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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1240

Collection of Assessments and Refunds Under the Honey Research, Promotion, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements procedures governing the collection of assessments and refunds under the Honey Research, Promotion, and Consumer Information Order (Order). The Order is effective under the Honey Research, Promotion, and Consumer Information Act (Act) and provides for an initial assessment of one-cent per pound for honey produced in the United States or honey or honey products imported into the United States. Persons who produce, produce and handle, or import less than 6,000 pounds of honey annually may obtain an exemption from assessment.

EFFECTIVE DATE: February 2, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250 (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Honey Research, Promotion, and Consumer Information Order, and rules issued thereunder, are unique in that they are brought about through the group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

The Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601 *et seq.*) and the Honey Research, Promotion, and Consumer Information Order (7 CFR Part 1240; 51 FR 26147) provide that all handlers and producer-packers who handle honey and all importers who import honey or honey products are subject to regulation under the promotion order for honey produced in, or honey and honey products imported into the United States, including the Commonwealth of Puerto Rico. The Act and Order require that honey producers, producer-packers, and importers pay assessments for operating the program, and require that honey handlers act as collection agents for honey producers covered under the Order.

The honey industry is made up of many small entities, and several larger entities, which are engaged in the production, importation, and marketing of honey. There are generally three categories of honey producers in the United States: the hobbyist; the part-time beekeeper; and commercial beekeepers. There are about 190,000 hobbyist beekeepers; about 10,000 part-time beekeepers; and about 1,600 commerical beekeepers. Because the Act and the Order exempt persons who annually produce or import less than 6,000 pounds of honey, hobbyist beekeepers and a significant number of part-time beekeepers are not required to pay assessments.

Pursuant to requirements set forth in the RFA, the Administrator of the Agricultural Marketing Service has considered the impact of these regulations on small entities. This action establishes the provisions by which assessments are to be collected from, and refunds returned to, producers and importers, and the procedures required for producers, producer-packers, and importers to obtain an exemption from assessments. This final rule implements procedures governing the collection of assessments and refunds under the Order. Determinations concerning the RFA and the Order appear at 51 FR 3605 and 51 FR 26147. The provisions contained in this final rule were recommended by the National Honey Board (Board), the administrative agency established under the Order.

These regulations are applicable to all honey handled in the United States, and all honey and honey products imported into the United States. The National Honey Board, which is composed of producers, a member of a producer marketing cooperative, handlers, importers, and a public member, has determined that the methods contained in this rule are the most effective and least burdensome way to carry out the program's intent. The Board reviewed provisions currently in effect under similar research and promotion programs for other agricultural commodities as well as voluntary research and promotion programs currently and previously in effect within the honey industry. The impact on the various industry segments resulting from the establishment of these rules and regulations was also considered. Finally, the Board considered current business practices used by the industry when recommending the reporting and recordkeeping requirements that would be imposed upon producers, producer-packers, handlers, and importers covered under these regulations. Furthermore, persons who are required to pay assessments may request a refund of any assessment paid.

Honey production in the United States approximates 200 million pounds annually, although there is some year-to-year fluctuations due to weather conditions. The 1981 value of U.S. production of honey was about $90.1 million. This was based on 4.2 million colonies of bees with an average honey yield per colony of 44 pounds.

It is the Department's view that the impact of this action on producers, producer-packers, handlers, and importers is not adverse. The anticipated costs to producers, producer-packers, handlers, and importers in implementing these regulations will be significantly offset when compared to the potential benefits of these regulations.

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The Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) seeks to minimize the paperwork burden imposed by the Federal Government while maximizing the utility of the information requested. In accordance with the procedures contained in Title 5 of the Code of Federal Regulations, Part 1320, the information collection and recordkeeping requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 0581–0153.

The proposed rule was published in the January 9, 1987, **Federal Register** (52 FR 797) affording interested persons until January 26, 1987, to file comments. None were received. However, technical changes were made in this final rule to conform to U.S. Customs Service terminology to more precisely define the term imported, and to reference producer-packers in the refund provisions to the extent that such producer-packers are eligible for refunds. Several provisions have been moved to new sections to clarify certain sections relating primarily to assessments and recordkeeping requirements. The affected sections appeared in proposed §§ 1240.115, 1240.116, and 1240.117. Because proposed § 1240.116 was moved to § 1240.119, other sections have been renumbered as appropriate. Also, proposed § 1240.111 paragraphs (a) (1) and (2) were moved to § 1240.115 to simplify the definition of first handler and producer-packer and to clarify how assessments are levied. Additional miscellaneous non-substantive changes are also made for clarity including deleting language in § 1240.116(d) regarding payments through cooperating agencies.

Section 7(c)(6)(B) of the Act and § 1240.37(b) of the Order authorize the Board to recommend to the Secretary such rules and regulations as are necessary to effectuate the terms and conditions of the Order. Sections 1240.100 through 1240.125 establish the general rules and regulations which govern the collection of assessments, the procedure for applying for refunds, the application of late payment and interest charges on past due assessments, the filing of reports and maintenance of records, and the procedure for applying for an exemption from assessment. Sections 1240.100 and 1240.105 define certain words in addition to those contained in the Order, which are used throughout the subpart. These terms are defined to clearly delineate their meaning and to simplify the subsequent provisions in which they are used.

This final rule also directs communications in connection with the Order and all rules, regulations, and supplemental Orders issued thereunder to the Honey Board. The Board is charged with various duties regarding administration of the Order and therefore, questions in connection with the various aspects of the program could best be answered by the Board itself.

The purpose of this program is to fund projects relating to research, consumer information, advertising, sales promotion, producer information, and market development to assist, improve, or promote the marketing, distribution, and utilization of honey and honey products. Funds collected under this program will be used for this purpose in accordance with the Act and Order. A provision is included to insure that the Board's contracts comply, and are not inconsistent with, the provisions of this part. This provision also provides adequate safeguards to insure that Board funds are used properly.

This final rule also provides that the Board's by-laws be used as the basis to govern the conduct and organization of Board meetings. The Act and Order provide that all U.S. Department of Agriculture (USDA) costs associated with the conduct of its duties under the Order be reimbursed. These costs will be billed quarterly by USDA to the Board.

Because honey is marketed in many different ways, examples of who first handles honey or who is a producer-packer are included in this subpart to more clearly delineate who is required to collect assessments from producers or who is responsible to pay assessments, and when they should be collected and forwarded to the Board. The Act and the Order provide that producers, producer-packers, and importers who produce, produce and handle, or import less than 6,000 pounds of honey per year shall be exempt from assessment. Therefore, procedures for exempting producers, producer-packers, and importers have been recommended by the Board and are included in this subpart.

To properly administer this provision, the Board has recommended that exemption certificates be issued to qualified producers, producer-packers, and importers. Producers, producer-packers, and importers who wish to obtain an exemption are required to submit an application to the Board along with any appropriate evidence supporting their claim.

The Board will then investigate each such claim and, if appropriate, issue an exemption certificate together with an exemption number to the producer, producer-packer, or importer who meets the 6,000 pound exemption requirements. First handlers are required to collect assessments from each honey producer unless an exemption certificate is presented by that producer.

This subpart also prescribes procedures, pursuant to § 1240.24(d) of this part, to exempt producers paying assessments under their State plan from a portion of assessments due under these provisions. The first handler would then be required to forward to the Board the balance due pursuant to this part in excess of the State assessment.

The Order further provides the Board with discretionary authority to recommend that honey which is exported be exempted from assessment. The Board has not recommended such exemption at this time and therefore no such provisions appear in this rule.

The levying of assessments is clarified in this subpart to summarize who may be exempt from assessment and how assessments are levied on imported honey and honey products and on honey pledged as collateral for a loan under the Commodity Credit Corporation Honey Price Support Program.

A late payment charge is establishd pursuant to § 1240.41(i) of the Order in the amount of ten percent of the outstanding balance due the Board. The amount of the late payment charge recommended by the Board was determined to be in keeping with good business practices in that it would discourage handlers from using monies collected from producers for their own purposes. Ten percent was considered not excessive but substantive enough that it should serve as an effective deterrent against the improper use of such funds. The late payment charge will be applied to all assessments not paid within 15 days after the date such assessments become due.

In addition to the late payment charge, one and one-half percent per month interest on the outstanding balance, including any accrued interest, will be added to any accounts delinquent over 30 days and will sontinue monthly until the outstanding balance is paid to the Board. This provision is authorized by § 1240.41(j) of the Order and is intended to insure that assessments are remitted to the Board in a timely manner.

Section 1240.118 sets forth the procedures to be used by producers and importers to apply for a refund of assessments. Producers and importers desiring a refund of assessments are required to submit an application form within 90 days from the date the assessment became payable pursuant to § 1240.114. In order to safeguard the refunding process, producers and importers are required to submit evidence satisfactory to the Board that the assessments have been paid. Refunds will be given by the Board in June and December of each year. In order for the Board to refund assessments on this schedule, the regulations set May 31 and November 30 as the last day to apply for a refund and receive payment on the June and December dates, respectively.

The Board has recommended that a monthly reporting period be established for handlers paying assessments to the Board. However, should different handler, importer, or producer-packer payment schedules be necessary in order to recognize differences in purchasing practices and procedures, the Board will have the authority to approve such alternate payment schedules. The provisions in § 1240.117 clarify how assessments are to be remitted to the Board. This section also provides for assessments to be collected through a cooperating agency, such as another government agency or grower cooperative. The provision also establishes procedures for prepayment of assessments for those handlers or producer-packers who wish to do so.

The provisions in §§ 1240.119 through 1240.125 which involve safeguards; retention period of records; availability of records; confidential books, records, and reports; right of the Secretary; personal liability; and OMB control number, are generally included in research and promotion programs. All the provisions are incidental to, and not inconsistent with, the terms and conditions of the Act and Order.

It is hereby found and determined that the general rules and regulations, as hereinafter set forth will tend to effectuate the declared policy of the Act. It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). The final rule should be issued as soon as possible so the Board can begin collecting assessments and adminstering the program. This would help the industry reduce its large inventories of honey through the program's promotion efforts. Affected persons in the honey industry are aware of and have prepared for this program and planned their operations accordingly. Many importers have considered the assessment in negotiating contracts with foreign suppliers. The initial rate of assessment is set by statute and is provided for in the Order. The Order was promulgated pursuant to formal rulemaking in which producers, handlers, producer-packers, and importers participated. February is one of the heavier honey handling and importing months of the year and this final rule should be made effective to assess this honey so as to provide a sound financial basis for the Board to operate in this fiscal year. Any producer, producer-packer, or importer can request and receive a refund of assessments paid into the program.

List of Subjects in 7 CFR Part 1240

Honey, Agricultural research, Reporting and recordkeeping requirements, Market development, Consumer information.

1. The authority citation for 7 CFR Part 1240 is revised to read as follows:

Authority: Honey Research, Promotion, and Consumer Information Act, Secs. 1–13, 98 Stat. 3115; 7 U.S.C. 4601–4612.

The Subpart—General Rules and Regulations is added to Part 1240 to read as follows:

PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER

Subpart—General Rules and Regulations

Sec.

1240.100 Terms defined.
1240.105 Definitions.
1240.106 Communications.
1240.107 Policy and objective.
1240.108 Contracts.
1240.109 Procedure.
1240.110 U.S. Department of Agriculture costs.
1240.111 First handler and producer-packer.
1240.113 Importer.
1240.114 Exemption procedures.
1240.115 Levy of assessments.
1240.116 Payment of assessments.
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1240.118 Reports of disposition of exempted honey.
1240.119 Reporting period and reports.
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1240.122 Confidential books, records, and reports.
1240.123 Right of the Secretary.
1240.124 Personal liability.
1240.125 OMB control number.

Subpart—General Rules and Regulations

§ 1240.100 Terms defined.

Unless otherwise defined in this subpart, definitions of terms used in this subpart shall have the same meaning as the definitions of such terms which appear in Subpart—Honey Research, Promotion, and Consumer Information Order. Additional terms are defined in § 1240.105.

§ 1240.105 Definitions.

(a) "Principal ingredient" means fifty-one percent or more by weight of the total ingredients contained in honey products.

(b) "First handler" means the person who first handles honey.

(c) "Order" means the Honey Research, Promotion, and Consumer Information Order which appears in this part.

(d) "United States" means the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 1240.106 Communications.

Communications in connection with the Order and all rules, regulations, and supplemental Orders issued thereunder shall be addressed to the National Honey Board, 9595 Nelson Road, Box C, Longmont, Colorado 80501.

§ 1240.107 Policy and objective.

(a) It shall be the policy of the Board to carry out an effective and continous coordinated program of marketing research, development, advertising, and promotion in order to help maintain and expand existing domestic and foreign markets for honey and to develop new or improved markets.

(b) It shall be the objective of the Board to carry out programs and projects which will provide maximum benefit to the honey industry and no undue preference shall be given to any of the various industry segments.

§ 1240.108 Contracts.

The Board, with the approval of the Secretary, may enter into contracts or make agreements with persons for the development and submission to it of plans or projects authorized by the Order and for carrying out of such plans or projects. Contractors shall agree to comply with the provisions of this part. Subcontractors who enter into contracts or agreements with a primary contractor and who receive or otherwise utilize funds allocated by the Board shall be subject to the provisions of this part. All records of contractors and subcontractors applicable to contracts entered into by the Board are subject to audit by the Secretary.

§ 1240.109 Procedure.

The Organization of the Board and the procedure for conducting meetings of the Board shall be in accordance with the By-Laws of the Board.

§ 1240.110 U.S. Department of Agriculture costs.

The Board shall reimburse the U.S. Department of Agriculture (USDA) from assessments for administrative costs

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incurred by USDA with respect to the Order after its promulgation and for any administrative expenses incurred by USDA for the conduct of referenda. The Board shall pay those administrative costs incurred by USDA for the conduct of its duties under the Order as determined periodically by the Secretary. USDA will bill the Board quarterly and payment shall be due promptly after the billing of such costs.

§ 1240.111 First handler and producer-packer.

Persons who are first handlers or producer-packers include but are not limited to the following:

(a) When a producer delivers honey from his or her own production to a packer or processor for processing in preparation for marketing and consumption, the packer or processor is the first handler, regardless of whether he or she handles the honey for his or her own account or for the account of the producer or the account of other persons.

(b) When a producer delivers honey to a handler who takes title to such honey, and places it in storage, such handler is the first handler.

(c) When a producer delivers honey to a commercial storage facility for the purpose of holding such honey under his or her own account for later sale, the first handler of such honey would be identified on the basis of later handling of such honey.

(d) When a producer packages and sells honey of his or her own production at a roadside stand or other facility to consumers or sells to wholesale or retail outlets or other buyers, the producer is a producer-packer.

(e) When a producer sells unprocessed or processed honey from his or her own production directly to a commercial user or food processor who utilizes such honey as an ingredient in the manufacture of formulated products, the producer is a producer-packer.

(f) When a producer uses honey from his or her own production in the manufacture of formulated products for his or her own account and for the account of others, the producer is the producer-packer.

(g) When a producer delivers a lot of honey to a processor who processes and packages a portion of such lot of honey for his or her own account and sells the balance of the lot, with or without further processing, to another processor or commercial user, the first processor is the first handler for all the honey.

(h) When a producer supplies honey to a cooperative marketing organization which sells or markets the honey, with or without further processing and packaging, the cooperative marketing organization becomes the first handler upon physical delivery to such cooperative.

(i) When a producer uses honey from his or her own production for feeding his or her own bees, such honey is not handled at that time. Honey in any form sold and shipped to any persons for the purpose of feeding bees is handled and is subject to assessment. The buyer of the honey for feeding bees is the first handler.

§ 1240.113 Importer.

Each lot of honey and honey products imported into the United States is subject to assessment under this part. Such assessment shall be paid by the importer of such honey and honey products at the time of entry or withdrawal for consumption into the United States. Any person who imports honey or honey products into the United States as principal, agent, broker, or consignee for honey produced outside the United States and imported into the United States shall be the importer.

§ 1240.114 Exemption procedures

(a) Producers who produce, producer-packers who produce and handle, and importers who import less than 6,000 pounds of honey per year wishing to claim an exemption from assessments pursuant to § 1240.42 (a) and (b) should submit an application to the Board for a certificate of exemption.

(b) Upon receipt of the claim for exemption, the Board shall investigate, to the extent practicable, the request for exemption. The Board will then issue, if deemed appropriate, an exemption certificate to each person who is eligible to receive one. Producers who are exempt from assessment must present their certificates of exemption to their first handler in order to not be subject to assessment on honey. First handlers, except as otherwise authorized by the Honey Board are required to maintain records showing the exemptee's name and address along with their certificate number assigned by the Board.

(c) The Secretary, upon recommendation by the Board, may exempt that portion of assessments collected under a qualified State plan: *Provided,* That the State plan meets all of the requirements in § 1240.42(d) of the Order.

(1) First handlers collecting assessments from producers for the State plan and the Board shall forward that portion of assessments collected under the order in excess of the State assessment to the Board.

(2) Upon request of the Board, producers having an exemption from a portion of the assessments under this Order due to payment of assessments under a State plan, shall be required to furnish evidence to the Board that the assessments to the State have been paid.

§ 1240.115 Levy of assessments.

(a) *Time of payment.* The assessment shall become due at the time assessable honey is first handled or entered or withdrawn for consumption into the United States pursuant to this part.

(b) An assessment of one cent per pound is levied on honey produced in the United States, on imported honey entered or withdrawn for consumption into the United States, and on honey used in imported honey products entered or withdrawn for consumption into the United States except that assessments shall not be levied on the following:

(1) Any persons other than importers holding a valid exemption certificate during the twelve month period ending on December 31;

(2) That portion of honey which does not enter the current of commerce which is utilized solely to sustain a producers or producer-packer's own colonies of bees;

(3) That portion of otherwise assessable honey which is contained in imported products wherein honey is not a principal ingredient. Honey subject to assessment shall be assessed only once.

(c) The assessment on each lot of honey handled in the United States shall be paid by the first handler who handles, or by the producer-packer who produces and handles such honey.

(1) The first handler shall collect and pay assessments to the Board unless such handler—

(i) Has obtained from the producer a certificate of exemption from the Board exempting the producer from assessment due to the exclusion in § 1240.42(a) of the Order and § 1240.14 of the regulations, or

(ii) Has received documentation acceptable to the Board that the assessment has been previously paid.

(2) A producer-packer shall pay, or collect and pay, assessments to the Board unless—

(i) Such producer-packer has obtained an exemption from the Board applicable to the honey he or she produced or produced and handled;

(ii) Such producer-packer has obtained from another producer, whose honey the producer-packer handled, a certificate of exemption from the Board exempting that producer from assessment due to the exclusion in § 1240.42(a) of the Order and § 1240.114 of the regulations; or

(iii) Has received documentation acceptable to the Board that the assessment has been previously paid.

(d) Assessments shall be levied with respect to honey pledged as collateral for a loan under the Commodity Credit Corporation (CCC) Honey Price Support Program in accordance with an agreement entered into between the Honey Board and CCC. The assessment will be deducted from the proceeds of the loan by CCC and forwarded to the Board, except that the assessment shall not be deducted in the case of a honey marketing cooperative that has already deducted the assessment or that portion of the assessment paid to a qualified State plan exempted by the Board. When such loan is redeemed, the Department shall provide the producer with proof of payment of assessment.

(e) The U.S. Customs Service (USCS) will collect assessments on all honey or honey products where honey is the principal ingredient imported under its tariff schedule (TSUSA number 155.70) at the time of entry or withdrawal for consumption and forward such assessment as per the agreement between the USCS and USDA. Any importer or agent who is exempt from payment of assessments pursuant to § 1240.42 (a) and (b) of the Order may apply to the Board for reimbursement of such assessments paid.

(f) A late payment charge shall be imposed on any handler, producer-packer, or importer except as otherwise authorized by the Board, who fails to pay to the Board within the time prescribed in this subpart the total amount of assessment due for which any such handler, importer, or producer-packer is liable. Fifteen days after the assessment becomes due a one-time late payment charge of 10 percent will be added to any outstanding funds due the Board.

(g) In addition to the late payment charge, one and one-half percent per month interest on the outstanding balance except as otherwise authorized by the Board, will be added to any accounts delinquent over 30 days and will continue monthly until the outstanding balance is paid to the Board.

§ 1240.116 Payment of assessments.

(a) *Responsibility for payment.* Unless otherwise authorized by the Board under the Act and Order, the first handler or producer-packer shall collect the assessment from the producer, or deduct such assessment from the proceeds paid to the producer on whose honey the assessment is made, and remit the assessments to the Board. The first handler or producer-packer shall furnish the producer with evidence of such payment. Any such collection or deduction of assessment shall be made not later than the time when the assessment becomes payable to the Board. Failure of the handler or producer-packer to collect or deduct such assessment does not relieve the handler or producer-packer of his or her obligation to remit the assessment to the Board. Assessments on imported honey and honey products shall be collected as specified in § 1240.115(e): *Provided,* That importers shall be responsible for payment of any assessment amount not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States.

(b) *Payment directly to the Board.* Except as provided in paragraph (c) of this section, each first handler and producer-packer shall pay the required assessment pursuant to § 1240.41 of the Order directly to the Board at the address referenced in § 1240.106, for each reporting period specified in § 1240.119, on or before the 15th day following the end of such period. Payment shall be in the form of a check, draft, or money order payable to the Board and shall be accompanied by a report on Board forms pursuant to § 1240.50.

(c) *Prepayment of assessment.* (1) In lieu of the monthly assessment payment specified in § 1240.119 of this subpart, the Board may permit first handlers or producer-packers to make advance payments of their total estimated assessments for the season to the Board prior to their actual determination of assessable honey.

(2) Persons using such procedure shall provide a monthly accounting of actual handling and assessments.

(3) Specific requirements, instructions, and forms for making such advance payments shall be provided by the Board upon request.

(d) *Payment through cooperating agency.* The Board may enter into agreements subject to approval of the Secretary authorizing other organizations to collect assessments in its behalf. All such agreements are subject to the requirements of the Act, Order, and all applicable rules and regulations under the Act and the Order.

§ 1240.117 Refunds.

A refund of assessments may be obtained by a producer, producer-packer only for their own production, or importer only by following the procedures prescribed in the section.

(a) *Application form.* A producer, producer-packer, or importer shall obtain a refund form from the Board by written request which shall bear the producer's, producer-packer's, or importer's signature. For partnerships, corporations, associations, or other business entities, a partner or an officer of the entity must sign the request and indicate his or her title.

(b) *Submission of refund application to Board.* Any producer, producer-packer, or importer requesting a refund shall mail an application on the prescribed form to the Board within 90 days from the date the assessment became payable pursuant to § 1240.115. The refund application shall show the following:

(1) Producer's, producer-packer's, or importer's name and address;

(2) First handler's or handlers' name(s) and address(es);

(3) The number of pounds of honey on which a refund is requested;

(4) Date or inclusive dates on which assessments were paid; and

(5) Producer's, producer-packer's, or importer's signature.

Where more than one producer, producer-packer, or importer shared in the assessment payment, joint or separate refund application forms may be filed. In any such case the refund application shall show in addition to other required information the names, addresses, and proportionate shares of such producers or importers and the signature of each.

(c) *Proof of payment of assessment.* Evidence of payment of assessments satisfactory to the Board shall accompany the producer's, producer-packer's, or importer's refund application.

(d) *Payment of refund.* Refunds will be made in June and December only; applications for refunds payable in June must be received by May 31 and applications for payment in December by November 30. For joint applications, the remittance shall be made payable jointly to all eligible producers, producer-packers, or importers signing the refund application form.

§ 1240.118 Reports of disposition of exempted honey.

The Board may require reports by first handlers and producer-packers on the handling and disposition of exempted honey. Also, authorized employees of the Board or the Secretary may inspect such books and records as are

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appropriate and necessary to verify the reports on such disposition.

§ 1240.119 Reporting period and reports.

(a) For the purpose of the payment of assessments, a calendar month shall be considered the reporting period; however, other accounting periods may be used when registered with and approved by the Board in writing.

(b) Pursuant to § 1240.50 of the Order, handlers and producer-packers shall file with the Board a report for each reporting period.

(1) All reports shall contain at least the following information:

(i) The handler's or producer-packer's name and address;

(ii) Date of report (which is also date of payment to the Board);

(iii) Period covered by report; and

(iv) Total quantity of honey determined as assessable during the reporting period.

(2) Handlers or producer-packers who collect assessments from producers or withhold assessments for their accounts or pay the assessments themselves shall also include with each report a list of all such producers whose honey was handled during the period, their addresses, and to total assessable quantities handled for each such producer.

(c) Each importer shall file with the Board a monthly report containing at least the following information:

(1) The importer's name and address.

(2) The quantity of honey and honey products entered or withdrawn for consumption into the United States.

(3) The amount of assessment paid on honey and honey products entered or withdrawn for consumption into the United States to the U.S. Customs Service at the time of entry or withdrawal for consumption.

(4) The amount of any honey and honey products on which the assessment was not paid to the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States.

(d) In the event of a first handler's, producer-packer's, or importer's death, bankruptcy, receivership, or incapacity to act, the representative of the handler, producer-packer, or importer or his or her estate, shall be considered the first handler, producer-packer, or importer for the purposes of this part.

§ 1240.120 Retention period for records.

Each first handler, producer-packer, and importer required to make reports pursuant to this subpart shall maintain and retain for at least two years beyond the marketing year of their applicability: One copy of each report made to the Board, records of all exempt producers, producer-packer, and importers including certification of exemption as necessary to verify the address of each exempt producer, producer-packer, and importer and such records as are necessary to verify such reports.

§ 1240.121 Availability of records.

Each first handler, producer-packer, and importer required to make reports pursuant to this subpart shall make available for inspection by authorized employees of the Board or the Secretary during regular business hours, such records as are appropriate and necessary to verify reports required under this subpart.

§ 1240.122 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handler, producer-packer, and importers and all information with respect to refunds of assessments made to individual producers and importers shall be kept confidential in the manner and to the extent provided for in § 1240.52 of the Order.

§ 1240.123 Right of the Secretary.

All fiscal matters, programs, projects, rules or regulations, reports, or other substantive action proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1240.124 Personal liability.

No member of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, or employee except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1240.125 OMB control number.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511, is as follows: 0581–0153.

Signed this day at Washington, DC, January 28, 1987.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 87–2008 Filed 1–29–87; 11:30 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–NM–149–AD; Amdt. 39–5531]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 airplanes, which requires inspections and modifications of the emergency escape system. This action has been prompted by numerous reports of escape system failures. The required inspections and modifications will provide a satisfactory overall reliability of the passenger evacuation system, and will provide corrective action for the malfunctions identified in the listed service bulletins. Failure of the evacuation system could result in unusable escape slides and jeopardize successful emergency evacuation of an airplane.

DATE: Effective March 9, 1987.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124; the BF Goodrich Company, Dept. 1809, 500 South Main Street, Akron, Ohio 44318; and the Air Cruisers Company, P.O. Box 180, Belmar, New Jersey 07719. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Roger S. Young, Airframe Branch, ANM–120S; telephone (206) 431–1929. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive to require inspections and modifications of the Boeing Model 747 emergency escape system was published in the **Federal Register** on May 8, 1986 (51 FR 17049).

The comment period for the proposal, which ended July 29, 1986, afforded interested persons an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received. Comments were received from The Boeing Company, the Air Transport Association (ATA) of America, and the National Transportation Safety Board (NTSB).

The Boeing Company stated that proper maintenance practices must be followed to ensure reliable escape system operation, and that the operational reliability of the escape system would be significantly enhanced with implementation of the checklist. Boeing recommended that it be performed each "2C" check period (generally 24 to 26 months). The FAA concurs, but notes that the 30-month required insepction interval was determined by the FAA to correspond to the "2C" check period, with allowance for those operators who have a slightly longer time between "C" checks. Therefore, the final rule needs no revision.

Boeing and ATA objected to the proposed requirement to revise maintenance inspection programs on the grounds that the FAA is using AD procedures to enforce proper maintenance practices. ATA cites the preamble to Part 39 of the Federal Aviation Regulations for objecting to the FAA using the AD process to correct a maintenance practice of an individual operator or to enforce maintenance rules. The FAA does not concur. The preamble to Amendment 39–106 (30 FR 8826), effective August 13, 1965, states that "this amendment removes the two restrictions from the regulations and will allow AD's to be issued for unsafe conditions however and wherever found." The preamble also states that the FAA is "broadening the regulation to make any unsafe condition, whether resulting from maintenance, design defect, or otherwise, the proper subject of an AD." The preamble does state that the FAA will not issue AD's to correct problems arising from poor maintenance practices on the part of an individual operator. However, service history has demonstrated that the Model 747 escape system problems are not limited to a single operator. Therefore, the FAA has determined that the inspection checklist is a proper subject for an AD.

Boeing also commented that the maintenance manual procedures are customized to individual operators and are not currently FAA-approved. Boeing noted that the temporary revision to the maintenance manual, referenced in paragraph A of the proposal, has now been formally incorporated into each operator's maintenance manual, and no longer exists. Boeing has updated the inspection checklist to reflect the latest procedures in the Boeing Maintenance Manual Chapter 52–11–07 and released the checklist in Boeing Service Letter 747–SL–52–35, Revision A, dated December 16, 1986. The final rule has been revised to reflect this service letter. This revision consists of corrections and clarifications, and will impose no additional burden on any operator. However, the FAA has determined that inspections accomplished in accordance with Boeing Maintenance Manual Temporary Revision 52–607, dated October 31, 1985, are acceptable for compliance with paragraph A of this AD.

Boeing commented that there is no requirement for an initial inspection for airplanes after line number 630, and that the recurrent inspection interval of 30 months is not consistent with line number 630, which was delivered in January 1986. Boeing suggested that the applicability of the AD should be changed to any airplane delivered 30 months prior to the effective date of the AD.

The FAA concurs and paragraph A. of the final rule has been revised to reflect that compliance is required within 9 months after the effective date of the AD or within 30 months after the date of initial delivery from Boeing, whichever occurs later. This change merely clarifies the AD and does not increase the burden on any operator.

Boeing also stated that the AD should exclude freighters. The FAA concurs that freighters should be excluded since the doors are not passenger emergency exits and they generally do not have escape slides installed. This would also apply to doors in the cargo area of dedicated mixed passenger/cargo airplanes. Airplanes that are converted regularly from the cargo to the passenger configuration must be inspected when in the passenger configuration. The wording of the final rule has been changed to exclude doors which do not have escape slides installed.

Boeing stated that escape slide part numbers should be listed instead of listing the Supplemental Type Certificate (STC) under which the slides were approved because operators do not receive copies of the STC. The FAA does not concur. The use of escape slide part numbers instead of the STC number is not practical since the AD would have to be revised each time additional part numbers are approved under the STC. Operators who install a part by STC must have the STC for the airplane records and must have the corresponding installation procedures.

The ATA questioned whether each of the 11 modifications can be justified on its own merits and stated that the NPRM is based only on general statements of unreliability. The FAA does not concur. The FAA notes that The Boeing Company, in a letter to FAA, cited its study of almost 1,300 attempted door and slide deployments, of which 82.3 percent were successful. This included Boeing's own production tests in which deployments are more reliable than deployments in service. Boeing concluded that reliability can be enhanced by improved maintenance and incorporation of certain service bulletins. Further, Boeing stated that almost a third of the unsuccessful deployments "are preventable by simply using the checklist." The FAA also has received numerous failure reports from the Service Difficulty Reporting System and reports of failures of partial evacuation demonstrations conducted under FAR 121.291. Each of the modifications proposed was evaluated by the FAA and has been determined to be necessary to prevent deployment failures and to provide an adequate level of safety.

ATA commented that the Seattle Aircraft Certification Office will be "taking over" the operators' maintenance programs and that the operators will not be able to adjust their maintenance programs based on their reliability programs. The ATA contends that this could adversely affect safety by delaying adoption of needed program revisions, even in the case of adverse reliability findings. The FAA does not concur. Once the checklist is incorporated into an operator's maintenance program, the AD requirement is satisfied and, with approval by the Principal Maintenance Inspector (PMI), the maintenance program can be adjusted by the operator without coordination with the Seattle Aircraft Certification Office. The FAA does not agree that this AD will compromise the operator's maintenance program. The maintenance program should be strengthened by the incorporation of a systematic checklist. By requiring incorporation of the checklist into the maintenance program, instead of requiring specific intervals for repetitive inspections, this AD gives the operator the flexibility to accomplish the inspections within the framework of its normal maintenance practice.

The ATA stated that the FAA estimate of the time required to accomplish the inspection checklist is too low, since some operation

procedures would require two mechanics and an inspector. Also, some inspections must be accomplished in an overhaul shop because dismantling of the slide packs and records checks are not normally done by line mechanics, which adds to the complexity of the inspections. The ATA estimated that 144 manhours is a more accurate number of the manhours required to accomplish the requirements of the AD. Upon reconsideration of this information, the FAA agrees that its original estimate of 14 manhours is low; however, the ATA estimate appears too high. In its economic cost analyses, the FAA only considers the costs associated with the required inspections, not the time necessary for corrective action. The cost estimate has been revised to better reflect the time necessary to accomplish the inspection.

The FAA has determined that the records checks need not be part of an AD and the final rule has been revised to delete them. If the operator wishes, some of the checks could be accomplished with the escape slide removed from the airplane; however, it is not necessary. The slide packs must be removed from the door, but need not be unpacked in order to accomplish the required inspections. All inspections can be accomplished on the airplane.

The NTSB agrees that the AD would improve the reliability of the Model 747 slides and slide/rafts and cites specific escape slide failures that it has investigated. The NTSB states that the AD would provide inspections that should preclude the cited problems from recurring.

After a careful review of available data, including the comments noted above, the FAA has determined that air safety and the public interest require adoption of the proposed rule with the changes previously noted.

The following table lists the approximate number of U.S.-registered airplanes that will be affected by this AD, and gives an estimate of the manhours and cost of repair parts per airplane that will be required to accomplish each of the inspections.

Paragraph	No. of airplanes	Manhours/Airplane	Parts
A & B	133	56	0
C.1	40	10	$133
C.2	78	30	$2,370
C.3	0	0	0
C.4	7	8	$2,636
C.5	133	46	$1,086
C.6	12	16	0
C.7	9	12	$243
C.8	6	7	$651
C.9	133	10	$2,040
C.10	133	4	$1,020
D	133	16	$2,273

Based on an average labor cost of $40 per manhour, and the table above, the total cost impact of this AD to U.S. operators is estimated to be $1,906,852.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 747 series airplanes equipped with escape slides, certificated in any category. The applicability of each requirement is listed in the following paragraphs. Compliance required as indicated in the body of the AD.

To detect installation errors and provide satisfactory reliability of the evacuation system, accomplish the following, unless already accomplished:

A. For all Model 747 airplane doors equipped with escape slides, within nine months after the effective date of this AD or within 30 months after the date of initial delivery from Boeing, whichever occurs later, inspect the evacuation system in accordance with Boeing Service Letter 747-SL-52-35, Revision A, dated December 18, 1986, or later FAA-approved revisions, or FAA-approved equivalent, except as noted in subparagraphs A.1, A.2, and A.3., below.

1. For airplanes equipped with Air Cruisers slide/rafts installed in accordance with STC SA1215EA, the following changes must be made to the inspections:

a. Paragraph 3, Step C: The strap does not require disconnecting.

b. Paragraph 3, Step P(3): The girt lanyard cables must be installed on both forward and aft pulleys in accordance with a Air Cruisers Installation Instructions P-11751.

c. Paragraph 3, Step Q(18): This step may be deleted.

2. For airplanes equipped with BF Goodrich slide/rafts installed in accordance with STC SA574GL or SA575GL, replace Paragraph 3, Step C and Step Q(18), with the survival kit instructions of BFGoodrich Service Bulletin 25-063.

3. The following records checks need not be accomplished as part of this AD:

Paragraph:	Step
3	Q(4)
4	W(3)
5	X(3)
6	AJ
6	AU(3)
6	AU(20)
6	AU(23)

Airplane evacuation systems that do not meet the inspection criteria must be repaired prior to further flight in accordance with the corrective action procedure listed in the Boeing Service Letter or as amended by Air Cruisers installation instructions.

Note.—Equivalent inspections may be approved by an FAA Principal Maintenance Inspector.

B. Within the next nine months after the effective date of this AD, incorporate the inspections described in paragraph A., above, into the FAA-approved maintenance inspection program. These inspections must be accomplished at intervals not to exceed 30 months from the last inspection.

Note.—Equivalent inspections may be approved by an FAA Principal Maintenance Inspector.

C. Within 18 months after the effective date of this AD, inspect and/or modify the evacuation system in accordance with the following service bulletins, or later FAA-approved revisions:

1. For airplanes listed in Boeing Model 747 Service Bulletin 25-2083, dated August 12, 1970, modify the off-wing escape slide compartment latch system in accordance with that Boeing Service Bulletin.

2. For all Model 747 airplanes equipped with evacuation slide assemblies (Boeing Part Numbers 60B00006 -63 thru -102) and evacuation ramp assemblies (Boeing Part Numbers 60B50076 -57 thru -60) modify the slide/ramp packboard release mechanism in accordance with Boeing Model 747 Service Bulletin 25-2141, Revision 1, dated July 19, 1971.

Note.—These units may have been installed on airplanes other than those listed in the service bulletin.

3. For airplanes listed in Boeing Service Bulletin 747-25-2332 Revision 2, dated September 2, 1977, modify the off-wing escape slide inflation system in accordance with that Boeing Service Bulletin.

4. For Model 747 airplanes with reservoir assemblies (BF Goodrich Part Numbers 4A3037 -12 and -13, 4A3038, and 4A3038 -10 and -11) installed at the off-wing location, replace the actuator assembly portion of the reservoir assembly in accordance with Boeing Service Bulletin 747-25-2423 dated August 25, 1978.

Note.—These reservoir assemblies may have been installed on airplanes other than those listed in the service bulletin.

5. For Model 747 airplanes listed in Boeing Service Bulletin 747-25-2501, Revision 4, dated January 11, 1985, test and inspect the off-wing slide firing cable in accordance with that Boeing Service Bulletin.

a. Cables not meeting the test and inspection criteria must be replaced prior to further flight.

b. Repeat the inspection at intervals not to exceed two years until the cables are replaced in accordance with Paragraph III.J. of Boeing Service Bulletin 747-25-2501, Revision 4, dated January 11, 1985.

6. For Model 747 airplanes equipped with upper deck evacuation slide assemblies (Boeing Part Numbers 60B50072 -31, -32, -39, -41 thru -46, -50 thru -52, -59 thru -61, and -63 thru -65), modify the slide assemblies in accordance with Boeing Service Bulletin 747-25-2465, Revision 1, dated May 25, 1982.

Note.—These slide assemblies may have been installed on airplanes other than those listed in the service bulletin.

7. For Model 747 airplanes listed in Boeing Service Bulletin 747-25-2525, Revision 1, dated May 22, 1981, modify the off-wing escape slide compartment in accordance with that Boeing Service Bulletin.

8. For Model 747 airplanes equipped with upper deck escape slide packboard assemblies (Boeing Part Numbers 65B57619 -41 and -42), modify the packboard in accordance with Boeing Service Bulletin 747-25-2529, dated July 10, 1981.

Note.—These packboards may have been installed on airplanes other than those listed in the service bulletin.

9. For airplanes listed in Boeing Service Bulletin 747-25-2592, dated June 15, 1982, modify the off-wing latch release and door opening thrusters in accordance with that Boeing Service Bulletin.

10. For airplanes listed in Boeing Service Bulletin 747-25-2641, dated October 26, 1984, inspect and replace, if necessary, the off-wing door deployment thruster in accordance with that Boeing Service Bulletin.

D. For all Model 747 airplanes equipped with a combination slide/raft, within two years after the effective date of this AD, replace the Door No. 5 girt bar lifters and adjust the door floor fittings in accordance with Boeing Service Bulletin 747-52-2171, Revision 1, dated December 3, 1982, or later FAA-approved revisions.

E. Except as provided in Paragraph A. and B., an alternate means of compliance, which provide an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Upon request of an operator, an FAA Principal Maintenance Inspector, subject to approval by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the compliance times specified in this AD to permit compliance at an established inspection period of that operator if the request contains substantiating data to justify the change for that operator.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207; BFGoodrich Company, Dept 1809, 500 South Main Street, Akron, Ohio 44318; and Air Cruisers Company, P.O. Box 180, Belmar, New Jersey 07719. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 9, 1987.

Issued in Seattle, Washington, on January 21, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-1906 Filed 1-30-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-109-AD; Amdt. 39-5530]

Airworthiness Directives; Gates Learjet Models 35, 35A, 36, 36A, and 55

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive, applicable to Gates Learjet Models 35, 35A, 36, 36A, and 55 series airplanes, equipped with certain J.E.T. autopilot/flight director systems, which adds a limitation to the Airplane Flight Manual Supplement (AFMS) that prohibits the use of the applicable J.E.T. flight director system for certain VOR/TACAN operations, and where appropriate, modifies or adds a limitation to the AFMS relative to the use of wing flaps on autopilot-coupled VOR/TACAN approaches. This amendment is needed to prevent the potential for lateral navigational errors during enroute and approach operations.

DATE: Effective March 9, 1987.

ADDRESSES: The applicable Temporary Airplane Flight Manual Supplement Changes may be obtained from Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Robert R. Jackson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946-4416.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which adds limitations to the AFMS of certain Gates Learjet 35, 36, and 55 series airplanes, to prohibit the use of the applicable J.E.T. flight director system for certain VOR/TACAN operations, was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on June 4, 1986 (51 FR 20308).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

Since issuance of the NPRM, the FAA has reviewed and approved Gates Learjet Corporation Service Bulletins SB 35/36-22-5 and SB 55-22-2, both dated January 5, 1987, which describe modifications to the autopilot computers which will correct the unsafe condition addressed by this AD. The FAA has determined that incorporation of the modification described in the service bulletins constitutes terminating action for the requirements of this AD. Accordingly, an optional terminating action provision has been added to the final rule.

Certain other revisions have been made to the final rule to: (1) Clarify certain serial numbers of affected airplanes, (2) reference the date of a revision to a certain Airplane Flight Manual Supplement, and (3) include an additional airplane modification kit which, if incorporated on Model 55 airplanes, will exclude those planes from certain requirements of this AD (this kit number was inadvertently omitted from the Notice). The FAA has determined that these changes are editorial, relieving, or optional requirements, and will impose no additional burden on any operator.

After careful review of the available data, the FAA has determined that air safety and the public interest require the

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adoption of the rule with the changes noted above.

Approximately 230 airplanes of U.S. registry will be affected by this AD. The FAA has determined that since this proposed regulation only requires the insertion of the Temporary Flight Manual Supplement Changes in the Limitations Section of the appropriate Flight Manual Supplement, compliance would involve only a nominal monetary cost to operators.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because of the minimal cost of compliance per airplane. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Gates Learjet Corporation: Applies to Learjet Models 35, 35A, 36, and 36A airplanes equipped with a J.E.T. FC-530 autopilot/flight director; Model 35A airplanes equipped with a J.E.T. FC-535 autopilot/flight director; and Model 55 airplanes equipped with a J.E.T. FC-550 autopilot/flight director; certificated in any category. Compliance required as indicated, unless already accomplished.

To prevent the potential for operations with unsafe flight director steering commands, accomplish the following:

A. For Models 35, 35A, 36, and 36A airplanes equipped with J.E.T. FC-530 autopilot/flight director, except airplanes S/N 35-620, 35-627 and subsequent, and 36-057 and subsequent, within the next 10 hours time-in-service after the effective date of this AD, insert the following information in "Section I—Limitations" of the Gates Learjet 35/36 series Airplane Flight Manual Supplement (AFMS) for the J.E.T. FC-530 autopilot/flight director, AFMS W1029, dated 4/23/85, revised 3/11/86 (or Gates Learjet 35A, 36A J.E.T. FC-530 autopilot/flight director, AFMS W1029, dated 9/20/82, revised 5/13/83):

1. Add the following limitation and Note:

Flight director VOR enroute and approach operations and prohibited.

Note.—Autopilot-coupled VOR operations and raw data displays are not affected and may be used.

2. Change the final limitation to read as follows:

For autopilot VOR approach, the flaps must be lowered to 8° or more.

B. For Model 35A airplanes equipped with J.E.T. FC-535 autopilot/flight directors, within the next 10 hours time-in-service after the effective date of this AD, insert the following information in "Section I—Limitations" of the Gates Learjet Model 35A/36A AFMS for the J.E.T. FC-535 autopilot/flight director, AFMS T1204, dated 3/16/84, revised 4/4/84:

1. Add the following limitation and Note:

Flight director VOR/TACAN enroute and approach operations are prohibited.

Note.—Autopilot-coupled VOR/TACAN operations and raw data displays are not affected and may be used.

2. Change the final limitation to read as follows:

For autopilot VOR/TACAN approach, the flaps must be lowered to 8° or more.

C. For Model 55 airplanes equipped with J.E.T. FC-550 autopilot/flight directors, airplanes Serial Numbers 55-003 through 55-011, not incorporating ECR 2524, ECR 2525, AAK 55-81-2, or AAK 55-83-1, within the next 10 hours time-in-service after the effective date of this AD, insert the following information in "Section I—Limitations" of the Gates Learjet Model 55 AFMS for the J.E.T. FC-550 autopilot/flight director, AFMS W1001, dated 4/14/81, revised 8/31/81:

1. Add the following limitation and Note:

Flight director VOR enroute operations are prohibited.

Note.—Autopilot-coupled VOR enroute operations and raw data displays are not affected and may be used.

D. For Model 55 airplanes equipped with J.E.T. FC-550 autopilot/flight director; airplanes S/N 55-003 through 55-011, incorporating ECR 2524, ECR 2525, AAK 55-81-2, or AAK 55-83-1; and airplanes S/N 55-012 through 55-126; within the next 10 hours time-in-service after the effective date of this AD, insert the following information in "Section I—Limitations" of the appropriate Gates Learjet Model 55 AFMS for the J.E.T. FC-550 autopilot/flight director: AFMS W1002, dated 8/25/81, revised 2/15/83 (for airplanes S/N 55-003 through 55-011, incorporating ECR 2524 or AAK 55-81-2, and airplanes S/N 55-012 through 55-042); or AFMS W1003, dated 8/31/81, revised 2/15/83 (for airplanes S/N 55-003 through 55-042, incorporating ECR 2524 and ECR 2525, or AAK 55-83-1; and airplanes S/N 55-043 and 55-126):

1. Add the following limitation and Note:

Flight director VOR enroute and approach operations are prohibited.

Note.—Autopilot-coupled VOR operations and raw data displays are not affected and may be used.

2/ Add the following limitation:

For autopilot VOR approach, the flaps must be lowered to 8° or more.

E. In order to comply with the applicable requirements of paragraph A., B., C., or D., above, a copy of this AD may be used as a temporary amendment to the AFMS and carried in the airplane as part of the AFMS until replaced by the appropriate FAA-approved Gates Learjet published Temporary Flight Manual (TFM) Supplement Change. These include:

1. TFM Supplement Change to AFMS W1029 for the Models 35/36 series with J.E.T. FC-530 autopilot/flight director: TFM 86-1, dated 4/1/86.

2. TFM Supplement Change to AFMS T1204 for the Models 35A/36A with J.E.T. FC-535 autopilot/flight director: TFM 86-2, dated 4/1/86.

3. TFM Supplement Change to AFMS W1001 for the Model 55 with J.E.T. FC-550 autopilot/flight director: TFM 86-3, dated 4/1/86.

4. TFM Supplement Change to AFMS W1002 and AFMS W1003 for the Model 55 with J.E.T. FC-550 autopilot/flight director: TFM 86-4, dated 4/1/86.

F. Installation of the modification described in Gates Learjet Service Bulletins SB35/36-22-5 or SB55-22-2, both dated 1/5/87, as applicable, constitutes terminating action for the requirements of this AD.

G. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Wichita Aircraft Certification Office, FAA, Central Region.

All persons affected by this directive who have not already received the appropriate Temporary Airplane Flight Manual Supplement Changes and other service information from the manufacturer may obtain copies upon request to Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277. The service information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

This amendment becomes effective March 9, 1987.

Issued in Seattle, Washington, on January 21, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-1907 Filed 1-30-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-CE-07-AD; Amdt. 39-5527]

Airworthiness Directive; Mitsubishi Heavy Industries, Limited, and Mitsubishi Aircraft International, Inc., Models MU-2B, MU-2B-10, MU-2B-15, MU-2B-20, MU-2B-25, MU-2B-26, MU-2B-26A, MU-2B-30, MU-2B-35, MU-2B-36, MU-2B-36A, MU-2B-40, and MU-2B-60 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directives (AD) 74-11-02 (Amendments 39-1846, 39-2269) and 75-02-01 (Amendments 39-2059, 39-2269) applicable to Mitsubishi Heavy Industries, Limited, (MHI) Type Certificate A2PC Models MU-2B, -10, -15, -20, -25, -26, -30, -35, and -36 airplanes. The new AD would eliminate the repetitive inspections of the superseded AD's and require a one-time inspection, sealing, and replacement, as necessary, of wing flap flexible shafts, as well as shaft routing adjustment for bend radius relief. The new AD is needed because the FAA has learned of additional wing flap flexible shaft failures and that the applicability should be expanded to include the MU-2B airplanes certificated in the U.S. under Type Certificate (TC) A10SW. Failure of the wing flap flexible shaft will result in aircraft roll upon operation of flaps during flight. This action will preclude wing flap flexible shaft failure.

EFFECTIVE DATE: March 4, 1987.

Compliance: Required as prescribed in the body of the AD.

ADDRESSES: MHI Service Bulletin (S/B) MU-2 No. 198 dated February 13, 1985, and Mitsubishi Aircraft International (MAI) S/B MU-2 SB051/27-007, dated February 1, 1985, applicable to this AD, may be obtained from Mitsubishi Heavy Industries, Ltd., 10, Oye-Cho, Minato-ku, Nagoya, Japan, or Beech Aircraft Corporation (Licensee to Mitsubishi), 9709 East Central, P.O. Box 85, Wichita, Kansas 67201, Attn: Manager, Publications.

A copy of this information is also contained in the Rules Docket, Federal Aviation Administration, Central Region, Office of Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: For MHI TC A2PC Series airplanes manufactured in Japan: Mr. Jerry Sullivan, Aerospace Engineer, Airframe Section, ANM-172W, Western Aircraft Certification Office, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, California, 90009-2007; Telephone (213) 297-1166. For MAI TC A10SW Series airplanes manufactured in the U.S.: Mr. Robert R. Jackson, Aerospace Engineer, Wichita Aircraft Certification Office, ACE-130W, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4419.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new AD superseding two existing ADs applicable to certain Mitsubishi Heavy Industries MU-2B series airplanes requiring inspection and a joint sealing process on the wing flexible shaft joints was published in the **Federal Register** on July 30, 1986 (51 FR 27194) and a supplemental notice of proposed rulemaking (NPRM) was published in the **Federal Register** on November 4, 1986, (51 FR 40033). The proposals resulted from the manufacturer's report that a wing flap flexible shaft had failed on a MU-2B airplane prior to the manufacturer's recommended maximum service life of 2000 hours and created the potential of differential flap extension. As a result, MHI issued MU-2 Service Bulletin (S/B) No. 198 dated February 13, 1985, and MAI issued MU-2 S/B SB051/27/007, dated February 1, 1985, which give instructions for a torque inspection and a sealing process on flap flexible shaft joints. These instructions are more effective than inspections required by AD 74-11-02 and AD 75-02-01. The Japan Civil Aviation Bureau, which has responsibility and authority to maintain the continuing airworthiness in Japan, has classified this service bulletin and the actions recommended therein by the manufacturer as mandatory and has issued (Japanese) AD TCD-2451-85 to assure the continued airworthiness of the affected airplanes. On airplanes operated under Japanese regulations, this action has the same effect as an AD on airplanes certificated for operation in the United States.

The FAA relies upon the certification of the Japan Civil Aviation Bureau combined with the FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this design certificated for operation in the United States. The FAA has examined the available information related to the issuance of MU-2 S/B No. 198 and the mandatory classification of this service bulletin by the Japan Civil Aviation Bureau. Based on the foregoing, the FAA has determined that the condition addressed by MU-2B S/B No. 198 is an unsafe condition that may exist on other products of this type design certificated for operation in the United States.

Consequently, the proposed AD was applicable to MHI Models MU-2b, -10, -15, -20, -25, -26, -30, -35, and -36, airplanes certificated under TC A2PC and MAI Models MU-2B-25, MU-2B-26, MU-2B-26A, MU-2B-35, MU-2B-36A, MU-2B-40 and MU-2B-60 airplanes certificated under TC A10SW, and would require inspection, sealing of joints, and replacement, if necessary, of the flap flexible shaft in accordance with MHI MU-2 S/B No. 198 or MAI MU-2 S/B SB051/27-007 and removal of flap drive shaft clamp at Wing Station (W.S.) 2590 to allow routing of the right and left hand flap flexible shafts to relieve any bend radius less than 8.7 inches and the elimination of the presently required repetitive inspections. In addition, the affected flap flexible shaft part numbers are now RY25-1 or 8022Y-OC-97.00 or 8022Y-OC-97.50 or 035A-961001-3. These actions are to preclude operational failure of the wing flaps.

Interested persons have been afforded the opportunity to comment on the proposal. Beech Aircraft Corporation (Licensee to Mitsubishi Heavy Industries) made a comment to the NPRM published on July 30, 1986, advising the FAA that the MAI airplanes should be included. The FAA published a Supplement NPRM on November 4, 1986. The comment period closed December 10, 1986. No comments were received in response to the Supplemental NPRM. No objections were received on the FAA determination of the related cost to the public. The FAA noted that the original NPRM, published July 30, 1986, included Model MU-2B-36 in the applicability statement but that it was inadvertently omitted in the Supplemental NPRM, published November 4, 1986. Inclusion of this Model MU-2B-36, therefore, imposes no additional burden upon the public. Accordingly, the proposal is adopted as presented in the Supplemental NPRM which was published in the **Federal Register** on November 4, 1986, except for the above change.

There are approximately 548 United States registered airplanes affected by this superseding AD. The cost of complying with this AD is estimated to be $240 per airplane. The cost to the private sector is estimated to be $131,520. Few, if any, small entities own

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the affected airplanes. The cost of compliance is so minimal that is would not impose a significant economic burden on any such owner.

Therefore, I certify that this action: (1) Is not a major rule under Executive Order 12291; (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the capition **"ADDRESSES."**

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 74-11-02 (Amendment 39-1846 as amended by Amendment 39-2269) and AD 75-02-01 (Amendment 39-2059 as amended by Amendment 39-2269) with the following new AD:

Mitsubishi: Applies to Models MU-2B, MU-2B-10, MU-2B-15, MU-2B-20, MU-2B-25, MU-2B-26, MU-2B-26A, MU-2B-30, MU-2B-35, MU-2B-36, MU-2B-36A, MU-2B-40, MU-2B-60 airplanes (Serial Numbers (S/Ns) 008 through 457 inclusive (incl.), 501 through 799 incl., 1501 through 1566 incl. with or without the SA suffix), certificated in any category. (Serial numbers with "SA" suffix designate those MU-2B airplanes certificated in the United States of America under Type Certificate (TC) A10SW, and those serial numbers without "SA" suffix designate those MU-2B airplanes certificated in Japan under TC A2PC.)

Compliance: Required as indicated in the body of the AD, unless previously accomplished.

To preclude failure of flap flexible shaft Part Numbers (P/N) RY25-1, or 8022Y-OC 97.00, or 8022Y-OC-97.50, or 035A-961001-3, and potential differential flap operation, accomplish the following:

(a) For flap flexible shafts:

(1) With less than 1,000 hours of time-in-service (TIS) on the effective date of this AD:

(i) Within the next 100 hours of TIS, seal the fitting and the connection area of the flap flexible shaft in accordance with "INSTRUCTIONS" of MHI MU-2 Service Bulletin (S/B) No. 198 dated February 13, 1985, or "ACCOMPLISHMENT INSTRUCTIONS" of MAI MU-2 S/B SB051/27-007 dated February 1, 1985, as applicable.

(ii) Prior to the accumulation of 1,100 hours total TIS of the flap flexible shaft, perform torque inspection of the flap flexible shaft in accordance with the MHI MU-2 S/B No. 198, or MAI MU-2 S/B SB051/27-007, as applicable.

(A) If the torque value is less than 1.2 in-lbs (1.4 kg-cm) or less, in both clockwise and counter clockwise rotation, seal the flexible shaft in accordance with "INSTRUCTIONS" of MHI MU-2 S/B No. 198 or "ACCOMPLISHMENT INSTRUCTIONS" of MAI MU-2 S/B SB051/27-007, as applicable and return the airplane to service.

(B) If the torque value is greater than 1.2 in-lbs (1.4 kg-cm) in any direction of rotation, before further flight, remove flap flexible shaft and replace this shaft with a serviceable shaft, P/N 8022Y-OC-97.00, or 8022Y-OC-97.50 or 035A-961001-3 or FAA approved equivalent, in accordance with paragraph (b) of this AD, and return the airplane to service.

(2) With 1,000 or more hours of TIS on the effective date of this AD: Within 100 additional hours TIS perform the torque inspection in accordance with MHI MU-2 S/B No. 198, or MAI MU-2 S/B SB051/27-007, as applicable.

(i) If the torque value is 1.2 in-lbs (1.4 kg-cm) or less, in both clockwise and counter clockwise rotation, seal the flexible shaft in accordance with "INSTRUCTIONS" of MHI MU-2 S/B No. 198 or "ACCOMPLISHMENT INSTRUCTIONS" of MAI MU-2B S/B SB051/27-007, as applicable and retrun the airplane to service.

(ii) If the torque value is greater than 1.2 in-lbs (1.4 kg-cm) in any direction of rotation, before further flight, remove flap flexible shaft and replace this shaft with a serviceable shaft, P/N 8022Y-OC-97.00, or 8022Y-OC-97.50 or 035A-961001-3 or FAA approved equivalent, in accordance with paragraph (b) of this AD, and return the airplane to service.

(b) Prior to installing a serviceable replacement flexible shaft, seal the part in accordance with MHI MU-2 S/B No. 198 or MAI MU-2 S/B SB051/27-007, as applicable.

(c) Within 100 hours of TIS after the effective date of this AD, remove and do not reinstall the clamp at W.S. 2590 and ensure that the flap flexible shaft is installed so as to establish that no bend radius throughout the length of the shaft between Wing Station (W.S.) 2370 and W.S. 2910 is less than 8.7 inches (220 millimeters).

(d) Special flight permits may be issue in accordance with FAR 21.197 and FAR 21.199 to ferry aircraft to a maintenance base in order to comply with the requirements of this AD.

(e) An equivalent method of compliance with this AD may be used on the MHI airplanes, if approved by the Manager, Western Aircraft Certification Office, ANM-170W, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007, and on the MAI airplanes, if approved by the Manager, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Mitsubishi Heavy Industries, Ltd., 10, Oye-Cho, Minato-ku, Nagoya, Japan or Beech Aircraft Corporation, 9709 East Central, P.O. Box 85, Wichita, Kansas 67201, Attention: Manager, Publications; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment supersedes AD 74-11-02 (Amendment 39-1846 (39 FR 17220) as amended by Amendment 39-2269 (40 FR 30464)) and AD 75-02-01 (Amendment 39-2059 (39 FR 44740) as amended by Amendment 39-2269 (40 FR 30464).

This amendment becomes effective March 7, 1987.

Issued in Kansas City, Missouri, on January 20, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-1908 Filed 1-30-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM80-53]

Publication of Prescribed Maximum Lawful Prices Under the Natural Gas Policy Act of 1978

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order of the Director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.307(k), the Director of the Office of Pipeline and Producer Regulation revises and publishes the maximum lawful prices prescribed under Title I of the Natural Gas Policy Act (NGPA) for the months of February, March, and April, 1987. Section 101(b)(6) of the NGPA requires that the Commission compute and publish the maximum lawful prices before the beginning of each month for which the figures apply.

EFFECTIVE DATE: February, 1, 1987.

FOR FURTHER INFORMATION CONTACT: Richard P. O'Neill, Director, OPPR (202) 357-8500.

Order of the Director, OPPR

Issued: January 27, 1987.

Section 101(b)(6) of the Natural Gas Policy Act of 1978 (NGPA) requires that the Commission compute and make available maximum lawful prices and inflation adjustments prescribed in Title I of the NGPA before the beginning of any month for which such figures apply.

Pursuant to this requirement and § 375.307(k) of the Commission's regulations, which delegates the publication of such prices and inflation adjustments to the Director of the Office of Pipeline and Producer Regulation, the maximum lawful prices for the months of February, March, and April, 1987, are issued by the publication of the price tables for the applicable quarter. Pricing tables are found in § 271.101(a) of the Commission's regulations. Table I of § 271.101(a) specifies the maximum lawful prices for gas subject to NGPA sections 102, 103(b)(1)(2), 105(b)(3), 106(b)(1)(B), 107(c)(5), 108 and 109. Table II of § 271.101(a) specifies the maximum lawful prices for sections 104 and 106(a) of the NGPA. Table III of § 271.102(c) contains the inflation adjustment factors. The maximum lawful prices and the inflation adjustment factors for the periods prior to February, 1987 are found in the tables in §§ 271.101 and 271.102.

List of Subjects in 18 CFR Part 271

Natural Gas.

Richard P. O'Neill,

Director, Office of Pipeline and Producer Regulation.

1. The authority citation for Part 271 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 et seq.; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553.

§ 271.101 [Amended]

2. Section 271.101(a) is amended by inserting the maximum lawful prices for February, March, and April, 1987 in Tables I and II.

TABLE I.—NATURAL GAS CEILING PRICES

[Other than NGPA §§ 104 and 106(a)]

Subpart of Part 271	NGPA section	Category of Gas	Maximum lawful price per MMBtu for deliveries in:		
			Feb. 1987	Mar. 1987	Apr. 1987
B	102	New Natural Gas, Certain OCS Gas[4]	$4.478	$4.497	$4.516
C	103(b)(1)	New Onshore Production Wells[5]	3.164	3.167	3.170
	103(b)(2)	New Onshore Production Wells[5]	3.821	3.832	3.843
E	105(b)(3)	Intrastate Existing Contracts	4.393	4.408	4.423
F	106(b)(1)(B)	Alternative Maximum Lawful Price for Certain Intrastate Rollover Gas[1]	1.810	1.812	1.814
G	107(c)(5)	Gas Produced from Tight Formations[3]	6.328	6.334	6.340
H	108	Stripper Gas	4.796	4.816	4.836
I	109	Not Otherwise covered	2.620	2.623	2.626

[1] Section 271.602(a) provides that for certain gas sold under an intrastate rollover contract the maximum lawful price is the higher of the price paid under the expired contract, adjusted for inflation or an alternative Maximum Lawful Price specified in this Table. This alternative Maximum Lawful Price for each month appears in this row of Table I. Commencing January 1, 1985, the price of some intrastate rollover gas is deregulated. (See Part 272 of the Commission's regulations.)

[3] The maximum lawful price for tight formation gas is the lesser of the negotiated contract price or 200% of the price specified in Subpart C of Part 271. The maximum lawful price for tight formation gas applies on or after July 16, 1979. (See § 271.703 and § 271.704.)

[4] Commencing January 1, 1985, the price of natural gas finally determined to be new natural gas under section 102(c) is deregulated. (See Part 272 of the Commission's regulations.)

[5] Commencing January 1, 1985, the price of some natural gas finally determined to be natural gas produced from a new, onshore production well under section 103 is deregulated. (See Part 272 of the Commission's regulations.)

TABLE II.—NATURAL GAS CEILING PRICES: NGPA §§ 104 AND 106(A)

[Subpart D, Part 271]

Category of Natural Gas and type of sale or contract	Maximum lawful price per MMBtu for deliveries made in:		
	Feb. 1987	Mar. 1987	Apr. 1987
Post-1974 gas[2]: All producers	$2.620	$2.623	$2.626
1973-1974 Biennium gas:			
Small producer	2.215	2.217	2.219
Large producer	1.692	1.694	1.696
Interstate Rollover gas: All producers	.974	.975	.976
Replacement contract gas or recompletion gas:			
Small producer	1.242	1.243	1.244
Large producer	.955	.956	.957
Flowing gas:			
Small producer	.630	.631	632
Large producer	.530	.531	.532
Certain Permian Basin gas:			
Small producer	.740	.741	.742
Large producer	.656	.657	.658
Certain Rocky Mountain gas:			
Small producer	.740	.741	.742

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TABLE II.—NATURAL GAS CEILING PRICES: NGPA §§ 104 AND 106(A)—Continued

[Subpart D, Part 271]

Category of Natural Gas and type of sale or contract	Maximum lawful price per MMBtu for deliveries made in:		
	Feb. 1987	Mar. 1987	Apr. 1987
Large producer	.630	.631	.632
Certain Appalachian Basin gas:			
North subarea contracts dated after 10-7-69	.599	.600	.601
Other contracts	.554	.555	.556
Minimum rate gas[1]: All producers	.328	.328	.328

[1] Prices for minimum rate gas are expressed in terms of dollars per Mcf, rather than MMBtu.
[2] This price may also be applicable to other categories of gas. (See § 271.402, 271.602).

§ 271.402 [Amended]

3. Section 271.402(c) is amended by inserting the inflation adjustment for the months of February, March, and April, 1987.

TABLE III.—INFLATION ADJUSTMENT

Month of delivery 1987	Factor by which price in preceding month is multiplied
February	1.00099
March	1.00099
April	1.00099

[FR Doc. 87-1937 Filed 1-30-87; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 282

[Docket No. RM79-14]

Incremental Pricing Regulations; Incremental Pricing Acquisition Cost Thresholds; Natural Gas Policy Act

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order prescribing incremental pricing thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: February 1, 1987.

FOR FURTHER INFORMATION CONTACT: Richard P. O'Neill, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426 (202) 357-8500.

Order of the Director, OPPR

Issued: January 27, 1987.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(l) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of February, 1987 are issued by the publication of a price table for the month. The incremental pricing acquisition cost threshold prices for months prior to those reflected on the table are found in § 282.304.

The incremental pricing thresholds for February, 1987 reflect a two-month lag adjustment described in the notice of the March 1, 1986 thresholds.

List of Subjects in 18 CFR Part 282

Natural gas.

Richard P. O'Neill,

Director, Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

	Calendar Year 1986—												Calendar Year 1987—	
	January	February	March	April	May	June	July	August	September	October	November	December	January	February
Incremental Pricing Threshold	$2.460	$2.467	$2.474	$2.481	$2.487	$2.493	$2.499	$2.504	$2.509	$2.514	$2.522	$2.530	$2.538	$2.541
NGPA section 102 Threshold	4.166	4.191	4.218	4.241	4.264	4.287	4.310	4.332	4.354	4.376	4.403	4.431	4.459	4.478
NGPA section 109 Threshold	2.539	2.546	2.553	2.560	2.566	2.572	2.578	2.583	2.588	2.593	2.601	2.609	2.617	2.620
130% of No. 2 Fuel Oil in New York City Threshold	7.370	7.930	5.040	5.290	4.680	3.980	3.800	3.190	3.310	4.020	3.320	3.240	4.09	4.660

[FR Doc. 87-1938 Filed 1-30-87; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 344

Demand Deposit Treasury Certificates of Indebtedness; State and Local Government Series; Average Marginal Tax Rates

AGENCY: Fiscal Service, Bureau of the Public Debt, Treasury.

ACTION: Notice of estimated average marginal tax rate and Treasury Administrative costs for Demand Deposit United States Treasury Certificates of Indebtedness—State and Local Government Series.

SUMMARY: This notice is being published to provide the information necessary to apply the interest rate formula for Demand Deposit United States Treasury Certificates of Indebtedness—State and Local Government Series. The interim regulations governing securities of the State and Local Government Series which appeared in the **Federal Register** of December 31, 1986, (51 FR 47400), in setting out the formula, made provision for such publication. The factor necessary to convert the interest rate to a tax-exempt equivalent (1—the average marginal tax rate of purchasers of short-term tax-exempt bonds) is estimated to be .69, as of February 1, 1987. The Treasury's administrative costs have been estimated to be 50 basis points (.5 percent).

EFFECTIVE DATE: February 1, 1987.

FOR FURTHER INFORMATION CONTACT: Sandy Dyson, Attorney-Adviser, (202) 376-4320, or Margaret Marquette, Attorney-Adviser, (202) 447-9859.

SUPPLEMENTARY INFORMATION: The Department of the Treasury, under authority of Chapter 31 of Title 31, United States Code, and pursuant to the Tax Reform Act of 1986, Pub. L. 99-514, is offering a demand deposit United States Treasury Certificate of Indebtedness—State and Local Government Series. This security, available to eligible investors on and after February 2, 1987, will be a one-day certificate of indebtedness, issued in an amount of $1000 or any higher dollar amount, with interest accrued and added to the principal daily. In publishing the interim regulations on December 31, 1986, provision was made to provide by notice the information necessary to apply the interest rate formula to the new demand deposit certificate, *i.e.*, the weekly Federal Funds rate less ¼ of one percent per annum, multiplied by one minus the estimated average marginal tax rate ("1-MTR") of purchasers of short-term tax-exempt bonds, less Treasury administrative costs. As of February 1, 1987, the factor "1-MTR" is .69. The administrative costs have been determined to be 50 basis points (.5 percent). Both the estimated "1-MTR" and the administrative costs are subject to redetermination by the Department of the Treasury; any future changes thereof will be published by notice in the **Federal Register.**

Richard L. Gregg,

Acting Commissioner.

January 29, 1987.

[FR Doc. 87-2074 Filed 1-30-87; 8:45 am]

BILLING CODE 4810-35-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL-3148-3; KY-032]

Approval and Promulgation of Implementation Plans; Revisions to the Carbon Monoxide and Ozone Plans for Jefferson County, KY

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On February 18, 1986, the Kentucky Natural Resources and Environmental Protection Cabinet submitted minor revisions to the Jefferson County carbon monoxide (CO) and ozone State Implementation Plans (SIPs). These consisted of revisions to Regulation 8 of the Air Pollution Control District of Jefferson County's rules, which cover the District's Vehicle Exhaust Testing (VET) program and miscellaneous revisions to the program operating procedures. These revisions were intended by the District to improve the administration and effectiveness of the program. Because they represent only minor changes to, and are consistent with, the VET rules already approved by EPA as part of the CO and ozone SIPs for Jefferson County, EPA approves these revisions.

DATE: This action is effective April 3, 1987 unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Copies of Kentucky's submittal can be obtained from:

Thomas P. Lyttle, Air Programs Branch, EPA, Region 4, 345 Courtland Street, Atlanta, Georgia 30365

Kentucky Division of Air Pollution Control, 18 Reilly Road, Frankfort, Kentucky 40601

Copies may also be examined at the following locations: Public Information Reference Unit, Library System Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas P. Lyttle, (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On October 9, 1984 (49 FR 39547), EPA approved the 1982 CO and ozone SIP revisions for Jefferson County. As part of the control strategy in the SIPs, the District adopted Regulation 8, which provided for the VET program. The program has been in operation since January 2, 1984. Based on EPA's audit of the program in March 1986, the Agency has found that the program is operating effectively and is producing the emissions reductions expected as part of the SIP control strategy. The District has made various minor changes to the original Regulation 8 to enhance its effectiveness and to respond to a few minor problems that have arisen during operation of the program. The changes to the regulation include: (1) Slight changes to the emission standards for 1980 and earlier vehicles, designed to maintain the design 20% failure rate for such vehicles and to assure that the failure rates would be equal for each model year; (2) an exemption for vehicles which are registered as 6,000 pound vehicles, but are in fact over 18,000 pounds (the normal weight exemption for the program); Kentucky law allows wreckers to be registered as 6,000 lb. vehicles regardless of their actual weight; and (3) simplification of the enforcement process, eliminating the requirement for a Notice of Violation (NOV) to vehicle owners who did not have their vehicles tested. This NOV was merely a warning that continued noncompliance would result in a summons to court. The actual enforcement actions (summons and court hearings) remain unchanged. These changes are minor and are consistent with the original design of the program as approved by EPA. The changes in standards, in most cases, are to require a tighter standard and the change in enforcement may allow slightly more expeditious enforcement action. Therefore, the changes in the regulation will serve to enhance the emission reductions from the program.

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In addition to changes in Regulation 8, Kentucky also provided information on additional activities which have been undertaken by the District to enhance the program. These include: (1) A voluntary testing program for out-of-county residents who operate their vehicles in Jefferson County, (2) preparation of an informational pamphlet on smoking vehicles and, (3) changes in the information collected from repair shops to better assess the repairs being performed and their effects on the program's waiver rate. Although this level of detail on program operation was not required by EPA as part of the original SIP, EPA believes that these changes will enhance the effectiveness of the program and concurs with their implementation.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, the action will be withdrawn before the effective date by publishing two subsequent notices. One will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective April 3, 1987.

Final Action: EPA today approves as part of the Jefferson County CO and ozone SIPs, the revisions submitted by Kentucky on February 18, 1986. This action is being taken because these revisions are only minor changes to the SIPs already approved by EPA, are consistent with and improvements to the approved SIP, and meet the requirements of the Clean Air Act and EPA policy.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 3, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Carbon monoxide, Hydrocarbon, Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the Commonwealth of Kentucky was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 27, 1987.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart S—Kentucky

2. Section 52.920 is amended by adding paragraph (c)(48) as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(48) Revisions to the I/M portions of the carbon monoxide and ozone Part D plans for Jefferson County, submitted by the Kentucky Natural Resources and Environmental Protection Cabinet on February 18, 1986.

(i) Incorporation by reference.

(A) A revised Regulation 8, Vehicle Exhaust Testing Requirements of the rules of the Air Pollution Control District of Jefferson County which was adopted on September 18, 1985.

(ii) Other materials—none.

[FR Doc. 87–1959 Filed 1–30–87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-1-FRL-3148-4]

Approval and Promulgation of Implementation Plans; Maine; Adoption of Federal Test Methods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision involves a change to a SIP regulation previously approved by EPA involving Petroleum Liquids Transfer Vapor Recovery. This regulatory revision incorporates federal test methods and compliance procedures. The intent of this action is to approve a SIP revision request submitted by the State of Maine in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: The action will be effective April 3, 1987 unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2312, JFK Federal Building, Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2312, JFK Federal Bldg., Boston, MA 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; Office of the Federal Register, 1100 L St., NW., Room 8301, Washington, DC; and the Department of Environmental Protection, Bureau of Air Quality Control, State House, Station No. 17, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Lorenzo Thantu (617) 565–3250; FTS 835–3250.

SUPPLEMENTARY INFORMATION: On August 4, 1986, the Maine Department of Environmental Protection (DEP) submitted a revision to its SIP. This revision includes an amendment to a SIP regulation previously approved by EPA, Chapter 112, Petroleum Liquids Transfer Vapor Recovery.

EPA promulgated test methods and procedures at 40 CFR Part 60, Subpart XX, § 60.503 on August 18, 1983 (48 FR 37578) and December 22, 1983 (48 FR 56580) to determine compliance with volatile organic compound (VOC) emission limits applicable to bulk gasoline terminals. Maine has revised Chapter 112, Petroleum Liquids Transfer Vapor Recovery, to incorporate these federal test methods and procedures.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective April 3, 1987.

Final Action

EPA is approving a SIP revision submitted by the Maine DEP on August 4, 1986. This revision amends Maine regulation Chapter 112, Petroleum Liquids Transfer Vapor Recovery, to incorporate test methods and procedures as stated in 40 CFR Part 60, Subpart XX—Standard of Performance for Bulk Gasoline Terminals, § 60.503.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 3, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and Recordkeeping requirements.

Note.—Incorporation by reference of the State Implementation Plan for the State of Maine was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 27, 1987.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart U—Maine

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1020 is amended by adding paragraph (c)(22) as follows:

§ 52.1020 Identification of plan

* * * * *

(c) * * *

(22) Revision to federally-approved regulation Chapter 112, Petroleum Liquids Transfer Vapor Recovery [originally approved on February 19, 1980, see paragraph (c)(11), above], was submitted on August 4, 1986, by the Department of Environmental Protection.

(i) Incorporation by reference:

(A) Regulation Chapter 112(6), Emission Testing, is amended by incorporating test methods and procedures as stated in 40 CFR Part 60, Subpart XX, § 60.503 to determine compliance with emission standards for volatile organic compound emissions from bulk gasoline terminals. This revision to Regulation Chapter 112(6) became effective on July 22, 1986 in the State of Maine.

(ii) Additional Materials:

The nonregulatory portions of the state submittals.

3. Section 52.1031 is amended by adding the following line under entry "112" of the table to read as follows:

§ 52.1031 EPA-Approved Maine regulations.

* * * * *

TABLE 52.1031—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	Federal Register Citation	52.1020
112	Petroleum Liquids Transfer Recovery.	7/22/86	2/2/87	52 FR 3117	(c)(22) Bulk Gasoline Terminal Test methods.

[FR Doc. 1960 Filed 1–30–87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-1-FRL-3147-9]

Approval and Promulgation of Implementation Plans; New Hampshire; Incorporation of Permits for Dartmouth College

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of New Hampshire. These revisions include permits to restrict the sulfur dioxide (SO_2) emissions from Dartmouth College in Hanover by further limiting boiler operation from earlier SIP levels, in conjunction with the installation of a new boiler. This tightening of operating parameters is necessary due to recent increases in ambient SO_2 levels in the vicinity of Dartmouth College. The intended effect of this revision is to federally approve the requirements on this source imposed by the State.

EFFECTIVE DATE: This action will be effective April 3, 1987, unless notice is received on or before March 4, 1987, that adverse or critical comments will be submitted.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2311, JFK Federal Building, Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2311, JFK Federal Bldg., Boston, MA 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M St., SW., Washington, DC; and the New Hampshire Air Resources Agency, Health and Welfare Building, Hazen Drive, Concord, New Hampshire 03301.

FOR FURTHER INFORMATION CONTACT: Fred Weeks (617) 565–3232; FTS 835–3232.

SUPPLEMENTARY INFORMATION: On May 19, 1986, the Director of the New Hampshire Air Resources Agency (NHARA) submitted revisions to its State Implementation Plan (SIP). These revisions further restrict emissions from the oil-fired boilers utilizing No. 6 fuel oil at Dartmouth College in Hanover, NH. Dartmouth College is replacing its oldest boiler with a new one, and more stringent operating conditions are being imposed on all the remaining existing boilers at the college to maintain attainment of the National Ambient Air Quality Standards (NAAQS) for SO_2.

Background

On November 8, 1983, New Hampshire submitted a SIP revision to allow the burning of No. 6 fuel oil with a 2% sulfur content by weight at five sources in the state, including Dartmouth College. Dartmouth College was required to limit its operation to 95% of its maximum rated capacity. On August 7, 1984, EPA published approval of this SIP revision (49 FR 31415).

On May 19, 1986 the NHARA submitted a source specific SIP revision for Dartmouth College imposing more stringent operating conditions on the existing boilers than those approved in EPA's August 7, 1984 action. Those conditions are imposed in permits for each of the four boilers, enforceable by the State of New Hampshire, issued to

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Dartmouth College on January 6, 1986 by the NHARA. The conditions of those permits limit the operation of the source to 83% of its maximum rated capacity. The technical support, included in the SIP revision submitted on May 19, 1986, and supplemented by EPA analysis, consists of air quality modeling to determine the impact of SO_2 emissions from Dartmouth College's four oil boilers. That modeling demonstrates that the NAAQS for SO_2 will not be violated if the operating conditions contained in the permits, referenced above, are applied. The technical support also demonstrates that this revision will not cause any deterioration of air quality or interfere with the attainment or maintenance of the NAAQS in any other State, since this action results in a reduction in emissions.

EPA has reviewed NHARA's technical support and has determined that the modeling procedures are correct and approvable. For more details on EPA's review, see the technical support document available at the locations listed in the **ADDRESSES** section of this notice.

Final Action

EPA is approving this SIP revision, consisting of four permits submitted by the State on May 19, 1986, to further restrict the operation of the oil-fired boilers at Dartmouth College, in Hanover.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. This action will be effective April 3, 1987 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective April 3, 1987.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 3, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Sulfur oxides, Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the State of New Hampshire was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 27, 1987.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart EE—New Hampshire

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1520, is amended by adding paragraph (c)(35) as follows:

§ 52.1520 Identification of plan.

(c) • • •

(35) A revision to approve operating limits for boilers at Dartmouth College, submitted on May 19, 1986 by the Director of the New Hampshire Air Resources Agency.

(i) *Incorporation by reference.* (A) Permits to Operate issued by the State of New Hampshire Air Resources Agency to Dartmouth College, No. PO–B–1501.5, No. PO–B–1502.5, and No. PO–B–1503.5, and Temporary Permit TP–B–150.2, 3, and 4, dated January 6, 1986.

3. Section 52.1523 is amended by adding the following entry to the table to read as follows:

§ 52.1525 EPA-approved New Hampshire State regulations.

• • • • •

Title/subject	State citation chapter	Date adopted by State	Date approved by EPA	Federal Register citation	Section 52.1520	Comments
•	•	•	•	•	•	•
Sulfur content limit in fuels	CH air 400	4/17/86	2/2/87	52 FR 3118	(c) 35	Revison for Dartmouth College
•	•	•	•	•	•	•

[FR Doc. 87–1961 Filed 1–30–87; 8:45 am]

BILLING CODE 6560–50–M

Proposed Rules

Federal Register
Vol. 52, No. 21
Monday, February 2, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 900

Proposed Procedure for the Conduct of Referenda in Connection with Marketing Orders for Eggs and Spent Fowl

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Agreement Act of 1937, as amended, authorizes the development of marketing agreements and orders for eggs, spent fowl, and their products. A recommended decision has been issued concerning an egg marketing order which would authorize programs and projects relating to research, consumer education, advertising, promotion, and product development. To become effective, however, the order must be approved by egg producers voting in a referendum. This rule proposes procedures for the conduct of referenda.

DATE: Comments due by March 4, 1987.

ADDRESS: Comments should be sent to: Janice L. Lockard, Poultry Division, Agricultural Marketing Service, United States Department of Agriculture, Room 3949–S, Washington, DC 20250.

Comments concerning the information collection, and recordkeeping requirements contained in this subpart should be addressed to: Marina Gatti, Desk Officer for the Agricultural Marketing Service, USDA, Office of Management and Budget (OMB), Room 3228, New Executive Office Building, Washington DC 20503.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, (202) 382–8132.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Department Regulation 1512–1 and has been designated a "non-major" rule under criteria contained therein. Pursuant to requirements set forth in the Regulatory Flexibility Act, the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities because it involves only procedures to conduct referenda. The proposed procedures would involve the voluntary participation of egg producers owning 10,000 or more laying hens, but only to the extent of the act of voting.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), authorizes the development of marketing agreements and marketing orders for eggs, spent fowl, and products thereof. A public hearing was held on a proposed marketing order for eggs, spent fowl, and their products in January-March 1986. Based on the record of the hearing, a recommended decision was issued (51 FR 37822) concerning a proposed research and promotion order.

The period for filing comments on the recommended decision ended on December 23, 1986. A final decision will be issued after consideration of the written exceptions and comments received. If the decision is to issue an order, the Act requires that a referendum be held to determine whether affected producers approve or favor such order. Therefore, it is necessary to establish procedures to be followed in conducting the initial referendum as well as any subsequent referenda. Such procedures are necessary to meet the requirements of the Act and are similar to procedures established for other marketing order referenda.

The proposed provisions include sections on definitions, voting, instructions for the referendum agents, the duties of subagents, ballots, the referendum report, and the confidentiality of information.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) the reporting provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). They will not become effective prior to OMB approval. Comments regarding these provisions may be submitted to OMB.

List of Subjects in 7 CFR Part 900

Marketing agreement, Eggs.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter IX, Part 900 of the Code of Federal Regulations is amended as follows:

1. The authority citation for proposed 7 CFR Part 900, Subpart—Procedure for the Conduct of Referenda in Connection with Marketing Orders for Eggs and Spent Fowl Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended, consisting of §§ 900.700 through 900.707 reads as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–694).

2. Subpart—Procedures for the Conduct of Referenda in Connection with Marketing Orders for Eggs and Spent Fowl Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended, is added to Part 900 to read as follows:

PART 900—GENERAL REGULATIONS

Subpart—Procedure for the Conduct of Referenda in Connection with Marketing Orders for Eggs and Spent Fowl Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended

Sec.

900.700 General.
900.701 Definitions.
900.702 Voting.
900.703 Instructions.
900.704 Subagents.
900.705 Ballots.
900.706 Referendum report.
900.707 Confidential information.

Subpart—Procedure for the Conduct of Referenda in Connection with Marketing Orders for Eggs and Spent Fowl Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended

§ 900.700 General.

Referenda to determine whether eligible producers favor the issuance, continuance, or termination of a marketing order on eggs and spent fowl, and products thereof, unless supplemented or modified by the Secretary, shall be conducted in accordance with this subpart.

§ 900.701 Definitions.

(a) "Act" means Public Act No. 10, 73d Congress (May 11, 1933), as amended and reenacted and amended by the Agricultural Marketing Agreement Act

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of 1937, as amended (Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601 *et seq.*).

(b) "Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department of Agriculture who has been delegated or who may hereafter be delegated the authority to act for the Secretary.

(c) "Administrator" means the Administrator of the Agricultural Marketing Service, or any other officer or employee of the Department of Agriculture who has been delegated or who may hereafter be delegated the authority to act for this Administrator.

(d) "Order" means the marketing order (including an amendatory order) with respect to which the Secretary has directed that a referendum be conducted.

(e) "Referendum agent" means the individual or individuals designated by the Secretary to conduct the referendum.

(f) "Representative period" means the period designated by the Secretary pursuant to section 8c of the Act (7 U.S.C. 608c).

(g) "Person" means any individual, partnership, corporation, association, or any other business unit.

(h) "Producer" means any person, who is engaged in the production of commercial eggs and who owns 10,000 or more laying hens. For the purpose of this definition, the term producer includes (1) an egg farmer who acquires and owns laying hens, chicks, and/or started pullets for the purpose of and is engaged in the production of commercial eggs; or (2) a person who supplies laying hens, chicks, and/or started pullets to an egg farmer for the purpose of producing commercial eggs pursuant to a contractual agreement for the production of commercial eggs. Such person is deemed to be the owner of such laying hens unless it is established in writing to the satisfaction of the Secretary that actual ownership of the laying hens is in some other party to the contract or other person.

§ 900.702 Voting.

(a) Each person who is a producer, as defined in this subpart, at the time of the referendum, and who was a producer during the representative period shall be entitled to only one vote in the referendum.

(b) Proxy voting is not authorized, but an officer or employee of a corporate producer, or an administrator, executor, or trustee of a producing estate, or an authorized representative of any other business unit may cast a ballot on behalf of such producer or estate. Any individual so voting in a referendum shall certify that he or she is an officer or employee of the corporate producer, or an administrator, executor, or trustee of the producing estate, or an authorized representative of such other business unit and that he or she has the authority to take such action. Upon request of the referendum agent, such individual shall submit adequate evidence of his or her authority.

(c) Each producer entitled to vote in a referendum shall be entitled to cast only one ballot in the referendum.

§ 900.703 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period of the referendum, and the time when all ballots must be received by the referendum agent.

(b) Determine whether ballots may be cast by mail, at polling places, at meetings of producers, or by any combination of the foregoing.

(c) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information for ascertaining (1) whether the person voting, or on whose behalf the vote is cast, is an eligible voter, and (2) the total volume of commercial eggs produced by each voter during the representative period.

(d) Give reasonable advance notice of the referendum (1) by utilizing without advertising expense, available media of public information (including, but not limited to, press and radio facilities) serving the production area, announcing the dates, places, and method(s) of voting, eligibility requirements, and other pertinent information, and (2) by such other means as said agent may deem advisable.

(e) Make available to producers instructions on voting, appropriate registration, ballot, and certification forms, and except in the case of a referendum on the termination or continuance of an order, the text of the proposed order and a summary of its terms and conditions: *Provided,* That no person who claims to be qualified to vote shall be refused a ballot.

(f) If the ballots are to be cast by mail, cause all the material specified in paragraph (e) of this section to be mailed to each producer whose name and address are known to the referendum agent.

(g) If the ballots are to be cast at polling places or meetings, determine the necessary number of polling or meeting places, designate them, announce the time of each meeting or the hours during which each polling place will be open, provide the material specified in paragraph (e) of this section, and provide for appropriate custody of ballot forms and delivery to the referendum agent of ballots cast.

(h) At the conclusion of the referendum, canvass the ballots, tabulate the results, and except as otherwise directed, report the outcome to the Administrator and promptly thereafter submit the following:

(1) All ballots received by the agent and appointees, together with a certificate to the effect that the ballots listed are all of the ballots cast and received by the agent and appointees during the referendum period;

(2) A tabulation of all challenged ballots deemed to be invalid; and

(3) A tabulation of the results of the referendum and a report of the referendum including a detailed statement explaining the method used in giving publicity to the referendum and showing other information pertinent to the manner in which the referendum was conducted.

§ 900.704 Subagents.

The referendum agent may appoint any person or persons deemed necessary or desirable to assist said agent in performing his or her functions hereunder. Each person so appointed may be authorized by said agent to perform, in accordance with the requirements herein set forth, any or all of the following functions (which, in the absence of such appointment, shall be performed by said agent):

(a) Give public notice of the referendum in the manner specified herein;

(b) Preside at a meeting where ballots are to be cast or as poll officer at a polling place;

(c) Provide for the distribution of the ballots and the aforesaid texts to producers and receive any ballots which are cast; and

(d) Record the name and address of each person receiving a ballot from, or casting a ballot with said subagent and inquire, as deemed appropriate, into the eligibility of such persons to vote in the referendum.

§ 900.705 Ballots.

The referendum agent and his or her appointees shall accept all ballots cast; but should they, or any of them, deem that a ballot should be challenged for any reason, said agent or appointee shall sign a statement on said ballot to the effect that such ballot was challenged, by whom challenged, the reasons therefor, the results of any investigations made with respect thereto, and the disposition thereof. Invalid ballots shall not be counted.

§ 900.706 Referendum report.

Except as otherwise directed, the Administrator shall prepare and submit to the Secretary a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 900.707 Confidential information.

The ballots cast and the contents thereof whether or not relating to the identity of any person who voted or the manner in which any person voted and all information furnished to, compiled by, or in the possession of the referendum agent shall be regarded as confidential.

Signed in Washington, DC, on January 28, 1987.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 87–2005 Filed 1–30–87; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No PRM–50–41]

Public Citizen; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking filed on behalf of Public Citizen by Eric Glitzenstein, Attorney for Public Citizen, and Ken Bossong, Director, Critical Mass Energy Project (Petitioner). The Petitioner requests that, to comply with the mandate of section 306 of the Nuclear Waste Policy Act of 1982 (the NRC Training Authorization Section), NRC adopt specific regulations or other regulatory guidance setting forth detailed requirements for training and fitness for duty of nuclear power plant personnel. NRC is denying the petition, among other reasons, because it has determined that the statute does not cover fitness for duty and, with respect to training, that it provides NRC with flexibility to issue the regulatory guidance in the form of a policy statement.

ADDRESSES: Copies of the petition, public comments, and NRC's denial letter are available for public inspection or copying for a fee at NRC's Public Document Room, 1717 H. Street, NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Thomas F. Dorian, Esq., Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: (301) 492–8690.

SUPPLEMENTARY INFORMATION: The Commission is concerned that the Petitioner's assertions could cause misunderstandings about the Commission's policy statements on fitness for duty and on training and wishes to use this opportunity to clarify any misconceptions. The Commission will provide in full the Petitioner's arguments, the arguments of the opponents of the petition, and its own determination so that all of the arguments are presented clearly and in order that the two policy statements and their backgrounds can be better understood.

The Petition

The Petitioner believes that NRC has failed to fulfill its statutory obligations under section 306 of the Nuclear Waste Policy Act of 1982 (NWPA) (the NRC Training Authorization Section), 42 U.S.C. 10226, 19 Stat. 2201 at 2262–2263, Pub. L. 97–425, and that the statutory deadline for compliance has long since passed. The Petitioner contends that this failure results in increased danger to the health and safety of the public from inadequately trained nuclear power plant personnel. It urges NRC to adopt specific regulations or other regulatory guidance setting forth detailed requirements for training and fitness for duty of nuclear power plant personnel.

Basis for the Petition

The Petitioner bases its petition on the statutory mandate of Section 306 of the NWPA which requires various NRC actions by January 7, 1984, as follows:

Sec. 306. Nuclear Regulatory Commission Training Authorization. The Nuclear Regulatory Commission is authorized and directed to promulgate regulations, or other appropriate Commission regulatory guidance, for the training and qualifications of civilian nuclear powerplant operators, supervisors, technicians and other appropriate operating personnel. Such regulations or guidance shall establish simulator training requirements for applicants for civilian nuclear power-plant operator licenses and for operator requalification programs, requirements governing NRC administration of requalification examinations; requirements for operating tests at civilian nuclear powerplant simulators, and instructional requirements for civilian nuclear power-plant licensee personnel training programs. Such regulations or other regulatory guidance shall be promulgated by the Commission within the 12-month period following enactment of this Act, and the Commission within the 12-month period following enactment of this Act shall submit a report to Congress setting forth the actions the Commission has taken with respect to fulfilling its obligations under this section.

The Petitioner contends that the Commission's March 20, 1985, Policy Statement on "Training and Qualification of Nuclear Power Plant Personnel" (50 FR 11147) and its then proposed, now final, Policy Statement on "Fitness for Duty of Power Plant Personnel" (51 FR 27921, August 4, 1986) are legally insufficient to fulfill NRC's obligations under section 306.

With respect to fitness for duty (on which NRC had not published a final policy statement when it docketed the petition on April 17, 1986), the Petitioner states "that the NRC has totally abandoned its responsibilities under section 306."

The Petitioner argues that the Commission's Training and Qualification Policy Statement does not comply with the statute in three ways. First, it asserts that the Policy Statement gives five elements of an acceptable training program that are vague and general and fail to set forth any specific standards against which compliance can be measured or enforced. Further, the Petitioner contends that because these five elements do not outline "requirements for personnel training programs" they do not comport with Congress' intent in enacting section 306.

Second, the Petitioner insists that NRC's endorsement of the Institute for Nuclear Power Operations' (INPO) accreditation programs, instead of NRC's promulgation of its own training requirements, does not comply with the statute. The Petitioner mentions in this context Senator Weicker's statement that notes " . . . the shortcomings of relying only upon INPO or other existing institutions." *See* Cong. Rec. S15643 (Dec. 20, 1982). The Petitioner also contends that NRC's endorsement of INPO's accreditation program sacrifices public participation in the development of regulations or regulatory guidance and public access to documents reflecting licensees' implementation of these requirements.

Finally, the Petitioner argues that the Training and Qualification Policy Statement does not allow for adequate monitoring of the effectiveness of a

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Training program because (1) the five elements are vague and do not provide adequate standards against which to measure an individual licensee's progress or to evaluate the effectiveness of INPO's program as a whole; (2) it provides only for NRC monitoring of licensees that achieve INPO accreditation and does not provide for NRC monitoring of licensees with the most severe training problems; and (3) NRC has not retained authority to ensure prospectively that each licensee implements adequate training programs and that all achieve accreditation within a specific time.

Public Comments on the Petition and NRC Responses

NRC published in the **Federal Register** on May 12, 1986 (51 FR 17361), a notice that the petition for rulemaking had been filed. Interested persons were invited to submit written comments or suggestions about the petition by July 11, 1986. NRC received 21 comments in response to the notice, 20 from utilities and their various representative organizations opposing the petition and a short letter from another group supporting it. The latter organization states in essence that it is concerned that NRC monitors only licensees with INPO accreditation and not those with the most severe training problems.

Fitness for Duty

With respect to fitness for duty, many of the opponents of the petition point to the words and legislative history of section 306, stating that neither mentions policies for administration of fitness for duty programs or broader, more generic continuing observation programs. Several commenters indicate that the Petitioner is incorrect in stating that the Commission has abandoned its responsibilities in this area and say that apparently the Petitioner is unaware of NRC's ongoing efforts which provide guidance and direction to utilities with nuclear power programs and make rulemaking unnecessary.

The commenters note that the Commission approved a fitness for duty policy statement on June 25, 1986 (51 FR 27921, August 4, 1986) and that NRC guidance on this issue has existed for many years. They disclose that the Nuclear Utility Management and Resources Committee (NUMARC), an organization composed of the top officers of all utilities with nuclear power plants, proposed to NRC during the summer of 1984 a two-year trial period for the development and implementation of fitness for duty guidelines at all of their plants, to be evaluated by INPO. They indicate that in October 1984 NRC began working with the industry to evaluate this proposal and that all nuclear power reactor licensees committed to review and upgrade their programs, as necessary. Further, the industry, acting on its initiative, instituted routine INPO evaluations of each utility's implementation of a fitness for duty program. The commenters stress that in developing its program, each utility has used the guidelines of the Edison Electric Institute, "EEI Guide to Effective Drug and Alcohol/Fitness for Duty Policy Development," described in the Policy Statement and that NUMARC and INPO have kept the Commission apprised of the ongoing INPO evaluations in public briefings.

Training and Qualifications

The comments on the Petitioner's three basic contentions are provided below.

First Contention

With respect to the Petitioner's first contention that the Policy Statement provides only five vague and general elements of an acceptable training program and fails to set forth any specific standards with which compliance can be measured, monitored, and enforced, most of the commenters point out that the five elements are based upon detailed accreditation criteria developed by INPO and reviewed by NRC. They argue that the Policy Statement provides the necessary NRC guidance for the industry to implement acceptable training programs while allowing sufficient flexibility to bring about self-improvements in nuclear training programs and personnel qualifications.

One commenter notes that section 306 does not specify the degree of detail that the regulation or regulatory guidance must contain or require that detailed acceptance criteria be included. It argues, therefore, that the Petitioner's contention that the Policy Statement is vague, general, and lacks specific standards and requirements is a "subjective opinion" and is not a basis for measuring the Policy Statement against the statute.

Another commenter notes that the Policy Statement was formally issued more than a year before the petition was filed. During this period, the industry has relied heavily on the Policy Statement and has dedicated time and resources to comply with its intent; the same period in which the Petitioner apparently did nothing to challenge the NRC's decision.

The commenters generally contend that the Policy Statement and NRC's own extensive involvement in related matters, such as licensed operator requalification examinations and routine training inspections, provide for a thorough NRC overview of training and accreditation processes. This overview includes, among other things listed in the Policy Statement, (1) NRC observation of site visits by an INPO accrediting team; (2) NRC nomination of members to the National Nuclear Accrediting Board (this board, which is composed of members from the academic community and the nuclear and other industries, awards or defers accreditation of individual utility training programs); (3) periodic accompaniment of INPO on selected plant evaluation visits; (4) NRC post-accreditation audits at utilities, in accordance with NUREG–1220, "Training Review Criteria and Procedures," July 1986, to ensure that the accreditation process is effective (the criteria are identical to the five elements in the Policy Statement and the procedures describe the systematic review process to ensure the effectiveness of each element); (5) periodic training inspections by NRC's five Regions; and (6) a training summary evaluation included as part of the NRC Systematic Assessment Report of Licensee Performance (SALP). They suggest that such close NRC monitoring indicates that the Commission is not simply endorsing INPO's accreditation programs as claimed by the Petitioner. These commenters also note that improvements obtained thus far in utility training programs provide evidence that the intent of section 306 is being met, including better focused management control, more and better training staff, and improved and expanded training facilities and equipment.

Many commenters also argue that the Policy Statement provides NRC guidance on training and qualification and the basis for NRC's oversight of the industry's programs. The Policy Statement encompasses the elements of performance-based training and provides the basis to ensure that licensees' personnel have qualifications commensurate with the performance requirements of their jobs. They contend that tasks performed vary widely and that, therefore, a rule requiring detailed training program standards would have been inappropriate. They note that NRC's own experience has shown that technical details for resolution of specific issues are best handled at an administrative level below that of rules and regulations. They cite various examples of documents that address the

training issue and are in addition to INPO programs, including current Regulatory Guide 1.8, "Personnel Selection and Training"; ANSI N18.1 (1971), "Selection and Training of Nuclear Power Plant Personnel"; ANS 3.1 (1981), "Selection, Qualification, and Training of Personnel for Nuclear Power Plants"; ANS 3.5 (1985), "Nuclear Power Plant Simulators for Use in Operator Training"; and NUREG–1021, "Operator Licensing Examiner Standards." They maintain that to attempt to impose detailed requirements through a regulation would be a needless and inappropriate burden on both licensee and NRC resources: Needless, because the desired effect of improved training is already being obtained by the current system and NRC's Policy Statement, including NRC's guidance documents, industry standards, INPO accreditation, and NRC's undiminished enforcement authority; and inappropriate, because of the many plant-specific circumstances that would cause many licensees to be affected unequally and in some cases unfairly by a generic rule.

Second Contention

With respect to the Petitioner's second contention that the Policy Statement on Training and Qualification is legally insufficient to fulfill NWPA's statutory mandate, most of the twenty commenters argue in detail that section 306 clearly provides NRC with alternatives on the best way to accomplish Congress' intent. They maintain that Congress directed the Commission in Section 306 to establish instructional requirements for several categories of personnel either through a regulation or through more general guidance, leaving it to NRC to decide which option it wants to adopt. In this regard, one commenter makes detailed arguments about the legislation, showing that the legislation gave NRC a wide degree of latitude, flexibility, and discretion on the manner and scope of its compliance with the statute. Both this and another commenter declare that an interpretation of section 306 is not dependent on one statement made by one member of Congress. The commenter also argues that INPO accreditation of utility training programs would probably have been a central feature of the Commission's final rule and that, when such accreditation is completed, the Petitioner will have received the equivalent of the relief sought in the petition because accreditation would probably have taken two years by either the rule-making or policy statement route.

Several commenters explain that they think that the Policy Statement, when taken together with NRC's present and proposed rules and guidance, is more than sufficient to provide the Commission with reasonable assurance that personnel at nuclear power plants will perform their jobs in a safe and competent manner to protect the public health and safety and, at the same time, permit utilities to develop and implement plant-specific training programs. One commenter stresses that the five elements contained in the Policy Statement are professionally accepted components of any training or educational pursuit and that the Commission's proposed revision to 10 CFR Part 55, "Operators' Licenses," incorporates these elements.

Another commenter discusses the proposed revision to Part 55 and the three proposed regulatory guides related to Part 55: R.G. 1.8 "Qualifications and Training Personnel for Nuclear Power Plants," R.G. 1.134 "Medical Evaluation of Nuclear Facility Personnel Requiring Operator Licenses," and R.G. 1.149 "Nuclear Power Plant Simulation Facilities for Use in Operator License Examinations." The commenter points out that a proposed rule was published in the **Federal Register** on November 26, 1984 (49 FR 46428). It sought to clarify the regulations for the issuance of licenses to operators and senior operators; to revise the requirements and scope of written examinations and operating tests for operators and senior operators, including a requirement for a simulation facility; to codify procedures for the administration of requalification examinations; and to describe the form and content of operator license applications. The purpose of the proposed rule and regulatory guides was to improve the safety of nuclear power plant operations by improving the operator licensing process, including examination content; to provide NRC with an improved basis for administering operator licensing examinations and conducting operating tests; and, to respond to the specific direction given by Congress in section 306, to promulgate regulations and regulatory guidance in the area of examinations. (The NRC staff proposal for a final rule can be found in SECY–86–348, November 21, 1986.) The commenter argues that it is only through such an approach to training, one that allows differences in various circumstances, that effective training can result; indeed, an overly restrictive rule would ensure compliance, but may not give encouragement to improvements beyond the scope of the rule.

Still another contends that many utilities are already well on their way to implementing the requirements in NRC's proposed revision to Part 55, and the regulatory guidance, described above.

Many commenters argue that NRC's decision to issue the Policy Statement instead of a rule was based on a number of public meetings and interactions between the industry and NRC throughout 1984. They emphasize that industry representatives, in presentations to the Commission on proposed NRC training regulations, stated that the regulations were not in the best interests of nuclear safety and reliability and, in effect, would have undermined industry initiatives in training and accreditation underway since 1980. They explain that the industry, recognizing the importance of training and accreditation activities and drawing upon one of the principal recommendations of the Kemeny Commission on the accident at Three Mile Island, established training and accreditation as one of INPO's key programs and committed itself to upgrade training activities. They stress that NRC's Policy Statement recognizes the significant progress achieved by industry initiatives through NUMARC, INPO, and the associated National Academy for Nuclear Training in developing programs to improve nuclear utility training and personnel qualifications, and that the Policy Statement has provided the industry an opportunity to demonstrate continued progress.

Third Contention

Most of the commenters opposing the petition argue that the Petitioner is wrong on all three counts of its final contention. First, they contend that the five elements do provide a standard against which training programs can be measured when viewed in light of NRC's existing regulations and regulatory guides. Title 10 CFR, Part 55, "Operators' Licenses," contains the procedures and criteria for the issuance of licenses to and requalification programs for operators and senior operators. Currently, this part and Regulatory Guide 1.8 detail the education, experience, and training requirements for individuals to be administered examinations for operator or senior operator licenses. The training programs for these individuals are submitted to NRC for review and approval as part of an applicant's Final Safety Analysis Report (FSAR). The commenters stress that NRC also evaluates the effectiveness of licensees' training programs based on examination results

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of applicants for operator and senior operator licenses. This is in effect an audit of the effectiveness of licensees' programs. Further, NRC administration of a percentage of the required annual requalification examinations is an additional audit of the effectiveness of the training programs. Based on the results of these examinations, NRC may take other actions to have reasonable assurance that licensed personnel are being requalified to perform their tasks in a safe and competent manner. The commenters emphasize that, therefore, the Commission has knowledge about applicants' and licensees' training programs for operators and senior operators.

With respect to the second part of the Petitioner's final contention, several commenters argue that the Policy Statement is based, in part, on the commitment of each utility with a nuclear power plant to submit its training program to INPO for accreditation. They note that NRC is mindful about how these commitments are being met, among other ways, through its review of periodic INPO accreditation status reports and NRC briefings. One commenter emphasizes that NRC remains responsible for evaluating the implementation of improved training programs to ensure that required results are achieved, and argues that the Atomic Energy Act provides broad authority for the Commission to take prompt action should NRC determine that a facility of an NRC licensee is not operated in a manner that adequately protects the public health and safety. Others indicate that (1) the Policy Statement specifically addresses NRC's enforcement policy, (2) that the Statement does not limit NRC's authority to conduct inspections or to take appropriate enforcement actions, and (3) that there is nothing in the Policy Statement which supports the Petitioner's statements that NRC has retained no authority to ensure that adequate training programs exist at individual facilities. The Policy Statement's enforcement provisions state:

> Notwithstanding its Enforcement Policy in 10 CFR Part 2, Appendix C, 49 FR 8583 (March 8, 1984), the Commission will exercise some discretion in selecting appropriate enforcement action for violations involving training in light of the NUMARC/INPO initiative. Licensees who are making reasonable efforts in developing and implementing the INPO/NUMARC programs described above will generally not be cited for violations related to these programs, provided the violations, whether or not identified by NRC, are appropriately corrected in a timely manner. However, violations which are not corrected in a timely manner, violations of any applicable reporting requirement, and any willful violation may be subject to enforcement. Any enforcement action taken during this grace period will be taken only with Commission concurrence. In addition to required reports and inspections, information requests under 10 CFR 50.54(f) may be made and enforcement meetings held to ensure understanding of corrective actions. Orders may be issued where necessary to achieve corrective actions on matters affecting plant safety. In brief, the NRC's decision to use discretion in enforcement in order to recognize industry initiatives in no way changes the NRC's ability to issue orders, call enforcement meetings or suspend licenses when a safety problem is found. Nothing in this Policy Statement shall limit the authority of the NRC to conduct inspections as deemed necessary and to take appropriate enforcement action when regulatory requirements are not met.

Finally, with respect to the third part of the Petitioner's final contention, several commenters explain that there is a timetable for utilities to obtain INPO accreditation. Utilities have committed to submitting to INPO all of their self-evaluation reports by the end of 1986. Completion of the accreditation process usually takes about twelve to fifteen months after submittal of this report. In addition, these commenters point out that NRC has stated in the Policy Statement that it will revisit the entire training issue around March 20, 1987, two years from March 20, 1985, the effective date of the Policy Statement.

Reasons for Denial

The Commission believes that it has been responsive to Congress' mandate in section 306. The Commission has determined that section 306 does not cover fitness for duty; nonetheless, it has issued a policy statement on this topic, as mentioned above.

With respect to the training and qualifications of civilian nuclear power plant personnel, the issue raised by the Petitioner arises out of the language of section 306. That language provides for the promulgation of regulations or of other appropriate Commission regulatory guidance. The Petition and one commenter believe that compliance with the statute requires enactment of legally binding regulations. The nuclear industry believes that NRC acceptance of INPO's accrediation program for training and qualifications by a policy statement meets the need for regulatory guidance. Indeed, the industry argues that conversion of the voluntary effort into a compulsory regulation would be destructive of its voluntary efforts. In this connection, the House of Representatives Committee on Appropriations in reporting, on May 15, 1984, the Energy and Water Development Appropriation Bill, 1985, Report 98–755 to accompany H.R. 5653, at page 145, submitted the following view:

> **Reactor Training and Operations**
>
> The Committee is concerned that the NRC may inadvertently undermine the initiatives of the Institute of Nuclear Power Operations. The NRC should carefully review its activities in the area of reactor operations and training so as not to prevent the licenses [sic] from making needed improvements. The Committee agrees with the President's Kemeny Report that prescriptive and voluminous regulations can serve as a negative factor in nuclear safety. Therefore, the Committee urges the Commission in complying with section 306 of the NWPA to develop alternatives to prescriptive regulations. The Committee does not agree with the Commission that the proposed training rule as currently formulated achieves this purpose.

Before analyzing section 306, the Commission wishes to explain how it views a policy statement and its uses. The Administrative Procedure Act (5 U.S.C. 552(A)(1)(D) and (A)(2)(B)) requires an agency to publish its statements of general policy or interpretation of general applicability in the **Federal Register** for guidance to the public. One of the recommendations of the Administrative Conference of the United States is that an agency should articulate its policies through published policy statements. 1 CFR 305.71–3 (Recommendation No. 71–3). The Administrative Conference explains that a policy statement is an agency's indication of how it will exercise discretion. 1 CFR 305.76–5 (Recommendation No. 76–5). *See* also 3 Mezines, Stein & Gruff, *Administrative Law* section 15.04 (1982). A policy statement in and of itself provides guidance only and does not carry regulatory force or statutory force. A person cannot be cited for not "complying" with a policy statement *per se*. A policy statement, however, may explain how an agency interprets a statute or rule. *See Pacific Gas & Electric Co.* v. *Federal Power Commission*, 506 F.2d 33, 38–9, (D.C. Cir. 1974). In such cases, the agency can enforce that statute or rule in the way it states it will in that statement.

Consequently, the Commission does not rely on policy statements in lieu of regulatory requirements imposed either by rule or by license condition. The Commission has not taken enforcement action against a licensee for failure to follow the guidance given in a policy statement because policy statements are not enforceable as such. If an unsafe situation arose at a licensed facility with respect to a matter covered by a policy statement, however, the Commission could issue an order its general Atomic Energy Act authority. Such an order could require the license to take remedial action and impose appropriate license conditions governing matters otherwise covered by the policy statement.

NRC would not necessarily need a specific event to trigger action related to the policy statement. It remains NRC's continued responsiblity, as noted in both policy statements, to independently evaluate applicant development and licensee implementation of NRC's guidance to ensure that desired results are achieved. Nothing in any of NRC's policy statements limits NRC's authority or responsibility to follow up on operational events or its enforcement authority when regulatory requirements are not met. For instance, in the Policy Statement On Training and Qualification, the Commission explained that it will evaluate the effectiveness of utility programs by, among other ways, direct inspection conducted by NRC's appraisal teams, resident inspectors and inspectors from its Regional Offices. It also stated that violations of any applicable reporting requirement or instances that potentially affect plant safety will be subject to NRC's enforcement process. If, the Commission suspected that a licensee were not developing or implementing adequate programs along the lines indicated in the Policy Statement, it could inspect the licensee and require information under 10 CFR 50–54(f) to determine whether the license should be modified, suspended or revoked. Thereafter, if the Commission found that the licensee's program were indeed inadequate, it could make, for instance, a public health and safety determination under which it could order modification of the license by inserting the elements of the Policy Statement as a condition of continued operation.

Industry urged the Commission to allow the industry to demonstrate its initiative in the area of management and human resources. The Commission stated in its Policy Statement on Training and Qualification that it would evaluate its own guidance and the industry's response for a fairly short period, *i.e.*, two years from its effective date. The Commission believes that it has not lost any time in the industry initiatives and that, in fact, it has gained much that it could not have achieved using its own resources. The Commission also believes that the industry could achieve more, and could achieve it better and faster, if NRC allowed it to implement its own initiative with NRC guidances rather than through a rule imposing upon it limited, minimum standards.

The Commission believes that Congress directed NRC in Section 306 to establish instructional requirements for several categories of personnel either through a regulation *or* through regulatory guidance, leaving it to NRC's discretion to decide which regulatory approach to adopt. Section 306 in effect provides that the NRC is "directed to promulgate regulations, or other appropriate Commission regulatory guidance," which "shall establish . . . instructional requirements for civilian nuclear powerplant licensee personnel training programs."

The Commission believes that "guidance" or "regulatory guidance" do not necessarily mean a mandatory, enforceable regulation, order or license condition.

The Commission decided to withhold action on promulgating new training and qualifications regulations during a short evaluation period. During this period, NRC has been evaluating the results of the accreditation program to determine whether the industry's efforts ensure training and qualifications that meet or exceed the elements included in the Policy Statement and other Commission guidance documents. The Commission has not, however, stopped with issuance of the Policy Statement; it is in the process of issuing a revision to 10 CFR Part 55 and to the three regulatory guides described above.

To further assess license candidates in a realistic job setting, NRC revised 10 CFR Part 55 to require that operating tests be conducted not only in oral walkthroughs of the plant and in its control room but also in a simulation facility. This facility, which may include the plant, a plant-referenced simulator, or another simulation device, alone or in combination, is used to demonstrate a candidate's understanding of and ability to perform essential job tasks. The Policy Statement and NRC's revision to Part 55 enhance the NRC licensing examination process. The facility licensee's systematic analysis of the job and learning objectives phases of the Systems Approach to Training are used by NRC as a basis for developing examinations. License candidate evaluations are based, therefore, in part, upon performance stsandards and evaluation criteria delineated in the objectives. Once licensed, individuals participate in requalification programs that also are based in part on learning objectives derived from the Systems Approach to Training. NRC's requalification program evaluations use information developed by its licensees under the Policy Statement.

The Commission is also considering a rule on degree requirements for operating staff at nuclear power plants. Though the rule is not addressed by section 306, it is responsive to the concern about personnel qualification. In a related activity, the Commission published a Policy Statement on Engineering Expertise on Shift to ensure that adequate engineering and accident assessment expertise is provided to the shift supervisor (50 FR 43621, October 28, 1985).

In sum, the Commission believes that the industry's efforts to date have been productive. NRC has increased confidence in the industry's training process, because the industry in systematically analyzing job performing requirements. The Systems Approach to Training appears to be working in the nuclear power industry. This training method is currently used in technological environments where human performance and safety concerns are very important. Noteworthy examples include the military, the NASA space program, and the field of aviation. NRC determined that its approach was consistent with that being used by INPO in training program evaluations for its accreditation process and, therefore, decided not to promulgate a rule but to issue the Policy Statement on Training and Qualification and to evaluate for a short while INPO's accreditation process.

The Commission agrees that a highly prescriptive rule would have dampered the industry's enthusiasm and creativity and thereby set back its training efforts. It believes that, in light of the language of Section 306, it has a choice to choose the better of two means to achieve the statutory goal and that it has been responsive to Congress' intentions.

Accordingly, the Commission denies the petition.

Dated at Bethesda, Maryland, this 14th day of January 1987.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 87–1980 Filed 1–30–87; 8:45 am]

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VOL 52 ISS 21 FE 2 1987 UMI

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 564

[No. 87-100]

Federal Savings and Loan Insurance Corporation, Settlement of Insurance

January 23, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Supplemental notice of proposed rulemaking and request for comment.

SUMMARY: The Federal Home Loan Bank Board ("Board") as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC") is proposing to revise the preamble to is proposed Settlement of Insurance regulations. Specifically, the Board today proposes that any change to the Insurance Regulations limiting insurance coverage on certificates of deposit securing certain tax-exempt public unit bond issuances will not apply if the bonds are issued under the Tax Reform Act of 1986 for the purposes of refinancing existing tax-exempt public unit bonds prior to 30 days after the publication of final regulation. The request for comment is limited to this issue.

DATES: Comments must be received by March 4, 1987.

The proposed effective date for any final rule which the Board may adopt pursuant to this revision to the Settlement of Insurance proposal and additional request for comment is 30 days after publication of such final rule.

ADDRESS: Send comments to Director, Information Service Division, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: Jerome Edelstein, Attorney, Office of the General Counsel, (202) 377-7057, at the above address.

SUPPLEMENTARY INFORMATION: Between October 1982 and April 1983, states and their political subdivisions issued bonds exempt from federal taxes to finance real estate projects. These bonds were secured (hereinafter referred to as "secured bonds") as to payment of principal and interest by certificates of deposit issued by institutions the deposits of which are insured by the FSLIC ("insured institutions"). Under regulations governing the insurance of accounts, the interest of each bondholder would be insured to $100,000 separately from any individual accounts that the bondholder had in the same insured institution. *See* 12 CFR 564.8(b) (1986); Office of General Counsel ("OGC") Opinion Letter by A. Patrick Doyle, Deputy General Counsel (Nov. 3, 1982); OGC Opinion Letters by Peter M. Barnett, Associate General Counsel (Oct. 13, 1982 and April 8, 1982). This regulation and the interpretations contained in those letters are still effective.

The Tax Reform Act of 1984 (the "1984 Act") eliminated the federal tax exemption for secured bonds issued after April 14, 1983. However, certain bonds, most significantly those issued pursuant to section 631(c)(2) of the 1984 Act, could be issued after that date and retain their tax exempt status. Section 631(c)(2) authorized tax-exempt treatment for secured bonds issued after April 14, 1983, provided they were to be issued pursuant to a binding contract in effect on March 4, 1983. *See* 26 U.S.C. 103(h) (1982 and Supp. III 1985).

However, section 1316(e) of the Tax Reform Act of 1986 (the "1986 Act") permits issuers to refinance existing secured bonds by issuing new secured bonds, which would also be tax exempt, at lower interest rates more consistent with current market conditions. Tax Reform Act of 1986, Pub. L. No. 99-514, section 1316(e), Special Tax Pamphlet No. 9A (U.S.C.A.) p. 584. The Board strongly supported this revision of the tax code which it believes will help stave off defaults on such secured bonds caused by economic difficulties in several Southwestern states due to declining energy prices.

In 1985, the Board issued proposed revisions to the Settlement of Insurance regulations. Board Res. No. 85-286a, 50 FR 19185 (1985). That proposal contained provisions that would limit insurance on certificates securing such bonds to $100,000. 50 FR 19185, 19193, 19195 (1985). Thus, insurance treatment under the proposal differs significantly from that currently afforded by the FSLIC. Under the proposal, each bondholder's interest in the certificates securing a particular bond issuance would not be separately insured to $100,000. Instead, each bondholder would be eligible for his pro rata portion of the $100,000 of insurance coverage available on the certificates. The proposal specifically sought comment on the advisability of grandfathering insurance coverage of existing time deposits for the convenience of persons who had made long-term investments in insured accounts under existing rules and also sought comment on what would constitute an appropriate delayed effective date for revised regulations as to insurance of such accounts. In this way, the Board signaled its intention to consider carefully the issue of fairness to long-term investors, including investors in secured bonds.

Nevertheless, it has come to the Board's attention that the proposed limitation on insurance of certificates securing such bond issuances may have a detrimental effect on the ability of issuers, pursuant to the 1986 Act, to refinance existing secured bonds because of the effect of any such insurance limitation on the credit rating of the newly issued bonds. Consequently, the Board today proposes that any change in the limitation on the amount of insurance available to certificates of deposit securing tax-exempt secured bond issuances not apply to certificate securing bonds issued prior to 30 days after the publication in the **Federal Register** of the final Settlement of Insurance Regulation. Today's proposal refers only to bond issuances undertaken, in accordance with the section 1316(e) of the 1986 Act, to refinance existing tax-exempt public unit secured bonds. The Board will accept comments on today's proposal for a period of 30 days from the date of this publication. The Board is not reopening the comment period as to any other issues raised in its 1985 proposed rule on Settlement of Insurance.

Nadine Y. Washington,

Acting Secretary.

[FR Doc. 87-1986 Filed 1-30-87; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-225-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9-30, -40, and C-9 (Military) Series Airplanes, Fuselage Numbers 1 Through 1084

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain McDonnel Douglas DC-9 series airplanes, which would require inspections for cracks in the rudder drive crank assembly, and replacement, as necessary. This proposal is prompted by reports of cracks in the rudder drive crank assembly. This condition, if not corrected, could result in the loss of rudder effectiveness during critical flight regimes.

DATE: Comments must be received no later than March 23, 1987.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-225-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6319.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtian a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-225-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Three operators of McDonnell Douglas Model DC-9-30 and -40 series airplanes have reported five instances of rudder drive crank assembly failures. Investigation revealed that rudder drive cranks on the rudder torque tube had failed due to fatigue cracking. The cracks occurred on airplanes having logged between 13,547 and 33,340 flight-hours and from 18,250 to 32,737 landings. A cracked rudder drive crank could cause the loss of rudder effectiveness during critical flight regimes.

The FAA has reviewed and approved McDonnell Douglas DC-9 Service Bulletin 27-261, dated October 18, 1985, which describes procedures for inspection of the rudder drive crank assembly for cracks, using eddy current and ultrasonic inspection methods, and replacement of cracked assemblies.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require repetitive inspections for cracks in rudder drive crank assemblies on the rudder torque tube, and replacement, if necessary, in accordance with the service bulletin previously mentioned. Installation or rudder crank assembly P/N 5912801-501 would constitute terminating action for the required repetitive inspections.

It is estimated that 367 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required inspection, and that the average labor cost is estimated to be $40 per manhour. (Replacement of the rudder drive crank assembly, if necessary, would require approximately 9.3 manhours to accomplish.) Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $14,680 for the initial required inspection.

For these reasons, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on s substantial number of small entities because few, if any, Model DC-9 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pusuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-30, -40, and C-9 (Military) series airplanes, Fuselage Numbers 1 through 1084, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the failure of the rudder drive crank assembly, within 500 landings or 90 days after the effective date of this AD, whichever occurs earlier, unless already accomplished within the last 2,500 landings or 9 months, accomplish the following:

A. Eddy current or ultrasonically inspect the rudder drive crank assembly for cracks in accordance with McDonnell Douglas DC-9 Service Bulletin 27-216, dated October 18, 1985, or later FAA-approved revisions.

1. If no cracks are found, accomplish repetitive inspections at intervals not to exceed 12 months, or 3,000 landings, whichever occurs earlier, until such time as the procedures described in paragraph A.3., below, are accomplished.

2. If crack(s) are found, before further flight, replace cracked rudder drive crank assembly with a new P/N 5912801-1 or -501 drive crank. If a new 5912801-1 drive crank assembly is used as a replacement part, inspect in accordance with paragraph A.1., above.

3. Installation of rudder drive crank assembly P/N 5912801-501, in accordance with McDonnell Douglas DC-9 Service Bulletin 27-261, dated October 18, 1985, or later FAA-approved revisions, constitutes terminating action for the repetitive inspections.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft certification Office, FAA, Northwest Mountain Region.

C. Upon the request of an operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the

request contains substantiating data to justify the change for that operator.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–L65 (54–60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, January 21, 1987.

Wayne J. Barlow,

Director Northwest Mountain Region.

[FR Doc. 87–1905 Filed 1–30–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 375 and 382

[Docket No. RM87–3–000]

Annual Charges Under the Omnibus Budget Reconciliation Act of 1986

January 28, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations to establish annual charges as required by section 3401 of the Omnibus Budget Reconciliation Act of 1986 (Budget Act). The Commission would assess these charges against gas and oil pipelines and electric utilities. The charges would be based on the volumes of energy transported and sold by the gas pipelines and electric utilities, and on the operating revenues received by the oil pipelines.

DATE: Written comments on this proposed rule must be filed with the Commission by March 4, 1987.

ADDRESS: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

For legal matters

Roland M. Frye, Jr., Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8315

For technical matters

Jewel C. Poore, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–5362

SUPPLEMENTARY INFORMATION:

Issued: January 28, 1987.

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations to establish annual charges as required by section 3401 of the Omnibus Budget Reconciliation Act of 1986 (Budget Act).[1] The Commission would assess these charges against gas and oil pipelines and electric utilities. The charges would be based on the volumes of energy transported and sold by the gas pipelines and electric utilities, and on the operating revenues received by the oil pipelines.

II. Background

A. The Budget Act

Section 3401(a)(1) of the Budget Act requires the Commission to "assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year."[2] This authority is in addition to that granted to the Commission in sections 10(e) and 30(e) of the Federal Power Act (FPA).[3] The annual charges must be computed based on methods which the Commission determines to be "fair and equitable."[4] The Conference Report provides the Commission with the following guidance as to this phrase's meaning:

> [A]nnual charges assessed during a fiscal year on any person may be reasonably based on the following factors: (1) The type of Commission regulation which applies to such person such as gas pipeline or electric utility regulation; (2) the total direct and indirect costs of that type of Commission regulation incurred during such year; (3) the amount of energy—electricity, natural gas, or oil—transported or sold subject to Commission regulation by such person during such year; and (4) the total volume of all energy transported or sold subject to Commission regulation by all similarly situated persons during such year.[5]

The Commission may assess these charges by making estimates based upon data available to it at the time of assessment.[6] The Commission is required to collect not only all its direct costs but also all its indirect expenses such as hearing costs and indirect personnel costs.[7]

Congress will continue to approve the Commission's budget through annual and supplemental appropriations. The annual charges do not enable the Commission to collect amounts in excess of its expenses, but merely serve as a vehicle to reimburse the United States Treasury for the Commission's expenses.[8]

B. Existing Fees and Annual Charges Schedules

The Commission currently assesses filing fees and annual charges under several statutes. Title V of the Independent Offices Appropriations Act of 1952 (IOAA)[9] permits the Commission to charge filing fees for special benefits provided to identifiable persons. Such fees are based on the cost to the agency to the agency's services.[10] FPA section 10 (e) requires that entities licensed under section 4 of that Act pay "reasonable annual charges" for, among other things, reimbursing the United States for the costs of administering Title I of the FPA. Section 30(e) of the FPA instructs the Commission to establish fees "adequate to reimburse * * * reasonable costs incurred in connection with any studies or other reviews carried out * * * for purposes of compliance with" section 30 of the FPA.

The existing filing fee regulations implement the IOAA and recover Commission costs for certain services to gas, oil and electric companies which file with the Commission.[11] Under existing annual charges regulations promulgated pursuant to section 10 of the FPA, the Commission recovers costs from licensees for certain services provided to the hydroelectric industry.[12] The Commission is in the process of promulgating regulations to implement the recent amendment to section 30 of the FPA.[13]

The Budget Act's billing authority is more comprehensive than the existing billing authority under either the IOAA or the FPA. Unlike FPA sections 10(e) and 30(e) which permit recovery of only those costs incurred in administering Part I and incurred in connection with studies and reviews performed pursuant to section 30 of the FPA respectively, and unlike the IOAA which permits recovery of only those costs incurred in providing special benefits to identifiable persons,[14] the Budget Act *requires* the Commission to recover *all* of its costs.

Under this proposed rulemaking, the Commission would recover through annual charges all costs not recouped through existing IOAA filing fees and FPA assessments.

III. General Discussion of Annual Charges Formula

To implement the Budget Act, the Commission must first formulate an annual charge billing procedure. To do this, the Commission must determine:

- The types of companies which the Commission should bill.
- How to estimate and then allocate the Commission's costs among its regulatory programs.
- How to allocate each program's costs among the companies regulated under each program.

After formulating an annual charge billing procedure, the Commission must then determine:

- How to adjust the annual charges at the end of a fiscal year "to eliminate any overrecovery or underrecovery of [the Commission's] total costs, and any overcharging or undercharging of any person" pursuant to section 3401(e) of the Budget Act.
- The standards for waiving all or part of an annual charge pursuant to section 3401(g) of the Budget Act.

In this part, the Commission addresses these five steps as they apply to all three programs. Parts IV, V, and VI of this Notice specifically address the type of companies to be billed and the method for allocating the costs of the three regulatory areas.

A. The Types of Companies to be Billed

The Conference Report indicates that Congress intentionally did not specify the classes of companies subject to annual charges.[15] Congress instead granted the Commission discretion to identify the companies to be assessed annual charges. The Commission believes that fairness and equity (as required in section 3401(b) of the Budget Act) as well as administrative efficiency[16] justify the assessment of annual charges against three types of companies: Public utilities, interstate oil pipelines and interstate natural gas pipelines. The reasons justifying the Commission's proposal to assess annual charges only against these three types of companies are discussed more fully in Parts IV, V and VI below. This approach is consistent with the legislative history, which indicates that the primary focus of Congress was on public utilities, interstate oil pipelines and interstate natural gas pipelines. Indeed, the bil reported out of the House Budget Committee would have assessed annual charges against only these three types of companies.[17] Nevertheless, Congress ultimately decided not to specify the classes of entities subject to charges in order to give the Commission the discretion to assess charges against other types of companies as well.[18] Therefore, the Commission invites comments as to whether and how it should assess annual charges against more than these three types of companies, both for immediate purposes (FY 1987 collection) and in future fiscal years.

B. The Method for Estimating and Then Allocating the Commission's Costs Among Its Regulatory Programs

1. *Estimation of Costs.* The Commission is required to "assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year."[19] The Commission's cost estimates may be based on data available to it at the time of assessment.[20] Because the annual charges must be paid by the end of the fiscal year for which they are assessed,[21] the Commission, when it assesses the annual charges, will not yet have available to it the actual cost data for that year. The Commission must therefore estimate what its year-end

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[1] Act of October 21, 1986, Pub. L. No. 99–509, Title III, Subtitle E, section 3401, 1986 U.S. Code Cong. & Ad. News (100 Stat.) ____, ____ (to be codified at ____ U.S.C. ____):

(a) In General—(1) Except as provided in paragraph (2) and beginning in fiscal year 1987 and in each fiscal year thereafter, the Federal Energy Regulatory Commission shall, using the provisions of this subtitle and authority provided by other laws, assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year.

(2) The provisions of this subtitle shall not affect the authority, requirements, exceptions, or limitations in sections 10(e) and 30(e) of the Federal Power Act.

(b) Basis For Assessments—The fees or annual charges assessed shall be computed on the basis of methods that the Commission determines, by rule, to be fair and equitable.

(c) Estimates—The Commission may assess fees and charges under this section by making estimates based on data available to the Commission at the time of assessment.

(d) Time of Payment—The Commission shall provide that the fees and charges assessed under this section shall be paid by the end of the fiscal year for which they were assessed.

(e) Adjustments—The Commission shall, after the completion of a fiscal year, make such adjustments in the assessments for such fiscal year as may be necessary to eliminate any overrecovery or underrecovery of its total costs, and any overcharging or undercharging of any person.

(f) Use of Funds—All moneys received under this section shall be credited to the general fund of the Treasury.

(g) Waiver—The Commission may waive all or part of any fee or annual charge assessed under this section for good cause shown.

[2] Filing fees and annual charges both recover the government's regulatory costs but are different kinds of assessments. In general, a filing fee accompanies a filing with the government for a particular benefit or service. In contrast, the government assesses annual charges by billing individual entities regulated under a specific regulatory program for a share of all expenses of administering that program. A company subject to an annual charge is expected to pay the yearly bill even though the company may not have filed a specific application or request for relief.

[3] Budget Act section 3401(a)(2), *citing* 16 U.S.C. 803(e) (1982) and Act of October 16, 1986, Pub. L. 99–405, section 7(c), 1986 U.S. Code Cong. & Ad. News (100 Stat.) 1243, 1248–1249 (to be codified at 16 U.S.C. 823(a)(e)). Section 10(e) of the FPA provides that the Commission shall assess annual charges against companies holding hydroelectric licenses. Such charges must be sufficient to reimburse the federal government for the costs of administering Part I of the FPA. Section 30(e) provides that the Commission shall assess fees sufficient to reimburse various fish and wildlife agencies for certain costs incurred in assuring compliance with section 30 of the FPA.

[4] Budget Act section 3401(b).

[5] Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884.

[6] Budget Act section 3401(c).

[7] *See* Conference Report to Accompany H.R. 5300 (Conference Report), H.R. Rep. No. 1012, 99th Cong., 2d Sess. 238, *reprinted in* 1986 U.S. Code Cong. & Ad. News 3868, 3863; *see also* Report of the Committee on the Budget of the United States Senate, to Accompany S. 2706 (Senate Budget Report), S. Rep. No. 348, 99th Cong., 2d Sess. 56, 66 and 68.

[8] Budget Act section 3401(f).

[9] 31 U.S.C. 9701 (1982).

[10] *See* New England Power Co. v. FPC, 151 U.S. App. D.C. 371, 374–375, 467 F.2d 425, 428–429 (1972), *aff'd.* 415 U.S. 345 (1974).

[11] 18 CFR Parts 346 and 381 (1986).

[12] 18 CFR Part 11 (1986). Also, pursuant to section 10(f) of the FPA, the Commission also assesses charges to recover the cost of its headwater benefit investigations. *Id.*

[13] Act of October 16, 1986, Pub. L. 99–495, section 7(c), 1986 U.S. Code Cong. & Ad. News (100 Stat.) 1243, 1248–1249 (to be codified at 16 U.S.C. 823(a)(e)).

[14] The legislative history indicates Congress intended the authority of its mandate in the Budget Act to go beyond that contained in Title V of the IOAA. *See* Report of the Committee on the Budget, House of Representatives, to Accompany H.R. 5300 (House Budget Report), H.R. Rep. No. 727, 99th Cong., 2d Sess. 44, *reprinted in* 1986 U.S. Code Cong. & Ad. News 3607, 3640 ("FERC does not currently have authority to assess charges on regulated companies for the remainder of the work performed by FERC in regulating oil pipelines, natural gas pipelines and public utilities. [This] legislation gives that authority to FERC.")

[15] Conference Report at 239, U.S. Code Cong. & Ad. News at 3884.

[16] *See generally* House Budget Report at 55, 1986 U.S. Code Cong. & Ad. News at 3651 ("Any billing method that reasonably minimizes FERC and industry administrative costs is acceptable"); *cf.* Capital Cities Communications v. FCC, 180 U.S. App. D.C. 276, 279, 554 F. 2d 1135, 1138 (1976) ("the statutory requirement that fees should be 'fair and equitable' does leave some room for consideration of administrative convenience"); National Cable Television Ass'n v. FCC (National Cable), 180 U.S. App. D.C. 233, 249, 554 F. 2d 1084, 1108 (1976) ("considerations of administrative convenience may certainly be taken into account as one factor in the calculation" of fees).

[17] Conference Report at 239, U.S. Code Cong. & Ad. News at 3884.

[18] *See* Senate Budget Report at 56, 68.

[19] Budget Act section 3401(a)(1).

[20] *Id.* at section 3401(c).

[21] *Id.* at section 3401(d).

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expenses will be. The Commission believes that the most accurate available data on which to base such estimates would be the prior fiscal year's expenses, since experience has shown that the Commission's expenditures by program remain reasonably stable from one year to the next. The Commission can adjust this cost figure upward or downward at the time bills are calculated to account for any actual or expected major changes in fiscal expenditures from the previous fiscal year, such as a supplemental budget increase. This approach is consistent with the manner in which the Commission develops its operating budget, *i.e.*, the Commission uses the prior fiscal year's expenditures as a guide for developing the next year's budget. For these reasons, the Commission proposes to use this approach.

2. *Allocation of Costs.* The Conference Report indicates that Congress intended the Commission to recover the costs of each program from those entities directly affected by the activities of the Commission in that program area:

> For example, public utilities subject to the Federal Power Act should be required to pay for the Commission's activities under the Federal Power Act and related statutes, including a proportionate share of the Commission's overhead. They should not be expected to pay for the Commission's activities under the Natural Gas Act or the Natural Gas Policy Act.[22]

The Commission notes that the Budget Act does not require it to create a new data base for billing purposes, and that it is therefore free to use the most reliable data available to arrive at a reasonable approximation of its program costs.[23]

The Commission currently uses a computerized management information system, the Time Distribution Reporting System (TDRS), that accounts for staff time by program area. TDRS data for the prior fiscal year will provide the most reliable basis for distributing direct and indirect costs among the Commission's gas, oil, and electric programs. The Commission now uses the TDRS as the basis for calculating its IOAA filing fees and for allocating FPA hydroelectric annual charges. This system has proven to be effective and accurate.[24]

The Commission proposes to allocate its costs among the three programs as follows. Costs that are directly related to a particular program (such as the cost of the Commission's contract for a gas pipeline flow analysis computer model) would be charged against only that program while indirect expenses (such as computer support contracts) would be distributed *pro rata* among all programs based on direct staff time as reflected in the TDRS data.[25] The Commission is also proposing to distribute on a *pro rata* basis the net expenses (after subtracting filing fees collected) of administering appeals from Department of Energy remedial orders and adjustment request denials (discussed in Part V B below). A program's total cost would thus include all its direct costs and a *pro rata* share of indirect and DOE appeal costs. As noted in greater detail in Part III D below, each program's costs would be reduced by the amount of filing fees collected during the prior fiscal year from entities regulated under that program. The Commission proposes to rely on the prior year's filing fees as an estimate of the current year's filing fee receipts.

C. Allocation of Each Program's Costs Among the Companies Regulated Under Each Program

After the Commission's costs are allocated among the three regulatory programs, the Commission would further allocate each program's costs among the companies being regulated. The Commission is generally proposing that the amount of each natural gas pipeline and public utility's bill would be directly related to the volume of gas or electricity which it sells or transports, and that the amount of each oil pipeline's bill would be directly related to the operating revenues it receives from the transportation of oil and petroleum products (as a proxy for annual sales). The Commission believes that this approach is consistent with the expectation reflected in the Conference Report that the Commission will "assess annual charges proportionately on the basis of annual sales or volumes transported" [26] Under this method, all IOAA filing fees attributed to each program would be subtracted from the program's budget because they represent costs already recovered.[27] This proposal is discussed in detail in Parts IV, V and VI below.

The Commission is also seeking comments on an alternative methodology which would reduce total prior year program costs only by the amount of the fees paid by entities who will not be billed an annual charge. After the annual charges bill is calculated, each company which is to receive an annual charge bill would be given individual credit for all filing fees that it paid.

Under this alternative, any filing fees which a company paid during the first six months of fiscal year 1987 would be credited against the company's annual charge in the same program for that fiscal year. In subsequent fiscal years, credit would be given for the filing fees paid in the last six months of the previous fiscal year and the first six months of the fiscal year for which the bills are issued. However, pipelines which also produce gas would not be able to credit their producer filing fees against their pipeline annual charges because such a credit would give such companies an unfair advantage over their producer and pipeline competitors

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[22] Conference Report at 238–239, 1986 U.S. Code Cong. & Ad. News at 3883–3884.

[23] *See* Budget Act section 3401(c); *see generally* Yosemite Park and Curry Co. v. U.S., 686 F.2d 925, 931–932 (Ct. Cl. 1982) and authority cited in nn. 32–34 therein (IOAA fees need only have a reasonable, not exact, relationship to agency cost); *National Cable*, 250 U.S. App. D.C. at 246–247, 554 F.2d at 1105–1106 (FCC need not calculate the exact cost of servicing each regulated entity, but can base its fee computations on approximations); National Association of Broadcasters v. FCC, 250 U.S. App. D.C. 259, 271 n.28, 554 F.2d 1118, 1130 n.28 (1976) (FCC fee calculations need not be exact; reasonable approximations are sufficient.)

[24] A detailed description of TDRS, including a discussion of its accuracy-control measures, is attached as Appendix A. The United States Court of Appeals for the Tenth Circuit upheld the Commission's filing fee schedules which were based upon the same TDRS sytem which the Commission proposes to use in establishing annual charges. Phillips Petroleum Co. v. FERC, 786 F.2d 370, *cert. denied*, U.S. , 107 S. Ct. 92, 93 L. Ed. 2d 44, 55 U.S.L.W. 3232 (1986).

[25] The United States Court of Appeals for the Fifth Circuit upheld a similar *pro rata* inclusion of indirect costs in the Nuclear Regulatory Commission's IOAA fees. Mississippi Power & Light Co. v. NRC, 601 F.2d 223, 231 (1979), *cert. denied*, 444 U.S. 1102 (1980). *See also* Central & Southern Motor Freight Tariff Ass'n v. U.S., 250 U.S. Ap. D.C. 63, 77–78, 777 F.2d 722, 736–37 (1985); *National Cable*, 250 U.S. App. D.C. at 242, 554 F.2d at 1101 ("The costs assessed may include a pro rata share of any expenses for regulatory activities which are necessary in order to grant [an FCC certificate of compliance].")

[26] Conference Report at 239, 1986 U.S. Code Cong & Ad. News at 3884; *see also* House Budget Report at 54–55, 1986 U.S. Code Cong. & Ad. News at 3650–3651; H.R. 5300, 99th Cong., 2d Sess. section 4101(b) (1986).

[27] This approach of crediting fees to the programs as a whole rather than to each company finds support in the House Budget Report at 56, 1986 U.S. Code Cong. & Ad. news at 3652:

> FERC is then to allocate and determine the costs incurred in administering its jurisdictional statutes, broken down into the following areas of responsibility: The administration of the Natural Gas Act and the Natural Gas Policy Act; the regulation of interstate oil pipelines under Title 49 U.S.C.; and, the regulation of public utilities under Parts II and III of the Federal Power Act.
>
> From these three subtotals, FERC is to subtract the fees collected (if any) under the Natural Gas Policy Act that are paid in connection with activities which pertain to each of the programs. The remaining costs of administering its jurisdictional statutes in each of the three areas are those costs which are to be assessed as annual charges.

and would therefore not be "fair and equitable." Nevertheless, the total program cost for gas would be reduced by an estimated amount of the total producer filing fees to be paid during the billing period. This estimate would be based upon the amount of filing fees paid during the previous fiscal year.

This alternative would also require the use of company identifers in order to facilitate the crediting of each company for the filing fees and annual charges it paid during an annual charges billing period. Specifically, the Commission would use EIA/FERC Name-Address identification number currently assigned to each company. This unique number is already used in many Commission staff computer programs as well as in statistical reports assembled and published by the Energy Information Administration (EIA). Other possible systems would be IRS (employer identifier) numbers, or new 3 or 4 digit numbers to be assigned by the Commission.

Finally, the Commission is also considering a second alternative to the proposed methodology, the use of sampling methods rather than the more precise sales and transportation data for each company. A sampling method would require the Commission to set up categories of companies based on generalized sales and transportation data, assign companies to various categories, and charge each company within a category the same amount.

The Commission invites comments on the relative advantages and disadvantages of the proposed method and the two alternatives, as well as any other methods which commenters wish the Commission to consider.

D. Adjustment of Charges for a Fiscal Year so as To Eliminate Any Overrecovery or Underrecovery of the Commission's Total Costs and Any Overcharging or Undercharging of Any Company

The Commission proposes to correct overrecovery or undercovery of costs by comparing at the end of the fiscal year the actual amounts collected with the actual fiscal year costs, and adjusting the subsequent fiscal year's estimated program costs by the difference.[28] For instance, waivers, if granted, could lead to underrecovery for a particular year. The Commission would adjust the subsequent year's costs to recover losses due to waivers. The entire billing calculation is illustrated in the following example which calculates hypothetical costs for the natural gas program for two fiscal years:

[Dollars in thousands]

Line		1987	1988
	Billing basis:		
1	Prior Fiscal Year's Program Cost	49,300	49,000
2	Adjustment Based on Current Year Program Changes		
3	Filing Fees Adjustment (Subtract estimated filing fees collected for gas program)	−12,000	−12,200
4	Correction for prior year Over- or Undercollection		400
5	Billing Basis	37,300	36,400
6	Waivers	−100	
7	Amount Collected (from annual charges)	37,200	
	Actual Costs (Calculated after end of Fiscal Year)		
8	Actual Costs for Program	49,000	
9	Filing Fees Adjustment (using actual filing fee receipts)	−12,200	
10	Actual Net Costs	36,800	
11	Over- or Undercollection—Difference between Amount Collected (Line 7) and Actual Net Costs (Line 10)	+400	

In the above example, to arrive at the billing basis for FY 1987, the Commission would start with the prior year's actual costs for the natural gas program, hypothetically $49.3 million (line 1). Next, the Commission would adjust for current year program changes (line 2). While there is no adjustment in this example, and adjustment could be expected if there were a significant change, such as the need to request a supplemental budget increase from Congress.

Next, the Commission would deduct estimated filing fee collections. The estimate would be based on prior year's collections, with possible adjustments to take into account the changes in the amount of filing fees published each year.[29] In the above example, the adjustment is $12 million (line 3). The adjustment on line 4 does not apply to the first year of annual changes, but will be discussed below in relation to FY 1988 costs. The billing basis of $37.3 million (line 5) would be divided among the pipeline companies in annual charges by the proposed method described in Part IV of this Notice.

The Commission may grant waivers of annual charges after billing. In this example, the Commission granted $100,000 in waivers (line 6), and thus would collect $37.2 million in annual charges from pipelines during the fiscal year (line 7).

After the end of the fiscal year, the Commission would calculate actual costs and compare them to the amount collected. In the example, actual costs for the program were $49.0 million (line 8) and actual filing fees received were $12.2 million (line 9). Therefore, actual net costs (line 8 less line 9) were $36.8 million (line 10). In this example, the amount collected from annual charges (line 7) exceeded actual net costs (line 10) by $400,000 (line 11). In establishing the FY 1988 billing basis, the Commission would reduce the estimated costs by this amount (line 4, second column).[30]

As an alternative to the final step in the above process, the Commission has considered issuing refund checks and supplemental charges once it has the actual year-end data with which to compute whether, and by how much, each company has over- or underpaid. The Commission is not proposing this approach because of the administrative burden involved in issuing and accounting for two sets of bills each year. However, the Commission is considering the following similar alternative. First, the Commission would estimate program costs, reduce those costs by estimates of filing fee collections, and bill companies on the net cost basis, as in the proposed method. Then, when actual costs and filing fee collections are available after the end of the fiscal year, the Commission would recalculate the bills, compare actual collections from individual companies to the recalculated bills for those companies, and carry over any difference as debits and credits onto the next year's bills. Under this approach, the adjustment for over- or undercollection of costs (line 4 in the preceding table) would not be necessary. Such an adjustment would automatically result from the Commission recalculating bills and crediting or debiting individual companies' annual charges in the following year.

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[28] *See* House Budget Report at 55, 1986 U.S. Code Cong. & Ad. News at 3651; H.R. 5300, 99th Cong., 2d Sess. Section 4101(e) (1986).

[29] *See* 18 CFR 381.104 (1986).

[30] *See* authority cited *supra* note 28.

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E. Standards for Waiving All or Part of an Annual Charge

The Commission proposes to apply to annual charges the standards for waiver currently applicable to filing fees. The Commission's current regulations permit a company to seek a waiver of a filing fee if it can show that it is economically unable to pay all or part of the fee or that such payment would place it in financial distress or emergency.[31] The Commission believes that this stringent standard is appropriate because any charges waived for one company must be paid in the following year by the program's remaining regulated companies, due to the Budget Act's requirement that the Commission recover *all* its costs.

The Commission proposes that any requests for waiver of annual charges be received before the bill is due (*i.e.*, within 45 days after the billing date) and be based upon sufficient financial data for the Commission to make its decision. The Director of the Office of Pipeline and Producer Regulation, the Oil Pipeline Board, and the Director of the Office of Electric Power Regulation would be delegated the authority to rule on waiver requests in the gas, oil and electric areas respectively.

F. Other Matters

The Commission proposes to provide a 45-day period for payment of annual charges, and to assess interest on overdue annual charges. Such interest will be computed in accordance with § 154.67(c)(iii) of the Commission's regulations.[32] The Commission also proposes that it may refuse to process any application or consider any other filing of a company which has annual charges or interest amounts in arrears, unless a petition for waiver is pending, or take any other appropriate action permitted by law.

IV. Cost Basis for the Natural Gas Regulatory Program

A. Overview of the Commission's Responsibilities

The Commission's authority to regulate the natural gas industry derives from the Natural Gas Act (NGA) [33] and the Natural Gas Policy Act of 1978 (NGPA).[34] Pursuant to these two Acts, the Commission regulates sales and transportation of gas by about 148 interstate natural gas pipelines and some aspects of the sales of gas by approximately 9,700 natural gas producers. The Commission is responsible for ensuring the lowest reasonable rates for the sale and transportation of natural gas consistent with safe and reliable long-term service.[35] The NGA provides for the issuance of certificates of public convenience and necessity for the transportation and sale for resale of natural gas in interstate commerce and the construction and operation of facilities therefor, the grant of abandonment authority for such facilities and services, and the establishment of rates for those services.[36] The NGPA deregulates a major portion of the gas wellhead market, establishes ceiling prices for certain categories of natural gas production in interstate and intrastate commerce that remain regulated, and authorizes the Commission to permit interstate and intrastate pipelines to transport gas in interstate commerce outside the restriction of the Natural Gas Act. Finally, the Secretary of Energy has delegated to the Commission a portion of the responsibility under the Natural Gas Act for the regulation of imports or exports of natural gas.

B. The Types of Companies To Be Billed

The Commission proposes to assess annual charges only against interstate natural gas pipelines, and to continue to collect all the IOAA filing fees it currently assesses against natural gas producers, and interstate and intrastate pipelines.[37] However, the Commission is considering whether it should also assess annual charges against producers and/or intrastate pipelines.

The Commission could assess annual charges against the 107 interstate natural gas pipelines that receive authority to transport natural gas across state lines pursuant to section 311 of the NGPA.[38] However, the Commission estimates that such companies already pay in filing fees $1.7 million of the approximately $1.8 million in the gas program cost attributable to the implementation of section 311 with respect to interstate pipelines. These companies have therefore already reimbursed the Commission for nearly all of their share of the regulatory expenses, and the Commission considers the collection of the remaining $100,000 in costs from over 100 pipelines to be administratively burdensome.[39] Moreover, the Commission does not wish to discourage such intrastate pipelines from voluntarily seeking section 311 authorization. For these reasons, the Commission does not propose to assess annual charges against section 311 intrastate pipelines.

Similarly, the Commission is not proposing to assess annual charges against producers. Although the Conference Report indicates that Congress intended to give the Commission the discretion to assess charges against any natural gas company it regulates, the legislative history also indicates that its primary focus was on natural gas pipelines.[40] In fact, the House Budget Report expressly placed on the gas pipelines the burden of the Commission's "cost of administering *all* aspects of the Natural Gas Policy Act of 1978." [41] Therefore, while the Budget Act may authorize the Commission to collect charges from producers, the Commission clearly has the discretion to exclude producers for good cause.

The Commission believes that fairness and equity require that the consumers pay for that portion of the producer regulatory costs that is not already reimbursed through filing fees. The unreimbursed portion in FY 1986 was $10.6 million out of the $12.9 million in the Commission's expenses attributable to the regulation of producers. The benefits of such regulation inure to the consumers in the form of reasonable prices and adequate supplies of natural gas. The most direct way for the Commission's regulatory expenses to reach the consumers is for pipelines to be assessed the charges and to pass them through to the consumers in their rates.[42]

Finally, the Commission believes that the administrative burden of attempting to collect the approximately $10 million from more than 9,000 producers would be severe and disproportionate to any countervailing benefits.

The Commission notes that it does not presently maintain a list of all producers and does not collect a complete body of data by which it could identify such

[31] 18 CFR 381.106 (1986).

[32] 18 CFR 154.67(c)(iii) (1986).

[33] 15 U.S.C. 717–717w (1982).

[34] 15 U.S.C. 3301–3432 (1982).

[35] NGA 4, 15 U.S.C. 717c (1982).

[36] NGA 4, and 7, U.S.C. 717c and f (1982).

[37] For purposes of this rulemaking, an interstate natural gas pipeline is defined as any person (1) engaged in natural gas sales for resale or natural gas transaction that are subject to the Commission's jurisdiction under the NGA, and (2) not engaged solely in "first sales" of natural gas as that term is defined in section 2921) of the NGPA, 15 U.S.C. 3302(21) (1982). Based on FY 1986 data, the Commission would expect to collect $49.3 million in filing fees and annual charges in 1987.

[38] 15 U.S.C. 3371 (1982).

[39] *See* authority cited *supra* note 16.

[40] Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884.

[41] House Budget Report at 54, 1986 U.S. Code Cong. & Ad. News at 3650 (emphasis added).

[42] *See* Senate Budget Report at 74, stating that "the Commission will establish a mechanism whereby regulated companies may include these fees and annual charges in their rates."

producers. While the Commission is provided some volumetric data by pipelines in their purchased gas adjustment filings, such data would only reflect the volumes sold to the pipelines, but not the increasingly large volumes sold to local distribution companies and end users under limited-term abandonments [43] and Order Nos. 436 and 451.[44] While some producers inform the Commission of the sales volumes when they file reports required by the Commission's orders granting limited-term abandonments, such figures do not distinguish between jurisdictional and nonjurisdictional gas sold. Thus, in order accurately to assess annual charges against producers, the Commission would need to collect additional data from them—an unjustified burden given the fact that the expenses can be passed through more efficiently and directly to the ultimate beneficiary, the consumer, through pipeline rates. For all these reasons, the Commission does not propose to assess filing fees against gas producers.

Another alternative would be to require interstate pipelines to serve as agents for assessing and collecting annual charges from their producer-sellers. Under this alternative, the Commission would inform each pipeline of those costs it would be entitled to recover from producers, and each natural gas pipeline would then have to make some sort of adjustment with each of its producer-sellers. The Commission's calculations of recoverable costs would be based on the volumetric data currently reported in FERC Form No. 2 at page 518, lines 6–9, column c, and page 327, lines 1, 3, 4 and 5, column b. Similar data requirements would have to be added for Form Nos. 2–A and 14. However, the Commission is reluctant to impose such an additional reporting burden.

As of September 30, 1985, the Commission regulated 148 such pipelines under section 7 of the NGA.[45] Of these pipelines, the Commission proposes to assess annual charges against the following groups (currently totalling 135 pipelines):

(a) Interstate natural gas pipelines that have certificates of public convenience and necessity under section 7 of the NGA, that are subject to Commission NGA section 4 authority, and that sell and transport volumes in excess of 200,000 Mcf annually for any of the three calendar years immediately preceding the billing year (currently 114 pipelines);

(b) Interstate natural gas pipelines that have certificate authority under section 7 of the NGA but no tariff on file for jurisdictional or nonjurisdictional sales and that sell and transport volumes in excess of 200,000 Mcf annually for any of the three calendar years (immediately preceding the billing year (currently 13 pipelines);

(c) Regulated interstate natural gas pipelines that have NGA section 7(f) declarations and that sell and transport volumes in excess of 200,000 Mcf annually for any of the three calendar years immediately preceding the billing year (currently 3 pipelines); and

(d) LNG importers that fall within the Commission's jurisdiction pursuant to both sections 3 and 7 of the NGA and that sell and transport volumes in excess of 200,000 Mcf annually for any of the three calendar years immediately preceding the billing year (currently 5 pipelines).

The Commission proposes to exempt any interstate natural gas pipelines with sales and transportation volumes of 200,000 Mcf or less annually in each of the three calendar years immediately preceding the billing year (currently 13 pipelines). The Commission is interested in comments regarding its categorization.[46]

1. *Companies to be Billed.* Consistent with the Conference Report,[47] the Commission is proposing to assess annual charges against those companies over which it has jurisdiction under section 7 of the NGA.

(a) Interstate natural gas pipelines apply for certificates for the transportation and sale of natural gas for resale in interstate commerce under section 7 of the NGA. One-hundred twenty-one companies, excluding LNG importers but including gatherer-type pipelines, have certificates under NGA section 7 are also subject to the Commission's NGA section 4 rate regulatory authority. The Commission proposes to assess annual charges against the companies in this group with sales and transportation volumes exceeding 200,000 Mcf annually for any of the three calendar years immediately preceding the billing year.

(b) Section 1(b) of the NGA provides, in part, that the sale for resale of natural gas for ultimate public consumption is jurisdictional. This usually involves the sale of natural gas to a local distribution company (LDC) the facilities and services of which are under state or local jurisdiction. The Commission has authority to set rates for sales to LDCs pursuant to section 4 of the NGA. However, some natural gas pipeline companies make sales to companies that use the natural gas for their own consumption. These sales are referred to as direct sales. Although the Commission does not set rates for these sales because they are not regulated under section 4 of the NGA, the construction and operation of facilities to render services and the transportation of natural gas in interstate commerce are subject to the Commission's jurisdiction under section 7 of the NGA. Consistent with the scope of the Commission's NGA jurisdiction, the Commission proposes to assess annual charges on all sales volumes, *i.e.*, both the volumes sold for resale and the volumes transported in interstate commerce for direct sale. Seventeen such interstate pipeline companies currently have certificate authority but no tariff on file. If the Commission were using 1985 data to assess annual charges, it would exempt four pipelines on a volumetric basis (200,000 Mcf or less per year for each of the three immediately preceding calendar years) and assess the remaining 13 pipelines an annual charge. The Commission proposes to calculate the charges based upon total transportation and sales volumes.

(c) Under section 7(f) of the NGA, a natural gas pipeline may enlarge or extend its facilities to satisfy increased market demands without prior Commission authorization. Five regulated pipelines, not already included in sections (a) and (b) above, currently have section 7(f) declarations. These are natural gas companies under the NGA that perform a distribution function across state lines. For example, under section 7(f) of the NGA, Washington Gas Light Company (which serves the Washington, D.C., metropolitan area in Virginia, Maryland and the District of Columbia) can change its facilities and services for the purpose of increasing its market demand without prior Commission authorization. If the Commission were basing its annual charges assessments on 1985 data, it would exempt two of these pipelines because they have not sold and transported more than 200,000 Mcf annually for any of the last three calendar years. The remaining three pipelines would be required to pay an annual charge.

[43] *See* Felmont Oil Corp. and Essex Offshore, Inc., 33 FERC ¶ 61,333 (1985), *reh. denied*, 34 FERC ¶ 61,296 (1986).

[44] Order No. 436, 50 FR 42408 (October 18, 1985), FERC Stats. & Regs. (Regulations Preambles 1982–1985) ¶ 30,665. Order No. 451, 51 FR 22168 (June 18, 1986), III FERC Stats. & Regs. (Regulations Preambles) ¶ 30,701.

[45] The 1985 figure is the most current total available as of the issuance date of this Notice. However, a 1986 figure should be available for use in identifying natural gas pipelines to be assessed annual charges for fiscal year 1987.

[46] In Appendix B, the Commission segregates the companies into the above categories based on the most current information in the Commission's files.

[47] Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884.

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(d) Under the DOE Organization Act,[48] regulatory authority involving natural gas imports and exports is vested in the Secretary of Energy. The Secretary has delegated to the Commission the authority to regulate the use of domestic facilities for the sale or transportation of imported natural gas. One source of natural gas used to supplement national supplies is imported liquefied natural gas (LNG). An LNG importer is subject to the Commission's jurisdiction through section 3 of the NGA.[49] Pursuant to that section, an LNG importer files with the Commission a Form No. 14 indicating the total LNG volumes transported. The Commission is proposing to assess annual charges against importers which are subject to the Commission's NGA section 3 jurisdiction and which file a Form No. 14, only if the companies are also subject to the Commission's NGA section 7 jurisdiction. In addition, the Commission proposes to assess annual charges against only those importers which sell or transport more than 200,000 Mcf per year in any of the three calendar years immediately preceding the billing year. There are currently five companies in this category.[50]

[48] 42 U.S.C. 7101–7352 (1982).

[49] 15 U.S.C. 717b (1982).

[50] The Commission notes that it is not including in its universe of interstate natural gas pipelines the twelve companies that import or export natural gas under section 3 of the NGA and whose business is intrastate in nature. Persons required to file for authority to import or export natural gas under section 3 of the NGA may or may not be natural gas companies within the meaning of the Natural Gas Act. Natural gas company status is determined by whether a person transports or sells gas subject to section 7 requirements. Under the Department of Energy Organization Act and the Secretary of Energy's Delegation Orders Nos. 0204–111 (49 FR 6684, 6690 (February 22, 1984), 5 Fed. Energy Guidelines (CCH) ¶ 70,033) and 0204–112 (49 FR 6684, 6690–6691 (February 22, 1984), 5 Fed. Energy Guidelines (CCH) ¶ 70,034), the primary jurisdiction under section 3 lies with Department of Energy's Economic Regulatory Administration (ERA). The Commission has the authority only to approve or disapprove the siting and construction of new facilities, and to issue a Presidential Permit under E.O. 10485 for facilities on an international boundary. 3 CFR 970 (1949–1953 compilation), 18 FR 5397 (September 9, 1953), *reprinted in* 15 U.S.C. 717b note (1982), *amended by* 3 CFR 136 (1979), 43 FR 4957 (February 7, 1978), *reprinted in* 42 U.S.C. 7151 note (1982). Because of this joint authority for section 3 filings and the fact that import authority can be authorized by ERA without the necessity for a filing with the Commission, the Commission proposes not to assess annual charges against companies which fall under the Commission's jurisdiction solely due to section 3 of the NGA and the filing requirements of Part 153 of the Commission's regulations, 18 CFR Part 153 (1986). Based on 1985 data, there are currently twelve such companies.

2. *Pipeline Companies to be Exempted.* The Commission proposes to exempt natural gas pipelines with annual sales and transportation volumes of 200,000 Mcf or less in each of the three years immediately preceding the billing year.

The Commission does not currently collect the volumetric data necessary to accurately assess annual charges against such smaller pipelines. Even if these pipelines sold and transported the maximum exempt volume of 200,000 Mcf, they would each still be assessed only a $380 annual charge (using the method of calculation detailed in Part IV C below).[51] The maximum annual amount that could be collected from all thirteen companies would thus be only $4,940 (13 x $380). The collection of this minimal amount of money from the limited number of companies involved does not appear to warrant changing the existing reporting requirements. The Commission therefore proposes to exempt such small pipelines from the requirement of paying an annual charge.

C. Overview of the Annual Charges Formula

In keeping with the Conference Report,[52] the Commission is proposing to assess annual charges based on the pipelines' annual sales and transportation volumes. The Commission believes that the most representative sales and transportation volume can be found in FERC Form No. 2 from the sum of Line 42, *Total Sales* and Line 46, *Total, Gas Transported or Compressed for Others*, page 521 (Line 11 plus applicable transportation volumes in lines 13–15, Page 18 of Form No. 2A). For importers, FERC Form No. 14, Line 13 of Schedule I, Natural Gas, and Line 13 of Schedule II, LNG, provide this information.

The Commission proposes to apportion the its gas program costs among the 135 natural gas pipeline companies based upon the relation each company's total sales and transportation volume subject to Commission's regulation bears to the total sales and transportation volume subject to Commission regulation of all natural gas pipeline companies being assessed annual charges. Specifically, the Commission proposes to:

(1) Subtract all producer and pipeline filing fee collections from total gas program costs, to yield collectible gas program costs.

(2) Divide collectible gas program costs by the amount of gas sold and transported by all billable gas pipelines, [53] to yield the charge per Mcf.

(3) Multiply the charge per Mcf by the amount of gas sold and transported by each individual gas pipeline, to yield each individual pipeline's annual charge.

The Commission is also considering the alternative of subtracting only producer and wellhead fees from the total gas cost (a variation of step 1 above), and allowing company-specific credits for pipeline fees paid. Under this alternative, natural gas pipelines which are also natural gas producers would not be permitted to offset their annual charges with filing fees paid in their capacity as producers. To permit such a credit would place the pipeline-producer at a competitive advantage over its pipeline and producer competition, and would therefore not be "fair and equitable." The Commission invites comments on both approaches.

D. Other Matters

The Commission is proposing to authorize the Director of the Office of Pipeline and Producer Regulation to rule on petitions for waiver of the annual charges and would grant waivers to those companies which meet the standards for waiver currently applicable to filing fees.[54]

The Commission is also proposing to allow natural gas pipelines to include annual charges in their Administrative and General Expenses Account No. 928, Regulatory Commission Expenses, of the Commission's Uniform System of Accounts.[55] The Commission considers annual charges to be a cost of doing business for the gas pipelines.

Under §§ 381.107 and 381.206 of its regulations the Commission annually bills the Gas Research Institute (GRI) for processing its Research Demonstration and Development Budget.[56] The

[51] This estimated annual charge figure is calculated by multiplying 200,000 Mcf by $.0019 per Mcf. This latter number is obtained by dividing the annual cost of the natural gas program less filing fees in fiscal year 1986 ($41,266,000) by the total sales and transportation volumes of jurisdictional gas reported for calendar year 1985 (21,464,897 MMcf).

[52] Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884.

[53] If a company does not timely provide the Mcf data, the Commission would calculate the company's annual charge based upon the Commission's estimate of the Mcf amount using other data provided on Form 2, 2A, or 14 by the company in that year or, if necessary, in a prior year. Should the company subsequently provide accurate information, the Commission would adjust the company's annual charge for the following year. This adjustment would consist of increasing or decreasing the following year's Mcf figure by the difference between the estimated and actual figures.

[54] *See supra* Part III E.

[55] 18 CFR Part 201 (1986). *See generally* Senate Budget Report at 74.

[56] 18 CFR 381.107 and 381.206 (1986). *See generally* Gas Research Institute, 36 FERC ¶ 61,395 (1986).

Commission will continue to bill GRI, with the amounts collected from GRI to be subtracted from the overall costs of the natural gas program.

V. Cost Basis for the Oil Pipeline Regulatory Program

A. Overview of the Commission's Responsibilities

The Commission currently regulates 137 common carrier oil pipelines.[57] Under the Commission's oil pipeline program, companies that provide transportation of crude oil and petroleum products in interstate commerce are subject to regulation under the Interstate Commerce Act (ICA).[58]

The Commission is responsible for determining whether transportation rates on file are just and reasonable to shippers and consumers, and also supply adequate incentives for the expansion of oil pipeline systems. The responsibility for overseeing oil pipeline rates was transferred to the Commission from the Interstate Commerce Commission pursuant to section 306 of the Department of Energy Organization Act of 1977.[59] Jurisdictional companies file an Annual Report FERC Report No. 6 with the Commission.[60]

B. The Types of Companies to be Billed

The Commission proposes to assess annual charges against all oil pipelines which are required to file an Annual Report FERC Form No. 6 with the Commission pursuant to section 20 of the ICA [61] and § 357.2 of the Commission's regulations.[62] The Commission does not propose to exempt any oil pipelines from the payment of annual charges. Instead, the Oil Pipeline Board would be authorized to rule on petitions for waiver of the annual charges, and would grant waivers to those companies which meet the standards currently applicable to fees.[63]

The Commission notes that its review of DOE remedial orders (ROs) and adjustment request denials (RAs) are, for administrative convenience, currently included in the oil pipeline budget decision unit for TDRS reporting purposes (and are therefore included in the oil pipeline program's costs). The Commission proposes to continue to collect filing fees for ROs and RAs. However, because these appeals are completely unrelated to the Commission's oil pipeline program, the Commission believes that it would be inequitable to assess the oil pipelines the portion of the expense of administering these appeals which is not recouped through filing fees. The Commission therefore proposes to treat DOE appeal costs as indirect expenses and to apportion them among the gas, oil and electric programs (as described in Part III B 2 above).[64]

C. Overview of the Annual Charges Formula

Each oil pipeline reports to the Commission in its Annual Report FERC Form No. 6 the amount of barrels delivered, barrel-miles transported,[65] and operating revenue received each year.

The Commission initially considered apportioning the program's expenses based on the number of barrels delivered by the pipelines.[66] Such an approach would be consistent with the volumetric approaches used to compute natural gas pipelines' and electric utilities' annual charges. However, with regard to transportation of oil, this alternative would result in disproportionately high annual charges assessed against companies with short pipelines because it would not take into account the distance which the pipelines transported the delivered oil. A short-pipeline company moving a particular volume one mile would be assessed the same annual charge as another company moving the same volume 100 miles over a longer pipeline. This could result in inequitable assessments of annual charges.[67]

The Commission has also considered apportioning the program's expenses based on the number of barrel-miles transported. In their Annual Report FERC Form No. 6 (line 33a of page 600), the companies currently provide the Commission with the number of trunkline barrel-miles. However, Form No. 6 currently does not require reporting of gathering-line barrel-miles. The Commission's data for calculating annual charges based upon barrel-miles would thus be incomplete unless the Commission imposed additional filing requirements on the oil pipelines, a step which the Commission is reluctant to take. Moreover, use of trunkline barrel-miles could lead to an inequitable assessment of annual charges.[68]

Given the problems with assessing annual charges based on either the barrels delivered or barrel-miles, the Commission is proposing to apportion costs among oil pipelines based on each company's operating revenues. While not a volumetric approach, this procedure is consistent with the Conference Report which provides that the annual charges should be assesed on the basis of "annual sales or volumes transported" [69] because annual operating revenues are directly related to the annual transportation services which generate those revenues. The Commission believes that apportioning the annual charges based on this figure would fairly and equitably distribute the oil program costs.

The Commission proposes to apportion its oil program costs among the oil pipeline companies based upon the relation each company's annual operating revenue bears to the total annual operating revenue for all oil pipeline companies being assessed annual charges. Specifically, an individual company's annual charge would be calculated as follows:

(1) Subtract all oil pipeline fee collections from total oil program costs, to yield collectible oil program costs.

(2) Divide the collectible oil program costs by the total oil companies' operating revenue (FERC Form No. 6, page 114, line 1, column

[57] These companies are listed in Appendix C.

[58] 49 U.S.C. 1–27 (1976).

[59] 42 U.S.C 7155 (1982).

[60] 18 CFR 357.2 (1986).

[61] 49 U.S.C. 20 (1976).

[62] 18 CFR 357.2 (1986). Based on FY 1986 data, the Commission would expect to collect $4.4 million in filing fees and annual charges from oil pipelines in 1987.

[63] *See supra* Part III E.

[64] The estimated filing fee receipts for RO and RA cases in fiscal year 1987 totals $223,000, while the estimated expense for administering those cases totals $1,148,000.

[65] A barrel-mile is one barrel of oil or petroleum product moving one mile.

[66] Oil pipelines do not themselves own the commodity being transported, but provide only a transportation service.

[67] For instance, based on 1985 data, LOCAP, Inc. and Interstate Storage & Pipe Line Corporation (both short lines) would be responsible for paying 1.2 and 1.6 percent respectively of the oil program budget. If these companies' annual charges were based upon the two other approaches discussed below (barrel-miles and operating revenue), their charges would be dramatically lower. LOCAP would pay only .00027 percent and .206 percent respectively. Interstate would pay only .018 percent under the operating revenue approach. The Commission currently has insufficient data to calculate Interstate's percentage based on barrel-miles.

[68] For instance, Colonial Pipeline Company, which very rarely makes filings with the Commission, would be required to pay over 21 percent of the Commission's oil program budget, based on that company's barrel-mile throughput for calendar year 1985. Similarly, Lakehead Pipe Line Company would be required to pay 12 percent of that program's budget. If these companies' annual charges were based upon barrels delivered or operating revenues, their charges would be markedly lower. Colonial would pay only 5.3 and 6.6 percent respectively, and Lakehead would pay only 3.9 and 2.9 percent respectively.

[69] Conference Report at 239, 1986 U.S. Code Cong & Ad. News at 3884.

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c).[70] to yield the charge per dollar of operating revenue.

(3) Multiply the charge per dollar of operating revenue by each individual company's operating revenue, to yield each individual company's annual charge.

The Commission invites comments on the three methods of assessment discussed above, as well as any other methods which the commenters wish the Commission to consider.

D. Other Matters

The Commission proposes that the oil pipelines will be allowed to include annual charges in their Operating Expense Account No. 510, Supplies and Expenses, of the Commission's Uniform System of Accounts.[71] The Commission considers annual charges to be a cost of doing business for the oil pipelines.

VI. Cost Basis for the Electric Regulatory Program

A. Overview of the Commission's Responsibilities

As described more fully below, the Commission's electric power regulation program includes administering the provisions of the Federal Power Act (FPA) [72] concerning the activities of investor-owned utilities (IOU's); discharging its responsibilities under various statutes involving the Federal Power Marketing Agencies (PMAs); and implementing various provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA) [73] involving cogenerators and small power producers.

Pursuant to section 205 of the FPA,[74] the Commission regulates the rates and terms and conditions of service of public utilities making sales for resale or transmitting electric energy in interstate commerce. All jurisdictional rates must be on file with the Commission, and any rate change may be approved by the Commission only if it is just and reasonable and not unduly discriminatory or preferential. Under section 206 of the FPA,[75] the Commission may, after hearing, change any rate if it finds the rate to be unjust, unreasonable, unduly discriminatory or preferential.

The Commission also regulates certain corporate activities of public utilities pursuant to the FPA. Under section 203,[76] the Commission reviews applications filed by public utilities seeking to acquire, merge or otherwise dispose of jurisdictional facilities, if the net original cost of the facility exceeds $50,000. The Commission's authority under this section extends to the review of acquisitions of the securities of one public utility by another. Pursuant to section 204,[77] the Commission reviews the proposed security issues of jurisdictional electric utilities whose securities are not regulated by a State commission, within the meaning of subsection (f) of section 204. Finally, section 305(b) [78] gives the Commission jurisdiction to authorize individuals to hold concurrently the positions of officer or director of a public utility and officer or director of a financial institution which underwrites or participates in the marketing of public utility securities or a firm which is a supplier of electrical equipment.

The Commission also reviews the rates established by the Department of Energy for the five federally-owned PMAs (Bonneville Power Administration (BPA), Alaska Power Administration, Southeastern Power Administration, Southwestern Power Administration, and Western Power Administration). While regulation of IOU rates is guided by the FPA, regulation of the PMAs' rates is subject to the standards enumerated in a number of other statutes.[79] Essentially, the statutes require that the rates established by the PMAs must be devised with regard for the recovery of the cost of generation and transmission of electric energy, the encouragement of the most widespread use of the power, the provision of the lowest possible rates to customers consistent with sound business principles, and the protection of the interests of the United States in amortizing its investment in the project within a reasonable period of time. The Commission is also authorized, pursuant to the Regional Act, to review the Average System Cost methodology used to determine rates for exchange sales by utilities to BPA.

Section 210 of PURPA [80] requires the Commission to prescribe rules to encourage small power production and cogeneration of electricity. In particular, the section directs the Commission to adopt rules requiring utilities to purchase power from and sell power to qualifying cogeneration and small power production facilities (QFs). The Commission reviews applications filed by cogenerators and small power producers requesting QF certification, and either grants or rejects such applications based on critera set forth in the Commission's regulations.[81]

B. The Types of Companies to be Billed

The Commission's responsibilities in the electric utility program extend to approximately 176 IOUs including parent, subsidiary and affiliated utilities. Specifically, the Commission proposes to assess annual charges against those IOUs which have rate schedules on file with the Commission for sales for resale and coordination (interchange out and transmission delivered) services to municipal or cooperative electric utility systems, PMAs or other IOUs; and those IOUs required to file with the Commission the Form No. 1 (Major Utilities) or Form No. 1–F (Non-Major Utilities) reports.[82]

As described above, the Commission's responsibilities in the electric utility program also extend to the five federally-owned PMAs. The Commission proposes to exempt the PMAs from the payment of annual charges. Section 3401 of the Budget Act does not specify the entities to be made subject to annual charges, but the Conference Report suggests that Congress intended the Commission to use the scope of the House bill as a guide.[83] The House Budget Report indicated that, under the House bill, the entities to be charged would include "interstate natural gas pipelines, interstate oil pipeline carriers and *public utilities*." [84] The House bill, in turn,

[70] If a company does not timely provide the operating revenue data, the Commission is proposing to calculate the company's annual charge based on the Commission's estimate of the operating revenue using other data provided on FERC Form No. 6 by the company in that year, or, if necessary, in a prior year. Should the company subsequently provide the information, the Commission would adjust the company's annual charge in the following year. This adjustment would consist of increasing or decreasing the following year's operating revenue figure by the difference between the estimated and actual figures.

[71] 18 CFR Part 352 (1986). *See generally* Senate Budget Report at 74.

[72] 16 U.S.C. 792–828c (1982).

[73] 16 U.S.C. 2601–2645 (1982).

[74] 16 U.S.C 824d(a) (1982).

[75] 16 U.S.C 824e (1982).

[76] 16 U.S.C 824b (1982).

[77] 16 U.S.C 824c (1982).

[78] 16 U.S.C 825d(b) (1982).

[79] The Flood Control Act of 1944, 16 U.S.C. 825s (1982); the Federal Columbia River Transmission System Act, 16 U.S.C. 838g (1982); the Pacific Northwest Power Preference Act, 16 U.S.C. 837 (1982); the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (Regional Act), 16 U.S.C. 839 (1982); the Bonneville Project Act, 16 U.S.C. 832f (1982); and the Reclamation Act of 1939, 43 U.S.C. 485h (1982); the Department of Energy Organization Act, 42 U.S.C. 7101 (1982); see also DOE Delegation Order No. 0204–108, 48 55,664 (December 14, 1983); and 18 CFR Parts 300 and 301 (1986).

[80] 16 U.S.C 824a–3(a) (1982).

[81] 18 CFR Part 292 (1986).

[82] These companies are listed in Appendix D. Based on FY 1986 data, the Commission would expect to collect $21.9 million in 1987 in annual charges from the IOU's and in filing fees.

[83] Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884.

[84] House Budget Report at 54, 1986 U.S. Code Cong. & Ad. News at 3650 (emphasis added). *See*

Continued

defined "public utility" to have "the same meaning given such term by section 201(e) of the FPA, except that such term does not include a qualifying small power producer or a qualifying cogenerator." [85] Section 201(e) of the FPA defines "public utility" as "any person who owns or operates facilities subject to the jurisdiction of the Commission under this Part . . . ." [86] However, section 201(f) of the FPA provides that, "[n]o provision of this Part shall apply to , or be deemed to include, the United States, a State or any political subdivision of a state, or any agency, authority, or instrumentality of any one or more of the foregoing. . . . " [87] Therefore, as the Federal PMAs are not considered "public utilities" for purposes of the FPA, the Commission believes that they cannot be considered "public utilities" for purposes of assessing annual charges pursuant to the Budget Act. This is consistent with current practice because, under the Commission's Rules of Practice and Procedure, anyone engaged in the official business of the Federal Government may be exempted from the payment of the Commission's filing fees, and, in fact, the Commission presently does not impose fees on these entities.[88] Thus, the Commission believes it is appropriate also to exempt the Federal PMAs from the payment of annual charges. The Commission specifically seeks comments on this issue.

The Commission also proposes not to assess annual charges against municipals and cooperative utility systems because as noted above, municipals are exempt from Commission jurisdiction under section 201(f) of the FPA. The Commission takes the position that it has no FPA jurisdiction over rural cooperatives either.[89] The Commission presently imposes no fees on these entities.

The Commission further proposes to exempt cogenerators and small power producers. As pointed out in the Conference Report, the Commission originally requested a specific exemption for cogenerators and small power producers because of a concern that inclusion of these entities could frustrate the Commission's mandate under PURPA to encourage small power production and cogeneration. The Conference Report indicates the congressional expectation that the Commission will "take into account this concern, as well as other appropriate concerns, in determining whether to assess fees or charges upon such power producers." [90] Indeed, as noted above, H.R. 5300 (the House bill) specifically excluded qualifying cogenerators and small power producers from its definition of "public utility." Accordingly, the Commission believes that its incurred costs in this area are more appropriately recovered through the Commission's existing filing fees.[91]

Finally, the Commission proposes not to assess annual charges against electric utilities operating in Alaska, Hawaii and those in Texas which are not subject to Commission jurisdiction because they do not make wholesale sales or transmit energy in interstate commerce.

C. Overview of the Annual Charges Formula

The Commission proposes to apportion among the individual IOUs the amount of Commission costs related to electric rate regulation based on relative sales for resale, interchange out and transmission kilowatt-hour deliveries of energy. These energy deliveries are reported in the Annual Report Forms No. 1 and 1–F filed with the Commission, and the Annual Electric Utility Report Form No. 861 filed with the EIA.[92] The Commission believes that apportionment on this basis yields a fair and equitable distribution of incurred costs for, as noted above, the Commission's rate regulation of IOUs involves the sale of wholesale electric services, and the two major types of wholesale service regulated by the Commission are requirements (sales for resale) sales and sales in coordination markets (interchange out and transmission delivered). The Commission also believes that using these levels of energy deliveries taking place on IOU systems under these two wholesale service classifications is in accord with the Conference Report indication that the annual charges should be assessed on the basis of the "annual sales or volumes transported." [93]

The respective costs associated with the two classes of service would be determined by dividing these costs by the total kilowatt-hours delivered under each class. The figures so derived would be multipled by each IOU's kilowatt-hours delivered under each class to determine each IOU's total annual assessment.

The Commission further proposes to assign to the IOUs those costs incurred by the Commission as a result of its review of PMA rates. As stated above, subsection (a) of the Budget Act provides that the Commission is to "assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year." [94] The Conference Report also indicates that the Commission may waive any fee or annual charge "for good cause shown," but "if it does so, the Commission should use its authority . . . to make adjustments as necessary to ensure that it meets the requirement in subsection [a]" of section 3401 of the Budget Act. Furthermore, the Conference Report indicates that "public utilities subject to the Federal Power Act should be required to pay for the Commission's activities under the Federal Power Act and *related statutes* . . . ." [95] The statutes requiring Commission review of PMA rates may be considered "related statutes" to the Commission's rate regulation pursuant to the Federal Power Act. Therefore, the Commission believes that it must assign to the IOUs those costs related to Commission regulation of the exempted entities under the "related statutes." The Commission invites comments on this issue.

The Commission currently collects filing fees from IOUs, OFs and small power producers for services and benefits provided under the FPA and PURPA, including rate schedule and rate change filings; applications for the physical connection of facilities; applications for wheeling; applications for authorization to issue securities; applications to assume an obligation or liability as a guarantor; corporate applications involving one or more jurisdictional utilities; applications for

also Conference Report at 239, U.S. Code Cong. & Ad. News at 3884.

[85] H.R. 5300, 99th Cong., 2d Sess. 4101(h)(6) (1986).

[86] 16 U.S.C 824(e) (1982).

[87] 16 U.S.C 824(f) (1982).

[88] 18 CFR 381.108 (1986).

[89] Dairyland Power Cooperative, 37 FPC 12 (1967). *See also* Salt River Project Agricultural Improvement and Power Dist. v. FPC, 129 U.S. App. D.C. 117, 391 F.2d 470, *cert. denied sub nom.* Arkansas Valley G&T, Inc. v. FPC, 393 U.S. 857 (1968). Based on this state of the law, the Supreme Court held that states could regulate cooperatives. Arkansas Electric Cooperative Corp. v. Arkansas Public Service Comm'n, 461 U.S. 375 (1983).

[90] Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884.

[91] *See* 18 CFR Part 381 (1986).

[92] The classifications of delivered energy are listed at page 401 of the Form No. 1 reports under "Electric Energy Account" as (1) Interchange out (line 13); (2) Transmission delivered (line 17); and (3) Sales for resale (line 22). Sales for resale information is similarly identified in the Form No. 1–F reports on page 16, line 7, column c. Comparable information on all companies is available at Schedule II, Part 8, Energy Services and Disposition, in EIA Form No. 861.

[93] Conference Report at 239, 1986 U.S. Code Cong. & Ad. News at 3884.

[94] Budget Act, section 3401(a)(1).

[95] Conference Report at 238–239, 1986 U.S. Code Cong. & Ad. News at 3883–3884 (emphasis added).

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authorization to hold interlocking positions; applications for extensions of the period for testing equipment; and applications for certification of qualifying status. The amounts received from these fees would be deducted from the total program costs before those costs are allocated among the IOU's in the form of an annual charge.

Specifically, the Commission proposes to:

(1) Subtract all electric program filing fee collections from total electric program costs, to yield the collectible electric program costs.

(2)(a) Multiply the collectible electric program costs by the proportion of time devoted to sales for resale activities, to yield the sales for resale costs.

(b) Multiply the collectible electric program cost by the proportion of time devoted to coordination sales activities, to yield the coordination sales costs.

(3)(a) Divide the sales for resale costs by the total IOU sales for resale kwh, to yield the sales for resale charge per kwh.

(b) Divide the coordination sales cost by the total IOU coordination sales kwh, to yield the coordination sales charge per kwh.

(4)(a) Multiply the sales for resale charge per kwh by each IOU's sales for resale kwh, to yield each IOU's sales for resale charge.

(b) Multiply the coordination sales charge per kwh by each IOU's coordination sales kwh, to yield each IOU's coordination sales charge.

(5) Add each IOU's sales for resale charge and coordination sales charge, to yield each IOU's total annual charge.

The Commission is considering two alternatives for allocating costs to the qualifying IOUs. The first would assess costs solely on the basis of IOU sales for resale, with no effect being given to interchange out or transmission deliveries. The second would assess costs on the basis of Commission-regulated energy deliveries but would not attempt to distinguish coordination-type services, *i.e.*, interchange out and transmission deliveries, from sales for resale. The Commission invites comments on the relative advantages and disadvantages of the proposed and alternative approaches, as well as any other approaches which the commenters wish the Commission to consider.

D. Other Matters

The Commission proposes that the IOUs will be allowed to include annual charges in their Administrative and General Expenses Account No. 928, Regulatory Commission Expenses, of the Commission's Uniform System of Accounts.[96] The Commission considers annual charges to be a cost of doing business for the IOU.

[96] 18 CFR Part 101 (1986). *See generally* Senate Budget Report at 74.

VII. Regulatory Flexibility Act

When the Commission is required by section 553 of the Administrative Procedure Act [97] to publish a notice of proposed rulemaking, it is also required by section 603 of the Regulatory Flexibility Act (RFA) [98] to prepare and make available for public comment an initial regulatory flexibility analysis, unless the Commission certifies pursuant to the RFA that the proposed rule would not have a "significant economic impact on a substantial number of small entities." [99] The RFA is intended to ensure careful and informed agency consideration of rules that may significantly affect small entities and to encourage consideration of alternative approaches to minimize harm to or burdens on small entities.

In this case, the RFA requires the Commission to analyze only the impacts on small entities that would be subject to this rule. As discussed before, this rule would only apply to three distinct classes of entities—interstate natural gas pipeline companies regulated under the NGA and the NGPA, public utilities regulated under the FPA, and interstate oil pipeline companies regulated under the ICA. However, the Commission has proposed not to assess annual charges against specific small entities, such as natural gas pipelines with annual sales and transportation volumes not exceeding 200,000 Mcf in each of the three years immediately preceding the billing year; those entities that apply for qualifying facility status under PURPA; and those entities that seek review of DOE adjustment denials and remedial orders.

Overall, the Commission does not believe that this rule will have a significant direct impact on small entities. Specifically, most, if not all, jurisdictional natural gas pipeline companies, public utilities and oil pipeline companies that would be assessed annual charges under this rule do not fall within the RFA's definition of small entity because most jurisdictional natural gas pipeline companies, public utilities and oil pipeline companies subject to this rule are too large to be considered "small entities." [100] Therefore, the Commission certifies that this rule will not have a "significant economic impact on a substantial number of small entities."

[97] 5 U.S.C. 553 (1982).
[98] 5 U.S.C. 601–612 (1982).
[99] 5 U.S.C. 605(b) (1982).
[100] 5 U.S.C. 601(6) (1982).

VIII. Paperwork Reduction Act Statement

The information collection provisions in this notice of proposed rulemaking are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act [101] and OMB's regulations.[102] Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Ellen Brown, (202) 357–8272). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

IX. Comment Procedures

The Commission invites interested persons to submit comments, data, views, and other information concerning the matters set out in this notice. To facilitate the Commission's review of the comments, commenters are requested to provide a short summary of their position on the issues raised in this NOPR and to track the organization of this NOPR. Comments should comply with the requirements of Rule 2003.[103]

The original and 14 copies of such comments must be received by March 4, 1987. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM87–3–000.

All written comments will be placed in the Commission's public files and will be available for public inspection in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426, during regular business hours.

List of Subjects

18 CFR Part 375

Authority delegations (government agencies).

18 CFR Part 382

Annual charges.

In consideration of the foregoing, the Commission proposes to amend Part 375 of, and to add Part 382 to Chapter I, Title 18, Code of Federal Regulations, as set forth below.

[101] 44 U.S.C. 3501–3520 (1982).
[102] 5 CFR 1320 (1986).
[103] 18 CFR 385.2003 (1986).

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

1. A new Part 382 is added to read as follows:

PART 382—ANNUAL CHARGES

Subpart A—General Provisions

Sec.
382.101 Purpose.
382.102 Definitions.
382.103 Payment.
382.104 Enforcement.
382.105 Waiver.
382.106 Accounting for annual charges paid under Part 382.

Subpart B—Assessment of Annual Charges

382.201 Annual charges under Parts II and III of the Federal Power Act and related statutes.
382.202 Annual charges under the Natural Gas Act, Natural Gas Policy Act and related statutes.
382.203 Annual charges under the Interstate Commerce Act.

Authority: Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–905, Title III, Subtitle E, Sec. 3401 (Oct. 21, 1986); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12,009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 551–557; Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791a–828c (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976).

Subpart A—General Provisions

§ 382.101 Purpose.

The purpose of this act is to establish procedures for calculating and assessing annual charges to reimburse the United States for all of the costs incurred by the Commission, other than costs incurred in administering Part I of the Federal Power Act and costs recovered through the Commission's filing fees.

§ 382.102 Definitions.

For the purposes of this part:

(a) "Natural gas pipeline company" means any person—

(1) Engaged in natural gas sales for resale or natural gas transportation subject to the jurisdiction of the Commission under the Natural Gas Act whose sales for resale and transportation exceed 200,000 Mcf at 14.73 psi (60°F) in any of the three calendar years immediately preceding the fiscal year for which the Commission is assessing annual charges; and

(2) Not engaged solely in "first sales" of natural gas as that term is defined in section 2(21) of the Natural Gas Policy Act of 1978.

(b) "Public utility" means any person who owns or operates facilities subject to the jurisdiction of the Commission under Parts II and III of the Federal Power Act and who is not a "qualifying small power producer" or a "qualifying cogenerator", as those terms are defined in section 3 of the Federal Power Act, or the United States or a State, or any political subdivision of the United States or a State, or any agency, authority, or instrumentality of the United States, a State, political subdivision of the United States, or political subdivision of a State.

(c) "Oil pipeline company" means any person engaged in the transportation of crude oil and petroleum products subject to the Commission's jurisdiction under the Interstate Commerce Act.

(d) "Natural gas regulatory program" is the Commission's regulation of the natural gas industry under the Natural Gas Act and the Natural Gas Policy Act of 1978.

(e) "Electric regulatory program" is the Commission's regulation of the electric industry under Parts II and III of the Federal Power Act and related statutes.

(f) "Oil regulatory program" is the Commission's regulation of the oil industry under the Interstate Commerce Act.

(g) "Person" means an individual, partnership, corporation, association, joint stock company, public trust, or organized group of persons, whether incorporated or not.

(h) "Sales for resale activities" means the portion of the Commission's electric regulatory program consisting of the regulation of sales of energy under contracts that do not anticipate service interruptions.

(i) "Coordination sales activities" means the portion of the Commission's electric regulatory program consisting of the regulation of all jurisdictional sales or energy except sales for resale activities.

(j) "Sales for resale kilowatt-hours" means the number of kilowatt-hours of electrical energy: (1) Sold under contracts that do not anticipate service interruptions, (2) reported as sales for resale in the Commission's Form Nos. 1 or 1–F under § 141.1 or § 141.2 of this chapter, and (3) the rates, charges, terms and conditions of which are regulated by the Commission.

(k) "Coordination sales kilowatt-hours" means the number of kilowatt-hours of electrical energy (1) sold by a public utility that are not sales for resale kilowatt-hours, (2) reported as interstate out and transmission deliveries in the Commission's Form Nos. 1 or 1–F under § 141.1 or § 141.2 of this chapter, and (3) the rates, charges, terms and conditions of which are regulated by the Commission.

(l) "Operating revenues" means the monies received by an oil pipeline company for providing common carrier services regulated by the Commission.

(m) "Fiscal year" means the twelve-month period that begins on the first day of October and ends on the last day of September.

(n) "Preceding calendar year" means the twelve-month period that begins on the first day of January and ends the last day of December and immediately precedes the fiscal year for which the Commission is assessing annual charges.

(o) "Adjusted costs of administration" means the difference between (1) the estimated costs of administering a regulatory program for each fiscal year adjusted to reflect any overcollection or undercollection of cost attributable to that regulatory program in the annual charge assessment for the preceding fiscal year, and (2) the estimated amount of filing fees collected during that fiscal year under the provisions of Parts 346 and 381 of the Commission's regulations for activities that relate to that regulatory program.

§ 382.103 Payment.

(a) Annual charges assessed under this Part must be paid within 45 days of the issuance of the bill by the Commission, unless a petition for waiver has been filed under § 382.105 of this part.

(b) Payment must be made by check, draft, money order or Electronic Funds Transfer System made payable to the United States Treasury.

(c) If payment is not made within 45 days of issuance of a bill, interest will be assessed. Interest will be computed in accordance with § 154.67(c)(iii) of this chapter, from the date on which the bill becomes delinquent.

§ 382.104 Enforcement.

The Commission may refuse to process any petition, application, or other filing submitted by or on the behalf of any person that does not pay the annual charge assessed when due, or take any other appropriate action permitted by law.

§ 382.105 Waiver.

(a) *Filing of petition.* Any person may submit a petition for waiver of the regulations in this part. An original and two copies of a petition for waiver must include evidence, such as a finanical statement, clearly showing either that the petitioner does not have the money

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to pay all or part of the annual charge, or, if the petitioner does pay the annual charge, that the petitioner will be placed in financial distress or emergency. Petitions for waiver must be filed with the Commission prior to the date on which the annual charges payment is due, *i.e.*, within 45 days of issuance of the bill.

(b) *Decision on petition.* The Commission or its designee will review the petition for waiver and then will notify the applicant of its grant or denial, in whole or in part. If the petition is denied in whole or in part, the annual charge becomes due 30 days from the date of notification of the denial.

§ 382.106 Accounting for annual charges paid under Part 382.

(a) Any natural gas pipeline company subject to the provisions of this Part must account for annual charges paid by charging the amount to Account 928, Regulatory Commission Expenses, of the Commission's Uniform System of Accounts.

(b) Any public utility subject to the provisions of this Part must account for annual charges paid by charging the amount to Account 928, Regulatory Commission Expenses, of the Commission's Uniform System of Accounts.

(c) Any oil pipeline company subject to the provisions of this part must account for annual charges paid by charging the amount to Account 510, Supplies and Expenses, of the Commission's Uniform System of Accounts.

Subpart B—Assessment of Annual Charges

§ 382.201 Annual charges under Parts II and III of the Federal Power Act and related statutes.

(a) *Determination of costs to be assessed.* The adjusted costs of administration of the electric regulatory program will be be apportioned between sales for resale activities and coordination sales activities in proportion to the total staff time dedicated to each. The amount apportioned to sales for resale activities will constitute "sales for resale costs," and the amount apportioned to coordination sales activities will constitute "coordination sales costs."

(b) *Determination of annual charges.* (1) The sales for resale costs determined under paragraph (a) of this section will be assessed against each public utility based on the proportion of the sales for resale kilowatt-hours of each public utility in the immediately preceding calendar year to the sum of the sales for resale kilowatt-hours in the immediately preceding calendar year of all public utilities being assessed annual charges.

(2) The coordination sales costs determined under paragraph (a) of this section will be assessed against each public utility based on the proportion of the coordination sale kilowatt-hours of each public utility in the immediately preceding calendar year to the sum of the coordination sale kilowatt-hours in the immediately preceding calendar year of all public utilities being assessed annual charges.

(3) The annual charge assessed against each public utility will be the sum of the amounts determined in paragraphs (b) (1) and (2) of this section.

§ 382.202 Annual charges under the Natural Gas Act, Natural Gas Policy Act and related statutes.

The adjusted costs of administration of the natural gas regulatory program will be assessed against each natural gas pipeline company based on the proportion of the total gas subject to Commission regulation which was sold and transported by each company in the immediately preceding calendar year to the sum of the gas subject to Commission regulation which was sold and transported in the immediately preceding calendar year by all natural gas companies being assessed annual charges.

§ 382.203 Annual charges under the Interstate Commerce Act.

The adjusted costs of administration of the oil regulatory program will be assessed against each oil pipeline company based on the proportion of the total operating revenues of each oil pipeline company for the immediately preceding calendar year to the sum of the operating revenues for the immediately preceding calendar year of all oil pipeline companies being assessed annual charges.

PART 375—[AMENDED]

2. The authority citation of Part 375 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12.009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 551–557 (1982).

In § 375.306, a new paragraph (j) is added to read as follows:

§ 375.306 Delegations to the Oil Pipeline Board.

* * * * *

(j) Deny or accept, in whole or part, petitions for waiver of annual charges prescribed in § 382.203 of this chapter in accordance with the standard set forth in § 382.105 of this chapter.

4. In § 375.307, a new paragraph (w) is added to read as follows:

§ 375.307 Delegations to the Director of the Office of Pipeline and Producer Regulation.

* * * * *

(w) Deny or accept, in whole or part, petitions for waiver of annual charges prescribed in § 382.202 of this chapter in accordance with the standard set forth in § 382.105 of this chapter.

5. In § 375.308, a new paragraph (v) is added to read as follows:

§ 375.308 Delegations to the Director of the Office of Electric Power Regulation.

* * * * *

(v) Deny or accept, in whole or part, petitions for waiver of annual charges prescribed in § 382.201 of this chapter in accordance with the standard set forth in § 382.105 of this chapter.

Note.—The Appendices will not be codified in the CFR

Appendix A

Overview of TDRS

The Time Distribution Reporting System (TDRS) is an agency-wide system designed to collect data each month on staff time expended in support of the Commission. The purpose of TDRS is to support the FERC fee structure and provide data on staff resource allocation for the budget. TDRS is a fiscal year based system.

Commission employees prepare report forms twice a month indicating the activities (product categories) they worked on during the period. There are two TDRS reporting periods each month; the first through the 15th and the 16th through the end of each month. At the end of each reporting period, TDRS forms are signed by the employee, reviewed and signed by the supervisor (TDRS reviewer), and forwarded to an office coordinator. The office coordinator batches the forms and submits them to the Office of Administration (OAD). OAD forwards them to a contractor for keying onto a computer tape. After the TDRS forms are keyed, the information is loaded into the FERC IBM computer and processed through a series of programs that check for complete and reasonable data.

The keyed information is checked against an employee roster to ensure that a form has been submitted for each employee; this check consists of comparing TDRS data with the FERC Staffing Plan employee roster. The FERC Staffing Plan maintains data on each Commission employee. It contains the name, organization, and type of employment, i.e., part-time or full time,

for each employee in the Commission. The source of Staffing Plan data is standard personnel forms (SF–50's) provided by the Office of Personnel. Information from the SF–50's is entered into the Staffing Plan on the Hewlett-Packard computer; Staffing Plan data is copied to the IBM for TDRS prior to each reporting period.

All of the data is then reviewed by the TDRS Edit Program. This program looks for valid work codes, appropriate number of hours per employee, valid organization codes, etc. Questionable or unacceptable records are passed to an error file and names of employees who have not submitted a TDRS form are prepared. These are reviewed and corrected by TDRS staff.

After each period's data has passed all the checks, standard and special reports are available. In addition, monthly reports on the data are published in the Management Information System Report (Red Book).

TDRS Internal Operations

1. Report Form Flow Description

At the end of each reporting period, TDRS report forms are forwarded to the Office of Administration (OAD) from employees through reviewer/supervisors and office coordinators. At each step in this process, from employee to OAD, there are levels of review designed to ensure accurate information. These steps can be broken down by individual responsibility.

Employees: Each employee is responsible for submitting a report form to their supervisor the morning after the reporting period ends. A sample TDRS form is at Appendix A. Employees who will not be in the office on that day are to submit their TDRS forms before they leave. Employees who move from one organization to another during a reporting period submit two forms; one for each organization in which they worked. Forms are submitted by all Commission employees, both full and part time, except for those in the offices of the Commissioners.

Reviewers: The reviewers are the primary check on the quality of the data submitted to TDRS. Reviewers are responsible for substantive review of the TDRS report forms. Reviewers check for budget decision units, product categories, and task codes that accurately reflect the workload of the employee; the organization code of official assignment; appropriate dates of the reporting period covered; and the number of hours worked including overtime and noncompensatory time. Reviewers make sure that a form is submitted for each employee and list names of employees who do not submit TDRS forms on the transmittal sheet.

Reviewers also complete the 'reviewer's transmittal sheet' and forward it with the package of employee report forms to the office coordinator the day after the close of the reporting period. These transmittal sheets are used by OAD to verify that each organization has submitted a forms package and by the keypunch contractor for information on the organization, reviewer name and phone number, and reporting period number and dates.

Office Coordinators: Coordinators are responsible for performing an administrative review of the batched reviewers' packages to ensure that required information is complete and accurate. Coordinators clarify illegible or questionable data before sending forms to OAD. They make sure that:

(1) Pre-printed adhesive name labels or printed employee names are on each form,
(2) organization codes are correct,
(3) reporting period dates are correct on transmittal sheets and forms,
(4) identifying codes are complete and legible,
(5) the employee has signed the form,
(6) the reviewer has signed all forms,
(7) the transmittal sheets identify information enclosed, and reviewer name and organization codes are the same for all employee forms covered by the reviewer's transmittal sheet.

Coordinators must also use a transmittal sheet; the purpose of this sheet is to bundle all forms for that office and indicate any missing forms.

All TDRS forms are due to OAD no later than noon on the second workday after the close of the reporting period.

Office of Administration: OAD is responsible for the operation and maintenance of TDRS. OAD's responsibilities fall into four areas: (1) Managing the forms, (2) updating the Staffing Plan, (3) reviewing the edit program, and (4) performing other data quality projects.

OAD collects and logs all coordinator and reviewer packages of the TDRS report forms and sends them to a keypunch contractor for data entry. Data is keyed to a computer tape by the contractor and returned the next day.

The TDRS update cycle from employee to available data requires seven work days to complete. Starting the morning after a reporting period ends, it takes 1.5 days for reviewers and coordinators to submit the forms to OAD. OAD sends the forms to keypunch on Day 2 and they are due back the afternoon of Day 3. The first edit is run overnight on Day 2 and TDRS staff begins correcting errors on Day 4. Errors are researched and corrected on Days 4 through 6, and reports are sent to reviewers to check for missing forms on Day 7.

2. Staffing Plan Description

The purpose of the Staffing Plan is to provide TDRS with an employee roster which is used to ensure that TDRS forms have been received from all staff. The Staffing Plan, which is located on the Hewlett-Packard (HP) computer, duplicates the personnel system and was originally designed as a tool for budget formulation. Since the break of the Common Support Agreement, however, financial data is no longer maintained and the primary function of the Staffing Plan is to support TDRS.

The Staffing Plan provides an employee roster which accounts for every employee in the Commission, the organization in which that employee is assigned and whether the employee is full-time, part-time or temporarily detailed to a different organization than the permanent organization.

The Staffing Plan is updated semi-monthly by TDRS staff. Pertinent employee information is extracted from personnel actions (SF–50's) provided by the Office of Personnel and entered into the system using formatted screens. The types of personnel actions which affect TDRS are accessions, terminations, transfers, details and name changes.

At the beginning of each TDRS update cycle, Staffing Plan data is extracted from the HP and moved to the IBM computer where the rest of TDRS is located. This move converts the Staffing Plan data to the format needed for TDRS (i.e., the numerical organization code used in the personnel system is converted to the required TDRS organizational acronym). This process is performed while TDRS forms are being keyed to tape.

In the TDRS master file there are two record types: (1) Name and organization and (2) work activity. The name and organization record is formatted from the Staffing Plan as described above. The work activity record is keypunched by the contractor onto a tape using the employee's TDRS form. This tape is read into the IBM computer and compared to the Staffing Plan employee roster by the edit program. This comparison of data ensures that all employees are reporting time and that it is charged to the appropriate organization.

3. Edit Program Description

The purpose of the TDRS edit program is to check the validity and reasonableness of data from the combined Staffing Plan name and organization records and the keyed TDRS forms before they can go into the TDRS master file. Data that conforms to the conditions in the edit program are passed directly to the TDRS master file. Any invalid or unreasonable data (errors) are passed to an error file. If an employee's form contains an error, all records from that form are passed into

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the error file. A report which lists the error file is printed and reviewed by TDRS staff who research and correct all errors. When all errors have been corrected, the error file is empty and the TDRS update cycle is completed.

The first check made to the data is to determine if the work activity name and organization match the Staffing Plan name and organization. The name of the person, organization and status of employment (full time or part time) are compared. If they do not match, no further edits are performed and all records for that employee go to the error file to be corrected.

If the two records match, extensive edits are performed. The codes reported on the forms are compared to a master list of valid workload codes called the autodoc. The edit program checks for:

- Budget Decision Units—Do they correspond to the appropriate product categories and task codes?
- Product categories—Do they require task codes?
- Task codes—Are they required for specific product categories?
- Docket numbers—Are they used when required? Are they in READI?
- Office designator edits—Do they correspond to the employee office and task codes?
- Overtime, noncompensatory time and regular hours—Are they correctly reported? Edits on approved overtime and noncompensatory time are primarily numeric. Regular hours are checked in greater detail. For full-time employees, the number of hours reported on the TDRS report forms are checked to ensure that the correct number of hours are reported. For part-time employees, any number of hours reported are acceptable.
- Reviewer names and telephone numbers—Are they filled in?
- Holiday hours—Are they reported by full-time employees if they occur during the period?

After the data goes through the edits listed above, correct data is sent to the master file and can be accessed through standard TDRS or Adhoc reports.

4. Description of Other Data Quality Projects in TDRS

While the Staffing Plan, the TDRS edit program, and the TDRS reviewers are the mainstay of data quality in the system, other data quality measures are also part of the system. These other data quality projects are listed below:

Quarterly Validation Cycles: At the end of each fiscal quarter, TDRS staff forwards reports covering staff time by organization and lists of employees who have not submitted TDRS forms to the reviewers and supervisors. Reviewers are required to certify that the time reported for their organization accurately reflects the work performed as well as to submit any overdue forms. When all overdue forms and reviewer certifications are received, TDRS staff makes any necessary corrections to the data. After this point, no additions or changes to the quarter's data can be made as it is compressed and retired to different files to make room for the next quarter.

Keysam: Once each quarter, samples of the data keyed from the TDRS forms to computer tape by the keypunch contractor are taken to determine accuracy. For each Keysam, copies of 125 records keyed by the contractor are selected by random sample. Each of these 125 records are then compared to the report forms from which they were keyed and the first TDRS edit report. TDRS staff reviews these records to determine whether the record contains an error and if it does, whether the error was a mistake made by the employee on the form, or whether the contractor inaccurately keyed the record. This information regarding the presence or absence of error and the type of error is then run through a computer program which calculates the average employee and contractor errors, the types of errors, and other data. This information is forwarded to the Director, OAD, quarterly.

Employees Error Studies: The purpose of the employee error studies is to identify specific problems in employee reporting so that TDRS staff can work with Commission offices to improve the quality of the information on the TDRS form. Each quarter, a study of one reporting period is made to determine the types of errors made by employees in completing their TDRS form. This study summarizes the number and type of errors in each Commission office for the time period. TDRS staff reviews specific reporting problems with individual offices and forwards a report to the Director, OAD.

Appendix B

1. List of Natural Gas Companies which would be Assessed Annual Charges based upon 1985 Data.

(a) Interstate natural gas pipelines that have certificates of public convenience and necessity under section 7 of the NGA, that are subject to Commission NGA section 4 authority, and that sell and transport volumes in excess of 200,000 Mcf annually for any of the three calendar years immediately preceding the billing year (currently 114 pipelines)

Alabama-Tennessee Natural Gas Company
Algonquin Gas Transmission Company
ANR Pipeline Company
ANR Storage Company
Arkansas Oklahoma Gas Corporation
Arkla Energy Resources, a division of Arkla, Inc.
Associated Natural Gas Company
Bayou Interstate Pipeline System
Bear Creek Storage Company
Black Marlin Pipeline Company
Blue Dolphin Pipe Line Company
Bluefield Gas Company
Border Gas, Inc.
Boundary Gas, Inc.
Canyon Creek Compression Company
Caprock Pipeline Company
Carnegie Natural Gas Company
Chandeleur Pipe Line Company
Cimarron Transmission Company
Colorado Interstate Gas Company
Columbia Gas Transmission Corporation
Columbia Gulf Transmission Company
Commercial Pipeline Company, Inc.
Consolidated Gas Transmission Corporation
Distrigas of Massachusetts Corporation
East Tennessee Natural Gas Company
Eastern Shore Natural Gas Company
El Paso Natural Gas Company
Equitable Gas Company, a division of Equitable Resources, Inc.
Florida Gas Transmission Company
Frontier Gas Storage Company
Gas Gathering Corporation
Gas Transport, Inc.
Gasdel Pipeline System Inc.
Granite State Gas Transmission, Inc.
Great Lakes Gas Transmission Company
Hampshire Gas Company
High Island Offshore System
Honeoye Storage Corporation
Inland Gas Company, Inc.
Jupiter Energy Corporation
KN Energy, Inc.
Kentucky West Virginia Gas Company
Lawrenceburg Gas Transmission Corporation
Locust Ridge Gas Company
Lone Star Gas Company, a Division of Enserch Corporation
Lone Star Gathering Company
Louisiana-Nevada Transit Company
MIGC, Inc.
Marenco Corporation
Michigan Consolidated Gas Company
Michigan Gas Storage Company
Mid Louisiana Gas Company
Midwestern Gas Transmission Company
Mississippi River Transmission Corporation
Mountain Fuel Resources, Inc.
National Fuel Gas Supply Corporation
Natural Gas Pipeline Company of America
North Penn Gas Company
Northern Border Pipeline Company
Northern Natural Gas Company, a Division of InterNorth, Inc.
Northwest Alaskan Pipeline Company
Northwest Central Pipeline Corporation
Northwest Pipeline Corporation
Ohio River Pipeline Corporation
Orange and Rockland Utilities, Inc.
Overthrust Pipeline Company
Ozark Gas Transmission System
Pacific Gas Transmission Company
Pacific Interstate Offshore Company
Pacific Interstate Transmission Company
Pacific Offshore Pipeline Company
Panhandle Eastern Pipe Line Company
Pelican Interstate Gas System
Penn-York Energy Corporation
Point Arguello Natural Gas Line Company
Raton Natural Gas Company
Ringwood Gathering Company
Sabine Pipe Line Company
Seagull Interstate Corporation
Sea Robin Pipeline Company
South County Gas Company
South Georgia Natural Gas Company
Southern Natural Gas Company
Southwest Gas Corporation
Southwest Gas Storage Company
Southwest Gas Transmission Company
Standard Pacific Gas Line, Inc.
Stingray Pipeline Company
Tarpon Transmission Company
TCP Gathering Company
Tennessee Gas Pipeline Company, a Division of Tenneco, Inc.
Texas Eastern Transmission Corporation
Texas Gas Pipe Line Corporation
Texas Gas Transmission Corporation
Texas Sea Rim Pipeline, Inc.
Trailblazer Pipeline Company
Transco Gas Supply Company
Transcontinental Gas Pipe Line Corporation
Transwestern Pipeline Company
Trunkline Gas Company
Union Light, Heat and Power Company
United Gas Pipe Line Company
U-T Offshore System
Valero Interstate Transmission Company
Valley Gas Transmission, Inc.
Washington Natural Gas Company
West Texas Gas, Inc.
West Texas Gathering Company
Western Gas Interstate Company
Western Transmission Corporation
Williston Basin Interstate Pipeline Company
Wyoming Interstate Company, Ltd.
Zenith Natural Gas Company

(b) Interstate natural gas pipelines that have certificate authority under section 7 of the NGA but no tariff on file for jurisdictional and nonjurisdictional sales and that sell and transport volumes in excess of 200,000 Mcf annually for any of the three calendar years immediately preceding the billable year (currently 13 pipelines)

American Distribution Company (Alabama Division)
Glacier Gas Company
Great Plains Natural Gas Company
Indiana Utilities Corporation
Interstate Power Company
Iowa-Illinois Gas and Electric Company
Iowa Public Service Company
Michigan Power Company
Pennsylvania and Southern Gas Company
Phillips Gas Pipeline Company
South Penn Gas Company
Superior Offshore Pipeline Company
Union Gas System, Inc.

(c) Regulated interstate natural gas pipelines that have NGA section 7(f) declarations and that sell and transport volumes in excess of 200,000 Mcf annually for any of the three calendar years immediately preceding the billable year (currently 3 pipelines)

National Fuel Gas Distribution Corporation
Shenandoah Gas Company
Washington Gas Light Company

(d) LNG importers that fall within the Commission's jurisdiction pursuant to both sections 3 and 7 of the NGA and that sell and transport volumes in excess of 200,000 Mcf annually for any of the three calendar years immediately preceding the billable year (currently 5 pipelines)

Columbia LNG Corporation
Consolidated System LNG Company
Distrigas Corporation
Southern Energy Company
Trunkline LNG Company

2. List of Natural Gas Companies which would be Exempted from Annual Charges based upon 1985 Data.

(a) Companies the sale and transportation transactions of which do not exceed 200,000 Mcf per year for each of the three calendar years immediately preceding the billable year (currently 13 companies)

Blacksville Oil and Gas Co., Inc.
C.B. Gas Gathering, Inc.
Crown Zellerbach Corporation
Georgia Pacific Corporation
Great River Gas Company
International Paper Company
Mid-Continent Gas Storage Company
Mitco Pipeline Company
Northern States Power Company
Penn-Jersey Pipe Line Company
RMNG Gathering Company
Urbana Corporation
Wheeler Gas, Inc.

(b) Importers with NGA section 3 and Presidential Permit authority only (currently 12 importers)

City of Roma, Texas
Del Norte Natural Gas Company
Entex, Inc.
Gas Service, Inc.
Inter-City Minnesota Pipelines Ltd., Inc.
Manchester Gas Company
Marathon Oil Company
Montana Power Company
Phillips Petroleum Company
St. Lawrence Gas Company
Valero Transmission Company
Vermont Gas Systems, Inc.

Appendix C

List of Interstate Oil Pipeline Companies which would be Assessed Annual Charges Based on 1985 Data:

Air Force Pipeline, Inc.
Algonquin Pipeline Company
Allegheny Pipeline Company
Amerada Hess Pipeline Corporation
American Petrofina Pipe Line Company
Amoco Pipeline Company
ARCO Pipe Line Company
Asamera Pipeline, Inc.
Ashland Pipe Line Company
Atlantic Pipeline Corporation
Badger Pipe Line Company
Belle Fourche Pipeline Company
Black Lake Pipe Line Company
BP Pipelines, Inc.
Buccaneer Pipe Line Company
Buckeye Pipe Line Company
Buckeye Pipe Line Company of Michigan, Inc.
Butte Pipe Line Company
C &T Pipeline, Inc.
Calnev Pipe Line Company
Cenergy Transmission Company
Chase Transportation Company
Chevron Pipe Line Company
Chicap Pipe Line Company
Chisholm Pipeline Company
Ciniza Pipe Line, Inc.
Citgo Pipeline Company
Cities Service NGL Pipeline Company
CKB Petroleum, Inc.
Clarco Pipe Line Company
CNG Pipeline Company
Cochin Pipeline System
Collins Pipeline Company
Colonial Pipeline Company
Continental Pipe Line Company
Cook Inlet Pipe Line Company
Crown-Rancho Pipe Line Corporation
Diamond Shamrock Refining and Marketing Company
Dixie Pipeline Company
Dome Pipeline Corporation
El Paso Frontera Corporation
Emerald Pipe Line Corporation
Enterprise Pipeline Company
Enterprise Products Company of Mississippi
Eureka Pipe Line Company
Explorer Pipeline Company
Exxon Pipeline Company
Farmland Industries, Inc.
Four Corners Pipe Line Company
Frontier Pipeline Company
G & T Pipeline Company
Getty Pipeline, Inc.
Gulf Central Pipeline Company
Hess Pipeline Company
Howell Crude Oil Company
Husky Pipeline Company
Hydrocarbon Transportation, Inc.
Interstate Storage & Pipe Line Corporation
Jayhawk Pipeline Corporation
Jet Lines, Inc.
Kaneb Pipe Line Company
Kaw Pipe Line Company
Kerr-McGee Pipeline Corporation
Kiantone Pipeline Corporation
Kuparuk Transportation Company
Lake Charles Pipe Line Company
Lakehead Pipe Line Company, Inc.
Largo Company
Laurel Pipe Line Company
Locap, Inc.
Marathon Pipe Line Company
Mark Oil Pipeline Company
McMoran Pipeline Company
Mesa Transmission Company
Mid-America Pipeline Company
Mid-Valley Pipeline Company
Milne Point Pipe Line Company
Minnesota Pipe Line Company
Mitco Pipeline Company
Mobil Alaska Pipeline Company
Mobil Eugene Island Pipeline Company
Mobil Pipe Line Company
National Transit Company
Navajo Pipeline Company
Northern Rockies Pipe Line Company
Northwest Pipeline Corporation

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Ohio Oil Gathering Corporation II
Ohio River Pipe Line Company
Oiltanking of Texas Pipeline Company
Okie Pipe Line Company
Olympic Pipe Line Company
Osage Pipe Line Company
Owensboro-Ashland Company
Paloma Pipeline Company
Pennzoil Offshore Pipeline Company
Phillips Alaska Pipeline Corporation
Phillips Pipe Line Company
Pioneer Pipe Line Company
Plantation Pipe Line Company
Platte Pipe Line Company
Pogo Offshore Pipeline Company
Portal Pipe Line Company
Portland Pipe Line Corporation
Pure Transportation Company
Santa Fe Pipeline Company
Seminole Pipeline Company
Shamrock Pipe Line Corporation
Shell Pipe Line Corporation
Sohio Pipe Line Company
Sonat Oil Transmission, Inc.
Southcap Pipe Line Company
Southern Pacific Pipe Lines, Inc.
Sun Oil Line Company of Michigan
Sun Pipe Line Company
Tecumseh Pipe Line Company
Texaco Cities Service Pipeline Company
Texas Eastern Transmission Corporation
Texas Pipe Line Company
Texas-New Mexico Pipe Line Company
Tomahawk Pipe Line Company
Total Pipeline Corporation
Trans Mountain Oil Pipe Line Corporation
Trans-Ohio Pipeline Company
Transco Terminal Company
Union Alaska Pipe Line Company
Wascana Pipe Line, Inc.
Wesco Pipe Line Company
West Emerald Pipe Line Corporation
West Shore Pipe Line Company
West Texas Gulf Pipe Line Company
Western Oil Transportation Company, Inc.
White Shoal Pipeline Corporation
Williams Pipe Line Company
Wolverine Pipe Line Company
Wood River Pipeline Company
Wyco Pipe Line Company
Yellowstone Pipe Line Company

Appendix D

List of Investor-Owned Utilities which would be Assessed Annual Charges Based on 1985 Data:

Georgia Power Co.
New England Power Co.
Ohio Power Co.
Indiana & Michigan Elec. Co.
Appalachian Power Co.
NY State Elec. & Gas Corp.
Arkansas Power & Light Co.
Alabama Power Co.
Pacific Pwr. & Lt. Co.
Duke Power Co.
Indiana-Kentucky Elec. Corp.
Ohio Edison Co.
West Penn Power Co.
Southern California Edison Co.
Pennsylvania Pwr. & Lt. Co.
Idaho Power Co.
Carolina Pwr. & Lt. Co.
Southern Elec. Gen. Co.
Portland General Elec. Co.
Arizona Pub. Service Co.
Northern States Power Co. (Mich.)
Southwestern Pub. Serv. Co.
Utah Pwr. & Lt. Co.
Texas Utilities Elec. Co.[1]
Maine Yankee Atomic Pwr. Co.
Potomac Edison Co.
Niagara Mohawk Pwr. Corp.
Southwestern Elec. Pwr. Co.
Connecticut Yankee Atomic Pwr. Co.
Montaup Electric Co.
Ohio Valley Elec. Corp.
Monogahela Power Co.
Alamito Co.
Canal Electric Co.
Consolidated Edison CO-NY Inc.
Virginia Elec. & Pwr. Co.
Florida Power Corp.
Columbus & So. Ohio Elec. Co.
Public Serv. Co. of Ind. Inc.
Gulf States Utilities Co.
Oklahoma Gas & Elec. Co.
Wash. Water Power Co.
Public Service Co. of Colorado
Pacific Gas & Elec. Co.
Wisconsin Pwr. & Lt. Co.
Kentucky Utilities Co.
Vermont Elec. Pwr. Co. Inc.
Kentucky Power Co.
Montana Power Co.
South Carolina Generating Co.
Tampa Electric Co.
Vermont Yankee Nucl. Pwr. Corp.
Wisonsin Elec. Pwr. Co.
Mississippi Power Co.
Florida Power & Light Co.
Detroit Edison Co.
Tucson Electric Power Co.
Upper Peninsula Generating Co.
AEP Generating Co.
Boston Edison Co.
Cincinnati Gas & Elec. Co.
Systems Energy Resources, Inc. (formerly Middle South Energy Inc.)
Houston Light & Pwr. Co.
Gulf Power Co.
Mississippi Pwr. & Lt. Co.
Minnesota Power & Light Co.
Kansas Pwr. & Light Co.
Commonwealth Ed. Co. Ind. Inc.
Maine Electric Power Co.
Potomac Electric Pwr. Co.
Union Electric Co.
Kansas Gas & Elec. Co.
Central Illinois Pub Serv Co.
Public Service Co. of N.H.
Orange & Rockland Utils. Inc.
Delmarva Power & Light Co.
Public Serv. Co. Oklahoma
Public Service Co. of N.M.
Susquehanna Elec. Co.
Rochester Gas & Elec. Corp.
West Texas Utilities Co.
Wisconsin Pub. Serv. Corp.
Puget Sound Pwr. & Lt. Co.
Northern States Pwr. Co. (Wis.)
Central Hudson G & E Corp.
Yankee Atomic Electric Co
Central Power & Lt. Co.
Louisiana Pwr. & Light Co.
Commonwealth Edison Co.
Consumers Power Co.
South Carolina Elec. & Gas Co.
Illinois Power Co.
Pennsylvania Electric Co.
Southern Indiana Gas & Elec. Co.
Connecticut Light & Power Co.
Empire District Elec. Co.
San Diego Gas & Elec. Co.
Safe Harbor Water Pwr. Corp.
Pennsylvania Pwr. Co.
Kansas City Pwr. & Lt. Co.
Central Vt. Pub. Serv. Co.
Otter Tail Power Co.
Iowa Elec. Light & Pwr. Co.
Central Corp.
New Orleans Pub. Serv. Inc.
Dayton Pwr. Lt. Co.
Holyoke Water Power Co.
Interstate Power Co.
Iowa-Illinois Gas & Elec. Co.
El Paso Elec. Co.
Philadelphia Electric Co.
Cleveland Elec. Illum Co.
Toledo Edison Co.
Electric Energy In.
Duquesne Light Co.
Black Hills Pwr. & Lt. Co.
Northern Indiana Pub. Serv. Co.
Long Island Lighting Co.
Jersey Central Pwr. & Lt. Co.
Baltimore Gas & Elec. Co.
Green Mountain Pwr. Corp.
Holyoke Pwr. & Elec. Co.
Sierra Pacific Power Co.
Iowa Power & Light Co.
Wisconsin River Pwr. Co.
Iowa Southern Utilities Co.
Western Mass. Elec. Co.
United Illuminating Co.
Indianapolis Pwr. & Light Co.
Tapoco Inc.
Metropolitan Edison Co.
Madison Gas & Edison Co.
Nevada Power Co.
Lake Superior Dist. Pwr. Co.
Utilicorp United Inc. (formerly Missiouri Public Service Co.)
Public Serv. Elec. & Gas Co.
Central Illinois Light Co.
Central Maine Power Co.
York Haven Power Co.
Upper Peninsula Power Co.
Maine Public Service Co.
Edison Sault Elec. Co.
Cambridge Elec. Light Co.
Southwestern Elec. Serv. Co.
Lockhart Power Co.
Warm Springs Pwr. Enterprises
Commonwealth Electric Co.
Michigan Power Co.
Northwestern Pub. Serv. Co.
Louisville Gas & Electric Co.
Superior Water Lt. & Pwr. Co.
Nantahala Pwr. & Lt. Co.
Savannah Electic & Power Co.
Atlantic City Electric Co.
Bangor Hydro-Elec. Co.
Yadkin Inc.
Alcoa Generating Corp.
Union Light Heat & Power Co.
Citizens Utilities Co.
Texas-N.M. Power Co.
Central Louisiana Elec. Inc.
Fitchburg Gas & Elec. Lt. Co.
South Beloit Wtr. Gas & Elec. Co.
Massachusetts Elec. Co.
Consolidated Wtr. Pwr. Co.
Mt. Carmel Public Utility Co.
St. Joseph Lt. & Pwr. Co.
Eastern Edison Co.
UGI Corp.
Narragansett Elec. Co.
Florida Public Utilities Co.
Unitl Power Corp.
Cliffs Electric Service Co.
EUA Power Corp.
Montana-Dakota Utilities Co.

[1] Annual charges are to be assessed based only on those sales under rate schedules on file with the Commission. For Form No. 1 reporting purposes, this company should expressly identify the kilowatt-hour transactions taking place.

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 270 and 275

[Notice No. 615]

Tobacco Regulations; Miscellaneous Amendments; Correction

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects errors made in FR Doc. 87-535, published in the **Federal Register** on January 12, 1987, at 52 FR 1207.

FOR FURTHER INFORMATION CONTACT: Clifford A. Mullen, Coordinator, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226, (202) 566-7531.

SUPPLEMENTARY INFORMATION:

Paragraph 1. In the middle column of page 1209, § 270.212(a) should read:

§ 270.212 Mark.

(a) Every package of Tobacco products packaged in a domestic factory shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, a mark as specified in this section.

* * * * *

Paragraph 2. In the right column of page 1209 the heading for Part 275 should read:

PART 275—IMPORTATION OF TOBACCO PRODUCTS, CIGARETTE PAPERS AND TUBES

Signed: January 21, 1987.

Stephen E. Higgins,

Director.

[FR Doc. 87-1915 Filed 1-30-87; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Reopening and Extension of Public Comment Period on Proposed Amendments to the Ohio Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Reopening and extending the public comment period.

SUMMARY: By letter dated May 8, 1986, the Ohio Department of Natural Resources (ODNR) submitted proposed amendments to Ohio's regulatory program. The proposed amendments consist of changes to Ohio's statutes and regulations that implement and administer the Ohio program. The proposed amendments are also intended to make Ohio's rules consistent with the revised Federal regulations contained in 30 CFR Chapter VII. The proposed amendment package contains fifty-five regulations and two statutes.

OSMRE published a notice in the **Federal Register** on June 19, 1986, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (51 FR 22309).

Following a review of the Ohio amendments, OSMRE notified the State by letter dated September 30, 1986, of its concerns about many of the proposed amendments to the Ohio statutes and regulations. These concerns related to bonding, penalty assessment, coal exploration, variances from approximate original contour, soil reconstruction specifications, and management levels on reclaimed prime farmland. On December 1, 1986, the Ohio Department of Natural Resources (ODNR) responded by submitting revisions of the amendments to address OSMRE's concerns.

Accordingly, OSMRE is reopening and extending the comment period on Ohio's May 8, 1986 amendment as modified on December 1, 1986. The action is being taken to provide the public with an opportunity to reconsider the adequacy of the proposed amendments.

DATE: Written comments, data or other relevant information relating to this rulemaking not received on or before 4:00 p.m. March 4, 1987 will not necessarily be considered in the Director's decision to approve or disapprove the amendment.

ADDRESSES: Written comments should be mailed or hand delivered to: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43232. Telephone: (614) 866-0578.

Copies of the Ohio program, the proposed modifications to the program, and all written comments received in response to this notice will be available for public review at the OSMRE Field Office listed above and at the OSMRE Headquarters Office and the office of the State regulatory authority listed below during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the amendments by contacting the OSMRE Columbus Field Office listed above.

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315A, 1100 "L" Street, NW., Washington, DC 20240.

Ohio Division of Reclamation, Building B, Fountain Square, Columbus, Ohio 43224.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43232. Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

The Ohio program was conditionally approved effective August 16, 1982, by notice published in the August 10, 1982 **Federal Register** (47 FR 34688). Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register**. Subsequent actions concerning the Ohio program conditions of approval and program amendments can be found at 30 CFR 935.11 and 935.15.

II. Proposed Amendments

By letter dated May 8, 1986, the Ohio Department of Natural Resources, Division of Reclamation submitted proposed amendments to Ohio's regulatory program. The proposed changes will bring the Ohio program regulations into conformity with the revised Federal rules. Because State regulations are required to be no less effective than Federal rules, Ohio was

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asked to submit revised regulations to OSMRE for review and approval.

During review of the amendments, OSMRE identified several concerns relating to several different sections of the proposed regulations. The concerns included premature closing of public records on bond release; reassessing good faith points following an abatement; coal exploration; use of an agricultural variance from approximately original contour; do not require use of Soil Conservation Service soil reconstruction specifications, and do not require the same management level on reclaimed land as on undisturbed land. OSMRE notified the State of these concerns by letter dated September 30, 1986.

On December 1, 1986, the ODNR responded by submitting revisions to Ohio's regulations that address OSMRE's concerns. The revisions respond to all of OSMRE's objections with appropriate changes, explanations, or policy statements.

The full text of the December 1, 1986 revised amendments is available for review at the locations listed above under "ADDRESSES". OSMRE is now seeking comment on the May 8, 1986 amendment as revised on December 1, 1986. If the Director determines that the proposed amendments are no less stringent than SMCRA and no less effective than the Federal regulations, the amendment will be approved and become part of the approved permanent program.

Dated: January 23, 1987.

Richard G. Bryson,

Acting Assistant Director, Program Policy.

[FR Doc. 87-1975 Filed 1-30-87; 8:45 am]

BILLING CODE 4310-05-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. RM-86-4]

Extension of Comment Period; Inquiry on Copyrightability of Digitized Typefaces

AGENCY: Copyright Office, Library of Congress.

ACTION: Extension of comment period.

Notice: On October 10, 1986 the Copyright Office in a Notice of Inquiry (51 FR 36410) invited public comment on the copyrightability of digitized versions of typefaces. Comments were invited through December 9, 1986.

The Copyright Office has received two written requests to extend the comment period. One other person requested an extension by telephone. In the interest of allowing full public comment, the Copyright Office hereby extends the comment period until February 17, 1987. Reply comments may be submitted during the extended comment period.

DATE: Comments should be received on or before February 17, 1987.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail, to: Library of Congress, Department 100, Washington, DC 20540.

If delivered by hand, copies should be brought to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room 407, First and independence Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559. (202) 287-8380.

List of Subjects in 37 CFR Part 202

Copyright registration.

Date: January 15, 1987.

Dorothy Schrader,

Associate Register of Copyrights for Legal Affairs.

Approved by:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 87-1895 Filed 1-30-87; 8:45 am]

BILLING CODE 1410-07-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 205

General Administration—Public Assistance Programs, Quality Control Requirements

AGENCY: Family Support Administration, HHS.

ACTION: Proposed rules.

SUMMARY: This proposal amends the rules of the quality control (QC) process under the Aid to Families with Dependent Children (AFDC) program to:

1. Establish a new performance-based threshold to determine which States with error rates in excess of the statutory error standard are eligible to apply for waivers on the grounds that the States took the necessary actions to meet the national standard but were unsuccessful; and

2. Establish more definitive criteria to be used by the Secretary to evaluate waiver requests filed by States on such grounds.

DATE: Comments will be considered if we receive them no later than April 3, 1987.

ADDRESSES: Comments should be submitted in writing to the Office of Family Assistance, Family Support Administration, Room B-428, Trans Point Building, 2100 Second Street, SW., Washington, DC 20201, between 8:30 am and 5:00 pm or regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Sean Hurley, Room B-110, Trans Point Building, 2100 Second Street, SW., Washington, DC 20201, (202) 245-2292.

SUPPLEMENTARY INFORMATION: These rules amend the QC regulations under the AFDC program by introducing two primary changes. The first establishes a new performance-based threshold to determine whether or not States that failed to meet the statutory error standard can, in fact, apply for a waiver on the grounds that the States took the necessary actions to meet the national standard but were unsuccessful. The second, which generally pertains to those States who are eligible to apply for a waiver by virtue of having met the threshold, establishes more definitive criteria to be used by the Secretary in determining whether waivers will be granted. These regulations apply to erroneous payments and fiscal liabilities for QC sampling periods beginning October 1986.

The Michel Amendment (section 201 of the Labor—HEW Appropriations Bill for FY 1980 (HR 4389) as referenced in the Continuing Resolution for FY 1980 (section 101(g) of Pub. L. 96-123)) set a series of payment error rate standards for States to reach during fiscal years 1981 and 1982 with a national standard of four percent for FY 1983 and future years. Section 156 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) reduced the national standard to three percent, effective FY 1984, and made several other changes in the QC system. Federal matching payments are not available for erroneous payments in excess of the error rate standards.

The Michel Amendment and TEFRA gave the Secretary authority to waive State fiscal liabilities "in certain limited cases" where, despite a good faith effort, a State has not met the error rate standard. Congress had made it clear that this waiver process is to be limited to extraordinary circumstances. The Secretary has complete discretion in determining whether a State's fiscal liability should be waived, based on the Secretary's judgment about the circumstances shown by the State.

Regulations were previously published on January 25, 1980, establishing some criteria the Secretary would use in considering waiver requests filed under the Michel Amendment. These regulations were used in determining the Secretary's decision on the FY 1981 waiver requests submitted by 28 States which exceeded their AFDC target. These waiver requests covered (1) extraordinary external events and circumstances such as natural disasters, strikes, workload changes, and incorrect Federal policy guidance and (2) documentation that the States timely developed and implemented a corrective action plan reasonably designed to meet the error rate. The Department engaged in an extensive review of material submitted by the States and subsequently announed the Secretary's decision on these requests.

Regulations implementing TEFRA did not substantially alter the provisions under which a State could request a waiver, except to restrict application to those States that either demonstrated error reduction from the prior assessment period or achieved an error rate tha' did not exceed the target error rate by more than one-third despite an error rate increase. The Department has now determined, based on its experience in reviewing the FY 1981 State waive submissions, that it is appropriate to revise this performance threshold.

We are taking this opportunity to also modify the current waiver criteria to: (1) emphasize the importance of State implementation of the Income and Eligibility Verification System mandated by the Deficit Reduction Act (DEFRA) of 1984 and (2) promote the use of effective corrective action measures, such as second-party case review, recommended by a recent corrective action study.

The proposed changes are as follows:

1. The Performance Threshold

To be eligible to apply for good faith waiver under the new regulations, a State must have experienced some error rate reduction from the prior year, in addition to having a payment error rate which does not exceed the national average error rate, unless the national average is below the statutory tolerance. The concept of a performance threshold for waiver application permits recognition of States with decreasing error rates that display substantial progress in error reduction despite not meeting the tolerance.

The first provision of this revised threshold limits applicants to those States with declining error rates. This should provide added incentive for States to establish and maintain a downward trend in error rate performance.

The second provision requires achievement in error reduction which equals or surpasses the national average error rate, reflecting our expectation that a State's performance must at least be on a par with other States to qualify for waiver consideration. Once the national average error rate falls below the tolerance, this provision would be superfluous as any State meeting it would not be liable for a disallowance and, therefore, have no need for a waiver.

A State that requests a waiver based on an extraordinary external event may also be eligible for a waiver under this performance threshold. This would occur if the State can demonstrate that its error rate for the period in question would have met the performance threshold but for the impact of the external circumstance(s).

All States will continue to be eligible to submit waiver requests based on extraordinary external events and circumstances (e.g., natural disasters) regardless of their actual error rates. However, we want to re-emphasize that waiver submissions relating to these events must be well documented to be considered. A State must clearly demonstrate the extraordinary nature of its circumstances, provide sufficient information to establish the extent to which the circumstance negatively affected the AFDC program, specifically show the extent to which the circumstance affected the payment error rate during the sample period, and document management efforts to quickly and adequately respond to the situation.

These regulations do not change the Congressional requirement that Federal funding for erroneous welfare payments be limited nor the expectation that States will improve their performance as a result of this requirement. Rather, these regulations further clarify the basis on which the Secretary intends to exercise discretion to grant waivers.

2. Waiver Evaluation Criteria

When a State has qualified to request a waiver based on the performance threshold outlined in these regulations, we intend to determine the amount of the waiver to be granted using four factors:

a. Operation of a quality control system in accordance with Federal regulations at 45 CFR 205.40 (e.g., adherence to Federal case completion timeliness requirements, and Quality Control Manual verification standards).

b. Formulation of error reduction initiatives based on the following processess:

(1) Performance of an accurate and thorough statistical and program analysis for error reduction purposes which utilizes quality control and other data; and

(2) The translation of analysis into specific and appropriate error reduction practices for major error elements; and

(3) The use of monitoring systems to verify that the error reduction initiatives were implemented at the local office level.

c. The operation of automated systems supported by evidence of the timely utilization of their outputs in the determination of case eligibility and grant amount, e.g., the implementation and maintenance of the Income and Eligibility Verification System as mandated by the Deficit Reduction Act of 1984; and the operation of systems relating to motor vehicles, vital statistics, and State or local income and property taxes (where such taxes exist) where the agency has access.

d. The use of the following accountability mechanisms to ensure that agency staff adhere to error reduction initiatives:

(1) Performance standards indicating that appraisals for supervisors and workers include payment accuracy and timely processing of case actions as quantitative measures of performance; and

(2) Selective second-party case reviews are conducted; the review results are periodically reported to higher level management, as well as to supervisors and workers, and are used in employee appraisals, and

(3) Regular operational reviews of local offices are performed to evaluate the offices' effectiveness in meeting error reduction goals with periodic monitoring to ensure that review recommendations have been implemented.

A State which demonstrates it fully meets the performance criteria under (a) and which demonstrates substantial performance for each of the other criteria may be granted a waiver of its disallowance in whole or in part by the Secretary. The State is to submit only specific documentation which verifies that the necessary actions were accomplished. For example, States could submit worker performance standards reflecting timeliness and case accuracy

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as quantitative measures of performance.

These factors along with their respective sub-items are definitive and represent a results-oriented approach to effective error reduction (i.e., they emphasize specific accomplishments rather than intended or planned actions).

3. Other Provisions

These rules also reaffirm our current position as stated in the September 28, 1984, regulations that the Secretary's decisions on waivers are not subject to appeal to the Departmental Grant Appeals Board. Because waivers are discretionary actions, which in effect permit greater Federal matching payments than authorized by law, the Department's decision not to grant a waiver (either in full or in part) is not appealable.

Executive Order 12291 — These regulations do not meet any of the criteria for a major regulation. It is not anticipated that disallowances of FFP will approach the $100 million level. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act—These regulations impose no new reporting/recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act—We certify that these regulations will not, if promulgated, have a significant economic impact on a substantial number of "small entities" because the rules involve a reduction of information required if a waiver is requested under the optional provision. "Small entities" are defined by the Regulatory Flexibility Act to include small businesses, small nonprofit organizations and small governmental entities. These regulations amend the existing Federal quality control system as it applies to the State's use of Federal funds in administering the AFDC program. A regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required because the Federal government will only be recouping monies that were incorrectly paid by the States.

(Catalog of Federal Domestic Assistance Programs No. 13.808 Public Assistance Maintenance Assistance (State Aid))

List of Subjects in 45 CFR Part 205

Administrative practice and procedures, Aid to Families with Dependent Children, Family Assistance Office, Grant programs—social programs, Public assistance programs, Reporting and recordkeeping requirements.

Dated: October 10, 1986.

Wayne A. Stanton,

Administrator, Family Support Administration.

Approved: December 23, 1986.

Otis R. Bowen,

Secretary of Health and Human Services.

PART 205—GENERAL ADMINISTRATION-PUBLIC ASSISTANCE PROGRAMS

Part 205 of Chapter II, Title 45, Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 205 continues to read as follows:

Authority: Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302, unless otherwise noted.

2. In § 205.44, the heading and paragraph (a) are revised to read as set forth below, and paragraph (h) is amended by removing the word "Commissioner", and adding in its place the word "Administrator".

§ 205.44 Reduction in Federal financial participation (FFP) for incorrect payments made by States from October 1984 through September 1986.

(a) *Purpose and applicability.* This section provides the rules we will use for quality control sample periods beginning October 1984 through September 1986 to determine whether we will reduce the amount of Federal matching funds (Federal financial participation or FFP) we give to a State and, if so, the amount of the reduction. We will reduce the amount of our matching funds if a State makes more incorrect payments in its AFDC program than allowed under the rules in this section. These rules apply to all States which have AFDC programs.

* * * * *

3. A new § 205.46 is added to read as follows:

§ 205.46 Reduction in Federal financial participation (FFP) for incorrect payments made by States after September 1986.

(a) Purpose and applicability. This section provides the rules we will use for quality control sample periods beginning October 1986 to determine whether we will reduce the amount of Federal matching funds (Federal financial participation or FFP) we give to a State and, if so, the amount of the reduction. We will reduce the amount of our matching funds if a State makes more incorrect payments in its AFDC program than allowed under the rules in this section. These rules apply to all States which have AFDC programs.

(b) Definitions. For the purpose of this section—"Annual assessment period" means the 12-month period October 1-September 30.

"Incorrect assistance payments" mean payments to individuals ineligible for a payment and overpayments to eligible individuals.

"National average error rate" means the weighted arithmetic average of States' official payment error rates for an annual assessment period.

"National standard" means a four percent error rate for Guam, Puerto Rico and the Virgin Islands and a three percent payment error rate for all other States.

"Payment error rate" means the dollar amount of incorrect assistance payments a State has made expressed as a percentage of the State's total assistance payments.

"We, "us" or "our" means the Department of Health and Human Services or the Family Support Administration.

(c) *General.* In these rules we are establishing national standards of four percent for Guam, Puerto Rico and the Virgin Islands and three percent for all other States for incorrect assistance payments in the AFDC program. These standards will be used to measure performance of the States in each annual assessment period.

(d) How we will measure a State's performance. We will use the information provided by the Federal/State quality control system.

(1) This system measures the dollar amount of incorrect assistance payments in each annual assessment period by reviewing a statistically valid sample of cases selected during each month of the assessment period. The sample results are then projected to the universe of all cases.

(2) If a State fails to complete a valid and reliable sample in accordance with the prescribed QC procedures and deadlines, as required by § 205.40, for any assessment period, we will notify the State of its failure and provide the State the opportunity to negotiate a solution regarding the timely completion of its sample. Where a State is unable to negotiate a solution or fails to carry out a negotiated solution, we will assign to the State an error rate based on the best data reasonably available, including data obtained from any one or more of the following methods: error rate information for past sample periods, a partially completed State sample, a Federal subsample of completed State cases, a supplemental Federal sample, a Federal audit, and an audit conducted through a contractual agreement with a third party.

(e) Cost of determining an error rate for States other than Guam, Puerto Rico and the Virgin Islands. In any case where it is necessary for us to determine a State's error rate for a fiscal year because the State fails to cooperate with us by not providing the information required of the State in accordance with § 205.40 of these rules, the following procedure will apply: Pursuant to section 403(i)(3)(A) of the Act, notwithstanding any other provision of this chapter, total payments to a State under section 403(a)(3) for the proper and efficient administration of the State plan shall be reduced by the amount necessary (deducted without regard to any other reduction under this section) to offset all expenditures the Federal government has incurred in order to determine the State's error rate for any fiscal year in which that State has failed to provide the necessary error rate data. All amounts, both direct and indirect expenditures, shall be deducted generally no later than the second quarter following the quarter in which the costs of compiling data for determining the State's error rate are available.

(f) If a State fails to meet the established error rate. If a State does not meet the national standard for any assessment period, we will reduce our matching funds to the State for that period, unless a State can show that it made a good faith effort to meet the national standard. If a State uses the regular Federal percentage in section 403(a)(1) of the Act for FFP and has an average monthly payment per recipient of more than $32 in an assessment period, an adjustment will be made to the State's error rate for purposes of determining the amount of reduction in our matching funds.

Example: In fiscal year 1987, the applicable national standard for a particular State is three percent. The State's payment error rate for the assessment period, October 1, 1986, through September 30, 1987, is 4.4 percent. Because the 4.4 percent error rate exceeds the national standard by 1.4 percentage points, we will reduce our Federal matching funds by 1.4 percent of the Federal share of the dollars the State paid to recipients in the form of assistance payments under its AFDC program during that year.

(g) When we will reduce a disallowance because a State has made a good faith effort.

(1) A state will have 30 days after receipt of a notice of intent to disallow or 15 months after the end of each fiscal year, whichever comes first, to show that it made a good faith effort to meet the national standard. If we find that the State did not meet the national standard despite a good faith effort, we will reduce the funds being disallowed in whole or in part as we find appropriate under the circumstances shown by the State. A finding may be made that a State did not meet the national standard despite a good faith effort under certain limited circumstances. The burden of proof for showing that a good faith effort was made rests entirely with the State.

(2) Some examples of the limited circumstances under which we may find that a State did not meet the national standard despite a good faith effort are—

(i) Disasters, such as fire, flood or civil disorders, that require the diversion of significant personnel normally assigned to AFDC eligibility administration, or destroyed or delayed access to significant records needed to make or maintain accurate eligibility determinations.

(ii) Strikes of State staff or other government or private personnel necessary to the determination of eligibility or processing of case changes.

(iii) Sudden and unanticipated workload changes which result from changes in Federal law and regulations, or rapid, unpredictable caseload growth in excess of, for example, 15 percent for any consecutive six-month period in an assessment period.

(iv) The State has taken the action needed to meet the national standard but the national standard was not met. Request for a waiver under this criterion will not be considered unless a State's payment error rate (after taking into account extraordinary external events, such as natural disasters, as provided for in paragraphs (g)(2)(i) through (iii)) is less than its error rate for the prior annual assessment period and does not exceed the national average error rate for the sample period under review, unless the national average is below the tolerance level. If a State has met these requirements, we will evaluate requests for a good faith waiver based on the factors specified in paragraphs (g)(2)(iv)(A), (B), (C) and (D). A State which fully meets the performance criteria under paragraph (g)(2)(iv)(A) and which demonstrates substantial performance pertinent to the criteria under paragraphs (g)(2)(iv)(B), (C) and (D) may be granted a waiver of disallowance in whole or in part by the Secretary. The State is to submit only specific documentation which verifies that the necessary actions were accomplished relative to the following factors:

(A) Operation of a quality control system in accordance with Federal regulations (e.g., adherence to Federal case completion timeliness requirements and Quality Control Manual verification standards.)

(B) Formulation of error reduction initiatives based on the following processes:

(*1*) Performance of an accurate and thorough statistical and program analysis for error reduction which utilized quality control and other data; and

(*2*) Translation of analysis into specific and appropriate error reduction practices for major error elements; and

(*3*) Use of monitoring systems to verify that the error reduction initiatives were implemented at the local office level.

(C) Operation of automated systems supported by evidence of the timely utilization of their outputs in the determination of case eligibility and grant amount, e.g., the implementation and maintenance of the Income and Eligibility Verification Systems as mandated by the Deficit Reduction Act of 1984 and the operation of systems relating to motor vehicles, vital statistics, and State or local income and property taxes (where such taxes exist) where the agency has access.

(D) Use of the following accountability mechanisms to ensure that agency staff adhere to error reduction initiatives. The following are minimum requirements.

(*1*) Payment accuracy and timely processing of case actions are used as quantitive measures of performance and reflected in performance and appraisal forms; and

(*2*) Selective second-party case reviews are conducted. Moreover, the second-party review results are periodically reported to higher level management, as well as supervisors and workers, and are used in paragraph (g)(2)(iii)(D)(*1*) above; and

(*3*) Regular operational reviews of local offices are performed to evaluate the offices' effectiveness in meeting error reduction goals with periodic monitoring to ensure that review recommendations have been implemented.

(*4*) The failure of a State to act upon necessary legislative changes or to obtain budget authorization for needed

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resources is not a basis for finding that a State failed to meet the national standard despite a good faith waiver.

(h) *Disallowances subject to appeal.* If a State does not agree with our decision to reduce (disallow) FFP, it can appeal to us within 30 days from the date of our notice. The regular procedures for appeal of a disallowance will apply including review by the Administrator and by the Grant Appeals Board (see 45 CFR Part 16). This appeal provision, as it applies to AFDC Quality Control disallowances, is not applicable to the Secretary's decision on a State's "good faith" waiver request.

[FR Doc. 87-1455 Filed 1-30-87; 8:45 am]

BILLING CODE 4150-04-M

Notices

Federal Register

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Monday, February 2, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Draft Environmental Impact Statement and the Proposed Land and Resource Management Plan, Bridger-Teton National Forest, WY

The Bridger-Teton National Forest finds it necessary to extend the review period for The Draft Environmental Impact Statement for their Proposed Land and Resource Management Plan to meet demands for involvement. The Forest extended the public involvement to include the following open houses:

Kemmerer, Wyoming, February 16, 7:00 pm
Afton, Wyoming, February 16, 7:00 pm
Pinedale, Wyoming, February 17, 7:00 pm
Dubois, Wyoming, February 18, 7:00 pm
Jackson, Wyoming, February 19, 7:00 pm
Casper, Wyoming, February 20, 7:00 pm

The Bridger-Teton National Forest Environmental Impact Statement and Land and Resource Management Plan review period is hereby extended for 22 days, from February 6 to February 28, 1987. Written comments on the draft documents should be sent to: Forest Supervisor, Bridger-Teton National Forest, Forest Service Building, P.O. Box 1888, 340 North Cache, Jackson, Wyoming 83001.

For further information, contact Carl Pence at the above address, or contact him by calling (307) 733-2752.

T.A. Roederer,

Deputy Regional Forester, Resources.

[FR Doc. 87-1918 Filed 1-30-87; 8:45 am]

BILLING CODE 3410-11-M

Oil and Gas Leasing in the Escalante Known Geological Structure, Dixie National Forest, UT

This notice extends the period for comments referred to in the Revised Notice of Intent to Prepare an Environmental Impact Statement (EIS) for Oil and Gas Leasing in the Escalante Known Geological Structure published in the **Federal Register** on January 6, 1987.

Comments are being solicited to determine the scope of issues to be addressed in the EIS. They should identify significant issues related to the proposed activity.

Such comments will be accepted until March 2, 1987.

Written comments and suggestions concerning the proposal should be sent to Mr. Hugh Thompson, Forest Supervisor, Dixie National Forest, Cedar City, UT 84720.

Mr. J. S. Tixier, Regional Forester, Intermountain Region, Ogden, Utah, is the responsible official. The draft EIS should be available for public review and comment by April 1987. The final EIS is scheduled to be completed by October 1987.

Questions about the proposed action and EIS should be directed to Calvin Bird, Forest Land Planner, Dixie National Forest, Cedar City,UT 84720, or Douglas Austin, District Ranger, Escalante Ranger District, Escalante, UT 84726, Phone (801) 826-4221.

Dated: January 23, 1987.

T.A. Roederer,

Deputy Regional Forester, Resources.

[FR Doc. 87-1919 Filed 1-30-87; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: 1987 Census of Transportation
Form Number: Agency-CD-4200, CD-4400, CD-4700, CD-4299; OMB No. -NA
Type of Request: New collection
Burden: 152,000 respondents; 69,100 reporting hours
Needs and Uses: This survey is part of the 1987 Economic Censuses, which are the major source of facts about the structure and functioning of a large segment of the economy, and which provide essential information for government, business, and the general public.
Affected Public: Businesses or other for-profit institutions, small businesses or organizations
Frequency: One time
Respondent's Obligation: Mandatory
OMB Desk Officer: Don Arbuckle, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: January 27, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87-1987 Filed 1-30-87; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[A-201-601]

Certain Fresh Cut Flowers From Mexico; Postponement of Final Antidumping Duty Determination

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: The final antidumping duty determination on certain fresh cut flowers from Mexico is being postponed until not later than January 27, 1987.

EFFECTIVE DATE: February 2, 1987.

FOR FURTHER INFORMATION CONTACT: William Kane or John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1766 or (202) 377-3965.

SUPPLEMENTARY INFORMATION: On October 28, 1986, we made an affirmative preliminary antidumping duty determination that certain fresh cut flowers from Mexico are being, or are

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likely to be, sold in the United States at less than fair value (51 FR 39896, November 3, 1986). The notice stated that we would issue our final determination by January 12, 1987.

On January 12, 1987, pursuant to a request by counsel for respondents representing a significant proportion of the merchandise under investigation, we extended the period for the final determination until not later than January 20, 1987.

On January 16, 1987, counsel for those respondents requested that the Department further extend the period for the final determination for an additional week, in accordance with section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act). If exporters who account for a significant proportion of exports of the merchandise under investigation properly request an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, the period for the final determination in this case is hereby extended. We intend to issue the final determination not later than January 27, 1987.

Scope of Investigation

The products covered by this investigation are fresh cut standard carnations, standard chrysanthemums and pompon chrysanthemums, currently provided for in item 192.21 of the *Tariff Schedules of the United States.*

This notice is published pursuant to section 735(d) of the Act.

The United States International Trade Commission is being advised of this postponement is accordance with section 735(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-1992 Filed 1-30-3510-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-201-601]

Certain Fresh Cut Flowers From Mexico; Postponement of Final Antidumping Duty Determination

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: The final antidumping duty determination on certain fresh cut flowers from Mexico is being postponed until not later than February 17, 1987.

EFFECTIVE DATE: February 2, 1987.

FOR FURTHER INFORMATION CONTACT: William D. Kane or John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1766 or (202) 377-3965.

SUPPLEMENTARY INFORMATION: On October 28, 1986, we made an affirmative preliminary antidumping duty determination that certain fresh cut flowers from Mexico are being, or are likely to be, sold in the United States at less than fair value (51 FR 39896, November 3, 1986). The notice stated that we would issue our final determination by January 12, 1987.

On January 12, 1987, pursuant to a request by counsel for respondents representing a significant proportion of the merchandise under investigation, we extended the period for the final determination until not later than January 20, 1987.

On January 20, 1987, counsel for respondents requested an additional extension for one week until not later than January 27, 1987.

On January 23, 1987, counsel for respondents requested a further postponement of the final determination until not later than February 17, 1987, in accordance with section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act). If exporters who account for a significant proportion of the exports of the merchandise under investigation properly request an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, the period for the final determination in this case is hereby extended. We intend to issue the final determination not later than February 17, 1987.

Scope of Investigation

The products covered by this investigation are fresh cut standard carnations, standard chrysanthesmums and pompon chrysanthemums, currently provided for in item 192.21 of the

Tariff Schedules of the United States.

This notice is published pursuant to section 735(d) of the Act.

The United States International Trade Commission is being advised of this postponement in accordance with section 735(d) of the Act.

January 27, 1987.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-1993 Filed 1-30-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-337-602]

Final Determination of Sales at Less Than Fair Value; Standard Carnations From Chile

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that standard carnations from Chile are being, or are likely to be, sold in the United States at less than fair value and have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to continue to suspend the liquidation of all entries of standard carnations that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, except for entries from Soc. Flores Del Sur Ltda., and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Continuation of Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: February 2, 1987.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins or John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1756 or (202) 377-3965.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that standard carnations from Chile are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)). We made fair value comparisons on sales of the class or kind of merchandise to the United States by the respondents during the period of investigation, June 1, 1985 through May 31, 1986. Comparisons were based on

United States price and foreign market value. Foreign market value was based on home market prices.

The margins found for the companies investigated are listed in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On May 21, 1986, we received a petition in proper form filed by the Floral Trade Council of Davis, California. The petition was filed on behalf of the U.S. industry that grows standard carnations. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Chile are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

We determined that the petition contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated such an investigation on June 10, 1986 (51 FR 21947, June 17, 1986), and notified the ITC of our action. On July 7, 1986, the ITC determined that there is a reasonable indication that imports of standard carnations from Chile materially injure a U.S. industry (USITC Pub. No. 1887).

On July 16, 1986, we presented antidumping duty questionnaires to Jorge Puiggros Mazuela and Agricola Longotoma. On November 8, 1986, Jorge Puiggros Mazuela advised the Department that it had changed its name to Soc. Flores Del Sur Ltda. These companies accounted for approximately 63 percent of exports from Chile of the subject merchandise to the United States during the period of review. We requested responses in 30 days. On August 18, 1986, at the request of respondents, we granted extensions of the due dates for the questionnaire responses. On September 10, we received responses from Soc. Flores Del Sur Ltda. and Agricola Longotoma. On October 1, we requested additional information from respondents. We received supplemental responses on October 14, 1986. The preliminary determination was made on October 28, 1986.

From November 4, to November 8, 1986, we conducted our verification in Chile.

On December 22, 1986 we received a request from respondents to extend the due date of our final determination until January 26, 1987. On January 9, 1987, pursuant to section 735(a)(2)(A) of the Tariff Act of 1930, as amended, we extended the due date of the final determination until not later than January 26, 1987 (52 FR 1515, January 14, 1987). A hearing requested by the petitioner was scheduled for November 26, 1986. The hearing was cancelled after the petitioner withdrew its request. As required by the Act, we afforded interested parties an opportunity to submit written comments to address the issues arising in this investigation.

Scope of Investigation

The products covered by this investigation are standard carnations currently provided for in item 192.21 of the *Tariff Schedules of the United States.*

Fair Value Comparisons

In order to determine whether sales of the subject merchandise to the United States were made at less than fair value, we compared a weighted-average monthly price of U.S. sales with a foreign market value based on home market prices.

Section 620(a) of the Trade and Tariff Act of 1984 (19 U.S.C. 1677f(1) expanded the discretionary use of sampling and averaging by the Department to include the determination of United States price or foreign market value, so long as the average is representative of the transactions under investigation. A combination of factors persuaded us to average the prices charged for U.S. sales in this investigation.

In a situation, such as here, where there is a mass filing of petitions alleging the sale of the same products at less than fair value from a number of countries, the limited resources of the Department are severely taxed due to the statutory deadlines. Eight separate cases were filed, some of them covering up to seven types of flowers. At the time of the preliminary determinations, the Department was confronted with over 260,000 sales transactions in the United States of the fresh cut flowers from various countries under investigation. A decision to make fair value comparisons transaction-by-transaction would present an onerous, perhaps impossible, burden on the Department in terms of data collection, verification, and analysis. Consequently, the Department exercised its broad discretion to average United States price, as authorized by the 1984 amendment to the Act, in order to reduce the administrative burden and maximize efficient use of limited resources, without loss of reasonable fairness in the results.

Another factor in our determination is the need for consistency in our treatment of all the cut flowers investigations. Although the number of transactions varies among the countries being investigated, uniform application of the averaging methodology ensures that all countries are treated on the same basis.

Moreover, because of the perishability of the product under investigation, we believe that averaging of the United States prices in this case contributes to a more fair and more representative measure of fair value. Because of this perishability, sellers may be faced with the choice of accepting whatever return they can obtain on certain sales or destroying the merchandise. Unlike non-perishable products, sellers cannot withhold their flowers from the market until they can obtain a higher price.

Faced with investigating sales of a product that is perishable, the Department has three options. The first would be to disregard entirely the "end of the day" or "distress" sales that are taken in lieu of destroying the product. The second would be to perform a transaction-by-transaction comparison. Finally, the third approach would be to employ limited averaging of United States prices.

Under the first approach, the Department would ignore the end of the day sales on the basis that such sales are not representative of the sellers' behavior in the U.S. market. To do so, however, would completely overlook the fact that such sales do occur in the ordinary course of trade in this product. Moreover, any attempt to segregate end of the day sales from dumped sales would be fraught with difficulties. Therefore, we have rejected this approach.

Under the second alternative, the Department would perform a transaction-by-transaction comparison. As noted above, the administrative burden imposed by a transaction-by-transaction comparison in these cases would be overwhelming. Moreover, given the Department's practice of treating non-dumped sales as having zero margins, even where the margins would be negative, this approach would give disproportionate weight to the end of the day sales. In other words, a producer whose normal sales are at prices above fair value could be found to be dumping solely because of these end of the day transactions. Again, we note that these sales arise only because of the perishability of the products under investigation.

The final approach, limited averaging of United States prices, represents a balancing of the concerns raised by the other approaches. It does not ignore the fact that such end of the day sales occur in the ordinary trade of this product. Nor does it assign disproportionate weight to

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these sales. Therefore, this comparison yields the most accurate basis for determining whether sales are at less than fair value and constitutes the most representative analysis of trading practices which involve perishable products.

Finally, we note that well before passage of the Trade and Tariff Act of 1984, the Department used its discretion to employ nontraditional methodology when circumstances dictated. In *Certain Fresh Winter Vegetables From Mexico; Antidumping: Final Determination of Sales at Not Less Than Fair Value,* (45 FR 20512, (1980)), we used economic sampling techniques involving averaging to determine U.S. price because of the wide fluctuations in price due to the perishability of the product, among other reasons. This decision was affirmed by the Court of International Trade in *Southwest Florida Winter Vegetable Growers Ass'n.* v. *United States,* 7 CIT 99, 584 F. Supp. 10 (1984). The court noted that the Department has "broad flexibility" in administering the antidumping law, which it employed "with reasonable basis in fact reflecting the unique characteristic of perishability in the produce industry." *Id.* at 107–108.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price for Agricola Longotoma when the merchandise was sold to unrelated purchasers prior to importation into the United States. We calculated the purchase price based on the f.o.b. Santiago, packed price to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight and export service charges.

As provided in section 772(c) of the Act, we used the exporter's sales price, where appropriate, to represent the United States price for Soc. Flores Del Sur Ltda. and Agricola Longotoma for that merchandise sold to unrelated purchasers after importation into the United States. We made deductions, where appropriate, for foreign and domestic inland freight, handling, air freight, export service charges, credit expenses and commissions.

Because the Generalized System of Preferences is applicable to Chilean flowers, there was no United States duty charge to deduct.

We used monthly weighted averages for United States price because, in many instances, the consignees in the United States reported sales on a monthly basis. For exporters in some countries, the only information available on United States sales is monthly totals.

Foreign Market Value

For purposes of this investigation, the Department looked at an extended period of investigation of 12 months in order to compensate for the seasonality of flower production and sales.

In calculating foreign market value, the period of investigation was broken into two six-month periods, in accordance with our standard practice. We are not persuaded to change that practice in this case. During each six-month period, if home market sales occurred in three months or more, then the weighted-average prices for the months with sales were used for the entire six-month period.

In accordance with section 773(a) of the Act, we calculated foreign market value based on packed prices to unrelated purchasers in the home market. When comparing foreign market value to U.S. exporter's sales prices, we made a deduction, where appropriate, for credit expenses in the home market and for indirect selling expenses, as an offset for commissions paid in the U.S. market, as provided for in § 353.15(c) of the Commerce Regulations. For U.S. purchase price sales, we made an adjustment under § 353.15 of the Commerce Regulations for differences in circumstances of sale for credit expenses in the United States and home market.

For both purchase price and exporter's sale price comparisons, in order to adjust for differences in packing between the two markets, we subtracted home market packing and added U.S packing to foreign market value.

Currency Conversion

For comparisons involving purchase price transactions when calculating foreign market value, we made currency conversions from Chilean pesos to U.S. dollars in accordance with § 353.56(a)(1) of our regulations. For comparisons involving exporter's sales price transactions, we used the official exchange rate on the date of purchase pursuant to section 615 of the Trade and Tariff Act of 1984. We followed section 615 of the 1984 Act rather than § 353.56(a)(2) of our regulations, as it supersedes that section of the regulations.

Normally, we use certified daily exchange rates furnished by the Federal Reserve Bank of New York as the official exchange rate but no certified rates were available for Chile. Therefore, in place of the official certified rate, we used the monthly exchange rates published by Bank of America, London, as best information available.

Petitioner's Comments

Petitioner's Comment 1: Petitioner argues that the Department should not use monthly averages for determination of United States prices for the final determination as it did for the preliminary determination. It argues that the use of such averages for products whose prices fluctuate on a daily or weekly basis disguises dumping margins. Petitioner further contends that, if the Department uses averages, the law restricts their use to instances in which the use of averaging does not distort the existence or amount of less than fair value sales and to situations involving large numbers of transactions, where sale by sale analysis would impose an onerous burden on the Department. Petitioner maintains that both statute and administrative precedent preclude the use of averaging in this case. If the Department does proceed to use averages for United States price, however, petitioner suggests use of daily averages during the winter and spring months and other months which had significant swings in unit prices.

DOC Position: We disagree. See the "Fair Value Comparison" section of this notice.

Petitioner's Comment 2: Petitioner argues that the Chilean home market sales should not be used as a basis for foreign market value for the final determination. It states that the flowers sold in the home market are either not export quality flowers or, if export quality, are sold as distress sales when shipment is not possible to the United States and, as such, are not sold in the ordinary course of trade. In addition, it contends that home market sales for Soc. Flores Del Sur Ltda. are below the cost of production and, therefore, must be rejected.

DOC Position: We disagree. The Department is satisfied that home market sales reported by the growers and verified are "such or similar merchandise" when compared to the export quality flowers sold by these growers in the United States. In reaching this determination we examined internal company documents regarding classification and control of flowers sold in both markets, and observed the classification and packaging of flowers at the farm or at the control distribution center.

There is also no justification for determining that these home market sales were not in the ordinary course of trade. Petitioner's arguments are not supported by § 353.3 of our regulations, which states that "in determining the ordinary course of trade, conditions and practices which, for a reasonable time prior to the exportation of the merchandise which is the subject of an investigation, have been normal in the trade under consideration with respect to merchandise of the same class or kind shall be applicable." We have no evidence either from the petitioner or from the verification itself that the "conditions and practices" in Chile prior to exportation, or at any time, were not in the ordinary course of trade for the Chilean flower market.

Finally, with regard to petitioner's allegation that home market sales were below the cost of production, we note that this issue was raised for the first time by petitioner on December 12, 1986, one month prior to the final determination. Given the number of days required to conduct a cost of production investigation, we reject this allegation as an untimely submission.

Petitioner's Comment 3: Petitioner advocates that total movement charges and commissions incurred by respondents in shipping flowers to the United States should be allocated to United States flowers sold, and not to flowers shipped, since not all flowers shipped are eventually sold, but all import charges must be paid, whether the flowers are sold or not.

DOC Position: We agree. All movement charges incurred by respondents in this investigation on shipments made to the United States have been allocated over flowers sold, not flowers shipped. In all instances respondents reported commissions based on flowers sold.

Petitioner's Comment 4: Petitioner argues that certain home market sales of lower grade flowers should not be compared with export quality flowers. In the alternative, petitioner argues that, if such sales are utilized under 19 U.S.C. 1677(16), at a minimum, where applicable, the cost for coding, packing materials and labor attributable to packed, export quality flowers must be added to the home market prices of such home market flowers.

DOC Position: We agree. We have excluded home market sales for lower grade, non-export quality flowers from our calculations for foreign market value.

Petitioner's Comment 5: Petitioner argues that the Department should deduct from the United States price the amount paid for quality control services in the United States by Agricola Longotoma because it is an additional cost incidental to bringing the flowers to the United States.

DOC Position: We agree. The Department has considered the amount to be an additional expense incidental to bringing the merchandise to the United States and has deducted the cost of such services from United States price.

Petitioner's Comment 6: Petitioner argues that, to the extent that additional cost for export quality boxes used for overseas shipment of flowers by Soc. Flores Del Sur Ltda. are added to its United States price, the equivalent amount must be added to foreign market value.

DOC Position: We agree and have added the cost of U.S. packing, and deducted the cost of home market packing, to foreign market value.

Petitioner's Comment 7: Petitioner argues that ITA should not allow a deduction from home market prices for commissions paid by Agricola Longotoma as the verification showed that the commissions were paid to Agricola Longotoma's employees.

DOC Response: We disagree. We have allowed commissions in the home market as an indirect selling expense to offset the commissions paid in the U.S. market, in accordance with § 353.15(c) of our regulations.

Petitioner's Comment 8: Petitioner argues that air freight should be deducted from United States prices, and, to the extent the handling charges are a separate item from inland and air freight, such charges must be separately deducted from United States prices.

DOC Position: We agree. These deductions have been made.

Petitioner's Comment 9: Petitioner argues that credit returns issued by U.S. Floral to Soc. Flores Del Sur Ltda. for decayed flowers should be deducted in determining United States price.

DOC Position: We agree. Credit returns have been deducted from Soc. Flores Del Sur's United States price.

Petitioner's Comment 10: Petitioner argues that for Soc. Flores Del Sur's home market sales in the investigation: (1) There was no claim made on the record for commissions; (2) there are no facts establishing that commissions were actually paid; (3) there are no facts concerning the relationship between the grower and its home market consignee; and (4) there is no description of the method by which commissions were paid.

DOC Position: We disagree. Commissions on home market sales were reported in Soc. Flores Del Sur's September 6, 1986, response. We determined from company bylaws and proof of ownership documents that the consignee in the home market did not have any relationship to the company. Liquidation documents for home market sales and amounts paid to the consignee were compared to sales values reported in the company's response and supported its claim that commissions were paid to the consignee in the home market.

Verification

As provided in section 776(a) of the Act, we verified all information provided by the respondents, using standard verification procedures, including examination of accounting records and original source documents containing relevant information on selected sales.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of standard carnations from Chile that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register,** except for entries from Soc. Flores Del Sur Ltda., in accordance with section 733(d) of the Act. The U.S. Customs Service shall require a cash deposit or the posting of a bond on all entries equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The margins are as follows:

Manufacturer/seller/exporter	Weighted-average margin percentage
Soc. Flores Del Sur Ltda. (formerly Jorge Puggros Mazuela)	8
Agricola Longotoma	26.78
All Others	26.78

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[no] product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act, which prohibits assessing antidumping duties on the portion of the margin attributable to export subsidies. Accordingly, there is no reason to require a cash deposit or bond for that amount. Therefore, the level of export subsidies (as determined in the January 26, 1987 final affirmative countervailing duty determination on standard carnations from Chile) will be subtracted from the dumping margins for deposit or bonding purposes.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our

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determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on standard carnations from Chile entered, or withdrawn from warehouse, for consumption on or after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Lee W. Mercer,

Acting Assistant Secretary for Trade Administration.

January 27, 1987.

[FR Doc. 87-1990 Filed 1-30-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-423-601]

Mirrors in Stock Sheet and Lehr End Sizes From Belgium: Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration; Import Administration; Commerce.

ACTION: Notice.

SUMMARY: We have determined that mirrors in stock sheet and lehr end sizes from Belgium are being, or are likely to be, sold in the United States at less than fair value. The United States International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or threatening material injury to, a United States industry. We have also directed the U.S. Customs Service to continue to suspend liquidation of all entries or mirrors in stock sheet and lehr end sizes from Belgium that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Continuation of Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: February 2, 1987.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, (202) 377-1769, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that mirrors in stock sheet and lehr end sizes from Belgium are being, or are likely to be, sold in the United States at less than fair value as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The weighted-average margin is shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On April 1, 1986, we received a petition in proper form filed by the National Association of Mirror Manufacturers, on behalf of the U.S. industry producing mirrors in stock sheet and lehr end sizes. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Belgium are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry. The petition included an allegation that home market sales were made at prices below the cost of production.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on April 21, 1986 (51 FR 15933, April 29, 1986), and notified the ITC of our action.

On May 16, 1986, the ITC found that there is a reasonable indication that imports of mirrors in stock sheet and lehr end sized from Belgium are materially injuring a U.S. industry (U.S. ITC Pub. No. 1850; May, 1986).

On May 20, 1986, we presented a questionnaire to Glaverbel S.A. A response was received from Glaverbel, S.A. on July 9, 1986. Since Glaverbel had insufficient home market sales on which to base foreign market value, a cost response to the questionnaire was not required. On August 20, 1986, petitioner alleged that sales to third countries were below the cost of production. On September 8, 1986, we issued an affirmative preliminary determination of sales at less than fair value (51 FR 32505, September 12, 1986). On September 11, 1986, Glaverbel requested a postponement of the final determination until not later than the 135th day after the date of publication of our preliminary determination in the **Federal Register**, pursuant to section 735(a)(2)(A) of the Act. On September 29, 1986 we granted the request (51 FR 35382, October 3, 1986).

The United States International Trade Commission was advised of this postponement, in accordance with section 735(d) of the Act. Our notice of preliminary determination provided interested parties with an opportunity to submit views orally or in writing. Based upon a timely request, a public hearing was held on December 4, 1986.

Scope of Investigation

The products covered by this investigation are unfinished glass mirrors, made of any of the glass described in TSUS item numbers 541.11 through 544.41, 15 square feet or more in reflecting area, which have not been subjected to any finishing opeation such as beveling, etching, edging, or framing, currently classifiable in the *Tariff Schedules of the United States Annotated* (TSUSA) under item 544.5400.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

We made comparisons on all U.S. sales of the product during the period of investigation.

The period of investigation is November 1, 1985 through April 30, 1986.

United States Price

We based United States price n C.I.F., packed prices and made deductions for ocean freight, inland freight and marine insurance.

Foreign Market Value

In accordance with section 773(a)(1)(B) of the Act, we determined that there were insufficient home market sales to be used as a basis for determining foreign market value. The third country market with the largest volume of sales of the most similar merchandise is Italy (lehr end sizes). On August 20, 1986, petitioner alleged that sales to third countries were at prices below the cost of production. We did not have sufficient time to develop the cost of production data to make a proper comparison for our preliminary determination.

We have now determined the cost of production on the basis of the cost of materials, fabrication and general expenses and have made the following adjustments to Glaverbel's responses. Our adjustments to Glaverbel's original submission, are:

- Research and development expenses were included.
- Depreciation was corrected for furnace depreciation, new equipment and start-up costs.
- Fixed factory overhead expenses were allocated to mirrors on the basis of direct labor hours.
- Total financial expenses were allocated to mirrors on the basis of cost of goods sold.

We found insufficient sales to Italy at prices above the cost of production to form the basis for our comparisons. Therefore, we based foreign market value on constructed value.

Since the actual general expenses were above the statutory minimum of 10 percent of materials and fabrication costs, we used the actual expenses. Since profit was below the statutory minimum of eight percent of the foregoing, we used the statutory minimum of eight percent. We added U.S. packing and made adjustments for differences in circumstances of sale for warranty expenses and credit.

We made currency conversions from Belgian francs and Italian lira to U.S. dollars in accordance with section 353.56(a) of our regulations, using the certified daily exchange rates furnished by the Federal Reserve Bank of New York.

Petitioner's Comments

Comment 1: Petitioner claims that, as disclosed in the annual statement, the respondent owns 60% of Maasglas, B.V. and, therefore, Maasglas is considered to be a related party pursuant to section 773(e)(2) of the Act. As such, the intercompany transactions must be tested to determine if such prices represent a "fair value in the country in which the product is manufactured."

DOC Position: Section 773(e)(2) of the Act pertains to the determination of constructed value for the merchandise under investigation. For purposes of determining cost of production, the Department is concerned with determining if "all costs" for the production of the merchandise have been recovered. The Department reviewed Maasglas' costs to determine if full costs had been captured and to assess the "reasonableness" of these costs. We found that the costs had been captured and were reasonable.

For purposes of determining constructed value in accordance with section 773(e)(2) we compared the price at which Maasglas transferred float glass to Glaverbel to the market value of float glass. We determined that the arms length market value of float glass was less than the transfer price. Therefore, we used the transfer price.

Comment 2: Petitioner contends that the production costs of float glass are unacceptable since general, administrative, and other overhead expenses incurred at the corporate level by Maasglas B.V. or overhead expenses incurred at the divisional level for float glass were not fully included.

DOC Position: We disagree. All applicable divisional overhead and administrative, social and industial expenses of all appropriate corporate entities were included in the costs.

Comment 3: Petitioner argues that the production costs of float glass should be increased to account for inventory costs incurred by the respondent and Maasglas, B.V.

DOC Position: The inventory carrying costs have been included in the warehouse and interest expenses.

Comment 4: Petitioner claims that the interest expense claimed by the respondent is unacceptable, since the interest cost are less than the ratio of corporate interest costs to corporate cost of goods sold.

DOC Position: The claimed interest costs have been revised to reflect a proportional share of total financial expenses in the cost of production.

Comment 5: Petitioner argues that the Department reject the respondent's cost of production response, since certain costs such as market prices for float glass, divisional GS&A, corporate level GS&A and selling costs were not included.

DOC Position: Although certain costs were not included in the original submission, the relevant information was provided during verification. The Department's position concerning the alleged omissions has been addressed in other comments. Adjustments have been made to the cost of production for omitted costs.

Comment 6: Petitioner argues that claims for certain adjustments to sales to the United Kingdom have not been properly supported or quantified.

DOC Position: Since we did not use sales to the United Kingdom for purposes of our final determination, the issue is moot.

Comment 7: Petitioner contends that the rebates claimed by the respondent should not be deducted from sales prices unless they can be shown to be directly related to the sales under consideration.

DOC Position: We verified that the rebates were granted to satisfy claims for defective merchandise or overinvoicing and were credited against specific sales of the subject mirrors during the period of investigation. In those instances where we did not find evidence that claimed rebates had been granted, we disallowed the claimed adjustments. These rebates formed the basis for the adjustment for differences in circumstances of sale to constructed value.

Respondent's Comments

Comment 1: Respondent argues that the 0.82 percent margin found at the time of the preliminary determination should be considered *de minimis* in the context of this investigation and that our determination should be negative.

DOC Position: Since this determination resulted in an 18.82 percent margin, the issue is moot.

Comment 2: Respondent contends that the lehr end size mirrors sold to Italy are more similar to the stock sheet mirrors sold to the United States than the PB size mirrors sold to the United Kingdom, which were used as the basis for our comparisons in the preliminary determination. Respondent bases its argument on the fact that the lehr end mirrors differ from the stock sheet mirrors in one lateral dimension while the PB size mirrors differ in both lateral dimensions.

DOC Position: We agree and limited our price analysis to lehr end mirrors sold in Italy. Constructed value was based on the material and fabrication costs of the mirrors sold to the United States.

Comment 3: Respondent argues that we should reduce the prices of lehr end mirrors sold to Italy by the amount of commissions paid to related parties, since commissions of equal or greater magnitude are paid to unrelated agents in other third country markets. Respondent claims that if an adjustment is made for these commissions the commission offset adjustment relative to U.S. sales should not be made since the prices to the U.S. importer are net of a markup which exceeds the amount of the commission.

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DOC Position: The level of commissions paid to unrelated agents in other markets does not serve as a proper basis for determining that commissions paid to related agents are reflective of arms length transactions. Other factors in the respective markets may also influence the quantification of commissions paid. No evidence has been presented to demonstrate that the related agents are functioning as unrelated agents would. Therefore, we have disallowed the adjustment to constructed value for commissions and the issue of offsets is moot.

Verification

As provided in section 776(a) of the Act, we verified all information provided by Glaverbel by using standard verification procedures, which include on-site inspection of manufacturer's facilities and examination of relevant sales and financial records of the company.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of mirrors in stock sheet and lehr end sizes from Belgium that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
Glaverbel, S.A.	18.82
All other manufacturers/producers/exporters	18.82

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will make its determination whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days of publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on mirrors in stock sheet and lehr end sizes from Belgium entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Lee W. Mercer,

Acting Assistant Secretary for Trade Administration.

January 27, 1987.

[FR Doc. 87-1901 Filed 1-30-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-608; A-351-607]

Postponement of Final Countervailing and Antidumping Duty Determinations and Rescheduling of the Public Hearings; Disposable Paint Filters and Strainers From Brazil

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the respondent in the antidumpting duty investigation on disposable paint filters and strainers from Brazil, that the final antidumpting duty determination be postponed for 135 days from publication of our antidumping duty preliminary determination, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)).

Pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98-573), we are also extending the date of the countervailing duty investigation of the same product from Brazil. The final determinations of these cases are now scheduled for not later than May 15, 1987. In addition, we are rescheduling the public hearings in these investigations.

EFFECTIVE DATE: February 2, 1987.

FOR FURTHER INFORMATION CONTACT: Steven Lim (Antidumping) or Thomas Bombelles (Countervailing Duty), Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-5332 (Lim) or 377-3174 (Bombelles).

Case History

On July 15, 1986, we received antidumpting and countervailing duty petitions filed in proper form by the Louis M. Gerson Co. Inc., of Middleboro, Massachusetts, on paint filters and strainers from Brazil. In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the antidumpting and countervailing duty petitions alleged that imports of paint filters and strainers are being, or are likely to be, sold in the United States a less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act) and are being subsidized by the Government of Brazil within the meaning of section 701 of the Act. The petitions further alleged that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petitions contained sufficient grounds upon which to initiate antidumpting duty and countervailing duty investigations, and on August 4, 1986, we initiated such investigations (51 FR 28737, 51 FR 28739, August 11, 1986). A preliminary negative determination in the countervailing duty investigation was made on October 30, 1986 (51 FR 36734, October 15, 1986). A preliminary affirmative determination in the antidumping investigation was made on December 22, 1986 (51 FR 47037, December 30, 1986).

On August 29, 1986, the ITC preliminarily determined that there is a reasonable indication that imports of paint filters and strainers cause material injury to a U.S. industry (51 FR 32257, September 10, 1986).

On October 22, 1986, petitioner filed a request for extension of the deadline date for the final determination in the countervailing duty investigation to correspond with the deadline date of the antidumping duty investigation. Section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984, provides that when a countervailing duty investigation is "initiated simultaneously with an [antidumping] investigation . . . which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination [in the countervailing duty investigation] . . . to the date of the final determination" in the antidumping investigation (19 U.S.C. 1671d(a)(1)). Pursuant to this provision, we granted an extension of the deadline date for the final determination in the countervailing duty investigation of paint filters and strainers from Brazil to March 6, 1987, the original deadline for the final determination in the antidumping duty investigation.

On December 23, 1986, counsel for respondent requested that the Department extend the period for the final determination in the antidumping duty investigation to 135 days from the publication date of our preliminary antidumping duty determination in accordance with section 735(a)(2)(A) of the Act. Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it published a notice of its preliminary determination, if exporters who account for a significant portion of the merchandise which is the subject of the investigation request a postponement after an affirmative preliminary determination.

The respondent is qualified to make such a request since it accounts for all exports of the merchandise under investigation. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, the Department will issue a final determination in the antidumping duty case not later than May 15, 1987. In addition, because the deadline for the countervailing duty determination has been tied to the deadline for the antidumping determination, we are also extending the final countervailing duty determination to the same date. The public hearings in these cases are being postponed until March 19, 1987 (10:00 a.m. for the countervailing duty investigation and 2:00 p.m. for the antidumping investigation), and will be held at the U.S. Department of Commerce, Room 1851, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Accordingly, prehearing briefs must be submitted to the Deputy Assistant Secretary by March 9, 1987. All written views should be filed in accordance with 19 CFR 353.46, for the antidumping duty investigation, and 19 CFR 335.34 for the countervailing duty investigation, no later than 30 days before the final determinations are due, at the above address in at least 10 copies.

This notice is published pursuant to section 735(d) of the Act.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

January 24, 1987.

[FR Doc. 87-1994 Filed 1-30-87; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 82-067

University of California et al.; Disposition of Applications for Duty-Free Entry of Scientific Instruments: Correction

In FR Doc. 86-21039 appearing at page 32935 of the **Federal Register** of September 17, 1986, *Docket Number* 82-067 is amended to correct description of the instrument. Reference to the instrument should read: *Instrument:* Linear Actuators.

This notice is further amended to include the following application:

Docket Number 83-100. *Applicant:* University of California, Livermore, CA 94550. *Instrument:* Linear Actuators. *Date Revoked:* March 9, 1985. *Reason:* Ineligible components.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-1989 Filed 1-30-87; 8:45 am]

BILLING CODE 3510-DS-M

Yale University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 87-001. Applicant: Yale University, New Haven, CT 06511. Instrument: Magnetic Analysis System and Transport.

Manufacturer: Bruker Instruments, Inc., West Germany. Intended Use: See notice at 51 FR 40243, November 5, 1986.

Comment: None received. Decision: Application denied. An instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. The applicant claims that Question 8 of the application is not applicable since "equivalent equipment can be delivered by a domestic manufacturer, but the bid submitted by that manufacturer was nearly twice as large as the bid from the lowest bidder." 19 CFR 301.2(s) disallows cost as justification of duty-waiver. Duty-free entry of a foreign article under Pub. L. 89-651 is allowed only "if no instrument or apparatus of equivalent scientific value for the purposes for which the instrument is intended to be used is being manufactured in the United States" (see 19 CFR 301.1(b) (2) and (3)). Since the applicant admits that equivalent equipment is available from a domestic manufacturer, a case cannot be made for duty-free entry on the basis of scientific equivalency. Therefore, pursuant to § 301.5(d)(1)(i) the application is denied.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-1995 Filed 1-30-87; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting, February 4, 1987, from 10 a.m. to approximately 4 p.m., at the Holiday Inn, Peabody, MA, to discuss reports of the groundfish and scallop oversight committees; the status of Atlantic salmon, as well as to discuss other fishery management and administrative matters.

For further information, contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, (Route One), Saugus, MA 01906; telephone: (617) 231-0422.

Dated: January 27, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87-1917 Filed 1-30-87; 8:45 am]

BILLING CODE 3510-22-M

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COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

January 27, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 28, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566–6828. For information on embargoes and quota re-openings, please call (202) 377–3715. For Information on categories for which consultations have been requested call (202) 377–3740.

Background

On December 9, 1986, a notice was published in the **Federal Register** (51 FR 44329), which established an import restraint limit for man-made fiber textile products in Category 650 (dressing gowns and robes), produced or manufactured in China and exported to the United States during the ninety-day period which began on October 30, 1986 and extends through January 27, 1987. The notice also stated that the Government of the People's Republic of China is obligated under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, if no mutually satisfactory solution is reached on a level for this category during consultations, to limit its exports during the twelve-month period immediately following the ninety-day consultation period to 71,376 dozen.

No solution has been reached in consultations on a mutually satisfactory limit for Category 650. The United States Government has decided, therefore, to control imports of man-made fiber textile products in Category 650, exported during the twelve-month period beginning on January 28, 1987 at the level described above. The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register**.

In the event the limit established for the ninety-day period has been exceeded, such excess amount, if allowed to enter, will be charged to the level established for the designated twelve-month period.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47. FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

January 27, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs, Department of the Treasury.
Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 28, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 650, produced or manufactured in China and exported during the period which begins on January 28, 1987 and extends through January 27, 1988, in excess of 71,376 dozen.

Textile products in Category 650 which are in excess of the ninety-day limit previously established shall be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–1988 Filed 1–30–87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Revision

DoD FAR Supplement Part 217.7204 and 52.217–7270 Part 217 of the DoD FAR Supplement and the clause at 252.217–7270, Identification of Sources of Supplies, require contractors for supplies to deliver a listing of the name and address of the actual manufacturer, producer or all sources of supply for the items being procured together with the national stock number and manufacturer's part number. The name and address of sources for technical data is also required. This requirement applies to all contracts requiring delivery of supplies, other than commercial items sold in substantial quantities to the general public at established catalog or market prices or awarded through full and open competition. This information will be used by contracting officers and parts breakout personnel to assure that purchase is made from actual manufacturers, thus reducing overhead burden and profit incident to purchase through third parties. Further, this information will be used to identify sources for participation in competitive acquisitions.

Businesses or others for profit/small business or organizations.
Responses: 1,175,000.
Burden hours: 700,250.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Owen Green, DAR Council, ODASD(P)DARS, c/o OASD(A&L)(MRS), Room 3C841, The Pentagon, Washington, DC 20301–3062, telephone (202) 697–7266.

Dated: January 22, 1987.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 87–1949 Filed 1–30–87; 8:45 am]

BILLING CODE 3810-01-M

Ada Board Technology and Standards Panel; Meeting

ACTION: Notice of meeting.

SUMMARY: A meeting of the Ada Board Technology and Standards Panel will be held Wednesday, 18 February 1987 from 9:00 a.m. to 5:30 p.m., at the Institute for Defense Analyses, Five Skyline Place, 5111 Leesburg Pike, Suite 300, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: Dr. Gerald Fisher, IBM, Thomas J. Watson Research Center, Yorktown Heights, NY 10598, (914) 945–1831.

Patricia H. Means,

Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

January 22, 1987.

[FR Doc. 87–1950 Filed 1–30–87; 8:45 am]

BILLING CODE 3810-01-M

Ada Board Evaluation and Validation Panel; Meeting

ACTION: Notice of meeting.

SUMMARY: A meeting of the Ada Board Evaluation and Validation Panel will be held Wednesday, 18 February 1987 from 9:00 a.m. to 5:30 p.m. at the Institute for Defense Analyses, 1801 N. Beauregard Street, Alexandria, VA 22311.

FOR FURTHER INFORMATION CONTACT: Dr. Dudrey C. Smith, Lear Siegler Inc., Instrument Division, Grand Rapids, MI 49508, (616) 241–7665.

Patricia H. Means,

Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

January 22, 1987.

[FR Doc. 87–1951 Filed 1–30–87; 8:45 am]

BILLING CODE 3810-01-M

Ada Board; Meeting

ACTION: Notice of meeting.

SUMMARY: A meeting of the Ada Board will be held Thursday, and Friday, 19–20 February 1987 from 9:00 a.m. to 5:00 p.m. at the Radisson Mark Plaza Hotel, 5000 Seminary Road, Alexandria, Virginia 22311.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine McDonald, Institute for Defense Analyses, 1801 N. Beauregard Street, Alexandria, Virginia, 22311, (703) 824–5531.

Patricia H. Means,

Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

January 22, 1987.

[FR Doc. 87–1952 Filed 1–30–87; 8:45 am]

BILLING CODE 3810-01-M

Advisory Committee on Integrated Long-Term Strategy; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Advisory Committee on Integrated Long-Term Strategy will meet in closed session on 20 February 1987 in the Old Executive Office Building, Washington, DC.

The mission of the Advisory Committee on Integrated Long-Term Strategy is to provide the Secretary of Defense and the Assistant to the President for National Security Affairs with an independent, informed assessment of the policy and strategy implications of advanced technologies for strategic defense, strategic offense and theater warfare, including conventional war. At this meeting the Committee will hold classified discussions of national security matters dealing with strategic defense and strategic offense.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended [U.S.C. App. II, (1982)], it has been determined that this Advisory Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

January 22, 1987.

[FR Doc. 87–1953 Filed 1–30–87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) title of Information Collection and Form Number if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; and (8) the point of contact from whom a copy of the information proposal may be obtained.

Extension

Invitation for Bids etc. for Granting use of Real Property of the United States The bids, management plans, lease applications, ownership disclosure and record keeping and income reporting for concession leases enable the Corps to determine whether existing or potential grantees have or will manage federal property properly and to calculate rental charges for concession leases.

Respondents: Individuals or households, State or local governments, farmers, businesses or other for profit, small businesses or organizations.
Responses: 14,471
Burden Hours: 7,975.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

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SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Angela R. Petrarca, DAIM-ADI, Room 1C838, The Pentagon, Washington, DC 20310-0700, telephone number (202) 694-0754.

January 22, 1987.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 87-1954 Filed 1-30-87; 8:45 am]

BILLING CODE 3810-01-M

Army Science Board Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meetings:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 19-20 February 1987

Time: 0830-1700 hours, 19 February
0830-1500 hours, 20 February

Place: Headquarters, TRADOC, Ft. Monroe, VA

Agenda: The Army Science Board 1987 Summer Study on Lightening the Force will meet at Headquarters, Training and Doctrine Command, Fort Monroe, VA for the purpose of gathering facts in the first phase of the study. On the first and second day of this meeting, briefings will be provided to the panel by HQ TRADOC and TRADOC agencies on scenarios, doctrine, force definition, and sealfit and airlift requirements. On the second day, the panel will identify sub-groupings for the panel's succeeding fact gathering and report writing efforts. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87-1920 Filed 1-30-87; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP87-147-000 et al.]

Natural Gas Certificate Filings; El Paso Natural Gas Co. et al.

January 22, 1987

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Co.

[Docket No. CP87-147-000]

Take notice that on December 30, 1986, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, section 7(b) of the Natural Gas Act for authorization to abandon by conveyance to Gas Company of New Mexico, a Division of Public Service Company of New Mexico (Gas Company) certain compression, pipeline, metering and tap facilities, with appurtenances, located in Dona Ana and Otero Counties, New Mexico, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso states that by order issued April 25, 1950, in Docket No. G-1238, the Commission granted El Paso permanent certificate authority for, *inter alia*, the construction and operation of certain facilities in Dona Ana and Otero Counties, New Mexico, and the sale and delivery of natural gas to Sacramento Corporation for resale and distribution. El Paso states that those facilities included the following pipeline and meter stations: (1) Approximately 13.00 miles of 6⅝-inch O.D. pipeline and 56.80 miles of 4¼-inch O.D. pipeline, with appurtenances, referred to as the Alamogordo Line commencing in Dona Ana County and terminating at the Alamogordo City Gas Meter Station in Otero County, New Mexico; (2) approximately 4.30 miles of 2⅜-inch O.D. pipeline, with appurtenances, referred to as the White Sands Line, commencing at a point of interconnection with the Alamogordo Line and terminating at the White Sands Meter Station in Otero County, New Mexico; and (3) approximately 7.20 miles of 3½-inch O.D. pipeline, with appurtenances, referred to as the Holloman Air Force Base Line, commencing at a point of interconnection with the Alamogordo Line and terminating at the Holloman Air Force Base Meter Station in Otero County, New Mexico.

Additionally, it is stated, by order issued December 26, 1956, in Docket No. G-9540, the Commission granted El Paso permanent certificate authority for the construction and operation of certain additional facilities in Dona Ana and Otero Countries, New Mexico, and the sale and delivery of natural gas to Southern Union Gas Company, predecessor-in-interest to Gas Company, for resale to the White Sands Proving Ground, Holloman Air Force Base, and the Town of Alamogordo, New Mexico. It is further stated that such facilities certificated included: (1) The Alamogordo Compressor Station; (2) approximately 8.00 miles of 6⅝-inch O.D. and 6.20 miles of 4½-inch O.D. loop line, referred to as the Alamogordo Loop Line; and (3) approximately 3.10 miles of 4½ O.D. loop line, referred to as the Holloman Air Force Base Loop Line. El Paso further states that by order issued April 15, 1959, in Docket No. G-17505, the Commission granted El Paso certificate authority for the construction and operation of approximately 4.30 miles of 3½-inch O.D. loop line, referred to as the White Sands Loop Line.

El Paso states that due to growth in gas demand experienced on the Alamogordo System, El Paso expanded such system by the construction and operation of certain tap facilities, which included: (1) The Joyce Qualtrough Tap; (2) the Dolores C. Wright Tap; (3) the P.K. Colquitt Tap; (4) the Nike No. 1 Tap; (5) the West Walker Tap; (6) the Alamogordo Airport Tap; (7) the Alamogordo Airport No. 2 Tap; (8) the Sun Mobil Homes Tap; (9) the Mrs. LaVelle Hoket Tap; and (10) the White Sands Reactor Building Tap.

El Paso states that the Alamogordo Compressor Station, Alamogordo Line, Alamogordo Loop Line, White Sands Line, White Sands Loop Line, Holloman Air Force Base Line, and Holoman Air Force Base Loop Line, together with the meeting and tap facilities, which collectively constitute the Alamogordo System, are currently being utilized by El Paso to sell and deliver natural gas to Gas Company for resale to the White Sands Proving Ground, Holloman Air Force Base, and the community of Alamogordo, New Mexico and environs. It is further stated that deliveries by El Paso from its Alamogordo System to Gas Company at each of such metering and tap facilities are made pursuant to the terms and conditions of the currently-effective service agreement between El Paso and Gas Company dated February 1, 1970 (service agreement), on file with the Commission. Such service agreement was accepted by the Commission for filing effective as of April 23, 1970, by Commission letter order dated April 22, 1970, it is stated.,

El Paso further states that since the installation by El Paso of the compression, pipeline, metering and tap facilities, with appurtenances, serving the White Sands Proving Ground, Holloman Air Force Base, and the community of Alamogordo, New Mexico, and environs, Gas Company has continued to experience increases in the natural gas requirements in and around the Alamogordo System. The increases in Gas Company's natural gas requirements at the delivery points

along the Alamogordo System have and continue to consist of high-priority load requirements. El Paso avers that with the projected continuous development of Gas Company's requirements, located in the general proximity of El Paso's Alamogordo System, El Paso's facilities have suffered serious encroachment. El Paso states that encroachment on the Alamogordo System is making normal maintenance increasingly difficult in that it hinders ingress and egress by El Paso. Further, from an operational standpoint, said facilities are now effectively serving a distribution function and can be more properly monitored and maintained by Company as a distribution pipeline facility, it is stated. El Paso states that ownership of the facilities would also permit Gas Company to attach new customers in an expeditious manner as requests for such service are received.

El Paso states that as a result of the present utilitization of the Alamogordo System, together with the increasing problems being experienced by El Paso concerning encroachment and operational maintenance, El Paso proposes to abandon and convey to Gas Company; and Gas Company has agreed to acquire, the Alamogordo System. The Alamogordo System would be conveyed to Gas Company at an estimated sales price of $325,000, pursuant to the terms and conditions of the letter agreement between El Paso and Gas Company dated November 21, 1986. El Paso further states that the proposed conveyance would permit El Paso to measure and make deliveries of natural gas to Gas Company at a single new point rather than at several points along or at the terminus of the Alamogordo Pipeline, thus giving El Paso a more precise degree of control of such deliveries.[1] No interruption, reduction or termination of natural gas service presently rendered by El Paso to any of its customers would result, and no material change in El Paso's average cost of service would result therefrom, El Paso states.

[1] El Paso would shortly file for prior notice authorization under § 157.211 of the Commission's Regulations, to install a master meter station to facilitate the sale of natural gas by El Paso to Gas Company for service to the White Sands Proving Ground, Holloman Air Force Base, and the community of Alamogordo, New Mexico and its environs, it is stated. It is further stated that such master meter station would be located at the point of interconnection of El Paso's existing 26-inch O.D. California Line, 30-inch O.D. California First Loop Line, 30-inch O.D. Waha Plant to Ehrenberg Line and the existing 6⅝-inch O.D. Alamogordo Pipeline in Dona Ana County, New Mexico.

Comment date: February 12, 1987, in accordance with Standard Paragraph F at the end of this notice.

2. Pacific Gas Transmission Co.

[Docket No. CP87-159-000]

Take notice that on January 13, 1987, Pacific Gas Transmission Company (Applicant), 160 Spear Street, Room 1909, San Francisco, California 94105-1570, filed in Docket No. CP87-159-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations (18 CFR 282.221) for a blanket certificate of public convenience and necessity authorizing transportation of natural gas on behalf of others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks authorization to implement service under new Original Volume No. 1-a to its FERC Gas Tariff to render such service. Applicant seeks a waiver of the Commission's rate regulations contained in § 284.7 (d)(1) and (d)(2) of the Commission's Regulations (18 CFR 284.7(d)(1) and (d)(2)) to commence 30 days from the date of filing this application. Applicant also requests that the waiver apply to transportation under § 282.102 of the Commission's Regulations (18 CFR 282.102) that implements section 311(a)(1) of the Natural Gas Policy Act of 1978. Applicant requests continuation of this temporary waiver until such time rates are placed into effect under its next general rate case which, Applicant states, would be filed in May of 1987.

Applicant requests temporary authorization for gas transportation, pending approval and acceptance of the blanket certificate application, to commence 30 days from the date of filing of this application. Applicant further requests that it be afforded a reasonable opportunity to assess the action which the Commission takes with respect to its general rate case prior to accepting the blanket certificate sought by the application and that it be allowed to operate under such temporary authority until that time.

Applicant proposes to begin open access under Order No. 436 in two phases. Applicant states that in the first phase it intends to conduct a lottery to determine priority of service for all shippers whose requests for service are received within ten calendar days beginning on the date of filing of the instant application. All requests for service received after the ten-day period would be prioritized on a first come, first served basis. In the event that the use of a lottery is not deemed appropriate, Applicant proposes to prioritize all requests for service on a first come, first served basis. It is said that service would be in full compliance with Order No. 436 except for certain rate provisions. Applicant proposes to offer interruptible and firm service but states that at the present time its full system capacity is contractually committed to its existing firm service customers. Applicant proposes, during the interim period, to credit transportation revenues to the cost of service of its existing firm service customers.

In the second phase Applicant would file tariff sheets in compliance with the general principles contained in the Commission's rate regulations as set forth in § 284.7(d)(1) and (d)(2) by May 1987, at which time there would be an opportunity for full compliance review of Applicant's open access program.

It is further explained that in compliance with the application procedure set forth at § 284.221(b)(1), Applicant would comply with the condition in paragraph (c) of § 284.221, that are the conditions contained in Subpart A of Part 284 of the Commission's Regulations.

Comment date: February 12, 1987, in accordance with Standard Paragraph F at the end of this notice.

3. Southern Natural Gas Co.

[Docket No. CP87-139-000]

Take notice that on December 23, 1986, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP87-139-000 an application pursuant to section 7(b) of the Natural Gas Act and for permission and approval to abandon by sale an interest in certain pipeline and measuring facilities in Escambia County, Alabama, and to abandon two transportation services which involve said facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to abandon by sale to Florida Gas Transmission Company (FGT) an undivided one-half interest in 3.128 miles of 10-inch pipeline and related metering stations and appurtenances extending from facilities owned by Exxon Corporation to an interconnection with FGT's main

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transmission line in Escambia County, Alabama. Applicant also proposes to abandon a transportation service performed for FGT through the subject facilities. Applicant states that in Docket No. CP74-307 it was authorized to transport up to 2,000 Mcf of natural gas per day through the facilities on a long-term basis. Applicant also states that it performs a transportation service authorized under Part 284 of the Commission's Regulations which was reported by Applicant in Docket No. ST85-818-000. It is stated that FGT will no longer require these transportation services once it acquires the one-half interest in the Escambia County facilities.

It is claimed that Applicant does not require the use of the one-half interest in the facilities for its own gas supplies and that the sale of this interest will not have any adverse effect on any sales or services rendered by Applicant.

Comment date: February 12, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraph

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-1939 Filed 1-30-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-217-000]

CRSS Hopewell Cogenerators; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

January 15, 1987.

On January 5, 1987, CRSS Hopewell Cogenerators (Applicant), of 1177 West Loop South, Suite 900, Houston, Texas 77027, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at 1111 Hercules Road, Hopewell, Virginia 23860. The facility will consist of a combustion turbine generator, a heat recovery steam generator, and an extraction/condensing turbine generator. Thermal energy recovered from the facility will be used in manufacturing operations and space heating by Hercules, Incorporated. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 130 MW. Installation of the facility is scheduled to begin in September 1987.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-1941 Filed 1-30-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-223-000]

E.I. du Pont de Nemours & Co. (Sabine River Works); Application for Commission Certification of Qualifying Status of a Cogeneration Facility

January 23, 1987.

On January 13, 1987, E.I. du Pont de Nemours & Company (Applicant), of 1007 Market Street, Wilmington, Delaware 19898, submitted for filing an application for certification of a facility as qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located at the Applicant's Sabine River Works Plant in Orange, Texas. The facility consists of a natural gas-fired steam generator and three back pressure steam turbine generators. The steam recovered from the facility will be used for process heating at Du Pont's Sabine River Works. The electric power production capacity of the facility will be approximately 15.625 MW. The primary source of energy is natural gas. The installation of the facility commenced in 1945.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-1940 Filed 1-30-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-218-000]

Howell Energy Associates a New Jersey Limited Partnership; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

January 23, 1987.

On January 7, 1987, Howell Energy Associates, a New Jersey Limited Partnership (Applicant), of 87 Elm Street, Cohasset, Massachusetts 02025, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration will be located in Howell, New Jersey. The facility will consist of one (1) combustion turbine generator, one heat recovery steam generator and one extraction/condensing turbine generator. Thermal energy recovered from the facility will be utilized by Arnold Steel Co., Inc. in heat exchangers to provide the heating and cooling of the facility and also for treating and cleaning fabricated steel. The net electric power production capacity will be 140 megawatts. The primary energy source will be synthetic gas and natural gas, with oil used when natural gas is not available. Construction of the facility will begin on July 1, 1988.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-1942 Filed 1-30-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-186-000]

Texaco Producing Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

January 20, 1987.

On December 29, 1986, Texaco Producing Inc. (Applicant), of P.O. Box 10269, Bakersfield, California 93389, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in the San Ardo Field, Monterey County, California. The facility will be comprised of two combustion turbine generating units and a heat recovery steam generator (HRSG). Steam produced by the facility will be used for enhanced oil recovery. The primary energy source for the facility will be natural gas. The maximum electric power production capacity of the facility will be 49 megawatts. The facility is scheduled for start-up on July 1, 1988.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-1943 Filed 1-30-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-157-000]

Iowa Public Service Co.; Notice of Filing

January 21, 1987.

Take notice that on November 4, 1986, Iowa Public Service Company (Public Service), P.O. Box 778, Sioux City, Iowa 51102, filed a request for a waiver of the requirement to file its Annual Report of Natural Gas Companies (Form No. 2) all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Public Service states that it owns and operates an interstate pipeline which extends from Sioux City, Iowa, across the South Dakota border and serves the bordering communities of North Sioux City, South Dakota and McCook Lake, South Dakota. All gas transported is for the benefit of residential and commercial users and is not for resale for ultimate public consumption according to Public Service. The company also states that total sales by gas volume for 1985 constituted only 120,596 Mcf, which represented only about 3/10th of one percent of Public Service's total natural gas sales. It is for these reasons that Public Service believes it qualifies as a local distributor of natural gas and therefore requests waiver of the filing requirements.

Any person desiring to be heard or to make any protest with reference to said filing should on or before February 4, 1987, file with the Commission, 825 N. Capitol St., NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.211, 385.214. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-1944 Filed 1-30-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-158-000]

Panhandle Eastern Pipe Line Co.; Request Under Blanket Authorization

January 22, 1987.

Take notice that on January 9, 1987, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP87-158-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authority to abandon metering facilities and the transportation of natural gas through the facilities under the certificate issued in Docket No. CP83-83-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on

others and Tennessee's pipeline

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file with the Commission and open to public inspection.

Panhandle proposes to abandon and reclaim four irrigation meters located in Texas County, Oklahoma, Hansford County, Texas and Grant County, Kansas. Panhandle states the four meters were installed at the request of right of way grantors to provide irrigation gas service. The meters and related transportation services were certificated in Docket No. CP81-489-000, it is explained. It is further explained that each owner has submitted a written request to have service terminated and the facilities removed. Panhandle states that the total estimated cost of reclaiming these meters is $2,860.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-1945 Filed 1-30-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP81-38-011 et al.]

Tennessee Gas Pipeline Co. et al.; Filing of Pipeline Refund Reports

January 22, 1987.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports. The date of filing and docket number are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before February 4, 1987. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

Appendix

Filing date	Company	Docket No.
11-19-86	Tennessee Gas Pipeline Co.	RP81-38-011
11-26-86	Texas Eastern Transmission Corp.	RP84-108-008
12-16-86	Tennessee Gas Pipeline Co.	RP82-125-003
12-16-86	East Tennessee Natural Gas Co.	RP71-15-023
12-19-86	Lawrenceburg Gas Transmission Corp.	RP87-37-018
12-23-86	Transcontinental Gas Pipe Line Corp.	RP77-108-009
12-24-86	Tennessee Gas Pipeline Co.	RP85-94-004
12-29-86	Caprock Pipeline Co.	RP85-109-001
12-29-86	West Texas Gathering Co.	DP85-108-003
12-31-86	Midwestern Gas Transmission Co.	CP82-397-004
12-31-86	Natural Gas Pipeline Company of America.	RP80-11-020
1- 5-87	Williston Basin Interstate Pipeline Co.	RP85-97-004
1- 5-87	Texas Eastern Transmission Corp.	RP85-85-005
1- 7-87	Mid-Louisiana Gas Company.	RP85-82-004
1- 7-87	Valley Gas Transmission, Inc.	RP85-104-003
1- 7-87	Southern Natural Gas Co.	RP85-153-005
1- 8-87	Sea Robin Pipeline Co[1].	RP85-89-004
1- 8-87	United Gas Pipe Line Co[1].	RP85-90-005
1- 8-87	Mississippi River Transmission Corp.	RP85-80-003
1- 8-87	ANR Pipeline Co.	RP85-88-003
1- 9-87	K N Energy, Inc[1].	RP85-98-003
1-13-87	Consolidated Gas Transmission Corp.	RP85-87-004

[1] Requests for Extensions of Time to file reports.

[FR Doc. 87-1946 Filed 1-30-87; 8:45 am]

BILLING CODE 6717-01

[Docket No. CP86-124-001]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Southern Natural Gas Co.; Petition to Amend

January 20, 1987.

Take notice that on January 13, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, and Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, (Petitioners) filed in Docket No. CP86-124-001 a joint petition to amend their joint application filed in Docket No. CP86-124-000 pursuant to section 7(c) of the Natural Gas Act by requesting separate consideration of the proposed transportation and exchange services, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners explain that in Docket No. CP86-124-000, Tennessee and Southern request Commission authorization to exchange and transport certain quantities of natural gas on a best efforts basis, pursuant to the terms of a gas transportation and exchange agreement dated January 21, 1985 (Agreement). Pursuant to the Agreement Southern agrees to receive an aggregate of up to 6 billion Btu equivalent of natural gas per day made available by or for the account of Tennessee at an existing point of interconnection between Southern and Tennessee located in Main Pass Block 298, offshore Louisiana, it is stated. It is further stated that Tennessee agrees to receive up to 6 billion Btu equivalent of natural gas per day made available by Southern at (1) an existing point of interconnection between the pipeline facilities jointly owned by Southern and others and Tennessee's pipeline facilities located in Cameron Parish, Louisiana (Block 34 Exchange Point), or (2) an existing point of interconnection between the pipeline facilities jointly owned by Southern and others and Tennessee's pipeline facilities located in East Cameron Block 97, offshore Louisiana (Block 104 Exchange Point). In addition, and pursuant to the Agreement, Petitioners state that they agree to transport such quantities of natural gas (not to exceed 6 billion Btu equivalent), which may be greater than the quantity of gas available to one of the parties to this exchange arrangement. In such case, Petitioners agree to transport such gas, it is stated. Southern would accept Tennessee's gas for transportation and would redeliver or cause to be redelivered such quantity to or for the account of Tennessee to the existing point of interconnection between Southern's pipeline facilities at or near the outlet of Placid Oil Company's Patterson Gasoline Plant in Section 48, Township 15 South, 11 East, St. Mary's Parish, Louisiana (Mutual Redelivery Point), Petitioners explain. Tennessee would accept Southern's gas for transportation and would redeliver such gas to the Mutual Redelivery Point, it is stated.

Petitioners now request that the Commission phase its decision in this docket and first authorize the best-efforts exchange service proposed by Tennessee and Southern and then authorize the related best-efforts transportation services. Petitioners also request that the Commission promptly issue the certificate authorizing the exchange service proposed in this proceeding. Petitioners state that the exchange service is currently being performed pursuant to Tennessee and Southern's Order No. 60 blanket certificate as reported by Tennessee in Docket No. ST85-618-000 and by Southern in Docket No. ST85-803-000, and that this authorization would terminate on February 18, 1987. Petitioners allege that unless the certificate authorization requested by Tennessee and Southern in issued before that date, all production from the affected sources would be shut-in resulting in loss of natural gas as well as oil production and the possibility of damage to the reservoir.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before February 3, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-1947 Filed 1-30-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-150-000]

United Gas Pipe Line Co.; Application

January 20, 1987.

Take notice that on January 6, 1987, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-150-000 an application pursuant to section 7 (c) of the Natural Gas Act authorizing the transportation on an interruptible basis of up to 5,000 Mcf of natural gas per day for Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. (Tennessee), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that pursuant to a gas transportation agreement dated september 19, 1986, Applicant proposes to transport up to 5,000 Mcf of natural gas per day for Tennessee, receiving such volumes at two points on its' pipeline located in Lafourche Parish, Louisiana. Applicant avers that it would transport and redeliver a substantially equivalent volume of natural gas to Tennessee at the existing points of interconnection between the facilities of Applicant and Tennessee, near West Monroe, Ouachita Parish, Louisiana, Wharton County, Texas, and the tailgate of the Champlin Petroleum Company's East Texas Processing Plant, Panola County, Texas. It is stated that Tennessee would purchase the subject gas for its general system supply from Stone Oil Company and Louisiana Land and Exploration Company.

Applicant proposes to intially charge Tennessee a rate of 40.34 cents for each Mcf redelivered to Tennessee, which excludes the Gas Research Institute surcharge. It is stated that the gas transportation agreement is effective for the period beginning on the date deliveries of gas commence and ending June 30, 1991. It is stated that either party may terminate the agreement at the conclusion of the primary term.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 10, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-1948 Filed 1-30-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-3149-6]

Establishment and Open Meeting of the Asbestos Hazard Emergency Response Act Negotiated Rulemaking Advisory Committee

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of the establishment of an Advisory Committee to negotiate proposed regulations implementing the Asbestos Hazard Emergency Response Act (AHERA) of 1986. We have determined

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that this is in the public interest and will assist the Agency in performing its duties prescribed in AHERA. Copies of the Committee charter will be filed with appropriate committees of Congress and the Library of Congress.

The Committee's initial meeting will be held on February 5–6, 1987, in the Hall of States Room at the Skyline Inn, I and South Capitol Streets SW., Washington, DC. The meeting will start at 9:00 a.m., each day and will run until completion.

Potential parties met for a January 23, 1987 Organizational Meeting and selected February 5–6 as the meeting dates, in light of the Congressional deadline for a proposed rule by April 20, 1987. For this reason, the notice of this two-day meeting is being given less than 15 days prior to the meeting itself. The Agency is issuing this notice promptly now that the meeting dates are confirmed. The Agency will inform all parties who have indicated an interest in this negotiation of the meeting dates.

The purpose of the first meeting is to complete any outstanding procedural matters, to identify the substantive issues, to determine how best to address the substantive issues, and to begin to address them.

If interested in attending or receiving more information, please contact kathy Tyson at (202) 382–5479.

Dated: January 28, 1987.

John M. Campbell, Jr.,

Acting Assistant Administrator for Policy, Planning, and Evaluation.

[FR Doc. 87–2075 Filed 1–30–87; 8:45 am]

BILLING CODE 6560–50–M

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 6]

Agency Forms Submitted for OMB Review

AGENCY: Export-Import Bank of the United States.

ACTION: In accordance with the provisions of the Paperwork Act of 1980, Eximbank has submitted a proposed collection of information in the form of a survey to the Office of Management and Budget for Review.

Purpose

The proposed Annual Competitiveness Report Survey of Exporters and Bankers as authorized by 12 U.S.C. 635(b), Export-Import Bank of the U.S. Act of 1945, as amended, is to be completed by U.S. banks and exporters familiar with Eximbank's programs as a means of evalnating the private sector's view on the extent to which Eximbank has provided export credit programs competitive with the export credit programs offered by the major foreign OECD governments.

The collection of the information will enable Eximbank to access and report to the U.S. Congress the private sector's view of its programs' competitiveness, as required by law.

Summary

The following summarizes the information collection proposal submitted to OMB:

(1) Type of request: Revision.
(2) Number of forms submitted: One.
(3) Form number: EIB No. 85–3 (Rev. 1/87).
(4) Title of information collection: Annual Competitiveness Report Survey to Exporters and Bankers.
(5) Frequency of use: Annual.
(6) Respondents: Commercial banks and exporters in the United States.
(7) Estimated total number of responses: 80.
(8) Estimated total number of hours needed to fill out the form: 60.

Additional Information or Comments

Copies of the proposed survey may be obtained from Helene Wall, Agency Clearance Officer (202) 566–8111. Comments and questions should be directed to Francine Picoult, Office of Management and Budget, Information and Regulatory Affairs, Room 3235, Washington, DC 20503, (202) 395–7340. All comments should be submitted within two weeks of the date of this notice; if you intend to submit comments but are unable to meet this deadline, please advise Francine Picoult by telephone that comments will be submitted late.

Dated: January 12, 1987.

Helene H. Wall,

Agency Clearance Officer.

[FR Doc. 87–2001 Filed 1–30–87; 8:45 am]

BILLING CODE 6690–01–M

Solicitation of Proposals by Financial Advisors on Loan Portfolio

AGENCY: The Export-Import Bank of the United States.

ACTION: Solicitation of proposals by financial advisors.

Purpose

The Export-Import Bank of the United States (Eximbank) has announced that it is soliciting proposals by prospective financial advisors to advise on and assist in the preparation and sale of a portion of Eximbank's loan portfolio. The contract period would cover fiscal year 1987 with a possible extension for fiscal year 1988. Eximbank will award the contract to the responsible offeror whose offer conforms to the solicitation and is most advantageous to Eximbank, cost or price, technical quality and other factors considered. All interested parties are invited to request solicitation documents in writing. Solicitation documents will become available on or about February 9, 1987. When requesting such documents, the interested party should indicate whether the firm is a large or small business. The closing date for receipt of proposals is March 11, 1987.

FOR FURTHER INFORMATION CONTACT:

Barbara H. Hardin, Contract Specialist, Telephone (202) 566–8952
or
Helene H. Wall, Contracting Officer, Telephone (202) 566–8111

SUPPLEMENTARY INFORMATION: Under section 2002 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), Eximbank is required to raise $1.5 billion prior to September 30, 1987 through the sale of loans in the agency's portfolio.

Dated: January 28, 1987.

Helene H. Wall,

Agency Clearance Officer.

[FR Doc. 87–1976 Filed 1–30–87; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 and/or § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–011049.
Title: Tampa Terminal Agreement.
Parties:
Tampa Port Authority (Port)
Seagull Terminal & Stevedoring Co. (Seagull).

Synopsis: The proposed agreement would permit the Port to lease dockside open storage space and office space in a warehouse to Seagull for a period of one year.

Filing Party: H.E. Welch, Director of Traffic, Tampa Port Authority, Post Office Box 2192, Tampa, Florida 33601.

Dated: January 28, 1987.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87–1978 Filed 1–30–87; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 244–003914–002.
Title: Oakland Terminal Agreement.
Parties:
City of Oakland
Sea-Land Service, Inc.

Synopsis: The proposed amendment would delete the portion of the leased premises known as "Parcel B" from the provisions of the agreement.

Agreement No: 202–010252–005.
Title: New Zealand-Pacific Coast Rate Agreement.
Parties:
Blue Star Line, Ltd.
Columbus Line

Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Agreement No.: 202–010656–018.
Title: North Europe-U.S. Gulf Freight Association.
Parties:
Compagnie Generale Maritime (CGM)
Lykes Bros. Steamship Company, Inc.
Gulf Container Line (GCL), B.V.
Sea-Land Service, Inc.
Hapag-Lloyd AG
Trans Freight Lines
Nedlloyd Lijnen, B.V.

Synopsis: The proposed amendment would delete agreement provisions pertaining to the operation of Seabee/Lash barge service by agreement parties.

Agreement No.: 202–010676–025.
Title: South Europe/U.S.A. Freight Conference.
Parties:
Achille Lauro
C.I.A. Venezolana de Navegacion
Compania Trasatlanticia Espanola, S.A.
Costa Line (Costa Container Lines, S.p.A.)
Evergreen Marine Corporation (Taiwan) Ltd.
Farrell Lines, Inc.
"Italia" di Navigazione, S.p.A.
Jugolinija (Jugoslavenska Linijska Plovidba)
Jugooceanija (Jugoslavenska Oceanska Plovida)
Lykes Lines (Lykes Bros. Steamship Co., Ltd.)
A.P. Moller-Maersk Line
Nedlloyd Lines (Nedlloyd Lijnen B.V.)
Sea-Land Service, Inc.
Trans Freight Lines
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would republish the agreement and make a number of administrative changes which include changing the name of the agreement as designated above, amending voting procedures and policing authority and revising independent action provisions regarding brokerage and freight forwarder compensation.

Agreement No.: 224–010990–001.
Title: Charleston Terminal Agreement.
Parties:
South Carolina State Ports Authority (Port)
Farrell Lines Incorporated (Farrell)

Synopsis: The proposed amendment would give Farrell exclusive use of 396 container parking slots at the Port's Wando Terminal for a period of three years. The parties have requested a shortened review period.

Agreement No.: 224–011055.
Title: New London Terminal Agreement.
Parties:
State of Connecticut Department of Transportation (State)
New Haven Terminal, Inc. (NHT)

Synopsis: The proposed agreement would permit NHT to manage and operate a terminal and warehouse facility owned by the State in New London, Connecticut. The agreement would remain in effect through June 30, 1991.

Agreement No.: 224–011056, 224–011056–001, 224–011056–002, and 224–011056–003.
Title: Baton Rouge Terminal Agreement.
Parties:
Greater Baton Rouge Port Commission (Port)
Ryan-Walsh Stevedoring Co., Inc. (Ryan-Walsh)

Synopsis: The proposed agreement, as amended, allows the Port to give Ryan-Walsh preferential use of mid-stream vessel and barge mooring facilities for use in conjunction with Ryan-Walsh's operations at the Port of Baton Rouge.

Dated: January 28, 1987.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87–1979 Filed 1–30–87; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

National Advisory Council on Drug Abuse, etc.; Meetings

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meetings of the agency's initial review committees and national advisory bodies. These committees will be open for discussion of administrative announcements and program developments. The committees will be performing initial review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d). Notice of these

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meetings is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: National Advisory Council on Drug Abuse, NIDA.

Date and Time: February 3-4: 9:00 a.m.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 8, Bethesda, Maryland 20892.

Status of meetings: Open—February 3: 9:00–12 Noon; February 4: 9:00 a.m.–5:00 p.m., Closed—Otherwise.

Contact: Sheila Gardner, Room 10A–03, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6460

Purpose: The Council advises and makes recommendations to the Secretary, Department of Health and Human Services, the Administration, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute on Drug Abuse, on the development of new initiatives and priorities and the efficient administration of drug abuse research, including prevention and treatment research, and research training. The Council also gives advice on policies and priorities for drug abuse grants and contracts, and reviews and makes final recommendations on grant applications.

Committee Name: Psychosocial and Biobehavioral Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH.

Date and Time: February 5–6: 9:30 a.m.

Place: Sheraton Washington Hotel, 2660 Woodley Road at Connecticut Avenue, NW., Washington, DC 2008.

Status of Meeting: Open—February 5: 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Maureen Eister, Room 9C–02, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4868.

Purpose: The subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support or research and/or research training activities in the fields of treatment development and assessment and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: National Advisory Mental Health Council, NIMH.

Date and Time: February 9–11: 9:00 a.m.

Place: February 9, National Institutes of Health, Building #31, Conference Room 8, 9000 Rockville Pike, Bethesda, Maryland 20892 February 10–11, Parklawn Building, Conference Rooms G and H, 5600 Fishers Lane, Rockville, Maryland 20857.

Status of Meeting: Open—February 9: 9:00 a.m.–5:00 p.m.; Closed—Otherwise.

Contact: Rachel Driver, Parklawn Building, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3367.

Purpose: The Council advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, regarding policies and programs of the Department in the field of mental health and makes recommendations to the Secretary with respect to approval of applications for, and amount of, these grants.

Committee Name: Psychopharmacological, Biological, and Physical Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH.

Date and Time: February 12–13: 9:00 a.m.

Place: Washington Marriott, 1221 22nd Street, NW., Washington, DC 20037

Status of Meeting: Open—February 12: 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Pamela Mitchell, Room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1367.

Purpose: The subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the fields of treatment development and assessment with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Cognition, Emotion, and Personality Research Review Committee, NIMH.

Date and Time: February 12–14: 9:00 a.m.

Place: The Capitol Hill Hotel, 200 C Street SE., Washington, DC 20003.

Status of Meeting: Open—February 13, 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Naomi Lichtenberg, Room 9C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3944.

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to the fields of personality, cognition, emotion, and higher mental processes with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Child and Family and Prevention Subcommittee of the Life Course and Prevention Research Review Committee, NIMH.

Date and Time: February 12–14: 9:00 a.m.

Place: The River Inn, 924 24th Street, NW., Washington, DC 20037.

Status of Meeting: Open—February 12: 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Dorothy Tengood, Room 9C18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3857.

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to basic psychopharmacology and neuropsychology with recommendations to the National Advisory Council for final review.

Committee Name: Neurosciences Research Review Committee, NIMH.

Date and Time: February 12–14: 8:30 a.m

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Status of Meeting: Open—February 12; Close—Otherwise

Contact: Eva Stone, Room 9C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443–3944.

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to basic psychopharmacology and neuropsychology with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Biochemistry Subcommittee of the Drug Abuse Biomedical Research Review Committee, NIDA.

Date and Time: February 17–20: 9:00 a.m.

Place: Crowne Plaza Holiday Inn, Halpine Conference Room, 1750 Rockville Pike, Rockville, Maryland 20852, (301) 443–2620.

Status of Meeting: Open—February 17: 9:00–9:30 a.m.; Closed—Otherwise.

Contact: Yuth Nimit, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2620.

Purpose: The Subcommittee is charged with the intial review of applications for assistance from the National Institute of Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council of Drug Abuse for final review.

Committee Name: Pharmacology Subcommittee of the Drug Abuse Biomedical Research Review Committee, NIDA.

Date and Time: February 17: 9:00 a.m.

Place: Crowne Plaza Holiday Inn, Woodmont Conference Room, 1750 Rockville Pike, Rockville, Maryland 20852.

Status of Meeting: Open—February 17: 9:00–9:30 a.m.; Closed—Otherwise

Contact: Heinz Sorer, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2620.

Purpose: The subcommittee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Drug Abuse Clinical and Behavioral Research Review Committee, NIDA.

Date and Time: February 17–20: 9:00 a.m.

Place: Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, Maryland 20852

Status of Meeting: Open—February 17: 9:00–9:30 a.m.; Closed—Otherwise.

Contact: Daniel Mintz, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2620

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Epidemiology and Prevention Subcommittee of the Drug Abuse Epidemiology, Prevention, and Services Research Review Committee, NIDA.

Date and Time: February 17–18: 9:00 a.m.

Place: Crowne Plaza Holiday Inn, Rockville Room, 1750 Rockville Pike, Rockville, Maryland 20852.

Status of Meeting: Open—February 17: 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Ron Gold, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2620.

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for

support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Biochemistry, Physiology, and Medicine Subcommittee of the Alcohol Biomedical Research Review Committee, NIAAA.

Date and Time: February 17–19: 9:00 a.m.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Status of Meeting: Open—February 17: 9:00–11:00 a.m.; Closed—Otherwise.

Contract: Ronald Suddendorf, Room 16C26 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6106

Purpose: The subcommittee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Behavioral Sciences Subcommittee of the Mental Health Research Education Review Committee, NIMH.

Date and Time: February 18–20: 9:00 a.m.

Place: Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008.

Status of Meeting: Open—February 18: 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Jean Byrne, Room 9C18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3857

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research training activities in the areas of biological sciences, the psychological sciences, and the applied behavioral sciences related to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Clinical Program Projects/Clinical Research Centers Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH.

Date and Time: February 19: 9:00 a.m.

Place: J.W. Marriott, 1331 Pennsylvania Avenue, NW., Washington, DC 20004.

Status of Meeting: Open—February 19: 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Pamela Mitchell, Room 9C14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1367.

Purpose: The subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of Mental Health Clinical Research Centers, clinical program projects, and other large-scale multidisciplinary research projects, and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Clinical and Treatment Subcommittee of the Alcohol Psychosocial Research Review Committee, NIAAA.

Date and Time: February 23–25: 9:00 a.m.

Place: Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, Maryland 20852.

Status of Meeting: Open—February 23: 9:00–9:30 a.m.; Closed—Otherwise.

Contact: Laura Weinstein, Room 16C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6106.

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Research Scientist Development Review Committee, NIMH.

Date and Time: February 24–26: 9:00 a.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Status of Meeting: Open—February 24: 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Linda Rainey, Room 9C05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6470.

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities to develop and execute a program of Research Scientist and Research Scientist Development Awards to appropriate institutions for the support of individuals who are engaged full time in research and related activities relevant to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Services Subcommittee of the Epidemiologic and Services Research Review Committee, NIMH.

Date and Time: February 24–26: 9:00 a.m.

Place: Bay Harbor Inn, 7700 Courtney Campbell Causeway, Tampa, Florida 33607

Status of Meeting: Open—February 24–26: 9:00 a.m.; Closed—Otherwise.

Contact: Gloria Yockelson Room 9C14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1367.

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Neuroscience and Behavior Subcommittee of the Alcohol biomedical Research Review Committee, NIAAA.

Date and Time: February 25–27: 9:00 a.m.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Status of Meeting: Open—February 25: 9:00–11:00 a.m.; Closed—Otherwise.

Contact: Samar Zakhari, Room 16C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6106.

Purpose: The subcommittee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Criminal and Violent Behavior Research Review Committee, NIMH.

Date and Time: February 25–27: 9:15 a.m.

Place: Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

Status of Meeting: Open—February 25: 9:15–10:30 a.m.; Closed—Otherwise.

Contact: Peg Lyons, Room 9C18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3857.

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, cooperative agreements, and research and development contracts, as they relate to the mental health aspects of criminal, delinquent, and antisocial behavior; individual violent behavior; sexual assault; and law-mental health interactions related to these areas, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Prevention and Epidemiology Subcommittee of the Alcohol Psychosocial Research Review Committee, NIAAA.

Date and Time: February 25–27: 9:00 a.m.

Place: Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, Maryland 20857.

Status of Meeting: Open—February 25: 9:00–10:30 a.m.; Closed—Otherwise.

Contact: Mary Ganikos, Room 16C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6106.

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Psychopathology and Clinical Biology Research Review Committee, NIMH.

Date and Time: February 25–27: 9:00 a.m.

Place: The Canterbury Hotel, 1733 N Street NW., Washington, DC 20036.

Status of Meeting: Open—February 25: 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Emilie Embrey, Room 9C08, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1340.

Purpose: The committee is charge with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training activities in the areas of clinical psychopathology and clinical biology as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Basic Behavioral Processes Research Review Committee.

Date and Time: February 26–27: 9:00 a.m.

Place: Holiday Inn, Georgetown, 2101 Wisconsin Avenue NW., Washington, DC 20007

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Status of Meeting: Open—February 26: 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Shirley Maltz, Room 9C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3936

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and training activities related to experiments and physiological psychology and comparative behavior, with recommendations to the National Advisory Mental Council for final review.

Committee Name: Aging Subcommittee of the Life Course and Prevention Research Review Committee, NIMH

Date and Time: February 26–27: 9:00 a.m.

Place: Sheraton Washington Hotel, 2660 Woodley Road, NW., Washington, DC 20008

Status of Meeting: Open—February 26: 9:00–9:30 a.m.; Closed—Otherwise.

Contact: Jean Byrne, Room 9C18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3857

Purpose: The subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, cooperative agreements, and research and development contracts, as they relate to mental health, in the fields of child, family, and aging, with recommendations to the National Advisory Mental Council for final review.

Committee Name: Mental Health Behavioral Sciences Research Review Committee.

Date and Time: February 26–28: 9:00 a.m.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814

Status of Meeting: Open—February 26: 9:00–10:00 a.m.; Closed—Otherwise.

Contact: Naomi Lichtenberg, Room 9C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3936

Purpose: The committee is charged with the initial review of applications for assistance from the National Institution of Mental Health for support of research and/or research training activities relating to behavioral science areas relevant to mental health and makes recommendations to the National Advisory Mental Council for final review.

Substantive information may be obtained from the contract persons listed above. Summaries of the meetings and rosters of committee members may be obtained as follows: NIAAA: Ms. Diana Widner, Committee Management Officer, Room 16C20 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4375. NIDA: Ms. Mary Kielkopf, Committee Management Officer, Room 10–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1644. NIMH: Ms. Joanna Kieffer, Committee Management Officer, Room 9–95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

This **Federal Register** notice is late due to inclement weather conditions.

Dated: January 21, 1987.

Brenda L. Williamson,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 87–1898 Filed 1–30–87; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

National Institute for Occupational Safety and Health; Grants for Education Programs in Occupational Safety and Health; Availability of Funds for Fiscal Year 1987

The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), announces the availability of funds in Fiscal Year 1987 for training grants in occupational safety and health as authorized by section 21(a)(1) of the Occupational Safety and Hath Act of 1970 (29 U.S.C. 670(a)(1)). Regulations applicable to this program are in Part 86, "Grants for Education Programs in Occupational Safety and Health," of Title 42, Code of Federal Regulations (42 CFR Part 86). The objective of this grant program is to award funds to eligible institutions or agencies to pay part or all of the costs of the combination of long- and short-term training activities in occupational safety and health.

Funds in the amount of approximately $7,472,000 will be available in Fiscal Year 1987. Of that amount $6,612,000 will be awarded to 14 new, renewal, and continuation Educational Resource Center (ERC) training grants ranging from approximately $300,000 to $700,000 with the average award being $500,000; to award approximately 25 new, renewal, or continuation long-term training grants ranging from approximately $10,000 to $150,000 with the average award being $50,000; and to conduct the peer review and evaluations of all new, competing renewal, and supplemental applications received. The President's FY 1988 budget assumes that these activities will be supported progressively from non-federal funding sources beginning in FY 1987. Full funding from non-federal sources is projected for FY 1990. Project periods for applications should be consistent with the President's FY 1988 budget.

In addition $860,000 will be awarded to the Educational Resource Centers (ERC's) to support research training programs. These funds were appropriated to expand the mission of the ERC's to include research and research training. The research training initiative was described in the recent ERC Program Announcement published in the **Federal Register** on September 17, 1986 (51 FR 32963). Program support is available for faculty, staff, student support, and other resources to train teachers and researchers in the various occupational safety and health disciplines. The support for research training programs will range from approximately $50,000 to $150,000 for each ERC with the average award being $80,000. The policies regarding project periods and non-federal funding sources also apply to these activities.

FOR FURTHER INFORMATION CONTACT:

Business

Nancy C. Bridger, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE, Room 321, Atlanta, Georgia 30305. Telephone: (404) 262–6575.

Technical

David Thelen, Training Grant Coordinator, Division of Training and Manpower Development, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226. Telephone: (513) 533–8241.

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

(This program is described in the Catalog of Federal Domestic Assistance Program No. 13.263, Occupational Safety and Health Training Grants)

Dated: January 23, 1987.

L.W. Sparks,

Executive Officer, National Institute for Occupational Safety and Health.

[FR Doc. 87–1969 Filed 1–30–87; 8:45 am]

BILLING CODE 4160–19–M

National Institute for Occupational Safety and Health; Long-Term Training Project Grants in Occupational Safety and Health Program Announcement

I. Introduction

This program announcement provides information about the long-term training project grants administered by the National Institute for Occupational Safety and Health, Centers for Disease Control.

II. Authority

Grants for occupational safety and health training are authorized under the Occupational Safety and Health Act of 1970, (29 U.S.C. 670(a)). Program regulations applicable to these grants are contained in Part 86, Subpart B of Title 42, Code of Federal Regulations, Occupational Safety and Health Training Grants.

III. Eligible Applicants

Any public or private educational or training agency or institution located in a State is eligible to apply for a grant.

IV. Objective

These grants are available for the establishment, strengthening, or expansion of graduate, undergraduate, and special training programs in occupational safety and health areas.

The awards are normally for training programs of 1 academic year. They are intended to augment the scope, enrollment, and quality of training programs rather than to replace funds already available for current operations. The types of training currently eligible for support are:

1. Graduate training for practice, teaching, and research careers in occupational safety and health. Priority will be given to programs producing graduates in areas (i.e., disciplines such as occupational health nursing) of greatest occupational safety and health need.

2. Undergraduate and other pre-baccalaureate training providing trainees with capabilities for positions in occupational safety and health professions.

3. Special technical or other programs for training of occupational safety and health technicians or specialists.

4. Special programs for development of occupational safety and health training curricula and educational materials, including mechanisms for effectiveness testing and implementation.

The President's FY 1988 budget assumes that these activities will be supported progressively from non-federal funding sources beginning in FY 1987. Full funding from non-federal sources is projected by FY 1990.

V. Review Procedures

In reviewing applications, consideration will be given to:

1. The need for training in the program area outlined by the application. This should include documentation of ability and a plan for student recruitment, projected enrollment, job opportunities, regional/national needs both in quality and quantity, and similar programs, if any, within the geographic area.

2. The potential contribution of the project toward meeting the needs for graduate or specialized training in occupational safety and health.

3. Curriculum content and design which should include formalized program objectives, minimal course content to achieve certificate or degree, course sequence, related courses open to students, time devoted to lecture, laboratory and field experience, nature and the interrelationship of these educational approaches.

4. Previous records of training in this or related areas, including placement of graduates.

5. Methods proposed to evaluate effectiveness of the training.

6. The degree of institutional commitment: Is grant support necessary for program initiation or continuation? Will support gradually be assumed? Is there related instruction that will go on with or without the grant?

7. Adequacy of facilities (classrooms, laboratories, library services, books, and journal holdings relevant to the program, and access to appropriate occupational settings).

8. The competence, experience, training, time commitment to the program and availability of faculty to advise students; faculty/student ratio; and teaching loads of the program director and teaching faculty in relation to the type and scope of training involved.

9. Admission Requirements: Student selection standards and procedures, student performance standards and student counseling services.

10. Advisory Committee (if established): Membership, industries and labor groups represented; how often they meet; whom they advise, role in designing curriculum and establishing program need.

VI. Trainee Support

The normal tuition and fees of the institution, stipends, and funds for travel which is a part of the training may be requested for trainees. Stipend ceiling levels for full-time predoctoral and postdoctoral trainees are provided in accordance with the Public Health Service Policy Statement. Postdoctoral trainee stipend ceilings are based on the number of years of relevant experience. Years of relevant experience is defined as experience earned *after* a doctoral degree is obtained. No allowance is provided for dependents.

VII. Application Procedures

New, competing renewal, or supplemental applications should be submitted on the Training Grant Application Form PHS 6025–1; PHS 6025–2 should be used for continuation applications. The forms may be obtained from: Centers for Disease Control, Procurement and Grants Office, 255 East Paces Ferry Road, NE., Room 321, Atlanta, GA 30305.

The original and six (6) copies of new, competing renewal, or supplemental applications should be submitted to: Division of Research Grants, National Institutes of Health, Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20816.

These applications should be clearly identified as an application for an Occupational Safety and Health Long-Term Training Project Grant. Submission schedule is as follows:

New/Renewal & Supplemental Receipt Dates

February 1, 1987
June 1, 1987
October 1, 1987

Applications not received by a designated receipt date will be held for review in the next cycle.

An original and two (2) copies of non-competing continuation applications should be submitted to: Centers for Disease Control, Grants Management Branch, Procurement and Grants Office, 255 East Paces Ferry Road, NE., Room 321, Atlanta, GA 30305.

FOR FURTHER INFORMATION CONTACT:

Business

Nancy C. Bridger, Grants Management, Specialist, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, GA 30305, Telephone: 404–262–6575.

Technical:

David S. Thelen, Training Grants Coordinator, Division of Training and Manpower Development, National Institute for Occupational Safety and Health, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, OH 45226, Telephone: 513–533–8241.

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

This program is described in the Catalog of Federal Domestic Assistance Program No. 13.263, Occupational Safety and Health Training Grants.

Dated: January 27, 1987.

L.W. Sparks,

Executive Officer, National Institute for Occupational Safety and Health.

[FR Doc. 87–1970 Filed 1–30–87; 8:45 am]

BILLING CODE 4160–19–M

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-020-07-4310-33: GP7-093]

Oregon; Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice: Burns district advisory council meeting.

SUMMARY: Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act of 1976, that a meeting of the Burns District Advisory Council will be held on March 6, 1987, at 9:00 Pacific Standard Time in the Circuit Courtroom of the Harney County Courthouse in Burns, Oregon.

The agenda for the meeting will include: (1) An update on the Hammond Land Exchange; (2) The Andrews Land Use Plan Amendment for Land Tenure Adjustments; (3) The Drewsey/Riley Resource Management Plan; (4) Update on the Harney County Emergency Flood Relief Program; (5) Update on the Drewsey Management Framework Plan Amendment; (6) Winter Sports Use on Steens Mountain; (7) Reorganization of BLM in Oregon; (8) Update on the Alvord Allotment Proposed Grazing Increase and; (9) Other Miscellaneous Business.

The meeting is open to the public. Interested persons may make oral statements to the Council at the end of the meeting or file written statements for the Council's consideration. Anyone desiring to make an oral statement must notify the District Manager, Bureau of Land Management, 74 South Alvord, Burns, Oregon 97720, by February 23, 1987. A per-person time limit may be established by the District Manager, depending on the number of persons wanting to address the Council.

Summary minutes of the Council meeting will be available for public inspection and duplication within 30 days following the meeting.

DATE: March 6, 1987 at 9:00 a.m. (Pacific Standard Time).

ADDRESS: The meeting will take place in the Circuit Courtroom of the Harney County Courthouse in Burns, Oregon.

FOR FURTHER INFORMATION CONTACT: Joshua L. Warburton, Burns District Office, 74 South Alvord, Burns, Oregon 97720—Telephone (503) 573–5241.

Dated: January 22, 1987.

Joshua L. Warburton,

Burns District Manager.

[FR Doc. 87–1922 Filed 1–30–87; 8:45 am]

BILLING CODE 4310–33–M

[OR-020-07-4321-10: GP7-033]

Oregon; Wild Horse Gathering Schedule Meeting Notice

AGENCY: Bureau of Land Management, Interior.

ACTION: Burns District Office: Statewide wild horse gathering schedule public meeting.

SUMMARY: In accordance with Pub. L. 92–195, this notice sets forth the public meeting date to discuss the use of helicopters in gathering wild horses and the proposed gathering schedule in Oregon for the remainder of FY 87 and 88.

DATE: March 9, 1987 3:00 P.M. to 4:30 P.M.

ADDRESS: The meeting will take place at the BLM Burns District Office in Burns, Oregon.

FOR FURTHER INFORMATION CONTACT: Joshua L. Warburton, District Manager, Burns District, Bureau of Land Management, 74 South Alvord, Burns, Oregon 97720—Telephone (503) 573–5241.

SUPPLEMENTARY INFORMATION: The use of helicopters to gather wild horses throughout southeastern Oregon in Fiscal Year 1987 and 1988 will be discussed along with other aspects of the program and adoption process. Information cocerning the gathering of the following wild horse herds will be presented at the meeting: Sage Hen Allotment, Gouldin Allotment, Warm Springs, Stinkingwater, South Steens, Riddle Mountain, Kiger, Egli Ridge, Coyote Gap, Hog Creek, Basque, Pot Holes, Jackies Butte, Sand Springs, and Beatty Butte. The total number of horses expected to be gathered will be between 1,250 and 1,565 depending on the availability of funds and the capability of the Burns District to process and adopt out the horses gathered.

This meeting is open to the public. Persons interested in making an oral statement at this meeting are asked to notify the District Manager, Burns District Office, 74 South Alvord, Burns, Oregon 97720 by March 2, 1987. Written statements must be received by this date.

Summary minutes of the meeting will be available for public inspection and duplication within 30 days following the meeting.

Dated: January 15, 1987

Joshua L. Warburton,

District Manager.

[FR Doc. 87–1923 Filed 1–30–87; 8:45 am]

BILLING CODE 4310–33–M

[AZ-050-07-4212-11; A-19132]

Realty Action; Lease or Conveyance of Public Lands in Mohave County, AZ

The following described public lands were a portion of the lands classified and leased in 1974 to Mohave County. The purpose of this action is to patent and convey these lands to the State of Arizona through the Adjutant General under the Recreation and Public Purposes Act as amended (43 U.S.C. 869 et. seq.):

Gila and Salt River Meridian, AZ

T. 13 N., R. 19 W.
Sec. 20, NW¼SE¼, containing 40 acres.

The State of Arizona, through the Adjutant General, has expressed an interest in the above described land for construction of a permanent National Guard Armory.

These lands are not required for Federal purposes. Conveyance of these lands is consistent with the Bureau's planning for this area and would be in the public interest.

The conveyance, when issued, will be subject to the provisions of the Recreation and Public Purposes Act, applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. All mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior.

In the event of noncompliance, title to the land shall revert to the United States.

Publication of this notice in the **Federal Register** segregates these public lands from appropriation under any public land laws, including the general mining laws. The segregative effect will end upon issuance of the patent.

For a period of 45 days from the date of publication of this Notice, interested parties may submit comments to the District Manager, Yuma, Arizona 85364. Any objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior, effective 90 days from the date

of publication in the **Federal Register.** Additional information may be obtained from the Havasu Resource Area, 602–855–8017.

Dated: January 23, 1987.

Ferne M. Blair,

Acting District Manager.

[FR Doc. 87–1924 Filed 1–30–87; 8:45 am]

BILLING CODE 4310–32–M

[CA-940-07-5410-10-ZBHE; CA-883, et al]

California; Conveyance of Mineral Interest

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action-conveyance of federally reserved mineral interest.

SUMMARY: The private lands described in this notice have been found suitable for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interest will be conveyed in whole or in part upon favorable mineral examination.

Serial No.	Legal description	Acres	County	Mineral reservation
CA-19668	T. 17 S., R. 7 E., MD Mer: Sec. 15, SE¼; Sec. 22, N½NE¼, S½NW¼, within, W½SW¼, within, SE¼SW¼, SW¼SE¼.	531.75	San Diego	100% all min
CA-8883	T. 27 S., R. 15 E., MD Mer: Sec. 27, SE¼; Sec. 34, W½NE¼, E½NW¼	320.0	Kern	100% all min
CA-17684	T. 4 S., R. 16 E., MD Mer: Sec. 25, lots 1–3, within, Sec. 25, NE¼NW¼, within	81.86	Mariposa	100% all min
CA-19701	T. 9 S., R. 21 E., MD Mer: Sec. 13, W½SW¼; Sec. 14, SE¼NW¼, NW¼SW¼, NW¼NE¼, S½NE¼, NW¼SE¼, SE¼SE¼.	360.0	Maders	100% all min
CA-19801	T. 11 N., R. 6 W., SB Mer: Sec. 30, MS 6638	1.0	San Bernardino	100% all min
CA-19695	T. 26 S., R. 34 E., MD Mer: Sec. 30, lot 1, within; Sec. 30, S½NW¼, within	1.0	Kern	100% all min
CA-19822	T. 2 S., R. 13 W., SB Mer: Sec. 4, Lot 3, 4	4.0	Los Angeles	100% oil & gas

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

Upon publication of this notice of realty action in the **Federal Register** as provided in 43 CFR 2720.1-(b), the mineral interests owned by the United States in the private land covered by the application shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance to such mineral interest, upon final rejection of the application or two years from the date of filing of the application, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hoefler, Bureau of Land Management, California State Office, 2800 Cottage Way, Room E–2841, Federal Office Building, Sacramento, CA 95825, 916–978–4815.

Dated: January 23, 1987.

Nancy J. Alex,

Chief, Lands Section Branch of Adjudication and Records.

[FR Doc. 87–1925 Filed 1–30–87; 8:45 am]

BILLING CODE 4310–40–M

[OR 32919; OR-080-07-4212-13; GP7-095]

Realty Action Proposed Exchange, Amended; Oregon

January 23, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

This notice amends that notice of realty action published in the **Federal Register** on May 22, 1986 (FR Doc. 86–11494).

In addition to those lands and interest in lands listed in the May 22, 1986, notice, the United States will acquire the following described lands from Willamette Industries, Inc.:

Willamette Meridian, OR

T. 12 S., R. 3 E.,
Sec. 18, N½NE¼;
T. 2 S., R. 5 W.,
Sec. 9, W½NW¼NE¼, NW¼SE¼NE¼, S½SE¼NW¼, NE¼SE¼.

Containing 80.00 acres in Linn County and 90.00 acres in Yamhill County.

Melvin E. Chase,

Acting District Manager.

[FR Doc. 87–1926 Filed 1–30–87; 8:45 am]

BILLING CODE 4310–33–M

[WY-040-06-4212-11; W96238]

Realty Action; Sweetwater County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action W–96238, recreation and public purposes classification and application for lease of public lands in Sweetwater County, Wyoming.

SUMMARY: The following described public lands near the communities of Eden and Farson, Wyoming, have examined and indentified as suitable for lease for sanitary landfill purposes. The lands will be classified for lease under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.).

Sixth Principal Meridian

T. 25 N., R. 106 W.,
Section 34: S½NE¼.
The area described contains 80 acres.

DATES: Comments must be submitted on or before March 19, 1987. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the lands described in this notice will become effective April 3, 1987.

ADDRESSES: Submit comments in writing to the Area Manager, Green River Resource Area, Box 1170, Rock Springs, Wyoming 82902.

FOR FURTHER INFORMATION CONTACT: Sally Haverly (Realty Specialist), 307–362–6422.

SUPPLEMENTAL INFORMATION: The Eden Valley Solid Waste Disposal District intends to use the land for a sanitary landfill. The lands are physically suited to the proposed use. The proposed use would be in the public interest and is in conformance with the Bureau's planning for the lands involved.

A lease issued under this notice reserve to the United States all mineral deposits in said lands, together with the right to mine and remove the same under applicable laws and regulations. Such a lease will also be subject to the provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior. Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all appropriations except as to applications under the mineral leasing laws and the Recreation and Public Purpose Act.

BEST COPY AVAILABLE

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The lease will have no impact to any grazing lease permittees.

Sally J. Haverly,

Acting Area Manager.

[FR Doc. 87-1927 Filed 1-30-87; 8:45 am]

BILLING CODE 4310-22-M

[NV-943-07-4220-10; N-19622]

Legal Description of Bravo 20 Bombing Range Withdrawal; Nevada

January 16, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice provides official publication of the legal description of the Department of the Navy's Bravo 20 Bombing Range Withdrawal in Nevada as required by secretary 2(a) of Pub. L. 99-606 enacted November 6, 1986.

EFFECTIVE DATE: November 6, 1986.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Bureau of Land Management, Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, (702) 784-5481.

SUPPLEMENTARY INFORMATION: The legal description of the public land withdrawal for the Bravo 20 Bombing Range effected by Pub. L. 99-606 is as follows:

Mount Diablo Meridian, NV

T. 23 N., R. 32 E.,
secs. 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30.
T. 24 N., R. 32 E.,
secs. 20, 22, 24, 28, 28, 30, 32, 34, 36.
T. 23 N., R. 33 E.,
secs. 6, 8, 18, 20, 30;
sec. 17 SE¼;
sec. 19, S½.
T. 24 N., R. 33 E.,
secs. 20, 30, 32.

The area described aggregates approximately 21,600 acres in Churchill County.

A copy of the legal description and the map depicting the involved lands are on file for public inspection in the following offices:

Director (322), Bureau of Land Management, Room 3643, Interior Bldg., 18th and C Streets, NW., Washington, DC 20240

State Director, Bureau of Land Management, Nevada State Office, P.O. box 12000, 850 Harvard Way, Reno, Nevada 89520

Bureau of Land Management, Carson City District Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89701

Office of the Secretary, Department of Defense, The Pentagon, Washington, DC 20301-1000

Commander, Naval Air Station, Fallon, NV 89406

Commanding Officer, Western Division, Naval Facilities Engineering Command, P.O. Box 727, San Bruno, CA 94066-0720

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 87-1928 Filed 1-30-87; 8:45 am]

BILLING CODE 4310-HC-M

[ORE-05433, ORE-05555, OR-20572, OR-943-07-4220-11; GPO7-086]

Proposed Continuation of Withdrawals; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration proposes that all or portions of 3 separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed to surface entry and mining and be opened to mineral leasing subject to FAA concurrence.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208 (Telephone 503-231-6905).

The Federal Aviation Administration proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The following described lands and projects are involved:

1. ORE 05433, Bureau of Land Management Order of 6-14-1957, Klamath Falls Air Navigation Site. 160 Acres. Located in Klamath County, 10 miles southeast of Klamath Falls. T. 40 S., R. 10 E., W.M. Secs. 9 and 10.

2. ORE 05555, Bureau of Land Management Order of 7-12-1957, Horton Air Navigation Site. 111 Acres. Located in Lane County, 25 miles northwest of Eugene. T. 15 S., R. 7 W., W.M., Sec. 7.

3. OR 20572, Bureau of Land Management Order of 8-18-1950, Medford Air Navigation Site. 80 Acres. Located in Jackson County, 12 miles north of Medford. T. 35 S., R. 2 W., W.M., Secs. 34 and 35.

The withdrawals currently segregative the lands from operation of the public lands laws generally, including the mining and mineral leasing laws. The Federal Aviation Administration requests no changes in the purpose or segregate effect of the withdrawals except that the lands be opened to applications and offers under the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Dated: January 21, 1987.

Leland D. Morrison,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-1929 Filed 1-30-87; 8:45 am]

BILLING CODE 4310-33-M

[OR-22247: OR-943-07-4220-11: GP-07-061]

Oregon; Conveyance of Public Land: Order Providing for Opening of Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 3,139.16 acres of public lands out of Federal ownership. This action will also open 3,345.60 acres of reconveyed lands to surface entry, mining and mineral leasing.

EFFECTIVE DATE: March 9, 1987.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (Telephone 503-231-6905).

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 3,139.16 acres of lands in Harney County, Oregon, from Federal to private ownership.

2. In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

T. 24 S., R. 24 R.,
Sec. 2, E½SW¼ and W½SE¼;
Sec. 11, NE¼, NE¼NW¼, and SE¼SE¼;
Sec. 15, NW¼NE¼;
Sec. 24, SE¼NW¼.
T. 23 S., R. 25 E.,
Sec. 31, SW¼NE¼;
Sec. 32, NE¼SE;
Sec. 33, N½SW¼ and NW¼SE¼.
T. 24 S., R. 27 E.,
Sec. 7, all that portion lying westerly of the highway right-of-way, as more particularly identified and described upon the official records of the Bureau of Land Management, Oregon State Office;
Sec. 17;
Sec. 19, lots 1, 2, 3, and 4, E½W½, and E½;
Sec. 21;
Sec. 25, NE¼, N½NW¼, SW¼, excepting therefrom a tract of land in the SE¼ SW¼ described as follows: Beginning at the southeast corner of the SW¼ of said section 25; thence west 208.7 feet; thence north 417.4 feet; thence east 208.7 feet; thence south 417.4 feet to the place of beginning.
T. 24 S., R. 28 E.,
Sec. 19, SE¼NW¼.

The areas described aggregate approximately 3,345.60 acres in Harney County.

3. At 8:30 a.m., on March 9, 1987, the lands described in paragraph 2 will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on March 9, 1987, will be considered as simultaneously filed at the time. Those received thereafter will be considered in the order of filing.

4. At 8:30 a.m., on March 9, 1987, the lands described in paragraph 2 will be open to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. At 8:30 a.m., on March 9, 1987, the lands described in paragraph 2 will be open to applications and offers under the mineral leasing laws.

Dated: January 21, 1987.

L. D. Morrison,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-2014 Filed 1-30-87; 8:45 am]

BILLING CODE 4310-33-M

Bureau of Mines

Divestment of Stored Drill Core Holdings

AGENCY: Bureau of Mines, Interior.

ACTION: Notice of divestment of stored drill core holdings.

SUMMARY: The Director of the Bureau of Mines proposes to begin divestment proceedings on hard rock drill core stored on Federal property adjacent to the Mining Research Center in Fort Snelling (Minneapolis, MN).

DATES: Interested parties should contact the official listed below on or before March 4, 1987.

FOR FURTHER INFORMATION CONTACT: Bureau of Mines, Twin Cities Research Center, James J. Olson, Deputy Research Director, 5629 Minnehaha Avenue South, Minneapolis, MN 55417 (612) 725-4560.

SUPPLEMENTARY INFORMATION: The Bureau of Mines intends to begin divestment of hard rock drill core stored on Federal property adjacent to its Twin Cities Mining Research Center in Fort Snelling (Minneapolis, MN). The amount of core is approximately 1.1 million feet, and it is stored in either wooden or metal trays. The total footage is composed of roughly 790,000 feet from States east of the Mississippi River and 310,000 feet from States west of the river.

Much of the core was acquired from extensive exploratory drilling under the Strategic and Critical Mineral Investigations Program during World War II. Analyses were conducted on the core and the mineral potential summarized in a series of Bureau of Mines Reports of Investigations and other publications. Following this, the Bureau moved to catalog and store the core, eventually consolidating holdings at repositories located in Minneapolis and Denver. Some additional core was provided by private companies, other Government agencies, and county offices from several States. From that time on and into the early 1960's, the Bureau continued to accept core on a case-by-case basis. In the 1970's, however, storage capacities were reached and core was no longer accepted.

During the 1970's core at the Minneapolis (Twin Cities) repository was recataloged and records updated to provide efficient public access. The Denver repository, however, was not improved to the same extent, and with need for the storage facility for other purposes, the Denver core was transferred to the Twin Cities repository in 1983. The Denver holdings are being held temporarily in an unsorted storage condition.

The likelihood of core divesture was accelerated when the Minnesota Department of Natural Resources (DNR) approached the Bureau with a request to transfer all core drilled in the State to its repository in northern Minnesota. Placement of the Bureau's collection together with other State holdings enhances the value of this core as a tool for mineral exploration. As a result, a memorandum of agreement was negotiated with the Minnesota DNR to transfer the Minnesota core (over 400,000 feet) on a long-term basis, and the transfer has been completed.

State Geologists from other States have been contracted to survey their interest in accepting core, and considerable interest was documented. As a next step, the Bureau proposes to divest itself of the remaining 1.1 million feet of core and eventually coordinate the transfer of ownership of the Minnesota core to the State DNR. Other Federal agencies that may have a programmatic interest in acquiring the core, or that have contributed core in the past and wish to express a position, should contact the Bureau.

Once the Bureau determines that no Federal agency is interested in acquiring this core, it will proceed with divestment. The Bureau plans to use appropriate Federal information management procedures for divestment with the goal of placing the Bureau-drilled core with the respective State Geological Surveys or appropriate natural resources branches. Other owners of core presently stored in the Bureau's repositories would then be asked if they agree to give their core to the appropriate State or if they want to retain possession of the core and if the State were agreeable, to transfer their core on a loan basis while retaining ownership. Core not claimed by anyone will be discarded.

Robert C. Horton

Director.

[FR Doc. 87-1930 Filed 1-30-87; 8:45 am]

BILLING CODE 4310-53-M

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Minerals Management Service

Royalty Management Advisory Committee; Meeting

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of meeting.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that the Royalty Management Advisory Committee will hold a meeting in Denver, Colorado, at the location and on the dates indicated below to review a report of the PAAS Onshore Conversion Working Panel. The Advisory Committee will also review proposed oil, gas, and coal product valuation regulations. The MMS published the proposed oil and coal product valuation regulations in the **Federal Register** on January 15, 1987. The proposed gas regulations are scheduled for publication in mid-February 1987. In addition, the Advisory Committee will review MMS's policy pertaining to adjustments reported by payors on the monthly Report of Sales and Royalty Remittance (Form MMS–2014).

The Advisory Committee will review the panel report, proposed rulemakings, and MMS's adjustment policy. It will make recommendations to the Secretary of the Interior, as appropriate.

Location and dates: The "PAAS Onshore Conversion", "Valuation Regulations", and "Adjustment Policy" sessions of the Royalty Management Advisory Committee will be held at the Sheraton Denver Tech Center, 4900 Denver Tech Center Parkway, Denver, Colorado, on March 30, 31, and April 1, 1987, from 8 a.m. to 5 p.m. each day, except that the meeting on March 30 will start at 9 a.m.

These meetings will be open to the public. Public attendance may be limited by the space available. Questions and answers from the public will be addressed at a designated time during each day's meeting. Written statements should be submitted by March 15, 1987, to the address listed below. Minutes of this meeting will be available for public inspection and copying by May 29, 1987, at the same address.

FOR FURTHER INFORMATION CONTACT: Vernon B. Ingraham, Minerals Management Service, Royalty Management Program, Office of External Affairs, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 660, Denver, Colorado 80225, telephone number (303) 231–3360, (FTS) 326–3360.

SUPPLEMENTARY INFORMATION: The PAAS Onshore Conversion Working Panel was established by the Royalty Management Advisory Committee. The panel is composed of both Advisory Committee members and non-Committee members and was established to provide the Advisory Committee with analysis of specific issues and proposed recommendations. Panel recommendations will be reviewed by the Advisory Committee which will then decide what advice and recommendations to give to the Department of the Interior and MMS.

Dated: January 22, 1987.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 87–1955 Filed 1–30–87; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Intention To Negotiate Concession Contract; Buzzard Point Boatyard Corp.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Buzzard Point Boatyard Corporation, authorizing it to continue to provide marina and boating facilities and services for the public at Anacostia Park, National Capital Parks-East, Washington, DC, for a period of six (6) years from September 1, 1986 through August 31, 1992.

This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on August 31, 1986, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, National Capital Region, 1100 Ohio Drive SW., Washington, DC 20242, for information as to the requirements of the proposed contract.

Dated: July 21, 1986.

Editorial Note: This document was received at the office of the Federal Register January 28, 1987.

Robert Stanton,

Acting Regional Director, National Capital Region.

[FR Doc. 87–2010 Filed 1–30–87; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Coordinating Council; Meeting

The first quarterly meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention will be held in Washington, DC, on February 25, 1987. The meeting will take place in the Main Auditorium at the Department of Health and Human Services, Hubert Humphrey Building, 200 Independence Avenue, SW., from 9:30 a.m. to 12:00 p.m. The public is welcome to attend.

The agenda will include matters related to the coordination of the Federal effort with regard to the implementation of the Anti-Drug Abuse Act as its provisions apply to children and youth and the prevention of delinquency.

For further information, please contact Roberta Dorn, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 724–7655.

Dated: January 23, 1987.

Approved:

Verne L. Speirs,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 87–2004 Filed 1–30–87; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted on or before March 4, 1987.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202) 786–0233 and Ms. Judy Egan, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3208, Washington, DC 20503 (202) 395–6880.

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202) 786–0233 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category Revisions

Title: National Capital Arts and Cultural Affairs Program.

Form Number: 3136–0115.

Frequency of Collection: 1 per year from each respondent.

Respondents: Applicants for grants from the National Capital Arts and Cultural Affairs Program.

Use: To apply for grants.

Estimated Number of Respondents: 15 per year.

Estimated Hours for Respondents to Provide Information: 4 hours per respondent annually.

Susan Metts,

Assistant Chairman for Administration.

[FR Doc. 87–1931 Filed 1–30–87; 8:45 am]

BILLING CODE 7536–01–M

National Endowment for the Arts; Meeting; Literature Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Audience Development Section) to the National Council on the Arts will be held on February 19, 1987, from 9:00 a.m.–5:30 p.m.; on February 20, 1987, from 9:00 a.m.–5:30 p.m.; and on February 21, 1987, from 9:00 a.m.–1:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 21, 1987, from 12:00 p.m.–1:00 p.m. for a discussion of policy and guidelines.

The remaining sessions of this meeting on February 19, 1987, from 9:00 a.m.–5:30 p.m.; on February 20, 1987, from 9:00 a.m.–5:30 p.m.; and on February 21, 1987, from 9:00 a.m.–12:00 p.m. are for the purpose of application review in accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

January 27, 1987.

[FR Doc. 87–1932 Filed 1–30–87; 8:45 am]

BILLING CODE 7537–01–M

National Endowment on the Arts; Meeting; Museum Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Special Exhibitions Section Section) to the National Council on the Arts will be held on February 23–27, 1987, from 9:00 a.m.–5:30 p.m. in room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

January 27, 1987.

[FR Doc. 87–1933 Filed 1–30–87; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Music Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hearby given that a meeting of the Music Advisory Panel (Centers for New Music Resources/Services to Composers Section) to the National Couuncil on the Arts that will be held on February 18, 1987, from 9:00 a.m.–5:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public from 2:00–3:00 on a space available basis. The topics for discussion will include policy and guidelines.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

January 27, 1987.

[FR Doc. 87–1934 Filed 1–30–87; 8:45 am]

BILLING CODE 7537–01–M

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NUCLEAR REGULATORY COMMISSION

Financial Protection Requirements and Indemnity Agreements; Indemnification of Spent Reactor Fuel Stored at a Reactor Site Different Than the One Where it Was Generated

AGENCY: Nuclear Regulatory Commission.

ACTION: Exercise of discretionary statutory authority.

SUMMARY: The Commission has decided to exercise its discretionary statutory authority under the Price-Anderson Act and again extend Government indemnity to spent reactor fuel stored at a particular reactor site different than the one where it was generated. Absent this action by the Commission, this spent reactor fuel will not be covered by Government indemnity in the event of a nuclear incident at the site where this spent fuel will be stored and where the reactors involved have the same licensee.

FOR FURTHER INFORMATION CONTACT: Mr. Ira Dinitz, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–9884.

SUPPLEMENTARY INFORMATION: Most operating reactor licensees have increased, or are planning to increase, the capacity of their onsite spent fuel storage pools. In some instances where the capacity of the storage pools at the reactor site cannot be increased sufficiently to meet the licensee's needs, fuel storage may be sought at another location. One method of storing spent fuel away from the reactor from which it is discharged is to store it in the spent fuel pool of another of the same licensee's reactors but at a different site.

The Commission has received a request from Carolina Power and Light Company to authorize and indemnify this type of activity. The Carolina Power request is for Commission authorization permitting Carolina and its co-licensees at the Shearon Harris Station to store spent fuel discharged from the Brunswick and Robinson reactors at the Shearon Harris reactor. Carolina Power is seeking Price-Anderson indemnity protection for all such storage of spent fuel at the distant reactor location.

The Commission considered and approved similar requests by Carolina Power and Light Company in August 1977, and Duke Power Company in November 1982, July 1985 and April 1986. (See **Federal Register** Notices 42 FR 44615, 46 FR 55024, 50 FR 30415 and 51 FR 12664).

Under the Price-Anderson Act (section 170 of the Atomic Energy Act of 1954, as amended (the Act)), financial protection and government indemnity are mandatory for production and utilization facilities, such as reactors, licensed under section 103 and section 104 of the Act. This financial protection and indemnity covers the "licensed activity" which encompasses not only possession and operation of the reactor facility itself but also certain ancillary activities including (1) possession of the new fuel (containing special nuclear material) being stored on-site for use in the reactor and (2) on-site storage of spent fuel following its irradiation at that reactor. Mandatory indemnification does not extend to the fuel when it is stored another reactor site.

Possession of spent fuel away from the facility where it was generated, i.e., at a location where it is not used in connection with the operation of the facility, is not a part of the ancillary activity of possession and operation of the facility where this spent fuel is to be stored. As a result, after being transferred from the reactor site where it was generated to some other site, possession of this spent fuel must be licensed under other provisions of the Act which authorize licenses for possession and use of the special nuclear and byproduct material and would not be subject to the mandatory indemnity requirement of the Act providing that the Commission require financial protection of and indemnify reactor (and other production and utilization facility) licensees.

Accordingly, no indemnity protection automatically would be afforded spent fuel stored away from the facility where it is produced or used. To indemnify this spent fuel, the Commission must require the licensee at whose facility the spent fuel will be stored to maintain financial protection and to be indemnified by exercising its discretionary authority under section 170 of the Act. For the purposes of Price-Anderson coverage, this exercise of discretionary authority would result in treating spent fuel produced at one reactor site but stored at a different site the same as spent fuel stored at the site of the reactor where it was produced. Thus, irradiated fuel generated by a reactor at one site whether stored by itself in the spent fuel pool of a reactor at a different site or commingled with the second reactor's irradiated fuel in that reactor's spent fuel pool would be covered by financial protection and indemnity.

The NRC believes that it would not be desirable to have a situation where spent fuel generated at one reactor but stored in the spent fuel pool of a second reactor at a different site would be unindemnified while the spent fuel produced by the second reactor and stored at the same site would be indemnified. If indemnity coverage were not extended to the spent fuel generated at the first reactor but stored at the site of a second reactor and if an accident involving the fuel storage pool at the second reactor were to occur, it would be virtually impossible to determine whether indemnified or unindemnified spent fuel caused the accident.

In view of the foregoing, the Commission has decided to exercise its discretionary authority under section 170 of the Atomic Energy Act of 1954, as amended, and will modify the indemnity agreement for the Shearon Harris facility to permit storage at Shearon Harris of fuel irradiated either at the Brunswick facility or at the Robinson facility. As required in 10 CFR 140.9, the Commission is publishing an amendment, which would redefine the term "the radioactive material" in Article I, paragraph 9 in the Shearon Harris Indemnity Agreement B–103, to read as follows:

> The radioactive material means source, special nuclear and byproduct material which (1) is used, was used or will be used in, or is irradiated, was irradiated or will be irradiated by the nuclear reactor licensed under NPF–63, or (2) was used in, or was irradiated in the nuclear reactors licensed under DPR–23, DPR–62, and DPR–71 and subsequently is transported to the site of the nuclear reactor licensed under NPF–63 for the purpose of storage, or (3) which is produced as the result of the operation of the nuclear reactor licensed under NPF–63.

This amendment relates to changes in an indemnity agreement incorporated into a 10 CFR Part 50 license. Accordingly, this amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(10)(i). Pursuant to 10 CFR 51.22(b), no environmental impact statement nor environmental assessment need be prepared in connection with the issuance of this amendment.

Authority: 5 U.S.C. 552; Pub. L. 83–703, 68 Stat. 919, as amended by Pub. L. 85–256, 71 Stat. 576, as amended (42 U.S.C. 2210).

Dated at Bethesda, Maryland, this 15th day of January 1987.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 87–1874 Filed 1–30–87; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Subcommittee on Standardization of Nuclear Facilities; Postponed Meeting

The **Federal Register** published on Friday, January 23, 1987 (52 FR 2632) contained notice of a meeting of the ACRS Subcommittee on Standardization of Nuclear Facilities to be held on Wednesday, February 11, 1987, 8:30 a.m., Room 1046, 1717 H Street, NW., Washington, DC. This meeting has been postponed until further notice.

Dated: January 28, 1987.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 87–1982 Filed 1–30–87; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on February 5–7, 1987, in Room 1046, 1717 H Street NW, Washington, DC. Notice of this meeting was published in the **Federal Register** on January 21, 1987.

Thursday, February 5, 1987

8:30 a.m.–8:40 a.m.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:40 a.m.–10:45 a.m.: Naval Reactors Training Facility (Closed)—Consider proposed operation of a training facility for naval nuclear propulsion plant personnel.

This session will be closed to discuss classified information.

11:00 a.m.–12:00 Noon: Advanced Reactors (Open)—Discuss use of established technology and standardization of DOE non-water cooled nuclear power plants.

1:00 p.m.–3:00 p.m.: NRC Safety Research Program (Open)—Discuss proposed ACRS report to the United States Congress regarding the proposed NRC Safety Research Program for FY 1988.

3:00 p.m.–4:30 p.m.: Quantitative Safety Goals (Open)—Discuss proposed NRC Staff plan for implementation of the NRC Policy Statement on Quantitative Safety Goals.

4:45 p.m.–5:30 p.m.: Radioactive Waste Management and Disposal (Open)—Briefing by NRC Staff regarding proposed ACRS activities in the regulation of radwaste management and disposal.

5:30 p.m.–6:15 p.m.: Standardized Nuclear Plants (Open)—Discuss proposed ACRS comments regarding improvements in standardized nuclear plants.

6:15 p.m.–6:45 p.m.: Containment Performance (Open)—Discuss proposed NRC Staff resolution of Generic Issue 61, SRV Discharge Line Break in the Airspace of Mark I and Mark II Suppression Pools, and other pool bypassing mechanisms.

Friday, February 6, 1987

8:30 a.m.–11:00 a.m.: Nuclear Facility Operating Experience (Open/Closed)—Discuss recent operating experience and events at nuclear power plants.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the facility being discussed.

11:15 a.m.–12:15 p.m.–2:00 p.m.: Surry Nuclear Power Station Unit 2 (Open)—Briefing and discussion regarding planned resolution of recent feedwater line failure at this facility.

2:00 p.m.–2:15 p.m.: Edwin I. Hatch Nuclear Plant—Briefing regarding AIT evaluation of recent incident in which spent-fuel cooling water was lost.

2:15 p.m.–2:30 p.m.: Future Activities (Open)—Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

2:30 p.m.–4:30 p.m.: NRC Reactor Safety Research Program (Open)—Discuss proposed ACRS report to the U.S. Congress regarding the proposed NRC Safety Research Program for FY 1988.

4:30 p.m.–6:30 p.m.: Quantitative Safety Goals (Open)—Discuss proposed NRC Staff implementation plan for the NRC Policy Statement on Quantitative Safety Goals.

Saturday, February 7, 1987

8:30 a.m.–11:00 a.m.: Preparation of ACRS Reports (Open/Closed)—Discuss proposed ACRS reports to the NRC and the U.S. Congress regarding items considered during this meeting. A proposed report on electrical surge protection in nuclear power plants will also be discussed.

Portions of this session will be closed as necessary to discuss Proprietary Information and Classified Information applicable to the matters being discussed.

11:15 a.m.–12:45 p.m.: Advanced Boiling Water Reactor (Open)—Discuss major issues associated with the scope of and basis for the licensing review of this facility.

1:45 p.m.–2:00 p.m.: Radioactive Waste Management and Control (Open)—Discuss proposed ACRS position/comments regarding the proposed ACRS role in the regulation of radioactive waste management and disposal.

2:00 p.m.–3:00 p.m.: ACRS Subcommittee Activity (Open/Closed)—Hear and discuss reports of designated ACRS subcommittee activities regarding safety related and regulatory activities of the NRC.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matter being discussed.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 20, 1986 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R.F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information that involves Proprietary Information (5 U.S.C. 552b(c)(4)) and classified information (5 U.S.C. 552b(c)(1)) applicable to the facility being discussed.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F.

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Fraley (telephone 202/634-3285), between 8:15 a.m. and 5:00 p.m.

Dated: January 27, 1987

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 87-1983 Filed 1-30-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co. and the Cleveland Electric Illuminating Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3 issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

The amendment would revise Technical Specification (TS) Sections 3.8.2.3, 4.8.2.3.1, 4.8.2.3.2, and 4.8.2.4.1 and the associated Basis Section 3/4.8 in accordance with the licensees' application for amendment dated January 21, 1987. These TS Sections relate to the D.C. electrical power distribution system during plant operation and when shutdown. The proposed revisions would (1) change certain nomenclature used in the TSs to the specific equipment designations used at Davis-Besse, and (2) revise the Surveillance Requirements for D.C. Distribution using the guidance of the model technical specifications for station batteries issued by the NRC on July 16, 1981. The NRC guidance was based upon Regulatory Guide 1.129, February 1978, and IEEE Standard 450-1980. The current Davis-Besse TS Surveillance Requirements are based on earlier revisions of these documents.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensees have evaluated the proposed changes to the TSs with respect to the three criteria given in 10 CFR 50.92 and have concluded that the proposed changes would not involve a significant hazards consideration as follows:

1. The accident conditions and assumptions are not affected by the proposed TS changes. The proposed TSs continue to meet the safety function of the Limiting Condition for Operation and Surveillance Requirements. Therefore, the changes would not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)).

2. No station equipment is modified by these changes and the station batteries and distribution system will continue to be tested and inspected to ensure the operability. Therefore, no new or different kind of accident from any previously analyzed is created. Therefore, the changes would not create the possibility of a new or different kind of accident from any previously analyzed (10 CFR 50.92(c)(2)).

3. The operability of the A.C. and D.C. power sources and associated distribution systems will continue to be demonstrated to ensure sufficient power is available to supply the safety-related equipment required for (1) the safe shutdown of the station, (2) the mitigation and control of accident conditions within the station, (3) the maintaining of the station in the shutdown or refueling condition for extended periods of time and (4) instrumentation and control capability for monitoring and maintaining the station's status. Therefore, the changes would not involve a significant reduction in the margin of safety (10 CFR 50.92(c)(3)).

The Commission agrees with the licensees' evaluation regarding the application of the criteria of 10 CFR 50.92, and proposes to determine that the proposed changes likely do not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland, from 8:15 a.m. to 5:00 p.m. Copies of the written comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 2, 1987, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for an amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i) through (v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

For the Nuclear Regulatory Commission.

Gordon E. Edison,

Acting Director, PWR Project Directorate No. 6, Division of PWR Licensing-B.

[FR Doc. 87-1981 Filed 1-30-87; 8:45 am]

BILLING CODE 7590-01-M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of Meeting.

SUMMARY: The Commission will hold a public meeting on February 12-13, 1987 in Room 800 of the Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC. The meetings will begin at 9:00 AM and 8:30 AM on the respective two days. The Commission was established by section 9305 of Pub. L. 99-272.

ADDRESS: The Commission's office in the Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20201 in Suite 7033. Its telephone number is 202/472-1364.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director for Management and External Relations, 202/472-1367.

SUPPLEMENTARY INFORMATION: The meeting will be devoted to completion of the Commission's annual report to Congress due March 1. The Commissioners will review a draft prepared by staff and make final decisions on recommendations. It will discuss its workplans for the next 6-12 months. If time permits, the Commission will hear background briefings on the Administration's proposal to pay radiologists, anesthesiologists and pathologists for services to Medicare inpatients on the basis of diagnostic related groups (DRGs).

Paul B. Ginsburg,

Executive Director.

[FR Doc. 87-1984 Filed 1-30-87; 8:45 am]

BILLING CODE 6820-SE-M

RAILROAD RETIREMENT BOARD

Actuarial Advisory Committee With Respect to the Railroad Retirement Accounts; Public Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that the Actuarial Advisory Committee will hold a meeting on February 24, 1987, at the office of the Chief Actuary of the U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, on the conduct of the 17th Actuarial Valuation of the Railroad Retirement Account. The agenda for this meeting will include the results of the recently completed age retirement, disability retirement, withdrawal, and active service mortality studies for the 17th Valuation, together with the recommendations of the Chief Actuary as to the retirement, withdrawal, and active service mortality assumptions to be used for the 17th Valuation.

The meeting will be open to the public. Persons wishing to submit written statements or make oral

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presentations should address their communications or notices to the RRB Actuarial Advisory Committee, c/o Chief Actuary, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

Dated: January 26, 1987.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 87-1935 Filed 1-30-87; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24024; File No. SR-OCC-86-11]

Self-Regulatory Organizations; Options Clearing Corp., Order Granting Approval of Proposed Rule Change

The Options Clearing Corporation ("OCC"), on May 13, 1986, filed with the Securities and Exchange Commission a proposed rule change (File No. SR-OCC-86-11) under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") that would revise OCC's By-Laws concerning adjustments to the terms of outstanding stock option contracts.[1] The Commission published notice of the proposal in the **Federal Register** on June 3, 1986.[2] No comments were received. This Order approves the proposal.

I. Description

The proposal would revise OCC's By-Laws, Article VI, Section 11, and would add several proposed Interpretations and Policies ("Interpretations"). The principal changes are discussed below.

Paragraph (a)

The proposal would expand the types of changes to underlying securities that might warrant adjustments to option contracts to include: (1) Distributions in the form of a cash dividend or reverse stock split; and (2) the merger, consolidation, dissolution, or liquidation of the issuer of an underlying security.

Paragraph (b)

The proposal would amend Section 11 to clarify that OCC's Securities Committee ("Committee") will make all OCC option contract adjustments.[3] The Committee would determine, in its sole discretion, whether to make adjustments and, if so, the amount of such adjustments.

The proposal would direct the Committee, in making adjustment decisions, to act in furtherance of the protection of investors and the public interest, and to apply such factors as: (1) Fairness to holders and writers of options; (2) maintenance of fair and orderly options markets; (3) consistency of the Committee's interpretations and practices; (4) efficiency of option exercise settlement procedures; and (5) coordination with other clearing agencies of the clearance and settlement of transactions in the underlying security. The paragraph also would authorize the Committee to adopt policy statements or interpretations concerning adjustment determinations.

Further, Paragraph (b) would designate the Committee's adjustment determinations as conclusive, binding on investors, and non-reviewable.[4] It would likewise designate the Committee's policy statements of interpretations as conclusive, binding on investors, and non-reviewable, subject only to Commission oversight.[5]

Paragraph (c)

The proposal generally would preclude adjustments for "ordinary" cash dividends or "ordinary" cash distributions. Proposed Interpretation .01 would define the term "ordinary" in this context to mean cash dividends and cash distributions of up to 10% of a security's market value. Cash dividends and cash distributions of more than 10% would require evaluation on a case-by-case basis as to whether they qualify as "extraordinary" and, if so, whether they require adjustment. The Committee would continue its current practice of adjusting option contracts for: (1) Stock distributions of underlying securities;[6] and (2) other events that change the property interests represented by underlying securities.[7]

Paragraphs (d)-(g)

Paragraphs (d) and (e) would provide for adjustments to an option contract in event of a stock dividend, stock distribution, or stock split involving the underlying security. The provisions would remain essentially unchanged by the proposal except that they would be changed from mandatory rules to "general" rules, thereby providing added flexibility.

Paragraph (f) also would remain essentially unchanged except that, as amended, it would grant the Committee specific authority to determine the value of "distributed properties," authority that by implication it already possesses. Paragraph (g) would grant the Committee discretionary adjustment authority concerning events affecting option contracts that are not otherwise specified in Section 11.

Paragraphs (h) and (i)

Paragraph (h) would specify that the "ex-dates" for options contracts would be the same as the "ex-dates" established for related underlying securities in the primary markets. Paragraph (i) would provide that, as a general rule: (1) All adjustments of an exercise price would be to the nearest ⅛ of a dollar and all adjustments to the unit of trading would be rounded down to eliminate any fraction; and (2) if the unit price were rounded down to eliminate a fraction, the adjusted exercise price would be further adjusted, to the nearest ⅛ of a dollar, to eliminate any diminution in the value of the option contract resulting from the elimination of the fraction.

Paragraph (j)

The proposal would grant the Committee overriding authority to make exceptions to the general adjustment rules set forth in Paragraphs (c) through (i) of section 11. The Committee, in considering such exceptions, would apply the standards governing adjustments as set forth in section 11(b).

Paragraph (k)

Proposed Paragraph (k) would supersede existing section 11(e), governing the structure of the Committee. It would authorize an inter-exchange standing committee (*i.e.*, the Securities Committee) composed of the Chairman of OCC and one representative (rather than the present two representatives) from each participating exchange.[8]

An *ad hoc* panel of the standing Committee would consist of two representatives (including one member of the standing Committee) from the exchange or exchanges that trade option contracts on the underlying security as well as the OCC Chairman or his designee. The actions of such a panel would constitute the actions of the Committee itself. The vote of a majority of voting members of either the Committee or of any adjustment panel would constitute, respectively, the determination of the Committee or a panel. Under current OCC rules, while panels may be used in formulating adjustment decisions, the panels themselves lack formal recognition, and therefore panel decisions require approval by the Committee before becoming final.

The proposal would authorize OCC's Chairman to appoint any other OCC officer to the Committee as his substitute. Moreover, unless subject to a conflict of interest,[9] any representative of an exchange could designate any other representative of such exchange to serve in his place for any meeting of the Committee, or adjustment panel thereunder, and any such designee would have the powers of the person designating him. The proposal would bar *ad hoc* panel members from participating in any decisions if they beneficially hold an option contract about which the panel must render an adjustment decision.

Interpretations

Proposed Interpretation .02 of Section 11 ordinarily would preclude adjustments designed to reflect the issuance of exercisable "poison pill rights." If the rights were triggered, the Committee then would review the matter, like any other distribution. Interpretation .03 would preclude making adjustments to reflect a tender offer or exchange offer. Interpretation .04 would preclude adjustments to reflect internal changes to a company's capital structure where the underlying security is not changed into another security, cash, or property. Interpretation .05 would require options adjustments to reflect the cash amount where an underlying security is converted into cash in a cash-out merger. Interpretation .06 would apply to corporate reorganization that result in a unit for unit exchange for securities in a resulting company. It ordinarily would require adjustments to options on the original company's underlying securities into a like number of units of the resulting company's securities.

II. OCC's Rationale

OCC believes that the proposal conforms to the purposes and requirements of sections 6(b)(5) and 17A of the Act. Generally, OCC believes that the proposal would further the maintenance of fair and orderly markets and the protection of investors in that it would: (1) Eliminate overly restrictive language presently applicable to adjustments, (2) permit more equitable adjustments in extraordinary situations, and (3) clarify the OCC By-Laws as to the authority and effects of the Committee's determinations. OCC further states that the proposal would provide the Committee with more discretion to deal with novel securities transactions and would codify certain existing adjustment practices.

OCC believes that the Committee, in considering option contract adjustments: (1) Must act promptly after the announcement of a transaction that affects the underlying security; (2) cannot always foresee how a transaction involving the underlying security ultimately will affect the price of the related option; and (3) cannot make adjustment decisions if its decisions may expose its members to significant liabilities.

OCC also believes that the Committee's adjustment determinations must be final because once OCC announces an adjustment decision, investors trade in reliance on that decision and subsequent changes to the decision could result in considerable investor confusion and financial losses. Although OCC believes its rules already provide finality for the Committee's adjustment decisions, OCC believes the proposed rules will make the finality of those decisions more explicit.[10]

OCC believes that it is desirable: (1) To authorize the Committee to adjust option contracts for extraordinary distributions or dividends, and (2) to eliminate the existing text that prohibits adjustments for cash dividends or cash distribution out of an issuer's "earnings and profits." OCC's reasoning is as follows: (1) Available records often do not disclose whether a distribution has come from an issuer's "earnings and profits;" (2) the concept of "earnings and profits" has no meaning when applied to some issuers, such as limited partnerships; and (3) the failure to adjust option contracts can lead to inappropriate results when applied to extraordinary distributions.

OCC believes that the proposal would introduce more flexibility into the adjustment process. OCC notes that the proposal would permit the Committee to make exceptions in appropriate cases and would place greater emphasis on decentralized adjustment panels. Apparently, most adjustment decisions already are the result of panel decisions.

III. Discussion

The Commission believes that the proposal would improve the framwork for adjustment decisions, provide an appropriate balance between the interests of holders and writers of options, and increase certainty in the adjustment process. Accordingly, the Commission believes that the proposal is consistent with the Act and should be approved.

The Commission recognizes that adjustments to an option contract may become necessary as a result of basic modification to the option's underlying security (*e.g.*, a stock split) or to the security's issuer (*e.g.*, a corporate merger). Without adjustments in such cases, an option, as a derivative security, might not, for example, bear the intended proportionate relationship to the total number of shares outstanding. Such a result could hinder efforts to maintain fair and orderly markets.

The proposal would improve the framework for adjustment decisions. The proposal would clarify that adjustment decisions will be made by the Securities Committee (through ad hoc panels), which would now be a standing committee vested with express authority to adopt interpretations and stated policies having general application to recurrent types of transactions.[11] The proposal also would minimize actual or perceived conflicts of interests by prohibiting anyone who owns an option (beneficially or directly)

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[1] "Adjustments" must be made to option contracts to reflect the occurrence of certain fundamental changes (*e.g.*, a 2 for 1 stock split) to the underlying securities.

[2] *See* Securities Exchange Act Rel. No. 23278 (May 28, 1986), 51 FR 19913.

[3] Existing OCC By-Law, Article VI, section 11(e) established the Committee. The Committee's members currently consist of the OCC Chairman and two designated representatives of each exchange that trades options issued by OCC (although this proposal, in Paragraph (k), would modify its membership). *See infra.*

[4] *See, infra,* note 13. The adjustment decisions, of course, would not be exempt from the Commission's oversight authority under the Act. On December 30, 1986, OCC amended the proposal to expressly recognize Commission oversight authority in this regard. *See,* letter from Lori R. Burns, Associate General Counsel, OCC, to Jonathan Kallman, Assistant Director, Securities and Exchange Commission, December 30, 1986.

[5] *See, infra,* note 11.

[6] Stock "distributions" may include, for example, a stock dividend, stock split, reverse split, rights dividend, or a property dividend such as shares of a subsidiary distributed as a corporate spin-off. Investment companies and limited partnerships may effect similar distributions but possibly under different terminology.

[7] Events that may change corporate property interests include, for example: A merger, acquisition, consolidation, reorganization, dissolution, or liquidation.

[8] OCC's By-Laws define "exchange" to mean: (1) A national securities exchange that has qualified for participation in OCC, or (2) a national securities association that has qualified for participation in OCC. *See* OCC By-Laws, Art. I, Section 1(b).

[9] OCC has agreed that, under section 11(k) of the proposal, any person having such a conflict of interest could neither participate in the adjustment decision nor designate his replacement to participate in the adjustment decision. Telephone conversation between Lori R. Burns, Associate General Counsel, OCC, and Thomas C. Ehrr, Attorney, Securities and Exchange Commission, December 4, 1986.

[10] *See, infra,* note 13.

[11] Depending on the nature of the interpretations and policies, such interpretations and policies may constitute proposed rule changes, which are required to be filed with the Commission under section 19(b) of the Act.

II. NASD's Rationale for the Proposed

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and would provide an automated

from participating in an adjustment decision concerning that option.

The proposal would provide the Committee with considerable flexibility in making adjustment decisions. For example, it would authorize delegation of adjustment decisions to the *ad hoc* panels, consisting of designees knowledgeable about the case at hand. The proposal also would clarify that a majority vote of the Committee or of an adjustment panel would constitute a determination of the Committee and would authorize Committee and panel members to designate their own replacements to act with the same authority as full Comittee or panel members.[12] The Commission believes this flexibility is essential because of the need for prompt and final decision-making regarding option adjustments.[13]

The Commission recognizes the Committee's need for flexibility to deal with unforeseeable circumstances, but also recognizes the potential for abuse. The Commission believes that OCC has taken appropriate steps to limit this potential. Although Paragraph (j) would authorize the Committee to grant exceptions to OCC rules mandating or prohibiting adjustments, OCC will maintain records of such decisions and of the Committee's supporting rationale.[14]

The proposal codifies several Committee policies and practices. The Commission believes that these policies provide useful guidance to investors and the Committee. For example, the proposal clarifies that adjustments will not be made to refelct: the issuance of "posion pill" rights that are not immediately exercisable, commencement of tender or exchange offers to holders of securities underlying option contracts, or changes in an issuer's capital structure where all the Outstanding securities in the hands of the public are not changed into another security, cash, or property.

The proposal also adds important guidance concerning adjustments for dividends and distributions. The Commission believes that the increasing use of distributions in corporate reorganizations or in response to takeover bids justifies authorizing the Committee to adjust for extraordinary dividends or distributions. Authorizing the Committee to make adjustments on a case-by-case basis, with a stated policy that adjustments should not be made for "ordinary" dividends of less than 10% of their underlying securities' market values, appears to be an approriate balance between the interests of holders and writers. Under this framwork, it would appear that adjustments will more likely reflect the substance, rather than the form, of changes in securities underlying equity options.

IV. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with the Act. In particular, the Commission finds that the proposed rule change is consistent with: (1) Sections 6(a), 11 A(a)(1)(C)(i), and 17A(a)(2) regarding the public interest, the maintenance of fair and orderly markets, and the efficient execution of securities transactions; (2) Sections 6(b)(5) and 17A(b)(3)(F) in fostering cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; and (3) Section 17A and the rules and regulations thereunder applicable to clearing agencies.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–OCC–86–11) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, under delegated authority.

Dated: January 23, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–1997 Filed 1–30–87; 8:45 am]

BILLING CODE 8010-01-M

[12] *See, supra,* note 9.

[13] The Commission does not intend this rule change to preclude an action challenging an adjustment decision where it is adequately alleged that OCC or the members of the Committee or of its panels acted in bad faith in implementing the provisions of this rule. *See* section 29 of the Act and Brawer v. OCC, No. 86–7416 (2d Cir. Dec. 11, 1986). In addition, in approving this rule change, the Commission takes no position on whether the rule change would preclude any state law breach of contract action challenging an OCC adjustment decision.

[14] OCC has agreed that, if the Committee grants any exception that overrides OCC rules governing adjustments to option contracts, OCC shall: (1) Provide a written statement to the Commission and, on request, the OCC clearing members setting forth "good cause" for the Committee's exception; and (2) maintain a log of such exceptions as part of its official records under section 17(a) of the Act.

[Release No. 34–24022; File No. SR–NASD–87–02]

Self-Regulatory Organizations; Filing and Order Approving on an Accelerated Basis Proposed Rule Change by National Association of Securities Dealers, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 8, 1987, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission a proposed rule change providing for on-line trade reconciliation of over-the-counter ("OTC") transactions in multipal bonds. The Commission is publishing this notice to solicit comments on the proposed rule change. Also, because the Commission believes the benefits of an automated comparison system for municipal securities transactions should be made available to participating NASD member firms as soon as possible, the Commission is approving the proposal on an accelerated basis.

Written comments on the proposal may be submitted within 21 days from the date this Order is published in the **Federal Register**. Six copies should be filed with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Please refer to File No. SR–NASD–87–02.

Copies of the proposal, amendments, comment letters, and written communications relating to the proposed rule change other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, may be inspected and copies at the Commission's Public Reference Room in Washington, DC. Filings also may be inspected and copied at the principal office of the above-mentioned self-regulatory organization.

I. Description of the Proposed Rule Change

The NASD proposes to amend the description of the Trade Acceptance and Reconciliation Service ("TARS") that is operated by NASD Market Services, Inc. ("MSI"), a subsidiary of the NASD. Since its inception in 1983, TARS has provided participating firms with a facility for on-line trade reconciliation of OTC transactions in equity securities that are cleared through a registered national clearing agency. The proposed update of the TARS description reflects an enhancement that will extend the features of TARS of OTC transactions in municipal bonds. This enhancement is known as the Municipal Bond Acceptance and Reconciliation Service ("MBARS"). The details of its operation are set forth in the *MBARS User Guide*, a copy of which has been filed with the Commission.

Subscription to MBARS, Like TARS, will be voluntary. Hence, a firm's decison to subscribe is purely an internal one based upon business considerations. Moreover, a TARS subscriber will pay no additional fee for use of MBARS.

II. NASD's Rationale for the Proposed Rule Change

In its filing, the NASD states that the purpose of the proposed rule change is to update the description of TARS previously filed with the Commission to incorporate the MBARS enhancement. MBARS is designed to support the clearance of municipal bond trades and to assist subscriber firms with on-line entury of trade data respecting trades cleared through a registered national clearing agency. The implementation of MBARS will introduce a greater degree of automation to the process of clearing OTC transactions in municipal bonds, particularly the process of resolving uncompared trades. As such, the NASD believes MBARS will expedite comparison and, in general, provide more cost-effective procedures for processing OTC transactions in municipal bonds that are eligible for clearance through a clearing agency.

The statutory bases for the MBARS enhancement are identical to those for TARS and can be found in sections 17A(a) (1) (A), (B) and (C) of the Securities Exchange Act of 1934 (the "Act").[1] Section 17A of the Act articulates the Congressional findings respecting a national system for the clearance and settlement of securities transactions:

> [That] the prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors; [that] inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors; [and that] new data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement.

Because the automation capabilities of MBARS will increase the efficiency and cost-effectiveness of the comparison and settlement process for OTC transactions in municipal bonds, the NASD believes that its implementation is fully responsive to the foregonig findings.

Additionally, implementation of the MBARS enhancement to TARS is supported by section 15A(b)(6) of the Act and Municipal Securities Rulemaking Board ("MSRB") Rule G–12, subparagraphs (f) and (h). Section 15A(b)(6) requires national securiteis associations, such as the NASD, to promulgate rules designed to foster cooperation and coordiantion with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in, municipal securities. In that connection, subparagraph (f) of MSRB Rule G–12 concerns the use of automated comparison, clearance, and settlement systems; subparagraph (h) concerns the resolution of open inter-dealer transactions.[2] By streamlining the clearance and settlement process for OTC transactions in municipal bonds, the NASD believes the MBARS will foster achievement of the statutory goals expressed in section 15A(b)(6) of the Act and promote compliance with MSRB Rule G–12, particularly subparagraphs (f) and (h). Lastly, the NASD notes that section 19(g)(1) of the Act mandates, among other things, that the NASD enforce compliance by its members with the rules of the MSRB.

III. Discussion

The Commission believes that the proposed rule change is consistent with the Act, and in particular, sections 15A(b) (6) and 17A of the Act. As contemplated by section 15A(b)(6) of the Act, the NASD's municipal comparison system should foster cooperation and coordination with persons engaged in clearing and settling transactions in municipal securities. The NASD's proposal is similar to existing clearing agency municipal bond comparison systems.[3]

The Commission believes the NASD proposal, like the municipal comparison systems currently in operation, benefits the municipal securities industry and furthers the goals in section 17A of the Act by providing uniform, automated, efficient municipal securities comparison services. The proposal would extend the features of TARS to OTC transactions in municipal bonds, and would provide an automated mechanism for performing repetitive tasks that are integral to the routine processing of OTC transactions in municipal bonds cleared through a registered clearing corporation, particularly the process of resolving uncompared trades.

Finally, the Commission agrees that the proposal promotes compliance with MSRB Rule G–12. That rule requies the use of automated clearnace and settlement systems for certain municipal securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds the proposed rule change consistent with the requirements of the Act. Furthermore, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publishing notice of filing. The Commission believes that immediate implementation of the proposal is desirable because it will allow participating NASD member firms to realize the benefits of an automated comparison system for municipal securities transactions.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NASD–87–02) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: January 21, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–1996 Filed 1–30–87; 8:45 am]

BILLING CODE 8010-01-M

[1] Section 3(a)(12) of the Act defines the term "exempted securities" to include municipal securities. This provision specifies, however, that municipal securities shall not be deemed to be "exempted securities" for purposes of section 17A of the Act.

[2] *See* Securities Exchange Act Rel. No. 20365 (Novembver 14, 1983), 48 FR 52531, which approved proposed changes to MSRB Rules G–12 and G–15 establishing a timetable for integrating municipal seucrities brokers and dealers into the National Clearance and Settlement System.

[3] *See* Securities Exchange Act Rel. No. 20976 (May 18, 1984), 49 FR 22426; Securities Exchange Act Rel. No. 21120 (July 6, 1984), 49 FR 28490; Securities Exchange Act Rel. No. 21279 (August 31, 1984), 49 FR 35456; and Securities Exchange Act Rel. No. 21315 (September 12, 1984), 49 FR 36726, in which the Commission approved automated comparison services for municipal securities transactions proposed by the National Securities Clearing Corporation ("NSCC"), Midwest Clearing Corporation ("MCC") and Pacific Clearing Corporation ("PCC"), the Depository Trust Company ("DTC"), and Stock Clearing Corporation of Philadelphia ("SCCP"), respectively.

[Release No. 34–23960; File No. SR–OCC–86–24]

Self-Regulatory Organization; Filing and Immediate Effectiveness of Proposed Rule Change by Options Clearing Corp.

The Options Clearing Corporation ("OCC"), on October 31, 1986, filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") concerning the pledge of non-equity options under OCC's options pledge program. As described in greater detail below and in OCC's filing, the proposed rule change authorizes OCC to offer its non-equity options pledge program to all clearing members through

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February 28, 1987 [1] and permits clearing members to exercise or sell pledge non-equity options. The Commission is publishing this notice to solicit comments on the rule change.

I. Background

The proposal amends OCC Rule 614, which governs pledges of option positions and which previously applied only to equity options.[2] The proposal follows a pilot program that OCC introduced in March 1986.[3] The pilot permitted a limited number of clearing members to pledge non-equity options, but the pilot prohibited clearing members from selling or exercising pledged non-equity options.

II. Description

A. Rights of Parties

OCC is expanding its Rule 614 to cover the rights and obligations of the pledgees, clearing members, and OCC, in the event a pledged option is sold or exercised. First, under the rule, OCC must deliver to pledgees and clearing members, on the business day following the exercise or sale of a pledged option ("Report Day"), a written report stating which pledged options have been exercised or sold. Second, any clearing member with an overpledged position [4] must pay an "Overpledged Value Amount" to OCC, prior to 9:00 a.m. (Central Time) on Report Day. The Overpledged Value Amount consists of a cash deposit equal to the current market value of the option contract for each pledged option that gave rise to an overpledged position by having been exercised or sold.[5] As described below, if OCC fails to receive the Overpledged Value Amount (*i.e.*, if a clearing members fails to make the required deposit), OCC must take action under the terms of the second paragraph of OCC Rule 614(i). Third, OCC is authorized to withdraw the Overpledged Value Amount from the clearing member's bank account.[6] Fourth, OCC, as promptly as practicable after it receives the Overpledged Value Amount from the clearing member, must deposit such amount in the pledgee's deposit account.[7] Fifth, the pledgee has the right to receive the Overpledged Value Amount, but upon OCC's deposit of that amount into the pledgee's deposit account, the pledgee has no further right to either the pledged options that gave rise to the overpledged option or to the proceeds thereof.

B. Failure to Receive Deposit

If OCC fails to receive the Overpledged Value Amount from the clearing member on the Report Day, special procedures apply as set forth in OCC Rule 614(i). Under subparagraph (1) of Rule 614(i), the sales or exercises are reallocated pursuant to subparagraph (f)(2) of Rule 614. Rule 614(f)(2) generally requires: (1) Reallocation of the sales and exercises to the primary account and then to the pledge accounts on a proportional basis, and (2) establishment of a short position in the Primary Account for any remaining sales after the long positions have been closed out. Under subparagraph (2), OCC is required: (1) To suspend the defaulting clearing member as promptly as practicable, and (2) deposit the proceeds of each pledged option that had been sold into the pledgee's deposit account. The terms of subparagraphs (1) and (2) are not modified by this rule change.

Subparagraph (3) deals with pledged options that have been exercised. In event of a clearing member's failure to pay the cash deposit, it requires OCC to notify the clearing member to whom the exercised option has been assigned (*i.e.*, the clearing member on the other side of the default): (1) To close out the option contract through buy-in or sell-out procedures and (2) to pay over any profit to OCC. OCC is required to deposit that settlement amount into the pledgee's deposit account. In event that the settlement amount is less than the full amount due, the deficiency shall be paid to the assigned clearing member from the following sources: (1) The funds obtained from the primary account until such funds are exhausted, and (2) the liquidating settlement account.[8]

The new text of subparagraph (3) would define "Assigned Clearing Member" (for purposes of that subparagraph) in terms of the assignee's duties with respect to: (1) Pledged equity options or Treasury securities, and (2) pledged foreign currency options. With respect to pledged equity options or Treasury sucurities, the close out obligations of option contracts assigned on the previous day will be delegated to that clearing member that is obligated to deliver to or receive from the exercising clearing member (*i.e.*, the defaulting clearing member). For pledged foreign currency options, close out obligations will be delegated to the clearing member that is obligated to deliver to or receive from OCC, on the settlement date of the pledged option, the foreign currency underlying the pledged option. Because of OCC netting rules that apply in settling exercises of Treasury securities options and foreign currency options [9] and OCC's system of post-netting allocation, which instructs a clearing member to effect settlement with another clearing member, the clearing member that ultimately is obligated to settle with an exercising clearing member will not necessarily be the Assigned Clearing Member pursuant to subparagraph (3).

Subparagraph (4), which is entirely new, applies only to pledged index options. It provides that if a clearing member fails to make the required cash deposit after exercising a pledged index option, OCC promptly will deposit the amount due into the pledgee's deposit account.[10]

Subparagraph (5), which also is entirely new, applies to pledged Treasury securities options and pledged foreign currency options that net against other settlement obligations thereby relieving the exercising clearing clearing of the need to deliver or receive the underlying security or currency.[11] In this case, where a clearing member fails to make its required deposit, OCC will deposit into the pledgee's deposit account an amount equal to the in-the-money value of the pledged option as of the close of trading on the exercise date.[12]

Finally, the rule change: (1) Deletes Interpretation .01 (the provision that established the pilot program) from Rule 614; and (2) revises Rule 1807 to recognize the possibility that, in the event of a clearing member's insolvency, a pledgee (rather than the clearing member itself) might be entitled to receive the exercise settlement amount from the exercised index options.

III. Conclusions

OCC states that the proposal is consistent with the purposes and requirements of Section 17A of the Act in that it would further the public interest by facilitating the frequency of positions in non-equity options, thereby contributing to the depth and liquidity of the markets for those products.

The rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons may submit written comments within 21 days after notice is published in the **Federal Register**. Six copies of the comments should be filed with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. 552, are available at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–86–24 and should be submitted by February 23, 1987.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: January 6, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–2000 Filed 1–30–87; 8:45 am]

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[1] On December 31, 1986, OCC filed a similar proposal for permanent approval of the proposed non-equity options pledge program. *See* File No. SR–OCC–86–27.

[2] OCC began its Option Pledge Program for equity options in March 1983 with the adoption of OCC Rule 614. *See* Securities Exchange Act Rel. No. 19956 (July 19, 1983), 48 FR 33956 (File No. SR–OCC–82–25).

[3] *See* Securities Exchanuge Act Rel. No. 23097 (April 2, 1986), 51 FR 12254 (File No. SR–OCC–86–3).

[4] The term "overpledged position" means a pledged option position that has been exercised or sold.

[5] The "Overpledged Value Amount" is the product of: (1) The unit of trading for the series of options of the pledged option, and (2) the current highest asked price on the premium for that option series at or about the close of trading on the preceding business day. Additionally, OCC may fix a different value in accordance with OCC Rule 801. *See* OCC Rule 614(a).

[6] *See* OCC Rule 614(a).

[7] The "Pledgee's Deposit Account" or "collateral account" is an account with a clearing bank designated by the Pledgee for accepting cash deposits. *See* OCC Rule 614(a).

[8] Upon the suspension of a clearing member, OCC must convert to cash all margins deposited with the OCC by that clearing member in all accounts. Such funds then are placed by OCC in a special account known as a "Liquidating Settlement Account." *See* OCC Rule 1104.

OCC's ultimate source of funds to make good losses resulting from the failure of a clearing member to perform its obligations under an assigned option contract is OCC's Clearing Fund. *See* OCC's By-Laws, Art. VIII, Sect. 1.

[9] *See* OCC Rules 1406 and 1605.

[10] In the case of index options, the need for buy-in and sell-out provisions is eliminated by the absence of an underlying asset to deliver or receive.

[11] With these options, as with index options, there is no obligation to be bought in or sold out.

[12] The amounts to be deposited in the deposit accounts are amounts that OCC would have paid to the clearing member in any event if the exercise had settled in due course, either as a return of margin (on equity options or currency options) or in settlement of the exercises (with foreign currency options).

[FILE NO. 22–15868]

Application and Opportunity for Hearing; American Southwest Financial Corp.

January 27, 1987.

Notice is hereby given that American Southwest Financial Corporation (the "Company") has filed an application, as amended and restated ("Application"), pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (hereinafter sometimes referred to as the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of The Valley National Bank of Arizona (the "Bank") under an indenture dated as of August 1, 1984, as amended (the "Indenture"), providing for the issuance of bonds ("Bonds") in series ("Series"), which was heretofore qualified under the Act, and indenture supplements thereto with respect to each such Series of Bonds, ("Indenture Supplements"), is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under the aforementioned indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor. The Company alleges that:

1. Each Series of Bonds is secured by the pledge of collateral by the Company to the Bank under such Indenture and Indenture Supplements. A default under the Indenture or Indenture Supplement for any Series of Bonds does not cause a default under the Indenture or Indenture Supplement for any other Series of Bonds.

2. Each Series of Bonds is secured by collateral which includes, *inter alia*, various mortgage-backed certificates, mortgage participation certificates, conventional mortgage loans and other mortgage loans secured by mortgages or deeds of trust on single-family residences ("Pledged Loans"). The Application relates only to the trusteeship under the Indenture and Indenture Supplements with respect to Series of Bonds secured by mortgage collateral consisting in whole or in part of Pledged Loans.

3. The Company intends to purchase certain general coverage insurance policies or performance bonds (such as pool insurance policies, special hazard insurance policies, mortgagor bankruptcy bonds, repurchase bonds, and prepayment interests bonds, hereinafter "General Coverage Policies") providing coverage for more than one Series of Bonds in the circumstance where the Indenture and Indenture Supplements with respect to each Series of Bonds would be under the trusteeship of the Bank, subject to the requirement that any such utilization not result in a downgrading of the rating of the Bonds of any such Series by any rating agency rating such bonds.

4. With respect to the five types of General Coverage Policies, the Bank is primarily responsible for the presentment of claims only under two of such General Coverage Policies. A master servicer rather than the Bank is required to present, or cause to be presented, claims to the respective issuers of the pool insurance policy, the special hazard insurance policy and the mortgagor bankruptcy bond. The Bank's only relationship with the pool insurance policy, the special hazard insurance policy and the mortgagor bankruptcy bond is limited to (i) physical custody of such insurance policies or performance bonds because they constitute part of the Trust Estate and (ii) the succession of the rights and powers of the master servicer in the event of the termination of the master servicer pursuant to the terms of the Master Servicing Agreement until a new master servicer is appointed. The Trustee is primarily responsible for the presentment of claims under any repurchase bond or any prepayment interest bond. However, the coverage provided under either the repurchase bond or the prepayment interest bond will be drawn upon only upon the successive occurrence of a number of unlikely events.

5. In the event that General Coverage Policies are utilized to provide coverage for more than one Series of Bonds, the bondholders of each such Series of Bonds would rank pari passu. The Bank, or the master servicer, as applicable, would be required to either pay such claim from amounts held or present such claims to the issuer of the policy for payment in the order in which such claim was received and under a mandatory tie-breaker system with respect to the receipt of more than one claim on the same day any one of which

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claims would exhaust the coverage under such General Coverage Policy.

6. The administrative effort and expense, and the premium costs, of providing separate General Coverage Policies for each Series of Bonds is enormous and unduly burdensome both on the part of the Applicant and the issuers of such General Coverage Policies and it has become difficult to obtain General Coverage Policies for single Series of Bonds. To the extent that an issuer is willing to issue a General Coverage Policy, such issuers have expressed a strong desire that any such General Coverage Policy be utilized to provide coverage for more than one Series of Bonds. To the extent that an issuer is unwilling to issue a General Coverage Policy for a Series of Bonds, the Applicant is required to make substantial cash or cash equivalent deposits partially or entirely in lieu therefor into an account or fund in order to satisfy the rating agency requirements for such Series of Bonds.

7. The public interest in not well served by a requirement that results in the procurement of separate General Coverage Policies for each Series of Bonds since it is costly, economically inefficient and unduly burdensome to both the Applicant and the issuers of such General Coverage Policies and, ultimately, the purchasers of the Bonds. Additionally, the requirement of separate General Coverage Policies for each Series of Bonds is unnecessary for the protection of investors in that (i) the Indenture and Indenture Supplements will be structured to prevent the Trustee from being in a conflict situation as between different Series of Bonds, (ii) the statutory conflict-of-interest provisions will remain in full force in the Indenture in the event that a conflict situation ever arises, (iii) the Trust Estate with respect to each Series of Bonds structured as contemplated by the Application will initially have access to an amount of coverage under the General Coverage Policies at least equal to, or in most cases greater than, the coverage that would have been provided had separate General Coverage Policies been issued, and (iv) the rating agencies have revised there standards to allow the use of General Coverage Policies as contemplated by the Application while continuing to assign such Series of Bonds their highest credit rating.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rule of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said Application as amended, which is on file in the offices of the Commission's Public Reference Section, File Number 22-15868, 450 Fifth Street, NW, Washington, DC 20549.

Notice is further given that any interested person may, not later than February 17, 1987 request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission. For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-1998 Filed 1-30-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15551; 812-6520]

Lincoln National Pension Insurance Co., et al.; Application for Exemption

January 23, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

Applicant(s): Lincoln National Pension Insurance Company, Lincoln National Pension Variable Annuity Account E, and American Funds Distributors, Inc.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

Summary of Application: Applicants seek an order to permit them to issue variable annuity contracts that provide for the deduction of mortality and expense risk charges from net asset value.

Filing Date: The application was filed on November 13, 1986, and amended on January 6, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 17, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant(s) with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

Addresses: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Lincoln National Pension Insurance Company, Lincoln National Pension Variable Annuity Account E, 1300 South Clinton Street, Fort Wayne, Indiana 46801 and American Funds Distributors, Incorporated, 333 South Hope Street, Los Angeles, California 90071.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Denise M. Furey, (202) 272-2067 or Special Counsel Lewis B. Reich, (202) 272-2061 (Division of Investment Management.)

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Lincoln National Pension Insurance Company ("LNP") is a stock life insurance company incorporated under the laws of the State of Indiana on March 1, 1934, as a general business corporation and recognized as an insurance company on November 3, 1978. LNP is a wholly-owned subsidiary of The Lincoln National Life Insurance Company, a stock life insurance company, which in turn is wholly-owned by Lincoln National Corporation, a publicly-held insurance holding company. Lincoln National Pension Variable Account E (the "Variable Account") was established by LNP as a separate account under the laws of the State of Indiana on September 26, 1986. The Variable Account is a unit investment trust registered with the Commission under the Act.

2. The Variable Account will invest in shares of one or more of the investment series of the American Pathway Fund (the "Fund"). The Fund is a diversified, open-end management investment company and was organized as a Massachusetts Business Trust in 1983. Four of the Fund's five series initially will be available under the Contracts: the Cash Management Series; the High-Yield Bond Series; the Growth-Income Series; and the Growth Series. The assets of each series are separate from the others and each series has separate investment objectives and policies. As a result, each series operates as a separate investment fund and the investment performance of one series has no effect on the investment performance of any other series. The Variable Account has several sub-accounts, each of which invests solely in a specific corresponding series of the Fund. Currently, shares of the Fund are sold to a separate account of Anchor National Life Insurance Company to fund variable annuity contracts.

3. American Funds Distributors, Inc. ("AFD"), 333 South Hope Street, Los Angeles, California 90071, will serve as the distributor and principal underwriter of the Contracts. AFD is registered under the Securities Exchange Act of 1934 as a broker-dealer and is a member of the National Association of Securities Dealers, Inc. The Contracts will be sold by independent broker-dealers who have entered into sales agreements with AFD. The broaker-dealers will be licensed by State insurance departments to represent LNP.

4. A charge will be deducted from the daily net asset value of the Variable Account to reimburse LNP for certain mortality and expense risks assumed under the Contracts. The mortality risk borne by LNP under the Contracts guarantees that the variable annuity payments made to Contractowners will not be affected by the mortality experience (life span) of persons receiving such payments or of the general population. The expense risk undertaken by LNP is that the annual deduction of $35.00 which is guaranteed for the life of the contract for administration costs may be insufficient to cover the actual future costs incurred by LNP. Thre mortality and expense risk charge will be deducted from the Contract Value of each Contract daily in an amount equal to an effective annual rate of 1.25%. Of that amount, approximately .8% is allocable to the mortality risks and .45% is allocable to the administrative and distribution expense risks. The rate of this charge is guaranteed never to increase.

5. In certain cases, a contingent deferred sales charge will be assessed upon surrender of a Contract or withdrawal of part of the Contract Value prior to the Annuity Commencement Date. In each Contract Year, up to 10% of the Purchase Payments may be withdrawn free of charge. Thus, the charge applies to the first partial withdrawal in a Contract Year in excess of 10% of Purchase Payments. LNP assumes that Purchase Payments are withdrawn on a first-in, first-our basis, and that all Purchase Payments are withdrawn before any earning are withdrawn. The contingent deferred sales charge is 6% of purchase payments during the first 2 contract years after the applicable payment. The charge decreased by 100 basis points annually until it is eliminated in the seventh year.

In no event, however, will the total sales charges for a particular Contract exceed 9% of the Purchase Payments made for that Contract. Furthermore, the contingent deferred sales charge will be waived in the event the Contract is surrendered as a result of the total and permanent disability or death of the Annuitant and for contracts issued to officers, directors, or full-time employees of LNP, AFD, or the Fund's investment adviser. The contingent deferred sales charge is paid to LNP to compensate for the cost of distributing the Contracts.

6. The charge of 1.25% for mortality and expense risks assumed by LNP is within the range of industry practice with respect to comparable annuity products. This representation is based upon LNP's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, existence of charge level guarantees, and guaranteed annuity rates.

7. LNP has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Variable Account and the Contractowners.

Applicant's Conditions

If the requested order is granted, the Applicant agrees to the following conditions:

1. LNP represents that it will maintain at its administrative offices, and make available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey made to support the representation that the mortality and expense risk charge is reasonable within the range of industry practice.

2. Applicants represent that there is a memorandum setting forth the basis for the representation that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Variable Account and the Contractowners.

3. The Variable Account will invest only in management investment companies which undertake, in the event that it should adopt any plan under Rule 12b-1 to finance distribution expenses, to have a board of directors, a majority of whom are not interested persons in the Company, approve any plan under Rule 12b-1 to finance distribution expenses.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-1999 Filed 1-30-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circulars—Dynamic Evaluation of Transport Airplane Seats, and Analytic Methods in Impact Dynamics

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Reopening of comment period.

SUMMARY: This notice reopens the comment period for proposed advisory circulars (AC) 25.562-1, Dynamic Evaluation of Transport Airplane Seats, and 21-YY, Analytic Methods in Impact Dynamics (51 FR 25990; July 17, 1986). This notice is based on requests from industry for more time in which to study the proposed ACs and prepare comments.

DATE: Comments must be received on or before July 14, 1987.

ADDRESSES: Send comments on proposed AC 25.562-1 to: Federal Aviation Administration, Northwest Mountain Region, Transport Standards Staff, ANM-110, 17900 Pacific Highway South, C-68966, Seattle Washington, 98168. Send comments on proposed AC 21-YY to: Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness, File No. 21-YY (AVN-110), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, or deliver comments to Room 335D, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: For AC 25.562-1: Patricia Siegrist, Transport Standards Staff, at the above address, telephone (206) 431-2126. For AC 21-YY: Arthur J. Hayes, Technical Analysis Branch, AWS-120, telephone (202) 267-9568).

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SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed ACs by submitting such written data, views, or arguments as they may desire. Commenters should identify the AC (AC 25.562–1 or AC 21–YY) and submit comments in duplicate to the appropriate address specified above. All comments received on or before the closing date for comments will be considered before issuing the final ACs.

How To Obtain Copies

A copy of the proposed ACs may be obtained by contacting the persons named above under, **"FOR FURTHER INFORMATION CONTACT."**

Discussion of AC 25.562–1

By separate notice (Notice 86–11, 51 FR 25982; July 17, 1986), the FAA invited public comments concerning proposed new standards for the passenger and crew seats of transport category airplanes. The proposed standards would require dynamic testing of the seats for strength, deformation, and protection of occupants from impact injury. Test conditions representing two airplane crash scenarios are defined. Proposed AC 25.562–1 describes the FAA's crashworthiness program for transport airplanes and provides information and guidance for showing compliance with the proposed standards applicable to the dynamic testing of airplane seats, including procedures for measuring loads and impact energy with an anthropomorphic test dummy. Issuance of this AC is, of course, contingent on final adoption of the proposed standards.

Discussion of AC 21–YY

Proposed AC 21–YY discusses certain nonlinear structural dynamic computer programs that determine structure, seat, and occupant response to an impact condition. All the computer programs require a user developed mathematical model of airplane structure. The proposed AC cover a general description of selected computer programs, analytic modeling problems, computer program validation, and the use of the computer programs in impact analysis.

Reopening of Comment Period

A number of commenters have requested more time in which to study the proposed AC and prepare their comments. One commenter stated that the two advisory circulars could be better evaluated once they have formulated and submitted their position on Notice 86–11. Another commenter requested additional time in which to study an interim report on seat testing which became available during the comment period and which provides new and meaningful information not available before. In consideration of these comments, the FAA concludes that reopening the comment period for an additional six months would be in the public interest. Accordingly, the comment period for proposed AC 25.562–1 and proposed AC 21–YY is reopened for six months.

Issued in Seattle, WA, on January 20, 1987.

Leroy A. Keith,

Manager, Aircraft Certification Division, Northwest Mountain Region.

[FR Doc. 87–1902 Filed 1–30–87; 8:45 am]

BILLING CODE 4910–13–M

Certification Issues Conference; Civil Powered-Lift Transport Category Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of conference.

SUMMARY: This notice announces a conference to discuss civil certification issues for powered-lift aircraft that may arise from the entry of such an aircraft into the civil aviation system. Powered-lift aircraft fly at the higher speeds of conventional airplanes but also safely fly at airspeeds significantly below those of conventional airplanes and may also have a zero airspeed (hover) capability. This capability may be provided by aircraft configuration changes (tilt-wing, tilt-rotor, tilt-propeller), by thrust vectoring, by direct-life engines, or by other powered-lift concepts. Powered-lift aircraft include some characteristics of rotorcraft and some characteristics of airplanes and, as a result, constitute a unique category.

DATES: *May 1, 1987:* Last day for receipt of agenda items submitted to the FAA Rotorcraft Standards Staff to facilitate establishing the conference agenda/special requirements.

June 23, 1987: Public meeting will begin at 9 a.m. and continue through succeeding days until coverage of all issues is complete.

ADDRESSES: The conference will be held at the FAA, Southwest Region, Building 3B Training Room (Room 167), 4400 Blue Mound Road, Fort Worth, Texas.

Agenda items may be mailed to FAA, Regulations Program Management, ASW–111, P.O. Box 1689, Fort Worth, Texas 76101, or delivered to the FAA Southwest Regional Office, Rotorcraft Standards Staff, Building 3B, Room 166, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. J.S. Honaker, Regulations Program Management, ASW–111, Rotorcraft Standards Staff, Aircraft Certification Division, P.O. Box 1689, Fort Worth, Texas, telephone (817) 624–5109 or FTS 734–5109.

SUPPLEMENTARY INFORMATION: Several designs of powered-lift aircraft are currently being considered by various industry and government groups, and an application for civil certification of one of the designs has recently been received by the FAA. In that regard, the FAA is seeking the identification and discussion of certification issues that could arise as a result of the development of such a design.

Interested persons are invited to identify issues for civil certification of a powered-lift aircraft. Issues received by May 1, 1987, will be used to establish a conference agenda.

Issued in Fort Worth, Texas, on January 16, 1987.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 87–1903 Filed 1–30–87; 8:45 am]

BILLING CODE 4910–13–M

Lebanon Municipal Airport, Lebanon, NH; FAA Approval of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the City of Lebanon, New Hampshire, under the provisions of Title I of the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (Pub. L. 96–193) and 14 CFR Part 150. The findings are made in recognition of the description of Federal and non-federal responsibilities in Senate Report No. 96–52 (1980). On March 7, 1986, the FAA determined that the noise exposure maps, submitted by the City of Lebanon under Part 150, were in compliance with applicable requirements. On September 2, 1986, the Administrator approval the Lebanon Municipal Airport noise compatibility program. All of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Lebanon Municipal Airport noise compatibility program is September 2, 1986. .

FOR FURTHER INFORMATION CONTACT: M. Ashraf Jan, Federal Aviation Administration, New England Region, Airports Division, ANE–610, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone (617) 273–7060.

Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Lebanon Municipal Airport, effective September 2, 1986.

Under section 104(a) of the Aviation Safety and Noise Abatement Act (ASNA) of 1979, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noice exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program development in accordance with FAR Part 150 is a local program, not a Federal program. The FAA does not substitute its judgement for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Aviation Safety and Noise Abatement Act of 1979, and is limited to the following determinations:

The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the Navigable Airspace and Air Traffic Control Systems, or adversely affecting other powers and responsibilities of the Administrator as prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where Federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Burlington, Massachusetts.

The City of Lebanon submitted to the FAA, on February 28, 1986, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted form October 1984 through November 1985. The Lebanon Municipal Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on March 7, 1986. Notice of this determination was published in the Federal Register on March 17, 1986.

The Lebanon Municipal Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 1990. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on March 7, 1986, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180 day period shall be deemed to be an approval of such program.

The submitted program contained seven proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective September 2, 1986.

Outright approval was granted for all the seven specific program elements. The overall program has two components: (a) Airport Operations related measures, including airport physical changes; airport management measures; and airport and airspace procedural changes, and (b) Land Use control measures to reduce and prevent land use incompatibilities. Airport Operations related measures include: Clear Zone acquisition and tree clearance in Runway 36 approach to remove the present threshold restriction for landing on Runway 36, enable departure of high performance aircraft on Runway 18, and prevent development of incompatible uses to the south of the Airport; informal preferential runway use program to minimize noise exposure in populated areas; aircraft noise monitoring program; controlling engine maintenance runups; developing informal noise abatement procedures using the NBAA flight procedures; and extending the taxiway parallel to Runway 7–25 to facilitate the use of Runway 25 for preferential departures. Through the Land Use control measure a special aircraft noise exposure zoning district will be defined that will include all land within the Ldn 55 dB contour. This will be an overlay district containing requirements aimed at land use compatibility, that are to be in addition to restrictions present in the conventional underlying districts.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on September 2, 1986. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the City Manager's Office, City of Lebanon, New Hampshire.

Issued in Burlington, Massachusetts, on January 15, 1987.

Clyde DeHart, Jr.,

Acting Director, New England Region.

[FR Doc. 87–1900 Filed 1–30–87; 8:45 am]

BILLING CODE 4910–13–M

William B. Hartsfield Atlanta International Airport, Atlanta, GA; Receipt of Revised Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a revised Noise

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Compatibility Program (NCP) submitted by William B. Hartsfield Atlanta International Airport (ATL) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 and that this revised program will be approved or disapproved on or before July 13, 1987.

EFFECTIVE DATE: The effective date of the start of FAA's review of the revised Noise Compatibility Program is January 14, 1987. The public comment period ends February 27, 1987.

FOR FURTHER INFORMATION CONTACT: Charles Prouty, Civil Engineer, Atlanta Airports District Office, Suite 310, 3420 Norman Berry Drive, Atlanta, Georgia 30354, telephone (404) 763–7631. Comments on the revised Noise Compatibility Program should also be submitted to that office.

SUPPLEMENTARY INFORMATION: The FAA determined that the Noise Exposure Maps for ATL were in compliance on October 16, 1984, and approved the initial NCP on April 10, 1985. This notice announces the availability of the revised NCP for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a Noise Exposure Map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted a Noise Exposure Map that is accepted by FAA as meeting Federal Aviation Regulation Part 150, promulgated pursuant to Title I of the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

ATL submitted to the FAA on June 19, 1984, Noise Exposure Maps, descriptions and other documentation which were produced during the Airport Noise Exposure Maps and Noise Compatibility Program (Part 150) study conducted at ATL from 1982 to 1984. It was requested that the FAA accept this material as a Noise Exposure Map as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a Noise Compatibility Program under section 104(b) of the Act.

The FAA has completed its review of the Noise Exposure Maps and related descriptions submitted by ATL. The specific maps under consideration are depicted in Map I, 1982, and Map II, 1985, in the final report of the Part 150 study. The FAA accepted these materials as the Noise Exposure Maps for ATL on October 16, 1984.

FAA's acceptance of an airport operator's Noise Exposure Map is limited to the determination that the map was developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such acceptance does not constitute approval of the applicant's data, information or plans, or a commitment to approve a Noise Compatibility Program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the Noise Exposure Map to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act.

These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's acceptance of Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with these public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Upon acceptance of the Noise Exposure Maps, the FAA received the initial Noise Compatibility Program for ATL on October 16, 1984. It was approved on April 10, 1985.

On December 4, 1986, the FAA received the revised Noise Compatibility Program.

Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of revised Noise Compatibility Programs but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before July 13, 1987.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses.

The revisions to the NCP which are under consideration are as follows:

Land Use Measure #2, "Purchase/Guarantee," has been revised to "Property Interest/Acoustical Treatment/Transaction Assistance Program."

The intended objective of the Purchase Guarantee Program was to assure the homeowner that he or she would be able to sell a single-family home located in a noise impacted area. Only owner-occupied, single-family residential units would be purchased from willing sellers during the initial 6-year program. After appropriate soundproofing measures were taken, the Airport would resell each home with retention of an avigation easement. The proceeds from the resale would help offset the initial acquisition/relocation costs and would be reapplied to the program. This program would allow people to move out while still preserving the area as a residential neighborhood. This measure was primarily applied to those areas within the 75 Ldn.

The Property Interest Rights/Acoustical Treatment/Transaction Assistance Program meets the objectives of the Purchases Guarantee Program in that families desiring to sell and relocate can do so with assurance that the Airport Sponsor will participate in the cost of marketing and selling the property. Eligibility for transaction assistance benefits are influenced by the time period a property owner moved into the community; however, all property owners are entitled to the Property Interest Rights/Acoustical Treatment Program regardless of their decision to relocate or when they purchased their home.

Land Use Measure #3, "Soundproofing/Easement," has been revised to "Property Interest Rights/Acoustical Treatment."

Under this revision, the Airport Sponsor proposes to absorb the total cost to acoustically treat the owner-occupied houses in the 70–75 Ldn noise contour. In the original NCP, the cost to soundproof was a shared expense between the homeowner and the airport. The NCP now more fully compensates the homeowners and represents a more attainable program.

Land Use Measure #4, "Private Sector Development."

The original objective under the Private Sector Development Program was to encourage land use conversion from incompatible to compatible use by private developers with no direct involvement by the Airport Sponsor. Under the revised program, it is anticipated a developer will acquire and clear properties in a designated area while the sponsor will pay net cost and retain property interest rights over the land. Net cost is fair market purchase price for residential property less its appraised value as development property.

Interested persons are invited to comment on the revised program with specific reference to these factors. All comments, other than these properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the accepted Noise Exposure Maps, the FAA's evaluation of the maps, and the revised Noise Compatibility Program are available for examination at the following locations:

Federal Aviation Administration, National Headquarters, 800 Independence Avenue SW., Room 615, Washington, DC

Federal Aviation Administration, Airports District Office, 3420 Norman Berry Drive, Suite 310, Atlanta, Georgia 30354

William B. Hartsfield Atlanta International Airport, Office of Commissioner of Aviation, Atlanta, Georgia 30320.

Questions may be directed to the individual named above under the heading, **"FOR FURTHER INFORMATION CONTACT."**

Issued in East Point, Georgia, January 14, 1987.

Robert E. Harris,

Assistnt Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 87–1901 Filed 1–30–87; 8:45 am]

BILLING CODE 4910-13-M

Airway Science Grants

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Solicitation for Airway Science Grant Proposals.

SUMMARY: The Federal Aviation Administration (FAA) is authorized by Pub. L. 99–591 to solicit competitive proposals for Airway Science (AWS) grants from accredited 4-year public or nonprofit private colleges and universities with recognized FAA Airway Science Curriculum programs. The FAA expects to award most, if not all, of an available $5,000,000 in the form of grants, to a small, select number of these institutions of higher learning.

The grant awards are available for the purchase, lease, or construction of buildings and associated facilities to be used in conjunction with an FAA recognized AWS curriculum. In addition, funds may be used for nonexpendable instructional materials or instructional equipment to be used in the actual teaching of the AWS curriculum. No Federal grant funds are to be used for salaries, operating expenses, research and development, travel, consultant fees, indirect costs, office supplies, automobiles, aircraft, maintenance agreements, air traffic control towers, or printing costs.

FOR FURTHER INFORMATION CONTACT: Virginia Hancock Krohn, Airway Science Grant Manager, Federal Aviation Administration, APT–200, Room 524, 800 Independence Avenue SW., Washington, DC 20591, telephone: (202) 267–8003; or Rita Morgan, Airway Science Grant Assistant, Federal Aviation Administration, APT–200, Room 524, 800 Independence Avenue SW., Washington, DC 20591, telephone: (202) 267–8042.

Closing Deadline: The original and five copies of the proposal from an interested institution must be submitted to the FAA by either mail or hand delivery, no later than May 29, 1987 (4:30 p.m. EST).

Proposals Submitted by Mail: A proposal submitted by mail must be addressed to: Federal Aviation Administration, Airway Science Grant Manager, APT–200, Room 524, 800 Independence Avenue SW., Washington, DC 20591.

An applicant is encouraged to use registered or, at least, first class mail. Any grant applications received by the FAA after the closing date of May 29, 1987, 4:30 p.m. EST will be treated as a late application and not considered for award of a grant. Each late grant applicant will be notified if its application was received late.

Proposals Submitted by Hand Carried Messengers: A proposal that is hand delivered must be taken to the Federal Aviation Administration, Office of the AWS Grant Manager, Room 524, 800 Independence Avenue SW., Washington, DC 20591. The Office of the AWS Grant Manager will accept hand delivered proposals between the hours of 8:30 a.m. and 4:30 p.m. (EST), daily except Saturdays, Sundays, and Federal holidays. A proposal that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

No supplemental materials received after the application deadline date will be considered unless such material is specifically solicited by the AWS Grant Manager. Questions regarding grants management requirements should be referred to the AWS Grant Manager.

Background

The FAA is engaged in a comprehensive program to modernize the Nation's airway system to meet the challenge of aviation growth in the coming decades. The modernization program is reflected in the agency's National Airspace System plan which takes advantage of current technological advances to increase the capacity and efficiency of the Nation's airspace system while reducing relative costs to the Nation's taxpayers.

The FAA recognizes the increasing complexity of technical and managerial skills that will be needed to accommodate the technological advances in equipment, systems and configurations being planned and implemented in the aviation industry. The FAA decision to sponsor an AWS curriculum was a direct result of an FAA assessment of the human resources needed to realize the full benefits of the forthcoming airspace and airway system modernization.

Beginning in 1982, in collaboration with the University Aviation Association, the FAA developed and recommended a specific college-level airway science curriculum. The airway science curriculum was designed to satisfy university academic and accreditation requirements, be easily adaptable to existing aviation-related programs, and yet allow individual educational institutions the option of offering any number of the five areas of concentration according to their individual resources. (48 FR 32490, July 15, 1983.)

The five areas of concentration are: (1) Airway Science Management, (2) Airway Computer Science, (3) Aircraft Systems Management, (4) Airway Electronics Systems, and (5) Aviation Maintenance Management. Graduates of educational institutions offering FAA recognized airway science programs are eligible for recruitment by the FAA in one of four agency career fields: air traffic control, electronics technology,

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aviation safety inspection (general aviation operations and maintenance), and computer sciences.

The FAA has recognized 29 institutions with one or more airway science areas of concentration. Their curricula directly support FAA's human resource needs by producing graduates with the necessary knowledge and skills to pursue aviation-related technical careers in the public and private sectors.

References

Those parties interested in the FAA's previous AWS activities may refer to the following Federal Register Notices: 48 FR 11672, March 18, 1983 (FAA proposed Airway Science curriculum demonstration project plan); 48 FR 32490, July 15, 1983 (Office of Personnel Management approval of the FAA demonstration project final plan); 49 FR 22903, June 1, 1984 (a notice that announced the first competitive criteria initially employed by the FAA in selecting its first AWS grant recipient); and 50 FR 37612, September 16, 1985 (a notice that announced the competitive criteria employed by the FAA in selecting the most recent AWS grant recipients).

The Airway Science Grant

Authority: This solicitation represents a continuation of the FAA's Airway Science Grant Program. This program funds projects at selected institutions of higher learning which have evidenced a commitment to the agency's AWS curriculum program. These grants are authorized by Pub. L. 99-591. An amount of $5,000,000 is available for grant awards for the purchase, lease, or construction of buildings and associated facilities, instructional materials or equipment to be used in conjunction with AWS curricula. Monies are not available for salaries, operating expenses, research and development, travel, consultant fees, indirect costs, office supplies, automobiles, maintenance agreements, air traffic control towers, or printing costs.

Eligibility: Eligible institutions must be accredited 4-year public and non-profit colleges or universities in the United States and its possessions. To be eligible an applicant institution must have an established FAA recognized AWS curriculum in place and available to students. The curriculum must have been recognized by the Federal Aviation Administrator no later than December 31, 1990.

Proposal Format and Content

Each AWS grant proposal is subject to the provisions of applicable FAA regulations and OMB Circulars A-21, A-73, A-88, and A-110. Proposals should contain the following information in the order listed:

1. *Cover Sheet.* Near the top of the Cover Sheet, type the title "Airway Science Grant Proposal." The legal name of the proposed grantee institution, its mailing address, and Employer Identification Number, as assigned by the Internal Revenue Service, should be centered on the Cover Sheet. The names, titles, and telephone numbers of the proposed Project Director and of an official authorized to sign for the proposed grantee institution should be typed on the lower left and right corners, respectively, of the Cover Sheet. The Cover Sheet of one copy of the proposal must bear the original signature and date of each of the above individuals. The signature of the authorized official signifies institutional endorsement of the proposal, cognizance of the eligibility and limitation requirements and a commitment to provide the specific support for the proposed activities in the event the grant is made.

2. *Standard Form 424.* Applicants must submit Standard Form 424, Application for Federal Assistance, with the grant proposal. This form may be obtained by writing to the AWS Grant Manager at the address listed above.

3. *Project Summary.* A concise summary of the proposed project, including a statement of the goals and objectives, the plan to achieve these goals and objectives and the long-term benefits of the project to the institutional and national AWS programs is required. The summary should not exceed two (2) double-spaced typewritten pages, and should be written so that individuals in the aviation community can understand the basis for the use of Federal funds to support the proposed project.

4. *Budget plan.* The proposal must contain a Budget Plan that includes a detailed itemization of proposed expenditures according to the following categories:

(a) Facilities
(b) Equipment
(c) Materials
(d) Publications
(e) *Travel
(f) *Consultant services
(g) *Other direct costs
(h) *Indirect costs

(*The above costs must be set forth even though they are not subject to Federal funding under the grant.)

FAA grant funds may only be dedicated to categories a, b, c, and d. Each line item within each of the above categories must show the allocations of expenditures between the FAA grant funds and institutional funds and/or equivalent support services. The Budget Plan must also include a description of each line item listed in each of the above categories.

5. *Narrative.* The proposal Narrative should be clearly written and not exceed forty (40) double-spaced typewritten pages in length. The Narrative should contain the following:

(a) Introduction—The introduction should present a brief description of the institution including historical background, full-time graduate and undergraduate student enrollment, student body profile, location (rural, urban, etc.), fields of emphasis and degrees awarded.

(b) Background—The Narrative should provide a description of the institution's current programs in mathematics, science and engineering, computer sciences, management and the aviation sciences. The description should characterize these programs according to: the number of full-time faculty, total student enrollment, the number of majors by discipline, undergraduate degrees awarded during the 1985-1986 academic year, average faculty salaries, and the avarage teaching loads (in semester or quarter hours).

(c) The Existing AWS Program—The Narrative should include a description of the current AWS program. Discuss the relationship of the proposed project to the goals and objectives of the overall AWS program at the institution. Assess the impact of the project upon other AWS program activities. Information should be provided on the number of full-time and part-time faculty, average salaries, the total student enrollment in the AWS program, the number of AWS majors by AWS concentration area, the number of AWS degrees awarded, and projections of student enrollment and expected degrees to be conferred over the next 5 years. Describe institutional plans to attract students to the AWS program.

An institution must enclose, with the proposal, a copy of the official course catalog and/or other brochure(s) showing the AWS course offerings to students during the 1986-1987 academic year.

(d) Institutional Needs in Airway Science—The Narrative should identify and discuss the institution's needs for funds, faculty, facilities and other resources in terms of the institution's goals and objectives for the AWS curriculum. The role of the proposed project should be discussed in this context.

(e) Project Plan—A Project Plan should be prepared that sets forth the goals and objectives of the proposed project and the various activities and tasks necessary to bring the project to a successful conclusion. The plan should include time schedules for performance with appropriate milestones relating to the conduct of the project. The Plan should describe the mechanisms that will be used to manage and monitor the progress of the project. Anticipated progress reports, advisory committee meetings and similar events should be described.

(f) Project Personnel—Identify and describe the relevant skills of those individuals who will have major AWS program responsibilities. A Curriculum Vitae should be appended to the proposal for each individual who has a significant AWS program administrative and/or teaching responsibility. The amount of time each such person will be required to devote to the program must be stated.

The role of the AWS Program Director is particularly critical. The proposal must provide information indicating that the Program Director has well-defined responsibilities and sufficient time and adequate academic and institutional authority and support to effectively manage the program.

(g) Evaluation Plan—As part of the Narrative, a project Evaluation Plan should be outlined. The purpose of the Evaluation Plan, when completed at the close of the project, is to permit FAA officials and other educational and aviation specialists to assess whether the objectives of the project have been achieved and assess the impact of the project upon the AWS program at the grantee institution. The completed Evaluation Plan should give attention to the enhanced skills and subsequent occupational marketability of those AWS students who have benefited from the project. The Evaluation Plan may be prepared entirely by institutional staff or in collaboration with outside consultants. The results of the completed evaluation are to be included in the Final Project Report. The FAA anticipates that FAA representatives will make site visits to each grantee institution during the lifetime of the project.

(h) Equipment and Facilities—The Narrative should present a detailed discussion of the Facilities, Equipment, and Materials for which grant award funds are proposed to be spent. This must include a statement explaining the need for the item, the tentative source, and the time table and method (lease, lease to purchase, lease with the option to purchase, purchase or construction) for acquisition. Applicants may submit photographs, architectural drawings, site plans or other visual representations that would aid the reviewing panel in assessing the relative merits of the proposed facilities. *The institution must include a detailed description of how the specific items directly support its AWS curriculum.* Example: Discussion of which AWS courses will utilize the specific facilities and equipment.

Reporting Requirements

Until the proposed project is completed, the FAA requires that each award institution prepare an Annual Project Report, not to exceed twenty (20) double-spaced typewritten pages in length. The Annual Project Report shall be submitted to the FAA AWS Grant Manager within 90 days of the close of each fiscal year by the award institution. The Report should include a summary of project progress, highlights and accomplishments, personnel changes and a status report on expenditures and account balances for each of the line items presented in the proposed Budget Plan.

In addition, a Final Project Report shall be prepared and sent to the FAA AWS Grant Manager within 90 days of project completion. The Final Project Report should include summaries of project activities, accomplishments and Budget Plan expenditures. The Report must contain the completed Evaluation Plan described above. "Project completion" will be determined by the FAA in terms of the proposed project goals and objectives and will occur after the principal project objectives have been achieved and the awarded funds have been expended.

Local Review Statement

The proposal must have appended to it a statement, signed by the Chief Executive Officer of the institution, that contains: (a) An endorsement of the proposed project; (b) a description of how the proposed project supports the larger institutional goals and objectives in AWS; and (c) a commitment to provide the institutional resources necessary to complete the proposed project and continuing support for the AWS program after the grant award funds have been expended.

Proposal Review

Proposals will be reviewed, evaluated and ranked on the basis of merit by a panel of educational and aviation specialists from the public and private sectors, including academia, private industry and/or the Federal Government.

The awards typically will range from $100,000 to $1,000,000 maximum. The FAA does not intend to fund all proposed projects or necessarily all components of a proposal selected for award. The agency expects to distribute most, if not all of the $5,000,000 available.

Evaluation Criteria.

Evaluation criteria are designed to enable the reviewing panel and FAA officials to effectively evaluate the relative merit of proposals submitted in response to this solictation. Each reviewer will evaluate the proposals based on the following factors listed below and rate each proposal on a 100-point numerical scale. The evaluation criteria are the following:

1. *Institutional Impact.* Each proposal will be evaluated to determine the extent to which the proposing institution has demonstrated:

(a) The need for funding of its AWS program in terms of the AWS program goals and objectives;

(b) The role grant funding will play in achieving these goals and objectives;

(c) The impact the grant funding will have upon the existing AWS program;

(d) The expected benefits that will accrue to the institution and its AWS students; and

(e) The consequences to the AWS program if the project is not funded. The proposal should identify the ways in which the proposed project will support the overall institutional goals and objectives in related disciplines such as mathematics, science and engineering, management and the computer sciences. (15 points maximum)

(2) *Institutional Commitment.* Each proposal will be evaluated as to the extent of the institution's commitment to the AWS Program. This includes consideration of the following: (a) Number of recognized AWS curriculum options and number of students enrolled; (b) the amount of institutional funds, facilities and other collateral resources provided toward the support of the proposed grant project; and (c) the continued support and growth of the institutional AWS program, including the beneficial impact of the proposed project after the grant funds are expended. In addition, the Local Review Statement from the Chief Executive Officer of the institution will be considered in determining how the proposed project will assist the institution in attaining the goal of establishing a quality AWS program. (20 points maximum)

3. *Project Plan Quality.* The Project Plan for each proposed AWS project

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will be evaluated in regard to the following characteristics:

(a) The relationship between the goals and objectives of the proposed project and those of the other AWS programs of the institution;

(b) The adequacy of the institutional resources for achieving the goals and objectives of the proposed project;

(c) The effectiveness of the proposed mechanisms for the management and coordination of the faculty, administrative, facility and other institutional resources in achieving the goals and objectives of the proposed project;

(d) Project management mechanisms that provide for the effective administration and technical direction of the project, including the establishment of specific project goals and objectives, time-tables for performance and milestones that permit monitoring of the progress of the project and the measurement of its overall effectiveness;

(e) A budget Plan that sufficiently details proposed expenditures by budget category and line item and shows the allocation between grant funds and institutional funds and/or equivalent support services. The budget figures should be appropriate for the goods and services being procured and consistent with the project narrative presented elsewhere in the Project Plan;

(f) Adequate institutional budgeting and other fiscal controls that allow for periodic review of resource commitments and determinations that expenditures are in accordance with the Project Plan; and

(g) The identification of significant educational, technical and administrative innovations that would further the attainment of the institutional and national goals and objectives for the AWS programs. (30 points maximum)

4. *Qualifications of Key Personnel.* The reviewing panel will evaluate the professional qualifications and experience of the institution's present AWS personel and other key individuals who would be involved in the proposed AWS project, with particular attention being given to the AWS Program Director. The relationship of the qualifications and past experience of these individuals to the goals and objectives of the project will be considered. (10 points maximum)

5. *Expected Benefits.* The benefits of the proposed project to both the institutional and national AWS programs will be evaluated. The reviewers will consider: (a) The long-term benefits to the institution, including the AWS students, faculty, facilities and curriculum development efforts; (b) the applicability and usefulness of educational, technical and administrative innovations to AWS programs at other institutions and in other instructional and occupational environments; (c) the benefit to future employers of AWS program graduates, including academia, private industry and Federal, State and Local governments; and (d) projections of the number of AWS program graduates over the next five years, in each of the concentration areas of the FAA AWS curriculum. (15 points maximum)

6. Evaluation Plan. The reviewing panel will consider the adequacy of the proposed Evaluation Plan in assessing project performance and the impact of the project upon the existing institutional AWS and the quality of graduating AWS students. (10 points maximum)

Award Date

The FAA expects to announce who the institutional recipients of the AWS grant awards are during the summer of 1987.

E.V. Curran,

Director of Personnel and Technical Training.

Issued in Washington, DC., on January 22, 1987.

[FR Doc. 87-1904 Filed 1-30-87; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 151; Minimum Operational Performance; Standards for Airborne MLS Area Navigational Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 151 on Minimum Operational Performance Standards for Airborne MLS Area Navigational Equipment to be held on February 18-20, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of the Minutes of the Fourteenth Meeting; (3) Review and Discuss SC-137 and EUROCAE WG-27 Activities; (4) Technical Presentations; (5) Working Group Reports; (6) Review of the Ninth Draft MOPS; (7) Working Group Sessions; (8) Plenary to Review Working Group Progress and Task Assignments; (9) Other Business; and (10) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 21, 1987.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 87-1909 Filed 1-30-87; 8:45 am]

BILLING CODE 4910-13-M

Airspeed Instruments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO-C2d prescribes the minimum performance standards that airspeed instruments must meet to be identified with the marking "TSO-C2d."

DATE: Comments must identify the TSO file number and be received on or before May 8, 1987.

ADDRESS: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO-C2d, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

Or Deliver Comments to: Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-9570.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSC listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

Background

Proposed TSO-C2d will include revised Marking and Data Requirements for airspeed instruments. Also, the proposed TSO incorporates Radio Technical Commission for Aeronautics (RTCA) Document Nos. DO-160B, "Environmental Conditions and Test Procedures for Airborne Equipment," dated July 1984, for the environmental standards, and DO-178A, "Software Consideration in Airborne Systems and Equipment Certification" dated March 1985, for the computer software requirements.

How to Obtain Copies

A copy of the proposed TSO-C2d may be obtained by contacting the person under "For Further Information Contact." TSO-C2d references SAE AS 8019, dated March 30, 1981, for the minimum performance standards, RTCA/DO-160B for the environmental standard, and RTCA/DO-178A for the computer software requirements. SAE AS 8019 may be purchased from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096. RTCA/DO-160B and DO-178A may be purchased from the Radio Technical Commission for Aeronautics Secretariat, One McPherson Square, Suite 500, 1425 K Street, NW., Washington, DC 20005.

Issued in Washington, DC, January 22, 1987.

Thomas E. McSweeny,

Manager, Aircraft Engineering Division, Office of Airworthiness.

[FR Doc. 87-1910 Filed 1-30-87; 8:45 am]

BILLING CODE 4910-13-M

Turn and Slip Instrument

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The propsoed TSO-C3d prescribes the minimum performance standards that turn and slip instruments must meet to be identified with the marking "TSO-C3d."

DATE: Comments must identify the TSO file number and be received on or before May 8, 1987.

ADDRESS: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO-C3d, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591

Or deliver comments to:

Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-9570.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

Background

Proposed TSO-C3d will include revised Marking and Data Requirements for turn and slip instruments. Also, the proposed TSO incorporates Radio Technical Commission for Aeronautics (RTCA) Documents Nos. DO-160B, "Environmental Conditions and Test Procedures for Airborne Equipment," dated July 1984, for the environmental standards, and DO-178A, "Software Consideration in Airborne Systems and Equipment Certification," dated March 1985, for the computer software requirements.

How to Obtain Copies

A copy of the proposed TSO-C3d may be obtained by contacting the person under **"FOR FURTHER INFORMATION CONTACT."** TSO-C3d references SAE AS 8004, dated September 1975, for the minimum performance standards, RTCA/DO-160B for the environmental standard, and RTCA/DO-178A for the computer software requirements. SAE AS 8004 may be purchased from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096. RTCA/DO-160B and DO-178A may be purchased from the Radio Technical Commission for Aeronautics Secretariat, One McPherson Square, Suite 500, 1425 K Street, NW., Washington, DC 20005.

Issued in Washington, DC, January 22, 1987.

Thomas E. McSweeny,

Manager, Aircraft Engineering Division, Office of Airworthiness.

[FR Doc. 87-1911 Filed 1-30-87; 8:45 am]

BILLING CODE 4910-13-M

Direction Instrument, Magnetic (Gyroscopically Stabilized)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO-C6d prescribes the minimum performance standards that direction instrument, magnetic (gyroscopically stabilized) must meet to be identified with the marking "TSO-C6d."

DATE: Comments must identify the TSO file number and be received on or before May 8, 1987.

ADDRESS: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO-C6d, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591

Or deliver comments to:

Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays

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except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

Background

Proposed TSO–C6d will include revised Marketing and Data Requirements for magnetic (gyroscopically stabilized) direction instruments. Also, the proposed TSO incorporates Radio Technical Commission for Aeronautics (RTCA) Document Nos. DO–160B, "Environmental Conditions and Test Procedures for Airborne Equipment," dated July 1984, for the environmental standards, and DO–178A, "Software Consideration in Airborne Systems and Equipment Certification," dated March 1985, for the computer software requirements.

How To Obtain Copies

A copy of the proposed TSO–C6d may be obtained by contacting the person under "For Further Information Contact." TSO–C6d references SAE AS 8013, dated June 1983, for the minimum performance standards, RTCA/DO–160B for the environmental standard, and RTCA/DO–178A for the computer software requirements. SAE AS 8013 may be purchased from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096. RTCA/DO–160B and DO–178A may be purchased from the Radio Technical Commission for Aeronautics Secretariat, One McPherson Square, Suite 500, 1425 K Street, NW., Washington, DC 20005.

Issued in Washington, DC, on January 22, 1987.

Thomas E. McSweeny,

Manager, Aircraft Engineering Division, Office of Airworthiness.

[FR Doc. 87–1914 Filed 1–30–87; 8:45 am]

BILLING CODE 4910–13–M

Direction Instrument, Non-Magnetic (Gyroscopically Stabilized)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO–C5e prescribes the minimum performance standards that direction instrument, non-magnetic (gyroscopically stabilized) must meet to be identified with the marking "TSO–C5e."

DATE: Comments must identify the TSO file number and be received on or before May 8, 1987.

ADDRESS: Send all comments on the proposed technical standard order to:

Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO–C5e, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591

Or deliver comments to:

Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

Background

Proposed TSO–C5e will include revised Marking and Data Requirements for non-magnetic (gyroscopically stabilized) direction instruments. Also, the proposed TSO incorporates Radio Technical Commission for Aeronautics (RTCA) Document Nos. DO–160B, "Environmental Conditions and Test Procedures for Airborne Equipment," dated July 1984, for the environmental standards, and DO–178A, "Software Consideration in Airborne Systems and Equipment Certification," dated March 1985, for the computer software requirements.

How To Obtain Copies

A copy of the proposed TSO–C5e may be obtained by contacting the person under "For Further Information Contact." TSO–C5e references SAE AS 8021, dated March 16, 1981, for the minimum performance standards, RTCA/DO–160B for the environmental standard, and RTCA/DO–178A for the computer software requirements. SAE AS 8021 may be purchased from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096. RTCA/DO–160B and DO–178A may be purchased from the Radio Technical Commission for Aeronautics Secretariat, One McPherson Square, Suite 500, 1425 K Street, NW., Washington, DC 20005.

Issued in Washington, DC, on January 22, 1987.

Thomas E. McSweeny,

Manager, Aircraft Engineering Division, Office of Airworthiness.

[FR Doc. 87–1913 Filed 1–30–87; 8:45 am]

BILLING CODE 4910–13–M

Direction Instrument, Magnetic, Non-Stabilized Type (Magnetic Compass)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO–C7d prescribes the minimum performance standards that direction instrument, magnetic, non-stabilized type (magnetic compass) must meet to be identified with the marking "TSO–C7d."

DATE: Comments must identify the TSO file number and be received on or before May 4, 1987.

ADDRESS: Send all comments on the proposed technical standard order to:

Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO–C7d, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591

Or deliver comments to:

Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness

Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

Background

Proposed TSO–C7d will include revised Marking and Data Requirements for magnetic, non-stabilized type direction instruments (magnetic compass). Also, the proposed TSO incorporates Radio Technical Commission for Aeronautics (RTCA) Document No. DO–178, "Software Consideration in Airborne Systems and Equipment Certification," dated March 1985, for the computer software requirements.

How To Obtain Copies

A copy of the proposed TSO–C7d may be obtained by contacting the person under "FOR FURTHER INFORMATION CONTACT." TSO–C7d references SAE AS 398A, reaffirmed October 1984, for the minimum performance standards, and RTCA/DO–178A for the computer software requirements. SAE AS 398A may be purchased from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096. RTCA/DO–178A may be purchased from the Radio Technical Commission for Aeronautics Secretariat, One McPherson Square, Suite 500, 1425 K Street, NW., Washington, DC 20005.

Issued in Washington, DC.

Thomas E. McSweeny,

Manager, Aircraft Engineering Division, Office of Airworthiness.

[FR Doc. 87–1912 Filed 1–30–87; 8:45 am]

BILLING CODE 4910–13–M

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Sunshine Act Meetings

Federal Register
Vol. 52. No. 21
Monday, February 2, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, February 4, 1987.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: *Fire Toxicity Report/National Research Council Briefing*

The staff and some members of the National Research Council (NRC) of the National Academy of Science will brief the Commission on the NRC report: Fire & Smoke, Understanding the Hazards.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,

Deputy Secretary.

January 28, 1987.

[FR Doc. 87-2017 Filed 1-29-87; 9:05 am]

BILLING CODE 6355-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time) Monday, February 9, 1987.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street NW., Washington, DC 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Proposed Compliance Manual, Section 630, Volume II, Unions

Closed

Litigation Authorization; General Counsel Recommendations
Discussion of Commissioner's Charge

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634-6748.

Dated: January 28, 1987.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

This Notice Issued January 28, 1987.

[FR Doc. 87-2013 Filed 1-28-87; 4:36 pm]

BILLING CODE 6750-06-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

January 28, 1987.

TIME AND DATE: 10: a.m., Thursday, February 5, 1987.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Part open, part closed (pursuant ot 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED:

In Open meeting, the Commissioners will consider and act upon the following:

1. *Dillard Smith v. Reco, Inc.*, Docket No. VA 86-9-D. (Issues include consideration of the operator's motion to vacate the Commission's direction for review.)

In Closed meeting, the Commissioners consider and act upon the following:

2. *Emerald Mines Corporation v. Secretary of Labor*, Docket No. PENN 85-298-R. (Issues include consideration of requirements for taking enforcement action under section 104(d) of the Mine Act. 30 U.S.C. 814(d).

Any person attending the open portion of this meeting who requires special accessibility features, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 87-2090 Filed 1-29-87; 2:08 pm]

BILLING CODE 6735-0-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

January 28, 1987.

TIME AND DATE: 10:00 a.m., Thursday, January 22, 1987.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed IPursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED:

In addition to the previously announced items, the Commission also considered the following item:

3. *Secretary of Labor on behalf of Yale Hennessee v. Alamo Cement Co.*, Docket No. CENT 86-151-DM. Issues included the operator's request to review the judge's denial of its motion to modify an order of temporary reinstatement.

It was determined by a unanimous vote of Commissioners that this item be included and no earlier announcement of the addition was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 87-2089 Filed 1-29-87; 2:08 pm]

BILLING CODE 6735-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of February 9, 1987:

Opens meetings will be held on Monday, February 2, 1987, at 10:00 a.m. and on Thursday, February 5, 1987, at 10:00 a.m., in Room 1C30. A closed meeting will be held on Tuesday, February 3, 1987, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions, set forth in 5 U.S.C. 552b(c) (4), (8) (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioners Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Monday, February 2, 1987, at 10:00 a.m., will be:

Consideration of whether to grant the MBS Clearing Corporation ("MBSCC") registration as a clearing agency under section 17A of the Act and Rule 17Ab2-1(c). MBSCC will perform clearing agency services for mortgage-backed securities, particularly securities issued by the Government National Mortgage Association. For further information, please contact Joe McDonald at (202) 272-2422.

The subject matter of the closed meeting scheduled for Tuesday, February 3, 1987, at 2:30 p.m., will be:

Regulatory matter regarding financial institution.

Settlement of administrative proceeding of an enforcement nature.

Institution of injunctive action.

The subject matter of the open meeting scheduled for Thursday, February 5, 1987, at 10:00 a.m., will be:

1. Consideration of whether to: (1) Preppropose for public comment Form N-7 and relative rules and rule amendments under the Investment Company Act of 1940 and the Securities Act of 1933 that would be used for the registration of unit investment trusts. The Commission is also republishing staff guidelines relating to Form N-7; and (2) propose for comment Rule 24f-3 under the Investment Company Act of 1940 to permit the sale of unit investment trust securities in the secondary market without the imposition of an additional fee under the Securities Act of 1933 if certain conditions are met. For further information, please contact Jay Gould at (202) 272-2107.

2. Consideration of whether to publish for comment proposed amendments to Regulation S-X that would require accountants' reports included in Commission filings to be signed by an independent accountant who within the last three years has undergone a peer review of its accounting and auditing practice. For further information, please contact John Heyman at (202) 272-2130.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bernard Black at (202) 272-2468.

Jonathan G. Katz,

Secretary.

January 27, 1987.

[FR Doc. 87-2012 Filed 1-28-87; 4:36 p.m.]

BILLING CODE 8010-01-M

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federal register

Monday
February 2, 1987

Part II

Federal Home Loan Bank Board

12 CFR Part 563
Bank Secrecy Act Compliance Procedures; Technical Correction; Notice of OMB Control Number

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FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 87-113]

Bank Secrecy Act Compliance Procedures; Technical Correction

January 29, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of OMB Control number.

SUMMARY: The Federal Home Loan Bank Board ("Board") is amending the final regulation providing for Bank Secrecy Act compliance which was published at page 2858 in the January 27, 1987, **Federal Register** by inserting the Office of Management and Budget Control number which was inadvertently omitted.

EFFECTIVE DATE: February 2, 1987.

FOR FURTHER INFORMATION CONTACT: John Downing, Attorney, Office of Enforcement, (202) 653-2604, C. Dawn Causey, Attorney, Office of Enforcement, (202) 653-2640, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

The Federal Home Loan Bank Board hereby amends Part 563, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47, Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401-407, 48 Stat. 1255-1260, as amended (12 U.S.C. 1724-1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-1948 Comp., p. 1071.

2. The Office of Management and Budget Control number on page 2859, center column, second line from the top, is corrected to read "3068-0530".

3. Section 563.17-7 is amended by adding a parenthetical phrase to the end of the section to read as follows:

§ 563.17-7 Procedures for monitoring Bank Secrecy Act compliance.

* * * * *

(Approved by the Office of Management and Budget under Control number 3068-0530)

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Acting Secretary.

[FR Doc. 87-2172 Filed 1-3-87; 12:16 pm]

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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[4] No amendments to this volume were promulgated during the period July 1, 1985 to June 30, 1986. The CFR volume issued as of July 1, 1985 should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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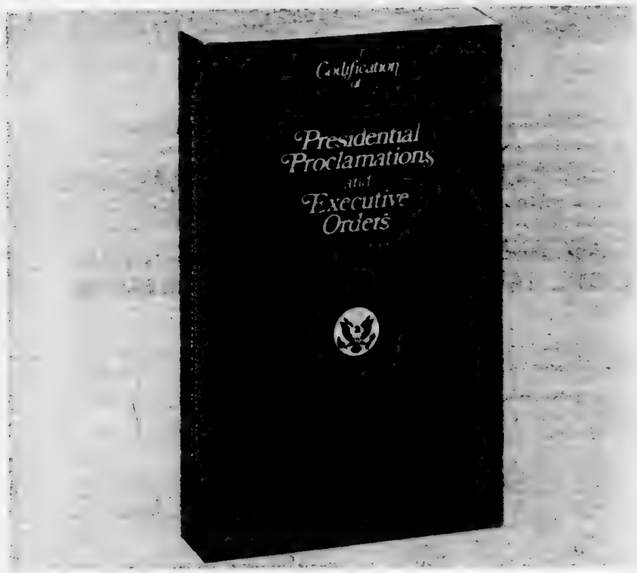
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Federal Register
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Tuesday, February 3, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Retirement Spouse Equity Act of 1984

AGENCY: Office of Personnel Management.
ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (POM) is revising its interim rules implementing the Civil Service Retirement Spouse Equity Act of 1984 (CSRSEA) as amended by the Federal Employees Benefits Improvements Act of 1986 (FEBIA) and the Federal Employees' Retirement System Technical Corrections Act of 1986 (FERSTCA). These revisions are necessary (1) to conform with changes in the law made by FERSTCA; and (2) to clarify several sections in the previously published interim rules.

DATES: Interim rules effective February 3, 1987; comments must be received on or before April 6, 1987.
ADDRESS: Send written comments to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, P.O. Box 57, Washington, DC 20044, or deliver to OPM, Room 4351, 1900 E Street NW., Washington, DC.
FOR FURTHER INFORMATION CONTACT: Patricia A. Rochester (202) 632-4682.
SUPPLEMENTARY INFORMATION: On September 8, 1986, we published (at 51 FR 31927) interim rules (with a request for comments) implementing the retirement provisions of FEBIA (Pub. L. 99-251). The September 8, 1986, interim rules were necessary to conform earlier-published interim rules (50 FR 20064, May 13, 1985) implementing CSRSEA, with the changes made by FEBIA. These revisions to the September 8th interim rules are necessary for conformance with the technical changes made by FERSTCA (Pub. L. 99-556). Additionally, we are clarifying several sections of the September 8th interim rules.

I. Changes Required By FERSTCA

Section 831.1704 has been revised to reflect a change (provided in section 501(a) of FERSTCA) in the provisions concerning a court-ordered survivor annuity for a former spouse. Previously, FEBIA allowed a court-ordered survivor annuity to a former spouse if either (1) the court order terminates the marriage; or (2) the employee or Member retires on or after May 7, 1985. Now, under FERSTCA, a court-ordered survivor annuity for a former spouse based on a marriage that was terminated before May 7, 1985, will not be honored. We are therefore deleting the paragraphs ((d)(1)(i) and (ii)) that incorporated the superseded provisions.

II. Clarifying Regulatory Text

Section 831.612(a)(1) has been revised to clarify that when the marriage of an individual who retired on or after May 7, 1985, terminates after retirement, the individual may file with OPM a written election to provide a former spouse annuity within 2 years after the termination of the marriage. The language in § 831.612(a)(1) of the September 8th interim rules did not clearly state that the provisions apply when the individual's marriage terminates after retirement.

Section 831.1704(e) has been revised to make it clear that OPM will not honor a court order modifying a decree of divorce or annulment if it is issued after the death or retirement of the employee or Member involved. The language in the text of the September 8th interim rules could have been interpreted to mean that OPM would honor such modifications when the marriage is terminated after retirement.

Under section 553(d)(3) of Title 5, United States Code, I find that there is good reason to make these amendments effective in less than 30 days. These regulations are effective upon publication so that OPM regulations will conform with the law as recently amended. Delaying rulemaking would result in unncessary confusion regarding the conditions under which a former spouse may be entitled to retirement benefits under the law.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect retirement payments to retired Government employees, spouses, and former spouses.

List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

Office of Personnel Management
James E. Colvard,
Deputy Director.

PART 831—RETIREMENT

Accordingly, OPM is amending 5 CFR Part 831 as follows:

Subpart F—Survivor Annuities

1. The authority citation for Subpart F of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347; § 831.621 also issued under sec. 201(d) of the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99-251.

2. In § 831.612, paragraph (a)(1) is revised to read as follows:

§ 831.612 Post-retirement election of fully reduced annuity or partially reduced annuity to provide a former spouse annuity.

(a)(1) Except as provided in paragraphs (b) and (c) of this section, when the marriage of a retiree who retired on or after May 7, 1985, terminates after retirement, he or she may elect in writing a fully reduced annuity or a partially reduced annuity to provide a former spouse annuity. Such an election must be filed with OPM within 2 years after the retiree's marriage to the former spouse terminates.

. . . . .

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Subpart Q—Court Orders Affecting Civil Service Retirement Benefits

3. The authority citation for Subpart Q of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347.

4. In § 831.1704, paragraphs (d) and (e)(1) are revised to read as follows:

§ 831.1704 Qualifying court orders.

* * * * *

(d) For purposes of affecting or awarding a former spouse annuity, a court order is not a qualifying court order whenever—

(1) The marriage was terminated before May 7, 1985; or

(2)(i) The marriage was terminated on or after May 7, 1985; and

(ii) The employee or Member retired under CSRS before May 7, 1985; and

(iii)(A) The employee or Member had elected not to provide a current spouse annuity for that spouse at the time of retirement; or,

(B) In the case of a post-retirement marriage, the annuitant had not elected to provide a survivor annuity for that spouse before May 7, 1985.

(e)(1) For purposes of affecting or awarding a former spouse survivor annuity, a court order modifying a decree of divorce or annulment, or modifying any court order or court approved property settlement incident to a decree of divorce or annulment will not be honored if it is issued after the employee or Member dies or retires.

* * * * *

[FR Doc. 87-2048 Filed 2-2-87; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 890

Federal Employees Health Benefits Program—Management of Reserve Funds

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is amending its regulations on the Federal Employees Health Benefits (FEHB) Program to modify the formula that triggers transfers of health plan reserve funds between OPM and certain health plan carriers. While overall FEHB reserve objections will remain unchanged, these regulations will enhance the efficacy of cash management procedures for the Employees Health Benefits Fund in the U.S. Treasury by delaying disbursements from the Fund until absolutely necessary and maximizing the return of excess funds that accumulate with health plan carriers when claims experience is better than expected.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Bonnie Rose (202) 632-4634.

SUPPLEMENTARY INFORMATION: On August 22, 1986, OPM published proposed regulations in the **Federal Register** (51 FR 30068) concerning changes in FEHB reserve management. The primary purpose of those regulations was to increase the preferred minimum balance for contingency reserve accounts held in the EHB Fund with respect to experience-rated health plans. The new contingency reserve target amounted to the equivalent of 1½ months' average outlays by such plans for claims paid plus administrative expenses and retentions, instead of 1 months' average outlays. At the same time, the regulations proposed a reduction in the maximum level of carrier-held reserve funds for each experience-rated health plan to an amount equivalent to 3½ month's average outlays by the plan, in lieu of 4 months. In the FEHB Program, carrier-held reserves have consistently been understood to include (1) funds set aside for incurred-but-unpaid claims; and (2) the "special" reserve representing the cumulative difference between plan income (subscription income plus interest on investments) and plan expenses (claims paid, claims incurred but unpaid, administrative expenses, and retentions).

The FEHB reserve target levels trigger automatic fund transfers between health plan carriers and OPM. The respective transfers normally coincide with the carrier's submission and OPM's acceptance of the plan's accounting statement at the end of each contract period. However, the proposed regulations expressly recognized that it is within OPM's discretion to specify a date subsequent to the submission of the annual accounting statement for a carrier's transfer of excess reserves, should OPM find that circumstances warrant this.

Finally, the proposed regulations sought to eliminate the special exception to the general reserve targets for plans havings more than 50 percent of their enrollees overseas. In OPM's view, this exception was no longer needed.

During the 60-day comment period, OPM received a total of six comments on the regulations from two health plan carriers, two health plan underwriters, one association representing employee organization health plans, and one health plan's legal counsel. Following is a summarization of the commenters' concerns with explanations of regulatory modifications to accommodate each concern or OPM's rationale for not considering further change.

Effective Date

Four commenters objected to supplementary information accompanying the proposed regulations which indicated that changes "would not apply to carrier-held reserves until December 31, 1986." The commenters maintained that a delay in the effective date is necessary because, when OPM published the proposed changes, the 1986 contract year was nearly over and carriers had already concluded 1987 rate negotiations with the expectation of holding total reserves equalling up to 4 months' outlays. OPM wishes to note that the revised reserve targets are intended to apply to automatic reserve transfers based on the plans' 1987 operations. Such payments will be determined on the basis of the accounting statement due at the end of the 1987 contract period, so that the actual transfers will occur in calendar year 1988. Automatic reserve transfers in calendar year 1987 will be based on 1986 plan operations which are subject to reserve target levels under OPM's final regulations published on March 4, 1986 (51 FR 7428).

Access to OPM-Held Reserves

All of the commenters opposed reapportioning FEHB reserve holdings between OPM and the plans, unless the regulations also provide automatic access to the plan's contingency reserve whenever a plan demonstrates that it is, or will likely be, in a negative cash-flow position. The commenters noted that plans must typically set aside funds approximately 3 months' average outlays to cover incurred-but-unpaid claims. Thus, the new regulations effectively reduce any year-end surplus of income for the plan over plan expenses that may be retained in the carrier-held special reserve to one-half month's outlays, instead of 1 month. The special reserve serves as the carrier's margin against adverse fluctuations in claims experience. The commenters maintained that the proposed reserve targets create a significant risk of carrier reserve depletion and delays in claims payments.

OPM does not dispute the comments that the FEHB plans are vulnerable to adverse claims experience because plans must generally submit benefit and rate proposals 7 months in advance of a particular contract year. Furthermore, applicable law requires an open season for enrollment changes during the interim period between contract negotiation and the effective date of any change in benefits or rates. However, in addition to the end-of-year reserve transfers, the regulations (5 CFR 890.503(c)(6)) will continue to allow carriers to request a transfer from a plan's contingency reserve anytime the carrier has good cause, such as an unanticipated increase in benefit claims. If the carrier provides adequate justification for the request, OPM can respond in a matter of days. Moreover, the funds transferred under the provision are not limited to the excess in the contingency reserve over the preferred minimum balance. As a further assurance to plans, the final regulations (5 CFR 890.503(c)(6)) assign carrier requests for unscheduled contingency reserve transfers "high priority" in OPM's administration of the program.

One underwriter expressed particular concern about the proposed reduction in carrier-held reserves, noting that if a plan changes underwriters the displaced underwriter has no contractual call on the plan's contingency reserve funds beyond the contract expiration date. Health plan rate negotiations anticipate income to the plan from subscription income, interest from reserve investments, and transfers of contingency reserves in excess of the preferred minimum balance. Automatic contingency reserve transfers are based on the plan's annual accounting report due upon conclusion of each contract year. Moreover, OPM regulations specify that resulting contingency reserve transfers shall be reported as subscription income to the plan for the year in which paid. Thus, a displaced underwriter would not receive all of the income anticipated for the final contract year and might sustain a deficit for plan operations, in spite of the fact that the plan's contingency reserve exceeds the preferred minimum balance.

OPM agrees that the underwriter has put forth a valid concern. However, this matter may be addressed in the contract between an underwriter and the carrier of an experience-rated health plan. The contract may provide that any contingency reserves accessible to the plan under OPM regulations and negotiated as income for the plan for a particular contract year shall continue to be available to the underwriter when the carrier fails to renew the underwriter's contract at the end of the contract term, if such funds are necessary to satisfy outstanding underwriter liabilities attributable to plan benefits. The fact that OPM's regulations (5 CFR 890.503(c)(6)) specify that disbursements from FEHB contingency reserves shall be reported as subscription income to the plan for the year in which payment occurs is an accounting convention. This does not affect performance under a contract between a plan's carrier and an underwriter.

Exceptions From Reserve Targets

Both an association representing employee organization health plans and one of the underwriters for a large number of those plans urged OPM to provide for exceptions to the 3½-month target on year-end carrier reserves. They stated that this was necessary to ensure that no carrier is required to transfer funds to OPM that are committed to pay for incurred-but-unpaid claims. These commenters noted that there are bona fide differences in the way carriers determine and account for their incurred claims. In particular, they maintained that an exception to the formula is still a critical factor when a plan is dealing with a significant number of overseas enrollees. One employee organization plan, for example, introduced a distinct plan option in the 1986 contract year to deal exclusively with enrollees who are stationed at foreign posts of duty.

On reconsideration, OPM agrees that a special exception to the reserve formula should be retained to deal with the lag time associated with receiving and processing claims when the majority of enrollees, in either an entire plan or a particular plan option, are stationed outside the United States. Accordingly, the final regulations retain the provision under which payments to and from the contingency reserve associated with such plans, or plan options, will be based solely on maintaining the carrier's special reserve at an amount equivalent to 1 month's average outlays for claims and administration. In all other cases, though, OPM concludes that the 3½-month target for carrier-held reserves should be adequate to sustain uninterrupted operations. But, in the event that a cash-flow problem does develop, we reiterate that OPM will promptly act on requests for special contingency reserve payments.

Miscellaneous Comments

Two commenters questioned whether manipulating FEHB reserve policy to reflect the Administration's emphasis on improved cash management in the Federal budget is consistent with the statutory purposes of the FEHB Fund. We see no inconsistency. Regardless of where FEHB reserves are actually accumulated, they will continue to be available solely to benefit program participants.

Finally, one commenter objected to the proposed changes from the perspective of impact on investment returns and the attendant effect on program costs. The commenter advised that the new reserve targets will result in significant opportunity costs to the program. Plans can typically achieve a higher rate of return on investments than can the Government because the Department of the Treasury invests primarily in short-term securities. Higher investment yields ultimately translate into reduced program costs. Moreover, the new reserve targets make it more likely that plans will be forced to liquidate assets to pay benefits, creating the risk of capital losses for plans.

OPM does not find this argument persuasive. Although it is well-established FEHB Program policy that FEHB funds that are not immediately needed to pay benefits should be invested in interest-bearing obligations, generation of interest income is not a primary program objective. Rather, the FEHB law implicitly directs that funds are to be available for the benefit of program participants. Thus, short-term investments are entirely consistent with the statutory purposes of the FEHB Fund and they obviate the need to liquidate assets at a loss if unanticipated events create cash-flow problems.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they relate to OPM's management of the Employees Health Benefits Fund.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Claims, Government employees, Health insurance, Retirement.

Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM is amending 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104 and sec. 3(5) of

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Pub. L. 95–454, 92 Stat. 1112; § 890.301 also issued under 5 U.S.C. 8905(b); § 890.302 also issued under 5 U.S.C. 8901 (5) and (9); § 890.701 also issued under 5 U.S.C. 8902(m)(2); Subpart H also issued under Title I of Pub. L. 98–615, 98 Stat. 3195, and Title II of Pub. L. 99–251, 100 Stat. 20.

2. Section 890.503 is amended by revising paragraph (c) to read as follows:

§ 890.503 Reserves.

* * * * *

(c)(1) *Contingency reserve.* The contingency reserve for each plan is credited with—

(i) The three one-hundred-and-fourths of the enrollment charge set aside for the contingency reserve from the enrollment charges for employees and annuitants enrolled for that plan;

(ii) Amounts transferred in accordance with law from other contingency reserves and the administrative reserve;

(iii) Income from investment of the reserve;

(iv) Its proportionate share of the income from investment of the administrative reserve; and

(v) Any return of reserves of the plan.

(2) *Contingency reserve minimum balance.* The preferred minimum balance for the contingency reserve for community-rated plans is 1 month's subscription charges at the average recurring monthly rate paid from the Employees Health Benefits Fund for the plan during the most recent contract period. The preferred minimum balance for the contingency reserve for experience-rated plans is 1½ times an amount equal to the sum of an average month's paid claims plus an average month's administrative expenses and retentions, as determined under paragraph (c)(3) of this section. Amounts in excess of the preferred minimum balance for a contingency reserve account may be used with respect to the plan from which the reserve derives: To defray increases in future rates; to increase plan benefits, or to reduce contributions of eligible subscribers and the Government under the program through devices such as temporary suspension of, or reduction in, required contributions or a refund of contributions to eligible subscribers and the Government.

(3) *OPM/carrier reserve transfers.* Except as provided by paragraph (c)(4) of this section, the target level for total reserves held by the carrier of an experience-rated plan is 3½ times an amount equal to the sum of an average month's paid claims plus an average month's administrative expenses and retentions. Carrier-held reserves include funds set aside for incurred-but-unpaid benefit claims and the "special" reserve representing the cumulative difference between income to the plan (subscription income plus interest on investments) and plan expenses (benefit costs plus administrative expenses and retentions). In this section, an average month's paid claims is one-sixth of the total claims paid during the last 6 months of the most recent contract period, and an average month's administrative expenses and retentions is one-twelfth of the administrative expenses and retentions for the most recent contract period.

(i) When, as of the end of a contract period, the total of all the reserves held by a carrier for an experience-rated plan is less than the target level described in the first three sentences of paragraph (c)(3) of this section, the carrier is entitled to payment from the contingency reserve. Such contingency reserve payment shall equal the lesser of: An amount equal to the difference between the target level for the plan's reserves and the total of the reserves held by the carrier for the plan, or an amount equal to the excess, if any, of the contingency reserve over the preferred minimum balance. OPM must authorize this payment promptly after accepting the accounting statement for the contract period. The carrier must credit the amount so paid to the special reserve of the plan.

(ii) When, as of the end of a contract period, the total of all reserves held by the carrier of an experience-rated plan amounts to more than the plan's target level, the carrier must return to OPM any excess over the plan's target level. The payment must be made at the same time the plan submits its annual accounting statement unless OPM specifies a later date. If the accounting statement is not filed by the time limit specified in the plan's contract with OPM or the plan fails to return the excess reserves with the accounting statement (or at a later date specified by OPM), OPM may estimate the amount of excess reserves and offset that amount from future subscription payments.

(4) *Exceptions from carrier-held reserve targets.* If more than 50 percent of the enrollees in an experience-rated plan, or a particular plan option, are stationed at posts of duty outside the United States, its possessions, and the Commonwealth of Puerto Rico, the carrier's "special" reserve for such plan or option, as described in paragraph (c)(3) of this section, rather than the total reserves held, shall be used to determine payments to and from the contingency reserve.

(i) When the special reserve held by the carrier at the end of the contract period amounts to less than the sum of 1 month's average paid claims plus 1 month's average administrative expenses and retentions, as determined under paragraph (c)(3) of this section, the carrier is entitled to payment from the contingency reserve. Such contingency reserve payment shall equal the lesser of: An amount equal to the difference between 1 month's average paid claims plus 1 month's average administrative expenses and retentions and the total of the special reserve held by the carrier for the plan or plan option, or an amount equal to the excess, if any, of the contingency reserve over the preferred minimum balance. OPM shall authorize this payment promptly after accepting the accounting report for the contract period. The carrier shall credit the amount so paid to the respective special reserve.

(ii) When the special reserve held by the carrier for the plan or plan option at the end of the contract period amounts to more than the sum of 1 month's average paid claims plus 1 month's average administrative expenses and retentions, as determined under paragraph (c)(3) of this section, the carrier shall return to OPM any excess over such amount, to be credited to the contingency reserve administered by OPM for the plan. The payment shall be made at the same time that the plan submits its annual accounting statement unless OPM specifies a later date. If the accounting statement is not filed by the time limit specified in the plan's contract with OPM or the plan fails to return the excess reserves with the accounting statement (or at a later date specified by OPM), OPM may estimate the amount of excess reserves and offset that amount from future premium payments.

(5) OPM may, by agreement with the carrier, approve community rating for a comprehensive plan. If the contingency reserve of the carrier of a community-rated plan exceeds the preferred minimum balance, as described in paragraph (c)(2) of this section, the carrier may request OPM to pay to the plan a portion of the reserve not greater than the excess of the contingency reserve over the preferred minimum balance. The carrier shall state the reason for the request. OPM will decide whether to allow the request in whole or in part and will advise the plan of its decision.

(6) *Special contingency reserve transfers.* In addition to those amounts, if any, paid under paragraphs (c)(2) through (c)(5) of this section, OPM may authorize such other payments from the contingency reserve as in the judgment of OPM may be in the best interest of employees and annuitants enrolled in the program. A carrier for a plan may apply to OPM at any time for a payment from the contingency reserve when the carrier has good cause, such as unexpected claims experience and variations from expected community rates. In the administration of this part, OPM will accord a high priority to deciding whether to allow requests under this paragraph in whole or in part and will promptly advise the carrier of its decision. Amounts paid from the contingency reserve under paragraphs (c)(2) through (6) of this section shall be reported as subscription income in the year in which paid. By agreement with the carrier and where good cause exists, OPM may accept payment from carrier reserves for credit to the contingency reserve in an amount and under conditions other than those specified in paragraph (c) of this section.

[FR Doc. 87–2050 Filed 2–2–87; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 402, 403, 405, 409–411, 413–425, 427–433, and 435–451

[Doc. No. 3720S]

General Amendment; Various Crop Insurance Regulations; Termination for No Premium Earned

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends all regulations relating to the insurance covering specific crops or groups of crops, and codified in Chapter IV of Title 7 of the Code of Federal regulations (7 CFR Part 402, *et seq.*). The intended effect of this rule is to provide that, effective for the 1987 and succeeding crop years, contracts not earning premium shall be cancelled after three years of dormancy instead of five years. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: March 5, 1987.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of the regulations cited herein under those procedures. The sunset review dates established for all regulations affected by this action remain unchanged.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

Under present policy provisions for insuring crops issued by FCIC those policies not earning premium for five consecutive years are terminated. As an example, if an insured produced corn, oats, and soybeans and has each crop insured, FCIC maintains three contracts and supporting paperwork. If the insured grows only soybeans for five consecutive crop years, FCIC would continue to maintain contracts, process zero acreage reports and attendant records on corn and oats, but no premium is paid, no liability incurred, and essentially no insurance exists.

FCIC has determined that sufficient time elapses in three years to follow a rotational plan of farming to include corn and oats in the example above, making it unnecessary to maintain such dormant contracts for five years.

When terminating a dormant contract, FCIC notifies the insured that policies for insurance on certain crops have not earned premium for the requisite number of consecutive years and, unless reinstated by the insured before the termination date, such policies will be terminated. The insured, therefore, has the option of deciding to produce the crops and maintain insurance if desired.

On October 27, 1986, FCIC published a Notice of Proposed Rulemaking in the **Federal Register** at 51 FR 37916, proposing to amend all crop insurance policies issued by FCIC relating to the insurance covering specific crops or groups of crops to provide that, effective with the 1987 crop year for policies with contract change dates subsequent to February 27, 1987, and with the 1988 crop year for all other crop policies, contracts not earning premium, will be cancelled after three years of dormancy instead of the current five years.

The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, the proposed rule is hereby adopted as a final rule.

With the issuance of this rule FCIC changes the time allowing a contract not earning premium to be dormant from five to three consecutive years.

List of Subjects in 7 CFR Parts 402, 403, 405, 409, 410, 411, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 427, 428, 429, 430, 431, 432, 433, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, and 451

Crop Insurance

This regulation concerns raisin, peach, apple, Arizona-California citrus, Florida citrus, grape, Texas citrus, Forage seeding, Forage production, pea, sugarcane, Wheat, Barley, Grain sorghum, Cotton, Potato, Flax, Rice, Peanut, Oat, Sunflower, Rye, Sugar beet, Soybean, Corn, Dry bean, Tobacco-quota, Tobacco-guaranteed, Canning & freezing sweet corn, canning and processing tomato, Almond, Texas citrus tree, Table grape, Prevented planting, Hybrid seed, Fresh tomato, Pepper, Walnut, Popcorn, ELS (pima) cotton, Fresh market sweet corn, Prune, and Canning and processing peach.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501, *et seq.*), the Federal Crop Insurance Corporation hereby amends all crop insurance

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regulations issued by FCIC and currently in effect, covering specific crops or groups of crops (7 CFR Part 402, *et seq.*), effective for the 1987 and succeeding crop years for policies with contract change dates subsequent to February 27, 1987, and with the 1988 and succeeding crop years for all other crop policies, in the following instances:

1. The authority citation for 7 CFR Parts 402, 403, 405, 409, 410, 411, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 427, 428, 429, 430, 431, 432, 433, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, and 451, continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. In § 402.7(d), section 16 of the FCIC Policy is amended by revising subsection 16.f to read as follows:

§ 402.7 The application and policy.

* * * * *

(d) * * *

16. * * *

f. The contract will terminate if no premium is earned for 3 consecutive years.

* * * * *

§§ 403.7, 405.7, 409.7, 410.7, 411.7, 413.7, 414.7, 415.7, 416.7, 417.7, 418.7, 419.7, 420.7, 421.7, 422.7, 423.7, 425.7, 427.7, 428.7, 429.7, 430.7, 431.7, 432.7, 433.7, 435.7, 436.7, 437.7, 438.7, 439.7, 440.7, 441.7, 443.7, 444.7, 445.7, 446.7, 447.7, 448.7, 449.7, 450.7, and 451.7. [Amended]

3. In §§ 403.7(d), 405.7(d), 409.7(d), 410.7(d), 411.7(d), 413.7(d), 414.7(d), 415.7(d), 416.7(d), 417.7(d), 418.7(d), 419.7(d), 420.7(d), 421.7(d), 422.7(d), 423.7(d), 425.7(d), 427.7(d), 428.7(d), 429.7(d), 430.7(d), 431.7(d), 432.7(d), 433.7(d), 435.7(d), 436.7(d), 437.7(d), 438.7(d), 439.7(d), 440.7(d), 441.7(d), 443.7(d), 444.7(d), 445.7(d), 446.7(d), 447.7(d), 448.7(d), 449.7(d), 450.7(d), and 451.7(d), Section 15. of the FCIC Policy is amended by revising subsection 15.f to read as follows:

* * * * *

(d) * * *

15. * * *

f. The contract will terminate if no premium is earned for 3 consecutive years.

* * * * *

4. In § 424.7(d), section 15. of the FCIC Policy is amended by revising subsection 15.e. to read as follows:

§ 424.7 The application and policy.

* * * * *

(d) * * *

15. * * *

e. The contract will terminate if no premium is earned for 3 consecutive years.

* * * * *

5. In § 442.7(c), section 15. of the FCIC Policy is amended by revising subsection 15.f. to read as follows:

§ 442.7 The application and policy.

* * * * *

(c) * * *

15. * * *

f. The contract will terminate if no premium is earned for 3 consecutive years.

* * * * *

Done in Washington, DC, on January 5, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87–2061 Filed 2–2–87; 8:45 am]

BILLING CODE 3410–08–M

Agricultural Marketing Service

7 CFR Part 907

Navel Oranges Grown in Arizona and Designated Part of California; Minimum Size Regulation

AGENCY: Agriculture Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes a minimum size requirement of 2.32 inches in diameter for fresh domestic shipments of California-Arizona navel oranges during the 1986–87 marketing season. This action recognizes the size composition of the 1986–87 California-Arizona navel orange crop and current and prospective market conditions.

EFFECTIVE DATE: February 3, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202/447–5697.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered the economic impact of this regulation on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, hereinafter referred to as the "Act", and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Although handlers and/or marketers are affected by size regulations, the intent of the Act is to benefit agricultural producers. The California-Arizona navel orange industry is characterized by a large number of producers located over a wide area. The production area is divided into four districts which cover Arizona and a part of California. The highest proportion of the production is located in Central California (District 1), which represented 87 percent of the total production in 1985–86. District 2 is located in the southern coastal area of California and represented 12 percent of 1985–86 production; District 3 is the desert area of California and Arizona, which represented 1 percent last season; and District 4, northern California, less than 1 percent.

The Navel Orange Administrative Committee (NOAC) reports that there were 4,065 producers during the 1985–86 season and 123 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.1 (1985)) as those having average annual gross revenues for the last three fiscal years of less than $100,000. Handlers are considered small entities if revenues are less than $3.5 million. The California-Arizona navel orange industry is characterized by small producers. The 1985–86 industry total value of production (at the on-tree level) was $190 million which would average $47,000 per producer.

The domestic (regulated) market is the preferred market for California-Arizona navel oranges. It is estimated that 67 percent of the 1986–87 crop of 72,700 cars will be utilized in fresh domestic channels (48,800 cars), with the remainder being exported fresh or processed. This compares to 47,985 cars shipped to domestic markets in 1985–86, about 71 percent of the 67,867 car crop.

This action proscribes the shipment of small sized California-Arizona navel oranges during the 1986–87 season. Navel oranges are classified into categories which indicate the number of oranges packed in a standard carton of 37.5 pounds. For instance, a size category designating very large size oranges would be 56's and very small sizes, 180's or 210's. The regulation will prohibit the shipment of size 180's and smaller. It is difficult to ascertain the exact amount of oranges that will preclude from shipment to the domestic fresh market because oranges sometimes tend to get larger as the season progresses, if left on the tree, the picking patterns may vary. The NOAC reports that growth tests indicate that navel oranges have not been sizing as rapidly as had been expected earlier in the season, thus making it more difficult to predict actual outturn. However, even considering all of the unknowns, it is doubtful that the size precluded from shipment (180's and smaller) will represent more than 1 or 2 percent of the crop.

Implementation of this regulation will tend to force the handling of larger sized oranges, improving producers' return and aiding in strengthening the price patterns of the large sizes.

Prices for smaller sized oranges are usually discounted which may tend to reduce the overall price structure for all navels. However, prices tend to peak on sizes 72's and 88's, with markedly lower prices on smaller sizes; with prices for size 163's usually less than one-half the level of the more preferred sizes. Since this regulation applies only to domestic shipments, smaller sized navel oranges may be processed or exported. As not all of the crop will be utilized in domestic fresh markets, the result of the regulation would be to move toward an economic utilization which is expected to result in higher overall producer revenue.

The reporting and recordkeeping requirements under the navel orange marketing order are incurred by handlers. However, the handlers in turn may require individual producers to utilize certain reporting and recordkeeping practices to enable handlers to carryout their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements are likely passed on to producers. Since volume regulations are being used, most of these reporting and recordkeeping functions would still be carried out in the absence of a size regulation. These size regulations do not require USDA inspection, thus no additional costs for such inspection are incurred.

Consequently, when weighing costs and benefits derived from the use of size regulations, it seems highly probable that the benefits of this rule will far outweigh the costs.

Based on the above, the Administrator of the Agricultural Marketing Service has determined that the issuance of this size regulation will not have a significant economic impact on a substantial number of small entities.

This rule is issued under Marketing Order No. 907, as amended, regulating the handling of navel oranges grown in Arizona and a designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601–674). This action was recommended by the NOAC which locally administers the marketing order.

A proposal was published in the December 16, 1986, issue of the **Federal Register** (51 FR 44992) and provided interested persons the opportunity for public comment. The comment period ended on December 29, 1986. One comment was received from Mr. Anthony R. Conte, Councillor-at-Large, City Council, City of Revere, Massachusetts. Mr. Conte opposed the proposal on the basis that it was too restrictive and limited competition.

Mr. Conte asserted that time and money would be wasted by the implementation of this rule and that producers should have the opportunity to sell and consumers should have the opportunity to buy smaller fruit for lower prices if they wished to, and that such trade could be mutually beneficial. However, sales of smaller sized fruit are often made at discounted prices which can have an adverse impact on the overall price structure for navel oranges and may result in lower returns to producers. In addition, smaller sized fruit can be diverted to export or by-product outlets. This regulation affects only navel oranges sold in fresh domestic channels and is estimated to prohibit only 1 to 2 percent of the 1986–87 navel oranges crop from being sold in such channels. It is hereby found that this action will tend to effectuate the declared policy of the Act.

It is further found that it is impracticable and contrary to the public interest to postpone the effective date until 30 days after publication in the **Federal Register** (51 U.S.C 553), because a final rule should be issued as soon as possible since shipments of 1986–87 crop navel oranges have already begun and are expected to continue through July 1987.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (navel).

PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read as follows:

Authority: Secs 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.930 is added to read as follows:

§ 907.930 Navel orange regulation 630.

During the period February 3, 1987 through July 31, 1987, no handler shall handle any navel oranges which are of a size smaller than 2.32 inches in diameter, such diameter to be the largest measurement at a right angle to a straight line running from the stem to the blossom end of the fruit: *Provided*, That not to exceed 5 percent, by count, of the oranges in any container may measure smaller than 2.32 inches in diameter.

Dated: January 28, 1987.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 87–2052 Filed 2–2–87; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1032

[Docket No. AO–313–A36]

Milk in the Southern Illinois Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the pool plant provisions of the Southern Illinois order based on industry proposals considered at a public hearing held at Bridgeton, Missouri, on December 9–11, 1986. The amended order provides that a distributing plant, which meets the pool plant standards of the Southern Illinois order and one or more other Federal orders, but which was regulated under the Southern Illinois order in the preceding month, shall continue to be regulated under such order until the plant has more than 50 percent of its sales of fluid milk products in the marketing area covered by another Federal order for three consecutive months. The action is necessary to reflect current marketing conditions and to insure orderly marketing in the area. Dairy farmers through their respective cooperative associations have approved the issuance of the amended order.

EFFECTIVE DATE: February 1, 1987.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued November 18, 1986; published November 21, 1986 (51 FR 42109).

Emergency Partial Final Decision: Issued January 20, 1987.

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Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Southern Illinois order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Southern Illinois marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The party prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) Additional Findings

It is necessary in the public interest to make this order amending the order effective not later than February 1, 1987. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The emergency decision of the Assistant Secretary containing all amendment provisions of this order was issued January 20, 1987. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective February 1, 1987, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559)

(c) Determinations

It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c (9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by more than the necessary two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1032

Milk marketing order, Milk, Dairy products

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Southern Illinois marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1032—MILK IN THE SOUTHERN ILLINOIS MARKETING AREA

1. The authority citation for 7 CFR Part 1032 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; (7 U.S.C. 601–674).

2. In § 1032.7, paragraph (d)(2) is revised to read as follows:

§ 1032.7 Pool plant.

* * * * *

(d) * * *

(2) A distributing plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which during the month there is a greater quantity of route disposition, except filled milk, in the marketing area regulated by the other order than in this marketing area: *Provided*, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which more than 50 percent of such plant's total route disposition is made in such other marketing area;

* * * * *

Effective date: February 1, 1987.

Signed at Washington, DC, on January 28, 1987.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 87–2053 Filed 2–2–87; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 1065 and 1079

[Docket Nos. AO–86–A44 and AO–295–A37]

Milk in the Nebraska-Western Iowa and Iowa Marketing Areas; Order Amending Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the Nebraska-Western Iowa and Iowa Federal milk marketing orders. As amended, the plant location adjustment provisions of the two orders conform with the new Class I differentials mandated by the Food Security Act of 1985, effective on May 1, 1986. The action is based on industry proposals considered at a public hearing held April 8–10, 1986. The changes are necessary to reflect current marketing conditions and to insure orderly marketing conditions in the Nebraska-Western Iowa and Iowa marketing areas.

EFFECTIVE DATE: April 1, 1987.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447–4829.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued February 25, 1986; published March 3, 1986 (51 FR 7280).

Recommended Decision: Issued August 6, 1986; published August 12, 1986 (51 FR 28819).

Extension of Time for Filing Exceptions to Recommended Decision: Issued August 27, 1986; published September 2, 1986 (51 FR 31133).

Final Decision: Issued December 5, 1986; published December 11, 1986 (51 FR 44617).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Nebraska-Western Iowa and Iowa orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Nebraska-Western Iowa and Iowa marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the orders as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified, in marketing agreements upon which a hearing has been held.

(b) Determinations

It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c (9) of the Act) of more than 50 percent of the milk, which is marketed within each of the respective marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending each of the specified orders, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the respective orders as hereby amended; and

(3) The issuance of this order amending each of the specified orders is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing areas.

List of Subjects in 7 CFR Parts 1065 and 1079

Milk marketing orders, Milk, Dairy products.

Order Relative To Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Nebraska-Western Iowa and Iowa marketing areas shall be in conformity to and in compliance with the terms and conditions of the aforesaid orders, as amended, and as hereby further amended, as follows:

The authority citation for 7 CFR Parts 1065 and 1079 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; (7 U.S.C. 601–674).

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

§ 1065.52 [Amended]

1. In § 1065.52, paragraph (b)(3) is amended by changing the number "1.5" to read "1.7."

PART 1079—MILK IN THE IOWA MARKETING AREA

§ 1079.52 [Amended]

1. In § 1079.52 paragraph (b)(3) is amended by changing the number "1.5" to read "1.7."

Effective date; April 1, 1987

Signed at Washington, DC, on January 28, 1987.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 87–2054 Filed 2–2–87; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

Regulations G, T, U and X; Securities Credit Transactions, OTC Margin Stock List

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks is comprised of stocks traded over-the-counter (OTC) that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List is published from time to time by the Board as a guide for lenders subject to the regulations and the general public. This document sets forth additions to or deletions from the previously published List effective November 11, 1986, and will serve to give notice to the public about the changed status of certain stocks.

EFFECTIVE DATE: February 10, 1987.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Research Assistant, Division of Banking Supervision and Regulation, (202)–452–2781, Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) (202)–452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Set forth below are stocks representing additions to or deletions from the Board's List of Marginable OTC Stocks. A copy of the complete list incorporating these additions and deletions is available from the Federal Reserve Banks. This List supersedes the last complete List which was effective November 11, 1986. (Additions and deletions for that List were published at 51 FR 39642, October 30, 1986). The current List includes those stocks that meet the criteria specified by the Board of Governors in Regulations G, T, U and X (12 CFR Parts 207, 220, 221, and 224, respectively). They have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. It also includes, as a result of an amendment to the margin regulations (49 FR 35756, September 12, 1984), any stock designated under an SEC rule as qualified for trading in a national market system (NMS Security). The List of Marginable OTC Stocks, as it is now called, is a composite of the List of OTC Margin Stocks and all NMS securities. Additional OTC securities may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable at broker-dealers upon the effective date of their designation. The names of these

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securities are available at the Board and the Securities and Exchange Commission and will be subsequently incorporated into the Board's next quarterly List.

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the List specified in 12 CFR 207.6 (a) and (b), 220.7 (a) and (b), and 221.7 (a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of this List as soon as possible. The Board has responded to a request by the public and allowed a two-week delay before the List is effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin, requirements, Investments, National Market System (NMS Security), Reporting requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, Securities, National Market System (NMS Security), Reporting requirements.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Federal Reserve System, Margin, Margin requirements, Reporting requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6(c) (Regulation G), 12 CFR 220.2(s) and 220.17(c) (Regulation T), and 12 CFR 221.2(j) and 221.7(c) (Regulation U), there is set forth below a listing of deletions from and additions to the Board's List:

Deletions From List

Stocks Removed for Failing Continued Listing Requirements

Ault Inc.
No par common
Avalon Corp.
$7.50 par convertible preferred
Bacardi Corp.
Class A, $1.00 par common
CAM–OR, Inc.
No par common
Classified Financial Corp.
$.10 par common
Conservative Savings Bank
$.01 par common
Datapower, Inc.
No par common
Dimis, Inc.
$.01 par common
Environmental Processing, Inc.
$.01 par common
Warrants (expire 07–13–89)
Family Health Systems, Inc.
$.01 par common
Guilford Industries, Inc.
$.01 par common
Hytek International Corp.
$.05 par common
Integrated Software Systems Corp.
No par common
Itel Corp.
Class A, $100 par redeemable preferred
Martin Lawrence Limited Editions
Warrants (expire 12–18–86)
Mutual Savings Life Insurance Co.
$1.00 par common
Offshore Logistics, Inc.
No par preferred
Polycast Technology Corp.
Warrants (expire 08–01–92)
Property Investors of Colorado
$1.00 par shares of beneficial interest
Statewide Bancorp
Warrants (expire 03–31–89)
Sunshine Mining Co.
Warrants (expire 08–30–88)
Techdyne, Inc.
$.01 par common
Triton Group Ltd.
Series A, $1.00 par convertible preferred
United Oklahoma Bankshares, Inc.
$1.00 par common

Stocks Removed for Listing on a National Securities Exchange or Being Involved in an Acquisition

America First Federally Guaranteed Mortgage Fund L.P.
Units of limited partnership interest
American Furniture Co., Inc.
$1.00 par common
American List Corp.
$.01 par common
American Medcenters, Inc.
$.001 par common
American Medical Services, Inc.
$.10 par common
American Nucleonics Corp.
$03–⅓ par common
Anadite, Inc.
$.10 par common
Arizona Bancwest Corp.
$2.50 par common
ATE Enterprises, Inc.
$1.00 par common
C L Assets, Inc.
$1.00 par common
$1.00 par cumulative preferred
California Jockey Club
Paired certificates
Capital Federal Savings & Loan Association (California)
$.01 par common
Carteret Savings Bank
$.01 par common
Centerbanc Savings Association
$2.00 par common
Coast Savings & Loan Association
No par common
Columbus Mills, Inc.
$1.00 par common
Commercial Bancshares Inc. (New Jersey)
$5.00 par common
Compucom Development Corp.
$1.00 par common
Conna Corp.
No par common
Crump Companies, Inc., The
No par common
Distribuco, Inc.
$1.00 par common
Ealing Corp., The
$.10 par common
Economics Laboratory, Inc.
$1.00 par common
ERB Lumber Co.
$.01 par common
Filtertek, Inc.
Paired certificates
First Railroad & Banking Company of Georgia
$.06⅔ par common
Franklin Corp., The
$1.00 par common
Franklin Resources, Inc.
$.10 par common
Harper International, Inc.
$.10 par common
Healthamerica Corp.
Warrants (expire 04–05–89)
Heritage Entertainment, Inc.
Series A, warrants (expire 1989)
Home Federal Savings and Loan Association of Atlanta
$1.00 par common
Il Morrow, Inc.
$.01 par common
Intelligent Systems Corp.
$.05 par common
Jackson National Life Insurance Co.
$1.15 par common
JWP, Inc.
$.10 par common

Kinney System, Inc.
$.01 par common
Kroy Inc.
$.50 par common
Manufactured Homes, Inc.
$.50 par common
Merchants Bancorp, Inc.
$3.00 par common
Michaels Stores, Inc.
$.10 par common
Midamerica Bancsystem, Inc.
$1.00 par common
Narragansett Capital Corp.
$1.00 par common
National Controls, Inc.
$1.00 par common
National Health Corp.
No par common
New Jersey National Corp.
$2.22–⅙ par common
Newcentury Bank Corp.
$5.00 par common
Pacwest Bancorp
$5.00 par common
Pasquale Food Co., Inc.
Class A, $1.00 par common
Class B, $1.00 par common
Pasta & Cheese Inc.
$.01 par common
Patient Medical Systems Corp.
$.001 par common
Patten Corp.
$.01 par common
Pawnee Industries, Inc.
$.01 par common
Peak Health Care, Inc.
No par common
Pennsylvania National Financial Corp.
$10.00 par common
People Express, Inc.
$.01 par common
Series A, $2.64 convertible preferred
Series B, $2.50 convertible preferred
Powertec, Inc.
No par common
Preferred Financial Corp.
$.01 par common
Prism Entertainment Corp.
$.01 par common
Qms, Inc.
$.01 par common
Raymond Engineering Inc.
$1.00 par common
Reebok International Ltd.
$.01 par common
Rhodes, Inc.
$1.00 par common
Rogers Communications, Inc.
Class B, no par common
Sandusky Plastics, Inc.
$.10 par common
Servicemaster Industries Inc.
$1.00 par common
Siltec Corp.
No par common
Southern United Life Insurance Co.
No par common
St. Joseph Bancorporation, Inc.
No par common
Steifer Tractor, Inc.
$1.00 par common
Stifel Financial Corp.
$.15 par common
Swedlow, Inc.
$1.00 par common
Syscon Corp.
$.05 par common
Systems Associates, Inc.
$.01 par common
Third National Corp.
$3.75 par common
United Bancorp of Arizona
$5.00 par common
United First Federal Savings and Loan Association
$.01 par common
Usacafes, Inc.
$.01 par common
USPCI, Inc.
$.10 par common
Webb Company, The
No par common, $3.00 stated value
Westamerica Bancorporation
No par common

Additions to the List

Aaron Brothers Art Marts, Inc.
$.01 par common
Abington Savings Bank (Massachusetts)
$.10 par common
Acceptance Insurance Holdings, Inc.
$.01 par common
Adaptec, Inc.
No par common
Advo System, Inc.
$.01 par common
Alliant Computer Systems Corp.
$.01 par common
Allwaste, Inc.
$.01 par common
Aloette Cosmetics, Inc.
No par common
American Museum of Historical Documents, Chartered, The
$.001 par common
American Network, Inc.
No par common
American Nursery Products, Inc.
$.10 par common
Amerifirst Federal Savings & Loan Association (Florida)
$.01 par common
Anac Holding Corp.
$1.00 par convertible preferred
Anchor Financing Corp.
$6.00 par common
Anthony, Michael Jewelers, Inc.
$.001 par common
Argonaut Group, Inc.
$.10 par common
Asbestec Industries, Inc.
No par common
Automated Language Processing Systems
No par common
Bank of New Hampshire Corp.
No par common, $2.50 stated value
Bank of Stamford (Connecticut)
$1.00 par common
Barry's Jewelers, Inc.
No par common
Bear Automotive Service Equipment Co.
$.01 par common
Benjamin Franklin Savings & Loan Association (Oregon)
$1.00 par common
Beverly Savings Bank (Massachusetts)
$.01 par common
BHA Group, Inc.
$.01 par common
Bildner, J. & Sons, Inc.,
$.01 par common
Boston Acoustics, Inc.
$.01 par common
Brown Transport Co., Inc.
$.10 par common
Carmike Cinemas, Inc.
Class A, $.03 par common
CB Financial Corp.
$7.50 par common
CDC Life Sciences, Inc.
No par common
Central Co-Operative Bank (Massachusetts)
$1.00 par common
Chandler Insurance Co., LTD.
$1.67 par common
Chicago Dock and Canal Trust, The
No par common
Clairson International Corp.
$.01 par common
Comcast Corp.
Special Class A, non-voting, $1.00 par common
Commercial Programming Unlimited, Inc.
Class A, $0.25 par common
Consolidated Capital Income Opportunity Trust/2
No par shares of beneficial interest
Warrants (expire 12–19–89)
Consumer Plastics Corp.
$.01 par common
Continental Medical Systems, Inc.
$.01 par common
Convex Computer Corp.
$.01 par common
Craft House Corp.
$.01 par common
Crazy Eddie, Inc.
6% convertible subordinated debentures
Crestmont Federal Savings & Loan Association (New Jersey)
$1.00 par common
Criterion Group, Inc.
Class A, $.01 par common
Datametrics Corp.
No par common
Delaware Ostego Corp.
$1.25 par common
Dial Reit, Inc.
$.01 par common
Dick Clark Productions, Inc.
$.001 par common

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Dime Savings Bank of Wallingford, The (Connecticut)
$1.00 par common
Dixie Yarns, Inc.
No par common
Dryclean U.S.A., Inc.
$.01 par common
Duramed Pharmaceutical, Inc.
$.01 par common
Edgcomb Corp.
$1.50 par common
Ehrlich Bober Financial Corp.
$1.00 par common
Fairfield-Noble Corp.
$.10 par common
Fairhaven Savings Bank (Massachusetts)
$.10 par common
Family Mutual Savings Bank, The
$.01 par common
Farragut Mortgage Co., Inc.
$.01 par common
Financial Benefit Group, Inc.
Class A, $.01 par common
Class B, $.01 par common
1st American Bank for Savings (Massachusetts)
$.01 par common
First Citizens Bancshares, Inc.
Class A, $1.00 par common
Class B, $1.00 par common
First Colorado Financial Corp.
$1.00 par common
First Commerce Bancshares, Inc.
$1.00 par common
First Federal of Alabama, F.S.B.
$.01 par common
First Federal Savings & Loan of Chattanooga
$1.00 par common
First Federal Savings and Loan of Panama City
$1.00 par common
First Security Financial Corp.
$5.00 par common
Framingham Savings Bank (Massachusetts)
$.10 par common
Franklin Computer Corp.
No par common
Fred Meyer, Inc.
$.01 par common
Gaming and Technology, Inc.
$.10 par common
Gartner Group, Inc., The
$.01 par common
General Automation, Inc.
$.10 par common
General Kinetics Inc.
$.25 par common
Georgia Gulf Corp.
$.05 par common
Golden Valley Microwave Foods, Inc.
$.01 par common
Groundwater Technology, Inc.
$.01 par common
Grove Hall Savings Bank, the (Massachusetts)
$.10 par common
Hamburger Hamlets, Inc.
$1.00 par common
Harken Oil & Gas, Inc.
$1.00 par common
Harman International Industries, Inc.
$.01 par common
HDR Power Systems, Inc.
$.01 par common
Health Images, Inc.
$.01 par common
Heartland Express, Inc.
$.10 par common
Heritage Financial Services, Inc.
$1.25 par common
Heritage-Nis Bank for Savings (Massachusetts)
$.10 par common
Hibernia Savings Bank, The (Massachusetts)
$1.00 par common
Home Owners Federal Savings and Loan Association
$6.125 par convertible preferred
Home Savings Bank, The (New York)
$1.00 par common
Home Unity Savings & Loan Association (Pennsylvania)
$1.00 par common
Horizon Financial Services, Inc.
$1.00 par common
Huffman-Koos, Inc.
$.01 par common
Ideal School Supply Corp.
$.01 par common
Inspeech, Inc.
$.01 par common
Intertan, Inc.
$1.00 par common
Irwin Magnetic Systems, Inc.
$.001 par common
Jefferson Bancorp, Inc.
$1.00 par common
Johnstown Savings Bank (Pennsylvania)
$1.00 par common
Jones Medical Industries, Inc.
$.04 par common
Knutson Mortgage Corp.
$.01 par common
Koss Corporation
$.01 par common
Landmark Financial Corp.
$3.00 par common
Lane Financial Inc.
$1.00 par common
Lowrance Electronics, Inc
$.10 par common
Loyola Capital Corp. (Maryland)
$.10 par common
LPL Investment Group, Inc.
$.02 par common
Macrochem Corp.
$.005 par common
Manatron, Inc.
No par common
Marble Financial Corp.
$1.00 par common
Masco Industries, Inc.
Depository convertible exchangeable preferred shares
Massbank for Savings (Massachusetts)
$1.00 par common
Merchants Group, Inc.
$.01 par common
Metro Mobiles Cts, Inc.
$.10 par common
Metrobank, N.A. (California)
$1.66 par common
Mid Maine Savings Bank, F.S.B.
$.01 par common
Mid-South Insurance Co.
$1.00 par common
Milwaukee Insurance Group, Inc.
$.01 par common
Morino Associates, Inc.
$.01 par common
Mountaineer Bankshares of West Virginia, Inc.
$2.50 par common
Mtech Corp.
$.01 par common
Municipal Development Corp.
$.01 par common
Musto Exploration Limited
No par common
National Banc of Commerce Co.
$1.25 par common
National Video, Inc.
$.001 par common
Navigators Group, Inc.
$.10 par common
Neeco, Inc.
$.01 par common
Newman Federal Savings and Loan Association (Georgia)
$1.00 par common
North American Holding Corp.
Class A, non-voting, $.0001 par common
North American Ventures, Inc.
$.001 par common
Norwich Savings Society, The (Connecticut)
$1.00 par common
Nutmeg Industries, Inc.
$.01 par common
One Valley Bancorp of West Virginia, Inc.
$10.00 par common
Overmyer Corp.
No par common
Oxford Energy Co., The
$.01 per common
P.A.M. Transportation Services, Inc.
$.01 par common
PCS, Inc.
$.01 par common
Peoples Heritage Savings Bank (Maine)
$1.00 par common
Peoples Savings Bank (Connecticut)
$.10 par common
Peoples Savings Bank of New Britain, The (Connecticut)
$1.00 par common
Pharmakinetic Laboratories, Inc.
$.001 par common
Warrants (expire 10–26–87)
Pioneer American Holding Corp.

$10.00 par common
Plasti-Line, Inc.
$.001 per common
Plymouth Five Cent Savings Bank (Massachusetts)
$.10 par common
Polymeric Resources Corp.
No par common
Precision Resources, Inc.
$.10 par common
Pulitzer Publishing Co.
$.01 par common
Quicksilver, Inc.
$.01 par common
Reed Jewelers, Inc.
$.10 par common
Resdel Industries
$.50 par common
Sage Software, Inc.
$.01 par common
Scor U.S. Corp.
$.30 par common
Scott-& Stringfellow Financial, Inc.
$.10 par common
Seaboard Savings & Loan Association (Virginia)
$5.00 par common
Seagull Energy Corp.
$1.00 par convertible preferred
Security Federal Savings Bank (Montana)
$1.00 par common
Seneca Foods Corp.
$.25 par common
Shaw's Supermarkets, Inc.
$1.00 par common
Shelby Federal Savings Bank (Indiana)
$1.00 par common
Shelton Savings & Loan Association (Connecticut)
$1.00 par common
Shorewood Packaging Corp.
$.01 par common
Sigma Designs, Inc.
No par common
Silicon Graphics, Inc.
$.001 par common
Somerset Savings Bank (Massachusetts)
$1.00 par common
Sound Advice, Inc.
$.01 par common
Southern Bankshares, Inc.
$2.50 par common
Springboard Software, Inc.
$.01 par common
Starpointe Savings Bank (New Jersey)
$2.00 par common
Stars To Go, Inc.
$.01 par common
Step-Saver Data Systems, Inc.
No par common
Warrants (expire 08–12–89)
Strategic Planning Associates, Inc.
Class B, no par common
Student Loan Marketing Association
Warrants (expire 08–01–91)
Suburban Bankshares, Inc.
Class A, $.10 par common
Suncoast Savings and Loan Association (Florida)
Class A, $3.55 par common
Sunlite, Inc.
$.20 par common
T Cell Sciences, Inc.
$.001 par common
Talman Home Federal Savings and Loan Association of Illinois, The
$.01 par common
Tekelec
No par common
Thermal Industries, Inc.
$.01 par common
Tolland Bank, F.S.B.
$1.00 par common
Trans Leasing International, Inc.
$.01 par common
TRC Companies, Inc.
$.10 par common
Tri-Star Pictures, Inc.
Warrants (expire 12–31–93)
Trust America Service Corp.
$.01 par common
U.S. Facilities Corp.
$.01 par common
Uni-Marts, Inc.
Class A, $.10 par common
Unicare Financial Corp.
No par common
Unifast Industries, Inc.
$.01 par common
United Savings Association (Florida)
Class A, $.01 par common
United Savings Bank (Montana)
$1.00 par common
United Savings Bank (Oregon)
$1.00 par common
University Bank and Trust Co.
$.30 par common
Vestar, Inc
$.01 par common
Victoria Creations, Inc.
No par common
Vitronics Corp.
$.01 par common
Warren Five Cents Savings Bank (Massachusetts)
$.10 par common
Webster Financial Corp.
$.01 par common
Wendt-Bristol Co., The
$.01 par common
Warrants (expire 10–16–91)
West Mass Bankshares, Inc.
$.10 par common
Westerbeke Corp.
$.01 par common
Westmark International, Inc.
$.01 par common
Wilmington Savings Fund Society, F.S.B.
$.01 par common
Worlco Data Systems
$.10 par common
Xplor Corp.
$.01 par common
ZZZZ Best Co., Inc.
$.01 par common

By order of the Board of Governors of the Federal Reserve System acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.2(c)(18)). January 27, 1987.

William W. Wiles,
Secretary of the Board.

[FR Doc. 87–1921 Filed 2–2–87; 8:45 am]
BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 8824]

Glendinning Companies, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: The Federal Trade Commission has modified a 1976 consent order with respondent (41 FR 53653) by lifting a prohibition against running skill contests that are not based on "matters of established provable fact." Provisions in the original consent order that required skill contests to be based on reference materials that are available in the typical public library and disclosure of the reference books containing the answers were replaced in the modified order with new provisions requiring that correct answers be ascertainable from "authoritative reference works" and that contestants be informed of that fact.

DATES: Consent Order issued October 26, 1976. Modified Order issued January 13, 1987.

FOR FURTHER INFORMATION CONTACT: FTC/A–4631, Jerry R. McDonald, Washington, DC 20580. (202) 326–2971.

SUPPLEMENTARY INFORMATION: In the Matter of Glendinning Companies, Inc., a corporation. The prohibited trade practices and/or corrective actions, as set forth as 41 FR 53653 remain unchanged.

List of Subjects in 16 CFR Part 13

Promotional contests, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Order Reopening the Proceeding and Modifying Cease and Desist Order

Commissioners: Daniel Oliver, Chairman, Patricia P. Bailey, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr.

In the matter of Glendinning Companies, Inc., a corporation. Docket No. 8824.

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On September 15, 1986, Glendinning Associates, Inc. (Petitioner), successor to the respondent under the order, Glendinning Companies, Inc., filed a request to reopen and modify the Consent Order issued by the Commission on October 26, 1976, in Docket No. 8824. (88 F.T.C. 656.)

The request to reopen and modify the Consent Order was placed on the public record on October 9, 1986, and a press release concerning the petition was issued on the same date. A notice of 30 day period for public comments on the petition was published in the **Federal Register** on October 24, 1986 [5 FR 37741 (1986)]. The public comment period ended on November 10, 1986, and no comments were filed. The deadline for the Commission to rule on Petitioner's request was January 13, 1987.

Petitioner is engaged in the manufacture, promotion, sale, and distribution of promotional games used to induce the sale of consumer products. Paragraph 1 of the order relates to all promotional games, contests and sweepstakes in which a prize is offered. Paragraph 2 relates only to skill contests. Petitioner asserts that the public interest requires that the Commission replace paragraph 2 with a new paragraph 2.

Paragraph 2 now orders Petitioner to cease and desist from:

2. Engaging in promoting the use of, or participating in the development or operation of any skill contest, unless:

a. The skill contest is based solely on matters of established, provable fact.

b. The factual subject matter is obtainable from readily available reference materials, e.g., those available in the typical public library.

c. Contest materials and advertising disclose clearly and conspicuously that a substantial degree of skill is involved and also the specific reference works on which the answers are based (e.g., a specific dictionary, encyclopedia, atlas, or historical work), and contest rules and directions clearly provide all necessary information for the contestant to participate successfully.

d. Questions and answers with complete supporting data as outlined in paragraphs (a) and (b) and complete judging procedures are filed with an independent organization prior to promotion implementation.

e. The correct answers and a list of winners is made available to participants upon request and filed with an independent organization within 60 days of the close of judging of the competition.

f. Respondent or its designee maintains for at least two years after the closing of each skill contest and the awarding of all prizes in connection therewith, in addition to the records required by paragraph 1(c), all entry forms submitted by participants in such skill contests.

Petitioner argues that the unintended effect of the order is to preclude it from conducting any skill contest except those based on "established provable fact." Therefore, Petitioner contends that it is forbidden by the order from conducting other skill contests such as those involving "checker problems, chess problems, crossword puzzles, photography or drawing contests, poetry contests and contests awarding prizes for the best jingle, slogan, product name, letter, or essay."

Petitioner argues further that subparagraph b. of paragraph 2 prevents it from conducting a current events or contemporary history quize dealing with recent events because the answers to such quizzes may not be readily available in published reference materials in the typical public library. A trivia quiz may also be questionable, according to Petitioner, because the typical public library "may not have reference materials concerning sports data, motion picture lore, or data on operas, broadway shows, radio and television shows, their starts and plots."

Petitioner asserts that the requirement in subparagraph c. of paragraph 2 that contest materials and advertising disclose the specific dictionary, encyclopedia, atlas or historical work)," reduces a skill contest to a research project. Under such conditions, Petitioner argues, almost every contestant could become a winner by looking up the answers in the reference books. Therefore, according to Petitioner, large prizes could not be offered and there would be no incentive to participate if nominal prizes were offered.

Petitioner's proposed paragraph 2 restructures order paragraph 2 so that the requirements that apply to all skill contests are set forth in new subparagraphs (a) and (b) and those requirements that apply only to skill contests based on fact are listed separately under new subparagraph (c). The Commission considers this modification to be in the public interest because it would permit Petitioner to conduct games of skill that are not based on fact, while preserving the essential requirements of the order. For games of skill based on fact, the modification would eliminate the requirement in subparagraph b. that the factual subject matter be "obtainable from readily available reference materials, e.g., those available in the typical public library." This modification, is in the view of the Commission, in the public interest as it would permit Petitioner to conduct skill contests based on recent events and trivia quizzes that may not be found in reference materials that are readily available in the typical public library. Furthermore, not all answers to a contest need come from a single reference source. However, the answers must be ascertainable from "authoritative reference works."

Petitioner's proposed paragraph 2 would also eliminate the requirement in subparagraph c. that the specific reference works where answers may be found be disclosed. This modification serves the public interest as it would enable Petitioner to stimulate interest in its contests by offering large prizes. As Petitioner points out in its petition, anyone could win under the order by merely going to the stated reference books and looking up the answers. Therefore, large prizes could not be offered.

Petitioner has not demonstrated a change of law or fact to support its request that the order be reopened and modified as requested, in accordance with section 5(b) of the Federal Trade Commission Act. However, the facts presented by Petitioner have persuaded the Commission that the public interest requires that the order be reopened and modified as requested.

It Is Therfore Ordered that the proceeding is hereby reopened and the Decision and Order issued on October 26, 1976, and modified on February 24, 1981, is hereby further modified to read as follows:

Order

It is ordered, That respondent Glendinning Companies, Inc., a corporation, its successors and assigns, officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of Coca-Cola, Tab, or any food or other product, or in connection with the sale or distribution of "Big Name Bingo," or any other promotional game, contest, sweepstake or similar device which involves or offers the awarding of a prize or anything of value to participants therein, by any means, in commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

1. Engaging in, promoting the use of, or participating in any such promotional game, contest, sweepstake or similar device, by means of any announcement, notice or advertisement, unless:

(a) All of the requirements, terms and conditions for participating therein and for entitlement of such prizes are clearly and conspicuously set forth in each advertisement or notice which purports to explain or illustrate the operation of, manner of participation in, or the basis for or prospects of becoming entitled to or receiving a prize in connection with, any such contest or promotional game.

(b) All such prizes are in fact awarded to all participants therein whose entries conform to the stated requirements, terms and conditions for entitlement to and receipt of such prizes.

(c) There are maintained by respondent or its designee for a period of at least two years after the closing of each such promotional game or contest and the awarding of all prizes in such connection therewith, full and adequate records which clearly disclose the operation of such promotional game or contest, the basis or method used to determine entitlement to prizes, and the facts as to the receipt of such prizes by participants entitled thereto; which said records and documents shall be open for inspection during normal business hours by each contest participant or his duly authorized representative.

2. Engaging in promoting the use of, or participating in the development or operation of any skill contest, unless:

(a) Contest materials and advertising disclose clearly and conspicuously that a substantial degree of skill is involved and, contest rules and directions clearly provide all necessary information for the contestant to participate successfully.

(b) Respondent or its designee maintains for at least two years after the closing of each skill contest and the awarding of all prizes in connection therewith, in addition to the records required by paragraph 1(c), all entry forms submitted by participants in such skill contests.

(c) In any skill contest based on fact: (1) Each correct answer or solution is ascertainable from authoritative reference works; (2) the contest materials and advertising disclose, clearly and conspicuously in addition to the disclosures required by paragraph 2(a), that the answers are ascertainable from authoritative reference works; (3) questions and answers with complete supporting data and complete judging procedures are filed with an independent organization prior to promotion implementation; and (4) the correct answers and a list of winners is made available to participants upon request and filed with an independent organization within 60 days of the closing of judging of the competition.

For purposes of this order a skill contest is defined as any promotional contest or device in which the award of a prize or anything of value to the participants is determined on the basis of the winning answers or solutions submitted by participants through the exercise of a substantial degree of skill in determining the winning answers or solutions to the questions or problems which are the subject of the contest or device.

In the event that the Commission promulgates a final trade regulation rule concerned with skill contests, then such trade regulation rule shall completely supersede and replace paragraph 2 and such trade regulation rule shall become part of this order.

It is further ordered, That the terms of this order shall not apply to a promotional game, contest or device conducted by or under the direction of a governmental instrumentality, or where the respondent neither knew nor had reason to know of failure to comply with the terms of this order.

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondent notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

By the Commission.

Issued: January 13, 1987.

Emily H. Rock,

Secretary.

[FR Doc. 87-2115 Filed 2-2-87; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM81-19]

Publication of Project Cost Limits Under Blanket Certificates

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order of the director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.307(t), the Director of the Office of Pipeline and Producer Regulation computes and publishes the project cost and annual limits specified in Table I of § 157.208(d) and Table II of § 157.215(a) for each calendar year.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Richard P. O'Neill, Director, OPPR (202) 357-8500.

Order of the Director, OPPR

Issued January 28, 1987.

Section 157.208(d) of the Commission's Regulations provides for project cost limits applicable to construction, acquisition, operation and miscellaneous rearrangement of facilities (Table I) authorized under the blanket certificate procedure (Order No. 234, 19 FERC ¶61,216). Section 157.215(a) specifies the calendar year dollar limit which may be expended on underground storage testing and development (Table II) authorized under the blanket certificate. Section 157.208(d) requires that the "limits specified in Tables I and II shall be adjusted each calendar year to reflect the 'GNP implicit price deflator' published by the Department of Commerce for the previous calendar year."

Pursuant to § 375.307(t) of the Commission's Regulations, the authority for the publication of such cost limits, as adjusted for inflation, is delegated to the Director of the Office of Pipeline and Producer Regulation. The cost limits for calendar years 1982 through 1987, as published in Table I of § 157.208(d) and Table II of § 157.215(a), are hereby issued.

List of Subjects in 18 CFR Part 157

Natural gas.

Raymond A. Beirne,

Deputy Director, Office of Pipeline and Producer Regulation.

TABLE I

Year	Limit	
	Auto. proj. cost limit (col. 1)	Prior notice proj. cost limit (col. 2)
1982	$4,200,000	$12,000,000
1983	4,500,000	12,800,000
1984	4,700,000	13,300,000
1985	4,900,000	13,800,000
1986	5,100,000	14,300,000
1987	5,200,000	14,700,000

TABLE II

Year	Limit
1982	$2,700,000
1983	2,900,000
1984	3,000,000
1985	3,100,000
1986	3,200,000
1987	3,300,000

[FR Doc. 87-2106 Filed 2-2-87; 8:45 am]

BILLING CODE 6717-01-M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 85C-0377]

Listing of Color Additives for Coloring Contact Lenses; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule on listing color additives for coloring contact lenses that was published in the **Federal Register** on October 28, 1986. The Roman numeral headings under Supplementary Information were incorrectly numbered. Additionally, the expanded environmental assessment provision was inadvertently cited as the abbreviated provision under "**SUPPLEMENTARY INFORMATION: VI. Environmental Assessment**". By amending the provision, FDA will cite the correct environmental assessment regulation under which the final rule was reviewed, and correct the numbering of the Roman numeral headings.

FOR FURTHER INFORMATION CONTACT: Mary J. Stephens, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In FR Doc. 86-24273, appearing at page 39370 in the **Federal Register** of Tuesday, October 28, 1986, the following corrections are made:.

1. The paragraph under "**VI. Environmental Assessment**" is corrected to read as follows:

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

2. On page 39371, second column, the heading, "**V. Inspection of Documents**" is corrected to read "**IV. Inspection of Documents**"; "**VI. Environmental Assessment**" is corrected to read "**V. Environmental Assessment**"; and "**VII. Objections**" is corrected to read "**VI. Objections**".

Dated: January 20, 1987.

Richard J. Rouk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-2026 Filed 2-2-87; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of FD&C Yellow No. 6, D&C Red Nos. 8 and 9; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Red Nos. 8 and 9 for use as color additives in drugs and cosmetics, and for the provisional listing of FD&C Yellow No. 6 for use as a color additive in food, drugs, and cosmetics. The new closing date will be April 6, 1987. FDA has decided that this postponement is necessary to provide time for the receipt and evaluation of any objections submitted in response to the final rule, published in the **Federal Register** of December 5, 1986 (51 FR 43877), permanently listing the drug and cosmetic uses of D&C Red Nos. 8 and 9, and the final rule published in the **Federal Register of November 19, 1986** (51 FR 41765), permanently listing the food, drug, and cosmetic uses of FD&C Yellow No. 6.

EFFECTIVE DATE: February 3, 1987, the new closing date for FD&C Yellow No. 6, D&C Red Nos. 8 and 9 will be April 6, 1987.

FOR FURTHER INFORMATION CONTACT: Gerald L. McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of February 3, 1987, for the provisional listing of FD&C Yellow No. 6, D&C Red Nos. 8 and 9 by regulation published in the **Federal Register** of December 5, 1986 (51 FR 43899). Also in the **Federal Register of December 5, 1986 (51 FR** 43877), FDA permanently listed the drug and cosmetic uses of D&C Red Nos. 8 and 9. A final rule permanently listing the food, drug, and cosmetic uses of FD&C Yellow No. 6 was published in the **Federal Register** of November 19, 1986 (51 FR 41765). FDA has received numerous comments objecting to the permanent listing of D&C Red Nos. 8 and 9, and FD&C Yellow No. 6.

FDA believes that it is reasonable to postpone the closing date for these color additives until April 6, 1987, to provide time for evaluation of these comments. FDA concludes that this extension is consistent with the public health and the standards set forth for continuation of provisional listing in *McIlwain* v. *Hayes*, 690 F.2d 1041 (D.C. Cir. 1982).

Because of the shortness of time until the February 3, 1987, closing date, FDA concludes that notice and public procedure on this regulation are impracticable and that good cause exists for issuing the postponement as a final rule and for an effective date of April 6, 1987. This regulation will permit the uninterrupted use of these color additives until further action is taken. In accordance with 5 U.S.C. 553 (b) and (d) (1) and (3), this postponement is issued as a final regulation, effective on February 3, 1987.

List of Subjects in 21 CFR Part 81

Color additives, Cosmetics, Drugs.

Therefore, under the Transitional Provisions of the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055-1058 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 88-616; sec. 203, 74 Stat. 404-407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

2. In § 81.1 *Provisional lists of color additives* by revising the closing dates for "FD&C Yellow No. 6" in paragraph (a) and for "D&C Red No. 8" and "D&C Red No. 9" in paragraph (b) to read "April 6, 1987."

§ 81.27 [Amended]

3. In § 81.27 *Conditions of provisional listing* by revising the closing dates for "FD&C Yellow No. 6," "D&C Red No. 8," and "D&C Red No. 9" in paragraph (d) to read "April 6, 1987."

Dated: January 27, 1987.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-1899 Filed 2-2-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-86-09]

Drawbridge Operation Regulations; Bayou Teche, LA

AGENCY: U.S. Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana State University (LSU) Agricultural Experiment Center, the Coast Guard is changing the regulation governing the operation of the swing span bridge across Bayou Teche, mile 46.5 near Jeanerette, Iberia Parish, Louisiana. This change will require the draw of the bridge to open on at least four hours advance notice from 7 a.m. to 5 p.m., Monday through Friday, to be consistent with the existing opening requirement for the bridge immediately upstream at mile 43.5 and the bridge downstream at mile 48.7. The bridge at mile 46.5 is maintained in the open position at all other times.

This change is being made because of infrequent requests to open the draw. This action will relieve the bridge owner of the burden of having a person constantly available at the bridge on weekdays from 7 a.m. to 5 p.m., while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on March 5, 1987.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: On 6 November 1986, the Coast Guard published a proposed rule (51 FR 40342) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated 14 November 1986. In each notice interested persons were given until 22 December 1986 to submit comments.

Drafting Information

The drafters of this regulation are Perry Haynes, project officer, and Lieutenant Commander James Vallone, project attorney.

Discussion of Comments

The only response to the notices was one letter of no objection.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this amended regulation has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this finding is that few vessels pass through the bridge as evidenced by the 1984 bridge opening statistics. These vessels can reasonably give four hours notice for a bridge opening by placing a collect call to the bridge owner at any time from ashore or afloat. Mariners requiring the bridge opening are mainly repeat users of the waterway and scheduling their arrival at the bridge at the appointed time involve little or no additional expense to them. The four hours advance notice of opening the draw would be given by placing a collect call to the LSU Agricultural Experiment Center between the hours of 7:30 a.m. and 4:30 p.m., telephone (318) 276-5527; at all other times call (318) 276-0422 or 6337. From afloat, this contact may be made by radiotelephone through a public coast station. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citiation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.501 is amended by redesignating existing paragraphs (b)(8) through (b)(18) as (b)(9) through (b)(19), and by adding a new paragraph (b)(8) to read as follows:

§ 117.501 Teche Bayou.

* * * * *

(b) * * *

(8) LSU Agri bridge, mile 46.5 near Jeanerette (notice required for opening from 7 a.m. to 5 p.m., Monday through Friday except holidays).

* * * * *

Dated: January 15, 1987.

E.B. Acklin,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard District.

[FR Doc. 87-2065 Filed 2-2-87; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 10

International Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes numerous miscellaneous revisions consolidated in the transmittal letter for issue 4 of the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations, 39 CFR 10.1.

While many of the revisions are minor, editorial, or clarifying, issue 4 contains some substantive changes, such as the regulations governing the new International Priority Airmail Service, certain new International Surface Air Lift Service exchange offices and destination countries, and the addition of new countries receiving Express Mail International Service. These substantive changes have previously been published in the **Federal Register.**

EFFECTIVE DATE: September 18, 1986.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp (202) 268-2960.

SUPPLEMENTARY INFORMATION: The International Mail Manual (IMM), which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 10.1), has been amended by the publication of a transmittal letter for issue 4, dated September 18, 1986. The text of all published changes is filed with the Director of the Federal Register. Subscriber to the International Mail Manual receive these amendments automatically from the Government Printing Office.

The following is from the Explanation section of the transmittal letter for issue 4:

Explanation

Issue 4 replaces Issue 3 of the IMM. It contains all IMM revisions published in the *Postal Bulletin* through September 18, 1986 and the **Federal Register** of September 3, 1986. Items published after September 18, 1986 are effective but have not been incorporated into Issue 4. In addition, Issue 4

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corrects printing and format errors and omissions in Issue 3.

Chapter 1

a. Section 115.11 is revised to reflect changes in the office title and functions caused by the headquarters and field realignment which became effective June 7, 1986.

b. Section 122.1j is revised to insert a second address example for mail addressed to Mexico.

c. Section 123.13 is revised to reflect a new value of $312 when Form 2976A, *Customs Declaration* is required. Previously the amount was set at $120. (PB 21543, 12–5–85).

d. Section 138f is revised to incorporate the requirements for a special endorsement on shipments containing radioactive materials. (PB 21543, 12–5–85).

e. Section 143.5g is revised to permit envelopes with one or two transparent window panels. (PB 21543, 12–5–85).

f. Section 153a is revised to permit a postage meter stamp or permit imprint to be affixed directly on the mail piece when plastic wrap is used. (PB 21543, 12–5–85).

g. Section 123.22, 131.3, 139.41b, 142.2, 144.2b, 144.3, 144.4 are revised to correct printing and/or format errors and omissions in Issue 3.

h. Section 137.2b is revised to reflect the new office title, Office of Classification and Rates Administration.

i. Section 142.2 is revised to correct printing error on the maximum thickness of post cards.

Chapter 2

a. Section 211.5 is revised to include Greece and Qatar in the list of countries providing return receipt service. (PB 21563, 4–24–86)

b. Section 241.22a(3) is revised to correct the DMM reference.

c. Section 251 is revised to insert item d which permits the mailing of sound recordings or tapes as Free Matter for the Blind provided they are sent by a blind person. (PB 21543, 12–5–85).

d. Section 283.1 is revised to reflect the current Small Packet weight limit of four pounds to many countries. (PB 21543, 12–5–85).

e. Section 231.32 is revised to reflect the new office title, Office of Classification and Rates Administration.

f. Sections 244.2 and 244.5 are revised to incorporate new Second-Class marking provisions. (PB 21579, 8–14–86)

g. Sections 224.3, 241.5b, 244.5, 244.54, 245, 271.21, 274.2 are revised to correct printing and/or format errors and omissions in Issue 3.

h. Section 280 is a new subchapter to incorporate regulations governing International Priority Airmail Service. Effective date of the new service is October 3, 1986. (Federal Register Notice of September 3, 1986)

Chapter 3

a. Sections 391.2, 391.2c, 391.413, 391.423, 391.431, 391.5c, 391.72d are revised to incorporate new procedures for the acceptance and exchange of international money orders to Japan (PB 21523, 7–18–85).

b. Section 392.3a is revised to reflect the new price of 80 cents for International Reply Coupons. (PB 21543, 12–5–1985).

c. Sections 323.22, and 381.5 are revised to correct printing and/or format errors and omissions in Issue 3.

d. Section 333.2 is revised to reflect new registered indemnity limit for Canada (PB 21560, 4–3–86).

e. Section 364.22b and Exhibit 363.1 are revised to reflect the new office title, Office of Classification and Rates Administration.

f. Sections 391.432(c)(3), 391.6, 391.71, 391.72, 391.8, 391.911, 391.92 are revised to reflect the correct address for the Money Order Division (PB 21578, 7–24–86).

Chapter 4

a. Section 423.2 is revised to incorporate new procedures for handling shortpaid Express Mail International Service items. (PB 21531, 9–12–85).

Chapter 7

a. Section 711.62 is revised to correct the entry pertaining to Hawaii.

b. Section 782.14 is revised to reflect new procedures for returning undeliverable air letters and cards (PB 21543, 12–5–85).

c. Section 782.31 is revised to clarify the procedure for returning undeliverable mail.

d. Section 711.511 is revised to correct a format error.

e. Sections 741, 756.2, 793.1, 794.2 and 795 are revised to reflect the new office title, Office of Classification and Rates Administration.

Chapter 9

a. Section 928.121 is revised to incorporate new procedures for processing requests for completion of return receipts. (PB 21543, 12–5–85).

b. Section 934.22 is revised to reflect new registered indemnity limit for Canada (PB 21560, 4–3–86).

c. Sections 922.3, 931.22, and 944.2 are revised to reflect the new office title, Office of Classification and Rates Administration.

Appendices

Appendix C is revised to extend the conversion table out to $500 U.S.

Appendix D is revised to reflect:

a. New service countries

Bahamas (PB 21530, 10–17–85)
Cyprus (PB 21549, 1–16–86)
Greece (PB 21530, 10–17–85)
Guyana (PB 21573, 7–3–86)
Iceland (PB 21542, 11–28–85)
Nigeria (PB 21573, 7–3–86)
Oman (PB 21573, 7–3–86)
Panama (PB 21527, 8–15–85)

b. Changes in weight limits, service areas, and admitted contents:

Argentina (PB 21561, 4–10–86)
China (PB 21527, 8–15–85) (PB 21573, 7–3–86) (PB 21575, 7–17–86)
Egypt (PB 21527, 8–15–85)
Great Britain & Northern Ireland (PB 21536, 10–17–85)
Japan (PB 21561, 4–10–86 and PB 21563, 4–24–86)
New Zealand (Change in reciprocal name)
Portugal (PB 21527, 8–15–85)
Saudi Arabia (PB 21551, 1–30–86)
South Africa (PB 21542, 11–28–85) (PB 21576, 7–24–86)
Turkey (PB 21527, 8–15–85) (PB 21573, 7–3–86)

Appendix E is revised to reflect new ISAL exchange offices and destination countries. (PB 21542, 11–28–85, and PB 21549, 1–16–86) (PB 21570, 6–12–86) (PB 21582, 9–4–86).

Individual Country Listings are revised to reflect the following changes:

a. New four pound weight limit for air and surface Small Packets for most countries (PB 21543, 12–5–85 and PB 21555, 2–27–86) (PB 21567, 5–22–86) (PB 21573, 7–3–86) (PB 21579, 8–14–86)

b. New or revised parcel post insurance service to certain countries. (PB 21543, 12–5–86 and PB 21557, 3–13–86) (PB 21578, 8–14–86).

c. Corrections to parcel post rate charts for several countries. (PB 21551, 1–30–86).

d. Other individual country listings are revised to reflect new or changed prohibitions and restrictions as published by the International Bureau and to correct printing errors and omissions in Issue 3 (PB 21570, 6–12–86).

e. Separate country sheets for Anguilla, British Virgin Islands, Montserrat, Wallis and Futuna Islands.

List of Subjects in 39 CFR Part 10

Postal Service, Foreign relations, Incorporation by reference.

PART 10—[AMENDED]

1. The authority citation for Part 10 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Section 10.3 is amended by adding at the end thereof the following:

§ 10.3 Amendments to the International Mail Manual

* * * * *

Transmittal letter for issue	Dated	FR Publication
4	September 15, 1986	52 FR

Fred Eggleston,
Assistant General Counsel, Legislative Division.

[FR Doc. 87–1916 Filed 2–2–87; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–9–FRL–3148–1]

Approval and Promulgation of Implementation Plans; Five Districts in California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On February 10, 1986 the California Air Resources Board (CARB) submitted a set of revisions to the California State Implementation Plan (SIP) affecting the Butte County Air Pollution Control District (APCD), the Lake County APCD, the Placer County APCD (Mountain Counties portion), the Sutter County APCD, and the Tehama County APCD. This notice takes action on the noncontroversial, administrative rules from the submittal package. The revisions strengthen or retain equivalent emission control requirements, and are consistent with the Clean Air Act, 40 CFR Part 51, and EPA policy. Thus, EPA has determined that these revisions should be approved.

EFFECTIVE DATE: This action will be effective April 6, 1987 unless notice is received on or before March 5, 1987, that adverse or critical comments will be submitted.

ADDRESSES: Please address any comments to: Regional Administrator, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, ATTN: State Implementation Plan Section (A–2–3), Air Management Division.

EPA's office in San Francisco has copies both of the submitted revisions and of EPA's technical Evaluation Report for each rule. These documents are available for public inspection during normal working hours.

A complete set of the rules is also available at the California Air Resources Board. For information on a rule pertaining to a specific county, the appropriate District may be contacted. Pertinent addresses are listed below.

California Air Resources Board, SIP Section, Technical Support Division, 1131 "S" Street, Sacramento, CA 95812
Butte County Air Pollution Control District, 316 Nelson Avenue, Oroville, CA 95965
Lake County Air Pollution Control District, 883 Lakeport Boulevard, Lakeport, CA 95453
Placer County Air Pollution Control District, 11582 B Avenue (Bldg. 117A), Auburn, Ca 95603
Sutter County Air Pollution Control District, 142 Garden Highway, Yuba City, CA 95991
Tehama County Air Pollution Control District, 1760 Walnut Street, Red Bluff, CA 96080
EPA Library, Public Information Reference Unit, Environmental Protection Agency, 401 "M" Street, SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Patty Monahan, State Implementation Plan Section (A–2–3), Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–9470; FTS 454–9470

SUPPLEMENTARY INFORMATION:

Background

On February 10, 1986, the California Air Resources Board submitted a package of revisions to the State Implementation Plan. This notice addresses some of those revisions. The rules EPA is approving in today's notice are primarily administrative and non-controversial. Minor rule changes have been adopted for clarity and to enhance administrative processes.

Below is a list of the rules addressed by this notice. An evaluation of the rules, as well as the intended EPA action, are contained at the end of the list.

Description of Regulations

Butte County APCD

Rule 3–3—Burning Permit Agencies (deletion)
Rule 101—Title
Rule 102—Definitions
Rule 250—Circumvention
Rule 260—Separation of Emissions
Rule 261—Combination of Emissions
Rule 270—Orchard Heaters
Rule 301—Prohibitions on Open Burning
Rule 302—Exemptions to Rule 301
Rule 303—Burning Permits
Rule 304—Exemptions to Rule 303
Rule 306—Information Furnished by Permit Applicant
Rule 307—Ignition Hours
Rule 308—Notice of Intent to Ignite
Rule 309—Freedom from Debris and Mositure
Rule 310—Arrangement of Agricultural and Wood Waste
Rule 311—Drying Period
Rule 312—Wind Direction
Rule 313—Ignition Devices
Rule 314—Burning of Vines or Bushes Treated with Herbicides
Rule 315—Rice Straw Burning
Rule 316—Field Crop Ignition
Rule 317—Field Crops Harvested Prior to September 10
Rule 318—Restriction of Burning During Poor Air Quality Conditions
Rule 320—Certificate from Department of Fish and Game
Rule 322—Special Permit
Rule 323—Range Improvement Burning
Rule 324—Burning at Disposal Sites
Rule 325—Exemption to Rule 324
Rule 401—General Requirements
Rule 402—Authority to Construct
Rule 403—Permit to Operate
Rule 405—Permit Conditions
Rule 406—Emissions Calculations
Rule 407—Anniversary Date
Rule 420—Standards for Granting Applications
Rule 421—Conditional Approval
Rule 422—Required Information
Rule 423—Action on Applications
Rule 425—Appeals
Rule 601—General
Rule 602—Filing Petition
Rule 603—Contents of Petition
Rule 604—Petition for Variance
Rule 605—Petition for Revocation of Permit
Rule 606—Petition for Reinstatement of Suspended Permit
Rule 607—Noncompliance with District Rules
Rule 608—Answers
Rule 609—Dismissal of Petition
Rule 610—Time and Place of Hearing
Rule 611—Notice and Hearing
Rule 612—Interested Members of Public; Special Notice
Rule 613—Evidence
Rule 614—Record of Proceedings
Rule 615—Preliminary Matters
Rule 616—Official Notice
Rule 617—Continuances
Rule 618—Decision
Rule 619—Effective Date of Decision
Rule 620—Appeal from Denial
Rule 621—Appeal and Petition for Variance after Permit Denial
Rule 701—Violation of Rules
Rule 702—Violation of Orchard Heater or Open Burning Regulations
Rule 703—Citations
Rule 704—Violation of Authority to Construct and Permit Conditions
Rule 801—Request for Variance
Rule 802—Conditions for Granting Variance
Rule 901—Severability Clause
Rule 902—Empower to Enter Upon Private Property

Lake County APCD

Rule 650D—Source Emission Testing
Rule 651—Source Emission Testing and Monitoring
Rule 1701Q—Interim Variance

Placer County APCD (Mountain Counties Portion)

Rule 102—Definitions
Rule 211A—Process Weight (deletion)
Rule 219M—Organic Solvents (deletion)
Rule 312—Minimum Drying Times
Rule 314—Preparation of Material to be Burned
Rule 315—Burning of Agricultural Waste
Rule 320—Open Burning Conducted by Public Officers
Rule 505—Cancellation of Authority to Construct
Rule 507—Provision of Sampling and Testing Facilities
Rule 803—Penalties

Tehama County APCD

Rule 2.12—Status of Permit

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Rule 2.13—Transfers
Rule 2.14—Cancellation of Permits
Rule 2.15—Posting of Permit
Rule 2.16—Defacing
Rule 2.17—Public Records—Trade Secrets
Rule 5.2—General
Rule 5.3—Filing Petitions
Rule 5.6—Contents of Petitions
Rule 5.7—Petition for Variance
Rule 5.8—Petition for Abatement Order
Rule 5.9—Failure to Comply with Rules
Rule 5.10—Service of Notices
Rule 5.11—Answers
Rule 5.12—Withdrawal of Petitions
Rule 5.13—Place of Hearing
Rule 5.15—Rules of Evidence and Procedures
Rule 5.16—Preliminary Matters
Rule 5.17—Official Notice
Rule 5.18—Continuances
Rule 5.20—Effective Date of Decision
Rule 5.21—Issuance of Subpoenas: Subpoenas Duces Tecum
Rule 5.22—Confidential Information
Rule 5.23—Additional Rules

Sutter County APCD

Rule 2.5—Permit Regulations

EPA Evaluation

EPA has evaluated these rules for consistency with the Clean Air Act, 40 CFR Part 51, and EPA policy. All of the rules either strengthen or maintain the existing State Implementation Plan. Most of the rules contain minor changes which clarify administrative policies. The remaining rules offer: More specific definitions of agricultural burn materials, reduced hours for agricultural burns, greater authority to the air pollution control officer for controlling burns, and more precise hearing board and permitting procedures.

EPA's detailed evaluation of the submitted rules is available at the EPA Region 9 office.

EPA Action

This notice approves all the rule revisions previously listed and incorporates them into the California SIP. These rules are being approved because they are consistent with the Clean Air Act, 40 CFR Part 51, and EPA policy. Thus, EPA proposes to approve these rules under section 110 and Part D of the Clean Air Act.

Regulatory Process

The Office of Management and Budget has exempted these rules from the requirements of section 3 of E.O. 12291.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

EPA's approval of the above revisions to the California SIP is being done without prior proposal because no critical comments from the public are expected. Unless adverse or critical comments are received by EPA within 30 days, this approval action will be effective 60 days from the date of publication of this **Federal Register** notice. If critical comments are received, this approval action will be withdrawn. A subsequent notice of proposed rulemaking will postpone the effective date, and a new comment period will be established.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 6, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Particulate matter, Carbon monoxide, Ozone, Reporting and recordkeeping requirements.

Note.—Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: January 27, 1987.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Subpart F of Part 52, Chapter I, Title 40 of the *Code of Federal Regulations* is amended as follows:

Subpart F—California

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.220 is amended by adding paragraph (c)(168) as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(168) Revised regulations for the following APCD's were submitted by the Governor's designee on February 10, 1986.

(i) Incorporation by Reference.

(A) Butte County APCD.

(*1*) New or amended rules 101, 102, 250, 260, 261, 270, 301, 302, 303, 304, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 320, 322, 323, 324, 325, 401, 402, 403, 405, 406, 407, 420, 421, 422, 423, 425, 601 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 701, 702, 703, 704, 801, 802, 901, 902, and 3–3 (repealed), adopted August 6, 1985.

(B) Lake County APCD.

(*1*) New rules 650D, 651, and 1701Q, adopted December 10, 1985.

(C) Placer County APCD (Mountain Counties portion).

(*1*) Amended rules 102, 312, 314, 315, 320, 505, 507, 803, 211A (repealed), and 219M (repealed), adopted May 20, 1985.

(D) Sutter County APCD.

(*1*) Amended rule 2.5, adopted October 15, 1985.

(E) Tehama County APCD.

(*1*) Amended rules 2.12, 2.13, 2.14, 2.15, 2.16, 2.17, 5.2, 5.3, 5.6, 5.7, 5.8, 5.9, 5.10, 5.11, 5.12, 5.13, 5.15, 5.16, 5.17, 5.18, 5.20, 5.21, 5.22, and 5.23, adopted September 19, 1985.

[FR Doc. 87–1957 Filed 2–2–87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 62

[A–6–FRL–3146–6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Oklahoma; Plan for Controlling Sulfuric Acid Mist Emissions From Existing Sulfuric Acid Production Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: This notice approves Oklahoma's 111(d) plan for the control of sulfuric acid mist (H_2SO_4) emissions from existing sulfuric acid production plants. The plan was submitted by the Oklahoma State Department of Health (OSDH) on December 5, 1985, and the sulfuric acid mist regulation (3.4(b)(2)) was submitted by the Governor of Oklahoma on March 31, 1986. The State adopted EPA's emission limitations for the control of sulfuric acid mist from existing sulfuric acid plants on March 11, 1978. The plan was submitted in response to the publication of emission control guidelines by the Administrator under section 111(d) of the Clean Air Act, as amended. The plan satisfies EPA's requirement for adoption and submittal of a plan to control H_2SO_4.

EFFECTIVE DATE: This action will be effective on April 6, 1987, unless notice is received on or before March 5, 1987, that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments on this action should be addressed to Thomas H. Diggs of the EPA Region 6, Air Programs Branch, SIP/New Source Section (address below). Copies of the documents relevant to this action are available for public inspection during

normal business hours at the following locations.

Environmental Protection Agency,
Region 6, Air, Pesticides and Toxics Division, Air Programs Branch, SIP New Source Section, 1201 Elm Street, Dallas, Texas 75270
Oklahoma State Department of Health, Air Quality Service, P.O. Box 53551, Oklahoma City, Oklahoma 73152.

FOR FURTHER INFORMATION CONTACT: Gregg Guthrie, Air Programs Branch, EPA Region 6, 1201 Elm Street, Dallas, Texas 75270, telephone (214) 767–1597, or (FTS) 729–1597. Reference Docket File Number OK–85–5.

SUPPLEMENTARY INFORMATION: On December 5, 1985, the OSDH submitted the State's plan for controlling sulfuric acid mist emissions from existing sulfuric acid production plants. On March 31, 1986, the Governor of Oklahoma submitted Regulation 3.4(b)(2) Sulfuric Acid Mist which was received by EPA on April 21, 1986. The regulation was adopted by the Oklahoma State Board of Health after the January 10, 1978, public hearing. EPA reviewed the plan and developed an evaluation report,[1] which is based on the requirements of section 111(d) of the Clean Air Act of 1977, as amended, 40 CFR Part 60 Subpart B and EPA guideline document titled "Final Guideline Document: Control of Sulfuric Acid Mist Emissions from Existing Sulfuric Acid Production Units." This evaluation report is available for inspection during normal business hours at the EPA Region 6 Office and the other addresses listed above.

The plan meets all of EPA's criteria for approval. The emission limits in the Oklahoma Regulation 3.4(b)(2) are the same as EPA's limits. Oklahoma has two sources which produce H_2SO_4, National Zinc Co. and Tulsa Chemical Co. They are both in compliance. Therefore, compliance schedules are not required to be submitted.

The two sources are required by their permits to monitor on a continuous basis for sulfur dioxide (SO_2). This data is used to calculate the amount of H_2SO_4 being produced. A table showing the H_2SO_4 emission at per ton and per hour of product follows. Both sources are under their allowable limit of H_2SO_4 production.

Final Action

EPA is approving the Oklahoma 111(d) plan for the control of sulfuric acid mist from existing plants because the State's emission limits are the same as EPA's limits and the two sources affected by the plan are in compliance. This action is taken without prior proposal because the change is non-controversial and EPA anticipates no adverse comments on it. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days of publication that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will withdraw the final action and will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 6, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

SULFURIC ACID (H_2SO_4) Emissions Data Table

	National Zinc Co.[1]		Tulsa Chemical Co.[2]	
	Pounds emission per ton	Pounds emission per hour	Pounds emission per ton	Pounds emission per hour
EPA limit	0.50	4.35	0.50	2.67
State limit	0.50	4.35	0.50	2.67
Emissions allowed	0.50	4.35	0.50	2.67
Actual emission	0.0057	0.50	0.034	0.18
Under limit	0.443	3.85	0.466	2.49

[1] Amount 100% H_2SO_4 produced is 17,410 lbs/hr.
[2] Amount 100% H_2SO_4 produced is 10,660 lbs/hr.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

List of Subjects in 40 CFR Part 62

Air pollution control, Fluoride, Sulfur, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements, Phosphate, Aluminum, Fertilizers, Paper and paper products industry, Sulfuric oxides, Sulfuric acid plant.

Dated: January 20, 1987.

Lee M. Thomas,

Administrator.

Title 40, Chapter I, Part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for Part 62 continues to read as follows:

Authority: Secs. 111 and 301(a), Clean Air Act, as amended (42 U.S.C. 7413 and 7601).

Subpart LL—Oklahoma

§ 62.9100 [Redesignated as § 62.9120]

2. The centerheading "Fluoride Emissions From Phosphate Fertilizer Plants" and § 62.9100 are redesignated as "Fluoride Emissions From Phosphate Fertilizer Plants" and § 62.9120, respectively.

§ 62.9110 [Redesignated as § 62.9130]

3. The centerheading "Fluoride Emissions From Primary Aluminum Reduction Plants", and § 62.9110 are redesignated and "Fluoride Emissions From Primary Aluminum Plants", and § 62.9130, respectively.

4. Subpart LL is amended by adding the following centerheading and § 62.9100 to read as follows:

Plan for the Control of Designated Pollutants From Existing Facilities (Section 111(d) Plan)

§ 62.9100 Identification of Plan.

(a) *Identification of plan:* Oklahoma Plan for Control of Designated Pollutants from Existing Facilities [111(d) Plan].

(b) The plan was officially submitted as follows:

(1) Control of sulfuric acid mist from existing sulfuric acid production plants submitted on December 5, 1985, with the corresponding regulation submitted by the Governor of Oklahoma on March 31, 1986.

(c) Designated facilities: The plan applies to existing facilities in the following categories of sources.

(1) Sulfuric acid production plants.

5. Subpart LL is further amended by adding the following new centerheading and § 62.9110 to read as follows:

[1] Evaluation Report for Oklahoma 111(d) Plan for the Control of Sulfuric Acid Mist from Existing Sulfuric Acid Production Plants.

Sulfuric Acid Mist From Existing Sulfuric Acid Plants

§ 52.9110 Identification of sources.

(a) *Identification of sources:* The plan includes the folloiwng sulfuric acid production plants.

(1) National Zinc Co. in Bartlesville, Oklahoma.

(2) Tulsa Chemical Co. in Tulsa, Oklahoma.

[FR Doc. 87-1760 Filed 2-2-87; 8:45am]

BILLING CODE 6560-50-M

40 CFR Part 421

[OW-FRL-3149-8]

Nonferrous Metals Manufacturing Point Source Category; Effluent Limitations Guidelines for the Primary Rare Earth Metals Subcategory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; removal.

SUMMARY: On September 20, 1985 the EPA promulgated a final regulation establishing best practicable control technology currently available (BPT), best available technology economically achievable (BAT), new source preformance standards (NSPS), pretreatment standards for existing sources and pretreatment standards for new sources (PSES and PSNS) for the Nonferrous Metals Manufacturing industry under the Clean Water Act. One August 4, 1986, portions of the final regulation establishing BPT and BAT for the Primary Rare Earth Metals subcategory were remanded to the EPA by the Third Circuit Court of Appeals with directions to vacate those portions of the regulations. EPA is today removing those portions of the regulation from the Code of Federal Regulations so as to inform the public that the regulation is no longer effective.

EFFECTIVE DATE: The remand of these portions of the Nonferrous Metals Manufacturing regulation is effective as of August 4, 1986, the date of the Court's order.

FOR FURTHER INFORMATION CONTACT: Eleanor Zimmerman, 202-382-7126.

SUPPLEMENTARY INFORMATION: On September 20, 1985, EPA issued a final rule entitled "Nonferrous Metals Manufacturing Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards; Final Rule," published at 50 FR 38276. That rule limited the discharge of pollutants into navigable waters of the United States and into publicly owned treatment works by existing and new nonferrous metals manufacturing facilities that process ore concentrates and scrap metals to recover and increase the metal purity contained in those materials. Specifically, the Agency established best practicable control technology currently available (BPT) effluent limitations guidelines, best available technology economically achievable (BAT) effluent limitations guidelines, new source performance standards (NSPS), and pretreatment standards for existing and new sources (PSES and PSNS) in the nonferrous metals manufacturing regulation.

Several parties filed petitions in the Court of Appeals challenging various aspects of this regulation. *AMAX INC., et al.,* v. *EPA* (85-3560). One petitioner in particular, Reactive Metals & Alloys Corp. (Remacor), submitted an issues list raising *inter alia* procedural issues with respect to the promulgation of limitations in the Primary Rare Earth Metals subcategory. Remacor is the only known existing direct discharger in this subcategory and, hence appears to be the only facility subject to the BPT and BAT requirements within the subcategory. In reviewing Remacor's issue list, the Agency found that formal written responses to Remacor's comments on both the proposed rule (49 FR 26352) and the notice of data availability (50 FR 10918) had not been prepared or placed in the record. The Agency, therefore, determined to seek a remand of those portions of the rulemaking afffecting Remacor.

The Agency and Remacor filed a Joint Motion for Voluntary Remand of the regulation in the Third Circuit Court of Appeals. On August 4, 1986, in response to the Joint Motion, the Court remanded the regulations at 40 CFR 421.272 and 40 CFR 421.273 with instructions to vacate those provisions.

Today's rulemaking formally removes the BPT and BAT limitations for the Primary Rare Earth Metals Subcategory (40 CFR 421.272 and 421.273) from the Code of Federal regulations. These effluent limitations have not been effective since August 4, 1986, the date the Court remanded these limitations.

Today's action does not in any way affect other limitations and standards established for the Nonferrous Metals Manufacturing Category which were published on September 20, 1985. These other limitations are still effective.

List of Subjects in 40 CFR Part 421

Metals, Nonferrous metals, Waste treatment and disposal, Water pollution control.

Dated: January 27, 1987.

Lee M. Thomas,

Administrator.

For the reasons stated above, 40 CFR Part 421 is amended as follows:

PART 421—NONFERROUS METALS MANUFACTURING POINT SOURCE CATEGORY

1. The authority citation for Part 421 continues to read as follows:

Authority: Secs. 301, 304(b), (c), (e), and (g), 306(b) and (c), 307(b) and (c), 308, and 501 of Federal Water Pollution Control Act as amended (the "Act"); 33 U.S.C. 1251, 1311, 1314(b), (c), (e), and (g), 1316(b) and (c), 1317(b) and (c), and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217.

§ 421.272 [Removed and Reserved]

2. Section 421.272 is removed and reserved.

§ 421.273 [Removed and Reserved]

3. Section 421.273 is removed and reserved.

[FR Doc. 87-2078 Filed 2-2-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 799

[OPTS-42012D; FRL-3150-7]

Diethylenetriamine; Final Test Standards and Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On May 23, 1985, EPA issued a final rule under section 4(a) of the Toxic Substances Control Act (TSCA) requiring that manufacturers and processors of diethylenetriamine (DETA; CAS No. 111-40-0) test this substance for (1) oral subchronic (90-day) toxicity in at least one mammalian species, (2) dermal absorption in the same mammalian species used for the subchronic testing, (3) chemical fate under aerobic conditions, and (4) mutagenicity (including tests for both gene mutations and chromosomal aberrations). On April 10, 1986, the Agency proposed that the study plans submitted by an industry consortium be adopted, with certain revisions, as the test standards and reporting requirements for DETA under this test rule. EPA has reviewed the public comments on this proposal, and has decided to promulgate a final rule that specifies that these revised study plans, with certain additional revisions in response to public comment and Agency review, shall constitute the test standards and reporting requirements for DETA.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271; February 21, 1985), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern ("daylight" or "standard", as appropriate) time on February 17, 1987. This rule shall become effective on March 19, 1987.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460 (202-554-1404).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 23, 1985 (50 FR 21398), EPA issued a final Phase I rule under section 4(a) of TSCA to require testing of DETA for (1) oral subchronic (90-day) toxicity in at least one mammalian species, (2) dermal absorption in the same species used for the subchronic testing, (3) chemical fate under aerobic conditions, and (4) mutagenicity (including tests for both gene mutations and chromosomal aberrations). The Agency is now promulgating a final Phase II rule specifying that the EPA-modified industry-submitted study plans, with certain revisions, shall constitute the test standards and reporting requirements for this testing. This test rule is being promulgated under 40 CFR 799.1575.

I. Background

This document is part of the implementation of section 4 of the Toxic Substances Control Act (TSCA, Pub. L. 94-469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.),* which contains authority for EPA to require development of data relevant to assessing the risks to human health and the environment posed by exposure to particular chemical substances or mixtures.

Diethylenetriamine (DETA; CAS No. 111-40-0) was designated by the Interagency Testing Committee (ITC) for priority testing consideration (46 FR 28138; May 22, 1981). EPA responded to the ITC's designation by issuing a proposed test rule for DETA, published in the **Federal Register** of April 29, 1982 (47 FR 18386). Subsequently, in the **Federal Register** of May 23, 1985 (50 FR 21398), EPA promulgated a final Phase I rule requiring testing of DETA. EPA based the final testing requirements for DETA (for all effects except oncogenicity) on the authority of section 4(a)(1)(A) of TSCA. The Agency found that the manufacture, processing, use, and disposal of DETA may present an unreasonable risk of injury to human health due to potential mutagenic, oncogenic (after transformation to a *N*-nitrosamine derivative under environmental conditions), and subchronic effects of the substance. For a detailed discussion of EPA's findings and testing requirements for DETA, refer to the final Phase I rule. In accordance with the Test Rule Development and Exemption Procedures for two-phase rulemaking in 40 CFR Part 790, persons subject to this rule were required to submit letters of intent to perform the testing or exemption applications. Those submitting letters of intent were required to submit proposed study plans (including time schedules) for the testing required in the final Phase I rule.

On August 6, 1985 (Refs. 1 through 3), three U.S. manufacturers of DETA notified EPA of their intent to sponsor the testing required in the final Phase I test rule for DETA. Subsequently, an industry consortium (composed of these three manufacturers of DETA, one future manufacturer, and other current manufacturers or importers) known as the Diethylenetriamine Producers/Importers Alliance (DPIA) submitted an initial complete set of study plans for all of the testing required for DETA on October 7, 1985, and a set of study plans containing some revisions on December 2, 1985. In the **Federal Register** of April 10, 1986 (51 FR 12344), EPA proposed that the study plans submitted by the DPIA on December 2, 1985, be adopted, with certain revisions [referred to as the EPA-approved modified study plans for DETA (Ref. 4)], as the test standards and reporting requirements for the testing of DETA. After review of public comments, EPA is now promulgating a final Phase II rule requiring the DPIA, or its member companies, to conduct this testing in accordance with the revised EPA-approved modified study plans for DETA (Ref. 5). These plans incorporated revisions of Ref. 4 in response to public comments and shall constitute the test standards and reporting requirements for this substance.

II. Proposed Test Standards

The following member companies of the DPIA, Union Carbide Corporation, Dow Chemical Company, and Texaco Chemical Company, notified EPA by letter (Refs. 1 through 3) of their intent to sponsor the testing required in the final Phase I rule for DETA (40 CFR 799.1575). The DPIA, composed of the aforementioned three companies and Berol Chemicals, Inc., AZS Corporation, BASF Wyandotte Corporation, and Air Products and Chemicals, Inc., has submitted proposed study plans for the required testing, which, after evaluation, the EPA has revised, resulting in the EPA-approved modified study plans for DETA (Ref. 4). The study plans include the following studies: Fourteen-Day (Range-Finding) Dietary Toxicity Study with Diethylenetriamine in Albino Rats, Ninety-Day (Subchronic) Dietary Toxicity Study with Diethylenetriamine in Albino Rats, Absorption/Elimination Study of Diethylenetriamine following Dermal Application in Male and Female Fischer-344 Rats, Testing to Assess the Potential Environmental Production of *N*-Nitroso Adducts of Diethylenetriamine, Sex-linked Recessive Lethal Gene Mutation Test in *Drosophila melanogaster,* and an Evaluation of Diethylenetriamine in an *In Vitro* Chromosomal Aberration Assay Utilizing Chinese Hamster Ovary Cells. In addition, should the appropriate lower-tier mutagenicity tests yield certain results for DETA, the following mutagenicity tests will also be performed: Mouse Specific Locus Test for Visible Markers, Evaluation of Diethylenetriamine in the Mouse Bone Marrow Micronucleus Test, Dominant Lethal Assay of Diethylenetriamine in CD Rats, and Heritable Translocation Assay of Diethylenetriamine in CD-1 Mice.

The EPA-approved modified study plans for all of these tests (Ref. 4) are available for inspection in the public docket for this rulemaking. The Agency had previously proposed these plans as the test standards for conducting the testing of DETA required under 40 CFR 799.1575 in the proposed Phase II test rule for DETA, published in the **Federal Register** of April 10, 1986 (51 FR 12344). The Agency proposed that all of the testing be conducted in accordance with EPA's TSCA Good Laboratory Practice Standards as set forth in 40 CFR Part 792. In addition, the EPA-approved modified health effects study plans all conform to the appropriate TSCA Health Effects Test Guidelines (40 CFR Part 798) or contain justified deviations from the appropriate guidelines.

III. Proposed Reporting Requirements

EPA proposed (51 FR 12344; April 10, 1986) the schedules contained in the EPA-approved modified study plans for DETA (Ref. 4) as the reporting requirements for DETA. The proposed reporting deadlines for the submission of final reports are essentially in agreement with those suggested by the DPIA; however, for all testing required for DETA, the Agency proposed that brief interim progress reports be submitted to EPA at consecutive 3-month intervals following the date on which each test becomes mandatory

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until the submission of the final report to EPA.

Subsequent to the issuance of the proposed Phase II test rule for DETA, the Agency has decided that interim reports for the testing required for substances under section 4 of TSCA at 6-month intervals, rather than at 3-month intervals, will be sufficient to keep EPA informed of the current status of required testing and of any difficulties which the testing facilities may encounter during the course of testing. In addition, this change will also lessen the reporting burden of test sponsors. Accordingly, the final reporting requirements for the testing required for DETA will reflect a requirement for 6-month, rather than 3-month, interim testing reports.

As required by TSCA section 4(d), the Agency plans to publish in the **Federal Register** a notice of the receipt of any test data submitted under this test rule within 15 days after receipt of the data. Except as otherwise provided in TSCA section 14, such data will be made available for examination by any person.

IV. Response to Public Comments

The only comments received by the Agency in response to the proposed Phase II test rule for DETA were from the Diethylenetriamine Producers/Importers Alliance (DPIA). The major issues identified during the comment period are discussed below.

A. Sponsorship of Required Testing

The DPIA, a group of producers and importers and a future manufacturer of DETA organized as a special project of the Synthetic Organic Chemical Manufacturers Association, Inc. (SOCMA), commented that EPA had incorrectly indicated in the proposed Phase II test rule for DETA that the DPIA itself is sponsoring the testing required for DETA in 40 CFR 799.1575. The DPIA asserts that each test has a single member company as the sponsor and, thus, neither the DPIA nor SOCMA is a sponsor of any of the tests. As the Agency stated in the proposed Phase II test rule for DETA, EPA received letters (Refs. 1 through 3) from three member companies of the DPIA on August 6, 1985, notifying the Agency of their intent to sponsor certain of the tests required for DETA. On the same date, the Agency received exemption requests (Refs. 6 through 9) from all other member companies of the DPIA for all of the testing required for DETA. Each of these exemption requests noted that another member company of the DPIA had agreed to sponsor the testing for which the exemption was requested, and also indicated that the requester would enter into an agreement with the sponsoring companies regarding reimbursement of the sponsors' costs for testing. In addition, the revised study plans for the testing required for DETA, which were received by the Agency on December 2, 1985, were submitted by the DPIA itself rather than by the three individual member companies which had earlier indicated by letter to the Agency their intent to sponsor certain tests for this substance, and were accompanied with a cover letter from the DPIA referring to the study plans as "the DPIA study plans" (Ref. 4). Thus, from a financial and organizational point of view, the Agency asserted in the proposed Phase II test rule for DETA that the DPIA had, due to its submission of revised study plans to the Agency on December 2, 1985, notified the EPA of their agreement to sponsor the testing required for DETA in 40 CFR 799.1575, for which letters of intent to sponsor testing had been previously received from three separate member companies [Refs. 1 through 3]. However, from a strictly technical point of view, the EPA agrees with the DPIA that neither the DPIA nor SOCMA is a sponsor of any of the tests required for DETA. The individual sponsoring companies of the DPIA, together with a list of the tests which each company is sponsoring, is presented here in tabular form for clarification.

For the sake of brevity however, the study plans submitted collectively to the Agency by the DPIA on December 2, 1985, as revised by EPA, shall be referred to as the EPA-approved modified study plans for DETA (Ref. 4), originally submitted by the Diethylenetriamine Producers/Importers Alliance (DPIA). The study plans resulting from revisions to Ref. 4 due to public comment and Agency review shall be referred to as the revised EPA-approved modified study plans for DETA (Ref. 5), originally submitted by the DPIA.

SPONSORS OF TESTING FOR DETA

Sponsoring Co.	Test(s) sponsored
Dow Chemical Company.	Sex-linked recessive lethal test in *Drosophila*. *In vitro* cytogenetics test. *In vivo* cytogenetics test. Dermal absorption test.
Union Carbide Corporation.	Chemical fate test. Dominant lethal test. Heritable translocation test.

SPONSORS OF TESTING FOR DETA

Sponsoring Co.	Test(s) sponsored
Texaco Chemical Company.	90-Day subchronic toxicity test. Mouse visible specific locus test.

B. Mouse Visible Specific Locus Assay

The DPIA commented on a number of issues related to the mouse visible specific locus (MSL) assay which it believes should be discussed during the Agency's public program review of all of the then available mutagenicity data for DETA which, as described in the final Phase I test rule for DETA, published in the **Federal Register** of May 23, 1985 (50 FR 21398), will precede the initiation of the testing of DETA in the MSL test. The DPIA correctly comments that, by modifying the study plan contained in Ref. 4 identified as the "Mouse Specific Locus Test for Visible Markers" by changing the last sentence in section D.1. on page 4 of the study plan to read: "A laboratory with no prior experience with the test shall provide negative and positive control validation data conforming to the requirements of 40 CFR 798.2500(d)(4)(i), prior to performing the assay," the EPA is requiring that a laboratory with no previous experience with the test must create an adequate historical data base before the Agency would view the testing facility as a "qualified" or "available" one.

The DPIA further comments that an industrial testing laboratory which it consulted estimates that the cost of obtaining such control validation data would be very high [probably exceeding the cost of a 104-week rodent carcinogenicity bioassay (over 1 million dollars)], and that it is clear from the Agency's economic analysis for all of the testing required for DETA in the final Phase I test rule for this substance (50 FR at 21410; May 23, 1985) that the development of historical control data for the MSL was not considered to be included in the test requirement for the assay itself. Additionally, the DPIA requests that the proposed final Phase II test rule for DETA be amended to reflect that the development of adequate control data for the MSL assay is not included in the test requirement for the assay itself but is a precondition to the qualification of a laboratory to conduct the test.

The DPIA also suggests that EPA might use the authority of section 10(a) of TSCA to enter into contracts with or make grants to several laboratories for developing adequate control data for the MSL assay to insure that adequate and qualified testing facilities are available for the testing of substances having TSCA section 4(a) testing requirements for this assay. The DPIA asserts that the use of TSCA section 10(a) authority in this regard should not be limited to a single testing facility, since this might result in a monopoly with respect to testing in the MSL assay.

The Agency agrees with the DPIA that the issues which it has raised and which are presented above are appropriate topics, among others, to be discussed during the EPA's public program review of all of the then available mutagenicity data for DETA which, as described in the final Phase I test rule for DETA, will precede the initiation of the testing of DETA in the MSL test. The EPA also agrees with DPIA that, for a laboratory to be considered a qualified and available testing facility for the MSL assay, it must have or develop adequate control validation data in conformance to the requirements of 40 CFR 798.2500(d)(4)(i).

On the other hand, the Agency disagrees with the DPIA's assertion that a potential requirement for the development of the positive and negative control data necessary for a laboratory which has had no prior experience with the MSL assay is not an integral part of the testing requirement for DETA (or other substances subject to a similar test rule requirement) in the MSL assay. This potential requirement is clearly stated in the revised EPA-approved modified study plan for the testing of DETA in the MSL assay (Ref. 5), which conforms to the requirements for this assay described in 40 CFR 798.2500(d)(4)(i). However, this is a potential requirement, because any laboratory having previous experience with this assay will most likely already possess the required control data and, therefore, will not need to expend any additional time for financial resources to develop such data prior to the testing of DETA in the MSL assay. Thus, the development of positive and negative control data for the testing of DETA in the MSL is a potential mandatory activity contained in the requirement for this assay established for DETA in the final Phase I test rule for this substance. However, should the required testing of DETA in the MSL assay be performed by a laboratory having had previous experience with this assay, and possessing the required positive and negative control data, development of additional control data will not be required.

The DPIA is correct in asserting that the economic analysis for the testing required for DETA contained in the final Phase I test rule for this substance did not include the cost of developing the positive and negative control data for the MSL assay. This cost was not included in the economic analysis because the Agency believes it to be highly unlikely that this expense will have to be incurred by the test sponsor for this required testing for DETA. As stated in the final Phase I test rule for this substance, the Agency believes that commercial testing facilities may decide to develop the required control data to enable them to perform this assay as these laboratories become familiar with the fact that the MSL assay is being required in many TSCA section 4(a) test rules for substances requiring testing for eliciting gene mutations.

In addition, EPA met with representatives from the U.S. Department of Energy (DOE) on October 3, 1986, to discuss the feasibility of having Oak Ridge National Laboratory (ORNL; operated by DOE) perform the MSL assay for test sponsors of chemical substances having a TSCA section 4(a) test rule requirement for this assay, should no other qualified testing facility offer this assay at the time such a requirement becomes mandatory. As outlined in EPA's summary of this meeting, ORNL already possesses the required historical control data for the MSL assay, and is capable of performing the assay for test sponsors in compliance with EPA's Good Laboratory Practice Standards. Test sponsors wishing to utilize ORNL for this purpose would contract with and reimburse ORNL directly, and would supply the additional personnel and funding required by ORNL to comply with EPA's Good Laboratory Practice Standards. As discussed at the DOE/EPA meeting, ORNL has previously performed the MSL assay for the artificial sweetener, cyclamate, in compliance with the U.S. Food and Drug Administration's (FDA's) Good Laboratory Practice Standards at an industry group's expense. Discussions at the DOE/EPA meeting did indicate that some financial issues remain to be resolved regarding ORNL's performing the MSL assay for test sponsors, but those test sponsors wishing to utilize ORNL for this purpose should discuss these issues directly with ORNL prior to EPA's public program review of all of the available mutagenicity data for substances subject to a test rule requirement for the MSL assay. Test sponsors could then discuss with EPA the results of their preliminary contract negotiations with ORNL during the public program review. A summary of the DOE/EPA meeting held on October 3, 1986 has been placed in the docket for this rulemaking. Because of its discussion with DOE, EPA does not now contemplate exercising its authority under section 10(a) of TSCA to fund the development of the required control data for the MSL assay by a commercial laboratory. Should it become apparent that the number of substances requiring this assay as a result of TSCA section 4(a) test rules is substantial, commercial laboratories may well decide to expend the necessary funds to develop the control data to enable them to offer the assay on a commercial basis.

C. Reporting Requirements

The DPIA commented that the proposed reporting requirements for all of the testing required for DETA contained in the EPA-approved modified study plans for DETA (Ref. 4) are reasonable, except for those proposed for the mouse visible specific locus (MSL) assay and the heritable translocation assay. With respect to the MSL assay, the proposed reporting requirement mandated that the final report be submitted to the Agency within 62 months of the effective date of the final Phase II test rule for DETA. This proposed reporting requirement allowed 48 months for the completion of the MSL assay itself, with 14 months after the effective date of the final Phase II test rule for DETA being added to this figure for the previous completion of the required sex-linked recessive lethal assay of DETA in *Drosophila melanogaster*. A positive response in the latter assay is necessary before EPA initiates a public program review of all of the mutagenicity data on DETA available at that time to determine if the required testing in the MSL assay should be initiated (50 FR 21398; May 23, 1985). The DPIA asserts that, if the time required for EPA to conduct the public program review is for some reason prolonged, the proposed reporting requirement for the MSL assay would result in significantly shortening the 48-month time period allowed for performing this assay. Therefore, DPIA suggests that the proposed reporting requirement for the MSL assay be changed to indicate that the final report shall be submitted to the Agency within 48 months after the test sponsor has been notified of EPA's decision, after the public program review, that the required testing of DETA in this assay should be

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initiated. In addition, the DPIA suggests that, should EPA decide that the initiation of testing in the MSL assay is necessary, and no testing facility willing to perform the testing in a manner consistent with test rule requirements possesses the necessary control validation data, then up to 30 months should be added to the time period allowed of the performance of the MSL assay (a total of 78 months) to allow for the development of the necessary control data.

The Agency has carefully considered these comments. Although EPA does not expect the time period required for its public program review preceding the decision on the initiation of the testing of DETA in the MSL assay to significantly shorten the 48-month period allowed for performance of this assay, the Agency does agree that the 48-month period allowed for testing would be significantly shortened under the proposed reporting requirement for this assay (Ref. 4), should some unforeseen circumstances lengthen the period required for EPA's public program review. On the other hand, as discussed in Unit IV.B. of this preamble, it is likely that the test sponsor for the MSL assay of DETA will be able to contract for this testing with the Oak Ridge National Laboratory (ORNL), or another qualified testing facility which may exist when testing is required, and, therefore, additional time and funds for the development of the necessary control data will not be required.

The Agency recognizes that scheduling problems at ORNL, or at a qualified commercial laboratory which may be offering the MSL assay at the time that this assay is required for DETA, might significantly decrease the 48-month period allowed for completion of this testing following EPA's notification of the test sponsor. However, the test sponsor for this assay will have ample time to investigate any such scheduling problem during the period from EPA's notification by industry of a positive test result for DETA in the sex-linked recessive lethal test in *Drosophila* until the time of EPA's public program review of all of the then available mutagenicity data for DETA, which, as described in the final Phase I test rule for this substance, will precede EPA's decision whether or not testing in the MSL assay should be initiated for DETA. Thus, the test sponsor may discuss any scheduling concerns with EPA during the public program review.

In view of these comments, the EPA is requiring in the final Phase II test rule for DETA that the final report resulting from the testing of this substance in the MSL assay shall be submitted to the Agency within 48 months from the designated date contained in EPA's notification of the test sponsor by certified letter or Federal Register notice of the Agency's decision, following a public program review of all of the then available mutagenicity data for DETA resulting from a positive test result for this substance in the sex-linked recessive lethal assay in *Drosophila melanogaster*, that the required testing must be initiated. Seven interim (6-month) reports shall be submitted to the Agency, commencing at 6 months following the designated date. These reporting requirements, incorporated into the final Phase II test rule for DETA, are contained in the revised EPA-approved modified study plans for DETA (Ref. 5) and are reflected in Unit V.B. of this preamble.

With respect to the heritable translocation assay, the proposed reporting requirement (Ref. 4) mandated that the final report be submitted to the Agency within 38 months of the effective date of the final Phase II test rule for DETA. This proposed reporting requirement allowed 18 months for the completion of the heritable translocation assay itself, with 20 months after the effective date of the final Phase II rule for DETA being added to this figure for the previous completion of the required *in vitro* cytogenetics test, the potentially required *in vivo* cytogenetics test, and the dominant lethal test of DETA. A positive response in the dominant lethal assay is necessary before the EPA initiates a public program review of all of the then available mutagenicity data on DETA to determine if the required testing in the heritable translocation assay should be initiated (50 FR 21396; May 23, 1985). The DPIA asserts that, if the time required to conduct the public program review is for some reason prolonged, the proposed reporting requirement for the heritable translocation assay (Ref. 4) would result in significantly shortening the 18-month time period allowed for performing this assay. Therefore, the DPIA suggests that the proposed reporting requirement for the heritable translocation assay be changed to indicate that the final report shall be submitted to the Agency within 18 months after the test sponsor has been notified of EPA's decision, following the public program review, that the required testing of DETA in this assay should be initiated.

In view of these comments, the EPA is requiring in this final Phase II test rule for DETA that the final report resulting from the testing of this substance in the heritable translocation assay should be submitted to the Agency within 18 months from the designated date contained in EPA's notification of the test sponsor by certified mail or Federal Register notice of the Agency's decision, following public program review of the then available mutagenicity data for DETA (resulting from a positive test result for DETA in the dominant lethal assay), that the required testing in the heritable translocation assay should be initiated. Two interim (6-month) reports shall be submitted to the Agency, commencing at 6 months following the designated date. These reporting requirements, incorporated into this final Phase II test rule for DETA, are contained in the revised EPA-approved modified study plans for DETA (Ref. 5) and are reflected in Unit V.B. of this preamble.

D. Chemical Fate Testing

The DPIA correctly noted that the EPA-approved modified study plan entitled "Potential Environmental Production of *N*-Nitroso Adducts of Diethylenetriamine", contained in Ref. 4 and proposed as the test standard and reporting requirements for DETA in the proposed Phase II test rule for this substance, differed from the DPIA-submitted study plan in that Alternative 1 was deleted from the industry-submitted plan and Alternative 2 was mandated for use. Alternative 1 in the DPIA-submitted study plan stipulated that the chemical fate of DETA would first be investigated in samples of sewage; however, if no *N*-nitroso derivatives of DETA were found to be produced in sewage, chemical fate studies of DETA would not then be conducted in samples of lake water and soil. Alternative 2 in the DPIA-submitted study plan stipulated that the chemical fate studies would be conducted in samples of sewage, as well as in samples of lake water and soil, whether or not a *N*-nitroso derivative of DETA was found to be produced in sewage samples. As explained in the proposed Phase II test rule for DETA, this change in the DPIA-submitted study plan was necessary because only Alternative 2 of the plan meets the testing specified to be performed for DETA in the final Phase I test rule for DETA, which clearly indicates that chemical fate testing is to be performed in samples of sewage, lake water, and soil, regardless of the test results obtained in any one or more of these environmental media [40 CFR 799.1575(d)(i)]. If it had been the intent of the Agency to predicate the requirement for the chemical fate testing of DETA in lake water and soil upon

positive test results in tests with sewage, the language used in final Phase I test rule would have so stated. The DPIA, in its comments on the proposed Phase II test rule for DETA asserts that it believes the chemical fate testing requirement established for DETA in the final Phase I test rule for this substance is unreasonable and may impose upon industry entirely unnecessary testing, continuing to assert that Alternative 1 in the DPIA-submitted study plan for the chemical fate testing of DETA should be followed.

As described in the final rule for test rule development and exemption procedures (49 FR 39774; October 10, 1984), it is the final Phase I test rule which, in a two-phase rulemaking such as that employed for DETA, specifies the health and environmental effects and other characteristics for which data are required to be developed. With respect to the chemical fate testing of DETA, the data required to be developed are clearly stated in the final Phase I test rule for this substance to be: "Testing to assess *N*-nitrosamine formation, resulting from aerobic biological and/or chemical transformation, shall be conducted with DETA using environmental samples of lake water, sewage, and soil" [40 CFR 799.1575(d)(i)]. Thus, the required chemical fate tests mandated for DETA are already determined by final rule, and are not an appropriate subject for comments on the proposed Phase II test rule for DETA, which proposes test standards (methodology) and reporting requirements for conducting the already required tests. As stated in Unit V.D. of this preamble, EPA received no petitions for review of the final Phase I rule for DETA, and accordingly any petition for judicial review of this final Phase II test rule for DETA will be limited to a review of the test standards (methodology employed to perform the tests required in the final Phase I rule) and reporting requirements for this substance which are established in this notice. In view of these facts, the Agency believes that it is not legally obligated to respond to the DPIA's comments regarding the required chemical fate tests to be conducted with DETA which have already been established [40 CFR 799.1575(d)(i)].

Notwithstanding the lack of a legal obligation to respond to the DPIA's comments on the required chemical fate tests for DETA, the Agency has decided to respond to these comments to further clarify the scientific basis and rationale supporting the selection of the chemical fate tests required for DETA in the final Phase I test rule for this substance. The DPIA believes that the aerobic chemical and/or biological transformation of DETA to a *N*-nitrosamine derivative(s) will be much greater in samples of sewage than in samples of lake water or soil; therefore, the DPIA maintains that testing should be conducted in aerobic sewage first, with no further testing in lake water or soil if no *N*-nitrosamine derivative(s) of DETA are produced in sewage samples. The DPIA cites a memorandum of February 27, 1984, from Dr. Robert Brink, Senior Scientist, Exposure Assessment Branch, Exposure Evaluation Division, EPA, to Mr. Raymond K. Locke, Test Rules Development Branch, Existing Chemical Assessment Division, EPA (Ref. 10), in support of this position. Dr. Brink's position on this matter, as well as the positions of others, were carefully considered by EPA, which, for the reasons outlined below, decided that the chemical fate testing of DETA was necessary in all three environmental media (sewage, lake water, and soil) to develop the data necessary to determine the risks posed to human health due to drinking water potentially contaminated with a *N*-nitrosamine derivative(s) of DETA which might enter the drinking water supply via any one of these three environmental media.

The DPIA asserts that it is well known that sewage contains higher concentrations of nitrites (a necessary reactant for *N*-nitrosamine formation) than either lake water or soil; thus, aerobic sewage would provide a more favorable environment for the direct chemical production of *N*-nitrosamine derivative(s) of DETA than either lake water or soil. The Agency agrees with this comment, but, as pointed out in the final Phase I test rule for this substance, the Agency is concerned about the total transformation, whether biological or purely chemical in nature, of DETA present in water, sewage, or soils to an *N*-nitrosamine derivative of the substance, which the Agency views as a potential carcinogen and which may enter the drinking water supply.

The DPIA asserts that aerobic sewage would also provide a more favorable environment for formation of *N*-nitrosamine derivatives of DETA through biological activity, since sewage is a richer source of both bacteria and the nutrients required for their growth than is soil or lake water. The Agency notes that it is a well known fact that the types of microorganisms expected to be present in sewage will differ from those expected to be present in soil and lake water, both with respect to their concentration and species. The enzymatic activities present in these organisms are also well known to differ; therefore, without testing, it is not possible to predict that the greater concentration of microorganisms present in sewage, with respect to soil and lake water, would necessarily lead to a greater biological transformation of DETA to a *N*-nitrosamine derivative(s) in sewage as opposed to the other two environmental media. Even though the concentration of the microorganisms is greater in sewage, their enzymatic capability to effect the transformation of DETA to a *N*-nitrosamine derivative may be less than that possessed by the different microorganisms present in soil and lake water. Thus, it is not possible to predict, without testing, that the total chemical and biological transformation of DETA to a *N*-nitrosamine derivative(s) will necessarily be greater in sewage than in either soil or lake water, and testing is necessary in all three environmental media.

The DPIA correctly observes that Yordy and Alexander (Ref. 11) demonstrated that a chemical analogue of DETA, diethanolamine, was transformed to an *N*-nitrosamine derivative in sewage at a rate much greater than that observed in lake water. From these data, the DPIA concludes that, if a *N*-nitrosamine derivative(s) is produced from DETA, the amount of the derivative(s) generated in sewage would be higher than that generated in lake water or soil. The Agency disagrees with the DPIA's conclusions from these data. First, the data presented by Yordy and Alexander (Ref. 11) do not deal in any respect with the transformation of diethanolamine, an analogue of DETA, to its *N*-nitrosamine derivative in samples of soil. Secondly, these data on diethanolamine, a chemical analogue of DETA, cannot even be used to reliably predict that the transformation of DETA itself to a *N*-nitrosamine derivative(s) would necessarily be greater in sewage than in lake water. The biological transformation of DETA to such a derivative(s) in all three of these environmental media is dependent upon the enzymatic activities present in the microorganisms occurring in these media. Enzymatically catalyzed transformations are very much dependent upon the chemical structure of the substance undergoing reaction. It is well known that very small changes in the chemical structure of a substance known to be readily transformed to another substance by an enzymatic reaction can lead to a total loss of the enzyme's ability to catalyze the transformation. Although diethanolamine and DETA are chemically similar, they are different in

that the two primary amino groups present in DETA have been replaced by two hydroxyl groups in diethanolamine. This difference in chemical structure may well result in great differences in the relative extent of the enzymatic biological transformation of DETA to a *N*-nitrosamine derivative(s) in samples of sewage and lake water with respect to those observed for diethanolamine by Yordy and Alexander (Ref. 11). No data are available for diethanolamine with respect to soil. Thus, without testing, it is impossible to predict that DETA would be biologically transformed to a *N*-nitrosamine derivative(s) in aerobic sewage to a much greater extent than in aerobic soil or lake water, and the testing of DETA in all three environmental media is, therefore, necessary.

The DPIA correctly comments that an earlier study by Yordy and Alexander (Ref. 12) demonstrates that there is no significant difference in the degradation rate of the *N*-nitrosamine derivative of diethanolamine with respect to samples of sewage and lake water. The DPIA concludes from these data that one could not expect any significant difference in degradation rates for any *N*-nitrosamine derivative formed from DETA in samples of sewage and lake water. The Agency agrees that the data of Yordy and Alexander (Ref. 12) do not demonstrate a significant difference in the degradation of pure *N*-nitrosodiethanolamine in samples of sewage and two lake waters. However, the salient points to be derived from this study are that the degradation of this carcinogenic substance was slow in all three media and that this substance may persist in freshwater lakes for long periods of time during the winter months. The Agency disagrees with the DPIA's conclusion that these data indicate that one would not expect significant differences in degradation rates for any *N*-nitrosamine derivative formed from DETA in sewage or lake water. Once again, the rates of degradation of the *N*-nitrosamine derivatives of DETA and diethanolamine are dependent upon enzymatically catalyzed reactions. Since the chemical structures of these *N*-nitrosamine derivatives are different, without testing one cannot reliably predict that results observed with the *N*-nitrosamine derivative of diethanolamine are those that would be observed for the *N*-nitrosamine derivative of DETA.

Finally, the DPIA asserts that the EPA is incorrect in asserting that the final Phase I test rule for DETA (50 FR 21398; May 23, 1985) precludes the use of Alternative 1 in the DPIA-submitted study plan for chemical fate studies of DETA. The DPIA asserts that 40 CFR 799.1575(d)(i) addresses testing in lake water, sewage, and soil, but does not specify the method for conducting such testing. The DPIA believes that Alternative 1 contained in the DPIA-submitted study plan for chemical fate studies of DETA is consistent with the requirements of the final Phase I test rule for DETA. As previously discussed in the second paragraph of Unit IV.D. of this preamble, the methodology for conducting the chemical fate testing of DETA presented in Alternative 1 of the DPIA-submitted study plan actually would change the required chemical fate tests mandated for DETA in 40 CFR 799.1575(d)(i), and Alternative 1 is, therefore, unacceptable.

In view of these comments, the Agency continues to require that testing to assess *N*-nitrosamine formation, resulting from aerobic biological and/or chemical transformation, shall be conducted with DETA using environmental samples of lake water, sewage, and soil. This requirement is contained both in this final Phase II test rule for DETA and in the revised EPA-approved modified study plans for DETA (Ref. 5).

V. Final Phase II Test Rule

A. Test Standards

The test protocols contained in the revised EPA-approved modified study plans for DETA (Ref. 5) shall be the test standards for the testing of DETA required under 40 CFR 799.1575. The Agency believes that the conduct of the required tests in accordance with the revised EPA-approved modified study plans for DETA will insure that the resulting data are reliable and adequate.

B. Reporting Requirements

The Agency is requiring that all data developed under this rule be reported in accordance with the TSCA Good Laboratory Practice (GLP) Standards (40 CFR Part 792).

The Agency is required by TSCA section 4(b)(1)(C) to specify the time periods during which persons subject to a test rule must submit test data. On the basis of the Agency's regulatory experience for the tests required for DETA, as well as in response to certain public comments, EPA is adopting the reporting requirements for these tests which are contained in the revised EPA-approved modified study plans for this substance (Ref. 5), and which are presented below.

REPORTING REQUIREMENTS FOR DETA

Test	Reporting deadline for final report (months after the effective date of final phase II rule, except as indicated)	Number of interim (6-month) reports required
Sex-linked recessive lethal test in *Drosophila*	14	2
Mouse visible specific locus assay	[1] 48	7
In vitro cytogenetics test	6	0
In vivo cytogenetics test	[2] 14 [3] (8)	1
Dominant lethal test	[2] 20 [3] (6)	0
Heritable translocation assay	[1] 18	2
90-Day subchronic toxicity test	15	2
Dermal absorption test	20	3
Chemical fate test	18	2

[1] Figure indicates the reporting deadline in months, calculated from the designated date contained in the notification of the test sponsor by certified letter or FEDERAL REGISTER notice that, following public program review of all of the then existing mutagenicity data for DETA, the Agency has determined that the required testing must be performed.

[2] Figure includes the time periods required for previous required testing.

[3] Figure in parentheses indicates the time period allowed for completion of the test itself, not including the time periods for previous required testing.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the **Federal Register** as required by section 4(d).

C. Conditional Exemptions Granted

The final rule for test rule development and exemption procedures (40 CFR 790.87) indicates that, when certain conditions are met, exemption applicants will be notified by certified mail or in the final Phase II test rule for a give substance that they have received conditional exemptions from test rule requirements. The exemptions granted are conditional because they will be given based on the assumption that the test sponsors will complete the required testing according to the test standards and reporting requirements established in the final Phase II test rule for the given substance. TSCA section 4(c)(4)(B) provides that if an exemption is granted prospectively (that is, on the basis that one or more persons are developing test data, rather than on the basis of prior test data submissions), the Agency must terminate the exemption if any test sponsor has not complied with the test rule.

Since sponsors have indicated to EPA by letters of intent (Refs. 1 through 3) their agreement to sponsor all of the test required for DETA in the final Phase I test rule for this substance (50 FR 21398; May 23, 1985) according to the test standards and reporting requirements established in this final Phase II test rule for DETA, the Agency is hereby granting conditional exemptions to all exemption applicants for all of the testing required for DETA in 40 CFR 799.1575.

D. Judicial Review

The promulgation date for the final Phase I test rule for DETA was established as 1:00 p.m. eastern daylight time on June 6, 1985 (50 FR 21398; May 23, 1985). EPA received no petitions for review of that Phase I final rule. Accordingly, any petition for judicial review of this final Phase II test rule for DETA will be limited to a review of the test standards and reporting requirements for this substance which are established in this notice.

E. Other Provisions

TSCA section 4 findings, required testing, test substance specifications, persons required to test, enforcement provisions, and the economic analysis are all presented in the final Phase I test rule for DETA (50 FR 21398; May 23, 1985).

VI. Rulemaking Record

EPA has established a record for this rulemaking, [Docket Number OPTS-42012D]. This record includes the basic information considered by the Agency in developing this rule and appropriate **Federal Register** notices.

This record currently includes the following information:

A. Supporting Documentation

(1) Final Phase I rule on diethylenetriamine (50 FR 21398; May 23, 1985).

(2) Proposed Phase II rule on diethylenetriamine (51 FR 12344; April 10, 1986).

(3) Contact reports of telephone conversations.

(4) Letters, memoranda, and meeting summaries related to this rulemaking.

(5) Public comments on the proposed Phase II rule on diethylenetriamine.

B. References

(1) Union Carbide Corporation. Letter from J. Cole to TSCA Public Information Office, USEPA. (August 2, 1985).

(2) Dow Chemical Company. Letter from W. Cornelius to TSCA Public Information Office, USEPA. (July 29, 1985).

(3) Texaco Chemical Company. Letter from F. Bentley to TSCA Public Information Office, USEPA. (August 5, 1985).

(4) Diethylenetriamine Producers/Importers Alliance [DPIA]. Letter from A. Rautio (and attached study plans and associated cover letters for diethylenetriamine) to G. Timm, USEPA. (November 27, 1985). [And attached Confirmation of EPA's Receipt, Evaluation, and Revision. (February 10, 1986).]

(5) Diethylenetriamine Producers/Importers Alliance (DPIA). Letter from A. Rautio (and attached study plans and associated cover letters for diethylenetriamine) to G. Timm, USEPA. (November 27, 1985). [And attached Final EPA Revisions of Study Plans for Diethylenetriamine. (June 19, 1986).]

(6) Berol Chemicals, Inc. Letter from K. Dahlin to TSCA Public Information Office, USEPA. (August 2, 1985).

(7) Industrial Chemicals Division, Air Products and Chemicals, Inc. Letter from D. Hartter to TSCA Public Information Office, USEPA. (August 5, 1985).

(8) AZS Corporation. Letter from J. Cook to TSCA Public Information Office, USEPA. (August 2, 1985).

(9) BASF Wyandotte Corporation. Letter from R. Flaherty to TSCA Public Information Office, USEPA. (August 5, 1985).

(10) USEPA. Memorandum from R. Brink, Exposure Evaluation Division, to R. Locke, Test Rules Development Branch. (February 27, 1984).

(11) Yordy, J., and Alexander, M. "Formation of *N*-nitrosodiethanolamine from diethanolamine in lake water and sewage." *Journal of Environmental Quality* 10:266–270. (1981).

(12) Yordy, J.R., and Alexander, M. "Microbial metabolism of *N*-nitrosodiethanolamine in lake water and sewage." *Applied and Environmental Microbiology* 39:559–565. (1980).

The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

VII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirements of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. The economic analysis of the testing required for DETA is discussed in the Phase I test rule (50 FR 21398; May 23, 1985).

This final Phase II test rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments received from OMB, together with any EPA response to these comments, are included in the public record for this rulemaking.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses for the following reasons:

1. There is not a significant number of small businesses manufacturing DETA.

2. Small manufacturers and small processors of DETA are not expected to perform testing themselves or to participate in the organization of the testing efforts.

3. Small manufacturers and small processors of DETA will experience only minor costs, if any, in securing exemption for testing requirements.

4. Small manufacturers and small processors are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned the OMB control number 2070–0033. No public comments on these same requirements contained in the proposed Phase II rule for DETA (51 FR 12344; April 10, 1986) were submitted to the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: January 22, 1987.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

PART 799—[AMENDED]

Therefore, Chapter I of 40 CFR Part 799 is amended as follows:

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. By amending § 799.1575 by revising paragraphs (c)(1)(ii), (2)(ii), (3)(ii), (4)(ii),

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(d) and (e); and adding paragraphs (c)(1)(iii), (2)(iii), (3)(iii), (4)(iii) and (f) to read as follows:

§ 799.1575 Diethylenetriamine (DETA).

* * * * *

(c) * * *

(1) * * *

(ii) *Test standards.* The testing shall be conducted in accordance with the following revised EPA-approved modified study plans (June 19, 1986) originally submitted by the Diethylenetriamine Producers/Importers Alliance (DPIA): "Sex-linked recessive lethal test in *Drosophila melanogaster*," and "Mouse specific locus test for visible markers." These revised EPA-approved modified study plans are available for inspection in EPA's OPTS Reading Room, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

(iii) *Reporting requirements.* (A) The sex-linked recessive lethal test of DETA in *Drosophila melanogaster* shall be completed and a final report submitted to the Agency within 14 months from the effective date of the final Phase II rule. Two interim progress reports shall be submitted at 6-month intervals, the first of which is due within 6 months of the effective date of the final Phase II rule.

(B) If required pursuant to paragraph (c)(1)(i)(B) of this section, the mouse specific locus test of DETA for visible markers shall be completed and a final report submitted to the Agency within 48 months from the designated date contained in EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing should be initiated. Seven interim progress reports shall be submitted at 6-month intervals, the first of which is due within 6 months of EPA's designated date.

(2) * * *

(ii) *Test standards.* The testing shall be conducted in accordance with the following revised EPA-approved modified study plans (June 19, 1986) originally submitted by the Diethylenetriamine Producers/Importers Alliance (DPIA): "*In vitro* cytogenetics test," "*In vivo* cytogenetics test," "Dominant lethal assay of diethylenetriamine in CD rats," and "Heritable translocation assay of diethylenetriamine in CD–1 mice." These revised EPA-approved modified study plans are available for inspection in EPA's OPTS Reading Room, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

(iii) *Reporting requirements.* (A) The *in vitro* cytogenetics testing of DETA shall be completed and a final report submitted to the Agency within 6 months of the effective date of the final Phase II rule.

(B) If required pursuant to paragraph (c)(2)(i)(B) of this section, the *in vivo* cytogenetics testing of DETA shall be completed and final report submitted to the Agency within 14 months of the effective date of the final Phase II rule. One interim progress report shall be submitted within 12 months of the final rule's effective date.

(C) If required pursuant to paragraph (c)(2)(i)(C) of this section, the dominant lethal testing of DETA shall be completed and a final report submitted to the Agency within 20 months of the effective date of the final Phase II rule.

(D) If required pursuant to paragraph (c)(2)(i)(D) of this section, the heritable translocation testing of DETA shall be completed and a final report submitted to the Agency within 18 months of the designated date contained in EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing should be initiated. Two interim progress reports shall be submitted at 6-month intervals, the first of which is due within 6 months of EPA's designated date.

(3) * * *

(ii) *Test standard.* The testing shall be conducted in accordance with the following revised EPA-approved modified study plan (June 19, 1986) originally submitted by the Diethylenetriamine Producers/Importers Alliance (DPIA): "Ninety-day (subchronic) dietary toxicity study with diethylenetriamine in albino rats." This revised EPA-approved modified study plan is available for inspection in EPA's OPTS Reading Room, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

(iii) *Reporting requirements.* The testing shall be completed and a final report submitted to the Agency within 15 months of the effective date of the final Phase II rule. Two interim progress reports shall be submitted at 6-month intervals, the first of which is due within 6 months of the effective date of the final Phase II rule.

(4) * * *

(ii) *Test standard.* The testing shall be conducted in accordance with the following revised EPA-approved modified study plan (June 19, 1986) originally submitted by the Diethylenetriamine Producers/Importers Alliance (DPIA): "Dermal absorption." This revised EPA-approved modified study plan is available for inspection in EPA's OPTS Reading Room, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

(iii) *Reporting requirements.* The testing shall be completed and the final report submitted to the Agency within 20 months of the effective date of the final Phase II rule. Three interim progress reports shall be submitted at 6-month intervals, the first of which is due within 6 months of the effective date of the final Phase II rule.

(d) *Chemical fate testing*—(1) *Required testing.* Testing to assess *N*-nitrosamine formation, resulting from aerobic biological and/or chemical transformation, shall be conducted with DETA using environmental samples of lake water, sewage, and soil.

(2) *Test standard.* The testing shall be conducted in accordance with the following revised EPA-approved modified study plan (June 19, 1986) originally submitted by the Diethylenetriamine Producers/Importers Alliance (DPIA): "Chemical fate." This revised EPA-modified study plan is available for inspection in EPA's OPTS Reading Room, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

(3) *Reporting requirements.* The testing shall be completed and a final report submitted to the Agency within 18 months of the effective date of the final Phase II rule. Two interim progress reports shall be submitted at 6-month intervals, the first of which is due within 6 months of the effective date of the final Phase II rule.

(e) *Modifications.* Persons subject to this section are not subject to the requirements of § 790.50(a)(2)(ii) of this chapter.

(f) *Effective date.* The effective date of the final Phase II rule for diethylenetriamine is March 19, 1987.

[FR Doc. 87-2080 Filed 2-2-87; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-6904]

Changes in Flood Elevation Determinations

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2751.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorg. Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Maricopa	City of Phoenix	Sept. 30, and Oct. 7, 1985, *Arizona Business Gazette.*	The Honorable Terry Goddard, Mayor, City of Phoenix, City Hall, 25 West Washington, Phoenix, AZ 85003.	Sept. 26, 1986	040051
Connecticut: Hartford	Town of South Windsor	Dec. 24 and Dec. 31, 1986, *The Hartford Courant.*	The Honorable Richard J. Sartor, South Windsor Town, Manager, 1540 Sullivan Ave., South Windsor, CT 06074.	Dec. 22, 1986	090036
Florida:					
Collier	Unincorporated areas	Sept. 11 and Sept. 18, 1986, *Naples Daily News.*	The Honorable John Pristor, Chairman, Collier County Commission, Collier County Government Complex, 3301 East Tamiami Trail, Naples, FL 33942.	Sept. 5, 1986	120067
Collier	City of Naples	Oct. 30 and Nov. 6, 1986, *The Naples Daily News.*	The Honorable Edwin J. Putzell, Mayor, City of Naples, City Hall, 735 Eighth St., South, Naples, FL 33940.	Oct. 21, 1986	125130
Georgia: Bibb and Jones	City of Macon and Bibb County.	Dec. 19 and Dec. 26, 1986, *Macon Telegraph and News.*	The Honorable George Israel, Mayor, City of Macon, P.O. Box 247, Macon, GA 31298.	Dec. 12, 1986	130011
Illinois: Du Page	City of West Chicago	Nov. 20 and Nov. 27, 1986, *West Chicago Press.*	The Honorable A. Eugene Rennels, Mayor, City of West Chicago, 475 Main St., West Chicago, IL 60185.	Nov. 12, 1986	170219
Kansas: Cowley	City of Winfield	Oct. 16 and Oct. 23, 1986, *Winfield Courier.*	The Honorable Bill Dexter, Mayor, City of Winfield, P.O. Box 646, Winfield, KS 67156.	Oct. 3, 1986	200071
Maryland: Anne Arundel	Anne Arundel County	Dec. 19 and Dec. 26, 1986, *The Capitol.*	The Honorable O. James Lighthizer, Anne Arundel County Executive, Arundel Center, P.O. Box 1831, Annapolis, MD 21404.	Dec. 9, 1986	240008
Ohio: Lorain	City of Lorain	Dec. 17 and Dec. 24, 1986, *Lorain Journal.*	The Honorable Alex M. Olejko, Mayor, City of Lorain, City Hall, 200 West Erie Ave., Lorain, OH 44052.	Dec. 8, 1986	390351
Tennessee: Shelby	Unincorporated areas	Sept. 12 and Sept. 18, 1986, *Commercial Appeal.*	The Honorable William N. Morris, Mayor, Shelby County, Shelby County Administrative Building, Suite 850, 160 North Mid America Mall, Memphis, TN 38103.	Aug. 29, 1986	470214
Texas:					
Tarrant	City of Blue Mound	Dec. 5 and Dec. 12, 1986, *Fort Worth Star-Telegram.*	The Honorable Dale Jensen, Mayor of the City of Blue Mound, Blue Mound City Hall, 1600 Bell Ave., Fort Worth, TX 76131.	Dec. 1, 1986	480587
Dallas, Denton, and Collin	City of Carrollton	Jan. 2 and Jan. 9, 1987, *Times-Chronicle.*	The Honorable Milburn Gravley, Mayor of the City of Carrollton, P.O. Box 110535, Carrollton, TX 75011-0535.	Dec. 23, 1986	480167
Fort Bend	Fort Bend County, Municipal Utility District No. 34.	Nov. 26 and Dec. 3, 1986, *The Herald-Coaster.*	Ms. Sally M. Woody, President of the Board of Directors, Fort Bend County Municipal Utility District No. 34, 2000 West Loop South, Suite 1600, Houston, TX 77027.	Nov. 18, 1986	480226

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Fort Bend	Fort Bend County, Municipal Utility District No. 35.	Nov. 21, and Nov. 28, 1986, *The Herald-Coaster.*	Ms. Patsy McPherson, President of the Board of Directors, Fort Bend County Municipal Utility District No. 35, 2000 West Loop South, Suite 1600, Houston, TX 77027.	Nov. 20, 1986	481519
Harris	Unincorporated areas	Oct. 10, and Oct. 17, 1986, *The Houston Post.*	The Honorable Jon Lindsay, Harris County Judge, Harris County Administration Building, 1001 Preston, Houston, TX 77002.	Sept. 26, 1986	480287
Tarrant	City of Hurst	Oct. 10 and Oct. 17, 1986, *Mid-Cities Daily News.*	The Honorable William Souder, Mayor of the City of Hurst, 801 Precinct Line Rd., Hurst, TX 76054.	Oct. 3, 1986	480601
Bexar	City of San Antonio	Oct. 15 and Oct. 22, 1986, *San Antonio Light.*	The Honorable Henry Cisneros, Mayor of the City of San Antonio, Bexar County, P.O. Box 9066, San Antonio, TX 78285.	Oct. 10, 1986	480055
Bexar	City of San Antonio	Nov. 26 and Dec. 5, 1986, *San Antonio Light.*	The Honorable Henry Cisneros, Mayor of the City of San Antonio, P.O. Box 9066, San Antonio, TX 78285.	Nov. 19, 1986	480045
Smith	City of Tyler	Nov. 11 and Nov. 18, 1986, *Tyler Courier-Times.*	The Honorable James R. Montgomery, Mayor of the City of Tyler, Smith County, P.O. Box 2039, Tyler, TX 75704.	Oct. 29, 1986	480571
Virginia: Arlington	Unincorporated areas	Nov. 17 and Nov. 24, 1986, *Northern Virginia Sun.*	The Honorable Mary Margaret Whipple, Chairman of the Arlington County Board of Supervisors, Arlington County Courthouse, 1400 North Courthouse Rd., Arlington, VA 22201.	Nov. 12, 1986	515520

Issued: January 16, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-2036 Filed 2-2-87; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2751.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator, has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains.

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorg. Plan No. 3 of 1978, E.O., 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Illinois, Lake	Village of Lincolnshire, FEMA Docket #6728.	Aug. 28, 1986, Sept. 4, 1986, *The Deerfield Review.*	The Honorable Evelyn Cooper, Mayor, Village of Lincolnshire, 175 Olde Half Day Road, Lincolnshire, Illinois 60069.	July 24, 1986	170378
Iowa, Montgomery (Docket No. FEMA-6900).	City of Red Oak	Sept. 19, 1986, Sept. 26, 1986, *Red Oak Express.*	The Honorable Raymond Gustafson, Mayor, City of Red Oak, 601 6th Street, Red Oak, Iowa 51566.	Sept. 11, 1986	190210
Texas, Aransas, Nueces and San Patricio (FEMA Docket No. 6900).	City of Aransas Pass	Sept. 24, 1986, Oct. 1, 1986, *Aransas Pass Progress.*	The Honorable Robert B. Watson, Mayor of the City of Aransas Pass, P.O. Drawer X, 600 West Cleveland, Aransas Pass, Texas 78336.	Sept. 18, 1986	485453
Texas, Bexar	City of San Antonio (FEMA Docket No. 6728).	Aug. 11, 1986, Aug. 18, 1986, *San Antonio Light.*	The Honorable Henry Cisneros, Mayor of the City of San Antonio, Bexar County, P.O. Box 9066, San Antonio, Texas 78285.	July 3, 1986	480045

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: January 16, 1987.

[FR Doc. 87-2034 Filed 2-2-87; 8:45 am]

BILLING CODE 6718-01-M

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2751.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorg. Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD) Modified
ALABAMA	
Montgomery (city), Montgomery, Elmore, Autauga and Lowndes Counties (FEMA Docket No. 6729)	
Alabama River:	
Approximately 0.9 mile downstream of confluence of Catoma Creek	*158
Just downstream of Interstate 65	*164
About 1,600 feet upstream of confluence of Galbraith Creek	*168
West End Ditch:	
At confluence with the Alabama River	*161
About 200 feet downstream of U.S. Highways 31 and 82	*162
Maps available for inspection at the Engineering Department, City Hall, P.O. Box 1111, Montgomery, Alabama.	
INDIANA	
Auburn (city), DeKalb County (FEMA Docket No. 6729)	
Cedar Creek:	
About 600 feet downstream of the Chessie System	*852
About 1,250 feet downstream of 9th Street	*857
About 1,550 feet upstream of First Street	*861
Maps available for inspection at the City Hall, P.O. Box 506, Auburn, Indiana.	
Nashville (town), Brown County (FEMA Docket No. 6901)	
North Fork Salt Creek:	
Just downstream of confluence with Jackson Branch	*602
About 0.63 mile upstream of confluence of Claylick Creek	*610
Just upstream of State Route 46 (near confluence of Gnaw Bone Creek)	*618
1,530 feet upstream of Old State Route 46	*621
Maps available for inspection at the Brown County Planning Commission, P.O. Box 401, Nashville, Indiana.	
MASSACHUSETTS	
Pittsfield (city), Berkshire County (FEMA Docket No. 6901)	
Southwest Branch:	
Upstream side of CONRAIL bridge	*976
Approximately 1,100 feet downstream of Cadwell Road	*978
Approximately 80 feet upstream of Cadwell Road	*982
Approximately 800 feet upstream of Cadwell Road	*985
Maps available for inspection at the Pittsfield Planning Board, 70 Allen Street, Room 205, Pittsfield, Massachusetts.	
MISSOURI	
Belton (city), Cass County (FEMA Docket No. 6729)	
Oil Creek:	
Just upstream of 155th Street	*977

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD). Modified
Just downstream of 162nd Street	*1,003
Just downstream of 163rd Street	*1,007
Maps available for inspection at the the City Hall, P.O. Box 230, Belton, Missouri.	
Grandview (city), Jackson County (FEMA Docket No. 6729)	
Oil Creek:	
About 0.48 mile downstream of 155th Street	*969
Just downstream of 155th Street	*977
Maps available for inspection at the Engineering Department, Attn: Harry Finley, 1200 Main Street, Grandview, Missouri.	
Independence (city), Jackson and Clay Counties (FEMA Docket No. 6901)	
Missouri River:	
At river mile 357.10	*739
At river mile 357.91	*740
Maps available for inspection at the Planning Department, City of Independence, 111 East Maple Street, Independence, Missouri.	
Platte County (unincorporated areas) (FEMA Docket No. 6729)	
Burlington Creek:	
About 2,200 feet downstream of 49th Street	*764
Just upstream of 49th Street	*775
About 900 feet upstream of Paradise Valley Road	*797
Maps available for inspection at the City Hall, P.O. Box 406, Platte City, Missouri.	
Riverside (city), Platte County (FEMA Docket No. 6729)	
Missouri River:	
About 0.86 mile downstream of the confluence of Line Creek	*757
About 0.55 mile upstream of Fairfax Bridge	*758
About 0.31 mile upstream of the confluence of Burlington Creek	*762
Burlington Creek:	
At confluence with the Missouri River	*762
Just downstream of State Highway 9	*762
Just upstream of State Highway 9	*764
About 400 feet upstream of Paradise Valley Road	*784
Line Creek	
At confluence with the Missouri River	*757
Just downstream of Northwest Platte Road	*757
Maps available for inspection at the City Hall, P.O. Box 9135, Riverside, Missouri	
NEW HAMPSHIRE	
Lebanon (city), Grafton County (FEMA Docket No. 6729)	
Mascoma River:	
Approximately 580 feet downstream of the Mascoma Street bridge	*509
Approximately 400 feet upstream of the Hanover Street bridge	*575
Maps available for inspection at the City Hall, 51 North Park Street, Lebanon, New Hampshire.	
NEW JERSEY	
Nutley (township), Essex County (FEMA Docket No. 6729)	
Third River:	
Downstream corporate limits	*43
Upstream side of Vreeland Avenue	*57
Approximately 570 feet downstream of Chestnut Street	*61
Downstream side of Chestnut Street	*64
Upstream side of Centre Street	*70
St. Pauls Branch	
Downstream side of Elm Place	*54
Downstream side of dam	*78
Passaic River: Upstream corporate limits	*14
Maps available for inspection at the Municipal Engineer's Office, 1 Kennedy Drive, Nutley, New Jersey.	
NEW YORK	
Babylon (town), Suffolk County (FEMA Docket No. 6729)	
Atlantic Ocean: Entire shoreline within community	*15
Fire Island Inlet:	
At confluence with Atlantic Ocean	*15
At Captree State Park	*9
Great South Bay:	
At Western Concourse, extended	*10
At western end of Harding Avenue	*7
Maps available for inspection at the Engineering Division, Department of Planning and Development, Town Hall, 200 East Sunrise Highway, North Lindenhurst, New York.	
Bellport (village), Suffolk County (FEMA Docket No. 6729)	
Great South Bay:	
Shoreline at Browns Lane (extended)	*10
Approximately 350 feet south of intersection of Point Road and Thorn Hedge Road	*7
Approximately 650 feet southeast along Point Road from intersection of Point Road and Thorn Hedge Road	*6
Maps available for inspection at the Village Hall, 144 South Country Road, Bellport, New York.	
Greenburgh (town), Westchester County (FEMA Docket No. 6729)	
Sprain Brook:	
Downstream corporate limits	*180
2nd upstream corporate limits	*187
Maps available for inspection at 320 Knollwood Road, Greenburgh, New York.	
Patchogue (village), Suffolk County (FEMA Docket No. 6801)	
Great South Bay:	
Entire shoreline within community	*8
Shoreline of Patchogue River at Laurel Street, extended	*6
Maps available for inspection at the Patchogue Village Hall, 14 Baker Street, Patchogue, New York.	
Saltaire (village), Suffolk County (FEMA Docket No. 6712)	
Atlantic Ocean: Shoreline at Atlantic Walk (extended)	*15
Great South Bay: Shoreline at Pacific Walk (extended)	*6
Maps available for inspection at the Village Hall, P.O. Box P551, Bay Shore, New York.	
Southampton (town), Suffolk County (FEMA Docket No. 6729)	
Atlantic Ocean:	
At Southampton/Easthampton corporate limits	*13
Shoreline of Fairfield Pond	*9
Shoreline west of Village of Westhampton and Southampton Beach corporate limits	*15
Moriches Bay:	
At confluence with Clam Creek	*10
At Apaquck Point	*11
At intersection of South County Road and Baynor Drive	*9
Shoreline at Rogers Lane extended	*12
Quantuck Bay:	
Shoreline at Delanield Street extended	*11
Shoreline at Quantuck Bay Road extended	*9
Shinnecock Bay:	
At Pine Neck Point	*11
Entire shoreline of Daves Creek	*8
At Ponquogue Point	*10
Shoreline at Sweet Briar Road extended	*12
Mecox Bay:	
Shoreline at Crescent Avenue extended	*11
Entire shoreline of Burnett Creek	*9
Wickapogue Road extended	*8
Maps available for inspection at the Town Clerk's Office, Town Hall, 116 Hampton Road, Southampton, New York.	
Southampton (village), Suffolk County (FEMA Docket No. 6729)	
Atlantic Ocean:	
At western corporate limits	*14
At Halsey Neck Lane extended	*13
At Phillips Pond	*8
Shinnecock Bay:	
Shoreline of Heady Creek at Penners Landing extended	*8
At north end of Shinnecock Road extended	*10
Maps available for inspection at the Village Hall, 23 Main Street, Southampton, New York.	
Westhampton Beach (village), Suffolk County (FEMA Docket No. 6729)	
Atlantic Ocean: Entire shoreline within community	*15
Moriches Bay:	
Shoreline at west end of Fair Avenue	*11
At Pond Point	*10
At Picket Point	*12
Shoreline at South Road extended	*9
Moneybogue Bay:	
Shoreline at Cross Lane extended	*11
At intersection of Stevens Lane and Mitchell Road	*9
Quantuck Bay:	
Shoreline at Sunswyck Lane extended	*11
Shoreline of Aspatuck River at Mortimer Street extended	*9
Maps available for inspection at the Village Office, Sunset Avenue, P.O. Box 991, Westhampton Beach, New York.	
NORTH CAROLINA	
Raleigh (city), Wake County (FEMA Docket No. 6901)	
Big Branch (Tributary to Walnut Creek):	
At confluence with Walnut Creek	*184
Just downstream of Rock Quarry Road	*186
About 800 feet upstream of Rock Quarry Road	*186
New Hope Tributary	
At confluence with Marsh Creek	*216
Just upstream of dam located about 1300 feet upstream of the confluence with Marsh Creek	*223
Just downstream of dam located about 1500 feet downstream of New Hope Church Road	*239
Just upstream of dam located about 1500 feet downstream of New Hope Church Road	*250
Just downstream of dam located about 300 feet upstream of New Hope Church Road	*254
Just upstream of dam located about 300 feet upstream of New Hope Church Road	*271
Just downstream of dam located about 300 feet upstream of Waterbury Road	*280
About 800 feet upstream of Waterbury Road	*289
Perry Creek:	
Just upstream of Gresham Lake Dam	*251
Just downstream of Rock Quarry Bridge	*258
Walnut Creek:	
At mouth	*177
About 1.14 miles upstream of mouth	*177
Maps available for inspection at the Planning Department, P.O. Box 590, Room 307, Raleigh, North Carolina.	
OHIO	
Franklin (city), Warren County (FEMA Docket No. 6729)	
Carlisle Drain:	
About 0.86 mile downstream of the divergence with Dry Run	*669
Just downstream of the divergence with Dry Run	*671
Dry Run:	
At mouth	*673
Just downstream of Conrail	*674

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD). Modified
Just upstream of Conrail	*671
About 0.67 mile upstream of Conrail	*673
Toomys Run:	
Just downstream of the confluence of Greens Run	*702
About 480 feet upstream of the confluence of Greens Run	*709
Maps available for inspection at the City Manager, 35 East Fourth Street, Franklin, Ohio.	
Montgomery County (Unincorporated Areas) (FEMA Docket No. 6729)	
Miles Creek:	
Just upstream of Mad River Road	*799
About 400 feet upstream of Interstate 675	*892
About 2.0 miles upstream of State Highway 725	*909
Maps available for inspection at the Recorder's Office, 451 W. 3rd Street, 5th Floor, Dayton, Ohio.	
Newark (city), Licking County (FEMA Docket No. 6729)	
South Fork Licking River:	
Just upstream of confluence with Licking River landward of levee	*814
Just downstream of South 2nd Street landward of levee	*814
About 600 feet upstream of National Drive landward of levees	*816
Maps available for inspection at the City Hall, 40 W. Main Street, Newark, Ohio.	
OKLAHOMA	
Clinton (city), Custer County (FEMA Docket No. 6720)	
Washita River:	
Approximately 2,120 feet upstream of Gary Freeway	*1,485
Approximately 152 feet downstream of upstream corporate limits	*1,486
Maps available for inspection at the City Hall, 415 Gary Freeway, Clinton, Oklahoma.	
Oklahoma (city), Oklahoma County (FEMA Docket No. 6699)	
Lightning Creek Tributary 3:	
Approximately 100 feet upstream of South Walker Avenue	*1,231
Approximately 1,300 feet downstream of eastbound US 62 and Interstate 240 access road	*1,237
Approximately 45 feet downstream of eastbound US 62 and Interstate 240 access road	*1,243
Walnut Creek:	
Approximately 200 feet upstream of Hefner Road (Northwest 108th Street)	*1,204
Approximately 800 feet upstream of Hefner Road (Northwest 108th Street)	*1,205
Approximately 1,500 feet upstream of Hefner Road (Northwest 108th Street)	*1,208
Approximately 1,200 feet downstream of Northwest Expressway (State Highway 3)	*1,221
Approximately 525 feet downstream of Northwest Expressway (State Highway 3)—Limit of Detailed Study	*1,225
Tributary 3 of Canadian River Tributary 1:	
Approximately 860 feet upstream of SW 119th Street	None
At upstream side of SW 119th Street	None
Maps available for inspection at the City Hall, 200 North Walker, Suite 302, Oklahoma City, Oklahoma.	
Oklahoma (city), Oklahoma, Canadian, Cleveland, McClain, and Pottawatomie Counties (FEMA Docket No. 6673)	
Tributary O of Canadian River Tributary 1:	
Upstream side of SW 134th Street	*1,192
Downstream side of Western Avenue	*1,197
Spring Creek West Branch	
Upstream side of NW 122nd Street	*1,160
Upstream side of Roxboro Road	*1,170
Approximately 1,090 feet upstream of Roxboro Road	*1,172
Mustang Creek Tributary 3 East Branch:	
Approximately 150 feet upstream of the confluence of Mustang Creek Tributary 3 West Branch	*1,284
Approximately 850 feet upstream of the confluence of Mustang Creek Tributary 3 West Branch	*1,288
Approximately 1,580 feet upstream of the confluence of Mustang Creek Tributary 3 West Branch	*1,291
Maps available for inspection at the City Hall, 200 North Walker, Suite 302, Oklahoma City, Oklahoma.	
Oklahoma City (city), Oklahoma, Canadian, Cleveland, McClain, and Pottawatomie Counties (FEMA Docket No. 6720)	
Spring Creek of Bluff Creek:	
Approximately 600 feet downstream of NW 122nd Street	*1,099
Upstream side of MacArthur Boulevard	*1,105
Approximately 1,585 feet downstream of Blue Stem Lake Dam	*1,116
Spring Creek West Branch:	
Approximately 200 feet downstream of MacArthur Boulevard	*1,101
Approximately 375 feet upstream of small dam	*1,131
Maps available for inspection at City Hall, 200 North Walker, Suite 302, Oklahoma City, Oklahoma.	
OREGON	
Veneta (city), Lane County (FEMA Docket No. 6729)	
Long Tom River: Approximately 1,250 feet north of the intersection of 7th Street and Dunham Avenue	*385
Maps are available for review at the City Hall, 24951 McCutcheon, Veneta, Oregon	
PENNSYLVANIA	
Berwick (township), Adams County (FEMA Docket No. 6729)	
Spring Run:	
Approximately 525 feet upstream of corporate limits	*519
Approximately 1,700 feet upstream of corporate limits	*522
Maps available for inspection at the Hanover Evening Sun, 135 Baltimore Road, Hanover, Pennsylvania.	
Hempfield (township), Westmoreland County (FEMA Docket Nos. 6692 and 6720)	
Sewickley Creek:	
Approximately 1,000 feet downstream of Buffalo Creek confluence	*933
Downstream corporate limit of the Borough of New Stanton	*937
Upstream corporate limit of the Borough of New Stanton	*949
Upstream side of Trouttown Road	*954
Upstream side of State Route 819	*966
Upstream corporate limits	*966
Jacks Run:	
Confluence with Sewickley Creek	*951
Downstream side of Depot Street at corporate limits	*952
Upstream side of CONRAIL	*969
Confluence with State Creek	*976
Upstream corporate limit of city of Greensburg	*1,002
Confluence of Tributary No. 2	*1,022
State Creek:	
Confluence with Jacks Run	*976
Upstream side of Reaper Road	*979
Upstream side of L.R. 64174	*999
Upstream side of Brookdale Drive	*1,021
Upstream side of State Route 130	*1,028
Roadman Lake	*1,056
Upstream side of Luxor Road	*1,088
Approximately 184.6 feet upstream of L.R. 64164	*1,142
Zellers Ran:	
Upstream side of Stanton Street	*1,016
Downstream corporate limit of the city of Greensburg	*1,029
Township Line Run:	
Confluence with Sewickley Creek	*966
Approximately 52 feet upstream of 2nd Robert Shaw Acres bridge	*996
Approximately .77 mile upstream of L.R. 64174	*1,070
Nelson Ran:	
Confluence with Sewickley Creek	*833
Downstream side of CONRAIL culvert	*834
Upstream corporate limit of the Borough of Hunker	*1,007
Downstream corporate limit of the Borough of New Stanton	*1,044
Sandworks Road outside corporate limits approximately 100 feet upstream of Sandworks Road	*1,133
Upstream corporate limits	*1,139
Tributary No. 1 to Jacks Run:	
Confluence with Jacks Ran	*977
Upstream side of Hunter Road's first crossing of Tributary No. 1	*983
Tributary No. 2 to Jacks Run:	
Confluence with Jacks to Jacks Run	*1,022
Approximately 1,000 feet upstream of Jacks Run	*1,026
Tributary No. 5 to Jacks Run:	
Approximately 53 feet upstream of U.S. Route 119	*1,013
Downstream side of Terrace View Road	*1,025
Downstream side of State Route 819	*1,063
Maps available for inspection at the Township Building, Greensburg, Pennsylvania.	
TEXAS	
Mesquite (city), Dallas County (FEMA Docket No. 6720)	
Stream 2J2:	
Approximately 3,350 feet upstream of confluence with North Mesquite Creek	*498
Downstream side of Hollow Bend Drive	*500
Downstream side of Amencana Lane	*506
Upstream side of Amencana Lane	*508
South Mesquite Creek:	
Approximately 1,050 feet downstream of Peachtree Road	*456
Approximately 50 feet downstream of Peachtree Road	*458
Approximately 50 feet upstream of Peachtree Road	*459
Approximately 50 feet downstream of Gross Road	*461
Approximately 700 feet upstream of Gross Road	*462
Approximately 800 feet downstream of South Frontage Road	*465
Approximately 50 feet downstream of South Frontage Road	*466
Approximately 1,370 feet upstream of Pioneer Road	*421
West Fork:	
Approximately 650 feet upstream of confluence with South Mesquite Creek	*461
Approximately 910 feet upstream of confluence with South Mesquite Creek	*461
Stream 2B8 Approximately 310 feet downstream of Interstates 20 and 635	*462
Maps available for inspection at the Engineering Division, 117 North Galloway Avenue, Mesquite, Texas.	
Nueces County (FEMA Docket No. 6729)	
Oso Creek:	
Approximately 11,000 feet upstream of FM 2444	*17
Approximately 1,400 feet upstream of State Route 43	*18
Downstream side of State Route 286	*19
Oso Creek Tributary No. 6: At confluence with Oso Creek	*17

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) Modified
Maps available for inspection at the County Courthouse, 901 Leopard, Room 103, Nueces, Texas.	
VIRGINIA	
Cedar Bluff (town), Tazewell County (FEMA Docket No. 6729)	
Clinch River:	
Upstream side of Mill Dam	*1,955
Approxmately 0.2 mile upstream of Mill Dam	*1,957
Maps available for inspection at the Town Hall, Valley Drive, Cedar Bluff, Virginia.	
WISCONSIN	
Pewaukee (village), Waukesha County (FEMA Docket No. 6720)	
Pewaukee River:	
About 0.42 mile downstream of Wisconsin Avenue	*845
About 0.94 mile upstream of Sussex Road	*853
Maps available for inspection at the City Hall, West 240—North 3065 Pewaukee Road, Pewaukee, Wisconsin.	

Issued: January 16, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-2035 Filed 2-2-87; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 1-18; Notice 28]

Federal Motor Vehicle Safety Standards Controls and Displays

AGENCY: National Highway Traffic Safety Administration (NHTSA) DOT.

ACTION: Final rule.

SUMMARY: The purpose of this notice is to amend Federal Motor Vehicle Safety Standard No. 101, *Controls and Displays*, to permit greater flexibility in the illumination and identification of controls and displays. The amendments are adopted in response to several petitions for rulemaking.

The amendments allow gauges to have a two-level lighting intensity, rather than being continuously variable over a wide range. They distinguish between critical telltales, such as the turn signal indicators, which must be visible under all lighting conditions, and less critical telltales, such as the water temperature indicator, which are permitted the same range of intensity as gauges. The categorization of certain displays as informational readout displays and the specification of special illumination requirements for those displays is discontinued.

To accommodate new display technologies capable of showing information about different telltales and gauges on a single display screen, the amendments permit the cancellation of messages, but require them to be retrievable by the driver. They also permit messages to be automatically sequenced.

The amendments allow the use of specified words to identify controls and displays, as an alternative to the symbols formerly required for many controls, and permit the use of symbols "substantially similar" to those specified.

DATES: The requirements of S5.3.3(b)(1) and S5.3.3(c)(1) are effective September 1, 1989. All other amendments are effective March 5, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavey, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-5271.

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking (NPRM) published on September 12, 1985 (50 FR 37240), NHTSA responded to a number of issues related to Standard No. 101, *Controls and Displays*. These issues had been raised by petitions for rulemaking and by comments on earlier NPRM's. The notice set forth a number of proposed amendments to the lighting intensity and identification requirements of the standard. Upon reviewing the comments on the proposal, the agency has concluded that several of the proposed amendments should be adopted, but that others should not. In the discussion that follows, each amendment appears in the same order as in the NPRM.

Lighting Intensity Requirements

The NPRM dealt with several questions presented by the advent of new display technologies, among them questions about the appropriate lighting intensity for the different types of displays, the grouping of displays with differing intensity requirements into a single cluster, the need to vary lighting intensity according to the outside conditions, and the use of a common space, such as a small TV screen, to display message in sequence.

The standard divides displays into two broad categories: Telltales and gauges. It defines a telltale as a display that indicates, by means of a light-emitting signal, the actuation of a device, existence of a correct or defective condition, or of a failure to function.

Telltales include the turn signal indicators, the high-beam indicator, and the brake failure warning. The standard defines a "gauge" as any display listed in the standard (S5.1 or Table 2) that is not a telltale. Gauges include such displays as the speedometer and the odometer.

As discussed at greater length in the preamble to the NPRM, the current intensity requirements for telltales differ from those for gauges. The lighting for a telltale must be of a single fixed intensity that makes the telltale visible under all daytime and nighttime conditions, while the lighting for a gauge must be continuously variable over a range of intensities.

In an attempt to accommodate new display technologies capable of showing more than one message or symbol on a single screen, the agency amended the standard in 1978 to place those displays into a separate category called informational readout displays (IRD). Although IRD's were required to have two intensity levels—one for daytime and a lower level for nighttime—the fixed intensity of the telltales prevented the manufacturers from including telltales in IRD's.

In response to a petition by General Motors seeking to accommodate telltales in IRD's and a petition by BMW to include telltales among the messages displayed in sequence in a common message center, NHTSA examined the safety implications of changing the lighting intensity requirements for gauges and telltales. In the NPRM, the agency proposed several amendments to these requirements.

A. Lighting Intensity Requirements for Gauges

The NPRM proposed to amend the provisions relating to gauges and IRD's to reduce the number of different sets of lighting requirements and to ensure that drivers are provided with the means for making gauges visible under all lighting conditions. It proposed to amend S5.3.3. to apply the bi-level lighting requirements of IRD's to all gauges, so that the lighting for a gauge and its identification would no longer have to be continuously variable. One lighting level would have to be "barely discernible to a driver who has adapted to dark ambient roadway conditions," continuing that criterion from the current S5.3.3. The intensity could be adjusted either manually or automatically, and could have a level at

which the gauge would not be visible under some lighting conditions. If the brightness level could be automatically adjusted, there would have to be a means to allow the driver to override manually the adjustment to restore visibility. In consequence of proposing to make the lighting requirements for gauges and IRD's identical, the NPRM proposed to delete the term Information Readout Display and the separate IRD light intensity requirement from the standard as no longer useful.

The comments on the proposed amendment to § 5.3.3. focussed on the requirement that a gauge must have at least two levels of brightness (§ 5.3.(b)(1)), and on the requirement that an automatic adjustment have a manual override to allow the driver to restore visibility (§ 5.3.3(c)). General Motors stated that each of these requirements could require a change in hardware that had been developed to meet the IRD criteria. However, there exists general agreement among all commenters (including GM) with the proposal to require that gauges have more than one level of brightness. GM, in its comments, indicates that such a requirement will provide for good visibility of the gauges and also provide the means to prevent glare during darker ambient conditions.

However, GM also commented that when a telltale is incorporated in a cluster of gauges, and the telltale is actuated, the gauges need not be required to be variable in intensity. The agency believes that gauges should always have the capability of being adjusted and will not, for the reasons discussed below, permit the exemption that GM requested.

Although telltales are generally intended to alert the driver to an unsafe or unwanted condition and thus would not normally be illuminated for other than short periods of time, this is not always the case. Many vehicles now incorporate telltales whose nature is more related to providing general information than to denoting an emergency situation. Telltales such as, for example, one indicating the need to service emission equipment may often be illuminated for considerable driving periods. In such instances the agency concludes that the brightness of gauges should be capable of being adjusted.

GM has not presented any compelling evidence to contradict this conclusion. Having a major portion of a gauge cluster illuminated at full brightness for a lengthy time period without manual control would be inconsistent with the general consensus of the commenters, as noted above.

The agency believes that the requirements of the existing standard may be ambiguous in this regard. Because of the possible ambiguity and the need to modify and existing designs which would not comply with the new requirement, the effective date for this section of the proposed amendment (S5.3.3) is September 1, 1989.

A second question presented by GM concerning S5.3.3(b)(1) involves continuously variable lighting. As proposed in the NPRM, S5.3.3(b)(1) would require at least two levels of brightness, one of which would have to be "barely discernible to a driver who has adapted to dark ambient roadway conditions." GM asked whether a means for continuously varying the level of brightness, such as a rheostat, could have a position at which no light is emitted, as permitted by the current S5.3.3. The agency intends no change in the regulation of continuously variable lighting. By requiring "at least" two levels of brightness, S5.3.3(b)(1) implicitly permits the control to have additional levels of brightness, with no restrictions as to whether such levels are above or below the "barely discernible" level.

The remaining question raised by the comments of S5.3.3 concerns the requirement in S5.3.3(c) that if the brightness is automatically adjusted to a level where it is not visible to the driver, a means must be provided to enable the driver to restore visibility. The provision is intended to regulate systems such as those that reduce the brightness of the controls and displays when the headlamps are turned on, regardless of the ambient light conditions. If automatic brightness controls can be developed that employ photosensitive devices to provide adequate visibility under any ambient light conditions, these controls would not be subject to the provision. In proposing this requirement, the agency expressed the view that driving with headlamps on during the daytime was a sufficiently frequent occurrence to necessitate a control to allow the driver to override the effect of the headlamp control.

Notwithstanding objections from General Motors to the effect that there are no field data to indicate a safety problem from the diminished daytime visibility of IRD's, the agency regards the non-visibility of crucial information from displays as a self-evident safety problem. The remedy, a manual override control to increase the displays' brightness, is inexpensive and technically simple. The agency is accordingly adopting S5.3.3(c) as proposed, but with an effective date of September 1, 1989, to permit manufacturers whose displays lack an override to incorporate this feature in an efficient manner.

As proposed in the NPRM, the new S5.3.3 regulates the visibility of controls as well as that of gauges. The comments to the NPRM did not object to this proposal. Finally, the new S5.3.3 eliminates the use of the term "informational readout display." As proposed in the NPRM, the final rule also deletes the definition of that term from S4.

B. Lighting Intensity Requirements for Telltales

As part of the proposal to allow gauges and telltales to be more readily combined in common displays, the NPRM proposed to permit (but not require) most telltales to have the same range of lighting intensity as gauges. Means would have to be provided to make them visible under all conditions, but they could also be adjustable to levels at which they would not be visible under some driving conditions (S5.3.5). The four telltales that were considered to be critical—those for brakes, high beams, turn signals, and seat belts—could also be adjustable, but only to levels at which they would be visible under any driving condition (S5.3.4). The critical telltales would thus have to have a source of illumination separate from that of any telltale or gauge that could be reduced to a level of invisibility.

The comments supported the proposed distinction between critical and non-critical telltales, but several comments objected to classifying the safety belt telltale as a critical telltale. These objections arose mainly from the proposed S5.4, which would have prohibited the inclusion of the critical telltales in a common space, and are discussed in greater detail in the portion of this preamble dealing with that section. Sections S4.5.3.3 and S5.7.3 of Standard No. 208 *Occupant Protection*, require "a continuous or flashing warning light, visible to the driver," if a manual belt is not used or if an automatic belt is disabled. It would be inconsistent with the provisions of Standard No. 208 for Standard No. 101 to permit the safety belt telltale to be reduced in brightness to the point of invisibility. Hence, the safety belt telltale is retained as one of the telltales which may not be adjusted under any conditions to the point of invisibility.

In response to a comment by GM pointing to a potential ambiguity in the drafting of S5.3.4(b) and S5.3.5(b), the final rule makes it clear that the

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minimum brightness level permitted for a critical telltale varies according to the ambient light conditions. The key requirement is that at any specific level of ambient light, a critical telltale may not be adjustable to a level that is invisible.

To simplify the standard somewhat, the final rule consolidates the proposed S5.3.4 and S5.3.5 into one section, S5.3.4, and makes additional editorial changes.

C. Other Lighting Intensity Requirements

In the NPRM, the agency proposed a new section S5.3.6 to require a means of varying the light intensity for any passenger compartment illumination within the driver's forward field of view, including illumination "for purposes other than the controls and displays subject to" Standard No. 101. This illumination would have been required to provide at least two levels of brightness. Although the former S5.3.3 required a variable intensity for any illumination that is provided "when and only when the headlights are activated," the proposal would have included other illumination, such as the LED display for a clock, that is controlled by the ignition. The NPRM noted the clocks and other sources of illumination can present the same problems of glare as any of the gauges, and that these sources should be subject to a similar regulation.

This proposal drew a number of comments, most of them adverse. A common view in the comments was that the proposed requirement should not apply to light sources such as glove boxes, vanity mirrors, and under-dash courtesy lights that are rarely, if ever, illuminated while the vehicle is in motion (British Leyland, Chrysler). Many of these light sources were said to be peripheral and of low intensity, so as not to require variable adjustment (GM). Their modification was predicted to entail cost and leadtime problems (GM, Ford). One commenter sought to exclude vehicles which are normally operated with the passenger compartment illuminated (Flxible). The general view was that the existing regulation was adequate.

After considering these comments, NHTSA has decided to adopt a provision closer to that of S5.3.3 as it existed before the issuance of these amendments. The amended provision, now designated as S5.3.3, applies only to those sources of illumination which are capable of being illuminated while the vehicle is in motion, thereby excluding lamps such as courtesy lamps which are actuated by opening the door. It provides that a source of illumination may have either a variable intensity, a single intensity that is barely discernible to a driver whose eyes have adjusted to dark ambient conditions, or a means of being turned off. The manufacturers, may thus choose any of three options for eliminating glare from these sources of illumination. The agency believes that this combination of options meets each of the objections voiced by the comments, while maintaining essential limits on glare. In response to the comment by Flxible, the section does not apply to buses which are normally operated with the passenger compartment illuminated.

D. Multi-Message Displays

Several manufacturers have developed electronic message centers in which more than one telltale may be displayed in a single or common space. The telltales are typically displayed one at a time. Because displaying one telltale cancels any preceding telltale, a means must be provided to ensure that the driver is aware of each actuated telltale. In the NPRM, NHTSA proposed several constraints for these multi-message displays: The critical telltales—brake, high beam, turn signal, and safety belt—were not to be included; a telltale was to be displayed at the onset of its underlying condition; if the conditions for more than one telltale existed, an indication was to be given to the driver; messages were to be retrievable by the driver; messages could be cancelled automatically, subject to the driver's retrieval, but could not be repeated automatically in sequence; and a visible indication of stored messages was to be given the driver.

The proposed S5.4 drew more comments than any other portion of the NPRM, some objecting to the exclusion of the safety belt telltale from a common display (Jaguar, BMW, GM), and most objecting to the prohibition of automatic sequencing (SAAB, Jaguar, Volkswagen, American Motors, Chrysler, BMW, GM, and Ford). Upon further review, the agency concludes that these objections have merit and therefore adopts S5.4 with changes that address the objections.

The safety belt telltale is regulated by Standard No. 208, which specifies separate requirements for manual safety belts and for automatic safety belts. The telltale for a manual belt at the driver's seating position must be actuated for 4–8 seconds after the ignition is turned "on" if the driver's belt is not fastened. This telltale could be incorporated into a multi-message display, as long as it preempts other messages and is visible during the time that Standard No. 208 requires it to be actuated. The telltale for an automatic belt system at the driver's position must meet more stringent requirements. If the belt is unbuckled, if the webbing release mechanism has been actuated, or if the automatic belt positioning motor has not locked the belt into place at the anchorage point, the telltale is required to be continuous or flashing as long as the condition exists.

In view of these distinctions, the agency is limiting the reference to the safety belt telltale in S5.4(a) to a telltale associated with an automatic safety belt. Under Standard No. 208, such a telltale could not be cancellable as long as the safety belt is disabled by one of the three conditions described above. The agency has not proposed to amend Standard No. 208 to permit cancellation, and does not regard a *de facto* amendment through Standard No. 101 to be appropriate.

Upon reexamination of the issue of automatic sequencing, the agency has concluded that automatic sequencing for messages other than the critical telltales has advantages which outweigh the potential drawbacks discussed in the NPRM. The principal advantage is that automatic sequencing eliminates the need for a driver to remember how to retrieve a message in the rare event that two or more telltales are actuated at the same time. Although the NPRM mentioned the possibility that a driver might be distracted by a flashing sequence of messages, there is also a possibility that the driver could be distracted by his attempt to manually retrieve a stored message. On balance, NHTSA has concluded that automatic sequencing should not be prohibited, and is therefore deleting the prohibition from S5.4.4. In doing so, however, the agency cautions that any multi-message display conveying safety information should not be so burdened with non-safety messages as to diminish the value of the display as a safety reminder to the driver.

E. Other Display Requirements

As part of its proposal to eliminate the term "informational readout display," NHTSA proposed to apply the color requirements of S5.3.2 to the displays which would have been classified as IRD's. The agency noted that the use of the specified colors appeared to help drivers understand the meaning and importance of messages, but it invited comments on the difficulty of applying these requirements to electronic displays.

The comments on the color requirements ranged from full support (Robert Schlegel), to a request that they be discontinued for non-critical telltales (GM), to opposition to any color requirements for telltales (American Motors, Ford). Ford and GM each stated that the single-color displays permitted for IRD's had had no adverse effects on safety. GM noted that prohibiting such displays would inhibit certain new applications such as monochromatic cathode ray tubes (CRT's). Ford offered the example of its message center, which is monochromatic but offers the advantage of displaying a large amount of information in a small space.

On reviewing the value of color requirements vis-a-vis the other available means of enabling the driver to distinguish among various telltales, the agency has concluded that the color requirements should continue to apply to critical telltales, but that they need not apply to other telltales. The physical separation of the critical telltales from the other telltales, and the differing lighting intensity applicable to the critical telltales, have the effect of requiring them to have a separate source of illumination. The retention of the color requirements for these telltales should therefore be compatible with existing designs and should not require any redesign.

In a related action, the agency also proposed to amend the definition of "telltale" to delete the phrase "by means of a light-emitting signal." This proposal would permit the use of new displays, such as liquid crystals, that might have been prohibited by the deleted phrase. It received no adverse comments and the definition is therefore amended for the reasons given in the NPRM.

Identification Requirements

In response to issues raised in three petitions for rulemaking (GM, VW and BL Technology), the NPRM addressed a variety of issues concerning the identification requirements for controls and displays. Although the agency declined to adopt a suggestion by GM that the requirements be removed from the safety standard and placed in a regulation, it proposed amendments to make the requirements more flexible. The first of these was an amendment to permit the use of specified words as an alternate means of identifying controls and displays for which symbols had previously been the exclusive identification. If a manufacturer used the word or aymbol specified for a control or display, the NPRM proposed to allow the manufacturer to use additional identification. Finally, the NPRM proposed to permit the use of symbols which substantially resemble those specified in the tables.

There were no objections in the comments to these proposals. Two comments, however, contained requests for the use of specific words and symbols. General Motors requested the use of "Wiper-Washer" as an alternative to "Wipe-Wash," to identify the windshield wiping and washing control, and "R-Def" as an alternative to the phrases proposed to identify the rear defroster control. The agency believes that each of these alternatives would be readily comprehended by the average driver and is accordingly including them in Table I.

Mercedes-Benz requested that three symbols—the ISO symbols for the manual choke, the heater, and air conditioner—be listed in Table I as alternatives to the words now specified for those controls. The agency has previously considered petitions regarding each of these symbols, and has declined to permit their use as alternatives to the specified words. The agency remains convinced that none of the three symbols is intuitively recognizable by the average driver in this country. As stated in the NPRM, the effectiveness of symbols as identifiers has been called into question in recent studies. The agency finds no reason to alter its earlier decision and accordingly declines to permit the use of the symbols requested by Mercedes.

Regulatory Evaluation

The agency has evaluated the economic and other effects of this final rule and determined that they are neither major as defined by Executive Order 12291 nor significant as defined by the Department's Regulatory Policies and Procedures. The agency has determined that the economic effects of this final rule are so minimal that a full regulatory evaluation is not required. Since the amendments relieve restrictions, they conceivably could result in some minor nonquantifiable savings.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, the agency has evaluated the effects of this action on small entities. Since the amendments impose no new requirements and do not result in any significant cost impacts, I certifiy that the amendments will not have a significant economic impact on a substantial number of small entities. This conclusion applies to vehicle manufacturers, equipment manufacturers, and small organizations and governmental units that purchase motor vehicles.

Environmental Effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that the final rule will not have a significant effect on the quality of the human environemt.

Effective date

In view of the extensive redesign of displays required by S5.3.3(b)(1) and S5.3.3(c)(1), the agency has determined that an effective date of September 1, 1989, for these sections is in the public interest. The other amendments relieve restrictions and the agency has therefore determined that an effective date of 30 days after publication in the **Federal Register** is in the public interest.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.101 [Amended]

1. Section S.4 is amended by removing the sentence defining "informational readout display".

2. Section S.4 is amended by removing the phrase "by means of a light emitting signal" from the definition of "Telltale."

3. The first two sentences of section S5.2.1(a) are revised to read as follows:

(a) Except as specified in S5.2.1(b), any hand-operated control listed in column 1 of Table 1 that has a symbol designated for it in column 3 of that table shall be identified by either the symbol designated in column 3 (or symbol substantially similar in form to that shown in column 3) or the word or abbreviation shown in column 2 of that table. Any such control for which no symbol is shown in Table 1 shall be identified by the word or abbreviation shown in column 2. * * *

4. Section S5.2.3 is revised to read as follows:

S5.2.3 Any display located within the passenger compartment and listed in column 1 of Table 2 that has a symbol designated in column 4 of that table shall be identified by either the symbol designated in column 4 (or symbol substantially similar in form to that shown in column 4) or the word or abbreviation shown in column 3. Additional words or symbols may be used at the manufacturer's discretion for the purpose of clarity. Any telltales used in conjuction with a gauge need not be identified. The identification required or

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permitted by this section shall be placed on or adjacent to the display that it identifies. The identification of any display shall, under the conditions of S6, be visible to the driver and appear to the driver perceptually upright.

5. Table 1(a) is amended by adding the words "or washer-wiper" after "wash-wipe" as identifying words for combined windshield washing and wiping systems in column 2, and by amending the indentifying words for rear window defrosting and defogging systems in column 2 to read: "Rear Defrost, Rear Defog, Rear Def, or R-Def".

6. Section S5.3.2 is revised to read as follows:

S5.3.2. Each telltale shall be of the color shown in column 2 of Table 2. The identification of each telltale shall be in a color that contrasts with the background.

7. Table 2 is amended by deleting the colors designated under Column 2 for all telltales other than those for "Turn Signal", "High Beam", and "Malfunction in Anti-Lock or Brake System".

8. Section S5.3.3 is revised to read as follows:

S5.3.3 (a) Means shall be provided for making controls, gauges, and the identification of those items visible to the driver under all driving conditions.

(b) The means for providing the required visibility—

(1) Shall be adjustable, except as provided in S5.3.3(d), to provide at least two levels of brightness, one of which is barely discernible to a driver who has adapted to dark ambient roadway conditions.

(2) May be operable manually or automatically, and

(3) May have levels of brightness at which those items and their identification are not visible.

(c) Effective September 1, 1989, if the level of brightness is adjusted by automatic means to a point where those items or their identification are not visible to the driver, a means shall be provided to enable the driver to restore visibility.

(d) For a vehicle manufacutured before September 1, 1989, the requirements of S5.3.3(b)(1) shall not apply to any gauge during the actuation of a telltale which shares a common light source with the gauge.

9. A new section S5.3.4 is added to read as follows:

S5.3.4 (a) Means shall be provided that are capable of making telltales and their identification visible to the driver under all driving conditions.

(b) The means for providing the required visibility may be adjustable manually or automatically, except that the telltales and identification for brakes, highbeams, turn signals, and safety belts may not be adjustable under any driving condition to a level that is invisible.

10. A new section S5.3.5 is added to read as follows:

S5.3.5 Any source of illumination within the driver's forward field of view which is not used for the controls and displays regulated by this standard, and which is capable of being illuminated while the vehicle is in motion, must have either a variable intensity, a single intensity that is barely discernible to a driver who has adapted to dark ambient roadway conditions, or a means of being turned off. This requirement shall not apply to buses that are normally operated with the passenger compartment illuminated.

11. A new section S5.4 is added to read as follows:

S5.4 A common space may be used to display messages from any sources, subject to the following requirements:

(a) The telltales for the brake, high beam, and turn signal, and the safety belt telltale required by S4.5.3.3 of Standard No. 208 may not be shown on the common space.

(b) Except as provided in S5.4(e), the telltales listed in Table 2 shall be displayed at the initiation of any underlying condition.

(c) When the underlying condition exists for actuation of two or more messages, the messages shall be either—

(1) Repeated automatically in sequence, or

(2) Indicated by visible means and capable of being selected by the driver for viewing.

(d) Messages may be cancellable automatically or by the driver.

(e) The safety belt telltale must be displayed and visible during the time specified in S7.3 of Standard No. 208.

13. Table 2 is amended by placing "7" as an additional superscript for the color of the safety belt telltale and by adding the following as footnote 7:

7. The color of the telltale required by § 4.5.3.3 of Standard No. 208 is red; the color of the telltale required by § 7.3 of Standard No. 208 is not specified.

Issued on January 29, 1987.

Diane K. Steed,

Administrator.

[FR Doc. 87-2062 Filed 1-29-87; 4:03 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 41276-4176]

Foreign Fishing and Joint Venture Specifications, 1987

AGENCY: National Marine Fisheries Service (NMFS), NOAA Commerce.

ACTION: Notice of 1987 foreign fishing and joint venture specifications.

SUMMARY: Fishing regulations require that specifications of optimum yields (OYs), initial estimates of U.S. harvests, and total allowable levels of foreign fishing (TALFFs) be published at the beginning of each fishing year. Specifications for mackerel, squid, and butterfish; the Gulf of Alaska and Bering Sea and Aleutian Islands groundfish; and the Pacific groundfish fisheries have been published earlier. NOAA issues this notice announcing specifications for the remaining foreign fisheries in the U.S. exclusive economic zone (EEZ) which continue without change. Fish species not specified in this notice have no joint venture processing (JVP), reserve, or TALFF available at this time for foreign fishing although they may have incidental catch levels.

EFFECTIVE DATE: January 1, 1987.

ADDRESSES: For current apportionments and incidental catch levels, contact the following Regional Directors.

Mr. Richard Schaefer, Acting Director, Northeast Region, NMFS, 14 Elm Street, Federal Building, Gloucester, MA 01930, 617-281-3600

Mr. Jack T. Brawner, Director, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702, 813-893-3141

Mr. Robert W. McVey, Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, AK 99802, 907-586-7221

Mr. Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115, 206-526-6150

Mr. E. Charles Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731, 213-548-2575.

FOR FURTHER INFORMATION CONTACT: Donna D. Turgeon (Regulations Branch Chief, NMFS), 202-673-5315.

SUPPLEMENTARY INFORMATION: The following initial specifications for fisheries in which foreign fishing applications may be received during 1987 have already been published:

(1) Mackerel, squid, and butterfish fisheries on January 7, 1987 (52 FR 537);

(2) Bering Sea and Aleutian Islands groundfish fishery on January 9, 1987 (52 FR 785);

(3) Gulf of Alaska groundfish fishery on January 9, 1987 (52 FR 785);

(4) Pacific Coast groundfish fishery on January 7, 1987 (52 FR 537).

This notice announces initial specifications for the remaining fisheries in which foreign fishing applications may be received during 1987.

1. Northwest Atlantic Ocean Fisheries (Northeast Region)

Foreign fishing regulations for Atlantic hakes; river herring and other finfish; and mackerel, squid, and butterfish appear at §§ 611.50 and 611.51.

The hake and river herring fisheries are managed under preliminary management plans (PMPs) in which the initial annual specifications remain constant from year to year. The initial specifications for hakes were respecified on July 16, 1986 (51 FR 25704).

The mackerel, squid, and butterfish fisheries are managed under one fishery management plan (FMP) at 50 CFR Part 655. Procedures for determining OYs for these species each year are described in § 655.20.

2. Atlantic and Gulf Fisheries (Southeast Region)

Foreign fishing regulations for the Atlantic billfishes and sharks, and the royal red shrimp fisheries appear at §§ 611.61 and 611.62.

The Atlantic billfishes and sharks fishery is managed under a multi-year PMP in which the specifications for sharks remain constant from year to year; billfishes are prohibited species for foreign fishing.

The royal red shrimp fishery is managed under the FMP for the shrimp fishery of the Gulf of Mexico, at 50 CFR Part 658. The TALFF established in the FMP and its implementing regulations (46 FR 27489, May 20, 1981) for this species has continued without change from year to year.

3. Alaska Fisheries (Alaska Region)

Foreign fishing regulations for the groundfish fisheries off Alaska appear at §§ 611.90, 611.92, and 611.93

The snail fishery in the Bering Sea is managed under a multi-year PMP, at § 611.94, in which the specifications remain constant from year to year.

4. Northeast Pacific Ocean Fisheries (Northwest Region)

Foreign fishing regulations for Pacific Coast groundfish appear at § 611.70.

5. Western Pacific Ocean Fisheries (Southwest Region)

Foreign fishing regulations for these fisheries appear at §§ 611.80 and 611.81. These fisheries are managed under multi-year PMPs in which the specifications remain constant from year to year.

INITIAL (AS OF JANUARY 1, 1987) OPTIMUM YIELD (OY), TARGET QUOTA (TQ), OR TOTAL ALLOWABLE CATCH (TAC), ESTIMATED DOMESTIC ANNUAL HARVEST (DAH), ESTIMATED DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), RESERVE, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), ALL IN METRIC TONS.

Species	Species code	Areas	OY	DAH	DAP	JVP	Reserve	TALFF
1. Northeast Region								
Northwest Atlantic Ocean Fisheries:								
A. Hake fishery:								
		(Source: 51 FR 3788, January 30, 1986; 51 FR 25704, July 16, 1986)						
Hake, silver	104	NW Atlantic I-IV [1]	30,000	20,600	5,600	15,000	0	9,400
		NW Atlantic V	13,000	9,000	2,000	7,000	0	4,000
Hake, red	105	NW Atlantic I-IV	16,000	8,000	5,000	3,000	3,000	3,000
		NW Atlantic V	6,000	3,500	500	3,000	0	2,500
B. Trawl fishery:								
		(Source: 51 FR 3788, January 30, 1986)						
Herring, river	309		8,000	7,800	7,900	0	0	200
Other finfish	499		247,000	200,200	180,000	20,200	0	46,800
2. Southeast Region								
Atlantic and Gulf Fisheries:								
A. Atlantic billfishes and sharks fishery:								
		(Source: 48 FR 3371, January 25, 1983)						
Sharks	469		6,150	5,,000			0	1,150
B. Shrimp fishery of the Gulf of Mexico:								
		(Source: 46 FR 27489, May 20, 1981)						
Royal red shrimp	630		177.8	111.6			0	66.2
3. Alaska Region								
Alaska Fisheries:								
Snail fishery:								
		(Source: 46 FR 1738, January 7, 1981)						
Snails (meats)	673	Area-wide	3,000	0	0	0	0	3,000

INITIAL (AS OF JANUARY 1, 1987) OPTIMUM YIELD (OY), TARGET QUOTA (TQ), OR TOTAL ALLOWABLE CATCH (TAC), ESTIMATED DOMESTIC ANNUAL HARVEST (DAH), ESTIMATED DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), RESERVE, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), ALL IN METRIC TONS.—Continued

Species	Species code	Areas	OY	DAH	DAP	JVP	Reserve	TALFF
4. Southwest Region								
Western Pacific Ocean Fisheries:								
Pacific Billfish and Sharks Fishery:								
		(Source: 46 FR 1738, January 7, 1981)						
Swordfish	264	U.S. West Coast	318.4	[2] 350.2			0	0
		Hawaii & Midway	93.6	5.9			8.8	78.9
		Guam & N. Marianas	4.1	0.2			0.4	3.5
		American Samoa	2.4	0			0	2.4
		U.S. Possessions	28.1	0			0	28.1
Blue marlin	260	Hawaii & Midway	612.0	603.4			8.6	0
		Guam & N. Marianas	26.9	3.0			23.9	0
		American Samoa	37.2	2.3			0	34.9
		U.S. Possessions	76.3	0			0	76.3
Black marlin	253	Hawaii & Midway	97.7	[2] 104.7			0	0
		Guam & N. Marianas	0.6	0			0.1	0.5
		American Samoa	5.3	0			0	5.3
		U.S. Possessions	6.2	0			0	6.2
Striped marlin	261	U.S. West Coast	43.2	[2] 47.5			0	0
		Hawaii & Midway	223.2	67.9			15.5	139.8
		Guam & N. Marianas	5.0	0.3			0.5	4.2
		American Samoa	7.8	0			0	7.8
		U.S. Possessions	46.6	0			0	46.6
Spearfish	262	Hawaii & Midway	42.7	23.4			1.9	17.4
		Guam & N. Marianas	4.8	0.2			0.5	4.1
		American Samoa	3.5	1.3			0	2.2
		U.S. Possessions	14.3	0			0	14.3
Sharks	469	U.S. West Coast	27.6	[2] 30.4			0	0
		Hawaii & Midway	1,111.6	0			111.1	1,000.5
		Guam & N. Marianas	31.9	0			0	31.9
		American Samoa	101.6	0			0	101.6
		U.S. Possessions	651.4	0			0	651.4
Wahoo	255	Hawaii & Midway	288.9	[2] 317.8				0
		Guam & N. Marianas	25.1	27.6				0
		American Samoa	4.8	2.8				2.0
Mahimahi	238	Hawaii & Midway	105.0	[2] 115.5			0	0
		Guam & N. Marianas	18.9	[2] 20.8			0	0
		American Samoa	6.4	4.4			0	2.0
		U.S. Possessions						

Footnotes:
[1] *Northwest Atlantic* means the trawling areas shown in § 611.50, Figure 1, Numbered I to V from south to north.
[2] Estimated DAH exceeds OY for this fishery.

This notice is issued under 50 CFR Part 611 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 29, 1987.

William E. Evans,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-2145 Filed 2-2-87; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 651

[Docket No. 60599-6141]

Northeast Multispecies Fishery; Correction

AGENCY: National Marine Fisheries Service (NFMS), NOAA, Commerce.

ACTION: Interim rule; correction.

SUMMARY: This document corrects a mistake in the regulatory text of the interim rule for the Northeast Multispecies Fishery which was published August 20, 1986, 51 FR 29642. The correction involves coordinates for the boundaries of an area closed to fishing during the months of February through May.

FOR FURTHER INFORMATION CONTACT: Elizabeth D. Haynes, Fishery Management Specialist, 202-673-5319.

SUPPLEMENTARY INFORMATION: In FR Doc. 86-18815 in the issues of August 20, 1986, beginning on page 29642 make the following correction:

§ 651.21 [Corrected]

On page 29649, in the table in § 651.21(a)(2), the latitude of point g "41°51.9' N." should read "41°59.1' N.".

(16 U.S.C. 1801 *et seq.*)

Dated: January 29, 1987.

William E. Evans,

Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 87-2144 Filed 1-29-87; 5:08 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 22
Tuesday, February 3, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 735

Non-Public (Confidential) Financial Disclosure

AGENCY: Office of Personel Management.

ACTION: Proposed regulations; extension of comment period.

SUMMARY: The Office of Government Ethics proposed regulations to establish a system of non-public (confidential) financial reporting for certain officers and employees of the executive branch. These proposed regulations were published in **Federal Register** on December 2, 1986, at 51 FR 43359. Because of the holiday period and the recent weather related closings, the Office of Government Ethics received a number of requests that the comment period be extended. This regulation extends the comment period to March 2, 1987, instead of February 2, 1987.

DATE: Comments must be received on or before March 2, 1987.

ADDRESS: Office of Government Ethics, P.O. Box 14108, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Jane Ley or Nancy Janes, (202) 632-0569.

Lists of Subjects in 5 CFR Part 735

Conflicts of interest, Financial disclosure, Government employees.

Office of Government Ethics.

David H. Martin,

Director, Office of Government Ethics.

[FR Doc. 87-2047 Filed 2-2-87; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1011

[Docket No. AO-251-A32]

Milk in the Tennessee Valley Marketing Area; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider proposals by a cooperative association and a dairy processor to amend the Tennessee Valley Federal marketing order. One proposal would modify the plant definition to permit a reloading operation to take place at a facility with permanent storage tanks. The pool distributing plant qualifications would be revised to permit unit pooling of two or more plants.

DATE: The hearing will convent at 9:30 a.m., local time, on February 12, 1987.

ADDRESS: The hearing will be held at the Hyatt Regency Hotel, 500 Hill Avenue, SE, Knoxville, Tennessee 37901 (615/637-1234).

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Hyatt Regency Hotel, 500 Hill Avenue, SE, Knoxville, Tennessee 37901 (615/637-1234), beginning at 9:30 a.m., on February 12, 1987, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Tennessee Valley marketing area.

The hearing is called pursuant to the provisons of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" [Pub. L. 96-354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and information impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Part 1011

Milk marketing orders, Milk, Dairy products.

The authority citation for Part 1011 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Dairymen, Inc.

Proposal No. 1

Revise § 1011.7 of the order, pool plant definition, by adding the following proviso to paragraph (a)(2):

Provided, That two or more plants operated by the same handler may be considered as a unit for the purpose of

that the law has been violated as

officers, employees and representatives.

period of up to three years from the date

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meeting the total Class I requirements of this paragraph if such handler requires that the plants be so considered and each plant in the unit meets the in-area route disposition requirements specified in paragraph (a)(1) of this section.

Proposed by Kraft, Inc.

Proposal No. 2

Revise § 1011.4 to read as follows:

§ 1011.4 Plant.

"Plant" means the land, buildings, facilities and equipment constituting a single operating unit or establishment at which milk products (including filled milk) are received, processed or packaged. Separate facilities without stationary storage tanks which are used only as a reload point for transferring bulk milk from one tank truck to another or separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition shall not be a plant under this definition: *Provided*, That a facility with stationary storage tanks, located in an area that includes the marketing area plus the area within 100 miles of the marketing area boundary, which is used only as a reload point for transferring bulk milk from one tank truck to another shall not be a plant.

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 3

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator of the Tennessee Valley marketing area, or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)
Office of the Market Administrator, Tennessee Valley Marketing Area

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on: January 29, 1987.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 87-2138 Filed 2-2-87; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 871 0011]

Alleghany Corporation; Proposed Consent Agreement With Analysis To Aid Public Comment: Agreement Containing Consent Order To Cease and Desist

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would allow, among other things, a New York City title insurance company to acquire Safeco Title Insurance Co. by requiring respondent to divest two title plants to alleviate concerns that the acquisition could reduce competition in the production and sale of title information in Cook County, Ill. and Los Angeles County, Calif.

DATE: Comments will be received until April 6, 1987.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/A-2308, Michael E. Antalics, Washington, DC 20580 (202) 326-2682.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with the accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Title insurance, Trade practices.

Agreement Containing Consent Order To Cease and Desist

In the matter of Alleghany Corp., a corporation.

The Federal Trade Commission having initiated an investigation into the proposed acquisition of Safeco Title Insurance Company, a subsidiary of Safeco Corporation, by Chicago Title & Trust Company, a subsidiary of Alleghany Corporation, and it now appearing that Alleghany Corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to divest certain assets;

It Is Hereby Agreed by and between Alleghany Corporation, by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent Alleghany Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal office at Park Avenue Plaza, New York, New York, 10055.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint here attached, will be placed on the public record for a period of sixty days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order to divest certain assets in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the Order shall have the same force and effect, and may be altered, modified or set aside in the same manner and within the same time, provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to-Order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the proposed complaint and Order contemplated hereby. It understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It Is Hereby Ordered that as used in this Order the following definition shall apply:

A. "Alleghany" means Alleghany Corporation, its subsidiaries, divisions, groups and affiliates controlled by Alleghany, and their respective directors, officers, employees and representatives, and their respective successors and assigns.

B. "Safeco" means Safeco Corporation, its subsidiaries, divisions, groups and affiliates controlled by Safeco, and their respective directors, officers, employees and representatives, and their respective successors and assigns.

C. "Title plant" means a privately owned set of records regarding the ownership of and interests in real property that is maintained by obtaining information from the public records on a daily or regular basis, and is indexed, posted or otherwise organized to update data regarding specific land parcels.

D. "TRI Plant" means the title plant located in Los Angeles County, California, in which Alleghany maintains and ownership interest.

II

It Is Further Ordered that Alleghany shall divest or shall cause to be divested, absolutely and in good faith, all of its right, title and interest in the properties described in Paragraphs IIA and IIB. Divestiture shall be made within the times specified in Paragraphs IIA and IIB, and shall be made only to a buyer or buyers and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continuation of the assets as ongoing, viable title plants engaged in the production and sale of title plant information, and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint in this matter.

A. Safeco's title plant in Cook County and all user or access agreements with the plant shall be divested within twelve months from the date this Order becomes final. Computer and other services provided for the plant by Safeco from Safeco's other facilities, at the buyer's option at the time of purchase, will continue to be provided by Alleghany at a commercially reasonable price, for a period of up to three years from the date this Order becomes final and, at the buyer's option, Alleghany will assist the buyer in transferring the computer services to any other provider of such services.

B. Either Safeco's title plant in Los Angeles County or Alleghany's interest in the TRI plant in Los Angeles County shall be divested within fourteen months from the date this Order becomes final. Alternatively, Alleghany shall abandon its interest in the TRI plant within the same 14 month period. If the Safeco title plant is divested, all user or access agreements with the Safeco plant shall also be divested. If the Safeco title plant in Los Angeles County is divested, computer and other services provided for the plant by Safeco, at the buyer's option at the time of purchase will continue to be provided by Alleghany at a commercially reasonable price for a period of up to three years from the date this Order becomes final and, at the buyer's option, Alleghany will assist the buyer in transferring the computer services to any other provider of such services.

III

It Is Further Ordered That:

A. If Alleghany has not divested the Safeco Cook County title plant within the twelve month period, Alleghany shall consent to the appointment of a trustee by the Commission pursuant to the Order. The appointment of a trustee shall not preclude the Commission from seeking civil penalties and other relief available to it for any failure by Alleghany to comply with Paragraphs IIB through XI of this Order.

B. If a trustee is appointed by the Commission pursuant to Paragraph IIIA of the Order, Alleghany shall consent to the following terms and conditions regarding the trustee's duties and responsibilities:

1. The Commission shall select the trustee, subject to Alleghany's consent, which shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall have six months from the date of appointment to submit for prior approval of the Commission the divestiture of the Safeco Cook County title plant.

3. If, at the end of the six month period, the trustee has not submitted for prior approval of the Commission a divestiture of the Safeco Cook County title plant, the trustee shall have an additional twelve month period in which to submit for prior approval of the Commission a divestiture of either the Safeco Cook County title plant or a copy of Alleghany's own computerized Cook County title plant.

4. If the trustee chooses to sell a copy of Alleghany's computerized Cook County title plant pursuant to Paragraph IIIB3, the sale shall include copies of all of the computer tapes and other information used by Alleghany in its operation of the computerized title plant, with the exception of the computer hardware, updated in the future on a daily basis until such time as the buyer(s) has established a separate title plant including that information and has, in full operation, the personnel needed to continue updating the plant information without Alleghany's assistance.

5. If at the end of the trustee's twelve month period the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a

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reasonable time, the divestiture period may be extended by the Commission.

6. The trustee shall have full and complete access to the personnel, books, records, and facilities relating to any undivested assets and Alleghany shall develop such financial or other information relevant to the assets to be divested as such trustee may reasonably request. Alleghany shall cooperate with the trustee and shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

7. The power and authority of the trustee to divest shall be at the most favorable price and terms available consistent with the Order's absolute and unconditional obligation to divest and the Commission's intention to ensure that a viable, going concern will be divested, but there shall be no minimum price.

8. The trustee shall serve at the cost and expense of Alleghany on such reasonable and customary terms and conditions as the Commission may set. The trustee shall account for all monies derived from asset sales and all expenses incurred. After approval by the Commission of the account of the trustee, including fees for his or her services, all remaining monies shall be paid to Chicago Title & Trust Company and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement (percentage of price) that is contingent on the trustee causing the divestiture of the assets and that shall provide an incentive for the trustee to divest the assets as soon as possible.

9. Promptly upon appointment of the trustee, Alleghany shall, subject to the Commission's prior approval and consistent with provisions of this Order, execute a trust agreement that transfers to the trustee all rights and power necessary to permit the trustee to cause divestiture of undivested assets.

10. If the trustee ceases to act or fails to act diligently, the Commission may, on its own or by request of Alleghany, appoint a substitute trustee for the balance of the time periods specified in Paragraphs IIIB2 and IIIB3, or any extensions thereof.

11. The trustee shall report in writing to Alleghany and the Commission every thirty days concerning the trustee's efforts to accomplish divestiture.

12. The trustee shall be authorized to retain independent legal counsel and other persons for purposes of discharging the functions set forth above. Alleghany shall reimburse the trustee for the reasonable value of all expenses so incurred.

13. If Alleghany and the trustee are unable to resolve a dispute regarding the reasonable value of his/her services or the reasonableness of an expenditure or obligation incurred by the trustee in connection with his/her efforts to divest the assets, then Alleghany and the trustee shall submit the dispute to the Commission for resolution, but the time periods shall continue to run. The trust agreement shall recite that the Commission's determination of the reasonable value of the trustee's services or the reasonableness of expenditures and other obligations incurred by the trustee shall be binding upon Alleghany and the trustee.

IV

It is further ordered that Alleghany shall not cause or permit the wasting or deterioration of the assets and operations to be divested in accordance with Paragraphs IIA and B of this Order in any manner that impairs the marketability of any such assets and operations or impairs in any manner the viability of the assets and operations as a going concern engaged in the production and sale of title plant information. In this regard:

A. Alleghany shall maintain the Safeco Cook County title plant and Safeco Los Angeles County title plant to the extent and in the manner maintained by Safeco prior to this acquisition, including but not limited to updating the records contained in the plants on a daily or regular basis such that the plants are as current as possible at all times.

B. Alleghany shall maintain in good faith all contracts for access to the Safeco Cook County title plant and Safeco Los Angeles County title plant subject to the terms, conditions and stipulations of those contracts, and will refrain from taking any action toward terminating those contracts other than that which would be commercially reasonable to Safeco under the terms of those agreements.

V

It is further ordered that for a period of ten years from the date this Order becomes final, Alleghany shall not, directly or indirectly, acquire any stock, share capital, or equity interest in any concern corporate or non-corporate, that in turn has any direct or indirect ownership interest in a title plant that services either Cook County, Illinois, or Los Angeles County, California, or acquire from any concern, corporate or non-corporate, any assets (other than in the ordinary course of business) of, or ownership interest in, an existing title plant that services either Cook County, Illinois or Los Angeles County California, without the prior approval of the Federal Trade Commission.

VI

It is further ordered that for a period of ten years from the date this Order becomes final, Alleghany shall not, directly or indirectly, acquire any stock, share capital, or equity interest in any concern, corporate or non-corporate, that in turn has any direct or indirect ownership interest in a title plant servicing any geographic area for which Alleghany at that time has any direct or indirect ownership interest in a title plant servicing the same area, or acquire from any concern, corporate or non-corporate, any assets (other than in the ordinary course of business) of, or ownership interest in, any existing title plant servicing any geographic area for which Alleghany at that time has any direct or indirect ownership interest in a title plant servicing the same area, without providing advance written notification to the Federal Trade Commission. Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"). Alleghany shall provide the Notification to the Federal Trade Commission at least thirty days prior to acquiring any such interest (hereinafter referred to as the "first waiting period"). Alleghany shall provide to the Commission supplemental information either in Alleghany's possession or reasonably available to Alleghany. Such supplemental information shall include a copy of the proposed acquisition agreement; the names of the principal representative of Alleghany and of the firm Alleghany desires to acquire who negotiated the acquisition agreement, any management or strategic plans discussing the proposed acquisition, and all documents relating to competition for the provision of title plant services in that particular county. If, within the first waiting period, representatives of the Federal Trade Commission make a written request for additional information, Alleghany shall not consummate the acquisition until twenty days after submitting such additional information. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. Section 18A).

VII

It is further ordered that acquisitions resulting in an ownership interest of not more than 10% of publicly traded companies, solely for the purpose of investment, are not subject to the requirements of Paragraphs V and VI of this Order, except that acquisitions resulting in an ownership interest of more than 5% of publicly traded companies, even if solely for the purpose of investment, are subject to the requirements of Paragraphs V and VI of this Order if such companies, directly or indirectly, have an ownership interest of 5% or more in Ticor Title Insurance Company, Lawyers Title Insurance Corporation, First American Title Insurance Company, Commonwealth Land Title Insurance Company, Transamerica Title Insurance Company, Stewart Title Guaranty Company, Minnesota Title Insurance Company, or TRW, Inc. or any of their successors or assigns.

VIII

It is further ordered that Alleghany shall notify the Commission at least thirty days prior to any change in Alleghany such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Order.

IX

It is further ordered That:

A. Within thirty days after the Order becomes final, and every thirty days thereafter until Alleghany has fully complied with Paragraph II of this Order, Alleghany shall file with the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with this Order. Such compliance reports shall include, in addition to any other information that the staff of the Federal Trade Commission may reasonably request, a summary of all contacts and negotiations with potential purchasers of the stock, assets, or other rights or interests to be divested under this Order, the identity and address of all such potential purchasers, and copies of all written communications to and from such potential purchasers.

B. Within one year after the Order becomes final, and annually for the next nine years, Alleghany shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with this Order.

Analysis To Aid Public Comment On Proposed Consent Order

The Federal Trade Commission has accepted for public comment from Alleghany Corporation an agreement containing consent order. This agreement has been placed on the public record for sixty (60) days for reception of comments from interested persons.

Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's order.

The Commission investigation in this matter concerned the proposed acquisition by a subsidiary of Alleghany Corporation of Safeco Title Insurance Company, a wholly-owned subsidiary of Safeco Corporation. Notifications of the proposed acquisition were filed pursuant to the Hart-Scott-Rodino Act in November 1986.

Both Safeco Title and Alleghany, through its subsidiary, Chicago Title and Trust Company, are engaged in the sale of title insurance and related services nationwide. In particular, each company owns, in various counties throughout the nation, title plants. A title plant is a privately owned set of records regarding the ownership of and interests in real property.

The complaint alleges that there likely would be anticompetitive effects from the acquisition in the production and sale of title plant information in Cook County, Illinois and Los Angeles County, California, and that the acquisition therefore would violate section 7 of the Clayton Act. The complaint also charges that the acquisition agreement would violate section 5 of the Federal Trade Commission Act.

The order accepted for public comment contains provisions requiring divestiture of certain assets. Within 12 months of the order's effective date, Alleghany must divest its entire interest in the Safeco title plant in Cook County, Illinois along with all its access agreements with third parties. If that plant has not been divested within that period, the Commission would be able to appoint a trustee to complete the divestiture. If after six months the trustee is unable to complete the divestiture, then the trustee will have the option of divesting either the Safeco Cook County plant, or a copy of Alleghany's own computerized Cook County plant. All divestitures would be subject to the approval of the Federal Trade Commission.

The order also requires Alleghany to divest within 14 months the Safeco Los Angeles plant or Alleghany's interest in a jointly-owned plant in Los Angeles called Title Records, Inc. ("TRI"). Alternatively, Alleghany must abandon its interest in the TRI plant if it is unable to divest or chooses not to divest the Safeco plant or its share of the TRI plant.

The order also requires Alleghany to take measures to prevent the wasting of the assets to be divested, in order to maintain their competitive vitality.

For a period of ten (10) years from its effective date, the order would also prohibit Alleghany from acquiring an ownership interest in a title plant in either Cook County or Los Angeles County without the prior approval of the Commission. For the same period, Alleghany would be required to give prior notification to the Commission of any acquisition of an ownership interest in a title plant serving the same county as a plant already owned by Alleghany. There is an exception for acquisitions up to 10% of the shares of a corporation if made solely for the purpose of investment. An exception to this exception is where purchase is made of more than 5% of the stock of a company which itself owns more than 5% of any of several named competitors in the sale of title insurance. In such case prior notification or approval would be required.

It is anticipated that the provisions of the order would resolve the competitive concerns alleged in the complaint. In Cook County, Alleghany and Safeco owned the only title plants serving the area, comprising greater metropolitan Chicago. The acquisition, absent the proposed relief, would give Alleghany a monopoly over title plant information there. The divestiture contemplanted by the order would provide for the existence of a viable competitor to Alleghany in that market.

In Los Angeles, the competitive concern is that the acquisition would increase the likelihood of collusion in the provision of title plant information by virtue of Alleghany's ownership interest in two of the three title plants serving that county. The divestiture contemplated by the order for Los Angeles would leave Alleghany with an ownership interest in only one of the plants, alleviating the dual ownership problem and its possible adverse impact on competition.

The purpose of this analysis is to invite public comment. This analysis is not intended to constitute an official

interpretation of the agreement and order or to modify its terms in any way.

Emily H. Rock,

Secretary.

[FR Doc. 87-2114 Filed 2-2-87; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-43-86]

Interest Charge; Domestic International Sales Corporation (DISCs)

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the taxation of income allocable to a Domestic International Sales Corporation (DISC) for taxable years beginning after 1984. Changes to the applicable tax law were made by the Tax Reform Act of 1984 and the Technical Corrections Title of the Tax Reform Act of 1986. The proposed regulations would provide DISCs and DISC shareholders with guidance needed to comply with the Act and would affect all DISCs and DISC shareholders.

DATES: Written comments and requests for a public hearing must be delivered or mailed by April 6, 1987. The regulations are proposed to be effective for transactions after December 31, 1984, and taxable years ending after December 31, 1984.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attn: CC:LR:T (Intl-43-86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Joseph M. Rosenthal of the Office of the Associate Chief Counsel (International), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attn: CC:LR:T). Telephone 202-566-6276 (not a toll-free call.)

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 441, 991, 992, 995, 996 and 6011 of the Internal Revenue Code of 1954. These amendments are proposed to provide regulations under sections 441(h), 995(b)(1)(E), 995(f) and 996 which were added to the Code by sections 803 and 802 of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 672) or amended by the Technical Corrections Title of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2085).

Explanation of the Proposed Regulations Termination of DISC Election and Exemption of DISC Income From Tax

Under section 805(b) of the Tax Reform Act of 1984, the last taxable year of each DISC which began before January 1, 1985, ended on December 31, 1984. The termination of a DISC's taxable year on that date is treated under § 1.921-1T(a) as a revocation of the corporation's DISC election. All corporations which wish to be treated as a DISC for any period after 1984 must make a new DISC election of Form 4876A. Regulations providing for the time and manner of making the new DISC election were provided by § 1.921-1T(b)(1) Q&A-1. Those regulations generally require that the election of a corporation to be treated as an interest charge DISC for the corporation's first taxable year beginning after December 31, 1984, must be filed on Form 4876A within 90 days after the beginning of such year. The Service has learned that many corporations which were DISCs on December 31, 1984, and which intended to continue to be treated as an interest charge DISC may have failed to re-elect DISC status in a timely manner. Accordingly, section 1.992-2(a)(3) of these proposed regulations extends the time for re-electing DISC status for 1985 and subsequent taxable years for corporations which were treated as a DISC for the taxable year ending December 31, 1984, to June 4, 1987. Forms 4876A filed by such corporations within this time will be accepted by the Service as a timely DISC election for the DISC's taxable year beginning January 1, 1985, based on these proposed regulations.

In addition, under section 805(b) of the Tax Reform Act of 1984, generally all corporations which qualified as DISCs on December 31, 1984, are permitted to treat their accumulated DISC income as previously taxed income when distributed after that date. Temporary regulations relating to the treatment of such distributions were provided by § 1.921-1T and are contained in § 1.996-9 of the proposed regulations. That section of the proposed regulations also provides that any net operating loss or capital loss carryforward of a DISC as of December 31, 1984, is to be reduced by the amount of accumulated DISC income that was exempted from tax. In addition, that section also provides that no foreign tax credit shall be allowed with respect to any foreign taxes paid with respect to the amount of accumulated DISC income that was exempted from tax.

New DISC Rules

The Tax Reform Act of 1984 also changed many of the rules applicable to DISCs effective for taxable years ending after 1984.

Taxable year of the DISC

A DISC is required to use the same taxable year as its principal shareholders. The same rule also applies to Foreign Sales Corporations (FSCs) and to small FSCs. Section 1.441-1(h) of the proposed regulations provides rules relating to this requirement. The DISC must change its taxable year if the principal shareholder changes its taxable year, or if a different shareholder having a different taxable year becomes the principal shareholder of the DISC. If the DISC must change its taxable year to conform to the taxable year of a new principal shareholder, § 1.441-1(h)(3)(iii) of the proposed regulations provides that the short period required to effect the change shall end with the close of the new principal shareholder's taxable year within which the change in ownership occurs. This provision would amend the rule for determining the short period contained in § 1.921-1T(b)(6) of the Temporary Regulations (under which the short period is the taxable year of the DISC following the DISC's taxable year in which the change of ownership occurs), and is proposed to be effective for changes in ownership occurring after 30 days the date the proposed regulations are finalized.

Controlled groups

A DISC and a FSC or a small FSC cannot be members of the same greater-than-50-percent controlled group. Rules relating to this requirement are contained in § 1.992-1(j) of the proposed regulations. In general, the DISC election of a corporation is treated as revoked if a FSC or a small FSC election becomes effective for any other member of the controlled group. A special transitional rule is provided if a DISC and a FSC or a small FSC become members of the same controlled group by reason of an acquisition of a shareholder in either the DISC, the FSC or the small FSC.

Deemed distributions

The deemed distribution relating to base period export gross receipts (the incremental rule) is eliminated for taxable years beginning after 1984, and is replaced with a deemed distribution of the DISC's taxable income attributable to qualified export receipts that exceed $10 million. Section 1.995-8 of the proposed regulations provides rules relating to this new deemed distribution. In general, the $10 million amount may be allocated to qualified gross receipts on a transaction-by-transaction basis. Section 1.995-8(b)(2) of the proposed regulations provides a special rule for the allocation of qualified gross receipts attributable to related and subsidiary services. Section 1.995-8(f) of the proposed regulations provides a method for allocating the $10 million amount among DISCs which are members of the same controlled group. Under § 1.995-8(a), the $10 million amount is to be prorated on a daily basis in the case of a DISC having a short taxable year.

The deemed distribution of 50 percent of the DISC's taxable income of a non-C corporation DISC shareholder is eliminated, and the deemed distribution of 57.5 percent of the DISC's taxable income to a C corporation DISC shareholder is reduced to a deemed distribution of 1/17th of the amount of the DISC's taxable income for the taxable year in excess of the other deemed distributions. See § 1.995-2A of the proposed regulations.

Interest Charge

In general

The Tax Reform Act of 1984 also provides for an annual interest charge on the shareholders of the DISC. Section 1.995(f)-1 of the proposed regulations provides rules relating to this requirement. In general, the amount of the interest charge is based on the additional income tax that would otherwise be due on the accumulated DISC income deferred by the DISC in taxable years beginning after 1984 computed as if the deferred income were distributed to the shareholder. The rate of interest charged is tied to the rate of interest on 52-week Treasury bills (the "base period T-bill rate"), as described below. The interest charge is not imposed on the accumulated DISC income for the taxable year in which it is earned. Thus, a DISC shareholder will not have an interest charge for the shareholder's taxable year ending with or including the last day of the DISC's first taxable year for which its new DISC election is made. Section 1.995(f)-1(f) contains rules for determining the amount of the deferred DISC income.

DISC-related deferred tax liability

The tax that would otherwise be due on the deferred DISC income, the "shareholder's DISC-related deferred tax liability", for a taxable year of the shareholder is the excess of the shareholder's tax liability computed as if the deferred DISC income were included in the shareholder's gross income over the shareholder's actual tax liability for the taxable year. Sections 1.995(f)-1 (d) and (e) of the proposed regulations provide rules relating to this computation. Under section 995(f)(2), the computation is to be made without regard to carrybacks to the taxable year from a later taxable year. Under § 1.995(f)-1(d) (4) of the proposed regulations, the computation is also to be made without regard to carryforwards to the taxable year or to any other item that may be carried by the shareholder to another taxable year. Thus, the treatment of carrybacks and carryovers of deductions and credits in the computation of the amount of the shareholder's DISC-related deferred tax liability is similar to the treatment of such items under section 644(a) of the Code. Section 644(a) provides a special rule for determining the tax imposed on a trust's gain on the sale of property contributed to the trust within two years by reference to the additional tax that would have been imposed on the grantor if the property had been sold by the grantor.

Base period T-bill rate

The rate of interest charged on the shareholder's DISC-related deferred tax liability for a taxable year is equal to the "base period T-bill rate." This rate is equivalent to the average investment yield on 52 week T-bills auctioned during the one-year period ending on September 30 of the calendar year ending with or within the taxable year of the shareholder. The base period T-bill rate, as determined above, is then compounded daily for the number of days in the shareholder's taxable year for which the interest charge is being determined. Under section 6622, the amount of any interest required to be paid under the Code is determined by daily compounding.

The base period T-bill rate for each one-year period ending September 30 shall be published in a revenue ruling in the Internal Revenue Bulletin. That revenue ruling shall also contain a table of factors reflecting daily compounding of the base period T-bill rate. Revenue Ruling 86-132, 1986-46 I.R.B. 5 published the base period T-bill rates for the periods September 30, 1984, 1985 and 1986, together with tables of factors reflecting daily compounding.

To compute the amount of the interest charge for the shareholder's taxable year, the shareholder shall multiply the DISC-related deferred tax liability by the base period T-bill rate factor corresponding to the number of days in the shareholder's taxable year for which the interest charge is being determined. Generally, the shareholder will use the base period T-bill rate factor for a 365 day year. The factor to be used will be other than the factor for 365 days if the shareholder's taxable year is a short taxable year, if the shareholder uses the 52-53 week taxable, year, or if the shareholder's taxable year is a leap year.

Paragraph (g) of § 1.995(f)-1 of the proposed regulations provides fuels for determining the amount of the interest charge for a taxable year in which stock in the DISC is transferred. In general, the transferor and the transferee shareholders compute their DISC-related deferred tax liability as if they each held the stock for the entire taxable year and then multiply that amount by the base period T-bill rate factor for the number of days in the year that each shareholder held the stock. A reduction in the amount of deferred DISC income (and thus of the interest charge) is made for any gain recognized on the transfer under section 995(c).

Section 1.995(f)-1(h) of the proposed regulations provides for pass-through treatment of the interest charge in the case of DISC stock held by a partnership or an S corporation. If stock in a DISC is held by an estate or trust, however, the interest charge is imposed on the estate or trust.

Payment, collection and assessment of the interest charge

Section 995(f) (6) provides that the amount of the interest charge for a taxable year is treated as interest imposed on an underpayment of tax under section 6601. Thus, the interest charge may be deducted by the DISC shareholder only to the extent that the shareholder may deduct interest on an underpayment of tax. The interest charge is due at the same time the shareholder's income tax return for the taxable year is required to be filed, without regard to extensions. No payments of estimated tax under sections 6154 or 6654 are required with respect to the interest charge.

The interest charge is to be computed on Form 8404. To assist the IRS in properly processing the shareholder's the Form 8404 and crediting the payment to the shareholder's account, the Form 8404, together with the shareholder's payment of the interest charge, is *not* to be included with or attached to the shareholder's income tax return for the taxable year.

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Technical corrections

The Technical Corrections Title of the Tax Reform Act of 1986 made several amendments to the DISC and FSC rules. The proposed regulations incorporate those amendments, but do not address any issues that may be raised by other substantive provisions of the Tax Reform Act of 1986.

Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has determined that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. § 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Paperwork Reduction Act

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments to these requirements to the OMB also send copies of those comments to the IRS.

Drafting Information

The principal author of the proposed regulations is Joseph M. Rosenthal of the Office of Associate Chief Counsel (International), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing these regulations on matters of substance and style.

List of Subjects in 26 CFR 1.441–1 through 1.483–2

Income taxes, Accounting.

List of Subjects in 26 CFR 1.861–1 through 1.997–1

Income taxes, Aliens, Exports, DISC, FSC, Foreign investments in U.S., Foreign tax credit, Source of income, U.S. investment abroad.

List of Subjects in 26 CFR 1.6001–1 through 1.6109–2

Income taxes, Administration and procedure, filing requirements.

Proposed Amendment to the Regulations

Accordingly, the proposed amendments to 26 CFR Part 1 are as follows:

PART 1—INCOME TAX

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *
Section 1.441–1(h) also issued under 26 U.S.C. 441(h). * * *
Section 1.995–8(f) also issued under 26 U.S.C. 995 (b)(4)(B). * * *
Section 1.995 (f)–1(b) (2) also issued under 26 U.S.C. 995(f)(4). * * *
Section 1.995 (f)–1(c) also issued under 26 U.S.C. 995(f)(3). * * *
Section 1.995 (f)–1(d) (4) and (5) also issued under 26 U.S.C. 995(f)(2)(B). * * *

Par. 2. Section 1.441–1 is amended as follows:

1. a. Paragrah (b)(1) is revised;

b. A new sentence is added at the end of paragraph (b)(3);

c. A new sentence is added at the end of paragraph (b)(4); and

2. A new paragraph (h) is added immediately after paragraph (g).

The revised and added provisions read as follows:

§ 1.441–1 Period for computation of taxable income.

* * * * *

(b) *Taxable year.* (1) The term "taxable year" means—

(i) The taxpayer's annual accounting period, if it is a calendar year or a fiscal year (within the meaning of paragraph (e) of this section);

(ii) The calendar year, if section 441 (g) (relating to taxpayers who keep no books or have no accounting period) applies;

(iii) The period for which the return is made, if the return is made under section 443 for a period of less than 12 months, referred to as a "short period"; or

(iv) In the case of a FSC, a small FSC or a DISC filing a return for a period of at least 12 months, the period determined under section 441(h) and paragraph (h) of this section.

* * * * *

(3) * * * For rules applicable to the adoption of a taxable year by a FSC or a DISC, see paragraph (h) of this section.

(4) * * * For rules applicable to a change of taxable year by a FSC or a DISC, see paragraph (h) of this section.

* * * * *

(h) *Taxable year of FSCs and DISCs*—(1) *In general.* (i) The taxable year of any FSC, or of any DISC established after December 31, 1984, shall be the same taxable year as the taxable year of the FSC's or DISC's principal shareholder (as defined in paragraph (h)(2) of this section). In addition, any domestic corporation which was a DISC on or at any time before December 31, 1984, and which elects to be treated as a DISC for any taxable year beginning after December 31, 1984, must adopt the same taxable year as its principal shareholder. For purposes of this section, the term "FSC" includes a small FSC as defined in section 922(b).

(ii) The corporation shall (without being required to obtain the consent of the Commissioner, and without filing Form 1128, Application for Change in Accounting Period) adopt the taxable year of its principal shareholder by ending the corporation's first taxable year for which it elects to be treated as a FSC or a DISC on the last day of the principal shareholder's taxable year, and the corporation shall file its return for such first taxable year and for succeeding taxable years on that basis. If the principal shareholder's annual accounting period is a 52–53 week year under section 441(f), the FSC or DISC shall also adopt such 52–53 week year as the taxable year.

(2) *Principal shareholder*—(i) *General rule.* The "principal shareholder" of a FSC or DISC is the shareholder (or group of shareholders having the same taxable year) who has the highest percentage of voting power in the FSC or DISC. If the principal shareholder of the DISC or FSC is a pass-through entity, such as an S corporation, a partnership, a trust or an estate, the DISC or FSC shall adopt the taxable year of the pass-through entity without regard to the taxable year of the pass-through entity's shareholders, partners or beneficiaries.

(ii) *Voting power.* (A) In the case of a FSC, "voting power" is determined on the basis of the total combined voting power of all classes of stock in the corporation entitled to vote.

(B) In the case of a DISC, "voting power" is determined on the basis of the one class of stock that the DISC is permitted to issue under section 992(a)(1)(C).

(iii) *More than one principal shareholder.* If two or more shareholders, or groups of shareholders, have the highest percentage of voting power in the FSC or DISC and have different taxable years, such FSC or DISC shall conform its taxable year (in the manner prescribed in paragraph (h)(1)(ii) of this section) to the taxable year of any one of such shareholders or groups, and only the shareholder or group shall be considered the principal shareholder for purposes of this paragraph (h).

(3) *Subsequent changes in FSC's or DISC's accounting period*—(i) *General rule.* Except as provided in this paragraph (h)(3), a FSC or a DISC shall not change its taxable year.

(ii) *Principal shareholder changes its taxable year.* If the principal shareholder of a FSC or a DISC changes its taxable year, the FSC or DISC shall also change its accounting period to conform to the principal shareholder's new taxable year, including using the same short period to effect such change. The Commissioner will not grant consent, under section 442, to a request for change in the principal shareholder's taxable year unless the FSC or DISC also agrees to make and makes the same change in its annual accounting period.

(iii) *New principal shareholder.* This paragraph (h)(3)(iii) is effective for changes of ownership described in subparagraphs (A) and (B) of this paragraph (h)(3)(iii) which occur [insert date 30 days after date this document is published in the **Federal Register** as a Treasury Decision]. For such changes in ownership occurring before such date, see 26 CFR 1.921–1T(b)(6) (Revised as of April 1, 1985). If (A) the voting power of the principal shareholder in the FSC or DISC is reduced by 10 or more percentage points, and (B) immediately after such reduction such shareholder is no longer a principal shareholder of the FSC or DISC, the FSC or DISC shall change its annual accounting period to that of the new principal shareholder in the manner prescribed by section 442 and the regulations thereunder. The short period required for the FSC or DISC to effect such change shall end on the last day of the new principal shareholder's taxable year within which the change in ownership occurs. For example, assume that in 1985 a FSC or DISC adopts the calendar year to conform to the annual accounting period of its sole shareholder, and that on March 1, 1987, a new shareholder having a fiscal year ending on June 30 becomes the principal shareholder by acquiring 60 percent of the total voting power of the stock of the FSC or DISC. The short period required to change the FSC's or DISC's annual accounting period shall be the period beginning January 1, 1987, and ending June 30, 1987. If, however, the new principal shareholder's taxable year were the fiscal year ending January 31, then the short period required for the FSC or DISC to change its annual accounting period shall be the period beginning January 1, 1988, and ending January 31, 1988. The change in the FSC's or DISC's annual accounting period shall be made in accordance with section 442 and the regulations thereunder.

* * * * *

§ 1.921–1T [Amended]

Par. 3. Paragraph (b)(6) of § 1.921–1T is removed.

Par. 4. Section 1.991–1 is amended as follows:

1. In the third sentence of paragraph (a), the phrase "and the interest equalization tax" is removed, and three new sentences are added at the end of paragraph (a).

2. a. In paragraph (b)(1) the third sentence is revised:

b. In paragraph (b)(2) a new sentence is added immediately after the fourth sentence:

c. Paragraph (b)(3) is revised; and

d. Paragraphs (b) (4) and (5) are removed.

3. New paragraph (e) and (f) are added immediately after paragraph (d).

§ 1.991–1 Taxation of a domestic international sales corporation (DISC).

(a) *In general.* * * * For taxable years of a DISC beginning after 1984, the shareholders of the DISC are required to pay an annual deductible interest charge on the shareholder's DISC-related deferred tax liability. The interest charge is imposed on the DISC shareholder, not the DISC. See section 995(f) and § 1.995(f)-1.

* * * * *

(b) *Determination of taxable income*—(1) *In general.* * * * For example, a DISC may choose its accounting methods and inventory method, or elect, under section 168 (b)(3), different recovery percentages for its recovery property than those prescribed under section 168(b)(1), as if the DISC were a domestic corporation which had not elected to be treated as a DISC. * * *

(2) *Choice of accounting methods.* * * * See also, section 267 for rules that may apply to transactions between a DISC and a related taxpayer requiring the matching of certain items of income and deduction and the deferral of certain losses. * * *

(3) *Annual accounting period.* For taxable years beginning after March 21, 1984, a DISC cannot choose or change its taxable year without regard to the taxable year of its principal shareholder. In general, a DISC and its principal shareholder must use the same taxable year. See section 441(h) and § 1.441–1.

* * * * *

(e) *Close of taxable year and termination of DISC election for all DISCs on December 31, 1984; Reelection required; Exemption of pre-1985 accumulated DISC income from tax.* Under section 805(b)(1)(A) of the Tax Reform Act of 1984, Pub. L. 90–369, the last taxable year of a DISC beginning before 1985 ended on December 31, 1984. The corporation's DISC election is also deemed revoked as of the close of business on December 31, 1984. A new DISC election must be made on Form 4876A in order for the corporation to be treated as a DISC for any taxable year beginning after December 31, 1984. See § 1.921–1T(b). See section 805(b)(2) of the Act and the Act and § 1.921–1T(a), for the tax treatment after 1984 of the accumulated DISC income derived before 1985 by certain DISCs.

(f) *Interest charge imposed on DISC shareholders after 1984.* Section 995(f) requires that for each taxable year beginning after 1984, each shareholder of a DISC shall pay a deductible interest charge on the shareholder's DISC-related deferred tax liability. The shareholder's DISC-related deferred tax liability is computed only with reference to the DISC's accumulated DISC income (earned in periods after 1984) and deferred by the DISC for more than one taxable year. Thus, in general, a DISC shareholder will not have a DISC-related deferred tax liability (and thus, no interest charge) until the close of the shareholder's taxable year following the taxable year with which or within which the first taxable year of the DISC (ending after 1984) ends. See § 1.995(f)–1.

Par. 5. Section 1.992–1 is amended as follows:

1. At the end of paragraph (a)(7), "and" is removed; at the end of paragraph (a)(8), the period is removed and ", and" is added in its place; immediately following paragraph (a)(8) the following new paragraph (a)(9) is

added to read as set forth below; and in the concluding text of paragraph (a), the language "subparagraphs (1) through (8) of this paragraph" is removed and the langauge "paragraphs (a)(1), through (a)(9) of this section" is added in its place.

2. The text of paragraph (e) is redesignated as paragraph (e)(1) and new paragraph (e)(2) is added to read as set forth below.

3. A new paragraph (j) is added to read as set forth below.

§ 1.992-1 Requirements of a DISC.

(a) * * *

(9) Is not a member of any controlled group (as defined in section 993(a)(3) and § 1.993—1(k)) of which a FSC or a small FSC (as defined in section 992) is a member. See paragraph (j) of this section.

(e) *Election in effect*—(1) * * *

(2) Section 805(b)(1)(A) of the Tax Reform Act of 1984 provides that the last taxable year of any DISC beginning in 1984, shall end on December 31, 1984, and under § 1.921-1T(a)(1) the corporation's DISC election is also deemed revoked as of the close of business on the date. A new DISC election must be filed on Form 4876A in order for the corporation to be treated as a DISC for any taxable year beginning after December 31, 1984. See § 1.992-2 (a) and (b).

* * * * *

(j) *Effect on a DISC of a FSC election*—(1) *General rule.* (i) Under section 992(a)(1)(E) and paragraph (a)(9) of this section, a corporation shall not be treated as a DISC for a taxable year if at any time during such taxable year such corporation is a member of a controlled group (as defined in section 993(a)(3) and § 1.993.1 (k)) of which a FSC or a small FSC (as defined in section 922) is a member. For purposes of this paragraph (j), a FSC also includes a small FSC. A FSC election within a group will prevail over any DISC election within such group. Thus, no corporation can make an election to be treated as a DISC for any taxable year if on any day of such taxable year such corporation is a member of a controlled group of which a FSC is a member. Further, the election of a corporation to be treated as a DISC is terminated on the first day for which the election of another corporation to be treated as a FSC becomes effective, if at any time during the DISC's taxable year such corporations are members of the same controlled group. Except as provided in paragraph (j)(2) of this section (relating to certain corporate acquisitions and reorganizations), the termination of the DISC election on such date means that such corporation shall not be treated as a DISC for its entire taxable year which includes such date, and the corporation shall be subject to tax on its taxable income for such entire taxable year. A revocation of the corporation's DISC election under section 992(b)(3) is not required.

(ii) The following example illustrates the provisions of this paragraph (j)(1):

Example. D, a calendar year corporation, has made a proper DISC election for 1985 and succeeding years. F, a corporation having a fiscal year beginning on July 1, is a member of the same controlled group of which D is a member. On May 1, 1986, F files an election to be treated as a FSC effective for F's taxable year beginning July 1, 1986. D's DISC election is treated as terminated on July 1, 1986, and D is not a DISC for its taxable year which begins January 1, 1986, and ends on December 31, 1986. F's election to be treated as a FSC for its taxable year beginning July 1, 1986, is not affected by the termination of D's DISC election.

(2) *Exception for certain acquisitions and reorganizations.* (i) In the case of a DISC and a FSC described in paragraph (j)(2)(ii) of this section for a taxable year, paragraph (j)(1) of this section shall not apply, and the domestic corporation may be treated as a DISC or the foreign corporation may be treated as a FSC for a short taxable year ending on the day preceding the day the DISC and the FSC became members of the same controlled group. If the DISC election is terminated, the DISC is required to satisfy all requirements to be treated as a DISC (including the 95 percent qualified export receipts and assets requirements of section 992(a)(1)) for the short taxable year, and may satisfy those requirements by making the distributions to meet such requirements provided in section 992(c). The $10 million limitation on qualified export receipts under section 995(b)(1)(E) for the short taxable year must be pro rated on a daily basis as provided in § 1.995-8(a). If the FSC election is terminated, the FSC is required to satisfy all requirements to be treated as a FSC for the short taxable year, and if the FSC is a small FSC, the $5 million foreign trading gross receipts limitation under section 924(b)(2) for the short taxable year must be pro rated on a daily basis. The controlled group of corporations shall make its choice to terminate the election of either the DISC or the FSC by filing the short period return required for the corporation whose election as a DISC or FSC (as the case may be) is to be terminated within the due date (including extensions) prescribed by section 6072(b). If the group fails to terminate the election of either the DISC or the FSC within such period, the DISC election of the domestic corporation shall be terminated as provided by paragraph (j)(1) of this section.

(ii) A DISC and a FSC are described in this paragraph (j)(2)(ii) for a taxable year if—

(A) Both the DISC and the FSC had an immediately preceding taxable year and each was treated as a DISC and as a FSC, respectively, for such immediately preceding taxable year,

(B) The DISC and the FSC were not members of the same controlled group on the first day of the taxable year, and

(C) The DISC and the FSC became members of the same controlled group of corporations during the taxable year by reason of the acquisition, directly or indirectly, of a member of the controlled group which includes such DISC (or FSC, as the case may be) by either—

(*1*) A member of the controlled group which includes such FSC (or DISC, as the case may be) (thereby making the DISC and the FSC members of the same parent-subsidiary controlled group), or

(*2*) The 5 or fewer persons who are individuals, estates or trusts who control the corporation which controls such FSC (or DISC, as the case may be) (thereby making the DISC and the FSC members of the same brother-sister controlled group.)

(iii) The provisions of this paragraph (j)(2) may be illustrated by the following example:

Example—(i) *Facts.* Z corporation owns all the the stock of D, a corporation which has elected to be treated as a DISC. X corporation owns all the stock of F, a corporation which has elected to be treated as a small FSC. Z, X, D and F use the calendar year as the taxable year. D was treated as a DISC, and F was treated as a small FSC, for their taxable years ending December 31, 1986. On January 1, 1987, Z and X are not members of the same controlled group. On August 1, 1987, Z purchases all of the stock of X, thereby making D and F members of the same controlled group.

(ii) *Result.* (A) If the group choses to retain the small FSC and terminate the DISC, under paragraph (j)(2)(i) of this section, D is permitted to end its taxable year on July 31, 1987, and may be treated as a DISC for such short year if it satisfies the requirements of section 992(a)(1) with respect to such short taxable year. The $10 million amount under section 995(b)(1)(E) for the short taxable year is limited to $5,808,219 ($10 million × 212/365). D's DISC election is terminated on August 1, 1987. F's small FSC election and $5 million amount under section 924(b)(2) are not affected by the acquisition.

(B) Alternatively, the group could chose to retain the DISC and terminate the small FSC with the same short taxable year ending July 3, 1987. F's $5 million amount for such short year would be limited to $2,904,110 ($5 million × 212/365), and D's DISC election

and $10 million amount under section 995(b)(1)(E) would not be affected by the acquisition.

Par. 6. Section 1.992-2 is amended by removing "Form 4876" each place it appears and adding in their place the words "Form 4876A", and by revising paragraphs (a) and (b)(2) to read as follows:

§ 1.992-2 Election to be treated as a DISC.

(a) *Manner and Time of election*—(1) *Manner.* The election to be treated as a DISC is made by the corporation by filing Form 4876A (Form 4876 for taxable years beginning before January 1, 1985) with the service center with which it would file its income tax return if the corporation were subject for such taxable year to all the taxes imposed by subtitle A of the Internal Revenue Code. The Form 4876A shall be signed by any person authorized to sign the corporation's return under section 6062, and shall contain the information required by such Form. Except as provided in paragraphs (b)(3) and (c) of this section, such election to be treated as a DISC shall be valid only if the statement of consent of every person who is a shareholder of the corporation as of the beginning of the first taxable year for which such election is to be effective is made on or is attached to such Form 4876A when filed with the service center.

(2) *Time for making election.* In the case of a corporation making an election to be treated as a DISC for the corporation's first taxable year, the election shall be made within 90 days after the beginning of such taxable year. In the case of a corporation making an election to be treated as a DISC for a taxable year which is not the corporation's first taxable year, the election shall be made during the 90 day period immediately preceding the first day of such taxable year.

(3) *Special rule for re-electing DISC status in 1985.* Under section 805(b) of the Tax Reform Act of 1985, the last taxable year of any DISC beginning in 1984 ended on December 31, 1984, and under § 1.921-1T (a)(1), the corporation's election to be treated as a DISC is deemed revoked after the close of business on such date. A corporation which was a DISC on December 31, 1984, and which wishes to be treated as a DISC for its first taxable year beginning after December 31, 1984, must make a new DISC election by filing Form 4876A in accordance with the instructions thereon and in accordance with paragraph (a)(1) of this section on or before June 4, 1987. The Form 4876A is to be filed within such period with the service center with which the corporation files its DISC return.

(b) *Consent by shareholders*—* * *

(2) *Transitional rule for certain corporations re-electing DISC status in 1985.* Notwithstanding paragraph (b)(1) of this section, if the corporation was a DISC on December 31, 1984, and the corporation files its election to be treated as a DISC for the corporation's first taxable year beginning after December 31, 1984, within the time prescribed in paragraph (a)(3) of this section, the election shall be valid if the consent of each person who was a shareholder of the corporation on January 1, 1985, is filed with the service center with which the election was filed on or before December 31, 1986. The form of such consent shall be the same as that prescribed in paragraph (b)(1) of this section. A copy of the corporation's statement of election, Form 4876A, shall be attached to the consent.

* * * * *

Par. 7. Section 1.995-2 is amended by revising the title of the section and by adding two new sentences immediately before the first sentence in paragraph (a) to read as follows:

§ 1.995-2 Deemed distributions in qualified years ending before 1985.

(a) *General rule.* This section applies to taxable years of a DISC ending before January 1, 1985. See § 1.995-2A for taxable years of a DISC beginning after December 31, 1984. * * *

* * * * *

Par. 8. New § 1.995-2A is added immediately after § 1.995-2 to read as follows:

§ 1.995-2A Deemed distributions in qualified years beginning after 1984.

(a) *General rule.* This section applies to taxable years of a DISC beginning after December 31, 1984. See § 1.955-2 for taxable years beginning before January 1, 1985. Under section 995(b)(1), each shareholder of a DISC shall be treated as having received a distribution taxable as a dividend with respect to the shareholder's stock on the last day of each taxable year of the DISC beginning after December 31, 1984, in an amount equal to the shareholder's pro rata share of the sum (as limited by paragraph (b) of this section) of the following items:

(1) The gross interest derived by the DISC during such year from producer's loans (as defined in § 1.993-4).

(2) The lower of—(i) Any gain recognized by the DISC during such year on the sale or exchange of property (other than property which in the hands of the DISC is a qualified export asset) which was previously transferred to it in a transaction in which the transferor realized gain which was not recognized in whole or in part, or

(ii) The amount of the transferor's gain which was not recognized on the previous transfer of the property to the DISC.

For purposes of this paragraph (a)(2), each item of property shall be considered separately. See paragraph (d) of this section for special rules with respect to certain tax-free acquisitions of property by the DISC.

(3) The lower of—(i) Any gain recognized by the DISC during such year on the sale or exchange of property which in the hands of the DISC is a qualified export asset (other than stock in trade or property described in section 1221(1)) and which was previously transferred to the DISC in a transaction in which the transferor realized gain which was not recognized in whole or in part, or

(ii) The amount of the transferor's gain which was not recognized on the previous transfer of the property to the DISC and which would have been includible in the transferor's gross income as ordinary income if its entire realized gain had been recognized upon the transfer.

For purposes of this paragraph (a)(3), each item of property shall be considered separately. See paragraph (d) of this section for special rules with respect to certain tax-free acquisitions of property by the DISC.

(4) Fifty (50) percent of the taxable income of the DISC for the taxable year attributable to military property (as defined in § 1.995-8).

(5) The taxable income of the DISC for the taxable year attributable to qualified export receipts of the DISC for such year which exceed $10,000,000 (as determined under § 1.995-8).

(6) The sum of—(i) In the case of a shareholder which is a C corporation, an amount equal to one-seventeenth (1/17) of the excess, if any, of the taxable income of the DISC for the taxable year, before reduction for any distributions during such year, over the sum of the amounts deemed distributed for the taxable year in accordance with paragraphs (a) (1) through (5) of this section,

(ii)(A) In the case of a shareholder which is a C corporation—

(*1*) An amount equal to 16/17 of the excess described in paragraph (a)(6)(i), multiplied by the international boycott factor as determined under section 999(c)(1), or

(*2*) In lieu of the amount determined under subparagraph (ii)(A)(*1*), 16/17 of

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such excess as is described in section 999(c)(2), or

(B) In the case of a shareholder which is not a C corporation—

(*1*) An amount equal to all of the excess described in paragraph (a)(6)(i), multiplied by the international boycott factor as determined under section 999(c)(1), or

(*2*) In lieu of the amount determined under subparagraph (ii)(B)(*1*), the amount of such excess as is described in section 999(c)(2), and

(iii) An amount equal to the sum of any illegal bribes, kickbacks, or other payments paid by or on behalf of the DISC directly or indirectly to an official, employee, or agent in fact of a government. An amount is paid by a DISC where it *is* paid directly or indirectly by any officer, director, employee, shareholder, or agent of the DISC for the benefit of such DISC. For purposes of this section, the principles of section 162(c) and the regulations thereunder shall apply. The amount of an illegal payment made in the form of property or services shall be considered to be equal to the fair market value of such property or services at the time such property is transferred or such services are performed.

(*7*) The amount of foreign investment attributable to producer's loans of the DISC, as of the close of the "group taxable year" ending with such taxable year of the DISC, determined in accordance with § 1.995–5. The amount of such foreign investment attributable to producer's loans so determined for any taxable year of a former DISC shall be deemed distributed as a dividend to the shareholders of such former DISC on the last day of such taxable year. See § 1.995–3(e) for the effect that such deemed distribution has on scheduled installments of deemed distributions of accumulated DISC income under § 1.995–3(a) upon disqualification.

(b) *Limitation on amount of deemed distributions under section 995(b)(1)*—(1) *General rule.* The sum of the amounts described in paragraphs (a)(1) through (a)(6) of this section which is deemed distributed pro rata to the DISC's shareholders as a dividend for any taxable year of the DISC shall not exceed the DISC's earnings and profits for such year.

(2) *Foreign investment attributable to producer's loans.* The amount of foreign investment attributable to producer's loans of the DISC (as described in paragraph (a)(7) of this section) which is deemed to be distributed pro rata to the DISC's shareholders as a dividend for any taxable year of the DISC shall not exceed the lesser of the DISC's accumulated DISC income at the beginning of such year or the corporation's accumulated earnings and profits at the beginning of such year (but not less than zero)—

(i) Increased by any DISC income of the corporation for such year as defined in § 1.996–3(b)(2) (that is, any excess of the DISC's earnings and profits for such year over the sum of the amounts described in paragraphs (a)(1) through (a)(6) of this section), or

(ii) Decreased by any deficit in the DISC's earnings and profits for such year.

For example, if a DISC has a deficit in accumulated earnings and profits at the beginning of a taxable year of $10,000, current earnings and profits of $12,000, no amounts described in paragraphs (a)(1) through (a)(6) of this section for the year, and foreign investment attributable to producer's loans for the taxable year of $5,000, the DISC would have a deemed distribution described in paragraph (a)(7) of this section of $5,000 for the taxable year. As a further example, assume that the DISC had accumulated earnings and profits of $13,000 at the beginning of the taxable year, accumlated DISC income of $10,000 at the beginning of the taxable year, a deficit in earnings and profits for the taxable year of $12,000, no amounts described in paragraphs (a)(1) through (a)(6) of this section for the taxable year, and foreign investment attributable to producer's loans for the taxable year of $5,000. Under these facts the DISC would have no deemed distribution described in paragraph (a)(7) of this section for the taxable year because the DISC had no DISC income for the taxable year and the current year's deficit in earnings and profits subtracted from the DISC's accumulated DISC income at the beginning of the year produces a negative amount. For rules relating to the carryover to a subsequent year of the $5,000 of foreign investment attributable to producer's loans, see § 1.995–5(a)(6).

(3) *Ordering rule when limitation applies.* If, by reason of the limitation described in paragraph (b)(1) of this section, less than the sum of the amounts described in paragraph (a)(1) through (a)(6) of this section is deemed distributed, then the portion of such sum which is deemed distributed shall be attributed first to the amount described in paragraph (a)(1), to the extent thereof; second to the amount described in paragraph (a)(2), to the extent thereof; third to the amount described in paragraph (a)(3), to the extent thereof; and so forth, and finally to the amount described in paragraph (a)(6).

(c) *Examples.* Paragraphs (a) and (b) of this section may be illustrated by the following examples:

Example (1). Y is a corporation which uses the calendar year as its taxable year and elects to be treated as a DISC beginning with its taxable year beginning January 1, 1985. X, a corporation, is Y's sole shareholder. In 1985, X transfers certain property to Y in exchange for Y's stock in a transaction in which X does not recognize gain or loss by reason of the application of section 351(a). Included in the property transferred to Y is depreciable property described in paragraph (a)(3) of this section on which X realizes, and does not recognize by reason of the application of section 1245(b)(3), a gain of $20,000. If X had sold such property for cash, the $20,000 gain would have been recognized as ordinary income under section 1245. Also included in the transfer to Y are 100 shares of stock in a third corporation (which is not a related foreign export corporation) on which X realizes, but does not recognize, a gain of $5,000. In 1986, Y sells such property and recognizes a gain of $25,000 on the depreciable property and $8,000 on the 100 shares of stock. Y has accumulated earnings and profits at the beginning of 1986 of $5,000, earnings and profits for 1986 of $72,000, and taxable income for 1986 of $100,000. At the beginning of 1986, Y has $6,000 of accumulated DISC income, no previously taxed income, and a deficit of $1,000 of other earnings and profits. The total qualified export receipts of Y for 1986 are less than $10 million and there were no transactions in military property. Under these facts and the additional facts assumed in the table below, X is treated as having received a deemed distribution taxable as a dividend of $46,000 on December 31, 1986, determined as follows:

(1) Gross interest derived by Y in 1986 from producer's loans	$7,000
(2) Amount of gain on depreciable property (lesser of Y's recognized gain ($25,000) or X's gain not recognized on section 1245 property ($20,000))	20,000
(3) Amount of gain on stock (lesser of Y's recognized gain ($8,000) or X's gain not recognized ($5,000))	5,000
(4) One-seventeenth of the excess of the DISC's taxable income for 1986 over the sum of lines (1), (2) and (3) (1/17 of $100,000 minus $32,000))	$4,000
(5) Limitation on lines (1) through (4):	
(a) Sum of lines (1) through (4)	$36,000
(b) Earnings and profits for 1986	72,000
(c) Lesser of lines (5) (a) or (b)	$36,000
(6) Amount determined under paragraph (a) (7) of this section:	
(a) Foreign investment attributable to producer's loans under $1.995–5	$10,000
(b) Sum of the lesser of accumulated earnings and profits at beginning of 1986 ($5,000) or accumulated DISC income at beginning of 1986 ($6,000), plus excess of earnings nd profits for 1986 over line (5) (c) ($72,000 minus $36,000)	$41,000
(c) Lesser of lines (6) (a) or (b)	$10,000
(7) Total deemed distribution for 1986 (sum of lines (5) (c) and (6) (c))	$46,000

Example (2). Assume the facts are the same as in example (1), except that the earnings and profits for 1986 are only $30,000. Under these facts, X is treated as receiving a deemed distribution taxable as a dividend of $35,000 on December 31, 1986, determined as follows:

(5) Limitation on lines (1) through (4) of example (1):	
(a) Line (5)(a) of example (1)	$36,000
(b) Earnings and profits for 1986	$30,000
(c) Lesser of lines (5)(a) or (b)	$30,000
(6) Amount determined under paragraph (a)(7) of this section:	
(a) Line (6)(a) of example (1)	$10,000
(b) Sum of the lesser of accumulated earnings and profits at beginning of 1986 ($5,000) or accumulated DISC income at beginning of 1986 ($6,000), plus excess of earnings and profits for 1986 over line (5) (c) ($30,000 minus $30,000)	$5,000
(c) Lesser of lines (6) (a) or (b)	$5,000
(7) Total deemed distribution for 1986 (sum of lines (5)(c) and (6)(c)	$35,000

Example (3). Assume the facts are the same as in example (1), except that Y has a deficit in accumulated earnings and profits at at the beginning 1986 of $4,000. This deficit is comprised of accumulated DISC income of $1,000, no previously taxed income and a deficit in other earnings and profits of $5,000. Assume also that Y has earnings and profits for 1986 of $45,000. Under these facts, X is treated as receiving a deemed distribution taxable as a dividend in the amount of $45,000 on December 31, 1986. Determined as follows:

(5) Limitation on lines (1) through (4) of example (1):	
(a) Line (5)(a) of example (1)	$36,000
(b) Earnings and profits for 1986	$45,000
(c) Lesser of lines (5) (a) or (b)	$36,000
(6) Amount determined under paragraph (a)(7) of this section:	
(a) Line (6)(a) of example (1)	$10,000
(b) Sum of the lesser of accumulated earnings and profits at beginning of 1986 ($4,000 deficit—but not less than zero) or accumulated DISC income at beginning of 1986 ($1,000), plus excess of earnings and profits for 1986 over amount on line (5)(c) (45,000 minus $36,000)	$9,000
(c) Lesser of lines (6)(a) or (b)	$9,000
(7) Total deemed distribution for 1986 (sum of lines (5)(c) and (6)(c))	$45,000

(d) *Special rules for certain tax-free acquisitions of property by the DISC*—(1) *Exchanges by DISC.* For purposes of paragraph (a)(2)(i) and (3)(i) of this section, if—

(i) A DISC acquires property in a first transaction and in a second transaction it disposes of such property in exchange for other property, and

(ii) By reason of the application of section 1031 (relating to like-kind exchanges) or section 1033 (relating to involuntary conversions), the basis in the DISC's hands of the other property acquired in such second transaction is determined in whole or in part with reference to the basis of the property acquired in the first transaction,

then upon a disposition of such other property in a third transaction by the DISC such other property shall be treated as though it had been transferred to the DISC in the first transaction. Thus, if the first transaction is a purchase of the property for cash, then paragraph (a) (2) and (3) of this section will not apply to a sale by the DISC of the other property acquired in the second transaction.

(2) *Transfer of another DISC.* For purposes of paragraph (a) (2)(i) and (3)(i) of this section, if a DISC acquires property in a first transaction and it transfers such property to a transferee DISC in a second transaction in which the transferor DISC's gain is not recognized in whole or in part, then such property shall be treated as though it had been transferred to the transferee DISC in the same manner in which it was acquired in the first transaction by the transferor DISC. For example, if X and Y are both DISCs, and if X transfers property to Y in a second transaction in which gain or loss is not recognized, paragraph (a) (2) or (3) of this section does not apply to a sale of such property by Y in a third transaction if X had acquired the property in a first transaction by a cash purchase. If, however, X acquired the property from a transferor other than a DISC in the first transaction in which the transferor's realized gain was not recognized, then paragraph (a) (2) or (3) of this section may apply to a sale by Y if the other conditions of paragraph (a) (2) or (3) are met.

(3) *Limitation on amount recognized by DISC.* If a DISC acquires property in a second transaction described in paragraph (d) (1) or (2) of this section in which it (or, in the case of a second transaction described in paragraph (d)(2), the transferor DISC) recognizes a portion (but not all) of the realized gain, then the amount described in paragraph (a)(2)(ii) or (a)(3)(ii) of this section with respect to a disposition by the DISC of such acquired property in a third transaction shall not exceed the amount of the transferor's gain which was not recognized on the first transaction minus the amount of gain recognized by the DISC (or transferor DISC) on the second transaction.

(4) *Examples.* The provisions of this paragraph (d) are illustrated by the following examples:

Example (1). X and Y are corporations each of which qualifies as a DISC and uses the calendar year as its taxable year. In 1985, X acquires section 1245 property in a first transaction in which the transferor's entire realized gain of $17 is not recognized. In 1986, X transfers such property to Y in a second transaction in which X realizes a gain of $20 of which only $4 is recognized. (On December 31, 1986, X's shareholders are treated as having received a distribution taxable as a dividend which includes such $4 under paragraph (a)(3) of this section, provided the limitation in paragraph (b) of this section is met.) Assume further that in a third transaction in 1987, Y sells such property and recognizes a gain of $25. Under section 995(b)(1)(C) and paragraph (a)(3)(ii) of this section, Y's shareholders are treated as having received a distribution taxable as a dividend on December 31, 1987, of $13, which is the amount of the gain not recognized on the first transaction ($17) reduced by the amount recognized by X on the second transaction ($4).

Example (2). Z is a DISC which uses the calendar year as its taxable year. In a first transaction in 1985, Z acquires section 1245 property in exchange for its stock from A, an individual who is Z's sole shareholder, in a transaction in which A's realized gain of $30 is not recognized by reason of section 351(a). In a second transaction in 1986, Z exchanges such property for other property in a like-kind exchange to which section 1031(b) applies and recognizes $10 of a realized gain of $35. (On December 31, 1986, A is treated as having

received a distribution taxable as a dividend which includes such $10 under paragraph (a)(3) of this section, provided the limitation of paragraph (b) of this section is met.) In a third transaction in 1987, Z sells the property acquired in the like-kind exchange and recognizes a gain of $25. Under section 995(b)(1)(C) and paragraph (a)(3)(ii) of this section, A is treated as having received a distribution taxable as a dividend on December 31, 1987, of $20, which is the amount of gain not recognized by A on the first transaction ($30) reduced by the amount of gain recognized by Z on the second transaction ($10).

(e) *Carryback of net operating loss and capital loss to prior DISC taxable year.* For purposes of sections 991, 995 and 996, the amount of the deduction for the taxable year under section 172 for a net operating loss carryback or carryover or under section 1212 for a capital loss carryback or carryover shall be determined in the same manner as if the DISC were a domestic corporation which had not elected to be treated as a DISC. Thus, the amount of the deduction will be the same whether or not the corporation was a DISC in the year the loss is incurred or in the year to which the loss is carried. For provisions setting forth adjustments to the DISC's, or former DISC's, deemed distributions, adjustments to its divisions of earnings and profits, and other tax consequences arising from such carrybacks, see § 1.996–8. See § 1.996–9 for the reduction of the amount of any net operating loss or capital loss carryforward of a DISC to the extent of the DISC's accumulated DISC income as of December 31, 1984.

Par. 9. Section 1.995–7 is amended by revising the title of the section and by revising paragraph (a) to read as follows:

§ 1.995–7 Taxable income attributable to base period export gross receipts in taxable years beginning after December 31, 1975, and ending before January 1, 1985.

(a) *General rule.* This section provides rules for the computation of taxable income attributable to base period export gross receipts. Section 995(b)(1)(E) (as in effect prior to its amendment by section 802(b)(1) of the Tax Reform Act of 1984) treats taxable income attributable to base period export gross receipts (as defined in paragraph (c)(4) of this section) as a deemed distribution to a shareholder of a DISC for taxable years of a DISC beginning after December 31, 1975, and ending before January 1, 1985. The amount attributable to base period gross receipts that must be included in the income of a shareholder will be referred to as the nonincremental distribution. The nonincremental distribution must be computed for each taxable year of a DISC beginning after December 31, 1975, and ending before January 1, 1985. Each such year shall be referred to as the computation year.

* * * * *

Par. 10. A new § 1.995–8 is added immediately after § 1.995–7, to read as follows:

§ 1.995–8 Taxable income attributable to qualified export receipts which exceed $10 million for a taxable year ending after 1984.

(a) *In general.* This section provides rules for the computation of the taxable income of the DISC attributable to qualified export receipts (as defined in section 993(a) and the regulations thereunder) of the DISC which exceed $10 million for a taxable year beginning after December 31, 1984. Section 995(b)(1)(E) treats the amount of such taxable income as a deemed distribution pro rata to the shareholders of the DISC for taxable years of the DISC beginning after December 31, 1984. If the DISC's qualified export receipts for the taxable year exceed the $10 million amount, the corporation does not lose its status as a DISC, but there will be a deemed distribution of all of the DISC's taxable income attributable to the qualified export receipts for the taxable year which exceed the $10 million amount. Under section 995(b)(4) and paragraph (f) of this section, only one $10 million amount is allowed among all DISC's which are members of the same controlled group (as defined in section 993(a)(3)). If the DISC's taxable year is a short period as defined in section 443, and for such year the DISC is not a member of a controlled group which includes any other DISC, the $10 million amount for such year shall be reduced to the amount which bears the same ratio to $10 million as the number of days in such short period bears to 365, and for purposes of this section, all references to the $10 million amount shall refer to such reduced amount. If the qualified export receipts of the DISC for the taxable year do not exceed the $10 million amount, section 995(b)(1)(E) and this section do not apply. The $10 million amount is an annual amount; thus, if $10 million exceeds the DISC's qualified export receipts for the taxable year, such excess may not be carried or applied to any other taxable year. For purposes of this section, the term "excess receipts" means the qualified export receipts of the DISC for the taxable year which exceed the $10 million amount. See paragraph (d) of this section for coordination of the deemed distribution under section 995(b)(1)(E) and the other deemed distributions under section 995(b)(1).

(b) *Determination of qualified export receipts which exceed $10 million*—(1) *General rule.* If the qualified export receipts of the DISC for the taxable year exceed the $10 million amount, the DISC shall segregate the qualified export receipts for the taxable year into two amounts, those which shall be considered not to exceed the $10 million amount, and those which shall be considered to exceed the $10 million amount. Except as provided in paragraphs (b) (2) and (3) of this section, the selection of the excess receipts may be made by the DISC in any manner. In general, the selection of the excess receipts permits the DISC to allocate the $10 million amount to the qualified export receipts of those transactions during the taxable year which permit the greatest amount of taxable income to be allocated to the DISC under the inter-company pricing rules of section 994. Except as provided in paragraphs (b) (2) and (3) of this section, the allocation may be made on a transaction-by-transaction basis among all the transactions occurring during the taxable year, or on the basis of groupings consistent with the groupings used by the DISC for purposes of applying the inter-company pricing rules under § 1.994–1(c)(7). Specifically, the $10 million amount is not required to be allocated to transactions in the order in which they occur during the taxable year, nor is the amount required to be allocated ratably to all transactions occurring during the taxable year. The allocation of the $10 million amount shall be made by the DISC on or before the due date of the DISC's return for the taxable year. The allocation of the $10 million amount may thereafter be amended only if (i) the DISC and all of the DISC's shareholders file amended returns consistent with any change in the allocation of the $10 million amount, and (ii) at the time such amended returns are filed, at least 12 full months remain in the statutory period (including extensions) for the assessment of a deficiency against any shareholder of the DISC. If less than 12 full months of such period remain with respect to any shareholder, the director of the service center with which such shareholder files its income tax return will, upon request, enter into an agreement extending such statutory period for the limited purpose of assessing any deficiency against such shareholder attributable to the change in the allocation of the $10 million amount.

(2) *Exception for related and subsidiary services.* Notwithstanding paragraph (b)(1) of this section, if qualified export receipts for the taxable year arise from a transaction in which services are or are to be provided which are related and subsidiary to any qualified sale, exchange, lease, rental, or other disposition of export property (within meaning of section 993(a)(1)(C) and § 1.993–1(d)), the total amount of the qualified export receipts derived from such transaction must either be allocated in total, or not allocated at all to the $10 million amount. For example, if the qualified export receipts derived from a transaction are $50, of which $4 are attributable to related and subsidiary services and $46 are attributable to the sale of export property, the DISC must allocate either $50 or $0 of the qualified export receipts from such transaction to the $10 million amount; the DISC may not choose to allocate to the $10 million amount only the $4 attributable to the services or only the $46 attributable to the export property.

(3) *Ratable allocation where last transaction selected exceeds $10 million amount.* If, in selecting among the qualified export receipts of the taxable year, the qualified export receipts of the last transaction so selected by the DISC (when added to the receipts selected from other transactions) result in the DISC exceeding the $10 million amount for such year, the amount of qualified export receipts and taxable income attributable to such transaction which, for purposes of section 995(b)(1)(E) and this section shall be considered not to exceed the $10 million amount, shall be apportioned in proportion to (i) the amount of the qualified export receipts of the transaction that do not (when added to the receipts selected from other transactions) cause the DISC to exceed the $10 million amount, to (ii) the total amount of qualified export receipts from such transaction. The remainder shall be considered attributable to excess receipts for the taxable year. The deductions and the taxable income attributable to such transaction shall also be apportioned in the same manner. For example, assume that for the taxable year the DISC has selected nine transactions having total qualified export receipts of $9,975,000 as transactions to which the $10 million amount is to be applied, and that the tenth transaction the DISC would select has qualified export receipts of $40,000. In this instance, $25,000 ($10,000,000 −$9,975,000) of the qualified export receipts from such tenth transaction shall be considered not to exceed the $10 million amount, and $15,000 ($40,000 −$25,000) of such receipts shall be considered to be excess receipts. Accordingly, 37.5 percent (15/40) of the taxable income attributable to such transaction shall be deemed to be attributable to excess receipts.

(c) *Deductions taken into account.* After identifying the transactions of the taxable year which are considered to exceed the $10 million amount, the DISC shall reduce such excess receipts by, where applicable, the cost of goods sold attributable to such excess receipts, and the deductions of the DISC properly allocated and apportioned to such excess receipts in accordance with § 1.861–8. Such deductions include all applicable deductions from gross income for the taxable year provided under part VI of subchapter B of chapter 1 of the Code. The difference between the amount of the excess receipts and the deductions attributable to such excess receipts is the taxable income of the DISC attributable to qualified export receipts of the DISC for the taxable year which exceed the $10 million amount. Except as provided in paragraph (d) of this section, this amount of taxable income is treated as the deemed distribution under section 995(b)(1)(E) for the taxable year.

(d) *Coordination with other deemed distributions under section 995(b)(1).* If (but for this paragraph (d)) an amount of taxable income would be treated as distributed for the taxable year under section 995(b)(1)(E) and also under subparagraph (A), (B), (C) or (D) of section 995(b)(1), such amount of taxable income shall be treated as distributed for such taxable year under that other subparagraph and not under section 995(b)(1)(E) and shall be subtracted from the amount determined under paragraph (c) of this section. In the case of military property, as defined in section 995(b)(3)(B) and § 1.995–6(c), 50 percent of the taxable income of the DISC for the taxable year attributable to such property is deemed distributed under section 995(b)(1)(D) and § 1.995–6. The remainder of the taxable income attributable to military property is deemed distributed under section 995(b)(1)(E) unless the gross receipts attributable to such property is allocated to the $10 million amount.

(e) *Illustration.* The principles of this section may be illustrated by the following example:

Example—(i) *Facts.* P is a C corporation that uses the fiscal year ending September 30 as the taxable year. P owns all of the stock in Corporation D. D elects to be treated as a DISC for its taxable year beginning January 1, 1985. Under section 441 (h), D must use the same taxable year as P. Accordingly, D's taxable year beginning January 1, 1985, will end on September 30, 1985. Assume that in D's taxable year ending September 30, 1985, D sold four aircraft in separate transactions (S1, S2, M1, M2). Two of the sales (M1 and M2) were of military property. D also derived $12,000 of interest from producer's loans during the taxable year. D's qualified export receipts for the taxable year are $9,762,000, and assume that the deductions properly allocated and apportioned thereto are $8,550,000, as follows:

	Receipts	Deductions	Taxable income
Producer's loan interest	$12,000	0	$12,000
Sales:			
S1	3,750,000	$3,330,000	420,000
S2	3,000,000	2,670,000	330,000
M1	1,500,000	1,200,000	300,000
M2	1,500,000	1,350,000	150,000
	9,762,000	8,550,000	1,212,000

(ii) *Limitation on $10 million amount.* D's taxable year ending September 30, 1985, is a short period consisting of 273 days. Accordingly, the $10 million amount specified in section 995 (b) (1) (E) is limited to $7,479,452 (273/365 x $10 million) for the taxable year.

(iii) *Amount distributed under section 995 (b) (1) (E).* D allocates all of the qualified export receipts from S1 and S2, and $729,452 of the receipts from M1 against the $7,479,452 amount ($3,750,000 + $3,000,000 + $729,452 = $7,479,452), leaving the following amounts, reduced by the deductions properly apportioned and allocated thereto, as the amount distributed for the taxable year under section 995 (b) (1) (E):

	Excess receipts	Deductions	Taxable income
M1	$1,500,000	$1,200,000	$300,000
Less: Amount of M1 not in excess of limitation	(729,452)	(583,562) (1)	(145,890)
M1 Excess receipts	770,548	616,438	154,110
M2	$1,500,000	1,350,000	150,000
Producer's loan interest	$12,000	0	12,000
Taxable income attributable to excess receipts, see § 1.995–8(c)			316,110
Less: Amounts otherwise distributed under section 995(b)(1), see § 1.995–8(d):			
Section 995(b)(1)(A)—Producer's loan interest			(12,000)

(1) $729,452/$1,500,000 x $1,200,000 = $583,562. See paragraph (b)(3) of this section.

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Section 995(b)(1)(D)—50% of taxable income attributable to sales of military property:	
M1: $154,110 x 50%	$(77,055)
M2: $150 x 50%	(75,000)
Deemed distribution under section 995 (b)(1)(E) for taxable year	152,055

(iv) *Deemed distribution for 1985.* The amount of D's deemed distribution under section 995 (b)(1) for D's taxable year ending September 30, 1985, is $437,464 determined as follows:

Section 995(b)(1)—	Amount
(A) Producer's loan interest	$12,000
(D) One-half of taxable income attributable to military property (50% of $450,000)	225,000
(E) Taxable income attributable to excess receipts	152,055
(F) One-seventeenth of the excess of taxable income (sum of amounts in (A), (D) and (E)) 1/17 x ($1,212,000-$12,000-$225,000-$152,055)	48,409
	437,464

(f) *Members of a controlled group limited to one $10 million amount*—(1) *General rule.* For purposes of section 995 (b)(1)(E) and this section, in the case of a controlled group of corporations (as defined in section 993(a)(3) and § 1.993–1(k)), all DISCs which are members of such controlled group on a December 31, shall, for their taxable years which include such December 31, be limited to one $10 million amount. The $10 million amount shall be allocated equally among the member DISCs of such controlled group for their taxable years including such December 31, unless all of the member DISCs consent to an apportionment plan providing for an unequal allocation of the $10 million amount. Such a plan shall provide for the apportionment of a fixed dollar amount to one or more of the corporations, and the sum of the amounts so apportioned shall not exceed the $10 million amount. If the taxable year includng such December 31 of any member DISC is a short period (as defined in section 443), the portion of the $10 million amount allocated to such member DISC for such short period under the preceding sentence shall be reduced to the amount which bears the same ratio to the amount so allocated as the number of days in such short period bears to 365. The consent of each member DISC to the apportionment plan for the taxable year shall be signified by a statement which satisfies the requirements of and is filed in the manner specified in § 1.1561–3(b). An apportionment plan may be amended in the manner prescribed in § 1.1561–3(c), except that an original or an amended plan may not be adopted with respect to a particular December 31 if at the time such original or amended plan is sought to be adopted, less than 12 full months remain in the statutory period (including extensions) for the assessment of a deficiency against any shareholder of a member DISC the tax liability of which would change by the adoption of such original or amended plan. If less than 12 full months of such period remain with respect to any such shareholder, the director of the service center with which such shareholder files its income tax return will, upon request, enter into an agreement extending such statutory period for the limited purpose of assessing any deficiency against such shareholder attributable to the adoption of such original or amended apportionment plan.

(2) *Membership determined under section 1563(b).* for purposes of paragraph (f) of this section, the determination of whether a DISC is a member of a controlled group of corporations with respect to any taxable year shall be made in the manner prescribed in section 1563 (b) and the regulations thereunder.

(3) *Certain short taxable years*—(i) *General rule.* If a DISC has a short period (as defined in section 443) which does not include a December 31, and such DISC is a member of a controlled group of corporations which includes one or more other DISC's with respect to such short period, then the amount described in section 995(b)(1)(E) with respect to the short period of such DISC shall be determined by (A) dividing $10 million by the number of DISCs which are members of such group on the last day of such short period, and (B) multiplying the result by a fraction, the numerator of which is the number of days in such short period and the denominator of which is 365. For purposes of the preceding sentence, section 1563(b) shall be applied as if the last day of such short period were substituted for December 31. Except as provided in paragraph (f)(3)(ii) of this section, a DISC having a short period not including a December 31 may not enter into an apportionment plan with respect to such short period.

(ii) *Exception.* If the short period not including a December 31 of two or more DISCs begins on the same date and ends on the same date and such DISCs are members of the same controlled group, such DISCs may enter into an apportionment plan for such short period in the manner provided in paragraph (f)(1) of this section with respect to the combined amount allowed to each of such DISCs under paragraph (f)(3)(i).

(4) *Effect on DISC shareholders.* The computation of the deemed distribution under section 995(b)(1)(E) and this section for a taxable year, as affected by the controlled group rules of this paragraph (f), applies to a shareholder of a DISC whether or not such shareholder is a member of the controlled group which includes such DISC.

Par. 11. New § 1.995(f)–1 is added immediately after § 1.995–8 to read as follows:

§ 1.995(f)–1 Interest charge on DISC-related deferred tax liability for periods after 1984.

(a) *Interest charge*—(1) *In general.*— Effective for taxable years ending after December 31, 1984, section 995(f) requires that each shareholder of a DISC shall pay for each taxable year interest on the shareholder's DISC-related deferred tax liability (as defined in paragraph (d) of this section) for such year at a rate of interest equal to the base period T-bill rate (as defined in paragraph (b)(2) of this section). See paragraph (b) of this section for the computation of the amount of the interest charge. The interest charge is computed on Form 8404. For purposes of this section, the term "DISC" includes a former DISC as defined in section 992 (a)(3). Accordingly, a shareholder of a former DISC is required to pay the annual interest charge on such shareholder's DISC-related deferred tax liability.

(2) *Related rules.* (i) The interest charge is an annual charge and is imposed on the shareholder of the DISC. The interest charge is not imposed on the DISC. Under section 995(f)(6), the amount of a shareholder's interest charge for any taxable year is treated for all purposes of the Code as interest paid or accrued on an underpayment of tax. Accordingly, subject to all otherwise applicable limitations on the deduction for interest, the amount of the annual interest charge imposed on the shareholder is deductible by the shareholder for the taxable year in which the amount of the interest charge is paid, in the case of a shareholder which uses the cash receipts and disbursements method of accounting, or accrued, in the case of a shareholder which uses the accrual method of accouting. See paragraph (j)(2) of this section. Because the interest charge imposed on the shareholder is treated as interest, the payment or accrual of the interest charge does not increase or decrease the shareholder's basis in the stock of the DISC, and does not increase or decrease the taxable income or earnings and profits of the DISC.

(ii) Under section 995(f)(2), the shareholder's DISC-related deferred tax liability for a taxable year, that is, the amount considered to be the "principal" amount of the "loan" on which the interest charge is computed, is determined only with reference to the accumulated DISC income (A) derived by the DISC in periods after 1984, and

(B) derived by the DISC in taxable years of the DISC that ended before the taxable year of the shareholder for which the interest charge is being determined.

(iii) No payments of estimated tax under section 6654 (in the case of individuals) or 6154 (in the case of corporations) are required with respect to the interest charge imposed by section 995(f)(1).

(iv) Paragraph (g) of this section contains rules for determining the interest charge for a taxable year in which shares in the DISC are transferred or redeemed. Paragraph (h) of this section provides rules for the computation and allocation of the interest charge where the DISC's shares are held by S corporations, trusts, estates or partnerships.

(b) *Computation of the interest charge*—

(1) *General rule.* Under section 995(f)(1), the amount of interest charge imposed on a DISC shareholder for a taxable year is equal to the product of—

(i) The shareholder's DISC-related deferred tax liability for such year, multiplied by,

(ii) A factor, which is equal to the base period T-bill rate compounded daily for the number of days in the shareholder's taxable year for which the interest charge is being computed.

See section 6622 for the requirement that all interest required to be paid under the Code be compounded daily. See paragraph (c) of this section for obtaining the table of base period T-bill rate factors reflecting daily compounding of the base period T-bill rate. See paragraph (g) of this section for special rules for computing the amount of the interest charge for a taxable year in which the shareholder transfers or acquires stock in the DISC.

(2) *Base period T-bill rate.* Under section 995(f)(4), the "base period T-bill rate" is the annual rate of interest determined by the Secretary to be equivalent to the average investment yield of United States Treasury bills with maturities of 52 weeks which were auctioned during the one-year period ending on September 30 of the calendar year ending with (or, if the shareholder's taxable year is not the calendar year, of the most recent calendar year ending before) the close of the taxable year of the DISC shareholder for which the shareholder's interest charge is being determined. For example, if a DISC shareholder's taxable year is a fiscal year ending on June 30, the base period T-bill rate applicable to the shareholder's taxable year ending June 30, 1987, would be the rate determined for the one-year period ending September 30, 1986. If the shareholder's taxable year is the calendar year, the base period T-bill rate applicable to the shareholder's taxable year ending December 31, 1987, would be the rate determined for the one-year period ending September 30, 1987.

(c) *Publication of base period T-bill rate and use of the table of factors for daily compounding.* The base period T-bill rate for each one-year period ending on September 30, as determined by the Secretary, shall be certified to the Commissioner and shall be published in a revenue ruling in the Internal Revenue Bulletin. Such revenue ruling shall also contain a table of factors reflecting daily compounding of the base period T-bill rate. To compute the amount of the interest charge for the taxable year under paragraph (b) of this section the shareholder shall use the base period T-bill rate factor corresponding to the number of days in the shareholder's taxable year for which the interest charge is being computed. Generally, the factor to be used will be the factor for 365 days. The factor to be used will be other than the factor for 365 days if the shareholder's taxable year for which the interest charge is being determined is a short taxable year, if the shareholder uses the 52–53 week taxable year, or if the shareholder's taxable year is a leap year. For example, if a DISC shareholder which had been using the calendar year as the taxable year changes its taxable year to the fiscal year ending January 31, then in computing the interest charge for the short taxable year January 1 to Janaury 31 required to effect such change, the shareholder will use the factor for a taxable year of 31 days.

(d) *DISC-related deferred tax liability*—(1) *Purpose.* for taxable years of a DISC shareholder ending after December 31, 1984, the shareholder's DISC-related deferred tax liability represents, in general terms, the cumulative amount of income tax that is considered to have been deferred from taxation in prior taxable years (ending after 1984) of the shareholder by use of the DISC. A separate interest charge is imposed on the shareholder for each taxable year of the shareholder until the deferred DISC income in distributed or deemed distributed by the DISC. The amount of the shareholder's DISC-related deferred tax liability is determined for each taxable year by taking the difference between the shareholder's income tax liability for the taxable year computed first with, and then without, the accumulated DISC income that has been deferred from taxation in prior taxable years of the shareholder. See paragraph (f) of this section for the definition of "deferred DISC income." This paragraph (d) provides certain special rules to be used solely for the purpose of determining the amount of the shareholder's DISC-related deferred tax liability. for any taxable year, these rules may result in the amount of the shareholder's DISC-related deferred tax liability being different than the amount of additional income tax that the shareholder would owe for such year if the deferred DISC income were received by the shareholder in an actual distribution to which section 996(a) applies.

(2) *In General.* (i) Under section 995(f)(2), the "shareholder's DISC-related deferred tax liability", with respect to any taxable year of a DISC shareholder ending after 1984, is the excess of—

(A) The amount which would be the tax liability (as defined in paragraph (3) of this section) of the shareholder for the taxable year if the amount of the deferred DISC income (as described in paragraph (f) of tis section) of such shareholder for such taxable year were included in the shareholder's gross income as ordinary income, over

(B) The actual amount of the shareholder's tax liability for such taxable year.

(ii) If in the taxable year the shareholder owns stock in more than one DISC, the deferred DISC income of such shareholder for the taxable year is the sum of the amounts of deferred DISC income of such shareholder with respect to each of such DISCs.

(iii) Where the DISC shareholder is a member of an affiliated group of corporations that files a consolidated return, the affiliated group's DISC-related deferred tax liability for the taxable year is the excess of (A) the amount which would be the group's tax liability (as defined in paragraph (3) of this section) including in gross income the deferred DISC income for the taxable year of each DISC shareholder which is a member of the group, over (B) the amount of the group's actual tax liability for such taxable year.

(iv) Except as provided in paragraphs (d) and (e) of this section, the computations necessary to determine the shareholder's DISC-related deferred tax liability shall be made under the law and the rates of tax applicable to the shareholder's taxable year for which the computations are made.

(v) The shareholder's DISC-related deferred tax liability for a taxable year is computed on Form 8404. See paragraph (j) of this section for the manner and time for filing or amending

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Form 8404 and paying the interest charge.

(3) *Carrybacks not taken into account.* Under section 995(f)(2)(A), the shareholder's DISC-related deferred tax liability for any taxable year is determined without regard to any net operating loss or capital loss carryback or any credit carryback to such taxable year from any succeeding taxable year. For example, if for 1987 a calendar year shareholder of a DISC has a DISC-related deferred tax liability for the taxable year and thereby incurs an interest charge for such taxable year, and if the shareholder thereafter has a net operating loss (as defined in section 172(c)) for calendar year 1988, all or a portion of which is a net operating loss carryback to the 1987 taxable year, the shareholder's DISC-related deferred tax liability and interest charge for the 1987 taxable year are not affected by such net operating loss carryback, even if the shareholder recovers the total amount of the tax it paid for taxable year 1987, and has a net operating loss carryover to future taxable years.

(4) *Carryovers not taken into account*— (i) *General rule.* Under section 995(f)(2)(A)(i), the determination of the shareholder's tax liability for the taxable year including the deferred DISC income shall be made by not taking into account any loss, deduction or credit to the extent that such loss, deduction or credit may be carried by the shareholder to any other taxable year. If, however, the taxable year is the last taxable year to which the amount of a carryforward (of either a deduction or a credit) may be carried, the shareholder's tax liability including the deferred DISC income shall be computed with regard to the full amount of such carryforward, because the amount of the carryforward cannot be carried to another taxable year of the shareholder.

(ii) *Examples.* The provisions of this paragraph (d)(4) may be illustrated by the following examples:

Example (1). Assume that in 1986, a calendar year DISC shareholder recognizes only ordinary business income of $10,000, and has deferred DISC income for the taxable year of $5000. If the shareholder also had a net operating loss carryforward to 1986 of $12,000, the shareholder would be allowed a $10,000 net operating loss deduction for 1986 and would have a net operating loss carryforward to 1987 of $2000. For purposes of determining the shareholder's DISC-related deferred tax liability for 1986, the shareholder's computation of its tax liability including the deferred DISC income under section 995(f)(2)(A)(i) may take into account a new operating loss deduction of only $10,000, because $2000 of the total loss carryforward may be carried to the shareholder's following taxable year. Accordingly, the shareholder's taxable income for 1986 including the deferred DISC income is $5000 ($10,000 of ordinary income, plus $5000 of deferred DISC income, less the net operating loss deduction of $10,000 of ordinary income, plus $5000 of deferred DISC income, less the net operating loss deduction of $10,000). However, if 1986 were the last taxable year to which the $12,000 net operating loss carryforward could be carried, then the shareholder's tax liability including the deferred DISC income under section 995 (f) (2) (A) (i) may be computed by taking the full amount of the loss carryforward into account.

Example (2). Assume that in 1986, a calendar year DISC shareholder places in service an amount of property such that the amount of the investment credit determined for the taxable year under section 46 is $25,000, and that the shareholder has no credit carryforwards to the taxable year from any earlier taxable year. Assume that for the shareholder's 1986 taxable year the amount of the credit allowed is limited to $20,000, because of the limitation on the amount of the credit allowed under section 38 (c), and that the remaining $5000 of the credit determined for the taxable year may be carried back 3 years or forward 15 years. In determining the shareholder's DISC-related deferred tax liability for the 1986 taxable year, the amount of the credit that may be allowed to reduce the shareholder's tax liability including the deferred DISC income under section 995(f)(2)(A)(i) is limited to $20,000, because the remaining $5000 of the credit may be carried to another taxable year.

Example (3). The facts are the same as in example (2). Assume that $2000 of the $5000 excess credit for 1986 was applied to reduce 1985 taxes, and that none of the remaining $3000 could be carried-back to any other taxable year. If in 1987, all of the $3000 credit carried-over from 1986 is applied to reduce the shareholder's 1987 actual tax liability, that $3000 credit is also to be used to reduce the shareholder's 1987 tax liability including the deferred DISC income under section 995(f)(2)(A)(i).

(5) *Adjustments not involving carryovers or carrybacks.* In computing the amount of the DISC shareholder's taxable income and tax liability including the deferred DISC income under section 995(f)(2)(A)(i), there shall be taken into account adjustments in amounts allowable as deductions and in amounts excluded from or included in gross income to the extent that such adjustments do not result in amounts which may be carried back or forward by the shareholder to any other taxable year. For example, in the case of a DISC shareholder who is an individual, the amount of medical expenses allowable as a deduction under section 213 must be redetermined when computing the individual's taxable income and tax liability including the deferred DISC income under section 995(f)(2)(A)(i). The amount of medical expenses allowable as a deduction decreases because the taxpayer's adjusted gross income, increased by the amount of the deferred DISC income, would increase the limitation on the deductible amount of medical expenses, and the medical expenses not allowed may not be carried to any other taxable year. As a further example, in the case of an individual or a corporation which is a DISC shareholder, the amount allowable as a charitable deduction under section 170 is not redetermined when computing the taxpayer's taxable income and tax liability including the deferred DISC income under section 995(f)(2)(A)(i), because the amount of charitable contributions made for the taxable year which are not allowable as a deduction for such year by reason of the percentage of income limitations under section 170(b) may be carried over to subsequent taxable years under section 170(d).

(6) *Deferred tax liability determined without regard to any consequential deduction or credit.* Except as provided in paragraph (d)(8) of this section, in computing the amount of the DISC shareholder's tax liability including the deferred DISC income under section 995(f)(2)(a)(i), there shall not be taken into account any additional deduction or credit that would be allowable for any item that would be paid or accrued if the deferred DISC income were actually distributed to the shareholder. For example, when computing the shareholder's tax liability including the deferred DISC income, no deduction shall be taken into account for the additional state or local income or franchise taxes that would be due if such deferred DISC income were actually distributed to the shareholder. In addition, to simplify the calculations, in the case of a DISC shareholder who uses the accrual method of accounting, no deduction for the current year's interest charge shall be taken into account in computing the shareholder's DISC-related deferred tax liability for the current taxable year. However, after the amount of the interest charge for the current taxable year has been determined, such amount may be taken into account as a deduction for the current taxable year in determining the amount of the shareholder's income tax liability under chapter 1 of the Code for the taxable year in the circumstances described in paragraph (j)(2)(ii) of this section.

(7) *Source of deferred DISC income.* The source of the deferred DISC income which is considered included in the shareholder's gross income for purposes of section 995(f)(2)(A)(i) shall be determined under section 861(a)(2)(D) and § 1.861–3(a)(5) in the same manner as if such amount were actually distributed to the DISC shareholder as a dividend.

(8) *Deemed paid foreign tax credit; separate limitation.* In the case of a DISC shareholder that is a corporation, if the shareholder elects the foreign tax credit for the taxable year, such shareholder shall, in computing its tax liability including the deferred DISC income, take into account any increase in the amount of the deemed paid foriegn tax credit under section 902(a) for foreign income taxes paid by the DISC to the extent that the deferred DISC income is treated as income from sources without the United States. In such case, in accordance with section 78, the shareholder shall also include the amount of such foreign income tax in computing its gross income including the deferred DISC income. Any increase in the amount of the foreign tax credit that would be allowable against the tax liability determined under section 995 (f)(2)(A)(i) with respect to the amount of the deferred DISC income shall be subject to the separate limitation required by section 904(d)(1)(B) in the same manner as if such amount were actually distributed to the DISC shareholder as a dividend.

(e) *Tax liability*— (1) *General rule.* Except as provided in paragraphs (e)(2) and (e)(3) of this section, for purposes of the two tax computations ("with and without" the deferred DISC income) required by section 995(f)(2) and paragraph (d) of this section, the term "tax liability" means the amount of the tax imposed on the DISC shareholder for the taxable year by chapter 1 of the Code, reduced by the credits (but not the credit carrybacks or carryovers described in paragraphs (d) (3) and (d) (4) of this section) allowable against such tax.

(2) *Certain taxes not to be taken into account.* For purposes of section 995 (f)(2) and paragraph (e)(1) of this section, any tax imposed by any of the following provisions shall not be treated as tax imposed by chapter 1 of the Code:

(i) Section 55 (relating to the alternative minimum tax) and

(ii) Any other provisons described in section 26 (b)(2) (relating to certain other taxes treated as not imposed by chapter 1 of the Code).

(3) *Certain credits not taken into account.* For purposes of section 995 (f)(2) and paragraph (e)(1) of this section, the credits allowed for the taxable year by the following sections shall not be taken into account in determining the DISC shareholder's tax liability:

(i) Section 31 (relating to taxes withheld on wages),

(ii) Section 32 (relating to the earned income credit), and

(iii) Section 34 (relating to the fuels credit).

(f) *Deferred DISC income*—(1) *In general.* Under section 995(f)(3)(A), for any taxable year of a DISC shareholder, the term "deferred DISC income" means the excess of—

(i) The shareholder's pro rata share of the DISC's accumulated DISC income (earned by the DISC in taxable years ending after December 31, 1984) as of the close of the computation year (as defined in paragraph (f)(2) of this section), over

(ii) The amount (if any) of distributions-in-excess-of-income (as defined in paragraph (f)(3) of this section) made by the DISC during the taxable year of the DISC immediately following the computation year.

Thus, in the simple case where the DISC has only one shareholder and the DISC and the shareholder have the same taxable year, the shareholder's deferred DISC income for the taxable year is the excess of the DISC's accumulated DISC income (derived from periods after 1984) at the beginning of the taxable year over the amount (if any) by which actual distributions for the taxable year which are considered to be made out of accumulated DISC income exceed the amount of DISC income for such year. Where shareholders of the DISC have a taxable year different from that of the DISC, the deferred DISC income is measured from the computation year, as described in paragraph (f)(2) of this section.

(2) *Computation year*—(i) *General rule.* Under section 995(f)(3)(B), with respect to any taxable year of a DISC shareholder, the "computation year" is the taxable year of the DISC ending with (or within, if the DISC and the shareholder do not have the same taxable year) the taxable year of the shareholder which precedes the taxable year of the shareholder for which the amount of deferred DISC income is being determined.

(ii) *Example.* The following example illustrates the relationship between the shareholder's taxable year and the DISC's computation year:

Example. Assume that a DISC, D, has two shareholders, A, the principal shareholder, and B, a minority shareholder. Shareholder A uses the calendar year as the taxable year, and shareholder B's taxable year is the fiscal year ending June 30. Under section 441(h), D must use the calendar year as the taxable year. In determining the amount of shareholder A's deferred DISC income for A's taxable year ending December 31, 1987, the computation year is D's taxable year ending December 31, 1986, that is, D's taxable year ending with shareholder A's taxable year preceding the taxable year of A for which A's deferred DISC income is being determined. In determining the amount of shareholder B's deferred DISC income for B's taxable year ending June 30, 1987, the computation year is D's taxable year ending December 31, 1985, that is, D's taxable year ending within B's taxable year preceding the taxable year of B for which B's deferred DISC income is being determined.

(3) *Distributions-in-excess-of-income.* Under section 995(f)(3)(C), with respect to any taxable year of a DISC, the term "distributions-in-excess-of-income", means the excess (if any) of—

(i) The amount of actual distributions made to the shareholder during such taxable year out of accumulated DISC income (as determined under section 996), over

(ii) The shareholder's pro rata share of the DISC income (as defined in section 996(f)) for such taxable year.

(4) *Illustrations.* The provisions of paragraph (f) of this section may be illustrated by the following example:

Example-(i) Facts. P corporation, which uses the calendar year as the taxable year, owns all of the stock of D, a domestic corporation which elects to be treated as a DISC for its taxable year beginning January 1, 1985. Under section 441(h), D must adopt the same taxable year as P; accordingly, D's taxable year beginning January 1, 1985, will end on December 31, 1985.

Assume that D has the following amounts for its three taxable years ending December 31, 1985, 1986 and 1987:

	1985	1986	1987
Taxable income and earnings and profits for the year	$45,000	$60,000	$40,000
Deemed distribution under section 995(b)(1)	5,000	10,000	15,000
DISC income for year	40,000	50,000	25,000
Actual distributions during year	0	20,000	60,000
Accumulated DISC income—end of year	40,000	85,000	65,000
Previously taxed income—end of year	5,000	0	0
Accumulated earnings and profits-end of year	45,000	85,000	65,000

(ii) *Result-1985.* Under section 995(f)(3), P will have no deferred DISC income for P's taxable year ending December 31, 1985, because D does not have accumulated DISC income derived from periods after 1984 as of the close of the computation year. With respect to P's taxable year ending December 31, 1985, the computation year under section 995(f)(3)(B) would be D's taxable year ending with or within P's taxable year ending December 31, 1984, which is prior to D's

current election to be treated as a DISC. Accordingly, because P has no deferred DISC income for its taxable year ending December 31, 1985, P will have no DISC-related deferred tax liability and therefore no interest charge for the taxable year.

(iii) *Result—1986.* Under section 995(f)(3), P will have deferred DISC income for P's taxable year ending December 31, 1986, of $40,000 determined as follows. With respect to P's taxable year ending December 31, 1986, the computation year is D's taxable year ending December 31, 1985. D's accumulated DISC income as of the close of the computation year is $40,000, and D made no distributions-in-excess-of-income in D's taxable year following the computation year (that is, in D's taxable year ending December 31, 1986, of the actual distributions of $20,000, only $5000 of this amount is treated as made out of accumulated DISC income, and because the DISC income for the year is $50,000, none of the actual distributions for the year reduce the accumulated DISC income as of the beginning of the taxable year.)

Accordingly, because P's deferred DISC income for the taxable year ending December 31, 1986, is $40,000, P must compute its tax liability for the year with and then without the $40,000 amount under section 995(f)(2) to determine its DISC-related deferred tax liability. P's interest charge for the taxable year ending December 31, 1986, under section 995(f)(1) will be the amount of the DISC-related deferred tax liability (the tax on $40,000) multiplied by the base period T-bill rate factor for the 365 day taxable year. See paragraph (b) of this section.

(iv) *Result—1987.* Under section 995(f)(3), P will have deferred DISC income for P's taxable year ending December 31, 1987, of $65,000 computed as follows:

D's accumulated DISC income derived from periods after 1984 as of the close of the computation year (D's taxable year ending December 31, 1986)	$85,000
Less: Amount of D's distributions in-excess-of-income made in D's taxable year ending December 31, 1987	20,000
P's deferred DISC income for taxable year ending December 31, 1987	65,000

The $20,000 amount of distributions-in-excess-of income for D's taxable year ending December 31, 1987, may be determined as follows:

Amount of D's actual distributions for D's taxable year ending December 31, 1987	$60,000
Less: D's previously taxed income at close of previous taxable year	0
Deemed distribution for current year	$15,000
Total amount of previously taxed income available for distributions during D's taxable year ending December 31, 1987	15,000 15,000
Difference—Amount of actual distributions for current year out of accumulated DISC income	45,000
Less: DISC income for current year	25,000
Distributions-in-excess-of-income for D's taxable year ending December 31, 1987	20,000

Accordingly, because P's deferred DISC income for its taxable year ending December 31, 1987 is $65,000, P must compute its tax liability for the taxable year with and then without the $85,000 amount to determine its DISC-related deferred tax liability under section 995(f)(2). P's interest charge for the taxable year ending December 31, 1987, under section 995(f)(1) will be the amount of the DISC-related deferred tax liability (the tax on the $65,000) multiplied by the base period T-bill rate factor for the 365 day taxable year.

(g) *Special rules for computation of the interest charge where DISC stock is transferred during taxable year*—(1) *General rule.* If the same number of shares of stock in the DISC are not held by the shareholder for the shareholder's entire taxable year, the amount of the interest charge for the taxable year with respect to the shares transferred or acquired by the shareholder shall be equal to the amount of the DISC-related deferred tax liability with respect to such transferred or acquired shares computed as if the shareholder held such shares for the shareholder's entire taxable year, multiplied by the base period T-bill rate factor corresponding to the number of days in the shareholder's taxable year that the shareholder held such transferred or acquired shares. In determining the number of days in the shareholder's taxable year that the shareholder held such transferred or acquired shares, the transferor shareholder shall include the day of the transfer and the transferee shareholder shall exclude the day of the transfer.

(2) *Adjustment for gain recognized on disposition*—(i) *Transferor.* For purposes of determining the deferred DISC income for the taxable year of a shareholder who disposes of stock in the DISC during the taxable year, the amount of gain recognized with respect to such stock which is treated under section 995(c) and § 1.995–4 as a dividend shall be treated as an actual distribution made by the DISC to such shareholder out of accumulated DISC income for the taxable year of the DISC which includes the date of such disposition. Accordingly, the amount of such gain which exceeds the shareholder's pro rata share of the DISC income for such taxable year shall be treated under section 995(f)(3)(C) and paragraph (f) of this section as a distribution-in-excess-of-income which reduces the amount of such shareholder's deferred DISC income for the taxable year of the shareholder in which the disposition of the shares occurs.

(ii) *Transferee.* For purposes of determining the amount of any transferee shareholder's deferred DISC income for a taxable year, if under section 996(d)(1) and § 1.996–4(a) such shareholder would be permitted to treat an amount of an actual distribution by the DISC made out of accumulated DISC income as made out of previously taxed income, such transferee shareholder's deferred DISC income for such taxable year shall be reduced by such amount.

(3) *Examples.* The provisions of this paragraph (g) may be illustrated by the following examples:

Example (1). X, an individual, uses the calendar year as the taxable year and owns all of the stock of D, a calendar year corporation which elects to be treated as a DISC for 1985. On May 1, 1987, X makes a gift to Y, a calendar year individual, of all the stock in D. On December 31, 1986, D had accumulated DISC income of $1000, and during its taxable year ending December 31, 1987, D made no distributions-in-excess-of-income. X recognizes no gain on the transfer of stock to Y. Accordingly, for the taxable year ending December 31, 1987, X and Y each have deferred DISC income of $1000, and each must compute a DISC-related deferred tax liability for 1987 with respect to this $1000 of deferred DISC income as if each of them owned the stock for the entire year. X will multiply X's DISC-related deferred tax liability by the base period T-bill rate factor for 121 days, and Y will multiply Y's DISC-related deferred tax liability by the base period T-bill rate factor for 244 days, to reflect the number of days during their taxable year that each held the stock in the DISC. If during the taxable year Y received a distribution-in-excess-of-income of $200, Y's deferred DISC income for the taxable year would be $800, and X's deferred DISC income for the year would also be $800, even though the actual distribution was received by Y.

Example (2). (i) Corporations A and D use the calendar year as the taxable year. A owns all of the stock of D, which elects to be treated as a DISC for 1985. On December 31, 1987, A sells all of its stock in D to B corporation, and recognizes a gain on the sale of $400. B corporation uses the fiscal year ending June 30 as the taxable year. Assume that D had accumulated DISC income at the close of 1986 of $600, and that D realized $250 of DISC income for 1987. Assume also that D made no actual distributions out of accumulated DISC income during 1987. Accordingly, D has accumulated DISC income at December 31, 1987, of $850 ($600 plus $250), all of which was accumulated during the period A held the stock in the DISC. Under section 995 (c) and § 1.995–4, all of A's recognized gain of $400 on the disposition of the stock in the DISC is treated as a dividend, because A's recognized gain ($400) does not exceed the accumulated DISC income of D attributable to the stock disposed of by A ($850).

(ii) Under paragraph (g)(2) of this section, for purposes of section 995(f)(3), the $400 amount that A must treat as a dividend is treated as an actual distribution to A for 1987 out of accumulated DISC income. Accordingly, A's deferred DISC income for its taxable year ending December 31, 1987, is $450, determined as follows:

Accumulated DISC income of D at close of computation year (1986)		$600
Amount of gain realized by A in 1987 treated as an actual distribution out of accumulated DISC income	$400	
Less: DISC income for 1978	250	
Difference: Amount treated as a distribution-in-excess of-income	$150	150
Deferred DISC income		$450

A will use this $450 amount of deferred DISC income to compute its DISC-related deferred tax liability and interest charge for A's 365 day taxable year ending December 31, 1987.

(iii) Because B purchased the stock in D on December 31, 1987, B will have a part-year interest charge for B's taxable year ending June 30, 1988. D's computation year with respect to B's taxable year ending June 30, 1988, is D's taxable year ending December 31, 1986. B's deferred DISC income for its taxable year ending June 30, 1988, is $450, the same amount that A had with respect to A's taxable year ended December 31, 1987, because B is permitted, under section 996 (d), to take into account as a reduction in accumulated DISC income, the amount of gain A recognized on the disposition which was treated as an actual distribution to A out of accumulated DISC income. Accordingly, B must compute its DISC-related deferred tax liability and interest charge for the taxable year ending June 30, 1988, with respect to the $450 of deferred DISC income. The interest charge for B's taxable year ending June 30, 1988, is determined by multiplying B's DISC-related deferred tax liability (the tax on the $450 of deferred DISC income) by the base period T-bill rate factor for 182 days (January 1 to June 30, 1988), because B held the stock for only 182 days in B's taxable year ended June 30, 1988.

(iv) Note that under section 441(h), D must change its taxable year from the calendar year to the fiscal year ending June 30, because there has been a change in the taxable year of D's "principal shareholder" by reason of B's acquisition of D. See § 1.441–(h)(3).

(h) *Special rules for computation of the interest charge where DISC stock is held by certain passthrough entities*—(1) *Partnerships.* For purposes of section 995(f) and this section, if stock in a DISC is held by a partnership, the deferred DISC income of such partnership for the taxable year shall be attributed to each partner in proportion to the partner's interest in partnership income for the taxable year. Thus, each partner shall take into account its share of the partnership's deferred DISC income for the partnership taxable year ending with or within the taxable year of the partner, and each partner shall determine its DISC-related deferred tax liability and the interest charge thereon for the partner's taxable year as if the partner directly owned stock in the DISC.

(2) *S corporations.* For purposes of section 995(f) and this section, if stock in a D'SC is held by an S corporation, the deferred DISC income of such S corporation for the taxable year shall be attributed to each shareholder in proportion to the shareholder's pro rata share of the S corporation's nonseparately computed income or loss (determined under section 1366(a)(1)(B)) for the taxable year. Thus, each shareholder shall take into account its share of the S corporation's deferred DISC income for the taxable year of the S corporation ending with or within the taxable year of the shareholder, and shall determine its DISC-related deferred tax liability and the interest charge thereon for the taxable year as if the shareholder directly owned stock in the DISC.

(3) *Estates or trusts.* For purposes of section 995(f) and this section, if stock in a DISC is held by an estate or trust, the deferred DISC income allocable to the stock in the DISC held by the estate or trust shall not be attributed to the beneficiaries of such estate or trust. The interest charge is imposed on the estate or trust. The estate or trust is required to determine its DISC-related deferred tax liability and interest charge for the taxable year in the same manner as other taxpayers. For this purpose, the tax rates applicable to estates and trusts for the taxable year under section 1(e) shall apply. In computing the taxable income of the estate or trust for the taxable year including the deferred DISC income under section 995(f)(2)(A)(i), the estate or trust shall not take into account a deduction under section 651 or 661 (relating to deductions for distributions) greater than the deduction for distributions allowed in computing the estate or trust's actual tax liability for such year under section 995(f)(2)(A)(ii).

(i) [Reserved]

(j) *Character, payment, assessment and collection of the interest charge*—(1) *Character.* Under section 995(f)(6), the interest charge imposed on a DISC shareholder for any taxable year is treated for all purposes of the Code in the same manner as interest on an underpayment of tax under section 6601. Thus, the interest charge may be deducted from the shareholder's gross income only to the extent the shareholder may deduct interest on an underpayment of tax, and subject to all applicable limitations on the deduction for interest.

(2) *Taxable year for which interest charge is deductible*—(i) *Cash method shareholder.* If the DISC shareholder uses the cash receipts and disbursements method of accounting, to the extent that the interest charge for a taxable year is deductible, it is deductible in the taxable year in which the shareholder pays the interest charge. For example, assume that on March 15, 1987, a cash method, calendar year DISC shareholder that is a C corporation pays $100, representing the full amount of the shareholder's interest charge for its taxable year ending December 31, 1986. The $100 amount is a proper interest deduction for the shareholder's taxable year ending December 31, 1987, the taxable year in which the cash method shareholder paid the interest charge.

(ii) *Accrual method shareholder.* If the DISC shareholder uses the accrual method of accounting, under the all events test the fact of the shareholder's liability for the interest charge for a taxable year is not fixed, and the amount of the interest charge cannot be determined, until the close of the period in which the shareholder can receive a distribution-in-excess-of-income with respect to such year. Prior to that time, all or any amount of the interest charge for the taxable year may be eliminated by such a distribution. Generally, however, if the DISC shareholder uses the accrual method and if the DISC and the shareholder have the same taxable year, then to the extent that the interest charge for a taxable year is deductible, the amount of the shareholder's interest charge is a proper deduction for such taxable year, because the period in which the DISC can make a distribution-in-excess-of-income to the shareholder

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with respect to such taxable year ends on the last day of such shareholder's taxable year. For example, assume that on March 10, 1987, an accrual method, calendar year DISC shareholder that is a C corporation pays $150, representing the full amount of the shareholder's interest charge for its taxable year ending December 31, 1986. Assume also that the DISC uses the calendar year as the taxable year. When the DISC's 1986 taxable year closed, the shareholder could no longer receive a distribution-in-excess-of-income under section 995(f)(3)(A)(ii) with respect to the shareholder's 1986 taxable year. Accordingly, the $150 interest charge is a proper interest deduction for the shareholder's taxable year ending December 31, 1986, the taxable year in which the interest charge accrued under section 461.

(3) *Payment, assessment and collection of the interest charge.* (i) Under section 995(f)(6), the interest charge imposed on the DISC shareholder for any taxable year is required to be paid on the same date the shareholder's income tax return for such taxable year is required to be filed, without regard to extensions.

If the interest charge is not paid by that date, interest, compounded daily, at the rate specified under section 6621 shall be imposed on the amount of the unpaid interest charge from that date until the date the interest charge is paid. The interest charge for the taxable year shall be computed on a current Form 8404, which must be completed in accordance with the instructions thereon, and filed by the DISC shareholder together with a separate payment of the interest charge. The payment of the interest charge shall be made, and the Form 8404 shall be filed with the service center with which the shareholder's income tax return for the taxable year is required to be filed. In order to assure proper handling of the Form 8404 and crediting of payment of the interest charge to the shareholder's account, the Form 8404 and the payment of the interest charge should not be attached to or mailed together with the shareholder's income tax return for the taxable year. Payment of the interest charge may not be made by designating any portion of an overpayment of tax as an amount to be applied in payment of the interest charge.

(ii) Payments of estimated tax under section 6654 (in the case of an individual), or 6154 (in the case of a corporation) are not required with respect to the interest charge.

(iii) The interest charge is to be assessed, and may be collected in the same manner as interest on an underpayment of tax under section 6601.

(4) *Subsequent change in interest charge amount; amended Form 8404.* If the shareholder's actual tax liability for a taxable year changes, either by reason of an audit adjustment or by the filing of an amended return, the shareholder is required to file an amended Form 8404 only if the amount of the shareholder's DISC-related deferred tax liablity (as defined § 1.995(f)–1(d)) for such taxable year also changes. If so required, the shareholder shall file the amended Form 8404 by (i) clearly labeling across the top of a Form 8404 "Amended Form 8404 for Shareholder's Taxable Year Ending 19XX", (ii) by attaching to the amended Form 8404 a computation and an explanation of the change in the shareholder's DISC-related deferred tax liability and interest charge for such taxable year, and (iii) by enclosing payment for the amount of any additional interest charge or a statement of the amount of the interest charge required to be refunded to the shareholder. The amended Form 8404 should be attached to the copy of the shareholder's amended income tax return for the taxable year involved, or mailed separately to the service center with which the shareholder would file an amended income tax return for the taxable year involved.

Par. 12. Paragraph (b)(2) of § 1.996–1 is revised to read as follows:

§ 1.996–1 Rules for actual distributions and certain deemed distributions.

* * * * *

(b) *Rules for qualifying distributions and deemed distributions under section 995(b)(1)(G).* * * *

(2) *Special rules*—(i) *1976–1984.* For taxable years beginning after December 31, 1975, and before January 1, 1985, paragraph (b)(1) of this section shall apply to one-half of the amount of an actual distribution made pursuant to § 1.992–3 to satisfy the condition of § 1.992–1(b) (the gross receipts test) and paragraph (a) of this section shall apply to the remaining one-half of such amount.

(ii) *After 1984.* For taxable years beginning after December 31, 1984, in the case of a DISC shareholder which is a C corporation, paragraph (b)(1) of this section shall apply to $^{1}\%_{17}$ of the amount of an actual distribution made pursuant to § 1.992–3 to satisfy the condition of § 1.992–1(b) (the gross receipts test) and paragraph (a) of this section shall apply to one-seventeenth ($\frac{1}{17}$) of such amount.

* * * * *

Par. 12. A new § 1.996–9 is added immediately after § 1.996–8 to read as follows:

§ 1.996–9 Adjustments attributable to the Tax Reform Act of 1984.

(a) *Exemption of pre-1985 accumulated DISC income from tax*—(1) *In general.* Under section 805(b)(2) of the Tax Reform Act of 1984, Pub. L. 98–369, 98 Stat. 494, 1001, in the case of actual distributions made after December 31, 1984, by a DISC or former DISC which was a DISC on such date, any accumulated DISC income of such DISC or former DISC which was derived before January 1, 1985, shall be treated as previously taxed income with respect to which there had previously been a deemed distribution to which section 996(e)(1) applied. For purposes of this section such accumulated DISC income shall be referred to as "exempt accumulated DISC income". For purposes of this section, a distribution includes any distribution in liquidation of a corporation.

(2) *Exception for previously disqualified DISCs.* Paragraph (a)(1) of this section does not apply to the amount of any actual or deemed distribution of any accumulated DISC income of a DISC or former DISC derived before January 1, 1985, which is scheduled to be received as a deemed distribution under section 995(b)(2) and § 1.995–3 by reason of the disqualification, termination or revocation of the DISC election of such corporation (a "disqualified DISC"). Thus, in the case of a corporation which was a disqualified DISC with respect to one or more prior taxable years ending before 1985, but which has re-elected to be treated as a DISC for one or more succeeding taxable years including the taxable year ending December 31, 1984, this paragraph (a)(2) applies to any accumulated DISC income scheduled to be received as a deemed distribution under section 995(b)(2), and paragraph (a)(1) of this section applies to any accumulated DISC income derived before 1985 which is not required to be distributed under section 992(b)(2).

(3) *Exception for amounts distributed to meet qualification requirements.* Paragraph (a)(1) of this section does not apply to the amount of any accumulated DISC income derived before January 1, 1985, which is distributed (or is required to be distributed) under section 992(c) after December 31, 1984, in order to satisfy the requirements of section 992(a)(1)(A) (relating to the 95 percent qualified export receipts test) or section 992(a)(1)(B) (relating to the 95 percent qualified export assets test), with respect to any taxable year ending before January 1, 1985.

(b) *Effect of distributions by DISC to shareholders*—(1) *Scope.* This paragraph

(b) applies only to distributions made after December 31, 1984, by a DISC (including a corporation which has elected to be treated as an interest charge DISC for any period after 1984) or a former DISC which has any amount of exempt accumulated DISC income (as defined in paragraph (a)(1) of this section), and it shall not apply after such corporation has distributed, under the ordering rules of this paragraph (b), all of its exempt accumulated DISC income. This paragraph (b) shall apply notwithstanding section 996(a)(1).

(2) *Ordering rule for distributions made before July 1, 1985.* Any actual distribution to a shareholder after December 31, 1984, and before July 1, 1985, by a DISC or former DISC described in paragraph (b)(1) of this section, which is made out of earnings and profits shall be treated as made—

(i) First, out of previously taxed income, to the extent thereof,

(ii) Second, out of accumulated DISC income derived after 1984, to the extent thereof, and

(iii) Third, out of other earnings and profits (including current earnings and profits in the case of a former DISC).

Any distribution which is treated as made out of previously taxed income under paragraph (b)(2)(i) shall be treated as made first out of exempt accumulated DISC income, to the extent thereof, and second, out of other previously taxed income.

(3) *Ordering rule for distributions made after June 30, 1985.* Any actual distribution to a shareholder after June 30, 1985, by a DISC or former DISC described in paragraph (b)(1) of this section, which is made out of earnings and profits shall be treated as made—

(i) First, out of other earnings and profits (including current earnings and profits in the case of a former DISC), to the extent thereof,

(ii) Second, out of previously taxed income, to the extent thereof, and

(iii) Third, out of accumulated DISC income derived after 1984.

Any distribution which is treated as made out of previously taxed income under paragraph (b)(3)(ii) shall be treated as made first out of exempt accumulated DISC income, to the extent thereof, and second, out of other previously taxed income.

(4) *Exception for qualifying distributions and foreign investments attributable to producer's loans.* This paragraph (b) shall not apply to any actual distribution made pursuant to section 992(c) (relating to distributions to meet qualification requirements), or to any deemed distribution pursuant to section 995(b)(1)(G) (relating to foreign investment attributable to producer's loans). Such distributions shall be treated as described in section 996(a)(2).

(c) *Earnings and profits attributable to exempt income.* The earnings and profits of a corporation which receives a distribution directly or indirectly from a DISC or former DISC shall be increased by the amount of money and the adjusted basis of any property received in a distribution which is treated as made out of previously taxed income attributable to exempt accumulated DISC income.

(d) *No adjustment to basis in stock of DISC for exempt income.* Notwithstanding section 996(e), a shareholder's basis in the stock of a DISC or former DISC shall not be increased by the amount of exempt accumulated DISC income which is treated as previously taxed income, and such basis shall not be reduced by the receipt of such amount as previously taxed income in a distribution to which paragraph (b) of this section applies.

(e) *Carryover basis in property received in a distribution of exempt income.* If property other than money is received in a distribution of exempt accumulated DISC income as previously taxed income, and if such property was a qualified export asset (as defined in section 993(b)) on December 31, 1984, then for purposes of section 311, no gain or loss shall be recognized on the distribution of such property, and the shareholder who receives such property shall have a basis in such property equal to the basis of such property in the hands of the DISC or former DISC.

(f) *Reduction of net operating loss and capital loss carryovers.* In the case of a DISC (including a a corporation which has elected to be treated as an interest charge DISC for any period after 1984) or a former DISC which was a DISC on December 31, 1984, the amount of any net operating loss or capital loss of such corporation that was incurred in a taxable year in which such corporation was a DISC and which is a net operating loss or capital loss carryover to any taxable year ending after December 31, 1984, shall be reduced by the amount of exempt accumulated DISC income (as defined in paragraph (a)(1) of this section) of such corporation as of December 31, 1984. If the sum of such carryovers exceeds the amount of such exempt accumulated DISC income, the exempt accumulated DISC income shall first be applied to reduce the amount of such net operating loss carryover, and the amount of such exempt accumulated DISC income (if any) which exceeds such net operating loss carryover shall be applied to reduce the amount of such capital loss carryover to the extent of such excess.

(g) *No credit allowed for foreign taxes attributable to exempt accumulated DISC income.* Notwithstanding sections 901(d) and 902, no credit shall be allowed for the amount of any income, war profits, or excess profits taxes paid or deemed paid to any foreign country or possession of the United States to the extent that such taxes are attributable to any exempt accumulated DISC income of a DISC or former DISC.

Par. 13. In § 1.6011–2, a new sentence is added immediately after the third sentence in paragraph (a) to read as follows:

§ 1.6011–2 Returns, etc. of DISCs and former DISCs.

(a) *Records and information.* * * * For taxable years beginning after 1984, every DISC or former DISC shall also disclose on the Schedule K (Form 1120–DISC) the amount of the shareholder's deferred DISC income for the shareholder's taxable year (as defined in section 995(f)(3)). * * *

* * * * *

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

[FR Doc. 87–2015 Filed 2–2–87; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 557

Certification and Use of Army Airfields by Other Than United States Department of Defense Aircraft

AGENCY: Department of the Army.

ACTION: Proposed rule.

SUMMARY: The Department of the Army is proposing to add Part 557 Title 32, of the Code of Federal Regulations, which establishes the responsibilities and describes the procedures for Certification and Use of Army Airfields by Other than United States Department of Defense Aircraft. This publication establishes requirements and responsibilities and provides instructions for non-DOD aircraft operators to request permission to use U.S. Army airfields.

DATE: Comments must be received March 5, 1987.

ADDRESS: Send comments to U.S. Army Aeronautical Services (USAASO), Cameron Station, Alexandria, VA 22304–5050.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Cole, U.S. Army Aeronautical Services Office (USAASO), Cameron Station, Alexandria, VA 22304–5050, telephone (202) 274–7796/6304.

SUPPLEMENTARY INFORMATION: This publication established the U.S. Army Aeronautical Services Office as the office of primary responsibility for use of Army airfields by other than DOD aircraft; includes DOD policy regarding use of military airfields by other than DOD aircraft; includes criteria for the commander to use in considering joint use; provides new forms for permit application; explains types of joint use; includes information on fixed base operations; designates the approving authorities for civil use of Army airfields; established minimum insurance requirements; and established landing, parking, and storage fees.

The Department of the Army has determined that this regulation is not a major rule as defined by E.O. 12291, and is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354.) DD Forms 2400, 2401, and 2402, contain reporting or record keeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96–511.) And have been approved by the Office of Management and Budget (OMB) under Control Number 0701–0050.

List of Subjects in 32 CFR Part 557

Aviation safety, Military air transportation, Airports, Air traffic control, Armed services.

The Part 557 is proposed to be added to 32 CFR to read as follows:

PART 557—CERTIFICATION AND USE OF ARMY AIRFIELDS BY OTHER THAN UNITED STATES DEPARTMENT OF DEFENSE AIRCRAFT

Subpart A—General Provisions

Sec.

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Appendix—

A—References
B—Joint Use Criteria
C—U.S. Army Comparative Information for 14 CFR Part 139 of the Federal Aviation Regulations
D—Tables and figures
E—Glossary

Authority: 10 U.S.C. 8012; 49 U.S.C. 1507.

Subpart A—General Provisions

§ 557.1 Purpose.

This regulation prescribes policies, responsibilities, and procedures with regard to use of U.S. Army Airfields (AAFs) by other than Department of Defense (DOD) aircraft.

§ 557.2 References.

Required and related publications and prescribed referenced forms are listed in Appendix A.

§ 557.3 Explanation of abbreviations and terms.

Abbreviations and special terms used in this regulation are explained in the glossary.

§ 557.4 Waivers.

Waivers to requirements of this regulation are authorized by the Director, U.S. Army Aeronautical Services Office (USAASO) when in the best interest of the U.S. Government, subject to prior approval of the Assistant Secretary of the Army (Installation and Logistics).

§ 557.5 Information control number (OMB).

OMB No. 0701–0050 has been assigned to the forms and reports that request data from individuals or agencies not in the Federal Government. These forms and reports are referred to in Subparts C and D.

§ 557.6 Army policy.

The rapidly increasing number of aircraft, especially general aviation aircraft, in the National Airspace System (NAS) is causing a shortage of suitable landing areas. Because of this shortage, requests for use of AAFs by operators of other than DOD aircraft are continually increasing in numbers. The Army permits this use of AAFs when all of the following apply:

(a) Use is requested in advance by an individual: a company representative: or a representative if a local, State, Federal, or foreign government agency.

(b) Use will not keep the Army from carrying out its current and future mission.

(c) Air safety will not be degraded.

(d) Security will not be compromised.

(e) The AFF will be able to support the proposed operation.

(f) Applicable joint use criteria in § 557.7 through § 557.9 and Appendix B are satisfied.

(g) Minimum insurance requirements of Table 1–1 in Appendix D are met.

§ 557.7 DOD policy.

The 1958 Aviation Act authorized the DOD to regulate public use of military airfields. Within this context, a systematic approach has been developed to respond to requests for civil use of military airfields. The cornerstone of this approach is the following statement:

(a) "The DOD determines the feasibility and extent of joint use at military airfields. The DOD will consider joint use when it does not compromise military response, security, readiness, or safety. Joint use of military airfields will be considered on case-by-case basis when a formal proposal is submitted by a local government agency eligible to sponsor a public airport. Established criteria and good judgment will be used by DOD when evaluating formal proposals."

(b) The above policy statement pertains primarily to long term joint use and fixed base operations.

§ 557.8 User requests/proposals.

Each user request/proposal will be considered, however, Army and other DOD requirements will take precedence over use of AAFs by others. AAFs will only be considered for use by nonexempt aircraft when such use is not—

(a) In competition with civil airports or commercial air carriers.

(b) Solely for the convenience of passengers or aircraft operators.

(c) For nonexempt transient aircraft servicing.

(d) For private enterprise that promotes, benefits, or favors a commercial venture, except as allowed by this regulation.

(e) For customs handling purposes.

§ 557.9 Criteria for considering long-term joint use/fixed base operations.

Appropriate approving authorities will consider the criteria contained in Appendix B when responding to long-term joint use or fixed base operation requests.

§ 557.10 Suspension or termination of joint use.

The Army reserves the right to suspend or terminate joint use of an AFF when—

(a) Such use is inconsistent with national defense.

(b) A user's liability insurance is canceled or expires.

(c) A user is not operating in accordance with agreed to procedures or approved purposes.

(d) It is in the best interest of the Army, DOD, or the U.S. Government.

§ 557.11 Prior users agreements or leases.

Users agreements of leases in effect before publication of this regulation will remain in force until they expire or are canceled. At that time any new agreements will be governed by this regulations.

§ 557.12 Identification numbers.

Approving officials named in Table 2–1 in Appendix D will develop an identification number that will identify the approving authority, the year the request was approved, the number of the approval, and the type operation approved. The number will be recorded in the appropriate block of the DD Form 2401 (Civil Aircraft Landing Permit). Instructions for developing identification numbers are given in Figure 1–1 in Appendix D. The identification number will be placed in the appropriate block of DD Form 2401.

Subpart B—Responsibilities

§ 557.13 The Assistant Secretary of Army (Installation and Logistics).

The ASA(I&L) is responsible for general Secretariat oversight of AAF utilization, including the formulation, execution, and review of related policies, plans and programs, the establishment of objectives and appraisal of performance.

§ 557.14 Deputy Chief of Staff for Operations and Plans (DCSOPS).

The DCSOPS has the overall Army Staff responsibility for AAF operational activity impacting on the NAS and provides for representation with other DOD, local, State, Federal, national, and international agencies or individuals. Other Army Staff principals or Army agencies that are responsible for planning or programming activities having impact on AAF operations within the NAS will consult with the DCSOPS executive agent during early stages of project development. All installations or unit mission changes that affect the NAS will be coordinated with the DCSOPS executive agent.

§ 557.15 Director U.S. Army Aeronautical Services Office (USAASO).

The Director, USAASO, serves as the executive agent for DCSOPS on the matters discussed in § 557.14. In this capacity the director is authorized direct contact with other Army Staff principals, major Army commands (MACOMs), Army installations, other military services, and other Federal, States, and local government, civil, national, and international agencies or individuals. The DCSOPS executive agent is responsible for—

(a) Department of the Army (DA) operational approval for user requests to operate at AAFs.

(b) Providing for DA interface with the Federal Aviation Administration (FAA) and other civil and government agencies at the international, national, and regional level.

(c) Ensuring the development, coordination, and implementation of plans, policies, and procedures pertaining to use of AAFs by other than DOD aircraft.

(d) Providing for DA membership and participation on DOD, FAA, other government, national, and international boards, committees, groups, and panels.

(e) Providing for DA participation in public hearings or meetings, formal or informal, at the local, regional, or national level, on matters pertaining to the NAS.

(f) Providing guidance and assistance to MACOMs, installation commanders, and AAF commanders on matters pertaining to this regulation.

(g) The Director, USAASO may assign this function to a responsible Air Traffic Control (ATC) action officer.

§ 557.16 Chief of Engineers (COE).

After approval of a long-term joint use or fixed base operation the COE will issue an outgrant, lease, or license in accordance with AR 405–80 for the use of land, building, and other facilities at AAFs. This document will be based on a report of availability prepared by the installation commander.

(a) The FAA and the Army has authority to inspect civil operations at Army airfields to ensure compliance with applicable Federal Aviation Regulations (FARs) or Army Regulations (ARs).

(b) The outgrant, lease, or license may be canceled for noncompliance with FARs or ARs.

§ 557.17 Assistant Chief of Staff for Intelligence (ACSI).

The ACSI exercises overall Army Staff responsibility for Army interaction with foreign representatives. In this capacity, the ACSI—

(a) Is the approval authority for access to all Army installations or facilities by foreign personnel, less those in the following categories for which approval authority has been delegated to other Army Staff principals, MACOMs, or local commanders.

(1) Those traveling on approved invitational travel orders prepared under provisions of AR 12–15 (students or AR 550–2 tours).

(2) Those in a transient status (such as crew rest, remain overnight, loading or offloading cargo, or procurement of aircraft services).

(3) Those engaged in fulfilling an approved Army contract involving unclassified information.

(4) Those representing foreign media, when traveling under the auspices of AR 360–5.

(5) Those engaged in an approved cross-border movement under the provisions of AR 525–16.

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(6) Those involved in an approved unit exchange under the provisions of AR 350–11.

(7) Those whose access is exclusively for social or other activities open to the general public

(b) On request, provides guidance concerning the propriety of installation or facility access by nationals of communist and other countries whose aims are not in accord with those of the United States.

(c) On request, and in coordination with Office of the Deputy Chief of Staff for Operations and Plans, provide DA guidance concerning operational security implications inherent in installation/facility access by foreign personnel. (See AR 350–11.)

§ 557.18 Other Army Staff principals or heads of Army agencies that are responsible for planning or programming activities having impact on AAF operations within the NAS.

These individuals will consult with the DCSOPS executive agent during early stages of project development. All installations or unit mission changes that affect the NAS will be coordinated with the DCSOPS executive agent.

§ 557.19 Major Army commanders.

MACOM commanders will—

(a) Advise and assist the Director, USAASO on matters requiring agreements with the FAA and other agencies.

(b) Approve or disapprove user requests as authorized. (See §§ 557.24, 557.25, 557.30(c) and Appendix D, table 2–1.) MACOM commanders will also assign identification numbers to approved requests. (See § 557.12).

(c) Forward copies of forms shown below to the Director, USAASO, ATTN: Airspace Support Division, Cameron Station, ALEX, VA 22304–5050.

(1) DD Form 2401.

(2) DD Form 2400 (Civil Aircraft Certificate of Insurance).

(3) DD Form 2402 (Civil Aircraft Hold Harmless Agreement).

(d) Recommend approval or disapproval of requests for use of AAFs when approval authority is maintained at DA level.

§ 557.20 Commanders of installations with AAFs.

Commanders of installations with AAFs—

(a) Approve or disapprove requests as authorized. (See §§ 557.24, 557.25, 557.30(d) and Appendix D, Table 2–1). Will assign identification numbers per § 557.12 and Appendix D, Figure 1–1 when requests are approved.

(b) Forward all requests that require higher level approval through channels to the appropriate approving authority with a recommendation for approval or disapproval.

(c) Continually review all user operations to ensure compatibility with the DA and DOD mission for national defense.

(d) May delegate their approval authority to the airfield commander or other appropriate individual.

(e) Will ensure that copies of papers, letters, reports, and other documents referred to in § 557.20(c) are forwarded, through appropriate channels, to the Director, USAASO, ATTN: Airspace Support Division, Cameron Station, ALEX, VA 22304–5050.

§ 557.21 AAF commanders.

The commander of an AAF where joint use operation has been approved—

(a) Control the administration and security of aircraft and passengers while they are on the airfield.

(b) Require users to schedule or modify their operations to keep from interfering with military activities when desired.

(c) Cooperate with customs and immigration officials, and health officials, and other appropriate public authorities regarding aircraft arrival and departure.

(d) Send a copy of each of the following to the Director, USAASO, ATTN: ALEX, VA 2203–5050, as soon as a completed copy is available.

(1) Letters of agreements (LOA).

(2) Lease agreements.

(3) DD Forms 2401, 2402, and 2403.

(4) Other papers, reports, or letters pertaining to user operators; in particular, those having to do with emergency or unauthorized landings.

(e) Ensure that specific operational procedures contained in FM 1–300, pertaining to civil aircraft operations, are implemented.

§ 557.22 Owners and operators of nonexempt aircraft.

Owners and operators of nonexempt aircraft will—

(a) Comply with special procedures, requirements, and restrictions imposed by this regulation.

(b) Comply with special procedures, requirements, and restrictions that may be imposed by the FAA, the post commander, or other appropriate authority.

Subpart C—Authorized Use of Army Airfields

§ 557.23 Types of joint use.

Joint use falls into four board categories. These are discussed in §§ 557.24, 557.25, 557.27, and 557.28.

§ 557.24 Exempt users.

Owners and/or operators of aircraft referred to below are authorized to land at AAFs except where specific restrictions are in force. Prior permission to land may be required by the installation or AAF commander.

(a) Any aircraft owned or operated by—

(1) The DOD.

(2) Any other U.S. Government agency when on official business.

(3) Local flying club members when the flying club is established in accordance with AR 215–2. Completion of a DD Form 2400 and a DD Form 2402 are required.

(4) Members of other DOD flying clubs, at the discretion of the installation commanders, when consistent with flying club regulations and policies. Priority for use will be established in accordance with AR 215–1 and AR 215–2. Completion of a DD Form 2400 and a DD Form 2402 are required.

(5) Flying club aircraft operators must obtain approval from appropriate approving authority before landing at AAFs that do not have established flying clubs.

(6) Representatives of Federal, State, county, or municipal governments when operated in connection with official, nonpolitically related, U.S. Government business. A declaration of responsibility for liability, or completed DD Form 2400, and a completed DD Form 2402 are required.

(b) Any civil aircraft under—

(1) Lease or contractual agreement for exclusive operational use by an agency of the U.S. Government that is operated by or for that agency; such as the FAA or Department of the Interior. This includes any aircraft under contract to the Military Airlift Command, the Military Traffic Management Command, and other agencies of similar nature. The DOD or other Government agency must declare responsibility for liability on the aircraft owner/operator must complete a DD Form 2400 and provide proof of insurance when requesting authorization to operate at an AAF.

(2) Lease or contractual agreement to the U.S. Air Force Civil Air Patrol (CAP) for liaison purposes and operated by a U.S. Air Force (USAF) liaison officer on official business. Completion of DD Form 2400 and DD Form 2402 are required unless the USAF assumes liability responsibility

(3) CAP control for an authorized mission when directed by USAF orders.

(4) U.S. Coast Guard (USCG) control for an official administrative or operational mission.

(5) Bailment contract if the U.S. Government is the insurer for liability.

(6) Use for humanitarian flights transporting critically ill or injured people to or from a military installation.

(7) Contractual agreement to any Federal, State, or local government agency in support of operations involving safety of life or property because of a natural disaster.

(c) Foreign government owned aircraft for which a reciprocal use agreement exists. Aircraft must have aircraft landing authorization number (ALAN). Prior permission may also be required by the AAF commander. (This category requires clearance with the Department of State and ACSI. USAASO will process required clearance and provide ALAN.)

§ 557.25 Short-term users.

Short-term users are those whose operational requirements can be accommodated without a lease arrangement or LOA. The appropriate approving authority may authorize short term use by issuing a CALP. (See § 557.26)

(a) Table 2–1 in Appendix D specifies categories of applicants that may be considered eligible to use AAFs.

(b) Prospective users must submit—

(1) Completed DD Forms 2400, DD Form 2401, and 2402.

(2) Other information as required by Table 2–1, in Appendix D with the above forms.

(3) A special request must be submitted when the user is from a foreign country. (The request may be in the form of a message if all pertinent information is provided.)

(c) The information required of short-term users should be submitted prior to the intended landing; however, commanders at their discretion may permit users, except for foreign users, to provide this information immediately after first landing. Foreign users must submit requests in sufficient time to allow for required coordination with ACSI, Department of State, and other principals, as necessary.

(d) The Army agency receiving the forms cited in § 557.25(b)(1) of this part will forward them to the appropriate approval authority as shown in Table 2–1 in Appendix.

(e) The approving authority will consider the factors in § 557.6 and § 557.7 and of this part § 557.23(e)(1) through § 557.25(e)(8) in deciding whether to approve the request:

(1) Current and programmed military activities at the installation.

(2) Runway, taxiway, and other airfield facilities.

(3) Availability of supplies and maintenance service.

(4) Volume and type of aircraft traffic.

(5) Crash and rescue equipment and protection.

(6) Overall security.

(7) Detraction from ability to perform mission.

(8) Other criteria on a case-by-case basis.

§ 557.26 Civil aircraft landing permit (DD Form 2401).

A DD Form 2401 may be issued by the appropriate approving authority when a request for landing meets the requirements of this regulation.

(a) A DD Form 2401 may be issued for a period of one year, except that it will terminate one day before expiration of the insurance policy expiration date. Should the insurance policy be renewed prior to its expiration date, the DD Form 2401 may be extended until the expiration date on the DD Form 2400.

(b) USAASO or a MACOM, provided the MACOM has jurisdiction over all AAFs involved, may issue a DD Form 2401 authorizing operations at more than one AAF.

(c) A copy of the DD Form 2401 should be on board the aircraft for inspection by the AAF commander or his or her designee.

§ 557.27 Long-term users.

Long-term users are those whose operational requirements can only be accommodated through a LOA, license, lease, or outgrant arrangement negotiated between the appropriate Army agency and the aircraft operator. The operator may be an individual or company, either private or commercial.

(a) LOAs may be used to accommodate those operators making frequent landings at an AAF Over a long period of time yet require limited use of airfield facilities.

(b) Operators who make more extensive use of AAFs are required to negotiate a license, lease, or outgrant with the appropriate district engineer office. Examples of such use includes those operators who require facilities for parking, maintenance, terminal operations and passengers, and other extensive facility use.

(c) Requests for long-term joint use will be submitted initially to the Director, USAASO to determine the operational feasibility of the proposal operation. If the request is operationally feasible, it will be forwarded to HQDA (DAEN-ZCE) WASH, DC 20310–2600 for further action.

§ 557.28 Fixed base operator (FBO).

When this fixed base operation is approved, a part or all of the airfield land and facilities are turned over to the FBO for exclusive use, subject to the terms and conditions of any lease, outgrant, LOA, or any other document in force between the Army and the FBO.

(a) FBO proposals are usually negotiated with a local community government agent but may be negotiated with any sponsor eligible to conduct fixed base operations at that particular AAF. A lease or outgrant will be negotiated between the appropriate district engineers office and the sponsor, not to exceed 25 years, with renewable clauses every 5 years. The document will detail the type of operations proposed and those procedures, restrictions, limitations, responsibilities, and requirements.

(b) FBO proposals will only be considered when received from a sponsor eligible to conduct fixed base operations.

(1) FBO proposals should be submitted through channels to the Director, USAASO, Cameron Station, ALEX, VA 22304–5050.

(2) The Director, USAASO, will ensure that all appropriate principals are provided a copy. Each principal will consider the criteria in appendix B to determine the feasibility and extent of joint use to be permitted.

(c) Should an environmental assessment (EA) or environmental impact statement (EIS) be needed, the Army will be the lead agency. The EA or EIS will be prepared according to AR 200–2. The cost will be borne by the FBO or sponsor. (For help, write HQDA (DAEN-ZCE), WASH DC 20310–2600).

§ 557.29 Fixed base operations.

Fixed base operations are managed independently except the FBO will ensure compliance with terms and conditions established by the Army for such operations.

(a) Essential Army traffic will normally receive priority over other traffic except for emergencies.

(b) Civil and other nonexempt aircraft are not required to obtain a DD Form 2401 or "Prior Permission Required" (PPR) phone call unless specifically required by the terms and conditions established in approving the fixed base operations.

(c) The FBO shall be held accountable for any liability resulting from fixed base operations at an AAF.

(d) Fixed base operation proposals should be completed as outlined in Figure 2–1 in Appendix D.

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§ 557.30 Approval authority for use of AAFs.

Approval authority is delegated to various agencies and levels depending on the type of operation, origin of aircraft, and nationality of persons on board the aircraft.

(a) The Director, USAASO (See § 557.15) or his or her designated representative is responsible for determining the overall operational feasibility of all requests or proposals and has the authority to approve all exempt and short term user requests (see Table 2–1 in Appendix D) except that requests from foreign nations or operators of aircraft with foreign nationals on board will be cleared through ACSI (see § 557.17) and the Department of State.

(b) The COE or his designated representative, after operational feasibility of a request or proposal has been determined, is responsible for the issuance of a lease, license, or outgrant based on facility and/or land use availability.

(c) The MACOM commander or his or her designated representative has the authority to approve requests for use of all AAFs in that command as prescribed in Table 2–1 in Appendix D.

(d) The installation commander or his or her designated representative has the authority to approve requests for use of his or her AAF as prescribed in Table 2–1 in Appendix D.

Subpart D—User Information

§ 557.31 Insurance requirements.

The FBO or FBO sponsor and each aircraft owner or operator, including exempt operators, operating at am AAF will provide a copy of DD Form 2400 completed by an insurance company representative. A copy containing an original signature must be sent to the appropriate approving authority or an acceptable alternate, such as a declaration of liability responsibility by another party. All DOD and other federally owned aircraft are covered by the Federal Government.

(a) The amount of insurance carried will equal or exceed the minimum requirements shown in Table 1–1 in Appendix D. All policies must be current during the time the AAF is used.

(b) Each user's policy will provide for the following:

(1) The insurer waives any rights of subrogation the insurer may have against the United States by reason of any payment made under the policy for injury, death, or property damage that might arise out of, or in connection with, the insured's use of any AAF.

(2) The insurance afforded by the policy applies to the liability assumed by the injured under DD Form 2400, or the LOA, lease, license, or outgrant as negotiated.

(3) The insurer will send written notice of any intended cancellation or reduction of coverage at least 30 days before the effective date of such action. The policy must reflect this requirement.

§ 557.32 Fees for landing, parking, and storage.

Fees for landing, parking, and storage are collectable at the time of use. All fees collected will be deposited with the finance and accounting officers (FAO) using DD Form 1131 (Cash Collection Voucher) as prescribed by AR 37–103. Guidance and assistance may be obtained from the installation FAO.

(a) The amount of the fees is based on the mean gross takeoff weight (MGTOW) and the time the aircraft remains on the AAF.

(b) The installation commander will use Table 3–1 in Appendix D to determine the amount due.

§ 557.33 Exemption from fees.

Landing, parking, and storage fees will not be collected for aircraft that are—

(a) Operated by the following:

(1) Active duty, U.S. military or DOD civilian personnel on official business.

(2) CAP or USCG auxiliary personnel with official orders.

(3) National Guard, Reserve, or Reserve Officers Training Corps members with official orders.

(4) Members of military flying clubs or operators of other aircraft operating in accordance with military flying club regulations and procedures.

(b) Operated in support of official U.S. Government business or for any use for which the U.S. Government is responsible for payment.

(c) Operated under a contract for the U.S. Government.

(d) Foreign government-owned, when a reciprocal agreement exists between the United States and that foreign government.

(e) Foreign civil aircraft chartered for use by foreign heads of state on official State visits.

(f) Commercial carriers chartered by multinational organizations with which the United States has signed a support agreement.

(g) Otherwise exempt from this regulation or waived by proper authority.

§ 557.34 Waiver of fees.

The installation commander or his/her designee may waive the collection of landing, parking, and storage fees when in the best interest of the Government. (Examples include public relations or when collection of fees costs more than the amount of the fees).

§ 557.35 Approved landings.

Approved landings. Approved landings are those by operators of aircraft that are—

(a) Exempt from this regulation.

(b) Authorized to operate under the requirements set forth by this regulation.

§ 557.36 Unapproved landings.

Unapproved landings are those for which prior approval has not been given. They fall into the categories shown in § 557.36(a) through § 557.36(c) of this part. Table 3–2 in Appendix D provides additional information on unapproved landings.

(a) Emergency landings. Any aircraft operator who experiences an in-flight emergency may land at any AAF without prior approval. The following will apply:

(1) The Army will use any method or means to clear aircraft or wreckage from the runway to keep it from interfering with essential Army operations. Removal will be accomplished in a manner that will minimize additional damage to the aircraft.

(2) The aircraft owner or operator is not charged a landing fee but will pay all related costs for labor, material, parts, use of equipment, tools, and so forth; including, but not limited to, the following:

(*i*) Spreading foam on the runway.

(*ii*) Damage to runways, lighting, navigation aids, and other facilities.

(*iii*) Rescue, crash, and fire control.

(*iv*) Movement and storage of aircraft or wreckage.

(*v*) Aircraft repairs.

(*vi*) Fuel.

(*vii*) Other related expenses.

(b) Inadvertent landings. An inadvertent landing is one where the aircraft operator has landed due to flight disorientation or has mistaken the AAF for a civil or an authorized airport. Normal landing fees may be charged for this unapproved landing. Any subsequent landing will be assessed and processed as an international unapproved landing. (See § 557.36(c) of this part.)

(c) International unapproved landings. International unapproved landings are those made at AAFs by operators not in an exempt category and who have not obtained prior approval.

(1) The airfield commander will classify a landing as intentional unapproved when the civil aircraft operator has—

(*i*) Landed without prior approval or does not have an approved DD Form 2401 (CALP) on board the aircraft.

(*ii*) Landed for a purpose not approved on the DD Form 2401.

(*iii*) Landed in an aircraft not listed on the approved DD Form 2401.

(2) The airfield commander will charge punitive landing fees for landings of this type.

(3) Operators who make repeated intentional unapproved landings may have their aircraft detained at the installation until the unapproved landing has been reported to the FAA General Aviation District Office or Flight Standards District Office and USAASO, and until other requirements of this regulation have been met. Repeated international unapproved landings will jeopardize future use of an AAF by that operator and may result in legal action being taken.

§ 557.37 Responsibilities related to unapproved landings.

(a) Table 3–2 in Appendix D lists actions that must be taken for an unapproved landing. Send reports through channels as soon as possible, to the Director, USAASO, Cameron Station, ALEX, VA 22304–5050.

(b) The aircraft operator must explain in writing to the installation commander why the landing occurred. The installation commander will send a copy of this report through channels to the Director, USAASO.

(c) In case of an accident the installation commander will report the details through channels to the Director, USAASO.

§ 557.38 Fuel, services, and supplies.

(a) Those users who qualify under AR 703–1 may purchase Army fuel and oil on either a cash or credit basis.

(b) Prices charged for fuel and other supplies will be as stated in AR 37–60 unless there is an agreement or contract that states otherwise.

(c) Disposition of funds will be as stated in AR 703–1 and AR 37–108 (See NGR 37–108 for ARNG).

(d) Authorization and identification required for purchase will be as stated in AR 703–1, paragraph 3–32.

(e) An identaplate is not a credit card.

§ 557.39 Authorization to land at AAFs.

All foreign aircraft operators that fall into Category 11, Table 1–2 in Appendix D, must have advance authorization to land at AAFs. Exceptions are those aircraft referred to in § 557.24(c).

§ 557.40 Procedures to obtain advance authorization.

Prospective users will submit requests for landing authorization, to include the information required by § 557.25(b), as follows:

(a) For flights requiring HQDA DAMI-FL approval and that involve interaction of foreign personnel with Army elements, the request will be submitted via the respective foreign military attache to HQDA (DAMI-FL), WASH DC 20310–1000 a minimum of 30 calendar days prior to the intended landing date.

Note: Requests of this nature may be submitted via the respective U.S. Defense Attache Office (USDAO), but only if the country in question is not officially represented by a military attache in Washington, DC.

(b) For flights that do not require DAMI-FL approval and that involve the interaction of foreign personnel with Army organizations, the request may be submitted directly to the Director, USAASO a minimum of 10 working days prior to the intended landing date.

§ 557.41 Action addressee responsibilities.

(a) For requests submitted in accommodation with § 557.40(a), HQDA (DAMI-FL) will—

(1) Ensure that USAASO has received, or is promptly provided, a copy of the request.

(2) Process the request per procedures prescribed in AR 380–25 to include coordination with USAASO for action as prescribed in paragraphs (b) (2) and (3) of this section and with other HQDA agencies as appropriate.

(3) Correlate results of coordination and render approval/disapproval notification to the requestor and other concerned parties.

(b) For requests submitted per § 557.40(b), USAASO will—

(1) Review the request to ensure that approval by HQDA (DAMI-FL) is not required. If HQDA (DAMI-FL) approval is required, ensure a copy of the request is forwarded.

(2) Coordinate with the installation commander to determine whether the AAF is available and can accommodate the request.

(3) Contact the Department of State Political-Military Affairs Office and the FAA International Office to determine whether a diplomatic overflight clearance has been issued or is required.

(4) Correlate results of coordination and render approval/disapproval notification to the requester and other concerned parties.

Subpart E—Aircraft Certification

§ 557.42 Federal aviation regulation, 14 CFR Part 139.

The FAA requires airports in any state, territory, or possession of the United States, serving FAA certified air carriers to be certificated under FAR part 139 unless—

(a) The airport has been certificated under the grant of exemption issued by FAA to DOD.

(b) The pilot declares an emergency.

(c) The airfield serves as an authorized weather alternate for the air carrier.

(d) The air carrier is under an exclusive contract to an element of DOD and is landing at a DOD airfield.

(e) The carrier is an air taxi operation that is excluded from FAR part 139 requirements.

§ 557.43 Certification requests for AAFs.

Initial or renewal requests for certification will—

(a) Verify that the conditions of FAR Part 139 or the grant of exemption are met.

(b) Contain a list of crash rescue and firefighting equipment.

(c) Be forwarded through channels to Director, USAASO, ATTN: Airspace Support Division, Cameron Station, ALEX, VA 22304–5050, at least 180 days before the date indicated for certification. Sufficient copies will be forwarded so that USAASO receives three copies.

§ 557.44 Additional USAASO responsibility.

USAASO will—

(a) Ensure the request for certification is coordinated with the Army Staff and is submitted to FAA.

(b) Monitor the FAA action and notify the AAF commander of approval or disapproval.

§ 557.45 Inspection authority.

The FAA or an Army authority may inspect a certificated airfield to see if it complies with the terms of FAR Part 139 or the grant of exemption. If the airfield fails the inspection, the certification may be revoked.

Appendix A—References

Section I—Required Publication AR 37–60

Pricing for Material and services
AR 37–103
Finance and Accounting for Installations Dispensing Operations
AR 37–108
General Accounting and Reporting for Finance and Accounting Office
AR 200–2
Environmental Effects of Army actions
AR 380–25

VOL
52
ISS
22
FE
3
1987
UMI

Foreign Visitors and Accreditations
AR 703–1
Coal and Petroleum Supply and Management Activities
FAR
Federal Aviation Regulation (Cited in §§ 557.43 and 557.45.)
FM 1–300
Flight Operations and Airfield Management. (Cited in § 557.21[e])
NGR 37–108
Fiscal Accounting and Reporting-Army National Guard. (Cited in § 557.40)

Section II—Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this publication.
AR 1–20
Legislative Liaison
AR 12–15
Joint Security Assistance Traning (JSAT)
AR 20–1
Inspector General Activities and Procedures
AR 95–14
Army Aviation Aeronautical Information
AR 95–27
Operational Procedures for Aircraft Carrying Hazardous Material
AR 95–50
Airspace and Special Military Operations
AR 95–87
Aircraft Hurricane Evacuation
AR 210–20
Master Planning for Army Installations
AR 215–1
Administration of Army Welfare, Morale, and Recreation Activities and Nonappropriated Fund Instrumentalities
AR 215–2
The Management and Operation of Army Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalites
AR 350–11
Exchange of Small Army Units Between the United States and Allied Nations for training
AR 360–5
Public Information
AR 385–40
Accident Report and Records
AR 385–95
Army Aviation Accident Prevention
AR 405–80
Granting Use of Real Estate
AR 420–72
Surfaced Areas, Railroads, and Associated Structures
AR 420–90
Fire Protection
AR 500–60
Disaster Relief
AR 525–16
Temporary Cross Border Movement of Land Forces between the United States and Canada
AR 550–2
Visits to Department of the Army Installations and
TM 5–803–4
Planning Army Aviation Facilities
TM 5–820–1
Surface Drainage for Airfields and Heliports TM 5–823–4 Army Airfield-heliport Operational and Maintenance Facilities (Marking)
TM 5–823–4
Army Airfield—Heliport Operational and Maintenance Facilities (marking)
TM 95–228
Terminal Instrument Procedures (TERPS)

Section III—Prescribed Forms

DD Form 2400
Civil Aircraft Cetificate of Insurance. (Prescribed in §§ 557.24, 557.25, and 557.31)
DD Form 2401
Civil Aircraft Landing Permit. (Prescribed in §§ 557.2, 557.25, 557.28 and 557.38)
DD Form 2402
Hold Harmless Agreement. (Prescribed in §§ 557.24 and 557.25)

Section IV—Referenced Form

DD Form 1131
Cash Collection Voucher

Appendix B—Joint Use Criteria

B–1. General

Civil aircraft use of a military airfield is considered on a case-by-case basis when a proposal is submitted through channels to the appropriate military headquarters by an authorized sponsor. The proposal should include the type of operation, type of aircraft, and estimated annual operations.

a. Joint use must not interfere with national defense requirements, degrade safety, or in any way hamper DOD in carrying out its mission.

b. All agreements will hold the Government harmless for any liability or damage arising from civil use of Government property and all restrictions and conditions will be part of the agreement. The term of the agreement and/or lease cannot exceed 25 years. Title to real property improvements will pass to the Government at termination or be restored to a condition acceptable to the Government. The Government will have authority to terminate the agreement in a national emergency or when in the best interest of national defense.

c. Proposals should be initially submitted to the installation commander. In addition to commenting on the proposal, the local commander will obtain comments from the appropriate Department of Army Regional Representative (DARR) at the FAA Regional Headquarters Office before forwarding all documents to the appropriate MACOM.

d. Specific criteria used to evaluate joint use proposals are listed in paragraphs B–3 through B–9. Failure of the proposal to meet established joint use criteria will result in joint use being limited, restricted, or prohibited.

Table B–1—Wake Turbulence Table

If military aircraft are	And civil aircraft are	Joint use is
Heavy	heavy	possible.
Large	heavy	prohibited.
Small	heavy	prohibited.
Heavy	large	possible.
Large	large	possible.
Small	large	possible.
Heavy	small	prohibited.
Large	small	possible.
Small	small	acceptable.

B–2. Airspace/Air Traffic Control Criteria

Operational consideration will be based on the premise that military aircraft will receive priority handling (except in emergencies) if traffic must be adjusted or resequenced. Funding for manpower increases required in air traffic control or related support activities as a result of the civil operation will have to be accommodated outside DOD resources. Additional equipment or physical airfield changes must be funded by the civil sponsor. Specific items considered are—

a. Airspace saturation.
b. Special use airspace and military training route requirements.
c. Traffic flow capability.
d. ATC facility capability.

B–3. Traffic Mix Criteria

The impact of dissimilar operations characteristics or procedures between civil and military aircraft increases the potential for accidents or incidents and opens DOD to possible litigation. The following items will be considered in evaluating the traffic mix aspect of joint use.

a. Aircraft weapons.
b. Helicopter operation.
c. Instrument Flight Rules vs Visual Flight Rules.
d. High performance aircraft.
e. Training mission.
f. Aircraft wake turbulence. See Table B–1.

B–4. Military Activity Criteria for Joint Use.

The following items are considered from a mission compatability perspective.

a. Must be advantageous to DOD.
b. Will not adversely impact DOD mission.
c. special material storage or loading area identified. (Joint use will not be considered at installations with nuclear storage areas.)
d. Installations involved in training student pilots will not be considered for joint use.
e. Joint use will not be considered at locations with an alert force mission.
f. Installations subject to no-notice inspections or frequent exercises will not be considered for joint use.
g. Joint use must not adversely reduce flexibility for force beddown or other related activity.
h. Must not impair Mobilization activities.

B–5. Civil Aircraft Equipment and Aircrew qualification Criteria

The following items are recommended for civil aircraft operating in a joint use environment:

a. IFR certified aircraft.
b. IFR qualified crews.
c. Two-way radio and transponder.

B–6. Facilities Criteria

The majority of land for civil facilities must be located on the perimeter of the military installation with access that does not impact on installation traffic. Federal legislature jurisdiction should be retroceded to the State, particularly in exclusive use and access

areas. Military approval is required on siting, design, and construction of civil facilities. The following items will be considered in evaluating the impact of joint use on facilities.

a Civil Facilities.

(1) Availability of existing local civil facilities.
(2) Practicality of constructing or expanding a civil airfield.

b. Runway and Taxiway

(1) Prevement strength for wheel loading.
(2) Pavement width and length.
(3) Capacity.
(4) Dual or single runway.
(5) Access to runway from civil facilities.

c. Civil Facility Location

(1) Availability of non-Government land for taxiway, terminal, ramp, fuel storage, hangar, maintenance, and so forth.
(2) Availability of excess Government-owned land for civil facilities.

d. NAVAIDs

DOD will not provide manpower to install, operate, or maintain navigational equipment for the sole use of civil aviation. Consideration must be given to the adequacy of existing NAVIADs for the civil operation.

e. Fire, Crash, Rescue.

(1) Equipage.
(2) Manpower.

f. Noise Barriers

(1) Existing configuration.
(2) Civil requirement.

g. Aircraft Arresting Systems (AAS)

DOD will not install, alter, or remove AAS for the use or convenience of non-military traffic; therefore, consideration must be given to—

(1) Existing configurations.
(2) Civil requirements.

h. Air Installation Compatible Use Zone

Study required in conjunction with airspace analysis to include—

(1) Runways to be used.
(2) Traffic distribution.
(3) Peak hour use.
(4) Schedule of operating hours.
(5) Engine signatures.
(6) Approach/departure profiles.
(7) Climatic data.

i. Security

Clear separation of military and civil activities is essential to avoid increased security cost, increased threat to priority and sensitive resources. Joint use increases the possibility for sabotage, terrorism, and vandalism. Joint use will not be considered if military and civilian aircraft will be collocated on a parking ramp, where other than runway facilities are used, or where non-Government personnel would require access to, and routinely transit, the base. Specific security aspects to be considered in joint use are—

(1) Access of public to military resources.
(2) Impact on manpower if increased security is required.

B–7. Manpower Criteria

The following items must be considered from the perspective or impact on manpower and career limitations:

a. Workload versus manpower level.
b. Possibility of contract or civilianization of ATC facilities (cost comparison studies).
c. Impact on rotation of military ATC personnel.

B–8. Financial Criteria

Any logistical support or utilities provided by the Government are reimbursable. Some reimbursable items that could be recovered include labor, equipment use, and supplies provided. The civil sponsor must pay a prorated share for property and operation of the Government runway. All real property outleased will be processed through the Corps of Engineers at fair market rental value. The following must be considered in evaluating joint use proposals.

a. There must be no cost to DOD appropriations.
b. Cost must be reimbursable through services in lieu of user fees.
c. There must be no significant indirect costs.
d. The sponsor must have funding available for the civil facilities.

B–9. Environmental Criteria

Analysis will be required if joint use involves new aircraft types of new approach/departure tracks. For FBO operations an EA or EIS may also be required. The following items also must be considered in a joint use evaluation:

a. Sponsor for civil operation must pay for preparation of any EA or EIS that may be required.
b. DOD or the appropriate military services will be the lead agency in the preparation of the EA or EIS.

Appendix C—U.S. Army Comparative Information for 14 CFR Part 139 of the Federal Aviation Regulation

Subpart C—Airport Operations Manual

Note: Subparagraph 1a, 2a, and so forth reference FAA standards. Subparagraphs 1b, 2b, and so forth, define reference comparable Army standards.

1a. 139.31 Preparations

1b. Army directives, pamphlets, and technical manuals control the design, operation, and maintenance of aviation facilities. These documents are maintained at all levels of command and are followed closely. FM 1–300 specifies requirements for detailed standing operating procedures. References in this table establish requirements that are equal to or exceed Part 139 of the FAR.

Subpart D—Certification: Eligibility

2a. 139.43 Pavement.

2b. See TM 5–803–4, Chapter 4 (Standards 3, 8, 11, 15, and 19).

3a. 139.45 Safety areas.

3b. See TM 5–803–4 and TM 5–820–1, Chapter 4 (Standards 4, 12, 21, 29, and 30).

4a. 139.47 Marking and lighting runways, thresholds, and taxiways.

4b. TM 5–803–4 (Chapter 3) and TM 5–823–4 provide criteria for Army Corps of Engineers personnel to mark serviceable runways, taxiways, overruns, and shoulders in accordance with U.S. National Standards. TM 5–803–4 (Category Group 13, para 3–3) establishes criteria for marking and lighting obstructions to air navigation at airfields. FM 1–300 ensures that all standards for parking and lighting airfields facilities and obstacles to air navigation are maintained. These standards are equal to or exceed standards of FAR, Part 139.

5a. 139.49 Airport firefighting and rescue equipment and services.

5b. See AR 420–90 (para 1). AR 420–90 contains responsibilities, polices, standards, and procedures for fire prevention and protection.

6a. 139.51 Handling and storing hazardous articles and materials.

6b. See FM 1–300. AR 95–27 contains safety procedures for handling dangerous material such as chemical and biological material and ammunition.

7a. 139.53 Traffic and wind direction indicators.

7b. Applicable Army aviation facilities have control towers directing local traffic. They have radio communication with civilian and military aircraft. The Army does not specifically require traffic pattern indicators. TM 5–803–4 (para 557.32) lists Army codes for airfield facilities. Code 134–70 stands for lighted wind direction indicators. Each Army airfield and heliport will have at least one lighted wind direction indicator.

8a. 139–55 Emergency plans.

8b. Each Army facility is required to publish, maintain, and exercise periodically their various emergency plans. The plans should provide enough guidance to ensure immediate issue of vital emergency information to principal tenants and to all units and agencies. The following regulations apply: AR 95–87, AR 385–40, AR 385–95, and AR 500–60.

9a. 139.57 Self-inspection program.

9b. The U.S. Army requires constant inspection of AAFs from a variety of specialist and command levels. Adequate procedures have been developed for issuing pertinent information to interested personnel. AR 20–1 contains general guidelines at all levels. Also see FM 1–300. The U.S. Army Safety Center (USASC) Guide for Aviation Resources Management for Aircraft Mishap Prevention provides a specific checklist. The USASC publication, "Preparation of a System Safety Program Plan for Aviation System Development," also applies.

10a. 139.59 Ground vehicles.

10b. Army vehicles operating on active aviation facilities normally have two-way radio contact with the control tower. They also follow specifically marked routes, and

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their movements are controlled by signals from the control tower. Also see TM 1-300.

11a. 139.61 Obstruction.

11b. TM 5-823-4 (apps H and I) is in accordance with the National Standards for Obstruction Marking. Also see FM 1-300.

12a. 139.63 Protection of NAVAIDs.

12b. AAFs are normally within the confines of, or next to, military installations that provide excellent protection and maximum security. Sites are selected by U.S. Engineers to ensure maximum performance of the navigation aid. Commanders ensure that the NAVAID's signal is not impaired by unnecessary construction.

13a. 139.65 Public protection.

13b. All U.S. Army installations are designed and maintained to provide security from inadvertent entry of persons or animals onto airfield operations areas. Airfield boundaries are normally marked or posted and patrolled by security police, usually around-the-clock. The following publications apply: AR 210-20, AR 360-25, and TM 5-803-4.

14a 139.67 Bird hazard reduction.

14b. Army aviation facilities are normally located within a major military installation. To date, no problem exists; however, each installation will continuously monitor its local bird hazard and request assistance if advisable.

15a. 139.69 Airport Condition Assessment and Reporting.

15b. See AR 95-14.

Subpart E—Operations

16a. 139.81 Operations rules: General.

16b. Mission requirements dictate that each installation be staffed and maintained properly according to Army standards. Pertinent directives ensure that these standards are equal to or exceed Part 139 of the FAR. Command inspection systems ensure compliance.

17a. 139.83 Maintenance of pavement areas.

17b. Details are in TM 5-803-4, TM 5-820-1, and TM 5-823-4.

18a. 139.85 Snow removal and positioning.

18b. At installations where snow and ice might become a hazard, AR 420-72 requires a snow removal and ice control plan. The plan will contain at least the following:

(1) An established priority for clearance of designated areas.

(2) Designation of equipment to be used.

(3) A listing of quantities and storage locations of materials to be used.

(4) Training material for equipment operators and supervisors.

(5) Provisions for round-the-clock notice of forecasted snow and ice storm intensities and duration.

19a. 139.87 Cleaning and replacing lighting items.

19b. See § 139.57, item 9 (self-inspection program).

20a. 139.89 Airport firefighting and rescue equipment and service.

20b. Details are in AR 95-26 and AR 420-90.

21a. 139.91 Self-inspection.

21b. See § 139.57, item 9, (self-inspection program).

22a. 139.93 Maintenance of approach and other imaginary surfaces.

22b. TM 5-803-4 (Chapter 8) contains criteria for determining obstructions to air navigation at AAFs. For terminal instrument procedures, the criteria in TM 95-228 apply. Guidance is also provided in section 77.28 of the FAR.

Subject: Fixed base operations at (Name of AAF), (Name of Army Installation), (City and State)
Thru: (Installation Commander)
Thru: (MACOM)
To: Director, USAASO
Attn: Airspace Support Division, Cameron Station, ALEX VA 22304-5050

1. The (name of the sponsor) requests approval to establish fixed base operation at (name of AAF).

2. Use of the AAF will be (reason request is being submitted).

3. Type of operation will be for (whether use is for general aviation, commercial aviation, both, or other).

4. The type and number of aircraft to be located on the AAF will include (type and number of aircraft).

5. Other facilities required include (facilities needed such as parking, hangar and terminal space, and land.

6. Services that will be required include (services required such as fuel, maintenance, and air traffic control).

7. Over the next 5 years, this operation will probably (estimate the growth and change of the operation).

8. Other information for your consideration includes (other information that applies).

Figure 2-1. Sample format for fixed base operation proposal.

Appendix D—Tables and Figures

TABLE 1-1.—LANDING, PARKING, AND STORAGE FEES

Authorized landing		
U.S. and possessions	$0.50 per 100 pounds	$10 minimum
Overseas	$1.70 per 100 pounds	$10 minimum
Unauthorized landing		
MGTOW up to 12,500 pounds	$200	
MGTOW 12,500 through 39,999	$500	
MGTOW 40,000 pounds and over	$1000	
Parking on ramp		
Up to 6 hours no charge.		
After 6 hours and for each 24 hours period or fraction thereof.	$15 per aircraft through 12,499 MGTOW.	
	$30 per aircraft 12,500 through 39,999	
	$60 per aircraft 40,000 MGTOW and above	
Storage in hanger		
For each 24-hour period and fraction thereof.	$30 per aircraft through 12,499 MGTOW	
	$60 per aircraft 12,500 through 39,999 MGTOW.	
	$120 per aircraft 40,000 MGTOW and above.	

TABLE 1-1.—MINIMUM AIRCRAFT LIABILITY COVERAGE REQUIREMENTS, STATED IN DOLLARS, FOR PRIVATELY OWNED, BUSINESS, OR COMMERCIAL AIRCRAFT, INCLUDING PASSENGERS

	A	B	C	D	E
Rule No.	If the MGTOW is	then for	the minimum for bodily injury is	the minimum for property damage is	and the minimum liability for passengers is
1	12,500 pounds and under	each person each accident	$200,000		$200,000
2			$600,000	$200,000	$200,000 X number of passenger seats
3	Over 12,500 pounds	each person each accident	$200,000		$200,000
4			$2,000,000	$2,000,000	$200,000 X number of passenger seats

5 FBO sponsor must carry a minimum of $6,000,000 insurance coverage.

Figure 1-1. Instructions for developing an identification number

ASO 11-86-79 (Example of an identification number.)

* * * 79 indicates number of DD Form 2401's issued in current year.

* * * 86 * * * indicates calendar year.

* * * 11 * * * indicates category of user from Table 1-2.

ASO * * * indicates the three letter identifier of the approving authority.

Table 1-2

Short Term Users

Category: 1. U.S. or Foreign contractor subcontractor not included in § 557.24b.

Lowest level of approving authority: Installation commander.

User requirement responsibility Authorized to operate corporation, personal, or leased aircraft when fulfilling the terms of a U.S. Government contract or when conducting other Government business. Must provide (1) the contract, (2) a brief description of the work being done, and (3) the name, telephone number, and address of the government contracting officer. (For exclusive contract see para § 557.24.) (See Notes 1 and 3.)

Category: 2. Displays or demonstrated.

Lowest level of approving authority: Installation commander.

User requirement responsibility: Must be a contractural provision of fulfilling a request by a U.S. Government representative who has a procurement interest and authorization or certification responsibilities. DD Form 2401 should contain name, address, and telephone number of the requesting Government contracting officer (For exclusive contract, see § 557.24.) (See Note 1.)

Category: 3. U.S. military, personnel-active duty, National Guard, Reserve, or ROTC.

Lowest level of approving authority: Installation commander.

User requirement responsibility: Not members of military flying clubs. May be own or leased aircraft. Use must be to take part in authorized military functions or when on temporary duty (TDY). Must show some means of identification. National Guard. Reserve, and ROTC must provide commander's endorsement or TDY orders. (See Notes 1, 2, and 3.)

Category: 4. Federal civilian employees.

Lowest level of approving authority: Installation commander.

User requirement responsibility: Not members of military flying clubs. May be operating their own or leased aircraft. Use must be to take part in authorized military functions or when on TDY. Provide TDY orders or other official papers certifying requirement to use the AAF. (See Notes 1, 2, and 3.)

Category: 5. Retired U.S. Military.

Lowest level of approving authority: Installation commander.

User requirement responsibility: Includes Regular and Reserve personnel entitled to retired pay, who are not members of military flying clubs. Provide a copy of retirement orders or other authorized means of identification (See Notes 1, 2, and 3.)

Category: 6. News media.

Lowest level of approving authority: Installation commander.

User requirement responsibility: Pertains to when the news media representatives are gathering information about a U.S. Government operation or event. Will be authorized on a case-by-case basis when other modes of transportation will preclude meeting a publication schedule or when in the best interest of the U.S. Army. Provide proper news media credentials. (See Notes 1, 2, and 3.)

Category: 7. Member of Congress or heads of Federal departments or agencies.

Lowest level of approving authority: MACOM representative designated by commander.

User requirement responsibility: Pertains to aircraft either owned or personally chartered for members of Congress and heads of U.S. Federal departments of agencies other than the President or vice President. Any request received from or for member of Congress must be reported to the Chief of Legislative Liaison in accordance with AR 1-20. Use must be official Government business and nonpolitically oriented. Proper identification must be presented as required. (See Notes 1, 2, and 3.)

Category: 8. Civil fly-ins.

Lowest level of approving authority: Installation commander.

User requirement responsibility: Pertains to civilian aircraft invited to participate in any Army installation-sponsored activity being held at an AAF. This also includes those activities sponsored by local communities or groups and hosted by an Army installation. Applies only during the period of event. Provide validation as part of the event being sponsored or hosted by the Army installation. (See Notes 1, 2, and 3.)

Category: 9. Weather alternate.

Lowest level of approving authority: Director USAASO.

User requirement responsibility: Designated AAFs may be used by scheduled air cariers when unforecast weather conditions require a change from the original destination while in flight. Show on the flight plan and in the request for approval the AAF requested for use as a weather alternate. (See Notes 1 and 2.)

Category: 10. Major political candidates.

Lowest level of approving authority: Director, USAASO.

User requirement responsibility: Pertains to aircraft owned or chartered explicitly for a U.S. presidential candidate. Includes not more than one accompanying news media aircraft. The candidate must be one who is being provided Secret Service protection. All flight operations involving AAFs must be coordinated with the Director (USAASO), ATTN: Airspace Support Division, Cameron Station, ALEX VA 22304-5050, (telephone commercial (202) 274-7796/6304). Changes in schedule after normal duty hours must be reported to the Army Operational Center, Pentagon. Fuel may be sold on credit in accordance with AR 703-1. Candidates identification must be confirmed and Secret Service Security requirements must be satisfied. (See Notes 1, 2, and 3.)

Category: 11. Foreign aircraft operations

Lowest level of approving authority: Director, USAASO.

User requirement responsibility: Pertains to foreign civil or Government aircraft operating in a commercial mode. AAFs may be authorized as weather alternates for foreign aircraft in certain instances. Coordinates with the U.S. State Department, FAA, and DAMI-FL (§ 557.41.) Authorization to land at an AAF does not take the place of, or constitute, a diplomatic overflight clearance. Must have an ALAN. (See Notes 1, 2, and 3.)

Category 12. Miscellaneous.

Lowest level of approving authority: Director, USAASO.

User requirement responsibility: Other categories of users may be considered on a case-by-case basis. Examples include commercial development testing at Army facilities, commercial charters, scheduled air service, and private nonrevenue flights. Provide any agreements or documents indicating approval for landing. (See Notes 1, 2, and 3.)

Notes: 1. DD Form 2400, DD Form 2401, and DD Form 2402, or equivalent documentation, must be provided to the appropriate approving authority by the potential user. This information is used in determining whether or not to approve the request.

2. Landing fees are chargeable but may be waived by the approving authority in the best interest of the Army. (See § 557.34.)

3. Prior permission to land at the destination AAF may be required by the AAF commander even though the operator has an approved DD Form 2401.

TABLE 3-1.—[Landing, Parking, and Storage Fees]

Authorized landing		
U.S. and possessions	$0.50 per 100 pounds	$10 minimum
Overseas	1.70 per 100 pounds.	$10 minimum
Unauthorized landing		
MGTOW up to 12,500 pounds	$200	
MGTOW 12,500 through 39,999	$500	
MGTOW 40,000 pounds and over	$1000	
Parking on ramp		
Up to 6 hours no charge.		
After 6 hours and for each 24 period or fraction thereof.	$15 per aircraft through 12,499 MGTOW.	
	$30 per aircraft 12,500 through 39,999	
	$60 per aircraft 40,000 MGTOW and above	
Storage in hanger		
For each 24-hour period and fraction thereof.	$30 per aircraft through 12,499 MGTOW	
	$60 per aircraft 12,500 through 39,999 MGTOW	
	$120 per aircraft 40,000 MGTOW and above.	

Table 3-2

Responsibilities related to unapproved landings.

Required action: Provide help or emergencies. Responsible person: Instl cdr.

Required action: Inform the aircraft operator of his or her responsibility to report the incident to FAA. Responsible person: Instl cdr.

Required action: Report the incident to the nearest FAA General Aviation District Office or Flight Standards District Office. Responsible person: Instl cdr.

Required action: Explain why the unapproved landing took place. (A written record of the explanation will be kept on file.) Responsible person: A/C opr.

Required action: Prepare a report of landing by non-DOD aircraft and send a copy to the Director, USAASO. Responsible person: A/C opr.

Required action: complete and sign a DD Form 2402. Responsible person: A/C opr.

Required action: Provide information on insurance coverage. Responsible person: A/C opr.

Required action: Determine and collect cost of fees due U.S. Government responsible person: Instl cdr.

Required action: Overseas, advise the nearest U.S. Defense Attached Office (USDAO.) Responsible person: Instl cdr.

Appendix E— Glossary

Section I

Abbreviations

AAF
Army airfield

ACSI
Assistant Chief of Staff for Intelligence

ALAN
Aircraft landing authorization number

ATC
Air traffic control

CAP
Civil air patrol
COE
Chief of Engineers
DA
Department of the Army
ODCSOPS
Deputy Chief of Staff for Operations and Plans
DOD
Department of Defense
EA
Environmental assessment
EIS
Environmental Impact Statement
FAA
Federal Aviation Administration
FAO
Finance and accounting officer
FBO
Fixed base operator
IFR
Instrument flight rules
LOA
Letter of agreement
MACOM
Major Army command
MGTOW
Mean gross takeoff weight
NAS
National Airspace System
NAVAID
Navigational aid
PPR
Prior permission required
TDY
Temporary duty
USAASO
U.S. Army Aeronautical Services Office
USAF
U.S. Air Force
USASC
U.S. Army Safety Center
USAR
U.S. Army Reserve
USGC
U.S. Coast Guard
USDAO
U.S. Defense Attache Office

Section II

Terms
Aircraft
Any contrivance or device used or intended to be used for flight in the air.
Airfield
Any runway or landing area designed for use by aircraft.
Approval authority
The individual or agency having authority to approve landing at AAFs by nonexempt aircraft.
Army airfield (AAF)
An airfield owned or operated by the Army.
Authorized buyer letter
A letter of agreement that qualified operators must file with the Army in order to purchase aviation Petroleum Oils and Lubricants on credit.
Bailed aircraft
U.S. Government-owned aircraft delivered to a government contractor for a use directly related to a contract.
Certificate of Insurance
A certificate that describes the amount of third-party insurance carried by the user, aircraft owner, or aircraft operator.
Civil aircraft
Army U.S. or foreign registered aircraft owned by private individuals, companies, corporations, or foreign governments that are operated for private or commercial aviation purposes.
Civil aircraft landing permit (DD Form 2401)
An application that, when validated by the appropriate approving authority, permits an aircraft operator to use an AAF under the terms of this regulation.
Civil aviation
All civil aircraft of any national registry, including commercial, business, and general aviation.
Civil use
Use of an AAF by a civil operator.
Emergency landing
A landing resulting from an inflight emergency.
Exempt aircraft
Aircraft that do not require a CALP or other authorization to land at an AAF.
Government aircraft
Aircraft owned, operated exclusively by or on behalf of, or controlled by any department or agency of any government or any aircraft for which that government has liability responsibility.
Civil use
Use of an AAF by a civil operator.
Emergency landing
A landing resulting from an inflight emergency.
Exempt aircraft
Aircraft that do not require a CALP or other authorization to land at an AAF.
Government aircraft
Aircraft owned, operated exclusively by or on behalf of, or controlled by any department or agency of any government or any aircraft for which that government has liability responsibility.
Hold harmless agereement (DD Form 2402)
An agreement filled out by the user, that obsolves the U.S. Government from all liabilities incurred in connection with civil aircraft use of an AAF.
Inflight emergency
A situation developed in flight that makes continued flight hazardous to the crew or passengers or both.
Joint use
Use of an AAF by a local community of foreign government. A specific written agreement will detail all specific conditions of such use.
Joint-use AAF
An AAF where a specific written agreement exists between the Army and a local, State, or foreign agency for use of any of the AAF.
Loaned aircraft
A U.S. Government-owned aircraft delivered to another portion of the U.S. Government or to a military service of any government.
Nonexempt aircraft
All aircraft other than exempt aircraft.
Official government business
Activity associated with support of U.S. Army, DOD, or other U.S. Federal agencies at or near an AAF.
Outgrant
Authority to use military property under existing statutes. May be in the form of leases, licenses, permits, and so forth.
Unapproved landing
A landing at an AAF by a nonexempt aircraft without prior permission or approval.
User
An operator of nonexempt aircraft operating at an AAF.
Weather alternate
An AAF used as a weather alternate as prescribed by FFRs or other directives.

John O. Roach II,

Army Liaison Officer, with the Federal Register

[FR Doc. 87-1473 Filed 2-2-87; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD14-87-01]

Anchorage Ground; Island of Tinian, Commonwealth of the Northern Marianas Islands

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish an explosives anchorage around naval anchorages "A" and "B" northwest of Tinian Harbor. Military Sealift Command ships loaded with explosives will be using these moorings on a regular basis. The purpose of the regulation is to provide a safe separation between vessels loaded with explosives and other vessels at anchor.

DATES: Comments must be received on or before March 20, 1987.

ADDRESSES: Comments should be mailed to Commander (oan), Fourteenth Coast Guard District, Prince Kalanianole Federal Building, 300 Ala Moana Blvd., Honolulu, Hawaii 96850-4982. The comments and other materials referenced in this notice will be available for inspection and copying at the PJKK Federal Building, 300 Ala Moana Blvd., Room 9139, Honolulu, Hawaii. Normal office hours are between 6:30 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LT. M. D. West, (808) 541-2315.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD14-87-01) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LT M. D. WEST, project officer, Fourteenth Coast Guard District Aids to Navigation Office, and LT M. G. FETROW, project attorney, Fourteenth Coast Guard District Legal Office.

Discussion of Proposed Regulations

The United States Navy has established fleet moorings A and B northwest of Tinian Harbor on the Island of Tinian, CNMI. Military Sealift Command ships carrying explosives in amounts up to 1.6 million pounds will use the anchorages on a regular basis. The U.S. Coast Guard has established a security zone around both fleet moorings. This regulation is being proposed to provide safe separation distance between explosive laden vessels and other vessels at anchor beyond the area provided by the security zone. This regulation was initiated at the request of the U.S. Navy. The District Engineer, U.S. Army Corps of Engineers has been contacted and has no objection to the issuance of this regulation. This regulation is issued pursuant to 33 U.S.C. 471 as set out in the authority citation for all of 33 CFR Part 110.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under E.O. 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The fleet moorings have been established in an open roadstead off the Island of Tinian. The only regular vessel traffic in the area consists of small vessels transiting the area or involved in fishing. Passage of these vessels (less than 500 gross tons) will be unaffected by the regulation. Ample anchorage area with good holding grounds are located outside the anchorage grounds. The regulation does not restrict access to any fairway or channel, or limit access to any facility or area previously accessible to vessels affected by the regulation.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.239 is added to read as follows:

§ 110.339 Island of Tinian, CNMI.

(a) The anchorage grounds (based on 1944 Saipan Datum):

(1) Explosives Anchorage A: A circular area intersecting the shoreline having a radius of 1,900 yards centered at latitude 14°58'57.0" N, longitude 145°35'40.8" E.

(2) Explosives Anchorage B: A circular area intersecting the shoreline having a radius of 1,900 yards centered at latitude 14°58'15.9" N, longitude 145°35'54.8" E.

(b) The regulations: Explosives Anchorages A and B; with the exception of explosive laden navel vessels at explosives anchorage A and B, no vessel may anchor within these areas without permission of the Captain of the Port. No vessel or more than 500 gross tons displacement may enter these areas except for the purpose of anchoring in accordance with this section.

Dated: January 21, 1987

Alfred P. Manning, Jr. RADM,

U.S Coast Guard, Commander, 14th Coast Guard District.

[FR Doc. 87-2066 Filed 2-2-87; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Rocky Mountain National Park, CO; Mountain Climbing and Winter Backcountry Trip Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking is a deletion of registration and check out requirements for technical climbing and overnight winter backcountry trips in Rocky Mountain National Park. The existing regulations, which require technical climbers and overnight winter backcountry users to register and check out after completion of their activity were intended to provide information necessary to initiate search and rescue responses. Actual experience over the years has shown that the intended purpose of this regulation has not been achieved. Nearly all search and rescue responses have been generated by reports from sources other than the check out system. Instead of aiding rescuers, these regulations have burdened the park rangers with the task of checking on countless cases of climbers and backpackers who have failed to check out. The deletion of this regulation has been supported by the climbing and backpacking community for over two years. The deletion of this regulation will not result in the reduction of visitor protection services provided by park personnel.

DATES: Written comments will be accepted through March 5, 1987.

ADDRESS: Comments should be addressed to: Superintendent, Rocky Mountain National Park, Estes Park, CO 80517.

FOR FURTHER INFORMATION CONTACT: David J. Essex, Chief Park Ranger, Rocky Mountain National Park, Estes Park, CO 80517, Telephone: 303-586-2317.

SUPPLEMENTARY INFORMATION:

Background

The existing National Park Service (NPS) special regulations that pertain to mountain climbing and winter backcounty trips are codified as 36 CFR 7.7 (d) and (e). They require all technical climbers and all winter overnight backcountry users to register or check in prior to undertaking these activities and to check out with a ranger upon completion of the activity. The original intent was to provide park search and rescue personnel with the knowledge

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that a park user was in essence overdue from a potentially dangerous activity. In reality, almost all perceived overdue parties concerned climbers and backcountry users failing to properly check out. In addition, a portion of the climbing community opposed the registration system and deliberately violated the conditions of the system. The net effect of the regulations was a combination of non-compliance, failure to check out, failure a contact a ranger in a timely manner and wasted time and energy on the part of the park staff administering the system. After a reasonable period of time working with these restrictions, it was determined that they were not achieving their original purpose of saving lives. In reality, almost all park search and rescue efforts were the result of initial reports by climbing partners, other park backcountry users, friend or relatives. The registration forms themselves were not the basis for search and rescue responses. For over two years, the climbing and backpacking community has supported the deletion of these regulations.

The NPS believes the deletion of these rules will make the management of mountain climbing and winter backcountry trips more consistent with the practices of both state and federal agencies whose lands are contiguous with Rocky Mountain National Park. Overnight backcountry trips will continue to be regulated by 36 CFR 2.10 Camping and Food Storage.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking.

The Rocky Mountain National Park staff has contacted the Colorado Mountain Club, local climbing speciality shops, and the local communities regarding this rulemaking.

Drafting Information

The primary authors of this rulemaking are David J. Essex, Chief Park Ranger, and James L. Protto, South District Ranger, Rocky Mountain National Park.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule within the meaning of Executive Order 12291, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). This rulemaking has no economic effect.

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental Regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

National parks; Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter 1 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); § 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

§ 7.7 [Amended]

2. By amending § 7.7 as follows:

a. By removing paragraphs (d) and (e).

b. By redesignating paragraphs (f) as (d), (g) as (e) and (h) as (f).

c. By amending the cross reference in paragraph (b) now reading "paragraph (g)" to read "paragraph (e)".

d. By amending the cross reference in newly redesignated paragraph (f)(4) now reading "paragraph (h)(5)" to read "paragraph (f)(5)".

Dated: January 6, 1987.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–2009 Filed 2–2–87; 8:45 am]

BILLING CODE 4310-70-M

VETERANS ADMINISTRATION

38 CFR Part 3

Medical Reports as Informal Claims/ Recoupment of Separation Pay

AGENCY: Veterans Administration.

ACTION: Proposed regulatory amendments.

SUMMARY: The Veterans Administration (VA) is proposing to amend its adjudication regulations concerning the acceptability of certain medical reports as informal claims and the withholding of compensation to recoup separation pay and readjustment pay. These amendments are necessary to implement certain provisions of the Defense Officer Personnel Management Act and two unpublished opinions of the VA General Counsel. The intended effect of these amendments is to clarify the circumstances under which medical reports may constitute informal claims for benefits and to prevent duplication of payments of compensation and military separation and readjustment pay.

DATES: Comments must be received on or before March 3, 1987. These changes are proposed to be effective 30 days after the date of publication of the final rules with the exception of the amendment to § 3.700(a) (2)(iii) and (5) concerning recoupment of separation pay which is proposed to be effective September 15, 1981, as provided by law.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132, at the above address and only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until March 16, 1987.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, (202) 233–3005.

SUPPLEMENTARY INFORMATION: The Defense Officer Personnel Management Act, Pub. L. 96–513, created a new category of payment upon involuntary discharge or release from active duty called separation pay under 10 U.S.C. 1174. That same law also required the VA to withhold compensation that was payable based on disabilities that were incurred or aggravated during the same period of service until the full amount of separation pay had been recouped. We propose to implement this law by appropriately amending 38 CFR 3.700.

In a related matter the VA General Counsel has held that while compensation must be withheld to recoup 75 percent of readjustment pay authorized under 10 U.S.C. 687, where entitlement to disability compensation was established prior to September 15, 1981, readjustment pay authorized under 10 U.S.C. 3814(a) was not subject to recoupment through withholding of disability compensation, entitlement to which was established prior to September 15, 1981. Where entitlement to VA compensation was established on or after September 15, 1981, the total amount of separation pay awarded under section 1174(h)(2) of Title 10, United States Code, or severance pay or readjustment pay under any other provision of law is subject to recoupment through withholding of disability compensation. This decision will also be implemented by appropriately amending 38 CFR 3.700.

In an unpublished opinion, the VA General Counsel has also clarified the circumstances under which certain medical reports may be accepted as informal claims. Under 38 CFR 3.157(b) certain examination or treatment reports may be accepted as informal claims and in some cases the date of examination, treatment or admission may be considered the date of receipt of the claim. To be so considered, however, the VA General Counsel has held that the reports cited in 38 CFR 3.157(b)(1) must relate to examination or treatment of a disability for which service-connection has already been established or that a claim specifying the benefit sought must be received within one year from the date of such examination, treatment or hospitalization. We propose to add clarifying language to this section which is consistent with that opinion.

The Administrator hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109)

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: January 8, 1987.

Thomas K. Turnage,

Administrator.

38 CFR Part 3, Adjudication, is proposed to be amended as follows:

PART 3—[AMENDED]

1. The authority citation for Part 3, Subpart A, continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 210.

2. In § 3.155, paragraph (c) is revised to read as follows:

§ 3.155 Informal claims.

* * * * *

(c) When a claim has been filed which meets the requirements of § 3.151 or § 3.152, an informal request for increase or reopening will be accepted as a claim.

§ 3.157 [Amended]

3. In § 3.157(a), remove the words "Pub. L. 87–825" from the citation at the end of the paragraph, so that the complete citation reads "(38 U.S.C. 3010(a))".

4. In § 3.157, paragraph (b)(1) is revised to read as follows:

§ 3.157 Report of examination or hospitalization as claim for increase or to reopen.

* * * * *

(b) * * *

(1) *Report of examination or hospitalization by VA or uniformed services.* The date of outpatient or hospital examination or date of admission to a VA or uniformed services hospital will be accepted as the date of receipt of a claim. The date of a uniformed service examination which is the basis for granting severance pay to a former member of the Armed Forces on the temporary disability retired list will be accepted as the date of receipt of claim. The date of admission to a non-VA hospital where a veteran was maintained at VA expense will be accepted as the date of receipt of a claim, if VA maintenance was previously authorized; but if VA maintenance was authorized subsequent to admission, the date the VA received notice of admission will be accepted. The provisions of this paragraph apply only when such reports relate to examination or treatment of a disability for which service-connection has previously been established or when a claim specifying the benefit sought is received within one year from the date of such examination, treatment or hospital admission. (38 U.S.C. 210(c))

5. In § 3.700, paragraph (a)(2) is revised, a citation is added to paragraph (a)(3) and paragraph (a)(5) is added to read as follows:

§ 3.700 General.

* * * * *

(a) * * *

(2) *Lump-sum readjustment pay.* (i) Where entitlement to disability compensation was established prior to September 15, 1981, a veteran who has received a lump-sum readjustment payment under former 10 U.S.C. 687 (as in effect on September 14, 1981) may receive disability compensation for disability incurred in or aggravated by service prior to the date of receipt of lump-sum readjustment payment subject to deduction of an amount equal to 75 percent of the amount received, as readjustment payment. (38 U.S.C. 210(c))

(ii) Readjustment pay authorized under former 10 U.S.C. 3814(a) is not subject to recoupment through withholding of disability compensation, entitlement to which was established prior to September 15, 1981. (38 U.S.C. 210(c))

(iii) where entitlement to disability compensation was established on or after September 15, 1981, a veteran who has received a lump-sum readjustment payment may receive disability compensation for disability incurred in or aggravated by service prior to the date of receipt of the lump-sum readjustment payment, subject to

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recoupment of the total amount of the readjustment payment. (38 U.S.C. 210(c))

(iv) The receipt of readjustment pay does not affect the payment of disability compensation based on a subsequent period of service. Compensation payable for service-connected disability incurred or aggravated in a subsequent period of service will not be reduced for the purpose of offsetting readjustment pay based on a prior period of service. (10 U.S.C. 1174(h)(2))

(3) *Severance pay.* * * * (10 U.S.C. 1212(c)).

* * * * *

(5) *Separation pay.* (i) A veteran who has received separation pay may receive disability compensation for disability incurred in or aggravated by service prior to the date of receipt of separation pay subject to recoupment of the total amount received as separation pay.

(ii) The receipt of separation pay does not affect the payment of disability compensation based on a subsequent period of service. Compensation payable for service-connected disability incurred or aggravated in a subsequent period of service will not be reduced for the purpose of offsetting separation pay based on a prior period of service. (10 U.S.C. 1174)

* * * * *

[FR Doc. 87-1973 Filed 2-2-87; 8:45 am]

BILLING CODE 8320-01-M

VETERANS ADMINISTRATION

DEPARTMENT OF DEFENSE

38 CFR Part 21

Veterans Education; Increase in Rates Payable in the Education Assistance Test Program

AGENCY: Veterans Administration and Department of Defense.

ACTION: Proposed regulations.

SUMMARY: The law provides that rates of subsistence allowance and educational assistance payable under the Education Assistance Test Program shall be adjusted annually based upon the average actual cost of attendance at public institutions of higher education in the 12-month period since the rates were last adjusted. After consultation with the Department of Education, the Department of Defense has concluded that these rates should be increased by 6.1 percent. The regulations dealing with these rates are adjusted accordingly.

DATES: Comments must be received on or before March 3, 1987. It is proposed to make this rate increase effective October 1, 1986.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 of the above address between the hours of 8 a.m. to 4:30 p.m. Monday through Friday (except holidays) until March 16, 1987.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233-2092.

SUPPLEMENTARY INFORMATION: The law (10 U.S.C. 2145) provides that the Secretary of Defense shall adjust the amount of educational assistance which may be provided in any academic year under the Educational Assistance Test Program, and the amount of subsistence allowance authorized under that program. The adjustment is to be based upon the 12-month increase in the average actual cost of attendance at public institutions of higher education. As required by law, the Department of Defense has consulted with the Department of Education and determined that these costs have increased 6.1 percent. This proposal adjusts 38 CFR 21.5820 and 21.5822 so that all rates which appear in them are based on an annual limit on educational assistance of $1560, and a monthly payment of subsistence allowance for full-time students of $389.

It is proposed to make these increases effective October 1, 1986. Retroactive effect is warranted because these changes are liberalizing, and because they are interpretative rules which implement and construe the meaning of a law. Moreover, there is good cause for a retroactive effective date of October 1, 1986. Such a date facilitates implementation of 10 U.S.C. 2145 which requires annual adjustments in educational assistance.

The Veterans Administration (VA) and the Department of Defense have determined that these proposed amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs and the Secretary of Defense have certified that these proposed amended regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the proposed amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because these proposed amended regulations make adjustments required by law, and because they affect only rates payable to individuals. No regulatory, administrative, or paperwork burdens are imposed on any type of small entities.

There is no Catalog of Federal Domestic Assistance number for the program affected by these proposed amended regulations.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: November 17, 1986.

Thomas K. Turnage,

Administrator.

A. Lukeman,

Major General, USMC, Deputy Assistant Secretary of Defense.

December 10, 1986.

PART 21—[AMENDED]

38 CFR Part 21, Vocational Rehabilitation and Education, is proposed to be amended as follows:

1. In § 21.5820 the introductory text of paragraph (b), paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B), and paragraphs (b)(2)(ii)(A) and (b)(2)(ii)(B) are revised to read as follows:

§ 21.5820 Educational assistance.

* * * * *

(b) *Amount of educational assistance.* The amount of educational assistance may not exceed $1,560 per standard academic year, adjusted annually by regulation. (10 U.S.C. 2143)

(1) * * *

(ii) * * *

(A) Multiplying the number of whole months in the enrollment period by § 173.33 for a full-time student or by $88.67 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $5.77 for a full-time student or by $2.88 for a part-time student; and (10 U.S.C. 2143)

* * * * *

(2) * * *

(ii) * * *

(A) Multiplying the number of whole months in the enrollment period by § 173.33 for a full-time student or by $86.67 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $5.77 for a full-time student or by $2.88 for a part-time student; and (10 U.S.C. 2143)

* * * * *

2. In § 21.5822 paragraphs (b)(1)(i) and (b)(1)(ii) and paragraphs (b)(2)(i) and (b)(2)(ii) are revised to read as follows:

§ 21.5822 Subsistence allowance.

* * * * *

(b) * * *

(1) * * *

(i) If a person is pursuing a course of instruction on a full-time basis, his or her subsistence allowance is $389 per month, adjusted annually by regulation.

(ii) If a person is pursuing a course of instruction on other than a full-time basis, his or her subsistence allowance is $194.50 per month. (10 U.S.C. 2144)

* * * * *

(2) * * *

(i) The VA shall determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction full-time by dividing $389 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day.

(ii) The VA shall determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction on other than a full-time basis by dividing $194.50 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day. (10 U.S.C. 2144)

* * * * *

[FR Doc. 87-1974 Filed 2-2-87; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6905]

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Proposal rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2751.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regualtions, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricker requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premimum rates for new buildings and their contents and for the second layer of insruance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entites. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

Authority: 42 U.S.C. 4001 et seq., Reorg. Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
California	Carlsbad (City), San Diego County.	Buena Vista Creek	At Jefferson Street Bridge	None	*15
			50 feet upstream of Hayma/ Drive Bridge	None	*25
			500 feet upstream of El Camino Real Bridge	None	*29
Maps are available for review at the Engineering Department, 1200 Elm Street, Carlsbad, California 92008.					
Send Comments to the Honorable Mary Casler, Mayor City of Carlsbad, 1200 Elm Street, Carlsbad, California 92008.					
California	Nevada County (Unincorporated Areas)	Donner Creek	1,680 feet downstream of confluence with Cold Creek	*5,898	*5,898

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PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
			40 feet upstream from the Center of Cold Stream Road.	*5,923	*5,919
			490 feet upstream of Cold Stream Road	*5,924	*5,921
		Donner Lake	At intersection of South Shore and Cedar Drives	*5,942	*5,936
		Summit Creek	At mouth (Donner Lake)	*5,942	*5,936
			2,740 feet upstream of Summit Creek Drive	*6,106	*6,106

Maps are available for inspection at the Planning Department, 700 Zion Street, Nevada City, California.

Send comments to the Honorable Crawford Bost, Chairman, Nevada County Board of Supervisors, 201 Church Street, Nevada City, California 95959.

Illinois	Village of Gardner, Grundy County.	Illinois Central Gulf Railroad Ditch	Just upstream of State Highway 53	*586	*583
			Just downstream of Sherman Street overpass	*588	*589

Maps available for inspection at the Village Hall, P.O. Box 545, Mayor and Center Streets, Gardner, Illinois.

Send comments to the Honorable Raymond Serene, Mayor, Village of Gardner, Village Hall, P.O. Box 545, Mayor and Center Streets, Gardner, Illinois 60424.

Minnesota	City of Rochester, Olmsted County.	Cascade Creek Split Flow	About 160 feet upstream of confluence with Cascade Creek.	None	*1,000
			About 670 feet upstream of confluence with Cascade Creek.	None	*1,002
			Just upstream of U.S. Highway 52	None	*1,006

Maps available for inspection at the Department of Planning and Zoning, 1421 3rd Avenue, SW., Rochester, Minnesota.

Send comments to The Honorable Chuck Hazama, Mayor, City of Rochester, 224 1st Avenue SW., Rochester, Minnesota 55902.

New Jersey	Belleville, town, Essex County	Second River	Upstream side of Mills Ridge Street at the upstream corporate limits.	*89	*104

Maps available for inspection at the Town Engineering Department, 383 Washington Avenue, Belleville, New Jersey.

Send comments to The Honorable Michael V. Marotta, Mayor of the Town of Belleville, Essex County, 152 Washington Avenue, Belleville, New Jersey 07019

New Jersey	Bloomfield, Township, Essex County.	Third River	Downstream corporate limits	*81	*82
			Upstream side of Garden State Parkway	*102	*109
			Confluence with Third River Tributary No. 1	*140	*139
			Downstream side of Broughton Avenue	*160	*160
			Upstream corporate limits	*176	*184
			Confluence with the Third River	*140	*139
		Third River Tributary No. 1	Approximately .4 mile upstream of the confluence with Third River.	*144	*144
			Downstream corporate limits	*100	*104
		Second River	Upstream side of Bloomfield Avenue	*114	*117
			Upstream side of Glenwood Avenue	*120	*124
			Upstream corporate limits	*129	*132
			Confluence with Second River	*116	*118
		Second River Tributary	Upstream corporate limits	*129	*126

Maps available for inspection at the Municipal Building, Municipal Plaza, Bloomfield, New Jersey.

Send comments to The Honorable John W. Kinder, Mayor of the Township of Bloomfield, Essex County, Municipal Building, Municipal Plaza, Bloomfield, New Jersey 07003-5487.

New Jersey	Hopewell, Township, Mercer County.	Delaware River	Downstream corporate limits	*40	*48
			Approximately .5 mile upstream of confluence of Moore Creek.	*62	*61
			Upstream corporate limits	*64	*65
		Stony Brook	Approximately .3 mile downstream of Old Mill Road	*141	*142
			At confluence of Baldwins Creek	*152	*153
			Approximately 300 feet upstream of CONRAIL	*170	*171
			Upstream corporate limits	*206	*207
		Jacobs Creek	Just downstream of confluence with Delaware River	*49	*48
			Approximately 400 feet downstream of confluence of Ewing Creek.	*65	*66
			At Jacobs Creek Road	*70	*68
		Ewing Creek	Approximately 250 feet upstream of Nursery Road	*120	*121
			Approximately 650 feet upstream of Scotch Road	*150	*149
			Approximately 75 feet upstream of Scotch Road	None	*154
		Beden Brook	Approximately 950 feet upstream of Province Line Road	*115	*117
			Upstream side of Aunt Molly Road		
			Approximately 300 feet upstream of Mount-Rose-Hopewell Road	*125	*127
			Approximately 600 feet downstream of upstream corporate limits.	*185	*183

Maps available for inspection at the Hopewell Township Municipal Building, Route 546 & Scotch Road, Titusville, New Jersey.

Send comments to The Honorable James Davy, Administrator of the Township of Hopewell, Mercer County, Route 546 & Scotch Road, Titusville, New Jersey 08560.

New Jersey	Lawrence, Township, Mercer County	Stony Brook	At downstream corporate limits	*115	*114
			Approximately 360 feet upstream of dam	*131	*130
			At upstream corporate limits	*133	*135

Maps available for inspection at the Town Hall, 2207 Lawrence Road, Lawrenceville, New Jersey.

Send comments to The Honorable Barry Larson, Manager of the Township of Lawrence, Mercer County, 2207 Lawrence Road, Lawrenceville, New Jersey 08618.

New Jersey	Montclair, Township, Essex County.	Third River	Downstream corporate limits	*196	*198
			Upstream corporate limits	*219	*218
		Second River	Downstream corporate limits	*191	*192

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
			Upstream side of Willow Street	*249	*251
			Downstream side of Park Street	*277	*279
		Nishuane Brook	Downstream corporate limits	*164	*166
			Upstream side of Madison Avenue	*234	*235

Maps available for inspection at the Planning Department, 205 Claremont Avenue, Montclair, New Jersey.

Send comments to The Honorable Bertrand Kandell, manager of the Township of Montclair, Essex County, 205 Claremont Avenue, Montclair, New Jersey 07042.

New Jersey	Mount Laurel, Township, Burlington County.	North Branch Pennsauken Creek	Approximately 1,000 feet downstream of Union Mills Road.	*33	*34

Maps available for inspection at the Mount Laurel Municipal Building, 100 North Mount Laurel Road, Mount Laurel, New Jersey.

Send comments to The Honorable John F. Hammer, Mayor of the Township of Mount Laurel, Burlington County, 100 North Mount Laurel Road, Mount Laurel, New Jersey 08054.

New Jersey	Pompton Lakes, Borough, Passaic County.	Wanaque River	Upstream side of Riverdale Boulevard	None	*190
			Approximately 400 feet upstream of Paterson-Hamburg Turnpike.	None	*198
			Downstream side of Wanaque Avenue	None	*208

Maps available for inspection at the Pompton Lakes Municipal Building, 25 Lenox Avenue, Pompton Lakes, New Jersey.

Send comments to The Honorable Donald Krom, Administrator for the Borough of Pompton Lakes, Passaic County, 25 Lenox Avenue Pompton Lakes, New Jersey 07442

New York	Glenville, Town, Schenectady County.	Alplaus Kill	Upstream side of Glenridge Road	*230	*228
			Upstream side of Delaware and Hudson Railroad	*232	*231

Maps available for inspection at the Town Hall, 18 Glenridge Road, Glenville, New York.

Send comments to The Honorable William W. Baird, Supervisor of the Town of Glenville, Schenectady County, 18 Glenridge Road, Glenville, New York 12302.

Ohio	Village of Groveport, Franklin County.	Blacklick Creek	About 1.2 miles downstream of Hamilton Road	*None	*729
			About 500 feet upstream of U.S. Route 33	*None	*746
		Tributary J	At mouth About 2,150 feet upstream of mouth	*740	*740

Maps available for inspection at the Zoning Commission, 650 Cherry Street, Groveport, Ohio.

Send comments to The Honorable Harold Carley, Mayor, Village of Groveport, 605 Cherry Street, Groveport, Ohio 43125.

Ohio	Unincorporated Areas of Warren County.	Bear Run	At mouth	*None	*608
			About 800 feet downstream of State Route 3	*607	*608
		Carlisle Drain	At mouth	*None	*665
			Just upstream of Jill Lane	*None	*669
		Little Miami River	About 2,200 feet downstream of the confluence of Ertel Run.	*592	*592
			About 500 feet upstream of State Route 48	*627	*627
			Just downstream of Stubbs Mill Road	*None	*641
			Just upstream of Interstate 71	*None	*684
			Just downstream of County Highway 30	*None	*709
			Just downstream of State Route 73	*722	*722
			About 1,100 feet upstream of County Boundary	*None	*745
		Twin Creek	At mouth	*664	*664
			Just downstream of Franklin-Trenton Road	*669	*667
			Just upstream of Chessie System	*674	*674

Maps available for inspection at the Building and Zoning Department, Warren County Administration Building, 320 East Silver Street, Lebanon, Ohio.

Send comments to The Honorable George Terwilleger, President, Board of County Commissioners, Warren County Administration Building, 320 East Silver Street, Lebanon, Ohio 45036.

Pennsylvania	Neshannock Township, Lawrence County.	Shenango River	At downstream corporate limits	*816	*805
			At upstream side of State Route 60	*818	*806
			At upstream side of Pulaski Road	*818	*807
			At upstream corporate limits	*819	*809

Maps available for inspection at the Neshannock Township Building, 3131 Mercer Road, New Castle, Pennsylvania.

Send comments to The Honorable John Carter, Chairman of the Board of Supervisors of the Township of Neshannock, Lawrence County, 3131 Mercer Road, New Castle, Pennsylvania 16105.

Pennsylvania	Reading, City Berks County	Schuylkill River	2,540 feet downstream of CONRAIL bridge	*219	*218
			Downstream side of CONRAIL bridge	*224	*223
			1,130 feet upstream of Warren Street Bypass bridge	*226	*225
			2,030 feet upstream of Warren Street Bypass bridge	*226	*225
			2,630 feet upstream of Warren Street Bypass bridge	*226	*227
			Upstream corporate limits	*226	*227
		Tulpehocken Creek	0.19 mile upstream of the mouth	*215	*214
			Upstream corporate limits	*216	*214

Maps available for inspection at the City Hall, 815 Washington Street, Reading, Pennsylvania.

Send comments to The Honorable Karen A. Miller, Mayor of the City of Reading, Berks County, City Hall, 815 Washington Street, Reading, Pennsylvania 19601-3690.

South Carolina	Unincorporated Areas of Richland County.	Little Jackson Creek	At mouth	*205	*204
			Just upstream of Two Notch Road	*219	*211
			About 400 feet downstream of Creekwood Avenue	*226	*220
			Just upstream of Creekwood Avenue	*227	*225
			About 1,950 feet downstream of Rabon Road	*243	*243
		Lightwood Knot Branch	At confluence with Little Jackson Creek	*221	*214
			Just downstream of Interstate 20	*221	*221

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PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
Maps available for inspection at the County Administrator's Office, Richland County, P.O. Box 192, Columbia, South Carolina.					
Send comments to The Honorable Dean Hunter, Jr., County Administrator, Richland County, P.O. Box 192, Columbia, South Carolina 29202.					
Tennessee	City of Pigeon Forge, Sevier County.	West Prong Little Pigeon River	About 0.55 mile downstream of U.S. Highway 441	*968	*968
			Just upstream of U.S. Highway 441	*977	*978
			Just downstream of Private Bridge	*982	*982
Maps available for inspection at the Public Work Director's Office, P.O. Box 1066, Pigeon Forge, Tennessee 37863.					
Send comments to The Honorable Bill Maples, Mayor, City of Pigeon Forge, P.O. Box 1066, Pigeon Forge, Tennessee 37863.					
Texas	Austin, City, Travis County	Tannehill Branch	Confluence with Boggy Creek North	*450	*450
			At downstream side of Springdale Road	*473	*469
			At downstream side of Oak Springs Drive	*477	*475
			At downstream side of Martin Luther King Boulevard	*514	*510
			At upstream side of Manor Road	*548	*547
			At downstream side of Old Manor Road	*556	*554
			At downstream side of Cameron Road	*630	*629
			At downstream side of Bennett Avenue	None	*643
			At downstream side of Helen Avenue	None	*646
			At downstream side of Koenig Lane	None	*661
		Givens Park Tributary 1 (GP-1)	At confluence with Tannehill Branch	None	*483
			At downstream side of 12th Street	None	*488
			At downstream side of Greenwood Avenue	None	*504
			At downstream side of Martin Luther King Boulevard	None	*532
			Approximately 370 feet upstream of Manor Road	None	*558
		Given Park Tributary 2 (GP-2)	At confluence with GP-1	None	*493
			At downstream side of Martin Luther King Boulevard	None	*529
			Approximately 2,200 feet upstream of Martin Luther King Boulevard.	None	*570
		West Tributary 3 (WT-3)	At confluence with Tannehill Branch	None	*504
			At downstream side of Martin Luther King Boulevard	None	*507
			At downstream side of Manor Road	None	*547
Maps available for inspection at the Department of Public Works, One Texas Center, 505 Barton Springs Road, Austin, Texas.					
Send comments to the Honorable Frank Cooksey, Mayor of the City of Austin, Travis County, P.O. Box 1088, Austin, Texas 78767-8839.					
Texas	Comal County Unincorporated Areas.	Cibolo Creek	Approximately 1,100 feet upstream at Ralph Fair Road	*1,252	*1,253
			At confluence of Postoak Creek	*1,255	*1,257
			At confluence of Balcones Creek	*1,267	*1,270
			Approximately 510 feet upstream of County boundary	*1,268	*1,271
		Postoak Creek	At confluence with Cibolo Creek	None	*1,257
			At upstream County boundary	None	*1,272
Maps available for inspection at the Comal County Unit Road System, Floodplain Administrator's Office, Highway 46 West, New Braunfels, Texas.					
Send comments to the Honorable Fred Clark, Comal County Judge, 100 Main Plaza, Room 114, New Braunfels, Texas 71830.					
Texas	Duncanville, City, Dallas County	Tenmile Creek	Approximately 150 feet upstream of confluence with Home Branch.	*618	*619
			Approximately 290 feet upstream of Duncanville Road	*623	*624
			Approximately 100 feet downstream of Duncanville Road.	*620	*621
		Horne Branch	Approximately 500 feet upstream of confluence with Tenmile Creek.	*619	*618
			Approximately 1,300 feet upstream of confluence with Tenmile Creek.	*624	*623
Maps available for inspection at the Director of Public Works, 100 East Center Street, Duncanville, Texas.					
Send comments to the Honorable Russ Kent, Mayor of the City of Duncanville, Dallas County, P.O. Box 380280, Duncanville, Texas 75138.					
Texas	Kendall County	Cibolo Creek	At downstream County boundary	None	*1,270
			Approximately 1.9 miles upstream of County boundary	None	*1,294
		Balcones Creek	At confluence with Cibolo Creek	None	*1,270
			Downstream side of Southern Pacific Railroad	None	*1,290
		Postoak Creek	At downstream County boundary	None	*1,272
			At downstream side of Silver Spur Trail	None	*1,276
			At upstream side of Rolling Acres Trail	None	*1,308
			Approximately 1,000 feet upstream of Rolling Acres Trail.	None	*1,313
Maps available for inspection at the Tax Assessor's Office, 211 East San Antonio Street, Boerne, Texas.					
Send comments to the Honorable Kenneth Muller, Kendall County Judge, 204 East San Antonio Street, Suite 1, New Braunfels, Texas 78006.					

Issued: January 16, 1987

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-2037 Filed 2-2-87; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87-02; Notice 1]

Federal Motor Vehicle Safety Standards; Seat Belt Assembly Anchorages

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to three petitions for rulemaking and based on the agency's own compliance test experience, this notice solicits comments on a number of proposals to amend the performance requirements and test procedures of Standard No. 210, *Seat Belt Assembly Anchorages*. In response to a petition from BL Technology, the agency is soliciting comments on the possible modification of the anchorage strength test procedure to harmonize it more closely with the Economic Commission for Europe regulation on safety belt anchorages. In response to a petition from Mercedes-Benz, the notice solicits comments on the seat positioning test procedure used for conducting the anchorage strength test. Based on the agency's compliance testing, the notice also proposes several changes to the test equipment used to test the strength of the anchorage. These changes would simplify the test procedure. Harmonization of Standard No. 210 and the Economic Commission for Europe regulation would make it easier for manufacturers to use the same safety belt anchorages in vehicles to be sold in different parts of the world. thereby resulting in a cost savings. The proposed changes in the test procedure should make the tests simpler to perform for manufacturers and the agency. And in response to a petition from General Motors the agency is proposing to delete a redundant requirement for Type 2 safety belt anchorages.

DATES: Comments must be received by April 6, 1987. If adopted, the proposed amendments would become effective on September 1, 1987.

ADDRESS: Comment should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours 8 a.m.–4 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. Clark Harper, Office of Vehicle Safety Standards, NRM–12, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202 366–4916).

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 210, *Seat Belt Assembly Anchorages*, sets performance requirements for safety belt anchorages to ensure their proper location for effective occupant protection and to reduce the likelihood of the anchorage's failure in a crash. The requirements of the standard, which apply to passenger cars, trucks, buses, and multipurpose passenger vehicles, set zones within the vehicle where an anchorage must be located and specify the forces an anchorage must be capable of withstanding during a static strength test. In response to three petitions for rulemaking and based on the agency's experience in conducting compliance testing, this notice proposes a number of changes to the performance requirements and test procedures of the standard. Each of the proposed changes is discussed in detail below.

I. Anchorage Strength Test Procedure

Standard No. 210 currently uses a static pull laboratory test, rather than a dynamic pull or crash test, to measure the strength of safety belt anchorages. (In a static test, forces are slowly applied to the anchorages for a period of a few seconds. In a dynamic test, such as a 30 mph crash test, the forces are quickly applied for a few milliseconds.) The standard specifies certain minimum loads that safety belt anchorages must withstand. The standard also sets the maximum rate of onset of the test load and provides that the load must be withstood by an anchorage for at least 10 seconds.

BL Technology, Ltd., (BL) submitted a petition to amend Standard No. 210 to harmonize the anchorage strength test procedure with the Economic Commission for Europe (ECE) Regulation No. 14 on safety belt anchorages. The ECE regulation provides that the safety belt anchorage test loads must be applied as rapidly as possible and held for not less than 0.2 seconds. BL said that adopting the ECE test procedure would reduce vehicle weight and cost. In particular, BL said that additional welds and reinforcing brackets are necessary on a vehicle to withstand the 10 second load duration of Standard No. 210, but such reinforcement is not required to meet the 0.2 second load duration specified in ECE Regulation No. 14. In addition, BL argued that the static test procedure of Standard No. 210 is not representative of real world crash conditions.

The agency recognizes that the static test procedure of Standard No. 210 imposes a load for a longer period of time on a vehicle anchorage than occurs during a crash test. The agency is also aware that under dynamic loading a metal structure can withstand a larger force than under static loading. The agency is concerned that relying solely on a non-crash dynamic test procedure could result in a potential reduction in safety unless the ultimate test load the anchorage can withstand under dynamic loading is increased or the safety belt/anchorage system is required to meet other occupant crash protection requirements. The agency is soliciting comments on three possible changes to the strength requirement. The three changes are deleting strength requirements for anchorages used with dynamically-tested safety belts, harmonizing the anchorage strength test with the ECE regulation and placing limits on anchorage movement during a static test. Based on an evaluation of the comments and its continuing assessment of test data from the agency's New Car Assessment Program (NCAP) and other crash tests, NHTSA will determine whether a change in the test procedure or anchorage load requirement is necessary. (Among the information gathered in the agency's NCAP tests is data on the loads experienced by the safety belts during the test. NHTSA's most recent review of the upper torso belt performance data from 142 NCAP tests has shown that the maximium recorded upper torso belt load was 2,683 pounds for small vehicles (unloaded vehicle weight (UVW) of 2,450 pounds or less) (50 tests) 3,144 pounds for compact vehicles (UVH of 2,451 to 2,950) (44 tests), 3,608 pounds in intermediate vehicles (UVW of 2,951 to 3,450 pounds) (29 tests) and 2,833 pounds in large vehicles (UVW greater than 3,450) (19 tests). The maximum recorded safety belt loads in the compact and intermediate vehicles exceeded the 3,000 pound static test requirement currently specified in Standard No. 210. However, in each instance when the belt loads were greater than 3,000 pounds, the belts did not break, and the recorded head injury criterion and chest acceleration were less than the limits set by Standard No. 208, *Occupant Crash Protection*, even though the tests were conducted at 35 mph. The agency will continue to

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review upper torso belt performance in NCAP tests and will also review lap belt performance data from those tests.)

A. Exclusion of Anchorages for Dynamically Tested Manual Belts

On April 12, 1985 (50 FR 14589), the agency proposed that manual lap/shoulder belts installed at the outboard seating positions of passenger cars, light trucks, small van-like buses and light multipurpose passenger vehicles comply with the dynamic test requirements of Standard No. 208, *Occupant Crash Protection*. On March 21, 1986 (51 FR 9800), NHTSA published a final rule requiring the dynamic testing of manual belts in passenger cars. The agency is still considering whether to require dynamic testing of manual belts in other vehicles. The dynamic test requirements provide for using test dummies in passenger car crash tests to measure the level of occupant crash protection offered by manual safety belts. The March 1986 notice also exempted dynamically tested manual safety belts from the location requirements of Standard No. 210.

A number of commenters to the April 1985 notice requested the agency to exempt dynamically tested manual belts from all of the requirements of Standard No. 210. They argued that requiring a safety belt system to meet the injury reduction requirements of Standard No. 208 is sufficient to ensure that vehicle occupants are satisfactorily protected in a crash. The agency seeks comments on whether the strength tests should be retained to assure protection for other than the 50th percentile male used in crash tests or as a surrogate for corrosion or other forms of potential anchorage weakening over the vehicle's life.

The agency believes that any exclusion from Standard No. 210 of anchorages in vehicles with dynamically tested manual belts should not apply to anchorages which are used to secure both dynamically and statically tested belts. An example of those anchorages would be the inboard anchorages for a front bench seat. It is common practice for manufacturers to use the inboard anchorages to secure both the driver's and right front outboard passenger's belts, which would be dynamically tested, and the belt for the center seating position, which would not be dynamically tested. If all three front seating positions were occupied, the inboard anchorages would be simultaneously loaded by all three safety belt systems. The agency believes that the anchorages for the front center seat should continue to meet the performance requirements of Standard No. 210.

B. Harmonization with ECE

The agency also requests comments on another approach to testing manual safety belt anchorages. This approach would be used for anchorages of safety belts that are not dynamically tested under Standard No. 208 (i.e., the front center and rear safety belt anchorages). In addition, it could be used for front outboard anchorages, if the agency does not adopt the proposed exclusion of anchorages used in those positions with dynamically tested manual safety belts.

Under this approach, the agency would revise the force application and duration requirements of Standard No. 210 to be similar to the dynamic test requirements of ECE Regulation No. 14, which requires the test load to be applied as rapidly as possible and maintained for 0.2 seconds. The agency believes the ECE requirement that the force be applied "as rapidly as possible" is too subjective and is therefore requesting comments on specifying a maximum time for application of the required test load. The agency specifically requests comments on applying the force at an onset rate of not more than 50,000 pounds per second for lap belts and 30,000 pounds per second for lap/shoulder belts with the force being attained in not more than 5 seconds and maintained for not less than 0.2 seconds.

The agency also requests comments on adopting the ECE-based strength test proposed above and harmonizing Standard No. 210 with the other performance requirements of ECE Regulation No. 14. These other changes would include harmonizing safety belt mounting angles, adopting limits on anchorage deformation, changing the minimum spacing between lap belt anchorage locations and providing a wider zone for locating upper anchorages. These possible changes are discussed in more detail below.

1. Harmonization of Lap Belt Mounting Angles

Standard No. 210 currently sets a minimum and maximum mounting angle for lap belts and for the lap portion of a lap/shoulder belt. The standard requires that the lap belt angle, measuring from the seating reference point to either the anchorage or the point where the safety belt contacts the seat frame, must be between 20 and 75 degrees from the horizontal.

The purpose of the mounting angle requirement is twofold. First, the minimum mounting angle requirement reduces the possibility of submarining (i.e., an occupant sliding forward and under the belt during a crash). The possibility of submarining increases as the belt angle approaches the horizontal (i.e., as the belt angle decreases). The potential hazard of submarining is that occupants can suffer abdominal injuries as they slide under their belts. In addition, the maximum mounting angle requirement limits forward excursion of an occupant. The possibility of forward excursion increases as the belt angle approaches the vertical (i.e., as the belt angle increases) because the belt will rotate about the anchorage before it begins to resist the crash forces.

At present, the safety belt mounting angles set in Standard No. 210 and ECE Regulation No. 14 differ. The ECE regulation requires the safety belt angle to be between 30 and 80 degrees as compared to Standard No. 210's requirement of between 20 and 75 degrees. Thus, a U.S. vehicle whose minimum mounting angle is 20 degrees cannot be sold in Europe. Likewise, a European vehicle whose maximum mounting angle is 80 degrees cannot be sold in the U.S. This could possibly result in a manufacturer having to provide two different safety belt angles in the same vehicle depending on where the vehicle is sold.

The agency is therefore proposing to change the minimum lower angle requirement from 20 degrees to 30 degrees. By requiring the minimum lap belt angle to be 30 degrees, the agency believes that the risk of occupants submarining under lap belts will be reduced. By reducing submarining, the proposed angle should reduce the possibility of abdominal injuries and of a rear seat occupant's knees striking the front seat back in a crash. The agency also is requesting accident and test data on whether increasing the maximum angle to 80 degrees will significantly increase the forward excursion of an occupant, thereby potentially increasing the possibility of injury. Finally, the agency notes that it has recently granted a petition to require rear seat lap/shoulder belts. This proposed harmonization action should not be viewed as the substitute for any action the agency may take on that issue. Rather, it is simply a response to an older petition dealing with the international harmonization of safety standards.

2. Deformation Limits

While structural deformation of the area around an anchorage can aid an occupant by absorbing part of the crash energy, excessive deformation can allow an occupant to move forward and strike

the vehicle's interior. Currently, the only limit Standard No. 210 places on structural deformation is that the anchorage must not completely separate from the structure of the vehicle. ECE Regulation No. 14, however, places limits on the movement of an anchorage during testing. It provides that during the dynamic test, the pelvic anchorage must continue to meet the minimum lateral spacing requirement of the regulation and the anchorage for an upper torso restraint must stay within the zone set out in the regulation. The agency is considering adopting the limits set in the ECE regulation (Figure 1 shows the ECE upper torso anchorage location zone).

3. Upper Anchorage Location Zone

Both Standard No. 210 and ECE Regulation No. 14 specify limits on where upper anchorages for the shoulder portion of lap/shoulder belts can be located. The ECE regulation differs from Standard No. 210 in that the ECE regulation permits an anchorage to be located farther forward than does Standard No. 210 so that an anchorage could be in front of an occupant's shoulder. The agency solicits comment on whether to adopt the upper anchorage location zone used in the ECE regulation (Figure 1 shows the ECE anchorage location zone). The agency is particularly interested in receiving additional accident and test data on the safety effects of permitting anchorages to be located in front of an occupant's shoulder.

The agency is aware of test data showing that an anchorage positioned in front of an occupant's shoulder can allow increased head movement and thus potentially increase the risk of injury. In a 1977 report prepared for the Canadian government, Calspan Corp. reported that head travel and upper torso angular motion increased as the upper anchorage point moved forward of the occupant's shoulder. (A copy of the study, Contract 16T–T8080–7–0840, has been placed in the docket for this notice.) Calspan Corp. also conducted testing for NHTSA in which the anchorage location for a passive belt equipped Volkswagen Rabbit was varied. The test data showed an increase in head movement and a trend to higher head injury criterion measurements when the anchorage was moved forward of the occupant's shoulder. (A copy of the Calspan study, "Evaluation of Passive Belts For Different Size Occupants" has been placed in the docket for this notice). In 1979, GM provided the agency with data on their investigation of upper anchorage locations. This data supports the Calspan study. (A copy of the GM data has been placed in the docket for this notice).

The agency has other test data indicating that the increases in head movement resulting from forward anchorage locations may not significantly increase the risk of injury. For example, Mercedes-Benz has submitted data in response to another rulemaking notice that indicates that having the anchorage located in front of an occupant's shoulder does not significantly increase head injury criterion and chest acceleration measurements. The testing involved 30 mph frontal/offset impacts in which 95th percentile male test dummies were placed with the seat at the seating reference point in some tests and with the seat positioned at the rearmost position in vehicles equipped with seats with extended seat track travel in other tests. With the seat in the rearmost position, the anchorage would be located in front of the occupant's shoulder. (The Mercedes data are in Docket 82–05, Notice 1, Entry 16)

4. Lateral Spacing of Lap Belt Anchorage

Standard No. 210 currently requires a minimum lateral spacing of 6.5 inches for anchorages used for a single lap belt, while the ECE regulation requires a minimum of 13.75 inches. The agency recognizes that the closer the spacing of the anchorages, the greater the possibility of increased lateral movement of an occupant during an oblique or rollover crash. In addition, the closer spacing can permit increased side loads on an occupant's pelvis. However, the agency does not have any data indicating that the possible side loads and lateral movement do, in fact, present a serious risk of injury. The agency requests comments and crash and other data on the effect of changing the anchorage spacing on occupant safety.

5. Simultaneous Testing of Anchorages

Several manufacturers have raised questions about whether anchorages on a bench seat should be tested separately or simultaneously. The agency believes that simultaneous testing of all anchorages common to one seat assembly is more representative of a real-world crash in which all seats are occupied. In addition, ECE Regulation No. 14 also uses simultaneous testing. Therefore, the agency is proposing that all seat and floor-mounted anchorages common to one seat be tested simultaneously.

C. Limitation on Anchorage Movement During Static Test

The final alternative, which the agency is considering, would be to set limits on the forward and lateral movement of anchorages during a static pull test. During the agency's compliance testing, several tests were terminated because the vehicle's floor pan and B pillar deformed to the point that the test equipment could not impose the peak anchorage load called for in the standard. The agency is also concerned that this excessive deformation may permit an occupant to move forward and contact the interior of the vehicle. ECE Regulation No. 14 requires the minimum lateral spacing for lap belt anchorages to be maintained during the dynamic test and also requires the upper anchorages to remain within the zone set out in proposed Figure 1 during the test. The agency solicits comments on whether to adopt the limits set in the ECE regulation. In addition, the agency requests comments on the possibility of adopting requirements that would limit the lateral movement of any lower anchorage to 1.0 inch and the longitudinal movement to 1.5 inches. In addition, the longitudinal movement of any upper anchorage would have to remain within the zone set forth in proposed Figure 1 with the lateral movement not exceeding two inches. These proposed values were selected as a matter of engineering judgment based on a review of the agency's compliance tests. The agency believes these limits will both substantially reduce the number of tests that will have to be terminated because of excessive deformation and will prevent excessive movement of a restrained occupant. NHTSA requests commenters to provide any data they may have on anchorage deformation during crash and compliance tests.

II. Automatic Belt Anchorage Strength

The agency is proposing to clarify the strength requirement for automatic belt anchorages. A number of manufacturers have raised questions about whether automatic belt anchorages are required to meet the strength requirements set for Type 1 lap belts or Type 2 lap-shoulder belts. In interpretation letters of July 1978 to Nissan and July 1980 to Toyo Kogyo, the agency has stated that anchorages for automatic belts are required to meet the strength requirements set for Type 2 lap/shoulder safety belt anchorages. This notice would explicitly incorporate that interpretation in the standard.

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III. Deletion of Manual Belt Anchorages for Automatic Belt Vehicles

S4.1.1 of Standard No. 210 currently requires anchorages for Type 2 lap/shoulder belts at the front outboard seating positions in all passenger cars. S4.3 of the standard requires those anchorages to be located in specific zones within the vehicles. The purpose of the location specification is to ensure that an anchorage will be located so that the safety belt attached to it will provide sufficient protection to a vehicle occupant. In the case of automatic belts and dynamically tested manual belts, the standard provides that the anchorages for those belts are exempt from the requirement in the standard that anchorages must be located in certain specified zones within the vehicle.

The agency exempted automatic and dynamically tested manual belt anchorages to give manufacturers flexibility in designing those safety belts, which must meet the occupant protection criteria of Standard No. 208. However, the agency has said that anchorages for a Type 2 (manual lap and shoulder) safety belt are still required for the front outboard seats in a vehicle equipped with automatic belts, if the automatic belt anchorages are outside the required locations for Type 2 safety belt anchorages. The agency has previously said that requiring Type 2 safety belt anchorages for vehicles equipped with automatic belts would allow owners to replace damaged automatic belts with a Type 2 belt if they desired.

NHTSA has recently granted a petition for rulemaking from General Motors requesting the agency to provide that the safety belt anchorage installation requirement of S4.1.1 of the standard is satisfied by the installation of safety belt anchorages for a safety belt that meets the occupant crash protection requirements of Standard No. 208, *Occupant Crash Protection*. The agency has tentatively decided to adopt GM's proposal, primarily because the July 1984 decision on Standard No. 208 concluded that automatic restraints, such as automatic belts, that meet the occupant crash protection requirements of the standard meet the need for motor vehicle safety. Thus, manual belt anchorages for automatic belt equipped seating positions are redundant for persons protected by the automatic restraint. Therefore, the agency is proposing to delete the requirement for providing separate Type 2 safety belt anchorages at designated seating positions equipped with automatic and dynamically tested manual belts which meet the occupant crash protection requirements of Standard No. 208. (Anchorages for a manual lap belt would still be required for the front right seating position if the automatic restraint cannot be used to secure a child safety seat. See 50 FR 41356; October 10, 1985.)

IV. Test Anchorage With Seat in its Rearmost Position

Mercedes-Benz has petitioned the agency to revise the seat location requirement currently used in upper torso belt anchorage testing. The standard currently provides that a seat is to be placed in its full rearward and downward position and the "H" point of a two dimensional manikin is to be located at the seating reference point. (The "H" point simulates the location of the hip joint; the seating reference point is the manufacturer's design reference point that determines the rearmost normal driving position of the seat. Standard No. 210 uses the seating reference point in determining the zone for the location of the upper anchorages for lap/shoulder belts.) Mercedes said that in some vehicles with long seat track travel, it is possible that the seating reference point will be several inches in front of the seat back of an adjustable seat placed in its rearmost position. Because of this, Mercedes requested the agency to delete the requirement for a vehicle seat to be in its full rearward position.

In 1985, during the agency's compliance testing on Standard No. 210, NHTSA gathered data on the relationship of the seating reference point to the rearmost position of the seat on the seat track. NHTSA found that the seating reference point coincided with the rearmost position of the seat in all of the cars tested. Recently, manufacturers have provided additional information on this issue to the agency. In responding to the agency's June 1986 (51 FR 20536) notice of proposed rulemaking on redefining the term "seating reference point," several manufacturers indicated that they now provide extended seat track travel in some of their vehicles. For example, Ford said that most of its passenger vehicles and some of its light trucks have extended seat track travel and American Motors said that about 50 percent of its current and planned vehicles have extended seat track travel. Thus, in those vehicles the seating reference point would not coincide with the rearmost position of the seat on its track.

As explained in the June 1986 notice on seating reference point, the agency believes that positioning of the seat for the purposes of determining a vehicle's compliance with the anchorage location requirements of Standard No. 210 should be treated differently than the positioning of the seat for other standards. The agency believes that the upper anchorages should be tested with the seat in its rearmost position, since that position will be used by some vehicle occupants. The agency is concerned that if it did not test the vehicle with the seat in its rearmost position then an anchorage for an upper torso belt, correctly positioned with respect to the seating reference point located ahead of the rearmost position, could lie forward of the occupant's shoulder when the seat is in its most rearward position. As discussed earlier in this notice, the agency is concerned that an anchorage positioned in front of an occupant's shoulder can allow increased head movement and thus may increase the risk of injury. Thus, the agency is proposing to continue to determine a vehicle's compliance with the anchorage location requirements of the standard with the seats in the full rearward position.

However, the agency plans to use the existing seating reference point, which may not be the rearmost position, for testing to determine whether the lap portion of a lap belt or a lap/shoulder belt meet the minimum and maximum mounting angle requirements. The agency is concerned that the minimum lap belt angle for 5th percentile adult females would, in all liklihood, be marginal if the rearmost seating position is used, rather than the seating reference point.

V. Compliance Test Equipment

During the past several years, NHTSA's Office of Vehicle Safety Compliance has encountered several problems while conducting Standard No. 210 compliance testing. Approximately 30 percent of the agency's recent compliance tests could not be completed because of problems associated with interaction between the test equipment and the belt assembly. The problems result mainly from excessive side loads induced by the body block, designed to simulate the human torso, used in the test procedure. Other tests have been stopped prior to attaining the prescribed test loads because of belt webbing elongation, deformation of the vehicle structure, or lack of adequate pull distance for the body block in smaller vehicles. Most of those tests are not repeated because the vehicle has been damaged and another vehicle is not available. Based on this compliance test experience, the agency is proposing a number of changes in the test procedures and equipment.

A. Use of Cables

At present, the standard uses the safety belt assemblies installed in the vehicle to transfer the test load from the body block to the anchorage. This notice proposes to adopt the use of cables instead of safety belts with the cable routed through the "D" ring and attached to the existing retractor. This will reduce the number of tests that cannot be completed because of problems associated with interaction between the test equipment and the safety belts. The agency has conducted a test program using cables and found that it produces results comparable to those produced by the current Standard No. 210 test procedure. (The report, Contract No. DTHN22-83-P-020378, for that testing has been placed in the docket for this notice.)

B. Test Block Width

The 14 inch width of the current body block can preclude the simultaneous testing of safety belt anchorages for all three seating positions in the rear seat of smaller cars. This notice proposes to reduce the width of the body block from 14 inches to 10 inches and to reduce the length from 20 inches to 13 inches. The width reduction should make it easier to simultaneously test all of the anchorages in a rear seat. In addition, the length reduction should provide more pull distance in both front and rear seats, thus making it easier to perform the anchorage strength test. The agency recognizes that this will result in a very small reduction in the longitudinal load applied to the anchorage; however the overall load input will be the same.

VI. Clarification of Compliance Failure

Standard No. 210 currently provides that the safety belt anchorage must meet certain performance requirements. In compliance testing, there have been instances in which the safety belt attachment hardware or attachment bolts have broken before the maximum test load has been applied to the anchorage. It is important that the attachment hardware and bolts have the same strength as the anchorage. The agency is proposing to amend the standard to make clear that a failure of the attachment hardware, the attachment bolt, or the anchorage to meet the strength performance requirement constitutes a compliance failure.

Cost and Benefits

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of E.O. 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has also determined that the economic and other impacts of this rulemaking action are so minimal that a full regulatory evaluation is not required. The amendments proposed by this notice are intended to simplify the compliance test procedure and to promote the international harmonization of vehicle safety requirements.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a preliminary regulatory flexibility analysis.

Few, if any, passenger car manufacturers would qualify as small entities. Small organizations and governmental units should not be significantly affected since the potential decreases associated with this proposed action should only slightly affect the purchase price of new motor vehicles.

Environmental Effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted. All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR 571.210 be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.210 [Amended]

2. S4.2.1 would be revised to read as follows:

S4.2.1 Except for side-facing seats, the anchorages for a Type 1 seat belt assembly or for the pelvic portion of a Type 2 or automatic seat belt assembly and the seat belt attachment hardware and attaching bolts for those anchorages shall withstand a 5,000 pound force when tested in accordance with S5.1.

3. S4.2.2 would be revised to read as follows:

S4.2.2. The anchorages for a Type 2 seat belt assembly or for an automatic seat belt assembly and the seat belt attachment hardware and attaching bolts for those belt anchorages shall withstand a 3,000-pound force when tested in accordance with S5.2.

4. S4.2.3 would be revised to adopt one of the following two alternatives:

Alternative One

During the test, an upper torso restraint anchorage and its attachment hardware and bolt shall remain in the zone specified in S4.3.2 and the anchorages for a Type 1 lap belt or the pelvic portion of a Type 2 or automatic

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belt shall continue to meet the lateral spacing requirement of S4.3.1.4.

Alternative Two

During the test, no portion of each lower anchorage and its attachment hardware and bolt shall move laterally more than one inch or move longitudinally more than 1.5 inches. No portion of each upper anchorage and its attachment hardware and bolt shall move outside the zone described in Figure 1 or move laterally more than two inches.

5. S4.2.4 would be revised as follows:

S4.2.4 Except for seat belt anchorages common to forward-facing and rearward-facing seats, all floor-mounted and seat-mounted seat belt anchorages for a set of laterally adjacent designated seating positions shall be tested by simultaneously loading cables, duplicating the geometry of the seat belt assemblies, secured to retractors or other attachment hardware at those anchorages.

6. The second sentence in S4.3 would be revised by replacing the word "passive" by the phase "automatic or dynamically tested manual."

7. S4.3.1.1 would be revised to read as follows:

S4.3.1.1 In an installation in which the seat belt does not bear upon the seat frame:

(a) If the seat is a nonadjustable seat, then a line from the seating reference point to the nearest contact point of the belt with the hardware attaching it to the anchorage shall extend forward from the anchorage at an angle with the horizontal of not less than 30 degrees and not more than 75 degrees.

(b) If the seat is an adjustable seat, then a line from a point 2.50 inches forward of and 0.375 inches above the seating reference point to the nearest contact point of the belt with the hardware attaching it to the anchorage shall extend forward from the anchorage at an angle with the horizontal of not less than 30 degrees and not more than 75 degrees.

8. The second sentence of S4.3.1.2 would be revised to read as follows:

* * * The line from the seating reference point to the nearest belt contact point on the seat frame, with the seat positioned at the seating reference point, shall extend forward from that contact point at an angle with the horizontal of not less than 30 degrees and not more than 75 degrees.

9. S4.3.1.3 would be revised to read as follows:

S4.3.1.3 In an installation in which the seat belt anchorage is on the seat structure, the line from the seating reference point to the nearest contact point of the belt with the hardware attaching it to the anchorage shall extend forward from that contact point at an angle with the horizontal of not less than 30 degrees and not more than 75 degrees.

10. S4.3.2 would be revised to read as follows:

S4.3.2 Place the seat in its full rearward and downward position and place the seat back in its most upright position. With the seat and seat back so positioned, the seat belt anchorage for the upper end of the upper torso restraint shall be located within the acceptable range shown in Figure 1, with reference to a two-dimensional manikin described in SAE Recommended Practice J826 April 1980. The manikin's "H" point shall be at the design "H" point of the seat for its full rearward and full downward position, as defined in SAE Recommended Practice J1100 July 1979, and the manikin's torso line shall be at the same angle from the vertical as the seat back.

11. A new third sentence would be added to S5 to read as follows:

* * * Use the attachment hardware (including retractors and "D" rings) and bolts from the existing seat belt assembly to secure the cables to the vehicle structure.

12. S5.1 would be revised to read as follows:

S5.1 With the seat in its full rearward and full downward position, apply a force of 5,000 pounds, in the direction in which the seat faces, to a pelvic body block (described in Figure 2) restrained by a cable representing the geometry of a Type 1 seat belt assembly or the pelvic portion of a Type 2 or automatic seat belt assembly, as applicable, in a plane parallel to the longitudinal centerline of the vehicle, with an initial force application angle of not less than 30 degrees and not more than 75 degrees above the horizontal. Apply the force at an onset rate of not more than 50,000 pounds per second. Attain the 5,000 pound force in not more than 30 seconds and maintain it for 10 seconds.

13. S5.2 would be revised to read as follows:

S5.2 With the seat in its full rearward and full downward position, apply a force of 3,000 pounds, in the direction in which the seat faces, simultaneously to the pelvic and upper torso body blocks (described in Figures 2 and 3), as applicable, restrained by a cable representing the geometry of a Type 2 or automatic seat belt assembly, as applicable, in a plane parallel to the longitudinal centerline of the vehicle, with an initial force application angle of not less than 5 degrees and not more than 15 degrees above the horizontal. Apply the force at an onset rate of not more than 30,000 pounds per second. Attain the 3,000 pound force in not more than 30 seconds and maintain it for 10 seconds.

16. Figures 1 and 2 would be revised as follows:

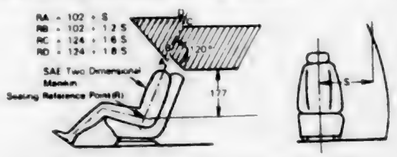


Figure 1 Location of Anchorage for Upper Torso Restraint

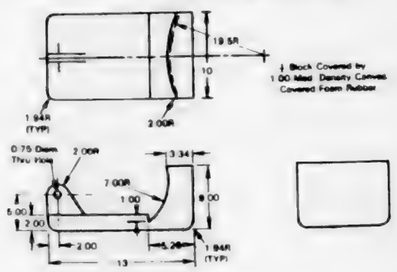


Figure 2. Body Block for Lap Belt Anchorage

Issued on January 28, 1987.

Ralph Hitchcock,

Acting Associate Administrator for Rulemaking.

[FR Doc. 87-2063 Filed 1-29-87; 4:03 pm]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 52, No. 22
Tuesday, February 3, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Designation Renewal of the Columbus, OH, Agency

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Columbus Grain Inspection, Inc. (Columbus) as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: March 1, 1987.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Columbus' designation terminates on February 28, 1987, and requested applications for official agency designation to provide official services within a specified geographic area in the September 2, 1986, **Federal Register** (51 FR 31153). Applications were to be postmarked by October 2, 1986. Columbus was the only applicant for designation in its geographic area and applied for designation renewal in the area currently assigned to that agency.

The Service announced the applicant name and requested comments on the same in the November 3, 1986, **Federal Register** (51 FR 39881). Comments were to be postmarked by December 18, 1986. Five favorable comments were received regarding Columbus' designation renewal.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), determined that Columbus is able to provide official services in the geographic area for which the Service is renewing its designation. Effective March 1, 1987, and terminating February 28, 1990, Columbus will provide official inspection services in its entire specified geographic areas, previously described in the September 2 **Federal Register**.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may receive a listing of an agency's specified service points by contacting either the Review Branch, Compliance Divsion, at the address listed above or the agency at the following address: Columbus Grain Inspection, Inc., 348 ½ E. Franklin, P.O. Box 167, Circleville , OH 43113.

(Pub. L. 94-582, 90 Stat. 2867, as amended; 7 U.S.C. 71 *et seq.)*

Dated: January 28, 1987.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 87-2136 Filed 2-2-87; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the Bloomington, IL, and Plainview, TX, Agencies.

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic area currently assigned to Bloomington Grain Inspection Department (Bloomington) and Plainview Grain Inspection and Weighing Service, Inc. (Plainview).

DATE: Comments to be postmarked on or before March 20, 1987.

ADDRESS: Comments must be submitted, in writting, to Lewis Lebakken, Jr., Information Resources Staff, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 1661 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the December 1, 1986, **Federal Register** (51 FR 43224). Applications were to be postmarked by December 30, 1986. Bloomington and Plainview were the only applicants for designation in their geographic area and each applied for designation renewal in the area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the designation applicants. All comments must be submitted to the Information Resources Staff, Resources Management Division, at the address listed above.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicant will be informed of the decision in writing.

(Pub. L. 94-582, 90 Stat. 2867, as amended; (7 U.S.C. 71 *et seq.*))

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Dated: January 28, 1987.
Neil E. Porter,
Acting Director, Compliance Division.
[FR Doc. 87-2134 Filed 2-2-87; 8:45 am]
BILLING CODE 3410-EN-M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the State of Georgia and Schneider, IN, Agency

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are Georgia Department of Agriculture and Schneider Inspection Service, Inc.

DATE: Applications to be postmarked on or before March 5, 1987.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Georgia Department of Agriculture (Georgia), Capitol Square, Room 604, Atlanta, GA 30334, was designated under the Act as an official agency to provide inspection and weighing functions on August 1, 1984; Schneider Inspection Service, Inc. (Schneider), 15406 White Oak, Lowell, IN 46356, was designated on that date to provide inspection functions.

Each official agency's designation terminates on July 31, 1987. Section 7(g)(1) of the Act states that official agencies' designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Georgia, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows: The entire State of Georgia, excluding those export port locations within the State.

The geographic area presently assigned to Schneider in the States of Illinois, Indiana, and Michigan, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

In Illinois and Indiana: Bounded of the North by the northern Will County line from Interstate 57 east to the Illinois-Indiana State line; the Illinois-Indiana State line north to Interstate 94; Interstate 94 east-northeast to the northern Laporte County line; the northern St. Joseph and Elkhart County lines;

Bounded on the East by the eastern and southern Elkhart County lines; the eastern Marshall County lines;

Bounded on the South by the southern Marshall and Starke County lines; the eastern Jasper County line south-southwest to U.S. Route 24; U.S. Route 24 west to Indiana State Route 55; Indiana State Route 55 south to the Newton County line; the southern Newton County line west to U.S. Route 41; U.S. Route 41 north to U.S. Route 24; U.S. Route 24 west to the Indiana-Illinois State line; and

Bounded on the West by Indiana-Illinois State line north to Kankakee County; the southern Kankakee County line west to U.S. Route 52; U.S. Route 52 north to Interstate 57; Interstate 57 north to the northern Will County line.

In Michigan: Berrien, Case, St. Joseph, Branch, and Hillsdale Counties.

The following locations, outside of the foregoing contiguous geographic area, are presently assigned to Schneider and are part of this geographic area assignment: Central Soya and Farmers Grain, Winamac, Pulaski County, Indiana.

Interested parties, including Georgia and Schneider, are hereby given opportunity to apply for official agency designation to provde the official services in each geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning August 1, 1987, and ending July 31, 1990. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above, for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: January 28, 1987.
Neil E. Porter,
Acting Director, Compliance Division.
[FR Doc. 87-2135 Filed 2-2-87; 8:45 am]
BILLING CODE 3410-EN-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: Application for Fishing Vessel Guarantee
Form Number: Agency-NOAA-88-1; OMB- 0648-0012
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 1,510 respondents; 12,080 reporting hours
Needs and uses: Title XI of the Merchant Marine Act authorizes the Fisheries Obligation Guarantee (FOG) program to assist small businessmen in financing commercial fishing vessels and shoreside facilities. The information provided is used to determine the risk to the Federal government of guaranteering the loan
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion; annually
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Donald Arbuckle, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: January 27, 1987.
Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.
[FR Doc. 87-2121 Filed 2-2-87; 8:45 am]
BILLING CODE 3510-CW-M

International Trade Administration

[C-421-601]

Final Affirmative Countervailing Duty Determination: Certain Fresh Cut Flowers From the Netherlands

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to producers or exporters in the Netherlands of certain fresh cut flowers (cut flowers) as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is 3.48 percent *ad valorem*.

We have notified the U.S. International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of cut flowers from the Netherlands that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond on entries of these products in the amount equal to the estimated net subsidy as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: February 3, 1987.

FOR FURTHER INFORMATION CONTACT: Lori Cooper, Eleanor Shea, or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-8320, 377-0184, or 377-2438.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to producers or exporters in the Netherlands of cut flowers. For purposes of this investigation, the following programs are found to confer subsidies:

- Natural Gas Provided at Preferential Rates.
- Aids for the Creation of Cooperative Organizations.
- Glasshouse Enterprises Program.
- Aids for the Reduction of Glass Surface.
- Steam Drainage Systems.
- Guarantee Fund for Agriculture.

We determine the estimated net subsidy to be 3.48 percent *ad valorem*.

Case History

On May 21, 1986, we received a petition in proper form from the Floral Trade Council filed on behalf of the U.S. industry producing cut flowers. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleged that producers or exporters in the Netherlands of cut flowers receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on June 10, 1986, we initiated an investigation (51 FR 21958, June 17, 1986). We stated that we expected to issue a preliminary determination on or before August 14, 1986.

On June 25, 1986, the petitioner requested a full extension of the period within which a preliminary countervailing duty determination must be made pursuant to section 703(c)(1)(A) of the Act. On July 3, 1986, we issued a notice of postponement stating that the preliminary determination would be made on or before October 20, 1986 (51 FR 25084, July 10, 1986).

Since the Netherlands is a "country under the Agreement" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from the Netherlands materially injure, or threaten material injury to, a U.S. industry. On July 7, 1986, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the Netherlands of the subject merchandise (51 FR 25751, July 16, 1986).

On June 20, 1986, we presented a questionnaire concerning petitioner's allegations to the Government of the Netherlands and to the Delegation of the Commission of the European Communities (EC), in Washington, DC. According to the Government of the Netherlands, there are over 8,000 flower growers in the Netherlands. Therefore, we requested that the government provide aggregate information in the questionnaire responses. We received the government response on August 8, 1986, and the EC response on August 11, 1986. We sent a supplemental questionnaire to the Government of the Netherlands on September 5, 1986. We received the government's supplemental response on September 26, 1986, and received an additional submission, containing several amendments to the supplemental response, on October 2, 1986.

On August 11 and December 24, 1986, we received letters on behalf of the EC and the Government of the Netherlands, respectively, challenging the standing of the Floral Trade Council and requesting dismissal of the petition. As we have previously stated, see, *e.g.*, *Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada* (51 FR 10041, March 24, 1986), neither the Act nor the Commerce Regulations requires a petitioner to establish affirmatively that it has the support of a majority of a particular industry. The Department relies on petitioner's representation that it has, in fact, filed on behalf of the domestic industry, until it is affirmatively shown that this is not the case. Where domestic industry members opposing an investigation provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will review whether the opposing parties do, in fact, represent a major proportion of the domestic industry. In this case, we have not received any opposition from the domestic industry.

On the basis of the information contained in the responses to our questionnaires, we made a preliminary affirmative countervailing duty determination on October 20, 1986 (51 FR 37944, October 27, 1986).

Based upon the request of petitioner, on November 26, 1986, we extended the deadline dates for the final determinations in the countervailing duty investigations of certain fresh cut

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flowers from Canada, Israel, Kenya, the Netherlands, and Peru, and standard carnations from Chile to correspond to the date of the final determinations in the antidumping duty investigations of the same merchandise, pursuant to section 705(a)(1) of the Act, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98–573) (51 FR 43649, December 3, 1986). On January 9, 1987, we extended the deadline date for the countervailing duty determinations on standard carnations from Chile and certain fresh cut flowers from Israel and the Netherlands to coincide with the postponement of the final antidumping duty determination on standard carnations from Chile, in accordance with section 705(a)(1) as amended, 19 U.S.C. 1671d(a)(1) (52 FR 1515, January 14, 1987).

On November 20 and 21, 1986, we verified the response of the EC in Brussels, Belgium. From November 24 through December 5, 1986, we verified the responses of the Government of the Netherlands in The Hague. We received amended responses from respondents on December 31, 1986, January 2, 13, 14, and 16, 1987.

At the request of petitioner and respondents, a public hearing was held on December 17, 1986, to afford interested parties an opportunity to present views orally in accordance with our regulations (19 CFR 355.35). Petitioner and respondents filed case briefs on December 10, 1986, post-hearing briefs on December 24, 1986, and comments on the verification reports on January 21, 1987. We received additional comments from the Government of the Netherlands on December 24, 1986 and January 20 and 23, 1987.

Scope of Investigation

The products covered by this investigation are fresh cut miniature (spray) carnations, currently provided for in item 192.17 of the *Tariff Schedules of the United States* (TSUS) and standard chrysanthemums, alstroemeria, and gerbera, currently provided for in item 192.21 of the TSUS.

Analysis of Programs

Throughout this notice we refer to certain general principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

For purposes of this final determination, the period for which we are measuring subsidies (the review period) is calendar year 1985. Based upon our analysis of the petition and the responses to our questionnaires, verification, and comments filed by petitioner and respondents, we determine the following:

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to producers or exporters in the Netherlands of cut flowers under the following programs:

A. Natural Gas Provided at Preferential Rates

Petitioner alleges that the Dutch gas company, partly owned by the Government of the Netherlands, supplies natural gas at preferential rates to the greenhouse industry which includes the producers of cut flowers.

Natural gas in the Netherlands is sold directly to major customers by the N.V. Nederlandse Gasunie (Gasunie). The Agricultural Industrial Board, or "Landbouwschap", a quasi-governmental body, acts as a negotiating body with Gasunie to determine the prices and general terms of gas delivery for Dutch horticulturalists (*i.e.*, greenhouse growers).

Gasunie is 40 percent owned by DSM Aardgas (a company wholly-owned by the Government of the Netherlands), 10 percent by the Government of the Netherlands, 25 percent by Shell Nederland, and 25 percent by Esso Nederland N.V. While the Government of the Netherlands does not own a controlling interest in Gasunie, it plays a significant role in the setting of natural gas prices. The Minister of Economic Affairs reserves the right to approve selling prices and terms of delivery for supplies to public distributors in the Netherlands, large export contracts, and contracts between Gasunie and the Landbouwschap. In this respect, the Minister's right forms part of the system of controls normally applied to prices.

The Landbouwschap is a statutory trade organization created under the Industrial Organizations Act. Its chairman is approved by the Government of the Netherlands and its purpose is to represent the economic and political interests of the agricultural sector in the Netherlands.

At verification, we found that natural gas prices are based on consumption levels which are broken down into five categories or "zones"—zones "a" through "e". Zone "a" users are small gas consumers, such as homeowners or small businesses which use less than 170,000 cubic meters of gas per year; zone "e" users are the largest consumers, such as industries which use more than 50 million cubic meters of gas per year. Zone "a" users pay the highest price per cubic meter; zone "e" the lowest.

One of Gasunie's primary concerns is not to lose customers to energy substitutes, primarily heavy or light fuel oil. Therefore, the rate for each zone is based on the world market price of heavy or light fuel oil. The price of gas to all users is less than, equal to, or greater than the calorifically equivalent fuel oil (light or heavy) price, depending on the readiness of various buyers to switch to, and maintain their usage of, the substitute fuel. For example, the zone "a" rate is tied to the world market price of light fuel oil, while the zone "b" through "e" rates are tied to the world market price of heavy fuel oil. Zone "d" is the point of parity between heavy fuel oil and natural gas. The zone "b", "c", and "e" rates are tied to the world market price of heavy fuel oil, adjusted to account for the cost of converting to and using the substitute fuel.

The rate for each zone is set on a quarterly basis and is based on the world market prices of light and heavy fuel oil during the previous quarter. Gas prices are determined by this schedule for all users with the following exceptions which are determined by separate contracts: prices for exports, prices paid by local gas distribution companies, and prices paid by greenhouse growers.

The Board of Directors of Gasunie has twelve seats, six of which are held by private stockholders (Shell Nederlandse and Exxon Nederlandse N.V.), and six of which are held by officials appointed by the government. Gas prices, and the above-mentioned contracts, require a 75 percent majority approval of the Board and are subject to the final approval of the Minister of Economic Affairs.

As noted above, the greenhouse growers, through the Landbouwschap, negotiated a contract with Gasunie for their natural gas. Under the contract, greenhouse growers pay the zone "d" rate plus 0.5 guilder cents per cubic meter of gas. Absent the contract, most greenhouse growers, given their individual consumption levels, would fall in zone "a" or zone "b", with a few falling in zone "c".

In the 1984 contract negotiated with Gasunie by the Landbouwschap on behalf of greenhouse growers, a maximum ceiling price was established. At verification, we found that, during the first three quarters of 1985, the ceiling price was lower than the zone "d" plus 0.5 guilder cents rate. In the fourth quarter of 1985, the ceiling price

was higher than the zone "d" plus 0.5 guilder cents rate. No other group in the Netherlands has ever benefitted from such a ceiling price. At verification, we were informed for the first time that, in September 1985, Gasunie sent a letter to the Landbouwschap withdrawing the maximum ceiling price from the contract, effective at the start of the fourth quarter. The Landbouwschap objected to this unilateral withdrawal.

Because greenhouse growers are the only group in the Dutch economy that has such a contract, we determine that the Government of the Netherlands, through Gasunie and the Landbouwschap, provides natural gas under this contract to "a specific enterprise or industry, or group of enterprises or industries" within the meaning of section 771(5)(B) of the Act. The contract constitutes governmental provision of natural gas because the Government of the Netherlands owns 50 percent of Gasunie, the Minister of Economic Affairs must approve the contract between Gasunie and the Landbouwschap, and the Landbouwschap itself is a quasi-governmental organization. Furthermore, the contract involves the provision of natural gas to a specific industry because, while the Landbouwschap represents the interests of the entire agricultural sector, this contract was negotiated on behalf of a specific group within agriculture, that is, greenhouse growers.

In order to determine whether the prices paid for natural gas under this contract are preferential within the meaning of section 771(5)(B)(ii) of the Act, we examined both prices established in the contract; that is, the zone "d" rate plus 0.5 guilder cents, and the ceiling price. With respect to the zone "d" rate plus 0.5 guilder cents, we determine that this price is not preferential for the following reasons.

We recognize that a contract providing gas to greenhouse growers as a group, at a lower rate than they would pay individually based on consumption, does not necessarily, in and of itself, constitute preference. The contract specifies that greenhouse growers pay the zone "d" rate plus 0.5 cents per cubic meter of gas. Yet, based on total collective consumption, greenhouse growers would be eligible for the zone "e" rate, which is lower than the zone "d" plus 0.5 guilder cents rate. Given this high level of collective consumption, it is in the interest of greenhouse growers to band together to negotiate a contract with the Landbouwschap to obtain the lowest possible gas rate. Gas constitutes a significant portion of the greenhouse growers' cost of production. Additionally, greenhouse growers have, over the years, developed and retained the ability to convert relatively easily from gas to oil heating systems if the economics of fuel usage justify the change. Furthermore, greenhouse growers constitute a well-organized group of consumers with considerable bargaining power. Greenhouse growers in the Netherlands traditionally have banded together for purposes of marketing and distributing their products through the auction system. From the standpoint of Gasunie, it is in the commercial interest of its owners to provide greenhouse growers with gas at the zone "d" plus 0.5 guilder cents rate because this reflects the highest price Gasunie can charge without losing greenhouse customers to alternative fuel sources. Therefore, the provision in the contract which stipulates the zone "d" rate plus 0.5 guilder cents per cubic meter for greenhouse growers can be justified by economic considerations and we do not consider this a preferential price.

However, with respect to the ceiling price in the contract, we determine that this price is preferential within the meaning of section 771(5)(B)(ii) of the Act. First, greenhouse growers are the only group of gas consumers within zone "d" that benefits from a price ceiling. Indeed, they are the only group throughout the Dutch economy that benefits from a ceiling price. The existence of the price ceiling constitutes preferential treatment because comparable users are denied such a provision. Although respondents argue that the ceiling price is a negotiated contract price, no ceiling price is in effect for other zone "d" users that consume a comparable amount of natural gas and that, presumably, have comparable bargaining power to negotiate a ceiling price. Therefore, the inclusion of the ceiling price in the contract cannot be considered non-preferential when no other gas users are enjoying the same price ceiling.

When zone "d" rates increase above the ceiling price, the price ceiling constitutes the provision of a good by the Government of the Netherlands through Gasunie to greenhouse growers at a price that is lower than the price charged by the government to other users of gas within the Netherlands. Thus, the ceiling price constitutes price discrimination by the government. Accordingly, we determine that the ceiling price constitutes the provision of a good at a preferential rate.

To calculate the benefit to greenhouse growers under this program, we took the difference between the price of gas actually paid by greenhouse growers during 1985 and the zone "d" plus 0.5 guilder cents price they would have had to pay under the contract absent the ceiling price. We allocated this amount over total sales of greenhouse growers during the review period. This resulted in an estimated net subsidy of 2.45 percent *ad valorem*.

Respondents have requested that we establish a separate deposit rate reflecting the withdrawal of the maximum ceiling price by Gasunie. It is our policy to take into account verified program-wide changes that occur prior to our preliminary determination.

Although we found at verification that Gasunie sent a letter to the Landbouwschap in September 1985 withdrawing the ceiling price, it was a unilateral withdrawal contested by the Landbouwschap. No new contract has been signed between the parties agreeing to the withdrawal and, therefore, the current contract technically still includes the maximum ceiling price for greenhouse growers. Accordingly, we cannot consider the unilateral withdrawal of the ceiling price from the contract to be a program-wide change. Thus, the fact that greenhouse growers may not currently be enjoying benefits under this program because the zone "d" rate plus 0.5 guilder cents is currently lower than the ceiling price is irrelevant to our determination.

B. Aids for the Creation of Cooperative Organizations

Petitioner alleges that Dutch auction houses receive funds from both the European Community (EC) and the Government of the Netherlands for the creation of cooperative organizations. Petitioner states that a major proportion of EC flowers passes through Dutch auction houses, which are flower grower cooperatives. Petitioner further contends that these auction houses are the exclusive selling agents for the member growers and form cartels to regulate the industry.

Under EC Regulation 355/77, grants have been provided since 1978 by the EC through the Agricultural Guidance and Guarantee Fund with matching grant contributions from EC member states. The purpose of the program is to improve the processing, marketing, and distribution of agricultural products in member states.

This grant program has two levels. First, there is a "program" level whereby member states submit sectoral program proposals to the EC for approval. Programs are generally approved for a

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three- to five-year period. While funding is guaranteed for investment projects under approved programs for the life of the program, the level of funding provided each year is determined annually by the EC.

The second level is the "project" level whereby companies or organizations submit specific investment project proposals to their member state governments, which, in turn, pass the proposals on to the Fund for consideration. Only when there is an approved program will the EC accept and consider specific investment project applications.

Project grants are paid in two installments. Fifty percent of the grant is paid upon certification that half of the investment project has been completed, and the remainder of the grant is paid upon certification that the entire project has been completed. Grant recipients must complete projects within four years of the date of approval of the grant. Before this two-level funding system became fully operational in 1980, member state governments could also submit specific investment project proposals for funding.

During verification, we found that the Government of the Netherlands submitted a program proposal to the EC in 1979 for flower auctions. In 1980, the EC approved the program for a four-year duration. This program terminated at year-end 1984; however, project applications submitted to the EC by December 1984 were eligible for, and received, grant approval in June 1985. At verification, we found that grants are still being disbursed under the flower auction program for investment projects approved in June 1985 or previously. In February 1985, the Government of the Netherlands requested an extension of the flower auction program, but withdrew this request in March 1986. In addition, flower auctions also had projects approved in 1978 and 1979 during the transition period before the two-level funding system became operational in 1980.

Since 1978, several program proposals have been submitted by the Government of the Netherlands and have been approved for products including fruits, vegetables, flowers, nursery products, crop seeds, grass seeds, potatoes, cheese, milk, beef, pork, poultry, veal, and fish. However, only a few programs are submitted and approved each year and a limited number are in effect at the same time. For example, in 1980, the year in which the program for flower auctions was approved, only three other programs were approved, two of which pertained to fruit and vegetables and one which pertained to beef slaughterhouses. Even if we look at a three-year time span (*e.g.*, 1979–1981), we find that not all agricultural activities, or even a wide range of agricultural activities, received approval under this program. For 1978 and 1979, the two years prior to the approved flower auction program, our analysis of the EC's statistical reports also shows that the Dutch projects funded did not encompass all agricultural activities, or even a wide range of agricultural activities. Moreover, there are no standard criteria established by the Government of the Netherlands or the EC for selection of either sectoral programs or projects under the Aids for the Creation of Cooperative Organizations program.

Because the Government of the Netherlands selects only certain activities and/or products within the agricultural sector for which it proposes a program to the EC for funding, we determine that this grant program is administered in such a way as to be limited to a specific enterprise or industry, or group of enterprises or industries in the Netherlands and, therefore, is countervailable. Furthermore, because the Government of the Netherlands limits its selection of programs to be submitted to the EC for consideration, and because we saw no evidence of standard criteria applied in the approval of programs by the EC, it follows that the grants approved and disbursed by the EC are also limited to a specific group of enterprises or industries within the agricultural sector of the Netherlands and are, therefore, countervailable.

To calculate the benefit from this program, we followed the grant methodology outlined in the Subsidies Appendix. We took the total value, in guilders, of grants given in each year to flower auction houses under this program and allocated these amounts over ten years, which is the average useful life of renewable physical assets in the agricultural sector as determined under the U.S. Internal Revenue Service's Asset Depreciation Range System. Although the flower auction program terminated in 1984 and no grants were approved after June 1985, benefits are still accruing from these grants under our methodology. For the years prior to 1982, we used as the discount rate, the average commercial bond rate in the Netherlands, as reported in the *OECD Financial Statistics, 1985*. For the years 1982 through 1985, we used as the discount rate, commercial loan rates published by the Netherlands Bank (the Central Bank). We then took the total of the 1985 benefits from all of these grants and divided it by total flower auction sales during the review period. This resulted in an estimated net subsidy of 0.17 percent *ad valorem*.

C. Glasshouse Enterprises Program

Petitioner alleges that producers of cut flowers in the Netherlands are benefitting from a grant provided by the Minister for Agriculture and Fisheries to the "gardening sector." This grant was provided for research and investment in energy conservation in glasshouse enterprises.

At verification, government officials stated that the Glasshouse Enterprises Program was part of a national energy conservation policy developed by the Ministry of Economic Affairs, and that other government ministries develop and implement specific objectives and programs for the particular sectors or groups falling under their jurisdiction. While there may be a general national energy conservation policy, we saw no evidence of a coordinated national program under which the Glasshouse Enterprises Program was funded or administered, nor could we tie the funds authorized under this program to ministerial budget allocations for energy activities.

Under the Glasshouse Enterprises Program, the Minister of Agriculture and Fisheries appropriated 300 million guilders (f300 million), of which f270 million was to be spent to stimulate private investment in energy-saving methods in the horticultural industry and f30 million was to be spent on research. (See Section II.A. of the notice for a complete discussion of the Glasshouse Enterprises Research Grants.) The program was scheduled to terminate in 1984; however, the fund was not fully used, and was extended for one year to June 1985. During verification, we found that grants under this program were still being provided during 1986. Officials from the Ministry of Agriculture and Fisheries explained that these grants were given on energy saving investment plans approved prior to the termination of the program and that funds under these plans could be disbursed in 1987 or later.

In order to receive grants for investments, applicants were required: (1) To have been professionally involved in agriculture, with at least one-half of their agricultural activities in the horticultural sector; (2) to have used at least 30,000 cubic meters of natural gas in 1980; and (3) to have realized at least a 20 percent energy savings by program's end.

Because this program was available only to greenhouses, we determine that it was limited to a specific enterprise or industry or group of enterprises or industries and, as such, is countervailable.

We calculated the benefit under this program according to the grant methodology outlined in the Subsidies Appendix. For each of the years 1982 to 1985, we took the total amount of grants provided to all Dutch greenhouse growers under this program. We allocated these amounts over ten years, which is the average useful life of renewable physical assets in the agricultural sector. Although this program officially terminated in June 1985, under our methodology, benefits are still accruing from these grants and, in fact, grants were still being provided in 1986. For the discount rate, we used the average commercial bond rate in the Netherlands for each year in which grants were provided. We took the sum of the 1985 benefit from all of these grants and divided it by total sales of greenhouses during the review period. This resulted in an estimated net subsidy of 0.80 percent *ad valorem*.

D. Aids for the Reduction of Glass Surface

Petitioner alleges that producers of cut flowers may benefit from the Government of the Netherlands' provision of aid for the destruction of unprofitable greenhouses.

As with the Glasshouse Enterprises Program discussed above, government officials stated that the Aids for the Reduction of Glass Surface program was part of a national energy conservation policy developed by the Ministry of Economic Affairs, under which other government ministries develop and implement specific objectives and programs for the particular sectors or groups falling under their jurisdiction. While there may be a general national energy conservation policy, we saw no evidence of a coordinated national program under which the Aids for the Reduction of Glass Surface program was funded or administered, nor could we tie the funds authorized under this program to ministerial budget allocations for energy activities.

The Aids for the Reduction of Glass Surface program was designed to increase the energy efficiency of glasshouses by dismantling existing glass and replacing it with modern, energy-saving glass. The expansion of the existing facility was prohibited. Grant recipients were required to sign an agreement with the Ministry of Agriculture and Fisheries stating that they would not increase the total glass surface area for a period of five years. Only glasshouse operators who had an approved energy investment plan under the Glasshouse Enterprises Program (see Section I.C. of the notice) could apply for assistance for reducing glass surface area.

Applicants could obtain a grant of f12 per square meter of glass, up to a maximum of 15 percent of their total acreage, and up to a maximum acreage of 1,500 square meters. Payment of the grant was made upon completion of the dismantling. The program began on November 1, 1982, and terminated on November 1, 1984. Applications were not accepted after November 1, 1984; however, grants were paid out after November 1, 1984, for projects approved prior to that date. The dismantling of glass projects were supposed to be completed prior to January 1, 1985. At verification, we found that grants are still being paid out under this program.

Because this program was available only to glasshouses, we determine that it was limited to a specific enterprise or industry or group of enterprises or industries and, as such, is countervailable.

We calculated the benefit from these grants according to the grant methodology outlined in the Subsidies Appendix. For each of the years 1983 to 1985, we took the total amount of grants provided to all Dutch greenhouse growers under this program. We allocated these amounts over ten years, which is the average useful life of renewable physical assets in the agricultural sector. Although this program terminated on November 1, 1984, under our methodology, benefits are still accruing from these grants. We used as the discount rate, the average commercial bond rate in the Netherlands for each year in which grants were provided. We took the sum of the 1985 benefit from all of these grants and divided it by total sales of greenhouses for the review period. This resulted in an estimated net subsidy of 0.01 percent *ad valorem*.

E. Steam Drainage Systems

Petitioner alleges that the Government of the Netherlands provides funds to greenhouse owners who install steam drainage systems and/or gas fired mobile furnaces.

During verification we found that the purpose of this program is to encourage efficient and effective methods of land disinfecting other than the use of methylbromide. In January 1981, the Government of the Netherlands banned the use of methylbromide as a means of soil disinfection due to the potential health hazards caused by the chemical. In December 1981, the Ministry of Agriculture and Fisheries established a program making available cash grants to encourage the use of steam drainage as an alternative method of soil disinfection for greenhouses. At verification, we learned that greenhouse growers are the only users of steam drainage systems. Under this program, a greenhouse grower could receive a grant of up to 25 percent of the amount of his investment in steam drainage systems with a maximum of f1.50 per square meter of land on which the steam drainage system was installed.

Although the program began in December 1981, Article 7 of the applicable decree allowed for the retroactivity of the program to January 1, 1981 (the date the government banned the use of methylbromide). Greenhouse growers who had already switched to steam drainage systems prior to January 1, 1981 did not receive any assistance under this program. The program did not terminate on September 1, 1983, as originally scheduled, but was extended for one year and terminated on September 1, 1984.

Because this program was only available to greenhouse growers, we determine it was limited to a specific enterprise or industry, or group of enterprises or industries and, as such, is countervailable.

We calculated the benefit under this program according to the grant methodology outlined in the Subsidies Appendix. For each of the years 1982 to 1984, we took the total amount of grants provided to all Dutch greenhouse growers under this program. We allocated these amounts over ten years, which is the average useful life of renewable physical assets in the agricultural sector. Although this program terminated on September 1, 1984, under our methodology, benefits are still accruing from these grants. We used as the discount rate, the average commercial bond rate in the Netherlands for each year in which grants were provided. We took the sum of the 1985 benefit from all of these grants and divided it by total sales of greenhouses during the review period. This resulted in an estimated net subsidy of 0.01 percent *ad valorem*.

F. Guarantee Fund for Agriculture

Petitioner alleges that the Government of the Netherlands provides guarantees for loans awarded by banks to certain farmers through a fund designed to promote the development of agriculture.

The official name of this program is the Stichting Borgstellingsfonds voor de Landbouw (Foundation Security Fund for Agriculture). The purpose of the Foundation is to enable creditworthy

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farmers to obtain loans when they do

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farmers to obtain loans when they do not possess sufficient collateral. To receive a loan guarantee under this program, the borrower works in tandem with the bank. The bank provides a loan for which adequate security is available. If this amount is not sufficient to meet the borrower's needs, the bank applies to the Foundation for a guarantee, on behalf of the borrower. If granted, the guarantee applies only to the portion of the loan not originally approved by the bank.

According to the response, and based upon our findings at verification, this program is available to virtually all agriculture. However, during verification, we found that horticulture receives a disproportionate share of loan guarantees under this program. Taking horticulture as a percent of all agriculture, based upon a review of the value of guaranteed loans granted in each year 1982 to 1984, we found that horticulture received approximately 47 percent of the value of all guaranteed loans. Horticulture represents approximately 24 percent of total agricultural production value, as reported in the statistical review of Dutch horticulture, *Tuinbouwcijfers 1986*. In addition, in 1985, horticulture accounted for 52 percent of the total value of loan guarantees awarded. The consistent pattern over the years of horticulture receiving almost 50 percent of the funding even though it accounts for only 24 percent of the value of agricultural production leads us to conclude that the Guarantee Fund is administered in such a way as to confer a benefit on a specific group of industries (*i.e.*, horticulture).

To calculate the benefit under this program, we would normally take the difference between the guarantee fee, if any, paid under the program and the fee paid for commercial loan guarantees, and multiply the difference by the total value of guaranteed loans to horticulture outstanding during the review period. However, during verification we found that there are no commercial loan guarantees available in the Netherlands. Therefore, as best information available, we took the difference between the interest rate in 1985 on the guaranteed loans and on loans secured by equipment and/or accounts receivable, as reported by the Rabobank Nederland (which provides almost all of the loans guaranteed under this program and which is the major source of financing for the agricultural sector in the Netherlands). We multiplied this amount by the total outstanding value of guaranteed loans to horticulture in 1985. We then divided this amount by the value of total horticulture sales during the review period, as reported by the auction houses. This resulted in an estimated net subsidy of 0.04 percent *ad valorem*.

II. Programs Determined Not To Confer Subsidies

We determine that subsidies are not being provided to producers or exporters in the Netherlands of cut flowers under the following programs:

A. Glasshouse Enterprises Research Grants

Petitioner alleges that producers of cut flowers in the Netherlands are benefitting from grants provided by the Ministry of Agriculture and Fisheries to conduct research pertaining to energy conservation.

During verification, we found that the Ministry of Agriculture appropriated a total of f30 million for research and development in energy conservation and energy saving devices. We reviewed publications and a law which show that the results of the research were always made public.

Because the results of the research conducted with these grants are published and made available for public use, we determine this portion of the Glasshouse Enterprises Program not to be countervailable.

B. Funding of Interest on Loans

Petitioner alleges that the Government of the Netherlands provides funding of interest on loans under a program to encourage the modernization of certain agricultural and horticultural ventures.

This program is provided for under a regulation entitled, "Besluit Structuurverbetering Landbouwbedrioven" (Decree for Structural Improvement of Agricultural Enterprises). The program is designed for "developmental enterprises" (*i.e.*, those that show good prospects for healthy growth) and is administered by the Foundation for Development and Reorganization in Agriculture (O & S).

During verification, we found that the purpose of this program is to improve farm efficiency with the aim of raising the yearly income of farm workers. Towards this aim, the O & S pays a portion of the interest on loans for approved investment projects. The most recent amendment to the law governing this program states that the intent is to improve quality, diminish production costs, improve working conditions, save energy, and to focus on environmental investments, especially manure storage programs. Eligibility for the program is based on the yearly income of the farm owner's employees; if below a certain level, then the farm owner becomes eligible to receive the interest subsidy on loans for projects to meet the program's objectives.

According to the government response, the funding of interest on loans is available and provided to all agriculture, except for one exclusion and two limitations. No support is currently given for expansion in poultry; pig farming investments must abide by the rule to utilize 35 percent of the needed fodder from the farm's own production; and expansion in dairy farming is restricted.

During verification, we confirmed that benefits under this program are provided to virtually all agricultural activities and that the only exception involves poultry farmers, who are excluded due to surplus production of eggs; pig and dairy farmers are eligible if they comply with certain restrictions. The mere exclusion of one narrow type of agricultural activity (*i.e.*, poultry farming) does not automatically render this program limited to a specific enterprise or industry, or group of enterprises or industries.

At verification we also found that this program has a definite set of eligibility criteria based upon the farm worker's income level, and a definite formula for determining the amount of interest funding to be provided. The existence of eligibility criteria under which virtually all farmers are eligible indicates that the program is not administered in such a way as to make it limited to a specific enterprise or industry, or group of enterprises or industries.

Furthermore, based upon a review of the most recent five-year period for which data are available, taking horticulture as a percent of all agriculture, horticulture received a share of the approved amounts of funding of interest on loans commensurate with its percentage share of total agriculture production value, minus the total production value of the poultry industry. Therefore, we find this program not to be countervailable.

III. Programs Determined Not To Be Used

We determine that the producers or exporters in the Netherlands of cut flowers did not use the following programs:

A. Investment Incentive (WIR)—Regional Program

Petitioner alleges that, under the Investment Incentive Program (Wet Investerings Rekening-WIR), bonus premiums for regional investments are given to producers or exporters of cut

flowers in the Netherlands. Financial assistance conferred under the WIR regional program was found to be countervailable in the *Final Countervailing Duty Determination: Dextrines and Soluble or Chemically Treated Starches Derived from Corn Starch from the European Community* (45 FR 18414, March 21, 1980).

At verification, we found that the Regional Planning Premium (ROT) and the Special Regional Premium (BRT) of the WIR program provided tax credits, over and above the basic WIR credit, as incentives for investments in the northern and eastern sections of the country. We also found that agriculture was excluded from the ROT and BRT in 1982, and both programs were terminated in 1983.

According to the response submitted by the Government of the Netherlands, and based upon our findings during verification, the WIR programs were not used by Dutch flower growers.

B. Loans at Preferential Interest Rates

Petitioner alleges that the National Investment Bank may provide loans on terms inconsistent with commercial considerations to producers or exporters of cut flowers in the Netherlands. Petitioner also contends that at least two regional development companies, the Northern Development Company and the Limburg Institute for Development and Finance, offer loans and share capital for investments in the northern development area and in the southern Limburg development area, respectively.

During verification we found that the National Investment Bank (NIB) issues long-term loans to financially sound companies which lack sufficient capital. Commercial banks, private investors, and the government jointly participate in the NIB, and the government may guarantee the loan principal and interest in certain cases, *e.g.*, establishment of new industrial enterprises in regions designated for economic stimulation. The possible subsidization of interest costs applies solely to new industries to be established in regions designated for economic stimulation.

During verification we found that both the NIB and the provincial development companies are geared toward industrial concerns. We saw no evidence that flower growers or auctions received loans under these programs.

C. Energy Saving Aids

Petitioner alleges that the Ministry of Economic Affairs provides funds for projects which promote energy conservation (*e.g.*, wind or solar installations). Petitioner also states that the Ministry offers loans for research and development, under which repayment is waived for unprofitable research or unsuccessful projects.

At verification, government officials contended that the Energy Savings Aids program is the national energy conservation policy of the Government of the Netherlands, developed by the Ministry of Economic Affairs, and under which other government ministries develop and implement specific objectives and programs for the particular sectors or groups falling under their jurisdiction. They stated that the Glasshouse Enterprises and Reduction of Glass Surface Area programs fall under the general category of Energy Savings Aids applicable to greenhouse growers. As noted above, we saw no evidence of a coordinated national program under which these programs were funded. In addition, we found no evidence that Dutch flower growers received any energy savings assistance other than that provided under the Glasshouse Enterprises and the Aids for the Reduction of Glass Surface programs.

D. Landbankregulation

Petitioner alleges that the Government of the Netherlands provides financing for acquiring land in the agricultural sector under the Landbankregulation program. During verification we found that the Landbankregulation program applies only to arable crop and dairy farming.

Petitioner's Comments

Comment 1: Petitioner contends that the Department significantly understated the value of benefits conferred by programs which it preliminarily determined to be countervailable because the Department assumed, in comparing the total benefit of a program with the value of all greenhouse production, that the subsidy equally affects all areas of greenhouse production. Petitioner argues that, because yields for flowers are lower than that for other greenhouse plants, more greenhouse acreage is needed to produce flowers and, therefore, equal allocation over all greenhouse production would understate the effect of the subsidy.

DOC Position: In the programs we are examining, the Government of the Netherlands does not differentiate benefit amounts provided to greenhouse growers according to the types of products produced in greenhouses. Therefore, in cases where we use aggregate data in evaluating benefits, as in this investigation, it is usually not possible to isolate the benefits accruing solely to the products under investigation since the programs usually are not provided specifically to the products we are investigating. When the purpose of the programs is to assist greenhouse growers, and when the amounts of the benefits are not segregable between greenhouse growers who produce flowers and greenhouse growers who produce other products, we consider that the total benefit is appropriately assigned to the total value of all greenhouse sales, and that this assignment reflects the value of the subsidy attributable to flowers grown in greenhouses.

Comment 2: Petitioner contends that the Department should continue to use best information available regarding natural gas provided at preferential rates because the Government of the Netherlands has provided no further information since its supplemental questionnaire response and that any other information submitted so late in the investigation would be untimely and accordingly should be rejected.

DOC Position: We disagree. For purposes of our final determination on the natural gas program, information obtained by the Department during verification and accurately reported in the amended responses makes the use of best information available unnecessary.

Comment 3: Petitioner contends that the Aids for the Creation of Cooperative Organizations program is limited to a specific group of enterprises of industries because, according to figures provided in the response, a comparison of sums awarded to auction houses with the total amounts awarded under the program shows that most probably the auction houses got most, if not all, of the monies bestowed in the Netherlands under the part of the program which is specifically intended for the flowers and plants sector. Furthermore, they contend that, in the Netherlands, this program is only available to a few sectors of agriculture and cite EC Regulation 355/77.

DOC Position: While we have found the Aids for the Creation of Cooperative Organizations program to confer a subsidy, we did so on the basis that the Government of the Netherlands, through the selection process, limited program proposals to specific agricultural activities, and not because auction houses may have received a significant amount of the funding under the approved program for flowers and plants. See Section I.B. of the notice.

Comment 4: Petitioner contends that, with respect to Aids for the Creation of Cooperative Organizations program, because the largest part of the

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production of the Dutch greenhouse growers is exported, and because these products are sold through auction houses for export, export promotion must be viewed as a *de facto* consequence of the subsidizing of the auction houses. In support of their argument, petitioner cites "The Commerce Department speaks on Import Administration and Export Administration 1984" at 315–316. ("Thus, Commerce frequently talks of an export subsidy as one which operates and is intended to stimulate export rather than domestic sales or is contingent upon export performance.")

DOC Position: We disagree. The fact that export sales may be a consequence of this program does not mean that the Aids for the Creation of Cooperative Organizations program constitutes an export subsidy. See *Final Negative Countervailing Duty Determination: Certain Softwood Products from Canada* (48 FR 24159, 24167, May 31, 1983).

Comment 5: Petitioner contends that under the Guarantee Fund for Agriculture, the horticultural and floricultural sectors received a disproportionate share of benefits and that the program is, therefore, countervailable. Petitioner cites the *Preliminary Affirmative Countervailing Duty Determination: Certain Textile Mill Products and Apparel from Thailand* (49 FR 49661, December 21, 1984) in support of its argument. Furthermore, petitioner contends that the Department's interpretation on general availability is contrary to law as formed in *Cabot* v. *United States* (620 F. Supp. 722 (1985)).

DOC Position: Based upon our analysis of all information submitted, we have determined that the Guarantee Fund for Agriculture is administered in such a way as to provide a disproportionate share of benefits to horticulture. See Section I.F. of the notice.

Comment 6: Petitioner contends that the Funding of Interest on Loans program is countervailable under existing Department interpretation as it provides a subsidy which *de facto* benefits disproportionately the horticultural sector. In addition, petitioner argues that the Government of the Netherlands has admitted that certain sectors of agriculture, such as the poultry sector, pig farming and dairy farming have been excluded from the program or that benefits for those sectors have been restricted.

DOC Position: We disagree. During verification, we found that benefits under this program are provided to virtually all agricultural activities. The only exception involves poultry farmers who are excluded due to surplus production of eggs; pig and dairy farmers are eligible if they comply with certain restrictions. We maintain that the exclusion of only one narrow type of agricultural activity (*i.e.*, poultry farming) does not render this program limited. Furthermore, we found no evidence at verification that would lead us to conclude that horticultural activities received a disproportionate amount of benefits under this program.

Comment 7: Petitioner contends that the February 13, 1985 EC decision concerning Gasunie's and the Landbouwschap's natural gas pricing provisions was based on the fact that the Dutch natural gas tariff for flower growers was preferential, and not just the ceiling price on natural gas, as claimed by respondents. Furthermore, petitioner argues that the Department has received no information from the Government of the Netherlands to show that the preference has been eliminated. Therefore, the Department should continue to use best information available for the final determination.

DOC Position: The EC decision of February 13, 1985 states that "[T]he advantage of the new system to a horticultural holding is thus as follows:

—4.1 cents/cubic meter for the fourth quarter of 1984,
—5.5 cents/cubic meter for the first quarter of 1985."

This "advantage" represents the difference between the gas price under the 1984 contract, effectively the ceiling price in the fourth quarter of 1984 and the first quarter of 1985, and the gas price that would have been applicable had the 1983 contract been in effect during those two quarters. Moreover, the 1983 contract between Gasunie and the Landbouwschap, signed after consultations between the EC and the Government of the Netherlands, did not contain a ceiling price provision. Therefore, the EC's February 13, 1985 decision objected only to the new ceiling price provision in the 1984 contract.

With respect to petitioner's argument that the Department has received no new information to show that the preference has been eliminated, the Government of the Netherlands submitted information during verification which we verified and which clarifies the terms of the contract between Gasunie and the Landbouwschap. We have based our analysis on this verified information.

Comment 8: Petitioner contends that respondents' argument that because the Government of the Netherlands did not direct the sale of natural gas to the Dutch flower growers at low prices, there can be no subsidy, is contrary to both judicial decision and legislative history which establish that government direction is not a requirement for a finding of subsidization. In addition, petitioner contends that, in fact, the Government of the Netherlands owns 50 percent of Gasunie and retains the right to approve prices and terms of delivery for natural gas and that these facts should lead the Department to conclude that the Dutch Government does indeed play a role in setting natural gas prices.

DOC Position: We agree that the Government of the Netherlands plays a significant role in setting gas prices. See Section I.A. of the notice.

Comment 9: Petitioner contends that respondents' argument that any benefit from low natural gas prices was not conferred on a "specific enterprise or industry" is contrary to information submitted by respondents. They argue that this information indicates that benefits accrue only to one part of the entire agriculture sector and that this sector constitutes a specific enterprise or industry, or group of enterprises or industries.

DOC Position: We agree. See Section I.A. of the notice.

Comment 10: Petitioner contends that respondents' argument, that natural gas prices charged to Dutch flower growers were not preferential because Gasunie was forced to bring down its gas price to convince flower growers not to shift to oil heat, ignores the evidence of record which shows that the tariff charged horticultural users of natural gas was not justified on economic grounds.

DOC Response: The evidence on the record shows that the provision in the contract which stipulates the zone "d" plus 0.5 guilder cents rate for greenhouse growers is the result of negotiations based on each party's interests and is justified on economic grounds. Therefore, the contracted zone "d" plus 0.5 guilder cents rate cannot be considered a preferential price to greenhouse growers because it is a negotiated price that is directly linked to the price paid by other gas consumers which, in turn, is linked to the world market price of heavy or light fuel oil. See Section I.A. of the notice.

Comment 11: Petitioner contends that respondents' argument that benefits similar to those provided under the Reduction of Glass and the Glasshouse Enterprises programs were available in all areas or industry as part of a national policy of energy conservation and should, therefore, be found generally available would require a sweeping expansion of the general availability test, so that almost no

benefit would be found countervailable. They further contend that this interpretation would contradict the underlying purpose of the law, which is to offset the unfair advantage subsidies provide a foreign manufacturer over its U.S. competitors.

DOC Position: We agree that the these programs are countervailable. The bases for our determinations are fully addressed in Sections I.C. and I.D. of the notice. See also DOC Position to Respondents Comment 1.

Comment 12: Petitioner argues that, with respect to the Glass Reduction and Glasshouse Enterprises programs, although these programs allegedly have been terminated, grants received under these programs continue to benefit the recipients during the review period so that their value must be included in calculating the *ad valorem* duty rate.

DOC Position: We agree. See DOC Position to Respondents' Comment 24.

Comment 13: Petitioner argues that, although the Dutch law prohibiting the use of methylbromide may have forced the Dutch growers to use other methods of soil sterilization, it did not require them to use steam drainage systems. By making available grants for this purpose, the Government of the Netherlands awarded a benefit to greenhouse growers who installed such systems, relieving them of part of their operating costs.

DOC Position: We agree. See DOC Position to Respondents' Comment 3.

Comment 14: Petitioner contends that the questionnaire response does not indicate that there are no flower growers in WIR eligible areas and is surprised that there would not be a single flower grower in the northern and eastern sections of the Netherlands which are the regions targeted to receive benefits under the program.

DOC Position: During verification, we found that there are, in fact, some flower growers located in areas eligible for tax benefits under the WIR regional programs (ROT and BRT). However, we also found that these programs were terminated in 1983 and were not used by flower growers.

Comment 15: Petitioner contends that verification of the Aids for the Creation of Cooperative Organizations program reveals that the EC enjoys much discretion in deciding whether or not to award grants and how much to award. They further contend that different regions are subject to different rates and that these are maximum rates only, and allow for considerable discretion on the part of the grant authority. Thus, they maintain that the Aids for the Creation of Cooperative Organizations program could also be considered a regional subsidy. In support of this argument, petitioner cites *Live Swine and Fresh, Chilled and Frozen Pork Products from Canada* (50 FR 25097, June 17, 1985) *(Live Swine)* in which they contend that the Department found all benefits under an Ontario tax program to constitute a regional subsidy even though every farmer within the province was eligible to receive benefits at a certain level of income, while farmers in specified regions were eligible at a lower income level. Lastly, petitioner contends that the Department was unable to verify the nature of the criteria employed or the exact effect of the selection process. Therefore, they contend that the Department should determine that these grants are countervailable.

DOC Position: Although we found during verification at the EC that certain regions within the Community are eligible for higher grant contributions than others, there are no differing eligibility levels for regions in the Netherlands. Therefore, regionality is not the basis of our determination that this program is countervailable. We found at verification that the Government of the Netherlands limits its selection of programs and projects to be sent to the EC for consideration. Furthermore, we were unable to verify any standard criteria applied in the approval process of member states' sectoral programs and the individual investment project applications under the sectoral programs. For these reasons, we have found that the grants given under this program are limited to a specific group of enterprises or industries within the agricultural sector and, as such, are countervailable.

Furthermore, petitioner's argument that the existence of regional preferences should lead us to conclude that the entire program constitutes a regional subsidy is incorrect. With regard to the Ontario Tax Reduction Program discussed in *Live Swine*, because information was unavailable on specific benefits provided to individual commodity groups, or within specific regions of Ontario, we used as best information available, the total payout under the program in 1984 to swine production. Furthermore, in the *Final Affirmative Countervailing Duty Determination: Certain Fresh Cut Flowers from Canada* (52 FR 2134, January 20, 1987), the Department verified that all farmers throughout Ontario were eligible for this tax program if they had an annual income of $8,000. Farmers located in specific regions were eligible if they had an annual income of $5,000. We found that the receipt of benefits under the $8,000 criterion was not limited to a specific enterprise or industry, or group of enterprises or industries, or to companies located in specific regions.

Respondents' Comments

Comment 1: The Government of the Netherlands contends that energy conservation programs, such as the Decree for Energy Savings Measures in Horticulture under Glass and the Decree for Business-Reduction of Horticultural Glasshouses, as well as other energy conservation programs available in the Netherlands, were designed to conserve energy, and not to benefit Dutch manufacturers, homeowners or growers. They contend that the "targets" of the implementation of these programs were not specific industries or any group favored by the government. Rather, the policy and its implementation were aimed at all significant energy consumers throughout the Dutch economy.

DOC Position: At verification, the Government of the Netherlands was unable to provide documentation linking these programs directly to a national energy program. Officials stated that they do not maintain central records on all energy conservation programs, nor is there one central budget for all energy programs within the country. Each government ministry approves the budget for energy programs implemented under its jurisdiction. Because the government was unable to document the inclusion of the Glasshouse Enterprises and the Reduction of Glass Surface programs as part of an overall national energy program, or even an agriculture-wide energy program, and because these programs are available only to greenhouse growers, we find that they are limited to a specific enterprise or industry, or group of enterprises or industries and, therefore, are countervailable.

Comment 2: The Government of the Netherlands contends that the Subsidies Code recognizes that subsidies other than export subsidies are widely used as important instruments for the promotion of social and economic policy objectives, and that it is not the intent to restrict the rights of signatories to use such subsidies to achieve important policy objectives. Therefore, they contend that, in determining the effect of the subsidy, proper consideration should be given to the nature of the subsidy and, as such, the programs designed chiefly to promote energy savings should not be considered countervailable.

DOC Position: The language of Article 11 of the Subsidies Code does not

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prejudice the right of any signatory to the Code to countervail against non-export subsidies. The fact that certain subsidies are not specifically prohibited by the Code is not relevant as to whether such subsidies confer a countervailable benefit in a specific case. In this investigation, we have carefully considered all aspects of each program under investigation and have made decisions consistent with our methodology and prior determinations.

Comment 3: The Government of the Netherlands contends that the objective of the Steam Drainage Program was to protect the health, environment and social needs of its citizens rather than to bestow any benefit on greenhouse growers. They contend that, as a consequence of this program, greenhouse growers were economically worse off than before this measure was taken.

DOC Position: We disagree. The purpose of the Steam Drainage program was to provide financial assistance to greenhouse growers to offset the cost of complying with the ban in January 1961 on methylbromide as a means of soil disinfection. The ban itself, and not the program, fulfilled the objective of protecting the health, environment and social needs of the population. The argument that greenhouse growers were economically worse off than before the ban is irrelevant in that growers would have had to comply with the ban absent the Steam Drainage program. Therefore, this program is found to provide a direct benefit specifically to greenhouse growers.

Comment 4: With regard to programs which have officially been terminated, the Government of the Netherlands contends that any programs terminated by a signatory cannot be used as a basis for countervailing measures to be applied after the removal of the program.

DOC Position: We disagree. Although these programs have been terminated, we found at verification that grants were still being provided under these programs after the review period. In addition, these grants were awarded to individual recipients on a one-time only basis and were not recurring in each year during the existence of the programs. Therefore, under our grant methodology, we allocate these grants over the average useful life of renewable physical assets in the industry. Under this methodology, grants continue to yield benefits even after the termination of the programs.

Comment 5: The Government of the Netherlands, in supporting a statement submitted by the EC, contends that, according to the relevant provisions of the Subsidies Code, any request for countervailing duties must be made "by or on behalf of the industry affected" and that it must be supported by producers accounting for a major proportion of the like product. The Government of the Netherlands and the EC state that they find no evidence for these conditions having been fulfilled in this investigation and that the Floral Trade Council did not even allege that it represented a majority of the U.S. flower producers of the "like" product.

DOC Position: As the Department has previously stated, see, *e.g., Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada* (51 FR 10041, March 24, 1986), neither the Act nor the Commerce Regulations requires a petitioner to establish affirmatively that it has the support of a majority of a particular industry. The Department relies on petitioner's representation that it has, in fact, filed on behalf of the domestic industry, until it is affirmatively shown that this is not the case. Where domestic industry members opposing an investigation provide a clear indication that there are grounds to doubt a petitioner s standing, the Department will review whether the opposing parties do, in fact, represent a major portion of the domestic industry. In this case, we have not received any opposition from the domestic industry.

Comment 6: The Government of the Netherlands contends that the Department erred in its decision in the preliminary determination to use, as best information available, the EC decision of February 13, 1985, regarding the investigation by the EC into alleged preferential natural gas prices for Dutch horticulturists. The Government of the Netherlands contends that the Department did not take into account that the Netherlands government appealed this decision and that the case is still pending. Furthermore, they contend that the Department failed to note that the EC in its decision accepts the principle of differentiation of gas tariffs. The Government of the Netherlands argues that the dispute centered around the maximum price clause in the 1984 agreement and that this price ceiling has now been removed and was fully discussed at verification.

DOC Position: We agree that there is reason to differentiate gas tariffs based on demand, ability and likelihood of customers to switch to alternative energy sources. Our decision on this program is based on the special ceiling price given only to greenhouse growers. As stated in Section I.A. of the notice, we have no evidence that the Landbouwschap has agreed to the withdrawal of the ceiling price in the contract by Gasunie.

Comment 7: The Government of the Netherlands contends that the Department erred in its statement in the preliminary determination that the Government of the Netherlands determined the price of natural gas set by Gasunie. They contend that the government has the right to approve tariffs set by the Gasunie, but only after the agreement with the Landbouwschap is reached.

DOC Position: The Government of the Netherlands owns 50 percent of Gasunie and the Minister of Economic Affairs has final approval of the tariff schedules. These two factors indicate that the Government of the Netherlands has a significant role in natural gas sales and pricing; such a role, in effect, indicates that the provision of a special ceiling price on natural gas purchased by greenhouse growers is provided or required by government action.

Comment 8: The Government of the Netherlands contends that they have a right to prescribe minimum prices for natural gas on the basis of the market value of the gas and that this power has been used occasionally in relation to gas prices for households but never in relation to gas for industrial users.

DOC Position: The issue in this case is the maximum ceiling price set by or through government action in the contract between Gasunie and the Landbouwschap, and not minimum prices for natural gas.

Comment 9: The Government of the Netherlands contends that, contrary to the findings of the verification team, the price charged by Gasunie for natural gas to the greenhouse growers has never been below the contract price and, in three quarters of 1985, the ceiling price was the contract price.

DOC Position: While the ceiling price is in the contract, we have found that the provision of gas at the ceiling price constitutes the provision of a good at a preferential rate. See Section I.A. of the notice.

Comment 10: Respondents contend that if the Department were to find that the gas price ceiling did bestow a countervailable benefit on greenhouse growers, the Department now has verified that the program was terminated over a year prior to the preliminary determination and, therefore, no estimated countervailing duties should be calculated.

DOC Position: We disagree. We do not consider the unilateral withdrawal of the ceiling price by Gasunie to constitute a program-wide change because no new contract has been

signed by the parties agreeing to the withdrawal, and because the current contract still includes the maximum ceiling price for greenhouse growers. See Section I.A. of the notice.

Comment 11: Respondents contend that the price of gas to horticulturists was determined through arm's length negotiations between Gasunie and the Landbouwschap and is not provided or required by government action. They further contend that the existence of a farmers union to negotiate gas prices on behalf of all growers is a natural extension of the general cooperation among growers.

DOC Position: These arguments are addressed in Section I.A. of the notice.

Comment 12: Respondents argue that the Landbouwschap is a union which represents and defends the interest of all agricultural producers, not simply those of a specific sector of agriculture. Therefore, they contend that the gas prices negotiated between the Landbouwschap and Gasunie were not industry specific.

DOC Position: We agree that the Landbouwschap has been established to represent the interests of all agriculture. However, in negotiations for a contract with Gasunie, the Landbouwschap lobbied for lower gas prices only for horticulturalists (*i.e.*, greenhouses). Therefore, any benefit obtained by the Landbouwschap benefits only a specific industry.

Comment 13: Respondents argue that the situation which compels Gasunie to utilize a different formula for determining gas prices charged to Dutch greenhouse growers than that applied to individual producers is based entirely on normal commercial, rather than government factors. They contend that, since Dutch greenhouse growers are much more ready to shift from gas to oil or coal, prices charged to those producers are more sensitive than those charged to individual industrial producers.

DOC Position: We agree that it may be in the commercial interest of each party to negotiate a contract under which greenhouse growers pay a price that is directly tied to published tariff prices since these tariff prices are based on level of consumption and are set according to the world market prices of heavy and light fuel oil. However, when the government agrees that this same group will not have to pay the published tariff rate if this rate increases above a ceiling price, and when the government does not provide a ceiling price to any other users, the ceiling price constitutes price discrimination by the government.

Comment 14: Respondents argue that the programs for Glass Reduction and Glasshouse Enterprises were part of a nationwide program to promote energy conservation and protect the health, environment, and social needs of its citizens and that the signatories to the Subsidies Code recognize a nation's right to institute such programs. Furthermore, they contend that a general energy-saving policy must be implemented differently in each sector, given that similar incentives will not work for both homeowners and for industry.

DOC Position: We disagree. See DOC Position to Respondents' Comments 1 and 2.

Comment 15: Respondents argue that the Department has verified that both the Glass Reduction and Glasshouse Enterprises programs have been terminated and that there is, therefore, no basis for countervailing these programs for future exports.

DOC Position: We disagree. While we have verified that these programs were terminated prior to the review period, grants are still being disbursed under these programs. In addition, these grants were awarded to individual recipients on a one-time only basis and were not recurring in each year during the existence of the programs. Therefore, under our grant methodology, we allocate these grants over the average useful life of renewable physical assets in the industry. Under this methodology, grants continue to yield benefits even after the termination of the programs.

According to our methodology, for each year in which grants were provided, if the total value of all grants in any one year exceeds 0.5 percent of relevant total sales in that year, the grants shall be allocated over the average useful life of renewable physical assets in the industry, as determined under the U.S. Internal Revenue Service's Asset Depreciation Range System. Therefore, where grants under all programs exceeded the 0.5 percent threshold in each year, these grants were allocated over ten years, in accordance with our methodology. If, however, grants provided under all programs were found to be less than 0.5 percent for each year, grants disbursed in that year under both the Glasshouse Enterprises and Reduction of Glass Surface programs properly would have been expensed in the year of receipt.

Comment 16: Respondents argue that the preliminary determination failed to take into consideration that the Glass Reduction and Glasshouse Enterprises programs are available to all greenhouse operators, whether fruit, vegetable, flower, tree or plant, and that the Department's calculation does not make adequate allowance for the wide coverage of this program.

DOC Position: We disagree. These programs were found to be limited to a specific subset of agriculture, specifically greenhouse growers, and as such we consider benefits to be limited to a specific group of enterprises or industries, and, therefore, countervailable. See also DOC Position to Respondents' Comment 20.

Comment 17: Respondents contend that flower growers received no benefit through the Steam Drainage program because the governmental allowance for steam drainage investments only partially offsets an economic disadvantage that the government imposed specifically on greenhouse growers. They cite *Certain Steel Products from Belgium* (47 FR 39304, September 7, 1982) in which they contend that the Department did not countervail aid to workers who were retired early because the government had merely relieved the companies of an extraordinary burden it had imposed under a restructuring program.

DOC Position: We disagree. (See DOC Position to Repondents' Comment 3.) In addition, with regard to *Certain Steel*, we found the Labor Assistance (Pre-Pension) Program not to be countervailable because benefits were not being provided to companies *per se*. Rather, the companies merely acted as a conduit for the provision of benefits to the displaced workers as a result of the restructuring. Therefore, the displaced workers, and not the companies, were the recipients of benefits under the Labor Assistance Program. In this investigation, benefits provided to growers directly reduce their costs to implement steam drainage systems.

Comment 18: Respondents contend that information verified by the Department confirmed the general availability of the Guarantee Fund and Interest Funding and that, contrary to petitioner's arguments, no *de facto* limitation was found.

DOC Position: See Sections I.F. and II.B. of the notice in which we have addressed the issues of availability and proportionality of benefits provided under the Guarantee Fund for Agriculture and the Funding of Interest on Loans programs.

Comment 19: Respondents contend that information verified by the Department confirmed that flower growers did not benefit from the WIR regional programs, Loans at Preferential Interest Rates, Industrial Energy Savings Aids, or Landbankregulation.

DOC Position: We agree.

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Comment 20: Respondents contend that, if the Department can characterize the product of one flower, the rose, as an industry (*Agrexco, Agricultural Export Co., Ltd.* v. *United States*, 9 CIT_____, 604 F. Supp. 1238 (1985)), then the separate industries making up the horticulture "industry" contain over 60 categories such as cut flowers, shrubs, trees, apple orchards, etc. They contend that the industries classified by the Department as "greenhouse growers" and "horticulturists" are, therefore, too broad a class and should not be properly considered an industry or a specific group of industries. Therefore, they contend, any benefit to "greenhouse growers" or "horticulturists" should not give rise to countervailing duties.

DOC Position: We disagree. Although the horticulture and greenhouse industries contain many separable categories of products, the Department considers these industries to be a specific subset of all agriculture and not so broad as to consider them more than a specific enterprise or industry, or group of enterprises or industries under the countervailing duty law. The Department consistently has found benefits provided to specific subsets of agriculture to be limited. See *e.g., Final Affirmative Countervailing Duty Determination: Certain Fresh Cut Flowers from Canada* (52 FR 2134, January 20, 1987), *Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled and Frozen Pork Products from Canada* (50 FR 25097, June 17, 1985), and *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Lamb Meat from New Zealand* (50 FR 37708, September 17, 1985).

Comment 21: Respondents contend that the Department recognizes that price differences resulting from enhanced purchasing power, in this case the Landbouwschap, are not preferential under the law, even if the government has been the cause of the enhanced power. They cite *Industrial Nitrocellulose from France* (48 FR 11971, March 22, 1983) in support of their argument. They further contend that, in the present case, the enhanced purchasing power is entirely non-governmental and in itself cannot give rise to a countervailable preference.

DOC Position: We agree that price differences resulting from differences in purchasing power do not necessarily constitute "preferential rates." The provisions in the 1984 contract between the Landbouwschap and Gasunie, establishing the zone "d" plus 0.5 guilder cents gas rate for greenhouse growers, resulted from an arm's length negotiation based on the greenhouse growers' purchasing power and Gasunie's incentive to keep a high-volume customer. However, the provision of the ceiling price in the contract consitutes the provision of a good at a preferential rate specifically to greenhouse growers as opposed to other users. See Section I.A. of the notice.

Comment 22: Respondents contend that the Department correctly ruled that "large scale energy consumers" is not a countervailable category in *Certain Steel Products from the Netherlands* (47 FR 39372, September 7, 1982) and that the energy programs examined by the Department in the present investigation, Glass Reduction and Glasshouse Enterprises, fall squarely into this noncountervailable category.

DOC Position: We disagree. The program referred to in *Certain Steel Products from the Netherlands* was a program which provided assistance to all industries in the Netherlands to introduce new energy-saving technology for which funds are disbursed in a nondiscretionary manner. In that case, the Department found that a company receiving assistance under this program had received funds to purchase specialized computer control equipment which could be utilized by other industries such as the chemical industry and other large scale energy consumers. Therefore, respondents incorrectly interpreted that the Department ruled in that case that large scale energy consumers is not a countervailable category when, in fact, the Department found that the program itself was not limited to a specific enterprise or industry, or group of enterprises or industries.

Comment 23: Respondents contend that information verified by the Department confirmed the general availability of Aids for the Creation of Cooperative Organizations program and that petitioner has not and cannot provide evidence that the program is intended to stimulate exports or is contingent upon exports.

DOC Position: We disagree that our verification confirmed the general availability of this program. On the contrary, we found it to be administered in such a way as to be limited to a specific group of enterprises or industries within the agricultural sector (see Section I.B. of the notice). We agree, however, that this program does not constitute an export subsidy (see DOC Position to Petitioner's Comment 4).

Comment 24: Respondents contend that the Glass Reduction and Glasshouse Enterprises programs have been established for a period of years through on-going legislation and were clearly not exceptional in nature. Therefore, the Department should not impute a past benefit under these programs onto future sales.

DOC Position: We disagree. Although these programs were established for a period of years, grants to individual recipients were provided on a one-time only basis and were not recurring in each year during the existence of the programs. Therefore, for grants provided on a one-time only basis, the Department's methodology, which allows for the allocation of benefits over the average useful life of renewable physical assets in the industry, is the appropriate methodology to calculate the benefit from these two programs. See also DOC Position to Respondents' Comment 4.

Comment 25: Respondents contend that the figures to use for the export sales value is the FOB value, which represents the auction price plus the exporter's mark-up. They contend that it is the FOB value which the U.S. Customs Service uses for the entry value and this value is, therefore, a more appropriate representation.

DOC Position: At verification, respondents made this same argument. The verification team informed respondents that, if the information on the exporter's mark-up could be presented and verified, we would consider the information for use in our final determination. Respondents did not provide, nor did we verify, any information on the exporter's mark-up. Therefore, we cannot consider the FOB value for the export sales portion of the denominator.

Comment 26: Respondents contend that, if the Department were to find the natural gas program to be a subsidy, the annual, not the first quarter, gas price should be used to calculate the alleged gas price preference in 1985.

DOC Position: We have calculated an average annual price based on the quarterly price that greenhouse growers would have had to pay at the zone "d" plus 0.5 guilder cents rate, and compared this price to the average annual price actually paid by greenhouse growers during the review period. This difference constitutes the preference to greenhouse growers through the provision of the ceiling price.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. During verification, we followed standard verification procedures, including meeting with government officials, as well as on-site inspection of one flower auction house and of two randomly selected companies, inspection of documents and ledgers, and tracing information in the responses to source documents, accounting ledgers, and financial statements.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of cut flowers from the Netherlands which are entered, or withdrawn from warehouse, for consumption on or after October 27, 1986. As of the date of publication of this notice in the **Federal Register**, the Customs Service shall require a cash deposit or bond of 3.48 percent *ad valorem* for each entry of this merchandise from the Netherlands.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted, as a result of the suspension of liquidation, will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing the Customs officers to assess countervailing duties on all entries of cut flowers from the Netherlands entered, or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

This determination is published pursuant to section 705(d) of the Act [19 U.S.C. 1671d(d)].

Lee W. Mercer,

Acting Assistant Secretary for Trade Administration.

January 27, 1987.

[FR Doc. 87-2130 Filed 2-2-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-337-601]

Final Affirmative Countervailing Duty Determination; Standard Carnations From Chile

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to producers or exporters in Chile of standard carnations as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is 2.25 percent *ad valoreum*. However, consistent with our stated policy of taking into account changes in programs that occur before our preliminary determination, we are adjusting the duty deposit rate to 12.25 percent *ad valorem* to reflect the commencement of the Simplified Drawback Program. We have notified the U.S. International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to suspend liquidation of all entries of standard carnations from Chile, commencing on the date of publication of this notice in the **Federal Register**, that are entered, or withdrawn from warehouse, for comsumption, and to require a cash deposit or bond on entries of these products in the amount equal to the duty deposit rate.

EFFECTIVE DATE: February 3, 1987.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen, Jessica Wasserman or Gray Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; Telephone (202) 377-0167, 377-1442, or 377-0161.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that there is reason to believe or suspect that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to producers or exporters in Chile of standard carnations. For purposes of this investigation, the following programs are found to confer subsidies.

- Stamp and Seal Tax Exemption for Exporters
- Export Rebate (Simplified Drawback)

We determine the estimated net subsidy to be 2.5 percent *ad valoreum*, and the duty deposit rate to be 12.25 percent *ad valoreum*.

Case History

On May 21, 1986, we received a petition in proper form from the Floral Trade Council filed on behalf of the U.S. industry producing standard carnations. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleged that producers or exporters in Chile of standard carnations receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on June 10, 1986, we initiated an investigation (51 FR 21953, June 17, 1986). We stated that we expected to issue a preliminary determination on or before August 14, 1986.

On June 25, 1986, the petitioner requested a full extension of the period within which a preliminary countervailing duty determination must be made pursuant to section 703(c)(1)(A) of the Act. On July 3, 1986, we issued a notice of postponement stating that the preliminary determination would be made on or before October 20, 1986 (51 FR 25084, July 10, 1986).

Since Chile is a "country under the Agreement" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Chile materially injure, or threaten material injury to, a U.S. industry. On July 7, 1986, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Chile of standard carnations (51 FR 25751, July 6, 1986).

On June 20, 1986, we presented a questionnaire to the Government of Chile in Washington, DC, concerning petitioner's allegations. We received the government and company responses on July 25, 1986, September 15, 1986, and September 26, 1986, from the Government of Chile, Coexflor Ltd., and Agricola Longotoma. Coexflor Ltd. is the exporter for Sociedad Agricola Flores Pochohay Ltda., Andres Ramirez Matte, Sociedad Agricola Los Molles Ltda., Juan Alberto Decombe, Sociedad Agricola Millary, Ltda., and Alberto Behn T., producers of standard carnations. Agricola Longotoma is both a producer and an exporter of standard carnations. We received responses from both the exporters and the producers of standard carnations.

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On November 4, 1986, petitioner filed a request to extend the deadline date for a final determination in the countervailing duty investigation to correspond to the date of the final determination in the antidumping investigation, pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98–573). The Department granted an extension of the deadline for the final determination in this countervailing duty investigation to January 12, 1987, the original deadline for the final determination in the antidumping investigation.

On December 22, 1986, respondents requested that the Department postpone the final determination in the antidumping duty investigation on standard carnations in accordance with section 735(a))(2)(A) of the Act. We granted this request and postponed our final antidumping duty determination until not later than January 28, 1987. Pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984, the deadline for the final countervailing duty determination on standard carnations from Chile was also postponed until January 28, 1987, to coincide with the revised date of the final antidumping duty determination (52 FR 1515, January 14, 1987).

Scope of Investigation

The products covered by this investigation are standard carnations currently provided for in item 192.21 of the *Tariff Schedules of the United States* (TSUS).

For purposes of this determination, the period for which we are measuring subsidies (the review period) is calendar year 1985. Based upon our analysis of the petition, the responses to our questionnaire, our verification, and comments submitted by petitioner we determine the following:

I. Programs Determined To Confer a Subsidy

We determine that subsidies are being provided to producers or exporters in Chile of standard carnations under the following programs:

A. Stamp and Seal Tax Exemption for Exporters (SST)

The SST is a tax that affects all credit operations in Chile. Bills of exchange, promissory notes, letters of credit and any other document containing a loan or any other money credit transaction are subject to the SST. This tax amounts to 0.2 percent of the par value of the document per month, for a maximum limit of twelve months or 2.4 percent. As of October 29, 1985, the Government of Chile began exempting export credit operations from the SST. Neither the Government of Chile nor the respondent companies gave us clear explanations as to what is meant by "export credit operations." Nor did we find any indication that the exporters paid the SST in any export credit operations. Therefore, based on best information available, we assume that companies which export are exempted from paying the stamp and seal tax on all export credit operations.

Because the exemption appears to be available only to companies which export, we determine that this exemption constitutes an export subsidy. To calculate the benefit during the review period, we used the best information available, since the companies did not give us specific information on each loan obtained in 1985; nor did they give us any information on loans for 1986. Therefore, for Agricola Longotoma, one of the two exporters, we first multiplied total principal outstanding as of December 31, 1985, by the ratio of export earnings to total earnings for 1985; we then multiplied the result by 0.4 percent, in order to determine the benefit conferred by the exemption granted for the last two months of 1985. For the second exporter, Coexflor (which exports 100 percent of its sales), we multiplied the outstanding balance of its 120-day credit line as of December 31, 1985, by 0.4 percent as well. Because this program started only during the last two months of the review period and, therefore, could only benefit export sales made after the start of the program, we allocated the total subsidy received by both companies in 1985 over the proportion of total exports during the review period to which this subsidy is attributable. This resulted in an estimated net subsidy of 2.25 percent *ad valorem*.

B. Export Rebate (Simplified Drawback)

Law 14,480 of December 1985 allows a 10 percent simplified drawback on the F.O.B. value of exports to those companies whose exports averaged US$2.5 million or less in 1983 and 1984 and whose annual exports have not exceeded US$7.5 million after 1984.

According to the Government of Chile's response, this drawback is a rebate of import duties and other indirect taxes on inputs physically incorporated in an exported product. However, the Government of Chile has provided no evidence that eligibility for the rebate is linked to import duties or indirect taxes paid on such inputs, as required in our determination in *Certain Apparel from Thailand: Final Affirmative Countervailing Duty Determination and Countervailing Order* (50 FR 9818, March 12, 1985). Lacking any evidence that the Government of Chile attempted to base the export rebate on an accurate model of indirect taxes and import duties on physically incorporated inputs, as best information available, we determine that this rebate is countervailable in its entirety.

We verified that this law went into effect in 1986 and that the companies under investigation did not receive any benefits under this program during the review period. However, to the best of our knowledge, the companies did receive benefits in 1986. Therefore, we are adjusting the duty deposit rate to reflect the 10 percent *ad valorem* subsidy granted under this program.

II. Programs Determined Not To Confer a Subsidy

We determine that subsidies are not provided to producers or exporters in Chile of standard carnations under the following program:

Value Added Tax (VAT) Rebate

Under the VAT system in Chile, a duty or sales tax of 20 percent is paid at each stage of production. Each time a transaction takes place, the purchaser pays, and the seller collects, the tax on behalf of the government. However, no VAT is collected when an export sale is made. Once a month companies must total their payments and collections of VAT and settle their account with the Chilean tax authorities.

Producers for the domestic market usually owe the government because they collect more tax on the sales of their products than they have paid on inputs. Exporters, on the other hand, will always be in a credit situation vis-a-vis the government with respect to their export sales. In order to neutralize this disadvantage, the government provides that exporters may receive a rebate of a percentage of the total VAT paid by the exporter. This percentage is based on the amount export sales represent of total sales. At the end of each month, exporters, like all other companies, must reconcile payments and collections with the government and refund to the government the collections that exceed payments.

We found no evidence that this rebate constitutes an excessive remission of indirect taxes and, heance, it does not constitute a subsidy.

III. Programs Determined Not To Be Used

We determine that producers or exporters in Chile of standard carnations did not use the following programs:

A. Preferential Export Credit

Petitioner alleges that exporters of standard carnations in Chile may benefit from export credits provided at preferential rates by the Government of Chile.

According to the Government of Chile, the lines of pre- and post-shipment credit available to exporters are regulated by Chapter X of the Compendium of Export Rules of the Central Bank of Chile and the rates of interest applicable to these lines of credit are market rates.

We found no evidence at verification that any of the companies under investigation received loans on terms inconsistent with commercial considerations. Therefore, we determine that the companies under investigation did not benefit from preferential export credit.

B. Corporacion de Fomento (CORFO) Loans and Debt Rescheduling

Petitioner alleges that producers and exporters of standard carnations in Chile may benefit from subsidized loans and subsidized debt rescheduling provided by the Chilean Development Bank (CORFO) to agriculture. We verified that the companies under investigation did not have loans received under this program outstanding during the review period.

C. Preferential Exchange Rate for Repayment of Foreign Debt

Petitioner alleges that producers and exporters of standard carnations in Chile may benefit from a preferential exchange rate available for repayment of foreign debt incurred before August 6, 1982.

We verified that a preferential foreign exchange rate was established during August 1982 in view of the deregulation of the national currency which adversely affected those with foreign currency debts. To be eligible for the preferential exchange rate, the debt had to be incurred prior to 1982. We verified that the companies under investigation did not benefit from this program.

D. Deferred Import Duties for Capital Goods

Petitioner alleges that producers and exporters of standard carnations in Chile may benefit from a deferral or exemption of import duties on capital goods used in the agricultural industry.

According to the Government of Chile, machinery for agriculture is excluded from the benefits of Decree Law 1,226 providing for the deferred payment of import duties. We verified that the companies under investigation have not received benefits from this program.

E. Tax Rebate on Fixed Assets

As of October 29, 1985, the Government of Chile provides a VAT rebate on fixed assets six months after the assets have been purchased. We verified that the companies under investigation have not received rebates under this program.

F. Currency Retention Scheme

The Government of Chile requires almost all exporters to repatriate foreign exchange earnings from exports within 90 days of shipment. Under certain circumstances, the exporter is allowed a waiver of the 90-day rule. We verified that all exporters under investigation repatriated their foreign exchange within the 90-day period.

G. Export Credit Limits

Under Law No. 18439, the Government of Chile has increased the level of authorized bank lending for exports beyond that which is available to producers which sell domestically. At verification, we found no indication that the exporters under investigation received more loans than domestic sellers.

Petitioner's Comments

Comment 1: Petitioner argues that Agricola Longotoma, Ltd., benefitted from a preferential exchange rate on repayment of a loan taken out on December 31, 1985. Petitioner contends that this loan was a loan under Agreement 1466, which was one of the vehicles used to implement the program providing a preferential rate for the repayment of foreign debt.

DOC Position: Under this program, a preferential exchange rate is available only for loans taken out prior to August 1982. Therefore, the loan petitioner refers to is not eligible for the preferential exchange rate.

Comment 2: Petitioner argues that the loans of Agricola Longotoma, Ltd., and Alberto Behn were rescheduled at preferential rates. Petitioner argues that, to the extent information on rescheduling was not obtained at verification, the agency should reject the questionnaire responses of the Chilean producers and use best information otherwise available for purposes of the final determination.

DOC Position: We found no evidence at verification that any of the companies under investigation received loans from government sources, nor did we find any evidence that commercial loans were rescheduled on terms inconsistent with commercial considerations.

Comment 3: Petitioner argues that the provision in the VAT rebate program which allows exporters to recover VAT prior to actually exporting their goods provides a benefit to the recipients (equal to the time value of money). Petitioner argues that the benefit should be calculated according to the following paragraph of Article 1 of Decree 34,011 of the General Controllership of the Republic:

> If the exporter does not effect the respective export operation, he should restitute the values returned within the month following the one in which he realizes the export would not take place, the values should be adjusted in the same percentage the Consumer Price Index variation was established for the month prior to the reception of the values and the month prior to actual restitution. The adjusted value will be charged one percent monthly interest.

DOC Position: We disagree. During verification, we noted that, in the normal course of trade, it is usually the producer selling his goods domestically who actually recoups his "Purchases VAT" (the VAT he pays when purchasing an item) earlier than the exporter. As explained *supra*, the domestic seller starts recovering his "purchases VAT" the minute he sells his products through the acquisition of "sales VAT" (the VAT he collects when making a domestic sale). In fact, we found in many cases that domestic sellers receive more "sales VAT" per month than "purchases VAT", thus giving them extra funds which they do not have to return to the government until the end of the month when they reconcile their VAT payments and collections with the Chilean government. The exporter, on the other hand, receives no "sales VAT" for his foreign sales; therefore, if he had to wait until after his goods were exported to file for VAT rebates, he would always be at a disadvantage vis-a-vis a seller in the domestic market. The provision allowing exporters to recover "purchases VAT" prior to actually exporting their products merely entitles the exporter to treatment similar to the domestic seller. Therefore, we do not consider that this program provides a countervailable subsidy.

Comment 4: Petitioner contends that, from the face of the questionnaire responses, it is clear that in 1986 companies will receive benefits under the Simplified Drawback program. Petitioner argues that, since efforts to

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verify this program were met with much resistance, the ITA should issue an affirmative final determination finding this program countervailable with a net benefit of 10 percent *ad valorem*. This would be consistent with the mandates of the law and with prior agency practice regarding program-wide changes.

DOC Position: We agree that a new subsidy program went into effect after the review period. This program went into effect prior to our preliminary determination and, to the best of our knowledge, some of the respondents did receive benefits in 1986 under this program. This program thus benefits the merchandise that is subject to suspension of liquidation. Therefore, we are issuing an affirmative final determination with a duty deposit rate which reflects the best information available on the subsidy provided under this new program.

Comment 5: Petitioner argues that the verification report on one company indicates that its credit operations were not subject to the stamp and seal tax charge. Therefore, the ITA must find that a benefit has been received.

DOC Position: We agree. Based on best information available, we have determined that benefits have been received by exporters under this program. See Section I.A. of this notice.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. During verification, we followed standard verification procedures, including tracing the information in the responses to source documents, accounting ledgers, financial statements and annual reports.

Suspension of Liquidation

In accordance with section 705(c)(B) of the Act, we have instructed the U.S. Customs Service to suspend liquidation of all entries of standard carnations from Chile which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this determination in the **Federal Register** and to require a cash deposit or bond for each such entry in the amount of 12.25 percent *ad valorem*. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 75 days after the date of publication of this notice. If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled.

If, however, the ITC determines that injury does exist, we will issue a countervailing duty order, directing Customs officers to assess a countervailing duty on standard carnations from Chile entered, or withdrawn from warehouse, for consumption on or after the date of the suspension of liquidation as indicated in the "Suspension of Liquidation" section of this notice.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 167d(d)).

Lee W. Mercer,

Acting Assistant Secretary for Trade Administration.

January 27, 1987.

[FR Doc. 87-2129 Filed 2-2-87; 8:45 am]

BILLING CODE 3510-05-M

[C-508-603]

Final Affirmative Countervailing Duty Determination; Certain Fresh Cut Flowers From Israel

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to producers or exporters in Israel of certain fresh cut flowers (cut flowers) as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is 11.59 percent *ad valorem* during the review period. However, consistent with our stated policy of taking into account a program-wide change which occurred after our review period, but prior to the preliminary determination, we are adjusting the duty deposit rate to reflect changes in the Export Promotion Financing Fund program.

We have notified the U.S. International Trade Commission (the ITC) of our determination. We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of cut flowers from Israel that are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or bond on entries of this merchandise in an amount equal to 10.79 percent *ad valorem*.

EFFECTIVE DATE: February 3, 1987.

FOR FURTHER INFORMATION CONTACT: Mary Martin, Barbara Tillman, or Ross Cotjanle, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2830, (202) 377-2433, or (202) 377-3534.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to producers or exporters in Israel of cut flowers. For purposes of this investigation, the following programs are found to confer subsidies:

- Exchange Rate Risk Insurance Scheme.
- Export Promotion Financing Fund.
- Long-Term Development Loans to Agrexco.
- Government Support of the Flower Board.
- Fuel Grants and Low-Cost Credit.

We determine the estimated net subsidy to be 11.59 percent *ad valorem* for all producers or exporters in Israel of cut flowers during the review period. However, we are adjusting the duty deposit rate to reflect a program-wide change in the Export Promotion Financing Fund program that occurred after our review period but prior to our preliminary determination. Thus, the cash deposit or bond on entries of these products will be 10.79 percent *ad valorem*.

Case History

On May 21, 1986, we received a petition in proper form from the Floral Trade Council filed on behalf of the U.S. industry producing cut flowers. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleged that producers or exporters in Israel of cut flowers receive, directly or indirectly,

benefits which constitute subsidies within the meaning of section 701 of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on June 10, 1986, we initiated an investigation (51 FR 21956, June 17, 1986). We stated that we expected to issue a preliminary determination on or before August 14, 1986.

On June 25, 1986, the petitioner requested a full extension of the period within which a preliminary countervailing duty determination must be made pursuant to section 703(c)(1)(A) of the Act. On July 3, 1986, we issued a notice of postponement stating that the preliminary determination would be made on or before October 20, 1986 (51 FR 25084, July 10, 1986).

Since Israel is a "country under the Agreement" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Israel materially injure, or threaten material injury to, a U.S. industry. On July 7, 1986, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Israel of the subject merchandise (51 FR 25751, July 16, 1986).

On June 20, 1986, we presented a questionnaire to the Government of Israel in Washington, DC, concerning petitioner's allegations. We received responses from the government and from Agricultural Export Co., Ltd. (Agrexco), and R. Shemi, Ltd. (Shemi), on August 13, 1986. Agrexco and Shemi are exporters of the subject merchandise, and they accounted for at least 60 percent of the United States exports of cut flowers during the review period. Since there are over 1,000 growers of cut flowers in Israel, the government provided information on an aggregate basis for all growers. Additional information was supplied on August 26, September 3, 16, 22, 25 and 26, and October 9, 17, and 31, 1986. Corrections to the responses were filed on November 25, 1986.

On the basis of the information contained in these responses, we made our preliminary determination on October 20, 1986 (51 FR 37925, October 27, 1986). Based upon the request of the petitioner, on November 26, 1986, we extended the deadline dates for the final determinations in the countervailing duty investigations of certain fresh cut flowers from Canada, Israel, Kenya, the Netherlands, and Peru, and standard carnations from Chile to correspond to the date of the final determinations in the antidumping duty investigations of the same merchandise, pursuant to section 705(a)(1) of the Act, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98-573) (51 FR 43649, December 3, 1986). On January 9, 1987, we extended the deadline date for the countervailing duty determinations on standard carnations from Chile and certain fresh cut flowers from Israel and the Netherlands to coincide with the postponement of the final antidumping duty determination on standard carnations from Chile, in accordance with section 705(a)(1) as amended, 19 U.S.C. 1671d(a)(1) (52 FR 1515, January 14, 1987).

From November 6 to November 18, 1986, we verified the information submitted by the Government of Israel, Agrexco, and Shemi.

At the request of the petitioner, we held a public hearing on December 5, 1986, to afford interested parties an opportunity to present views orally in accordance with our regulations (19 CFR 355.35). Petitioner and respondents filed case briefs on December 18, 1986, post-hearing briefs on December 22, 1986, and comments on the verification reports on January 14, 1987.

Scope of Investigation

The products covered by this investigation are fresh cut miniature (spray) carnations, currently provided for in item 192.17 of the *Tariff Schedules of the United States* (TSUS) and gerbera, currently provided for in item 192.21 of the TSUS.

Analysis of Programs

Throughout this notice we refer to certain general principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

For purposes of this determination, the period for which we are measuring subsidies (the review period) is October 1, 1985 through September 30, 1986, which corresponds to the companies' fiscal year.

Based upon our analysis of the petition, the responses to our questionnaire, verification and comments submitted by the interested parties, we determine the following:

I. Programs Determined to Confer Subsidies

We determine that subsidies are being provided to producers or exporters in Israel of cut flowers under the following programs:

A. Exchange Rate Risk Insurance Scheme

The Exchange Rate Risk Insurance Scheme (EIS), operated by the Israel Foreign Trade Risk Insurance Corporation Ltd. (IFTRIC), is aimed at insuring exporters against losses which result when the rate of inflation exceeds the rate of devaluation and the new Israeli snekel (NIS) value of an exporter's foreign currency receivables does not rise enough to cover increases in local costs.

The EIS scheme is optional and open to any exporter willing to pay a premium to IFTRIC. Compensation is based on a comparison of the change in the rate of devaluation of the NIS against a basket of foreign currencies with the change in the consumer price index. If the rate of inflation is greater than the rate of devaluation, the exporter is compensated by an amount equal to the difference between these two rates multiplied by the value-added of the exports. If the rate of devaluation is higher than the change in the domestic price index, however, the exporter must compensate IFTRIC. The premium is calculated on the basis of the value-added of the exports.

In determining whether an export insurance program provides a countervailable benefit, we examine whether the premiums and other charges are adequate to cover the program's long-term operating costs and losses. In *Potassium Chloride from Israel: Final Affirmative Countervailing Duty Determination* (49 FR 36122, September 14, 1982), we stated that we had insufficient data to determine that the premiums and other charges were manifestly inadequate to cover the program's long-term operating costs and losses. We noted, however, that we were not making a conclusive determination on the program's countervailability at that time. However, in the *Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Israel* (52 FR 1649, January 15, 1987), we found that this program conferred a countervailable benefit on manufacturers, producers, or exporters in Israel of oil country tubular goods.

In this case, we reviewed EIS data which show that EIS operated at a loss from 1981 through 1986. In fact, in the five years of operations, there was only one month where premiums received were greater than compensation paid out. We believe that five years is, in this case, a sufficiently long period to establish that the premiums and other charges are manifestly inadequate to

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cover the long-term operating costs and losses of the program. We, therefore, determine that this program confers an export subsidy on exports of cut flowers from Israel.

We calculated the benefit from this program by allocating the amount of compensation Agrexco and Shemi received from IFTRIC, after deducting premiums paid, over the companies' relevent exports during the review period. The calculation was based upon all non-European exports for Shemi and all flower exports to all markets for Agrexco for the period October 1985 to September 1986. We used these exports for the basis of the calculation because that is how the accounting records on this program are maintained in the companies. This resulted in an estimated net subsidy of 8.87 percent *ad valorem*.

B. Export Promotion Financing Fund

The Foreign Trade Center of the Ministry of Agriculture operates the Export Promotion Financing Fund to promote the development of export markets for fresh Israeli produce.

Exporters submit a request for participation in promotional activities, and the Ministry determines on the basis of the development potential and in view of the availability of funds whether to approve the request. Approved proposals receive reimbursements of up to 50 percent of actual expenses. The Israeli government requires exporters to provide receipts before granting reimbursements.

On July 10, 1986, the Export Promotion Committee of the Ministry of Agriculture determined at its annual meeting that effective October 1, 1986, no export promotion funds would be provided for promotion of cut flowers in the United States market.

We verified that during the review period Shemi received funds for general advertising of all products in all markets, and Agrexco received funds for promotion of all flowers in the United States and Canada. We also verified that Shemi used a portion of these funds for the promotion of carnation plants and cuttings, rather than for flowers.

Because assistance under this program provides cash payments and is available only to exporters, we determine it is countervailable. To estimate the benefits Shemi received on exports to the United States, we multiplied the value of the funds Shemi received for export promotion for flowers for all markets during the review period by the ratio of Shemi's U.S. exports to its total exports. We calculated the *ad valorem* benefits from this program by dividing the compensation Shemi and Agrexco received on their exports to the United States by the value of their U.S. exports during the review period. This resulted in an estimated net subsidy of 0.80 percent *ad valorem*.

The Export Promotion Financing Fund is overseen by the Israeli government's Export Promotion Committee. This committee meets once a year to review the past administration of the fund and to set policy for the future. During its most recent annual meeting on July 10, 1986, the committee voted to eliminate as of October 1, 1986, any benefits under the fund for the export of flowers to the United States. When the government in question institutes a program-wide change prior to our preliminary determination and when that change results in complete cessation prior to our preliminary determination of benefits under the program, it is our policy to take that change into account by not including the estimated net subsidy from this program for duty deposit purposes. We are satisfied here that the Export Promotion Committee's action constitutes such a program-wide change. We have accordingly not included the estimated net subsidy from the Export Promotion Fund in the duty deposit rate.

C. Long-Term Development Loans to Agrexco

Agrexco received four long-term development loans which had balances outstanding during the review period. Fixed-rate loans were received in 1971 and 1973, and two variable rate loans linked to the Consumer Price Index (CPI) were received in 1980.

These loans were not provided under the Encouragement of Capital Investments in Agriculture Law (ECILA), or under the development budget of the Ministry of Agriculture. (*See* section II.D. of this notice, which discusses development loans for agriculture.) The Government of Israel did not provide us with information concerning selection criteria for these loans, nor did it provide us with information on the distribution of loans under this program. Because we have no information on the approval process or actual distribution of these loans, we have determined that the loans are limited to a specific enterprise or industry, or group of enterprises or industries.

To determine if these loans are provided on terms inconsistent with commercial considerations, we compared them to a commercial benchmark interest rate. Because there is no fixed-rate long-term borrowing in Israel, we have used as our benchmark the short-term NIS interest rate prevailing in the review period. Based on this comparison, we find that the loans were provided on terms inconsistent with commercial considerations. Therefore, we determine these development loans to be countervailable.

To calculate the benefit from these loans, we applied our short-term loan methodology. Dividing the amount of interest savings in the review period by the value of total sales of Agrexco and Shemi during the review period, we calculated an estimated net subsidy of 0.04 percent *ad valorem*.

D. Government Support of the Flower Board

Petitioner alleges that the Government of Israel may provide funds directly to the Ornamental Plants Production and Marketing Board (Flower Board) or may reduce the Flower Board's expenses by providing staff. The Flower Board is a statutory body established by the Ornamental Plants Production and Marketing Board Law of 1976. The Flower Board is appointed by the Israeli Cabinet acting through the Ministers of Agriculture and Commerce and Industry. However, the Government provides no staff to the Board.

In its responses, the Government of Israel stated that no government support had been provided to the Flower Board. At verification, however, we found that the Flower Board had received funds from the Ministry of Agriculture in the year prior to the review period. The Government of Israel attempted to establish that funds provided by the Ministry of Agriculture to the Flower Board were not intended to support the general activities of the Board, but rather were provided for a research project on ocean transport of flowers. The government claimed that the results of the study were public.

Based on the information provided, we were unable to verify that the Ministry of Agriculture specifically required that the funds be used for this research project. Furthermore, a similar sum of money had been provided by the Ministry of Agriculture in the previous year, also for unspecified purposes. Because respondents did not provide us with the budget of the Flower Board for the review period, we determine on the basis of the best information available that the Government of Israel provided financial support to the Flower Board in the review period and that this financial support is countervailable.

To calculate the benefit from this assistance, we divided the amount of financial support provided to the Flower Board during the year prior to the review period by the value of flower

exports during the review period. The estimated net subsidy is 0.07 percent *ad valorem*.

E. Fuel Grants and Low-Cost Credit

In 1982, the Israeli Institute for Farm Research published a survey on the profitability of rose production in the 1980/81 season. This study states that gross income for rose growers included grants for fuel expenses and interest savings on low-cost credit. Petitioner requested that we investigate such benefits.

We verified that Agrexco and Shemi did not receive fuel grants or so-called "low-cost credit" during the review period, but we were unable to verify that growers of cut flowers did not receive these benefits. Although the Government of Israel maintained that the program had been discontinued, they failed to provide evidence of termination of the program or non-receipt of benefits by the growers.

In the Department's recent administrative review under section 751 of the Act, *Fresh Cut Roses from Israel; Final Results of Countervailing Duty Administrative Review and Determination Not to Revoke Countervailing Duty Order* (51 FR 44498, December 19, 1986), we determined the benefit from this program to be 1.81 percent *ad valorem*. On the basis of this determination as the best information available, we determine that the estimated net subsidy for cut flowers is 1.81 percent *ad valorem*.

II. Programs Determined Not to Confer Subsidies

We determine that subsidies are not being provided to producers or exporters in Israel of cut flowers under the following programs:

A. Export Financing Program

Petitioner alleges that the Government of Israel provides preferential export financing to producers or exporters in Israel of cut flowers through three export credit funds administered by the Bank of Israel. The Export Production Fund provides foreign currency loans to exporters to enable them to finance export production. The Export Shipments Fund provides loans to exporters to enable them to extend credit in foreign currency to their overseas customers. Under the Imports-for-Exports Fund, exporters receive loans in foreign currency in order to finance imported materials used for export production. The export financing program was referred to in our notice of initiation as the "Export Credit Fund."

Since July 1985, the Bank of Israel has authorized commercial banks to lend specified levels of foreign currency to exporters. The interest rate charged by the commercial banks for these foreign currency loans is the London Interbank Offered Rate (LIBOR) plus two percent.

During the review period, Agrexco and Shemi received dollar loans under the export financing program. Because only exporters are eligible for these loans, we determine that they are countervailable to the extent that they are provided as preferential rates.

Dollar loans are not otherwise available in Israel, and we were not able to obtain benchmark interest rates for these loans from independent sources. In *Potassium Chloride from Israel: Final Affirmative Countervailing Duty Determination* (49 FR 36122, September 14, 1982), we found that the appropriate benchmark for short-term foreign currency loans was LIBOR plus two percent. Based on information received at verification concerning offers for short-term foreign currency loans, we consider that this is still the appropriate benchmark.

Comparing the benchmark interest rate to the rates charged on these loans, we determine that none of the loans were provided at preferential rates, and, thus are not countervailable.

B. Grants Under the ECILA

The ECILA came into effect in April 1981, to encourage capital investments in agriculture. To accomplish this, the ECILA provides investment and drawback grants for approved agricultural enterprises. Investment grants are provided for a portion of the investment. Drawback grants relate to taxes on investment. ECILA grants were also referred to as "Cash Payments to Growers for Greenhouses" and "Cash Payments to Packing Houses" in our notice of initiation.

Persons requesting ECILA grants apply to a regional office of the Ministry of Agriculture. The regional office forwards the application together with its recommendation to the national office of the Ministry, which in turn makes its recommendation to the Agricultural Investment Authority. This Authority decides whether to approve the request. If approved, the grant is paid upon completion of the project or upon specified stages of completion. Since the beginning of this program in 1981, producers and exporters of cut flowers have received both investment and drawback grants.

We verified that grants have been received by agricultural enterprises of all types throughout Israel, and, that the grants are not contingent upon export performance or limited to companies in specific regions of the country. Therefore, we determine that the program is not countervailable.

C. Preferential Accelerated Depreciation and Other Tax Benefits Under ECILA

The ECILA provides tax benefits for approved enterprises. The text of the ECILA indicates that producers that receive "approved undertaking" status are automatically eligible for ECILA tax benefits. We verified that ECILA grants to "approved undertakings" were provided throughout the entire agricultural sector. Therefore, we determine that these tax benefits are not limited to a specific enterprise or industry, or group of enterprises or industries. In addition, we verified that Agrexco, which was not eligible for ECILA benefits, received no benefits from preferential tax provisions since its tax liabilities were not affected by the application of these provisions.

D. Development Loans for Agriculture

Development loans were the primary source of institutional long-term credit in the agriculture sector until they were abolished in 1985. This program is also referred to in the notice of initiation as "Long-Term Loans to Packing Houses/Exporters." Development loans in the agricultural sector were provided as part of the development budget of the Ministry of Agriculture. Shemi had development loans approved by the Ministry of Agriculture on which principal was outstanding during the review period.

We verified that the agricultural development loans were given on the same terms to virtually all agricultural producers, irrespective of region or development zone and irrespective of export performance. Accordingly, we determine that the program is not countervailable.

E. General Research and Development Programs

Petitioner believes that exporters of cut flowers are benefitting from research and development programs funded by the Government of Israel.

We verified that the Government of Israel sponsors and carries out a great deal of agricultural research in all fields by grants to universities and research institutions. Results of basic and general research are widely published in Israel and abroad.

Since the results of these research and development activities are made available for public use, we determine that these programs are not countervailable.

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F. Government Funding of Agrexco and Purchase of Agrexco Shares

Petitioner alleges that the Government of Israel provided funds, in the form of cash grants or purchases of equity, to Agrexco.

We verified the government's funding of Agrexco consisted of government purchases of shares in the company. Agrexco is a non-profit company which acts as the seller, marketer, and distributor of all types of Israeli agricultural products. Most of Agrexco's stock is owned by agricultural producers and not the government. Since Agrexco operates as a cooperative, it does not retain profits, but always covers its costs and obligations. Although Agrexco is a non-profit company, it is classified as a private company under Israeli law. We have consistently held that government provision of equity does not *per se* confer a countervailable benefit. Government equity infusions bestow countervailable benefits only when they occur on terms inconsistent with commercial considerations.

There is no evidence in the record indicating that the purchase of Agrexco's shares was inconsistent with commercial considerations. We verified that the government's investment was justified by the value of Agrexco's real assets, its logistics and sales organization, its reputation and the goodwill of its customers, and by its "Carmel" brandname. Due to these attributes, the government could realize a reasonable rate of return on its investment in Agrexco by sale of its equity to other parties, deapite the fact that it is a not-for-profit company. We note that the Government of Israel has in the past sold its equity in commercial companies, including other not-for-profit companies. Therefore, we determine that the government's purchase of equity in Agrexco does not confer a countervailable benefit.

III. Programs Determined Not To Be Used

Based on the verification of the responses of the Government of Israel, Agrexco, and Shemi, we determine that the producers or exporters in Israel of cut flowers did not use the following programs, which were listed in our notice of initiation:

A. Interest Subsidy Payments

Petitioner alleges that beginning on July 1, 1985, exporters in Israel of cut flowers may receive under the Encouragement of Capital Investments Law (ECIL), grants from the Government of Israel for the rebate of interest on loans provided by commercial banks. We verified that Agrexco and Shemi did not receive any benefits under this program, and that agricultural enterprises including the flower industry are not eligible to receive benefits under the ECIL program.

B. Government-Guaranteed Minimum Price Program

The Ministry of Agriculture operates a program to guarantee a minimum income to farmers on their crops in case of bad marketing conditions. The government determines a national level of production to be covered by the guarantee program, sets a minimum price based on expected market conditions, and pays half of the difference between the guaranteed price and the actual average market price, if the market price is lower than the guaranteed price.

We verified that no claims or payments were made under this program for carnations or gerbers during the review period.

C. Capital Fund for Agrexco

Agrexco's 1979/80 financial statement shows that a capital fund for Agrexco was created from Ministry of Agriculture investment grants.

We verified that Agrexco's capital fund was created in 1968, and that it has not received any investment grants since then. We allocate grants over the average useful life of renewable physical assets in the industry involved, as determined by the U.S. Internal Revenue Service in the 1977 Class Life Asset Depreciation Range System. According to our grant methodology, grants bestowed in 1968 only bestow benefits for ten years in the flower industry. As a result, benefits are no longer accruing from these grants.

D. Rebate of Export Insurance Premiums

Petitioner alleges that exporters of cut flowers receive rebates of export insurance premiums from the Government of Israel. We verified that Agrexco and Shemi did not hold export insurance, other than Exchange Rate Risk Insurance, during the review period.

E. Encouragement of Industry (Taxes) Law (EIL)

Petitioner alleges that producers or exporters in Israel of cut flowers may receive benefits under the following sections of the EIL: Preferential accelerated depreciation, reduction in income tax rates, and tax deductible inventory adjustment. We verified that Agrexco and Shemi did not claim any of these benefits during the review period and that growers are not eligible for EIL benefits.

F. Other Benefits Referenced in the ECIL

The Foreword to the Encouragement of Capital Investments Law (ECIL) makes reference to benefits in the form of labor training supported by the Ministry of Labor. We verified that Shemi and Agrexco did not receive any benefits from the Ministry of Labor, and that cut flower growers are not eligible for benefits by virtue of the fact that agricultural producers receive benefits only under ECILA.

G. Specific Research and Development Funding

Research undertaken on behalf of the Government of Israel under contract with outside parties is disseminated according to the terms of the contract. We verified that Agrexco and Shemi did not receive any grants for research and development or participate in any government-sponsored research and development programs. In addition, we found no evidence indicating that specific research and development funding was provided for the products under investigation.

IV. Program Determined To Be Terminated Property Tax Exemption on Equipment

Petitioner alleges that producers or exporters in Israel of cut flowers may claim tax benefits under the ECIL that allow eligible enterprises a 10-year exemption from payment of one-sixth of property taxes on equipment. We verified that property taxes were abolished for all taxpayers in Israel as of April 1, 1981. Accordingly, no property taxes were assessed against any company in Israel from 1981 through 1984. A new special temporary property levy was introduced on April 1, 1985, and was enacted in August 1985 under the Property Levy Law. These taxes were applicable to all companies in Israel, and no company was exempt from the tax. Currently, no property taxes are in effect with respect to any company in Israel.

Petitioner's Comments

Comment 1: Petitioner argues that the appropriate test for determining whether Agrexco and Shemi received preferential accelerated depreciation and other tax benefits under the ECILA is whether, absent use of these benefits, there would have been a tax liability.

DOC Position: We found the ECILA program to be available and provided to the entire agriculture sector and, therefore, not countervailable. In addition, we verified that Shemi would have had no tax liability in the review period even if it had not used accelerated depreciation and other tax benefits. Finally, since Agrexco is not a producer of agricultural products, it is not eligible for any ECILA benefits.

Comment 2: Petitioner contends that even if all enterprises and individuals within the agricultural sector received identical benefits under the ECILA grant program, the program would still be countervailable given its limitation to the agricultural industry or group of industries. The program is clearly distinguishable from, for instance, government construction of highways intended to assist the entire population and not a particular industry or enterprise. *See e.g., Cabot Corp.* v. *United States,* 620 F. Supp. 722 (1985).

DOC Position: We disagree. To the extent that *Cabot* supports the proposition that generally available benefits may be countervailable, we disagree with the decision of the court. The Court vacated its remand order on mootness grounds by order dated November 20, 1986, Consol. Court No. 83-7-01044. Furthermore, the decisions of the Court of International Trade in *Carlisle Tire and Rubber Co. v. United States,* 6 CIT 229 (1983) and *Al Tech Specialty Steel Corp.* v. *United States,* 12, CIT , Slip Op. 86-124 (December 1, 1986) clearly support our position on specificity, which is that benefits provided to more than a specific enterprise or industry, or group of enterprises or industries, are not countervailable.

Comment 3: Petitioner contends that the export financing program is countervailable. Petitioner alleges that Agrexco and Shemi are uncreditworthy and would not have had access to foreign currency loans at a rate of LIBOR plus two percent on the commercial market. Furhermore, because Agrexco transfer to growers funds it receives under the export financing program, the Department must determine whether the growers were creditworthy. Finally, petitioner argues that, even if they are creditworthy, neither the Israeli growers, Agrexco, nor Shemi would be able to obtain loans at the rate of LIBOR plus two percent. The Department's reliance in the preliminary determination on the Government of Israel's representation that the benchmark for foreign currency loans should be LIBOR plus two percent is incorrect. While this is the commercial rate at which Israeli banks are able to raise funds are relend on a profitable basis, it does not represent the rate available to Agrexco, Shemi and the growers. The advantage bestowed by a subsidy is measured by the value of the benefit to the recipient, not the cost of the loan to the Israeli banks.

DOC Position: Petitioner's uncreditworthiness allegation is untimely as it was not made until December 8, 1986, after the verification was completed. Furthermore, in accordance with the Subsidies Appendix, when we calculate benefits from short-term loans we do not treat uncreditworthy companies differently from creditworthy companies.

We agree that the benchmark for short-term loans should be based upon the rate for comparable commercial loans, rather than the cost of the loans to the Israeli banks. We have determined that the rate of LIBOR plus two percent is available to Israeli companies borrowing foreign currency. (See our discussion in section II.A.) Since Agrexco is the borrower and obligated to repay the loans, what Agrexco does with the money is irrelevant and there is no need to look at the creditworthiness of the growers.

Comment 4: Petitioner maintains that the development loans, which were provided by the Ministry of Agriculture, are countervailable because the government has discretion in granting the loans. The different sectors of agriculture receiving loans represent a specific group of enterprises or industries and, hence, these benefits are countervailable.

DOC Position: We disagree. We verified that development loans provided by the Ministry of Agriculture were given to virtually all types of agricultural commodities at the same interest rate regardless of location. The Department has consistently held that benefits available and provided to the entire agricultural sector of a country are not countervailable (See, *e.g., Final Negative Countervailing Duty Determination, Fresh Asparagus from Mexico* (48 FR 21613, May 13, 1983)).

Comment 5: Petitioner contends that in determining whether benefits from research and development programs are generally available, the Department must look behind the apparent range of beneficiaries to determine who in fact is intended to benefit. The Court of International Trade has held that "it is immaterial whether the information is disseminated to all groups, but whether the research and development is targeted to assist a particular, rather than a general industry . . . If the research is targeted to the production of roses, it is a subsidy." *Agrexco* v. *United States,* 604 F. Supp. 1238, 1241-42 (CIT 1985).

DOC Position: In determining whether research and development programs are countervailable, we examine whether the results of such programs are publicly available. At verification, we found that research and development support was provided by the Ministry of Agriculture to universities and research institutions and that the results of this research were publicly available worldwide. Under these circumstances, we have found research and development not countervailable. The decision cited by the petitioner, *Agrexco* v. *United States,* 604 F. Supp. 1238 (CIT 1985), is not binding. On July 3, 1985, the United States moved the CIT to vacate that part of its opinion which remanded the case to the Department. Because the CIT has not yet ruled on this motion, the decision is not yet a final judgment.

Comment 5: Petitioner contends that based on the reasoning of the Subsidies Appendix and the decision in *Stainless Steel Plate from the United Kingdom; Final Results in Countervailing Duty Administrative Review* (51 FR 44656, December 11, 1986), the government's equity purchases in Agrexco are inconsistent with commercial considerations and should be allocated in accordance with the Department's grant methodology. Since Agrexco is a not-for-profit company, and its shares are not publicly traded, but are held only by the agricultural cooperatives and boards and by the government, the government's purchase of Agrexco's shares is inconsistent with commercial considerations. The Department must place itself in the position of a private investor assessing the prospects of the company at the time of the investment to determine whether the purchases were consistent with commercial considerations.

DOC Position: We disagree that the government's purchase of Agrexco's shares was inconsistent with commercial considerations. We verified that Agrexco operates a world-wide marketing system with an annual turnover of more than 200 million dollars, and that its trademark and goodwill have significant value. Therefore, we cannot conclude that the government's equity purchases were inconsistent with commercial considerations.

Comment 7: Petitioner maintains that the Department was unable to verify that flower growers did not benefit from the fuel grants and low-cost credit program. Petitioner contends that, as best information available, the Department should use the *ad valorem* benefit found in the recent section 751

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review determination concerning fresh cut roses from Israel.

DOC Position: We agree. We verified that neither Agrexco nor Shemi benefitted from this program, but we were unable to verify that flower growers did not receive benefits from this program. During verification, the Israeli government contended that references to this program originated in a report by the Institute of Farm Income Research, entitled, "The Profitability of the Greenhouse Sector in 1980/81." The government provided a letter dated November 3, 1986, from the manager of the Institute, stating that the fuel grants program operated in 1980/81, but was discontinued after one year, and that it has not been reintroduced. The letter further stated that the manager did not believe cut flower growers had received fuel grants. The letter also maintained that the subsidized credit mentioned in the report represented the difference between the real value of credit and the cost of actual credit that was extended to rose growers by exporters, and that exporters received this credit under the Bank of Israel export financing program.

However, the Israeli government did not provide us with documentation concerning the termination of this program, and we have no information on the actual utilization of the program by flower growers during the program's operation. Therefore, we have concluded on the basis of best information available, that benefits were provided to growers of cut flowers under this program.

Comment 8: Petitioner contends that respondents did not support their claim that the Ministry of Agriculture did not contribute to the Flower Board's 1985/86 budget. The record is clear that the Ministry of Agriculture in two prior years made contributions to the Flower Board's budget, and there is no indication that the Ministry discontinued its contributions. In the absence of verification of non-receipt, the Department should presume, as best information available, that the Ministry of Agriculture provided the Board during the review period with the same sum it has provided in each previous year.

DOC Position: We agree. See section I.D. of this notice.

Comment 9: Petitioner contends that, even if benefits under the export promotion financing fund are no longer provided on flower exports to the United States, the duty deposit rate for this program should not be zero. Petitioner believes that the budget of the fund has not been reduced out, rather, funds under the program have simply been allocated away from the United States to other countries. Given the fungibility of money, freeing funds in the exporter's third country promotion budget for use in promoting exports to the United States can result in the same benefits as previously were conferred by directly funding export promotion to the United States.

DOC Position: We disagree. We have no evidence indicating that the Israeli government is increasing export promotion financing on cut flowers to other countries. Moreover, even if benefits for shipments to the third countries were increased, there would be no benefit on exports of cut flowers to the United States, since funds under this program are granted to reimburse specific expenses. Although market-specific or product-specific benefits may have the effect of reducing a company's total expenses, the Department's policy is to allocate such benefits entirely to the market or product which they were intended to benefit.

Comment 10: Petitioner objects to the Department's decision to permit the respondents to limit their response to data covering the 1986 fiscal year, rather than also providing information covering the 1985 fiscal year.

DOC Position: We withdrew our request for 1985 fiscal year data on September 17, 1986, because the 1986 fiscal year (October 1 through September 30) represents the most recent period for which data are available. The 1986 fiscal year is subsequent to Israel's signing of the Free Trade Agreement with the United States and becoming a signatory of the Subsidies Code, which changed its export financing program. Furthermore, since the growing season ended in May, all exports of cut flowers had ended for fiscal year 1985. In addition, verification was conducted in November, after the completion of the 1986 fiscal year. Therefore, it was unnecessary for the respondents to supply data for the 1985 fiscal year.

Respondents' Comments

Comment 1: Respondents argue that ECILA grants are not countervailable because these grants are awarded to producers in all sectors of agriculture without regard to location, and the grants are not tied to export performance.

DOC Position: We agree. We verified that the ECILA grants are available and provided to the entire agricultural sector in Israel, and the grants were not contingent upon export performance.

Comment 2: Respondents maintain that the development loans for agriculture are not countervailable, because they were granted to producers in all sectors of agriculture, and there was no preference for specific products or regions of the country.

DOC Position: We agree that the agricultural development loans are not countervailable. We verified that they were available to, and provided on, equal terms to the entire agricultural sector.

Comment 3: Respondents contend that ECILA tax benefits should be considered generally available for the same reasons that the ECILA grants should not be found countervailable. In addition, both Agrexco and Shemi demonstrated that they would not have paid taxes during the review period even absent the application of the ECILA tax benefits. Therefore, Agrexco and Shemi did not benefit from this program.

DOC Position: We agree. We verified that ECILA tax benefits are available to the entire agricultural sector in Israel and that Agrexco and Shemi did not benefit from ECILA tax benefits during the review period. See section II.C. of the notice.

Comment 4: Respondents contend that the Exchange Rate Risk Insurance Program is structured and operated on sound commercial considerations and is not a countervailable subsidy. The program operates as a risk insurance program designed to balance over time. Because the program has been operating for only about five years, the Department cannot conclude that long-term costs will not be met my premiums. Moreover, this program merely attempts to restore exporters to approximately the same position they would have enjoyed had the domestic economy not eroded their profits during the period of time between the establishment of a contract price for exported goods and the receipt of payment. Therefore, this program does not provide exporters with a benefit.

DOC Position: We disagree. (*See Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Israel* (52 FR 1649, January 15, 1987)). The Government of Israel owns all of the shares of IFTRIC and acts as a re-insurer to cover IFTRIC's losses up to 150 million U.S. dollars. In general, to determine whether government-controlled export insurance programs confer countervailable benefits, the Department examines whether the insurance premiums and other payments charged are adequate to cover the program's long-term operating costs and losses. This approach is consistent with Paragraph (j) of the Annex to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement of Tariffs and Trade (the Subsidies Code), under which an export subsidy is defined to include:

> the provision by governments (or special institutions controlled by governments) . . . of insurance or guarantee programs against increases in the costs of exported products or of exchange risk programmes, at premium rates, which are manifestly inadequate to cover the long-term operating costs and losses of the programmes.

EIS operated at a loss in each of the years 1981 through 1985. Despite continuing losses, which have amounted to millions of U.S. dollars each year, EIS has not raised the premium rates charged or increased other charges to its customers. We believe that five years is, in this case, a sufficiently long period to establish that the premiums and other charges are manifestly inadequate to cover the long-term operating costs and losses of the program. We therefore conclude that the premiums and other charges levied by EIS are minifestly inadequate to cover its long-term operating costs and losses.

Finally, we believe that the EIS program does provide a benefit to exporters. Exporters who do not participate in this program must absorb the losses that result when the rate of inflation in Israel exceeds the rate of devaluation of the shekel.

Comment 5: Respondents maintain that benefits accorded under the export promotion financing fund were overstated in their responses because of errors in reporting. The Department should use the corrected and verified amounts of benefits for the review period. In addition, as was verified, the program has been eliminated for promotion of flowers to the United States, so the duty deposit rate should be zero on this program.

DOC Position: We agree. Section 776(a) of the Act requires us to use verified information for our final determination. It is our stated policy to take into account a verified program-wide change, which occurs after the review period, but prior to the preliminary determination, if no benefits are still accruing under the program, by adjusting the duty deposit rate.

Comment 6: Respondents contend that government ownership of shares in Agrexco is not a subsidy because the ownership constitutes a commercially sound equity purchase rather than a grant. It was demonstrated at verification that Agrexco's shares have substantial commercial value. The Government of Israel does sell its shares in government companies, and if Agrexco's shares were sold the government would expect to realize a profit.

DOC Response: We agree. We verified that Agrexco operates a world-wide marketing system with annual turnover of more than 200 million dollars. Since Agrexco operates as a cooperative, it does not retain profits, but it always covers its costs and obligations. We also verified that Agrexco's trademark, "Carmel," contains significant value. We found no evidence indicating that the government's purchase of Agrexco's shares was not a commercially sound equity purchase. The Government of Israel is free to sell all or part of Agrexco's shares at any time.

Comment 7: Respondents contend that the position of Agrexco is distinguishable from that of British Steel in *Stainless Steel Plate from the United Kingdom; Final Results of Countervailing Duty Administrative Review* (51 FR 44666, December 11, 1986), which petitioner cites as providing the applicable standard to show that government ownership in Agrexco is a subsidy. In *British Steel* the government was the only shareholder, while in the case of Agrexco, the government is only one of several shareholders. The government has always paid the same price for Agrexco's shares as other investors have paid. The percentage of government ownership in Agrexco has decreased in recent years because Agrexco has issued additional shares to its other shareholders. Agrexco is a viable company, that operates as a cooperative and always covers its costs and obligations. By contrast, British Steel was "a dying concern bolstered by the government infusions of equity." Despite the fact that Agrexco does not pay dividends, ownership of Agrexco is a valuable asset.

DOC Position: We agree that the position of Agrexco is distinguishable from that of British Steel. There is no evidence in this case that the government's investment in Agrexco was inconsistent with commercial considerations.

Comment 8: Respondents contend that the export financing programs are not countervailable. All loans under these programs during the review period were made and repaid in foreign currency at the interest rate of LIBOR plus two percent. These programs do not represent government lending because commercial banks lend the foreign currency out of money they themselves raise. The government's role is to limit the volume of foreign currency lending because of currency controls and to set a maximum interest rate. Moreover, it is irrelevant that Agrexco distributes to growers money it borrows under this program, because Agrexco is liable for repayment.

DOC Position: We agree that these programs did not provide benefits to growers or exporters of cut flowers during the review period because the interest rate did not exceed the benchmark. However, we disagree that the program is not countervailable due to the fact that commercial banks lend the money out of funds they raise. Financing required by government action, even if the government is not the source of funds, can provide a subsidy. See, *e.g., Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Israel* (52 FR 1649, Jan. 15, 1987).

Verification

In accordance with section 776(a) of the Act, we verified the information and data used in making our final determination. During verification, we followed normal verification procedures, including meetings with government officials and inspection of documents, as well as on-site inspection of the accounting records of the responding companies.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of cut flowers from Israel which are entered, or withdrawn from warehouse, for consumption on or after October 27, 1986. As of the date of publication of this notice in the **Federal Register**, the Customs Service shall require a cash deposit or bond of 10.79 percent *ad valorem* for each entry of this merchandise from Israel.

ITC Notification

In accordance with section 705(d) of the Act, wel will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted, as a result of the suspension of liquidation,

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will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing the Customs officers to assess countervailing duties on all entries of cut flowers from Israel, entered or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

This determination is published pursuant to section 705(d) of the Act (19 USC 1671d(d)).

Lee W. Mercer,

Acting Assistant Secretary for Trade Administration.

January 27, 1987.

[FR Doc. 87-2128 Filed 2-2-87; 8:45 am]

BILLING CODE 3510-DS-M

National Telecommunications and Information Administration

Public Telecommunications Facilities Program; Closing Date for Applications

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Public Telecommunications Facilities Program: Notice of closing date for applications.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces that applications are available for planning and construction grants for public telecommunications facilities under the Public Telecommunications Facilities Program of NTIA.

Applicants for grants under PTFP must file their applications on or before March 17, 1987. Congress has appropriated $20.5 million for this program in FY 1987, however, the President has recommended a recision of $19.3 million of that amount. If funds are available for the program for the fiscal year, NTIA anticipates making grant awards in early September 1987.

Although a Notice of Proposed Rulemaking for this grant program was published December 4, 1986 (51 FR 43804), the rules in effect for 1987 applications will be those currently found at 15 CFR Part 2301.

FOR FURTHER INFORMATION CONTACT: Dennis R. Connors, Acting Director, PTFP/NTIA/DOC, Room 4625, Washington, DC 20230. Telephone (202) 377-5802.

SUPPLEMENTARY INFORMATION:

I. Eligibility

To be eligible to apply for or receive a grant under the PTFP, an applicant must be:

(A) A public or noncommercial educational broadcast station;

(B) A noncommercial telecommunications entity;

(C) A system of public telecommunications entities;

(D) An nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes;

(E) A nonprofit foundation, corporation, institution, or association organized for any purpose except primarily religious to plan for the provision of public telecommunications services or;

(F) A State or local government or agency or a political or special purpose subdivision of a State.

II. Closing Date

Pursuant to 15 CFR 2301.10, the Administrator of NTIA hereby establishes the closing date for the filing of applications for grants under the PTFP. *The closing date selected for the submission of applications is March 17, 1987.*

III. Program Goals and Priorities

The Goals of this program, as stated in Section 390 of the Act are:

To assist through matching grants, in the planning and construction of public telecommunications facilities in order to achieve the following objectives:

(1) Extend delivery of public telecommunications services to as many citizens of the United States as possible by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies;

(2) Increase public telecommunications services and facilities available to, operated by, and owned by minorities and women; and

(3) Strengthen the capability of existing public television and radio stations to provide public telecommunications services to the public.

The Agency has established the following Priorities for the PTFP:

Priority I—Provision of Public Telecommunications Facilities for First Radio and Television Signals to a Geographic Area

Within this category, we establish two subcategories:

A. Projects Which Include Local Origination Capacity

This category includes the planning or construction of new facilities which can provide a full range of radio and/or television programs including material that is locally produced. Eligible projects include new radio or television broadcast stations, new cable systems, or first public telecommunications service to existing cable systems, provided that such projects include local origination capacity.

B. Projects Which Do Not Include Local Origination Capacity

This category includes projects such as increases in tower height and/or power of existing stations and construction of translators, cable networks and repeater transmitters which will result in providing public telecommunications services to previously unserved areas.

Priority I and its subcategories only apply to grant applicants proposing to plan or construct new facilities to bring public telecommunications services to geographic areas which are presently unserved—i.e., areas which do not receive any public telecommunications services whatsoever. (It should be noted that television and radio are considered separately for the purposes of determining coverage.)

Under Priority 1B, NTIA will consider an area served when it receives a public television signal from a distant source through a cable system which has a penetration rate of 50 percent. (An applicant proposing to plan or construct a facility to serve a geographical area which is presently unserved, should indicate the number of persons who would receive a first public telecommunications signal as a result of the proposed project.)

Priority II—Replacement of Basic Equipment of Existing Essential Broadcast Facilities

Projects eligible for consideration under this category include the replacement of obsolete or worn out equipment in existing broadcast facilities which provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographical area.

In order to show that the replacement of equipment is necessary, applicants must provide documentation indicating excessive downtime, or a high incidence of repair (i.e., copies of maintenance logs. Letters documenting non-availability of parts should also be included.) Additionally, applicants must show that the facility is the only public telecommunications facility providing a signal to a geographical area or the only facility with local origination capacity in a geographical area.

The distinction between Priority II and Priority IV is that Priority II is for the replacement of basic equipment for essential facilities. Where an applicant seeks to "improve" basic equipment in its facility (i.e., where the equipment is not "worn out"), or where the applicant is not an essential facility, NTIA would consider the applicant's project under Priority IV.

Priority III—Establishment of First Local Origination Capacity in a Geographical Area

Projects in this category include the planning or construction of facilities to bring the first local origination capacity to an area already receiving public telecommunications services from distant sources through translators, repeaters or cable systems.

Applicants seeking funds to bring the first local origination capacity to an area already receiving some public telecommunications services may do so, either by establishing a new (and additional) public telecommunications facility, or by adding local origination capacity to an existing facility. (A source of a public telecommunications signal is distant when the geographical area to which the source is brought is beyond the grade B contour of the originating facility.)

Priority IV—Replacement and Improvement of Basic Equipment for Existing Broadcast Facilities

Projects eligible for consideration under this category include the replacement of obsolete or worn out equipment and the upgrading of existing origination or delivery capacity to current industry performance standards (e.g., conversions to color, stereo, etc.; improvements to signal quality and significant improvements in equipment flexibility or reliability). As under Priority II, applicants seeking to replace or improve basic equipment under Priority IV should show that the replacement of the equipment is necessary by including in their applications data indicating excessive downtime, or a high incidence of repair (such as documented in maintenance logs).

Priority V—Augmentation of Existing Broadcast Station Facilities

Projects under this priority would equip an existing station beyond a basic capacity to broadcast programming from distant sources and to originate local programming.

A. Projects To Equip Auxiliary Studios at Remote Locations, or Either To Provide Mobile Origination Facilities

An applicant must demonstrate that significant expansion in public paticipation in programming will result. This category includes mobile units, neighborhood production studios or facilities in other locations within a station's service area which would make participation in local programming accessible to additional segments of the population.

B. Projects To Augment Production Capacity Beyond Basic Level in Order To Provide Programming or Related Materials for Other Than Local Distribution

This category would provide equipment for the production of programming for regional or national use. Need beyond existing capacity must be justified.

Other Cases. In any fiscal year, NTIA possesses the discretionary authority to award grants to eligible applicants whose proposals do not clearly fall within any of the listed priorities but whose application, by virtue of their unique or innovative nature, would further the overall objectives of the Act. Such projects include, among other things, the planning and construction of facilities to provide significantly different additional services for which a clear and substantial community need can be demonstrated (e.g., services to identifiable ethnic or linguistic minority audiences, services to the blind or deaf, instructional services or electronic text.)

IV. Application Forms and Regulations

To apply for a PTFP grant, an applicant must file a timely and complete application on a current form approved by the agency.[1] All persons and organizations on the PTFP's mailing list have been sent a copy of the current application form and the Interim Rules (15 CFR Part 2301). Those not on the mailing list may obtain copies by contacting the PTFP at the address above. Prospective applicants should read the Interim Rules carefully submitting applications. Applicants whose applications were deferred have been mailed pertinent PTFP materials and instructions for requesting reactivation.

Applicants should note that they must comply with the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." The Executive Order requires applicants for financial assistance under this program to file a copy of their application with the Single Points of Contact (SPOC) of all states relevant to the project. Applicants are required to serve a copy of their completed application on the appropriate Single Point(s) of Contact on or before March 17, 1987. Applicants are encouraged to contact the appropriate SPOC will before the NTIA closing date.

Applicants should note that all PTFP grant recipients are subject to the provisions of Office of Management and Budget (OMB) Circulars A-87 "Cost Principles for State and Local Governments," A-21 "Cost Principles for Educational Institutions," A-102, A-110, A-122, and A-128. In addition, any applicant organizations with outstanding accounts receivable with the Department of Commerce will not receive a new award until the debt is paid or arrangements to repay the debt which are satisfactory to the Department are made.

Potential PTFP grant recipients may also be required to submit a "Name Check" form (Form CD-346), which is used to ascertain background information on key individuals associated with the potential grantee. The "Name Check" requests information to reveal if any key individuals in the organization have been convicted or, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters pertinent to management honesty or financial integrity. Potential grantee organizations may also be subject to reviews of Dun and Bradstreet data or other similar credit checks.

V. Funding Criteria

The funding criteria for construction applications are as follows:

In determining whether to approve a construction grant application, in whole or in part, and the amount of such grant, or whether to defer action on such an application, the Agency will evaluate all the information in the application file and consider the following factors (the order of listing implies no priority):

(a) How well the applicant has satisfied the assurances required in 15 CFR 2301.5;

(b) The program purposes set forth in § 23012.20 of the Interim Rules as well as the specific program priorities set forth in Section III above;

(c) The adequacy and continuity of financial resources for long-term operational support, which assures the applicant's continual service to the communities within the service area;

[1] Approval has been requested from the Office of Management and Budget (OMB) for the information collection and reporting requirements contained in NTIA's application as required under the Paperwork Reduction Act of 1980.

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the current competition and will be

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exported during the twelve-month period

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and the availability of necessary funds for capital expenditures;

(d) The extent to which non-Federal funds will be used to meet the total cost of the project;

(e) The extent to which the applicant has: (1) Assessed specific educational, informational, and cultural needs of the community(ies) to be served by the proposed public telecommunications service;

(2) Evaluated alternate technologies, the basis upon which decisions were made as to the technology to be utilized and the extent to which the proposed service will not duplicate service already available;

(3) Provided meaningful documentation of applicant's equipment requirements;

(4) Provided meaningful documentation of community support for the service to be provided (such as letters from key elected/appointed policy-making officials, from agencies for whom the applicant produces or will produce programs or other materials);

(f) The extent to which the evidence supplied in the application reasonably assures an increase in public telecommunications services and facilities availabe to, operated by and owned (or controlled) by minorities and women;

(g) The extent to which various items of eligible apparatus proposed are necessary to, and capable of achieving the objectives of the project and will permit the most efficient use of the grant funds;

(h) The extent to which the eligible equipment requested meets current broadcast industry performance standards;

(i) The extent to which the applicant will have available sufficient qualified staff to operate and maintain the facility and provide services of professional quality;

(j) The extent to which the applicant has planned and coordinated the proposed services with other telecommunications entities in the service area;

(k) The extent to which the project implements local, statewide or regional public telecommunications systems plans, if any;

(l) The extent to which the applicant's proposed five (5) year facilities plan required by section 392(a) of the Act is practical, financially affordable and consistent with the intent of the Act and Regulations;

(m) The readiness of the Commission to grant any necessary authorization;

(n) The urgency for funding based on justification of needs.

The funding criteria for planning applications are as follows:

In determining whether to approve a planning grant application, in whole or in part, and the amount of such grant, or whether to defer action on such an application, the Agency will evaluate all the information in the application file and consider the following factors (the order of listing implies no priority);

(a) How well the applicant has satisfied the assurances required in 15 CFR 2301.5 of the Interim Rules;

(b) The extent to which the applicant's interests and purposes are consistent with the purposes of the Act and the priorities of the Agency;

(c) The qualifications of the proposed planner to provide a public telecommunications facilities plan;

(d) The extent to which the planning project's proposed procedural design assures that the applicant would obtain adequate;

(1) Financial, human and support resources necessary to conduct the plan,

(2) Coordination with other telecommunications entities at the local, state, regional and national levels,

(3) Evaluation of alternate technologies and existing services, and

(4) Participation by the public to be served (and by minorities and women in particular) in the planning of the project;

(e) The extent to which the applicant has engaged in pre-planning studies to determine the technical feasibility of the proposed planning project (such as the availability of a frequency assignment, if necessary for the project);

(f) The extent to whch the proposed procedure and timetable are feasible and can achieve the expected results.

VI. Matching Requirements

(a) Planning Grants

A Federal grant for the planning of a public telecommunications facility shall be in an amount determined by the Agency and set forth in the grant award document and the attachments thereto. The Agency may provide up to 100 percent of the funds necessary for the planning of a public telecommunications construction project.

(b) Construction Grants

(1) A Federal grant award for the construction of a public telecommunications facility shall be an amount determined by the Agency and set forth in the grant award document, except that such amount shall not exeed 75 percent of the amount determined by the Agency to be the reasonable and necessary cost of such project.

(2) No part of the grantee's matching share of the eligible project costs may be met with funds paid by the Federal government, except where the use of such funds to meet a Federal matching requirement is specifically and expressly authorized by Federal statute.

(3) Funds supplied to an applicant by the corporation for Public Broadcasting may not be used for the required non-Federal matching purposes, except upon a clear compelling showing of need.

Applicants should note that expenditure of local matching funds prior to the award of a grant is at the applicant's own risk. The exact amount of the match will not be known with certainty until the final award agreement is negotiated. Therefore, should the applicant's expenditure of non-Federal funds exceed the non-Federal share which will be established in the final award agreement, the Federal share of the total project cost will be reduced by a corresponding amount and a penalty could be applied. If the amount already spent at the local level is substantial portion of the amount negotiated as the total project cost, the action could result in cancellation of the grant offer.

VII. Selection Process and Project Period

PTFP grants are awarded on the basis of a competitive review process. This includes several grant review panels, which apply the Funding Criteria in Section V listed above. The Agency determines the selection of grantees according to the Priorities listed in Section III above and the evaluation of the applications by the various review panels.

The period for which a planning grant may be made is one year, whereas the period for which a construction grant may be made is two years. Although these timeframes are generally applied to the award of all PTFP grants, variances in project periods may be made based on specific circumstances of an individual proposal.

VIII. Filing Applications

Applications delivered by mail must be *received* no later than close of business, March 17, 1987, and must be addressed to: Public Telecommunications Facilities Program, NTIA/DOC, Room 4625, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Applications *delivered by hand* must be delivered to the above address between 8:30 a.m. and 5:00 p.m. on or before close of business March 17, 1987. Applicants whose applications are not received by close of business March 17, 1987, will be notified that their applications will not be considered in the current competition and will be returned.

NTIA requires that all applicants whose proposed projects need authorization from the Federal Communications Commission (FCC), must tender an application to the FCC for such authority on or before March 17, 1987. (An application is tendered to the FCC when it has been received by the Secretary of the FCC.) However, you are urged to submit it with as much lead time before the PTFP closing date as possible. The greater the lead time, the better the chance your FCC application will be processed to coincide with NTIA's grant cycle. NTIA will return the application of any applicant which fails to tender an application to the FCC for any necessary authority on or before March 17, 1987.

Authority: The Public Telecommunications Financing Act of 1978, 47 U.S.C. 390–394, 397–399b (Act); as amended by the Public Broadcasting Amendments of 1981, Pub. L. 97–35, 95 Stat. 725 (1981 Amendments), as amended by the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, secs. 5001, 100 Stat. 82, 117 (1986).

(Catalog of Federal Domestic Assistance No. 11.550)

Dennis R. Connors,

Director, Office of Policy Coordination and Management.

[FR Doc. 87–2147 Filed 2–2–87; 8:45 am]

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COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

January 28, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 2, 1987. For further information contact Kathryn Cabral, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

The Bilateral Cotton and Man-Made Fiber Textile Agreement of February 19 and 24, 1986, as amended, between the Governments of the United States and the People's Republic of Bangladesh, establishes specific limits for cotton and man-made fiber textile products in Categories 331, 334, 335, 340/640, 341, 347/348 and 635, produced or manufactured in Bangladesh and exported during the twelve-month period which begins on February 1, 1987 and extends through January 31, 1988. In the letter which follows this notice the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to control imports in these categories at the designated limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

January 28, 1987.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Agreement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton and Man-Made Fiber Textile Agreement of February 19 and 24, 1986, as amended, between the Governments of the United States and the People's Republic of Bangladesh; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 2, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 331, 334, 335, 340/640, 341, 347/348 and 635, produced or manufactured in Bangladesh and exported during the twelve-month period which begins on February 1, 1987 and extends through January 31, 1988, in excess of the following limits:

Category	12-month restraint limit [1]
331	535,300 dozen pairs.
334	63,600 dozen.
335	116,600 dozen.
340/640	1,378,000 dozen of which not more than 318,000 dozen shall be in yarn-dyed shirts in Category 340-Y/640-Y.[2]
341	1,166,000 dozen.
347/348	1,049,400 dozen.
635	153,700 dozen.

[1] The limits have not been adjusted to account for any imports exported after January 31, 1987.

[2] In Categories 340 only TSUSA numbers 381.0522, 381.5500, 381.5610, 381.5625, 381.5637, and 381.5660. In Category 640 only TSUSA numbers 381.3132, .381.3142, 381.3152, 381.9535, 381.9547, and 381.9550.

In carrying out this directive, entries of cotton and man-made fiber textile products listed in the table above, which have been exported during previously established restraint periods, shall, to the extent of any unfilled balances, be charged against the restraint limits established for such goods during those periods. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the limits set forth in this directive.

The foregoing limits are subject to adjustment in the future according to the terms of the bilateral agreement of February 19 and 24, 1986, as amended, which provide in part, that specific limits may be adjusted by designated percentages for carryover. Appropriate adjustments will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 19843 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–2118 Filed 2–2–87; 8:45 am]

BILLING CODE 3510–DR–M

Cancelling Staged Entry for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

January 29, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 2, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On December 30, 1986, a notice was published in the **Federal Register** (51 FR 47041), which, among other things, established staged entry periods for imports of cotton and man-made fiber textile products in Categories 314, 341, 342, 636, 641, and 645/646, produced or manufactured in the People's Republic of China and exported during the period which began on January 1, 1986 and extends through December 31, 1986. Inasmuch as it has been determined that these staged entry periods are no longer needed, they are being cancelled.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 29, 1987.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile agreement, effected by exchange of notes dated August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, I request that, effective on February 2, 1987, you cancel the staged entry periods established in the directive of December 23, 1986 for cotton and man-made fiber textile products in Categories 314, 341, 342, 636, 641, and 645/646, produced or manufactured in the People's Republic of China.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a) (1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the implementation of Textile Agreements.

[FR Doc. 87-2117 Filed 2-2-87; 8:45 am]

BILLING CODE 3510-DR-M

Extending Coverage of the Hong Kong Export Visa Requirement To Include Textiles and Textile Products of Vegetable Fibers (Other Than Cotton), Silk Blends, and Man-Made Fiber Textile Products in Category 670; Correction

In paragraph 2 of the letter to the Commissioner of Customs, published in the **Federal Register** on July 30, 1986 (51 FR 27235), insert the following language at the end of the second sentence:

This directive will also apply to merchandise in Categories 845(2) and 846(2) which are assembled in Hong Kong from parts made elsewhere and exported to the United States on and after August 1, 1986. These products must have an appropriate export visa from Hong Kong or they will be denied entry or withdrawal from warehouse for consumption.

Donal R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR. Doc. 87-2116 Filed 2-2-87; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of Sri Lanka To Review Trade in Category 638/639

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 3, 1987. For further information contact Kathryn Cabral, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535-6736. For information on embargoes and quota re-openings, please call (202) 377-3715. For information on categories on which consulations have been requested call (202) 377-3740.

Background

On November 28, 1986, the Government of the United States requested consulatons with the Government of Sri Lanka with respect to category 638/639 man-made fiber knit shirts and blouses. This request was made under the libateral agreement between the Governments of the United States and Sri Lanka of May 10, 1983, as amended, relating to trade in cotton, wool and man-made fiber textile products which permits the United States to request consultations when imports from Sri Lanka threaten or cause market disruption.

According to the terms of the bilateral agreement, if no mutually satisfactory solution is reached during consulations, the United States may establish prorated specific limits for the period which began on November 28, 1986 and extends through May 31, 1987 at a level of 193,152 dozen.

The Government of the United States has decided, pending a mutually satisfactory solution, to control imports in Category 638/639 exported during the ninety-day consulation period which began on November 28, 1986 and extends through February 25, 1987 at the prescribed limit of 111,150 dozen.

In the event the limit established for the ninety-day period is exceeded, such excess amounts, if allowed to enter, may be charged to the prorated specific limit specified above.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consulations with the Government of Sri Lanka, further notice will be published in the **Federal Register.**

A summary market statement for this category follows this notice.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (48 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Anyone wishing to comment or provide data or information regarding the treatment of Category 638/639 under the agreement with Sri Lanka, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in this category, is invited to submit such comments or information in ten copies to Mr. Ronald I. Levin, Acting Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consulations is not yet certain, comments should be submitted in response to this notice will be available for public inspection on the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a) (1) relating to matters which constitute "a foreign affairs function of the United States."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Sri Lanka—Market Statement

Category 638/639—Man-Made Fiber Knit Shirts and Blouses

November 1986.

Summary and Conclusions

U.S. imports of Category 638/639 from Sri Lanka were 409,772 dozen during the year ending September 1986, 12 percent above the 364,815 dozen imported a year earlier. During the first nine months of 1986, imports of Category 638/639 from Sri Lanka were 393,058 dozen, 53 percent above the 256,749 dozen imported during the same period in 1985 and 44 percent above the amount imported during calendar year 1985.

The U.S. market for Category 638/639 has been disrupted by imports. The sharp and substantial increase of imports from Sri Lanka has contributed to this disruption.

U.S. Production and Market Share

U.S. production of man-made fiber knit shirts and blouses has been on the decline since 1982, falling 14 percent from 57,668 thousand dozen in 1982 to 49,687 thousand dozen in 1985. The U.S. producers' share of this market fell from 73 percent in 1982 to 67 percent in 1985. The U.S. market share is expected to fall to 59 percent in 1986.

U.S. Imports and Import Penetration

U.S. imports of Category 638/639 grew from 21,075 thousand dozen in 1982 to 24,976 thousand dozen in 1985, a 19 percent increase. Imports increased dramatically in 1986. Category 638/639 imports during the first nine months of 1986 reached 25,455 thousand dozen, 40 percent above the 18,214 thousand dozen imported during the same period of 1985. The ratio of imports to domestic production increased from 37 percent in 1982 to 50 percent inf 1985. Assuming the 1986 U.S. Category 639 production reaches the 1985 level and annualizing January-September 1986 imports, the import-to-production ratio increases to 68 percent in 1986.

Duty-Paid Value and U.S. Producer Price

Approximately 53 percent of the imports of Category 638/639 from Sri Lanka during the first nine months of 1986 entered under TSUSA numbers 384.8012—women's man-made fiber knit blouses, excluding tank tops, not ornamented; and 384.8045—women's man-made fiber knit shirts, excluding sweatshirts and T-shirts, not ornamented. These garments entered the U.S. at duty paid landed values below U.S. producers' prices for comparable garments.

Committee for the Implementation of Textile Agreements

January 29, 1987.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983, as amended, between the Governments of the United States and Sri Lanka; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 3, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 638/639, produced or manufactured in Sri Lanka and exported during the ninety-day period which began on November 28, 1986 and extends through February 25, 1987, in excess of 111,150 dozen.[1]

Textile products in Category 638/639 which have been exported to the United States prior to November 28, 1986 shall not be subject to this directive.

Textile products in Category 638/639 which have been released form the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a) (1) (A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a) (1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-2119 Filed 2-2-87; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after November 27, 1986.

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of information collection.

SUMMARY: The Commodity Futures Trading Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

ADDRESS: Persons wishing to comment on this information collection should contact Robert Neal, Office of Management and Budget, Room 3235, NEOB, Washington, DC 20503, (202) 395-7231. Copies of the submission are available from Joseph G. Salazar, Agency Clearance Officer, (202) 254-9735.

Title: Regulations Governing Bankruptcies of Commodity Brokers.
Control No.: 3038-0021
Action: Extension
Respondents: Businesses (excluding small businesses)
Estimated Annual Burden: 800.5 hours
Estimated Number of Respondents: 402.

Issued in Washington, DC, on January 29, 1987.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-2098 Filed 2-2-87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Thurs and Fri, 19-20 February 1987.

Times of Meeting: 0900-1700 hours each day.

Place: Pentagon, Wash, DC.

Agenda: The Army Science Board Summer Study Panel for Army Force Cost Drivers will meet at the Pentagon for the purpose of reviewing the specific Army environment (battlefield and natural) requirements and their conversion to military specifications for the acquisition and procurement of selected pieces of equipment and systems. AMC project managers (PM) and TRADOC systems managers (TSM) will present briefings concerning this process for their systems. OTEA will brief on how these systems were or are being tested and evaluated against the environmental military specifications established by AMC. The panel will also receive a briefing on the military application of advanced high technology to future Army systems, i.e., Directed Energy Weapons (DEW), etc. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87-2088 Filed 2-2-87; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Emergencies

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the International Atomic Energy Agency (IAEA) concerning Peaceful Application of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

Contract No. S-IA-146, to the IAEA Safeguards Analytical Laboratory, Vienna Austria, 18.771 grams of plutonium, enriched to 93.38 percent in the isotopes plutonium-239 and 241, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: January 28, 1987.

For the Department of Energy.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87-2143 Filed 2-2-87; 8:45 am]

BILLING CODE 6450-01-M

Alaska Power Administration

Revised Divestiture Work Plan

AGENCY: Alaska Power Administration, DOE.

ACTION: Notice of availability of revised divestitute work plan and new reports addressing alternative sale structures and asset valuation; request for comments on revised work plan.

SUMMARY: On July 28, 1986, the Alaska Power Administration (APAd) published in the **Federal Register** (51 FR 26924) notice of the availability of its July 1986 "Work Plan" and "Alternative Structures" report, both relating to divestiture of the Eklutna and Snettisham Hydroelectric Projects, and invited public comments regarding them. In accordance with the July Work Plan, APAd obtained through a consulting contract reports presenting an independent asset valuation and further advice on alternative sale structures. After considering comments received and all other new information, APAd has revised its Divestiture Work Plan. Notice is hereby given that the consultant's reports on asset valuation and review of alternative sale structures, and APAd's revised Divestiture Work Plan are available for public review. APAd invites public comments on the Revised Work Plan.

DATES: The consultant's reports on asset valuation and review of alternative sale structures, and APAd's Revised Divestiture Work Plan are available immediately upon request at the address below at no charge

Written comments received by March 10, 1987, will be considered before implementing the Plan.

ADDRESS: Requests for the above reports may be mailed to Administrator, Alaska Power Administration, P.O. Box 020050, Juneau, Alaska, 99802, or picked up in Room 835, Juneau Federal Building, 709 West Ninth Street, Juneau, Alaska, between 8 a.m. and 4:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert J. Cross, Administrator, or Helen E. Heim, Assistant to the Administrator, at the address above or 907/586-7405 (Commercial and FTS).

SUPPLEMENTARY INFORMATION: The Alaska Power Administration (APAd) is a unit of the U.S. Department of Energy and is responsible for operation, maintenance, transmission and power marketing for the two Federal hydroelectric projects in Alaska. These are the 30,000 kilowatt Eklutna Project which has served the Anchorage and Palmer areas since 1955, and the 47,160 kilowatt Snettisham Project which has been Juneau's main power source since 1975.

An expansion of the Snettisham Project—the 31,000 kilowatt Crater Lake Unit—is under construction by the Corps of Engineers, with power production expected in October 1988.

APAd sells power at wholesale to five electric utilities and to the State of Alaska for a State-owned hatchery facility at Snettisham.

Sale of the projects to the State of Alaska or other non-Federal owner was proposed along with the President's budgets for FY 1986 and 1987.

APAd and the State of Alaska Office of Management and Budget prepared a study and report on issues surrounding the proposed sale (*Alaska Power Administration Transfer Study*, April, 1986). The report identified as potential purchasers electric utilities now served by the two projects and the State of Alaska through its Alaska Power Authority. The report contains considerable information on the two projects, as well as information on APAd's organization and finances.

APAd published in the Federal Register notice of the availability of its July, 1986, *Divestiture Work Plan* and draft report *Alternative Structures for Sale of Alaska Power Administration*, and invited public comment on them by September 15, 1986. Written comments were received from State and local officials, electric utilities, utility associations, and others. In accordance with the July "Work Plan", APAd obtained through a consulting contract reports presenting an independent valuation of APAd assets and a further review of alternative sale structures.

APAd has revised its "Work Plan" considering comments received and all other new information. The revisions include: Additional opportunities for public review and comment; statements of priorities for divestiture goals, objectives, and guidelines; and schedule revisions to allow additional time for preparing purchase proposals.

The revised "Work Plan" retains the objectives of obtaining in 1987 workable proposals for sale of the projects which would then be presented for consideration by the Congress. It is hoped that Congressional authorization, implementation of the sale, and closeout of APAd can be accomplished by the end of FY 1989, or possibly sooner.

The Revised Divestiture Work Plan and the consultant's reports are available to all interested parties upon request at the address published above.

Comments are requested in writing on the revised "Work Plan". Comments should be directed to APAd at the address published above. Comments received by March 10, 1987, will be considered prior to implementing the revised Plan.

Robert J. Cross,

Administrator.

[FR Doc. 87-2044 Filed 2-2-87; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-C&E-86-02; OFP Case No. 62022-9329-20-24]

Order Granting Florida Energy Partners Limited Partnership and Metropolitan Dade County Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order granting exemption.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or the "Act"), to Florida Energy Partners Limited Partnership and Metropolitan Dade County. (petitioners). The permanent cogeneration exemption permits the use of natural gas as the primary energy source, for the proposed cogeneration facility to be located in Miami, Florida. The final exemption order and detailed information are provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The order shall take effect on April 6, 1987.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Myra Couch, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA-093, Washington, DC 20585, Telephone (202) 586-6769

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building—Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586-6749

SUPPLEMENTARY INFORMATION: The facility for which the petitioners are requesting a permanent cogeneration exemption is a 27.9 MW gas turbine generator in Miami, Florida, which will provide all the current and future electrical and air conditioning requirements for the Downtown Government Center. Florida Power & Light will purchase over 50 percent of electricity produced. The system will consist of a gas turbine, a waste heat recovery boiler, and extraction/condensing steam turbine generator. The facility will burn natural gas and will be capable of utilizing #2 oil as a back-up fuel.

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on November 20, 1986, (51 FR 32836), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing.

The comment period closed on January 5, 1987; no comments were received and no hearing was requested.

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that petitioners have satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to the petitioners to permit the use of natural gas as the primary energy source for their cogeneration facility.

Pursuant to section 702(c) of the Act of 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register**.

Issued in Washington, DC, on January 27, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-2140 Filed 2-2-87; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-87-23; OFP Case No. 55118-9352-03-12]

Acceptance of Petition for Exemption and Availability of Certification by General Electric Co., Mt. Vernon, IN

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance.

SUMMARY: On December 23, 1986, General Electric Company (GE or the petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption based on the "lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum" for its proposed new boilerhouse No. II, Boiler #3, at it's plant in Mt. Vernon, Indiana, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new major fuel burning installation and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of

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Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures for petitioning for this type of exemption from the prohibitions of Title II of FUA are found in 10 CFR 503.32.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register**.

DATES: Written comments are due on or before March 20, 1987. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA–093, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA–C&E–87–23 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–093, Washington, DC 20585, Telephone (202) 586–8233

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586–6947

SUPPLEMENTARY INFORMATION: The proposed gas boiler will be a field erected unit rated at 250 MM BTU/hr heat input, and 206 M lb/hr steam output at 615 psig and 550°F temperature. The boiler will be located in an addition to Boilerhouse No. II, which currently operates two coal boilers of the same capacity as the proposed gas boiler.

Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. To qualify the petitioner must certify that:

(1) A good faith effort has been made to obtain an adequate and reliable supply of an alternate fuel for use as a primary energy source of the quality and quantity necessary to conform with the design and operational requirements of the proposed unit;

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source during the useful life of the proposed unit as defined in § 503.6 (cost calculation) of the regulations;

(3) No alternate power supply exists, as required under § 503.8 of the regulations;

(4) Use of mixtures is not feasible, as required under § 503.9 of the regulations; and

(5) Alternative sites are not available, as required under § 503.11 of the regulations.

In accordance with the evidentiary requirements of § 503.32(b) (and in addition to the certifications discussed above), the petitioner has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment.

If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that GE is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this instance.

Issued in Washington, DC, on January 27, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–2141 Filed 2–2–87; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA–C&E–87–22; OFP Case No. 65045–6351–20, 21–22]

Acceptance of Petition for Exemption and Availability of Certification by Ocean State Power, Burrillville, RI

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance.

SUMMARY: On December 31, 1986, Ocean State Power (Ocean State or the petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption based on the "lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum" for a proposed combined cycle powerplant to be located in Burrillville, Rhode Island, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures for petitioning for this type of exemption from the prohibitions of Title II of FUA are found in 10 CFR 503.32.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before March 20, 1987. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA–093, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA–C&E–87–22 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Ellen Russell, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–093, Washington, DC 20585, Telephone (202) 586–9624

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586–6947

SUPPLEMENTARY INFORMATION: Ocean State proposes to install a gas fired combined cycle powerplant at its Burrilleville, Rhode Island site. The plant, with a planned generating capacity of 470 MW, will consist of two combined cycle units, each will have two gas fired combustion turbines that exhaust into a two-pressure level, heat recovery steam generator. The first of the two powerplants is scheduled to be placed in service on or about November 1, 1989. The on-line date for the second powerplant has not yet been determined. Electricity from the Burrilleville facility will be supplied to the New England Power Pool.

Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. To qualify the petitioner must certify that:

(1) A good faith effort has been made to obtain an adequate and reliable supply of an alternate fuel for use as a primary energy source of the quality and quantity necessary to conform with the design and operational requirements of the proposed unit;

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source during the useful life of the proposed unit as defined in § 503.6 (cost calculation) of the regulations;

(3) No alternate power supply exists, as required under § 503.8 of the regulations;

(4) Use of mixtures is not feasible, as required under § 503.9 of the regulations; and

(5) Alternative sites are not available, as required under § 503.11 of the regulations.

In accordance with the evidentiary requirements of § 503.32(b) (and in addition to the certifications discussed above), the petitioner has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the request exemption would not be considered a major Federal action significantly affecting the quality of the environment.

If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Ocean State is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on January 27, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–2142 Filed 2–2–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. TA87–5–20–000 and 001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

January 28, 1987.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on January 21, 1987, tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1 the following tariff sheets:

Substitute Twelfth Revised Sheet No. 204
Thirteenth Revised Sheet No. 204

Algonquin states that the above-mentioned tariff sheets are being filed pursuant to the provisions of section 7 of Algonquin's Rate Schedule F–3 to reflect in its rates under Rate Schedule F–3 changes in the underlying rates of its pipeline supplier National Fuel Gas Supply Corporation ("National Fuel") as set forth in National Fuel's Motion filing in Docket No. RP86–136–000 and its semi-annual PGA filing in Docket No. TA87–2–16–000.

Algonquin requests that the Commission accept Substitute Twelfth Revised Sheet No. 204 and Thirteenth Revised Sheet No. 204 to be effective January 1, 1987 and February 1, 1987, respectively, to coincide with the proposed effective dates of National Fuel's rate changes.

Algonquin notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 5, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to

intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2101 Filed 2-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-6-20-000 and 001]

Algonquin Gas Transmission Co., Proposed Changes in FERC Gas Tariff

January 28, 1987.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on January 23, 1987, tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1 the following tariff sheets:

Eleventh Revised Sheet No. 205

Algonquin states that the above-mentioned tariff sheet is being filed pursuant to the provisions of section 7 of Algonquin's Rate Schedule F-4 to reflect in its rates under Rate Schedule F-4 changes in the underlying rates of its pipeline supplier Texas Eastern Transmission Corporation ("Texas Eastern") as set forth in Texas Eastern's semi-annual PGA filing of December 31, 1986.

Algonquin requests that the Commission accept Eleventh Revised Sheet No. 205 to be effective February 1, 1987 to coincide with the proposed effective date of Texas Eastern's rate change.

Algonquin notes that a copy of this filing is being served upon each affected party and interested State commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 5, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2102 Filed 2-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 9693-005 et al.]

Birch Power Co. et al; Surrender of Preliminary Permits

January 23, 1987.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. Birch Power Co.

[Project No. 9693-005]

Take notice that the Birch Power Company, Permittee for the Challis Canal Hydropower Project No. 9693, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9693 was issued May 13, 1986, and would have expired April 30, 1989. The project would have been located on the Salmon River at the Challis Canal near Challis, Custer County, Idaho.

The Permittee filed the request on December 22, 1986.

2. Cedar Creek Limited Partnership

[Project No. 9612-002]

Take notice that Cedar Creek Limited Partnership, permittee for the Cedar Creek Project No. 9612, has requested that its preliminary permit be terminated. The preliminary permit was issued on May 30, 1986, and would have expired on April 30, 1989. The project would have been located on Cedar Creek and an unnamed tributary of Cedar Creek in Madison County, Montana.

The permittee filed the request on December 15, 1986.

3. Dam Eleven Hydro Partners

[Project No. 9912-002]

Take notice that Dam Eleven Hydro Partners, permittee for the Kentucky River Lock & Dam Number Eleven Project No. 9912, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9912 was issued on June 23, 1986, and would have expired on May 31, 1989. The project would have been located on the Kentucky River in Madison and Estill Counties, Kentucky.

The permittee filed the request on January 13, 1987.

4. Dam Eight Hydro Partners

[Project No. 9909-002]

Take notice that Dam Eight Hydro Partners, permittee for the Kentucky River Lock & Dam Number Eight Project No. 9909, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9909 was issued on June 23, 1986, and would have expired on May 31, 1989. The project would have been located on the Kentucky River in Jessamine County, Kentucky.

The permittee filed the request on January 13, 1987.

5. Dam Fourteen Hydro Partners

[Project No. 9915-002]

Take notice that Dam Fourteen Hydro Partners, permittee for the Kentucky River Lock & Dam Number Fourteen Project No. 9915, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9915 was issued on June 23, 1986, and would have expired on May 31, 1989. The project would have been located on the Kentucky River in Lee County, Kentucky.

The permittee filed the request on January 13, 1987.

6. Dam Nine Hydro Partners

[Project No. 9910-002]

Take notice that Dam Nine Hydro Partners, permittee for the Kentucky River Lock & Dam Number Nine Project No. 9910, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9910 was issued on June 26, 1986, and would have expired on May 31, 1989. The project would have been located on the Kentucky River in Jessamine and Madison Counties, Kentucky.

The permittee filed the request on January 13, 1987.

7. Dam Ten Hydro Partners

[Project No. 9911-002]

Take notice that Dam Ten Hydro Partners, permittee for the Kentucky River Lock & Dam Number Ten Project No. 9911, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9911 was issued on June 23, 1986, and would have expired on May 31, 1989. The project would have been located on the Kentucky River in Madison and Clark Counties, Kentucky.

The permittee filed the request on January 13, 1987.

8. Dam Three Hydro Partners

[Project No. 9908-002]

Take notice that Dam Three Hydro Partners, permittee for the Kentucky River Lock & Dam Number Three Project No. 9908, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9908 was issued on June 23, 1986, and would have expired on May 31, 1989. The project would have been located on the

Kentucky River in Henry and Owen Counties, Kentucky.

The permittee filed the request on January 13, 1987.

9. Dam Twelve Hydro Partners

[Project No. 9913-002]

Take notice that Dam Twelve Hydro Partners, permittee for the Kentucky River Lock & Dam Number Twelve Project No. 9913, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9913 was issued on June 23, 1986, and would have expired on May 31, 1989. The project would have been located on the Kentucky River in Estill County, Kentucky.

The permittee filed the request on January 13, 1987.

10. Edwin F. Slowick

[Project No. 8616.001]

Take notice that the Edwin F. Slowick, permittee for the Hennicker Falls Project No. 8616 has requested that the preliminary permit be terminated. The preliminary permit for Project No. 8616 was issued on May 17, 1985, and would have expired on April 30, 1987. The project would have been located on the Contoocook River, in Merrimack County, New Hampshire.

The permittee filed the request on December 15, 1986.

11. Hyrum Associates

[Project No. 9203-002]

Take notice that Hyrum Associates, permittee for the proposed Hyrum Hydro Project No. 9203, has requested that its preliminary permit be terminated. The preliminary permit was issued on November 21, 1985, and would have expired on October 31, 1988. The project would have been located on Little Bear River in Cache County, Utah. The permittee states that the project would not be economically feasible to develop at this time.

The permittee filed the request on January 5, 1987.

12. Midway Associates

[Project No. 9667-001]

Take notice that Midway Associates, permittee for the proposed Pine Creek Project No. 9667, has requested that its preliminary permit be terminated. The preliminary permit was issued on May 2, 1986, and would have expired on April 30, 1989. The project would have been located on Pine Creek in Wasatch County, Utah. The permittee states that the project would not be economically feasible to develop at this time.

The permittee filed the request on January 5, 1987.

13. Newton Associates

[Project No. 9220-001]

Take notice that Newton Associates, permittee for the proposed Newton Hydro Project No. 9220, has requested that its preliminary permit be terminated. The preliminary permit was issued on November 21, 1985, and would have expired on October 31, 1988. The project would have been located on Clarkston Creek in Cache County, Utah. The permittee states that the project would not be economically feasible to develop at this time.

The permittee filed the request on January 5, 1987.

14. Nine Mile Associates

[Project No. 9235-001]

Take notice that Nine Mile Associates, permittee for the proposed Nine Mile Hydro Project No. 9235, has requested that its preliminary permit be terminated. The preliminary permit was issued on November 27, 1985, and would have expired on October 31, 1988. The project would have been located on Six Mile Creek in Sanpete County, Utah. The permittee states that the project would not be economically feasible to develop at this time.

The permittee filed the request on January 5, 1987.

15. Sheep Falls Associates

[Project No. 9315-004]

Take notice that Sheep Falls Associates, permittee for the Sheep Falls Project No. 9315, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9315 was issued on December 13, 1985, and would have expired on November 30, 1988. The project would have been located on Henry's Fork River in Fremont County, Idaho, within the Targhee National Forest.

The permittee filed the request on December 30, 1986.

Standard Paragraph

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2110 Filed 2-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-160]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Bishop Pipeline Corp.; Order Denying Rehearing

Issued: January 27, 1987.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Bishop Pipeline Corporation has filed a timely request for rehearing of the order issued in *Bishop Pipeline Corporation*, 37 FERC § 61,029 (October 20, 1986). We will deny rehearing.

Background

Bishop entered into a transportation contract with Tennessee Gas Pipeline Company, a Division of Tenneco Inc. that specified three receipt points. An amendment to the contract, executed on October 7, 1985, referred to a specific well in connection with each of the receipt points. Bishop stated that the amendment was not meant to restrict the receipt of gas for transportation to specific wells and contended that "where both parties to the contract ascribe to it a common interpretation, that interpretation will be controlling because the parties to the contract 'know what they intended.' " We denied Bishop's request and relied on *U.S. Steel*, 34 FERC ¶ 61,199, *reh'g denied*, 35 FERC ¶ 61,261 (1986), in holding that it would be "inappropriate . . . to ignore one provision in the context merely to permit another provision to take effect, or to rewrite a contract to conform it to our presumption of what the parties may have intended."

In its request for rehearing, Bishop contends that we erred in limiting the transportation service to the wells identified in the October 7 amendment. Bishop asserts that: (1) We "misapplied principles of contract construction by failing to consider Bishop's argument that the contract was ambiguous"; (2) we departed from our policy in *Pennzoil Co. v. FERC*, 645 F.2d 360 (5th Cir. 1981), *cert. denied*, 454 U.S. 1142 (1982), which held that, in the absence of probative extrenic evidence to the contrary, the mutual interpretation of the parties to the contract is controlling; and (3) we failed to give any weight to the "undisputed mutual intent of the parties."

Discussion

In interpreting a contract, we must examine the intent of the parties. *Pennzoil*, 645 F.2d at 388. *See also Sunbury Textile Mills, Inc. v. Commissioner*, 585 F.2d 1190, 1195 (3rd

Cir. 1978). Where a contract is ambiguous, extrinsic evidence can be examined to contradict the terms of a contract. *Sunbury*, 585 F.2d at 1196. In an attempt to clarify that the intent of the parties was not to limit the receipt of gas to certain wells, Bishop states that the identification of the wells was a practice *under* the contract, *not* a modification thereof, and was intended simply to permit Tennessee to review the operational and regulatory acceptability of the sources, types and volumes of gas before it was received by Tennessee." (Emphasis in Bishop's request.)

However, the interpretation of a contract advanced by the parties should not be controlling where the statement offered by the parties concerning their intent is not persuasive. If the wells had to be identified in advance so that Tennessee could review the sources, types, and volumes of gas before receipt, it is logical to conclude that other wells could not be added to the transportation service if they had not also been identified in advance in order to review the same factors. Bishop's statement that the parties did not intend to limit the transaction to the identified wells is simply not persuasive in light of the explanation offered by Bishop. Accordingly, we find that the language of the contract should control. In this instance, the contract, on its face, appears to limit the transportation of gas from the wells specified. Inasmuch as no persuasive reason has been offered for a contrary interpretation, Bishop's request for rehearing is denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2099 Filed 2-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER87-216-000 et al.]

Electric Rate and Corporate Regulation Filings; Dayton Power & Light Co. et al.

January 21, 1987.

Take notice that the following filings have been made with the Commission:

1. Dayton Power & Light Co.

[Docket No. ER87-216-000]

Take notice that on January 12, 1987, The Dayton Power and Light Company (DP&L) tendered for filing an executed Agreement (Agreement) between DP&L and the City of Piqua, Ohio (Piqua).

The proposed Agreement modifies the rates and charges associated with the Short Term and Emergency Schedules of the Interconnection Agreement dated May 10, 1972.

DP&L and Piqua have requested the Commission to waive its notice and filing requirements and permit the Short Term modification to become effective January 1, 1987 and the Emergency modification to become effective immediately.

Comment date: February 4, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Central Vermont Public Service Corp.

[Docket No. EL87-10-000]

Take notice that on January 16, 1987, Central Vermont Public Service Corporation ("Central Vermont") tendered for filing a request for (1) a declaratory order disclaiming jurisdiction over a planned corporate reorganization or (2) if such order is not issued, then an order granting any authorization needed to permit the reorganization to go forward.

Central Vermont conducts an electric generation, transmission and distribution business in the state of Vermont. Central Vermont's subsidiary, Connecticut Valley Electric Company, Inc. ("Conn Valley") conducts an electric distribution business in an adjacent service area in the state of New Hampshire. Under the proposed corporate reorganization, Central Vermont would become a direct wholly owned subsidiary of an as yet unnamed parent corporation ("the Parent"). Conn Valley also would become a direct wholly owned subsidiary of the Parent. The Parent would directly own two newly organized businesses, a generation subsidiary which would engage in new generating projects and an energy services subsidiary which would engage in an energy conservation business on a shared savings basis.

Central Vermont states that the corporate reorganization does not involve any of the elements required for Commission jurisdiction under section 203 of the Federal Power Act since there will be no disposition by Central Vermont or Conn Valley of its jurisdiction facilities, no merger or consolidation of jurisdiction facilities with those of another person and no acquisition by Central Vermont or Conn Valley of the securities of another public utility. Central Vermont states that, because any aspect of the transaction involving the issuance of securities by Central Vermont will be authorized by the Vermont Public Service Board, the Commission, under section 204(f), is without jurisdiction to authorize such issuance.

Central Vermont states that the corporate reorganization is consistent with the public interest.

Comment date: February 5, 1987, in accordance with Standard Paragraph E at the end of this document.

3. Northern Indiana Public Service Co.

[Docket No. EC87-8-000]

Take notice that on January 12, 1987, Northern Indiana Public Service Company (Applicant) filed an application for an order of the Federal Energy Regulatory Commission pursuant to section 203 of the Federal Power Act authorizing Applicant to sell and dispose of to the City of Rensselaer, an Indiana municipality, certain electric substation facilities installed to provide electric service to the City of Rensselaer. The sale becomes effective upon approval by the Federal Energy Regulatory Commission.

Comment date: February 4, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Northern States Power Co. (Minnesota); Northern States Power Co. (Wisconsin)

[Docket No. EC87-215-000]

Take notice that on January 12, 1987, Northern States Power (Minnesota) and Northern States Power Company (Wisconsin) ("the NSP Companies") jointly tendered for filing an amendment dated January 9, 1987, of the Settlement Agreement dated May 31, 1985, in Docket No. ER84-690-000. The Amendment of Settlement Agreement: (1) Reduces the common equity return under the NSP Companies' Interchange Agreement from 15% to 12.25%, effective January 1, 1987, and (2) adopts a procedure under which the NSP Companies, as of the first of each year, will revise the common equity return in the Interchange Agreement to the level of the quarterly adjusted generic equity return promulgated by the Commission for effectiveness on November 1 of the preceding year.

The NSP Companies request waiver of notice requirements to allow the filing to become effective as of January 1, 1987. Copies of the filing have been mailed to the wholesale customers of the NSP Companies and the parties to the earlier Settlement Agreement, including the Public Service Commissions of Minnesota, Michigan, North Dakota, South Dakota and Wisconsin.

Comment date: February 4, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Southwestern Electric Power Co.

[Docket No. EC87-115-000]

Take notice that on January 16, 1987, Southwestern Electric Power Company ("SWEPCO") tendered for filing letters from counsel for SWEPCO and for Tex-La Electric Cooperative of Texas, Inc. ("TEX-LA") intended to clarify the parties' agreement with respect to the capacity charge reflected in the Letter Agreement between SWEPCO and TEX-LA, dated July 31, 1986, which is the subject of this proceeding. The letters state that SWEPCO and TEX-LA, recognized the interim nature of the Letter Agreement and selected the interim capacity charge contained therein only as a reasonable proxy for capacity charges which would have been imposed had SWEPCO and TEX-LA been able to complete negotiations and file a formal Power Supply Agreement before service to TEX-LA began. SWEPCO and TEX-LA have agreed that the Power Supply Agreement will provide for reconciliation of amounts paid for 1986 service under the Letter Agreement to the extent such amounts exceed or fall short of amounts which would have been due under the Power Supply Agreement if it had been in effect or filed with the Commission prior to the commencement of service by SWEPCO to TEX-LA on August 4, 1986.

SWEPCO renews its request for an effective date of July 31, 1986, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon TEX-LA and the Public Utility Commission of Texas.

Comment date: February 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2109 Filed 2-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP86-676-000]

Equitable Gas Co. and Equitable Transmission Co.; Informal Technical Conference

January 28, 1987.

Take notice that an informal technical conference will be held at the Office of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on February 4, 1987 at 10:00 a.m. in the above-captioned matter. In Docket No. CP86-676-000, Equitable Gas Company (Equitable) and Equitable Transmission Company (Transmission) filed an application, under Section 7 of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the transfer of Equitable's jurisdictional natural gas facilities to the newly formed Transmission as part of a corporate restructuring. At the conference, various issues associated with the application will be discussed, particularly those issues raised in the interventions filed by the Pennsylvania Office of Consumer Advocate and the Pennsylvania Public Utility Commission.

All parties to this proceeding, the Commission's staff, and interested members of the public are invited to attend. However, mere attendance at the conference will not confer party status. Any person wishing to become a party to this proceeding must file a Motion to Intervene in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

For further information contact Louis J. Sacher, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8861.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2111 Filed 2-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2892-002]

Friant Power Authority; Availability of Environmental Assessment and Finding of No Significant Impact

January 27, 1987.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

AMENDMENTS

Project No.	Project name	State	Water body	Nearest town or county	Applicant
2892-002	Friant Fish Release Power Plant.	CA	San Joaquin River	Friant	Friant Power Authority

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements for these projects will not be prepared. Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2107 Filed 2-2-87; 8:45 am]

BILLING CODE 6717-01-M

North Penn Gas Co.; Tariff Filing

[Docket No. RP85-193-002]

January 28, 1987.

Take notice that on January 21, 1987, North Penn Gas Company (North Penn) tendered for filing certain tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1. North Penn states that these sheets are filed pursuant to Article 20 of the Settlement Agreement approved by the Commission in its December 12, 1986 order. The tariff sheets cover the various services that the Settlement Agreement requires North Penn to offer. The proposed effective date of these tariff sheets is January 12, 1987, which is when North Penn began to provide the new services

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as required by the Settlement Agreement.

North Penn has served copies of this filing on each party to this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 5, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2112 Filed 2-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-33-000]

Northwest Central Pipeline Corp.; Proposed Changes in FERC Gas Tariff

January 28, 1987.

Take notice that on January 23, 1987, Northwest Central Pipeline Corporation (Northwest Central) tendered for filing a First Revised Volume No. 1 and certain revised tariff sheets to Original Volume No. 2 of its FERC Gas Tariff.[1] The proposed effective date of these tariff sheets is February 23, 1987.

Northwest Central states that the filing proposes a change in its currently effective sales and transportation rates which would result in an increase in annual revenues of approximately $4.4 million, based on the test period (the twelve months ended September 30, 1986, adjusted for known changes through June 30, 1987). The Company states that the increased rates are required to reflect an overall rate of return of 14.29 percent, increases in expenses and a decline in sales volumes.

Northwest Central also states that, in addition to a general rate increase, its filing reflects substantial revisions in the structure of its sales and transportation rates, including new demand-commodity sales rates, the inclusion of a contract demand limitation on the Company's service obligations, and related revisions to its rate schedules and general terms and conditions, as well as other changes in its tariff provisions. The Company states that these changes are designed to: (1) Implement an Order No. 436 "open access" mode of operation on its system, (2) revise the Company's rates and tariff provisions to reflect the current, highly competitive nature of the interstate natural gas business, and (3) make necessary conforming and updating revisions in the Company's tariff.

Northwest Central states that its filing was served on each of its customers and affected state commissions pursuant to § 154.16(b) of the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 5, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2113 Filed 2-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-13633-004, et al.]

Pennzoil Co.; Merger

January 23, 1987.

Take notice that on January 15, 1987, Pennzoil Company (Pennzoil), of P.O. Box 2967, Houston, Texas 77252-2967, filed an application pursuant to § 154.92(d) of the Commission's Regulations to continue the sales of natural gas in interstate commerce previously made by Pennzoil Producing Company (PPC) and that PPC's rate schedules be redesignated as those of Pennzoil, all as more fully shown on Exhibit "C", which is on file with the Commission and open to public inspection.

Effective October 24, 1986, Pennzoil Producing Company was merged into Pennzoil Company pursuant to the terms of that certain Certificate of Ownership and Merger dated October 23, 1986 by the Secretary of State of Delaware.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 9, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

EXHIBIT C

PPC rate schedule No.	FERC docket No.	Purchaser	Field/offshore block
42	G-13,633	United Gas Pipe Line Co	Baxterville.
63	G-13,633	United Gas Pipe Line Co	Burnell-N. Pettus.
66	G-13,633	Arkansas Louisiana Gas Co	Colquitt.
67	G-13,633	United Gas Pipe Line Co	Cotton Valley.
70	G-13,633	Trunkline Gas Co	E. Edinburg/San Carlos.

[1] Such new tariff sheets are: Original Sheet Nos. 1 through 276 to First Revised Volume No. 1 and First Revised Sheet No. 2Y, Second Revised Sheet Nos. 1, 2M and 176 Third Revised Sheet Nos. 91 and 219, and Fourth Revised Sheet No. 2A to Original Volume No. 2.

EXHIBIT C—Continued

PPC rate schedule No.	FERC docket No.	Purchaser	Field/offshore block
80	G-13,633	Trunkline Gas Co	Heard Ranch.
81	G-13,633	Val Gas Co	Hidalgo.
82	G-13,633	United Gas Pipe Line Co	Joaquin.
86	G-13,633	United Gas Pipe Line Co	Lisbon.
90	G-13,633	Southern Natural Gas Co	Logansport.
91	G-13,633	Southern Natural Gas Co	Logansport.
92	G-13,633	United Gas Pipe Line Co	Maxie-Pistol Ridge.
93	G-13,633	United Gas Pipe Line Co	E. McFaddin.
94	G-13,633	United Gas Pipe Line Co	E. McFaddin.
194	CI65-488	Primos Gathering System	Monroe.
200	G-13,633	Kerr-McGee Corp	Ruston-Unionville.
202	G-13,633	Texas Eastern Transmission Corp	San Domingo.
206	G-13,633	United Gas Pipe Line Co	Sibley.
209	G-13,633	United Gas Pipe Line Co	Soso.
210	G-13,633	United Gas Pipe Line Co	Sugar Creek.
215	G-13,633	United Gas Pipe Line Co	Lirette.
216	G-13,633	United Gas Pipe Line Co	Bay Baptiste.
218	G-13,633	United Gas Pipe Line Co	Bourg.
222	G-14,370	United Gas Pipe Line Co	Maxie-Pistol Ridge.
223	G-14,124	United Gas Pipe Line Co	Deer Island.
224	G-15,077	Southern Natural Gas Co	Dexter.
225	G-13,788	United Gas Pipe Line Co	Bayou Rambio.
227	G-17,087	Valero Interstate Transmission Co	Sheperd.
228	G-13,633	United Gas Pipe Line Co	Delarge.
229	G-13,633	United Gas Pipe Line Co	Dulac-Lapeyrouse.
230	G-18,193	Texas Gas Transmission Corp	East Lisbon.
232	G-19,209	United Gas Pipe Line Co	Calhoun.
233	G-19,450	Arkansas Louisiana Gas Co	Calhoun.
234	G-13,633	United Gas Pipe Line Co	Gibson.
237	CI60-344	Southern Natural Gas Co	Felice Bayou.
238	CI60-509	United Gas Pipe Line Co	Hynes Ranch.
239	CI60-622	United Gas Pipe Line Co	Hollywood (Houma).
240	CI61-335	United Gas Pipe Line Co	Willow Springs.
241	CI61-1041	United Gas Pipe Line Co	N. Jacksonville/Barkley.
244	CI61-1111	Transcontinental Gas Pipe Line Corp	Eugene Island 128.
245	G-13,633	United Gas Pipe Line Co	Refugio-Fox.
248	CI62-1104	United Gas Pipe Line Co	S. Downsville.
249	CI61-318	ANR Pipe Line Co	Holly Ridge.
250	CI62-639	Natural Gas Pipeline Co. of America	W. Jennings.
251	CI63-714	Texas Eastern Transmission Corp	Piatt.
252	CI64-1192	United Gas Pipe Line Co	Strauch-Wilcox/San Domingo.
253	CI64-1192	United Gas Pipe Line Co	W. Tuleta.
254	CI64-1358	United Gas Pipe Line Co	Eugene Island 53.
358	G-13,633	Arkansas Louisiana Gas Co	Waskom.
259	CI66-106	Natural Gas Pipe Line Co. of America	Virginia.
261	CI67-18	Southern Natural Gas Co	Plum Point.
263	CI67-713	Southern Natural Gas Co	N. King's Ridge.
264	CI67-1763	United Gas Pipe Line Co	Kent Bayou.
265	CI68-78	United Gas Pipe Line Co	Duson.
270	CI69-522	United Gas Pipe Line Co	Pettus.
271	CI69-256	Sea Robin Pipeline Co	Ship Shoal 222.
272	CI70-577	Southern Natural Gas Co	N. King's Ridge.
274	CI70-629	Tennessee Gas Pipeline Co	South Davis.
275	CI70-767	Texas Gas Transmission Corp	Welcome.
276	G-13,633	United Gas Pipe Line Co	Agua Dulce.
280	CI72-425	Arkansas Louisiana Gas Co	Calhoun.
281	G-13,633	United Gas Pipe Line Co	Bethany.
282	G-13,633	United Gas Pipe Line Co	Greenwood-Waskom.
283	G-13,633	United Gas Pipe Line Co	Logansport.
284	G-13,633	United Gas Pipe Line Co	Waskom.
287	CI72-321	Sea Robin Pipeline Co	Ship Shoal 225.
291	G-13,633	United Gas Pipe Line Co	Sligo-Barksdale.
296	CI65-615	United Gas Pipe Line Co	Monroe.
297	CI74-244	United Gas Pipe Line Co	Ship Shoal 186.
299	CI75-232	United Gas Pipe Line Co	South Drew.
300	CI75-217	Texas Eastern Transmission Corp	Kildare.
301	CI75-242	United Gas Pipe Line Co	E. Crescent Farms.
305	G-13,633	United Gas Pipe Line Co	Greta-Tom O'Connor.
306	G-13,633 (CI77-177)	United Gas Pipe Line Co	Carthage.

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EXHIBIT C—Continued

PPC rate schedule No.	FERC docket No.	Purchaser	Field/offshore block
308	CI78-996	United Gas Pipe Line Co	Kent Bayou.
310	CI76-496	United Gas Pipe Line Co	Main Pass 140.
311	CI76-634	United Gas Pipe Line Co	W. Cameron 533.
312	CI76-635	United Gas Pipe Line Co	W. Cameron 532.
313	CI77-288	Sea Robin Pipeline Co	S. Marsh Island 128.
314	CI77-611	Sea Robin Pipeline Co	S. Marsh Island 127
315	CI77-612	Sea Robin Pipeline Co	S. Marsh Island 125
316	CI79-564	United Gas Pipe Line Co	High Island 475.
317	CI80-45	ANR Pipeline Company	High Island 273.
318	CI80-175	United Gas Pipe Line Co	High Island 273
319	CI80-446	United Gas Pipe Line Co	High Island 325.
332	CI81-460	ANR Pipeline Company	High Island 325.
333	CI82-356	Tennessee Gas Pipeline Co	South Davis.
334	CI83-32	ANR Pipeline Company	High Island 351/368.
335	CI84-487	Transcontinental Gas Pipe Line Corp	Vermilion 103.
336	CI85-379	Natural Gas Pipe Line Co. of America	Escobas.
337 [1]	CI77-702 *et al.* (CI78-767)	Sea Robin Pipeline Co	8 Offshore Blocks.
338 [1]	CI77-702 *et al.* (CI78-767, CI78-499, & CI78-501).	United Gas Pipe Line Co	32 Offshore Blocks.
339 [1]	CI77-702 *et al.* (CI78-767)	United Gas Pipe Line Co	E. Cameron 237.
340 [1]	CI77-702 *et al.* (CI78-767)	United Gas Pipe Line Co	W. Cameron 352.
341 [1]	CI77-702 *et al.* (CI78-767)	Southern Natural Gas Co	W. Cameron 352.
342	CI85-295	Texas Gas Transmission Corp	Eugene Island 330/337.
343	CI78-80	Sea Robin Pipeline Co	Eugene Island 330.
344	CI78-81	Sea Robin Pipeline Co	Eugene Island 295.
345	CI78-82	Sea Robin Pipeline Co	E. Cameron 270.
346	CI78-83	United Gas Pipe Line Co	W. Cameron 587.
347	CI78-84	United Gas Pipe Line Co	Main Pass 140.
348	CI78-85	United Gas Pipe Line Co	W. Cameron 532.
349	CI78-87	United Gas Pipe Line Co	W. Cameron 533.
350	CI78-88	Sea Robin Pipeline Co	W. Cameron 533
351	CI78-90	Sea Robin Pipeline Co	W. Cameron 532.
352	CI78-86	United Gas Pipe Line Co	E. Cameron 335.
353	CI78-89	Sea Robin Pipeline Co	E. Cameron 335.
354	CI78-91	Sea Robin Pipeline Co	E. Cameron 334.
355	CI78-92	Sea Robin Pipeline Co	S. Marsh Island 128.
356	CI78-93 (CI84-126)	Southern Natural Gas Co	W. Cameron 586.
357	CI78-93 (CI84-126)	United Gas Pipe Line Co	W. Cameron 586.
358	CI78-93 (CI84-126)	United Gas Pipe Line Co	W. Cameron 586.
359	CI78-93 (CI84-126)	Southern Natural Gas Co	Vermilion 228.[2]
360	CI78-93 (CI84-126)	United Gas Pipe Line Co	Vermilion 228.[2]
361	CI78-94	Sea Robin Pipeline Co	S. Marsh Island 125.
362	CI78-95	Sea Robin Pipeline Co	S. Marsh Island 127.
363	CI78-93 (CI84-126)	United Gas Pipe Line Co	Eugene Island 256.
364	CI78-93 (CI84-126)	Southern Natural Gas Co	Eugene Island 256.
365	CI79-273	United Gas Pipe Line Co	High Island 340.
366	CI79-275	United Gas Pipe Line Co	High Island 327.
367	CI79-276	United Gas Pipe Line Co	High Island 332.
368	CI79-277	United Gas Pipe Line Co	High Island 339.
369	CI79-429	United Gas Pipe Line Co. & Southern Natural Gas Co.	W. Cameron 352.
370	CI79-563	United Gas Pipe Line Co	High Island 279.
371	CI79-567	United Gas Pipe Line Co	High Island 474.
372	CI79-568	United Gas Pipe Line Co	High Island 475.
373	CI79-569	United Gas Pipe Line Co	High Island 489.
374	CI79-565	United Gas Pipe Line Co	High Island 356.
375	CI79-566	United Gas Pipe Line Co	High Island 273.
376	CI79-570	United Gas Pipe Line Co	High Island 355.
377	CI79-583	United Gas Pipe Line Co	Main Pass 72/74.
378	CI79-585	United Gas Pipe Line Co	Main Pass 73.
379	CI79-589	United Gas Pipe Line Co	Main Pass 72.
380	CI79-590	United Gas Pipe Line Co	South Pass 78.
381	CI80-50	ANR Pipeline Co	High Island 273.
382	CI80-441	United Gas Pipe Line Co	High Island 325.
383	CI80-444	United Gas Pipe Line Co	High Island 555.
384	CI81-461	ANR Pipeline Co	High Island 325.
385	CI82-131	United Gas Pipe Line Co	South Pass 57.
386	CI82-147	United Gas Pipe Line Co	E. Cameron 237.
387	CI82-231	United Gas Pipe Line Co	High Island 499.
388	CI82-226	United Gas Pipe Line Co	High Island 570.

EXHIBIT C—Continued

PPC rate schedule No.	FERC docket No.	Purchaser	Field/offshore block
389	CI82-227	United Gas Pipe Line Co	High Island 545, 546, 547 and 548.
390	CI82-260	United Gas Pipe Line Co	High Island 563/564.
391	CI83-320	ANR Pipeline Co	High Island 351/368.
392	CI84-454	United Gas Pipe Line Co	High Island 356.
393	CI85-247	Texas Gas Transmission Corp	Eugene Island 337
394 [1]	CI77-702 *et al.* (CI78-96)	Sea Robin Pipeline Co	6 Offshore Blocks.
395 [1]	CI77-702 *et al.* (CI78-498 and CI78-500).	United Gas Pipe Line Co	High Island 323/520.
396	CI73-455-001	Sea Robin Pipeline Co	E. Cameron 270 and Eugene Island 330.
397	CI75-436	United Gas Pipe Line Co	W. Cameron 387.
398	CI77-762-001	Sea Robin Pipeline Co	Vermilion 228.[2]
399	CI78-782-002 and CI78-785-002.	United Gas Pipe Line Co	High Island 520.
400	CI78-786-001 and CI87-787-002.	United Gas Pipe Line Co	High Island 323.
401	CI79-457-001 and CI79-458-001.	United Gas Pipe Line Co	High Island 339/340.
402	CI82-420-002	United Gas Pipe Line Co	High Island 570.
403	CI84-407-001	Tennessee Gas Pipeline Co	South Pass 6.
404	CI85-443	Tennessee Gas Pipeline Co	Patterson.
405	CI77-373-001	Sea Robin Pipeline Co	W. Cameron 586.

[1] Number tentatively assigned by the Commission.
[2] Abandonment applications are pending at the Commission in the following dockets: Rate Schedules 359 and 360—Docket No. CI86-691, Rate Schedule 398—Docket No. CI86-692.

[FR Doc. 87-2108 Filed 2-2-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER87-223-000]

Southwestern Electric Power Co.; Filing

January 20, 1987.

Take notice that on January 15, 1987, Southwestern Electiric Power Compnay ("SWEPCO") tendered for filing a Power Supply Agreement, dated January 9, 1987, between SWEPCO and Rayburn Country Electric Cooperative, Inc. ("Rayburn Country"). The Power Supply Agreement provides for SWEPCO to sell to Rayburn Country all the power and energy required by Rayburn Country (in excess of the power and energy received by Rayburn Country from the Southwestern Power Administration) to meet the load of Rayburn Country's members served from the points of delivery listed in the Agreement.

SWEPCO requests an effective date of January 16, 1987, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Rayburn Country and the Public Utilities Commission of Texas.

Any person desiring to be heard or to protest this application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with section 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 2, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-2103 Filed 2-2-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP87-32-000]

Transcontinental Gas Pipe Line Corp.; Request for Waiver of Tariff Provisions

January 28, 1987.

Take notice that on January 21, 1987, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a petition for authorization for limited waiver of certain provisions of its FERC Gas Tariff.

Transco requests authorization for a limited waiver of certain provisions of its FERC Gas Tariff so as to permit Transco to avoid collection of its minimum commodity bill from its full requirement customers during the contract year commencing November 1, 1984 and ending October 31, 1985. Transco states there is good cause to allow waiver of its minimum commodity bill tariff provisions for full requirement customers who had no control over their market loss during contract year 1985.

Copies of the filing have been served on Transco's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 5, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-2105 Filed 2-2-87; 8:45 am]
BILLING CODE 6717-01-M

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[Docket No. ID-2259-000]

Wayne D. Romberg; Filing

January 21, 1987.

Take notice that on January 12, 1987, Wayne D. Romberg, pursuant to section 305(b) of the Federal Power Act, submitted for filing a supplemental application for authority to hold the following position:

Vice President, The Connecticut Light and Power Company, Public Utility
Vice President, Western Massachusetts Electric Company, Public Utility
Vice President, Connecticut Yankee Atomic Power Company, Public Utility

Any person desiring to be heard or to protest said application should file a motion to intervene or protest with Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before February 5, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of the application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2104 Filed 2-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Process Gas Consumers Group, Order Denying Request for Clarification

Issued: January 27, 1987.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On December 15, 1986, Process Gas Consumers Group filed a pleading styled as a request for clarification of Order No. 436.[1] Process Gas requests clarification that substitute receipt points and suppliers may be designated in the narrow and limited situation where an end user receiving transportation under a long-term Order No. 319 agreement cannot arrange delivery of its full, contracted-for gas volumes at a pipeline receipt point designated in the agreement. The transitional regulations adopted in Order No. 436, as clarified in a number of subsequent orders, clearly preclude use of transitional authority to transport gas from new receipt points. The Process Gas request is tantamount to a request to amend Order No. 436 rather than to clarify it. Accordingly, Process Gas' request for clarification is denied.[2]

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2100 Filed 2-2-87; 8:45 am]

BILLING CODE 6717-01-M

[1] FERC Statues and Regulations, Regulation Preambles 1982-1985 ¶ 30,665; 50 F.R. 42408 (October 18, 1985).

[2] *See* Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Columbia Gas Transmission Corp., et al.), 37 FERC ¶ 61,090, issued November 5, 1986 (dismissing eleven requests for clarification of Order No. 436).

Western Area Power Administration

Public Information and Comment Forum; Proposed Salt Lake City Area Integrated Projects Power Rate

AGENCY: Department of Energy, Western Area Power Administration.

ACTION: Public information and comment forum—Proposed Salt Lake City are Integrated projects power rate.

SUMMARY: The Western Area Power Administration (Western) held a public information forum on November 20, 1986, and a public comment forum on December 18, 1986, as announced in the **Federal Register** on November 5, 1986 (51 FR 40250), to discuss the proposed power rate for the Salt Lake City Area Integrated Projects. Due to adverse weather conditions at the Salt Lake City airport, many interested parties who would have arrived by air were unable to attend the comment forum.

In addition, Western provided new information to interested parties in a December 5, 1986, letter that some customers have indicated a desire to discuss further. This letter made three points. First, Western has proposed a new power rate of 10.04 mills per kilowatt hour (kWh), a reduction of 0.21 mills per kWh from the original proposal. Second, the letter shows the new language for the power factor adjustment in the rate schedule and that proposed for the power sales contracts. Third, Western proposes to reduce the financial benefits of integration to Collbran and Rio Grande Projects customers by 25 percent from the time the Salt Lake City Area Integrated Project power rate takes effect until the post 1989 allocations become effective. This action will serve to make a reasonable transition for these customers into the 50 percent reduction in financial benefits they will receive in the post-1989 contract period. A copy of this letter may be obtained by writing the Salt Lake City Area Office at the address given below.

Therefore, Western will hold a combined public information and comment forum on February 17, 1987, at the Salt Lake City Marriott, 75 South West Temple, Salt Lake City, Utah, at 10:30 a.m. Because of the additional meeting date, the consultation and comment period is extended to end on March 4, 1987, 15 days after the public information and comment forum.

FOR FURTHER INFORMATION CONTRACT: For further information on this action, contact Mr. Lloyd Griener, Area Manager, or Ms. Marlene Moody, Deputy Area Manager, at: Salt Lake City Area Office, Western Area Power Administration, 438 East Second South, P.O. Box 11606, Salt Lake City, UT 84147, Telephone: (801) 524-5493.

Issued at Washington, DC, January 23, 1987.

Ronald K. Greenhalgh,

Assistant Administrator for Washington Liaison.

[FR Doc. 87-2043 Filed 2-2-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[A-6-FRL-3149.7]

Final Agency Action of a PSD Permit for Texas Industries, Inc.

Notice is hereby given that on February 19, 1986, pursuant to 40 CFR 52.21, Region 6 of the Environmental Protection Agency (EPA) issued a Prevention of Significant Deterioration (PSD) permit, number PSD-TX-632, to Texas Industries, Incorporated for approval to construct two coal-fired steam generating units at the existing cement plant located at 245 Ward Road, Midlothian, Ellis County, Texas. On March 6, 1986, Mrs. Judith Lochbrunner petitioned the Administrator for review of the PSD permit.

Because a petition for review was filed with the Administrator, the issuance of the permit was no longer a final agency action, and the PSD permit for Texas Industries, Incorporated was not effective. [*See* 40 CFR 124.15(b)(2)] The petition for review was denied by the Administrator on September 24, 1986. Pursuant to 40 CFR 124.19(f)(1), a final permit decision on PSD-TX-632 was issued by Region 6 on November 14, 1986.

Under section 307(b)(1) of the Clean Air Act, judicial review of PSD-TX-632 is available *only* by the filing of a petition for review in the United States Court of Appeals for the Fifth Circuit within 60 days of today. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Copies of all of the materials concerning PSD-TX-632 are available for public inspection upon request at the following locations:

Environmental Protection Agency, Region 6, Air, Pesticides and Toxics Division, Air Enforcement Branch, 1201 Elm Street, Dallas Texas 75270
Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723

Dated January 15, 1987.

Myron O. Knudson,

Acting Regional Administrator, Region 6.

[FR Doc. 87-2076 Filed 2-2-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-41023A]

Testing Consent Agreement Development for Chemical Substances Added to Toxic Substances Control Act Section 4(e) Priority List; Solicitation for Interested Parties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has issued an Interim Final Rule that amends EPA's regulations for the development and implementation of testing requirements under section 4 of the Toxic Substances Control Act (TSCA). These amendments provide for testing consent agreements between EPA and affected manufacturers, processors, and interested parties for the development of testing programs. In this notice, EPA is soliciting interest in public participation in the consent agreement process for two chemical substances. Public meetings are announced to initiate negotiations for these chemicals.

DATE: Submit written notice of interest to be designated an interested party on or before February 13, 1987.

ADDRESS: Submit written notice of interest in being designated an "interested party" in triplicate identified by the document control number (OPTS-41023A) to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M. St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460; (202) 554-1404.

Persons interested in attending the public meeting should notify EPA by telephone on or before February 13, 1987.

SUPPLEMENTARY INFORMATION: EPA has issued amendments to the procedural regulations in 40 CFR Part 790, which govern the development and implementation of testing requirements under section 4 of TSCA. These amendments established procedures for using enforceable consent agreements to develop testing requirements under section 4 of the Act. This notice serves two purposes under those procedures. First, it requests "interested parties" who wish to participate in testing negotiations for two chemicals recommended to EPA by the Interagency Testing Committee (ITC) to identify themselves to EPA. Second, it announces public meetings to initiate testing negotiations for these chemicals.

I. Identification of Interested Parties

Under 40 CFR 790.22, the testing negotiation procedures are initiated by the publication of a **Federal Register** notice which invites persons interested in participating in or monitoring negotiations for the development of a consent agreement to notify the Agency in writing. Those individuals and groups who respond to EPA's notice by the deadline established in the notice will have the status of "interested parties" and will be afforded opportunities to participate in the negotiation process. These "interested parties" will not incur any obligations by being designated "interested parties." The procedures for these negotiations are described in 40 CFR 790.22. Two chemical substances now are being considered for testing consent agreements. These substances are isopropanol (CAS No. 67-63-0), and methyl *tert*-butyl ether (CAS No. 1634-04-4). Individuals and groups desiring to have the status of "interested parties" in the development of testing consent agreements for any of these chemicals should submit a written notice of this fact to the Agency at the address given above on or before February 13, 1987.

II. Public Meetings

Public meetings may be held to initiate negotiations for these two chemicals. Persons interested in attending these meetings should notify the EPA TSCA Assistance Office by telephone at the telephone number listed above on or before February 13, 1987.

Authority: 15 U.S.C. 2603.
Dated: January 27, 1987.

J. Merenda,

Director, Existing Chemical Assessment Division.

[FR Doc. 87-2082 Filed 2-2-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-42086; FRL-3150-6]

Office of Solid Waste Chemicals; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A meeting will be held on February 11, 1987 to inform the public of the upcoming proposed test rule for 73 chemicals that are of concern to EPA's Office of Solid Waste. The test rule will propose health effects and/or chemical fate testing of these constituents of hazardous waste.

DATE: A meeting will be held February 11, 1987 at EPA Headquarters, Rm NE-103, 401 M St., SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Katherine M. Hart, Existing Chemical Assessment Division (TS-778), Office of Toxic Substances, Environmental Protection Agency, Rm. NE-100, 401 M St., SW., Washington, DC 20460, Phone: (202) 475-8157.

SUPPLEMENTARY INFORMATION: The Agency will be issuing a proposed rule under section 4 of the Toxic Substances Control Act (TSCA) requiring health effects and/or chemical fate testing of 73 chemical substances of concern to the Office of Solid Waste. The Agency will hold a meeting to brief the public on this upcoming proposal. The meeting will be held at EPA Headquarters on February 11, 1987.

Authority: 15 U.S.C. 2603.
Dated: January 21, 1987.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division.

[FR Doc. 87-2081 Filed 2-2-87; 8:45 am]

BILLING CODE 6560-50-M

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FEDERAL EMERGENCY MANAGEMENT AGENCY

Privacy Act of 1974; Establishment of New Government-Wide System of Records

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Establishment of new government-wide system of records and deletion of a FEMA system of records.

SUMMARY: The purposes of this document are to announce adoption of a new government-wide system of records entitled, "FEMA/GOVT–1, National Defense Executive Reserve System," and to delete an internal FEMA system of records entitled, "FEMA/NPP–1, National Defense Executive Reserve System."

DATE: Effective date is February 3, 1987.

FOR FURTHER INFORMATION CONTACT: Linda M. Keener, FOIA/Privacy Specialist, at (202) 646–3840.

SUPPLEMENTARY INFORMATION: The proposed government-wide system notice was published in the **Federal Register** on December 5, 1986, 51 FR 43972. A new system report was filed with the Speaker of the House of Representatives, the President of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget. During the comment period, a verbal comment was expressed by an employee of the Bureau of Mines regarding the retention and disposal section of the proposed system since it was unclear if the records retention and disposition had been approved by the National Archives and Records Administration. The National Archives and Records Administration is currently reviewing a request for these records to be included in a General Records Schedule. Since the proposed retention and disposition schedule is pending approval of the Archivist, the retention and disposal section of the system notice is being deleted in its entirety and is being replaced by the words, "Pending approval of the Archivist." For the convenience of the reader, the system notice is being republished in its entirety.

The FEMA internal system of records entitled, "FEMA/NPP–1, National Defense Executive Reserve System," which was published in the **Federal Register** on November 26, 1982, 47 FR 53493, and amended on March 11, 1985, 50 FR 9714, is being deleted concurrent with the effective date of the new government-wide system of records notice.

Dated: January 28, 1987.

George Watson,

Acting General Counsel, Federal Emergency Management Agency.

FEMA/GOVT–1

SYSTEM NAME:

National Defense Executive Reserve System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records may be maintained in the personnel office, emergency preparedness unit, or other designated offices located at the local installation of the Department or Agency which currently employs the individual.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for and incumbents of NDER assignments.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains FEMA Form 85–3, National Defense Executive Reserve Qualifications Statement, which includes such items as name, date of birth, social security number, and other personnel and administrative records, skills inventory, training data, and other related records necessary to coordinate and administer the NDER program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Defense Production Act of 1950, E.O. 11179 dated September 22, 1964, as amended by E.O. 12148 dated July 20, 1979.

PURPOSE(S):

For the purpose of establishing units of the NDER in Federal departments and agencies in accordance with E.O. 11179, as amended by E.O. 12148. Individuals voluntarily apply for assignments but would not be considered government employees to perform emergency duties unless the President of the United States declared a mobilization. Assignments are made in 3 year increments and may either be redesignated or terminated. Individuals may at any time request voluntary termination.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(a) Names and addresses may be made available to the Association of the National Defense Executive Reserve and the National Defense Executive Reserve Conference Association to facilitate training and relevant information dissemination efforts for reservists in the NDER program; (b) to the appropriate agency whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or issued pursuant thereto; to a Federal, State, or local agency maintaining civil, criminal, regulatory, licensing or other enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit; (c) to the National Archives and Records Administration during records management inspections conducted under authority of 44 USC 2904 and 2906; (d) to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the request of the individual about whom the record is maintained; (e) to another Federal agency, to a court, or a party in litigation before a court or in administrative proceeding being conducted by a Federal agency, either when the government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena; and (f) to disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM:

STORAGE:

Records may be stored in file folders, file cards, on microfiche, and/or automated record systems.

RETRIEVABILITY:

By name, personal data, skills or agency.

SAFEGUARDS:

Records are stored in locked file cabinets or locked rooms. Automated records are protected by restricted access procedures and audit trails. Access to records is strictly limited to those personnel whose official duties require access and who are properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Pending approval of the Archivist.

System manager(s) and address:

Associate Director, National Preparedness Programs Directorate, Federal Emergency Management Agency, Washington, DC 20472, will maintain a computerized record of all applications and assignments of NDER reservists for the Federal government as well as the personnel files for all individuals assigned to the Federal Emergency Management Agency. The Departments or Agencies will maintain their own personnel records on those individuals assigned to their respective Department or Agency.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about themselves should submit their inquiries to: (a) NDER applicants/assignees to FEMA Headquarters—Federal Emergency Management Agency, Associate Director, National Preparedness Programs Directorate, Washington, DC 20472; (b) NDER applicants/assignees to a FEMA Regional Office—Federal Emergency Management Agency, appropriate Regional Director as identified in Appendix AA to FEMA systems of records notices; (c) NDER applicants/assignees to Federal departments and/or agencies other than FEMA—contact the agency personnel, emergency preparedness unit, or Privacy Act Officer to determine location of records within the department/agency. Individuals should include their full name, date of birth, social security number, current address, and type of assignment/agency they applied with to be an NDER reservist.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above. The letter should state clearly and concisely what information is being contested the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are promulgated in 44 CFR Part 6. Individuals applying to or assigned to Federal agencies other than FEMA should consult the appropriate department's/agency's Privacy Act Regulations which can be found in that department's/agency's Code of Federal Regulations or **Federal Register** notice.

RECORD SOURCE CATEGORIES:

The individuals to whom the record pertains. Prior to being designated as an NDER reservist, the applicant must successfully complete a background investigation conducted by the Office of Personnel Management which may include reference checks of prior employers, educational institutions, police departments, neighborhoods, and present and past friends and acquaintances.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR. Doc. 87–2040 Filed 2–2–87; 8:45 am]

BILLING CODE 6718–01–M

Training and Fire Programs Directorate; Board of Visitors for the Emergency Management Institute; Open Meeting (Correction)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name: Board of Visitors (BOV) for the Emergency Management Institute (EMI)

Dates of meeting: February 12–13, 1987

Place: Federal Emergency Management Agency, National Emergency Training Center, Emergency Management Institute, Conference Room, Building G, Emmitsburg, MD 21727

Time: February 12—8:30 a.m. to 5:00 p.m. February 13—8:30 a.m. to agenda completion

Proposed agenda: New Business; Oath of Office for New Members; Program Orientation; Review of Course Curriculum

The meeting will be open to the public with approximately ten seats available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, Training and Fire Programs Directorate, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727 (telephone number, 301–447–1251) on or before January 25, 1987.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Associate Director's Office, Training and Fire Programs Directorate, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: January 9, 1987.

James P. McNeill,

Associate Director, Training and Fire Programs.

[FR Doc. 87–2038 Filed 2–2–87; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–785–DR]

Major Disaster and Related Determinations American Samoa

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Territory of American Samoa, (FEMA–785–DR), dated January 24, 1987, and related determinations.

DATE: January 24, 1987.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3616.

Notice: Notice is hereby given that, in a letter of January 24, 1987, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the Territory of America Samoa resulting from Hurricane Tusi on January 17, 1987, is of sufficient severity and magnitude to warrant a major-disaster declaration under Public Law 93–288. I therefore declare that such a major disaster exists in the Territory of American Samoa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ms. Joan Hodgins of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Territory of American Samoa to have been affected adversely by this declared major disaster and are designated eligible as follows:

The Manua Islands for Individual Assistance and Public Assistance.

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(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Julius W. Becton, Jr.,

Director.

[FR Doc. 87-2039 Filed 2-2-87; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

Bank of New Hampshire Corp., et al; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 23, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of New Hampshire Corporation*, Manchester, New Hampshire; to acquire 100 percent of the voting shares of Bank of New Hampshire-Portsmouth, Portsmouth, New Hampshire, a *de novo* bank.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Peotone Bancorp, Inc.*, Peotone, Illinois; to acquire 10.83 percent of the voting shares of DuPage County Bancorp, Inc., Glendale Heights, Illinois. M.G., Bancorporation, Inc., Chicago, Illinois, and thereby indirectly acquire Mount Greenwood Bank, Chicago, Illinois, Worth Bancorp, Inc., Worth, Illinois, and thereby indirectly acquire Worth Bank and Trust, Worth, Illinois, and Illini Bancorp, Inc., Danville, Illinois, and thereby indirectly acquire The First National of Danville, Danville, Illinois.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Centre Bancshares, Inc.*, Camdenton, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank Centre, Osage Beach, Missouri, *a de novo* bank. Comments on this application must be received by February 20, 1987.

2. *U.S.B. Corporation*, Washington, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of United Southwest Bank, Washington, Indiana. United Southwest Bank engages in the sale of mortgage, casualty, personal liability, and bonding insurance.

Board of Governors of the Federal Reserve System, January 28, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2069 Filed 2-2-87; 8:45 am]

BILLING CODE 6210-01-M

Damariscotta Bankshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 17, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Damariscotta Bankshares, Inc.*, Damariscotta, Maine; to become a bank holding company by acquiring 100 percent of the voting shares of Damariscotta Bank and Trust Company, Damariscotta, Maine.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation*, Columbus, Ohio; to merge with Charter 17 Bancorp, Inc., Richmond, Indiana, and thereby indirectly acquire First National Bank of Richmond, Richmond, Indiana, and Security National Bank, New Castle, Indiana. Applicant has also applied to acquire 11.9 percent of PTC Financial Corp., Peru, Indiana, and thereby indirectly acquire The Peru Trust Company, Peru, Indiana. Comments on this application must be received by February 13, 1987.

2. *CG Bancshares, Inc.*, Irvine, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Guaranty Bank, Irvine, Kentucky. Comments on this application must be received by February 20, 1987.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Community Group, Inc.*, Jasper, Tennessee; to acquire 100 percent of the voting shares of Farmers Bank of Lawrence County, Lawrenceburg, Tennessee. Comments on this application must be received by February 20, 1987.

2. *First Bancorp, Inc.*, Oneida, Tennessee; to become a bank holding company by acquiring 80 percent of the voting shares of The First National Bank of Oneida, Oneida, Tennessee.

D. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *The Citizens State Corporation*, Williamsport, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens State Bank, Williamsport, Indiana.

2. *First Wisconsin Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Du Page Bancshares, Inc., Glen Ellyn, Illinois, and thereby indirectly acquire Du Page Bank & Trust Company, Glen Ellyn, Illinois.

3. *First Wisconsin Corporation*, Milwaukee, Wisconsin; to acquire 100

percent of the voting shares of Naper Financial Corporation, Naperville, Illinois, and thereby indirectly acquire Naper Bank Bolingbrook, Bolingbrook, Illinois, and Naper Bank, National Association, Naperville, Illinois.

E. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texstar Financial Corporation, Inc.*, Azle, Texas; to become a bank holding company by acquiring 99.93 percent of the voting shares of First National Bank of Azle, Azle, Texas.

2. *TransTexas Bancshares, Inc.*, Beaumont, Texas; to acquire 100 percent of the voting shares of Kirbyville Bancshares, Inc., Beaumont, Texas, and thereby indirectly acquire Kirbyville State Bank, Beaumont, Texas; Newton Bancshares, Inc., Beaumont, Texas, and thereby indirectly acquire First National Bank of Newton, Newton, Texas, and First National Bank of Woodville, Woodville, Texas. Comments on this application must be received by February 23, 1987.

F. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *U.S. Bancorp*, Portland, Oregon; to acquire 100 percent of the voting shares of Valley National Corporation, Forest Grove, Oregon, and thereby indirectly acquire Valley National Bank of Oregon, Forest Grove, Oregon.

Board of Governors of the Federal Reserve System, January 28, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2070 Filed 2-2-87 8:45 am]

BILLING CODE 6210-01-M

Granite State Bankshares, Inc., et al.; Notice of Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 20, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Granite State Bankshares, Inc.*, Keene, New Hampshire; to engage *de novo* through its subsidiary, GSBI Mortgage, Inc., Keene, New Hampshire, in mortgage banking activities pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 28, 1987.

James McAfee,

Associated Secretary of the Board.

[FR Doc. 87-2071 Filed 2-2-87; 8:45 am]

BILLING CODE 6210-01-M

The Royal Bank of Canada, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 17, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Royal Bank of Canada*, Montreal, Canada; to engage *de novo* through its subsidiary, Capel Court Pacific, Inc., Los Angeles, California, in providing portfolio investment advice and in furnishing general economic information and advice, and general economic statistical forecasting services and industry studies permitted under § 225.25(b)(4)(iii) and (iv) of the Board's Regulation Y; and also to serve as an investment advisor to a registered investment company, including sponsoring, organizing and managing a closed-end investment company, as permitted under § 225.25(b)(4)(ii) of the Board's Regulation Y.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First Pennsylvania Corporation*, Philadelphia, Pennsylvania; to engage *de novo* through its subsidiary, Centre Square Investment Group, Inc., Philadelphia, Pennsylvania, in investment advisory activities pursuant to § 225.25(b)(4) of the Board's Regulation Y.

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C. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Equimark Corporation,* Pittsburgh, Pennsylvania; to engage *de novo* through its subsidiary, Equimanagement, Inc., Pittsburgh, Pennsylvania, in collecting overdue accounts receivables, both retail and commercial, for its clients pursuant to § 225.25(b)(23) of the Board's Regulation Y.

2. *Huntington Bancshares, Incorporated,* Columbus, Ohio; to engage *de novo* through its subsidiary, The Huntington Company, Columbus, Ohio, in underwriting and dealing in government obligations or money market instruments pursuant to § 225.25(b)(16) of the Board's Regulation Y; and providing investment or financial advice solely in connection with underwriting and dealing in government obligations pursuant to § 225.25(b)(4) of the Board's Regulation Y. Comments on this application must be received by February 23, 1987.

D. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *SunTrust Banks, Inc.,* Atlanta, Georgia; to engage *de novo* through its subsidiary, SunTrust Securities, Inc., Atlanta, Georgia, in providing financial advisory services to issuers of municipal securities and to assist in the structuring of new issues of such securities, pursuant to § 225.25(b)(4) of the Board's Regulation Y.

E. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Hayesville Bancshares, Inc.,* Hayesville, Iowa; to engage directly in providing insurance agent or brokerage services for general insurance in a community that has a population not exceeding 5,000 and providing life insurance accident and health insurance property and casualty insurance pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 28, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2072 Filed 2-2-87; 8:45 am]

BILLING CODE 6210-01-M

Trustcorp, Inc., et al., Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 24, 1987.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Trustcorp, Inc.,* Toledo, Ohio; to acquire William Fall, Inc., Perrysburg, Ohio, and thereby engage in appraisal services pursuant to § 225.25(b)(13) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 28, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2073 Filed 2-2-87; 8:45 am]

BILLING CODE 6210-01-M

The Citizens and Southern Corp. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The Companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulaton Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, indentifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 17, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *The Citizens and Southern Corporation,* and Citizens and Southern Georgia Corporation, both of Atlanta, Georgia; to merge with People Equity Shares, Inc., Carrollton, Georgia, and thereby indirectly acquire The Peoples Bank, Carrollton, Georgia.

In connection with this application, Applicants also propose to acquire Peoples Equity Leasing Company, Inc., Carrollton, Georgia, and thereby engage in leasing of all types of tangible personal property, including, but not limited to, automobiles, heavy equipment and phone systems, pursuant to § 225.25(b)(5) of the Board's Regulation Y; and Peoples Equity Mortgage Co., Carrollton, Georgia, and thereby engage in real estate mortgage lending activities, including origination, sales and servicing, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Pacific Western Bancshares,* San Jose, California; to acquire 100 percent of the voting shares of County Bank and Trust, Santa Cruz, California.

In connection with this application, Applicant also proposes to acquire Bancorp Capital Group, Inc., Irvine, California, and thereby engage in making and servicing loans, offering investment and financial advice, and leasing personal or real property pursuant to § 225.25(b)(1), (4), and (5) of the Board's Regulation Y. Applicant also proposes to acquire Bancorp Management Services, Inc., Santa Cruz, California, and thereby engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

2. *Valley National Corporation,* Phoenix, Arizona; to acquire 100 percent of the voting shares of Valley Utah Bancorporation, Salt Lake City, Utah, and thereby indirectly acquire Valley Bank and Trust Company, Salt Lake City, Utah, Silver King State Bank, Salt Lake City, Utah, and Valley Central Bank, Richfield, Utah.

In connection with this application, Applicant also proposes to acquire Valley Mortgage Corporation, Salt Lake City, Utah, and thereby engage in making and servicing loans pursuant to § 225.25(b)(1); Valley Leasing Company, Salt Lake City, Utah, and thereby engage in leasing personal or real property, pursuant to § 225.25(b)(7); and Valley Utah Life Insurance Company, Inc., Salt Lake City, Utah, and thereby engage in insurance sales pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 28, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2068 Filed 2-2-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Mental Health Advisory Board Meeting

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the meeting of the Alcohol, Drug Abuse, and Mental Health Advisory Board. This committee meeting will be open for discussion of issues in the areas of finance, research, treatment and prevention vis-a-vis the legislative mandate. The Administrator will provide an update on the President's Drug Initiative with special emphasis on the impact of recent legislation in the services and treatment area. Notice of this meeting is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Date and Time: February 25-26.

Place: Parklawn Building, 5600 Fishers Lane, Conference Room E, Rockville, Maryland 20857.

Statue of Meeting: Open.

Contact: Barbara Wagner, Room 12C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4640.

Purpose: The Board assesses the national needs for alcoholism, alcohol abuse, drug abuse, and mental health treatment and prevention services and the extent to which those needs are being met by State, local, and private programs, and programs receiving funds under Title V and Parts B and C of Title XIX of the Public Health Service Act. The Board provides advice and recommendations to the Secretary and to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration respecting these activities to assist in guiding national strategies aimed at the amelioration of alcohol, drug abuse, and mental health problems.

* * * * *

Substantive information, summaries of meetings, and rosters of committee members may be obtained from the contact person listed above.

Dated: January 27, 1987.

Brenda L. Williamson,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 87-2022 Filed 2-2-87; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 86F-0459]

Ciba-Geigy Corp.; Filing of Food Additive Petition; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the document that announced the filing of a food additive petition by Ciba-Geigy Corp. This document corrects the docket number.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In FR Doc. 86-28720 appearing on page 45955 in the issue of Tuesday, December 23, 1986, in the first column, the docket number is corrected to read as set forth in the heading of this document.

Dated: January 20, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-2025 Filed 2-2-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86C-0495]

The Proctor and Gamble Co.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Proctor and Gamble Co. has filed a petition proposing that the color additive regulations be amended to provide for the safe use of the color additive mica ($K_2Al_4(Al_2Si_6O_{20})(OH)_4$ or, alternatively, $H_2KAl_3(SiO_4)_3$) for use in dentifrices that are drugs as well as cosmetics. The petitioner also requests a change in the specification for fitness to permit, but not require, a larger average particle size distribution.

FOR FURTHER INFORMATION CONTACT: JoAnn Ziyad, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1), 74 Stat. 402-403 (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 7C0207) has been filed by the Proctor and Gamble Co., 11511 Reed Hartman Highway, Cincinnati, OH

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45241, proposing that § 73.1496 *Mica* (21 CFR 73.1496) be amended to provide for the safe use of mica ($K_2Al_4(Al_2Si_6O_{20})(OH)_4$ or, alternatively, $H_2KAl_3(SiO_4)_3$) in dentifrices that are drugs as well as cosmetics. The petitioner also proposes a change in the fitness specification for mica to permit, but not require, a larger average particle size distribution.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 20, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-2021 Filed 2-2-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86F-0515]

Abbott Laboratories; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Abbott Laboratories has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 4-(diiodomethylsulfonyl) toluene for use as a perservative in can end and side seam cements contacting food.

FOR FURTHER INFORMATION CONTACT: Mary J. Stephens, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6B3961) has been filed by Abbott Laboratories, Abbott Park, IL 60064, proposing that § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) be amended to provide for the safe use of 4-(diiodomethylsulfonyl) toluene for use as a preservative in can end and side seam cements contacting food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 20, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-2028 Filed 2-2-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86F-0516]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of the reaction products of *N*-phenylbenzenamine with 2,4,4-trimethylpentene as antioxidants in lubricants with incidental food contact.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5))), 72 Stat. 1786 (21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 7B3978) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570) be amended to provide for the safe use of the reaction products of *N*-phenylbenzenamine with 2,4,4-trimethylpentene as antioxidants in lubricants with incidental food contact.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 20, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-2031 Filed 2-2-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86F-0489]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of poly(acrylic acid-*co*-hypophosphite), sodium salt (a 4:1 to 16:1 monomer ratio by weight) as a boiler water additive.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7A3975) has been filed by the Ciba-Geigy Corp., Three Skyline Drive, Hawthorne, NY 10532, proposing that § 173.310 *Boiler Water Additives* (21 CFR 173.310) be amended to provide for the safe use of poly(acrylic acid-*co*-hypophosphite), sodium salt (a 4:1 to 16:1 monomer ratio by weight) as a boiler water additive.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's findings of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 20, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-2029 Filed 2-2-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86F-0494]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2-(2H-benzotriazol-2-yl)-4,6-bis(1-methyl-1-phenylethyl)phenol as a light stabilizer for polycarbonate resins and polyethylene phthalate polymers.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 7B3976) has been filed by the Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers* (21 CFR 178.2010) be amended to provide for the safe use of 2-(2H-benzotriazol-2-yl)-4,6-bis(1-methyl-1-phenylethyl)phenol as a light stabilizer for polycarbonate resins and polyethylene phthalate polymers complying with 21 CFR 177.1580 and 177.1630, respectively.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 20, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-2030 Filed 2-2-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86F-0508]

Rohm and Haas Co.; Filing for Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Rohm and Haas Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of *N*-methylglutarimide/acrylic copolymers as articles or components of articles intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B3979) has been filed by Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105, proposing that the food additive regulations be amended to provide for the safe use of *N*-methylglutarimide/acrylic copolymers as articles or components of articles intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 20, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-2032 Filed 2-2-87; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Distribution of Awards; Fiscal Year 1987 Final Funding Preferences for Cooperative Agreements for Area Health Education Center Programs; Public Health Service

The Health Resources and Services Administration announces the final funding preferences which will be applied in the distribution of awards in Fiscal Year 1987 for Cooperative Agreements for Area Health Education Center (AHEC) Programs under the authority of section 781(a)(1) of the Public Health Service Act, as amended by Pub. L. 99-129.

Section 781(a)(1) authorizes Federal assistance to medical and osteopathic schools which have cooperative arrangements with one or more public or nonprofit private area health education centers for the planning, development and operation of area health education center programs. New applications submitted under this authority will be accepted from medical and osteopathic schools for the purpose of planning, developing and operating new area health education center programs. Applicants may request up to three years of support with the expectation that centers planned and developed in years one and two would be operational no later than the third year.

In making awards for Fiscal Year 1987, the following funding preferences are established:

(1) Competing continuation applications;

(2) Planning and development projects under section 781(a)(1); and

(3) Supplements to existing awards.

Additional proposed funding preferences were published in the **Federal Register** of November 24, 1986 (51 FR 42305) for public comment and no comments were received during the 30-day comment period.

Therefore, the final additional preferences are:

(1) Preference will be given to applications proposing Centers that serve health manpower shortage areas with a greater proportion of American Indian/Alaskan Natives, Asian/Pacific Islanders, Blacks and/or Hispanics, or low-income individuals.

An individual will be deemed to be of "low income" if that individual comes from a family with an annual income below a level based on low income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in all health professions programs. The following income figures determine what constitutes a low income family for purposes of the Area Health Education Centers Program for Fiscal Year 1987.

Size of family [1]	Level [2]
1	$7,200.00
2	9,400.00
3	11,100.00
4	14,300.00
5	16,800.00
6 or more	18,900.00

[1] Includes only dependents based on Federal income tax forms.

[2] Adjusted gross income for calendar year 1985, rounded to $100.

An application will be evaluated with respect to other approved applications to determine whether it has a "greater proportion" of the stated minority individuals.

(2) Preference will be given to applications proposing Centers located in primary care health manpower shortage areas designated under section 332 of the Public Health Service Act.

This program is not subject to the provisions of E.O. 12372, Intergovernmental Review of Federal Programs or 45 CFR Part 100.

Dated: January 27, 1987.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 87-2023 Filed 2-2-87; 8:45 am]

BILLING CODE 4160-15-M

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Public Health Service

State of Organization, Functions, and Delegations of Authority: Food and Drug Administration

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent part at 50 FR 16156, April 24, 1985) is amended to reflect the transfer of the quality assurance function from the Office of the Director (OD), National Center for Toxicological Research (NCTR) to the Office of Research Services (ORS), NCTR. When the Office of Research and ORS were established effective April 24, 1985, no decision could be made on the proper location of the quality assurance function and so that function remained in the OD, NCTR. The Director NCTR, now believes that those functions are most compatible with the activities of ORS and that management of the quality assurance activities will be most appropriaely conducted at the ORS level.

Section HF-B, Organization and Functions is amended as follows:

1. Delete subparagraph (q-1), Office of the Director (HFT1) and substitute the following:

(q-1) *Office of the Director (HFT1).* Provides leadership and direction to assure the efficient and effective planning, performance, and evaluation of Center activities.

Provides leadership and direction to all Center research activities.

Provides for scientific intelligence between the Center and all related interests in toxicological research, including the National Academy of Sciences, the National Science Foundation, and the worldwide academic, scientific, and medical communities consort; acts as principal liaison with the Director of the National Toxicology Program.

Coordinates Center programs with similar in-house, grant, and contract programs of the Food and Drug Administration, the Environmental Protection Agency, the National Institutes of Health, the National Toxicology Program, and other government toxicological research laboratories.

Monitors and evaluates performance of contractors supporting Center activities.

2. Delete subparagraph (q-5), Office of Research Services (HFTE) and substitute the following:

(q-5) *Office of Research Services* (HFTE). Organizes, plans, and directs Center research services programs in the areas of pathology, microbiology, diet preparation, animal husbandry, and analytical services.

Plans and coordinates the implemenation of research service programs in response to the Office of Research; directs pathology support services for the Center.

Performs research services relating to chemical and physicochemical behavior of test chemcials, integrity of dosage forms, and safe use and disposal of test chemicals.

Implements analytical methods to insure nutritional integrity and absence of deleterious substances in animal diets as they affect test results.

Develops, modifies, and validates microbial testing procedures which contribute to the assessment of toxic industrial chemicals, drugs, food additives, or naturally occurring and potentially toxic materials in the environment.

Directs and implements a microbiological surveillance program, providing quality assurance for all laboratory animal operations and toxicology experiments involving animal systems.

Establishes the requirements for analysis of diets used in toxicological evaluations and directs the operation of a diet preparation facility to support Center research.

Monitors the maintenance of an animal breeding facility to support research projects at the Center; directs animal care, barrier entry procedures, equipment and holding facilities, and data collection for animals in experiments.

Is responsible for the management of on-site Center service contracts in responsible program areas.

Establishes and conducts a quality assurance program to maintain the highest level of quality and integrity for all Center laboratory studies. Assures implementation of Departmental policies concerning performance and quality of research efforts.

Dated: January 22, 1987.

Wilford J. Forbush,

Director, Office of Management, PHS.

[FR Doc. 87-2132 Filed 2-2-87; 8:45 am]

BILLING CODE 4160-01-M

Office of the Assistant Secretary for Health; Advisory Council Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory Council scheduled to meet during the month of February 1987:

Name: National Advisory Council on Health Care Technology Assessment.

Date and Time: February 26-27, 1987, 1:30 pm.

Place: Ritz Carlton Hotel, Ballroom and Carlton Room, 2100 Massachusetts Avenue Northwest, Washington, DC.

Closed February 27, 11:30 am to 12:00 Noon

Open for remainder of meeting.

Purpose

The Council is charged to provide advice to the Secretary and to the Director of the National Center for Health Services Research and Health Care Technology Assessment (NCHSR) with respect to the performance of the health care technology assessment functions prescribed by section 305 of the Public Health Service Act, as amended.

Agenda

The agenda for the open session will center on public policy aspects of medical coverage issues involving health care technology. During the closed session, the Council will be reviewing research grant applications relating to health care technology. These applications contain research protocols, design, raw research data, technical information, and preliminary research reports. The meeting involves discussion of salaries and the professional competence of applicants, information of a personal nature, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Assistant Secretary for Health has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meetings, or other relevant information should contact Ms. Nancy Blustein, National Center for Health Services Research and Health Care Technology Assessment, Room 1805, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, 20857, Telephone (301) 443-5652.

Agenda items are subject to change as priorities dictate.

Dated: January 21, 1987.

John E. Marshall,

Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 87-2131 Filed 2-2-87; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Grazing Administration, Exclusive of Alaska; Grazing Fee for the 1987 Grazing Year

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of the Grazing Fee for the 1987 Grazing Year.

SUMMARY: Notice is hereby given that the fee for grazing livestock on public lands administered by the Bureau of Land Management shall be $1.35 per animal unit month for the 1987 grazing year.

EFFECTIVE DATE: March 1, 1987 through February 28, 1988.

ADDRESS: Inquiries should be sent to: Director (220), Bureau of Land Management, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Billy R. Templeton (202) 653-9193.

SUPPLEMENTARY INFORMATION: Grazing fees for the use of public rangelands are established and collected annually under the authority of section 3 of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315), and Executive Order No. 12548 of February 14, 1986. Bills to permittees and lessees shall be issued in accordance with the rate prescribed in this notice.

The legality of the fee formula under which the present grazing fee is calculated is being challenged in an action pending in the United States District Court for the Eastern District of California, *Natural Resources Defense Council, et al.* v. *Donald P. Hodel as Secretary of the United States Department of the Interior and Richard E. Lyng as Secretary of the United States Department of Agriculture* (Civ. No. CIV-S-86-0548 EJG EM).

J. Steven Griles,

Assistant Secretary of the Interior.

January 27, 1987.

[FR Doc. 87-2045 Filed 2-2-87; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[AK964-07-4213-15; AA-8103-39; AA-8103-42]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Section 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to Doyon, Limited for approximately 109 acres. The lands involved are within the following townships:

Kateel River Meridian

T. 19 S., R. 3 W.
T. 21 S., R. 4 W.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the FAIRBANKS DAILY NEWS-MINER. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 (907-271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until March 5, 1987, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file as appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Stanley Bronczyk,

Chief, Branch of Doyon Adjudication.

[FR Doc. 87-2021 Filed 2-2-87; 8:45 am]

BILLING CODE 4310-JA-M

[OR-010-07-4212-14; GP7-078; OR-39537]

Cancellation of Realty Action; Direct Sale of Public Land in Lake County, OR

The Notice of Realty Action, published in the **Federal Register** Document No. 86-8118, Volume 51, No. 70, pages 12572 and 12573, Friday, April 11, 1986, is hereby cancelled and the involved property withdrawn from public sale.

For additional information regarding this cancellation, contact the Bureau of Land Management, Lakeview District Office, P.O. Box 151, Lakeview, Oregon 97630.

Dated: January 23, 1987.

Jerry Asher,

District Manager.

[FR Doc. 87-2085 Filed 2-2-87; 8:45 am]

BILLING CODE 4310-33-M

[NV-030-07-4321-13]

Meeting of; Carson City District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Carson City District Advisory Council.

DATE: March 3, 1987; 9:00 a.m.

ADDRESS: BLM Carson City District Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada.

SUPPLEMENTARY INFORMATION: The meeting agenda will include a review of earlier Council efforts on wild horse and burro issues and updates on current issues and concerns. The public is welcome to attend, and anyone may address the Council at 11:00 a.m.

FOR FURTHER INFORMATION CONTACT: Public Affairs Officer Steve Weiss, 1535 Hot Springs Road, Suite 300, Carson City, NV 89701, (702) 885-6134.

Dated: January 22, 1987.

James W. Elliott,

District Manager.

[FR Doc. 87-2086 Filed 2-2-87; 8:45 am]

BILLING CODE 4310-HC-M

Bureau of Reclamation

Functional Responsibilities and Central and Regional Office Locations

The affirmative disclosure provisions of the Freedom of Information Act (5 U.S.C. 552(a) (1) and (2)) require Federal agencies to publish current descriptions of their central and field organization, functional responsibilities, and locations where the public may obtain information. This notice is being published to comply with those disclosure requirements, and supersedes the portion of the notice pertaining to the Bureau of Reclamation which was published in the **Federal Register** on December 17, 1985 (50 FR 51463). Additional information about the Bureau of Reclamation may be obtained by referring to its official regulations as published in Title 43 of the Code of Federal Regulations.

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Bureau of Reclamation

The Reclamation Act of 1902 (43 U.S.C. 371 *et seq.*) authorized the Secretary of the Interior to locate, construct, operate, and maintain works for the storage, diversion, and development of waters for the reclamation of arid and semiarid lands in the Western States. To perform these functions, the Secretary in July 1902 established the Reclamation Service under the Geological Survey. In March 1907 the Reclamation Service was separated from the Survey, and in June 1923 the name was changed to Bureau of Reclamation. The name was changed to the Water and Power Resources Service in November 1979 by Secretarial Order No. 3042. The name was changed to Bureau of Reclamation in May 1981 by Secretarial Order No. 3064.

The basic objectives of the reclamation program are authorized by the act of 1902 and subsequent amendatory and supplemental acts to assist the States, local governments, and other Federal agencies to stabilize and stimulate local and regional economies, enhance and protect the environment, and improve the quality of life through development of water, other renewable resources, and related land resources throughout the 17 contiguous Western States.

Reclamation projects serve multiple purposes, including: Municipal and industrial water supply, hydroelectric power generation, irrigation water service, water quality improvement, wind power and solar power research, fish and wildlife enhancement, outdoor recreation, flood control, navigation, river regulation and control, and related activities authorized by Congress. Through contracts with project beneficiaries, the Bureau arranges for repayment to the Government of reimbursable project construction, operation, and maintenance costs. About 85 percent of all direct project costs are reimbursable. Interest is paid on costs allocated to power and to municipal and industrial water service.

Major reclamation functions include: investigation and development of plans for the regulation, conservation, and utilization of water and related resources, including basinwide water resource studies and development of new sources of fresh water supplies, power capacity, and energy; design and construction of authorized projects for which funds have been appropriated by the Congress; repair and rehabilitation of existing projects; operation and maintenance of Bureau-constructed facilities that are not transferred to local organizations; review of operation and maintenance of Bureau-built facilities that have been transferred to local governments; administration of the Small Reclamation Projects Act of 1956, and of loans for construction or rehabilitation of irrigation systems; and negotiation, execution, and administration of repayment contracts, and water-user operation and maintenance contracts. The Bureau of Reclamation has responsibility for the operation and maintenance of 53 hydroelectric powerplants and the construction of new hydroelectric facilities on its projects, as authorized by the Congress.

In cooperation with other agencies, the Bureau prepares and/or reviews environmental statements for proposed Federal water resource projects and renders technical assistance to foreign countries in water resource development and utilization.

Dated: January 21, 1987.

C. Dale Duvall,

Commissioner of Reclamation.

MAJOR OFFICES—BUREAU OF RECLAMATION

Office	Headquarters
Commissioner's Office.	Department of the Interior, C Street between 18th and 19th Streets, NW., Washington DC 20240. *Public Affairs Office* (202) 343-4662
Engineering and Research Center	Bldg. 67, Denver Federal Center, P.O. Box 25007, Denver, Colorado 80225. *Mgmt. Operations Center:* (303) 236-3814
Pacific Northwest Region.	Federal Bldg., U.S. Courthouse, Box 043, 550 W. Fort St., Boise, Idaho 83724. *Public Affairs Office:* (208) 334-1938
Mid-Pacific Region	Federal Office Bldg., 2800 Cottage Way, Sacramento, California 95825. *Public Affairs Office:* (916) 978-4919
Lower Colorado Region.	P.O. Box 427, Nevada Highway and Park St., Boulder City, Nevada 89005. *Public Affairs Office* (702) 293-8419.
Upper Colorado Region.	P.O. Box 11568, 125 S. State St., Salt Lake City, Utah 84147. *Public Affairs Office* (801) 524-5403
Southwest Region	714 S. Tyler St., Amarillo, Texas 79101. *Public Affairs Office:* (806) 378-5437.
Missouri Basin Region.	P.O. Box 36900, Federal Office Bldg., 316 N. 26th St., Billings, Montana 59107. *Public Affairs Office:* (406) 657-6218.

[FR Doc. 87-2019 Filed 2-2-87; 8:45 am]

BILLING CODE 4310-09-M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 24, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by February 18, 1987.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Pitkin County

Aspen, *Bowles—Cooley House (Aspen MRA)*, 201 W. Francis St.
Aspen, *Callahan, Matthew, Log Cabin (Aspen MRA)*, 205 S. Third St.
Aspen, *Collins Block-Aspen Lumber and Supply (Aspen MRA)*, 204 S. Mill St.
Aspen, *Dixon—Markle House (Aspen MRA)*, 135 E. Cooper Ave.
Aspen, *Frantz, D.E., House (Aspen MRA)*, 333 W. Bleeker St.
Aspen, *Hallett, Samuel I., House (Aspen MRA)*, 432 W. Francis St.
Aspen, *Hynes, Thomas, House (Aspen MRA)*, 303 E. Main St.
Aspen, *La Fave Block (Aspen MRA)*, 405 S. Hunter St.
Aspen, *New Brick—The Brick Saloon (Aspen MRA)*, 420 E. Cooper Ave.
Aspen, *Riede's City Bakery (Aspen MRA)*, 413 E. Hyman Ave.
Aspen, *Shaw, Judge, House (Aspen MRA)*, 208 Lake Ave.
Aspen, *Shilling—Lamb House (Aspen MRA)*, 525 N. Fifth St.
Aspen, *Smuggler Mine (Aspen MRA)*, Smuggler Mountain
Aspen, *Waite, Davis, House (Aspen MRA)*, 234 W. Francis St.
Aspen, *Webber, Henry, House—Pioneer Park (Aspen MRA)*, 442 Bleeker St.

CONNECTICUT

Middlesex County

East Haddam, *Warner House*, 307 Town St.

FLORIDA

Nassau County

Fernandina Beach, *Fernandina Beach Historic District (Boundary Increase)*, Roughly bounded by Sixth, Broome, N. Third, & Escambia Sts.; Seventh & Date Sts., and Ash

Sarasota County

Sarasota, *Burns Realty Company—Karl Bickel House (Sarasota MRA)*, 101 N. Tamiami Trail
Sarasota, *El Vernona Hotel—John Ringling Hotel (Sarasota MRA)*, 111 N. Tamiami Trail

LOUISIANA

Caddo Parish

Shreveport, *Fairfield Historic District*, Fairfield Ave. and adjacent Sts. roughly bounded by Olive and Dalzell Sts., Line Ave. and Kings Hwy.
Shreveport, *Highland Historic District*, Roughly bounded by Vine, Gilbert, and Topeka Sts., and Irving Pl.

St. Landry Parish

Eunice, *Liberty Theatre*, 200 W. Park Ave.

MICHIGAN

Barry County

Hastings, *Shriner—Ketcham House*, 327 Shriner St.

Genesee County

Flint, *Johnson, Abner C., House*, 625 East St.

[FR Doc. 87-2148 Filed 2-2-87; 8:45 am]

BILLING CODE 4310-70-M

Alaska Region; Meeting of the Wrangell-St. Elias National Park Subsistence Resource Commission

Summary: The Alaska Regional Office of the National Park Service announces a meeting of the Wrangell-St. Elias National Park Subsistence Resource Commission. The following agenda items will be discussed:

1. Review of and finalize commission recommendations on trapping.
2. Review status of previous recommendations.
3. Rural determinations being made by the State of Alaska.
4. Eligibility for subsistence.
5. Consideration of other subsistence hunting proposals since last meeting.
6. NPS wilderness review process.
7. Status of general management plan and resource management plan.
8. Public comments.
9. Adjourn.

Information: The Wrangell-St. Elias National Park Subsistence Resource Commission is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96-487.

Date: The meeting will be held at 1:00 p.m. on February 19 and continuing at 7:00 p.m. on February 19 and again at 9:00 a.m. on February 20.

Address: Wrangell-St. Elias National Park, Headquarters, Mile 105.5 Richardson Highway, Glennallen, Alaska.

Information: Richard Martin, Superintendent, Wrangell-St. Elias National Park and Preserve, P.O. Box 29, Glennallen, Alaska 99588 (907) 822-5234.

Boyd Evison,

Regional Director.

[FR Doc. 87-2011 Filed 2-2-87; 8:45 am]

BILLING CODE 4310-70-M

Concurrent Jurisdiction in Florida

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given that, effective October 27, 1986, concurrent jurisdiction was established over lands and waters administered by the National Park Service within the following units of the National Park System situated in the State of Florida.

Big Cypress National Preserve
Biscayne National Park
Canaveral National Seashore
Castillo de San Marcos National Monument
DeSoto National Memorial
Everglades National Park
Fort Caroline National Memorial
Fort Jefferson National Monument
Fort Matanzas National Monument
Gulf Islands National Seashore

Concurent jurisdiction was conveyed to the United States pursuant to Chapter 86-67, Laws of Florida, relinquished by the United States to the State of Florida pursuant to 40 U.S.C. 255, and accepted by Denis P. Galvin, Acting Director of the National Park Service, pursuant to applicable Federal statutory law. Cession and acceptance of concurrent jurisdiction was acknowledged by letter by the Honorable Bob Graham, Governor of the State of Florida, on October 27, 1986.

Dated: January 21, 1987.

Denis P. Galvin,

Acting Director, National Park Service.

[FR Doc. 87-2149 Filed 2-2-87; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Amendment No. 6]

National Motor Equipment Interchange-Agreement; Section 5a, Application No. 65 [1]

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comment.

SUMMARY: Equipment Interchange Association (EIA) has filed, pursuant to section 14(e) of the Motor Carrier Act of 1980 (MCA), an application for approval of its ratemaking agreement under 49 U.S.C. 10706(b). Since some modifications are required before the agreement receives final approval, and because new and complex questions are involved in determining whether the agreement is consistent with the MCA, the Commission solicits public comment and further information from EIA on its interpretations and application of specific rate bureau provisions. Copies of EIA's proposed amended agreement are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, Washington, DC, 20423, and from EIA's representatives:

Roland Rice, John W. McFadden, Jr., 1600 Wilson Blvd., Suite 1301, Arlington, VA 22209
Kenneth R. Hauck, 1616 P Street NW., Washington, DC 20036

Additional information is in the Commission's decision. Copies may be purchased from TS InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call toll-free (800) 424-5403, or (202) 289-4357 in the Washington, DC, metropolitan area.

DATES: Responses from EIA are due March 20, 1987. Comments from interested parties are due 30 days thereafter. EIA may then reply within 30 days.

ADDRESS: An original and 10 copies, if possible, of comments referring to section 5a Application No. 65 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Jane Udovic (202) 275-7831
or
Louis E. Gitomer (202) 275-7691

SUPPLEMENTARY INFORMATION: Equipment Interchange Association (EIA) has filed an application for approval of its proposed amended collective ratemaking agreement as required by section 14(e) of the Motor Carrier Act of 1980, Pub. L. 96-296 (1980) (MCA). Since filing its application, EIA has been obliged to observe the requirements of the MCA and the standards in *Motor Carrier Rate Bureaus—Imp. Pub. L. 96-296*, 364 I.C.C. 464 (1980) and 364 I.C.C. 921 (1981) (*Rate Bureau*).

EIA is not a typical rate bureau. It alleges that many of the new requirements should not apply to its operations, and its agreement does not contain many of the statutory safeguards. However, we have provisionally approved EIA's agreement as consistent with 49 U.S.C. 10706(b) and *Rate Bureau, Supra*, subject to discussion of the following subject areas: Identification and description of member carriers; right of independent action; employee docketing; open meetings; proxy voting; quorum standards; final disposition of cases; single-line rates; general rate increases or decreases; changes in tariff structure; and zone of rate freedom. EIA has been directed either to file a revised agreement conforming to the imposed

[1] Section 5 was recodified as section 10706.

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conditions within 120 days of service of the decision, and indicate its intention to do so within 45 days, or to submit within 45 days further explanation as to why the conditions should not be imposed and why the section 10706 prohibitions do not apply. Interested parties will then have 30 days to comment. A copy of any comments filed with the Commission must also be served on EIA, which will have 30 days from the expiration of the comment period to reply.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: January 23, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Andre dissented in part with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87-2064 Filed 2-2-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 194)]

CSX Transportation, Inc.; Notice of Findings on Abandonment in Dinwiddie County, VA

The Commission has issued a certificate authorizing CSX Transportation, Inc. to abandon its 23.11-mile rail line between South Collier (milepost S-24.89) and McKenney, VA (milepost S-48.00) in Dinwiddie County, VA. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Noreta R. McGee,

Secretary.

[FR Doc. 87-2222 Filed 2-2-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Notification, Microelectronics and Computer Technology Corp.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98-462 (the "Act"), Microelectronics and Computer Technology Corporation ("MCC") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on December 23, 1986 disclosing changes in the membership of MCC and related information. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The notification identifying the original parties to the project, and the nature and objectives of that project, is published at 50 FR 2633 (January 17, 1985).

Effective November 13, 1986, Hewlett-Packard Company acquired the MCC share owned by BMC Industries Inc. On November 12, 1986, Sperry Corporation, a party to MCC, was merged into Burroughs Corporation. On November 13, 1986, Burroughs Corporation changed its name to Unisys Corporation.

Accordingly, Hewlett-Packard Company and each of its subsidiaries and Unisys Corporation and each of its subsidiaries are parties to MCC; BMC Industries, Inc. and each of its subsidiaries and Sperry Corporation and each of its subsidiaries are no longer parties to MCC.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87-2041 Filed 2-2-87; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Notification, Portland Cement Association

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98-462 ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. Specifically, Genstar Cement Company will be identified as Calaveras Cement Company, Genstar Cement Limited will be identified as Inland Cement Limited, and St. Marys Cement Limited's name has been changed to St. Marys Cement Corporation. Also, Falcon Cement Company has resigned from the Association effective October 31, 1986. Accordingly, at present members of the PCA are:

Aetna Cement Corp.
Alaska Basic Industries
Ash Grove Cement Co.
Ash Grove Cement West, Inc.
Blue Circle Atlantic
Blue Circle Inc.
CalMat Co.
Calaveras Cement Co.
Capitol Aggregates, Inc.
Dragon Products Co.
General Portland Inc.
Hawaiian Cement
Ideal Basic Industries, Cement Division
Canada Cement Lafarge Ltd.
Ciment Quebec, Inc.
Federal White Cement Ltd.
Inland Cement Ltd.
Independent Cement Corp.
Lehigh Portland Cement Co.
Lone Star-Faclon
Lone Star Industries, Inc.
Medusa Cement Co.
The Monarch Cement Co.
Moore McCormack Cement, Inc.
Northwestern States Portland Cement Co.
Rochester Portland Cement Corp.
St. Marys Peerless Cement Co.
St. Marys Wisconsin Cement Inc.
The South Dakota Cement Plant
Southwestern Portland Cement Co.
Lake Ontario Cement Ltd.
North Star Cement Ltd.
St. Lawrence Cement Inc.
St. Marys Cement Corp.

In addition, the following equipment suppliers are involved as "Participating Associates," together with PCA members, in the activities of the Manufacturing Process Subcommittee of PCA's General Technical Committee:

Baker-Dolomite (DBCA)
C-E Raymond
Holderbank Consulting Ltd.
Humboldt Wedag Company
Centennial Engineering, Inc.
Allis-Chalmers Corp.
F. L. Smidth and Co.
Claudius Peters, Inc.
Polysius Crop.
The Fuller Co.

The notifications were filed for the

purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The original notification, identifying the original parties to the venture and describing in general terms the area of planned activities of the venture, is published at 50 F.R. 5015 (1985).

Judy Whalley,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 87-2042 Filed 2-2-87; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 86-77]

Kasparian Pharmacy Ormond Beach, Fl; Hearing

Notice is hereby given that on September 19, 1986, the Drug Enforcement Administration, Department of Justice, issued to Kasparian Pharmacy, an Order To Show Cause as to why the Drug Enforcement Administration should not deny its application, executed on March 1, 1986, for registration as a retail pharmacy under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Tuesday, February 10, 1987, in Courtroom VI, 3rd Floor, Old Courthouse Building, 300 NE First Avenue, Miami, Florida.

Dated: January 29, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-2096 Filed 2-2-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-97]

22nd Avenue Drugs, Inc. (t/a Acosta Pharmacy); Miami, Fl; Hearing

Notice is hereby given that on December 8, 1986, the Drug Enforcement Administration, Department of Justice, issued to 22nd Avenue Drugs, Inc., t/a Acosta Pharmacy, an Order To Show Cause as to why the Drug Enforcement Administration should not revoke the pharmacy's DEA Certificate of Registration, A90103692, and deny any pending application for renewal of such registration as a retail pharmacy.

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Wednesday, February 11, 1987, in Courtroom VI, 3rd Floor, Old Courthouse Building, 300 NE First Avenue, Miami, Florida.

Dated: January 29, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-2097 Filed 2-2-87; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; of Application by Hoffmann-La Roche

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 7, 1986, Hoffmann-La Roche, Inc., 340 Kingsland Street, Nutley, New Jersey 07110, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Alphaprodine (9010)	II
Levorphanol (9220)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537. Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than March 5, 1987.

Dated: January 20, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-2020 Filed 2-2-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs,

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Office of Management and Budget, Room 3208, Washington, DC 20503 (telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earlist possible date.

Revision

Employment and Training Administration
National Longitudinal Surveys—Survey of Work Experience of Mature Women
1205-0044; LGT 3141; 3143(L)
Annually; Biennially
Individuals or households
3,395 respondents; 2,139 hours; no forms
The Department of Labor will use this information to determine the employment and training needs and develop labor market policies designed to ease the employment and unemployment problems faced by women 50-64. These women were 30-44 years of age when this longitudinal survey began in 1967.

Revision

Employment and Training Administration
Program Monitoring Report and Job Service Complaint Form
1205-0039; ETA 8249
Recordkeeping
State or local governments
450 Recordkeepers; 5,400 hours; 1 form
Job Service forms are necessary as part of Federal Regulations at 20 CFR Parts 651, 653 and 658 published as a result of the NAACP vs. Brock suit. The forms allow us to track the services provided to MSFWs by SESAs.

Extension

Mine Safety and Health Administration
Ventilation Tests and Examinations in Underground Coal Mines
1219-0088
Daily; weekly
Businesses or other for profit; small businesses or organizations
2,007 respondents; 5,644,231 hours
Requires operators of underground coal mines to keep records of certain tests and examinations which are required to be performed to monitor the ventilation system.

Extension

Mine Safety and Health Administration
Records of Fire Drills and Programs to Instruct and Train, Miners in the Location and use of Firefighting Equipment
1219-0054
On occasion; quarterly
Businesses and other for profit; small businesses or organizations
2,207 respondents; 40,882 hours
Requires underground coal mine operators to have a plan approved by MSHA for the instruction of miners in firefighting and evacuation procedures to be followed in event of an emergency. The Standard also requires fire drills to be conducted quarterly to implement the plan and that a record be kept of the fire drills.

Extension

Mine Safety and Health Administration
Ventilation System and Methane and Dust Control Plan
1219-0084
On occasion; semi-annually
Businesses or other for profit; small businesses or organizations
2,207 respondents; 13,642 hours
Requires operators of underground coal mines to submit a detailed ventilation system and methane and dust control plan and revisions thereof to MSHA for approval.

Extension

Mine Safety and Health Administration
Escapeways and Escape Facilities
1219-0052
Weekly
Businesses or other for profit; small businesses or organizations
2,007 respondents; 150,124 hours
Requires that underground coal mine operators keep records of the results of weekly examinations of emergency escapeways.

Extension

Mine Safety and Health Administration
Ground Control Plan
1219-0026
On occasion
Businesses and other for profit; small businesses or organizations
410 respondents; 16,400 hours
Requires operators of surface coal mines to establish and follow a ground control plan which is consistent with prudent engineering design.

Extension

Occupational Safety and Health Administration
Respiratory Protection
1218-0099; OSHA 274
On occasion
Businesses or other for profit; Federal agencies or employees; small businesses or organizations
160,507 responses; 1,181,764 hours
This standard requires employers to collect information to ensure that employees who must wear respiratory protection devices are properly protected and issued the type of respirator appropriate to the hazard.

Signed at Washington, DC, this 27th day of January, 1987.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 87-2091 Filed 2-2-87; 8:45 am]

BILLING CODE 4510-43-M

Employment and Training Administration

[TA-W-17,256 and TA-W-17,257]

C.F. Hathaway Co., Waterville, ME and C.F. Hathaway Co., Dover Foxcroft, ME; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 15, 1986 applicable to all workers of the C.F. Hathaway Company in Waterville, Maine (TA-W-17,256 and C.F. Hathaway Company, Dover Foxcroft, Maine (TA-W-17,257). The Certification was published in the **Federal Register** on October 3, 1986 (51 FR 35442).

Based on new information furnished to the Department by the Amalgamated Clothing and Textile Workers Union and the company, the Department is terminating as of January 31, 1987 the certification for workers at the Waterville, Maine plant of C.F. Hathaway Company. The new information indicated only a few worker separations occurred at the Waterville, Maine plant and those were the result of seasonal factors.

The intent of the certification is to cover all workers of the C.F. Hathaway Company who were separated because of increased import competition of men's dress shirts. The amended notice applicable to TA-W-17,256 and 17,257 is hereby issued as follows:

"All workers of C.F. Hathaway Company, Waterville, Maine who became totally or partially separated from employment on or after February 18, 1985 and before January 31, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and all workers of C.F. Hathaway, Dover Foxcroft, Maine who became totally or partially separated on or after February 18, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 21st day of January, 1987.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 87-2092 Filed 2-2-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18-064, et al.]

Cities Service Oil and Gas Corp.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of TA-W-18,064 Tulsa, Oklahoma; TA-W-18,064-A Oklahoma City, Oklahoma; TA-W-18,064-B Lindsay, Oklahoma; TA-W-18,064-C Houston, Texas; TA-W-18,064-D Midland, Texas; TA-W-18,064-E Bridgeport, Texas; TA-W-18,064-F Robstown, Texas; TA-W-18,064-G West Seminole, Texas; TA-W-18,064-H Odessa, Texas; TA-W-18,064-I Pratt, Kansas; TA-W-18,064-J El Dorado, Kansas; TA-W-18,064-K Bakersfield, California; TA-W-18,064-L Ingleside, California; TA-W-18,064-M Denver, Colorado; TA-W-18,064-N Jackson, Mississippi; TA-W-18,064-O Anchorage, Alaska; TA-W-18,064-P Charleston, South Carolina; TA-W-18,064-Q Niagara Falls, New York; TA-W-18,064-R Gillette, Wyoming; TA-W-18,064-S Lake Charles, Louisiana; TA-W-18,064-T Hobbs, New Mexico.

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 19, 1986 applicable to all workers of the Exploration and Production of Division of Cities Service Oil and Gas Corporation, Tulsa, Oklahoma. The Certification was published in the **Federal Register** on January 9, 1987 (52 FR 874).

Based on new information furnished to the Department, the notice is amended to properly reflect the correct worker group by eliminating the Exploration and Production Division in the title of the notice. Cities Service is an exploration and production company for crude oil and natural gas. The company has oil and gas fields in several states as well as offices which support crude oil production. Worker separations have occurred at locations in several different states.

The intent of the certification is to cover all workers of Cities Service Oil and Gas Corporation in Tulsa, Oklahoma; Oklahoma City, Oklahoma; Lindsay, Oklahoma; Houston, Texas; Midland, Texas; Bridgeport, Texas; Robstown, Texas; West Seminole, Texas; Odessa, Texas; Pratt, Kansas; El Dorado, Kansas; Bakersfield, California; Ingleside, California; Denver, Colorado; Jackson, Mississippi; Anchorage, Alaska; Charleston, South Carolina; Niagara Falls, New York; Hobbs, New Mexico; Gillette, Wyoming and Lake Charles, Louisiana. The amended notice applicable to TA-W-18,064 is hereby issued as follows:

All workers of Cities Service Oil and Gas Corporation in Tulsa, Oklahoma; Oklahoma City, Oklahoma; Lindsay, Oklahoma; Houston, Texas; Midland, Texas; Bridgeport, Texas; Robstown, Texas; West Seminole, Texas; Odessa, Texas; Pratt, Kansas; El Dorado, Kansas; Bakersfield, California; Ingleside, California; Denver, Colorado; Jackson, Mississippi; Anchorage, Alaska; Charleston, South Carolina; Niagara Falls, New York; Hobbs, New Mexico; Gillette, Wyoming and Lake Charles, Louisiana who became totally or partially separated from employment on or after August 29, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 15th day of January 1987.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-2093 Filed 2-2-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,560]

Murray Ohio Manufacturing Co., Lawrenceburg, TN; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 10, 1986 in response to a worker petition received on October 30, 1986 which was filed on behalf of workers at Murray Ohio Manufacturing Company, Lawrenceburg, Tennessee.

An active certification covering the petitioning group of workers remains in effect (TA-W-15,451). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 24th day of December 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-2094 Filed 2-2-87; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 13, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 13, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC, 20213.

Signed at Washington, DC this 12th day of January 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Marvin E. Boyer Oil Co. (Company)	Iola, KS	1/5/87	12/16/86	TA-W-18,870	Crude oil.
Leamco Service (Workers)	Midland, TX	1/5/87	12/17/86	TA-W-18,871	Plastic bearings.
Stelman Mfg. Co. (ILGU)	Wilkes-Barre, PA	1/5/87	12/8/86	TA-W-18,872	Ladies' blouses.
Modern Industrial Plastics Div. The Dunkin Co. (USWA)	Dayton, OH	1/5/87	12/19/86	TA-W-18,873	Plastic industrial seals.
Anwelt Corporation (Workers)	Fitchburg, MA	1/5/87	12/12/86	TA-W-18,874	Leather work boots.

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APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Lettisse, Inc. (Company)	Reading, PA	1/5/87	12/9/86	TA-W-18,875	Ladies' handbags & belts.
Cycle Industries (Workers)	Sanford, ME	1/5/87	12/12/86	TA-W-18,876	Leather footwear.
Muskegon Piston Ring Co., Inc. (UAW)	Muskegon, MI	1/5/87	12/7/86	TA-W-18,877	Piston rings.
HPM Corporation (IAMAW)	Mt. Gilead, OH	1/5/87	12/15/86	TA-W-18,878	Plastic mfg machinery
Santa Clara Plastics (Workers)	Boise, ID	1/12/87	12/16/86	TA-W-18,879	Capital equipment for microchip processing.
Campo Industries, Inc. (Workers)	Lowell, MA (Rogers)	1/12/87	12/18/86	TA-W-18,880	Fabric for shoes.
Do	Lowell, MA (Middlesex)	1/12/87	12/18/86	TA-W-18,881	Fabric for shoes.
Olga Coal Company (UMWA)	Coalwood, WV	1/12/87	12/25/86	TA-W-18,882	Metallurgic coal.
Cooper Industry (Workers)	Hartford, CT	1/12/87	12/22/86	TA-W-18,883	Electrical light switches, outlets and relays.
C.B.I. Services, Inc. (Boilermakers)	Salt Lake City, UT	1/12/87	12/20/86	TA-W-18,884	Storage vessels, steel fabrication.
Kelly-Springfield Tire Co. (URW)	Cumberland, MD	1/12/87	1/2/87	TA-W-18,885	Tires for passenger cars and light trucks.
BHP Petroleum (Americas) (Workers)	Oklahoma City, OK	1/12/87	12/24/86	TA-W-18,886	Crude oil.
National Supply Co. (USW)	Gainesville, TX	1/12/87	12/24/86	TA-W-18,887	Oilfield equipment.
United Technical Associates, Inc. (Company)	Allentown, PA	1/12/87	12/26/86	TA-W-18,888	Designed and drafting service.
Umetco Minerals Corp (Workers)	Blanding, UT	1/12/87	1/2/87	TA-W-18,889	Uranium and vanadium.
Spears & Jackson, Inc (IAMAW)	Eugene, OR	1/12/87	12/18/86	TA-W-18,890	Bandsaws and circular saws.
Flooring Point Systems Inc. (Workers)	Beaverton, OR	1/12/87	12/19/86	TA-W-18,891	Array processors.
Bessemer and Lake Erie Railroad Co. (Workers)	Monroeville, PA	1/12/87	12/22/86	TA-W-18,892	Transport service (freight).
Mitchel Energy & Development Corp. (MEDC) (Company)	Washington, DC	1/12/87	12/24/86	TA-W-18,893	Oil and gas exploration and production.
Do	Bridgeport, TX	1/12/87	12/24/86	TA-W-18,894	Do.
Do	Spring, TX	1/12/87	12/24/86	TA-W-18,895	Do.
Do	The Woodlands, TX	1/12/87	12/24/86	TA-W-18,896	Do.
Do	Denver, CO	1/12/87	12/24/86	TA-W-18,897	Do.
Do	New Orleans, LA	1/12/87	12/24/86	TA-W-18,898	Do.
Do	Columbus, OH	1/12/87	12/24/86	TA-W-18,899	Do.
Do	Oklahoma City, OK	1/12/87	12/24/86	TA-W-18,900	Do.
Do	Connsautville, PA	1/12/87	12/24/86	TA-W-18,901	Do.
Do	Bridgeport, TX	1/12/87	12/24/86	TA-W-18,902	Do.
Do	Decatur, TX	1/12/87	12/24/86	TA-W-18,903	Do.
Do	Ft. Worth, TX	1/12/87	12/24/86	TA-W-18,904	Do.
Do	Galveston, TX	1/12/87	12/24/86	TA-W-18,905	Do.
Do	Ganado, TX	1/12/87	12/24/86	TA-W-18,906	Do.
Do	Houston, TX	1/12/87	12/24/86	TA-W-18,907	Do.
Do	Jacksboro, TX	1/12/87	12/24/86	TA-W-18,908	Do.
Do	Livingston, TX	1/12/87	12/24/86	TA-W-18,909	Do.
Do	Mineral Wells, TX	1/12/87	12/24/86	TA-W-18,910	Do.
Do	Sonora, TX	1/12/87	12/24/86	TA-W-18,911	Do.
Do	Thornton, TX	1/12/87	12/24/86	TA-W-18,912	Do.
Do	Douglas, WY	1/12/87	12/24/86	TA-W-18,913	Do.
MND Drilling Corp. (MEDC) Northern Div. (Company)	Bridgeport, TX	1/12/87	12/24/86	TA-W-18,914	Do.
Do	Magnolia TX	1/12/87	12/24/86	TA-W-18,915	Do.
Oilworld Supply Co. (MEDC) (Company)	Houston, TX	1/12/87	12/24/86	TA-W-18,916	Do.
Do	Bridgeport, TX	1/12/87	12/24/86	TA-W-18,917	Do.
Ferguson Crossing Pipe Line Co. (MEDC) (Company	Lyons, TX	1/12/87	12/24/86	TA-W-18,918	Do.
Do	San Antonio, TX	1/12/87	12/24/86	TA-W-18,919	Do.
South Gen-Tex Gas Co. (MEDC) (Company)	do	1/12/87	12/24/86	TA-W-18,920	Do.
Southwestern Gas Pipeline, Inc. (MEDC)	Mineral Wells, TX	1/12/87	12/24/86	TA-W-18,921	Do.
Do	San Antonio, TX	1/12/87	12/24/86	TA-W-18,922	Do.
Winnie Pipeline, Co. (MEDC) (Company)	Winnie, TX	1/12/87	12/24/86	TA-W-18,923	Do.
Liquid Energy Corp. (MEDC) (Company)	Roswell, NM	1/12/87	12/24/86	TA-W-18,924	Do.
Do	Bridgeport, TX	1/12/87	12/24/86	TA-W-18,925	Do.
Do	Bryan, TX	1/12/87	12/24/86	TA-W-18,926	Do.
Do	Cisco, TX	1/12/87	12/24/86	TA-W-18,927	Do.
Do	Dumas, TX	1/12/87	12/24/86	TA-W-18,928	Do.
Do	Leggett, TX	1/12/87	12/24/86	TA-W-18,929	Do.
Do	Mineral Wells, TX	1/12/87	12/24/86	TA-W-18,930	Do.
Do	Rising Star, TX	1/12/87	12/24/86	TA-W-18,931	Do.
Do	Rochdale, TX	1/12/87	12/24/86	TA-W-18,932	Do.
Do	Sonnett, TX	1/12/87	12/24/86	TA-W-18,933	Do.
Billy The Kid Industries (ACTWU)	El Paso, TX	1/5/87	12/11/86	TA-W-18,934	Men's and boys' pants.
Link-Belt Construction (Workers)	Lexington, KY	1/5/87	12/19/86	TA-W-18,935	Heavy construction equipment.
Farah Manufacturing Co. (ACTWU)	El Paso, TX	1/5/87	12/11/86	TA-W-18,936	Men's and ladies' sportswear.
Interstate Diesel Inc. (Workers)	North Lawrence, OH	1/12/87	12/29/86	TA-W-18,937	Fuel injector nozzel assemblies.
Taxtronic, Inc. (Workers)	Beaverton, OR	1/12/87	12/22/86	TA-W-18,938	Integrated circuits.
Asea Robotics (Workers)	New Berlin, WI	1/12/87	12/15/86	TA-W-18,939	Industrial robotics.
Rival Mfg. Co. (Workers)	Albany, MO	1/12/87	12/19/86	TA-W-18,940	Small kitchen appliances.
Meritorc Precision Components (Workers)	Walworth, IN	1/12/87	12/19/86	TA-W-18,941	Check valves & vacuum emission harnesses.
Gerald Mills (Workers)	Hazelton, PA	1/12/87	12/23/86	TA-W-18,942	Women's blouses.
Ideal of Scotty's Fashions (ILGWU)	Pen Argyl, PA	1/12/87	12/22/86	TA-W-18,943	Ladies pants and skirts.
General Castings Corp. (USWA)	Waukesha, WI	1/12/87	12/23/86	TA-W-18,944	Iron castings.
Lauson Engine Div. of Tecumseh Products (IAMAW)	New Holstein, WI	1/12/87	12/23/86	TA-W-18,945	Engines for lawn & garden.
B&B Manufacturing Co. Inc. (ILGWU)	Trenton, NJ	1/5/87	12/19/87	TA-W-18,946	Sportswear (shirts, blouses).
Cardinal Drilling, Co. (Workers)	Billings, MT	1/12/87	12/16/86	TA-W-18,947	Oil and gas drilling.
J&D L.P. Service (Company)	Dickinson, ND	1/12/87	12/16/86	TA-W-18,948	Delivers oil products.
Prairie Oil Co. (Company)	Dickinson, ND	1/12/87	12/16/86	TA-W-18,949	Do.
Prairie Truck Center (Company)	Dickinson, ND	1/12/87	12/15/86	TA-W-18,950	Do.
J&D Inc. (Company)	Dickinson, ND	1/12/87	12/16/86	TA-W-18,951	Do.
H.D. Lee Company (UGWA)	Ottawa, KS	1/12/87	14/16/86	TA-W-18,952	Men's and women's denim products.
McEvoy-Willis (Workers)	Tyler, TX	1/12/87	12/31/86	TA-W-18,953	Oil field equipment.
The Anschutz Corp. (Company)	Denver, CO	1/12/87	1/2/87	TA-W-18,954	Oil and gas exploration and production.
Do	Midland, TX	1/12/87	1/2/87	TA-W-18,955	Do.
Rose & Sons, Inc. (Workers)	Midland, TX	1/12/87	12/22/86	TA-W-18,956	General contractor.
Tri Valley Growers, Plant M (Teamsters)	Merced, CA	1/12/87	12/16/86	TA-W-18,957	Canned peaches.
Gaffney, Cline & Associates Inc. (Company)	Dallas, TX	1/12/87	12/10/86	TA-W-18,958	Financial services to oil industry
Stone & Webster Oil Co. (Workers)	Houston, TX	1/12/87	12/20/86	TA-W-18,959	Oil and gas drilling and exploration.
Natco (Company)	Electra, TX	1/12/87	12/15/86	TA-W-18,960	Oil and gas processing equipment.
Kaneb Operating Co. Ltd. (Workers)	Midland, TX	1/12/87	12/17/86	TA-W-18,961	Oil and gas.
Emerald Services, Inc. (Workers)	Titusville, PA	1/12/87	1/5/87	TA-W-18,962	Crude oil.
Alliance Drop Forge Co. (Workers)	Alliance, OH	1/12/87	1/3/87	TA-W-18,963	Commercial forgings.
W.B. Hinton Drilling Co. (Workers)	Mt. Pleasant, TX	1/12/87	11/22/86	TA-W-18,964	Drilling oil wells.
Crystal Springs Oil Inc. (Workers)	Seneca, PA	1/12/87	11/24/86	TA-W-18,965	Crude Oil.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Viking Glass Company (AFGWU)	New Martinsville, WV	1/12/87	12/30/86	TA-W-18,966	Glass tableware

[FR Doc. 87-2095 Filed 2-2-87; 8:45 am]
BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

Application for Class Exemption Relating to Certain Employee Benefit Plan Foreign Exchange Transactions

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Extension of comment period.

SUMMARY: On September 15, 1986 (51 FR 32695), the U.S. Department of Labor published a notice requesting comments on issues which the Department is considering in deciding whether to propose a class exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from the taxes imposed by the Internal Revenue Code for foreign exchange transactions effected between employee benefit plans and certain banks and their affiliates. The notice established a comment closing date of January 15, 1987.

In response to requests from the public, the Department is extending the comment period for 40 days from the original comment closing date.

DATE: The comment period has been extended to February 24, 1987.

Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except to comments received on or before this date.

ADDRESS: Comments should be addressed to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N-5669, U.S. Department of Labor, Washington, DC 20210. Attention: Foreign Exchange Class Exemption Application. All comments received will be available for public inspection at the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rudy Nuissl, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 523-8671. [This is not a toll-free number.]

Dated: January 19, 1986.

Alan D. Lebowitz,

Director of Program Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87-2151 Filed 2-2-87; 8:45 am]
BILLING CODE 4510-29-M

[Application No. D-6397, et al.]

Proposed Exemptions; IBI, Inc. Profit Sharing Plan, et. al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room, N-4677, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on life with the Department for a complete statement of the facts and representations.

IBI, Inc. Profit Sharing Plan and Trust Agreement (Profit Sharing Plan) and IBI, Inc. and Top Home Center, Inc. Defined Benefit Pension Plan and Trust (the Pension Plan; collectively, the Plans) Located in Hastings, MN

[Application Nos. D-6397 and D-6398]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply, for a period of 5 years, to the proposed sales by IBI, Inc. (IBI) of contracts for deed to the Plans, nor to the guarantee of repayment by

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certain shareholders of IBI, provided that the terms and conditions of such sales are at least as favorable to the Plans as those which the Plans could receive in similar transactions with unrelated parties.

Summary of Facts and Representations

1. The Plans are a pension plan and a profit sharing plan with the pension plan having 4 participants and the profit sharing plan 24 participants. As of June 30, 1985, the Pension Plan had net assets of $376,172 and the Profit Sharing Plan had net assets of $780,828. IBI, the Plans' sponsor, operates a building supply company (Top Home Center) and also is in the business of constructing condominiums.

2. IBI purchases undeveloped real estate, sub-divides the same, constructs condominiums on the real estate and obtains mortgages thereon. IBI then sells the condominium units to purchasers under a contract for deed. A contract for deed is a contract whereby the owner in fee simple absolute (the Vendor), or the Vendor's assignee agrees by contract to convey to the buyer (Vendee) by a warranty deed, accompanied by an abstract of title or torrens certificate showing good and marketable title in the Vendor, the fee simple title to the premises upon payment by the Vendee of the principal and interest due from the Vendee to the Vendor under the contract for deed.

3. IBI is requesting an exemption to allow it to sell the above described contracts for deed (the Contractors) to the Plans for a 5 year period. The Contracts being sold to the Plans will represent a first lien on such properties and will be recorded as such. IBI will sell the Contracts to the Plans on an equal basis for a cash purchase price of the lessor of IBI's cost or the market value of the Contracts on the date of sale. If IBI receives any premium or additional consideration in connection with such Contracts, such premium shall be passed along to the Plans. IBI will receive no financial benefit from any Contract sold to the Plans.

4. The Contracts that IBI is proposing to sell to the Plans are not seasoned in the sense that they have been in existence for any period of time. The proposed transactions involve only new construction for IBI. In making residential loans and reviewing residential loan applications, IBI will follow the Federal National Market Association (FNMA) guidelines. The factors influencing acceptability will include the credit record and financial statements of the loan applicant, the ratio between expenses to be assumed as a result of the loan and the stabilized income of the applicant, verification of employment, the value of the security and the ratio of the loan sought to the value of the security.

5. The Plans will not purchase any Contract where the loan to value ratio exceeds 75%, nor purchase any Contract which upon its purchase would put the value of all Contracts owned by said Plan at 25% or more of the current value of the Plan's assets. No more than 10% of the assets of either Plan will be invested in any one Contract and the Plans will not purchase more than one Cabinet from any mortgagor or Vendee. All Contracts purchased by either Plan will meet all FNMA underwriting criteria. Also, there will be an appraisal of the underlying security by an FNMA approved independent appraiser prior to any purchase of a Contract by either Plan. In addition, the purchaser of the property will be required to maintain casualty insurance on the property subject to the Contract at all times during the term of the Contract. In addition, no Contract will be purchased by the Plans in which the annual return is less than 12%. IBI will service the Contracts at no cost to the Plans.

6. IBI and Robert J. Swanson, Donald W. Gustafson, Paul W. Lawrence and Samuel H. Hertogs (the Shareholders) jointly and severally guarantee as follows:

(1) To repurchase, at full face value, without discount, any Contract not refinanced or otherwise fully paid off within 90 days of its maturity. If IBI has not performed and purchased the Contract within said 90 days, the Shareholders shall do so within 10 days thereafter.

(b) To repurchase at full fact value without any discount, any Contract more than 3 months delinquent in payments at any time during the life of the Contract and prior to maturity. If IBI has not performed and purchased the Contract within 10 days of the Contract being 3 months in arrears, the Shareholders shall do so within 10 days thereafter.

7. Prior to any purchase of a Contract by either Plan a party unrelated to the Plans and IBI, Mr. John Poepl (Mr. Poepl), President of Vermillion State Bank of Vermillion, Minnesota will determine whether each such transaction is a suitable investment for the Plans and that the terms of the proposed transaction are at least as favorable to the Plans as those which the Plans could have received in the same type of transaction with an unrelated third party. Mr. Poepl will also supervise the servicing of all transactions by IBI.

In making the decision whether to purchase a particular Contract, Mr. Poepl will take into account the following factors:

(a) An appropriate rate of return to the Plans based on other comparable investments available to the Plans. Considerations include safety of the investment, period required to amortize the investment and returns being realized by the Vermillion State Bank on its commercial installment loans.

(b) The Contracts are secured and guaranteed by the property, the Vendee, IBI and the Shareholders.

(c) No more than 25% of each Plan's assets will be invested in Contracts.

Mr. Poepl represents that he will monitor and enforce the terms and conditions of the Contracts including the guarantees. In the event of default, Mr. Poepl will establish the fair market value of the Contract to be sold to IBI or the Shareholders.

8. In summary, the applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Plans' trustees represent that the proposed transactions are in the best interests of the participants and beneficiaries of the Plans;

(b) The proposed transactions will be approved and monitored by Mr. Poepl);

(c) The exemption will be a temporary exemption for 5 years;

(d) The Plans will receive both corporate and personal guarantees; and

(e) No more than 25% of each Plan's assets will be invested in the Contracts.

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted will expire 5 years after the date of grant. Subsequent to the expiration of this exemption, the Plans may continue to hold Contracts originated during this 5 year period until repaid. Should the applicant wish to continue selling Contracts to the Plans beyond the 5 year period, the applicant may submit another application for exemption.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Maurice S. Rawlings, M.D., P.C. Defined Benefit Plan and Trust (the Plan) Located in Chattanooga, TN

[Application No. D–6688]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the

Code [1] and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by the Plan of a parcel of real property and the improvements thereon to the Georgia Winery, Inc. (Georgia Winery), a disqualified person with respect to the Plan, provided the Plan receives no less than fair market value for the property at the time of sale.

Summary of Facts and Representations

1. Maurice S. Rawlings (Rawlings) is the sole shareholder and the only employee of Maurice S. Rawlings, M.D., P.C. (the Corporation). Rawlings is also the president of the Corporation and the sole participant in the Plan. The Plan is a defined benefit plan which had total assets of approximately $400,000 as of June 30, 1985. If other employees become eligible to participate, a new, nondiscriminatory plan will be established. Rawlings has made all the decisions in regard to investments of the Plan, acting on the advice of various financial advisors and stockbrokers.

2. In November 1985, the Plan purchased a parcel of unimproved real property located in Catoosa County, Georgia. The real property was purchased for $60,000 in cash from a party unrelated to the Plan. The total cost to the Plan of acquiring the property, including closing costs, amounted to $60,103. Subsequently, Plan assets amounting to approximately $48,300 were used for the purpose of constructing a small commercial building on the property. At the time of construction, it was the intention that upon completion the building would be used as a retail store by Georgia Winery, a corporation wholly-owned by Rawlings which recently has been duly organized under the laws of the State of Georgia.[2]

[1] Because Maurice S. Rawlings is the sole shareholder of the Employer and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

[2] The applicant recognizes that the use of Plan assets to construct an improvement on the property may have constituted a prohibited transaction under section 4975(c)(1) of the Code. Accordingly, the applicant will pay the Internal Revenue Service all excise taxes that are applicable under section 4975(a) of the Code within 90 days of the publication in the **Federal Register** of the grant of this proposed exemption.

3. An appraisal was made on the parcel of real property on March 19, 1986, by James C. Glascock (Glascock), a realtor located in Chattanooga, Tennessee. The Plan paid $500 for the appraisal. The applicant represents that Glascock is independent of the Plan and Rawlings. The property is situated approximately 12 miles south of the downtown section of Chattanooga. Glascock states that the highest and best use of the 8.1 acres of land constituting the subject property would be some form of commerce on that part of the property which is not steeply rolling woodland. The building on the property, which was about 60 percent complete at the time of the appraisal, is constructed of steel frame and metal panel siding, with a mansard style roof. Placing emphasis on the comparable sales approach to value, Glascock estimated that, upon completion of the building, the property with improvements would have a fair market value of $65,400.

4. The real property has produced no income for the Plan since the time of purchase. The applicant proposes that the Plan sell the property to Georgia Winery. The Plan will sell the property for cash and will pay no commissions, fees or other expenses in connection with the proposed sale. The price paid by Georgia Winery will be the greater of: (1) Fair market value for the property, as improved, at the time of sale, based on an updated independent appraisal, or (2) the total cost to the Plan of acquiring and holding the real property and constructing the improvements thereon. In addition, Georgia Winery will make a payment to the Plan to compensate the Plan for the use of its funds to construct improvements on the property. The payment will equal $48,300 multiplied by the number of days the funds were so used times the federal short-term interest rate as defined in Code section 1274(d), all divided by 365. The sale of the property will enable the Plan to invest the cash proceeds in assets which are more liquid and produce income for the Plan.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 4975(c)(2) of the Code because: (1) The sale of the real property will be entirely for cash and the Plan will pay no commissions or other expenses in regard to the sale; (2) Georgia Winery will pay either fair market value for the property, as improved, or the total cost to the Plan of acquiring, holding and improving the property, whichever is higher; (3) the cash realized from the sale will be reinvested in assets which are more liquid and produce income for the Plan; and (4) because Rawlings is the only participant in the Plan, the transaction will affect only Rawlings.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

Allen-Tamarak, Inc. Profit Sharing Plan (the Profit Sharing Plan) and the Allen-Tamarak, Inc. Money Purchase Pension Plan (the Pension Plan; collectively, the Plans) Located in San Francisco, CA

[Application Nos. D–6700 and D–6701]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to a loan (the Loan) of $75,000 by the individual accounts (the Accounts) in the plans of Mr. Francis F. Allen (Mr. Allen) to Bermuda Research Corporation (BRC), a party in interest with respect to the Plans, provided the terms of the Loan are at least as favorable to the Plans as those obtainable in an arms's length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plans, which are sponsored by Allen-Tamarak, Inc. (ATI), a business consulting firm formerly located in San Francisco, California, consist of the Profit Sharing Plan and the Pension Plan. The Plans provide for participant-directed investments. They share two common participants, Mr. Allen and Ms. Mary A. Fay (Ms. Fay), who are unrelated. As of September 30, 1985, the Profit Sharing Plan has net assets of $318,964 and Mr. Allen had an Account balance in the Profit Sharing Plan of $257,026. Also as of September 30, 1985, the Pension Plan had net assets of $231,092 and Mr. Allen had an Account balance in the Pension Plan of $181,965. Since November 22, 1983, the Plans have been inactive due to the liquidation of ATI.

2. BRC is a California corporation maintaining its principal place of business in Orinda, Contra Costa County, California. BRC owns and manages certain parcels of real property in several states. BRC also owns the patent on and manufactures a garden

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tool known as the "Whirlybird" spreader. Mr. Allen and Ms. Fay serve as officers and directors of BRC. Mr. Allen is the sole shareholder of BRC and the former principal shareholder of ATI.

3. An exemption is requested to allow Mr. Allen's Accounts in the Plans to lend $75,000 to BRC. Mr. Allen's Account in the Profit Sharing Plan will contribute $45,000; his Account in the Pension Plan will contribute $30,000. The Loan proceeds will be used by BRC to provide additional operating capital.

4. The Loan will have a duration of ten years. It will be repaid in annual principal installments of $7,500 plus quarterly interest payments on the unpaid prinicipal balance. The Loan will carry a fixed rate of interest. Westamerica Bank (Westamerica) of San Rafael, California, an unrelated entity, has indicated it would charge BRC interest at the rate of 10.125 percent per annum for a comparable loan. In addition, Westamerica says it would charge BRC an upfront loan fee of $2,250.

On the basis of the foregoing, the interest rate for the proposed Loan will be 10.425 percent per annum. This interest rate has been determined by adding to the original interest rate of 10.125 percent per annum, as established by Westamerica, the figure .3 percent, representing the $2,250 upfront loan fee amortized over ten years.

5. The Loan will be evidenced by a promissory note and it will be secured by a first deed of trust on a condominium (the Real Property) located at 4969 Desert Vista Terrace, Borrego Springs, California. The Real Property is currently being leased for one year to Di Giorgio Corporation, an unrelated entity, for an annual rental of $18,000. A portion of the rental income generated from the Real Property will be utilized to amortize the Loan.

The deed of trust evidencing the interests in the Real Property of Mr. Allen's Accounts in the Profit Sharing and Pension Plans will be recorded. In addition, BRC will maintain, at its own expense, adequate insurance against fire or other casualty loss to the Real Property. BRC will also name the Plans as addtional named insureds of such insurance.

6. The Real Property was valued by Mr. Gregory F. Hansen, SRA, an indepeendent appraiser affiliated with G.F. Hansen and Associates, Inc. of San Diego, California. In an appraisal report dated March 8, 1986, Mr. Hansen placed the fair market value of the Real Property at $161,000.

7. At all times, the value of the Real Property securing the Loan will represent 150 percent of the outstanding balance of the Loan. If the value of the Real Property declines during the term of the Loan to an amount which is below the 150 percent level, additional collateral will be pledged.

8. In summary it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of th Act because: (a) The Loan will represent less than 25 percent of the total assets of Mr. Allen's Accounts in the Plans; (b) The Loan will be secured by a first deed of trust on the Real Property which has a fair market value in excess of 150 percent of the outstanding Loan balance; (c) Additional collateral for the Loan will be provided should the fair market value of the Real Property fall below 150 percent of the outstanding balance of the Loan; (d) the Loan is based on terms that are similar to those required by Westamerica; and (e) the only accounts in the Plans that will be affected by the Loan will be those of Mr. Allen.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

Maryville-Alcoa Newspapers, Inc. Profit Sharing Plan (the Plan) Located in Maryville, Tennessee

[Application No. D–6765]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) of a certain parcel of real property (the Property) by the Plan to Tutt S. Bradford (Mr. Bradford), a party in interest with respect to the Plan, provided that the consideration paid for the Property is not less than the greater of either the sum of $75,000 or the fair market value of the Property on the date of the Sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 14 participants and total assets of $273,144.12 as of October 31, 1986. The assets consisted of the Property, stocks, bonds, cash, and cash equivalents.

On October 10, 1962, the Plan was established by Maryville Alcoa Newspapers, Inc. (the Employer) for the benefit of its employees. A defined benefit plan was established on September 22, 1970, by the Employer, at which time contributions to the Plan were discontinued and all participants became fully vested in their respective account balances. The latest favorable determination letter for the Plan was issued by the Internal Revenue Service on September 30, 1985. Mr. Bradford and Jerome Moon (Mr. Moon) are the trustees and administrators for the Plan.

2. The employer is a Tennessee corporation that publishes and distributes a daily newspaper for the cities of Maryville, and Alcoa, Tennessee and for Blount County, Tennessee. Mr. Bradford is the Chairman of the Board of the Employer and Mr. Moon, who is a son-in-law of Mr. Bradford, is its President and Publisher. Mr. Bradford's wife is the Treasurer of the Employer and Mr. Bradford's two daughters are the Secretary and Vice-President, respectively.

The entire legal and/or beneficial ownership of the preferred stock and the common stock of the Employer, except for 1,000 shares of preferred stock held by Maryville College, is separately held by or for Mr. Bradford his wife, and their two daughters and grandchildren.

3. Mr. Bradford proposes to purchase the Property from the Plan for a cash amount that will be the greater of either the sum of $75,000 or the fair market value of the Property on the date of the Sale. No expenses for the Sale will be incurred by the Plan.

The Property is located at 307 E. Harper Street in Maryville, Tennessee. It is one part of a larger three-part parcel of real property consisting of land and a portion of a building on which the Employer's business is conducted. A second part of this overall parcel is owned by the Employer and the third part is owned by Mr. Bradford's daughter, who is the wife of Mr. Moon.

The Property was purchased for the consideration of $30,321.75 by the Plan on November 23, 1964, from an unrelated party. At the time of purchase by the Plan the Property was being leased to the Employer. [1] This lease was transferred to and assumed by the Plan and continues to exist between the Plan and the Employer [2]. Two renewals of

[1] The applicant represents that the lease of the Property by the Plan to the Employer is exempt from the prohibited transaction provisions of the Act until June 30, 1994, by virtue of the relief provided by section 414(c)(2) of the Act. The Department expresses no opinion as to the applicability of section 414(c)(2) of the Act to the lease arrangements.

[2] The Department is not proposing an exemption for the lease of the Property by the Plan to the

Continued

the lease were made by the Employer for ten year periods each on November 23, 1974, and November 23, 1984. If there is any difference between the fair market rental values as determined by a qualified independent apprasier and the actual rentals paid after June 30, 1984, the applicant represents that the difference, plus an appropriate rate of interest on the difference, will be paid within 60 days of publication in the **Federal Register** of the grant for the proposed exemption.

An update of an appraisal, dated November 18, 1985, of the Property was prepared on October 20, 1986, by Mr. William F. Proffitt, S.R.A. of Maryville, Tennessee, a qualified independent apprasier, who determined that the Property had a fair market value of $75,000. When making this updated appraisal, Mr. Proffitt specifically considered the use of the Property by the Employer and its location with respect to the adjoining properties owned by Mr. Bradford's daughter and the Employer. He also expressed an opinion that the highest and best use of the Property is the continuance of its present use by the Employer.

The applicant represents that the Property has no other ready use other than that employed by the Employer. The applicant further represents that if the Plan attempted to sell the Property to an unrelated party, the sale would be for a considerable discount from its appraised fair market value. Furthermore, if the Plan could not sell the Property as proposed in the application for exemption, it would be compelled to terminate the lease and hold the Property as a none-income producing assets. It is the intention of Plan fiduciaries to terminate the Plan as soon as practicable to avoid the continuing administrative expenses and to lquidate its assets in order to pay benefits. A distribution in kind of the Property is not possible because no remaining individual account in the Plan is large enough to accommodate such a transaction.

4. In summary, the applicant represents that the proposed transaction satisfies the criteria for an exemption under section 408(a) of the Act because (a) the Sale will be a one-time transaction for cash with no expenses incurred by the Plan; (b) the Plan will sell the Property at its fair market value as determined by a qualified independent appraiser; (c) the Plan will be able to terminate and distribute in a timely manner the benefits to the remaining Plan participants; and (d) the Plan will be able to avoid selling the Property in a forced sale at a discount; or in the alternative, to avoid holding a non-income producing asset.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Unifi, Inc. Profit Sharing Plan and Trust (the Plan) Located in Greensboro, NC

[Application No. D–6867]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) though (E) of the Code shall not apply to both (1) the proposed contribution of certain real property (the Property) to the Plan by Unifi, Inc. (the Employer), a party in interest with respect to the Plan, and (2) the proposed lease-back of the Property by the Plan to the Employer, provided that the terms and conditions of the transactions are at least as favorable to the Plan as those obtainable from an unrelated party.

Summary of Facts and Representations

(1) The Plan is a defined contribution plan with 718 participants and total assets of $10,647,045, as of June 30, 1986. The assets are invested as follows: 31.7 percent in certificates of deposit, interests in pooled funds, and other interest-bearing bank deposits; approximately 7.5 percent in a receivable for a contribution from the Employer; and approximately 60.8 percent in investments in common stock issued by various publicly held corporations. The NCNB National Bank of North Carolina, a national banking association with its principal place of business in Charlotte, North Carolina, is the trustee of the Plan (the Trustee). However, in connection with the proposed transactions, Wachovia Bank and Trust Company, N.A., a national banking association with its principal place of business in Winston Salem, North Carolina, serves as the independent fiducialry for the Plan (the Independent Fiduciary). The Independent Fiduciary, when accepting its appointment, in accordance with a written agreement, has been given exclusive discretionary authority with respect to the acquisition, disposition, management and control of the Property and, after a review of the Plan and its portfolio, has rendered a favorable opinion with respect to the proposed transaction. Furthermore, the Independent Fiduciary, in asserting its independence, has represented that it has no banking relationship with the Employer, other than in its capacity as a fiduciary of the Plan, and neither it nor its affiliates have common directors or officers with the Employer.

(2) The Employer is a publicly held New York corporation with 1,475 full-time employees and three wholly-owned subsidiaries. It annual sales for the fiscal year 1986 were $248,900,000, generating a net income after taxes of $10,400,000. The business of the Employer consists primarily of purchasing raw polyestic filament fiber from chemical manufacturers, texturizing the fiber to give it stretch, a softer feel and greater bulk, and selling the texturized yarn domestically and internationally to knitters and weavers who use fabrics for the apparel, industrial, and home furnishing markets. It has manufacturing facilities in Yadkinville, North Carolina and Letterkenny, County Donegal, Ireland. Also, it has manufacturing facilities in Mayodan, North Carolina which are leased to another company. The executive offices of the Employer are located at 7201 West Friendly Road, Greensboro, North Carolina.

(3) The Property, which the Employer proposes to contribute [1] to the Plan and lease-back, is located at 7201 West Friendly Road, Greensboro, North Carolina and consists of two tracts of land, totalling approximately 6.99 acres, with improvements. These improvements include a one-story concrete industrial and office buidling containing 58,565 square feet of which 17,064 square feet is used for the Employer's executive offices and 41,501 square feet for warehouse facilities. The property is not subject to a mortgage or other lien. John T. Taylor of John McCracken & Associates, Inc. of Greensboro, North Carolina, a qualifeid independent MAI appraiser, determined as of June 16, 1986, that the fair market value of the Property is $2,050,000 and the fair market rental value for the first three years of the lease is $218,051.96 per annum with a 16.3 percent increase

Employer. The applicant has represented that the Form 5330 will be filed with the Internal Revenue Service and the exicise taxes for the lease will be paid prior to or within 60 days of publication in the **Federal Register** of the grant for the proposed exemption.

[1] The applicant represents that the proposed contribution will not cause a violation of section 415 of the Code.

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to $253,579 per annum for the last two years of the five year lease. The lease provides for payment of the above rentals over a five year term and an option for the employer to renew the lease for two additional five year periods, subject to a qualified independent appraiser's determination of the fair rental value and the approval of the renewal by the Independent Fiduciary. The rental will also be adjusted at the end of the third year of each renewal period.

(4) The Independent Fiduciary represents (a) that it has extensive experience and understands and acknoweldges its duties and liabilities under the Act as fiduciary with respect to the Plan; (b) that it has been given the authority and has undertaken the responsibility for monitoring the proposed transactions and taking any appropriate actions to safeguard the interests of the Plan; (c) that it has examined the investment portfolio of the Plan, considered the liquidity and diversification requirements and investment objectives and policies of the Plan, including the terms and conditions of the proposed transactions; and (d) that it has determined that the proposed transactions are appropriate for the Plan and in the best interest of the participants and beneficiaries of the Plan. The Independent Fiduciary represents that the proposed transactions offer the Plan a unique opportunity to receive valuable real estate without an outlay of cash or acquisition costs and with a potential for significant long term appreciation in value. In addition, the Plan currently owns no real property and the proposed transactions would further diversify the portfolio of the Plan. Further, the Independent Fiduciary states that the method of adjusting the rental for renewal terms under the proposed lease and the payment by the Employer of all expenses, including the Independent Fiduciary's fees, provides for continued fair market rental income to the Plan throughout the term of the proposed lease.

(5) In summary, the applicant represents that the proposed transactions satisfies the criteria for an exemption under section 408(a) of the Act because (a) the proposed transactions have been approved by the Independent Fiduciary of the Plan, (b) the fair market value of the property has been determined by a qualified independent appraiser; (c) the fair market rental value of the Property has been determined by a qualified independent appraiser and the Plan will receive the fair market rental value under the lease; (d) the Independent Fiduciary will monitor and enforce the terms and conditions under the lease on behalf of the Plan; and (e) the Independent Fiduciary has determined that the proposed contribution of the Property to the Plan and its lease-back are in the interest and protective of the Plan and its participants and beneficiaries.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Jamestown Clinic, Ltd. Employee Retirement Plan (the Plan) Location in Jamestown, ND

[Application No. D–6936]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procecdure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406 (a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale by the Plan of certain improved real property (the Property) to Medical Properties, Inc. (MPI), a party in interest with respect to the Plan; provided that such sale is on terms no less favorable to the Plan than the Plan could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with 69 participants and assets with a total fair market value of $3,267,239 as of December 1, 1986. The Plan was established in 1952 by Jamestown Clinic, Ltd. (the Employer), a North Dakota professional corporation functioning as a multi-purpose clinic (the Clinic) for the general practice of medicine in Jamestown, North Dakota. On July 1, 1985, the Employer was merged (the Merger) with Dakota Clinic, Ltd. (DCL), a North Dakota professional corporation functioning as a large multi-specialty medical clinic centered in Fargo, North Dakota, employing over 170 physicians and operating fifteen branches in communities of the outlying regions around Fargo. Upon the Merger, DCL became the sponsor of the Plan and assumed all obligations of the Employer. Since the Merger, no contributions have been made to the Plan. All participants in the Plan who are still employed at the Clinic by DCL are now participants in DCL's own pension plan. DCL represents that the Plan may be terminated in the near future. The Trustee of the Plan is Norwest Bank Minneapolis, N.A. (the Trustee).

2. Among the assets of the Plan is the Property, a 48,146 square foot parcel of real property improved with a one-story medical clinic and office building and adjacent parking lots, located at 401 Third Street Southeast in Jamestown, North Dakota. The Property has been utilized and occupied by the Employer as its principal place of business and has been leased by the Employer from the Plan continuously since May 1, 1972. The Employer's lease of the Property from the Plan (the Lease) is the subject of an individual administrative exemption from the prohibited transactions provisions of the Act, Prohibited Transaction Exemption 84–129 (PTE 84–129, 49 FR 34593, August 31, 1984). Upon the Merger, DCL assumed the Employer's obligations under the Lease and DCL continues to operate a medical clinic on the Property, which is the Jamestown branch of DCL. The interests of the Plan for all purposes related to the Property are represented by the Trustee. The current term of the Lease is due to expire June 30, 1987. DCL represents that the Property has recently begun to experience a decline in market value due to adverse economic conditions affecting the value of commercial properties located in rural areas of North Dakota. As of July 2, 1986, the Property had a fair market value of $645,500, according to Harry R. Arneson, MAI (Arneson), an independent professional real estate appraiser in Fargo, North Dakota. Based on Arneson's valuation, the Property constitutes approximately 19.7 percent of the Plan's assets as valued December 1, 1986. According to the Trustee, the Plan has invested a total of $431,361 in the Property, including an original purchase price in 1955 of $255,338.

3. DCL represents that the Clinic is in need of expansion and improvements which would be required in order for DCL to seek a renewal of the Lease beyond its current term. The Trustee has determined that it would not be appropriate for the Plan to invest the additional capital required to make the necessary improvements in the Property. DCL is willing to make the necessary improvements to the Property to enable the continued operation of the Clinic on the Property but is not willing to do so unless the Property is owned by DCL or its property-owning affiliate, MPI. MPI is a closely-held North Dakota corporation, all of the stock of which is owned by shareholders of DCL. Under the prevailing circumstances and because of the consequences of DCL's possible vacation of the Property on June 30, 1987, the Trustee has determined that the Property should be sold to prevent any financial loss to the Plan. In the interests of relieving the Plan of the Property, providing increased Plan liquidity to accommodate a possible termination of the Plan, and enabling the necessary improvement of the Property for DCL, it is proposed that MPI purchase the Property from the Plan. DCL is requesting an exemption to permit such a purchase under the circumstances described herein.

4. MPI will pay the Plan cash for the Property in the amount of no less than the Property's fair market value according to Arneson's appraisal of July 2, 1986. Arneson's appraisal will be updated as of the date of the sale and the purchase price will be increased in the amount, if any, by which the Property's value has increased since his original appraisal. All costs and expenses related to the sale transaction will be borne by MPI. The Trustee represents that it has evaluated the proposed transaction on behalf of the Plan and has determined that the sale of the Property to the Employer under the terms and conditions described herein would be in the best interests and protective of the Plan's participants and beneficiaries. The Trustee confirms that improvement and expansion of the Property are necessary to enable DCL's continued operation of its Jamestown branch on the Property. The Trustee has determined that DCL's unwillingness to finance such improvements without MPI's ownership of the Property will likely result in a vacancy of the Property upon the Lease's expiration on June 30, 1987. The Trustee represents that it is unlikely that the Property's best use as a medical clinic could continue with another lessee because of the lack of any other local medical group of sufficient size to occupy the facilities on the Property. The Trustee has determined that if MPI does not purchase the Property from the Plan, the Plan may be forced to sell or lease the Property for less than its appraised fair market value. The Trustee represents that a sale of the Property to MPI will prevent financial loss and unnecessary expense related to any alternative disposition of the Property and that the terms and conditions offered in the proposed sale to MPI are more favorable to the Plan than the Plan could expect in a sale of the Property to an unrelated buyer. Finally, the Trustee represents that the proposed sale of the Property to MPI will enable the Plan to realize a gain on the Property of at least $214,139, net of all costs and expenses related to the sale transaction.

5. In summary, the applicant represents that the criteria of section 408(a) of the Act are satisfied in the proposed transaction for the following reasons:

(1) The Plan will receive cash for the Property in the amount of no less than its fair market value as of the date of the sale and will incur no costs or expenses related to the sale transaction;

(2) The transaction will yield the Plan a gain and will increase the Plan's liquidity to accommodate a possible termination of the Plan;

(3) The transaction will prevent the expenses and possible losses resulting from DCL's vacation of the Property upon the Lease's expiration;

(4) The transaction is approved and recommended by the Trustee, which represents the Plan for all purposes with respect to the Property.

For Further Information Contact: Mr. Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 29th Day of January, 1987.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 87–2150 Filed 2–2–87; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 87–08]

NASA Advisory Council, Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Advanced Propulsion Technology.

DATE AND TIME: February 20, 1987, 8 a.m. to 5 p.m.

ADDRESS: Administration Building, Room 225, Lewis Research Center, National Aeronautics and Space Administration, 21000 Brookpark Road, Cleveland, OH 44135.

FURTHER INFORMATION CONTACT: Mr. John Facey, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2857.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance and direction to the

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aeronautics research and technology activities in the Office of Aeronautics and Space Technology (OAST). Special ad hoc teams were formed to address specific topics. The ad hoc team on Advanced Propulsion Technology, chaired by Dr. Eugene Covert, is comprised of nine members. The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the team members and other participants).

Type of Meeting: Open.

Agenda:

February 20, 1987

8 a.m.—Welcome and Opening Comments
8:30 a.m.—Systems Analysis for Lightweight Stoichiometric Engines
9:30 a.m.—Parallel Sessions
Materials and Structures
Internal Fluid Mechanics
Instrumentation and Controls
1:30 p.m.—Committee Report Preparation Session
5 p.m.—Adjourn

Dated: January 20, 1987.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 87-2024 Filed 2-2-87; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Thursday, February 19, 1987 at nine o'clock in the morning has been designated by the President's Committee on the Arts and the Humanities for Plenary Meeting XIV. This meeting has been scheduled in the Council Room, Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., in Washington DC. This is a regularly scheduled meetng at which committee activities will be reviewed and progress reported.

The Committee, charged with exploring ways to increase private support for the arts and the humanities, has generated private funds which augment their operational costs and support projects and programs which have been initiated by the President's Committee.

Agenda items on February 19 will include:

• Briefings by the Chairman of the National Endowment for the Arts and the National Endowment for the Humanities on the highlights of their activities.

• *Bicentennial of the American Constitution.* The Honorable Warren E. Burger, Former Chief Justice of the United States.

• *How to Interpret the Constitution on Subjects It Doesn't Mention.* Dr. Robert Goldwin, Director of Constitutional Studies, American Enterprise Institute.

In addition, reports will be made by Dr. Frank Stanton on the *Corporate Council on The Liberal Arts,* Caroline Leonetti Ahmanson on the *Humanities Council,* Deborah Welch, project director and Dr. Gus Burns, Professor of History, University of Florida on the *History Teaching Allicance.*

For further information individuals may call 202/682-5409.

Dated: January 28, 1987.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87-2087 Filed 2-2-87; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-029]

Yankee Atomic Electric Co., Yankee Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR 50.62 to Yankee Atomic Electric Company (the licensee) for the Yankee Nuclear Power Station (Yankee) located at the licensee's site near Rowe, Massachusetts.

Environmental Assessment

Identification of Proposed Action

The exemption would provide relief from requirements of 10 CFR 50.62 for the Yankee Nuclear Power Station. The proposed exemption is in accordance with the licensee's request for exemption submitted by letters dated October 15, 1985 and January 21, 1987.

The Need for the Proposed Action

10 CFR 50.62, "Reduction of Risk from Anticipated Transients Without Scram (ATWS) Events for Light-Water-Cooled Nuclear Power Plants," requires that each pressurized water reactor must have equipment from sensor output to final actuation device, that is diverse from the reactor trip system, to automatically initiate the auxiliary (or emergency) feedwater system and initiate a turbine trip under conditions indicative of an ATWS. For the Yankee plant, the licensee maintains that the risk from ATWS is sufficiently low, considering such factors as power level, unique design features, remaining plant lifetime and remote siting, that addition of diverse actuation of emergency feedwater and turbine trip is not necessary or justified. Therefore, the licensee requested an exemption to these requirements in its October 15, 1985 and January 21, 1987 application.

Environmental Impacts of the Proposed Action

The proposed exemption from the requirements of 10 CFR 50.62 for Yankee will not result in a significant environmental impact because: (1) The Yankee plant is a relatively small pressurized water reactor, about one-fifth the size of new plants. There are significant margins in secondary system inventory, and system operating temperatures and pressure; (2) the plant is located in a sparsely populated area; (3) the long operating history of Yankee shows that the frequency of plant trips/transients is lower than the industry average and that the emergency feedwater system has never been challenged; and (4) the reactor trip system at Yankee does not utilize undervoltage trip devices; a loss of power to the trip breaker also de-energizes the rod holding coils so the rods will insert by gravity. Thus, the likelihood of core melt or radiological release from an ATWS at Yankee is low.

Our evaluation of the proposed exemption indicates that the exemption will not significantly increase the probability or consequences of any radiological releases, and there is no significant increase in occupational exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves systems located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since we have concluded that the environmental effects of the proposed action are not significant, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts and could result in the licensee being in violation of the Commission's regulations.

Alternative Use of Resources

This action does not involve the use of resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult with agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption submittals dated October 15, 1985 and January 21, 1987 which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Bethesda, Maryland, this 22nd day of January of 1987.

For the Nuclear Regulatory Commission.

Eileen M. McKenna,

Acting Director, Project Directorate No. 1, Division of PWR Licensing-A.

[FR Doc. 87-2120 Filed 2-2-87; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Human Factors; Meeting

The ACRS Subcommittee on Human Factors will hold a meeting on February 18, 1987, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, February 18, 1987—8:30 a.m. Until the Conclusion of Business

The Subcommittee will review "Safety Conscience" concept at utilities.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcrip is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: January 29, 1987.

John C. McKinley,

Chief, Project Review Branch No. 1.

[FR Doc. 87-2122 Filed 2-2-87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Transitional Provisions for Improved Patent Protection in the Republic of Korea

AGENCY: Office of the United States Trade Representative.

ACTION: Notice given regarding opportunity to amend pharmaceutical and chemical process patent applications pending in the Republic of Korea (Korea), and request for submissions regarding protection of certain chemical products in Korea.

SUMMARY: During the two years leading up to November 1985, the United States and the Republic of Korea held a series of consultations aimed at improving Korean protection of U.S. intellectual property rights (patents, copyrights, trademarks). These consultations provided a useful exchange of views, but were unsuccessful in eliciting changes in Korean laws. During that time, losses to U.S. intellectual property owners were increasing from unauthorized reproduction of copyrighted materials and unauthorized use of U.S. inventions.

Accordingly, in November 1985, the President directed the United States Trade Representative to initiate an investigation under section 302(c) of the Trade Act of 1974, as amended, of Korean intellectual property laws and practices. The President terminated the investigation in August 1986, upon agreement by Korea to introduce copyright and software legislation and amendments to the patent laws.

Pursuant to the agreement, Korea has enacted certain amendments to its patent law to take effect on July 1, 1987. These changes include patent coverage for chemical and pharmaceutical products, and for new uses of chemical and pharmaceutical products. Further, Korea will institute certain transitional provisions to minimize the disadvantages to certain owners of U.S. patents and to applicants for Korean patents, which may have resulted from the limitations of the present Korean patent law. Both governments agreed that these provisions would be implemented in a manner to ensure a manageable process.

Specifically, two alternative options will be made available. They are:

I. Applications for process patents pending in the Republic of Korea on the effective date of the new patent law may be amended by adding product claims, upon the request of the applicant. The opportunity to amend process patent applications in this manner will be in effect for ninety (90) days following the effective date of the new patent law. The specific procedures for filing such amendments will be substantially the same as those under the present law.

This option is applicable to products which will be patentable under the amended Korean patent law. A Korean patent granted on an amended application provides a period of protection of 15 years from publication for opposition.

If a U.S. patent application relating to a chemical product is presently pending and the 12-month priority period under the Paris Convention for the Protection of Industrial Property has not yet expired, a related process patent

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application filed now in the Republic of Korea could be amended after the effective date of the new patent law provided the Korean application is pending at that time. A related process application may also be filed outside the Convention year, provided the absolute novelty requirement of the Korean law is satisfied.

II. Chemical products, including pharmaceuticals and agrichemicals, subject to pre-marketing regulatory review in the Republic of Korea under relevant laws (e.g., the Pharmaceutical Affairs Law and the Agricultural Chemicals Management Law), which were patented in the United States between January 1, 1980, and July 1, 1987, but were marketed neither in the Republic of Korea nor in the United States of America prior to the effective date of the new patent law, will be protected by denying permission, for ten (10) years from such effective date, to manufacture or market such products in the Republic of Korea without the authorization of the owner of the U.S. patent.

Any natural or juridical person who owns a U.S. patent claiming a chemical product, including pharmaceutical and agrichemical products, that would be subject to pre-market review if manufactured or sold in the Republic of Korea, is eligible to avail himself of this option.

Eligible products will be limited to those which are protected by U.S. patents issued after January 1, 1980, and before the effective date of the new Korean patent law, July 1, 1987. In this respect, it has been agreed that Korea would be furnished with an identification of such products no later than the effective date of the new patent law. Information provided to the Korean Government based upon submissions made pursuant to this notice will not be treated confidentially.

In order to provide Korea with the agreed upon information, owners of U.S. patents eligible for such treatment must submit a declaration to the Office of the United States Trade Representative not later than March 31, 1987, containing the following information:

1. A copy of the relevant U.S. patent.
2. An identification of the patented product that has not and will not be marketed in the United States and in the Republic of Korea prior to the effective date of the new patent law.

Although the product in question must have been the subject of U.S. patent protection after January 1, 1980, a patent may not yet have issued by the time the Declaration is to be submitted to the Office of the United States Trade Representative. Accordingly, information should be supplied identifying the relevant patent application on the basis of which a patent is expected to be granted before July 1, 1987. If a patent is issued before July 1, 1987, on such application, the declarant is required to submit a supplementary Declaration to that effect, together with a copy of such patent.

The product in question must have been identified for commercial applicability and should be identified by its tradename, if such has been established, and also by its generic and chemical names. The Declaration must include a statement that such product is subject to pre-market regulatory review in Korea under relevant laws (e.g., the Pharmaceutical Affairs Law and the Agricultural Chemicals Management law).

The Declaration will be accepted if, and only if, the declarant acknowledges his understanding in the Declaration that willfully false statements and the like will subject him to fine or imprisonment, or both, under 18 U.S.C. 1001. The declarant must also set forth in the body of the Declaration that all statements made of the declarant's own knowledge are true and that all statements made on information and belief are believed to be true. Declarations and materials specified above should be submitted to the Office of the U.S. Trade Representative, Office of the General Counsel, Room 223, 600 17th Street, NW., Washington, DC 20506.

For further information regarding transitional provisions or other proposed changes in Korean legislation contact: Emery Simon, Director for Intellectual Property (202) 395–6864, Sandra Kristoff, Deputy Assistant United States Trade Representative for Asia and Pacific (202) 395–4755, or Catherine Field, Assistant General Counsel, (202) 395–3432.

Judith Hippler Bello,

Chairman, Section 301 Committee.

[FR Doc. 87–2048 Filed 2–2–87; 8:45 am]

BILLING CODE 3190-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

State Agency Advisory Committee; Regular Meeting Notice

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open

SUMMARY: The Northwest Power Planning Coucil hereby announces a forthcoming meeting of its State Agency Advisory Committee, to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix 1, 1–4. Activities will include:

- Final MCS Rule.
- Bonneville's MCS programs.
- Bonneville's Intertie Access Policy.
- Western Energy Study workplan.
- Least cost energy planning.
- Other issues of interest to the task force.

DATE: Thursday, February 5, 1987; 10:30 a.m.–5:00 p.m.

ADDRESS: The meeting will be held at the Idaho Public Utilities Commission, 472 W. Washington Street, State House, Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Jim Litchfield, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 87–2084 Filed 2–2–87; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[(Release No. 34–24021; File No. SR–Amex–84–32)]

Self/Regulatory Organizations; Order Approving Proposed Rule Change; American Stock Exchange, Inc.

I. Introduction

The American Stock Exchange, Inc. ("Amex") submitted on October 30, 1984, a proposed rule change pursuant to section 19(b) (1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to amend Commentary .04 of Amex Rule 154 to reinstate an Amex requirement, rescinded in 1961, that specialists accept stop orders in common stock.[1] In addition, Amex proposes to require specialists to accept stop limit orders where the stop and limit price are not identical. Currently, Amex rules do not allow specialists to accept stop orders in round lots and only require that specialists accept stop limit orders having the same stop and limit prices.[2]

[1] Notice of the proposed rule change together with the terms of substance of the proposal was given by the issuance of a Comission release (Securities Exchange Act Release No. 21654, January 11, 1985), and by publication in the **Federal Register** (50 FR 2745, January 18, 1985). No comments were received with respect to the proposed rule change.

[2] The Amex currently requires specialists to accept stop orders and stop limit orders in options contracts. Amex Rule 950, Floor Rules Applicable to Options.

In 1961, the Amex prohibited the use of stop orders because of concerns of specialist manipulation and abuse in connection with the execution of such orders. In particular, accumulations of stop orders on specialists' books in a number of stocks had led to marked decreases in the stocks' prices when significant selling interest, represented by the stop orders, was triggered. Excessive downward pressure on the market resulted from either apparent manipulation of the market by Exchange specialists through the election of stop orders on their books, or specialists' inability to make fair and orderly markets when excessvie volume in stop orders had been allowed to accumulate.[3]

The Amex has proposed limitations on the execution of stop orders, and a variety of surveillance enhancements, designed to address the problems encountered prior to 1961. The proposed Amex rule would require that a specialist obtain a floor official's approval before executing for his own account a trade which elects one or more stop orders on his book. All stop orders thereby elected would have to be executed at the same price as the electing transaction. In addition, the Amex filing states that "specialists will be reminded that they have the duty to inform a floor official or floor governor whenever there is an unusual accumulation of stop and/or stop limit orders at a specific price or prices which may affect their market making ability in the stock." Amex specialists also will be required to report to floor officials stop order accumulations of 5,000 shares or more within one point either above or below the current market price.[4]

The Commission notes that stop orders continue to be the source of a significant number of public customer complaints concerning order executions and that the potential exists for specialists to abuse stop order election procedures to the disadvantage of public customer orders. The Commission believes, however, that the Amex proposal provides for appropriate floor official review and approval of specialist transactions that trigger (or "elect") stop orders, and provides for adequate surveillance of (1) stop order transactions approved by floor officials, and (2) stocks with large accumulations and executions of stop orders.

Therefore, the Commission has determined to approve the proposed rule change in light of Amex's proposed special surveillance measures described below, together with the overall expansion and improvement of Amex's surveillance procedures.[5]

II. Regulatory Concerns Associated with Stop Orders

Stop sell orders generally are entered in a stock whose price has increased substantially, to protect the investor's profits should the stock price decline. Stop buy orders generally are entered by investors with short positions to limit losses should the stock price increase. A stop buy order will be elected if the stock price increases to or above the stop price.

While stop orders generally are intended to prevent a loss (or preserve a gain), the investor is guaranteed an execution only at the best available price. In contrast, a stop limit order is intended to ensure that the order will be executed at no lower than the limit price. A stop limit order to sell becomes a limit order (as opposed to a market order) executable at the limit price, or at a better price, if obtainable, when a transaction in the security occurs at or below the stop price. A stop limit order to buy becomes a limit order executable at the limit price or better when a transaction occurs at or above the stop price. A stop limit order is intended to guarantee that the order receives an execution at no worse than the limit price. If, however, the market drops below the limit price before the order can be executed, it is possible that the order will not be executed. Thus, the Amex proposal, by permitting the limit price to be entered below the stop price, will increase the opportunities for a customer order to be executed in the event the market continues downward.

Before prohibiting stop orders in common stock in 1961, the Amex encountered two different types of problems with stop order elections. Both types involved specialists electing stop orders through principal transactions in instances where they apparently could have refrained from doing so, while still stabilizing buying and selling interest. In both cases, significant volume in stop sell orders was entered on the specialist's book at various price levels below the market price as the stock price increased.

1. The "Snowball Effect"

After stop orders accumulate in a particular stock, when buying interest slows and the price decreases somewhat, the specialist, buying for his own account, may be able to successively elect stop orders, creating a "snowballing" effect that sharply accelerates the price downswing. In the absence of significant public buying interest, the market may move gradually downward due to the sepcialist electing stop order volume at one price, and by purchasing for his own account. The specialist then may respond to the selling interest thereby elected by lowering his bid further and purchasing the elected volume at the lower price, thus electing additional stop order volume at that price.

2. Gap Elections

Specialists with large stop order volume on their book have "cleaned up the book" first by electing large stop order volume by executing a transaction at a price substantially below the market price, then executing the orders by buying along with public bids at the electing price or at a lower price.[6]

III. Proposed Amex Surveillance Procedures[7]

The Amex has proposed several surveillance measures intended to alleviate the two principal stop order problems the Exchange previously encountered. The proposed Amex Rule addresses the "snowball effect" by requiring that specialists who have elected stop orders in trading for their own account, execute the elected stop order volume at a price no lower than the electing sales price. The proposed Amex Rule is intended to assure that gap elections only occur in response to

[3] The Comission detailed a number of problems associated with the execution of stop orders in its 1963 study of stop orders. *See* Division of Trading and Exchanges, SEC. *Stop Orders*, (1963) ("Stop Order Study").

[4] *See* letter from Simon Krauthamer, Assistant Vice President, Amex, to Michael Cavalier, Branch Chief, Division of Market Regulation, dated February 21, 1985 ("February 21, letter").

[5] As discussed in more detail below, we note that the Commission is approving the portion of the rule filing setting the gap pricing parameters only for a one year pilot period.

[6] The principal difference between the "snowball" effect and "gap elections" is that the former is characterized by the specialist's making substantially narrower markets. They arrive, however, at the same result—a significant drop in the stock's price.

As the Stop Order Study noted, the specialist, in making a gap election, arguably is making a fair and orderly market by buying the accumulated stop sell orders in response to heavy selling interest. The Stop Order Study also stated, however, that stop orders at prices between the market quote and the specialist's bid may not receive the best execution. By allowing the market to fall substantially in executing the stop orders, the specialist thereby may be able either to cover profitably a short position or establish a position at a favorable price.

[7] Several proposed surveillance procedures were described in a letter from the Amex. *See* February 21 letter, *supra* note 4; letter from Brandon Becker, Assistant Director, Division of Market Regulations, to Simon Krauthamer, dated April 22, 1986, and letter from Simon Krauthamer to Brandon Becker, dated August 6, 1986 ("April 22" and "August 6 letters," respectively).

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market forces (1) by requiring floor official approval for all specialists' electing transactions,[8] and (2) by providing Amex surveillance with a daily record of all specialist dealer transactions, including those involving stop orders, so that Amex off-floor surveillance personnel also can examine the appropriateness of the electing transaction.

Regarding the latter procedure, the Amex would require that Amex Specialists provide a daily record of all stop order transactions by indicating on Form 191[9] which of their previous day purchases or sales elected stop orders, and obtain on the Form the signature or stamp of the floor official who approved the electing transaction. Stop order data would be reviewed daily by the staff of the Amex Trading Analysis Division to identify stocks with stop order accumulations that might pose market making problems. In addition, the Amex has indicated that its Market Surveillance Division could thereby review, on a case-by-case basis, instances of floor official approval of specialists' stop order elections to determine whether approval was warranted. In this regard, the Amex stated that its review would be conducted independently of the floor officials' assessment of the available information.[10]

In addition, specialists will be required to report to floor officials stop order accumulations of 5,000 shares or more within one point above or below the existing market price, to apprise the officials of potentially volatile market situations. Further, the Amex will require that a specialist record on Form 191 whenever he has stop order volume of 5,000 shares or more within one point of the market price, and indicate which floor official the speicialist informed of the stop order accumulation.[11]

With respect to gap elections, the specialist participating in a gap election will be required not only to receive floor official approval, but also a written explanation by the floor official of the external reason for the election,[12] when the gap between the specialist's bid or offer and the previous last sale is ⅜ point for stocks with a previous last sale of less than $10, ¾ point for stocks between $10 and $20, and one point for stocks over $20.[13] These procedures will be implemented on a one year pilot basis, after which the Exchange and the Commission will assess the adequacy of these gap pricing parameters for purposes of requiring written floor official approval of gap elections.[14]

In addition, the Amex will issue an interpretation under Amex Rule 170 ("Registration and functions of Specialists") to provide that specialists would be prohibited from making a purchase (sale) as principal above (below) the last different price if the purchase or sale would elect a stop or stop limit order held by a specialist. The specialist, however, could obtain a floor official's advance exemption from this rule interpretation if there are unusual circumstances in the market for that particular stock or in the general market.[15]

The Amex also stated that, pursuant to Amex Rule 22, floor officials can ban stop and stop limit orders in a stock when it appears that the acceptance of such orders would be "detrimental to the market."[16] Amex Market Surveillance also could impose a stop order ban until it determined that the market for the security had stabilized.

IV. Discussion

While the Commission has been long aware of the potential market making problems associated with stop orders, the Commission believes that the proposed Amex rule and surveillance procedures, if properly administered, should provide a satisfactory regulatory scheme for the handling of stop orders by Amex specialists.

The proposed Amex rule would tend to limit the "snowball effect" by requiring that elected orders be executed at the same price as electing transations. In addition, the proposed Amex rule will involve the floor official in determining the appropriateness of specialist stop order elections. In this regard, the Amex would provide two levels of review of specialist execution of stop orders: (1) Floor official oversight, and (2) Amex surveillance examination of both floor official and specialist performance.

Further, the Commission notes that certain Amex surveillance procedures, notably the stop order audit trail capability provided by specialist reports on Form 191, should provide accessible data for all stocks with stop order volume. In addition, the Amex's proposed surveillance procedures should enable the Exchange to anticipate stop order accumulations that could destabilize the market, by requiring that a specialist report stop order volume of 5,000 shares within one point of the market price to a floor official.[17]

The Amex rule does not, however, directly address the potential problem of "gap elections" *i.e.*, under the proposed requirements the specialist could bid below the market and elect stop orders at significantly reduced price levels. As noted above, Amex has sharply curtailed this ability by prohibiting, in the absence of prior floor official approval, a specialist's principal purchase (sale) above (below) the last sale price if the purchase for sale would elect a stop or stop limit order held by the specialist. Nevertheless, the Amex will have to rely on the judgment and diligence of floor officials and its Market Surveillance Department, as well as on the specialists, to ensure that liquid and continuous markets are made in stocks with stop order accumulations.

In this regard, the Commission believes that two measures seem particularly suited to promoting fair and orderly markets in such stocks by enabling Amex surveillance to identify stocks requiring special monitoring: (1) The requirement that spcialists indicate on Form 191 those electing transactions executed for their own account, and (2) the requirement that floor officials be informed of all accumulations and executions of stop orders that exceed 5,000 shares. The Amex's Trading Services Division could thereby ensure that: (1) Electing transactions executed for the specialist's own account received floor official approval and that the floor official provided a written explanation for gap elections when the gap is at a specified lower price; [18] (2) specialists executed stop orders at no worse than the electing price; and (3) specialists did not abuse the gap election procedures. In addition, Form 191 data would facilitate the Amex's identifying those stocks that are likely candidates for stop order bans.[19]

Although the principal vehicle for Amex oversight of specialist and floor official preformance will be Form 191 information, the Commission notes that floor officials must be capable of making appropriate decisions while on the trading floor regarding specialists' reports of stop order accumulations or requests for approval of electing transactions. The Commission notes that the Amex plans to educate floor officials regarding potential on-floor situations commonly encountered involving stop orders both through an information memorandum describing such situations and instructional meetings.

V. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 21, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2123 Filed 2-2-87; 8:45 am]

BILLING CODE 8010-01-M

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[8] NYSE Rule 123A.40 has a similar requirement that the specialist obtain floor official approval for all of his dealer transactions that elect stop orders.

In this connection, the Exchange plans to develop an informaitoin circular describing appropriate and inappropriate circumstances for floor official approval of specialists' electing transactions, and hold instructional meetintgs with floor officials. Indeed, the Commission expects that such an informaiton circular generally wil, describe the regulatory framework applicable to stop orders and provides specific examples of appropriate and inappropriate stop order execution procedures.

[9] Form 191, required to be filed daily prior to the opening, pursuant to Amex Rule 191, must include the name of the security and the price at which it was purchased or sold.

[10] *See* April 22 and August 6 letters, *supra* note 7.

[11] *Id.* Amex has agreed to review, over the next six to nine months, the 5,000 share/one point reporting requirement and to report to the Commission, in writing, their experience with this standard.

[12] Although, as noted above, "gap" elections can be abused, they also may reflect legitimate price movement which reflects the entry of significant new infomation to the market. Where there has been no significant new market information, the Commission can indentify no appropriate reason for the specialist to create a gap election through effecting a transaction for his own account. Accordingly, the Commission is especially interested in ensuring that the Amex's surveillance system be capable of identifying, with specificity, the reason for a "gap" election.

[13] As of October 31, 1986, 463 Amex stocks traded at less than $10 per share, 252 traded between $10 and $20, and 224 traded at $20 or more.

[14] During the one year pilot, Amex will collect additional data relating to the number of gap elections at ¼ point for stocks less than $10, ½ point for stocks between $10 and 20, and ¾ point for stocks over $20. Whenever the specialist elects or participates in the election of a stop order, the specialist will indicate on Form 191 the previous sale price. The Amex staff will tabulate the number of stop orders elected by the specialist, or in which the specialist participated, at the ¼, ½, and ¾ point parameters noted above, based on review of the specialist's Form 191. For purposes of this review, the Amex will review each specialist unit's Form 191s on a random basis. Amex also indicated that order tickets (which must indicate whether the order was entered with stop) are reviewed periodically, and that they will be compared with the Form 191 as a check to verify that the specialist is noting the previous sale price for all stop orders which he elects or in which he participates. *See* April 22 and August 6 letters, *supra* note 7.

[15] This interpretation is similar to Amex Rule 207 ("Limitation on Electing Odd-Lot Stop Orders"), which prohibits, in the absence of prior floor official approval, the principal purchases (or sales) above (or below) the last differnt price that would elect an odd-lot stop or stop limit order.

In addition, the Amex will provide examples of the unusual market circumstances that could warrant the grant of an exemption by a floor official. *See* April 22 and August 6 letters, *supra* note 7.

[16] *See* February 21 letter, *supra* note 4.

[17] Moreover, we note tha Amex's review of the 5,000/one point reporting requirement will enable the Commission and Amex to assess whether the reporting standards are adequate or should be altered

[18] Because of the importance of the gap pricing parameters that establish when a specialist must get written floor official approval, with an explanation, to participate in a gap election at a specified lower price, the Commission is only approving these pricing parameters for a one year pilot period. This will allow the Commission to review how these procedures are working on the Amex floor and determine whether the parameters should be altered, modified or approved on a permanent basis.

[19] The data also would indicate whether a specialist had large stop order volume on his book about which he should have informed a floor official.

[Release No. 34-24026; File No. SR-DTC-86-10]

Self-Regulatory Organizations; Depository Trust Co.; Filing of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78(b)(1), notice is hereby given that on December 23, 1986, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described below. The Commission is publishing this notice to solicit comment.

The proposal would expand the methods of access to DTC's Computer-to-Computer Facility II ("CCF-II"). CCF-II allows DTC Participants to transmit to and receive from DTC transactional data through a link between DTC's mainframe computer and Participant's mainframe computer. Presently, Participants can use CCF-II only if they have access to a mainframe computer manufactured by IBM. The proposed rule change would allow Participants with non-IBM computers to use CCF-II. In addition, the proposal would allow DTC Participants with an IBM MVS/Bulk Data Transmission ("BDT") computer to make high speed transmission of bulk data to and from DTC through the CCF-II system.

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will (A) by order approve such proposed change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons may submit written comments about the proposal by filing six copies of their comments with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20459. Copies of the filing also will be available for inspection and copying at DTC's principal office. All comments should refer to the file number in the caption above and should be submitted by February 24, 1987.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: January 27, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2127 Filed 2-2-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 7-9590, et al.]

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

January 27, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Taiwan Fund Inc.
Common Stock, $.01 Par Value (File No. 7-9590)

Universal Health Realty Income Trust
Shares of Beneficial Interest (File No. 7-9591)

M.D.C. Asset Investors, Inc.
Common Stock, $.01 Par Value (File No. 7-9592)

Servicemaster Limited Partnership
Shares of Limited Partnership Interest (File No. 7-9593)

Alleghany Corporation (Delaware)
Common Stock, No Par Value (File No. 7-9594)

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Fruehauf Corporation (Delaware)
Class B Common Stock, $.01 Par Value (File No. 7-9595)
Fruehauf Corporation (Delaware)
$3.68 Series A Cumulative Exchangeable Redeemable Preferred Stock (File No. 7-9596)
Homestead Financial Corporation (Delaware)
Class A Common Stock, $.01 Par Value (File No. 7-9597)
Homestead Financial Corporation (Delaware)
Class B Common Stock, $.01 Par Value (File No. 7-9598)
Lucky Stores, Inc. (Delaware)
Common Stock, $1.25 Par Value (File No. 7-9599)
Sun Chemical Corporation
Class A Common Stock, No Par Value (File No. 7-9600)
Sun Chemical Corporation
Class B Common Stock, No Par Value (File No. 7-9601)
Standard Pacific Corporation L.P. (Delaware)
Depository Receipts, No Par Value (File No. 7-9602)
Transworld Corporation Liquidating Trust
Units of Beneficial Interest, No Par Value (File No. 7-9603)
TW Services, Inc.
Common Stock, $.01 Par Value (File No. 7-9604)
Wisconsin Electric Power Company (Holding Company)
Common Stock, $.01 Par Value (File No. 7-9605)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 18, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 87-2125 Filed 2-2-87; 8:45 am]
BILLING CODE 8010-01-M

[File No. 7-9606]

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

January 28, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Premark International, Inc.
Common Stock, $1.00 Par Value (File No. 7-9606)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 19, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 87-2126 Filed 2-2-87; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 35-24305]

Filings Under the Public Utility Holding Company Act of 1935 ("Act"); Appalachian Power Co.

January 28, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 18, 1987, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Appalachian Power Company (70-7345)

Appalachian Power Company ("APCo"), 40 Franklin Road, S.W., Roanoke, Virginia 24011, a subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a declaration with this Commission pursuant to sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

APCo proposes to issue and sell, in one or more transactions from time to time through December 31, 1987, up to $100 million aggregate principal amount of its First Mortgage Bonds ("Bonds"), in one or more new series, each with a maturity of not less than 5 years and not more than 30 years. The interest rate on the principal amount of Bonds and the price to be paid to APCo for the Bonds will be determined at the time of the sale or sales by competitive bidding. APCo may employ alternative competitive bidding procedures in accordance with the Commission's statement of policy set forth in HCAR No. 22623, September 2, 1982, or as an alternative, subject to Commission approval, it may publicly or privately place the Bonds.

As an alternative to the issuance of the Bonds, APCo proposes, subject to receipt of appropriate authorization, to issue, from time to time through December 31, 1987, up to $100 million principal amount of its unsecured notes with a maturity in excess of twelve months ("Notes") to one or more commercial banks pursuant to a proposed term loan agreement. The proposed term loan agreement would provide that the Notes bear interest at a fixed rate per annum not in excess of 12%. APCo has requested an exception to the competitive bidding rules pursuant to Rule 50(a)(5) with respect to possible placement fees of .5% of the principal amount borrowed.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 87-2124 Filed 2-2-87; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 1-87]

Treasury Notes, Series U-1989

Washington, January 22, 1987.

The Secretary announced on January 21, 1987, that the interest rate on the notes designated Series U-1989, described in Department Circular—Public Debt Series—No. 1-87 dated January 15, 1987, will be 6⅛ percent. Interest on the notes will be payable at the rate of 6⅛ percent per annum.

Bart Derrick,
Acting Fiscal Assistant Secretary.

[FR Doc. 87-2018 Filed 2-2-87; 8:45 am]
BILLING CODE 4810-40-M

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Sunshine Act Meetings

Federal Register
Vol. 52, No. 22
Tuesday, February 3, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., February 3, 1987.
PLACE: 2033 K Street NW., Washington, DC, 5th Floor Hearing Room.
STATUS: Open.
MATTERS TO BE CONSIDERED: Proposed Revisions to Part 9—Rules relating to the review of Exchange disciplinary or other adverse actions.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–2189 Filed 1–30–87; 12:33 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., February 3, 1987.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Enforcement Matter.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–2190 Filed 1–30–87; 12:33 p.m.]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., February 6, 1987.
PLACE: 2033 K St., NW., Washington, DC 8th Floor Conference Room.
STATUS: CLOSED.
MATTERS TO BE CONSIDERED: Market Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–2191 Filed 1–30–87; 12:33 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., February 13, 1987.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Market Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–2192 Filed 1–30–87; 12:33 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., February 18, 1987.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.
STATUS: Open.
MATTERS TO BE CONSIDERED: Third Quarter Goals and Objectives, FY 1987.

Application of the Chicago Mercantile Exchange for designation as a futures contract market in the U.S. Dollar Index
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–2193 Filed 1–30–87; 12:33 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., February 20, 1987.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Market Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–2194 Filed 1–30–87; 12:33 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., February 24, 1987.
PLACE: 2033 K Street, NW., Washington, DC, 5th Floor Hearing Room.
STATUS: Open.
MATTERS TO BE CONSIDERED:
Revision of Federal Speculative Position Limits—proposed rules
Proposed Chicago Board of Trade Clearing Corporation Bylaw 110—settlement price procedures
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–2195 Filed 1–30–87; 12:33 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., February 24, 1987.
PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Rule enforcement review.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–2196 Filed 1–30–87; 12:33 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., February 24, 1987.
PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Enforcement matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–2197 Filed 1–30–87; 12:33 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., February 27, 1987.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87–2198 Filed 1–30–87; 12:33 pm]
BILLING CODE 6351–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the regular meeting of the Farm Credit Administration Board (Board) scheduled for February 3, 1987, has been cancelled. The next meeting of the Board is scheduled for March 3, 1987.
FOR FURTHER INFORMATION CONTACT: Kenneth J. Auberger, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4010.
ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: January 29, 1987.
Kenneth J. Auberger
Secretary Farm Credit Administration Board.
[FR Doc. 87–2133 Filed 1–29–87; 4:37 pm]
BILLING CODE 6705–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552), notice is hereby given that at 10:40 a.m. on Thursday, January 22, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) Accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for a purchase and assumption transaction, or (2) in the event no acceptable bid for a purchase and assumption transaction is submitted, accept the highest acceptable bid for an insured deposit transfer transaction which may be submitted, or (3) in the event no acceptable bid for either type transaction is submitted, make funds available for the payment of the insured deposits of the closed bank, with respect to the following: (a) National Bank of Frederick, Frederick, Oklahoma, which was expected to be closed later in the day by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency; and (b) First Sierra Bank, Bishop, California, which was expected to be closed on Friday, January 23, 1987, by the Superintendent of Banks for the State of California.

(B)(1) Accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for the transfer of insured deposits in The First National Bank of Marlboro, Marlborough, Massachusetts, which was expected to be closed on Friday, January 23, 1987, by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, or (2) in the event no acceptable bid for a deposit transfer transaction is submitted, make funds available for the payment of the insured deposits of the closed bank.

At that same meeting, the Board of Directors also considered the application of Rainier Bank Oregon, National Association, Gresham, Oregon, for consent to purchase the assets of and assume the liability to pay deposits made in Rainier Bank Oregon, a Federal Savings Bank, Portland, Oregon, a non-FDIC-insured institution.

In calling the meeting, the Board determined, on motion of Director Robert L. Clarke (Comptroller of the Currency), seconded by Director C.C. Hope, Jr. (Appointive), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meetings was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B).

Dated: January 28, 1987.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 87–2146 Filed 1–29–87; 4:37 pm]
BILLING CODE 6714–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Meeting

ACTION: Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).
STATUS: Open.
TIME AND DATE: February 11–12, 1987, 9:30 a.m.
PLACE: Sheraton/Spokane Hotel, North 322 Spokane Falls Court, Spokane, Washington.
MATTERS TO BE CONSIDERED:

February 11, 1987

1. Amendments to the Columbia River Basin Fish and Wildlife Program
   - Salmon and steelhead framework
   - Bypass at Corps dams
   - Transportation of juvenile fish
   - Artificial production of salmon and steelhead
   - Resident fish projects above Hells Canyon Dam
   - Final action on amendments package
2. Council Action on Response to Comments on Model Conservation Standards Amendment
3. Council Business

February 12, 1987

4. Public Comment and Council Action on Petitions to Adopt Model Conservation Standards for Existing Residential Buildings
5. Public Comment on Amendments to the Model Conservation Standards regarding a Surcharge for Conversion Standards and Model Conservation Standards for Federal Agency Customers
6. Council Action on Bonneville Power Administration's Power Work Plan
7. Council Action on Comments on Bonneville Power Administration's Resource Strategy
8. Public Comment. Note that public comment has closed on items 1 and 2.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Atkins at (503) 222–5161.
Edward Sheets,
Executive Director.
[FR Doc. 87–2223 Filed 1–30–87; 2:10 pm]
BILLING CODE 0000–00–M

POSTAL RATE COMMISSION

TIME AND DATE: 9:00 a.m. on Thursday, February 5, 1987.
PLACE: Conference Room, 1333 H Street, NW., Suite 300, Washington, DC.
STATUS: Closed.
MATTERS TO BE CONSIDERED: To discuss the Commission's decision and opinion in Docket Nos., N86–1/MC86–3.
CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20268–0001, Telephone (202) 789–6840.
Charles L. Clapp,
Secretary.
[FR Doc. 87–2221 Filed 1–30–87; 1:56 pm]
BILLING CODE 7715–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Tuesday, February 3, 1987 at 2:30 p.m.
PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.
STATUS: Open to the public.
MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. 731–TA–371 (P) (Fabric and expanded neoprene laminate from Taiwan)—briefing and vote.
6. Any items left over from previous agenda.

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CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

January 23, 1987.

[FR Doc. 87-2188 Filed 1-30-87; 12:30 pm]

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Tuesday
February 3, 1987

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 43, 91, 121, 127, and 135
Air Traffic Control Radar Beacon System and Mode S Transponder Requirements in the National Airspace System; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43, 91, 121, 127, and 135

[Docket No. 23799; Amdt. Nos. 43-26, 91-198, 121-190, 127-41, 135-22]

Air Traffic Control Radar Beacon System and Mode S Transponder Requirements in the National Airspace System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes requirements pertaining to the use, installation, inspection, and testing of Air Traffic Control Radar Beacon System (ATCRBS) and Mode S transponders in U.S.-registered civil aircraft. The rule adopted continues to require a transponder for operation in each terminal control area (TCA) and in the airspace of the 48 contiguous states and the District of Columbia above 12,500 feet above ground level (AGL). Automatic pressure altitude reporting equipment, which is currently required in all of the above airspace except Group II TCA's, will be required in Group II TCA's effective December 1, 1987. The rule provides for a phased transition from ATCRBS to Mode S transponders in the National Airspace System (NAS) by limiting the manufacture and installation of ATCRBS transponders. After January 1, 1992, all newly installed transponders in U.S.-registered civil aircraft are required to meet the requirements of the technical standard order (TSO) for airborne Mode S transponder equipment. The rule also permits ATCRBS transponders already installed on that date to be used indefinitely. Projected increases in air traffic will require improved aircraft location and identification information, which will be provided by the Mode S and automatic pressure altitude reporting equipment. These requirements are an essential component of the NAS Plan. Mode S is also necessary technical prerequisite to obtain data link services which allow digital exchange of information between aircraft and the ground. The FAA will provide these services beginning on/about 1990. This action also sets forth test and inspection requirements for the Mode S transponder and a new output power test requirement for the ATCRBS transponder.

EFFECTIVE DATE: April 6, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Falsetti, Airspace and Air Traffic Rules Branch, Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9249.

SUPPLEMENTARY INFORMATION: The three kinds of aircraft equipment addressed by this rulemaking are as follows:

Air Traffic Control Radar Beacon System (ATCRBS). A radar system in which the aircraft to be detected is equipped with a radio receiver/transmitter called a transponder. Radar pulses transmitted from the ground are received by the transponder and used to trigger a distinctive transmission from the transponder. The controller's radar receives this transmission and displays a distinct and amplified return on the radar scope.

Mode S Transponder. The Mode S Transponder is an advanced version of the existing ATCRBS transponder. The Mode S transponder is completely interoperative and compatible with the current ATCRBS system. Mode S utilizes a discrete set of radio pulses (code) for each individual aircraft, and is not limited to the maximum 4,096 possible codes of the ATCRBS transponder. Mode S also adds the capability to provide a data link between the aircraft and the ground.

Mode C (Automatic Altitude Reporting Equipment). Some transponders are equipped with a Mode C capability. Mode C is that function of a transponder which responds to specific ground interrogations by transmitting the aircraft's current altitude in 100 foot increments. This information is received by ground equipment and displayed on the controller's scope in the data block for the transmitting aircraft. Mode C may be used with both ATCRBS and Mode S transponders.

History

On October 18, 1983, the FAA published an Advance Notice of Proposed Rulemaking (ANPRM) announcing the proposed use of Mode S transponders in the NAS (48 FR 48364, Notice No. 83-16). The following was proposed to take effect by 1992 or earlier, as noted:

1. Issuance of a technical standard order (TSO) for airborne Mode S transponder equipment. With issuance, TSO authorization to manufacture ATCRBS transponders would be terminated effective in 1986.

2. Amendment of Federal Aviation Regulations (FAR) Part 43 to include tests and testing procedures appropriate to Mode S transponders.

3. Amendment of FAR Part 91 as follows:

a. Newly installed transponders in U.S.-registered civil aircraft would meet requirements of the new TSO for airborne Mode S transponder equipment.

b. Either a Mode S or ATCRBS transponder, as well as automatic pressure altitude reporting equipment, would be necessary to operate in TCA's.

c. Either an operable Mode S or ATCRBS transponder, as well as automatic pressure altitude reporting equipment, would be necessary above 12,500 feet MSL in U.S. airspace. The proposal would retain the current exception for gliders above 12,500 feet MSL and retain provisions for helicopters and air traffic control (ATC) authorized deviations.

d. Automatic pressure altitude reporting equipment would be required for operations in Group II TCA's.

4. Amendments to FAR §§ 121.345(c), 127.123(b), and 135.143(c) to be consistent with the amendments to Part 91.

Comments—Proposed Introduction of Mode S

Comments were generally favorable to the proposed introduction of Mode S in the NAS. Twelve (12) comments were received which, though generally supportive, expressed some concern in several areas.

The areas of concern centered on:

1. The ramifications to U.S. manufacturers, foreign governments, and various international users regarding early cutoff of the TSO authorization to manufacture ATCRBS transponders in 1986.

2. The need for improved accuracy of altitude data, improved automatic pressure altitude reporting equipment, and reduced quantization (i.e., smaller intervals of reported altitudes) of aircraft reported altitude in the Mode S environment.

3. The impact of the proposed installation requirement on the Department of Defense (DOD) and on general aviation aircraft owners and operators.

4. The impacts on pilot cockpit workload, awareness of other air traffic, and the vulnerability to errors in altitude reporting in an automated system.

5. The extent of U.S. airspace within which Mode S would be required.

6. The bottom-line services and benefits that Mode S offers users, particularly general aviation users, in the NAS.

On September 17, 1985, the FAA published a Notice of Proposed Rulemaking (NPRM) (50 FR 37674, Notice 85-16) which reflected consideration of the concerns expressed in response to the ANPRM.

1. The NPRM acknowledged that an early U.S. withdrawal of the ATCRBS TSO authorization would likely have an unnecessarily disruptive and adverse economic effect on U.S. manufacturers' international sales of the ATCRBS and in addition an adverse effect on the regulatory and certification processes of foreign countries. To meet the dual objectives of permitting the continued manufacture and sale of ATCRBS transponders for foreign distribution and consumption while accomplishing an orderly domestic phase-in of Mode S transponders, the FAA proposed a schedule of installation requirements applicable only to ATC transponder equipment installed in U.S.-registered civil aircraft. The schedule was as follows:

Mode C automatic pressure altitude reporting equipment would be required in Group II TCA's effective January 1, 1992.

Transponder equipment, except equipment reinstalled in an aircraft from which it was removed for maintenance, would be required to meet TSO performance and environmental requirements in accordance with the following schedule:

1. Through December 31, 1986:

Any class of ATCRBS transponder (TSO-C74b or TSO-C74c), as appropriate; or any class of TSO-C112 (Mode S).

2. January 1, 1987, through January 1, 1992:

Any class of ATCRBS transponder (TSO-C74b or TSO-C74c) if the equipment was manufactured before January 1, 1987; or any class of TSO-C112 (Mode S).

3. After January 1, 1992:

Any class of TSO-C112 (Mode S).

As stated in the NPRM, the revised schedule was seen as providing several options to the U.S. civil aircraft operator. For example, the operator could use a previously installed ATCRBS transponder as long as it could be maintained. Through December 31, 1986, the operator could elect to replace a previously installed transponder or install a newly manufactured or used ATCRBS or a Mode S transponder meeting appropriate TSO specifications. From January 1, 1987, through January 1, 1992, the operator could elect the same options with one restriction. If the operator elects to install a new or different ATCRBS transponder, it must have been manufactured prior to January 1, 1987.

2. With respect to the concerns relative to improved accuracy of altitude data, improved automatic pressure altitude reporting equipment, and reduced quantization of aircraft reported altitude, the FAA agreed there would be benefits from greater precision in automatic altitude reporting. However, the agency maintained that each area would require separate development of the associated technology and procedures; and in each case, the FAA would seek public and industry input on the specific proposal. In addition, the existing equipment and procedures were determined to be fully adequate to support the additional reporting requirements proposed in the NPRM. For the above reasons, and because the suggested improvements were beyond the scope of the NPRM, the FAA determined it would not be appropriate to incorporate such suggestions in the Mode S NPRM. The agency did announce it would consider the institution of separate rulemaking for adoption of the requested improvements.

3. It was also recognized in the NPRM that an early cutoff of the ATCRBS TSO would adversely affect DOD equipage plans for its sizeable fleet. Accordingly, the FAA stated in the preamble to the NPRM that it proposed to permit continued manufacture of ATCRBS transponders to correspond to the DOD Mark XV implementation schedule.

4. The preamble to the NPRM also recognized the concern expressed concerning the adverse effect a "silent" Mode S data link environment would have on overall pilot traffic awareness and pilot workload in the cockpit. Again, these concerns were considered to be well beyond the scope of the NPRM. The FAA stated in the NPRM that in its implementation of data link, the agency would involve the public in its studies of all factors associated with each kind of message being considered for data link.

5. The concerns relative to the impact of Mode S on general aviation were articulated by the Aircraft Owners and Pilots Association (AOPA). AOPA's position was that the benefits of Mode S would accomplish acceptance of Mode S on a voluntary basis and that is should not be mandated. AOPA also questioned the benefits of Mode S to low altitude traffic. AOPA went on record as opposing Mode S if it were mandated above 6,000 feet. AOPA did recognize that the FAA proposal was to mandate Mode S or ATCRBS above 12,500 feet and within TCA's

FAA responded to the issues of bottom-line benefits, scope of airspace wherein Mode S is proposed, and service capabilities with a summary of the benefits of the NAS Plan. The goals of the NAS plan were broadly presented in the preamble of the NPRM as those designed to meet the pressures of increased demands for aviation services, limit costs, and provide and improve facilities. The preamble further stated that the plan for Mode S is incorporated in the NAS Plan because Mode S is considered to provide the airborne data link capability in NAS. The following excerpts from the NPRM describe in summary the NAS Plan and the role of Mode S in the NAS.

The NAS Plan is a comprehensive plan supported by large increases in automation to yield significant improvements in service and cost savings to the airspace user, the taxpayer, and the ATC system. Cost savings are expected through reductions in delays and fuel consumption due to improved traffic handling capabilities and the increased ability of the ATC system to accommodate direct, pilot-preferred routings. The effectiveness of NAS is expected to be dependent, in great part, upon a surveillance system which can provide accurate position information, relatively interference-free aircraft identify through selective addressing, and automatic pressure altitude reporting equipment. The Mode S transponder, coupled with its associated automatic pressure altitude reporting equipment, is considered a key piece of avionics necessary to participate fully in and receive the benefits of the NAS.

To summarize the role of Mode S in the NAS, Mode S is an advanced secondary radar system expected to provide improved accuracies in the surveillance of aircraft position and more interference-free identity and altitude reports to ATC.

Comments on the NPRM

The NPRM comment period expired December 16, 1985. At the request of the Air Transport Association (ATA), the comment period was reopened. The reopened period extended from February 14 to March 3, 1986 (51 FR 5686, Notice 85-16). A total of 15 commenters responded during both the original and reopened comment periods. There was general support and acceptance of the proposal. However, those in support of the proposal did express certain reservations and suggestions for improvement. Those in general support of the proposal but with comment and suggestions were the Air

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Traffic Control Association (ATCA), Air Line Pilots Association (ALPA), Soaring Society of America (SSA), Experimental Aircraft Association (EAA), General Aviation Manufacturers Association (GAMA), Air Transport Association (ATA), the State of Montana, and Aerospace Industries Association of America (AIAA), Rockwell International, and Allied Bendix Aerospace. Those generally opposed to the proposed introduction of Mode S into the NAS were the Aircraft Owners and Pilots Association (AOPA), the National Business Aircraft Association (NBAA), Foster Airdata, and two private citizens.

Issues

A common element in the comments was a perception that the agency is proceeding too quickly in mandating Mode S. Many commenters stated or implied that the FAA is accelerating the Mode S transponder requirement without giving due regard to the need for allowing a reasonable acceptance period on the part of all parties affected. Those identified as being affected by an accelerated transition from ATCRBS to Mode S equipment included the manufacturers who must design, develop, produce, and market Mode S; aircraft manufacturers who design and manufacture their aircraft cockpits to accommodate installation of Mode S; installers; and general aviation owners and operators who will make the ultimate decisions to purchase and install it.

The following are the major issues and related subissues presented in the public comments.

Major Issues

a. Mode S is costly.

b. The proposed installation schedule for Mode S transponders creates problems for:

—Avionics manufactures.

—Aircraft manufactures.

—Airlines.

—Owners and operators who believe they may be forced into making two purchase decisions, an initial one for a surveillance transponder, and a subsequent purchase when added data link services become available. In addition, commenters representing general aviation believe the general aviation operators may be forced into purchasing a transponder whose benefits are questionable.

c. Data link services to be available are indefinite. FAA has made no commitment to data link, causing uncertainty as to when and what services will be available.

Other issues

There were a number of other issues and subissues raised. They are as follows:

1. There is no justification for automatic pressure altitude reporting equipment in Group II terminal control areas (TCA). On the other hand, other commenters expressed the opposite view. That view was that there is a recognizable need for automatic pressure altitude reporting equipment and its use should be required by separate rulemaking.

2. The recent decline in aviation growth does not bear out original NAS plan estimates and it makes the mandating of Mode S transponders unnecessary.

3. There are deficiencies and problems with the proposed transponder tests.

4. There are performance weaknesses and deficiencies associated with Mode S, data link, and Mode C altitude reporting equipment.

5. Use of Mode S with data link would create a "silent" environment, as opposed to today's "party line" voice communications environment. A silent environment is hazardous to flight safety.

6. The Mode S requirements may adversely affect DOD fighting capability.

7. The U.S. may be breaking International Civil Aviation Organization (ICAO) agreements if it issues a rule without international approval.

8. Issuance of Mode S requirements prior to issuance of the Mode S TSO is premature.

Discussion of major issues

a. Major issue number 1: Mode S is costly. Generally, concerns were expressed that Mode S transponders could impose a financial burden on the industry and that the FAA seems little concerned that added costs will have the greatest effect on the general aviation fleet. Major concerns associated with cost were—

(1) Mode S transponder prices, even before data link is added, will be higher, creating a smaller market, which in turn will drive the cost even higher.

The effect of higher prices would be to freeze or reduce the transponder equipage levels at the lower end of the fleet.

(2) Mode S transponders with data link will cost more because they are significantly more complicated and complex.

One commenter said that FAA's finding in its economic evaluation that the difference in cost between the ATCRBS and a basic Mode S transponder would be approximately $600 after a break-in period, was fallacious. This was said to be so because if real-time weather and automated ATC data link communications are the Mode S benefits, a surveillance-only transponder would not be very marketable. In other words, to take full advantage of data link and automation benefits, the Mode S transponder will be considerably more complicated, and therefore more costly, than a survillance-only transponder.

(3) There may be a need to make more than one buy of a Mode S transponder.

One commenter said that without any real FAA definition of what if any data link services might be available, an operator might at first buy a basic Mode S tranponder and subsequently be faced with a decision to buy another more expensive model when and if operationally effective data link services become available. On this issue, the ATA suggested that data link, at least at the basic communications level, should be required by regulatory schedule. This would permit introduction of data link for ATC purposes, without requiring replacement of the basic transponder. It would also permit reasonable investment decisions for equipment to be installed at earlier dates.

(4) Mode S transponders will have a negative cost impact on small helicopters and airplanes, and on the DOD fleet.

This commenter said the DOD would feel a great impact because of its large new fleet which would be introduced during transition to Mode S. The U.S. Army alone has nearly 10,000 helicopters now, most of which are being replaced by new helicopters which could be required to carry advanced navigational capabilities of ATCRBS and Mode S equipment. The commenter concluded that the proposed requirement seemed to be excessively redundant and expensive

Discussion of cost issue.

Under the narrow-demand, higher-price, and resultant equipage-freeze theory, the industry would produce fewer transponder options if there is a narrow base of demand, focusing on the higher end of the market (with built-in data link). FAA discussions with marketing representatives of two manufacturers of transponder equipment did not support this scenario. Both companies advised they expect to continue to produce mainly for major portion of the market. They do not expect any significant contraction in the

demand for their transponders in the 1990's in large part because of the expected existence of a substantial retrofit market. With regard to the market as a whole, although there has been a dramatic decline in the production of general aviation aircraft in recent years, the size of the total fleet and the number of hours flown have remained fairly constant or increased somewhat. Furthermore, the manufacturers have the freedom to produce basic Mode S equipment that will be upgradable or have data link capability, thereby enhancing its attractiveness to potential purchasers of smaller aircraft.

Some commenters noted that the price difference quoted in the rule between Mode S and ATCRBS transponders does not include data link and that there are very few or no advantages for a Mode S transponder without data link. The manufacturers' ability to produce basic, upgradable equipment, as expressed above, is expected to help resolve this problem.

With respect to the issue of basic Mode S advantages/disadvantages, the FAA recognizes that data link is a major benefit of equipping with a Mode S transponder. The agency also believes that most users will eventually opt to equip with data link. There are however, two basic advantages of Mode S transponders that accrue to users that derive from the capability to enhance ATC services. One is the unique address portion of the Mode S transponder which makes possible the automatic association and display of the transponder reply with aircraft registration on the ATC radar scope. The other is that when a Mode S transponder operates with a Mode S ground system, certain kinds of radio interference present in high-density traffic environments are reduced below the level experienced with an ATCRBS transponder. Not all of the garbling problems with the ATCRBS transponders and ATCRBS ground station can be eliminated by upgrading the ground station or the transponder.

There is also more to the cost issue when considered in conjunction with Mode S with data link capability. The FAA had considered a requirement that would have included some level of data link with every Mode S transponder, but rejected it for two reasons. First, the agency believes that most users desire that the device mandated by the rule be as simple as possible—a number of commenters obviously preferred a device even simpler than Mode S. Second, FAA believes that a rule mandating data link would unnecessarily limit the flexibility of manufacturers to develop a range of capabilities. That range might be described as follows. At bottom is the user who is aware of the benefit of improved ATC surveillance, but has no use for the kinds of information envisioned for data link. A middle range may be the visual flight rules (VFR) operator with a simple display device to obtain weather services through data link. At the top of the line, one might find a frequent instrument flight rules (IFR) operator needing display, a touch entry device, or even a printer to make a permanent record of data link messages to obtain weather and ATC services. By not making data link mandatory, the flexibility to meet these needs is retained as determined by the marketplace and designers' innovations.

Comment regarding negative cost effects of the Mode S proposal on the DOD was not submitted by the DOD, but by private citizens. The DOD did not reply to the NPRM during the comment period but has since advised that it concurs with the proposal. In any event, under the transponder installation requirements of § 91.24(a), the proposed Mode S requirements pertaining to transponder installations apply only to U.S.-registered civil aircraft.

b. Major issue number 2: the proposed installation schedule for Mode S transponders creates problems for avionics and aircraft manufacturers, airlines, and aircraft owners and operators. The major concerns expressed in this area were—

(1) Effects on avionics manufacturers. One of the proposal's alleged negative effects to avionics manufacturers was stockpiling. The NPRM proposed that an ATCRBS transponder could continue to be installed in a U.S.-registered civil aircraft after January 1, 1987, but only if it were manufactured before that date. Rockwell International commented that an effect of this requirement would be that manufacturers would have to stockpile ATCRBS transponders for 5 years (from January 1, 1987, to January 1, 1992). Stockpiling was also brought out by another commenter relative to the concerns expressed regarding production problems.

Another alleged negative effect to avionics manufacturers was that the proposal did not allow time which would be needed to design, develop, and produce Mode S transponders. Allied Bendix stated that the ATCRBS production must be moved closer to the January 1992 deadline. Since the typical product development cycle was said to be 18 to 24 months, Allied Bendix recommended that ATCRBS production cutoff for non-U.S.-registered civil aircraft should be 24 months prior to the Mode S implementation deadline. The ATCRBS production cutoff should than be December 31, 1989, if the January 1992 deadline were retained. Allied Bendix commented this would allow availability of equipment which incorporates the latest technology coincident with a market that would justify the investment required to introduce a new product. Otherwise, the company maintained it was left with the choice of either stockpiling ATCRBS transponders or foregoing this market opportunity.

In still another area of negative effect, a manufacturer said that because Mode S transponders would be more complex, they would be more expensive. Therefore, it would be more likely that ATCRBS transponders would be installed up to the 1992 deadline or until the supply of pre-January 1, 1987, transponders was depleted. A consequence of this would be that the onset of a general aviation market for Mode S transponders would be very uncertain.

(2) Effects regarding general aviation. There were several alleged negative effects of the proposal to general aviation, most of them associated with the cost/benefit issue. The NBAA maintained that owners in the lower-price end of the fleet would not equip with a transponder at all when faced with the unavailability of low priced ATCRBS transponders and no expectation of flying above 12,500 feet MSL or in TCA's.

On another related subissue, NBAA said that new hardware and software are 5 to 10 years in the future, and possibly even longer for the lower-price end of the general aviation market. Accordingly, the only foreseeable service that would convince the lower-price portion of the market to buy Mode S is improved real-time weather services.

Although not expressed in terms of specific effects to general aviation, the AOPA submitted several objections to the Mode S proposal questioning the value of Mode S primarily in terms of benefits and cost. In terms of benefits, AOPA submitted that while there may be some small incremental improvement in surveillance from use of Mode S, most, if not all, of the surveillance accuracy improvement will be attributable to the Mode S ground sensors and not the Mode S transponders. Accordingly, the FAA should permit sufficient time after Mode S ground sensors are operational for an objective evaluation of their value prior

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to forcing an airborne transponder retrofit to achieve a marginal improvement in accuracy. AOPA's other concerns with the impact to general aviation owners/pilots were expressed in terms of cost. For example, AOPA reiterated the concern that Mode S transponder prices would be higher. As a result, purchases would be down, essentially freezing equipment levels in the low end of the fleet. These concerns are discussed under the cost issue above.

Comments of the SSA noted the effects of the proposal on general aviation with respect to consumer choice. SSA agreed with AOPA that service benefits of Mode S, rather than regulation, should be relied upon to motivate pilots to upgrade their equipment. Mode S services must be made available to general aviation aircraft operating below 10,00 feet MSL and not be reserved for jet-powered, high-altitude traffic. For this reason, Mode S should not be made mandatory after January 1, 1992. SSA concluded that ATCRBS should be permitted to be manufactured and installed as long as it does not interfere with either the surveillance system or services.

With respect to what was perceived as an unjustified installation requirement of Mode S transponders, the lack of consumer choice was an issue raised by two other commenters. One comment was that Mode S development will require at least 2 years from the availability of TSO-approved Mode S airborne equipment. The commenter referred to the NPRM which stated that only one Mode S ground radar is expected to be operational by 1988 at an unspecified location. Another commenter voiced a similar concern by saying that under the NPRM, users will be forced to equip with airborne Mode S before the ground stations can provide the same coverage as the older ATCRBS. The commenter's conclusion was that FAA's plan for forcing airborne Mode S equipage is premature.

(3) Effects on aircraft manufacturers. One commenter pointed out that because of technical parameters and data link capability, the Mode S transponder is not physically interchangeable with the ATCRBS transponder and, therefore, current aircraft designs cannot accept Mode S. The commenter suggested that new radio rack mounts, new control panels, new wiring, new cooling, and an additional antenna are needed to accommodate the new installation.

The problem facing manufacturers was also raised by several commenters as a retrofit problem for aircraft operators. Several commenters maintained that a formidable effect of the Mode S proposal would be the problem of retrofitting Mode S transponders in cockpits not adequately designed to accommodate the new equipment. One said that current aircraft designs do not accept Mode S. Installation design changes will be necessary and a development flight test will be required to assure antenna locations and operation characteristics are acceptable. Another suggested that retrofitting of older aircraft should remain voluntary except for aircraft operating in those areas where radar coverage is degraded by high-density traffic.

(4) Effects on airlines. The ATA advised that the proposed installation schedule would affect airlines. When a transponder is removed for maintenance, airlines routinely replace it with another unit and do not reinstall the same transponder equipment in the same aircraft each time.

The defective box is taken to the avionics shop for repair and subsequently installed in a different aircraft within the fleet. Under the proposed January 1, 1987, cutoff date associated with ATCRBS transponders, airlines would be required to retrofit all aircraft prior to the January 1, 1992, Mode S date.

Discussion of installation issues

The FAA believes that most of the concerns of and effects upon the avionics and aircraft manufacturers, owners/operators, consumers, and airlines can be alleviated by—

(a) changing the last manufacturing cutoff date for ATCRBS transponders which may be installed in U.S. aircraft from December 31, 1988, to December 31, 1989. The additional three years will provide an extended time period within which affected users may effectively plan for transition from ATCRBS to Mode S;

(b) modifying the installation requirements so that—

(1) a transponder that meets requirements of TSO C74b or TSO 74c, and that is manufactured before January 1, 1990, may be removed from an aircraft for maintenance and/or repair, and then be reinstalled on the aircraft from which it was removed. Also, a correctly functioning transponder which meets the requirements of the appropriate TSO may be installed on the aircraft temporarily while the malfunctioning transponder is being repaired.

(2) for fleet operations, a transponder that meets the requirements of TSO C74b or TSO C74c may be removed from an aircraft for maintenance and/or repair, and then be installed on either the aircraft from which it was removed or on another aircraft in the same fleet. Equipment transferred among fleet aircraft will be considered permanent equipment and not "substitute equipment" under the provision for temporary replacement sets. Accordingly, any equipment installed for the first time in an aircraft of a particular operator's fleet after January 1, 1992, must meet the requirements of TSO–C112 (Mode S).

The FAA believes that the above changes to the installation requirements which appear in the final rule may be expected to:

(i) Eliminate the problem of stockpiling.

(ii) Clarify onset of a Mode S market.

(iii) Allow time for aircraft manufacturers to ensure that new aircraft designs provide adequate space, wiring, etc., to accommodate Mode S equipment; and

(iv) Allow time for operators/consumers to plan for retrofitting which is not mandatory but which could take place in the 1990's as owners/operators consider replacement of ATCRBS transponders.

With respect to the issue of the reluctance to install a Mode S transponder because of associated increased costs, the FAA views as insignificant any disincentive to buy a Mode S transponder because a basic unit costs more than it does today. Most voluntary transponder equippage is due to the perceived benefit in obtaining ATC services. Those services will continue and will be enhanced with Mode S. We believe that users will see that cost as being justified. If some users do not see it as being justified, the rule provides ample time for low end users to equip with ATCRBS transponders, the life of which should extend to near the end of the century.

The proposed rule did not expressly provide for the use or installation of ATC transponders which were manufactured under TSO–C74 or TSO–C74a. The existing rule requires that transponders installed after January 1, 1974, or used after July 1, 1975, meet the requirements of TSO–C74b or TSO–C74c. However, the use of the TSO–C74 and TSO–C74a equipment after July 1, 1975, could be approved by the Administrator if the operator submitted data showing that the equipment met the performance standards of the appropriate class of TSO–C74c and environmental conditions of the TSO under which it was manufactured.

Any equipment which qualified under this provision would be more than eleven years old at this time. While the rule adopted does not make specific provision for such equipment, the FAA will permit the continued use of any equipment manufactured under TSO–C74 or C–74a, if still in use, if that equipment meets the performance standards of TSO–C74c and the environmental standards of the TSO under which it was manufactured.

c. Major issue number 3: Data link services to be available are indefinite; they lack FAA commitment; operators do not know what data link services will be available nor when. Uncertainty in this area is also likely to be costly to consumers faced with a decision to purchase Mode S transponders (the latter part of this issue is discussed under the cost issue).

Several commenters noted that the FAA made no commitment in the proposal to data link applications, even though data link was put forth as one of the basic benefits to come from the Mode S transponder. Moreover, to obtain the benefits of data link, more equipment would be required, e.g., displays, printers, and input/output devices. This leads to cost and retrofitting problems. The AOPA commented that any forced transition to Mode S transponders should begin only after the FAA, in concert with the aviation user community, has decided what services will be provided on the data link and has created a plan which ensures that investments in equipment to obtain those services will be justified.

Discussion of the data link issue

While the FAA has not to date issued any rulemaking or technical standards specifically relating to data link, the agency is now engaged in preparation of a data link master plan and the development of a data link program. The FAA expects that informational data link services will be available within a year of the first operational Mode S sensors. In addition, the FAA agrees that there is a need to stimulate aircraft owners to purchase Mode S transponders by accelerating date link development. Data link development to date has been system oriented and has concentrated on the NAS components that are necessary for date link. Agency personnel are meeting with user groups to develop implementation priorities and a schedule which is compatible with the Mode S transponder rule schedule.

With regard to the products and services that the FAA expects to have available for users, the FAA objectives are to—

(a) Develop and implement data link applications which improve aviation safety and efficiency and stimulate Mode S transponder equipage;

(b) Provide data link services at the earliest date the equipment and data base availability permit; and

(c) Provide a focal point for all domestic and international aviation data link standards.

Weather information is currently scheduled to be the first data base available. Therefore, weather services are expected to be the first group of services offered using Mode S data link. The initial set of potential services within this group are terminal forecasts, surface observations, Automated Surface Observation System data, Automated Weather Observing System data, winds aloft forecasts, pilot reports, radar summaries, and hazardous weather advisories. The initial implementation of these services may be on a request/reply basis. As the system matures, these services can be provided to a pilot in a more automated manner.

The second group of potential services expected to be available are expanded weather and airport services. These include the Automated Terminal Information System, wind shear alerts, and runway surface winds.

The third group of potential applications expected to be available are initial ATC services. These applications include transfer of communications, altitude assignment confirmation, flight identification, minimum safe altitude warning, traffic information, and uplinking of aircraft position data.

The fourth group of potential applications expected to be available are dependent on the implementation of the advanced automation system. These applications include en route metering, automatic flight service hazardous weather, weather graphics, and clearance delivery.

Each of the above groups of services depends upon specific equipment and data base availability. The indicated order of group implementation reflects the current FAA schedules. The implementation schedule of a data link application within a group depends upon its acceptance by the users and the maturity of the concept. One of the data link program objectives is to provide the greatest number of data link services in the shortest time span.

In regard to the issue of requiring data link, the FAA had considered specifications that would have required some level of data link with every Mode S transponder, but rejected it for two reasons. The basis for rejection was that most users desire the simplest device possible; and secondly, FAA believes that a rule mandating data link would unnecessarily limit the flexibility of manufacturers to develop a range of capabilities that was described under discussion of the cost issue. In consideration of manufacturers' opinions in this area, the FAA has retained the manufacturers' flexibility to meet these needs in accordance with the marketplace and product innovations and not by regulation.

Discussion of other issues

Issue number 1: The need for automatic pressure altitude reporting equipment.

The NPRM proposed an effective date for requiring Mode C equipment in Group II TCA's of January 1, 1992. For reasons discussed below, the FAA has adopted an effective date in the final rule of December 1, 1987. The basic justification for extending the requirement to Group II TCA's remains the same. The comments which addressed the Mode C issue focused on the need for Mode C in Group II TCA's and on the inclusion of Mode S and Mode C requirements in the same rule, but not on the implementation date for the Mode C requirement.

AOPA opposed the use of Mode C in Group II TCA's saying the FAA had not provided a rationale for extending the use of Mode C transponders to additional airspace. AOPA believes there is little evidence to show that it can help to improve ATC system safety and challenged FAA claims that Mode C would increase ATC effectiveness through greater selectivity in viewing targets or that it would reduce the number of traffic advisories or avoidance vectors. AOPA said that TCA's should be considered individually, and rulemaking action should be taken if it becomes clear that a location warrants such exclusionary provisions based upon traffic volume, complexity, aircraft mix, controller workload, and frequency congestion.

In another view, two commenters said that it would be inappropriate to include two complex issues in one rule, and that Mode S and Mode C should be handled by separate rulemakings.

The FAA does not agree that the use of Mode S transponders and automatic pressure altitude reporting equipment should be separate rulemaking actions. The required use of altitude reporting equipment in Group II TCA's is not a separate issue; rather, it is an extension of its current application in Group I TCA's and above 12,500 feet MSL. Neither can its use be regarded as separate and unrelated to the use of Mode S transponders since its use will logically be required in the same airspace areas where Mode S transponders will be required

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Automatic pressure altitude reporting equipment has been required and has been in proven use in conjunction with ATC transponder equipment in Group I TCA's and above 12,500 feet MSL since 1973. The equipment has been used to provide essential aircraft identity, location, and altitude information in those airspace areas where such information provides a fundamental base in providing airspace users safe, orderly, and efficient use of available airspace.

Experience has shown that Mode C has been particularly beneficial in the higher density TCA airspace environment. It was in consideration of this environment that Task Group 1–2.1 of the National Airspace Review (NAR) recommended use of Mode C to reduce radio frequency congestion. The task group's rationale, as stated in Notice 85–16, was that this reduction was necessary to create more efficiency within the system thereby increasing capacity while providing an increased level of safety over operations with non-Mode C aircraft. In particular, the group pointed to weather conditions which cause pilots of VFR aircraft to change altitude to maintain appropriate separation from clouds. In a high density environment, this altitude change is not immediately forwarded to the controller. However, the Mode C readout on the controller's radar display does provide this information. The task group's conclusion was that in busy, complex areas with high concentrations of traffic, a continuous readout of aircraft altitude is a necessity for maintaining a continuous three-dimensional (range, azimuth, altitude) view of the traffic picture.

The FAA concurs with the finding of the NAR task group. The FAA also recognizes that the NAR task group envisioned use of Mode C equipment within a single class of TCA whose proposed establishment criteria were somewhat lower than current Group I TCA criteria and somewhat higher than current Group II criteria. Although the NAR task group related the Mode C requirements to a single class of TCA, the FAA expects similar benefits from use of Mode C in the airspace environment of today's current Group II TCA's. That environment is examined in more detail below.

The designation of a terminal area as a Group II TCA indicates that it is a higher density terminal area which presents complex air traffic conditions resulting from a mix of large turbine-powered air carrier aircraft with other aircraft of varying performance characteristics. There is no reason to believe that the complex nature of a high-density environment, as typified by a Group II TCA, will be altered by slower than expected growth in traffic or even the unlikely event of a sustained static level of traffic into the next decade and beyond. The requirements of the Group II TCA are basic to that environment and they are essentially common to the requirements of a Group I TCA. Furthermore, the requirements are generic in the sense that they could apply to any classification of airspace with similar characteristics. They are requirements designed to affort the greatest protection for the greatest number of people by providing ATC with an increased capability to provide aircraft separation service to minimize the hazardous mix of controlled and uncontrolled aircraft.

The amendment adopted prohibits operation in a Group II TCA without operating Mode C equipment, effective December 1, 1987. The requirement adopted is the same as that proposed in the NPRM except for the earlier implementation date. In consideration of the benefits of having each aircraft in TCA airspace equipped with Mode C, as discussed immediately above, the FAA believes that this requirement should not be postponed to 1992 as originally proposed. In addition, one or more other rulemaking projects under consideration by the FAA at this time would almost certainly have the effect of requiring Mode C in Group II TCA's long before January 1, 1992. These actions include:

—The establishment of a single category of TCA, in which Mode C would be required. This action was recommended by the NAR and also by a TCA Review task group established by the FAA in September 1986, and is part of the airspace reclassification rulemaking now in progress (FAA Docket No. 24455, 50 FR 5055; Docket No. 24456, 50 FR 5046, February 5, 1985).

—The requirement for use of a traffic alert and collision avoidance system (TCAS). The FAA has announced its intention to issue an NPRM by November 1987 proposing to require the installation and use of TCAS equipment by certain operators. The TCAS II system to be proposed will issue traffic alerts for conflicting aircraft equipped with transponders, but will issue conflict resolution advisories only for aircraft equipped with Mode C.

Also, the FAA has received separate petitions for rulemaking, from the Air Line Pilots Association and the Air Transport Association, requesting that the requirements for Mode C equipment be extended to additional terminal areas and other airspace. The FAA has not acted on either petition at this time. Finally, language included by the House Committee on Appropriations in the report on a recent spending resolution (H.J. Res. 730) stated the committee's intent that the FAA substantially expand the airspace in which Mode C equipment is required.

Requiring Mode C equipment in Group II TCA's effective December 1, 1987, rather than January 1, 1992, advances the date by which some operators must acquire Mode C but does not otherwise alter the requirement proposed in the NPRM. The equipment required is common avionics equipment now installed on the aircraft used by most Part 121 and Part 135 operators and many general aviation operators. An adjustment in the implementation date from 1992 to 1987, therefore, does not present any new issues with respect to availability of equipment or costs to operators.

In summary, the FAA believes the benefits of a Mode C requirement in Group II TCA's clearly support the implementation of that requirement at the earliest practical time. An effective date of December 1, 1987, will provide affected operators sufficient time to acquire the Mode C equipment if necessary. The issues related to the expanded Mode C requirement were presented and discussed in the NPRM and the comments received, and the agency has determined that further notice is not required.

Issue number 2: There has been a decline in aviation growth that does not bear out NAS estimates and which makes the mandating of Mode S transponders unnecessary. AOPA said it is clear that the traffic projections upon which the NAS Plan was based in 1980 substantially exaggerate the growth and density of aircraft in the U.S. fleet. The increases suggested will not happen, and any transponder mandate based on those forecasts is misguided at best.

The initial estimate that 19.9 billion in cost savings or benefits over the years 1981–2000 is expected to result from NAS improvements was derived on the basis of a 1981 equivalent system. In other words, the improvements of the NAS were quantified by estimating the cost savings expected to result from a reduction in delays, improved fuel-efficient routing, reduced accidents, and reduced operating and maintenance costs, using as a baseline for comparison the higher expected costs of operating and maintaining the 1981 system in a manner to provide the same level of service to more aircraft. The extent of these benefits was estimated on the basis of the projected increase in traffic levels over the years 1981–2000, which in turn are based on projected increases in the active fleet. The benefits of Mode S estimated in the initial economic evaluation were based on fleet projections made in early 1985 rather than in 1980–81, as the commenter apparently believes was the case. The 1987 projection, which was just released, takes account of declining production trends in general aviation aircraft over the past 5 years as it forecasts a total of 219,300 airplanes in this category as of the year 1998, which is about 40,000 lower than last year's projection. The 1986 estimate of NAS improvement benefits has been reduced to 16 billion mainly to reflect the lower forecasts of aviation activity. The reduction in the fleet of about 15 percent is considerably less than the 50 percent decrease cited by one commenter and has had a proportionately smaller downward effect on the magnitude of expected benefits. In any case, the benefits of an upgraded NAS that were estimated 1 year ago are likely to be realized eventually even if the underlying forecast may have been too optimistic, because the total civil aviation fleet is still expected to increase over the foreseeable future if at a slower pace.

Issue number 3: There are deficiencies and problems with transponder tests. Several concerns were raised in this area. One commenter said there would be increased reliance placed on future transponders, especially on data link; therefore, there is a question whether the frequency with which ATC transponders are required to be tested is adequate.

In reference to the proposed additional testing of transponder output power, another commenter said that unless the FAA can demonstrate that inadequate output from current transponders is causing a degradation in system performance, this part of the rule should not be adopted.

AOPA stated that while it supports the transponder test requirements, the length of time between inspection and test could easily be extended from 24 to 36 months. Inspections conducted at that interval would assure proper operation, but would offset the increased cost of performing the more complex tests both for Mode S and ATCRBS devices.

The current transponder tests and inspection requirement are based on the experience gained with the ATCRBS transponders. At this time, the FAA has no data to substantiate either increasing or reducing the frequency of transponder tests and inspections. Prior to the implementation of the data link, the FAA expects sufficient experience with the Mode S transponder to determine if the frequency of testing should be changed.

The FAA believes that the additional testing of the transponder output power is necessary because it is obvious that inadequate output from transponders degrades the air traffic control system performance. If a transponder does not have sufficient output power to respond to an interrogation, the ATC system does not obtain identification of the aircraft.

The FAA does not concur with the AOPA suggestion that the length of time between inspection and tests could be extended from 24 to 36 months. The FAA has no data to support such a change. Older transponders, without solid-state output, tend to degrade in performance over time. Increasing the length of time between tests and inspection could result in some transponders being out of tolerance for longer periods of time.

Issue number four: There are performance weaknesses and deficiencies associated with Mode S, data link, and Mode C altitude reporting equipment.

Commenters alleged several technical deficiencies and weaknesses with the equipment with respect to both Mode C and Mode S equipment. One commenters said that the current trend to monopulse secondary surveillance radar (SSR)/monopulse ATCRBS may be jeopardized by the addition of any form of Mode S transponders in the airspace using the same ICAO radio channels, because, according to an in-depth British study, angular errors will increase. Another commenter said the Mode S proposal includes the likelihood of a degradation of the primary function of the radar beacon system in its mission of air traffic monitoring and ATC operations. The data rate of message exchanges is restricted by the radar antenna sweep rate which will limit message exchange windows to 120 milliseconds duration at 12 second intervals for en route and 40 milleseconds for terminal radars. Another commenter believes the FAA should defer the Mode S issue until it is proven that the ATCRBS/SSR Mode C, using monopulse techniques now being developed in Europe in the interest of greater accuracy, can no longer meet the national ATC needs.

Concerning the accuracy of Mode C altitude reporting equipment, AIA stated that there is a major problem with altitude reporting accuracy that has not solved by Mode S; i.e., barometric altitude. Another commenter recommended that the FAA undertake, on a high priority basis, a research and development project to develop an accurate altimetry system to ensure that altitude reports by either ATCRBS or Mode S users will in fact be accurate altitudes. The commenter went on to say that to mandate a whole new system based on present altimetry techniques is premature and a shameful waste of money.

With respect to data link, one commenter maintained that data link hardware for the cockpit is yet to be determined. The packaging and human factors features are not specified. Manufacturers must determine how data will be uplinked and downlinked. Questions remain unanswered. In slightly different language, the ATA said that even though the characteristics of the Mode S transponder are reasonably well defined, the extent to which the data link functions may impact the hardware design is less clear. ATA concluded that it seems appropriate that FAA adjust the dates for transition to Mode S until the airborne architecture for Mode S data link has been firmed up.

Concern regarding need for improved accuracy of altitude data and improved automatic pressure altitude reporting equipment was one of the issues to surface from the original ANPRM. As stated in the NPRM and repeated earlier in the preamble to this rule, the FAA agreed there would be benefits from greater precision in automatic altitude reporting. However, this increased precision would require separate development of the associated technology and procedures. In each case, the FAA would seek public and industry input on the specific proposal. This continues to be the agency position on this issue. Also, in accordance with the previous position on this matter, the FAA believes the existing equipment and procedures are fully adequate to support additional reporting requirements proposed in this notice. The agency will consider the institution of separate rulemaking in the future for adoption of the requested improvements.

The introduction of Mode S transponders is not expected to affect adversely the introduction of monopulse ATCRBS or the angular measurement accuracy of air traffic monitoring operations. The compatibility of ATCRBS with present and future enhancements was considered by the International Civil Aviation Organization (ICAO) in its Secondary Surveillance Radar (SSR) Improvements and Collision Avoidance System Panel (SICASP). The panel approved a recommendation at its first meeting recognizing that compatibility had been demonstrated to exist between Mode S and ATCRBS. The panel further

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recommended that ICAO ensure the maintenance of compatibility of future SSR enhancements in the formulation of standards relating to these enhancements. The recommendation was subsequently accepted by ICAO.

With regard to data link concerns, the FAA believes that the revised Mode S installation schedule will also help provide for a longer transition period to develop and test equipment and procedures, validate benefits, and implement associated data link applications and procedures. Concerns regarding the uses, systems, practices, or procedures involving data link will be addressed through the appropriate procedures of FAA's data link program as evaluation data becomes available. These concerns therefore will not be addressed here since they are beyond the scope of this rule which is limited to the use, testing, and installation of ATCRBS/Mode S transponders.

Issue number 5: Use of Mode S with data link would create a "silent" environment, as opposed to today's "party line" voice communications environment.

According to one commenter, a silent environment is hazardous to flight safety. The commenter said the silent nature of the Mode S data link can lead to sending a message in error which, if undetected, can lead to a fatal accident. Currently, all pilots hear ATC instructions to all other proximate pilots and can catch inconsistent instructions to different aircraft in the same area. The party line would be lost if this rulemaking takes effect.

Contrary to the commenter's perception, the "party line" would not be lost as a result of this rulemaking. Though presented as a major benefit, data link is not being mandated by this rule. This same concern was expressed in response to the original ANPRM and responded to in the subsequent NPRM. These concerns were considered to be well beyond the scope of the NPRM. The FAA stated in the NPRM that in its implementation of data link, it would involve the public in its studies of all factors associated with each kind of message being considered for data link. This continues to be the FAA's position. The FAA recognizes there are advantages and disadvantages to both the party line and data link messages. The benefits to any data link service must outweigh the disadvantages before implementation. One of the objectives of the FAA's data link applications program will be to investigate the feasibility and desirability of providing some of the "party line" information which currently serves to congest voice frequencies over data link. Frequency changes are an example. If frequency changes were removed, voice channels are expected to be less congested, providing more time for users to better monitor other party line information.

Issue number 6: The Mode S requirements may adversely affect DOD fighting capability.

Two commenters believed that the DOD's fighting capability would be diminished by the Mode S rule. The impact of the Mode S transponder rule on the DOD was discussed earlier in this preamble under the major issue of cost. In that discussion, it was stated that comment regarding negative cost effects of the Mode S proposal on the DOD was submitted by private citizens. Even though the proposal did not apply to military aircraft, the DOD has advised the FAA that it concurs with the proposal and is voluntarily incorporating Mode S in its Mark XV transponder. In summary, the DOD has expressed no concerns that mandating Mode S transponders would adversely affect its mission.

Issue number 7: The U.S. may be breaking ICAO agreements if it issues a rule without international approval.

A commenter said that it appears from study of the ICAO charter, to which the U.S. has agreed, that no nation will unilaterally impose rules regarding avionics in its airspace which is available via bilateral ICAO agreement with at least 50 other nations. Another commenter stated that the U.S. should defer implementation of a Mode S requirement until there is full agreement in the ICAO that Mode S is essential and that states are permitted to mandate its use for aircraft of all nations. The U.S. cannot afford an ICAO confrontation.

In regard to the ICAO issue—

(a) There will be no conflict with ICAO. The installation requirement pertains only to U.S.-registered civil aircraft.

(b) If ICAO believes Mode S is unnecessary, it may consult with the U.S., possibly through SICASP, and make a recommendation.

Issue number 8. Issuance of Mode S requirements prior to issuance of the Mode S Technical Standard Order is premature. This point was made by seven commenters before the December 16 comment deadline date for the Mode S NPRM. At that time, the FAA had not as yet issued a Mode S TSO. However, on February 5, 1986, the FAA issued the Mode S TSO, TSO–C112, "Air Traffic Control Radar Beacon System/Mode Select (ATCRBS/Mode S) Airborne Equipment."

Economic Evaluation

The following is a summary of the regulatory evaluation associated with this rule. The complete evaluation is in the public docket for inspection.

This rule involves some costs and benefits. There are three aspects of the rule which may have potential economic impacts:

1. The requirement for use of automatic pressure altitude reporting equipment in Group II TCA's after December 1, 1987.

2. The basic Mode C and Mode S transponder and maintenance requirements.

3. The change to maintenance tests for the ATCRBS transponder.

Group II TCA Requirement

The proposal for altitude reporting equipment within Group II TCA's has an effective date of December 1, 1987. Current regulations require only a 4096 code transponder (ATCRBS) within Group II TCA's. The basic transponder does not have the automatic altitude reporting capability associated with Mode C, which is an add-on piece of avionics compatible with nearly all transponders currently in use. There has been a steady trend toward increased equipage in the general aviation fleet with both ATCRBS transponders and Mode C capability over the past decade. FAA national data reveal that by 1984, about 80 percent of the general aviation (including the commuters and air taxies) was equipped with an ATCRBS transponder and that about one-half of these transponders had Mode C capability. In estimating the cost of this new requirement, the FAA assumed that only those aircraft which presently operate in Group II TCA's and are not equipped with Mode C would be affected. The FAA determined that the cost (discounted) of equipping the 2,368 aircraft that would be affected by this requirement would amount to $1.9 million. In addition, the incremental testing costs associated with Mode C are expected to amount to about $333,500 over the next five years. None of the major air carriers would be affected by this requirement.

There are safety and efficiency benefits associated with the proposal, but they are not quantifiable. Those benefits would result from improved aircraft control within Group II TCA's. Although there is no realistic method for allocating a portion of the overall NAS benefits ($16 billion) to the Mode C regulatory proposal, one can reasonably conclude that the likely benefits would far exceed the associated one-time costs of $1.9 million and recurring cost of $335,000 in view of the central role envisioned for Mode C in the overall NAS Plan.

Mode S Transponder Requirements

The regulatory cost of the Mode S proposal can be developed by estimating Mode S installations and multiplying this forecast by an estimate of the net cost of compliance.

Forecast of Installations

Installations of Mode S transponders are forecast to begin in 1988, with only 10 percent of new installations being Mode S that year, but increasing to 100 percent in 1992. Total transponder installations are estimated as the net annual increase in active aircraft in forecast years, plus 3 percent of the previous year's active aircraft. Using FAA forecasts for future years (FAA Aviation Forecast, February 1987), installations of Mode S transponders would exceed 6,000 in 1992 and average approximately 6,500 a year for the decade from 1991 to the year 2000.

Net Cost of Installation

The added cost per unit for a Mode S transponder, compared to projected transponder equipage in the absence of this regulation, is expected to be approximately $600, installed. This cost estimate assumes installation of a Mode S surveillance transponder with data link connectors, but not the cost of data link processing or display capability. Data link capability could be integrated into the transponder or added later. The price for a Mode S transponder will be about $1,000 more than for an ATCRBS Transponder for about 4 years to account for recovery of development costs.

Based on these assumptions, the regulatory cost of the Mode S proposal for the period 1988 thru 2000 is $21.2 million on a discounted cost basis.

Benefits of Mode S

Mode S is a major component of the NAS Plan. There are many benefits of Mode S, and all are associated with the benefits of the NAS Plan implementation. The benefits of the NAS Plan implementation have been estimated at almost $16 billion in cost savings through the year 2000, due to system operations and maintenance costs, as compared to the "1981 equivalent" systems. There is no reasonable way to allocate a portion of the overall NAS benefits to the Mode S regulatory proposal, but Mode S is considered necessary to successful implementation of the NAS Plan.

Transponder Maintenance Tests

There are additions to Appendix F of Part 43 which provide for tests appropriate for Mode S tranponders. There is also an added power output test required for ATCRBS transponders. This test should not involve significant additional costs. The Mode S inspection costs are expected to be moderately higher. Assuming the cost of the Mode S biennial test will be moderately higher than today's tests, any offsetting benefits are in the same general category of general NAS benefits and cannot be specifically allocated to Mode S.

Conclusion

Estimated costs of the Mode C requirement in Group II TCA's are $1.9 million for equipment and approximately $333,500 over the next five years for testing. Estimated cost of the Mode S transponder requirement from the year 1988 through the year 2000 is $21.2 million on a discounted cost basis. Additional costs of required periodic testing of the Mode S transponder will not be significant. The benefits of the Mode C, Mode S, and associated testing requirements adopted in this rule are difficult to quantify, but all are essential components of the NAS Plan. Implementation of the Plan is estimated at almost $16 billion in cost savings through the year 2000. In addition, if one midair collision involving a medium size airliner is prevented by any of the requirements adopted, the additional benefit would be approximately $61,508,000 on a discounted cost basis (based on an accident involving 110 fatalities). Therefore, the FAA has concluded that the benefits of the rules adopted substantially exceed the regulatory costs of those rules.

For the reasons set forth in the above regulatory evaluation summary, the FAA has determined that the rule does not involve a major rule under Executive Order 12991. The Department of Transportation has determined that the rule is considered a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the Regulatory Evaluation prepared for this action is contained in the regulatory docket, and a copy may be obtained by contacting the person identified under the caption, "**FOR FURTHER INFORMATION CONTACT.**"

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress in order to insure, among other things, that small entities are not disproportionately affected by Government regulations. The RFA requires agencies to review rules which may have a "significant impact on a substantial number of small entities." For purposes of RFA, small entities are considered to include small businesses, non-profit organizations, and municipalities but not private individuals. As discussed above under "Economic Evaluation," the FAA concludes that the number of small entities affected by this rule will not be substantial in relation to all aviation-related small entities. In addition, the impact on most such small entities will be substantially less than the threshold for significant impact under agency guidelines. Therefore, I certify that, under the criteria of the Regulatory Flexibility Act, this rule will not have a significant impact on a substantial number of small entities.

Summary of FAA Actions

Consistent with FAA's plan to modernize the NAS, and the planned role of the Mode S surveillance system in the NAS, the FAA is taking or has taken the following actions:

1. *Issue a TSO for airborne Mode S Transponder.* Concurrently, TSO authorization to manufacture ATCRBS transponders will continue in effect. The intent of continuing the ATCRBS TSO is to allow continued manufacture of ATCRBS transponders for foreign sale and for installation in aircraft destined for foreign countries and to accommodate the DOD.

Issuance of the TSO's is not accomplished through rulemaking and, therefore, the Mode S TSO is not a regulatory portion of this rulemaking package. However, consistent with FAA practice, the proposed TSO for Mode S was made available for public comment. All issues generated by public comment were resolved and TSO–C112 was issued February 5, 1986.

2. *Amend the FAR.* The following changes to the FAR are adopted by this amendment:

FAR Part 43, Appendix F. ATC transponder test and inspection requirements apply to both ATCRBS and Mode S transponders. Test areas include radio reply frequencies, suppression, receiver sensitivity, radio frequency, and output power. Those tests applicable only to Mode S transponders include Mode S diversity transmission channel isolation, Mode S address, Mode S formats, Mode S all-call interrogations, ATCRBS-only all-call interrogations, and squitter. The reference to § 91.177 is corrected to refer to § 91.172. The existing requirement for recordkeeping will be retained.

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FAR Part 91, Section 91.24(a). For operations not conducted under Parts 121, 127, or 135, ATC transponder equipment installed (or in fleet operations, equipment introduced into the fleet inventory) within specific time periods must meet the performance and environmental requirements of the TSO's specified in the rule. The requirement to meet the Mode S TSO after January 1, 1992, does not apply to—

(a) A transponder which met the requirements of the rule when originally installed, and which is removed from an aircraft for maintenance and then reinstalled on the aircraft from which it was removed.

(b) A transponder which meets the requirements of TSO C74b or TSO C74c and is temporarily installed on an aircraft when the permanent transponder is removed for maintenance.

(c) A transponder which met the requirements of the rule when originally installed in a fleet aircraft, which is removed from the aircraft for maintenance/repair, and which is then installed on either the aircraft from which it was removed or on another aircraft in the same fleet.

Section 91.24(b). All aircraft operated in the airspace areas below are required to have either a combination ATCRBS or Mode S transponder and automatic pressure altitude reporting equipment. The new requirement applies as follows:

1. in Group I TCA's;
2. in Group II TCA's; and
3. in all controlled airspace of the 48 contiguous States and the District of Columbia, above 12,500 feet MSL, excluding the airspace at and below 2,500 feet AGL.

Automatic pressure altitude reporting (Mode C) equipment is required in Group II TCA's.

Exceptions to the rule are as follows:

1. Operations of helicopters in TCA's at or below 1,000 feet AGL under a letter of agreement.

2. Operations of gliders above 12,500 feet MSL but below the floor of positive control area.

No Group III TCA's exist or are planned.

An editorial change has been made to substitute the word "operating" for the word "operable" in § 91.24(b). Substitution of the word "operating" for the word "operable" is made to reflect the requirement that transponders must be turned on.

Section 91.90(b)(2)(iii). Aircraft operating in Group II TCA's are required to be equipped with automatic pressure altitude reporting equipment effective December 1, 1987.

The following FAR sections are amended to make transponder requirements under those sections consistent with the amended transponder installation requirements of Part 91:

1. FAR Part 121, § 121.345(c);
2. FAR Part 127, § 127.123(b); and
3. FAR Part 135, § 135.143(c).

List of Subjects

14 CFR Part 43

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 91

Aviation safety, Safety, Aircraft, Air traffic control, Pilots, Airspace, Air transportation, Airports.

14 CFR Part 121

Aviation safety, Safety, Air traffic control, Air transportation, Aircraft, Airplanes, Airports, Airspace, Transportation.

14 CFR Part 127

Aircraft, Airworthiness, Air traffic control, Helicopters, Airspace.

14 CFR Part 135

Aviation safety, Safety, Air transportation, Airworthiness, Aircraft, Transportation, Helicopters, Air traffic control, Airspace, Airplanes.

Adoption of the Amendments

For the reasons set forth above, Parts 43, 91, 121, 127, and 135 of the Federal Aviation Regulations (14 CFR Parts 43, 91, 121, 127, and 135) are amended as follows:

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING AND ALTERATION

1. The authority citation for Part 43 is revised to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. Appendix F to Part 43 is revised to read as follows:

Appendix F—ATC Transponder Tests and Inspections

The ATC transponder tests required by Section 91.172 of this chapter may be conducted using a bench check or portable test equipment and must meet the requirements prescribed in paragraphs (a) through (j) of this appendix. If portable test equipment with appropriate coupling to the aircraft antenna system is used, operate the test equipment for ATCRBS transponders at a nominal rate of 235 interrogations per second to avoid possible ATCRBS interference. Operate the test equipment at a nominal rate of 50 Mode S interrogations per second for Mode S. An additional 3 dB loss is allowed to compensate for antenna coupling errors during receiver sensitivity measurements conducted in accordance with paragraph (c)(1) when using portable test equipment.

(a) Radio Reply Frequency:

(1) For all classes of ATCRBS transponders, interrogate the transponder and verify that the reply frequency is 1090±3 Megahertz (MHz).

(2) For classes 1B, 2B, and 3B Mode S transponders, interrogate the transponder and verify that the reply frequency is 1090±3 MHz.

(3) For classes 1B, 2B, and 3B Mode S transponders that incorporate the optional 1090±1 MHz reply frequency, interrogate the transponder and verify that the reply frequency is correct.

(4) For classes 1A, 2A, 3A, and 4 Mode S transponders, interrogate the transponder and verify that the reply frequency is 1090±1 MHz.

(b) Suppression: When Classes 1B and 2B ATCRBS Transponders, or Classes 1B, 2B, and 3B Mode S transponders are interrogated Mode 3/A at an interrogation rate between 230 and 1,000 interrogations per second; or when Classes 1A and 2A ATCRBS Transponders, or Classes 1B, 2A, 3A, and 4 Mode S transponders are interrogated at a rate between 230 and 1,200 Mode 3/A interrogations per second:

(1) Verify that the transponder does not respond to more than 1 percent of ATCRBS interrogations when the amplitude of P_2 pulse is equal to the P_1 pulse.

(2) Verify that the transponder replies to at least 90 percent of ATCRBS interrogations when the amplitude of the P_2 pulse is 9 dB less than the P_1 pulse. If the test is conducted with a radiated test signal, the interrogation rates shall be 235±5 interrogations per second unless a higher rate has been approved for the test equipment used at that location.

(c) Receiver Sensitivity:

(1) Verify that for any class of ATCRBS Transponder, the receiver minimum triggering level (MTL) of the system is −73±4 dbm, or that for any class of Mode S transponder the receiver MTL for Mode S format (P6 type) interrogations is −74±3 dbm by use of a test set either:

(i) connected to the antenna end of the transmission line;

(ii) connected to the antenna terminal of the transponder with a correction for transmission line loss; or

(iii) utilized radiated signal.

(2) Verify that the difference in Mode 3/A and Mode C receiver sensitivity does not exceed 1 db for either any class of ATCRBS transponder or any class of Mode S transponder.

(d) Radio Frequency (RF) Peak Output Power:

(1) Verify that the transponder RF output power is within specifications for the class of transponder. Use the same conditions as described in (c)(1) (i), (ii), and (iii) above.

(i) For Class 1A and 2A ATCRBS transponders, verify that the minimum RF peak output power is at least 21.0 dbw (125 watts).

(ii) For Class 1B and 2B ATCRBS Transponders, verify that the minimum RF peak output power is at least 18.5 dbw (70 watts).

(iii) For Class 1A, 2A, 3A, and 4 and those Class 1B, 2B, and 3B Mode S transponders that include the optional high RF peak output power, verify that the minimum RF peak output power is at least 21.0 dbw (125 watts).

(iv) For Classes 1B, 2B, and 3B Mode S transponders, verify that the minimum RF peak output power is at least 18.5 dbw (70 watts).

(v) For any class of ATCRBS or any class of Mode S transponders, verify that the maximum RF peak output power does not exceed 27.0 dbw (500 watts).

Note: The tests in (e) through (j) apply only to Mode S transponders.

(e) Mode S Diversity Transmission Channel Isolation: For any class of Mode S transponder that incorporates diversity operation, verify that the RF peak output power transmitted from the selected antenna exceeds the power transmitted from the nonselected antenna by at least 20 db.

(f) Mode S Address: Interrogate the Mode S transponder and verifv that it replies only to its assigned address. Use the correct address and at least two incorrect addresses. The interrogations should be made at a nominal rate of 50 interrogations per second.

(g) Mode S Formats: Interrogate the Mode S transponder with uplink formats (UF) for which it is equipped and verify that the replies are made in the correct format. Use the surveillance formats UF=4 and 5. Verify that the altitude reported in the replies to UF=4 are the same as that reported in a valid ATCRBS Mode C reply. Verify that the identify reported in the replies to UF=5 are the same as that reported in a valid ATCRBS Mode 3/A reply. If the transponder is so equipped, use the communication formats UF=20, 21, and 24.

(h) Mode S All-Call Interrogations: Interrogate the Mode S transponder with the Mode S-only all-call format UF=11, and the ATCRBS/Mode S all-call formats (1.6 microsecond P_4 pulse) and verify that the correct address and capability are reported in the replies (downlink format DF=11).

(i) ATCRBS-Only All-Call Interrogation: Interrogate the Mode S transponder with the ATCRBS-only all-call interrogation (0.8 microsecond P_4 pulse) and verify that no reply is generated.

(j) Squitter: Verify that the Mode S transponder generates a correct squitter approximately once per second.

(k) Records: Comply with the provisions of Section 43.9 of this chapter as to content, form, and disposition of the records.

PART 91—GENERAL OPERATING AND FLIGHT RULES

3. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

4. In § 91.24, paragraphs (a) and (b) are revised to read as follows:

§ 91.24 ATC transponder and altitude reporting equipment and use.

(a) *All airspace: U.S.-registered civil aircraft.* For operations not conducted under Parts 121, 127, or 135 of this chapter, ATC transponder equipment installed within the time periods indicated below must meet the performance and environmental requirements of the following TSO's

(1) *Through January 1, 1992:* (i) Any class of TSO–C74b or any class of TSO–C74c as appropriate, provided that the equipment was manufactured before January 1, 1990; or

(ii) The appropriate class of TSO–C112 (Mode S).

(2) *After January 1, 1992:* The appropriate class of TSO–C112 (Mode S). For purposes of paragraph (a)(2) of this section, "installation" does not include—

(i) Temporary installation of TSO–C74b or TSO–C74c substitute equipment, as appropriate, during maintenance of the permanent equipment;

(ii) Reinstallation of equipment after temporary removal for maintenance; or

(iii) For fleet operations, installation of equipment in a fleet aircraft after removal of the equipment for maintenance from another aircraft in the same operator's fleet.

(b) *Controlled Airspace: All aircraft.* Except for persons operating helicopters in terminal control areas at or below 1,000 feet AGL under the terms of a letter of agreement, and except for persons operating gliders above 12,500 feet MSL, but below the floor of the positive control area, no person may operate an aircraft in the controlled airspace prescribed in paragraphs (b)(1) through (b)(3) of this section, unless that aircraft is equipped with an operating coded radar beacon transponder having either a Mode 3-A 4096 code capability, replying to Mode 3/A interrogations with the code specified by ATC, or a Mode S capability, replying to Mode 3/A interrogations with the code specified by ATC and intermode and Mode S interrogations in accordance with the applicable provisions specified in TSO–C112, and that aircraft is equipped with automatic pressure altitude reporting equipment having a Mode C capability that automatically replies to Mode C interrogations by transmitting pressure altitude information in 100-foot increments. This requirement applies—

(1) in Group I Terminal Control Areas governed by § 91.90(a);

(2) in Group II Terminal Control Areas governed by § 91.90(b) except as provided therein; and

(3) in all controlled airspace of the 48 contiguous States and the District of Columbia, above 12,500 feet MSL, excluding the airspace at and below 2,500 feet AGL.

* * * * *

5. In § 91.90, paragraph (b)(2)(iii) is revised to read as follows:

§ 91.90 Terminal control areas.

* * * * *

(b) *Group II terminal control areas.*

* * * * *

(2) *Equipment requirements.*

* * * * *

(iii) The applicable equipment specified in § 91.24, except that for operations conducted prior to December 1, 1987, automatic pressure altitude reporting equipment is not required for any operation within the TCA. A transponder is not required for IFR flights operating to or from an airport outside of but in close proximity to the TCA when the commonly used transition, approach, or departure procedures to such airport require flight within the TCA.

* * * * *

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

6. The authority citation for Part 121 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

7. In § 121.345, paragraph (c) is revised to read as follows:

§ 121.345 Radio equipment.

* * * * *

(c) ATC transponder equipment installed within the time periods indicated below must meet the performance and environmental requirements of the following TSO's

(1) *Through January 1, 1992:* (i) Any class of TSO–C74b or any class of TSO–C74c as apporpriate, provided that the equipment was manufactured before January 1, 1990; or

(ii) The appropriate class of TSO–C112 (Mode S).

(2) *After January 1, 1992:* The appropriate class of TSO–C112 (Mode S). For purposes of paragraph (c) (2) of this section, "installation" does not include—

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(i) Temporary installation of TSO–C74b or TSO–C74c substitute equipment, as appropriate, during maintenance of the permanent equipment;

(ii) Reinstallation of equipment after temporary removal for maintenance; or

(iii) For fleet operations, installation of equipment in a fleet aircraft after removal of the equipment for maintenance from another aircraft in the same operator's fleet.

PART 127—CERTIFICATION AND OPERATIONS OF SCHEDULED AIR CARRIERS WITH HELICOPTERS

8. The authority citation for Part 127 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1422, 1423, 1424, 1425, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

9. In § 127.123, paragraph (b) is revised to read as follows: Section 127.123 Radio equipment.

* * * * *

(b) ATC transponder equipment installed within the time periods indicated below must meet the performance and environmental requirements of the following TSO's

(1) *Through January 1, 1992:* (i) Any class of TSO–C74b or any class of TSO–C74c as appropriate, provided that the equipment was manufactured before January 1, 1990; or

(ii) The appropriate class of TSO–C112 (Mode S).

(2) *After January 1, 1992:* The appropriate class of TSO–C112 (Mode S). For purposes of paragraph (b)(2) of this section, "installation" does not include—

(i) Temporary installation of TSO–C74b or TSO–C74c substitute equipment, as appropriate, during maintenance of the permanent equipment;

(ii) Reinstallation of equipment after temporary removal for maintenance; or

(iii) For fleet operations, installation of equipment in a fleet aircraft after removal of the equippment for maintenance from another aircraft in the same operator's fleet.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

10. The authority citation for Part 135 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

11. In § 135.143, paragraph (c) is revised to read as follows:

§ 135.143 General requirements.

* * * * *

(c) ATC transponder equipment installed within the time periods indicated below must meet the performance and environmental requirements of the following TSO's

(1) *Through January 1, 1992:* (i) Any class of TSO–C74b or any class of TSO–C74c as appropriate, provided that the equipment was manufactured before January 1, 1990; or

(ii) The appropriate class of TSO–C112 (Mode S).

(2) *After January 1, 1992:* The appropriate class of TSO–C112 (Mode S). For purposes of paragraph (c)(2) of this section, "installation" does not include—

(i) Temporary installation of TSO–C74b or TSO–C74c substitute equipment, as appropriate, during maintenance of the permanent equipment;

(ii) Reinstallation of equipment after temporary removal for maintenance; or

(iii) For fleet operations, installation of equipment in a fleet aircraft after removal of the equipment for maintenance from another aircraft in the same operator's fleet.

Issued in Washington, DC on January 29, 1987.

Donald D. Engen,

Administrator.

[FR Doc. 87–2033 Filed 1–29–87; 4:33 pm]

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H.J. Res. 93/Pub. L. 100–2
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S.J. Res. 24/Pub. L. 100–3
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Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 5605 of February 2, 1987

National Poison Prevention Week, 1987

By the President of the United States of America

A Proclamation

Accidental poisonings, in which children swallow medicines or household chemicals, continue to be a tragic public health problem in our country. Since the first National Poison Prevention Week, in 1962, our Nation's yearly death toll has dropped by more than 80 percent. But even as we rejoice in this progress, we resolve to redouble our efforts to reduce the number and severity of childhood poisonings.

The National Center for Health Statistics reports that in 1984, the most recent year reported, 64 children died after accidentally swallowing household chemicals or medicines. And the American Association of Poison Control Centers in 1984 received more than 360,000 reports of ingestion of poison by children under five.

Thankfully, a number of organizations, private and public, continue to do a great deal to stop these accidents. The Poison Prevention Week Council coordinates a national network of health, safety, business, and voluntary groups to increase public awareness. The United States Consumer Product Safety Commission administers the Poison Prevention Act and requires child-resistant closures on many products that are potentially dangerous to children. The Poison Control Centers throughout our land provide emergency first aid information if poisonings occur. And many State and local health departments, hospitals, pharmacies, cooperative extension agents, and others conduct poison prevention programs. We can be most grateful for the caring and concern shown by these Americans.

To encourage the American people to learn more about the dangers of accidental poisonings and to take more preventive measures, the Congress, by joint resolution approved September 26, 1961 (75 Stat. 681), has authorized and requested the President to issue a proclamation designating the third week of March of each year as "National Poison Prevention Week."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate the week beginning March 15, 1987, as National Poison Prevention Week. I call upon all Americans to observe this week by participating in appropriate ceremonies and events.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of February, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

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Presidential Documents

Executive Order 12582 of February 2, 1987

Naturalization Requirements Exceptions for Aliens and Non-Citizen Nationals of the United States Who Served in the Grenada Campaign

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 1440 of Title 8, United States Code, and in order to provide expedited naturalization for aliens and non-citizens who served in the Armed Forces in the Grenada campaign, it is hereby ordered as follows:

For the purpose of determining qualification for the exceptions from the usual requirements for naturalization, the period of Grenada military operations in which the Armed Forces of the United States were engaged in armed conflict with a hostile foreign force commenced on October 25, 1983, and terminated on November 2, 1983. Those persons serving honorably in active-duty status in the Armed Forces of the United States during this period, in the Grenada campaign, are eligible for naturalization in accordance with the statutory exceptions to the naturalization requirements, as provided in Section 1440(b) of Title 8, United States Code. Qualifying active-duty service includes service conducted, during this period, on the islands of Grenada, Carriacou, Green Hog, and those islands adjacent to Grenada in the Atlantic Seaboard where such service was in direct support of the military operations in Grenada. Qualifying active-duty service during this period also includes service conducted in the air space above Grenada, in the adjacent seas where operations were conducted, and at the Grantly Adams International Airport in Barbados.

Ronald Reagan

THE WHITE HOUSE,
February 2, 1987.

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Rules and Regulations

Federal Register
Vol. 52, No. 23
Wednesday, February 4, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 870, 871, 872, 873, and 890

Federal Employees Group Life Insurance and Health Benefits Programs, Underdeductions of Premiums

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is adopting previously proposed regulations on the Federal Employees' Group Life Insurance (FEGLI) and the Federal Employees Health Benefits (FEHB) Programs. These regulations clarify a Federal agency's responsibilities when the agency discovers that it failed to deduct life or health insurance withholdings required by law from salary, annuity, or workers compensation disbursements to an insured individual.

EFFECTIVE DATE: March 6, 1987.

FOR FURTHER INFORMATION CONTACT: Bonnie Rose, (202) 632–4634.

SUPPLEMENTARY INFORMATION: On July 15, 1986, OPM published two proposed regulations in the **Federal Register** (51 FR 25532–25534; technical corrections published at 51 FR 28576, August 8, 1986) concerning a Federal agency's obligation under the FEGLI and FEHB laws to submit all required employee and agency premium contributions to OPM for deposit in the respective program trust funds. Both of these proposed regulations specified that when an agency discovers that it deducted less than or none of the applicable FEGLI or FEHB withholdings from an insured individual's pay, annuity, or workers compensation payments, the paying agency must promptly remit an amount equal to the uncollected withholdings to OPM. The agency's remittance must reach OPM no later than 60 calendar days after determination that an underdeduction exists.

By express provision, these regulations will not interfere with agency authority (under 5 U.S.C. 5584 or other applicable statute) to waive any overpayment of pay, annuity, or workers compensation resulting from underdeduction of FEGLI or FEHB withholdings in lieu of recovery from the affected individual. However, the regulations advise that, regardless of whether or when the agency recovers FEGLI or FEHB underdeductions from the program enrollee, the agency is obliged to forward to OPM the full amount due the respective program trust fund within the prescribed 60-day period.

OPM received four comments on the proposed regulations. Comments from two insurance companies that participate in the FEHB Program fully supported the clarification of agency responsibilities concerning underdeductions.

An individual expressed concern about the financial burden that retroactive adjustment of premium underdeductions would impose on retirees with limited incomes. However, as explained previously, these regulations will not interfere with established agency authority to waive overpayments of pay, annuity, or workers compensation under prescribed conditions. The civil service retirement law (5 U.S.C. 8346(b)), for example, provides that: "Recovery of [annuity] payments . . . may not be made from an individual when, in the judgment of the Office of Personnel Management, the individual is without fault and recovery would be against equity and good conscience." Even if the facts in a particular case lead to a finding that the individual is obligated to repay an overpayment of retirement benefits, the retirement debt collection regulations (5 CFR 831.1305(c)) permit installment payments to ease the financial burden.

Finally, an employing agency commented that the proposed regulations refer to "administrative error" without defining the term and also questioned what source of funds is available for paying insurance deductions not yet collected from insured individuals. The term "administrative error" appears only in the summary of the proposed regulations. The Supplementary Information section further explains that the proposed regulations concern agency failure to properly deduct insurance withholdings required by law from agency payments to insured individuals so that an "underdeduction" results. The regulatory text defines the term "underdeduction" and explains agency responsibilities in this regard. Accordingly, we do not believe that a further definition is required.

As to the source of funding for retroactive insurance deductions, the General Accounting Office (GAO) has consistently held that underdeductions of Federal employee contributions for retirement or group insurance results in an overpayment of salary, which is subject to waiver under 5 U.S.C. 5584; for example, see Comptroller General decisions B–212154 and B–202201. In determining whether there has been an overpayment of pay, GAO focuses on the *net* salary received by the individual. Thus, even though the gross pay may have been correct, underdeductions can result in salary overpayment. The source of funds for agency use in forwarding underdeductions of individual insurance withholdings is the same as that used for salary or benefit payments to the individual. Agencies must subsequently determine whether recovery of salary or benefit overpayments may be waived under applicable law.

Finally, OPM is further revising the introductory text in § 890.101(a) for greater clarity.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they concern administration of Federal employee benefits.

List of Subjects

5 CFR Parts 870, 871, 872, and 873

Administrative practice and procedure, Government employees, Life insurance, Retirement.

5 CFR Part 890

Administrative practice and procedure, Claims, Government

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employees, Health insurance, Retirement.

Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM is amending 5 CFR Parts 870, 871, 872, 873, and 890 as follows:

1. The authority citation for Parts 870, 871, 872, and 873 continues to read as follows:

Authority: 5 U.S.C. 8716.

PART 870—BASIC LIFE INSURANCE

2. Section 870.103 is amended to alphabetically add the definition of "underdeduction" to read as follows:

§ 870.103 Definitions.

* * * * *

"Underdeduction" means a failure to withhold the required amount of life insurance deductions from an individual's pay, annuity, or compensation. This definition includes both nondeductions (when none of the required amount was withheld) and partial deductions (when only part of the required amount was withheld). Withholdings are not required while an individual is in a nonpay status; therefore, the nonpayment of premiums in this instance does not result in an underdeduction.

3. In § 870.401, paragraph (h) is revised and paragraph (i) is added to read as follows:

§ 870.401 Withholdings and contributions.

* * * * *

(h) When an agency withholds less than or none of the proper amount of basic life insurance deductions from an individual's pay, annuity, or compensation, the agency must submit an amount equal to the sum of the uncollected deductions and any applicable agency contributions required under section 8708 of Title 5, United States Code, to OPM for deposit to the Employee's Life Insurance Fund.

(i) The deposit to OPM as described in paragraph (h) of this section must be made as soon as possible but no later than 60 calendar days after the date the employing office determines the amount of the underdeduction that has occurred, regardless of whether or when the underdeduction is recovered by the agency. A subsequent agency determination whether to waive collection of an overpayment of pay caused by failure to properly withhold life insurance deductions shall be made in accordance with 5 U.S.C. 5584 as implemented by 4 CFR Chapter I, Subchapter G, unless the agency involved is excluded from application of 5 U.S.C. 5584, in which case any applicable authority to waive the collection may be used.

PART 871—STANDARD OPTIONAL LIFE INSURANCE

4. In § 871.401, paragraph (g) is revised and paragraph (h) is added to read as follows:

§ 871.401 Withholdings.

* * * * *

(g) When an agency withholds less than or none of the proper cost of optional life insurance from an individual's pay, annuity, or compensation, the agency must submit an amount equal to the uncollected deductions required under section 8714a of Title 5, United States Code, to OPM for deposit to the Employees' Life Insurance Fund.

(h) The deposit to OPM as described in paragraph (g) of this section must be made as soon as possible but no later than 60 calendar days after the date the employing office determines the amount of the underdeduction that has occurred, regardless of whether or when the underdeduction is recovered by the agency. A subsequent agency determination whether to waive collection of an overpayment of pay shall be made in accordance with 5 U.S.C. 5584 as implemented by 4 CFR Chapter I, Subchapter G, unless the agency involved is excluded from application of 5 U.S.C. 5584, in which case any applicable authority to waive the collection may be used.

PART 872—ADDITIONAL OPTIONAL LIFE INSURANCE

5. In § 872.401, paragraph (g) is revised and paragraph (h) is added to read as follows:

§ 872.401 Withholdings.

* * * * *

(g) When an agency withholds less than or none of the proper cost of additional optional life insurance from an individual's pay, annuity, or compensation, the agency must submit an amount equal to the uncollected deductions required under section 8714b of Title 5, United States Code, to OPM for deposit to the Employees' Life Insurance Fund.

(h) The deposit to OPM as described in paragraph (g) of this section must be made as soon as possible but no later than 60 calendar days after the date the employing office determines the amount of the underdeduction that has occurred, regardless of whether or when the underdeduction is recovered by the agency. A subsequent agency determination whether to waive collection of an overpayment of pay caused by failure to properly withhold life insurance deductions shall be made in accordance with 5 U.S.C. 5584 as implemented by 4 CFR Chapter I, Subchapter G, unless the agency involved is excluded from application of 5 U.S.C. 5584, in which case any applicable authority to waive the collection may be used.

PART 873—FAMILY OPTIONAL LIFE INSURANCE

6. In § 873.401, paragraph (e) is revised and paragraph (f) is added to read as follows:

§ 873.401 Withholdings.

* * * * *

(e) When an agency withholds less than or none of the proper cost of family optional life insurance from an individual's pay, annuity, or compensation, the agency must submit an amount equal to the uncollected deductions required under section 8714c of Title 5, United States Code, to OPM for deposit in the Employee's Life Insurance Fund.

(f) A deposit to OPM as described in paragraph (e) of this section must be made as soon as possible but no later than 60 calendar days after the date the employing office determines the amount of the underdeduction that has occurred, regardless of whether or when the underdeduction is recovered by the agency. A subsequent agency determination whether to waive collection of an overpayment of pay caused by failure to properly withhold life insurance deductions shall be made in accordance with 5 U.S.C. 5584 as implemented by 4 CFR Chapter I, Subchapter G, unless the agency involved is excluded from application of 5 U.S.C. 5584, in which case any applicable authority to waive the collection may be used.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

7. The authority citation for Part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104 and sec. 3(5) of Pub. L. 95-454, 92 Stat. 1112; § 890.301 also issued under 5 U.S.C. 8905(b); § 890.302 also issued under 5 U.S.C. 8901(5) and 5 U.S.C. 8901(9); § 890.701 also issued under 5 U.S.C. 8902(m)(2); Subpart H also issued under Title I of Pub. L. 98-615, 98 Stat. 3195; Title II of Pub. L. 99-251, 100 Stat. 20.

8. Section 890.101 is amended as follows:

a. By removing the paragraph designations (a)(2) through (a)(12).

b. By revising the introductory text of paragraph (a) to read as set forth below and by removing paragraph (a)(1).

§ 890.101 Definitions; time computations.

(a) In this part, the terms "annuitant," "carrier," "employee," "employee organization," "former spouse," "health benefits plan," "member of family," and "service," have the meanings set forth in section 8901 of Title 5, United States Code, and supplement the following definitions:

§ 890.101 [Amended]

c. The paragraph designations in the definition of "foster child" are redesignated as paragraphs (1) and (2).

d. The following definitions are alphabetically added to read as follows:

"Compensation" means compensation under Subchapter I of Chapter 81 of Title 5, United States Code, which is payable because of a job-related injury or disease.

"Compensationer" means an employee or former employee who is entitled to compensation and whom the Department of Labor determines is unable to return to duty. A compensationer is also an annuitant for purposes of Chapter 89 of Title 5, United States Code.

"OWCP" means the Office of Workers' Compensation Programs, U.S. Department of Labor, which administers Subchapter I of Chapter 81 of Title 5, United States Code.

"Underdeduction" means a failure to withhold the required amount of health benefits contributions from an individual's pay, annuity, or compensation. This definition includes both nondeductions (when none of the required amounts was withheld) and partial deductions (when only part of the required amount was withheld). Though FEHB contributions are required to cover a period of nonpay status, the nonpayment of contributions during such period does not result in an underdeduction.

3. In § 890.502, paragraphs (d) and (e) are added to read as follows:

§890.502 Employee withholdings and contributions.

* * * * *

(d) An agency that withholds less than or none of the proper health benfits contributions from an individual's pay, annuity, or compensation must submit an amount equal to the sum of the uncollected deductions and any applicable agency contributions required under section 8906 of Title 5, United States Code, to OPM for deposit in the Employees Health Benefits Fund.

(e) The deposit to OPM as described in paragraph (d) of this section, must be made as soon as possible but no later than 60 calandar days after the date the employing office determines the amount of the underdeduction that has occurred, regardless of whether or when the underdeduction is recovered by the agency. A subsequent agency determination whether to waive collection of the overpayment of pay caused by failure to properly withhold employee health benefits contributions shall be made in accordance with 5 U.S.C. 5584 as implemented by 4 CFR Chapter I, Subchapter G, unless the agency involved is excluded from application of 5 U.S.C. 5584, in which case any applicable authority to waive the collection may be used.

[FR Doc. 87-2049 Filed 2-3-87; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

United States Standards for Grades of Seed Potatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action revises the voluntary U.S. Standards for Grades of Seed Potatoes

The Potato Association of America, a trade association, requested that the standards be revised to bring them in line with current agricultural and marketing practices. The Agricultural Marketing Service (AMS) has the responsibility, in cooperation with industry, to develop and improve standards of quality, condition, quantity, grade, and packaging in order to encourage uniformity and consistency in commercial practices.

EFFECTIVE DATE: March 6, 1987.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Mizelle, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2188.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Departmental Regulation 1512-1 and Executive Order 12291 and has been designated as "nonmajor." It will not result in an annual effect of $100 million or more. There will be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601), because this action revises the U.S. Standards for Grades of Seed Potatoes to coincide more closely with current State certification and industry marketing practices. Compliance with these standards will not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of such entities vis-a-vis large businesses. In addition, these standards are voluntary, and individual seed potato producers need not have their potatoes certified under these standards.

On July 23, 1986, a proposed rule inviting public comment on several changes in the U.S. Standards for Grades of Seed Potatoes was published in the **Federal Register** (51 FR 26390). The proposal requires blue tags to be attached to containers of certified U.S. No. 1 Seed Potatoes. The tags would identify the size, grower, class, and other information. In addition, the proposal provided less restrictive tolerances for factors not affecting seed quality, more definitive terms for specific defects, and methods of scoring such defects.

The 60-day comment period ended September 22, 1986, and 49 comments were received. All but two of the comments were in favor of the proposed changes. One commentor, representing the Maine seed potato industry, expressed opposition to several of the proposed changes as well as the impact these changes could have on the Maine seed potato industry.

He opposed the requirement that seed potato containers have a blue tag attached showing information as to variety, grower, crop year, etc. When the proposal was being developed, the Certification Section of the Potato Association of America requested that blue tags be a requirement in the revised standards in an effort to develop national uniformity, and because most

States already use blue tags to identify their top grade. Although this standard requires that a blue tag be used to show the required information, it does not prevent a State from printing other information (disease levels, etc.) on this tag or adopting other color coding methods. For example, a State may require a shipper to attach an additional tag of another color or to apply a colored label to the blue tag (provided the required information is not covered).

The commentor from Maine also opposed the establishment of a definition of "damage by soil" and allowing 25 percent of a potato's surface to be caked with soil as part of that definition. A comment indicated that allowing this much soil may hide defects on the potato's surface and would reduce the efficacy of treatment to control tuber-borne pathogens.

In response to these comments the agency is making a change in the final rule. In addition to the "damage by soil" definition, a definition for "fairly clean" was added to permit a lot of seed potates to be reported as being cleaner than the grade requires.

The agency decided to retain the standard of "damage by soil" at the proposed level to allow for national uniformity for the U.S. No. 1 Grade. Some potato-producing areas have heavy soil which clings to harvested seed potatoes. A stricter standard for soil damage might preclude seed potatoes from these areas from qualifying for U.S. No. 1 Grade certification.

The commentor from Maine opposed the change in tolerance for undersized potatoes from 3 to 5 percent by weight (§ 51.3002(b)(1)). The standard which had been in effect allowed for 3 percent for potatoes in any lot which failed to meet the required or specified minimum size except that 5 percent would be allowed when the minimum size specified is 2¼ inches or more in diameter or 5 ounces or more in weight. The Certification Section of the Potato Association of America recommended that a single tolerance level be established for undersized potatoes regardless of the minimum size or weight specified. The agency agrees with this recommendation because a single tolerance level should reduce possible sources of confusion for potato purchasers. The agency also believes that this change is not so large as to significantly reduce the quality of the grade.

The two commentors offered various objections to changes on the tolerance regarding damage by sprouts, damage by soil, vascular ring discoloration, and percentage allowed for other grade defects (§ 51.3002 (a)(4)). However, they offered no reasons for these objections. The tolerances as proposed met with the overwhelming approval of commentors, and the agency will adopt the tolerances as proposed.

Two commentors representing the Certification Section were in favor of the revision but asked that the defects be categorized by causes, as originally requested, rather than by alphabetical order, as proposed. Since this does not change the content of the standard and there is no compelling need to require listing in alphaetical order, this change has been made in the final rule.

All U.S. grade standards are developed and revised at the specific request of industry and with their support. The grade standards should serve as a common trading language so that the industry can uniformly market the commodity. The comments received by USDA indicates general support for these changes.

List of Subjects in 7 CFR Part 51

Fresh fruits, vegetables, and other Products (Inspection, Certification, and Standards)

PART 51—[AMENDED]

Accordingly, 7 CFR Part 51 is amended as follows:

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended, [7 U.S.C. 1622–1624].

2. Subpart—United States Standards for Grades of Seed Potatoes and the table of contents thereof is revised to read as follows:

Subpart—United States Standards for Seed Potatoes

Sec.
51.3000 General.
51.3001 Grade.
51.3002 Tolerances.
51.3003 Application of tolerances.
51.3004 Samples for grade and size determination.
51.3005 Definitions.
51.3006 Classification of defects.

Subpart—United States Standards for Seed Potatoes

§ 51.3000 General.

Compliance with the provisions of these standards shall not excuse failure to comply with provisions of applicable Federal or State Laws

§ 51.3001 Grade.

"U.S. No. 1 Seed Potatoes" consist of unwashed potatoes identified as certified seed by the state of origin by blue tags fixed to the containers or official State or Federal State certificates accompanying bulk loads, which identify the variety, size, class, crop year, and grower or shipper of the potatoes, and the State certification agency. These potatoes must meet the following requirements:

(a) Fairly well shaped.

(b) Free from:

(1) Freezing injury;

(2) Blackheart;

(3) Late Blight Tuber Rot;

(4) Nematode or Tuber Moth injury;

(5) Bacterial Ring Rot;

(6) Soft rot or wet breakdown; and,

(7) Fresh cuts or fresh broken-off second growth.

(c) Free from serious damage caused by:

(1) Hollow Heart; and,

(2) Vascular ring discoloration.

(d) Free from damage by soil and any other cause. (See § 51.3005–06).

(e) Size:

(1) Minimum diameter, unless otherwise specified, shall not be less than 1–1/2 inches (38.1 mm) in diameter;

(2) Maximum size, unless otherwise specified, shall not exceed 3–1/4 inches (82.6 mm) in diameter or 12 ounces (340.20 g) in weight.

(f) Tolerance. (See § 51.3002).

§ 51.3002 Tolerances.

In order to allow for variations incident to proper grading and handling in the foregoing grade, the following tolerances, by weight, are provided as specified.

(a) For defects:

(1) 10 percent for potatoes in any lot which are seriously damaged by hollow heart;

(2) 10 percent for potatoes in any lot which are damaged by soil;

(3) 5 percent for potatoes in any lot which are seriously damaged by vascular ring discoloration;

(4) 11 percent for potatoes which fail to meet the remaining requirements of the grade including therein not more than 6 percent for external defects and not more than 5 percent for internal defects: Provided, that included in these tolerances not more than the following percentages shall be allowed for the defects listed:

	Percent
Bacterial Ring Rot	0.00
Serious damage by dry or moist type Fusarium Tuber Rot	2.00
Late Blight Tuber Rot	1.00
Nematode or Tuber Moth injury	0.00
Varietal mixture	0.25
Frozen, soft rot or wet breakdown	0.50

Provided, that en route or at destination, an additional 0.50 percent, or a total of 1 percent, shall be allowed for potatoes which are frozen or affected by soft rot or wet breakdown.

(b) For off-size:

(1) For undersize: 5 percent for potatoes in any lot which fail to meet the required or specified minimum size.

(2) For oversize: 10 percent for potatoes in any lot which fail to meet the required or specified maximum size.

§ 51.3003 Application of tolerances.

Individual samples (See § 51.3004) shall not have more than double the tolerances specified, except that at least one defective and one off-size potato may be permitted in any sample; Provided, that en route or at destination, one-tenth of the samples may contain three times the tolerance permitted for potatoes which are frozen or affected by soft rot or wet breakdown; and provided further, that the averages for the entire lot are within the tolerances specified for the grade.

§ 51.3004 Samples for grade and size determination.

Individual samples shall consist of at least 20 pounds (9.06 kg). The number of such individual samples drawn for grade and size determination will vary with the size of the lot.

§ 51.3005 Definitions.

(a) "Fairly well shaped" means that the potato is not materially pointed, dumbbell-shaped or otherwise materially deformed.

(b) "Nematode or Tuber Moth injury" means the presence of, or any evidence of, Nematode or Tuber Moth.

(c) Soil:

(1) "Fairly clean" means that at least 90 percent of the potatoes in the lot have no more than 10 percent of the surface covered with caked soil.

(2) "Damage by soil" means that cake soil covers more than 25 percent of a potato's surface.

(3) "Loose soil"—A lot of seed potatoes is not considered damaged by the presence of loose soil, clods, rocks, vines, and foreign material, but such will be considered a tare factor if the following allowances are exceeded:

8 ounces (226.80 g) in a 100 pound (45.3 kg) container.
4 ounces (113.40 g) in a 50 pound (22.65 kg) container.
2 ounces (56.70 g) in a 25 pound (11.33 kg) container or less.
1 percent in a bulk load

(d) "Shriveling"—Damage by shriveling means that the individual potato is more than moderately shriveled, spongy or flabby.

(e) "Freezing injury" means that the potato is frozen or shows evidence of having been frozen.

(f) "Soft rot or wet breakdown" means any soft, mushy or leaky condition of the tissue.

(g) "Zero Tolerance" (0.00) means none found during the normal inspecting procedures. Certification of a lot is not a guarantee that the lot inspected is free of a zero tolerance disease or injury.

(h) "Damage" means any defect or any combination of defects which materially detracts from the internal or external appearance of the potato, or any external or internal defect which cannot be removed without a loss of more than 5 percent of the total weight of the potato (See § 51.3006).

(i) "Serious damage" means any defect or any combination of defects which seriously detracts from the internal or external appearance of the potato, or any internal or external defect which cannot be removed without a loss or more than 10 percent of the total weight of the potato (See § 51.3006).

(j) "External defects" are defects which can be detected by examining the surface of the potato. Cutting may be required to determine the extent of the injury (See § 51.3006, Table I).

(k) "Internal defects" are defects which cannot be detected without cutting the potato (See § 51.3006, Table II).

(l) "Permanent defects" are defects which are not subject to change during storage or shipment.

(m) "Condition defects" are defects which may develop or change during storage or shipment.

§ 51.3006 Classification of defects.

(a) Brown discoloration following skinning, dried stems, flattened depressed areas (showing no underlying flesh discoloration), greening, skin checks and sunburn do not affect seed quality and shall not be scored against the grade.

(b) *Table I—External Defects.*

x—indicates method of scoring unless otherwise noted.

Defect	Damage: When materially detracting from the appearance of the potato	or	When removal causes a loss of more than 5 percent of the total weight of the potato.
Air cracks			x
Bruises			x
Cuts and broken-off second growth (healed)	x		x
Elephant hide (scaling)	x		
Enlarged, discolored or sunken lenticels	x		
Folded ends	x		
Second growth	x		
Shriveling	When more than moderately shriveled, spongy, or flabby.		
Sprouts	When more than 20 percent of the potatoes in any lot have any sprout more than 1 inch (25.4 mm) in length.		
Surface cracking	x		x
Flea Beatle injury	x		x
Grub damage	x		x
Rodent and/or bird damage	x		x
Wireworm or grass damage	Any hole more than ¾ inch (19.1 mm) long or when the aggregate length of all holes is more than 1¼ inches (31.8 mm) [1].		
Dry rots			x
Rhizoctonia	x		

Defect	Damage: When materially detracting from the appearance of the potato	or	Damage: When removal causes a loss of more than 5 percent of the total weight of the potato.
Scab, pitted	x		x
Scab, russet	When affecting more than ⅓ of the surface.		
Scab, surface	When affecting more than 5 percent of the surface.		
Silver Scurf	When affecting more than 25 percent of the surface.		
Growth cracks	When seriously detracting from the appearance.		
Pressure bruises and sunken areas—with underlying flesh discolored.			When removal causes a loss of more than 10 percent of the total weight.

[1] Definitions of damage and serious damage are based on potatoes that are 2¼ inches (63.5 mm) in diameter or 6 ounces (170.10 g) in weight. Correspondingly lesser or greater areas are permitted on smaller or larger potatoes.

(c) *Table II—Internal Defects.*

Defect	Damage: When materially detracting from the appearance of the potato	or	Damage: When removal causes a loss of more than 5 percent of the total weight of the potato
Ingrown sprouts			Dx
Internal discoloration occurring interior to the vascular ring (such as, Internal Brown Spot, Mahogany Browning and Heat Necrosis.).	When more than the equivalent of three scattered light brown spots ⅛ inch (3.2 mm) in diameter [1].		
All other internal discoloration *excluding* discoloration confined to the vascular ring.			

[1] Definitions of damage and serious damage are based on potatoes that are 2-½ inches (63.5 mm) in diameter or 6 ounces (170.10 g) in weight. Correspondingly lesser or greater areas are permitted on smaller or larger potatoes.

Defect	Serious damage: When seriously detracting from the appearance of the potato.	or	Serious damage: When removal causes a loss of more than 10 percent of the total weight of the potato.
Internal Discoloration confined to the vascular ring..			x
Hollow Heart or Hollow Heart with discoloration.	When affected area exceeds that of a circle ¾ inch (19.1 mm) in diameter. [1]		

[1] Definitions of damage and serious damage are based on potatoes that are 2-½ inches (63.5 mm) in diameter or 6 ounces (170.10 g) in weight. Correspondingly lesser or greater areas are permitted on smaller or larger potatoes.

Done in Washington, DC on January 30, 1987.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 87-2255 Filed 2-3-87; 8:45 am]

BILLING CODE 3410-02-M

Food and Nutrition Service

7 CFR Parts 271, 272, 273, 275, and 276

[Amendment No. 266]

Food Stamp Program; Performance Reporting System

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rulemaking.

SUMMARY: This rule contains final regulations for the Food Stamp Program to implement various changes to the requirements that State agencies and the Food and Nutrition Service (FNS) must meet regarding administration, conducting management evaluation (ME) reviews, data analysis and evaluation, corrective action, and reporting as part of the Performance Reporting System (PRS). Proposed regulations were publsihed in the **Federal Register** of August 29, 1985. Comments on the proposal were solicited through October 28, 1985. This final rulemaking takes the comments received into account. The result of implementing these changes will be to simplify the PRS and reduce workloads and costs. Several changes have been made to the Quality Control (QC) System.

DATE: These rules are effective March 6, 1987.

FOR FURTHER INFORMATION CONTACT: Thomas O'Connor, Supervisor, State Management Section, Administration and Design Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA Alexandria, Virginia 22302, (703) 756-3385.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

The final rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified "not major." The rule will not have an annual effect on the economy of $100 million or more, nor is it likely to result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Because this rule would not affect the business community, it would not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-base enteriprises in domestic or export markets.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final Rule Related Notice to 7 CFR 3015 Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule was also reviewed with regard to the requirements of Pub. L. 96-354, and Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that it will not have a significant economic impact on a substantial number of small entities. The rule implements various changes to simplify the PRS. State agencies should experience a reduction in workloads and costs.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping provisions that are included in this rule were approved by the Office of Management and Budget (OMB) under control number 0584-0010 (through 12/31/88).

Background

This preamble addresses the changes made to the proposed rule and the controversial provisions that were not changed. There were 46 comment letters received on the proposed rule. Since the explanation of many of the provisions of the final rule are set forth in the proposed rule, it may be necessary to refer to the publication for a full understanding of these provisions.

PRS Coordinator

There was overwhelming support for eliminating the PRS Coordinator position and the "full-time" requirement. We have done so. In addition, we are eliminating the requirement that State designate an organizational entity within the State structure to be responsible for corrective action. (§ 275.2(a))

Alternate Review Schedule and Reduction of Routine Reviews

Current regulations contain strict timetables for the frequency of State agency reviews of projects areas operations based on the size of the project area. The proposed regulation introduced the concept of the "alternate review schedule" which would allow State agencies to obtain permission from FNS to do fewer routine reviews of project areas with few or minimal problems. By doing this, State agencies could concentrate time and resources on reviews of project areas with known problems.

In general, there was broad support of the concept of the alternate review schedule. Many commenters felt, however, that some of the proposed rules were still too restrictive to allow the most efficient targeting. Although the proposed rules did not allude to or redefine the size of small, medium, and large project areas, a significant number of comment letters suggested that we should have, because this was the simplest way to give State agencies a reduction of routine reviews. Most commenters felt the numerical values for the three project area sizes were too small. The current requirement that all project areas must be reviewed every three years came under the most intense criticism. It was argued that this still forces State agencies to do more frequent routine reviews than are necessary for project areas with good performances, and for which State agencies have well-developed performance measurement systems of their own. The proposal to drop the "70%" rule which requires more frequent reviews for State agencies where more than 70% of project areas are small was met with approval.

Based on the comments, the Department had decided to make several changes in this area. The final rule will: (1) Drop the "70%" rule and (2) adjust the size of project areas. Small project areas are redesignated as those with 2,000 or fewer households, medium 2,001-15,000, and large 15,001 and up. Despite the criticism by those who wished to extend the three year limits, FNS felt it was necessary to retain the minimum review frequency at three years in order not to lose program control. (It should be noted however, that a State agency with exceptional circumstances could request a formal waiver of this regulation, but those are not encouraged and would require more rigorous justification than for an alternate schedule).

The concepts of targeting and the alternate review schedule go hand in hand to allow State agencies and FNS to redirect their resources to areas with known deficiencies. FNS does not intended that these provisions be used to reduce the level of commitment of State agency resources to PRS activities, nor to discourage the occasional conducting of full reviews. FNS regional offices may occasionally conduct a full "top to bottom" State agency operations review (SAOR) of State agencies in their region. State agencies are also encouraged to conduct occasional full SAORs for the same reasons as indicated above. It should be emphasized that the above actions are optional, i.e., allowable but not required. (§ 275.5)

State Selection of a Representative Number of Subunits for Review

The proposed regulations would have deleted the detailed rules that specify how to select subunits for review. This proposal was intended to keep State agencies from being tied to performing a specific number of reviews and in a rigidly prescribed manner.

All comments on this proposed provision were positive. Therefore, this rule adopts the provision from the propoal. (§ 275.7)

Targeting

The proposal to provide for reviews to be performed only on targered aspects of program operation—as selected by FNS annually—instead of on all aspects, received widespread enthusiastic support. No change in the wording of the proposed rule will be made. However, it is necessary to clear up a misunderstanding regarding the yearly targets provided by FNS. The FNS regional offices do not have the authority to exempt review of specific yearly national targets; however the "review" does not need to be a physical on-site review and analysis of a target area if the State agency has in place an effective objective performance measurement system which is periodically validated. A brief report providing the data obtained from the State agency's performance measurement system would constitute sufficient "review action" on that national target. (§ 275.8)

Announcing Annual Program Targets

Under the targeting approach discussed above it was proposed that national target be provided to State agencies by FNS 60 days prior to the beginning of the review period (the Federal fiscal year). However, one

commenter made the point that we are setting the same deadline (60 days before beginning of fiscal year) for both ME review schedules and for provision of the yearly targets. They argued that a State agency needs to have the yearly targets in hand and study them for some time before finalizing their ME review schedule for the coming review period. We agree. Consequently, the regulation has been changed. National targets for each upcoming fiscal year will be announced at least 90 days prior to the beginning of the fiscal year. This will mean that State agencies will have 30 days to review national targets before the due date for the review schedule. Targets for fiscal year 1987 are now in effect. (§ 275.8)

Additional Target Areas

The proposed regulations indicated that FNS may impose additional areas for review during the fiscal year in addition to the list of targeted areas announced prior to the beginning of the fiscal year. All comments recieved on this item were critical. The fear was that FNS would impose large numbers of additional target areas throughout the fiscal year, making State agency adherence to their review schedule difficult.

The intent of this section was not to create a channel for the adding of large numbers of new target areas, but to provide a mechanism that would allow the Department to meet new priorities or unforeseen problems during the fiscal year. Because of the necessity to have this flexibility, the Department is retaining the provision. However, it has been modified in several ways. First, the Department adopted one State agency's suggestion that State agencies be given a 60-day implementation period before they were responsible for beginning actual review of a newly mandated area. Seconds, the FNS national office will impose additional national target areas during a fiscal year only for deficiencies of national scope. While a regional office is authorized to require State agencies to review additional areas in addition to the national targets, this will be done only when these areas are directly related to deficiencies in a particular program area in that State. A regional office cannot, because of a deficiency in one State agency, establish a blanket requirement that all state agencies in that region add this program area as an additional targeted area of review. (§ 275.8)

Elimination of Specific Review Procedures

The proposed regulation eliminated the required detailed review method procedures in the current regulations. Almost all comments were positive. The proposed regulation will not be changed. However, State agencies wishing to continue using the current detailed procedures may do so. (§ 275.9)

Prior Approval of Review Methodologies/Formats/Requirements by FNS

One commenter felt that prior FNS approval should be necessary for Methodologies, Formats, or Plan Requirements to emphasize uniformity among State agencies. This suggestion was not accepted as it runs counter to the admninistrative direction of the other provisions of the rule. (§ 275.9)

Elimination of FNS Approval of State Corrective Action Plans

The requirement that State Corrective Action Plans be approved in advance by FNS was proposed to be eliminated. Response to this proposal was mixed though more were in favor than opposed. Among those favoring the proposed rule, it was the feeling that this provision would eliminate some of the paperwork and enable them to more quickly get to work on performing the required corrective actions, thus saving valuable time and resources that would otherwise be spent on obtaining or waiting for Federal approval. Of those that disliked the proposal, the basic argument was that FNS was going back on its responsibility to insure that programs were operated in the best way possible. One State agency made the specific point that FNS, because it had knowledge of large numbers of corrective action plan initiatives in other State agencies, was in the best possible position to estimate whether a State agency's corrective action plan might succeed—or whether a different approach was known to be more effective. A number of commenters wanted to retain FNS approval responsibility for general "compliance" issues, but eliminate FNS approval for QC-related corrective action items. The Department carefully considered the arguments raised by the commenters and decided to retain the language of the proposed rule. Thus, State agencies' corrective action plans (CAPs) will no longer need to be approved in advance by FNS.

There seemed to be some concern on the part of commenters that the elimination of the requirement that State agencies obtain approval of their CAP's would mean a withdrawal of FNS from the corrective action process. This is not the intention of the rule nor of FNS. State agencies' CAPs will still be reviewed by FNS. If a State agency wants an FNS regional office to review and comment on its CAP, it may request such action. Even if such a request is not made, any shortcomings discovered by FNS will be pointed out to State agencies. Suggestions for changes based on regional office knowledge of the success or failure of other State agencies confronted with similar problems will continue to be made. (§ 275.17)

Definition of a Statewide Trend

The proposed rule solicited comment on a possible revision of the current definition of "Statewide trend." Currently this term is defined as a deficiency occurring in a significant number, usually 25 percent, of the State agency's project areas/management units. The term had been included to define the concept of a widespread or systemic problem that needed addressing at a level above the single project area or management unit. It was a way to differentiate between deficiencies, indicating which warranted State agency and FNS attention and which should be left at the local level for handling. With the change to a targeting approach to doing reviews, this differentiation is no longer needed. Therefore, the term "Statewide trend" is dropped from the rules. Likewise, the term "patterns of errors", included in the rules for similar reasons, is also being dropped. (In addition, the reference in the rules to deficiencies resulting from State agency causal factors was dropped. It was felt that this provision was redundant.) (§ 275.16(b))

Frequency of State Corrective Action Plan Update

Currently, State agencies are required to submit changes to their CAPs because of a newly discovered deficiency within 60 days of the discovery. This requirement ensured that State agencies reacted quickly to newly discovered problems as well as ensured that FNS was appraised of them. The proposed rule would have changed this procedure. The proposal dropped the requirement for "non-cyclical" reporting and substituted a procedure requiring periodic reports. By making this change, the constant flow of paperwork characteristic of the current system would be ended. In its place, a more easily tracked and managed report would be sent in at regular intervals.

This proposal met with a mixed reaction from commenters. Most commenters agreed with the proposal, believing that the cycling of information into periodic reports eased the reporting burden. A few disagreed, preferring the ability to go ahead and focus attention on particular problems and sending in the necessary reports as the problems arose.

The proposed rule, in putting forth the concept of periodic updates as an alternative, solicited comments on what frequency of the updates should be. Some suggested "periodic updates" should be no more often than yearly, an equal number favored twice yearly. Only a few favored updates more often than twice yearly.

The final regulation requires CAP updates semiannually, to be received by FNS by May 1st and November 1st. The update will include followups on items previously submitted and corrective actions for deficiencies discovered since the last submission. FNS retains the authority to require immediate reporting of any *specific* CAP when necessary. Deficiencies needing immediate attention as discovered in individual audits or reviews should continue to be handled on a prompt basis. Wording to this effect in the introductory paragraph to § 275.3, which was inadvertently deleted, will be restored. (§ 275.17)

No Corrective Action Plan Needed To Implement Regulations

The proposed rule required that an initial Corrective Action Plan be provided to FNS within 90 days after publication of the rule. All commenters were negative about this requirement pointing out there was insufficient rationale for requiring an initial CAP. Each State agency already has a fully functional CAP, updates are made on a periodic basis, and none of the proposed rules taken singly or as a unit would change anything that would trigger a need for a new CAP. Requiring such a CAP was seen as a step backwards in the effort to eliminate unnecessary paperwork and out of conformity with the general direction of the rule. Therefore, the requirement for an initial CAP has been dropped.

Quality Control

The Department proposed several changes to the quality control portion of the PRS regulations. Nineteen State and local agencies and FNS regional offices commented on these proposed changes. Most commenters supported the changes concerning: (1) Deleting FNS validation of the active case error rate; (2) excluding disaster cases from the negative universe; (3) changing the submittal dates for the forms FNS–247 and FNS–248; (4) correcting § 275.25(d)(2) to say "prior fiscal year" instead of "applicable period"; and (5) correcting § 275.25(d)(2) to say "less than five percent" instead of "five percent or less". Therefore, in this rule, the Department is making the changes as proposed. In addition, we are adding a provision stating that the validation review of each State agency's underissuance error rate shall occur as a result of the Federal validation of the State agency's payment error rate. This revises the provision stating that the validation review of each State agency's underissuance error rate shall occur as a result of the Federal validation of the State agency's active case error rate.

The Department proposed to add a clarifying statement to § 275.3(c) which provided for FNS validation reviews against the Food Stamp Act and the regulations, taking into account any FNS-authorized waivers to deviate from specific regulatory provisions. Seven commenters opposed this provision either because they felt that reviews should be conducted against State policy or because timeframes for regulatory implementation are too short for State agencies to accomplish. As was discussed in the preamble of the proposed rule, this provision is being placed in the regulations at § 275.3(c) solely to emphasize that Federal reviews will meet the same standards as State reviews. State agencies are already required by § 275.10 of the regulations to conduct reviews against the standards established in the Food Stamp Act and the regulations, taking into account any FNS-authorized waivers. This provision is discussed in the preamble of the final rule on February 17, 1984 at 49 FR 6294. The Department has kept the provision as proposed.

The Department also proposed to require that a State agency determine a household ineligible if the household refuses to cooperate with a Federal quality control reviewer. Seven commenters supported the proposal; two were opposed. Several commenters requested clarification about the status of the quality control case. When the Federal reviewer refers a household for termination from the program for refusal to cooperate, the reviewer would continue to try to complete the case. The case would be determined complete or incomplete depending on whether the Federal reviewer was able to complete the case without the household's cooperation.

One commenter was concerned that the household's rights were not addressed. The household has the right to request a fair hearing for a termination for refusal to cooperate with a Federal reviewer just as the household has for any other negative action. FNS will assist the State agency in the hearing process.

Two commenters pointed out that the timeframes in § 273.2(d)(2) were not compatible with the Federal review timeframes as Federal reviews are still being conducted more than 95 days after the end of the annual review period. We have revised § 273.2(d)(2) to provide appropriate timeframes for refusal to cooperate with Federal reviews.

The Department has also revised § 273.2(d)(2) to refer to the verification provisions of the regulations (§ 273.2(f)) and added a provision to the mandatory verification rules specifying the verification requirements for households that refused to cooperate with State or Federal QC reviewers.

In addition, we have corrected two typographical errors in §§ 275.11(b)(1)(ii) and 275.12(c).

FNS Right To Start a Sanction Even When State Has Addressed a Deficiency in Their CAP

Only two comment letters address this issue (both against). One commenter suggested that FNS should wait until after evaluation of a State agency's CAP before starting a sanction. This has been the usual procedure in the past and will likely be the method adopted for most issues. However, FNS determined it was necessary to have authority to begin the warning process immediately where past State agency performance has been poor or the deficiency is serious. Therefore, the provisions has been retained. (§ 275.17(d))

Review Periods

A number of comment letters indicated that there was confusion as to what period of time the "review period" covered. Although some concluded that the review period was erquivalent to the Federal fiscal year (which is correct) they felt that it should be equivalent to the State fiscal or budget year in those State agencies where these varied from the Federal. In response, it must be noted that the Food Stamp Act requires that QC reviews be done on Federal fiscal year schedule. Therefore, no change was made. (§ 275.8(a))

SAORS for State Agencies With Under 5 Percent Error

One commenter proposed that State agencies with error rates under 5 percent be exempt from SAORS. This was accepted since SAORS are not only for review of functions which affect the QC error rate but also for other operational functions as well.

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Division of Corrective Action Plans into Separate QC and Compliance Issue CAPs and Related Issues

A number of commenters suggested that there should be two separate CAPs, one for QC issues and one for all other "operational" or compliance issues. According to the commenters, the reasons to do this is that the sources of information for the two areas as well as the action required are distinctly different. The Department seriously examined this suggestion but decided it would be confusing to require two separate CAPs. However, if it would be useful as an internal organizational aid, State agencies may divide a single CAP into two sections, one dealing strictly with issues directly related to the QC error rate, and one related to all other operational management compliance issues. This might possibly assist in organizing CAPs, particularly when different divisions in State agencies have separate responsibilities for each aspect of the total plan. A related issue was raise whether a State agency with an error rate under 5 percent needs to prepare a CAP at all. No change was made in this provision. The rules still require a CAP form those State agencies since assumedly there could be some compliance issue needing attention. However, because of the low error rate, QC-related issues may not need to be addressed in such a CAP.

Miscellaneous Minor Changes

On the following issues, the majority of comments were highly favorable and the proposed regulation language will be retained intact: (1) Deletion of requirements to use error prone profiles and certain QC results, and (2) the change in the frequency of Federal ME reviews from annual to biennial. (§ 275.3)

The following minor changes have been made in response to comments received: (1) The rquirements for requesting an alternate schedule have been simplified (§ 275..5(b)(2)), (2) non-discrimination reviews may continue, at State agency option, to be addressed through the ME process (§ 275.9(b)(1)(iv), and (3) "GAO and Contract Audits" will be added to the list of sources of findings in § 275.16.

Implementation

Within 30 days after the date of publication of this rule, all State agencies shall have converted from the old PRS to the new system based on this rule. All waivers and review schedules for Fiscal Year 1987 shall remain in force for the remainder of this fiscal year. Any State agency that wishes may request a change in its waivers or review schedules in order to implement earlier than Fiscal Year 1988. One commenter raised the issue of existing waivers and their applicability, particularly in regard to targeting, once the new regulaitons are in effect. Most waivers that have been granted for ths fiscal year will become moot upon publication of this rule. This is especially true of the targeting waivers. However, there may be some small differences between these rules and some current waivers. Rather than cause all State agencies to reapply for waivers to maintain these small differences, the Department has decided to consider all waivers in effect until the end of this fiscal year. If a State agency wishes to cease following an approved waiver procedure before then, it should notify its Regional office of the change it wants to make and negotiate a timeframe for making the change.

The first periodic Corrective Action Plan update due to FNS under this rule shall be submitted by May 1, 1987. This should cover all outstanding deficiencies in the State agencies' operations.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food Stamps, Grant programs—social programs

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

7 CFR Part 276

Administrative practice and procedure, Food stamps, Fraud, Grant programs—social programs, Penalties.

Accordingly, Parts 271, 272, 273, 275, and 276 are amended as follows:

1. The authority citation for Parts 271, 272, 273, 275, and 276 continues to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2029).

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2, the definitions of "Large project area", "Medium project area", and "Small project area", are revised to read as follows:

§ 271.2 Definitions.

* * * * *

"Large project area" means those project areas/management units with monthly active caseloads of more than 15,000 households based on the most current information available at the time the large project area review schedule is developed.

* * * * *

"Medium project area" means those project areas/management units with monthly active caseloads of 2,001 to 15,000 households based on the most current information available at the time the medium project area review schedule is developed.

* * * * *

"Small project area" means those project areas/management units with monthly active caseloads of 2,000 households or fewer based on the most current information available at the time the small project area review schedule is developed.

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.1, the first sentences in paragraph (d)(1) and paragraph (d)(2) are revised and a new paragraph (g)(71) is added to read as follows:

§ 272.1 General terms and conditions

* * * * *

(d) *Information Available to the Public.* (1) Federal regulations, Federal procedures embodied in FNS notices and policy memos, State Plans of Operation, and corrective action plans shall be available upon request for examination by members of the public during office hours at the State agency headquarters as well as at FNS regional and national offices. * * *

(2) Copies of regulations, plans of operation, State manuals, State corrective action plans, and Federal procedures may be obtained from FNS in accordance with Part 295 of this chapter.

* * * * *

(g) *Implementation.* * * *

(71) *Amendment No. 266.* The provisions contained in Amendment No. 266 shall be implemented by March 6, 1987.

(i) All Fiscal Year 1987 review schedules shall continue in force despite

the implementation of these provisions. However, a State agency may, at its option, seek a change in that schedule.

(ii) Waivers shall remain in force until their expiration. If a State agency wishes to cancel a waiver it should contact its Regional Office and negotiate whatever change it needs.

(iii) The first periodic Corrective Action Plan update required by this amendment shall be submitted by May 1, 1987.

* * * * *

4. In § 272.2, the eighth sentence is removed from paragraph (a)(2).

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

5. In § 273.2, paragraph (d)(2) is revised, a new paragraph (f)(1)(ix) is added and paragraph (f)(3)(ii) is amended by removing the words "in accordance with § 275.15(a)(2)" from the first sentence. The revision to (d)(2) and the new paragraph (f)(1)(ix), read as follows:

§ 273.2 Application Processing.

* * * * *

(d) *Household cooperation.* * * *

(2) *Cooperation with QC Reviewer.* In addition, the household shall be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility as a part of a quality control review. If a household is terminated for refusal to cooperate with a quality control reviewer, in accordance with § 275.3(c)(5) or § 275.12(g)(1)(ii), the household may reapply, but shall not be determined eligible until it cooperates with the quality control reviewer. If a household terminated for refusal to cooperate with a State quality control reviewer reapplies after 95 days from the end of the annual review period, the household shall not be determined ineligible for its refusal to cooperate with a State quality control reviewer during the completed review period, but must provide verification in accordance with § 273.2(f)(1)(ix). If a household terminated for refusal to cooperate with a Federal quality control reviewer reapplies after seven months from the end of the annual review period, the household shall not be determined ineligible for its refusal to cooperate with a Federal quality control reviewer during the completed review period, but must provide verification in accordance with § 273.2(f)(1)(ix).

* * * * *

(f) *Verification.* * * *

(1) *Mandatory verification.* * * *

(ix) State agencies shall verify all factors of eligibility for households who have been terminated for refusal to cooperate with a State quality control reviewer, and reapply after 95 days from the end of the annual review period. State agencies shall verify all factors of eligibility for households who have been terminated for refusal to cooperate with a Federal quality control reviewer and reapply after seven months from the end of the annual review period.

* * * * *

PART 275—PERFORMANCE REPORTING SYSTEM

6. In § 275.1, the parenthetical expression "(of which the State corrective action plan is a part)" is removed from the last sentence in paragraph (a) and paragraph (b) is revised. The revision to paragraph (b) reads as follows:

§ 275.1 General scope and purpose.

* * * * *

(b) The Food Stamp Act authorizes the Secretary to pay each State agency an amount equal to 50 percent of all administrative costs involved in each State agency's operation of the program. The Act further authorizes the Secretary to increase the share to 60 percent of all administrative costs for State agencies whose combined payment error rate and underissuance error rate is, as determined by quality control, less than five percent and whose negative case error rate is less than the national weighted mean negative case error rate for the prior fiscal year. Those State agencies whose combined payment and underissuance error rates are five percent or more are required to specify and carry out the corrective action which they propose to take to reduce errors.

7. In § 275.2 paragraph (a)(2) is revised as follows:

§ 275.2 State agency responsibilities.

(a) *Establishment of the Performance Reporting System* * * *

(2) The State agency must ensure corrective action is effected at the State and project area levels.

* * * * *

8. In § 275.3, the introductory paragraph is revised. Paragraphs (a), (b), and (d) are revised. Introductory paragraph (c) is revised, the title and introductory paragraph of (c)(1) are revised, paragraph (c)(2) is removed, paragraphs (c)(3), (c)(4), and (c)(5) are redesignated as (c)(2), (c)(3), and (c)(4), respectively, the redesignated paragraph (c)(2) is revised, and a new paragraph (c)(5) is added. The revisions read as follows:

§ 275.3 Federal monitoring.

The Food and Nutrition Service shall conduct the review described in this section to determine whether a State agency is operating the Food Stamp Program and the Performance Reporting System in accordance with program requirements. The Federal reviewer may consolidate the scheduling and conduct of these reviews to reduce the frequency of entry into the State agency. FNS regional offices will conduct additional reviews to examine State agency and project area operations, as considered necessary to determine compliance with program requirements. FNS shall notify the State agency of any deficiencies detected in program or system operations. Any deficiencies detected in program or system operations which do not necessitate long range analytical and evaluative measures for corrective action development shall be immediately corrected by the State agency. Within 60 days of receipt of the findings of each review established below, State agencies shall develop corrective action addressing all other deficiencies detected in either program or system operations and shall ensure that the State agency's own corrective action plan is amended and that FNS is provided this information at the time of the next formal semiannual update to the State agency's Corrective Action Plan, as required in § 275.17.

(a) *Reviews of State Agency's Administration/Operation of the Food Stamp Program.* FNS shall conduct an annual review of certain functions performed at the State agency level in the administration/operation of the program. FNS will designate specific areas required to be reviewed each fiscal year.

(b) *Reviews of State Agency's Management Evaluation System.* FNS will review each State agency's management evaluation system on a biennial basis; however, FNS may review a State agency's management evaluation system on a more frequent basis if a regular review reveals serious deficiencies in the ME system. The ME review will include but not be limited to a determination of whether or not the State agency is complying with FNS regulations, an assessment of the State agency's methods and procedures for conducting ME reviews, and an assessment of the data collected by the State agency in conducting the reviews.

(c) *Validation of State Agency Error Rates.* FNS shall validate each State agency's payment error rate and underissuance error rate, as described in § 275.23(c), during each annual quality control review period. Federal

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validation reviews shall be conducted by reviewing against the Food Stamp Act and the regulations, taking into account any FNS-authorized waivers to deviate from specific regulatory provisions. FNS shall validate the State agency's negative case error rate, as described in § 275.23(d), only when the State agency's payment and underissuance error rates for an annual review period appear to entitle it to an increased share of Federal administrative funding for that period as outlined in § 277.4(b)(2), and its reported negative case error rate for that period is less than the national weighted mean negative case error rate for the prior fiscal year. Any deficiencies detected in a State agency's QC system shall be included in the State agency's corrective action plan. The findings of validation reviews shall be used as outlined in § 275.23(e)(6).

(1) *Payment error rate.* The validation review of each State agency's payment error rate shall consist of the following actions: * * *

(2) *Underissuance error rate.* The validation review of each State agency's underissuance error rate shall occur as a result of the Federal validation of the State agency's payment error rate as outlined in paragraph (c)(1) of this section.

* * * * *

(5) *Household cooperation.* Households are required to cooperate with Federal QC reviewers. Refusal to cooperate shall result in termination of the household's eligibility. The Federal reviewer shall follow the procedures in § 275.12(g)(1)(ii) in order to determine whether a household is refusing to cooperate with the Federal QC reviewer. If the Federal reviewer determines that the household has refused to cooperate, as opposed to failed to cooperate, the household shall be reported to the State agency for termination of eligibility.

(d) *Assessment of Corrective Action.* (1) FNS will conduct will conduct a comprehensive annual assessment of a State agency's corrective action process by compiling all information relative to that State agency's corrective action efforts, including the State agency's system for data analysis and evaluation. The purpose of this assessment and review is to determine if: identified deficiencies are analyzed in terms of causes and magnitude and are properly included in either the State or Project Area/Management Unit corrective action plan; the State agency is implementing corrective actions according to the appropriate plan; target completion dates for reduction or elimination of deficiencies are being met; and, corrective actions are effective. In addition, FNS will examine the State agency's corrective action monitoring and evaluative efforts. The assessment of corrective action will be conducted at the State agency, project area, and local level offices, as necessary.

(2) In addition, FNS will conduct on-site reviews of selected corrective actions as frequently as considered necessary to ensure that State agencies are implementing proposed corrective actions within the timeframes specified in the State agency and/or Project Area/Management Unit corrective action plans and to determine the effectiveness of the corrective action. The on-site reviews will provide State agencies and FNS with a mechanism for early detection of problems in the corrective action process to minimize losses to the program, participants, or potential participants.

9. In § 275.5, paragraph (b) is revised and paragraph (c) is removed. The revision reads as follows:

§ 275.5 Scope and purpose.

* * * * *

(b) *Frequency of review.* (1) State agencies shall conduct a review once every year for large project areas, once every two years for medium project areas, and once every three years for small project areas, unless an alternate schedule is approved by FNS. The most current and accurate information on active monthly caseload available at the time the review schedule is developed shall be used to determine project area size.

(2) A request for an alternate review schedule shall be submitted for approval in writing with a proposed schedule and justification. In any alternate schedule, each project area must be reviewed at least once every three years. Approval of an alternate schedule is dependent upon a State agency's justification that the project areas that will be reviewed less frequently than required in paragraph (b)(1) of this section are performing adequately and that previous reviews indicate few problems or that known problems have been corrected. FNS retains the authority for approving any alternate schedule and may approve a schedule in whole or in part. Until FNS approval of an alternate schedule is obtained, the State agency shall conduct reviews in accordance with paragraph (b)(1) of this section.

(3) FNS may require the State agency to conduct additional on-site reviews when a serious problem is detected in a project area which could result in a substantial dollar or service loss.

(4) State agencies shall also establish a system for monitoring those project areas' operations which experience a significant influx of migratory workers during such migrations. This requirement may be satisfied by either scheduling ME reviews to coincide with such migrations or by conducting special reviews. As part of the review the State agency shall contact local migrant councils, advocate groups, or other organizations in the project area to ensure that migrants are receiving the required services.

§ 275.6 [Amended]

10. In § 275.6, paragraph (a) is amended by removing the last two words of the third sentence and substituting "for purposes of frequency of review" and by removing "or sampling requirements" in the last sentence.

11. In § 275.7 paragraphs (b) and (e) are revised and (f) is removed. The revised paragraphs read as follows:

§ 275.7 Selection of sub-units for review.

* * * * *

(b) *Reviewing issuance Offices and Bulk Storage Points.* The issuance office and bulk storage point review required by § 274.1(c)(2) of this chapter may be satisfied through the ME review system.

* * * * *

(e) *Selection of Sub-units for Review.* State agencies shall select a representative number of sub-units of each category for on-site review in order to determine a project area's compliance with program standards.

12. Section 275.8 is revised to read as follows:

§ 275.8 Review coverage.

(a) During each review period, State agencies shall review the national target areas of program operation specified by FNS. FNS will notify State agencies of the minimum program areas to be reviewed at least 90 days before the beginning of each annual review period, which is the Federal fiscal year. FNS may add additional areas during the review period if deemed necessary. The FNS headquarters office will add national target areas during the review period only for deficiencies of national scope. State agencies would have 60 days in which to establish a plan schedule for such reviews.

(b) State agencies shall be responsible for reviewing each national target area or other program requirement based upon the provisions of the regulations governing the Food Stamp Program and the FNS-approved Plan of Operation. If FNS approves a State agency's request

for a waiver from a program requirement, any different policy approved by FNS would also be reviewed. When, in the course of a review, a project area is found to be out of compliance with a given program requirement, the State agency shall identify the specifics of the problem including: the extent of the deficiency, the cause of the deficiency, and, as applicable, the specific procedural requirements the project area is misapplying.

13. In § 275.9, paragraphs (a), (b), and (c) are revised, paragraphs (d), (e), and (f) are removed, and paragraph (g) is redesignated as paragraph (d) and is amended by removing the words "to be approved by FNS,". The revised paragraphs (a), (b), and (c) read as follows:

§ 275.9 Review process.

(a) *Review procedures.* State agencies shall review the program requirements specified for review in § 275.8 of this part using procedures that are adequate to identify problems and the causes of those problems. As each project area's operational structure will differ, State agencies shall review each program requirement applicable to the project area in a manner which will best measure the project area's compliance with each program requirement.

(b) *ME review plan.* (1) State agencies shall develop a review plan prior to each ME review. This review plan shall specify whether each project area is large, medium, or small and shall contain:

(i) Identification of the project area to be reviewed, program areas to be reviewed, the dates the review will be conducted, and the period of time that the review will cover;

(ii) Information secured from the project area regarding its caseload and organization;

(iii) Identification of the certification offices, issuance offices, bulk storage points, reporting points, and data management units selected for review and the techniques used to select them;

(iv) Identification of whether the State agency is using the ME review to monitor coupon issuers and bulk storage points as discussed § 274.1(c)(2). At State agency option it may also indicate whether the State agency is using the ME review process to perform non-discrimination reviews; and

(v) A description of the review method(s) the State agency plans to use for each program area being reviewed.

(2) ME review plans shall be maintained in an orderly fashion and be made available to FNS upon request.

(c) *Review methods.* (i) State agencies shall determine the method of reviewing the program requirements associated with each program area. For some areas of program operation it may be necessary to use more than one method of review to determine it the project area is in compliance with program requirements. The procedures used shall be adequate to identify any problems and the causes of those problems.

(2) State agencies shall ensure that the method used to review a program requirement does not bias the review findings. Bias can be introduced through leading questions, incomplete reviews, incorrect sampling techniques, etc.

* * * * *

14. In § 275.11, paragraph (b)(1)(ii) is amended by replacing, in the table, "59,000" with "59,999" and (f)(2) is amended by redesignating paragraphs (ii) and (iii) as (iii) and (iv), respectively and by adding a new paragraph (ii). The new paragraph (ii) reads as follows:

§ 275.11 Sampling

* * * * *

(f) *Sample Universe.* * * *

(2) *Negative Cases.* * * *

(ii) A household denied food stamps under a disaster certification authorized by FNS;

* * * * *

§ 275.15 [Amended]

15. In § 275.15, pargraph (a)(1) is redesignated as (a), paragraphs (a)(2), (a)(3), and (d) are removed, and paragraphs (e), (f) and (g) are redesignated as (d), (e) and (f) respectively.

16. In § 275.16, paragraph (a) is amended by removing "with FNS approval," and the commas before and after it in the first sentence. Paragraphs (b) and (d) are revised to read as follows:

§ 275.16 Corrective action planning.

* * * * *

(b) The State agency and project area(s)/management unit(s), as appropriate, shall implement corrective action on all identified deficiencies Deficiencies requiring action by the State agency or the combined efforts of the State agency and the project area(s)/management unit(s) in the planing, development, and implementation of corrective action are those which:

(1) Result from evaluation of yearly targets (actions to correct errors in individual cases however, shall not be submitted as part of the State agency's corrective action plan);

(2) Are the cause for combined payment and underissuance error rates of five percent or more for any reporting period (actions to correct errors in individual cases, however, shall not be submitted as part of the State agency's corrective action plan);

(3) Are the causes of other errors/deficiencies detected through quality control, including error rates of 1 percent or more in negative cases (actions to correct errors in individual cases, however, shall not be submitted as part of the State agency's corrective action plan);

(4) Are identified by FNS reviews, GAO audits, contract audits, or USDA audits or investigations at the State agency or project area level (except deficiencies in isolated cases as indicated by FNS); and,

(5) Result from 5 percent or more of the State agency's QC sample being coded "not complete" as defined in § 275.12(g)(1) of this part. This standard shall apply separately to both active and negative samples.

* * * * *

(d) In planning corrective action, the State agency shall coordinate actions in the areas of data analysis, policy development, quality control, program evaluation, operations, administrative cost management, civil rights, and training to develop appropriate and effective corrective action measures.

17. In § 275.17, paragraph (a) is revised and new paragraphs (c) and (d) are added to read as follows:

§ 275.17 State corrective action plan.

(a) State agencies shall prepare corrective action plans addressing those deficiencies specified in § 275.16(b) requiring action by the State agency or the combined efforts of the State agency and the project area(s)/management unit(s). This corrective action plan is an open-ended plan and shall remain in effect until all deficiencies in program operations have been reduced substantially or eliminated. State agencies shall provide updates to their corrective action plans through regular, semiannual updates. These semiannual updates shall be received by FNS by May 1st and November 1st respectively. Such updates must contain:

(1) Any additional deficiencies identified since the previous corrective action plan update;

(2) Documentation that a deficiency has been corrected and is therefore being removed from the plan; and

(3) Any changes to planned corrective actions for previously reported deficiencies.

* * * * *

(c) FNS will provide technical assistance in developing corrective

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action plans when requested by State agencies.

(d) State agencies will be held accountable for the efficient and effective operation of all areas of the program. FNS is not precluded from issuing a warning as specified in Part 276 because a deficiency is included in the State agency's corrective action plan.

18. Section 275.20, is revised in its entirety to read as follows:

§ 275.20 ME review schedules.

(a) Each State agency shall submit its review schedule to the appropriate FNS regional office at least 60 days prior to the beginning of the next year's review period (the Federal fiscal year). These schedules must ensure that all project areas/management units will be reviewed within the required time limits. Each schedule shall identify the project areas/management units in each classification and list each project area to be reviewed by month or by quarter. A State agency may submit a request to use an alternate review schedule at any time. The alternate schedule shall not be effective until approved by FNS in accordance with § 275.5(b)(2).

(b) State agencies shall notify the appropriate FNS regional office of all changes in review schedules.

§ 275.21 [Amended]

19. In § 275.21, paragraphs (c) and (d) are amended by replacing "95" with "105".

§ 275.22 [Removed]

§§ 275.23 and 275.25 [Redesignated as §§ 275.22 and 275.23]

20. Section 275.22 is removed. Section 275.23 is redesignated §275.22. Section 275.25 is redesignated § 275.23. In the newly redesignated § 275.23, the word "FNS-approved State manuals" are removed from paragraph (a)(1). The words "active case error rate," are removed from paragraph (d)(1)(i). Finally, in paragraph (d)(2), the words "five percent or less" are replaced with the words "less than five percent" and the words "applicable to the period of enhanced funding" are replaced with the words "for the prior fiscal year".

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

§ 276.4 [Amended]

21. In § 276.4, the third sentence in the introductory paragraph of (d) and the second sentence in (d)(2) are amended by replacing the words "an FNS-approved" with the word "a".

Dated: January 28, 1987.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 87-2057 Filed 2-3-87; 8:45 am]

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7 CFR Parts 272 and 273

[Amendment No. 283]

Food Stamp Program; Supplemental Security Income and Social Security Provisions of the Food Security Act of 1985

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule and corrections.

SUMMARY: This action finalizes interim Food Stamp Program regulations which implemented a provision of the Food Security Act of 1985. The interim rule reinforced and strengthened the regulations in regard to Food Stamp Program services in Social Security Administration offices. This rule also corrects typographical errors which appeared in the interim rule.

In addition, this rule corrects two erroneous citations which appeared in an interim rule published August 5, 1986, entitled "Food Stamp Program: Categorical Eligibility for Certain Public Assistance and Supplemental Security Income Recipients". The rule also corrects a typographical error which appeared in a final rule published May 21, 1986, entitled "Food Stamp Program: The Food Security Act of 1985: Nondiscretionary Provisions; Final Rule and Correction".

DATES: This regulation is effective October 1, 1986.

FOR FURTHER INFORMATION CONTACT: If there are any questions, please contact Judith M. Seymour, Supervisor, Certification Rulemaking Section, Eligibility and Monitoring Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 706, Alexandria, Virginia 22302; (703) 756-3429.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291 and Secretary's Memorandum 1512-1

This rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1521-1. The rule will not result in an annual economic impact of more than $100 million or major increases in costs or prices nor will it have a significant adverse effect on competition, employment, productivity, investment, or foreign trade. Further, the rule is unrelated to the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the rule has been classified as "nonmajor."

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final Rule and related Notice to 7 CFR 3015 Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this action does not have a significant economic impact on a substantial number of small entities. This rule finalizes a provision from the Food Security Act of 1985 which does not represent a major change in application processing or operational policy.

Paperwork Reduction Act

This rulemaking does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

Introduction

On June 9, 1986, the Department published interim regulations (51 FR 20793) which implemented amendments made by section 1531 of the Food Security Act of 1985 (99 Stat. 1582, December 23, 1985) that reinforced and strengthened former regulations in regard to Food Stamp Program services in Social Security Administration (SSA) offices. The rule specified that all Title II Social Security applicants/recipients must be informed of the availability of Food Stamp Program benefits and informed of the availability of a simple application to participate in the Program at Social Security Administration (SSA) offices. No processing of the application, as is required for Supplemental Security Income (SSI) applicants, is required for these Title II applicants/recipients

An explanation of the rationale and purposes of this rule was provided in the preamble to the interim rulemaking.

Therefore, a full understanding of the basis of the final rule may require reference to the June 9, 1986, interim rule.

Only one comment (from a State agency) was received on the interim rulemaking. The commenter questioned § 273.2 of the interim regulation which requires that an applicant for or recipient of social security benefits under Title II of the Social Security Act shall be informed of the availability of a Food Stamp Program application at the SSA office. The commenter felt that it is not necessary to stock food stamp applications at SSA offices when an efficient information and referral system between county social service departments and local SSA offices has been developed. It was suggested that States be allowed the alternative of placing information and referral brochures for food stamps in SSA offices. The Department does not agree, because the cited regulation section is nondiscretionary. Section 11(j) of the Food Stamp Act as amended by section 1531(b) of the Food Security Act of 1985 clearly states that the above referenced applicants or recipients "shall be informed of the availability of a simple application to participate * * * at the social security office". It is clear from both the legislation and legislative history that a food stamp application is to be provided in the SSA office.

The commenter further states that distributing combined application forms without proper instructions and screening could possible discourage people from applying for food stamps and, also, that the use of a simplified application could involve costly changes to a computerized application system, as well as being costly to stock. Since, as stated above, the application must be available at SSA offices, the Department believes that State agencies will have to devise means to minimize these problems. Relative to assisting the applicant, although the Act does not require that SSA offices assist households applying for or receiving title II social security benefits in completing food stamp applications, there will be notification available in SSA offices as to where such assistance may be obtained, if there is no outstationed food stamp caseworker at the SSA office. The commenter's second point reflects administrative concerns. The majority of States currently use their own applications and could continue to do so. These State-designed, FNS-approved, applications already fulfill food stamp application requirements. States should review their applications and determine if they meet the description of a simple application. If not, the States can modify their applications in some way, e.g., by shading the food stamp portion or using a brief cover sheet highlighting the food stamp sections. If States make these minor modifications to their applications there should be minimal cost involved, the forms would be easier to fill out and no changes to existing computer systems would be necessary. If a State agency decided not to use its own application form, the other alternative is to use the Application for Food Stamps, Form FNS-385. This form is shorter than most State forms and contains all necessary application information such as eligibility requirements, rights and responsibilities, penalty warnings, etc.

In light of the above alternatives, the Department is not amending the policies established by the interim rule and such policies are being adopted as final by this action.

Implementation

The effective date of this rule is October 1, 1986. This date is specified in the Food Security Act of 1985. There is no special implementation effort required by the State agencies to effectuate this rulemaking.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—Social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamp, Fraud, Grant programs—Social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR Parts 272 and 273 are amended as follows:

1. The authority citation for Parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011-2029.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. The amendment to § 272.1 to add a new paragraph (g)(77), as published at 51 FR 20794, June 9, 1986, contains a typographical error. The reference to "§ 273.2(1)" contained in the new paragraph (g)(77) should read "§ 273.2(l)" and is hereby corrected. As corrected, the amendment is adopted final.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. The amendment published at 51 FR 20794, June 9, 1986, to add a new paragraph to § 273.2 contains typographical errors. The reference to "paragraph (1)" contained in amendatory statement No. 3 should read "paragraph (l)" and the regulatory designation which precede the new paragraph should also read "(l)". These typographical errors are hereby corrected. As corrected, the amendment is adopted final.

4. In FR Doc. 86-11256, appearing at page 18744, Part III, in the issue of May 21, 1986, correct the following typographical error:

§ 272.1 [Corrected]

On page 18750, in the first column under paragraph (g)(76)(iii), the regulatory reference to "§ 273(a)(4)(ii)(B)" should read "§ 273.21(a)(4)(ii)(B)" and is hereby corrected.

5. In FR Doc. 86-17535, appearing at page 28196, Part III, in the issue of August 5, 1986, correct the following typographical errors:

§ 273.2 [Corrected]

a. On page 28202, in the first column, under paragraph (j)(2)(i), the regulatory reference in the last sentence to "§ 273.12(e) (3), (4), and (5)" should read "§ 273.12(f) (3), (4) and (5)" and is hereby corrected.

b. On page 28202, in the second column, under paragraph (k) introductory text, the regulatory reference to "§ 273.2(j)(1)(v)" should read "§ 273.2(j)(1)(iv)" and is hereby corrected.

Dated: January 28, 1987.

Robert E. Leard,

Administrator.

[FR Doc. 87-2056 Filed 2-3-87; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Parts 907, 908, and 929

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Orders 907, 908, and 929 for the

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respective 1986–87 fiscal year for each order. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: November 1, 1986–October 31, 1987 (§§ 907.224, 908.226); September 1, 1986–August 31, 1987 (§ 929.227).

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 123 handlers of California-Arizona Navel Oranges, 115 handlers of California-Arizona Valencia oranges, and 27 handlers of cranberries grown in ten States will be subject to regulation during the course of the current season and that the great majority of these firms may be classified as small entities. While this action may impose some additional costs on handlers, including small entities, the costs are in the form of uniform assessments on all handlers which do not impose a significant economic impact on the small entities involved.

Each marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year.

An annual budget of expenses is prepared by each administrative committee and submitted to the Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. This is appropriate because they are familiar with the committees' needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budgets are formulated and discussed in public meetings; thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is a derived figure. It is merely applying a rate per unit of the commodity (e.g. per pound, ton, box, carton, etc.), to the estimated production in order to produce income sufficient to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by committees shortly before a season starts and expenses are incurred on a continuous basis, therefore budget and assessment rate approvals must be expedited in order that the committees will have funds to pay their expenses.

Based on the foregoing, the Secretary finds that it is impractical and unnecessary to give preliminary notice, engage in public rulemaking procedure and that good cause exists for not postponing the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Parts 907, 908, and 929.

Marketing agreements and orders.

1. The authority citation for 7 CFR Parts 907, 908, and 929 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New §§ 907.224, 908.226 and 929.227 are added to read as follows (the following sections prescribe annual expenses and assessment rates and will not be published in the Code of Federal Regulations):

PART 907—NAVEL ORGANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

§ 907.224 Expenses and assessment rate.

Expenses of $1,039,000 by the Navel Orange Administrative Committee are authorized, and an assessment rate of $0.022 per carton of navel oranges is established for the fiscal period ending October 31, 1987. Unexpended funds may be carried over as a reserve.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

§ 908.226 Expenses and assessment rate.

Expenses of $626,000 by the Valencia Orange Administrative Committee are authorized, and an assessment rate of $0.027 per carton of Valencia oranges is established for the fiscal period ending October 31, 1987. Unexpended funds may be carried over as a reserve.

PART 929—CRANBERRIES GROWN IN STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

§ 929.227 Expenses and assessment rate.

Expenses of $172,500 by the Cranberry Marketing Committee are authorized, and an assessment rate of $0.045 per 100-pound barrel of cranberries is established for the fiscal year ending August 31, 1987. Unexpended funds may be carried over as a reserve.

Dated: January 29, 1987.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 87–2169 Filed 2–3–87; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Parts 1030, 1032, 1033, 1036, 1049, and 1050

[Docket Nos. AO–361–A24 et al.]

Milk in The Chicago Regional and Certain Other Marketing Areas; Order Amending Orders

7 CFR Part	Marketing Area	AO Numbers
1030	Chicago Regional	AO–361–A24
1032	Southern Illinois	AO–313–A35
1033	Ohio Valley	AO–160–A55
1036	Eastern Ohio-Western Pennsylvania	AO–179–A49–R01
1049	Indiana	AO–319–A35
1050	Central Illinois	AO–355–A24

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the plant location adjustments to prices under the Southern Illinois, Ohio Valley, Indiana, and Central Illinois orders based on industry proposals considered at a public hearing held March 12–14, 1986. The location adjustment provisions of the four orders are amended in order to conform with the higher Class I price differentials mandated by the Food Security Act of 1985 and to assure a more proper intra-market alignment of prices. More than two-thirds of the producers in each of the four markets have approved the amended orders.

The hearing in this proceeding reopened an earlier proceeding on proposed amendments to change the location adjustment provisions of the Eastern Ohio-Western Pennsylvania order. Separate documents dealt with the Eastern Ohio-Western Pennsylvania order and the issues related thereto.

This action does not amend the Chicago Regional milk order in that all relevant proposals were withdrawn at the hearing.

EFFECTIVE DATE: April 1, 1987.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, (202) 447–7311.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued February 14, 1986; published February 21, 1986 (51 FR 6241).

Interim Final Decision: Issued June 26, 1986; published July 8, 1986 (51 FR 24677).

Correction to Interim Final Decision: Published July 17, 1986 (51 FR 25896).

Interim Final Rule: Issued July 24, 1986; published July 30, 1986 (51 FR 27152).

Final Decision: Issued December 5, 1986; published December 11, 1986 (51 FR 44611).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the orders as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

(b) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Section 8c (9) of the Act) of more than 50 percent of the milk, which is marketed within each of the respective marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending each of the specified orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the respective orders; and

(3) The issuance of this order amending each of the specified orders is approved by more than the necessary two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Parts 1032, 1033, 1049, and 1050

Milk marketing order, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of the aforesaid orders, as amended, and as hereby further amended, as follows:

1. The authority citation for 7 CFR Parts 1032, 1033, 1049 and 1050 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

Note.—No amendatory action taken.

PART 1032—MILK IN THE SOUTHERN ILLINOIS MARKETING AREA

2. Section 1032.52 is amended by revising paragraphs (a)(1), (a)(2)(i), (a)(2)(ii), (a)(3), (a)(4), (b) and adding paragraph (a)(2)(iii) to read as follows:

§ 1032.52 Plant location adjustments for handlers.

(a) * * *

(1) For a plant located within one of the zones designed in § 1032.2, the adjustment shall be as follows:

Zone:	Adjustment per hundredweight
Base Zone	No adjustment.
Northern Zone	Minus 17 cents
Southern Zone	Plus 9 cents.

(2) * * *

(i) Plus 9 cents. St. Clair County (Scott Military Reservation, East St. Louis, Centreville, Canteen, and Stites Townships and the city of Belleville only) in the State of Illinois and the counties of Jefferson, St. Charles and St. Louis and the city of St. Louis in the State of Missouri.

(ii) Minus 17 cents. In the counties of Fountain, Parke, Vermillion and Warren in the State of Indiana.

(iii) No location adjustment shall apply at a plant located in the State of Missouri south and east of Interstate Highway 44 that was not in an area described in paragraph (a)(2)(i) of this section.

(3) For a plant located outside the marketing area and the area described in paragraph (a)(2) of this section, the adjustment shall be minus 20 cents for any such plant located 100 miles or more from the city or village limit of Alton, Robinson, or Vandalia, Illinois, whichever is nearest, and minus an additional 2.0 cents for each 10 miles or fraction thereof that such distance exceeds 110 miles.

(4) In determining location adjustments pursuant to this section, mileage shall be based on the shortest hard-surfaced highway distance as determined by the market administrator from the latest Mileage Guide as published by the Household Goods Carrier's Bureau.

(b) For purposes of calculating such adjustment, bulk transfers between pool plants shall be assigned Class I disposition at the transferee-plant only to the extent that 110 percent of Class I disposition at the transferee-plant exceeds the sum of receipts at such plant from producers and handlers described in § 1032.9(c), and the volume

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assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to receipts of fluid milk products from pool plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

* * * * *

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

3. Section 1033.6 is amended by revising paragraphs (a), (b), (c), and adding (d) and (e) to read as follows:

§ 1033.6 Ohio Valley marketing area.

* * * * *

(a) "Zone 1" shall include the following territory:

Ohio Counties

Fulton, Hancock, Henry, Lucas, Putnam, Sandusky (Woodville and Madison Townships only), Seneca, Wood.

Michigan Counties

Lenawee (Blissfield, Deerfield, Ogden, Palmyra, and Riga Townships only).
Monroe (except Ash, Berlin, Dundee, Exeter, London, and Milan Townships).

(b) "Zone 2" shall include the following territory:

Ohio Counties

Allen, Auglaize, Crawford, Darke, Hardin, Logan, Marion, Mercer, Morrow, Richland, Shelby, Union, Van Wert (city of Delphos only), Wyandot.

(c) "Zone 3" shall include the following territory:

Ohio Counties

Butler, Champaign, Clark, Clinton, Coshocton (except Adams Township), Delaware, Fairfield, Fayette, Franklin, Greene, Guernsey (except Oxford, Londonderry, and Millwood Townships), Hocking, Knox, Licking, Madison, Miami, Montgomery, Morgan, Muskingum, Noble, Perry, Pickaway, Preble, Warren.

(d) "Zone 4" shall include the following territory:

Ohio Counties

Adams, Athens, Brown, Clermont, Gallia, Hamilton, Highland, Jackson, Lawrence, Meigs, Pike, Ross, Scioto, Vinton, Washington.

Kentucky Counties

Boone, Boyd, Bracken, Campbell, Grant, Greenup, Harrison, Kenton, Lewis, Mason, Pendleton, Robertson.

Indiana Counties

Dearborn, Ohio.

West Virginia Counties

Calhoun, Gilmer, Pleasants, Ritchie, Wirt, Wood.

(e) "Zone 5" shall include the following territory:

Kentucky Counties

Floyd, Johnson, Lawrence, Magoffin, Martin, Pike.

West Virginia Counties

Boone, Cabell, Fayette, Jackson, Kanawha, Lincoln, Logan, Mason, Mingo, Putnam, Raleigh, Roane, Wayne, Wyoming.

4. Section 1033.53 is amended by revising paragraphs (a)(1), (a)(2), (a)(3), redesignating (a)(4) as (a)(5), and adding (a)(4) to read as follows. Newly redesignated paragraph (a)(5) is republished.

§ 1033.53 Plant location adjustments for handlers.

(a) * * *

(1) At a plant located in one of the zones set forth in § 1033.6, the adjustment shall be as follows:

Zone:	*Adjustment per hundredweight*
1	Minus 24 cents.
2	Minus 14 cents.
3	No adjustment.
4	Plus 7 cents.
5	Plus 15 cents.

(2) At a plant located outside the marketing area and 60 miles or less from the city hall of the nearest city listed herein, excluding plants located in the area specified in (a)(4) of this section, the adjustment shall be the adjustment applicable at Cincinnati, Coshocton, Dayton, Lima, Marietta, or Toledo, Ohio; Ashland or Maysville, Kentucky; or Beckley or Charleston, West Virginia; whichever city is nearest;

(3) At a plant located outside the marketing area and more than 60 miles from the city hall of the nearest city listed in paragraph (a)(2) of this section, excluding plants located in the area specified in (a)(4) of this section, the adjustment shall be the adjustment applicable at the nearest city, less 11 cents and less an additional 1.5 cents for each 10 miles or fraction thereof in excess of 70 miles that such plant is located from the city hall of the nearest city listed above. However, at any such plant located in the Louisville-Lexington-Evansville marketing area under Part 1046 of this chapter or east of the Mississippi River and south of the northern boundary of Kentucky, West Virginia, or Virginia, the adjustment shall be the adjustment applicable at Zone 4;

(4) At a plant located outside the marketing area in the Ohio counties of Defiance, Paulding Van Wert, (except the city of Delphos), or Williams, the adjustment shall be minus 24 cents, and

(5) For the purpose of computing location adjustments pursuant to this section, distances shall be measured by the shortest hard-surfaced distance as determined by the market administrator.

* * * * *

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

Note.—A separate document will be issued regarding the issues related thereto.

PART 1049—MILK IN THE INDIANA MARKETING AREA

5. In § 1049.52, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 1049.52 Plant location adjustments for handlers.

(a) * * *

(1) At any plant located within:

	Rate of adjustment per hundredweight (cents)
(i) The State of Ohio or any Indiana county not specifically named in paragraph (a)(1)(ii) through (a)(1)(iv) of this section or at any location south of the marketing area as specified in § 1049.2	0
(ii) Any of the Indiana counties of Adams, Allen, Benton, Blackford, Carroll, Cass, Fulton, Huntington, Jay, Miami, Wabash, Wells, and White	20
(iii) Any of the Indiana counties of DeKalb, Elkhart, Jasper, Kosciusko, La Grange, La Porte, Marshall, Newton, Noble, Pulaski, Starke, Steuben, St Joseph, and Whitley and any of the Michigan counties of Berrien, Branch, Cass, and St. Joseph	30
(iv) Any of the Indiana counties of Lake and Porter	40

(2) For any plant at a location outside the territory specified in the preceding paragraph (a)(1) of this section, the applicable adjustment rate per hundredweight shall be based on the shortest highway distance between the plant and the nearest of the Monument Circle, Indianapolis, Indiana, or the main post offices of Fort Wayne, South Bend, or Valparaiso, Indiana, and shall be 2.0 cents for each 10 miles or fraction thereof from such point plus the amount of the location adjustment pursuant to paragraph (a)(1) of this section applicable at the respective point.

* * * * *

PART 1050—MILK IN THE CENTRAL ILLINOIS MARKETING AREA

6. In § 1050.52, paragraphs (a) and (b) are revised to read as follows:

§ 1050.52 Plant location adjustments for handlers.

(a) The Class I price for producer milk at a plant located outside the State of Illinois or in the State of Illinois but north of the northernmost boundaries of the counties of Mercer, Henry, Bureau, La Salle, Grundy, and Kankakee shall be reduced 10 cents if such plant is 50 miles or more from the City Hall in Peoria, Illinois, plus an additional 2.0 cents for each 10 miles or fraction thereof that such distance exceeds 60 miles. Distances applied pursuant to this paragraph shall be the shortest hard-surfaced highway distances as determined by the market administrator from the latest Mileage Guide as published by the Household Goods Carrier's Bureau.

(b) For purposes of calculating such adjustment, bulk transfers between pool plants shall be assigned Class I disposition at the transferee-plant only to the extent that 105 percent of Class I disposition at the transferee-plant exceeds the sum of receipts at such plant from producers and cooperative associations pursuant to § 1050.9(c), and the volume assigned as Class I to receipts from other order plants and unregulated supply plants; such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

* * * * *

Effective date: April 1, 1987.

Signed at Washington, DC, on January 28, 1987.

Karen K. Darling,

Marketing & Inspection Services.

[FR Doc. 87-2055 Filed 2-3-87; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-20; Special Conditions No. 25-ANM-11]

Special Conditions; Fokker B.V. Model F27 MK050 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued pursuant to §§ 21.16 and 21.101 of the Federal Aviation Regulations (FAR) to Fokker B.V., the Netherlands, for an amended type certificate (TCA-817) for the F27 MK050 airplane. The F27 MK050 airplane will have novel or unusal design features associated with an automatic takeoff power control system (ATPCS) for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. The ATPCS will allow the airplane to take off with less than maximum takeoff thrust approved for the airplane; and, if an engine fails, the system will automatically provide maximum takeoff thrust on the operating engine. These special conditions contain safety standards which the Administrator finds necessary to establish a level of safety equivalent to that provided by the regulations applicable to the F27 MK050 airplane because of the novel or unsual features.

EFFECTIVE DATE: March 6, 1987.

FOR FURTHER INFORMATION CONTACT: James Walker, Policy and Procedures Branch, Transport Standards Staff, ANM-110, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2116.

SUPPLEMENTARY INFORMATION:

Background

On July 31, 1985, Fokker B.V. 1117 ZJ Schiphol, the Netherlands, applied for an amended type certificate (TC) for the Fokker F27 MK050 airplane.

The F27 MK050 is a high wing, twin-engine, pressurized transport category airplane with a certificated takeoff gross weight of 41,865 pounds (*optional* 45,900 pounds). The airplane is equipped with two Pratt and Whitney of Canada Model PW-124 turbopropeller engines, each producing 2,400 shaft horsepower for maximum takeoff sea level standard day, and Dowty-Rotol 6-bladed propellers. The airplane has a total seating capacity of 50 persons and a maximum permissible altitude of 25,000 feet.

The design covered under the amended TC will incorporate the installation of an ATPCS. Automatic takeoff power control system special conditions issued to date for other airplanes require the ATPCS be designed to permit manual decrease or increase in power up to the maximum takeoff power approved for the airplane under existing conditions through the use of power levers. The ATPCS system installed on the engines of the F27 MK050) airplane contains an electronic fuel controller (EFC), which provides an automatic fixed power increment increase in the event of an engine failure during takeoff. In the event of an engine failure, a signal from the ATPCS is transmitted to the EFC which up-trims the operating engine to the approved takeoff power. In the event of an ATPCS failure concurrent with engine failure, the crew would be required to advance the power lever to obtain the maximum power.

The type design of the F27 MK050 airplane with the automatic system installed contains a number of novel or unusual design features for which the applicable airworthiness requirements do not contain adequate or appropriate safety standards. Special conditions are necessary to provide a level of safety equal to that generally intended by the established certifications basis and to support a finding by the Administrator that no feature or characteristic of the airplane with the automatic system installed makes it unsafe for the category in which certification is requested. These special conditions specify limits on the maximum power increment which may be applied to the operating engines by the ATPCS, prescribe system reliability and status monitoring requirements, require provisions for manual selection of the maximum takeoff power approved for the airplane under existing conditions, prohibit approval of the system if the automatic or manual application of approved maximum takeoff power would result in an engine operating limit being exceeded, and require the installation of an independent engine failure warning system if the inherent characteristics of the airplane do not provide a clear warning to the crew.

Discussion of Comments

Notice of proposed special conditions No. SC-86-2-NM for the F27 MK050 airplane was published in the **Federal Register** on October 6, 1986 (51 FR 35523). There were no public comments received.

Type Certification Basis

The type certification basis for the Fokker F27 MK050 airplane with the ATPCS installed is:

Part 25 of the FAR dated February 1, 1965, as amended by Amendments 25-1 through 25-56, 25-58 and 25-59, except for the following sections which will be certified to earlier amendments as noted: § 25.109, Amendment 25-41; § 25.631 (not applicable, § 25.631 was added by Amendment 25-23); § 25.671(c)(3), Amendment 25-22; § 25.701, Amendment 25-22 and § 25.1309, Amendment 25-22. The automatic flight control system will comply with § 25.1309 as amended by Amendment 25-56.

Part 36 of the FAR with amendments in effect at the time the amended type certificate is issued.

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Special Federal Aviation Regulations (SFAR) 27 with amendments in effect at the time the amended type certificate is issued.

Equivalent safety findings for § 25.777(e) (Flap handle location), § 25.781 (Flap handle shape); § 25.729(e)(4) (Landing gear position indicator and warning device) and these special conditions for the automatic takeoff power control system and any exemptions developed and issued for this airplane.

The applicable airworthiness standards for import products are those regulations designated in accordance with § 21.29 and are known as the "type certification basis" for the airplane design. Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of the airplane. Special conditions, as appropriate, are now issued after public notice in accordance with §§ 11.28 and 11.29(b), effective October 14, 1980 and become part of the type certification basis in accordance with § 21.17(a)(2).

Conclusion

This action affects only certain unusual or novel design features on one model of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued to Fokker B.V. for the F27 MK050 airplane equipped with an automatic takeoff power control system (ATPCS):

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

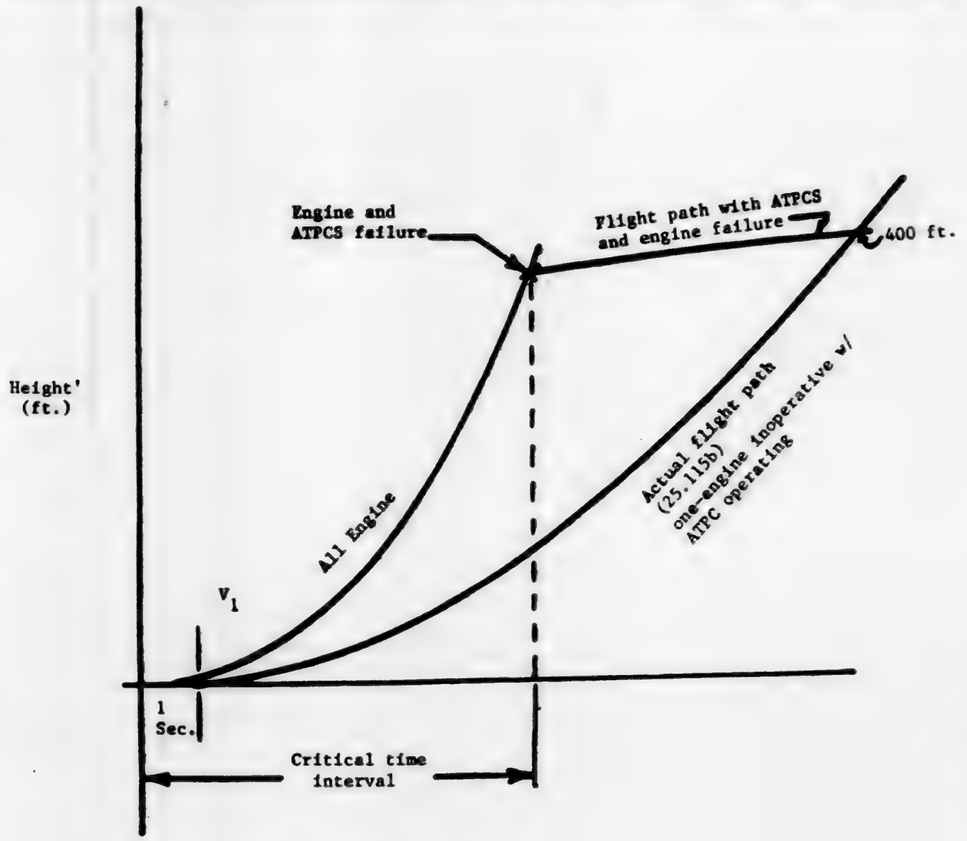
A. *General.* With the ATPCS and associated systems functioning normally as designed, all applicable requirements of Part 25, except as provided in these special conditions, must be met without requiring any action by the crew to increase power.

B. *Definitions.*

1. *Automatic Takeoff Power Control System (ATPCS).* An ATPCS is defined as the entire automatic system used on takeoff, including all devices, both mechanical and electrical, that sense engine failure, transmit signals, actuate fuel controls or power levers on operating engines to achieve scheduled power increase, and furnish cockpit information on system operation.

2 *Critical Time Interval.* When conducting an ATPCS takeoff, the critical time interval is between V_1 minus 1 second and a point on the minimum performance, all-engine flight path where, assuming a simultaneous engine and ATPCS failure, the resulting minimum flight path thereafter intersects the Part 25 required gross flight path at not less than 400 feet from the takeoff surface. This definition is shown in the following graph.

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BILLING CODE 4910-13-C

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3. *Takeoff Power.* Notwithstanding the definition of "takeoff power" in Part 1 of the FAR, "takeoff power" means the horsepower obtained from each initial power setting approved for takeoff under these special conditions.

C. *Performance Requirements.* The applicant must comply with the following performance and reliability requirements.

1. An ATPCS system failure during the critical time interval must be shown to be improbable.

2. The concurrent existence of an ATPCS failure and an engine failure during the critical time interval must be shown to be extremely improbable.

3. All applicable performance requirements of Part 25 must be met with an engine failure occurring at the most critical point during takeoff with the ATPCS system functioning.

D. *Power Setting.* The initial takeoff power set on each engine at the beginning of the takeoff roll may not be less than:

1. Ninety percent (90%) of the power level set by the ATPCS (the maximum takeoff power approved for the airplane under existing conditions);

2. That required to permit normal operation of all safety related systems and equipment dependent upon engine power or power lever position; or

3. That shown to be free of hazardous engine response characteristics when power is advanced from the initial takeoff power level to the maximum approved takeoff power.

E. *Powerplant Controls.*

1. In addition to the requirements of § 25.1141, no single failure or malfunction, or probable combination thereof, of the ATPCS system, including associated systems, may cause the failure of any powerplant function necessary for safety.

2. The ATPCS must be designed to:

a. Apply power on the operating engine, following an engine failure during takeoff, to achieve the selected takeoff power without exceeding engine operating limits;

b. Permit manual decrease or increase in power up to the maximum takeoff power approved for the airplane under existing conditions through the use of the power lever. For aircraft equipped with limiters that automatically prevent engine operating limits from being exceeded under existing conditions, other means may be used to increase the maximum level of power controlled by the power levers in the event of an ATPCS failure, provided the means:

(1) Is located on or forward of the power levers;

(2) Is easily identified and operated under all operating conditions by a single action of either pilot with the hand that is normally used to actuate the power levers; and

(3) Meets the requirements of § 25.777, paragraphs (a), (b), and (c);

c. Provide a means to verify to the flightcrew prior to takeoff that the ATPCS is in a condition to operate; and

d. Provide a means for the flightcrew to deactivate the automatic function. This means must be designated to prevent inadvertent deactivation.

F. *Powerplant Instruments.* In addition to the requirements of § 25.1305:

1. A means must be provided to indicate when the ATPCS is in the armed or ready condition; and

2. If the inherent flight characteristics of the airplane do not provide adequate warning that an engine has failed, a warning system that is independent of the ATPCS must be provided to give the pilot a clear warning of any engine failure takeoff.

Issued in Seattle, Washington, on January 23, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-2174 Filed 2-3-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-126-AD; Amdt. 39-5540]

Airworthiness Directives: British Aerospace Model DH/HS/BH-125 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace (BAe) Model DH/HS/BH-125 series airplanes, that requires modifications to the Auxiliary Power Unit (APU) installation. This action is needed to prevent APU fuel leakage into the rear equipment bay and to provide the electrical grounding of the starter/generator to the airframe. This action is necessary to correct a reported potential fire hazard.

DATE: Effective March 9, 1987.

ADDRESSES: The service bulletins specified in this AD may be obtained upon request to British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, D.C. 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires sealing in the area of the turbine plenum drain outlet and installation of twin heavy duty bonding cables on certain British Aerospace Model DH/HS/BH-125 series airplanes, was published in the **Federal Register** on August 26, 1986 (51 FR 30371).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The only commenter expressed concurrence with the proposal.

After careful review of the available data, the FAA has determined that air safety and public interest require the adoption of the rule as proposed.

It is estimated that 20 airplanes of U.S. registry will be affected by this AD, that it will take approximately 14 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $11,200.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($560). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to British Aerospace (BAe) Model DH/HS/BH-125 series airplanes identified in BAe Service Bulletins 49-31-9286A and 49-32-9210A, both Revision 1, and both dated March 24, 1986, certificated in any category. Compliance is required within 6 months after the effective date of this AD. To reduce the possibility of APU fuel leakage in the rear equipment bay, and assure electrical bonding of the starter/generator to the airplane, accomplish the following, unless previously accomplished:

A. Seal the APU plenum shroud at the turbine plenum drain outlet in accordance with BAe Service Bulletin 49-31-9286A, Revision 1, dated March 24, 1986, Modification No. 259286A.

B. Install twin heavy duty bonding cables between the APU accessory case and ground terminal post 16 on the main engine beam in accordance with BAe Service Bulletin 49-32-9210A, Revision 1, dated March 24, 1986, Modification No. 259210A.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 9, 1987.

Issued in Seattle, Washington, on January 26, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-2180 Filed 2-3-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-183-AD; Amdt. 39-5544]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which currently requires repetitive inspections for cracks and repair, if necessary, of the wing rear spar terminal fitting, and identifies terminating action. This action is prompted by a reevaluation of the terminating action described in the existing AD. This assessment has determined that the terminating action is inappropriate, and that it is necessary to periodically inspect the modified or repaired wing rear spar terminal fittings for cracks. Failure to detect cracks prior to reaching critical length may severely reduce the load carrying capability of the wing.

EFFECTIVE DATE: March 13, 1987.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington, 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton Wood, Airframe Branch, ANM-120S; telephone (206) 431-1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 83-04-01, Amendment 39-4570 (48 FR 7721; February 24, 1983), to require repetitive inspection of the wing rear spar terminal fitting for cracks, was published in the **Federal Register** on October 8, 1986 (51 FR 36015). The comment period closed December 1, 1986.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment which was received.

The commenter requested that the proposed inspections be included under the Supplemental Structural Inspection (SSID) program, so that the required inspections would be limited only to the candidate fleet identified in that program. The FAA does not concur. Accomplishment of the SSID program is required by AD 84-21-05, Amendment 39-4920 (49 FR 38931; October 2, 1984). The program is designed to monitor the aging fleet to discover cracks. When cracks are discovered and corrective action is needed, it is necessary to require corrective action for all affected airplane. Therefore, the FAA has determined that this amendment is appropriate.

Paragraph D. of the final rule has been revised to require concurrence of the FAA Principal Maintenance Inspector in the approval process for request by operators of an alternate means of compliance or adjustment of the compliance time. The FAA has determined that this change will not increase the economic burden on any operator.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously mentioned.

It is estimated that 120 airplanes of U.S. registry will be affected by this AD, that it will take approximately 336 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,612,800.

For the reasons discussed above, the FAA has determined that this regualtion is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, Boeing Model 727 airplanes are operated by small entities. A Final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.3 [Amended]

2. By superseding AD 83–04–01, Amendment 39–4570 (48 FR 7721; February 24, 1983), with the following new airworthiness directive:

Boeing: Applies to Model 727 series airplanes listed in Boeing Service Bulletin 727–57–103, Revision 3, dated June 19, 1981, certificated in any category.

Compliance is required within the next 6,000 landings after March 31, 1983; or prior to accumulating 30,000 landings; or 30,000 landings after repair or modification in accordance with Service Bulletin 727–57–103; whichever occurs latest, unless already accomplished.

To ensure the structural integrity of the wing rear spar terminal fitting, accomplish the following:

A. Inspect the wing spar terminal fittings for cracks, using x-ray eddy current and close visual techniques, in accordance with the procedures listed in Table I of the Addendum, Flight Safety Section, Boeing Service Bulletin 727–57–103, Revision 3, dated June 19, 1981, or later FAA-approved revisions. Repeat the inspection at intervals not to exceed 20,000 landings.

Note.—Terminal fittings listed in the above referenced service bulletin as not requiring modification need not be inspected in accordance with the requirements of this AD.

B. Cracked structure must be repaired before further flight in accordance with Service Bulletin 727–57–103, original issue, or later FAA-approved revisions.

C. For the purpose of this AD, and when approved by an FAA maintenance inspector, the number of landings may be computed by dividing each airplane's time in service by the operator's fleet average time from takeoff to landing for the aircraft type.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This supersedes AD 83–04–01, Amendment 39–4570.

This amendment becomes effective March 13, 1987.

Issued in Seattle, Washington, on January 28, 1987.

Wayne J. Barlow,

Director Northwest Mountain Region.

[FR Doc. 87–2176 Filed 2–3–87; 8:45]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 86–NM–172–AD; Amdt. 39–5546]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires an inspection for cracking and repair or replacement, as necessary, of the pylon midspar attach fitting horizontal clevis on certain Boeing Model 747 airplanes. This action is prompted by reports of cracks and corrosion in fastener holes of the attach fitting that, if not corrected, could result in possible separation of the pylon and engine from the wing.

EFFECTIVE DATE: March 13, 1987.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. The information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM–120S; telephone (206) 431–1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive to require inspection for cracking of the pylon midspar attach fitting horizontal clevis, and subsequent repair, if necessary, was published in the **Federal Register** on October 1, 1986 (51 FR 34997). The comment period for the proposal closed on November 21, 1986.

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

A comment was received from the Air Transport Association (ATA) of America of behalf of its members. The ATA requested that the proposed rule be revised to incorporate Notice of Status Change No. 747–54–2118 NSC 1, dated October 5, 1986. This Notice describes the inspection of the subject fittings on the inboard pylons without the removal of the engine and pylon. The FAA is currently evaluating this procedure. If acceptable, the procedure will be incorporated into a later service bulletin revision. It will not be necessary to revise the AD, as it currently allows for the use of later FAA-approved revisions to the service bulletin.

Paragraph C. of the AD has been revised to define the appropriate paragraph in the service bulletin for terminating action.

Paragraph D. of the AD has been revised by the addition of the Principal Maintenance Inspector in the approval process for requests by operators for alternate means of compliance or adjustment of the compliance time.

These changes are essentially editorial and have been made strictly for clarification purposes.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above.

It is estimated that 160 airplanes of U.S. registry will be affected by this AD, that it will take approximately 656 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $4,198,400 for the initial inspection cycle.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this rule, will not have a significant economic impact on the substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A final evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 727 series airplanes listed in Boeing Service Bulletin 747–54–2118, dated July 25, 1986, certificated in any category.

To detect cracking of engine pylon midspar attach fitting, accomplish the following, unless already accomplished:

A. Within 5,000 flight hours after the effective date of this AD or prior to the accumulation of 20,000 flight hours, whichever occurs later, unless accomplished within the last 5,000 flight hours, and at intervals thereafter not to exceed 10,000 flight hours, perform an ultrasonic inspection for cracks initiating at the aft-most two fastener holes in both pylon midspar fittings on the inboard nacelle pylons on airplanes listed in Group 1 through 5, and on the outboard nacelle pylons on airplanes listed in Group 1, in accordance with Boeing Service Bulletin 747–54–2118, dated July 25, 1986, or later FAA-approved revisions.

B. If cracking is found, repair prior to further flight in accordance with Boeing Service Bulletin 747–54–2118, dated July 25, 1986, or later FAA-approved revisions.

C. Terminating action for the requirements of this AD is rework or replacement of the pylon midspar fitting in accordance with Section III, paragraph E., of Boeing Service Bulletin 747–54–2118, dated July 25, 1986, or later FAA-approved revisions.

D. An alternate means of compliance of adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

Note.—Compliance with this AD does not terminate the inspection requirements of the Supplemental Structural Inspection Document (SSID) Airworthiness Directive 84–21–02, Amdt. 39–4936 (49 FR 44890; November 13, 1984), if applicable.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington, 98124–2207. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This Amendment becomes effective March 13, 1987.

Issue in Seattle, Washington, on January 28, 1987.

Wayne J. Barlow,

Director Northwest Mountain Region.

[FR Doc. 87–2177 Filed 2–3–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 86–NM–190–AD; Amdt. 39–5539]

Airworthiness Directives; Lockheed-California Company Model L–1011 Series Airplanes, Equipped With Carbon Fibre Cowls

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Lockheed Model L–1011 series airplanes equipped with carbon fibre cowls that requires modification of the left rear fan cowl door support stowage mechanism to prevent the potential jamming of the throttle controls. This AD is prompted by nine reports of engine throttle control mechanism jamming caused by an unrestrained left rear fan cowl door support that fell among the throttle mechanism linkages. This condition, if not corrected, could result in loss of engine control.

EFFECTIVE DATE: March 9, 1987.

ADDRESSES: The applicable service information may be obtained from the Rolls-Royce PLC, P.O. Box 31, Derby DE 2 8BJ, England, Attention: Technical Publications Department. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Roy A. McKinnon, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514–6327.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) that requires modifications and corrective actions to prevent the potential jamming of the throttle control, was published in the **Federal Register** on October 1, 1986 (51 FR 34999). The proposed amendment applies to Lockheed Model L–1011 series airplanes equipped with carbon fibre cowls. The comment period for the proposal closed November 21, 1986.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The Air Transport Association (ATA) of America stated that its affected members indicated no objection to the contents of the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Approximately 7 U.S. registered Model L–1011 series airplanes will be affected by this AD. It is estimated that it will take six manhours per nacelle to accomplish the required actions, that the average labor cost will be $40 per manhour, and that the cost of parts will be $320 for each engine modified. Based on these figures, the cost to modify the Model L–1011 airplanes is estimated to be $1,680 per airplane, or $11,760 for the affected U.S. fleet.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model L–1011 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

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Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L 97-449 January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive (AD):

Lockheed-California Company: Applies to Lockheed Model L-1011 series airplanes equipped with carbon fibre cowls, certificated in any category. Compliance is required within 12 months after the effective date of this AD, unless already accomplished.

To prevent loss of throttle control caused by an unstowed left rear fan cowl door support on carbon fibre cowls, accomplish the following:

A. Modify the fan cowl support strut stowage mechanism in accordance with Rolls-Royce Service Bulletin RB211-71-8220, dated May 23, 1986, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Alternate means of compliance which provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Rolls-Royce PLC, P.O. Box 31, Derby DE 2 8BJ, England, Attention: Technical Publication Department. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective March 9, 1987.

Issued in Seattle, Washington, on January 26, 1987.

Frederick M. Isaac,

Acting Director Northwest Mountain Region.

[FR Doc. 87-2179 Filed 2-3-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-NM-54-AD; Amdt. 39-5536]

Airworthiness Directives: Airbus Industries Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 B2 and B4 series airplanes, that requires inspections for cracks and modification and repairs, as necessary. There have been reports of cracks in the flanges and in certain fastener holes in fuselage frame 47, which, if not detected and repaired, could lead to rapid decompression of the airplane.

EFFECTIVE DATE: Effective March 9, 1987.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires inspections for cracks and modification and repairs, as necessary, was published in the **Federal Register** on August 15, 1986 (51 FR 29256).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment which was received.

The commenter stated that two of the service bulletins referred to in the proposal have been revised, and that the later revision should be used because modification in accordance with the original service bulletins could result in oversized holes. The FAA concurs. After review of the revised service bulletins, the FAA has revised the final rule to reference the later revisions to the service bulletin. This change will not result in any additional burden to operators, nor does it expand the scope of this AD.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the change previously noted.

It is estimated that 34 airplanes of U.S. registry will be affected by this AD, that it will take approximately 40 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $54,400.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of entities because few, if any, Model A300 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-499, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directives:

Airbus Industrie: Applies to Model A300 B2 and B4 series airplanes, serial numbers as listed in each applicable service bulletin, certificated in any category. To prevent propagation of cracks in fuselage frame 47, accomplish the following within the time period specified in each of the following paragraphs after the effective date of this AD, or prior to reaching the threshold number of landings indicated in each paragraph below, whichever occur later, unless previously accomplished:

A. For B2 Series Airplanes:

1. Prior to the accumulation of 6,000 landings, or within the next 300 landings after the effective date of this AD, whichever occurs later, inspect fastener holes A and B of frame 47, lefthand and righthand, in accordance with the accomplishment instructions of Airbus Industrie (AI) service Bulletin A300-53-194, Revision 2, dated July 8, 1985. Repair cracks in accordance with the service bulletin. If no cracks are found, cold work the holes and installl interference fit fasteners in accordance with the service bulletin.

2. Reinspect in accordance with AI Service Bulletin A300-53-196, dated February 4, 1985, at intervals not to exceed 6,000 landings.

3. Accomplishment of the modifications described in AI Service Bulletin A300-53-198, Revision 1, dated November 12, 1985, constitutes terminating action for the inspection requirements of paragraphs A.1. and A.2., above.

B. For B2 Series Airplanes:

1. Prior to the accumulation of 5,000 landings, or within the next 300 landings after the effective date of this AD, whichever occurs later, inspect frame 47, lefthand and righthand, in accordance with the accomplishment instructions of AI Service Bulletin A300-53-193, dated March 14, 1984.

2. If cracks are found, repair in accordance with the service bulletin.

3. If no cracks are found, further inspections are not required.

C. For B4 Series Airplanes:

1. Prior to the accumulation of 7,000 landings or within the next 1,000 landings after the effective date of this AD, whichever occurs later, inspect frame 47, lefthand and righthand, fastener holes in accordance with AI Service Bulletin A300-53-200, Revision 2, dated February 6, 1986.

2. If cracks are found, repair in accordance with the service bulletin.

3. If no cracks are found, reinspect at intervals not to exceed 2,000 landings.

4. Accomplishment of the inspection and modification described in AI Service Bulletin A300-53-199, Revision 2, dated February 6, 1986, constitutes terminating action for the inspection requirements of paragraphs C.1. and C.2., above.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive, who have not already received the appropriate service documents from the manufacturer, may obtain copies upon request of Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This Amendment becomes effective March 9, 1987.

Issued in Seattle, Washington, on January 26, 1987.

Frederick M. Issac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-2181 Filed 2-3-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-141-AD; Amdt 39-5545]

Airworthiness Directives: McDonnell Douglas Model DC-10-10, -15, -30, -40, and KC-10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes two existing airworthiness directives (AD) which require purging and grease packing of wing spar mounted and aft fuselage mounted fuel shutoff valves on McDonnell Douglas Model DC-10 and KC-10A (Military) series airplanes. This amendment requires modification, reidentification, and/or rotation, as applicable, of these fuel fire shutoff valves. This action is prompted by reports of restricted movement of emergency fire handles which are necessary to discharge the fire agent. This condition, if not corrected, could result in loss of fuel shutoff and fire extinguishing capabilities.

EFFECTIVE DATE: Effective March 13, 1987.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Roy A. McKinnon, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808, telephone (213) 514-6327.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 86-09-10, Amendment 39-5305 (51 FR 17007) and AD 86-16-08, Amendment 39-5375 (51 FR 27526), to require modification, reidentification, and/or rotation of certain fuel fire shutoff valves, was published in the **Federal Register** on September 4, 1986 (51 FR 31647).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Three operators forwarded comments through the Air Transport Association (ATA) of America. Two of the operators suggested that the proposed compliance time of 12 months be extended to 18 months, as delivery of required modification parts will necessitate a lead time of 6 months. The other operator also suggested that the compliance time be extended so that the requirements of the proposed AD could be accomplished at the same time as that of a closely related existing AD (86-19-09), concerning fuel transfer valves. (Compliance with AD 86-19-09 is required by April 2, 1988.) The FAA concurs with both suggestions. The FAA has verified with the manufacturer that some parts required for the modifications may require a lead time of 6 months for delivery. The FAA has determined that concurrent compliance with the proposed AD and with AD 86-19-09 is appropriate and would be cost effective. Therefore, the final rule has been revised to reflect a compliance time of 18 months after the effective date of this AD. The FAA has determined that this change will not adversely affect safety since operators will continue to accomplish the purging and inspection requirements of the existing AD's in the interim.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule with the change noted previously.

Approximately 180 U.S. registered Model DC-10 series airplanes will be affected by the requirements of paragraph A. of this AD (modification in accordance with McDonnell Douglas Service Bulletin 28-168); approximately 86 airplanes will be affected by the requirements of paragraph B. (modification in accordance with McDonnell Douglas Service Bulletin 28-55). It is estimated that the cost of parts required by paragraph B. is $1100 per airplane. It is estimated that it will take 5 manhours for each airplane modified in accordance with Service Bulletin 28-168 and 43 manhours per airplane modified in accordance with Service Bulletin 28-55. The average labor cost will be $40 per manhour. Based on these figures, the cost impact of this AD on

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U.S. operators is estimated to be $278,520.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC-10 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 86-09-10, Amendment 39-5305 (51 FR 17007; May 8, 1986), and AD 86-16-08, Amendment 39-5375 (51 FR 27526; August 1, 1986), with the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-10-10, -15, -30, -40, and KC-10A (Military) series airplanes, certificated in any category. To prevent loss of fuel shutoff and fire extinguishing capabilities, accomplish the following within the next eighteen (18) months after the effective date of this AD, unless already accomplished:

A. Modify and reidentify engine No. 2 aft fuselage mounted fuel fire shutoff valve in accordance with the Accomplishment Instructions of McDonnell Douglas DC-10/KC-10A Service Bulletin 28-168, dated April 16, 1986, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Modify, reidentify, and rotate engine No. 1 and engine No. 2 wing spar mounted fuel fire shutoff valves, and modify and reidentify engine No. 3 wing spar mounted fuel fire shutoff valves, in accordance with the Accomplishment Instructions of McDonnell Douglas DC-10 Service Bulletin 28-55, Revision 3, dated December 19, 1980, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. An alternate means of compliance with this AD which provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a base for accomplishment of the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This supersedes AD 86-09-10, Amendment 39-5305, and AD 86-16-08, Amendment 39-5375.

This Amendment becomes effective March 13, 1987.

Issued in Seattle, Washington, on January 28, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-2175 Filed 2-3-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-136-AD; Amdt. 39-5537]

Airworthiness Directives: McDonnell Douglas Model DC-9-80 (MD-80) Series Airplanes Equipped With Pratt and Whitney (P&W) JT8D-209, -217, or -217A Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that requires engine and airplane performance limitations on McDonnell Douglas Model DC-9-80 series airplanes equipped with Pratt and Whitney (P&W) JT8D-209, -217, or -217A engines. This amendment is prompted by FAA findings that a flutter condition exists in the low pressure compressor (LPC) 5th stage rotor blades within the engine operating envelope and below the LPC (N_1) rotor speed redline limit. This AD is necessary to maintain an acceptable level of safety until modified blades are installed.

DATE: Effective March 9, 1987.

Compliance schedule as presented in the body of the AD, unless already accomplished

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California 90808.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Kolb, Supervisory Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6327.

SUPPLEMENTARY INFORMATION: During certification testing on three P&W JT8D-219 engines, fifth stage compressor blades failed at maximum power. One failure caused compressor stalls and partial loss of thrust. The FAA New England Engine Certification Office findings confirmed that the blade failures were caused by flutter, which necessitated a blade redesign to successfully pass the certification standards. Follow-on testing by P&W also confirmed that the blade flutter problem exists in the earlier P&W JT8D-209, -217, and -217A series engines in certain environments. The FAA New England Region is presently considering a proposal to mandate blade replacement in these engines. In the interim, this AD requires engine and airplane performance limitations to minimize the potential for engine failure from blade flutter, as described above.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires engine and airplane performance limitations on certain McDonnell Douglas Model DC-9-80 airplanes, was published in the **Federal Register** on June 23, 1986 (51 FR 22822).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Several commenters replied with requests for a public meeting to discuss the issues. Accordingly, a Notice of Public Technical Conference was published in the **Federal Register** on

August 22, 1986 (51 FR 30073). The meeting was held September 4, 1986, in Long Beach, California.

Attendees at the Public Technical Conference included representatives from seven domestic operators, six foreign operators, the engine and airplane manufacturers, a blade repair organization, the Airline Pilot's Association (ALPA), the Air Transport Association (ATA) of America, and the FAA (Northwest Mountain and New England Regions). Following the meeting, additional written comments were received from the engine and airplane manufacturers and the ATA.

The written and verbal comments received are reviewed below in the same sequence by section or paragraph as presented in the Notice of Proposed Rulemaking (NPRM).

Discussion section of NPRM: Several operators and the ATA commented that the stated cost impact of the proposed rule omits the costs involved in implementing the performance limitations. The FAA concurs; these costs were intentionally omitted since the FAA is unable to determine how each operator would change its operations for compliance with the proposed rule. The economic impact analysis paragraph has been revised to clarify that these costs are not included in the estimated cost impact of the AD.

Paragraph A.1.a.: All operators in the meeting expressed strong objections to the restriction on Automatic Reserve Thrust System (ARTS) operation, stating that it would be a severe economic penalty with no safety benefits. Also, the engine manufacturer discourages the use of power settings above normal ratings because of increased engine deterioration and additional shaft life limitations imposed when using the engines' takeoff maximum rating. All operators, engine, and airplane manufacturers requested that the use of ARTS with appropriate limitations should be allowed as presented in McDonnell Douglas' Airplane Flight Manual (AFM) Appendix 10. The FAA has considered this information and has determined that the use of (ARTS-ON) normal takeoff ratings with appropriate engine power and airplane weight limitations provides an acceptable level of safety. Therefore, the final rule has been revised to permit the optional procedure contained in Appendix 10, allowing takeoff with ARTS armed.

Paragraph A.1.b.: Several operators questioned why the FAA proposed more severe Engine Pressure Ratio (EPR) reductions than those included in Appendix 10. These operators also objected to the use of the overly conservative AFM Appendix I for weight limitations. The operators and the airplane manufacturer stated that the MD-80 has been in service over six years with no 5th stage blade flutter failures. P&W presented additional information, both orally and in writing, showing the additional conservatism that is built into the P&W-defined 5th stage blade flutter boundary. P&W, Douglas, and all operators at the meeting stated that operation in accordance with Appendix 10 assures an adequate margin of safety to prevent blade flutter failures until the blades are replaced. Several of the operators at the meeting stated they are currently operating under the procedures described in Appendix 10. The FAA has completed its review of the additional information presented by P&W and agrees that operation in accordance with Appendix 10 does provide an adequate margin of safety to prevent blade flutter if the EPR restrictions are adhered to. The NPRM included an extra 65 rpm N_1 speed margin above that recommended in Appendix 10 to compensate for EPR system inaccuracy and momentary EPR overshoots that may occur during takeoff. The extra conservatism of Appendix 10, demonstrated to the FAA by P&W, relieves that concern. Therefore, the final rule has been revised to require accomplishment of these procedures in accordance with Appendix 10. Since Appendix 10 includes the appropriate weight limitations, reference to Appendix I is not necessary and has been deleted from the final rule.

Paragraph A.1.c.: Several operators stated the restrictions for go-around were not required, for the same reasons as mentioned above with respect to paragraph A.1.b. Also, the operators and the airplane and engine manufacturers stated that power and weight restrictions are not needed, as shown by McDonnell Douglas analysis and Appendix 10. These restrictions were included in the NPRM to provide additional margin for EPR system accuracy and power overshoots during go-around. The FAA has reconsidered this information and agrees that the extra conservatism built in by P&W relieves the previous safety concerns. Therefore, the requirements of paragraph A.1.c. have been deleted.

Paragraph A.2.: Several operators requested that the Master Minimum Equipment List (MMEL) remain unchanged. They stated that a cross check of takeoff throttle position to EPR, and EPR/N_1 relationships, can detect unusual operating parameters before flight. One operator stated that only the digital portion of the EPR gauge needs to be operational to properly set power. Most operators in the meeting stated that the proposed changes to the MMEL restrict operational flexibility unnecessarily. Since EPR is the primary control to set power and prevent exclusions into the flutter boundary, the FAA has determined that the analog portion of the EPR gauge is required to show the rate of increase in power as the takeoff setting is approached. Also, the maximum limit chevron with an operational analog pointer helps to prevent power overshoots into the flutter boundary. For the above reasons, the FAA disagrees with the operators' request for relief with respect to the EPR Indication System and the final rule requires the change to the MMEL as proposed. However, with respect to the N_1 tachometer system, the FAA agrees that a cross-check of throttle position to EPR on both engines to one engine with an operational N_1 gauge can detect unusual operating parameters. Also, since the relationship between EPR and N_1 is consistent on these engines, adequate information will be provided to the flight crew for determination of margin to the flutter boundary. Therefore, the revision to the MMEL relating to the N_1 tachometer system has been deleted from the final rule.

Paragraph A.3.: All operators objected to establishing N_1 Rotor Flutter Speed Limits for takeoff and go-around, other than the takeoff N_1 limits contained in Appendix 10. They stated that controlling of EPR settings will give assurance of adequate flutter margin. Most of the operators preferred Appendix 10's method of providing N_1 takeoff rotor speed limits to the flight crew. Several operators in the meeting stated that the N_1 limits in Appendix 10 are used as a cross-check during takeoff, and that it would be inadvisable to require establishment of N_1 limits for go-around because, cockpit workload would be impacted. The FAA agrees that Appendix 10's method of providing N_1 limits for takeoff is acceptable. Information presented by P&W has shown that it is unlikely for both engines to fail even if operated at full thrust lever travel during go-around; this is due to differences in engine builds and the effect of engine deterioration that improves margin to flutter. In addition, the need to operate engines at full thrust level travel is unlikely. Since the final rule does not impose EPR limitations for go-around power, the use of auto throttles is allowed for approach. FAA-witnessed flight tests have shown that power overshoots are rare with auto throttles engaged. Likewise, for the engine-out case, it is considered unlikely that the remaining engine would have an

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EPR malfunction resulting in an overboost during go-around. Therefore, the FAA agrees that N_1 limits are not required for go-around and the final rule has been revised to be consistent with Appendix 10 on this point.

Paragraph B.: All operators and the ATA strongly objected to the proposed requirement of a placard on the instrument panel. The operators in the meeting described various methods for controlling intermixed fleets and notifying their flight crews of special limits. They stated that the proposed placard puts too much emphasis on monitoring N_1 versus close monitoring of EPR, and that this also adversely impacts cockpit crew workload. Several operators stated that the contents of Appendix 10 make the pilot aware of the N_1 limits for takeoff. The FAA has considered this information and has determined that, because the necessary N_1 limitations are contained in Appendix 10 of the AFM, and the pilot is required to determine N_1 limitations prior to takeoff, a placard is not necessary. Accordingly, the final rule has been revised to delete the requirement for a placard.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the changes previously noted.

It is estimated that 271 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required action, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $43,360. The FAA is unable to determine the cost impact of power and weight restrictions to the operators resulting from this AD.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, Model DC–9–80 (MD–80) series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas DC–9–80 (MD–80) series airplanes, certificated in any category, equipped with Pratt and Whitney (P&W) JT8D–209, –217, or –217A engines, listed in P&W Service Bulletin (S/B) 5618, dated November 26, 1985. Compliance required as indicated, unless previously accomplished.

To prevent 5th stage compressor blade failure from flutter and the possibility of engine power loss, accomplish the following within 30 calendar days after the effective date of this airworthiness directive:

A. Revise the McDonnell Douglas DC–9–80 FAA approved Airplane Flight Manual (AFM) Report MDC–J8480 (English) or MDC–J8480M (Metric) to add the following:

Section 1—Limitations

1. The engine and airplane performance limitations presented in the AFM Report MDC–J8480, Appendix 10, FAA-approved November 26, 1986, or later FAA-approved revisions, must be observed.

2. The Engine Pressure Ratio (EPR) Indicating System for each engine must have the pointer, digital counter, and maximum limit chevron operative prior to takeoff.

Note.—The McDonnell Douglas DC–9 Master Minimum Equipment List (MMEL) Revision #21, dated November 1, 1984, and subsequent revisions, Page 77–1, Item 77–1, Engine Pressure Ratio Indicating System (with Pointer *and* Digital Counter) (Series 80) and Maximum Limit Chevrons (Series 80) is affected by the above AFM Limitations, which take precedence over the MMEL.

B. Terminating action for this AD is the installation of the modified blades P/N 804505 in accordance with P&W Service Bulletin (S/B) 5618, dated November 26, 1985, or later FAA-approved revisions, or other equivalent FAA-approved 5th stage blades.

C. A copy of this AD inserted in the FAA approved AFM may be considered as an acceptable means of compliance with the required AFM revisions.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

E. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California 90808.

This amendment becomes effective March 9, 1987.

Issued in Seattle, Washington, on January 26, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–2182 Filed 2–3–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 25178; Amdt. No. 1339]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the **Federal Register** on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standard Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as efective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on January 23, 1987.

John S. Kern,

Director of Flight Standards.

Adoption of the Amendment

PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Publ L. 97–449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective April 9, 1987

Montague, CA—Siskiyou County, VOR–B, Amdt. 5, CANCELLED
Detroit, MI—Detroit Metropolitan Wayne County, ILS RWY 3L, Amdt. 10
Detroit, MI—Detroit Metropolitan Wayne County, ILS RWY 3R, Amdt. 9
Detroit, MI—Detroit Metropolitan Wayne County, ILS RWY 21R, Amdt. 22
Detroit, MI—Detroit Metropolitan Wayne County, RADAR–1, Amdt. 17
Detroit, MI—Detroit Metropolitan Wayne County, VOR RWY 9, Amdt. 12
Detroit, MI—Detroit Metropolitan Wayne County, NDB RWY 3L, Amdt. 8
Detroit, MI—Detroit Metropolitan Wayne County, NDB RWY 3C, Amdt. 9
Detroit, MI—Detroit Metropolitan Wayne County, RNAV RWY 21R, Amdt. 1

. . . Effective March 12, 1987

Jesup, GA—Jesup-Wayne County, NDB RWY 10, Orig.
Jesup, GA—Jesup-Wayne County, NDB RWY 10, Amdt. 4, CANCELLED
Atlanta, GA—DeKalb-Peachtree, NDB RWY 9, Orig., CANCELLED
Atlanta, GA—DeKalb-Peachtree, NDB RWY 27, Amdt. 1, CANCELLED
Brunswick, GA—Glynco Jetport, NDB RWY 7, Amdt. 8
Brunswick, GA—Glynco Jetport, ILS RWY 7, Amdt. 6
Cochran, GA—Cochran, VOR/DME RWY 5, Amdt. 5
Valparaiso, IN—Porter County Muni, NDB RWY 27, Amdt. 5

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Valparaiso, IN—Porter County Muni, ILS RWY 27, Amdt. 1
Valparaiso, IN—Porter County Muni, RNAV RWY 9, Amdt. 2
Teterboro, NJ—Teterboro, VOR/DME–A, Amdt. 1
Cheveland, OH—Burke Lakefront, LOC RWY 24R, Amdt. 7
Cleveland, OH—Burke Lakefront, NDB RWY 24R, Amdt. 6
Camden, SC—Woodward Field, VOR/DME–A, Amdt. 2
Orangeburg, SC—Orangeburg Muni, NDB RWY 4, Orig.
Oneida, TN—Scott Muni, SDF RWY 23, Amdt. 2
Oneida, TN—Scott Muni, NDB RWY 23, Amdt. 2
Highgate, VT—Franklin County State, VOR–B Amdt. 1

. . . *Effective February 12, 1987*

Atlanta, GA—KeKalb-Peachtree, VOR/DME RWY 20L, Orig
Atlanta, GA—DeKalb-Peachtree, VOR/DME RWY 27, Orig
Bar Harbor, ME—Hancock County-Bar Harbor, LOC/DME BC RWY 4, Orig.
Bar Harbor, ME—Hancock County-Bar Harbor, ILS RWY 22, Amdt. 2
Atlantic City, NJ—Atlantic City International, ILS RWY 13, Amdt. 3
Cedar City, UT—Cedar City Muni, VOR RWY 20, Amdt. 3
Cedar City, UT—Cedar City Muni, ILS RWY 20, Orig.

. . . *Effective January 15, 1987*

Lexington, NE—Lexington Muni, VOR RWY 14, Amdt. 1
Butler, PA—Butler County, ILS RWY 8, Amdt. 3

. . . *Effective December 30, 1986*

Oakdale, CA—Oakdale, VOR RWY 10, Amdt. 5

[FR Doc. 87–2173 Filed 2–3–87; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 38

Education Personnel; Information Collections

AGENCY: Bureau of Indian Affairs, Interior.
ACTION: Final rule.

SUMMARY: The Bureau is amending its program regulations by publishing the statements concerning information collection requirements required by the Office of Management and Budget. This technical amendment is being done to conform with 5 CFR Part 1320 by codifying such statements as part of its rules.

EFFECTIVE DATE: March 6, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Farrell LeGard, Personnel Management Specialist, Office of Indian Education Programs, Room 3515 Interior, 18th and E Street, NW., Washington, DC 20245 (Telephone number (202) 343–8657).

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (April 1, 1981) gave the Office of Management and Budget approval authority over agency collections of information from the public. The Office of Management and Budget requires that an agency that has collections of information contained in its regulations must publish approved OMB control numbers for such collections in the **Federal Register** to ensure that this information is available to the public and that it is included in the Code of Federal Regulations.

This technical amendment includes only OMB control numbers for information collection requirements in 25 CFR Part 38.

Because the only amendment made to Part 38 in this rule is notification of an information collection requirement already adopted through the procedures provided by the Paperwork Reduction Act, public comment on the rule is determined to be unnecessary. 5 U.S.C. 553(b)(B).

List of Subjects in 25 CFR Part 38

Indians—education, Teachers, Administrators.

Accordingly, Part 38 of Title 25 of the Code of Federal Regulations is amended as set forth below:

PART 38—EDUCATION PERSONNEL

1. The authority citation for Part 38 continues to read as follows:

Authority: Secs. 1131 and 1135 of the Act of November 1, 1978 (92 Stat. 2322 and 2327, 25 U.S.C. 2011 and 2015).

2. A new § 38.14 is added to read as follows:

§ 38.14 Information collection.

The information collection requirements contained in Part 38, § 38.4 use Standard Form 171 for collection, and have been approved by OMB pursuant to 44 U.S.C. 3507 and assigned approval number 3206–0012. The sponsoring agency for the Standard Form 171 is the Office of Personnel Management. The information is being collected to determine eligibility for employment. The information will be used to rate the qualifications of applicants for employment. Response is mandatory for employment

Henrietta Whiteman,
Deputy to the Assistant Secretary/Director—Indian Affairs (Indian Education Programs).

[FR Doc. 87–2206 Filed 2–3–87; 8:45 am]
BILLING CODE 4310–02–M

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 551

Control, Custody, Care, Treatment and Instruction of Inmates Birth Control, Pregnancy, Child Placement, and Abortion; Correction

AGENCY: Bureau of Prisons, Justice.
ACTION: Notice of Correction.

SUMMARY: This notice amends the public comment date for the Bureau's interim rule on Birth Control, Pregnancy, Child Placement, and Abortion, previously published in the **Federal Register** December 30, 1986 (at 51 FR 47178 et seq.). The public comment date is extended from January 30, 1987 to February 14, 1987.

DATE: Comments on the Interim Rule are now due on or before February 14, 1987.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272–6874.

Dated: January 29, 1987.

Norman A. Carlson,
Director, Bureau of Prisons.

[FR Doc. 87–2186 Filed 2–3–87; 8:45 am]
BILLING CODE 4410–05–M

VETERANS ADMINISTRATION

DEPARTMENT OF DEFENSE

38 CFR Part 21

Veterans Education; End of Flight Training in VEAP (Post-Vietnam Era Veterans Educational Assistance Program)

AGENCY: Veterans Administration and Department of Defense.
ACTION: Final regulations.

SUMMARY: The Omnibus Budget Reconciliation Act of 1981 provided that people eligible for educational assistance under VEAP (Post-Vietnam Era Veterans Educational Assistance Program) could not enroll in flight training for the first time after September 30, 1981. Those people who enrolled in flight training during September 1981 could receive educational assistance only during that month. A person who enrolled in flight training before September 1, 1981, could receive educational assistance only if the continuity of his or her enrollment was not broken.

No one received educational assistance for flight training under VEAP during fiscal years 1985 and 1986. Consequently, the continuity of everyone's enrollment has been broken. Educational assistance may no longer be paid for flight training under VEAP. All references to flight training under VEAP have been eliminated from these final regulations.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–2092.

SUPPLEMENTARY INFORMATION: On pages 26913 and 26914 of the **Federal Register** of July 28, 1986, there was published a notice to amend Part 21 to eliminate all references to flight training under VEAP. Interested people were given 30 days to submit comments, suggestions or objections. The Veterans Administration (VA) and the Department of Defense received two letters with comments.

One letter was from a university official. The other was from an official of an educational organization. Both letter writers indicated that they had no objections to the regulations. Accordingly, the VA and the Department of Defense are making the regulations final.

The VA and the Department of Defense have determined that these final regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and they will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs and the Secretary of Defense have certified that these final regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the final regulations, therefore, are exempt from the initial and final regulatory analyses requirements of section 603 and 604.

This certification can be made because this change results from a requirement of the law. Any effect on small entities results directly from the law, and and not from the final regulations.

The Catalog of Federal Domestic Assistance number for the program effected by these final regulations is 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 1, 1986.
By direction of the Administrator.

Thomas E. Harvey,
Deputy Administrator.

Approved: December 23, 1986.

A. Lukeman,
Major General USMC, Deputy Assistant Secretary of Defense.

38 CFR Part 21, Vocational Rehabilitation and Education, is amended as follows:

PART 21—[AMENDED]

§ 21.5021 [Amended]

1. In § 21.5021, paragraph (j)(3) is removed.

2. In § 21.5072, the introductory portion of paragraph (a)(1) and paragraph (c) are revised to read as follows:

§ 21.5072 Entitlement Change. * * *

(a) *Residence training.* (1) A charge against the period of entitlement for a program other than one leading to a secondary school diploma or an equivalency certificate where the monthly rate is based on the individual's tuition and fees will be made as follows: (38 U.S.C. 1631)

* * * * *

(c) *Correspondence training courses.* (1) A charge against the period of entitlement for a program consisting exclusively of correspondence training will be made on the basis of 1 month for each sum of money paid equivalent to the dollar value of a month of entitlement as determined under § 21.5138(a)(2)(viii), which is paid to the individual as an educational assistance allowance for this training. When computation results in a period of time other than a full month, the charge will be prorated.

(2) If the individual is contributing to the fund at the same time that benefits are being used or subsequently contributes a sum or sums, the entitlement charges will not be recomputed. Thus, if the monthly rate arrived at by applying the formula is determined to be $150 at the time a benefit program for correspondence training is computed, the individual will be charged 1 month of entitlement for each $150 paid. If a different monthly rate is computed at the time of a subsequent payment for such training, no adjustment will be made in the entitlement charged for the previous payment(s) even though the value of each month's entitlement may vary from payment to payment. (38 U.S.C. 1631(c); Pub. L. 94–502)

3. In § 21.5132, paragraph (a) is revised to read as follows:

§ 21.5132 Criteria used in determining benefit payments.

(a) *Training time.* The amount of benefit payment to an individual in all types of training except correspondence training depends on whether the VA determines that the individual is a full-time student, three-quarter-time student, half-time student or one-quarter-time student. (38 U.S.C. 1631)

* * * * *

§ 21.5137 [Removed]

4. Section 21.5137 is removed.

5. In § 21.5138, paragraphs (a)(2) introductory text, (a)(2)(ix), and the authority citation at the end of (a)(2) are revised to read as follows:

§ 21.5138 Computation of benefit payments and monthly rates.

(a) *Computation of entitlement factor.* * * *

(2) For correspondence training the entitlement factor will be computed as follows:

* * * * *

(ix) Enter the correspondence charges certified by the school..... (9) _____

* * * * *

(38 U.S.C. 1631; Pub. L. 94–502)

* * * * *

§ 21.5250 [Amended]

6. In § 21.5250, paragraph (k) is removed and reserved.

[FR Doc. 87–2155 Filed 2–3–87; 8:45 am]
BILLING CODE 8320–0–M

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL-3147-8; FL-021]

Approval and Promulgation of Implementation Plans; Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today approving the Florida CO State Implementation Plan (SIP) version for Dade County (Miami). The SIP revision was submitted to EPA by the Florida Department of Environmental Regulation (FDER) on July 16, 1986, and resubmitted on September 19, 1986, with final modifications. Through reductions in CO emissions achieved by the Federal Motor Vehicle Control Program (FMVCP) and transportation control measures (TCMs), Florida has demonstrated attainment of the National Ambient Air Quality Standards (NAAQS) for CO by December 31, 1987. These revisions meet the requirements of the Clean Air Act (CAA) and EPA policy.

DATE: This action will be effective April 6, 1987 unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Written comments should be addressed to Thomas Hansen of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Florida may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Bureau of Air Quality Management, Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301–8241

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Hansen, Air Programs Branch, EPA Region IV, at the above address and telephone number 404/347–4292 or FTS 257–4292.

SUPPLEMENTARY INFORMATION: Dade County, Florida was officially designated an attainment area on March 3, 1978, for the pollutant CO (40 CFR 81.310), negating the need for a Part D SIP revision. This designation was based on a single CO monitoring site, located in the downtown area of Miami. On May 10, 1979, EPA promulgated the ambient Air Quality Surveillance Regulations (40 CFR Part 58). Pursuant to these regulations, the monitoring network in Dade County was expanded. Analysis by EPA and the State of Florida of ambient CO measurements collected in the Miami area indicated that, on a number of occasions, recorded levels of CO had exceeded the eight-hour NAAQS.

For areas with a full approved SIP, showing attainment, but which did not attain, EPA announced its intention to treat such areas as "substantially inadequate" to assure attainment under section 110(a)(2)(H) of the CAA. EPA policy stated that CO SIP calls should be made in all cases where the highest second high is greater than or equal to 12.6mg/m³ (11 ppm), using the two most current years of data available. A review of the latest available data for Dade County at that time (1982 and 1983) resulted in a design value of 13.2 mg/m³. On September 18, 1984, the Governor of the State of Florida requested EPA concurrence for the State to revise its SIP for CO, obviating the need for a section 110(a)(2)(H) call by EPA. On October 9, 1984, EPA approved the proposed action by the Governor on condition that the State of Florida commit to completing its SIP revision within one year. A proposed schedule was submitted within 60 days of EPA's concurrence, detailing how this would be accomplished.

To achieve the deadlines imposed by the proposed schedule, the State, in a January 22, 1985, letter, requested technical assistance from EPA in the form of contractual help. EPA agreed to provide this assistance. The contractor, under EPA direction and with the assistance and cooperation of the FDER and the Dade County Department of Environment Resources Management (DERM), prepard four technical memorandums entitled:

- Analysis of East Flagler Street Carbon Monoxide Exceedances—Downtown Miami.
- Description of Methodologies to Assess Eight-Hour Nightime Carbon Monoxide Exceedances.
- Identification and Analysis of Potential Carbon Monoxide Hotspots in Dade Country, Florida.
- Analysis of Transportation Control Measures (TCMs), Dade County/Miami.

The results of this in-depth analysis predict that the ambient air quality standard for CO will be met in Dade County by December 31, 1987. Furthermore, no additional control measures beyond those already in place need to be implemented to meet this attainment date.

East Flagler Street

Nearly ninety percent of all CO exceedances which have been measured in Dade County have occurred at a monitoring site located on East Flagler Street, downtown Miami. The monitor is located near midblock of this roadway with the objective of measuring the maximum concentration in the Miami Central Business District (CBD). Furthermore, the site is characterized as a "street canyon" because of the presence of tall buildings on both sides of the street. The data collected at this site indicates a strong downward trend both in the number of exceedances as well as the maximum concentrations measured. The NAAQS for CO is 40 mg/m³ (35 ppm) for one hour or 10 mg/m³ (9 ppm) over eight hours, not to be exceeded more than once per year. The East Flagler Street site has not experienced any exceedances of the one-hour standard. The site experienced 72 exceedances of the eight-hour CO NAAQS in 1981. However, this number has become less each year until in 1985 only one exceedance was recorded. Likewise the magnitude of the exceedances has come down from a high of 15.3 mg/m³ in 1981, successively lowering to 10.4 mg/m³ in 1985, which when rounded off would meet the standard. Therefore, the modeling and monitoring data support the conclusion of the air quality analysis, i.e., this site will be in attainment by December 31, 1987. Since the East Flagler Street site is the worst case, all other CBD sites are either in attainment or can be expected to attain by that date.

Little Havana

The Little Havana CO monitor is a neighborhood spatial scale site located in a suburban area of Miami and has been sited to measure the CO concentrations representative of areas of high population density to obtain the maximum population exposure.

The conventional wisdom that has guided the development of most SIPs is that (a) ambient CO concentrations are caused almost exclusively by motor vehicle traffic; (b) ambient CO concentrations are high near roadways and drop off rapidly with distance; and (c) to attain the NAAQS for CO it is necessary to either reduce tailpipe emissions and/or traffic congestion in the area where the exceedances occur.

At the Little Havana site, however, as well as in numerous other locations in Region IV and throughout the United States, exceedances have been found to occur during nightime hours when there is little or no traffic. An analysis of the hourly data associated with these "coldspot"exceedances indicates that the greatest portion of the highest concentrations is attributable to background levels. Therefore, a "rollback" technique was used to determine the required emission reduction to attain the NAAQS. This technique involves linearly rolling back the design value to the standard and reduction emissions by the percentage difference. The 1982 design value for this site is 10.6 mg/m³ and therefore requires a 7.4% reduction in emissions by December 31, 1987, to attain the 10 mg/m³ eight-hour CO NAAQS. The FMVCP controls are projected to reduce mobile source emissions 30% between 1982 and 1987. Applying this reduction to the background portion of the design value yields a maximum projected concentration of 8.55 mg/m³ by the end of 1987, well below the NAAQS.

Intersection Hot Spot Analysis

No ambient monitoring data for CO is currently available at any intersection in Dade County. Therefore, evaluation of both current and projected air quality was made using appropriate modeling techniques. A general screening process was used to rank the most congested intersections in the county. Five of the intersections expected to have the worst air quality impacts at the end of 1987 were subjected to more detailed analysis. The detailed modeling methodology described in EPA's "Guidelines for Air Quality Maintenance Planning and Analysis Volume 9 (Revised): Evaluating Indirect Sources" (EPA–450/4–78–001), with corrections made to update the emission factors, was then used to predict maximum eight-hour concentrations near each intersection. This methodology is the only EPA-approved technique, at this time, to address intersectional hot spots. The only emission controls accounted for were those associated with the FMVCP. The worst of these intersections is projected to have a maximum eight-hour concentration of 9.5 mg/m³.

Transportation Control Measures

Metrorail and Metromover—The Metrorail is a heavy rail mass transit system currently in operation at Dade County. The system connects downtown Miami with Hialeah to the northwest and with the Kendall area (via the South Dixie Highway corridor) to the southwest. Once into the downtown area the main line connects to a downtown Metromover system which circles the downtown area. The Metrorail system, which was in part designed to reduce traffic into the downtown area, has not attained the ridership originally expected. Although there has been at least some traffic reduction, for the purpose of this SIP revision no emission reductions were calculated directly as a result of Metrorail or the Metromover. Indirectly, as a result of Metrorail, a portion of the bus services to the downtown area is expected to be cancelled. These fewer buses are expected to increase traffic flow and reduce emissions.

Anti-Tampering and Fuel Switching—The county has adopted an anti-tampering and fuel switching (misfueling) ordinance. This ordinance makes it unlawful for an owner of a motor vehicle to operate the vehicle if it (a) does not meet a 20 percent opacity standard for exhaust emissions; or (b) has had certain emission control devices tampered with; or (c) is powered by leaded gasoline when the vehicle is designed by the manufacturer to be powered by unleaded gasoline. The enforcement of this ordinance is a random one percent roadside tampering/misfueling inspection countywide. Any owner of a motor vehicle found to be in violation is subject to a fine and must repair the vehicle.

The amount of CO emission reduction directly associated with randomly auditing and repairing one percent or 10,000-15,000 vehicles/year is quite small. However, the impact of this program will probably improve the emission characteristics of more than just the one percent of the motor vehicles being audited in the county, especially through an active public information campaign and the owner knowing he/she may be pulled over. Emission credits for this program can only be obtained for the actual number of vehicles audited. The SIP revision does not claim this credit.

Because of EPA's close involvement in the detailed analysis work and throughout this process, the technical reports prepared by the EPA consultant will serve as the technical support document for this approval action.

Final Action

Based on the above discussion, EPA is approving the Post-1982 Florida CO SIP revision for Dade County. The plan revision satisfactorily meets all Part D requirements of the CAA.

Since the State of Florida is not required to revise their CO control strategy or change their rules or regulations to assure attainment of the CO NAAQS in Dade County, there is no material to be incorporated by reference.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective April 6, 1987.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 6, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under 5 U.S.C. 605(b), I certify that this approval action will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Carbon monoxide.

Dated: January 27, 1987.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart K—Florida

2. Section 52.520 as amended by adding paragraph (c)(59) as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(59) Post-1982 CO SIP revision for Dade County, submitted on September 19, 1986, by the Florida Department of Environmental Regulation.

(i) Incorporation by reference—none.

(ii) Other material.

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(A) Narrative description of analysis performed for CO.

(B) Analysis of East Flagler Street Carbon Monoxide Exceedances—Downtown Miami.

(C) Description of Methodologies to Assess Eight-Hour Nighttime Carbon Monoxide Exceedances.

(D) Identification and Analysis of Potential Carbon Monoxide Hotspots in Dade County, Florida.

(E) Analysis of Transportation Control Measures (TCMs), Dade County/Miami.

[FR Doc. 87-2211 Filed 2-3-87; 8:45 am]
BILLING CODE 6560-50-M

Proposed Rules

Federal Register
Vol. 52, No. 23
Wednesday, February 4, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

Papayas Grown in Hawaii; Change in the Term of Office of Committee Members

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the 2-year term of office of the members and alternates of the Papaya Administrative Committee to the period July 1–June 30, from the period January 1–December 31, and extend for 6 months the current committee members' term of office through June 30, 1987. The beginning date of the new term of office would coincide with the beginning date of the new fiscal year (July 1) recently established under the marketing order. These proposed changes are expected to improve the functioning and operations of the committee and the marketing order program.

DATES: Comments must be received by March 6, 1987.

ADDRESSES: Comments should be sent to: Docket Clerk, F&V, AMS, Room 2085–S, U.S. Department of Agriculture, Washington, DC 20250. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone (202) 447–5697.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

The proposed rule is issued under the marketing agreement and Order No. 928 (7 CFR Part 928), regulating the handling of papayas grown in Hawaii. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The rule is based upon the recommendations and information submitted by the Papaya Administrative Committee, established under the order, and upon other available information.

This proposed rule would change the 2-year term of office of committee members and alternates currently specified in § 928.21, so that the term begins on July 1 of each odd-numbered year, rather than January 1 of each odd numbered year. Section 928.21 authorizes the Secretary to change the fiscal period upon recommendation of the committee. The beginning date of the new term of office would coincide with the beginning date of the new fiscal year, which was recently changed to July 1 from January 1 by a rule issued under the marketing order adding a new § 928.106 (51 FR 35342, October 2, 1986). In addition, the proposal would extend the term of office of members and alternates currently serving on the committee by 6 months, until June 30, 1987, to provide for an orderly transition to the new term of office.

These changes are designed to improve the functioning of the committee, and the operations of the marketing order program.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

The purpose of the FRA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601–674), and rules promulgated thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of Hawaiian papayas subject to regulation under the Hawaiian papaya marketing order, and approximately 306 papaya producers in Hawaii. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000 and agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The great majority of handlers and producers of Hawaiian papayas may be classified as small entities. This action is primarily of an administrative nature and, as such, does not impose any additional costs on handlers.

List of Subjects in 7 CFR Part 928

Marketing agreements and orders, Papayas, Hawaii.

PART 928—[AMENDED]

1. The authority citation for 7 CFR Part 928 continues to read as follows:

Authority: Secs. 1–19, 48 stat. 31, as amended; 7 U.S.C. 601–674.

2. The proposal is to amend Subpart—Rules and Regulations (7 CFR 928.141–928.313) by adding § 928.121 to read as follows:

§ 928.121 Term of office.

Pursuant to § 928.21, the term of office for each member and alternate member on the committee is reestablised to be a 24-month period beginning July 1 of each odd-numbered year and ending on the second succeeding June 30: *Provided*, That committee members currently serving on the committee shall continue to serve through June 30, 1987.

Dated: January 29, 1987.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87-2168 Filed 2-3-87; 8:45 am]
BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1942

Community Facility Loans and Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations regarding loans

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and grants for Community Facility projects. This proposed action is being taken by FmHA to comply with Pub. L. (Pub. L.) 99–198. Title XIII of Pub. L. 99–198 changes certain criteria for determining the amount of grant and interest rate a community can receive under FmHA's water and waste disposal program and establishes a new purpose for which grant funds may be used. Also the proposed action removes the limitation on the use of grant funds to pay a portion of project cost when the annual reserve exceeds one-tenth of the average debt service. Also the proposed action is being taken to comply with Office of Management and Budget (OMB) Circulars A–128 and A–110. Other editorial changes are proposed to remove ambiguity in the existing regulations. The intended effect of this action is to bring existing regulations into compliance with Pub. L. 99–198, develop a new regulation for the technical assistance and/or training grants authorized by the law, and to more effectively serve the needs of rural communities.

DATE: Comments must be received on or before March 6, 1987.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, South Building, Room 6348, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection on weekdays between the hours of 8:15 a.m. and 4:45 p.m. at the above address. The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South Agriculture Building, Room 6328, Washington, DC 20250, telephone: (202) 382–9589.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers; individual industries; Federal, State, or Local Government agencies; or geographic regions. Futhermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This proposed action is not expected to substantially affect budget outlay, to affect more than one agency or to be controversial. Additional efforts to administer the changes are expected to be minimal. Increased program costs are, therefore, not anticipated. The net result is expected to provide better service to rural communities.

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.418, Water and Waste Disposal Systems for Rural Communities, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983, and 7 CFR Part 1940, Subpart J, "Intergovernmental Review of Farmers Home Administration Programs and Activities").

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), Mr. Vance L. Clark, Administrator of the Farmers Home Administration, has determined that this action will not have a significant economic impact on a substantial number of small entities because in terms of the total number of rural communities less than 100 will be affected annually.

This action amends FmHA's policies for making development grants and loans. These loans and grants assist in financing the development costs of domestic water and waste disposal systems to rural communities and other associations of farmers, ranchers, rural residents, and other rural users.

These loans and grants will assist rural communities and other associations of farmers, ranchers, rural residents, and other rural users in developing projects and improving the management or operations of existing systems. This action also includes a new regulation and policies for making technical assistance and/or training grants to private nonprofit organizations.

Public Law 99–198 requires FmHA to: (1) Develop a graduated scale of grant rates that establishes a higher rate for projects in communities having lower population and income levels.

(2) For water and waste disposal projects serving more than one separate community use median population and income levels of all the separate communities in calculating grants and establishing interest rates.

(3) Provide grants to private nonprofit organizations for the purpose of providing technical assistance and/or training to associations eligible for FmHA water and waste disposal grant funding.

This action removes a limitation on the use of grant funds when the annual reserve exceeds one-tenth of the annual debt service requirements. This reserve limitation affects projects involving other lenders.

The audit requirements of OMB Circulars A–128 and A–110 are being incorporated into FmHA's grant regulations by adding a new section.

FmHA proposes to amend Subparts A and H and add a new Subpart J of Part 1942 to bring FmHA Community Facility regulations into compliance with Pub. L. 99–198.

List of Subjects in 7 CFR Part 1942

Community development, Community facilities, Loan programs—Housing and community development, Loan security, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

Therefore, as proposed, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for Part 1942 continues to read as follows:

Authority: 7 U.S.C. 1927 A; 7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Community Facility Loans

2. In § 1942.17, paragraph (f)(6) is revised to read as follows:

§ 1942.17 Community facilities.

* * * * *

(f) * * *

(6) *Income determination.* The income data used to determine median household income should be that which most accurately reflects the income of the service area. The service area is that area reasonably expected to be served by the facility being financed by FmHA. In cases where more than one geographic area is being served by a water and waste disposal project, the most accurate income figure should be used. One method of obtaining the income of the service area is by calculating a weighted average based on the number of households in each area. The following example demonstrates this method:

	Income	Households	Total income
Area A	$11,200	150	$1,680,000
Area B	14,500	1,500	21,750,000
Area C	16,000	7,000	112,000,000
		8,650	135,430,000

$$\frac{\text{Total Income}}{\text{Total Households}} = \frac{\$135,430,000}{8,650} = \$15,657 \text{ weighted median household income}$$

The median household income of the service area and the nonmetropolitan median household income of the State will be determined from income data from the most recent decennial census of the U.S. If there is reason to believe that the census data is not an accurate representation of the median household income within the area to be served, the reasons will be documented and the applicant may furnish, or FmHA may obtain, additional information regarding median household income. Information will consist of reliable data from local, regional, State or Federal sources or from a survey conducted by a reliable impartial source. The nonmetropolitan median household income of the State may only be updated on a national basis by the FmHA National Office. This will be done only when median household income data for the same year for all Bureau of the Census areas is available from the Bureau of the Census or other reliable sources. Bureau of the Census areas would include areas such as: Counties, County Subdivisions, Cities, Towns, Townships, Boroughs, and other places.

* * * * *

Subpart H—Development Grants for Community Domestic Water and Waste Disposal Systems

3. Section 1942.358 is amended by revising paragraph (e) to read as follows:

§ 1942.358 Use of grant funds.

* * * * *

(e) To use FmHA grant funds on projects where other types of financial assistance are available on all or part of the projects, provided the other assistance is on reasonable rates and terms. In such cases the maximum percentages allowed under other agencies' authorities will apply to their participation in the project. However, the FmHA grant may not exceed applicable percentages in § 1942.360(b) of this subpart of the eligible project development cost. The need for FmHA grant funds must meet the requirements of § 1942.363 of this subpart after considering all project financing.

* * * * *

4. Section 1942.360 is amended by removing paragraph (a)(11); redesignating paragraphs (a)(12), (a)(13), and (a)(14) as (a)(11), (a)(12), and (a)(13) respectively; and by revising newly redesignated paragraph (a)(13) and paragraph (b) to read as follows:

§ 1942.360 Grant limitations.

(a) * * *

(13) Pay any costs of a project when the median household income of the service area is above the poverty line and more than 100 percent of the nonmetropolitan median household income of the State. The poverty line will be that income for a family of four as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

(b) An FmHA development grant may not be made in excess of the following percentages (*whichever is higher*) of the eligible project development costs. Facilities previously installed will not be considered in determining the development costs.

(1) Seventy-five percent (75%) when the median household income of the service area is below the poverty line or below 80 percent of the statewide nonmetropolitan median household income.

(2) Fifty-five percent (55%) when the median household income of the service area exceeds the seventy-five percent requirements described in paragraph (b)(1) of this section but is not more than 100 percent of the statewide nonmetropolitan median household income.

5. In § 1942.363, paragraph (b)(3) is added, and paragraphs (c)(1), (c)(2) and (d) are revised to read as follows:

§ 1942.363 Determining the need for development grants.

* * * * *

(b) * * *

(3) *User rate.* The initial user rate after the grant is made should produce enough revenue to provide for all costs of the facility. The planned revenue should be sufficient to provide for all debt service, reserve, operation and maintenance and if appropriate, additional revenue for facility replacement of short lived assets without building a substantial surplus. Ordinarily, the total reserve will be equal to one average annual loan installment which will accumulate at the rate of one-tenth of the total each year.

(c) * * *

(1) Grants may not exceed the percentages in § 1942.360(b) of this subpart of the eligible project development costs listed in § 1942.358 of this subpart.

(2) Applicants will be considered for grant assistance when the debt service portion of the average annual user cost, for users in the applicant's service area, exceeds the following percentages of median household income:

(i) *.5 percent* when the median household income of the service area is below the poverty line or below 80 percent of the statewide nonmetropolitan median household income.

(ii) *1.0 percent* when the median household income of the service area exceeds the .5 percent requirement but is not more than 100 percent of the statewide nonmetropolitan median household income.

* * * * *

(d) The income data used to determine median household income should be that which most accurately reflects the income of the service area. The service area is that area reasonably expected to be served by the facility being financed by FmHA. In cases where more than one geographic area is being served by a water and waste disposal project, the most accurate income figure should be used. One method of obtaining the income of the service area is by calculating a weighted average based on the number of households in each area. The following example demonstrates this method:

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	Median income	Households	Total income
Area A	$11,200	150	$1,680,000
Area B	14,500	1,500	21,750,000
Area C	16,000	7,000	112,000,000
Total		8,650	135,430,000

Total Income ($135,430,000) divided by Total Households (8,650) equals the Weighted Median Household Income ($15,657)

The median household income of the service area, communities described in paragraph (b)(2) of this section, communities used in Part 11 C of Form FmHA 1942–51, and the nonmetropolitan median household income for the State will be determined from income data from the most recent decennial census of the U.S. If there is reason to believe that the census data is not an accurate representation of the median household income within the area to be served, the reasons will be documented on Form FmHA 1942–51 and the applicant may furnish, or FmHA may obtain, additional information regarding such median household income. Information will consist of reliable data from local, regional, State or Federal sources or from a survey conducted by a reliable impartial source. The nonmetropolitan median household income of the State may only be updated on a national basis by the FmHA National Office. This will be done only when median household income data for the same year for all Bureau of the Census areas is available from the Bureau of the Census or other reliable sources. Bureau of the Census areas would include areas such as: Counties, County Subdivisions, Cities, Towns, Townships, Boroughs, and other places.

* * * * *

6. Section 1942.381 is added to read as follows:

§ 1942.381 Audits.

Audits will be handled in accordance with § 1942.17(q)(4) of Subpart A of Part 1942 of this chapter.

7. New Subpart J is added to Part 1942 to read as follows:

Subpart J—Technical Assistance and Training Grants

Sec.

1942.451 General.
1942.452 [Reserved]
1942.453 Objectives.
1942.454 Definitions.
1942.455 Source of funds.
1942.456 [Reserved]
1942.457 Eligibility.
1942.458 Purpose.
1942.459 [Reserved]
1942.460 Limitations.
1942.461 Equal opportunity requirements.
1942.462 Environmental requirements.
1942.463 Preapplications.
1942.464 Priority.
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1942.466 Application processing.
1942.467 [Reserved]
1942.468 Grant approval and obligation of funds.
1942.469 Fidelity bond.
1942.470–1942.471 [Reserved]
1942.472 Fund disbursement.
1942.473 Grant cancellation or major changes.
1942.474 Reporting.
1942.475 Audit.
1942.476 Grant agreement.
1942.477 Grant servicing.
1942.478 Delegation of authority.
1942.479–1942.500 [Reserved]
Exhibit A—Grant Agreement—Technical Assistance and Training

Subpart J—Technical Assistance and Training Grants

§ 1942.451 General.

This subpart sets forth the policies and procedures for making technical assistance and training grants authorized under section 306(a)(16)(A) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)), as amended.

§ 1942.452 [Reserved]

§ 1942.453 Objectives.

The objectives of the Technical Assistance and Training Grant Program are to:

(a) Identify and evaluate solutions to water and waste disposal problems in rural areas.

(b) Assist applicants in preparing applications for water and waste disposal grants made in accordance with Subpart H of Part 1942 of this chapter.

(c) Improve operation and maintenance of existing water and waste disposal facilities in rural areas.

§ 1942.454 Definitions.

(a) *Association.* An entity that is eligible for FmHA water and waste disposal financial assistance in accordance with § 1942.17(b) of Subpart A and § 1942.355(a) of Subpart H of Part 1942 of this chapter.

(b) *Grantee.* An entity with whom the Farmers Home Administration (FmHA) has entered into a grant agreement under this program.

(c) *Low income.* Median household income below the poverty line for a family of four as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), or below 80 percent of the Statewide nonmetropolitan median household income.

(d) *Rural area.* For water and waste disposal facilities the terms "rural" or "rural area" will not include any area in a city or town with a population in excess of 10,000 inhabitants according to the latest decennial census of the United States.

(e) *State.* Any of the fifty States, the Commonwealth of Puerto Rico, the Western Pacific Territories, Marshall Islands, Federated States of Micronesia, Republic of Palau, and the U.S. Virgin Islands.

§ 1942.455 Source of funds.

All grants awarded will be made from not less than one (1) percent or, at the discretion of the FmHA Administrator, not more than two (2) percent of any appropriations for grants under section 306(a)(2) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)). Funds not obligated by September 1 of each fiscal year under this subpart will be used for water and waste disposal grants made in accordance with Subpart H of Part 1942 of this chapter.

§ 1942.456 [Reserved]

§ 1942.457 Eligibility.

Organizations eligible for grants are private nonprofit organizations that have been granted tax exempt status by the Internal Revenue Service of the United States. Applicants must have the proven ability, background, experience, legal authority and actual capacity to provide technical assistance and/or training to associations as provided in § 1942.453 of this subpart.

§ 1942.458 Purpose.

Technical Assistance and/or Training Grants may be used to:

(a) Identify and evaluate solutions to water problems of associations in rural areas relating to:

(1) Source.

(2) Storage.

(3) Treatment.

(4) Distribution.

(b) Identify and evaluate solutions to waste problems of associations in rural areas relating to:

(1) Collection.

(2) Treatment.

(3) Disposal.

(c) Assist associations that have filed a preapplication with FmHA in the preparation of water and/or waste disposal grant applications.

(d) Provide training to association personnel that will improve the management, operation and maintenance of water and waste disposal facilities.

(e) To pay the expenses associated with providing the technical assistance and/or training authorized in paragraphs (a), (b), (c), and (d) of this section.

§ 1942.459 [Reserved]

§ 1942.460 Limitations.

Grant funds may not be used to:

(a) Recruit applications for FmHA's water and waste disposal loan and/or grant program or any loan and/or grant program.

(b) Duplicate current services, replacement or substitution of support previously provided such as those performed by an association's consultant in developing a project.

(c) Fund political activities.

(d) Pay for capital assets, the purchase of real estate or vehicles, improve and renovate office space, or repair and maintain privately-owned property.

(e) Pay for construction or operation and maintenance costs.

(f) Pay costs incurred prior to the effective date of grants made under this subpart.

§ 1942.461 Equal opportunity requirements.

The policies and regulations contained in Subpart E of Part 1901 this chapter apply to grants made under this subpart.

§ 1942.462 Environmental requirements.

The policies and regulations contained in Subpart G of Part 1940 of this chapter apply to grants made for the purposes in § 1942.458 of this subpart.

§ 1942.463 Preapplications.

(a) Applicants will file an original and one copy of Form AD–621, "Preapplication for Federal Assistance," with the appropriate FmHA office between October 1 and December 31 each fiscal year. This form is available in all FmHA offices. Applicants proposing to provide technical assistance and/or training in only one State will apply through the appropriate FmHA State Office. The FmHA State Office will forward preapplications, with any written comments, within seven working days to the National Office, Attention: Water and Waste Disposal Division. Applicants providing technical assistance and/or training in more than one State will forward the preapplication to the Administrator, Farmers Home Administration, Washington, DC 20250.

(b) All preapplications shall be accompanied by:

(1) Evidence of applicant's legal existence and authority.

(2) Evidence tax exempt status from the Internal Revenue Service.

(3) Brief written narrative which includes items such as:

(i) The proposed service(s) to be provided, including the benefits of the technical assistance and/or training.

(ii) Area to be served.

(iii) Name of association(s) or type of association(s) that will be served.

(iv) Median household income of the population to be served by each association(s).

(v) Grantee's experience, including experience of key staff members and person(s) providing the technical assistance and/or training.

(vi) The number of months duration of the project or service and the estimated time it will take from grant approval to beginning of service.

(vii) Method used to select the association(s) that will receive the service.

(viii) Brief description of how the service will be provided. Such as through currently employed personnel or some other method.

(ix) Method to be used for delivery of the service, including personnel to be utilized and tasks to be contracted, if any.

(4) Latest financial information to show the organization's financial capacity to carry out the proposed work. As a minimum, the information should include a balance sheet and an income statement. A current audit report is preferred.

(5) Estimated breakdown of costs including that to be funded by grantee as well as other sources.

(6) Budget and accounting system in place or proposed.

(7) Evaluation method to determine if objective(s) of the proposed activity is being accomplished.

(c) Upon receipt of a preapplication, the FmHA National Office will:

(1) Review and evaluate the preapplication and accompanying documents; and

(2) Request from the Office of General Counsel (OGC), a legal determination of applicant's legal existence and authority to provide technical assistance and/or training. The legal opinion will be obtained from the Regional Attorney serving the area where the applicant's headquaters is located; and

(3) Normally, respond to the applicant within 45 days after December 31 of each year using Form AD–622, "Notice of Preapplication Review Action," indicating the action taken on the preapplication.

(d) Applicants whose preapplications are found to be ineligible will be given notice by use of Form AD–622 and advised of their appeal rights under Subpart B of Part 1900 of this chapter.

(e) Applicants who are eligible, but do not have the priority necessary for further consideration will be notified with Form FmHA AD–622 which includes the following statements:

"Your proposal cannot be funded within the available funds."

"You are advised against incurring obligations which cannot be fulfilled without FmHA funds."

(f) Applicants that are eligible for funding within the available funds will be provided forms and instructions for filing a complete application. Applicants should be advised against incurring obligations which cannot be fulfilled without FmHA funds.

§ 1942.464 Priority.

The preapplication and supporting information will be used to determine the applicant's priority for available funds. The following specific criteria will be considered in the competitive selection of grant recipients:

(a) Applicant's demonstrated capability and past performance in providing technical assistance and/or training to rural associations.

(b) The extent to which the population of the associations served have low income.

(c) Applicant's financial and if applicable, in-kind resources.

(d) The extent to which the project will be cost effective, including but not limited to: the ratio of proposed personnel to the cost of the project, the cost per person of the benefited users of the project, and the expected benefits from the project.

(e) How well the proposal coincides with the objectives of FmHA's Water and Waste Disposal program authorized in Subparts A and H of Part 1942 of this chapter.

(f) Applicants proposing to serve multi-state, regional, or nationwide areas.

(g) Applicants whose time frame for completion of the project is twelve months or less.

§ 1942.465 [Reserved]

§ 1942.466 Application processing.

(a) Upon notification on Form AD–622, that the applicant is eligible for funding, the following will be submitted to the FmHA National Office by the applicant.

(1) Form AD–623, "Application for Federal Assistance (Nonconstruction Programs)."

(2) Proposed scope of work detailing the training and/or technical assistance to be accomplished and time frames for completion of each task.

(3) Proposed budget.

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(4) Other requested information needed by FmHA to make a grant award determination.

(b) The following forms and documents will be part of the grant docket:

(1) Form FmHA 400–1, "Equal Opportunity Agreement."

(2) Form FmHA 400–4, "Assurance Agreement."

(3) Grant Agreement signed by the applicant.

(4) Scope of work prepared by the applicant.

(5) Form FmHA 1940–1, "Request for Obligation of Funds."

(c) If the applicant fails to submit the application and related material by the date shown on Form AD–622 (normally 30 days from the date of Form AD–622), FmHA may discontinue consideration of the application.

§ 1942.467 [Reserved]

§ 1942.468 Grant approval and obligation of funds.

(a) FmHA National Office will review the application and other documents to determine whether the proposal complies with these regulations.

(b) All grants made under these regulations will be approved and obligated by the FmHA Administrator, or designee.

(c) The obligation of funds will be handled in accordance with § 1942.5(d) of Subpart A of Part 1942 of this chapter.

(d) An executed copy of the Grant Agreement and scope of work will be sent to the applicant on the obligation date, along with a copy of Form FmHA 1940–1. FmHA will retain the executed original of the Grant Agreement. The grant will be considered closed on the obligation date.

(e) If the grant is not approved, the applicant will be notified in writing of the reason(s) for rejection. The notification to the applicant will state that a review of this decision by FmHA may be requested by the applicant under Subpart B of Part 1900 of this chapter.

§ 1942.469 Fidelity bond.

Prior to the advancing of funds, the grantee will provide fidelity bond coverage for the positions of persons entrusted with the receipt and disbursement of its funds and the custody of valuable property. The amount of the bond will be at least equal to the maximum amount of monies that the grantee will have on hand at any one time for technical assistance and/or training provided in accordance with the Grant Agreement. Unless prohibited by State law, the United States, acting through the Farmers Home Administration, will be named as co-obligee in the bond. The bond must be obtained from a company listed in Department of Treasury Circular 570, as amended. Form FmHA 440–24, "Position Fidelity Schedule Bond," may be used. A certified power-of-attorney with effective date will be attached to the bond.

§§ 1942.470–1942.471 [Reserved]

§ 1942.472 Fund disbursement.

Grantees will be reimbursed as follows:

(a) Standard Form (SF) 270, "Request for Advance or Reimbursement," will be completed by the applicant and submitted to FmHA National Office not more frequently than monthly.

(b) Upon receipt of a properly completed SF–270, the funds will be requested through the field office terminal system. Ordinarily, payment will be made within 30 days after receipt of a proper request for reimbursement.

(c) Grantees are encouraged to use minority banks (a bank which is owned by at least 50 percent minority group members) for the deposit and disbursement of funds. A list of minority owned banks can be obtained from the Office of Minority Business Enterprise, Department of Commerce, Washington, DC 20230.

§ 1942.473 Grant cancellation or major changes.

If it is determined that a project will not be funded or if major changes in the scope of the project are made after release of the approval announcement, the Administrator will notify the Director of Legislative Affairs and Public Information Staff (LAPIS) giving the reasons for such action. In the case of a grant cancellation, Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation," will not be submitted to the Finance Office until five working days after notifying the Director of LAPIS and grant obligation cancellations will not be submitted to the National Office until 5 work days after notifying the Director of LAPIS.

§ 1942.474 Reporting.

Standard Form (SF) 269, "Financial Status Report," SF 272, "Federal Cash Transactions Report," and a project performance activity report will be required of all Grantees on a quarterly basis. A final project performance report will be required with the last SF–269. The final report may serve as the last quarterly report. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. All multi-state, regional, and nationwide Grantees are to submit an original of each report to the FmHA National Office. Grantees serving only one State are to submit an original of each report to the FmHA State Director. The FmHA State Director will review and forward to the FmHA National Office the report with comments. The project performance reports shall include, but not be limited to, the following:

(a) A comparison of actual accomplishments to the objectives established for that period;

(b) Reasons why established objectives were not met;

(c) Problems, delays, or adverse conditions which will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(d) Objectives and timetable established for the next reporting period.

§ 1942.475 Audit.

The Grantee will provide an audit report prepared in accordance with OMB Circular A–110, Attachment F, within 90 days after project completion.

§ 1942.476 Grant Agreement.

Exhibit A of this subpart is a Grant Agreement which sets forth the procedures for making and servicing grants made under this subpart.

§ 1942.477 Grant servicing.

Grants will be serviced in accordance with the grant agreement and Subpart E of Part 1951 of this chapter. Subpart B of Part 1900 of this chapter will be followed when grants are terminated for cause.

§ 1942.478 Delegation of authority.

The authority under this subpart is redelegated to the Assistant Administrator, Community and Business Programs, except for the discretionary authority contained in § 1942.455 of this subpart. The Assistant Administrator, Community and Business Programs, may redelegate the authority in this section.

§§ 1942.479–1942.500 [Reserved]

Exhibit A—Grant Agreement—Technical Assistance and Training

This agreement is between _____ (name), _____ (address), (Grantee) and the United States of America acting through the Farmers Home Administration (Grantor or FmHA). Grantee has determined to undertake certain Technical Assistance and/or Training at an estimated cost of $_____ and has duly authorized such activity. Grantee shall finance $_____ of the costs through cash and in-kind contributions. The Grantor agrees to grant to Grantee a sum not to exceed $_____ subject to the terms and conditions established by the Grantor; provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant. In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 306 (a)(16)(A) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926 (a)) for the purpose of defraying technical assistance and/or training costs as permitted by applicable Farmers Home Administration regulations:

Part A

Grantor and Grantee agree:

1. This agreement shall be effective when executed by both parties.

2. The scope of work described by the applicant in Exhibit 1 shall be completed within ____ days from the date of this agreement.

3. Use of grant funds for travel which is determined as being necessary to the program for which the grant is established may be subject to the travel policies of the Grantee institution if they are uniformly applied regardless of the source of funds in determining the amounts and types of reimbursable travel expenses of Grantee staff and consultants. Where the Grantee institution does not have such specific policies uniformly applied, the Federal Travel Regulations shall apply in determining the amount charged to the grant.

The information collected through the grant agreement is required to obtain a Technical Assistance and/or Training grant and is used to determine that the grant funds are used for authorized program purposes.

Grantee may purchase furniture and office equipment only if specifically approved in the scope of work. Approval will be given only when Grantee demonstrates that purchase is necessary. Commercial purchase under these circumstances will be approved only after consideration of Federal supply sources.

(a) Expenses and Purchases Excluded:

(i) In no event shall the Grantee expend or request reimbursement from Federal-share funds for obligations entered into or for costs incurred or accrued prior to the effective date of this grant.

(ii) Funds budgeted under this grant may not be used for entertainment expenses or to fund political activities.

(iii) Funds budgeted under this grant may not be used to pay for capital assets, the purchase of real estate or vehicles, improve or renovate office space, or repair and maintain privately-owned property.

(iv) Recruit applications for FmHA's water and waste disposal loan and/or grant program.

(v) Duplicate current services, replacement, or substitution of support previously provided.

(b) Grant funds shall not be used to replace any financial support previously provided for or assured from any other source. The Grantee agrees that the general level of expenditure by the Grantee for the benefit of program area and/or program covered by this agreement shall be maintained and not reduced as a result of the Federal share funds received under this grant.

4. Grant funds will be disbursed by FmHA on a reimbursement basis not to exceed one advance every 30 days. The financial management system of the recipient organization shall provide for effective control over and accountability for all funds, property and other assets.

(a) As needed, but not more frequently than once every 30 days, an original and one copy of Standard Form (SF) 270, "Request for Advance or Reimbursement" may be submitted to FmHA.

(b) Grantee shall provide satisfactory evidence to FmHA that all officers of Grantee organization authorized to receive and/or disburse Federal funds are covered by such bonding and/or insurance requirements as are normally required by the Grantee.

(c) Where the Grantee shall have claimed credit for contributions-in-kind to the total cost of allowable expenses, the evaluation of such contributions-in-kind shall be subject to reevaluation by the Grantor at any time, and any deficiency so determined by the Grantor shall be compensated by supplemental contributions by the Grantee as a condition for further disbursements by the Grantor. Specific procedures for establishing the value of in-kind contributions from third parties established in OMB Circular A–110 will govern such an evaluation. Principles for determining cost are set forth in OMB Circular A–122 and will be used in cost evaluation.

(d) If for any reason grant funds are invested, income earned on such investments shall be identified as interest income on grant funds and forwarded to the Finance Office, FmHA, St. Louis, Missouri.

5. The Grantee will submit Performance and Financial reports as indicated below:

(a) Quarterly, an original and one copy of SF 269, "Financial Status Report," SF 272, "Federal Cash Transactions Report," (due 15 working days after end of quarter) and a Project Performance report according to the schedule below:

Period *Date Due*

(b) Final, an original and 1 copy of SF 269, and a Project Performance report according to the schedule below:

Due Date

Note.—Final reports may serve as the last quarterly reports.

(c) The original and 1 copy of reports and forms are to be submitted to the Administrator, Farmers Home Administration, Washington, D.C. 20250.

6. The budget covered by this agreement is:

(a) Federal Contribution $ _____

Grantee Contribution:

Cash _____

In-kind _____

Total $ _____

(b) Budget.

Budget categories	Federal funds	Non-Federal share		Total
		Cash	In-Kind	
Direct charges:				
1. Personnel	$	$		$
2. Fringe benefits				
3. Travel				
4. Equipment				
5. Supplies				
6. Contractual				
7. Other				
Total Direct Charges	$			
Totals	$	$		$

(c) In accordance with OMB Circular A–122, compensation for employees will be considered reasonable to the extent that such compensation is consistent with that paid for similar work in order activities of the State or local government.

(d) In accordance with OMB Circular A–110, Attachment J, transfers among direct cost budget categories of more than 5 percent of the total budget must have prior written approval by the Administrator, Farmers Home Administration.

7. Grantee responsibility.

(a) The scope of work is described in the attached Exhibit 1. The Grantee accepts responsibility for providing technical assistance and/or establishing and implementing a training program as set forth in scope of work. The Grantee shall:

(i) Identify and evaluate solutions to water and waste disposal problems in rural areas.

(ii) Provide technical assistance and/or training to improve operation and maintenance of water and waste disposal facilities in rural areas.

(iii) Assist rural communities that have decided to submit an application for the FmHA Water and Waste Disposal grant program in preparing such application.

(iv) Provide continuing information to FmHA on the status of Grantee programs, projects, related activities, and problems.

(b) The Grantee shall inform the Grantor as soon as the following types of conditions become known:

(i) Problems, delays, or adverse conditions which materially affect the ability to attain program objectives, prevent the meeting of time schedules or goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated, and any Grantor assistance needed to resolve the situation.

(ii) Favorable developments or events which enable meeting time schedules and

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goals sooner than anticipated or producing more work units than originally projected.

Part B

Grantee agrees:

1. To comply with property management standards established by Attachment N of OMB Circular A–110 for expendable and nonexpendable personal property. "Personal property" means property of any kind except real property. It may be tangible—having physical existence—or intangible—having no physical existence, such as patents, inventions, and copyrights. "Nonexpendable personal property" means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. A Grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above. "Expendable personal property" refers to all tangible personal property other than nonexpendable property. When nonexpendable tangible property is acquired by a Grantee with project funds, title shall not be taken by the Federal Government but shall be vested in the Grantee subject to the following conditions:

(a) Right to transfer title. For items of nonexpendable personal property having a unit acquisition cost of $1,000 or more, FmHA may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such reservation shall be subject to the following standards:

(i) The property shall be appropriately identified in the grant or otherwise made known to the Grantee in writing.

(ii) FmHA shall issue disposition instructions within 120 calendar days after the end of the Federal support of the project for which it was acquired. If FmHA fails to issue disposition instructions within the 120 calendar day period, the Grantee shall apply the standards of Part B1. (b) and (c) of this exhibit.

(iii) When FmHA exercises its right to take title, the personal property shall be subject to the provisions for federally owned nonexpendable property discussed in Part B 1. (b) and (c) of this exhibit.

(iv) When title is transferred either to the Federal Government or to a third party and the Grantee is instructed to ship the property elsewhere, the Grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage cost incurred.

(b) Use of other tangible nonexpendable property for which the Grantee has title.

(i) The Grantee shall use the property in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When it is no longer needed for the original project or program, the Grantee shall use the property in connection with its other Federally sponsored activities, in the following order of priority:

(*1*) Activities sponsored by FmHA.

(*2*) Activities sponsored by other Federal agencies.

(ii) Shared use. During the time that nonexpendable personal property is held for use on the project or program for which it was acquired, the Grantee shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. First preference for such other use shall be given to projects or programs sponsored by FmHA; second, preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by FmHA. User charges should be considered if appropriate.

(c) Disposition of other nonexpendable property. When the Grantee no longer needs the property as provided in Part B 1. (b) of this exhibit, the property may be used for other activities in accordance with the following standards:

(i) Nonexpendable property with a unit acquisition cost of less than $1,000. The Grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(ii) Nonexpendable personal property with a unit acquisition cost of $1,000 or more. The Grantee may retain the property for other use provided that compensation is made to FmHA or its successor. The amounts of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to current fair market value of the property. If the Grantee has no need for the property and the property has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

(iii) FmHA shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the Federal Property Management Regulations (FPMR), to the General Services Administration by FmHA to determine whether a requirement for the property exists in other Federal agencies. FmHA shall issue instructions to the Grantee no later than 120 days after the Grantee request and the following procedures shall govern:

(*1*) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the property and reimburse FmHA an amount computed by applying to the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share $100 or ten percent of the proceeds, whichever is greater, for the Grantee's selling and handling expenses.

(*2*) If the Grantee is instructed to dispose of the property other than as described in Part B 1. (b) and (c) of this exhibit, the Grantee shall be reimbursed by FmHA for such costs incurred in its disposition.

(*3*) Property management standards for nonexpendable property. The Grantee's property management standards for nonexpendable personal property shall include the following procedural requirements:

(*a*) Property records shall be maintained accurately and shall include:

(*i*) A description of the property.

(*ii*) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(*iii*) Sources of the property including grant or other agreement number.

(*iv*) Whether title vests in the Grantee or the Federal Government.

(*v*) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(*vi*) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the Federal Government.)

(*vii*) Location, use and condition of the property and the date the information was reported.

(*viii*) Unit acquisition cost.

(*ix*) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a Grantee compensates the Federal agency for its share.

(*b*) Property owned by the Federal Government must be marked to indicate Federal ownership.

(*c*) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The Grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(*d*) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss; damage, or the theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the Grantee shall promptly notify FmHA.

(*e*) Adequate maitenance procedures shall be implemented to keep the property in good condition.

(*f*) Where the Grantee is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

(*g*) Expendable personal property shall vest in the Grantee upon acquisition. If there is a residual inventory of such property exceeding $1,000 in total aggregate fair market value, upon termination or completion of the grant and if the property is not needed for any other federally sponsored project or program, the Grantee shall retain the property for use on nonfederally sponsored activities, or sell it, but must in either case compensate the Federal Government for its share. The amount of compensation shall be computed

in the same manner as nonexpendable personal property.

2. To provide Financial Management Systems which will include:

(a) Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

(b) Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used soley for authorized purposes.

(d) Accounting records supported by source documentation.

3. To retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee which are pertinent to the specific grant program for the purpose of making audit, examination, excerpts, and transcripts.

4. Provide an audit report prepared in accordance with OMB Circular A–110, Attachment F, within 90 days after project completion.

5. To account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes. See Part A 4.(d) of this exhibit.

6. Not to encumber, transfer, or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in Part B 1 of this exhibit.

7. To provide Grantor with such periodic reports as it may require of Grantee operations by designated representative of the Grantor.

8. To execute Form FmHA 400–1, "Equal Opportunity Agreement," Form FmHA 400–4, "Assurance Agreement," and to execute any other agreements required by Grantor to implement the civil rights requirements.

9. That, upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will to the extent legally permissable, repay to the Grantor forthwith the original principal amount of the grant stated herein above, with interest accruing thereon from the date of default at the market rate for water and waste disposal loan assistance in effect on the date hereof or at the time the default occurred. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by the Grantor, at its option and without regard to: (a) Prior waivers by it of previous defaults of Grantee, (b) by judicial proceedings to require specific performance of the terms of this Grant Agreement, (c) by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and, (d) the laws and regulations under which this grant is made.

10. That no member of Congress shall be permitted any share or part of this grant or any benefit that may arise therefrom; but this provision shall not be construed to bar as a contractor under the Grant a private nonprofit organization whose membership might include a member of Congress.

11. That all nonconfidential information resulting from its activities shall be made available to the general public on an equal basis.

12. That the purpose and scope of work for which this grant is made shall not duplicate programs for which monies have been received, are committed, or are applied for from other sources, public and private.

13. That the Grantee shall relinquish any and all copyrights and/or privileges to the materials developed under this grant, such material being the sole property of the Federal Government. In the event anything developed under this grant is published in whole or in part, the material shall contain notice and be identified by language to the following effect: "The material is the result of tax-supported research and as such is not copyrightable. It may be freely reprinted with the customary crediting of the source."

14. That the Grantee shall abide by the policies promulgated in OMB Circular A–110, Attachment O, which provides standards for use by Grantees in establishing procedures for the procurement of supplies, equipment, and other services with Federal grant funds.

15. To the following termination provisions:

(a) *Termination for cause.* The Grantor agency may terminate any grant in whole, or in part, at any time before the date of completion, wherever it is determined that the Grantee has failed to comply with the conditions of the grant. The Grantor agency shall promptly notify the Grantee in writing of the determination and the reasons for the termination, together with the effective date. Grants can be terminated for cause such as: failure to use funds for authorized purposes, poor progress, untimely reports, no progress, and failure to properly account for expenditures or property.

(b) *Termination for convenience.* The Grantor agency or Grantee may terminate grants in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The Grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Grantor agency shall allow full credit to the Grantee for the Federal share of the noncancelable obligations, properly incurred by the Grantee prior to termination. Disposition of expandable and nonexpendable personal property will be in accordance with the standards of Part B1. of this exhibit.

16. As a condition of this grant or Cooperative Agreement, the recipient assures and certifies that it is in compliance with and will comply in the course of the Agreement with all applicable laws, regulations, Executive Orders and other generally applicable requirements, including those set out in 7 CFR 3015.205b, which hereby are incorporated in this Agreement by reference, and such statutory provisions as are specifically set for herein.

Part C

Grantor Agrees:

1. That it will assist Grantee, within available appropriations , with such technical assistance as Grantor deems appropriate in planning the project.

2. That at its sole discretion, Grantor may at any time give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (a) advisable to further the purposes of the grant or to protect Grantor's financial interest therein, and (b) consistent with both the statutory purposes of the grant and the limitations of the statutory authority which it is made.

This agreement is subject to current Grantor regulations and any future regulations not inconsistent with the express terms hereof.

Grantee on _____ 19 ____ has caused this agreement to be executed by its duly authorized _____ and attested and its corporate seal affixed by its duly authorized _____.

Attest:

Grantee

_____

By _____

(Title)

Grantor

United States of America

Farmers Home Administration

By _____

_____

(Title)

Dated: January 28, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 87–2137 Filed 2–3–87; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Issuance or Amendment; Power Reactor License or Permit Following Initial Decision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission proposes to amend its regulation that specifies when a license, permit, or amendment can be issued following an initial adjudicatory decision resolving all issues before the presiding officer in favor of authorizing the issuance or amendment of a license or permit. Changes are proposed to simplify and clarify the existing rule and to delete language in the regulation emanating from Three Mile Island-related regulatory policies, action upon which has now been completed. This proposed rule supersedes two prior proposed rules entitled "Possible Amendments to 'Immediate Effectiveness' Rules," published May 22, 1980 (45 FR 34279), and "Commission Review Procedures for Power Reactor Construction Permits; Immediate Effectiveness Rule," published October 25, 1982 (47 FR 47260).

DATES: Comment period expires April 6, 1987. Comments received after this date will be considered if practicable to do so, but assurance of consideration can be given only for comments filed on or before that date.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch. Hand deliver comments to: Room 1121, 1717 H Street, NW., Washington, DC, between 8:15 a.m. and 5:00 p.m.

Examine comments received at: The NRC Public Document Room, 1717 H St., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul Bollwerk, Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 202–634–3224.

SUPPLEMENTARY INFORMATION:

I. Introduction

Prior to the March 1979 accident at Three Mile Island, Unit 2 (TMI–2), 10 CFR 2.764 authorized the Director of Nuclear Reactor Regulation to issue construction permits, operating licenses, and amendments to such permits and licenses immediately following the issuance of a favorable Atomic Safety and Licensing Board decision on a pending application without regard to whether an administrative appeal was filed. Shortly after the accident, however, the Commission recognized that the various investigations into the accident were likely to result in significant changes in the Commission's regulatory policy and in power reactor licensing procedures, making the previous "immediate effectiveness" practice inappropriate. 44 FR 58559 (October 10, 1979). To ensure that such changes were incorporated properly into the licensing process, the Commission provided in a new Appendix B to 10 CFR Part 2 that no initial decision authorizing issuance of a nuclear power reactor construction permit, limited work authorization, or operating license could become "effective," in the sense that the permit or license may then be issued by the Director of the appropriate NRC staff office, prior to Atomic Safety and Licensing Appeal Board and Commission "effectiveness" reviews (44 FR 65249 (November 9, 1979)). In addition, in the new Appendix B, the Commission set forth a general statement of policy on the implications of the TMI–2 accident for Licensing and Appeal Board interpretation of regulations and regulatory policy. *Id.* Eventually these revised effectiveness procedures and the TMI-related guidance were incorporated into the language of § 2.764 (46 FR 28627 (May 28, 1981)).

On the basis of the experience gained in reviewing operating license decisions subsequent to the TMI–2 accident, the Commission thereafter revised its practice relating to the effectiveness of operating license initial decisions. For instance, under current regulations review by an Appeal Board is no longer included as part of the effectiveness review procedure for full-power operating license decisions. 10 CFR 2.764(f). Also, prior agency practice applicable to operating license decisions now has been reinstated partially in that decisions regarding fuel loading and low power testing are again immediately effective. *Id.* 2.764(f)(1) (published at 46 FR 47764 (September 30, 1981)).

In addition to these regulatory changes, the Commission has put forth several rulemaking proposals to revise the existing scheme for the effectiveness of initial decisions regarding construction permits. These proposals were designed to deal with a number of concerns, including whether review of site-related issues in potentially troublesome cases should be advanced before large sums of money are committed and construction sites are altered irrevocably. (45 FR 34279 (May 22, 1980) and 47 FR 47260 (October 25, 1982)).

After reviewing again the operation of its current effectiveness provisions and the outstanding rulemaking proposals, the Commission believes that further revisions are appropriate.

II. Proposed Revisions to "Immediate Effectiveness" Rule

A. General Provisions on Issuance of Licenses and License Amendments Following a Favorable Initial Decision

Under existing paragraph (a) of § 2.764, subject to certain stated exceptions, an initial decision rendered in a formal adjudicatory proceeding conducted under 10 CFR Part 2, Subpart G, supporting the issuance or amendment of a construction permit, a construction authorization, or an operating license is immediately effective. The exceptions are (1) an authorization under 10 CFR Part 72 allowing construction and operation of an independent spent fuel storage installation, (2) certain authorizations under 10 CFR Part 60 regarding any high-level radioactive waste storage facility, (3) an authorization regarding issuance of a construction permit or operating license for power reactors under 10 CFR Part 50, (4) any instance when a presiding officer finds that good cause exists why the initial decision should not become immediately effective, and (5) any special circumstance in which the Commission issues an order to the contrary. Further, except in instances covered by these exceptions, under paragraph (b) of § 2.764, the Director of the NRC staff office with delegated jurisdiction over the subject matter of the application is to issue the permit, license, or amendment within ten days of an initial decision favorable to issuance.

The major substantive changes in § 2.764 that are now proposed, and that are discussed more fully in section II.B., concern initial decisions relating to construction permits and operating licenses that are covered in paragraphs (e) and (f) of the current rule. In addition, some clarifying revisions have been made to the other provisions of the existing rule that require explanation.

The language of paragraph (a) and other portions of the proposed rule have been revised to clarify the relationship between the presiding officer's initial decision and issuance of a license. The proposed rule would indicate that an initial decision only serves to resolve those issues pending before the presiding officer; though a necessary step toward issuance of a license in adjudicated cases, an initial decision does not itself constitute the issuance of a license or an amendment. The act of issuing a license or amendment is ultimately within the province of the Director of the appropriate NRC staff office under authority delegated by the Commission. *See, e.g.*, 10 CFR 2.760a, 50.50, 50.92(a). Such issuance takes place only after the Director has made all the appropriate findings required by the Atomic Energy Act and agency regulations on the basis of the presiding officer's decision on contested matters and the staff's review of other matters. The provisions of the proposed rule have been revised to emphasize this distinction.

Under the proposed rule, an initial decision by a Licensing Board that resolves all contested issues in favor of an applicant is "immediately effective" in the sense that a necessary step toward license issuance has been taken. But the proposed rule also would add language to paragraph (a) to make it clear that a stay order issued in accordance with § 2.788 would suspend the effectiveness of any initial decision, thereby blocking license issuance until the stay is lifted. The proposed rule would continue to indicate that the Commission itself can issue an order suspending the effectiveness of an initial decision.

The Commission further proposes to make certain clarifying changes relating to the other stated exceptions to the general rule in § 2.764(a) that an initial decision resolving all issues in favor of authorizing the issuance of a license is immediately effective. The rule as proposed continues the existing references to Part 72 and Part 60 proceedings as exceptions to immediate effectiveness under paragraphs (c) and (d). In addition, incorporated into paragraph (d) of the proposed rule is the language of existing § 2.765 relating to low-level waste disposal licensed under 10 CFR Part 61. Retaining § 2.765 as a separate provision is unnecessarily duplicative.

Under paragraph (b), a Director's authority to issue a license subsequent to an initial decision will continue to be subject to the existing exceptions as well as an additional exception in paragraph (e), which sets forth the particular practice relating to a Director's issuance of a full-power operating license for a reactor. Existing § 2.764(b) nonetheless has been revised to indicate that license issuance by the Director is to occur promptly after the Director is able to make the appropriate licensing findings. This reference to the Director's licensing findings is another explicit recognition that certain additional findings are a prerequisite to license issuance even after entry of an initial decision that resolves in the applicant's favor all contested issues raised in an adjudicatory proceeding.

B. Initial Licensing Decisions Regarding Reactor Construction Permits and Operating Licenses

Under the existing § 2.764(e)(2), a Licensing Board's initial decision supporting issuance of a construction permit cannot become effective until an Appeal Board, in accordance with 10 CFR 2.788, decides any stay motion filed or, if no such motion is submitted, makes its own determination about whether a stay should be granted. The Appeal Board has sixty days within which to make its determination. In addition, under § 2.764(e)(3), an initial decision on a construction permit cannot become effective until the Commission, of its own accord, has reviewed and issued a decision on the Appeal Board's determination on whether a stay should be granted. This is to be completed within twenty days of receipt of the Appeal Board's decision but, in any event, the initial decision will not become effective until the Commission issues its determination.

Under the revisions now proposed to § 2.764, the language of paragraph (e) of existing § 2.764 would be deleted entirely and paragraphs (a) and (b) would be worded to indicate that initial decisions regarding construction permits are excluded from the immediate effectiveness provision altogether. Although the Commission's notices of proposed rulemaking published in 1980 and 1982 discussed several possible revisions of the existing procedures, the Commission does not believe that further consideration of those proposals at this time would be fruitful. The outstanding rulemaking proposals and the comments thereon are dated and would not provide the best foundation for further Commission consideration of appropriate regulatory changes. Moreover, there currently are no construction permit applications pending with the Commission nor have any been filed for the past several years, making Commission consideration of the matter somewhat academic. Nonetheless, given the Commission's general concern that existing effectiveness procedures need to be revised, retaining the present provision would be misleading and somewhat inconsistent. The Commission thus has decided simply to remove power reactor construction permit initial decisions from § 2.764. However, the Commission has directed the NRC staff to undertake consideration of how the effectiveness of initial decisions on such permits should be handled in the context of staff's ongoing review of appropriate licensing procedures for standardized reactor design applications.[1]

Under the existing § 2.764(f), an initial decision regarding a license to operate a power reactor above five percent rated power cannot become effective until the Commission, on its own motion, has issued a decision that a stay of effectiveness is not necessary. Absent such an affirmative Commission decision, which is to be issued within thirty days of Commission receipt of the Licensing Board's decision, the initial decision will not become effective. The proposed rule does not retain the requirement that the Commission itself make an affirmative determination that an initial decision favorable to the applicant should become effective during the period when formal review of the initial decision is ongoing. Consistent with the foregoing discussion, such initial decisions will become effective immediately upon issuance.

Such a decision by itself, however, will not be sufficient to authorize the Director of Nuclear Reactor Regulation to issue a full-power license. As is indicated in paragraph (e)(1), in the exercise of its inherent supervisory power over proceedings conducted by its adjudicatory boards, *see Public Service Co. of New Hampshire* (Seabrook Station, Units 1 and 2), CLI–77–8, 5 NRC 503, 516–17 (1977), the Commission will undertake its own supervisory examination of the matters contested before the Licensing Board to determine if any cause exists for suspending the effectiveness of the Licensing Board's initial decision. As paragraph (e)(1) indicates, this supervisory examination is to be finished prior to issuance of a license authorizing operation above five percent of rated power, and notification that it has been completed must be received by the Director before license issuance. While the conduct of this supervisory examination is a prerequisite to issuance of such a license, the Commission need not reach or announce any affirmative decision on contested matters, and generally will not do so, unless the Commission concludes from

[1] In the absence of a particular rule, the Commission could establish effectiveness procedures for construction permit decisions on a case-by-case basis if necessary. *See West Chicago v. NRC*, 701 F.2d 632, 646–47 (7th Cir. 1982). If circumstances so justified, the procedures could provide for the immediate effectiveness of an initial decision on a construction permit application.

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the examination that Commission intervention in the adjudicatory process is appropriate.

In the course of its supervisory examination of contested matters the Commission intends to consider all pertinent information relating to facility operation, including information on ongoing investigations. Since this supervisory examination is not in any way a part of the adjudicatory proceeding, the ex parte and separation of functions constraints applicable to communications to the Commission during adjudications would not be applicable to bar Commission consideration of any investigation information. Also, because its supervisory examination is not a part of the adjudicatory proceeding, the Commission will not entertain unsolicited comments or requests from the parties concerning its supervisory examination. Rather, as § 2.764(e)(1) suggests, any party wishing to stay the effectiveness of an initial decision in order to preclude license issuance should file a motion with the presiding officer, the Appeal Board, or the Commission in accordance with 10 CFR 2.788.

In addition to a supervisory examination of contested issues under proposed § 2.764(e)(2), prior to issuance of a license authorizing operation above five percent of rated power the Commission will consider the NRC staff's reviews relative to those matters that were not contested before the Licensing Board but nonetheless must be the subject of appropriate findings by the Director in accordance with 10 CFR 50.57(a) before a license can issue. *See* 10 CFR 2.760a. Under proposed paragraph (e)(2), the Commission will issue a notification that it has completed its review of the NRC staff's findings on uncontested issues and a determination that those findings provide an appropriate basis for issuance of the license. Only after this Commission authorization is given will the Director be able to issue a license for operation above five percent of rated power.

As § 2.764(e) states, it is the Commission's intention that its supervisory examination of contested matters and its review of uncontested issues be completed prior to the time a facility is ready for operation above five percent of rated power. To ensure that the Commission can do so in a timely manner, paragraph (e)(3) of the rule imposes upon the Director the responsibility to keep the Commission informed of the expected date when the facility involved will be ready for full-power operation. Because it is the Commission's intention that, absent unusual circumstances, a full-power license should not be issued until shortly before a facility is ready for full-power operation, the Director's representations will provide the timetable for Commission completion of its supervisory examination of contested issues under paragraph (e)(1) and its review of uncontested issues under paragraph (e)(2).

Finally, proposed paragraph (e)(4) indicates that, in the event the Commission determines on the basis of its supervisory examination of contested issues or its review of uncontested issues that Commission action is necessary, any suspension of the effectiveness of the Licensing Board's decision or substantial postponement of the Director's issuance of the license will include a written statement of the reasons for that suspension or postponement. That suspension or postponement will not be open ended, but instead will be limited to such period as is necessary for the Commission to accept appropriate submissions from the applicant, the NRC staff, and any other party to the licensing proceeding with respect to any contested issue or from the applicant with respect to any uncontested issue and to resolve the issues.

Under this proposed procedure for full-power operating licenses, judicial review of the issuance of a license following an initial decision will be appropriate only in two circumstances: (1) Upon final agency action on a stay motion filed in accordance with § 2.788 or (2) upon the completion of the process of agency appellate review of an initial decision. Any other attempt to seek judicial review regarding an initial decision authorizing operation will be challenged by the agency for failure to exhaust administrative remedies. Moreover, with regard to the first circumstance, the appropriate subject of any judicial challenge to final agency action on a stay motion would be the propriety of the agency's determination to issue or withhold a stay, not the merits of the initial decision for which the stay is sought.

C. TMI-Related Provisions

As was noted earlier, the Commission has provided the Licensing and Appeals Boards with guidance on how to factor into the adjudicatory process the various regulatory changes resulting from the TMI–2 accident. Paragraphs (e)(1)(ii) and (f)(1)(ii) of existing § 2.764 direct the Licensing Boards that in considering construction permit or operating license applications they should "interpret existing regulations and regulatory policies with due consideration to the implications for those regulations and policies of the Three Mile Island Accident." A similar reminder is given to the Appeal Boards under § 2.764(e)(2)(ii) with regard to their consideration of construction permit stay requests. Further, paragraph (f)(1)(ii) relating to Licensing Board consideration of operating license applications states that "[i]n this regard it should be understood that as a result of [TMI-related] analyses under way the Commission may change its present regulations and regulatory policies in important respects and that compliance with existing regulations may turn out to no longer warrant approval of a license application."

While the Commission remains acutely aware of the need for this agency and the nuclear industry to remain alert to the implications an consequences of the TMI–2 accident, nonetheless the specific Commission guidance provided in § 2.764 and various Commission policy statements relating to the litigation of TMI-related issues has become superfluous. In the six years since the accident, the agency has identified various "lessons learned" from the TMI–2 accident, which are embodied in NUREG–0737, "Clarificaiton of TMI Action Plan Requirements."[2] It has implemented changes to update regulatory requirements on the basis of these "lessons" through specific license conditions, orders, and regulations. *See, e.g.*, 10 CFR 50.44 (hydrogen control); 50.47, 50.54(s), and Appendix E to Part 50 (emergency planning); 50.54(w) (property insurance); Part 55 (operator training). The NRC staff has advised the Commission that all applicable NUREG–0737 action items are covered by regulatory changes and that a license applicant's compliance with existing regulations is a sufficient response to all applicable TMI–2 accident "lessons learned." As a result, the Commission has reassessed a number of its existing policy statements on TMI-related requirements and will be publishing a notice that rescinds previous superseded policy statements and sets forth the Commission's updated policy on litigation of TMI-realted issues. Further, the Commission proposes this notice to delete the references to TMI–2 action items in existing § 2.764(e)(1)(ii), (e)(2)(ii), (f)(1)(ii).

[2] NUREG-series reports referenced in this document are available for inspection and copying for a fee in the NRC Public Document Room, 1717 H Street, NW., Washington, DC. These reports may be purchased from the U.S. Government Printing Office by calling 202–275–2060 or by writing this office at P.O. Box 37082, Washington, D.C. 20013–7082. They also may be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Additional Views of Commissioner Bernthal

For several years it has been Commission practice to convene a pubic meeting before a nuclear power plant license issues. At that meeting, NRC technical staff, the applicant, and other interested parties are given the opportunity to comment on whether the Commission should permit "immediate effectiveness" of any Licensing Board decision authorizing full power operation for a commercial nuclear power plant. Generally speaking, following presentations from interested parties, the Commission publicly votes on the question of whether or not a license should issue.

This proposed rule suggests that such meetings no longer be held. Instead, the Commission would conduct a supervisory examination of contested issues and a review of uncontested matters to determine whether the Licensing Board's decision should be suspended or not. Via written public notice, the Commission would then simply communicate the results of its review to the Director of Nuclear Reactor Regulation.

The public may wish to consider the question of whether the Commission should continue its past practice of holding open meetings as described above, or whether the procedure outlined in this proposed rule adequately serves public interest in the results of the Commission's supervisory review of any issues that may be associated with an application for a full-power license.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Review

This proposed rule contains no new or amended information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C., 3501 *et seq.*).

Regulatory Analysis

The existing requirements governing the effectiveness of initial decisions regarding construction permits and full-power operating licenses act to delay automatic issuance of a license following a Licensing Board's favorable initial decision until such time as the Appeal Board or the Commission has had an opportunity to review and make an affirmative determination about whether the decision should become effective. The alternative put forth in this proposed rule with regard to full-power operating license initial decisions reduces the potential for administrative delay inherent in the existing process while ensuring that mechanisms are available, whether in the form of stay requests filed under 10 CFR 2.788 or through the Commission's supervisory examination or review detailed in proposed § 2.764(e)(1), (2), to postpone license issuance in appropriate circumstances.

Some revision of the existing requirements for construction permits also appears appropriate. However, there are no pending construction permit applications and none has been filed for several years. While the Commission could retain the existing immediate effectiveness provisions, this would create misleading inconsistencies with the proposed operating license effectiveness procedures. The Commission therefore proposes as an alternative the removal of construction permit initial decisions from § 2.764 with the expressed intent to revisit the issue of the appropriate effectiveness scheme after additional staff study.

Finally, the Commission's previous concern that the implications of the TMI–2 accident be incorporated appropriately into the licensing process has now been resolved. Retention of the TMI–2 related provisions of the current immediate effectiveness rule therefore is unnecessary and would be misleading to participants in NRC licensing proceedings. Deletion of those provisions also is proposed.

The proposed rule thus constitutes the preferred alternative and the cost involved in its promulgation and application is necessary and appropriate. The foregoing discussion constitutes the regulatory analysis for the proposed rule.

Backfit Analysis

This proposed rule does not modify or add to systems, structures, components, or design of a facility; the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct, or operate a facility. Accordingly, no backfit analysis pursuant to 10 CFR 50.109(c) is required for this proposed rule.

Regulatory Flexibility Certification

The proposed rule will not have a significant economic impact upon a substantial number of small entities. Entities seeking construction permits or Commission operating licenses that would be subject to the revised immediate effectiveness provisions would not fall within the definition of small businesses found in section 34 of the Small Business Act, 15 U.S.C. 632, the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121, or the NRC's size standards published December 9, 1985 (50 FR 50241). Further, intervenors who probably would fall within the pertinent Small Business Act definition will not encounter a significant economic impact from the proposed rule. While the proposed rule would no longer afford intervenors an opportunity to comment directly to the Commission on the issue whether an initial decision should be immediately effective, the economic costs of participating in NRC proceedings would not be affected since the rule merely redirects such comments to an Appeal Board under 10 CFR 2.788, the existing regulation governing stays. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the NRC hereby certifies that this rule, if promulgated, will not have a significant economic impact upon a substantial number of small entities.

List of Subjects in 10 CFR Part 12

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plant and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 2:

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073,

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2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200 through 2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600 through 2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Appendix A also issued under sec. 6, Pub. L. 91–580, 84 Stat. 1437 (42 U.S.C. 2135). Appendix A also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b *et seq.*).

2. Section 2.764 is revised to read as follows:

§ 2.764 Issuance or amendment of construction permit, construction authorization, or operating license following an initial decision.

(a) Pending review and final decision by the Commission, an initial decision resolving all issues before the presiding officer in favor of authorizing issuance or amendment of a construction permit (other than an initial decision regarding issuance of a power reactor construction permit), of a construction authorization, or of an operating license will be immediately effective upon issuance except—

(1) As provided in paragraphs (c) through (d) of this section;

(2) As provided in any order issued in accordance with § 2.788 that stays the effectiveness of an initial decision; or

(3) As otherwise provided by the Commission in special circumstances.

(b) The Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, notwithstanding the filing or pendency of an appeal pursuant to § 2.762 or a petition for review pursuant to § 2.786, promptly shall issue a construction permit, a construction authorization, or an operating license, or amendments thereto, following an initial decision resolving all issues before the presiding officer in favor of the licensing action (other than an initial decision regarding issuance of a power reactor construction permit) upon making the appropriate licensing findings, except—

(1) As provided in paragraphs (c) and (e) of this section;

(2) As provided in any order issued in accordance with § 2.788 that stays the effectiveness of an initial decision; or

(3) As otherwise provided by the Commission in special circumstances.

(c) An initial decision resolving all issues before the presiding officer in favor of authorizing the issuance of an initial license for the construction and operation of an independent spent fuel storage installation (ISFSI) under 10 CFR Part 72 of this chapter may not become effective until review by the Commission has been completed. The Director of Nuclear Material Safety and Safeguards may not issue an initial license for the construction and operation of an independent spent fuel storage installation (ISFSI) under 10 CFR Part 72 of this chapter until expressly authorized to do so by the Commission.

(d) An initial decision resolving all issues before the presiding officer in favor of authorizing the issuance of a construction authorization or license under Part 60 of this chapter (relating to disposal of high-level radioactive wastes in geologic repositories), of a license under Part 61 of this chapter (relating to land disposal of radioactive waste), or of any amendment to such an authorization or a license that authorizes actions that may significantly affect the health and safety of the public, becomes effective only upon order of the Commission. The Director of Nuclear Material Safety and Safeguards may not issue a construction authorization or a license under Part 60 of this chapter, a license under Part 61 of this chapter, or any amendment to such an authorization or a license that may significantly affect the health and safety of the public until expressly authorized to do so by the Commission.

(e)(1) Before the Director of Nuclear Reactor Regulation may issue a license for operation of a nuclear power reactor above five percent of rated power in accordance with paragraph (e)(2) of this section, the Commission, in the exercise of its supervisory authority over agency proceedings, shall undertake and complete a supervisory examination of those issues contested in the proceeding before the Licensing Board to consider whether there is any significant basis for doubting that the facility will be operated with adequate protection of the public health and safety, and whether the Commission should take action to suspend or to otherwise condition the effectiveness of a Licensing Board decision that resolves contested issues in a proceeding in favor of authorizing operation above five percent of rated power. This supervisory examination is not part of the adjudicatory proceeding and the parties to the proceeding have no right to file pleadings with the Commission with regard to this supervisory examination. The Commission shall notify the Director in writing when its supervisory examination conducted in accordance with this paragraph has been completed.

(2) Before the Director of Nuclear Reactor Regulation issues a license that authorizes operation above five percent of rated power, the Commission shall review those issues that have not been contested in the proceeding before the Licensing Board but about which the Director must make appropriate findings prior to the issuance of such a license. The Director shall issue a license for operation above five percent of rated power only after written notification from the Commission of its completion of its review under this paragraph and of its determination that it is appropriate for the Director to issue such a license. This Commission review of uncontested issues is not part of the adjudicatory proceeding and the parties to the proceeding have no right to file pleadings with the Commission concerning this review.

(3) So that the Commission can conduct its supervisory examination of contested issues under paragraph (e)(1) of this section and its review of uncontested issues under paragraph (e)(2) of this section in a timely manner, the Director of Nuclear Reactor Regulation shall keep the Commission informed of the date upon which the Director anticipates the facility will be ready for operation above five percent of rated power.

(4) No suspension of the effectiveness of a Licensing Board's initial decision or postponement of the Director's issuance of a license that results from a Commission supervisory examination of contested issues under paragraph (e)(1) of this section or a review of uncontested issues under paragraph (e)(2) of this section will be entered except in writing with a statement of the reasons. Such suspension or postponement will be limited to such period as is necessary for the Committee to resolve the matters at issue. If the supervisory examination results in a suspension of the effectiveness of the Licensing Board's initial decision under paragraph (e)(1) of this section, the Commission will take review of the decision *sua sponte* and further proceedings relative to the contested matters at issue will be in accordance with procedures for participation by the applicant, the NRC staff, or other parties to the Licensing Board proceeding established by the Commission in its written statement of reasons. If a postponement results from a review under paragraph (e)(2) of this section, comments on the uncontested matters at issue may be filed by the applicant within ten (10) days of service of the Commission's written statement.

§ 2.765 [Removed]

3. Section 2.765 is removed.

Dated at Washington, DC, this 29th day of January, 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87–2268 Filed 2–3–87; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–0595]

Bank Holding Companies and Change in Bank Control; Procedures Regarding Publication and Processing of Notices Filed Under the Change in Bank Control Act

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Reserve Board is proposing to amend Subpart E of its Regulation Y, section 225 of Title 12, Code of Federal Regulations, to implement certain amendments to the Change in Bank Control Act ("CBCA") made by section 1360 of the Anti-Drug Abuse Act of 1986, Pub. L. 99–570. Under this proposal, notificants under the CBCA would be required to publish, in a newspaper of general circulation in communities where the bank or bank holding company to be acquired is located, an announcement of the proposed acquisition no later than 10 calendar days after the notice has been accepted by the appropriate Federal Reserve Bank. The proposed regulation provides an exception to the publication requirement where disclosure would threaten the safety or soundness of the bank to be acquired. In addtion, publication may be delayed by the Board for good cause shown.

The proposed regulation also authorizes the Board to extend the period of time it has to consider a CBCA notice for up to two additional periods of 45 days each.

Finally, as required by the Anti-Drug Abuse Act, the proposed regulation states that the Board shall conduct an investigation of the competence, experience, integrity, and financial ability of each proposed acquiror and shall make an independent determination of the accuracy and completeness of the informaton submitted. A written report of the investigation will be prepared which will become part of the record.

DATE: Comments must be received by March 6, 1987.

ADDRESS: All comments, which should refer to Docket No. R–0595, should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to Room B–2223, 20th and Constitution Avenue NW., Washington DC, between 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in Room B–1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: J. Virgil Mattingly, Deputy General Counsel (202/452–3430), Scott G Alvarez, Senior Counsel (202/452–3583), Legal Division; or Sidney Sussan, Assistant Director (202/452–2638), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired *only*, Telecommunications Service for the Deaf, Earnestine Hill or Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

Under the CBCA, persons acting either individually or in concert to acquire control of any insured state member bank or bank holding company must provide the Board with 60 days prior written notice describing the proposed acquisition and containing certain information concerning the financial resources and background of the notificant. The transaction may proceed at the end of the 60-day period, unless the board disapproves the transaction or extends the notice period. An acquisition may proceed prior to the expiration of the 60-day review period if the Board issues a written statement of its intent not to disapprove the transaction.

On October 27, 1986, the President signed into law the Anti-Drug Abuse Act of 1986, Pub. L. 99–570. Section 1360 of this Act (hereinafter the "1986 Amendment") makes several amendments to the CBCA that necessitate a revision in the Board's implementing regulations.

Publication and Solicitation of Comments

Prior to the 1986 Amendment, the CBCA did not require notice to, or solicitation of comments from, the public in connection with a notice filed under the CBCA. The Board's regulation provided that the Board or the appropriate Reserve Bank could solicit information or views from any person, including any bank or bank holding company involved in the notice, and any appropriate state, federal or foreign governmental authority. (See 12 CFR 225.43(d)).

The 1986 Amendment provides that the appropriate Federal agency shall publish the name of the insured bank or bank holding company proposed to be acquired and the name of each person identified as a person by whom or for whom such acquisition is to be made, and solicit public comments on the proposed acquisition, in particular from persons in the geographic area where the bank to be acquired is located. Publication is not required if the agency determines in writing that such disclosure or solicitation would seriously threaten the safety or soundness of the bank or holding company to be acquired.

Regulations promulgated by both the Federal Deposit Insurance Corporation (12 CFR 303.4(b)) and the Office of the Comptroller of the Currency (12 CFR 5.50(h)) provide for the public disclosure and solicitation of comments by requiring the notificant to publish a disclosure statement in a newspaper serving the community where the head office of the bank to be acquired is located.

The Board is proposing to amend its regulation in a similar manner to require the person or persons seeking to acquire a bank or bank holding company to publish an announcement of the proposed acquisition in a newspaper of general circulation in the community in which the head office of the state member bank or bank holding company to be acquired is located and, in the case of a bank holding company, in each community in which the head office of a bank subsidiary of the holding company is located.

The newspaper announcement must contain the name of each proposed acquirer, the percentage of shares to be acquired, the name of each bank or bank holding company to be acquired, and, in the case of a bank holding company, the names of each of its subsidiary banks. The announcement must also state that any person wishing to comment on the proposed acquisition may do so by submitting written comments to the appropriate Reserve Bank within 20 calendar days of publication or such shorter period of time as the Board may prescribe in a particular case.

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As proposed, the announcement may be published no earlier than 10 calendar days before the CBCA notice if filed with the appropriate Reserve Bank and no later than 10 calendar days after the notice has been accepted by the Reserve Bank.

In addition to requiring newspaper publication by the notificant, the Board proposes to publish notice of filings made under the CBCA in the **Federal Register**, including the names of persons who propose to acquire control of a bank or bank holding company, the amount of shares to be acquired, and the names of all banks to be acquired. The Board proposes that the **Federal Register** notice permit a minimum period of 15 calendar days for public comment, unless the Board determines that the public requires shortening or waiving this comment period. The **Federal Register** notice will be published upon submission to the Reserve Bank of the CBCA notice.

The Board may dispense with public notice if it determines in writing that such publication and solicitation of comment would seriously threaten the safety or soundness of the bank or bank holding company to be acquired. Finally, the proposed regulation will provide that the publication requirement does not give any person standing to intervene in proceedings on the CBCA notice or to appeal or otherwise contest the Board's action regarding a notice.

Tender Offers

The Board notes that the FDIC and the OCC regulations provide that publications of a filing under the CBCA may be delayed for up to 34 days after the filing in the case of a proposed tender offer that requires notice under the CBCA and is simultaneously subject to the requirements of the Williams Act (15 U.S.C. 78m and 78n).[1]

The Board's proposed rule would permit the Board, in its discretion, to postpone, but not eliminate, the publication requirement under the CBCA for such period as the Board deems appropriate where an acquiring party requests such delay and confidential treatment of a CBCA notice.

Extension of Time For Disapproving Transactions

Prior to the 1986 Amendment, the CBCA authorized the appropriate federal agency to extend for up to 30 days the statutory period in which a proposed acquisition could be disapproved. The 1986 Amendment provides that, in addition to this 30-day extension, the appropriate agency may authorize two additional extensions of not more than 45 days each. In order to utilize this authority, the agency must determine that: (i) An acquiring party has not furnished all the information required under section 7(j)(8) of the CBCA (12 U.S.C. 1817(j)(8)); (ii) material information submitted is substantially inaccurate; (iii) an investigation of an acquiring party has not been completed because of inadequate cooperation or delay by the acquiring party; or (iv) additional time is needed to investigate and determine that no acquiring party has a record of failing to comply with the currency transaction reporting requirements of the Bank Secrecy Act, subchapter II of chapter 53 of title 31, United States Code.

The Board is proposing to amend § 225.43(c) of its regulations to reflect this change in the CBCA. If the Board acts under this authority to extend the time for disapproval beyond the initial 30-day extension, the proposed regulation requires the Board to notify the acquiring party of the reasons for such extension, including a statement of any information that is determined by the Board to be incomplete, inadequate, or inaccurate.

Investigation and Report

The 1986 Amendment requires the appropriate agency to conduct an investigation of the competence, experience, integrity, and financial ability of each person named in a notice of a proposed acquisition as a person by or for whom such acquisition is to be made, and to make an independent determination of the accuracy and completeness of the information required by the CBCA to be submitted to the agency. The agency is then required to prepare a written report of such investigation, which is to become part of the record. The Board is proposing to amend § 225.43(d) of its regulation to reflect this change in the law.

Interim Applicability

Because the amendments to the CBCA made by the Anti-Drug Abuse Act of 1986 are already effective, the Board will follow the procedures set out in the proposed regulation pending final action on the regulation.

Regulatory Flexibility Act

This proposal to provide for publication of notices filed under the CBCA implements specific statutory requirements recently imposed by the Anti-Drug Abuse Act of 1986. The CBCA generally requires persons seeking to acquire control of a bank or bank holding company to provide prior written notice to the appropriate federal banking agency, but imposes no requirements on the target bank or bank holding company itself. The proposal to publish notice of a proposed acquisition subject to the CBCA would likewise not impose any regulatory burden on banks or bank holding companies of any size that are the targets of a proposed change in control. The proposal would have the benefit, however, of providing such banks or bank holding companies notice of a proposed change of control and permitting an opportunity for such banks, bank holding companies, and other interested persons to provide comment and information regarding the proposal to the Board. Thus, the proposal is not expected to have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

The proposal would require persons proposing to acquire a bank or bank holding company in a transaction subject to the CBCA to publish notice of the proposed transaction in a newspaper of general circulation in communities served by the target bank or bank holding company and to provide the Board with verification of such publication. No additional reporting requirements or modification to existing reporting requirements are proposed.

List of Subjects in 12 CFR Part 225

Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements.

For the reasons set out in this notice, and pursuant to the Board's authority under section 13 of the Change in Bank Control Act (12 U.S.C. 1817(j)(13)), the Board proposes to amend 12 CFR Part 225 as follows:

PART 225—[AMENDED]

1. The authority citation for Part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1843(c)(8), 1844(b), 3106, 3108, 3907, and 3909.

2. The Board proposes to revise § 225.43(a) to read as follows:

§ 225.43 Procedures for filing, processing, publishing, and acting on notices.

(a) (1) *Filing notice.* A notice required under this subpart shall be filed with the appropriate Reserve Bank and shall contain the information required by paragraph 6 of the Change in Bank Control Act (12 U.S.C. 1817(j)(6)), or prescribed in the designated Board form. With respect to personal financial statements required by paragraph 6(B) of the Change in Bank Control Act, an individual may include a statement of assets and liabilities as of a date within 90 days of filing the notice, a brief income summary, and a description of any subsequent material changes, subject to the authority of the Reserve Bank or the Board to require additional information.

(2) *Acceptance of notice.* The 60-day notice period specified in § 225.41 of this subpart shall commence on the date all required information is received by the appropriate Reserve Bank or the Board. The Reserve Bank shall notify the person or persons submitting a notice under this subpart of the date all such required information is received and the notice is accepted for processing.

(3) *Publication.* (i) *Newspaper announcement.* A person(s) filing a notice under this subpart shall publish, in a form prescribed by the Board, an announcement soliciting public comment on the proposed acquisition. The announcement shall be published in a newspaper of general circulation in the community in which the head office of the state member bank to be acquired is located or, in the case of a proposed acquisition of a bank holding company, in the community in which its head office is located and in the community in which the head office of each of its subsidiary banks is located. The announcement shall be published no earlier than 10 calendar days prior to the filing of the notice with the appropriate Reserve Bank and no later than 10 calendar days after acceptance of the notice by the Reserve Bank. A copy of the announcement and the publisher's affidavit of publication shall be provided to the appropriate Reserve Bank.

(ii) *Contents of newspaper announcement.* The newspaper announcement shall state:

(A) The name of each person identified in the notice as a proposed acquiror of the bank or bank holding company and the percentage of shares proposed to be acquired;

(B) The name of the bank or bank holding company to be acquired, including, in the case of a bank holding company, the name of each of its subsidiary banks; and

(C) A statement that interested persons may submit comments on the notice to the Board of the appropriate Reserve Bank for a period of 20 days or such shorter period as may be provided pursuant to paragraph (a)(3)(v) of this section.

(iii) *Federal Register announcement.* The Board will, upon the filing of a notice under this subpart, publish announcement in the **Federal Register** of receipt of the notice. The **Federal Register** announcement will contain the information required under paragraphs (a)(3)(ii)(A) and (B) of this section and a statement that interested persons may submit comments on the proposed acquisition for a period of 15 days or such shorter period as may be provided pursuant to paragraph (a)(3)(v) of this section. The Board may waive publication in the **Federal Register** if the board determines that such action is appropriate.

(iv) *Delay of publication.* The Board may permit delay in the publication required under this paragraph if the Board determines, for good cause shown, that it is in the public interest to grant such a delay. Requests for delay of publication may be submitted to the appropriate Federal Reserve Bank.

(v) *Shortening or waiving notice.* In circumstances requiring prompt action, the Board may shorten the public comment period required under this paragraph. The Board may also waive the newspaper publication and solicitation of public comment requirements of this paragraph, or it may act on a notice before the expiration of a public comment period, if it certifies in writing that such disclosure of the notice or solicitation of public comment would seriously threaten the safety or soundness of the bank or bank holding company to be acquired.

(4) *Consideration of public comments.* In acting upon a notice filed under this subpart, the Board shall consider all public comments received in writing within the period specified in the newspaper or **Federal Register** announcement. At the Board's option, comments received after this period may, but need not, be considered.

(5) *Standing.* No person (other than the acquiring person) who submits comments or information on a notice filed under this subpart shall thereby become a party to the proceeding or acquire any standing or right to participate in the Board's consideration of the notice or to appeal or otherwise contest the notice or the Board's action regarding the notice.

* * * * *

3. The Board proposes to revise § 225.43(c)(2) to read as follows:

§ 225.43 Procedures for filing, processing, publishing, and acting on notices.

* * * * *

(c) * * *

(2) *Extensions of time period.* (i) The Board may extend the 60-day period in paragraph (c)(1) of this section for an additional 30 days by notifying the acquiring person(s).

(ii) The Board may further extend the period during which it may disapprove a notice for two additional periods of not more than 45 days each if the Board determines that:

(A) Any acquiring person has not furnished all the information required under paragraph (a) of this section;

(B) Any material information submitted is substantially inaccurate;

(C) It is unable to complete the investigation of an acquiring person because of inadequate cooperation or delay by that person; or

(D) Additional time is needed to investigate and determine that no acquiring person has a record of failing to comply with the requirements of the Bank Secrecy Act, subchapter II of Chapter 53 of Title 31, United States Code.

(iii) If the Board extends the time period under this paragraph, it shall notify the acquiring person(s) of the reasons therefor and shall include a statement of the information, if any, deemed incomplete or inaccurate.

* * * * *

4. The Board proposes to revise § 225.43(d) to read as follows:

§ 225.43 Procedures for filing, processing, publishing, and acting on notices.

* * * * *

(d) *Investigation and report.* (1) After receiving a notice under this subpart, the Board or the appropriate Reserve Bank shall conduct an investigation of the competence, experience, integrity, and financial ability of each person by and for whom an acquisition is to be made. The Board shall also make an independent determination of the accuracy and completeness of any information required to be contained in a notice under paragraph (a) of this section. In investigating any notice accepted under this subpart, the Board or Reserve Bank may solicit information or views from any person, including any bank or bank holding company involved in the notice, and any appropriate state,

[1] The tender offer regulations applicable to bank holding companies and to state member banks, 17 CFR 240.14(d) and 12 CFR 206.8, require that an offer remain open for at least 20 business days from the date the tender offer is first published, sent or given to security holders. Shares tendered or deposited pursuant to the offer may be withdrawn by a depositing shareholder at any time within the first 15 business days of the offering. (17 CFR 240.14(d)(7); 12 CFR 206.8(g)). Under the CBCA, a bidder may not purchase shares deposited in response to a tender offer in amounts exceeding the CBCA limits until the expiration of the review period unless notified by the Board at an earlier time that the acquisition may commence.

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federal, or foreign governmental authority.

(2) The Board or the appropriate Reserve Bank shall prepare a written report of its investigation, which shall contain, at a minimum, a summary of the results of the investigation.

* * * * *

Board of Governors of the Federal Reserve System, January 28, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-2067 Filed 2-3-87; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 523

[No. 87-111]

Membership in Federal Home Loan Banks

Dated: January 29, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is proposing to amend its Federal Home Loan Bank System Regulations to provide a method for determining appropriate Federal Home Loan Bank ("Bank") district membership for all institutions eligible to become Bank members. Under the amendment, an institution could be a member only in the Bank district in which it maintained its principal office, normally as shown in its charter, unless the Principal Supervisory Agent were to determine that membership was inconsistent with the actual location of control over the institution's records or operations. The amendment would eliminate an option that allows an institution to become a member of a Bank outside the district in which its home office is located by naming a state in which it does substantial business as its principal place of business in accordance with the provisions of 28 U.S.C. 1332(c). Institutions that have taken advantage of the current option could choose to be grandfathered, but would not be immune from future application of a procedure for the mandatory transfer of membership established in the proposal.

DATE: Comments must be received on or before April 6, 1987.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Jonathan Curtis, Program Analysis Development Division, Office of the District Banks, at (202) 377-6709; or Richard L. Little, Associate General Counsel, Corporate and Securities Division, Office of General Counsel, at (202) 377-6447, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: In relevant part, section 4(b) of the Federal Home Loan Bank Act ("Bank Act") provides: "An institution eligible to become a member . . . under this section may become a member only of, or secure advances from, the Federal Home Loan Bank of the district in which is located the institution's principal place of business . . . ." 12 U.S.C. 1424(b) (1982). Although an institution's location determines the Bank district in which membership would be appropriate, the operative term, "principal place of business," is not defined in the Bank Act.

For many years, the lack of statutory clarity had little significance. An institution was regarded as having its principal place of business in the jurisdiction in which it maintained offices. Since most institutions were limited to establishing offices in just one state, membership in only one Bank was normally available. In 1981, however, in response to a continuing need to resolve numerous severe supervisory cases, the Board instituted a policy of approving transactions that resulted in organizations with deposit-taking facilities in more than one state and, often, in more than one Bank district. The structures produced have come to include free-standing interstate savings institutions, interstate subsidiaries of unitary savings and loan holding companies, single-and multi-state subsidiaries of multiple savings and loan holding companies, and thrift institutions that are themselves holding company parents of multi-state organizations.

Late in 1982, primarily as a way of accommodating the business needs of the new class of interstate organizations, the Board added § 523.3-2 to the Regulations for the Federal Home Loan Bank System ("Bank System Regulations") (Board Res. No. 82-790, 47 FR 56314 (Dec. 12, 1982)). Section 523.3-2(b) permits an institution that does substantial business in more than one state to "designate as its principal place of business a state in which it could be deemed to have its principal place of business under the provisions of 28 U.S.C. 1332(c)." 12 CFR 523.3-2(b) (1986). The statutory reference is to a provision under which "a corporation shall be deemed a citizen of any State by which it has been incorporated and of any State where it has its principal place of business . . ." for purposes of determining jurisdiction of a Federal district court based on diversity of citizenship. 28 U.S.C. 1332(c) (1982). According to Board Res. No. 82-790, cases interpreting 28 U.S.C. 1332(c) provided "an acceptable standard and settled rule of law" for an institution that did substantial business in more than one state to determine its principal place of business and, as a result, choose a Bank district in many cases.

Contrary to fears expressed by some commenters in 1982, experience with § 523.3-2 of the Bank System Regulations has not revealed any serious abuses involving "Bank shopping" that can be traced to the choice of membership rule. Nevertheless, the Board now believes, on the basis of its experience, that the 1982 amendment possessed certain shortcomings from the standpoint of effective supervision of multi-state organizations. A measure that extends maximum business flexibility does not necessarily confer corresponding administrative benefits. Rather, the Board has become concerned by reports from its supervisory staff that the current system may impede, in some instances, its ability to obtain a complete picture of the operations of multi-state organizations. Books and records necessary for proper examination of individual institutions that are supposed to be run as independent entities may be maintained outside the districts of the Banks in which they are members. Managerial control also may be exercised at a distance. Under such circumstances, supervisory staffs at individual Banks find it extremely difficult, time-consuming, and costly to gather needed information and identify responsible management.

These problems, moreover, are not confined to institutions with an interstate presence. Some institutions located in single states actually are operated as branches of a larger, multi-state network, especially when the parents are themselves thrift institutions. In such cases, books, records, and managerial functions are also removed from the supervisory scrutiny of the Banks in which these institutions nominally are members.

In light of the unanticipated adverse effects that have arisen in the wake of the 1982 amendment, the Board is proposing to install a different method for determining an institution's principal place of business and its appropriate district Bank. According to the basic

rule established in the proposal, an institution's principal place of business would be the state in which its "principal office," as defined in 12 CFR 561.7, was located, that is, the institution's home office, established as such in conformity with the laws under which the insured institution is organized. Normally, the site would be specified in its charter. Institutions doing substantial business in more than one state would no longer enjoy the option of choosing their principal places of business unless they formally relocated their home offices.

The basic rule would prevail unless the Principal Supervisory Agent ("PSA") at the Bank in which the institution was a member were to designate a different state as its principal place of business based on any one of four factors indicating that control over its records or operations was lodged in the other state. In the event of a designation that would result in a principal place of business in another Bank district, the PSA would transmit a written notification of intent to order transfer of membership. If, within 90 days of the date of the notice, the institution did not take action to correct the conditions supporting the designation or explain why the designation was unjustified, the PSA could order transfer of membership to the appropriate Bank. No transfer would be effective until the PSAs of the Bank districts involved reached agreement on a method of orderly transfer. Absent an agreement, the Board could set the terms of the transfer.

Institutions whose memberships would not comply with the home office rule of the proposal because of a designation of a principal place of business made under current regulations could choose to be grandfathered but would not be immune from future application of the mandatory transfer process. Only institutions that have received specific Board approval to become members of adjoining Bank districts under section 4(b) of the Bank Act (12 U.S.C. 1424(b) (1982)) would be exempt. Transfers would be effective for all purposes including directoral representation under section 7(c) of the Bank Act (*Id.* Section 1427(c)) and § 522.23 of the Bank System Regulations (12 CFR 522.23 (1986)). They would not constitute withdrawals or removals from membership under section 6 of the Bank Act (12 U.S.C. 1426 (1982 & Supp. I 1983)) or § 523.30 and § 523.31 of the Bank System Regulations (12 CFR 523.30, 523.31 (1986)).

Coverage of the proposed amendments would not necessarily be limited to institutions maintaining offices in more than one jurisdiction. Even an institution with offices in a single state could be subject to mandatory transfer to a different Bank district if, in effect, it were being run as a branch operation of a multi-state organization based outside the institution's home office district.

Finally, the Board believes that, from the standpoint of conserving scarce administrative resources, adoption of the proposed amendments would be preferable to initiation of individual cease-and-desist proceedings to enforce compliance with various regulatory requirements. Problems readily susceptible to resolution at the local level could generally be handled without involvement of Washington staff. The object of the proposal is to ensure that the site where control of an institution is exercised and its records are maintained coincides with its principal place of business for Bank membership purposes. Achieving such a goal would greatly aid effective examination and supervision. The Board hopes that when institutions become aware of how seriously the shortcomings associated with supervision of multi-state organizations are viewed, many current difficulties may be resolved without resort to the mandatory Bank membership transfers that the proposed amendments contemplate.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the proposed rules.* These elements have been discussed elsewhere in the **SUPPLEMENTARY INFORMATION** regarding the proposal.

2. *Small entities to which the proposed rule would apply.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). Therefore, small entities to which the proposed rule would apply would be any of the 1,742 insured institutions, with assets totaling $100 million or less as of December 31, 1985, that are affiliated with organizations maintaining depository offices in more than one Bank district.

3. *Impact of the proposed rule on small entities.* The rule would impose no new recordkeeping or reporting requirements on any insured institution. The Board believes that the proposed rule would not have a significant economic impact on small institutions.

4. *Overlapping or conflicting federal rules.* Other than a rule relating to directoral representation in 12 CFR 522.23, which would be incorporated in the proposed procedures, the Board has no rules prescribing the location of a member institution's principal place of business other than that contained in 12 CFR 523.3-2 which would be amended by the proposed regulation.

5. *Alternatives to the proposed rule.* There are no alternatives, other than commencement of individual enforcement actions, that would achieve the Board's objectives.

The Board is providing a 60-day comment period for this rule. Comment is invited on all aspects of the proposal, including the appropriateness and effect of the proposed changes, and any additional or alternative measures that would serve the goals of the Board as outlined in the proposal.

List of Subjects in 12 CFR Part 523

Federal home loan banks, Flood insurance, Mortgage, and Reporting and recordkeeping requirements.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Part 523, Subchapter B, Chapter V, Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 523—MEMBERS OF BANKS

1. The authority citation for Part 523 is revised to read as follows:

Authority: Sec. 5, 47 Stat. 727, as amended (12 U.S.C. 1425); Sec. 5A, 47 Stat. 727, as added by Sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); Sec. 5, 46 Stat. 132, as amended (12 U.S.C. 1464); Secs. 401-403, 405-407, 48 Stat. 1255-1257, 1259-1260, as amended (12 U.S.C. 1724-1726, 1728-1730); Sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Sec. 503, 88 Stat. 1521, as amended (15 U.S.C. 1601 *note*); Sec. 202(b), 87 Stat. 982, as amended (42 U.S.C. 4106(b)); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1947 Supp., 1943-48 Comp., p. 1071.

2. Section § 523.3-2 is amended by revising the heading of the section, by revising paragraph (b), and adding new paragraphs (c) through (f) to read as follows:

§ 523.3-2 Membership at principal place of business, designation, transfer of membership.

* * * * *

(b) *Principal place of business.* Except as designated in accordance with paragraph (c) of this section, the principal place of business of an

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institution is the state in which the institution maintains its "principal office," as defined in § 561.7 of this chapter.

(c) *Designation by Principal Supervisory Agent.* The rule contained in paragraph (b) of this section notwithstanding, the "Principal Supervisory Agent," as defined in § 541.18 of this chapter, at a Bank in which an institution is a member, has discretion to designate a different principal place of business if—

(1) Any books or records deemed necessary by the Principal Supervisory Agent for proper examination and supervision;

(2) Regular places of employment of a substantial number of officers with policy-making functions or their equivalents;

(3) Principal residences (other than those located in Metropolitan Statistical Areas) of a substantial number of officers with policy-making functions or their equivalents; or

(4) A substantial number of meetings of the board of directors, constituent committees, or their equivalents are maintained, held, or located in a state other than the state in which the institution maintains its principal office.

(d) *Transfer of membership by Principal Supervisory Agent.* If, as a result of a designation made pursuant to paragraph (b) of this section, an institution's principal place of business is deemed to be a state outside the Bank district in which the institution is a member, the Principal Supervisory Agent responsible for the designation shall transmit to the institution a written notice of intent to order transfer of membership. The notice shall include the designated principal place of business, the basis for the designation and the Bank district to which membership will be transferred. If, in the judgment of the Principal Supervisory Agent, within 90 days of the date of the notice the institution has not acted in good faith to eliminate the basis for the designation or adequately explained why the designation was unjustified, the Principal Supervisory Agent has the discretion to order transfer of the institution's membership as set forth in the notice. No order shall take effect until the Principal Supervisory Agents of the Bank districts involved reach agreement on a method of an orderly transfer. In the event that the Principal Supervisory Agents fail to agree, the Board shall determine the conditions under which the transfer shall take place.

(e) *Non-conforming memberships.* Except for an institution that has received Board approval to be a member of a Bank district adjoining the district in which its principal place of business is located under section 4(b) of the Act, an institution that is not a member in a Bank district in which its principal office is located on [the effective date of these amendments] may choose to remain a member in its district but, in the event of a designation made pursuant to paragraph (b) of this section, could be subject to transfer to another district in the manner prescribed by paragraph (c) of this section.

(f) *Effect of transfer.* A transfer of membership authorized by this section shall be effective for all purposes including directoral representation under section 7(c) of the Act and § 522.23 of this subchapter, but shall not be treated as a withdrawal or removal from membership within the scope of section 6 of the Act or § 523.30 and § 523.31 of this subchapter.

§§ 523.3–3, 523.10, 523.11, 523.12, and 523.29 [Amended]

3. Sections 523.3–3, 523.10, 523.11, 523.12, and 523.29 are amended by removing the authority citations located at the end of the sections.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Acting Secretary.

[FR Doc. 87–2183 Filed 2–3–87; 8:45 am]

BILLING CODE 6720–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[A–5–FRL–3151–1]

Approval and Promulgation of Implementation Plans Designation of Areas for Air Quality Planning Purposes; Indiana

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: On March 12, 1982 (47 FR 10813), and May 13, 1982 (47 FR 20583), USEPA conditionally approved Indiana's sulfur dioxide (SO_2) State Implementation Plan (SIP) for most areas of the State, including attainment and nonattainment (Part D) areas. In this rulemaking, USEPA took no action on one of three compliance methods contained in Indiana's current SO_2 regulation (325 IAC 7–1), the sulfur content in fuel averaging method which is based on 30-day averaging.

On May 11, 1984, the U.S. Court of Appeals for the Seventh Circuit set aside USEPA's approval of the SO_2 emission limits in Indiana's revised plan, because USEPA did not rulemake on the 30-day averaging compliance method contained in 325 IAC 7–1. See *Indiana & Michigan Electric Company (IMEC)* v. *USEPA*, 733 F.2d 489. Based on this decision and another recent decision discussed below, there are no federally enforceable SO_2 emission limits regulating existing sources in Indiana, and Indiana thus no longer has a conditionally approvable Part D SO_2 plan.

Because the Court set aside USEPA's rulemaking on the emission limits in 325 IAC 7–1, USEPA is reproposing rulemaking on these same limits, as well as other limits submitted by the State, today. USEPA cannot approve the Indiana SO_2 plan under the Clean Air Act (CAA) because the compliance methodology submitted by Indiana is not consistent with the demonstration of attainment of the short-term 3-hour and 24-hour SO_2 National Ambient Air Quality Standards (NAAQS). USEPA, therefore, is proposing to disapprove the Indiana SO_2 plan. It is also listing other deficiencies in the plan as they relate to specific geographical areas/facilities in Indiana and is proposing specific disapproval actions on Indiana's requests relating to these areas/facilities, including certain redesignation requests. If before USEPA proceeds to final rulemaking to disapprove the Indiana SO_2 plan the State submits a revised regulation which contains an independently enforceable short-term compliance methodology which assures compliance with the short-term SO_2 NAAQS, USEPA could approve the State's SO_2 plan for the 77 counties listed in this notice without further reproposal.

If USEPA ultimately disapproves Indiana's plan, USEPA will simultaneously issue a notice of SIP deficiency to Indiana under section 110(a)(2)(H). The State will then have 60 days under section 110(c) to submit a schedule for a revised plan which assures attainment and maintenance of the SO_2 NAAQS. Failure to submit such a schedule or submit a revised plan in keeping with this schedule may result in the imposition of local and State air program funding restrictions under section 176(b).

Finally, as stated above, there is no longer an approved SO_2 SIP in Indiana. USEPA is soliciting comments as to whether the construction ban under section 110(a)(2)(1) went into effect in Indiana's SO_2 nonattainment areas on May 11, 1984, when the Court issued its order, or if it goes into effect if and when USEPA disapproves Indiana's SO_2 Plan.

Note.—The section 110(a)(2)(1) ban has never been lifted in the nonattainment area in Wayne County and currently remains in effect.

DATE: Comments on these revisions/redesignations and on the proposed USEPA actions must be received by May 5, 1987.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Steven D. Griffin, at (312) 353–3849, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Indiana Department of Environmental Management, Office of Air Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206–6015

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: Steven D. Griffin, (312) 353–3849.

SUPPLEMENTARY INFORMATION: Under section 107 of the CAA, USEPA has designated certain areas in each State which did not attain the NAAQS for SO_2[1]. For Indiana, USEPA designated certain areas in Lake, LaPorte, Marion, Vigo, and Wayne Counties as primary SO_2 nonattainment areas. Dearborn, Gibson, Jefferson, Porter, and Warrick Counties were designated as unclassifiable, and the remaining counties were designated attainment. See 40 CFR 81.315, 43 FR 8962 (March 3, 1978), and 43 FR 45993 (October 5, 1978). Part D of the CAA requires States to revise their SIPs to provide for attaining the SO_2 NAAQS as expeditiously as practicable. The requirements for an approvable SIP are described in a "General Preamble" for Part D rulemakings published at 44 FR 20372 (April 4, 1979). 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979). 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979).

Indiana SO_2 SIP History

In 1972, Indiana submitted and USEPA approved a revised SO_2 regulation (1972 APC 13) for Indiana. This regulation imposed a 1.2 pounds per million BTU (lbs/MMBTU) emission limit on almost all electrical power plants in Indiana, with emission limits between 1.2 and 6.0 lbs/MMBTU for many other sources. Compliance was required by 1975.

In 1974, Indiana submitted a revised SO_2 regulation (1974 APC 13) which basically only required 1.2 to 6.0 lbs/MMBTU emission limits for existing sources in four counties: Dearborn, Lake, Marion, and Warrick. No continuous emission limits were required in the other counties. Compliance was required by 1975 in Lake County and by 1978 in the other three. USEPA approved this regulation in 1976 for all counties except Jefferson, LaPorte, Porter, Vigo, and Warrick Counties. For these five counties, the 1972 APC 13 remained in effect.

On July 26, 1979, Indiana submitted a revised SO_2 regulation (1979 APC 13, later recodified and resubmitted on October 6, 1980, as 325 IAC 7–1). This regulation had site-specific emission limitations for certain sources in the nonattainment counties of Lake, LaPorte, Marion, and Vigo Counties, and a 6.0 lbs/MMBTU emission limit cap for all other sources. It provided three possible compliance methods: stack testing, 30-day sulfur-in-fuel averaging, and other methods as determined by the Board. Compliance was required by no later than 1982.

On March 12, 1982, USEPA conditionally approved this regulation for Lake, LaPorte, and Marion Counties and fully approved it for all but seven of the remaining counties (Dearborn, Floyd, Jefferson, Porter, Vigo, Warrick, and Wayne Counties), where the SIP remained the earlier 1972 or 1974 APC 13.[2] It disapproved the compliance schedule within the regulation for all sources for which emission limits within the regulation were either equal to or a relaxation of the previous SO_2 SIP. USEPA approved the stack test compliance method, took no action on the 30-day averaging compliance method while USEPA further studied the issue of sulfur variability in fuels, and required all other Board-approved compliance methods to be submitted as SIP revisions.

Finally, as a condition to its approval, USEPA required certain modeling/strategy deficiencies to be corrected in Lake, LaPorte, and Marion Counties. On May 13, 1982, USEPA took similar action which fully approved, with the above exceptions, 325 IAC 7–1 for Vigo County. On March 13, 1984 (49 FR 9422), USEPA approved site-specific SO_2 emission limitation for Sisters of Providence Convent in St. Mary-of-the-Woods (Vigo County), Indiana. On March 23, 1984 (49 FR 11086), USEPA approved a site-specific SO_2 emission limit for the Indiana & Michigan Electric Company (IMEC) Breed Generating Station in Sullivan County.

Court Decisions Affecting the Indiana SO_2 SIP

In 1975, an Indiana trial court ruled both 1972 APC 13 and 1974 APC 13 invalid for State purposes, because Indiana had not followed proper State rulemaking procedures in their adoption. In 1979, an Indiana appellate court upheld this ruling. See *Indiana Environmental Management Board* v. *Indiana-Kentucky Electric Corporation (IKEC)*, 393 N.E.2d 213 (Ind. App. 1979). USEPA still believed, however, that these regulations were effective for Federal purposes, although it did stipulate as a part of litigation settlement that it would not enforce the regulations against several major sources in Indiana. See, among others, *Public Service Company of Indiana, Inc. (PSI)* v. *USEPA*, Nos. 76–1920, 76–1940 (7th Cir. 1979).

The Sierra Club tried to enforce both 1972 APC 13 and 1974 APC 13 in Federal District Court. On appeal from a decision adverse to the Sierra Club, the Seventh Circuit Court of Appeals held on August 30, 1983, in *Sierra Club* v. *IKEC*, 716 F.2d 1145 (7th Cir. 1983), that because these rules were improperly adopted at the State level, they were not enforceable by a Federal court. At the time of this decision, USEPA believed that these regulations were federally applicable in only Dearborn, Floyd, Jefferson, Porter, Warrick, and Wayne Counties. On March 26, 1984 (49 FR 11197), USEPA issued a notice of SIP deficiency for three of these counties (Porter, Warrick, and Wayne) and noted that USEPA currently had alternative plans before it for the remaining three counties.

In another lawsuit, IMEC and Indianapolis Power & Light Company (IPL) petitioned the U.S. Court of Appeals for the Seventh Circuit to review under section 307 of the CAA

[1] The primary SO_2 NAAQS is violated when, in a calendar year, either: (1) the annual arithmetic mean value of SO_2 concentration exceeds 80 micrograms per cubic meter of air (80 ug/m^3 (the annual primary standard), or (2) the maximum 24-hour concentration of SO_2 at any site exceeds 365 ug/m^3 more than once (the 24-hour primary standard). The secondary SO_2 NAAQS is violated when the maximum 3-hour concentration at any site exceeds 1,300 ug/m^3 more than once

[2] USEPA had earlier disapproved 325 IAC 7–1 for Jefferson County on January 27, 1981 (46 FR 8473). On March 12, 1982, USEPA disapproved 325 IAC 7–1 for Dearborn, Porter, Warrick, and Wayne Counties, and took no action on Floyd and Vigo Counties.

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USEPA's March 12, 1982, partial conditional approval of 1980 325 IAC 7–1.

This action was based on, among other issues, USEPA's taking no action on 30-day averaging. On May 11, 1984, the Seventh Circuit found that the 30-day averaging compliance method is an integral portion of the rule and that "taking no action" under those circumstances is not an action available to USEPA under the CAA. See *IMEC* v. *USEPA*, 733 F.2d 489. Based on this, the Court set aside as much of USEPA's conditional approval action on 325 IAC 7–1 as pertains to the "sulfur dioxide ceiling in Indiana's revised plan."

The same logic which the Court used in *IMEC* v. *USEPA* could be applicable to all of Indiana's SO_2 sources which have 30-day averaging as one available compliance method. Therefore, USEPA today is reproposing rulemaking on (1) all emission limits contained in 325 IAC 7–1 and (2) any other pending and approved emission limits contained in operating permits which the State based on the compliance methods in 325 IAC 7–1.

30-Day Averaging Compliance Method

As stated earlier, Section 3 of 325 IAC 7–1 allows SO_2 emissions (compliance) from sources to be determined by any of three possible methods. These are:

1. By the stack test procedures set forth in 40 CFR Part 60, Appendix A, Method 6 (revised as of August 18, 1977).
2. By specifying the average sulfur content of the fuel used (30-day average), or
3. By any other procedures approved by the Indiana Air Pollution Control Board (Board).

The regulation is thus worded such that if a source is in compliance using any of the three methods, it is in compliance with the regulation.

In USEPA's March 12, 1982, rulemaking on 325 IAC 7–1, USEPA (1) approved the stack test method, (2) took no action on the 30-day averaging method, and (3) approved the third option, because 325 IAC 7–1 requires any such method approved by the Board to be submitted as a revision to the SIP. The method would not become a part of the SIP until approved by USEPA. USEPA took no action on the 30-day averaging method because it was then reviewing the matter of sulfur variability in coal. As a part of this review, it investigated methods that use longer averaging times than 3 and 24 hours and at the same time ensure the protection of the current SO_2 NAAQS. See 45 FR 9994 (February 14, 1980) and the "Review of the National Ambient Air Quality Standards for Sulfur Oxides," EPA 450/5–82–007, November 1982. USEPA, therefore, believed that it was appropriate to take no action on 30-day averaging while it was investigating the possible future use of a 30-day averaging compliance method. As a result, USEPA made the stack test method the only approved method for determining compliance with 325 IAC 7–1, because no alternative method had been submitted under Option 3. USEPA, therefore, was able to approve the emission limits in this regulation based on the stack testing compliance method.

In response to the *IMEC* v. *USEPA* Seventh Circuit decision, USEPA is today proposing action on Indiana's statewide SO_2 rule (325 IAC 7–1), including the 30-day averaging compliance test method, on subsequential State submittals of site-specific emission limits, and on the Indiana Plan as a whole. USEPA is proposing to determine that this plan containing a 30-day averaging provision is not approvable. The plan (depending upon the source/area) is not approvable for two major reasons. For source/area specific plans, the computer dispersion models Indiana used to develop these strategies are based on a maximum emission level (never to be exceeded) for each source; this assumption is consistent with use of stack testing as a compliance method, but the State did not make a demonstration that emission levels developed with these methods when averaged over 30-days will adequately protect the 3-hour and 24-hour NAAQS. For areas where a 6.0 lbs/MMBTU emission limit applies to all sources, Indiana did not justify that the emission limit, when averaged over 30-days, will assure the attainment and maintenance of the SO_2 NAAQS.

Deterministic Nature of the Short-Term SO_2 NAAQS and Present Modeling Techniques

USEPA typically relies upon air quality dispersion models to determine whether an SO_2 emission limit will protect the SO_2 NAAQS. USEPA has specified the use of certain models and procedures for performing attainment demonstrations (see "Guideline on Air Quality Models," April 1978; "Regional Workshops on Air Quality Modeling: A Summary Report," April 1981; and "Guideline on Air Quality Models (Revised)," July 1986). To address the short-term NAAQS, these modeling analyses require input of a *constant* emission and operating rate (never to be exceeded) and of hourly sequential meteorological data in order to calculate individual hourly concentrations. These concentrations are then arithmetically averaged to produce 3-hour and 24-hour concentrations. The highest, second-highest 3-hour and 24-hour concentrations in any year, over a multi-year data base, are then used (along with the highest annual average concentration) as the design concentrations for developing emission limitations. Because of the inherent variability of the sulfur content in coal,[3] short-term emissions (e.g., hourly, daily) from burning coal from a given coal source will vary. Averaging daily sulfur content values together to form a 30-day average results in some daily values exceeding the average. If a 30-day average emission level is then input to the model, then the attainment demonstration may not be representative of maximum ambient impacts which may occur on days (or hours) when the actual emission rate exceeds the 30-day average. Consequently, multiple exceedances of the short-term SO_2 NAAQS during a given year may occur if an emission limit determined by a modeling analysis which assumes a constant hourly emission limit is actually enforced on a 30-day average emission rate basis.

Indiana used deterministic types of models to develop emission limits for its SO_2 strategies, but incorporated a 30-day averaging compliance method which is not compatible with its demonstrations. For this reason, USEPA is proposing to disapprove the Indiana SO_2 SIP strategy where computer dispersion modeling was used to develop emission limits. Additionally, for these and all other sources, USEPA is proposing to disapprove the Indiana SO_2 plan because the compliance methodology submitted by the State is not consistent with the short-term SO_2 NAAQS.

Overview of Today's Actions

As stated above, USEPA is proposing to disapprove the entire Indiana SO_2 plan because the compliance methodology submitted by the State is not consistent with the 3-hour and 24-hour SO_2 NAAQS. Certain portions of the plan are also being proposed for disapproval based on other deficiencies enumerated in today's notice and USEPA's technical support document, which is available at the addresses listed in the front of this notice. Finally, USEPA is proposing to disapprove all requested SO_2 redesignations from nonattainment or unclassifiable to attainment in Indiana because the State's underlying SO_2 plan is not approvable. An overview of the actions in today's notice are in the following table:

[3] See "A Statistical Study of Coal Sulfur Variability and Related Factors," Draft 1979; "Summary Information on Variability of Sulfur Dioxide Emissions from Coal-Fired Boilers," Draft 1979; and "Preliminary Evaluation of Sulfur Variability in Low Sulfur Coals from Selected Mines," 1977.

County	Action(s)	Reasons for disapproval
Adams	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Allen	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Bartholomew	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Benton	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Blackford	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Boone	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Brown	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Carroll	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Cass	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Clark	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Clay	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Clinton	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Crawford	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Daviess	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Dearborn	Section 110 SIP Site-Spec. Redes.	3-Hour and 24-Hour Comp. Methodology, Possible Tall Stack Issue.
Decatur	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Dekalb	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Delaware	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Dubois	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Elkhart	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Fayette	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Floyd	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology, Plan for Secondary Std.
Fountain	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Franklin	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Fulton	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Gibson	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Grant	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Greene	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Hamilton	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Hancock	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Harrison	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Hendricks	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Henry	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Howard	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Huntington	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Jackson	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Jasper	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Jay	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Jefferson	Section 110 SIP Site-Spec. Redes.	3-Hour and 24-Hour Comp. Methodology.
Jennings	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Johnson	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Knox	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Kosciusko	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Lagrange	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Lake	Part D SIP Site-Spec. Redes.	3-Hour and 24-Hour Comp. Methodology, Demo. of Attain. Not Approvable.
LaPorte	Part D SIP Site-Spec. Redes.	3-Hour and 24-Hour Comp. Methodology, Demo. of Attain. Not Approvable.
Lawrence	Section 110 SIP	3-Hour and 24-Hour.
Madison	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Marion	Part D SIP Site-Spec. Redes.	3-Hour and 24-Hour Comp. Methodology, Possible Tall Stack Issue.
Marshall	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Martin	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Miami	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Monroe	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Montgomery	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Morgan	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Newton	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Noble	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Ohio	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Orange	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Owen	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Parke	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Perry	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Pike	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Porter	Section 110 SIP Site-Spec.	3-Hour and 24-Hour Comp. Methodology, Demo. of Attain. Not Approvable.
Posey	Section 110 SIP Site-Spec.	3-Hour and 24-Hour Comp. Methodology, Inadequate Demo. of Attain. Submitted.
Pulaski	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Putnam	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Randolph	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Ripley	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Rush	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
St. Joseph	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Scott	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Shelby	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Spencer	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Starke	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Steuben	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Sullivan	Section 110 SIP Site-Spec.	3-Hour and 24-Hour Comp. Methodology.
Switzerland	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Tippecanoe	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Tipton	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Union	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Vanderburgh	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Vermillion	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Vigo	Part D SIP Site-Spec.	3-Hour and 24-Hour Comp. Methodology, Revised Demo. of Attain. Not Submitted, Possible Tall Stack Issue.
Wabash	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Warren	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology.
Warrick	Section 110 SIP Site-Spec.	3-Hour and 24-Hour Comp. Methodology, Deficient Demo. of Attain., Submit. of Add. Emission Limits and Info. Req.

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County	Action(s)	Reasons for disapproval
Washington	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology
Wayne	Part D SIP	3-Hour and 24-Hour Comp. Methodology
Wells	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology
White	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology
Whitley	Section 110 SIP	3-Hour and 24-Hour Comp. Methodology

Explanation of expressions in table
Section 110 SIP: A plan for an attainment or unclassifiable area, which is being acted upon under section 110 of the CAA.
Part D SIP: A plan for a nonattainment area, which is being acted upon both under section 110 and Part D of the CAA.
Site-Spec.: A plan which contains site-specific emission limits, which were developed for a specific source/area.
Redes: A request by the State to redesignate an area under section 107 of the CAA.
3 Hour and 24-Hour Comp. Methodology: USEPA is proposing to disapprove a plan, because the State submitted a compliance methodology which is not consistent with the 3-hour and 24-hour short-term SO_2 NAAQS.
Demo. of Attain. Not Approvable: USEPA is proposing to disapprove a plan, because the demonstration of attainment which the State submitted contains deficiencies and, therefore, the plan is not approvable.
Possible Tall Stack Issue: One or more sources within the plan have changed their stack configuration since 1970. These changes must be properly credited within the plan in keeping with USEPA's July 8, 1985, promulgation of its regulations for implementing section 123 of the CAA (50 FR 27892). The State needs to determine if emissions from these sources were correctly credited.
Deficient Demo. of Attain., Submit. of Add. Emission Limits and Info. Req.: USEPA is proposing to disapprove a plan, because the demonstration of attainment which the State submitted is deficient in that additional information and emission limits are required. Therefore, the current plan is not approvable.
Plan for Secondary Std.: Plan does not provide for attainment of the secondary SO_2 NAAQS.

Comments and Deficiencies Concerning Area-Specific SO_2 Plans

Indiana's SO_2 regulation, 325 IAC 7–1, consists of (1) point-specific emission limits for certain sources in Lake, LaPorte, Marion, and Vigo Counties and (2) a general 6.0 lbs /MMBTU emission limit for all other sources throughout the State. The regulation also provides that if the State has adopted or does adopt other emission limits through its operating/construction permit procedures, these limits automatically supersede for State purposes those limits contained in 325 IAC 7–1.

Other than for new sources, area-specific/source-specific SO_2 limits have been submitted to USEPA for 11 counties in Indiana. These counties are: Dearborn, Jefferson, Lake, LaPorte, Marion, Porter, Posey, Sullivan, Vigo, Warrick, and (draft limits) Wayne. In addition, the State needs to ultimately determine if such limits are required in the remaining counties; particularly in Floyd, Gibson, Morgan, and Vermillion Counties. Each of these 15 counties and the plan for that county are addressed separately below.[4]

Dearborn County

Dearborn County is designated unclassifiable for the SO_2 NAAQS. On March 12, 1982, USEPA disapproved the general 6.0 lbs/MMBTU emission limit in 325 IAC 7–1, which was applicable to all sources in this county. On November 16, 1983, Indiana submitted a revised plan for this county which includes (1) a modeled attainment demonstration and (2) site-specific emission limits for three sources (IMEC's Tanners Creek Generating Station, Joseph E. Seagram and Sons, Inc., and Scheneley Distillers, Inc.)[5] and the general 6.0 lbs/MMBTU limit for all other sources. The State also requested on April 19, 1982, that the county be redesignated to attainment for SO_2.

USEPA is proposing to disapprove both Indiana's redesignation request and SO_2 strategy because of the short-term compliance methodology issue. Additionally, the attainment demonstration is based on taking credit for certain changes in the stack height/configuration at Tanners Creek. Specifically, the three stacks serving Boilers 1, 2 and 3 were merged to a single taller stack. The Dearborn County plan must be reviewed further to determine if the modeling of this stack configuration complies with USEPA's recent promul[illegible]tion of its regulations implementating the stack height requirements of section 123 of the CAA (50 FR 27892, July 8, 1985). If it does not, this too would be a reason why the plan would have to be disapproved.

Floyd County

Floyd County was designated attainment for SO_2. On March 27, 1980 (45 FR 20437), USEPA proposed to approve the then current Indiana SO_2 regulation, 1979 APC 13, for Floyd County.

During this same time frame, Jefferson County, Kentucky petitioned the Administrator under the interstate pollution abatement provisions of section 126(b) and (c) of the CAA to determine if the PSI Gallagher Station in Floyd County was impermissibly contributing to SO_2 pollution levels in Jefferson County. On February 16, 1982 (47 FR 6624), the Administrator determined that the Gallagher Station was not in violation of section 126.[6]

In collecting data in response to Jefferson County's petition, USEPA had a computer dispersion modeling analysis performed for the area. This analysis predicted that when the Gallagher Station is emitting at the allowable limit of 6.0 lbs/MMBTU provided in 325 IAC 7–1, the primary SO_2 standards are protected in Indiana. However, the modeling also predicted that violations of the secondary NAAQS could occur in Indiana if Gallagher emits at a rate greater than 4.7 lbs/MMBTU.

Because of this, on May 26, 1982 (47 FR 22976), USEPA reproposed action on Floyd County. USEPA proposed to approve the 6.0 lbs/MMBTU emission limit to protect the primary standards in Floyd County, to disapprove it as protecting the secondary standard, and to take no action at that time on the 30-day average compliance method. Today, USEPA is reproposing to disapprove the complete Floyd County strategy because of the short-term compliance methodology issue.

However, if the strategy contained a methodology which ensured compliance with the short-term SO_2 NAAQS, USEPA could proceed with rulemaking

[4] As mentioned earlier, USEPA is proposing to disapprove the entire Indiana plan because it contains a compliance methodology which is not consistent with the short-term 3-hour and 24-hour SO_2 NAAQS. To prevent repetition, this issue will not be addressed at length in any of the following county-specific sections, but will simply be referenced as the "short-term compliance methodology issue." Nevertheless, USEPA is proposing to disapprove the plan for each of these counties due to this issue.

[5] Emission limits in this plan are: Tanners Creek Units 1, 2 and 3 (at rated capacities)—1.2 lbs/MMBTU. Unit 4—8.3 lbs/MMBTU; Seagram Boiler 5—1.92 lbs/MMBTU and 30,000 tons of coal per year. Boiler 8—6.0 lbs/MMBTU; and Scheneley Boilers 1 and 9—0.55 lbs/MMBTU. Boiler 2—2.70 lbs/MMBTU when Boilers 1 and 9 are not operating and Boiler 2 is operating at 48 MMBTU/hr or less, and Boiler 2—0.55 lbs/MMBTU when Boiler 2 is operating at over 48 MMBTU/hr. (Although not addressed in the permit, presumably Indiana meant Boiler 2 to be limited to 0.55 lbs/MMBTU if it was operating at less than 48 MMBTU/hr and Boiler 1 and/or 9 were operating.)

[6] This determination was appealed to the U. S. Court of Appeals for the Sixth Circuit. The Court upheld USEPA's determination. *See Air Pollution Control District of Jefferson County, Kentucky v USEPA*, 739 F.2d 1071 (6th Cir. 1984).

on Floyd County as proposed on May 26, 1982. Comments were received on that proposal from the States of Indiana and New York; Jefferson County, Kentucky; and PSI, the owner of the Gallagher Power Plant. These comments and USEPA's complete responses to the comments are available at the locations listed in the front of this notice. Following is a summary of the comments and the appropriate USEPA's responses to that proposal.

The State of Indiana and PSI raised issues concerning the modeling, and informed USEPA of a recently established ambient monitor which has not recorded any excursions of the SO_2 standards. The State requested that USEPA approve the plan for the primary standard and conditionally approve it for the secondary standard until such time as Indiana further studies the area and develops, if necessary, a revised strategy for the area.

USEPA finds that the Floyd County area was modeled correctly and that there are presently insufficient monitoring data to be of use in development of a Floyd County SIP. As to conditionally approving the Floyd County SO_2 Plan with respect to the secondary SO_2 standard, USEPA's conditional approval policy does not apply in attainment areas.[7] Because Floyd County is designated attainment, the growth restrictions of section 110(a)(2)(I) do not apply there, and a conditional approval is not appropriate for the area. However, USEPA could have approved the area for the primary standards while not approving it for the secondary standard.

New York State questioned whether the 6.0 lbs/MMBTU emission limit would be a relaxation from the actual existing emissions for Gallagher and whether the interstate pollution requirements of section 110(a)(2)(E) were properly addressed for SO_2 emissions from Floyd County. More specifically it questioned whether the cumulative impact of SIP relaxations for midwest SO_2 sources must be addressed under section 110(a)(2)(E) before USEPA can act on the Floyd County SIP; whether the particulates (sulfates) formed from SO_2 emissions from Floyd County impermissibly, with respect to section 110(a)(2)(E), impact New York's total suspended particulate (TSP) nonattainment areas; and whether the currently available long-range transport computer dispersion models should be used to make these determinations.

[7] For more detail on USEPA's conditional approval policy see 44 FR 38583 (July 2, 1979) and 44 FR 67182 (November 23, 1979).

The Gallagher section 126 record shows that a 6.0 lbs/MMBTU emission limit is essentially a status quo limit. This conclusion is valid despite the source's 5.42 lbs/MMBTU 1980 annual averaged emission rate. A direct comparison of the two emission rates was inapposite because the 6.0 lbs/MMBTU limit is presumed to be based on the short-term average obtained from the stack test method contained in 40 CFR Part 60, while the 1980 actual emission rate was computed on an annual average basis. Due to the high variability of coal's sulfur content, the longer annual averaging time will always result in a lower average emission rate for a source than the maximum measured in a stack test. (See the "30-Day Averaging Compliance Method" section preceding.)

Regarding the Gallagher Station emission rate, the 1980 actual annual average emission rate of 5.42 lbs/MMBTU, if recomputed on a short-term basis, would yield an emission rate at least as high as the 6.0 lbs/MMBTU rate USEPA is rulemaking on today. Therefore, if USEPA were to approve this limit, it would not constitute a relaxation from actual emission levels. In relation to allowable levels, USEPA's approval would establish a continuously applicable Federal emission limit where none now exists.

With respect to New York's concern about the interstate impact under section 110(a)(2)(E), USEPA has addressed the impact of Gallagher's SO_2 emissions on the adjacent areas of Kentucky in the section 126 proceedings and has found no impermissible impact. (Kentucky is the only other state within 50 km of Floyd County.) USEPA has responded to New York's other general concerns about long-range transport, sulfate deposition, etc. in USEPA's response to the section 126 petitions of New York, and others. See 49 FR 48152 (December 10, 1984). The State of New York *et al.* petitioned the U.S. Court of Appeals for the District of Columbia to review this section 126 determination, but the Court has not yet reached a decision. See Causes 84–1592 and 85–1082.

Jefferson County, Kentucky asserted that because the secondary SO_2 standard is not protected, the SO_2 plan for Floyd County should be completely disapproved. It also noted that the plan did not specify a "reasonable time" by which the secondary standard would be attained and, therefore, felt that the plan is not approvable.

In today's action, USEPA is proposing to disapprove the entire SO_2 plan. However, the CAA does recognize the possibility that a plan may initially protect only the primary, health-related NAAQS while giving a State additional time to develop a plan to protect the secondary, welfare-related NAAQS. See, e.g., section 110(b). In the May 26, 1982, proposal (47 FR 22976), USEPA proposed to approve the 6.0 lbs/MMBTU emission limit because it protects the primary standard and because 1974 APC 13 did not contain any emission limits. USEPA proposed to disapprove the plan with respect to the secondary standard and, at the time of USEPA's final rulemaking, to notify the State under section 110(c) that the Floyd County SO_2 SIP is deficient in that the secondary standard is not protected.

This disapproval and the SIP revision/promulgation process initiated by section 110(c) would have assured that the deficiency would have been corrected within a reasonable time.

Gibson County

Gibson County is designated unclassifiable for SO_2. PSI operates a large power plant within the county known as the Gibson Station. 325 IAC 7–1 would normally limit all existing units (Units 1–4) at this facility to 6.0 lbs/MMBTU. However, in order to assure that the construction of Unit 5 did not jeopardize the NAAQS, Indiana also required more stringent emission limits for Units 1–4. These more stringent limits for Units 1–4 are contained in the Part C Prevention of Significant Deterioration (PSD) permit for Unit 5 and, therefore, are presently enforceable by USEPA.

In addition to the short-term compliance methodology issue, USEPA is proposing to disapprove the Gibson County plan because Indiana has not submitted documentation that these State and federally enforceable emission limits for Gibson Station are sufficient to assure the attainment and maintenance of the SO_2 NAAQS. In fact, air quality modeling provided by Indiana indicates that these emission limits will not protect the NAAQS. USEPA notified Indiana of this fact in a September 2, 1983, letter.

Jefferson County—Redesignation

USEPA initially designated Jefferson County as unclassifiable. On January 27, 1981 (46 FR 8588), USEPA proposed to redesignate Jefferson County to nonattainment for the secondary SO_2 NAAQS. The proposed redesignation was based on modeled violations of the secondary SO_2 NAAQS. This modeling was originally performed by a USEPA contractor to assist USEPA in evaluating a petition filed by Kentucky under

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section 126 of the CAA concerning IKEC's Clifty Creek Generating Station, as discussed further below.[8]

However, on December 13, 1983, the U.S. Court of Appeals for the Seventh Circuit determined that USEPA could not redesignate an area to nonattainment after the date of the initial designations against the will of a State. See *Bethlehem Steel Corporation v. USEPA*, 726 F.2d 1303. Based on this decision, USEPA is withdrawing its January 27, 1981, proposal.

Using two stacks at 207m and the new associated parameters as input, IKEC modeled the facility and submitted the results to Indiana. (This was the proper modeling configuration under the February 8, 1982, regulations. On December 3, 1985, and April 3, 1986, the State submitted information related to the stack credits of Clifty Creek with respect to USEPA's stack height regulations. This information will be the subject of a separate rulemaking notice. On March 13, 1981, Indiana requested redesignation of Jefferson County to attainment for SO_2 and submitted the IKEC modeling as justification for this redesignation. This modeling predicts that violations of the NAAQS do not occur if Clifty Creek emits at a rate of 7.52 lbs/MMBTU[9] and sources in the remainder of the county emit at a rate of 6.0 lbs/MMBTU. Later in this notice, USEPA is proposing rulemaking to disapprove the 7.52 lbs/MMBTU emission limitation for Clifty Creek and the 6.0 lbs/MMBTU emission limit for all other sources in Jefferson County, Indiana.

[8] The above modeling was based on Clifty Creek's stack configuration at the time of the plant's construction in the 1950's, i.e., three stacks at 207 meters (m), and was consistent with USEPA's policy in January 1981 to implement section 123 of the CAA. As noted before, section 123 limits the credit that can be given to stack heights and dispersion enhancement techniques in the development of SIPs and the establishment of emission limits. Clifty Creek's stack configuration was changed in the middle of the 1970's to two 300m stacks.

On February 8, 1982 (47 FR 5869), USEPA promulgated its regulations to implement section 123. As then promulgated, they allowed modeling of Clifty Creek at the original stack height of 207m while using its present number of stacks (two) and the stack parameters associated with the newer stacks; i.e., exit gas temperature and velocity, stack diameter, etc. The February 8, 1982, regulations were challenged under section 307 of the CAA, and the U.S. Court of Appeals for the District of Columbia upheld certain portions of the regulations, remanded other portions to USEPA, and disapproved the remainder. See *Sierra Club v. USEPA*, 719 F.2d 436 (1983), *cert. denied*, 104 S. Ct. 3571 (July 2, 1984). In response to this Court ruling, USEPA recently promulgated revised regulations on July 8, 1985. The State's review of physical stack height credit and merged stack credit for Clifty Creek is the subject of a separate rulemaking notice.

[9] Historically, Clifty Creek's SO_2 emissions have ranged between 6.01 and 8.40 lbs/MMBTU, averaged on a monthly basis.

Based on the proposed disapproval of the Jefferson County SO_2 plan, USEPA is proposing to deny Indiana's request to redesignate Jefferson County from unclassified to attainment of the SO_2 NAAQS and to retain the present unclassified designation for this county.

Jefferson County—Emission Limits

After reviewing a Jefferson County modeling analysis with Clifty Creek being modeled with three 207m stacks, on January 27, 1981, USEPA disapproved the Indiana 6.0 lbs/MMBTU SO_2 plan for Jefferson County. USEPA also issued a section 110(a)(2)(H) notice of SIP deficiency (46 FR 8784, January 27, 1981).

The IAPCB adopted operating permits containing revised source-specific emission limits for Clifty Creek and on April 15, 1982, submitted them as revisions to the SO_2 SIP. These permits establish a 7.52 lbs/MMBTU SO_2 emission limitation for Units 1 through 6 at the Clifty Creek plant. The permits also set a maximum SO_2 emission rate of 269,900 lbs of SO_2 per 3 hours (equivalent to 7.52 lbs/MMBTU at maximum operating capacity). These emission limits replaced the State's 6.0 lbs/MMBTU limit for Clifty Creek contained in 325 IAC 7–1.

Based on the short-terms compliance methodology issue, USEPA is proposing to disapprove the 7.52 lbs/MMBTU limit for Clifty Creek and the 6.0 lbs/MMBTU limit in 325 IAC 7–1 for other sources in Jefferson County. USEPA is proposing to disapprove the 269,900 lbs of SO_2 per 3 hours limit because the State did not demonstrate with reduced load modeling that this limit protects the NAAQS at less than full load. For more information on the requirements for reduced load modeling, see the discussion of this subject in the "Lake County" section following.

Jefferson County—Section 126

Kentucky petitioned the Administrator under section 126 to determine if Clifty Creek was causing or substantially contributing to violations of the SO_2 NAAQS in Kentucky (44 FR 29495, May 21, 1979). USEPA held a hearing on Kentucky's petition on June 19, 1979. USEPA anticipates proposing in the **Federal Register** its determination on Kentucky's petition after it fully acts on a plan for Jefferson County. Even so, USEPA will review and revise its action on Clifty Creek if its final determination on Kentucky's section 126 petition conflicts with its action on the Jefferson County plan.

New York, Pennsylvania and Maine also petitioned USEPA under section 126. These States petitioned USEPA to consider the aggregate effect of SO_2 emissions from several sources, including Clifty Creek, on the particulate levels within their States. As stated before, USEPA made a final determination on this petition in the December 10, 1984, **Federal Register** (49 FR 48152), and the reader is referred to this determination for responses to the issues raised in this petition.

Lake County

The northern portion of Lake County is designated nonattainment. On March 12, 1982 (47 FR 10813), USEPA conditionally approved the Indiana SO_2 Part D SIP for Lake County. On September 7, 1982 (47 FR 39167), USEPA amended one of the conditions in its approval. The Lake County conditions are that the State must:

1. Demonstrate that the 24-hour SO_2 standard is constraining or provide 3-hour and annual attainment analyses,
2. Justify appropriate SO_2 background levels for *all* averaging periods and use these in the analyses,
3. Include a complete emission inventory (with process sources) in the attainment analyses,
4. Design a receptor network which provides adequate resolution and use this network in the analyses, and
5. Address the Northern Indiana Public Service Corporation (NIPSCO) Mitchell Generating Station stack height in the revised analysis.

Furthermore, if in satisfying these conditions Indiana found that revisions to the original emission limitations were necessary, then Indiana committed to submit these revisions to USEPA (as changes to the SIP).

In response to these conditions, on March 21, 1984, the State of Indiana submitted a revised SO_2 control strategy for Lake County (325 IAC 7–1–8.1, Appendix A, Lake County Sulfur Dioxide Limitations), along with technical support (i.e., a new modeling analysis). On October 15, 1984, the State of Indiana submitted revisions to 325 IAC 7–1–8.1 (Lake County SO_2 Limitations) to USEPA for parallel processing for SIP revision purposes. The October 15, 1984, revisions, which are only for the United States Steel (USS) Gary Works, result in a net reduction of 415.2 lbs/hr from the overall plan. Although no modeling was provided to support these revised emission limits, the State noted in a September 17, 1984, letter that modeling was performed for 15 days from the full year analysis performed for the Lake County SO_2 SIP. Because this 15-day "mini-analysis" for the revised USS limits is built upon the overall county-wide SIP analysis, the approvability of

the October 15, 1984, changes to Indiana's plan modeled in the mini-analysis must be based not only on the mini-analysis itself but also on the approvability of the underlying overall Lake County SO_2 plan which is discussed below.

Lake County—1984 Analyses

USEPA has compared the emission limits in Indiana's 1984 submittals relative to those which USEPA conditionally approved. One significant change is that, in addition to those emission limits expressed as lbs/hour, the plan includes emission limits expressed as lbs/MMBTU and lbs/ton. However, these lbs/MMBTU and lbs/ton limits are only applicable at rated capacity. It is not clear what the applicable emission limits would be at less than rated capacity, other than the overall lbs/hour limits. Other significant changes/deficiencies are discussed in the technical support document. Because the proposed regulations are substantially different from the regulations which were conditionally approved in 1982 by USEPA, the outstanding 1982 conditional approval issues are essentially irrelevant to the 1984 plans and the 1984 proposed regulations must stand on their own; i.e., a complete attainment demonstration is necessary to support the proposed regulations.

Based on the available data, USEPA has determined that the proposed regulations are not approvable. This is due both to the short-term compliance methodology issue and to deficiencies in the attainment demonstration. General and source-specific deficiencies and comments are summarized below.

1. Reduced Load Analysis—The proposed regulations contain a fuel quality (lbs/MMBTU or lbs/ton) emission limitation that is applicable only at rated capacity. At lower operating/production rates (as well as at rated capacity), the lbs/hr limit applies. This would enable a given source to emit as much SO_2 at full load as at, for example, 50 percent load. However, as load decreases, plume rise also decreases. Thus, a source operating at partial load (but at full, allowed emissions) will cause higher peak ambient pollutant levels than the same source operating at full load.

The modeling submitted by the State, however, only considered full load operation. No analysis has been provided to ensure that the standards will be protected at reduced load under the lbs/hr limits. Therefore, the analyses/rules submitted do not assure attainment and maintenance under all load conditions.

2. Plume Rise Enhancement—The 3-hour and 24-hour attainment demonstrations took credit for enhanced plume rise, resulting from the merging of nearby plumes; i.e., the individual exhaust gas buoyancy and momentum combine to increase plume rise. This modification to the model used, RAM, effectively produces a non-reference model.

USEPA procedures and techniques for the determining the acceptability of a nonguideline model are discussed in the "Regional Workshops on Air Quality Modeling: A Summary Report", April 1981, and "Guideline on Air Quality Models (Revised)", July 1986. No such support has been provided for the non-guideline model used in Lake County. Therefore, the results of the short-term modeling must be disregarded.

3. Interstate Impacts—section 110(a)(2)(E) requires that SIPs must prohibit stationary sources in one State from preventing attainment and maintenance of the NAAQS in any other State, and that source emissions may not interfere with measures in any other State's Part C PSD plans. Section 110(a)(2)(E) also requires that SIPs must insure compliance with section 126 (interstate pollution abatement). No interstate impact analysis for either Illinois or Michigan (the two States close enough to be within the modeling range of the current guideline models) has been provided for the Lake County SO_2 SIP.

4. Receptor Network—The receptor network used in the modeling was deficient in that (1) it failed to include areas on plant property where the general public is not prevented from entry, (2) an inappropriate model for determining hot spot locations was used in some locations, and (3) the modeling did not include sufficient receptors around American Brick in Munster. It should be noted that the modeling contained no receptors over Lake Michigan.

5. Annual Analysis—There are several technical problems with this analysis which are discussed in USEPA's technical support document.

6. Common Emission Limits—Several facilities have a common emission limitation. USEPA has reviewed the acceptability of collective limits for these sources and has grouped them within the technical support document into three categories:

(1) Those needing further support,

(2) Those needing no further support, and

(3) Those needing more information to determine the need for further support.

The plan contains certain sources which USEPA has determined fall within categories 1 and 3. Therefore, the plan is not approvable for these sources.

7. Meteorological Data Base/Modeling Issues—Only one full year of meteorological (MET) data (1984 Midway surface/Peoria upper air) was used in the 1984 modeling. USEPA modeling guidelines specify the use of five years of representative MET data, whenever available.

At the time of the development of the original Lake County Part D SIP, USEPA agreed to accept a Lake County SO_2 plan based on only one year of MET data. However, in view of the length of time since this agreement, the availability of five years of MET data, and the fact that the proposed regulations constitute essentially a new SIP (i.e., substantially different from the conditionally approved 1982 SIP), continued acceptance of one year of MET data is questionable. USEPA is proposing to disapprove the Lake County plan for other reasons. However, any new plan must be based on the most recent 5 years of MET data.

In addition to the above modeling deficiencies, other comments/deficiencies concerning the Lake County modeling, including site-specific elements within the plan, are included in the technical support document, and USEPA is soliciting comment on these issues as well.

As stated before, USEPA proposes to disapprove the Lake County SO_2 plan, including the U.S. Steel source-specific portion. This disapproval is due to the numerous modeling and technical deficiencies with the plan and the short-term compliance methodology issue.

Lake County Redesignation

On July 1, 1985, and July 11, 1985, Indiana requested that USEPA redesignate to attainment the area in Lake County currently designated as a primary SO_2 nonattainment area. This request was based on (1) monitored data showing no monitored violations of the SO_2 standards and (2) the SO_2 attainment strategy, including modeling, conditionally approved by USEPA in 1982.

USEPA is proposing to disapprove this redesignation request because it does not conform to USEPA's redesignation policy for SO_2 nonattainment areas (April 21, 1983, memorandum from Sheldon Meyers, Director, Office of Air Quality Planning and Standards, and December 23, 1983, memorandum from G.T. Helms, Chief, Control Programs Operation Branch). USEPA recognizes that the Lake County monitored data for the last two calendar years do not show violations of the NAAQS. [One

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exceedance of the 24-hour standard was measured in 1984.) However, to redesignate an area to attainment for SO_2, USEPA's policy also requires an approvable attainment demonstration and certification of compliance with USEPA fully-approved regulations.

In the case of Lake County, there is no USEPA-approved control strategy. USEPA did conditionally approve the Lake County SO_2 plan on March 12, 1982. However, the March 12, 1982, **Federal Register** notice cited numerous deficiencies with this original modeling analysis which precludes it from being considered a completely approvable analysis. Additionally, USEPA's approval was set aside on May 11, 1984. See "Court Decisions Affecting the Indiana SO_2 SIP" section of today's notice. Furthermore, USEPA today is proposing to disapprove Indiana's October 15, 1984, modeled attainment demonstration. Thus, the October 15, 1984, strategy too would not be a basis for redesignation. Because Indiana neither has a fully-approved SIP nor an approvable attainment demonstration in Lake County, USEPA is proposing to disapprove Indiana's Lake County redesignation request.

LaPorte County

The northwest portion of LaPorte County is designated primary nonattainment for SO_2 and the remainder is designated attainment. On June 26, 1979, Indiana submitted an SO_2 strategy for LaPorte County which consisted of emission limits for the Indiana State Prison [10] and the general 6.0 lbs/MMBTU limit contained in Indiana's SO_2 regulation, 325 IAC Article 7, for all other sources. On March 12, 1982, USEPA approved this strategy on the condition that Indiana correct certain modeling deficiencies. The U.S. Court of Appeals for the Seventh Circuit, on May 11, 1984, vacated USEPA's conditional approval of this plan.

Instead of responding directly to the conditions, Indiana chose to redesign the entire strategy for the county. On June 6, 1983, Indiana submitted a revised strategy for LaPorte County. This strategy consisted of a 6.0 lbs/MMBTU emission limit for most sources in the county, except for the Indiana State Prison and the NIPSCO power plant in Michigan City. On June 14, 1983, Indiana requested USEPA to consider the revised NIPSCO limits, with the technical support supplied, as satisfying the conditions of USEPA's March 12, 1982, approval of the LaPorte County SIP. It also requested that USEPA redesignate LaPorte County attainment for the SO_2 NAAQS. Additional modeling was submitted on September 26, 1983.

LaPorte County Redesignation

The modeling demonstrated that the NAAQS would be attained and maintained throughout most of the county, but predicted 24-hour violations of the NAAQS in a swath north-northeast of the NIPSCO plant, starting over Lake Michigan and continuing over the Michigan City Yacht Basin. The maximum second-high SO_2 level predicted for a 24-hour period is 497 $\mu g/m^3$, which occurs over Lake Michigan. The highest second-high concentration over the yacht basin is 442 $\mu g/m^3$, and over land near the bank of the yacht basin it is 432 $\mu g/m^3$.[11] These concentrations are dominated by the NIPSCO plant and would be greater if a background concentration would be included. Nevertheless, these impacts alone are above the the 24-hour SO_2 NAAQS of 365 $\mu g/m^3$, not to be exceeded more than once per year; i.e, maximum second-high of 365 $\mu g/m^3$.

USEPA has analyzed these data in relation to the CAA's requirement to assure that the SO_2 ambient air quality standards are protected. "Ambient Air" is defined at 40 CFR 50.1(e) as that portion of the atmosphere, external to buildings, to which the general public has access. USEPA has determined that the modeled violations near the bank, over the yacht basin, and over Lake Michigan are sufficient to make the State's control strategy disapprovable. Because Indiana's strategy does not assure attainment of the NAAQS in these areas and because of the short-term compliance methodology issue, USEPA is proposing to disapprove the State's request to redesignate to attainment that portion of LaPorte County currently designated as nonattainment. In addition to the above overriding reasons for proposing to disapprove the request, the State also did not provide assurances that all sources in LaPorte County were in compliance with the LaPorte County strategy which the State had submitted.

LaPorte County Strategy

Indiana's revised LaPorte County Strategy is based on site-specific emission limits for two sources (the Indiana State Prison and NIPSCO's Michigan City Power Plant) and the general 6.0 lbs/MMBTU limit contained in Indiana's SO_2 regulation, 325 IAC Article 7, for all other sources. Indiana submitted modeling for the two significant sources in LaPorte County that are regulated by the general 6.0 lbs/MMBTU limit (Allis Chalmers Corporation and the Westville Correctional Center). This modeling predicted that the NAAQS are attained in the vicinity of these sources with a 6.0 lbs/MMBTU limit. Therefore, the 6.0 lbs/MMBTU emission limit would be approvable for all LaPorte County sources, except for NIPSCO and the Indiana State Prison, assuming compliance with this limit were determined by a stack-test or other short-term compliance method.

As for the exceptions, the emission limits for the Indiana State Prison were conditionally approved by USEPA on March 12, 1982, but were invalidated by the May 11, 1984, Seventh Circuit decision. See *IMEC v. USEPA*. On June 6, 1983, Indiana submitted a strategy limiting this facility to 5.12 lbs/MMBTU. This limit is based on merging three 21m stacks into one 30.5m stack. Credit for merged stacks is allowed by USEPA's July 8, 1985, stack height rule based on the 5.12 lbs/MMBTU limit because the plantwide allowable emissions would be less than 5,000 tons/year. The Indiana State Prison limit is not approvable because of the short-term compliance methodology issue.

On June 6, 1983, Indiana submitted revised limits for Units 4, 5, and 6 at NIPSCO's Michigan City Power Plant.[12] These call for different emission limits with different compliance time frames, depending upon the number of these boilers operating at any given time. When only one of these boilers is in operation, it must meet a 5.3 lbs/MMBTU emission limit. Compliance may be determined by any of the compliance methodologies provided in 325 Article 7. When two of the three

[10] Emissions from the Indiana State Prison were limited to 4.44 lbs/MMBTU if it used its then existing three 21 meter stacks or 5.12 lbs/MMBTU if a new single 30.5 meter stack was constructed. It is USEPA's understanding that the new stack was constructed, and the source at this time must meet Indiana's 5.12 lbs/MMBTU emission limit. This emission limit is discussed further in this proposal

[11] The predicted values of 497 $\mu g/m^3$, 442 $\mu g/m^3$, and 432 $\mu g/m^3$ do not include any background emissions, i.e., emissions from sources either too small to model or too far away to be significant. If such background emissions would be added to these values, the predicted SO_2 concentrations would be even higher.

[12] Indiana did not submit a revised emission limit for Unit 12. The 6.0 lbs/ MMBTU emission limit contained in 325 IAC 7-1 for this unit is disapprovable, because the modeling which accompanied Indiana's submission assumes that Unit 12 is limited to 5.3 lbs/MMBTU. USEPA understands, however, that Indiana has issued an operating permit limiting this source to a 5.3 lbs/MMBTU limit (compliance to be determined by the methods included in Article 7), and this emission limit is in effect for State purposes. These deficiencies could be rectified by submitting the 5.3 lbs/MMBTU emission limit as a revision to the SIP.

Units 4, 5, and 6 boilers are in operation, each is limited to 5.9 lbs/MMBTU, as averaged on a daily basis.[13] When all three of these boilers are in operation, each is limited to 4.1 lbs/MMBTU, also averaged on a daily basis.

USEPA has analyzed the data submitted and finds it cannot approve the LaPorte County plan primarily because, as discussed above, it does not protect the NAAQS near and over the Michigan City Yacht Basin and over Lake Michigan, and certain emission limits are not supported by a methodology which ensures compliance with the short-term SO_2 NAAQS. Therefore, USEPA is proposing to disapprove the emission limits for all sources in LaPorte County, to disapprove the LaPorte County attainment demonstration, and disapprove the redesignation of LaPorte County.

Marion County Redesignation

All of Marion County, except for a small portion in Franklin and Washington Townships, is designated as a primary nonattainment area for SO_2. On April 16, 1982, the Indiana Air Pollution Control Board (IAPCB) submitted a request to redesignate the designated primary nonattainment area to attainment for SO_2. The request was supported by all available monitor data and by air quality modeling for the major SO_2 sources in the eastern and northern portions of the county. In letters dated July 16, 1982, and September 1, 1982, USEPA notified the State that insufficient data were presently available to support the entire redesignation request, particularly for the central and southwestern portions of the Indianapolis area.

On November 3, 1982, the IAPCB submitted a modified request to redesignate five of the nine townships (Pike, Washington, Lawrence, Warren, and Franklin) in Marion County to attainment for SO_2 (without withdrawing its initial request for full county attainment). The submittal contained technical support materials prepared by the City of Indianapolis Air Pollution Control Division (dated October 25, 1982) which includes the relevant interagency correspondence and air quality computer dispersion modeling results for the eight major SO_2 sources located in these five townships.

On March 3, 1983, and August 17, 1983, in support of the redesignation request, the IAPCB submitted revised emission limits for the following eight SO_2 sources as revisions to Indiana's SO_2 SIP: Amtrak, Chrysler Corporation (Shadeland Avenue Plant), Ford Motor Company, Fort Benjamin Harrison, International Harvester Company, Rock Island Refining Corporation, Western Electric Company, Inc., and Refined Metals. These SO_2 emission limits are consistent with the City of Indianapolis' SO_2 Regulation, IV-4, but are more stringent than Indiana's SO_2 limits of 6.0 lbs/MMBTU. On March 28, 1983, the City of Indianapolis submitted a supplemental modeling run to support the redesignation/SIP revision for the five townships.

USEPA reviewed the monitor data submitted for Marion County and found that it did not show any violations of the SO_2 NAAQS in the last 8 quarters. (Included were data from the two monitors in Washington Township and the one in Pike Township.) However, because USEPA recognizes that a small number of ambient monitors are usually not representative of the air quality for the entire area if an area is dominated by point sources, USEPA also requires modeling analysis of SO_2 areas being redesignated.

USEPA reviewed the modeling analysis for the five townships: i.e., Franklin, Lawrence, Pike, Warren, and Washington, and found that it is consistent with USEPA modeling guidance and satisfies USEPA's criteria for redesignation of SO_2 nonattainment areas to attainment (April 21, 1983, memorandum from Sheldon Meyers). The analysis included all major SO_2 sources in these townships at their proposed SO_2 emission limits. In a June 14, 1983, letter, the City of Indianapolis stated that the eight SO_2 sources are currently in compliance with their operating permit limits. Based on the State's request, the ambient data, the modeling data, and the City's statement concerning the sources' compliance, on November 16, 1983 (48 FR 52095), USEPA proposed to redesignate Franklin, Lawrence, Pike, Warren, and Washington Townships from primary nonattainment to attainment for the SO_2 NAAQS but to disapprove the requested redesignation for the other four townships, Center, Decatur, Perry, and Wayne.

Other than general comments from the State and City supporting the redesignation, no comments were received in response to this proposal. Nevertheless, due solely now to the 30-day average compliance method issue which is applicable to these sources because of the State's submittal of the limits, USEPA finds it must now repropose to disappove the redesignation for the five townships, and is doing so.

The State did not originally provide a comparable modeling analysis for the remaining four townships; i.e., Center, Decatur, Perry, and Wayne. These townships contain the larger utility and industrial SO_2 sources in the county. On March 28, 1984, Indiana submitted revised emission limits for sources in these four townships and modeling to support these limits. However, the following three issues concerning this redesignation request remain: (1) The emission limits in these townships are impacted by the short-term compliance methodology issue, (2) sources within the townships are not required to come into compliance with the more stringent emission limits required by the modeling until future dates and, thereby, may now be emitting at levels which cause violations of the SO_2 NAAQS, and (3) the modeled attainment demonstration assumes credit for dispersion techniques which must be reviewed with respect to USEPA's July 8, 1985, final rules for implementing the stack height requirements of section 123. If the section 123 review reveals a deficiency, then this too would be a reason why the request must be disapproved. Based on these reasons, USEPA is proposing to disapprove the redesignation of Center, Decatur, Perry, and Wayne Townships.

Marion County SO_2 Strategy

As stated earlier, in 1974 Indiana adopted a revised statewide SO_2 regulation, APC 13. Indianapolis adopted for county purposes regulation IV-4, which contained emission limits comparable to 1974 APC 13. Both the State regulation, when combined with the attainment status regulation APC 22, and the Indianapolis regulation limited emissions from sources in Marion County to between 6.0 and 1.2 lbs/MMBTU, depending upon the size and characteristics of the source.

Although Indiana in 1979 adopted a revised statewide SO_2 regulation which superseded for State purposes all previous SO_2 regulations in Indiana, the City of Indianapolis did not adopt a comparable regulation and retained the more stringent emission limits of their rule IV-4. USEPA conditionally approved with certain exceptions just Indiana's revised SO_2 regulation for Marion County on March 12, 1982. At no

[13] "Daily" is not defined by the State, and the State did not submit a compliance methodology for daily limits. USEPA assumes, for the purpose of this rulemaking, that "daily" means a 24-hour period from midnight of one day until midnight of the next and that the stack test compliance methodology in Article 7 would apply to "daily" limits. USEPA is soliciting comments during the public comment period associated with this notice on this interpretation of the term "daily".

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time has USEPA adopted into the SIP rule IV–4.

As stated earlier, on November 3, 1982, the State submitted a request to redesignate five townships in Marion County to attainment for SO_2. The submittal contained technical support materials prepared by the City of Indianapolis Air Pollution Control Division (dated October 25, 1982) which included air quality computer dispersion modeling results for the eight major SO_2 sources located in these five townships. This modeling predicted attainment of the NAAQS in these five townships, but was based on the more stringent emission limitation contained in Indianapolis' IV–4. USEPA informed the State that in order to have an approvable redesignation request based on this modeling, the State would have to adopt these more stringent emission limitations and submit them to USEPA as a revision to the SIP.

Therefore, the State did adopt these emission limitations and, on March 3, 1983, and August 17, 1983, submitted as revisions to Indiana's SO_2 SIP these emission limits for the eight SO_2 sources. The sources are Amtrak, Chrysler Corporation (Shadeland Avenue), Ford Motor Company, Fort Benjamin Harrison, International Harvester Company, Rock Island Refining Corporation, Western Electric Company, Inc., and Refined Metals. The operating permits establish SO_2 emission limits for these sources which are consistent with the City of Indianapolis' SO_2 Regulation, IV–4, but which are more stringent than those contained in 325 IAC Article 7.

On November 16, 1983 (48 FR 52095), USEPA proposed to approve the emission limits for these eight sources and to approve the SO_2 plan for the five townships, Franklin, Lawrence, Pike, Warren, and Washington. During the 60-day public comment period, USEPA received comments from the City and the State. They noted that one of the emission limits for Chrysler Corporation was incorrect and submitted a revised emission limit for this source.

USEPA has reviewed the emission limitations, including the correction, and has found that, but for the compliance methodology which is not consistent with the short-term SO_2 NAAQS, the SO_2 NAAQS would be attained and maintained at these limits. Nevertheless, in light of *IMEC* v. *USEPA* and based on the short-term compliance methodology deficiency, USEPA today is proposing to disapprove the emission limits for the eight sources as a portion of the Part D SIP in Marion County and is proposing to disapprove the plan as a whole for Franklin, Lawrence, Pike, Warren, and Washington Townships.

On March 21, 1984, March 28, 1984, and April 6, 1984, Indiana submitted a revised plan for the remaining four townships, Center, Decatur, Perry, and Wayne. This plan consisted of a computer dispersion modeled demonstration of attainment and revised, source-specific emission limits for Allison Gas Turbine Operations—a division of General Motors Corporation (plants 5 and 8); Bridgeport Brass Company—a division of National Distillers Chemical Corporation; Central Soya; Central State Hospital; Citizens Gas and Coke Utility; Detroit Diesel Allison—a division of General Motors Corporation; Glass Containers Corporation; G.M. Truck and Bus Group—a division of General Motors Corporation; Indiana Girls School; Indianapolis Power and Light Company (IPL—Perry K, Perry W, and Stout); The Indianapolis Rubber Company; Indianapolis Sludge Incinerator; National Starch and Chemical Corporation; P.T. Components, Incorporated (Bearing and Chain); Quemetco—RSR Corporation; RCA; Reilly Tar and Chemical Corporation; Stokely Van Camp, Incorporated; Union Carbide Corporation; and Wishard Memorial Hospital. USEPA is proposing to disapprove the emission limits for the above sources and the plan for Center, Decatur, Perry, and Wayne Townships because of the short-term compliance methodology issue and other deficiencies previously discussed in this notice.

In addition, the modeled attainment demonstration is based on revised stack parameters for National Starch and IPL—Stout. National Starch proposes to combine several stacks into one stack. Credit for the enhanced plume rise resulting from this combination of stacks was assumed in the attainment demonstration. Under USEPA's July 8, 1985, rulemaking on implementing section 123 of the CAA, a demonstration of equivalence is required to justify credit for this stack combination.

IPL raised its stack on Stout Units 50 and 60 by 12 feet and added a nozzle which increases stack exit velocity. USEPA's July 8, 1985, stack height rulemaking does not allow automatic credit for the increase in the physical height of a stack greater than 213 feet.

Morgan County

Morgan County contains a large SO_2 source, IPL Pritchard Generating Station. The State's SO_2 regulation limits this source to the general limit of 6.0 lbs/MMBTU, but the State has not provided a demonstration that this limit will protect the SO_2 NAAQS. On September 2, 1983, USEPA notified the State that air quality modeling indicates the potential for SO_2 NAAQS violations at the 6.0 lbs/MMBTU limit, but the State has not yet submitted modeling justifying this limit. USEPA today is proposing to disapprove the plan for Morgan County because the State has not demonstrated that a 6.0 lbs/MMBTU emission limit, with or without 30-day averaging, will protect the standards there.

Porter County

Porter County is designated unclassifiable for SO_2. On March 12, 1982, USEPA disapproved Indiana's SO_2 rule, 325 IAC 7–1, for Porter County because the State did not demonstrate that the SO_2 NAAQS were assured by the 6.0 lbs/MMBTU emission limit in this regulation. On March 1, 1984, Indiana submitted revised limits for Bethlehem Steel and Midwest Steel. The other sources in the county remained limited by 325 IAC 7–1. USEPA has reviewed this submittal and has found it deficient because the attainment demonstration did not address building downwash and the emission inventory needs further documentation. These deficiencies are addressed in more detail in USEPA's technical support document. USEPA is proposing to disapprove the Porter County plan because of the short-term compliance methodology issue and because, considering the deficiencies in the modeling, the State has not assured that the SO_2 NAAQS will be attained and maintained with the emission limits in its plan.

Posey County

Posey County is designated attainment. On March 12, 1982, USEPA approved 325 IAC 7–1 for this county, which imposed a 6.0 lbs/MMBTU emission limit on sources there. On November 1, 1983, Indiana submitted as an alternative emission control plan (bubble) revised limits for the Indiana Farm Bureau Co-op Refinery which would establish a 14 lbs/MMBTU limit for the FCC preheater and a 5 lbs/MMBTU limit for three gas/oil fired boilers.[14] This bubble was based on the general emission limit in 325 IAC 7–1 of 6.0 lbs/MMBTU.

USEPA is proposing to disapprove this bubble because the ambient equivalence demonstration submitted is unacceptable and because the submittal failed to address PSD increment consumption. Also, USEPA is proposing to disapprove the overall SO_2 plan for Posey County because the plan contains a compliance methodology which is not consistent with the short-term SO_2 NAAQS.

Sullivan County

Sullivan County is designated attainment for SO_2, and the plan for this county was approved within USEPA's general approval of 325 IAC 7–1 on March 12, 1982. Indiana adopted an operating permit for IMEC's Breed Generating Station in Sullivan County that contained a 9.57 lbs/MMBTU SO_2 emission limit and initially submitted it to USEPA on February 26, 1981. In response to deficiencies noted by USEPA, the permit was resubmitted on June 22, 1982, with additional data. The Indiana plan for Sullivan County then consisted of a 9.57 lbs/MMBTU emission limit for Breed Generating Station and the general 6.0 lbs/MMBTU emission limit in 325 IAC 7–1 for all other sources in the county. USEPA approved this plan on March 23, 1984 (49 FR 11086), but took no action on the 30-day averaging compliance method. The logic contained in the Seventh Circuit Court of Appeals decision of May 11, 1984, invalidates the plan. See the "Court Decisions Affecting the Indiana SO_2 SIP" section of this notice.

Today, USEPA is proposing to disapprove the Sullivan County plan, including the 9.57 lbs/MMBTU emission limit for Breed, because of the short-term compliance methodology issue.

Vermillion County

Vermillion County is designated attainment for SO_2. Sources in this county, such as the PSI Cayuga Generating Station, were regulated by the general limit of 6.0 lbs/MMBTU in 325 IAC 7–1, which was approved on March 12, 1982. However, the State has never provided a demonstration that this limit will protect the SO_2 NAAQS. On September 2, 1983, USEPA notified the State that air quality modeling indicates violations of the SO_2 NAAQS. USEPA today is proposing to disapprove the plan for Vermillion County because the State has not justified that a 6.0 lbs/MMBTU emission limit, with or without 30-day averaging, will protect the standards there.

Vigo County

USEPA approved the Vigo County plan on May 13, 1982, and a site-specific revision for Sisters of Providence Convent on March 13, 1984, but the logic of the *IMEC* v. *USEPA* decision applies to this plan. Additionally, Indiana submitted on March 21, 1984, changes to the plan which affected six companies. These changes are discussed in detail in USEPA's technical support document. Today, USEPA is proposing to disapprove the Vigo County plan because of the short-term compliance methodology issue and because the State did not demonstrate that the . March 21, 1984, revised plan still protects the SO_2 NAAQS in Vigo County. Also, the State is reviewing the stack height credit assumed for two sources in the previous modeling analysis. This review will be the subject of a separate rulemaking notice.

Warrick County

On March 5, 1985, Indiana submitted a revised strategy for Warrick County. The strategy consists of the immediate imposition of the general 6.0 lbs/MMBTU emission limit in 325 IAC 7–1 for all sources in the county and, in order to protect the secondary 1300 $\mu g/m^3$ standard, a 5.48 lbs/MMBTU emission limit required as of December 31, 1989, on boilers at the two power stations (Warrick Station and Culley Station)[15] in the county. Compliance for the two stations is to be determined by a 30-day rolling weighted average.

There are several deficiencies in the plan. First, the modeling assumes that emissions are limited on certain ALCOA aluminum reduction sources in the county which were not included in the submission. Second, ALCOA has not submitted evidence that it has fenced off areas (about 30 square kilometers) on its property where modeling predicts violations of the SO_2 NAAQS.[16] Finally, other minor modeling deficiencies remain, which are discussed in the technical support document. USEPA is proposing to disapprove the plan for Warrick County for these reasons and because of the short-term compliance methodology issue.

Wayne County

Wayne County is designated nonattainment for SO_2. On May 12, 1982, USEPA disapproved 325 IAC 7–1 for this county because the State did not justify that the general 6.0 lbs/MMBTU emission limit in this regulation would protect the SO_2 NAAQS. On March 26, 1984, USEPA issued a notice of SIP deficiency for Wayne County. On April 11, 1984, Indiana notified Richmond Power and Light in Wayne County that emission limits between 1.3 and 0.6 lbs/MMBTU were appropriate at that source's present stack configuration. Richmond Power and Light Company notified the State that it wished to develop a revised SIP for Wayne County based on replacing its current two stacks, which are approximately 30 feet higher than the 120-foot boiler building, with one new, higher stack. The proper physical stack height and plume rise credits for Richmond Power and Light must be consistent with USEPA's July 8, 1985, final stack height regulations.

Notwithstanding the above agreement, the only State fully-adopted plan for Wayne County that USEPA currently has before it is 325 IAC 7–1.[17] USEPA is proposing to disapprove this regulation again for Wayne County because the State has not shown that its general 6.0 lbs/MMBTU emission limit in this regulation, with or without 30-day averaging, will protect the SO_2 NAAQS in Wayne County.

Other Counties

In addition to the above counties where either the State has submitted a SIP revision to USEPA or USEPA has informed the State of a SIP inadequacy, there are 77 other counties in Indiana where 325 IAC 7–1 applies. As mentioned earlier, USEPA is proposing to disapprove 325 IAC 7–1 for these counties because the State has submitted a compliance methodology which is not consistent with the short-term 3-hour and 24-hour SO_2 NAAQS.

[14] An alternative emission control plan or "bubble" is a method by which a source may exchange one set of emission limits for another set, assumably because the second set is less expensive to meet. USEPA's policy on criteria for determining the approvability of individual bubbles is found in its final Emission Trading Policy Statement (51 FR 43814, December 4, 1986). A fundamental requirement under the policy is that the bubble must satisfy certain specified air quality analysis tests designed to ensure ambient equivalence. The

Continued

baseline for emission trades in SO_2 attainment areas is generally actual emissions, but allowable emissions may be used under certain cases.

For the purposes of determining the approvability of the revised limits for Farm Bureau Coop, any differences between the requirements of the December 4, 1986, Emission Trading Policy and previous policies on emission trading are irrelevant.

[15] Each of the seven boilers at these Stations is owned either jointly or independently by Southern Indiana Gas and Electric Company and/or ALCOA Generating Company.

[16] The SO_2 NAAQS by definition must be protected in the "ambient air". Ambient air is defined at 40 CFR 50.1(e) as that portion of the atmosphere, external to buildings, to which the general public has access. Thus private property which is excluded from public access by fence or other effective physical barrier is not ambient air, and the requirement for attaining and maintaining the NAAQS do not apply there.

[17] On September 29, 1986, Indiana submitted a draft revised plan for Wayne County for parallel processing. Indiana has not yet adopted this strategy under State rulemaking procedures, and the applicable State approved plan for Wayne County is still that contained in 325 IAC 7–1. USEPA will propose rulemaking on the revised Wayne County plan (or subsequent Wayne County SO_2 submittals) in a future **Federal Register** notice.

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As discussed above, the inclusion of the 30-day averaging provision in the SIP revision that was the subject of USEPA's March 12, 1982, notice is the reason that USEPA is proposing disapproval of that revision in today's notice. Deletion of the 30-day averaging provision by the State or equivalent changes as described below would allow USEPA to consider reinstating the various approvals expressed in the March 12, 1982, notice, except for the 15 counties specifically addressed above.

In *IMEC* v. *EPA*, the Seventh Circuit invalidated USEPA's conditional and final approvals of SO_2 emission limits contained in Indiana's submittal of October 6, 1980, because USEPA had decided not to act regarding the 30-day averaging provision. The Seventh Circuit dismissed all other challenges to the March 12, 1982, order in *IMEC*, as well as additional challenges to the March 12th order raised by petitioners in *State of New York* v. *Gorsuch* (7th Cir. No. 82-1717). The sole reason for the Seventh Circuit's setting aside of USEPA's approval of the SIP submittal of October 6, 1980, was the failure to act on one of three compliance methods in the submittal. If the State of Indiana withdraws 30-day averaging from its plan or makes equivalent changes as described below, USEPA's objections to that plan would be eliminated, and the previous approvals could be reinstated in the 77 counties referenced above, where still applicable. If the State withdraws its present regulation and provides a revised regulation which contains an independently enforceable short-term compliance method which assures compliance with the short-term SO_2 NAAQS, USEPA could without reproposal reinstate the 6.0 lbs/MMBTU emission limit in the 77 counties referenced above. The State could revise the regulation either (1) to remove the possible 30-day averaging compliance method or (2) to make a violation determined by the stack test compliance method independently enforceable; i.e., not refutable by compliance determined by another method such as 30-day averaging fuel analysis.

Notice of SIP Deficiency

Because of the State's and USEPA's previous actions on the Indiana SO_2 plan and the two Seventh Circuit Court of Appeals decisions concerning these actions, Indiana currently does not have an approved SO_2 SIP. Therefore, the SIP is substantially inadequate to assure attainment of the SO_2 NAAQS and a notice of SIP deficiency under section 110(a)(2)(H) is appropriate. However, because USEPA currently has before it a plan for the entire State, it intends to wait until it takes final rulemaking action on the SO_2 plan currently before it. If USEPA disapproves this plan, it will simultaneously issue to Indiana a notice of SIP deficiency under section 110(a)(2)(H). Upon the date of the section 110(a)(2)(H) notice, Indiana will have 60 days in which to submit a schedule for submittal of a complete, approvable SO_2 plan for the entire State. That schedule must not extend beyond one year from the date of the section 110(a)(2)(H) notice. If either of these dates is not met, USEPA will proceed with a Federal promulgation of a SO_2 plan for Indiana under section 110(c) of the Clean Air Act. See USEPA's post-82 SIP policy, entitled Compliance with the Statutory Provisions of Part D of the Clean Air Act (November 2, 1983, 48 FR 50685), and the January 27, 1984, Guidance Document for the Correction of Part D SIPs for Nonattainment Areas.

Sanctions

The CAA provides various sanctions where there is not an approved SO_2 plan for nonattainment areas. See sections 110(a)(2)(I), 176(b), and 316; the November 2, 1983, post-82 SIP policy, entitled Compliance with the Statutory Provisions of Part D of the Clean Air Act; and the January 27, 1984, Guidance Document for the Correction of Part D SIPs for Nonattainment Areas. At this time, USEPA is not proposing any action in relation to the sewage treatment grant sanctions of section 316.

State and Local Air Pollution Control Grants

Section 176(b) provides that the Administrator shall not make grants under the CAA to State or general purpose local governments where he finds that these entities are not implementing any requirement of an approved section 110 plan, including any requirement for a revised implementation plan (under Part D). In Indiana, if USEPA notifies the State under section 110(a)(2)(H) that the SO_2 SIP is substantially deficient and the State does not respond in a timely manner with an approvable schedule and SO_2 plan for both attainment and nonattainment areas, then USEPA will propose at that time in the **Federal Register** its intention to withhold the appropriate section 105 grant funds from the State.

Section 110(a)(2)(I) Growth Restrictions

Section 110(a)(2)(I) provides that after June 30, 1979, no major stationary source shall be constructed or modified in any (primary) nonattainment area if that source would cause or contribute to concentrations of that pollutant and the area in question does not have an approved Part D plan. In the case of Indiana, primary SO_2 nonattainment areas exist in Lake, LaPorte, Marion, Vigo, and Wayne Counties. In 1982, USEPA approved or conditionally approved Part D plans for the nonattainment areas in Lake, LaPorte, Marion, and Vigo Counties and, thereby, lifted the section 110(a)(2)(I) growth restrictions from these counties. USEPA has never approved a Part D SO_2 plan for Wayne County, and the section 110(a)(2)(1) growth restrictions have been in place in that county since July 1979.

However, as stated in the "Court Decisions Affecting the Indiana SO_2 SIP" section of today's notice, on May 11, 1984, the Seventh Circuit Court of Appeals set aside so much of USEPA's March 12, 1982, approval as pertained to emission ceilings, because USEPA took no action on the 30-day averaging compliance provision in Indiana's SO_2 rule, 325 IAC 7-1. See *IMEC* v. *USEPA*, 733 F.2d 489. The Court, thereby, also set aside one of the bases for USEPA's approval of the Indiana Part D plan.

Under these circumstances, Indiana no longer has an approvable SO_2 SIP, and the section 110(a)(2)(I) growth restrictions should be applicable. However, it is not clear if the reimposition of the growth restrictions in the nonattainment areas of Lake, LaPorte, Marion, and Vigo Counties is automatic (effective as of the May 11, 1984, date of the Seventh Circuit Court decision) or if it is effective on the date that USEPA disapproves the SO_2 plan. USEPA is specifically soliciting comments upon this issue. Based on these comments and the CAA, USEPA will make a decision on this issue at the time of the final rulemaking on Indiana's SO_2 plan. Parties planning to construct facilities in the primary SO_2 nonattainment areas in Lake, LaPorte, Marion, and Vigo Counties should be aware of the possibility that SO_2 growth sanctions may be in place in these areas at this time.

Finally, in addition to today's notice, interested parties are directed to USEPA's technical support document, with attachments. The attachments contain technical comments on area-specific plans. Several of these comments were written prior to and will not reflect the May 11, 1984, Seventh Circuit Court decision. USEPA is soliciting comments both on today's proposal and on the technical information contained in the technical support document.

Under 5 U.S.C. section 605(b), the Agency must assess the impact of

proposed or final rules on small entities. As discussed earlier, a moratorium on the construction and modification of major stationary sources of SO_2 may go into effect or may already be in effect in the designated nonattainment portions of Lake, LaPorte, Marion, and Vigo Counties. USEPA does not have sufficient information to determine the impacts a moratorium may have on small entities because it is difficult to obtain reliable information on future plans for business growth. However, because USEPA cannot be certain of the potential impact on small entities, the Agency invites comments on this issue.

Even if this moratorium were to have a significant impact on a substantial number of small entities, the Agency could not modify the action. Under the CAA, the imposition of a construction moratorium is automatic and mandatory whenever the Agency determines that a plan for a nonattainment area fails to meet the requirements of Part D of the CAA.

Under Executive Order 12291, this action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Authority: 42 U.S.C. 7401-7642.

Dated: January 22, 1987.

Frank M. Covington,

Acting Regional Administrotor.

[FR Doc. 87-2213 Filed 2-3-87; 8:45 am]

BILLING CODE 6560-50-M

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Notices

Federal Register
Vol. 52, No. 23
Wednesday, February 4, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

January 30, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Forest Service
  Technical Data-Electronic Type Land Use
  FS 2700-10
  On occasion
  Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 100 responses; 25 hours; not applicable under 3504(h)
  Ruben M. Williams (703) 235-2412

Revision

- Food Nutrition Service
  State Plan and Operating Guidelines, Forms and Waivers
  FNS-366A, -366B
  Annually
  State or local governments; 106 responses; 2,828 hours; not applicable under 3504(h)
  Paul Jones (703) 756-3396

Donald E. Hulcher,
Acting Departmental Clearance Officer.
[FR Doc. 87-2256-Filed 2-3-87; 8:45 am]
BILLING CODE 3410-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-201-003]

Ceramic Tile From Mexico; Amendment to Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of amendment to final results of countervailing duty administrative review.

EFFECTIVE DATE: February 4, 1987.

FOR FURTHER INFORMATION CONTACT: Cynthia Gozigian or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

Amendment

On December 5, 1986, the Department of Commerce published the final results of its countervailing duty administrative review on ceramic tile from Mexico (51 FR 43944). The review covered the period July 1, 1983 through June 30, 1984.

Subsequent to publication of the final results, we discovered that two companies, Teofilo Cavarrubias Villarreal and Reynol Martinez Chapa, had been inadvertently omitted from the list of zero-rate firms included in the final results. Consequently, we are amending the final results to include these two companies.

The Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of ceramic tile from these two firms exported on or after July 1, 1983 and on or before June 30, 1984. Further, the Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of ceramic tile from these two companies entered, or withdrawn from warehouse, for consumption on or after December 5, 1986. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

Dated: January 28, 1987.

Joseph A. Spetrini,
Acting Deputy Assistant Secretary, Import Administration.
[FR Doc. 87-2234 Filed 2-3-87; 8:45 am]
BILLING CODE 3510-DS-M

Biotechnology Technical Advisory Committee; Partially Closed Meeting

A meeting of the Biotechnology Technical Advisory Committee will be held February 27, 1987, 9:30 a.m. in the Herbert C. Hoover Building, Room B-841, 14th Street and Constitution Avenue, NW., Washington, D.C. The Committee advises the Office of Technology and Policy Analysis, Export Administration, with respect to technical questions that affect the level of export controls applicable to biotechnology and related equipment or technology.

Agenda:

1. Welcoming remarks by the Chairman.
2. Introduction of members and quests.
3. Presentation of papers or comments by the public.
4. Action items and plans for next meeting.

5. Recommendations for new members.
6. Nomination and election of new Chairman.
7. Discussion of controls applicable to biotechnology.

Executive Session:

8. Discussions of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control and strategic criteria related thereto.

The General Session will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 19, 1985, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: (202) 377-4217. For further information or copies of the minutes, contact Betty Anne Ferrell, (202) 377-2583.

Dated: January 28, 1987.

Margaret A. Cornejo,
Director, Technical Support Staff, Office of Technology & Policy Analysis.
[FR Doc. 87-2239 Filed 2-3-87; 8:45 am]
BILLING CODE 3510-25-M

Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

A meeting of the Electronic Instrumentation Technical Advisory Committee will be held February 24, and 25, 1987. The meeting will convene on both days at 9:30 a.m. in Room 3407, Herbert C. Hoover Building, 14th & Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to electronics and related equipment and technology.

General Session:

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Continuation of discussion concerning the export controls on ECCN 1521A (broad band amplifiers).
4. Public comments on foreign availability of nd:YAG lasers for manual systems—CCL 1522A.
5. Public comments are also invited on the following entries on the Commodity Control list (CCL):

CCL 1522A—Lasers and Laser Systems
CCL 1529A—Electronic Test Equipment—particularly Subitem b(5) and Subitem (f)
CCL 1531A—Frequency Synthesizers
CCL 1541A—Cathode Ray Tubes
CCL 1568A—Electromechanical Equipment
CCL 1572A—Recording and Reproducing Equipment

Comments should consider the need for revision (strengthening, relaxation or decontrol) of the current regulations based on technological trends, foreign availability and national security. The Committee is also intersted in proposals for revision to the People's Republic of China guidelines and G-COM regulations relating to these CCL numbers.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting and can be directed to: Technical Support Staff, Office of Technology & Policy Analysis, Room 4073, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202-377-4217. For further information or copies of the minutes contact Ruth Fitts on 202/377-4959.

Semiconductor Technical Advisory Committee; Closed Meeting

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on January 10, 1986, in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

Time and Place: February 18, 1987, 9:30 a.m., Herbert C. Hoover Building, Room 6029, 14th Street and Constitution Avenue, NW., Washington, DC.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meeting and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202-377-4217. For further information or copies of the minutes contact Ruth Fitts on 202/377-4959.

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Dated: January 29, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 87-2236 Filed 2-3-87; 8:45 am]

BILLING CODE 3510-25-M

Transportation and Related Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held February 26, 1987, 9:30 a.m., Herbert C. Hoover Building, Room 6029, 14th Street and Constitution Avenue, NW., Washington, D.C.

The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

Agenda:

1. Opening remarks by the Chairman.
2. Charter Renewal.
3. Technical Advisory Committee Membership.
4. 1986 Annual Report and Plan Implementation.
5. 1987 Plan.
6. Presentation of papers or comments by the public.
7. New Business.

Executive Session:

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 30, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377-4217. For further information or copies of the minutes call 202-377-2583.

Dated: January 29, 1987

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 87-2238 Filed 2-3-87; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meetings

Agency: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Salmon Plan Development Team (SPDT) will convene a public meeting, February 16-20, 1987, at the Council's office, (address below). On February 16 the Team will convene at 1 p.m. to draft the 1987 stock status report for presentation in March 1987 to the Council.

At 10 a.m. on February 19 the Council's Salmon Advisory Subpanel (SAS) and members of the Council's Scientific and Statistical Committee will join the SPDT for a preliminary review of the 1987 stock abundance projections. This preliminary review is provided to assist SAS members in developing salmon management proposals to submit to the Council for 1987. The joint public meeting will convene in room 330 of the Metro Center. Written and oral statements pertaining to the salmon abundance projections will be accepted at appropriate times during the public meetings. For further information contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Center, 2000 SW. First Avenue, Suite 420, Portland OR 97201; telephone: (503) 221-6352.

Dated: January 28, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87-2215 Filed 2-3-87; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

Agency: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Crustacean Plan Monitoring Team will convene a public meeting, February 6, 1987, at 1 p.m., at the Western Pacific Council's Conference Room 1605 (address below), to discuss results of lobster trap escape gap research; review recently completed work on marketing Hawaii lobster; recommend a minimum size for slipper lobster which can be harvested; discuss the status of the lobster stocks in the Northwestern Hawaiian Islands; report on the status of Amendment IV to the Spiny Lobster Fishery Management Plan, as well as to discuss other Team business.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: January 28, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87-2216 Filed 2-3-87; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 1 to Permit No. 322; (P267)]

Marine Mammals; Permit Modification: Dr. Paul Gleeson

Notice is hereby given that, pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), § 220.24 of the regulations on endangered species permits (50 CFR Parts 217-222), Scientific Research Permit No. 322 issued to Dr. Paul Gleeson, U.S. Department of the Interior, National Park Service, Alaska Regional Office, 2525 Gambell Street, Anchorage, Alaska 99503-2892 on March 24, 1981 (46 FR 19513) is modified as follows:

Section B.4 is replaced by:

4. The authority to export and reimport this material shall extend through December 31, 1991. The terms and conditions of this Permit shall remain in effect as long as the material hereunder is maintained under the authority and responsibility of the Permit Holder.

The effective date of this modification is December 31, 1986.

As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of the modification, and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This modification was issued in accordance with, and is subject to Parts 220-222 of Title 50 CFR of the National Marine Fisheries Service regulations governing endangered species permits (39 FR 41367), November 27, 1974.

Documents submitted in connection with the above Permit and modification are available for review in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115; and

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802.

Dated: January 27, 1987.

Nancy Foster,

Director, Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 87-2217 Filed 2-3-87; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increasing Import Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

January 29, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 31, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 29, 1987. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 25, 1985 and October 3, 1985, as amended, between the Governments of the United States and Indonesia provides, among other things, for designated percentage increases in certain categories (swing). An increase for swing is being applied to the import restraint limit for man-made fiber textile products in Category 639, produced or manufactured in Indonesia and exported during the agreement year which began on July 1, 1985 and extended through June 30, 1986. The limit for the 1986-87 agreement year (July 1, 1986—June 30, 1987) is also being increased by application of swing. As a result of swing, imports exported in 1985-86, amounting to 27,300 dozen, charged to the 1986-87 restraint limit will be deducted and charged to the 1985-86 restraint limit.

In the letter below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the restraint limits for Category 639 as indicated. The Commissioner is also directed to deduct 27,300 dozen from the restraint limit established for 1986-87 and to charge this same amount to the 1985-86 limit.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

January 29, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directives issued to you on October 31, 1985 and June 25, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in Indonesia and exported during the 1985-86 and 1986-87 agreement years.

Effective on January 29, 1987, the directives of October 31, 1985 and June 25, 1986 are hereby further amended to adjust the previously established restraint limits for Category 639 under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 25 and October 3, 1985, as amended:[1]

Adjusted 12-mo limit [1] (7/1/85-6/30/86)	Adjusted 12-mo limit [2] (7/1/86-6/30/87)
417,300 dozen	442,338 dozen

[1] The limit has not been adjusted to reflect any imports exported after June 30, 1985.
[2] The limit has not been adjusted to reflect any imports exported after June 30, 1986.

Also effective on January 29, 1987, you are directed to charge 27,300 dozen to the 1985-86 restraint limit. This same amount is to be deducted from the charges made to the restraint limit which began on July 1, 1986 and extends through June 30, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-2232 Filed 2-3-87; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Government of Panama Concerning Category 645/646

January 30, 1987.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715. For information on categories on which consultations have been requested call (202) 377-3740.

Background

On November 26, 1986, the Government of the United States, under Article 3 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973, and as extended by Protocols on December 8, 1977, December 22, 1981 and July 31, 1986, requested the Government of Panama to enter into consultations concerning exports to the United States of man-made fiber sweaters in Category

[1] The agreement provides, in part, that: (1) Specific limits may be increased by designated percentages for swing, carryover and carryforward; and (2) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

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645/646, produced or manufactured in Panama.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Panama, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of man-made fiber textile products in Category 645/646, produced or manufactured in Panama and exported to the United States during the twelve-month period which began on November 26, 1986 and extends through November 25, 1987 at a level of 72,137 dozen.

A summary market statement concerning this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Anyone wishing to comment or provide data or information regarding the treatment of Category 645/646 under Article 3 of the Multifiber Arrangement, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Ronald I. Levin, Acting Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce 14th and Constitution Avenue NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Panama—Market Statement

Category 645/646—Man-Made Fiber Sweaters

November 1986.

Summary and Conclusions

U.S. imports of Category 645/646 from Panama were 82,634 dozen during the year ending September 1986 six times the 13,639 dozen imported a year earlier. During the first nine months of 1986, imports from Panama were 82,501 dozen, 25 times the amount imported during the same period of 1985 and 24 times the amount imported during calendar year 1985.

The U.S. market for Category 645/646 has been disrupted by imports. The sharp and substantial increase of imports from Panama has contributed to this disruption.

U.S. Production and Market Share

U.S. Production of man-made fiber sweaters declined 18 percent from 7,235 thousand dozen in 1983 to 5,947 thousand dozen in 1985. The U.S. Producers' share of this market declined from 40 percent in 1983 to 33 percent in 1985.

U.S. Imports and Import Penetration

U.S. imports of Category 645/646 grew from 10,775 thousand dozen in 1983 to 12, 167 thousand dozen in 1985, a 13 percent increase. Imports reached 12,403 thousand dozen during the year ending September 1986, 6 percent above the previous years level. The ratio of imports to domestic production increased from 149 percent in 1983 to 205 percent in 1985.

Duty Paid Value and U.S. Producer Price

Approximately 93 percent of Category 645/646 imports from Panama during the first nine months of 1986 entered under TSUSA number 384.8073—women's and girls' man-made fiber knit sweaters, not ornamented. These sweaters entered the U.S. at landed duty paid values below the U.S. producer price for comparable sweaters.

[FR Doc. 87-2233 Filed 2-3-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research advisory Committee Panel on Laser Eye Protection will meet on February 12 and 13, 1987 at the Pentagon, Washington, DC. The meeting will commence at 9:00 AM and terminate at 5:00 PM on February 12; and commence at 8:00 AM and terminate at 4:00 PM on February 13, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to review the current Navy and DOD R&D laser eye protection programs. The agenda will include technical discussions addressing the current and projected threat, cockpit compatabilty, operational requirements and organizational responsibilities. These discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this matter contact: Commander T.C. Fritz, U.S. Navy, Office of the Chief of Naval Research (Code 00NR), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

This notice is being published late because of administrative problems caused by inclement weather.

Dated: January 30, 1987.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy Federal Register Liaison Officer.

[FR Doc. 87-2226 Filed 2-3-87; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CI87-183-000]

Apollo Oil Co.; Application for Abandonment With Pregranted Abandonment for Sales Under Small Producer Certificate

January 30, 1987.

Take notice that on December 16, 1986, as supplemented on January 15, 1987, Apollo Oil Company (Apollo), P.O. Box 1737, Hobbs, New Mexico 88240, filed an application under Section 7(b) of the Natural Gas Act and § 2.77 of the Commission's rules.

Apollo requests that the Commission issue an order granting Apollo (1) authority to abandon sales to Phillips 66 Natural Gas Company (Phillips 66) of certain gas which is subject to NGA jurisdiction from the State "E" Tract 17, Well #5, Lovington Queen Field, Lea County, New Mexico, and (2) blanket pregranted abandonment authorization for a limited-term of three years for any future sales of such gas under its small producer certificate issued in Docket No. CS75-41. Apollo states that it is subject to substantially reduced takes without payment, the volumes involved are approximately 300 Mcf per day, the last effective rate was 69¢ per Mcf, Apollo is in danger of losing its lease, and the contract is due to expire July 14, 1988.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to Section 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Apollo to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2251 Filed 2-3-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-34-000]

Northwest Alaskan Pipeline Co; Tariff Changes

January 30, 1987.

Take notice that on January 27, 1987, Northwest Alaskan Pipeline Company (Northwest Alaskan) tendered fo filing the following revisions to its FERC Gas Tariff Original Volume No. 2.

Rate schedule	Tariff sheet No.
X-3	Second Revised Sheet No. 300 Second Revised Sheet No. 301 Original Sheet Nos. 30800-308ZZ Original Sheet Nos. 308AAA-308FFF Second Revised Sheet No. 322 First Revised Sheet No. 350 Original Sheet Nos. 358HH-358ZZ Original Sheet No. 358AAA First Revised Sheet No. 386A

Northwest Alaskan proposed that these revisions be effective as of February 25, 1987.

Northwest Alaskan states that the proposed tariff revisions implement a settlement of a dispute among Northwest Alaskan, its supplier Pan-Alberta Gas Ltd. ("Pan Alberta") and its purchaser United Gas Pipe Line Company ("United") regarding take-and-pay provisions of Northwest Alaskan's agreement with Pan-Alberta and corresponding provisions of Northwest Alaskan's agreement with United. The settlement between the three parties, among other things, provides for a release by Pan-Alberta of its take-and-pay claims for contract years 1985, 1986 and the portion of 1987 up to the effective date of the settlement, and provides for reductions for a two year period following the effective date in the minimum take levels and in the purchase prices under Northwest Alaskan's contract with Pan-Alberta. The settlement provides a corresponding take-and-pay claim release by Northwest Alaskan and reductions in the minimum take levels and purchase prices under Northwest Alaskan's nearly identical Gas Purchase Agreement with United.

Northwest Alaskan states by virtue of Pan-Alberta's agreeing to release its take-and-pay claims and to reduce contractual minimum volumes and purchase prices, Pan-Alberta will be foregoing substantial claims for damages and will incur a significant reduction in revenue. Accordingly, United has agreed in the settlement amendments to make cash payments directly to Pan-Alberta for the account of Northwest Alaskan or to Northwest Alaskan who will in turn pay them to Pan-Alberta, in the total amount of $50 million (U.S). As an intergral part of the settlement, United has entered has entered into a Marketing and Transportation Agreement with Pan-Alberta which could potentially result in an additional benefit to Pan-Alberta of $15 million (U.S.) per year for each of the two years following the effective date of the settlement amendments (see tariff sheets numbered 308CCC through 308FFF).

Northwest Alaskan has requested that the Commission, approve the tariff revisions, find that the entire settlement is just and reasonable and deemed to be prudent and find that Northwest Alaskan may flow through to United any payments made by Northwest Alaskan to Pan-Alberta pursuant to the settlement amendments. A determination with respect to the treatment of such amounts in United's rates is not sought in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before February 6, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2250 Filed 2-3-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-94-007

Sea Robin Pipeline Co.; Compliance Tariff Filing

January 30 1987.

Take notice that on January 28, 1987, Sea Robin Pipline Company (Sea Robin) tendered for filing the following tariff sheets as part of its FERC Gas Tariff, Original Volume No. 1, in compliance with the Commission's letter orders dated November 3, 1986 and January 15, 1987:

Revised Substitute Original Sheet No. 4-A2—effective September 26, 1986

Substitute First Revised Sheet No. 4-A2—effective January 1, 1987.

Sea Robin requests waiver of the Commission's regulations so that the sheets may become effective as noted. Copies of this filing were served on Sea Robin's jurisdictional customers and parties in Docket No. RP86-94.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 6, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2249 Filed 2-3-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2249-000]

Thomas R. Williams; Notice of Application

January 28, 1987.

Take notice that on September 18, 1986, Thomas R. Williams, pursuant to section 305 (b) of the Federal Power Act, tendered for filing an Application for Authority to hold the following interlocking positions:

Director, Georgia Power Company, Public Utility

Director, National Service Industries, Inc., Supplying Electrical Equipment.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this motion are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2246 Filed 2-3-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER87-226-000 et al.]

Electric Rate and Corporate Regulation Filings; Central Illinois Public Service Co. et al.

January 28, 1987.

Take notice that the following filings have been made with the Commission:

1. Central Illinois Public Service Company

[Docket No. ER87-226-000]

Take notice that on January 22, 1987, Central Illinois Public Service Company ("CIPS") tendered for filing Appendix D to the existing Interconnection Agreement between CIPS and Southern Illinois Power Cooperative ("SIPC").

CIPS requests an effective date of September 15, 1986 and therefore requests a waiver of the Commission's notice requirements.

Comment date: February 11, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power & Light Company

[Docket No. ER 87-222-000]

Take notice that Florida Power & Light Company (FPL), on January 15, 1987, tendered for filing: (1) a Contract for Interchange Service Between Florida Power & Light Company and the City of Homestead, Florida ("Contract"); and (2) Cost Support Schedules C, F, and G (together with Cost Support Schedule F Supplements) which support the daily capacity charges for sales under Service Schedule B (Short-Term Firm Interchange Service) of the Contract. The Contract has been executed by both parties.

FPL respectfully requests that the proposed Contract and Cost Support Schedules C, F, and G (together with Cost Support Schedule F Supplements) be made effective February 1, 1987 and therefore requests waiver of the Commission's notice requirements. According to FPL, a copy of this filing was served upon the City of Homestead, Florida and the Florida Public Service Commission.

Comment date: February 11, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company

[Docket No. ER87-171-000]

Take notice, that, on January 20, 1987, Florida Power & Light Company (FPL) filed certain materials relating to the Stipulation and Agreement between FPL and the five Florida Cities filed on December 18, 1986, in the captioned proceeding.

Comment date: February 11, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Holyoke Water Power Company, Holyoke Power and Electric Company

[Docket No. ER84-574-004]

Take notice that on January 20, 1987, Holyoke Water Company (Holyoke) tendered for filing, in compliance with the Commission's Opinion No. 257, the following:

1. Amendment to each of three Mt. Tom power contracts, as filed in this docket, revised in accordance with the Initial Decision, as modified on reconsideration and clarified by Opinion No. 257. These are denominated Amendment No. 6 to each of the three contracts.

2. A copy of these three sets of amendments, underlined to indicate where revisions have been made in compliance with Opinion No. 257 as compared to the amendments originally filed in 1984.

3. A billing comparison reflecting the compliance level revenues versus the level of revenues prior to filing, including reflection of the amortization of the replacement reserve.

Comment date: February 11, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Idaho Power Company

[Docket No. ER87-220-000]

Take notice that on January 15, 1987, the Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume, No. 1 (Supersedes Original Volume No. 1) during November 1986, along with cost justification for the rate charged. This filing includes the following supplements:

Utah Power & Light Company, Supplement No. 60

Sierra Pacific Power Company, Supplement No. 58

Washington Water Power Company, Supplement No. 44

Puget Sound Power & Light, Supplement No. 25

Portland General Electric Company, Supplement No. 50

Comment date: February 11, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Nevada Power Company

[Docket No. ER87-218-000]

Take notice that Nevada Power Company on January 14, 1987, tendered for filing proposed changes in its FPC Electric Service Tariff, No. 1. The changes include the elimination of all references to C P National Corporation (CPN) and a change of power factor adjustment to 95%.

The changes are the result of the purchase of C P National in and around Laughlin and Searchlight, Nevada by Nevada Power Company authorized by FERC Docket No. EC 86-20-000 issued October 27, 1986. The City of Needles, California will be served directly under contract by Nevada Power Company.

Copies of the filing were served upon the City of Needles, California, the Public Service Commission of Nevada, the California Public Utilities Commission and the FERC San Francisco Office.

Comment date: February 11, 1987, in accordance with Standard Paragraph E at the end of this document.

7. Ohio Power Company

[Docket No. ER-87-221-000]

Take notice that the American Electric Power Service Corporation (AEP) on January 15, 1987 tendered for filing on behalf of its affiliate Ohio Power Company (Ohio Power) Supplemental Schedule V, dated as of Janaury 1, 1987, to service Schedule A—Transmission Service under Agreement, dated as of April 1, 1974 (1974 Agreement), between American Municipal Power Ohio, Inc. (AMP-Ohio) and Ohio Power, Ohio Power Rate Schedule FERC No. 74.

Supplemental Schedule V defines an Interconnection Point and a delivery Point that is required by Service Schedule A so that AMP-Ohio can avail itself of the Transmission Service provided for in Service Schedule A. This schedule has been proposed by AMP-Ohio to become effective January 1, 1987, therefore waiver of the Commission's notice requirements is requested.

Copies of this filing were served upon the Public Utilities Commission of Ohio and AMP-Ohio.

Comment date: February 11, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. The United Illuminating Company

[Docket No. ER87-136-000]

Take notice that on January 20, 1987, The United Illuminating Company ("UI") tendered for filing its First Amendment to its initial Rate Schedule, Docket No. ER87-136-000, a Unit Sale Agreement (the "Agreement") between UI and UNITIL POWER Corporation ("UNITIL Power"), the Amendment provides additional information requested by the Commission.

UI renewed its request that the Commission waive its standard notice period and allow the Agreement to become effective on October 1, 1986.

UI states that a copy of this Amendment has been mailed to UNITIL Power, Bedford, New Hampshire.

UI further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: February 11, 1987, in accordance with Standard paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary

[FR Doc. 87-2245 Filed 2-3-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-198-000]

Chace Oil Company, Inc.; Application for Limited-Term Abandonment With Pregranted Abandonment for Sales Under Small Producer Certificate

January 30, 1987.

The applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act for limited-term abandonment and pregranted abandonment to sell natural gas for resale in interstate commerce under its small producer certificate, as described herein.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI87-198-000, B, 12/23/86 [1]	Chace Oil Company, Inc., 313 Washington S.E., Albuquerque, New Mexico 87108.	El Paso Natural Gas Company, South Lindrith Gallup/Dakota Field, Sandoval and Rio Arriba Counties, New Mexico.	([2])	

[1] Additional information received January 20, 1987.

[2] Applicant, a small producer certificate holder in Docket No. CS73-209, requests an eighteen-month limited-term abandonment of its sale of gas to El Paso for various wells located in South Lindrith Gallup/Dakota Field, Sandoval and Rio Arriba Counties, New Mexico. In support of its application Applicant states the wells are shut in due to the market. The subject wells, their estimated deliverability and the NGPA category of the gas are as follows:

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Name of well	Estimated daily deliverability (Mcf)	NGPA category
Jicarilla Apache, Lease No. 70–#3	5	108.
Jicarilla Apache, Lease No. 70–#4	2	108.
Jicarilla Apache, Lease No. 70–#2	3	104 (1973–1974).
Jicarilla Apache, Lease No. 71–#2	2	104 Post–1974.
Jicarilla Apache, Lease No. 47M–#1	5	108.
Jicarilla Apache, Lease No. 54–#2	3	104 Post–1974.
	20	

Applicant intends to sell this gas in an alternate market.
Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 87–2243 Filed 2–3–87; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. CI87–167–000]

Graham Resources, Inc., et al.; Application for Limted-Term Abandonment With Pregranted Abandonment for Sales Under Small Producer Certificate

January 30, 1987.

Take notice that the Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to abandon service as described herein.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436–A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85–1–000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR sections 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft ³	Pressure base
CI87–167–000, B, Dec. 5, 1986 [1].	Graham Resources, Inc., et al., P.O. Box 3134, Covington, Louisiana 70434–3134 [2].	El Paso Natural Gas Company, Blanco Field, Rio Arriba and Sandoval Countries, New Mexico.	(3)	

[1] Additional material received December 18, 1986, January 16 and 21, 1987.
[2] The et al. parties are Graham Royalty, Ltd., Prudential Bache Energy Income Production Partnership II P–5, Prudential Bache Energy Income Production Partnership II P–6, Prudential Bache Energy Income Production Partnership II P–7, Prudential Bache Energy Income Production Partnership II P–8, Prudential Bache Energy Income Production Partnership II P–9, and Prudential Bache Energy Income Production Partnership II P–10.
[3] Applicant, a small producer certificate holder in Docket No. CS83–102–000, requests authorization for a limited-term abandonment of sales of NGPA section 108 stripper gas to El Paso for a period of up to two years and for pregranted abandonment for sales under its small producer certificate.
In support of its application Applicant states it is incurring substantially reduced takes without payment. Applicant has included with its application an unexecuted letter agreement dated November 17, 1986, which indicates El Paso has agreed to release the gas for a period coterminous with the limited-term abandonment authority. Current deliverability is 1,800 Mcf per day. Applicant proposes to seek an alternate market.
Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 87–2244 Filed 2–3–87; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. C171–596–000 et al.]

Tenneco Oil Co.; Applications for Limited-Term Abandonment and Blanket Limited-Term Certificate With Pregranted Abandonment

January 30, 1987.

Take notice that the Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act for limited-term abandonment and for blanket limited-term certificate with pregranted abandonment to sell natural gas for resale in interstate commerce, as described herein.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436–A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85–1–000, all as more fully described in the applications which are no file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft ³	Pressure base
CI71–596–000, B, Dec. 4, 1986 [1],	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	Trunkline Gas Company, South Timbalier Blocks 169 and 196, Offshore Louisiana.	(2)	
CI87–165–000, A, Dec. 4, 1986 [1],	do	Various Purchasers, South Timbalier Blocks 169 and 196, Offshore Louisiana.	(3)	

[1] Additional material received December 18, 1986, and January 13, 1987.
[2] Applicant requests authorization to abandon service to Trunkline for a limited term ending December 31, 1987. The gas involved is NGPA section 102(d) gas, which is in excess of Trunkline's requirements under Applicant's January 1, 1971, gas sales contract.
In support of its application Applicant states that due to cut-backs by the primary purchaser, shut-in deliverability by the primary purchaser has been a major problem for the blocks subject to this abandonment application. Applicant has previously implemented a spot sales program which commenced with spot sales of NGPA section 102(c) gas and which was later expanded, through the grant of abandonment and certificate authorization, to include NGPA section 102(d) gas. From time to time sales of the NGPA section 102(d) gas were made under Applicant's TENNEFLEX Program. After the TENNEFLEX Program expired, sales of the subject NGPA section 102(d) gas were made under Applicant's blanket sales and abandonment certificate issued in Docket No. CI85–633–000. Such sales are currently ongoing and Applicant's blanket sales and abandonment authority issued in Docket No. CI85–633–000 will expire March 31, 1987. Despite spot sales of the subject NGPA section 102(d) gas, pipeline takes from the OCS have steadily declined. Applicant has been exposed to substantially reduced takes by Trunkline without payment for any volumes not purchased, even though Trunkline's contract take obligation is 80% of deliverability. During 1986, Trunkline has not purchased any NGPA section 102(d) gas from the subject acreage. Based on this trend, and the continuation of market conditions which precipitated such reduced takes, it appears that takes by Trunkline will continue to be at extremely low levels for an indefinite period. Consequently, the imminent threat of shut-in gas will be exacerbated by the expiration of spot sales authority for the section 102(d) gas. Accordingly, Applicant entered into a contract renegotiation with Trunkline wherein Trunkline obtained significant take-or-pay relief and credit in exchange for the temporary release of excess deliverability from the subject OCS blocks if appropriate Commission authorization is received. Applicant states that Trunkline will cooperate toward transportation of the released gas, subject to capacity limitations and necessary Commission authorization. The subject wells and their estimated daily deliverability are shown as follows:

Well name	Estimated deliverability (MMCF/D)
South Timbalier 196:	
A–1D	0.7
A–2D	0.2
A–5D	0.8
Subtotal	1.7
South Timbalier 169:	
#5	3.5
#6	8.6
A–6	4.4
Subtotal	16.5
Total	18.2

Applicant indicates its intent to sell the subject gas on the spot market.
[3] Applicant requests in Docket No. CI87–165–000 a blanket limited-term certificate with pregranted abandonment to be effective through December 31, 1987, to make spot sales in interstate commerce of gas which is subject to the limited-term abandonment in Docket No. CI71–596–000.
Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 87–2247 Filed 2–3–87 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP87–35–000]

Texas Gas Pipe Line Corp.; Rate filing

January 30, 1987.

Take notice that on January 28, 1987, Texas Gas Pipe Line Corporation (TGPL) filed proposed changes to its FERC Gas Tariff, Second Revised Volume 1. The proposed changes would effect a net reduction in the Base Tariff Rate. Accordingly, the total Base Tariff Rate would be reduced 59.89¢ from the existing 244.47¢ to 184.58¢. This reduction is accomplished primarily via the lowering of purchased gas costs. The reduction takes into account a total increase in non-gas costs of 17.28¢.

TGPL also proposes Revised Cover Sheets to both volumes of its Tariff and a Revised Sheet No. 23 to its Second Revised Volume No. 1; these proposed changes are administrative or clerical in nature. TGPL states that this filing arises

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out of its duty to file a rate base tariff not later than every thirty-six (36) months. Copies of the filing were served upon TGPL's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Comission's rules of practice and procedure. All such motions or protests should be filed on or before February 6, 1987. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2252 Filed 2-3-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-221-000]

Pepperell Power Corp.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

January 30, 1987.

On January 12, 1987, Pepperell Power Corporation (Applicant), c/o Energy Management, Inc., of 200 Boylston Street, Chestnut Hill, Massachusetts, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in East Pepperell, Massachusetts. The facility will consist of one (1) combustion turbine generator, one (1) heat recovery steam generator, and one (1) extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be utilized by James River Pepperell, Inc., in its papermaking process and space heating. The net electric power production capacity will be approximately 35,690 kilowatts. The primary energy source will be natural gas, with number 2 oil as an emergency back up fuel. Construction of the facility is expected to begin in August 1989.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2248 Filed 2-3-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50665 FRL-3148-4]

Issuance of Experimental Use Permits; American Cyanamid Co.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

241-EUP-114. Extension. American Cyanamid Company, Agricultural Research Division, P.O. Box 400, Princeton, NJ 08540. This experimental use permit allows the use of 6,000 pounds of the herbicide imazapyr on forests to evaluate the control of broadleaf weeds and grasses. A total of 4,000 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Delaware, Florida, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. The experimental use permit is effective from January 1, 1987 to January 1, 1988. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800))

100-EUP-88. Issuance. Ciba-Geigy Corporation, P.O. Box 18300, Greensboro, NC 27419. This experimental use permit allows the use of 330 pounds of the herbicide glufosinateammonium on soybeans to evaluate the control of various weeds. A total of 100 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Tennessee, and Virginia. The experimental use permit is effective from December 23, 1986 to February 15, 1988. A temporary tolerance for residues of the active ingredient in or on soybeans has been established. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703-557-1830))

279-EUP-107. Extension. FMC Corporation, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 178.3 pounds of the insecticide cyclopropanecarboxylic acid, 3-(2-chloro-3,3-trifluoro-1- propenyl)-2,2-dimethyl-[1,1'biphenyl]-3-yl methyl ester on almonds, apples, cherries, grapes, peaches, pears, pecans, and walnuts to evaluate the control of various insect pests. A total of 203.5 acres are involved; the program is authorized in the States of Alabama, Arkansas, California, Colorado, Florida, Georgia, Idaho, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Washington, West Virginia, and Wisconsin. The experimental use permit is effective from November 10, 1986 to November 10, 1987. (George LaRocca, PM 15, Rm. 204, CM#2, (703-557-2400))

50658-EUP-2. Issuance. Merck & Company, Inc., Hillsborough Road, Three Bridges, NJ 08887. This experimental use permit allows the use of 161.25 pounds of the miticide avermectin and its delta 8,9-geometric isomer on cotton to evaluate the control of spider mites. A total of 4,700 acres are involved; the program is authorized only in the States of Alabama, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. The experimental use permit is effective from November 15, 1986 to November 15, 1987. A temporary tolerance for residues of the active ingredient in or on cottonseed has been established. (George LaRocca, PM 15, Rm. 204, CM#2, (703-557-2400)).

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: January 21, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87-1966 Filed 2-3-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-36137; FRL-3149-1]

Pesticide Registration Standards; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of registration standards.

SUMMARY: This notice announces the availability of Registration Standard documents for certain pesticides. EPA is making available a document for each of the pesticides describing the Agency's regulatory conclusions and positions on the continued registrability for those pesticides whose reviews have been completed or the draft Registration Standard for those whose review has not yet been completed. Completed Registration Standards are available from the National Technical Information Service (NTIS).

ADDRESSES: Published Registration Standards may be purchased from the NTIS at the following address: National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, (703-487-4650).

Orders may be placed by telephone to the NTIS order desk and charged against a deposit account or American Express, VISA, or MasterCard, or sent by mail with check, money order, or account number.

FOR FURTHER INFORMATION CONTACT: Concerning NTIS availability, by mail: Nancy Hemming, Registration Support and Emergency Response Branch, Registration Division (TS-767C), Office of Pesticide Programs Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number, Rm. 718-B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-8193).

Concerning the public docket, or to request indices to the public docket or draft Registration Standards, by mail contact Frances S. Mann, Information Services Branch, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2805).

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency conducts a systematic review of pesticides to determine whether they continue to meet the criteria for registration under section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). That review culminates in the issuance of a Registration Standard, a document describing the Agency's regulatory conclusions and positions on the continued registrability of the pesticide. Final or draft Registration Standards for the pesticides listed in this notice are available.

For each published Registration Standard desired, the order should specify the title of the document, the corresponding NTIS order number, and whether hard copy or microfiche is desired. The NTIS order number is the same for hard copy and microfiche, but the price differs. All microfiche copies are $6.50 each; the price for hard copies differs according to the length of the document. To obtain the current hard-copy price, please contact NTIS before ordering. Registration Standards are available for the following pesticides:

Name	Number
Acephate	(*)
Alachlor	PB 86-179635/AS
Aldicarb	PB 84-207653
Aliette (Fosetyl-Al)	PB 84-206554
Aluminum phosphide	PB 82-137514
4-Aminopyridine (Avitrol)	PB 84-209907
Amitraz	(*)
Amitrole	PB 87-104766/AS
Ammonium sulfamate	PB 82-133570
Antazine	PB 84-168301
Aspon	PB 84-206549
Atrazine	PB 84-149541/AL
Azinphos methyl (Guthion)	PB 87-111779/AS
Bacillus thuringiensis	(*)
Banum metaborate	PB 84-168376
Benomyl	(*)
Bentazon	PB 86-159653/AS
Bolstar (Sulprofos)	PB 82-133646
Bonc acid	PB 87-101903/AS
Bromacil	PB 87-110276/AS
Brominated salicylanilides (3-5-Di-bromo)	PB 86-168150/AS
Butoxcarboxime (Plantpin)	PB 82-177585
Butylate	PB 85-147304/AS
Captan	PB 86-181674
Captafol	PB 87-104774/AS
Carbaryl	PB 84-232602
Carbofuran	PB 87-105516/AS
Carboxin	PB 82-132994
Chloramben	PB 82-134347
Chlordimeform HCl	(*)
Chlorobenzilate	PB 85-107605
Chloroneb	PB 81-123804
Chloropicrin	PB 86-182094/AS
Chlorothalonil	PB 85-247245/AS
Chlorpyrifos	PB 87-110284/AS
Chlorsulfuron (Glean)	PB 85-122505
Chromated arsenicals	PB 87-114088/AS
Copper chloride/nitrates	(*)
Copper Sulfate	PB 86-236767/AS
Coumaphos	PB 82-133570
Cryolite	PB 87-110300/AS
Cyanazine	PB 86-175098/AS
Cycloheximide	PB 84-211945
Cyhexatin	PB 86-173184/AS
Daminozide	PB 87-104782/AS
DCNA	PB 84-210178
Deet	PB 81-277722
Demeton	PB 86-168820/AS
Dialifor	PB 82-133638
Diallate	PB 85-144814/AS
Dicamba	PB 84-243492
Dichlone	PB 81-207383
Dicofol	PB 84-160084
Dicrotophos	PB 82-204383
Diflubenzuron (Dimilin)	PB 86-176500/AS
Dimethoate	PB 87-110318/AS
Dioxathion	PB 85-245033/AS
Dipropetryn	PB 86-171147/AS
Diquat dibromide	PB 87-105490/AS
Disulfoton	PB 86-178167/AS
Diuron	PB 84-210327
Endosulfan	PB 82-243999
EPTC	PB 87-109427/AS
Ethion	PB 86-177565
Ethoprop	PB 84-210194
Ethoxyquin	PB 82-131418
Fenaminosulf	PB 86-177573
Fensulfothion	PB 85-148963/AS
Fluchloralin	PB 86-176476/AS
Fluometuron	PB 87-109435/AS
Fonofos	BP 84-210186
Formetanate hydrochlonde	PB 84-141456
Fumann	PB 81-123812
Glyphosate	PB 87-103214/AS
Guthion (see AZINPHOS METHYL)	
Heliothis NPV	PB 85-134393
Hexazinone	PB 87-110292/AS
Hyamine 3500	PB 86-169406/AS
Isapropalin	PB 82-131293
Lindane	PB 86-175114/AS
Linuron	PB 85-149011/AS
Magnesium Phosphide	PB 82-195777
MCPA	PB 87-110326/AS
Metalaxyl	PB 82-172297
Methamidophos	PB 87-109419/AS
Methidathion	PB 87-109401/AS
Methomyl	PB 82-180738
Methoprene	PB 87-109443/AS
Methyl Bromide	PB 87-105508/AS
Metolachlor	PB 81-123280
Metolachlor (FRSTR)	(*)
Metnbuzin	PB 87-105482/AS
Monocrotophos	PB 86-173895/AS
Monuron TCA	PB 84-166669
Naled	PB 84-158980
Naphthalene	PB 82-139437
Naphthaleneacetic acid	PB 82-131145
Naptalam	PB 86-173861/AS
Nitrapyrin	PB 86-176468/AS
Norflurazon	PB 86-135159/AS
OBPA	PB 82-172271
Oryzalin	(*)
Paraquat	(*)
Pendimethalin	PB 86-172814/AS
Perfluidone	PB 86-173879/AS
Phorate	PB 87-109383/AS
Phosalone	PB 82-131731
Phosmet	PB 87-116620/AS
Picloram	PB 86-173887/AS
Potassium bromide	PB 86-106978/AS
Potassium permanganate	PB 86-173135/AS
Pronamide	PB 87-103735/AS
Propachlor	PB 86-174182/AS

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Name	Number
Simazine	PB 84-212349
Sodium and calcium hypochlorites	PB 87-103222/AS
Sodium omadine	PB 86-179929/AS
Sulfur	PB 86-102043/AS
Sulfuryl fluoride	PB 86-173937/AS
Telone	PB 87-111787/AS
Temephos	PB 82-140641
Terbacil	PB 85-120186
Terbufos	PB 84-210335
Terrazole	PB 81-126116
Thiophanate ethyl	PB 87-101283/AS
Thiophanate methyl	(*)
Thiram	PB 85-102705
TPTH (Triphenyltinhydroxide)	PB 85-248797
Trichlorfon	PB 85-149300/AS
Trifluralin	(*)
Trimethacarb (Landrin)	PB 86-160414/AS
Warfarin	PB 82-140716
6-12	PB 81-234098

*Draft document sent out for public comment. Copies of draft document available from Frances S. Mann, Information Services Branch, address above.

Additional notices will be published in the **Federal Register** as other Registration Standards become available through NTIS.

Dated: January 21, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87-1965 Filed 2-3-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180712; FRL-3151-2]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted a specific exemption for the control of various pests in Texas, and announces a crisis exemption initiated by the Texas Department of Agriculture. Also listed are 34 quarantine exemptions granted to the U.S. Department of Agriculture. The exemptions, issued during the month of November, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific, crisis, quarantine exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each exemption for the name of the contact person. The following information applies to all contact people:

By mail: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA has granted a specific exemption to the Texas Department of Agriculture for the use of permethrin on kale, turnip, mustard, and kohlrabi to control cabbage loopers; November 13, 1986 to March 31, 1987. Texas initiated a crisis exemption for this use. (Libby Pemberton)

A crisis exemption was initiated by the Texas Department of Agriculture on October 21, 1986, for the use of sodium chlorate on black-eyed peas as a harvest aid. The need for this program has ended. (Libby Pemberton)

The following quarantine exemptions were granted to the U.S. Department of Agriculture for the use of various chemicals on various non-food items to control pests around the country from November 20, 1986 to November 19, 1989. (Libby Pemberton)

1. A mixture of ethylene oxide and carbon dioxide on miscellaneous cargo, to control quarantinably important snails and slugs, in ship holds, under tarpaulins or in other temporary enclosures. EPA completed a rebuttable presumption against registration (RPAR) on this chemical; the final determination was published in the **Federal Register** of January 27, 1978 (43 FR 3801).

2. Hydrogen cyanide on cargo which is adversely affected when treated with methyl bromide, to control cotton insects, khapra beetles or snails, in ship holds, under tarpaulins, or in other temporary enclosures.

3. Methyl bromide on nonfood/nonfeed cargo, to control khapra beetles, woodboring insects, snails, and other quarantinable plant pests, in ship holds under tarpaulins or in other temporary enclosures.

4. Methyl bromide on machinery, plant, and nonplant materials to control golden nematodes, witchweed, cotton insects, and gypsy moths, under tarpaulins, in fields, within quarantined areas, as ports of entry.

5. Aluminum phosphide to fumigate stored nonfood products in ship holds under tarpaulins or in other temporary enclosures.

6. Formaldehyde as a plant pest treatment to fumigate rice straw and containers.

7. Formaldehyde as a plant pest treatment for bags and bagging, and rice hulls.

8. G-1707-Pyrethrum extract and synergist to control fruit flies and other soft-bodied insects in aircraft and cargo containers.

9. d-Phenothrin to control fruit flies and other soft-bodied insects in aircraft and cargo containers.

10. Malathion to control the infestation of quarantine insects on ship decks, bulkheads, pier areas, or other storage facilities.

11. Malathion-carbaryl dip to treat orchids and other plants found not tolerant to methyl bromide fumigation at inspection stations around the country.

12. Bordeaux mixture as a foliar spray on plants to reduce surface diseases at inspection stations and port areas around the country.

13. Sodium hypochlorite to treat propagative plant parts and plant materials at inspection stations.

14. Captan to treat seeds and other propagative plant parts for plant diseases at designated inspection stations. EPA completed a rebuttable presumption against registration (RPAR) on this chemical: the final determination was published in the **Federal Register** of June 21, 1985 (50 FR 25884).

15. Copper sulfate to treat some seeds and plant material at designated inspection stations.

16. Ferbam as a spray to control various plant diseases on propagative plant parts.

17. Zineb to treat certain plants or plant parts infested with diseases at designated inspection stations.

18. Propoxur for use in insect traps.

19. Dichlorvos (DDVP) for use in gypsy moth and khapra beetle traps.

20. Naled for use in fruit fly traps.

21. Ethyl acetate for use in black light traps.

22. Trifluralin on established lawns and turf to control witchweed.

23. Methyl bromide to kill witchweed seed in soil on fallow fields and small plots of land released from quarantine.

24. Sodium carbonate to be applied to surfaces potentially exposed to certain animal diseases in semen containers.

25. Sodium carbonate to be applied to aircraft surfaces potentially exposed to certain animal diseases.

26. Sodium hypochlorite to be applied to surfaces potentially exposed to certain animal diseases.

27. Sodium hydroxide to be applied to exposed surfaces, animal product containers, hay and straw.

28. Resmethrin aerosol may be applied to control fruit flies and other soft-bodied insects in aircraft and cargo containers when people are present.

29. Resmethrin may be applied as a micronized dust in aircraft containers or other temporary enclosures when the airplane crew, passengers, or animals are not present.

30. 8-Hydroxyquinoline sulfate-aqueous solution to treat plant diseases in citrus and other rutaceous seeds at inspection stations.

31. Nicotine sulfate to control aphids on a wide variety of propagative plant materials while in quarantine at inspection stations.

32. d-Phenothrin to control mealy bugs and aphids on a wide variety of propagative plants while in quarantine.

33. Cyhexatin to control spider mites on a variety of propagative plants while in quarantine.

34. Dienochlor to control spider mites on a variety of propagative plants while in quarantine.

Authority: 7 U.S.C. 136.

Dated: January 21, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 87-2214 Filed 2-3-87; 8:45 am]

BILLING CODE 6560-50-M

[A-4-FRL-3150-9]

North Carolina Sulfur Dioxide (SO_2) Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Informational notice.

SUMMARY: On December 7, 1982 (47 FR 54939), EPA approved for all but 24 sources a revision to the North Carolina regulation 15 NCAC 2D.0516 which relaxed the sulfur dioxide (SO_2) limit for fuel-burning sources from 1.6 pounds per million BTU heat input (lb/mBTU) to 2.3 lb/mBTU. Some of these sources are undergoing additional analysis in order for EPA to approve the relaxed limit. However, four sources will remain at the 1.6 lb/mBTU level and are required to do so by State permit. These four sources are Maiden Knitting (formerly Cannon Mills), Ecusta Corporation (formerly Olin Mills), Texasgulf and Travenol.

ADDRESSES: Copies of the material submitted by the State may be examined during normal business hours at the following locations:

United States Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, 512 North Salisbury Street, Raleigh, North Carolina 27611.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Peddicord, Air Programs Branch, U.S. EPA Region IV at the above address and telephone number FTS 257-2864 or commercial (404) 347-2864.

SUPPLEMENTARY INFORMATION: On December 7, 1982 (47 54939), EPA approved, for all but 24 sources in the State of North Carolina, a revision to State regulation 2D.0516 which relaxed the SO_2 limit for fuel-burning sources. The original version of 2D.0516 prescribed a stepdown in SO_2 emissions for all fuel-burning sources from 2.3 lb/mBTU heat input to 1.6 lb/mBTU by July 1, 1980. Air quality dispersion modeling submitted by the State in 1982 indicated that removal of the SO_2 stepdown requirement was approvable for all but 24 sources.

EPA indicated in the December 7, 1982, **Federal Registration** notice that if future modeling could show that the relaxed SO_2 limit of 2.3 lb/mBTU was adequate to protect the NAAQS, then the stepdown requirement could be eliminated for other sources as well.

Four of the 24 sources are now and will remain at the 1.6 lb SO_2/mBTU limit. The four sources either did not wish for a relaxed SO_2 limit or they predicted NAAQS violations with the new limit and decided not to apply for a source-specific SO_2 SIP revision.

The four sources remaining at the 1.6 lb/mBTU are:

(1) *Maiden Knitting* (formerly Cannon Mills) Construction/operation permit No. 3922123 issued on March 6, 1986, limits boilers to 1.6 lb/mBTU SO_2.

(2) *Ecusta Corporation* (formerly Olin Corporation) Operation Permit No. 3644R6 issued on March 28, 1986 limits boilers to 1.6 lbmBTU SO_2.

(3) *Texasgulf* Construction/operation permit No. 2871R6 issued on April 21, 1986, limits boiler to 1.6 lb/mBUT SO_2.

(4) *Travenol* Construction/operation permit No. 1915R6 issued on July 8, 1986, limits boiler to 1.6 lb/mBTU.

This notice serves to inform the public of the four North Carolina sources remaining at 1.6 lb/mBTU. Copies of the permits and correspondence are available at the EPA Region IV office. Contact Bob Peddicord at the aforementioned address.

Dated: January 15, 1987.

Jack E. Ravan,

Regional Administrator.

[FR Doc. 87-2210 Filed 2-3-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-400001; FRL-3101-6]

Statement of Policy and Guidance Regarding Petitions Under Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice outlines EPA's policy concerning the petition provisions of section 313(e) of Title III of the Superfund Amendments and Reauthorization Act of 1986. This notice also informs petitioners where to send such petitions and provides additional guidance regarding format and appropriate support documentation that will best assist the Agency in making decisions on such petitions.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202) 554-1404.

SUPPLEMENTARY INFORMATION:

I. Background

The Superfund Amendments and Reauthorization Act of 1986 [Pub. L. 99-499] contains a free-standing Title III, which is itself titled, "The Emergency Planning and Community Right-To-Know Act of 1986." Section 313 of Title III requires owners and operators of certain facilities that manufacture, process, or otherwise use a specified list of toxic chemicals, in amounts exceeding statutory threshold quantities, to report annually their emissions of such chemicals to the environment. Section 313(c) of Title III sets forth an initial list of "Toxic Chemicals Covered" that is composed of 329 entries including several categories of chemicals. This initial list is set forth in Senate Environment and Public Works Committee Print No. 99-169 and is repeated in the following table:

List of Toxic Chemicals Subject to the Provisions of Section 313 of the Emergency Planning and Community Right to Know Act of 1986

Chemical Name	Cas No
Acetaldehyde	75070
Acetamide	60355
Acetone	67641
Acetonitrile	75058
2-Acetylaminofluorene	53963
Acrolein	107028
Acrylamide	79061
Acrylic acid	79107
Acrylonitrile	107131
Aldrin	309002
Allyl chloride	107051
Aluminum (fume or dust)	7429905
Aluminum oxide	1344281
2-Aminoanthraquinone	117793
4-Aminoazobenzene	60093
4-Aminobiphenyl	92671
1-Amino-2-methylanthraquinone	82280
Ammonia	7664417
Ammonium nitrate (solution)	6484522
Ammonium sulfate (solution)	7783202
Aniline	62533
o-Anisidine	90040
p-Anisidine	104949
o-Anisidine hydrochloride	134292
Anthracene	120127
Antimony and compounds	7440360

Chemical Name	Cas No.
Arsenic and compounds	7440382
Asbestos (friable)	1332214
Auramine	492808
Barium and compounds	7440393
Benzal chloride	98873
Benzamide	55210
Benzene	71432
Benzidine	92875
Benzoic trichloride (Benzotrichloride)	98077
Benzoyl chloride	98884
Benzoyl peroxide	94360
Benzyl chloride	100447
Beryllium and compounds	7440417
Biphenyl	92524
Bis(2-chloroethyl) ether	111444
Bis(chloromethyl) ether	542881
Bis(2-chloro-1-methylethyl) ether	108601
Bis(2-ethylhexyl) adipate	103231
Bromoform (Tribromomethane)	75252
Bromomethane (Methyl bromide)	74839
1,3-Butadiene	106990
Butyl acrylate	141322
n-Butyl alcohol	71363
sec-Butyl alcohol	78922
tert-Butyl alcohol	75650
Butyl benzyl phthalate	85687
1,2-Butylene oxide	106887
Butyraldehyde	123728
C.I. Acid Blue 9, diammonium salt	2650182
C.I. Acid Blue 9, disodium salt	3844459
C.I. Acid Green 3	4680788
C.I. Basic Green 4	569642
C.I. Basic Red 1	989388
C.I. Disperse Yellow 3	2832408
C.I. Food Red 5	3761533
C.I. Food Red 15	81889
C.I. Solvent Orange 7	3118976
C.I. Solvent Yellow 3	97563
C.I. Solvent Yellow 14	842079
C.I. Vat Yellow 4	128665
Cadmium and compounds	7440439
Calcium cyanamide	156627
Captan	133062
Carbaryl	63252
Carbon disulfide	75150
Carbon tetrachloride	56235
Carbonyl sulfide	463581
Catechol	120809
Chloramben	133904
Chlordane	57749
Chlorinated fluorocarbon (Freon 113)	76131
Chlorine	7782505
Chlorine dioxide	10049044
Chloroacetic acid	79118
2-Chloroacetophenone	532274
Chlorobenzene	108907
Chlorobenzilate	510156
Chloroethane (Ethyl chloride)	75003
Chloroform	67663
Chloromethane (Methyl chloride)	74873
Chloromethyl methyl ether	107302
Chloroprene	126998
Chlorothalonil	1897456
Chromium and compounds	7440473
Cobalt and compounds	7440484
Copper and compounds	7440508
p-Cresidine	120718
Cresol (mixed isomers)	1319773
m-Cresol	108394
o-Cresol	95487
p-Cresol	106445
Cumene	98828
Cumene hydroperoxide	80080
Cupferron	135206
Cyanide compounds	57125
Cyclohexane	110827
2,4-D	94757
Decabromodiphenyl oxide	1163195
Diallate	2303164
2,4-Diaminoanisole	615054
2,4-Diaminoanisole sulfate	39156417
4,4'-Diaminodiphenyl ether	101804
Diamnotoluene (mixed isomers)	25376458
2,4-Diaminotoluene	95807
Diazomethane	334883
Dibenzofuran	132649
1,2-Dibromo-3-chloropropane (DBCP)	96128
1,2-Dibromoethane (Ethylene dibromide)	106934
Dibutyl phthalate	84742
Dichlorobenzene (mixed isomers)	25321226
1,2-Dichlorobenzene	95501
1,3-Dichlorobenzene	541731
1,4-Dichlorobenzene	106467
3,3'-Dichlorobenzidine	91941
Dichlorobromomethane	75274
1,2-Dichloroethane (Ethylene dichloride)	107062
1,2-Dichloroethylene	540590
Dichloromethane (Methylene chloride)	75092
2,4-Dichlorophenol	120832
1,2-Dichloropropane	78875
1,3-Dichloropropylene	542756
Dichlorvos	62737
Dicofol	115322
Diepoxybutane	1464535
Diethanolamine	111422
Di(2-ethylhexyl) phthalate (DEHP)	117817
Diethyl phthalate	84662
Diethyl sulfate	64675
3,3'-Dimethoxybenzidine	119904
4-Dimethylaminoazobenzene	60117
3,3'-Dimethylbenzidine (o-Tolidine)	119937
Dimethylcarbamyl chloride	79447
1,1-Dimethyl hydrazine	57147
2,4-Dimethylphenol	105679
Dimethyl phthalate	131113
Dimethyl sulfate	77781
4,6-Dinitro-o-cresol	534521
2,4-Dinitrophenol	51285
2,4-Dinitrotoluene	121142
2,6-Dinitrotoluene	606202
n-Diochylphthalate	117840
1,4-Dioxane	123911
1,2-Diphenyl hydrazine (Hydrazobenzene)	122667
Direct Black 38	1937377
Direct Blue 6	2602462
Direct Brown 95	16071866
Epichlorohydrin	106898
2-Ethoxyethanol	110805
Ethyl acrylate	140885
Ethyl benzene	100414
Ethyl chloroformate	541413
Ethylene	74851
Ethylene glycol	107211
Ethyleneamine (Aziridine)	151564
Ethylene oxide	75218
Ethylene thiourea	96457
Fluometuron	2164172
Formaldehyde	50000
Heptachlor	76448
Hexachlorobenzene	118741
Hexachloro-1,3-butadiene	87683
Hexachlorocyclopentadiene	77474
Hexachloroethane	67721
Hexachloronaphthalene	1335871
Hexamethylphosphoramide	680319
Hydrazine	302012
Hydrazine sulfate	10034932
Hydrochloric acid	7647010
Hydrogen cyanide	74908
Hydrogen fluoride	7664393
Hydroquinone	123319
Isobutyraldenyde	78842
Isopropyl alcohol (mfg. strong acid processes)	67730
4,4'-Isopropylidenediphenol	80057
Lead and compounds	7439921
Lindane	58899
Maleic anhydride	108316
Maneb	12427382
Manganese and compounds	7439965
Melamine	108781
Mercury and compounds	7439976
Methanol	67561
Methoxychlor	72435
2-Methoxyethanol	109864
Methyl acrylate	96333
Methyl tert-butyl ether	1634044
4,4'-Methylene bis(2-chloroaniline) (MOCA)	101144
4,4'-Methylene bis(N,N-dimethyl) benzenamine	101611
Methylene bis(phenylisocyanate) (MBI)	101688
Methylene bromide	74953
4,4-Methylene dianiline	101779
Methyl ethyl ketone	78933
Methyl hydrazine	60344
Methyl iodide	74884
Methyl isobutyl ketone	108101
Methyl isocyanate	624839
Methyl methacrylate	80626
Michler's ketone	90948
Molybdenum trioxide	1313275
Mustard gas	505602
Naphthalene	91203
alpha-Naphthylamine	134327
beta-Naphthylamine	91598
Nickel and compounds	7440020
Nitric acid	7697372
Nitrilotriacetic acid	139139
5-Nitro-o-anisidine	99592
Nitrobenzene	98953
4-Nitrobiphenyl	92933
Nitrofen	1836755
Nitrogen mustard	51752
Nitroglycerin	55630
2-Nitrophenol	88755
4-Nitrophenol	100027
2-Nitropropane	79469
p-Nitrosodiphenylamine	156105
N,N-Dimethylaniline	121697
N-Nitrosodi-n-butylamine	924163
N-Nitrosodiethylamine	55185
N-Nitrosodimethylamine	62759
N-Nitrosodiphenylamine	86306
N-Nitrosodi-n-propylamine	621647
N-Nitrosomethylvinylamine	4549400
N-Nitrosomorpholine	59892
N-Nitroso-N-ethylurea	759739
N-Nitroso-N-methylurea	684935
N-Nitrosonornicotine	16543558
N-Nitrosopiperidine	100754
Octachloronaphthalene	2234131
Osmium tetroxide	20816120
Parathion	56382
Pentachlorophenol (PCP)	87865
Peracetic acid	79210
Phenol	108952
p-Phenylenediamine	106503
2-Phenylphenol	90437
Phosgene	75445
Phosphoric acid	7664382
Phosphorus (yellow or white)	7723140
Phthalic anhydride	85449
Picric acid	88891
Polychlorinated biphenyls (PCBs)	1336363
Propane sultone	1120714
beta-Propiolactone	57578
Propionaldehyde	123386
Propoxur	114261
Propylene (Propene)	115071
Propyleneimine	75558
Propylene oxide	75569
Pyridine	110861
Quinoline	91225
Quinone	106514
Quintozene (Pentachloronitrobenzene)	82688
Saccharin (manufacturing)	81072
Safrole	94597
Selenium	7782492
Silver and compounds	7440224
Sodium hydroxide (solution)	1310732
Sodium sulfate (solution)	7757826
Styrene (monomer)	100425
Styrene oxide	96093
Sulfuric acid	7664939
Terephthalic acid	100210
1,1,2,2-Tetrachloroethane	79345
Tetrachloroethylene (Perchloroethylene)	127184
Tetrachlorvinphos	961115
Thallium and compounds	7440280
Thioacetamide	62555
4,4'-Thiodianiline	139651
Thiourea	62566
Thorium dioxide	1314201
Titanium dioxide	13463677
Titanium tetrachloride	7550450
Toluene	108883
Toluene-2,4-diisocyanate	584849
Toluene-2,6-diisocyanate	91087
o-Toluidine	95534
o-Toluidine hydrochloride	636215
Toxaphene	8001352
Triaziquone	68768
Trichlorfon	52686
1,2,4-Trichlorobenzene	120821
1,1,1-Trichloroethane (Methyl chloroform)	71556
1,1,2-Trichloroethane	79005
Trichloroethylene	79016
2,4,5-Trichlorophenol	95954
2,4,6-Trichlorophenol	88062
Trifluralin	1582098
1,2,4-Trimethyl benzene	95636
Tris(2,3-dibromopropyl) phosphate	126727
Urethane (Ethyl carbamate) (monomer)	51796
Vanadium (fume or dust)	7440622
Vinyl acetate	108054
Vinyl bromide	593602
Vinyl chloride (monomer)	75014
Vinylidene chloride	75354
Xylene (mixed isomers)	1330207
m-Xylene	108383
o-Xylene	95476
p-Xylene	106423
2,6-Xylidine	87627
Zinc (fume or dust) and compounds	7440666

Chemical Name	Cas No.
Zineb	12122677

EPA can by rule add chemicals to or delete chemicals from the emissions inventory list. Also, any member of the public can petition EPA to add chemicals to or delete chemicals from the list. Chemicals may be added or deleted according to the criteria in section 313(d) and the provisions in section 313(c).

Section 313(d)(2) states that a determination under this paragraph (that is, EPA's decision to add or delete a chemical) must be based on generally accepted scientific principles or laboratory tests, or appropriately designed and conducted epidemiological or other population studies, available to the Administrator.

Section 313(e) gives EPA 180 days to "initiate rulemaking" or publish a notice explaining why the petitioner's request is being denied. In the event of a petition from a State governor to add a chemical, if EPA fails to act within 180 days, EPA must publish a final rule adding the chemical to the list. Therefore, EPA is under specific time constraints to evaluate petitions and to develop and publish an appropriate response.

II. Early Consultation With the Agency and Other Authorities

Any person or organization considering development of a petition under section 313(e) of Title III is encouraged to consult with the Agency at an early point in that development process.

The Agency does plan to publish periodically the chemicals under review for addition to or deletion from the list. However, contact with the Agency—usually first at the regional level—will help to avoid considerable work for a chemical already under review.

Further, the petitioner also may want to consider whether it is appropriate to request the Agency to list a chemical for the purpose of requiring nationwide emissions reporting.

Persons should bear in mind that there are potentially a very large number of firms subject to the annual reporting requirements related to the list because the addition of a chemical to the list triggers reporting nationwide by certain manufacturers, processors, and users of that chemical. For example, a person may want information on a chemical that may be emitted from a local facility, but such chemical is not on the section 313 emissions inventory list. If persons have only this purpose in mind, they are encouraged to check with the EPA Regional office or appropriate state agencies for more information on the chemical, since there may be more direct ways to obtain the relevant data than to add the chemical to the section 313 list.

Also, under the emergency planning provisions of Title III, States are required to establish emergency response commissions and local emergency planning committees. Information relating to other toxic and hazardous chemicals will be reported to such groups by local facilities. Once the groups are established petitioners are encouraged to check to determine if the desired information on the chemical of concern has already been or will be collected by such State or local authorities.

Once established, the state emergency response commissions are urged to encourage citizens and organizations in their state to use them as a focal point prior to submitting the petition to EPA Headquarters. They are in a key position—if consulted early—to identify cases where several citizens and organizations are working on petitions for the same chemical. In addition, they may be able to supplement and enhance the petition with state information.

In recommending a chemical for addition to the list, the petitioner may want to consider the additional factor of exposure potential. For example, available data may indicate that a chemical may cause an adverse chronic effect in humans, based on ingestion. It is reasonable for the petitioner to consider how likely residents of any given community would be to ingest the chemical as a result of a nearby facility's emissions of that chemical. EPA or state agencies may have information related to the general industrial processes and potential for emissions, and thus the relative potential for human exposure to that chemical. Such information could give the petitioner insight into whether the chemical would be a prime candidate for annual, nationwide emissions reporting.

Again, persons may wish to direct general questions regarding chemicals to local, State or EPA Region authorities. Persons, organizations and states that are beginning to develop or are in the process of developing a specific petition under section 313 are encouraged to contact EPA regional offices or Headquarters. For EPA headquarters contact the address and telephone number provided under the heading of **FOR FURTHER INFORMATION CONTACT** above.

III. EPA's Review of Petitions

Section 313(e) requires EPA to give consideration to additions and deletions of the initial list of chemicals established by law. The recommended contents for a petition are being established here in the belief that the public interest is best served by well-developed and sound technical petitions facilitating Agency review in an efficient manner. EPA's review of petitions will be limited both by the information available and the relatively short period of time for review. Therefore, the Agency's individual decision will be largely based on the quality and quantity of information provided by the petitioner.

EPA plans to conduct its own limited information search on chemicals contained in a petition. This data search will be directed at public sources of human health and environmental data as well as EPA's own files of chemical information. The purpose of this search will be to verify information supplied by the petitioner. The "in-house" data search will be done to ensure that decisions made are consistent with other EPA decisions on the same chemical, to the extent that such decisions relate to the same basic criteria for human health and the environment. As discussed previously, EPA may in certain cases be able to assist a petitioner in developing a petition.

The criteria effects—cancer, for example—specified by the petitioner will be the focus of EPA's review of the chemical in question. EPA will not do a broad-based search for information on all criteria-related effects of the chemical. EPA's decision to initiate rulemaking to add or delete a chemical, or to deny the petitioner's request, will be based primarily on the evaluation of the chemical as it relates to the stated criteria effects.

IV. Petition Contents

A petitioner should provide the Agency with enough information concerning his or her request and as much credible scientific support documentation as can reasonably be developed to assist the Agency in reviewing the petition. The following elements illustrate the type of information that would assist the Agency in reviewing petitions.

A. Chemical Identification

The key element in chemical identification is to provide the Agency with an unambiguous name that defines the chemical in question. For this reason, EPA recommends that the

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petitioner provide a systematic chemical name such as the one used by the Chemical Abstracts Service (CAS) in naming and indexing chemical substances during the 9th Collective Index Period. Where available, the petitioner should also provide the corresponding CAS Registry Number, which is a universal identifier for discrete chemical substances. Both the CA Index Name and the CAS Registry Number can be obtained by searching the volumes of *Chemical Abstracts* or *CA Index Guide*, which are available in university and large public libraries.

Those persons with computer telecommunications resources may obtain the required information by accessing such commercially available computer data bases as CAS ONLINE, CIS/SANSS, MEDLARS, DIALOG and other data bases that contain on-line chemical dictionaries. These data bases allow for searching by many routes including synonyms, name fragments, molecular formulas, and chemical structure.

As an alternative to CA Index Names, the petitioner may also identify the chemical in question by its International Union of Pure and Applied Chemistry (IUPAC) name. The IUPAC system of naming chemicals is perhaps the most frequently used nomenclature in chemistry text books. If both CA Index Names and IUPAC names are not available, the petitioner should attempt to provide the most systematic chemical name available.

Petitioners should avoid the use of a product trade name as the chemical identification. If a trade name is the only identification for the chemical that the petitioner has available prior to submitting the petition, then the petitioner should also attempt to provide the CAS Registry number associated with that chemical. For example, the section 313-mandated list contains the pesticide Aldrin. Aldrin is a product trade name, not a chemical-specific name. However, this list entry is accompanied by the specific CAS Registry Number that provides EPA, the industry, and the public with a reference to a more chemically specific identification. As supplementary information, EPA encourages petitioners to provide any known tradenames associated with the chemical of concern.

B. Specific Criteria Elements

For petitions requesting additions to the list, it would assist the Agency to know which of the section 313(d)(2) criteria elements the chemical in question meets. Identifying the relevant criteria allows EPA to focus the petition review process and gives the Agency some direction for focusing its own data development efforts within the limited time for the review. For deletions, the petitioner should state that the chemical meets none of the health and environmental effects criteria.

Section 313(d)(2) sets forth criteria as follows:

> A chemical may be added if the Administrator determines, in his judgment, that there is sufficient evidence to establish any one of the following:
>
> (A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.
>
> (B) The chemical is known to cause or can reasonably be anticipated to cause in humans—
>
> (i) Cancer or teratogenic effects, or
>
> (ii) Serious or irreversible—
>
> (I) Reproductive dysfunction,
>
> (II) Neurological disorders,
>
> (III) Heritable genetic mutations, or
>
> (IV) Other chronic health effects.
>
> (C) The chemical is known to cause or can reasonably be anticipated to cause, because of—
>
> (i) Its toxicity
>
> (ii) Its toxicity and persistency in the environment or,
>
> (iii) Its toxicity and tendency to bioaccumulate in the environment, a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

Any person may petition the Agency on the basis of the first two criteria, (A) and (B). A state governor may petition the Agency on the basis of all three criteria, (A), (B) or (C).

C. Rationale

The petitioner should explain why the chemical in question meets (or does not meet) the specified criteria elements. For example, a petitioner may claim that a chemical should be listed because it meets the first criteria element relating to adverse acute human health effects. The rationale should explain what adverse acute effects could be anticipated and why these effects are "significant." Further, it would assist the Agency if the petitioner stated why the concentration of the chemical beyond the facility site boundary would be likely to cause such adverse acute effects, and what that concentration is reasonably likely to be as a result of continuous or frequently recurring releases. The same type of rationale should be provided for each criterion listed by the petitioner.

D. Published Literature Citations

For information that appears in published literature sources, the petitioner should provide EPA with a citation to the specific documents that the petitioner believes support the requested action. Such information sources could include one or more of the following:

1. Textbooks on toxicology or other health sciences.
2. Reference books or reports relating to toxic effects of chemicals, published by government or private sources.
3. Regulatory documents or other official public notification documents, e.g., **Federal Register** notices relating to current regulation of the chemical, or other Federal, State or local government actions.
4. Specific scientific journal articles, preferably those articles that have undergone peer review.
5. Results of data base searches. Several comprehensive, computer-accessible data bases contain abstracts of health or environmental studies and/or provide citations to specific journal articles or other sources. If petitioners do not have specific access to such computer-based search services, they may want to start by contacting their local public library. The following list contains representative data bases and certain components of those data bases that can provide information on health and environmental effects of chemical substances:

DIALOG (a privately maintained database)
- BIOSIS
- EXERPTA MEDICA

MEDLARS (maintained by the National Library of Medicine)
- TOXLINE
- CANCERLINE
- HSDB Toxnet system

CIS (Chemical Information System—a privately maintained data base.)
- ENVIROFATE
- AQUIRE (Aquatic Information Retrieval)
- RTECS (Registry of Toxic Effects of Chemical Substances)
- GENETOX

CAS–ONLINE (mentioned above)
- CA–FILE

E. Unpublished Information

The petitioner may be aware of studies or documents that could support the proposed action but that EPA would not have immediate knowledge of, or access to. In such cases of unpublished information, the petitioner should provide EPA with an actual copy of the document.

Examples of unpublished information include:

1. Company-sponsored studies.
2. University research papers/dissertations.
3. Government-sponsored reports/assessments, especially those done at the local and State level.

V. Recommended Format for a Petition

A. Summary of the Petition

The following information laid out early in the petition would greatly expedite the review process:

1. Name, address and telephone number of the petitioner, and a description of any organization that person represents, if applicable.
2. Actions requested, i.e., to add or delete. In the case of additions, which of the criteria in section 313(d)(2) the chemical or chemicals meet.
3. A tabular summary of the specific chemicals, with associated Chemical Abstracts Service (CAS) registry numbers, if more than one chemical is involved. Organizing this summary list in CAS number order would also assist the Agency in its basic review tasks.

B. Body of the Petition

The body of the petition itself should be chemical-specific. It would be most helpful if the body of the petition is structured so that each chemical and its CAS number are listed at the heading of a paragraph or page, depending upon the quantity of support data supplied. The associated information elements could be presented under the following subheadings:

1. The action requested, i.e., to add or to delete.
2. The specific criteria elements that the chemical meets.
3. The justification or rationale, including a statement explaining why the chemical meets or does not meet the stated criteria elements, and a listing or attachment of support documentation.

VI. Where To Send Petitions

A petition under section 313 of Title III should be sent to the following address to expedite its review.

ADDRESS: OTS Document Processing Center, Attn: Title III, Section 313(e) Petition, U.S. Environmental Protection Agency, Office of Toxic Substances (TS–790), 401 M St. SW., Washington, DC 20460.

VII. Paperwork Reduction Act

The information collection provisions in this notice will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* These provisions are not effective until OMB approves them and a notice to that effect is published in the **Federal Register.**

Dated: January 21, 1987.

Lee M. Thomas,

Administrator.

[FR Doc. 87–2187 Filed 2–3–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL HOME LOAN BANK BOARD

Acceptance of Appointment of Receiver; North America Savings and Loan Association, Santa Ana, CA

Notice is hereby given that pursuant to the authority contained in section 406(c)(1) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1) (1982), and as directed by the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation on January 23, 1987, accepted the tender of the Savings and Loan Commissioner for the State of California, pursuant to section 8253 of the California Financial Code, of the appointment as receiver for North America Savings and Loan Association, Santa Ana, California for the purpose of liquidation.

Dated: January 29, 1987.

Nadine Y. Washington,

Acting Secretary.

[FR Doc. 87–2184 Filed 2–3–87; 8:45 am]

BILLING CODE 6720–01–M

Appointment of Receiver; North America Savings and Loan Association, Santa Ana, CA

Notice is hereby given that pursuant to the authority contained in section 406(c)(2) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(2) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for North America Savings and Loan Association, Santa Ana, California on January 23, 1987.

Dated: January 29, 1987.

Nadine Y. Washington,

Acting Secretary.

[FR Doc. 87–2185 Filed 2–3–87; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 86–32]

Filing of Agreements by Persons Subject To Shipping Act; 1916 and Shipping Act of 1984—Exculpatory Provisions in Marine Terminal Agreements and Leases; Availability of Finding of No Signficant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Special Studies has determined that Docket No. 86–32 will not constitute a major Federal action signficantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. section 4321 *et seq.*, and the preparation of an environmental impact statement is not required.

Docket 86–32 is a proceeding instituted to consider the possible necessity of promulgating a rule prohibiting marine terminal operators from including exculpatory provisions in agreements and leases for terminal facilities and services.

The Master Contracting Stevedore Association of the Pacific Coast, Inc. has filed a Petition for Rulemaking (Petition) requesting that the Commission promulgate a rule prohibiting exculpatory clauses in terminal leases and agreements. The Commission, however, has determined that some form of evidentiary proceeding is necessary to develop a full factual record upon which a reasoned decision on the Petition can be made. Specifically, the hearing may consider the following issues: (1) Whether the practice of including exculpatory liability-shifting provisions in marine terminal leases and agreements is unjust and unreasonable; (2) whether the Commission should prohibit exculpatory liability-shifting provisions in marine terminal agreements and leases; and (3) whether the Commission should allow any exceptions to such a prohibition if a prohibition is found to be warranted and necessary.

This Finding of No Signficant Impact (FONSI) will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 504.6(b).

The FONSI and related environmental assessment are available for inspection upon request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, DC 20573, telephone (202) 532–5725.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-2154 Filed 2-3-87; 8:45 am]

BILLING CODE 6730-01-M

[Agreement No.: 212-011045]

Trans-Atlantic Revenue Apportionment Agreement (TARA); Request for Additional Information

Parties: Atlantic Constainter Line, B.V.; Gulf Container Line (GCL), B.V.; Compagnie Generale Maritime (CGM); Dart-ML Ltd.; Hapag-Loyd AG Trans; Freight Lines; Sea-land Service, Inc.; Nedlloyd Lijnen, B.V.

Synopsis: Notice is hereby given that the Federal Maritime Commission pursuant to section 6(d) of the Shipping Act of 1984 (46 U.S.C. app. 1701-1720) has requested additional information from the parties to the agreement in order to complete the statutory review of Agreement No. 212-011045 as required by the Act. This action extends the review period as provided in section 6(c) of the Act.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: January 30, 1987.

[FR Doc. 87-2152 Filed 2-3-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Centerre Bancorporation; Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23 of the Board's Regulation Y (12 CFR 225.23) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to engage, either directly or through a subsidiary, in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 19, 1987.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Centerre Bancorporation,* St. Louis, Missouri; to acquire Benefit Plan Services, Inc., Maryland Heights, Missouri, and thereby engage in providing services with respect to employee benefit plans. These activities will be conducted in the states of Missouri and Illinois.

Board of Governors of the Federal Reserve System, January 29, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2281 Filed 2-3-87; 8:45 am]

BILLING CODE 6210-01-M

CityTrust Bancorp et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 24, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *CityTrust Bancorp, Inc.,* Bridgeport, Connecticut, to engage through its subsidiary, CityTrust of New Jersey, Inc., Edison, New Jersey, in making, acquiring and servicing loans and other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y. Comments regarding this application must be received by February 12, 1987.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *CB&T Bancshares, Inc.,* Columbus, Georgia; to engage *de novo* through its subsidiary, Calumet Investment Advisors, Inc., Columbus, Georgia, in offering investment advisory services for a fee to retail customers, pursuant to § 225.25(b)(4) of the Board's Regulation Y.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Fidelity Bancorp,* Scottsdale, Arizona; to engage through a yet-to-be-named subsidiary, in mortgage banking activities and credit card processing, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 29, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2282 Filed 2-3-87; 8:45 am]

BILLING CODE 6210-01-M

Howard Bancorp et al.; Formation of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 24, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Howard Bancorp,* Burlington, Vermont; to merge with Jones Real Estate Company, Inc., Barre, Vermont, and thereby indirectly acquire Granite Savings Bank and Trust Company, Barre, Vermont. Comments on this application must be received by February 20, 1987.

B. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Solvay Bank Corporation,* Solvay, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Solvay Bank, Solvay, New York.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *City National Bancshares, Inc.,* Miami, Florida; to become a bank holding company by acquiring 94 percent of the voting shares of City National Bank Corporation, Miami, Florida, and thereby indirectly acquire City National Bank of Miami, Miami, Florida, and to acquire 94 percent of the voting shares of City National Bank of Florida, Hallandale, Florida.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Benton Bancorp, Inc.,* Benton, Kentucky; to acquire at least 67 percent of the voting shares of Calvert Bank, Calvert City, Kentucky.

E. **Federal Reserve Bank of Dallas** (W. Authur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Greenville Bancshares, Corporation,* Greenville, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of American National Bank of Greenville, Greenville, Texas.

Board of Governors of the Federal Reserve System, January 29, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2259 Filed 2-3-87; 8:45 am]

BILLING CODE 6210-01-M

Security Pacific Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 19, 1987.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation,* Los Angeles, California; to acquire Atlas Thrift of Nevada, Las Vegas, Nevada, and thereby engage in making, acquiring or servicing loans or other extensions of credit pursuant to § 225.25(b)(1) of lthe Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 29, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2260 Filed 2-3-87; 8:45 am]

BILLING CODE 6210-01-M

Clinton Bank & Trust Company Employee Ownership Stock Bonus Trust et al.; Acquisitions of Shares of Banks or Bank Holding Companies; Change in Bank Control

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and §225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 19, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Clinton Bank & Trust Company Employee Stock Ownership Stock Bonus Trust,* Clinton, Louisiana; to acquire 22.61 percent of the voting shares of Clinton Bancshares, Inc., Clinton, Louisiana, and thereby indirectly acquire Clinton Bank and Trust Company, Clinton, Louisiana.

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B. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Samuel C. Johnson,* Racine, Wisconsin; to acquire 16.10 percent of the voting shares of Heritage Racine Corporation, Racine, Wisconsin, and thereby indirectly acquire American State Bank, Kenosha, Wisconsin, and Heritage Bank & Trust, Wind Point, Wisconsin.

2. *Frank A. Thomas,* Greenwood, Wisconsin; to acquire 99.94 percent of the voting shares of North Holding Company, Inc., Neillsville, Wisconsin, and thereby indirectly acquire Neillsville Bank of Neillsville, Wisconsin.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Mr. John Vucurevich,* Rapid City, South Dakota; to acquire up to an additional 20 percent of the voting shares of Northern Plains Bancshares, Inc., Fargo, North Dakota, and thereby indirectly acquire First Interstate Bank of Fargo, National Association, Fargo, North Dakota.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Browne & Browne Partners,* Oklahoma City, Oklahoma; to acquire 12.5 percent of the voting shares of Union Bancorporation, Inc., Oklahoma City, Oklahoma, and thereby indirectly acquire Union Bank and Trust Company, Oklahoma City, Oklahoma.

2. *Philip S. Burek,* Alan D. Clark, Douglass C. Cogswell, Winton W. Cogswell, Internal Medicine Associates Employee Profit Sharing Trust (Lawrence P. Donahue), John A. Marta, Ronald C. Ness Profit Sharing Plan, Lee Pittle, Gary R. Swanson, Richard Walker, Internal Medicine Associates Employee Profit Sharing Trust (William J. Weller), and William J. Weller, M.D., all of Colorado Springs; Raymond D. Kandt, Shawnee Mission, Kansas, and Larry D. Shoemaker, Monument, Colorado; to acquire 50 percent of the voting shares of State Bank and Trust of Colorado Springs, Colorado Springs, Colorado.

3. *Herschel Pickett* and Eunice Pickett, Parker, Colorado; to acquire 6.66 percent of the voting shares of Parker Bancshares, Inc., Parker, Colorado.

E. **Federal Reserve Bank of Dallas**— (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222.

1. *Noel S. Bailey,* L. W. Bassett, Jr., and Aaran Blankenship; to acquire 78 percent of the voting shares of Entex Bancshares, Inc., Enloe, Texas.

2. *Tallulah Bancshares, Inc. Employee Stock Ownership—Stock Bonus Trust,* to acquire 23.45 percent of the voting shares of Tallulah Bancshares, Inc., Tallulah, Louisiana.

Board of Governors of the Federal Reserve System, January 29, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2258 Filed 2-3-87; 8:45 a.m.]

BILLING CODE 6210-01-M

Society for Savings Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR § 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 6, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Society for Savings Bancorp, Inc.,* Hartford, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of Society for Savings, Hartford, Connecticut.

In connection with this application, Applicant also proposes to acquire Society Mortgage Corporation, Wethersfield, Connecticut, and thereby engage in mortgage banking activities pursuant to § 225.25(b)(1) and acting as agent for the sale of home mortgage redemption insurance pursuant to § 225.25(b)(8) of the Board's Regulation Y. Applicant also proposes to acquire Financing for Science and Technology, Hartford, Connecticut, and thereby engage in leasing of capital equipment of the type used in the health care and research and development industry pursuant to § 225.25(b)(5) of the Board's Regulation Y; and to acquire Fidelity Acceptance Corporation, Minneapolis, Minnesota, and thereby engage in purchasing and servicing retail installment sales contracts and engage in consumer lending pursuant to § 225.25(b)(1); acting as underwriter and agent for the sale of credit related insurance, including home mortgage redemption insurance, pursuant to § 225.25(b)(8) of the Board's Regulation Y. Applicant also proposes to engage through Society for Savings in collecting premiums and paying benefits on whole life insurance pursuant to § 225.22(d)(2)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 29, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2257 Filed 2-3-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

National Aeronautics and Space Administration

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. C.W. Mathews, Office of Federal Acquisition and Regulatory Policy (202) 523-3856.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* Two-step sealed bidding is a method of contracting designed to obtain the benefits of Sealed Bidding when adequate specifications are not available. An objective is to permit the development of a sufficiently descriptive and not unduly restrictive statement of the Government's requirements, including an adequate technical data package, so that subsequent acquisitions may be made by conventional sealed bidding. This method is especially useful in acquisitions requiring technical proposals, particularly those for complex items. It is conducted in two steps.

(a) Step one consists of the request for, submission, evaluation, and (if necessary) discussion of a technical proposal. No pricing is involved. The objective is to determine the acceptability of the supplies or services offered. As used in this context, the word "technical" has a broad connotation and includes, among other things, the engineering approach, special manufacturing processes, and special testing techniques. It is the proper step for clarification of questions relating to technical requirements.

(b) Step two involves the submission of sealed priced bids by those who submitted acceptable technical proposals in step one. Bids submitted in step two are evaluated and the awards made in accordance with Subparts 14.3 and 14.4.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 3,225; responses per respondent, 1; total annual responses, 3,225; hours per response, 8; and total burden hours, 25,800.

Obtaining Copies of Proposals: Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0041, Technical Proposal—2-Step.

Dated: January 23, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87-2199 Filed 2-3-87; 8:45 am]

BILLING CODE 6820-61-M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition and Regulatory Policy (202) 523-3775.

SUPPLEMENTARY INFORMATION: a. *Purpose:* When it is in the best interest of the Government and when supplies and services are required by a Government contract, contracting officers may authorize contractors to use Government supply sources in performing certain contracts. Contractors placing orders under Federal Supply Schedules or Personal Property Rehabilitation Price Schedules must follow the terms of the applicable schedule. To place orders, firms will submit the initial FEDSTRIP or MILSTRIP requisitions or the Optional Form 347, a copy of the authorization to order, and a statement regarding authorization to the firm holding the schedule contract.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 300; responses per respondent, 7; total annual responses 2100; hours per response, .25; and total burden hours, 525.

Obtaining copies of proposals: Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0031, Contractor Use of Government Supply Sources.

Dates: January 23, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87-2200 Filed 2-3-87; 8:45 am]

BILLING CODE 6820-61-M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition and Regulatory Policy, (202) 523-3775.

SUPPLEMENTARY INFORMATION: a. *Purpose:* If it is in the best interest of the Government, the contracting officer may authorize cost-reimbursement contractors to obtain, for official purposes only, interagency motor pool vehicles and related services. Contractor's requests for vehicles must contain two copies of the agency authorization, the number of vehicles and related services required and period of use, a list of employees who are authorized to request the vehicles, a listing of equipment authorized to be serviced, and billing instructions and address.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 70; responses per respondent, 2; total annual responses

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140; hours per response, .5; and total burden hours, 70.

Obtaining copies of proposals: Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0032, Contractor Use of Interagency Motor Pool Vehicles.

Dated: January 21, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87–2201 Filed 2–3–87; 8:45 am]

BILLING CODE 6820–61–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. C.W. Mathews, Office of Federal Acquisition and Regulatory Policy (202) 523–3856.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* It is the policy of the Government to dispose of Bid samples received in response to a solicitation in the manner requested by the bidder. The information received from the bidder permits the contracting office to dispose of the bid samples as requested by the bidder.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 2,663; responses per respondent, 3; total annual responses, 7,989; hours per response, .167; and total burden hours, 1,334.

Obtaining copies of proposals: Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0040, Bid Sample Disposition Instructions.

Dated: January 23, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87–2202 Filed 2–3–87; 8:45 am]

BILLING CODE 6820–61–M

Federal Acquisition Regulations (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition and Regulatory Policy (202) 523–3775.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* When the Government purchases supplies that are new to the supply system, nonstandard, or modifications of previously shipped items, and different freight classifications may apply, offerors are requested to indicate the full Uniform Freight Classification or National Motor Freight Classification.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 2,640; responses per respondent, 3; total annual responses 7,920; hours per response, .167; and total burden hours, 1,323.

Obtaining Copies of Proposals: Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0055, Freight Classification Description.

Dated: January 21, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87–2203 Filed 2–3–87; 8:45 am]

BILLING CODE 6820–61–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition and Regulatory Policy (202) 523–3775.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* It is the Government's policy to try to resolve all contractual issues by mutual agreement at the contracting officer's level without litigation. Contractor's claims must be submitted in writing to the contracting officer for a decision. Claims exceeding $50,000 must be accompanied by a certification that (1) the claim is made in good faith; (2) supporting data are accurate and complete; and (3) the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable. Contractors may appeal the Contracting Officer's decision by submitting written appeals to the appropriate officials.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 7,500 responses per respondent, 20; total annual responses 150,000; hours per response, 1; and total burden hours, 150,000.

Obtaining copies of proposals: Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0035, Claims and Appeals.

Dated: January 23, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87–2204 Filed 2–3–87; 8:45 am]

BILLING CODE 6820–61–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition and Regulatory Policy (202) 523–3775.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* Offers submitted in response to Government solicitations must be evaluated and awards made on the basis of the lowest laid down cost to the Government at the overseas port of discharge, via methods and ports compatible with required delivery dates and conditions affecting transportation known at the time of evaluation. Offers are evaluated on the basis of shipment through the port resulting in the lowest cost to the Government. This provision collects information regarding the vendors preference for delivery ports.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 100; responses per respondent, 4, total annual responses 400; hours per response, .25; and total burden hours, 100.

Obtaining copies of proposals: Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0057, Evaluation of Export Offers.

Dated: January 21, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87–2205 Filed 2–3–87; 8:45 am]

BILLING CODE 6820–61–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. C.W. Mathews, Office of Federal Acquisition and Regulatory Policy (202) 523–3856.

SUPPLEMENTARY INFORMATION: a. *Purpose:* There are instances when the Government is unable to award a contract within the acceptance period established in the solicitation due to unforeseen complications. Rather than incur the costly expense of resoliciting offers, the Government requests the offerors to establish a longer acceptance period than the minimum acceptance period established by the Government in the solicitation.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 3,220; responses per respondent, 40; total annual responses, 128,800; hours per response, .017; and total burden hours, 2,190.

Obtaining copies of proposals: Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0044, Bid/Offer Acceptance.

Dated: January 23, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87–2220 Filed 2–3–87; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreements for State-Based Diabetes Control Programs; Availability of Funds for Fiscal Year 1987

Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1987 for competitive applications for cooperative agreements for the development of comprehensive State-Based Diabetes Control Programs which address the prevention of blindness due to diabetes, adverse outcomes of pregnancy among diabetic women, lower extremity amputations due to diabetes, coexisting diabetes and hypertension, and the integration of these efforts into the health care delivery system.

Authority

This cooperative agreement is authorized by section 301(a) [42 U.S.C. 241(a)] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance Number is 13.988.

Eligible Applicants

Eligible applicants for this program are official State public health agencies, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

Program Objectives/Purpose

The purpose of this cooperative agreement program is to implement *comprehensive* programs which will ensure that persons with diabetes who are at high risk for certain complications of diabetes are identified, entered into the health care system, and receive ongoing state-of-the-art preventive care and treatment. Persons with diabetes are an identifiable population with high rates of morbidity and premature mortality, and they have a high risk of diabetes-related complications, such as hypertension. A substantial proportion of morbidity and premature mortality among persons with diabetes can be prevented if existing technologies are fully utilized.

Applicants approved to receive assistance under this cooperative agreement program will develop comprehensive diabetes control programs designed to reduce morbidity and premature mortality among persons with diabetes through activities designed to impact on the health care system. In addition, programs will concurrently develop and/or maintain and refine the core capacity to integrate these complication-specific elements into a comprehensive package, and to integrate this package into the health care delivery system for persons with diabetes. These programs will include complication-specific elements for the prevention of visual loss due to diabetes *and* the prevention of at least *two of three* other major complication areas associated with diabetes which are

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described below. Emphasis should be placed on improving the delivery of health care and ensuring that persons with diabetes have access to comprehensive state-of-the-art care. It is anticipated that programs will develop the core capacity to address additional complication-specific areas, and will phase in these elements.

Diabetic eye disease (REQUIRED COMPLICATION-SPECIFIC PROGRAM ELEMENT): Diabetes is the leading cause of legal blindness in adults under the age of 65 in the United States. It is estimated that 5,800 persons with diabetes become blind each year, however 60 percent of this blindness could be prevented by the application of current knowledge. Control strategies should be focused initially upon persons at high risk of blindness due to diabetes. Those at high risk are post-pubertal persons who have not been examined by sensitive diagnostic techniques during the past year, *and* who have Type I diabetes (Insulin Dependent Diabetes Mellitus) of five years duration or who have Type II (Non-Insulin Dependent Diabetes Mellitus) diabetes.

At least *two* program elements from among those described below as *Optional* Complication-Specific Program Elements *MUST ALSO BE CHOSEN.* It is expected that the program element not chosen at this time will be integrated into the program as soon as possible.

Adverse Outcomes of Pregnancy (OPTIONAL COMPLICATION-SPECIFIC PROGRAM ELEMENT): Each year approximately 10,000 to 15,000 infants are born to women with overt diabetes in the United States. Compared to the offspring of women without diabetes, these infants are at increased risk for macrosomia, hypoglycemia, respiratory distress syndrome, and major congenital malformations. They also have increased rates of fetal and neonatal mortality. Recent studies suggest that increased rates of major congenital anomalies can be reduced to rates experienced by the offspring of women without diabetes. All women of childbearing age with diabetes, generally between the ages of 15 and 44, are considered at risk for adverse outcomes of pregnancy.

Lower Extremity Amputations Associated with Diabetes (OPTIONAL COMPLICATION-SPECIFIC PROGRAM ELEMENT): Annually, there are an estimated 40,000 lower extremity amputations among persons with diabetes. It is estimated that 50 percent of these amputations can be prevented by improving health care practices and reducing risk factors for amputation. The populations at high risk for amputation are persons with previous amputations, persons with previous ulcers or foot deformities, persons 40 years of age or older with diabetes, and persons with diabetes of 10 or more years duration.

Diabetes and Hypertension (OPTIONAL COMPLICATION-SPECIFIC PROGRAM ELEMENT): Of the 5.5 million persons estimated to have diabetes in the United States, approximately 45 percent (2.5 million) are estimated to also have hypertension. This is approximately twice the rate found in the general population. Hypertension contributes to the 85,000 cases of coronary artery disease, 40,000 amputations, 23,000 cerebrovascular accidents, 5,800 cases of blindness, and 4,000 cases of end-stage renal disease which occur annually among persons with diabetes. Only about half the persons with both conditions have their hypertension under control. Programs should target all persons with diabetes since 45 percent either have or will develop hypertension.

Cooperative Activities

1. Recipient Activities

a. For the development and/or maintenance and refinement of *core capacity:*

(1) Develop and/or maintain, and refine a system to ensure that needs and problems of persons with diabetes will be identified and assessed.

(2) Develop and/or maintain, and refine a program advisory group, and perform consensus-building activities.

(3) Develop and/or maintain, and refine a statewide plan for diabetes control which will integrate complication-specific program elements and future program elements into a comprehensive system of care for persons with diabetes.

b. For *each* complication-specific program element to be undertaken:

(1) Identify a/the high risk group within the target population.

(2) Identify available diagnostic, treatment, and education resources within the target population.

(3) Describe current patterns of care within the target population, with attention to primary care sources.

(4) Define and coordinate the activities of State agencies and other groups participating in the project, such as professional and volunteer organizations and third-party payers.

(5) Ensure that necessary referral and followup systems are in place which will assure that patients are treated through non-project resources, and integrated into the available health care delivery system.

(6) Ensure that complication-specific quality patient education components are provided to high-risk patients, and are included in the general diabetes patient education available for persons with diabetes.

(7) Ensure that relevant complication-specific professional education is provided to appropriate health care providers.

(8) Develop measurable morbidity-reduction and process objectives.

(9) Develop a system to monitor and document the impact of the program on the health care delivery system and health status of persons with diabetes and on the high risk/target populations.

c. In addition, for the *required* program element dealing with the prevention of visual loss due to diabetes:

(1) Ensure that high-risk patients are examined by sensitive diagnostic techniques. (Clinical examination through undilated pupils is not adequate to diagnose proliferative diabetic retinopathy.) Acceptable techniques to diagnose diabetic retinopathy include (in priority order):

(a) Examination by general ophthalmologists or retinal specialists.

(b) Examination by other health-care professionals such as optometrists, who have demonstrated the ability to perform sensitive diagnostic examinations.

(c) Fundus photography using standard fundus cameras.

(d) Fundus photography using "non-mydriatic" cameras.

(2) Ensure that examinations as described above also include acuity testing, tonometry, assessment of lens opacity, and blood pressure measurement.

(3) Ensure that the monitoring system to be developed will include data sufficient for measuring program impact and for tracking program objectives.

d. In addition, for the prevention of adverse outcomes of pregnancy, if this is one of the *optional* program elements chosen:

(1) Ensure that prepregnancy management and counseling is provided to diabetic women of childbearing age (15–44) in the target population, with particular attention to their need to normalize blood glucose levels prior to conception and throughout gestation.

(2) Ensure that pregnant diabetic women are managed as high-risk pregnant patients.

(3) Ensure that the monitoring system to be developed will include data sufficient for measuring program impact and for tracking program objectives.

e. In addition, for the prevention of lower extremity amputations, if this is one of the *optional* program elements chosen:

(1) Ensure that a system is established whereby high risk persons with diabetes in the target population have their feet examined during each visit to a primary care practitioner; with such examinations no less than annually in all risk groups.

(2) Ensure that persons with diabetes and foot complications have access to appropriate examination, diagnosis, and therapy.

(3) Ensure that the complication-specific patient education to be provided (in addition to principles of foot care, skin care, hygiene, and other components of quality diabetes education) also includes sections on smoking cessation, blood pressure control, and strategies to lower cholesterol.

(4) Ensure that the monitoring system to be developed will include data sufficient for measuring program impact and for tracking program objectives.

f. In addition, for the management of hypertension among persons with diabetes, if this is one of the *optional* program elements chosen:

(1) Ensure that the blood pressure of persons with diabetes is measured at each visit to a primary care provider, with such measurement no less than annually, and that hypertension is detected, evaluated, and treated in accordance with the recommendations of *The 1984 Report of the Joint National Committee on Detection, Evaluation, and Treatment of High Blood Pressure,* including nonpharmacologic therapy.

(2) Ensure that the complication-specific patient education to be provided includes sections on inter-relationships between diabetes and hypertension, the importance of treatment, control and followup, weight control, and exercise, in addition to other components of quality education.

(3) Ensure that mechanisms are in place to promote adherence to antihypertensive therapy in the target population, including followup.

(4) Ensure that the monitoring system to be developed will include data sufficient for measuring program impact and for tracking program objectives.

2. Centers for Disease Control Activities

a. Develop and disseminate public health recommendations for the diagnosis, prevention, and treatment of the complications of diabetes.

b. Collaborate in the planning, operation, and evaluation of program activities through onsite participation, telephone and written consultation.

c. Collaborate in the development of surveillance and data systems and in the State's analysis and evaluation of data.

d. Collaborate in the development of screening, referral, tracking, and monitoring program components.

e. Collaborate in the development of patient and professional education components.

f. Collaborate in the dissemination of complication-specific outcome indicators and their integration into program operation.

g. Collaborate in the establishment of specific morbidity reduction objectives.

Availability of Funds

Approximately $5 million will be available in Fiscal Year 1987 to award from 25 to 30 cooperative agreements. The President's FY 1988 budget assumes that the cooperative agreements will be supported progressively from non-federal funding sources beginning in FY 1987. The average award will be $178,600 with individual cooperative agreements ranging from approximately $75,000 to $250,000. It is expected that the cooperative agreements will begin on or about September 1, 1987. Depending on the availability of funds, cooperative agreements are usually funded in 12-month budget periods within a 1–3 year project period. Non-federal funding sources should provide greater shares of support in any later budget period. Funding estimates outlined above may vary and are subject to change. Although new applications will be considered, priority for funding will be given to currently funded cooperative agreements because of the limited funds available in Fiscal Year 1987. The project periods for any new applications should be consistent with the President's FY 1988 budget which assumes full funding from non-federal sources for this activity by FY 1990. Competing renewal awards will be limited to applicants which have demonstrated an effective complication-specific diabetes control program.

Use of Funds

Funds will not be awarded for the purchase or lease of land or buildings, for the construction of a facility, or for renovation of existing space. The purchase of equipment is discouraged and must be pre-approved by CDC. The only equipment which will be considered for approval will be that which is justified on the basis of being essential to the project and not available from any other source. Cooperative agreement funds shall not be used for treatment or treatment services.

Reporting Requirements

Quarterly narrative and performance statistical reports may be required subject to approval by Office of Management and Budget (OMB). Financial status reports must be submitted no later than 90 days after the end of each budget period. Final financial status and progress reports are required no later than 90 days after the end of the project period.

Recipient Financial Participation

This program has no statutory formula. No specific matching funds are required; however, the application should include data on the applicant's contribution to the overall program costs and reflect a commitment to progressive support on the part of non-federal funding sources.

Application Content

1. *Initial Application*—The initial application for a new cooperative agreement must include a narrative which describes:

a. Current complication-specific diabetes control efforts demonstrating an effective diabetes control program.

b. The background and need for support including a description of high-risk groups within the target populations and an assessment of the health care needs of these populations as they relate to complication-specific program areas.

c. Specific measurable objectives consistent with the purpose of the cooperative agreement and which can be evaluated in accordance with Section f. below. (Include a milestone-to-completion chart consistent with the timeframe of the project period.)

d. The methods and activities undertaken to accomplish complication-specific objectives including:

(1) How high-risk groups and target populations will be/have been identified.

(2) How currently available diagnostic, treatment, and education resources will be/have been identified and utilized.

(3) How the high-risk populations' current patterns of care will be/have been assessed, with attention to patterns of care in the primary health care system.

(4) How needs/deficits in provider knowledge and health care practices will be/have been assessed.

(5) Identification of program activities designed to complement available diagnostic, education, and treatment resources.

(6) How the target populations will be examined (as applicable) by sensitive diagnostic techniques.

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(7) How the target populations will be assured of treatment (as applicable), with treatment and treatment services provided through non-project resources.

e. The methods and activities undertaken to accomplish objectives related to the integration of complication-specific program elements into the health care delivery system for persons with diabetes, including:

(1) How linkages formed with other public health care programs, primary care providers and organizations, volunteer agencies, and other medical care providers will facilitate the integration of these program elements into the health care delivery system for persons with diabetes.

(2) How a program advisory group will facilitate the integration of these complication-specific program elements into the health care delivery system for persons with diabetes.

(3) How the needs and problems (and factors contributing to these) will be assessed in an ongoing manner to ensure that the ability to integrate future complication-specific program elements into the program is maintained.

(4) How the *National Standards for Diabetes Patient Education Programs/CDC-State DCP Patient Education Guidelines* will be used to assess current patient education activities, to ensure the quality of education provided to patients at high risk for the complications, and how such patient education will be integrated into the health care delivery system for persons with diabetes.

(5) How *The Guide for Primary Care Practitioners* and the *CDC-State DCP Professional Education Guidelines* will be used in relevant professional education, and how such professional education will facilitate the integration of these program elements into the health care delivery system for persons with diabetes.

(6) How a statewide plan for diabetes control will be developed to facilitate the integration of complication-specific program elements into a comprehensive program of care for persons with diabetes.

f. The system to monitor and document the impact of this program on the health care delivery system and health status of persons with diabetes, including health outcome indicators which will be developed and utilized.

g. The level of professional and community support and involvement in the program. (Letters of support/commitment from care providers, voluntary agencies, and other relevant groups and individuals should be included.)

h. A budget justification, and any other information which will support the need for assistance.

i. Plans to become self-sustaining within the time period assumed in the President's FY 1988 budget.

2. *Continued Funding*—An application for continued funding of these activities within an approved project period should contain the following information:

a. Progress report on activities performed and results achieved during the prior budget period.

b. Short-term objectives for the new budget period that are consistent with the availability of funds and include the phase-in of any additional complication-specific elements.

c. A description of the method of operation that will be used to accomplish any new objective.

d. An evaluation plan which will help determine if the methods are effective and the objectives are being achieved.

e. A budget and accompanying justification consistent with the purpose and objectives of the project and the availability of funds.

Application Review and Evaluation Criteria

1. The initial application for a project period will be reviewed and evaluated based upon the following factors:

a. The demonstrated effectiveness of current complication-specific diabetes control program.

b. The need for support as demonstrated by the description of the high risk and target populations and of the health care needs/problems of these populations.

c. The consistency of the measurable objectives with the stated purpose of the cooperative agreement and the ability to complete the objectives, activities, and milestones of the project within the specified period.

d. The adequacy of the applicant's plans to develop and maintain the capacity to identify target populations, define needs, and plan future complication-specific program elements (to ultimately include visual loss due to diabetes, adverse outcomes of diabetic pregnancies, lower extremity amputations among persons with diabetes, and coexisting diabetes and hypertension).

e. The adequacy of the applicant's plans to ensure examination of high-risk individuals by sensitive diagnostic techniques, to refer (and followup on referrals) those in need of treatment, and to assure adequate treatment (paid for by non-project resources) for patients needing treatment.

f. The adequacy of the applicant's plans to ensure the integration of complication-specific program elements into the health care delivery system for persons with diabetes through the formation of program linkages, the development of a program advisory group, and the development of a statewide plan for diabetes control.

g. The adequacy of the applicant's plans to conduct and/or assure the provision of quality patient and professional education, and to ensure the integration of this education into the health care delivery system for persons with diabetes.

h. The adequacy of the applicant's plans to monitor and document the impact of the program, and the program's impact on the health care delivery system and the health status of persons with diabetes.

i. The ability of the applicant to generate community and professional support and involvement in the program, to utilize available resources, and to coordinate the activities of groups participating in the program, including governmental agencies, professional and volunteer organizations, third-party payers, consultants, and the diabetes community at large.

j. The extent to which the budget is reasonable and consistent with the intended use of cooperative agreement funds and includes a plan to become self-sustaining within the time period assumed in the President's FY 1988 budget.

k. The ability of the applicant to identify staff for the program who are available and trained to carry out the required tasks.

2. Continuation awards within the project period will be made on the basis of the following criteria:

a. Availability of funds.

b. The extent to which the accomplishments of the current budget period show that the applicant is meeting its objectives.

c. The consistency of the objectives for the new budget period with the purpose of the cooperative agreement and the extent to which they are realistic, specific, and measurable.

d. The extent to which the methods described will clearly lead to achievement of these objectives.

e. The quality of the evaluation plan proposed to be used in monitoring whether the methods are effective.

f. The extent to which the budget request is justified, reasonable, and consistent with the intended use of cooperative agreement funds.

Application Submission and Deadline

The original and two copies of the application must be submitted to Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, on or before May 1, 1987.

1. *Deadline:* Applications will be considered to meet the deadline if they are either:

a. Received at the above address on or before the deadline date or,

b. Sent on or before May 1, 1987, and received in time for submission to the independent review group. (Applicant should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the above criteria are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Other Submission and Review Requirements

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs (60-day review period).

Where To Obtain Additional Information

Information on application procedures, copies of application forms and other material may be obtained from Marsha Driggans, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, telephone (404) 262–6575, or FTS 236–6575.

Technical assistance may be obtained from Lisle S. House, Division of Diabetes Control, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, telephone 404–329–1851, or FTS 236–1851.

Dated: January 29, 1987.

Robert L. Foster,

Acting Director, Office of Program Support Centers for Disease Control.

[FR Doc. 87–2170 Filed 2–3–87; 8:45 am]

BILLING CODE 4160–18–M

Cooperative Agreements; Preventive Health Services—Tuberculosis Control; Availability of Funds for Fiscal Year 1987

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1987 for Cooperative Agreements for Tuberculosis Control Programs. The funds received by these programs are directed primarily to support outreach activities necessary for effective prevention and control of tuberculosis in high incidence population groups and selected geographical areas.

Authority

This program is authorized by section 317(a) of the Public Health Service (PHS) Act (42 U.S.C. 247b(a)), as amended. Regulations governing programs for preventive health services are codified at 42 CFR Part 51b. Subpart A contains general provisions relating to these programs. The Catalog of Federal Domestic Assistance Number is 13.116.

Eligible Applicants

Eligible applicants for this program are the official public health agencies of State and local governments, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and American Samoa. Although new applications will be considered, priority for funding will be given to currently funded cooperative agreements. New awards, if any, will be limited to: (1) States which reported 100 or more new cases of tuberculosis for each of the years 1985 and 1986 or had an incidence rate greater than the national tuberculosis incidence rate reported in 1985 (9.3 per 100,000 population) for both 1985 and 1986, or (2) local health agencies which are not currently receiving assistance as a sub-recipient under a cooperative agreement and which are serving a high-priority urban area with a city of at least 250,000 population which reported 200 or more new cases of tuberculosis in each of the years 1985 and 1986 or had an incidence rate greater than the rate for United States cities over 250,000 population in 1985 (19.5 per 100,000 population) for both 1985 and 1986. Although certain local health agencies may be eligible for direct funding, eligible local health agencies within a State are strongly encouraged to include their request for assistance in the State application to ensure effective coordination of State/local/Federal resources.

Applicants must show that tuberculosis cooperative agreement funds will be directed primarily to support outreach activities in high incidence population groups and selected geographical areas with (1) a significant level of tuberculosis; and (2) an incidence rate greater than the State as a whole. The President's FY 1988 budget assumes that these activities will be funded progressively from block grant funds and non federal funding sources. Full funding from block grants and non-federal funds is projected for FY 1990.

Program Background and Objectives

Recent data show that the expected decline in tuberculosis cases has not occurred. The decline for 1985 was only 0.2 percent, which was very slight when compared to the 6.7 percent average annual decline experienced during 1982–84. Furthermore, through the 48th week of 1986, there was a provisional increase in U.S. tuberculosis cases of 2.5 percent. In recent years, U.S. tuberculosis morbidity has been affected by: Continued transmission and infection of children; the emergence of drug resistant tuberculosis and community outbreaks of drug resistant tuberculosis disease; tuberculosis in immigrants, minorities, the elderly, and the homeless; and an apparent increase in cases among persons with tuberculosis infection who also have Acquired Immunodeficiency Syndrome (AIDS) or are infected with the Human T-Lymphotropic Virus Type III/Lymphadenopathy-Associated Virus (HTLV–III/LAV).

The national goal in tuberculosis control is to achieve an annual reduction of tuberculosis morbidity of at least 5 percent. The minimum short-term objectives needed to meet this goal include:

1. At least 75 percent of all initially infectious patients will become noninfectious (convert their sputum from positive to negative) within 3 months of starting treatment, and at least 95 percent will become noninfectious within 6 months.

2. At least 90 percent of all reported cases of tuberculosis will complete an American Thoracic Society/Centers for Disease Control (ATS/CDC) recommended regimen of antituberculosis drug therapy.

3. At least 95 percent of all close contacts to infectious cases will receive examinations, with at least 95 percent of all those under 15 years of age and 75 percent of all infected persons 15 years

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of age and over placed on preventive treatment.

4. For close contacts and other high-risk individuals placed on preventive therapy, at least 90 percent of those persons under 15 years of age and 75 percent of all others will complete a recommended course of preventive therapy.

Cooperative Activities

The collaborative and programmatic involvement of recipients of funds and CDC is as follows:

1. Recipient Activities

a. Reporting of all tuberculosis cases, suspects, and significant laboratory results by health care providers and laboratories in both the public and private sectors; analysis of reporting trends; and implementation of updated public health record systems needed to monitor the current care status of patients, suspects, contacts, and high-risk infected persons in the community.

b. Application or intensification of directly observed drug treatment for patients and use of other strategies for ensuring completion of therapy and preventive therapy for patients and other high risk persons who will not or cannot self-administer recommended medications.

c. Deployment of outreach personnel for followup of patients and their contacts.

d. Providing tuberculosis diagnostic, treatment, and prevention services adapted to the characteristics of tuberculosis population subgroups; and implementation of innovative approaches to prevent tuberculosis in high-risk groups.

e. Development or continuation of cost-effective, medically sound tuberculosis medical care and public health policies. A major policy component should be the implementation of recommended ATS/CDC treatment and preventive therapy recommendations.

f. Program evaluation and special epidemiological investigation/analysis of unique tuberculosis problems including problems related to tuberculosis and AIDS or HTLV–III/LAV infection and problems related to tuberculosis in foreign born, drug resistance, etc.

g. Detailed investigations of all deaths from tuberculosis, tuberculosis occurring in children, and recurrent (relapse) cases, to identify causes of past program failures and to design more effective prevention and control actions for the future.

h. Evaluation of the effectiveness of program activities and achievements related to short-term objectives.

2. Centers for Disease Control Activities

a. Collaboration in the development and operation of tuberculosis case reporting and program management record systems. Assistance in analysis and evaluation of morbidity, mortality, and program management information. Assistance in the investigation and analysis of special problems such as tuberculosis in institutions or in AIDS or HTLV–III/LAV infected populations.

b. Assistance in improving program performance through onsite consultation and the provision of training materials for use by project staff.

c. Provision of onsite technical assistance in the planning, operation, and evaluation of ongoing and innovative program activities.

d. Provision of medical and programmatic consultation through telephone/written consultation.

e. Epidemiologic consultation including investigation of unusual outbreaks and problems.

f. Development and dissemination of public health and medical policies and recommendations for the diagnosis, treatment, and prevention of tuberculosis (including the development of joint ATS/CDC statements).

g. Development of program evaluation tools.

Availability of Funds

Approximately $5 million is available in Fiscal Year 1987 to continue between 40 and 48 continuation cooperative agreements. Although new applications will be considered, priority for funding will be given to continuation of existing programs. The average award is expected to be $146,000, with individual awards ranging from $26,000 to $470,000. As stated above, the President's FY 1988 budget assumes full funding of this activity from block grant and non-federal funds by FY 1990. Project periods for applications should be consistent with these plans. Cooperative agreements are usually funded in 12-month budget periods. Funding estimates outlined above may vary and are subject to change.

Use of Funds

Cooperative agreement funds may be used to support both local personnel and individuals in direct assistance (i.e., "in lieu of cash") positions under section 317 of the PHS Act, and to purchase equipment, supplies, and services directly related to project activities, particularly directly-observed therapy, patient outreach, morbidity surveillance, and program assessment. Project funds may not be used to supplant State or local funds available for tuberculosis control or to support construction costs or inpatient care.

Reporting Requirements

Semiannual narrative and performance statistical reports are required within 30 days after the end of the reporting period. Program performance reports have Office of Management and Budget (OMB) clearance (OMB No. 0920–0026). Approval of additional data items are pending. Financial status reports are required no later than 90 days after the end of each budget period. Final financial status and progress reports are required 90 days after the end of a project period.

Recipient Financial Participation

No specific matching funds are required; however, the President's FY 1988 budget assumes full funding of this activity from block grant and non-federal funds by FY 1990. The application should contain information on the applicant's contribution to the overall tuberculosis control program during its most recent accounting period pursuant to provisions of section 317(b)(2) of the PHS Act.

Application Content

1. *Initial Application.*—The initial application for a new project period must include a narrative which details:

(a) *The background and need* for support, including information that relates to factors by which the applications will be evaluated and the number of tuberculosis cases under current supervision with drug resistant organisms;

(b) Long- and short-term *objectives* of the proposed project which are consistent with the national goal outlined above, and which are specific, measurable, realistic, and time-framed;

(c) The activities and *methods* which will be employed to accomplish the objectives. Of special importance will be:

(1) The employment of outreach workers in high incidence areas for use in patient followup and directly-observed therapy programs,

(2) Information regarding alternative methods for ensuring completion of the therapy and preventive therapy, and

(3) Innovative methods to prevent tuberculosis among high-risk groups;

(d) An evaluation plan to monitor the effectiveness of the program activities and the progress made toward meeting the objectives;

(e) Current data (or plans to collect data this year) on the number of AIDS cases that have had tuberculosis by year of AIDS report and by year of tuberculosis report and the procedures which will be employed to establish and continue such surveillance, as well as the additional assessment of community *tuberculosis problems related to AIDS and HTLV–III/LAV infection;*

(f) *Fiscal information* of the applicant pursuant to provisions of section 317(b)(2) of the PHS Act, although there are no matching or cost participation requirements; and

(g) A *budget and accompanying justification* consistent with the purpose and objectives of the project, and any other information which will support the request for assistance. The budget should reflect progressive support from block grants and non-federal funds.

To insure that all necessary elements are covered, it is suggested that the applicant use the above (a)–(g) elements as the outline in writing the application.

2. *Continued Funding*—An application for continued funding of these activities within an approved project period should contain the following:

(a) A *progress report* on activities performed during the prior budget period, including a discussion of progress or lack of progress in accomplishing the objectives of the prior budget period; statistical data from recent report periods compared to baseline statistical data provided in the original application; the number of patients treated with directly-observed therapy regimens; the activities of outreach personnel employed through the cooperative agreement; populations served and the special needs of those populations which have been met through the agreement (e.g., noncompliant patients, children, foreign-born, and persons at risk for both tuberculosis infection and AIDS or HTLV–III/LAV infection); and other data and/or anecdotal situations which are exemplary of effectiveness of work performed, (e.g. reductions in hospitalizations, clinic delinquency rates, costs of treatment, etc.);

(b) *New short-term objectives* for the new budget period (consistent with availability of funds);

(c) *A description of any changes* in the need for grant support, long-term objectives, methods of operation, and evaluation procedures compared to information provided in previous applications. Of special importance is information regarding:

(1) Alternative methods for ensuring completion of therapy and preventive therapy and

(2) Innovative methods to prevent tuberculosis in high-risk groups;

(d) Current data (or plans to collect data this year) on the number of AIDS cases that have had tuberculosis by year of AIDS report and by year of tuberculosis report and should also describe plans to establish and continue such surveillance and to assess the extent of community tuberculosis problems related to AIDS and HTLV–III/LAV infection;

(e) *Fiscal information* of the applicant pursuant to provisions of section 317(b)(2) of the PHS Act; and

(f) A *budget and accompanying justification* consistent with the purpose and objectives of the project and the availability of funds. The budget should reflect progressive support from block grants and non-federal funds. To insure that all necessary elements are covered, it is suggested that the applicant use the above (a)–(f) elements as the outline in writing the continuation application.

Application Review and Evaluation Criteria

1. *Initial Application*—The initial application for a new project period will be evaluated and priority for funding of new projects established, based upon the following factors:

(a) The need for support as demonstrated in the background and need section of the application narrative including data for both 1985 and 1986 relevant to:

(1) The total number of cases reported;

(2) The number of bacteriologically confirmed cases reported;

(3) The bacteriologically substantiated incidence rate of disease;

(4) The number of tuberculosis cases among children 0–14 years of age;

(5) Significant levels of tuberculosis among individuals who were born in countries with high rates of tuberculosis; and

(6) A significant increase in tuberculosis morbidity. The number of tuberculosis cases under current supervision with organisms resistant to one or more antituberculosis drugs will also be considered in evaluating and prioritizing projects for funding.

(b) The degree to which long and short term objectives are consistent with the national goal and are realistic, specific, measurable, and consistent with availability of funds;

(c) The overall potential effectiveness of the proposed activities and methods in meeting the stated objectives, including plans for the use of outreach workers for directly observed therapy and other innovative methods for insuring compliance and preventing tuberculosis in high risk groups;

(d) The adequacy of plans to evaluate program activities and to assess the extent of community tuberculosis problems related to AIDS and HTLV–III/LAV infection;

(e) The extent to which the budget request is clearly justified, reasonable, and consistent with the intended use of cooperative agreement funds. These factors were chosen to establish the extent of an applicant's tuberculosis problem and incorporate the intent of Congress for expenditure of these funds.

2. *Continued FundingT1—Continuation awards within a project period will be made on the basis of the following criteria:*

(a) Availability of funds;

(b) Satisfactory documentation of progress in meeting project objectives including data comparing current reports with baseline data from the original application, data on the number of persons treated with directly observed therapy, reports of activities of project employed outreach workers, data on populations served and special needs met as well as other exemplary data and/or anecdotal reports;

(c) The extent to which the objectives for the new budget period are realistic, specific, and measurable, consistent with the purpose of the cooperative agreement, and relate to the use of other innovative methods (in addition to outreach workers) for insuring therapy compliance and preventing tuberculosis in high risk groups;

(d) The extent of success of the new or revised methods of operation in meeting the proposed objectives;

(e) The adequacy of plans to evaluate program activities and to assess the extent of community tuberculosis problems related to AIDS and HTLV–III/LAV infection;

(f) The extent to which the budget request is clearly justified, reasonable, and consistent with the intended use of cooperative agreement funds.

Application Submission and Deadline

The original and one copy of the application must be submitted to Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, on or before April 6, 1987.

1. *Deadline.* Applications shall be considered as meeting the deadline if they are either:

a. Received at the above address on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to

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the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications.* Applications which do not meet the criteria in either paragraph a. or b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

3. *Copies of Applications.* A copy of the application should be simultaneously submitted to the appropriate Department of Health and Human Services Regional Office listed below. For applicants who are other than State agencies, the appropriate State health agency should be notified of the submission of the application.

Other Submission and Review Requirements

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Where to Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from Nealean Austin, Grant Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, telephone (404) 262-6575, or FTS 236-6575. Technical assistance may be obtained from John J. Seggerson, Division of Tuberculosis Control, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 329-2508, or FTS 236-2508. Technical assistance is also available from the appropriate Department of Health and Human Services Regional Office.

Dated: January 29, 1987.

Robert L. Foster,

Acting Director, Office of Program Support Centers for Disease Control.

Department of Health and Human Services (HHS) Regional Offices

Regional Health Administrator, PHS, HHS Region I, John Fitzgerald Kennedy Building, Boston, Massachusetts 02203, (617) 223-6827

Regional Health Administrator, PHS, HHS Region II, Federal Building, 26 Federal Plaza, Room 3337, New York, New York 10278, (212) 264-2561

Regional Health Administrator, PHS, HHS Region III, Gateway Building #1, 3521-35 Market Street, Mailing Address: P.O. Box 13716, Philadelphia, Pennsylvania 19101, (215) 596-6637

Regional Health Administrator, PHS, HHS Region IV, 101 Marietta Tower, Suite 1007, Atlanta, Georgia 30323, (404) 221-2316

Regional Health Administrator, PHS, HHS Region V, 300 South Wacker Drive, 33rd Floor, Chicago, Illinois 60606, (312) 353-1385

Regional Health Administrator, PHS, HHS Region VI, 1200 Main Tower Building, Room 1835, Dallas, Texas 75202, (214) 767-3879

Regional Health Administrator, PHS, HHS Region VII, 601 East 12th Street, Kansas City, Missouri 64106, (816) 374-3291

Regional Health Administrator, PHS, HHS Region VIII, 1185 Federal Building, 1961 Stout Street, Denver, Colorado 80294, (303) 844-6163

Regional Health Administrator, PHS, HHS Region IX, 50 United Nations Plaza, San Francisco, California 94102, (415) 556-5810

Regional Health Administrator, PHS, HHS Region X, 2901 Third Avenue, M.S. 402, Seattle, Washington 98121, (206) 442-0430

[FR Doc. 87-2171 Filed 2-3-87; 8:45 am]

BILLING CODE 4160-18-M

Meeting on Role of Antibody Testing in the Prevention and Control of AIDS

Time and date: 8:30 a.m.—5:45 p.m.—February 24, 1987; 8:30 a.m.—12:00 noon—February 25, 1987

Place: Hyatt Regency Hotel, Peachtree Center, Atlanta, Georgia (404/577-1234)

Status: Open

Matters to be Discussed: This meeting is being convened to discuss issues related to the implementation of antibody testing to prevent further spread of AIDS virus infection. The purpose of the meeting is to identify strategies to encourage the use of antibody testing to prevent spread of infection with the AIDS virus.

The meeting will be open to the public limited only by the space available. The meeting room accommodates approximately 250 people.

Registration materials for the meeting will be available at 7:30 a.m. on Tuesday, February 24. The opening plenary session is scheduled for 8:30 a.m. This will be followed by workshops with panels of experts to explore specific applications of antibody testing for prevention of infection. A portion of each workshop will be set aside to hear members of the public. The workshops will be summarized at the closing plenary session of February 25, and the meeting will adjourn about 12 noon.

Advance notification to the AIDS Program, CDC, of your intent to attend the meeting is desired, but not required, due to limited meeting space available. Reservations for hotel accommodations should be made directly.

Contact Person for more Information: Additional information concerning the conference and preregistration materials may be obtained from:

Thomas A. Leonard, Senior Public Health Advisor

or

James R. Allen, M.D., Assistant Director for Medical Science, AIDS Program, CID, CDC, 1600 Clifton Road, N.E., Atlanta, GA 30333, Telephones: FTS: 236-2407, Commercial: 404/329-2407

Dated: January 29, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control

[FR Doc. 87-2157 Filed 2-3-87; 8:45 am]

BILLING CODE 4160-18-M

Agency for Toxic Substances and Disease Registry; Public Health Service; Meeting

ACTION: Notice of meeting.

The following meeting will be convened by the Agency for Toxic Substances and Disease Registry (ATSDR), U.S. Public Health Service, and will be open to the public for observation and participation, limited only by the space available:

Dates: March 23-24, 1987

Times: 8 a.m.-5 p.m.—March 23, 8 a.m.-3 p.m.—March 24

Place: Westin Peachtree Plaza, Peachtree at International Boulevard, Atlanta, Georgia 30343-9986

Status: Open

Purpose: To review and discuss the ATSDR *National Registry Proposal* for registering individuals exposed to select environmental hazardous substances. Viewpoints and suggestions from industry, organized labor, environmental groups, academia, State and Federal government agencies, and the public are invited. The meeting will be conducted as a workshop and will focus on organizational, ethical, and social issues concerning a National exposure registry.

Contact person for more information: Copies of the proposal and additional information about the meeting may be obtained from: Wendy E. Kaye, Ph.D., ATSDR, Exposure Registry

Implementation Group, 1600 Clifton Road, NE., Atlanta, GA 30333, Telephones: FTS: 236-4592, Commercial: (404) 454-4592.

Dated: January 29, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination.

[FR Doc. 87-2158 Filed 2-3-87; 8:45 am]

BILLING CODE 4160-18-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applicants for Permits

The following applicant's have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-714657

Applicant: John Sutterlin, Auburn, WA.

The applicant requests a permit to import four male and three female, captive born white eared pheasants (*Crossoptilon crossoptilon*) from Harry J. Hardy, South View Aviaries, Burnaby, British Columbia for the purpose of captive breeding.

PRT-714788

Applicant: Dallas Zoo, Dallas, TX.

The applicant requests a permit to purchase, in interstate commerce, one female back rhino (*Diceros bicornus*) from Roman Schmitt, Tampa, FL, for possible captive breeding and for conservation education and exhibition.

PRT-714783

Applicant: Robert Barnes, Soldotna, AK.

The applicant requests a permit to import a trophy from a bontebok (*Damaliscus dorcas dorcas*) which was a member of a captive herd maintained by F.W.M. Bowker, Grahamstown, Republic of South Africa. The herd is maintained for the purpose of sport hunting. The applicant contends that permission to import this trophy will enhance the likelihood of the continued maintenance of this herd and thereby enhance the likelihood of the survival of the species.

PRT-714960

Applicant: Memphis Zoological Gardens, Memphis, TN.

The applicant requests a permit to import one pre-reproductive female giant panda (*Ailuropoda melanoleuca*) from the Chapultepec Park Zoo, Mexico City, Mexico, where she was born, for purposes of display, research and conservation education. The panda may stay at the Memphis Zoo up to six months after which she will be reexported back to the Chapultepec Zoological Park.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: January 29, 1987.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87-2152 Filed 2-3-87; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[CO-050-07-4322-02]

Canon City District Grazing Advisory Board; Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463) notice is hereby given of a meeting of the Canon City District Grazing Advisory Board to be held at 10:00 a.m., Friday, March 6, 1987, at the Chaffee County Bank, 146 'G' Street, Salida, Colorado.

Agenda will include (1) expenditure of range betterment funds (2) proposals for expenditure of range improvement funds for fiscal year 1988 (3) review of the Rangeland Program Summary update for the Royal Gorge Grazing EIS area, and (4) any other issues dealing with grazing management in the Canon City District.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Space for the public is limited and persons will be accommodated on a first come, first serve basis. Any member of the public may file with the Board a written statement concerning matters to be discussed. A portion of the meeting time will be set aside at 2:00 p.m. to hear members of the public. Minutes of the meeting will be made available for public inspection 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Donnie Sparks, Bureau of Land Management, P.O. Box 311, 3080 East Main Street, Canon City, Colorado 81212, (303) 275-0631.

Donnie R. Sparks,

District Manager.

[FR Doc. 87-2227 Filed 2-3-87; 8:45 am]

BILLING CODE 4310-JB-M

[U-58166; UT-040-4212-14]

Realty Action, Sale of Public Lands in Kane County, Utah

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) public land described as SW1/4SW1/4NE1/4NW1/4, Section 10, T. 40 S., R. 7 W., SLB&M, Utah totaling 2.5 acres is proposed for direct sale to Isaac and Sylvia Chamberlain at the appraised fair market value of $1,250.00. The purpose of the sale is to dispose of public land that is difficult and uneconomical to manage by a government agency. The lands described are hereby segregated from all forms of appropriation under the public land laws, including the mining laws, pending disposition of this action.

ADDRESS: Detailed information concerning the sale is available at the Kanab Area Office, 318 North First East, Kanab, Utah 84741, (801) 644-2672. Comments should also be sent to the same address. The sale will be held in the Kanab Area Office, BLM, 318 North First East, Kanab, Utah 84741.

DATES: Comments will be accepted until March 23, 1987. The sale will be held on April 7, 1987 at 10:00 a.m.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the sale are:

1. The sale will be for the surface estate only. Minerals will remain with the United States Government.

2. There is reserved to the United States a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, (26 Stat. 391, 42 U.S.C. 945).

3. Title transfer will be subject to valid existing rights, including a county road right-of-way crossing the southwest corner of the 2.5 acre tract.

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Any objections received during the comment period will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action notice will become the final determination of the Department of the Interior.

Dated: January 26, 1987.

Morgan S. Jensen,

District Manager.

[FR Doc. 87-2207 Filed 2-3-87; 8:45 am]

BILLING CODE 4310-DQ-M

[NM 940-7-4520-12-0838]

New Mexico; Filing of Plat of Survey

January 26, 1987.

The plat of survey, in three sheets, described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on January 23, 1987.

A survey representing the dependent resurvey of a portion of the subdivisional lines, and certain small holding claim boundaries in sections 8 and 17, the subdivision of sections 8 and 18, and the survey of lots in sections 8 and 17, Township 26 North, Range 8 East, New Mexico Principal Meridian, New Mexico, under Group 836 NM.

This survey was requested by the District Manager, Albuquerque, New Mexico.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Ronald E. Paisley,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 87-2208 Filed 2-3-87; 8:45 am]

BILLING CODE 4310-FB-M

[NM-940-07-4220-11; NM NM 46842; NM NM 0554865]

New Mexico; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture proposes that two withdrawals for the Grants Ranger Station Administrative Site continue for an additional 18 years. The land would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

DATE: Comments should be received by May 5, 1987.

ADDRESS: Comments should be sent to: New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504-1449.

FOR FURTHER INFORMATION CONTACT: Kay Thomas, BLM, New Mexico State Office, (505) 988-6589.

The Forest Service, U.S. Department of Agriculture proposes that the existing land withdrawals made by Public Land Order No. 3611 of April 8, 1965, and Executive Order No. 3889 of August 13, 1923, be continued for a period of 18 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian Cibola National Forest

T. 11 N., R. 10 W.,
Sec. 24, E½SE¼.

The area described contains 80.00 acres in Cibola County.

The withdrawal is essential for protection of substantial capital improvements on the Grants Ranger Station Administrative Site, Mount Taylor Ranger District. The withdrawals closed the described lands to surface entry and mining but not mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existng and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: January 22, 1987.

Sally Wisely,

Acting State Director.

[FR Doc. 87-2209 Filed 2-3-87; 8:45 am]

BILLING CODE 4310-FB-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-309 (Final)]

Butt-Weld Pipe Fittings From Japan; Import Investigation

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(d)), that an industry in the United States is materially injured by reason of imports from Japan of carbon steel butt-weld pipe and tube fittings, under 14 inches in inside diameter, [2] provided for in item 610.88 of the Tariff Schedules of the United States (TSUS), which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective August 11, 1986, following a preliminary determination by the Department of Commerce that imports of butt-weld pipe fittings from Japan [3] were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 27, 1986 (51 FR 30557). The hearing was held in Washington, DC, on October 28, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on January 27, 1987. The views of the Commission are contained in USITC Publication 1943 (January 1987), entitled "Butt-Weld Pipe Fittings From Japan: Determination of the Commission in Investigation No. 731-TA-309 (Final) Under the Tariff Act of 1930, Together With the Information obtained in the Investigation."

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] For purposes of this investigation, such fittings may be finished or unfinished but, if forged, must be advanced beyond forging. Such advancements may include any one or more of the following: coining, heat treatment, shot blasting, grinding, die stamping, or painting. Such fittings do not include couplings (provided for in TSUS item 610.86). Also excluded from the scope of this investigation are induction pipe bends classifiable under TSUS item 610.88 which have at one or both ends tangents that equal or exceed 12 inches in length.

[3] The Commission also instituted investigations Nos. 731-TA-308 and 310 (Final) concerning imports of butt-weld pipe fittings from Brazil and Taiwan. The Commission made unanimous affirmative injury determinations in those investigations in December 1986.

Issued: January 29, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-2113 Filed 2-3-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-261]

Certain Ink Jet Printers Employing Solid Ink; Notice of Import Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 23, 1986, pursuant to section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, on behalf of E/D Venture, Route 13, Milford, New Hampshire 03055; Exxon Printing Systems, Inc., 1112 Federal Road, Brookfield, Connecticut 06804; and Dataproducts Corporation, 6200 Canoga Avenue, Woodland Hills, California 91365. An amendment to the complaint was filed on January 9, 1987, which states that complainant Exxon Printing Systems, Inc.'s name has been changed to Reliance Printing Systems, Inc. The complaint, as amended, alleges unfair methods of competition and unfair acts in the importation into the United States of certain ink jet printers employing solid ink, and in their sale, by reason of alleged (1) direct and contributory infringement of, and inducement to infringe, claims 11, 15–17, 20–23, 44–45, 47, 49, 52–54 and 57–61 of U.S. Letters Patent No. 4,631,557; (2) direct and contributory infringement of, and inducement to infringe, claims 1–5, 7–9, 11–12, 14–17, and 19–21 of U.S. Letters Patent No. 4,593,292; and (3) misappropriation of trade secrets. The complaint, as amended, further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an efficiently and economically operated, domestic industry, or to prevent the establishment of such an industry in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sulzer, Esq., or Regina A. Loughran, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-523-0419 and 202-523-1088, respectively.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on January 21, 1987, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain ink jet printers employing solid ink into the United States, or in their sale, by reason of alleged (1) direct and contributory infringement of, and inducement to infringe, claims 11, 15–17, 20–23, 44–45, 47, 49, 52–54 and 57–61 of U.S. Letters patent No. 4,631,557; (2) direct and contributory infringement of, and inducement to infringe, claims 1–5, 7–9, 11–12, 14–17, and 19–21 of U.S. Letters Patent No. 4,593,292; and (3) misappropriation of trade secrets, the effect or tendency of which is to destroy or substantially injure an efficiently and economically operated domestic industry or to prevent the establishment of such an industry in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

E/D Venture, Route 13, Milford, New Hampshire 03055

Reliance Printing Systems, Inc., 1112 Federal Road, Brookfield, Connecticut 06804

Dataproducts Corporation, 6200 Canoga Avenue, Woodland Hills, California 91365

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint and the amendment to the complaint are to be served:

Tokyo Juki Industrial Co., Ltd., 2-1, Kokuryo-cho, 8-Chome, Chofu-shi, Tokyo, Japan

Howtek, Inc., 21 Park Avenue, Hudson, New Hampshire 03051

(c) Stephen L. Sulzer, Esq., and Regina A. Loughran, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 124 and Room 126, respectively, Washington, DC 20436, shall be the Commission investigative attorneys, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint, as amended, and in this notice, may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint and the amendment to the complaint, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202-523-0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: January 29, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-2160 Filed 2-3-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-262]

Certain Hard Sided Molded Luggage Cases; Notive of Import Investigation

AGENCY: U.S. International Trade Commission.

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ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 31, 1986, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) by Samsonite Corporation, 11200 East Forty-Fifth Avenue, Denver, Colorado 80239. The complaint was supplemented on January 23, 1987. The complaint, as supplemented, alleges unfair methods of competition and unfair acts in the importation of certain hard sided molded luggage cases into the United States, and in their sale, by reason of alleged (1) common law trademark infringement; (2) violation of section 43(a) of the Lanham Act (15 U.S.C. 1125(a)); (3) common law passing off; and (4) common law unfair competition. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–523–1272.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 220.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on January 27, 1987, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain hard sided molded luggage cases into the United States, or in their sale, by reason of alleged (1) common law trademark infringement; (2) false representation; (3) common law passing off; and (4) common law unfair competition, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Samsonite Corporation, 11200 East Forty-Fifth Avenue, Denver, Colorado 80239

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Cosmopolitan Trunk and Leather Mfg. Co., Ltd., P.O. Box 9–22, Tainan, Taiwan
Echolac Company, Ltd., Seventh Floor, 3 Tun Hwa South Road, Taipei, Taiwan
Eminent Enterprise Company, Seventh Floor, 197 Nan King East Road, Section 4, Taipei, Taiwan
Dunson Industrial Co., Ltd., 164 Kuang Gua Road, Ching Shui Chen, Tai Chung Hsien, Taiwan
The Baltimore Luggage Co., 1919 Annapolis Road, Baltimore, Maryland 21230
Edison Luggage Corp., 1270 Broadway, New York, New York 10001
Tahoe International Inc., 184 Riverdale Road, Riverdale, New Jersey 07675
Akron Industries, Inc., 3401–3411 N.W. 48th Street, Miami, Florida 33142

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 128, Washington, DC 20436, shall be the Commission investigative attorneys, party to this investigation; and

(4) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202–523–0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: January 29, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–2159 Filed 2–3–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–252]

Certain Heavy Duty Mobile Scrap Shears; Commission Decision Not To Review an Initial Determination Granting a Motion for Summary Determination; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of the presiding administrative law judge's initial determination granting respondents' motion for summary determination on the issue of infringement in the above-captioned investigation.

SUMMARY: On November 13, 1986, respondents Dudley Shearing Machine Manufacturing Co., Ltd. and Dudley Shearing, Inc. moved for summary determination on the issue of infringement (Motion No. 252–7). Complainant LaBounty Manufacturing Inc. (LaBounty) opposed the motion. On December 9, the presiding administrative law judge (ALJ) heard oral argument on the moton.

On December 24, 1986, the ALJ issued an initial determination (ID) granting respondents' motion for summary determination and terminating the investigation (Order No. 21). In the ID, the ALJ determined that respondents were not infringing the claims of LaBounty's U.S. patent at issue in the investigation.

After reviewing all of the documents regarding this matter, the Commission has determined not to review the ID. This action terminates the investigation.

FOR FURTHER INFORMATION CONTACT: Kristian E. Anderson, Esq., Office of the General Counsel, U.S. International Trade Commission, Washington, DC 20436, telephone 202–523–0074.

SUPPLEMENTARY INFORMATION:

Authority

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rules 210.53 and 210.54 (19 CFR 210.53, 210.54).

Background

On June 25,1986, LaBounty filed a section 337 compliant alleging the respondents were violating section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Specifically, complainant Bergen originally alleged that respondents are infringing claims 1–22 of U.S. Letters patent 4,519,135. On July 30, 1986, the Commission instituted the present investigation. 51 FR 27261.

Public Inspection

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: January 29, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–2161 Filed 2–3–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. TA–203–16]

Stainless Steel and Alloy Tool Steel, Import Investigation

AGENCY: United States International Trade Commission.

ACTION: Institution of an investigation under section 203(i)(3) of the Trade Act of 1974 (19 U.S.C. 2253(i)(3)) and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: Following receipt of a petition filed on January 14, 1987 on behalf of the Specialty Steel Industry of the United States (SSIUS) and the United Steelworkers of America (AFL–CIO), the United States International Trade Commission instituted investigation No. TA–203–16 under section 203 of the Trade Act of 1974 for the purpose of gathering information in order that it might advise the President of its judgment as to the probable economic effect on the domestic industry concerned of the termination of the import relief presently in effect with respect to stainless or alloy tool steel, provided for in items 606.90, 606.93, 606.94, 606.95, 607.26, 607.28, 607.34, 607.46, 607.54, 607.72, 607.76, 607.88, 607.90, 608.26, 608.29, 608.34, 608.43, 608.49, 608.57, 608.64, and 609.45 of the Tariff Schedules of the United States (TSUS). Such import relief is provided for in Presidential Proclamation 5074 of July 19, 1983 (48 FR 33233) and is described in items 926.04, 926.05, 926.12, 926.13, 926.17, 926.18, 926.22, and 926.23 of the appendix to the TSUS. The relief is scheduled to terminate on July 19, 1987, unless extended by the President.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 206, subparts A and B (19 CFR part 206), and part 201, subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: January 27, 1987.

FOR FURTHER INFORMATION CONTACT: Judith C. Zeck (202–523–0339), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Participation in the investigation.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c)), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on April 2, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on March 13, 1987. All persons desiring to appear at the hearing and make oral presentations, with the exception of public officials and persons not represented by counsel, should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on March 18, 1987, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is March 27, 1987. Posthearing briefs must be submitted not later than the close of business on April 9, 1987. Confidential material should be filed in accordance with the procedures described below.

Parties are encouraged to limit their testimony at the hearing to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b(2)(i)).

Written submissions.—As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before April 9, 1987. A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for

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confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under the authority of section 203 of the Trade Act of 1974. This notice is published pursuant to § 201.10 of the Commission's rules (19 CFR 201.10).

Issued: January 29, 1987.

By order of the Commission

Kenneth R. Mason,

Secretary.

[FR Doc. 87-2162 Filed 2-3-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-250]

Certain Ventilated Motorcycle Helmets; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Marushin Kogyo Company, Ltd. (Marushin) and Hoppe & Associates, Inc. (Hoppe).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on January 30, 1987.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Written comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

Issued: January 30, 1987.

By order of the Commission

Kenneth R. Mason,

Secretary.

[FR Doc. 87-2166 Filed 2-3-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-250]

Certain Ventilated Motocycle Helmets; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Shoei Kako Co., Ltd and Shoei Safety Helmets Corporation (Shoei).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on January 30, 1987.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Written comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

Issued: January 30, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-2167 Filed 2-3-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-337 (Final)]

Certain Paint Filters and Strainers From Brazil

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-337 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of disposable paint filters and strainers of paper, containing cotton gauze, provided for in item 256.90 of the Tariff Schedules of the United States (TSUS), of cotton gauze, containing paper, provided for in TSUS item 386.53, or of man-made fibers, provided for in TSUS item 389.62, which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). The Commission will make its final injury determination within forty-five days after notification of Commerce's final determination (see sections 735(a) and 735(b) of the act (19 U.S.C. (1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: December 30, 1986.

FOR FURTHER INFORMATION CONTACT: Brian Walters (202-523-0104), Office of Investigations, U.S. International Trade Commisison, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202-724-0002. Information may also be obtained via electronic mail by assessing the Office of Investigations' remote bulletin board system for personal computers at 202-523-0103.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce (51 FR 47037, Dec. 30, 1986) that imports of certain paint filters and strainers from Brazil are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1637). The investigation was requested in a petition filed on July 15, 1986, by the Louis M. Gerson Co., Inc., Middleboro, Massachusetts. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (51 FR 32257, September 15, 1986).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each doucment filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Hearing, staff report, and written submissions.—The Commission will hold a hearing in connection with this investigation at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC; the time and date of the hearing will be announced at a later date. A public version of the prehearing staff report in this investigation will be placed in the public record prior to the hearing, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21) The dates for filing prehearing and posthearing briefs and the date for filing other written submissions will also be announced at a later date.

Authority. This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: January 29, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-2164 Filed 2-3-87; 8:45am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 192)]

CSX Transportation, Inc.; Abandonment in Mecklenburg County, Va, and Warren County, NC; Findings

The Commission has issued a certificate authorizing CSX Transportation, Inc., to abandon its 18.79-mile rail line between Meredith, VA (Milepost S-79.61), and Norlina, NC (milepost S-98.4) in Mecklenburg County, VA, and Warren County, NC. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.

Decided: January 29, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87-2333 Filed 2-3-87; 8:45 am]

BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

State of Illinois; Staff Assessment of Proposed Agreement Between the NRC and the State of Illinois

[Editorial Note: The following document was originally published at page 2309 in the issue of Wednesday, January 21, 1987. The document is being republished at the request of the agency.]

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of proposed agreement with State of Illinois.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission is publishing for public comment the NRC staff assessment of a proposed agreement received from the Governor of the State of Illinois for the assumption of certain of the Commission's regulatory authority pursuant to section 274 of the Atomic Energy Act of 1954, as amended. Comments are requested on the public health and safety aspects of the proposal.

A staff assessment of the State's proposed program for control over sources of radiation is set forth below as supplementary information to this notice. A copy of the proposed agreement, program narrative, including the referenced appendices, applicable State legislation and Illinois regulations, is available for public inspection in the

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Commission's public document room at 1717 H Street NW., Washington, DC, the Commission's Region III Office, 799 Roosevelt Road, Building No. 4, Glen Ellyn, Illinois, and the Illinois Department of Nuclear Safety, 1035 Outer Park Drive, Springfield, Illinois. Exemptions from the Commission's regulatory authority, which would implement this proposed agreement, have been published in the Federal Register and codified as Part 150 of the Commission's regulations in Title 10 of the Code of Federal Regulations.

DATE: Comments must be received on or before January 30, 1987 *.

ADDRESSES: Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Monday through Friday. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Joel O. Lubenau, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301–492–0887.

SUPPLEMENTARY INFORMATION:

Assessment of Proposed Illinois Program to Regulate Certain Radioactive Materials Pursuant to section 274 of the Atomic Energy Act of 1954, as amended.

The Commission has received a proposal from the Governor of Illinois for the State to enter into an agreement with the NRC whereby the NRC would relinquish and the State would assume certain regulatory authority pursuant to section 274 of the Atomic Energy Act of 1954, as amended.

Section 274e of the Atomic Energy Act of 1954, as amended, requires that the terms of the proposed agreement be published for public comment once each week for four consecutive weeks. Accordingly, this notice will be published four times in the Federal Register.

I. Background

A. Section 274 of the Atomic Energy Act of 1954, as amended, provides a mechanism whereby the NRC may transfer to the States certain regulatory authority over agreement materials [1] when a State desires to assume this authority and the Governor certifies that the State has an adequate regulatory program, and when the Commission finds that the State's program is compatible with that of the NRC and is adequate to protect the public health and safety. Section 274g directs the Commission to cooperate with the States in the formulation of standards for protection against radiation hazards to assure that State and Commission programs for radiation protection will be coordinated and compatible. Further, section 274j provides that the Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

B. In a letter dated October 2, 1986, Governor James P. Thompson of the State of Illinois requested that the Commission enter into an agreement with the State pursuant to section 274 of the Atomic Energy Act of 1954, as amended. The Governor certified that the State of Illinois has a program for control of radiation hazards which is adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State of Illinois desires to assume regulatory responsibility for such materials. The text of the proposed agreement is shown in Appendix A.

The specific authority requested is for (1) byproduct material as defined in section 11e.(1) of the Act, (2) source material, (3) special nuclear material in quantities not sufficient to form a critical mass and (4) permanent disposal of low-level waste containing one or more of the foregoing materials but not containing uranium and thorium mill tailings (byproduct material as defined in section 11e.(2) of the Act. The State does not wish to assume authority over uranium recovery activities. The State, however, reserves the right to apply at a future date to NRC for an amended agreement to assume authority in this area. The nine articles of the proposed agreement cover the following areas:

I. Lists the materials covered by the agreement.

II. Lists the Commission's continued authority and responsibility for certain activities.

III. Allows for future amendment of the agreement.

IV. Allows for certain regulatory changes by the Commission.

V. References the continued authority of the Commission for common defense and security for safeguard purposes.

VI. Pledges the best efforts of the Commission and the State to achieve coordinated and compatible programs.

VII. Recognizes reciprocity of licenses issued by the respective agencies.

VIII. Sets forth criteria for termination or suspension of the agreement.

IX. Specifies the effective date of the agreement.

C. Ill. Rev. Stat. 1985, ch. 127, par. 63b17, the enabling statute for the Illinois Department of Nuclear Safety authorizes the Department to issue licenses to, and perform inspections of, users of radioactive materials under the proposed agreement and otherwise carry out a total radiation control program. Illinois regulations for radiation protection were adopted on September 25, 1986 under authority of the enabling statute and provide standards, licensing, inspection, enforcement and administrative procedures for agreement and non-agreement materials. Pursuant to § 330.360 the regulations will apply to agreement materials on the effective date of the agreement. The regulations provide for the State to license and inspect users of naturally-occurring and accelerator-produced radioactive materials.

D. Illinois is one of two States with a cabinet-level agency devoted exclusively to radiation safety and control. Illinois' role in radiation safety is traceable to 1955 when the Illinois General Assembly created the Atomic Power Investigating Commission. The Illinois Department of Nuclear Safety Program provides a comprehensive program encompassing radiation protection regulation for radioactive materials and machine produced radiation, lasers, low-level radioactive waste management, surveillance of transportation of radioactive materials and environmental radiation, coordination of State government functions concerning nuclear power and emergency preparedness.

E. The proposed Illinois Agreement will cover several unique facets. It will include (1) regulation of a low-level waste disposal site which is no longer accepting low-level radioactive waste for disposal (Sheffield), (2) regulation of a new regional low-level waste disposal facility, (3) regulation of one of only two licensed uranium conversion plants in the United States (Allied-Chemical) and (4) assumption of regulatory responsibility for off-site source material resulting from operation of the Kerr-McGee West Chicago Rare Earths Facility (including such material which is, or may be, stored on the Kerr-McGee site). Jurisdiction over the tailings materials at this site (by-product material as defined by section 11e(2) of the Act) will remain with NRC. The State's proposed programs for low-level radioactive waste disposal and the Allied Chemical plant are assessed under Criteria nos. 9, "Radioactive Waste Disposal" and 20 "Personnel." The disposition of the regulatory responsibility for the Kerr-McGee radioactive materials resulting from the operation of the Rare Earths Facility is covered in the assessment under Crtierion 25, "Existing NRC Licenses and Pending Applications."

Under the proposed agreement jurisdiction for health and safety for Allied Chemical's plant would be transferred to Illinois. The Allied Chemical plant is one of 2 plants in the United States licensed to convert uranium "yellowcake" to UF_6. NRC staff is reviewing the common defense and security significance of the Allied Chemical plant in consultation with appropriate Federal agencies. Section 274 agreements are approved by the Commission when, among other things, the proposed State program is adequate to protect the public health and safety. The NRC staff assessment finds the proposed Illinois program will provide adequately for public health and safety. The Atomic Energy Act, as amended, however, states that such agreements shall not affect the Commission's authority to protect the common defense and security. The decision on whether to exclude the Allied Chemical plant from the Agreement will be made by the Commission concurrent with its decision on the Illinois request for an Agreement.

II. NRC Staff Assessment of Proposed Illinois Program for Control of Agreement Materials

Reference: Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement.[2]

Objectives

1. Protection. A State regulatory program shall be designed to protect the health and safety of the people against radiation hazards.

Based upon the analysis of the State's proposed regulatory program the staff believes the Illinois proposed regulatory program for agreement materials is adequately designed to protect the health and safety of the public against radiation hazards.

Reference: Illinois Program Statement, Application for Agreement State Status.

Radiation Protection Standards

2. *Standards.* The State regulatory program shall adopt a set of standards for protection against radiation which shall apply to byproduct, source and special nuclear materials in quantities not sufficient to form a critical mass.

Statutory authority to formulate and promulgate rules for controlling exposure to sources of radiation is contained in the enabling statute. In accordance with that authority, the State adopted radiation control regulations on September 25, 1986 which include radiation protection standards which would apply to byproduct, source and special nuclear materials in quantities not sufficient to form a critical mass upon the effective date of an agreement between the State and the Commission pursuant to section 274b of the Atomic Energy Act of 1954, as amended.

Reference: 32 ILL. ADM. CODE Parts 310, 320, 330, 340, 341, 350, 351, 370, 400 and 601.

3. *Uniformity in Radiation Standards.* It is important to strive for uniformity in technical definitions and terminology, particularly as related to such things as units of measurement and radiation dose. There shall be uniformity on maximum permissible doses and levels of radiation and concentrations of radioactivity, as fixed by 10 CFR Part 20 of the NRC regulations based on officially approved radiation protection guides.

Technical definitions and terminology contained in the Illinois Radiation Control Regulations including those related to units of measurement and radiation doses are uniform with those contained in 10 CFR Part 20.

Reference: 32 ILL. ADM. CODE 310.20, 3410.20, 350.30, 351.30, 370.20, and 601.20.

4. *Total Occupational Radiation Exposure.* The regulatory authority shall consider the total occupational radiation exposure of individuals, including that from sources which are not regulated by it.

The Illinois regulations cover all sources of radiation within the State's jurisdiction and provide for consideration of the total radiation exposure of individuals from all sources of radiation in the possession of a licensee or registrant.

Reference: 32 ILL. ADM. CODE 340.1010 to 340.1060.

5. *Surveys, Monitoring.* Appropriate surveys and personnel monitoring under the close supervision of technically competent people are essential in achieving radiological protection and shall be made in determining compliance with safety regulations.

The Illinois requirements for surveys to evaluate potential exposures from sources of radiation and the personnel monitoring requirements are uniform with those contained in 10 CFR Part 20. Additionally, for personnel dosimeters (except extremity dosimeters and pocket ionization chambers) that require processing, the accreditation criteria in the January 1, 1985 revision of 15 CFR 7b and in American National Standards Institute N13.11–1983, 1983 edition, must be met.

References: 32 ILL. ADM. CODE 340.2010, 340.2020 and 340.2070.

6. *Labels, Signs, Symbols.* It is desirable to achieve uniformity in labels, signs, and symbols, and the posting thereof. However, it is essential that there be uniformity in labels, signs, and symbols affixed to radioactive products which are transferred from person to person.

The prescribed radiation labels, signs and symbols are uniform with those contained in 10 CFR Parts 20, 30 thru 32 and 34. The Illinois posting requirements are also uniform with those of Part 20.

References: 32 ILL. ADM. CODE 330.220(g), 330.220(i), 330.280(d), 330.280(g), 340.2030 and .2040, 350.1050.

7. *Instruction.* Persons working in or frequenting restricted areas shall be instructed with respect to the health risks associated with exposure to radioactive materials and in precautions to minimize exposure. Workers shall have the right to request regulatory authority inspections as per 10 CFR 19, Section 19.16 and to be represented during inspections as specified in Section 19.14 of 10 CFR 19.

The Illinois regulation contain requirements for instruction and notices to workers that are uniform with those of 10 CFR Part 19.

Reference: 32 ILL. ADM. CODE Part 400.

8. *Storage.* Licensed radioactive material in storage shall be secured against unauthorized removal.

The Illinois regulations contain a requirement for security of stored radioactive material.

Reference: 32 ILL ADM. CODE 340.2060.

9. *Radioactive Waste Disposal.* (a) Waste disposal by material users. The standards for the disposal of radioactive

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* The Nuclear Regulatory Commission revised the deadline for comments to February 20, 1987, in a document published at page 2309 in the issue of Wednesday, January 21, 1987.

[1] A. Byproduct materials as defined in 11e(1)
B. Byproduct materials as defined in 11e(2)
C. Source materials; and
D. Special nuclear materials in quantities not sufficient to form a critical mass

[2] NRC Statement of Policy published in the Federal Register January 23, 1981 (46 FR 7540–7546), a correction was published July 16, 1981 (46 FR 36969) and a revision of Criterion 9 published in the Federal Register July 21, 1983 (48 FR 33376).

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materials into the air, water and sewer, and burial in the soil shall be in accordance with 10 CFR Part 20. Holders of radioactive material desiring to release or dispose of quantities or concentrations of radioactive materials in excess of prescribed limits shall be required to obtain special permission from the appropriate regulatory authority.

Requirements for transfer of waste for the purpose of ultimate disposal at a land disposal facility (waste transfer and manifest system) shall be in accordance with 10 CFR Part 20.

The waste disposal standards shall include a waste classification scheme and provisions for waste form, applicable to waste generators, that is equivalent to that contained in 10 CFR Part 61.

(b) Land Disposal of waste received from other persons. The State shall promulgate regulations containing licensing requirements for land disposal of radioactive waste received from other persons which are compatible with the applicable technical definitions, performance objectives, technical requirements and applicable supporting sections set forth in 10 CFR Part 61. Adequate financial arrangements (under terms established by regulation) shall be required of each waste disposal site licensee to ensure sufficient funds for decontamination, closure and stabilization of a disposal site. In addition, Agreement State financial arrangements for long-term monitoring and maintenance of a specific site must be reviewed and approved by the Commission prior to relieving the site operator of licensed responsibility (section 151(a)(2), Pub. L. 97—425).

The Illinois regulations contain provisions relating to the disposal of radioactive materials into the air, water and sewer and burial in soil which are essentially uniform with those of 10 CFR Part 20. Waste transfer and manifest system requirements for transfer of waste for ultimate disposal at a land disposal facility are included in the Illinois regulations. The waste disposal requirements include a waste classification scheme and provisions for waste form equivalent to that in 10 CFR Part 61.

The Illinois regulations provide for land disposal of low—level radioactive waste received from other persons which are compatible with the applicable technical definitions, performance objectives, technical requirements and supporting sections set out in 10 CFR Part 61. The Illinois regulations include provisions for financial arrangements for decontamination, closure and stabilization. Under the Nuclear Waste Policy Act of 1982 (Pub. L. 97—425) the financial arrangements for long-term monitoring and maintenance at specific sites in Illinois will be subject to Commission review and approval prior to Illinois relieving the site operator of licensed responsibility.

References: 32 ILL. ADM. CODE 340.1060, 340.3010 to 340. 3110, Part 601; Section 151(a)(2), Pub. L. 97-425.

10. *Regulations Governing Shipment of Radioactive Materials.* The State shall to the extent of its jurisdiction promulgate regulations applicable to the shipment of radioactive materials, such regulations to be compatible with those established by the U.S. Department of Transportation and other agencies of the United States whose jurisdiction over interstate shipment of such materials necessarily continues. State regulations regarding transportation of radioactive materials must be compatible with 10 CFR Part 71.

The Illinois regulations are uniform with those contained in NRC regulations 10 CFR Part 71.

References: 32 ILL. ADM. CODE Part 341.

11. *Records and Reports.* The State regulatory program shall require that holders and users of radioactive materials (a) maintain records covering personnel radiation exposures, radiation surveys, and disaposals of materials; (b) keep records of the receipt and transfer of the materials; (c) report significant incidents involving the materials, as prescribed by the regulatory authority; (d) make available upon request of a former employee a report of the employee's exposure to radiation; (e) at request of an employee advise the employee of his or her annual radiation exposure; and (f) inform each employee in writing when the employee has received radiation exposure in excess of the prescribed limits.

The Illinois regulations require the following records and reports licensees and registrants:

(a) Records covering personnel radiation exposures, radiation surveys, and disposals of materials.

(b) Records of receipt and transfer of materials.

(c) Reports concerning incidents involving radioactive materials.

(d) Reports to former employees of their radiation exposure.

(e) Reports to employees of their annual radiation exposure.

(f) Reports to employees of radiation exposure in excess of prescribed limits.

Reference: 32 ILL. ADM. CODE 310.40, 340.4010, 340.4030, 340.4050 and 400.130.

12. *Additional Requirements and Exemptions.* Consistent with the overall criteria here enumerated and to accommodate special cases and circumstances, the State regulatory authority shall be authorized in individual cases to impose additional requirements to protect health and safety, or to grant necessary exemptions which will not jeopardize health and safety.

The Illinois Department of Nuclear Safety is authorized to impose upon any licensee or registrant by rule, regulation, or order such requirements in addition to those established in the regulations as it deems appropriate or necessary to minimize danger to public health and safety or property.

Reference: 32 ILL. ADM. CODE 310.70.

The Department may also grant such exemptions from the requirements of the regulations as it determines are authorized by law and will not result in undue hazard to public health and safety or property.

Reference: 32 ILL. ADM. CODE 310.30.

Prior Evaluation of Uses of Radioactive Materials

13. *Prior Evaluation of Hazards and Uses, Exceptions.* In the present state of knowledge, it is necessary in regulating the possession and use of byproduct, source and special nuclear materials that the State regulatory authority require the submission of information on, and evaluation of, the potential hazards and the capability of the user or possessor prior to his receipt of the materials. This criterion is subject to certain exceptions and to continuing reappraisal as knowledge and experience in the atomic energy field increase. Frequently there are, and increasingly in the future there may be, categories of materials and uses as to which there is sufficient knowledge to permit possession and use without prior evaluation of the hazards and the capability of the possessor and user. These categories fall into two groups—those materials and uses which may be completely exempt from regulatory controls, and those materials and uses in which sanctions for misuse are maintained without pre-evaluation of the individual possession or use. In authorizing research and development or other activities involving multiple uses of radioactive materials, where an institution has people with extensive training and experience, the State regulatory authority may wish to provide a means for authorizing broad use of materials without evaluating each specific use.

Prior to the issuance of a specific license for the use of radioactive materials, the Illinois Department of Nuclear Safety will require the submission of information on, and will make an evaluation of, the potential hazards of such uses, and the capability of the applicant.

References: 32 ILL. ADM. CODE 330.240 to 330.340 and Part 601; Illinois Program Statement, Sections II.B.1(a)(1) "Licensing," II.C.1(a)(3) "Regulating Low-Level Waste Disposal" and III.B. "Licensing."

Provision is made for the issuance of general licenses for byproduct, source and special nuclear materials in situations where prior evaluation of the licensee's qualifications, facilities, equipment and procedures are not required. The regulations grant general licenses under the same circumstances as those under which general licenses are granted in the Commission's regulations.

References: 32 ILL. ADM. CODE 330.210 and 330.220.

Provision is made for exemption of certain source and other radioactive materials and devices containing radioactive materials. The exemptions for materials covered by the Agreement are the same as those granted by NRC regulations.

References: 32 ILL. ADM. CODE 330.30 and 330.40.

14. *Evaluation Criteria.* In evaluating a proposal to use radioactive materials, the regulatory authority shall determine the adequacy of the applicant's facilities and safety equipment, his training and experience in the use of the materials for the purpose requested, and his proposed administrative controls. States should develop guidance documents for use by license applicants. This guidance should be consistent with NRC licensing and regulatory guides for various categories of licensed activities.

In evaluating a proposal to use agreement materials, the Illinois Department of Nuclear Safety will determine that:

(1) The applicant is qualified by reason of training and experience to use the material in question for the purpose requested in accordance with the regulations in such a manner as to minimize danger to public health and safety or property;

(2) The applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property; and

(3) The issuance of the license will not be inimical to the health and safety of the public.

Other special requirements for the issuance of specific licenses are contained in the regulations.

References: 32 ILL. ADM. CODE 330.250 to 330.280 and Part 601; Illinois Program Statement, Sections II.B.1.a(1) "Licensing" II.C.1.(a) "Low-Level Radioactive Waste Management" and III.B "Licensing."

15. *Human Use.* The use of radioactive materials and radiation on or in humans shall not be permitted except by properly qualified persons (normally licensed physicians) possessing prescribed minimum experience in the use of radioisotopes or radiation.

The Illinois regulations require that the use of radioactive materials (including sealed sources) on or in humans shall be by a physician having substantial experience in the handling and administration of radioactive material and, where applicable, the clinical management of radioactive patients.

Reference: 32 ILL. ADM. CODE 330.260(a), (b), and (c).

Inspection

16. *Purpose, Frequency.* The possession and use of radioactive materials shall be subject to inspection by the regulatory authority and shall be subject to the performance of tests, as required by the regulatory authority. Inspection and testing is conducted to determine and to assist in obtaining compliance with regulatory requirements. Frequency of inspection shall be related directly to the amount and kind of material and type of operation licensed, and it shall be adequate to insure compliance.

Illinois materials licensees will be subject to inspection by the Department of Nuclear Safety. Upon instruction from the Department, licensees shall perform or permit the Department to perform such reasonable tests and surveys as the Department deems appropriate or necessary. The frequency of inspections is dependent upon the type and scope of the licensed activities and will be at least as frequent as inspections of similar licensees by NRC. Generally, inspections will be unannounced.

References: 32 ILL. ADM. CODE 310.50, 310.60, 310.70 and 400.140(a); Illinois Program Statement, Section II.B.1.(a)(2) "Inspection and Compliance," Section III.C, "Inspection and Enforcement" and Section IV.C., "Division of Responsibilities."

17. *Inspections Compulsory.* Licensees shall be under obligation by law to provide access to inspectors.

Illinois regulations state that licensees shall afford the Department at all reasonable times opportunity to inspect sources of radiation and the premises and facilities wherein such sources of radiation are used or stored.

Reference: 32 ILL. ADM. CODE 310.50.

18. *Notification of Results of Inspection.* Licensees are entitled to be advised of the results of inspections and to notice as to whether or not they are in compliance.

Following Department inspections, each licensee will be notified in writing of the results of the inspection. The letters and written notices indicate if the licensee is in compliance and if not, list the areas of noncompliance.

Reference: Illinois Program Statement, Section II.B.1.(a)(2) "Inspection and Compliance," Section III.C, "Inspection and Enforcement" and Section IV.C., "Division of Responsibilities."

Enforcement

19. *Enforcement.* Possession and use of radioactive materials should be amenable to enforcement through legal sanctions, and the regulatory authority shall be equipped or assisted by law with the necessary powers for prompt enforcement. This may include, as appropriate, administrative remedies looking toward issuance of orders requiring affirmative action or suspension or revocation of the right to possess and use materials, and the impounding of materials; the obtaining of injunctive relief; and the imposing of civil or criminal penalties.

The Illinois Department of Nuclear Safety is equipped with the necessary powers for prompt enforcement of the regulations. Where conditions exist that create a clear presence of a hazard to the public health that requires immediate action to protect human health and safety, the Department may issue orders to reduce, discontinue or eliminate such conditions. The department actions may also include impounding of radioactive material, imposition of a civil penalty, revocation of a license, and requesting the State Attorney General to seek injunctions and convictions for criminal violations.

References: 32 ILL. ADM. CODE 310.70, 310.80, 310.90, 330.500; Ill. Rev. Stat. 1985, ch. 111½, pars. 219, 222, 223 and 224; Illinois Program Statement, Section II.B.1.(a)(2), "Inspection and Compliance," Section III.C, "Inspection and Enforcement" and Section IV.C., "Division of Responsibilities."

Personnel

20. *Qualifications of Regulatory and Inspection Personnel.* The regulatory agency shall be staffed with sufficient trained personnel. Prior evaluation of applications for licenses or authorizations and inspection of licensees must be conducted by persons possessing the training and experience relevant to the type and level of

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radioactivity in the proposed use to be evaluated and inspected.

To perform the functions involved in evaluation and inspection, it is desirable that there be personnel educated and trained in the physical and/or life sciences, including biology, chemistry, physics and engineering, and that the personnel have had training and experience in radiation protection. The person who will be responsible for the actual performance of evaluation and inspection of all of the various uses of byproduct, source and special nuclear material which might come to the regulatory body should have substantial training and extensive experience in the field of radiation protection.

It is recognized that there will also be persons in the program performing a more limited function in evaluation and inspection. These persons will perform the day-to-day work of the regulatory program and deal with both routine situations as well as some which will be out of the ordinary. These people should have a bachelor's degree or equivalent in the physical or life sciences, training in health physics, and approximately two years of actual work experience in the field of radiation protection.

The foregoing are considered desirable qualifications for the staff who will be responsible for the actual performance of evaluation and inspection. In addition, there will probably be trainees associated with the regulatory program who will have an academic background in the physical or life sciences as well as varying amounts of specific training in radiation protection but little or no actual work experience in this field. The background and specific training of these persons will indicate to some extent their potential role in the regulatory program. These trainees, of course, could be used initially to evaluate and inspect those applications of radioactive materials which are considered routine or more standardized from the radiation safety standpoint, for example, inspection of industrial gauges, small research programs, and diagnostic medical programs. As they gain experience and competence in the field, the trainees could be used progressively to deal with the more complex or difficult types of radioactive material applications. It is desirable that such trainees have a bachelor's degree or equivalent in the physical or life sciences and specific training in radiation protection. In determining the requirement for academic training of individuals in all of the foregoing categories, proper consideration should be given to equivalent competency which has been gained by appropriate technical and radiation protection experience.

It is recognized that radioactive materials and their uses are so varied that the evaluation and inspection functions will require skills and experience in the different disciplines which will not always reside in one person. The regulatory authority should have the composite of such skills either in its employ or at its command, not only for routine functions, but also for emergency cases.

a. *Radioactive Materials Program.*

i. *Personnel.*

There are approximately 800 NRC specific licenses in the State of Illinois. Under the proposed agreement, the State would assume responsibility for about 800 of these licenses. The Department's Division of Nuclear Materials is currently staffed with 13 professional persons and has one vacancy. Including the Manager of the Office of Radiation Safety (in which the Division of Nuclear Materials is located), four individuals will be assigned management and supervisory duties in the materials program. Exclusive of the low-level radioactive waste regulatory program and the regulatory oversight for a uranium conversion plant (discussed below) we estimate the State will need to apply between 7.9 to 12 staff-years of professional effort to the radioactive materials program. Illinois will apply about 14.4 staff-years to this program. The personnel together with summaries of their assigned responsibilities, training and experience are as follows (except as noted percentage of time devoted to the radioactive materials program will be 90% or more):

Terry R. Lash: Director, Illinois Department of Nuclear Safety, Governor's Designated Liaison to NRC. (10% of time devoted to materials program).

Training:

Ph.D.—Yale University (1970)
—Molecular Biophysics and Biochemistry, Yale University
M.Ph.—Molecular Biophysics and Chemistry
—Yale University (1967)
B.A.—Reed College (1965)
—Physics Major

Experience:

1984—Present: Director, Illinois Department of Nuclear Safety
1983—1984: Deputy Director, Illinois Department of Nuclear Safety
1983—1983: Independent Consultant
1982—1983: Science Director, Scientists' Institute for Public Information, New York City
1981—1982: Independent Consultant
1980—1981: Director, Science and Public Policy, The Keystone Center, Dillon, Colorado
1972—1980: Staff Scientist, Natural Resources Defense Council, San Francisco, California
1970—1972: Postdoctoral Research Fellow, Yale University Medical School, New Haven, Connecticut

Paul D. Eastvold: Manager, Office of Radiation Safety. Responsible for managing the programs, functions and activities of four technical divisions: Nuclear Materials, Electronic Products, Radiologic Technologist Accreditation and Medical Physics (33% of time devoted to materials program).

Training:

B.S.—University of Iowa (1970)
—General Science/Nuclear Medicine Technology

"Special Topics in Licensing: Contingency Plans," US NRC, San Francisco, CA (1986)
"Impact of Proposed Changes to 10 CFR 20," Technical Management Services, Inc., Gaithersburg, Maryland (1986)
"Large Irradiation Radiation Safety Workshop," US NRC, New Jersey (1985)
"Incinertion of Radioactive Material Workshop," University of California (1984)
"Transportation of Radioactive Materials," US NRC, Illinois (1983)
"Recognition, Evaluation, and Control of Non-Ionizing Radiation," US Dept. of Labor, Illinois (1981)
"Inspection Procedures," US NRC, Illinois (1980)
"Safety Aspects of Industrial Radiography," US NRC, Louisiana (1980)
"Quality Assurance in Nuclear Medicine," US FDA, Maryland (1979)
"Health Physics in Radiation Accidents," Oak Ridge Associated Universities, Tennessee (1979)
"Laser Safety Seminar," US Food and Drug Admin., Wisconsin (1979)
"Radiological Response Operations Training Course," US NRC, Nevada (1978)
"Radiopharmacies—Problems and Solutions," Univ. of Southern California, California (1978)
"Radiological Emergency Response Planning Course," US NRC, Minnesota (1977)
"Health Physics and Radiation Protection," US NRC, Tennessee (1977)
"Fundamentals of Non-Ionizing Radiation Protection," U.S. Food and Drug Administration, Maryland (1973)
"Licensing Course—Byproduct, Source, and Special Nuclear Materials," US NRC, Maryland (1972)

Experience:

1980—Present: Illinois Department of Nuclear Safety
1971—1980: Illinois Department of Public Health, Division of Radiological Health
1970—1971: University of Iowa Radiation Protection Office

Michael Ewan: Chief, Division of Nuclear Materials. Manages the Division including supervision of staff and establishment of program objectives.

Training:

M.A.—Sangamon State University , IL (1980)
—Business Administration
B.S.—University of Iowa (1971)
—General Science/Nuclear Medicine Technology
"Uranium and Thorium: A Perspective on the Hazard," Radiation Safety Associates, Inc., Springfield, Illinois (1986)
"Special Topics in Licensing: Contingency Plans," US NRC, San Francisco, CA (1986)
"Incineration Basics," Univ. of California, Irvine, Charlotte, N.C. (1986)
"Basic Supervision," Keye Productivity Center, Springield, Illinois (1986)
"Impact of Proposed Changes to 10 CFR 20," Technical Management Services, Inc., Gaithersburg, Maryland (1986)
"Transportation of Radioactive Materials," US DOE, Illinois (1985)
"Technical Writing," Richmond Staff Development, Illinois (1985)
"Health Physics and Radiation Protection," Oak Ridge Associated Universities, Tennessee (1985)
"Gas and Oil Well Logging," US NRC, Texas (1984)
"Licensing Practices and Procedures," US NRC, Maryland (1984)
"Transportation of Radioactive Materials," US NRC, Illinois (1983)
"Current Applications of Nuclear Imaging," Siemens Gammasonics, Inc., Illinois (1981)
"Nuclear Cardiology," Univ. of Wisconsin, Wisconsin (1980)

Experience:

1982–Present: Illinois Department of Nuclear Safety
1973–1982: St. John's Hospital, Springfield, Illinois
1981: Lincoln Land Community College, Springfield, Illinois (Instructor)
1973–1977: Nuclear Medicine Institute, Ohio (Affiliate Instructor)
1971–1973: Wesley Medical Center, Kansas

Jou-Guang (Joe) Hwang: Licensing Section Head, Division of Nuclear Materials. Responsible for supervising the review of radioactive material license applications.

Training:

Ph.D.—Purdue University (1985)
—Health Physics
MSPH—University of South Carolina (1981)
—Industrial Hygiene and Environmental Quality Assessment
B.S.—National Taiwan University (1978)
—Pharmacy
"Uranium and Thorium: A Perspective on the Hazard," Radiation Safety Associates, Inc., Springfield, Illinois (1986)
"External Dosimetry," Health Physics Society, State College, Pennsylvania (1986)
"Introduction to Licensing Practices and Procedures," US NRC, Bethesda, Maryland (1986)
"Medical Uses of Radionuclides for State Regulatory Personnel," US NRC, Oak Ridge Tennessee (1986)

Experience:

1986–Present: Illinois Department of Nuclear Safety
1983–1986: Purdue University, Graduate Teaching Instructor, School of Pharmacy, Nursing and Health Sciences
1980–1982: Purdue University, Graduate Research Instructor, School of Health Sciences
1980–1981: University of South Carolina, Graduate Teaching Assistant, Department of Environmental Health Sciences
1980–1980: University of South Carolina, Graduate Research Assistant, Department of Environmental Health Sciences
1978–1979: The Church of Taipei, Minister, Taipei, Taiwan
1978–1979: Yun-Fu Pharmaceutical Ltd., Pharmacist, Taipei, Taiwan
1977–1977: National Taiwan University, Hospital, Pharmacy Intern, Taipei, Taiwan
1977–1977: Pfizer Pharmaceutical Company, Assistant Pharmacist (Intern), Tan-Shui, Taiwan ROC

Y. David La Touche: Radioactive Materials License Reviewer, Division of Nuclear Materials. Performs reviews of radioactive material license applications and performs inspections of radioactive materials licensees.

Training:

Ph.D.—Oregon State University (1981)
—Radiation Biology
M.S.—Oregon State University (1978)
—Biological Science
B.S.—Concordia University, Montreal, Canada (1976)
—Biology
"Special Topics in Licensing: Contingency Plans," US NRC, San Francisco, CA (1986)
"Health Physics and Radiation Protection," US NRC, Oak Ridge, Tennessee (1986)
"Uranium and Thorium: A Perspective on the Hazard," Radiation Safety Associates, Inc., Springfield, Illinois (1986)
"Introduction to Licensing Practices and Procedures," US NRC, Bethesda, Maryland (1986)

Experience:

1986—Present: Illinois Department of Nuclear Safety
1982–1986: Oregon State University, Corvallis, Oregon Research Associate
1979–1981: Oregon State University, Corvallis, Oregon Graduate Research Associate
1977–1979: Oregon State University, Corvallis, Oregon Graduate, Teaching Assistant

Yu-Ann Stephen Hsu: Radioactive Materials License Reviewer, Division of Nuclear Materials. Performs reviews of radioactive material license applications and performs inspections of radioactive materials licensees.

Training:

M.S.—Old Dominion University (1982)
—Norfolk, Virginia
—Physics
B.S.—Tam Kang college of Arts and Sciences
—Physics
"Introduction to Air Toxics," US EPA, Kansas City, Missouri (1985)
"Health Physics and Radiation Protection," US NRC, Oak Ridge, Tennessee (1984)
"Safety Aspects of Industrial Radiography for State Regulatory Personnel," US NRC, Baton Rouge, Louisiana (1984)
"Cobalt Teletherapy Calibration," US NRC, Houston, Texas (1984)
"Medical Use of Radionuclides for State Regulatory Personnel," US NRC, Tennessee (1984)
"Gas and Oil Well-Logging for State Regulatory Personnel," US NRC, (1983)
"Hazardous Waste Management," Old Dominion University, Virginia Beach, Virginia (1982)
"Inspection Procedures," US NRC, Atlanta, Georgia (1986)

Experience:

1986—Present Illinois Department of Nuclear Safety
1985—1986: Iowa Electric Light & Power Company, Cedar Rapids, Iowa, Radiological Engineer

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1982—1985: Kansas Department of Health and Environment, Topeka, Kansas, Radiation Control Inspector
1981—1982: Eastern Virginia Medical Authority, Norfolk, Virginia, Assistant Radiation Safety Officer
1980—1981: Eastern Virginia Medical Authority, Norfolk, Virginia, Radiation Safety Research Technician
1979—1980: Old Dominion University Norfolk, Virginia, Research Assistant

Steve Meiners: Radioactive Materials License Reviewer, Division of Nuclear Materials. Performs reviews of radioactive material license applications and performs inspections of radioactive materials licensees.

Training:
M.S.—University of Arkansas for Medical Sciences (1985)
—Radiation Health Physics
B.A.—Harding University (1981)
—Biology
"Medical Uses of Radionuclides for State Regulatory Personnel," US NRC, Oak Ridge, Tennessee (1986)

Experience:
1985—1985: Texas Tech University, Radiation Safety Officer
1984—1984: University of Arkansas, Graduate Assistant
1981—1984: University of Arkansas, Laboratory Technologist
1981—1983: University of Arkansas, Aquatic Ecologist
1980—1981: Harding University, Teaching Assistant

Sheryl O. Soderdahl: Support Services Section Head, Division of Nuclear Materials. Responsible for the Division's data processing system and registration program, assists in license reviews and inspections, assists in review and revision of regulations and standards and serves as the Department's Radiation Safety Officer.

Training:
B.S.—Purdue University, Indiana (1980)
Health Physics
"Inspection Procedures," US NRC, Atlanta, Georgia (1985)
"Writing for Results," Sangamon State University, Springfield, Illinois (1985)
"Introduction to Licensing Practices and Procedures," US NRC, Washington, D.C. (1985)
"Environmental Health Practices," University of Massachusetts, Amherst, Massachusetts (1982)

Experience:
1985—Present: Illinois Department of Nuclear Safety
1980—1985: University of Massachusetts, Department of Environmental Health and Safety, Amherst, Massachusetts, Staff Health Physicist
1979—1979: Fermi National Accelerator Laboratory, Proton Department, Batavia, Illinois

Bruce J. Sanza: Inspection and Enforcement Section Head, Division of Nuclear Materials. Manages the inspection and enforcement program.

Training:
M.S.—Texas A & M University (1985)
—Nuclear Engineering (Health Physics)
B.S.—University of Virginia (1979)
—Nuclear Engineering
"Uranium and Thorium: A Perspective on the Hazard," Radiation Safety Associated, Springfield, Illinois (1986)
"Inspection Procedure," US NRC, Atlanta, Georgia (1986)
"Gas & Oil Well Logging for Regulatory Personnel," (Accepted for attendance at November, 1986 course, Houston, Texas)

Experience:
1986—Present: Illinois Department of Nuclear Safety
1983—1986: Texas A & M University, Health Physicist, College Station, Texas
1980—1983: Carolina Power & Light Company, Radiation Control Specialist, Hartsville, South Carolina

George E. Merrihew: Radioactive Materials License Inspector. Performs reviews of radioactive materials license applications and performs inspections of radioactive materials licensees.

Training:
M.A.—Sangamon State University (1972)
—Biology/Psychology
B.A.—Sangamon State University (1971)
—Biology/Psychology
A.A.—Springfield, College in Illinois (1969)
—General Science
"Radiological Emergency Response Operation," FEMA, Las Vegas, Nevada (1986)
"Medical Uses of Radionuclides," US NRC, Oak Ridge, Tennessee (1986)
"Gas and Well Logging for Regulatory Personnel," US NRC, Houston, Texas (1985)
"Radioactive Material Training Course: Hazardous Material Regulations of the United States Department of Transportation," Chicago, Illinois (1985)
"Safety Aspects of Industrial Radiography," US NRC, Baton Rouge, Louisiana (1985)
"Introduction to Licensing Practices and Procedures," US NRC, Betheada, Maryland (1984)
"Inspection Procedures," US NRC, Atlanta, Georgia (1984)
"Health Physics and Radiation Protection," US NRC, Oak Ridge, Tennessee (1984)
"Radiation Protection Technology," Rockwell International, Energy Systems Group (1983)
"Transportation of Nuclear Materials," US NRC Illinois (1983)
"Executive Development Academy," Illinois Department of Personnel, Illinois (1981)
"ANS Cobol Course," (1980); "Basic Systems Analysis: (1980); "General Introduction to Statistical Package for the Social Sciences" (1979): "DP Concepts" (1979); "IMS Environment Course" (1979); "Easytrieve/IMS Class" (1979); "Basics in Easytrieve," State of Illinois Data Processing Training Center (1977)
"Air Pollution Control Orientation," US EPA (1978)
"Community Hygiene," US HEW, Georgia (1978)
University of Illinois, School of Clinical Medicine, (1974)
University of Illinois, School of Basic Medical Sciences (1973)

Experience:
1983–Present: Illinois Department of Nuclear Safety
1974–1983: Illinois Department of Public Health, Division of Engineering
1971–1972: Sangamon State University, Department of Biology, Graduate Assistant
1965–1967: Memorial Medical Center, Clinical Laboratory

Lori Kim Podolak: Radioactive Materials License Inspector. Performs reviews of radioactive materials license applications and performs inspections of radioactive materials licensees.

Training:
M.S.—University of Lowell (1986)
—Radiological Sciences
B.S.—Kentucky Wesleyan College (1984)
—Physics

Experience:
1986–Present: Illinois Department of Nuclear Safety
1984–1986: University of Lowell
1985: Brookhaven National Laboratory
1983: Oak Ridge National Laboratory

Andrew S. Gulczynski: Chicago Inspection and Enforcement Section Head, Division of Nuclear Materials. Supervises Chicago office materials license inspectors.

Training:
B.S.—Northeastern Illinois University (1981)
—Biology
"Five Week Health Physics and Radiation Protection Course," US NRC, Oak Ridge, Tennessee (1986)
"Internal Dose Assessment," Technical Management Services, Inc., Illinois (1985)

"Transportation of Radioactive Materials," US DOE, Chicago, Illinois (1985)
"Medical Uses of Radionuclides for State Regulatory Personnel," US NRC, Oak Ridge, Tennessee (1984)
"Safety Aspects of Industrial Radiography for State Regulatory Personnel," US NRC, Baton Rouge, Louisiana (1983)
"Inspection Procedures for State Regulatory Personnel," US NRC, Atlanta, Georgia (1983)
"Radiological Emergency Response Operations," FEMA, Las Vegas, Nevada (1983)

Experience:
1985–Present: Illinois Department of Nuclear Safety
1982–1985: Kansas Department of Health and Environment, Bureau of Radiation Control, Topeka, Kansas,
1981–1982: Argonne National Laboratory, Argonne, Illinois
1977–1981: Northeastern Illinois University, Chicago, Illinois

John D. Papendorf: Radiocative Materials License Inspector. Performs reviews of radiactive materials license applications and performs inspections of radioactive materials licensees.

Training:
N.M.T.—Oak Park Hospital (1975)
—Nuclear Medicine Technologist Certification
R.T.—Hines V.A. Hospital (1972)
—X-Ray Technologist Certification
A.S.—Central YMCA College (1972)
"Inspection of Transportation of Radioactive Materials," U.S. NRC, Glen Ellyn, Illinois (1985)
"Nuclear Transportation for State Regulatory Personnel," US NRC, Columbia South Carolina (1984)
"Hazardous Materials Training Course," U.S. DOE, Chicago, Illinois (1983)
"Radiation Safety," Northwestern University, Evanston, Illinois (1982)
"Radiation Therapy Workshop, Medical Linear Accelerators," US Public Health Service, Chicago, Illinois (1981)
"Acceptance Testing of Radiological Imaging Equipment," American Association of Physicists in Medicine, American College of Radiology and Society for Radiological Engineering, Chicago, Illinois (1981)
"Safety Aspects of Industrial Radiography for State Programs," US NRC, Baton Rouge, Louisiana (1981)
"Inspection Procedures," US NRC, Glen Ellyn, Illinois (1980)
"Quality Assurance in Nuclear Medicine Departments," US Food and Drug Administration, Rockville, Maryland (1979)
"Radiological Emergency Response Operations Training Course for State and Local Government Emergency Preparedness Personnel," FEMA, Las Vegas, Nevada (1979)
"Special Procedures on CT Scanners" US Public Health service, Chicago, Illinois (1976)
"Radiological Workshop," US Public Health Service, Chicago, Illinois (1976)

Experience:
1980–Present: Illinois Department of Nuclear Safety
1976–1980: Illinois Department of Public Health, Division of Radiological Health
1973–1976: Oak Park Hospital, Nuclear Medicine Technologist, Oak Park, Illinois
1972–1973: Oak Park Hospital, X-Ray Technologist, Oak Park, Illinois

Robin Gehrhardt Bauer: Radioactive Materials License Inspector. Performs reviews of radioactive materials license applications and performs inspections of radioactive materials licensees.

Training:
M.S.—Emory University (1985)
—Radiological Physics
B.S.—University of Miami (1983)
—Biology
"Health Physics and Radiation Protection," US NRC, Oak Ridge, Tennessee (1986)

Experience:
1986–Present: Illinois Department of Nuclear Safety
1985–1985: Georgia Baptist Hospital, Internship, Medical Physics, Atlanta, Georgia
1985–1985: Emory University, X-Ray, Nuclear Medicine, Calibration, Atlanta, Georgia
19893–1984: Loyola University, Research Technician, Maywood, Illinois

Joanne B. Kark: Radioactive Materials License Inspector. Performs reviews of radioactive materials license applications and performs inspections of radioactive materials licensees.

Training:
Graduate work toward M.S.—Colorado State University (1985)
—University of Tennessee (1982)
—Health Physics
B.S.—Villanova University (1975)
—Biology
Certificate—St. Joseph's Hospital and Medical Center School of Nuclear Medicine Technology Paterson, New Jersey (1977)
"Inspection Procedures," US NRC, Atlanta, Georgia (1986)

Experience:
1986–Present: Illinois Department of Nuclear Safety
1981–1984: Oak Ridge National Laboratory, Health and Safety Research Division, Senior Laboratory Technician
1979–1981: Oak Ridge National Laboratory, Biology Division, Biological Technician
1977–1979: Radiology Associates, Albert Einstein Medical Center, No. Division, Nuclear Medicine Technologist.
1976–1977: SpectroChem Laboratories, Inc., Analytical Chemistry Technician

John W. Cooper: Manager, Office of Environmental Safety. Provides technical support to the Division of Nuclear Materials on an as needed basis.

Training:
Ph.D—University of Iowa (1971)
—Radiation Biology
M.S.—University of Iowa (1966)
—Pharmacy
B.S.—Drake University (1960)
—Pharmacy
"Industrial Ventilation Systems," OSHA Training Institute, Illinois (1983)
"Respirator Safety for CSHO's," OSHA Training Institute, Illinois (1982)

Experience:
1981–Present: Illinois Department of Nuclear Safety
1975–1981: U.S. Nuclear Regulatory Commission, Region III, Inspector and license reviewer
1971–1975: Allegheny General Medical Center, Radiation Biology Laboratory
1964–1971: University of Iowa, Radiation research and teaching

Apparao Devata: Chief, Division of Medical Physics. Provides technical support to the Division of Nuclear Materials on an as needed basis.

Training:
Ph.D.—University of New Orleans (1975)—Physics
M.S.—University of New Orleans (1972)—Physics
MSc.—Andhra University (1968)—Applied Physics
BSc.—Andhra Loyola College (1965)—Mathematics

Experience:
1985–Present: Illinois Department of Nuclear Safety
1985: Medical Physics Consultant
1983–1985: St. James Hospital Medical Center, Chicago Heights, Illinois, Medical physicist
1975–1983: St. Joseph's Hospital, Elgin, Illinois, Medical physicist
1975: Mt. Sinai Hospital, Chicago, Illinois, Medical physicist
VA Hines Hospital, Hines, Illinois, Medical physicist
1969–1975: University of New Orleans Research and teaching

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Reference: Illinois Program Statement, Section III, "Implementation of the Agreement State Program for Materials Licenses," Section IV.A.3, "Staff Requirements" and Appendix 5, "Current Agreement State Staff Positions: Byproduct Material, Source Material and Special Nuclear Materials in Quantities Not Sufficient to Form a Critical Mass."

b. Regulatory Oversight of Uranium Conversion Plant

i. *Personnel*

There are two plants in the United States which convert natural uranium oxide (yellowcake) to uranium hexafluoride. These activities are conducted pursuant to source materials licenses issued by the NRC. Under the proposed Agreement, the source material license for the Allied Chemical uranium conversion facility located in Metropolis will be transferred to Illinois.* The Office of Radiation Safety, Division of Nuclear Materials will be responsible for regulatory oversight with technical support from the Offices of Environmental Safety and Nuclear Facility Safety. Overall IDNS will commit 0.6 full-time equivalent professionals effort to this program. Key staff assigned to this program together with summaries of their duties and training and experience are:

(a) Staff previously identified in the materials program (Section 20.a)

Jou-Guang (Joe) Hwang, Y. David La Touche, Bruce J. Sanza, John W. Cooper.

(b) Other IDNS staff:

Lih-Ching Chu: Chief, Division of Radiochemistry Laboratories, Office of Environmental Safety. Supervises analytical support for all Department programs. Provides technical support in radiochemistry and radioanalysis.

Training:

Ph.D—Washington University (1981)—Chemistry
M.A.—Washington University (1981)—Chemistry
M.S.—East Texas State University (1976)—Chemistry
B.S.—Tamkang College of Arts and Sciences (1971)—Chemistry
"Vax Applications Manager," Canberra Industries, Inc., CT, 1984
"Introduction to S–90–VMS Apogee System Operations," Canberra Industries, Inc., CT, 1984

Experience:

1984–Present: Illinois Department of Nuclear Safety
1981–1984: Indiana State Board of Health, Radiochemistry Lab, Indianapolis, Indiana
1977–1981: Indiana University Medical Center, Indianapolis, Indiana
1976–1977: St. Jude Children's Research Hospital, Memphis, Tennessee

James F. Scheweitzer: Health Physicist, Office of Environmental Safety. Serves as a specialist in environmental monitoring and will provide technical support and guidance in this area.

Training:

Ph.D.—Purdue University (1985)—Environmental Toxicology
M.S.—Purdue University (1981)—Health Physics
B.S.—Randolph-Macon College (1976)—Biology
Environmental Laws and Compliance Course
"Vax Applications Manager," Canberra Industries, Inc., Connecticut (1984)
"Introduction to S–90–VMS Apogee System Operations," Canberra Industries, Inc., Connecticut (1984)
"Auditor Training," Gilbert/Commonweath (1984)
"Radiological Monitor," Indiana Department of Civil Defense and Emergency Management (1983)
"Radiochemistry for State Regulatory Personnel," NRC (1983)
"Radiological Monitoring, Sampling and Analysis of Nuclear Facilities," US DOE (1983)
"Radiological Emergency Response Training for State Government Emergency Preparedness Personnel," FEMA/US DOE (1982)

Experience:

1984–Present: Illinois Department of Nuclear Safety
1981–1984: Indiana State Board of Health, Radiochemistry Lab, Indianapolis, Indiana
1977–1981: Indiana University Medical Center, Indianapolis, Indiana
1976–1977: St. Jude Children's Research Hospital, Memphis, Tennessee

David A. Filler: Assistance Chief, Division of Radiochemistry Laboratories, Office of Environmental Safety. Provides radiochemistry support.

Training:

Ph.D.—University of Michigan, (1976)—Biochemistry
M.S.—University of Michigan, (1973)—Biochemistry
B.S.—Purdue University (1969)—Chemistry
"Vax Applications Manager," Canberra Industries, Inc., Connecticut (1984)
"Introduction to S–90–VMS Apogee System Operations," Canberra Industries, Inc., Connecticut (1984)
"Auditor Training," Gilbert/Commonweath (1984)
"Radiological Monitor," Indiana Department of Civil Defense and Emergency Management (1983)
"Radiochemistry for State Regulatory Personnel," NRC (1983)
"Radiological Monitoring, Sampling and Analysis of Nuclear Facilities," US DOE (1983)
"Radiological Emergency Response Training for State Government Emergency Preparedness Personnel," FEMA/US DOE (1982)

Experience:

1984–Present: Illinois Department of Nuclear Safety
1981–1984: Illinois Department of Energy and Natural Resources
1976–1981: Washington University, St. Louis, Missouri
1974–1976: East Texas State University, Commerce, Texas
1973–1974: Young-Ho Middle School, Young-Ho, Taiwan, ROC
1971–1973: Military Service, Taiwan, ROC

David A. Filler: Assistance Chief, Division of Radiochemistry Laboratories, Office of Environmental Safety. Provides radiochemistry support.

Training:

Ph.D.—University of Michigan, (1976)—Biochemistry
M.S.—University of Michigan, (1973)—Biochemistry
B.S.—Purdue University (1969)—Chemistry
"Vax Applications Manager," Canberra Industries, Inc., Connecticut (1984)
"Introduction to S–90–VMS Apogee System Operations," Canberra Industries, Inc., Connecticut (1984)
"Auditor Training," Gilbert/Commonweath (1984)
"Radiological Monitor," Indiana Department of Civil Defense and Emergency Management (1983)
"Radiochemistry for State Regulatory Personnel," NRC (1983)
"Radiological Monitoring, Sampling and Analysis of Nuclear Facilities," US DOE (1983)
"Radiological Emergency Response Training for State Government Emergency Preparedness Personnel," FEMA/US DOE (1982)

Experience:

1984–Present: Illinois Department of Nuclear Safety
1981–1984: Indiana State Board of Health, Radiochemistry Lab, Indianapolis, Indiana
1977–1981: Indiana University Medical Center, Indianapolis, Indiana
1976–1977: St. Jude Children's Research Hospital, Memphis, Tennessee

James F. Scheweitzer: Health Physicist, Office of Environmental Safety. Serves as a specialist in environmental monitoring and will provide technical support and guidance in this area.

Training:

Ph.D.—Purdue University (1985)—Environmental Toxicology
M.S.—Purdue University (1981)—Health Physics
B.S.—Randolph-Macon College (1976)—Biology
Environmental Laws and Compliance Course
Short Course: Uranium and Thorium: A Perspective on the Hazard (1986)

Experience:

1986–Present: Illinois Department of Nuclear Safety
1985–1986: Purdue University, Office of Radiological and Chemical Control
1980–1980: Purdue University, Office of Radiological and Chemical Control

Michael H. Momeni: Chief, Low-Level Waste Siting Section, Office of Environmental Safety. Provides radiological and environmental support for the Office of Environmental Safety and will provide technical support for Allied Chemical regulatory actions.

Training:

Ph.D—University of Iowa—Biophysics/Radiation Biology
M.S.—University of Iowa—Nuclear Physics
B.A.—Luther College—Physics-Mathematics

Experience:

1986–Present: Illinois Department of Nuclear Safety
1985–1986: Scientist, Oak Ridge Associated Universities, Oak Ridge, Tennessee
1983–1985: Professor-Director of Health Physics Program, San Diego State University, San Diego, California
1975–1983: Senior Scientist, Argonne National Laboratory, Argonne, Illinois
1970–1975: Biophysicist-Lecturer, The University of California, Davis, California
1962–1963: Science Teacher, Urbana Consolidated Schools, Iowa

Gary Wright: Manager, Office of Nuclear Facility Safety. Provides technical assistance concerning engineering principles and emergency planning and response.

Training:

—Sangamon State University (1974)
—Degree approx. half complete in Public Administration
M.S.—University of Illinois (1965)—Nuclear Engineering
B.S.—Millikin University (1964)—Physics/Mathematics
"Management Education Workshop," Ill. Dept. of Personnel, Champaign (1978)
"International Symposium on Migration of Tritium in the Environment," International Atomic Energy Agency, California (1978)
"Radiological Emergency Response Operations," US NRC, Nevada (1977)
"Workshop on Collective Bargaining for Public Employees," Ill. Dept. of Personnel (1976)
"Administrative and Organizational Behavior," Ill. Dept. of Public Health (1975)
"Professional Engineering Review," Univ. of Ill. (1974)
"Response of Structures to External Forces, i.e., Earthquakes, Tornados, etc.," Penn. State Univ. (1968)

Experience:

1980–Present: Illinois Department of Nuclear Safety
1973–1980: Illinois Department of Public Health
1967–1973: Sangamo-Weston Electronics Company, Springfield, Illinois
1965–1967: Westinghouse Electric Company, Forrest Hills, Pennsylvania

Reference: Illinois Program Statement, Section III.D," Allied Chemical Uranium Conversion Facility," Appendix 5, and Appendix 9, "Current Agreement State Staff Positions: Low-Level Radioactive Waste Management Program, Office of Environmental Safety."

c. Licensing and Regulation of Permanent Disposal of Low-Level Radioactive Waste

i. Personnel

The Office of Environmental Safety has responsibility for the low-level waste (LLW) management regulatory program which includes the Sheffield site and the regional waste disposal facility. The assessment of the regulatory framework is included under Criterion 9, "Radioactive Waste Disposal." The LLW and transportation management program is staffed by 13 technical staff members. The Manager of the Office of Environmental Safety will provide overall supevision and management and the Chief of the Office's Division of Nuclear Chemistry will provide laboratory support. Technical support will also be available from the Division of Nuclear Materials. These personnel and summaries of their duties are:

(a) Staff previously identified in the materials or uranium conversion plant regulatory oversight programs (Section 20.a and b):

Michael H. Momeni, Lih-Ching Chu, John W. Cooper, James F. Schweitzer.

(b) Other IDNS Staff:

Robert A. Lommler: Chief, Division of Waste and Transportation. Has responsibilities for implementing the Illinois LLW management act, supervises staff in the LLW program and manages the spent nuclear fuel and LLW shipment inspection program.

Training:

B.S.—Kent State University (1971)—Chemistry
"10 CFR 61," US NRC, Springfield, Illinois (1986)

Footnote: *The Commission is considering whether continued NRC regulation of the Allied Chemical Plant is necessary in the interest of the common defense and security of the United States.

"Incinerator Basics," Univ. of California, Charlotte, N.C. (1986)
"Radioactive Material Transportation Workshop," US DOE, Chicago, Illinois (1985)
"10 CFR 61 Compliance," TMS, Inc., Washington, D.C. (1984)
"Radiological Protection Officer Course," U.S. Army (1978)
"Chemical Officer Advanced Course," U.S. Army (1978–1979)
"Transportation of Hazardous Materials by Air," US DOT (1972)
"Chemical Officer Basic Course," U.S. Army (1971)

Experience:

1984–Present: Illinois Department of Nuclear Safety
1979–1983: U.S. Army, Radiation Safety Officer, Ft. Riley, Kansas
1975–1978: U.S. Army, Mannehim, West Germany
1971–1975: U.S. Army, Edgewood, Maryland

Michael Klebe: Nuclear Safety Engineer. Serves as technical resource on LLW management environmental problems, decomissioning and disposal facility siting.

Training:

M.S.—Montana College of Mineral Science and Technology (1982)—Mining Engineering
B.S.—Montana College of Mineral Science and Technology (1980)—Mining Engineering

Experience:

1986–Present: Illinois Department of Nuclear Safety
1982–1986: Shell Mining Company, Houston, Texas and Elkhart, Illinois, Mining Engineer

David Flynn: Geologist. Evaluates geological and hydrologic factors relating to LLW management.

Training:

B.S.—Southern Illinois University (1979)—Geology
"Uranium and Thorium: A Perspective on the Hazard," Radiation Safety Associates, Springfield, Illinois (1986)
"Corrective Actions for Containing and Controlling Ground Water Contamination," National Water Well Association, Columbus, Ohio (1986)
"A Standardized System for Evaluation of Groundwater Pollution Potential Using Hydrogeologic Setting," National Water Well Association, Denver, Colorado (1986)
"Groundwater Pollution and Hydrology," Princeton & Associates, Miami, Florida (1986)
"Engineering and Design of Waste Disposal Systems," Civil Engineering Department, Colorado State University, Fort Collins, Colorado (1985)
""Groundwater Monitoring Workshop," Illinois Department of Energy and Natural Resources, Champaign, Illinois (1984)
"Radiological Emergency Response Training for State and Local Government Emergency Preparedness Personnel," FEMA, Nevada Test Site (1983)

Experience:

1983–Present: Illinois Department of Nuclear Safety
1981–1983: Mine Geologist, Atlas Minerals Corporation, Moab, Utah
1980–1981: Associate Mine Geologist, Rancher's Exploration & Development Corporation, Albuquerque, New Mexico
1979–1980: Junior Geologist, Rancher's Exploration & Development Corporation, Albuquerque, New Mexico

Shannon M. Flannigan: Geologist. Reviews, interprets and evaluates geologic hydrologic, physical and environmental data related to environmental impact, design, location, construction and decommissioning of facilities.

Training:

B.S.–Drake University (1978) Geology
A.A.–Springfield College in Illinois (1976)–Business
"Radiological Emergency Response," FEMA, Nevada (1986)
"Groundwater Contaminant Transport Modeling," Princeton University, Princeton, New Jersey (1986)
"A standardized System for Evaluating Groundwater Pollution Using Hydrogeologic Setting," Denver, Colorado (1986)
"Groundwater Pollution & Hydrology," Princeton Associates, Princeton, New Jersey (1986)
"Borehole Geophysics Techniques for Solving Groundwater Problems," National Water Well Association, Denver, Colorado (1986)
"Soil Mechanics and Foundations," Lincoln Land Community College, Springfield, Illinois (1981)
"Environmental Risk Assessment," Sagamon State University, Springfield, Illinois (1985)
"Recognition, Evaluation, and Control of Ionizing Radiation," OSHA Training Institute, Illinois (1985)

Experience:

1985–Present: Illinois Department of Nuclear Safety
1984–1985: Hanson Engineers, Inc. Springfield, Illinois
1981–1984: Veesay Geoservice, Inc. Denver, Colorado

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1978–1981: Hanson Engineers, Inc. Springfield, Illinois.

George T. FitzGerald: Nuclear Safety Engineer I. Principally responsible for geology.

Training:

B.A.–Humboldt State University, California (1968)–Geology

Post-Graduate Work: Education. Humboldt State University, Economic Evaluation, Colorado School of Mines, Golden, Colorado

Experience:

1986–Present: Illinois Department of Nuclear Safety

1984–1986: Boliden Minerals, Inc., Silver City, New Mexico

1980–1984: Minatome Corporation, Denver, Colorado

1975–1980: SOHIO, Seboyeta, New Mexico

1968–1975: Kerr McGee Corporation Grants, New Mexico

Dana M. Willaford: Nuclear Safety Supervisor. Responsible for overall operation of waste generator registration and inspection program.

Training:

M.P.A.–Sangamon State University (1983)

B.A.–University of Illinois (1981)–Political Science, Math/Physics Minor

"Radioactive Materials Transportation Course," US DOE, Kansas City, Missouri (1986)

"Uranium and Thorium: A Perspective on the Hazard," Radiation Safety Associates, Inc., Springfield, Illinois (1986)

"Recognition, Evaluation, and Control of Ionizing Radiation," OSHA, Des Plaines, Illinois (1985)

"Environmental Laws and Regulations Compliance Course," government institutes, Washington, D.C. (1985)

"Radiological Emergency Response Operations Course," FEMA, Nevada (1983)

Experience:

1983–Present: Illinois Department of Nuclear Safety

1981–1983: Illinois Department of Nuclear Safety/Sangamon State University (Graduate Public Service Intern)

1977–1981: University of Illinois (Student Worker)

Tim Runyon: Nuclear Safety Inspector. Assists the Chief, Waste & Transportation Management.

Training:

A.S.–Illinois Central College–Radiologic Technology

"Hazardous Materials Transportation Course," ISP, Illinois State Policy Academy, Springfield, Illinois (1985)

"Review of USDOT Regulations," US NRC, Hanford, Washington (1985)

"Evaluation and Control of Ionizing Radiation," OSHA, Argonne National Laboratory (1981)

"Emergency Response for Radiological Accidents," REECO, Las Vegas, Nevada (1981)

Experience:

1985–Present: Illinois

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection:

10 CFR Part 30—Rules of General Applicability to Domestic Licensing of Byproduct Material

10 CFR Part 32—Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material

3. The form number if applicable: Not applicable.

4. How often the collection is required: Once, when first registering the source or device with the NRC.

5. Who will be required or asked to report: Manufacturers and distributers of sealed sources and devices containing radioactive byproduct material.

6. An estimate of the number of responses: 100 annually (40 sealed sources, 60 devices).

7. An estimate of the total number of hours needed to complete the requirement or request:

10 hours for each sealed source
30 hours for each device
Total industry hours: 2,200

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: The proposed regulations would provide for manufacters of radiation sources and devices containing radioactive sources to register with NRC described safety information about their products. When referenced in applications for licenses, the registered information will be used by NRC in the issuance of specific licenses to the manufacturers' customers, thus making it unnecessary for each inidividual application to provide the information registered by the manufacturer.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395–7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland, this 29th day of January 1987.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 87–2228 Filed 2–3–87; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Waste Management; Meeting

The ACRS Subcommittee on Waste Management will hold a meeting on February 19 and 20, 1987, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, February 19, 1987—8:30 a.m. until the conclusion of business

Friday, February 20, 1987—8:30 a.m. until the conclusion of business.

The Subcommittee will review the following nuclear waste management topics: (1) Rulemaking for definition of HLW, (2), Implementation of the HLW Five Year Plan, (3) HLW Geologic repository performance allocation, (4) Hydrology of geologic repositories (domestic and international programs), (5) NRC's waste package corrosion program, (6) Guidance documents for LLW Shallow Land Burial (Standard Review Plan, and Standard Format and Content Guide), and (7) Long range plans for LLW Program through 1993.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff members, Mr. Owen S. Merrill (telephone 202/634–1413) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: January 30, 1987.

John C. McKinley,

Chief, Project Review Branch No. 1.

[FR Doc. 87–2266 Filed 2–3–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–289]

GPU Nuclear Corporation et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regualtory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–50 issued to GUP NUclear Corporation (the licensee), for operation of Three Mile Island Nuclear Station, Unit No. 1, located in Dauphin County, Pennsylvania.

The Emergency Feedwater (EFW) System is being upgraded to safety-related criteria during the present Cycle 6 Refueling Outage in order to comply with TMI-1 restart commitments and NUREG-0737, Action Item II.E.1. The licensee's application for amendment dated January 23, 1987 (Technical Specification (TS) Change Request No. 166), would provide additional operability and surveillance requirements appropriate for the newly modified FEW System and associated Heat Sink Protection System (HSPS). Administrative and editorial changes to affected TS pages were also requested, including revisions to the EFW System and HSPS bases.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request invovles no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involved a significant reduction in a margin of safety.

Operation of the FEW System in accordance with the proposed TSs will not degrade the reliability or capacity of the system. In fact, the purpose of the EFW System modifications and associated TSs is to increase system reliability to function during a design basis event, assuming a single active failure. The licensee is committed to complete the upgrade modifications and implement the TSs for a safety-related EFW System before startup of Cycle 6.

A proposed amendment to an operating license for a facility involves no significant hazards considerations if the previously identified three standards of 10 CFR 50.92(c) are met. Pursuant to the provisions of 10 CFR 50.91, the licensee has provided an analysis of no significant hazards considerations using the Commission's standards. The Commission's staff has reviewed the proposed amendment and the licensee's analysis. Each of the 10 CFR 50.92(c) standards is discussed below as it applies to the operation of TMI-1 in accordance with this TS change request for the EFW System.

(1) The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated because EFW System reliability will be improved. The proposed TSs provide the additional operability and surveillance requirements necessary for upgrading the system to safety-related criteria. The addition of automatic actuation features does increase the probability of inadvertent actuation of the EFW System or inadvertent main feedwater isolation. Inadvertent EFW initiation is undesirable but does not prevent the mitigation of any accident or prevent attaining cold shutdown conditions as the plant is designed for EFW initiation. Inadvertent main feedwater isolation is also undersirable; but since the HSPS is designed to be single failure proof, the probability of a loss of main feedwater due to single active failures during HSPS operation is not significantly increased. Loss of main feedwater is an anticipated event, the consequences of which are lessened to a certain extent as a result of the automatic EFW initiation features provided by the HSPS. These automatic initiation features in conjunction with other design changes were incorporated as system modifications to increase EFW reliability and thereby reduce the probability of occurrence or consequences of accidents.

(2) The proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. Loss of feedwater and any other event which might require EFW System initiation have been analyzed including assumption of single active failure and documented in Chapter 14 of the Final Safety Analysis Report (FSAR). EFW System design changes and TS revisions do not portend unevaluated accident events beyond the scope of the FSAR.

(3) The proposed amendment would not involve a significant reduction in a margin of safety because the EFW System will be upgraded to safety-related criteria in accordance with restart commitments and TMI action plan requirements. EFW System changes and proposed TSs will constitute additional restrictions, controls and reliability in order to increase the overall margin of safety for plant operation.

Purely administrative and editorial changes to the TSs contained on the pages affected by the proposed amendment are necessary to achieve consistency, correct errors, change nomenclature and improve clarity. As such, these changes are considered to fall within the scope of example (i) of amendments that are considered not likely to involve significant hazards considerations contained in the Commission's guidelines published within 51 FR 7751.

Accordingly, based upon the above discussion, the Commission proposes to determine that the application for amendment does not involve significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be

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considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland, from 8:15 a.m. to 5:00 p.m. Copies of the written comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is dicussed below.

By March 6, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for an amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Jr. of Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filing of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714 (a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Dated at Bethesda, Maryland, this 30th day of January, 1987.

For the Nuclear Regulatory Commission.

Gordon E. Edison,

Acting Director, PWR Project Directorate No. 6, Division of PWR Licensing–B.

[FR Doc. 87–2230 Filed 2–3–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–275–OLA and 50–323–OLA (ASLBP No. 86–523–03–LA)]

Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2); Memorandum and Order

January 28, 1987.

Atomic Safety and Licensing Board Before Administrative Judges: B. Paul Cotter, Jr., Chairman, Glenn O. Bright, Dr. Jerry Harbour.

On December 15, 1986 Intervenors Sierra Club and San Luis Obispo Mothers for Peace filed a joint motion for summary disposition alleging that NRC Staff had failed to file an environmental impact statement and had failed to adhere to the provisions of the Standard Review Plan. The motion concluded that on these grounds the Board should deny a license amendment request by Pacific Gas and Electric Company to expand the capacity of its spent fuel pools at Units 1 and 2 of the Diablo Canyon Nuclear Power Plant. Subsequently, in a filing dated January 13, 1987, the Mothers for Peace withdrew from "all participation in this proceeding".

In an earlier pleading dated December 10, 1986, the third intervenor in this case, Consumers Organized for Defense of Environmental Safety (CODES), indicated its intention not to participate any further in the proceedings. In a further development, the Sierra Club filed a motion dated January 13, 1987 requesting a continuance of the hearings scheduled to commence on February 2, 1987 on the ground that its principal representative and sole witness in the hearing had been injured in an automobile accident.

Upon consideration of these filings and the responses thereto, the Board: (1) denies the joint motion for summary disposition; (2) finds that the San Luis Obispo Mothers for Peace and CODES have withdrawn from the proceeding and are no longer parties; and (3) establishes a revised schedule for commencing hearing on March 9, 1987.

Motion for Summary Disposition

The motion for summary disposition avers that the license amendment to rerack the two spent fuel pools at the Diablo Canyon Plant Units 1 and 2 should be denied on two independent grounds:

1. Because the NRC has failed to comply with the National Environmental Policy Act of 1969 by not preparing an environmental impact statement; and
2. The reracking application fails to meet the NRC acceptance criteria for spent fuel storage at civilian nuclear power stations.

The motion lists material facts as to which there is no dispute. The third of these allegedly undisputed facts is that the proposed spent fuel racks "will collide with each other and cause a postulated seismic event". The motion attaches no supporting affidavit, and there is no showing that counsel who signed the motion has any technical expertise in this area.

Both the NRC Staff and the licensee, Pacific Gas and Electric Company, oppose the motion on both the law and the facts, arguing in part that there are disputed questions of fact and that the motion is outside the scope of any contention. Intervenor Sierra Club admits in its motion that it does not "seek to prove a particular contention set for hearing" but alleges, nevertheless, that the motion is directly related to the contentions and should be dispositive of the proceeding. The Board does not agree. Wholly aside from the technical argument as to whether the motion relates to *material* facts at issue in this proceeding, the Board is completely satisfied that the resolution of Intervenor's motion will require a decision on factual matters which are disputed by the parties. The Board is further satisfied that the factual disputes in question are such that even if intervenors attempted to support their position by otherwise qualifying affidavits, the factual disputes would still remain. Accordingly, the motion is denied. *Cleveland Electric Illuminating Company*, 6 NRC 741, 752, 754 (ALAB–443, 1977).

Withdrawal of Intervenors San Luis Obispo Mothers for Peace and Consumers Organized for Defense of Environmental Safety

The January 13, 1987 filing by the Mothers for Peace leaves no doubt that it has withdrawn from all further participation in this proceeding. Accordingly, its remaining contentions are dismissed.

The December 10, 1986 filing by Intervenor Consumers Organized for Defense of Environmental Safety is less precisely worded but leaves little doubt of its intent. Accordingly, the Board concludes that CODES too has withdrawn from the proceeding and its remaining contention is dismissed.

Hearing Schedule

The Sierra Club's Motion for Continuance follows a telephone notification to the Board and parties of the request and the grounds for it. The motion contemplates commencing the hearing on Monday, February 23, 1986. The Board members' schedules and the availability of hearing space in the San Luis Obispo area dictates that the hearing cannot commence at that time. Accordingly the hearing will commence at 9:30 A.M. local time, Monday, March 9, in the Cabana Room, San Luis Bay Inn, Avila Beach, California 93424, and continue from day to day until complete. The parties are to file all prefiled testimony with the Board on or before February 24, 1987. The parties shall also agree upon a marking system for all exhibits, and the Staff shall submit to the Board an agreed-upon list of all such exhibits at the same time prefiled testimony is due. Prefiled testimony shall show in the text the contentions and exhibits to which it relates.

Limited Appearances

The Board will entertain limited appearance statements from 4:00–6:00 P.M. on Monday, March 9, 1987. If additional time is needed for limited appearance statements, it will be scheduled during the course of the hearing.

Order

For all the foregoing reasons and upon consideration of the entire record in this proceeding, it is this 28th day of January, 1987, ordered.

1. That the motion of Intervenors Mothers for Peace and Sierra Club for summary disposition is denied;

2. That prefiled testimony and a list of exhibits shall be received by the Board and the parties to this proceeding on or before February 24, 1987; and

3. That the hearing shall commence at 9:30 a.m. local time, Monday, March 9, 1987 and continue from day to day until complete.

The Atomic Safety and Licensing Board.

B. Paul Cotter, Jr.,

Chairman, Administrative Judge.

Glenn O. Bright,

Administrative Judge.

Jerry Harbour,

Administrative Judge.

[FR Doc. 87–2267 Filed 2–3–87; 8:45 am]

BILLING CODE 7590–01–M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a Guide in its Regulatory guide Series together with a draft of the associated regulatory analysis. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific

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problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft, temporarily identified by its task number, OP 013-4 (which should be mentioned in all correspondence concerning this draft guide), is proposed Revision 1 to Regulatory Guide 8.22, "Bioassay at Uranium Mills." The guide is being developed to describe a bioassay program acceptable to the NRC staff for uranium mills, including exposure conditions with and without the use of respiratory protection devices.

This draft guide and the associated regulatory analysis are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both the draft guide (including the implementation schedule) and the draft regulatory analysis. Comments on the draft regulatory analysis should be accompanied by supporting data. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555. Comments will be most helpful if received by April 17, 1987.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with: (1) Items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Information and System Services. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 29th day of January 1987.

For the Nuclear Regulatory Commission.

Karl R. Goller,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 87-2229 Filed 2-3-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-30]

Reinstatement and Renewal of Facility Operating License National Aeronautics and Space Administration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 7 to Facility Operating License No. TR-3 for the National Aeronautics and Space Administration (the licensee) which reinstates and renews the license for possession-only of the Plum Brook Test Reactor located at the Plum Brook Reactor Facility near Sandusky, Ohio. The facility is a non-power reactor that had operated at power levels not in excess of 60 megawatts (thermal). The reinstated and renewed Operating License No. TR-3 will expire ten years from the date of issuance.

The amended licence complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I. Those findings are set forth in the license amendment. Opportunity for hearing was afforded in the notice of the proposed issuance of this reinstatement and renewal in the **Federal Register** on August 12, 1986, at 51 FR 28908. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has prepared a Safety Evaluation for the reinstatement and renewal of Facility Operating License No. TR-3 and has, based on that evaluation, concluded that the facility can be possessed by the licensee without endangering the health and safety of the public.

For further details with respect to this action, see: (1) The application dated July 26, 1985, (2) Amendment No. 7 to Operating License TR-3, and (3) the staff's related Safety Evaluation. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Dated at Bethesda, Maryland, this 28th day of January 1987.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Standardization and Special Projects Directorate, Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.

[FR Doc. 87-2231 Filed 2-3-87; 8:45 am]

BILLING CODE 7590-01-M

POSTAL SERVICE

Privacy Act of 1974; Matching Program—Postal Service/City of New York Human Resources Administration

AGENCY: Postal Service.

ACTION: Notice of Computer Matching Program—U.S. Postal Service/City of New York Human Resources Administration.

SUMMARY: The purpose of this document is to publish notice of the Postal Service's plan to participate as a source agency in a computer matching program to detect fraud, waste, and abuse in the public assistance programs administered by the Human Resources Administration of the City of New York. The match will compare certain of the Postal Service's Payroll System File (050.020, Finance Records-Payroll System) with that agency's master file of public assistance clients.

DATE: The match is expected to begin in or about February 1987.

ADDRESS: Comments may be mailed to Records Officer, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260-5010, or delivered to Room 8121 at that address between 9:00 a.m. and 4:00 p.m. where they will be available for inspection and photocopying during those hours.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office, (202) 268-5158.

SUPPLEMENTARY INFORMATION: The Postal Service has agreed to assist the City of New York Human Resources Administration in its efforts to identify current postal employees receiving public assistance, food stamps, and/or medicaid benefits from the City of New York to which they are not entitled. Set forth below is the information required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget (47 FR 21656; May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Report of a Matching Program: U.S. Postal Service (USPS) and City of New York Human Resources Administration (NY HRA).

a. *Authority:* 39 U.S.C. 404.

b. *Program Description:* Under the planned program, the USPS will submit to the NY HRA a computer tape of the names and social security account numbers (SSANs) of its current postal employees in the City of New York. The NY HRA will match that tape, using name and SSAN, against its tape of recipients of public assistance, food stamps, and/or medicaid benefits. The purpose of this match is to identify current postal employees who are receiving benefits to which they are not entitled under these programs. In instances where SSANs match, i.e., "hits," the USPS will disclose to the NY HRA the following information from its payroll file: name, SSAN, date of birth, home address, date started on payroll, facility where employed, and annual gross wage information.

The validity of "matched" employee/benefit recipient information will be verified by the NY HRA. Case files will be evaluated, recipients interviewed to obtain supplementary verification of employment, and written notice of appeal rights given to recipients prior to initiation of steps to have benefits terminated or reduced. Subsequent actions may include collection of outstanding debts owed by those employees for past overpayment of these benefits and appropriate action against those employees fraudulently receiving benefits. Further, the USPS Inspection Service may participate in the investigation of hits as a result of this matching program and establish investigative case files within the parameters of Privacy Act system USPS 080.010, Inspection Requirements Investigative File System (last published in 48 FR 10975 of March 15, 1983). Disclosure of this information is authorized by routine use No. 28 in USPS 050.020, Payroll System, most recently published in 52 FR 2776 of January 26, 1987.

c. *Period of the Match:* The matching program will be on a one-time basis and is expected to begin in February 1987 and end no later than July 1988.

d. *Security:* The NY HRA personnel who perform and verify the match will: (a) Have the only access to the USPS computer tape; (b) use it for the purpose of the match and for no other purpose; and (c) safeguard it from unauthorized access. Likewise, information on benefit recipients disclosed to the USPS will be used by authorized personnel only for the purpose of the match and for no other purpose and will be safeguarded from unauthorized access. All information exchanged as a result of this matching project will be maintained in locked file areas when not in use.

e. *Disposition of Records:* The NY HRA will not retain or copy the tape provided by the USPS and will return it to the USPS within six months from the date of its receipt. All information compiled as a result of this matching effort must be destroyed as soon as the determination is made that no fraud or irregularity has occurred.

f. *Further Comments:* No bestowed rights, privileges, or benefits will be terminated solely on the basis of a "hit" or the records provided by the USPS in connection with this project.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87-2225 Filed 2-3-87; 8:45 am]

BILLING CODE 7710-12-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Notice of meetings

Notice is hereby given of meetings of the Prospective Payment Assessment Commission on February 9-10, 1987, at the Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC.

The Subcommittee on Hospital Productivity and Cost Effectiveness will meet in the Hampton Room on February 9, 1987 at 3 o'clock p.m.

The full Commission will convene at 8 o'clock a.m. on February 10, 1987, also in the Hampton Room.

Both meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 87-2327 Filed 2-3-87; 8:45 am]

BILLING CODE 6820-BW-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-15554; 812-6460]

North Star Stock Fund and Investment Advisers Inc.; Application Permitting an Affiliated Transaction

January 28, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: North Star Stock Fund, Inc. (the "Fund") and Investment Advisers, Inc. ("the Adviser").

Relevant 1940 sections: Exemption requested under sections 6(c) and 17(b) from section 17(a).

Summary of application: Applicants seek an order to permit the Adviser to transfer to the Fund an interest and commitment in Broad Street Investment Fund I, L.P., a Delaware limited partnership ("Broad Street").

Filing date: The application was filed on August 18, 1986, and amendments thereto November 28, 1986 and January 15, 1987.

Hearing or notification of hearing: If no hearing is ordered the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 19, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve either Applicant with the request, personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549; North Star Stock Fund, Inc. and Investment Advisers, Inc., 1100 Dain Tower, P.O. Box 357, Minneapolis, Minnesota 55440.

FOR FURTHER INFORMATION CONTTACT: Sherry A. Hutchins, Staff Attorney, at (202) 272-2799 or Brion R. Thompson, Special Counsel, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations

1. The Fund was incorporated in Minnesota on December 4, 1970, and on July 31, 1986, had an authorized capital of 10,000,000 shares of common stock, par value $.10 per share, of which 4,508,268 shares were outstanding, and net assets of approximately $67,443,700. The Fund is registered under the Act as an open-end, diversified management investment company.

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2. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 and has managed the Fund since the Fund was organized. The Fund and the Adviser have common officers and directors as set forth in the application.

3. The Fund was organized as an investment company with capital appreciation as its primary investment objective. In pursuing its primary objective, the Fund's portfolio consists principally of common stocks of established United States companies. However, the Fund is permitted to invest to a limited extent in other securities believed by the Fund's management and its Adviser to offer above-average potential for capital appreciation.

4. The Fund's management and the Adviser have determined that investing in limited partnerships and funds which, in turn, invest in leveraged buyout transactions ("LBOs") also would provide the Fund with above-average potential for capital appreciation. Therefore, the Fund's management proposed that the shareholders of the Fund approve an amendment to the Fund's fundamental investment restrictions to permit the Fund to invest up to 10% of the value of its total assets in LBO limited partnerships and funds. A majority of Fund shareholders approved such amendment pursuant to Section 13(a) of the 1940 Act at their annual shareholder's meeting held on July 23, 1986.

5. Fund shareholders approved such amendment with the understanding that, pending shareholder approval, the Adviser committed to invest, as an accommodation to the Fund and without any charge to the Fund, $1,000,000 in Broad Street, and that, following such shareholders approval, the Adviser would assign and transfer the limited partnership interest and commitment in Broad Street to the Fund.

6. The Adviser and Fund management believe that an investment in Broad Street would provide the Fund with above-average potential for capital appreciation and would not expose the Fund to imprudent investment risks. The Adviser and the Fund management became aware of Broad Street through ordinary investment channels. Limited partnership interests in Broad Street were offered to the Adviser by means of a confidential private placement memorandum dated March 1986. Prior to the investment in Broad Street on June 30, 1986, neither the Adviser nor the Fund was related in any way to Broad Street or any partner or promoter of Broad Street.

7. Broad Street was organized on June 30, 1986, as a Delaware limited partnership following the receipt of commitments of $150 million in limited partnership contributions. Each of the 98 limited partners have committed to invest a minimum of $1 million in Broad Street. Further commitments of up to $100 million may be accepted by Broad Street. Goldman, Sachs & Co., a New York limited partnership, is the general partner of Broad Street, and is committed to co-invest an amount equal to 10% of the total commitments of limited partners.

8. Broad Street was organized as a leveraged buyout fund to invest in LBOs. Broad Street's investment objective is to provide its limited partner investors with long-term capital gains through a portfolio of equity and equity-related securities in LBOs.

9. Fund shareholders were informed of the risks of investing in LBO limited partnerships and funds as set forth in the application. Fund shareholders were also informed of the terms and conditions of the Fund's proposed investment in Broad Street.

10. As of June 30, 1986, the Adviser contributed $300,000 to the capital of Broad Street and committed to contribute the remaining $700,000 at such times and in such amounts as the general partner of Broad Street may direct by written notice to the Adviser not less than 15 days prior to the date such future installment or installments are due. If the requested exemptive is granted, the Adviser propose to transfer its Broad Street limited partnership interest and commitment to the Fund. The Fund will pay to the Adviser the amount of any capital contributions theretofore and will assume the commitment to make all future capital contributions. The Adviser will receive no interest, profit or other compensation from the Fund upon such transfer.

11. The terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve any overreaching on the part of any person concerned; the proposed transaction is consistent with the policy of the Fund, as recited in the Fund's registration statement; and the proposed transaction is consistent with the general purposes of the 1940 Act. The Adviser will not be compensated by the Fund for its transfer of the Broad Street investment to the Fund. Applicants believe that the investment in Broad Street will provide the Fund with above-average capital growth potential and will therefore promote the Fund's primary investment objective. Further, the investment in Broad Street would not violate any investment restriction of the Fund.

Applicants' Conditions

Applicants agree to be subject to the following conditions:

1. Receipt of the order sought hereby from the Commission allowing the proposed transaction;

2. Receipt of assurances by the Fund that the proposed transaction will not jeopardize the registration of the Fund's shares of common stock in the various states in which its shares are offered.

3. Approval of the proposed transaction thereof by the general partner of Broad Street.

4. In addition, the Fund will not make such commitment and investment in Broad Street unless its Board of Directors ratifies its earlier action permitting such commitment and investment and determines that there have been no material adverse developments affecting the proposed investment in Broad Street, such determination to take place shortly before such commitment and investment is made. Applicants further agree that if the Fund does not make a commitment to invest in Broad Street within (90) days ninety days of the granting of the order sought hereby, such commitment and investment will not be made without a further order of the Commission.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2218 Filed 2-3-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 21 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency clearance officer: Elizabeth M. Zaic, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653-6623

OMB reviewer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340

Title: SBDC Quarterly and Financial Reports

Frequency: Quarterly

Description of Respondents: SBDC Directors are required to submit quarterly financial reports to SBA

Annual Responses: 196

Annual Burden Hours: 12,936

Type of Request: Extension

Elizabeth M. Zaic,

Deputy Director, Office of Administrative Services, Small Business Administration.

January 30, 1987.

[FR Doc. 87-2240 Filed 2-3-87; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2264]

Declaration of Disaster Loan Area, South Carolina

Charleston and Georgetown Counties and the adjacent Counties of Colleton and Horry in the State of South Carolina constitute a disaster area because of damage from flooding, wave action and winds which occurred on December 31, 1986 and January 1, 1987. Applications for loans for physical damage may be filed until the close of business on March 30, 1987, and for economic injury until the close of business on October 28, 1987, at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, Georgia 30308.

or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	7.500
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	9.500

The number assigned to this disaster is 226406 for physical damage and for economic injury the number is 649600.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: January 28, 1987.

Charles L. Heatherly,

Deputy Administrator.

[FR Doc. 87-2242 Filed 2-3-87; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/04-5138]

Merit Funding, Inc.; Surrender of License

Notice is hereby given that Merit Funding, Inc., 4124 Broadway, New York, New York 10033 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Merit Funding, Inc. was licensed by the Small Business Administration on June 14, 1978.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on December 31, 1986, and, accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: January 28, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87-2241 Filed 2-3-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits; Week Ended January 23, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in apppropriate cases a final order without further proceedings.

Docket No. 44625

Date Filed: January 23, 1987.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 20, 1987.

Description: Joint Application of Continental Airlines, Inc. and Eastern Air Lines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations, applies for an amendment of a condition in the certificates for Routes 59, 71-F, 110, 131, 148, 157, 165, 239, 240, 258, 287, 389, and 487.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87-2264 Filed 2-3-87; 8:45 am]

BILLING CODE 4910-62-M

Maritime Administration

[Docket S-799]

Moore McCormack Bulk Transport, Inc.; Application

In the matter of Application for Written Permission Pursuant to section 805(a) of the Merchant Marine Act, 1936, as amended, and Article II-13 of Operating-Differential Subsidy Agreement, Contract MA/MSB-295 for Certain Affiliations and Other Arrangements Concerning Moore McCormack Bulk Transport, Inc. and Certain of its Affiliates which will be Acquired by Barker Associates Inc.

McCormack Bulk Transport, Inc. (Bulk Transport) by letter of counsel dated January 30, 1987, requested written permission pursuant to section 805(a) of the Act and Article II-13 of Bulk Transport's Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB-295 for certain affiliations and arrangements described hereafter.

Bulk Transport is a party to ODSA Contract MA/MSB-295 for the operation of three tank vessels in the foreign commerce of the United States. The Interlake Steamship Company (Interlake), owns and operates dry bulk cargo vessels as contract carriers in domestic coastwise trade on the Great Lakes, and Moore McCormack Leasing II (Leasing), owns a vessel chartered to Interlake for operation in the domestic trade. Bulk Transport, Interlake and Leasing are wholly-owned subsidiaries

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of Moore McCormack Resources, Inc. (Resources). Written permission under section 805(a) and Article II–13 of the ODSA for the affiliation between Bulk Transport on the one hand and Interlake and Leasing on the other, has been granted by the Maritime Administration, including appropriate permission for certain common officers and directors, and for the controlling interest of Resources in all three companies.

Resources proposes to sell all the stock of Interlake and Leasing to Interlake Holding Company (Holding), a Delaware corporation, and all the stock in Bulk Transport to Barker Associates Inc. (Associates), also a Delaware corporation. All stock issued by Holding will be owned by Mr. James R. Barker. Mr. Barker will own 55 percent of the stock of Associates and his children, Mark W. Barker, James A. Barker, Karen E. Barker, will each own 15 percent of the stock of Associates. Both purchasing corporations will be citizens of the United States as defined in section 905 of the Act. The operating organizations of Bulk Transport and Interlake will remain respectively with those companies. The guarantees or undertakings made by Resources to Bulk Transport and Interlake will remain in force after the sale.

Bulk Transport requests written permission under section 805(a) of the Act and Article II–13 of the ODSA for Mr. Barker to own a pecuniary interest in, and to control Holding, and Associates directly, and through them, Interlake, Leasing and Bulk Transport, for the same scope of domestic ownership and operations by Interlake and Leasing as is contained in Article I–II of Bulk Transport's ODSA. In addition, permission is requested for any common officers and directors, so long as Mr. Barker's direct or indirect control of all of the companies exists.

Initially, it is planned that Mr. Barker will be a director, Chairman and President of Holding, Interlake, Leasing, and Associates, and a director and Chairman of Bulk Transport; that Mr. Wycliffe L. Bennett will be Treasurer of Holding, a director, Vice President, Treasurer and Chief Financial Officer of Interlake, Leasing and Bulk Transport; and that Mr. Michael J. Herling will be Secretary of Holding, Interlake, Leasing, Associates and Bulk Transport. There will initially be no other common director or officer of Holding, Interlake or Leasing on the one hand, and on the other, Associates and Bulk Transport.

Any person, firm or corporation having any interest (within the meaning of section 805(a)) in Bulk Transport's request and desiring to submit comments concerning the request must by 5:00 PM on February 10, 1987 file written comments in triplicate with the Secretary, Maritime Administration, together with petition for leave to intervene. The petition shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petition for leave to invervene is received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations: (a) Could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

By Order of the Maritime Administrator.

Dated: January 30, 1987.

James E. Saari,

Secretary.

[FR Doc. 87–2263 Filed 2–3–87; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 29, 1987.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0909
Form Number: IRS Form 8210
Type of Review: Revision
Title: Self-Assessed Penalties Return

Clearance Officer: Garrick Shear, (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Officer Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Office.

[FR Doc. 87–2253 Filed 2–3–87; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 29, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: IRS Form 1120–DF
Type of Review: New
Title: U.S. Income Tax Return for Designated Settlement Funds (Under Section 468B)

Clearance Officer: Garrick Shear, (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Officer Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Office.

[FR Doc. 87–2253 Filed 2–3–87; 8:45 am]

BILLING CODE 4810-25-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Suspension of Increased Tariffs on Certain Articles

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice suspends the increased duties imposed by Proclamation 5601 on all articles set out in that Proclamation, including certain hams, cheeses, vegetables, white wines, brandies and gin.

EFFECTIVE DATE: January 30, 1987.

FOR FURTHER INFORMATION CONTACT: Charles E. Roh, Jr. Office of the United States Trade Representative (202) 395–5114, 600 17th Street, Washington, DC 20506.

SUPPLEMENTARY INFORMATION: On May 15, 1986 the President determined pursuant to section 301(a) of the Trade Act of 1974, that restrictions imposed by the European Economic Community (EEC) on grain and oilseeds deny benefits to the United States under the General Agreement on Tariffs and Trade (GATT), are unreasonable and constitute a burden or restriction on U.S. commerce. In Proclamation 5601 of January 21, 1987 (52 FR 2663), in response to the uncompensated withdrawal of tariff concessions and application of the EEC variable levy on Spanish imports of corn and sorghum, the President proclaimed increased tariffs on imports into the United States of specified articles, effective January 30, 1987. In the event the EEC provided adequate compensation, the President in that Proclamation authorized the United States Trade Representative (USTR) to suspend, modify or terminate the increased duties upon publication in the **Federal Register** of the USTR's determination that such action is in the interest of the United States.

On January 29, the United States and the EEC reached an agreement whereby the EEC will provide adequate compensation to the United States at least for the period through December 31, 1990. Under the terms of that agreement, the EEC will, among other steps, extend certain tariff commitments, reduce certain tariffs and take steps to assure EEC importation of certain quantities of feedgrains from non-EEC countries.

Action: Pursuant to the authority delegated to me in Proclamation 5601 of January 21, 1987, I have determined that, the EEC having agreed to provide adequate compensation at least until December 31, 1990, for withdrawal of concessions and the application of variable levies on corn and sorghum, it is in the interest of the United States to suspend, effective January 30, 1987, the increased duties imposed by Proclamation 5601 on all the articles specified in the annex to that Proclamation.

Accordingly, the increased duties imposed by Proclamation 5601 are suspended, effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 30, 1987, on all the articles specified in the annex to that Proclamation, thereby restoring, effective that date, the rates of duty previously applied to such articles.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 87–2337 Filed 2–3–87; 10:16 am]

BILLING CODE 3190-01-M

VETERANS' ADMINISTRATION

Special Medical Advisory Group; Meeting

The Veterans' Administration gives notice under Pub. L. 92–463 that a meeting of the Special Medical Advisory Group will be held on February 12 and 13, 1987. The session on February 12 will be held at the Sheraton Carlton Hotel, 923 Sixteenth Street, NW., Washington, DC 20006, and the session on February 13 will be held in Room 119 at the Veterans' Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. In addition, the Subcommittee on the Department of Medicine and Surgery's Mission will hold a session on February 12 in Room 819 at the Veterans' Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420 convening at 1:30 p.m. The purpose of the Special Medical Advisory Group is to advise the Administrator and Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Veterans' Administration's Department of Medicine and Surgery.

The session on February 12 (held at the Sheraton Carlton Hotel) will convene at 6 p.m. and the session on February 13 will convene at 8 a.m. All sessions will be open to the public up to the seating capacity of the rooms. Because this capacity is limited, it will be necessary for those wishing to attend to contact Kathy Eller, Secretary, Office of the Chief Medical Director, Veterans' Administration Central Office (phone 202/233–5156) prior to February 6, 1987.

Dated: January 15, 1987.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 87–2156 Filed 2–3–87; 8:45 am]

BILLING CODE 8320-01-M

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Sunshine Act Meetings

Federal Register
Vol. 52, No. 23
Wednesday, February 4, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., February 19, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Oral Arguments

Lawrence Grabarnick v. National Futures Association, CFTC Docket No. CRAA–86–3
Sansom Refining Company V. Drexel Brunham Lambert, Inc., *et al.*, CFTC Docket No. 82—R448

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–2324 Filed 2–2–87; 11:55 am]

BILLING CODE 6351–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 12:00 noon, Monday, February 9, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–2269 Filed 1–30–87; 4:43 p.m.]

BILLING CODE 6210–01–M

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

TIME AND DATE: 11:00 a.m. Tuesday, April 14, 1987.

PLACE: National Press Club, "The News Room"—13th Floor, 14th & F Streets, NW., Washington, DC 20045.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public:

1. Call meeting to order.
2. Adoption of proposed agenda.
3. Approval of minutes of September 16, 1986 meeting.
4. Discussion of the 1988–89 Scholarship program.
   a. Impact of the President's Budget on the program.
   b. Determination of annual cost of living increase in maximum level of scholarship grant.
   c. Speaker for 1988 Awards Ceremony.
   d. Comment on the increase in the number of nominations.
   e. Discussion of other program changes.
   f. Report on Marshall Foundation public service leadership program.
5. Report of the Executive Secretary.
   a. Status of Trust Fund.
   b. Update on Scholars.
   c. Regional Review Panels and Panelists.
   d. Comments from campus faculty representatives on eligibility.
6. Resolution to empower the Chairman/Executive Secretary to enter/renew contracts, conclude agreements, and conduct other Foundation business.
7. Resolution approving the 1987 panel recommendations of Truman Scholars and Alternates.
8. New Business.
9. Discuss and set date, time and place of Fall Board meeting.
10. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Malcolm C. McCormack, Executive Secretary, Telephone 202/395–4831.

Malcolm C. McCormack,

Executive Secretary.

[FR Doc. 87–2325 Filed 2–2–87; 11:55 am]

BILLING CODE 6820–AB–M

INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, February 11, 1987.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: Open Special Conference.

MATTER TO BE DISCUSSED:

Finance Docket No. 30900—*Joint Application of CSX Corporation and Sealand Corporation Under 49 U.S.C. 11321.*

CONTACT PERSON FOR MORE INFORMATION: Alvin H. Brown, Office of Legislative and Public Affairs, Telephone: (202) 275–7252.

Noreta R. McGee,

Secretary.

[FR Doc. 87–2224 Filed 1–30–87; 2:11 pm]

BILLING CODE 7035–01–M

NATIONAL SCIENCE BOARD

DATE AND TIME:

February 20, 1987

8:30 a.m. Closed Session
8:45 a.m. Open Session

PLACE: National Science Foundation, Washington, D.C.

STATUS: Most of this meeting will be open to the public. Part of this meeting will be open to the public.

MATTERS TO BE CONSIDERED FEBRUARY 20:

Closed Session (8:30–8:45 a.m.)

1. Minutes—August 1986 Meeting
2. NSB and NSF Staff Nominees
3. Grants, Contracts, and Programs

Open Session (8:45–12:00 noon)

4. Grants, Contracts and Programs
5. Chairman's Report
6. Minutes—November 1986 Meeting
7. Director's Report
8. Report of the NSF Advisory Committee on Merit Review
9. Report on Executive Committee Retreat
10. Interim Report of Committee on NSF Role in Polar Regions
11. Presentation on Coordinated Experimental Research
12. Other Business

Thomas Ubois,

Executive Officer.

[FR Doc. 87–2284 Filed 2–2–87; 10:06 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 2, 9, 16, and 23, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of February 2

Thursday, February 5

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (closed—Ex. 2 & 6)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, February 6

10:00 a.m.
Briefing on Chernobyl (Public Meeting)

Week of February 9—Tentative

Thursday, February 12

10:00 a.m.
Meeting with Regional Administrators (Public Meeting)

2:00 p.m.
Briefing on Advanced Reactor Designs (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, February 13

10:00 a.m.
Briefing by GPUNC on Status of TMI–2 Cleanup (Public Meeting)

Week of February 16—Tentative

Tuesday, February 17

10:00 a.m.
Briefing on Surry Incident (Public Meeting)

2:00 p.m.
Briefing on Final Version of Draft NUREG–1150 (Source Term) (Public Meeting) (*Postponed* from January 30)

Wednesday, February 18

2:00 p.m.
Briefing on Status of EEO Program (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 23—Tentative

Tuesday, February 24

2:00 p.m.
Discussion/Possible Vote on Full Power Operating Licence for Clinton–1 (Public Meeting)

Wednesday, February 25

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.
Discussion/Possible Vote on Restart of Palisades (Public Meeting)

Thursday, February 26

10:00 a.m.
Briefing on Status of Fort St. Vrain (Public Meeting)

3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Affirmation of "Request for Stay of Immediate Effectiveness Provision of License Suspension Order by Advanced Medical Systems, Inc." (Public Meeting) was held on January 29. Affirmation of "Final Rulemaking for Revisions to Operator Licensing—10 CFR Part 55 and Conforming Amendments" scheduled for January 29, *postponed.*

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING) (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634–1410.

Robert B. McOsker,

Office of the Secretary.

January 29, 1987.

[FR Doc. 87–2270 Filed 1–30–87; 4:43 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, D.C.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission held a closed meeting on Monday, January 26, 1987 at 10:30 a.m., to consider the following item.

Settlement of administrative proceeding of an enforcement nature.

Chairman Shad and Commissioners Cox, Grundfest and Fleischman, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kathryn Natale at (202) 272–3195.

Jonathan Katz

Secretary.

January 27, 1987.

[FR Doc. 87–2418 Filed 2–2–87; 3:45 p.m.]

BILLING CODE 8010–01–M

UNITED STATES INSTITUTE OF PEACE

TIMES AND DATES:

9:00 a.m.–5:00 p.m., Thursday, February 12, 1987
9:00 a.m.–5:00 p.m., Friday, February 13, 1987

PLACE: National Trust for Historic Preservation 1785 Massachusetts Avenue, NW., Washington, DC 20036.

STATUS: Open (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. 98–525).

AGENDA (TENTATIVE): Meeting of the Board of Directors convened. Consideration of minutes. President's report. Reports on presidential search. Consideration of grants applications. Jennings Randolph Fellowship Program.

CONTACT: Mrs. Olympia Diniak. Telephone (202) 789–5700.

Dated: January 30, 1987.

Charles Duryea Smith,

Attorney Adviser, United States Institute of Peace.

[FR Doc. 87–2326 Filed 2–2–87; 11:55 am]

BILLING CODE 3155–01–M

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Corrections

Federal Register
Vol. 52, No. 23
Wednesday, February 4, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

THE PRESIDENT

3 CFR

Radiation Protection Guidance to Federal Agencies for Occupational Exposure; Approval of Environmental Protection Agency Recommendations

Correction

In Presidential document 87–1716 beginning on page 2822 in the issue of Tuesday, January 27, 1987, and corrected at page 3079 in the issue of Friday, January 30, 1987, make the following additional corrections:

1. On page 2824, in the second complete paragraph, in the 16th line, "doses" should read "dose".

2. On page 2828, in the first complete paragraph, in the tenth line, "accrued" was misspelled.

3. On page 2832, in the first complete paragraph, in the third line, "required" should read "require".

4. On the same page, in paragraph "6", in the 11th line, "provision" should read "provisions".

5. On the same page, in paragraph "7", in the ninth line, "worker" should read "workers".

6. On the same page, in the last paragraph, in the first line, "does" should read "doses".

7. On page 2833, in paragraph "9", in the sixth line, "interventions" should read "intervention".

8. On the same page, in paragraph "2", in the second line, "for" should read "of".

9. On the same page, in paragraph "3", in the fourth line, "determining" was misspelled.

10. On the same page, in paragraph "4", in the seventh line, "from" should read "for".

11. On the same page, in paragraph "5", in the first line, "b" should read "by".

12. On the same page, in footnote 7, in the first line, "of" should read "or".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing–Federal Housing Commissioner

[Docket No. N–86–1653; FR–2307]

Section 8 Housing Vouchers—Notice of Funding Availability for a Limited Number of Section 8 Opt Outs

Correction

In notice document 86–29151 appearing on page 47064 in the issue of Tuesday, December 30, 1986, make the following correction:

In the first column the Effective Date should read "December 30, 1986".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–940–87–4220–10; C–39289]

Opening of Public Lands; Colorado

Correction

In notice document 86–27797 beginning on page 44693 in the issue of Thursday, December 11, 1986, make the following correction:

On page 44694, in the first column, at the end of the eleventh line, insert "and SW¼;".

BILLING CODE 1505-01-D-

federal register

Wednesday
February 4, 1987

Part II

Federal Trade Commission

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules; Notice

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FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

FISCAL YEAR 1987 TRANSACTIONS, TRANSACTIONS GRANTED EARLY TERMINATION MONTH OF DECEMBER

	Name of acquiring person Name of acquired person Name of acquired entity	Transaction number	Date terminated
(1)	Outrigger Hotels Hawaii First Federal Savings Bank of Rogers, Arkansas, et al First Federal Savings Bank of Rogers, Arkansas, et al	870303	12-01-86
(2)	Cablevision Industries Ltd Partnership Tribune Company Danville Cablevision Company	870315	12-01-86
(3)	Gulf & Western Inc Festival Cinemas Festival Cinemas	870369	12-01-86
(4)	Land O'Lakes, Inc Farmers Union Central Exchange, Inc. CENEX Feed/Seed Divisionchange, Inc.	870389	12-01-86
(5)	Farmers Union Central Exchange, Incorporated Land O'Lakes, Inc. Petroleum Assets of LOL	870390	12-01-86
(6)	Nestle, S.A Pasta & Cheese, Inc. Pasta & Cheese, Inc.	870446	12-01-86
(7)	Nestle, S.A Pasta & Cheese, Inc. Pasta & Cheese, Inc.	870447	12-01-86
(8)	George A. Gillett, Jr Reliance Capital Group, L.P. 3 TV stations, Blair Oklahoma	870454	12-01-86
(9)	Bertelsmann AG/R Mohn/J Mohn Peter C. Parsons and Helen W. Parsons Riverside County Publishing Co. of California	870477	12-01-86
(10)	C.H. Beazer (Holdings) PLC Merrill L. Nash Symons Corporation	870478	12-01-86
(11)	W.R. Grace & Co Panhandle Eastern Corporation Dixilyn-Field Drilling Company	870488	12-01-86
(12)	Azabu Building Co Ltd Kaanapali Beach Partners and Kaanapali Beach Partners Kaanapali Beach Partners and Kaanapali Beach Partners	870491	12-01-86
(13)	Ameritech Pension Trust Sears, Roebuck & Co. Calpark Shopping Center Corp.	870502	12-01-86
(14)	JWP, Inc Kerby Saunders, Inc. Kerby Saunders, Inc.	870503	12-01-86
(15)	Goldman Financial Group, Inc., (David L. Goldman, UPE) Emhart Corporation Fellows Corporation	870506	12-01-86
(16)	Chock Full of Nuts Corporation Kenneth R. Fischer The Greenwich Mills Company	870511	12-01-86
(17)	Lomas & Nettleton Financial Corp M Corp. MNET Corp.	870513	12-01-86

FISCAL YEAR 1987 TRANSACTIONS, TRANSACTIONS GRANTED EARLY TERMINATION MONTH OF DECEMBER—Continued

	Name of acquiring person Name of acquired person Name of acquired entity	Transaction number	Date terminated
(18)	Noble Affiliates, Inc Texas Eastern Corporation Texas Eastern Corporation	870532	12-01-86
(19)	Manufacturing Acquisition Association, L.P Graphisphere Corporation Graphisphere Corporation	870543	12-01-86
(20)	Michal J. Levenson Kmart Corporation Bishop Buffets, Inc. Furr's Cafeterias, Inc.	870548	12-01-86
(21)	Uri Sheinbaum American Adventure, Inc. American Adventure, Inc.	870558	12-01-86
(22)	Wicor, Incorporated Transamerica Corporation Pumptron Divi. of Transamerica Delaval, Inc.	870278	12-02-86
(23)	Akzo N.V Cooper Development Co. Cooper Development Company	870293	12-02-86
(24)	Dart & Kraft, Inc Mr. Edward G. McMahon and Mrs. Mary Alice McMahon McMahon Food Company, Inc.	870353	12-02-86
(25)	Washington Healthcare Corporation Columbia Hospital for Women Foundation, Inc. Columbia Hospital for Women Foundation, Inc.	870364	12-02-86
(26)	Land O'Lakes, Inc Agronomy Company—A Joint Venture Agronomy Company—A Joint Venture	870391	12-02-86
(27)	Farmers Union Central Exchanges, Inc Agronomy Company—A Joint Venture Agronomy Company—A Joint Venture	870392	12-02-86
(28)	Gulf and Western Incorporated Central Pacific Corporation Central Pacific Corporation	870420	12-02-86
(29)	CrossLand Savings FSB FMC Corporation FMC Finance Corporation	870439	12-02-86
(30)	Chicago Pacific Corporation The McGuire Company The McGuire Company	870443	12-02-86
(31)	Mrs. Harriet Hartman Dowling Bag Company, Inc. Dowling Bag Company, Inc.	870452	12-02-86
(32)	H Group Holding Inc Sealy, Incorporated Sealy, Incorporated	870473	12-02-86
(33)	Quebecor, Inc Semline, Inc. Semline, Inc.	870496	12-02-86
(34)	Semline, Inc Quebecor, Inc. Quebecor, Inc.	870497	12-02-86
(35)	The Laird Group Public Limited Company Henry B. Thomas Etta Packaging, Inc.	870570	12-02-86
(36)	The Laird Group Public Limited Company Thomas M. Wilkinson Etta Packaging, Inc.	870571	12-02-86
(37)	Cleveland-Cliffs, Inc Moore McCormack Resources, Inc. Pickands Mather & Co.	870572	12-02-86
(38)	G. Heilman Brewing Co., Inc Droguois Brands, Ltd. Champale, Inc.	870291	12-03-86

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FISCAL YEAR 1987 TRANSACTIONS, TRANSACTIONS GRANTED EARLY TERMINATION MONTH OF DECEMBER—Continued

	Name of acquiring person Name of acquired person Name of acquired entity	Transaction number	Date terminated
(39)	Continental Illinois Corporation Spear Leeds & Kellogg First Options of Chicago, Inc.	870325	12-03-86
(40)	Edward W. Wedbush Great American First Savings Bank Great American First Savings Bank	870412	12-03-86
(41)	ConAgra, Incorporated The Lundy Packing Company The Lundy Packing Company	870423	12-03-86
(42)	Centocor, Incorporated FMC Corporation Immunorex Associates and IRMX Corp.	870432	12-03-86
(43)	FMC Corporation Centocor, Incorporated Centocor, Incorporated	870433	12-03-86
(44)	Time Incorporated Dale W. Lang Working Woman, Incorporated	870455	12-03-86
(45)	Bristol-Myers Company David H. Smith Praxis Biologies, Inc.	870509	12-03-86
(46)	Aluminum Company of America TRE Corporation TRE Corporation	870515	12-03-86
(47)	American Express Company Systems Associates, Inc. Systems Associates, Inc.	870521	12-03-86
(48)	Robert Bosch Industrietreuhand KG Merlin Hanson Weldun International, Inc.	870526	12-03-86
(49)	Charles F. Dolan Cablevision of Ohio, Ltd. a limited partnership Cablevision of Ohio, Ltd. a limited partnership	870566	12-03-86
(50)	Koch Industries, Inc Henry H. Zarrow Bigheart Pipe Line Corporation	870314	12-04-86
(51)	Principal Mutual Life Insurance Company EGT Financial Corporation EGT Financial Corporation	870379	12-04-86
(52)	Charles F. Dolan Cablevision Systems and Programming of Southern Conn. Cablevision Systems and Programming of Southern Conn.	870381	12-04-86
(53)	Birmingham Steel Corporation Northwest Steel Rolling Mills, Incorporated Northwest Steel Rolling Mills, Incorporated	870429	12-04-86
(54)	Pepsi Cola Albany Bottling Co., Inc Bernard G. Greer Alistar Beverages Corp. and Alistar Leasing Corp.	870457	12-04-86
(55)	The Federal Company John V. Harker Harker's Inc. and Harker's Leasing Corp.	870483	12-04-86
(56)	George A. Hormel & Company Earl B. Olson & Dorothy Olson Jennie-O Foods, Inc.	870530	12-04-86
(57)	Dart & Kraft, Inc Richard A. Feldman I. Feldman & Co., Inc.	870535	12-04-86
(58)	Advance Voting Trust Citicorp Signature magazine, a division of Diners Club	870555	12-04-86
(59)	Tootal Group PLC Standard-Coosa-Thatcher Company Standard-Coosa-Thatcher Company	870402	12-05-86

FISCAL YEAR 1987 TRANSACTIONS, TRANSACTIONS GRANTED EARLY TERMINATION MONTH OF DECEMBER—Continued

	Name of acquiring person Name of acquired person Name of acquired entity	Transaction number	Date terminated
(60)	Lucas Industries PLC (United Kingdom) Schaevitz Engineering Schaevitz Engineering	870537	12-05-86
(61)	Trump Capital Corporation Lucky Stores, Inc. Checker Auto Parts, Inc.	870552	12-05-86
(62)	Guardian Royal Exchange PLC Grenel Financial Corporation Grenel Financial Corporation	870559	12-05-86
(63)	New England Mutual Life Insurance Co Grenel Financial Corp. Grenel Financial Corp.	870563	12-05-86
(64)	Newmount Mining Corporation Peabody Holding Company, Inc. Peabody Holding Company, Inc.	870564	12-05-86
(65)	MagneTek, Inc Thomas L. Kempner Universal Electric Motor Company	870598	12-05-86
(66)	Rhone Poulenc S.A. Union Carbide Corporation Union Carbide Agricultural Products Company, Inc.	870456	12-08-86
(67)	DeWitt & Lila Wallace Trust Shane Sheldon Travel Magazine Inc.	870487	12-08-86
(68)	Yves Saint Laurent S.A.R.L. Squibb Corporation Cosmetics and fragrance subsidiaries	870576	12-08-86
(69)	Allied-Lyons PLC Reichman Holding Limited Hiram-Walker-Gooderham & Worts Limited	870830	12-08-86
(70)	Allied-Lyons PLC Bacardi Corpporation Bacardi Corpporation	870831	12-08-86
(71)	The Liberty Corporation Southern Life Insurance Company Southern Life Insurance Company	870422	12-09-86
(72)	Lomas & Nettleton Financial Corporation RRH Corporation Union Life Insurance Company	870547	12-09-86
(73)	Heritage Communications, Inc Lin Broadcasting Corp. WIL Music, Inc., Lin-Wisconsin Broadcasting Corp. WBBF.	870318	12-10-86
(74)	The Morgan Crucible Company plc Union Carbide Corporation Union Carbide Corporation	870344	12-10-86
(75)	Health Plans Capital Services Corp Plan Investment Fund, Inc. Plan Investment Fund, Inc.	870349	12-10-86
(76)	Health Care Service Corporation Plan Investment Fund, Inc. Plan Investment Fund, Inc.	870350	12-10-86
(77)	Blue Cross & Blue Shield of Connecticut, Inc Plan Investment Fund, Inc. Plan Investment Fund, Inc.	870351	12-10-86
(78)	Gulf & Western, Inc Festival Enterprises, Inc. Festival Enterprises, Inc.	870370	12-10-86
(79)	T.M Evans B.F. Goodrich Company B.F. Goodrich Company	870414	12-10-86
(80)	Roger S. Penske Leaseway Transportation Corp. Leaseway Transportation Leasing Corp., Yellow Truck	870436	12-10-86

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FISCAL YEAR 1987 TRANSACTIONS, TRANSACTIONS GRANTED EARLY TERMINATION MONTH OF DECEMBER—Continued

	Name of acquiring person Name of acquired person Name of acquired entity	Transaction number	Date terminated
(81)	UAL, Inc. Leaseway Transportation Corp. Leaseway Transportation Leasing Corp., Yellow Truck	870437	12-10-86
(82)	International Paper Company Pluswood, Inc. U.S. business of Pluswood	870438	12-10-86
(83)	Pharmacia Aktiebolag Incentive Aktiebolag LKB, Inc.	870451	12-10-86
(84)	Trusthouse Forte PLC Queensway Development Partners II Queensway Bay Hilton Hotel	870466	12-10-86
(85)	M L Media Partners, LP SCI Associates LP SCI-29, Inc. SCI-30, Inc. SCI-31, Inc., SCI-32, Inc.,	870472	12-10-86
(86)	Ban Ponce Corporation BankAmerica Corporation Banerical Caribbean Finance Company Inc.	870505	12-10-86
(87)	Kohler Company Owens-Corning Fiberglass Corp. FRP Components Division	870517	12-10-86
(88)	New Zealand Dairy Board Dorman Intl, Inc., Hickory Cheese Co., Dorman Cheese Dorman Intl, Inc., Hickory Cheese Co., Dorman Cheese	870524	12-10-86
(89)	Alfred McAlpine, plc Blythe Industries Blythe Industries	870556	12-10-86
(90)	Itel Corporation Anixter Bros., Inc. Anixter Bros., Inc.	870568	12-10-86
(91)	Itel Corporation Anixter Bros., Inc. Anixter Bros., Inc.	870569	12-10-86
(92)	Bell Atlantic Corporation Bank America Corporation Eugene A. Obregon and Paul Buck	870574	12-10-86
(93)	Bet Public Limited Company Werner Enterprises, Inc. Werner Enterprises, Inc.	870575	12-10-86
(94)	American Exploration Company Union Texas Petroleum Holdings, Inc. Union Texas Petroleum Corporation and Union Texas	870582	12-10-86
(95)	Raffinerie Tirlemontoise, S.A San Francisco French Bread Company San Francisco French Bread Company	870586	12-10-86
(96)	G.T.C. Transcontinental Group, Inc James G. McMillan 579 Corporation	870589	12-10-86
(97)	Cummins Engine Company, Inc Cummins West, Inc. Cummins West, Inc.	870594	12-10-86
(98)	Sodexho S.A. Food Dimensions, Inc. Food Dimensions, Inc.	870601	12-10-86
(99)	Tarmac PLC Wade G. Ellis Ellis Trans. Co. and Co-Val Concrete Pipe Co.	870612	12-10-86
(100)	W.R. Grace & Co Dr. Steven Scott Coastal Group, Inc., Century American Insurance Group	870613	12-10-86
(101)	Great Western Resources Inc Bow Valley Industries, Ltd. Bow Valley Industries, Ltd. & Bow Valley Oil & Gas Inc.	870616	12-10-86
(102)	McGraw-Hill, Inc Peter Tower C.J. Tower & Sons of Buffalo, Inc.	870624	12-10-86

FISCAL YEAR 1987 TRANSACTIONS, TRANSACTIONS GRANTED EARLY TERMINATION MONTH OF DECEMBER—Continued

	Name of acquiring person Name of acquired person Name of acquired entity	Transaction number	Date terminated
(103)	The Laird Group Public Limited Company Serigraph Sales & Manufacturing Co., Inc. Serigraph Sales & Manufacturing Co., Inc.	870628	12-10-86
(104)	Cowles Media Company Historical Times, Inc. Historical Times, Inc.	870629	12-10-86
(105)	Agway, Inc. International Multifoods Corporation Adams and Smoke Craft	870631	12-10-86
(106)	Bob Evans Farms, Inc Jerry P. Owens Owens Country Sausage, Inc.	870634	12-10-86
(107)	Venango River Corporation IC Industries, Inc. Illinois Central Gulf Railroad Company	870636	12-10-86
(108)	Arabian Investment Banking Corporation Club Car, Inc. Club Car, Inc.	870638	12-10-86
(109)	Lincoln National Corporation Mr. Herbert L. Greenberg Preferred Financial Corporation	870640	12-10-86
(110)	Variety Corporation Dayton Walther Corporation Dayton Walther Corporation	870654	12-10-86
(111)	Cooperants Mutual Life Insurance Society American Mutual Liability Insurance Co. AM Life Insurance Company	870679	12-10-86
(112)	The Clayton & Dubilier Private Equity Fund II Ltd. ITT Corporation O.M. Scott & Sons Co., and W. Atlee Burpee Co., Canadian	870687	12-10-86
(113)	Thomson Industries, Inc., (John B. Thomson, Jr., UPE) General Motors Corporation Saginaw Divi's Actuator Products Group	870725	12-10-86
(114)	Elgin National Industries, Inc Nortek, Inc. The Industrial Products Group of Monogram Industries	870771	12-10-86
(115)	Allis-Chalmers Corporation Security Pacific Corporation Security Pacific Equipment Finance, Inc.	870776	12-10-86
(116)	Trump Capital Corporation Fair Lanes, Inc. Fair Lanes, Inc.	870818	12-10-86
(117)	The Morgan Crucible Company PLC M/A COM, Inc. M/A Com, Laser Diode, Inc.	870450	12-11-86
(118)	Allied-Lynons PLC Southern Tea Company Southern Tea Company	870583	12-11-86
(119)	Bruncor Inc. Chancellor Corporation Chancellor Corporation	870610	12-11-86
(120)	Bruncor, Inc. Chancellor Corporation Chancellor Corporation	870611	12-11-86
(121)	Klaus J. Jacobs American Home Products Corporation E.J. Brach & Sons, Inc. and E.J. Brach Corporation	870615	12-11-86
(122)	Deluxe Check Printers, Incorporated A.O. Smith Corp. A.O. Smith Corp.	870619	12-11-86
(123)	Warburg, Pincus Capital Company, L.P. Arthur A. Ciocca Wine Acquisition Corporation, Inc.	870641	12-11-86

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FISCAL YEAR 1987 TRANSACTIONS, TRANSACTIONS GRANTED EARLY TERMINATION MONTH OF DECEMBER—Continued

	Name of acquiring person Name of acquired person Name of acquired entity	Transaction number	Date terminated
(124)	PepsiCo, Inc. TJF Group, Inc. TJF Beverages, Inc. and RDM Properties, Inc.	870644	12-11-86
(125)	Compagnie Leban Robert Merson Southern Electric Supply Company, Inc.	870657	12-11-86
(126)	Federal-Mogul Corporation Switches, Inc. Patrick C. Duffy	870672	12-11-86
(127)	University of Southern California Occidental Petroleum Corp. Occidental Petroleum Corp.	870677	12-11-86
(128)	The Oklahoma Publishing Co Mistletoe Express Service Mistletoe Express Service	870680	12-11-86
(129)	R. Stephen Rubin Charles J. Cole El Greco, Inc.	870690	12-11-86
(130)	Jeffrey P. Orleans FPA Corporation FPA Corporation	870692	12-11-86
(131)	The Federal Company Henry House, Inc. Henry House, Inc.	870697	12-11-86
(132)	M.A. Hanna Company Burton Rubber Processing, Incorporated Burton Rubber Processing, Incorporated	870745	12-11-86
(133)	Fleet Financial Group, Inc. Richard E. and Marianne B. Kipper AFSA Enterprises	870746	12-11-86
(134)	First Boston, Inc. Lone Star Industries, Inc. LSI's Southeast Region	870756	12-11-86
(135)	Tarmac Plc First Boston Inc. Trusa Southern National Inc.	870757	12-11-86
(136)	Tarmac PLC Lonestar Southeast, Inc., joint venture corp. Lonestar Southeast, Inc., joint venture corp.	870758	12-11-86
(137)	Lone Star Industries Lonestar Southeast, Inc., newly formed joint venture Lonestar Southeast, Inc., newly formed joint venture	870759	12-11-86
(138)	F P L Group, Inc. CBR Information Group, Inc. CBR Information Group, Inc.	870768	12-11-86
(139)	Edward J. DeBartolo Corporate Property Investors Corporate Property Investors	870803	12-11-86
(140)	Corporate Property Investors Edward J. DeBartolo Palm Beach Mall	870804	12-11-86
(141)	Trump Capitol Corporation Fair Lanes, Inc. Fair Lanes, Inc.	870811	12-11-86
(142)	Trump Capital Coproration BTR Realty, Inc. BTR Realty, Inc.	870812	12-11-86
(143)	Trump Capital Corporation Fair Lanes, Inc. Fair Lanes, Inc.	870819	12-11-86
(144)	IU International Corporation John E. Winston Roanoke Restaurant Services, Inc.	870825	12-11-86

FISCAL YEAR 1987 TRANSACTIONS, TRANSACTIONS GRANTED EARLY TERMINATION MONTH OF DECEMBER—Continued

	Name of acquiring person Name of acquired person Name of acquired entity	Transaction number	Date terminated
(145)	I U International Corporation David W. Shelor Roanoke Restaurant Services, Inc.	870826	12-11-86
(146)	SPS Technologies Inc Allegheny International Inc. The Arnold Engineering Co.	870833	12-11-86
(147)	Southwestern Bell Corporation Metrocall of Delaware, Incorporated Metrocall of Delaware, Incorporated	870092	12-12-86
(148)	Masco Corporation Bertram Teich Acme Steel Partition Co., Inc.; Acme Office Group, Inc.	870425	12-12-86
(149)	Masco Corporation Mr. Jack J. Teich Acme Steel Partition Co., Inc.; Acme Office Group, Inc.	870426	12-12-86
(150)	The Continental Corporation MBIA, Inc. MBIA, Inc.	870468	12-12-86
(151)	Fireman's Fund Corporation MBIA, Inc. MBIA, Inc.	870469	12-12-86
(152)	CIGNA Corporation MBIA, Inc. MBIA, Inc.	870470	12-12-86
(153)	Staveley Industries, plc WEIGH-TRONIX, Inc. WEIGH-TRONIX, Inc.	870514	12-12-86
(154)	Eastman Kodak Company Fox Photo, Inc. Fox Photo, Inc.	870523	12-12-86
(155)	Berwind Corporation Robert J. Hill Synergetic Resources, Inc.	870553	12-12-86
(156)	A. Alfred Taubman Carter Hawley Hale Stores, Inc. John Wanamaker, Philadelphia	870557	12-12-86
(157)	USG Corporation Reflector Hardware Corporation Reflector Hardware Corporation	870561	12-12-86
(158)	Trinova Corporation Industrial Plastics Corporation Industrial Plastics Corporation	870573	12-12-86
(159)	Harvard Industries, Inc. The Kingston-Warren Corporation The Kingston-Warren Corporation	870599	12-12-86
(160)	Cummins Engine Company, Inc Thomas D. Taylor Cummins Northwest, Inc.	870600	12-12-86
(161)	General Electric Company Auto Auction, Inc. Auto Auction, Inc.	870605	12-12-86
(162)	Rexham Corporation Robert A. Bristol Production Graphics Corporation	870614	12-12-86
(163)	Brunswick Corporation Ray Employees' Stock Ownership Trust Ray Industries, Inc.	870656	12-12-86
(164)	Garden State Newspapers, Inc Loren Ghiglione The Bristol Press Publishing Co.	870761	12-12-86
(165)	David Jones Limited H.S. Crocker Co., Inc. H.S. Crocker Co., Inc.	870766	12-12-86
(166)	Ply-Gem Industries, Inc Great Lakes Window Corp. Great Lakes Window Corp.	870767	12-12-86

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FISCAL YEAR 1987 TRANSACTIONS, TRANSACTIONS GRANTED EARLY TERMINATION MONTH OF DECEMBER—Continued

	Name of acquiring person Name of acquired person Name of acquired entity	Transaction number	Date terminated
(167)	William J. McCarty McCormick & Company, Inc. McCormick Construction Company	870801	12-12-86
(168)	Circuit City Stores Handyman Corporation Handyman Corporation	870813	12-12-86
(169)	Werner K. Rey Barco Auto Leasing Corporation Barco Auto Leasing Corporation	870823	12-12-86
(170)	SmithKline Beckman Corporation CooperVision Inc. CVI Contact Lens Business	870838	12-12-86
(171)	M.D.C. Asset Investors, Inc M.D.C. Holdings, Inc. M.D.C. Mortgage Funding Corporation	870842	12-12-86
(172)	Harken Oil & Gas Incorporated E-Z Serve, Incorporated E-Z Serve, Incorporated	870855	12-12-86
(173)	Dart & Kraft, Inc Mr. Earl E. McMahon and Mrs. Bettye McMahon McMahon Food Company, Inc.	870355	12-14-86
(174)	MBIA inc Ryder System Inc Municipal Issuers Service, Corp., JRBE, Inc.	870489	12-15-86
(175)	Levi Strauss Associates Inc British Motor Car Distributors, Inc., (Kejell H. Qvale) Asian Pacific Industries Inc.	870490	12-15-86
(176)	John Labatt Limited Louis S. Caiola Tuscan Industries, Inc.	870516	12-15-86
(177)	Cineplex Odeon Corporation Fredric A. Danz Sterling Recreation Organization, Inc.	870659	12-15-86
(178)	Taft Broadcasting Company WEI Associated, L.P. Wometco Cable TV, Inc.	870512	12-16-86
(179)	S.K. Johnston, Jr Middle States Coca-Cola Bottling Group, Inc. Middle States Coca-Cola Bottling Group, Inc.	870581	12-16-86
(180)	Catalyst Energy Development Corporation Philadelphia Electric Company PECO Sysetm and 13 generating plants	870585	12-16-86
(181)	Ashland Oil Inc Planning Research Corporation PRC Engineering, Inc.	870618	12-16-86
(182)	General Electric Company Stemler Co., Ltd., Joseph Stemler Gem Products, Inc.	870627	12-16-86
(183)	Beverly Investment Properties, Inc Beverly Enterprises Beverly Enterprises	870741	12-16-86
(184)	General Electric Company Stemler Co., Ltd., (Joseph O'Hara, UPE) Gem Products, Inc.	870744	12-16-86
(185)	H.J. Heinz Company Near East Food Products, Inc. Near East Food, Products, Inc.	870765	12-16-86
(186)	Thomas E. Worrell, Jr HAC Holding, Inc. HAC Holding, Inc.	870786	12-16-86
(187)	MBIA, Inc. The Mutual Benefit Life Insurance Company National Bonding and Accident Insurance Company	870361	12-17-86

FISCAL YEAR 1987 TRANSACTIONS, TRANSACTIONS GRANTED EARLY TERMINATION MONTH OF DECEMBER—Continued

	Name of acquiring person Name of acquired person Name of acquired entity	Transaction number	Date terminated
(188)	Adams-Russell Electronics Co. Inc Mikron, GmgH SDI, Inc.	870518	12-17-86
(189)	Siebe plc W.H. Salisbury W.H. Salisbury & Company	870544	12-17-86
(190)	New York Life Insurance Company Anac Holding Corporation Anac Holding Corporation	870551	12-17-86
(191)	Ferguson Industrial Holdings, PLC A.J. Clegg Empery Corporation.	870554	12-17-86
(192)	The Industrial Bank of Japan Limited Estate of George S. Eccles Aubrey G. Lanston & Co., Inc.	870565	12-17-86
(193)	Lord Iliffe's Trust UPE-Vattendon Investment Trust Ltd Genex Corp. Dot Publishing Company, Inc.	870567	12-17-86
(194)	MEDIQ Mental Health Management, Inc. Mental Health Management, Inc.	870577	12-17-86
(195)	Bessemer Securities Corporation William E. and Margaret H. Davis Wm E. Davis & Sons, Inc. and Davis Property Company	870603	12-17-86
(196)	Reliance Group Holdings, Inc Zenith National Insurance Corporation Zenith National Insurance Corporation	870622	12-17-86
(197)	Franz Haniel & I,Cie GmbH Milford Quinn Quinn Wholesale Company	870637	12-17-86
(198)	J. Frederick Merz, Jr Ashland Oil, Inc Scientific Gas Products Division	870651	12-17-86
(199)	Penrzoil Company Seagull Refining Company Seagull Refining Company	870655	12-17-86
(200)	Sara Lee Corporation Sky Bros., Inc Sky Bros., Inc.	870664	12-17-86
(201)	RFS Equity Partners RFS Webcraft Holding Corp. RFS Webcraft Holding Corp.	870673	12-17-86
(202)	CNC Associates The Quaker Oats Company Eyelab, Inc.	870772	12-17-86
(203)	RFS Equity Partners Piggly Wiggly Southern, Inc. Piggly Wiggly Southern, Inc.	870805	12-17-86
(204)	Southmark Corporation Charles A. Osborn, Jr. National Heritage, Inc., Edisto Convalescent Center.	870814	12-17-86
(205)	Hobart Brothers Company, Inc Allegheny International, Inc. Scaky Brothers Inc.	870834	12-17-86
(206)	Datapoint Corporation Lucky Stores, Inc. Lucky Stores, Inc.	870405	12-18-86
(207)	Sears, Roebuck & Co Macy Acquiring Corp. Macy Acquiring Corp.	870504	12-18-86
(208)	The Mead Corporation Ampad Corporation Ampad Corporation	870526	12-18-86

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FISCAL YEAR 1987 TRANSACTIONS, TRANSACTIONS GRANTED EARLY TERMINATION MONTH OF DECEMBER—Continued

	Name of acquiring person Name of acquired person Name of acquired entity	Transaction number	Date terminated
(209)	The Dyson-Kissner-Moran Corporation Narragansett Capital Corporation Cissell Manufacturing Company	870584	12-18-86
(210)	BTR plc Pilkington Brothers plc Pilkington Brothers plc	870587	12-18-86
(211)	Salomon Inc RCK Holding Corp. RCK Holding Corp.	870591	12-18-86
(212)	Salomon Inc Newco Newco	870592	12-18-86
(213)	Salomon Inc Estate of Maurice Rosenfeld, c/o Stuart Becker & Co. PC Equitable Bag Co.	870593	12-18-86
(214)	United States Philips Trust BMC Industries, Inc. Integrated Microcircuits Inc., and Interconics Group	870609	12-18-86
(215)	Browning-Ferris Industries, Inc Allen L. Jarabek Fall River Landfill, Inc., Jarabek Disposal, Inc. and	870617	12-18-86
(216)	The Quaker Oats Company International Multifoods Corporation Kretschmer Wheat Germ and Ready-to-Eat Cereal	870633	12-18-86
(217)	Northeast Savings, F.A. Alan Turtletaub The Money Store International, Inc.	870642	12-18-86
(218)	The Edward W. Scripps Company American City Business Journals, Inc. American City Business Journals, Inc.	870658	12-18-86
(219)	American City Business Journals, Inc The Edward W. Scripps Company The Edward W. Scripps Company	870659	12-18-86
(220)	Ford Motor Company BankAmerica Corporation Actium Leasing Corp. and Kadesh Leasing Corp.	870668	12-18-86
(221)	Carena Holdings Limited Florida Life Care, Inc. Florida Life Care, Inc.	870683	12-18-86
(222)	J. L. Clark Manufacturing Company Richard N. Witham Michigan Spring Company	870689	12-18-86
(223)	Masco Industries, Inc John L. McLane Architectural Specialties Company, Inc.	870695	12-18-86
(224)	Masco Industries, Inc Wallace J. Warner Architectural Specialties Company, Inc.	870696	12-18-86
(225)	Federal Realty Investment Trust Northeast Plaza Associates Ltd. Northeast Plaza Associates Ltd.	870699	12-18-86
(226)	Federated Development Company Maxxam Group Inc. Maxxam Group Inc.	870721	12-18-86
(226)	Kraft, Incorporated Institutional Food Distributors, Inc. Institutional Food Distributors, Inc.	870722	12-18-86
(227)	Garden Way Incorporated Robert E. Bergen Bolens Corporation	870731	12-18-86
(228)	U S West, Inc Inspiration Resources Corp. Inspiration Resources Corp.	870735	12-18-86
(229)	Asarco Incorporated The British Petroleum Company Missouri assets of the Ozark Lead Division	870752	12-18-86

FISCAL YEAR 1987 TRANSACTIONS, TRANSACTIONS GRANTED EARLY TERMINATION MONTH OF DECEMBER—Continued

	Name of acquiring person Name of acquired person Name of acquired entity	Transaction number	Date terminated
(230)	Buhrmann-Tetterode N.V. Valcour Holdings, Inc. Valcour Holdings, Inc.	870760	12-18-86
(231)	Adia Services, Inc P.F.I. (Personnel Finders, Inc.) P.F.I. (Personnel Finders, Inc.)	870763	12-18-86
(232)	Munsingwear, Inc Princeton Hosiery Mills, Inc. Princeton Hosiery Mills, Inc.	870764	12-18-86
(233)	Amer Group Ltd Jack W. Nicklaus IV Square, Inc.	870774	12-18-86
(234)	Kentco Limited C & M Partnership Alex Brands, Inc.	870776	12-18-86
(235)	Pitney Bowes, Inc Kenneth W. Ford Colonial Leasinig Company of New England, Inc.	870785	12-18-86
(236)	Capital Holding Corporation Nationwide Mutual Insurance Company Worldwide Underwriters Insurance Copmany	870792	12-18-86
(237)	Kellwood Company Robert Levin-E-Z Sportswear Robert Levin-E-Z Sportswear	870797	12-18-86
(238)	Northwestern Steel & Wire Company Armco Inc. Armco Inc.	870799	12-18-86
(239)	Legg Mason, Inc First Investment Services, Inc. Western Asset Management Company	870800	12-18-86
(240)	Genicom Corporation Centronics Data Computer Corp. Centronics Sales and Service	870821	12-18-86
(241)	Silver Eagle Distributors, Inc Basil Georges Southwest Distributing Company, Inc.	870899	12-18-86
(242)	Jannock Limited Boren Clay Products Company Boren Clay Products Company	870847	12-18-87
(243)	New World Pictures, Ltd Sheldon Feinberg The Marvel Entertainment Group	870620	12-19-86
(244)	Colgate Palmolive Company Jung Corporation Jung Corporation	870623	12-19-86
(245)	PACCAR Inc., a Delaware Corporation Trico Industries, Inc., a California Corporation Trico Industries, Inc., a California Corporation	870635	12-19-86
(246)	Ronald R. Anderson All-Steel Associates All-Steel Inc.	870649	12-19-86
(247)	Nestle S.A. L.J. Minor Corporation L.J. Minor Corporation	870688	12-19-86
(248)	Brentwood Associates, IV, L.P. The Times Mirror Company Graphic Controls Corporation	870701	12-19-86
(249)	Kansas City Southern Industries, Inc Leonard M. Heine, Jr. Heine Management Group, Inc.	870705	12-19-86
(250)	Combined International Corp. Eugene W. Jackson Springhouse Financial Corporation	870747	12-19-86

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FISCAL YEAR 1987 TRANSACTIONS, TRANSACTIONS GRANTED EARLY TERMINATION MONTH OF DECEMBER—Continued

	Name of acquiring person Name of acquired person Name of acquired entity	Transaction number	Date terminated
(251)	IFINT S.A. Everco Industries, Inc. Everco Industries, Inc.	870779	12-19-86
(252)	RMS Limited Partnership Newsweb Corporation Newsweb Corporation	870791	12-19-86
(253)	Beneficial Corporation European-American Bancorp European-American Bancorp	870798	12-19-86
(254)	Goldome FSB Intech Capital Corporation Intech Capital Corporation	870802	12-19-86
(255)	Nestle, S.A. Sharpoint, Inc. Sharpoint, Inc.	870841	12-19-86
(256)	Michael Kane Action Manufacturing Company Action Manufacturing Company	870844	12-19-86
(257)	Carousel Resort Partnership Sears, Roebuck and Company The Carousel Hotel	870846	12-19-86
(258)	The Hearst Trust Phillip W. Moffitt Esquire Magazine Group, Inc.	870850	12-19-86
(259)	RepublicBank Corporation Texas American Bancshares, Inc. Texas American Bancshares, Inc.	870856	12-19-86
(260)	Forsch Corporation Ingersoll-Rand Company Ingersoll-Rand Financial Corporation	870862	12-19-86
(261)	Equity Holdings, a general partner Old Fox, Inc. Old Fox, Inc.	870863	12-19-86
(262)	Masco Corporation Philip D. Miller Howard Miller Clock Company	870865	12-19-86
(263)	Masco Corporation Jack H. Miller Howard Miller Clock Company	870866	12-19-86
(264)	Westwood One, Inc., (Norman J. Pattiz, UPE) HHC Holding, Inc. Radio & Records, Inc.	870873	12-19-86
(265)	Jefferson-Pilot Corporation Data Communications Corporation Data Communications Corporation	870878	12-19-86
(266)	Super Valu Stores, Inc. AG-OPUS Investors, Joint Venture AG-OPUS Investors, Joint Venture	870879	12-19-86
(267)	Morgan Grenfell Group PLC C.J. Lawrence & Company, Inc. C.J. Lawrence & Company, Inc.	870880	12-19-86
(268)	Sharad C. Tak Roy E. Disney and Patricia A. Disney Shamrock Broadcasting, Inc.	870883	12-19-86
(269)	Unilever PLC, Unilever, N.V. Chesebrough-Pond's Inc. Chesebrough-Pond's Inc.	870912	12-19-86
(270)	McGraw-Hill, Inc. Warburg, Pincus & Co. Biomedical Information Corporation	870590	12-22-86
(271)	Charles F. Dolan Rainbow Program Enterprises Rainbow Program Enterprises	870639	12-22-86
(272)	NV Verenigd Bezit VNU James S. Mulholland, Jr. Hayden Publishing Company, Inc.	870647	12-22-86

FISCAL YEAR 1987 TRANSACTIONS, TRANSACTIONS GRANTED EARLY TERMINATION MONTH OF DECEMBER—Continued

	Name of acquiring person Name of acquired person Name of acquired entity	Transaction number	Date terminated
(273)	Borden, Inc. Unilever p.l.c Thomas L. Lipton, Inc.	870674	12-22-86
(274)	Unilever p.l.c. and Unilever Borden, Inc. Borden, Inc.	870675	12-22-86
(275)	Scarsdale Company, N.V. Peter Kiewit Sons', Inc. CCC Series 200, Inc.	870676	12-22-86
(276)	Quachita Coca-Cola Bottling Co., Inc. Coca-Cola Bottling Co. of South Arkansas Coca-Cola Bottling Co. of South Arkansas	870678	12-22-86
(277)	Peter Kiewit Sons', Inc. Scarsdale Company, Inc. Scarsdale Company, Inc.	870691	12-22-86
(278)	International Minerals & Chemical Corp. Johnson & Johnson Pitman-Moore, Inc.	870703	12-22-86
(279)	Sensormatic Electronics Corp. Vicon Industries, Inc. Vicon Industries, Inc.	870724	12-22-86
(280)	Prime Cable Income Partners L.P. Centel Corporation Centel Cable Television Co. of Texas	870732	12-22-86
(281)	West Point-Pepperell, Inc. Burton M. Gold Stratton Industries, Inc.	870736	12-22-86
(282)	Carl Zeiss Stiftund d.b.a. Schott Glaswerke The Cambridge Instrument Company PLC Fiber Optics Division of Reichert-Lung, Inc.	870749	12-22-86
(283)	Gibraltar Financial Corp. Coast Savings & Loan Association Coast Federal Business Credit Corp.	870751	12-22-86
(284)	The Quaker Oats Company Jason F. Bloomberg R. W. Snyder Company	870753	12-22-86
(285)	Pacific Scientific Company Allegheny International, Inc. HTL Industries, Inc.	870754	12-22-86
(286)	Shawnut Corporation Gibraltar Financial Corporation First Gibraltar Mortgage Corporation	870777	12-22-86
(287)	Hercules, Incorporated Unisys Corporation SP-Microwave, Inc.	870786	12-22-86
(288)	The Gates Corporation General Electric Company GE Battery Business	870840	12-22-86
(289)	Great Lakes Chemical Corporation Pentech Corporation, (G.S. Beckwith Gilbert, UPE) Pentech Corporation, (G.S. Beckwith Gilbert, UPE)	870848	12-22-86
(290)	North American Ventures, Inc Butler International, Inc. Butler International, Inc.	870864	12-22-86
(300)	Drexel, Burnham, Lambert Group, Inc. Templeton Energy, Inc. Temex Energy, Inc.	870875	12-22-86
(301)	Compagnie Generale des Eaux Limbach Incorporated Limbach Incorporated	870884	12-22-86
(302)	International American Homes, Inc. R.A. Homes, Inc. R.A. Homes, Inc.	870898	12-22-86

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FISCAL YEAR 1987 TRANSACTIONS, TRANSACTIONS GRANTED EARLY TERMINATION MONTH OF DECEMBER—Continued

	Name of acquiring person Name of acquired person Name of acquired entity	Transaction number	Date terminated
(303)	The BF Goodrich Company The Gates Corporation Jet Electronics and Technology Incorporated	870648	12-23-86
(304)	Gulf Western Inc The Times Mirror Company The H.M. Gousha Company	870666	12-23-86
(305)	Sara Lee Corporation Capitol Fish Company, Inc., (Julius Levitt, UPE) Capitol Fish Company, Inc., (Julius Levitt, UPE)	870790	12-23-86
(306)	Petrofina S.A. The Williams Companies Williams Exploration Co. and Northwest	870793	12-23-86
(307)	Groupe Bruxelles Lambert S.A. The Williams Companies Williams Exploration Company and Northwest	870794	12-23-86
(308)	Bindley Western Industries New England Wholesale Drug Company New England Wholesale Drug Company	870806	12-23-86
(309)	Bindley Western Industries, Inc. Stamford Superior Drug Company Stamford Superior Drug Company	870807	12-23-86
(310)	Bindley Western Industries, Inc. Edward Osman Special Services, Inc.	870808	12-23-86
(311)	Bindley Western Industries, Inc. Stephen Osman Special Services, Inc.	870809	12-23-86
(312)	Consolidated Gold Fields PLC. Newmont Mining Corporation Magma Copper Company	870828	12-23-86
(313)	Sorrento, Inc. California Cheese Company California Cheese Company	870829	12-23-86
(314)	Henleys Group Limited Mr. Morris Sussman Shore Plastics Inc., Anchor Enterprises, Inc.	870852	12-23-86
(315)	Prairie Farms Dairy, Inc Best Ever Companies, Inc. Best Ever Companies, Inc.	870854	12-23-86
(316)	Sealright Co., Inc. Indopak Indopak	870858	12-23-86
(317)	National Patent Development Corporation General Physics Corporation Ralph C. Roe Trust	870870	12-23-86
(318)	Santa Fe Southern Pacific Corporation J. Morgan Smith Genesis Petroleum Corporation	870871	12-23-86
(319)	Phillips Petroleum Company Burlington Northern, Inc. El Paso Natural Gas Company	870882	12-23-86
(320)	Outboard Marine Corporation William H. Winn, Sr. Four Winns, Inc.	870904	12-23-86
(321)	The Valspar Corporation Insilco Corporation Enterprise Paint Cos. Divi. and Carter Coatings Corp.	870604	12-24-86
(322)	Pepsi Co, Inc Angelo Campodonico Grandchildren Trust New Century Beverage Company	870621	12-24-86
(323)	CalMat Co Dale C. Sneed Revocable Trust, an Arizona Trust Allied Concrete & Materials Co.	870630	12-24-86

FISCAL YEAR 1987 TRANSACTIONS, TRANSACTIONS GRANTED EARLY TERMINATION MONTH OF DECEMBER—Continued

	Name of acquiring person Name of acquired person Name of acquired entity	Transaction number	Date terminated
(324)	Covenient Holding Limited Partnership Herbert P. Koch Polka Dot Dairy Inc.	870645	12-24-86
(325)	Convenient Holding Limited Partnership Wallace Pettit Polka Dot Dairy, Inc.	870646	12-24-86
(326)	The Ohio Mattress Company Sealy, Incorporated Sealy, Incorporated	870660	12-24-86
(327)	The Ohio Mattress Company Sealy, Incorporated Sealy, Connecticut, Inc.	870661	12-24-86
(328)	The Times Mirror Company Bernard J. and Florance F. Starkoff CRC Press, Inc.	870667	12-24-86
(329)	The Ohio Mattress Company The Maryland Bedding Company Joseph B. Rudick	870670	12-24-86
(330)	The Ohio Mattress Company Sealy of Maryland and VA., Inc., (Marc E. Rudick, UPE) Sealy of Maryland and VA., Inc., (Marc E. Rudick, UPE)	870671	12-24-86
(331)	The Federal Company Charles L. Shelton Quik-To-Fix Foods Products, Inc.	870681	12-24-86
(332)	General Electric Company Brasher's Inc. Brasher's Inc.	870693	12-24-86
(333)	Finevest Partners Limited Partnership Valley Bell Dairy Company Valley Bell Dairy Company, Valley Bell Foods, Inc.	870698	12-24-86
(334)	The Ohio Mattress Co William H. Walzer Sealy of Connecticut, Inc.	870713	12-24-86
(335)	The Ohio Mattress Co Sealy, Incorporated Sealy, Incorporated	870714	12-24-86
(336)	The Ohio Mattress Co Sealy, Inc. Sealy, Inc.	870715	12-24-86
(337)	The Ohio Mattress Co Morris A . Kaplan Sealy Mattress Co. of Illinois	870716	12-24-86
(338)	Revlon Group, Inc Transworld Corporation Transworld Corporation	870717	12-24-86
(339)	Ronald O. Perelman Transworld Corporation Transworld Corporation	870718	12-24-86
(340)	Ronald O. Perelman Army Partners I MAFCO Acquisition Co.	870719	12-24-86
(341)	Revlon Group, Inc Army Partners I MAFCO Acqisition CO.	870720	12-24-86
(342)	TI Group plc John Henry Industries Abar Ipsen Industries	870729	12-24-86
(343)	Farmers Union Central Exchange, Inc. Polka Dot Dairy, Inc. Polka Dot Dairy, Inc.	870733	12-24-86
(344)	Equitable Resources, Inc Danville Resources, Inc. Adobe Resources Corp.	870742	12-24-86
(345)	Harnischfeger Industries, Inc Syscon Corporation Syscon Corporation	870782	12-24-86

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FISCAL YEAR 1987 TRANSACTIONS, TRANSACTIONS GRANTED EARLY TERMINATION MONTH OF DECEMBER—Continued

	Name of acquiring person Name of acquired person Name of acquired entity	Transaction number	Date terminated
(346)	Roy E. and Patricia A. Disney Bunge Foundation Bunge Foundation	870783	12-24-86
(347)	Macco Investments, Inc Pizitz, Inc. Pizitz, Inc.	870784	12-24-86
(348)	Oak Industries, Inc Electronic Technologies Quartz Crystal Group	870822	12-24-86
(349)	Werner K. Rey Harold L. Ahlberg Professional Service Industries, Inc	870824	12-24-86
(350)	Shell Oil Company Union Texas Petroleum Corp. Union Texas Petroleum Corp.	870835	12-24-86
(351)	Mr. Summer M. Redstone Viacom International, Inc. Viacom International, Inc.	870839	12-24-86
(352)	Butcher and Company Incorporated UGI Corporation UGI Corporation	870860	12-24-86
(353)	Sun Life Assurance Company of Canada Equitable of Iowa Companies Voting Trust Massachusetts Casualty Insurance Company	870885	12-24-86
(354)	SIS Corp Wendy's International, Inc. Sisters International, Inc.	870894	12-24-86
(355)	Mr. Louis V. Manzo North American Beauty Supply, Inc. North American Beauty Supply, Inc.	870905	12-24-86
(356)	CalMat Co The Dyson-Kissner-Morgan Corporation The Dyson-Kissner-Morgan Corporation	870911	12-24-86
(357)	Willis Faber p.l.c Harleysville Mutual Insurance Company McAlear Associates, Inc.	870925	12-24-86
(358)	Allianz Aktiengesellschaft Holding Riunione Adriatica di Sicurta S.p.A. Riunione Adriatica di Sicurta S.p.A.	870926	12-24-86
(359)	Jackson Stevens Beverly Enterprises Beverly Enterprises	870929	12-24-86
(360)	W.R. Stevens Beverly Enterprises Beverly Enterprises	870930	12-24-86
(361)	Peter R. Harvey Plastics Specialties & Technologies, Inc. Plastics Specialties & Technologies, Inc.	870728	12-24-86
(362)	Bunzl plc Mr. Peter Lampl Hinco Corp.	870739	12-24-86
(363)	Pacific Lighting Corporation Gart Bros. Sporting Goods Co., Inc., (Jerry Gart, UPE) Gart Bros. Sporting Goods Co., Inc., (Jerry Gart, UPE)	870762	12-24-86
(364)	Combustion Engineering, Inc AccuRay Corporation AccuRay Corporation	870902	12-24-86
(365)	MCA, Inc Berry Gordy Motown Record Corporation	870909	12-24-86
(366)	Revlon Group Incorporated Transworld Corporation Transworld Food Systems, Inc.	870933	12-29-86

FISCAL YEAR 1987 TRANSACTIONS, TRANSACTIONS GRANTED EARLY TERMINATION MONTH OF DECEMBER—Continued

	Name of acquiring person Name of acquired person Name of acquired entity	Transaction number	Date terminated
(367)	Ronald O. Perelman Transworld Corporation Transworld Food Systems, Inc.	870934	12-29-86
(368)	First Carolina Communications, Inc Bank of Montreal Southern TeleCom, Inc.	870775	12-30-86
(369)	Staley Continental, Inc Collins Foods International, Inc. Collins Foodservice, Inc.	870837	12-30-86
(370)	Brierley Investments Limited Resorts International, Inc. Resorts International, Inc.	870843	12-30-86
(371)	Cement-Roadstone, Holdings, PLC Ceco Industries, Inc. N.C. Products Corp. and Adams Products Co.	870872	12-30-86
(372)	USAir Group, Inc PS Group, Inc. Pacific Southwest Airlines	870888	12-30-86
(373)	Tenneco, Inc Kaiser Aluminum & Chemical Corporation Container and Food Service Foil Division	870906	12-30-86
(374)	Dynascan Corporation Marantz Company, Inc. Marantz Company, Inc.	870917	12-30-86
(375)	Blue Cross and Blue Shield of Colorado Rocky Mountain Health Care Corporation Rocky Mountain Health Care Corporation	870919	12-30-86
(376)	Questar Corporation Universal Resources Corporation Universal Resources Corporation	870922	12-30-86
(377)	New Mexico Blue Cross and Blue Shield, Inc Rocky Mountain Health Care Corporation Rocky Mountain Health Care Corporation	870927	12-30-86
(378)	Universal Parcel Service of America, Inc Service Plants Corporation Service Plants Corporation	870928	12-30-86
(379)	Caroline Hunt Trust Estate Phillips-Van Heusen Corporation Phillips-Van Heusen Corporation	870706	12-31-86
(380)	Reliance Group Holdings, Inc United Fire & Casualty Company United Fire & Casualty Company	870708	12-31-86
(381)	Amfac Boardman Partners Boardman Partners	870836	12-31-86
(382)	Granada Group PLC Kidde, Inc. National Video Corp.	870876	12-31-86
(383)	The Clayton & Dubilier Private Fund II Limited Ptnrship Unisys Corporation Unisys Corporation	870910	12-31-86
(384)	Facet Enterprises, Inc Purolator Courier Corp. Purolator Products, Inc.	870921	12-31-86
(385)	Telerate, Inc The Associated Press The Associated Press Financial Services Co.	870939	12-31-86
(386)	Super Valu Stores, Inc Associated Grocers of Colorado, Inc. Associated Grocers of Colorado, Inc.	870941	12-31-86
(387)	The Laurentian Mutual Insurance Richard G. Fanslow American Guaranty Life Insurance Company	870942	12-31-86

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FISCAL YEAR 1987 TRANSACTIONS, TRANSACTIONS GRANTED EARLY TERMINATION MONTH OF DECEMBER—Continued

	Name of acquiring person Name of acquired person Name of acquired entity	Transaction number	Date terminated
(388)	Gulf & Western Inc Barclays PLC Barclay's American/Financial, Inc.	870949	12-31-86
(389)	Allie P. Ash, Ur., c/o Parent Company, Inc The Lawyers Co-operative Publishing Company The Research Institute of America, Inc.	870954	12-31-86

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.
Benjamin I. Berman,
Acting Secretary.
[FR Doc. 87-2003 Filed 2-3-87; 8:45 am]
BILLING CODE 6750-01-M

federal register

Wednesday
February 4, 1987

Part III

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

BEST COPY AVAILABLE

Office of Management and Budget

Budget Recissions and Deferrals To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report seven revised rescission proposals now totaling $723,461, 329, twenty-five new deferrals of budget authority totaling $257,977,000, and one revised deferral of budget authority now totaling $7,162,831.

The rescissions affect programs in the Departments of Agriculture, Commerce, Education, Energy, Health and Human Services, and Interior.

The deferrals affect programs in the Departments of Agriculture, Defense-Civil, Health and Human Services, Labor and Transportation, Funds Appropriated to the President, the Environmental Protection Agency, and the United States Railway Association.

The details of these rescission proposals and deferrals are contained in the attached report.

RONALD REAGAN.

The White House.

January 28, 1987.

BILLING CODE 3110-01-M

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CONTENTS OF SPECIAL MESSAGE
(In thousands of dollars)

RESCISSION NO.	ITEM	BUDGET AUTHORITY
	Department of Agriculture:	
	Agricultural Research Service:	
R87-1A	Buildings and facilities	28,000
	Department of Commerce:	
	Economic Development Administration:	
R87-17A	Economic development assistance programs	169,668
	Department of Education:	
	Office of Postsecondary Education:	
R87-33A	Higher education	203,050
	Department of Energy:	
	Energy Programs:	
R87-37A	Energy conservation	83,933
	Department of Health and Human Services:	
	Health Resources and Services Administration:	
R87-39A	Health resources and services	161,210
R87-40A	Indian health facilities	57,100
	Department of the Interior:	
	Fish and Wildlife Service:	
R87-53A	Resource management	20,500
	Total rescissions	723,461

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Funds Appropriated to the President:	
	Agency for International Development:	
D87-32	Functional development assistance program	2,278
	Department Agriculture:	
	Commodity Credit Corporation:	
D87-33	Temporary emergency food assistance program	28,559
	Rural Electrification Administration:	
D87-34	Reimbursement to the Rural electrification and telephone and revolving fund for interest subsidies and losses	20,000
	Forest Service:	
D87-35	State and private forestry	797
D87-36	Land acquisition	27,070
D87-37	Timber roads, purchaser election	11,900
	Department of Defense - Civil:	
	Soldiers' and Airmen's Home:	
D87-38	Capital outlays	1,132
	Department of Health and Human Services:	
	Centers for Disease Control:	
D87-39	Disease control, research, and training	2,428
	Alcohol, Drug Abuse, and Mental Health Administration:	
D87-40	Alcohol, drug abuse, and mental health	10,000
	Social Security Administration:	
D87-12A	Limitation on administrative expenses (construction)	7,163
	Department of Labor:	
	Employment Standards Administration:	
D87-41	Salaries and expenses	9,659
	Department of Transportation:	
	Federal Railroad Administration:	
D87-42	Rail service assistance	462
D87-43	Railroad safety	1,101
D87-44	Conrail labor protection	646
D87-45	Northeast corridor improvement program	16,962
D87-46	Conrail commuter transition assistance	10,000
	Urban Mass Transportation Administration:	
D87-47	Research, training and human resources	4,336
D87-48	Interstate transfer grants - transit	51,800
	Federal Aviation Administration:	
D87-49	Operation and maintenance, Metropolitan Washington Airports	12,214
	Coast Guard:	
D87-50	Research, development, test, and evaluation	5,000
D87-51	Offshore oil pollution compensation fund	2,154
D87-52	Deepwater port liability fund	5,176

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DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Office of the Secretary:	
D87-53	Payments to air carriers.....	10,748
	Environmental Protection Agency:	
D87-54	Research and development.....	11,000
D87-55	Abatement, control, and compliance.....	11,400
	Other Independent Agencies:	
	United States Railway Association:	
D87-56	Administrative expenses.....	1,155
	Total, deferrals.....	265,140

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SUMMARY OF SPECIAL MESSAGES FOR FY 1987
(in thousands of dollars)

	RESCISSIONS	DEFERRALS
Fourth special message:		
New items.....	---	257,977
Revisions to previous special messages.	-3,550	89
Effects of fourth special message.....	-3,550	258,066
Amounts from previous special messages that are changed by this message (changes noted above).....	727,011	7,073
Subtotal, rescissions and deferrals.....	723,461	265,140
Amounts from previous special messages that are not changed by this message.....	5,112,290	11,048,083
Total amount proposed to date in all special messages.....	5,835,751	11,313,223

R87-1A

Supplemental Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Rescission No. R87-1 transmitted to Congress on January 5, 1987.

This revision to a proposed rescission of the Department of Agriculture, Agricultural Research Service, Buildings and facilities account changes the description of the projects that would not be funded as a result of the proposed rescission. Budgetary resources are updated, but the amount of the rescission does not change.

R87-1A

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Buildings and facilities

Of the funds included under this head in the Agriculture, Rural Development, and Related Agencies Appropriations Act, 1987, as included in Public Laws 99-500 and 99-591, $28,000,000 are rescinded.

Rescission Proposal No: R87-1A

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY:
Department of Agriculture

Bureau: Agricultural Research Service

Appropriation title and symbol:
Buildings and facilities
12X1401

OMB identification code:
12-1401-0-1-352

Grant program:
[ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year (expiration date)
[X] No-Year

New budget authority.....$ 37,400,000
(P.L. 99-500 & 99-591)
Other budgetary resources...*$ 34,846,186
Total budgetary resources...*$ 72,246,186
Amount proposed for rescission.....$ 28,000,000

Legal authority (in addition to sec. 1012):
[ ] Antideficiency Act
[ ] Other _____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

***Justification:** This account funds the acquisition of land, construction, repair, improvement, extension, alterations, and purchases of fixed equipment or facilities of or used by the Agricultural Research Service. Rescission of the following funds is proposed: $27.0 million for construction of a Plant and Animal Science Research Center at the University of Illinois, $.9 million for construction of a wheat marketing and demonstration laboratory in Portland, Oregon, and $.1 million to conduct feasibility studies in Kansas for a plant science research center and an educational satellite video communication center. These projects are low priority and will not contribute significantly to the mission of the Agricultural Research Service. The Portland project is strictly a marketing laboratory and is more appropriately funded through a marketing agency. The Kansas video feasibility study is already being funded by the Department of Education and the Kansas research center can be handled through existing funds. The rescission is proposed to help achieve the deficit reduction goals of the Balanced Budget and Emergency Deficit Control Act of 1985.

Estimated Program Effect: The Illinois project and the feasibility studies will not be Federally funded.

Outlay Effect (in thousands of dollars):

1987 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1987	1988	1989	1990	1991	1992
43,405	32,405	11,000	17,000	...	...	...	...

* Revised from previous report.

R87-17A

Supplemental-Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Rescission No. R87-17 transmitted to Congress on January 5, 1987.

This revision to a proposed rescission of the Department of Commerce, Economic Development Administration, Economic development assistance programs account changes the description of the projects that would not be funded as a result of the proposed rescission, the budgetary resources, the amount of the rescission, and the appropriation language.

R87-17A

DEPARTMENT OF COMMERCE

Economic Development Administration

Economic development assistance program

Of the funds included under this head in the Department of Commerce Appropriations Act, 1987, as included in Public Laws 99-500 and 99-591, $114,413,000 are rescinded; in addition, all funds made available by section 101(n) of Public Laws 99-500 and 99-591, authorized by the Follow Through Act, are rescinded.

Of the funds made available by section 108(c) of Public Law 99-190, $8,134,000 are rescinded: Provided, That the remaining amounts remain available until September 30, 1987: Provided further, That the language beginning "to remain available" until the end is deleted: Provided further, That section 108(a) of said statute is repealed.

Of the funds made available under this head in the Supplemental Appropriations Act, 1985 (Public Law 99-88), $20,730,000 are rescinded: Provided, That the remaining amounts remain available until September 30, 1987: Provided further, That the language "to remain available " until the end is deleted.

Rescission Proposal No: R87-17A

R87-17A

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Commerce

Bureau: Economic Development Administration

Appropriation title and symbol:

Economic development assistance program 1/
*1372050 13X2050 *136/72050

OMB Identification code:

13-2050-0-1-452

Grant program:

[X] Yes [ ] No

Type of account or fund:

[X] Annual

[X] Multiple-year Sept. 30, 1987 (expiration date)

[X] No-Year

New budget authority.....*$ 191,539,000
(P.L. 99-500 & 99-591)

Other budgetary resources..*$ 46,159,000

Total budgetary resources..*$ 237,698,000

Amount proposed for rescission.....*$ 169,668,000

Legal authority (in addition to sec. 1012):

[ ] Antideficiency Act

[ ] Other _____

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other _____

***Justification:** This account provides funding for public works projects, planning and technical assistance grants, and research and evaluation for economic development activities, as well as specific Congressionally-mandated projects. Because this program interferes with the workings of the private market, and provides functions that should be performed by State and local governments, the Administration proposes to rescind $123,913,000 of the funds initially made available under the 1987 Continuing Resolution (P.L. 99-500 and 591), $25,025,000 of the funds made available for this program by the 1986 Continuing Resolution (P.L. 99-190), and $20,730,000 of the funds made available under the Supplemental Appropriations Act, 1985.

Estimated Program Effect: The effect will be to transfer responsibility for economic development to State, local and private sources.

Outlay Effect (in thousands of dollars):

1987 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1987	1988	1989	1990	1991	1992
221,752	204,785	16,967	33,934	42,417	42,417	25,450	8,483

1/ This account was the subject of a similar rescission proposal in 1986 (R86-14).

* Revised from previous report.

R87-33A

Supplemental Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Rescission No. R87-33 transmitted to Congress on January 5, 1987.

This revision to a proposed rescission of the Department of Education, Office of Postsecondary Education, Higher education account changes the description of the projects that would not be funded as a result of the proposed rescission. The amount of the rescission does not change, but the appropriation language is corrected.

R87-33A

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Higher education

Of the funds included under this head in the conference version of H.R. 5233, Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1987, and made available by Public Laws 99-500 and 99-591, $203,050,000 are rescinded; of which $94,000,000 are rescinded from funds made available for subpart 4 of part A of title IV of the Higher Education Act of 1965, as amended, $3,000,000 are rescinded from funds made available for section 420A of that Act, $17,500,000 are rescinded from funds made available for part D of title V of that Act, $26,550,000 are rescinded from funds made available for title VI of that Act, $2,000,000 are rescinded from funds made available for section 771 of that Act, $14,400,000 are rescinded from funds made available for title VIII of that Act, $20,650,000 are rescinded from funds made available for parts B, C, E, and F of title IX of that Act, $6,200,000 are rescinded from funds made available for parts A and C of title X of that Act, $2,000,000 are rescinded from funds made available for part D of title XI of that Act, $500,000 are rescinded from funds made available for section 1204(c) of that Act, $5,500,000 are rescinded from funds made available for section 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961, $750,000 are rescinded from funds made available for subpart 1 of part H of title XIII of the Education Amendments of 1980, as amended, $4,000,000 are rescinded from funds made available for the Kansas Satellite Center as authorized by H.R. 4244 as passed the Senate on September 30, 1986 and subsequently enacted as Public Law 99-608, $1,000,000 are

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rescinded from funds made available for carrying out H.R. 3598 as passed the House on November 4, 1981, and $5,000,000 are rescinded from funds made available for the Technology Transfer Institute.

Rescission Proposal No: R87-33A

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Education

Bureau: Office of Postsecondary Education

Appropriation title and symbol:

Higher education 1/

9170201 91X0201
916/70201

OMB identification code:

91-0201-0-1-502

Grant program:

[ ] Yes [X] No

Type of account or fund:

[X] Annual

[X] Multiple-year Sept. 30, 1987 (expiration date)

[X] No-Year

New budget authority.....$ 479,128,000
(P.L. 99-500 & 99-591)

Other budgetary resources...$ 77,308,149

Total budgetary resources...$ 556,436,149

Amount proposed for rescission.....$ 203,050,000

Legal authority (in addition to sec. 1012):

[ ] Antideficiency Act

[ ] Other _____

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other _____

Coverage: Appropriation	Account Symbol	Rescission Proposal
Higher education	9170201	$173,550,000
Higher education	91X0201	29,500,000
		203,050,000

***Justification:** This account funds aid for institutional development, aid for improving postsecondary education and minority institutions' science programs, interest subsidy grants, and special programs for the disadvantaged. The following programs are proposed for rescission: $4.7 million for the Fund for the Improvement of Postsecondary Education, $1.5 million for innovative community projects, $32.0 million for international education and foreign language studies, $14.4 million for cooperative education, $1.5 million for law school clinical experience, $0.5 for assistance to Guam, $0.8 million for the Robert A. Taft Institute of Government, $2.0 million for Welch Hall, $2.0 million for the Wagner Institute of Urban Public Policy, $4.0 million for the Kansas Satellite Center, $1.0 million for the Carl Albert Center, $5.0 million for the Technology Transfer Institute, $94.0 million for special programs for the disadvantaged, $3.0 million for veterans education outreach, $1.5 million for legal training for the disadvantaged, $15.5 million for congressional teacher scholarships, $17.6 million for graduate fellowships, and $2.0 million for Christa McAuliffe fellowships. The activities proposed for rescission

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either duplicate or are similar to other Federal, State, or local programs, or are narrow in purpose and nonessential. This rescission will also help to achieve the deficit reduction goals of the Balanced Budget and Emergency Deficit Control Act of 1985.

Estimated Program Effect: Federal funding would be eliminated for approximately 25 innovative community projects, 93 national resource centers, 1,170 domestic and overseas fellowships and 172 domestic and overseas international education projects, 177 cooperative education grants, 601 veterans' education outreach grants, 3,542 teacher scholarships, 3,385 graduate and legal education fellowships, 6 special purpose grants to individual institutions of higher education, and one grant to Guam. The number of new grants under the Fund for the Improvement of Postsecondary Education would be reduced from 180 to 110 grants. Under special programs for the disadvantaged, continuation upward bound grants would be reduced by 40 percent, the number of new special services grants would be reduced by one-third, and 175 talent search grants, 37 educational opportunity centers, and 7 staff training grants would be eliminated.

Outlay Effect (in thousands of dollars):

1987 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1987	1988	1989	1990	1991	1992
464,140	444,801	19,339	138,685	41,285	*3,741	...	..

1/ This account was the subject of a similar rescission proposal in 1986 (R86-26).

* Revised from previous report.

R87-37A

Supplemental Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Rescission No. R87-37 transmitted to Congress on January 5, 1987.

This revision to a proposed rescission of the Department of Energy, Energy conservation account changes the amount of the proposed rescission from $87,433,329 to $83,933,329. This change of $3,500,000 is also reflected in the description of the projects that would not be funded as a result of the proposed rescission.

R87-37A

DEPARTMENT OF ENERGY

Energy Programs

Energy conservation

Of the funds made available under this head in the Department of the Interior and Related Agencies Appropriations Act, 1987, as included in Public Laws 99-500 and 99-591, $83,933,329 are rescinded.

Rescission Proposal No: R87-37A

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Energy

Bureau: Energy Programs

Appropriation title and symbol:

Energy conservation 1/

89X0215

OMB identification code:

89-0215-0-1-999

Grant program:

[X] Yes [ ] No

Type of account or fund:

[ ] Annual

[ ] Multiple-year (expiration date)

[X] No-Year

New budget authority.....$ 280,129,000
(P.L. 99-500 & 99-591)

Other budgetary resources...$ 38,106,178

Total budgetary resources...$ 318,235,178

Amount proposed for rescission.....*$ 83,933,329

Legal authority (in addition to sec. 1012):

[ ] Antideficiency Act

[ ] Other _____

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other _____

***Justification:** This account funds a variety of energy conservation research and development activities including buildings and community systems, industry, transportation, and multi-sector research. It also funds assistance to State and local governments for the weatherization of schools, hospitals, and low-income dwellings. The 1987 appropriation included $83,933,329 in Congressional add-ons that are in excess of program requirements. These include Transportation energy conservation ($3.5 million), Industrial energy conservation ($4.5 million), Tufts University research building ($10 million), Schools and hospitals ($1.3 million), and the weatherization assistance program ($64.6 million). The rescission of these funds is proposed to eliminate low priority programs and to achieve the deficit reduction goals of the Balanced Budget and Emergency Deficit Control Act of 1985.

Estimated Program Effect: Low priority programs will not be funded.

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Outlay Effect (in thousands of dollars):

1987 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1987	1988	1989	1990	1991	1992
448,644	426,457	22,187	51,553	...	...	...	...

1/ This account was the subject of a similar rescission proposal in 1986 (R86-77A).

* Revised from previous report.

R87-39A

Supplemental Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Rescission No. R87-39 transmitted to Congress on January 5, 1987.

This revision to a proposed rescission of the Department of Health and Human Services, Health Resources and Services Administration, Health resources and services account revises the description of the projects that would not be funded as a result of the proposed rescission. The amount of the rescission does not change, but the language is modified to repeal the provision for a project proposed to be terminated.

R87-39A

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Health resources and services

Of the funds included under this head in the conference version of H.R. 5233, Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1987, and made available by Public Laws 99-500 and 99-591, $161,210,000 are rescinded: Provided, That the phrase "of which $5,000,000" through "section 329 or 330 of that Act;" is repealed.

Rescission Proposal No: R87-39A

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Health and Human Services

Bureau: Health Resources and Services Administration

Appropriation title and symbol:

Health resources and services 1/

75X0350 7570350
756/70350

OMB identification code:

75-0350-0-1-550

Grant program:

[X] Yes [ ] No

Type of account or fund:

[X] Annual

[X] Multiple-year Sept.30, 1987 (expiration date)

[X] No-Year

New budget authority.....$1,465,318,000
(P.L. 99-500 & 99-591)

Other budgetary resources...$ 62,278,000

Total budgetary resources...$1,527,596,000

Amount proposed for rescission.....$ 161,210,000

Legal authority (in addition to sec. 1012):

[ ] Antideficiency Act

[ ] Other _____

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other _____

*Coverage:

Appropriation	Account Symbol	Proposed Rescission
Health resources and services.....	75X0350	$5,000,000
Health resources and services.....	7570350	156,210,000
		$161,210,000

Justification: This appropriation supports health resources and health services categorical programs and the maternal and child health block grant. Federal efforts in support of health professions have resulted in long-term trends of steadily increasing supplies of physicians and nurses and an improvement in the distribution of health care practitioners among the medically under-served areas of the country. At the same time, cumulative Federal contributions to health professions and nursing student loan funds, combined with Health Education Assistance loan guarantees, have established a foundation of Federal health professions student aid. Because of this, programs providing general support to health education to increase the number and improve the distribution of practitioners are no longer needed.

A rescission of the excess funding for the National Health Service Corps is proposed to reflect the actual needs of the program during 1987.

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Emergency construction for outpatient facilities is available through disaster relief funds.

*The following reductions are requested (in thousands of dollars):

National Health Service Corps	15,500
National Health Service Corps scholarships	2,300
Outpatient facilities construction	5,000
Emergency medical services	2,000
Special initiatives pacific basin	1,500
Native Hawaiian children health care	1,000
Health professions analytical studies	1,575
Exceptional need scholarships	7,000
Public health capitation	5,000
Health administration grants	1,500
Public health traineeships	3,000
Health administration traineeships	500
Preventive medicine residencies	1,600
Family medicine residencies	13,560
General internal medicine and pediatrics	12,000
Family medicine departments	2,000
Physician assistants	1,203
Area health education centers	8,800
Disadvantaged assistance	20,250
Special educational initiatives	8,300
Two-year medical and osteopathic schools	500
Nurse training:	
Advanced nurse education	12,950
Nurse practitioner/midwife	11,447
Special projects	9,350
Professional nurse traineeships	11,750
Nurse anesthetists	800
Faculty fellowships	825
Total savings	161,210

Estimated Program Effect: The above programs providing general support to health professions training and other categorical health service will be reduced or terminated.

Outlay Effect (in thousands of dollars):

1987 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1987	1988	1989	1990	1991	1992
1,500,639	1,420,034	80,605	80,605			...	...

1/ This account was the subject of a similar rescission proposal in 1986 (R86-9).
* Revised from previous report

R87-40A

Supplemental Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Rescission No. R87-40 transmitted to Congress on January 5, 1987.

This revision to a proposed rescission of the Department of Health and Human Services, Health Resources and Services Administration, Indian health facilities account revises the description of the projects that would not be funded as a result of the proposed rescission. The amount of the rescission does not change.

R87-40A

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Indian health facilities

Of the funds included under this head in the Department of the Interior and Related Agencies Appropriations Act, 1987, as included in Public Laws 99-500 and 99-591, $30,761,000 are rescinded; and of the remaining available balances, $26,339,000 are rescinded.

Rescission Proposal No: R87-40A

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Health and Human Services

Bureau: Health Resources and Services Administration

Appropriation title and symbol:
Indian health facilities 1/
75X0391

OMB identification code:
75-0391-0-1-551

Grant program:
[ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year _____ (expiration date)
[X] No-Year

New budget authority.....$ 61,703,000
(P.L. 99-500 & 99-591)
Other budgetary resources...$ 35,158,000
Total budgetary resources...$ 96,861,000
Amount proposed for rescission.....$ 57,100,000

Legal authority (in addition to sec. 1012):
[ ] Antideficiency Act
[ ] Other _____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other _____

***Justification:** This program funds construction, major repair, improvement, and equipment for health and related auxiliary facilities, including quarters for personnel; preparation of plans, specifications, and drawings; acquisition of sites; purchase and erection of portable buildings, purchases of trailers and provision of domestic and community sanitation facilities for Indians, as authorized by section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a), and the Indian Self-Determination Act. This proposal would rescind $57 million in appropriations realized in excess of the 1987 President's Budget. These savings are being proposed to help achieve the goals of the Balanced Budget Emergency Deficit Control Act of 1985. Reductions are being proposed for the following items (in thousands of dollars):

*Hospitals	
New and Replacement	$17,773
Modernization and Repair	5,078
*Outpatient Care	10,128
*Sanitation facilities	12,519
*Personnel quarters	11,602
TOTAL	$57,100

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Estimated Program Effect: Several projects will be delayed or discontinued for new and replacement hospitals, outpatient facilities, personnel quarters, and sanitation facilities. Prior year unobligated balances of about $8 million would be available for current projects.

•Indian drug and alcohol abuse rehabilitation centers would be funded as provided in the 1987 Continuing Resolution, and work would begin on the Sacaton Hospital in Alaska. In addition, $11 million would be obligated for sanitation facilities construction during 1987.

Outlay Effect (in thousands of dollars):

1987 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1987	1988	1989	1990	1991	1992
63,534	50,036	13,498	24,752	9,560	9,290	...	...

1/ This account was the subject of a similar rescission proposal in 1986 (R86-30).

• Revised from previous report.

R87-53A

Supplemental Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Rescission No. R87-53 transmitted to Congress on January 5, 1987.

This revision to a proposed rescission of the Department of Interior, Fish and Wildlife Service, Resource management account revises the description of the projects that would not be funded as a result of the proposed rescission. Budgetary resources and the appropriations language are changed, but the amount of the rescission does not change.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Resource management

Of the funds included under this head in the Department of the Interior and Related Agencies Appropriations Act, 1987, as included in Public Laws 99-500 and 99-591, $20,500,000 are rescinded, of which $4,300,000 are to carry out the purposes of 16 U.S.C. 1535.

Rescission Proposal No: R87-53A

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of the Interior

BUREAU: Fish and Wildlife Service

Appropriation title and symbol:

Resource management

1471611 *14X1611

OMB Identification code:

14-1611-0-1-303

Grant program:

[X] Yes [ ] No

Type of account or fund:

[ ] Annual

[ ] Multiple-year (expiration date)

[X] No-Year

New budget authority.....$ 314,692,000
(P.L. 99-500 & 99-591)

Other budgetary resources...*$ 39,160,554

Total budgetary resources...*$ 353,852,554

Amount proposed for rescission.....$ 20,500,000

Legal authority (in addition to sec. 1012):

[ ] Antideficiency Act

[ ] Other _____

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other _____

*Coverage:

Appropriation	Account Symbol	Proposed Rescission
Resource management.....	1471611	$16,200,000
Resource management.....	14X1611	4,300,000
		20,500,000

Justification: This account funds the basic operations of the Fish and Wildlife Service including management of national wildlife refuges, fish hatchery operations, and research. The 1987 Budget proposed adequate funding to meet Federal fish and wildlife responsibilities. The 1987 appropriation of $314,692,000 exceeded the Budget proposal by $29.6 million or over a 10 percent increase.

*This rescission proposal would reduce operations to a level commensurate with programmatic need given limited budgetary resources. While many of the Congressional add-ons may fund worthwhile programs, these can be left unfunded without significant effect on our natural resources. Low priority activities proposed for termination include: $12 million for wildlife and refuge programs, $2 million for research and development, and $2 million for enhancement and fisheries.

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Endangered species cooperative state grants ($4.3 million) are proposed for termination because States have developed individual programs. Many States have instituted income tax check-offs to fund wildlife and endangered species programs. The rescission is proposed to help achieve the deficit reduction goals of the Balance Budget and Emergency Deficit Control Act of 1985.

Estimated Program Effect: Non-essential operational activities will be curtailed or cancelled with negligible effect on our fish and wildlife resources.

Outlay Effect (in thousands of dollars):

1987 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1987	1988	1989	1990	1991	1992
305,000	287,575	17,425	3,075	...	...	...	...

• Revised from previous report.

Deferral No: D87-32

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President

Bureau: Agency for International Development

Appropriation title and symbol:

Functional development assistance program

1171021

OMB identification code:

11-1021-0-1-151

Grant program:

[X] Yes [ ] No

Type of account or fund:

[X] Annual

[ ] Multiple-year (expiration date)

[ ] No-Year

New budget authority.....$1,460,990,500
(P.L. 99-500 & 99-591)
Other budgetary resources...$ -13,000,000

Total budgetary resources...$1,447,990,500

Amount to be deferred:
Part of year.....$ 2,278,000

Entire year.....$

Legal authority (in addition to sec. 1013):

[ ] Antideficiency Act

[X] P.L. 99-500 & 99-591 1/

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other

Justification: This account provides economic resources to developing countries with the aim of bringing the benefits of development to the poorer countries and peoples. In 1987, AID is able to use $39 million of the funds in this account to provide local cost support to its missions. Additional amounts are deferred pending Congressional consideration of proposed supplemental appropriations language to transfer them to AID Operating expenses and Inspector General accounts to fund the costs of the January 1987 pay raise.

Estimated Program Effect: One or several assistance programs may be reduced by the amount of the deferral.

Outlay Effect (in thousands of dollars):

1987 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	1987	1988	1989	1990	1991	1992
1,367,771	1,367,589	-182	-775	-547	-456	-318	...

1/ Another authority is: The Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 et seq.)

Deferral No: D87-33

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Agriculture

Bureau:
Commodity Credit Corporation

Appropriation title and symbol:
Temporary emergency food assistance program
1273635

OMB identification code:
12-3635-0-1-351

Grant program:
[X] Yes [ ] No

Type of account or fund:
[X] Annual
[ ] Multiple-year (expiration date)
[ ] No-Year

New budget authority.....$ 50,000,000
(P.L. 99-500 & 99-591)
Other budgetary resources...
Total budgetary resources... 50,000,000

Amount to be deferred:
Part of year.....$ 28,559,000
Entire year.....

Legal authority (in addition to sec. 1013):
[ ] Antideficiency Act
[X] Other P.L. 99-500 & 591 1/

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other

Justification: This account funds the costs of intrastate storage and distribution of CCC commodities donated to families. The program is administered by the Food and Nutrition Service through grants to State agencies that operate food distribution programs. The program was set up to be a temporary program and is no longer needed. These amounts are deferred pending Congressional consideration of proposed supplemental appropriations language to transfer them to other accounts of the Department of Agriculture to fund the costs of the January 1987 pay raise and increased Federal Employee Retirement System costs.

Estimated Program Effect: States will pay the costs of transporting commodities.

Outlay Effect (in thousands of dollars):

1987 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	1987	1988	1989	1990	1991	1992
53,643	25,084	-28,559	...	...	...	...	...

1/ Other authorities are: Title II of P.L. 98-8 and Title XV of P.L. 99-198.

Deferral No: D87-34

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Agriculture

Bureau: Rural Electrification Administration

Appropriation title and symbol:
Reimbursement to the Rural electrification and telephone revolving fund
1273102

OMB identification code:
12-3102-0-1-452

Grant program:
[ ] Yes [X] No

Type of account or fund:
[X] Annual
[ ] Multiple-year (expiration date)
[ ] No-Year

New budget authority.....$ 20,000,000
(P.L. 99-500 & 99-591)
Other budgetary resources...
Total budgetary resources... 20,000,000

Amount to be deferred:
Part of year.....$ 20,000,000
Entire year.....

Legal authority (in addition to sec. 1013):
[ ] Antideficiency Act
[X] Other P.L. 99-500 & 591, & 7 U.S.C. 931

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other

Justification: This account is intended to pay the Rural electrification and telephone revolving fund for interest subsidies and losses sustained in prior years. In fact, the fund has never incurred a loss since its inception in 1973. In 1986, interest receipts exceeded expenses by $101 million. The fund has not incurred losses because it is exempted by statute from paying $307 million in annual interest costs to the Treasury on advances totaling $7.9 billion. These amounts are deferred pending Congressional consideration of proposed supplemental appropriations language to transfer them to other accounts of the Department of Agriculture to fund the costs of the January 1987 pay raise and increased Federal Employee Retirement System costs.

Estimated Program Effect: This deferral will have no effect on the programs of the Rural Electrification Administration. This fund does not need the appropriation to continue functioning.

Outlay Effect (in thousands of dollars):

1987 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	1987	1988	1989	1990	1991	1992
20,000	...	-20,000	...	...	...	...	...

Deferral No: D87-35

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Agriculture
Bureau: Forest Service

Appropriation title and symbol:
State and private forestry
12X1105

OMB identification code:
12-1105-0-1-302

Grant program:
[ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year (expiration date)
[X] No-Year

New budget authority.....$ 58,946,080
(P.L. 99-500 & 99-591)
Other budgetary resources... 9,304,825
Total budgetary resources... 68,250,825

Amount to be deferred:
Part of year.....$ 797,000
Entire year.....

Legal authority (in addition to sec. 1013):
[ ] Antideficiency Act
[X] Other P.L. 99-500 & 591, P.L. 95-313, P.L. 95-495, & P.L. 96-586

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other

Justification: This account funds (1) expenses of cooperating with, and providing technical and financial assistance to States, territories, possessions, and others and (2) forest pest management activities. Part of this account provides Federal contributions for cooperative Federal/State soil erosion mitigation and water pollution control projects on State, county, and local lands within the Lake Tahoe (California/Nevada) Basin. This deferral postpones cooperative funding for minor activities in the Lake Tahoe Basin. Major new soil erosion mitigation and water pollution control projects will still be initiated in the Lake Tahoe Basin in 1987. These amounts are deferred pending Congressional consideration of proposed supplemental appropriations language to transfer them to other accounts of the Department of Agriculture to fund the costs of the January 1987 pay raise.

Estimated Program Effect: Minor soil erosion mitigation and water pollution control projects planned by South Lake Tahoe City, California; Placer County, California; El Dorado County, California; Douglas County, Nevada; and Washoe County, Nevada may be postponed without Federal contributions.

D87-35

Outlay Effect (in thousands of dollars):

1987 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	1987	1988	1989	1990	1991	1992
59,116	58,479	-637	-160	...	...	...	...

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Deferral No: D87-36

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Agriculture
Bureau: Forest Service

Appropriation title and symbol:
Land acquisition 1/

12X5004

OMB identification code:
12-5004-0-2-303

Grant program:
[ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year (expiration date)
[X] No-Year

New budget authority.....$ 52,236,000
(P.L. 99-500 & 99-591)
Other budgetary resources... 46,831,989

Total budgetary resources... 99,067,989

Amount to be deferred:
Part of year.....$ 27,070,000
Entire year.....

Legal authority (in addition to sec. 1013):
[ ] Antideficiency Act
[X] Other P.L. 99-500 & 591 2/

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other

Justification: This account funds the acquisition of private lands and interests for public outdoor recreation purposes. Future land purchases are not necessary because (1) the current Forest Service land base (191 million acres) is adequate to provide Federally funded public outdoor recreation and (2) the current taxable land base for States and local governments should not be reduced further. These amounts are deferred pending Congressional consideration of proposed supplemental appropriations language to transfer them to other accounts of the Department of Agriculture to fund the costs of the January 1987 pay raise and increased Federal Employee Retirement System costs.

Estimated Program Effect: Land acquisition program objectives will be met through land exchanges rather than purchases.

Outlay Effect: None

1/ This account is also the subject of a rescission proposal (R87-16).

2/ Other authorities are: P.L. 61-435, P.L. 90-542, P.L. 90-543, P.L. 93-205, and P.L. 95-586.

Deferral No: D87-37

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Agriculture
Bureau: Forest Service

Appropriation title and symbol:
Timber roads, purchaser election

12X5202

OMB identification code:
12-9922-0-2-302

Grant program:
[ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year (expiration date)
[X] No-Year

New budget authority.....$ 15,434,000
(16 U.S.C. 472a(i))
Other budgetary resources... 114,796,648

Total budgetary resources... 130,230,648

Amount to be deferred:
Part of year.....$ 11,900,000
Entire year.....

Legal authority (in addition to sec. 1013):
[ ] Antideficiency Act
[X] Other 16 U.S.C. 472a(i)

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other

Justification: This account uses timber receipts from purchasers of timber who qualify as small businesses and elect to have the Forest Service (instead of themselves) construct the roads designated under the timber sale contract. Timber road construction for small businesses can be accomplished in 1987 with the remaining large unobligated balances. These amounts are deferred pending Congressional consideration of proposed supplemental appropriations language to transfer them to the Operation of the national forest system account to fund the costs of the January 1987 pay raises.

Estimated Program Effect: None

Outlay Effect: None

Deferral No: D87-38

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Defense - Civil

Bureau: U.S. Soldiers' and Airmen's Home

Appropriation title and symbol:
Capital outlay
84X8932

OMB identification code:
84-8932-0-7-705

Grant program:
[ ] Yes [X] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year (expiration date)
[X] No-Year

New budget authority.....$ 16,241,000
(P.L. 99-500 & 99-591)
Other budgetary resources...$ 2,741,065
Total budgetary resources...$ 18,982,065

Amount to be deferred:
Part of year.....$ 1,132,000
Entire year.....$

Legal authority (in addition to sec. 1013):
[ ] Antideficiency Act
[X] P.L. 99-500 & 99-591 & Act of March 3, 1851 (9 Stat. 595)

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other

Justification: This account finances renovation and construction of the physical plant of the U.S. Soldiers' and Airmen's Home. The 1987 appropriation exceeded amounts required to implement the Home's renovation plans during 1987 in order to speed up certain renovations. However, these excess amounts can not be used until the Home has established specifications for renovation projects (now expected to be in 1988 or 1989). After the specifications are developed, cost estimates will be prepared, appropriations requested, and contracts awarded. Therefore, these amounts are deferred pending Congressional consideration of proposed supplemental appropriations language to transfer them to Operation and maintenance to fund the costs of the January 1987 pay raise and increased costs of the Federal Employee Retirement System.

Estimated Program Effect: There is no effect. The Home will carry on its planned renovations in 1987.

Outlay Effect (in thousands of dollars):

1987 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	1987	1988	1989	1990	1991	1992
12,192	12,192	...	-566	-283	-141	-71	-35

Deferral No: D87-39

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Health and Human Services

Bureau: Centers for Disease Control

Appropriation title and symbol:
Disease control, research, and training
75X0943 7570943

OMB identification code:
75-0943-0-1-550

Grant program:
[X] Yes [ ] No

Type of account or fund:
[X] Annual
[ ] Multiple-year (expiration date)
[X] No-Year

New budget authority.....$ 539,067,000
(P.L. 99-500 & 99-591)
Other budgetary resources...$ 45,089,784
Total budgetary resources...$ 584,156,784

Amount to be deferred:
Part of year.....$ 2,428,000
Entire year.....$

Legal authority (in addition to sec. 1013):
[ ] Antideficiency Act
[X] P.L. 99-500 & 99-591, & 91-596

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other

Justification: This account funds the preventive health block grant and federal assistance in the areas of sexually transmitted diseases, immunization, infectious diseases, chronic and environmental diseases, occupational safety and health, and epidemic services. Among other activities, funding is provided for educational resource centers sponsored by the National Institute for Occupational Safety and Health. After nearly a decade of Federal support, the beneficiaries of this training -- primarily industry and state governments--should gradually assume greater financial responsibility for it. The 1988 Budget proposes to phase down Federal support for educational resource centers over three years beginning in 1987. Therefore, unneeded balances in the one-year account are deferred pending Congressional consideration of proposed supplemental appropriations language to transfer them to the Food and Drug Administration to fund the increased costs of the Federal Employee Retirement System.

Estimated Program Effect: Federal support of educational resource centers will be phased down.

D87-39

Outlay Effect (in thousands of dollars):

1987 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	1987	1988	1989	1990	1991	1992
490,274	487,846	-2,428	...	...	...	...	...

Deferral No: D87-40

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Health and Human Services

Bureau: Alcohol, Drug Abuse, and Mental Health Administration

Appropriation title and symbol:

Alcohol, drug abuse, and mental health
7571361 757/81361
75X1361

OMB identification code:

75-1361-0-1-550

Grant program:

[X] Yes [ ] No

Type of account or fund:

[X] Annual

[X] Multiple-year Sept. 30, 1988 (expiration date)

[X] No-Year

New budget authority.....$1,313,970,000
(P.L. 99-500 & 99-591)
Other budgetary resources...$ 4,871,223

Total budgetary resources...$1,318,841,223

Amount to be deferred:
Part of year.....$ 10,000,000

Entire year.....$

Legal authority (in addition to sec. 1013):

[ ] Antideficiency Act

[X] P.L. 99-500 & 99-591, 99-319, & 42 U.S.C. 242a

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other

Justification: This account provides Federal support for services, research, and research training in the areas of alcohol, drug abuse, and mental health. Among other activities, funds are provided for mental health clinical training and grants to protection and advocacy programs for the mentally ill. In light of the adequate supply of mental health clinicians, the 1988 Budget proposes to phase down Federal support of mental health clinical training over three years. The Budget also proposes that protection and advocacy programs be funded progressively from block grant funds and non-Federal funding sources over three years. Therefore, unneeded balances in the one-year account are deferred pending Congressional consideration of proposed supplemental appropriations language to transfer them to the Food and Drug Administration and Saint Elizabeths Hospital to fund the costs of the January 1987 pay raise and increased costs of the Federal Employee Retirement System.

Estimated Program Effect: Federal support of mental health clinicians will be phased down.

D87-40

Outlay Effect (in thousands of dollars):

1987 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	1987	1988	1989	1990	1991	1992
1,207,334	1,197,334	-10,000	...	...	...	...	...

D87-12A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D87-12 transmitted to Congress on September 26, 1986.

This revision to a deferral for the Limitation on administrative expenses (construction) account of the Social Security Administration in the Department of Health and Human Services increases the amount previously reported from $7,073,456 to $7,162,831. This net increase of $89,375 results from the deferral of additional balances carried over from 1986.

Deferral No: D87-12A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Health and Human Services

Bureau: Social Security Administration

Appropriation title and symbol:

Limitation on administrative expenses (construction) 1/
75X8704

OMB identification code:

*20-8007-0-7-651

Grant program:

[ ] Yes [X] No

Type of account or fund:

[ ] Annual

[ ] Multiple-year _____ (expiration date)

[X] No-Year

New budget authority.....$_____
(P.L. _____)

Other budgetary resources..*$ 7,198,831

Total budgetary resources..*$ 7,198,831

Amount to be deferred:
Part of year.....$_____

Entire year.....*$ 7,162,831

Legal authority (in addition to sec. 1013):

[X] Antideficiency Act

[ ] Other _____

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other _____

***Justification:** This account provides funding for construction and renovation of the Social Security Administration's (SSA) headquarters and field office buildings. The only costs in 1987 are for close-out and claims pending for previously approved construction projects. Obligational authority in the amount of this deferral is not needed at the present time because there are no current plans for any new construction or expansion of district offices during 1987. Some additional obligations will occur in 1988 for repair projects. Should new requirements arise, subsequent apportionments will reduce this deferral. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (D86-28A).

* Revised from previous report

Deferral No: D87-41

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Labor

Bureau: Employment Standards Administration

Appropriation title and symbol:

Salaries and expenses

1670105 166/70105

OMB identification code:

16-0105-0-1-505

Grant program:

[ ] Yes [X] No

Type of account or fund:

[X] Annual

[X] Multiple-year Sept. 30, 1987 (expiration date)

[ ] No-Year

New budget authority.....$ 192,709,000
(P.L. 99-500 & 99-591)

Other budgetary resources...$ 35,620,000

Total budgetary resources...$ 228,329,000

Amount to be deferred:
Part of year.....$ 9,659,000

Entire year.....$_____

Legal authority (in addition to sec. 1013):

[ ] Antideficiency Act

[X] P.L. 99-500 & 99-591 & 99-178 & 5 U.S.C. Chapter 81

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other _____

Coverage:

Appropriation	Account Symbol	Amount Deferred
Salaries and expenses	1670105	$1,659,000
Salaries and expenses	166/70105	8,000,000
		9,659,000

Justification: This account funds the administration and enforcement of a variety of statutes that (1) prescribe certain standards and conditions of employment that must be met by covered employers or (2) provide medical assistance and income maintenance for workers injured on the job. Funds available to permit the acquisition of computer equipment and software for the Federal Employees' Compensation (FEC) program are deferred. The contract to carry out this effort was terminated by the Employment Standards Administration (ESA) to permit the review of several different current alternatives for the development and implementation of a new FEC computer system. This review will not be completed in time to allow the use of the full amount available for the system in 1987. Unneeded funds are deferred pending Congressional consideration of proposed supplemental appropriations language to transfer them to other Department of Labor accounts to fund the costs of the January 1987 pay raise and increased Federal Employee Retirement System costs.

D87-41

Estimated Program Effect: ESA is currently in the process of reviewing several different alternatives for the development and implementation of a new FEC computer system. This review will not be completed in time to allow use of the full amount available for the system in 1987 and the absence of the amount proposed for transfer would not affect the FEC program in 1987. However, the ESA review will be completed by 1988 and an appropriation has been requested to enable ESA to acquire any needed software and equipment for the FEC system in 1988.

Outlay Effect: None

Deferral No: D87-42

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Transportation

Bureau: Federal Railroad Administration

Appropriation title and symbol:
Rail service assistance
69X0122

OMB identification code:
69-0122-0-1-401

Grant program:
[X] Yes [ ] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year (expiration date)
[X] No-Year

New budget authority.....$ ____

Other budgetary resources...$ 24,988,552

Total budgetary resources...$ 24,988,552

Amount to be deferred:
Part of year.....$ 462,000
Entire year.....$ ____

Legal authority (in addition to sec. 1013):
[ ] Antideficiency Act
[X] Other P.L. 99-272, P.L. 98-473, & P.L. 99-190

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other ____

Justification: This account funds discretionary and formula grants to all States for rail planning and for track rehabilitation of light density lines. The 1987 appropriation of $10 million (included in the Office of the Administrator account) and $25.0 million of unobligated balances from prior years are available in this program. The funds in this account include more than $17 million in discretionary grant funds that States may use as they choose within the overall objectives of the program. This deferral of discretionary funds is proposed because rail abandonment problems proposed to be addressed by the deferred funds are local in nature and are more appropriately the responsibility of State and local governments. The funds are deferred pending Congressional consideration of proposed supplemental appropriations language to transfer them to other Federal Railroad Administration accounts to fund the costs of the January 1987 pay raise and increased Federal Employee Retirement System costs.

Estimated Program Effect: Rail service improvements will be funded by State and local governments, if at all.

D87-42

Outlay Effect (in thousands of dollars):

1987 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	1987	1988	1989	1990	1991	1992
33,539	32,077	-462	...	...	...	...	...

Deferral No: D87-43

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Transportation

BUREAU: Federal Railroad Administration

Appropriation title and symbol:

Railroad safety

69X0702 6970702
69X0706

OMB identification code:

69-0702-0-1-401

Grant program:

[X] Yes [ ] No

Type of account or fund:

[ ] Annual
[ ] Multiple-year (expiration date)
[X] No-Year

New budget authority.....$ 27,050,000
(P.L. 99-500 & 99-591)
Other budgetary resources...$ 1,268,652

Total budgetary resources...$ 28,318,652

Amount to be deferred:
Part of year.....$ 1,101,000
Entire year.....$

Legal authority (in addition to sec. 1013):

[ ] Antideficiency Act
[X] P.L. 99-500 & 99-591, & P.L. 91-458

Type of budget authority:

[X] Appropriation
[ ] Contract authority
[ ] Other

Justification: This account funds Federal enforcement of railroad safety, the automated track inspection program, grants-in-aid for railroad safety, and safety research and development. Grants-in-aid for railroad safety that subsidize existing State inspection programs should not be a Federal responsibility because the program has primarily a local impact. These grant funds are deferred pending Congressional consideration of proposed supplemental appropriations language to transfer them to other Department of Transportation accounts to fund the costs of the January 1987 pay raise and increased Federal Employee Retirement System costs.

Estimated Program Effect: States currently in the grant program would not receive funds appropriated for grants-in-did for railroad safety. Because of the low percentage of the Federal subsidy, States are likely to fully fund these programs.

Outlay Effect (in thousands of dollars):

1987 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	1987	1988	1989	1990	1991	1992
48,458	47,357	-1,101	...	...	...	...	...

Deferral No: D87-44

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Transportation

Bureau: Federal Railroad Administration

Appropriation title and symbol:

Conrail labor protection

69X0707 69X0709

OMB identification code:

69-0709-0-1-603

Grant program:

[ ] Yes [X] No

Type of account or fund:

[ ] Annual

[ ] Multiple-year (expiration date)

[X] No-Year

New budget authority.....$ _____

Other budgetary resources...$ 734,978

Total budgetary resources...$ 734,978

Amount to be deferred:
Part of year.....$ 646,000

Entire year.....$ _____

Legal authority (in addition to sec. 1013):

[ ] Antideficiency Act

[X] Other P.L. 97-35, & P.L. 98-473

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other _____

Justification: This account provides protection to Conrail employees deprived of employment because of actions taken under the Regional Rail Reorganization Act of 1973. It also provides benefits to Milwaukee Railroad employees. The purposes for which these funds were originally appropriated have been accomplished. Therefore, the funds are deferred pending Congressional consideration of proposed supplemental appropriations language to transfer them to other Federal Railroad Administration accounts to fund the costs of the January 1987 pay raise and increased Federal Employee Retirement System costs.

Estimated Program Effect: None

Outlay Effect: None

Deferral No: D87-45

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Transportation

Bureau: Federal Railroad Administration

Appropriation title and symbol:

Northeast corridor improvement programs

69X0123

OMB identification code:

69-0123-0-1-401

Grant program:

[ ] Yes [X] No

Type of account or fund:

[ ] Annual

[ ] Multiple-year (expiration date)

[X] No-Year

New budget authority.....$ 16,962,000
(P.L. 99-500 & 99-591)

Other budgetary resources...$ 12,666,796

Total budgetary resources...$ 29,628,796

Amount to be deferred:
Part of year.....$ 16,962,000

Entire year.....$ _____

Legal authority (in addition to sec. 1013):

[ ] Antideficiency Act

[X] P.L. 99-500 & 99-591, & P.L. 94-210

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other _____

Justification: This account funds improvements to the northeast corridor as authorized by title VII of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended. The program can be completed with funds appropriated through 1986. Further improvements should be justified and financed as are other Amtrak capital projects -- evaluated and authorized by the Board of Directors and financed either through available corporate funds or Amtrak's budget request. The funds are deferred pending Congressional consideration of proposed supplemental appropriations language to transfer them to the Federal Aviation Administration to fund the costs of the January 1987 pay raise and increased Federal Employee Retirement System costs.

Estimated Program Effect: Further northeast corridor improvements would be financed by Amtrak based on and following business-like evaluations.

Outlay Effect (in thousands of dollars):

1987 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	1987	1988	1989	1990	1991	1992
118,795	117,777	-1,018	-4,580	-7,972	-3,392	...	...

Deferral No: D87-46

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Transportation

Bureau: Federal Railroad Administration

Appropriation title and symbol:

Conrail commuter transition assistance

69X0747

OMB identification code:

69-0747-0-1-401

Grant program:

[X] Yes [ ] No

Type of account or fund:

[ ] Annual

[ ] Multiple-year (expiration date)

[X] No-Year

New budget authority.....$ 5,000,000
(P.L. 99-500 & 99-591)
Other budgetary resources...$ 5,000,000

Total budgetary resources...$ 10,000,000

Amount to be deferred:
Part of year.....$ 10,000,000

Entire year.....$

Legal authority (in addition to sec. 1013):

[ ] Antideficiency Act

[X] P.L. 99-500 & 99-591, P.L. 97-35, & P.L. 99-190

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other

Justification: These funds helped defray the one-time only start-up costs of commuter service and other transition expenses connected with the transfer of rail commuter services from Conrail to other operators. Subsequent appropriations have provided funds for local commuter train improvements that are local jurisdiction responsibilities and should, if judged necessary by those jurisdictions, be funded from local funds or selected by local sponsors for assistance from within available Federal mass transit funds. The funds are deferred pending Congressional consideration of proposed supplemental appropriations language to transfer them to other Department of Transportation accounts to fund the costs of the January 1987 pay raise and increased Federal Employee Retirement System costs.

Estimated Program Effect: Local commuter train improvements would receive all financing from local jurisdictions or as part of mass transit funds.

Outlay Effect (in thousands of dollars):

1987 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	1987	1988	1989	1990	1991	1992

Deferral No: D87-47

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Transportation

Bureau: Urban Mass Transportation Administration

Appropriation title and symbol:

Research, training and human resources

69X1121

OMB identification code:

69-1121-0-1-401

Grant program:

[X] Yes [ ] No

Type of account or fund:

[ ] Annual

[ ] Multiple-year (expiration date)

[X] No-Year

New budget authority.....$ 17,400,000
(P.L. 99-500 & 99-591)
Other budgetary resources...$ 9,526,325

Total budgetary resources...$ 26,926,325

Amount to be deferred:
Part of year.....$ 4,336,000

Entire year.....$

Legal authority (in addition to sec. 1013):

[ ] Antideficiency Act

[X] P.L. 99-500 & 99-591, & 49 U.S.C. 1601 et seq.

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other

Justification: This account funds research, training, and human resource development in the transit industry. Section 6 of the Urban Mass Transportation Act of 1964 authorizes research, development and demonstration projects. The development of suitable projects is difficult and time consuming and as a result large unobligated balances have developed over the years. These were reduced last year as a result of various transfers. However, there are still balances not obligated from appropriations prior to 1987 that are not likely to be used this year. The funds are deferred pending Congressional consideration of proposed supplemental appropriations language to transfer them to other Department of Transportation accounts to fund the costs of the January 1987 pay raise and increased Federal Employee Retirement System costs.

Estimated Program Effect: Lower priority training, research and human resources projects will not be funded.

Outlay Effect (in thousands of dollars):

1987 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	1987	1988	1989	1990	1991	1992
21,968	21,968	...	-1,900	-1,100	-900	-436	...

Deferral No: D87-48

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Transportation

Bureau: Urban Mass Transportation Administration

Appropriation title and symbol:

Interstate transfer grants - transit

69X1127 686/71127

OMB identification code:

69-1127-0-1-401

Grant program:

[X] Yes [ ] No

Type of account or fund:

[ ] Annual

[X] Multiple-year Sept. 30, 1987 (expiration date)

[X] No-Year

New budget authority.....$ 200,000,000
(P.L. 99-500 & 99-591)

Other budgetary resources...$ 67,787,213

Total budgetary resources...$ 267,787,213

Amount to be deferred:

Part of year.....$ 51,800,000

Entire year.....$

Legal authority (in addition to sec. 1013):

[ ] Antideficiency Act

[X] P.L. 99-500 & 99-591, & 23 U.S.C. 103(e)(4)

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other

Justification: The Secretary of Transportation is authorized to provide Federal funding to allow States and localities to withdraw nonessential Interstate highway segments and substitute public transportation improvements, such as bus projects or rail projects. This funding is discretionary and can be stretched out without appreciable loss of benefits. The funds are deferred pending Congressional consideration of proposed supplemental appropriations language to transfer them to the Federal Aviation Administration to fund the costs of the January 1987 pay raise and increased Federal Employee Retirement System costs.

Estimated Program Effect: Lower priority interstate transfer grants - transit projects will not be funded.

Outlay Effect (in thousands of dollars):

1987 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	1987	1988	1989	1990	1991	1992
367,860	360,060	-7,800	-12,900	-12,900	-7,800	-5,200	-5,200

Deferral No: D87-49

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Transportation

Bureau: Federal Aviation Administration

Appropriation title and symbol:

Operation and maintenance, Metropolitan Washington Airports
6971332

OMB identification code:

69-1332-0-1-402

Grant program:

[X] Yes [ ] No

Type of account or fund:

[X] Annual

[ ] Multiple-year (expiration date)

[ ] No-Year

New budget authority.....$ 35,000,000
(P.L. 99-500 & 99-591)

Other budgetary resources...$ 4,495,000

Total budgetary resources...$ 39,495,000

Amount to be deferred:

Part of year.....$ 12,214,000

Entire year.....$

Legal authority (in addition to sec. 1013):

[ ] Antideficiency Act

[X] P.L. 99-500 & 99-591, 49 U.S.C. App. 2401 & 2421, et seq.

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other

Justification: This account provides for care, operation, maintenance, and improvements for Federally-owned Washington National and Washington Dulles International Airports. Pursuant to the Metropolitan Washington Airports Act of 1986 (as included in P.L. 99-500 and 99-591), the responsibility for financing and operating these airports will be transferred to a new airport authority under a 50-year lease about June 1, 1987. Resources appropriated for fourth quarter operations and maintenance are not available to the new authority, but will be available for transfer because the funds would otherwise lapse. The funds are deferred pending Congressional considerat:on of proposed supplemental appropriations language to transfer them to the Federal Aviation Administration to fund the costs of the January 1987 pay raise and increased Federal Employee Retirement System costs.

Estimated Program Effect: None. If the transfer is not approved, the funds will lapse.

Outlay Effect: None

Deferral No: D87-50

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Transportation

Bureau: United States Coast Guard

Appropriation title and symbol:

Research, development, test and evaluation

69X0243

OMB identification code:

69-0243-0-1-403

Grant program:

[ ] Yes [X] No

Type of account or fund:

[ ] Annual

[ ] Multiple-year (expiration date)

[X] No-Year

New budget authority.....$ 20,000,000
(P.L. 99-500 & 99-591)
Other budgetary resources...$ 12,393,763

Total budgetary resources...$ 32,393,763

Amount to be deferred:
Part of year.....$ 5,000,000

Entire year.....$

Legal authority (in addition to sec. 1013):

[ ] Antideficiency Act

[X] P.L. 99-500 & 99-591 1/

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other

Justification: This account funds efforts to maintain the technological base in areas related to the successful execution of the Coast Guard's operational and regulatory missions. This program includes the development of techniques, methods, hardware, and systems that directly contribute to increasing the productivity and effectiveness of operating forces. Tests and evaluations are carried out in conjunction with research and development. The deferral will primarily come from prior year balances that are a result of delays in acquisitions in the patrol boat replacement program. In view of past and planned acquisition of the new patrol boats, this will not affect operational and regulatory missions. The funds are deferred pending Congressional consideration of proposed supplemental appropriations language to transfer them to the Coast Guard operating expenses to fund the costs of the January 1987 pay raise and increased Federal Employee Retirement System costs.

Estimated Program Effect: None

D87-50

Outlay Effect (in thousands of dollars):

1987 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	1987	1988	1989	1990	1991	1992
23,000	20,000	-3,000	-2,000	...	...	...	...

1/ Another authority is: the Coast Guard Authorization Act of 1986 (P.L. 99-640).

Deferral No: D87-51

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Transportation

Bureau: United States Coast Guard

Appropriation title and symbol:

Offshore oil pollution compensation fund

69X5167

OMB identification code:

69-5167-0-2-304

Grant program:

[ ] Yes [X] No

Type of account or fund:

[ ] Annual

[ ] Multiple-year _____ (expiration date)

[X] No-Year

New budget authority.....$ 1,000,000
(P.L. 99-500 & 99-591)

Other budgetary resources...$ 3,013,392

Total budgetary resources...$ 4,013,392

Amount to be deferred:

Part of year.....$ 2,154,000

Entire year.....$ _____

Legal authority (in addition to sec. 1013):

[ ] Antideficiency Act

[X] P.L. 99-500 & 99-591, & 43 U.S.C. 1812

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other _____

Justification: This account provides compensation for damages, including cleanup, resulting from oil spills affecting the outer continental shelf. Historically, there have been few obligations annually from this fund for the purposes indicated. Particularly in recent years, there have been few, if any, spills to clean up, resulting in $3.0 million carried over from 1986. The funds are deferred pending Congressional consideration of proposed supplemental appropriations language to transfer them to the Coast Guard operating expenses to fund the costs of the January 1987 pay raise and increased Federal Employee Retirement System costs.

Estimated Program Effect: None

Outlay Effect: None

Deferral No: D87-52

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Transportation

Bureau: United States Coast Guard

Appropriation title and symbol:

Deepwater port liability fund

69X5170

OMB identification code:

69-5170-0-2-304

Grant program:

[ ] Yes [X] No

Type of account or fund:

[ ] Annual

[ ] Multiple-year _____ (expiration date)

[X] No-Year

New budget authority.....$ 1,000,000
(P.L. 99-500 & 99-591)

Other budgetary resources...$ 5,607,022

Total budgetary resources...$ 6,607,022

Amount to be deferred:

Part of year.....$ 5,176,000

Entire year.....$ _____

Legal authority (in addition to sec. 1013):

[ ] Antideficiency Act

[X] P.L. 99-500 & 99-591, & 33 U.S.C. 1517(f)

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other _____

Justification: This account funds a system for determination and settlement, without fault, of claims for all cleanup costs and damages incurred, but not otherwise compensated as a result of discharges of oil into the marine environment from deepwater port activities. Historically, there have been few obligations from this fund for the purpose indicated. Particularly in recent years, there have been few, if any, spills, resulting in a carry over of $5.6 million from 1986. The funds are deferred pending Congressional consideration of proposed supplemental appropriations language to transfer them to other Coast Guard accounts to fund the costs of the January 1987 pay raise and increased Federal Employee Retirement System costs.

Estimated Program Effect: None

Outlay Effect: None

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Deferral No: D87-53

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Transportation

Bureau: Office of the Secretary

Appropriation title and symbol:

Payments to air carriers

69X0150

OMB identification code:

69-0150-0-1-402

Grant program:

[ ] Yes [X] No

Type of account or fund:

[ ] Annual

[ ] Multiple-year _____ (expiration date)

[X] No-Year

New budget authority.....$ 30,000,000
(P.L. 99-500 & 99-591)

Other budgetary resources...$ 18,997,390

Total budgetary resources...$ 48,997,390

Amount to be deferred:
Part of year.....$ 10,748,000

Entire year.....$ _____

Legal authority (in addition to sec. 1013):

[ ] Antideficiency Act

[X] P.L. 99-500 & 99-591, & P.L. 85-726

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other _____

Justification: This account provides compensation to airlines -- primarily commuter carriers -- to provide a guaranteed level of air service to certain eligible communities. The subsidy is designed to meet the specific needs of each community as detailed in its Essential Air Service determination. The program is currently scheduled to expire on October 24, 1988. Over $14 million of the funds currently available are not expected to be spent before that time because carriers are not applying for these subsidies. Some of the unneeded funds are deferred pending Congressional consideration of proposed supplemental appropriations language to transfer them to other Department of Transportation accounts to fund the costs of the January 1987 pay raise and increased Federal Employee Retirement System costs.

Estimated Program Effect: None

Outlay Effect: None

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Deferral No: D87-54

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:

Environmental Protection Agency

Bureau:

Appropriation title and symbol:

Research and development

68/80107

OMB identification code:

68-0107-0-1-999

Grant program:

[ ] Yes [X] No

Type of account or fund:

[ ] Annual

[X] Multiple-year Sept. 30, 1988 (expiration date)

[ ] No-Year

New budget authority.....$ 202,500,000
(P.L. 99-500 & 99-591)

Other budgetary resources... _____

Total budgetary resources... 202,500,000

Amount to be deferred:
Part of year.....$ 11,000,000

Entire year..... _____

Legal authority (in addition to sec. 1013):

[ ] Antideficiency Act

[X] Other P.L. 99-500 & 591 1/

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other _____

Justification: This account funds research and development activities through contracts, grants, and intergovernmental agreements. The 1987 appropriation exceeded identified spending requirements and included funding for lower priority special purpose activities that would primarily benefit special interest groups. Small increments are deferred from most EPA activities, including those increases over the President's request, pending Congressional consideration of proposed supplemental appropriations language tc transfer them to Salaries and expenses, EPA, to fund the costs of the January 1987 pay raise and increased costs of the Federal Employee Retirement System.

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

1987 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	1987	1988	1989	1990	1991	1992
203,337	200,422	-2,915	-5,720	-1,540	-715	-110	

D87-54

1/ Other authorities are: 7 U.S.C. 136 et seq.; 15 U.S.C. 2601 et seq.; 33 U.S.C. 1251 et seq.; 42 U.S.C. 300f et seq.; 42 U.S.C. 6901 et seq.; 42 U.S.C. 7401 et seq.; Reorganization Plan No. 3 of 1970.

Deferral No: D87-55

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Environmental Protection Agency

Bureau:

Appropriation title and symbol:
Abatement, control, and compliance
687/80108

OMB identification code:
68-0108-0-1-304

Grant program:
[ ] Yes [X] No

Type of account or fund:
[ ] Annual
[X] Multiple-year Sept. 30, 1988 (expiration date)
[ ] No-Year

New budget authority.....$ 582,685,000 (P.L. 99-500 & 99-591)
Other budgetary resources...
Total budgetary resources... 582,685,000

Amount to be deferred:
Part of year.....$ 11,400,000
Entire year.....

Legal authority (in addition to sec. 1013):
[ ] Antideficiency Act
[X] Other P.L. 99-500 & 591 1/

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other

Justification: This account funds contracts, grants, and cooperative agreements for pollution abatement, control, and compliance activities. The 1987 appropriation exceeded identified spending requirements and included funding for lower priority special purpose activities that would primarily benefit special interest groups. Small increments are deferred from most EPA activities, including those increases over the President's request, pending Congressional consideration of proposed supplemental appropriations language to transfer them to Salaries and expenses, EPA, to fund the costs of the January 1987 pay raise and increased costs of the Federal Employee Retirement System.

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

1987 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	1987	1988	1989	1990	1991	1992
575,515	571,981	-3,534	-5,700	-1,140	-684	-342	..

D87-55

1/ Other authorities are: 7 U.S.C. 136 et seq.; 15 U.S.C. 2601 et seq.; 33 U.S.C. 1251 et seq.; 42 U.S.C. 300f et seq.; 42 U.S.C. 6901 et seq.; 42 U.S.C. 7401 et seq.; Reorganization Plan No. 3 of 1970.

Deferral No: D87-56

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: United States Railway Association

Bureau:

Appropriation title and symbol:

Administrative expenses

98X0100

OMB identification code:

98-0100-0-1-401

Grant program:

[ ] Yes [X] No

Type of account or fund:

[ ] Annual

[ ] Multiple-year (expiration date)

[X] No-Year

New budget authority.....$ 2,200,000
(P.L. 99-500 & 99-591)

Other budgetary resources...$ 55,251

Total budgetary resources...$ 2,255,251

Amount to be deferred:

Part of year.....$ 1,155,000

Entire year.....$

Legal authority (in addition to sec. 1013):

[ ] Antideficiency Act

[X] P.L. 99-500 & 99-591, & P.L. 99-509

Type of budget authority:

[X] Appropriation

[ ] Contract authority

[ ] Other

Justification: This temporary agency was established in 1973 to oversee the formation of Conrail, monitor its performance, and act as a conduit for Federal assistance. These activities have been completed and USRA will be abolished on April 1, 1987. Conrail is currently a profitable corporation that does not receive or need a government subsidy. The funds are deferred pending Congressional consideration of proposed supplemental appropriations language to transfer them to Department of Transportation accounts to fund the costs of the January 1987 pay raise and increased Federal Employee Retirement System costs.

Estimated Program Effect: None. The work of the agency is completed.

Outlay Effect: None

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February 4, 1987

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1210

Proposed Watermelon Research and Promotion Plan; Notice of Hearing

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1210

[WRPA Docket No. 1]

Proposed Watermelon Research and Promotion Plan; Notice of Hearing

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed plan.

SUMMARY: Notice is hereby given of a public hearing to be held to consider a proposed Watermelon Research and Promotion Plan (hereinafter referred to as the "Plan"). The proposed plan represents an attempt to improve the position of watermelons in the marketplace by a coordinated plan of research promotion. The proposal was submitted by the National Watermelon Association, Inc., which represents a substantial segment of the watermelon producers and handlers. The proposed plan would provide for a national research and promotion program financed by assessments on watermelons paid both by first handlers and by producers who grow five or more acres of watermelons annually. The proposed plan would establish a maximum assessment rate of 2 cents per hundredweight for handlers and producers. A 29-member board composed of watermelon producers, handlers and a representative of the general public would administer the program. The text of the proposal to be considered is set forth below.

DATES: There will be a continuous hearing with sessions scheduled as follows:

1. February 18, 1987, 9:00 a.m.
2. February 24, 1987, 9:00 a.m.

Any session may be continued beyond one day if necessary.

ADDRESSES:

1. The February 18, 1987 session will be held at the Flamingo Hotel, 3555 Las Vegas Blvd. South, Las Vegas, Nevada.
2. The February 24, 1987 session will be held at 101 Marietta St. NW (corner of Spring and Marietta Streets), 29 Floor, Suite 2900, Atlanta, Georgia.

Copies of this Notice of Hearing may be obtained from Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, Room 2523–S, AMS, USDA, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, Room 2523–S, AMS, USDA, Washington, D.C. 20250; telephone: (202) 447–5698.

SUPPLEMENTARY INFORMATION: This action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code, and therefore is excluded from the requirements of Executive Order 12291.

The hearing is called pursuant to the provisions of the Watermelon Research and Promotion Act (Pub. L. 99–198, 99th Congress, approved December 23, 1985, 7 U.S.C. 4901–4916), and in accordance with the applicable rules of practice and procedure governing proceedings to formulate an order (7 CFR Part 1200).

The Regulatory Flexibility Act (Pub. L. 96–354), effective January 1, 1981, seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the probable regulatory and informational impact of the proposal on small businesses.

The National Watermelon Association, Inc., composed of producers and handlers, proposed a Watermelon Research and Promotion Plan. The proposal has not received the approval of the Secretary of Agriculture. The proposed plan would provide for a research and promotion program for watermelons and watermelon products. The proposal contains no provisions for quality standards, production control, or any other controls that limit the right of individual watermelon producers to produce watermelons. Program costs would be financed by assessments paid by first handlers and by producers who grow five or more acres of watermelons annually. The proposed plan would establish a maximum assessment rate of 2 cents per hundredweight for handlers and producers. A 29-member board composed of watermelon producers, handlers and a representative of the general public would administer the program. The research and promotion plan would be applicable to watermelons produced in the forty-eight contiguous States of the United States.

Because late winter and spring are busy periods for the watermelon industry, the proponents requested that the hearing be held as soon as practicable to allow interested persons an opportunity to participate in the hearing. A pre-notice press release was issued nationwide on December 10, 1986, allowing interested persons until January 5, 1987, to comment on the proposed plan. In response to the pre-notice press release, copies of the proposed plan were requested but no comments were received.

Under the Rules of Practice the Administrator has determined that less than 15 days notice of hearing is adequate and reasonable in as much as: (1) The proposal was submitted by an industry group representing a substantial segment of the watermelon producers and handlers; (2) prior notice of the plan was given through a pre-notice press release issued nationwide on December 10, 1986; (3) the proponents requested the February 18 and 24 dates because of the late winter and early spring busy period and a desire to maximize participation at the hearing; and (4) the hearing will have two sessions one on February 18 in Las Vegas, Nevada and one on February 24 in Atlanta, Georgia which will allow all interested persons to participate at either the earlier or later session.

Copies of this notice are being mailed to all State Governors and county Cooperative Extension Service offices and all known State associations, producers, and handlers of watermelons. A press release will be made available nationwide to news media.

The hearing is for the purpose of:

(a) Receiving evidence about economic and marketing conditions which relate to the proposal and to any appropriate modifications thereof;

(b) Determining the need for a plan to implement a nationally coordinated watermelon research and promotion program;

(c) Determining the economic impact of the proposed plan on segments of industry and public affected by such a plan; and

(d) Determining whether provisions specified in the proposed plan or any appropriate modifications will tend to effectuate the declared policy of the Watermelon Research and Promotion Act (7 U.S.C. 4901 *et seq.*).

From the time this hearing notice is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Fruit and Vegetable Division, Agricultural Marketing Service

Procedural matters are not subject to the above prohibition and may be discussed at any time.

The provisions of the proposed research and promotion plan follow.

List of Subjects in 7 CFR Part 1210

Watermelon, Agricultural research, Agricultural promotion, Market development.

1. The provisions of the plan proposed by the National Watermelon Association, Inc. would add Part 1210 and would read as follows:

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

Definitions

Sec.
1210.301 Secretary.
1210.302 Act.
1210.303 Plan.
1210.304 Board.
1210.305 Watermelon.
1210.306 Watermelon products.
1210.307 Producer.
1210.308 Handle.
1210.309 Handler.
1210.310 Person.
1210.311 Processor.
1210.312 Fiscal period and marketing year.
1210.313 Programs and projects.
1210.314 Promotion.
1210.315 Research.

National Watermelon Promotion Board

1210.320 Establishment and membership.
1210.321 Nominations and selection.
1210.322 Term of office.
1210.323 Acceptance.
1210.324 Vacancies.
1210.325 Procedure.
1210.326 Compensation and reimbursement.
1210.327 Powers.
1210.328 Duties.

Research and Promotion

1210.330 Policy and objective.
1210.331 Programs and projects.

Expenses and Assessments

1210.340 Budget and expenses.
1210.341 Assessments.
1210.342 Exemption from assessment.
1210.343 Producer and handler refunds.
1210.344 Operating reserve.

Reports, Books, and Records

1210.350 Reports.
1210.351 Books and records.
1210.352 Confidential treatment.

Miscellaneous

1210.360 Right of the Secretary.
1210.361 Personal liability.
1210.362 Influencing governmental action.
1210.363 Suspension or termination.
1210.364 Proceedings after termination.
1210.365 Effect of termination or amendment.
1210.366 Separability.
1210.367 Patents, copyrights, inventions, and publications.

Authority: Pub. L. 99–198; 7 U.S.C. 4901–4916.

Definitions

§ 1210.301 Secretary.

"Secretary" means the Secretary of the United States Department of Agriculture or any officer or employee of the Department to whom authority has been delegated, or to whom authority may be delegated, to act for the Secretary.

§ 1210.302 Act.

"Act" means the Watermelon Research and Promotion Act of 1985 (Title XVI, Subtitle C of Pub. L. 99–198, 99th Congress, approved December 23, 1985, 99 Stat. 1622).

§ 1210.303 Plan.

"Plan" means this Watermelon Research and Promotion Plan issued by the Secretary pursuant to the Act.

§ 1210.304 Board.

"Board" means the National Watermelon Promotion Board, hereinafter established pursuant to § 1210.320.

§ 1210.305 Watermelon.

"Watermelon" means all varieties of watermelon grown by producers in the 48 contiguous States of the United States.

§ 1210.306 Watermelon products.

"Watermelon products" means products wherein watermelon is a principal ingredient.

§ 1210.307 Producer.

"Producer" means any person engaged in the growing of 5 acres or more of watermelons who owns or shares the ownership and risk of loss of such watermelon crop.

§ 1210.308 Handle.

"Handle" means to grade, pack, process, sell, transport, purchase, or in any other way to place watermelons or cause watermelons to be placed in the current of commerce. Such term shall not include the transportation or delivery of field-run watermelons by the producer thereof to a handler for grading, sizing or processing.

§ 1210.309 Handler.

"Handler" means any person (except a common or contract carrier of watermelons owned by another person) who handles watermelons, including a producer who handles watermelons of his own production.

§ 1210.310 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity.

§ 1210.311 Processor.

"Processor" means any person who commercially processes watermelons into watermelon products intended for human consumption.

§ 1210.312 Fiscal period and marketing year.

"Fiscal period" and "marketing year" means the 12 month period from January 1 to December 31 or such other period which may be approved by the Secretary.

§ 1210.313 Programs and projects.

"Programs" and "projects" mean those research, development, advertising, or promotion programs or projects develop by the Board pursuant to § 1210.331.

§ 1210.314 Promotion.

"Promotion" means any action taken by the Board, pursuant to the Act, to present a favorable image for watermelons to the public with the express intent of improving the competitive position of watermelons in the marketplace and stimulating sales of watermelons, and shall include, but not be limited to, paid advertising.

§ 1210.315 Research.

"Research" means any type of systematic study or investigation, and/or the evaluation of any study or investigation designed to advance the image, desirability, usage, marketability, production, or quality of watermelon or watermelon products.

National Watermelon Promotion Board

§ 1210.320 Establishment and membership.

(a) There is hereby established a National Watermelon Promotion Board, hereinafter called the "Board". The Board shall be composed of producers and handlers and one public representative appointed by the Secretary. An equal number of producer and handler representatives shall be nominated by producers and handlers pursuant to § 1210.321. The public representative shall be nominated by the producer and handler Board members in such manner as may be prescribed by the Secretary. If producers and handlers fail to select nominees for appointment to the Board, the Secretary may appoint persons on the basis of representation as provided in § 1210.324. If the Board fails to adhere to procedures prescribed by the Secretary for nominating a public representative, the Secretary shall appoint such representative.

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(b) Membership on the Board shall be determined on the basis of two handler and two producer representatives for each of seven (7) districts in the continguous States of the United States. The districts established have approximately equal production volume according to the 3-year average production as set forth in the USDA Crop Production Annual Summary Reports for 1979, 1980, and 1981. They are:

District #1—South Florida including all areas south of State highway 50.
District #2—North Florida including all areas north of State highway 50.
District #3—The States of Alabama and Georgia.
District #4—The States of South Carolina, North Carolina, Virginia, Delaware, Maryland, West Virginia, Pennsylvania, New Jersey, New York, Ohio, Michigan, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine.
District #5—The States of Mississippi, Kentucky, Tennessee, Louisiana, Arkansas, Missouri, Illinois, Indiana, Iowa, Kansas, Nebraska, Oklahoma, Wisconsin, Minnesota, North Dakota, South Dakota, Colorado, and New Mexico.
District #6—The State of Texas.
District #7—The States of Arizona, California, Nevada, Utah, Oregon, Idaho, Wyoming, Washington, and Montana.

(c) Every five years, the Board shall review the districts to determine whether realignment of the districts is necessary. In making such review, it shall give consideration to:

(1) The most recent three years USDA production reports, or Board assessment reports if USDA production reports are unavailable;

(2) Shifts and trends in quantities of watermelon produced, and

(3) Other relevant factors.

As a result of this review, the Board may realign the districts subject to the approval of the Secretary. Any such realignment shall be made at least six months prior to the date on which terms of office of the Board begin each year and shall become effective at least 30 days prior to such date.

§ 1210.321 Nominations and selection.

The Secretary shall appoint the members of the Board from nominations to be made in the following manner:

(a) The Board shall issue a call for nominations by February first of each year in which an election is to be held. The call shall include at a minimum, the followng information:

(1) A list of the vacancies and qualifications by District for which nominees may be submitted.

(2) The date by which the nominees shall be submitted to the Secretary for consideration to be in compliance with § 1210.323 of this subpart.

(3) A list of those States by District entitled to participate in the nomination process.

(4) The date, time, and location of any next scheduled meeting of the Board, National and State producer or handler associations, and District conventions, meetings, or caucuses, if any.

(b) Nominations for the vacant positions shall be made in the District entitled to nominate by District convention, meeting, or caucus. Notice of such convention, meeting, or caucus shall be publicized to all producers and handlers within such District at least ten days prior to said event. The Secretary shall also receive at least ten days notice of such event. The notice shall have attached to it the call for nominations from the Board. The responsibility for publicizing and convening the District convention, meeting or caucus shall be that of the then members of the Board from that District.

(c) All producers and handlers within the District may participate in the convention, meeting, or caucus: *Provided,* That, if a producer or handler is engaged in the production or handling of watermelons in more than one State, he/she shall elect the State in which he/she desires to participate, and such election shall remain controlling until revoked in writing to the Board.

(d) The District convention, meeting or caucus shall conduct the selection process for the nominees in accordance with procedures to be adopted at each such convention, meeting, or caucus: *Provided,* That the following provisions are applicable to all nominating procedures whenever and wherever held:

(1) There shall be two individuals nominated for each vacant position. Each nominee shall meet the qualifications set forth in the call.

(2) No State in Districts 3, 4, 5 and 7 as currently constituted shall have more than three representatives on the Board.

(3) Each State represented at the District convention, meeting or caucus shall have one vote which vote shall be determined by the producers and handlers from that State by majority vote. Each State shall further have an additional vote for each 5 hundred thousand hundredweight volume as determined by the three year average annual crop production summary reports of the USDA, or if such reports are not published, then the three year average of the Board assessment reports: *Provided,* That for the first four calls for nominees, the USDA Crop Production Annual Summary Reports for 1979, 1980, and 1981 will be controlling as to the additional votes.

§ 1210.322 Term of office.

(a) The term of office of Board members shall be three years, except that the members of the initial Board shall be designated by lot for, and shall serve terms as follows: Four producers and four handlers and the public member shall serve for one-year terms; five producers and five handlers shall serve for two-year terms; and five producers and five handlers shall serve for three-year terms.

(b) The term of office for the initial Board shall begin immediately on appointment by the Secretary. In subsequent years, the term of office shall begin on January 1 or such other period which may be approved by the Secretary.

(c) Board members shall serve during the term of office for which they are selected and have qualified, and until their successors are selected and have qualified.

(d) No member shall serve more than two successive terms: *Provided,* That those members and alternates serving the initial term of one year may serve two additional consecutive three-year terms.

§1210.323 Acceptance.

Each person nominated for membership on the Board shall qualify by filing a written acceptance with the Secretary. Such written acceptance shall accompany the nominations list required by § 1210.321.

§ 1210.324 Vacancies.

(a) In the event any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Board shows adequate cause, the Secretary shall remove such member from office. Further, without recommendation of the Board a member may be removed by the Secretary upon showing of adequate cause, if the Secretary determines that the person's continued services would be detrimental to the purposes of the Act.

(c) To fill any vacancy caused by the failure of any person selected as a member of the Board to qualify, or in the event of the death, removal, resignation, or disqualification of any member, a successor shall be nominated and selected in the manner specified in § 1210.321, except that said nomination and replacement shall not be required if the unexpired term of office is less than six months. In the event of failure to provide nominees for such vacancies, the Secretary may appoint other eligible persons.

§ 1210.325 Procedure.

(a) Fifteen Board members shall constitute a quorum and any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings all votes shall be cast in person.

(b) For routine and noncontroversial matters which do not require deliberation and the exchange of views, and for matters of an emergency nature when there is not enough time to call an assembled meeting, the Board may act upon a majority of concurring votes of its members cast by mail, telegraph, telephone, or by other means of communication: *Provided,* That each member receives an accurate, full, and substantially identical explanation of each proposition. Telephone votes shall be promptly confirmed in writing. All votes shall be recorded in the Board minutes.

§ 1210.326 Compensation and reimbursement.

Board members shall serve without compensation but shall be reimbursed for reasonable expenses incurred by them in the performance of their duties as Board members.

§ 1210.327 Powers

The Board shall have the following powers subject to § 1210.363:

(a) To administer the provisions of this Plan in accordance with its terms and conditions;

(b) To make rules and regulations to effectuate the terms and conditions of this Plan;

(c) To receive, investigate, and report to the Secretary complaints of violations of this Plan; and

(d) To recommend to the Secretary amendments to this Plan.

§ 1210.328 Duties.

The Board shall, among other things, have the following duties:

(a) To meet, organize, and select from among its members a President and such other officers as may be necessary; to select committees and subcommittees of board members; to adopt such rules for the conduct of its business as it may deem advisable; and it may establish advisory committees of persons other than Board members.

(b) To employ such persons as it may deem necessary and to determine the compensation and define the duties of each; and to protect the handling of Board funds through fidelity bonds;

(c) To, prepare and submit, prior to the beginning of each fiscal period, for the Secretary's approval, a recommended rate of assessment and a fiscal period budget of the anticipated expenses in the administration of this Plan, including the probable costs of all programs and projects;

(d) To develop programs and projects, which must be approved by the Secretary before becoming effective, and enter into contracts or agreements, with the approval of the Secretary, for the development and carrying out of programs or projects of research, development, advertising or promotion, and the payment of the costs thereof with funds collected pursuant to this Plan;

(e) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the Board. Minutes of each Board meeting shall be promptly reported to the Secretary;

(f) To prepare and submit to the Secretary such reports from time to time as may be prescribed for appropriate accounting with respect to the receipt and disbursement of funds entrusted to the Board;

(g) To cause the books of the Board to be audited by a certified public accountant at least once each fiscal period, and at such other time as the Board may deem necessary. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. Two copies of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the Board for inspection by producers and handlers;

(h) To investigate violations of the Plan and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of the Plan;

(i) To periodically prepare and make public and to make available to producers and handlers reports of its activities carried out, and at least once each fiscal period to make public an accounting of funds received and expended;

(j) To give the Secretary the same notice of meetings of the Board and its subcommittees as is given to its members.

(k) To act as intermediary between the Secretary and any producer or handler; and

(l) To furnish the Secretary such information as the Secretary may request.

(m) To notify watermelon producers and handlers of all Board meetings through press releases or other means;

(n) To appoint and convene, from time to time, working committees drawn from producers, handlers and the public to assist in the development of research and promotion programs for watermelon;

(o) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of programs or projects to effectuate the declared purpose of the Act; and

(p) With the approval of the Secretary to enter into contracts or make agreements for the development and carrying out of research and promotion projects and to pay for the costs of such contracts or agreements with funds collected pursuant to § 1210.341.

Research and Promotion

§ 1210.330 Policy and objective.

It shall be the policy of the Board to carry out an effective, continuous, and coordinated program of research, development, advertising, and promotion in order to:

(a) Strengthen watermelon's competitive position in the marketplace,

(b) Maintain and expand existing domestic and foreign markets, and

(c) Develop new or improved markets.

It shall be the objective of the Board to carry out programs and projects which will provide maximum benefit to the watermelon industry.

§ 1210.331 Programs and projects.

The Board shall develop and submit to the Secretary for approval any programs or projects authorized in this section. Such programs or projects shall provide for:

(a) The establishment, issuance, effectuation and administration of appropriate programs or projects for advertising and sales promotion of watermelons or watermelon products designed to strengthen the position of the watermelon industry in the marketplace and to maintain, develop, and expand markets for watermelon and watermelon products;

(b) Establishing and carrying out research and development projects and studies to the end that the acquisition of knowledge pertaining to watermelon and watermelon products or their consumption and use may be

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encouraged or expanded, or to the end that the marketing and use of watermelons and watermelon products may be encouraged, expanded, improved, or made more efficient: *Provided,* That quality control, grade standards, supply management programs or other programs that would otherwise limit the right of the individual watermelon producer to produce watermelon shall not be conducted under, or as a part of, this Plan;

(c) The development and expansion of watermelon and watermelon product sales in foreign markets;

(d) A prohibition on advertising or other promotion programs that make any reference to private brand names or use false or unwarranted claims on behalf of watermelons or their products or false or unwarranted statements with respect to the attributes or use of any competing product;

(e) Periodic evaluation by the Board of each program or project authorized under this Plan to insure that each program or project contributes to an effective and coordinated program of research and promotion and submit such evaluation to the Secretary. If the Board or the Secretary finds that a program or project does not further the purposes of the Act, then the Board shall terminate such program or project.

Expenses and Assessments

§ 1210.340 Budget and expenses.

(a) Prior to the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend to the Secretary a budget of its anticipated expenses and disbursements in the administration of this Plan, including probable costs of research, development, advertising, and promotion for such fiscal period. The Board shall also recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in § 1210.344.

(b) Funds collected by the Board pursuant to § 1210.341 shall be used for research, development, advertising, or promotion of watermelon and watermelon products, such other expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary, and any referenda and administrative costs incurred by the Department of Agriculture.

§ 1210.341 Assessments.

(a) During the effective period of this subpart assessments shall be levied on all watermelons produced and all watermelons handled for ultimate consumption as human food. No more than one assessment on a producer nor more than one assessment on a handler shall be made on any watermelons. The handler shall be assessed an equal amount on a per unit basis as the producer. If a person performs both producing and handling functions, both assessments shall be paid by such person.

(b) Assessment rates shall be fixed by the Secretary in accordance with § 1647(f), of the Watermelon Research and Promotion Act: *Provided,* That the maximum assessment shall not exceed two (2) cents per hundredweight for producers and two (2) cents per hundredweight for handlers. No assessments shall be levied on watermelons grown by producers of less than 5 acres of watermelons: *Provided,* such grower has applied for an exemption under § 1210.342(b) of this Plan.

(c) Each first handler, as specified in regulations, is responsible for payment to the Board of both the producer's and the handler's assessment pursuant to regulations issued hereunder. The first handler may collect producer assessments from the producer or deduct such assessments from the proceeds paid to the producer on whose watermelons the assessments are made. The first handler shall maintain separate records for each producer's watermelons handled, including watermelons produced by said handler. Such records shall indicate the total quantity of watermelons handled by the handler, including those handled for producers and for the handler, the total quantity of watermelons handled by the handler that are included under the terms of this Plan, as well as those that are exempt under this Plan, and such other information as may be prescribed by the Board.

(d) Assessments shall be paid to the Board at such time and in such manner as the Board, with the Secretary's approval, directs pursuant to regulations issued hereunder. Such regulations may provide for different handlers or classes of handlers and different handler payment and reporting schedules to recognize differences in marketing practices or procedures used in any State or production area.

(e) The Board may authorize other organizations to collect assessments in its behalf.

(f) There shall be a late payment charge imposed on any handler who fails to remit to the Board the total amount for which any such handler is liable on or before the payment due date established by the Board under paragraph (d) of this section. The amount of the late payment charge shall be set by the Board subject to approval by the Secretary.

(g) There shall also be imposed on any handler subject to a late payment charge, an additional charge in the form of interest on the outstanding portion of any amount for which the handler is liable. The rate of such interest shall be prescribed by the Board subject to approval by the Secretary, but shall not exceed the maximum legal rate of interest, if any, as established by Congress.

(h) The Board is hereby authorized to accept advance payment of assessments by handlers that shall be credited toward any amount for which the handlers may become liable. The Board is not obligated to pay interest on any advance payment.

(i) The Board is hereby authorized to borrow money for the payment of administrative expenses subject to the same fiscal , budget, and audit controls as other funds of the Board.

§ 1210.342 Exemption from assessment.

(a) The Board may exempt watermelons used for nonfood purposes from the provisions of this Plan and shall establish adequate safeguards against improper use of such exemptions.

(b) Any person engaged in the growing of less than five acres of watermelons who owns or shares the ownership and risk of loss of such watermelon crop shall be exempt from the assessment. To claim such exemption, a producer shall submit an application to the Board starting that his/her production shall not be five acres or more for the year for which the exemption is claimed.

§ 1210.343 Producer and handler refunds.

Any producer or handler against whose watermelons an assessment is made and collected under this Plan and who is not in favor of supporting the research, development, advertising, and promotion program provided for under this Plan shall have the right to demand and receive from the Board a refund of such assessment upon submission of proof satisfactory to the Board that the producer or handler paid the assessment for which refund is sought. Any such demand shall be made personally by such producer or handler on a form which the producer or handler shall sign and within a time period prescribed by the Board pursuant to regulations. Such time period shall give the producer or handler at least 90 days from the date of collection to submit the refund request

form to the Board. Any such refund shall be made within 45 days after demand therefor.

§ 1210.344 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established: *Provided,* That funds in the reserve shall not exceed approximately two fiscal periods' budgeted expenses. Such reserve funds may be used to defray any expenses authorized under this subpart.

Reports, Books, and Records

§ 1210.350 Reports.

Each first handler shall maintain a record with respect to each producer for whom watermelons were handled and for watermelons produced and handled by the handler. First handlers shall report to the Board at such times and in such manner as it may prescribe by regulations such information as may be necessary for the Board to perform its duties. Such reports may include, but shall not be limited to, the following:

(a) Total quantity of watermelons handled for each producer and for him/herself, including those which are exempt under this Plan;

(b) Total quantity of watermelons handled for each producer and for him/herself, on which the producer assessment was collected;

(c) Name and address of each person from whom an assessment was collected, the amount collected from each person, and the date such collection was made; and

(d) Name and address of each person claiming exemption from assessment and a copy of each such person's claim of exemption.

§ 1210.351 Books and records.

Each handler subject to this subpart shall maintain and during normal business hours make available for inspection by employees of the Board or Secretary, such books and records as are necessary to carry out the provisions of this Plan and the regulations issued thereunder, including such records as are necessary to verify any required reports. Such records shall be maintained for two years beyond the fiscal period of their applicability.

§ 1210.352 Confidential treatment.

(a) All information obtained from the books, records, or reports required to be maintained under §§ 1210.350 and 1210.351 shall be kept confidential and shall not be disclosed to the public by any person. Only such information as the Secretary deems relevant shall be disclosed to the public and then only in a suit or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this Plan: Except that nothing in this subpart shall be deemed to prohibit:

(1) The issuance of general statements based on the reports of a number of handlers subject to this Plan if such statements do not identify the information furnished by any person; or

(2) The publication by direction of the Secretary of the name of any person violating this Plan together with a statement of the particular provisions of this Plan violated by such person.

(b) Any disclosure of any confidential information by any employee of the Board shall be considered willful misconduct.

Miscellaneous

§ 1210.360 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1210.361 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1210.362 Influencing governmental action.

No funds collected by the Board under this plan shall in any manner be used for the purpose of influencing governmental policy or action; except for making recommendations to the Secretary as provided in this subpart.

§ 1210.363 Suspension or termination.

(a) Whenever the Secretary finds that this Plan or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall terminate or suspend the operation of this Plan or such provision thereof.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of the Board or of 10 percent or more of the watermelon producers and handlers to determine if watermelon producers and handlers favor termination or suspension of this Plan. The Secretary shall suspend or terminate this Plan at the end of the marketing year whenever the Secretary determines that the suspension or termination is favored by a majority of the watermelon producers and handlers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in production and/or handling of watermelons and who produced and/or handled more than 50 percent of the volume of watermelons produced or handled by those producers and handlers voting in the referendum. Any such referendum shall be conducted at county extension offices.

§ 1210.364 Proceedings after termination.

(a) Upon the termination of this Plan, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all funds and property then in possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall—

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to § 1210.328(d);

(3) From time-to-time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person or persons as the Secretary may direct; and

(4) Upon the request of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person or persons full title and right to all the funds, property, and claims vested in the Board or the trustees pursuant to this section.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this section shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) A reasonable effort shall be made by the Board or its trustees to return to producers and handlers any residual funds not required to defray the necessary expenses of liquidation. If it is found impractical to return such remaining funds to producers and handlers, such funds shall be disposed of in such manner as the Secretary may determine to be appropriate.

§ 1210.365 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this Plan or any regulation issued pursuant

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thereto, or the issuance of any amendment to either thereof, shall not—

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this Plan or any regulation issued thereunder, or

(b) Release or extinguish any violation of this Plan or any regulation issued thereunder, or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any other person with respect to any such violation.

§ 1210.366 Separability.

If any provision of this Plan is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this Plan or applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1210.367 Patents, copyrights, inventions, and publications.

Except for a reasonable royalty paid to the inventor of a patented invention, any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this Plan shall be the property of the United States government as represented by the Board. Funds generated by such patents, copyrights, inventions, product formulations, or publications shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board.

Signed in Washington, DC, on February 2, 1987.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR. Doc. 87-2346 Filed 2-2-87; 1:48 pm]

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 308, 318, 320, 327, and 381

[Docket No. 81-013N]

Canning of Meat and Poultry Products; Policy Statement

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Policy statement.

SUMMARY: This document announces the Department's policy about the voluntary use of the final regulations concerning the canning of meat and poultry products which were published December 19, 1986, and which will become effective on June 19, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Bill F. Dennis, Director, Processed Products Inspection Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447-3840.

SUPPLEMENTARY INFORMATION: On December 19, 1986, the Department publishing requirements for the canning of meat and poultry products and setting forth the procedures to be used by the Agency in evaluating compliance with these requirements. Since the final rule was published questions have arisen about voluntary use of the rule before the June 19, 1987, effective date. After considering the issues and interests, the Administrator has decided the following:

An establishment may voluntarily become subject to 9 CFR 318, Subpart G, and 9 CFR 381, Subpart X, prior to June 19, 1987; provided, the Agency determines that such establishment is in compliance with all applicable requirements of Subparts G and X. Interested establishments shall submit a written request to Mr. Bill F. Dennis, Director, Processed Products Inspection Division, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Subsequently, the Agency will perform an expeditious assessment of the requestor's operation to determine compliance with the regulations. Approvals and denials similarly will be provided in writing with an explanation of the reason(s) for a denial.

Done at Washington, DC, on: February 2, 1987.

Donald L. Houston,
Administrator, Food Safety and Inspection Service.

[FR Doc. 87-2434 Filed 2-4-87; 8:45 am]
BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-178-AD; Amdt. 39-5538]

Airworthiness Directives; CASA Model C-212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD), applicable to certain CASA Model C-212 series airplanes, that requires the installation of a smoke detector system in the main cargo/passenger cabin in those CASA Model C-212 series airplanes that have been converted from passenger to cargo configuration. A smoke detector system is necessary for the cargo configuration in order to alert the crew to impending or existing fire conditions in the main cabin.

DATE: Effective March 9, 1987.

ADDRESSES: The applicable service information specified in this AD may be obtained from Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires installation of a smoke detector system in the main cabin, was published in the **Federal Register** on September 22, 1986 (51 FR 33617).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 2 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Modification parts are estimated at $663 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $1,966.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($983). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of the Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

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Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

CASA: Applies to all CASA Model C-212 series airplanes when converted to a cargo configuration in accordance with CASA Service Bulletin 212-25-35, dated October 23, 1985, or other modifications, certificated in any category. Compliance is required within 9 months after the effective date of this AD, or prior to conversion to a cargo configuration, whichever occurs later. In the cargo configuration, to preclude an undetected fire in the main cabin, accomplish the following, unless previously accomplished:

A. Install a smoke detector system in accordance with CASA Service Bulletin 212-26-06, dated October 23, 1985.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 9, 1987.

Issued in Seattle, Washington, on January 26, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-2281 Filed 2-4-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-212-NM-AD; Amdt. 39-5535]

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. Embraer Model EMB-120 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Embraer Model EMB-120 series airplanes by individual letters. This AD imposes a maximum operating altitude of 10,000 feet Mean Sea Level (MSL) for airplanes equipped with certain oil coolers which have accumulated more than 200 hours time-in-service. This action is prompted by recent occurrences of failures of the engine oil coolers, which have resulted in excessive oil loss and in-flight engine shutdowns.

DATES: Effective February 17, 1987.

This AD was effective earlier to all recipients of Priority Letter AD 86-21-11, dated October 22, 1986.

ADDRESSES: The applicable service information may be obtained from Embraer Aircraft Corporation, 276 S.W. 34th Street, Fort Lauderdale, Florida 33315. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. Gil Carter, Aerospace Engineer, Propulsion Branch (ACE-140), FAA, Central Region, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349; telephone (404) 991-3810.

SUPPLEMENTARY INFORMATION: On October 22, 1986 the FAA issued Priority Letter AD 86-21-11, applicable to Embraer Model EMB-120 series airplanes, which imposes a maximum operating altitude limitation of 10,000 feet MSL on airplanes equipped with oil coolers, part numbers 160282-1 and 160282-2, which have accumulated more than 200 hours time-in-service. The AD was prompted by several recent occurrences of failures of those part-numbered engine coolers, which have resulted in excessive oil loss and in-flight engine shutdowns. The in-flight failures are a consequence of the cyclic effects of temperature and pressure on the oil cooler. The FAA has determined that the lower temperatures and pressure differentials, which are experienced at lower altitudes, will preclude leakage.

This AD requires installation of a placard on the instrument panel to indicate to the pilot that the maximum operating altitude is 10,000 feet MSL. Terminating action for this requirement is replacement of the engine oil cooler with a modified design engine oil cooler, part number 160282-3 or subsequent.

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89

2. By adding the following new airworthiness directive:

Empresa Brasileira de Aeronautica S.A.: Applies to Embraer Model EMB-120 series airplanes; serial numbers 120004, 120006 through 120028, 120033, and 120034; equipped with engine oil coolers, part numbers 160282-1 or 160282-2, which have accumulated more than 200 hours time-in-service; certificated in any category. Compliance is required within the next 10 hours time-in-service after the effective date of this AD, unless previously accomplished.

To prevent oil loss and in-flight engine shutdown, accomplish the following:

A. Fabricate and install on the instrument panel near the altimeter, in full view of the pilot, a placard that reads: "MAXIMUM OPERATING LIMITATION 10,000 FEET MSL.

B. Installation of engine oil cooler, part number 160282-3 or subsequent, constitutes terminating action for the requirements of this AD.

This amendment becomes effective February 17, 1987, as to all persons, except those persons to whom it was made immediately effective by Priority Letter AD 86-21-11, issued October 22, 1986.

Issued in Seattle, Washington, on January 26, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-2283 Filed, 2-4-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-CE-59-AD; Amendment 39-5533]

Airworthiness Directives; Helio Models H-700 and H-800 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) applicable to Helio Models H-700 and H-800 airplanes which requires repetitive inspection of the composite material main landing gear legs for delamination and replacement of delaminated gear legs with FAA-approved metallic legs. Reports of delamination and failure of the composite material landing gear legs on Models H-700 and H-800 airplanes have been received. This action is necessary to prevent failure of a landing gear leg and possible loss of the airplane.

EFFECTIVE DATE: March 9, 1987.

Compliance: As required in the body of the AD.

ADDRESSES: Copies of STC SA2171CE applicable to this AD may be obtained from Clarence H. Brent, P.O. Box 486, Pittsburg, Kansas 66762. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Douglas W. Haig, Aerospace Engineer, ACE-120W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD requiring repetitive inspection of the composite main landing gear legs for delamination and replacement of delaminated gear legs with FAA-approved metallic legs on certain Helio Models H-700 and H-800 airplanes was published in the **Federal Register** on November 26, 1986 (51 FR 42852). The proposal resulted from one accident and one incident involving the composite main landing gear legs of the Helio H-700 and H-800 airplanes. A Helio H-800 was involved in an accident when one of the gear legs failed during a landing. In the second case, a Model H-700 was found with a wing sagging. The case was delamination of one of the main landing gear legs. Analysis established that the most likely cause of delamination was shear failure due to bolt tipping. Although redesign of the attachment of the gear legs to the fuselage and the gear leg to the axle assembly to alleviate the bolt tipping is a possibility, it is not likely as the manufacturer is no longer in business. The only fix when one gear has delamination is to replace both landing gear legs with FAA-approved metal parts.

Since the condition described is likely to exist or develop in other Helio H-700 and H-800 airplanes of the same design, the AD requires repetitive inspection of the main landing gear legs for delamination at 100 hour time-in-service (TIS) intervals, and replacement of both legs if either leg has delamination. At this time, the only known FAA-approved replacement landing gear is per STC SA2171CE.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change, except for minor editoral clarifications.

The FAA has determined there are approximately 18 airplanes affected by the proposed AD. A cost of $30 per airplane per year is estimated to conduct the required inspection. Installation of STC SA2171CE, if required, would cost approximately $3,000 per airplane. Since the cost of replacing failed or unserviceable parts is not included in the total cost computation for purposes of classifying a rulemaking action in accordance with Executive Order 12291, the total estimated cost to the private sector for this action is $540 annually for the repetitive inspections.

Therefore, I certify that this action (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDMENT]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Helio: Applies to Models H-700 and H-800 airplanes (all serial numbers) certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To assure airworthiness of the composite main landing gear legs, accomplish the following:

(a) Within the next 100 hours TIS after the effective date of this AD and each 100 hours TIS thereafter, remove landing gear fairings, if installed, and visually inspect the edges of the composite main landing gear legs for evidence of delamination. Delamination is evidenced by longitudinal splitting between the fiberglass plies. This could occur anywhere along the span of the landing gear leg. If any delamination is found, prior to further flight, install FAA-approved right and left metallic landing gear legs.

Note.—On the effective date of this AD, the only know FAA-approved replacement landing gear is per STC SA2171CE.

(b) If, in between the inspections required in paragraph (a) above, it is observed that the wings do not appear level, or one side of the airplane appears to be drooping, prior to further flight, conduct the inspections and replacement, if necessary, required in paragraph (a) of this AD.

(c) The inspection required in paragrphs (a) and (b) are no longer required when FAA-approved metallic landing gear legs have been installed.

(d) Ferry permits issued in accordance with FAR 21.197 and equivalent methods of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4400.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Federal Aviation Administration, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on March 9, 1987.

Issued in Kansas City, Missouri, on January 22, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-2278 Filed 2-4-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-CE-31-AD; Amendment 39-5532]

Airworthiness Directives; Pilatus Britten-Norman Limited, Model BN-2T Islander Airplanes Incorporating Engine Vibration Isolators Manufactured by Barry Controls

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to all Pilatus Britten-Norman Limited, Model BN-2T Islander airplanes incorporating engine vibration isolators manufactured by Barry Controls, which could develop cracks and deterioration in the elastomer core assemblies, and/or cracks on the isolator mounting brackets, at the intersection of each main rib with the elastomer core location rim. This AD defines the inspections and corrective actions for both the isolator brackets and the elastomer core assemblies. The action will eliminate the possibility of high engine vibrations and possible propeller whirl flutter, which could result in loss of the airplane.

DATES: *Effective Date:* March 9, 1987. *Compliance:* Required as indicated after the effective date of this AD, unless already accomplished.

ADDRESSES: Pilatus Britten-Norman Limited, Mandatory Service Bulletin (MSB) No. BN-2/SB.172, Issue 2, dated June 2, 1986, applicable to this AD may be obtained from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, England. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Ebina, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, Brussels, Belgium; Telephone (322) 513.38.30; or Mr. Harvey A. Chimerine, Foreign FAR 23 Section, Central Region, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring inspection and corrective actions for both the isolator brackets and the elastomer core assemblies on certain Pilatus Britten-Norman Limited, Model BN-2T Islander airplanes was published in the Federal Register on August 15, 1986 (51 FR 29259). The proposal resulted from service experience showing that on Pilatus Britten-Norman Limited, Model BN-2T Islander airplanes incorporating engine vibration isolator mounting brackets manufactured by Barry Controls, Barry Part No. 44-9115-0100, were experiencing cracking at the intersection of each main rib with the elastomer core location rim. In addition, some of the elastomer core assemblies, Barry Part No. R20700-2, were developing cracks in the elastomer itself. Failure of the vibration isolators will increase engine vibration levels into the airframe and possibly induce propeller whirl flutter. This AD action will eliminate the possibility of high engine vibrations and possible propeller whirl flutter, which could result in loss of the airplane.

Consequently, Pilatus Britten-Norman Limited issued Service Bulletin No. BN-2/SB.172, Issue 2, dated June 2, 1986, which defines inspections and introduces corrective actions for both the engine vibration isolator mounting brackets and the elastomer core assemblies.

The Civil Airworthiness Authority of the United Kingdom (CAA-UK), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in Great Britain, Classified this Pilatus Britten-Norman Limited, Service Bulletin BN-2/SB.172, Issue 2, dated June 2, 1986, and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under United Kingdom of Great Britain registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the CAA-UK combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of Pilatus Britten-Norman Limited, Service Bulletin No. BN-2/SB.172, Issue 2, dated June 2, 1986, and the mandatory classification of this service bulletin by the CAA-UK, and concluded that the condition addressed by Pilatus Britten-Norman Limited, Service Bulletin No. BN-2/SB.172, Issue 2, dated June 2, 1986, was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include an AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change. The FAA has determined that this regulation involves 100 airplanes at an approximate annual cost of $640 for each airplane, for a total cost of $64,000 to the private sector.

The cost of compliance with the proposed AD is so small that it will not have a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Pilatus Britten-Norman Limited: Applies to Model BN-2T Islander (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent the possibility of high engine vibrations and possible propeller whirl flutter, accomplish the following:

(a) Within 100 hours time-in-service (TIS) after the effective date of this AD and at each 500 hours TIS thereafter:

(1) Inspect the isolator mounting brackets, Barry Part No. 44-9115-0100, for cracks in accordance with the "Inspection (Part A)—Forged Brackets" paragraph of Pilatus Britten-Norman (PBN) Limited Service Bulletin (S/B) No. BN-2/SB.172, Issue 2, dated June 2, 1986, and:

(i) If a cracked "thick-ribbed" (0.190 inches) bracket is found, prior to further flight, replace the bracket with a similar serviceable part or

(ii) If a cracked "thin-ribbed" (0.150 inches) bracket is found, prior to further flight, replace all three brackets as an engine mounting set with "thick-ribbed" brackets in accordance with the "Rectification (Part B)—Forged Brackets" paragraph of PBN S/B No. BN-2/SB.172, Issue 2, dated June 2, 1986.

(b) Within 100 hours TIS after the effective date of this AD, and at each 100 hours TIS thereafter:

(1) Inspect the Barry-manufactured elastomer cores, and:

(i) If Part Number (P/N) K20700-2 is installed, prior to further flight, replace such cores with stiffer serviceable cores P/N R20700-15; or,

(ii) If P/N R20700-15 is installed, inspect for cracks, tears, or delamination in accordance with the "Inspection and Rectification of Elastomer Cores (Part C)" paragraph of PBN S/B No. BN-2/SB.172, Issue 2 dated June 2, 1986, and if defective, prior to further flight, replace with a serviceable core.

(c) The intervals between the repetitive inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishing these inspections concurrent with other scheduled maintenance of the airplane.

(d) Aircraft may be flown in accordance with FAR 21.197 to a location where this AD can be accomplished.

(e) An equivalent means to compliance with this AD may be used if approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

All persons affected by this directive may obtain copies of the document referred to herein upon request to Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, England; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on March 9, 1987.

Issued in Kansas City, Missouri, on January 22, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-2279 Filed 2-4-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-CE-43-AD; Amdt. 39-5529]

Airworthiness Directives; British Aerospace Models HP.137 Jetstream MK.1, Jetstream Series 200, and Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to British Aerospace (BAe) Models HP.137 Jetstream MK.1, Jetstream Series 200, and Jetstream Model 3101 airplanes, which requires the identification of the flap torque shaft assembly and limits the in-service life of the flap torque shaft assembly to 18,000 landings or the equivalent as a result of BAe fatigue tests. This AD provides instructions for determining the "in-service life" and labeling the flap torque shaft assemblies in service.

DATES: *Effective Date:* March 7, 1987. *Compliance:* Required as indicated after the effective date of this AD, unless already accomplished.

ADDRESSES: BAe Mandatory Service Bulletin (MSB) 27-JA840421 dated January 14, 1986, and Service Bulletin (S/B) 27-JM7500 dated January 23, 1986, applicable to this AD may be obtained from British Aerospace, Engineering Department, P.O. Box 17414, Dulles International Airport, Washington, D.C. 20041; Telephone (703) 435-9100. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Ebina, Brussels Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium; Telephone 513.38.30; or Mr. Harvey Chimerine, FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations, to include an AD requiring the identification of the flap torque shaft assembly and a limit on the in-service life of the torque shaft assembly to 18,000 landings or the equivalent as a result of BAe fatigue tests on certain BAe Models HP.137 Jetstream MK.1, Jetstream Series 200, and Jetstream Model 3101 airplanes, was published in the **Federal Register** on October 17, 1986 (51 FR 37041). The proposal resulted from BAe-conducted fatigue tests. Consequently, British Aerospace issued BAe S/B 27-JN7500 dated January 23, 1986, and MSB 27-JA840421 dated January 14, 1986, which details procedures for the identification of these assemblies by individual serial number to facilitate the recording of the expired life of an individual component, and includes instructions for determining the "in-service life" and labeling of flap torque shaft assemblies in service used in BAe Models HP.137 Jetstream MK.1, Jetstream Series 200, and Jetstream Model 3101 airplanes, and which are now being restricted to 18,000 landings or the equivalent.

The Civil Aviation Authority-United Kingdom (CAA-UK), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom, classified this BAe MSB 27-JA840421 dated January 14, 1986, and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under United Kingdom registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the CAA-UK combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of BAe MSB 27-JA840421 dated January 14, 1986, and S/B 27-JM7500 dated January 23, 1986, and the mandatory classification of these service bulletins by the CAA-UK, and concluded that the condition addressed by BAe MSB 27-JA840421 dated January 14, 1986, was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include an AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change except for minor editorial corrections and clarifying the instruction for recording the total accumulated number of landings. The FAA has determined that this regulation involves 50 airplanes at an approximate one-time cost of $1,050

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for each airplane, or a total one-time fleet cost of $52,500.

The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

British Aerospace: Applies to Models HP.137 Jetstream MK.1, Jetstream Series 200 and Jetstream Model 3101 (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent failure of the flap torque shaft assembly, accomplish the following:

(a) Within 100 hours time-in-service (TIS):

(1) Modify the flap torque shaft assembly by securing a "Modification and Serial Number Plate" to the flap torque shaft which includes part number and serial number (assigned by British Aerospace (BAe)) in accordance with the provisions of Section 2, "Accomplishment Instructions" of BAe S/B 27-JM7500 dated January 23, 1986.

(2) On airplanes with flap torque shaft assemblies having 17,900 or more landings on the effective date of this AD, within the next 100 landings, replace the flap torque shaft assembly with an airworthy part of the same part number modified as per paragraph (a)(1) above and modified in accordance with the provisions of Section 2, "Accomplishment Instructions," Part A, "Torque Shaft Assembly Installed on In-servie Aircraft" of BAe MSB 27-JA840421 dated January 14, 1986.

(3) On airplanes with flap torque shaft assemblies having less than 17,900 landings on the effective date of this AD, replace the flap torque shaft assemblies before accumulating 18,000 landings, with an airworthy part of the same part number modified as per paragraph (a)(1) above and modified in accordance with the provisions of Section 2, "Accomplishment Instructions," Part A, "Torque Shaft Assembly Installed on In-service Aircraft" of BAe MSB 27/JA840421 dated January 14, 1986.

(4) Upon any removal of a flap torque shaft assembly, whether life expired or for other reasons, enter date of removal and total number of accumulated landings on the lower portion of plate P/N S778/2.

(b) If the actual number of landings is unknown for the purpose of complying with this AD, one landing may be substituted for each ½ flight hour unless the operator substantiates a different flight hours to landings ratio. This substantiation must be submitted to and approved by the Manager, Aircraft Certification Staff, AEU-100, address below.

(c) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium.

All persons affected by the directive may obtain copies of the documents referred to herein upon request to British Aerospace, Engineering Department, P.O. Box 17414, Dulles International Airport, Washington, D.C. 20041; Telephone (703) 435-9100; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on March 7, 1987.

Issued in Kansas City, Missouri, on January 21, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-2280 Filed 2-4-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AGL-32]

Establishment of Transition Area, Cumberland, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to establish the Cumberland, Wisconsin, transition area to accommodate a new NDB Runway 09 Standard Instrument Approach Procedure (SIAP) to Cumberland Municipal Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 U.t.c. April 9, 1987.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, December 2, 1986, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the Cumberland, Wisconsin transition area (51 FR 43385).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes the Cumberland, Wisconsin, transition area to accommodate aircraft utilizing an NDB Runway 09 SIAP.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

Cumberland, WI [New]

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the Cumberland Municipal Airport (lat. 45°30'25"N., long. 91°58'45"W.); and within 3 miles each side of the 262° bearing from the Cumberland NDB extending from the 5 mile radius to 8.5 miles west of the airport.

Issued in Des Plaines, Illinois, on January 20, 1987.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 87-2277 Filed 2-4-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Commission

15 CFR Parts 374, 375, and 399

[Docket No. 60852-6152]

Exports to the People's Republic of China; Revision of Advisory Notes

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which identifies those commodities subject to Department of Commerce export controls. The "Advisory Notes" in various entries of the CCL list those commodities covered by a particular entry that are more likely to be approved for export than others.

This rule amends several Advisory Notes covering exports to the People's Republic of China (PRC) of various commodities, including the following:

Equipment for the manufacture or testing of electronic components and materials;

Radio relay communication equipment;

Lasers and laser systems;

Electronic measuring, calibrating, counting, testing, or time interval measuring equipment;

Radio spectrum analyzers;

Electronic component assemblies, sub-assemblies, printed circuit boards, substrates and microcircuits; and

Recording or reproducing equipment and specially designed components therefor.

These amendments to the Advisory Notes result from the review of the system of strategic export controls maintained by the United States and certain allied countries through the Coordinating Committee (COCOM).

In addition, this rule amends the "permissive reexports" provision of the Export Administration Regulations. Reexports are permitted from a COCOM country to the PRC of equipment meeting requirements set forth in Advisory Notes for Country Groups Q, W, and Y, as well as the Advisory Notes for the PRC.

Also, a clarification is added to the Regulations stating that the inclusion of the contract title and contract number on a Chinese End-Use Certificate is optional. Such information may be used by the PRC, but the Department of Commerce will not require it.

EFFECTIVE DATE: This rule is effective February 5, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian or John Black, Office of Technology and Policy Analysis, Export Administration, Telephone (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Export Administration, International Trade Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0625-0001.

List of Subjects in 15 CFR Parts 374, 375 and 399

Exports, reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 368-399) are amended as follows:

PART 374—[AMENDED]

PART 375—[AMENDED]

1. The authority citation for Parts 374 and 375 continues to read as follows:

Authority: Pub. L. 97-72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. Paragraph (j) of § 374.2 is revised to read as follows:

§ 374.2 Permissive reexports.

* * * * *

(j) Reexports from a COCOM country to the People's Republic of China that meet the requirements set forth in "Advisory Notes" for the People's Republic of China or for Country Groups Q, W, and Y in the Commodity Control List (Supplement No. 1 to § 399.1) and are licensed for shipment by that country.

§ 375.6 [Amended]

3. Section 375.6 is amended by adding "(optional)" immediately before the semicolon in paragraph (b)(1).

PART 399—[AMENDED]

4. The authority citation for Part 399 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 (October 2, 1986); E.O. 12571, October 27, 1986 (51 FR 39505, October 29, 1986).

§ 399.1 Supplement No. 1 [Amended]

5. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1355A is amended by revising the introductory text of the "Advisory Note for the People's Republic of China" to read: "Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of equipment, as follows, for use in silicon semi-conductor manufacturing:"

6. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1520A is amended by revising the phrase "19 GHz" in paragraphs (a) and (b) of the "Advisory Note for the People's Republic of China" to read "20 GHz".

7. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1522A is amended by adding paragraph (c) of the "Advisory Note for the People's Republic of China" to read:

(c) Equipment specially designed for medical applications incorporating ND:YAG lasers covered by paragraph (a)(vi) of ECCN 1522A;

8. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1529A is amended by adding the words "or sweep generators" after the words "network analyzers" in paragraph (b) of the "Advisory Note for the People's Republic of China" and by revising the phrase "18 GHz" to read "20 GHz" in paragraphs (c) and (d) of the "Advisory Note for the People's Republic of China."

9. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1533A is amended by revising the word "incorporating" to read ", including those with" in paragraph (a) of the "Advisory Note for the People's Republic of China."

10. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1564A is amended by revising the phrase "8 bit" to read "12 bit" in paragraphs (g) (2) and (3) of the "Advisory Note for the People's Republic of China."

11. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1568A is amended by revising the phrase "8 bit" to read "12 bit" in paragraphs (b) and (c) of the "Advisory Note for the People's Republic of China."

12. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1572A is amended by revising the number "12,992" to read "13,125" in paragraph (c)(1) of the "Advisory Note for the People's Republic of China."

Dated: February 2, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87-2347 Filed 2-4-87; 8:45 am]

BILLING CODE 3510-DT-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3205]

International Masters Publishers Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Los Angeles mail-order seller of recipe cards to honor cancellation and return and requests in a timely manner and prohibits respondent from misrepresenting it return cancellation policies.

DATE: Complaint and Order issued January 14, 1987.[1]

FOR FURTHER INFORMATION CONTACT: Jerome M. Steiner, Jr., San Francisco Regional Office, Federal Trade Commission, 901 Market St., San Francisco, CA 94130 (415) 995-5220.

SUPPLEMENTARY INFORMATION: On Thursday, November 6, 1986, there was published in the **Federal Register**, 51 FR 40336, a proposed consent agreement with analysis in the Matter of International Masters Publishers Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: S 13.10 Advertising falsely or misleadingly; 13.10-1 Availability of merchandise and/or services; 13.185 Refunds, repairs, and replacements. Subpart—Corrective Actions and/or Requirements: 13.533 Corrective actions and/or requirements; 13.533-20 Disclosures; 13.533-55 Refunds, rebates, and/or credits.

List of Subjects in 16 CFR Part 13

Mail order, Recipe cards, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 87-2338 Filed 2-4-87; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th St. & Pa. Ave., NW., Washington, DC 20580.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 87-16]

Amendment to the Customs Regulations Concerning the Coastwise Transportation of Certain Articles by Vessels of the Ivory Coast

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to add the Ivory Coast to the lists of nations which permit vessels of the U.S. to transport certain articles specified in section 27, Merchant Marine Act of 1920, as amended, between their ports.

Customs has been furnished satisfactory evidence that the Government of the Ivory Coast places no restrictions on the transportation of certain specified articles by vessels of the U.S. between ports in that country. This amendment provides reciprocal privileges for vessels registered in the Ivory Coast.

EFFECTIVE DATE: The reciprocal privileges for vessels registered in the Ivory Coast became effective on December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Paul Hegland, Carriers, Drawback & Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-5706).

SUPPLEMENTARY INFORMATION:

Background

Section 27, Merchandise Marine Act of 1920, as amended (46 U.S.C. 883) (the "Act"), provides generally that no merchandise shall be transported by water, or by land and water, between points in the U.S. except in vessels built in and documented under the laws of the U.S. and owned by U.S. citizens. However, the 6th proviso of the Act, as amended by Pub. L. 89-194 (79 Stat. 823, T.D. 66-176) and Pub. L. 90-474 (82 Stat. 700, T.D. 68-227), provides that upon a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State, that a foreign nation does not restrict the transportation of certain articles between its ports by vessels of the U.S., reciprocal privileges will be accorded to vessels of that nation, and the prohibition against the transportation of those articles between points in the U.S. will not apply to its vessels.

Section 4.93(b)(1), Customs Regulations (19 CFR 4.93(b)(1)), lists those nations found to extend reciprocal privileges to vessels of the U.S. for the transportation of empty cargo vans, empty lift vans, and empty shipping tanks. Section 4.93(b)(2), Customs Regulations (19 CFR 4.93(b)(2)), lists those nations found to extend reciprocal privileges to vessels of the U.S. for the transportation of equipment for use with cargo vans, lift vans, or shipping tanks; empty barges specifically designed for carriage aboard a vessel and certain equipment for use with these barges; certain empty instruments of international traffic; and certain stevedoring equipment and material.

On December 29, 1986, the Department of State advised the Director, Carriers, Drawback and Bonds Division, of the Customs Service Headquarters, that the Government of the Ivory Coast places no restrictions on the transportation of the articles listed in the Act by vessels of the U.S. between ports in the Ivory Coast. The effective date of such notification was December 31, 1986.

The Carriers, Drawback and Bonds Division is of the opinion that satisfactory evidence has been furnished to establish the reciprocity required in § 4.93(b). Therefore, the Director of that Division has determined that, effective retroactively to December 31, 1986, the Ivory Coast should be added to the lists of nations set forth in § 4.93(b) (1) and (2).

By Treasury Department Order 165-25 the Secretary of the Treasury has delegated authority to the Commissioner of Customs to prescribe regulations relating to §§ 4.22, 4.81a(b), 4.93 (b)(1) and (b)(2), 4.94(b), and 10.59(f), Customs Regulations (19 CFR 4.22, 4.81a(b), 4.93 (b)(1) and (b)(2), 4.94(b), and 10.59(f)). These sections relate to lists of nations entitled to preferential treatment in Customs matters because of reciprocal privileges accorded to vessels and aircraft of the U.S. Subsequently, by Customs Delegation Order No. 66 (T.D. 82-201), dated October 13, 1982, the Commissioner delegated this authority to the Assistant Commissioner (Commercial Operations), who redelegated this authority to the Director, Office of Regulations and Rulings, who then redelegated it to the Director, Regulations Control and Disclosure Law Division.

Finding

On the basis of the information received from the Secretary of State, as described above, it is determined that the Government of the Ivory Coast places no restrictions on the transportation of the articles specified in the 6th proviso of section 27 of the Merchant Marine Act of 1920, as amended, by vessels of the U.S. between ports in the Ivory Coast. Therefore, reciprocal privileges are accorded as of December 31, 1986, to vessels registered in the Ivory Coast.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this is a minor amendment in which the public is not particularly interested and there is a statutory basis for the described extension of reciprocal privileges, notice and public procedure pursuant to 5 U.S.C. 553(b)(B) are unnecessary. In accordance with 5 U.S.C. 553(d)(1), a delayed effective date is not required because this amendment grants an exemption.

Inapplicability of Regulatory Flexibility Act

This document is not subject to the provisions of 5 U.S.C. 603, 604, as added by section 3 of Pub. L. 96-354, the Regulatory Flexibility Act." That Act does not apply to any regulations such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

Executive Order 12291

This amendment does not meet the criteria for a major regulation as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Bruce J. Friedman, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Cargo vessels, Maritime carriers, Vessels.

Regulations Amendments

To reflect the reciprocal privileges granted to vessels registered in the Ivory Coast, Part 4, Customs Regulations (19 CFR Part 4), is amended in the following manner:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority citation for Part 4 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624; 46 U.S.C. 3, 2103; § 4.93 also issued under 19 U.S.C. 1322(a); 46 U.S.C. 883.

§ 4.93 [Amended]

2. Section 4.93 (b)(1) and (b)(2), Customs Regulations (19 CFR 4.93 (b)(1), (b)(2)), are amended by adding "Ivory Coast", in appropriate alphabetical order to the lists of nations entitled to reciprocal privileges.

Dated: January 27, 1987.

B. James Fritz,

Director, Regulations Control and Disclosure Law Division.

[FR Doc. 87-2408 Filed 2-4-87; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 85F-0517]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of perfluoroalkyl acrylate

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copolymer as a component of paper and paperboard in contact with aqueous and fatty food. This action responds to a petition filed by Minnesota Mining & Manufacturing Co.

DATES: Effective February 5, 1987; objections by March 9, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857

FOR FURTHER INFORMATION CONTACT: Thomas C. Brown, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 9, 1985 (50 FR 50233), FDA announced that a petition (FAP 5B3870) had been filed by Minnesota Mining & Manufacturing Co., 3M Center, St. Paul, MN 55144, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of the polymer reaction product of: ethanaminium, *N,N,N*-trimethyl-2-[2-methyl-1-oxo-2-propenyl)-oxy], chloride; 2-propenoic acid, 2-methyl-, oxiranylmethyl ester; 2-propenoic acid, 2-ethoxyethyl ester; and 2-propenoic acid, 2[[(heptadecafluorooctyl) sulfonyl] methylaminojethyl ester, as a water and oil repellant for paper and paperboard. For regulatory purposes FDA is regulating this material as "perfluoroalkyl acrylate copolymers" and is specifying the materials used to manufacture the copolmer.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use is safe, and the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before March 9, 1987 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Food Safety and Applied Nutrition, Part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR Part 176 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 176.170(a)(5) by alphabetically inserting a new item in the list of substances to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of substances	Limitations
* * *	* * *
Perfluoroalkyl acrylate copolymer (CAS Reg. No. 92265-81-1) containing 35 to 40 weight percent fluorine, produced by the copolymerization of ethanaminium, *N,N,N*-trimethyl-2-[(2-methyl-1-oxo-2-propenyl)-oxy]-, chloride; 2-propenoic acid, 2-methyl-, oxiranylmethyl ester; 2-propenoic acid, 2-ethoxyethyl ester; and 2-propenoic acid, 2[[heptadecafluoro-octyl)sulfonyl] methyl amino]ethyl ester.	For use only as an oil and water repellant at a level not to exceed 0.5 percent by weight of the finished paper and paperboard in contact with nonalcoholic foods under conditions of use C, D, E, F, G, or H described in table 2 of paragraph (c) of this section.
* * *	* * *

* * * * *

Dated: January 20, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87–2455 Filed 2–4–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1306

Refilling of Prescription for Controlled Substances in Schedules III and IV

Note.—The following document was originally published January 16, 1987, on page 1903. It is being republished due to subsequent OMB review and approval. The substance of the document is the same; however, the effective date has been changed.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: The final rule amends 21 CFR 1306.22 to allow additional refills of an original prescription authorized by the prescribing practitioner, as long as the number of refills, including those authorized on the original prescription, do not exceed the five refill limitation nor extend beyond six months from the date of issue of the original prescription.

EFFECTIVE DATE: March 9, 1987.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, State and Industry Section, Office of Diversion Control, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537 (202–633–1216).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in the **Federal Register** on June 16, 1986 (51 FR 21773) to amend 21 CFR 1306.22. This proposed rulemaking provided opportunity for interested parties to submit comments or objections in writing on or before August 15, 1986.

Eleven comments were received in response to the notice of proposed rulemaking. A letter dated August 8, 1986 from the American Medical Association stated that the AMA supports the proposed change, but strongly recommended that the impact of the proposed change be monitored closely to ensure that it does not result in increased illicit diversion. The comments dated June 27, 1986 from the National Association of Chain Drug Stores, Inc. and July 10, 1986 from the Retired Persons Services, Inc., AARP Pharmacy Service were in support of the proposal. Comments dated June 26, 1986 from the Georgia Pharmaceutical Association, Inc. support the proposal and the concept of allowing refill information to be maintained on the back of the prescription or "on another appropriate document." Additional support for the proposal was received in comments dated July 8, 1986 from the South Carolina Board of Pharmacy which noted that the change will save the pharmacist and the patient valuable time. Comments of July 7, 1986 from Jack Eckerd Corporation support the proposal, noting that it is in keeping with safe pharmaceutical practice for non-controlled substances and will permit pharmacists to provide more efficient care to their patients. Comments of July 1, 1986 from Pay Less Northwest Drug Stores, Inc. support the proposal, indicating that the real benefit of the proposed amendment would be to establish a single source reference to monitor refill activity, which better detects possible abuse or too frequent refill activity. Super X Drug Stores in their comments of July 2, 1986 support the proposal, as well as La Verdiere's Super Drug Stores comments on August 21, 1986 which stated that in addition to saving time, it would make for a much more efficient patient reference system.

The only negative comments received were from the State of New Jersey Department of Health, Division of Narcotic and Drug Abuse Control dated July 3, 1986 and from the State of New Jersey Department of Law and Public Safety, Division of Consumer Affairs, State Board of Pharmacy dated August 8, 1986. They expressed concern that the new regulation on the refilling of prescriptions for Schedule III and IV controlled substances would not have any significant impact upon the reduction in paperwork for a pharmacist. They also stated that the educational process of instructing pharmacists about the new regulations would not be cost effective.

It is the opinion of the DEA that the revision will reduce the paperwork required of dispensing pharmacists since they will not be required to prepare a new prescription for each additional refill authorized by the prescribing practitioner. The pharmacist will be permitted to record the refill authorization on the reverse of the original prescription. The new regulation reduces the number of records to which a pharmacist must refer when dispensing a controlled substance to an individual patient. It also establishes a single source document from which to monitor refill activity, thereby more easily detecting abuse and/or frequent refilling. DEA has an instructional booklet available for pharmacists that will be updated to inform them about the new regulations.

States are not obliged to change their requirements. If they wish to maintain more stringent requirements to address their particular concerns, it is certainly within their purview. When both Federal and state laws and regulations address the same area of concern, the more stringent requirements will apply.

The Deputy Assistant Administrator hereby certifies that this final rule will have no significant impact upon small businesses whose interests must be considered under the Regulatory Flexibility Act, 5 U.S. 601, et seq. It will in fact reduce records required by a dispensing pharmacy.

Pursuant to sections 3(c)(3) and 3(e)(2)(B) of the Executive Order 12291, this action has been submitted for review by the Office of Management and Budget, and approval of that Office has been requested pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq.

Therefore, pursuant to the authority vested in the Attorney General by 21 U.S.C. 821 and 871(b) as delegated to the Administrator of the Drug Enforcement Administration and redelegated to the Deputy Assistant Administrator of the Office of Diversion Control by 28 CFR 0.100 and 0.104, the Deputy Assistance Administrator hereby orders that Part 1306 of Title 21, Code of Federal Regulations be amended as follows:

List of Subjects in 21 CFR Part 1306

Drug traffic control, Prescription requirements.

PART 1306—[AMENDED]

1. The authority for Part 1306 continues to read as follows:

Authority: 21 U.S.C. 821, 829, and 871(b).

2. Section 1306.22 is amended by revising paragraph (a) to read as follows:

§ 1306.22 Refilling of prescriptions.

(a) No prescription for a controlled substance listed in Schedule III or IV shall be filled or refilled more than six months after the date on which such prescription was issued and no such prescription authorized to be refilled may be refilled more than five times. Each refilling of a prescription shall be entered on the back of the prescription or on another appropriate document. If entered on another document, such as a medication record, the document must be uniformly maintained and readily retrievable. The following information must be retrievable by the prescription number consisting of the name and dosage form of the controlled substance, the date filled or refilled, the quantity dispensed, initials of the dispensing pharmacist for each refill, and the total number of refills for that prescription. If the pharmacist merely initials and dates the back of the prescription it shall be deemed that the full face amount of the prescription has been dispensed. The prescribing practitioner may authorize additional refills of Schedule III or IV controlled substances on the original prescription through an oral refill authorization transmitted to the pharmacist provided the following conditions are met:

(1) The total quantity authorized, including the amount of the original prescription, does not exceed five refills nor extend beyond six months from the date of issue of the original prescription.

(2) The pharmacist obtaining the oral authorization records on the reverse of the original prescription the date, quantity of refill, number of additional refills authorized, and initials the prescription showing who received the authorization from the prescribing practioner who issued the original prescription.

(3) The quantity of each additional refill authorized is equal to or less than the quantity authorized for the initial filling of the original prescription.

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(4) The prescribing practitioner must execute a new and separate prescription for any additional quantities beyond the five refill, six-month limitation.

* * * * *

Dated: January 22, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-2291 Filed 2-4-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 200, 203, 220, and 228

[Docket No. R-87-1189; FR-1927]

Mortgage Insurance—Claims Without Conveyance of Title; Bidding Requirements for Foreclosure Sales; Correction of Effective Date

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule; correction of effective date.

SUMMARY: This document corrects the effective date contained in a final rule authorizing the Secretary to permit mortgagees to submit claims for the payment of mortgage insurance benefits on foreclosed single family properties without conveying title to the foreclosed properties to the Secretary. The rule was published in the **Federal Register** on January 13, 1987 (52 FR 1320).

EFFECTIVE DATE: April 1, 1987.

FOR FURTHER INFORMATION CONTACT: Fred W. Pfaender, Director, Single Family Servicing Division, Office of Single Family Housing, Department of Housing and Urban Development, Room 9180, 451 Seventh Street, SW., Washington, DC 20410, telephone No. (202) 755-6672. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Accordingly, the following correction is made in FR Doc. 87-552 appearing on page 1320 in the issue of January 13, 1987:

On page 1320, third column, the effective date is corrected to read "**EFFECTIVE DATE:** April 1, 1987."

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: January 30, 1987.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 87-2299 Filed 2-4-87; 8:45 am]

BILLING CODE 4210-27-M

24 CFR Parts 203, 204, 250, 251, and 255

[Docket No. R-87-1306; FR-2252]

Eligibility Requirements: Mortgagee Approval

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule adopts as final an interim rule setting forth HUD approval requirements for mortgagees participating in its mortgage insurance programs. Certain revisions are made in the interim rule in order to further simplify these eligibility requirements and to clarify the text by consolidating related provisions.

EFFECTIVE DATE: March 17, 1987.

FOR FURTHER INFORMATION CONTACT: Andrew Zirneklis, Office of Lender Activities and Land Sales Registration, Department of Housing and Urban Development, Room 9146, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-6924 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department published an interim rule revising its mortgagee approval requirements in the **Federal Register** (45 FR 50561) on July 30, 1980. The revision was largely a restating and updating of existing regulations HUD requirements. However, there were significant new provisions including (1) requiring mortgagees to implement and maintain a quality control plan, (2) requiring mortgagee payment of application and annual fees, (3) making limited partnerships eligible as approved mortgagees, (4) prohibiting the use of non-approved mortgagees as authorized agents after July 30, 1983, (5) requiring an adjusted net worth of at least $100,000 for nonsupervised mortgagees, (6) requiring nonsupervised mortgagees to establish a warehouse line of credit, and (7) establishing more detailed requirements for loan correspondents.

More than 25 individuals and organizations submitted comments on the interim rule within the public comment period. A section-by-section discussion of the more recurrent and significant public comments on the interim rule, and the changes made by this final rule, follows.

Section 203.1 Approval of Mortgagees.

One comment on this section concerned the prohibited payments language in revised § 203.1(b) of the interim rule. It recommended that mortgagees be permitted to compensate a person who provided a service related to a loan transaction, regardless of whether any other compensation was received from the mortgagor, seller, builder or any other person. In justification, the commenter stated that this would permit the mortgagee to train and utilize personnel in outlying areas, thus providing a worthwhile service to home buyers and more effective coverage for HUD programs.

The Department does not accept this recommendation since it would nullify its policy against the payment of referral fees by a mortgagee. It should be noted that paragraph 203.1(b) already allows for the payment by a mortgagee of such "compensation as may be approved by the Commissioner" for services actually performed and, with respect to rural or outlying areas, HUD currently permits mortgagees to compensate licensed real estate brokers for actual services performed in preparing a HUD-FHA loan application if certain criteria are met. This compensation may be in addition to any real estate commission to be received. The Department believes that this policy, as currently set forth in Mortgagee Letter 83-17, adequately meets the concerns expressed by the commenter concerning outlying areas.

A second comment suggested that mortgagees be permitted to pay referral fees to individuals who serve in an originating capacity for multifamily projects, have no identity of interest with a mortgagor, his agent, or the mortgagee and receive no other compensation in connection with the transaction. We do not accept this recommendation as there would be a significant additional administrative burden placed on the Department with respect to reviewing each multifamily transaction to determine whether an identity of interest exists and whether other compensation was received.

Except for nonsubstantive, clarifying language changes made in paragraph 203.1(b) and a reference in paragraph (a) to the fact that additional approval is required for direct endorsement or coinsuring mortgagees, there are no changes in this section from the interim rule.

Section 203.2 Approval requirements.

Several comments were received with respect to this section. One comment objected to the wording of § 203.2(a)(2), requiring employment of "trained personnel competent in all aspects of mortgage lending", saying that it is nonspecific and possibly subject to unduly restrictive interpretation by HUD for compliance purposes.

We have revised the language in this paragraph to provide that mortgagees are required to employ trained personnel competent to perform assigned responsibilities. Individual employees are not required to be trained in all aspects of a mortgagee's lending activities. This clarifies the intent of HUD under the existing regulation; no change in policy is reflected in the revision.

One comment concerned § 203.2(a)(6)—compliance with HUD servicing requirements under Subpart C of Part 203. It suggested that since some mortgagees do not service mortgages, the language in this requirement should be clarified. We believe that the language contained in Subpart C already clearly sets forth the exact extent and nature of a mortgagee's servicing responsibilities. The reference in § 203.2(a)(6) (which is now designated as 203.2(f)) is only intended to provide mortgagees servicing insured mortgages with notice that noncompliance with HUD servicing requirements under Subpart C constitutes a basis for the withdrawal of mortgagee approval by the Department.

Another comment, concerning the Yearly Verification Report required by § 203.2(a)(8) (now designated as 203.2(h)), recommends that the content of the report be specified. Also, there was concern that the requirement may be unnecessarily burdensome. The Department has specified the reporting requirements of this section in HUD Handbook 4060.1, Mortgagee Approval Handbook. There is minimal burden because HUD generates the report and all the mortgagee must do is to confirm the information. The information is necessary to maintain the Department's computerized list of all approved mortgagees, which is used in the collection of annual "user fees" from mortgagees and in sending timely communications to mortgagees concerning HUD program requirements and other necessary information. The Department will retain this requirement unchanged.

Two comments concerned the Quality Control Plan required by § 203.2(a)(10) (now designated as 203.2(j)). Both comments suggested that requirements concerning quality control be set forth in a handbook rather than by regulation. This, in fact, is the case. The Department has set forth the guidelines for an acceptable Quality Control Plan in HUD Handbook 4060.1. The Department does not adopt the suggestion of eliminating from the regulations any reference to this requirement. A regulatory provision is necessary for purposes of notice and enforcement.

Three comments were received with respect to the fee provisions of § 203.2(a)(11) (now designated as 203.2(k)). Two comments objected to the fee requirement on the grounds that the payment of application and annual fees by mortgagees would ultimately raise the cost of the loan transaction to the consumer and that the payment of mortgage insurance premiums should cover the costs involved in administering the mortgagee approval program. A third comment suggested that if fees are required, the Department should increase the present permissible one percent loan origination fee that mortgagees may collect from the borrower. The Department does not accept the suggestions put forth by the first two comments. Based on our operating experience, the required $300 application fee and $200 annual fee has not raised significantly the cost of a HUD-insured mortgage transaction and these fees have helped to defray the costs of approving and supervising mortgagees. The third comment is considered beyond the scope of this final rule.

One comment was received suggesting that the indictment or conviction of the mortgagee applicant (or any officer, partner, director, principal or employee of the applicant) of an offense which reflects upon the responsibility, integrity or the ability of the mortgagee to participate in HUD programs as an approved mortgagee should be a basis for rejecting an application. The Department has adopted this comment in the new § 203.2(*l*) contained in this final rule. The Department has also included in this new paragraph its existing policy of rejecting an application if the applicant or any officer, partner, director, principal or employee of the applicant is suspended, debarred or otherwise restricted under Part 24 or Part 25 of this title or under similar procedures of any other Federal agency.

In addition, two existing regulatory requirements (see 24 CFR 200.230(c)(6) and 24 CFR 25.9(p)), with which failure to comply could result in debarment or exclusion from participation in HUD programs, are expressly included in the FHA Commissioner's requirements for mortgagee approval. Provisions are added to paragraph 203.2(*l*) requiring that, at the time of application, neither the mortgagee applicant nor any officer, partner, director, principal or employee of the applicant may (1) be subject to unresolved findings as a result of HUD or other governmental audits or investigations or (2) be engaged in business practices which fail to conform to generally accepted practices of prudent lenders or which demonstrate irresponsibility.

Finally, the separate requirements for limited partnerships in § 203.2(b) (1)–(3) of the interim rule have been consolidated in this final rule.

Section 203.3 Supervised mortgagees.

Numerous comments were received with respect to § 203.3(e). That paragraph prohibits the use of Authorized Agents in connection with HUD-insured mortgage transactions after July 30, 1983, where the Authorized Agent is not a HUD-approved mortgagee.

The interim rule provided a three-year period for Authorized Agents to make this change. The transition has already taken place and the issue is moot.

Section 203.4 Nonsupervised mortgagees.

Section 203.4(b)(1) has been revised to eliminate reference to the three-year interim period provided by the Department to mortgagees previously approved with a net worth or trust estate of less than $100,000 to increase their net worth to the required amount. This period expired on July 30, 1983.

Two comments were received recommending that the Department's minimum adjusted net worth requirement of $100,000 for mortgagee approval be increased. We believe that current net worth requirements are adequate and therefore have not adopted this recommendation.

Another commenter recommended that the minimum required warehouse line of credit of $250,000 (as set forth in § 203.4(b)(2)) be increased. The Department has not adopted this recommendation. Higher requirements could prevent some small mortgagees from qualifying for HUD approval and an increase is not considered necessary to protect Federal financial interests.

One comment was received with respect to the escrow analysis required by § 203.4(b)(4)(i). The comment stated that the requirement was not clear and should be deleted. The Department does not agree. The requirement for escrow analysis is not new and is not a separate reporting requirement, but rather an integral part of an audited financial statement.

A question was raised concerning whether the compliance test referenced in § 203.4(b)(4)(ii) imposed an unnecessary burden on small mortgagees. The Department agrees that this may possibly be the case, and

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therefore is adding, in this final rule, a new § 203.4(c) providing that mortgagees that originate less than 100 HUD-insured single family mortgages annually may submit a Management Letter prepared by a Certified Public Accountant or Independent Public Accountant, and a Management Letter response prepared by senior management, in lieu of the compliance report. This lesser requirement will ease audit costs to small mortgagees participating in the Department's mortgage insurance programs, since the CPA will not have to perform the detailed compliance testing set forth in HUD Handbook IG 4000.3 Rev.

In addition to providing a reduced compliance burden for smaller mortgagees, this rule also extends, from 75 to 90 days, the time period within which a mortgagee must file with HUD its audit report or Management Letter. The extension should prove helpful to mortgagees and does not adversely affect Federal financial interests.

One comment suggested elimination of the requirement contained in § 203.4(b)(4) authorizing HUD to require the submission of an audit report at such times as the Department may require. The Department does not adopt this suggestion. We have found that this authority is necessary if HUD is to make a timely determination regarding continuation or withdrawal of mortgagee approval where the mortgagee is experiencing financial problems. The final rule also revises § 203.4(b)(4) to set forth the Department's authority to grant extensions of time for filing audited financial statements.

Another comment recommended that HUD define in these regulations the term "branch office". We have not adopted this recommendation. The requirements for a branch office are currently set forth in Form HUD 92001B and HUD Handbook 4060.1, the Mortgagee Approval Handbook, and are available to all mortgagees.

Section 203.5 Loan correspondents.

On December 19, 1985, the Department published in the **Federal Register**, after opportunity for public comment, a final rule revising the eligibility criteria for loan correspondents (50 FR 51673). The rule (1) increases the net worth requirement from $5,000 to $25,000, (2) permits nonsupervised and governmental HUD-approved mortgagees to sponsor loan correspondents, (3) requires, except under the direct endorsement program (where loans must be underwritten by the mortgagee-sponsor) that all loans be underwritten and closed in the loan correspondent's own name, and (4) permits loan correspondents to maintain branch offices upon meeting an additional $25,000 net worth requirement for each branch office until an adjusted net worth of $100,000 is reached. The recent revision of § 203.5 is now in effect. The section is promulgated again in this rule in order to make a language change which makes express something already implied, *i.e.*, that a loan correspondent not only must meet, but also must maintain, an additional $25,000 net worth requirement to continue to operate its branch offices.

Section 203.6 Investing mortgagees.

This section has been revised in the final rule to eliminate the requirement that an investing mortgagee have real estate experience. An investing mortgagee may not originate or service HUD-insured mortgages. It purchases mortgages from other HUD-approved mortgagees and arranges for their servicing. The Department has determined that because of the passive nature of the mortgage operations of such institutions there is no need to require previous real estate experience.

Section 203.7 Governmental Institutions and National Mortgage Associations.

We have combined § 203.8 (Special Purpose Mortgagees) with this section since special purpose mortgagees are, as a matter of practice, governmental institutions or instrumentalities of such institutions.

Also, on August 27, 1985, the Department published a final rule (51 FR 30478), that adopted an interim rule published in the **Federal Register** on September 27, 1985 (50 FR 39083), that extensively revised 24 CFR Part 44 in order to implement the Single Audit Act of 1984 (31 U.S.C. 7501–7507) and OMB Circular A–128. The interim rule contained a provision revising § 203.7 by adding a paragraph requiring State and local governments (as defined in Part 44), that receive mortgage insurance as mortagees, to conduct audits in accordance with HUD audit requirements at 24 CFR Part 44. This rule includes this audit paragraph as part of the revised § 203.7.

The consolidation of §§ 203.7 and 203.8 requires the technical correction of certain cross references to those sections found in Parts 204, 250, 251, and 255 of Title 24. These corrections, and the correction of two other cross references, are included in this rule.

Procedural Requirements

This rule does not constitute a "major rule" as that term is defined in section (b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, 451 Seventh Street, S.W., Washington, DC 20410.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The substantive changes made in this final rule are minimal and will affect small and large entities equally. (As indicated earlier, § 203.4(c) of the rule contains provisions designed to ease the regulatory burden on small mortgagees with reference to otherwise applicable compliance testing procedures.)

This rule was listed as Sequence Number 853 under the Office of Housing as item H–30–86 in the Department's Semiannual Agenda of Regulations published on October 27, 1986 (51 FR 38424), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The information collection requirements contained in this regulation (Sections 203.1(a)(1), 203.2(g), 20.2(h), 203.2(i), 203.2(j), and 203.4(b)(4)) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 2502–0005.

The following numbers identify the program listed in the Catalog of Federal Domestic Assistance affected by this regulation change.

Section 203(b)	= 14.117 Mortgage Insurance—Homes (F). 14.118 Mortgage Insurance—Homes for Certified Veterans (F).
Section 203(k)	= 14.108 Rehabilitation Mortgage Insurance (F).
Section 213	= 14.126 Mortgage Insurance—Management Type Cooperative Projects (F).
Section 220	= 14.122 Mortgage Insurance—Homes in Urban Renewal Areas (F).
Section 221(d)(2)	= 14.120 Mortgage Insurance—Homes for Low and Moderate Income Families (F).
Section 222	= 14.166 Mortgage Insurance—Servicemen (F).
Section 234(c)	= 14.133 Mortgage Insurance—Purchase of Units in Condominiums (F).
Section 235(i)	= 14.105 Interest Reduction—Homes For Lower Income Families (C.F).
Section 240	= 14.130 Mortgage Insurance—Purchase by Homeowners of the Fee Simple Title by Lessors (F).
Section 207	= 14.134 Mortgage Insurance—Rental Housing (F)
Section 207 (Mobile Home Parks)	= 14.127 Mortgage Insurance—Mobile Home.
Section 213	= 14.115 Mortgage Insurance—Development of Sales Type Cooperative Projects (F). = 14.124 Mortgage Insurance—Investor Sponsored Cooperative Housing (F). = 14.132 Mortgage Insurance—Purchase or Sales-Type Cooperative Housing Units (F).
Section 220	= 14.139 Mortgage Insurance—Rental Housing in Urban Renewal Areas (F).
Section 221(d)(3)	= 14.137 Mortgage Insurance—Rental and Cooperative Housing for Low and Moderate Income Families. Market Interest Rate (F).
Section 221(d)(4)	= 14.135 Mortgage Insurance—Rental Housing for Moderate Income Families (F).
Section 231	= 14.138 Mortgage Insurance—Rental Housing for the Elderly (F).
Section 232	= 14.129 Mortgage Insurance—Nursing Homes and Intermediate Care Facilities (F).
Section 241	= 14.151 Supplemental Loan Insurance—Multifamily Rental Housing (F).
Section 242	= 14.128 Mortgage Insurance—Hospitals (F).
Title X	= 14.125 Mortgage Insurance—Land Development and New Communities (F).

List of Subjects in 24 CFR Part 203

Home improvement, Loan program: Housing and Community Development, Mortgage insurance, Solar energy.

Accordingly, 24 CFR Part 203 is amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for Part 203 continues to read as follows:

Authority: Secs. 203, 204, and 211, National Housing Act (12 U.S.C. 1709, 1710, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, Subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

2. Sections 203.1 through 203.7 are revised to read as set forth below and §§ 203.8 and 203.9 are removed and reserved.

§ 203.1 Approval of mortgagees.

(a) *General.* (1) A mortgagee may be approved for participation in the HUD/FHA mortgage insurance programs upon filing a request for approval on a form prescribed by the Commissioner. Approval of the application shall constitute an agreement between the mortgagee and the Commissioner which shall govern the mortgagee's continued approval subject to the provisions of this part.

(2) Approval may be restricted to participation in the home mortgage insurance programs or the multifamily mortgage insurance programs, and to geographic areas designated by the Commissioner.

(3) Separate approval is required under the National Housing Act for participation in the Title I Program, and additional approval is required for participation in the Title II Direct Endorsement Program or for each of the Coinsurance Programs.

(b) *Prohibited payments.* A mortgagee may not pay anything of value, directly or indirectly, in connection with any insured mortgage transaction or transactions to any person or entity if such person or entity has received any other compensation from the mortgagor, seller, builder, or any other person for services related to such transactions or related to the purchase or sale of the mortgaged property, except that compensation as may be approved by the Commissioner may be paid for services actually performed. The mortgagee shall not pay a referral fee to any person or organization.

(c) *Withdrawal of approval.* Mortgagee approval may be withdrawn by the Mortgagee Review Board as provided in Part 25 of this title. Withdrawal of a mortgagee's approval shall not affect the insurance on mortgages already accepted for insurance.

(Approved by the Office of Management and Budget under control number 2502–0005)

§ 203.2 Approval requirements.

To be approved for participation in the HUD–FHA mortgage insurance programs, and to maintain approval, a mortgagee shall meet the following general requirements and the specific requirements of § 203.3 through § 203.7, as appropriate.

(a) It shall be a chartered institution, a permanent organization having succession, or a trust. A limited partnership will be considered a permanent organization having succession for purposes of this section if the partnership has not more than one general partner and the general partner is a chartered institution that has as its principal activity the management of the partnership affairs. If these conditions are met, the requirements of paragraphs (b) and (c) of this section shall be

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treated as applicable to the general partner.

(b) It employs trained personnel competent to perform their assigned responsibilities, including origination, servicing and collection activities, and adequate staff and facilities to originate and service mortgages in accordance with this part, to the extent the mortgagee engages in such activities.

(c) All employees who will sign applications for mortgage insurance on behalf of the mortgagee shall be corporate officers or shall otherwise be authorized to bind the mortgagee in matters involving the origination of mortgage loans.

(d) It shall not use escrow funds for any purpose other than that for which they were received.

(e) It shall comply with the provisions of Title VIII of the Civil Rights Act of 1968, the Equal Credit Opportunity Act, the Real Estate Settlement Procedures Act of 1974 and all other Federal laws relating to the lending or investing of funds in real estate mortgages.

(f) It shall comply with the servicing responsibilities contained in Subpart C of this part, with all other applicable regulations contained in this title and with such additional conditions and requirements as the Commissioner may impose.

(g) It shall provide prompt notification, on a form prescribed by the Commissioner, of all changes in its legal structure, including, but not limited to mergers, terminations, name, location, control of ownership, and character of business.

(h) It shall file a yearly verification report on a form prescribed by the Commissioner.

(i) It shall, upon request, submit a copy of its latest financial statement, submit such information as the Commissioner may request, and submit to an examination of that portion of its records which relates to its insured mortgage activities.

(j) It shall implement a written Quality Control Plan that assures compliance with the regulations and other issuances of the Commissioner regarding loan origination and servicing.

(k) A mortgagee, other than one meeting the requirements of § 203.7, shall pay an application fee and annual fees, including additional fees for each branch office authorized to submit applications for mortgage insurance, in such amounts and at such times as the Commissioner may require.

(l) At the time of application, neither the applicant mortgagee nor any officer, partner, director, principal or employee of the applicant mortgagee shall:

(1) Be suspended, debarred or otherwise restricted under Part 24 or Part 25 of this title or under similar procedures of any other Federal agency.

(2) Be indicted for, or have been convicted of, an offense which reflects upon the responsibility, integrity or ability of the mortgagee to participate in HUD programs as an approved mortgagee.

(3) Be subject to unresolved findings as a result of HUD or other governmental audits or investigations.

(4) Be engaged in business practices that do not conform to generally accepted practices of prudent lenders or that demonstrate irresponsibility.

(Approved by the Office of Management and Budget under control number 2502–0005)

§ 203.3 Supervised mortgagees.

(a) A supervised mortgagee may submit applications for mortgage insurance and may purchase, hold, service and sell insured mortgages.

(b) An institution may be approved as a supervised mortgagee on application to the Commissioner if it is either:

(1) A member of the Federal Reserve System or an institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation, the Federal Deposit Insurance Corporation or the National Credit Union Administration and that meets the requirements of § 203.2; or,

(2) An institution subject to the inspection and supervision of a governmental agency that is required by law or applicable regulation to make periodic examinations of its books and accounts, provided the institution meets the requirements of § 203.2 and the following additional requirements:

(i) It shall promptly notify the Commissioner in the event of termination of its supervision by its supervising agency.

(ii) It shall have and maintain a net worth or a trust estate as provided in § 203.4(b)(1).

(c) A supervised mortgagee may, on application to the Commissioner, maintain branch offices for the submission of applications for mortgage insurance. The mortgagee shall remain fully responsible to the Commissioner for the actions of its branch offices.

(d) A supervised mortgagee may, with the approval of the Commissioner, designate another approved mortgagee as Authorized Agent for the purpose of submitting applications for mortgage insurance in its name and on its behalf.

(e) Approval of a banking institution or a trust company as a supervised mortgagee shall constitute approval of such institution or company when lawfully acting in a fiduciary capacity in investing fiduciary funds which are under its individual or joint control. Upon termination of such fiduciary relationship, any insured mortgages held in the fiduciary estate shall be transferred to a mortgagee approved under this section and the fiduciary relationship must be such as to permit such transfer.

§ 203.4 Nonsupervised mortgagees.

(a) A nonsupervised mortgagee is an institution that has as its principal activity the lending or investment of funds in real estate mortgages, but does not meet the requirements of a supervised mortgagee as provided in §203.3. A nonsupervised mortgagee may submit applications for the insurance of mortgages and may purchase, hold, service and sell insured mortgages.

(b) A mortgagee may be approved as a nonsupervised mortgagee if it meets the approval requirements of § 203.2 and the following special requirements:

(1) It shall have and maintain a net worth or a trust estate of not less than $100,000 in assets acceptable to the Commissioner.

(2) It shall have and maintain a reliable warehouse line of credit in an amount of not less than $250,000, available for use in the origination of mortgages or other mortgage funding programs acceptable to the Commissioner.

(3) It shall segregate escrow commitment deposits, work completion deposits, and all periodic payments received under insured mortgages on account of ground rents, taxes, assessments, and insurance premiums, and shall deposit such funds in a special account or accounts with a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or the National Credit Union Administration.

(4) It shall file an audit report with the Commissioner within 90 days of the close of its fiscal year (or within an extended time if an extension is granted in the sole discretion of the Commissioner), and at such other times as may be requested. Audit reports shall be based on audits performed by a Certified Public Accountant, or by an Independent Public Accountant licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970, and shall include:

(i) A financial statement in a form acceptable to the Commissioner, including a balance sheet and a statement of operations and retained earnings, and analysis of the mortgagee's net worth, adjusted to reflect only assets acceptable to the Commissioner, and an analysis of escrow funds.

(ii) A report on compliance tests prescribed by the Commissioner.

(iii) Such other information as the Commissioner may require.

(c) A nonsupervised mortgagee that originates 100 or fewer FHA-insured single family mortgages annually shall be exempt from the provisions of § 203.4(b)(4)(ii), if it files with the Commissioner, within 90 days of the close of its fiscal year, a certification by a senior official of the mortgagee that it did not originate more than 100 FHA-insured single family mortgages during its fiscal year, and a Management Letter prepared by a Certified Public Accountant, or by an Independent Public Accountant licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970, which conforms with generally accepted auditing standards and which includes senior management's response to the Management Letter.

(d) A nonsupervised mortgagee may, on application to the Commissioner, maintain branch offices for the submission of applications for mortgage insurance. The mortgagee shall remain fully responsible to the Commissioner for the actions of its branch offices.

(Approved by the Office of Management and Budget under control number 2502–0005)

§ 203.5 Loan correspondents.

(a) A loan correspondent is an institution that originates and closes HUD/FHA insured mortgage loans for sale to its sponsor or sponsors. Except for the Direct Endorsement program authorized in §§ 200.163 through 200.164a of this chapter, it must process and close all loans in its own name. A loan correspondent may not sell insured mortgages to any mortgagee other than its sponsor or sponsors without the prior approval of the Commissioner, nor may it retain insured mortgages in its own portfolio. In connection with the Direct Endorsement program, a loan correspondent may not underwrite, but shall close in its own name, all loans for submission to HUD/FHA for insurance endorsement. Underwriting of Direct Endorsement loans shall be the responsibility of the loan correspondent's sponsor.

(b) A mortgagee may be approved as a loan correspondent if it meets the approval requirements of § 203.4, except that:

(1) Its approval must be requested by one or more sponsors that are HUD/FHA approved mortgagees under § 203.3, § 203.4, or § 203.7.

(2) It shall be exempt from the warehouse line of credit requirements of § 203.4(b)(2) where there is a written agreement by a sponsor to fund all mortgages originated by the loan correspondent.

(3) It shall have and maintain an adjusted net worth or trust estate of not less than $25,000 in assets acceptable to the Commissioner. Previously approved loan correspondents that have a net worth of less than $25,000 must meet this $25,000 net worth requirement on or before March 1, 1988.

(4) It may not, as authorized in § 203.4(d), maintain branch offices for the processing of loan applications and the submission of applications for a firm commitment without the prior approval of the Commissioner. Approval may be granted where the loan correspondent meets and maintains an additional $25,000 net worth requirement for each branch office it maintains until it has reached an adjusted net worth of not less than $100,000. Loan correspondents with an adjusted net worth of $100,000 or more may, with the prior approval of the Commissioner, open and maintain branch offices without meeting any additional net worth requirement. A loan correspondent shall remain fully responsible to the Commissioner for the actions of its branch offices.

(5) A loan correspondent and its sponsor or sponsors shall promptly notify the Commissioner upon termination of any loan correspondent agreement, and termination of its agreements with all its sponsors shall be cause for withdrawal of the loan correspondent's approval.

§ 203.6 Investing mortgagees.

(a) An investing mortgagee is an organization, including a charitable or nonprofit institution, pension fund or trust, that is not approved under other sections of this part. It may purchase, hold and sell insured mortgages but may not submit applications for the insurance of mortgages. An investing mortgagee may not service insured mortgages without prior approval of the Commissioner.

(b) An organization may be approved as an investing mortgagee if it meets the approval requirements of § 203.2, and the following special requirements:

(1) It has lawful authority to purchase insured mortgages in its own name.

(2) It has or has arranged for funds sufficient to support a projected investment in real estate mortgages of at least $1 million.

(3) It will provide, or will arrange for, the servicing of all mortgages it acquires.

§ 203.7 Governmental institutions, national mortgage associations, public housing agencies and state housing agencies.

(a) A Federal, State or municipal governmental agency, a Federal Reserve Bank, a Federal Home Loan Bank or a National Mortgage Association which meets the approval requirements of § 203.2 and is empowered to hold mortgages insured under the National Housing Act may be approved as an FHA mortgagee and may originate, purchase, hold, service and sell insured mortgages to the extent authorized by applicable Federal, State or local law.

(b) Under such terms and conditions as the Commissioner may prescribe, Public Housing Agencies or their instrumentalities may be approved as mortgagees for the purpose of originating and holding insured project mortgages funded by issuance of tax exempt obligations by the agency, if the housing project will be assisted under section 8 of the United States Housing Act of 1937.

(c) Under such terms and conditions as the Commissioner may prescribe, State Housing Agencies as defined in section 244(g) of the National Act may be approved as mortgagees for the purpose of originating and holding coinsured project mortgages pursuant to section 24 of that Act.

(d) A mortgagee approved under paragraph (a), (b) or (c) of this section may, with the approval of the Commissioner, designate another approved mortgagee as Authorized Agent for the purpose of submitting applications for mortgage insurance in the mortgagee's name and on its behalf.

(e) Since the insuring of mortgage notes or other evidence of indebtedness under the National Housing Act constitutes "financial assistance" for purposes of audit requirements set out in 24 CFR Part 44, State and local governments (as defined in § 44.2) that receive mortgage insurance as mortgagees shall conduct audits in accordance with HUD audit requirements at 24 CFR Part 44.

§ 203.8 [Reserved]

§ 203.9 [Reserved]

PART 204—COINSURANCE

3. The authority citation for Part 204 continues to read as follows:

Authority: Secs. 211 and 244, National Housing Act (12 U.S.C. 1715b and 1715z–9); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

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4. The introductory language in paragraphs (a) and (b) of §§ 204.2 is revised to read as follows:

§ 204.2 Approval of coinsuring mortgagees.

(a) A mortgagee approved under § 203.1, § 203.2 or § 203.4 of this chapter and meeting the following special requirements may be approved as a coinsuring mortgagee under this part:

* * * * *

(b) Approval of a coinsuring mortgagee under this part may be withdrawn for the causes provided in § 25.9 of this chapter or for any of the following causes:

* * * * *

PART 250—COINSURANCE FOR STATE HOUSING FINANCE AGENCIES

5. The authority citation for Part 250 is revised to read as follows:

Authority: Secs. 211 and 244, National Housing Act (12 U.S.C. 1715b and 1715z–9); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

6. The introductory language of § 250.202, and paragraph (h) are revised to read as follows:

§ 250.202 Withdrawal of approval.

The Commissioner may refrain from issuing a commitment for mortgage insurance authorized by this part with respect to any project proposed for coinsurance by an agency which has been given written notice by the Commissioner that its certification as an approved agency under this part may be suspended or withdrawn. Certification as an approved agency under this part may be suspended or withdrawn pursuant to the provisions of Part 24 of this title or for any of the following causes:

* * * * *

(h) Withdrawal of approval as a mortgagee pursuant to § 25.9 of this title.

* * * * *

PART 251—COINSURANCE FOR THE CONSTRUCTION OF SUBSTANTIAL REHABILITATION OF MULTIFAMILY HOUSING PROJECTS

7. The authority citation for Part 251 continues to read as follows:

Authority: Secs. 211 and 244, National Housing Act (12 U.S.C. 1715b, 1715z–9); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

8. Section 251.101 is revised to read as follows:

§ 251.101 Eligible lender.

The Commissioner may approve as a coinsuring lender any lender that (a) is currently a HUD-approved multifamily lender under 24 CFR 203.1 through 203.4, 203.6, or § 203.7(c), and (b) meets the requirements of § 251.102.

9. Section 251.105(a) is revised to read as follows:

§ 251.105 Delegation of servicing.

(a) The lender must directly service all coinsured loans included in GNMA securities pools. In all other instances, the lender may choose to service its coinsured loans or arrange for another entity to service the Mortgages as long as the contract servicer is a HUD-approved lender under §§ 203.1 through 203.6, or § 203.7(c) of this chapter and the coinsuring lender retains its obligations under this part.

* * * * *

PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

10. The authority citation for Part 255 continues to read as follows:

Authority: Secs. 211 and 244, National Housing Act (12 U.S.C. 1715b, 1715z–9); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

11. Section 255.101 is revised to read as follows:

§ 255.101 Eligible lender.

The Commissioner may approve as a coinsuring lender any lender that (a) is currently a HUD-approved multifamily lender under 24 CFR 203.1 through 203.4, 203.6, or § 203.7(c); and (b) meets the requirements of § 255.102.

12. Section 255.105(a) is revised to read as follows:

§ 255.105 Delegation of servicing.

(a) The lender must directly service all coinsured loans included in GNMA securities pools. In all other instances, the lender may choose to service its coinsurance loans or arrange for another entity to service the Mortgages, provided the contract servicer is a HUD-approved lender under §§ 203.1 through 203.4, 203.6, or § 203.7(c) of this chapter and the coinsuring lender retains its obligations under this part.

* * * * *

Dated: January 23, 1987.

Thomas T. Demery,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 87–2303 Filed 2–4–87; 8:45 am]

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24 CFR Parts 510 and 570

[Docket No. R–86–1286; FR–2151]

Section 312 Rehabilitation Loan Program and Urban Development Action Grant Progam; Relocation Requirements

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: The Department is revising its relocation requirements for those displaced by rehabilitation activities under the Section 312 Rehabilitation Loan Program and the Urban Development Action Grant Program. These amendments provide greater consistency in the treatment of persons who are displaced by HUD-assisted community development projects, but who are not covered by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

EFFECTIVE DATE: March 17, 1987.

This rule applies to any displacement which occurs on or after March 17, 1987.

FOR FURTHER INFORMATION CONTACT: Melvin Geffner, Deputy Director; Roland Brown, Georgian Carter, or Alvin West, Relocation and Real Estate Division, Room 7174, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 24100–7000. Telephone (202) 755–6336. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

1. Background

On June 4, 1986, the Department published a proposed rule in the **Federal Register** (see 51 FR 20312), requesting comments on revisions to its relocation requirements for two of its programs—the Section 312 Rehabilitation Loan Program and the Urban Development Action Grant Program.

The Department proposed to adopt relocation requirements for non-Uniform Act Section 312 Program activities that are similar to those it plans to adopt to implement Section 104(j) of the Housing and Community Development Act of 1974. Section 104(j) requires that reasonable relocation benefits be provided to persons displaced by rehabilitation or non-Uniform Act acquisition under the Community Development Block Grant (CDBG) Program or Urban Development Action Grant (UDAG) Program. The proposed changes were designed to simplify current requirements and make them more consistent with relocation requirements under other HUD-assisted activities not subject to the Uniform Act.

In addition, the Department proposed changes to § 570.457, the Urban Development Action Grant (UDAG) Program's requirements on relocation assistance. Paragraph (a) of this section makes it clear that the acquisition of real property by a "State agency" under the UDAG program and displacement resulting from such acquisition are subject to the provision of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act). Rather than repeat standards contained in other regulations, paragraph (b) refers the user to § 570.606(a) and 24 CFR Part 42 for specific instructions on implementation of the Uniform Act.

Paragraph (c) of § 570.457 sets forth relocation requirements governing non-Uniform Act displacements under UDAG that are subject to the provisions of Section 104(j) of the Housing and Community Development Act of 1974 (the Act). Section 104(j) requires that reasonable relocation benefits be provided to any family, individual, business, nonprofit organization or farm "involuntarily and permanently displaced as a result of the use of assistance" under the CDBG or UDAG programs to acquire or substantially rehabilitate property. Because the statute covers displacement brought about as a result of the "use of assistance", the displacement-causing acquisition or rehabilitation activities of private developers are subject to the law and these implementing regulations.

These changes will improve consistency in relocation requirements under HUD-assisted community development programs not subject to the Uniform Act. Like the Section 312 relocation requirements referenced above, the changes to the UDAG rule expand the flexibility of the grantee to determine eligibility requirements for tenants displaced from a dwelling and also the amount of assistance to be provided. Consistent with certain minimums set forth in the rule, the grantee must develop, adopt and provide to persons to be displaced the standards it would follow.

The Department also proposed to revise § 750.458(c)(14)(ix)(I) to conform the required certification of compliance with applicable relocation and acquisition requirements to the changes proposed for § 570.457.

2. This Document

The Department received no public comment on the proposal, although it did receive two comments from field offices. Accordingly, the Department is making no substantive change in the rule as proposed. However, HUD is making an editorial change both to § 510.52(c) and to § 570.457(c)—to make it clear that the locality must provide *to persons to be displaced* the locality's standards in providing relocation assistance.

3. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410–0500.

Executive Order 12291

This rule does not constitute a major rule as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act of 1980

Under the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned certifies that this rule would not have a significant economic impact on a substantial number of small entities, because it does not affect the amount of funds provided under the Urban Development Action Grant Program or Section 312 Rehabilitation Loan Program, but rather eliminates unnecessary, administrative relocation requirements by making revisions to the rule consistent with recently enacted legislation.

HUD Semiannual Agenda

This rule was listed as item 919 in the Department's Semiannual Agenda of Regulations, published on October 27, 1986 (51 FR 38424, 38425) under Executive Order 12291 and the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements contained in this rule were submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 (44 U.S.C 3501–3520). All requirements have been approved and have been assigned OMB Control Number 2506–0084.

Catalog of Federal Domestic Assistance

The applicable Catalog numbers are 14.220 for the Section 312 Rehabilitation Loan Program and 14.221 for the Urban Development Action Grant Program.

List of Subjects

24 CFR Part 510

Loan programs: housing and community development, Housing, Relocation assistance, Home improvement, Rehabilitation, Urban renewal.

24 CFR Part 570

Community development block grants, Grant programs: housing and community development, Loan programs: housing and community development, Low and moderate income housing, New communities, Pockets of poverty, Small cities.

Accordingly, 24 CFR Chapter V is amended as follows:

PART 510—SECTION 312 REHABILITATION LOAN PROGRAM

1. The authority citation for Part 510 continues to read as follows:

Authority: Section 312, United States Housing Act of 1964 (42 U.S.C. 1452b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 510.52 is revised to read as follows:

§ 510.52 Relocation/displacement.

(a) *Responsibility of locality.* (1) The locality shall administer its Section 312 Rehabilitation Loan Program in a manner that minimizes any potential or actual involuntary displacement of tenants. Wherever it offers the potential of minimizing displacement, the locality shall require the owner to consider the feasibility of carrying out the rehabilitation in stages.

(2) The locality is responsible for ensuring compliance with the

requirements of this section. To pay the cost of the assistance required, the locality may use local public funds or Community Development Block Grant funds. The locality also may secure a commitment from any participating party in the program to provide all or part of the necessary funds. (To use Block Grant funds, the locality shall adopt a written policy in accordance with § 570.606(b) of this chapter.)

(3) If a locality determines that a residential tenant will not be displaced, it shall ensure that the terms and conditions of the tenant's continued occupancy are consistent with the locality's standards, are not more restrictive than those customary in the jurisdiction, and are set forth in a lease which is offered to the tenant.

(4) The locality shall maintain records in sufficient detail to demonstrate compliance with the requirements of this section.

(b) *Applicability of Uniform Act.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) and HUD implementing regulations at 24 CFR Part 42 apply to the displacement of any person (family, individual, business, nonprofit organization or farm) as a direct result of the acquisition of real property by a "State agency" (defined in section 101 of the Uniform Act, 42 U.S.C. 4601) for a federally assisted project, including a project where the Federal assistance is a Section 312 Rehabilitation Loan.

(c) *Non-Uniform Act Displacement.* Projects not subject to the Uniform Act are subject to this paragraph (c). The locality shall provide reasonable relocation assistance to any residential or nonresidential tenant displaced as a direct result of an approved Section 312 Rehabilitation Loan activity. (The term "tenant" includes any family, individual, business, nonprofit organization or farm that is a renter.) The locality shall develop, adopt and provide to persons to be displaced a written statement of the standards it will use for providing relocation assistance, consistent with the following minimum requirements:

(1) A residential tenant who moves will be considered displaced from his or her dwelling if:

(i) The tenant has not been offered a decent, safe and sanitary dwelling unit on the real property at a cost for rent and estimated utility charges that does not exceed the greater of

(A) The tenant's cost for rent and utilities at the time of the submission of the preapplication (or the application, if there is no preapplication) to the HUD Office or

(B) 30 percent of the tenant household's gross income; or

(ii) Temporary relocation is required and the tenant is not reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation.

(2) Eligibility criteria must cover

(i) Any tenant legally occupying the property at the time of the submission of the preapplication (or application, if there is no preapplication) to the HUD office; and

(ii) Any tenant who legally moves into the property between such event and the actual rehabilitation without receiving prior written notice of his or her possible displacement as a result of the planned rehabilitation.

(3) Any residential or nonresidential tenant (but not an owner-occupant) who is determined under local standards to be displaced as a direct result of Section 312 Rehabilitation Loan activity shall be provided with relocation assistance, including at a minimum:

(i) Reasonable moving expenses;

(ii) Advisory services needed to help in relocating; and

(iii) For a displaced residential tenant:

(A) Referral to at least one suitable, decent, safe and sanitary replacement dwelling unit. The grantee shall advise tenants of their rights under the Federal Fair Housing Law (Title VIII) and of replacement housing opportunities in such manner that, wherever feasible, they will have a choice between relocating within their neighborhood and other neighborhoods consistent with the locality's responsibility to affirmatively further fair housing; and

(B) Either (*1*) Payment at least equal to 24 times the increase, if any, between the monthly cost of rent and utilities at the dwelling unit from which the tenant is displaced and the cost of rent and utilities at a suitable, decent, safe and sanitary replacement dwelling unit or (*2*) The provision of a certificate or housing voucher for rental assistance payments under the Section 8 Housing Assistance Payments Program if the tenant is an eligible lower income person.

(d) *Appeals.* If a person disagrees with the locality's determination concerning the person's eligibility for, or the amount of a relocation payment under this section, the person may file a written appeal of that determination with the locality. The appeal procedures to be followed are described at 24 CFR 42.10.

(Approved by the Office of Management and Budget under control number 2506–0084)

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

3. The authority citation for Part 570 continues to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. Section 570.457 is revised as follows:

§ 570.457 Relocation and acquisition.

(a) *Responsibility of the applicant.* (1) The applicant is responsible for ensuring compliance with the requirements of this section. To pay the cost of relocation assistance, including rental assistance payments, the applicant may use local public funds, action grant or entitlement community development block grant funds (see Subparts D and G of this part). The applicant also may secure a commitment from any participating party in the action grant program to provide all or part of the necessary funds. In order to use Block Grant funds, the applicant shall adopt a written policy in accordance with § 570.606(b).

(2) If the applicant determines that a residential occupant will not be displaced, it shall ensure that the terms and conditions of the person's continued occupancy are consistent with its established standards, are not more restrictive than those customary in the jurisdiction, and are set forth in a lease which is offered to the person.

(3) The applicant shall maintain records in sufficient detail to demonstrate compliance with the requirements of this section.

(b) *Applicability of the Uniform Act.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) and HUD implementing regulations in Part 42 of this title apply to the acquisition of real property by a "State agency" for an activity assisted under this subpart and to the displacement of any person (family, individual, business, nonprofit organization or farm) that results from the acquisition. "State agency" is defined in section 101 of the Uniform Act (42 U.S.C. 4601). *See* also § 570.606(a) for additional instructions on the implementation of the uniform Act.

(c) *Displacement not subject to the Uniform Act.* The displacement of any tenant (family, individual, business, nonprofit organization or farm) as a result of the acquisition of real property by an entity other than a State agency or rehabilitation for an activity assisted under this subpart is not subject to the Uniform Act. However, such displacement is subject to section 104(j) of the Housing and Community Development Act of 1974, which requires that reasonable relocation assistance be provided to persons

permanently and involuntarily displaced as a result of the use of assistance received under this part to acquire or substantially rehabilitate property where such displacement is not subject to the Uniform Act. The grantee shall develop, adopt, and provide to persons to be displaced a written statement of the standards it will use for providing relocation assistance, consistent with the following minimum requirements:

(1) A residential tenant who moves will be considered displaced from his or her dwelling if:

(i) The tenant has not been provided a decent, safe, and sanitary dwelling unit on the property following the completion of the assisted activity at a monthly cost for rent and utilities that does not exceed the greater of:

(A) The tenant's cost for rent and utilities at the time of preliminary funding approval for the UDAG assistance; or

(B) 30 percent of the tenant household's gross income; or

(ii) Temporary relocation is required and the tenant is not reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation.

(2) Eligibility criteria for relocation assistance must cover:

(i) Any tenant legally occupying the property at the time the grantee enters into a contract to provide assistance for the acquisition or rehabilitation; and

(ii) Any tenant who legally moves into the property between such event and the actual acquisition or rehabilitation without receiving prior written notice of his or her possible displacement as a result of the planned acquisition or rehabilitation.

(3) Any residential or nonresidential tenant who is determined under grantee standards to be displaced as a direct result of rehabilitation or acquisition assisted under this part (not subject to the Uniform Act) must be provided relocation assistance, including at a minimum:

(i) Reasonable moving expenses;

(ii) Advisory services needed to help in relocating; and

(iii) For a displaced residential tenant:

(A) Referral to at least one suitable, decent, safe and sanitary replacement dwelling unit. The grantee shall advise tenants of their rights under the Federal Fair Housing Law (Title VIII) and of replacement housing opportunities in such a manner that, whenever feasible, they will have a choice between relocating within their neighborhood and other neighborhoods consistent with the grantee's responsibility to affirmatively further fair housing; and

(B) Either (*1*) Payment at least equal to 24 times the increase, if any, between the monthly cost of rent and utilities at the dwelling unit from which the tenant is displaced and the cost of rent and utilities at a suitable, decent, safe and sanitary replacement dwelling unit, or (*2*) The provision of a certificate or housing voucher for rental assistance payments under the Section 8 Housing Assistance Payments Program, if the tenant is an eligible lower income person.

(4) For purposes of this paragraph (c), the term "tenant" includes any family, individual, business, nonprofit organization or farm that is a renter. It also includes any owner-occupant displaced as a direct result of non-Uniform Act acquisition by an agency with the power of eminent domain and any displaced owner-occupant of a manufactured (mobile) home who rents the site.

(d) *Appeals.* If a person disagrees with the applicant's determination concerning the person's eligibility for, or the amount of relocation payment under this section, the person may file a written appeal of that determination with the applicant. The appeal procedures to be followed are described in 24 CFR 42.10.

(Approved by the Office of Management and Budget under control number 2506–0084)

5. Section 570.458(c)(14)(ix)(I) is revised as follows:

§ 570.458 Full applications.

* * * * *

(c) * * *

(14) * * *

(ix) * * *

(I) The acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), HUD implementing regulations in Part 42 of this title, and the relocation requirements in § 570.457(c) governing displacement subject to section 104(j) of the Housing and Community Development Act of 1974.

* * * * *

Dated: January 23, 1987.

Jack R. Stockvis,

General Deputy, Assistant Secretary for Community Planning and Development.

[FR Doc. 87–2302 Filed 2–4–87; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 18, and 602

[T.D. 8123]

Income Taxes; Limitation on Certain Adoptions, Changes, and Retentions of Annual Accounting Period

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations and amendments to final rules.

SUMMARY: This document provides temporary regulations relating to certain changes, adoptions, and retentions of annual accounting period. The regulations are needed to ensure that taxpayers do not attempt to change to, adopt, or retain a taxable year that is a fiscal year (including a 52–53-week taxable year) in order to circumvent the effective date provisions of the Tax Reform Act of 1986. The regulations affect certain persons who wish to change to, adopt, or retain a taxable year that is a fiscal year during the period covered by the temporary regulations and provide these persons with the guidance needed to comply with the law.

EFFECTIVE DATES: For §§ 1.441–2(f), 1.441–3T, 1.442–1(f) and 1.442–2T, September 29, 1986; for §§ 1.442–3T, 1.706–1 (b) (7) and 18.1378–1 (e), November 5, 1986; for § 602.101 (c), January 22, 1987.

FOR FURTHER INFORMATION CONTACT: Arthur E. Davis III of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attn: CC:LR:T). Telephone 202–566–3238 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR Part 1) and the Temporary Income Tax Regulations under the Subchapter S Revision Act of 1982 (26 CFR Part 18) to provide temporary rules relating to certain changes, adoptions, and retentions of annual accounting period under sections 441, 442, 706, and 1378 of the Internal Revenue Code of 1954. In general, the temporary regulations limit the ability of certain taxpayers to change to, adopt, or retain a taxable year that is a fiscal year (including a 52–53-week taxable year ending with reference to the month of December) during the period to which the temporary regulations apply. The Internal Revenue Service announced in

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Announcement 86–101, 1986–41 I.R.B. 14, and Announcement 86–113, 1986–47 I.R.B. 46, that temporary regulations providing these limitations would be issued.

Explanation of Provisions Changes of Annual Accounting Period

The temporary regulations relating to changes of annual accounting period generally suspend the provisions of §§ 1.441–2 (c), 1.442–1 (c), and 1.706–1 (b) of 26 CFR Part 1, § 18.1378–1 of 26 CFR Part 18, Rev. Proc. 72–51, 1972–2 C.B. 832, and any revenue procedure issued before September 18, 1986, that otherwise would permit a taxpayer to change its taxable year (including a change to a 52–53-week taxable year) either under a procedure that does not require the prior approval of the Commissioner or under expedited procedures for securing that approval. In addition, the temporary regulations provide that the Commissioner generally will not consider a request for approval of a change of annual accounting period unless the taxpayer has had a substantial acquisition or divestiture determined in accordance with the temporary regulations, or the taxpayer meets certain other conditions. The temporary regulations allow certain taxpayers to change their annual accounting period without the prior approval of the Commissioner if the taxpayer has a substantial business purpose for the change as evidenced by the satisfaction of a mechanical test. Certain taxpayers, however, must obtain prior approval to a change even if the mechanical test is satisfied.

The mechanical test generally is the same as the "25 percent test" set forth in section 4.04 of Rev. Proc. 83–25, 1983–1 C.B. 689. Under the mechanical test, the gross receipts from sales or services for the last two months of each of three 12-month periods that end with the last month of the requested taxable year must equal or exceed 25 percent of the gross receipts from sales or services for that 12-month period. If more than one taxable year meets this mechanical test, a substantial business purpose is evidenced only for the year for which the arithmetical average of the percentages obtained under the mechanical test for the three applicable 12-month periods is highest.

For purposes of the mechanical test, the three 12-month periods are the most recent 12-month period (determined at the time the statement or application required to effect or request the change is filed) ending with the last month of the requested taxable year and the two preceding 12-month periods that end with the corresponding month. A taxpayer must test the three 12-month periods that end with months other than the last month of the requested taxable year, however, in order to determine if more than one taxable year meets the mechanical test.

A taxpayer that has not been in existence for the three 12-month periods described above may evidence a substantial business purpose under the mechanical test by taking into account the gross receipts from sales and services of a predecessor organization. Gross receipts of a predecessor organization shall not be taken into account, however, unless the predecessor organization was actively engaged in a trade or business at all times during the portion of the three applicable 12-month periods prior to the inception of the taxpayer. Thus, a taxpayer in existence for only the most recent applicable 12-month period may use the gross receipts from the two preceding 12-month periods of a predecessor organization.

Although a mechanical test is used in these temporary regulations to determine whether a taxpayer has a business purpose for a particular taxable year, taxpayers should not infer that a mechanical test always will be used to determine business purpose in future years. The Service is studying the mechanical test to determine when its use is appropriate.

The temporary regulations do not apply to certain changes of annual accounting period, including a change to a calendar year. Thus, for example, a corporation seeking S status will be permitted to change its taxable year automatically to a calendar year under § 18.1378–1 (b) (1) (for the first year for which the S election is effective) if all of its principal shareholders are calendar year taxpayers and if the corporation satisfies all of the applicable requirements under that section. Similarly, a corporation (including a regulated investment company as defined in section 851) will be permitted to change automatically to a calendar year under § 1.442–1 (c) provided that the corporation satisfies all of the applicable requirements under that section.

The temporary regulations generally apply to any change in annual accounting period if the income tax return for the short period involved in the change is filed after September 29, 1986, and the short period involved in the change ends before January 5, 1987. The temporary regulations do not apply, however, if the application required to effect or request the change (*i.e.*, Form 1128 or Form 2553) was timely filed before September 30, 1986. In the case of a change that is effected by filing an income tax return for the short period involved in the change, the temporary regulations do not apply if an application for extension of time for filing that return was filed before September 30, 1986, the application clearly stated the year to which the taxpayer intended to change, and the income tax return for the short period subsequently is timely filed (determined with regard to extensions).

The temporary regulations include an anti-abuse rule that is applicable to any adoption by a taxpayer of a taxable year that has the effect of circumventing the limitations prescribed under the temporary regulations on changes of annual accounting period. Thus, for example, a corporation will not be able to circumvent the provisions of the temporary regulations by creating a new corporation that adopts the desired fiscal year and by transferring some or all of the net assets of the existing corporation to the new corporation.

52–53-Week Taxable Year

The temporary regulations provide special rules applicable to certain entities and investors in those entities that wish to adopt, retain, or change to or from a 52–53-week taxable year. Under those rules, a partnership, partner, S corporation (or corporation seeking S status), S corporation shareholder, personal service corporation, or employee-owner of a personal service corporation must agree to certain conditions in order to change to or from a 52–53-week taxable year or to adopt or retain such a year. The conditions relate to the taxable year in which a partner, S corporation shareholder, or employee owner must take into account items passed through or paid by the partnership, S corporation, or personal service corporation.

The temporary regulations also include a rule to prevent the evasion or avoidance of tax through the adoption of or change to or from a 52–53-week taxable year by any taxpayer, including a corporation that is not seeking S status. The temporary regulations provide that a taxpayer may not adopt or change to or from a 52–53-week taxable year if the principal purpose for such action is the evasion or avoidance of Federal income tax.

The temporary regulations relating to adoptions of, retentions of, or changes to or from a 52–53-week taxable year generally apply if the first taxable year for which the election to use or retain the 52–53-week year is made (or, if applicable, the short period involved in the change) ends before January 5, 1987, and the income tax return for that year (or period) is filed after September 29, 1986. The temporary regulations do not apply, however, if the application required to effect or request the adoption, retention, or change (i.e., Form 1128 or Form 2553) was timely filed before September 30, 1986. In the case of an adoption or change that is effected by filing an income tax return for the first taxable year for which the election is made, the temporary regulations do not apply if an application for extension of time for filing that return was filed before September 30, 1986, the application clearly stated the taxpayer's intent to adopt or change to a 52–53-week taxable year, and the income tax return for that year is timely filed (determined with regard to extensions).

Adoptions and Retentions of a Taxable Year

The temporary regulations generally provide that a partnership or corporation seeking S status may not adopt or retain a taxable year that results in a deferral of income to its partners or shareholders unless the taxpayer establishes a substantial business purpose for the adoption or retention. Thus, the temporary regulations suspend the applicable provisions of Rev. Proc. 72–51, 1972–2 C.B. 832, and § 4.03 of Rev. Proc. 83–25, 1983–1 C.B. 689, for the period to which the temporary regulations apply. The temporary regulations also contain special rules (including a mechanical test) for determining whether a taxpayer has established a substantial business purpose for the adoption or retention of a taxable year that results in a deferral of income to its partners or shareholders.

The temporary regulations relating to adoptions and retentions of a taxable year generally apply if the first taxable year of the partnership or the first taxable year for which the S election is effective begins before January 1, 1987, unless the application necessary to effect or request the adoption or retention was timely filed before November 6, 1986. The regulations do not apply, however, to an adoption by a partnership of a taxable year that begins before January 1, 1986. The regulations also do not apply to certain adoptions or retentions, such as an adoption or retention of a calendar year.

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545–0134.

Drafting Information

The principal author of these regulations is Alice M. Bennett of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.441–1—1.483–2

Income taxes, Accounting, Deferred compensation plans.

26 CFR Part 18

Sale of residence, Income taxes.

26 CFR Part 602

Reporting and record Keeping requirements.

Amendments to the Regulations

For the reasons set out in the preamble, Subchapter A, Parts 1 and 18 and Subchapter H, Part 602 of title 26, Chapter I of the Code of Federal Regulations are amended as set forth below:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.441–3T also issued under 26 U.S.C. 441. Sections 1.442–2T and 1.442–3T also issued under 26 U.S.C. 422, 706, and 1378.

Par. 2. Section 1.441–2 is amended by adding the following new paragraph (f):

§ 1.441–2 Election of year consisting of 52–53 weeks.

* * * * *

(f) *Cross-reference to § 1.441–3T.* For special rules relating to certain adoptions of or changes to or from a 52–53-week taxable year ending in 1986 or 1987, see § 1.441–3T.

Par. 3. Section 1.441–3T is added in the appropriate place.

§ 1.441–3T Special rules for certain adoptions of, retentions of, or changes to or from a 52–53-week taxable year (Temporary).

(a) *Applicability.* This section applies to any partnership, partner, S corporation, S corporation shareholder, personal service corporation, or employee-owner that wishes to adopt or change to or from a 52–53-week taxable year. This section also applies to a corporation seeking S status that wishes to adopt, retain, or change to or from a 52–53-week taxable year. This section applies in the case of a change to or from a 52–53-week taxable year whether or not the taxpayer also wishes to change the month with reference to which its taxable year ends. Paragraph (c) (2) of this section applies to any taxpayer (including, for example, a corporation that is not seeking S status) that wishes to adopt or change to or from a 52–53-week taxable year.

(b) *Definitions*—(1) *Personal service corporation.* For purposes of this section only, the term "personal service corporation" means any corporation (other than an S corporation) if—

(i) The principal activity of that corporation is the performance of personal services, and

(ii) Such services are substantially performed by employee-owners.

A corporation shall not be treated as a personal service corporation, however, unless more than 10 percent of the fair market value of the outstanding stock of the corporation is held by employee-owners.

(2) *Employee-owner.* For purposes of this section, the term "employee-owner" means an employee who owns, on any day of the corporation's taxable year, any outstanding stock of the personal service corporation. Section 318 will apply to determine stock ownership for purposes of this paragraph (b), except that "any" is to be substituted for "50 percent or more in value" in section 318(a)(2)(C).

(3) *Performance of a substantial portion of services.* For purposes of paragraph (b)(1) of this section, personal services are substantially performed by employee-owners if the total time spent by employee-owners in performing those services is 10 percent or more of the total time spent by all employees (including employee-owners) in

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performing those services. In determining time spent in performing personal services of a corporation, time spent on matters that do not relate directly and intrinsically to the performance of services for or on behalf of clients or customers of the corporation shall not be taken into account. Thus, for example, in the case of a corporation performing accounting services, time spent in performing secretarial services, managerial work of a purely administrative nature, or janitorial services shall not be taken into account in determining either the time spent by employee-owners in performing accounting services or the total time spent by all employees in performing accounting services. Managerial time shall be taken into account, however, to the extent that it consists of the supervision of accounting services performed by employees for or on behalf of clients or customers of the corporation.

(c) *General rule*—(1) *Satisfaction of applicable conditions.* A taxpayer to which this section applies may not adopt, retain, or change to or from a 52–53-week taxable year under § 1.441–2(c)(1) or (2), § 1.442–1, or 26 CFR 18.1378–1 unless each of the applicable conditions set forth in paragraph (d) of this section is satisfied with respect to the taxpayer seeking the adoption, retention, or change. For additional requirements applicable to certain taxpayers that wish to adopt, retain, or change to or from a 52–53-week taxable year, see §§ 1.442–2T and 1.442–3T.

(2) *Evasion or avoidance of tax*—(i) *General rule.* A taxpayer may not adopt or change to or from a 52–53-week taxable year if the principal purpose for such action is the evasion or avoidance of Federal income tax.

(ii) *Example.* The provisions of this paragraph (c)(2) may be illustrated by the following example.

Example. Assume that X, a calendar year corporation, wishes to elect, for taxable years beginning after December 31, 1985, a 52–53-week taxable year that ends on the Tuesday nearest to December 31. Assume that such election allows the corporation to sell a substantial portion of its assets on Wednesday, December 31, 1986, and to report the income from such sale in the taxable year beginning on December 31, 1986, and ending on December 29, 1987. By electing the 52–53-week taxable year, the corporation obtains the advantages of the lower Federal income tax rates applicable for the period beginning December 31, 1986. Moreover, the sale of the assets on December 31 allows the buyer of the assets, a calendar year taxpayer, to obtain certain Federal income tax advantages that are not available with respect to purchases of assets in 1987 and later years. Given the above facts, it is presumed that the principal purpose for such action is the evasion or avoidance of Federal income tax. Thus, X may not adopt a 52–53-week taxable year.

(d) *Conditions applicable to certain taxpayers*—(1) *Conditions.* (i) If the taxpayer seeking the adoption or change is a partnership, all of the partners (determined at the close of the first taxable year of the partnership for which the election to use the 52–53-week taxable year is made or, if applicable, the short period involved in the change) must agree to treat the current and all subsequent 52–53-week years of the partnership (and of any partner) as ending on the last day of the calendar month that ends nearest to the last day of the 52–53-week year for purposes of determining the taxable year in which the inclusions required by sections 702 and 707(c) are taken into account.

(ii) If the taxpayer seeking the adoption or change is a partner, the partner must agree to treat the current and all subsequent 52–53-week years of the partner (and the 52–53-week years of any partnership in which such taxpayer is a partner) as ending on the last day of the calendar month that ends nearest to the last day of the 52–53-week year for purposes of determining the taxable year in which the inclusions required by sections 702 and 707(c) are taken into account.

(iii) If the taxpayer seeking the adoption, retention, or change is an S corporation or a corporation seeking S status, all of the shareholders (determined at the close of the first taxable year of the S corporation for which the election to use or retain the 52–53-week year is made or, if applicable, the short period involved in the change) must agree to treat the current and all subsequent 52–53-week taxable years of the corporation (and of any shareholder) as ending on the last day of the calendar month that ends nearest to the last day of the 52–53-week year for purposes of determining the taxable year in which the inclusions required by section 1366 are taken into account.

(iv) If the taxpayer seeking the adoption or change is an S corporation shareholder, the shareholder must agree to treat the current and all subsequent 52–53-week taxable years of the shareholder (and the 52–53-week years of any S corporation in which such taxpayer is a shareholder) as ending on the last day of the calendar month that ends nearest to the last day of the 52–53-week year for purposes of determining the taxable year in which the inclusions required by section 1366 are taken into account.

(v) If the taxpayer seeking the adoption or change is a personal service corporation, all of the employee-owners (determined at the close of the first taxable year of the corporation for which the election to use the 52–53-week taxable year is made or, if applicable, the short period involved in the change) must agree to treat the current and all subsequent taxable years of an employee-owner and the corporation that end with or with reference to the same calendar month as if both such taxable years ended on the last day of the taxable year of the corporation for purposes of determining the taxable year in which payments (whether or not in cash) that are deductible by the corporation are taken into account by the employee-owner.

(vi) If the taxpayer seeking the adoption or change is an employee-owner of a personal service corporation, the employee-owner must agree to treat the current and all subsequent taxable years of the employee-owner and the corporation that end with or with reference to the same calendar month as if both such taxable years ended on the last day of the taxable year of the corporation for purposes of determining the taxable year in which payments (whether or not in cash) that are deductible by the corporation are taken into account by the employee-owner.

(2) *Examples.* The provisions of paragraph (d)(1) of this section may be illustrated by the following examples.

Example (1). Assume that ABC, a calendar year partnership, wishes to elect, for taxable years beginning after December 31, 1985, a 52–53-week taxable year that ends on the Friday nearest to December 31. Assume that A, B, and C, who are individual calendar year taxpayers, are equal partners in ABC. Assume also that A, B, and C agree to treat each of the 52–53-week taxable years of ABC as ending on December 31 for purposes of determining the taxable year in which guaranteed payments and their distributive shares of income, gains, losses, deductions, and credits are taken into account. Assume that, for its taxable year ending January 2, 1987, ABC has net income of $30,000, and that ABC has no other items of income, gain, loss, deduction, or credit for that taxable year. Under paragraph (d)(1)(i) of this section, A, B, and C each must include $10,000 in income for their taxable years ending on December 31, 1986. Similarly, if ABC makes a guaranteed payment to A on January 2, 1987, A must include the payment in income for the taxable year ending December 31, 1986.

Example (2). Assume that X, a calendar year personal service corporation, wishes to elect, for taxable years beginning after December 31, 1985, a 52–53-week taxable year that ends on the Friday nearest to December 31. Assume that all of the employer-owners of X are individual calendar year taxpayers. Assume further that all of the employee-owners agree to treat their taxable year as ending on the last day of X's taxable year for purposes of determining the year in which payments by X are taken into income. Assume that on January 2, 1987, X makes a payment of bonuses of $10,000 to each employee-owner. Under paragraph (d)(1)(v) of this section, each employee-owner must include $10,000 in income for the taxable year ending December 31, 1986.

(e) *Procedural requirements.* In the case of an adoption of or change to a 52–53-week taxable year under § 1.441–2(c)(1) or (2), a taxpayer to which any condition in paragraph (d) of this section applies must indicate on the statement required under § 1.441–2(c)(1) or (2), or on a separate statement that is attached to the income tax return for the year of adoption or change, that all of the applicable conditions are satisfied. If the due date for that return is before March 9, 1987, the statement required under § 1.441–2(c)(1) or (2) (or an amended statement) indicating that the applicable conditions are satisfied must be filed by the later of March 9, 1987 or the due date for the return (determined with regard to extensions). If § 1.442–2T or § 1.442–3T applies to an adoption of, retention of, or change to or from a 52–53-week taxable year, the procedures set forth in § 1.442–2T or § 1.442–3T (whichever is applicable) must be followed and the rules set forth in § 1.442–2T(f)(3) or § 1.442–3T(d) shall apply.

(f) *Effective date*—(1) *In general.* This section shall apply to adoptions of, retentions of, or changes to or from a 52–53-week taxable year if—

(i) The income tax return for the first taxable year for which the election to use or retain the 52–53-week year is made (or, if applicable, the income tax return for the short period involved in the change) is filed after September 29, 1986, and

(ii) The first taxable year for which the election to use or retain the 52–53-week year is made (or the short period involved in the change) ends before January 5, 1987.

(2) *Exceptions.* This section shall not apply if the application required to effect or request the adoption, retention, or change was timely filed before September 30, 1986. In the case of an adoption or change that is effected by filing an income tax return for the first taxable year for which the election is made, this section shall not apply if an application for extension of time for filing that return was filed before September 30, 1986, the application clearly stated the taxpayer's intention to adopt or change to a 52–53-week taxable year, and the income tax return for that taxable year is timely filed (determined with regard to extensions).

Par. 4. Paragraph (f) of § 1.442–1 is amended by adding the following sentences at the end thereof:

§ 1.442–1 Change of annual accounting period.

* * * * *

(f) *Effective date.* * * * For special rules applicable to certain changes of annual accounting period that result in a short period ending in 1986 or 1987, see § 1.442–2T. For special rules applicable to certain adoptions and retentions of a taxable year ending in 1986 or 1987, see § 1.442–3T.

Par. 5. Section 1.442–2T is added at the appropriate place.

§ 1.442–2T Special limitations on certain changes of annual accounting period (Temporary).

(a) *Applicability.* This section applies to any taxpayer that wishes to change its annual accounting period, or that wishes to adopt an annual accounting period described in paragraph (h) of this section. This section shall not apply, however, to:

(1) Any taxpayer to which the provisions of § 1.1502–76 apply (other than a taxpayer to which the provisions of paragraph (h) of this section apply);

(2) Any taxpayer to which the provisions of § 1.442–1(e) apply;

(3) Any taxpayer that wishes to change its annual accounting period to a calendar year (including a change under 26 CFR 18.1378–1(b)) or to a 52–53-week taxable year that ends with reference to the month of December (see, however, § 1.441–3T);

(4) Any partnership that wishes to change its annual accounting period under § 1.706–1(b)(1) to the same taxable year as that of all of its principal partners or to which all of its principal partners are concurrently changing;

(5) Any corporation seeking S status that wishes to change its annual accounting period under section 4.02 of Rev. Proc. 83–25, 1983–1 C.B. 689, to the same taxable year as that of shareholders holding more than 50 percent of the shares of stock of the corporation or to which such shareholders are concurrently changing;

(6) Any corporation seeking S status that wishes to change its annual accounting period under section 4.04 of Rev. Proc. 83–25, 1983–1 C.B. 689;

(7) Any taxpayer that wishes to change to a 52–53-week taxable year that ends with reference to the same calendar month as that in which the former taxable year ended (see, however, § 1.441–3T); or

(8) Any organization exempt under section 501(a), and any plan meeting the requirements for qualification under section 401(a) and which is exempt under section 501 (a), except those organizations and plans required to file a Form 990–T for the short period involved in the change of annual accounting period.

(b) *General rule.* A taxpayer to which this section applies may not change its annual accounting period under the provisions of—

(1) Paragraph (c) of § 1.442–1,

(2) Paragraph (b) of § 1.706–1,

(3) 26 CFR 18.1378–1(b),

(4) Rev. Proc. 72–51, 1972–2 C.B. 832, or

(5) Any revenue procedure issued before September 18, 1986, that, without regard to this section, would permit a taxpayer to change its taxable year either under a procedure that does not require the prior approval of the Commissioner or under expedited procedures for obtaining that approval.

Examples of procedures suspended by paragraph (b)(5) of this section include Rev. Proc. 84–34, 1984–1 C.B. 508, and those portions of Rev. Proc. 83–25, 1983–1 C.B. 689, that apply to changes of annual accounting period. In addition, the Commission will not consider a request by a taxpayer to which this section applies for approval of a change of annual accounting period under § 1.442–1(b)(1) unless the requirements of paragraph (e) of this section are satisfied. A taxpayer to which this section applies may, however, change its annual accounting period without securing the prior approval of the Commissioner if the taxpayer can establish a substantial business purpose for the change under paragraph (c) of this section and agrees to all of the applicable conditions set forth in paragraph (d) of this section.

(c) *Substantial business purpose*—(1) *General rule.* Except as provided in paragraph (c)(4) of this section, a taxpayer generally can establish a substantial business purpose under this paragraph (c) for a change of annual accounting period to any taxable year that meets the requirements of paragraph (c)(2) of this section. If more than one taxable year meets the requirements of paragraph (c)(2), however, a taxpayer can establish a substantial business purpose under this paragraph (c) only for a change to the year that yields the highest percentage when the percentages (rounded to the nearest 1/100 of a percent) obtained under paragraph (c)(2) of this section are averaged.

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(2) *Mechanical test.* A taxable year meets the requirements of this paragraph (c)(2) only if, for the most recent 12-month period (determined at the time the statement or application required to effect or request the change is filed) ending with the last month of the requested taxable year and for each of the two preceding 12-month periods ending with the corresponding month—

(i) The gross receipts from sales or services for the last two months of such 12-month period equal or exceed 25 percent of—

(ii) The gross receipts from sales or services for such 12-month period.

(3) *Special rules*—(i) *Gross receipts.* For purposes of this section, gross receipts from sales or services shall be determined using the taxpayer's method of accounting.

(ii) *52–53-week taxable year.* If the requested year is a 52–53-week taxable year, the calendar month ending nearest to the last day of the 52–53-week taxable year shall be treated for purposes of paragraph (c)(2) of this section as the last month of the requested year.

(iii) *Taxpayers not in existence for three 12-month periods.* If a taxpayer has not been in existence for the three 12-month periods described in paragraph (c)(2) of this section, the requirements of paragraph (c)(2) of this section may be satisfied by taking into account the gross receipts from sales and services of a predecessor organization (within the meaning of section 4.04 of Rev. Proc. 83–25) that was actively engaged in a trade or business at all times during the portion of the three applicable 12-month periods prior to the inception of the taxpayer. Thus, a taxpayer in existence for only the most recent applicable 12-month period may use the gross receipts of a predecessor organization for the two preceding 12-month periods.

(4) *Exceptions.* The following taxpayers cannot establish a substantial business purpose for a change of annual accounting period under this section solely by satisfying the requirements of this paragraph (c), and, thus, must secure the prior approval of the Commissioner to the change:

(i) A partner of a partnership;

(ii) A partnership in which any partner is a partnership or S corporation;

(iii) A beneficiary of a trust or estate;

(iv) A United States shareholder of a controlled foreign corporation; and

(v) A shareholder of a DISC or former DISC.

(5) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples.

Example (1). Assume that X, a calendar year corporation that is not described in paragraph (c)(4) of this section, wishes to change its annual accounting period to a fiscal year that ends on November 30. If the change is permitted under this section, the short period involved in the change would end on November 30, 1986. Under paragraph (f) of this section, X must attach a statement to its income tax return for the short period ending November 30, 1986, in order to effect the change. For purposes of paragraph (c)(2) of this section, the most recent 12-month period ending with the last month of the requested taxable year (November), determined as of the time the statement required to effect the change is filed, is the period that begins on December 1, 1985, and ends on November 30, 1986. The two preceding 12-month periods ending with the corresponding month are the periods from December 1, 1984, through November 30, 1985, and from December 1, 1983, through November 30, 1984.

Example (2). Assume that X, a calendar year corporation that is not described in paragraph (c)(4) of this section, wishes to change its annual accounting period to a fiscal year that ends on September 30. Assume that the most recent 12-month period determined under paragraph (c)(2) of this section is the period from October 1, 1985, through September 30, 1986, and that the two preceding 12-month periods are the periods from October 1, 1984, through September 30, 1985, and from October 1, 1983, through September 30, 1984.

Assume that the gross receipts from sales or services for the last two months of the 12-month periods ending on September 30, 1986, September 30, 1985, and September 30, 1984, are $3,500, $3,125, and $2,500, respectively. Assume further that the total gross receipts for the 12-month periods ending on September 30, 1986, September 30, 1985, and September 30, 1984, are $12,500, $12,000, and $10,000, respectively. The following percentages are obtained for the 12-month periods ending on September 30, 1986, September 30, 1985, and September 30, 1984, when the gross receipts for the last two months of each period are divided by the total gross receipts for that 12-month period: 28.00% ($3,500/$12,500), 26.04% ($3,125/$12,000), and 25.00% ($2,500/$10,000). Thus, the requirements of paragraph (c)(2) of this section are satisfied since each of those percentages equals or exceeds 25%.

Example (3). Assume the same facts as in example (2) except that X wishes to change its annual accounting period to a fiscal year that ends on July 31. In addition, assume that the percentages obtained for purposes of paragraph (c)(2) of this section with respect to a fiscal year that ends on July 31 are 26.00%, 25.00%, and 25.00%. Under paragraph (c)(1) of this section, X can establish a substantial business purpose only for a fiscal year that ends on September 30 since the average of the percentages obtained under paragraph (c)(2) of this section with respect to that year (26.35%) exceeds the average of the percentages obtained with respect to a fiscal year that ends on July 31 (25.33%).

(d) *Conditions.* The requirements of this section are in addition to any applicable conditions under sections 441, 442, 443, 706, and 1378. Thus, for example, a taxpayer must annualize income for the short period involved in a change of annual accounting period to which this section applies if required to do so under section 443(b). The following additional conditions apply under this section to any change of annual accounting period made by a corporation (other than an S corporation) without the prior approval of the Commissioner:

(1) If the taxpayer has a net operating loss as defined in section 172 for the short period involved in the change, that net operating loss must be deducted ratably over a six-year period beginning with the first taxable year after the short period unless—

(i) The net operating loss resulting from the short period is $10,000 or less, or

(ii) The net operating loss results from a short period of nine months or longer and is less than the net operating loss for a full 12-month period beginning with the first day of the short period.

(2) If the taxpayer has an unused credit for the short period, the taxpayer must carry the unused credit forward. Unused credits from the short period may not be carried back.

(3) The taxpayer may not make an election to be treated as an S corporation that would be effective for the taxable year immediately following the short period.

(e) *Prior approval of the Commissioner*—(1) *In general.* The Commissioner will not consider a request for approval to a change of annual accounting period under this section unless—

(i) The taxpayer is described in paragraph (c)(4) of this section and the taxable year to which the taxpayer wishes to change meets the requirements of paragraph (c)(1) of this section, or

(ii) The taxpayer has experienced a substantial acquisition or diverstiture, as defined in paragraph (e)(2) of this section.

(2) *Substantial acquisition or diverstiture*—(i) *In general.* For purposes of this paragraph (e), a taxpayer has not experienced a substantial acquisition or diverstiture unless—

(A) The taxpayer has acquired or disposed of a block of assets on or after the first day of the taxable year immediately proceeding the short period involved in the change of annual accounting period,

(B) At all times during the applicable 12-month periods (as defined in paragraph (e)(2)(iii) of this section), including any period during which the assets were not held by the taxpayer, the assets were segregated, whether in a separate branch or division or otherwise, so that the gross receipts attributable to those assets can be identified, and

(C) The requirements of paragraph (e)(2)(ii) of this section are satisfied.

If a taxpayer has experienced a substantial acquisition or diverstiture it is anticipated that the Commissioner will usually approve a change of annual accounting period to a taxable year that would meet the requirements of paragraph (c)(1) of this section if pro-forma gross receipts (*i.e.*, gross receipts that would have resulted if the acquistion or diverstiture had taken place at the beginning of the earliest applicable 12-month period) were substituted for the gross receipts described in paragraph (c)(2) of this section. The failure of a requested taxable year to meet the requirements of paragraph (c)(1) when pro-forma gross receipts are used, however, will not prevent the Commissioner from approving the change.

(ii) *Mechanical test.* A taxpayer has experienced a substantial acquisition or diverstiture for purposes of this paragraph (e) only if—

(A) The aggregate of the gross receipts from sales and services (within the meaning of paragraph (c)(3)(i) of this section) for the applicable 12-month periods attributable to the acquired or divested assets (including receipts for any period during which the assets were not held by the taxpayer), exceeds 80 percent of—

(B) The aggregate of the gross receipts from sales and services (within the meaning of paragraph (c)(3)(i) of this section) of the taxpayer for the applicable 12-month periods, determined without taking into account the gross receipts from sales and services attributable to the acquired or divested assets.

(iii) *Applicable 12-month periods.* For purposes of this paragraph (e)(2), the term "applicable 12-month periods" means—

(A) In the case of a acquisition, the 12-month period described in paragraph (c)(2) of the section; and

(B) In the case of divestiture, the 12-month periods described in paragraph (c)(2) of this section that end before the date of the divestiture.

(iv) *Example.* The provisions of this paragraph (e) may be illustrated by the following example.

Example. Assume that X, a calendar year corporation, wishes to change its annual accounting period to a fiscal year ending October 31, 1986. Assume that on January 1, 1986, X acquired from corporation Y a block of assets that Y held in a separate division and that X also holds in a separate division. Assume that the most recent 12-month period described in paragraph (c)(2) of this section is the period that begins on November 1, 1985, and ends on October 31, 1986, and that the two preceding 12-month periods are the periods from November 1, 1984 through October 31, 1985, and from November 1, 1983, through October 31, 1984. Assume that the gross receipts attributable to the assets acquired from Y for the 12-month period ending October 31, 1986 (including the receipts attributable to the period from November 1, 1985, through December 31, 1985, when the assets were held by Y, and the receipts attributable to the period from January 1, 1986, through October 31, 1986, when the assets were held by X), are $8,000. In addition, assume that the gross receipts attributable to the assets acquired from Y for the 12-month periods ending October 31, 1985, and October 31, 1984, when the assets were held by Y, are $7,500, and $7,000, respectively. Assume further that X's gross receipts from sales and services for the 12-month period ending October 31, 1986, October 31, 1985, and October 31, 1984, without taking into account gross receipts attributable to the assets acquired from Y, are $10,000, $9,000, and $8,000, respectively. The requirements of paragraph (e)(2)(ii) of this section are satisfied since $22,500 ($8,000 + $7,500 + $7,000) exceeds 80 percent of $27,000 ($10,00 + $9,000 + $8,000). Thus, the Commissioner will consider X's request to change its taxable year to a fiscal year ending October 31, 1986.

(f) *Procedures*—(1) *Changes not requiring the prior approval of the Commissioner.* In order to effect a change that does not require the prior approval of the Commissioner under this section, a taxpayer must indicate that the requirements of this section are satisfied in a statement setting forth the computations required to establish a substantial business purpose under paragraph (c) of this section. The statement also must indicate that the taxpayer has agreed to all of the applicable conditions to the change, including any applicable conditions contained in § 1.441–3T. A taxpayer (other than an corporations seeking S status) must attach the statement to the income tax return for the short period involved in the change and, in addition, must type or legibly print the following caption at the top of page 1 of the return: "FILED UNDER § 1.442–2T (f)(1)." In the case of a corporation seeking S status, the statement must be attached to Form 2553 and the caption "FILED UNDER § 1.442–2T (f) (1)" must be typed or printed legibly at the top of page 1 of Form 2553.

(2) *Changes requiring the prior approval of the Commissioner.* In the case of a change of annual accounting period that requires the prior approval of the Commissioner under this section, a taxpayer must file Form 1128 or Form 2553, whichever is applicable. (See paragraph (e)(1) of this section for situations in which a request for approval will be considered.) The taxpayer must indicate that the application is filed under this paragraph (f)(2) by typing or printing legibly the following caption at the top of page 1 of the Form 1128 or Form 2553: "FILED UNDER § 1.442–2T (f)(2)." The taxpayer also must attach a statement to the applicable form setting forth the computations described in paragraph (c) of this section. In addition, a taxpayer described in paragraph (e)(1) (ii) of this section must attach a statement setting forth the computations described in paragraph (e) (2) of this section.

(3) *Time for filing.* (i) Except as otherwise provided in paragraph (f)(3) (ii) of this section, a taxpayer cannot change its annual accounting period under this section unless the return or form required to effect or request the change is filed by its due date (with extensions if the change is effected by filing an income tax return for the short period involved in the change).

(ii) A taxpayer may change its annual accounting period under this section if the due date (without regard to extensions) for the return or form required to effect or request the change is on or after September 30, 1986, and before March 9, 1987 and the return or form is filed before March 9, 1987 (or, in the case of a change effected by filing an income tax return for the short period involved in the change, if an application for extension is filed before March 9, 1987. This paragraph only extends the time for changing an annual accounting period and does not extend the time for making a S election. An S election that is timely filed before March 9, 1987, however, will not be denied or rendered ineffective solely by reason of the need for the taxpayer to submit the information required by paragraph (f)(1) or (f)(2) of this section.

(iii) In the case of a change of annual accounting period under this section that is effected by filing an income tax return for the short period involved in the change, any failure to file a return or to pay tax on or before the due date for the return or the date prescribed for payment will be treated as due to reasonable cause and will not give rise to any addition to tax under section 6651 if—

(A) The due date for the return (without regard to extensions) or the date prescribed for payment is on or

(2) *Mechanical test.* A taxable year meets the requirements of this paragraph (c)(2) only if, for the most recent 12-month period (determined at the time the statement or application required to effect or request the change is filed) ending with the last month of the requested taxable year and for each of the two preceding 12-month periods ending with the corresponding month—

(i) The gross receipts from sales or services for the last two months of such 12-month period equal or exceed 25 percent of—

(ii) The gross receipts from sales or services for such 12-month period.

(3) *Special rules*—(i) *Gross receipts.* For purposes of this section, gross receipts from sales or services shall be determined using the taxpayer's method of accounting.

(ii) *52–53-week taxable year.* If the requested year is a 52–53-week taxable year, the calendar month ending nearest to the last day of the 52–53-week taxable year shall be treated for purposes of paragraph (c)(2) of this section as the last month of the requested year.

(iii) *Taxpayers not in existence for three 12-month periods.* If a taxpayer has not been in existence for the three 12-month periods described in paragraph (c)(2) of this section, the requirements of paragraph (c)(2) of this section may be satisfied by taking into account the gross receipts from sales and services of a predecessor organization (within the meaning of section 4.04 of Rev. Proc. 83–25) that was actively engaged in a trade or business at all times during the portion of the three applicable 12-month periods prior to the inception of the taxpayer. Thus, a taxpayer in existence for only the most recent applicable 12-month period may use the gross receipts of a predecessor organization for the two preceding 12-month periods.

(4) *Exceptions.* The following taxpayers cannot establish a substantial business purpose for a change of annual accounting period under this section solely by satisfying the requirements of this paragraph (c), and, thus, must secure the prior approval of the Commissioner to the change:

(i) A partner of a partnership;

(ii) A partnership in which any partner is a partnership or S corporation;

(iii) A beneficiary of a trust or estate;

(iv) A United States shareholder of a controlled foreign corporation; and

(v) A shareholder of a DISC or former DISC.

(5) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples.

Example (1). Assume that X, a calendar year corporation that is not described in paragraph (c)(4) of this section, wishes to change its annual accounting period to a fiscal year that ends on November 30. If the change is permitted under this section, the short period involved in the change would end on November 30, 1986. Under paragraph (f) of this section, X must attach a statement to its income tax return for the short period ending November 30, 1986, in order to effect the change. For purposes of paragraph (c)(2) of this section, the most recent 12-month period ending with the last month of the requested taxable year (November), determined as of the time the statement required to effect the change is filed, is the period that begins on December 1, 1985, and ends on November 30, 1986. The two preceding 12-month periods ending with the corresponding month are the periods from December 1, 1984, through November 30, 1985, and from December 1, 1983, through November 30, 1984.

Example (2). Assume that X, a calendar year corporation that is not described in paragraph (c)(4) of this section, wishes to change its annual accounting period to a fiscal year that ends on September 30. Assume that the most recent 12-month period determined under paragraph (c)(2) of this section is the period from October 1, 1985, through September 30, 1986, and that the two preceding 12-month periods are the periods from October 1, 1984, through September 30, 1985, and from October 1, 1983, through September 30, 1984.

Assume that the gross receipts from sales or services for the last two months of the 12-month periods ending on September 30, 1986, September 30, 1985, and September 30, 1984, are $3,500, $3,125, and $2,500, respectively. Assume further that the total gross receipts for the 12-month periods ending on September 30, 1986, September 30, 1985, and September 30, 1984, are $12,500, $12,000, and $10,000, respectively. The following percentages are obtained for the 12-month periods ending on September 30, 1986, September 30, 1985, and September 30, 1984, when the gross receipts for the last two months of each period are divided by the total gross receipts for that 12-month period: 28.00% ($3,500/$12,500), 26.04% ($3,125/$12,000), and 25.00% ($2,500/$10,000). Thus, the requirements of paragraph (c)(2) of this section are satisfied since each of those percentages equals or exceeds 25%.

Example (3). Assume the same facts as in example (2) except that X wishes to change its annual accounting period to a fiscal year that ends on July 31. In addition, assume that the percentages obtained for purposes of paragraph (c)(2) of this section with respect to a fiscal year that ends on July 31 are 26.00%, 25.00%, and 25.00%. Under paragraph (c)(1) of this section, X can establish a substantial business purpose only for a fiscal year that ends on September 30 since the average of the percentages obtained under paragraph (c)(2) of this section with respect to that year (26.35%) exceeds the average of the percentages obtained with respect to a fiscal year that ends on July 31 (25.33%).

(d) *Conditions.* The requirements of this section are in addition to any applicable conditions under sections 441, 442, 443, 706, and 1378. Thus, for example, a taxpayer must annualize income for the short period involved in a change of annual accounting period to which this section applies if required to do so under section 443(b). The following additional conditions apply under this section to any change of annual accounting period made by a corporation (other than an S corporation) without the prior approval of the Commissioner:

(1) If the taxpayer has a net operating loss as defined in section 172 for the short period involved in the change, that net operating loss must be deducted ratably over a six-year period beginning with the first taxable year after the short period unless—

(i) The net operating loss resulting from the short period is $10,000 or less, or

(ii) The net operating loss results from a short period of nine months or longer and is less than the net operating loss for a full 12-month period beginning with the first day of the short period.

(2) If the taxpayer has an unused credit for the short period, the taxpayer must carry the unused credit forward. Unused credits from the short period may not be carried back.

(3) The taxpayer may not make an election to be treated as an S corporation that would be effective for the taxable year immediately following the short period.

(e) *Prior approval of the Commissioner*—(1) *In general.* The Commissioner will not consider a request for approval to a change of annual accounting period under this section unless—

(i) The taxpayer is described in paragraph (c)(4) of this section and the taxable year to which the taxpayer wishes to change meets the requirements of paragraph (c)(1) of this section, or

(ii) The taxpayer has experienced a substantial acquisition or diverstiture, as defined in paragraph (e)(2) of this section.

(2) *Substantial acquisition or diverstiture*—(i) *In general.* For purposes of this paragraph (e), a taxpayer has not experienced a substantial acquisition or diverstiture unless—

(A) The taxpayer has acquired or disposed of a block of assets on or after the first day of the taxable year immediately proceeding the short period involved in the change of annual accounting period,

(B) At all times during the applicable 12-month periods (as defined in paragraph (e)(2)(iii) of this section), including any period during which the assets were not held by the taxpayer, the assets were segregated, whether in a separate branch or division or otherwise, so that the gross receipts attributable to those assets can be identified, and

(C) The requirements of paragraph (e)(2)(ii) of this section are satisfied.

If a taxpayer has experienced a substantial acquisition or diverstiture it is anticipated that the Commissioner will usually approve a change of annual accounting period to a taxable year that would meet the requirements of paragraph (c)(1) of this section if pro-forma gross receipts (*i.e.*, gross receipts that would have resulted if the acquistion or diverstiture had taken place at the beginning of the earliest applicable 12-month period) were substituted for the gross receipts described in paragraph (c)(2) of this section. The failure of a requested taxable year to meet the requirements of paragraph (c)(1) when pro-forma gross receipts are used, however, will not prevent the Commissioner from approving the change.

(ii) *Mechanical test.* A taxpayer has experienced a substantial acquisition or diverstiture for purposes of this paragraph (e) only if—

(A) The aggregate of the gross receipts from sales and services (within the meaning of paragraph (c)(3)(i) of this section) for the applicable 12-month periods attributable to the acquired or divested assets (including receipts for any period during which the assets were not held by the taxpayer), exceeds 80 percent of—

(B) The aggregate of the gross receipts from sales and services (within the meaning of paragraph (c)(3)(i) of this section) of the taxpayer for the applicable 12-month periods, determined without taking into account the gross receipts from sales and services attributable to the acquired or divested assets.

(iii) *Applicable 12-month periods.* For purposes of this paragraph (e)(2), the term "applicable 12-month periods" means—

(A) In the case of a acquisition, the 12-month period described in paragraph (c)(2) of the section; and

(B) In the case of divestiture, the 12-month periods described in paragraph (c)(2) of this section that end before the date of the divestiture.

(iv) *Example.* The provisions of this paragraph (e) may be illustrated by the following example.

Example. Assume that X, a calendar year corporation, wishes to change its annual accounting period to a fiscal year ending October 31, 1986. Assume that on January 1, 1986, X acquired from corporation Y a block of assets that Y held in a separate division and that X also holds in a separate division. Assume that the most recent 12-month period described in paragraph (c)(2) of this section is the period that begins on November 1, 1985, and ends on October 31, 1986, and that the two preceding 12-month periods are the periods from November 1, 1984 through October 31, 1985, and from November 1, 1983, through October 31, 1984. Assume that the gross receipts attributable to the assets acquired from Y for the 12-month period ending October 31, 1986 (including the receipts attributable to the period from November 1, 1985, through December 31, 1985, when the assets were held by Y, and the receipts attributable to the period from January 1, 1986, through October 31, 1986, when the assets were held by X), are $8,000. In addition, assume that the gross receipts attributable to the assets acquired from Y for the 12-month periods ending October 31, 1985, and October 31, 1984, when the assets were held by Y, are $7,500, and $7,000, respectively. Assume further that X's gross receipts from sales and services for the 12-month period ending October 31, 1986, October 31, 1985, and October 31, 1984, without taking into account gross receipts attributable to the assets acquired from Y, are $10,000, $9,000, and $8,000, respectively. The requirements of paragraph (e)(2)(ii) of this section are satisfied since $22,500 ($8,000 + $7,500 + $7,000) exceeds 80 percent of $27,000 ($10,00 + $9,000 + $8,000). Thus, the Commissioner will consider X's request to change its taxable year to a fiscal year ending October 31, 1986.

(f) *Procedures*—(1) *Changes not requiring the prior approval of the Commissioner.* In order to effect a change that does not require the prior approval of the Commissioner under this section, a taxpayer must indicate that the requirements of this section are satisfied in a statement setting forth the computations required to establish a substantial business purpose under paragraph (c) of this section. The statement also must indicate that the taxpayer has agreed to all of the applicable conditions to the change, including any applicable conditions contained in § 1.441–3T. A taxpayer (other than an corporations seeking S status) must attach the statement to the income tax return for the short period involved in the change and, in addition, must type or legibly print the following caption at the top of page 1 of the return: "FILED UNDER § 1.442–2T (f)(1)." In the case of a corporation seeking S status, the statement must be attached to Form 2553 and the caption "FILED UNDER § 1.442–2T (f) (1)" must be typed or printed legibly at the top of page 1 of Form 2553.

(2) *Changes requiring the prior approval of the Commissioner.* In the case of a change of annual accounting period that requires the prior approval of the Commissioner under this section, a taxpayer must file Form 1128 or Form 2553, whichever is applicable. (See paragraph (e)(1) of this section for situations in which a request for approval will be considered.) The taxpayer must indicate that the application is filed under this paragraph (f)(2) by typing or printing legibly the following caption at the top of page 1 of the Form 1128 or Form 2553: "FILED UNDER § 1.442–2T (f)(2)." The taxpayer also must attach a statement to the applicable form setting forth the computations described in paragraph (c) of this section. In addition, a taxpayer described in paragraph (e)(1) (ii) of this section must attach a statement setting forth the computations described in paragraph (e) (2) of this section.

(3) *Time for filing.* (i) Except as otherwise provided in paragraph (f)(3) (ii) of this section, a taxpayer cannot change its annual accounting period under this section unless the return or form required to effect or request the change is filed by its due date (with extensions if the change is effected by filing an income tax return for the short period involved in the change).

(ii) A taxpayer may change its annual accounting period under this section if the due date (without regard to extensions) for the return or form required to effect or request the change is on or after September 30, 1986, and before March 9, 1987 and the return or form is filed before March 9, 1987 (or, in the case of a change effected by filing an income tax return for the short period involved in the change, if an application for extension is filed before March 9, 1987. This paragraph only extends the time for changing an annual accounting period and does not extend the time for making a S election. An S election that is timely filed before March 9, 1987, however, will not be denied or rendered ineffective solely by reason of the need for the taxpayer to submit the information required by paragraph (f)(1) or (f)(2) of this section.

(iii) In the case of a change of annual accounting period under this section that is effected by filing an income tax return for the short period involved in the change, any failure to file a return or to pay tax on or before the due date for the return or the date prescribed for payment will be treated as due to reasonable cause and will not give rise to any addition to tax under section 6651 if—

(A) The due date for the return (without regard to extensions) or the date prescribed for payment is on or

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after September 30, 1986, and before March 9, 1987, and

(B) The return (or application for extension) is filed and the tax is paid before March 9, 1987.

(g) *Effective date*—(1) *In general.* This section shall apply to a change of annual accounting period (other than a change described in paragraph (g)(2) of this section) if—

(i) The income tax return for the short period involved in the change is filed after September 29, 1986, and

(ii) The short period involved in the change ends before January 5, 1987.

(2) *Exceptions.* This section shall not apply to a change of annual accounting period if the application required to effect or request the change was timely filed before September 30, 1986. In the case of a change that is effected by filing an income tax return for the short period involved in the change, this section shall not apply if an application for extension to file that return was filed before September 30, 1986, the application clearly stated the year to which the taxpayer intended to change, and the income tax return for the short period is timely filed (determined with regard to extensions).

(3) *Hardship rule.* A taxpayer can request a waiver from the provisions of this section if the taxpayer can demonstrate, to the satisfaction of the Commissioner, that the taxpayer would sustain a substantial hardship from the application of this section, and if the short period involved in the change ends on or before October 5, 1986. A waiver ordinarily will not be granted unless the taxpayer can show that, by October 5, 1986, the taxpayer had closed its books in a manner that indicates that the period in question was intended to be the end of the short period, taken a physical inventory (if applicable), and incurred substantial costs in modifying its accounting systems (including,) for example, costs of reprogramming applicable computer systems) in order to change its year. A request for a waiver under this paragraph (g)(3) must be filed with the Commissioner of Internal Revenue, 1111 Constitution Avenue, NW, Room 5040, Washington, DC 20224 by March 9, 1987. Any information submitted with the request for waiver shall be submitted under penalties of perjury.

(h) *Anti-abuse rule*—(1) *In general.* A taxpayer may not adopt any taxable year that has the effect of circumventing the provisions of this section. The provisions of this section are deemed to be circumvented if, for example, a taxpayer that is unable to change its taxable year under this section transfers a substantial portion of its net assets to a related person and the related person purportedly adopts the desired taxable year. In that case, purported adoption of the desired taxable year will not be given effect and the related person must adopt the same taxable year as that of the taxpayer that is unable to change its taxable year under this section. For this purpose, the term "related person" has the same meaning as in section 168(e)(4)(D) (as in effect prior to the enactment of the Tax Reform Act of 1986), except that the second sentence thereof (relating to the substitution of 10 percent for 50 percent in applying sections 267(b) and 707(b)(1)) shall be disregarded.

(2) *Example.* The provisions of paragraph (h)(1) of this section may be illustrated with the following example.

Example. Assume that X, a calendar year corporation, is subject to the restrictions on changes in annual accounting period under this section. Assume that X wishes to change its taxable year to a fiscal year ending November 30, 1986, but cannot do so because it does not meet the requirements of this section. Assume further that X creates corporation Y, a wholly-owned subsidiary of X, which purportedly adopts a taxable year ending November 30, 1986. In addition, assume that X transfers a substantial portion of its net assets to Y before November 30, 1986, in a transaction described in section 351 or 368. Under these facts, Y may not adopt a November 30 taxable year and instead must adopt a taxable year that ends on December 31, which is the taxable year of X.

Par. 6. Section 1.442–3T is added at the appropriate place:

§ 1.442–3T Special limitations on certain adoptions and retentions of a taxable year.

(a) *Applicability.* This section generally applies to—

(1) Any partnership that wishes to adopt a taxable year other than the calendar year, the taxable year of its principal partners, or the taxable year to which all of its principal partners are concurrently changing, and

(2) Any corporation seeking S status that wishes to adopt or retain a taxable year other than the calender year or a taxable year that meets the requirements of § 4.02 or 4.04 of Rev. Proc. 83–25, 1983–1 C.B. 689.

(b) *General rule.* A taxpayer to which this section applies may not adopt or retain a taxable year that results in any deferral of income to its partners or shareholders unless the taxpayer—

(1) Secures the prior approval of the Commissioner by establishing a substantial business purpose under paragraph (c)(2) of this section for the adoption or retention, or

(2) Is permitted to adopt or retain the taxable year without securing the prior approval of the Commissioner under paragraph (c)(1) of this section.

Thus, a taxpayer to which this section applies may not adopt or retain a taxable year that results in a deferral of income to its partners or shareholders under Rev. Proc. 72–51, 1972–2 C.B. 832, or § 4.03 of Rev. Proc. 83–25, 1983–1 C.B. 689.

(c) *Substantial business purpose*—(1) *Prior approval of the Commissioner not needed.* Notwithstanding § 1.706–1(b), § 1.442–1(b)(2), and 26 CFR 18.1378–1(a), a taxpayer to which this section applies may adopt or retain a taxable year that results in a deferral of income to its partners or shareholders without the prior approval of the Commissioner if the taxpayer can establish a substantial business purpose under § 1.442–2T(c). Thus, a taxpayer described in § 1.442–2T(c)(4) must secure the prior approval of the Commissioner to the adoption or retention even if the requirements of § 1.442–2T(c)(1) are satisfied. A taxpayer shall effect an adoption or retention permitted under this paragraph (c)(1) in the manner prescribed by § 1.442–2T(f)(1), except that the taxpayer's first income tax return shall be treated as the return for the short period involved in a change of annual accounting period.

(2) *Prior approval of the Commissioner.* In any case where the taxpayer was in existence for the three 12-month periods described in § 1.442–2T(c)(2), or where a predecessor organization (within the meaning of § 4.04 of Rev. Proc. 83–25) was actively engaged in a trade or business at all times during the portion of those three 12-month periods prior to the inception of the taxpayer, the Commissioner will consider a request for prior approval of an adoption or retention of a taxable year that results in a deferral of income to its partners or shareholders only if the taxpayer is described in § 1.442–2T(e). In such a case, the application for approval shall be filed in the manner prescribed by § 1.442–2T(f)(2). In any other case, the taxpayer must establish a substantial business purpose in order to obtain the prior approval of the Commissioner, and must file an application for approval in accordance with § 1.706–1(b) or 26 CFR 18.1378–1(a) (whichever is applicable) and § 1.442–1T(b)(1). For this purpose, the following factors generally will not be sufficient to establish a substantial business purpose:

(i) The use of a particular year for regulatory or financial accounting purposes;

(ii) The hiring patterns of a particular business (e.g., the fact that a firm typically hires staff during certain times of the year);

(iii) The use of a particular year for administrative purposes, such as for the admission or retirement of partners or shareholders, promotion of staff, and compensation or retirement arrangements with staff, partners, or shareholders; and

(iv) The fact that a particular business involves the use of price lists, model year, or other items that change on an annual basis.

(d) *Time for filing.* (1) Except as otherwise provided in paragraph (d)(2) of this section, a taxpayer cannot adopt or retain a taxable year under this section unless the return or form required to effect or request the adoption or retention is filed by its due date (with extensions if the adoption is effected by filing an income tax return for the taxpayer's first taxable year).

(2) A taxpayer may adopt or retain a taxable year under this section if the due date (without regard to extensions) for the return or form required to effect or request the adoption or retention is on or after November 6, 1986, and before March 9, 1987, and the return or form is filed before March 9, 1987 (or, in the case of an adoption effected by filing an income tax return for the taxpayer's first taxable year, if an application for extension is filed before March 9, 1987). This paragraph (d)(2) only extends the time for adopting or retaining a taxable year and does not extend the time for making an S election. An S election that is timely filed before March 9, 1987, however, will not be denied or rendered ineffective solely by reason of the need for the taxpayer to submit the information required by paragraph (c) of this section.

(3) In the case of an adoption or retention of a taxable year under this section that is effected by filing an income tax return for the taxpayer's first taxable year, any failure to file a return or to pay tax on or before the due date for the return or the date prescribed for payment will be treated as due to reasonable cause and will not give rise to any addition to tax under section 6651 if—

(i) The due date for the return (without regard to extensions) or the date prescribed for payment is on or after November 6, 1986, and before March 9, 1987, and

(ii) The return (or application for extension) is filed and the tax is paid before March 9, 1987.

(e) *Effective date.* This section generally applies if the first taxable year of the partnership or the first taxable year for which the election to be an S corporation is effective begins before January 1, 1987, unless the application necessary to effect or request the adoption or retention was timely filed before November 6, 1986. This section shall not apply, however, to an adoption by a partnership of a taxable year that begins before January 1, 1986.

Par. 7. Section 1.706–1 is amended by adding the following new paragraph (b)(7):

§ 1.706–1 Taxable years of partner and partnership.

* * * * *

(b) *Adoption or change in taxable year.* * * *

(7) *Cross-reference to § 1.442–2T and § 1.442–3T.* For special rules applicable to certain changes in annual accounting period where the short period involved in the change ends in 1986 or 1987, see § 1.442–2T. For special rules applicable to certain adoptions and retentions of a taxable year ending in 1986 or 1987, see § 1.442–3T.

* * * * *

PART 18—TEMPORARY INCOME TAX REGULATIONS UNDER THE SUBCHAPTERS S REVISION ACT OF 1982

Par. 8. The authority for Part 18 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 9. Section 18.1378–1 is amended by adding the following new paragraph (e) at the end thereof:

§ 18.1378–1 Taxable year of S corporation.

* * * * *

(e) *Cross-reference to § 1.442–2T and § 1.442–3T.* For special rules applicable to certain changes in annual accounting period where the short period involved in the change ends in 1986 or 1987, see § 1.442–2T. For special rules applicable to certain adoptions and retentions of a taxable year ending in 1986 or 1987, see § 1.442–3T.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 10. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 11. Section 602.101 (c) is amended by inserting in the appropriate places in the table "§ 1.441–3T ... 1545–0134", "§ 1.442–2T ... 1545–0134", and "§ 1.442–3T ... 1545–0134."

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

James I. Owens,

Acting Commissioner of Internal Revenue.

Approved: January 15, 1987.

O. Donaldson Chapoton,

Acting Assistant Secretary of the Treasury.

[FR Doc. 87–2016 filed 2–4–87; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Parts 5h and 602

[T.D. 8124]

Income Tax; Certain Elections Under the Tax Reform Act of 1986

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the time and manner of making certain elections under the Tax Reform Act of 1986. These regulations provide guidance to persons making these elections.

DATES: These regulations are effective February 5, 1987. Except as otherwise provided, the regulations apply to elections made after October 22, 1986.

FOR FURTHER INFORMATION CONTACT: Joel S. Rutstein of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, D.C. 20224, (Attention: CC:LR:T (LR–77–86). Telephone 202–566–3297 (not a toll free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to certain elections under various sections of the Internal Revenue Code of 1986 and the Tax Reform Act of 1986 (the Act). These regulations are added to the Temporary Regulations—Elections Under Various Public Laws (26 CFR Part 5h). The temporary regulations provided by this document will remain in effect until superseded by later temporary or final regulations relating to these elections.

Explanation of Provisions

Section 5h.5(a)(1) lists certain elections that are provided by the Act and are addressed in this regulation. The general rules (and exceptions thereto) regarding the time for making the listed elections are provided in

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§ 5h.5(a)(2). The general rules (and exceptions thereto) regarding the manner of making the listed elections are provided in § 5h.5(a)(3). Special rules regarding the time and manner for making certain elections listed in § 5h.5(a)(1) are contained in paragraphs (b) through (i) of § 5h.5. Election provisions provided by the Act, but not addressed in this regulation, will be addressed in other regulation projects.

Section 5h.5(j) provides that additional information may be required from taxpayers after an election has been filed.

Special Analysis

The Commissioner of Internal Revenue has determined that this temporary regulation is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545–0982.

Drafting Information

The principal author of these regulations is Joel S. Rutstein of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations both on matters of substance and style.

List of Subjects

26 CFR Part 5h

Income taxes, Elections under various public laws, Deficit Reduction Act of 1984, Tax Reform Act of 1986.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulation

Accordingly, 26 CFR Parts 5h and 602 are amended as follows:

PART 5h—[AMENDED]

Paragraph 1. The authority for Part 5h continues to read:

Authority: 26 U.S.C. 7805, section 5h.5 also issued under 26 U.S.C. 42(f)(1), 42(g)(1), 42(i)(2), 42(j)(5), 48(b)(2), 56(f)(3)(B), 83(c)(3), 141(b)(9), 142(d)(1), 142(d)(4)(B), 143(k)(9)(D)(iii), 154(d), 147(b)(4)(A), 165(l)(1), 168(b)(5), 168(f)(1), 168(g)(7), 168(h)(6)(F)(ii), 216(b)(3), 263(i), 263A(d)(3), 382(l)(5)(H), 448(d)(4), 453C(b)(2)(B), 453C(e)(4), 468B, 469(j)(9), 474, 585(c)(3)(A)(iii)(I), 585(c)(4), 616(d), 617(h), 1059(c)(4), 2632(b)(3), 2652(a)(3), 3121(w)(2), 4982(e)(4), and 7701(b). Section 5h.5 also issued under Pub. L. 99–514 sections 203(a)(1)(B), 204(e), 243(a), 243(b), 311(d)(2), 646, 801(d)(2), 806(e)(2)(c), 905(c), 1704(b), 1801(a), 1802(a), and 1804(e)(4).

Par. 2. A new § 5h.5 is added immediately after § 5h.4 to read as follows:

§ 5h.5 Time and manner of making the elections under the Tax Reform Act of 1986.

(a) *Miscellaneous elections*—(1) *Elections to which this paragraph applies.* This paragraph applies to the elections set forth below provided under the Tax Reform Act of 1986 (the Act). General rules regarding the time for making the elections are provided in paragraph (a)(2) of this section. General rules regarding the manner for making certain elections are provided in paragraph (a)(3) of this section. Special rules regarding the time and manner for making certain elections are contained in paragraphs (a)–(i) of this section. If a special rule applies to one of the elections listed below, a cross-reference to the special rule is shown in brackets at the end of the description of the "Availability of Election." Paragraph (j) of this section provides that additional information with respect to elections may be required by future regulations or revenue procedures.

Section of Act	Section of Code	Description of Election	Availability of Election
201(a)	168(b)(5)	Election to depreciate property using the straight line method of recovery with respect to one or more classes of property for any taxable year	Property placed in service after 12–31–86. Election must be made for taxable year in which property is placed in service. Election shall apply to all property in the class placed in service during the taxable year for which the election is made.
201(a)	168(f)(1)	Election to exclude certain property from the accelerated cost recovery system	Property placed in service after 12–31–86. Election must be made for taxable year in which property is placed in service.
201(a)	168(g)(7)	Election to use alternative depreciation system with respect to one or more classes of property for any taxable year (except for residential rental or non-residential real property where the election may be made separately with respect to each property)	Property placed in service after 12–31–86. Election must be made for taxable year in which property is placed in service. Except for residential rental or non-residential real property, election shall apply to all property in the class placed in service during the taxable year for which the election is made.
201(a), 1802(a)	168(h)(6)(F)(ii), 168(j) (as in effect before October 22, 1986).	Election by a tax-exempt controlled entity to treat any gain recognized by the tax-exempt parent on any disposition of an interest in the tax-exempt controlled entity (and to treat any dividends or interest received or accrued from the tax-exempt controlled entity) as unrelated business taxable income under Code section 511 in order for the tax-exempt controlled entity to not be treated as a tax-exempt entity (or as a successor to a tax-exempt entity)	Property placed in service after 9–27–85, but can apply to property placed in service before such date if the tax-exempt controlled entity so elects. [See paragraph (a)(3)(ii) of this section.]
203(a)(1)(B)		Election to apply Act section 201 (including all elections within section 201)	Property placed in service after 7–31–86 and before 1–1–87.
204(e)		Election to have Act section 201 either (i) not apply to any property placed in service during 1987 or 1988 which is replacement property for property lost, damaged or destroyed in a flood which occured 11–3–86 through 11–7–85 and which was declared a natural disaster area by the President of the United States, or (ii) apply to all such replacement property placed in service during 1985 or 1986.	(i) Property placed in service during 1987 or 1988, or (ii) property placed in service during 1985 or 1986.
243(a)		Election to begin the 60 month amortization period with the first month of the taxpayer's first taxable year beginning after 11–19–82 in lieu of the 11–19–82 date or the bus operating authority acquisition date	Bus operating authorities held on 11/19/82, or acquired after that date under a written contract that was binding on that date.

Section of Act	Section of Code	Description of Election	Availability of Election
243(b)		Election to begin the 60 month amortization period on the first month of the taxpayer's first taxable year beginning after the deregulation month in lieu of the deregulation month	Freight forwarder operating authorities held at the beginning of the 60 month period applicable to the taxpayer (i.e., the deregulation date or the first month of the first taxable year beginning after the deregulation date)
243 (a), (b)		Election by a qualified corporate taxpayer to allocate a portion of the cost basis of a qualified acquiring corporation in the stock of an acquired corporation to the basis of the authority	For bus operating authorities, authorities held on 11/19/82, or acquired after that date under a written contract that was binding on that date. For freight forwarders, authorities held at the beginning of the 60-month period applicable to the taxpayer.
252(a)	42(f)(1)	Election concerning beginning of credit period for low-income housing credit	Buildings placed in service after 12–31–86 and before 1–1–90 (before 1–1–91 for buildings described in Code section 42(n)(2)(B)). [See paragraph (b) of this section.]
252(a)	42(g)(1)	Election concerning qualified low-income housing project to either satisfy the 20–50 or the 40–60 occupancy test	Buildings placed in service after 12–31–86 and before 1–1–90 (before 1–1–91 for buildings described in Code section 42(n)(2)(B)). [See paragraph (b) of this section.]
252(a)	42(i)(2)	Election to reduce eligible basis by outstanding balance of Federal loan subsidy	Buildings placed in service after 12–31–86 and before 1–1–90 (before 1–1–91 for buildings described in Code section 42(n)(2)(B)). [See paragraph (b) of this section.]
252(a)	42(j)(5)	Election to have certain partnerships treated as the taxpayer eligible for low-income housing credit	Buildings placed in service after 12–31–86 and before 1–1–90 (before 1–1–91 for buildings described in Code Section 42(n)(2)(B) [See paragraph (b) of this section.]
311(d)(2)		Revocation of prior election under Code section 631(a)	Election for taxable years beginning before 1–1–87 may be revoked for taxable years ending after 12–31–86.
411(b)(1)	263(i)	For intangible drilling and development costs paid or incurred with respect to an oil, gas, or geothermal well located outside the United States, election to include such costs in adjusted basis for purposes of computing the amount of any deduction under Code section 611 (without regard to section 613).	Costs paid or incurred after 12–31–86 in taxable years ending after such date. [See paragraph (a)(2)(iii) of this section.]
411(b)(2)	616(d)	For expenditures paid or incurred with respect to the development of a mine or other natural deposit (other than an oil, gas, or geothermal well) located outside the United States, election to include such expenditures paid or incurred during the taxable year for which made in adjusted basis for purposes of computing the amount of any deduction under Code section 611 (without regard to section 613)	Costs paid or incurred after 12–31–86 in taxable years ending after such date. [See paragraph (a)(2)(iv) of this section.]
411(b)(2)	617(h)	For expenditures paid or incurred before the development stage for the purpose of ascertainng the existence, location, extent or quality of any deposit of ore or other mineral deposit (other than an oil, gas or geothermal well) located outside the United States, election to include all such expenditures, paid or incurred during the taxable year with respect to any such deposit, in adjusted basis for purposes of computing the amount of any deduction under Code section 611 (without regard to section 613)	Costs paid or incurred after 12–31–86 in taxable years ending after such date. [See paragraph (a)(2)(v) of this section.]
501(a)	469(j)(9)	Election to increase basis of property by amount of disallowed credit for purposes of determining gain or loss from a disposition of property used in a passive activity	Taxable years beginning after 12–31–86. [See paragraph (a)(3)(iii) of this section.]
614(b)	1059(c)(4)	Election to determine whether a dividend is extraordinary by reference to the fair market value of the share of stock with respect to which the dividend was received	Dividends declared after July 18, 1986 in taxable years ending after such date.
621(a)	382(l)(5)(H)	Election by certain new loss corporations not to apply the special rules of Code section 382(l)(5) concerning inapplicability of the section 382(a) limitation on corporate net operating loss carryforwards where the old loss corporation is involved in a Title 11-type case	Ownership changes following either an owner shift involving a 5% shareholder occurring after 12–31–86 or an equity structure shift occuring pursuant to a plan of reorganization adopted after 12–31–86.
644(d)	216(b)(3)	Election by a cooperative housing corporation to allocate real estate taxes or interest or both to each tenant-stockholder's dwelling unit in a manner which reasonably reflects the cost to the corporation of the tenant-stockholder's dwelling unit	Taxable years beginning after 12–31–86. [See paragraph (a)(3)(iv) of this section.]
646		Election by an entity to be treated as a trust under the Internal Revenue Code if such entity was created in 1906 as a common law trust and governed by the trust laws of the State of Minnesota, receives royalties from iron ore leases, and income interests in the entity are publicy traded on a national stock exchange	The election is effective beginning on first day of the first taxable year beginning after October 22, 1986 and following the year in which the election is made. Such election must be made by the board of trustees of such entity and must be accompanied by a written agreement signed by the board of trustees of the entity.
651	4982(e)(4)	Election by a regulated investment company to use taxable years ending on 11–30 or 12–31 for purposes of computing capital gain net income under Code section 4982	Calendar years beginning after 12–31–86. [See paragraph (a)(2)(vi) of this section.]
701(a)	56(f)(3)(B)	Election to have amount of net book income be equal to amount earnings and profits	Taxable years beginning after 12–31–86
801(a)	448(d)(4)	Election of common parent of an affiliated group that all members of such group be treated as one taxpayer if substantially all the activities of all members of the affiliated group involve performance of services in the same field	Taxable years beginning after 12–31–86
801(d)(2)		Election to continue using the cash method of accounting for loans, leases and related party transactions	Loans, leases and related party transactions entered into before 9–26–85
802	474	Election by certain small businesses to use the simplified dollar-value LIFO method	Taxable years beginning after 12–31–86. [See paragraph (a)(3)(v) of this section.]
803(a)	263A(d)(3)	Election to have rules of Code section 263A (relating to capitalization and inclusion in inventory costs of certain expenses) not apply to any plant or animal produced in any farming business conducted by the electing taxpayer	Unless consent is obtained from the Commissioner, the first taxable year beginning after 12–31–86 during which the taxpayer engages in a farming business. [See paragraph (c) of this section.]
806(e)(2)(C)		Election to have net income for the short taxable year of a partnership or S corporation which results from the required change in accounting period included entirely in income for such short taxable year	Partner and shareholder taxable years beginning after 12–31–86 with or within which the short taxable year created under section 806 of the Act ends. [See paragraph (d) of this section.]

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Section of Act	Section of Code	Description of Election	Availability of Election
		Election to reduce partnership or S corporation income for the short taxable year resulting from a required change in accounting period under section 806 of the Act by an unamortized adjustment amount existing as of October 22, 1986, where such adjustment was required to effectuate a previous accounting period change under Rev. Proc. 72-51, 1972-2 C.B. 832 or Rev. Proc. 83-25, 1983-1 C.B. 689	Short taxable years of partnerships or S corporations beginning after 12-31-86. [See paragraph (e) of this section.]
811(a)	453C(b)(2)(B)	Election to compute adjusted bases using depreciation deduction used under Code section 312(k)	Taxable years ending after 12-31-86 with respect to dispositions made after 2-28-86.
811(a)	453C(e)(4)	Election to have Code section 453C not apply to obligations arising from sales of timeshares and unimproved residential lots to individuals	Taxable years ending after 12-31-86 with respect to dispositions made after 2-28-86. [See paragraph (a)(3)(vi) of this section.]
901(a)	585(c)(3)(A)(ii)(I)	Election to recapture more than 10% of the bad debt reserve in the first taxable year after the disqualification year	Taxable years beginning after 12-31-86.
901(a)	585(c)(4)	Election to use the "cut-off method" to recapture bad debt reserves	Taxable years beginning after 12-31-86
905(a)	165(g)(1)	Election to treat amount of reasonably estimated loss on a deposit in insolvent or bankrupt qualified financial institution as a loss described in Code section 165(c)(3) and incurred in the taxable year	Taxable years beginning after 12-31-82. [See paragraph (f) of this section.]
905(c)		Election to apply Code section 451(f) (relating to treatment of interest on frozen deposits in certain financial institutions)	Taxable years beginning after 12-31-82 and before 1-1-87
1301(b)	141(b)(9)	Election by issuer of tax-exempt bonds to treat a portion of an issue as a qualified 501(c)(3) bond if such portion would have qualified as a 501(c)(3) bond had it been issued separately	Bonds issued after 8-15-86. [See paragraph (g) of this section.]
1301(b)	142(d)(1)	Election by issuer of tax-exempt bonds for residential rental property to satisfy either the 20-50 or the 40-60 occupancy test	Bonds issued after 8-15-86. [See paragraph (g) of this section.]
1301(b)	142(d)(4)(B)	Election by issuer of tax-exempt bonds for residential rental property to treat the project as a deep rent skewed project	Bonds issued after 8-15-86. [See paragraph (g) of this section.]
1301(b)	143(k)(9)(D)(ii)	Election to treat limited equity cooperative housing as residential rental property and not as owner-occupied housing	Bonds issued after 8-15-86 and before 1-1-89. [See paragraph (g) of this section.]
1301(b)	145(d)	Election by issuer of tax-exempt bonds to have Code section 145 not apply to the issue if the issue is an issue of exempt facility bonds or qualified redevelopment bonds, to which the volume cap applies	Bonds issued after 8-15-86. [See paragraph (g) of this section.]
1301(b)	147(b)(4)(A)	Election by issuer of qualified 501(c)(3) bonds to have such bonds treated as meeting the limitation on maturity requirements of Code section 147(b)(1) if the requirements of section 147(b)(4)(B) are met	Bonds issued after 8-15-86. [See paragraph (g) of this section.]
1431(a)	2632(b)(3)	Election to not allocate generation skipping transfer exemption to a direct skip transfer	Generation skipping transfers made, or treated as made, after October 22, 1986
1431(a)	2652(a)(3)	Election to have qualified terminable interest property election not apply for purposes of the generation skipping transfer tax	Generation skipping transfers made, or treated as made, after October 22, 1986.
1704(b)		Election to revoke prior election under Code section 1402(e) (relating to exemption from social security taxes for certain clergy)	Remuneration received in taxable years ending on or after October 22, 1986. [See paragraph (h) of this section.]
1801(a)	168(i) (as in effect before October 22, 1986)	Election to make finance leasing rules inapplicable to property which would otherwise be subject to them under the transitional rules of section 12(c)(1) of the Tax Reform Act of 1984	Personal property leased under certain lease agreements effective on or after 1-1-84. [See paragraph (a)(3)(vii) of this section.]
1804(e)(4)		Election by a common parent of an affiliated group to apply amendments made by the Tax Reform Act of 1984 for taxable years beginning after 12-31-83	Groups which include a corporation which on 6-22-84 is a member of the group which files a consolidated return for such corporation's taxable year which includes 6-22-84.
1807(a)(7)	468B	Election to treat a qualified payment made to a court-ordered fund as a payment made to a designated settlement fund	Generally, liabilities arising out of personal injury, death or property damage that are incurred after 7-18-84 under law in effect before the enactment of Code section 461(h). Election is made for the taxable year in which qualified payments are made to a designated settlement fund.
1806(e)(2)	48(b)(2)	Election by lessee and lessor not to apply the rule of Code section 48(b)(2) concerning the date leased property is treated as originally placed in service	Property originally placed in service after 4-11-84 (as determined under Code section 48(b) prior to its amendment by section 114(a)of the Tax Reform Act of 1984). [See paragraph (a)(3)(viii) of this section.]
1810( )(4)	7701(b)	Election to be treated as a resident alien	Taxable years beginning after December 31, 1984. [See paragraph (a)(3)(ix) of this section.]
1879(p)(1)	83(c)(3)	Election to treat certain stock acquired upon the exercise of nonqualified stock options as subject to a substantial risk of forfeiture by reason of Code section 83(c)(3) even though the transfer of stock pursuant to such exercise occurred before 1-1-82, the effective date of section 83(c)(3)	Transfers of stock described in section 1879(p)(1) of the Act. [See paragraph (a)(2)(viii) and(a)(3)(x) of this section.]
1882(c)	3121(w)(2)	Election to revoke prior election under Code section 3121(w) (relating to exemption from social security taxes for certain churches and qualified church-controlled organizations	Remuneration paid after 12-31-86 unless such electing church or church-controlled organization had withheld and paid over all employment taxes due, as if such election had never been in effect during the period from the stated effective date of the election being revoked through 12-31-86. [See paragraph (i) of this section.]

(2) *Time for making elections*—(i) *In general.* Except as otherwise provided in this section, the elections specified in paragraph (a)(1) of this section shall be made by the later of—

(A) The due date (taking extensions into account) of the tax return for the first taxable year for which the election is to be effective, or

(B) April 15, 1987 (in which case the election generally must be made by amended return).

(ii) *No extension of time for payment.* Payments of tax due shall be made in accordance with chapter 62 of the Code.

(iii) *Time for making the election with respect to foreign intangible drilling costs.* With respect to the election under Act section 411(b)(1) (Code section 263(i)(2)(A)), the election shall be made on a property-by-property basis for each oil, gas, or geothermal property (as defined in Code section 614). The election shall be made by the due date (taking extensions into account) of the income tax return for the first taxable year in which the taxpayer pays or incurs any cost with respect to the development of such property for which the election is available.

(iv) *Time for making the election with respect to foreign development expenditures.* With respect to the election under Act section 411(b)(2) (Code section 616(d)(2)(A)), the election shall be made for each mine or other natural deposit not later than the time prescribed by law for filing the income tax return (taking extensions into account) for the taxable year to which such election is applicable.

(v) *Time for making the election with respect to foreign exploration expenditures.* With respect to the election under Act section 411(b)(2) (Code section 617(h)(2)(A)), the election may be made at any time before the expiration of the period prescribed for filing a claim for credit or refund of the tax imposed by chapter 1 of the Code for the first taxable year for which the taxpayer desires the election to be applicable.

(vi) *Time for making certain elections by regulated investment companies.* The election under Act section 651 (Code section 4982(e)(4)) shall be made on a statement attached to the form prescribed by the Internal Revenue Service which is used to report and pay the excise tax liability under such section 4982, and shall be filed on or before March 15 of the first calendar year beginning after the end of the first excise tax period for which the election is to be effective. The statement of election under section 4982(e)(4) shall be attached to the prescribed form regardless of whether the regulated investment company is liable for the excise tax imposed by section 4982 for the excise tax period in question.

(vii) *Time for making the election with respect to certain nonqualified stock options.* The election under section 1879(p)(1) of the Act (Code section 83(c)(3)) shall be made—

(A) By April 21, 1987, in any case in which the operation of any law or rule of law on or before such date would prevent the credit or refund of any overpayment of tax resulting from such election, and

(B) By no later than any date after April 21, 1987 on which the operation of any law or rule of law would prevent the credit or refund of any overpayment of tax resulting from such election.

(3) *Manner of making elections*—(i) *In general.* Except as otherwise provided in this section, the elections specified in paragraph (a)(1) of this section shall be made by attaching a statement to the tax return for the taxable year for which the election is to be effective. If because of paragraph (a)(2)(i)(B) of this section the election may be filed after the due date of the tax return for the first taxable year for which the election is to be effective, such statement must be attached to a tax return or amended return for the taxable year to which the election relates. Except as otherwise provided in the return or in the instructions accompanying the return for the taxable year, the statement shall—

(A) Contain the name, address and taxpayer identification number of the electing taxpayer,

(B) Identify the election,

(C) Indicate the section of the Code (or, if the provision is not codified, the section of the Act) under which the election is made,

(D) Specify, as applicable, the period for which the election is being made and/or the property or other items to which the election is to apply, and

(E) Provide any information required by the relevant statutory provisions and any information necessary to show that the taxpayer is entitled to make the election.

(ii) *Special rules for making the transitional rule elections with respect to certain tax-exempt controlled entities.* The irrevocable election under Act sections 201(a) and 1802(a) (Code sections 168(h)(6)(F)(ii) and 168(j), as in effect before October 22, 1986), shall be made by the tax-exempt controlled entity at the time and in the manner described in paragraphs (a)(2) and (a)(3)(i) of this section. A copy of the election statement filed by the tax-exempt controlled entity shall also be attached to the Federal tax returns (*e.g.*, Form 990 or 5500) of each of the tax-exempt shareholders or beneficiaries of the controlled entity.

(iii) *Special rule for making the election with respect to gain or loss from a disposition of property used in a passive activity.* The election under Act section 501(a) (Code section 469(j)(9)) shall be made on the form prescribed by the Internal Revenue Service for computing the taxpayer's passive activity loss and credit for the taxable year in which the property is disposed.

(iv) *Special rules for making the election with respect to cooperative housing corporations.* The election under Act section 644(d) (Code section 216(b)(3)(B)(ii)) may be made by a cooperative housing corporation with respect to its real estate taxes or interest or both. The election is available for any taxable year beginning after December 31, 1986, if the cooperative housing corporation has, by January 31 of the year following the first calendar year that includes any period to which the election applies, furnished to each tenant-stockholder during that period a written statement showing the amount of the allocation (or allocations) under section 216(b)(3)(B)(i) attributable to such tenant-stockholder's dwelling unit (or units) for that period. Any cooperative housing corporation making the election shall do so in accordance with paragraph (a) (2) and (3) of this section and shall identify in the statement described in paragraph (a)(3) of this section whether the election is for real estate taxes or interest or both.

(v) *Special rules for making the election with respect to the simplified dollar-value LIFO method.* The election under Act section 802 (Code section 474) may be made only if the taxpayer files with the taxpayer's income tax return for the taxable year as of the close of which the method is first to be used a statement of the taxpayer's election to use the simplified dollar-value LIFO inventory method. The statement shall be on Form 970 pursuant to the instructions to the form and to the requirements of the regulations under section 474, or in such other manner as may be acceptable to the Commissioner.

(vi) *Special rules for making election to have section 453C not apply to obligations arising from sales of timeshares and unimproved residential lots to individuals.* The election under Act section 811(a) (Code section 453C(e)(4)) to have section 453C not apply to obligations arising from sales of timeshares and unimproved residential lots to individuals may be made with respect to any obligation, or with respect to a class of such obligations. In the case of an election made with respect to a class of obligations, such election shall describe the class of obligations with such specificity as to make the class readily identifiable.

(vii) *Special rules for making certain finance leasing transitional rule elections.* The election relating to finance leases under Act section 1801(a)(1) (Code section 168(i) as in effect before October 22, 1986) shall be made by the lessor under a lease agreement subject to the finance lease rules of section 168(i) of the Code, as in effect before October 22, 1986, by noting

Section of Act	Section of Code	Description of Election	Availability of Election
1879(p)(1)	83(c)(3)	Election to treat certain stock acquired upon the exercise of nonqualified stock options as subject to a substantial risk of forfeiture by reason of Code section 83(c)(3) even though the transfer of stock pursuant to such exercise occurred before 1-1-82, the effective date of section 83(c)(3)	Transfers of stock described in section 1879(p)(1) of the Act. [See paragraph (a)(2)(viii) and(a)(3)(x) of this section.]
1882(c)	3121(w)(2)	Election to revoke prior election under Code section 3121(w) (relating to exemption from social security taxes for certain churches and qualified church-controlled organizations	Remuneration paid after 12-31-86 unless such electing church or church-controlled organization had withheld and paid over all employment taxes due, as if such election had never been in effect during the period from the stated effective date of the election being revoked through 12-31-86. [See paragraph (i) of this section.]

(2) *Time for making elections*—(i) *In general.* Except as otherwise provided in this section, the elections specified in paragraph (a)(1) of this section shall be made by the later of—

(A) The due date (taking extensions into account) of the tax return for the first taxable year for which the election is to be effective, or

(B) April 15, 1987 (in which case the election generally must be made by amended return).

(ii) *No extension of time for payment.* Payments of tax due shall be made in accordance with chapter 62 of the Code.

(iii) *Time for making the election with respect to foreign intangible drilling costs.* With respect to the election under Act section 411(b)(1) (Code section 263(i)(2)(A)), the election shall be made on a property-by-property basis for each oil, gas, or geothermal property (as defined in Code section 614). The election shall be made by the due date (taking extensions into account) of the income tax return for the first taxable year in which the taxpayer pays or incurs any cost with respect to the development of such property for which the election is available.

(iv) *Time for making the election with respect to foreign development expenditures.* With respect to the election under Act section 411(b)(2) (Code section 616(d)(2)(A)), the election shall be made for each mine or other natural deposit not later than the time prescribed by law for filing the income tax return (taking extensions into account) for the taxable year to which such election is applicable.

(v) *Time for making the election with respect to foreign exploration expenditures.* With respect to the election under Act section 411(b)(2) (Code section 617(h)(2)(A)), the election may be made at any time before the expiration of the period prescribed for filing a claim for credit or refund of the tax imposed by chapter 1 of the Code for the first taxable year for which the taxpayer desires the election to be applicable.

(vi) *Time for making certain elections by regulated investment companies.* The election under Act section 651 (Code section 4982(e)(4)) shall be made on a statement attached to the form prescribed by the Internal Revenue Service which is used to report and pay the excise tax liability under such section 4982, and shall be filed on or before March 15 of the first calendar year beginning after the end of the first excise tax period for which the election is to be effective. The statement of election under section 4982(e)(4) shall be attached to the prescribed form regardless of whether the regulated investment company is liable for the excise tax imposed by section 4982 for the excise tax period in question.

(vii) *Time for making the election with respect to certain nonqualified stock options.* The election under section 1879(p)(1) of the Act (Code section 83(c)(3)) shall be made—

(A) By April 21, 1987, in any case in which the operation of any law or rule of law on or before such date would prevent the credit or refund of any overpayment of tax resulting from such election, and

(B) By no later than any date after April 21, 1987 on which the operation of any law or rule of law would prevent the credit or refund of any overpayment of tax resulting from such election.

(3) *Manner of making elections*—(i) *In general.* Except as otherwise provided in this section, the elections specified in paragraph (a)(1) of this section shall be made by attaching a statement to the tax return for the taxable year for which the election is to be effective. If because of paragraph (a)(2)(i)(B) of this section the election may be filed after the due date of the tax return for the first taxable year for which the election is to be effective, such statement must be attached to a tax return or amended return for the taxable year to which the election relates. Except as otherwise provided in the return or in the instructions accompanying the return for the taxable year, the statement shall—

(A) Contain the name, address and taxpayer identification number of the electing taxpayer,

(B) Identify the election,

(C) Indicate the section of the Code (or, if the provision is not codified, the section of the Act) under which the election is made,

(D) Specify, as applicable, the period for which the election is being made and/or the property or other items to which the election is to apply, and

(E) Provide any information required by the relevant statutory provisions and any information necessary to show that the taxpayer is entitled to make the election.

(ii) *Special rules for making the transitional rule elections with respect to certain tax-exempt controlled entities.* The irrevocable election under Act sections 201(a) and 1802(a) (Code sections 168(h)(6)(F)(ii) and 168(j), as in effect before October 22, 1986), shall be made by the tax-exempt controlled entity at the time and in the manner described in paragraphs (a)(2) and (a)(3)(i) of this section. A copy of the election statement filed by the tax-exempt controlled entity shall also be attached to the Federal tax returns (*e.g.*, Form 990 or 5500) of each of the tax-exempt shareholders or beneficiaries of the controlled entity.

(iii) *Special rule for making the election with respect to gain or loss from a disposition of property used in a passive activity.* The election under Act section 501(a) (Code section 469(j)(9)) shall be made on the form prescribed by the Internal Revenue Service for computing the taxpayer's passive activity loss and credit for the taxable year in which the property is disposed.

(iv) *Special rules for making the election with respect to cooperative housing corporations.* The election under Act section 644(d) (Code section 216(b)(3)(B)(ii)) may be made by a cooperative housing corporation with respect to its real estate taxes or interest or both. The election is available for any taxable year beginning after December 31, 1986, if the cooperative housing corporation has, by January 31 of the year following the first calendar year that includes any period to which the election applies, furnished to each tenant-stockholder during that period a written statement showing the amount of the allocation (or allocations) under section 216(b)(3)(B)(i) attributable to such tenant-stockholder's dwelling unit (or units) for that period. Any cooperative housing corporation making the election shall do so in accordance with paragraph (a) (2) and (3) of this section and shall identify in the statement described in paragraph (a)(3) of this section whether the election is for real estate taxes or interest or both.

(v) *Special rules for making the election with respect to the simplified dollar-value LIFO method.* The election under Act section 802 (Code section 474) may be made only if the taxpayer files with the taxpayer's income tax return for the taxable year as of the close of which the method is first to be used a statement of the taxpayer's election to use the simplified dollar-value LIFO inventory method. The statement shall be on Form 970 pursuant to the instructions to the form and to the requirements of the regulations under section 474, or in such other manner as may be acceptable to the Commissioner.

(vi) *Special rules for making election to have section 453C not apply to obligations arising from sales of timeshares and unimproved residential lots to individuals.* The election under Act section 811(a) (Code section 453C(e)(4)) to have section 453C not apply to obligations arising from sales of timeshares and unimproved residential lots to individuals may be made with respect to any obligation, or with respect to a class of such obligations. In the case of an election made with respect to a class of obligations, such election shall describe the class of obligations with such specificity as to make the class readily identifiable.

(vii) *Special rules for making certain finance leasing transitional rule elections.* The election relating to finance leases under Act section 1801(a)(1) (Code section 168(i) as in effect before October 22, 1986) shall be made by the lessor under a lease agreement subject to the finance lease rules of section 168(i) of the Code, as in effect before October 22, 1986, by noting

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this election in the books and records relating to the lease agreement within 12 months after February 5, 1987.

(viii) *Special rules for making the election relating to the date leased property is treated as originally placed in service.* The election under Act section 1809(e)(2) (Code section 48(b)(2)) must be made jointly by the lessee and the lessor. The election is made jointly when both the lessee and the lessor make the election in accordance with paragraphs (a)(2) and (a)(3)(i) of this section. In addition to the other information required to be provided under paragraph (a)(3)(i) of this section, the statement described therein shall include a copy of the lease agreement and shall be signed by both the lessee and the lessor.

(ix) *Special rules for making the election to be treated as a resident alien.* The election under Act section 1810(l)(4) (Code section 7701(b)) to be treated as a resident under Code setion 7701(b) shall be made by an alien individual by attaching a statement to the individual's income tax return (Form 1040), for the taxable year for which the election is to be in effect (the election year). The alien individual may not make this election until such time as he has satisfied the substantial presence test of Code section 7701(b)(1)(A)(ii) for the year following the election year. If an alien individual has not satsified the substantial presence test for the year following the election year as of the due date (without regard to extensions) of the tax return for the election year, the alien individual may request an extension of time for filing the return until after he has satisfied such test, provided that he pays with his extension application the amount of tax he expects to owe for the election year, computed as if he were a non-resident alien throughout the election year. The statement shall include the name and address of the alien individual and contain a signed declaration that the election is being made. It must specify—

(A) That the alien individual was not a resident in the year immediately preceding the election year;

(B) That the alien individual is a resident in the year immediately following the election year under the substantial presence test and the individual's number of days of presence in the United States during such year;

(C) The date or dates of the alien individual's 31 consecutive day period of presence and continuous presence in the United States during the election year; and

(D) The date or dates of absence from the United States during the election year that are deemed to be days of presence.

(x) *Special rules for making the election with respect to the treatment of the exercise of certain nonqualified stock options.* The election under Act section 1879(p)(1) (Code section 83(c)(3)) is made by filing on Form 1040X a claim for credit or refund of the overpayment of tax resulting from the election. In order to satisfy the requirements of § 301.6402–2(b)(1) (relating to grounds set forth in claim), the claim for credit or refund must set forth)—

(A) The date on which the option was granted,

(B) The name of the corporation which granted the option,

(C) The date on which the stock was transferred pursuant to the exercise of the option,

(D) The fiar market value of such stock on December 4, 1973,

(E) The fair market value on July 1, 1974 of the stock received upon the reorganization of the corporation which granted the option, and

(F) The date on which the taxpayer sold substantially all of the stock received in such reorganization.

The taxpayer shall file a single claim for credit or refund of the entire overpayment of tax resulting from the election under Act section 1879(p)(1).

(4) *Revocation*—(i) *Irrevocable elections.* The elections described in this section under Act sections 201(a) (Code sections 168(b)(5), 168(f)(1), 168(g)(7), and 168(h)(6)(F)(ii)), 203(a)(1)(B), 252(a) (Code sections 42(f)(1), 42(g)(1), 42(i)(2), and 42(j)(5)), 411(b)(1) (Code section 263(i)), 411(b)(2)(A) (Code section 616(d)(2)(A)), 501(a) (Code section 469(j)(9)), 801(d)(2), 905(c), 1301(b) (Code sections 141(b)(9), 142(d)(1), 142(d)(4)(B), 143(k)(9)(D)(iii), 145(d), and 147(b)(4)(A)), 1431(a) (Code section 2652(a)(3)), 1704(b), 1802(a) (Code section 168(j) as in effect before October 22, 1986), 1804(e)(4), 1879(p)(1) (Code section 83(c)(3)), and 1882(C) (Code section 3121(w)(2)) are irrevocable.

(ii) *Elections revocable with the consent of the Commissioner.* The elections described in this section under Act sections 204(e), 243(a), 243(b), 243(a)(b), 411(b)(2)(B) (Code section 617(h)(2)(A)), 614(b) (Code section 1059(c)(4)), 621(a) (Code section 382(l)(5)(H)), 644(d) (Code section 216(b)(3)), 646, 651 (Code section 4982(e)(4)(B)), 701(a) (Code section 56(f)(3)(B)), 801(a) (Code section 448(d)(4)), 802 (Code section 474), 803(a) (Code section 263A(d)(3)), 806(e)(2)(C) (and the election described in H.R. Rep. No. 99–841 at II–320), 811(a) (Code sections 453C(b)(2)(B) (i) and 453C(e)(4)), 901(a) (Code sections 585(c)(3)(B)(ii) and 585(c)(4)), 905(a) (Code section 165(l)(1)), 1801(a) (Code section 168(i) as in effect before October 22, 1986), 1807(a)(7) (Code section 468B), 1809(e)(2) (Code section 48(b)(2)), and 1810(l)(4) (Code section 7701(b)) are revocable only with the consent of the Commissioner.

(iii) *Freely revocable elections.* The elections described in this section under Act sections 311(d)(2) and 1431(a) (Code section 2632(b)(3)) are freely revocable.

(b) *Elections with respect to the low-income housing credit.* The elections under Act section 252 (a) (Code sections 42(f)(1), 42(g)(1), 42(i)(2), and 42(j)(5)) must be made for the taxable year in which the project is placed in service and shall be made in the certification required to be filed pursuant to section 42(l)(1).

(c) *Election to have the rules of section 263A (relating to capitalization and inclusion in inventory costs of certain expenses) not apply to any plant or animal produced in any farming business conducted by the electing taxpayer*—(1) *In general.* This paragraph applies to the election under Act section 803(a) (Code section 263A(d)(3)) to have the rules of section 263A (relating to capitalization and inclusion in inventory costs of certain expenses) not apply to any plant or animal produced in any farming business conducted by the electing taxpayer. The election is available to taxpayers engaged in the business of farming, including producers of agricultural crops, livestock, nursery stock, sod, trees bearing fruit, nuts or other crops, and ornamental trees (for purposes of section 263A, an evergreen tree that is more than 6 years old at the time it is severed from the roots shall not be treated as an ornamental tree). The election is not available to a corporation, partnership, or tax shelter that is required to use the accrual method of accounting under section 447 or section 448(a)(3), or farming syndicates (as defined in section 464(c)), or with respect to the planting, cultivation, maintenance or development of pistachio trees. In addition, the election does not apply with respect to costs incurred for the planting, cultivation, maintenance or development of any citrus or almond grove incurred during the 4-taxable-year period beginning with the taxable year in which such grove was planted. If a citrus or almond grove is planted in more than one taxable year, the portion of the grove planted in one taxable year is treated as a separate grove for this purpose.

(2) *Time and manner of making the election.* Unless consent is obtained

from the Commissioner, the election may only be made for the taxpayer's first taxable hear that begins after December 31, 1986, and during which the taxpayer engages in a farming business. The election shall be made on the Schedule E, F or other schedule required to be attached to the income tax return for the first taxable year for which the election is effective. In the case of a partnership or S corporation, the election must be made at the partner or shareholder level.

(3) *Election treated as if made if certain requirements satisfied.* A taxpayer eligible to make the election under section 263A(d)(3) shall be treated as having made the election if such taxpayer reports income and expense in accordance with the rules under the election on a timely filed income tax return.

(4) *Revocation.* Once the election is made, it is revocable only with the consent of the Commissioner.

(5) *Special rules for treatment of expenses.* If the election is made, the plant or animal produced is treated as section 1245 property and gain is recaptured (treated as ordinary income) in the amount of deductions which, but for the election, would have been required to be capitalized with respect to the plant or animal. If the taxpayer or a related person makes the election, a non-accelerated method of depreciation (as defined in section 168(g)(2)) shall be applied to all property used predominantly in any farming business of the taxpayer or related person and placed in service in any taxable year during which the election is in effect. For purposes of this election, related party means: (i) the members of the taxpayer's family (defined for this purpose to include the spouse of the taxpayer and any of this or her children who have not reached the age of 18 as of the last day of the taxable year); (ii) any corporation (including an S corporation) 50 percent or more of the value of which is owned directly or indirectly (through the application of section 318) by the taxpayer or members of the taxpayer's family; (iii) any corporation that is a member of the same controlled group (within the meaning of section 1563) as the taxpayer; and (iv) any partnership if 50 percent or more of the value of the interests in such partnership is owned directly or indirectly (through the application of section 318) by the taxpayer or members of the taxpayer's family.

(d) *Election with respect to the treatment of net income for the short taxable year resulting from a required change in accounting period.* This paragraph applies to the election under secton 806(e)(2)(C) of the Act. Net income for the short taxable year resulting form a required change in accounting period under the provisions of section 806 of the Act which is to be included ratably in the partners' and S corporation shareholders' income for the first four taxable years (including the short taxable year) beginning after December 31, 1986, or included entirely in income for the short taxable year at the election of the partner or shareholder, shall be taken into account in accordance with section 702 (with respect to partners) and section 1366 (with respect to S corporation shareholders).

(e) *Election with respect to reducing partnership or S corporation income for the short taxable year resulting from a required change in accounting period under section 806 of the Act by an unamortized adjustment amount existing as of October 22, 1986.*—(1) *In general.* This paragraph applies to the election described in H.R. Rep. No. 99–841 at II–320.

(2) *Partnerships or S corporations that make the election to reduce income for the short taxable year by an unamortized adjustment amount existing as of October 22, 1986.* Where a partnership or S corporation elects to reduce its income for the short taxable year required under the provisions of section 806 of the Act by the unamortized adjustment amount existing as of October 22, 1986, in accordance with paragraph (a) of this section, the income for the short taxable year (reduced by the unamortized adjustment amount) may then be subject to the election, under section 806(e)(2)(C) of the Act, by partners and S corporation shareholders to include all the net income for the short taxable year entirely in income for the partners' or shareholders' taxable year with or within which the short taxable year ends.

(3) *Partnership or S corporations that do not make the election to reduce income for the short taxable year by an unamortized adjustment amount existing as of October 22, 1986.* Where a partnership or S corporation does not elect to reduce its income for the short taxable year created by the provisions of section 806 of the Act by the unamortized adjustment amount existing as of October 22, 1986, as provided in paragraph (a) of this section, the short taxable year required under the provisions of section 806 of the Act shall be considered one taxable year for purposes of amortizing the adjustment amount under the requirements of Rev. Proc. 72–51, 1972–2 C.B. 832, or Rev. Proc. 83–25, 1983–1 C.B. 689. The net income of the partnership or S corporation after reduction by the adjustment amount for the short taxable year may then be subject to the election under section 806(e)(2)(C) of the Act by partners or S corporation shareholders to include all the net income for the short taxable year entirely in income for the partners' or shareholders' taxable year with or within which the short taxable year of the partnership or S corporation ends.

(f) *Election with respect to the treatment of certain losses in insolvent financial institutions*—(1) *In general.* This paragraph applies to the election under Act section 905(a) (Code section 165(l)(1)). If—

(i) As of the close of the taxable year, it can reasonably be estimated that there is a loss on a deposit of a qualified individual (as defined in section 165(l)(2)) in a qualified financial institution (as defined in section 165(l)(3)), and

(ii) Such loss is on account of the bankruptcy or insolvency of such institution.

then the qualified individual may elect to treat the entire amount so estimated for that taxable year (disregarding any amount treated as a casualty loss under section 165(c)(3) in a previous taxable year) as a loss § 5h.5(f)(1) described in section 165(c)(3) and incurred during the taxable year. The election shall apply to all losses of the qualified individual on deposits in the institution with respect to which an election is made, and section 166 (relating to bad debts) shall not apply to any loss with respect to which an election is made.

(2) *Time and manner of making the election.* The election may be made by claiming such loss on the tax return for any taxable year in which a reasonable estimate of such loss can be made. If the qualified individual does not claim such loss on the tax return for that taxable year, the qualified individual may not subsequently amend the tax return for that taxable year to claim such loss for that taxable year. However, for a tax return filed with respect to a taxable year beginning after December 31, 1982, but before January 1, 1986, the qualified individual may subsequently (before the expiration of the period prescribed for filing a claim for credit or refund) amend the tax return for that taxable year to claim such loss for that taxable year.

(3) *Revocability of the election.* This election may be revoked only with the consent of the Commissioner.

(g) *Elections with respect to certain bonds.* The elections under Act section 1301(b) (Code sections 141(b)(9), 142(d)(1), 142(d)(4)(B), 143(k)(9)(D)(iii),

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145(d), and 147(b)(4)(A)) must be made in the § 5h.5 (g) bond indenture or a related document (as defined in § 1.103–13(b)(8)) on or before the date of issue. With respect to obligations issued on or before March 9, 1987 these elections must be made on or before March 9, 1987 and need not be made in the bond indenture or a related document, but must be made in writing and retained as part of the issuer's books and records.

(h) *Revocation of the election for exemption from social security taxes by certain clergy*—(1) *In general.* This paragraph applies to the election under Act section 1704(b) to revoke an election under section 1402(e)(1) of the Code by a duly ordained, commissioned, or licensed minister of a church, a member of a religious order (other than a member of a religious order who has taken a vow of poverty as a member of such order), or a Christian Science practitioner. Only elections which are effective for the taxable year containing October 22, 1986 may be revoked under this paragraph.

(2) *Time for revoking the election.* The election shall be revoked by filing Form 2031 before the date on which the individual becomes entitled to benefits under sections 202(a) or 223 of the Social Security Act (without regard to sections 202(j)(1) or 223(b) of such Act), and not later than the due date of the Federal income tax return (including any extension thereof) for the individual's first taxable year beginning after October 22, 1986.

(3) *Manner of revoking the election.* To revoke an election under section 1402(a)(1), the individual shall file Form 2031 in accordance with the instructions accompanying that form. The revocation shall be made effective, as designated by the individual on the form, either with respect to the individual's first taxable year beginning after October 22, 1986.

(4) *Special rules for payment of self-employment taxes with respect to certain taxable years ending on or after October 22, 1986*—(i) *Elections filed after the due date of the Federal income tax return.* In Form 2031 is filed on or after the due date of the Federal income tax return (including any extension thereof) for the individual's first taxable year ending on or after October 22, 1986, and the election made therein is effective with respect to that taxable year, Form 2031 shall be accompanied by an amended Federal income tax return for such taxable year together with payment in full of an amount equal to the total of the taxes that would have been imposed by section 1401 of the Code with respect to all of the individual's income derived in that taxable year which would have constituted net earnings from self-employment for purposes of chapter 2 of subtitle A of the Code (notwithstanding paragraph (4) or (5) of section 1402(c)) but for the exemption under section 1402(e)(1).

(ii) *Elections filed before the due date of the Federal income tax return.* If Form 2031 is filed before the due date of the Federal income tax return (including any extension thereof) for the individual's first taxable year ending on or after October 22, 1986, and the election is effective with respect to that taxable year, payment in full of an amount equal to the total of the taxes that would have been imposed by section 1401 of the Code with respect to all of the individual's income derived in that taxable year which would have constituted net earnings from self-employment for purposes of chapter 2 of the subtitle A of the Code (notwithstanding paragraph (4) or (5) of section 1402(c)) but for the exemption under section 1402(e)(1) shall be made:

(A) In the case of Forms 2031 that are filed on or before the date on which the individual's Federal income tax return for such first taxable year is filed, with the individual's Federal income tax return for such taxable year; and

(B) In the case of Forms 2031 that are filed after the date on which the individual's Federal income tax return for such first taxable year is filed, with an amended Federal income tax return for that taxable year filed on or before the due date for the individual's Federal income tax return (including any extension thereof) for such taxable year.

(iii) *Interest on amounts paid after the due date of the Federal income tax return.* If any amount of tax imposed by section 1401 for an individual's taxable year with respect to which an election under this paragraph (h) is effective is paid after the due date of the individual's Federal income tax return (without regard to extensions) for such taxable year, interest will be assessed on such tax from the due date of such return (without regard to extensions) to the date on which such tax is paid.

(5) *Revocability of the revocation of the election.* Once having filed Form 2031, the individual may not thereafter file an application for an exemption under section 1402(e)(1).

(6) *Effective date of this provision.* This provision shall apply with respect to remuneration received in the taxable years for which the individual designates the revocation to be effective, as described in paragraph (h)(3) of this section, and with respect to monthly insurance benefits payable under title II of the Social Security Act on the basis of the wages and self-employment income of any individual for months in or after the calendar year in which such individual's application for revocation is effective (and lump-sum death payments payable under such title on the basis of such wages and self-employment income in the case of deaths occurring in or after such calendar year).

(i) *Revocation of the election for exemption from social security taxes by certain churches on qualified church-controlled organizations*—(1) *In general.* This paragraph applies to the election under Act section 1882 (Code section 3121 (w)(2)) to revoke an election under section 3121(w) by a church or qualified church-controlled organization (as defined in section 3121(w)(3)).

(2) *Time and manner of revoking the election.* The revocation described in this paragraph (i) shall be made by filing a Form 941 on or before the due date for filing Form 941 (without regard to extensions) for the first quarter for which the revocation is to be effective, accompanied by payment in full of the taxes that would be due for that quarter had there been no election under section 3121(w). See paragraph(i)(4) of this section for the effective date of revocation made under this paragraph (i).

(3) *Revocability of the revocation of the election.* Once an election under section 3121(w) is revoked under this paragraph (i), a new election under section 3121(w) may not be made.

(4) *Effective date of this paragraph.* A revocation made under this paragraph (i) shall be effective for the quarter of the calendar year covered by the Form 941 on which the revocation is made in accordance with paragraph (i)(2) of this section and all subsequent quarters. However, no revocation shall be effective prior to January 1, 1987 unless such electing church or church-controlled organization had withheld and paid over all employment taxes due, as if such election had never been in effect, during the period from the effective date of the election being revoked through December 31, 1986.

(j) *Additional information required.* Later regulations or revenue procedures issued under provisions of the Code or Act covered by this section may require the furnishing of information in addition to that which was furnished with the statement of election described in this section. In such event, the later regulations or revenue procedures will provide guidance with respect to the furnishing of such additional information. (26 U.S.C. 7805).

PART 602—[AMENDED]

Par. 3. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.10 [Amended]

Par. 4. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 5h.5 . . . 1545–0982".

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: January 13, 1987.

O. Donaldson Chapoton,

Acting Assistant Secretary of the Treasury.

[FR Doc. 87–2219 Filed 2–4–87; 8:45 am]

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DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 1–87]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is exemption a Privacy Act system of records from subsection (c)(3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8); (f) and (g) of the Privacy Act, 5 U.S.C. 552a. This system is the "United States Trustee Program Case Referral System, JUSTICE/UST–004," Records contained in this system relate to official Federal investigations and matters of law enforcement. The exemptions are needed to protect ongoing investigations, as well as the privacy of third parties and the identities of confidential sources involved in such investigations.

EFFECTIVE DATE: February 5, 1987.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark, (202) 272–6474.

SUPPLEMENTARY INFORMATION: A proposed rule with invitation to comment was published in the **Federal Register** on September 5, 1986 (51 FR 31781). The public was given 30 days to comment.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of smal entities."

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of information, Privacy, Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, the Department amends 28 CFR Part 16 by adding § 16.77 as set forth below.

Dated: January 8, 1987.

Harry H. Flickinger,

Acting Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for Part 16 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. It is proposed to amend 28 CFR Part 16 by adding § 16.77 to read as follows:

§ 16.77 Exemption of United States Trustee Program System—limited access.

(a) The following system of records is exempt from 5 U.S.C. 552a (c) (3) and (4); (d); (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8); (f) and (g):

(1) United States Trustee Program Case Referral System, JUSTICE/UST–004.

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of an investigation to obtain valuable information concerning the nature of that investigation. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel.

(2) From subsection (c)(4) since an exemption being claimed for subsection (d) makes this subsection inapplicable.

(3) From subsection (d) because access to the records contained in this system might compromise ongoing investigations, reveal confidential informants, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) From subsections (e)(1) and (e)(5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interest of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness, and completeness of all information obtained.

(5) From subsection (e)(2) because in a criminal investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement because the subject of the investigation would be placed on notice as to the existence of the investigation and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

(6) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it would compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(7) From subsections (e)(4) (G) and (H) because this system of records is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k).

(8) From subsection (e)(8) because the individual notice requirement of this subsection could present a serious impediment to law enforcement in that this could interfere with the U.S. Attorney's ability to issue subpoenas.

(9) From subsections (f) and (g) because this system has been exempted from the access provisions of subsection (d).

[FR Doc. 87–2307 Filed 2–4–87; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Approval of Amendments to Colorado Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: The Director is announcing the approval of several proposed program amendments to the Colorado permanent regulatory program (hereinafter referred to as the Colorado program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments consist of regulation changes and a policy statement addressing the program deficiencies set forth at 30 CFR 906.16 (b) through (h) in an earlier rulemaking.

EFFECTIVE DATE: February 5, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue NW., Albuquerque, New Mexico; Telephone: (505) 766–1406.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program

Information regarding the general background on the Colorado program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval, can be found in the December 15, 1980 **Federal Register** (45 FR 82173–82214). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 906.15 and 906.16.

II. Submission of Amendments

By letter dated August 18, 1986 (Administrative Record No. CO–294), Colorado submitted a proposed amendment consisting of various regulations modifications and a policy statement designed to address the program deficiencies identified in an earlier amendment (51 FR 4485–4497, February 5, 1986) and codified at 30 CFR 906.16 (b) through (h). The Director announced receipt of these materials in the October 9, 1986 **Federal Register** (51 FR 36231–36233) and invited public comment on their substantive adequacy.

III. Director's Findings

Set forth below, pursuant to SMRCA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendments submitted by Colorado. The letter in the heading of each finding refers to the paragraph of 30 CFR 906.16 containing the requirement which Colorado is addressing.

1. Required Amendment (b)

For the reasons set forth in Finding 1(d) of the February 5, 1986 **Federal Register** notice (51 FR 4486), the Director required that, by February 5, 1985, Colorado submit revisions to 2 CCR 407–2, 2.02.2(2)(g) or otherwise propose to amend its program to require that the notice filed by any person intending to conduct coal exploration involving the removal of 250 or fewer tons of coal include a complete description of the methods of exploration to be used and the practices that will be followed to reclaim the area following completion of exploration, and to clarify that specifying the maximum number of holes to be drilled will not fully satisfy this requirement.

The amendment submitted by Colorado on August 18, 1986 revises State rule 2.02.2(2)(g) to require that all coal exploration notices include a narrative description of the methods to be used to conduct coal exploration and reclamation. Therefore, the Director finds that the revised State rule is no less effective than the corresponding Federal regulations at 30 CFR 772.11(b)(5).

2. Required Amendment (c)

For the reasons set forth in Finding 1(f) of the February 5, 1986 **Federal Register** notice (51 FR 4486), the Director required that, by February 5, 1987, Colorado submit a revised form of 2 CCF 407–2, 4.21.4(1) replacing the cross reference to 2.05.6(2)(b) with one to 2.05.6(2)(a)(iii), or otherwise propose to amend the coal exploration provisions of its program to protect critical habitats of endangered or threatened species and habitats of unusually high value for fish, wildlife or related environmental values.

The amendment submitted by Colorado on August 18, 1986 replaces the cross reference to 2.05.6(2)(b) in 4.21.4(1) with one to 2.05.6(2)(b)(iii). Therefore, the Director finds that revised State rule 4.21.4(1) contains habitat protection requirements no less effective than those set forth in the Federal regulations at 30 CFR 815.15(a).

3. Required Amendment (d)

For the reasons set forth in Finding 3(a) of the February 5, 1986 **Federal Register** notice (51 FR 4487), the Director required that, by February 5, 1987, Colorado submit revisions to 2 CCR 407–2, 4.06.1(2) or otherwise propose to amend its program to provide that topsoil storage practices other than stockpiling may be used only when (1) stockpiling would be detrimental to the quantity or quality of the stored materials, (2) all stored materials are moved to an approved site within the permit area, (3) the alternative practice would not permanently diminish the capability of the soil of the host site, and (4) the alternative practice would maintain the stored materials in a condition more suitable for redistribution than would stockpiling.

The amendment submitted by Colorado on August 18, 1986 revises State rule 4.06.1(2) to require that the permittee demonstrate that a proposed alternative to stockpiling will provide more, rather than equal or more as in the previous version, protection for the topsoil. In addition, Colorado has proposed a policy statement in the form of a handbook memorandum entitled "Alternative to Topsoil Stockpiles", which requires that the Division consider the following factors when evaluating a proposed alternative practice: (1) Whether stockpiling would be detrimental to the quantity or quality of the topsoil, (2) whether the alternative practice would permanently diminish the capability of the host site, and (3) whether the alternative practice would maintain the topsoil in a condition more suitable for future distribution than would stockpiling. With respect to the remaining requirement of 39 CFR 906.16(d) that all stored materials be placed on an approved site within the permit area, Colorado rule 1.04(89) provides that all areas affected by surface coal mining reclamation operations must be included within the permit area. In addition, the policy statement requires that any proposed alternative practices be approved in writing by the Division. Therefore, the Director finds that revised State rule 4.06.1(2) and the accompanying handbook memorandum are no less effective than the requirements of the Federal regulations at 30 CFR 816.22(c)(3) and 817.22(c)(3).

4. Required Amendment (e)

For the reasons set forth in Finding 3(c) of the February 5, 1987 **Federal Register** (51 FR 4487), the Director required that, by February 5, 1987, Colorado submit revisions to 2 CCR 407–2, 4.06.2(2)(a) or otherwise propose to amend its program to establish definitive criteria governing the granting of topsoil removal variances, criteria which must be no less effective than those contained in the Federal regulations at 30 CFR 816.22(a)(3) and 817.22(a)(3).

As originally submitted, the Colorado rules provided that areas which might qualify for a variance included, but were not limited to, light traffic areas where vegetation or soil stability would not be destroyed, areas where topsoil removal would result in needless damage to soil characteristics, and areas of construction of small structures such as power poles, signs or fences. As revised in the August 18, 1986 submission, Colorado now limits the variance to the specific situations listed above, as do the Federal rules at 30 CFR 816.22(a)(3) and 817.22(a)(3). Therefore, the Director finds that Colorado rule 4.06.2(2)(a), as revised, is no less effective than the corresponding Federal rules.

5. Required Amendment (f)

For the reasons set forth in Finding 3(d) of the February 5, 1987 **Federal Register** notice (51 FR 4487), the Director required that, by February 5, 1987, Colorado submit revisions to 2 CCR 407–2, 4.06.1(4)(a)(iii) or otherwise propose to amend its program to require that, before the State approves topsoil substitutes or supplements, the operator demonstrate that the proposed final soil medium would be the best available within the permit area to support the vegetation.

The amendment submitted by Colorado on August 18, 1986, revises State rule 4.06.2(4)(a) to provide that the Division may approve the use of topsoil substitutes or supplements only if the resulting soil medium is, among other things, the best available in the permit area to support revegetation. Therefore, the Director finds that revised Colorado rule 4.06.2(4)(a) is no less effective than the corresponding Federal regulations at 30 CFR 816.22(b) and 817.22(b).

6. Required Amendment (g)

For the reasons set forth in Finding 9(i) of the February 5, 1986 **Federal Register** (51 FR 4491), the Director required that, by February 5, 1987, Colorado submit revisions to 2 CCR 407–2, 2.10.1(1) or otherwise propose to amend its program to require that all areas upon which roads or support facilities, other than isolated monitoring stations involving little or no surface disturbance, are to be sited be mapped at a scale of 1:6,000 or larger.

The amendment submitted by Colorado on August 18, 1986, revises State rule 2.10.1(1) to require that all roads and support facilities within the permit area be shown on a large scale (1:6,000 or larger) map. Therefore, the Director finds that revised Colorado rule 2.10.1(1) is no less effective than the corresponding Federal rule at 30 CFR 777.14(a).

7. Required Amendment (h)

For the reasons set forth in Finding 10(b) of the February 5, 1987 **Federal Register** notice (51 FR 4491–4492), the Director required that, by February 5, 1987, Colorado submit revisions to 2 CCR 407–2, 2.04.12(1) or otherwise propose to amend its program to require that prime farmland investigations be conducted on all lands upon which roads or support facilities are to be sited.

The amendment submitted by Colorado on August 18, 1986 revises State rule 2.04.12(1) to require that prime farmland investigations be conducted on all lands within the proposed permit area, or in the case of underground mining, only those areas proposed to be disturbed by surface operations or facilities. Colorado has proposed this language to eliminate the need for prime farmland investigations on areas overlying the underground workings of a mine where the surface is not disturbed. The State definition of "permit area" includes such areas whereas the Federal rules do not. In his February 5, 1986 rulemaking, the Director was concerned that, because of Colorado's interpretation of the term "disturbed area", investigations might not be made on all areas where certain roads and support facilities were to be sited. However, since Colorado has revised its topsoil rules at 4.06.2(2)(a) to require topsoil salvage wherever mining-related activities would otherwise adversely affect soil characteristics, such areas now would be considered potential disturbed areas under the State interpretation of that term and hence would be investigated for the presence of prime farmland. Therefore, the Director finds that Colorado rule 2.04.12(1), as revised, is no less effective than the corresponding Federal rule at 30 CFR 785.17(b)(1), which requires prime farmland reconnaissance surveys of all proposed permit areas.

IV. Public Comments

The Director solicited public comments on the proposed amendments in the October 9, 1986 **Federal Register** (51 FR 36231–36233). The comment period closed on November 10, 1986, without receipt of any comments. Since no one either requested an opportunity to present testimony at a hearing or expressed an interest in a public hearing, the public hearing scheduled for November 3, 1986, was not held.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), the Director also solicited comments from various Federal agencies. All agencies either declined comment or concurred in the amendments. However, the U.S. Forest Service noted that it must also review and approve all applications for permits or permit revisions where it is the surface land managing agency. In response, the Director notes that the cooperative agreement (30 CFR 906.30) governing mining on Federal lands in Colorado contains extensive provisions requiring consultation with the Federal land managing agency; it also requires that all necessary approvals be obtained.

V. Director's Decision

Based on the findings set forth above, the Director is approving the proposed amendments submitted by Colorado on August 18, 1986, and is removing the required amendments specified in 30 CFR 906.16 (b) through (h). The Federal rules at 30 CFR Part 906 are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with SMCRA without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Matters

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require

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approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 906

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: January 30, 1987.

James W. Workman,

Deputy Director, Operations and Technical Services.

PART 906—COLORADO

30 CFR Part 906 is amended as follows:

1. The authority citation for Part 906 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. A new paragraph (h) is added to § 906.15 to read as follows:

§ 906.15 Approval of regulatory program amendments.

* * * * *

(h) The following amendments, as submitted on August 18, 1986, are approved effective February 5, 1987:

(1) Revisions to the following provisions of 2 CCR 407–2, the rules and regulations of the Colorado Mined Land Reclamation Board:

2.02.2(2) (g)
2.04.12(1)
2.10.1(1)
4.06.1(2)
4.06.2(2)(a)
4.06.2(4)(a)
4.21.4(1)

(2) The Handbook Memorandum entitled "Alternative to Topsoil Stockpiles", which interprets State rule 4.06.1(2).

§ 906.16 [Removed]

3. Section 906.16 is removed in its entirety.

[FR Doc. 87–2411 Filed 2–4–87; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 166

Defense Contracting; Reporting Procedures on Defense Related Employment

AGENCY: Office of the Secretary of Defense.

ACTION: Amendment of final rule.

SUMMARY: This amendment to the rule is the fiscal year 1986 update of the section listing DoD contractors receiving contract awards of $10 million or more. The amendment is published to comply with the provisions of 10 U.S.C. 2397.

EFFECTIVE DATE: September 30, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. J.R. Sungenis, Director for Information Operations and Reports, Washington Headquarters Services, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302. Telephone (202) 746–0334.

SUPPLEMENTARY INFORMATION: In FR Doc. 70–15846 appearing in the **Federal Register** on November 25, 1970 (35 FR 18040), the Office of the Secretary of Defense published a final rule establishing criteria, prescribing procedures, and assigning responsibilities for monitoring contracting within the Department of Defense. Subsequently, fiscal years 1971 (36 FR 18464) through 1985 (50 FR 52443) which constitute the list of DoD contractors receiving contract awards for $10 million or more, were updated.

List of Subjects in 32 CFR Part 166

Armed Forces, conflict of interests, government employees, government procurement, reporting and recordkeeping requirements.

PART 166—[AMENDED]

Accordingly, 32 CFR Part 166 is amended as follows:

1. The authority citation for part 166 is revised to read as follows:

Authority: 10 U.S.C. 2397.

2. Section 166.11 is revised to read as follows:

§ 166.11 Department of Defense contractors receiving contract awards of $10 million or more.

Fiscal year 1986:

3D/International, Inc.
AAI Corp.
ACS Construction Co. of Miss.
ALM, Inc.
ALS Corp.
AT&T Information Systems
AT&T Technologies, Inc.
A/S Kongsberg Vaapenfabrikk
Aar Brooks & Perkins Corp.
Abbott Products, Inc.
Abex Corp.
Accudyne Corp.
Ace Industries, Inc.
Action Manufacturing Co.
Actus Corp/Escon, Inc., JV
Actus Corp.
Acurex Corp.
Addsco Industries, Inc.
Advanced Computer Communications
Advanced Technology, Inc.
Aero Corp.
Aerodyne Investment Castings
Aerojet-General Corp.
Aeroquip Corp.
Aerospace Corp., The
Agip Deutschland
Agip Petroli Spa
Airspace Technology Corp.
Aksarben Foods
Alabama Power Co.
Alamo Technology, Inc.
Alascom, Inc.
Alexander, H.B. & Son, Inc.
Algernon Blair, Inc.
All-Bann Enterprises, Inc.
Allen, J.F. Co.
Allied Corp. Prestolite
Allied Corp.
Allis-Chalmers Corp.
Alpha Industries, Inc.
Altama Delta Corp.
AM General Corp.
Amerada Hess Corp.
American Airlines, Inc.
American Cyanamid Co. Inc.
American Develpment Corp.
American Electronic Laboratories, Inc.
American Export
American Express Company
American Fuel Cell
American Management Systems
American President Lines, Ltd.
American Puff Corp.
American Satellite Co.
American Systems Corp.
American Telephone & Telegraph Co.
American Trans Air, Inc.
Amertex Enterprises, Inc.
Ametek, Inc.
Amex Systems, Inc.
Amoco Corp.
Ampex Corp.
Amron Corp.
Amstar Technical Products Co.
Analysis & Technology, Inc.
Analytic Sciences Corp., The
Analytical Systems Engineering
Analytics Inc.
Andersen, Arthur & Co.
Anker Kolen Maatschappij BV
Annuss GMBH Co.
Apex Oil Co.
Applied Companies, Inc.
Applied Research, Inc.
Applied Technology Associates
Arcwel Corp.
Ardox Corp.
Argosystems, Inc.
Arinc Research Corp.
Arkla, Inc.
Arral Industries, Inc.
Arrow Air, Inc.
Asco Falcon II Shipping Co.
Ashland Oil, Inc.
Asis Oil Co., Ltd.
Associated Aerospace
Astrocom Electronics, Inc.
Astronautics Corp. of America
Atacs Corp.
Atkins, Claude E. Enterprises
Atlantic Marine, Inc.
Atlantic Research Corp.
Atlantic Richfield Co.
Atlas Processing Co.
Auburn Electric, Inc.
Aul Instruments, Inc.
Austin Co. The
Autek Systems Corp.

Automated Data Management, Inc.
Automated Sciences Group, Inc.
Avantek, Inc.
Avco Corp.
Avondale Industries, Inc.
Aydin Corp.
Ayer, N.W. Inc.
Bahrain National Oil
Balimony Manufacturing Co. of Venice
Ball Corp.
Baltimore Gas & Electric Co.
Barrett Refining Corp.
Basil, Frank E., Inc. of Delaware
Bates, Ted Worldwide, Inc.
Bateson, J.W. Co. Inc.
Bath Iron Works Corp.
Battelle Memorial Institute
Bay City Marine, Inc.
BBN Communications Corp.
BDM Corp., The
Beacon Oil Co.
Bean Dredging Corp.
Beatrice Companies, Inc.
Becharas Brothers Coffee Co.
Bechtel Operating Service
Beech Aerospace Services, Inc.
Beech Aircraft Corp.
Bei Electronics, Inc.
Belcher New England, Inc.
Belcher Oil Company of NY, Inc.
Belcher Oil Co.
Bell Boeing
Bell Helicopter Textron, Inc.
Belleville Shoe
Bender, Allen L.
Bender Shipbuilding
Bendix Field Engineering Corp.
Beretta USA Corp.
Berg, Chris, Inc.
Bertolini, J.D. Industries
Bertucci, Anthony Construction Co.
Betac Corp.
Bethlehem Steel Corp.
Bilfinger & Berger Bauaktienge
Bionetics Corp., The
Blake Construction Co., Inc.
Blount Brothers Corp.
Blue Cross & Blue Shield of Rhode Island
Blue Cross & Blue Shield of South Carolina
Blue Cross & Blue Shield of Washington & Alaska, Inc.
Bodenhamer Building Corp.
Boeing Co. The
Boeing Technical Operations
Boeing Vertol Co.
Boland David, Inc.
Belt, Beranek, and Newman, Inc.
Booz, Allen & Hamilton, Inc.
Borg-Warner Corp.
Braintree, V. Maritime Corp.
Brintec Systems Corp.
British Aerospace
Brockway Standard, Inc.
Brunswick Corp.
Brussels Steel America, Inc.
Bulova Systems & Instruments
Bundesamt Fuer Wehrtechnik
Burlington Industries, Inc.
Burnside-Ott Aviation Training Center
Burroughs Corp.
Butler Aviation International
C 3, Inc.
C Construction Co., Inc.
CFS Aircargo, Inc.
Caci, Inc.
Caddell Construction Co.
Cadillac Gage Co.
Cal State Electric, Inc.
Calcasieu Refining Co.
California Microwave, Inc.
California Pacific Associates
California Storage Concepts
Calspan Corp.
Caltex Oil Products Co.
Caltex Petroleum Corp.
Camel Manufacturing Co.
Campbell, E.C., Inc.
Campbell Soup Co.
Can-Am Industries, Inc.
Cantu Services, Inc.
Carbon Hill Manufacturing Co.
Carlson, Henry Co.
Carnation Co.
Carnegie-Mellon University
Carolina Power & Light Co.
Carothers Construction, Inc.
Cas, Inc.
Case, J.I. Co.
Caterpillar, Inc.
Cates Construciton, Inc.
CBI Industries, Inc.
CBI Marine Co.
Centex Construction Co.
Central Power Engineering Corp.
Central Texas College
Centre Manufacturing Co., Inc.
Cerberonics, Inc.
Cessna Aircraft Co., Inc.
CFM International, Inc.
Chamberlain Manufacturing Corp.
Chancellor & Son, Inc.
Chesapeake and Potomac Telephone Co. of Virginia
Chevron USA, Inc.
Chin II Engineering, Ltd
Chromalloy American Corp.
Chrysler Corp.
Ciba-Geigy Corp.
Cincinnati Electronics Corp.
Cincinnati Milacron, Inc.
Cinpac, Inc.
City Public Service
Clearwater Constructors, Inc.
Clement Brothers Co.
Cleveland Pneumatic Co.
Coastal Dry Dock & Repair Corp.
Coastal Refining & Marketing
Coastal States Trading, Inc.
Cobro Corp.
College of Lake County
Colonas Shipyard, Inc.
Colorado Springs, City of
Colsa, Inc.
Colt Industries, Inc.
Columbia Research Corp.
Comarco, Inc.
Comptek Research, Inc.
Computer Sciences Corp.
Computer Software Analysts, Inc.
Computer Technology Association
Computervision Corp.
Comstock Communications, Inc.
Condec Corp.
Conner Brothers Construction Co.
Conoco, Inc.
Construcciones Aeronauticas Sa
Contel Page Systems, Inc.
Continental Airlines, Inc.
Continental Maritime San Diego
Control Data Corp.
Copper Tire & Rubber Co.
Cooper & Lybrand
Cornell University, Inc.
CPT Corp.
Craddock-Terry Shoe Corp.
Craft Machine Works, Inc.
Cray Research, Inc.
Creech J.W., Inc.
Crysen Corp.
Cubic Corp.
Cummins Engine Co. Inc.
DAE Woo Corp.
Daimler Benz AG
Dart & Kraft, Inc.
Data General Corp.
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Dataproducts New England, Inc.
Davey Compressor Co.
Day & Zimmermann, Inc.
Day Zimmermann & Basil Corp.
Dayron Corp.
Dayton Power & Light Co.
Defense Research, Inc.
Del Manufacturing Co.
Del Monte Corp.
Delta Industries, Inc.
Designer & Planners, Inc.
Detyens Shipyards, Inc.
Deutsche Bundespost
Deutsche Pam Mineraloel GMBH
Deval Corp.
Developmental Sciences, Inc.
Devils Lake Sioux Manufacturing
Deweys Electronics
Dewitt, J.E., Inc
DGWT Netherlands
Diagnostic & Retrieval Systems
Diamond Shamrock
Digital Equipment Corp.
Dillingham Construction
Diversified Group, Inc.
Doster Construction Co., Inc.
Draper Charles Stark Laboratories
Dresser Industries, Inc.
Du Pont, E.I. De Nemours and Co.
Dun & Bradstreet Corp.
Dynalec Corp.
Dynalectron Corp.
Dynamac Corp.
Dynamics Research Corp.
Dynateria, Inc.
EC Corp., The
EG&G Washington Anaytical Services Center
EG&H, Inc.
EIP Microwave, Inc.
E-Systems, Inc.
Eagle Technology, Inc.
Earth Technology Corp.
Eastern Canvas Products, Inc.
Eastern Marine, Inc.
Eastman Kodak Co.
Eastport International, Inc.
Eaton Corp.
Ebasco Services, Inc.
Eberharter Construction Group
Edcar Industries, Inc.
Edo Corp.
Educational Computer Corp.
Eldyne, Inc.
Electro-Methods, Inc.
Electronic Data Systems Corp.
Electrospace Systems, Inc.
ELF France
Elle Petroleum Corp.
Emco, Inc.
Emerson Electric Co.
Engineered Air Systems, Inc.

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G T E Service Corp.
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Garrett Corp., The
Gates Learjet Corp.
Gay, Robert Construction Co.
Gayston Corp.
General Battery Corp.
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Georgia Power Co.
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Grumman Data Systems Corp.
Grumman Houston Corp.
GTE Government Systems, Inc.
GTE Products Corp., Delaware
GTE Sylvania, Inc.
GTE Telecom, Inc.
Gulf Power Co.
Gulfstream Aerospace Corp., Delaware
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H & H Meat Products, Inc.
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H R Textron, Inc.
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Hoffman-La Roche, Inc.
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Holmes & Narver/Morrison-Knudson
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Horizons Technology, Inc.
Howell & Howell
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HRB-Singer, Inc.
Hudgins Construction Co., Inc.
Hudson Institute, Inc.
Hughes Aircraft Co.
Hughes Communication International
Hunt Building Corp.
Hunt Oil Co.
Hydraulic International, Inc.
Hydroscience, Inc.
Hyster Co.
IIT Research Institute
I L C Data Device Corp., Del.
IBIS Corp.
ICI Americas, Inc.
Illinois Tool Works, Inc.
INCO, Inc.
Industrial Pump & Compressor
Information System & Network Corp.
Informatics General Corp.
Information Spectrum, Inc.
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International Terminal Operating Co.
Intersystems Corp.
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Isometrics, Inc.
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Israel Military Industries
Itel Corp.
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ITT Corp.
ITT Westinghouse Joint Venture
Jacksoville Shipyards, Inc.
James, T. L. & Co., Inc.
Jaycor
Jersey Central Power & Light Co.
Jet Electronic & Technology
Jonathan Corp., The
Jones Group, Inc., The
Jordon & Nobles, Inc.
Jowett Corp.
JR Son, Inc.
Kaiser Aerospace & Electronics Co.
Kaiser Engineers & Constructors
Kaiser Engineers, Inc.
Kaman Aerospace Corp.
Kaman Sciences Corp.
Kansas Power & Light Co.
Kay & Associates, Inc.
Kaydon Corp.
KDI Precision Products, Inc.
Kellogg Sales Co.
Kelsey-Hayes Co.
Kentron International, Inc.
Kern County Refinery, Inc.
Key Airlines, Inc.
Kilgore Corp.
Kimberly-Clark Corp.
Kinross Manufacturing Corp.
Kisco Co. Inc.
Koch Fuels, Inc.
Kock Refining Co., Inc.
Koehring Co.
Koppers Co., Inc.
Korea Electric Power Corp.
Korean Air Lines Co., Ltd.
Kovatch Corp.
Kraus Peter
Kronenberger & Sohn KG
Kurz & Root Co.
Kuwait National Petroleum Co.
Kvaas Construction Co., Inc.
L S I Avionic Systems
La Forge & Budd Construction Co.
Lake Shore, Inc.
Laketon Refining Corp.
Land O Frost, Inc.
Landau, H. & Co.

Landoll Corp.
Lane Construction Corp.
Lanson Industries, Inc.
Lanthier Robert J., Co., Inc.
Lathrop, F. P. Construction Co.
Lavino, E. J. & Co.
Leal Petroleum Corp.
Lear Siegler, Inc.
Lewis, Jerry M. Truck Parts Equipment
Libby Corp.
Light Helicopter Turbin Eng
Lilly, David B. Co., Inc.
Lilly Eli & Co.
Lite Industries, Inc.
Little, Arthur D., Inc.
Litton Industries, Inc.
Litton Systems, Inc.
Lock 26 Constructors
Lockheed Corp.
Lockheed Electronics Co.
Lockheed Missiles & Space Co.
Lockheed Shipbuilding Co.
Lockport Marine Co.
Loggins Meat Co.
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Logistics Management Institute
Loral Corp.
Loral Electro-Optical Systems
Loral Electronic Systems
Loral Hycor, Inc.
Louisville Gas & Electric Co.
LTV Aerospace & Defense Co.
LTV Corp., The
Lucas Industries, Inc.
Luhr Bros, Inc.
Lundy Electronics & Systems
Lyda Inc.
Lykes Bros Steamship Co., Inc.
M H K Minerolhandel GMBH & Co.
M/A COM Linkabit, Inc.
M/A-COM, Inc.
Mabco Prefabricated Building
Magnavox Co., Inc. The
Magnavox Government & Industrial Electronics Co.
Management & Technical Services Co.
Mandex, Inc.
Mantech International Corp.
Mapco, Inc.
MAR, Inc.
Marable W M, Inc.
Maremont Corp.
Marinette Marine Corp.
Marion Laboratories, Inc.
Marquardt Co., Inc.
Martin Marietta Aerospace
Martin Marietta Corp.
Martin Marietta, D. E. JV
Martin-Baker Aircraft Co., Ltd.
Maruzen Oil Co., Ltd.
Marvin Engineering Co., Inc.
Maschinenfabrik Augsburg
Mason Chamberlain, Inc.
Mason Hanger-Silas Mason Inc., WV
Massachusetts Institute of Technology
Massman Construction Co.
Matra Co.
Maxwell Laboratories Inc.
Mayer Oscar Foods Corp.
McAlister Construction Co.
McCann Bill, Inc.
McCarthy Building Systems, Inc.
McCarthy Construction
McDermott Inc.
McDonnell Douglas Corp.
McDonnell Douglas Helicopter
McGraw-Edison Co.
McKee, Robert E., Inc.
McLaughlin Research Corp.
McMullan Robert & Son, Inc.
McMullen, John J. Associates
McRae Industries, Inc.
McGaughan, A. S. Co., Inc.
Mechanical Equipment Co.
Menasco, Inc.
Merck & Co., Inc.
Metal Trades, Inc.
Metric Construction Co., Inc.
Metric Constructors, Inc.
Metric Systems Corp.
Metro Machine Corp.
Meyer Tool, Inc.
MI Ryung Construction Co., Ltd
Michelson Organization
Midland-Ross Corp.
Midwest Construction Co.
Milcom Systems Corp.
Miltope Corp.
Mine Safety Appliances Co.
Miner Industries, Inc.
Minnesota Mining & Mfg Co.
Minowitz Manufacturing Co., Inc.
MIP Instandsetzungsbetric
Mission Research Corp.
Mitre Corp., The
Mobil Oil Corp.
Montedipe Spa
Moog, Inc.
Moon Engineering Co., Inc.
Morrison Knudsen Corp.
Mortenson, M. A. Co.
Morton Thiokol, Inc.
Moss Point Marine, Inc.
Motor Oils Hellas Corinth Refi
Motorola Communications Elcr
Motorola Computer Systems, Inc.
Motorola, Inc.
Munro & Co., Inc.
N I Industries, Inc.
Nabisco Brands, Inc.
Natco Limited Partnership
National Aeronautic Association, USA
National Airmotive Corp.
National Steel Shipbuilding Co.
National Structure, Inc.
National Systems Management
Navajo Refining Co.
Navistar International Corp.
NCR Corp.
Needham, Inc.
Nero & Associates, Inc.
Network Systems Corp.
New Mexico State University
Newberg-Brinderson, JV
Newhall Refining Co.
Newport News Shipbuilding & Dry Dock Co.
Nichols Research Corp.
N L Industries, Inc.
Norden Systems, Inc.
Norfolk Dredging Co., Inc.
Norfolk Shipbuilding Dry Dock
North Atlantic Industries, Inc.
Northeast Construction Co.
Northeast Petroleum Corp.
Northern Research & Engineering
Northern Telecom, Inc., Delaware
Northrop Corp.
Northrop Services, Inc.
Northrop Worldwide Aircraft Services
Northwest Airlines, Inc.
Northwest Marine Iron Works
Nuclear Metals, Inc.
O A O Corp.
O T O Melara Spa
Ocean Technology, Inc.
Ohbayashi Corp.
Okinawa Electric Power Co.
Oklahoma Aerotronics, Inc.
Oklahoma Gas and Electric Co.
Olin Corp.
Omi Bulk Transport, Inc.
Onan Corp.
Oregon Freeze Dry Foods, Inc.
Ori, Inc.
Oshco Pae Somc
Oshkosh Truck Corp.
Overton Constructors
P C C Technical Industries, Inc.
Paccar, Inc.
Pacer Systems, Inc.
Pacific Construction Co., Ltd.
Pacific Gas & Electric Co.
Pacific Refining Co.
Pacific Services, Inc.
Pan Am World Services, Inc.
Pan American World Airwarys, Inc.
Panama Canal Commission
Papa Mario & Sons, Inc.
Papago Chemicals, Inc.
Parker-Hannifin Corp.
Parsons, Ralph M. Co., The
Patrol Ofisi A S Genel Mud
Peco Enterprises, Inc.
Pennsylvania Shipbuilding Co.
Pennsylvania State University
Perceptronics, Inc.
Percor, Inc.
Perkin-Elmer Corp., The
Peterson Builders, Inc.
Petroleos Del Mediterraneo SA
Petroleum Traders Corp.
Petron Trading Co., Inc.
Pfizer, Inc.
Philip Morris Companies, Inc.
Phillipp Holzmann AG
Physics International Co.
Picker International, Inc.
Pike, John P. & Son, Inc.
Pioneer Construction Co.
Piqua Engineering, Inc.
Planning Research Corp.
Planning Systems, Inc.
Plastoid Corp.
Pneumo Abex Corp.
Poloron Products Bloom
Poong Lim Industry Co., Ltd.
Potomac Electric Power Co.
Power Conversion, Inc.
PPG Industries, Inc.
Price/Ciri Construction, JV.
Pride Refining, Inc.
Procter & Gamble Co., The
Property Service Agency
Propper International, Inc.
Prudential Lines, Inc.
Public Service Co. of New Mexico
Puerto Rico Sun Oil Co., Inc.
Purdy Corp.
Q E D Systems, Inc.
Questech Inc.
Quinton Corp.
Quintron Systems, Inc.
R & D Associates
Raae Karchert
Racal Corp., The
Radian Corp.
Rail Co.

Rand Corp., The
Raymond Engineering, Inc.
Raymond-Brown & Root-Mowlem
Raytheon Co.
Raytheon Service Co.
RCA Corp.
RCA Global Communications, Inc.
Reach-All Manufacturing & Engineering Co.
Recon/Optical, Inc.
Reeves Brothers, Inc.
Refinery Associates, Inc.
Reflectone, Inc.
Reid, J. H. General Contractor
Remploy, Ltd.
Rensselaer Polytechnic Institute
Republic Electronics, Inc.
Resource Consultants, Inc.
Rexon Technology Corp.
Reynolds, R. J. Tobacco Co.
Rheinmetall GMBH
Rice, James ED
Ridgeline Industries, Inc.
Right Away Foods Corp.
River City Petroleum, Inc.
Riverside Research Institute
RJR Nabisco, Inc.
Roberts, J. R. Corp.
Rockwell International Corp.
Roe Enterprises Inc.
Roebbelen Engineering, Inc.
Roh, Inc.
Rolls-Royce, Inc.
Rolm Mil-Spec Computer
Rosemount, Inc.
Rosenblatt, M. & Son, Inc.
Ross Bicycles, Inc.
Royal Norwegian Naval Material
Royal Ordanance Factories
Royal Ordnance Ammunitional, Ltd.
Rubber Crafters of West Virginia
Rum Yang Construction Co., Ltd.
Russell Corp., The
S B Construction, Inc.
S Cubed
S F W Corp.
Sachs-Freeman Associates, Inc.
Sadelmi New York, Inc.
San Diego Diversified Builders
Sanders Associates, Inc.
Santa Fe Engineers, Inc.
Sargent Fletcher Co.
Sargent Industries, Inc.
Sasc Technologies, Inc.
Sasebo Heavy Industries Co., Ltd.
Saudi Maintenance Co. Siyanco
Scallop Corp.
Schneider, Inc.
Science Applications International
Scientific Support Services
Scientific-Atlanta, Inc.
Scope, Inc.
Scripps Inst. of Oceanography
Sea-Land Service, Inc.
Sears Petroleum & Transport
Seaward International
Sechan Electronics, Inc.
Sellers Oil Co., Inc.
Selm Servizi Elettrici Montedi
Selma Apparel Corp.
Semcor, Inc.
Serv-Air, Inc.
Service Engineering Co.
Sharpe Contructors, JV
Shell Eastern Petroleum PTE Ltd.
Shell International Petroleum
Shell Oil Co.
Sheller-Globe Corp.
Shirley Construction Corp.
Siemens Capital Corp.
Siemens Medical Systems, Inc.
Sierra Research Corp.
Sierracin Sylmar
Sikorsky Support Services, Inc.
Silverton Construction Co., Inc.
Simmonds Precision Products
Sinclair Marketing, Inc.
Singer Co., The
Sippican, Inc.
SKF Industries, Inc.
Smithkline French Inter-American
SMS Data Products Group, Inc.
Sociedade De Construcors
Sofec, Inc.
Softech, Inc.
Solar Turbines, Inc.
Sonicraft, Inc.
Sooner Defense of Florida, Inc.
Southeast Machine Co.
Southern Air Transport, Inc.
Southern Packaging & Storage Co.
Southwest Gas Corp.
Southwest Mar San Francisco
Southwest Marine, Inc.
Southwest Mobile Systems Corp.
Southwest Research Institute
Southwestern Bell Telephone Co.
Space Communication Co.
Space Data Corp.
Sparta, Inc.
Sparton Corp.
Sperry Corp.
Squibb, E. R. & Sons, Inc.
SRI International
SRS Technologies
Staatsbauamt
Standard Manufacturing Co.
Standard Oil Company Ohio Corp.
Standard Products Co., The
Stanford, LeLand Jr University
Stanford Telecommunications
Star Food Processing, Inc.
Stearns Catalytic Corp.
Stearns-Roger, Inc.
Steinberg Brothers, Inc.
Stellar Industries, Inc.
Sterling Systems, Inc.
Steuart Petroleum Co.
Stewart & Stevenson Services
Stewart-Warner Corp.
Stolte, Inc.
Stone & Webster Engineering
Storage Technology Corp.
Strong Bill Enterprises, Inc.
Sumitomo Heavy Industries, Ltd.
Sun Chemical Corp.
Sun Refining & Marketing Co.
Sundstrand Corp.
Sundstrand Data Control, Inc.
Sunkyong, Ltd.
Superior Engineers Electronic Co.
Support Systems Associates, Inc.
Supreme Beef Processor, Inc.
Survival Technology, Inc.
Sverdrup Technology, Inc.
Swann Oil, Inc.
Swiftships, Inc.
Syscon Corp.
System Development Corp.
System Planning Corp.
Systemhouse, Inc.
Systems & Applied Sciences
Systems Engineering Assoc.
System Management American
Systems Research Laboratories
Systron-Donner Corp.
T R W Electronic Products, Inc.
T R W, Inc.
Tadiran Electronic Industries
Tan-Tex Industries Corp.
Tandem Computers, Inc.
Taylor, T. H., Inc.
Techdyn Systems Corp.
Technology Applications, Inc.
Tecom Inc.
Tektronix, Inc.
Tele-Signal Corp.
Teledyne, Inc.
Teledyne Industries, Inc.
Telos Corp.
Temtex Products, Inc.
Tennessee Apparel Corp.
Tennessee, State of
Tennier Industries, Inc.
Termomeccanica Italiana Spa
Tesoro Alaska Petroleum Co.
Tetra Tech., Inc.
Teval Corp.
Texaco, Inc.
Texas Capital Contractors, Inc.
Texas Instruments, Inc.
Texas Mil-Tronics, Inc.
Texas Power & Light Co.
Texstar Plastics Co., Inc.
Textron, Inc.
Therm, Inc.
Thompson, J. Walter Co.
Todd Pacific Shipyards Corp.
Todd Shipyards Corp.
Tohoku, Denryoku K. K.
Tokyo Denryoku, K. K.
Torrington Co., The
Tower Air, Inc.
Townsend & Bottum, Inc.
Tracor Aerospace Austin, Inc.
Tracor Applied Sciences, Inc.
Tracor, Inc.
Tracor Marine, Inc.
Tracor MBA
Trailer Marine Transport Corp.
Trans World Airlines, Inc.
Transamerica Airlines, Inc.
Transamerica Delaval, Inc.
Trataros Construction, Inc.
Trataros Industries, Ltd.
Travenol Laboratories, Inc., Delaware
Treadwell Corp.
Triad Aviation
Triad Microsystems, Inc.
Tridair Ind Fastener Div.
Triple A Machine Shop, Inc.
TSC Corp.
Turner International Industries
Turtle Mountain Mfg. Co.
Tyger Construction Co., Inc.
U S Oil & Refining Co.
U S Oil Co., Inc.
Ultramar Petroleum, Inc.
Ultrasystems, Inc.
Unidynamics Corp.
Unified Industries, Inc.
Union Carbide Corp.
Union Corp., The
Union Explosives Rio Tinto SA
Union Underwear Co., Inc., New York
Uniroyal, Inc.
United Airlines Aircrew Training
United Chem-Con Corp.
United States Lines, Inc.
United Technologies Corp.
Universal Canvas, Inc.
Universal Energy Systems, Inc.
Universal Propulsion Co.
University of California
University of Dayton
University of Illinois
University of Maryland
University of New Mexico, The
University of Southern California
University of Texas System
Upjohn Co., The
Urdan Industries, Ltd.
Usibelli Coal Mine, Inc.
Utah Power & Light Co.
Utah State University
Valleydale Packers, Inc.
Valmac Industries, Inc.
Vanee Foods Co.
Varian Associates, Inc.
Veda Inc.
Ver-Val Enterprises, Inc.
Verac, Inc.
Vertac Chemical Corp.
Vickers, Inc.
Viereck Co., Inc., The
Vinnell Corp.
Virginia Electric and Power Co.
Vitro Corp.
VIZ Manufacturing Co., Inc.
VSE Corp.
Walters, E. & Co., Inc.
Wang Laboratories, Inc.
Washington, University of
Waterman Steamship Corp.
Watkins Engineers & Constructors
Watkins-Johnson Co.
Wedtech Corp.
Wellco Enterprises, Inc.
Westerchil Construction Co., Inc.
Western Alaska Contractors JV
Western Gear Corp.
Western Petroleum Co.
Western Pioneer, Inc.
Western Research Corp.
Western Union International
Western Union Telegraph Co.
Westinghouse Electric Corp.
Westminster Co., Inc.
Westmont Industries
Westphal GMBH & Co. KG
White Consolidated Industries
White Engines, Inc.
White, T.A. Co., Inc.
Whitesell-Green, Inc.
Whittaker Corp.
Wickes Companies, Inc.
Willbros Butler Engineers, Inc.
Williams Electric Co., Inc.
Williams International Corp.
Williams Steel Industries, Inc.
William-Mc Williams Co., Inc.
Wilson Machine Company, Inc.
Winfield Manufacturing Co., Inc.
Wisconsin Physicians Service Insurance
Woods Hole Oceanographic Institute
Woodward Governor Co.
World Airways, Inc.
Wylie, C.E. Construction Co.
Wynn Construction Co.
Wyoming Refining Co.
Xerox Corp.
Zantop International Airlines
Zaroco, Inc.
Zenith Data Systems Corp.
Zenith Electronics Corp.
Zwick Energy Research Organization

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 2, 1987.

[FR Doc. 87-2443 Filed 2-4-87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-86-11]

Drawbridge Operation Regulations; Pascagoula River, MI

AGENCY: U.S. Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Mississippi State Highway Department, the Coast Guard is changing the regulation governing the operation of the U.S. Highway 90 drawbridge across the Pascagoula River, mile 1.8 at Pascagoula, Mississippi, to permit the draw of the bridge to remain closed to navigation from 6:15–7:15 a.m., 7:25–8 a.m., and 3:30–4:45 p.m. Monday through Friday except holidays. Presently, the bridge is permitted to remain closed to vessel traffic from 6:15–7:15 a.m., 7:25–8 a.m., 3:15–4:15 p.m., and 4:30–5:30 p.m. Monday through Friday except holidays.

This change is being made because of an increase in vehicular traffic and a change in the pattern of vehicular traffic flow. This action should help to relieve congestion at the bridge site during the peak hours of traffic flow, while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on March 9, 1987.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: On 26 November 1986, the Coast Guard published a proposed rule (51 FR 43047) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated 5 December 1986. In each notice interested parties were given until 12 January 1987 to submit comments.

Drafting Information

The drafters of this regulation are John Wachter, project officer, and Lieutenant Commander James Vallone, project attorney.

Discussion of Comments

Two letters were received in response to the notices, offering no objections to the proposal.

Economic Assessment and Certification

This regulation is considered to be non-major under executive order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this finding is that the bridge will actually remain in the closed to navigation position for less time than with the current regulation. The new closure time is an effort to expedite the flow of the changed vehicular traffic pattern. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.683 is revised to read as follows:

§ 117.683 Pascagoula River.

The draw of the US90 bridge, mile 1.8 at Pascagoula, shall open on signal; except that, from 6:15 a.m. to 7:15 a.m., 7:25 a.m. to 8 a.m., and 3:30 p.m. to 4:45 p.m. Monday through Friday except Federal holidays, the draw need not be opened for the passage of vessels.

Dated: January 26, 1987.

E.B. Acklin,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard District, Acting.

[FR Doc. 87-2437 Filed 2-4-87; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

Ice Navigation Season Notification

[CGD-87-005]

AGENCY: Coast Guard, DOT.

ACTION: Notice of Ice Navigation Season.

SUMMARY: The Ice Navigation Season Regulation Area (RNA) on the Northern portion of the Chesapeake Bay and its tributaries, including the Chesapeake and Delaware Canal will be placed in effect on January 29, 1987. The regulations for this Regulated Navigation Area, found in 33 CFR 165.503, published in the **Federal Register** May 19, 1983 (48 FR 22543), state that they are placed in effect and terminated at the direction of the Captain of the Port, Baltimore, MD by notice in the **Federal Register**. The purpose of this regulated navigation area is to enhance the safety of navigation in the affected waters. It requires operators of certain vessels to be aware, during their vessel's transit of the Regulated Navigation Area, of currently effective Ice Navigation Season Captain of the Port Orders issued by the Captain of the Port Baltimore, Maryland.

EFFECTIVE DATE: January 29, 1987.

FOR FURTHER INFORMATION CONTACT: Commander David M. Strasser, Chief Port Operations Department, USCG Marine Safety Office, Custom House, 40 South Gay Street, Baltimore, Maryland 21202–4022, (301) 962–5105.

Dated: February 2, 1987.

R.C. Pickup,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 87–2440 Filed 2–4–87; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–5–FRL–3150–8]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: USEPA is disapproving a revision to the Porter County, Indiana State Implementation Plan (SIP) for total suspended particulate (TSP). The revised strategy for this county was submitted as a revision to the SIP by Indiana on October 15, 1984, and is contained in Indiana regulation 325 IAC 6–6, Source Specific and Facility Emission Limitations for TSP in Porter County. USEPA has reviewed the regulation and the supporting documentation and has found that the regulation is not approvable under the Clean Air Act (Act) due to deficiencies in the regulation itself and in the modeling analysis and emission inventory submitted to support the regulation. This final action is consistent with USEPA's proposed rulemaking action of October 16, 1985 (50 FR 41909).

EFFECTIVE DATE: This final rulemaking becomes effective on March 9, 1987.

ADDRESSES: Copies of this disapproval of the Porter County TSP plan, copies of the SIP revision, the proposed and final technical support documents, public comments on the notice of proposed rulemaking, and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone Steven D. Griffin, at (312) 353–3849, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604

Indiana Department of Environmental Management, Office of Air Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206–6015

FOR FURTHER INFORMATION CONTACT: Steven D. Griffin (312) 353–3849.

SUPPLEMENTARY INFORMATION: Under section 107 of the Act, USEPA has designated certain areas in each State as not attaining the NAAQS for particulate matter.[1] A small portion of northern Porter County is presently designated unclassified with respect to attainment of particulate matter NAAQS and the remainder of the County is designated attainment.[2]

Bethlehem Steel Corporation (BSC), with technical advice from the Indiana Air Pollution Control Division (IAPCD), recently developed a revised TSP control strategy for Porter County, Indiana. The strategy used a computer dispersion modeling analysis to determine emission limits (industrial and non-industrial).[3]

The purpose of the revised Porter County strategy appears to be to attain and maintain the primary particulate matter standards in the most cost effective manner by emphasizing nonprocess fugitive dust control, rather than increased process controls. The modeling submitted in support of the strategy does predict violations of the 24-hour secondary standard.

BSC submitted this strategy to the Indiana Air Pollution Control Board (IAPCB) for its consideration. On May 21, 1984, the IAPCB sent USEPA for comment a copy of a draft Porter County TSP regulation, 325 IAC 6–6, and a December 1983 Technical Support Document, consisting of (1) particulate matter emissions inventories, and (2) an air quality modeling report ("Northwestern Porter County Air Quality Modeling Study", December 21, 1983). USEPA submitted comments on the proposed rule and the technical support document on July 6, 1984, with revisions on July 18, 1984.

On October 3, 1984, the IAPCB adopted this Porter County strategy as new regulation 325 IAC 6–6. Indiana submitted this rule on October 15, 1984.

[1] The primary particulate matter NAAQS are violated when, in a year, either: (1) the geometric mean value of TSP concentrations exceeds 75 micrograms per cubic meter of air (75 $\mu g/m^3$) (the annual primary standard); or (2) the maximum 24-hour concentration of TSP exceeds 260 $\mu g/m^3$ more than once (the 24-hour standard). The secondary particulate matter NAAQS is violated when, in a year, the maximum 24-hour concentration exceeds 150 $\mu g/m^3$ more than once.

[2] On March 3, 1978, USEPA initially designated all of Porter County as unclassifiable for particulate matter (43 FR 8962). On October 5, 1978, USEPA mistakenly designated Porter County as primary nonattainment (43 FR 45993).

In 1979, USEPA established three TSP monitors near Bethlehem Steel Corporation (BSC). These monitors recorded clear violations of the particulate matter NAAQS. On August 18, 1982, USEPA corrected its mistake of designating the entire county nonattainment by officially redesignating most of Porter County as unclassifiable and, based on the monitored violations near BSC, designating a portion of northern Porter County as primary nonattainment for particulate matter (47 FR 35966).

BSC petitioned the Seventh Circuit Court of Appeals to review this nonattainment designation. On December 13, 1983, the Court held that USEPA does not now have the authority to unilaterally redesignate an area nonattainment and vacated the designation. See *Bethlehem Steel Corporation* v. *USEPA*, 726 F.2d 1303, in response to the Court decision, USEPA reinstituted its initial unclassifiable designation for the entire county on June 6, 1984 (49 FR 23343).

On March 14, 1984, Indiana requested that all of Porter County be redesignated attainment, except for an area in the northern portion of Porter County which contains BSC and other major sources. USEPA approved this redesignation on April 22, 1985 (50 FR 15748). The current designation is that an area bounded on the north by the Lake Michigan shoreline, on the east by Mineral Springs Road, on the south by I–94, and on the west by Indiana 249 from I–94 to Burns Ditch and then following Burns Ditch to Lake Michigan is designated unclassifiable. The remainder of the County is designated attainment.

[3] This type of SIP is referred to as an "attainment demonstration SIP". In order to be approvable, an attainment demonstration SIP requires that all applicable emission limitations and requirements within it must individually be approvable, because the demonstration assumes that all of the limits are in place and are approved as a part of the SIP. Additionally, it requires all other applicable Section 110 requirements be met, e.g., explicit and approvable test methods, inspection procedures, and compliance schedules.

as a proposed revision to the SIP. Previously, on September 26, 1984, Indiana has sent to USEPA, BSC's August 27, 1984, response to USEPA's, July 6, 1984, comments, additional support documentation for the fugitive dust control program, and a revised air quality modeling report ("Northwestern Porter County Air Quality Modeling Study", August 13, 1984). However, Indiana did not submit a revised emission inventory for this area. On November 7, 1984, Indiana promulgated 325 IAC 6–6 as a State regulation.

USEPA reviewed the documents which were submitted. On October 16, 1985 (50 FR 41909), USEPA proposed to disapprove the revision due to deficiencies in the regulation itself and the underlying modeling analysis and emission inventory. On February 14, 1986, BSC submitted comments and further technical support in response to the proposed rulemaking action. Following is a discussion of the major deficiencies, BSC's comments, and USEPA's responses to those comments, where appropriate. Other deficiencies and more detail on the deficiencies discussed below can be found in USEPA's technical support documents which are available for review at the addresses listed in the front of this notice.

Deficiencies in the Emission Limits in 325 IAC 6–6

Deficiency

In 325 IAC 6–6–4, Emission Limitations, the heading above the emission limits column identifies these as "annual" limits. USEPA cannot approve any strategy which does not ensure attainment and maintenance of the short-term, as well as the annual, particulate matter NAAQS. Because 325 IAC 6–6 does not include short-term limits to protect the 24-hour NAAQS and the State has not demonstrated that the annual limits protect the 24-hour NAAQS, USEPA cannot approve the regulation.

BSC Comment

BSC did not address this deficiency.

Deficiency

Certain of the emission limits in 325 IAC 6–6 are expressed in terms of pounds per hour. To be approvable, any "mass per unit time" emission limit, such as pounds per hour, must either be supported by a thorough reduced load modeling analysis or evidence must be submitted that the facility cannot operate at less than full load. No such analysis or evidence was provided for the Porter County pounds per hour limits. Therefore, because such limits are an intrinsic part of the Porter County strategy, the strategy cannot be approved.

BSC Comment

BSC argued that these "pounds per hour" limits are acceptable since the sources in question are either baghouses, a slab mill scarfer, or a scrubber at the sinter plant. BSC claimed that the baghouses are associated with process sources which operate in an "on-off" mode. (BSC stated that this operation applied to the scarfer and scrubber as well.) Consequently, the company claimed that modeling these sources at reduced load was not appropriate.

USEPA Response

USEPA accepts the argument that a reduced load analysis is not necessary for sources that operate only in an "on-off" mode. BSC has not provided operating data, however, to prove that the process sources in question operate in this mode.

Deficiencies in 325 IAC 6–6 (Compliance Determinations)

Deficiency

Rule 325 IAC 6–6–2(d)(6) lists certain sources for which fuel usage data are used to determine compliance, and 325 IAC 6–6–2(e)(1) lists certain sources for which stack tests determine compliance. There are some sources limited by 325 IAC 6–6 that are not on either list. Rule 325 IAC 6–6–2(j) states that for all stack sources where compliance is not based on fuel monitoring analysis, compliance shall be based on opacity observations. 325 IAC 6–6–2(j) is unapprovable because it contradicts 325 IAC 6–6–2(e)(1) and because stack tests must be the primary test to determine compliance for all stack sources for which compliance is not based on fuel monitoring data. Opacity limitations should apply in addition to the stack test particulate limitations.

BSC Comment

BSC did not address this deficiency.

Deficiency

The Porter County strategy claims 30 percent control for basic oxygen furnace (BOF) vessels Numbers 1 and 2 and 90 percent control for BOF vessel Number 3. The BOF emission factors in the modeling analysis and the BOF emission limits in 325 IAC 6–6 reflect these levels of control. However, 325 IAC 6–6 does not contain a compliance method for roof monitor emissions from these sources. Indiana's general opacity rule, 325 IAC 5–1, applies to the BOF shop, but Indiana has not demonstrated that this opacity limit reflects 30 percent or 90 percent control for BOF vessels. The BOF shop emission limits in 325 IAC 6–6 are not approvable without appropriate compliance methods.

BSC Comment

BSC commented the USEPA should approve, at least, those portions of the subject rule that relate to opacity limits since Indiana is free to include in its SIP (or exclude from its SIP) any opacity limits it desires. Bethlehem also suggested that, because USEPA considered the BOF emission limits unapprovable without a compliance method, USEPA should probably reconsider approval of 325 IAC 6–3 as a particulate matter emission limit for the BOF, coke battery fugitive emission points, and blast furnaces, because there is no specified method of determining compliance for those sources using the process weight table in 325 IAC 6–3.

USEPA Response

USEPA does not agree that Indiana is free to include in its SIP (or exclude from its SIP) any opacity limits it desires. 40 CFR 51.19(c) requires that each SIP shall, as a minimum, provide for establishment of a system for detecting violations of any rules and regulations through the enforcement of appropriate visible emission limitations.

As for the second comment, 325 IAC 6–3, Particulate Emission Limitations for Process Operations, contains mass emission limits for process sources. Although there is no compliance method in this rule for fugitive sources, USEPA has considered that compliance with Indiana's general opacity rule, 325 IAC 5–1, indicates compliance with 325 IAC 6–3. USEPA is not now reconsidering approval of 325 IAC 6–3 providing particulate matter emission limitations for the BOF, coke battery fugitive emission points, and blast furnaces. However, the USEPA is currently reconsidering whether or not 325 IAC 5–1 is adequate to ensure compliance with 325 IAC 6–3 for process fugitive sources. As a result of this reconsideration, USEPA may determine that Indiana's opacity rule 325 IAC 5–1 is deficient.

Deficiency

The modeling analysis claims a 75 percent emission reduction for reentrained road dust from U.S. 12. Since 325 IAC 6–6 does not require cleaning of this road and no one has committed to clean it, the emission reduction credit from the cleaning is not approvable.

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BSC Comment

This deficiency was not addressed.

General Comment on Emission Limits

BSC Comment

BSC urged approval of the State regulation because it is an improvement upon existing regulations (e.g., allowable emissions are reduced from both point and fugitive dust sources).

USEPA Response

USEPA can only approve the plan if it has been demonstrated to ensure attainment and maintenance of the NAAQS or if it does not relax present limits for all sources. An acceptable attainment demonstration has not been provided for the Porter County plan. Additionally, the State has not demonstrated that the plan is either equal to or more stringent than the present SIP requirements for these sources. Even if USEPA approves a plan as being equal to or more stringent than the existing regulations, USEPA cannot approve a control strategy completely for an area until it ensures attainment and maintenance of the NAAQS.

Deficiency

The submitted modeling analysis is based on emissions being limited both at BSC and other facilities in the area. However, 325 IAC 6–6 only includes emission limitations and control measures for BSC. The State did not document that the emissions from these other sources used in the modeling represent the maximum allowable under current SIP regulations. Without such documentation, USEPA cannot confirm that this portion of the Porter County strategy is enforceable and, therefore, the strategy as a whole must be disapproved.

BSC Comment

BSC did not address this deficiency.

Deficiencies with the Air Quality Modeling

Deficiency

Indiana did not submit a complete copy of the modeling analysis, but did submit a report on the analysis from the contractor who developed the Porter County strategy. This report contained a summary of the modeling analysis techniques, a summary of the modeling input data, a summary table of the results of the modeling. Without seeing a complete copy of the modeling analysis, USEPA cannot fully comment on it. However, USEPA's review of the report has revealed several deficiences.

BSC Comment

BSC questioned how USEPA could be so certain that the deficiencies cited in the October 1985 notice were valid when USEPA had never reviewed a complete copy of the analysis.

USEPA Response

USEPA acted on all information submitted by the State. The State apparently saw no need to submit the complete set of computer print-outs. USEPA assumed that the report prepared by BSC's consultant was an accurate summary of the modeling analysis. (Note: USEPA did not cite the failure to submit the computer print-outs as a major deficiency.) Finally, it should be noted that BSC has not claimed that the actual print-outs resolve any of the cited deficiencies.

Deficiency

The most obvious deficiency with the completed modeling analysis is the lack of a reference short-term attainment demonstration. Instead, the demonstration used statistical transform equations to approximate 24-hour TSP concentrations.

This technique is contrary to current USEPA modeling guidelines, and current demonstrations based on this technique cannot be approved. (See the "Regional Workshops Air Quality Modeling: A Summary Report" (April 1981), and a memo dated June 20, 1984, from G. T. Helms entitled "Modeling Demonstration for Niagara Frontier".)

BSC Comment

BSC did not address this issue.

Deficiency

Another modeling deficiency concerns the issue of "ambient air". USEPA's ambient air policy is found at 40 CFR 50.1(e) and in a January 19, 1980, letter from Douglas Costle, then Administrator, to Senator Jennings Randolph. This policy only exempts from consideration land owned or controlled by the source to which public access is precluded by a fence or other physical barriers. No documentation was provided to justify the exclusion of modeled receptors from a large portion of the Burns Harbor area. For example, the neighboring Port of Indiana property does not fit the ambient air exemption, and the lack of receptors in this area is an obvious deficiency. This specific situation was addressed in the August 18, 1982, notice on the redesignation of Porter County. Thus, the submitted modeling analysis is further deficient, because it fails to provide a complete assessment of the pollutant concentrations in all the "ambient air" areas of Porter County.

BSC Comment

BSC maintained that the exclusion of modeled receptors from certain portions of the Burns Harbor area (such as the Port of Indiana) was proper.

USEPA Response

USEPA explained its policy on ambient air in the August 1982 notice. To reiterate, ambient air is that portion of the atmosphere, external to buildings, to which the general public has access. The only exemption from this definition is the atmosphere over land owned or controlled *by the source* and to which public access is precluded by a fence or other physical barriers. Consequently, the exclusion of receptors from non-BSC property, such as the Port of Indiana, is inappropriate.

Deficiency

BSC's August 13, 1984, report states that Porter County sources were modeled at 1979 stack and process fugitive source emission parameters adjusted to reflect projected operating rates. USEPA's modeling policy requires that short-term attainment demonstrations must use maximum allowable operating levels and maximum allowable emission limitations. For this reason also, the short-term modeling is deficient.

BSC Comment

BSC did not address this issue.

General Modeling Comments

BSC Comment

BSC objected to USEPA's strict reliance on its modeling guidelines since they claimed that these are merely guidelines and not Federal regulations.

USEPA Response

USEPA's "Guideline on Air Quality Models" (April 1978) recommends air quality modeling techniques that should be applied to SIP revisions for existing sources and to new source reviews. The Guideline is used by USEPA Regional Offices in judging the adequacy of modeling analyses performed by USEPA, States, local agencies, and by industry. The Guideline was developed to provide a consistent basis for selection of the most accurate model and data bases for use in air quality assessments and, therefore, responds to the need for consistency expressed by States, industries, trade associations, and the deliberation of Congress. Clarifications to the April 1978 Guideline have been issued at various times.

USEPA's modeling guidance allows the use of an alternative model or procedure if an acceptable demonstration is made that the alternative model performs equivalent to or better than the applicable USEPA recommended model. In addition, USEPA has specified procedures and techniques to be followed for determining the acceptability of a nonguideline model for an individual case based on superior performance. These procedures are contained in the USEPA document entitled "Interim Procedures for Evaluating Air Quality Models (Revised)", September 1984. BSC did not provide a demonstration for an alternative approach consistent with the Interim Procedures document.

BSC Comment

BSC argued that its modeling analysis is within the bounds of flexibility allowed by USEPA's modeling guidelines.

USEPA Response

USEPA follows its modeling guidelines in reviewing attainment demonstrations for new and existing sources. Although the guidelines do allow some flexibility, this flexibility still does not allow USEPA to accept an analysis fraught with deficiencies such as those cited in the October 1985 notice.

BSC Comment

BSC stated that the ISCLT model was used, not the CDM model, as noted in the October 1985 notice.

USEPA Response

USEPA acknowledges the error in the October 1985 notice. As correctly noted in USEPA's March 1985 Technical Support Document, the ISCLT model was used.

Deficiencies in the Emission Inventory

Deficiency

There are discrepancies between the inventories Indiana has submitted in support of its Porter County sulfur dioxide strategy and that it submitted in support of its TSP strategy.

BSC Comment

BSC did not address this deficiency.

Deficiency

Several of the emission limits in 325 IAC 6–6 for baghouses were higher than limits in the technical support document. This indicated that the technical support document allowed more emissions than the modeling took into account. BSC claimed that those discrepancies had been corrected, but they still existed in the documents that had been submitted to USEPA at the time of proposed rulemaking.

BSC Comment

Bethlehem submitted a February 17, 1984, technical support document and suggested that USEPA review the correct inventory to determine if the discrepancies were actual problems or the result of USEPA basing the review on the wrong documents.

USEPA Response

The limits in the February 17, 1984, technical support are the same as the limits in 325 IAC 6–6. This deficiency has been resolved.

Deficiency

325 IAC 6–6 contains a method for determining compliance with a coke quench water quality limit but does not contain a limit, and there is no Federally enforceable quench water quality limit in Indiana's SIP because 325 IAC 11–3–2(h) was disapproved due to an inadequate compliance method. The 1500 milligram (mg) total dissolved solids (TDS) per liter quench water limit of 325 IAC 11–3–2(h) would result in an emission rate of 0.6 lb per ton of coal. The strategy assumes an emission rate of 0.27 lb per ton of coal. The Porter County strategy is unacceptable because there is no Federally enforceable water quality limit and even if the 1500 mg TDS per liter limit were enforceable, it does not correspond to the modeled emission rate. Furthermore, the once per quarter sampling frequency specified in 325 IAC 6–6 is inadequate.

BSC Comment

This deficiency was not addressed.

Deficiency

Indiana's coke pushing rule, 325 IAC 11–3–2(g), was disapproved by USEPA, because it is not enforceable. 325 IAC 6–6 relies upon 325 IAC 11–3–2(g) to limit coke pushing emissions. A coke pushing emission factor of 0.08 lb per ton of coal (0.05 for uncollected emissions + 0.03 from control devices) would be acceptable if 325 IAC 11–3–2(g) were enforceable. But the modeled emission rates appear to be 0.047 lb per ton of coal for Number 2 Battery and 0.043 lb per ton of coal for Number 1 Battery. The Porter County strategy does not ensure that coke pushing emissions will not exceed the modeled emission rates. Similarly, compliance with 325 IAC 11–3–2(b) would result in a charging emission rate of about 0.043 lb per ton of coal. The Porter County strategy emission inventory assumes a charging emission rate of 0.016 lb per ton of coal.

BSC Comment

These deficiencies were not addressed.

Violations of the Secondary Particulate Matter Standard

Deficiency

The modeling submitted with the Porter County strategy predicted violations of the 24-hour secondary particulate matter standard. These 24-hour violations were predicted using the CDM annual model with the statistical transform equations (Larsen's Transforms) referred to previously. These statistical techniques are not acceptable for demonstrating attainment; basically because they underpredict 24-hour concentrations. For the same reason, the converse is true; these same techniques can be used to demonstrate nonattainment. This is because the hourly sequential short-term modeling concentrations given by reference modeling will generally be greater, not less, than the transform derived short-term concentrations. Another reason for disapproving the Porter County plan is because the modeling predicts violations of the secondary TSP standard in an area currently designated better than secondary nonattainment, i.e., unclassifiable.

BSC Comment

BSC did not address this comment.

Additional Public Comments

In addition to BSC's submittal responding to the October 1985 notice, Citizens for a Better Environment submitted comments in support of USEPA's proposed rulemaking to disapprove the Porter County plan on December 6, 1985. These comments are available for review at the locations listed in the **ADDRESSES** section of this notice.

Summary of Today's Rulemaking

In conclusion, the Porter County TSP strategy is not approvable, because of deficiencies in the regulation itself, such as enforceability; deficiencies in the modeling procedures used in development of the strategy; deficiencies in the emission inventory used in the strategy; and predicted violations of the secondary TSP standard. The above notice references some of the major deficiencies with the Porter County plan. As previously stated, other deficiencies are noted in USEPA's technical support documents

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which are also available for review at the locations listed in the **ADDRESSES** section of this notice. USEPA is disapproving as a revision to the SIP Indiana's revised Porter County TSP plans, including 325 IAC 6–6, which was submitted on October 15, 1984.

Additionally, USEPA is disapproving 325 IAC 5–1 (1980 APC 3), Indiana's opacity rule, for those sources referenced at 325 IAC 6–6–2(j) and specifically listed at 325 IAC 6–6–4. 325 IAC 6–6–2(j) contains modifications to 325 IAC 5–1 for certain stack sources in Porter County. USEPA has determined that these modifications are intrinsic to 325 IAC 5–1 as it applies to Porter County; therefore, 325 IAC 5–1 cannot be approved for Porter County as long as 325 IAC 6–6 is unapprovable. As a result of this disapproval, these Porter County sources will remain regulated by the previously approved opacity SIP, which includes 1974 APC 3 for combustion sources and 1972 APC 3 for process sources. In addition, as long as Bethlehem's No. 2 Coke Oven Battery Underfire Stack "equivalent visible emissions limit" (EVEL) remains approved, it replaces 325 IAC 5–1.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from date of publication). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Particulate matter, Intergovernmental relations.

Note.—Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 28, 1987.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart P—Indiana

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.770 is amended by adding paragraphs (c) (53) and (61) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(53) On October 6, 1980, Indiana submitted revised opacity regulation 325 IAC 5–1. It replaces 1972 APC 3 for process sources, approved at Paragraph (b), and SIP 1974 APC 3 for combustion sources, approved in part at paragraph (c)(14). Indiana does not intend 325 IAC 5–1 to regulate the emission points in Lake County listed in Table 2 of 325 IAC 6–1–10.2 (paragraph (c)(57)). USEPA is disapproving 325 IAC 5–1 for these sources. Indiana does not intend 325 IAC 5–1 to regulate certain coke battery emission sources listed in 325 IAC 11–3 (paragraph (c)(42)). USEPA is disapproving 325 IAC 5–1 as it applies to the provisions of 325 IAC 11–3 which USEPA disapproved at (c)(42), i.e., pushing and quenching sources throughout the State and coke oven doors in Lake and Marion Counties. Additionally, Indiana has modified 325 IAC 5–1 as it applies to certain stack emission points in Porter County at 325 IAC 6–6–2(j). USEPA is disapproving 325 IAC 5–1 as it applies to these Porter County sources (paragraph (c)(61) and § 52.794(c)).

For those source categories where USEPA is disapproving 325 IAC 5–1, they remain regulated by the previously approved opacity SIP which consists of SIP 1974 APC 3 for combustion sources and 1972 APC 3 for process sources. Additionally, as long as the Bethlehem Steel Corporation No. 2 Coke Oven Battery Underfire Stack EVEL (paragraph (c)(49)) remains approved, it replaces 325 IAC 5–1.

* * * * *

(61) On October 15, 1984, Indiana submitted a revision to the Porter County total suspended particulate (TSP) plan, including regulation 325 IAC 6–6, which was promulgated by Indiana on November 7, 1984. This plan is disapproved. See § 52.776(l).

* * * * *

3. Section 52.776 is amended by reserving paragraph (k) and adding paragraph (l) to read as follows:

§ 52.776 Control strategy: Particulate matter.

* * * * *

(k) [Reserved]

(l) The revised Porter County TSP plan, as submitted by Indiana on October 15, 1984, is disapproved, because the State did not demonstrate that it assures the attainment and maintenance of the primary TSP NAAQS in Porter County, Indiana. See § 52.770(c)(61).

4. Section 52.794 is amended by adding paragraph (c) to read as follows:

§ 52.794 Source surveillance.

* * * * *

(c) 325 IAC 5–1 (October 6, 1980, submittal—§ 52.770(c)(53)) is disapproved for the Lake County sources specifically listed in Table 2 of 325 IAC 6–1–10.2 (§ 52.770(c)(57)); for pushing and quenching sources throughout the State (August 27, 1981, 325 IAC 11–3–2 (g) and (h)—§ 52.770(c)(42)); for coke oven doors in Lake and Marion Counties (325 IAC 11–3–2(f)—§ 52.770(c)(42)); and for certain stack sources listed in 325 IAC 6–6–4 in Porter County (325 IAC 6–6–2(j)—§ 52.770(c)(53)). Applicability of this regulation to these sources is being disapproved because 325 IAC 5–1 does not meet the enforceability requirements of § 51.22 as it applies to these sources. Opacity limits in 325 IAC 6–1–10.2 and certain opacity limits in 325 IAC 11–13 and 325 IAC 6–6–2(j) supersede those in 325 IAC 5–1, and USEPA has previously disapproved these superseding regulations (§ 52.776 (j), (g), (f), and (l), respectively)

[FR Doc. 87–2212 Filed 2–4–87; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–9–FRL–3151–4]

Approval and Promulgation of Implementation Plans; California Plan Revisions for Merced County and San Francisco Bay Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This notice disapproves revisions to the San Francisco Bay Area and Merced County portions of the California State Implementation Plan (SIP). The revisions are relaxations of existing SIP requirements for food processors pertaining to New Source Review (NSR) and particulate emissions prohibitory regulations.

EFFECTIVE DATE: March 9, 1987.

ADDRESS: EPA's Technical Support Document and a copy of the disapproved rules are located at: New Source Section, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Dave Jesson (A–3–1), New Source Section, Air Managemend Division, EPA, Region 9 (415) 974–8220 (FTS) 454–8220.

SUPPLEMENTARY INFORMATION:

Background

In September 1983 the California State Legislature adopted Senate Bill 664, which added and revised §§ 41511.5, 41511.6, and 41511.7 of the State Health and Safety Code, relating to air pollution control requirements applicable to food processors. This legislation mandated revisions to the existing California air pollution control district rules and regulations, pertaining to NSR, Prevention of Significant Deterioration (PSD), and particulate emissions control.

Specifically, State law set the requirements for food processors as follows: (1) Particulate prohibitory rules must be consistent with a level of 480 pounds per day, but not to exceed 20 pounds per hour; (2) district NSR rules must have an applicability cutoff level of 1000 pounds per day, but not to exceed 50 tons per year; (3) district NSR rules must exempt modifications to convert from gaseous fuel to liquid or alternative fuels if emission increases do not exceed 40 tons per year of nitrogen oxides, sulfur dioxide, and volatile organic compounds, or 25 tons per year of particulate matter; and (4) PSD requirements may not be more stringent than federal PSD regulations. Finally, SB 664 provided that its sections shall be "inoperative" if EPA disapproves the amended SIP or if sanctions are imposed under the Clean Air Act as a result of the law's requirements.

On August 21, 1984 and September 19, 1984, respectively, the Merced County Air Pollution Control District (MCAPCD) and Bay Area Air Quality Management District (BAAQMD) adopted revisions to their regulations to conform to the State law. These revisions were submitted to EPA by the State on October 5, 1984, as official amendments to the SIP.

On February 14, 1985 EPA proposed to disapprove certain of the rules and to take no action at this time on others (50 FR 6217). EPA proposed disapproval because the revisions violated federal NSR requirements or relaxed existing SIP requirements without a demonstration by the State that the relaxations would not jeopardize attainment and maintenance of the national standards.

Among the deficiencies cited in the Notice of Proposed Rulemaking or accompanying Technical Support Document are the following. The revisions conflict with 40 CFR 51.165(a)(1)(vi) [formerly § 51.18(j)(1)(vi)] provisions regarding net emission increase by allowing each facility to modify without offsets if emission increases from such modification are less than 40 tons per year for nitrogen dioxides, sulfur oxides, and precursor organic compounds and 25 tons per year of particulate matter, despite other contemporaneous emission increases at the source which must be included in the determination of offset requirements. The revisions exempt food processor modifications from NSR requirements regardless of whether emission increases exceed the significance levels prescribed at 40 CFR 51.165(a)(1)(x) [formerly § 51.18(j)(1)(x)] for carbon monoxide and lead. The revisions relax the SIP particulate matter emission limitation of 0.10 gr/sdcf in the MCAPCD and 0.15 gr/sdcf in the BAAQMD to 20 pounds per hour and 480 pounds per day. This relaxation yields a potential particulate matter increase of 3821 tons per year within the Bay Area, according to the BAAQMD.

At the request of several commentors, EPA later extended the public comment period for the notice to June 5, 1985 (see 50 FR 21085). On August 12, 1986, the State submitted renumberings of BAAQMD rules 2–2–119 (now 122), 2–2–232 (now 235), and 2–2–421 (now 422), adopted on March 19, 1986.

Public Comment

EPA received eight comments on the proposal. Seven of the commentors were representatives of the food processor industry in California, and one commentor was a county supervisor. All comments opposed the disapproval, primarily arguing that the rule revisions would benefit an economically depressed industry and that the adverse air quality consequences of the rule relaxations were not as severe as increased pollution that would result if the industry failed and were to be replaced by more polluting developments. EPA has responded to these comments in its Technical Support Document. EPA is sympathetic to the commentors' argument, but continues to find no authority under the Clean Air Act to allow its approval of rule relaxations that would interfere with attainment and maintenance of the national standards either because (1) such approval would provide an economic benefit and competitive advantage to a particular category of industry, or (2) approval would prevent possible replacement of a less polluting industry with more polluting housing or industrial development.

EPA Action

For the reasons stated above and in the proposal, EPA today takes final action to disapprove the following food processor rule relaxations:

MCAPCD Rule 210.1–II–J—Defintion of Food Processor

MCAPCD Rule 210.1–VII–F—Exemption—Food Processors

MCAPCD Rule 408–C (new sentences two and three)—Fuel Burning Equipment

BAAQMD Section 2–2–119—Exemption, New Food Processing Facilities

BAAQMD Section 2–2–120—Exemption, Modification of Food Processing Facility

BAAQMD Section 6–205—Definition of Food Processor

BAAQMD Section 6–312—Food Processing Facility Particulate Matter Limitation

As discussed in the proposal, EPA will take action in future notices on MCAPCD minor revisions to Rules 202 and 210.1–V–D (Calculations), which do not specifically apply to food processors and which are approvable as elements of the wholly revised MCAPCD NSR Rule; and EPA will act on BAAQMD sections 2–2–232, 2–2–121, and 2–2–421 at a later date in conjunction with rulemaking on the entire BAAQMD PSD rule.

The effect of this disapproval is to maintain the present SIP requirements for food processors. Since the disapproved rules are written to be effective only upon EPA approval, the rule provisions would remain inoperative in district rules as a result of this action.

Administration

Under 5 U.S.C. 605(b), EPA has determined that this action will not have a significant economic impact on a substantial number of small entities, since the action will not impose any new burdens on these facilities, which must continue to comply with existing NSR and particulate emissions prohibitory rules.

Under Executive Order 12291, this action is not "major". It has been submitted to the Office of Management and Budget (QMB) for review.

Under section 307(b)(1) of the Act, any petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 6, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).]

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Ozone, Sulfur oxide, Nitrogen oxides, Hydrocarbons, Carbon monoxide.

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Dated: January 29, 1987.

Lee M. Thomas,

Administrator.

Subpart F of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart F—California

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.279 is added to read as follows:

§ 52.279 Food processing facilities.

(a) The following regulations are disapproved because they conflict with the requirements of 40 CFR Subpart I [formerly § 51.18], "Review of new sources and modifications," and relax the control on emissions from food processing facilities without any accompanying analyses demonstrating that these relaxations will not interfere with the attainment and maintenance of the National Ambient Air Quality Standards.

(1) Merced County APCD Rules 210.1–II–J, 210.1–VII–F, 408–C (new sentences two and three), adopted on August 21, 1984, and submitted on October 5, 1984.

(2) Bay Area Air Quality Management District sections 2–2–119, 2–2–120, 6–205, 6–312, adopted on September 19, 1984, and submitted on October 5, 1984.

[FR Doc. 87–2422 Filed 2–4–87; 8:45 am]

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40 CFR Part 81

[A–3–FRL–3147–7; EPA Docket No. 107PA–11]

Designation of Areas for Air Quality Planning Purposes; Disapproval of Section 107 Classification for the Commonwealth of Pennsylvania

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On June 29, 1983 (48 FR 29887) EPA proposed to approve the reclassification of Madison, Mahoning, Boggs, Washington and Pine Townships in Armstrong County, Pennsylvania from nonattainment to attainment of the primary National Ambient Air Quality Standards (NAAQS) for Sulfur Dioxide (SO_2) pursuant to section 107(d) of the Clean Air Act, 42 U.S.C. 7407(d).

Subsequently, on August 15, 1986, EPA published a notice in the **Federal Register** (51 FR 29262) reopening the public comment period on this action in order to discuss the requirements of the July 8, 1985, stack height regulations (50 FR 27892) and to solicit comment on the possible impact that these regulations have on the Armstrong County demonstration of attainment.

As a result of this Notice and a review of the comments received, EPA is today disapproving the Commonwealth of Pennsylvania request to reclassify the nonattainment portion of Armstrong County to attainment for SO_2.

EFFECTIVE DATE: March 9, 1987.

ADDRESSES: Copies of the reclassification request and accompanying documents are available during normal business hours at the following offices:

U.S. Environmental Protection Agency, Region III, Air Management Division, 841 Chestnut Building, Eighth Floor, Philadelphia, Pennsylvania 19107, Attn: Esther Steinberg

Commonwealth of Pennsylvania, Department of Environmental Resources, Bureau of Air Quality Control, 700 North 3rd Street, Harrisburg, Pennsylvania 17120, Attn: Gary Triplett

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Donna Abrams (3AM11) at the EPA, Region III address above or call (215) 597–9134.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962) and on September 2, 1978 (43 FR 40515), EPA classified Madison, Mahoning, Boggs, Washington and Pine Townships in Armstrong County, Pennsylvania as a nonattainment area for Sulfur Dioxide (SO_2). This classification was based primarily on an air diffusion modeling study performed for the Pennsylvania Department of Environmental Resources (DER) by a consultant, Geomet, Inc. The study predicted violations of the National Ambient Air Quality Standards (NAAQS) for SO_2, resulting primarily from the West Penn Power Company (WPPC) Armstrong Power Plant, a two unit, coal-fired facility (180 mw each unit) located on the Allegheny River near the town of Reesedale in Washington Township, Armstrong County. The Geomet study and its results are discussed in detail in the Notice reopening the comment period on this action (see 51 FR 29269).

On July 24, 1979, EPA published a **Federal Register** Notice (44 FR 43306) describing the steps that DER and WPPC had agreed to in a Consent Order and Agreement to provide for attainment of the SO_2 NAAQS. These steps are discussed in detail in that Notice and in the Notice reopening the public comment period on the proposed reclassification of Armstrong County (51 FR 29270).

DER and WPPC renegotiated the Consent Order and Agreement discussed above and submitted it to EPA as a proposed SIP revision on December 17, 1980. The revised Agreement included a schedule for construction of a 307-meter smoke-stack to replace the two existing 70-meter stacks at the plant, and set out interim emission limits which were to provide reasonable further progress toward meeting the NAAQS pending the completion of the stack at the end of 1982. The final emission limits under the Consent Order were to be the applicable limits in the Pennsylvania Code of Regulations (4.8 lbs. $SO_2/10^6$ BTU—daily average not to be exceeded at any time; 4.0 lbs. $SO_2/10^6$ BTU daily average not to be exceeded more than two days in any running 30-day period; and 3.7 lbs. $SO_2/10^6$ BTU—30-day average not to be exceeded at any time).

EPA proposed approval of this SIP revision in the **Federal Register** on January 28, 1981 (46 FR 9128), and on August 18, 1981, EPA published final approval of this SIP revision (46 FR 43423). The details regarding the stack height determination through fluid modeling, and the dispersion modeling of the GEP stack emissions, which were an integral part of this SIP revision, are discussed in detail in the notices relating to this SIP revision as well as the Notice reopening the comment period on the proposed reclassification of Armstrong County for SO_2 (51 FR 29270). EPA concluded that the studies demonstrated that Armstrong's 307-meter stack was an acceptable stack height credit.

This conclusion was based on conformity of the stack height showings with the proposed 1979 stack height regulations implementing section 123 of the Clean Air Act (Act), (44 FR 2608, January 17, 1979), which provides that emission limits for sources shall not be based upon credit for stack height above good engineering practice (GEP) height.

On December 10, 1982, DER notified EPA that the terms of the Consent Order had been fully satisfied. WPPC's 307-meter stack was completed, and the Armstrong plant was operating in accordance with the final emission limits specified in the Agreement. At that time, DER requested that the Armstrong area be reclassified "attainment" for SO_2.

On June 29, 1983, (48 FR 29887), EPA proposed approval of DER's reclassification request. EPA proposed approval in part based on a determination that this action met the requirements of the final stack height regulations published in the **Federal Register** on February 8, 1982 (47 FR 5864). However, on October 11, 1983, the Court of Appeals for the District of Columbia Circuit issued its opinion remanding portions of the 1982 stack height regulations (*Sierra Club vs. EPA*, 719 F. 2d 436 (D.C. Cir., 1983)). A detailed history of the stack height regulations, as it applies to this action, is discussed in the Notice reopening the comment period on this proposal (51 FR 29268).

As a result of uncertainties about the potential impact of that decision and any revised rules on the attainment demonstration at issue here, EPA delayed final action on the reclassification until it could fully assess whether the final revised rules would affect the reclassification.

On July 8, 1985, EPA promulgated final revised stack height rules in response to the DC Circuit Court remand (50 FR 27892). The Armstrong Power Plant stack height has not been demonstrated to conform to these regulations. The Armstrong County attainment demonstration is based on modeling of SO_2 emissions from the 307-meter stack at the Armstrong plant. When and if the regulations implementing section 123 are applied to that plant, credit for the full 307-meter stack may or may not be permitted.

The rules require a showing by field studies or fluid modeling that height greater than provided by the appropriate formula is needed to avoid a 40 percent increase in concentrations due to downwash that would also result in exceedance of a NAAQS or applicable PSD increment. To conduct a demonstration to show whether a NAAQS or a PSD increment is exceeded, the 1985 stack height regulations require that an emission rate be specified which is equivalent to that prescribed by the applicable New Source Performance Standard (NSPS). In this requirement, EPA established the presumption that the NSPS limit can be met by all sources seeking to justify stack height above formula height. A source may rebut this presumption, and establish an alternative emission limitation, by demonstrating to the reviewing authority that the NSPS emission limitation may not feasibly be met, given the characteristics of the source. WPPC, in conducting its fluid modeling, used the maximum emission rate specified in DER's non-air basin regulation (which is less stringent than the applicable NSPS); and to date, WPPC has not attempted to make a showing that NSPS is infeasible.

Additionally, the 1985 regulations contain a definition of "dispersion technique" which explicitly includes the merging of gases from two or more existing stacks into one unless, for mergers conducted before the promulgation of the regulations, such merging was part of a change in operations that included the installation of emissions control equipment or was carried out for "sound economic or engineering reasons." The merging of WPPC's two 70-meter stacks into one 307-meter stack may be considered a dispersion technique. Under the 1985 regulations, WPPC has the burden of providing documentation, in accordance with EPA guidance, that this is not the case. Complete documentation to support such a showing has not yet been provided. In any event, it would be evaluated in applying the 1985 regulations to the Armstrong stack.

Because WPPC acted in accordance with previous EPA guidance in constructing its stack to resolve the SO_2 nonattainment situation in Armstrong County, EPA reopended the public comment period on the proposed reclassification request to solicit public comment on whether the specific provisions of the 1985 stack height rules discussed above should be applied to the Armstrong Power Plant. EPA published a notice of the reopened comment period in the **Federal Register** on August 15, 1986 (51 FR 29268). EPA expressly sought comments on whether the October 11, 1983 Court decision, and resulting July 8, 1985 stack height regulations (50 FR 27892) are applicable to West Penn Power Company's Armstrong Station in a manner which requires that the Commonwealth of Pennsylvania and EPA reassess the Armstrong GEP stack height determination and stack merger, and require additional showings to demonstrate the attainment of the SO_2 NAAQS in Armstrong County.

In order to focus public comment on these issues, EPA set forth two possible options, together with the principal arguments in support of each position. Option "A" was to apply the July 8, 1985 stack height regulations to Armstrong's (WPPC's) GEP determination and subsequent attainment demonstration. Option "B" was not to apply the July 8, 1985 stack height regulations to WPPC's GEP determination and subsequent attainment demonstration.

As a result of the Notice, EPA received twenty-three responses with comments. EPA considered these comments along with the previous administrative proceedings here, the record of the 1985 stack height rulemaking, and its denial of three petitions for reconsideration concerning some of the same portions of the rules at issue here (51 FR 15885 (April 29, 1985)) in arriving at a decision. Based on this overall record, EPA has concluded that the provisions of the 1985 stack height regulations at issue here do apply to the Armstrong plant, and must be satisfied in order to approve the reclassification of Armstrong County. Since the appropriate showings under those provisions have not been made, at this time EPA must disapprove the reclassification request for the reasons stated above and discussed in the responses to comments below.

Comments in Support of Option "A"

Comment

1. The fact that EPA approved credit for Armstrong's stack is irrelevant. Congress adopted § 123 precisely because EPA, prior to 1977, had approved SIPs that gave credit for stacks beyond what Congress had intended in 1970. Accordingly, § 123 required EPA to promulgate rules establishing more restrictive limits on dispersion credit.

2. Section 123 by its terms applies to all stack changes after December 31, 1970, and provides no authority to EPA to exempt sources based on site-specific EPA approval actions before or after 1977.

3. The fact that EPA's approval of Pennsylvania's limits for Armstrong was not based on EPA's 1982 rules is irrelevant. The EPA approval action was taken before EPA had complied with the mandate of § 123 to issue final stack height rules. The validity of that approval was clearly contingent on EPA promulgation of valid final § 123 rules that permitted the credit in the Pennsylvania approval action. EPA's 1979 proposal was never adopted. EPA's 1982 rules were struck down as unlawful, and EPA's 1985 rules do not permit credit on the showing made by Pennsylvania. Moreover, the operative EPA stack height requirements at the time of the Pennsylvania approval, EPA's 1976 guideline, barred credit for Armstrong's stack increase.

Response

EPA basically agrees with the result urged by these comments. This Notice states that EPA has determined that the

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attainment demonstration may not be approved unless it conforms to the 1985 rules.

Comment

This matter cannot be distinguished from the Kammer case. In Kammer, EPA expressly stated that the Agency's presumptive NSPS limit requirement was adopted pursuant to the instruction of the U.S. Court of Appeals in its decision to remand the definition of "excessive concentrations" to EPA (51 FR 15886 (April 29, 1986)). Armstrong's reliance on its demonstration was just as fundamentally unlawful as Kammer's.

Response

In the April 29, 1986 Notice (51 FR 15885), EPA denied petitions for reconsideration of the fluid modeling requirements of the stack height regulations as they applied to the Kammer plant of American Electric Power Service Corporation (AEP). A fluid modeling study had been conducted by AEP, in 1979, to justify a stack for Kammer.

While EPA believes that there are some distinguishable factors between the two plants as discussed in the Notice (reopening the comment period on this action (51 FR 29271)), EPA has concluded that the better view is that WPPC is essentially in the same position as AEP, and that the 1985 rules are applicable to both.

Comment

The two Armstrong units were served originally by two separate stacks and are now served by one stack. EPA's July 1985 § 123 rules bar credit for the enhanced dispersion resulting from combining stacks unless certain specified showings are made. It appears that the dispersion modeling study relied upon to support the "attainment" designation gave full credit for the enhanced plume rise from Armstrong's combined stack. Since there is no evidence that West Penn Power has attempted to make the showings required by EPA's § 123 rules, these rules do not permit EPA to approve a redesignation based on such credit.

Response

This comment correctly states the merged stack issue in light of EPA's conclusion set forth in this Notice that the 1985 stack height regulations do apply to the Armstrong Power Station.

Comments in Support of Option "B"

Comment

West Penn has never sought and has never received an increase in DER's original emission limitation for the Armstrong Power Station based on stack height. Clearly, Pennsylvania's non-air basin sulfur dioxide emission limit is not a product of increased stack height at the Armstrong Power Station and stack height was not a consideration in the approval of this emission limit.

Response

The previous approval of DER's non-air basin regulation does not govern this action. DER's federally approved non-air basin regulation sets a maximum emission limitation of 4.0 lbs. $SO_2/10^6$ BTU, never to be exceeded. DER's "averaging" provision, which was approved for Armstrong County in conjunction with the construction of WPPC's stack, was never approved by EPA for all non-basin areas in the state. These averaging provisions permit up to 4.8 lbs $SO_2/10^6$ BTU as a maximum daily average so long as the 4.0 lbs $SO_2/10^6$ BTU is not exceeded more than twice in 30 days and the 30-day running average does not exceed 3.7 lbs. $SO_2/10^6$ BTU. In any event, the requirements of the 1985 rules must be met in establishing appropriate emission limits and attainment status for the area.

Comment

EPA has made a number of technical errors in the proposed Notice, they are: 1) the emission limitation used in the Armstrong dispersion modeling study was 4.0 lbs. of SO_2 per million BTU of heat input not 4.8 lbs. of SO_2 per million BTU of heat input, 2) Armstrong Power Station's approved SIP emission limit was not based on credit for the Armstrong GEP stack and, 3) no inference should be drawn that DER's 1979 non-air basin emission limit was developed based upon any credit for the Armstrong GEP stack.

Response

1. The use of 4.0 instead of 4.8 lbs $SO_2/10^6$ BTU further flaws the attainment demonstration for Armstrong County EPA believed that 4.8 lbs. $SO_2/10^6$ BTU was modeled for Armstrong because this is the emission limit which Armstrong Power Station may never exceed. EPA has learned from this comment by West Penn Power Company that Armstrong's never to be exceeded emission limit was not modeled for purposes of the attainment demonstration. Instead, the demonstration was based on the lower 4.0 lb. emission limit, which can, under law, be exceeded at the Armstrong Station as often as twice in each thirty day period. This fact provides a separate and independent basis for the position taken by EPA in this Notice that this area lacks an adequate attainment demonstration and will be taken into consideration in EPA's overall evaluation of Armstrong Power Plant's compliance with section 123 of the Clean Air Act.

2. The stack height demonstration was determined based on an emission limit of 4.8 lbs. $SO_2/10^6$ BTU, as described above. Although greater-than-formula stack height may not have originally entered into the setting of this limit, the Geomet study demonstrated that the limit was in fact insufficiently stringent to bring about attainment of the SO_2 standard without an increase in stack height. The 1977 Amendments to the Clean Air Act required Pennsylvania to revise its SIP for Armstrong County to ensure attainment of the SO_2 standard. EPA approved the existing DER emission limit for the Armstrong Station as satisfying the requirements of the 1977 Amendments only because that limit was believed to ensure attainment of the standard in Armstrong County when coupled with a new 307-meter stack. See 47 FR 43424. Had West Penn not received credit for the increase in stack height, the emission limit would have been lowered. See 46 FR 9129. Therefore, maintenance of this limit was dependent upon credit for the increased stack height. In any event, the 1985 stack height regulations fully address this problem by specifying that the emission limitation for purposes of justifying increased stack height shall be presumed to be the applicable NSPS limit or a source specific rebuttal of that presumption and justification of some alternative emission limitation.

3. DER's 1979 non-air basin regulation, as stated previously was never approved by EPA. The regulation is relevant only to Armstrong County, in the manner discussed above.

Comment

The EPA's rulemaking approving the stack configuration of Armstrong, specifically placed greater importance on attaining the SO_2 NAAQS than on complying with a subsequent final stack height rule.

Response

It is incorrect to claim that EPA placed greater importance upon one legislative requirement over another. Attaining the SO_2 NAAQS is, of course, important and an expeditious attainment is required under the Act. However, Congress, in adding Section 123, specified that attaining the NAAQS through excessive reliance on dispersion is not acceptable. Indeed, this point simply illustrates that the prior rulemaking for WPPC should not survive the subsequent stack height rules, which provided for the proper implementation of section 123.

Comment

If EPA decides to apply the 1985 revised stack height regulations to the Armstrong Power Station, it will be demonstrating to regulated industry that formal EPA approval of efforts to achieve environmental deadlines cannot be relied upon in the absence of final and finally litigated regulations.

Response

Regulations, once developed, always face the possibility of revision should new information become available to warrant a change, or as in this case, subsequent litigation requires change. In developing a regulation, EPA tries to implement the Act in the most appropriate manner. Should a regulation need to change due to better insight, court ordered requirements, or other factors, the revision may incorporate "grandfathering" provisions, when appropriate, to smooth the transition in a way which is fair and environmentally sound. Provisions such as this were included in the 1985 stack height rulemaking. However, for the reasons stated in the 1985 rulemaking, and the 1986 denial of petitions for reconsideration, EPA determined that "grandfathering" of previous fluid modeling demonstrations was not appropriate.

Comment

EPA's formal actions approving Armstrong's stack created a rule separate and distinct from the 1982 regulations which were remanded to EPA for revisions. Additionally, no petition to review EPA's action in approving the construction of Armstrong's stack has ever been filed. Therefore, it must be treated as a valid final rule.

Response

Although EPA approval of Armstrong's emission limits based on the stack was a final Agency action, it, like all such actions, is subject to revision based on changes in regulatory requirements. The reclassification request that is the subject of this Notice must conform to present regulatory requirements, including the 1985 rules. In addition, as stated in the preamble to the 1985 rules, 50 FR 27905, all previously established emission limits are required to be reviewed against these rules, and revised as appropriate. Those requirements are applicable here.

Comment

1. Should EPA retroactively withdraw its approval West Penn will be deprived of the benefit from its $13 million investment.

2. The argument that West Penn will not lose the benefit of its new stack if the 1985 stack height regulations are applied to Armstrong, presupposes that retroactive application of EPA's 1985 stack height regulations to the Armstrong Power Station serves a specific statutory interest sufficiently important that it outweighs the burden on West Penn.

3. In its benefit/burden analysis EPA must also keep in mind that West Penn would not have built a stack higher than approved by EPA for GEP credit. Also, EPA cannot ignore the cost of NSPS controls.

Response

The action being taken today is not retroactive. Although application of the 1985 stack height rules may ultimately require a reduction in the emission limit for the Armstrong Station, any such reduction would be prospective in effect. As stated in the Notice reopening the comment period on this action, WPPC will not be deprived of the benefit of its $13 million investment, for the reasons described there (51 FR 29272).

Application of the 1985 stack height regulations serves an important statutory interest, namely ensuring that attainment of air quality standards is not achieved by reliance on excessive stack height or other dispersion techniques. In Armstrong County, Pennsylvania relied on an increase in stack height in lieu of a decrease in emissions to attain the SO_2 standard. Therefore, that stack height must be carefully examined under section 123. In promulgating the 1985 regulations, EPA found that the 1979 proposed regulations, on which approval of the Armstrong stack was based, were inadequate because they did not specify an emission limit to serve as a starting point for GEP determinations. Without such a specification, a tall stack could, in effect, justify itself under the regulations. See 50 FR 27898. Such self-justification may have occurred in the case of the Armstrong Station, where the GEP stack height determination was based on an emission limit that was sufficiently stringent to ensure attainment of the SO_2 standard only when coupled with an increase in stack height.

The 1985 stack height rules are designed to implement the express requirements of section 123 of the Act. In implementing section 123, EPA has promulgated regulations which presume an emission limit (NSPS) that may be rebutted by a particular source. Such a demonstration is based on EPA's BART guidelines, which include consideration of costs and feasibility. With regard to the cost of complying with the NSPS or an alternative emission limit, West Penn is in the same position as any other source seeking credit for stack height in excess of formula height. Such cost does not, therefore, justify exempting West Penn from the requirements of the 1985 rules.

Comment

If EPA decides to retroactively apply its 1985 stack height regulations to the Armstrong Power Station, it could affect the construction of a new coal-fired electric generating facility in which Armstrong has invested approximately $11 million.

Response

While EPA is sensitive to this issue, it cannot base its decision to reclassify Armstrong County on this. WPPC does not have an unqualified right to construct a facility without compliance with environmental requirements, even when those requirements are changed during planning or construction. In this instance, the $11 million investment was incurred while the area was classified nonattainment for SO_2. WPPC cannot be said to have relied on the fact that the area has attained the NAAQS for SO_2. Additionally, it should be noted that Pennsylvania's approved new source review regulations clearly provide provisions which allow sources to locate in nonattainment areas.

Comment

The argument that West Penn's stack height demonstration did not employ the presumptive NSPS requirements is invalid as being contray to law. The presumptive NSPS requirement was not an issue before the Court of Appeals in *Sierra Club vs. EPA, Supra,* and nothing in the court's opinion or the Clean Air Act, expressed or implied, requires use of such a stringent level of control before a GEP credit above formula height may be demonstrated.

Response

This is a challenge to the stack height regulations, and properly should be raised before the Court of Appeals. The regulations have not been stayed, and EPA will implement them unless and until they are stayed or reversed.

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Comment

Congress intended to forbid any dispersion enhancement practice that was significantly motivated by an intent to obtain additional credit for greater dispersion. West Penn's stack was neither intended to and did not result in any dispersive enhancement.

Response

The stack merger and the new 307-meter stack enhanced the dispersion of SO_2 from the Armstrong Station, and Pennsylvania's demonstration that the ambient air quality standards for SO_2 has been attained in Armstrong County depended on that enhanced dispersion. Therefore, the demonstration must be examined to determine if it was consistent with section 123 and with EPA's implementing regulations. Those regulations address requirements for justifying the merger of stacks, and provide West Penn an opportunity to demonstrate an absence of dispersive intent.

Comment

Examination of the ad hoc rule for the Armstrong Power Station demonstrates that credit for stack height in excess of formula height was granted with "utmost caution" in "rare circumstances" and the Agency erred on the side of reducing stack height credit. West Penn was required to (1) demonstrate downwash induced ambient standard or PSD increment exceedances, (2) follow comprehensive fluid and dispersion modeling guidelines, and (3) limit the extent of terrain that could be used in the demonstration and, therefore, EPA acted with "utmost caution." Additionally, the Armstrong Power Station had two 70-meter stacks located within one-half mile of terrain elevated approximately 600 feet above the plant which is the kind of rare circumstance in which Section 123 was intended to provide relief.

Response

EPA recognizes that the Agency action approving the WPPC stack at Armstrong represented a careful consideration of a number of the factors which are required by the Court of Appeals' remand of the 1982 stack height regulations. However, for the reasons discussed here, the relationship between that showing and a health-based emission limit is problematic. More significantly, the action EPA took in revising the stack height regulations requires conformance of Armstrong to those regulations.

Comment

The rule that NSPS be applied in fluid modeling studies is an administrative preference, most likely chosen because, as part of a generally applicable rule, it can be applied without detailed analysis of individual situations.

Response

As discussed above, issues relating to the NSPS presumption in the 1985 stack height regulations belong in the proceedings pending in the D.C. Court of Appeals, where those regulations are under review. The basis for EPA's judgment is set out in the 1985 rulemaking and the denial of petitions for reconsideration.

Comment

West Penn's decision to construct its GEP stack height using a single concrete shell containing two flues was not based on a desire to employ merger as a dispersion technique. It was based on sound economic reasons. A formal demonstration is not required under the 1985 stack height regulations if no increase in emission limitations is being sought, which is the case at the Armstrong Power Station.

Response

A formal demonstration must be made that the merging of the flues at the Armstrong Power Station was done for sound economic or engineering reasons. While some information was provided making such a demonstration, more detail is required than what was provided in order to satisfy the regulatory requirements.

Comment

Retroactive application of EPA's 1985 stack height rules to the Armstrong Power Station is not governed by EPA's April 29, 1986 denial of petitions for reconsideration of the 1985 stack height rules.

Response

It is true that application of EPA's 1985 stack height rules to the Armstrong Power Station is not directly governed by EPA's April 29, 1986 denial of petitions for reconsideration of the 1985 stack height rules. However, the principles which governed EPA's denial of these petitions do apply. As stated in the denial Notice, the July 8, 1985 revisions to the stack height rules required under section 123 of the Clean Air Act, were to ensure that the degree of emission limitation required for the control of any air pollutant under an applicable State Implementation Plan (SIP) was not affected by that portion of any stack height which exceeded good engineering practice (GEP) height or by any other dispersion technique. The petitions in question were denied because no new information or rationales were provided to warrant a reconsideration of the rules. Similar circumstances exist here, and EPA has concluded that, for the reasons stated in its denial and in this Notice, the 1985 rules apply to the Armstrong Station.

Comment

EPA's technical staff has concluded that the differences between the draft technical guidance on how to conduct a fluid modeling study and the modifications made to it prior to its publication in final form do not lead to a conclusion that the study erred on the side of granting too much stack height.

Response

EPA does not base any of the conclusions in this Notice on the differences between the draft and final technical guidance on fluid modeling.

EPA has stated in its responses to public comments on the July 8, 1985 rulemaking that demonstrations are merely tools for determining compliance with regulatory requirements. Thus, the issue of concern is not the technical adequacy of the demonstration, but whether it comports with the revised regulations.

Comments

In order to develop a complete record EPA should include, as part of its rulemaking docket the following documents.

1. Any document in which EPA considers the burden on West Penn of retroactive application of its 1985 stack height rules.

2. Any document analyzing whether or not the definition of "excessive concentration" in EPA's 1979 proposed stack height rules violated any requirement of the Clean Air Act.

3. Any document discussing the basis upon which EPA approved DER's non-air basin sulfur dioxide emission limitation; particularly, any document which supports West Penn's position that DER's emission limitation is not based on stack height credit and that its acceptability as an attainment strategy was tested rather than established with the use of proportional (rollback) model; and

4. All documents which describe any reviews made by EPA of DER, or any comments, approvals, authorizations or acceptances by EPA employees, officials or representatives of EPA with respect to West Penn's fluid modeling and dispersion modeling for the Armstrong Power Station.

Response

EPA will take this comment into account in designating the administrative record for this rulemaking action.

Comment

If EPA does not redesignate to attainment there may be a potential curtailment of new coal mining projects or increased costs for new projects. Also, there may be a change in the coal supply for the Armstrong Power Station from the current local Pennsylvania supplies to out-of-state suppliers of lower sulfur coal.

Response

Under the Clean Air Act, EPA cannot base its decision whether to reclassify Armstrong County to attainment for SO_2 on any of these factors.

Comment

In Option "A" which supports application of the 1985 amended stack height regulations to Armstrong, EPA states that "it may be argued that the rules were not intended to implicitly grandfather any sources that were not explicitly grandfathered." Now EPA wishes to act as if they are not knowledgeable about their own intent.

Response

EPA has no intent to "grandfather" sources from application of the 1985 rule execpt where it expressly stated. The Notice in this action simply noted that, given the nature of EPA's intent regarding "grandfathering," it may be reasonable to conclude that the 1985 stack height regulations apply to the Armstrong Station for that reason alone.

Comment

EPA is not precluded by the Court remand or by any other requirements from honoring its commitment to WPPC, upholding its approval of the Armstrong stack, and redesignating Armstrong County to attainment.

Response

EPA has no commitment to WPPC respecting continued applicability of the 1982 stack height approval or actions regarding attainment designation in Armstrong County. As a result of the Court remand, EPA has promulgated the 1985 stack height rules. IF EPA were to redesignate Armstrong County to attainment for SO_2 in circumstances where these rules are applicable to the Armstrong Power Station, this action would be improper.

Comment

The scope of services provided for the Armstrong stack work included sizing and location of the stack and ductwork. The final selection was based on sound engineering and economic reasons as discussed below.

The area available for the stack(s) was insufficient for two chimneys (1 per unit) without extensive relocation of existing facilities which would result in interruption of generation and have a severe economic impact on the project.

In addition, pricing information obtained from the chimney constructor indicated that a single stack with two flues would be only 60 percent of the cost of two single flue chimneys.

Because of improved operating reliability, maintenance and the overwhelming savings in the two flue single stack over the single flue two stacks, the former option was selected.

In the event of an outage for flue inspection or maintenance, a two flue stack provides the greatest advantage because generation is curtailed only in the one unit.

Response

EPA has provided guidance regarding exceptions from restrictions on credit for merged stacks under the 1985 stack height rules (EPA memorandum dated October 28, 1985, from Darryl D. Tyler, Director, Control Programs Development Division, EPA, Research Triangle Park, NC to the EPA, Director, Air Management Division, Regions I–X, EPA). This guidance should be adhered to in providing any justification for merged stacks. These arguments by WPPC will be considered in evaluating its compliance with those rules.

Conclusion

After review in light of the Sierra Club decision, the 1985 stack height regulations, and the denial of petitions for reconsideration, EPA has concluded that these regulations do apply to the Armstrong Power Plant and therefore, to the request for reclassification of Armstrong County. The preamble to the 1985 regulations explicitly states that all existing stack height credits must be reviewed for conformance with them. This conclusion conforms to that requirement and to previous regulatory judgment by EPA.

Additionally, as stated previously in EPA's response to public comments, the SO_2 attainment demonstration for this area is further flawed by the fact that the dispersion modeling was performed at an emission rate of 4.0 lbs $SO_2/10^6$ BTU heat input which can, under law, be exceeded at the Armstrong Station as often as twice in each thirty day period. This fact provides separate and independent justification for EPA's determination that the Armstrong area lacks an adequate attainment demonstration.

Therefore, EPA is today disapproving the Commonwealth's request to reclassify Armstrong County, Pennsylvania to attainment for SO_2. This request is denied pending an acceptable demonstration of attainment which must consider a determination of the correct GEP stack height for WPPC, whether the stack merger was undertaken for sound economic or engineering reasons, and the appropriate emission limits for that source.

Administrative Procedures

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 6, 1987. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(1)).

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: January 23, 1987.

Lee M. Thomas,

Administrator.

[FR Doc. 87–2423 Filed 2–4–87; 8:45 am]

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40 CFR Part 271

[SW–9–FRL–3148–5]

Arizona: Schedule of Compliance for Modification of State Hazardous Waste Program

AGENCY: Environmental Protection Agency, Region 9.

ACTION: Notice of Arizona's compliance schedule to adopt program modifications.

SUMMARY: On September 22, 1986 EPA promulgated amendments to the deadlines for state program modifications, and published requirements for states to be placed on a compliance schedule to adopt the necessary program modifications. EPA is today publishing a compliance schedule for Arizona to modify its program in accordance with § 271.21(g)

Branch, U.S. Environmental Protection

FEDERAL COMMUNICATIONS

requirements are unenforceable, they

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to adopt the Federal program modifications.

FOR FURTHER INFORMATION CONTACT: Gary Lance (T–2–5), Waste Programs Branch, U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, California 94105, (415) 974–8125.

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by EPA if the Agency finds that the State program: (1) Is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement [section 3006(b), 42 U.S.C. 6226(b)]. EPA regulations for final authorization, appear at 40 CFR 271.1 through 271.24. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR 271.21. See 51 FR 33712, September 22, 1986 for a complete discussion of these procedures and deadlines.

B. Arizona

Arizona received basic authorization of its hazardous waste program on December 4, 1985. [See section 50 FR 47736, November 20, 1985]. Today EPA is publishing a compliance schedule for the State of Arizona to obtain program revisions for the following Federal program requirements.

3006(f)—Availability of Information

The State has agreed to obtain the needed program revisions according to the following schedule:

Regulations drafted	By 7/87.
Regulations submitted to EPA for review.	By 8/87.
Regulations submitted to Attorney General.	By 11/87.
Regulations adopted/certified	By 1/88.

Arizona expects to submit an application for authorization of the above mentioned program revisions by March 1, 1988.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(B).

Dated: January 22, 1987.

Judith E. Ayres,

Deputy Administrator.

[FR Doc. 87–1962 Filed 2–4–87; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 271

[SW–9–FRL–3148–7]

Guam: Schedule of Compliance for Modification of State Hazardous Waste Program

AGENCY: Environmental Protection Agency, Region 9.

ACTION: Notice of Guam's compliance schedule to adopt program modifications.

SUMMARY: On September 22, 1986 EPA promulgated amendments to the deadlines for State program modifications, and published requirements for States to be placed on a compliance schedule to adopt the necessary program modifications. EPA is today publishing the compliance schedule for Guam to modify its program in accordance with § 271.21(g) to adopt the Federal program modifications.

FOR FURTHER INFORMATION CONTACT: Roccena Lawatch (T–2–5), Waste Programs Branch, U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–0772.

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by EPA if the Agency finds that the State program: (1) Is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement [Section 3006(b), 42 U.S.C. 6226(b)]. EPA regulations for final authorization, appear at 40 CFR 271.1 through 271.24. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR 271.21. See 51 FR 33712, September 22, 1986 for a complete discussion of these procedures and deadlines.

B. Guam

Guam received basic authorization of its hazardous waste program on January 27, 1986 [51 FR 1370, January 13, 1986]. Today EPA is publishing a compliance schedule for the Territory of Guam to obtain program revisions for the following Federal program requirements.

3006(f)—Availability of Information

The Territory has agreed to obtain the needed program revisions according to the following schedule:

Regulations drafted	By 3/30/87.
Regulations submitted to EPA for review.	By 4/15/87.
Regulations proposed to the Guam Environmental Protection Agency Board.	By 5/15/87.
Regulations adopted	By 5/15/87.

Guam expects to submit an application for authorization which includes the above mentioned program revisions by July 15, 1987.

Authority

This notice is issued under the authority of sections 2022(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(B).

Dated: January 22, 1987.

Judith E. Ayres,

Regional Administrator.

[FR Doc. 87–1963 Filed 2–4–87; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 271

[SW–9–FRL–3148–6]

Nevada: Schedule of Compliance for Modification of Nevada's Hazardous Waste Program

AGENCY: Environmental Protection Agency, Region 9.

ACTION: Notice of Nevada's compliance schedule to adopt program modifications.

SUMMARY: On September 22, 1986 [51 FR 33712], EPA promulgated amendments to the deadlines for State program modifications, and published requirements for States to be placed on a compliance schedule to adopt the necessary program modifications. EPA is today publishing a compliance schedule for Nevada to modify its program in accordance with § 271.21(g) to adopt the Federal program modifications.

FOR FURTHER INFORMATION CONTACT: M. Kim Savage (T–2–5), Waste Programs Branch, U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, California 94105, (415) 974–8002.

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement [section 3006(b), 42 U.S.C. 6226(b)]. EPA regulations for final authorization appear at 40 CFR 271.1 through 271.24. In order to retain authorization a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR 271.21. See 51 *FR* 33712, September 22, 1986 for a complete discussion of these procedures and deadlines.

B. Nevada

Nevada received final authorization of its hazardous waste program on November 1, 1985 (50 *FR* 42181, October 18, 1985). Today EPA is publishing a compliance schedule for Nevada to obtain program revisions for the following Federal program requirements:

3006(f)—Availability of Information

The State has agree to obtain the needed program revisions according to the following schedule:

Regulations drafted—By March, 1987
Regulations submitted to EPA for review—By March, 1987
Regulations proposed to Commission—By July, 1987
Regulations adopted—By January, 1988

Nevada expects to submit an application to EPA for authorization of the above mentioned program revisions by March 1, 1988.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(B).

Dated: January 22, 1987.

Judith E. Ayres,

Regional Administrator.

[FR Doc. 87–1964 Filed 2–4–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[General Docket No. 20840; FCC 86–570]

Use of Recording Devices in Connection With Telephone Service

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: This action terminates the rulemaking proceeding which was initiated to reexamine the efficacy, desirability and lawfulness of the tariff prescription and Commission rule governing the recording of interstate telephone conversations. The Further Notice of Proposed Rulemaking proposed to eliminate the tariff prescription and to revoke § 64.501 of the Commission's Rules. This action concluded that it is in the public interest to retain the rule and the tariff prescription with a slight modification.

EFFECTIVE DATE: March 12, 1987.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Veal, Tariff Division, Common Carrier Bureau, (202) 632–6917.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in General Docket No. 20840, FCC 86–570, Adopted, December 23, 1986 and Released, January 26, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's Copy Contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. On October 27, 1983, the FCC released a Further Notice of Proposed Rulemaking (*Further Notice*), proposing to eliminate completely the current tariff prescription and to revoke § 64.501 of the Commission's Rules, 47 CFR 64.501. The tariff prescription currently provides that telephone subscribers wishing to record a telephone call must either use a beep tone device or obtain prior consent from all parties to the conversation. Three factors led to this proposal. First, the proliferation of inexpensive acoustic and inductive recorders, which cannot be detected by the telephone company, has rendered the tariffed prohibition virtually unenforceable. Second, to the extent that the beep tone and mutual consent requirements are unenforceable, they may actually create a false sense of security among persons who assume that these requirements adequately protect their privacy. Finally, the enactment by Congress of the Omnibus Crime Control and Safe Streets Act of 1968 (Omnibus Act), 18 U.S.C. 2510 *et seq.*, which imposes strict civil and criminal penalties for certain acts of interception and divulgence of telephone communications, raised questions as to the necessity of Commission regulation of telephone recording.

2. While most of the comments advocate elimination of the beep tone requirements, however, they fail to persuade the Commission that the policy should be abandoned. The Commission acknowledges that once the use of acoustic and inductive-type recorders became widespread, there was no way to detect violations of the beep tone requirements. However, the Commission does not believe that the limited ineffectiveness of the policy, in and of itself, justifies its elimination. Therefore, we shall modify the current tariff prescription and § 64.501 by adding to the present beep tone and mutual consent options a third option: recording will also be permitted if the recording party notifies the other party that it intends to record the conversation. This notification should be made at the beginning, and as part of the recorded portion of the call.

3. Notification made in a clear, unambiguous manner will meet the objective of notifying parties that their conversations are being recorded. We believe that one-party notification will be less intrusive and cumbersome in some situations than the mutual consent option and could, therefore, reduce any burdens which the present requirements might be causing.

4. One reason for retaining the beep tone rule with this slight modification is that, despite the telephone company's inability to detect unauthorized recordings when they are being made, the tariff sanctions can still be applied when such activity comes to light, and in this way may still be useful as a deterrent.

5. The Commission also concludes that Congress did not intend to limit the Commission's jurisdiction over the recording of two-way telephone conversations by the promulgation of the Omnibus Act. While the Commission shares Congress' concern for law enforcement, it also believes that the privacy of telephone communications is important and that appropriate measures should be taken to preserve users' privacy.

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6. Some of the commenters assert that the tariff prescription was overbroad and interferes with beneficial recording. The Commission is not convinced, however, that most legitimate business interests could not be met despite the retention of the beep tone or mutual consent options. We believe that addition of the one-party notification option increases the likelihood that legitimate business interests can be met within the requirements of the Rule.

7. Finally, the Commission fails to believe that any false sense of security that the requirement might be inducing in telephone users is sufficiently significant to outweigh these other factors, especially since the assertion that such a false sense of security has been engendered by the Rule and tariff requirement is purely speculative.

Ordering Clauses

8. It is further ordered, that pursuant to the authority granted in sections 4(i), 4(j), 201, and 218 of the Communications Act, 47 U.S.C. 154(i), 154(j), 201 and 218, § 64.501 of the Commission's Rules, 47 CFR 64.501 is amended as shown at the end of this document to reflect that the mutual consent option will now be replaced with one-party notification effective 30 days from the date of this publication.

9. In view of the foregoing and pursuant to the authority granted in sections 2(a), 4(i), 4(j), 201, 205, 303(r), and 403 of the Communications Act, 47 U.S.C. 152(a), 154(i), 154(j), 210, 205, 303(r) and 403 it is ordered, That all common carriers subject to Title II of the Communications Act, 47 U.S.C. 151 *et seq.* shall revise such tariff regulations on file with this Commission which provide for the use of recording devices in connection with interstate and foreign message toll telephone service and wide area telephone service, to comport with this Order.

10. It is further ordered, that the tariff revisions required in paragraph 8 be filed no later than 45 days from the release date of this Order to be effective on 15 days' notice. For this purpose we waive § 61.58 of the Commission's Rules, 47 CFR 61.58 and assign Special Permission No. 87–2.

12. It is further ordered, that Docket No. 20840 is hereby terminated.

List of Subjects in 47 CFR Part 64

Communications common carrier, Recording devices, Telephone companies.

Rule Changes

Part 64 and 47 CFR is amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for Part 64 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, unless otherwise noted.

2. Section 64.501 is amended by the addition of paragraph (b) to read as follows:

§ 64.501 Recording of telephone conversations with telephone companies.

* * * * *

(b) Where such use shall be preceded by verbal notification which is recorded at the beginning, and as part of the call, by the recording party, or,

* * * * *

3. Section 64.501 is further amended by redesignating existing paragraphs (b), (c) and (d) as paragraphs (c), (d) and (e), respectively.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–2358 Filed 2–4–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-334; RM-5111]

Radio Broadcasting Services; Clifton, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Class C FM Channel 271 for 237A at Clifton, AZ, and modifies the permit of Station KJJJ(FM), in response to a petition filed by Double Eagle Broadcasting. With this action, this proceeding is terminated.

DATES: Effective March 9, 1987.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85–334, adopted December 3, 1986, and released January 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Part 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended, under Arizona, by revising Channel 271 for 237A for Clifton.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–2359 Filed 2–4–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-64; RM-5010]

Radio Broadcasting Services; Auberry, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 286B1 to Auberry, California, as that community's first local service, in response to a petition filed by Eric R. Hilding. With this action, this proceeding is terminated.

DATES: Effective March 9, 1987. The window period for filing applications will open on March 10, 1987, and close on April 8, 1987.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner (202) 634–6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-64, adopted December 4, 1986, and released January 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. § 73.202(b), Table of FM Allotments, is amended by adding Auberry, California, Channel 286B1.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–2360 Filed, 2–4–87; 8:45 am]

BILLING CODE 6710-01-M

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47 CFR Part 73

[MM Docket No. 86-25; RM-4971]

Radio Broadcasting Services; Chester, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 287C2 to Chester, California, as that community's second local FM service, in response to a petition filed by Eric R. Hilding.

DATES: Effective March 9, 1987. The window period for filing applications will open on March 10, 1987, and close on April 8, 1987.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–25, adopted Dec. 16, 1986, and released Jan. 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copying contractors, International Transcription Service (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. Section 73.202(b), the Table of FM Allotments, the entry for Chester, California is amended to add Channel 287C2.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch Policy and Rules Division Mass Media Bureau.

[FR Doc. 87–2361 Filed 2–4–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-90; RM-5162]

Radio Broadcasting Services; Julesburg, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 243C1 to Julesburg, Colorado, as that community's first local broadcast service in response to a petition filed by Vivian S. Lopez. With this action, this proceeding is terminated.

DATES: Effective March 9, 1987; The window period for filing applications will open on March 10, 1987, and close on April 8, 1987.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–90, adopted Dec. 16, 1986, and released Jan. 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. In § 73.202(b) the table of allotments is amended by adding Julesburg, Channel 243C1, under Colorado.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–2362 Filed 2–4–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-131; RM-5225, RM-5473]

Radio Broadcasting Services; Nowata, OK; Caney, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 268A to Nowata, Oklahoma, with a site restriction of 6.1 kilometers southeast, as the community's second local FM service, at the request of Paul J. Campbell and Channel 266A to Caney, Kansas, with a site restriction of 3.1 kilometers east, as the community's first local FM service, at the request of Mike Stephens. With this action, this proceeding is terminated.

DATES: Effective March 12, 1987. The window for filing applications will open on March 13, 1987, and close on April 13, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–131, adopted December 4, 1986 and released January 26, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [AMENDED]

2. Section 73.202(b), the table of allotments is amended by adding Caney, Kansas, Channel 266A, and by amending the entry for Nowata, Oklahoma, to add Channel 268A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–2375 Filed 2–4–87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-57; RM-4940]

Radio Broadcasting Services; Hazard, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 284A to Hazard, Kentucky, as that community's second commercial FM channel in response to a petition filed by Perry Broadcasting, a partnership consisting of John E. Edwards and Kenneth R. Combs. With this action, this proceeding is terminated.

DATES: Effective March 6, 1987; The window period for filing applications will open on March 9, 1987, and close on April 6, 1987.

FOR FURTHER INFORMATION CONTACT: D. David Weston (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-57, adopted Dec. 15, 1986, and released Jan. 21, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. In § 73.202, the Table of FM Allotments, in the entry for Hazard, Kentucky, Channel 284A is added.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-2363 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-20; RM-5160]

Radio Broadcasting Services; Menominee, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channel 280A to Menominee, Michigan, and modifies the license of Station WCJL-FM, Channel 292A, Menominee, to specify Channel 280A. This action is taken in response to a petition filed by Woodward Communications, Inc., Station WAPL-FM, Channel 289, Appleton, Wisconsin. The substitution at Menominee, will permit Station WAPL-FM to relocate its transmitter and retain the Class C designation. Canadian concurrence has been obtained for the allocation of Channel 280A at Menominee, Michigan. With this action, this proceeding is terminated.

DATES: Effective March 9, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-20, adopted November 25, 1986, and released January 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. Section 73.202(b), the Table of Allotments, the entry for Menominee, Michigan, is amended to add Channel 280A and delete Channel 292A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2364 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-91; RM-5126]

Radio Broadcasting Services; Buffalo, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 260A to Buffalo, Missouri, as that community's first commercial broadcast service. Supporting comments were filed by School District No. 1. With this action, this proceeding is terminated.

DATES: Effective March 12, 1987. The window period for filing applications will open on March 13, 1987, and close on April 13, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-91, adopted, 1986, and released, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended for the entry of Buffalo, Missouri, by adding 260A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2367 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-117; RM-5085]

Radio Broadcasting Services; Bethany, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channel 238C2 to Bethany, Missouri, in response to a petition filed by Jerrell A. Shephard, and modifies the license of FM Station KAAN to specify operation on Channel 238C2. This allotment could provide Bethany with its first wide area coverage channel. Supporting comments were filed by Jerrell A. Shephard. With this action, this proceeding is terminated.

DATE: Effective March 6, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-117, adopted Dec. 15, 1986, and released Jan. 21, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. Section 73.202(b), the Table of FM Allotments, in the entry for Bethany, Missouri, Channel 238C2 is added and Channel 240A is deleted.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2366 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-353; RM-5486]

Radio Broadcasting Services; Hardin, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 238 to Hardin, Montana, in response to a petition filed by California Broadcast Group, licensee of Station KBSR-FM, and modifies the license of Station KBSR-FM to specify operation on Channel 238 instead of Channel 237A. With this action, this proceeding is terminated.

DATES: Effective March 6, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-353, adopted Dec. 19, 1986, and released Jan. 21, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. In § 73.202, the Table of FM Allotments

In § 73.202(b), the Table of Allotments is amended by revising the entry of Hardin, Montana, to delete Channel 237A and add Channel 238.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-2368 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-266; RM-5324; 5550]

Radio Broadcasting Services; Franklin and Haverhill, NH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 231A for Channel 232A at Franklin, New Hampshire, and modifies the permit of Station WFTN-FM to specify the new channel, at the request of Northeast Communications Corporation. Channel 231A can be allocated to Franklin without a site restriction. This document also allocates Channel 267A to Haverhill, New Hampshire, as the community's first local FM service, at the request of Barbara Dempsey. Channel 267A can be allocated with a site restriction of 2.3 kilometers northwest to avoid a short-spacing to recently allocated Channel 268A at Meredith, NH.Canadian concurrence has been received.

DATES Effective March 9, 1987; The window period for filing applications will open on March 10, 1987, and close on April 8, 1987. Applications can only be filed for the Haverhill allotment.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Burea (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-266, adopted Nov. 20, 1986, and released Jan. 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for New Hampshire is amended by adding Channel 267A, Haverhill, and substituting Channel 231A for Channel 232A at Franklin.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2371 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-210; RM-5317]

Radio Broadcasting Services; Roseau, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

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SUMMARY: This document allots FM Channel 271C2 to Roseau, Minnesota, as that community's first broadcast service, in response to a petition filed by Marlan T. Obie. Canadian concurrence has been obtained for the allotment of this channel. Supporting comments were filed by the petitioner. With this action, this proceeding is terminated.

DATES: Effective March 6, 1987; The window period for filing applications will open on March 9, 1987, and close on April 6, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–210, adopted Dec. 24, 1986, and released Jan. 21, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street NW. Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Minnesota, by adding Channel 271C2 to Roseau.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–2365 Filed 2–4–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86–53; RM–5027]

Television Broadcasting Services; Twentynine Palms, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document assigns UHF television Channel 31 to Twentynine Palms, California, as that community's first local television broadcast service, in response to a petition filed by Pacer Television Company. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 9, 1987.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–53, adopted December 16, 1986, and released January 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606(b) [Amended]

2. § 73.606(b), is amended by adding Twentynine Palms, California, Channel 31.

Federal Communications Commission

Mark N. Lipp,

Chief, Allocation Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–2380 Filed 2–4–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86–36; RM–5081]

Television Broadcasting Services; McCook, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document assigns VHF TV Channel 12+ to McCook, Nebraska, as the community's third local TV service, with a site restriction of 21.5 miles east. Crossroads Communications, Inc., Carl Fisher and Pamela R. Jones each filed comments expressing an intention to apply for the channel, if assigned. The petitioner, Jerrell E. Kautz, failed to file comments in the proceeding. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 12, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–36, adopted November 20, 1986 and released January 26, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street, NW. Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606(b) [AMENDED]

2. In § 73.606, the table of assignments, the entry for McCook, Nebraska is amended to add Channel 12.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–2414 Filed 2–4–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86–149; RM–5171]

Television Broadcasting Services; Corning, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document assigns UHF–TV Channel 48+ to Corning, New York, as the community's first local commercial television service, at the request of Clarence Smith. The channel requires a site restriction of 8.5 miles south. With this action, this proceeding is terminated.

DATE: Effective March 12, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–149, adopted December 24, 1986, and released January 26, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606(b) [Amended]

2. Section 73.606(b), the Television Table of Assignments for Corning, New York, is amended by adding Channel 48+.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–2361 Filed 2–4–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86–265; RM–5305]

Radio Broadcasting Services; Harrison, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 282A to Harrison, Ohio, as the community's first local FM service, at the request of Vernon Baldwin. The allocation can be made in compliance with the Commission's minimum distance separation requirements with a site restriction of 8 kilometers west to avoid a short-spacing to that portion of Station WPAY–FM's buffer zone which lies outside Zone II. The Commission has waived protection of that portion of the buffer within Zone I. With this action, this proceeding is terminated.

DATES: Effective March 9, 1987; the window period for filing applications will open on March 10, 1987, and close on April 8, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85–265, adopted December 5, 1986, and released January 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Ohio is amended by adding Harrison, Channel 282A.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–2374 Filed 2–4–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 85–284; RM–5055]

Television Broadcasting Services; Williamsport, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF TV Channel 53—to Williamsport, Pennsylvania, as the community's first local television service, at the request of Checkpoint Communications Company and Henry W. Mitchell, George A. Mitchell and William B. Kane. A site restriction of 11.8 kilometers (7.4 miles) west is imposed. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 9, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85–284 adopted November 20, 1986, and released January 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606(b) [AMENDED]

2. In § 73.606, the table of assignments, the entry for Williamsport, Pennsylvania is amended to add Channel 53—.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–2382 Filed 2–4–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86–97; RM–5170]

Television Broadcasting Services; Jellico, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document assigns UHF Television Channel 54 to Jellico, Tennessee, as that community's first local television service at the request of Wayne Marler Crusades, Inc. A site restriction of 8.5 kilometers (5.3 miles) south of the city is required. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 9, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–97, adopted December 3, 1986, and released January 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606(b) [AMENDED]

2. In § 73.606, the table of assignments, the entry for Williamsport, Pennsylvania is amended to add Channel 53—.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–2382 Filed 2–4–87; 8:45 am]

BILLING CODE 6712–01–M

SUMMARY: This document allots FM Channel 271C2 to Roseau, Minnesota, as that community's first broadcast service, in response to a petition filed by Marlan T. Obie. Canadian concurrence has been obtained for the allotment of this channel. Supporting comments were filed by the petitioner. With this action, this proceeding is terminated.

DATES: Effective March 6, 1987; The window period for filing applications will open on March 9, 1987, and close on April 6, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–210, adopted Dec. 24, 1986, and released Jan. 21, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street NW. Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Minnesota, by adding Channel 271C2 to Roseau.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–2365 Filed 2–4–87; 8:45 am]

BILLING CODE 6712–01–M

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List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606(b) [Amended]

2. § 73.606, the Table of Assignments, in the entry for Jellico, Tennessee, Channel 54— is added.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-2383 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-94; RM-4786]

Radio Broadcasting Services; Corpus Christi, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 204A to Corpus Christi, Texas, as that community's third local noncommercial educational FM service, at the request of Family Educational Radio of South Texas. Concurrence by the Mexican government has been obtained. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 12, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-94, adopted December 5, 1986 and released January 26, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.504(a) [Amended]

2. Section 73.504(a), the noncommercial educational FM, the table of allotments; in the entry for Corpus Christi, Texas, Channel 204A is added.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2376 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-85; RM-5090]

Radio Broadcasting Services; Lytle, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 217A to Lytle, Texas, as that community's first noncommercial educational FM channel at the request of Stronghold Foundation, Inc. The allotment requires a site restriction of 11.2 kilometers (7.0 miles) southwest of the community. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 9, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-95, adopted December 4, 1986 and released January 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.504(a) [Amended]

2. Section 73.504(a), the noncommercial educational FM table of allotments, in the entry for Lytle, Texas, Channel 217A is added.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2379 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-71; RM-5074]

Radio Broadcasting Services; Post, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 297C2 in lieu of Channel 297A to Post, Texas, as that community's first wide coverage FM service at the request of Boles Broadcasting Company. The window period for filing applications will be announced at a future date. With this action, this proceeding is terminated.

DATE: Effective March 9, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order MM Docket No. 86-71, adopted December 5, 1986, and released January 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. Section 73.202(h) the Table of FM Allotments is amended under, Texas, by revising Channel 297A to 297C2 for Post.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2377 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-295; RM 5450]

Radio Broadcasting Services; Tye, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 259C1 for Channel 257A at Tye, Texas, and modifies the license of Station KTLC(FM) to specify operation on the new frequency, at the request of Tye Broadcasting, Inc. Concurrence by the Mexican government has been obtained. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 9, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-295, adopted December 16, 1986, and released January 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. Section 73.202, the Table of FM Allotments is amended, under Texas, by revising Channel 257A to 259C1 for Tye.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2378 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 86-160; FCC 87-14]

Amendment of Part 90 Making Available Additional Frequency Assignments for SMR Systems in the 800 MHz Band; Report and Order

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Report and Order which will allow fully-loaded Specialized Mobile Radio (SMR) systems to participate in inter-category frequency sharing. This action was taken to provide additional frequency relief for SMR systems meeting the mobile loading requirements.

EFFECTIVE DATE: The adopted rules become effective on March 9, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 86-160, adopted January 5, 1987, and released January 26, 1987. The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, 2100 M Street, NW., Washington, DC 20037, telephone (202) 857-3800.

Summary of Report and Order

1. On May 8, 1986, the FCC released a Notice of Proposed Rulemaking (Notice), 51 FR 18464 (May 20, 1986), that proposed to amend § 90.621(g) of the rules to permit inter-category sharing of frequencies in the 800 MHz band by SMR, Industrial/Land Transportation, and Business category eligibles. The Notice proposed that licensees in these categories with fully-loaded trunked systems could access frequencies in the other 800 MHz categories when frequencies were not available in their own category. It was also proposed that access to Public Safety category frequencies by SMR licensees would not be permitted. The Notice further proposed that eligible licensees be authorized one inter-category sharing channel unless it was proven that the system's current mobile loading would warrant the authorization of additional channels. Finally, the Notice proposed that all requests for inter-category sharing frequencies be accompanied by concurrence from the frequency coordinator for the category involved.

2. This Report and Order adopts rules concerning the inter-category sharing of 800 MHz frequencies in the four categories designated in Part 90, Subpart S, of the rules. An eligible SMR licensee will be allowed access to unused channels in the Industrial/Land Transportation and Business categories and will be authorized one channel more than its current loading warrants. Further, if a licensee is authorized additional channels, it will automatically be removed from the waiting list unless its system, with the additional channels, remains seventy percent loaded. In this case, the effective date of the waiting list application will be changed to date of grant of additional channels. The application will then be moved to the appropriate place on the waiting list consistent with the new effective filing date. Licensees in the Industrial/Land Transportation and Business categories will be eligible for unused channels in the SMR category if channels are not available in their own category. Non-SMR licensees that are authorized SMR channels will also be authorized one channel more than their current loading warrants. Finally, concurrence from the coordinators of the categories involved will be required when inter-category channels are requested.

Final Regulatory Flexibility Analysis

3. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

Paperwork Reduction Act Statement

4. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase or decrease burden hours imposed on the public.

Ordering Clause

5. Accordingly, *It is Ordered*, that Part 90 *Is Amended* as set forth below, and that this proceeding *Is Terminated*. Authority for this action is found in sections 4(i) and 303 of the

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Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303.

6. For further information concerning this proceeding contact Eugene Thomson, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554, telephone (202) 634–2443.

List of Subjects in 47 CFR Part 90

SMR systems, Inter-category sharing, Private land mobile radio services.

William J. Tricarico,

Secretary.

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

The authority citation for Part 90 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

1. Section 90.617 is amended by revising the introductory texts of paragraphs (a), (b), (c), and (d) to read:

§ 90.617 Frequencies in the 809.750–816/854.750–861 MHz and 896–901/935–940 MHz bands available for trunked or conventional system use in non-border areas.

(a) The channels listed in Table 1 are available to eligible applicants in the Public Safety Category (consisting of the Local Government, Police, Fire, Highway Maintenance, Forestry-Conservation, and Special Emergency Radio Services). These frequencies are available in areas farther than 110 km (68.4 miles) from the U.S./Mexico border, and 160 km from the U.S./Canada border. Specialized Mobile Radio Systems (SMRS) will not be authorized in this category. These channels are available for inter-category sharing as indicated in § 90.621(g).

* * * * *

(b) The channels listed in Table 2A are available to eligible applicants in the Industrial/Land Transportation Category (consisting of the Power, Petroleum, Forest Products, Motion Picture, Relay Press, Special Industrial, Manufacturers, Telephone Maintenance, Motor Carrier, Railroad, Taxicab and Automobile Emergency Radio Services). These frequencies are available in areas farther than 110 km (68.4 miles) from the U.S./Mexico border and farther than 160 km (100 miles) from the U.S./Canada border. Specialized Mobile Radio Systems (SMRS) will not be authorized in this category except as indicated in § 90.621(g).

* * * * *

(c) The channels listed in Table 3A are available to eligible applicants in the Business Radio Category. This category does not include Specialized Mobil Radio Systems as defined in § 90.603(c). These frequencies are available in areas farther than 110 km (68.4 miles) from the U.S./Mexico border and farther than 160 km (100 miles) from the U.S./Canada border. These channels are available for inter-category sharing as indicated in § 90.621(g).

* * * * *

(d) The channels listed in Table 4A are available to eligibles in the SMRS Category (consisting of Specialized Mobile Radio Systems (SMRS) eligible under § 90.603(c)). These frequencies are available in areas farther than 110 km (68.4 miles) from the U.S./Mexico border and farther than 160 km (100 miles) from the U.S./Canada border. These channels are available for inter-category sharing as indicated in § 90.621(g)

* * * * *

2. Section 90.619 is amended by revising the introductory tests of paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (b) to read:

§ 90.619 Frequencies available for use in the U.S./Mexico and U.S./Canada border areas.

(a) * * *

(1) Table 1 lists the channels that are available for assignment to eligible applicants in the Public Safety Category (consisting of the Local Government, Police, Fire, Highway Maintenance, Forestry-Conservation, and Special Emergency Radio Services). Specialized Mobile Radio Systems (SMRS) will not be authorized in this category. These channels are available for inter-category sharing as indicated in § 90.621(g).

* * * * *

(2) Table 2 lists the channels that are available for assignment to eligible applicants in the Industrial/Land Transportation Category (consisting of the Power, Petroleum, Forest Products, Motion Picture, Relay Press, Special Industrial, Manufacturers, Telephone Maintenance, Motor Carrier, Railroad, Taxicab and Automobile Emergency Radio Services). Specialized Mobile Radio Systems (SMRS) will not be authorized in this category except as indicated in § 90.621(g).

* * * * *

(3) Table 3 lists the channels that are available for assignment to eligible applicants in the Business Radio Category. This category does not include Specialized Mobile Radio Systems as defined in § 90.603(c). These channels are available for inter-category sharing as indicated in § 90.621(g).

* * * * *

(4) Table 4 lists the channels that are available for assignment for the SMRS Category (consisting of Specialized Mobile Radio Systems (SMRS) as defined in § 90.603(c)). These channels are available for inter-category sharing as indicated in § 90.621(g).

* * * * *

(b) *U.S./Canada border area.* The following criteria shall govern the assignment of frequency pairs (channels) for stations located in the U.S./Canada border area. These channels are available for assignment for conventional or trunked systems in accordance with all applicable sections of this subpart. They are available for inter-category sharing as indicated in § 90.621(g).

* * * * *

3. Section 90.621 is amended by revising paragraph (g) and adding a new paragraph (h) to read:

§ 90.621 Selection and assignment of frequencies.

* * * * *

(g) The 806–821/851–866 MHz channels listed as available for eligibles in the Public Safety, Industrial/Land Transportation, Business, and SMRS categories are available for inter-category sharing under the following conditions:

(1) Channels in the Public Safety, Industrial/Land Transportation and Business categories will be available to eligible applicants in those categories only if there are no frequencies in their own category and no public safety systems are authorized on those channels under consideration to be shared.

(2) Channels in the Industrial/Land Transportation and Business categories will be available to fully-loaded SMR systems if no SMRS category frequencies are available. Evidence must be provided that the SMR applicant has sufficient users to warrant the authorization of additional channels. If available, the SMR licensee will be authorized no more than one channel more than its current loading warrants.

(3) Channels in the SMRS category will be available to fully-loaded industrial/Land Transportation and Business category systems if frequencies in their own categories are not available. Evidence must be provided that the applicant has sufficient users to warrant the authorization of additional channels. If available, the licensee will be authorized no more than one channel more than its current loading warrants.

(4) The applicant must submit a statement from its own category coordinator that frequencies are not available in that category, and coordination is required from the applicable out-of-category coordinator.

(5) The out-of-category licensee must operate by the rules applicable to the category to which the frequency is allocated.

(h) The 896–901/935–940 MHz channels listed as available for eligibles in the industrial/Land Transportation and Business categories will be available for inter-category sharing to all persons eligible in those categories under the following conditions thirty-six (36) months from the date the first authorization in this spectrum is issued.

(1) The applicant must submit a statement from its own category coordinator that frequencies are not available in that category, and coordination is required from the applicable out-of-category coordinator.

(2) The out-of-category licensee must operate by the rules applicable to the category to which the frequency is allocated.

[FR Doc. 87–2357 Filed 2–4–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 97

[PR Docket No. 86–63; FCC 86–429]

Amateur Radio Service; Examination Credit for Written Elements

AGENCY: Federal Communications Commission.

ACTION: Final rule; effective date.

SUMMARY: On November 25, 1986, the Commission published a final rule in this proceeding concerning the Amateur Radio Service and written examination credit (51 FR 42578). This document specifies the effective date of that action.

EFFECTIVE DATE: February 13, 1987.

FOR FURTHER INFORMATION CONTACT: John Borkowski (202) 632–4964.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–2355 Filed 2–4–87; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Administration

48 CFR Parts 2413 and 2433

[Docket No. R–87–1263; FR–2098]

Implementation of the Competition in Contracting Act of 1984 into the HUD Acquisition Regulation; Announcement of Effective Date

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice of announcement of effective date for final rule.

SUMMARY: This notice announces the effective date for the final rule published in the **Federal Register** on November 6, 1986 (51 FR 40331). That rule adopted the interim rule for the implementation of the Competition in Contracting Act of 1984 (CICA) into the HUD Acquisition Regulation (HUDAR), which was published in the **Federal Register** of November 8, 1985 (50 FR 46572). The effective date provision of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced that future notice of the effectiveness of the rule would be published in the **Federal Register**.

Thirty calendar days of continuous session of Congress will expire on March 2, 1987.

DATE: The effective date for the final rule published November 6, 1986 (51 FR 40331), is March 2, 1987.

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, Department of Housing and Urban Development, Washington, DC 20410, Telephone (202) 755–5294. (This is not a toll-free number.)

Dated: January 30, 1987.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 87–2300 Filed 2–4–87; 8:45 am]

BILLING CODE 4210–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1312 and 1313

[Ex Parte No. 387]

Railroad Transportation Contracts; Suspension of Interim Rule Effective Date

AGENCY: Interstate Commerce Commission.

ACTION: Suspension of the January 22, 1987 effective date for rail contract interim rules at 49 CFR 1313.10(b)(4)(i) and 1313.11(b)(3)(i).

SUMMARY: The Commission is suspending the January 22, 1987 effective date for interim rules at 49 CFR 1313.10(b)(4)(i) and 1313.11(b)(3)(i). These interim rules provide for disclosure of origin/destination information in contract summaries for agricultural commodity contracts and forest products and paper contracts (51 FR 45898, December 23, 1986). We are reinstating the prior interim rule at 49 CFR 1312.41(d)(1)(iii) for contract origin/destination information, pending the comment period and final rules. Section 1312.41(d)(1)(iii) requires disclosure of information sufficient to allow a party to determine if it is affected. Use of phrases such as "various pints in [a particular State]" will not be accepted, but references either to all points in a State or to a tariff will be acceptable pending final rules.

EFFECTIVE DATE: February 5, 1987.

FOR FURTHER INFORMATION CONTACT: Thomas Dahl, (202) 275–6448 or 275–7246.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4537 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: January 20, 1987.

By the Commission, Chairman Gradison.

Noreta R. McGee,

Secretary.

Appendix

Accordingly, 49 CFR Parts 1312 and 1313 are amended as follows:

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PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS

1. The authority citation for 49 CFR Part 1312 continues to read as follows:

Authority: 49 U.S.C. 10708(d) (1) and (2) and 10762, 5 U.S.C. 553.

2. Section 1312.41 is added to read as follows:

§ 1312.41 Contracts and contract summaries.

(a)–(c) [Reserved]

(d) *Content or contract summary; format.* (1) Contract summaries for agricultural commodities, forest products or paper shall contain the following terms in the order named.

(i)–(ii) [Reserved]

(iii) The origin station(s) and destination station(s), including the specific port(s) (if applicable).

(iv)–(vii) [Reserved]

(2)–(4) [Reserved]

(e)–(g) [Reserved]

PART 1313—RAILROAD CONTRACTS ENTERED INTO PURSUANT TO 49 U.S.C. 10713

3. The authority citation for 49 CFR Part 1313 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10713; and 5 U.S.C. 553.

§ 1313.10 [Amended]

4. The rules at 49 CFR 1313.10(b)(4)(i) are suspended.

§ 1313.11 [Amended]

5. The rules at 49 CFR 1313.11(b)(3)(i) are suspended.

[FR Doc. 87–2334 Filed 2–4–87; 8:45 am]

BILLING CODE 7035–01–M

Proposed Rules

Federal Register
Vol. 52, No. 24
Thursday, February 5, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 545 and 563

[No. 87–110]

Adjustable-Rate Mortgage Home Loan Disclosures

Dated: January 29, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), proposed to amend its regulations regarding the disclosures and notices that lenders must give to borrowers concerning adjustable-rate mortgage ("ARM") home loans. The Board's current regulation requires a lender to provide to a prospective borrower a clear and concise description of the nature of ARMs, either when an application is given or before a nonrefundable fee is charged, whichever is earlier. This disclosure may be accomplished by using the booklet titled, *Consumer Handbook on Adjustable Rate Mortgages* ("ARMs Handbook"). The proposed rule would retain the same timing for disclosures and continue to allow the use of the ARMs Handbook, but would require additional disclosures of specific information concerning the ARM program being offered to the consumer. The revision would clarify the Board's regulation and would implement the uniform disclosure of ARMs recommended by the Federal Financial Institutions Examination Council ("FFIEC") on August 12, 1986. The proposal was prepared in consultation with the Federal Reserve Board ("FRB") and the Office of the Comptroller of the Currency ("OCC"). the three agencies are revising their regulations concurrently and, where appropriate, analogously, in order to make uniform the disclosures that lenders must make to borrowers concerning ARMs. Particular attention was given by all three agencies to the volume and substance of consumer comment conerning ARMs in the past two years. In addition, the proposal would consolidate and clarify existing Board regulations on disclosures and notices for all loans.

The Board is soliciting comments for a period of 30 days and considering requiring compliance with the regulation on the same date that the FRB amended regulations take effect, currently planned for October 1, 1987.

DATE: Comments must be received on or before March 9, 1987.

ADDRESS: Send comments to Director, Public Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: Stephen D. Johnson, Attorney/Advisor, Division of Consumer and Civil Rights, Offices of Community Investment, (202–653–2692), Federal Home Loan Bank Board, 1700 G Street, NW. Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board is directed by Title IV of the National Housing Act, 12 U.S.C. 1724–30, to assure the sound and safe operation of institutions the accounts of which are insured by the FSLIC. Pursuant to that mandate, the Board is proposing revisions and clarifications to its regulations regarding the initial disclosures and subsequent notices that lenders must give to prospective borrowers and loan customers. The proposed revisions would implement a simple and uniform method of initial disclosures for ARMs developed in consultation with other financial regulatory agencies.

The popularity as widespread availability of a variety of ARMs are recent developments in home finance. ARMs proved to be great benefit to lenders and borrowers in the recent past when very high interest rates constricted the supply of funds for housing loans. Consumer awareness of ARMs has increased rapidly, but ARMs present borrowers with unfamiliar and complex options, including possible changes in terms, payments and amortization. Lenders have also gone through a learning and training effort, but not all lenders have completely mastered the skills required to develop and market successful ARMs. The Board has monitored complaints arising from incomplete or inaccurate understandings by both borrowers and lenders. Many customer complaints have been resolve by full explanation of the ARM to the customer. However, when this occurs after the making of the loan, both the lender and the borrower are already bound by the terms and conditions of the ARM—no longer is there much room for negotiation or choice of a different ARM.

Competitive and properly structured loan programs, prudent lending practices and informed borrowers and lenders provide the fundamental basis of modern lending, central to sound and safe operations by lenders. The Board, therefore, proposes to enhance the safety and soundness of insured institutions through these rule changes.

For several years the Board has been working with the other regulatory agencies in the FFIEC to develop a uniform set of disclosures for ARMs. In part, this effort arose from concern about the differing disclosure requirements imposed by the various federal agencies, since four federal agencies require that lenders subject to their regulations provide to borrowers four different kinds of disclosures. Under Regulation Z, (12 CFR 226) the FRB requires that a variable-rate feature be described briefly to consumers. In contrast, the regulations of other federal financial regulatory agenices and the Department of Housing and Urban Development ("HUD") call for more extensive, detailed information. The OCC mandates variable-rate disclosures for national banks and other lenders that seek to market their loans to national banks at 12 CFR Part 29. Under the "Alternative Mortgage Transaction Parity Act of 1982", Pub. L. No. 97–320, 96 Stat. 1545, *codified at* 12 U.S.C. 3801 *et seq.*, state-chartered institutions and other mortgage lenders may take advantage of federal authorization of ARMs by following the rules of the Board of the OCC (12 U.S.C. 3802). HUD prescribes disclosures for lenders wishing to participate in the Federal Housing Administration insurance program at 24 CFR Parts 203 and 234. The Board requires variable-rate disclosures for federally-chartered savings and loan associations and also for certain other lenders that wish to

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market their loans to federally-chartered savings and loans at 12 CFR 545.33 and for all insured institutions at 12 CFR 563.9–9.

The FFIEC and member agencies believe that the present regulatory structure is causing problems for both consumers and lenders. The ability of consumers to understand and make important decisions about ARMs before entering into these transactions may be hampered by their receipt of different information about ARM programs depending on which type of lender they have approached. This problem is exacerbated by the variety of ARM products now being offered as well as the complexity of some of these products. At the same time, regulatory requirements have proven burdensome to the mortgage industry, particularly when mortgage lenders must satisfy more than one regulation in order to take full advantage of the secondary market. Under certain circumstances, lenders who wish to originate mortgages for possible sale to either a federal savings and loan association or to national bank may have to make disclosures under both agencies' rules. Furthermore, it has been claimed that regulatory requirements have hampered the development of the secondary market for ARMs.

On April 17, 1985, the Board proposed to adopt a regulation requiring insured institutions to disclose in simple terms to certain applicants the general nature of the ARM device, including all of its significant features. See Board Res. No. 85–287, 50 FR 16094 (April 24, 1985). The Board's proposal also required lenders to distribute the ARMs Handbook published by the Board and the FRB, or a suitable substitute. The Board received 66 public comments in response to the proposed rule. Fifty-one comments were submitted by savings and loan associations. The great majority of commenters, whether in support or opposition, praised the regulatory goal of public disclosure and the concomitant spirit and intent of the proposed rule. The objections focused on a perceived lack of need for the proposed rule and problems associated with its implementation. The Board carefully reviewed all comments and determined to adopt the regulation substantially as proposed, with some modifications. The rule became 12 CFR 563.9–9, effective August 1, 1985.

Based on recommendations by the FFIEC and its own analysis, the FRB proposed in May 1985 to amend Regulation Z to provide more information to consumers about ARMs and to encourage uniform disclosures among the agencies. The FFIEC had two recommendations, which grew out of the work of a task force composed of representatives from HUD, the OCC, the FRB, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Board: (1) Consumers should be given information about ARMs before they submit a loan application or pay any fee; and (2) disclosures should include an explanation of the nature of ARMs, including an example of payment changes that would result in a creditor's ARM program assuming two percentage points index rate increases in each of the first three years of a mortgage.

On May 15, 1985, the FRB published a proposed amendment to Regulation Z incorporating the recommendations of the FFIEC and proposing to eliminate footnote 43 of Regulation Z that permits creditors to substitute the disclosures required by other federal agencies for the variable-rate disclosure required by Regulation Z. The FRB proposed that creditors make available to consumers information explaining ARMs and stated that the ARMs Handbook could be used by creditors to fulfill the requirement. The FRB further proposed that detailed, transaction-specific, disclosures be given to the consumer, including an example of the consumer's payment terms if the index rate increased two percentage points in each of the first three years.

The FRB received over 500 comments on its May 1985 proposal, many of them negative. About one-third of the commenters generally opposed the proposed rule because of the payment example required and the consequent potential increase in expense and burden to creditors. Futhermore, approximately one-half of the commenters addressed the proposal that the example of rate increases be transaction-specific. Nearly seventy percent of these commenters opposed the requirement, citing their concern about the anticipated high cost of preparing the transaction-specific disclosures. They also stated that these disclosures would be difficult to prepare within three days after the application. A majority of the commenters on the issue opposed the proposed example based on assumed two percentage points per year index rate increases for three years.

In August 1985, the FFIEC discussed the Board's rule change and the negative public comments received on the FRB's proposal, and recommended that its Consumer Compliance Task Force ("Task Force") develop a different approach to ARM disclosures. In October 1985, the Task Force recommended to the FFIEC that "generic" loan program disclosures be developed, but asked the FFIEC to decide whether the payment example should be based on an assumed two percentage points annual increase in index values. The ARMs disclosure proposal was discussed at three subsequent meetings of the FFIEC in late 1985 and in 1986. During that period, the federal financial agencies received letters from key members of Congress recommending that the disclosures show the borrower's maximum rate and payment exposure. On August 11, 1986, the FFIEC approved a proposal requiring that creditors provide two types of disclosures: (1) The *Consumer Handbook on Adjustable Rate Mortgages*, or a suitable substitute, and (2) disclosures that fully describe each of the creditor's ARM programs, with ultimately a fifteen-year historical example of how changes in the index or formula values used to compute interest rates would affect the interest rates and payments on a $10,000 home loan.

As recommended by the FFIEC, the Board is now proposing that ARM disclosures, including both the ARM brochure and the other detailed ARM information, be provided to prospective borrowers when an application form is furnished or before the payment of a non-refundable fee, whichever is earlier. This rule is consistent with the Board's current rule, 12 CFR 563.9–9(b), for distribution of the ARM brochure. This would permit creditors to provide the detailed generic disclosures to consumers as an insert or an attachment to the handbook when it is given. It also reflects the views of some of the commenters on the Board's and FRB's original proposals, who felt that ARM information should be provided to consumers as early as possible, particularly before payment of an application fee, in order for consumers to use the information for comparison shopping.

ARM disclosures would continue to be given to consumers earlier than the other Truth in Lending disclosures required by 12 CFR 226.17 (prior to consummation) and 12 CFR 226.19(a) (three days after a creditor's receipt of a written application).

The ARMs Handbook, developed by the FRB and the Board, may be used by creditors to fulfill the first requirement, if they choose. The new proposal would also permit creditors to provide a "suitable substitute" in place of the consumer handbook. Rather than the Board's evaluating whether an individual creditor's ARM brochure is a "suitable substitute," the regulation would require individual creditors to make good faith determination of whether a brochure is, in fact, a suitable substitute. The Board envisions that substitutes must be, at a minimum, comparable to the ARMs Handbook in substance, balance and comprehensiveness, recognizing that some lenders' brochures may contain more detailed descriptions of their particular ARM programs than are contained in the ARMs Handbook.

The remainder of the current proposal contains the revisions that would be made to the ARM disclosures currently required by 12 CFR 545.33(e) and (f) and 12 CFR 563.9–9. Like the FFIEC August 1986 recommendation, the Board proposal requires that detailed, specific information about all major aspects of an ARM feature be clearly disclosed to consumers. As discussed below, many of these disclosures are similar to those already required by Board regulations, but are being rewritten for uniformity and clarity.

Creditors would be required to identify the index to which interest rate changes are tied or provide a brief description of the formula used in calculating changes if no index is used. The proposal also would call for an explanation of how the interest rate will be determined—for example, by a statement that the interest rate will be based on a specific index plus a margin. Furthermore, creditors would be required to include a statement suggesting that consumers ask for the current margin value and interest rate. Creditors would also need to alert consumers about a discount feature when the initial rate is discounted.

As required now by the Board, the OCC, and the FRB, the frequency of interest rate and payment adjustments also would be disclosed, along with interest rate and payment caps. If no payment or rate caps exist, the disclosure would indicate conspicuously that there would be no limits on potential increases in payments or rates. If the presence of rate or payment caps would result in interest rate carryover or negative amortization, the disclosure statement would need to contain a statement about those features, as is now mandated in the OCC's disclosure rule.

Two proposed disclosures that were not contained in the FRB's original May 1985 proposal are: 1) The fact that a loan program contains a demand feature, if applicable; and 2) a statement reflecting what information will be contained in an adjustment notice and when such notice will be provided. Finally, creditors would be required to include a notice to consumers that disclosure forms are available for the creditor's other ARM loan programs.

The most significant change from the Board's current regulation and the FRB's May 1985 proposal is the type of example to be mandated in the ARM disclosures. The FRB's earlier proposal would have required creditors to show the effects of interest rate changes on the particular loan that the borrower was applying for. In contrast, the new proposal would provide for an example based on a $10,000 loan, as does the current OCC rule. As a result, the disclosures could be preprinted for each loan program and given to consumers with an ARMs Handbook. Creditors also would be required to include a statement on the disclosure from explaining to consumers how to calculate their actual monthly payment amount for a loan amount other than $10,000. The example based on $10,000 reflects the recommendation of the FFIEC, which is premised in part on the rationale that figures based on a $10,000 example provide information that consumers can use with minimal difficulty to calculate their actual monthly payments for a specific transaction. In addition to the effect on monthly payments, the example would need to reflect the effect of index rate changes on the outstanding loan balance as of the end of the year.

The May 1985 FRB proposal would have required that two examples be shown: one based on an assumed increase of 2 percentage points in the index rate in each of the first three years; and, one based on no changes in the index rate during the loan term. In contrast, the new proposal omits the example of no changes in index rates and would simply require that the example shown be based on the history of the specific index or formula to be used in the loan program. The index values used in the example will begin with the value for 1977 and be updated annually to add the values for each year from 1977 through 1986, and each year the value selected for one more year would be added until 1991. From that time forward, lenders would show a "rolling history" of index values, updated annually, for the preceding fifteen years.

The provision that the example be based on the historical performance of individual indices reflects the recommendation of the FFIEC and responds to Congressional concerns. This type of example also was recommended by some of the commenters on the FRB's earlier proposal. These commenters felt that the example based on assumed two percentage points increases for three years was too negative and, in fact, misleading to consumers when used for ARMs tied to stable indices, such as the cost of funds. Furthermore, some commenters asserted that consumers would be in a better position to compare ARM programs with an example based on the past performance of different actual indices, rather than an example based on arbitary assumed increases.

The payment and outstanding loan balance figures in the example would reflect all significant loan program terms. For example, features such as rate and payment caps, a discounted interest rate, negative amortization, and interest carryover would need to be taken into account by creditors in calculating the payment and outstanding balance figures. Because disclosures would be given early, creditors would need to assume a value for the margin in order to do the calculations for the example. Creditors could select a margin that they have used during the preceding six months and disclose on the form that the margin is one that they have used recently. The margin selected could be used until a creditor updates the disclosure form to reflect tne most recent fifteen years of index values.

Another change from earlier proposals is the requirement that the maximum interest rate and payment be disclosed. These disclosures would be calculated based on a $10,000 loan that is originated at the most recent interest rate shown in the historical example, and would assume that the interest rate then increases as rapidly as possible under the program. Thus, in a loan with interest rate limitations, or "caps," of two percentage points per year, and five percentage points for the life of the loan, the maximum interest rate would be five percentage points higher than the most recent rate shown in the historical example. Furthermore, the loan would not reach the maximum interest rate increase until the third year of the loan because of the two percent annual limitations. Consequently, the maximum payment disclosed would reflect the amortization of the loan during that period. Statement of a maximum interest rate and payment would not be required if the loan contained no caps, although the disclosure would state conspicuously that there are no limits on potential increases in payments of rates.

The Board welcomes comments on this proposed rule.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is

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providing the following regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the proposed rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

2. *Small entities to which the proposed rule would apply.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). Therefore, the proposed rule would apply to the 1,663 insured institutions that had assets totaling $100 million or less as of October 31, 1986.

3. *Impact of the proposed rule on small entities.* The proposal should not have a significant economic impact on small institutions. Small institutions as well as large ones will be using a new format for disclosure of information already being made with few new information categories. All institutions—including small ones—should benefit from improved safety and soundness and from greater ARM secondary market opportunities that will result from the proposal.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rule.* In the above **SUPPLEMENTARY INFORMATION** the Board is soliciting comment on possible alternatives to the rule as proposed.

List of Subjects in 12 CFR Parts 545 and 563

Accounting, Bank deposit insurance, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, and Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Part 545, Subchapter C, Part 563, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

1. The authority citation for Part 545 is revised to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

2. Amend § 545.33 by revising the introductory text of paragraph (e) to read as follows; by removing paragraph (e)(4) and redesignating paragraph (e)(5) as the new paragraph (e)(4); and by removing paragraph (f) redesignating paragraphs (g) and (h) as the new paragraphs (f) and (g) respectively.

§ 545.33 Home loans.

* * * * *

(e) *Adjustments.* For any home loan secured by borrower-occupied property, or property to be occupied by the borrower, adjustments to the interest rate, payment (s), balance, or term to maturity shall comply with the limitations and provisions of this paragraph (e). The disclosure and notice requirements of § 563.9–9 shall also be complied with.

* * * * *

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

3. The authority citation for Part 563 is revised to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

4. Section 563.9–9 is amended by revising the heading of the section to read as follows; by redesignating paragraph (a)(3) as the new paragraph (a)(4); by adding a new paragraph (a)(3) to read as follows; and by revising paragraphs (b), (c), and (d) to read as follows:

§ 563.9–9 Fixed-rate and adjustable-rate mortage loan disclosures and notices.

(a) * * *

(3) "Fixed-rate mortgage loan" means a loan, secured by property occupied or to be occupied by the borrower, on which the rate, term and the amount of the payments are fixed at the time of execution of the original loan documents. Fixed-rate mortgage loans may or may not be fully amortizing and include graduated payment loans on which the schedule of payment adjustments is fixed at the time of executing the original loan documents.

* * * * *

(b) *Disclosure.* Insured institutions shall disclose to each applicant for a home loan that is secured by property occupied or to be occupied by the borrower the information specified by this paragraph (b). These disclosures shall be provided for all such loans whether originated by the lender or purchased from an affiliate (as defined in § 583.15) or purchased from an unaffiliated entity as part of a business arrangement or agreement to purchase loans not yet originated. Disclosures must be delivered or placed in the mail not later than three business days following receipt of a consumer's written application when the application reaches the creditor through an intermediary agent or broker. Loans purchased from an unaffiliated entity in the usual course of business, and previously originated by the entity without guarantees, agreements or understandings that they would be purchased by the institution, may be purchased notwithstanding these disclosure requirements, provided that such loans comply with any other disclosure requirements, such as Truth in Lending, to which they may be subject. The disclosures shall be in one or more documents other than the loan documents and shall be in plain language. The purpose of these disclosure requirements is to provide a full understanding of the operations and consequences of the loan for which the borrower is applying. The disclosures do not constitute a commitment on the part of an institution to make a loan to the applicant.

(1) For all home loans secured by property occupied or to be occupied by the borrower on which the interest rate, balance, term and the amount of the payments are fixed, at a minimum an association shall provide, not later than three (3) business days following the receipt of a written application, the following information: (i) If the loan contract contains a due-on-sale clause, what rights the lender has under the clause.

(ii) If the loan contract authorizes the imposition of a late charge or a prepayment penalty, the amount of the charge or penalty or the manner in which it is to be determined. If the amount of the charge or penalty may vary over the term of the loan, the lender shall indicate the approximate minimum and maximum amounts that may be imposed for a loan of the same type and with an initial balance comparable to that of the borrower.

(iii) If the loan contract provides for escrow payments, a statement explaining the purpose of requiring escrow payments, how the amount of escrow payment is established, how the borrower will be notified of any deficiencies in the borrower's escrow account, how such deficiencies will be corrected, whether the borrower will have the option of correcting the deficiency with either pro-rated monthly payments or a lump-sum payment, and the rights of the association if the borrower fails to make the escrow payments.

(iv) In the case of non- or partially-amortized loans (including a loan giving the institution the right to call the loan due and payable after a period of time or upon the occurrence of an event external to the loan), a statement of what information will be contained in the notice of maturity, how far in advance notice of maturity will be provided, whether the institution has unconditionally obligated itself to refinance the loan or whether there will be a large payment due at maturity or upon call of the loan.

(v) A description of all contractural contingencies, including those arising from the borrower's breach or nonperformance of an obligation under the loan contract, under which the loan may become due or which may result in a forced sale of the home.

(2) In addition to providing the information required by paragraphs (b)(1) (i), (ii), (iii), (iv) and (v) of this section, institutions offering adjustable-rate home loans, secured by property occupied or to be occupied by the borrower, shall provide two types of disclosure to prospective borrowers when an application form is provided or before the payment of a non-refundable fee, whichever is earlier:

(i) The *Consumer Handbook on Adjustable Rate Mortgages*, prepared by the Federal Reserve Board and the Federal Home Loan Bank Board, or a suitable substitute, shall be provided.

(ii) A "loan program" disclosure (prepared for each adjustable-rate home loan program) containing the following information, *if applicable*, shall be provided: (A) The fact that the interest rate, payment or term can change.

(B) The index or formula to be used and a source of information about the index.

(C) How the interest rate and payment will be determined.

(D) A statement that the interest rate will be discounted.

(E) How the index is adjusted to determine the interest rate, *i.e.*, the margin, and a statement that the consumer should ask about the current margin value and current interest rate.

(F) The frequency of interest rate and payment changes.

(G) Any rules relating to changes in the index, interest rate, payment amount and outstanding loan balance (*e.g.*, interest rate or payment limitations, negative amortization and interest carryover).

(H) A statement of the maximum interest rate and payment amount under the program if a $10,000 loan had originated at the most recent interest rate shown in the hypothetical example in paragraph (b)(2)(ii)(J) of this section. The example should assume that the interest rate increases as rapidly as possible under the program.

(I) If there are no limitations on payment or interest rate increase, a conspicuous statement to that affect.

(J) A historical example, based on a $10,000 loan amount, illustrating how payments and the loan balance would have been affected by interest rate changes implemented according to the terms of the loan program. The example shall be based on index values beginning in 1977 and be updated annually until a fifteen-year history is shown. Thereafter, the example shall reflect the most recent fifteen years of index values. The example shall reflect all significant loan program terms, such as negative amortization, interest rate carryover, interest rate discounts, and interest rate and payment limits, that are affected by the index movement during the period.

(K) An explanation of how to calculate consumer's payment amounts for loans based on multiples of $10,000, with an example using the most recent monthly payments shown in the hypothetical example in paragraph (b)(2)(ii)(J) of this section.

(L) That fact that a loan program contains a demand feature.

(M) What information will be contained in the required notice of adjustment and how far in advance such notice will be provided.

(N) A notice that disclosure forms are available on other ARM loan programs.

(c) *Notice.* An adjustment to the interest rate with or without a corresponding adjustment to the payment in an adjustable-rate mortgage loan is an event requiring new disclosure to the borrower. At least once each year during which an interest rate adjustment is implemented without an accompanying payment change, or, if the loan documents provide for a payment change accompanying each interest adjustment, at least 30 but no more than 120 days before the effective date of each scheduled interest rate adjustment, the following disclosures shall be made by the insured institution to the borrower: (1) The current and prior interest rates.

(2) The index values upon which the current and prior interest rates are based.

(3) The extent to which the lender has foregone any increase in the interest rate.

(4) The contractural effects of the adjustment, including the payment due after the adjustment and the loan balance.

(5) The payment, if different from that referred to in paragraph (C)(4) of this section, that would be required to fully amortize the loan at the new interest rate over the remainder of the loan term.

(d) *Calls.* At least 90 but not more than 120 days prior to a "call" or expected maturity of a non- or partially-amortized loan, an insured institution shall give the borrower actual notice of the "call" or maturity.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Acting Secretary.

[FR Doc. 87–2340 Filed 2–4–87; 8:45 am]

BILLING CODE 6720–01–M

12 CFR Part 563

[No. 87–114]

Regulation of Direct Investments by Insured Institutions

Dated: February 2, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of extension of comment period.

SUMMARY: This notice extends the comment period on a proposed amendment to 12 CFR 563.9–8 (Regulation of Direct Investment by Insured Institutions) to defer the expiration date of the regulation to January 1, 1989. Board Res. No. 86–962, 51 FR 32925 (September 17, 1986).

DATE: Comments must be received no later than 5:30 p.m. on February 13, 1987.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Christina M. Gattuso, Staff Attorney (202) 377–6649, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board at the above address.

SUPPLEMENTARY INFORMATION: On September 11, 1986, the Federal Home Loan Bank Board, ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation

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("FSLIC"), adopted a proposed amendment ("September proposal") to its regulation governing investments by institutions the accounts of which are insured by the FSLIC ("insured institutions") in equity securities, real estate, service corporations, and operating subsidiaries ("direct investments"). The proposal, which was published for a 30-day comment period ending on October 17, 1986, would have deferred the expiration date of the regulation from January 1, 1987, to January 1, 1989.

On December 18, 1986, the Board adopted an interim final rule to defer the expiration date of the direct investment regulation to March 15, 1987, and voted to reopen the comment period on the September proposal through February 6, 1987. Board Res. No. 86–1260, 51 FR 47001 (December 30, 1986) and Board Res. No. 86–1291, 52 FR 80 (January 2, 1987).

One commenter requested that the Board extend the comment period on the September proposal for a two week period beyond February 6, 1987, in order for the commenter to complete several economic studies, currently in process, regarding the direct investment regulation. After considering the concerns raised by this commenter, the Board has determined to extend the comment period on the September proposal through February 13, 1987. The Board believes that extension of the comment period for one week will allow commenters and the Board's staff additional time in which to complete economic studies on the direct investment regulation.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Acting Secretary.

[FR Doc. 87–2450 Filed 2–4–87; 8:45 am]

BILLING CODE 6720–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–10–FRL–3151–7]

Approval and Promulgation of State Implementation Plan; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: By this notice EPA Invites public comment on its proposal to approve in part, and disapprove in part, the State of Oregon rules for conflict of interest of state boards. These rules were submitted to EPA on May 31, 1986 as revisions to the Oregon State Implementation Plan (SIP). The submitted rules satisfy the requirements of section 128 (State Boards) of the Clean Air Act (hereinafter the Act) with respect to the Department of Environmental Quality (DEQ) and the Environmental Quality Commission (EQC), but fail to satisfy the requirements with respect to the Lane Regional Air Pollution Authority (LRAPA) which issues permits and enforcement orders under the Act.

DATE: Comments must be postmarked on or before March 9, 1987.

ADDRESSES: Comments should be addressed to:

Laurie M. Kral, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the materials submitted to EPA may be examined during normal business hours at:

Air Programs Branch (10A–86–9), Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

State of Oregon, Department of Environmental Quality, Executive Building, 811 SW. 6th Avenue, Portland, OR 97204.

FOR FURTHER INFORMATION CONTACT:

David C. Bray, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442–4253, FTS: 399–4253.

SUPPLEMENTARY INFORMATION:

I. Background

The August 7, 1977, amendments to the Clean Air Act included a new Section 128 "STATE BOARDS," which required each SIP to contain certain provisions by August 7, 1978. These provisions must require that (1) any board or body which approves permits or enforcement orders under the Act shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under the Act, and (2) any potential conflicts of interest by members of such board or body, or the head of executive agency with similar powers, be adequately disclosed.

On October 24, 1978, the Oregon Department of Environmental Quality (DEQ) submitted new rules, specifically, Oregon Administrative Rules (OAR) Division 20, sections 200 through 215, as a revision to the Oregon SIP in order to satisfy the requirements of section 128 of the Act. These rules were subsequently returned to the DEQ without action by EPA because of inadequate public notice for the DEQ's public hearing.

On February 5, 1986, the Oregon Environmental Council (OEC) notified the administrator of EPA of their intent to commence a civil action for failure to comply with an alleged non-discretionary duty under the Act. On May 8, 1986, the OEC and Kathy Williams, a private citizen, filed suit in the United States District Court for the District of Oregon, alleging that EPA failed to approve or disapprove the 1978 SIP submittal within 4 months, and that EPA failed to promulgate federal rules to implement section 128 of the Act in Oregon.

On April 25, 1986, the Environmental Quality Commission (EQC) adopted a complete consolidated SIP which included conflict of interest rules for state boards. On May 30, 1986, the DEQ submitted these rules (along with the consolidated SIP) to EPA as a revision to the Oregon SIP.

On September 15, 1986, EPA entered into a settlement agreement and consent decree with the OEC et al., for resolution of the civil suit. Specifically, EPA agreed to take expeditious action on the May 30, 1986, SIP submittal by proposing approval, disapproval or other final action on the submittal on or before February 1, 1987, and by taking final action on or before July 1, 1987.

II. Discussion

The "Conflict of Interest" rules submitted by the DEQ on May 30, 1986, specifically OAR 340–20–200 through 215, apply only to the EQC and the Director of the DEQ. EPA has found that these rules satisfy the requirements of section 128 of the Act for the EQC and the Director of the DEQ, and is therefore proposing to approve this submittal as a revision to the Oregon SIP, as they apply to the EQC and DEQ.

In order to determine whether there were any other boards or bodies in Oregon which issued permits or enforcement orders under the Act, EPA requested the State of Oregon Attorney General to review the State's air pollution program and identify each board or body which implemented any provision of the SIP. The Oregon Attorney General's opinion is included in the docket for this rulemaking and is available for review at the locations listed in the **ADDRESSES** section.

Based on the Oregon Attorney General's opinion, EPA finds that there is one other board or body in Oregon which issues permits and enforcement orders under the Act, as contemplated by section 128. Specifically, the Lane

Regional Air Pollution Authority (LRAPA) and its Board of Directors, have been approved by EPA to run an air pollution program in Lane County, Oregon. This program includes issuing permits to sources and enforcing emission limitations under the Act. Since neither the current SIP nor the May 30, 1986, SIP submittal, contains Sections 128 provisions for the LRAPA and its Board of Directors, EPA finds the SIP to be deficient with respect to LRAPA and its Board of Directors. Hence, EPA is proposing to disapprove the Oregon SIP for failing to contain provisions satisfying section 128 for the LRAPA and its Board of Directors.

There are also other boards and bodies in Oregon which carry out portions of the approved SIP. However, these boards or bodies do not issue permits or enforcement orders as contemplated by section 128. The Act, and thus section 128, contemplates enforcement orders issued under section 113(d), section 119, and section 167. Enforcement orders other than these are not affected by the requirements of section 128. The boards and bodies, other than the DEQ, EQC, and LRAPA, do not issue enforcement orders under sections 113(d), 119, or 167 of the Act. Also, the Act, under section 110(a)(2)(D), contemplates certain programs explicitly intended to be implemented through permits, namely the new source review, the prevention of significantly deterioration, and the stationary source permit programs. The boards or bodies, other than the DEQ, EQC, and LRAPA, do not issue permits under these programs. These other boards may issue what they refer to as "permits," but they are simply mechanisms for implementing certain SIP control programs. These so-called "permits" are still federally enforceable since they are derived from the SIP, but they are not permits as explicitly set forth in the Act, and consequently, as envisioned by section 128. Therefore, EPA finds that the SIP is not required to contain section 128 provisions for these boards and bodies. EPA's review of these boards and bodies, and its analysis of each, is included in the docket on this rulemaking and is available for review at the locations listed in the **ADDRESSES** section.

Finally, a specific concern was raised with respect to the Oregon Board of Forestry and the control of prescribed burning of forestry residues (or slash burning). EPA finds that slash burning permits are not the type of permit contemplated in the Act as being affected by section 128. They may be referred to as "permits" but do not fall into any of the specific categories described earlier as set forth in the Act. Instead, the slash burning program is basically a control measure which the State has chosen to implement through a permit system. Furthermore, the Oregon Attorney General found that the Board of Forestry has no involvement in the permitting and enforcement of the State's air pollution regulations for prescribed forestry burning. Rather, the Oregon Department of Forestry and the State Forester have jurisdiction over this activity. Since the Board of Forestry has not authority under State law to issue permits or enforcement orders regarding prescribed forestry burning, and in light of EPA's decision that slash burning permits are not affected by section 128, EPA finds that Section 128 provisions are not required for the Board of Forestry.

III. Summary of Action

In summary, EPA is today proposing to approve OAR 340–20–200 through 215, as it applies to the DEQ and EQC, as revisions to the Oregon SIP satisfying the requirements of section 128 of the Act. However, EPA is proposing to disapprove the Oregon SIP for failure to meet the requirements of section 128 with respect to (and only with respect to) the LRAPA and its Board of Directors.

Interested parties are invited to comment on all aspects of this proposed approval and disapproval of revisions to the Oregon SIP. Comments should be submitted in triplicate to the address listed in the front of this Notice. Public comments postmarked by March 9, 1987, will be considered in any final action EPA takes on this proposal.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities (see 46 FR 8709). The proposed disapproval involves only administrative procedures and will not have a significant economic impact on a substantial number of small entities.

Under Executive Order 12291, this action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and Recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: December 31, 1986.

Robie G. Russell,

Regional Administrator.

[FR Doc. 87–2424 Filed 2–4–87; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 201–8

Implementation of Federal Information Processing Standards (FIPS) and a Federal Telecommunications Standard (FED–STD) in the Federal Information Resources Management Regulation (FIRMR)

AGENCY: Information Resources Management Service, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed final regulation updates FIRMR provisions by implementing four Federal Information Processing Standards (FIPS) and one Federal Telecommunications Standard (FED–STD) to provide associated standard terminology that shall be used in requirements documents, including solicitations, as applicable. FIPS PUBS 120, 121, 123, 125, and FED–STD 1005A are added to the FIRMR. The intended effect of this regulation is to enhance economy and efficiency in the acquisition of automatic data processing/telecommunications equipment and services.

DATE: Comments are due: April 6, 1987.

ADDRESS: Comments should be submitted to the General Services Administration (KMPR), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mary B. Anderson, Regulations Branch (KMPR), Information Resources Management Service, telephone (202) 566–0194 or FTS, 566–0194. The full text of the proposed rule is available upon request.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Governmentwide management regulation that will have little or no net cost effect on society. The proposed rule is therefore not likely to have a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 41 CFR Chapter 201–8

Computer technology, Telecommunications, Information resources activities, Standards for information resources.

Dated: December 31, 1986.

Francis A. McDonough,

Deputy Commissioner for Federal Information Resources Management.

[FR Doc. 87–2306 Filed 2–4–87; 8:45 am]

BILLING CODE 6820–25–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. 1

[CC Docket No. 83–1376; Rm 4436]

Interstate Telecommunications Services, Alaska et al.

AGENCY: Federal Communications Commission.

ACTION: Order extending time.

SUMMARY: The order extends the time for filing opposition and reply comments before the Federal-State Joint Board in CC Docket No. 83–1376, *Integration of Rates and Services*, to provide for better sequencing of comments in interrelated proceedings. The Joint Board is considering the interrelationships between rate integration and competition in developing a recommended market structure and cost support mechanism for Alaska interstate telecommunications.

DATES: Opposition comments may be filed on, or before, February 27, 1987. Reply comments may be filed on, or before, March 27, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Douglas Slotten, Common Carrier Bureau, Policy and Program Planning Division, 202–632–9342.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Rulemaking initiating this docket is reported at Integration of Rates and Services, 50 FR 41714 (Oct. 15, 1985). The Order inviting interested persons to file comments is reported at *Integration of Rates and Services*, 51 FR 17756 (May 15, 1986).

Memorandum Opinion and Order

Adopted: January 15, 1987.

Released: January 20, 1987.

By the Chief, Common Carrier Bureau.

In the matter of Integration of rates and services for the provision of communications by authorized common carriers between the contiguous states and Alaska, Hawaii, Puerto Rico and the Virgin Islands; CC Docket No. 83–1376, RM 4436.

1. On January 8, 1987, the Alaska Telephone Association (ATA) filed a motion requesting an extension of time for filing further comments before this Federal-State Joint Board (Alaska Joint Board) in the rulemaking phase of this proceeding. ATA requests that the due date for opposition comments be extended from January 20, 1987, to a minimum of thirty days following the release of a related recommended decision of the Federal-State Joint Board in CC Docket No. 80–286 (Docket 80–286 Joint Board).

2. In support of its request, ATA submits that the Docket 80-286 Joint Board is expected to consider several proposals for modifying the separations procedures in the near future. It submits that its members are participating in that docket as well as in this one. ATA submits that to provide reasoned and informed comments to the Alaska Joint Board, it is essential that ATA have sufficient time to evaluate the potential impact of any recommendation of that Joint Board before filing its comments with the Alaska Joint Board.

3. ATA's concern with the proper sequencing of comments is well taken. The Docket 80–286 Joint Board has before it proposals on the allocation of category 6 and 8 plant that could affect the range or nature of the arguments that a party may desire to present to the Alaska Joint Board. In particular, decisions on the category 6 and 8 issues affect the evaluation of the procedures that may be necessary to implement any cost support mechanism that may be proposed by any party. Accordingly, we conclude that the comment dates should be modified to permit parties in this proceeding to consider any related decisions that may be taken by the Docket 80–286 Joint Board before they must file further comments in this proceeding. However, thirty days from the release of any related recommended decision of that Joint Board is too lengthy a deferral. The essence of the information needed by commenting parties in the Alaska Joint Board should be available at the time of a public meeting on those issues. Therefore, because we hope the Joint Board will be able to address these issues in the near future, we find that February 27 and March 27, 1987, will allow adequate time for the parties to prepare their opposition comments and reply comments in the rulemaking phase of this proceeding, respectively.

4. *Accordingly, It Is Ordered,* pursuant to sections 1, 4 (i) and (j), 201–205, 221, and 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154 (i) and (j), 201–205, 221, and 410(c), that the request of the Alaska Telephone Association *Is Granted* to the extent indicated.

Federal Communications Commission.

Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 87–2385 Filed 2–4–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 69

[CC Docket No. 87–2]

Amendment and Clarification Rules Governing the National Exchange Carrier Association

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission requests comment on proposed additions to its rules that would govern the allocation and reporting of the administrative expenses of the National Exchange Carrier Association. At present, the rules do not allocate NECA's administrative expenses or specify a reporting format.

DATES: Comments may be filed on or before February 25, 1987. Reply comments may be filed on or before April 22, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kent Nilsson, Policy and Program Planning Division, Common Carrier Bureau, (202) 632–6363.

SUPPLEMENTARY INFORMATION: This notice contains a summary of the Commission's Notice of Proposed Rulemaking In the Matter of Amendment and Clarification of Part 69 Rules Governing the National Exchange Carrier Association, CC Docket No. 87–2 (FCC 87–19), adopted January 6, 1987, and released January 16, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The full text of this decision also may be purchased from the Commission's copy contractor, International Transcription Service, Suite 140, 2100 M Street, NW., Washington, DC 20037. The telehone number of the International Transcription Service is (202) 857–3800. It is certified that the requirements that are contained in the Regulatory Flexibility Act, 5 U.S.C. 601–612, are not applicable to the rules that may result from this proceeding. NECA is not the type of small, non-dominant entity that is described in 5 U.S.C. 601, and 5 U.S.C. 601(2) specifically excludes rulemaking proceedings of this type. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements that are applicable to the public. However, NECA may be required to classify, retain, and report additional information incident to its specific obligations under the Commission's rules.

Summary of Notice of Proposed Rulemaking in CC Docket 87–2

1. In ruling on a petition that was filed by six state public utility commissions, the Commission released an order on January 16, 1987 that instituted a rulemaking into the allocation and reporting of the administrative expenses of the National Exchange Carrier Association ("NECA"). In instituting this proceeding, the Commission noted that because NECA's administrative expenses had been included in common line revenue requirements and disbursements, the Commission's recent decision to permit NECA to administer a voluntary pool for deregulated billing and collection purposes required that "those NECA expenses and any other future expenses that are not associated with interstate access" be apportioned to "a non-access category in order to assure that such expenses are not reflected in access charges."

2. In addition, the Commission stated:

> We have also tentatively decided that our cost apportionment rules should be revised to provide a more precise apportionment of the NECA expenses that are associated with interstate access charges. The present rules assign all of these expenses to the common line elements, including expenses related to the preparation of NECA tariffs for other elements and the administration of the voluntary "traffic sensitive" pool. We believe these latter expenses should be reflected in the NECA charges for those elements. Similarly . . . we have tentatively concluded that the cost of NECA participation in proceedings other than investigations or preinvestigation review of NECA tariffs, court proceedings related thereto, or matters that relate to Subpart G of Part 69 of our rules, should also be assigned to a non-access category. Such non-access category expenses would not be paid through access charge revenues . . . We also propose to require that NECA provide in each tariff filing a more detailed accounting of the expenditures that it has made, and that it anticipates making during the following test year, with respect to its activities under Part 69 of our rules. We request specific proposals as to the form that this rule should take.

3. As a matter of first impression, the Commission proposed adding to § 69.603 of its rules the subsections that are contained at the conclusion of this notice. Persons wishing to file comments or reply comments should conform to the requirements of §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, and should state in the caption of each comment and reply comment that the filing is being made in CC Docket No. 87–2.

4. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that ex parte contacts are permitted from the time the Commission adopts a Notice of Proposed Rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an ex parte presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written ex parte presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral ex parte presentation addressing matters not fully covered in any previously-filed written comments in the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each ex parte presentation described above must state on its fact the Secretary has been served, and must also state by docket number the proceeding to which it relates.

Ordering Clauses

5. *Accordingly, it is ordered,* pursuant to sections 1, 4(i) through (j), 201–202, and 403 of the Communications Act of 1934, as amended, that the petition is granted to the extent stated herein, and is otherwise denied.

6. *It is further ordered* pursuant to sections 1, 4(i) through (j), 201–202, 205, and 403 of the Communications Act of 1934, as amended, that a notice of proposed rulemaking is instituted to amend Part 69 of the Commission's rules to conform to this Order.

List of Subjects in 47 CFR Part 69

Access charges, National Exchange Carrier Association.

It is proposed that Part 69 of Title 47 of the Code of Federal Regulations be amended as follows:

PART 69—ACCESS CHARGES

1. The authority citation for Part 69 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 201, 202, 203, 205, 218, 403.

2. Section 69.603 is amended by adding paragraphs (c) and (d) to read as follows:

§ 69.603 Association functions.

* * * * *

(c) The Association shall divide the expenses of its operations into two categories. The first category ("Category I Expenses") shall consist of those expenses that are associated with the preparation, defense, and modification of Association tariffs, those expenses that are associated with the administration of pooled receipts and distributions of exchange carrier revenues resulting from Association tariffs, and those expenses that pertain to Commission proceedings involving Subpart G of Part 69 of the Commission's rules. The second category ("Category II Expenses") shall consist of all other Association expenses. Category I Expenses shall be sub-divided into two components: (1) common line ("Category I.A. Expenses"); and (2) other expenses ("Category I.B. Expenses"). Category I.A. Expenses shall consist of all Category I Expenses that relate to the preparation, defense, and modification of common line tariffs, those expenses that relate to the distribution of revenues that are received pursuant to those tariffs, and those expenses that are associated with Commission proceedings that relate to Subpart G of Part 69 of our rules. Category I.B. Expenses shall consist of all other Category I Expenses.

(d)(1) The revenue requirement for Association tariffs filed pursuant to § 69.4(a) and (b)(2) shall include no Association expenses other than Category I.A. Expenses.

(2) The revenue requirement for Association tariffs filed pursuant to § 69.4(b)(1), (3) through (9) shall include no Association expenses other than Category I.B. Expenses.

(3) No distribution to an exchange carrier of revenues from Association common line tariffs shall include

adjustments for Association expenses other than Category I.A. Expenses.

(4) No distribution to an exchange carrier of revenues from Association tariffs other than common line tariffs shall include adjustments for Association expenses other than Category I.B. Expenses.

(5) In the cost support materials for each tariff filing that is made pursuant to Part 69 of the Commission's rules, the Association shall separately identify and provide all Category I.A. and Category I.B. expenses for the twelve calendar months preceding the tariff filing and those Category I.A. and I.B. expenses that are forecast for the twelve calendar months subsequent to the month preceding the month in which the tariff is made.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 87-2386 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-492, RM-5390]

Radio Broadcasting Services; Siloam Springs, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document comments on a petition by John Brown University seeking the substitution of Channel 266A for noncommercial educational Channel *212A and modification of its license accordingly.

DATES: Comments must be filed on or before March 23, 1987, and reply comments on or before April 7, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Marvin R. Rosenberg and Frank R. Jazzo, Esqs., Fletcher, Head & Hildreth, 1225 Connecticut Ave., NW., Suite 400, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-492, adopted December 5, 1986, and released January 21, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte contact.*

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau

[FR Doc. 87-2388 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-489, RM-5460, RM-5490]

Radio Broadcasting Services; Canton, Farmington, and Pekin, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two separately filed petitions. The first, submitted by Metrocom Communications corporation, Inc., permittee of Station WBOD-FM, Canton, Illinois, proposes to substitute Channel 247B1 for Channel 265A and to modify its Class A construction permit accordingly. The second petition, filed by Petaz Communications, Inc., licensee of Station WGLO(FM), Pekin, Illinois, proposes to modify its Class A license to a Class B1 facility by substituting Channel 238B1 for Channel 237A at Pekin. Petitioner also requests substitution of channel 247B1 for unused Channel 239A at Farmington, Illinois, to accommodate its proposal. Interested parties are requested to submit gain area showings for their respective proposals.

DATES: Comments must be submitted on or before March 24, 1987, and reply comments on or before April 8, 1987.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Richard J. Hayes, Jr. 1359 Black Meadow Road, Spotsylvania, Virginia 22553 (Counsel for Metrocom Communications Corporation, Inc.); John F. Garziglia, Pepper and Corazzini, 200 Montgomery Building, 1776 K Street, NW., Washington, 20006 (Counsel for Petaz Communications, Inc.)

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-489 adopted December 16, 1986 and released January 28, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW. Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch Mass Media Bureau.

[FR Doc. 87-2389 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-491, RM-5396, RM-5557]

Radio Broadcasting Services; St. James and Blue Earth, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two separate conflicting petitions for rule making. The first petition, filed by Rogers Broadcasting, Inc., proposes the substitution of FM Channel 283C2 for Channel 285A at St. James, Minnesota, and modification of the license of Station KXAX, to specify operation on Channel 283C2. The second petition, filed by Minn-Iowa Christian Broadcasting Inc., requests the substitution of Channel 283C2 for Channel 265A at Blue Earth, Minnesota, and modification of its license for Station KJLY(FM), to reflect the Class C2 channel. The allotment could provide either community with its first wide area coverage channel. There is a site restriction 29.5 kilometers south of St. James, Minnesota, for the allocation of Channel 283C2 at that community. In comments, parties should compare the gain area provided by each proposal including the population and area with expanded service.

DATES: Comments must be filed on or before March 23, 1987, and reply comments on or before April 7, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Rogers Broadcasting, Inc., Station KXAX, P.O. Box 465, St. James, Minnesota 56081; Mark E. Fields, Miller & Fields, P.C. P.O. Box 33003, Washington, DC 20033 (Counsel for Station KXAX); and Susan Wing, Marissa G. Repp, Hogan & Hartson, 815 Connecticut Ave., NW., Washington, DC 20006-4072 (Counsel for Minn-Iowa Christian Broadcasting, Inc.)

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-491, adopted December 5, 1986, and released January 21, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedngs, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filling procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2391 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-202; RM-5266]

Radio Broadcasting Services; Penacook, NH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of petition.

SUMMARY: This document denies the request of Harvest Broadcasting Services to allocate Ch. 227A to Penacook, New Hampshire, upon a finding that the area is not a "community" for allotment purposes. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-202, adopted December 5, 1986, and released January 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transportation Service, (202) 857-3800, 2100 M Street, NW. Suite 140, Washington, DC 20037.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2370 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-07-M

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47 CFR Part 73

[MM Docket No. 86-514, RM-5571]

Radio Broadcasting Services; Jackson, NH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes the allocation of Channel 258A to Jackson, NH, as the community's first local FM service, at the request of Michael J. Osborne. Channel 258A can be allocated in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. Canadian concurrence is required since Jackson is located within 320 kilometers of the U.S.-Canadian border.

DATES: Comments must be filed on or before March 27, 1987, and reply comments on or before April 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Michael J. Osborne, 6 Rice Street, Natick, Massachusetts 01760 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-514, adopted December 24, 1986, and released January 26, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is

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no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–2392 Filed 2–4–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–515, RM–5539]

Radio Broadcasting Services; Perry, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by The Andover Corporation to allocate Channel 286A to Perry, Oklahoma, as the community's first local FM service. The channel can be allocated in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.5 kilometers (2.2 miles) southwest to avoid a short-spacing to Station KXLK, Channel 287, Haysville, Kansas.

DATES: Comments must be filed on or before March 27, 1987, and reply comments on or before April 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: B. Jay Baraff, Esq., Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street, NW., Suite 203, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–515, adopted December 24, 1986, and released January 26, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–2393 Filed 2–4–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–512, RM–5563]

Radio Broadcasting Services; Monterey, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by First Media of Monterey Inc., proposing the substitution of Channel 295C2 for Channel 296A at Monterey, Tennessee, and modification of the permit of Station WRJT(FM), Monterey, to specify operation on Channel 295C2, as that community's first wide coverage area FM service.

DATES: Comments must be filed on or before March 27, 1987, and reply comments on or before April 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Kirk Tollett, Vice-President, First Media of Monterey Inc., WRJT Building, P.O. Box 187, Monterey, TN 38574.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–512, adopted December, 24, 1986 and released January 26, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–2394 Filed 2–4–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–234; RM–5263]

Radio Broadcasting Services; Del Rio, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a petition filed by Forum Broadcasting, Inc., proposing the substitution of Channel 234C2 for Channel 232A at Del Rio, Texas and modification of the license of Station KLKE (FM), Channel 232A to specify operation on the new channel. This action is taken at the request of the petitioner. The counterproposal filed by Elena Mendoza requesting Channel 234C2 for allotment to Brackettville, Texas is denied. With this action, this proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–234, adopted December 24, 1986, and released January 26, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–2395 Filed 2–4–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–486, RM–5536]

Radio Broadcasting Services; Delta, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Glen S. Gardner proposing the allotment of Channel 239C1 to Delta, UT, as that community's first FM service. A site restriction of 11.7 kilometers (7.3 miles) south of the community is required.

DATES: Comments must be filed on or before March 24, 1987, and reply comments on or before April 8, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Glenn S. Gardner, c/o Vir James P.C., Broadcast Engineering Consultants, 3137 W. Kentucky Avenue, Denver, Co. 80219; and Glen S. Gardner, 781 N. Valley View Dr. #28, St. George, Utah 84770.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–486 adopted December 16, 1986 and released January 28, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–2396 Filed 2–4–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[Docket No. 86–490, RM–5517]

Radio Broadcasting Services; Sauk City, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Madison Radio, Ltd., licensee of Station WSEY(FM), Channel 244A, Sauk City, Wisconsin, proposing the substitution of Channel 242B1 for Channel 244A and modification of its license to specify the new channel. The proposal could provide a first wide area coverage station at Sauk City.

DATES: Comments must be filed on or before March 23, 1987, and reply comments on or before April 7, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Dan Dobrowolski, General Manager Madison Radio, Ltd., P. O. Box 566, Middleton, WI 53562 (petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawling, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rules Making, MM Docket No. 86–490, adopted December 16, 1986 and released January 21, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, MW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–2397 Filed 2–4–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–101; RM–5114; RM–5455]

Television Broadcasting Services; Anniston, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: Proposals to assign VHF television Channel 4 to Anniston, Alabama, in response to separate petitions filed by Contemporary Communications and Jacksonville State

University, are denied for failure to

Notices

released January 22, 1987. The full text

University, are denied for failure to provide city grade coverage as required by § 73–685(a) of the Commission's Rules. With this action, this proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–101, adopted December 5, 1986 and released January 26, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–2398 Filed 2–4–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86–493, RM–5525]

Television Broadcasting Services; Anchorage and Seward, AK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by the University of Alaska seeking the reassignment of VHF television Channel 9 from Seward to Anchorage, Alaska, and the reservation of the channel for noncommercial educational use.

DATES: Comments must be filed on or before March 23, 1987, and reply comments on or before April 7, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Joseph A. Godles, Esq., Goldberg & Spector, 1229–19th Street NW., Washington, DC 20036, (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, (202) 634–6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–493, adopted December 10, 1986, and released January 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–2399 Filed 2–4–87; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 52, No. 24
Thursday, February 5, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Documentation of Categorical Exclusion; Wild and Scenic River Boundary Adjustment, Middle Fork of the Feather River, Plumas National Forest

A boundary adjustment in the Middle Fork of the Feather Wild and Scenic River will allow a land sale under the small Tracts Act to resolve an innocent trespass. The boundary adjustment will remove 5 acres from the Recreation Zone of the Wild and Scenic River. This parcel is adjacent to a residential subdivision and has been innocently encroached upon by subdivision lot owners because of an erroneous private survey.

This action will become final upon publication in the **Federal Register.**

The **Federal Register,** Volume 45, No. 135, Friday July 11, 1980, page 46835, is corrected and amended as follows:

River Area Discription, Mount Diablo Meridian, California T.22N., R.13E., M.D.M

Section 10: Delete entire present description; insert the following:

Section 10: NW1/4, W1/2SW1/4; Excepting Therefrom, the E1/2E1/2E1/2E1/2E1/2NW1/4.

For further information, contact: Regional Forester, Pacific Southwest Region, 630 Sansome Street, San Francisco, California 94111.

R.E. Greffenius,

Acting Regional Forester.

[FR Doc. 87–2314 Filed 2–4–87; 8:45 am]

BILLING CODE 3410–11–M

Environmental Statements; Tonto National Forest, Maricopa County, AZ; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will publish an environmental impact statement for a proposal to permit the construction of a new County highway connecting the northeast portion of Scottsdale, Arizona with State Highway 87. The Forest Service will be the lead agency. The consulting firm of Dames and Moore will prepare the statement. However, the Forest Service will furnish guidance and participate in the preparation of the statement, independently evaluate the statement prior to its approval, and take responsibility for the scope and content of the statement.

The Tonto National Forest Land and Resource Management Plan has been approved and implemented. One of the management decisions in the plan was to study the proposed extension of Rio Verde Drive across the Tonto National Forest to State Highway 87.

A range of alternative locations for construction of a new highway will be considered. Extension of Rio Verde Drive across the Tonto National Forest will require examining the effects on the Tonto National Forest Plan. A Plan Amendment may be required.

Federal, State, and local agencies; and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process.

This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

Public meetings for identification of potential issues will be held locally during the spring of 1987. The exact time and locations will be published in advance.

Sotero Muniz, Regional Forester, Southwest Region, Albuquerque, New Mexico, is the responsible Official.

The analysis is expected to take about 20 months. The draft environmental statement should be available for public review by March 1, 1988. The final environmental impact statement is scheduled to be completed by October 15, 1988.

Written comments and suggestions concerning the analysis should be sent to James L. Kimball, Forest Supervisor, Tonto National Forest, P.O. Box 5348, Phoenix, Arizona 85010, by March 16, 1987.

Questions about the proposed action and environmental impact statement should be directed to Larry Soehlig, Lands Staff Officer, Tonto National Forest, phone (602) 225–5270.

Dated: January 28, 1987.

James L. Kimball,

Forest Supervisor.

[FR Doc. 87–2322 Filed 2–4–87; 8:45 am]

BILLING CODE 3410–11–M

Florida National Scenic Trail Advisory Council; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Florida National Scenic Trial Advisory Council will be held at 9:00 a.m. on Saturday, February 28, 1987, at the Avon Park Air Force Range, ten miles east of Avon Park, Florida.

The purpose of the Florida National Scenic Trail Advisory Council is to advise the Secretary of Agriculture on all matters of planning, management and development of the Florida National Scenic Trail. The agenda will include discussion of management organizational strategies to implement the Florida National Scenic Trail Comprehensive Plan.

The meeting will be open to the public; however, facilities and space for accommodating the public are limited. Any member of the public may file with the Council a written statement concerning the matters to be discussed.

Persons wishing further information concerning the meeting or who wish to submit written statements may contact Laurence G. Kolk, Recreation Staff Officer, USDA-Forest Service, National Forest in Florida, 227 North Bronough Street, Tallahassee, Florida 32301, Telephone 904/681–7265. Minutes of the meeting will be available for public inspection at the above address approximately four weeks after the meeting.

Issued in Tallahassee, Florida, on January 29, 1987.

T.F. Thomas, Jr.,

Acting Forest Supervisor.

[FR Doc. 87–2311 Filed 2–4–87; 8:45 am]

BILLING CODE 3410–11–M

Domestic Livestock Grazing Fees

AGENCY: Forest Service, USDA.

ACTION: Notice of 1987 grazing fees.

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SUMMARY: The fee for grazing livestock on certain specified National Forest System lands in the 16 contiguous Western States will be $1.35 per animal month for the 1987 grazing year.

EFFECTIVE DATE: March 1, 1987.

FOR FURTHER INFORMATION CONTACT: Robert M. Williamson, Director, Range Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20013–6090, (703) 235–8139.

SUPPLEMENTARY INFORMATION: Grazing fees for the use of the National Forests and Land Utilization Projects in the 16 Western States, and the Crooked River and Curlew National Grasslands are established and collected annually by the Forest Service under the authority of the Organic Act of June 4, 1897, (16 U.S.C. 473–475, 477–482, 551), the Bankhead-Jones Farm Tenant Act of July 22, 1937 (7 U.S.C. 1010–1012), and Executive Order 12548 of February 14, 1986. The 16 contiguous Western States are Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming. The agency will issue bills to permittees in accordance with the rate prescribed in this notice.

In giving this notice, the Forest Service also wants to inform the public, and grazing permittees in particular, that the legality of the fee formula under which the 1987 grazing fee is calculated is being challenged in an action pending in the United States District Court for the Eastern District of California. *Natural Resources Defense Council, et al.* v. *Donald P. Hodel as Secretary of the United States Department of the Interior and Richard E. Lyng as Secretary of the United States Department of Agriculture*, Civ. No. CIV–S–86–0548 EJG EM. Should disposition of this litigation require change in the fee formula or in rates for the 1987 grazing year, the Forest Service will give timely notice of such changes in the **Federal Register**.

Dated: January 29, 1987

F. Dale Robertson,

Associate Chief.

January 29, 1987.

[FR Doc. 87–2339 Filed 2–4–87; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Environmental Statements; Central Regional Critical Area Treatment (CAT) RC&D Measure, New Jersey

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Central Regional Critical Area Treatment (CAT) RC&D Measure, Ocean County, New Jersey.

FOR FURTHER INFORMATION CONTACT: Joseph C. Branco, State Conservationist, Soil Conservation Service, 1370 Hamilton Street, Somerset, New Jersey 08873, telephone (201) 246–1662.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Joseph C. Branco, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns are critical erosion on school property and safety. The planned works of improvement include the construction of a diversion, 2 pipe outlet drop structures, timber and gravel walkway, gravel access road, grading and revegetation.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Joseph C. Branco.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local official)

Dated: January 28, 1987.

Joseph C. Branco,

State Conservationist.

[FR Doc. 87–2313 Filed 2–4–87; 8:45 am]

BILLING CODE 3410–16–M

Wills Creek Watershed, OH; Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Wills Creek Watershed, Guernsey, Belmont, Noble, and Muskingum Counties, Ohio.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, 200 North High Street, Columbus, Ohio, 43215, telephone 614–469–6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood control. The planned works of improvement include 0.89 miles of diking, a flood warning system, and 0.93 miles of channel modification.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administration action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: January 27, 1987.

Harry W. Oneth,

State Conservationist.

[FR Doc. 87–2413 Filed 2–4–87; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–423–603]

Preliminary Affirmative Countervailing Duty Determination; Industrial Phosphoric Acid From Belgium

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Belgium of industrial phosphoric acid. The estimated net subsidy is 0.65 percent *ad valorem*. In addition, we preliminarily determine that "critical circumstances" do not exist in this case.

We have notified the U.S. International Trade Commission (ITC) of our determinations. We are directing the U.S. Customs Service to suspend liquidation of all entries of industrial phosphoric acid from Belgium that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond or entries of this product in an amount equal to the estimated net subsidy as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make our final determination by April 14, 1987.

EFFECTIVE DATE: February 5, 1987.

FOR FURTHER INFORMATION CONTACT: Alain Letort of Mark Linscott, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202/377–0186 (Letort) or 202/377–1174 (Linscott).

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters of industrial phosphoric acid in Belgium. For purposes of this investigation, the following programs are found to confer subsidies to manufacturers, producers, or exporters of industrial phosphoric acid in Belgium:

- Capital Grants and Interest Rate Reductions
- Exemptions from Real Property Taxes

We determine the estimated net subsidy to be 0.65 percent *ad valorem* for all manufacturers, producers, or exporters of industrial phosphoric acid in Belgium.

Case History

On November 5, 1986, we received a petition in proper form filed by the FMC Corporation, of Philadelphia, Pennsylvania, and the Monsanto Company, of Saint Louis, Missouri, on behalf of the U.S. industry producing industrial phosphoric acid.

In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Belgium of industrial phosphoric acid receive, directly or indirectly, subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

In addition, the petition alleges that "critical circumstances," as defined in section 703(e)(1) of the Act, exist in this case. We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on November 25, 1986, we initiated such an investigation (51 FR 43761, December 4, 1986). We stated that we expected to issue a preliminary determination by January 29, 1987.

Since Belgium is a "country under the Agreement" under section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Belgium materially injure, or threaten material injury to, a U.S. industry. Therefore, we notified the ITC of our initiation. On December 22, 1986, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Belgium of industrial phosphoric acid (52 FR 612, January 7, 1987).

On December 5, 1986, we presented a questionnaire to the government of Belgium in Washington, DC, concerning the petitioners' allegations, and requested a response by January 5, 1987. On December 22, 1986, and again on January 7, 1987, upon request of respondents, we granted additional time to submit responses. On January 20, 1987, we received responses to our questionnaire from the government of Belgium, the Société Régionale d'Investissement de Wallonie (SRIW), which is an agency of the regional government of Wallonia, and from the Société Chimique Prayon-Rupel S.A. (SCPR), which is the only known producer and exporter of industrial phosphoric acid in Belgium.

Scope of Investigation

The product covered by this investigation is industrial phosphoric acid, which is currently provided for in item 416.30 of the *Tariff Schedules of the United States* (TSUS).

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order" (49 FR 18006, April 26, 1984).

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final detemination.

For purposes of this preliminary determination, the period for which we are measuring subsidization ("the review period") is calendar year 1985, which coincides with SCPR's fiscal year. In their responses, the government of Belgium, SRIW, and SCPR provided data, including financial statements, for the applicable period.

Based upon our analysis of the petition and the responses to our questionnaire, we preliminarily determine the following:

I. Programs Preliminarily Determined to Confer a Subsidy

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters

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of industrial phosphoric acid in Belgium under the following programs.

A. Programs Created by the 1970 Economic Expansion Law (EEL)

Under the Economic Expansion Law (EEL) of December 30, 1970, the Belgian government offers incentives to promote sectoral and technological development in designated development areas and in adjoining industrial sites. The provisions of the EEL are implemented and administered by regional authorities. Under the EEL the following benefits may be provided: Capital grants or interest rate reductions; loan guarantees; accelerated depreciation; real property, capital registration and capital gains tax exemptions; contractual aid and employment premiums. Companies which invest in development areas and which contribute directly to the creation, extension or conversion of industrial and service-related establishments pursuant to the general economic interest of the country are eligible to participate in these programs.

1. *Capital Grants and Interest Rate Reductions.* Companies which finance qualifying investments under the EEL through approved credit institutions may receive up to a seven percent reduction in the interest rate payable on 75 percent of the total cost of investment, so long as the effective rate does not fall below one percent per annum.

For those companies which finance at least 50 percent of the investment from their own funds, the interest rate reduction may be wholly or partly replaced by a nonrefundable capital grant of an equivalent amount. Because benefits received under this federal program are limited to companies within certain regions, we preliminarily determine the capital grants to be countervailable.

SCPR'S plant at Puurs, the only plant producing industrial grade phosphoric acid for sale to all markets, is not located in a development area and has never received benefits under this program. According to the responses, SCPR's plant at Engis was located in a development area and received two capital grants in 1985. All of the Engis plant's production of industrial phosphoric acid is for captive use (*i.e.*, it is consumed internally by SCPR to manufacture other products). Although industrial phosphoric acid produced by the Engis plant is not currently sold to any market, we find no evidence in the responses that industrial phosphoric acid produced at Engis differs in any respect from that produced at Puurs, nor any evidence that industrial phosphoric acid produced in the Engis plant could not be exported to the United States. Accordingly, to the extent that SCPR's production of industrial phosphoric acid has benefited under this program, regardless of the fact that benefits were conveyed to the Engis plant rather than to the Puurs plant, we find that these benefits accure to all production of industrial phosphoric acid.

To calculate the benefits, we allocated the grants received in 1985 over ten years, which is the average useful life of renewable physical assets in the chemical manufacturing industry, as determined under the U.S. Internal Revenue Service's Asset Depreciation Range System. Because SCPR obtained no new loans during the year in which it received the grants, we used as our discount rate the average rate charged by commercial banks in Belgium to their prime borrowers in 1985. Applying the grant methodology and dividing by the f.o.b. value of total sales by SCPR during the review period, we calculated an estimated net subsidy of 0.54 percent *ad valorem*.

2. *Exemption from Real Property Tax.* Companies which make qualifying investments pursuant to the EEL in designated development areas may be exempted from national, provincial and local real property taxes for a period of up to five years. Because benefits received under this federal program are limited to companies within certain regions, we preliminarily determine real property tax exemptions to be countervailable.

Due to its location in a development area, SCPR's plant at Engis has been exempt from paying a combined real property tax rate of 37.9 percent for investments it has made in Engis. To the extent that SCPR's production of industrial phosphoric acid has benefited under this program, regardless of the fact that benefits were conveyed to the Engis plant rather than to the Puurs plant, we find these benefits to accure to all production of industrial phosphoric acid.

To calculate the benefits, we divided the amounts reported in the responses as exempted in 1985 by the f.o.b. value of total sales by SCPR during the review period. Using our usual tax methodology, the benefit would be that amount reported in the tax return filed during the review period. According to SCPR's response, the government does not notify the taxpayer of its real property tax liability until the year following the year covered by the tax liability. Because we did not have the tax exemption for the 1984 tax liability, which would have been actually reported by government tax authorities during the review period in 1985, we have used as best information available, the exemption for the 1985 tax liability reported in 1986. Using this methodology, we calculated an estimated net subsidy of 0.11 percent *ad valorem*.

The remaining benefits under the EEL are discussed in the "Programs Preliminarily Determined Not to Be Used" section of this notice.

II. Programs Preliminarily Determined not to Confer a Subsidy

We preliminarily determine that subsidies are not being provided to manufacturers, producers, or exporters of industrial phosphoric acid in Belgium under the following programs.

A. Investment in SCPR by SRIW

Petitioners allege that the Société Régionale d'Investissement de Wallonie (SRIW), an agency of the regional government of Wallonia, played a crucial role in liquidating the former holding company Société de Prayon (SP) and its manufacturing subsidiary Société Industrielle de Prayon (SIP), and reorganizing them into the Société Chimique Prayon-Rupel S.A. (SCPR), the current producer and exporter in Belgium of the subject merchandise. Petitioners further allege that SRIW's equity investment in SCPR was made on terms inconsistent with commercial considerations.

In its response, SRIW states that it carries out two types of activities: (1) Equity investments made on behalf of and under the direction of the regional government of Wallonia with funds transferred to it by that government; and (2) equity investments aimed at promoting the economy of the region, made with SRIW's own funds, without any direction, advice, or prior approval from the regional government of Wallonia or the government of Belgium. SRIW's investment in SCPR falls into the second category. Under the law of April 2, 1962, governing regional investment companies, SRIW is required to seek a "normal return" on the second category of investments and to apply rules of "sound management." In order to avoid confusion between the two types of investments, SRIW set up in 1985 a wholly owned subsidiary called SOWAGEP, whose purpose is to act, in lieu of SRIW, as a representative of the regional government of Wallonia with respect to investments by that government.

With respect to SRIW's investment in SCPR, SRIW and SCPR state that SCPR is not SP or SIP reorganized, but rather a separate firm. According to the responses, SP and SIP filed for bankruptcy in 1981 under normal Belgian procedures comparable to Chapter XI proceedings in the United States. After SP and SIP were placed in receivership, SRIW formed a joint venture with a private Belgian industrial consortium, a Moroccan phosphate company, and a private French engineering firm. This joint venture was named Société Chimique Prayon-Rupel S.A. (SCPR). SCPR then purchased certain assets of the former SP and SIP from the court-appointed receiver.

In order to determine whether SRIW's equity investment in SCPR was made on terms inconsistent with commercial considerations, we analyzed the terms of this investment in light of normal commercial practices. We do not find this transaction inconsistent with commercial considerations for the following reasons.

First, SRIW is only a minority shareholder in SCPR. SRIW purchased its equity in SCPR on the same terms and conditions, at the same price, and at the same time as the private shareholders, which constitutes a *prima facie* indication that SRIW's investment was consistent with commercial considerations.

Second, at the time the joint venture was set us (late in 1981), the shareholders in the joint venture had every expectation that SCPR would return a profit, as evidenced by the shareholders' agreement which shows SCPR's anticipated stream of profits and rates of return on equity. SCPR purchased only those assets of SP and SIP it believed could return a profit, *i.e.*, the plants at Engis and Puurs. The sizable share of foreign and private investment in the joint venture is another indication of anticipated profitability.

Third, SRIW states that its investment in SCPR was made with its own funds, and not at the direction of the regional government of Wallonia. As noted above, where SRIW makes an equity investment with its own funds, it is required by law to obtain a "normal return" on its investment.

For the reasons stated above, we preliminarily determine that SRIW's investment in SCPR was not made on terms inconsistent with commercial considerations, and, therefore, does not confer a subsidy on industrial phosphoric acid from Belgium.

B. 1985 Equity Infusion by SRIW into SCPR

Petitioners allege that SCPR's capital stock increase by its shareholders in 1985 was inconsistent with commercial considerations because the company was clearly not an attractive investment opportunity at that time.

In order to determine whether the 1985 equity infusion was made on terms inconsistent with commercial considerations, we followed the same methodology as for the original equity investment into SCPR and analyzed this infusion in light of normal commercial practices. We do not find this transaction inconsistent with commercial considerations because (1) SCPR's private shareholders also contributed to the increase in capital stock on the same terms and conditions as SRIW, which constitutes a *prima facie* indication that SRIW's investment was consistent with commercial considerations, and (2) SCPR reported profits in each of the three years preceding the 1985 equity infusion.

Accordingly, we preliminarily determine that SRIW's equity infusion into SCPR in 1985 does not confer a subsidy on industrial phosphoric acid from Belgium.

III. Programs Preliminarily Determined not to be Used

We preliminarily determine that the following programs were not used by the manufacturers, producers, or exporters of industrial phosphoric acid in Belgium during the review period.

A. Preferential Loans

Petitioners allege that SCPR may have benefited from loans made on terms inconsistent with commercial considerations by the Société Nationale de Crédit à l'Industrie (SNCI), which is a primary government-controlled lender to industrial and commercial enterprises in Belgium. In its response, SCPR states that it has never applied for nor received loans from SNCI.

B. Employment-Based Benefits

Petitioners allege that SCPR may have received funds for employee training programs and other employment-based benefits from the Office National de l'Emploi. In its response, SCPR states that it has never applied for nor received such benefits.

C. Programs Created by the 1970 Economic Expansion Law (EEL)

1. *Loan Guarantees.* The government may gurantee loans made or bonds issued for the financing of investments which realize the objectives set forth in the EEL. If a loan was not granted by a public credit organization, or if a bond was not acquired or subscribed by a public-sector institution, the guarantee is limited to 75 percent of the amount due after realization of any collateral security. According to the responses, SCPR received no guarantees under this program.

2. *Accelerated Depreciation.* Companies qualified for governmental aid under the EEL may depreciate investments in plants, equipment and industrial buildings at double the rate allowed for normal straight-line depreciation. Accelerated depreciation benefits may be utilized for three successive tax periods, to be agreed upon and embodied in an aid contract. According to the responses, SCPR has not claimed accelerated depreciation under this program.

3. *Exemption from Capital Registration Tax.* Subscriptions or contributions to the capital of companies vested with legal personality and incorporated to act in accordance with the intentions of the EEL are exempted from payment of the capital registration tax. According to the responses, SCPR received no exemptions under this program.

4. *Employment Premiums.* Investments made pursuant to the EEL that create new jobs in development areas entitle the employer to a non-repayable grant. The magnitude of payment varies according to the number of jobs created. According to the responses, SCPR received no employment premiums under this program.

5. *Contractual Aid.* The EEL provides aid in the form of contracts awarded to firms making investments that promote economic, technological, industrial and/or commercial development within development areas. Specific types of aid include progress contracts, administrative promotion contracts, technological promotion contracts and contracts for the conversion or restructuring of operations. According to the responses, SCPR was awarded no contracts under this program.

6. *Exemption from Capital Gains Tax.* Capital gains invested in development areas under the EEL are exempt from the Belgium capital gains tax, if invested within a year following the close of the tax year in which the gain is realized. According to the responses, SCPR received no capital gains tax exemptions under this program.

D. Operating Subsidies

Petitioners allege that SCPR's annual reports for 1984 and 1985 show that the company received certain unspecified "operating subsidies." In its response, SCPR states that the "operating subsidies" in question consisted of certain research and development grants awarded by IRSIA, an agency of the government of Belgium, for

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laboratory research wholly unrelated to industrial phosphoric acid. Because these grants did not benefit the production of industrial phosphoric acid, we preliminarily determine that these grants were not used in this case.

Critical Circumstances

Petitioners allege that "critical circumstances" exist with respect to imports of industrial phosphoric acid from Belgium. Under section 703(e)(1) of the Act, critical circumstances exist when the Department has a reasonable basis to believe or suspect that (1) the alleged subsidy is inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code), and (2) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Section 355.29(a) of the Commerce Regulations [19 CFR 355.29(a)] on critical circumstances provides, *inter alia*, that we will determine "whether the alleged subsidy is an *export* subsidy inconsistent with the Agreement" (emphasis added). Thus, under existing regulations, a subsidy may be viewed as inconsistent with the Agreement only if it is an export subsidy.

Based upon our analysis, no export subsidies inconsistent with the Subsidies Code are being bestowed upon industrial phosphoric acid from Belgium. Therefore, we do not need to address the issue of whether there have been massive imports of industrial phosphoric acid from Belgium over a relatively short period. Accordingly, we preliminarily determine that "critical circumstances" do not exist with respect to industrial phosphoric acid from Belgium.

Verification

In accordance with section 776(a) of the Act, we will verify the data used in making our final determination. We will not accept any statement in a response that cannot be verified for our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of industrial phosphoric acid from Belgium which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond equal to 0.65 percent *ad volorem* for each such entry of this merchandise. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(c) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days after the Department makes its final determination.

Public Comment

In accordance with § 355.35 of the Commerce Regulations (19 CFR 355.35) we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination, at 1:00 p.m. on March 3, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within 10 days of the publication of this notice in the **Federal Register**.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of the proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Deputy Assistant Secretary by February 24, 1987. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, all written views will be considered if received not less than 30 days before the final determination is due, or, if a hearing is held, within 10 days after the hearing transcript is available.

This determination is published pursuant to section 703(f) of the Act [19 U.S.C. 1671b(f)].

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

January 29, 1987.

[FR Doc. 87-2235 Filed 2-4-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-508-605]

Preliminary Affirmative Countervailing Duty Determination; Industrial Phosphoric Acid From Israel

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Israel of industrial phosphoric acid. The estimated net subsidy is 6.52 percent *ad valorem* for Negev Phosphates Ltd., 14.83 percent *ad valorem* for Haifa Chemicals Ltd., and 7.14 percent *ad valorem* for all other manufacturers, producers, or exporters in Israel of industrial phosphoric acid. In addition, we preliminarily determine that critical circumstances do not exist in this case.

We have notified the U.S. International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to suspend liquidation of all entries of industrial phosphoric acid from Israel that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and to require a cash deposit or bond on entries of the subject merchandise in an amount equal to the estimated net subsidy as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make our final determination by April 14, 1987.

EFFECTIVE DATE: February 5, 1987.

FOR FURTHER INFORMATION CONTACT: David Levine or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202/377-1673 (Levine), 202/377-0161 (Taverman).

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Israel of industrial phosphoric acid. For purposes of this investigation, the following programs are found to confer subsidies to manufacturers, producers, or exporters of industrial phosphoric acid in Israel:

- Investment Grants under the Encouragement of Capital Investments Law (ECIL)
- Long-Term Development Loans under the ECIL
- Bank of Israel Export Production Fund loans
- Bank of Israel Export Shipment Fund Loans
- Bank of Israel Imports-for-Export Fund Loans
- Exchange Rate Risk Insurance Scheme

Case History

On November 5, 1986, we received a petition in proper form filed by the FMC Corporation, of Philadelphia, Pennsylvania, and the Monsanto Company, of Saint Louis, Missouri, on behalf of the U.S. industry producing industrial phosphoric acid.

In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Israel of industrial phosphoric acid receive, directly or indirectly, subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry. In addition, the petition alleges that "critical circumstances," as defined in section 703(e)(1) of the Act, exist in this case. We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on November 25, 1986, we initiated such an investigation (51 FR 43761, December 4, 1986). We stated that we expected to issue a preliminary determination by January 29, 1987.

Since Israel is a "country under the Agreement" under section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Israel materially injure, or threaten material injury to, a U.S. industry. Therefore, we notified the ITC of our initiation. On December 22, 1986, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Israel of industrial phosphoric acid (52 FR 612, January 7, 1987).

On December 8, 1986, we presented a questionnaire to the Government of Israel in Washington, DC concerning the petitioners' allegations, and requested a response by January 5, 1987. On December 30, 1986, upon request of respondents, we granted additional time to submit responses. On January 12, 1987, we received responses to our questionnaire from the Government of Israel and from Negev Phosphates Ltd. (Negev).

We did not receive a response from Haifa Chemicals Ltd. (Haifa), although it is a producer and exporter of industrial phosphoric acid. For purposes of this preliminary determination, we therefore applied the best information available to derive an estimated countervailing duty rate for Haifa. As best information available, we used the subsidy rates for particular programs found in our most recent final affirmative countervailing duty determination for an industrial product from Israel *(Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Israel (OCTG)* (52 FR 1649, January 15, 1987)), or the rate found for Negev, whichever was greater. Because Haifa did not respond, we preliminarily determine that a significant difference exists in the estimated net subsidies for the two companies. We therefore found company-specific rates for Haifa and Negev, and derived a weighted average for the "all other" company rate for industrial phosphoric acid from Israel.

Scope of Investigation

The product covered by this investigation is industrial phosphoric acid, which is currently provided for in item 416.30 of the *Tariff Schedules of the United States* (TSUS).

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

For purposes of this preliminary determination, the period for which we are measuring subsidization ("the review period") is April 1, 1985 through March 31, 1986, the fiscal year for the companies under investigation. In their responses, the Government of Israel and Negev provided data, including financial statements, for the applicable period.

Based upon our analysis of the petition and the responses to our questionnaire, we preliminarily determine the following:

I. Programs Preliminarily Determined to Confer Subsidies

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters of industrial phosphoric acid in Israel under the following programs.

A. The Encouragement of Capital Investments Law (ECIL)

The purpose of the ECIL is to attract capital to Israel. In order to be eligible to receive various benefits under the ECIL, including investment grants, long-term industrial development loans, accelerated depreciation, and reduced tax rates, the applicant must obtain approved enterprise status.

Approved enterprise status is obtained after review of information submitted to the Israel Ministry of Industry and Trade, Investment Center Division. The amount of the benefits received by approved enterprises depends on the geographic location of the eligible enterprise. For purposes of the ECIL, Israel is divided into three zones—Development Zone A, Development Zone B, and the "central area"—each with a different funding level.

1. *Investment Grants.* According to the responses, only investment projects outside the central area are eligible to receive investment grants since 1978. Because the grants are limited to enterprises located in specific regions, we preliminarily determine that they constitute subsidies within the meaning of the Act. Since 1975, Negev has been approved to receive grants for two projects.

To calculate the benefit, we allocated these grants over 10 years (the average useful life of assets in the chemical manufacturing industry, as determined under the U.S. Internal Revenue

Service's Asset Depreciation Range System). Usually, to allocate benefits over time we use as our discount rate the firm's weighted cost of capital, which is an average of the company's marginal costs of debt and equity for the year in which the terms of the grant were approved. However, we were unable to calculate a weighted cost of capital for Negev because there is no fixed rate long-term borrowing in Israel. Therefore, in order to reflect most accurately the benefit to Negev over time, we have used a variable discount rate to allocate the grant benefits.

To calculate the grant allocation amount for the review period, we applied the grant methodology outlined in the Subsidies Appendix, using as our variable discount rate the national average short-term borrowing rate for new Israeli shekels (NIS) in the review period, as determined by the Bank of Israel, adjusted for inflation. We divided by the value of total sales during the review period to calculate an estimated net subsidy for Negev of 2.1 percent *ad valorem*. As best information available, we preliminarily determine that the estimated net subsidy for Haifa also is 2.1 percent *ad valorem*.

2. *Long-Term Industrial Development Loans.* Prior to July 1985, approved enterprises were eligible to receive long-term industrial development loans funded by the Government of Israel. These loans were disbursed through the Industrial Development Bank of Israel (IDBI) and other industrial development banks associated with each commercial bank in Israel.

We stated in *OCTG* that the Government of Israel did not provide us with sufficient information concerning selection criteria for approved enterprises under ECIL, the criteria for receiving industrial development loans under ECIL, or the distribution of loans under the program. Although we asked for explanations of these elements in our questionnaire for the instant case, the responses did not provide sufficient clarification. Therefore, we preliminarily determine that the loans are limited to a specific enterprise or industry, or group of enterprises or industries, and are countervailable if they were provided on terms inconsistent with commercial considerations.

The supplemental response of Negev indicates that the company had loans under this program outstanding during the review period for projects at five of its plants, one of which produces an input for the subject product. The loans provided for this plant were linked to the U.S. dollar and were not on terms inconsistent with commercial considerations; *i.e.*, interest paid on the loans was not less than what would have been paid at our benchmark rate for these loans (the dollar-linked variable short-term rate adjusted for exchange rate fluctuation). Therefore, we preliminarily determine that Negev received no countervailable benefits under this program. As best information available, we preliminarily determine the estimated net subsidy for Haifa to be 5.02 percent *ad valorem*, based on *OCTG*.

B. Bank of Israel Export Loans

The Government of Israel provides preferential financing to manufacturers, producers, or exporters in Israel of industrial phosphoric acid through three export credit funds administered by the Bank of Israel (BOI).

1. *Export Production Fund (EPF).* Under the EPF, three-month loans are provided to exporters to finance export production. The amount which a company is able to borrow under this program is limited by a quota set by the BOI. The quota is based on the value of the company's exports, the product's value-added percentage, and the production cycle of the company. During the review period, Negev received loans denominated in NIS under this program.

Because only exporters are eligible for these loans, we preliminarily determine that they are countervailable to the extent that they are provided at preferential rates. We used as our benchmark the national average non-directed short-term NIS lending rate in the review period, to be published in the 1986 BOI Annual Report,[1] adjusted for inflation. Comparing this benchmark to the interest rates charged on these loans, we preliminarily determine that the loans were provided at preferential rates and are, therefore, countervailable.

To calculate the benefit from these loans, we allocated the interest savings over total exports during the review period, because Negev did not segregate loans provided for industrial phosphoric acid from loans for other products. We thereby calculated an estimated net subsidy of 0.64 percent *ad valorem* for Negev. The estimated net subsidy for Haifa is 2.78 percent *ad valorem*, based on *OCTG*.

2. *Export Shipment Fund (ESF).* Under the ESF, loans are provided to exporters to enable them to extend credit in foreign currency to their overseas customers. Financing is granted on a shipment-by-shipment basis. Funding is provided after shipment of the goods and must be repaid within six months. Because only exporters are eligible for these loans, we preliminarily determine that they are countervailable to the extent that they are provided at preferential rates.

According to its response, Negev received only dollar-denominated loans under the ESF at the interest rate of LIBOR plus two percent. Dollar loans are not otherwise available in Israel, and we were not able to obtain a benchmark interest rate for these loans from independent sources. We therefore used the benchmark applied in our *Final Affirmative Countervailing Duty Determination: Potassium Chloride from Israel (Potash)* (49 FR 36122, September 14, 1984) and *OCTG*, which is the London Interbank Offered Rate *(LIBOR)* plus two percent. Since Negev paid interest on the loans at our benchmark rate, we preliminarily determine that the company received no countervailable benefits under the ESF. The estimated net subsidy for Haifa is 0.002 percent *ad valorem*, based on *OCTG*.

3. *Imports-for-Export Fund (IEF).* Under the IEF, exporters receive loans with a three-month term in order to finance imported materials used for export production. Because only exporters are eligible for these loans, we determine that they are countervailable to the extent that they provided at preferential rates.

According to its response, Negev received dollar-denominated loans under the IEF during the review period. Comparing the benchmark interest rate (LIBOR plus two percent) to the rates charged on these loans, we preliminarily determine that some of the loans were provided at preferential rates and are, therefore, countervailable. To calculate the benefit from these loans, we allocated the interest savings over total exports during the review period, since Negev did not segregate loans for industrial phosphoric acid from loans for other products. We thereby calculated an estimated net subsidy of 0.01 percent *ad valorem* for Negev. The estimated net subsidy for Haifa is 1.16 percent *ad valorem*, based on *OCTG*.

D. Exchange Rate Risk Insurance Scheme

The Exchange Rate Risk Insurance Scheme (EIS), operated by the Israel Foreign Trade Risk Insurance Corporation Ltd. (IFTRIC), is aimed at insuring exporters against losses which result when the rate of inflation exceeds the rate of devaluation and the new Israeli shekel (NIS) value of an

[1] We received this public information during verification for our *Final Affirmative Countervailing Duty Determination: Certain Fresh Cut Flowers from Isreal (Flowers)* (to be published in the **Federal Register** on February 3, 1987). It is contained in Verification Exhibit 20 of the official file (C-508-603).

exporter's foreign currency receivables does not rise enough to cover increases in local costs.

The EIS scheme is optional and open to any exporter willing to pay a premium to IFTRIC. Compensation is based on a comparison of the change in the rate of devaluation of the NIS against a basket of foreign currencies with the change in the consumer price index. If the rate of inflation is greater than the rate of devaluation, the exporter is compensated by an amount equal to the difference between these two rates multiplied by the value-added of the exports. If the rate of devaluation is higher than the change in the domestic price index, however, the exporter must compensate IFTRIC. The premium is calculated on the basis of the value-added of the exports.

In determining whether an export insurance program provides a countervailable benefit, we examine whether the premiums and other charges are adequate to cover the program's long-term operating costs and losses. In *Potash*, we stated that we had insufficient data to determine that the premiums and other charges were manifestly inadequate to cover the program's long-term operating costs and losses. We noted, however, that we were not making a conclusive determination on the program's countervailability at that time. However, in *OCTG* and *Flowers* we found that this program conferred a countervailable benefit on manufacturers, producers, or exporters in Israel of oil country tubular goods and flowers.

In both those cases we reviewed EIS data which showed that EIS operated at a loss from 1981 through 1985. In fact, in the five years of operations, there was only one month when premiums received were greater than compensation paid out. We believe that five years is, in this case, a sufficiently long period to establish that the premiums and other charges are manifestly inadequate to cover the long-term operating costs and losses of the program. Therefore, we preliminarily determine that this program confers an export subsidy on exports of industrial phosphoric acid from Israel.

We calculated the benefit from this program by allocating the amount of compensation Negev received from IFTRIC expressly for industrial phosphoric acid exported to the United States, after deducting premiums paid, over the company's exports of industrial phosphoric acid to the United States during the review period. We thereby found a estimated net subsidy of 3.77 percent *ad valorem* for Negev. As best information available, we preliminarily determine that the estimated net subsidy for Haifa also is 3.77 percent *ad valorem*.

II. Programs Preliminarily Determined Not to be Used

We preliminarily determine that the following programs were not used by manufacturers, producers, or exporters in Israel of industrial phosphoric acid during the review period.

A. Encouragement of Industrial Research and Development Law (EIRD)

Petitioners allege that manufacturers, producers, or exporters in Israel of industrial phosphoric acid may benefit from research and development grants. Negev's response states that the company received no grants for research and development related to its production of industrial phosphoric acid.

B. Foreign Investment Company Benefits

Petitioners allege that under Amendment 15 to the ECIL a "Foreign Investment Company" is entitled to certain grants. Negev's response indicates that the company did not qualify for any benefits under this law.

C. Export Promotion Fund Benefits

Petitioners allege that exporters in Israel may receive benefits under this program. Negev's response indicates that it receives foreign currency loans under this program to establish a Paris office, but that it received no other benefits.

III. Program Preliminarily Determined to be Terminated

We preliminarily determine that the following program has been terminated.

A. Property Tax Exemptions on Buildings and Equipment

Petitioners allege that manufacturers, producers, or exporters in Israel of industrial phosphoric acid may benefit from tax incentives that allow eligible enterprises a five-year exemption from payment of two-thirds of property taxes on buildings and a ten-year exemption for payment of one-sixth of property taxes on equipment. According to the responses and our determinations in *OCTG* and *Potash*, the exemptions were repealed by Amendment No. 17, ECIL, 5738–1979. Also, property taxes on industrial buildings and equipment were repealed for all taxpayers in Israel on April 1, 1981. Property tax exemptions referred to in Section 53 of the ECIL are taxes on apartment buildings in residential areas.

IV. Programs for Which We Need Additional Information

We preliminarily determine that we need additional information in order to analyze accurately the following programs.

A. Preferential Accelerated Depreciation

Under section 42 of the ECIL, a company which has obtained approval enterprise status can choose to depreciate machinery and equipment at double the normal rate and buildings at four times the normal rate. Based on the responses, it is unclear whether Negev used accelerated depreciation under this law, or whether such accelerated depreciation is available to more than a specific enterprise or industry, or group of enterprises or industries. We therefore preliminarily determine that we need additional information to make a determination regarding this program.

B. Other ECIL Tax Benefits

Under Section 47 of the ECIL, a company which has obtained approved enterprise status is eligible for a reduced corporate and income tax rate. For the reasons provided in IV.A. above, we need additional information to make a determination regarding this program.

C. The Encouragement of Industry Law (EIL) Accelerated Depreciation and Further Tax Reductions

Petitioners allege that manufacturers, producers or exporters in Israel of industrial phosphoric acid may receive accelerated depreciation and further tax reductions under the EIL. For the reasons stated in IV.A. above, we need additional information to make a determination regarding this program.

Critical Circumstances

Petitioners allege that "critical circumstances" exist within the meaning of section 703(e)(1) of the Act, with respect to imports of industrial phosphoric acid from Israel. In determining whether critical circumstances exist, we must examine whether there is a reasonable basis to believe or suspect that: (1) The alleged subsidy is inconsistent with the Agreement, and (2) there have been massive imports of the subject merchandise over a relatively short period.

In determining whether imports have been massive over a relatively short period of time, we have considered the following factors: (1) the volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. A review of this information

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indicates that imports from Israel have not been massive over a relatively short period of time.

Since we have not found massive imports over a relatively short period of time, we do not need to consider whether the alleged subsidies are inconsistent with the Agreement. Therefore, we preliminarily determine that critical circumstances do not exist.

Verification

In accordance with section 776(a) of the Act, we will verify the data used in making our final determination. We will not accept any statement in a response that cannot be verified for our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of industrial phosphoric acid from Israel which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond for each such entry of this merchandise equal to 6.52 percent *ad valorem* for Negev Phosphates Ltd., 14.83 percent *ad valorem* for Haifa Chemicals Ltd., and 7.14 percent *ad valorem* for all other companies in Israel.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days after the Department makes its final determination.

Public Comment

In accordance with § 355.35 of the Commerce Regulations (19 CFR 355.35) we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination, at 10:00 a.m. on March 12, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within 10 days of the publication of this notice in the **Federal Register**.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of the proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Deputy Assistant Secretary by March 5, 1987. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, all written views will be considered if received not less than 30 days before the final determination is due, or, if a hearing is held, within 10 days after the hearing transcript is available.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

January 29, 1987.

[FR Doc. 87-2430 Filed 2-4-87; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 4568-01]

Actions Affecting Export Privileges; Daniel J. O'Hara

Summary

Pursuant to the consent agreement reached by the Department of Commerce and Daniel J. O'Hara in the above captioned proceeding and approved by the Administrative Law Judge in his Recommended Decision and Order, Daniel J. O'Hara, individually and doing business as D.J. Associates, both with addresses at P.O. Box L, Sparks, Nevada 89432, is hereby denied all export privileges for 20 years from the date of this Order. Additionally, he is assessed a civil penalty in the amount of $20,000.

Order

On January 8, 1987, the Administrative Law Judge entered an order approving the consent proposal submitted by the parties in the above matter. The Order was referred to me pursuant to the Export Administration Amendments Act of 1985, 50 U.S.C. App. 2412, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985) and 15 CFR 388.17(a), for final action. I note and hereby correct what apears to be a typographical error in the fourth sentence of paragraph seven of that Order to now read December 14, 1984. Having examined the record and based on the facts adduced in this case, I affirm the Order of the Administrative Law Judge as thus modified.

This constitutes final agency action in this matter.

Dated: January 30, 1987.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

In the Matter of Daniel J. O'Hara, Respondent; Docket No. 4658-01.

Order

A proceeding was initiated on April 23, 1986, against Respondent Daniel J. O'Hara, by the issuance of a charging letter by the Acting Director, Office of Export Enforcement (OEE), International Trade Administration, United States Department of Commerce (the Agency). In that notice the Respondent was charged with violating the Export Administration Act of 1979, 50 U.S.C. app. 2401-2402 as amended by the Export Administration Act Amendments of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985), (the Act) and the Export Administration Regulations (currently codified at 15 CFR Parts 368-399 (1985), (the Regulations).

In the charging letter, the Office of Export Enforcement alleged that Respondent violated the Act and Regulations in that:

(a) Between approximately February 1, 1981 and July 28, 1981, Daniel J. O'Hara conspired and acted in concert with John B. Pridmore-Smith to acquire and export two U.S.-origin automatic projection alignment systems, in violation of § 387.3 of Regulations; (b) Daniel J. O'Hara exported those systems without the export licenses from the Department which he knew were required by § 372.1(b) of the Regulations, in violation of §§ 387.4 and 387.6 of the Regulations, and (c) in order to export one of the automatic projection alignment systems, in connection with three separate shipments, Daniel J. O'Hara caused to be filed with the United States Customs Service three Shipper's Export Declarations which contained false and misleading statements, in violation of Section 387.5 of the regulations;

Pursuant to 15 CFR 388.17, the Agency and Daniel J. O'Hara have submitted a timely consent proposal to the officer whereby the parties have agreed to settle this matter:

(1) By O'Hara paying to the Agency a civil penalty in the amount of $20,000; and

(2) By denying O'Hara's export privileges for a period of 20 years from the effective date of this Order.

I find that these terms are sufficient to achieve effective enforcement of the Act and the Regulations. Therefore, pursuant to the authority delegated to me by Part 388 of the Regulations,

It is ordered

1. That a civil penalty in the amount of $20,000 is assessed against Respondent Daniel J. O'Hara.

2. That Respondent Daniel J. O'Hara shall pay to the Agency within 20 days of the service of the Final Order in this matter and in the manner specified in the attached instructions, the sum of $1,000. Payment of $4,000 of the civil penalty will be made in two equal installments of $2,000 each, the first due on or before November 1, 1987, and the second due on or before November 1, 1988. Payment of the remaining $15,000 is suspended, as authorized by § 388.16 of the Regulations, for a period of 3 years from the date of this Order. Payment of the suspended portion will be waived at the end of the 3-year period without further Order or action provided that Daniel J. O'Hara, his affiliates and subsidiaries, have committed no violations of the Act, or any regulation, order or license issued under the Act.

3. For a period of 20 years following the date of entry of this Order, Respondent Daniel J. Hara, individually and doing business as D.J. Associates, his successors or assignees, officers, partners, representatives, agents and employees hereby are denied all privileges of participating directly or indirecly in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the regulations. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity:

(a) As a party or as a representative of a party to a validated export license application;

(b) In preparing or filing any export license application or reexport authorization, or any document to be submitted herewith;

(c) In obtaining or using any validated or general export license or other export control document;

(d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, or storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(e) In the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities or technical data which are subject to the Act and the Regulations.

4. Such denial of export privileges shall extend not only to Respondents, but also to their agents and employees and to any successors. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which any Respondent if now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

5. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Administration, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related party, or whereby any Respondent or related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part or to be exported by, to, or for any Respondent or related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

6. That the Charging Letter, the Consent Agreement and Order shall be made available to the public.

7. By Order of December 14, 1984 (49 FR 49668, December 21, 1984), Daniel J. O'Hara and others were temporarily denied all privileges of participating in any manner or capacity in the export of U.S.-origin commodities or technical data. The temporary denial order was to remain in effect until the final disposition of any administrative or judicial proceedings initiated as a result of the then on-going investigation. This Order concludes the administrative proceeding initiated by the Department against Daniel J. O'Hara as a result of its investigation relating to the matter which gave rise to the temporary denial order. Accordingly, the following names and locations are deleted from the temporary denial order of December 14, 1986:

Daniel J. O'Hara, P.O. Box 1750, 1035 East York Way, Sparks, Nevada 89431
and
D.J. Associates with addresses at
P.O. Box 1750, 1035 East York Way, Sparks, Nevada 89431
and
18 Stewart Street, Reno, Nevada 89431
and
4200 Rewana Way, E505, Reno, Nevada 89502

8. This Order shall become effective upon entry of the Secretary's action in this proceeding pursuant to section 13(c) of the 1985 Amendments to the Export Administration Act.

Dated: January 8, 1987.

Hugh J. Dolan,

Administrative Law Judge.

Instructions for Payment of Civil Penalty.

1. The civil penalty check should be made payable to: U.S. Department of Commerce.

2. The check should be mailed to: U.S. Department of Commerce, Office of Assistant General Counsel for Export Administration, Room H-3845, 14th Street and Constitution Avenue NW., Washington, DC 20230, Attn: Pamela P. Breed, Esq.

[FR Doc. 87-2432 Filed 2-4-87; 8:45 am]

BILLING CODE 3510-DT-M

Export Trade Certificate of Review

ACTION: Notice of amendment to export trade certificate of review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the certificate should be amended.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International

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Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than February 25, 1987 to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Fredom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 84–A0021."

Applicant: Apparatex International Trading Company, 4819 Park Road, Charlotte, North Carolina 28209, Telephone: 704–527–5270

Application #: 84–A0021

Date Deemed Submitted: January 23, 1987

Members (in addition to applicant): Stanwood Corporation, Charlotte, North Carolina

Summary of the Application

An Export Trade Certificate of Review was issued to Apparatex International Trading Company (Apparatex) on October 26, 1984 (Application # 84–00021). Members of that certificate included: the William Carter Company, the Stanwood Corporation, and Mr. Anthony J. Cascardi. These members controlled 40, 40 and 20 percent of the shares of Apparatex, respectively.

In its application of January 12, 1987, Apparatex states that only one of its members, Stanwood Corporation, continues to be a member of the export trading company, with the stock shares of the other two previous members having been redeemed. It is, therefore, the sole intent of this application to amend the membership portion of the Export Trade Certificate of Review to reflect that the Stanwood Corporation is now the only member of Apparatex, controlling all its stock shares.

Dated: February 2, 1987.

James V. Lacy,

Director, Office of Export Trading Company Affairs.

[FR Doc. 87–2433 Filed 2–4–87; 8:45 am]

BILLING CODE 3510–DR–M

[Application 85–00013]

Issurance of Export Trade Certificate of Review

ACTION: Notice of Issurance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Basler Electric Company. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

A. Export Trade

Products

Static voltage regulators and accessories; static exciter-regulators and accessories; solid state protective relays; automatic synchronizers

Services

All services related to the sales and maintenance of the Products, including field repair services, advertising and marketing, and providing technical application assistance to end-users or their representatives; and the licensing (for the Export Markets) of patents, trademarks, trade names, know-how, or technical assistance.

B. Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

C. Members

William L. Basler; Floyd J. Basler; Carly Ann Maurer; Basler Electric Aviation, Inc.; Basler Electric Circuits, Inc.; and Summit Electronics, Inc.

Export Trade Activities and Methods of Operation

Basler may:

1. Enter into exclusive and nonexclusive agreements with individual suppliers of Products and Services to act as an Export Intermediary. These agreements may contain territorial, customer, price, and/or quanitity restrictions for the Export Markets.

2. For invitations to bid or sales opportunities in the Export Markets: (a) Indivdually contact U.S. suppliers of the Products and Services specified in the bid or purchase specifications, (b) invite the supplier(s) to provide independent quotations to Basler for the Products and Services, and (c) enter into individual agreements with the supplier(s) whereby Basler will submit a response to the bid invitation or request for quotation.

3. Enter into exclusive and nonexclusive agreements with distributors, sales representatives, and customers located in foreign countries and in the United States for Products and Services exported or in the course of being exported. These agreements may contain territorial, customer, price, and/or quantity restrictions for the Export Markets, and may provide for termination on the grounds that such restrictions have not been adhered to.

4. Refuse to enter into agreements with suppliers, distributors, sales representatives, and customers located in foreign countries and in the United States for Products and Services exported or in the course of being exported, unless the agreement contains any or all of the terms or restrictions described in paragraphs 1 or 3.

5. Sell, furnish, or offer for sale Products and Services exported or in the course of being exported of like grade or quality at discriminatory prices or on unequal terms.

6. Pay or grant, or receive or accept, or induce any person to pay or grant, or receive or accept, any commission, brokerage, or other compensation, to or from an intermediary, on unequal terms for Products and Services exported or in the course of being exported.

7. Sell or lease Products and Services exported or in the course of being exported on the condition that the purchaser or lessee not deal in Products and Services (exported or in the course of being exported) of a competitor.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: January 30, 1987

George Muller,

Deputy Director, Office of Export Trading Company Affairs.

[FR Doc. 87–2344 Filed 2–4–87; 8:45 am]

BILLING CODE 3510–DR–M

National Oceanic and Atmospheric Administration

Modification No. 3 to Marine Mammals Permit No. 464; Northwest and Alaska Fisheries Center (p77#9)

Notice is hereby given that pursuant to the provisions of 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 464 issued to the Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115, on April 19, 1984 (49 FR 17795) as modified on April 18, 1985 (50 FR 18283) and May 2, 1986 (51 FR 17506) is further modified as follows:

Section B.7 is replaced by:

"7. This permit is valid with respect to the activities authorized herein until December 31, 1987."

The effective date of this modification is December 31, 1986.

The permit, as modified, is available for review in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC.;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry St., Terminal Island, California 90731–7415; and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115–0070.

Dated: January 30, 1987.

Nancy M. Foster,

Director, Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 87–2442 Filed 2–4–87; 8:45 am]

BILLING CODE 3510–22–M

Patent and Trademark Office

Public Advisory Committee for Trademark Affairs; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

The Public Advisory Committee for Trademark Affairs will meet from 10:00 a.m. until 5:00 p.m. on March 9, 1987, at the U.S. Patent and Trademark Office in Room 11C24 of Building 3, Crystal Plaza, located at 2021 Jefferson Davis Highway, Arlington, Virginia.

The agenda for the meeting is as follows:

(1) Activities of the Trademark Examining Operation

(2) Operations of the Trademark Trial and Appeal Board

(3) Financial Reports

(4) Automation Activities.

The meeting will be open to public observation; approximately twelve (12) seats will be available for the public on first-come first-served basis.

If time permits, oral comments by the public of three (3) minutes on each topic within the above agenda will be allowed. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed.

Copies of the minutes will be available upon request.

For further information, contact Ellen J. Seeherman, Office of the Assistant Commissioner for Trademarks, Room CP3–11C17, Patent and Trademark Office, Washington, DC 20231. Telephone: 703–557–7464.

Dated: January 29, 1987.

Approved:

Donald W. Peterson,

Deputy Assistant Secretary and Deputy Commissioner of Patents and Trademarks.

[FR Doc. 87–2341 Filed 2–4–87; 8:45 am]

BILLING CODE 3510–16–M

COMMODITY FUTURES TRADING COMMISSION

New York Futures Exchange; Proposed Amendments Relating to the Commodity Research Bureau Futures Price Index Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The New York Futures Exchange (NYFE or Exchange) has submitted a proposal to amend the formula for calculating the Commodity Research Bureau (CRB) Futures Price Index (Index)—the pricing basis for the CRB futures contract. The amendments would eliminate five commodities from the Index, change the arithmetic averaging formula, and establish a liquidity criterion. The Deputy Director of the Division of Economic Analysis (Division) of the Commodity Futures Trading Commission (Commission) has determined that these proposals are of major economic significance and that, accordingly, publication of the proposals is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments should be received on or before March 9, 1987.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the proposed amendments to the NYFE's CRB Index futures contract.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Deputy Director, or Nancy McCabe, Economist, Market Analysis Section, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254–7303.

SUPPLEMENTARY INFORMATION: The proposal includes the following three changes to the calculations of the CRB Index:

1. Eliminate the Winnipeg Grain Exchange's barley, flaxseed, rapeseed, and rye futures contracts and the Minneapolis Grain Exchange's wheat futures contract;

2. Provide for the arithmetic averaging of individual commodity futures prices over a nine-month period, rather than the current twelve-month period; and

3. Exclude contract months in which open interest is less than 25 contracts.

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In a December 30, 1986, letter to the NYFE, the CRB stated that they are eliminating the above grain futures contracts from the Index because of the reduction in the relative importance of grains in the overall composition of the futures markets. The CRB noted that the four Winnipeg grain futures no longer comprise major markets, and that the Mirmeapolis wheat contract gives an unnecessary "double weighting" to wheat prices since the Chicago Board of Trade's wheat contract is also included in the Index.

The CRB further stated that converting to a nine-month averaging period, from the existing twelve-month period, will provide a more accurate picture of current futures market activiy since many commodities do not trade out a full calendar year. Finally, the CRB explained that the proposed "liquidity criterion" of including contract months with at least 25 contracts open interest ensures that only those contract months with sufficient trade interest will be included in the calculation of the Index.

The Exchange indicated that the CRB intends to begin calculating the revised Index on July 20, 1987, after the expiration of the July 1987 futures contract. The Exchange also indicated that the proposed amendments would apply beginning with the September 1987 contract, which may be listed prior to July 20, 1987.

The Deputy Director of the Division of Economic Analysis, on behalf of the Commission, has determined that the proposals submitted by the New York Futures Exchange regarding the CRB Futures Price Index are of major economic significance. This determination was made under the authority delegated by Commission Regulations 140.96 and in accordance with Section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12) (1982).

The NYFE proposals will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC, 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the NYFE in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.4 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Issued in Washington, DC, on January 30, 1987.

J. Blake Imel,

Deputy Director, Division of Economic Analysis.

[FR Doc. 87–2315 Filed 2–4–87; 8:45 am]

BILLING CODE 8351–01–M

DEPARTMENT OF DEFENSE

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee, DOD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: Monday, 23 February 1987, 9:00 a.m. to 5:00 pm.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Colonel Durate A Lopes, USAF, Acting Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20340–1328 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on intelligence support systems.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 29, 1987.

[FR Doc. 87–2329 Filed 2–4–87; 8:45 am]

BILLING CODE 3810–01–M

Advisory Council on Dependents' Education; Meeting

AGENCY: Department of Defense Dependents Schools (DoDDS), Office of the Secretary of Defense, DOD.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Dependents' Education. It also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act. Although the meeting is open to the public, due to space constraints, anyone wishing to attend should contact the Office of Dependents Schools (ODS) coordinator.

DATES: March 4, 1987, 9 a.m. to 4:30 p.m.; March 5, 1987, 9 a.m. to 12 p.m.

ADDRESS: Pentagon, Room 3E752, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Don Nolder, Special Projects Officer, DoDDS, 2461 Eisenhower Avenue, Alexandria, Virginia 22331–1100 (202/325–0867).

SUPPLEMENTARY INFORMATION: The Advisory Council on Dependents' Education is established under title XIV, section 1411, of Pub. L. 95–561, Defense Dependents' Education Act of 1978, as amended by title XII, section 1204(b)(3)–(5), of Pub. L. 99–145, Department of Defense Authorization Act of 1986 (20 U.S.C., chapter 25A, section 929, Advisory Council on Dependents' Education). The Council is co-chaired by designees of the Secretary of Defense and the Secretary of Education. In addition to a representative of each of the Secretaries, 12 members are appointed jointly by the Secretaries. They include representatives of educational institutions and agencies, professional employee organizations, unified military commands, school administrators, parents of students enrolled in DoDDS, and one DoDDS student. The DoDDS Director serves as the Executive Secretary of the Council. The purpose of the Council is to advise the Secretary of Defense and the DoDDS Director about effective educational programs and practices that should be considered by DoDDS and to perform such other tasks as may be required by the Secretary of Defense. This will be the initial meeting of the Council since its transfer from the Department of Education. The agenda will include information presentations to the new membership on educational and support programs in DoDDS, discussion of the Council's goals and objectives, and identification of plans and requirements for the fall 1987 and subsequent meetings.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 30, 1987.

[FR Doc. 87–2330 Filed 2–4–87; 8:45 am]

BILLING CODE 3810–01–M

DOD Advisory Group on Electron Devices; Meeting

SUMMARY: Working Group C (Mainly Opto Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Tuesday, March 3, 1987.

ADDRESS: The meeting will be held at the Night Vision & Electro-Optics Laboratories, Building 305, 4th Floor Conference Room, Fort Belvoir, Virginia 22060.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 201 Varick Street, New York, NY 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This opto-electonic device area includes such programs as imaging devices, infrared detectors and lasers. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. II section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 29, 1987.

[FR Doc. 87–2328 Filed 2–4–87; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Command and Control Management; Meeting

ACTION: Change in location of Advisory Committee Meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Command and Control Management scheduled for March 16–17, 1987 as published in the **Federal Register** (Vol. 51, No. 232, Page 43659, Wednesday, December 3, 1986, FR Doc. 86–27117) will be held at the MITRE Corporation, McLean, Virginia. In all other respects the original notice remains unchanged.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 30, 1987.

[FR Doc. 87–2331 Filed, 2–4–87; 8:45 am]

BILLING CODE 3810–01–M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement for the Caliente Creek Stream Group Investigation, California

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: *1. Proposed Action:* The Calinent Creek Stream Group Investigation for flood control is being conducted as part of the San Joaquin River Basin Comprehensive Investigation which was authorized by a resolution adopted May 8, 1964, by the Committee on Public Works of the House of Representatives. Investigation of flood problems and the preparation of a reconnaissance study of flood control alternatives were completed by the Corps of Engineers in 1985. This effort has produced a plan of action which appears to have general public acceptance and would provide significant flood control for the study area.

The potential project is located approximately 16 miles southeast of Bakersfield in Kern County, California. The creek is part of the internal drainage system of the Central Valley which historically contributed water to the Kern, Buena Vista, and Tulare Lakes. Due to water development and diversion within the watershed, Caliente Creek now only directly contributes to Kern Lake Bed and groundwater system. The Caliente Creek watershed covers approximately 470 square miles, flowing near State Highway 58 in a broad sandy wash, nearly one and one-quarter miles wide and four and one-half miles long. Downstream from this wash, the creek extends (during flood events) over a wide alluvial fan stretching west and south around the Communities of Lamont and Arvin. The tentatively selected plan of action would provide flood protection to the communities of Lamont and Arvin as well as adjacent agricultural areas.

The tentatively selected plan consists of a 16,000 acre-foot flood detention basin created by a earth fill embankment downstream of Highway 58. Downstream channel improvements extending around the perimeter of Arvin and Lamont over a distance of 35 miles, would drain the detention basin.

The Kern County Water Agency (KCWA) is the non-Federal sponsor of the Federal project. KCWA will insure project compliance with the California Environmental Quality Act.

2. Alternatives: Four alternative plans will be addressed in the DEIS. These include: (1) No Action; (2) the tentatively selected plan, featuring a detention basin and outlet channels; (3) a diversion dike and channel plan to convey flood flows to a terminal basin west of Lamont or south of Arvin; and (4) a wide, low-leveed training channel to capture flood flows before they enter Lamont and divert the flood flows past community to a point which approximates the pre-project flood plain. Plans eliminated from further study at the reconnaissance level of investigation will also be discussed.

3. Scoping of the DEIS: Close coordination is being maintained with Federal, State, and local agencies, conservation organizations, and concerned individuals. Information will be provided to interested parties concerning studies which evaluate potential impacts to endangered species. Wildlife resources, water quality testing, proposed mitigation meesures and other resources. The impacts to wildlife and its habitat have been analyzed using habitat evaluation procedures. A field and literature survey of cultural resources has not identified significant resources of potential impacts. Any group or individual is requested to provide information on these or any other significant resources of the study area to the District Engineer at the address given below.

A public meeting will be held after release of the DEIS. This meeting will also be publicized by general announcement as well as by written invitation to those known to be interested. Comments received as a result of this notice will be used to assist in identifying and evaluating significant resources and impacts of the proposed project in the DEIS.

4. Scoping Meetings: An initial scoping meeting was held by the Kern County Water Agency of July 9, 1979, in Lamont, California. A summary of flood problems and a project scoping session were developed. Most concerns expressed were for the need for a solution to flooding problems experienced in Lamont. Other concerns expressed included the cost of flood

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control projects and the need to consider wildlife resources and geologic faults in the plan formulation. An environmental/recreational scoping meeting was held in Bakersfield on April 3, 1986. No interest or potential sponsors for a recreation component of the plan were identified. Several concerns were raised on potential adverse impacts to the sand ridge and associated candidate endangered species. Potential mitigation strategies were also discussed.

5. Estimated date for release of the DEIS: The DEIS is scheduled to be circulated for public review and comment in June 1987.

ADDRESS: Correspondence concerning this project and the DEIS should be addressed to Colonel Wayne J. Scholl, District Engineer, Sacramento District Corps of Engineers, 650 Capital Mall, Sacramento, California 95814–4794. Questions concerning the proposed action and the draft document can be answered by Jeff Groska at (916) 551–1860 or (FTS) 460–1860.

Wayne J. Scholl,

Colonel, Corps of Engineers District Engineer.

[FR Doc. 87–2312 Filed 2–4–87; 8:45 am]

BILLING CODE 3710–EH–M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) on the Potential for Cumulative Impacts From Major Rehabilitation at Locks and Dams 2–22 on the Mississippi River, and at Locks and Dams on the Illinois Waterway From Lockport to La Grange

AGENCY: U.S. Army, DOD.

ACTION: Notice of Intent to prepare a draft environmental impact statement (DEIS).

SUMMARY:

1. Description of Proposed Action

Major rehabilitation of the Locks and Dams on both the Mississippi River and the Illinois Waterway is critical to extending the useful life of the navigation system. The majority of work consists of repair and replacement measures, such as repairing deteriorated concrete, replacing worn mechanical and electrical equipment, placing additional rockfill for increased scour protection, and repair to damaged or worn gate components. The Major Rehabilitation effort began in 1977 and is expected to continue into the 1990's. NEPA compliance to date for this repair and replacement work is being satisfied by the preparation and public review of site-specific Environmental Assessments.

During public review and coordination with other agencies for the Major Rehabilitation effort, certain features of the scheduled work were identified as having the potential to increase navigation traffic on the Upper Mississippi River System. Consequently, for the tentative list of measures below, an EIS will be prepared to specifically analyze not only the site-specific impacts, but also any cumulative impacts on the Upper Mississippi River System if navigation traffic is found to increase:

Submersible tainter gates at Peoria and La Grange L/Ds (Illinois Waterway)
Guardwall at L/D 22
Lower cell at L/D 21
Vertical lift gate at L/D 20
Bubbler systems at all sites (L/D 2–22; Illinois Waterway)
Modification to outlet structure at L/D 15
Construction of two cells above L/D 15
Upper and lower guidewall extension at L/D 21 and 22
Upper guidewall extension at L/D 11–20

The EIS is being prepared for Locks and Dams in both the St. Paul and Rock Island Districts of the Corps of Engineers. Rock Island District has the lead responsibility for EIS preparation and coordination.

2. Alternatives to the Proposed Action

Since this EIS will examine the potential for increased navigation traffic resulting from the proposed rehabilitation measures, alternatives will include various combinations of the proposed features, modifications to the features, and the No Federal Action alternative.

3. Public Involvement

Both the general public and other agencies have been involved in the Major Rehabilitation plans through availability of the Environmental Assessments for each Lock and Dam. It has been through public involvement and comments from interested parties that the decision was made to prepare an EIS to address potential cumulative impacts. The Rock Island District will continue to coordinate with all interested parties to assure the EIS process considers all pertinent concerns. Scoping meetings to determine significant resources and concerns are being planned for January-February 1987. The Rock Island District will notify agencies, special interest groups, and the general public, of meetings by public notice.

4. Estimated Release Date

The Draft EIS is scheduled to be released in March 1988. Point of contact for preparation of the EIS is Karen Bahus, Environmental Analysis Branch, Planning Division. She can be reached at (309) 788–6361, Ext. 384 or FTS 386–6384. Written questions or comments concerning the proposed EIS should be directed to: Neil A. Smart, Colonel, Corps of Engineers, District Engineer, U.S. Army Engineer District, Rock Island, Clock Tower Building, P.O. Box 2004, Rock Island, Illinois 61204–2004.

Dated: January 26, 1987.

Neil A. Smart,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 87–2412 Filed 2–4–87; 8:45 am]

BILLING CODE 3710–HV–M

DEPARTMENT OF EDUCATION

National Advisory Council on Women's Educational Programs; Meeting

AGENCY: National Advisory Council on Women's Educational Programs, Education.

ACTION: Notice of meeting.

SUMMARY: This document is intended to notify the general public of a meeting of the Executive Committee of the National Advisory Council on Women's Educational Programs. Due to budget constraints, the Committee will meet in closed session via teleconference on Wednesday, February 18, 1987, at 12:45 p.m. until business is completed, in suite 568, 2000 L Street NW., Washington, DC. The Committee is meeting in closed session to consider candidates and select an Executive Director for the National Advisory Council on Women's Educational Programs. These discussions will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemption (6) of section 552(b)(c) of Title 5 U.S.C.

FOR FURTHER INFORMATION CONTACT: Patricia A. Weber, Executive Director (Acting), National Advisory Council on Women's Educational Programs, suite 568, 2000 L Street NW., Washington, DC 20036 (202) 634–6105.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Women's Educational Programs is established pursuant to Pub. L. 95–561. The Council is mandated to (a) advise the Secretary on matters relating to equal education opportunities for women and policy matters relating to the administration of the Women's Educational Equity Act of 1978; (b) make recommendations to the Secretary with respect to the allocation of any funds pursuant to the Act, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation; (c) recommend criteria for the establishment of program priorities; (d) make such reports as the Council determines appropriate to the President and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council.

The Executive Committee will meet in closed session via teleconference on February 18, 1987 from 12:45 p.m. until business is completed. The Committee is meeting in closed session to consider candidates and select an Executive Director for the National Advisory Council on Women's Educational Programs.

These discussions will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

The public is being given less than fifteen days notice of this closed session due to the difficulty of arranging the meeting because of scheduling conflicts and the unavailability of some Executive Committee members.

A summary of the activities of the closed meeting and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 5526 will be available to the public within fourteen days of the meeting.

Records will be kept of the proceedings and will be available for public inspection at the office of the National Advisory Council on Women's Educational Programs, 2000 L Street NW., Suite 568, Washington, DC 20036.

Signed at Washington, DC on February 2, 1987.

Patricia A. Weber,

Executive Director (Acting).

[FR Doc. 87–2436 Filed 2–4–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Draft Amendment of Mission Plan for the Civilian Radioactive Waste Management Program

AGENCY: Office of Civilian Radioactive Waste Management, DOE.

ACTION: Notice of Availability of a Draft Amendment to the Mission Plan for the Civilian Radioactive Waste Management Program for Public Inspection.

SUMMARY: Section 301 of the Nuclear Waste Policy Act of 1982 (NWPA, Pub. L. 97–425), requires the Secretary of Energy to ". . . prepare a comprehensive report, to be known as the Mission Plan, which shall provide an informational basis sufficient to permit informed decisions to be made in carrying out the repository program and the research, development, and demonstration programs required under this Act."

After incorporating changes in response to comments received on a draft version of the Plan, the Department of Energy prepared and submitted the Mission Plan (DOE/RW–0005, June 1985) to Congress.

The Department has prepared a draft amendment to the Mission Plan and is transmitting it to States, affected Indian Tribes, the Nuclear Regulatory Commission (NRC), and other Government agencies for comment. Comments have been requested by April 3, 1987. After the comment period, the Department will revise the amendment as appropriate and formally submit it to Congress. The draft amendment to the Mission Plan is intended to apprise the Congress, the affected States and Indian Tribes, other Federal agencies, and the public, of significant developments and new information in the Civilian Radioactive Waste Management Program. These items, in terms of the Department's priorities, include:

- Achievements in the first repository program including the nomination and recommendation of sites for detailed site characterization;
- As a result of reevaluations of the work necessary to proceed, a five-year extension of the schedule for the first repository;
- New waste-generation data that, along with other considerations, indicated that it was prudent to indefinitely postpone site-specific activities for the second repository while continuing technical development activities;
- Developments concerning the submission to Congress of a proposal for a monitored retrievable storage (MRS) facility as an integral part of the waste management system; and
- Actions taken and progress made toward better defining the consultation-and-cooperation process with eligible States and affected Indian Tribes.

Copies of the draft amendment are being mailed for information to nearly 7000 addressees on the Civilian Radioactive Waste Management Program's mailing list who have previously expressed an interest in receiving program documents and status reports.

A copy of the draft amendment to the Mission Plan may be obtained by contacting the Office of Civilian Radioactive Waste Management Washington, DC office, or any one of the Project Offices at the following addresses:

U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Office of Policy and Outreach, RW–40, 1000 Independence Avenue, SW., Washington, DC 20585, Tel. (202) 586–2277

Salt Repository Project Office, U.S. Department of Energy, 505 King Avenue, Columbus, Ohio 43201, Tel: (614) 424–5916

Nevada Nuclear Waste Storage Investigations, Waste Management Project Office, U.S. Department of Energy, Nevada Operations Office, 2753 South Highland Street, Las Vegas, Nevada 89109, Tel: (702) 295–3521

Basalt Waste Isolation Project, U.S. Department of Energy, Federal Building, 825 Jadwin Avenue, Room 630, Richland, Washington 99352, Tel: (509) 376–7501

Repository Technology and Transportation Division, U.S. Department of Energy, 9800 South Cass Avenue, Argonne, Illinois 60439, Tel: (312) 972–2570

A copy of the draft amendment to the Mission Plan is also available for public inspection at the above Project Offices as well as at the following address:

U.S. Department of Energy, Public Reading Room, Room 1E–290, 1000 Independence Avenue, SW., Washington, DC 20585

Comments received in response to this notice will be available for public inspection at the Public Reading Room in Washington, DC at the address above.

Issued in Washington, DC, January 28, 1987.

Ben C. Rusche,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 87–2272 Filed 2–4–87; 8:45 am]

BILLING CODE 6450–01–M

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Conservation and Renewable Energy

National Energy Extension Service Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: National Energy Extension Service Advisory Board.

Date and Time: Monday, March 2, 1987, 8:00 a.m.–5:00 p.m., Tuesday, March 3, 1987, 8:00 a.m.–12:00 noon.

Place: Omni Georgetown Hotel, 2121 P. Street, NW., Washington DC 20037.

Contact: Susan D. Heard, Department of Energy, Forrestal Building—6A081, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202–586–8290.

Purpose of the Board: The Board was established to carry on a continuing review of the National Energy Extension Service and the plans and activities of each State in implementing Energy Extension Service programs. Additionally, the Board is responsible for reporting on an annual basis to the Congress, the Secretary of Energy, and the Director of the Energy Extension Service.

Tentative Agenda: Monday, March 2, 1987

- Review of the draft of the Board's Eighth Annual Report
- Public comment (10 minute rule)
- Tuesday March 3, 1987
- Revisions to draft of Eighth Annual Report
- Acceptance of Eighth Annual Report
- Public comment (10 minute rule)

Public Participation: The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Susan D. Heard at 202–586–8290. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday thru Friday, except Federal holidays.

Issued at Washington, DC, on January 30, 1987.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 87–2271 Filed 2–4–87; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Proposed Remedial Order to Tampimex Oil International, Ltd.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed remedial order to Tampimex Oil International, Ltd.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Tampimex Oil International, Ltd., 811 Dallas, Houston, Texas 77002. This Proposed Remedial Order alleges violations in the amount of $689,997.00, plus interest, resulting from violations of 10 CFR 212.186, 10 CFR 205.202 and 10 CFR 210.62(c) with regard to certain crude oil resales during the period January 1978 through December 1980. The effect of the alleged violations is nationwide.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: Office of Freedom of Information Reading Room, United States Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585.

Within fifteen (15) days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, United States Department of Energy, Forrestal Building, Room 6F–078, 1000 Independence Avenue, SW., Washington, DC 20585, in accordance with 10 CFR 205.193. The Notice shall be filed in duplicate, shall briefly describe how the person would be aggreived by issuance of the Proposed Remedial Order as a final order and shall state the person's intention to file a Statement of Objections.

Pursuant to 10 CFR 205.193(c), a person who files a Notice of Objection shall on the same day serve a copy of the Notice upon:

Sandra K. Webb, Director, Economic Regulatory Administration, U.S. Department of Energy One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002

and upon:

Marshall Staunton, Acting Solicitor, Economic Regulatory Administration, U.S. Department of Energy, Room 3H–017, RG–40, 1000 Independence Ave., SW., Washington, DC 20585

Issued in Washington, DC, on the 22th day of January 1987.

Marshall Staunton,

Acting Solicitor, Economic Regulatory Administration.

[FR Doc. 87–2275 Filed 2–4–87; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Energy Research Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Energy Research Advisory Board (ERAB).

Date and Time: Feburary 18, 1987—9:00 a.m.–5:00 p.m., Feburary 19, 1987—9:00 a.m.–12:00 Noon.

Place: Department of Energy, 1000 Independence Avenue, SW., Room 8E–089, Washington, DC 20585.

Contact: Sarah Goldman, Department of Energy, Office of Energy Research, ER–6, 1000 Independence Avenue, SW., Washington, DC 20585, Telphone: 202/586–5779.

Purpose of the Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas in the Department.

Tentative Agenda: The specific agenda items and times are subject to last minute changes. Written planning to attend for a specific topic should confirm the time prior to and during the day of the meeting.

Tentative Agenda

February 18

9:00 a.m., Administrative Items
- —Approvel of November Meeting Minutes
- —1987 Meeting Dates
- —Summer Study
- —Electronic Mail-New Procedures of the Energy Research Advisory Board
- —Technical Panel on Magnetic Fusion of the Energy Research Advisory Board Follow-up
- —Solid Earth Sciences Panel Follow-up

9:30 a.m., DOE FY 88 Budget
10:30 a.m., Break
11:00 a.m., Photo Session with the Secretary (ERAB Members)
12:00 noon, Lunch
1:15 p.m., Clean Coal Technology—Status
2:00 p.m., Superconducting Super Collider—Status
2:30 p.m., Physics Review Panel Report
3:15 p.m., Break
3:30 p.m., Physics Review Panel Report
4:15 p.m., Possible New Studies
4:50 p.m., Public Comment—(10 minute rule)
5:00 p.m., Adjourn

February 19

9:00 a.m., Possible New Studies
11:50 a.m., Public Comment (10 minute rule)
12:00 noon, Adjourn

Public Participation: The meeting is open to the public. The Chairman of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Sarah Goldman at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made received 5 days prior to the meeting and reasonable provison will be made to include the presentation on the agenda.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays.

Issued at Washington, DC, on January 29, 1987.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 87–22–74 Filed 2–4–87; 8:45 am]

BILLING CODE 6450–01–M

High Energy Physics Advisory Panel; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP)

Date and Time: Thursday, February 19, 1987, 9:00 am—6:00 pm Friday, February 20, 1987, 9:00 am—4:00 pm

Place: U.S. Department of Energy Room 4A–104, 1000 Independence Ave., SW., Washington, DC 20585

Contact: Dr. P.K. Williams Executive Secretary, High Energy, Physics Advisory Panel, U.S. Department of Energy, ER–221: GTN, Washington, DC 20545, Telephone: 301/353–4829

Purpose of Panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda:

Thursday, February 19, 1987

- —Presentation and Discussion of the FY 1988 Presidential Budget Request for the National Science Foundation Elementary Praticle Physics Program (If Available)
- —Presentation and Discussion of the FY 1988 Presidential Budget Request for the Department of Energy High Energy Physics Program (If Available)
- —Discussion of FY 1987 R&D Plans for the Superconducting Super Collider (SSC)
- —Status Report on the Fermilab Tevatron Collider First Operation for Physics
- —Status Report on the Standford Linear Collider Construction
- —Status Report on Tristan First Operation for Physics
- —Public Comment (10 minute rule)

Friday, February 20, 1987

- —Discussion of Possible HEPAP Subpanel on University Programs in High Energy Physics
- —Report on Meeting of the US/USSR Joint Coordinating Committee on Fundamental Properties of Matter
- —Status Report on the Study of High Energy Physics Accomplishments by the DOE Office of Program Analysis
- —Progress Report on ESNET Computer Network
- —Further Discussion of Foregoing Items
- —Public Comment (10 minute rule)

Pubic Participation: The meeting is open to the public. The Chairperson of the panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and resonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on January 29, 1987

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 87–2273 Filed, 2–4–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER87–225–000 et al.]

Duke Power Co. et al.; Electric Rate and Corporate Regulation Filings

January 30, 1987.

Take notice that the following filings have been made with the Commission:

[Docket No. ER87–225–000]

1. Duke Power Co.

Take notice that Duke Power Company (Duke) on January 21, 1987 tendered for filing a revision in its wheeling rate under the agreement between Duke Power Company (Duke) and the United States of America, Department of Energy, acting by and through the Southeastern Power Administration (SEPA), dated January 13, 1986 (designated Rate Schedule FFRC No. 283), as supplemented, which revision provides for a reduction in the wheeling rate from $1.62 per kilowatt month to $1.51 per kilowatt month for delivery by Duke of approximately 194,500 kilowatts from SEPA's Hartwell, Clarks Hill and Richard B. Russell Projects to preference customers of SEPA in Duke's service area in North Carolina and South Carolina.

Duke has requested a waiver of the Commission's notice requirements so that the revised rate becomes effective on January 21, 1987.

Copies of this filing were served on SEPA, the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: February 12, 1987, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. ER87–154–000]

2. Florida Power & Light Co.

Take notice that on January 23, 1987, Florida Power & Light Company ("FPL") tendered for filing a revised Attachment B to each of the respective Agreements entitled: (1) Stanton Transmission Service Agreement Between Florida Power & Light Company and the Florida Municipal Power Agency ("Stanton Transmission Agreement"); and (1) Stanton Tri-City Transmission Service Agreement Between Florida Power & Light Company and the Florida Municipal Power Agency ("Stanton Tri-City Transmission Agreement").

As requested by the Commission Staff, these Attachments have been revised to delineate the specific values for FPL's currently effective rates for transmission services provided under each of the respective Agreements. Each revised Attachment B supersedes and replaces in its entirety the attachment B to each of the respective Agreements that were initially filed in Docket No. ER87–154.

Copies of the filing were served upon Florida Municipal Power Agency, the FMPA Participating Members (as listed in the initial filing) and the Florida Public Service Commission.

FPL requests that these revised Attachments be made effective upon commencement of the commerical operation of Stanton Unit No. 1 (estimated to be July 1, 1987).

Comment date: February 12, 1987, in accordance with Standard Paragraph E at the end of this notice.

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[Docket No. ER86-684-001]

3. Jersey Central Power & Light Co., Metropolitan Edison Co. Pennsylvania Electric Co.

Take notice that on January 20, 1987, Jersey Central Power & Light Company, Metroplitan Edison Company and Pennsylvania Electric Company (GPU Companies) tendered for filing information requested by the Commission, after finding the agreement between GPU Companies and Niagara Mohawk Power Corporation (Niagara Mohawk) for the exchange of power and enrgy and the exchange of transmission service was deficient with respect to the Commission's regulation.

Comment date: February 12, 1987, in accordance with Standard Paragraph E at the end of this notice.

[Docket NO. ER87-224-000]

4. Kansas City Power & Light Co.

Take notice that on January 20, 1987, Kansas City Power & Light Company ("KCPL") tendered for filing an Amendatory Agreement No. 3, and an associated Capacity Exchange Service provided to the City of Independence, Missouri—service Schedule H-MPA-1 (KCPL Rate Schedule FERC No. 101). KCPL states that the rates for the service covered by the above-mentioned schedule are the same rates as previously approved by this Commission for Capacity Exchange Service for the City of Independence.

Comment date: February 12, 1987, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. ER87-169-000]

5. Public Service Co. of Indiana, Inc.

Take notice Public Service Company of Indiana, Inc. (PSI), on January 21, 1987, tendered for filing additional data with respect to a Settlement Agreement for a rate increase previously filed on December 16, 1986.

Copies of the filing were served upon the Public Service Commission of Indiana, the City of Logansport, Indiana, Henry and Jackson County Rural Electric Membership Corporations, the Indiana Municipal Power Agency, and the Indiana municipalities of Advance, Bainbridge, Brooklyn, Coatesville, Dublin, Dunreith, Edinburg, Hagerstorn, Knightstown, Ladoga, Lewisville, Montezuma, New Ross, Pittsboro, Rockville, South Whitley, Spicelan, Straughn, Thorntown, Veedersburg, Waynetown and Williamsport.

Comment date: February 12, 1987, in accordance with Standard Paragraph E at the end of this notice.

[Docket No ER87-227-000]

6. Public Service Co. of Oklahoma

TAke notice that on January 23, 1987, Public Service Company of Oklahoma ("PSO") submited for filing changes in its fuel adjustment clause. The changes are limited in nature and are intended to bring PSO's fuel adjustment clause into conformity with the Commission's present fuel clause regulations. Specifically, PSO proposes to pass through its fuel adjustment clause the total cost of the purchase of "economic power" as defined in the Commission's regulations. PSO also seeks permission to include the cost of fuel avoided when purchases are made from Qualifying Facilities.

Copies of the filing have been the served on the customers of PSO affected by the filing and on the Oklahoma Corporation Commission.

Comment date: February 12, 1987, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. ER86-547-001]

7. Wisconsin Power & Light Co.

Take notice that on January 21, 1987, Wisconsin Power & Light (WPL) tendered for filing documents which should enable the Commission to complete its review of the contract between South Beloit Water, Gas and Electric (SBWG&E) and WPL. WPL states that this current electric contract between themselves and SBWG&E was filed in June 1986.

Comment date: February 12, 1987, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2351 Filed 2-4-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRI-3152-1]

Financial Assistance Program Eligible for Review Under 40 CFR Part 29 and Subject to Section 204 of the Demonstration Cities and Metropolitan Development Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and review.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of a new financial assistance program, the Leaking Underground Storage Tanks Trust Fund, to support the development of State corrective action and enforcement programs that address releases from underground storage tanks containing petroleum. In order to facilitate State involvement, funds will be available during fiscal year (FY) 1987 for cooperative agreements between EPA and States where the Administrator determines that the State has the capacity to effectively carry out corrective actions and enforcement activities.

FOR FURTHER INFORMATION CONTACT: Ronald Brand, Director, Office of Underground Storage Tanks, U.S. EPA, 401 M Street, SW., Washington, DC 20460, (202) 382-4756.

SUPPLEMENTARY INFORMATION: Subtitle I of the Resource Conservation and Recovery Act (RCRA) provides for the development and implementation of a comprehensive regulatory and response program for underground storage tanks (USTs) containing petroleum and other regulated substances. The Superfund Amendments and Reauthorization Act of 1986 (SARA), which amended Subtitle I, created the Leaking Underground Storage Tank Trust Fund. This Fund will pay for the cost of certain Federal and State response and enforcement activities for releases from USTs containing petroleum.

RCRA Subtitle I, section 9003 requires the Administrator to promulgate release detection, prevention, and corrective action and financial responsibility regulations applicable to owners and operators of underground storage tanks. Before the effective date of those regulations, the Administrator or a State may use the Trust Fund to pay for corrective action (and related enforcement and cost recovery activities) for a petroleum release from an UST whenever necessary to protect human health and the environment.

Once the regulations are in effect, the following additional conditions must be met in order to be eligible for assistance from the Fund:

(1) No owner or operator can be found, within 90 days or such shorter period as may be necessary to protect human health and te environment, who is subject to the corrective action regulations and capable of carrying out such corrective action properly;

(2) Prompt action by EPA or a State is necessary to protect human health and the environment;

(3) Corrective action costs exceed the required amount of financial responsibility demonstrated by an owner or operator and, considering the class or category of UST, expenditures are necessary to assure an effective corrective action; or

(4) The owner or operator has failed or refused to comply with an order to perform corrective action.

In addition, following the effective date of the regulations, States will pay ten percent of the costs of corrective actions taken with Trust Fund support.

The purpose of this program is to prevent and reduce groundwater degradation by assuring rapid and effective response to releases from underground storage tanks containing petroleum. The first step in a response, typically done by the owner or operator, is recognizing and reporting that a release has occurred. Releases are likely to be recognized and reported sooner if an owner/operator's financial uncertainties associated with corrective action are reduced or removed. The Fund (in combination with financial responsibility requirements) is intended to reduce that uncertainty and encourage early reporting of releases. However, the Fund is *not* intended as a source of assistance to States for the development or implementation of UST *regulatory* programs, general technical capabilities, or programs to support State legal offices in carrying out their general responsibilities.

The Trust Fund cleanup program will be implemented by States and EPA Regional Offices under the guidance of the Office of Underground Storage Tanks in EPA Headquarters. States are expected to play key roles in cleanups because State officials are closer to the scene and know more about tasks in their States and about local site conditions than do Federal officials. EPA Regional Offices will have the lead in the negotiations of cooperative agreements and the subsequent State program approval process, with participation and assistance from the EPA Headquarters Office of Underground Storage Tanks.

This program is eligible for intergovernmental review under Executive Order 12372 and is subject to the review requirements of section 204 of the Demonstration Cities and Metropolitan Development Act. States must notify the following office in writing within thirty days of this publication whether their State's official E.O. 12372 process will review applications in this program: Grants Policy and Procedures Branch, Grants Administration Division (PM-216), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Applicants (State agencies) must contact their State's Single Point of Contact (SPOC) for intergovernmental review as early as possible to find out if the program is subject to the State's official E.O. 12372 review process and what material must be submitted to the SPOC for review. In addition, applications including projects within a metropolitan area must be sent to the areawide/Regional/local planning agency designated to perform metropolitan or Regional planning for the area for their review.

SPOCs and other reviewers should send their comments concerning applications to the appropriate EPA Regional Office, no later than sixty days after receipt of an application/other required material for review.

Dated: January 30, 1987.

J.W. McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 87-2425 Filed 2-4-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3151-8]

Limitations to Superfund Response Claims

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of regulatory limitations.

SUMMARY: This notice will serve to advise the public of limitations on response claims, which may be filed against the Hazardous Substances Superfund (Superfund) established by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9601 et seq. These limitations are contained in the National Oil and Hazardous Substances Contingency Plan (NCP) 40 CFR Part 300 (1985).

FOR FURTHER INFORMATION CONTACT: William O. Ross, Office of Emergency and Remedial Response (WH-548), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4645, or The RCRA/CERCLA Hotline, (800) 424-9386 (or 382-3000 in the Washington DC metropolitan area). Superfund Docket: (202) 382-3046.

SUPPLEMENTARY INFORMATION: This notice serves to advise the public concerning limitations on response claims. Section 111(a)(2) of CERCLA authorizes the use of Superfund monies for:

Payment of any claim for necessary response costs incurred by any other person as a result of carrying out the national contingency plan established under section 311(c) of the Clean Water Act and amended by section 105 of this title: *Provided, however,* That such costs must be approved under said plan and certified by the responsible Federal official.

Because a CERCLA response claim is a reimbursement, a claimant can only receive funds for response costs that have already been incurred in carrying out the NCP. The NCP, established under section 311(c) of the Clean Water Act and amended under section 105 of CERCLA, provides for efficient, coordinated, and effective response to discharges of oil and releases, or substantial threats of releases, of hazardous substances and to releases or substantial threat of releases of pollutants or contaminants which may present an imminent and substantial danger to public health or welfare. The Plan provides for the division and specification of responsibility among the Federal, State and local governments in response actions, and specifies the appropriate roles for private entities.

Section 300.25(d) of the NCP states that any other person who takes a response action and intends to seek reimbursement, in order to be in conformity with the NCP must both:

1. Notify the Administrator of EPA; and

2. Receive approval *prior* to undertaking the response action. This section continues that the process of prior approval is "preauthorization." Preauthorization will be only granted where EPA determines that the response action will be consistent with the NCP and that the person requesting preauthorization has demonstrated the technical and other capabilities to safely and effectively carry out the response.

EPA also plans to propose procedures for informing concerned persons of the response claims limitations pursuant to section 111(o) of CERCLA. Section 111(o) requires the President to develop and implement procedures to adequately notify concerned local and State officials and other concerned persons of the limitations on payment of response claims from the Superfund.

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These procedures may be incorporated with the procedures for filing response claims which are described below.

Section 112(a) of CERCLA authorizes the President to develop forms and procedures for filing claims against the Superfund. EPA will soon propose a rule on section 112(a) response claims, which will contain further details on the prerequisites to a claim against the Superfund. When promulgated, the response claim rule will appear at 40 CFR Part 307.

Dated: February 2, 1987.

Jack McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 87-2426 Filed 2-4-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100035; FRL-3152-5]

Keydata Systems, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA).

Keydata Systems, Inc. (KSI) has been awarded a contract to perform work for the EPA Office of Pesticide Programs (OPP), and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to KSI as authorized by 40 CFR 2.307(h) and 2.308(h)(2), respectively. This action will enable KSI to fulfill the obligations of the contract and serves to notify affected persons.

DATE: KSI will be given access to this information no sonner than February 10, 1987.

FOR FURTHER INFORMATION CONTACT:

By mail:

William C. Grosse, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 222, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2613).

SUPPLEMENTARY INFORMATION: Under Contract No. 68-02-4267, KSI will receive and process formula statements, product chemistry data, and information regarding the sources of ingredients for various pesticide products. This contract involves no subcontractor.

OPP has determined that access by KSI to such information on all pesticide chemicals is necessary to the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with KSI prohibits use of the information for any purpose other than purpose(s) specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, KSI is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in EPA. All information supplied to KSI by EPA for use in connection with this contract will be returned to EPA when KSI has completed its work.

Dated: February 2, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 87-2536 Filed 2-4-87; 8:45 am]

BILLING CODE 6560-50-M

Revision of Wisconsin National Polutant Discharge Elimination System (NPDES) Program To Issue General Permits

[FR-3151-9]

AGENCY: Environmental Protection Agency.

ACTION: Notice of Approval of the National Pollutant Discharge Elimination System General Permits Program of the State of Wisconsin.

SUMMARY: On December 19, 1986, the Regional Administrator for the Environmental Protection Agency (EPA), Region V approved the State of Wisconsin's National Pollution Discharge Elimination System General Permits Program. This action authorizes the State of Wisconsin to issue general permits in lieu of individual NPDES permits.

FOR FURTHER INFORMATION CONTACT: Almo Manzardo, Chief, Permits Section, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, 312/353-2105.

SUPPLEMENTARY INFORMATION:

Background

EPA regulations at 40 CFR 122.28 provide for the issuance of general permits to regulate discharges of wastewater which result from substantially similar operations, are of the same type wastes, require the same effluent limitations of operating conditions, require similar monitoring, and are more appropriately controlled under a general permit rather than by individual permits.

Wisconsin was authorized to administer the NPDES program in February, 1974. Their program, as previously approved, did not include provisions for the issuance of general permits. There are several categories which could appropriately be regulated by general permits. For these reasons the WDNR requested a revisin of their NPDES program to provide for issuance of general permits. The categories which have been proposed for coverage under the general permits program include: Non-Contact Cooling Water, Concrete Products Operations, Sand, Gravel or Crushed Stone Operations, Swimming Pools, Petroleum Storage Terminals, Water Treatment Plants, dredging Projects Involving Uncontaminated Sediments and Similar Facilities.

Each general permit will be subject to EPA review and approval as provided by 40 CFR 123.44. Public notice and opportunity to request a hearing is also provided for each general permit.

II. Discussion

The State of Wisconsin submitted in support of its request, copies of the relevant statutes and regulations. The State has also submitted a statement by the Attorney General certifying, with appropriate citations to the statutes and regulations, that the State has adequate legal authority to administer the general permits program as required by 40 CFR 1223.23(c). I n addition, the State submitted a program description supplementing the original application fora the NPDES program authority and a modification to the Memorandum of Agreement between EPA and the WDNR. EPA has concluded, upon reviewing all of these submitted materials, that the State has the legal authority to administer the general permits program, including the authority to perform each of the activities set forth in 40 CFR 123.44. Based upon Wisconsin's program description and upon its experience in administering an approved NPDES program, EPA has concluded that the State will have the necessary procedures and resources to administer the general permits program.

III. "Federal Register" Notice of Approval of State NPDES Programs or Modifications

EPA will provide **Federal Register** notice of any action by the Agency approving or modifying a State NPDES program. The following table will provide the public with an up-to-date list of the status of NPDES permitting authority throughout the country. Today's **Federal Register** notice is to announce the approval of Wisconsin's authority to issue general permits.

	Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment program
Arkansas *	11/01/86	11/01/86	11/01/86
Alabama	10/19/79	10/19/79	10/19/79
California	05/14/73	05/05/78	.....
Colorado *	03/27/75	.....	.....
Connecticut	09/26/73	.....	06/03/81
Delaware	04/01/74	.....	.....
Georgia	06/28/74	12/08/80	03/12/81
Hawaii	11/28/74	06/01/79	08/12/83
Illinois *	10/23/77	09/20/79	.....
Indiana	01/01/75	12/09/78	.....
Iowa	08/10/78	08/10/78	06/03/81
Kansas	06/28/74	06/28/85	.....
Kentucky *	09/30/83	09/30/83	09/30/83
Maryland	09/05/74	.....	09/30/85
Michigan	10/17/73	12/09/78	06/07/83
Minnesota	06/30/74	12/09/78	07/16/79
Mississippi	05/01/74	01/28/83	05/13/82
Missouri *	10/30/74	06/26/79	06/03/81
Montana *	06/10/74	06/23/81	.....
Nebraska	06/12/74	11/02/79	09/07/84
Nevada	09/19/75	08/31/78	.....
New Jersey *	04/13/82	04/13/82	04/13/82
New York	10/28/75	06/13/80	.....
North Carolina	10/19/75	09/28/84	06/14/82
North Dakota	06/13/75	.....	.....
Ohio	03/11/74	01/28/83	07/27/83
Oregon *	09/26/73	03/02/79	03/12/81
Pennsylvania	06/30/78	06/30/78	.....
Rhode Island *	09/17/84	09/17/84	06/17/84
South Carolina	06/10/75	09/26/80	04/09/82
Tennessee	12/28/77	.....	08/10/83
Vermont	03/11/74	.....	03/16/82
Virgin Islands	06/30/76	.....	.....
Virginia	03/31/75	02/09/82	.....
Washington	11/14/73	.....	09/30/86
West Virginia *	05/10/82	05/10/82	05/10/82
Wisconsin *	02/04/74	11/26/79	12/24/80
Wyoming	01/30/75	05/18/81	.....

* Asterisks indicate approved general permit authority

IV. Review Under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this rule from the review requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Pursuant to section 605(d) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), I certify that this State General Permits Program will not have a significant impact on a substantial number of small entities. Approval of the Wisconsin NPDES State General Permits Program establishes no new substantive requirements, nor does it alter the regulatory control over any industrial category. Approval of the Wisconsin NPDES State General Permits Program merely provides a simplified administrative process.

Dated: December 19, 1986.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 87-2427 Filed 2-4-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office Management and Budget for Review

January 30, 1987.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB No.: 3060-0106

Title: Section 43.61, Reports of Overseas Telecommunications Traffic

Action: Revision

Respondents: Common carriers providing international telecommunications services

Frequency of Response: Annually

Estimated Annual Burden: 12 Responses; 960 Hours

Needs and Uses: The overseas telecommunications traffic data reports are essential to the Commission and carriers for international facilities planning, facility authorization, monitoring and market analysis purposes. The data is used by FCC to determine whether to grant applicants authority to acquire and operate facilities for the provisions of telecommunications services between the United States and a new international point of communication. The Commission must determine whether the competition is feasible in the market(s) sought to be served and is in the public interest. The traffic data submitted is used to determine the feasibility of competition, i.e., whether there is sufficient traffic to support the applicant common carrier. The commission also uses the data to fulfill its regulatory responsibilities; in our facilities planning processes to estimate traffic and market trends in various regions of the world; in monitoring the development and competitiveness of each international market and in gauging the competitive impact of our decisions on the market.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-2400 Filed 2-4-87; 8:45 am]

BILLING CODE 6712-01-M

Information Collection Requirements Approval by Office of Management and Budget

January 30, 1987.

The following information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0003

Title: Application for Amateur Radio Station and/or Operator License

Form No.: FCC 610

A revised application form FCC 610 has been approved for use through 12/31/89. The July 1985 and March 1986 editions with expiration dates of 3/31/88 will remain in use until revised forms are available.

OMB No.: 3060-0046

Title: Application for New or Modified Common Carrier Radio Station Authorization Under Part 22

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Form No.: FCC 401

A revised application form FCC 401 has been approved for use through 11/30/89. The January 1985 edition with an expiration date of 4/30/87 will remain in use until revised forms are available.

OMB No.: 3060–0064

Title: Application for Station Authorization in the Private Operational Fixed Microwave Radio Service

Form No.: FCC 402

A revised application form FCC 402 has been approved for use through 10/31/89. The August 1985 edition with an expiration date of 4/30/88 will remain in use until revised forms are available.

OMB No.: 3060–0072

Title: Airborne Mobile Radio Telephone License Application

Form No.: FCC 409

A revised applicant form FCC 409 has been approved for use through 9/30/89. The October 1985 edition with an expiration date of 9/30/88 will remain in use until revised forms are available. At that time, a Public Notice will be issued containing information on availability and implementation.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–2401 Filed 2–4–87; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1641]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

January 30, 1987.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street NW, Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202–857–3800). Oppositions to these petitions must be filed (insert date 16 days after date of publication) See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b). Table of Allotments FM Broadcast Stations. (Hastings, Florida) (RM–5380) Number of petitions received: 1.

Comment: This Proposal is mutually exclusive with a pending Proposal for Channel 227A at Baldwin, Florida (RM–5213).

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–2402 Filed 2–4–87; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Stephen G. Kafka, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No	MM docket No
A. Stephen G. Kafka	Laramie, WY	BPH–850708MM	87–4
B. Laramie Women's Hispanic Network	do	BPH–850710NM	
C. Ken Braddick	do	BPH–850712GT	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
1. Air Hazard	B
2. Comparative	A, B, C
3. Ultimate	A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief Audio Services Division Mass Media Bureau.

[FR Doc. 87–2404 Filed 2–4–87; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Pilgrims Pride Broadcasting Co., Ltd., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No	MM docket No
A. Pilgrims Pride Broadcasting Company, Ltd	Harwichport, MA	BPH–831018AG	86–511
B. Women, Minorities and Disabled Americans for Better Broadcasting, Inc	do	BPH–840217AE	
C. Sound Media, Inc	do	BPH–840217AL	
D. Mary Jane Kelly	do	BPH–840217AP	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
1. Misrepresentation	C
2. Air Hazard	A, B, C, D
3. Comparative	A, B, C, D
4. Ultimate	A, B, C, D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief Audio Services Division Mass Media Bureau.

[FR Doc. 87–2405 Filed 2–4–87; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Ramon Rodriguez & Associates et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM docket No.
A. Ramon Rodriguez et al d/b/a Ramon Rodriguez & Associates	Cabo Rojo, PR	BPH–821208AA	86–510
B. Guillermo A. Bonet & Hilda Acosta de Bonet d/b/a Bonet Associates	Lajas, PR	BPH–830420AC	
C. Carmen B. Rodriguez & Frederick Gauthier de Castro d/b/a F.M Minority Broadcasting	do	BPH–830420AK	
D. David Ortiz Radio Corporation	do	BPH–830722AL	(Dismissed)

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
1. Air Hazard	B
2. Comparative	A, B, C
3. Ultimate	A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief Audio Services Division Mass Media Bureau.

[FR Doc. 87–2406 Filed 2–4–87; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOME LOAN BANK BOARD

[No. AC–552]

Bell Savings Bank, PaSa Upper Darby, PA; Final Action Approval of Conversion Application

Dated: January 30, 1987.

Notice is hereby given that on December 30, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Bell Savings Bank, PaSa, Upper Darby, Pennsylvania for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Pittsburgh, One Riverfront Center, Twenty Stanwix Street, Pittsburgh, Pennsylvania 15222–4893.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Acting Secretary.

[FR Doc. 87–2451 Filed 2–4–87; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–002744–059

Title: Atlantic and Gulf/West Coast of South America Conference

Parties:

Compania Chilena de Navigacion Interoceania, S.A.

Compania Sud Americana de Vapores S.A.

Lykes Bros. Steamship Co., Inc.

Compania Peruana de Vapores

Lineas Navieras Bolivianas, S.A.M.

Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Agreement No.: 202–007540–047

Title: United States Atlantic and Gulf/Southeastern Caribbean Conference

Parties:

Puerto Rico Maritime Shipping Authority

Sea-Land Service, Inc.

Shipping Corporation of Trinidad and Tobago, Ltd.

Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Agreement No.: 202–007590–048

Title: United States Colombia Conference

Parties:

Crowley Caribbean Transport, Inc.

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Flota Mercante Grancolombiana, S.A.
Lykes Bros. Steamship Co., Inc.
CTMT, Inc.
Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.
Agreement No.: 204–010066–012
Title: Atlantic & Pacific/Colombia Equal Access Agreement
Parties:
Flota Mercante Grancolombiana, S.A.
United States Lines (S.A.) Inc.
Crowley Caribbean Transport, Inc.
CTMT, Inc.
Synopsis: The proposed amendment would delete the agreement's termination date. The parties have requested a shortened review period.
Agreement No.: 202–010390–014
Title: United States Atlantic and Gulf/Ecuador Conference
Parties:
Crowley Caribbean Transport, Inc.
Lykes Bros. Steamship, Inc.
Ecuadorian Line, Inc.
Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.
Agreement No.: 224–010946–002
Title: Brazos River Terminal Agreement
Parties:
Brazos River Harbor Navigation District of Brazoria County, Texas (Port)
American Rice, Inc. (ARI)
Synopsis: The proposed amendment would specify the amount to be paid by ARI in the event ARI chooses to exercise its option to repurchase property improvements sold to the Port and leased-back under the terms of the agreement.
Agreement No.: 202–010717–017
Title: United States Atlantic and Gulf/Central America Freight Association
Parties:
Crowley Caribbean Transport, Inc.
Ecuadorian Line, Inc.
Seaboard Marine Line, Ltd.
Sea-Land Service, Inc.
United States Lines, Inc.
Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.
Agreement No.: 224–011057
Title: San Francisco Terminal Agreement
Parties:
San Francisco Port Commission
South Seas Steamship Company (SSSC)
Synopsis: The proposed agreement would permit the Port to assess SSSC a reduced level of dockage, wharfage and demurrage fees in return for SSSC utilizing San Francisco as its published, regularly scheduled Northern California port of call. The agreement would have a ten year term.
Agreement No.: 224–011058
Title: Galveston Port Agreement
Parties:
Board of Trustees of the Galveston Wharves (Port)
Suderman Stevedore, Inc. (SSI)
Synopsis: The proposed agreement would permit the Port to assign shed space to SSI for use in SSI's unloading of United States Department of Agriculture Title II sacked cargo. The agreement would remain in effect for a period of sixty days. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: February 2, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87–2409 Filed 2–4–87; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

First Chicago Corp.; Formations of, Acquisitions by and Mergers of Bank Holding Companies; Correction

January 30, 1987.

This notice corrects a previous **Federal Register** document.

1. (FR Doc. 87–54), published at page 359 of the issue for Monday, January 5, 1987.

Under the Federal Reserve Bank of Chicago, the entry for First Chicago Corporation is corrected to read as follows:

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Chicago Corporation*, Chicago, Illinois, and American National Corporation, Chicago, Illinois; to acquire 5.017 percent of the voting shares of Suburban Trust and Savings Bank, Oak Park, Illinois.

Comments on this application must be received by February 20, 1987.

Board of Governors of the Federal Reserve System, January 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–2288 Filed 2–4–87; 8:45 am]

BILLING CODE 6210–01–M

First Intercity Banc Corporation et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 23, 1987.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Intercity Banc Corporation*, Cleveland, Ohio; to engage *de novo* through its subsidiary, Firstco Mortgage Corporation, Cleveland, Ohio, in mortgage loan servicing pursuant to § 225.25(b)(1), and escrow servicing functions pursuant to § 225.25(b)(3) of the Board's Regulation Y. These activities will be conducted in the State of Ohio.

2. *Trustcorp, Inc.*, Toledo, Ohio; to engage either through itself or a *de novo* subsidiary, in tax planning and preparation activities and services pursuant to § 225.25(b)(21)l of the Board's Regulation Y. Comments on this application must be received by February 25, 1987.

Board of Governors of the Federal Reserve System, January 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–2290 Filed 2–4–87; 8:45 am]

BILLING CODE 6210–01–M

Alberto J. Gabrielli; Acquisition of Shares of Banks or Bank Holding Companies;

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act ((12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their view in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 20, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Alberto J. Gabrielli*, Buenos Aires, Argentina; to acquire 100 percent of the voting shares of Miami National Bancorp, Miami, Florida, and thereby indirectly acquire Miami National Bank, Miami, Florida.

Board of Governors of the Federal Reserve System, January 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–2289 Filed 2–4–87; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86E–0492]

Determination of Regulatory Review Period for Purposes of Patent Extension; Noroxin

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Noroxin and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Noroxin (norfloxacin) which is indicated in the treatment of adults with complicated and uncomplicated urinary tract infections that are caused by certain susceptible strains of microorganisms. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Noroxin from Kyorin Seiyaku Kabushiki Kaisha, and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated December 22, 1986, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the active ingredient, norfloxacin, represented the first permitted commercial marketing or use of that active ingredient. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Noroxin is 1,959 days. Of this time, 1,303 days occurred during the testing phase of the regulatory review period, while 656 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* June 22, 1981. The applicant claims June 4, 1981, as the date the notice of claimed investigational exemption (IND) for the drug became effective. However, FDA records indicate that the IND became effective on June 22, 1981.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* January 14, 1985. FDA has verified the applicant's claim that the new drug application for the drug (NDA 19–384) was initially submitted on January 14, 1985.

3. *The date the application was approved:* October 31, 1986. FDA has verified the applicant's claim that NDA 19–384 was approved on October 31, 1986.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension.

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In its application for patent extension, this applicant seeks 730 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before April 1, 1987 submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before August 4, 1987, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 2, 1987.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 87–2399 Filed 2–4–87; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 86E–0491]

Determination of Regulatory Review Period for Purposes of Patent Extension; Tegison

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Tegison and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extention that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be substrated as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Tegison (etretinate) which is indicated for the treatment of severe recalcitrant psoriasis, including the erythrodermic and generalized pustular types. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Tegison from Hoffmann-LaRoche, Inc., and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated December 22, 1986, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that its active ingredient, etretinate, represented the first permitted commercial marketing or use of that active ingredient. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Tegison is 3,640 days. Of this time, 2,989 days occurred during the testing phase of the regulatory review period, while 651 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* October 14, 1976. FDA has verified the applicant's claim that the notice of claimed investigational exemption (IND) for the drug became effective on October 14, 1976.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* December 19, 1984. The applicant claims that a new drug application for the drug (NDA 19–369) was initially submitted on December 20, 1984. However, FDA records indicate that the application was received on December 19, 1984.

3. *The date the application was approved:* September 30, 1986. FDA has verified the applicant's claim that NDA 19–369 was approved on September 30, 1986.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before April 6, 1987, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before August 4, 1987, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 2, 1987.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 87–2350 Filed 2–4–87; 8:45 am]

BILLING CODE 4160–01–M

Public Health Service

National Toxicology Program; Announcement of Completed Short-Term Toxicology Studies on Five Chemicals; Request for Comments

As part of an effort to inform the public and allow interested parties to comment and provide information on chemicals prior to designing of studies for long-term toxicology and carcinogenesis studies, the National Toxicology Program (NTP) will routinely announce in the **Federal Register** the list of chemicals for which short-term toxicology studies have been completed.

Short-term toxicology studies on the chemicals listed in this announcement have been completed and the National Institute of Environmental Health Sciences (NIEHS)/National Toxicology Program (NTP) is in the process of evaluating the results. A decision on whether additional studies including long-term toxicology and carcinogenicity studies are needed will soon be made by the NTP. If you have relevant information (such as current production, use pattern, exposure levels, toxicological data) to share with the NTP on any of these chemicals, please contact the responsible NTP Scientist within 30 days of the appearance of this announcement by telephone or by mail to: NIEHS/NTP, P.O. Box 12233, Research Triangle Park, North Carolina 27709. The information provided will be considered by the NTP while determining which chemicals require additional studies and in designing these studies.

1. Bromobenzene (108–86–1)

4-day inhalation, 90-day gavage and 90-day inhalation studies in Fischer 344 rate and B6C3F1 mice. Contact person: Dr. Joseph Roycroft, telephone (919–541–3627).

2. Butyl Benzyl Phthalate (85–68–7)

26-week dosed feed study in male Fischer 344 rats, 10-week dosed feed study with mating trials in male F344 rats. Contact person: Dr. Elmer Rauckman, telephone (919–541–7981).

3. Scopolamine Hydrobromide (114–49–8)

14 and 90-day gavage studies in Fischer 344 rats and B6C3F1 mice. Contact person: Dr. Dennis Dietz, telephone (919–541–2927).

4. Nickel Subsulfide (12035–72–2)

14 and 90-day inhalation studies in Fischer 344 rats and B6C3F1 mice. Contact person: Dr. June Dunnick, telephone (919–541–4811).

5. Theophylline (58–55–9)

14 and 90-day gavage and 90-day dosed feed studies in Fischer 344 rats and B6C3F1 mice, and continuous breeding studies in CD–1 mice. Contact person: Dr. Jeffrey Collins, telephone (919–541–2264).

Please submit all comments and suggestions on chemical(s) by telephone or by mail to the responsible scientist (listed above) within 30 days of publication of this notice. Any submissions received after the above date will be accepted and utilized if possible.

Dated: January 27, 1987.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 87–2453 Filed 2–4–87; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Chlorpheniramine Maleate

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of chlorpheniramine maleate, a widely used antihistaminic drug in human and veternary medicine. These studies were conducted by administering this chemical in deionized water by gavage to groups of 50 male and 50 female F344/N rats and B6C3F$_1$ mice five days a week for 103 weeks. The doses used were: Male rats—0, 15, or 30 mg/kg; female rats—0, 30, or 60 mg/kg; male mice—0, 25, or 50 mg/kg; female mice—0, 100, or 200 mg/kg.

Under the conditions of these 2-year gavage studies, there was no evidence of carcinogenicity [1] for F344/N rats or B6C3F$_1$ mice of either sex administered chlorpheniramine maleate in deionized water 5 days per week for two years. Due to high mortality in high dose female rats and high dose male mice, the sensitivity of these groups to detect a carcinogenic response was reduced. Chlorpheniramine maleate had a proliferative effect on the thyroid gland of female mice, as shown by the incresed incidences of follicular cells cysts and hyperplasia in both low dose and high dose groups.

Copies of *Toxicology and Carcinogenesis Studies of Chlorpheniramine Maleate in F344/N Rats and B6C2F$_1$ Mice (Gavage Studies)* (TR 317) are available without charge from the NTP Public Information Office, MD B2–04, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone: (919) 541–3991. FTS: 629–3991.

Dated: January 28, 1987.

David P. Rall,

Director.

[FR Doc. 87–2454 Filed 2–4–87; 8:45 am]

BILLING CODE 4140–01–M

[1] The NTP uses five categories of evidence of carcinogincity to summarize the strength of the evidence observed in each animal study: Two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

National Toxicology Program Board of Scientific Counselors Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting on March 4, 1987, of the National Toxicology Program (NTP) Board of Scientific Counselors, U.S. Public Health Service, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina.

The meeting will begin at 9:00 a.m. and be open to the public. The primary agenda topic is to peer review draft technical reports of long-term toxicology and carcinogenesis studies from the National Toxicology Program. Review will be conducted by the Technical Reports Review Subcommittee of the Board in conjunction with an *ad hoc* Panel of Experts.

Draft technical reports of studies on the following chemicals (listed in alphabetical order with Chemical Abstracts Service registry numbers, routes of administration and species, and NTP chemical managers) are *tentatively* scheduled to be peer reviewed on March 4. The actual order of presentation will be available at a later date.

Chemical (CAS registry No.)	Route/species	Chemical manager (Phone No.)
2-Amino-5-Nitro-Phenol (121–88–0)	Gavage/mice, rats	Dr. R.D. Irwin (919–541–3340)
Hexylresorcinol (136–77–6)	Gavage/mice, rats	Dr. R.S. Chhabra (919–541–3386)

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Chemical (CAS registry No.)	Route/species	Chemical manager (Phone No.)
Malonaldehyde Sodium (24382-04-5)	Gavage, mice, rats.	Dr. J.W. Spalding (919-541-7936)
Merchaptobenzothiazole (149-30-4)	Gavage, mice, rats.	Dr. M.P. Dieter (919-541-3368)
Mirex (2385-85-5)	Feed/rats.	Dr. J.R. Huff (919-541-3780)
N-Phenyl-2-Naphthylamine (135-88-6)	Feed/mice, rats.	Dr. K.M. Abdo (919-541-7819)

Program staff request that any persons wanting to make a presentation regarding a specific Technical Report during the public comment periods should please notify the Executive Secretary and provide a written copy in advance or at the beginning of the meeting so copies can be made for all attendees.

The Executive Secretary, Dr. Larry G. Hart, Office of the Director, National Toxicology Program, P. O. Box 12233, Research Triangle Park, North Carolina 27709, telephone (919-541-3971), FTS (629-3971), will furnish final agenda, rosters of subcommittee and panel members, and other program information prior to the meeting, and summary minutes subsequent to the meeting.

Dated: January 27, 1987.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 87-2452 Filed 2-4-87; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-87-1670; FR-2321]

Mortgage and Loan Insurance Programs under the National Housing Act; Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner (HUD).

ACTION: Notice of Change in Debenture Interest Rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the "Act"). The interest rate for debentures issued under section 221(g)(4) of the Act during the six-month period beginning January 1, 1987, is 7 percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the six-month period beginning January 1, 1987, is 8 percent.

FOR FURTHER INFORMATION CONTACT: James B. Mitchell, Financial Policy Division, Room 9132, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 426-4325 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6) and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the **Federal Register.**

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the interest rate determined by the Secretary of the Treasury pursuant to a formula set out in the statute.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning January 1, 1987, is 8 percent and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 8 percent for the six-month period beginning January 1, 1987. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the first six months of 1987.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1978:

Effective rate (percent)	On or after	Prior to
7⅛	Jan. 1, 1978	July 1, 1978
7¾	July 1, 1978	Jan. 1, 1979
8	Jan. 1, 1979	July 1, 1979
8¼	July 1, 1979	Jan. 1, 1980
9½	Jan. 1, 1980	July 1, 1980
9⅞	July 1, 1980	Jan. 1, 1981
11¾	Jan. 1, 1981	July 1, 1981
12⅞	July 1, 1981	Jan. 1, 1982
12¾	Jan. 1, 1982	Jan. 1, 1983
10¼	Jan. 1, 1983	July 1, 1983
10⅜	July 1, 1983	Jan. 1, 1984
11½	Jan. 1, 1984	July 1, 1984
13⅜	July 1, 1984	Jan. 1, 1985
11⅞	Jan. 1, 1985	July 1, 1985
11⅛	July 1, 1985	Jan. 1, 1986
10¼	Jan. 1, 1986	July 1, 1986
8¼	July 1, 1986	Jan. 1, 1987
8	Jan. 1, 1987	

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" in effect at the time the debentures are issued. The term "going Federal rate", as used in that paragraph, is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a formula set out in the statute, for the six-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the six-month period beginning January 1, 1987, is 7 percent.

HUD expects to publish its next notice of change in debenture interest rates in July 1987.

The subject matter of this notice falls within the categorical exclusion from HUD's environmental clearance procedures set forth in 24 CFR 50.20(1). For that reason, no environmental finding has been prepared for this notice.

(Secs. 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d)).

Dated: January 23, 1987.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 87-2301 Filed 2-4-87; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination That the Samish Indian Tribe Does Not Exist as an Indian Tribe

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(f) (formerly 25 CFR 54.9(f)), notice is hereby given that the Assistant Secretary has determined that the Samish Indian Tribe, c/o Mr. Kenneth C. Hansen, P.O. Box 217, Anacortes, Washington 98221, does not exist as an Indian tribe within the meaning of Federal law.

This notice is based on a determination following a review of public comments on the proposed finding that this group does not meet three of the criteria set forth in 25 CFR 83.7 and, therefore, does not meet the requirements necessary for a government-to-government relationship with the United States.

A notice of the proposed finding to decline to acknowledge the Samish Indian Tribe was published in the **Federal Register** on Thursday, November 4, 1982 (page 50110, Volume 47, No. 214). The comment period required by the regulations (25 CFR 83.9(g)) was delayed several times in order to allow for the resolution of several issues concerning a Freedom of Information Act request by the Samish. The 120-day comment period began January 8, 1986. It was extended in May and again in August, and closed December 1, 1986.

The Samish submitted detailed reports, evidence, and arguments on August 7 in response to the proposed finding. Limited additional materials were submitted by letter of November 20. Letters of support were received from several private parties and two organizations in Washington State. These letters, however, contained little or no new evidence or argument not already considered in the proposed finding. A memorandum of support was received from the former Superintendent of the Bureau's Western Washington Agency, who had been part of a 1974 Bureau evaluation of Samish eligibility for recognition. The petitioner's response included a more detailed affidavit from this individual.

A letter opposing the petitioner was received from the legal representative of the Tulalip Tribes of Washington State. It contained an argument that the 1979 decision in *U.S.* v. *Washington* that the Samish were not a political continuation of the treaty-signer precluded the Department from making a decision on acknowledgment under 25 CFR Part 83. It contained no significant evidence concerning whether or not the Samish met the requirements of the regulations themselves.

The proposed finding concluded that the Samish met criteria a, d, f and g of the acknowledgment regulations. Criterion a was met because various entities with some links to each other and some consistency in membership had been identified as Samish throughout history. Criterion d, submission of a governing document and criteria for membership, was technically complied with, although some deficiencies were noted in the statement of membership criteria. Only 9 percent of the membership was enrolled with a recognized tribe, hence criterion f was met. The group was found to have not been terminated or forbidden the Federal relationship by act of Congress, and thus met criterion g.

The proposed finding concluded that the membership of the group consisted predominantly of Indian descendants who had not maintained substantial social contact with each other nor formed or been part of a cohesive Indian community since the 19th century. The independent Samish village which existed in the 19th century dissolved in the first decade of the 20th century and it was concluded that its members merged into the Lummi and Swinomish Reservation communities in the succeeding decades. Therefore, the group was found to not meet criterion b of the regulations.

The proposed finding concluded that separate political functioning, derived from the independent village, gradually ended in the 1920s and 1930s, as the older generation of leadership died off and the Samish gradually became part of the emerging Swinomish and Lummi reservation communities. The present petitioner organization and earlier organizations formed in 1913 and 1926 were primarily for claims purposes and did not function as tribal political authority for the members, who had little affiliation with each other outside of the context of the organization. Therefore, the group was found to not meet criterion c of the regulations.

Based on the genealogical evidence available for the proposed finding, 42 percent of the petitioner's membership was unable to satisfactorily document Samish Indian ancestry for acknowledgment purposes. Therefore, the petitioner was found to not meet the requirement in criterion e that the membership consist of individuals tracing ancestry from the historic tribe or from historic tribes which had combined and formed a single autonomous entity. Twenty-two percent of the membership was found to have only ancestry from the Noowhaha tribe. Another 10 percent was found to have other Indian ancestry and the Indian ancestry of the remaining 10 percent was undetermined. Therefore, the group was found to not meet criterion e of the regulations.

No evidence in the response to the proposed finding was presented supporting a conclusion that the traditional Samish leaders who may have continued to function to some extent as late as the 1940s were the leaders of the vast majority of the membership who were Indian descendants (as characterized above) or that this continued after the 1940s. No evidence was presented supporting a conclusion that the present petitioner organization, formed in 1951, had functioned as a tribal political body and would meet the requirements of criterion c. The new and re-evaluated data provided somewhat clearer evidence that a nonreservation Samish community had persisted longer after the end of the New Guemes village shortly after 1900 than had been previously determined. It also tended to support a conclusion that traditional Samish leaders within the Swinomish Reservation community functioned within the reservation's emerging political institutions and as well as being leaders of the Indian community Samish and that this continued to some degree until the 1940s.

The Samish submitted the results of a survey of a sample of the membership to measure the degree of social interaction within the group, in response to the conclusion that most of the membership had little social contact with each other. Because of deficiencies in design of the survey and because the sample was unrepresentative in one important respect, the survey data did not provide an adequate basis to conclude that extensive social interaction occurred within the membership and that the membership formed a community. Most of the survey questions focused on participation in formal activities of the organization or were ambiguous with regard to the kinds of activities being measured. The sample of respondents was disproportionately made up of present or former members of the council or employees or their immediate relatives. Despite this, between a third and a half of those responding to the questions indicated no activity or none beyond their immediate family. Responses to some of the questions did

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indicate the probability of a significant degree of interaction characteristic of a tribal community among the limited portion of the membership who lived on or were derived from a reservation. Responses to a few of the questions did indicate some wider interaction between families, but the limited degree of this, together with the limitations of the questions and sample, did not provide a basis for changing the conclusions in the proposed finding that the present-day membership did not meet the requirements of criterion b.

There was little new data concerning the social character of the Indian descendants in the past. The petitioner contended that the Indian descendant portion of their membership's almost universal marriage to non-Indians for the past several generations was equivalent to the aboriginal Samish cultural pattern and that therefore this should not be considered as evidence of a lack of cohesiveness as a community. The aboriginal pattern of almost universal marriage outside the tribe, at least among the higher-ranking families, functioned in an intertribal system to provide a network of kinship-based social ties influencing residence, economics and alliance. It was in no way comparable to marriage outside Indian society, dispersed among a vastly larger population, which created no such ties.

Insufficient evidence was presented to show that the portion of the membership that was enrolled on a reservation or derived from such families was socially distinct from those reservation communities. The proposed finding concluded that these Samish had been merged into the reservation communities for several generations, even though some separate identity as Samish had been maintained. There was somewhat better evidence than previously available that a sharp distinction is made on the Lummi, but not concerning the Swinomish Reservation. Re-evaluation of the evidence also indicated that this portion of the Samish membership constituted about a quarter rather than a tenth of the petitioner's enrollment.

The response contained comparisons of the interpretation of several aspects of the Samish case with interpretations of purportedly similar situations in other Acknowledgment findings. The petitioner's contention that the Samish case had not been treated in a comparable fashion was not accurate, and was found in most instances to be based on a misinterpretation or misstatement of the findings in the other cases. The response incorrectly stated that, unlike other cases, only formal organization was evaluated in judging the existence of tribal political process. Both formal and informal processes were evaluated to the extent the limited data made possible. The limited function of several Samish organizations, to pursue claims, was not found comparable to other cases where a tribe with functioning political processes pursued claims as one activity. The extent of marriage within the group or with other Indian groups was not comparable to that in other cases which were determined to be eligible for acknowledgment. Other comparisons are discussed in the report prepared to support this determination.

Based on additional evidence and arguments provided, we conclude that three additional family lines can trace their ancestry to the historic Samish tribe. One of the three family lines traces to a Noowhaha ancestor who had probably been incorporated in the Samish tribe in historic times and therefore should be considered to be of ancestry from the historic tribe. The total membership meeting the requirements of criterion e therefore changed froim 58 to 74 percent.

As a result of the new evidence and re-evaluation of previous data, the factual conclusions in the final determination differ in some respects from those in the proposed finding. While the re-examination resulted in changes in factual conclusions concerning the history and character of the petitioner, these were not sufficiently different to warrant a change in the determination concerning any of the three criteria that the petitioner previously did not meet.

The arguments and evidence presented, some additional staff research, and re-evaluation of previously available data do not provide a basis for changing the conclusion in the proposed finding that the Samish do not meet three of the criteria for Federal Acknowledgment. It is determined therefore that the Samish do not meet the requirements necessary under Federal law for a government-to-government relationship with the United States.

In accordance with 25 CFR 83.9(j) of the Acknowledgment regulations, an analysis was made to determine what, if any, option other than acknowledgment would be available under which the petitioning group could make application for services and other benefits as Indians. No alternatives were found due to the lack of social and political cohesion of the group. Some individual members may be eligible now or may become eligible in the future for enrollment with the recognized Swinomish or Lummi Tribes.

This determination is final and will become effective 60 days after the date on which this notice appears in the **Federal Register** unless the Secretary of the Interior requests reconsideration pursuant to 25 CFR 83.10(a–c).

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

[FR Doc. 87–2276 Filed 2–4–87; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[AZ-050-07-4331-12]

Big Maria Area of Critical Environmental Concern (ACEC); Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Formal Notice of Closure of ACEC to Public Use.

SUMMARY: The closure of the Big Maria ACEC is being implemented to protect significant and sensitive cultural resources from inadvertent damage caused by vehicle use. Other sensitive resources in the ACEC which will benefit from the closure include wildlife, the desert plant community, and several important natural areas.

The authority for the management decision for partial closure to vehicle use are (1) the Federal Antiquity Act of 1906; (2) 43 CFR Section 8000.0–6c2 4340, 8340, 8341, 8342 and 8364; (3) the Federal Land Policy and Management Act of 1976; (4) the National Environmental Policy Act of 1969; (5) the Sikes Act of 1974; (6) the National Historic Preservation Act of 1966; (7) the Archaeological Resources Protection Act of 1979; and (8) Executive Orders 11644 and 11989. The Big Maria Area contains approximately 4,400 acres of BLM-managed land in eastern Riverside County, California, located just to the west of Highway 95 between 8 and 15 miles north of the city of Blythe. This management designation is a result of plans contained in the Yuma District Resources Management Plan (1986) and the Big Maria Cultural Resources Management Plan (1986).

Copies of the above two documents and maps of the ACEC with road use designations are on file and available at the Yuma BLM District Office.

DATE: February 5, 1987.

FOR FURTHER INFORMATION CONTACT: Area Manager, Bureau of Land Management, Yuma Resource Area, P.O. Box 5680, Yuma, Arizona 85364, (602) 726–6300.

SUPPLEMENTARY INFORMATION:

Vehicle Use

The Big Maria ACEC will be closed to all vehicle use except for the two following conditions:

1. The Blythe Intaglio road will be kept open for public use.

2. Several other designated and posted roads will be usable only by special Area Manager authorization for access to maintain existing transmission lines, radio/TV tower facilities, and rock quarries located within or beyond the Big Maria ACEC.

Dated: January 28, 1987.

J. Darwin Snell,

District Manager.

[FR Doc. 87–2321 Filed 2–4–87; 8:45 am]

BILLING CODE 4310-32-M

[UT-040-07-4121-16]

Environmental Statements; a Proposal Concerning 15 Coal Lease Readjustments in Wilderness Study Areas

AGENCY: Bureau of Land Management, Cedar City District, Interior.

ACTION: Notice of availability of draft environmental assessments.

SUMMARY: The Bureau of Land Management, Cedar City District is proposing to adjust the following coal leases U–0103107, U–0103109, U–0103129, U–0103130, U–0105418, U–0115792, U–115833, U–0115656, U–0115657, U–0130986, U–0130989, U–0136512, U–0140836, U–0140837, and U–0148535. Each of these leases have been evaluated and additional stipulations are proposed for the leases to increase the level of environmental protection and other considerations.

The Wilderness Study Areas involved are Carcass Canyon (076), Burning Hills (079), 50-Mile Mountain (080), Death Ridge (078), and Wahweap (248).

Draft Environmental Assessments have been prepared on these proposals and are now available for public review and comment. Comments should be submitted by March 9, 1987.

ADDRESS: To obtain a copy of these documents or to obtain additional information on the proposal, contact Dave Everett, Enviromental Specialist at the bureau of Land Management, Cedar City District Office, 176 East D.L. Sargent Drive, Cedar City, Utah 84720 or telephone at 801–586–2401.

Dated: January 29, 1987.

Morgan S. Jensen,

Distict Manager.

[FR Doc. 87–2317–Filed 2–4–87; 8:45 am]

BILLING CODE 4310-DQ-M

[ID-050-4212-13; I-23536, I-23537]

Realty Action; Idaho

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action, I–23536, I–23537, exchange of public and private lands in Gooding and Lincoln County, Idaho.

SUMMARY: The following described public lands have been determined to be suitable for disposal through the development of land use decisions based upon public input and resource and use evaluation. They are suitable for exchange under Section 206 of the *Federal Land Policy and Management Act of 1976*, 43 U.S.C. 1716.

Parcel #1—

I–23536.

Legal Description

T. 6 S., R. 15 E., B.M., Gooding County, Idaho
Sec. 20: SW¼,
Sec. 29: NW¼,
containing 320 acres of public land.

In exchange for these lands, the United States will acquire the following described lands from Faulkner Land and Livestock Company:

T. 6 S., R. 16 E., B.M., Lincoln County, Idaho
Sec. 16: N½
containing 320 acres of private land.

Parcel #2

I–23537

Legal Description

T. 6 S., R. 15 E., B.M., Gooding County, Idaho
Sec. 11: SE¼
Sec. 12: SE¼SW¼,
Sec. 13: NW¼,
Sec. 14: NE¼,
containing 520 acres of public land.

In exchange for these lands, the United States will acquire the following described lands from Arthur Gnesa:

T. 6 S., R. 16 E., B.M., Lincoln County, Idaho
Sec. 16: S½
containing 320 acres of private land.

The purpose of this exchange is to allow blocking up into better management units by obtaining a block of private inholdings; and to dispose of public land, parcel #1, that has management problems due to unauthorized uses (materials trespass and illegal dumping) and access problems to portions of parcel #2 because of an existing canal that crosses it. The Federal government will also obtain a water well, pump, water storage tank, stock water tanks, and 1½ miles of fencing, and the public interest will be served by completing these exchanges as a unit.

The values of the lands to be exchanged are approximately equal; full equalization of values will be achieved by adjusting acreages, or by payment to the Federal government, by the private party, of funds in an amount not to exceed 25 percent of the total values of the lands to be transferred out of Federal ownership.

Lands to be transferred from the United States will be subject to the following reservations, terms and conditions:

Parcel #1, I–23536

a. I–06667—R/W for Highway, Idaho Department of Transportation
b. H–027418—R/W for canal, North Side Canal Company
c. I–1459—Material site R/W, Idaho Department of Transportation
d. Withdrawal—FPC 7/8/1960 for power transmission line, Idaho Power Company
e. Ditches and canals to U.S.—Act of August 30 1890, (43 U.S.C. 945)

Parcel #2, I–23537

a. Ditches and canals to U.S.—Act of August 30, 1890, (43 U.S.C. 945)
b. H–015523—R/W for canal, Big Wood Canal Company

Publication of this notice segregates the public lands from the operation of the public land laws, including the mining laws as provided in 43 CFR 2201.1(b).

DATES: Comments on the exchange may be submitted to the issuing officer for a period of 45 days from the date of publication in the **Federal Register**.

ADDRESS: Comments should be addressed to: District Manager, Bureau of Land Management, Shoshone District Office, P.O. Box 2–B, Shoshone, ID 83352.

FOR FURTHER INFORMATION CONTACT: The Bennett Hills Resource Area Manager or District Realty Specialist at the above address or (208) 886–2206.

SUPPLEMENTARY INFORMATION: Comments received on this action will be evaluated and the proposed action may be vacated, modified or affirmed. In the absence of any further action by the issuing officer, this realty action will become the final action of the Department of the Interior.

Jon H. Idso,

District Manager.

[FR Doc. 87–2320 Filed 2–4–87; 8:45 am]

BILLING CODE 4310-GG-M

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[Group 874]

Filing of Plat of Survey; California

January 27, 1987.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Humboldt Meridian, Del Norte County

T. 14 N., R 2 E.

2. This plat representing the dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines, and the survey of the subdivision of sections 22, 27, and 34, Township 14 North, Range 2 East, Humboldt Meridian, California, under Group No. 874, California, was accepted January 14, 1987.

3. This plat will immediately become the basis record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This survey was executed to meet certain administrative needs of the U.S. Forest Service, Department of Agriculture.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief Records & Information Section.

[FR Doc. 87–2318 Filed 2–4–87; 8:45 am]

BILLING CODE 4310–40–M

[CO–942–06–4520–12]

Colorado: Filing of Plats of Survey

January 23, 1987.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 A.M., January 23, 1987.

The plat, in two sheets, representing the corrective dependent resurvey of a portion of the subdivisional lines and U.S. Mineral Survey No. 19034, Vanadis No. 10 Lode, and the metes-and-bounds survey of Lot 18, section 26, T. 44 N., R. 11 W., New Mexico Principal Meridian, Colorado, Group No. 616, was accepted January 8, 1987.

This survey was executed to meet certain administrative needs of this Bureau.

The plat, representing the dependent resurvey of a portion of the Ninth Standard Parallel North (south boundary), T. 37 N., R. 3 W. and a portion of T. 37 N., R. 4 W., the east and south boundaries, a portion of the subdivisional lines, and the remonumentation of certain original corners, T. 36 N., R. 3 W., New Mexico Principal Meridian, Colorado, Group Nos. 750 and 773, was accepted January 14, 1987.

The plat, representing the dependent resurvey of portions of the west boundary, the subdivisional lines, and the Homestead Entry Survey (H.E.S.) No. 247 (identical with a part of the east and west center line of section 18), and portions of the survey of the subdivision of section 18 and right-of-way of Interstate 70, T. 5 S., R. 79 W., Sixth Principal Meridian, Colorado, Group No. 768, was accepted January 15, 1987.

The plat of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 A.M., April 4, 1987.

The plat representing the metes-and-bounds survey of Public Land Tract 37, T. 37 N., R. 2 E., New Mexico Principal Meridian, Colorado, Group No. 812, was accepted January 20, 1987.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Jack A. Eaves,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 87–2323 Filed 2–4–87; 8:45 am]

BILLING CODE 4310–JB–M

Minerals Management Service

Availability of Final Environmental Impact Statement for the 5-year Outer Continental Shelf Oil and Gas Leasing Program for Mid–1987 to Mid–1992

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service (MMS) has prepared a final Environmental Impact Statement Statement (EIS) relating to the Proposed 5-year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for Mid–1987 to Mid–1992.

Information on the availability of the final EIS can be obtained from the Regional Director, Atlantic Region, Minerals Management Service 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180; Regional Director, Gulf of Mexico Region, Minerals Management Service 1201 Wholesalers Parkway, New Orleans, Louisiana 70123–2394; Regional Director, Pacific Region, Minerals Management Service, 1340 West Sixth Street—Room 244, Los Angeles, California 90017; or Regional Director, Alaska Region, Minerals Management Service, 949 East 36th Avenue, Anchorage, Alaska 99508.

Copies of the final EIS will be available for review in public libraries located throughout the coastal States. Information regarding the locations of libraries where copies of the statement will be available may be obtained from the offices listed above.

Dated: January 27, 1987.

Approved:

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 87–2286 Filed 2–4–87 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–57 (Sub-22X)]

Soo Line Railroad Co., Exemption Abandonment in Polk and Burnett Counties, WI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by the Soo Line Railroad Company of 51 miles of rail line between milepost 49.75 at Dresser and milepost 98.75 at Danbury, WI, and between milepost 49.96 at St. Croix Junction and milepost 51.96 at St. Croix Falls, WI, subject to standard labor protection conditions, and subject to the condition that Soo consult the Wisconsin Departments of Transportation and Natural Resources regarding salvage and clean-up operations.

DATES: This exemption will be effective on March 9, 1987. Petitions to stay must be filed by February 20, 1987, and petitions for reconsideration must be filed by March 2, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB–57 (Sub-No. 22X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's Representatives: Wayne C. Serkland, William C. Sippel, Larry D. Starns, 105 South Fifth Street, Soo Line Building, Suite 804, Minneapolis, MN 55440.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: January 21, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley, joined by Commissioner Simmons concurred with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87–2335 Filed 2–4–87; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–57 (Sub-No. 21X)]

Soo Line Railroad Co.; Abandonment Exemption in Ashland and Iron Counties, WI, and Gogebic County, MI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the Soo Line Railroad Company from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, to abandon its Bessemer line serving Ashland and Iron Counties, WI, and Gogebic County, MI, between milepost 409.83 at Mellen, WI, and milepost 443.38 at Bessemer, MI, a distance of approximately 33.55 miles.

DATES: This decision will be effective on March 9, 1987. Petitions for stay must be filed by February 16, 1987, and petitions for reconsideration must be filed by February 25, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB–57 (Sub-No. 21X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

and

(2) Petitioner's representative: Larry D. Starns, 105 South Fifth Street, Soo Line Building, Suite 804, Minneapolis, MN 55440

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (D.C. Metropolitan area) or call toll free (800) 424–5403.

Decided: January 27, 1987.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Vice Chairman Simmons and Commissioner Lamboley dissented with separate expressions.

Noreta R. McGee,

Secretary.

[FR Doc. 87–2336 Filed 2–4–87; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Industrial Asphalt, et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16 (b) through (h), that a proposed Final Judgment and Competitive Impact Statement ("CIS") have been filed with the United States District Court for the Central District of California in *United States of America v. Industrial Asphalt, et al.*, Civil Action No. 85–4631–JGD(JRx). The Complaint in this case alleges that Huntmix, Inc.; CalMat Co., a part owner of Huntmix; and Coast Asphalt, Inc., the successor to Industrial Asphalt Inc.; merged competing businesses into an entity known as "Industrial Asphalt" in violation of section 7 of the Clayton Act, 15 U.S.C. section 18, and section 1 of the Sherman Act, 15 U.S.C. section 1. The Complaint alleges that the effect of the merger might be substantially to lessen competition in the markets for the manufacture and sale of asphalt concrete in the greater Los Angeles area in western San Diego County.

The proposed Final Judgment requires Industrial Asphalt to divest the assets of three (3) specified asphalt concrete plants in the greater Los Angeles area within six (6) months. If Industrial Asphalt cannot accomplish the divestiture during this time, then a trustee will be appointed to do so. In addition, with respect to western San Diego County, the proposed Final Judgment enjoins the defendants, for a period of ten (10) years, from acquiring any interest in, managing or operating, or entering into any exclusive agreement concerning Asphalt, Inc.'s Lakeside plant or from impeding the ability of that plant's owners to sell its output. Finally, the proposed Final Judgment enjoins and restrains the defendants, for a period of ten (10) years, from merging with, or acquiring an interest in, any person engaged in the production of asphalt concrete in the greater Los Angeles area or western San Diego County.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the Federal Register and filed with the Court. Comments should be directed to Gary R. Spratling, Chief, San Francisco Office, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102 (telephone: 415–556–6300).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

Howard J. Parker, Joel S. Sanders, and Patricia J. Falk, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102. Telephone: (415) 556–6300. Attorneys for the United States.

U.S. District Court For the Central District of California

United States of America, Plaintiff, v. Industrial Asphalt; Huntmix, Inc.; Calmat Co.; and Coast Asphalt, Inc., Defendants.

Civil No. 85–4631JGD(JRx)

Filed: January 26, 1987.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

(1) The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court;

(2) The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment; and

(3) In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

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For the Plaintiff United States of America:

Charles F. Rule
Acting Assistant Attorney General
Judy Whalley
Gary R. Spratling
Howard J. Parker
Joel S. Sanders
Patricia J. Falk

Attorneys, Department of Justice, Antitrust Division, 450 Golden Gate Avenue, San Francisco, CA 94102, Telephone: (415) 556–6300.

For the Defendants Industrial Asphalt; Huntmix, Inc.; Calmat Co.; and Coast Asphalt, Inc.:

Latham & Watkins

By:
Michael J. Shockro, 555 South Flower Street, Los Angeles, CA 90071–2466, Telephone: (213) 485–1234.

Stipulation approved for filing.

Dated:

John G. Davies
United States District Judge

U.S. District Court for the Central District of California

United States of American, Plantiff, v. Industrial Asphalt; Huntmix, Inc.; Calmat Co.; and Coast Asphalt, Inc., Defendants

Civil No. 85–4631JGD (JRx)

Final Judgment

Filed January 26, 1987.

Plaintiff, United States of America, having filed its Complaint herein on July 15, 1985, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein:

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law here and upon consent of the parties hereto, it is hereby Ordered, Adjudged, and Decreed as follows:

I

Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against each defendant under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18), and under Section 1 of the Sherman Act (15 U.S.C. § 1).

II

Definitions

As used in this Final Judgment:

A. "Aggregate" means rock, sand, and gravel suitable for mixture in asphalt conccrete.

B. "Asphalt concrete" means material that is used principally for paving and is produced by combining and heating asphalt cement (also referred to in the industry as "liquid asphalt" or "asphalt oil") with rock, sand, or gravel.

C. "Assets to be Divested" means all the assets identified in Sections IV.A and IV.B. below.

D. "CalMat" means CalMat Co., a Delaware corporation with its principal place of business in Los Angeles, California.

E. "Coast Asphalt"means Coast Asphalt, Inc., a Delaware corporation with its principal place of business in Los Angeles, California.

F. "Greater Los Angeles area" means that area of Los Angles County, San Bernardino County, Riverside County, and Orange County with the following boundaries: on the west, the Pacific Ocean and the border between Los Angeles County and Ventura County; on the north, a line running through the intersection of Interstate 5 and Interstate 210 near Sylmar, California, due west to the Los Angeles County border and due east to the San Bernardino County border, and then southerly to the southeastern corner of the Angeles National Forest, and then due east to Interstate 15E/215; on the east, Interstate 15E/215; and on the south, a line running from the intersection of Interstate 405 and Interstate 5 due west to the Pacific Ocean and from the intersection of Interstate 405 and Interstate 5 northesterly to the intersection of Interstate 15E/215, California State Highway 60 and California State Highway 91.

G. "Hot-mix plant" means a plant that produces asphalt concrete.

H. "Huntmix" means Huntmix, Inc., a California corporation with its principal place of business in Van Nuys, California.

I. "Industrial Asphalt" means Industrial Asphalt, a California partnership with its principal place of business in Van Nuys, California.

J. "Ownership interest" means all right, title, andinterest, including but not limited to both fee and leasehold interests.

K. "Western San Diego County" means that area of San Diego County with the following boundaries: on the west, the Pacific Ocean; on the north, California State Highway 78; on the east, a line running due south from the intersection of California State Highways 78 and 67 near Ramona, California, to the Mexican border; and on the south, the Mexican border.

III

Applicability

A. The provisions of this Final Judgment apply to the defendants, to their successors and assigns, to their subsidiaries, directors, officers, managers, agents, and employees, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets in the greater Los Angeles area or western San Diego County involved in the production of asphalt concrete, or in the extracting, processing, and selling of aggregate, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV

Divestiture of Assets

A. Industrial Asphalt is hereby ordered and directed to divest, to an eligible purchaser or eligible purchasers, all of its ownership interest in all of the real and personal property used in the production and sale of asphalt concrete at:

1. either its plant located at 454 North Prospect Street, Orange, California (the "Orange Plant Assets") or its plant located at 24000 Santa Ana Canyon Road, Anaheim, California (the "Santa Ana Canyon Plant Assets");
2. its plant located at 19th Street and Campus Avenue, Upland, California (the "Upland Plant Assets"); and
3. either its plant located at 1380 East Arrow Highway, Irwindale, California (the "Arrow Highway Plant Assets") or its plant located at 13130 E. Los Angeles Street, Irwindale, California (the "Durbin Plant Assets").

Industrial Asphalt will warrant to the purchaser or purchasers of such assets that such assets will be operational on the date of sale, with its liability limited to repairing or replacing defects under the warranty. The Orange Plant Assets to be divested shall include the Sublicense Option Agreement executed on May 20, 1986 by Industrial Asphalt and Owl Rock Products Co., which provides an option to sublicense a site suitable for the operation of the Orange Plant Assets or a hot-mix plant of comparable batch capacity on Owl Rock Products Co.'s rock, sand, and gravel property on Gypsum Canyon Road in Orange County.

B. As part of any divestiture of plant assets under this Final Judgment, CalMat Co. shall agree that, for a period of ten (10) years from the date of divestiture, it shall, on request, supply aggregate to any purchaser or purchasers of such assets, from any of its aggregate producing sites in the greater Los Angeles area and western San Diego County then supplying aggregate to Industrial Asphalt, as long as CalMat is producing aggregate at that site, at f.o.b. prices and on other terms and conditions of sale that are at least as favorable as the f.o.b. price and other terms and conditions of sale at which aggregate of similar quantity and quality is sold at the same time by CalMat from that particular site to Industrial Asphalt. Provided, however, that nothing in this section IV.B shall preclude CalMat from conditioning the sale of aggregate to any such person on the reasonable approval of that person's credit. In the case of a shortage of aggregate, an interruption of the supply of aggregate, or other force majeure events, CalMat shall allocate aggregate to such persons on a reasonable and nondiscriminatory basis among all of its customers.

C. Unless plaintiff otherwise consents, divestiture under Sections IV.A and IV.B shall be made to a purchaser or purchasers who shall demonstrate to the plaintiff or, failing the plaintiff's approval, to the Court that (1) the purchase is for the purpose of competing in the manufacture and sale of asphalt concrete and (2) the purchaser or purchasers has or have the managerial, operational, and financial capability to compete in the manufacture and sale of asphalt concrete.

D. Industrial Asphalt shall take all reasonable steps to accomplish quickly the divestiture contemplated by Sections IV.A and IV.B.

V

Appointment of Trustee

A. In the event that Industrial Asphalt has not divested all of its ownership interests required by Section IV.A within six (6) months from the date of entry of this Final Judgment, the Court shall, on application of the plaintiff, appoint a trustee to effect the remainder of the divestiture required by Section IV.A. Such appointment shall become effective not more than forty-five (45) days following the filing of the petition. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the assets required to be divested pursuant to Section IV. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Industrial Asphalt shall not object to a sale by the trustee on any grounds other than malfeasance.

B. If Industrial Asphalt has not divested all of the ownership interests required by Section IV.A within five (5) months of the date of entry of this Final Judgment, the plaintiff and Industrial Asphalt shall immediately notify each other in writing of the names and qualifications of not more than two (2) nominees for the position of the trustee who shall effect the required divestiture. The parties shall attempt to agree upon one of the nominees to serve as the trustee. If the parties are able to agree on a trustee within thirty (30) days of the exchange of names, plaintiff shall notify the Court of the person upon whom the parties agreed, and the Court shall appoint such person as the trustee. If the parties are unable to agree within that time period, plaintiff shall furnish the Court the names of each party's nominees. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

C. The trustee shall serve at the cost and expense of Industrial Asphalt, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services, all remaining money shall be paid to Industrial Asphalt and the trust shall then be terminated. The compensation of such trustee shall be based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. The defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the Assets to be Divested, and Industrial Asphalt shall develop financial or other information relevant to such assets as the trustee may request. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture as contemplated under this Final Judgment. If the trustee has not accomplished such divestiture within twelve (12) months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment.

VI

Notification

A. Industrial Asphalt or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the plaintiff of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Industrial Asphalt. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest or desire to acquire any ownership interest in any of the Assets to be Divested, together with full details of the same. Within fifteen (15) days after receipt of the notice, the plaintiff may request additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. Industrial Asphalt or the trustee shall furnish the additional information within fifteen (15) days of the receipt of the request. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information, whichever is later, plaintiff shall notify in writing Industrial Asphalt and the trustee, if there is one, if it objects to the proposed divestiture. If the plaintiff fails to object within the period specified, or if the plaintiff notifies in writing Industrial Asphalt

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and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to Industrial Asphalt's limited right to object to the sale under Section V.A. Upon objection by the plaintiff or by Industrial Asphalt under Section V.A. the proposed divestiture shall not be accomplished unless approved by the Court.

B. Thirty (30) days from the date of entry of this Final Judgment and every thirty (30) days thereafter until the divestiture has been completed, Industrial Asphalt shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Section IV of this Final Judgment. Each such affidavit shall include, for each person who during the preceding thirty (30) days made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in any of the Assets to be Divested, the name, address, and telephone number of that person and a detailed description of each contact with that person during that period. Industrial Asphalt shall maintain full records of all efforts made to divest the Assets to be Divested.

VII

Preservation of Assets

A. Subject to Sections VII.E and VII.F, Industrial Asphalt shall preserve, hold, and, with the exception of the Arrow Highway Plant Assets, continue to operate as going businesses the Assets to be Divested. Industrial Asphalt shall use all reasonable efforts to maintain the Assets to be Divested as competitive entities, with the exception of the Arrow Highway Plant Assets, and shall not sell or otherwise dispose of, or pledge as collateral for loans (except such loans as are currently outstanding or replacements or substitutes therefor), the Assets to be Divested, except that such component as is replaced in the ordinary course of business with a newly purchased component may be sold or otherwise disposed of, provided the newly purchased component is so identified as a replacement component for an Asset to be Divested. This provision includes but is not limited to: preserving all asphalt concrete plants, and their aggregate supply and right and ability to operate at the sites where they are located; preserving all air pollution and operating permits (including proceeding with such application or operation as is necessary to renew or make permanent any temporary permits); and preserving all administrative and support facilities.

B. Subject to Sections VII.E and VII.F, Industrial Asphalt shall preserve the Assets to be Divested except those replaced with newly acquired assets in the ordinary course of business, in a state of repair equal to their state of repair as of January 3, 1984.

c. Subject to Section VII.F, Industrial Asphalt shall identify separately for each asphalt concrete plant referred to in Section IV.A all assets or replacements for or proceeds therefrom that were used in the production and sale of asphalt concrete at such plant prior to the formation of Industrial Asphalt.

D. Subject to Section VII.F, Industrial Asphalt shall keep a separate bookkeeping record of the income and debits attributable to each asphalt concrete plant referred to in Section IV.A.

E. Industrial Asphalt shall be excluded from its failure to preserve, hold, operate, repair, or replace any asset when such failure is attributable to causes beyond its reasonable control, including explosion, fire, flood, storm or other acts of God, governmental regulation or the loss of Industrial Asphalt's right to operate at a plant's current location. In the event such a cause occurs, Industrial Asphalt promptly will provide notice thereof to plaintiff.

F. The requirement that Industrial Asphalt take certain steps to preserve and identify assets as set forth in Sections VII.A, VII.B, VII.C, and VII.D shall terminate with respect to:

1. The Orange Plant assets and the Santa Ana Canyon Plant Assets when the divestiture required by this Final Judgment of either the Orange Plant Assets to the Santa Ana Canyon Plant Assets has been accomplished;

2. The Upland Plant Assets when the divestiture required by this Final Judgment of the Upland Plant Assets has been accomplished; and

3. The Arrow Highway Plant Assets and the Durbin Plant Assets when the divestiture required by this Final Judgment of either the Arrow Highway Plant Assets or the Durbin Plant Assets has been accomplished.

VIII

Future Acquisitions

A. The defendants are enjoined and restrained for a period of ten (10) years from the date of entry of this Final Judgment from merging with, or directly or indirectly acquiring any asets or stock of, any other person engaged in whole or in part in the production of asphalt concrete in the greater Los Angeles area or western San Diego County without the prior written consent of plaintiff or, if such consent is refused, without the approval of the Court after an affirmative showing by the defenadants that the effect of any such acquisition wil not be substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section of the country.

B. Defendants are enjoined and restrained for a period of ten (10) years from the date of entry of this Final Judgment from: acquiring any interest in the asphalt concrete plant located in Lakeside, California, operated by Asphalt Inc. (the "Lakeside plant"); managing or operating, directly or indirectly, the Lakeside plant; acting as sole selling or buying agent for, or entering into any other exclusive agreement with, any person that holds an ownership interest in the Lakeside plant with respect to the Lakeside plant; or interfering with or impeding the Lakeside plant owners' ability to sell the output from that plant to whomever and at whatever price and on whatever other terms and conditions of sale that they choose.

C. Nothing in this Section VIII shall prohibit defendants from acquiring property, equipment, or materials from any source in the ordinary course of their busineses or from holding or acquiring one percent (1%) or less of the voting securities of any person engaged in whole or in part in the production of asphalt concrete in the greater Los Angeles area or western San Diego County.

IX

COMPLIANCE INSPECTION

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice, including consultants and other persons retained by the Department, shall, upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their respective principal offices, be permitted:

1. access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. subject to the reasonable convenience of defendants and without restraint or interference from them, to interview officers, employees, and agents of defendants, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendants at their respective principal offices, defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a defendant to plaintiff, that defendant represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and that defendant marks each pertinent page of such material, "subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give ten (10) days notice to that defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

X

RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance with this Final Judgment, or for the punishment of violations of this Final Judgment.

XI

TERM

This Final Judgment will expire ten (10) years after the date of its entry or earlier upon the granting of a motion for termination made by plaintiff.

XII

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated:

Honorable John G. Davies,
United States District Judge.

Howard J. Parker, Joel S. Sanders, Patricia J. Falk, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, Telephone: (415) 556–6300, Attorneys for the United States.

U.S. District Court for the Central District of California

United States of America, Plaintiff, v. *Industrial Asphalt; Huntmix, Inc.; Calmat Co.; and Coast Asphalt, Inc.*, Defendants.

Civil No. 85–4631JGD(JRx).

Competitive Impact Statement.

Filed: January 26, 1987.

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On July 15, 1985, the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, 15 U.S.C. § 25, and under Section 4 of the Sherman Act, 15 U.S.C. § 4, challenging the December 20, 1983 merger of Huntmix, Inc., with Industrial Asphalt Inc., as a violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Complaint names as defendants Industrial Asphalt, the new entity resulting from the merger; Huntmix, Inc.; Coast Asphalt, Inc., the successor to Industrial Asphalt Inc.; and CalMat Co., a part owner of Huntmix, Inc. The Complaint alleges that the effect of the merger may be substantially to lessen competition in the markets for the manufacture and sale of asphalt concrete in the greater Los Angeles area and in western San Diego County. The Complaint seeks divestiture from and reorganization of the new entity resulting from the merger and an injunction preventing defendants from merging with other asphalt concrete manufacturers in the relevant geographic areas for ten years.

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the goverment withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations of the proposed Final Judgment.

II

Events Giving Rise to the Alleged Violation

On December 20, 1983, Huntmix, Inc. and Industrial Asphalt Inc. merged their asphalt concrete businesses by forming a partnership, 50% owned by each, to control both businesses. They named the partnership "Industrial Asphalt." Before the merger, Huntmix, Inc. and Industrial Asphalt Inc. had competed with each other in the manufacture and sale of asphalt concrete in the greater Los Angeles area and in western San Diego County. Industrial Asphalt Inc. had also engaged in the asphalt concrete business at other locations in California, Nevada, and Arizona.

Asphalt concrete is the black material used to pave city streets, parking lots, driveways, airport runways, and highways. Asphalt concrete is produced by heating and combining asphalt cement (also referred to in the industry as "liquid asphalt" or "asphalt oil") and aggregate. A plant that produces asphalt concrete is commonly referred to as a "hot-mix plant."

In the greater Los Angeles area before the merger, Industrial Asphalt Inc. was the largest supplier of asphalt concrete and Huntmix, Inc. was the second or third largest supplier. As measured by production, Industrial Asphalt Inc.'s market share for 1983 was approximately 24% and Huntmix, Inc.'s was approximately 17%. As a result of the merger, this market became highly concentrated. The Herfindahl-Hirschman Index, a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers, increased by more than 700 points to over 2100.

In western San Diego County before the merger, Industrial Asphalt Inc. and Huntmix, Inc. were two of the five largest suppliers of asphalt concrete. Industrial Asphalt Inc.'s market share based on production and sales for 1983 was approximately 18% and Huntmix, Inc.'s was approximately 11%. Industrial Asphalt Inc.'s 18% market share included asphalt concrete it marketed that was produced at a hot-mix plant in

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Lakeside, California not owned by it. As a result of the merger, this market also became highly concentrated. The Herfindahl-Hirschman Index increased by more than 250 points to over 2400.

The Complaint alleges that the manufacture and sale of asphalt concrete constitutes a line of commerce (product market) for antitrust purposes and that the greater Los Angeles area and western San Diego County constitute sections of the country (geographic markets). Within each of these two geographic areas, the Complaint alleges, based upon the increase in concentration and other facts, the effect of the merger may be substantially to lessen competition in the manufacture and sale of asphalt concrete.

III

Explanation of the Proposed Final Judgment

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the APPA. The proposed Final Judgment constitutes no admission by any party as to any issue of fact or law. Under the provisions of Section 2(e) of the APPA, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Final Judgment is in the public interest.

The proposed Final Judgment requires defendants to divest their entire interest in three hot-mix plants in the greater Los Angeles area, absolutely and unconditionally, within six months of the entry of the Final Judgment. If defendants cannot accomplish the required divestiture within the above period, the proposed Final Judgment provides that, upon application by the plaintiff, the Court shall appoint a trustee to sell the three hot-mix plants.

One of the three plants to be divested is the former Huntmix, Inc. hot-mix plant in Upland, California ("Upland plant"). Defendants and the trustee have an option regarding the identity of the two remaining hot-mix plants to sell. Defendants must divest: (a) either the former Industrial Asphalt Inc. hot-mix plant in Orange, California ("Orange plant") or the former Huntmix, Inc. hot-mix plant in Anaheim, California ("Santa Ana Canyon plant") and (b) eiher the former Huntmix, Inc. hot-mix plant on East Arrow Highway in Irwindale, California ("Arrow Highway plant") or the former Huntmix, Inc. hot-mix plant on East Los Angeles Street in Irwindale, California ("Durbin plant"). The proposed Final Judgment requires that with each of the plants to be divested there will be a ten-year agreement that defendant CalMat Co. will supply aggregate from its pits on at least as favorable terms as to Industrial Asphalt. With the Orange plant to be divested there will be an option to sublicense an alternate hot-mix plant site adjacent to an Orange County gravel pit. The divestiture of this plant site will provide a purchaser of the Orange assets with an alternative location for the existing Orange plant, or for a replacement plant, should the ground lease on the current plant site be terminated.

The three hot-mix plants must be divested to a purchaser or purchasers who can and will operate each as a viable, ongoing business that can compete effectively in the relevant market. The defendants will take all reasonable steps necessary to accomplish divestiture and shall cooperate with bona fide prospective purchasers and the trustee.

The proposed Final Judgment provides that defendants will warrant to the purchaser or purchasers of the three hot-mix plants that the assets will be operational on the date of sale. Until the required divestiture has been accomplished, the defendants must preserve the assets subject to divestiture, including both the physical facilities and all permits and rights to operate. Defendants must keep separate bookkeeping records for each plant subject to divestiture, and, except for the Arrow Highway plant which is not currently operating, must continue to operate the plants as going businesses and use all reasonable efforts to maintain them as competitive entities.

If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestiture is accomplished. If after eleven months from the date of the trustee's appointment the required divestiture has not been accomplished, the trustee and the parties shall make recommendations to the Court and the Court shall enter such orders as it deems appropriate to effect divestiture.

The divestiture of these three hot-mix plants will add at least one additional significant competitor in the greater Los Angeles area and thereby restore competition to that market.

With respect to competition in the manufacture and sale of asphalt concrete in western San Diego County, the proposed Final Judgment contains an injunctive provision designed to minimize the danger of the merged entity acting as the principal seller of the output of a hot-mix plant in Lakeside, California operated by Asphalt, Inc.

At one time Industrial Asphalt Inc. and Asphalt, Inc. were both part owners of this hot-mix plant. By agreement, Industrial Asphalt Inc. was the principal seller of the output of the plant. Asphalt, Inc. operated the plant and used a portion of the output in its contracting business. In 1981, the then-owner of Industrial Asphalt Inc., a predecessor to Chevron Corporation, attempted to sell the company, but due to a failure of a condition of the sales transaction, Industrial Asphalt Inc.'s part ownership of the Lakeside asphalt plant was not transferred to the new owner. It remained with what is not Chevron Corporation. Despite the failure to transfer this plant interest along with the rest of the company, Industrial Asphalt Inc. and its successor, the entity created by the subject merger, have continued as the de facto marketers of the output of the plant.

The proposed Final Judgment addresses this Lakeside plant marketing arrangement. The merged entity is enjoined by the proposed Final Judgment from entering into any exclusive agreement regarding the Lakeside plant, such as one designating the merged entity as sole selling agent; from acquiring, merging with, managing or operating the plant; and from interfering with price or output decisions by the plant's owners. The injunctive provision is to be applicable for ten years from the date of entry of the proposed Final Judgment.

This relief is adequate to solve the competitive problem resulting from the acquisition in western San Diego County. Since the merged entity will not be able to control the Lakeside plant's output, the Lakeside plant will become, in effect, an independent source of asphalt concrete in the western San Diego area. It should be a competitively significant source, especially because of its favorable location in the market. It is located near the center of the western San Diego County market, and can effectively compete with the two hot-mix plants, currently owned by Industrial Asphalt, which are located near the northern and southern edges of the market.

The proposed Final Judgment also prohibits defendants from acquiring or merging with any other hot-mix plants in the greater Los Angeles area or western San Diego County for ten years from the date of entry of the proposed Final Judgment.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the Final Judgment will neither impair nor assist the bringing of any private antitrust damages actions. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the Final Judgment has no *prima facie* effect in any private lawsuit that may be brought against the defendants.

V

Procedures Available for Modification of the Proposed Final Judgment

As provided by the APPA, any person wishing to comment upon the Final Judgment may, within the statutory 60-day comment period, submit written comments to Gary R. Spratling, Chief, San Francisco Office, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102. These comments and the Department's responses will be filed with the Court and published in the **Federal Register.** All comments will be given due consideration by the Department, which remains free to withdraw its consent to the Judgment at any time prior to entry. The Judgment provides that the Court retains jurisdiction over this action and any party may apply to the Court for any order necessary or appropriate for its modification, interpretation, or enforcement.

VI

Alternatives to the Proposed Final Judgment

As an alternative to the divestiture of three hot-mix plants in the greater Los Angeles area that is required by the proposed Final Judgment, the United States considered requiring divestiture of a greater or lesser number of plants. After consideration, the United States concludes that the requirement to divest three hot-mix plants in the greater Los Angeles area achieves the basic objective of the litigation for the greater Los Angeles area market: substantial, meaningful divestiture to reduce market concentration. Moreover, the three parts of greater Los Angeles where the proposed Final Judgment requires divestiture of hot-mix plants are the only areas where former Huntmix, Inc. and former Industrial Asphalt Inc. hot-mix plants are currently operated by the merged entity in close proximity to one another. Thus, the proposed relief will add one or more new competitors at those locations where the competitive impact of the merger is greatest. Accordingly, the United States concluded that the requirement that Industrial Asphalt divest three plants was appropriate to restore competition.

As an alternative to the injunctive relief with respect to the Lakeside plant that is required by the proposed Final Judgment, the United States considered requiring divestiture of one of the two hot-mix plants in western San Diego County that are wholly owned by Industrial Asphalt. After consideration, the United States concluded that relief with respect to the centrally located Lakeside plant would enhance competition more than would the divestiture of either of these two wholly owned plants, which are located at the northern and southern edges of the western San Diego County market. The central location of the Lakeside plant allows its output to be a strong competitive force throughout the western San Diego County market.

The United States also considered a provision in the proposed Final Judgment to enjoin Industrial Asphalt, beginning one year from the date of entry of the Judgment, from purchasing asphalt concrete produced at the Lakeside plant for Chevron Corporation. The purpose of the provision would have been directly to prevent Industrial Asphalt from marketing any of the plant's output, thereby giving greater incentive to the owner of that plant to use a new marketer for the output of that plant or to sell the plant to a new owner that would not have the historical ties with Industrial Asphalt. After consideration, the United States concluded that this provison placed an undue cost on Chevron Corporation, a third party to the litigation, and would not be needed to assure that the output of the Lakeside plant was not controlled by Industrial Asphalt. Specifically, the United States concluded that the current provisions of the proposed Final Judgment, which preclude Industrial Asphalt from acting as exclusive selling agent for the plant, or otherwise controlling the output or pricing decisions of that plant, would prevent Industrial Asphalt from exercising the type of control over Lakeside which would remove it as a potential independent source of asphalt in the western San Diego County market.

Finally, the United States considered two provisions intended to facilitate new entry into the relevant markets. One provision would have required defendant CalMat Co. to supply aggregate from its pits to all hot-mix plants so requesting on at least as favorable terms as to Industrial Asphalt. The second provision would have required defendant Calmat Co. to make available hot-mix plant sites for new entry at three specified locations in the greater Los Angeles area. After consideration, the United States concluded that these two provisions, which would have involved the government in significant regulation of competitive activity in the market, were unnecessary to restore competition. The United States concluded that the divestiture of three plants in the greater Los Angeles area, the Lakeside plant injunctive provisions, and the other relief concurrently in the proposed Final Judgment would be sufficient to remedy the potential anticompetitive effects of the merger challenged by the complaint.

VII

Determinative Materials and Documents

There are no materials or documents that the United States considered to be determinative in formulating this proposed Final Judgment. Accordingly, none are being filed with this Competitive Impact Statement.

Dated:

Respectfully submitted,

Howard J. Parker,
Joel S. Sanders,
Patricia J. Falk,
Attorneys, U.S. Department of Justice, Antitrust Division, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102. Telephone: (415) 556-6300.

[FR Doc. 87-2297 Filed 2-4-87; 8:45 am]
BILLING CODE 4410-01-M

National Cooperative Research Act Notification; American Cyanamid Co.; Pine Oil Joint Research Venture

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98-462 ("the Act"). American Cyanamid Company has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties to the Pine Oil Joint Research Venture and (2) the nature and objectives of the Pine Oil Joint Research Venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages

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under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties of the Pine Oil Joint Research Venture and its general areas of planned activities are provided below.

The parties to the Pine Oil Joint Research Venture are as follows:

American Cyanamid Company; Arizona Chemical Co.; Dow Consumer Products, Inc.; Hercules, Inc.; Johnson Chemical Co., Inc.; Lehn & Fink Products Corp.; Procter & Gamble Co.; SCM Organic Chemicals; T&R Chemicals, Inc.; Union Camp Corporation.

The objective of the Pine Oil Joint Research Venture is to sponsor and conduct toxicological research on the pesticide ingredient pine oil and to submit the results of the research to the U.S. Environmental Protection Agency ("EPA") in connection with the reregistration and data call-in of pesticides containing pine oil as an active ingredient. This research on pine oil, which is the active ingredient in certain commercially available pesticide products, will be conducted pursuant to a Data Call-In Notice issued by EPA on September 30, 1985 and a subsequent EPA letter dated August 25, 1986 concerning the requirements of the Data Call-In.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 87-2296 Filed 2-4-87; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Eli Lilly Industries, Inc., Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 1, 1986, and published in the **Federal Register** on December 5, 1986; (51 FR 43983), Eli Lilly Industries, Inc., Chemical Plant, Kilometer 146.7, State Road 2, Mayaquez, Puerto Rico 00708, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of dextropropoxyphene (non-dosage forms) (9273), a basic class of controlled substance list in Schedule II.

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: January 28, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-2294 Filed 2-4-87; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application; Norac Co., Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 10, 1986, Norac Company, Inc., 405 South Motor Avenue, Azusa, California 91702, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Ibogaine (7260)	I
Tetrahydrocannabinols (7370)	I

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than March 9, 1987.

Dated: January 28, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-2293 Filed 2-4-87; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application; Upjohn Co.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 23, 1986, Upjohn Company, 7171 Portage Road, Kalamazoo, Michigan 49001, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-dimethoxyamphetamine (7396)	I
Methamphetamine, its salts, isomers, and salts of its isomers (1105).	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than March 9, 1987.

Dated: January 28, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-2292 Filed 2-4-87; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (87-10)]

NASA Advisory Council (NAC), Space and Earth Science Advisory Committee (SESAC): Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space and Earth Science Advisory Committee.

DATE AND TIME: February 25, 1987, 9:30 a.m.—5:30 p.m., February 26, 1987, 8:30 a.m.—5:15 p.m., February 27, 1987, 8:30 a.m.—12 p.m.

ADDRESS: National Aeronautics and Space Administration, Conference Room 226A, 600 Independence Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey D. Rosendhal, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1656).

SUPPLEMENTARY INFORMATION: The Space and Earth Science Advisory Committee will meet to review NASA FY 1988 budget submission and its implications, the status of the Explorer Program and NASA planning. The Committee is chaired by Dr. Louis Lanzerotti and is composed of 32 members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including committee members and other participants).

Meeting: Open.

Agenda: February 25, 1987.

9:30 a.m.—Introduction, Announcements, Review, of Agenda, Purpose of Meeting, etc.

9:45 a.m.—Office of Space Science & Applications (OSSA) Program and Budget Status:

—The Federal Budget Proposal for FY 1988.
—NASA Organization and Personnel Changes.
—OSSA FY 1987 Operating Plan and FY 1988 Budget Proposal.
—Planetary Launch Situation.
—Prospects for the FY 1988 Budget in Congress.
—Longer-Range Implications of the FY 1988 Budget.

1 p.m.—European Space Agency Program Status and Planning.

2 p.m.—Solar System Exploration Committee Views of the State of the Solar System Exploration Program.

3:15 p.m.—Committee Discussion of the FY 1988 Budget and Its Implications.

5:30 p.m.—Adjourn. February 26, 1987.

8:30 a.m.—Status of the NAC "Mixed Fleet" study.

9 a.m.—Status of the Explorer Program, SESAC Review and Recommendations.

10:30 a.m.—Agency Wide Planning Activities.

10:45 a.m.—NASA Strategic Planning.

11:30 a.m.—Space 1995 Study.

1 p.m.—Committee Discussion:

—OSSA Near-Term and Long-Range Planning.
—Role of SESAC and Other Advisory Committees in the Planning Process.
—Follow-on Activities to the SESAC "Crisis" Report.

3:15 p.m.—Discussion and Drafting of Committee Recommendations on the FY 1988 Budget and Its Implications.

5:15 p.m.—Adjourn. February 27, 1987.

8:30 a.m.—Discussion and Final Formulation of SESAC Recommendations.

10 a.m.—The NASA Life Sciences Program: A preview of Possible Future Directions.

11:15 a.m.—Meeting Summary/Plans for the Next Meeting.

12 Noon—Adjourn.

Dated: January 30, 1987.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 87-2342 Filed 2-4-87; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Eukaryotic Genetics Program; Meeting

In accordance with the Federal Advisory Panel Act, as amended, P.L. 92-463, the National Science Foundation announces the following meeting.

Name: Advisory Panel for Eukaryotic Genetics.

Date and Time: Wednesday, Thursday, and Friday 18, 19, and 20, 1987.

Place: Inn by the Sea, 7830 Fay Avenue, La Jolla, California 92037.

Type Meeting: Closed.

Contact Person: DeLill Nasser, Program Director, Eukaryotic Genetics, Room 321L, Telephone: (202) 357-0112.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary of confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. The matters are within exemptions (4) and (6) of proposals U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the committee Management Officer pursuant to provisions of Section 10(d) of P.L. 92-463. Panel Management Officer was delegated the authority to make such determinations by the Director, NSF of July 6, 1979.

Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87-2285 Filed 2-4-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-206/361/362]

Southern California Edison Co.

San Onofre Nuclear Generating Station; Issuance of Director's Decision

Notice is hereby given that the Director, Office of Inspection and Enforcement, has issued a decision pursuant to 10 CFR 2.206 concerning a Petition dated May 27, 1986 filed on behalf of the City of Laguna Beach, California (Petitioner) by Mayor Martha Collison. The Petition requested that the Nuclear Regulatory Commission extend the 10-mile radius emergency planning zone (EPZ) for the San Onofre Nuclear Generating Station to include South Laguna and Laguna Beach.

The bases for the action requested in the Petition are concerns about the lack of emergency planning for Laguna Beach, the topography of the South Orange County coastline as it relates to the transportation network, and the effect on the residents of Laguna Beach as other who live to the south drive through Laguna Beach as part of an evacuation procedure. The Petition also referred to the "recent circumstances in the Soviet Union" as a basis for reconsidering the emergency planning zone issue for San Onofre.

The Director, Office of Inspection and Enforcement, has denied the Petitioner's request. The reasons for this denial are set forth in the "Director's Decision Under 10 CFR 2.206" (DD-87-01), issued today. A copy of the decision will be available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and in the Local Public Document Room for the San Onofre facility located at the University of California-Irvine, General Library, Irvine, California 02713.

A copy of the decision will be filed with the Secretary of the Commission for Commission review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c), the decision will become the final action of the Commission 25 days after issuance, unless the Commission on its own motion takes review of the decision within that time.

Dated at Bethesda, Maryland this 29th day of January 1987.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 87-2428 Filed 2-4-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-331]

Iowa Electric Light and Power Co., et al; Duane Arnold Energy Center; Exemption

I

Iowa Electric Light and Power Company (IELP/the licensee) is the holder of Facility Operating License No. DPR-49 which authorizes operation of

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the Duane Arnold Energy Center (DAEC/the facility). This license provides, among other things, that the facility is subject to all rules, regulations and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a boiling water reactor located at the licensee's site in Linn County, Iowa.

II

By letter dated October 31, 1986, IELP requested an exemption from the requirements of Appendix J, 10 CFR Part 50, Sections III.D.2(a) and III.D.3 so that the required 2-year test interval between Type B and C testing of certain valves, vents drains, sumps and penetrations, which maintain containment integrity at design basis accident conditions, can be extended for 75 days to conform with the start of the next refueling outage for the facility.

Pursuant to Final Rule 10 CFR 50.12 (50 FR 50764) published on December 12, 1985, the special circumstances for granting this exemption have been identified as follows:

The DAEC shutdown for its end-of-cycle 7 refuel outage, which was scheduled to last 12 weeks, on February 2, 1985. The required Appendix J, Type B and C, local leak rate testing commenced shortly afterwards and continued through March 1985. The unit was originally scheduled to shutdown for its end-of-cycle-8 refuel outage on February 1, 1987. This would have allowed the Type B and C testing to be completed during the required 2 year interval. However, during the end-of-cycle 7 outage, the discovery of cracks in the reactor circulation system piping which required weld-overlay repairs and difficulties in performing the 10-year Inservice Test and Inspection Program delayed startup until July 20, 1985, an extension of more than 11 weeks. Due to this unanticipated extension of the 1985 refuel outage and other unscheduled shutdowns during Cycle 8, the target end-of-cycle core exposure for Cycle 8 will not be achieved until mid-March, 1987 if the unit, which has been in coastdown since November 1, 1986, operates continuously. This would result in extending the 2-year test interval required by Appendix J for Type B and C tests about 45 days. However, to provide a margin for contingencies, the licensee has asked that the extension be granted until April 17, 1987, about 75 days.

Because of the aforementioned outage extension, the operational period of DAEC between its startup for Cycle 8 (July 20, 1985) and the requested date for extension would be approximately 21 months. Therefore the operational challenge to the components required to be given the Type B and C tests within the 2-year interval would be, even with the proposed 75-day extension, less than usually occurs during the 2-year interval. Based on the above circumstances and the reduced power levels presently existing during coastdown, the staff believes that a significant safety margin still exists for these components. In addition, after discussions with the staff, the licensee in a letter dated January 2, 1987 provided clarifying information and agreed to test all isolation valves that have a leakage history and are capable of being tested at power. Therefore, with respect to a schedular exemption to the requirements of Appendix J to 10 CFR Part 50 for Type B and C testing of certain valves, vents, drains, sumps and penetrations, the strict application of the requirements is not necessary to achieve the underlying purpose of the regulation, which is to assure that there is regular periodic testing of containment penetrations (over intervals that are not excessive) to assure continued containment integrity. Consequently, the special circumstances described by 10 CFR 50.12(a)(2)(ii) are applicable in this instance.

Accordingly, based on the above analysis, the staff concludes that the likelihood of these components failing at design basis accident conditions during the additional 75 days is remote and that offsite doses during such an event will be within the values previously analyzed and found acceptable. Therefore, a one-time exemption from the requirements of Sections III.D.2(a) and III.D.3 of Appendix J to 10 CFR Part 50 is justified and should be granted.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest; furthermore, in accordance with 10 CFR 50.12(a)(2)(ii), special circumstances, as discussed above, are present. The Commission hereby grants an exemption as described in Section II above from Sections III.D.2(a) and III.D.3 of Appendix J to the extent that the 2 year interval for performing Type B tests, except for air locks, and Type C tests, except as noted, may be extended for 75 days, on a one-time basis only, for the Duane Arnold Energy Center.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (52 FR 3069).

A copy of the Commission's concurrently issued Safety Evaluation related to this action is available for public inspection at the Commission's Public Document Room, 1717 H. Street, NW., Washington, DC, and at the Cedar Rapids Public Library, 500 First Street, SE., Cendar Rapids, Iowa 52401.

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland this 30th day of January 1987.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Division of BWR Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 87-2429 Filed 2-4-87; 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

[Docket No.]

Pendency of Request for Determination of Substantial Damage With Respect to Cessation of Contributions by Pioneer Paper Stock to Freight Drivers and Helpers Local 557 Pension Fund

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation has received a request from the Freight Drivers and Helpers Local 557 Pension Fund for a determination of substantial damage under section 4203(d)(4) of the Employee Retirement Income Security Act of 1974 with respect to the cessation of contributions under the plan by Pioneer Paper Stock. Section 4203(d) provides a special withdrawal rule for cessations of contributions involving plans and employers in the trucking industry (as defined in that section). Under that special rule, an employer that ceases contributions to a plan is considered not to have withdrawn from the plan if certain conditions are met. One of these conditions is that the employer must post a bond or deposit money in escrow. After the bond/escrow requirement has been satisfied, the Pension Benefit Guaranty Corporation may make a finding under section 4203(d)(4) that the cessation has caused substantial damage to the plan's contribution base, in which case the employer will be treated as having withdrawn from the plan and the bond or escrow will be paid to the plan. Any such finding must take into consideration any cessations

of contributions by other employers. Thus, a finding in any one case may have a bearing on other cases involving the same plan. The purpose of this notice is to advise interested persons of this request for such a finding and to solicit their views on it.

DATES: Comments must be submitted on or before March 23, 1987 to be assured of consideration.

ADDRESSES: All written comments should be addressed to: Director, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006. The request for a finding of substantial damage and the comments received will be available for public inspection at the PBGC Public Affairs Office, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Steven Rothenberg, Attorney, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; (202) 778-8850 (778-8859 for TTY and TDD). (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: Section 4203(d) of the Employee Retirement Income Security Act of 1974 ("ERISA") provides a special withdrawal liability rule for the trucking industry, which, for purposes of this rule, is considered to include the long and short haul trucking industry, the household goods moving industry, and the public warehousing industry. The rule is limited to trucking plans, i.e., plans under which substantially all of the contributions required are made by employers primarily engaged in the trucking industry. The rule is also limited to trucking employers, i.e., those that have an obligation to contribute under a trucking plan primarily for work in the trucking industry.

Under section 4203(d) of ERISA, a trucking employer will not be considered to have withdrawn from a trucking plan merely because the employer permanently ceases to have an obligation to contribute under the plan or permanently ceases all covered operations under the plan, if certain conditions are met. One condition is that the employer must not continue to perform work within the jurisdiction of the plan. Another condition is that the employer must furnish a bond or an amount held in escrow in an amount equal to 50 percent of the withdrawal liability of the employer.

After the bond or escrow is established, the Pension Benefit Guaranty Corporation ("PBGC") may, within 60 months after the time the employer's covered operations or obligation to contribute ceased, make a determination about the effect of the cessation (considered together with any cessations by other employers) on the plan's contribution base. If the PBGC makes a finding under section 4203(d)(4) that the contribution base has suffered substantial damage, the employer will be treated as having withdrawn from the plan on the date when the obligation to contribute or covered operations ceased, the bond or escrow will be paid to the plan and the employer will be liable for the balance of its withdrawal liability. If the PBGC finds under section 4203(d)(5) that no substantial damage has occurred, or if it has not made a finding of substantial damage under section 4203(d)(4) within the 60-month time period referred to above, then the bond will be cancelled or the escrow refunded and the employer will have no further liability under the plan.

As noted above, each cessation must be considered within the context of other cessations under the same plan in determining its effect on the plan's contribution base. Thus, the treatment accorded one employer's cessation of contributions may have a bearing on the treatment given a cessation by another employer. Accordingly, not only the plan and employer involved in a particular case, but also other present and former contributing employers, as well as participants and beneficiaries, may have an interest in the outcome of a request for a finding of substantial damage or no substantial damage.

In this case, the Freight Drivers and Helpers Local 557 Pension Fund (the "Plan") has requested that the PBGC find that the cessation of contributions under the plan by Pioneer Paper Stock has substantially damaged the plan's contribution base. The Plan represents that 96% of the employers that contribute to the Pension Fund are trucking employers. It also asserts that Pioneer is a trucking employer and ceased all covered operations under the Plan in May 1984.

According to the Plan, Pioneer contributed for 4,042 base units in the plan year before its cessation and made contributions totaling $41,914 between 1979 and 1984. During the five year period beginning in 1980 and ending in 1984, the Plan states that its total contribution base units declined 26.3%, from 5,541,200 to 4,081,500. During that same period, the plan asserts that 32 employers completely ceased contributions to the Plan. All of the withdrawn employers were trucking employers. Due to their poor financial condition, only one of these employers has paid any withdrawal liability. The Plan further represents that the average contribution rate increased 53.7% between 1980 and 1984. Total contributions to the Plan dropped from $6,195,800 in the plan year ending December 31, 1980, to $5,502,200 in the plan year ending December 31, 1982 and rebounded to $7,087,900 in the plan year ending December 31, 1984. The plan states that it has had to borrow against the next year's contributions in plan years 1980 through 1984 in order to meet the previous year's minimum funding requirement.

The PBGC's decision on the plan's request will be based on the information previously submitted by the plan and any additional information received in response to this notice of pendency.

All interested persons are invited to submit written comments on the pending request to the PBGC at the above address by March 23, 1987. Each comment should include the commenter's name, address, and telephone number. All comments will be made part of the record. Comments received, as well as the determination request, will be available for public inspection at the above address.

Issued at Washington, DC, this 30th day of January, 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87-2337 Filed 2-4-87; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission Office of Consumer Affairs, Washington, DC 20549.

Extension

Rule 6a-3

No. 270-15

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 6a-3 (17 CFR 240.6a-3) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) which requires each registered or exempted exchange to supplement its application and annual amendments by filing certain information with the Commission. The

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potential affected persons are 10 exchanges. Submit comments to OMB Desk Officer: Mr. Robert Neal, (202) 395-7340, Office of Information and Regulatory Affairs, Room 3228, NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

January 27, 1987.

[FR Doc. 87-2415 Filed 2-4-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24025; File No. SR-CBOE-86-41]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc.; Relating to the Addition of One-Half Point Exercise Prices in Swiss Franc Option Contracts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 2, 1987 the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would enable the Exchange to add one-half point exercise prices in Swiss franc option contracts, either singly or at the same time as the next exercise price is added.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to allow the listing of additional exercise prices in Swiss franc currency option contracts, so that the gap between strike prices quoted in European (used in the over-the-counter market) and American (used in exchange markets) terms is reduced. This would encourage market participants to use more often the options traded on the Exchange. The statutory basis for the proposed rule change is section 6(b)(5) of the Securities Exchange Act of 1934 (the Act), in that it is designed to facilitate transactions in Swiss franc currency option contracts.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 26, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 23, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2416 Filed 2-4-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24031; File No. SR-CBOE-86-40]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc.; Relating to Disciplinary Charges and Review

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 30, 1986, the Chicago Boad Options Exchange Incorporated ("CBOE") filed with the Securities and Exchange Commission the proposed rule change as described in Items, I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Chicago Board Options Exchange has proposed changes to its disciplinary rules to codify the policy against ex parte communications with members of its Business Conduct Committee and to permit review by the CBOE Board of a decision by its Business Conduct Committee not to initiate charges.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Purpose Rule Change

The proposed rule change amends rules relating to the Exchange's disciplinary process. These amendments provide for: (i) The prohibition of ex parte communications between members or their associated persons concerning a pending disciplinary proceeding, and (ii) the review by the Board of a determination by the BCC not to initiate charges.

The Exchange believes that each of these provisions will strengthen its disciplinary processes. The proposed change to Rule 17.4, prohibiting ex parte communications between BCC members and members of the Exchange in relation to matters pending before the BCC, codifies a longstanding policy of the Exchange.

The proposed change to Rule 17.10 establishes the authority of the Board to review a decision of the BCC not to initiate charges. The Board may order a review of the decision not to initiate charges upon application by the President made within 30 days of the BCC's decision. It is contemplated that such a review would be applied for only if the President believes the BCC's decision not to initiate charges was erroneous and that review by the Board is warranted. Such a review by the Board will be based on the record before the BCC and the minutes containing the Committee's reasons for not initiating charges, supplemented by whatever statement the BCC determines to submit in justification of its decision. It is contemplated that if the Board overturns a decision of the Business Conduct Committee not to initiate charges the matter would be remanded to the Business Conduct Committee with an intruction from the Board to initiate charges.

The proposed rule change is consistent with the Securities Exchange Act of 1934 and, in particular, sections 6(b) (1), (5) and (6) thereof, in that proposed rule change enhances the Exchange's administrative and disciplinary processes.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Porposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organizations consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities ane Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be availble for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days after the date of this publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 28, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2420 Filed 2-4-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24032; File No. SR-PSE-86-33]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to Requirement that Buyers From Multiple Sellers Time-Stamp and Submit Trading Tickets

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 22, 1986, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend Rule VI, section, 55(a) Commentary .01 and to adopt Options Floor Procedure Advice G-12 ("Reporting of Trade Information") relating to the party or parties responsible for recording the time of execution of options transactions and reporting options transactions to the Exchange. Currently, Exchange rules require that the seller report such transactions. The PSE proposes through this rule change to shift the responsbility to, in some cases, the buyer. In transactions in which there is but one buyer and multiple sellers, it is customary that the sellers hand their tickets to the buyer. The proposed rule change would place reporting and time-stamping responsibilities on the buyer if he/she decides to accept the tickets. In transactions involving only one buyer and one seller, the original requirement would still stand.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

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(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The PSE is proposing to change its rule with respect to reporting requirements on the Options Floor because of the actual design of the floor tickets and the manner in which they are used to report trades.

Floor tickets used by market makers to record transactions for their own account differ significantly from those used by floor brokers acting in an agency capacity. Specifically, a market maker's ticket can only show one contra side to a trade. A floor broker's ticket, however, can show multiple party contra sides. Consequently, in a multi-party transaction involving a floor broker buying from numerous selling market makers, the floor broker can record all selling contra sides on his/her ticket. The PSE believes that in such transactions, it makes sense to have the floor broker collect the tickets from the contra sides, match them with his/her ticket and submit them to the Exchange. To do otherwise would require the floor broker to write up separate "partial" tickets and hand them to each of the selling market makers. In turn each of the selling market makers would then match up each partial transaction and hand all of these tickets in to the Exchange. Consequently, the Exchange feels that it makes sense to require the principal participant in a trade to report such multiple party transactions.

Further, the Exchange feels that the present "seller's" reporting requirement creates an inequitable situation with respect to the ability of market makers to ascertain certain information not essential to trading when they are sellers. Due to the PSE's unique trade match system, which is derived from the matching of floor tickets on the floor, tickets representing off-floor orders contain detailed information which assists in the clearing process. This includes whether the order is for a customer or for a proprietary account of a member firm, whether such order is opening or closing, and, in some instances, the acutal customer account number.

Under the "seller's responsibility" scheme, a market maker involved in a sale is required to get the tickets from the buyer(s) in order to report, and, in the process is privy to this information. The PSE does not believe that this additional information should be available to a market maker simply because he/she is a buyer rather than a seller. Consequently, the PSE believes that in trades between market makers and floor brokers it should be the responsibility of the floor brokers to report transactions.

The basis for the proposed rule change is found in section 6(b)(5) of the Act which provides, in pertinent part, that the rules of the Exchange be designed to facilitate transactions in securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received. However, the proposed rule change was considered and approved by the Board of Governors at its meeting on December 18, 1986.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period:

(i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or

(ii) As to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 26, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 28, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2417 Filed 2-4-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15557; 812-6467]

Kidder, Peabody Acceptance Corp.; Notice of Application

January 30, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Kidder, Peabody Acceptance Corporation I ("Applicant").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks an order conditionally exempting it and certain trusts that it may form from time to time from all provisions of the 1940 Act for the limited purposes of issuing collateralized mortgage obligations, investing in certain mortgage certificates, and selling beneficial interests in such trusts.

Filing Dote: The Application was filed on August 29, 1986, and amended on October 2, December 3, December 12, 17, 1986, January 14, 16, 27, and 28, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 23, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 3939 InterFirst Two, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Richard Pfordte at (202) 272-2811 or Special Counsel Karen L. Skidmore at (202) 272-3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicant's Representations

1. Applicant is a direct, wholly-owned limited purpose financing subsidiary of Kidder, Peabody Funding Corporation, a Delaware corporation. Applicant, a Delaware corporation, was organized to facilitate the financing of mortgage loans through the issuance of one or more series of bonds secured by such mortgages and it will not engage in any business or investment activities unrelated to such purpose.

2. Applicant will form separate trusts ("Trusts") for the limited purpose of issuing one or more series ("Series") of collateralized mortgage obligations ("Bonds") and investing in certain Mortgage Certificates [1] which will be used to collateralize such Bonds.

3. Each Trust will be established under a separate deposit trust agreement ("Trust Agreement") between Applicant, acting as depositor, and a bank or trust company or other fiduciary acting as owner-trustee ("Owner Trustee"). Each Trust will issue one or more Series of Bonds under the terms of an indenture ("Indenture") between the Owner Trustee and an independent trustee ("Trustee"), as supplemented by one or more series supplements. The Indenture will be qualified under the Trust Indenture Act of 1939 unless an appropriate exemption is available.

4. In the case of each Series of Bonds: (a) Each Trust will hold no substantial assets other than the Mortgage Certificates; (b) the Bonds will be secured by Mortgage Certificates having a collateral value determined under the Indenture, at the time of issuance and following each payment date, equal to or greater than the outstanding principal balance of the Bonds; (c) distributions of principal and interest received on the Mortgage Certificates securing the Bonds and any applicable reserve funds, plus reinvestment income thereon, will be sufficient to pay all interest on the Bonds and to retire each class of Bonds by its stated maturity; and (d) the Mortgage Certificates will be assigned by the Owner Trustee to the Trustee and will be subject to the lien of the related Indenture.

5. In addition to the issue and sale of the Bonds, Applicant intends to sell the beneficial interests in each Trust to a limited number, in no event more than one hundred, of sophisticated institutional investors in transactions exempt from the registration requirments of the Securities Act of 1933 ("1933 Act") under section 4(2) thereof. Such institutional investors may include one or more banks, savings and loan associations, insurance companies, and pension plans or other investors that would have prior experience in making investments in mortgage related securities or real estate ("Eligible Institutions"). Each Eligible Institution will be required to represent that it is purchasing such beneficial interests for investment purposes. In addition, the Trust Agreement relating to each Trust will further prohibit the transfer of any certificates for such beneficial interests if there would be more than one hundred owners of such certificates at any time.

6. Neither the holders of the beneficial interests of any of the Trusts, the Owner Trustee nor the Trustee will be able to impair the security afforded by the Mortgage Certificates to the holders of the Bonds. That is, without the consent of each Bondholder to be affected, neither the holders of the beneficial interest of any of the Trusts, the Owner Trustee nor the Trustee will be able to: (1) Change the stated maturity on any Bonds; (2) reduce the principal amount or the rate of interest on any Bonds; (3) change the priority of payment on any class of any Series of Bonds; (4) impair or adversely affect the Mortgage Certificates securing a Series of Bonds; (5) permit the creation of a lien ranking prior to or on a parity with the lien of the related indenture with respect to the Mortgage Certificates; or (6) otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture.

7. The sale of the beneficial interests in each Trust will not alter the payment of cash flows under the Indenture, including the amounts to be deposited in the collection account or any reserve fund created pursuant to the Indenture, to support payments of principal and interest on the Bonds.

8. No holder of a controlling interest in a Trust (as the term "control" is defined in Rule 405 under the 1933 Act), will be affiliated with either the custodian or the statistical rating agency rating the Bonds. None of the owners of the beneficial interests in a Trust will be affiliated with the Trustee.

9. The interests of the Bondholders will not be compromised or impaired by the ability of the Applicant to sell beneficial interests in each Trust, and there will not be a conflict of interest between the Bondholders and the holders of the beneficial interests for several reasons: (a) The collateral which initially will be deposited into each Trust and will be pledged to secure the Bonds issued by such Trust will not be speculative in nature because it will consist solely of GNMA Certificates, FNMA Certificates or FHLMC Certificates, which Mortgage Certificates are guaranteed as to timely payment of interest and timely or ultimate payment of principal by each respective agency; (b) the Bonds will only be issued provided an independent nationally recognized statistical rating agency has rated such Bonds in one of the two highest rating categories, which by definition means that the capacity of the issuing Trust to repay principal and interest on the Bonds is extremely strong; (c) the Indenture under which the Bonds will be issued subjects the collateral pledged to secure the Bonds, all income distributions thereon and all proceeds from a conversion, voluntary or involuntary, of any such collateral to a first priority perfected security interest in the name of the Trustee on behalf of the Bondholders; [2] and (d) the owners of

[1] By definition, the "Mortgage Certificates" collateralizing the Bonds will consist of (1) "fully-modified" pass-through mortgage-backed certificates guaranteed by the Government National Mortgage Association ("GNMA Certificates"), (2) mortgage participation certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"), and (3) guaranteed mortgage pass-through securities issued by the Federal National Mortgage Association ("FNMA Certificates"). All or a portion of the Mortgage Certificates securing a Series of Bonds may be "partial pool" Mortgage Certificates. Some of the GNMA Certificates securing a Series of Bonds may be backed by mortgage loans that provide for payments during the initial portion of their term that are less than the actual amount of principal and interest payable thereon on a level desk service basis ("GPM GNMA Certificates"). In addition to the Mortgage Certificates directly securing the Bonds, a series may have additional collateral which may include certain collection accounts and reserve funds as specified in the related Indenture

[2] The Indenture further specifically provides that no amounts may be released from the lien of the Indenture to be remitted to the issuing Trust (and any owner of the beneficial interests thereof) until (i) the Trustee has made the scheduled payment of principal and interest on the Bonds, (ii) the Trustee has received all fees currently owed to it, and (iii) to the extent required by any supplemental indentures executed in connection with the issuance of the Bonds, deposits have been made to certain reserve funds which will ultimately be used to make payments of principal and interest on the Bonds. Once amounts have been released from the lien of the Indenture, the Trust Agreement for each Trust will provide that the Owner Trustee under the Trust Agreement will have a lien superior to that of the owners of the beneficial interests of the Trust to the remaining cash flow.

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the beneficial interests will be entitled to receive current distributions representing the residual payments on the collateral from each Trust in accordance with the terms of the applicable Trust Agreement, which distributions are analogous to dividends payable to a shareholder of a corporate issuer of collateralized mortgage obligations. Furthermore, if a Trust does not elect to be treated as a "real estate mortgage investment conduit" ("REMIC") under the Internal Revenue Code of 1986, the beneficial interest owners will be liable for the expenses, taxes and other liabilities of the Trust (other than the principal and interest on the Bonds) to the extent not previously paid from the trust estate. The choice of the form of issuer for the Bonds and the identity of the owners of the beneficial interests in such issuer, however, will not alter in any way the payments made to the Bondholders which payments are governed by an Indenture which will meet the requirements of the Trust Indenture Act of 1939.

10. The aggregate interests of the owners of the beneficial interests in the collateral and the expected returns earned by such owners will be far less than the payments made to Bondholders. Applicant does not intend to deposit in any Trust, Mortgage Certificates with a collateral value which exceeds 110% of the aggregate principal amount of the related Bonds.

11. Except to the extent permitted by the limited right to substitute collateral, it will not be possible for the owners of the beneficial interests to alter the collateral initially deposited into a Trust, and in no event will such right to substitute collateral result in a diminution in the value or quality of such collateral. Although it is possible that any collateral substituted for collateral initially deposited into a Trust may have a different prepayment experience than the original collateral, the interests of the Bondholders will not be impaired because: (a) The prepayment experience of any collateral will be determined by market conditions beyond the control of the owners of the beneficial interests, which market conditions are likely to affect all Mortgage Certificates of similar payment terms and maturities in a similar fashion; (b) the interests of the holders of the beneficial interests are not likely to be greatly different from those of the Bondholders with respect to collateral prepayment experience; and (c) to the extent that it may be possible for the owners of the beneficial interests to cause the substitution of collateral which has a different prepayment experience than the original collateral, this situation is no different for the Bondholders than the traditional collateralized mortgage obligation structure where bonds are issued by an entity that is a wholly-owned subsidiary. Further, due to the fact that there usually will be more than one owner of a Trust, it appears less likely that the owners will be able to agree on any desired substitution of collateral than if there were a single owner who could unilaterally decide on the timing and execution of the substitution.

12. Each Series of Bonds will consist of one or more classes of Bonds, including one or more classes of Non-Compound Interest Bonds, Compound Interest Bonds or adjustable interest rate Bonds. For additional representations and conditions concerning classes of Bonds, certain optional and mandatory redemption features, and the distribution of "excess cash flow," see the application.

13. The requested order is necessary and appropriate in the public interest because: (a) the Trusts should not be deemed to be entities to which the provisions of the 1940 Act were intended to be applied; (b) The Trusts may be unable to proceed with their proposed activities if the uncertainties concerning the applicability of the 1940 Act are not removed; (c) the Trust's activities are intended to serve a recognized and critical public need; (d) granting of the requested order will be consistent with the protection of investors because they will be protected during the offering and sale of the Bonds by the registration or exemption provisions of the 1933 Act and thereafter by the Trustee representing their interests under the Indenture; and (e) the beneficial interests in the Trusts will be held entirely by the Applicant or offered only to a limited number of sophisticated institutional investors through private placements.

14. The election by any Trust to be treated as a REMIC will have no effect on the level of the expenses that would be incurred by any such Trust. If a Trust elects to be treated as a REMIC, it will provide for the payment of administrative fees and expenses incurred in connection with the issuance of the Bonds and the administration of the Trust by one of the following methods or a combination of one or more of such methods: (a) A third party, whose credit is acceptable to the agency or agencies rating the Bonds, the Trustee and the Owner Trustee, will guaranty the payment of such fees and expenses; (b) One or more reserve funds will be established to provide for the payment of such fees and expenses, which maximum fees typically shall be projected, assuming current inflation factor scenarios required by the independent agency or agencies rating the Bonds, at the time of the issuance of the Bonds and the establishing of such reserve funds. The procedure used to calculate the anticipated level of fees and expenses is reasonable and has been used successfully in the past, in that it has provided available funds sufficient to pay such fees and expenses and to insure that funds will be sufficient to cover future fees and expenses. In addition, under the Indenture, the Trustee will look solely to such reserve funds for the payment of the Trustee's fees and expenses; (c) The Bonds will be secured by collateral, the value of which is in excess of the amount necessary to make payments of principal and interest on the Bonds, and such excess or a portion thereof will be applied to the payment of such fees and expenses, and may be used in combination with any of the other methods described herein. In no event will Applicant deposit in any Trust, Mortgage Certificates with a collateral value which exceeds 110% of the aggregate principal amount of the related Bonds; and (d) The owners of the beneficial interest in any Trust will be personally liable, pursuant to the Trust Agreement, for the fees and expenses of the Trust not otherwise payable from one of the sources described above.

Applicant's Conditions

Applicant agrees that if an order is granted it will be expressly conditioned on the following conditions:

1. Each Series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

2. The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934, as amended.

However, the collateral directly securing the Bonds will be limited to GNMA Certificates, FNMA Certificates, or FHLMC Certificates.

3. If new mortgage collateral is substituted, the substitute collateral will: (i) Be of equal or better quality than the collateral replaced; (ii) have similar payment terms and cash flow as the collateral replaced; (iii) be insured or guranteed to the same extent as the collateral replaced; and (vi) meet the conditions set forth in paragraphs (2) and (4). In addition, new collateral may not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as mortgage collateral. In no event may any new mortgage collateral be substituted for any substitute mortgage collateral.

4. All Mortgage Certificates, funds, accounts or other collateral securing a Series of Bonds ("Collateral") will be held by a Trustee, or on behalf of a Trustee by an independent custodian. The custodian may not be an affiliate (as the term "affliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of the Applicant. The Trustee will be provided with a first priority perfected security or lien interest in and to all Collateral.

5. Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating agency that is not affiliated with the Applicant. The Bonds will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

6. No less often than annually, an independent public accountant will audit the books and records of each Trust and, in addition, will report on whether the anticipated payments of principal and interest on the mortgage collateral continue to be adquate to pay the principal and interest on the Bonds in accordance with their arms. Upon completion, copies of the auditor's reports will be provided to the Trustee.

7. Each Trust will insure that the anticipated level of fees and expenses will be more than adequately provided for regardless of which or all of the methods, summarized in the representations listed above, (which methods may be used in combination) are selected by such Trust to provide for the payment of such fees and expenses.

8. Each class of adjustable interest rate Bonds will have a set maximum interest rate (an interest rate cap).

9. At the time of the deposit of the Collateral with the issuing Trust, as well as during the life of the Bonds, the scheduled payments or principal and interest to be received by the Trustee on all Mortgage Certificates pledged to secure the Bonds, plus reinvestment income thereon, and funds, if any, pledged to secure the Bonds (as described in the application) will be sufficient to make all payments of principal and interest on the Bonds then outstanding, assuming the maximum interest rate on each class of adjustable interest rate Bonds. Such Collateral will be paid down as the mortgages underlying the Mortgage Certificates are repaid, but will not be released from the lien of the Indenture prior to the payment of the Bonds.

10. In addition, the above representations regarding the beneficial interests (and more fully described in the application) will be express conditions to the requested order.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2431 Filed 2-4-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24038; Filed No. SR-CBOE-86-38]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Accelerated Approval to Propose Rule Change Relating to Long-Term Incentive Program in Foreign Currency Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 22, 1986 the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change is described in Items, I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The rule change extends the sign up deadline for the long-term incentive program in foreign currency options from November 1, 1986 through January 31, 1987.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to enable additional market makers and floor brokers to sign up for the long term incentive program in foreign currency options, which program was approved by the Commission in Release Number 34-23584, dated September 2, 1986 and concerning SR-CBOE-86-13. The members that have already signed up for the program have stated that they have no objection to this extension. The statutory basis for the proposed rule change is section 6(b)(5) of the Securities Exchange Act of 1934 (the Act), in that it is designed to increase the Exchange's capacity to accommodate non-market-maker orders by attracting more members to the long term incentive program.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations there under applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to thirtieth day after the date of publication of the proposal in the **Federal Register** in that the CBOE's foreign currency option incentive program was considered and approved by the Commission in September, 1986 [1] and the current filing relates solely to an administrative aspect of the incentive program.

IV. Solicitation of Comments

Interested person are invited to submit written data, view and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[1] *See* Securities Release No. 23584 (September 2, 1986).

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communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 26, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 29, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2419 Filed 2-4-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area # 2265]

Declaration of Disaster Area; Territory of American Samoa

As a result of the President's major disaster declaration on January 24, 1987, I find that the Manua Islands in the Territory of American Samoa constitute a disaster loan area because of Hurricane Tusi occurring on January 17, 1987. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on March 25, 1987, and for economic injury until the close of business on October 26, 1987, at: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, P.O. Box 13795, Sacramento, California 95853, or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	7.500
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	9.500

The number assigned to this disaster is 226508 for physical damage and for economic injury the number is 649700.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: January 29, 1987.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 87-2287 Filed 2-4-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[No. 999]

Restriction on the Use of United States Passports for Travel to, in, or Through Lebanon

Pursuant to the authority of section 211a of Title 22, United States Code, Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.72(a)(3), all United States passports, with the exception of two categories, are declared invalid for travel to, in, or through Lebanon unless specifically validated for such travel. In addition, I hereby conclude that it is in the national interest of the United States to permit those American citizens now in Lebanon a reasonable period of time during which these passport controls shall not apply, in order to permit those American citizens to wrap up their personal affiars and depart from Lebanon. Accordingly, these passport controls shall not apply to American citizens now in Lebanon for 30 days from the effective date of this Public Notice. For humanitarian reasons I have also determined that it would be inappropriate at this time to apply passport controls to immediate family members of hostages in Lebanon.

The situation in Lebanon, and in west Beirut in particular, is so chaotic that I do not believe that any American citizen can be considered safe from terrorist acts. While the U.S. government will attempt to help citizens unlawfully detained in Lebanon or elsewhere, our ability to secure their release is limited both by the chaos of Lebanon and our responsibility to protect broad national interests, including the avoidance of actions which might encourage future acts of terrorism. Events over the past few days have indicted that private citizens in Lebanon have not paid heed to 12 years of U.S. Government warnings and that they have neither sufficient information to evaluate the threat against them, nor the means to protect themselves.

In light of these events and circumstances I have determined that Lebanon is an area "where there is imminent danger to the public health and physical safety of United States travelers" within the meaning of § 51.72(a)(3) of Title 22, Code of Federal Regulations. All United States passports shall remain invalid for travel to, in, or through Lebanon, except for those passport holders who are immediate family members of hostages in Lebanon and, for 30 days from the effective date of this Public Notice, for those passport holders currently in Lebanon, unless specifically validated for such travel by the Department of State.

This Public Notice will be effective upon publication in the Federal Register and shall expire at the end of one year unless extended or sooner revoked by Public Notice.

Date: February 3, 1987.

George P. Shultz,

Secretary of State.

[FR Doc. 87-2577 Filed 2-4-87; 9:33 am]

BILLING CODE 4710-06-M

[CM-8/1042]

Fine Arts Committee; Meeting

The Fine Arts Committee of the Department of State will meet on Saturday, March 21, 1987 at 10:00 a.m. in the John Quincy Adams State Drawing Room. The meeting will last approximately until 11:30 a.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting in October 1986, the announcement of gifts, loans and financial contributions during calendar year 1986, and a report on the new Treaty Rooms on the 7th floor.

Public access to the Department of State is controlled. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office by Monday, March 16, 1987, telephone (202) 647-1990 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: January 23, 1987.

Clement E. Conger,

Chairman, Fine Arts Committee.

[FR Doc. 87-2308 Filed 2-4-87; 8:45 am]

BILLING CODE 4710-38-M

[CM-8/1043]

Shipping Coordinating Committee; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting on February 18, 1987, at 9:30 am in Room 6319 at Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C.

The purpose of the meeting will be to prepare for the first session of the International Maritime Organization (IMO) Ad-Hoc Preparatory Committee on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, to be held March 2-6, 1987. The Ad-Hoc Committee was formed by the IMO Council to consider a draft Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation. The draft Convention primarily concerns creation of criminal offenses, establishment of jurisdiction, and imposition of the obligation of a Party to extradite or prosecute an alleged offender. The following will be discussed at the meeting:

1. Background regarding the draft Convention.
2. The major provisions of the draft Convention.
3. Proposed positions for the Ad-Hoc Preparatory Meeting.

Members of the public may attend the meetings up to the seating capacity of the room.

For further information, contact Mr. Robert Horowitz, U.S. Coast Guard Headquarters (G-LMI), 2100 Second Street SW., Washington, DC 20593-0001, Telephone: (202) 267-1527.

Dated: January 21, 1987.

Michael E. McNaull,

Executive Secretary Shipping Coordinating Committee.

[FR Doc. 87-2309 Filed 2-4-87; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 998]

South African Parastatal Organizations; Receipt of Requests To Review Classification

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Requests have been submitted to the Department of State to review the classification of the following firms as South African "parastatal organizations" for purposes of the Comprehensive Anti-Apartheid Act of 1986, as amended (Public Law 99-440): Bophuthatswana National Development Corp. Ltd.; Cooperative Wine Growers (KWV); Council for Scientific and Industrial Research and its subsidiary institutes; South Africa Sugar Association; Thames Wire and Cable (Pty) Ltd.; and Transvaal Copper Rod Co. Ltd. Interested persons are invited to submit any writen comments relevant to the Department's review of the status of these firms.

DATE: Comments must be received no later than February 16, 1987.

ADDRESS: Comments should be sent to the Office of Southern African Affairs, Room 4238, Department of State, Washington, D.C. 20520.

FOR FURTHER INFORMATION CONTACT: Eric Benjaminson, Office of Southern African Affairs (202) 647-8433, or Lynda Clarizio, Office of the Legal Adviser (202) 647-4110.

SUPPLEMENTARY INFORMATION: State Department Public Notice No. 983, published on November 19, 1985 (51 Federal Register 41912), identified which South African firms are deemed to be "parastatal organizations" for purposes of the Comprehensive Anti-Apartheid Act of 1986. The notice provided that any person believing that, due to unique circumstances, a firm should be included or excluded from the list of parastatal organizations can request that the Department review the particular case. All requests must be submitted in writing to the Office of Southern African Affairs. Any submission should contain detailed information as to the stock ownership and composition of the board of directors of the particular firm as well as the amount of preferential financial assistance received by such firm from the South African Government. The notice stipulated that the Department of State may invoke the authorities set forth in section 603(b) of the Act in conducting a review. Any person who willfully makes a false or misleading statement in a submission to the Department will be subject to the civil and criminal penalties set forth in section 603 (b) and (c) of the Act and 18 U.S.C. 1001.

Requests have been submitted to the Department to review the classification of the following firms as South African parastatal organizations; Bophuthatswana National Development Corp. Ltd.; Cooperative Wine Growers (KWV); Council for Scientific and Industrial Research and its subsidiary institutes; South Africa Sugar Association; Thames Wire and Cable (Pty) Ltd.; and Transvaal Copper Co. Ltd. Interested pesons are invited to submit any written comments relevant to the Department's review of the status of these firms by February 3, 1987.

Dated: January 15, 1987.

Chas W. Freeman, Jr.,

Deputy Assistant Secretary for African Affairs.

[FR Doc. 87-1818 Filed 2-4-87; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA) Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held on February 26, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Approval of the minutes of meeting held November 17, 1986; (2) Executive Director's Report on Administrative Activities; (3) Special Committee Activities Report for November-December 1986; (4) Fiscal and Management Subcommittees Report and Proposed Appointments; (5) Consideration of Appointments of RTCA Technical Advisors; (6) Consideration of Proposal to Establish New Special Committees; and (7) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 27, 1987.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 87-2282 Filed 2-4-87; 8:45 am]

BILLING CODE 4910-13-M

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Federal Highway Administration

Environmental Impact Statement: Winnebago County, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway imporvement project in Winnebago County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Mr. Michael M. Moravec, Environmental Coordinator, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705–4905; telephone (608) 264–5947.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the WisDOT, is currently preparing an environmental impact statement for the construction of a 3.5 mile extension of USH 45. The project is located in the north-eastern corner of Winnebago County, Wisconsin, on the western fringe of the Appleton urbanized area. The proposed project would consist of a four lane, at grade controlled access, divided highway and would serve to accommodate future increases in traffic generated by this rapidly developing section of the urbanized area.

Planning environmental, and engineering studies are underway to develop transportation alternatives. The EIS will assess the need, location, and environmental impacts of alternatives including: (1) *The No-Build Alternative*—This alternative assumes to continued use of existing facilities with the maintenance necessary to insure their use, (2) *The STH 441 Extension Alternative*—This alternative would project west from STH 441 on new location, (3) *The STH 441 Northern Extension Alternative*—This alternative is also on new location and is approximately ¼ mile north of alternative No. 2.

Coordination and Scoping Process

Coordination activities have begun. Agency coordination is being accomplished on an individual basis. A public informational meeting was held to receive input from citizens. No formal scoping meeting is proposed; however, questions and comments from individuals and agencies concerning this proposed action and the environmental impact statement should be directed to the FHWA at the address provided.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activitis apply to this program)

Issued on January 26, 1987.

Frank M. Mayer,

Division Administrator Madison, Wisconsin.

[FR Doc. 87–2305 Filed 2–4–87; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

Rulemaking, Research and Enforcement Programs; Public Meeting

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of reschedule of date of public meeting.

SUMMARY: This notice announces a change of date of a public meeting (originally announced at 51 FR 44967, December 15, 1986) at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs. The public meeting, originally scheduled for January 27, 1987, will now be held on March 4, 1987. The meeting will begin at 10:30 a.m., run until 1:00 p.m., and reconvene at 2:00 p.m., if necessary. It will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan. The agency will respond to those questions previously supplied, unless revisions, additions, or deletions are submitted. Any additional or revised questions must be submitted to Barry Felrice, Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street, SW., Washington, DC 20590, no later than February 19, 1987.

Issued on February 2, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87–2407 Filed 2–4–87; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 4–87]

7½% Treasury Bonds of 2016

January 29, 1987.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,250,000,000 of United States securities, designated 7½% Treasury Bonds of 2016 (CUSIP No. 912810 DX 3), hereafter referred to as Bonds. The Bonds will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. Additional amounts of the Bonds may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Bonds may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Bonds will be issued February 17, 1987, and are offered as an additional amount of 7½% Treasury Bonds of 2016 (CUSIP No. 912810 DX 3) dated November 15, 1986. Payment for the Bonds will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from November 15, 1986, to February 17, 1987. Interest on the Bonds offered as an additional issue is payable on a semiannual basis on May 15, 1987, and each subsequent 6 months on November 15 and May 15 through the date that the principal becomes payable. They will mature November 15, 2016, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Bonds are subject to all taxes imposed under the Internal Revenue Code of 1954. The Bonds are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Bonds will be acceptable to secure deposits of Federal public moneys. They will not be acceptable in payment of Federal taxes.

2.4. The Bonds will be issued only in book-entry form, and in denominations of $1,000, $5,000, $10,000, $100,000, nd $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, and transfer of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest Components is set forth in Section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986, apply to the Bonds offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Thursday, February 5, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, February 4, 1987, and received no later than Tuesday, February 17, 1987.

3.2. The par amount of Bonds bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States hold membership; foreign central banks and foreign states; Federal Reserve banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Bonds applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Competitive tenders at yields higher than 8.14% will not be accepted, because the equivalent prices would fall below the original issue discount limit of 92.750. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Bonds specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Bonds allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted, and must include accrued interest from November 15, 1986, to February 17, 1987, in the amount of 19.47514 per $1,000 of Bonds allotted. Settlement on Bonds allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Tuesday, February 17, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, February 12, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Bonds alloted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, February 17, 1987. When payment has been submitted with the tender and the purchase price of the Bonds allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Bonds allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Bonds

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allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Bond being purchased. In any such case, the tender form used to place the Bonds allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS program (Separate Trading of Registered Interest and Principal of Securities), a Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The components of a Bond are: each future seminannual interest payment (hereafter referred to as an Interest Component); and the principal payment (hereafter referred to as the Principal Component). Each Interest Component and Principal Component shall have its own CUSIP number and designation, which are set forth in Attachment A hereto.

6.2 In order for a Bond to be separated into the components described in Section 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semiannual interest payment of $1.000 or a multiple of $1.000. The minimum and multiple par amount required to obtain the separate components for this offering is $80,000. Separation of Bonds into their components may be effected at any time from the issue date until maturity. A request to obtain the separate components must be made to the Federal Reserve Bank maintaining the account for the Bonds. Normally, any such request shall be executed by the Federal Reserve Bank within 3 business days after it is received.

6.3. The Principal Component will be payable on November 15, 2016.

6.4. Each Interest Component will be payable on its particular due date designated in Attachmnt A hereto.

6.5. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

6.6. Once a Bond has been separated into its components, each Interest Component and the Principal Component may be maintained and transferred in multiples of $1,000, regardless of the par amount initially required for separation or the resulting amount of each Interest Component.

6.7. Once there is a disposition of any amount of an Interest Component or of a Principal Component, the holder of the Bond will be considered for tax purposes to have stripped the amount of principal allocable to the amount of the components disposed of as of the date such first disposition occurs. Both the retained amount allocable to the stripped principal and the amount disposed of are thereafter treated as discount obligations, and the holders of such are subject to periodic income inclusion and other provisions of the Internal Revenue Code of 1954.

6.8. Interest Components and Principal components in multiples of $1.000 will be acceptable to secure deposits of Federal public monies at such time and such value as will be determined by the Secretary of the Treasury. They will not be acceptable in payment of Federal taxes.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Bonds.

7.2 The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Bonds. Public announcement of such changes will be promptly provided.

7.3 The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Bonds.

7.4. Attachment A is incorporated as part of this offering circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A

CUSIP Numbers and Designations for the Principal Component and Interest Components of 7½% Treasury Bonds of November 15, 2016, CUSIP No. 912810 DX 3

The Principal Component is designated 7½% Treasury Principal (TPRN) 2016 due November 15, 2016 CUSIP No. 912803 AK 9.

INTEREST COMPONENTS

Designation	CUSIP No. 912833	Designation	CUSIP No. 912833
Treasury interest (TINT) due		Treasury interest (TINT) due	
May 15, 1987	EJ 5	May 15, 2002	FQ 6
Nov. 15, 1987	EK 2	Nov. 15, 2002	FR 6
May 15, 1988	EL 0	May 15, 2003	FS 4
Nov. 15, 1988	EM 8	Nov. 15, 2003	FT 2
May 15, 1989	EN 6	May 15, 2004	FU 9
Nov. 15, 1989	EP 1	Nov. 15, 2004	FV 7
May 15, 1990	EQ 9	May 15, 2005	FW 5
Nov. 15, 1990	ER 7	Nov. 15, 2005	FX 3
May 15, 1991	ES 5	May 15, 2006	FY 1
Nov. 15, 1991	ET 3	Nov. 15, 2006	FZ 8
May 15, 1992	EU 0	May 15, 2007	GA 2
Nov. 15, 1992	EV 8	Nov. 15, 2007	GB 0
May 15, 1993	EW 6	May 15, 2008	GC 8
Nov. 15, 1993	EX 4	Nov. 15, 2008	GD 6
May 15, 1994	EY 2	May 15, 2009	GE 4
Nov. 15, 1994	EZ 9	Nov. 15, 2009	GF 1
May 15, 1995	FA 3	May 15, 2010	JU 5
Nov. 15, 1995	FB 1	Nov. 15, 2010	JV 3
May 15, 1996	FC 9	May 15, 2011	JW 1
Nov. 15, 1996	FD 7	Nov. 15, 2011	JX 9
May 15, 1997	FE 5	May 15, 2012	JY 7
Nov. 15, 1997	FF 2	Nov. 15, 2012	JZ 4
May 15, 1998	FG 0	May 15, 2013	KA 7
Nov. 15, 1998	FH 8	Nov. 15, 2013	KB 5
May 15, 1999	FJ 4	May 15, 2014	KC 3
Nov. 15, 1999	FK 1	Nov. 15, 2014	KD 1
May 15, 2000	FL 9	May 15, 2015	KE 9
Nov. 15, 2000	FM 7	Nov. 15, 2015	KF 6
May 15, 2001	FN 5	May 15, 2016	KH 2
Nov. 15, 2001	FP 0	Nov. 15, 2016	KK 5

[FR Doc. 87-2460 Filed 2-3-87; 10:59 am]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 3-87]

7¼% Treasury Notes of November 15, 1996, Series D-1996

January 29, 1987.

1. Invitation for Tenders

1.1 The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,750,000,000 of United States securities, designatd 7¼% Treasury Notes of November 15, 1996, Series D-1996 (CUSIP No. 912827 UF 7), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. Additional amounts of the Notes may be

issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be issued February 17, 1987, and are offered as an additional amount of 7¼% Treasury Notes of November 15, 1996, Series D-1996 (CUSIP No. 912827 UF 7) dated November 15, 1986. Payment for the Notes will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from November 15, 1986, to February 17, 1987. Interest on the Notes offered as an additional issue is payable on a semiannual basis on May 15, 1987, and each subsequent 6 months on November 15 and May 15 through the date that the principal becomes payable. They will mature November 15, 1996, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form or in denominations of $1.000, $5.000, $10.000, $100,000, and $1.000.000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Note may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, and transfer of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Notes in their fully constituted form; the description of the separate Principal and Interest Components is set forth in Section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, February 4, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, February 3, 1987, and received no later than Tuesday, February 17, 1987.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1.000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Competitive tenders at yields higher than 7.57% will not be accepted, because the equivalent prices would fall below the original issue discount limit of 97.750. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, the price on each competitive tender allotted will be determined and each sucessful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in

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part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted, and must include accrued interest from November 15, 1986, to February 17, 1987, in the amount of $18.82597 per $1,000 of Notes allotted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Tuesday, February 17, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, February 12, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, February 17, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS program (Separate Trading of Registered Interest and Principal of Securities), a Note may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The components of a Note are: each future semiannual interest payment (hereafter referred to as an Interest Component); and the principal payment (hereafter referred to as the Principal Component). Each Interest Component and Principal Component shall have its own CUSIP number and designation, which are set forth in Attachment A hereto.

6.2 In order for a Note to be separated into the components described in Section 6.1., the par amount of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. The minimum and multiple par amount required to obtain the separate components for this offering is $800,000. Separation of Notes into their components may be effected at any time from the issue date until maturity. A request to obtain the separate components must be made to the Federal Reserve Bank maintaining the account for the Notes. Normally, any such request shall be executed by the Federal Reserve Bank within 3 business days after it is received.

6.3. The Principal Component will be payable on November 15, 1996.

6.4. Each Interest Component will be payable on its particular due date designated in Attachment A hereto.

6.5. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

6.6. Once a Note has been separated into its components, each Interest Component and the Principal Component may be maintained and transferred in multiples of $1,000, regardless of the par amount initially required for separation or the resulting amount of each Interest Component.

6.7. Once there is a disposition of any amount of an Interest Component or of a Principal Component, the holder of the Note will be considered for tax purposes to have stripped the amount of principal allocable to the amount of the components disposed of as of the date such first disposition occurs. Both the retained amount allocable to the stripped principal and the amount disposed of are thereafter treated as discount obligations, and the holders of such are subject to periodic income inclusion and other provisions of the Internal Revenue Code of 1954.

6.8 Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies at such time and such value as will be determined by the Secretary of the Treasury. They will not be acceptable in payment of Federal taxes.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Notes separated into their components

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

7.3. The Notes issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

7.4. Attachment A is incorporated as part of this offering circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A

CUSIP Numbers and Designations for the Principal Component and Interest Components of 7¼% Treasury Notes of November 15, 1996, Series D–1996, CUSIP No. 912827 UF 7

The Principal Component is designated 7¼% Treasury Principal (TPRN) Series D–1996 due November 15, 1996, CUSIP No. 912820 AH 0.

INTEREST COMPONENTS

Designation	CUSIP No 912833	Designation	CUSIP No 912833
Treasury interest (TINT) due		Treasury interest (TINT) due	
May 15, 1987	EJ 5	May 15, 1992	EU 0
Nov. 15, 1987	EK 2	Nov. 15, 1992	EV 8
May 15, 1988	EL 0	May 15, 1993	EW 6
Nov. 15, 1988	EM 8	Nov. 15, 1993	EX 4
May 15, 1989	EN 6	May 15, 1994	EY 2
Nov. 15, 1989	EP 1	Nov. 15, 1994	EZ 9
May 15, 1990	EQ 9	May 15, 1995	FA 3
Nov. 15, 1990	ER 7	Nov. 15, 1995	FB 1
May 15, 1991	ES 5	May 15, 1996	FC 9
Nov. 15, 1991	ET 3	Nov. 15, 1996	FD 7

[FR Doc. 87–2461 Filed 2–3–87; 11:00 am]

BILLING CODE 4810–40–M

[Department Circular—Public Debt Series—No. 2–87]

Treasury Notes of February 15, 1990, Series S–1990

January 29, 1987.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $10,000,000,000 of United States securities, designated Treasury Notes of February 15, 1990, Series S–1990 (CUSIP No. 912827 UN O), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the Yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated February 17, 1987, and will accrue interest from that date, payable on a semiannual basis on August 15, 1987, and each subsequent 6 months on February 15 and August 15 through the date that the principle becomes payable. They will mature February 15, 1990, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Tuesday, February 3, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, February 2, 1987, and received no later than Tuesday, February 17, 1987.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders ony for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; federally-insured savings and loans associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the

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Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all of most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Tuesday, February 17, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, February 12, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, February 17, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the notes being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-2462 Filed 2-3-87; 11:00 am]

BILLING CODE 4810-40-M

[Number: 135-03]

Revocation of Commissioner of Public Debt Authority to Approve Requests of Production of Stamps and Transfer to Bureau of Engraving and Printing Director

Date: January 13, 1987.

Subject: Revocation of Commissioner of Public Debt Authority to Approve Requests of Production of Stamps and Transfer to Bureau of Engraving and Printing Director.

By virtue of the authority vested in me by 31 U.S.C. 321(b), the:

1. Commissioner of the Public Debt's authority to approve requests for the production of postage and other stamps and miscellaneous engraved work by the Bureau of Engraving and Printing for delivery to other departments, establishments, and agencies is revoked and that authority is conferred on the Director of the Bureau of Engraving and Printing, effective immediately.

2. Commissioner of the Public Debt shall continue to approve production requests for the production of non-legal tender notes, bills and certificates of indebtedness for a number of agencies.

3. Director, Bureau of Engraving and Printing, has the authority to approve other securities desired by the Territories and Island Possessions of the United States and by the Farm Credit Administration , Home Loan Bank Board, and other agencies of the Government.

4. This Order supersedes Treasury Order 127, "Revocation of Commissioner of Public Debt Authority to Approve Requests of Production of Stamps and Transferred to Bureau of Engraving and Printing Director," dated December 14, 1950.

James A. Baker, III,

Secretary of the Treasury.

[FR Doc. 87-2449 Filed 2-4-87; 8:45 am]

BILLING CODE 4810-25-M

[Number: 101-05]

Supervision of Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury

Date: January 13, 1987.

Subject: Supervision of Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury.

By virtue of the authority vested in me as Secretary of the Treasury, including the authority vested in me by 31 U.S.C. 321(b), it is ordered that:

1. The Deputy Secretary shall be under the direct supervision of the Secretary.

2. The following officials shall be under the supervision of the Secretary, and shall report to the Secretary through the Deputy Secretary, and shall exercise supervision over those officers and organizational entities set forth on the attached organizational chart:

Under Secretary of the Treasury for Finance
General Counsel
Assistant Secretary (Enforcement)
Assistant Secretary (International Affairs)

Assistant Secretary (Legislative Affairs)
Assistant Secretary of the Treasury (Management)
Assistant Secretary (Public Affairs and Public Liaison)
Assistant Secretary (Tax Policy)
Executive Secretary
Comptroller of the Currency
Commissioner of Internal Revenue
Inspector General

3. The following officials shall be under the supervision of the Under Secretary for Finance, and shall exercise supervision over those officers and the organizational entities set forth on the attached organizational chart:

Treasurer of the United States
Assistant Secretary (Domestic Finance)
Assistant Secretary (Economic Policy)
Fiscal Assistant Secretary

4. The Deputy Secretary, the Under Secretary of the Treasury for Finance, the General Counsel, and the Assistant Secretaries are authorized to perform any functions the Secretary is authorized to perform. Each of these officials shall perform functions under this authority in his or her own capacity and under his or her own title and shall be responsible for referring to the Secretary any matter on which action would appropriately be taken by the Secretary. Each of these officials will ordinarily perform under this authority only functions which arise out of, relate to, or concern the activities or functions of, or the laws administered by or relating to, the bureaus, offices, or other organizational units over which the incumbent has supervision. Any action heretofore taken by any of these officials in the incumbent's own capacity and under his or her own title is hereby affirmed and ratified as the action of the Secretary.

5. The following officers shall, in the order of succession indicated, act as Secretary of the Treasury in case of the death, resignation, absence, or sickness of the Secretary and other officers succeeding the incumbent, until a successor is appointed, or until the absence or sickness shall cease:

a. Deputy Secretary;

b. Under Secretary of the Treasury for Finance;

c. General Counsel; and

d. Assistant Secretaries, appointed by the President with Senate confirmation, in the order designated by the Secretary.

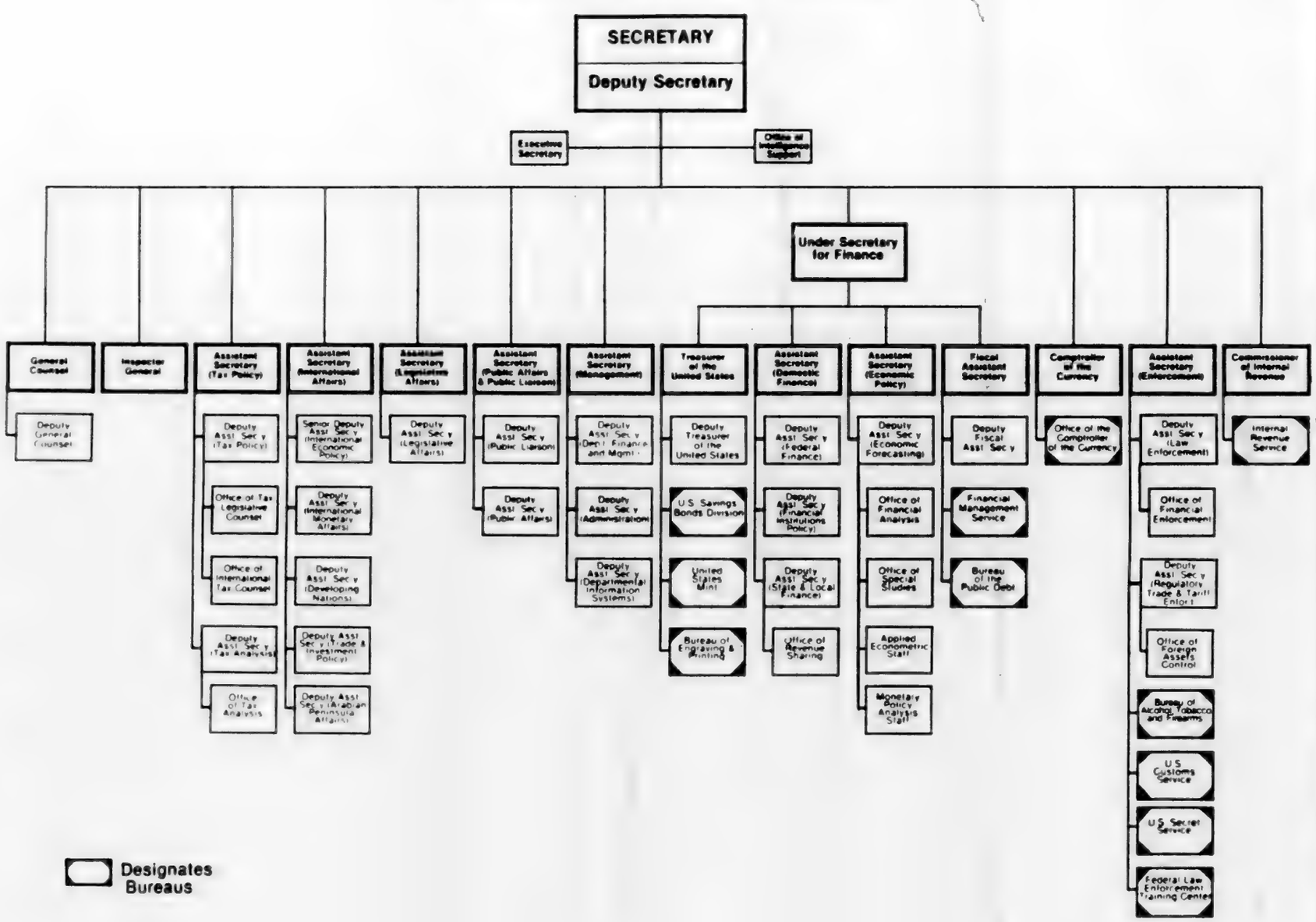
6. Treasury Department Order No. 101-5, December 21, 1981, is rescinded as of this date.

James A. Baker, III,

Secretary of the Treasury.

BILLING CODE 4810-25-M

THE DEPARTMENT OF THE TREASURY



As of 10-31-86

[FR Doc. 87-2445 Filed 2-4-87; 8:45 am]

BILLING CODE 4810-25-C

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[Number: 107-01]

The Ethics in Government Act of 1978

DATE: January 13, 1987.

SUBJECT: The Ethics in Government Act of 1978.

Pursuant to the authority vested in me and in implementation of the Ethics in Government Act of 1978 (Pub. L. 95-521) and 5 CFR § 738.202, the Deputy General Counsel is appointed, "Designated Agency Ethics Official," and the Senior Counsel for Ethics is appointed, "Alternate Designated Agency Ethics Official," for the Department of the Treasury within the meaning of that law and regulation.

This Order supersedes Treasury Department Order 107-1, "Appointment of Designated Agency Official Under the Ethics in Government Act of 1978," dated October 11, 1983.

James A. Baker, III,

Secretary of the Treasury.

[FR Doc. 87-2444 Filed 2-4-87; 8:45 am]

BILLING CODE 4810-25-M

[Number: 100-03]

Functions of the Executive Secretariat

DATE: January 13, 1987.

SUBJECT: Functions of the Executive Secretariat.

This Order describes the functions and responsibilities of the Executive Secretariat, including the Executive Secretary, the Special Assistant to the Secretary (National Security), the Secretariat staff, and the Office of Intelligence support (OIS).

1. *The Executive Secretariat* shall perform the following:

a. Receive, screen, assign action for, and maintain records on all official correspondence addressed to the Secretary and Deputy Secretary;

b. Review all materials submitted to the Secretary and Deputy Secretary for completeness, quality and coordination with other offices; and

c. Coordinate execution of tasks involving various offices within the Department, as directed by the Secretary or Deputy Secretary.

2. In addition to the above responsibilities, *the Executive Secretary* shall:

a. Coordinate briefings for the Secretary and Deputy Secretary;

b. Maintain direct liaison with the White House Staff Secretary, the Cabinet Secretary, the Executive Secretary of the National Security Council, and the Executive Secretaries (or equivalent) of the Cabinet Department;

c. Assist the Secretary and Deputy Secretary with coordination of the Department's policy development;

d. Carry out special tasks as assigned by the Secretary or Deputy Secretary;

e. Clear all Congressional testimony;

f. Approve transmittal of all regulations to the **Federal Register**; and

g. Review all press releases.

3. *The Special Assistant to the Secretary (National Security)* will report to the Secretary and Deputy Secretary. For purposes of administrative and managerial control, the Special Assistant to the Secretary (National Security) and the Office of Intelligence Support (OIS) will be part of the Executive Secretariat. The Special Assistant to the Secretary (National Security) will:

a. Provide day-to-day intelligence support to the Secretary and other officials;

b. Represent Treasury on intelligence community committees and maintain continuous liaison with elements of the community;

c. Review all proposals for support, or other arrangements of a continuing nature, between any Treasury office or bureau and the Central Intelligence Agency or other intelligence agenices, (except for the Federal Bureau of Investigation); and

d. Consult with the General Counsel and Inspector General on all such reviews, and report all such agreements and arrangements to the Secretary for his approval before implementation. This Order is intended to ensure proper coordination and review of all such agreements and arrangements but shall not affect in any way the normal reporting relationships and operational responsibilities of Treasury officials. Routine exchange between the intelligence community and Treasury of substantive intelligence information and reports will not be affected.

4. *The Office of Intelligence Support (OIS)*, under the direction of the Special Assistant to the Secretary (National Security), will:

a. Screen and distribute to appropriate Treasury officials relevant State Department telegrams;

b. Prepare daily cable summaries and regular wire service news summaries on items of issues to Treasury officials;

c. Screen and distribute intelligence reports and publications to appropriate Treasury officials; and

d. Provide other intelligence support to the Secretary and other Treasury officials as appropriate.

5. *This Order supersedes the following Treasury Orders (TOs):*

a. TO 170-6, "Establishment of Executive Secretariat and Director," dated January 23, 1961;

b. TO 170-6 (Amendment 1), "Transfer of Communications Watch Functions," dated June 16, 1977;

c. TO 240 (Revision 1), "Liaison Between Subordinate Organizational Units of the Treasury and the CIA," dated June 16, 1977; and

d. TO 249, "Establishment of the Office of Intelligence Support," dated May 17, 1977.

James A. Baker, III,

Secretary of the Treasury.

[FR Doc. 87-2446 Filed 2-4-87; 8:45 am]

BILLING CODE 4810-25-M

[Number: 140-01]

Federal Law Enforcement Training Center

DATE: January 13, 1987.

SUBJECT: Federal Law Enforcement Training Center.

1. Authority and Establishment

By virtue of the authority vested in me as Secretary of the Treasury, including the authority in the Government Employees Training Act, 5 U.S.C. 4101-4118, as implemented by Executive Order 11348 of April 20, 1967, and 31 U.S.C. 321(b), I hereby reaffirm the establishment of the Federal Law Enforcement Training Center as a bureau within the Department of the Treasury to function as an interagency training facility, and place it under the supervision of the Assistant Secretary (Enforcement).

2. Center Functions

The Federal Law Enforcement Training Center shall:

a. Serve as an interagency law enforcement training center for Federal agencies as well as an intergovernmental law enforcement training facility for State, local and international agencies on a not-to-interfere basis with training provided to participating Federal organization personnel.

b. Provide the facilities, equipment, and support services necessary for conducting basic and advanced training for law enforcement personnel, including:

(1) Budgeting for, and administering funds for, construction, maintenance and operation of the Center; and

(2) Housing, feeding, and providing recreation programs and administrative services for students.

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c. Provide support, administrative, and training personnel for common training programs to:

(1) Consolidate requirements of participating agencies and develop training curricula;

(2) Develop course content and teaching techniques to ensure that materials are designed to meet objectives; and

(3) Instruct and evaluate students.

d. Conduct research in law enforcement training methods and curriculum content to maintain state-of-the-art expertise in adult learning methodology.

e. Provide advice and assistance to the participating organizations in determining their needs for law enforcement training, in developing curriculum and course content, and in teaching methods and techniques for the advanced training which they provide at the Center.

3. Responsibilities of the Director

Under the supervision of the Assistant Secretary (Enforcement), the Director of the Center shall provide:

a. Executive direction and overall management to the Center's training programs and support activities while ensuring that organizational program goals and priorities are administered in the most sound, effective, efficient, and economical fashion.

b. Impetus for establishing and monitoring long-range Center plans and goal.

c. Overall managerial direction for the effective and efficient performance of the functions of the Center, including:

(1) Financial management, which includes planning, programming and budgeting for the Center, and fiscal operations;

(2) Administrative management, including personnel and managerial services;

(3) Development of the internal organization of the Center, including the designation of subordinate elements; and

(4) Evaluation of students including removal of students from training for such matters as deficiency in training, health, or conduct.

d. Advice to the Assistant Secretary relative to executive level policy and program administration of Federal law enforcement activities.

4. Authority of the Director

a. The Director of the Center shall have all the authority which has been delegated to heads of bureaus by Treasury orders and other issuances of the Office of the Secretary and which are necessary for the performance of his-her responsibilities, and the authority to redelegate such authority.

b. Pursuant to the authority vested in me, including that vested in me by delegation from the Administrator of General Services, FPMR Temporary Regulation D–54, dated January 29, 1976 (41 F.R. 5869), authority is hereby delegated to the Director, Federal Law Enforcement Training Center (1) to appoint uniformed guards as special policemen; (2) to make all needful rules and regulations; and (3) to annex to such rules and regulations such reasonable penalties (not to exceed those prescribed in 40 U.S.C. 318(c)) as will ensure their enforcement for the protection of persons and property at the Federal Law Enforcement Training Center (formerly Glynco Naval Air Station), Brunswick, Georgia. This authority shall be exercised in accordance with the Act of June 1, 1948, as amended (62 Stat. 281; 40 U.S.C. 318–318(c)).

c. In the absence of the Director, the Deputy Director shall have the authority of the Director.

5. Center Operations.

The Department of the Treasury is the Executive Agency for operating the Center and serves as the established point of authority for implementation of Federal regulations and policies having government-wide application. Within this concept:

a. All employees of the Center staff will be appointed under the authority of the Secretary of the Treasury and shall be employees of the Department of the Treasury.

b. Center operations will be financed by a separate appropriation to the Department of the Treasury to be used to pay costs of salaries, equipment, and other expenses in connection with:

(1) Administration;

(2) Maintenance and operation of the physical plant (including dormitories and dining facilities);

(3) Conducting common training programs;

(4) Operation of the laboratories, library, and other support services; and

(5) Research conducted in law enforcement curriculum and training methods.

6. Effect on Prior Treasury Orders.

This Order supersedes the following Treasury Department Orders which are hereby rescinded:

a. 217 (Revision 1), "Establishment of the Consolidated Federal Law Enforcement Training Center, dated June 30, 1970;

b. 217 (Revision 1) Amendment No. 1, "Change in Name of Consolidated Federal Law Enforcement Training Center, dated August 14, 1975; and

c. 217–1, "Delegation of Authority," dated February 25, 1976.

James A. Baker III,

Secretary of the Treasury.

[FR Doc. 87–2447 Filed 2–4–87; 8:45 am]

BILLING CODE 4810–25–M

[Number: 100–02]

Establishment of the Office of the Inspector General and Delegation of Authority to the Inspector General

DATE: January 13, 1987.

SUBJECT: Establishment of the Office of the Inspector General and Delegation of Authority to the Inspector General.

By virtue of my authority as Secretary of the Treasury, including the authority contained in 31 U.S.C. 321(b), and 5 U.S.C. 301 and 302, it is hereby ordered that:

1. Establishment of the Office of the Inspector General (OIG)

a. There is hereby established within the Department of the Treasury, *the Office of the Inspector General*, which shall conduct and supervise audits and investigations relating to programs and operations within the Department as detailed in this order.

b. *The Office of the Inspector General* shall also provide leadership and coordination and recommend policies for activities designed to:

(1) Promote economy, efficiency, and effectiveness in the administration of Departmental programs and activities;

(2) Prevent and detect fraud, waste, and abuse in Departmental programs and operations; and

(3) Inform the Secretary and Deputy Secretary of any problems or concerns with the administration of such programs and operations and the need for and progress of corrective action.

c. *The Office of the Inspector General* shall be independent of all other offices and bureaus within the Department.

d. *The head of the Office of the Inspector General* shall be the Inspector General (IG) who shall be appointed by the Secretary of the Treasury and who shall report to and operate under the general supervision of the Secretary and/or the Deputy Secretary.

e. *No officer or employee of the Department* shall prevent the Inspector General from initiating, carrying out, or completing any duly authorized audit or investigation, or prevent any duly appointed officer or employee of the Office of the Inspector General from obtaining access to any information or

documentation which the Inspector General has determined is necessary to the execution of an audit or investigation.

2. Authority and Responsibility of the Inspector General for the Conduct and Oversight of Investigations

a. *The Inspector General* is hereby delegated the authority to receive, analyze and evaluate allegations of illegal acts, violations of the Rules of Conduct of the Treasury Department and of the bureaus, violations of the merit system, and any other misconduct concerning any official or employee of any Treasury office or bureau or, in the case of alleged illegal acts or misconduct, any Treasury contractor, subcontractor, or offeror.

b. *All employees and officials of the Department of the Treasury* shall report to the Inspector General all matters which they believe raise questions of illegality or wrongdoing pursuant to paragraph a. above. Employees and officials who work in bureaus or offices with internal affairs or inspection offices, shall report such matters either to the head of those offices or to the Inspector General.

c. *The Inspector General* is hereby delegated the authority to initiate, organize, conduct, direct and control investigations of any allegations received pursuant to paragraph a. above, concerning the Department's senior officials, i.e., Presidential appointees, SES members, and GS or GM–15s and above.

d. If the allegation to the investigated involves a non-senior official or employee of a Treasury law enforcement bureau, the Inspector General shall refer the investigation to that bureau's internal affairs or inspection office and shall receive a full report of the investigation and any action taken on the matter referred.

e. If the allegation to be investigated involves a non-senior official or employee of a Treasury bureau or office that does not have an internal affairs or inspection office, the Inspector General may refer the investigation to a bureau which has such an office, which will undertake the investigation and will prepare a full report for the Inspector General of the investigation and of any action taken on the matter referred.

f. Paragraphs d. and e. above notwithstanding, the Inspector General shall conduct any investigation which he or she is directed to conduct by the Secretary or Deputy Secretary concerning any allegation of misconduct by an official, employee or contractor of the Treasury. The Inspector General may also conduct any investigation which involves alleged notorious conduct or other matter which, in his or her opinion, is especially sensitive or of Departmental significance.

g. If an allegation involves a matter which is appropriate for the Departmental or a bureau grievance or appeal procedure, or other routine management action, the Inspector General may refer such matter to the appropriate office or bureau for handling.

h. This Order does not change or reduce the authority of Treasury offices or bureaus which had established internal affairs and inspection offices as of July 18, 1978, to conduct investigations in accordance with their own internal procedures, with the exception of those investigations being conducted by the Inspector General. However, when the Inspector General gives notice to a bureau or office that an OIG investigation is being conducted in that bureau or office, no internal investigation will be initiated and any ongoing investigation into the same matter will immediately cease.

i. *All law enforcement bureau internal affairs and inspection offices* shall periodically report to the Inspector General their significant current investigative activities.

j. *The Inspector General* may review, evaluate, and approve all Departmental and bureau programs, plans, policies and operations for investigative misconduct and may make recommendations for changes.

k. *The Inspector General* shall require, receive, review, and analyze all reports informing the Secretary or Deputy Secretary of any significant problems, abuses, or deficiencies disclosed in any bureau or office investigation and the actions taken to correct them.

l. *The Inspector General* may, at his or her discretion report the results of the investigation of any senior official to the Secretary or Deputy Secretary or other appropriate management official for action.

m. *The Inspector General* is hereby delegated authority to receive all matters referred to the Department of the Treasury by the Special Counsel of the Merit Systems Protection Board, regarding allegations of prohibited personnel practices. He or she may investigate such matters or, as appropriate, may refer such matters for investigation to a law enforcement bureau internal affairs or inspection office, except for matters concerning the Internal Revenue Service (IRS), which shall be referred directly to that bureau.

n. *The Inspector General* shall receive and review reports of investigations by any bureau or office conducting such investigations, except for IRS, and may prepare or delegate to the appropriate bureau or office for preparation, final reports to the Special Counsel for review and signature of the Deputy Secretary or Under Secretary as the Secretary's designees, except for IRS which shall prepare its own final reports to the Special Counsel.

3. Authority and Responsibility of the Inspector General for the Conduct and Oversight of Audits

a. *The Inspector General* is hereby delegated complete authority for performing internal audits of all Treasury bureaus and offices, with the exception of the law enforcement bureaus. The law enforcement bureaus are the: Internal Revenue Service, U.S. Customs Service, Bureau of Alcohol, Tobacco and Firearms, and U.S. Secret Service.

b. *The Inspector General* may audit or authorize law enforcement bureau internal affairs or inspection offices to audit any Treasury program, activity, or function, including any Treasury or bureau contractor, subcontractor, or offeror.

c. *The Inspector General* shall coordinate all requests submitted by IGs from the other Government departments and agencies for audit services within the Department.

d. *The Inspector General and, as appropriate, the Heads of Internal Audit in the law enforcement bureaus* shall distribute copies of final audit reports to all headquarters and field officials responsible for taking corrective action on matters covered by those reports.

e. *The Inspector General* shall keep the Secretary or Deputy Secretary informed of any significant problems, abuses, or deficiencies disclosed in audits and the actions taken to correct them.

f. *The Inspector General* is responsible for formulating Departmental audit policies and priorities and assuring implementation of Federal audit standards in the Department.

g. *The Inspector General* may review, evaluate, and approve law enforcement bureau internal affairs and inspection offices' programs, plans, policies, reports and operations for internal auditing and may make recommendations for changes.

h. *The Inspector General* shall receive and may review and analyze all law enforcement bureau internal affairs and inspection offices' audit plans and reports as a basis for evaluating audit services to management.

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i. *All law enforcement Bureau internal affairs and inspection offices* shall periodically report to the Inspector General their significant current audit activities.

4. Authority of the Inspector General for Intelligence

a. Pursuant to Section 4 of Executive Order 12334, *the Inspector General shall, together with the General Counsel,* to the extent permitted by law, report to the President's Intelligence Oversight Board, concerning intelligence activities that he or she has reason to believe may be unlawful or contrary to Executive Order or Presidential directive.

b. *All Treasury employees* shall report to the Inspector General, the General Counsel, or the head of the inspection or internal affairs office of their bureau, any matters which they believe raise questions or propriety or legality under Executive Order 12333.

c. At appropriate intervals, *The Inspector General* shall review any foreign intelligence activities of the Treasury Department to determine whether any such activities raise questions of propriety under Executive Order 12333. Any questions arising from this review as to the legality of such activities shall be referred to the General Counsel.

d. *All law enforcement bureau internal affairs and inspection offices* shall review at appropriate intervals the activities of their bureaus in their relations with the United States foreign intelligence agancies to determine whether such activities raise questions of legality or propriety. Any questions of legality or propriety arising from this review shall be reported to the Inspector General who shall refer to the General Counsel any illegal activities.

e. *The Inspector General, together with the General Counsel,* shall review any agreement the Treasury Department or any of its bureaus or officers and the Central Intelligence Agency (CIA), dealing with arrangements of a continuing nature.

f. *The Inspector General, together with the General Counsel,* shall, when requested, consult with the Office of Intelligence Support regarding CIA or Treasury requests for support or assistance where there is no current written arrangements for such support or assistance.

g. *The Inspector General, together with the General Counsel,* consult with the Under Secretary, when requested, with regard to arrangements for support or assistance between the Treasury and any other intelligence agency of the Federal government except for arrangements between the Federal Bureau of Investigation and the Internal Revenue Service, which shall be the responsibility of the Commissioner of Internal Revenue.

5. Personnel Authority

a. *The Inspector General* may obtain as needed, under procedures he or she develops, investigative, audit, and support personnel from law enforcement bureau internal affairs and inspection offices for conducting investigations or audits under his or her direct supervision. Any detailed personnel shall remain on the rolls of the service or office from which they were detailed but will report exclusively to the Inspector General regarding the matter being investigated or audited.

b. *Bureau heads* shall consult with the Inspector General in recruiting and selecting candidates to head the internal affairs or inspection offices of the law enforcement bureaus. Bureau heads shall, prior to issuance, submit annual performance evaluations of incumbent heads of internal affairs or inspection offices to the Inspector General for review.

6. Regulatory Authority

The Inspector General is hereby delegated authority to promulgate any rules, regulations, directives, memoranda of understanding, policies and procedures necessary to implement his or her duties and responsibilities pursuant to this Order.

7. Cancellation and Consolidation of Previous Orders

a. This Order supersedes the following Treasury Department Orders (TDO):

(1) TDO 256, "Establishment of the Position of Inspector General," dated July 18, 1978;

(2) TDO 101–14, "Transfer of the Office of Audit to the Inspector General," dated February 20, 1980; and

(3) TDO 101–28 "Transfer of Internal Audit Function and Internal Investigative Functions and Positions to the Office of the Inspector General," dated June 7, 1982.

b. This Order supersedes those parts of the following orders which set forth duties of the Inspector General:

(1) TDO 240 (Revision 1), "Liaison Between Subordinate Organizational Units of the Treasury and the Central Intelligence Agency," dated July 18, 1978;

(2) TDO 246 (Revision 1), "Responsibilities for Oversight of Foreign Intelligence Activities Under Executive Order 12036," paragraphs number 1, 3, 5, and 6;

(3) TDO 101–4, "Delegation of Authority to the Inspector General to Receive Referrals from the Merit Systems Protection Board, and Delegation to the Deputy Secretary, to the Under Secretary and to the Commission of Internal Revenue to Sign Final Reports," dated April 13, 1979. Inspector General's duties are set forth in Part 1 of this Order; and

(4) TDO 101–15, "Delegations of Authority to the Deputy Secretary and Inspector General Relating to Treasury Auditing and Inspection Activities," dated February 27, 1980.

James A. Baker III,

Secretary of the Treasury.

[FR Doc. 87–2447 Filed 2–4–87; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Exchange Visitor Program; Amendment of Skills List

AGENCY: United States Information Agency.

ACTION: Amendment to Exchange Visitor Skills List.

SUMMARY: The Exchange Visitor Skills List is amended to reflect the indefinite suspension of Libya from the country skills list and the addition of two public administration fields to Group (1) of the country skills list for the People's Republic of China.

DATES: The indefinite suspension of the skills list for Libya is retroactive. With regard to the addition of Public Health Administration in the skills list for the People's Republic of China, this notice shall take effect 30 days after publication in the **Federal Register.**

ADDRESS: Comments and requests for further information should be addressed to: Richard L. Fruchterman, Assistant General Counsel, Office of the General Counsel and Congressional Liaison, USIA, Suite 700, 301–4th Street, SW., Washington, DC 20547. Telephone (202) 485–7976.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 212(e) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(e)), the Secretary of State designated on April 25, 1972 a list of fields of specialized knowledge or skill (Referred to as the Exchange-Visitor Skills List) and those countries which clearly required the services of persons engaged in one or more of such fields. Any alien who was a national or resident of one of those countries and obtained an exchange-

visitor visa and/or became a participant in an Exchange Visitor Program involving a designated field of specialized knowledge or skill after the effective date of that notice was subject to the 2-year foreign residence (home-country physical presence) requirement of section 212(e) of said Immigration and Nationality Act as provided by said section and 22 CFR 41. 65(b).

Pursuant to the provisions of Reorganization Plan No. 2 of 1977, section 217 of United States Information Agency Authorization Act of August 24, 1982 (Pub. L. 97–241) and Executive Orders Nos. 12038 (March 27, 1978) and 12388 (Oct. 14, 1982), the Director, United States Information Agency, on June 12, 1984 further amended the 1972 Exchange Visitor Skills List, as revised in 1978, to increase the designated fields of specialized knowledge or skills. The 1984 amendment gave notice of the addition of the People's Republic of China as the deletion of Cambodia, Iran and Viet-Nam from the skill list as well as the indefinite suspension of Afghanistan. On Sept. 30, 1986 (50 FR 34701 et seq.), the Exchange Visitor Skills List, as amended in 1984, was further amended to reflect the deletion of South Africa, addition of Iraq and changes in Group 4 in the country skills list for the People's Republic of China.

The Exchange Visitor Skills List, as amended in 1986, is further amended by the following:

1. *Libya*

The indefinite suspension of the country-skill list for Libya. Libyan exchange visitors who were subject to the home residence requirement pursuant to the skills list are no longer so, retroactively. No skills list will be applied to exchange visitors from Libya.

2. *People's Republic of China*

The addition to Group (1)—Fields in the Administration of Public or Public-Oriented Affairs—of IA. Public Administration and IB. Public Social Administration to the skills list for the People's Republic of China. Both IA. Public Administration and IB. Public Social Administration were inadvertently omitted from the 1984 publication of the country skills list for China. Exchange visitors from the People's Republic of China who specialize in this field shall be subject to the home residence requirement pursuant to the skills list 30 days after publication of this notice in the **Federal Register.**

The Exchange Visitor Skills List, as amended, is used in conjunction with the two prior existing lists.

This Notice amends Public Notice No. 356–37, 37 FR 8099–8177 April 25, 1972, Public Notice No. 591, 43 FR 5910–5912, February 10, 1978, Public Notice, Vol. 49 No. 114 FR 24194–24242, June 12, 1984 and Public Notice, Vol. 51, No. 189, FR 34701, Sept. 30, 1986.

Dated: February 2, 1987.

C. Normand Poirier,

Acting General Counsel, United States Information Agency.

[FR Doc. 87–2304 Filed 2–4–87; 8:45 am]

BILLING CODE 8230–01–M

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Sunshine Act Meetings

Federal Register
Vol. 52, No. 24
Thursday, February 5, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:35 p.m. on Wednesday, January 28, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) Accept the bid submitted by Lafayette National Bank, Lafayette, Indiana, for the purchase of certain assets of and the assumption of the liability to pay deposits made in The Farmers National Bank of Remington, Remington, Indiana, which was expected to be closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, Thursday, January 29, 1987; and (2) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction;

(B)(1) Accept the bid submitted by The Bank, National Association, McAlester, Oklahoma, for the purchase of certain assets of and the assumption of the liability to pay deposits made in Peoples State Bank & Trust Company, Holdenville, Oklahoma, which was expected to be closed by the Bank Commissioner for the State of Oklahoma on Thursday, January 29, 1987; and (2) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction;

(C)(1) Accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for a purchase and assumption transaction, or (2) in the event no acceptable bid for a purchase and assumption transaction is submitted, accept the highest acceptable bid for an insured deposit transfer transaction which may be submitted, or (3) in the event no acceptable bid for either type transaction is submitted, make funds available for the payment of the insured deposits of the closed bank, with respect to each of the following: (a) First State Bank of Pattonsburg, Pattonsburg, Missouri, which was expected to be closed by the Commissioner of Finance for the State of Missouri on Thursday, January 29, 1987; (b) Montgomery County Bank, National Association, Montgomery County (P.O. The Woodlands), Texas, which was expected to be closed by the Deputy Comptroller of the Currency, Office of the Comptroller, on Thursday, January 29, 1987; (c) The La Pryor State Bank, La Pryor, Texas, which was expected to be closed by the Acting Banking Commissioner for the State of Texas on Thursday, January 29, 1987; and (d) Bear Creek National Bank, Houston, Texas, which was expected to be closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, January 29, 1987; and

(D) Consider matters relating to the possible failure of an insured bank.

At that same meeting, the Board of Directors also considered a personnel matter.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: January 30, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-2491 Filed 2-3-87; 12:44 pm]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., February 11, 1987.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Commonwealth of Puerto Rico—Executive order 4482-B.
2. Enforcement matters.
3. Responses to Section 15 Orders Re Use of High Cube Containers in U.S./Japan Trade.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 87-2541 Filed 2-3-87; 3:50 pm]

BILLING CODE 6730-01-M

federal register

Thursday
February 5, 1987

Part II

Environmental Protection Agency

40 CFR Parts 261, 264, 265, 269, 270, and 271

Hazardous Waste Treatment, Storage, and Disposal Facilities; Air Emission Standards for Volatile Organics Control; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 264, 265, 269, 270, and 271

[FRL No. 3078-2]

Hazardous Waste Treatment, Storage, and Disposal Facilities; Air Emission Standards for Volatile Organics Control

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The proposed standards would limit emissions of volatile organics (VO) at hazardous waste treatment, storage, and disposal facilities (TSDF) where (a) equipment at the facilities contain hazardous wastes or derivatives of hazardous wastes and (b) these wastes or their derivatives contain 10 percent or more total organics. The proposed standards implement, in part, Section 3004(n) of the Resource Conservation and Recovery Act (RCRA), as amended. The intent of this proposed rule is to reduce the threat to human health and the environment posed by air emissions from certain hazardous organic waste management practices, e.g., reclamation and equipment associated with incineration of organic hazardous wastes.

DATES: *Comments.* The EPA will accept comments from the public on the proposed standards until April 6, 1987. A public hearing will be held on this proposed rulemaking to provide interested parties an opportunity for oral presentations of data or views concerning the proposed standards. See Section XI of this preamble for the schedule and location of this public hearing and a brief summary of how it will be conducted.

Incorporation by reference. The incorporation by reference of certain publications in these standards will be approved by the Director of the **Federal Register** as of the date of publication of the final rule.

ADDRESSES: *Comments.* Comments may be mailed to the Docket Clerk (Docket Number F-86-AESP, Air Emission Standards for Volatile Organics Control), Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Comments received by EPA and all references used in this document may be inspected in Room S-212, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC, from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Background information document. The technical notes for the proposed standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone (919) 541-2777. Please refer to "RCRA TSDF Air Emissions—Background Technical Memoranda for Proposed Standards" (EPA-450/3-86-009).

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000, or call Cynthia Monroe at (919) 541-5578.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Authority and Executive Summary
  A. Authority
  B. Executive Summary
II. Background
  A. Existing Air Emission Regulations Under RCRA
  B. Role of Section 3004(n) in RCRA
  C. Rationale for Accelerated Air Program
III. Overview: Accelerated Regulation of Air Emissions
  A. Regulatory and Technical Approach
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  C. Types of Facilities That Would Be Covered by Proposed Standards for Air Emissions
  D. Hazardous Wastes and Their Derivatives Covered by Today's Proposal
IV. Proposed Air Standards For Waste Solvent Treatment Facilities
  A. Background
  B. Need and Basis For Proposed Standards
  C. Summary of Proposed Standards
V. Applicability of Proposed Standards to Other TSDF Operations
VI. Permits and Other Aspects of Implementation
  A. Interim Status and Permitted Facilities
  B. Additions to 40 CFR Part 270
  C. Relation to Similar CAA Requirements
VII. Relation to Other RCRA Regulatory Provisions
  A. Product Storage Exemption
  B. Totally Enclosed Treatment Facility Exemption
  C. Eliminating the Exemption for the Act of Reclamation
  D. Wastewater Treatment Tank Exemption
  E. Application of Air Emission Standards to Equipment that Meets the Definition of a Generator's Accumulation Tank
  F. Applicability of Other Standards for Tanks and Tank Systems
  G. Impacts on Small Quantity Generators
VIII. State Authorization
  A. Applicability of Rules in Authorized States
  B. Effect on State Authorization
IX. Impacts of Proposed Standards
  A. Introduction
  B. Air Impacts
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I. Authority and Executive Summary

A. Authority

These regulations are proposed under the authority of Sections 1006, 2002, 3001-3007, 3010, 3014, 3015, 3017, 3018, 3019, and 7004 of the Solid Waste Disposal Act of 1970, as amended by RCRA, as amended (42 U.S.C. 6905, 6912, 6921-6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974).

B. Executive Summary

Today's proposal would establish new standards under Section 3004(n) of RCRA for the control of air emissions from hazardous waste treatment, storage, and disposal facilities (TSDF) that are already required to have a RCRA permit. The standards would reduce volatile organic (VO) emissions from such facilities managing organic hazardous waste by a combination of performance, design, and operating standards. The proposed standards include requirements for installation, operation, and maintenance of control equipment, leak detection and repair, and recordkeeping and reporting. Today's proposal also amends the requirements for facilities recycling certain "recyclable materials" (i.e., hazardous waste being recycled) to include regulation of the process of reclamation.

Facility owners or operators must determine (based on the procedures in the standards) which equipment at their facilities is subject to these air emission standards. The standards would cover equipment containing or contacting liquids, gases, or other emanations (derivatives) from hazardous waste in concentrations greater than 10 percent total organics located at affected TSDF. Total organics are a measure of whether sources potentially emit the VO emissions covered by the standards. The decision as to whether equipment is covered by the rule can be based either on testing the wastes and derivatives according to specified test procedures, or on engineering judgment as to these materials' total organic content. In questionable cases, the test procedures will be required to determine if equipment is subject to this regulation.

The proposed standards contain two major features. First, the proposal requires 95 percent reduction in VO emissions from product accumulator vessels, including process vents and surge control vessels. Both new and existing units would be required to operate systems designed to achieve 95 percent reduction and to operate within this design. Once in operation, the facilities would demonstrate compliance with the requirements by monitoring the operation of the system. Second, the standards require leak detection and repair programs for valves, pumps, compressors, pressure relief devices, and closed-vent systems used to handle hazardous wastes and their derivatives at TSDF. Control systems, leak detection methodology, leak definition, and repair schedule are based on existing standards developed under sections 111 and 112 of the Clean Air Act (CAA).

Product accumulator vessels include units used to distill and steam and air strip volatile components from hazardous waste; therefore, the proposed regulations would regulate the process of reclamation for the first time. Only recycling facilities that are already subject to RCRA permit requirements or facilities that perform recycling and need a permit for another part of their operation would be subject to the proposed air emission standards. Therefore, the proposed rule would add 40 CFR 261.6(d) so that reclamation activities at facilities subject to permit requirements are subject to the air emission standards.

These proposed air emission standards would be effective in all States and territories when promulgated, regardless of authorization status. Section 3006(g) of the Hazardous and Solid Waste Amendments of 1984 (HSWA) requires immediate implementation of all regulations mandated by HSWA. Until authorized programs are updated, EPA will administer the program.

For more details, the following sections of this preamble should be consulted.

II. Background

A. Existing Air Emission Regulations Under RCRA

To date, the RCRA regulatory program has focused primarily on preventing exposure to humans and the environment through the ground water and surface water pathways. However, EPA also is charged under RCRA with ensuring that hazardous waste management is accomplished while protecting human health and the environment from exposure through the air pathway. As described below, several rulemaking activities related to the control of air emissions have been undertaken under authority of RCRA. Air standards for TSDF initially were proposed by EPA on December 18, 1978, in 40 CFR 250.42-3 (43 FR 58999). These regulations would have required that facilities be designed, constructed, and operated to prevent emissions from exceeding limits established under the CAA. However, these regulations were not promulgated by the Agency. On January 12, 1981 (46 FR 2867), the interim final regulations for permitted hazardous waste tank systems were promulgated under 40 CFR Part 264. Under an accompanying proposal (46 FR 2895), all tanks would have been required to have treatment process controls "to protect human health and the environment from toxic or otherwise harmful fumes, wastes, or gases." The tank regulations, while recently revised (see 51 FR 25470, July 14, 1986) to require secondary containment controls for ground water and surface water protection, do not include standards for air emissions.

Even though standards for air emission monitoring under 40 CFR Part 264 were proposed in conjunction with Subpart F ground water requirements for land disposal units on February 5, 1981 (46 FR 11165), the standards were promulgated on July 26, 1982 (47 FR 32349), without the air component. However, these standards [40 CFR 264.250(c)(3), 264.301(f), and 264.273(f)] require the implementation of design and operating practices at permitted wastepiles, landfills, and land treatment operations that prevent the release of particulate emissions.

Air standards have been developed for the control of hazardous waste incinerator emissions. Regulations were promulgated May 19, 1980, for air emissions from interim status incinerators. These 40 CFR Part 265 Subpart O regulations require monitoring of visible emissions and operating conditions. The operating conditions are controlled so as to ensure 99.99 percent destruction and removal efficiency for primary organic hazardous constituents as demonstrated by test burns. Standards for permitted incinerators, promulgated on January 23, 1981 (46 FR 7689), and June 24, 1982 (47 FR 27532), limited air emissions of organics, hydrochloric acid, and particulates from incinerator stacks. Interim status standards for other thermal treatment units are found in 40 CFR Part 265 Subpart P. Certification standards for thermal treatment units burning dioxin-containing acute hazardous wastes are found at 40 CFR 265.383.

Today's proposal would regulate point source and nonpoint source air emissions associated with certain hazardous wastes and their management. The proposal is authorized not only by general RCRA authorities over air emissions, but also by a specific directive contained in Section 3004(n), added by the 1984 amendments, which requires EPA to promulgate standards for the monitoring and control of air emissions from hazardous waste TSDF. The role of Section 3004(n) within the RCRA program is discussed below.

B. Role of Section 3004(n) in RCRA

Congress directed EPA to ". . . promulgate such regulations for the monitoring and control of air emissions at hazardous waste treatment, storage, and disposal facilities, including but not limited to open tanks, surface impoundments, and landfills, as may be necessary to protect human health and the environment" [provision added to HSWA in Section 3004(n)]. This provision does not confer any new authority, but rather requires the Agency to exercise its preexisting authority over air emissions from hazardous waste management (S. Rep. No. 284, 98th Cong. 2d Sess. at 63).

Air emissions are generated or released from numerous sources at TSDF. Air emission sources include process vents, control systems, surface impoundments, open tanks, equipment leaks, transfer, storage, and handling operations, landfills, and land treatment operations. Depending on the source, air emissions can be classed as VO (including toxics, carcinogens, and ozone precursors) or particulates (including metals, aerosols of organics, dust, as well as toxics and carcinogens). Note that, as mentioned previously, EPA has established certain incinerator standards and currently is developing additional air regulations for incinerators and thermal treatment units. Today's proposed rules, also referred to as the "accelerated program," would require controls for certain of these sources. The rules are being developed for those situations for which sufficient information is currently available to support a rulemaking effort. The EPA is continuing to study the other sources and plans to propose comprehensive air standards by November 1987. The accelerated program is discussed further in the next subsection of this preamble.

Two other provisions added by the 1984 RCRA amendments also confer authority over air emissions resulting from hazardous waste management. These provisions are the corrective action authority in Section 3004(u) and the so-called omnibus permit authority in Section 3005(c)(3). Under section 3004(u), EPA must require corrective

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action to address releases of hazardous constituents from solid waste management units at all facilities seeking a Subtitle C permit, as may be necessary to protect human health and the environment. This provision is applicable to releases of hazardous constituents to the air (50 FR 28713, July 15, 1985). Permit writers under the omnibus permit authority [Section 3005(c)(3)] may impose permit conditions beyond those contained in EPA regulations as may be necessary to protect human health and the environment from risks posed by that particular facility. These provisions thus provide additional authority to control certain types of air emissions.

The EPA has a duty to act under all three of these provisions. In considering how best to implement each provision, it appears clear that Congress envisioned development of national air emission standards, rather than exclusive reliance on ad hoc mechanisms imposed by other regulatory authorities on a potentially uncertain timetable. At the same time, there is a definite role for corrective action and omnibus permit authorities in controlling hazardous waste air emissions. Because corrective action decisions may precede development of section 3004(n) standards in certain instances, the Agency intends to issue guidance and order corrective action to control air emissions at those facilities where air emissions are clearly posing an imminent threat. Where it is difficult to pinpoint the extent of risk posed by a facility's air emissions, the Agency may order various types of monitoring. In any case, facilities-issued permits are not exempt from standards developed under section 3004(n). Rather, monitoring and other collected data should assist in developing regulations under Section 3004(n) for monitoring of air emissions resulting from hazardous waste management.

The omnibus permit authority likewise ties into the national standard-setting process. The EPA intends to develop national standards that protect against the significant risks posed by hazardous waste air emissions. However, these standards in some cases will not be the most protective possible because this degree of control would appear unnecessary for most facilities. The omnibus permit authority allows permit writers to impose more stringent conditions where warranted at individual facilities. In essence, EPA envisions that the national emission standards under 3004(n) will achieve major across-the-board emission and risk reductions that will be protective of human health and the environment in most cases. The omnibus permit authority then provides a means of fine-tuning these standards at individual facilities where incremental reduction would be significant for protection of human health and the environment. The EPA, in fact, intends to issue guidance to permit writers as to when the omnibus permit authority may appropriately be used to expand regulatory controls on hazardous waste air emissions, identifying such factors as particular pollutants and meteorological conditions warranting special controls, and identifying particular additional control options.

In addition, under section 3004(m) of RCRA, EPA is setting standards that are achievable by the best demonstrated available technologies (BDAT) that could be used to treat waste solvents prior to their land disposal in Subtitle C units. In these rules that were issued on November 7, 1986 (51 FR 40572), EPA did not set limits on air emissions from treatment units used to comply with the BDAT standards. Rather, EPA will establish limits controlling air emissions under authority of section 3004(n). Today's rulemaking proposes air emission standards that would apply to TSDF that employ certain treatment technologies identified as BDAT for waste solvents. The EPA believes that this use of section 3004(n) is entirely appropriate and will result in the protection of human health and the environment, as may be necessary, for all environmental pollution media associated with TSDF.

C. Rationale for Accelerated Air Program

Today's proposal would regulate air emissions from certain types of hazardous waste treatment in advance of the more comprehensive rules on air emissions now under development. The EPA is acting to control these activities on an accelerated basis for the following reasons.

The 1984 amendments to Section 3004 of RCRA were designed to avoid substantial risks to human health and the environment from disposal, transfer, and storage of hazardous wastes. These amendments include provisions that prohibit land disposal of all hazardous wastes by specified dates if EPA has not established treatment standards under section 3004(m) that substantially diminish the risks associated with land disposal of wastes or granted a case-specific petition demonstrating that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous. As previously discussed, the 1984 amendments to Section 3004 of RCRA also specifically require EPA to establish standards for the monitoring and control of air emissions from hazardous waste TSDF.

The first group of wastes subject to the statutory prohibition include specified spent solvents (hazardous wastes numbered F001–F005) and dioxin-containing wastes (F020, F021, F023, F026, F027, and F028). Treatment standards for waste solvents and dioxins were promulgated on November 7, 1986 (51 FR 40572), based on concentrations of constituents allowed in disposal units after the application of BDAT. These wastes would have been prohibited from land disposal effective November 8, 1986, if EPA had not set treatment standards under Subsection(m) or granted a waiver based on no migration from a unit for as long as waste remains hazardous. Other categories of hazardous wastes will become subject to the land disposal prohibition over a 66-month period from enactment of the 1984 amendments. For example, treatment standards are required by July 1987 for halogenated organic hazardous wastes, many of which are treated in a way similar to the way solvents are used.

Section 3004(n) requires EPA to establish standards for air emissions at TSDF by May 8, 1987. If the land ban regulations and the air emission standards were both promulgated at the deadlines specified in RCRA, the result could be the construction or expansion of waste solvent treatment facilities (WSTF) without emission controls, and, later, RCRA requirements that would cause retrofit at extra costs in terms of equipment and operation for those WSTF and TSDF treating waste solvents which are hazardous wastes. Recent Congressional comments on the January 1986 proposed land disposal restrictions indicated that treatments that replace land disposal should not be allowed to pose undue risks. The EPA's mandate is to set standards for these technologies to protect human health and the environment adequately. Because the first two groups of wastes scheduled for land disposal restrictions include many volatile compounds, today's accelerated rule will reduce air emissions from technologies expected to be used in lieu of land disposal. In particular, air emissions from solvent reclamation currently are unregulated under Subtitle C. Without today's early action by EPA, the timing of these initial land disposal restrictions could result in: (1) additional sources of uncontrolled air emissions from WSTF and (2) subsequent RCRA requirements to retrofit air emission

controls to WSTF (and TSDF in general). Because EPA desires to minimize the impact of the timing of these Section 3004 efforts, EPA accelerated the schedule for a portion of its air emission project.

The EPA has available data to accelerate the portion of its air emission project associated with certain emission sources of total organics, in particular, process vents and equipment leaks. The proposed standards do not apply to other emission sources' such as surface impoundments, nor to other emissions, such as particulates or toxic metals. The standards do not apply to such sources and emissions because EPA has not completed its data collection and technical and regulatory analyses that would form the basis of such standards. As discussed below, EPA focused its analysis for today's proposed standards on existing data based on (1) the need for accelerated standards and (2) certain treatment and control technologies discussed in the following paragraphs.

The EPA reviewed the treatment technologies associated with TSDF to decide which sources could be covered by the accelerated effort for air emissions. In reviewing the treatment technologies expected to be used as alternatives to land disposal of waste solvents and hazardous organic compounds, EPA considered whether information was readily available to use in setting air emission standards and whether accelerated air emission standards were needed for the applicable treatment technologies. As explained in Section III of this preamble, EPA decided to accelerate the standards for air emissions associated with vents from distillation and stripping (air and steam) technologies used to treat waste solvents and also fugitive emissions from valves, pumps, and other equipment associated with the handling of rich organic streams (both wastes and derivatives of these wastes).

As explained in Section III of this preamble, technologies for the control of air emissions from distillation and stripping processes and equipment leaks at WSTF currently are available and, therefore, do not require further study by EPA. These technologies have been proven effective for reducing or eliminating the health threat posed by volatile air emissions based on EPA's extensive studies of similar sources under the CAA. Thus, EPA has based its regulatory approach for the accelerated program on existing standards issued under Section 112 of the CAA for control of benzene emissions. Accordingly, today's proposed standards are intended to reduce the immediate health and environmental threat posed by air emissions from waste solvent treatment operations that are similar to air emissions regulated under the CAA.

The benzene standards can be logically and technologically extended to any facility managing total organics with similar equipment to that affected by the final benzene standards. Thus, today's proposed standards also are intended to reduce the health and environmental threat posed by air emissions from sources in other TSDF similar to those in WSTF. For example, these sources include equipment associated with fugitive emissions (valves, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, and pipeline flanges) and product accumulator vessels (certain process vents, distillate receivers, surge control vessels, product separators, and hot wells that are vented to the atmosphere either directly or through a vacuum-producing system). The equipment covered by the proposed standards is discussed further in Section III of this preamble. The technologies for controlling air emissions from spent solvent distillation and separation and for controlling fugitive emissions from leaking equipment are equally suitable for controlling sources at TSDF performing distillation of organic-rich hazardous waste and separation techniques or generating fugitive emissions. After reviewing the engineering basis for the standards and the regulatory approach for control of the air emissions, EPA concluded that the proposed approach would be applicable to all RCRA waste streams and derivatives from these wastes with greater than 10 percent total organic content in the specified equipment. This percent criterion is discussed in Section III.C of this preamble.

In summary, data currently are available to estimate the emissions and health impacts posed by these emissions at WSTF and at certain other TSDF. Air toxics from the numerous fugitive sources at these TSDF also pose risks comparable on a facility basis to WSTF and contribute to the ambient ozone problem. For these reasons, EPA subsequently broadened this rulemaking to include emission controls for affected TSDF. Therefore, although today's proposal focuses primarily on WSTF and the cross-media effects of land disposal restrictions, the rulemaking also is applicable to the TSDF community as a whole.

Equipment leak controls can be applied at WSTF and the larger TSDF community now, based on the same technology already required for other similar industries under the CAA. The EPA believes that proceeding with available standards based on CAA regulations is in the best interests of the Section 3004(n) mandate—protection of human health and the environment from hazards posed by air emissions. Data currently are being collected and analyzed to determine the air emission impact from the many TSDF processes apart from distillation and separation operations that may be used at TSDF. Standards for these and other air sources are scheduled for later proposal.

III. Overview: Accelerated Regulation of Air Emissions

A. Regulatory and Technical Approach

Today's proposed standards are based on EPA's 10-year study of air emissions from the synthetic organic chemical manufacturing industry (SOCMI) and other major industrial sources of benzene and VO emissions (e.g., petroleum refineries, coke by-product plants, natural gas production plants, and manufacturing and recovery processes related to benzene and vinyl chloride). Regulations established under Sections 109, 110, 111, and 112 of the CAA that control certain process and fugitive emissions (i.e., equipment leaks) of VO and benzene have been applied to numerous industries that have equipment in benzene or volatile hazardous air pollutant service (see 40 CFR Part 60 Subpart VV and 40 CFR Part 61 Subpart V). In general, these industries handle organic liquid streams substantially the same as those handled at TSDF. Just as the organic liquid streams are similar, the equipment, sources of leakage, and applicable repairs are the same. Thus the regulatory approach used in developing today's regulations is based on the same technologies used to set these CAA standards for hazardous air pollutants and VO.

Today's proposed standards differ from the CAA standards only in the manner in which the standards are expressed and the way their impacts are characterized. The standards would reduce total VO emissions from TSDF as the basis for providing the protection required by section 3004 of RCRA. The EPA characterized the impacts of the standards by estimating the effects of the VO expected to be emitted by the sources covered by the standards. That is, VO is a surrogate or indicator for the many individual hazardous organic compounds, ambient ozone precursors, and other chemicals listed as hazardous under RCRA. By using VO as a surrogate, EPA can identify the overall

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air emissions generated from WSTF and certain TSDF, rather than focusing on constituent-based estimates. Using these air emission estimates, EPA is able to project the health and environmental effects (at least, those that are quantifiable) associated with these emissions as part of its risk assessment.

The EPA viewed several impacts with an awareness of the uncertainty associated with them while considering the need for and the protection provided by the proposed standards. The impacts considered to be indicators of the protection that will be provided upon compliance with the standards include reductions in VO emissions, cancer annual incidence, and cancer risk to the most exposed individuals. In estimating these impacts, EPA developed emission estimates, unit risk estimates, and other factors after reviewing all the available data for these estimates. Based on this review, EPA estimated medium or average factors for nationwide emission and risk estimates and reasonable worst-case estimates for the risks to the most exposed individuals. There is, of course, uncertainty in making these estimates. The EPA performed a risk assessment based on a Gaussian-based air dispersion model. For nationwide estimates, the risk assessment contained a range of expected locations to reflect variations in meteorological conditions and proximity to population. For the risks to the most exposed individuals, a location was selected based on exposure typical of urban areas. The dispersion model is similar to those EPA uses in development of standards under section 112 of the CAA and is mathematically similar to air dispersion models used in development of standards under RCRA. (The basis for these factors and modeling can be found in the introduction to the background information documentation.)

The EPA believes, as discussed below, the impacts associated with the proposed standards indicate that the standards are needed. In addition, EPA believes the protection envisioned by Section 3004 of RCRA is achieved by the standards because the standards are based on the most effective control except where additional controls would result in nonquantifiable reductions in impacts at high costs.

Although EPA believes its estimates are appropriate to use in considering the protection provided by this national standard, unusual situations (e.g., unexpectedly large emissions or emissions of particular chemicals) at particular sites could require additional control. Thus, if data and information become available showing exceptional health risks posed by specific operations at particular sites, the Agency will apply the omnibus authority of section 3005(c)(3) of RCRA to reduce emissions further when it issues the permit for that facility.

The EPA also transferred the use of control technologies. The technologies upon which current CAA standards are based have been proven effective in terms of emissions and costs for controlling emissions of benzene, VO, and other toxic or carcinogenic compounds emitted from process and fugitive sources. As discussed above, the equipment and repairs required by the proposed standards can be transferred from SOCMI because the equipment is substantially the same and the repairs and other control techniques apply equally well regardless of the industry in which it is used. Based on these considerations, EPA believes the data base and analysis used to select these technologies under the CAA are applicable to TSDF air emissions.

B. Need for Regulation

As discussed below, VO emissions from TSDF managing organic hazardous wastes increase cancer risks and contribute to ambient ozone formation. The overall breakdown of facilities affected by the proposed standard is estimated at about 100 WSTF that distill or strip F001–F005 solvents containing over 10 percent total organics and at about 1,300 TSDF that manage other RCRA wastes with over 10 percent total organics. Based on available data, it is estimated that emissions of VO from equipment at these types of activities at RCRA facilities pose cancer risks, contribute to ambient ozone formation, and cause other environmental impacts comparable to impacts produced by sources evaluated under the CAA.

Nationwide emissions of total VO from fugitive and process sources at WSTF are estimated at more than 8,660 megagrams/year (Mg/yr). Nationwide emissions of total VO from fugitive and process sources at other TSDF affected by the standards are estimated at more than 17,800 Mg/yr. Sources regulated under the CAA with similar emissions are considered significant. Similarly, WSTF and other TSDF affected by the standards are viewed as significant sources of VO and air toxics by EPA.

Annual cancer incidence associated with these emissions is estimated at 1.0 case/yr, with a range of 0.1 to 10.0 cases/yr. This range is associated with the variation in unit risk estimates associated with chemicals affected by the proposed standards. Similarly, a nationwide maximum lifetime risk (MLR) on the order of 1×10^{-3} (i.e., 1 in 1,000) could result from uncontrolled VO emissions that would be regulated by today's proposed rules.

VO emissions, as previously mentioned, also contribute to ambient ozone formation. The health and environmental effects of ambient ozone can be measured in terms of monetary losses totaling hundreds of millions of dollars each year. Ozone, a very reactive form of oxygen, is a primary constituent of photochemical smog. Unlike many other pollutants, ozone results from a series of chemical reactions between oxidant precursors [nitrogen oxides (NO_x) and VO] in the presence of sunlight. VO and NO_x are the two basic precursor classes controlling the ozone production process.

Ozone is a pulmonary irritant that affects the respiratory mucous membranes, other lung tissues, and respiratory functions. Clinical and epidemiologic studies have demonstrated that ozone can impair the normal mechanical function of the human lung and cause clinical symptoms such as chest tightness, coughing, and wheezing. Toxicologic studies show it increases susceptibility to bacterial infections in laboratory animals; other effects such as biochemical changes, morphological abnormalities, and genetic changes have been found in some studies of animals exposed to ozone.

In terms of public welfare and the environment, ozone can reduce the yields of citrus, cotton, potatoes, soybeans, wheat, spinach, and other sensitive crops, including visible injury to a variety of plant species. Entire ecosystems can be affected by ozone, as evidenced by damage to mixed conifer forests in California, reduction in the fruit and seed diets of small mammals, and alterations in species composition and wildlife habitat.

The VO emissions emitted from WSTF (and from TSDF in general) contribute to ambient ozone formation and cancer risks. The magnitude of these impacts is similar to those regulated by EPA under the CAA. Consequently, EPA believes standards limiting air emissions from facilities treating organic hazardous waste are needed to reduce the risk to human health. Such standards—among other advantages—will ensure that treatment alternatives to land disposal do not merely transfer the primary route of exposure from one environmental medium to another. Ambient ozone formation and the resulting health and environmental effects, including cancer risks, can be reduced by controlling VO emissions. Standards limiting air emissions from waste solvent treatment and associated sources are appropriate to reduce VO emissions that threaten human health as well as contribute to the formation of ambient ozone. One of EPA's current goals is to improve the nationwide program to help States and industries reduce VO emissions from major and minor sources. Today's proposed standards will assist in that goal.

The EPA currently is examining certain chemicals that may be contained in VO emissions and their role as potential depleters of stratospheric ozone. Stratospheric ozone depletion may result in increased cases of skin cancer in humans. The Agency is continuing to study stratospheric ozone depletion and its environmental and health risk impacts. The reduction in VO emissions provided by the proposed standards also may reduce emissions of potential ozone depleters. Any reduction in these VO emissions containing potential ozone depleters also may assist in protecting stratospheric ozone.

There also have been several reported damage incidents attributable to air emissions from hazardous waste solvent recycling operations (50 FR 659, January 4, 1985, damage incidents numbers 30 and 32). These incidents point out that harm to human health and the environment from these operations is not merely a potential occurrence but has in fact occurred.

C. Types of Facilities That Would Be Covered by Proposed Standards for Air Emissions

Today's proposed rule would control air emissions from certain equipment in volatile hazardous air pollutant (VHAP) service at RCRA facilities already required to obtain a RCRA permit for reasons other than those contained in today's proposal. To be covered, (a) a TSDF must have equipment, process vents, or accumulator vessels affected by the standards, (b) these sources must be in VHAP service (i.e., contain hazardous wastes or their derivatives with concentrations greater than 10 percent total organics, and (c) the TSDF is required to obtain a permit for an independent reason. The EPA explains these concepts and the reasons for structuring the rule in this way in the following sections of the preamble.

1. Equipment That Would Be Covered

Today's proposed rule generally would apply to facilities treating organic-rich hazardous waste to recover a usable product (e.g., solvent reclamation via distillation) or to generate a disposable residue. The standard affects ancillary equipment within a TSDF coming into contact with or containing fluids in concentrations greater than 10 percent total organics (either the wastes or derivatives from these hazardous wastes). "Equipment" is defined to include equipment generating both process and nonprocess (i.e., fugitive) air emissions. "Product accumulator vessels" are the types of equipment that generate process emissions and include process vents, distillate receivers, surge control vessels, product separators, or hot-wells that are vented to the atmosphere either directly or through a vacuum-producing system [proposed 40 CFR 269.30(b)]. Examples include most distillation columns, steam stripping columns, carbon adsorption vents, certain air stripping vents, and thin-film evaporation vents located in TSDF. Types of equipment associated with fugitive emissions are valves, pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, and pipeline flanges.

The standards apply only to the specifically enumerated types of equipment. Devices such as piping or open tanks thus would not be "equipment" for purposes of today's rule and so would not be covered by today's proposal. On the other hand, a closed tank that otherwise satisfied the definition of "product accumulator vessel" would be "equipment" for purposes of the rule. [The EPA is investigating appropriate controls for air emissions from devices not covered by today's proposed rule in the context of the broader section 3004(n) standards.]

It should be noted that facilities can be covered by today's proposed rule if any type of equipment (including nonprocess equipment) is in VHAP service. The equipment need not be recovering solvents or other organics from hazardous waste. For example, hazardous waste incinerators use valves, pumps, and other equipment to transfer wastes or their derivatives to the incinerator: that equipment would be covered by today's proposed rule.

2. Limitation of Applicability to Facilities Requiring Permits for an Independent Reason

Applicability of today's proposed standards would be limited to facilities required to obtain RCRA permits for reasons independent of today's rule. The EPA is proposing this course to avoid further burdening an already stressed RCRA permitting system at a time when the Agency and authorized States are attempting to issue final permits in the timeframes mandated by RCRA Section 3005(c)(2). More importantly, EPA needs more time to study the implications of the rule for certain types of facilities, particularly certain small quantity generators and small businesses with continuous reclamation processes that would not qualify as 90-day accumulation tanks (see 40 CFR 262.34) because they are not physically emptied each 90 days.

The EPA also believes that today's proposed standards will apply to the bulk of air emissions from facilities with equipment in VHAP service. The EPA, moreover, believes that many of the production facilities with such equipment not covered by today's proposal are in fact subject to the same standards under the CAA. The EPA established identical standards under the CAA for new and modified sources covering production of all petroleum products and most organic chemicals (see 40 CFR Part 60 Subparts VV and GGG). The EPA also has established guidelines for use by States to cover similar existing production facilities. In estimating the impacts of these standards, EPA found that, by about the year 1990, almost all petroleum and organic chemical production would be affected by the CAA standards. Thus, the majority of process equipment in VHAP service associated with production facilities is covered by CAA standards. Consequently, EPA believes that today's proposal covers a significant part of the problem posed by currently unregulated air emissions from hazardous waste management facilities with equipment in VHAP service.

The following examples illustrate how coverage under today's proposal is affected by the requirement that facilities be required to obtain a RCRA permit for a reason independent of this proposal.

1a. Facility A is an offsite reclaimer of hazardous waste spent solvents by distillation. The spent solvents are stored in tanks before being reclaimed.

Facility A's distillation column and associated equipment would be subject to today's proposed rule (assuming the spent solvents or their derivatives contain greater than 10 percent organics; see Section III.C. of this preamble). This is because Facility A s storage of spent solvent before distillation already requires a permit [40 CFR 261.6(c)].

1b. Same facts as Example 1a, except that Facility A is able to distill solvent without any prior storage.

Facility A's distillation activities are not subject to today's proposal because the facility is not already required to obtain an RCRA permit. The EPA believes that this situation is unlikely to

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occur; nonetheless, EPA requests specifically for comments on the number of offsite recyclers who recycle without storing the waste.

1c. Same facts as Example 1b, except that Facility A stores its distillation bottoms consisting of hazardous waste in drums for more than 90 days before sending them offsite for disposal.

Facility A's distillation activities would be subject to today's proposal because the storage of distillation bottoms requires a permit. Furthermore, the result would be the same if the hazardous waste storage resulted from a process unrelated to the spent solvent distillation.

2a. Facility B recycles hazardous waste spent solvents generated on site, storing the solvents and distilling the spent solvents in tanks for a total of fewer than 90 days from time of generation. There is no other hazardous waste management at the facility.

Facility B's distillation is not covered by today's proposed rule because Facility B is not required to obtain a permit (40 CFR 262.34).

2b. Same facts as Example 2a, except that the tank preceding distillation stores for more than 90 days.

Facility B's distillation is covered by today's proposed rule because Facility B already requires a storage permit. Note, however, that this type of configuration could potentially constitute an excluded closed loop reclamation system if it meets the conditions in 40 CFR 261.4(a)(8) (i)–(iv), July 14, 1986.

2c. Same facts as Example 2a, except that Facility B also operates a surface impoundment managing a different hazardous waste.

Facility B's distillation of a hazardous waste is subject to today's proposal because the facility requires a permit for the impoundment.

2d. Facility B generates hazardous waste spent solvents and sends them to onsite distillation without prior storage.

The distillation activities are not subject to today's proposal. They would be covered if Facility B had an independent unit requiring a RCRA permit, as in Example 2c.

3. Facility C operates a manufacturing process that distills organic-rich feedstocks and generates a distillation bottom that is a listed hazardous waste.

The distillation column is not covered by today's proposal because it processes raw materials, not hazardous wastes and so is not in VHAP service. In addition, no storage permit is required for the still bottom while it is in the distillation column [40 CFR 261.4(c)]. It should be noted that this facility would likely be covered under a CAA requirement (e.g., 40 CFR Part 60 Subpart VV).

D. Hazardous Wastes and Their Derivatives Covered by Today's Proposal

1. Hazardous Waste Containing Greater Than 10 Percent Organics

As noted above, today's proposed rule is limited in applicability to equipment "in VHAP service," defined as being equipment associated with hazardous waste treatment, storage, or disposal. The equipment must contain or be in contact with organic hazardous wastes or derivatives of hazardous wastes containing greater than 10 percent total organics by weight. Percent total organic content of these hazardous waste process fluids is determined by using Method 9060 of SW–846, Test Methods for Evaluating Solid Waste: Physical/Chemical Methods, or an appropriate ASTM method such as ASTM Method D 2267–68, E 169–63, E 168–67, or E 260–73 [40 CFR 269.34(a)(1)]. Owners or operators also may use engineering judgment to determine percent total organic content, but they have the burden of proof on the issue and are at risk if their judgment is incorrect [40 CFR 269.34(a)(2)]. In addition, equipment containing or contacting wastes with fluctuating organic content are considered to be in VHAP service if the wastes ever contain greater than 10 percent total organics [40 CFR 269.34(a)(1)]. Even though EPA does not believe owners or operators would dilute wastes in an attempt to avoid the need to comply with the standards, EPA will not accept dilution as a means of avoiding compliance with the standards. The Agency expects that hazardous spent solvents are a principal example of such wastes covered by the standards.

The Agency is proposing the 10-percent cutoff for a number of reasons. As elaborated in the rulemaking on CAA benzene standards, a 10-percent cutoff deals with the air emissions from equipment most likely to cause significant human health and environmental harm. In addition, EPA has not yet determined whether the control technologies for organic-rich waste streams are suitable for low organic streams, how effective these technologies would be, or whether regulation of these streams is necessary to protect human health and the environment. The EPA is continuing to investigate these questions as part of its overall rulemaking activities to implement Section 3004(n) of RCRA.

The determination associated with whether equipment are in VHAP service is based on total organics. The standards cover VO emissions and are intended to reduce impacts on human health and the environment associated with total organics. The basic reason for measuring total organics is that the original collection of data used to support the proposed standards measured total organics. In practice, most organic wastes and their derivatives affected by the proposed standards are considered volatile even though some may be relatively nonvolatile. The standards have been drafted to distinguish between sources containing or coming into contact with wastes or their derivatives which are more or less volatile. For example, the standards for pressure relief devices in gaseous service require no detectable emissions and the standards for pressure relief devices in liquid service only require gaseous leak detection if indications of liquid leaks are detected or otherwise sensed. Since the standards are based on volatile organics, however, the Agency solicits comment on the use of total volatile organics (e.g., as determined by Method 8240 of SW–846), rather than total organics, in determining the applicability of today's rule.

IV. Proposed Air Standards for Waste Solvent Treatment Facilities

A. Background

Some of the restrictions on land disposal of waste solvents, specifically spent solvents, will be effective in November 1986. Applicable treatment processes for these solvent wastes include: incineration, use as a fuel, distillation (which includes thin-film evaporation and simple and fractional distillation), and sometimes stripping (steam and air). Other treatment processes that may be used, such as biological treatment, carbon/resin adsorption, and chemical oxidation applied to solvent-water mixtures, are not considered expressly in this rulemaking because EPA is not prepared to address air emissions from treatment technologies used for most solvent-water mixtures at this time. In addition, EPA is not prepared to address air emissions from treatment technologies for waste solvents containing less than 10 percent total organics. Stack emissions from facilities burning waste solvents in incinerators and reusing waste solvents as fuel are being considered under separate standards for air emissions. Consequently, the development of air standards for WSTF (and TSDF) was limited to air evaluation of emissions of VO from

distillation and stripping (steam and air) treatment technologies. The evaluation of emissions and controls was limited to VO because other pollutants such as metals or toxic particulate matter are not likely to be released to the atmosphere by these processes. The EPA has not evaluated emissions and controls for highly volatile organometallics such as tetraethyl lead or dimethyl mercury and requests comments on these emissions and controls for them.

Distillation and stripping (air and steam) treatment processes separate organic components through volatilization and condensation of the more volatile components in the waste stream. The equipment used by these processes are similar when treating any type of spent solvent (indeed, any organic liquids) and embody the sources of fugitive and process air emissions. The organic liquids and sources are substantially the same as EPA has found in SOCMI. The wastes affected by the proposed standards are generally generated in SOCMI. For example, the solvents affected by the proposed standards are produced and used in SOCMI. Generally, process air emissions are associated with enclosed tanks that vent to the atmosphere as part of the treatment process. Fugitive air emissions are associated with ancillary equipment (e.g., pumps and valves) used in handling the spent solvents. The EPA studied these sources across several industries and found that their emissions are independent of industry. This is documented in an EPA information document covering these sources (EPA 450/3–81–002). These treatment processes use tanks and ancillary equipment to separate solvents from the waste stream.

Fugitive emissions from distillation and stripping treatment processes are those that escape directly to the atmosphere from leakage of gases, vapors, and liquids through faulty or inadequate seals in ancillary equipment used in the processes. This equipment is used to move and to control the movement of process fluids through these processes. In EPA and industry studies on fugitive emissions from ancillary equipment in various refining and organic chemical manufacturing industries, EPA has found that the quantity of fugitive emissions from facilities varies with the number of equipment components (e.g., pumps and valves used in the processes), the materials being handled, and the specific operation and maintenance practices applied to the equipment. Because the ancillary equipment used in WSTF (and certain TSDF) contain the same organic liquids found in these industries, EPA believes that fugitive emissions from WSTF ancillary equipment can be estimated using these studies. The studies include similar processes (distillation and stripping for product recovery) and identical ancillary equipment.

Control technologies for fugitive emissions comprise the use of control equipment, inspection of equipment, and repair programs to limit or reduce emissions from leaking equipment. These control technologies have been studied and evaluated for equipment containing fluids with more than 10 percent organics. The 10-percent criterion was used in EPA's original benzene/SOCMI studies to focus on air emissions from equipment containing relatively concentrated organics and presumably having the greatest potential for air emissions. The EPA has not decided at this time whether to set standards for equipment containing fluids with less than 10 percent organics. Fugitive emission controls and test methodology for equipment leaks have been proposed or established under both Sections 111 and 112 of the CAA. (See 46 FR 1136, January 5, 1981; 46 FR 1165' January 5, 1981; 48 FR 279, January 4, 1983; 48 FR 37598, August 18, 1983; 48 FR 48328' October 18, 1983; 49 FR 22598, May 30, 1984; 49 FR 23498, June 6, 1984; 49 FR 23522, June 6, 1984.) Emission reductions achievable with such programs are limited primarily by the number of components used in the operation, the frequency of monitoring, the ability to repair leaks, and the volatility of the organic waste (solvent). For operations such as are expected at WSTF, fugitive emission reductions of almost 75 percent are estimated for the program required by the proposed standards.

Process emissions from WSTF are those released to the atmosphere through process vents such as vents on the condenser column, the accumulator vessel, or the hotwell. (The hotwell is a vessel that contains the unvolatilized process stream.) Emissions from process vents include the noncondensible vapors and emissions resulting from any overload of the condenser during operations. These emissions are expected to be VO and are not expected to include emissions of metals or other solid materials in the waste solvent. Emissions from process vents vary with the throughput capacity, the vapor pressure of the compound(s) being recovered, and condenser operating conditions. In addition, vent emissions from batch operations vary over the operating cycle, with higher emission rates occurring at the start of the cycle.

The EPA has carried out studies of air emission control technologies for processes similar to those in WSTF such as distillation operations (EPA–450/3–83–005a, EPA–450/3–80–032a,b). National emission standards also have been established for equipment containing or contacting streams with a benzene content of 10 percent or more by weight (40 CFR 61 Subparts J and V). Air emission control technologies for process emissions include secondary condensers, flares, thermal afterburners, incinerators, scrubbers' and carbon adsorbers. The emission reduction potentially achievable by these control technologies depends on physical parameters associated with the process vent stream and the design and operation of the control technologies. For example, the efficiency of condensers is dependent on the physical properties of the solvents being condensed and the temperature of the cooling water used by the condenser. Of these possible control technologies, EPA believes condensers, flares, carbon adsorbers, and incinerators are generally applicable, feasible means of VO emission reduction and most likely will be used to reduce process emissions of VO at WSTF. However, the other control measures might be applicable in some situations. Properly designed and operated, all these control technologies can achieve 95 percent emission reduction or better. For further information on EPA technology decisions on emission control technologies for similar streams, see 46 FR 1165' January 5, 1981; 49 FR 23498, June 6, 1984.

Process and fugitive emission sources found at WSTF also are found at other TSDF. As explained previously, EPA believes that emissions from TSDF with waste streams containing more than 10 percent organics are significant. The EPA has determined that these emissions warrant control for protection of human health and the environment and are wholly appropriate for inclusion in this accelerated rulemaking. Emission controls for other TSDF processes, area sources, and waste categories are under development and will be proposed under a separate rulemaking. This inclusion of emission controls for TSDF with waste streams containing 10 percent or more organics treated by the designated types of equipment is discussed later in this preamble.

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B. Need and Basis for Proposed Standards

The proposed air emission standards are based on the control technologies discussed in this preamble and provide emission reductions that are needed to protect the public health and the environment. These technologies have been demonstrated to achieve reductions in VO emissions for the ancillary equipment like those used in TSDF. Control technologies for process emissions that can be applied now are secondary condensers, carbon adsorbers, flares, and incinerators; these techniques can be designed and operated to achieve at least 95 percent VO emission reduction. Control technologies for fugitive emissions consist of inspection and maintenance programs like those currently required by national emission standards for petrochemical facilities under the CAA. The control technologies discussed above for process emissions and fugitive emissions were used as the engineering and regulatory basis of the national emission standard for benzene equipment leaks (40 CFR Part 61 Subpart V). These technologies were selected as candidates for the reduction of air emissions in view of the need to develop accelerated air emission standards under RCRA section 3004(n). Further information on the selection and application of these control techniques is available in the **Federal Register** notices cited previously for proposal and promulgation of related standards under Sections 111 and 112 of the CAA. In this and the next section of the preamble, EPA summarizes the selection and application of these control techniques to WSTF and other TSDF.

The EPA considered the impacts of the control techniques as applied to WSTF when selecting the basis of the proposed standard. The EPA considered these impacts because they represented a complete and well-analyzed data collection for the air emission sources affected by this proposed rule. These control techniques result in an emission reduction of about 85 percent overall and at least 95 percent for process emissions. As indicated in the "Impacts of Proposed Standards" section of this preamble (Section IX), EPA made estimates on the basis of a range of impacts, which indicated that WSTF typically would emit about 8,660 Mg/yr of VO nationally without the proposed standards. This estimate of emissions is based on about 95 WSTF processing, about 440 million gallons of spent solvents. (See 51 FR 1727 concerning the recycling capacity of organic liquids.) Based on a scoping analysis, the nationwide annual incidence of cancer in the population living within 50 kilometers (km) of WSTF is estimated to be about 0.34 case/yr without the proposed standards. The nationwide maximum lifetime risk (MLR) to the most exposed individuals is estimated at 3.7×10^{-3}, or almost 4 in 1,000. With the proposed standards in place, WSTF typically would emit about 700 Mg/yr nationally with a corresponding nationwide incidence of about 0.028 case/yr. The estimated MLR would be reduced by the proposed standards to approximately 2.6×10^{-4} with WSTF process and fugitive controls. The estimated MLR is considered a reasonable indicator of the health risk posed by WSTF emissions. These impacts indicate the need to establish, and the protection provided by, the proposed air emission standards.

The proposed rules generally are based on the most stringent, technologically feasible controls for industry-wide application at new and existing sites. In certain cases, however, EPA did not select the highest level of control that could be achieved. For example, application of sealed bellows valves could achieve 100 percent control for certain manufacturing process streams but is generally not feasible for WSTF or TSDF because of the likelihood of corrosion due to contact with waste chemicals. (The EPA solicits comments on whether WSTF or TSDF routinely treat chemicals that would not destroy sealed bellows valves.) For certain other sources, however, the most effective controls that also are technologically feasible were not selected. These include dual seals for pumps and flaring or incinerating process vent emissions. (Note that the standards automatically allow the use of any controls equally or more effective than the prescribed controls; the rule includes provisions allowing for alternative controls. For example, pressure relief devices can be controlled by rupture discs or by venting emissions to flares via a closed system.) The EPA's reasons for not selecting the highest level of control available for pumps and product accumulator/process vents are discussed below.

Pumps are an air emission source for which additional emission reductions are feasible. Pumps can be controlled either by the use of dual seals to capture essentially all the fugitive emissions or by the use of the leak detection and repair program (contained in the proposed standards) that reduces the fugitive emissions by about 75 percent. The overall standard for WSTF, including leak detection and repair, would achieve an expected VO emission reduction of about 7,960 Mg/yr at an expected annualized cost of about $1.3 million/yr. The estimated MLR would be reduced from 3.7×10^{-3} to about 2.6×10^{-3}. In comparison, including dual seals would achieve an overall emission reduction of about 8,010 Mg/yr at a cost of $1.9 million/yr. The overall standard reduces the nationwide incidence from about 0.34 case/yr to about 0.028 or 0.023 case/yr based on including leak detection and repair or dual seals, respectively. With dual mechanical seals, the estimated MLR would be reduced to about 2.4×10^{-4}—an incremental MLR reduction of about 2×10^{-5}.

The EPA considered these impacts when deciding whether to require WSTF to install dual seals on pumps to control air emissions rather than to rely on monthly leak detection and repair. These impacts indicate that including leak detection and repair results in less emission reductions than including dual seals for pumps. However, the incremental decrease in emission reductions attributable to implementing a monthly leak detection program rather than more stringent dual seals appears to be small in comparison to the results of the overall standards; the decrease amounts to less than 1 percent of the overall emission reduction. In addition, this small incremental emission reduction does not clearly lead to a quantifiable reduction in risk because the data and models on which the risk estimates are based are not precise enough to quantify risk meaningfully to this exact a level. These data and models include the emission estimates, the air dispersion modeling, and the risk assessment, including location, population, and meteorologic uncertainties. If EPA were to present the risk estimates based on the number of significant digits in these estimates, they would include one digit, and the difference between the risk estimates would be zero.

Given the smallness and the imprecise nature of the emission and risk reductions associated with including dual seals in the overall standard, EPA believes the costs of achieving these reductions may not be warranted. More important, EPA cannot attribute a meaningful reduction in risk to use of the more expensive dual seals and, therefore, is proposing to select the less expensive control technology of monthly leak detection and repair for pumps. The EPA believes the use of leak detection and repair for pumps would provide the protection that is needed and that the use of the more expensive dual seals is not warranted by the emissions and risk reductions [see 45 FR 33089, May 19, 1980 (cost effectiveness is a relevant factor under RCRA in selecting among equally effective control technologies)].

Furthermore, EPA intends to prepare guidance to permit writers as to when imposition of dual seal pumps (through exercise of omnibus permit authority) may be appropriate (provided that it is technologically feasible). Through exercise of this authority, a means exists to impose the extra control if a significant reduction in risk would result.

The EPA also reviewed the application of flares and incinerators achieving 98 percent control in comparison to 95 percent control for WSTF process emission control. Although flares and incinerators may achieve 98 percent efficiency (or more) for many waste solvent streams, EPA cannot conclude, based on information and data currently available, when flares or incinerators rather than condensers or other 95-percent control devices should be applied to WSTF processes. (It should be noted that EPA has established requirements for hazardous waste incinerators that combust wastes very similarly to the way fuel oil furnaces combust oil. The incinerators and flares discussed in this preamble are different in that the air pollutants are combusted in a lean air stream heated by a flame rather than through the flame as is the case with combustion in fuel oil furnaces.)

In addition to the question of technical applicability, EPA reviewed the health, environmental, and cost impacts of secondary condensers (reflecting 95 percent control) compared to flares and incinerators (reflecting 98 percent control) as further information in deciding whether to require 98 percent control. Application of flares or incinerators for WSTF process emissions would be expected to reduce nationwide emissions from about 8,660 Mg/yr to about 470 Mg/yr. Condensers would reduce the emissions to about 700 Mg/yr. Thus, an incremental emission reduction of about 230 Mg/yr results with flares. Even though the models upon which the risk estimates are based are not sufficiently precise to quantify risk meaningfully to an exact level, EPA estimates that including flares or incinerators in the overall proposed standard would reduce annual cancer incidence from about 0.34 case/yr to about 0.018 case/yr in comparison to 0.028 case/yr for including condensers in the overall proposed standard. The estimated MLR associated with WSTF emissions would be reduced from about 3.7×10^{-3} to about 2.0×10^{-4} with flares or incinerators and 2.6×10^{-4} with condensers, an incremental MLR reduction of 6×10^{-5}.

Based on available information and data, 95 percent control appears to provide essentially the same level of protection for public health as 98 percent control. This level of control is achievable to WSTF processes and, as explained below, can be achieved at significantly less cost. In addition, if the Agency discovered that emissions from a facility resulted in an unacceptable overall impact to human health and the environment, section 3005(c)(3) of RCRA may be used to require the additional control. For these reasons, EPA selected 95 percent control over 98 percent control as the basis of the proposed standard.

As discussed above, a secondary point is that the costs of flares or incinerators do not appear to warrant their selection as the basis of the standard for process vents in WSTF. The net annual cost of secondary condensers is estimated at an overall credit of $620,000 nationwide, considering the recovery credit achievable. In comparison, the incremental nationwide annual net cost of flares or incinerators over condensers is estimated at about $7.2 million/yr. This incremental cost does not seem to warrant additional emission reduction of 230 Mg/yr when this nonquantifiable further health risk reduction is achieved.

C. Summary of Proposed Standards

The proposed standards apply to certain equipment at facilities treating waste solvents (i.e., WSTF) and, as discussed later, at TSDF in general. These facilities treat waste solvents (F001–F005) by distillation, air stripping, steam stripping, thin-film evaporation, or related chemical engineering processes to allow: (1) the use or reuse of the waste solvent or chemical or (2) disposal of the residual waste. (See discussion later in this notice on EPA's reasons for eliminating the current regulatory exemption for reclamation units and the proposal to cover TSDF handling organic hazardous wastes or their derivatives in concentrations greater than 10 percent.) The equipment affected by the proposed standards contains organic concentrations greater than 10 percent; this equipment includes valves, pumps, compressors pressure relief devices, sampling connection systems, open-ended valves or lines, pipeline flanges, product accumulator vessels, and closed-vent systems and control devices used to comply with the standard.

This equipment is used to move waste solvents and recycled solvents through various recycling operations at WSTF and TSDF. The proposed standards apply to the ancillary equipment containing or contacting fluids with more than 10 percent total organics that are hazardous wastes or derived from hazardous wastes within a facility. The approach of covering total organics as the basis for providing the protection as necessary under RCRA section 3004(n) is discussed in Section II.A of this preamble. Also as discussed before, the 10-percent criterion was selected because EPA has not studied and evaluated control technologies for equipment containing less than 10 percent total organics.

The details associated with the proposed standards can be found at 40 CFR Part 61 Subpart V. The following is a summary of Subpart V and how it applies to facilities affected by the proposed standards.

1. Valves

A monthly leak detection and repair program is required by the proposed standard for valves. This program should not be confused with the program required under Subpart J of 40 CFR Parts 264 and 265. The proposed standard allows quarterly leak detection for valves that have been found not to leak for 2 successive months; this is monthly/quarterly leak detection and repair. Leak detection is to be performed with a portable organic vapor analyzer according to Method 21 (see Appendix A of 40 CFR Part 60). If a reading of 10,000 parts per million (ppm) or greater of organic materials is obtained, a leak is detected. Initial repair of the leak must be attempted within 5 days, and the repair must be completed within 15 days. Delay of repair is allowed if repair is not technically feasible without a process unit shutdown; repair must occur at the next process unit shutdown. Delays are allowed for other specific reasons; all delays must be recorded and explained by the operator. The EPA expects few delays of repair and anticipates that no repairs would be delayed for more than 1 year. The standard also includes provisions that (1) exempt unsafe-to-monitor or difficult-to-monitor valves from the monthly monitoring program and that (2) allow use of alternative programs (e.g., skip period monitoring) if certain conditions are met (see 40 CFR 61.243–2 and 40 CFR 61.244).

The EPA concluded that the technological feasibility of control technologies for equipment leaks is limited by several factors including the

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10,000-ppm reading, the frequency of monitoring, and the ability to repair a leak. The 10,000-ppm reading is measured at the equipment-atmosphere interface. For this reason, this reading should not be compared to concentration readings from area-wide monitoring systems or personnel monitoring systems where lower readings are technologically feasible. In addition, the 10,000-ppm reading should not be confused with the 500-ppm reading that is used to confirm that no leakage is present at a leakless technology source (e.g., sealless valves); see 40 CFR 61.242–7(f), no detectable emissions for valves. The 10,000-ppm reading reflects the most restrictive level of control technologically feasible; EPA has not concluded that repairs are feasible or effective for concentration levels less than 10,000 ppm. The monitoring and repair frequencies reflect the most restrictive frequencies considered technologically feasible by EPA and are based on studies of existing, effective leak detection and repair programs.

These monitoring frequencies should not be confused with spill or leak detection and response requirements for hazardous waste tank systems or secondary containment systems [e.g., 40 CFR 264.15(b)(4)]; those frequencies of detection and response address soil and ground/surface water pollution, and are based on the application of visual inspection techniques.

The delay of repair provisions is required to make the program technologically achievable and to eliminate situations in which resulting emissions could be greater than allowing a delay in repair (e.g., during a process unit shutdown). Likewise, EPA included provisions that address the practical limitation associated with valves that are located in elevated pipe racks (e.g., difficult to monitor) and alternative leak detection and repair programs that are as effective as the required program. These alternative programs are based on never exceeding 2 percent of the valves leaking within a TSDF process unit, which reflects the performance of the best leak detection and repair programs within SOCMI; these programs allow TSDF operators to continue effective programs such as routine replacement of valve seals without the need to perform the required inspection program. Effective alternative programs (as measured by the 2-percent criterion) result in the same impacts as the required program.

2. Pumps

A monthly leak detection and repair program is required by the proposed standard for pumps. Leak detection is to be performed with a portable organic vapor analyzer according to Method 21. If a reading of 10,000 ppm or greater of total organic materials is obtained, a leak is detected. Initial repair of the leak must be attempted within 5 days, and the repair must be completed within 15 days. Delay of repair will be allowed for pumps that cannot be repaired without a process unit shutdown because emissions from a shutdown could easily exceed those from delaying a repair. Delay of repair, up to 6 months after detecting a leak, also is allowed when the plant owner or operator determines that repair of the pump requires using a dual mechanical seal system. Delay of repair is not expected to be needed for most situations, however, because pumps commonly are spared.

3. Compressors

The proposed standard for compressors requires the use of mechanical seals with barrier fluid systems and controlling degassing vents. The controlling degassing vents must use a closed-vent system and a control device that complies with the requirements as discussed in the "Product Accumulator Vessels, Closed-Vent Systems, and Control Devices" section of this preamble. The standard also would allow the use of alternative control systems (i.e., enclosed and leakless compressors) that provide equivalent emission reductions. [See 40 CFR 61.242–3(h) and (i).] Although these systems provide equivalent emission reductions, they cannot be used as the sole basis for this proposed standard because they are not technologically feasible in all situations. Compliance with these alternatives would be determined by review of records and inspection.

4. Pressure Relief Devices

The use of control equipment (rupture disc systems or closed-vent systems to flares) is the basis for the proposed standard for pressure relief devices in gas service. These requirements address leaks from pressure relief devices; they do not regulate discharges of air emissions through these devices. (The EPA notes that such discharges may be subject to the reportable quantity requirements of 40 CFR Part 302 and that these discharges will be considered further in setting air emission standards for TSDF.) For control techniques that eliminate equipment leaks, such as the use of rupture disc systems, an emission limit measurement for "no detectable emissions" can be established. An instrument reading of less than 500 parts per million volume (ppmv) above a background concentration based on Method 21 will be used to indicate whether equipment leaks are not detectable.

The "no detectable emission" limit will not apply to discharges through the pressure relief device during overpressure relief because the function of relief devices is to discharge process fluid, thereby reducing dangerously high pressures within the equipment. The standard specifies, however, that the relief device be returned to a "no detectable emission" status within 5 days after such a discharge. Plant owners or operators also may comply with this standard by connecting pressure relief devices in gas service to a system that complies with the requirements as discussed in the "Product Accumulator Vessels, Closed-Vent Systems, and Control Devices" portion of this section.

5. Sampling Connection Systems

Closed-purge sampling is the required standard for sampling connection systems and is the most stringent feasible control. Closed-purge sampling connection systems eliminate emissions due to purging by either returning the purge material directly to the process or by collecting the purge in a collection system that is not open to the atmosphere. Collected purge material must be destroyed or recovered in a system that complies with requirements discussed in the "Product Accumulator Vessels, Closed-Vent Systems, and Control Devices" portion of this section.

6. Open-Ended Valves or Lines

The standard for open-ended valves or lines requires the use of caps, plugs, or any other equipment that will effect enclosure of the open end. These are the most stringent controls possible. If a second valve is used, the standard requires the upstream valve to be closed first. After the upstream valve is closed completely, the downstream valve must be closed. This operational requirement is necessary to prevent trapping process fluid between the two valves, which could result in a situation equivalent to the uncontrolled open-ended valve or line.

7. Pipeline Flanges and Pressure Relief Devices in Liquid Service

Flanges and pressure relief devices in liquid service will be excluded from the routine leak detection and repair requirements. The EPA has not completely evaluated these sources at TSDF and may regulate them further in setting future emission standards. Even though these sources appear not to warrant routine leak detection and repair requirements at this time, they do warrant certain inspection requirements similar to those practiced by prudent operators. Thus, if indications of leaks are seen, heard, or smelled from these sources when operators perform routine inspection or other work practices, the operators must determine if a leak is detected based on Method 21. The same allowable repair interval that applies to valves and pumps will apply to leaks detected through this procedure.

8. Product Accumulator Vessels, Closed-Vent Systems, and Control Devices

The proposed standards affect product accumulator vessels and other process vent sources containing total organics in concentrations greater than 10 percent. Product accumulator vessels generally include overhead and bottoms receiver vessels used with fractionalization or stripping columns and product separator vessels used in series with reactor vessels to separate reaction products. Specifically, a product accumulator vessel includes any distillate receiver, condenser, bottoms receiver, surge control vessel, product separator, or hot well. Typically, accumulator vessels are vented directly to the atmosphere or indirectly to the atmosphere through a blowdown drum or through vacuum systems. Process vents are covered under the proposed rule only if they are in VHAP service or are associated with another type of product accumulator vessel, e.g., a distillate receiver in VHAP service. Surge control vessels and other vessels do not include equalization basins unless they are in VHAP service and are vented to the atmosphere. Venting occurs because mechanical or process-related effects cause the gases in an accumulator vessel to move through the vessel; tanks such as fixed or floating roof storage tanks are not accumulator vessels unless they vent VO emissions to the atmosphere. When an accumulator vessel contains VO (including toxics) and vents to the atmosphere, emissions are released. The EPA requests comment on whether the definitions of process vents and surge control vessels are defined clearly.

The proposed standards for product accumulator vessels would require that each vessel be equipped with a closed-vent system capable of capturing and transporting any leakage to a control device that is designed and operated to recover the organic vapors at an efficiency of 95 percent or greater. The efficiency of 95 percent or greater will be determined by estimating the mass of organics entering the control device and by estimating the mass of organics exiting the control device. Operational parameters (such as temperature of condenser cooling fluids and temperature of incinerators) then will be monitored to ensure that the mass recovery (or destruction) of 95 percent is maintained during operation of the control device. Method 21 will be used to verify that a closed-vent system has been designed and installed properly. The standards for control devices are design and operation requirements that ensure continuous effective removal of the emissions. Although EPA expects that TSDF sites will choose condensers to comply with the standards, approved alternatives to condensers are flares, incinerators, and adsorbers that achieve 95 percent control (or greater). Permit requirements relating to these design and operational (monitoring) requirements are discussed in Section VI, "Permits and Other Aspects of Implementation," of this preamble.

If an enclosed combustion device is used, the unit must be designed and operated for an efficiency of 95 percent or more. Alternatively, a minimum residence time of 0.5 second at a minimum temperature of 760 °C is required under Subpart V (40 CFR 61.242–11). If flares are used, the owner or operator must meet the design and operational provisions of 40 CFR 60.18. Subpart V also requires the monitoring of control devices to ensure that they are operated and maintained in conformance with their design. Additionally, closed-vent systems and control devices must be operated at all times when emissions may be vented to them.

Leak detection requirements for closed-vent systems are similar to those for fugitive sources. That is, all closed-vent systems must be designed and operated with no detectable emissions (i.e., 500 ppm above background by instrument reading using Method 21). The closed-vent system must be monitored initially to determine compliance. Followup monitoring is required annually and at any other time requested by EPA. If a leak is detected (by instrument reading or visible inspection), it must be repaired no later than 15 calendar days after detection. However, a first attempt at repair must be made within 5 days of detection.

V. Applicability of Proposed Standards to Other TSDF Operations

After selecting the proposed standards for WSTF, EPA considered the applicability of the standards to WSTF that could be applied to other RCRA facilities treating organic-rich hazardous waste with equipment identical to those for WSTF. Based on a review of the engineering basis for the proposed standard and the regulatory approach taken under RCRA for WSTF, as discussed above, EPA concluded that the proposed standard for WSTF could be broadened to cover all TSDF process streams with greater than 10 percent organics. Simply put, there is no technical basis for limiting the proposed controls on equipment in VHAP service at solvent treatment operations. The control technologies control VO emissions uniformly and indeed are already applicable under the CAA to many nonsolvent-emitting sources. In addition, there do not appear to be differences in emissions and risks that would justify not regulating equipment in VHAP service at TSDF.

Data currently are too limited to perform a detailed analysis of the impacts of the proposed standards on TSDF process streams greater than 10 percent organics. Specifically, the number of TSDF affected by the proposed standards cannot be determined accurately. However, EPA performed a rough analysis of these impacts as discussed below. Additional TSDF controls for other process emissions and area sources are currently under study and will be proposed in a later rulemaking.

Roughly speaking, extension of the proposed standards to TSDF with hazardous waste streams or other derivatives containing greater than 10 percent organics would affect from 269 to 2,332 sites, with a midrange estimate of 1,300 facilities. Using this midrange estimate, fugitive emissions of VO at these sites are expected to be in the area of 17,800 Mg/yr and result in an annual cancer incidence of approximately 0.65 case/yr nationwide. These estimates do not include estimated emissions or health risks associated with process vents at TSDF because data are insufficient at this time to provide such estimates. The EPA believes, however, that few, if any, of these vents (except those found at WSTF) are found at other TSDF; and, if they do exist, they would be appropriately covered by the proposed standards. The EPA requests comments on the types of process equipment and number of vents that would be regulated by these standards. (As noted earlier, TSDF with any equipment in VHAP service already required to obtain an RCRA permit would be covered by this proposal. They need not be engaged in distillation or other activities using product accumulation vessels or otherwise have process vents. TSDF with valves or pumps in VHAP service and otherwise required to obtain a permit would be

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covered by the proposal.) Further information on this topic is requested as described elsewhere in this preamble. Controls proposed for WSTF are applicable, available, and would achieve the same reductions—about 75 percent overall—at TSDF. Based on this overall control efficiency, nationwide emissions and risks would be reduced to about 4,500 Mg/yr, with residual annual cancer incidence of about 0.13 case/yr. The nationwide, annual net cost of this action would be roughly $9.6 million/yr.

VI. Permits and Other Aspects of Implementation

The EPA considered the proposed standards for WSTF and TSDF in light of the permitting process, the requirements for final permits, and the relation of these standards to similar CAA regulatory requirements.

A. Interim Status and Permitted Facilities

After selecting the standards for affected TSDF, EPA considered how to implement the standards with respect to interim status and final compliance. In doing so, EPA considered the overall burden for TSDF owners and operators and Agency personnel in preparing, reviewing, and approving final permits or modifications to permits. Although the administrative burden associated with the proposed standards would add to this overall burden, EPA believes that the incremental effort will be small. Because air emissions from these facilities are currently unregulated under RCRA and, as discussed above, the Agency believes these emissions are capable of posing significant risk to human health and the environment, the Agency believes it important to move to control these emissions expeditiously. The EPA, therefore, has examined the appropriateness of applying air emission standards to interim status facilities. [See, e.g., 50 FR 26484, June 26, 1985 (similar considerations justify adoption of 40 CFR Part 265 standards for tanks similar or identical to 40 CFR Part 264 standards).] In addition, because EPA needs to assign higher permitting priority to land disposal and treatment technologies, EPA considered whether the proposed standards could be self-implementing, i.e., without the burden associated with negotiations between the TSDF owner/operator and a permit writer.

The proposed standards, as discussed above, are based on the standards for equipment leaks of benzene, which were established under a regulatory program that inherently uses standards that are self-implemented. The standards for equipment leaks of benzene are self-implementable because either the specifications for a requirement are explicit (e.g. the leak definition of 10,000 ppm is explicitly specified in the standards) or, to the extent they are not explicit, the specifications include specific design criteria (e.g. the 95-percent design criterion) that can serve as the primary basis for determining compliance with the standards. All the requirements are set out explicitly in the rule except the design and operation requirements for control devices.

The requirements for control devices are not as completely explained in the rule because the proposed standards provide for many types of control devices that can be used to comply with the standards. However, engineering design practices for the control devices customarily used to comply with air emission standards are well enough established to provide the necessary documentation to show the ultimate levels of performance are achieved. Essentially, one can determine that a control device is achieving 95 percent reduction of VO by evaluating device design and—to ensure that the device is operating to achieve the designed level of performance—by monitoring certain parameters during operations. Appropriate parameters are discussed below and are based on monitoring performance of control device rather than measuring emissions directly. The parameters utilized are related to the physical and chemical nature of the removal or destruction mechanisms used as the basis for the control devices, design. For example, condensers use cooling fluids to reduce the temperature of an exhaust gas stream low enough to condense the organics in the stream. By designing a system to remove 95 percent of the organics entering the system, an exhaust gas temperature, along with other factors, such as the temperature of the cooling fluids, is estimated. Based on such parameters, the control device can be monitored to ensure it is operated as designed. The EPA considers these requirements reasonably self-implementable.

Compliance (for interim status facilities) with the standards for equipment leaks can be accomplished within a relatively short period of time (6 months) after the promulgation date of the standards. However, compliance with the standards requiring closed-vent systems and control devices could take longer. Based on EPA's experience under the benzene standard, compliance can be achieved within 24 months after the promulgation date of these standards. Thus, EPA is proposing to allow TSDF owners and operators up to 24 months to comply with the proposed standards requiring closed-vent systems and control devices. The EPA also is proposing that design of these systems and devices occur within 6 months and that construction begin within 9 months after promulgation of the standard to ensure that steady progress toward compliance with the standards occurs.

Compliance determinations (for interim status facilities) with the standards would occur through inspections and review of records and reports. The records are mainly associated with documenting the ongoing efforts of the leak detection and repair associated with equipment leaks and with demonstrating that add-on control devices achieve 95 percent reduction in organics by design and during operation. The design of these devices must show the basis for estimating the 95-percent control and the basis for the operating parameters used to monitor compliance with the device's design. The 95-percent control would be indicated by showing on a mass balance basis that the control device removes 95 percent of the organics entering the device. Specific operating or monitoring parameters are (1) coolant fluid temperature and exit gas temperature for condensers, (2) exit gas breakthrough of organics and carbon bed temperature for carbon adsorbers, (3) flue gas temperature for incinerators, and (4) pilot light flame detection and visible emission readings for flows. These general requirements are found at 40 CFR 61.242–11 and 61.245 Subpart V; EPA is proposing to add specific requirements at 40 CFR 269.33. These parameters would be monitored to ensure that the control device is performing according to its design. A review of these records and an inspection would serve to confirm whether a facility complies with the standards.

The final permit standards are the same as those for interim status facilities. The final permit requirements would include submitting documentation that the control equipment satisfying the interim status standards has been installed and that interim status standards are being achieved. A review of compliance with the interim status standards could occur. The EPA may request information to help determine if EPA should invoke the provisions of RCRA Section 3005(c)(3) to require control beyond that required in the standards. Most of this information (such as population distributions, facility location, wastes handled, and other specifics), will be available in other required RCRA information or in existing EPA data bases, so EPA does not anticipate the need to request additional data very often.

B. Additions to 40 CFR Part 270

Based on the approach used in implementing interim status and final permit standards, EPA decided to specify particular permitting requirements in 40 CFR Part 270 to help reduce the burden associated with preparing, reviewing, and approving Part B RCRA permits. The regulations and associated records and reports are detailed enough for the proposed standards to require the Part B permit application to document compliance with the standards. However, EPA concluded that further specific documentation would be helpful to demonstrate compliance with the standards for process vents.

Documentation is needed when demonstrating compliance with the standards for process vents and other product accumulator vessels because these standards require the operator to design and operate the control device to achieve 95 percent emission reduction. Although documentation can only be done on a case-by-case basis, it would be helpful for TSDF owners or operators and permit review personnel to follow similar guidelines. Thus, in 40 CFR Part 270, EPA is proposing a requirement that the operators compare their control devices, design and operation against a textbook analysis. This analysis would be used to determine whether the operator's approach appears to comply reasonably with the requirements of the standard. The textbook currently under consideration is the EPA Air Pollution Training Institute's Control of Gaseous Air Pollutants. Based on this comparison, EPA can decide if the operator's design and operation achieves the standards for process vents/accumulator vessels.

C. Relation to Similar CAA Requirements

The proposed standards contain a provision to ensure that no duplicative recordkeeping and reporting are required for any TSDF governed by the proposed rule and by existing CAA regulations (i.e., 40 CFR Part 60 Subpart VV and Part 61 Subpart V). For such facilities, proposed Section 269.33(e) provides that the owner or operator may elect to continue keeping records and reports pursuant to CAA requirements in order to comply with the recordkeeping and reporting requirements of the proposed rule. For facilities covered by RCRA only, the owner or operator must comply with the requirements in the proposed rule at Section 270.22.

The recordkeeping and reporting requirements under the proposed rule and the CAA are identical except for the documents described by proposed Section 270.22(a)(2)(i)–(ii), (3). Section 269.33(e) of the proposed rule, applicable to a TSDF facility governed under CAA and RCRA, allows the owner or operator to keep only one set of records and reports regarding operation and maintenance. It should be noted, however, that additional reporting and recordkeeping requirements, which are contained at Section 270.22, for example, and are required to obtain a final RCRA permit, apply to all TSDF, even those that are governed under the CAA.

RCRA Section 1006(b) allows the Administrator to eliminate duplicative regulation under RCRA and other Federal laws including the CAA. EPA has decided not to alter the applicability of CAA regulations to TSDF affected by today's proposed rule. As discussed above, a duplicative recordkeeping or reporting burden is not imposed on any TSDF by today's proposal. Other provisions under RCRA [e.g., omnibus permitting, pursuant to RCRA 3005(c)(3)] and the CAA (e.g., determination of attainment of any applicable NAAQS) will continue to apply to TSDF already subject to both regulatory schemes.

Because the CAA standards were adapted for the accelerated rule, the recordkeeping and reporting requirements differ from existing requirements in RCRA standards. Leaking equipment is flagged with labels indicating its identification number, until repairs are achieved, except that valves are marked until repaired for 2 successive months. Records of leaks are kept for 2 years, rather than maintained for a 3-year inspection record.

Reporting requirements for air emissions include the leak detection schedule and twice-a-year reporting of leaks and unrepaired leaks [which are records kept at the facility under 40 CFR 264.15(b) (2) and 265.15(b) (2)]. In contrast, 40 CFR 264.56(j) and 265.56(j) require written reports within 15 days of events that demand use of a facility contingency plan, which will, however, usually show more significant releases than those detected during leak monitoring.

The EPA requests comments on the integration of these recordkeeping and reporting requirements in the RCRA program. As proposed, the reporting and recordkeeping requirements of 40 CFR Part 270 apply to air emissions, along with the circumstances that implement use of the contingency plan.

VII. Relation to Other RCRA Regulatory Provisions

Today's proposal relates to other RCRA regulatory exemptions and these exemptions merit discussion. These provisions are discussed below in turn.

A. Product Storage Exemption

Paragraph 261.4(c) of the RCRA regulations exempts from regulation hazardous wastes that are generated in process-related equipment such as product or raw material storage tanks, or product or raw material pipelines. The exemption applies until the waste is physically removed from the unit in which it was generated.

This exemption would not be affected by today's proposal. Thus, such units as product distillation columns generating organic hazardous waste still bottoms containing greater than 10 percent organics would not be subject to today's proposed regulation while they are in the distillation column unit. As EPA noted in promulgating the exemption, risks posed by these units are incidental to the risk posed by the contained product or raw material. (See 45 FR 72025, October 30, 1980, and 45 FR 80286, December 4, 1980.) In addition, direct regulation of these units under RCRA could interfere impermissibly with the act of production and, therefore, would be beyond the Agency's RCRA authority. (See 51 FR 25487, July 14, 1986, and 50 FR 617, 637–38, January 4, 1985.)

B. Totally Enclosed Treatment Facility Exemption

Under 40 CFR 264.1(g)(5) and 40 CFR 265.1(c)(9), totally enclosed treatment facilities are exempt from RCRA regulation. A "totally enclosed treatment facility" is a facility treating hazardous waste that is "directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or constituent thereof into the environment during treatment" (40 CFR 260.10).

Treatment facilities located off the site of generation are not directly connected to an industrial process. Thus, commercial waste treatment facilities with equipment affected by the proposed standards, such as solvent reclamation facilities, by definition ordinarily would not be totally enclosed. In addition, storage facilities, disposal facilities, and ancillary equipment not used for treating hazardous waste do not fall within the definition of a totally enclosed treatment facility.

The EPA believes that many onsite treatment facilities also are not totally enclosed. Process emissions from

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recovery distillation columns and other treatment technologies generally are designed to release air emissions of the hazardous waste or constituent into the air environment. Therefore, by definition, these onsite technologies are generally not totally enclosed. [See 45 FR 33218, May 19, 1980 (no constituents released to air during treatment).] However, it is possible to construct a product accumulator vessel or distillation column that prevents the release of air emissions or is otherwise totally enclosed. Generally, EPA interprets "prevents" to include the use of effective controls such as those required by the proposed standard. In addition, the ancillary equipment affected by these proposed standards can be designed and operated/maintained to prevent releases. As a consequence, EPA believes that some onsite treatment would be totally enclosed. The EPA requests comments on this interpretation of the totally enclosed facility exemption and the number and type of onsite totally enclosed facilities with descriptions of the control devices and monitoring used to meet the totally enclosed treatment exemption.

C. Eliminating the Exemption for the Act of Reclamation

Today's proposal would regulate the activity of reclamation at certain types of RCRA facilities for the first time. This exemption dates from May 19, 1980 (45 FR 33084), and was continued when the Agency amended its regulations relating to hazardous waste recycling [40 CFR 261.6(c)(1), August 20, 1985]. The basis for this exemption was the Agency's initial uncertainty as to an appropriate regulatory regime for the act of any type of recycling (45 FR 33084). As the Agency began studying these questions, EPA began revoking the exemption by promulgating standards for various types of recycling activities, beginning with those most closely resembling classic types of hazardous waste management [see 40 CFR 266.23, January 4, 1985 (uses constituting disposal, analogous to land disposal); 40 CFR 266.31, November 29, 1985 (prohibition on burning hazardous waste fuel in nonindustrial boilers, analogous to incineration)].

Today's proposal marks a further step in this process. After studying the environmental problems associated with reclamation of organic-rich hazardous wastes, EPA believes there is a substantial problem requiring redress. Further, after studying various means of controlling air emissions from reclamation units and associated conveyance systems, the Agency believes that the controls proposed today provide an appropriate and protective regulatory regime. Consequently, the existing regulatory exemption for the process of reclamation is no longer appropriate. Accordingly, EPA is proposing to amend 40 CFR 261.6 to allow covering reclamation of hazardous wastes affected by today's proposal. It should be recognized, however, that today's proposed rule only applies at facilities otherwise needing a permit. Therefore, not all reclamation units will necessarily be affected by this rule.

Today's proposal does not consider whether to extend coverage of air emission controls to waste-handling generators with onsite recycling or recovery operations for waste solvents who do not store the spent solvents. The EPA believes that most generators with onsite recycling perform this operation in tanks and are exempt from regulation based on the provisions of 40 CFR 262.34, which allows accumulation of hazardous wastes onsite for 90 days or less without requiring a TSDF permit. Although EPA has the statutory authority to require controls for these operations, EPA has not completed a technical and administrative assessment at this time. The EPA is concerned about the impact of regulating commercial recyclers more than regulating generators with onsite recycling. The extent of this discontinuity is unclear; however, EPA has some reason to believe that it is insignificant. Generators with onsite recycling of solvents generally are covered under air emission standards associated with Sections 111 and 112 of the CAA. Although CAA standards would cover all onsite recycling of benzene and newly constructed onsite recycling of many organic solvent chemicals (many of which are affected by today's proposal), EPA does not know how many existing onsite recycling operations would remain unaffected by either CAA or RCRA standards for air emissions. Therefore, EPA is requesting data on the number of onsite recycling operations and any comments on the impact of regulating commercial recyclers and not generators with onsite recycling. The EPA will study this issue and decide on an appropriate strategy for public review and comment as more information becomes available.

D. Wastewater Treatment Tank Exemption

Paragraphs 264.1(g)(6) and 265.1(c)(9) exempt wastewater treatment tanks and elementary neutralization units (defined in 40 CFR 260.10) from Subtitle C regulation. Today's action does not affect the scope of that exemption. Thus, recovery devices such as steam strippers treating organic-rich hazardous wastes that would otherwise qualify for the wastewater treatment exemption are not covered by today's rule. The Agency believes there are few or no such units because wastewater streams are invariably more dilute than 10 percent organics. Because so few units would be covered, EPA does not regard the present proposal as the appropriate instrument to examine the scope of the wastewater treatment exemption. The Agency is considering the question in other contexts, including the comprehensive Section 3004(n) standards now under development.

E. Application of Air Emission Standards to Equipment that Meets the Definition of a Generator's Accumulation Tank

Section 262.34 of the RCRA regulations states that generator tanks that accumulate hazardous wastes for 90 days or less are not subject to interim status or final permit standards, provided they comply with most of the substantive standards for tanks storing hazardous wastes. Certain of the product accumulator vessels affected by today's proposed rule would be 90-day accumulation tanks, namely those that store or treat (51 FR 25422, July 14, 1986) hazardous wastes, are emptied every 90 days (51 FR 25427, July 14, 1986), and otherwise meet the substantive tank standards enumerated in 40 CFR 262.34(a) (1) and (4).

The Agency expects that there will be comparatively few of these tanks affected by today's proposed rule because most distillation columns and other recovery-type tanks are not operated on a continuous basis and thus are not physically emptied within a 90-day timeframe. (As explained, such tanks would be subject to today's regulation if the facility needed a RCRA permit for some independent reason.) However, certain columns involved in batch operations may be so emptied and meet other conditions as well and so qualify as accumulation tanks. For these tanks, the question is whether they should meet today's proposed air emissions standards as part of the conditioned exemption from permitting an interim status.

The EPA has tentatively determined not to apply the proposed air emission standards to these tanks at the present time. The EPA is concerned that many of the batch columns involved are extremely small, so that the technical controls proposed today might not be appropriate. In addition, these columns

may be located at small quantity generator or small business facilities, and the Agency needs more time to study the impacts of imposing controls on these types of entities.

The EPA specifically requests data on the following pertinent issues:

- Physical dimensions of these columns.
- Types of facilities having such columns.
- Types and volumes of hazardous wastes treated by these columns.

The EPA should note that it is currently reassessing the exemption from permitting an interim status for accumulation tanks (51 FR 25487). Today's proposal does not represent any departure from the issues raised in that advance notice of proposed rulemaking.

F. Applicability of Other Standards for Tanks and Tank Systems

Today's proposal for controlling air emissions would apply standards to product accumulator vessels and associated ancillary equipment, as well as eliminate (for air emissions) the exemption for the act of recycling contained in 40 CFR 261.6(c). This equipment meets the definitions of "tank" and "tank system" found in 40 CFR 260.10 (e.g., distillation columns are stationary devices containing an accumulation of hazardous waste, and they are constructed of nonearthen materials and would be self-supporting if waste is removed).

The question is thus presented whether these tanks and tank systems should be covered by the same standards as other hazardous waste tanks and tank systems. The fact that there has been at least one instance of ground water contamination directly attributable to a leaking distillation column distilling spent solvents heightens the Agency's concern. (See Florida Ground Water Contamination Sites, Florida Department of Environmental Regulation, September 1982: Spent solvent contamination of wells at Pratt and Whitney Aircraft, West Palm Beach.) The EPA is currently studying whether there is any difference in design or other structural features or waste-handling practices that would make imposition of the normally applicable tank standards inappropriate. The EPA solicits comment on this point. The EPA also requests information on the number of tanks potentially affected, on the types and nature of the tank systems of which they are part, and on the types of controls already in place for the tanks and tank systems (e.g., do most distillation columns already have secondary containment). The EPA emphasizes that it may decide to require the tanks otherwise affected by today's proposal to meet the normally applicable standards as part of its final rule.

G. Impacts on Small Quantity Generators

Under RCRA Section 3001(d), in drafting regulations affecting generators of greater than 100 kilograms (kg) and less than 1,000 kg a month of hazardous waste, EPA must weigh the impacts of regulation against the need to protect human health and the environment (although any regulations must adequately protect human health and the environment). See generally 50 FR 31283–286, August 1, 1985; 51 FR 10146, March 24, 1986. The EPA does not believe the present proposal affects such small quantity generators. Today's proposed rules apply only to facilities already required to obtain an RCRA permit. The EPA knows of no such small quantity generator facilities. In addition, as noted above, EPA is not proposing to apply the standards to any generators' 90-day accumulation tanks. Consequently, EPA sees no impacts on small quantity generators as a result of today's proposal.

VIII. State Authorization

A. Applicability of Rules in Authorized States

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under Sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the HSWA, a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified timeframes. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the newly enacted Section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. The EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. Although States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

Today's proposed rule would be promulgated pursuant to Section 3004(n) of RCRA, with provisions added by HSWA. Thus, it would be added to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1, as discussed in the following section of this preamble.

B. Effect on State Authorization

As noted above, EPA will implement today's proposed rule, when promulgated, in authorized States until they modify their programs to adopt these rules and the modification is approved by EPA. Because the rule will be promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under RCRA Section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications under RCRA Section 3006(b) are described in 40 CFR 271.21. The same procedures should be followed for RCRA Section 3006(g)(2).

Applying 40 CFR 271.21(e)(2), States that have final authorization must modify their programs within a year of promulgation of EPA's regulations if only regulatory changes are necessary, or within 2 years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases [40 CFR 271.21(e)(3)].

States with authorized RCRA programs may already have requirements similar to those in today's proposed rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to carry out these requirements in lieu of EPA until the State program modification is approved. States with existing rules may continue to administer and enforce their

standards as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts.

States that submit official applications for final authorization in fewer than 12 months after promulgation of EPA's regulations may be approved without including standards equivalent to those promulgated. Once authorized, however, a State must modify its program to include standards that are substantially equivalent or equivalent to EPA's within the time periods discussed above.

IX. Impacts of Proposed Standards

A. Introduction

To evaluate the need for the requirements to reduce emissions, EPA developed order-of-magnitude estimates of the air emissions from and control costs for WSTF and TSDF. These estimates were derived using available information and judgment to develop best estimates of parameters needed to characterize emissions, operating parameters of WSTF and TSDF with fluids containing organic concentrations greater than 10 percent, and health risks. Because insufficient information was available to characterize the composition of the organic wastes beyond the total VO content, the uncontrolled emission rate could not be quantified precisely. Thus, to provide a broad overview of potential impacts of air standards, estimates were developed of the maximum emission rate expected for highly volatile solvents and of a likely small emission rate from a WSTF and from a TSDF with waste streams containing 10 percent or more organics. The emission rates for a single WSTF were projected based on a January 1986 nationwide estimate [assuming 436 million gal (i.e., the sum of the 428 million gal currently distilled and 8.3 million gallons potentially requiring treatment)] for waste solvents treated by distillation processes. The emission rates for a single affected TSDF were projected based on 1,300 TSDF affected nationally, reflecting a range of 269 to 2,300 potentially affected TSDF. Control costs and health effects also were estimated for the expected emission rates and were projected to a nationwide basis.

Although these estimates were developed from the best available information, they must be viewed with considerable uncertainty because there is a paucity of information on operations of WSTF and other affected TSDF. The EPA believes these estimates will serve to guide discussion on the problem and to solicit additional information.

The facility and nationwide estimates of air impacts and control costs are presented below with expected lower values and with upper bound estimates indicated in parentheses to provide an indication of the potential variation in impacts of the proposed air standards. The health impact estimates (which focus on cancer risks and do not include other plausible health effects) are presented as overall nationwide estimates that consolidate the effects of variations in populations (rural and urban population densities), meteorology, and expected emission rates. Accordingly, the impacts of any individual TSDF may differ from the impacts presented in the preamble.

B. Air Impacts

It is estimated that the proposed standard will reduce VO emissions to the atmosphere from WSTF and other TSDF by approximately 85 and 75 percent, respectively, from the uncontrolled level at plants with typical emission rates (93 percent for WSTF facilities with maximum emission rates). For the model WSTF used in the impact analysis' this control represents an emission reduction from at least 27 Mg/yr (based on a range of 27 to 155 Mg/yr) to about 4 Mg/yr (based on a range of 4 to 11 Mg/yr). Because about 100 model WSTF would be needed to treat the estimated 436 million gal of waste solvents recycled annually, nationwide emissions would be reduced from a minimum level of 2,550 Mg/yr (maximum level of 14,700 Mg/yr) before control to a minimum level of 400 Mg/yr (a maximum level of 1,000 Mg/yr) after control. Nationwide fugitive emissions from other TSDF would be reduced from about 17,800 Mg/yr to about 4,500 Mg/yr. Together, the standards proposed for WSTF and TSDF are expected to reduce nationwide emissions from about 26,460 Mg/yr to about 5,460 Mg/yr after control—an overall reduction of nearly 80 percent.

The magnitude of the estimated emission reductions for TSDF and WSTF are uncertain because of differences in volatility of solvents, uncertainties in waste stream composition, and difficulties in developing emission factors for operations that vary widely. However, this overall reduction in VO emissions will assist in the attainment of the National Ambient Air Quality Standard for Ozone by reduction in ozone precursors, and it will reduce the risks to human health and the environment from hazardous waste management.

C. Health Impacts

A health impact analysis was conducted to assess the magnitude of cancer risk from exposure to air emissions from WSTF with extrapolated results applied to TSDF. Although cancer risks are not the only health impacts associated with air emissions from WSTF and TSDF, they are the most available measure of direct health effects associated with chronic low-level exposures to organic solvents. It should be noted that uncertainties associated with possible additive effects, synergism, antagonism, and heightened susceptibilities cannot be overemphasized. The health impacts were estimated using a representative range of unit risk factors (e.g., 2×10^{-7} to 2×10^{-5} cases per microgram per cubic meter per person) to estimate the magnitude of risks posed by WSTF at both typical and maximum emissions rates. The nationwide maximum individual lifetime risk was assumed to be the highest individual risk calculated for the model cases analyzed. The Human Exposure Model (HEM) was used to predict nationwide health effects of exposure to suspected carcinogens in the VO emissions from WSTF. It is considered a reasonable indicator for this screening evaluation. The HEM has been used successfully in many EPA risk assessments, but it does add an additional element of uncertainty because of the inherent assumptions of the model. However, a more detailed risk assessment cannot be performed until further information and data are available. Consequently, the nationwide annual incidence was calculated as the average annual incidence considering the projected number of WSTF and the range in emission rates, geographic location, and urban/rural sites expected for WSTF. This scoping analysis showed that the standard will reduce the maximum individual lifetime risk of cancer from WSTF operating at the upper bound emission rate from about 3.7×10^{-3} to 2.6×10^{-4}. The nationwide annual incidence of cancer in the population living within 50 km of uncontrolled WSTF is estimated to be about 0.34 case/yr assuming the midpoint of the unit risk factor range. The proposed standard will reduce this nationwide incidence rate to about 0.028 case/yr. The proposed standard for TSDF would reduce annual incidence from about 0.65 case/yr to about 0.13 case/yr. Nationwide annual incidence from TSDF and WSTF together would be reduced from about 1 case/yr to about 0.16 case/yr.

Because of the assumptions that were made in estimating emissions and in calculating these maximum lifetime risk and annual incidence estimates, there is considerable uncertainty associated with these risk estimates. These uncertainties are the result of the uncertainties in the emission estimates and to a number of simplifying assumptions made in the health risk analysis and in extrapolation of the estimates to a nationwide basis. In particular, there are uncertainties regarding the appropriate magnitude of the individual pollutant unit risk factors for this analysis. This sort of uncertainty is exacerbated because unit risk factors have been developed for only a few of the Appendix VII compounds that might be emitted by WSTF and TSDF. There are also uncertainties concerning possible additive effects of multiple pollutants, synergistic or antagonistic health effects, and heightened susceptibilities to some cancers by some population subgroups. Although exposure to ozone may be related to a variety of both health and environmental effects, it is unclear how ozone-related impacts will be quantified until some ongoing analyses are completed. These factors make it difficult to determine the absolute magnitude of the risk to human health.

D. Cost Impacts

Upper and lower bound estimates of control costs for a model WSTF were developed for process emission control using add-on control devices (such as secondary condensers, incinerators, or flares) and for fugitive emission control. These estimates were extrapolated to a nationwide basis assuming that approximately 100 model WSTF would be controlled and two basic combinations of control devices would be used. Depending on the process control device assumed in the estimation, the nationwide capital cost for the standard is estimated to range from approximately $2.9 million to $16.6 million, and the 1986 annualized cost is estimated to range from approximately $1.3 million/yr to $11 million/yr without recovery credit, or from $100,000/yr to $10.6 million/yr with the assumption of a recovery credit. (The average capital cost/model plant is estimated to range from $30,200 to $174,500, and the annualized costs without recovery credit range from $13,600/yr to $115,000/yr per model plant.) These cost estimates are based on assumptions that may represent significant overestimates of control costs compared to what actually may be experienced, particularly if the facilities use existing boilers or furnaces to control process-vent VO emissions. Consequently, it is expected that the actual cost of the standard will be closer to the lower, which reflects use of secondary condensers, than the upper cost estimate, which reflects use of add-on combustion control devices.

Annual net costs are estimated at about $7,400/yr for the TSDF model facility, considering recovery credits. Assuming a midpoint estimate of 1,300 facilities, the estimated nationwide annual cost of control under the proposed standards is about $9.6 million/yr. Combined nationwide net annual and capital costs for TSDF and WSTF are estimated at $9.7 million/yr and $35.3 million/yr, respectively.

X. Request for Further Information

As discussed in Section IX of this preamble, order-of-magnitude estimates of air emissions, health risks, and control costs were developed for WSTF. These estimates were developed using the best available information but contain considerable uncertainties because the available information was not comprehensive. To refine these assessments of potential impacts and benefits of emission control, EPA is specifically requesting comments in several areas.

The EPA requests comments, including data, on factors that may affect the feasibility of complying with the proposed standards for WSTF and TSDF or of achieving the proposed emission reductions. In particular, EPA requests that commenters submit data on emission rates, including information on composition and content of the wastes being processed; factors affecting emissions, including the effect of batch operations on process and fugitive emission rates; the number of WSTF and TSDF currently controlling process and fugitive emissions; and the number of process vents, accumulator vessels, and other tanks affected by the proposed standards. The EPA requests information that would help reduce the uncertainty with the number of TSDF, including recyclers, covered by the standards, and data on the number of offsite recyclers who recycle without prior storage. The EPA requests comments on the number of totally enclosed treatment units currently excluded from coverage under RCRA. The EPA also requests comments on the public health and environmental effects of VO emissions from these WSTF operations and TSDF operations in general. The EPA also requests comments on the approach based on using VO as measured by total organics in comparison to an approach based on using specific chemical constituents in regulating the air pollution affected by today's proposed standards. If commenters believe a particular standard is unsuitable for their equipment' they should document why the standard should not apply in light of the standards' widespread applicability to other types of VO-emitting equipment and industries.

The EPA derived the cost-related operating conditions for WSTF and TSDF based on an analysis of control costs from operating conditions observed in the petroleum and chemical industries. Because there are many similarities in operating conditions for these industries, EPA believes the assumed conditions should be representative of WSTF and TSDF operations recognizing, however, that uncertainties exist in the assumed conditions. Consequently, EPA requests information on: (1) Capital and annual costs for controlling process emissions, including information on annual operating hours, capacity, waste stream(s) treated, and product recovery credits; (2) the effect of batch operations on control costs, including the basis for the cost comparison: and (3) costs for inspection and maintenance programs used to control fugitive emissions.

The EPA is proposing that compliance with the standards for control devices, such as condensers, be demonstrated through documenting the design and monitoring the operation of these devices. This approach is the one utilized in the CAA standards, which are used as the basis for the proposed standards. The EPA believes this is a reasonable approach because studies of these devices used in many industries and applications indicate that their design can be documented with sufficient and precise detail to allow the EPA to decide whether the device has been designed to achieve the proposed standards. The engineering involved in designing these devices is straightforward and well understood by practicing professionals in the air pollution control field. The monitoring of these devices, in contrast to performing emission tests, to determine proper operation of these devices is also straightforward and understood by practicing professionals in the air pollution control field. The monitoring of these devices is done to ensure that they are operated within their design and therefore that they achieve the intended results of the standards. The EPA is requesting comments on this approach and the decision to use design and monitoring requirements rather than performance testing as the basis for determining compliance with these standards.

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In order to estimate the potential cost, economic, and risk impacts associated with requiring waste solvent recovery units to comply with the 40 CFR Part 61 Subpart J hazardous waste tank regulations, the Agency must characterize the solvent recovery unit and facility population. At this time, the Agency has limited data available to conduct such impact analyses. As a result, the Agency today requests comments that provide the specific information necessary to decide whether the waste solvent recovery units should comply with the 40 CFR Part 61 Subpart J requirements.

The EPA's Office of Solid Waste (OSW) has conducted a 1986 TSDF screening survey that, once final, will provide a current estimate of the number of TSDF with waste solvent recovery operations. However, the survey will not provide information on the number of waste solvent recovery units per TSDF. Other needed waste solvent recovery unit characteristics include design capacity, dimensions, length of ancillary piping, types of ancillary equipment such as pumps, material of construction, age, and waste solvent throughput (e.g., gal/day, gal/mo). In addition to waste solvent recovery unit characteristics, EPA needs waste solvent characteristic data. Such information includes waste constituents and constituent concentrations. Moreover, the Agency needs information on the facilities that have waste solvent recovery operations such as the number of waste solvent recovery units per facility, types of industries, number of employees, net income, or sales.

If EPA does not receive adequate information from public comments, the Agency must rely on waste solvent recovery or distillation unit characteristic information from a 1981 TSDF survey. These survey data provide such information for a sample of about 11 waste solvent recovery or distillation units. The 1981 survey data include information on design capacity, material of construction, and age. Other important factors such as extent of ancillary equipment or waste characteristics must be estimated using best professional judgment. Because the Agency prefers to base the decision of how to regulate waste solvent recovery tanks on the most current, thorough, and reliable data, EPA is today requesting detailed information on the potentially regulated waste solvent recovery unit and facility population.

The EPA is proposing in today's notice to add a new part to 40 CFR. The EPA had the option of adding the proposed standards to 40 CFR Parts 264 and 265, or possibly Part 266. However, because the proposed standards cover several units regulated under 40 CFR Parts 264 and 265 and, therefore, would have been added to several subparts within these parts, EPA decided to add a separate part that concerned air emission standards. In addition, EPA is considering which program office should implement the air emission standards. If EPA Regional or State air program offices implement RCRA air emission standards, then a separate part would allow these offices to implement the standards without first learning the entire RCRA regulatory framework. The EPA requests comments on adding a new 40 CFR Part 269 to contain air emission standards under RCRA.

The EPA will base the final standards on the evaluation used as the basis for the proposed standards and consideration of comments on and data concerning the proposed standards. In particular, the final standards will reflect appropriate reconsideration of the proposed standards based on revisions to the analysis resulting from significant comments on the feasibility, the effectiveness, and costs of process and fugitive emission controls. Comments on the regulatory approach used to establish the proposed standards and to cover recyclable materials and TSDF in general also are requested.

XI. Administrative Requirements

A. Public Hearing

The Agency will hold a public hearing on March 23, 1987. The hearing will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina, beginning at 10:00 a.m. Anyone wishing to make a statement at the hearing should notify, in writing, Ms. Geraldine Wyer, Public Participation Officer, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

Oral and written statements may be submitted at the public hearing. Persons who wish to make oral presentations must restrict them to 15 minutes and are encouraged to have written copies of their complete comments for inclusion in the public record.

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) to allow interested parties to identify and locate documents so they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review.

Additional information on the basis for the emissions, contract cost, and health risk estimates is presented in "RCRA TSDF Air Emission Standards—Background Technical Memoranda for Proposed Standards" EPA-450/3-86-009). Other technical information considered in the development of the estimates also is presented in Docket F-86-AESP. The docket is available for public inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays, in room S-212 U.S. Environmental Agency, 401 M Street, SW, Washington, DC 20460.

C. External Participation

Development of the basic background information included consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The EPA will welcome comments on all aspects of the proposed regulation, including economic and technological issues.

D. Office of Management and Budget Reviews

1. Impacts of Reporting and Recordkeeping Requirements

The proposed standard includes provisions that require semiannual reports of leak detection and repair efforts within a process unit. The EPA believes that the required reporting and recordkeeping requirements are necessary to assist EPA in (1) identifying sources, (2) determining initial compliance, and (3) enforcing the standards.

The Paperwork Reduction Act (PRA) of 1980 (P. L. 96-511) requires that the Office of Management and Budget (OMB) approve reporting and recordkeeping requirements that qualify as an "information collection request" (ICR). To accommodate OMB review, EPA uses 3-year periods in its impact analysis procedures for estimating the labor-hour burden of reporting and recordkeeping requirements.

The average annual burden on WSTF and TSDF to comply with the reporting and recordkeeping requirements of the proposed standards over the first 3 years after the effective date is estimated to be about 230 person-years. This amounts to about 6.5 person-hours per week per affected WSTF and TSDF. Most of this burden is already included in the annualized cost of the proposed standards.

2. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the PRA of 1980, 44 U.S.C. 3501 et seq. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked "Attention: Desk Officer for EPA," as well as to EPA. The final rule will respond to any OMB or public comments on the information collection requirements.

3. Executive Order 12291 Review

Under Executive Order (E.O.) 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis (RIA). This proposed regulation is not major because it would result in none of the adverse economic effects set forth in Section 1 of E.O. 12291 as grounds for finding a regulation to be major. The industry-wide annualized costs in the 5th year after the standards would go into effect would be less than $10 million, which is less than the $100 million established as the first criterion for a major regulation in E.O. 12291. Price increases associated with the proposed standards would not be considered a "major increase in costs or prices" specified as the second criterion in E.O. 12291. The proposed standards, effect on the industry would not result in any significant adverse effects on competition, investment, productivity, employment, innovation, or the ability of U.S. firms to compete with foreign firms (the third criterion in E.O. 12291).

This proposed regulation was submitted to OMB for review as required by E.O. 12291. Any written comments from OMB to EPA and any EPA responses to those comments will be included in Docket F-86-AESP. This docket is available for public inspection at the address indicated under the **ADDRESSES** section in this notice.

4. Regulatory Flexibility Act Compliance

Pursuant to the Regulatory Flexibility Act (U.S.C. 601 et seq.), whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis (RFA) that describes the impact of the rules on small entities (i.e., small business, small organizations, and small governmental jurisdictions). No RFA is required, however, if the head of the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The EPA considered the impacts on small businesses for this proposed rulemaking.

The EPA has established guidelines for determining whether an RFA is required to accompany a rulemaking package. The guidelines state that if at least 20 percent of the universe of "small entities" is affected by the rule, then an RFA is required. In addition, EPA criteria should be applied to evaluate if a regulation will have a "significant impact" on small entities. If any one of the following four criteria is met, the regulation should be assumed to have a "significant impact":

(1) Annual compliance costs will increase the relevant production costs for small entities by more than 5 percent.

(2) The ratio of compliance costs to sales will be 10 percent higher for small entities than for large entities.

(3) Capital costs of compliance will represent a significant portion of the capital available to small entities, taking into account internal cash flow plus external financing capabilities.

(4) The costs of the regulation will likely result in closures of small entities.

In considering whether an RFA was required, EPA first considered whether small entities would be affected by the rule. The only entities affected by the rule are those required to have a permit for treatment, storage and disposal of a hazardous waste. Few, if any, of these facilities are "small entities." Thus, EPA has concluded that the proposed rule would not have a substantial impact on small entities and, therefore, did not prepare an RFA.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities because the economic impact of the proposed rule is not significant.

XII. List of Subjects in 40 CFR Parts 261, 264, 265, 269, 270, and 271

Administrative practice and procedure, Air pollution control, Confidential business information, Hazardous materials, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Intergovernmental relations, Packaging and containers, Recycling, Reporting and recordkeeping requirements, Security measures, Surety bonds, Treatment, storage, and disposal facilities, Waste treatment and disposal, Water pollution control, Water supply.

Dated: January 13, 1987.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, Chapter I, Title 40, of the Code of Federal Regulations, is proposed to be amended as follows.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001, 3002, and 3017, of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 as amended [42 U.S.C. 6905, 6912, 6921, 6922, and 6937.

2. Section 261.6 would be amended as follows:

a. By revising the parenthetical text at the end of paragraph (c)(1) to read as follows:

* * * * *

(c)(1) * * * (The recycling process itself is exempt from regulation except as provided in 261.6(d)).

* * * * *

b. By adding new paragraph (c)(2)(iii) and new paragraph (d) to read as follows:

* * * * *

(c) * * *

(2) * * *

(iii) Section 261.6(d) of this chapter.

(d) Owners or operators of facilities that store and treat recyclable materials are subject to the requirements of 40 CFR Part 269 Subpart A and C, except as provided in paragraph (a) of this section, if they must obtain a permit under Part 270 of this chapter for a reason independent of Part 269 of this chapter, and if they own or operate equipment in VHAP service (as defined in Subpart C of Part 269).

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 264 continues to read as follows:

Authority: Sections 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 as amended [42 U.S.C. 6905, 6912(a), 6924, and 6925).

2. Section 264.1 is amended by adding paragraph (h) as follows:

§ 264.1 Purpose, scope, and applicability.

* * * * *

(h) The regulations of Part 269 apply to owners and operators for all

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hazardous waste facilities, except as provided in § 264.1(b) and in Part 269.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 265 continues to read as follows:

Authority: Sections 1006, 2002(a), 3004, 3005, and 3015 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6095, 6912(a), 6924, 6925, and 6935).

2. Section 265.1 is amended by adding paragraph (d) as follows:

§ 265.1 Purpose, scope and applicability.

* * * * *

(d) The regulations of Part 269 apply to owners and operators of all hazardous waste facilities, except as provided in § 265.1 and in 40 CFR Part 269.

PART 269—AIR EMISSION STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. Part 269 is added to read as follows:

PART 269—AIR EMISSION STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

Subpart A—General

Sec.

269.1 Purpose, scope, and applicability.
269.2 Incorporation by reference.

Subpart B—[Reserved]

Subpart C—Equipment leaks and accumulator vessels

269.30 Applicability.
269.31 Definitions.
269.32 Standards for facilities with final permit.
269.33 Standards for facilities during interim status.
269.34 Special requirements.

Authority: Sections 1006, 2002, 3001–3007, 3010, 3014, 3015, 3017, 3018, 3019, and 7004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 as amended [42 U.S.C. 6905, 6912, 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974].

Subpart A—General

§ 269.1 Purpose, scope, and applicability.

(a) The purpose of this part is to establish minimum national standards that define acceptable air pollution control management of hazardous wastes.

(b) The standards of this part apply to owners and operators of all facilities that treat, store and dispose of hazardous waste, except as specifically provided otherwise in this part or Parts 261, 262, 264, 265, and 270 of this chapter.

§ 269.2 Incorporation by reference.

The materials listed below are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the **Federal Register** on the date listed. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the **Federal Register**. The materials are available for purchase at the corresponding address noted below, and all are available for inspection at the Office of the **Federal Register**, Room 8401, 1100 L Street NW., Washington, DC, and at the Library (MD–35), U.S. EPA, Research Triangle Park, North Carolina.

(a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103; or the University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.

(1) ASTM. E 169–63 (reapproved 1977), General Techniques of Ultraviolet Quantitative Analysis, IBR approved for § 269.34(a).

(2) ASTM E 168–67 (reapproved 1977), General Techniques of Infrared Quantitative Analysis, IBR approved for § 269.34(a).

(3) ASTM E 260–73, General Gas Chromatography Procedures, IBR approved for § 269.34(a).

(4) ASTM D 2267–68 (reapproved 1978), Aromatics in Light Naphthas and Aviation Gasoline by Gas Chromatography, IBR approved for § 269.34(a).

(b) The following materials are available for purchase from the following address: National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

(1) Control of Gaseous Air Pollutants, IBR approved for § 270.22(a).

(2) SW–846, Test Methods for Evaluating Solid Waste: Physical/Chemical Methods, IBR approved for § 269.34(a).

Subpart B—[Reserved]

Subpart C—Equipment Leaks and Accumulator Vessels

§ 269.30 Applicability.

(a) The regulations in this subpart apply to owners or operators of facilities that treat, store, or dispose hazardous wastes except as provided in § 269.1, if they must obtain a permit under Part 270 for a reason independent of Part 269.

(b) The regulations in this subpart control and monitor air emissions associated with equipment, process vents, and accumulator vessels in volatile hazardous air pollutant (VHAP) service.

§ 269.31 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act; Parts 260, 261, 262, 263, 264, 265, or 266; and Subpart V of Part 61:

(a) "Equipment" means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, flange, or product accumulator vessel in VHAP service, and any control devices or systems required by this subpart.

(b) "Process vent" means any open-ended pipe or stack that is vented to the atmosphere either directly or through a vacuum-producing system. A process vent is in VHAP service if the vapor is at least 10 percent by weight VHAP.

(c) "Product accumulator vessel" means any distillate receiver, condenser, bottoms receiver, surge control vessel, product separator, or hot well (i.e., container holding unvolatilized process stream) that is vented to the atmosphere either directly or through a vacuum-producing system. A product accumulator vessel is in VHAP service if the liquid or the vapor is at least 10 percent by weight VHAP.

(d) "Vented" means discharged through an opening, typically an openended pipe or stack, permitting the passage of liquids, gases, or fumes into the atmosphere. The passage of liquids, gases, or fumes is caused by mechanical means such as compressors or process-related means such as evaporation produced by heating and not by natural means such as diurnal temperature changes.

(e) "In VHAP service" means that a piece of equipment either contains or contacts an organic fluid (slurry, liquid, or gas or other emanation) associated with management of a hazardous waste, hazardous wastes, or their derivatives in concentrations greater than 10 percent by weight. "In VHAP service" is determined according to the provisions of § 269.34(a). The provisions of § 269.34(a) also specify how to determine that a piece of equipment is not in VHAP service.

(f) "Surge control vessel" means any tank used to control or equalize the flow of process fluids within a process unit that is vented.

(g) "VHAP" means organic liquids or gases (1) that are either hazardous wastes or derivatives of these hazardous wastes and (2) that are associated with hazardous waste management.

§ 269.32 Standards for facilities with final permit.

(a) Owners and operators of facilities subject to the provisions of this subpart shall comply with the requirements of 40 CFR Part 61 Subpart V, except as provided in this subpart.

(b) Each process vent shall be equipped with a closed-vent system capable of capturing and transporting any emissions from the vent to a control device as described in § 61.242–11.

(c) The provisions of 40 CFR 61.244 Subpart V do not apply in this regulation.

§ 269.33 Standards for facilities during interim status.

(a) Owners and operators of facilities subject to the provisions of this subpart shall comply with the requirements of 40 CFR Part 61 Subpart V during interim status, except as provided in this subpart.

(b) Each process vent shall be equipped with a closed-vent system capable of capturing and transporting any emissions from the vent to a control device as described in § 61.242–11.

(c) The provisions of 40 CFR 61.242–11 Subpart V apply during interim status on the following basis:

(1) The owner and operator shall comply with this paragraph within 24 months after_____ (date of promulgation in **Federal Register**).

(2) The owner and operator shall complete construction of the control device and closed-vent system used to comply with this paragraph within 21 months after_____ (date of promulgation in **Federal Register**).

(3) The owner and operator shall commence construction of the control device and closed-vent system used to comply with this paragraph within 9 months after _____ (date of promulation in **Federal Register**).

(4) The owner and operator shall complete the design of the control device and closed-vent system used to comply with this paragraph within 6 months of the effective date.

(5) The owner or operator shall monitor the control device using the following parameters in conjunction with the requirements of § 61.242–11:

(i) For condensers, coolant fluid temperature and exhaust gas temperature.

(ii) For carbon adsorbers, carbon bed temperatures and exhaust gas organic-breakthrough.

(iii) For incinerators, exhaust gas temperature.

(iv) For flares, visible emissions and pilot flame detection.

(v) For any recovery system, annual material balances.

(d) The provisions of 40 CFR 61.244 Subpart V do not apply in this regulation.

(e) The owner or operator of any facility that is subject to this subpart and to regulations at 40 CFR Part 60 Subpart VV or 40 CFR Part 61 Subpart V may elect to demonstrate compliance with this subpart by documentation either pursuant to § 270.22 of this subpart, or pursuant to those provisions of 40 CFR Part 60 or 61, to the extent the documentation under the regulation at 40 CFR Part 60 or Part 61 duplicates the documentation required under this subpart.

§ 269.34 Special requirements.

(a)(1) Each piece of equipment within a facility that can conceivably be in VHAP service is presumed to be in VHAP service unless an owner or operator demonstrates that the piece of equipment is not in VHAP service. For a piece of equipment to be considered not in VHAP service, it must be determined that the percent organic content of the process fluid can be reasonably expected never to exceed 10 percent by weight. For purposes of determining the percent organic content of the process fluid that is contained in or contacts equipment, procedures that conform to the methods described in ASTM Method D–2267–68, E 169–63, E 168–67, E 260–73 or Method 9060 of SW–846 (incorporated by reference as specified in § 269.2) shall be used.

(2) An owner or operator may use engineering judgment rather than the procedures in paragraph (a)(1) of this section to demonstrate that the percent organic content of the process fluid does not exceed 10 percent by weight, provided that the engineering judgment demonstrates that the organic content clearly does not exceed 10 percent by weight. When an owner or operator and the Administrator do not agree on whether a piece of equipment is not in VHAP service, however, the procedures in paragraph (a)(1) of this section shall be used to resolve the disagreement.

(3) If an owner or operator determines that a piece of equipment is in VHAP service, the determination can be revised only after following the procedures in paragraph (a)(1) of this section.

(4) Samples used in determining the percent organic content shall be representative of the process fluid that is contained in or contacts the equipment.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for Part 270 continues to read as follows:

Authority: Sections 1006, 2002, 3005, 3007, 3019, and 7004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 as amended [42 U.S.C. 6905, 6912, 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974].

2. Section 270.22 is added as follows:

§ 270.22 Specific Part B information requirements for air emission standards under Part 269.

Except as otherwise provided in § 269.1, owners or operators of facilities affected by the requirements of Part 269 must provide the following information:

(a) For Subpart C of Part 269,

(1) Documentation that demonstrates compliance with the provisions of 40 CFR Part 61 Subpart V, excluding § 61.242–11. This documentation shall contain the reports and records required under §§ 61.245, 61.246, and 61.247. The Administrator may request further documentation before deciding if compliance with the interim status standards has been demonstrated.

(2) Documentation that demonstrates compliance with § 61.242–11. In addition to the reports and records required under §§ 61.245 and 61.246, the documentation shall include the following information:

(i) A listing of the background information material used in preparing the documentation.

(ii) An analysis based on appropriate sections of "Control of Gaseous Air Pollutants" [incorporated by reference as specified in § 269.2], which presents the basic information.

(3) Based on review of the documentation provided in paragraphs (a) (1) and (2) of this section, the Administrator may request further information and analysis before deciding to issue the permit.

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PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

1. The authority citation for Part 271 continues to read as follows:

Authority: Sections 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

2. It is proposed to amend § 271.1(j) by adding the following entry to Table 1 in chronological order by date of publication:

§ 271.1 Purpose and Scope.

* * * * *

TABLE 1. REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date of publication in the FEDERAL REGISTER	Title of regulation
. . . . .	
[Insert promulgation date]	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
. . . . .	

[FR Doc. 87-2079 Filed 2-4-87; 8:45 am]
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federal register

Thursday
February 5, 1987

Part III

Department of Labor

Office of the Secretary

29 CFR Part 20
Debt Collection Act of 1982; Salary Offset; Final Rule

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DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 20

Debt Collection Act of 1982; Salary Offset

AGENCY: Office of the Secretary, Labor.

ACTION: Final rule.

SUMMARY: The Debt Collection Act of 1982 (Pub. L. 97–365), and other applicable authority, authorizes the Federal government to deduct from the current pay account of an employee ("salary offset") when the employee owes money to the United States. This final rule establishes the procedures and policies the Department of Labor will follow in making a salary offset.

EFFECTIVE DATE: March 9, 1987.

FOR FURTHER INFORMATION CONTACT: Dennis McDaniel, Office of the Solicitor, Department of Labor, Room N–2428, 200 Constitution Avenue NW., Washington, DC 20210, telephone number (202) 523–7721.

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 (Pub. L. 97–365) amends the Federal Claims Collection Act of 1966 to authorize the Federal government to employ various debt collection techniques for the collection of debts owed to the United States. Among these techniques are those for deducting from the current pay account of an employee ("salary offset") when the employee owes money to the United States. This rule was originally published for public comment as a proposed rule in the **Federal Register** on December 16, 1985. Comments were to be submitted to the Labor Department, in duplicate, on or before January 30, 1986. No public comments were received. The only substantive change from the proposed regulations is found in § 20.78(b)(7), which affords employees of the Labor Department's Office of Administrative Law Judges the right to elect to have the review of an agency's determination on a debt heard and decided by a person not in the Office of Administrative Law Judges, and not under the supervision and control of the Secretary of Labor.

This final rule establishes the procedures the Department of Labor will employ in making a salary offset.

Executive Order 12291

The final rule is not a "major rule" under Executive Order 12291 because it is not likely to result in (1) an annual effect in the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) signficant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign based enterprises in domestic or foreign markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

The Department believes that the final rule will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act. Public Law 96–354, 94 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the final rule does not, in itself, impose any additional requirements upon small entities. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 1225–0038.

List of Subjects in 29 CFR Part 20

Government employees, Loan programs, Claims, Credit, Administrative practice and procedure.

Accordingly, Part 20 of Title 29 of the Code of Federal Regulations is amended as set forth below:

1. The authority for Part 20 is revised to read as follows:

Authority: Pub. L. 97–365, Oct. 25, 1982, 96 Stat. 1749; 31 U.S.C. 3711 et seq. Subpart D is also issued under 5 U.S.C., 5511 et seq.

2. Subpart D is added to read as follows:

PART 20—DEBT COLLECTION ACT OF 1982

* * * * *

Subpart D—Salary Offset

Sec.

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20.89 Prior provisions of rights with respect to debt.
20.90 Responsibilities of the Assistant Secretary for Administration and Management.

Authority: Pub. L. 97–365, Oct. 25, 1982, 96 Stat. 1749; 31 U.S.C. 3711 *et seq.*; 5 U.S.C. 5511 *et seq.*

Subpart D—Salary offset

§ 20.74 Purpose.

(a) The regulations in this subpart establish procedures to implement section 5 of the Debt Collection Act of 1982 (Pub. L. 97–365), 5 U.S.C. 5514. This statute authorizes the head of each agency to deduct from the current pay account of an employee ("salary offset") when the employee owes money to the United States. This subpart specifies the agency procedures that will be available in a "salary offset" by the Department of Labor of an employee's current pay account.

(b) Administrative offset is defined in 31 U.S.C. 3701(a)(1) as "withholding money payable by the United States Government, to or held by the Government for a person to satisfy a debt the person owes the Government."

A salary offset is a form of administrative offset and is separately authorized and governed by 5 U.S.C. 5514. This authority is consistent with and supplemented by administrative offset regulations of subpart B of 29 CFR Part 20.

§ 20.75 Scope.

(a) This subpart applies to debts owed to the United States (arising under Labor Department programs) by Labor Department employees, debts owed to the United States (arising under Labor Department programs) by employees of other federal agencies, and debts owed the United States (arising under programs of other federal agencies) by Labor Department employees. "Other agency" means:

(1) An executive agency as defined in section 105 of title 5, United States Code (but not including the Labor Department), including the U.S. Postal Service and the U.S. Postal Rate Commission:

(2) A military Department as defined in § 102 of title 5, United States Code;

(3) An agency or court in the judicial branch, including a court as defined in Section 610 of title 28, United States Code, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(5) Other independent establishments that are entities of the Federal Government.

(b) The procedures contained in this subpart do not apply to debts or claims arising under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1 et seq.), the Social Security Act (42 U.S.C. 301 et seq.), or the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g.) travel advances in 5 U.S.C. § 5705 and employee training expenses in 5 U.S.C. 4108).

(c) This subpart does not preclude an employee from requesting waiver of a salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with procedures prescribed by the General Accounting Office. Similarly, in the case of other types of debts, this subpart does not preclude an employee from requesting waiver, if waiver is available under any statutory provisions pertaining to the particular debt being collected.

§ 20.76 Definitions.

(a) "Disposable pay" means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. Agencies must exclude deductions described in 5 CFR 581.105 (b) through (f) to determine disposal pay subject to salary offset.

(b) As used in this subpart, the terms "claim" and "debt" are deemed synonymous and interchangeable. A "debt" means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

(c) "Employee" means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

(d) "Paying agency" means the agency employing the individual and authorizing the payment of his or her current account.

(e) "Credit agency" means the agency to which the debt is owed.

(f) "Salary offset" means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(g) "FCCS" means the Federal Claims Collection Standards jointly published by the Justice Department and the General Accounting Office at 4 CFR 101.1 *et seq.*

(h) "Waiver" means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

§ 20.77 Agency responsibilities.

(a) Each Department of Labor agency which has delinquent debts owed under its program and administrative activities is responsible for collecting its claims by means of salary offset, in accordance with guidelines established by the Assistant Secretary for Administration and Management.

(b) Before collecting a claim by means of salary offset, the responsibile agency should be satisfied that salary offset is feasible, allowable and appropriate, and, as otherwise provided in these regulations, must notify the debtor of the Department's policies for collecting a claim by means of salary offset.

(c) Whether collection by salary offset is feasible is a determination to be made by the creditor agency on a case-by-case basis, in the exercise of sound discretion. Agencies shall consider not only whether salary offset can be accomplished, both practically and legally, but also whether offset is best suited to further and protect all of the Government's interests. In appropriate cricumstances, agencies may give due consideration to the debtor's financial condition, and are not required to use offset of the full or partial amount of the claim in every instance in which there is an available source of funds.

(d) Before advising the debtor that the delinquent debt will be subject to salary offset, the agency head (or designee) responsible for administering the program under which the debt arose shall review the claim and determine that the debt is valid and overdue. In the case where a debt arises under the programs of two or more Department of Labor agencies, or in such other instances as the Assistant Secretary for Administration and Management, or his or her designee, may deem appropriate, the Assistant Secretary for Administration and Management, or his or her designee, may determine which agency (or agencies), or official (or officials), shall have responsibility for carrying out the provisions of this subpart.

(e) Agencies may not initiate offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the right to collect the debt were not known and could not reasonably have been known by the official of the Agency who was charged with the responsibility to discover and collect such debts. When the debt first accrued should be determined according to existing laws regarding the accrual of debts, such as under 28 U.S.C. 2415.

§ 20.78 Notifications.

(a) The agency head (or designee) of the creditor Labor Department agency shall send appropriate written demands to the debtor in terms which inform the debtor of the consequences of failure to repay claims. In accordance with guidelines as may be established by the Assistant Secretary for Administration and Management, a total of three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile and the debtor's response does not require rebuttal. In determining the timing of the demand letters, agencies should given due regard to the need to act promptly so that a debt to be collected by salary offset will be recovered during the employee's anticipated period of employment with the Government.

(b) In accordance with guidelines as may be established by the Assistant Secretary for Administration and Management, the creditor Labor Department agency shall send (at least 30 days prior to any deduction) written notice to the debtor, informing such debtor as appropriate:

(1) Of the origin, nature and amount of the indebtedness determined by the agency to be due;

(2) Of the intention of the agency to initiate proceedings to collect the debt by means of deduction from the employee's current disposable pay account;

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(3) Of the amount, frequency, proposed beginning date, and duration of the intended deductions;

(4) Unless such payments are excused in accordance with the FCCS, of the creditor agency's policy concerning assessment of interest, penalties, and administrative costs;

(5) Of the employee's right to inspect and copy Government records relating to the debt or, if the employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records;

(6) If not previously provided, of the opportunity (under terms agreeable to the creditor agency) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, be signed by both the employee and the creditor agency, and be documented in the creditor agency's files [4 CFR 102.2(e)];

(7) Of the employee's right to a hearing conducted by an administrative law judge of the Department of Labor, if a petition is filed as prescribed by the Department of Labor. In the event the debtor is an employee working in the Office of Administrative Law Judges, the notification shall inform such debtor of the right to elect to have the review of the agency's determination heard and decided by a person who is not in the Office of Administrative Law Judges, and not under the supervision and control of the Secretary of Labor; in such a case, all provisions in this subpart will otherwise apply, unless stated otherwise in the notification;

(8) Of the method and time period for petitioning for hearing;

(9) That the timely filing of a petition for hearing will stay the commencement of collection proceedings, unless the creditor agency determines that § 20.81(d) applies and further informs the debtor of the basis for its determination;

(10) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the administrative law judge grants a delay in the proceedings;

(11) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under chapter 75 of title 5, United States Code, Part 752 of title 5, Code of Federal Regulations, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, sections 3729-3731 of title 31, United States Code, or any other applicable statutory authority; or

(iii) Criminal penalties under sections 286, 287, 1001 and 1002 of title 18, United States Code or any other applicable statutory authority.

(12) Of any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(c) Creditor Labor Department agencies shall also include in their demand letters the notice provisions to debtors required by other regulations of the Labor Department, pertaining to disclosures to credit reporting agencies, administrative offset from other sources of funds, and the assessment of interest, penalties and administrative costs, to the extent inclusion of such is appropriate and practicable.

(d) The responsible agency head (or designee) shall exercise due care to ensure that demand letters are mailed or hand-delivered on the same day that they are actually dated. If evidence suggests that the debtor is no longer located at the address of record, reasonable action shall be taken to obtain a current address.

(e) The creditor Labor Department agency shall, in the initial demand letter to the debtor, provide the name of an agency employee who can provide a full explanation of the claim.

(f) If any internal Labor Department collection, the provisions of § 20.78 (a)–(e) need not be applied to any adjustment to pay which is not considered to be the result of collection of a debt, such as excess pay or allowances caused by (1) an employee's election of coverage or a change of coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated in four pay periods or less; or (2) ministerial adjustments in pay rates or allowances which cannot be placed into effect immediately because of normal processing delays, if the amount to be recovered was accumulated in four pay periods or less.

§ 20.79 Examination of records relating to the claim; opportunity for full explanation of the claim.

Following receipt of the notice specified in § 20.78(b), the debtor may request to examine and copy agency records pertaining to the debt.

§ 20.80 Opportunity for repayment.

(a) The creditor Labor Department agency shall afford the debtor the opportunity to (1) repay the debt or (2) enter into a repayment plan which is agreeable to the agency head (or designee) and is in a written form signed by such debtor and the creditor agency. The head of the agency (or designee) may deem a repayment plan to be abrogated if the debtor should, after the repayment plan is signed, fail to comply with the terms of the plan.

(b) Agencies have discretion and should exercise sound judgment in determining whether to accept a repayment agreement in lieu of offset. The determination should balance the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent and the debtor has not disputed its existence or amount, an agency should effect an offset unless the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience, or the agency otherwise determines that offset would be contrary to sound judgment.

§ 20.81 Review of the obligation.

(a) The debtor shall have the opportunity to obtain a hearing by an administrative law judge of the agency's determination concerning the existence or amount of the debt, or the repayment schedule proposed by the agency, and except as provided in § 20.75(c), review by an administrative law judge is to be the exclusive administrative review remedy on the agency's determination under these regulations.

(b) The debtor seeking a hearing shall make the request in writing to the Chief Administrative Law Judge, pursuant to 29 CFR Part 18, not more than 15 days from the date the notice of proposed salary offset was received by the debtor. The request for hearing shall be signed by the employee and state the basis for challenging the determination. If the debtor alleges that the agency's information relating to the debt is not accurate, timely, relevant or complete, such debtor shall fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes supports his or her position.

(c) The hearing ordinarily shall be based on written submissions and documentation by the debtor. However, an opportunity for an oral hearing shall be provided an individual debtor when the administrative law judge determines

that (1) an applicable statute authorizes or requires the agency to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or (2) an individual debtor requests reconsideration of the and the administrative law judge determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity; or (3) in ther situations in which the administrative law judge deems an oral hearing appropriate. Unless otherwise required by law or these regulations, any oral hearing under this section shall be conducted under the procedures in 29 CFR Part 18. Except as provided under § 20.79, the provisions for discovery shall not be applicable unless otherwise ordered by the administrative law judge. Procedural and evidentiary rules shall be relaxed by the administrative law judge to provide informality and to facilitate the hearing.

(d) Agencies may effect a salary offset against the current pay account of a debtor prior to the completion of the hearing procedures required by this subpart, if failure to initiate the offset would substantially prejudice the agency's ability to collect the debt; for example, if the employee's anticipated period of employment with the Government would not reasonably permit the completion of the hearing and recovery of the debt prior to termination of employment. Offset prior to completion of the hearing must be promptly followed by the completion of that hearing.

(e) If the debtor seeking a hearing under this section makes the request for review of the obligation after the expiration of the period for filing as described in paragraph (b) of this section, the administrative law judge may accept the request for hearing if the debtor can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the time limit (unless otherwise aware of it).

(f) Upon completion of the hearing, the administrative law judge shall transmit to the debtor a written decision. This decision shall state, at a minimum: the facts purported to evidence the nature and origin of the alleged debt; the administrative law judge's findings and conclusions, as to the employee's and/or creditor agency's grounds; the amount and validity of the alleged debt; and, where applicable, the repayment schedule. If appropriate, the notification shall also indicate any changes in the information to the extent such information differs from that provided in the notification under § 20.78(b).

(Approved by the Office of Management and Budget under control number 1225–0038)

§ 20.82 Cooperation with other DOL agencies and Federal agencies.

(a) Appropriate use should be made of the cooperative efforts of other DOL and Federal agencies in effecting collection by salary offset. Generally, paying agencies should comply with requests from other agencies to initiate salary offset to collect debts owed to the United States, unless the creditor agency has not complied with applicable regulations or the request would otherwise be contrary to law.

(b) Unless otherwise prohibited by law, a DOL agency may request that the current pay account of a debtor in another DOL or Federal agency be administratively offset in order to collect debts owed the creditor DOL agency by the debtor. In requesting a salary offset, the creditor DOL agency must provide the paying DOL agency or other paying Federal agency with written certification stating (1) that the debtor owes the creditor agency a debt (including the basis and amount of the debt); (2) the date on which payment was due; (3) the date on which the Government's right to collect the debt first accrued; and (4) where the paying agency is another federal agency, that the creditor agency's regulations under 5 U.S.C. 5514 have been approved by the Office of Personnel Management, and that the creditor agency has followed such regulations to the best of its information and belief.

§ 20.83 DOL agency as paying agency of the debtor.

Whenever a salary offset is sought by another DOL or Federal agency from a paying DOL agency, the paying DOL agency should not initiate the requested offset until it has been provided by the creditor organization with an appropriate written certification as described in § 20.82(b). Where the creditor agency is not another DOL agency, the creditor agency must certify that its regulations under 5 U.S.C. 5514 have been approved by the Office of Personnel Management and that it, the creditor agency, has followed such regulations to the best of its information and belief. When the creditor agency is not also the paying DOL agency, the creditor agency should also be required to certify that if an administrative or judicial order is issued directing the paying DOL agency to pay a debtor an amount previously paid to the creditor agency, the creditor agency will reimburse the paying DOL agency or pay the debtor directly within 15 days of the date of the order.

§ 20.84 Collections.

(a) Whenever feasible, and except as otherwise provided by law, debts owed to the United States, together with interest, penalties, and administrative costs should be collected in full in one lump sum. This is true whether the debt is being collected by salary offset or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments. Ordinarily, the size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. However, the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. Installment deductions must be made over a period not greater than the anticipated period of active duty or employment, as the case may be except as provided in § 20.84 (c) and (d). Where a DOL agency is the paying agency, salary offset will ordinarily begin with the salary payment made to the employee for the first full pay period following expiration of the 30 day notice period described in § 20.78(b), or if a hearing is pending under § 20.81, the first full pay period following the date of the administrative law judge's written decision.

(b) If the debtor owes more than one debt and designates how a voluntary installment payment is to be applied as among those debts, that designation must be followed. If the debtor does not designate the application of the payment, agencies should apply payments to the various debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

(c) If the employee retires or resigns or if his or her employment or period of active duty ends before collection of the debt is completed, under 5 U.S.C. 5514, salary offset shall be from subsequent payments of any nature (e.g., final salary payment, lump-sum leave, etc.) due the employee from the paying agency as of the date of separation to the extent necessary to liquidate the debt.

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(d) If the debt cannot be liquidated by salary offset from any final payment due the former employee as of the date of separation, under 5 U.S.C. 5514, administrative offset shall be from later payments of any kind due the former employee from the United States.

§ 20.85 Notice of offset.

Prior to effecting a salary offset, the paying DOL agency should advise the debtor of the impending offset. This notice should state that the debtor has been provided his/her rights under 5 U.S.C. 5514, that a determination has been made that collection by salary offset would be in the best interests of the United States, the amount of the offset, the date the salary offset will begin, and that the source of funds shall be from current disposable pay, except as provided by (c) and (d) of § 20.84. If evidence suggests that the debtor is no longer located at the address of record, reasonable action shall be taken to obtain a current address.

§ 20.86 Non-waiver of rights by payments.

An employee's involuntary payment, of all or any portion of a debt being collected under 5 U.S.C. 5514, shall not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutory or contractual provisions to the contrary.

§ 20.87 Refunds.

(a) Agencies shall promptly refund to the appropriate party amounts paid or deducted under this subpart when—

(1) A debt is waived or is otherwise not owing to the United States (unless refund is expressly prohibited by statute or regulation); or

(2) The employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.

(b) Refunds do not bear interest unless required or permitted by law or contract.

§ 20.88 Additional administrative collection action.

Nothing contained in this subpart is intended to preclude the utilization of any other administrative remedy which may be available.

§ 20.89 Prior provision of rights with respect to debt.

To the extent that the rights of the debtor in relation to the same debt have been previously provided by the creditor agency under some other statutory or regulatory authority, the creditor agency is not required to duplicate those efforts before taking salary offset.

§ 20.90 Responsibilities of the Assistant Secretary for Administration and Management.

The Assistant Secretary for Administration and Management, or his or her designee, shall provide appropriate and binding written or other guidance to Department of Labor agencies and officials in carrying out this subpart, including the issuance of guidelines and instructions, which he or she may deem appropriate. The Assistant Secretary shall also take such administrative steps as may be appropriate to carry out the purposes and ensure the effective implementation of this subpart.

Signed at Washington, DC, this 30th day of January, 1987.

William E. Brock,

Secretary of Labor.

[FR Doc. 87-2295 Filed 2-4-87; 8:45 am]

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federal register

Thursday
February 5, 1987

Part IV

Department of Health and Human Services

Food and Drug Administration

Cumulative List of Orphan Drug and Biological Designations; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84N-0102]

Cumulative List of Orphan Drug and Biological Designations

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) previously announced the availability of a list to be updated quarterly identifying the drugs and biologicals granted orphan drug designation in accordance with section 526 of the Federal Food, Drug, and Cosmetic Act (see the **Federal Register** of April 13, 1984 (49 FR 14808)). By this notice, FDA is publishing a cumulative list of designated orphan drugs and biologicals.

ADDRESS: A copy of the list of orphan designations for calendar year 1987 will be updated quarterly and will be available for review at, and individual copies may be obtained from, the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Roger C. Gregorio, Office of Orphan Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4903.

SUPPLEMENTARY INFORMATION: FDA's Office of Orphan Products Development reviews and takes final action on applications submitted by sponsors seeking orphan designation under the interim guidelines for section 526 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360bb). In accordance with section 526 of the act, which requires public notification of designations, FDA maintains a list identifying designated orphan drugs and biologicals for the current calendar year, e.g., 1987. The list is updated on a quarterly basis and is available upon request from FDA's Dockets Management Branch (address above) under Docket Number 84N-0102. The agency intends to continue to publish in the **Federal Register** at the end of each calendar year a cumulative list of designated orphan drugs and biologicals to include the name of the designated compound, the specific disease/condition for which the compound is designated, and the sponsor's name and address. The cumulative list of compounds receiving orphan designation through 1985 was published in the **Federal Register** of January 30, 1986 (51 FR 3844).

This notice lists designated orphan drugs and biologicals through December 31, 1986, and, therefore, updates the January 30, 1986, publication. The designation of a drug or biological applies only to the sponsor who requested the designation. Each sponsor interested in developing an orphan drug or biological must apply for designation. Copies of the interim guidelines for use in compiling an application for designation may be obtained from the Office of Orphan Products Development (HF-35) (address above).

Dated: January 28, 1987.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

Orphan Drug and Biological Designations Through 1986

[Biological designations]

Name of biological	Designated use	Sponsor's name and address
Generic—alpha-1-anti-trypsin (recombinant DNA origin); *Trade*—Not established.	Supplementation therapy for alpha-1 antitrypsin deficiency in the ZZ phenotype population.	Cooper Biomedical, Inc., 3145 Porter Drive, Palo Alto, CA 94304.
Generic—alpha-1-proteinase inhibitor (Alpha-1 PI); *Trade*—Not established.	Replacement therapy in the Alpha-1 PI congenital deficiency state.	Cutter Laboratories, P.O. Box 1986, Berkeley, CA 94701.
Generic-anti-J5mAb; *Trade*-Not established.	Treatment of patients with gramnegative bacteremia which has progressed to endotoxin shock.	Centocor, Inc., 244 Great Valley Parkway, Malvern, PA 19355.
Generic—anti pan T lymphocyte monoclonal antibody H-65 ricin A chain conjugate; *Trade*—Anti T Lymphocyte Immunotoxin XMMLY-H65-RTA.	For ex vivo treatment to eliminate mature T cells from potential bone marrow grafts and for in-vivo treatment of bone marrow recipients to prevent graft rejection and graft vs host disease (GVHD).	XOMA Corporation, 2910 Seventh Street, Berkeley, CA 94710.
Generic—antimelanoma antibody XMMME-0001-DTPA-III IN; *Trade*—Same as generic.	Diagnostic use in imaging systemic and nodal melanoma metastases.	Xoma Corporation, 3516 Sacramento Street, San Francisco, CA 94118.
Generic—antimelanoma antibody XMMME-001-RTA; *Trade*—Same as generic.	Treatment of Stage III melanma not amenable to surgical resection.	Xoma Corporation, 3516 Sacramento Street, San Francisco, CA 94118.
Generic—antithrombin III (AT-III); *Trade*—Not established.	For use as replacement therapy in congenital deficiency of AT-III for prevention and treatment of thromboses and pulmonary emboli.	Cutter Laboratories, P.O. Box 1986, Berkeley, CA 94701.
Generic—antithrombin III concentrate I.V.; *Trade*—Kybernin.	Prophylaxis and treatment of thromboembolic episodes in patients with genetic AT-III deficiency.	Hoechst-Roussel Pharmaceuticals, Inc., Route 202-206 North, Somerville, NJ 08876.
Generic—antithrombin III (human); *Trade*—Antithrombin.	Hereditary AT-III deficiency.	Kabi Vitrum Inc., 1311 Harbor Bay Parkway Alameda, CA 94501.
Generic—antithrombin III (human); *Trade*—Antithrombin III (Human).	For use in preventing or arresting episodes of thrombosis in patients with congenital antithrombin III deficiency and/or to prevent the occurrence of thrombosis in patients with antithrombin III deficiency who have undergone trauma or who are about to undergo surgery or parturition.	The American National Red Cross, National Headquarters, 17th and E Street, NW., Washington, DC 20006.
Generic—botulinum A toxin; *Trade*—Oculinum.	Treatment of strabismus and blepharospasm.	Alan B. Scott, M.D., 2232 Webster Street, San Francisco, CA 94115.
Generic—botulinum toxin; *Trade*—Orthotinum.	For use in the treatment of spasmodic torticollis.	Alan B. Scott, M.D., 2232 Webster Street, San Francisco, CA 94115.
Generic—digoxin-specific antibody fragments; *Trade*—Digibind [1] [2].	Treatment of potentially life-threatening digitalis intoxication in patients who are refractory to management by conventional therapy.	Burroughs-Wellcome Co., 3030 Cornwallis Road, Research Triangle Park, NC 27709.
Generic—erwinia 1-asparaginase; *Trade*—Not established.	Treatment of acute lymphocytic leukemia.	Porton Products Ltd., 5445 Balboa Boulevard Suite 115, Encino, CA 91316.
Generic—erwinia 1-asparaginase; *Trade*—Not established.	Acute lymphoblastic leukemia.	Lypho Med, Inc., 2020 Ruby Street, Melrose Park, IL 60160.
Generic—factor XIII; *Trade*—Fibrogammin.	Congenital Factor XIII deficiency.	Hoechst-Roussel Pharmaceuticals, Inc., Route 202-206 North, Somerville, NJ 08876.
Generic—hemin; *Trade*—Panhematin [1] [2].	Amelioration of recurrent attacks of acute intermittent porphyria temporally related to the menstrual cycle in susceptible women and similar symptoms which occur in other patients with acute intermittent porphyria, porphyria variegata and hereditary coproporphyria.	Abbott Laboratories, North Chicago, IL 60064.
Generic—interferon alfa-nl; *Trade*—Wellferon.	Treatment of Kaposi's sarcoma in AIDs patients.	Burroughs Wellcome Co., 3030 Cornwallis Road, Research Triangle Park, NC 27709.
Generic—monoclonal antibodies (murine or human) recognizing B-cell lymphoma idiotypes; *Trade*—Not established.	For the treatment of B-cell lymphoma.	IDEC, Inc., 291 North Bernardo Avenue, Mountain View, CA 94043.

Name of biological	Designated use	Sponsor's name and address
Generic—pentastarch; *Trade*—Not established.	For use as an adjunct in leukapheresis, to improve the harvesting and increase the yield of leukocytes by centrifugal means.	DuPont Critical Care, 1600 Waukegan Road, McGaw Park, IL 60085.
Generic—recombinant human erythropoietin; *Trade*—Not established.	Treatment of anemia associated with end stage renal disease (ESRD).	Amgen, 1900 Oak Terrace Lane, Thousand Oaks, CA 91320.
Generic—sheep antidigoxin fab; *Trade*—Digidote.	Life-threatening acute cardiac glycoside intoxication manifested by conduction disorders, ectopic ventricular activity and (in some cases) hyperkalemia.	Boehringer Mannheim Corporation, 1301 Piccard Drive, Rockville, MD 20850.

[1] Approved for Marketing.
[2] Exclusive Approval

[Drug designations]

Name of drug	Designated use	Sponsor's name and address
Generic—allopunnol riboside; *Trade*—Not established.	Treatment of cutaneous and visceral leishmaniasis and Chagas' disease.	Burroughs Wellcome Co., 3030 Cornwallis Road, Research Triangle Park, NC 27709.
Generic—amsacrine; *Trade*—Amsidyl.	Treatment of patients with acute adult leukemia.	Warner-Lambert Co., 201 Tabor Road, Morris Plains, NJ 07950.
Generic—anagrelide; *Trade*—Not established.	Treatment of polycythemia vera.	Bristol-Myers Co., P.O. Box 4755, Syracuse, NY 13221-4755.
Generic—anagrelide; *Trade*—Not established.	Treatment of thrombocytosis in chronic myelogenous leukemia.	Bristol-Myers, Co., Pharmaceutical Research and Development Division, 5 Research Parkway, P.O. Box 5100, Wallingford, CT 06492.
Generic—antipyrine; *Trade*—Not established.	Antipyrine test as an index of hepatic drug-metabolizing capacity.	Upsher-Smith Laboratories, Inc., 14905 23rd Avenue North, Minneapolis, MN 55441.
Generic—azidothymidine (AZT) (BW A509U); *Trade*—Not established.	Treatment of acquired immunodeficiency syndrome (AIDS).	Burroughs Wellcome Co., 3030 Cornwallis Road, Research Triangle Park, NC 27709.
Generic—bacitracin, U.S.P.; *Trade*—Not established.	Antibiotic-associated pseudomembranous enterocolitis caused by toxins A and B elaborated by Clostridium difficile.	A.L. Laboratories, Inc., 452 Hudson Terrace, P.O. Box 1621, Englewood Cliffs, NJ 07632.
Generic—benzoate/phenylacetate; *Trade*—Ucephan.	For adjunctive therapy in the prevention and treatment of hyperammonemia in patients with urea cycle enzymopathy (UCE) due to carbomylphosphate synthetase, ornithine transcarbamylase, or argino-succinate synthetase deficiency.	Kendall McGaw Laboratories, P.O. Box 25080 Santa Ana, CA 92799-5080.
Generic—BW B759U; *Trade*—Not established.	Treatment of severe human cytomegalovirus infections (HCMV) in specific immuno-suppressed patient populations (e.g., bone marrow transplant recipients and AIDS).	Burroughs Wellcome Co., 3030 Cornwallis Road, Research Triangle Park, NC 27709.
Generic—chenodiol; *Trade*—Chenix [1] [2].	For patients with radiolucent stones in well opacifying gallbladders, in whom elective surgery would be undertaken except for the presence of increased surgical risk due to systemic disease or age.	Reid-Rowell, Inc., 210 Main Street West, Baudette, MN 56623-0370.
Generic—chlorhexidine gluconate mouthrinse; *Trade*—Peridex.	For use in the amelioration of oral mucositis associated with cytoreductive therapy used in conditioning patients for bone marrow transplantation therapy.	The Procter and Gamble Co., Sharon Woods Technical Center, HB Building, 11511 Reed Hartman Highway, Cincinnati, OH 45241.
Generic—clofazimine; *Trade*—Lamprene [1] [2].	Treatment of lepromatous leprosy, including dapsone-resistant lepromatous leprosy and lepromatous leprosy complicated by erythema nodosum.	Pharmaceuticals Division, Ciba-Geigy Corporation, 556 Morris Avenue, Summit, NJ 07901.
Generic—colchicine; *Trade*—Not established.	For use in arresting the progression of neurologic disability caused by chronic progressive multiple sclerosis.	Pharmacontrol Corporation, P.O. Box 931, 661 Palisade Avenue, Englewood Cliffs, NJ 07632.
Generic—cromolyn sodium; *Trade*—Cromoral.	Mastocytosis.	Fisons Corporation, 2 Preston Court, Bedford, MA 01730.
Generic—cromolyn sodium 4% ophthalmic solution; *Trade*—Opticrom 4% Ophthalmic Solution [1] [2].	Treatment of vernal keratoconjunctivitis (VKC).	Fisons Corporation, 2 Preston Court, Bedford, MA 01730.
Generic—cyproterone acetate; *Trade*—Cyproterone/Androcur.	Treatment of severe hirsutism.	Berlex Laboratories, Inc., 110 East Hanover Avenue, Cedar Knolls, NJ 07927.
Generic—cysteamine (2-aminoethanethiol); *Trade*—Not established.	Treatment of nephropathic cystinosis.	Jess G. Thoene, M.D., Section of Biochemical Genetics and Metabolism, Department of Pediatrics, University of Michigan School of Medicine, Ann Arbor, MI 48109.
Generic—defibrotide; *Trade*—Not established.	Treatment of thrombotic thrombocytopenic purpura.	Crinos International, Via Belvedere 1, 22079 Villa Guardia (Como), Italy.
Generic—diaziquone; *Trade*—Not established.	Treatment of primary brain malignancies (Grade III-IV astrocytomes).	Warner-Lambert Co., 201 Tabor Road, Morris Plains, NJ 07950.
Generic—diethyldithiocarbamate; *Trade*—Imuthiol.	Treatment of acquired immunodeficiency syndrome (AIDS).	Meneux Institute, Inc., 7855 N.W. 12th Street, Suite 114, Miami, FL 33126.
Generic—dimethyl sulfoxide (DMSO); *Trade*—Scleroset.	Treatment of cutaneous manifestations of scleroderma.	Research Medical, Inc., a Subsidiary of Research Industries Corporation, 1847 West 2300 South Salt Lake City, UT 84119.
Generic—disodium silibinin dihemisuccinate; *Trade*—Legalon.	Treatment of hepatic intoxication by Amanita phalloides (mushroom poisoning).	Pharmquest Corporation, 201 Tamal Vista Blvd. Corte Madera, CA 94925 and Dr. Madaus GmbH and Co., Ostmerheimer Str. 198, 5000 Koln 91 Federal Republic of Germany.
Generic—eflornithine HCl (DFMO); *Trade*—Not established.	Trypanosoma brucei gambiense sleeping sickness.	Merrell Dow Research, P.O. Box 6300 2110 East Galbraith Road, Cincinnati, OH 45215-6300.
	Treatment of Pneumocystis carinii pneumonia in AIDS patients.	
Generic—epoprostenol prostacyclin, PGI$_2$, PGX; *Trade*—Flolan.	Replacement of heparin in patients requiring hemodialysis and who are at increased risk of hemorrhage.	Burroughs Wellcome Co., 3030 Cornwallis Road, Research Triangle Park, NC 27709.
Generic—epoprostenol; *Trade*—Cyclo-Prostin.	Replacement of heparin in patients requiring hemodialysis and who are at increased risk of hemorrhage.	The Upjohn Co., 301 Henrietta Street, Kalamazoo MI 49001.
Generic—epoprostenol prostacyclin, PGI$_2$, PGx; *Trade*—Flolan.	For use in the treatment of primary pulmonary hypertension (PPH).	Burroughs Wellcome Co., 3030 Cornwallis Road Research Triangle Park, NC 27709.
Generic—etidronate disodium, intravenous solution; *Trade*—Didronel I.V.	Treatment of hypercalcemia of a malignancy inadequately managed by dietary modification and/or oral hydration.	Norwich Eaton Pharmaceuticals, Inc., P.O. Box 191, Norwich, NY 13815.
Generic—ethanolamine oleate; *Trade*—Not established.	Bleeding esophageal varices.	Glaxo, Inc., P.O. Box 13960, Five Moore Drive Research Triangle Park, NC 27709.
Generic—flumecinol; *Trade*—Zixoryn.	Hyperbilirubinemia in newborn infants unresponsive to phototherapy.	Farmacon, Inc., P.O. Box 586 Westport, CT 06881.
Generic—flunarizine; *Trade*—Sibelium.	Treatment of alternating hemiplegia.	Janssen Pharmaceutica, 40 Kingsbridge Road, Piscataway, NJ 08854.
Generic—ganciclovir (DHPG); *Trade*—Not established.	Treatment of of cytomegalovirus (CMV) infections of a serious life- or sight-threatening nature in immunocompromised patients.	Syntex (USA), Inc., 3401 Hillview Avenue, Palo Alto, CA 94304.
Generic—glucocerebrosidase/beta-glucosidase (placenta-derived); *Trade*—Not established.	Replacement therapy in patients with Gaucher's Disease Type I.	Genzyme Corporation, 75 Kneeland Street, Boston, MA 02111.
Generic—guanethidine monosulfate; *Trade*—Ismelin [1] IV.	Treatment of moderate to severe reflex sympathetic dystrophy and causalgia.	Ciba-Geigy Corporation, 556 Morris Avenue, Summit, NJ 07901.

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ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1986—Continued

[Drug designations]

Name of drug	Designated use	Sponsor's name and address
Generic—HPA-23, *Trade*—Not established	Treatment of acquired immunodeficiency syndrome (AIDS)	Rhone-Poulenc Pharmaceuticals, Division of Rhone Poulenc, Inc., P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852
Generic—Hexamethylmelamine, *Trade*—Hexastat	Treatment of advanced adenocarcinoma of the ovary	Ives Laboratories, 685 Third Avenue, New York, NY 10017
Generic—human epidermal growth factor (urogastrone); *Trade*—Not established	Acceleration of corneal epithelial regeneration and healing of stromal incisions from corneal transplant surgery. Promotion of cutaneous wound healing in extreme burn treatment protocols	Chiron Corporation, 4560 Horton Street, Emeryville, CA 94608
Generic—human superoxide dismutase (hSOD), *Trade*—Not established	Protection of donor organ tissue from damage or injury mediated by oxygen-derived free radicals that are generated during the necessary periods of ischemia (hypoxia, anoxia), and especially reperfusion, associated with the operative procedure	Pharmacia-Chiron Partnership, 4560 Horton Street, Emeryville, CA 94608.
Generic—hydroxycobalamin/sodium thiosulfate, *Trade*— Not established	Treatment of severe acute cyanide poisoning	Evreka, Inc., P.O. Box 1513, 1990 Broadway, New York, NY 10023
Generic—ifosfamide, *Trade*—Not established	Treatment of soft tissue and bone sarcomas	Bristol-Myers Company, P.O. Box 4755, Syracuse, NY 13221–4755
Generic—1-alpha-acetylmethadol (LAAM); *Trade*—Not established	Treatment of heroin addicts suitable for maintenance on opiate agonists	Dixon and Williams, Pharmaceutical Co., Inc., 43 Old Wood Road, Bernardsville, NJ 07924
Generic—1-carnitine, *Trade*—Vita Carn [1]	Genetic carnitine deficiency	Kendall McGaw Laboratories, P.O. Box 25080, Santa Ana, CA 92799–5080
Generic—1-carnitine, *Trade*—Vita Carn	Treatment of manifestations of carnitine deficiency in patients with end stage renal disease (ESRD) who require dialysis.	Kendall McGaw Laboratories, P.O. Box 25080, Santa Ana, CA 92799–5080
Generic—1-carnitine, *Trade*—Carnitor [1 2]	Primary and secondary carnitine deficiency of genetic origin	Sigma Tau, Inc., 723 North Beers Street, Holmdel, NJ 07733
Generic—leucovonn, *Trade*—Leucovonn Calcium	For use in combination with 5-fluorouracil for the therapy of metastatic adenocarcinoma of the colon and rectum	Lederle Laboratories Div., American Cyanamid Company, Pearl River, NY 10965
Generic—L-5 hydroxytryptophan (L-5HTP); *Trade*—Not established	Treatment of postanoxic intention myoclonus	Bolar Pharmaceutical Co., Inc., 130 Lincoln Street, Copeague, NY 11716
Generic—mazindol; *Trade*—Sanorex	Treatment of Duchenne muscular dystrophy (DMD)	Platon J. Collipp, M.D., 176 Memorial Drive, Jesup, GA 31545
Generic—mesna, *Trade*—Uromitexan	For use in inhibiting the urotoxic effects induced by ifosfamide	Bristol-Myers Company, P.O. Box 4755, Syracuse, NY 13221–4755
Generic—methotrexate sodium; *Trade*—Methotrexate	Treatment of osteogenic sarcoma	Lederle Laboratories, Pearle River, NY 10965.
Generic—midodrine HCl, *Trade*—Midamine	Treatment of idiopathic orthostatic hypotension	Roberts Laboratories, Inc., 230 Half Mile Road, Red Bank, NJ 07701
Generic—monoclonal antiendotoxin antibody XMMEN-0E5; *Trade*—Same as generic.	Treatment of patients with gram-negative sepsis which has progressed to shock	Xoma Corporation, 2910 Seventh Street, Berkeley, CA 94710
Generic—monooctanoin; *Trade*—Moctan [1 2]	Dissolution of cholesterol gallstones retained in the common bile duct	Ascot Pharmaceuticals Inc., 7701 N. Austin Avenue, Skokie, IL 60077
Generic—naltrexone HCl; *Trade*—Trexan [1 2]	Blockade of the pharmacological effects of exogenously administered opioids as an adjunct to the maintenance of the opioid-free state in detoxified formerly opioid-dependent individuals	E.I. duPont de Nemours (Inc.), dba Du Pont Pharmaceuticals, 1000 Stewart Avenue, Garden City, NY 11530
Generic—oxymorphone HCl; *Trade*—Numorphan H.P.	Relief of severe intractable pain in narcotic-tolerant patients	Du Pont Pharmaceuticals, Inc., P.O. Box 12, Manati, PR 00701
Generic—PEG-adenosine deaminase (PEG-ADA), *Trade*—Imudon	For use as enzyme replacement therapy for ADA deficiency in patients with severe combined immunodeficiency (SCID)	Enzon, Inc., 300C Corporate Court, South Plainfield, NJ 07080
Generic—pentamidine isethionate; *Trade*—Pentam 300 [1 2]	Pneumocystis carinii pneumonia	LyphoMed, Inc., 2020 Ruby Street, Melrose Park, IL 60160
Generic—pentamidine isethionate; *Trade*—not established	Pneumocystis carinii pneumonia	Rhone-Poulenc, Inc., 52 Vanderbilt Ave., New York, NY 10017
Generic—physostigmine salicylate; *Trade*—Antilirium	Friedreich's and other inherited ataxias	Forrest Pharmaceuticals, Inc., 2510 Metro Boulevard, Maryland Heights, MO 64043–99
Generic—potassium citrate, *Trade*—Urocit-K [1 2]	Prevention of calcium renal stones in patients with hypocitraturia and for the avoidance of the complication of calcium stone formation in patients with uric lithiasis Prevention of uric acid nephrolithiasis	Charles Y.C. Pak, M.D., The Univ. of Texas Health Science Center at Dallas, 5323 Harry Hines Blvd., Dallas, TX 75235
Generic—potassium citrate and citric acid, *Trade*—Polycitra-K	For use in the dissolution and control of uric acid and cystine calculi in the urinary tract	Willen Drug Company, 18 North High Street, Baltimore, MD 21202
Generic—prednimustine; *Trade*—Sterecyt	Treatment of malignant non-Hodgkin's lymphomas	Smith Kline and French Laboratories, 1500 Spring Garden Street, Philadelphia, PA 19101
Generic—quinacrine HCl; *Trade*—Not established.	For use in the prevention of recurrence of pneumothorax in patients at high risk of recurrence, e.g., patients with cystic fibrosis.	LyphoMed, Inc., 2020 Ruby Street, Melrose Park, IL 60160
Generic—rifampin; *Trade*—Rifadin I.V.	For use as antituberculosis treatment where use of the oral form of the drug is not feasible.	Merrell Dow Pharmaceuticals, 2110 E. Galbraith Road, Cincinnati, OH 45215
Generic—rifampin, isoniazid, pyrazinamide, *Trade*—Rifater V.	Short course treatment of tuberculosis	Merrell Dow Research Inst., 2110 E. Galbraith Rd., Cincinnati, OH 45215
Generic—selegiline HCl; *Trade*—Deprenyl	Adjuvant to levodopa or levodopa and carbidopa treatment of idiopathic Parkinson's disease (paralysis agitans), postencephalitic parkinsonism, and symptomatic parkinsonism	Somerset Pharmaceuticals, One Olde Town Court, Bernardsville, NJ 07924
Generic—sodium gamma hydroxybutyrate (GHB), *Trade*—Catabate	Narcolepsy and the auxiliary symptoms of cataplexy, sleep paralysis, hypnagogic hallucinations and automatic behavior.	Sigma F and D Division, Ltd., Sigma Chemical, Co., 3050 Spruce Street, St. Louis, MO 63103
Generic—sodium monomercaptoundecahydro-*closo*-dodecaborate, *Trade*—Borolite	Treatment of glioblastoma multiforme as an alternative to conventional photon therapy	Nuclear Medicine, Inc., 900 Atlantic Drive, N.W., Atlanta, GA 30332
Generic—sodium pentosan polysulphate; *Trade*—Elmiron	Treatment of interstitial cystitis	Medical Market Specialties, Inc., P.O. Box 150, Boonton, NJ 07005
Generic—sodium tetradecyl sulfate; *Trade*—Sotradecol	Treatment of bleeding esophageal vances	Elkins-Sinn, Inc., 2 Esterbrook Lane, Cherry Hill, NJ 08003–4099
Generic—somatrem, *Trade*—Protropin [1 2]	For long-term treatment of children who have growth failure due to a lack of adequate endogenous growth hormone secretion.	Genentech, Inc., 460 Point San Bruno Blvd., South San Francisco, CA 94080
Generic—somatrem; *Trade*—Protropin	Short stature associated with Turner's syndrome	Genentech, Inc., 460 Point San Bruno Blvd., South San Francisco, CA 94080
Generic—somatropin; *Trade*—Humatrope	For long-term treatment of children who have growth failure due to inadequate secretion of normal endogenous growth hormone.	Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285
Generic—spiramycin; *Trade*—Rovamycine	For use in the symptomatic relief and parasitic cure of chronic cryptosporidiosis in patients with immunodeficiency.	Rhone-Poulenc, Inc., 52 Vanderbilt Ave., New York, NY 10017
Generic—surface active extract of saline lavage of bovine lungs; *Trade*—Infasurf	Treatment and prevention of respiratory failure due to pulmonary surfactant deficiency in preterm infants.	ONY, Inc., TDC Incubation Center, 2211 Main Street, Buffalo, NY 14214
Generic—surfactant TA (modified bovine lung surfactant extract), *Trade*—Not established	For the prevention and treatment of neonatal respiratory distress syndrome (RDS)	Ross Laboratories, Division of Abbott Laboratories, 625 Cleveland Avenue, Columbus, OH 43216

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1986—Continued

[Drug designations]

Name of drug	Designated use	Sponsor's name and address
Generic—teniposide (VM-26); *Trade*—Not established	Treatment of refractory childhood acute lymphocytic leukemia (ALL)	Bristol-Myers Co., Pharmaceutical Research & Development Division, P.O. Box 4755, Syracuse, NY 13221–4755
Generic—terlipressin, *Trade*—Glypressin	For the treatment of bleeding esophageal vances	Ferring AB, Soldattorspvagen 5, Box 30651, 200 62 Malmo, Sweden
Generic—thymone (TRH); *Trade*—Protirelin	Amyotrophic lateral sclerosis (ALS)	Abbott Laboratories, North Chicago, IL 60064
Generic—bopronin; *Trade*—Thiola	For use in the prevention of cystine nephrolithiasis in patients with homozygous cystinuria	Charles Y.C. Pak, M.D., The Univ. of Texas Health Science Center at Dallas, 5323 Harry Hines Blvd., Dallas, TX 75235
Generic—tranexamic acid; *Trade*—Cyklokapron	Treatment of hereditary angioneurotic edema	Kabi Vitrum, Inc., 1311 Harbor Bay Parkway, Alameda, CA 94501
Generic—tranexamic acid; *Trade*—Cyklokapron [1 2]	Treatment of patients with congenital coagulopathies who are undergoing surgical procedures e.g. dental extractions.	Kabi Vitrum, Inc., 1311 Harbor Bay Parkway, Alameda, CA 94501
Generic—tretinoin, *Trade*—Not established	Treatment of squamous metaplasia of the ocular surface epitheka (conjunctiva and/or cornea) with mucous deficiency and keratinization.	Spectra Pharmaceutical Services, Inc., Hanover Business Park, 155 Webster Street, Hanover, MA 02339
Generic—trientine HCl; *Trade*—Cuprid [1 2]	Treatment of patients with Wilson's disease who are intolerant, or inadequately reponsive to penicillamine.	Merck Sharp and Dohme Research Laboratories, Division of Merck and Co., Inc., West Point, PA 19486
Generic—trimetrexate glucuronate, *Trade*—Not established	Treatment of metastatic colorectal adenocarcinoma, metastatic carcinoma of the head and neck (i.e., buccal cavity, pharynx and larynx), and pancreatic adenocarcinoma. Treatment of Pneumocystis carinii pneumonia (PCP) in AIDS patients	Warner-Lambert Company, 2800 Plymouth road P.O. Box 1047, Ann Arbor, MI 48106
Generic—viloxazine hydrochloride, *Trade*—Vivalan	Treatment of narcolepsy and cataplery	Stuart Pharmeceuticals Division of ICI Americas Inc., Wilmington, DE 19897
Generic—zinc acetate; *Trade*—Not established	For use in the treatment of Wilson's disease	Lemmon Company, 650 Cathill Road, Sellersville, PA 18960
Generic—[131] I-metaiodobenzylguanidine, *Trade*—Not established	Diagnosbc adjunct in patients with pheochromocytoma	William H. Beierwaltes, M.D., Physician-in-charge, Nuclear Medicine, University of Michigan Medical Center, 1405 E. Ann Street, Ann Arbor, MI 48109
Generic—[131] I-6b-iodomethly-19-norcholesterol, *Trade*—Not established.	Adrenal cortical imaging	William H. Beierwaltes, M.D., Physician-in-charge, Nuclear Medicine, University of Michigan Medical Center, 1405 E. Ann Street, Ann Arbor, MI 48109.
Generic—2'-3'-dideoxycytidine; *Trade*—Not established	Treatment of acquired immune deficiency syndrom (AIDS)	The Division of Cancer Treatment, National Cancer Institute, Building 31, Room 3A49, National Institutes of Health, Bethesda, MD 20892
Generic—2,3-dimercaptosuc-cinic acid (DMSA), *Trade*—Not established.	Treatment of lead poisoning in children	Johnson and Johnson, Baby Products Co., Grandview Road, Skillman, NJ 08858

[1] Approved for Marketing
[2] Exclusive Approval

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Title 3—

The President

Proclamation 5606 of February 3, 1987

National Women in Sports Day, 1987

By the President of the United States of America

A Proclamation

In 1885, Oberlin College established the first department of physical education for women in a coeducational school. Today, some 100 years later, women's sports are a vital component of college life and their impact is felt far beyond the university campus.

The history of women in sports is rich and long and has provided millions with an opportunity for growth, development, and the pursuit of challenging goals. From youth sports to the Olympic arena, female athletes have shown levels of spirit, talent, and accomplishment undreamt of on that midwest campus a century ago.

Participation in sports contributes to the emotional, physical, and intellectual development of women of all ages. Through individual and team activities, young girls develop self-discipline, initiative, respect for fair play and cooperation, and communication and leadership skills that will help them succeed throughout their lives. Early positive experiences strongly influence wholesome lifelong habits of physical fitness, and thus have a direct bearing on the health and well-being of this Nation.

Great strides have been made in women's athletics along with the realization that women are entitled to equal opportunity on and off the playing field. In 1972 only a handful of college athletic scholarships were made available for women; today they number some 10,000. In the past decade the number of women involved in college athletics has grown from 32,000 to 150,000. This same period saw a 110 percent increase in female participation in public high school sports programs. In 1984, the women on our Olympic team brought home 44 percent of the gold medals available to them, making America's female athletes a significant force on the international sports scene.

The number of women participating in sports continues to grow, and we will continue to assure that more opportunities are created. From coach to administrator, women play an important role in the development of athletic programs for people of all ages.

In recognition of the contributions women's sports have made to this country, and of the need to further advance women's sports, the Congress, by Public Law 99–540, has designated February 4, 1987, as "National Women in Sports Day" and authorized and requested the President to issue a proclamation in observance of this event.

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NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim February 4, 1987, as National Women in Sports Day.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of February, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-2647
Filed 2-4-87; 2:54 pm]
Billing code 3195-01-M

Rules and Regulations

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Friday, February 6, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Retirement—Service Credit

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim rules implementing recent changes in the law granting service credit under the Civil Service Retirement System (CSRS). Rules concerning service credit under the Federal Employees Retirement System will be published separately. These rules will allow some Federal employees and Members to receive retirement credit for (1) certain service with the Cadet Nurse Corps during World War II; (2) certain service with a nonappropriate fund instrumentality after June 18, 1952, but before January 1, 1966; and (3) certain service as a National Guard technician before January 1, 1969.

DATES: Interim rules effective January 10, 1987; comments must be received on or before April 7, 1987.

ADDRESS: Send written comments to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or deliver to OPM, Room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patricia A. Rochester (202) 632-4682.

SUPPLEMENTARY INFORMATION:

I. Pub. L. 99-638, Enacted November 10, 1986

Pub. L. 99-368 (slip law not yet available) allows credit, under specified conditions, for certain service with the Cadet Nurse Corps during World War II and for service with a nonappropriated fund instrumentality after June 18, 1952, but before January 1, 1966.

(a) Service With the Cadet Nurse Corps

An individual who received training as a student or graduate nurse under a plan approved under section 2 of the Act of June 15, 1943 (57 Stat. 153) is entitled to credit under CSRS if (1) the service totaled 2 or more years; (2) the individual applies to OPM on Standard Form 2803 (Application to Make Deposit or Redeposit) for service credit no later than January 10, 1988; (3) the individual is employed by the Federal Government in a position subject to CSRS at the time SF 2803 is filed; and (4) the individual make a deposit for the service before the date of the separation on which the individual's entitlement to annuity is based.

OPM will determine the amount of the deposit to be made and advise the individual and his or her employing agency of the amount due. The employing agency must collect the deposit and submit the money and documentation of payment to OPM in accordance with instructions to be published in the Federal Personnel Manual. If the deposit is not completed before the date of the employee's separation for retirement purposes, credit for the service will not be allowed. If the employee dies before the deposit is completed, the agency may allow the surviving spouse to elect to make the deposit in a lump sum. Since the law says the individual who performed the service must apply to OPM for credit, however, the surviving spouse will not be able to initiate the application for service credit.

(b) Service With a Nonappropriated Fund Instrumentality

An individual who performed service with a nonappropriated fund instrumentality after June 18, 1952, but before January 1, 1966, in which he or she conducted arts and crafts, drama, music, library, service club, youth activities, sports or recreation programs (including any outdoor recreation programs) for personnel of the armed forces is entitled to service credit under CSRS if he or she was employed in a position subject to CSRS on November 9, 1986. The individual is not required to make a deposit to receive credit for this service. However, if a deposit is not made, his or her annuity will be reduced by 10 percent of the amount that should have been deposited (plus interest).

II. Pub. L. 99-661, Enacted November 14, 1986

Pub. L. 99-661 allows an individual credit for service (prior to January 1, 1969) as a National Guard technician if (1) the individual applies, to OPM on Standard Form 2803 for service credit no later than January 14, 1988; (2) the individual is employed (but the law specifically says not as a reemployed annuitant) by the Federal Government in a position subject to CSRS at the time the SF 2803 is filed; and (3) the individual makes a deposit for the service before the date of separation on which the individual's entitlement to annuity is based.

OPM will determine the amount of the deposit to be made based on the appropriate percentage of basic pay that would have been deducted from the individual's salary for retirement deductions at the time the service was performed. OPM will then advise the individual and his or her employing agency of the amount of the deposit due. The employing agency must collect the deposit and submit the money and documentation of payment to OPM in accordance with instructions to be published in the Federal Personnel Manual. If the deposit is not completed before the date of the employee's separation for retirement purposes, credit for the service will not be allowed. If the employee dies before the deposit is completed, the agency may allow the surviving spouse to elect to make the deposit in a lump sum. Since the law says that the individual who performed the service must apply to OPM for credit, however, the surviving spouse will not be able to initiate the application for service credit.

Under 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these amendments effective in less than 30 days. The rules are being issued as interim rules and will be effective retroactively to comply with the statutory requirement in both Pub. L. 99-638 and Pub. L. 99-661 that OPM prescribe implementing regulations

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within 60 days of the date the statute was enacted.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291; Federal Regulation.

Regulatory Flexibility Act

I certify that this rule will not have a significant economic impact on a substantial number of small entities because it will only affect retirement payments to retired Government employees, spouses, and former spouses.

List of Subjects in 5 CFR Part 831

Administrative practice and procedures, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

James E. Colvard,
Deputy Director.

Accordingly, OPM is amending 5 CFR Part 831 as follows:

PART 831—RETIREMENT

1. The authority citation for Subpart C of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347.

2. In Subpart C, new §§ 831.304, 831.305, and 831.306 are added to read as follows:

§ 831.304 Service with the Cadet Nurse Corps during World War II.

(a) *Definitions and special usages.* In this section—(1) "Basic pay" is computed at the rate of $15 per month for the first 9 months of study; $20 per month for the 10th through the 21st month of study; and $30 per month for any month in excess of 21 months.

(2) "Cadet Nurse Corps" means any training as a student or graduate nurse under a plan approved under section 2 of the Act of June 15, 1943 (57 Stat. 153).

(3) "CSRS" means the Civil Service Retirement System.

(b) *Conditions for creditability.* An individual who performed service with the Cadet Nurse Corps is entitled to credit under CSRS if—

(1) The service totaled 2 years or more;

(2) The individual submits an application for service credit to OPM no later than January 10, 1988;

(3) The individual is employed by the Federal Government in a position subject to CSRS at the time he or she applies to OPM for service credit; and

(4) The individual makes a deposit for the service before separating from the Federal Government for retirement purposes.

(c) *Processing the application for service credit.* Upon receiving an application for credit with the Cadet Nurse Corps, OPM will determine whether all the conditions for creditability have been met, compute the deposit, and advise the agency and the employee of the total amount of the deposit due.

(d) *Agency collection and submission of deposit.* (1) The individual's employing agency must establish a deposit account showing the total amount due and a payment schedule (unless deposit is made in one lump sum), and record the date and amount of each payment.

(2) If the individual cannot make payment in one lump sum, the employing agency must accept installment payments (by allotments or otherwise). However, the employing agency is not required to accept individual checks in amounts less than $50.

(3) If the employee dies before completing the deposit, the surviving spouse may elect to complete the payment to the employing agency in one lump sum; however, the surviving spouse will not be able to initiate an application for such credit.

(4) Payments received by the employing agency must be remitted to OPM immediately for deposit to the Civil Service Retirement and Disability Fund.

(5) Once the employee's deposit has been paid in full or closed out, the employing agency must submit the documentation pertaining to the deposit to OPM in accordance with instructions published in the Federal Personnel Manual.

§ 831.305 Service with a nonappropriated fund instrumentality after June 18, 1952, but before January 1, 1966.

(a) *Definitions and special usages.* In this section—(1) Service in a "nonappropriated fund instrumentality" is any service that involved conducting arts and crafts, drama, music, library, service club, youth activities, sports or recreation programs (including any outdoor recreation programs) for personnel of the armed forces.

(2) "Certification of the head of a nonappropriated fund instrumentality" can also be a certification by the National Personnel Records Center or by an official of another Federal agency having possession of any records which will verify an individual's service.

(3) "CSRS" means the Civil Service Retirement System.

(b) *Conditions for creditability.* An individual who performed service in a nonappropriated fund instrumentality is entitled to credit under CSRS if—

(1) The service was performed after June 18, 1952, but before January 1, 1966; and

(2) The individual was employed in a position subject to CSRS on November 9, 1986.

(c) *Deposit for service is not necessary.* It is not necessary for an individual to make a deposit for service performed with a nonappropriated fund instrumentality to receive credit for this service. However, if the individual does not elect to make a deposit, his or her annuity is reduced by 10 percent of the amount that should have been deposited (plus interest) for the period of service.

§ 831.306 Service as a National Guard technician before January 1, 1969.

(a) *Definitions.* In this section—(1) "Service as a National Guard technician" is a period of service performed under section 709 of title 32, United States Code (or under a prior corresponding provision of law) before January 1, 1969.

(2) "CSRS" means the Civil Service Retirement System.

(b) *Conditions for creditability.* An individual who performs service as a National Guard technician is entitled to credit under CSRS if—

(1) The individual submits an application for service credit to OPM no later than January 14, 1988;

(2) The individual is employed by the Federal Government in a position subject to CSRS (but not as a reemployed annuitant) at the time he or she applies to OPM for service credit; and

(3) The individual makes a deposit for the service before separating from the Federal Government for retirement purposes.

(c) *Processing the application for service credit.* Upon receiving an application requesting credit for service as a National Guard technician, OPM will determine whether all the conditions for creditability have been met, compute the deposit based on the appropriate percentage of basic pay that would have been deducted from the individual's pay at the time the service was performed, and advise the agency and the employee of the amount of the deposit due.

(d) *Agency collection and submission of deposit.* (1) The individual's employing agency must establish a deposit account showing the total amount due and a payment schedule (unless deposit is made in one lump sum), and record the date and amount of each payment.

(2) If the individual cannot make payment in one lump sum, the employing agency must accept installment payments (by allotments or otherwise). However, the employing agency is not required to accept individual checks in amounts less than $50.

(3) If the employee dies before completing the deposit, the surviving spouse may elect to complete the payment in one lump sum; however, the surviving spouse will not be able to initiate an application for such credit.

(4) Payments received by the employing agency must be remitted to OPM immediately for deposit to the Civil Service Retirement and Disability Fund.

(5) Once the employee's deposit has been paid in full or closed out, the employing agency must submit the documentation pertaining to the deposit to OPM in accordance with instructions published in the Federal Personnel Manual.

[FR Doc. 87-2567 Filed 2-5-87; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 646]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 646 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period February 6, 1987, through February 12, 1987. Such action is needed to balance the supply of fresh navel oranges with the demand for such period, due to the marketing situation confronting the orange industry.

DATE: Regulation 646 (§ 907.946) is effective for the period February 6, 1987, through February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202-447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes has small entity orientation and compatibility.

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1986-87 adopted by the Navel Orange Administrative Committee. The committee met publicly on February 3, 1987, in Visalia, California, to consider the current and prospective conditions of supply and demand and recommended, by a vote of 8 to 3, a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for navel oranges has slowed considerably.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Agricultural marketing service, Marketing agreements and orders, California, Arizona, Oranges (Navel).

PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 907.946 Navel Orange Regulation 646 is added to read as follows:

§ 907.946 Navel Orange Regulation 646.

The quantities of navel oranges grown in California and Arizona which may be handled during the period February 6, 1987, through February 12, 1987, are established as follows:

(a) District 1: 1,254,945 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons;

Dated: February 4, 1987.

Thomas R. Clark,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87-2672 Filed 2-5-87; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Regulation 547]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 547 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 260,000 cartons during the period February 8-14, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 547 (§ 910.847) is effective for the period February 8-14, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 has

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been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both states have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1986–87. The committee met publicly on February 3, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a vote of 10 to 1, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that demand is fairly steady.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

1. The authority citation for 7 CFR Part 910 continues to read as follows:

PART 910—[AMENDED]

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.847 is added to read as follows:

§ 910.847 Lemon Regulation 547.

The quantity of lemons grown in California and Arizona which may be handled during the period February 8 through February 14, 1987, is established at 260,000 cartons.

Dated: February 4, 1987.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–2671 Filed 2–5–87; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Proposed Policy Statement on Technical Specification Improvements for Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim policy statement.

SUMMARY: This statement presents the policy of the Nuclear Regulatory Commission (NRC) with respect to the scope and purpose of Technical Specifications for nuclear power plants as required by 10 CFR 50.36. It establishes a specific set of objective criteria for determining which regulatory requirements and operating restrictions should be included in Technical Specifications. It encourages licensees to implement a voluntary program to update their Technical Specifications to be consistent with revised vendor-specific Standard Technical Specifications (STS) to be developed by the industry based on these criteria and subject to NRC Staff approval. The Policy Statement also identifies mechanisms to be used by the NRC and industry to control changes to those items removed from Technical Specifications. The Policy Statement is expected to produce an improvement in the safety of nuclear power plants through the development of more operator-oriented Technical Specifications, improved Technical Specification Bases, reduced action statement-induced plant transients, and more efficient use of NRC and industry resources.

DATE: This Interim Policy Statement is effective upon issuance. However, the public is invited to submit comments by March 23, 1987. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date. On the basis of the submitted comments, the Commission will determine whether to modify the Policy Statement before issuing it as final.

FOR FURTHER INFORMATION CONTACT: David C. Fischer, Technical Specifications Coordinations Branch, Division of Human Factors Technology, Office of Nuclear Reactor Regulations, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–7924.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182a. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2232), mandates the inclusion of Technical Specifications in licenses for the operation of production and utilization facilities. The Act requires that Technical Specifications include information of the amount, kind, and source of special nuclear material, the place of use, and the specific characteristics of the facility. That section also indicates that Technical Specifications should contain such information as the Commission may by rule deem necessary to enable it to find that the utilization of special nuclear material will be in accord with the common defense and will provide adequate protection of public health and safety. Finally, that section requires Technical Specifications to be made a part of any license issued.

Section 50.36, "Technical Specifications," which implements section 182a. of the Atomic Energy Act, was promulgated by the Commission on December 17, 1968 (33 FR 18610). This rule delineates requirements for determining the contents of Technical Specifications. Technical Specifications set forth the specific characteristics of the facility and the conditions for its operation that are required to provide adequate protection to the health and safety of the public. Specifically, 10 CFR 50.36 requires that:

> Each license authorizing operation of a production or utilization facility of a type described in § 50.21 or § 50.22 will include Technical Specifications. The Technical Specifications will be derived from the analyses and evaluation included in the safety analysis report, and amendments thereto, submitted pursuant to § 50.34. The Commission may include such additional Technical Specifications as the Commission finds appropriate.

Technical Specifications cannot be changed by licensees without prior NRC approval. However, since 1969, there has been a trend towards including in Technical Specifications not only those requirements derived from the analyses and evaluation included in the safety analysis report but also essentially all other Commission requirements governing the operation of nuclear power reactors. This extensive use of Technical Specifications is due in part to a lack of well defined criteria (in either the body of the rule or in some other regulatory document) for what should be included in Technical Specifications. This has contributed to the volume of Technical Specifications and to the several fold increase, since 1969, in the number of license amendment applications to effect changes to the Technical Specifications. It has diverted both staff and licensee attention from the more important requirements in these documents to the extent that it has resulted in an adverse but unquantifiable impact on safety.

On March 30, 1982, the NRC published in the **Federal Register** (47 FR 13369) a proposed amendment to its regulations, 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities." The proposed amendment would have revised § 50.36, "Technical Specifications," to establish a new system of specifications divided into two general categories. Only those specifications contained in the first general category as Technical Specifications would have become part of the operating license and require prior NRC approval for any changes. Those specifications contained in the second general category would have become supplemental specifications and would not require prior NRC approval for most changes. The NRC review of the first general category of specifications would have been the same as currently performed for Technical Specifications changes, which are amendments to the operating license. For the second category, supplemental specifications, the licensee would have been allowed to make changes within specified conditions without prior NRC approval. The NRC would have reviewed these changes when they were made and would have done so in a manner similar to that currently used for reviewing design changes, tests, and experiments performed under the provisions of 10 CFR 50.59.

Because of difficulties when defining the criteria for dividing the Technical Specifications into the two categories of the proposed rule and other higher priority licensing work, the rule change was deferred.

In the past several years the nuclear industry and the NRC Staff have been studying the question of whether improvement to the current system of establishing Technical Specification requirements for nuclear power plants is needed. The two most recent studies of this issue were performed by an NRC task group known as the Technical Specifications Improvement Project (TSIP) and a Subcommittee of the Atomic Industrial Forum's (AIF) Committee on Reactor Licensing and Safety.[1] The overall conclusion of these studies was that many improvements in the scope and content of Technical Specifications are needed, and that a joint NRC and Industry program should be initiated to implement these improvements. Both of these groups made specific recommendations which are summarized as follows:

(1) The NRC should adopt the criteria for defining the scope of Technical Specifications proposed in the AIF and TSIP reports. Those criteria should then be used by the NRC and each of the nuclear steam supply system vendor owners groups to completely rewrite and streamline the existing Standard Technical Specifications (STS). This process would result in many requirements being transferred from control by Technical Specification requirements to control by other mechanisms [e.g., the Final Safety Analysis Report (FSAR), Operating Procedures, Quality Assurance (QA) Plan] which would not require a license amendment or prior NRC approval when changes are needed. The new STS should include greater emphasis on human factors principles in order to add clarity and understanding to the text of the STS. The new STS should also provide improvements to the Bases Section of Technical Specifications which provides the purpose for each requirement in the specification.

(2) A parallel program of short-term improvements in both the scope and substance of the existing Technical Specifications should be initiated in addition to developing a new STS as identified in (1) above.

II. Discussion

The Commission recognizes the advantages of improved Technical Specifications. Clarification of the scope and purpose of Technical Specifications will provide useful guidance to both the NRC and industry and should serve as an important incentive for industry participation in a voluntary program to improve Technical Specifications. It will result in Technical Specifications that focus licensee's and the plant operator's attention on those plant conditions most important to safety and should also result in more efficient use of agency and industry resources.

The Policy Statement identifies three objective criteria for defining the scope of Technical Specifications. These criteria are intended to be consistent with the scope of Technical Specifications as stated in the Statement of Consideration accompanying the current rule.

The Statement of Consideration discusses the scope of Technical Specifications as including the following:

> In the revised system, emphasis is placed on two general classes of technical matters: (1) Those related to prevention of accidents, and (2) those related to mitigation of the consequences of accidents. By systematic analysis and evaluation of a particular facility, each applicant is required to identify at the construction permit stage, those items that are directly related to maintaining the integrity of the physical barriers designed to contain radioactivity. Such items are expected to be the subjects of Technical Specifications in the operating license.

33 FR 18610 (December 17, 1968). The first of these two general classes of technical matters to be included in Technical Specifications is captured by criterion (1) and to some extent criterion (2) in that they address systems and process variables that alert the operator to a situation when accident initiation is more likely. The second general class of technical matters is explicitly addressed and captured by criteria (2) and (3). By applying the three criteria contained in the Policy Statement a licensee should capture all of those specific characteristics of its facility and the conditions for its operation that are required to meet the principal operative standard in section 182a. of the Atomic Energy Act, that is, that adequate protection is provided to the health and safety of the public.

The Commission recognizes that the three criteria carry with them a common theme of focusing on those requirements related to technical matters dealing with those features of a facility that are of controlling importance to safety. Since many of the requirements are of immediate concern to the health and safety of the public, the Policy Statement adopts, for the purpose of

[1] SECY–86–10, "Recommendations for Improving Technical Specifications," dated January 13, 1986, contains both "Recommendations for Improving Technical Specifications," NRC Technical Specifications Improvement Project, September 30, 1985, and "Technical Specifications Improvements," AIF Subcommittee on Technical Specifications Improvements, October 1, 1985.

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relocating requirements from Technical Specifications to other licensee-controlled documents, the subjective statement of the purpose of Technical Specifications expressed by an Atomic Safety and Licensing Appeal Board *Portland General Electric Company* (Trojan Nuclear Plant), ALAB–531, 9 NRC 263 (1979). There the Appeal Board interpreted Technical Specifications as being reserved for those conditions or limitations upon reactor operation necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health and safety. The Commission wishes to emphasize that this Policy Statement is intended to be consistent with the language of section 182a. of the Atomic Energy Act, 10 CFR 50.36, and previous interpretations of the regulations. It merely clarifies the scope and purpose of Technical Specifications by identifying criteria which can be used to establish, more clearly, the framework for Technical Specifications (i.e., identify those requirements derived from the analyses and evaluation included in the safety analysis report and which are of immediate concern to the health and safety of the public). It identifies requirements which should be retained in Technical Specifications and also describes a mechanism whereby other "additional" requirements can be identified and controlled through mechanisms other than Technical Specifications.

The Commission invites public comment on this Policy Statement and particularly invites comment on the statement of the purpose of Technical Specifications which introduces the text of the Policy Statement and on whether it would be beneficial for licensees to be able to modify related portions of their LCOs (such as containment systems) without having to apply the terms and provisions of the Policy Statement to all LCOs.

III. The Commission's Policy

The purpose of Technical Specifications is to impose those conditions or limitations upon reactor operation necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health and safety by establishing those conditions of operation which cannot be changed without prior Commission approval and by identifying those features which are of controlling importance to safety.

Licensees are encouraged to implement a program to upgrade their Technical Specifications consistent with this purpose. The Commission will entertain requests based on the criteria below (as clarified by the supporting discussion for individual license amendments that evaluate all of the Limiting Conditions for Operation (LCOs) for an individual plant to determine which LCOs should be included in the Technical Specifications. The Commission does not intend that these criteria be used as the basis for relocation of individual LCOs. LCOs which fail to meet any one or more of the criteria below may be removed from the Technical Specifications and relocated to other licensee-controlled documents, such as the FSAR or licensee procedures. The criteria may be applied to either Standard or custom Technical Specifications. However, it is expected that each of the nuclear steam supply system vendor owners groups will undertake the development of revised STS based on this Policy Statement, and we encourage licensees to use the revised STS as the basis for their individual plant Technical Specifications. The NRC will give first priority in its Technical Specifications improvements efforts to the review and approval of the revised STS and the plant specific license amendment applications based on them. Approved short term Technical Specifications improvements will be included in the revised STS. The revised STS and individual license amendment requests that are submitted based on this Policy Statement should incorporate all terms and provisions of the Policy Statement.

The following criteria delineate those constraints on design and operation of nuclear power plants that are derived from the plant safety analysis report and below in Technical Specifications in accord with 10 CFR 50.36 and the purpose of Technical Specifications stated above.

Criterion 1: Installed instrumentation that is used to detect, and indicate in the control room, a significant abnormal degradation of the reactor coolant pressure boundary:

Discussion of Criterion 1: A basic concept in the adequate protection of the public health and safety is the prevention of accidents. Instrumentation is installed to detect significant abnormal degradation of the reactor coolant pressure boundary so as to allow operator actions to either correct the condition or to shut down the plant safely, thus reducing the likelihood of a loss-of-coolant accident. This criterion is intended to ensure that Technical Specifications control those instruments specifically installed to detect excessive reactor coolant system leakage.

Criterion 2: A process variable that is an initial condition of a Design Basis Accident (DBA) or Transient Analyses that either assumes the failure of or presents a challenge to the integrity of a fission product barrier:

Discussion of Criterion 2: Another basic concept in the adequate protection of the public health and safety is that the plant shall be operated within the bounds of the initial conditions assumed in the existing Design Basis Accident and Transient Analyses. These analyses consist of postulated events, analyzed in the Final Safety Analysis Report (FSAR), for which a structure, system, or component must meet specified functional goals. These analyses are contained in Chapters 6 and 15 of the FSAR (or equivalent chapters) and are identified as Condition II, III, or IV events (ANSI N 18.2) (or equivalent) that either assume the failure of or present a challenge to the integrity of a fission product barrier.

As used in Criterion 2, process variables are only those parameters for which specific values or ranges of values have been chosen as reference bounds in the Design Basis Accident or Transient Analyses and which are monitored and controlled during power operation such that process values remain within the analysis bounds.

The purpose of this criterion is to capture those process variables that have initial values assumed in the Design Basis Accident and Transient Analyses, and which are monitored and controlled during power operation. So long as these variables are maintained within the established values, risk to the public safety is presumed to be acceptably low.

Criterion 3: A structure, system, or component that is part of the primary success path and which functions or actuates to mitigate a Design Basis Accident or Transient that either assumes the failure of or presents a challenge to the integrity of a fission product barrier:

Discussion of Criterion 3: A third concept in the adequate protection of the public health and safety is that in the event that a postulated Design Basis Accident or Transient should occur, structures, systems, and components are available to function or to actuate in order to mitigate the consequence of the Design Basis Accident or Transient. Safety sequence analyses or their equivalent have been performed in recent years and provide a method of presenting the plant response to an accident. These can be used to define the primary success paths.

A safety sequence analysis is a systematic examination of the actions required to mitigate the consequences of

events considered in the plant's Design Basis Accident and Transient Analyses, as presented in Chapters 6 and 15 of the plant's Final Safety Analysis Report (or equivalent chapters). Such a safety sequence analysis considers all applicable events, whether explicitly or implicitly presented. The primary success path of a safety sequence analysis consists of the combination and sequences of equipment needed to operate (including consideration of the single failure criteria), so that the plant response to Design Basis Accidents and Transients limits the consequences of these events to within the appropriate acceptance criteria.

It is the intent of this criterion to capture into Technical Specifications only those structures, systems, and components that are part of the primary success path of a safety sequence analysis. Also captured by this criterion are those support and actuation systems that are necessary for items in the primary success path to successfully function.

In addition to those structures, systems, and components captured by the above criteria, it is the Commission's policy that licensees retain in their Technical Specifications LCOs, action statements, and Surveillance Requirements for the following systems (as applicable) which operating experience and probabilistic risk assessment have generally shown to be important to public health and safety:

- Reactor Core Isolation Cooling (RCIC)/Isolation Condenser,
- Residual Heat Removal (RHR),
- Standby Liquid Control (SBLC), and
- Recirculation Pump Trip (RPT).

The Commission recognizes that features of plant design and operation not addressed in the safety analysis report's Design Basis Accidents or Transient Analyses can, in some cases, be significant contributors to the plant's overall core melt probability and risk. As stated in 10 CFR 50.36, the Commission may include such additional Technical Specifications as the Commission finds appropriate. Based on this, and consistent with the Commission's Safety Goal and Severe Accident Policy Statements, the Commission finds that risk evaluations are an appropriate tool for defining requirements that should be retained in Technical Specifications where including such requirements is consistent with the purpose of Technical Specifications as defined above.

The Commission expects that owners groups, in preparing their proposals to streamline the Standard Technical Specifications, will utilize the available literature on risk insights and Probabilistic Risk Assessments (PRAs). This material should be employed to strengthen the technical bases for those requirements that remain in Technical Specifications, when applicable, and to verify that none of the requirements to be relocated contain constraints of prime importance in limiting the likelihood or severity of the accident sequences that are commonly found to dominate risk. Similarly, the Staff will also employ risk insights and PRAs in evaluating the revised STS.

In some cases, plant-specific PRAs or risk surveys conducted, for example, pursuant to the Commission's Severe Accident Policy, may be available to licensees as they prepare license amendments to adopt the revised STS to their plant, or to streamline custom Technical Specifications under this Policy Statement. Where such PRAs or surveys are available, they should be used to strengthen the Bases and screen those Technical Specifications to be relocated, as suggested above. Where such plant-specific risk surveys are unavailable, licensees should utilize the available literature on risk insights and PRAs, as described above. However, licensees need not await the performance of plant-specific PRA studies before availing themselves of this policy. As in the case of the revised STS discussed above, the Staff will also utilize risk insights and PRAs in evaluating the plant-specific submittals. Further, as a part of the Commission's ongoing program of improving Technical Specifications, it will continue research in methods to make better use of risk and reliability considerations for defining future generic Technical Specification requirements.

Requirement(s) which would be relocated from Technical Specifications to another licensee-controlled document (e.g., the FSAR and 10 CFR 50.59, Operating Procedures, the QA Plan, or Fire Protection Plan) may be changed or deleted in conjunction with the filing of the revised STS or of individual license amendment request to implement this Policy Statement. The package containing the revised STS or the amendment request must contain a clear statement of the basis of the requirement(s) to be changed or deleted, a safety evaluation, and a statement that the change(s) has been reviewed by a multidisciplinary group of responsible, technical supervisory personnel, including onsite operations personnel.

When licensees submit amendment requests based on this Policy Statement, they should identify the location of, and controls for, the technical and administrative requirements of the removed Technical Specifications. The Staff will carefully review these submittals to ensure the accountability of each relocated requirement.

Appropriate surveillance requirements and action statements should be retained for each LCO which remains in the Technical Specifications. Each LCO, Action Statement, and Surveillance Requirement should have supporting Bases. The Bases should at a minimum address the following questions and cite references to appropriate licensing documentation (e.g., FSAR, Topical Report) to support the Bases.

1. What is the justification for the Technical Specification, i.e., which criterion requires it to be in the Technical Specifications?

2. What are the Bases for each Limiting Condition for Operation (LCO), i.e., why was it determined to be the lowest functional capability or performance level for the system/component in question necessary for safe operation of the facility and what are the reasons for the Applicable Operational Modes(s) for the LCO?

3. What are the Bases for each Action Statement, i.e., why should this remedial action be taken if the associated LCO cannot be met, how does this action relate to other Action Statements associated with the LCO, and what justifies continued operation of the system/component at the reduced state from the state specified in the LCO for the allowed time period?

4. What are the Bases for each Limiting Safety System Setting?

5. What are Bases for each Surveillance Requirement and the surveillance interval specified, i.e., what specific functional requirement is the surveillance designed to verify, and why is this surveillance necessary at the specified frequency to assure that the system/component function is maintained, that facility operation will be within the safety limits, and that the LCO will be met?

Note.—In answering these questions the Bases for each number (e.g., Trip Set point, Response Time, Allowed Outage Time, Surveillance Test Interval), state, condition, and definition (e.g., operability) should be clearly specified. As an example, a number might be based on engineering judgment, past experience, and/or PRA insights but this should be clearly stated.

The Commission recognizes that certain amendments to the regulations[2] may be necessary before the content of Technical Specifications can be limited entirely to the purpose defined above as embodied in the associated criteria (e.g.,

[2] Ibid. Enclosure 1, Table 3.1.

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§ 50.36a on Radiological Environmental Technical Specifications would have to be amended before radiological effluent controls can be transferred from the Technical Specifications to other documents). The Staff will initiate in parallel with issuance of this Policy Statement the rule changes necessary to fully implement this Policy Statement.

To give added assurance that the conditions and limitations currently contained in Technical Specifications that will be removed are adequately controlled, the NRC will give increased attention to changes made pursuant to § 50.59 and to the administrative control requirements of the Technical Specifications. The NRC is paying closer attention to FSAR updates, and will specifically look for changes which potentially violate § 50.59. The Staff is encouraging industry to get the help of the Institute of Nuclear Power Operations (INPO) and the support of the Nuclear Utility Management Resource Committee (NUMARC), in sponsoring activities to encourage the highest quality for utility review of changes, including those made pursuant to § 50.59. The NRC will work with industry to develop a standard for the conduct of § 50.59 reviews. This standard will then be afforded regulatory status (e.g., by a separate policy statement, regulatory guide, or generic letter). In the interim, utilities that choose to file an application to amend their Technical Specifications in accordance with this Policy Statement must have in place administrative controls to ensure that changes made pursuant to § 50.59 are made only after the bases for the requirement have been clearly established and after review by a multidisciplinary review group made up of responsible, technical supervisory personnel, including onsite operations personnel. In addition, if Technical Specifications requirements are relocated to plant procedures, then the revised Technical Specifications must contain administrative controls to ensure that they are appropriately maintained and implemented. The Staff will issue guidance on the appropriate control mechanisms for requirements removed from Technical Specifications (e.g., FSAR amendment, procedures, or other licensee-controlled document) in time for use when the Policy Statement is issued in final form.

The NRC will, consistent with its mission, allocate resources as necessary to implement this Policy Statement.

IV. Enforcement Policy

Any changes to a licensees' Technical Specifications to apply this Policy Statement's criteria will be made by the license amendment process prior to implementation. Continued compliance with Technical Specifications and with the commitments contained in other licensee-controlled documents is required by the Commission. Violations and deviations will, as in the past, be subject to the Enforcement Policy in 10 CFR Part 2, Appendix C, (1986).

If a licensee elects to apply these criteria, the requirements of the removed specifications will be relocated to the Final Safety Analysis Report (FSAR) or other licensee controlled documents. Licensees must operate their facilities in conformance with the descriptions of their facilities and procedures in their FSAR unless the change is reviewed and approved in accordance with § 50.59. The Commission will take appropriate enforcement action to ensure that licensees comply with FSAR commitments and § 50.59. Changes to the provisions of other documents (e.g., QA plan, plant procedures) are subject to the specific requirements for those documents. Nothing in this Policy Statement shall limit the authority of the NRC to conduct inspections as deemed necessary and to take appropriate enforcement action when regulatory requirements or commitments are not met.

Additional Views of Commissioner Asselstine

Commissioner Asselstine adds the following: I disapprove this interim policy statement. Although I support an effort to bring about improvements in plant Technical Specifications, I believe that this policy statement must be modified in four respects: First, any such policy should contain an explicit statement that the Commission will not entertain changes in testing and surveillance intervals and allowed outage times until licensee maintenance programs are strengthened. Second, I believe the 10 CFR 50.59 review process should be strengthened before licensees are given the flexibility afforded this interim policy. Third, this interim policy weakens the Commission's enforcement options for some important safety requirements now contained in the Technical Specifications. For example, plants licensed since January 1, 1979 (33 full power licenses thus far) are not covered by the requirements of the Commission's fire protection regulations (10 CFR Part 50, Appendix R). Instead, the Technical Specifications and license conditions have been used as the vehicle for establishing enforceable fire protection requirements for the plants licensed since 1978. It appears that this policy statement would allow removing the enforceable fire protection requirements from the Technical Specifications and placing them in a far less enforceable document—the Final Safety Analysis Report. The February 7, 1986 memorandum from the Acting Director for Operations to the Commissioners (Subject: Test Application of TSIP Technical Specification Selection Criteria) indicates that fire detection instrumentation, fire suppression systems and fire barriers would no longer be covered by the Technical Specifications. As the NRC staff admits, "(T)he NRC's ability to fine a licensee or to seek escalated enforcement action against a licensee who fails to comply with some relocated Technical Specifications is somewhat diminished." This is unacceptable. At a minimum, the Commission should treat failures to meet safety provisions in the Final Safety Analysis Report and other such controlled documents in the same manner as failures to comply with Technical Specifications.

Finally, the February 7, 1986 memorandum indicates that AC and DC power sources would not be covered by Technical Specifications while the plant is in the decay heat removal mode. These power sources are not deemed vital because events in this mode or operation are not "design basis accidents." I find this argument troubling. The significance of the decay heat removal function is described in, for example, the NRC's Office of Analysis and Evaluation of Operational Data report "Decay Heat Removal Problems at U.S. Pressurized Water Reactors" AEOD/C503, December, 1985. I fail to see the wisdom of not addressing power sources in the Technical Specifications while the plant is in the decay heat removal mode. Therefore, I must question the adequacy of the selection criteria for what is and is not to remain in the Technical Specifications.

I would appreciate receiving comments on the above.

Dated at Washington, DC, this 3d day of February, 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87-2560 Filed 2-5-87; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-186-AD; Amdt. 39-5543]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD), applicable to certain Boeing Model 747 airplanes equipped with General Electric CF6 engines, which requires repetitive inspections of the pylon skin aft of the precooler exhaust vent for cracks on the inboard and outboard pylons, and repair, if necessary. This action also provides for an optional modification of the pylons which, if incorporated, will terminate the repetitive inspection requirement. This action is prompted by recent reports of extensive damage to pylons on several airplanes. This action is necessary since overheating and subsequent cracking, if not corrected, could result in failure of the pylon and separation of the engine from the airplane.

EFFECTIVE DATE: March 13, 1987.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive to require inspection for cracks in the pylons of certain Boeing Model 747 airplanes equipped with General Electric CF6 engines and repair, if necessary, was published in the **Federal Register** on October 8, 1986 (51 FR 36017). The comment period for the proposal closed on December 1, 1986.

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment which was received.

The Air Transport Association (ATA) of America, on behalf of its members, expressed no objection to the content of the AD.

Paragraph E. of the AD has been revised by the addition of the Principal Maintenance Inspector in the approval process for requests by operators of an alternate means of compliance or adjustment of the compliance time. The AD has also been revised to allow accomplishment of the required inspections and repairs in accordance with later FAA-approved revisions of the service bulletin. These changes are essentially editorial in nature and have been made for clarification purposes; they impose no additional economic burden on operators.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously noted.

It is estimated that 7 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $560 for the initial inspection cycle.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this rule, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A final evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

PART 39—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes equipped with General Electric CF6 engines, listed in Boeing Service Bulletin 747-54-2091, Revision 1, dated October 22, 1984, certificated in any category.

To prevent separation of an engine due to overheating and subsequent cracking of the engine pylon, accomplish the following, unless already accomplished:

A. Prior to accumulation of 10,000 flight hours, or within the next 7½ months after the effective date of this AD, whichever occurs later, perform a visual inspection of the pylon skin aft of the precooler exhaust vent for cracks on the inboard and outboard pylons of Group 1 airplanes, and on the outboard pylons only of Group 2 airplanes, as defined in the service bulletin, in accordance with Boeing Service Bulletin 747-54-2091, Revision 1, dated October 22, 1984, or later FAA-approved revision.

B. If no cracks are found, reinspect at intervals not to exceed 15 months until terminating action, defined in paragraph D. of this AD, is accomplished.

C. If cracks are found, repair prior to further flight in accordance with FAA-approved data and continue to reinspect at intervals not to exceed 15 months; or install the terminating modification defined in paragraph D. of this AD.

D. Terminating action for the inspections required by this AD is the installation of the frame stiffeners and skin doublers in accordance with Boeing Service Bulletin 747-54-2091, Revision 1, dated October 22, 1984, or later FAA-approved revision.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This Amendment becomes effective March 13, 1987.

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Issued in Seattle, Washington, on January 28, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-2178 Filed 2-5-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 303

DEPARTMENT OF THE INTERIOR

Office of Territorial and International Affairs

[Docket No. 61090-6237]

Limit on Duty-Free Insular Watches in Calendar Year 1987

AGENCIES: Import Administration, International Trade Administration, Department of Commerce; Office of Territorial and International Affairs, Department of the Interior.

ACTION: Final rule.

SUMMARY: Pursuant to Pub. L. 97-446, the Departments of the Interior and Commerce (the Departments) share responsibility for establishing a limit on the quantity of watches and watch movements which may be entered free of duty during each calendar year. The law also requires the Departments to establish the shares of this limited quantity which may be entered from the three insular possessions of the U.S. and the Northern Mariana Islands (NMI). This action establishes the total quantity of duty-free insular watches and watch movements for 1987 at 6,000,000 units and divides this amount among the three insular possessions of the United States and the NMI. We have done this by amending 15 CFR § 303.14(e), which now permits a total of 6,500,000 units distributed among the three insular possessions and the NMI.

EFFECTIVE DATE: March 9, 1987.

FOR FURTHER INFORMATION CONTACT: Faye Robinson (202) 377-1660.

SUPPLEMENTARY INFORMATION: We published these revisions in proposed form on November 10, 1986 (51 FR 40813) and invited comments. We did not receive any comments.

Accordingly, the Departments are establishing for calendar year 1987 a total quantity and respective territorial shares as shown in the following table:

Virgin Islands	4,000,000
Guam	1,000,000
American Samoa	500,000
Northern Mariana Islands	500,000
Total	6,000,000

Classification

Executive Order 12291

In accordance with Executive Order 12291 (46 FR 13193, February 19, 1981), the Departments of Commerce and the Interior have determined that this rule does not constitute a "major rule" as defined by section 1(b) of the Order. It is not likely to result in:

(1) An annual effect on the economy of $100 million more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, preparation of a Regulatory Impact Analysis is not required.

This regulation was submitted to the Office of Management and Budget for review, as required by Executive Order 12291.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the General Counsel of the Department of Commerce has certified that this action will not have a significant economic impact on a substantial number of small entities. Fewer than ten entities are directly affected by this action. The Commercial benefits of the program governed by these regulations, for entities both directly and indirectly affected, are less than $10 million per year.

Paperwork Reduction Act

This rule does not contain information collection requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 15 CFR Part 303

Imports, Customs duties and inspection, Watches and jewelry, Marketing quotas, Administrative practice and procedure, Reporting and recordkeeping requirements, American Samoa, Guam, Virgin Islands, Northern Mariana Islands.

PART 303—[AMENDED]

For reasons set forth above, we amend Part 303 as follows:

1. The authority citation for Part 303 continues to read as follows:

Authority: Pub. L. 97-446, 96 Stat. 2329, 2331 (19 U.S.C. 1202 note); Pub. L. 94-241, 90 Stat. 263 (48 U.S.C. 1681, note).

2. Section 303.14 is amended by revising paragraph (e) to read as follows:

§ 303.14 Allocation factors and miscellaneous provisions.

* * * * *

(e) *Territorial shares.* The shares of the total duty exemption are 4,000,000 for the Virgin Islands, 1,000,000 for Guam, 500,000 for American Samoa, and 500,000 for the Northern Mariana Islands.

Dated: February 2, 1987.

Joseph A. Spetrini,

Deputy to the Deputy Assistant Secretary for Import Administration.

Kittie Baier,

Deputy Assistant Secretary for Territorial and International Affairs.

[FR Doc. 87-2547 Filed 2-5-87; 8:45 am]

BILLING CODE 3510-DS, 4310-93-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 15, 17, 203, 243, 511, 842, 942, 964, 968, and 3282

[Docket No. N-87-1617]

Announcement of Effective Dates; Corrections

AGENCY: Office of the Secretary; Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Office of the Assistant Secretary for Public and Indian Housing; and Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of announcement of effective dates for certain recently published final rules; Corrections of final rules.

SUMMARY: Section 7(o)(3) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o)(3), requires HUD to wait thirty calendar days of continuous session of Congress before it makes a published rule effective. This notice announces effective dates for certain recently published final rules. Thirty calendar days of continuous session of Congress will expire in the present Congress on March 2, 1987. For an explanation of subject matter on the rules, see **"SUPPLEMENTARY INFORMATION."**

In addition, the Department is publishing corrections for several of the rules in order to cite the appropriate effective date in the text of the rules.

DATES: For effective dates see **"SUPPLEMENTARY INFORMATION."**

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10276, 451 7th Street, SW., Washington, DC 20410. Telephone No. (202) 755-7055. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The effective date provision of the published rules stated that the rules would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced that future notice of the rules' effectiveness would be published in the **Federal Register.** Thirty calendar days of continuous session of Congress will expire in the present Congress on the dates listed below.

In addition, 24 CFR 203.423, 243.4, 942.4, and 964.3 are being corrected to include the appropriate effective date of the text of those provisions.

The effective dates are announced for the rules listed below:

24 CFR Part 15: Disclosure of Profit and Loss Information to Potential Purchasers of HUD-Held Morgages, Final Rule published December 9, 1986 (51 FR 44284), Docket No. R-86-1236; FR-2014. Effective Date: March 2, 1987.

24 CFR Part 17: Administrative Claims; Implementing the Deficit Reduction Act, Final Rule published October 31, 1986 (51 FR 39748), Docket No. R-86-1244; FR-2092. Effective Date: March 2, 1987.

24 CFR Part 203: Nonentitlement to Distributive Shares in the Event of Foreclosure, Final Rule published December 9, 1986 (51 FR 44286), Docket No. R-86-1297; FR-2214. Effective Date: March 2, 1987.

24 CFR Parts 243, 511, 842, and 942: Pet Ownership in Assisted Housing for the Elderly or Handicapped, Final Rule published December 1, 1986 (51 FR 43270), Docket No. R-86-1152; FR-1936. Effective Date: March 2, 1987.

24 CFR Parts 964 and 968: Tenant Participation and Management in Public Housing Projects; Eligibility for Comprehensive Improvement Assistance Program Funds, Final Rule published December 8, 1986 (51 FR 44055), Docket No. R-86-1265; FR-2033. Effective Date: March 2, 1987.

24 CFR Part 3282: Revision of Portions of Manufacturers Home Procedural and Enforcement Regulations, Final Rule published September 29, 1986 (51 FR 34466), Docket No. R-86-1307; FR-2287. Effective Date: March 2, 1987.

Accordingly, 24 CFR 203.423, 243.4, 942.4, and 964.3 are corrected as follows, and effective dates are announced for the rules listed below:

1. In FR Doc. 86-27601, beginning on page 44286 in the issue of December 9, 1986, the second sentence of 24 CFR 203.423(a) (appearing on page 44287) is correctly revised to read as follows:

§ 203.423 Distribution of distributive shares.

(a) * * * However, in the case of a mortgage insured pursuant to an application for a conditional commitment received on or after March 2, 1987 (or, as appropriate, an application for mortgage insurance endorsement under the Single Family Direct Endorsement program, as provided in § 203.255, where the property appraisal report is signed by the mortgagee's approved underwriter on or after March 2, 1987, no distribution shall be made if, after forclosure, title to the property is conveyed to a person or an entity other than the Commission.

* * * * *

2. In FR Doc. 86-26746, beginning on page 43270 in the issue of December 1, 1986, 24 CFR 243.4 (appearing on page 43297) and 24 CFR 942.4 (appearing on page 43302) are correctly added to read as follows:

§ 243.4 Effective date.

This part shall be effective on March 2, 1987. However, project owners shall have until May 1, 1987 to implement the provisions of this part.

§ 942.4 Effective date.

This part shall be effective March 2, 1987. However, the PHA shall have until May 1, 1987 to implement the provisions of this part.

3. In FR Doc. 86-27505, beginning on page 44055 in the issue of December 8, 1986, the last sentence of 24 CFR 964.3(b) is correctly added to read as follows:

§ 964.3 Applicability and scope.

* * * * *

(b) * * * Current tenant management contracts that do not meet the requirements of Subpart C of this part need not be modified until the first renewal on or after March 2, 1987.

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: January 30, 1987.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 87-2298 Filed 2-5-87; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8113]

Withholding Upon Dispositions of U.S. Real Property Interests by Foreign Persons

AGENCY: Internal Revenue Service, Treasury.

ACTION: Corrections to final rules.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on December 24, 1986 (51 FR 46620) as Treasury Decision 8113. The rules relate to the withholding that is required upon the disposition of a U.S. real property interest by a foreign person.

FOR FURTHER INFORMATION CONTACT: Jeffrey Dorfman, 202-566-3407 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final rules that are the subject of this corrections notice provided the public with guidance with respect to the withholding requirements of section 1445 of the Internal Revenue Code of 1954. Those rules affect purchasers of U.S. real property interests and entities with foreign interest-holders that dispose of U.S. real property interests. The rules also contained amendments to the Income Tax Regulations relating to substantive income tax liability on such a disposition.

Need for Corrections

As published, Treasury Decision 8113 contains several typographical errors that might cause confusion to taxpayers and practitioners.

Corrections of Publication

Accordingly, the publication of Treasury Decision 8113, which was the subject of FR Doc. 86-28511, is corrected as follows:

§ 1.897-2 [Amended]

Paragraph 1. On page 46627, second column, "Par. 3" (the instructional

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paragraph for § 1.807–2(c)(5) Example 2), in the 13th line, the language " 'April 7, 1966' in the first and second" is removed and the language " 'April 7, 1966' in the first and third" is added in its place.

Par. 2. In § 1.897–2, paragraph (h)(2)(v), page 46628, first column, the language "1325 K Street, NW., Washington, DC 20225" is removed and the language "950 L'Enfant Plaza South, SW, COMSAT Building, Washington, DC 20024" is added in its place.

Par. 3. In § 1.897–2, paragraph (h)(4)(ii), the language "OP:I:C:O" is corrected to read "OP:I:C:E".

§ 1.1445–1 [Amended]

Par. 4. In § 1.1445–1, paragraph (c)(2)(ii), page 46630, second column, the language "(ii) *Anti-abuse rule (A) In general.*" is corrected to read "(ii) *Anti-abuse rule—(A) In general.*".

Par. 5. In the same § 1.1445–1, paragraph (c)(2)(ii)(B)(*1*) thereof, page 46630, third column, the reference "§ 1.1445–3T(c)" is corrected to read "§ 1.1445–3(c)".

Par. 6. In § 1.1445–1, paragraph (f), page 46631, third column, the caption that reads "*Effect of withholding on transferor.*—" is corrected to read "*Effect of withholding on transferor—*".

Par. 7. In the same § 1.1445–1, paragraph (f), paragraph (f)(3)(ii), page 46632, first column, the language "for an early refund under § 1.1445–3(f)" is corrected to read "for an early refund under § 1.1445–3(g)".

§ 1.1445–3 [Amended]

Par. 8. In § 1.1445–3, paragraph (b), page 46637, third column, the reference "§ 1.445–1(g)(10)," is corrected to read "§ 1.1445–1(g)(10).", and the language "1325 K St. NW., Washington, DC 20225." is removed.

Par. 9. In § 1.1445–3, paragraph (c)(2), page 46638, second column, the language "long term capital gain, currently 28 percent." is corrected to read "long term capital gain."

Par. 10. In § 1.1445–3, paragraph (g), page 46640, third column, in the introductory material, the reference "paragraph (f)" is corrected to read "paragraph (g)".

Par. 11. In the same § 1.1445–3, paragraph (g), page 46640, third column, in paragraph (g)(2), the language "pursuant to withholding" is corrected to read "pursuant to the withholding"; in paragraph (g)(3), the language "withheld by transferee" is corrected to read "withheld by the transferee"; and in paragraph (g)(4), the language "refunded to transferor" is corrected to read "refunded to the transferor".

§ 1.1445–4 [Amended]

Par. 12. In § 1.1445–4, paragraph (f), page 46641, third column, in paragraph (f)(3)(ii), the word "or" is removed; and in paragraph (f)(3)(iii), the language "tasks." is corrected to read "tasks;".

§ 1.1445–5 [Amended]

Par. 13. In § 1.1445–5(b)(2)(i) introductory text, fifth line, "1445(e) if—" is removed.

Par. 14. In § 1.1445–5, paragraph (b)(3), page 46643, third column, the subparagraph that is designated "(ii)" and is captioned "*Reliance upon certification not permitted*" is redesignated "(iii)".

Par. 15. In the same § 1.1445–5, paragraph (b), page 46643, third column, in redesignated paragraph (b)(3)(iii)(C), the word "fuduciary's" is corrected to read "fiduciary's".

Par. 16. In § 1.1445–5, paragraph (b), page 46645, first column, subparagraph (b)(7), in the 7th sentence the reference to "§ 1.1445–6(f)" is corrected to read "§ 1.1445–6(g)".

Par. 17. In § 1.1445–5, paragraph (c), page 46645, second column, paragraph (c)(1)(i), the language "subdivision (ii) or (iii)," is removed and the language "subdivision (ii), (iii), or (iv)" is added in its place.

Par. 18. In § 1.1445–5, paragraph (c), page 46646, first column, paragraph (c)(1)(iii)(A), in the final sentence of that paragraph the word "interest" is corrected to read "interests".

Par. 19. In § 1.1445–5, paragraph (c), page 46646, first column, paragraph (c)(1)(iii)(B): In the introductory material the word "az" is corrected to read "a"; in paragraph (c)(1)(iii)(B)(*2*), the language "(*2*) In the case of disposition of U.S. real property interests occurring after November 21, 1986 but before [30 days after date of publication of this regulation]" is removed and the language "(*2*) In the case of a disposition of a U.S. real property interest occurring after November 21, 1986, but before January 23, 1987" is added in its place.

Par. 20. In the same § 1.1445–5, paragraph (c)(1)(iii)(C), page 46646, in the chart in the second and third columns, the last entry in the "Date" column which reads "Jan. 1, 1987" is corrected to read "Jan. 1, 1988"; in the "Parcel sold" column opposite the date Mar. 1, 1987, the language "Parcel 1" is added, and opposite the date Mar. 5, 1987, the language "Parcel 1" is removed; in the "Gains or (loss) realized" column, opposite the date Mar. 1, 1987, the language "140,000" is added, and opposite the date Mar. 5, 1987, the language "140,000" is removed.

Par. 21. In the same § 1.1445–5, paragraph (c), page 46647, first column, paragraph (c)(3), the language in the heading "(3) *Large partnerships or trusts—(i) In general.*" is corrected to read "(3) *Large partnerships or trusts*—(i) *In general.*".

Par. 22. In the same § 1.1445–5, paragraph (c), page 46647, second column, paragraph (c)(3)(iv)(A), the word "interest" is corrected to read "interests".

§ 1.1445–6 [Amended]

Par. 23. In § 1.1445–6, paragraph (c), page 46649, second column, in the 3rd sentence of the introductory material, the language "long term capital gain, currently 20 percent." is corrected to read "long term capital gain."; and in the 4th sentence, the language "long term capital gain, currently 28 percent." is corrected to read "long term capital gain.".

Par. 24. In § 1.1445–6, paragraph (e), page 46649, third column, paragraph (e)(1)(ii), the language "Director, Foreign Operations District" is removed and the language "Assistant Commissioner (International)" is added in its place.

§ 1.1445–7 [Amended]

Par. 25. In § 1.1445–7, last line of the section heading, the word "(temporary)" is removed.

Robert A. Katcher,

Chief, Branch 5, Associate Chief Counsel (International).

[FR Doc. 87–1651 Filed 2–5–87; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

Waste Prevention; Value Determination

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending 30 CFR 206.100 to reference Bureau of Land Management (BLM) regulations on the prevention of waste of oil or gas and to provide for the determination of value of oil or gas wasted. The amendment establishes consistency between BLM and Royalty Management regulations in the event of wasted or avoidably lost production.

EFFECTIVE DATE: February 6, 1987.

FOR FURTHER INFORMATION CONTACT: John L. Price, telephone (303) 231–3392, (FTS) 326–3392.

SUPPLEMENTARY INFORMATION: The principal author of this rulemaking is Scott Ellis of the Minerals Management Service, Lakewood, Colorado.

I. Background

The purpose of this final rulemaking is to clarify the policy to be followed by the Department of the Interior when the lessee of a federal onshore oil and gas lease violates the statutory and contractual probibition aganist the waste of gas from the lease. At the present time, the Department requires payment of royalty on the waste of onshore oil and of offshore oil or gas. In contrast, with respect to onshore gas, current regulations of the BLM require payment of royalty (43 CFR 3162.7–1(d)), whereas, MMS regulations require the payment of full value. Through an oversight, the MMS regulation was not modified when the BLM regulation was adopted. The Department has determined that the BLM regulation, effective on October 22, 1984 (49 FR 37356), to implement the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1701 et seq., represents the policy which should be followed to value all wasted gas.

Section 16 of the Minerals Leasing Act of 1920 (30 U.S.C. 225) prohibits waste of oil and gas as a condition of the lease and states that violations may be sufficient grounds for lease forfeiture. In 1925, the Secretary of the Interior decreed that no royalty will become due for unavoidably lost production, for gas vented or flared with proper approval, and for production used for lease activity. This interpretation was ratified by Congress in 1946.

A regulation was issued in 1936 to assess the full value of all gas considered wasted or avoidably lost, and codified at 30 CFR 221.35, later renumbered in 1982 as 30 CFR 221.102. The regulation included gas that was vented or flared without specific approval to do so.

A Notice to Lessees (NTL-4) was issued in 1974 that provided for the following:

—Payment would be due on the full value of avoidably lost gas, including gas vented or flared without approval.
—Royalty value would be due on avoidably lost oil.
—Royalty value would be due on unavoidably lost oil and gas, and
—Royalty value would be due on production used for lease activity.

Although NTL–4 was specific to onshore production, the Department of the Interior (DOI) interpreted the provisions of NTL–4 and the treatment of offshore production (in NTL's 78–1 and 78–2) to be the same. In 1978, however, the Federal courts overruled the provisions of NTL–4, *Gulf Oil Corp. v. Andrus*, 460 F. Supp. 15 (C.D. Cal.), and, in 1981, the courts similary determined that the offshore NTL's were invalid, *Amoco Production Co.* v. *Andrus*, 527 F. Supp. 796 (E.D. La), as they applied to unavoidably lost production, approved venting and flaring, and production used for lease or unit operating purposes.

Since an explanatory notice for lost production royalty was required with the demise of NTL–4, NTL–4A was issued (44 FR 76600, December 27, 1979), which provided for the following:

—Payment would be due on the full value of avoidably lost gas (wasted), including gas vented or flared without approval, as provided in the regulations;
—Royalty value would be due for avoidably lost oil (wasted);
—No royalty value would be due on unavoidably lost production, including gas vented or flared with approval or on any production used on the lease.

Section 308 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) provided that lessees were liable for royalty payments on oil or gas lost or wasted from a lease site (30 U.S.C. 1756). Before regulations were issued to implement the FOGRMA, BLM and MMS were reorganized.

In August of 1983, oil and gas operational and royalty regulations were revised within the jurisdictional agencies to reflect the BLM/MMS reorganization. Prior regulations at 30 CFR 221.102, which required the full value for gas wasted onshore, and at 30 CFR 250.65 and 250.66, which required royalty for oil and gas wasted offshore, all became royalty valuation regulations at 30 CFR Part 206, with the onshore regulation at 30 CFR 206.100.

The BLM regulations to implement FOGRMA were published at 49 FR 37356 (September 21, 1984) and were effective on October 22, 1984. These BLM regulations require royalty payment for avoidably lost or wasted onshore oil or gas (43 CFR 3162.7–1(d)) and supersede the statement in NTL–4A concerning full value. The MMS regulation which required full value for avoidably lost or wasted onshore oil or gas remained at 30 CFR 206.100.

This regulatory amendment is meant to correct these inconsistencies and provide the following:

—Specific reference to BLM regulations for determining whether the loss of production is considered wasted.
—Specific reference to royalty valuation regulations when BLM determines that production has been wasted.

The amended rule provides that the lessee is obligated to prevent the waste of Federal and Indian onshore oil or gas production in accordance with BLM regulations. The determination of what constitutes waste is the responsibility of BLM, under its operational regulations. This amendment will also have the effect of deleting the current provision that places full value on oil or gas production that is regarded as avoidably lost. Since BLM operational regulations stipulate that royalty is due at the royalty percentage provided in the lease for production considered to be avoidably lost, this MMS amendment merely states that the value, for royalty purposes, will be determined in accordance with the value provisions in 30 CFR Part 206. Accordingly, the amended rule will be consistent with the operational regulations of BLM.

This final rule clarifies all existing production value directives regarding wasted or avoidably lost onshore oil or gas production contained in various Secretarial, MMS, and U.S. Geological Survey Conservation Division (now BLM, Onshore Operations Division) directives, regulations, and NTL's (Notice to Lessees) issued prior to and after the effective date of this rulemaking.

II. Procedural Matters

Effective Date

The changes included in this MMS rulemaking are administrative corrections only, and not substantive changes. BLM, not MMS, is the agency within the Department of the Interior to which the Secretary has delegated the authority to establish substantive regulations governing lease operations and remedies for failure by lessees to comply with its regulations. The MMS operating procedures are already consistent with BLM regulations and the amended MMS regulations should be made effective immediately. Accordingly, pursuant to 5 U.S.C. 553(b), it has been determined that it is unnecessary to issue proposed regulations before the issuance of this final regulation. For the same reason, it has been determined that in accordance with 5 U.S.C. 553(d), there is good cause to make this regulation effective immediately. Moreover, as a matter of Secretarial policy, the deleted regulation will not be applied to any assessment for wasted onshore gas issued after the effective date of the BLM regulations to

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implement the FOGRMA, which is October 22, 1984.

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This rulemaking amendment is not considered to be a major rule because the changes are administrative only and not substantive.

Paperwork Reduction Act of 1980

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

National Environmental Policy Act of 1969

The Department of the Interior has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)].

List of Subjects in 30 CFR Part 206

Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Oil and gas exploration, Public lands-mineral resources.

Dated: November 26, 1986.

James E. Cason,

Acting Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, the following revisions are made to 30 CFR Part 206:

SUBCHAPTER A—ROYALTY MANAGEMENT

PART 206—[AMENDED]

1. The authority citation for Part 206 is revised to read as follows:

Authority: 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; 43 U.S.C. 1801 et seq.

2. Section 206.100 is revised to read as follows:

§ 206.100 Waste prevention; value determination.

The lessee is obligated to prevent the waste of oil or gas. If the BLM determines in accordance with 43 CFR Part 3160 that waste has occurred, the value of oil or gas wasted will be determined in accordance with this Part.

[FR Doc. 87-2477 Filed 2-5-87; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD7 87-02]

Special Local Regulations; Sundays of Haulover/Tel Tec 100

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Sundays of Haulover/Tel Tec 100 powerboat race. The event will be held on the 14th of February 1987 from 11:30 a.m. to 4:30 p.m. EST. The regulations are needed to promote the safety of life on navigable waters.

EFFECTIVE DATES: These regulations become effective on 14 February 1987 at 11:30 a.m. EST and terminate on 14 February 1987 at 4:30 p.m. EST.

FOR FURTHER INFORMATION CONTACT: CWO Tom Small (305) 535-4304.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical as there was insufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are CWO T.C. Small, project officer, USCG Group Miami and LCDR S.T. Fuger, Jr., project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulations

The Offshore Power Boat Racing Assoc. (OPBRA) of Miami, will sponsor the Sundays of Haulover/Tel Tec 100 offshore power boat race. The event is a high performance offshore power boat race, involving race boats ranging in length of 21 to 40 feet and with capabilities of reaching speeds in excess of 100 MPH. Thirty vessels are expected to participate in the race and an additional 400 spectator craft are expected to view the race. Regulations are issued by the Commander, Seventh Coast Guard District, Miami, Florida, as a public service to promote the safety of life on navigable waters.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.2.

2. A temporary § 100.35-702 is added as follows:

§ 100.35-702 Sundays of haulover/TEL TEC 100 powerboat race.

(a) *Regulated Area.* The waters of the Atlantic Ocean in the vicinity of Miami Beach Florida and bounded by the following points: Miami Beach shoreline at 25-53.6N, seaward to 25-53.5N and 080-05.0W, southward to 25-46.7N and 080-06.2W, and west to the shoreline at 25-45.4N.

(b) *Special Local Regulations.* (1) Entry into the regulated area is prohibited unless authorized by the patrol commander.

(2) A succession of not less than 5 short whistle or horn blasts from a patrol vessel will be signal for any non-participating vessels to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(c) *Effective dates.* These regulations become effective on 14 February 1987 from 11:30 a.m. EST and terminate on 14 February 1987 at 4:30 p.m. EST.

Dated: January 27, 1987.

H.B. Thorsen,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 87-2439 Filed 2-5-87; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Boston, MA Regulation CCGD1-86-20]

Safety Zone Regulation; Jenny Dock, Chelsea River, Boston Inner Harbor, Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Cancellation of rule.

SUMMARY: On the evening of 3 November 1986 approximately 125 feet of sea wall, tank farm containment wall, and river bank at the Northeast Petroleum Marginal Street Terminal (Jenny Dock) in Chelsea, MA collapsed into the Chelsea River in Boston Inner Harbor. An emergency safety zone was established to help insure the safe navigation of vessels through the area until the seawall could be repaired. Temporary sea wall repairs have been completed at the Jenny Dock. The conditions established are no longer needed and are cancelled.

EFFECTIVE DATE: This regulation is effective February 6, 1987.

FOR FURTHER INFORMATION CONTACT: LCDR Michael "A" Wade, Port Operations Officer, USCG Marine Safety Office Boston, MA (617) 565-9000.

Drafting Information

The drafters of this regulation are LCDR Michael "A" Wade, Project Officer for the Captain of the Port, and LCDR James M. Collin, Project Attorney, First Coast Guard District Legal Office.

Discussion of Regulation

Vessel navigation restrictions were established shortly after the sea wall at the Jenny Dock collapsed. These restrictions set conditions for safe passage of vessels on the Chelsea River in the vicinity of the Jenny Dock in Chelsea, MA and the Mobil Oil terminal in East Boston, MA. Temporary repairs have been completed to the sea wall. Efforts to remove sea wall rubble from the river were successful and were completed on 22 December 1986.

Civil engineers periodically surveyed the tank farm area during the project. The surveys did not reveal any appreciable movement of the remaining bank that might have resulted from pile driving, other repair operations, or vessels passing the site. This fact greatly reduced the concern for further collapse. Structural conditions at the Jenny Dock which dictated the publication of the vessel navigation restrictions no longer exist and the regulation is cancelled.

The conditions set forth to govern vessels operating through the Chelsea Street Drawbridge (33 CFR 165.120) are not modified by this regulation and remain in full effect. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

§ 165.T0117 [Removed]

2. Section 165.T0117 is removed.

Dated: January 22, 1987.

R.L. Anderson,

Captain, U.S. Coast Guard Captain of the Port Boston, Massachusetts.

[FR Doc. 87-2438, Filed 2-5-87; 8:45 am]

BILLING CODE 4910-14-M

PANAMA CANAL COMMISSION

35 CFR Part 119

Licensing of Officers

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: The Panama Canal Commission is today amending § 119.103 of Title 35, Code of Federal Regulations, which establishes the experience requirements for determining eligibility for the license of mate of steam or motor vessels. The amendment establishes a new avenue by which an applicant for a mate's license can qualify to sit for the license examination by including graduates of the Commission's tugboat mate apprentice program. It also permits an applicant to qualify for mate's license based upon his equivalent experience, as determined by a review board composed of three Commission officials.

EFFECTIVE DATE: March 9, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, telephone: (202) 634-6441, or Mr. John L. Haines, Jr., General Counsel, telephone in Balboa Heights, Republic of Panama, 011-507-7511.

SUPPLEMENTARY INFORMATION: On October 30, 1986, a notice of proposed rulemaking was published in the **Federal Register** (51 FR 39668) setting forth the proposed amendments to the rules concerning licensing of mates for steam or motor vessels in the Panama Canal. Interested parties were given the opportunity to submit comments on or before December 1, 1986. No comments were received during the period.

Following is a summary of how the rules published to day will modify the rules which have been in effect regarding the experience requirements for determining eligibility for the mate's license.

Present Commission regulations contained in 35 CFR 119.103 provide that an applicant for a license as mate, steam or motor vessels, can qualify to sit for the examination in one of two ways. The first requires an applicant to have graduated from an approved maritime academy and to be participating in a Commission training program for Master, steam or motor vessels. The second requires that the applicant hold a mate's license issued by an authority other than the Panama Canal and have stood at least 260 eight-hour watches as a licensed officer in charge of a deck watch on steam or motor vessels over 75 feet in length engaged in towing.

The principal change being made establishes the Canal Commission's apprentice program for mate, towboat, as a route to qualify to sit for a mate's license. Under the apprentice program, an individual who has not graduated from a maritime academy can qualify for the apprentice program, completion of which will qualify him for the Commission's mate trainee program.

Further, the requirement of completion of 260 eight-hour watches as a mate trainee in order to sit for the mate's licensing examination conforms to the industry norm; the usual requirement is that an applicant produce documentation showing one year of on-board service that does not include vacation time or sick leave. A Commission employee normally is scheduled to work a 40-hour week consisting of five 8-hour watches, which over 52 weeks would be equal to 260 8-hour watches.

Paragraph (b) of § 119.103 is revised to permit an individual who has graduated from the apprentice program and then satisfactorily completed 260 eight-hour watches as mate trainee, towboat, to sit for the examination for the mate's license. The present paragraph (b) of this section, slightly reworded, has been relettered as paragraph (c) in this change.

In addition, paragraph (a), is revised to make it clear that an individual participating in the Commission mate trainee program must complete 260 eight-hour deck watches as a mate trainee, towboat, before the individual is eligible for the mate's license examination.

Finally, a new paragraph (d) will permit an individual to qualify for the mate's license examination if he

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presents evidence of recent service or experience which is equivalent to the experience requirements established under the revised paragraphs (a), (b), or (c) of § 119.103, as determined by a review board composed of three Commission officials.

The Commission has determined that this rule does not constitute a major rule within the meaning of Executive Order 12291, dated February 17, 1981 (47 FR 13193). The basis for that determination are, first, that the rule, when implemented, would not have an annual effect on the economy of $100 million or more per year. Secondly, the rule would not result in a major increase in costs or prices for consumers, individual industries or local governmental agencies or geographic regions. Finally, the agency has determined that implementation of the rule would not have a significant adverse effect on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Further, the Commission has determined that this rule is not subject to the requirements of sections 603 and 604 of Title 5, United States Code, in that its promulgation will not have a significant impact on a substantial number of small entities, and the Administrator of the Commission so certifies pursuant to 5 U.S.C. 605(b).

List of Subjects in 35 CFR Part 119

Panama Canal, Navigations, Vessels.

Accordingly, Title 35, Code of Federal Regulations.

Part 119, is amended as follows:

PART 119—LICENSING OF OFFICERS

1. The authority citation for Part 119 is revised to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3811, E.O. 12215, 45 FR 36043.

2. Section 119.103 is revised to read as follows:

§ 119.103 Mate, steam or motor; experience required.

In order to be eligible for examination for the license of mate of steam or motor vessels, an applicant must—

(a) (1) Have graduated from either the Panama Nautical School's program for deck officers, a maritime academy in the United States recognized by the U.S. Coast Guard for licensing purposes, or from another maritime academy located outside the United States which is determined by the Supervising Inspector to have standards substantially equal to United States academies; (2) be serving as Mate Trainee, Towboat in a Panama Canal Commission training program; and (3) completed at least 260 eight-hour deck watches as Mate Trainee, Towboat: or

(b) Have graduated from the Panama Canal Commission apprentice program for Mate, Towboat, and have satisfactorily completed at least 260 eight-hour deck watches as Mate Trainee, Towboat: or

(c) Hold a license as mate issued by an authority recognized and approved by the Supervising Inspector and have at least 260 eight-hour watches of experience as a licensed officer in charge of deck watch on steam or motor vessels over 75 feet in length engaged in towing: or

(d) Present evidence of recent service or experince which is considered at least equivalent to the requirements provided in paragraph (a), (b), or (c), of this section, as determined by a review board composed of three Commission officials, appointed by the Supervising Inspector.

Dated: December 30, 1986.

D.P. McAuliffe,

Administrator, Panama Canal Commission.

[FR Doc. 87-2554 Filed 2-5-87; 8:45 am]

BILLING CODE 3640-04-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[FRL 3152-9]

Federal and State Administrative Orders Permitting a Delay in Compliance With State Implementation Plan Requirements for General Motors Corp., Saginaw Division, Saginaw, MI

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Final rulemaking.

SUMMARY: The Administrator of U.S. EPA hereby issues a Delayed Compliance Order (DCO) to General Motors Corporation, Saginaw Division, for its plant located in Saginaw, Michigan. The Order requires the Company to bring the volatile organic compound (VOC) emissions from its plant into compliance by December 31, 1986, with Michigan Rule R336.1621, which is a part of the federally approved State Implementation Plan (SIP).

EFFECTIVE DATE: This final rulemaking becomes effective February 6, 1987.

FOR FURTHER INFORMATION CONTACT: Dorothy Attermeyer, Associate Regional Counsel, Office of Regional Counsel, Chicago, Illinois 60604 (312) 886-5312.

SUPPLEMENTARY INFORMATION: On May 2, 1986, the Regional Administrator of U.S. EPA's Region V Office, published a notice in the **Federal Register** (51 FR 16353) setting forth the provisions of a proposed Delayed Compliance Order for General Motors Corporation, Saginaw Division plant. This Order deals with a compliance date extension for metallic surface coating operations in Saginaw, Michigan.

The Order requires final compliance by December 31, 1986, with Michigan Administrative Code 1980 AACS, R336.1621, which is part of the federally approved Michigan SIP. General Motors has consented to the terms of the Order. The notice of proposed rulemaking asked that public comments be received by May 19, 1986. No public comments were received. Therefore, a Delayed Compliance Order, effective this date, is issued to General Motors Corporation, Saginaw Division, for its plant in Saginaw, Michigan. Source compliance with the Order precludes suits under the Federal enforcement and citizen suit provisions of the Clean Air Act.

Under section 307(b) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 7, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

List of Subjects in 40 CFR Part 65

Air pollution control.

Dated: February 2, 1987.

Lee M. Thomas,

Administrator.

PART 65—DELAYED COMPLIANCE ORDER

Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 65.271 is amended by adding the following entry to the table:

§ 65.271 EPA approval of State delayed compliance Orders issued to major stationary sources.

* * * * *

Source	Location	Order No.	SIP regulation(s) involved	Date of FEDERAL REGISTER proposal	Final compliance date
General Motors Corporation Saginaw Division	Saginaw, MI	EPA-5-86-113(d)-28	Code 1980 AACS R336.1621.	5/02/86	12/31/86

* * * * *

[FR Doc. 87-2542 Filed 2-5-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 81

[A-1-FRL-3149-3]

Designation of Areas for Air Quality Planning Purposes; New Hampshire; Berlin Attainment Status Designation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a request by the State of New Hampshire to redesignate Metropolitan Berlin from nonattainment to attainment of the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO_2). Under section 107 of the Clean Air Act, the designation of attainment status may be changed where warranted by the available data. This action acknowledges an improvement in air quality in Metropolitan Berlin due to an implemented control strategy at the James River Corporation's pulp and paper mill.

EFFECTIVE DATE: This action will be effective April 7, 1987 unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESS: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2311, JFK Federal Building, Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2311, JFK Federal Bldg., Boston, MA 02203; and the New Hampshire Air Resources Agency, Health and Welfare Building, Hazen Drive, Concord, New Hampshire 03301.

FOR FURTHER INFORMATION CONTACT: Susan C. Kulstad (617) 565-3226; FTS 835-3226.

SUPPLEMENTARY INFORMATION: On June 10, 1986 the Director of the New Hampshire Air Resources Agency (NHARA) submitted a request to redesignate Metropolitan Berlin. The redesignation formally acknowledges the attainment of the primary NAAQS for SO_2 in Berlin.

Background

EPA designated Berlin as nonattainment for the primary SO_2 NAAQS on March 3, 1978 based on monitored violations of the standards (43 FR 9013). A pulp and paper mill, then owned by the Brown Paper Company and now owned by the James River Corporation (James River), is the single significant source of SO_2 emissions in the designated area.

On June 23, 1980, EPA published approval of a plan for the attainment of the primary SO_2 standards in Berlin (45 FR 41942) that included the installation of a bark burning boiler to replace oil burning boilers and construction of two stacks in accordance with good engineering practice (GEP). The provisions of the attainment plan are also contained in a consent decree between the United States and the State of New Hampshire, as plaintiffs, and the Brown Company, as defendant. The U.S. District Court of New Hampshire entered the consent decree on August 10, 1979. By stipulation filed on October 5, 1981, the James River Corporation agreed to be bound by the terms of this court settlement. The terms of the consent decree concerning SO_2 emissions have been met.

Redesignation

Upon a state's request for the redesignation of an area, EPA reviews all available information relative to the attainment status of the area. EPA will approve SO_2 redesignations where:

(1) Eight consecutive quarters of the most recent, quality assured ambient air quality data reveal no violations of the SO_2 NAAQS;

(2) An EPA-approved control strategy, accompanied by a dispersion modeling demonstration of attainment, has been implemented;

(3) Emission reductions are not temporary, for example, not merely the result of an economic downturn; and

(4) Prohibited dispersion techniques are not responsible for the improvement in air quality. The State's request addresses all of EPA's requirements.

Eight consecutive quarters (January, 1984 through December, 1985) of ambient air quality data from the eight SO_2 monitor sites in Berlin show no violations of the standards. A review of running averages over this same period similarly demonstrates that no exceedances of the SO_2 standards occur.

The control strategy for Berlin, which EPA approved on June 23, 1980, was required under the terms of an air emissions license issued by NHARA on June 18, 1979, as well as under provisions of the aforementioned consent decree. A dispersion modeling demonstration of attainment was submitted in support of the control strategy, and there have been no changes in operation that would alter this modeling since the plan was approved. The bark burning boiler and stacks of GEP height were installed and certain oil burning boilers were dismantled or restricted in operation by 1981. These control measures were fully implemented and, after some delays, complied with in 1982, and have resulted in a 1,866 tons per year reduction in allowable SO_2 emissions.

EPA's revised stack height regulations (50 FR 27892, July 8, 1985) concerning dispersion techniques are not at issue here since stack heights are less than or equal to the appropriate GEP formula height and the allowable SO_2 emission for James River are less than the *de minimis* rate of 5,000 tons per year.

EPA has reviewed New Hampshire's request and the supporting data, and has determined that the redesignation should be approved. For more details on EPA's review, see the technical support document available at the locations listed in the **ADDRESSES** section of this notice.

Final Action

EPA is approving this redesignation to attainment of the NAAQS for SO_2 in Metropolitan Berlin, New Hampshire, submitted on June 10, 1986.

Since EPA views the redesignation as noncontroversial, we are taking this action without prior proposal. This action will be effective April 7, 1987. However, if EPA is notified within 30 days that adverse or critical comments will be submitted, we will withdraw this action and publish a new rulemaking proposing the action and establishing a comment period.

Under 5 U.S.C. 605(b), I certify that this redesignation will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate

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circuit by April 7, 1987. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

List of Subjects in 40 CFR Part 81

Air pollution control.

Dated: January 27, 1987

Lee M. Thomas,

Administrator.

PART 81—[AMENDED]

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. In § 81.330 the attainment status designation table for New Hampshire—SO_2 is revised to read as follows:

§ 81.330 New Hampshire.

* * * * *

New Hampshire—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
N.H. portion of Merrimack Valley So. N.H. Interstate A.Q.C.R. 121				x
Central N.H. Intrastate A.Q.C.R. 149				x
N.H. portion of Androscoggin Valley Interstate A.Q.C.R. 107				x

* * * * *

[FR Doc. 87–2543 Filed 2–5–87; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6637

[AK–960–07–4220–10; A–3393]

Partial Revocation of Public Land Order No. 4825, Copper River Meridian, AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order insofar as it affects 439 acres of national forest land withdrawn for the Harriet Hunt Recreation Area. This action will also classify the land as suitable for selection by the State of Alaska, if such land is otherwise available. If the land is not selected by the State it will be opened to mining.

EFFECTIVE DATE: February 6, 1987.

FOR FURTHER INFORMATION CONTACT: Mary Jane Clawson, BLM Alaska State Office, 701 C Street, Box Anchorage, Alaska 99513, 907–271–5060.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and by subsection 17(d)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 708 and 709; 43 U.S.C. 1616(d)(1), it is ordered as follows:

1. Public Land Order No. 4825, dated May 23, 1970, which withdrew land in the Tongass National Forest for the Harriet Hunt Recreation Area, is hereby revoked as to the following described lands:

Copper River Meridian

Beginning at corner No. 1, identical with the quarter-section corner of Sec. 32, T. 73 S., R. 91 E., Copper River Meridian and Sec. 5, T. 74 S., R. 91 E., Copper River Meridian, and the true point of beginning; thence South 40 chains to corner No. 2; thence West 4 chains to corner No. 3; thence North 73 chains to corner No. 4; thence East 104 chains to corner No. 5; thence South 13 chains to corner No. 6; thence East 40 chains to corner No. 7; thence South 20 chains to corner No. 8; thence West 140 chains to corner No.1, the true point of beginning.

The area described contains appproximately 439 acres.

2. Subject to valid existing rights, the lands described above are hereby classified as suitable for and opened to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, et seq.; 48 U.S.C. prec. 21, or subsection 906(b) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 94 Stat. 2437–2438.

3. As provided by subsection 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the lands described above for a period of three hundred and sixty six (366) days from the date of publication of this order, if the lands are otherwise available. Any of the lands described herein that are not selected by the State of Alaska will continue to be subject to the terms and conditions of the Tongass National Forest and other withdrawals of record.

4. At 10 a.m. on February 8, 1988, subject to valid existing rights, the provisions of existing withdrawals and the requirement of applicable laws, the lands described in paragraph 2 above will be opened to location and entry under the United States mining laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and the time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local Courts.

J. Steven Griles,

Assistant Secretary of the Interior.

January 30, 1987.

[FR Doc. 87–2457 Filed 2–5–87; 8:45 am]

BILLING CODE 4310–JA–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6745]

Suspension of Community Eligibility; National Flood Insurance Program

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations [44 CFR Part 59 *et seq.*]. Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.** In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance become effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et. seq.*; Reorganization Plan No. 3 of 1978, E.O. 12127.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	Location	Community	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified	Date [1]
Region II					
New Jersey	Wharton, borough of, Morris County	340364B	Apr. 29, 1975, Emerg. Feb. 19, 1987, Reg. Feb. 19, 1987, Susp.	Mar. 3, 1974, Apr. 16, 1976 & Feb. 19, 1987	Feb. 19, 1987
New York	Tusten, town of, Sullivan County	360831C	May 13, 1975, Emerg. Aug. 27, 1982, Reg. Feb. 19, 1987, Susp.	Aug. 9, 1974, Sept. 17, 1976, Aug. 27, 1982 & Feb. 19, 1987.	Do
Do	Ulysses, town of, Tompkins County	360854B	Dec. 23, 1974, Emerg. Feb. 19, 1987, Reg. Feb. 19, 1987, Susp.	June 14, 1974, Aug. 13, 1976, & Feb. 19, 1987.	Do
Region III					
Maryland	St. Mary's County, unincorporated areas.	240064B	Apr. 26, 1975, Emerg. Feb. 19, 1987, Reg. Feb. 19, 1987, Susp.	Oct. 21, 1977 & Feb. 19, 1987.	Do
Region IV					
Georgia	Rincon, city of, Effingham County	130426A	Nov. 5, 1976, Emerg. Feb. 19, 1987, Reg. Feb. 19, 1987, Susp.	Apr. 11, 1975 & Feb. 19, 1987	Do
Kentucky	Lewis County, unincorporated areas.	210141B	Mar. 2, 1977, Emerg. Feb. 19, 1987, Reg. Feb. 19, 1987, Susp.	Dec. 20, 1974, June 17, 1977 & Feb 19, 1987	Do.
Do	Vanceburg, city of, Lewis County	210142B	Aug. 7, 1975, Emerg. Feb. 19, 1987, Reg. Feb. 19, 1987, Susp.	Feb. 1, 1974, Mar. 5, 1976 & Feb. 19, 1987	Do.
North Carolina	Mount Airy, town of, Surry County	370226C	May 28, 1975, Emerg. Dec. 1, 1981, Reg. Feb. 19, 1987, Susp.	June 28, 1974, May 14, 1976, Feb. 1, 1981 & Feb. 19, 1987.	Do
region V					
Michigan	Alabaster, township of, Iosco County	260249A	Nov. 20, 1973, Emerg. Feb. 19, 1987, Reg. Feb. 19, 1987, Susp.	Jan. 3, 1975 & Feb. 19, 1987	Do.
Do	Dexter, township of, Washtenaw County	260538B	Aug. 16, 1976, Emerg. Feb. 19, 1987, Reg. Feb. 19, 1987, Susp.	July 18, 1975, Oct. 1, 1976 & Feb. 19, 1987.	Do

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State	Location	Community	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified	Date [1]
Do	Fowlerville, village of, Livingston County	260439C	Aug. 7, 1975, Emerg. Feb. 19, 1987, Reg. Feb. 19, 1987, Susp.	Sept. 26, 1975 & Feb. 19, 1987	Do.
Minnesota	Scott County, unincorporated areas.	270428C	Apr. 14, 1972, Emerg. Apr. 3, 1978, Reg. Feb. 19, 1987 Susp.	Oct. 20, 1974 & Feb. 19, 1987	Do.
Region VIII					
Colorado	Holyoke, town of, Phillips County.	080141B	Aug. 7, 1975, Emerg. Feb. 19, 1987, Reg. Feb. 19, 1987, Susp.	June 26, 1974, Jan. 9, 1976 & Feb. 19, 1987	Do
North Dakota	Fargo, city of, Cass County	385364D	Apr. 10, 1970, Emerg. Apr. 30, 1971, Reg. Feb. 19, 1987, Susp.	Apr. 10, 1970, May 1, 1971, July 1, 1974, Apr. 23, 1976, Dec. 1, 1978, Jan. 19, 1982 & Feb. 19, 1987.	Do
Colorado	Poncha Springs, town of, Chaffee County	080220A	May 27, 1975, Emerg. Feb. 19, 1987, Reg. Feb. 19, 1987, Susp.	Aug. 29, 1975 & Feb. 19, 1987	Do
Region IX					
California	Pacifica, city of, San Mateo County.	060323D	Jan. 29, 1975, Emerg. Feb. 4, 1981, Reg. Feb. 19, 1987 Susp.	June 28, 1974, Dec. 5, 1975, Sept. 26, 1978, Feb. 4, 1981 & Feb. 19, 1987	Do
Region X					
Idaho	Cambridge, city of, Washington County.	160199A	Aug. 27, 1976, Emerg. Feb. 19, 1987, Reg. Feb. 19, 1987, Susp.	Aug. 6, 1975 & Feb. 19, 1987	Do.
Do	Midvale, city of, Washington County.	160123B	May 7, 1975, Emerg. Feb. 19, 1987, Reg. Feb. 19, 1987, Susp.	Sept. 13, 1974, Sept. 19, 1975 & Feb. 19, 1987	Do.
Do	Washington County, unincorporated areas.	160221B	Feb. 2, 1976, Emerg. Feb. 19, 1987, Reg. Feb. 19, 1987, Susp.	Dec. 26, 1979 & Feb. 19, 1987	Do
Do	Weiser, city of, Washington County.	160124B	Dec. 4, 1974, Emerg. Feb. 19, 1987, Reg. Feb. 19, 1987, Susp.	June 21, 1974, Dec. 12, 1975 & Feb. 19, 1987	Do.
Oregon	Pendleton, city of, Umatilla County.	410211E	Mar. 3, 1972, Emerg. Feb. 19, 1987, Reg. Feb. 19, 1987 Susp.	May 4, 1973, Sept. 26, 1975, July 13, 1976, Nov. 3, 1978, Sept. 1, 1981 & Feb. 19, 1987	Do
Do	Wilsonville, city of, Clackamas County.	410025C	Apr. 30, 1975, Emerg. Feb. 19, 1987, Reg. Feb. 19, 1987, Susp.	Mar. 29, 1974, Aug. 6, 1976, Jan. 6, 1982 & Feb. 19, 1987	Do

[1] Date certain Federal assistance no longer available in special flood hazard areas.
Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Harold T. Duryee,
Administrator, Federal Insurance Administration.
[FR Doc. 87-2493 Filed 2-5-87; 8:45 am]
BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-254; RM-5267]

Radio Broadcasting Services; Meredith, NH

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: This document allocates Channel 268A to Meredith, New Hampshire, as the community's first local FM service, at the request of Harvest Broadcasting Services and William Forbes. The channel can be allocated in compliance with the Commission's rules without the imposition of a site restriction. Canadian concurrence has been received since Meredith is located within 320 kilometers of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective March 26, 1987. The window period for filing applications opens on March 27, 1987, and closes on April 27, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-254, adopted November 20, 1986 and released December 24, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transportation Service (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. Section 73.202(b), the Table of FM Allotments for New Hampshire is amended by adding Meredith, Channel 268A.

Federal Communications Commission.
Mark N. Lipp,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 87-2515 Filed 2-5-87; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-274; RM-5246]

Radio Broadcasting Services; Southport, NC

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: This document substitutes Channel 298C2 for Channel 296A at Southport, North Carolina, and modifies the license of Atlantic Broadcasting Company of Southport, Inc. for Station WJYW(FM) to specify operation on the higher powered channel. Channel 298C2 can be allocated in compliance with the Commission's mileage separation requirements with a site restriction of 13.8 kms northeast pursuant to the consent of Station WKQB(FM) to waive its buffer zone protection. The allotment could provide Southport with its first wide coverage area FM service. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 12, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-274, adopted December 19, 1986 and released January 26, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments for Southport, North Carolina, is amended by adding Channel 298C2 and deleting Channel 296A.

Federal Communications Commission.
Mark N. Lipp,
Chief, Allocations Branch, Mass Media Bureau.
[FR Doc. 87-2373 Filed 2-5-87; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-87; RM-5094]

Radio Broadcasting Services; Atlanta TX

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: This document substitutes Channel 259C2 for Channel 257A at Atlanta, Texas, and modifies the license of Station KPYN(FM) to specify operation on the new frequency, at the request of Ark-La-Tex Broadcasting Company. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 6, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-87, adopted December 18, 1986, and released January 21, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors. International Transcription Service (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. Section 73.202, the table of allotments is amended, under Texas, by revising Channel 257A to read 259C2 for Atlanta.

Mark N. Lipp,
Chief, Allocations Branch, Mass Media Bureau.
[FR Doc. 87-2516 Filed 2-5-87; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 74

[MM Docket No. 85-225; FCC 86-589]

Experimental Broadcast Stations and Instructional Television Fixed Service

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: This action relaxes the posting of licenses requirements for experimental broadcast stations and for the Instructional Television Fixed Service (ITFS). In addition, it revises the ITFS rules concerning remote control and unattended operation, by eliminating "how-to" language and the requirement to obtain specific authority, which is routinely granted upon request for a licensed station. The licensee remains fully responsible for proper operation of the transmitter.

EFFECTIVE DATE: March 12, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Hank VanDeursen, Mass Media Bureau (202) 632-9660.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 74

Radio broadcasting, TV broadcasting.

Report and Order

(Proceeding Terminated)

In the matter of Review of technical and operational requirements: Part 74-A Experimental Broadcast Stations; and Part-I Instructional Television Fixed Service; MM Docket No. 85-225, FCC 86-589.

Adopted: December 29, 1986.
Released: January 26, 1987.
By the Commission.

Introduction/Background

1. The Commission has under consideration a *Notice of Proposed Rule Making* (*Notice*)[1] in the above captioned matter and the comments filed in response thereto.[2] The *Notice* proposed to revise certain rules covering technical and operational requirements for experimental broadcast stations and the Instructional Television Fixed Service (ITFS). Experimental broadcast stations are licensed to conduct research and experimentation for the advancement of technologies used by the broadcast industry. ITFS stations are operated by educational organizations and used primarily for the transmission of visual and aural instructional, cultural, and other types of educational material to one or more fixed receiving locations.

Issue 1: Posting of Licenses

2. We proposed to relax station license posting requirements for both services so that the original or a clearly legible photocopy of the station license need merely be available at the transmitter site. The proposed revisions to §§ 74.165 and 74.965 will be adopted. The ITFS operator license posting requirements, addressed in the *Notice*, were deleted in a separate proceeding.[3]

Issue 2: ITFS Remote Control

3. We also proposed to eliminate all ITFS remote control specifications and to permit remote control operation of a licensed ITFS station without further authority. Design, implementation, and modification of the transmitter remote control system would be left to the judgment of the licensee. Because remote control systems for auxiliary stations are reliable and readily available, we believe these systems no longer require detailed oversight by the Commission. Under these revised

[1] *See Notice of Proposed Rule Making* in MM Docket No. 85-225, FCC 85-357, 50 FR 30979, July 31, 1985 (adopted July 9, 1985).
[2] South Carolina Educational Television Commission (SCETV) filed the only comment in the proceeding and fully supported the proposals.
[3] *See* 50 40015, October 1, 1985.

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remote control rules we are adopting, the licensee remains fully responsible for proper technical operation of the transmitter.

Issue 3: Unattended Operation of ITFS Stations

4. Currently, a detailed technical showing is required for authorization to operate or change the facilities of an unattended ITFS relay station. These stations are also required to conform to certain technical criteria related only to quality. Technological advances in transmitters and the successful operation of these stations encourages us to relax the requirements of § 74.934 for new and existing facilities by revising that section. We believe this will provide flexibility to licensees and will not cause additional interference to other stations. We again emphasize that the licensee remains fully responsible for proper technical operation of the transmitter.

Other Considerations

5. We are also adopting other proposed revisions, which employ more concise language, to certain rule sections. These sections include: § 74.937 Antennas; § 74.939 Special rules governing ITFS response stations; § 74.952 Acceptability of equipment for licensing; and § 74.962 Frequency monitors and measurements.

Regulatory Flexibility Final Analysis

6. *Need and purpose of this action:* Through this decision, the Commission hopes to allow licensees more flexibility in the operation of their stations.

7. *Summary of issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis:* No issues of significance were raised in addition to those set forth above.

8. *Significant alternatives considered and rejected:* No significant alternatives were presented in the only comment received. After weighing all aspects of this proceeding, the Commission has adopted the course of action it deems most reasonable for the public interest under the Communications Act of 1934, as amended.

9. The Secretary shall cause a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of Small Business Administration, in accordance with section 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq*) (1981).

Paperwork Reduction Act

10. The Order contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to decrease the information burden which the Commission imposes on the public. This reduction in information collection burden is subject to approval by the Office of Management and Budget as prescribed by the Act.

Actions

11. Accordingly, it is ordered that Part 74 of the Commission's Rules is amended to be effective March 12, 1987. Authority for the actions taken herein is contained in sections 4(i) and 303(r) of the Communications Act of 1935, as amended. It is further ordered that FCC Form 330 be revised to reflect changes to § 74.933 and § 74.934 of the Rules.

12. Further information on this proceeding may be obtained by contacting Hank VanDeursen, Mass Media Bureau (202) 632–9660.

Federal Communications Commission.
William J. Tricarico,
Secretary.

PART 74—[AMENDED]

47 CFR Part 74 is amended as follows:

1. The authority citation for Part 74 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 74.165 is revised to read as follows:

§ 74.165 Station and operator licenses; posting of.

(a) The instrument of authorization or a clearly legible photocopy thereof, shall be available at the transmitter site.

(b) Operators of an experimental broadcast transmitter must have their operators' licenses or permits available at their duty station when they are on duty.

3. 47 CFR 74.933 is revised to read as follows:

§ 74.933 Remote control operation.

Licensed ITFS stations may be operated by remote control without further authority.

4. 47 CFR 74.934 is revised to read as follows:

§ 74.934 Unattended operation.

Unattended operation of licensed ITFS stations is permitted without further authority.

(a) An unattended relay station may be employed to receive and retransmit signals of another station provided that the transmitter is equipped with circuits which permit it to radiate only when the signal intended to be retransmitted is present at the receiver input terminals.

§ 74.937 [Amended]

5. 47 CFR 74.937 Antennas, is amended by removing paragraph (c); and redesignating paragraphs (d) through (f) as (c) through (e), respectively.

6. 47 CFR 74.939 is amended by removing paragraphs (j), (m), and (n); redesignating paragraphs (k) and (l) as (j) and (k), respectively; and revising paragraph (f) to read as follows:

§ 74.939 Special rules governing ITFS response stations.

* * * * *

(f) An ITFS response channel is 125 kHz wide and is centered at the assigned frequency. Either amplitude or frequency modulation can be employed. If amplitude modulation is used, the carrier shall not be modulated in excess of 100%. If frequency modulation is used, the deviation shall not exceed ±25 kHz. Any emissions outside the channel including harmonics shall be attenuated at least 60 dB below peak output power. Greater attenuation may be required if interference is caused by out-of-channel emissions.

* * * * *

§ 74.951 [Amended]

7. 47 CFR 74.951 Modification of transmission systems is amended by removing paragraph (d) and redesignating paragraphs (e) through (h) as (d) through (g), respectively.

8. 47 CFR 74.952 is revised to read as follows:

§ 74.952 Acceptability of equipment for licensing.

Each authorization for a station in this service requires the use of type accepted equipment. Requirements for obtaining a grant of equipment authorization are contained in Subpart J of Part 2 of the Rules.

(a) An application specifying a transmitter, translator, or booster not type accepted, may be filed by the applicant if the information and measurement data required for type acceptance under Subpart J of Part 2 of the Rules is submitted with the application. However, if that data has been filed with the Commission in connection with a request for type acceptance, it need not be resubmitted and may be referred to as "on file."

9. 47 CFR 74.962 is revised to read as follows:

§ 74.962 Frequency monitors and measurements.

Suitable measurements shall be made as often as necessary to ensure that the operating frequencies of the station are within the prescribed tolerances.

10. 47 CFR 74.965 is revised to read as follows:

§ 74.965 Posting of station license.

(a) The instrument of authorization of a clearly legible photocopy thereof, shall be available at each transmitter.

(b) If a station is operated unattended, the call sign and name of the licensee shall be displayed such that it may be read within the vicinity of the transmitter enclosure or antenna structure.

[FR Doc. 87–2356 Filed 2–5–87; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

48 CFR Parts 1317 and 1352

[Docket No. 60614–6229; Amdt. 86–1]

Acquisition Regulation; Contracts for Ship Construction, Ship Alteration, and Ship Repair

AGENCY: Department of Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends the Commerce Acquisition Regulation (CAR) to provide uniform contract clauses and solicitation provisions to be used in Department contracts and solicitations for Ship Construction, Ship Alteration and Ship Repair.

A notice of proposed rulemaking was published in the **Federal Register** on September 4, 1986 (51 FR 31687) requesting public comments by October 6. No public comments were received.

EFFECTIVE DATE: February 6, 1987.

FOR FURTHER INFORMATION CONTACT: John Dammeyer, Procurement Analyst, Office of Procurement Management, HCHB, Room H6424, U.S. Department of Commerce, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230 (202) 377–4248.

SUPPLEMENTARY INFORMATION: On September 4, 1986 the Department of Commerce published a proposed rule known as CAR Amendment 86–1 (51 FR 31687, September 4, 1986), requesting public comments by October 6, 1986. No public comments were received. Therefore, this rule is being issued in final with the following minor changes. Changes were made to paragraphs (b) and (c) of the Liability and Insurance clause (CAR 1352.217–96) to limit indemnification to contracts involving Government-owned vessels, since we anticipate that Department ship repair contracts will rarely call for repair of vessels not owned by the Government. Also, the word "cost" in paragraph (b) of the Lay Days clause (CAR 1352.217–106) was replaced with the word "amount".

Administrative Procedure Act and Small Business and Federal Procurement Competition Enhancement Act Requirements

Because this amendment involves matters of agency management, public property, and contracts, under subsection 553(a)(2) of the Administrative Procedure Act (APA) (5 U.S.C. 553(a)(2)), it is exempt from all requirements of section 553 including giving notice of proposed rulemaking, providing an opportunity for comment, and delaying the effective date until at least 30 days after publication or service.

However, section 302 of the Small Business and Federal Procurement Competition Enhancement Act of 1984, Pub. L. 98–577, added section 22 to the Office of Federal Procurement Policy Act which requires that notice of proposed rulemaking and at least 30 days opportunity for comment be given for acquisition regulations having a significant cost or administrative impact on contractors or offerors, and specifies that such regulations may not take effect until 30 days after such notice. Since it was determined that some of the changes that would be made to the CAR by the proposed amendment might have a significant cost or administrative impact on contractors or offerors, a notice of proposed rulemaking was published and written comments from the public were invited for consideration by October 6, 1986.

Regulatory Flexibility Act Requirements

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule would not affect a substantial number of small entities and would not impose a significant economic impact on those small entities which would be affected. Therefore, a regulatory flexibility analysis was not prepared.

Executive Order 12291 Requirements

Office of Management and Budget Bulletin No. 85–7 (dated December 14, 1984) exempted certain agency procurement regulations from the requirements of Sections 3 and 4 of Executive Order 12291. The exemption applies to this rule. A regulatory impact analysis is not required and was not prepared.

Paperwork Reduction Act Requirements

This rule contains collection of information requirements which have been approved by the Office of Management and Budget (OMB No. 0690–0004).

List of Subjects in 48 CFR Parts 1317 and 1352

Government procurement.

Accordingly, Chapter 13 of Title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, DC, January 30, 1987.

Hugh L. Brennan,
Director, Office of Procurement and Administrative Services, U.S. Department of Commerce.

1. The authority citations for Parts 1317 and 1352 continue to read as follows:

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

PART 1317—SPECIAL CONTRACTING METHODS

2. Part 1317 is amended to add a new Subpart 1317.70 to read as follows:

Subpart 1317.70—Contracts for Ship Construction, Ship Alteration, and Ship Repair

1317.7001 Solicitation provisions and contract clauses.

(a)(1) The contracting officer shall insert the following clauses in sealed bid fixed-price solicitations and contracts for ship construction, ship alteration, and ship repair.

(i) Inspection and Manner of Doing Work, 1352.217–90.

(ii) Delivery of the Vessel to the Contractor, 1352.217–91.

(iii) Performance, 1352.217–92.

(iv) Delays, 1352.217–93.

(v) Minimization of Delay Due to Government Furnished Property, 1352.217–94.

(vi) Additional Provisions Relating to Government Property, 1352.217–95.

(vii) Liability and Insurance, 1352.217–96.

(viii) Title, 1352.217–97.

(ix) Discharge of Liens, 1352.217–98.

(x) Department of Labor Occupational Safety and Health Standards for Ship Repairing, 1352.217–99.

(xi) Regulations Governing Asbestos Work, 1352.217–100.

(xii) Complete and Final Equitable Adjustments, 1352.217–101.

(xiii) Government Review, Comment, Acceptance, and Approval, 1352.217–102.

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(xiv) Access to the Vessel, 1352.217–103.
(xv) Documentation of Requests for Equitable Adjustment, 1352.217–104.
(xvi) Change Proposals, 1352.217–105.
(xvii) Lay Days, 1352.217–106.
(xviii) Changes—Ship Repair, 1352.217–107.
(xix) Default—Ship Repair, 1352.217–108.

(2) Unless inappropriate due to contract type, the contracting officer shall insert the clauses listed above in negotiated solicitations and contracts for ship construction, ship alteration, and ship repair.

(b) The contracting officer shall insert a clause substantially the same as the clause at 1352.217–109, Insurance Requirements, in solicitations and contracts for ship construction, ship alteration, and ship repair, unless the contracting officer determines that the contract, or job order, requires work on parts of a vessel only and the work is to be performed at a plant other than the site of the vessel.

(c) The contracting officer shall insert the clause at 1352.217–110, Guarantees, unless the contracting officer determines that its use would be inappropriate under the circumstances.

(d) The contracting officer shall insert the clause at 1352.217–111, Temporary Services, in solicitations and contracts for ship construction, ship alteration, and ship repair, unless the contracting officer determines that its use would be inappropriate under the circumstances.

(e) The contracting officer shall insert the provision at 1352.217–112, Self-Insurance Information, in solicitations and contracts for ship construction, ship alteration, and ship repair, when the contracting officer determines that it is appropriate to allow offerors the opportunity to self-insure for any or all of the risks set forth in the applicable insurance clauses of the contract.

PART 1352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The table of contents for Subpart 1352.2 is revised to read as follows:

Subpart 1352.2—Texts of Provisions and Clauses

1352.217–90 Inspection and manner of doing work.
1352.217–91 Delivery of vessel to the contractor.
1352.217–92 Performance.
1352.217–93 Delays.
1352.217–94 Minimization of delay due to government furnished property.
1352.217–95 Additional provisions relating to government property.
1352.217–96 Liability and insurance.
1352.217–97 Title.
1352.217–98 Discharge of liens.
1352.217–99 Department of Labor occupational safety and health standards for ship repairing.
1352.217–100 Regulations governing asbestos work.
1352.217–101 Complete and final equitable adjustments.
1352.217–102 Government review, comment, acceptance, and approval.
1352.217–103 Access to the vessel(s).
1352.217–104 Documentation of requests for equitable adjustment.
1352.217–105 Change proposals.
1352.217–106 Lay days.
1352.217–107 Changes—ship repair.
1325.217–108 Default—ship repair.
1352.217–109 Insurance requirements.
1352.217–110 Guarantees.
1352.217–111 Temporary services.
1352.217–112 Self-insurance information.
1352.219–1 Women-owned small business sources.
1352.233–2 Service of protest.

4. Sections 1352.217–90 to 1352.217–112 are added to Subpart 1352.2 to read as follows:

Subpart 1352.2—Texts of Provisions and Clauses

1352.217–90 Inspection and manner of doing work.

As prescribed in 1317.7001(a), insert the following clause:

Inspection and Manner of Doing Work (CAR 1352.217–90) (Jan. 1987)

(a) All work and material shall be subject to the approval of the Contracting Officer or his duly authorized representative. Work shall be performed in accordance with the plans and specifications of this contract as modified by any contract modification.

(b) Unless otherwise specifically provided for in the contract, all operational practices of the Contractor and all workmanship and material, equipment and articles used in the performance of work shall be in accordance with American Bureau of Shipping Rules for Building and Classing Steel Vessels, U.S. Coast Guard Marine Engineering Regulations and Material Specifications (Subchapter F 46 CFR), U.S. Coast Guard Electrical Engineering Regulations (Subchapter J 46 CFR) (APR 1982), and U.S.P.H.S., Handbook on Sanitation in Vessel Construction, in effect at the time of the Contractor's submission of bid (or acceptance of the contract, if negotiated), and the best commercial maritime practices, except where military specifications are specified, in which case such standards of material and workmanship shall be followed.

(c) All material and workmanship shall be subject to inspection and test at all times during the Contractor's performance of the work to determine their quality and suitability for the purpose intended and compliance with the contract. In case any material or workmanship furnished by the Contractor is found to be defective prior to redelivery of the vessel, or not in accordanoe with the requirements of the contract, the Government shall have the right prior to redelivery of the vessel to reject such material or workmanship, and to require its correction or replacement by the Contractor at the Contractor's cost and expense. This Government right is in addition to its rights under any Guarantee clause in this contract. If the Contractor fails to proceed promptly with the replacement or correction of such material or workmanship, as required by the Contracting Officer, the Government may, by contract or otherwise, replace or correct such material or workmanship and charge to the Contractor the excess cost to the Government. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work specified in the contract. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of the contract and for a period of 2 years after delivery of the vessel to the Government.

(d) No welding, including tack welding and brazing, shall be permitted in connection with repairs, completions, alterations, or addition to hulls, machinery or components of vessels unless the welder is at the time, qualified to the standards established by the United States Coast Guard, the American Bureau of Shipping, or the Department of the Navy. The welder's qualifications shall be appropriate for the particular service application, filler material type, position of welding, and welding process involved in the work being undertaken. A welder may be required to requalify if the Contracting Officer believes there is a reasonable doubt concerning the welder's ability. Welder's qualifications for this purpose shall be outlined in "Marine Engineering Regulations" of the United States Coast Guard. When a welding process other than manual shielded arc is proposed or required, the contractor or fabricator shall submit procedure qualification tests for approval prior to production welding. Procedure qualification tests shall be conducted in accordance with the requirements of the "Marine Engineering Regulations" of the United States Coast Guard.

(e) The Contractor shall exercise reasonable care to protect the vessel from fire, and the Contractor shall maintain a reasonable system of inspection over the activities of welders, burners, riveters, painters, plumbers and similar workers, particularly where such activities are undertaken in the vicinity of the vessel's magazine, fuel oil tanks, or storerooms containing flammable material. A reasonable number of hose lines shall be maintained by the Contractor ready for immediate use on the vessel at all times while the vessel is berthed alongside the Contractor's pier or in drydock or on a marine railway. All tanks or bilge areas under alteration or repair shall be cleaned, washed, and steamed out or otherwise made safe by the Contractor if and to the extent necessary as required by good marine practice or by current OSHA Regulations. The Contracting Officer's Technical Representative (COTR) shall be furnished with a "gas free" or "safe for hot work" or "safe for men" certificate before any hot work or entry is done. Unless otherwise provided in this contract, the Contractor shall at all times maintain a reasonable fire watch about the vessel, including a fire watch on the vessel while work is being performed thereon.

(f) The Contractor shall place proper safeguards and/or effect such safety precautions as necessary, including suitable and sufficient lighting, for the prevention of accidents or injury to persons or property during the prosecution of work under this contract and/or from time of receipt of the vessel until acceptance by the Government of the work performed.

(g) Except as otherwise provided in this contract, when the vessel is in the custody of the contractor or in drydock or on a marine railway and the temperature becomes as low as 35 degrees Fahrenheit, the Contractor shall keep all pipelines, fixtures, traps, tanks, and other receptacles on the vessel drained to avoid damage from freezing, or if this is not practicable, the vessel shall be kept heated to prevent such damage. The vessel's stern tube and propeller hubs shall be protected from frost damage by applied heat through the use of a salamander or other proper means, as approved by the COTR.

(h) Whenever practicable, the work shall be performed in a manner which does not interfere with the berthing and messing of personnel attached to the vessel. The Contractor shall ensure that assigned personnel have access to the vessel at all times. It is understood that such personnel will not interfere with the work or the Contractor's workers.

(i) The Government does not guarantee the correctness of the dimensions, sizes, and shapes given in any sketches, drawings, plans or specifications prepared or furnished by the Government. The Contractor shall be responsible for the correctness of the shape, sizes and dimensions of parts to be furnished hereunder, other than those furnished by the Government.

(j) The Contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by Contractor employees or the work, and at the completion of the work shall remove all rubbish from and about the site of the work and shall leave the work and its immediate vicinity "broom clean" unless more exactly specified in this contract.

(k) While in drydock or on a marine railway, the Contractor shall be responsible for the closing before the end of working hours, of all valves and openings upon which work is being done by its workers when such closing is practicable. The Contractor shall keep the COTR cognizant of the closure status of all valves and openings upon which the Contractor's workers have been working.

(l) Without additional expense to the Government, the Contractor shall employ specialty subcontractors where required by the specifications or when necessary for satisfactory performance of the work.

(m) When requested by the COTR, the Contractor shall notify the COTR in advance:

(i) Prior to starting inspections or tests; and

(ii) When supplies will be ready for Government inspection.

(n) When advance notification is requested, the authorized COTR shall specify the period and method of notification.

(End of Clause)

1352.217–91 Delivery of vessel to the contractor.

As prescribed in 1317.7001(a), insert the following clause:

Delivery of Vessel to the Contractor (CAR 1352.217–91) (Jan. 1987)

(a) The Government shall deliver the vessel to the Contractor at the location specified in the contract.

(b) If the Contractor's plant is specified, it shall be understood to mean the fairway of the plant. The Contractor shall provide necessary tugs and pilot services to move the vessel from the fairway to the pier or dock and, upon completion of all work, from the pier or dock to the fairway of the plant.

(c) While the vessel is in the possession of the Contractor, any necessary movement of the vessel incidental to the work specified in the contract shall be furnished by the Contractor without additional charge to the Government.

(End of Clause)

1352.217–92 Performance.

As prescribed in 1317.7001(a), insert the following clause:

Performance (CAR 1352.217–92) (Jan. 1987)

(a) Upon the issuance of the contract, the Contractor shall promptly commence the work specified in any plans and specifications made a part of the contract, and shall diligently prosecute the work to completion. The Contractor shall not commence work until the contract has been issued.

(b) The Government shall deliver the vessel described in the contract at such time and location as may be specified in the contract. Upon completion of the work, the Government shall accept delivery of the vessel at such time and location as may be specified in the contract.

(c) Without additional charge to the Government, and without specific requirement in the contract, the Contractor shall:

(1) Make available at the plant to personnel of the vessel while in drydock or on a marine railway, toilet and similar facilities acceptable to the Contracting Officer as adequate in number and sanitary standards;

(2) Supply and maintain, in such condition as the Contracting Officer may reasonably require, suitable brows and gangways from the pier, drydock or marine railway to the vessel;

(3) Treat salvage, scrap, or other ship's material of the Government resulting from performance of the work as items of Government furnished property in accordance with the Government Property clause;

(4) Perform, or pay the cost of, any repair, reconditioning or replacement made necessary as the result of the use by the Contractor of any of the vessel's machinery, equipment or fittings, including, but not limited to, winches, pumps, riggings, or pipe lines; and

(5) Furnish suitable offices, office equipment and telephones at or near the site of the work as the Contracting Officer reasonably requires for himself and his staff.

(d) Except as otherwise provided in the contract, the Contractor shall furnish all necessary material, labor, services, equipment, supplies, power, accessories, facilities, and other things and services necessary for accomplishing the work, subject to Government rights under the Government Property clause.

(e) The Contractor shall conduct dock and sea trials of the vessel as required by the contract. Unless otherwise expressly provided in the contract, during the conduct of these trials the vessel shall be under the control of the vessel's commander and crew with representatives of the Contractor and the Government on board to determine whether or not the work done by the Contractor has been satisfactorily performed. Dock and sea trials not specified which the Contractor requires for his own benefit shall not be undertaken by the Contractor without prior notice to and approval of the Contracting Officer; any such dock or sea trial shall be conducted at the risk and expense of the Contractor. The Contractor shall provide and install all fittings and appliances which may be necessary for the dock and sea trials, to enable the representatives of the Government to determine whether the requirements of the contract plans and specifications have been met. The Contractor shall also be responsible for the care, installation and removal of any instruments and apparatus furnished by the Government for such trials.

(End of Clause)

1352.217–93 Delays.

As prescribed in 1317.7001(a), insert the following clause:

Delays (CAR 1352.217–93) (Jan. 1987)

When during the performance of this contract the Contractor is required to delay the work on a vessel temporarily, due to orders or actions of the Government respecting stoppage of work to permit shifting the vessel, stoppage of hot work to permit bunkering, fueling, stoppage of work due to embarking or debarking passengers and loading or discharging cargo, and the Contractor is not given sufficient advance notice or is otherwise unable to avoid incurring additional costs on account thereof, an equitable adjustment may be made in the contract price pursuant to the Changes clause.

(End of Clause)

1352.217–94 Minimization of delay due to government furnished property.

As prescribed in 1317.7001(a), insert the following clause:

Minimization of Delay Due to Government Furnished Property (CAR 1352.217–94) (Jan. 1987)

(a) In order to assure timely delivery of the vessel under this contract, it is imperative that delay in delivery of such vessel resulting from late, damaged, or unsuitable Government furnished property be held to an

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absolute minimum. In order to achieve minimization of delay it is agreed that:

(1) Subject to adjustment as provided in paragraph (b) below, the Government shall deliver each item of Government furnished property to the Contractor on or before the date specified in the contract or, if later, in sufficient time for the contractor to deliver the vessel in accordance with the delivery schedule specified elsewhere.

(2) The Government may forego furnishing any item of Government property to the Contractor. In that event, the Contractor shall prepare the vessel in terms of piping, wiring, structure, foundation, ventilation, and any other preinstallation requirements of the item, so that the work on the vessel may continue without delay and disruption resulting from the absence of the item. If the Government does not furnish an item designated as Government furnished property, the parties may be entitled to an equitable adjustment in the contract price, in accordance with the Changes clause for eliminating the requirement to install the Government property item. But, notwithstanding any other clause of this contract, an adjustment shall not be made in the delivery schedule of any vessel if the Government chooses not to furnish the item on or before the delivery date of the item. If the Government subsequently desires the Contractor to install the item prior to delivery of the vessel, a contract modification shall be executed which takes into account any increase in cost or performance time resulting from the installation.

(b) If the delivery date for the vessel is extended for any reason, the latest date for which the Government must deliver items of Government property shall be deemed to be extended by an equal number of days unless (i) the Contracting Officer agrees in writing that earlier delivery of the items is required, in which case some or all of the Government property shall be extended as agreed rather than on a day-for-day basis, or (ii) a Government property item was the exclusive cause for the extension of the delivery date of the vessel in which case the latest date by which the Government must deliver the item shall not be deemed to be extended unless the parties agree otherwise.

(c) The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government furnished property suitable for use (except for such property furnished "as is") will be delivered to the Contractor at the time stated in the specification or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. If the Government furnished property is not delivered to the Contractor by such time and the Contractor makes a timely written request, the Contracting Officer shall determine if an equitable adjustment is appropriate. If determined appropriate, the Contracting Officer shall equitably adjust the delivery or performance date, the specifications, the price, or any other contractual provision affected by any such delay, in accordance with the Changes clause.

(d) The Government Property and Minimization of Delay Due to Government Furnished Property clauses contain exclusive remedies. The Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government furnished property or delivery of such property in a condition not suitable for its intended use.

(End of Clause)

1352.217-95 Additional provisions relating to government property.

As prescribed in 1317.7001(a), insert the following clause:

Additional Provisions Relating to Government Property (CAR 1352.217-95) (Jan. 1987)

(a) Notwithstanding any requirements to the contrary for the furnishing of material by the Government which may appear in plans, drawings, or other data, the Government shall furnish only the material specifically listed in the specifications as Government furnished property. Any material required for the performance of the contract which does not appear in the specifications as Government furnished shall be furnished by the Contractor.

(b) The Contracting Officer may increase the amount of material to be furnished by the Government and the contract shall be equitably adjusted in accordance with the Government Property clause.

(c) Unless otherwise specifically directed by the Contracting Officer, nonreusable crates and other nonreusable packaging in which Government material is delivered to the Contractor shall become the property of the Contractor upon removal of the packaged or crated material.

(d) Any packaging in preparation for delivery or for other disposal of Government property by the Contractor at the direction or authorization of the Contracting Officer pursuant to paragraph (i) of the Government Property clause shall be provided for by change order and an appropriate adjustment shall be made in the contract price in accordance with the Changes clause.

(e) The vessel, its equipment, movable stores, cargo and other ship's material are not designated Government furnished property under the Government Property clause.

(End of Clause)

1352.217-96 Liability and insurance.

As prescribed in 1317.7001(a), insert the following clause:

Liability and Insurance (CAR 1352.217-96) (Jan. 1987)

(a) The Contractor shall exercise reasonable care and use its best efforts to prevent accidents, injury or damage to all employees, persons and property, in and about the work, and to the vessel or part thereof upon which work is done.

(b) The Contractor shall be responsible for and make good at its own cost and expense any and all loss of or damage of whatsoever nature to the vessel (or part thereof), its equipment, movable stores and cargo, and Government owned material and equipment for the repair, completion, alteration of or addition to the vessel in the possession of the Contractor, whether at the plant or elsewhere, arising or growing out of the performance of the work, except where the Contractor can affirmatively show that such loss or damage was due to causes beyond the Contractor's control, was proximately caused by the fault or negligence of agents or employees of the Government, or which loss or damage the Contractor by exercise of reasonable care was unable to prevent. However, the Contractor shall not be responsible for any such loss or damage discovered after redelivery of the vessel unless (i) the loss or damage is discovered within 90 days after redelivery of the vessel and (ii) loss or damage is affirmatively shown to be the result of the fault or negligence of the Contractor. To induce the Contractor to perform the work for the compensation provided, it is specifically agreed that the Contractor's aggregate liability on account of loss of or damage to the vessel (or part thereof), its equipment, movable stores and cargo and Government owned materials and equipment shall in no event exceed the sum of $300,000. As to the Contractor, the Government assumes the risk of loss or damage to the Government-owned vessel (or part thereof), its equipment, movable stores and cargo and said Government-owned materials and equipment in excess of $300,000. This assumption of risk includes but is not limited to loss or damage from negligence of whatsoever degree of the Contractor's servants, employees, agents or subcontractors but specifically excludes loss or damage from willful misconduct or lack of good faith on the part of the Contractor's directors, officers and any of its managers, superintendents or other equivalent representatives who have supervision or direction of (i) all or substantially all of the Contractor's business, or (ii) all or substantially all of the Contractor's operation at any one plant. However, as to such risk assumed and borne by the Government, the Government shall be subrogated to any claim, demand or cause of action against third persons which exists in favor of the Contractor, and the contractor shall, if required, execute a formal assignment or transfer of claims, demands or causes of action. Nothing contained in this paragraph shall create or give rise to any right, privilege or power in any person except the Contractor, nor shall any person (except the Contractor) be or become entitled thereby to proceed directly against the Government, or join the Government as a co-defendent in any action against the Contractor brought to determine the Contractor's liability, or for any other purpose.

(c) The Contractor indemnifies and holds harmless the Government, its agencies and instrumentalities, and the vessel against all suits, actions, claims, costs or demands (including without limitation, suits, actions, claims, costs or demands resulting from death, personal injury and property damage) to which the Government, its agencies and instrumentalities, or the vessel may be subject or put by reason of damage or injury (including death) to the property or person of any one other than the Government, its agencies, instrumentalities and personnel, or the vessel arising or resulting in whole or in part from the fault, negligence, wrongful act

or wrongful omission of the Contractor, or any subcontractor, its or their servants, agents or employees; provided that the Contractor's obligation to indemnify under this paragraph (c) shall not exceed the sum of $300,000 on account of any one accident or occurrence in respect of any one vessel. Such indemnity shall include, without limitation, suits, actions, claims, costs or demands of any kind whatsoever, resulting from death, personal injury or property damage occurring during the period of performance of work on the vessel or within 90 days after redelivery of the vessel. With respect to any such suits, actions, claims, costs or demands resulting from death, personal injury or property damage occurring after the expiration of such period, the rights and liabilities of the Government and the Contractor shall be as determined by other provisions of this contract and by law; provided that such indemnity shall apply to death occurring after such period which results from any personal injury received during the period covered by the Contractor's indemnity as provided herein.

(d) The Contractor shall, at its own expense, procure, and thereafter maintain such casualty, accident and liability insurance, in such forms and amounts as may be approved by the Contracting Officer, insuring the performance of its obligations under paragraph (c) of this clause. In addition, the Contractor shall at its own expense procure and thereafter maintain such ship repairer's legal liability insurance as may be necessary to insure the Contractor against its liability as ship repairer in the amount of $300,000, or the value of the vessel as determined by the Contracting Officer, whichever is the lesser, with respect to each vessel on which work is performed. The Contractor shall cause the Government to be named as an additional insured under any and all liability insurance policies. However, at the discretion of the Contracting Officer, such insurance need not be procured whenever the job order requires work on parts of a vessel only and the work is to be performed at a plant other than the site of the vessel. Further, the Contractor shall procure and maintain in force Workmen's Compensation Insurance (or its equivalent) covering its employees engaged in the work and shall insure the procurement and maintenance of such insurance by all subcontractors engaged in the work. The Contractor shall provide evidence of insurance as required by the Government.

(e) The Contractor shall receive no allowance in the contract price for inclusion of any premium expense or charge for any reserve made on account of self-insurance for coverage against any risk assumed by the Government under this clause.

(f) As soon as practicable after the occurrence of any loss or damage the risk of which the Government has assumed, written notice of the damage shall be given by the Contractor to the Contracting Officer. The notice shall contain full particulars of the loss or damage. If claim is made or suit is brought thereafter against the Contractor as the result or because of such event, the Contractor shall immediately deliver to the Government every demand, notice, summons or other process received by it or its representatives. The Contractor shall cooperate with the Government and, upon the Government's request, shall assist in effecting settlements, securing and giving evidence; obtaining the attendance of witnesses and in the conduct of suits. The Government shall pay to the Contractor the expense, other than the cost of maintaining the Contractor's usual organization, incurred in this assistance. Except at its own cost, the Contractor shall not voluntarily make any payment, assume any obligation or incur any expense not imperative for the protection of the vessel or vessels at the time of the event.

(End of Clause)

1352.217-97 Title.

As prescribed in 1317.7001(a), insert the following clause:

Title (CAR 1352.217-97) (Jan. 1987)

Unless title to materials and equipment acquired or produced for, or allocated to, the performance of this contract shall have vested previously in the Government by virtue of other provisions of this contract, title to all materials and equipment to be incorporated in any vessel or part thereof, or to be placed upon any vessel or part hereof in accordance with the requirements of the contract, shall vest in the Government upon delivery thereof at the plant or such other location as may be specified in the contract for the performance of the work. However, the Contractor is fully responsible for all such Contractor furnished materials and equipment or the restoration of any damaged work. It is expressly understood and agreed that the Contractor shall assume without limitation the risk of loss for any such materials and equipment until such time as all work is completed and accepted by the Government and the vessel is redelivered to the Government. Upon completion of the contract, or with the approval of the Contracting Officer at any time during the performance of the contract, all such Contractor furnished materials and equipment not incorporated in any vessel or part thereof, or not placed upon any vessel or part thereof, in accordance with the requirements of the contract, shall become the property of the Contractor, except those materials and equipment the cost of which has been reimbursed by the Government to the Contractor.

(End of Clause)

1352.217-98 Discharge of Liens.

As prescribed in 1317.7001(a), insert the following clause:

Discharge of Liens (CAR 1352.217-98) (Jan. 1987)

The Contractor shall immediately discharge or cause to be discharged any lien or right in rem of any kind, other than in favor of the Government, which at any time exists or arises in connection with work done or materials furnished under any contract hereunder with respect to the machinery, fittings, equipment or materials for any of the vessels. If any such lien or right in rem is not immediately discharged, the Government may discharge or cause to be discharged such lien or right at the expense of the Contractor.

(End of Clause)

1352.217-99 Department of Labor Occupational Safety and Health Standards for Ship Repairing.

As prescribed in 1317.7001(a), insert the following clause:

Department of Labor Occupational Safety and Health Standards for Ship Repairing (CAR 1352.217-99) (Jan. 1987)

Attention of the Contractor is directed to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651-678), and to the Occupational Safety and Health Standards for Shipyard Employment (29 CFR 1915), promulgated under Pub. L. 85-742, amending Section 41 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 941), and adopted by the Department of Labor as occupational safety or health standards under Section 6(a) of the Occupation Safety and Health Act of 1970 (29 CFR 1910.13). These regulations apply to all ship repair and related work, as defined in the regulations, performed under this contract on the navigable waters of the United States, including any dry dock or marine railway. Nothing contained in this contract shall be construed as relieving the Contractor from any obligations which it may have for compliance with the aforesaid regulations.

(End of Clause)

1352.217-100 Regulations Governing Asbestos Work.

As prescribed in 1317.7001(a), insert the following clause:

Regulations Governing Asbestos Work (CAR 1352.217-100) (Jan. 1987)

If asbestos is encountered, the Contractor shall follow the regulations contained in 29 CFR 1910.1001 (OSHA, Chapter XVII).

(End of Clause)

1352.217-101 Complete and Final Equitable Adjustments.

As prescribed in 1317.7001(a), insert the following clause:

Complete and Final Equitable Adjustments (CAR 1352.217-101) (Jan. 1987)

Whenever the Contractor submits any claim for an equitable adjustment attributable to any fact or circumstance regarded as a change order whether formal or "constructive," under the Changes clause or any other clause of this contract, such claim shall include all adjustments (including but not limited to adjustments arising out of delays or disruptions or both caused by such change order) to which the Contractor is entitled under this contract. The foregoing requirement shall not preclude the Contractor from revising or resubmitting the claim prior to agreement upon the equitable adjustment for the change order. However, unless otherwise expressly agreed in the aforesaid supplemental agreement, the Contractor shall waive any right under the Changes clause or any other clause of this contract to further

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equitable adjustments attributable to such facts or circumstances giving rise to the claim upon the execution of the supplemental agreement setting forth the equitable adjustment. In any event, such right shall be deemed to be waived.
(End of Clause)

1352.217-102 Government Review, Comment, Acceptance, and Approval.

As prescribed in 1317.7001(a), insert the following clause:

Government Review, Comment, Acceptance and Approval (CAR 1352.217-102) (Jan. 1987)

(a) Documentation, including drawings and other engineering products and reports, required by the contract to be submitted for review, comment, acceptance or approval will be acted upon by the Government within 30 calendar days after receipt by the Government, unless another period of time is specified.

(b) Review, comment, acceptance or approval by the Government as required under this contract and applicable specifications shall not relieve the Contractor of its obligation to comply with the specifications and with all other requirements of the contract, nor shall it impose upon the Government any liability it would not have had in the absence of such review, comment and acceptance or approval.
(End of Clause)

1352.217-103 Access to the Vessel(s).

As prescribed in 1317.7001(a), insert the following clause:

Access to the Vessel(s) (CAR 1352.217-103) (Jan. 1987)

(a) As authorized by the Contracting Officer, a reasonable number of officers, employees and associates of the Government, or other prime Contractors with the Government and their subcontractors shall have admission to the plant and access to the vessel(s) at all reasonable times to perform and fulfill their respective obligations to the Government on a noninterference basis. The Contractor shall make reasonable arrangements to provide access for these personnel to office space, work areas, storage or shop areas, and other facilities and services, reasonable and necessary to performance of their respective duties. All such personnel shall comply with Contractor rules and regulations governing personnel at its shipyard, including those regarding safety and security.

(b) The Contractor further agrees to allow a reasonable number of officers, employees, and associates of offerors on other contemplated work, the same privileges of admission to the Contractor's plant and access to the vessel(s) on a noninterference basis subject to Contractor rules and regulations governing personnel in its shipyard, including those regarding safety and security.
(End of Clause)

1352.217-104 Documentation of Requests for Equitable Adjustment.

As prescribed in 1317.7001(a), insert the following clause:

Documentation of Requests for Equitable Adjustment (CAR 1352.217-104) (Jan. 1987)

(a) For the purpose of this clause, the term "change" includes not only a change made pursuant to a written order designated as a "change order" but also any act or omission to act on the part of the Government where a request is made for equitable adjustment.

(b) Whenever the Contractor requests or proposes an equitable adjustment to the contract price of not more than $100,000, for a change or an act or omission on the part of the Government, the request shall include a breakdown of the price adjustment in such form and supported by such reasonable detail as the Contracting Officer may request. As a minimum, the Contractor shall provide a breakdown of direct labor hours, labor dollars, overhead, material, subcontracts, contingencies and profit for each change and a justification for any extension of delivery date.

(c) Whenever the Contractor requests or proposes an equitable adjustment of $100,000 gross (aggregate increases and/or decreases) or more to the price of the contract for a change made pursuant to a written order designated as a "change order" or whenever the Contractor requests an equitable adjustment in any amount for any other act or omission to act on the part of the Government, the proposal supporting such request shall contain the following information for each individual item or element of the request:

(1) A description of (i) the unperformed work required by the contract before the change which has been deleted by the change and (ii) the work deleted by the change that already has been completed in whole or in part. The description shall include a list of components, equipment, and other identifiable property involved. Also, the status of manufacture, procurement, or installation of such property shall be indicated. A separate description shall be furnished for design and production work. Items of raw material, purchased parts, components, and other identifiable hardware which are made excess by the change, and which are not to be retained by the Contractor, are to be listed for later disposition;

(2) A description of the work necessary to undo work already completed which has been deleted by the change;

(3) A description of the work substituted or added by the change that was not required by the terms of the contract before the change. A list of components and equipment (not bulk material or items) involved, should be included. A separate description shall be furnished for design work and production work;

(4) A description of any interference or inefficiency encountered in performing the change;

(5) A description of disruption attributable solely to the change, which shall include the following information:

(i) A specific description of each element of disruption which states how the work has been, or will be, disrupted;

(ii) The calendar time period when disruption occurred, or will occur;

(iii) The area(s) aboard ship where disruption occurred, or will occur;

(iv) The trade(s) disrupted, with a breakdown of man-hours for each trade;

(v) The scheduling of trades before, during, and after the period of disruption;

(vi) A description of measures taken to lessen the disruptive effect of the change.

(6) The delay in delivery attributable solely to the change;

(7) A description of other work attributed to the change;

(8) A narrative statement of the direct causal relationship between any alleged Government act or omission and the claimed result, cross-referenced to the detailed information required above.

(9) A statement setting forth a comparative enumeration of the amounts "budgeted" for the cost elements, including the materials cost, labor hours, and indirect costs pertinent to the change estimated by the Contractor in preparing his initial and ultimate proposal(s) for this contract, and the amounts claimed to have been incurred, or projected to be incurred, corresponding to each such "budgeted cost" element.

(d) In addition to the information required by paragraph (b), each proposal submitted in support of a claim for equitable adjustment in the amount of $100,000 or more under any provision of this contract shall contain a duly executed Standard Form 1411 (Contract Pricing Proposal) for each individual claim item. The submitted Standard Form 1411 shall fully comply with Section 15.804-6 of the Federal Acquisition Regulation and any instructions on the reverse side of the form.

(e) In addition to the information required by paragraph (c), each proposal submitted in support of a claim for equitable adjustment under any provision of this contract shall contain a duly executed SF-1411 (Contracting Pricing Proposal) for each individual claim item. The submitted SF-1411 shall fully comply with Section 15.804-6 of the Federal Acquisition Regulation and any instructions on the reverse side of the form.

(f) Individual claims for equitable adjustment may not encompass all of the factors listed in (c) above. Accordingly, the Contractor is required to set forth in his proposal information only with respect to those factors which are encompassed in the individual claim for equitable adjustment. In any event, the information furnished hereunder shall be in sufficient detail to permit the Contracting Officer to correlate the claimed increased costs or delay in delivery set forth in the SF-1411 (Contracting Pricing Proposal) with the information submitted pursuant to paragraph (c).
(End of Clause)

1352.217-105 Change proposals.

As prescribed in 1317.7001(a), insert the following clause:

Change Proposals (CAR 1352.217-105) (Jan. 1987)

(a)(1) In addition to issuing changes under the Changes clause, the Contracting Officer may propose changes within the general scope of this contract, as set forth below. Within 10 days from the date of receipt of any such proposed change, or within such further time as the Contracting Officer may allow, the Contractor shall submit a scope of work, plans and sketches for the proposed change, and his estimate of: (i) the cost, (ii) the effect on the delivery date of the vessel, and (iii) the status of work on the ship affected by the proposed change. The proposed scope of work and estimate of the cost shall be in such form and supported by such reasonably detailed information as the Contracting Officer may require. (2) The Contractor's estimate shall be a firm offer for 30 days from receipt thereof by the cognizant Contracting Officer, unless extended by mutual consent. Within the time limit, the Contractor agrees to either (i) enter into a supplemental agreement covering the estimate as submitted or (ii) begin good faith negotiations at the request of the Contracting Officer, leading to the execution of a bilateral supplemental agreement, if the estimate as submitted is not satisfactory to the Contracting Officer. In either case, the supplemental agreement shall include an equitable adjustment for the preparatory work set forth above.

(b) Pending execution of a bilateral agreement or the direction of the Contracting Officer pursuant to the Changes clause, the Contractor shall proceed diligently with contract performance without regard to the effect of any such proposed change.

(c) Concurrently with the submission of any Change Proposal under this contract in which the proposed aggregate cost is $100,000 or greater, the Contractor shall submit to the Contracting Officer a completed Standard Form 1411. At the time of agreement upon the price of the Change Proposal, the Contractor shall submit a signed Certificate of Current Cost or Pricing Data.
(End of Clause)

1352.217-106 Lay days.

As prescribed in 1317.7001(a), insert the following clause:

Lay Days (CAR 1352.217-106) (Jan. 1987)

(a) Lay day time will be paid for by the Government at the Contractor's stipulated bid price for this item of the contract when the vessel remains on the dry dock or marine railways as a result of any Government change that involves work in addition to that required under the basic contract.

(b) No amount for lay day time shall be paid until all accepted items of the basic contract for which a price was established by the Contractor and for which docking of the vessel was required have been satisfactorily completed.

(c) Days of hauling out and floating, whatever the hour, shall not be paid as lay day time, and days when no work is performed by the Contractor shall not be paid as lay day time.

(d) Payment of lay day time shall constitute complete compensation for all costs except for the direct cost of performing the changed work.
(End of Clause)

1352.217-107 Changes—Ship repair.

As prescribed in 1317.7001(a), insert the following clause:

Changes—Ship Repair (CAR 1352.217-107) (Jan. 1987)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract, in any one or more of the following:

(1) Drawings, designs, or specifications, when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications;

(2) Method of shipment or packing;

(3) Place of performance of the work;

(4) Time of commencement or completion of the work; and

(5) Other requirements within the general scope of the contract.

(b) If any such change causes an increase or decrease in the cost of, or the time requried for, performance of any part of the work under this contract, whether changed or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must submit any proposal for adjustment (hereafter referred to as proposal) under this clause within 10 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
(End of Clause)

1352.217-108 Default—Ship repair.

As prescribed in 1317.7001(a), insert the following clause:

Default—Ship Repair (CAR 1352.217-108) (Jan. 1987)

(a) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—

(1) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(2) Make progress, so as to endanger performance of this contract; or

(3) Perform any of the other provisions of this contract.

(b) If the Government terminates this contract in whole or in part, it may arrange for completion of the work in the manner the Contracting Officer considers appropriate. The Contracting Officer may designate any plant or plants for completion of the work, including the Contractor's plant or plants. If the work is to be completed at the Contractor's plant, the Government may use all tools, machinery, facilities and equipment of the Contractor which the Contracting Officer determines to be necessary. The Contractor will be liable to the Government for any excess costs, other than those costs attributable to changes in the plans or specifications made after the termination date. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as

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if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of Clause)

1352.217-109 Insurance requirements.

As prescribed in 1317.7001(b), insert the following clause:

Insurance Requirements (CAR 1352.217-109) (Jan. 1987)

(a) The Contractor shall procure and thereafter maintain the following insurance:

(1) Ship repairer's legal liability insurance to insure the risks described in paragraph (b) of the Liability and Insurance clause. This insurance shall be for $300,000.

(2) Comprehensive general liability insurance and automobile insurance to insure the risks described in paragraph (c) of the Liability and Insurance clause. This insurance shall be for $300,000 on account of any one accident or occurrence with respect to each vessel, boat, and/or barge upon which work is performed. The Contractor shall cause the Government to be named as an additional insured under any and all liability insurance policies.

(3) Full coverage in accordance with the State Workmen's Compensation law; and

(4) Full coverage in accordance with the United States Longshoremen's and Harbor Worker's Act.

(b) As evidence that it has obtained the insurance specified in (a) above, the Contractor shall furnish the Contracting Officer with a certificate or certificates executed by an agent of the insurer authorized to execute such certificates. Such certificates shall be furnished prior to commencement of the work. Each certificate shall state that (name of insurer) has insured (name of Contractor) awarded contract number _____ for repair/alteration of (name of vessel) in accordance with the Liability and Insurance clause and the Insurance Requirements clause contained herein. Each certificate shall set forth that each policy of insurance represented thereby will expire on (date) and that each such policy contains the following clause:

"It is agreed that in the event of cancellation, or any material change in the policy adversely affecting the interest of the Government in this insurance 30 days prior written notice will be given to the Contracting Officer."

(End of Clause)

1352.217-110 Guarantees.

As prescribed in 1317.7001(c), insert the following clause:

Guarantees (CAR 1352.217-110) (Jan. 1987)

In case any work done or materials furnished by the Contractor under this contract on or for any vessel or the equipment thereof shall, within 90 days from the date of redelivery of the vessel by the Contractor, prove defective or deficient, such defects or deficiencies shall, as required by the Government in writing, be corrected and repaired by the Contractor or at Contractor expense to the satisfaction of the Contracting Officer. However, the Government shall be entitled to rely upon any guarantee secured by the Contractor or any subcontractor covering work done on materials furnished which exceeds the 90-day period until the expiration. Also, with respect to any individual work item identified and listed as incomplete at the redelivery of the vessel, the guarantee period shall run from the date of completion of such item. If and when practicable, the Government shall afford the Contractor an opportunity to effect such corrections and repairs itself. But, when it is impracticable or undesirable to return it to the Contractor, or the Contractor fails to proceed promptly with any such repairs as directed by the Contracting Officer, the corrections and repairs shall be made at Contractor expense at other Government designated locations. Where corrections and repairs are to be made by other than the Contractor, due to non-return of the vessel to the Contractor, the Contractor's liability may be discharged by an equitable deduction in the price of the contract. The Contractor's liability shall only extend for an additional 90-day guarantee period on those defects or deficiencies which it corrected and in no event to those for which payment was made. However, this clause does not limit the responsibility or relieve the liability of the Contractor under the Liability and Insurance clause. At the Contracting Officer's option, defects and deficiencies may be left in their uncorrected condition. In that event, the Contractor and the Contracting Officer shall agree on an equitable deduction from the contract price. If the Contractor and the Contracting Officer fail to agree upon an equitable deduction from the contract price, the dispute shall be determined in accordance with the Disputes clause.

(End of Clause)

1352.217-111 Temporary services.

As prescribed in 1317.7001(d), insert the following clause:

Temporary Services (CAR 1352.217-111) (Jan. 1987)

(a) Temporary services are services incidental to the performance of work which are required in the schedule or specifications to be provided by the contractor. Temporary services may include the furnishing of water, electricity, telephone service, toilet facilities, garbage removal, office space, parking places, or similar facilities as specified in the schedule or specifications.

(b) If performance time is extended due to Government caused delay or causes beyond the control of both the contractor and subcontractor, and without the fault or negligence of either, the contractor shall have the right to request an equitable adjustment for providing temporary services in excess of the number of estimated days contained in the schedule. Any such equitable adjustment shall not exceed the amount obtained by multiplying the number of excess days by the contractor's unit price contained in the schedule for this item.

(End of Clause)

1352.217-112 Self-insurance information.

As prescribed in 1317.7001(e), insert the following provision:

Self-Insurance Information (CAR 1352.217-112) (Jan. 1987)

An offeror who proposes to self-insure for any or all of the risks set forth in the Liability and Insurance clause and the Insurance Requirements clause shall submit satisfactory evidence to permit the Contracting Officer to determine that the offeror's assets are sufficient for the risks set forth in such clauses. The offeror shall submit with its offer 2 certified copies of documents listing its assets and liabilities and other information deemed necessary by the offeror or required by the Contracting Officer. For approval of self-insurance under the State Workmen's Compensation Law and the United States Longshoremen's and Harbor Workers' Act, evidence of qualifications as a self-insurer under the applicable compensation statute must be furnished to the Contracting Officer.

(End of Provision)

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INTERSTATE COMMERCE COMMISSION

49 CFR Part 1043

[Ex Parte No. MC-178]

Investigation Into Motor Carrier Insurance Rates

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: In response to a review of the initial comments received in this proceeding, and to provide contemporary guidance to applicants who wish to apply to self-insure against bodily injury and property damage claims, the Commission proposed to amend 49 CFR 1043.5(a) to include guidelines as to the type of information applicants for self-insurance should submit with the Form B.M.C. 40 application. Because of the serious nature of insurance-related economic and operational problems facing the motor carrier industry today, we adopted the proposed changes as interim rules to help provide the Commission with relevant information about carrier-applicants' abilities to indemnify claimants under insurance plans that do not rely primarily on commercial insurers. Comments were received and evaluated. Minor modifications were made to the interim rules based on these comments. The Commission now adopts the modified interim rules as final rules. The interim rules will remain in effect until the effective date of the final rules.

EFFECTIVE DATE: The rules are effective March 2, 1987.

FOR FURTHER INFORMATION CONTACT:

Mark S. Shaffer (202) 275-7805

or

Louis E. Gitomer (202) 275-7691

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Energy and Environmental Considerations

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

Regulatory Flexibility Analysis

The Commission certifies that adoption of these interim rules will not have a significant impact on a substantial number of small entities. They do not require small entities to do anything substantially different in applications under 49 CFR 1043.5 than already is required. The interim rules suggest the types of evidence that should be presented, and clarify the approach the Commission will take in evaluating self-insurance applications. To the extent that the revised approach to reviewing self-insurance applications encourages use of this alternative security mechanism by small carriers, this proceeding may have a beneficial impact on their ability to meet the required financial security obligations.

List of Subjects in 49 CFR Part 1043

Insurance, Motor carriers, Surety bonds.

Decided: January 20, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley dissented in part and will submit a separate expression at a later date.

Noreta R. McGee,

Secretary.

Appendix

Title 49 of the CFR is amended as follows:

PART 1043—SURETY BONDS AND POLICIES OF INSURANCE

1. The authority citation for 49 CFR Part 1043 is revised to read as follows:

Authority: 49 U.S.C. 10101, 10321, 11701, 10927; 5 U.S.C. 553.

2. Paragraph (a) of § 1043.5 is revised as follows:

§ 1043.5 Qualifications as a self-insurer and other securities or agreements.

(a) *As a self-insurer.* The Commission will consider and will approve, subject to appropriate and reasonable conditions, the application of a motor carrier to qualify as a self-insurer, if the carrier furnishes a true and accurate statement of its financial condition and other evidence that establishes to the satisfaction of the Commission the ability of the motor carrier to satisfy its obligation for bodily injury liability, property damage liability, or cargo liability. Application Guidelines: In addition to filing Form B.M.C. 40, applicants for authority to self-insure against bodily injury and property damage claims should submit evidence that will allow the Commission to determine:

(1) The adequacy of the tangible net worth of the motor carrier in relation to the size of operations and the extent of its request for self-insurance authority. Applicant should demonstrate that it will maintain a net worth that will ensure that it will be able to meet its statutory obligations to the public to indemnify all claimants in the event of loss.

(2) The existence of a sound self-insurance program. Applicant should demonstrate that it has established, and will maintain, an insurance program that will protect the public against all claims to the same extent as the minimum security limits applicable to applicant under § 1043.2 of this part. Such a program may include, but not be limited to, one or more of the following: Irrevocable letters of credit; irrevocable trust funds; reserves; sinking funds; third-party financial guarantees, parent company or affiliate sureties; excess insurance coverage; or other similar arrangements.

(3) The existence of an adequate safety program. Applicant must submit evidence of a current "satisfactory" safety rating by the United States Department of Transportation. Non-rated carriers need only certify that they have not been rated. Applications by carriers with a less than satisfactory rating will be summarily denied. Any self-insurance authority granted by the Commission will automatically expire 30 days after a carrier receives a less than satisfactory rating from DOT.

(4) Additional information. Applicant must submit such additional information to support its application as the Commission may require.

* * * * *

[FR Doc. 87-2497 Filed 2-5-87; 8:45 am]

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Proposed Rules

Federal Register
Vol. 52, No. 25
Friday, February 6, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Guidelines for Participating in the Federal Employees Health Benefits Program

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing revised regulations in response to requests for guidance from health benefits plans applying for participation in the Federal Employees Health Benefits (FEHB) Program. These regulations would outline the criteria used in considering applications by comprehensive medical plans, identify the areas on which OPM focuses its review, and address the distinctions drawn between the Department of Health and Human Services (HHS)-certified Health Maintenance Organizations (HMOs) and those plans that are not so certified.

DATE: Comments must be received on or before April 7, 1987.

ADDRESS: Written comments may be sent to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Ray, 632–3772.

SUPPLEMENTARY INFORMATION: OPM periodically accepts applications from Comprehensive Medical Plans (CMPs), often called HMOs, for participation in the FEHB Program. The law (5 U.S.C. Chapter 89) and current regulations state minimum requirements for Program participation. Subpart B of 5 CFR Part 890 contains OPM's specific requirements for FEHB Program participation, while general requirements to be met by all Federal Government contractors are contained in the Federal Acquisition Regulation (FAR) at 48 CFR Chapter 1. OPM has published proposed regulations, the Federal Employees Health Benefits Acquisition Regulations (FEHBAR), under the FAR System, which give further guidance on contracting with OPM under the FEHB Program. These regulations were published on July 30, 1986 (51 FR 27384). We are now reviewing comments received before preparing final regulations.

Over the years, OPM has received inquiries from plans seeking or investigating participation in the FEHB Program as to the criteria used in the application review process. To assist those CMPs/HMOs desiring entry into the FEHB Program, OPM is proposing these regulations to describe the criteria considered during the application review process.

OPM recognizes that the field of alternative health care delivery systems is a dynamic one. HMOs can, and do, follow a wide variety of acceptable paths toward success. Because of the variety of ways in which CMPs/HMOs approach the design and management of prepaid health plans, OPM has provided as much latitude in its review of applicant plans as the FEHB law and sound management practices permit. OPM's primary concern in the review process is to ensure that the health benefits carriers it contracts with have the experience, the financial stability, and the professional capability to perform effectively.

HHS has, for many years, administered the provisions of title 42 of the U.S. Code and Title 42 of the Code of Federal Regulations, both of which address the requirements for health care plans to become qualified for purposes of the Federal Health Maintenance Organization Act. As part of that qualification process, health care plans are required to submit extensive documentation to HHS to demonstrate (1) the soundness of the plan's infrastructure; (2) the capability of the plan's management team; (3) that arrangements are in place for the health care delivery system to provide necessary services; and (4) the fiscal viability to sustain plan operations in the future. These are many of the same attributes OPM looks for in applicants to the FEHB Program. Therefore, in the future, health care plans applying for participation in the FEHB Program who have been certified as HMOs by HHS at the time of application to OPM, and whose qualification status is not under active review by HHS, will need to submit only an abbreviated application to OPM to demonstrate compliance with FEHB statutory requirements and Program concerns. The extent of the data and documentation to be submitted by HHS-certified HMOs, as well as by non-certified health care plans, for a particular review cycle may be obtained by writing directly to the Prepaid Plans Division, Office of Insurance Programs, Retirement and Insurance Group, Office of Personnel Management, Washington, DC 20415.

These regulations OPM is proposing would become a part of § 890.203 of Title 5 of the Code of Federal Regulations. Section 890.203(a)(1) currently addresses the technical procedures for making application to the FEHB Program. The proposed revisions to paragraph (a)(2) would address certain mandatory requirements for all plans. The paragraphs added to § 890.203(a) would provide greater detail as to how the FEHB law and regulations are applied in the application review process. Part of the proposed regulation would replace the current language of § 890.203(a)(2), which addresses applications by employee organization plans for a period of time that expired January 1, 1980; this language is, therefore, obsolete.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation is a statement of application review criteria already in effect and announces reduced requirements for some categories of applicants to the FEHB Program.

List of Subjects in 5 CFR Part 890

Administrative practice and procedures, Claims, Government employees, Health insurance, Retirement.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM proposes to amend 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; Sec. 890.102 also issued under 5 U.S.C. 1104 and sec. 3(5) of Pub. L. 95–454, 92 Stat. 1112; Sec. 890.301 also issued under 5 U.S.C 8905(b); Sec. 890.302 also issued under 5 U.S.C. 8901(5) and 5 U.S.C. 8901(9); Sec. 890.701 also issued under 5 U.S.C. 8902(m)(2); Subpart H also issued under Title I of Pub. L. 98–615, 98 Stat. 3195, and Title II of Pub. L. 99–251.

2. In § 890.203, paragraph (a)(2) is revised and paragraphs (a) (3) and (4) are added to read as follows:

§ 890.203 Application for approval of, and proposal of amendments to, health benefits plans.

(a) * * *

(2) OPM may approve such comprehensive medical plans as, in the judgment of OPM, may be in the best interest of employees and annuitants enrolled in the Program. In addition to specific requirements set forth in 5 U.S.C. chapter 89, in chapter 1 and other relevant portions of Title 48 of the Code of Federal Regulations, and in other sections of this part, to be approved, an applicant plan must actually be delivering medical care at the time of application; must be in compliance with applicable state licensing and operating requirements; must not be a Federal, state, local, or territorial governmental entity; and must not be debarred, suspended, or ineligible to participate in Government contracting or subcontracting for any reason, including fraudulent health care practices in other Federal health care programs.

(3) Applications must identify those individuals who have the legal authority and responsibility to enter into and guarantee contracts. The applications will be reviewed for evidence of substantial compliance with the following standards:

(i) *Health plan management:* Stable management with experience pertinent to the prepaid health care provider industry; sufficient operating experience to enable OPM to realistically evaluate the plan's past and expected future performance;

(ii) *Marketing:* A rate of enrollment that ensures equalization of income and expenses within projected timeframes and sufficient subscriber income to operate within budget thereafter; enrollment dispersed among groups such that there is not a concentration of enrollment with one or a few groups so that the loss of one or more contracts by the carrier would not jeopardize its financial viability; feasible projections of future enrollment and employer distribution, as well as the potential enrollment area for marketing purposes;

(iii) *Health care delivery system:* A health care delivery system providing reasonable access to and choice of quality primary and specialty medical care throughout the service area; specifically, in the individual practice setting, contractual arrangements for the services of a significant number of primary care and specialty physicians in the service area; and in the group practice setting, compliance with 5 U.S.C. 8903(4)(A) preferably demonstrated by full-time providers specializing in internal medicine, family practice, pediatrics, and obstetrics/gynecology; and

(iv) *Financial condition:* Establishment of firm budget projections and demonstrated success in meeting or exceeding those projections on a regular basis; evidence of the ability to sustain operation in the future and to meet obligations under the contract OPM might enter into with the plan; clearly specified committed funding to see the plan to an expected break-even point including a sufficient amount for unexpected contingencies; adequate current and projected funding, such as estimated premium income or commitment from sponsorship by a mature stable entity outside the plan; insolvency protection, such as stop-loss reinsurance services and agreements with all plan providers that they will hold members harmless if, for any reason, the plan is unable to pay its providers.

(4) A comprehensive medical plan that has been certified as a qualified Health Maintenance Organization (HMO) by the Department of Health and Human Services (HHS) at the time of application to OPM, and whose qualification status is not under active review by HHS, will need to submit only an abbreviated application to OPM. The extent of the data and documentation to be submitted by an HHS-certified HMO, as well as by a non-certified plan, for a particular review cycle may be obtained by writing directly to the Prepaid Plans Division, Office of Insurance Programs, Retirement and Insurance Group, Office of Personnel Management, Washington, DC 20415.

* * * * *

[FR Doc. 87–2456 Filed 2–5–87; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 277

Food Stamp Program; Automation of Data Processing (ADP) Model Plan

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes a model plan and requirements for State agency plans for the comprehensive automation of data processing (ADP) and computerization of information systems under the Food Stamp Program, as required by the Food Security Act of 1985. State agencies must begin to implement their plans by October 1, 1988.

DATE: Comments on this proposed rulemaking must be received on or before March 23, 1987 to be assured of consideration.

ADDRESS: Comments should be submitted to Thomas O'Connor, Supervisor, State Management Section, Administration and Design Branch, Program Development Division, Food and Nutrition Service, USDA, 22302. All written comments will be open to public inspection during regular business hours (8:30 a.m. to 5:00 p.m. Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 706.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be directed to Mr. O'Connor at the above address or by telephone at (703) 756–3385.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

The Department has reviewed this action under Executive Order 12291 and Secretary's Memorandum No. 1512–1. It has been determined that this action would not result in an annual effect on the economy of $100 million or more; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Department has classified this action as "not major".

Executive Order 12372

The Food Stamp Program is listed in the Catalogue of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule related

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Notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has also been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). Robert E. Leard, the Administrator of the Food and Nutrition Service (FNS), has certified that this action will not have a significant economic impact on a substantial number of small entities. The action simply results in development of a model plan and State agency plans which will improve the efficiency and cost effectiveness of State automated data processing and information retrieval systems.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained.

Background

On December 23, 1985, the Congress enacted Pub. L. 99–198, the Food Security Act of 1985. Section 1537 of that law adds a new section 11(o) to the Food Stamp Act of 1977, as amended. Section 11(o) contains several provisions relating to computerization. First, there is a requirement that the Secretary develop a model plan. Second, there is a requirement that the State agencies submit their own plans for computerization. Third, the Secretary is required to report to Congress his evaluation of the degree and sufficiency of each State agency's automated data processing (ADP) and computerized information systems (CIS). Fourth, the Secretary can require corrective action on the part of the State agencies and can withhold State agency administrative funds for failure to comply.

1. Detailed Requirements of the Statute

a. *Subsection 11(o)(1).* Subsection 11(o)(1) requires that the Secretary of Agriculture develop a model plan for the comprehensive automation of data processing and computerization of information systems under the Food Stamp Program (FSP). The model plan may include intake procedures, eligibility determinations and calculation of benefits, verification procedures, coordination with related Federal and State programs, issuance, reconciliation procedures, generation of notices, and program reporting.

In developing the plan, the Secretary is required to take into account ADP and information systems already in the States and to be consistent with these. The Secretary is also required to develop the plan after consultation with an advisory group of State agencies.

The model plan must be published as a proposal in the **Federal Register** and public comments must be taken into consideration prior to publishing a final plan.

b. *Subsection 11(o)(2).* Subsection 11(o)(2) provides for the first step of a State planning and evaluation process. That is, by October 1, 1987, each State agency must develop and submit their own plans for the use of automated data processing and information retrieval systems to administer the Food Stamp Program. State plans must take the Secretary's model plan into consideration, and they must provide timeframes for completion of various activities. The statute provides that in the event a State agency already has a sufficient ADP and information retrieval system, then the Secretary may permit the State agency to submit a plan that reflects the State agency's existing system.

c. *Subsection 11(o)(3).* Subsection 11(o)(3) provides for the second step in the State planning and evaluation process. Under it, the Secretary will review all of the State agencies' plans and send a report to the Congress on that review by April 1, 1988 and periodically thereafter. In these reports, the degree and sufficiency of each State agency's ADP and CIS, including the State agencies' plans will be evaluated. The reports will also include an analysis of the additional steps needed for the State agencies to achieve efficient and cost-effective ADP and CIS. Consistent with the legislative history (House Report 99–271 on H.R. 2100, September 13, 1985, p. 163), the Secretary would not require State agencies to have computer systems identical to the model plan itself, or even as sophisticated as the model plan. The Secretary could approve ADP/CIS efforts that fell short of the model plan, although he could mandate computerization if he thought it necessary.

d. *Subsection 11(o)(4).* According to subsection 11(o)(4), the Secretary may require a particular State agency to undertake specific actions to rectify shortcomings in its administration of the FSP, except where such action would displace existing State initiatives. The Secretary may also require specified steps toward automated data processing systems if "the Secretary finds that in the absence of such systems, there will be program accountability or integrity problems that will substantially affect the administration of the Food Stamp Program in the State."

e. *Subsection 11(o)(5).* Subsection 11(o)(5) requires State agencies to begin to implement their ADP/CIS Plans by October 1, 1988. It also requires State agencies to meet the time schedules for various activities set forth in their plans. However, the Secretary may extend these deadlines, as appropriate, if the State agency has made a good faith effort to meet them.

Section 1537 authorizes the Secretary to withhold administrative funds which the State agency would otherwise be entitled to if the State agency does not automate sufficiently and effectively.

The amended statute retains the pre-existing enhanced funding authority for certain automation activities. (7 U.S.C. 2025(g))

2. Initial FNS Considerations

FNS initially determined that the model plan be a guide or tool for FNS and the State agencies themselves in developing computerized systems and assessing automation activities and needs. In keeping with the Congressional mandate to take into account and remain consistent with existing ADP and information systems, FNS wanted the plan to be realistic and attainable by State agencies which already had efficient and effective computer systems. Accordingly, FNS determined that there were several options for model plan development: general standards, a comprehensive and specific plan, or a combination of these.

3. Advisory Committee Recommendations

In accordance with the requirements of the statute, the Secretary appointed an Advisory Committee to advise him concerning the model plan. The Advisory Committee consisted of representatives from the Colorado, New Jersey, Ohio, South Carolina, Texas, and Vermont State agencies. Committee members represented a cross section of the States and included State persons who had primarily FSP expertise and others who had primarily ADP expertise. Their States included a balance of large and small States, urban and rural States, State-administered and county-administered programs, and programs which were already computerized and those which were just beginning to computerize.

A major concern of the Advisory Committee was that State agencies be allowed sufficient flexibility to design automation systems which most appropriately met their needs. They viewed automation as one of a number of approaches to resolving programmatic problem areas, noting that a manual system for some program areas could meet a given State agency's needs just as efficiently as a more automated system. They also noted that several State agencies which were highly automated had high error rates, while some State agencies with low error rates were not highly automated. Thus, they recommended against a comprehensive and specific plan, noting that State agencies desiring this type of input could obtain ideas for computer development by consulting with other State agencies.

The option the Committee recommended for model plan development was similar to the general standards option the Department had already identified. The Committee recommended that the Department use an updated version of section 277.18 of the current regulations (7 CFR 277.18) as the basis for the model plan.

The Committee recommended that the standards in section 277.18 be used as part of a two-step model plan process. All State agencies would be required to complete the first step of the process. Under it, each State agency would develop and submit to the Secretary a "plan". This plan would consist of a report which describes their operations in accordance with nine general criteria (which would serve as possible indicators of the need for automation). FNS would use the criteria to evaluate each State agency's plan, as well as its administration of the FSP as a whole.

If the State agency "passed" the first step of the model plan process, that would be considered evidence that they did not have substantial problems that automation could correct, so there would not be a need to undergo the second step of the model plan process.

State agencies which did not "pass" the first step would proceed to the second step of the model plan process. During it, the FNS Regional Office and the State agency would attempt to identify the most appropriate means to solve the State agency's problem. The model plan (consisting of § 277.18) would be consulted to determine whether or not an automated solution to the State agency's particular problem was appropriate. If the State agency and FNS agreed upon an automated solution, the State agency would then submit an Advance Planning Document (APD) and, if desired, request enhanced funding and take whatever additional steps were necessary to implement the solution. No State agency would be required to implement any part of the model plan unless it had been demonstrated that a specific and severe problem existed in a given area, and that an automated solution was most appropriate under the circumstances.

4. FNS Analysis of Advisory Committee Recommendations

FNS agrees with the Advisory Committee that the Congress did not intend to mandate computerization in and of itself but to tie it to certain management aspects of the program and to work toward the correction of management problems. H. Report 99–271 on H.R. 2100, September 13, 1985, p. 163, states:

> . . . the Committee does not foresee that the limited authority provided under the bill to the Secretary to mandate computerization in States with substantial accountability or integrity problems will result in the mandate of the model computer plan in any such State. The Secretary's ability to mandate the use of computers is intended to be limited to specific severe problems in a State's administration of the food stamp program. The computer mandate should apply only to the extent necessary to fix the particular problem in any given State. At least initially, the Secretary's mandate of computerization in any State would be based on findings in the written evaluation and analysis of each State computer operations. . . .

FNS also agrees that the Congress did not mandate a particular approach to computerization. House Report 99–271 on H.R. 2100, September 13, 1985, p. 162–163, states:

> The idea is to set a blueprint for where computerization is most appropriate, without mandating that any particular approach or system be utilized. The model plan should be flexible enough to accommodate the many differing computer systems and needs of the various States and localities.

Thus, FNS supports the Committee's recommendation to use § 277.18 as the basis for the model plan. The portion of § 277.18 recommended for use by the Advisory Committee is § 277.18(c). This subsection contains program functional standards, which consist of the minimum program standards which State agencies must meet in order to receive enhanced funding for ADP. They include certification; issuance, reconciliation, and reporting; and general standards. In the *certification* area they include, but are not limited to, areas such as determining eligibility, calculating benefits, and identifying pertinent information with which to determine eligibility and calculate benefits. In the *issuance, reconciliation, and reporting* area, they include, but are not limited to, areas such as generating authorizations for benefits in issuance systems employing ATPs, direct mail, or on-line issuance and storing all Household Issuance Record (HIR) information; providing for reconciliation of all transacted ATP's to the HIR masterfile; and generating data necessary to meet federal issuance, reconciliation, and reporting requirements. In the *general* area they include, but are not limited to, performing all activities necessary to meet the timeliness requirements established by FNS and allowing for reprogramming to implement regulatory and other changes, including a testing phase, to meet implementation deadlines. Using § 277.18(c) will provide State agencies with the maximum amount of flexibility—a major concern of the Committee—and will enable State agencies to tailor their automation plans to the needs of their individual States. In order to maximize the effectiveness of § 277.18 for this purpose, however, the Department is proposing to make several technical changes.

First, the program functional standards in § 277.18(c) will be modified to specify that every aspect of the Program must be automated. However, recognizing that automation is not always the best solution to program management problems, State agencies may, with FNS approval, elect to continue to use a manual system where the circumstances of the individual State agency would dictate that that would be most appropriate. Second, language will be added to specify that Income and Eligibility Verification System (IEVS) requirements must be met. Third, the program functional standards will be removed from § 277.18 and placed into § 272.2, the portion of the regulations concerning State plans. Fourth, language will be added specifying that the confidentiality of data must be safeguarded, appropriate security standards must be adhered to, and efforts must be made to appropriately coordinate with other State and Federal programs. Fifth, language will be added to provide for the eventual capability to directly transmit data to FNS. Finally, the appropriate portions of § 277.18 will be cross referenced to § 272.2.

In order to meet the requirements of the statute to provide a report to Congress on the degree and sufficiency of each State agency's automation efforts, (section 1537(o)(3) of the Food Security Act of 1985, Pub. L. 99–198), the Department is proposing that State agencies provide certain information (§ 272.2). The Department proposes

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(§ 272.10) that State agencies include, as part of their State plans, a statement of their planned automation activities, including timeframes. The statement would have to address the automation of each area specified in the new model plan. This, along with other information that will be available, will supply FNS with enough information to complete the required report.

As suggested by the Advisory Committee, the Department is recommending that State agencies consult with one another as they develop their automation plans. (State agencies may request the FNS Regional Offices to recommend the names of State agencies who they ought to consult.) For proper and efficient State administration, the Department is seeking comments as to whether State agencies should use these consultations to maximize the extent to which computer systems are transferred or adapted from one State to another, rather than new systems being created. If the State agency's plans for automation under the model plan would use any method other than transfer, the Department is proposing to require that the State agency show that it consulted with State agencies that were similar to it in terms of geographic size, urban or rural character, number of participants, and type of administration—county or State administered. They must also provide a specific justification of why a transfer would not be cost effective. Some common reasons cited by State agencies in opposition to transfer include: (1) The State agency is required to use a central data processing facility and the (otherwise) transferable system is incompatible with it; (2) the State agency's data base management software is incompatible with the transferable system; (3) the State agency's ADP experts are not familiar with the software/hardware used by the transferable system and acquiring new expertise would be expensive; (4) the transferable system is interactive or uses "generic" caseworkers, the receiving State agency does not and it would be expensive to make necessary modifications; and (5) transfer would provoke disputes with the State agency's personnel union. Existence of these and similar problems is insufficient justification for rejecting transfer or adaptation. Barriers to transfer cited in State plans must be accompanied by an analysis comparing the cost of overcoming the problem to the cost of developing a new system.

FNS will be glad to make available a comprehensive automation blueprint for those State agencies desiring one. This blueprint is the Functionally Automated Client Transaction System (FACTS) which was developed by FNS over the past year. As a document, FACTS contains a written narrative, flow charts, a listing of required data elements, and a checklist for detailed review of an individual State agency's system by State or Federal reviewers. It is, in effect, a detailed model or blueprint for States to use in developing Statewide automated program systems (including on-line certification, editing, and issuance). As a system, it was an independent effort by FNS that was undertaken prior to the enactment of the Food Security Act in order to provide State agencies with technical assistance. It is roughly analogous to a similar effort undertaken by the Department of Health and Human Services in connection with FAMIS (Family Assistance Management Information System), but without 90 percent Federal funding. (Interested persons should send their requests for the FACTS document to the address noted at the beginning of this proposed rule.)

The combination of utilizing portions of § 277.18 and making available the FACTS document means that State agencies will have the maximum flexibility as well as the maximum technical assistance.

The Secretary is not authorized to tie compliance with the model plan to enhanced funding. However, State agencies may nevertheless be entitled to enhanced funding to implement their ADP/CIS Plans. Enhanced funding authority will continue to be treated in the same manner and for the same reasons as currently used. That is, State agencies must undergo the APD process outlined in § 277.18; and they can receive enhanced funding for the planning, design, development or installation of *approved* ADP and CIS.

A. Procedures for Submission of Plans (§§ 272.2 and 272.10)

In the interest of facilitating the transmission of information required under subsection 11(o)(2), FNS is proposing that State agencies be required to submit their ADP/CIS Plans as an addendum to their State Plans of Operation required to be submitted under § 272.2 of the FSP regulations. In substance, these ADP/CIS Plans will consist of State agency plans for automating the areas specified in the model plan, including their timeframes for completion of their planned automation activities. If a State agency is not planning to automate some of the areas specified in the model plan because the automation would not be cost effective, or for other reasons, then it should include the reasons for not automating these areas in the ADP/CIS Plan. In order to prevent duplication of efforts, FNS is authorizing State agencies to substitute their complete and accurate Advance Planning Documents (APDs) for a portion, or all, of their State ADP/CIS Plans where appropriate. State agencies' ADP/CIS Plans must be submitted by October 1, 1987.

B. Implementation (§ 272.1)

Upon review and evaluation by FNS, the State agency may be required to submit additional information. Additional information will be required to be submitted if all areas included in the model plan are not addressed in an individual State agency plan, the information submitted is incomplete or unclear, there is not good reason for failure to automate a particular program area, or the timeframes for completion of various activities seem to be unrealistic. State agencies which fail to submit an approvable plan within 30 days of receipt of FNS comments on their plans, or which fail to comply with the activities or timeframes set forth in their approved plans (unless extended by FNS) may be subject to disallowance of administrative funds as specified in §§ 276.4 and 277.16. State agencies which do not plan to automate some of the areas specified in the model plan will only have their ADP/CIS plans approved if the State agency has provided sufficient justification that it would not be cost effective to automate these areas. State agencies must begin to implement their approved plans by October 1, 1988.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 277

Food stamps, Government procurement, Grant programs—social programs, Investigations, Reporting and recordkeeping requirements.

Accordingly, Parts 272 and 277 are proposed to be amended as follows:

1. The authority citations appearing after the table of contents for Parts 272 and 277 continue to read as follows:

Authority: 7 U.S.C. 2011–2029.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. Section 272.2 is amended by:

a. Adding a new sentence at the end of paragraph (a)(2);

b. Adding a new paragraph (d)(1)(vi); and

c. Adding a new paragraph (e)(8).

The additions read as follows:

§ 272.2 Plan of operation.

(a) *General Purpose and Content*—

* * *

(2) *Content.* * * * The ADP/CIS Plan is considered part of the State Plan of Operation but is submitted separately as prescribed under § 272.2(e)(7).

* * * * * *

(d) *Planning Documents.*

(1) * * *

(vi) ADP/CIS Plan as required by § 272.10.

* * * * * *

(e) *Submittal Requirements.* * * *

(8) *ADP/CIS Plan.* The ADP/CIS Plan shall be signed by the head of the State agency and submitted to FNS by October 1, 1987. If FNS requests additional information to be provided in the State agency ADP/CIS Plan or if FNS requests that changes be made in the State agency ADP/CIS Plan, State agencies must comply with FNS comments and submit an approvable ADP/CIS Plan within 30 days of their receipt of the FNS comments. Requirements for the plan are specified in § 272.10.

* * * * * *

§ 272.9 [Reserved]

3. Section 272.9 is added and reserved and a new § 272.10 is added to read as follows:

§ 272.10 ADP/CIS Model Plan.

(a) *General Purpose and Content*—(1) *Purpose.* All State agencies are required to appropriately and efficiently automate their food stamp program operations and computerize their systems for obtaining, maintaining, utillzing and transmitting information concerning the food stamp program. Appropriate and efficient automation levels are those which result in effective programs or in cost effective reductions in errors and improvements in management efficiency, such as decreases in program administrative costs. Thus, for some State agencies which operate exceptionally efficient and effective programs, a lesser degree of automation may be considered appropriate than in other State agencies. In order to determine the appropriate level of automation, each State agency shall develop an ADP/CIS Plan.

(2) *Content.* In developing their ADP/CIS Plans, State agencies shall include their plans for automating the areas specified in the model plan proposed in new § 272.10(b), including their timeframes for completion of any planned activities. State agencies planning additional automation must consult with other State agencies and with the appropriate FNS Regional Office in order to determine whether a transfer or modification of an existing system from another jurisdiction would be more efficient and cost effective than the development of a new system. State agencies planning automation using any method other than transfer, or State agencies planning to develop new systems must include a specific analysis of their consultations with other State agencies. The analysis must show that the State agencies they consulted were similar to them in terms of whether the States were urban or rural; whether the States' programs were county-administered or State-administered, the geographic size of the States, and the size of the caseload in each State. In addition, State agencies rejecting transfer must provide a specific analysis describing barriers to transfer. Each barrier must be accompanied by an analysis comparing the costs of overcoming the problem to the cost of developing a new system. Common reasons cited in opposition to transfer include: The State agency is required to use a central data processing facility and the (otherwise) transferable system is incompatible with it; the State agency's data base management software is incompatible with the transferable system; the State agency's ADP experts are not familiar with the software/hardware used by the transferable system and acquiring new expertise would be expensive; the transferable system is interactive or uses "generic" caseworkers, the receiving State agency does not and it would be expensive to modify the existing system and/or procedures; and transfer would provoke disputes with the State agency's personnel union. Existence of these and similar problems is insufficient justification for rejecting transfer or adaptation. State agencies which do not plan to automate some of the activities proposed in § 272.10(b) shall include as part of their plans their reasons for not automating. These reasons must include a specific analysis and justification of why it would not be cost effective to automate particular program areas. State agencies which have Advance Planning Documents (APDs) which have been approved by FNS may update these APDs to take into account their actual operations and plans and resubmit these updated APDs for the appropriate portion of their State ADP/CIS Plans.

(b) *Model Plan.* In order to meet the requirements of the Act and ensure the efficient and effective administration of the program, a food stamp system, at a minimum, shall be automated in each of the following program areas, most of which were formerly included in § 277.18(c).

(1) *Certification.* (i) Determine eligibility and calculate benefits or validate the eligibility worker's calculations by processing and storing all casefile information necessary for the eligibility determination and benefit computation, (including but not limited to all household member's names, addresses, dates of birth, social security numbers, individual household members' income by source: Earned and unearned, deductions, resources and household size). Redetermine or revalidate eligibility and benefits based on notices of change in households' circumstances;

(ii) Identify other elements that affect the eligibility of household members such as alien status, presence of an elderly person in the household, or status of periodic work registration;

(iii) Provide for an automatic cutoff of participation for households which have not been recertified at the end of their certification period;

(iv) Notify the certification unit (or generate notices to households) of cases requiring Notices of:

(A) Case Disposition,

(B) Adverse Action and Mass Change, and

(C) Expiration;

(v) Prior to certification, crosscheck for duplicate cases for all household menbers by means of a comparison with food stamp records within the relevant jurisdiction;

(vi) Meet the requirements of the IEVS system of § 272.8. Generate notices to other appropriate programs on recipient eligibility, changes and referrals;

(vii) Provide the capability to effect mass changes: Those initiated at the State level, as well as those resulting from changes at the Federal level (eligibility standards, allotments, deductions, utility standards, SSI, AFDC, SSA benefits);

(viii) Identify cases where action is pending or follow-up must be pursued, for example, households with verification pending or households containing disqualified individuals or a striker;

(ix) Calculate or validate benefits based on restored benefits or claims collection, and maintain a record of the changes made;

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(x) Store information concerning characteristics of all household members;

(xi) Provide for Social Security enumeration for all required household members; and

(xii) Provide for monthly reporting and retrospective budgeting as required.

(2) *Issuance, reconciliation and reporting.* (i) Generate authorizations for benefits in issuance systems employing ATP's, direct mail, or online issuance and store all Household Issuance Record (HIR) information including: name and address of household, household size, period of certification, amount of allotment, case type (PA or NA), name, address of authorized representative, and racial/ethnic data;

(ii) Prevent a duplicate HIR from being established for presently participating or disqualified households;

(iii) Allow for authorized under or over issuance due to claims collection or restored benefits;

(iv) Provide for reconciliation of all transacted ATPs to the HIR masterfile. This process must incorporate any manually issued ATPs, account for any replacement or supplemental ATPs issued to a household, and identify cases of unauthorized and duplicate participation;

(v) Provide a mechanism allowing for a household's redemption of more than one valid ATP in a given month;

(vi) Generate data necessary to meet Federal issuance and reconciliation reporting requirements, and provide for the eventual capability of directly transmitting data to FNS including:

(A) *Issuance:*

(*1*) FNS–259—Summary of mail issuance and replacement;

(*2*) FNS–250—Reconciliation of redeemed ATPs with reported authorized coupon issuance.

(B) Reconciliation: FNS–46—ATP Reconciliation Report.

(vii) Generate data necessary to meet other reporting requirements and provide for the eventual capability of directly transmitting data to FNS, including:

(A) FNS–101—Program participation by race;

(B) FNS–209—Status of claims against households; and

(C) FNS–388—Coupon issuance and participation estimates.

(viii) Allow for sample selection for quality control reviews of casefiles, and for management evaluation reviews;

(ix) Provide for program-wide reduction or suspension of benefits and restoration of benefits if funds later become available and store information concerning the benefit amounts actually issued;

(x) Provide for expedited issuance of benefits within prescribed timeframes;

(xi) Produce and store a participation history covering three (3) year(s) for each household receiving benefits;

(xii) Provide for cut-off of benefits for households which have not been recertified timely; and

(xiii) Provide for the tracking, aging, and collection of recipient claims and preparation of the FNS–209, Status of Claims Against Households report.

(3) *General.* The following functions must be part of an overall State agency system but they do not necessarily have to be automated:

(i) All activities necessary to meet the various timeliness and data quality requirements established by FNS;

(ii) All activities necessary to coordinate with other appropriate Federal and State programs, such as AFDC or SSI;

(iii) All activities necessary to maintain the appropriate level of confidentiality of information obtained from applicant and recipient households;

(iv) All activities necessary to maintain the security of automated systems to operate the Food Stamp Program;

(v) Implement regulatory and other changes including a testing phase to meet implementation deadlines, generally within 90 days;

(vi) Generate whatever data is necessary to provide management information for the State's own use, such as caseload, participation and actions data;

(vii) Provide support as necessary for the State's management of Federal funds relative to Food Stamp Program administration, generate information necessary to meet Federal financial reporting requirements; and

(viii) Routine purging of casefiles and file maintenance.

(ix) Provide for the eventual direct transmittion of data necessary to meet Federal financial reporting requirements.

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

In § 277.18:

a. Paragraph (a)(2) is revised;

b. Paragraph (c) is removed; and

c. Paragraphs (d), (e), (f), (g), and (h) are redesignated as paragraphs (c), (d), (e), (f) and (g).

The revision reads as follows:

§ 277.18 Establishment of an Automated Data Processing (ADP) and Information Retrieval System.

(a) *General.* * * *

(2) Meet such conditions as prescribed in § 272.10(a)(3).

* * * * *

Dated: January 29, 1987.

Robert E. Leard,

Administrator.

[FR Doc. 87–2435 Filed 2–5–87; 8:45 am]

BILLING CODE 3410–30–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Technical Specifications for Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Commission is withdrawing a proposed rule published in the **Federal Register** on March 30, 1982. In this rule, the Commission proposed amending its regulations in order to reduce the volume of Technical Specifications that are made part of an operating license, thereby reducing the number of changes which licensees have to submit to the NRC. The proposed approach was to split existing requirements between two documents, the plant Technical Specifications which would remain an appendix to the operating license and a separate set of supplemental requirements of lesser safety significance which would not be a part of the operating license. The Commission has decided that the same results that would have been achieved by the proposed rule can be achieved by a voluntary program of Technical Specification improvements. To this end, the Commission is simultaneously issuing with this notice a Policy Statement on Technical Specification Improvements.

FOR FURTHER INFORMATION CONTACT: David C. Fischer, Technical Specifications Coordination Branch, Division of Human Factors Technology, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–7824.

SUPPLEMENTARY INFORMATION:

Background

Section 182a of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2232(a) mandates the inclusion of Technical Specifications in licenses for the operation of production and utilization facilities. The Technical Specifications set forth the specific characteristics of the facility and the conditions for its

operation that are required to provide adequate protection to the health and safety of the public. Technical Specifications cannot be changed by licensees without prior NRC approval.

In 1969 the Commission in 10 CFR 50.36, "Technical Specifications" delineated requirements for determining the contents of Technical Specifications. Since that time essentially all Commission requirements governing the operation of nuclear power reactors have been in some way included in the Technical Specifications. This extensive use of Technical Specifications is due in part to a reluctance of the NRC Staff to use tools other than the Technical Specifications for implementing regulatory requirements, and a lack of well defined criteria for what should be included in Technical Specifications. This has resulted in the volume of Technical Specifications and the number of license amendments to effect changes to the Technical Specifications, to increase several fold since 1969. Disagreements between Staff and applicants as to which items must be included in Technical Specifications have also increased in number.

Proposed Rule

On March 30, 1982, NRC published in the **Federal Register** (47 FR 13369) a proposed "Technical Specifications for Nuclear Power Reactors" rule to amend 10 CFR 50.36. The proposed rule would have reduced the volume of Technical Specifications that are made part of an operating license, thereby reducing the number of change requests which licensees would have to submit to the NRC. The proposed approach was to split existing requirements between two documents, the plant Technical Specifications which would remain an appendix to the operating license and a separate set of supplemental requirements of lesser safety significance which would not be a part of the operating license.

Comments

A total of thirty-one comment letters were received in response to the proposed rule, all of which were evaluated in the decision to withdraw the proposed rule and to proceed instead with a Policy Statement on Technical Specifications Improvements. Two of the letters were duplicates and one letter did not address the proposed amendments. Therefore, only 29 of the 31 letters contained comments applicable to the proposed amendment.

Twenty-seven of the 29 comments expressed support for the general concepts of the proposed rule, while two comments opposed the proposed rule. The following highlights the major issues raised in the comments (A complete set of the comments received is available for inspection or copying for a fee in the Commission's Public Document Room at 1717 H Street NW., Washington, DC).

Response to Comments

Comments in Opposition to the Proposed Rule

An environmental group opposed the proposed rule change. Two of three concerns were related to questions of Staff resources and safety. The summary in the proposed rule stated that it was expected that the proposed changes would produce an improvement in the safety of nuclear power plants through more efficient use of NRC and licensee resources. The commenter interpreted this statement as suggesting that NRC and licensee resources have not been used efficiently to guarantee the safest possible nuclear power plant operation. The comment further suggests that if the regulatory work-load is inhibiting the safety of nuclear power plants, the NRC and licensee staffs should be increased as an alternative to the proposed rule.

The NRC Staff experience is that under current practice many license amendments for Technical Specifications are for nonsubstantive changes. The Commission considers it in the best interest of the public to avoid the procedural costs of nonsubstantive license amendments. To this extent, the comment is correct that NRC and licensee resources have not been used most efficiently. The Policy Statement would reduce the need for such amendments and encourage closer Staff and industry attention to changes made in accordance with 10 CFR 50.59. Any diversion of technical Staff from unnecessary procedural actions will provide more opportunities for the identification of more significant safety deficiencies. Since there is an opportunity for an increase in safety by diversion of Commission Staff from procedural actions to more substantive safety issues, the need to increase Staff resources appears unjustified.

The second concern was that the proportion of changes (to facilities as described in their FSARs) made without prior Commission approval that are subsequently rejected by the NRC may be high. The number of violations involving changes without prior Commission approval where prior approval should have been obtained (i.e., those involving unreviewed safety questions or changes to Technical Specifications) has been small. However, to provide added assurance under the Policy Statement that licensee safety evaluations of proposed changes are prepared properly, the Commission will give increased attention to changes made pursuant to 10 CFR 50.59.

The third concern was one of questioning how the proposed rule change would affect access of intervenors and interested parties to information about changes made to items removed from the Technical Specifications. A description of these changes including a summary of the safety evaluation of each will be made a part of the public record after the changes have been implemented by the licensee's annual report to the Commission. While the Staff may have performed only a limited number or reviews of licensee changes made pursuant to 10 CFR 50.59, experience with these changes, made without prior Commission approval, indicates a very low frequency of NRC disapproval of such changes.

The second commenter opposing the proposed rule was an architect engineer experienced in NRC licensing procedures. The comment did not agree that the concerns that motivated the rule change would be corrected by the proposed rule. These concerns were that without the rule change (a) the licensees would be less likely to focus on more important matters because of the increased number and complexity of Technical Specifications and (b) the same would be true for the NRC. The comments were (1) that the restructuring of the content of existing Technical Specifications would actually increase complexity by adding several new subcategories and that reporting would still be required, and (2) the uncertainty of the regulatory process would be increased because changes by the licensee would be subject to review and possible "enforcement action" after they are implemented.

The Commission acknowledges that the number of subcategories would have been increased and that the same number of safety evaluations would have been required. This is one of the reasons the Commission decided to issue a policy statement in lieu of rulemaking. The Policy Statement will clarify the scope and purpose of Technical Specifications and will establish a specific set of objective criteria for determining which regulatory requirements and operating restrictions should be included in Technical Specifications. The subcategory of supplemental specifications has been dropped.

There was no intent in the proposed rule to modify enforcement policy.

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Similarly, with the Policy Statement there is no intent to modify the Commission's enforcement policy or make items deleted from the Technical Specifications any less enforceable.

General Comments on the Proposed Rule

a. Changes to Supplemental Specifications

The proposed rule would have required (1) submittal to the NRC Regional Administrator within 3 days of implementation of a change to the supplemental specifications a description of the change and a safety evaluation and (2) revocation of the change immediately upon written notification by the appropriate NRC Regional Administrator that the justification provided for the change is inadequate. Many comments characterized these requirements as burdensome and not consistent with the objectives of the rulemaking. Further analysis by the NRC Staff resulted in a conclusion that those requirements would create a very difficult technical review problem for the Staff because submittal of safety evaluation would be at random times and because implicitly the proposed rule would have required a prompt review of the justification for the change. In response to the comments, and in view of the NRC Staff's further assessment, the Commission has determined not to implement this requirement and it is not adopted as the Policy Statement. The Policy Statement permits changes to those requirements previously in specifications without prior Commission approval using existing procedures, such as § 50.59 review, applicable to other changes not requiring prior Commission approval.

b. Criteria for Changes Without Prior Commission Approval

The proposed rule would have permitted changes to supplemental specifications without prior Commission approval unless the change involved (i) a conflict with Technical Specifications incorporated in the license or (ii) a decrease in the effectiveness of the provisions of the supplemental specifications.

Several types of changes were identified in the proposed rule as changes deemed to involve a decrease in effectiveness. Several comments were made on this issue, including a comment that criteria for judging a decrease in effectiveness were too restrictive and that exact guidelines are required to provide an interpretation of decrease in the effectiveness of a provision.

Since implementing the Policy Statement will not create supplemental specifications, there is no need for criteria to judge whether proposed changes decrease the effectiveness of supplemental specifications. Rather, changes to requirements relocated out of Technical Specifications will be covered by existing requirements and procedures used to determine whether a change requires prior Commission approval.

c. Criteria for Separation of Specifications into Technical Specifications and Supplemental Specifications

In the proposed rule Technical Specifications would have consisted of operational specifications and principal design feature specifications. Supplemental specifications would have consisted of those items needed to preserve safety analysis assumptions regarding important safety functions not included in operational Technical Specifications, assure that the necessary quality of systems, components, and structures is maintained, and assure effective management overview and control of facility changes and operation.

Many comments from licensees addressed the need for criteria for separating Technical Specifications into operational Technical Specifications and supplemental specifications. Essentially, the recommended criteria were that Technical Specifications be limited to items under the direct control of the operator and of immediate concern in day to day operation. There were requests for specific guidance, e.g., Regulatory Guides, Commission Policy Statements, Review Plans and Acceptance Criteria. The Westinghouse Electric Corporation recommended the establishment of a working committee(s) to develop more specific criteria. Furthermore, Westinghouse suggested that the working committee(s) be composed of representatives from the Nuclear Regulatory Commission, nuclear generating station owners, vendors, architect engineers and other segments of the nuclear industry impacted by Technical Specifications.

In formulating the Policy Statement the Commission reviewed section 182a of the Atomic Energy Act of 1954 and a decision by the Atomic Safety and Licensing Appeal Board in *Portland General Electric Company* (Trojan Nuclear Plant), ALAB-531, 9 NRC 263 (1979). The Commission adopts the position stated in ALAB-531 that Technical Specifications are limited to those matters as to which the imposition of rigid conditions or limitations upon reactor operation is deemed necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health and safety. Because the actions of others, e.g., maintenance personnel, can result in immediate threats to the public health and safety, the Commission concludes that Technical Specifications should not be limited only to matters under direct control of the operator.

The Commission acknowledges the need for specific guidance on how to identify these items which should remain in Technical Specifications. Within the framework of the existing § 50.36, the Policy Statement establishes a specific set of objective criteria for determining which regulatory requirements and operating restrictions should be included in Technical Specifications.

d. Implementation

The proposed rule would have become effective 180 days after the effective date of the amendment. Several comments observed that since applicants begin intensive review and preparation of Technical Specifications approximately 12–18 months prior to the expected date for receiving an operating license, a hardship would be incurred for plants being licensed 6–12 months after the effective date of the rule because of the extensive revisions that would be necessary. In response to these comments, the Policy Statement will be effective upon publication in the **Federal Register** but will be entirely voluntary.

Concerns were expressed that a first unit on a site, or a unit that is replicated at another site, would have Technical Specifications in the former format while the second unit and replicated unit, if licensed 1 year after the rule becomes effective, would have specifications in a different format. This comment is noted by the fact that the proposed Policy Statement calls for voluntary Technical Specification improvements.

e. Proliferation of Supplemental Specifications

Several comments expressed concern that this rule change could result in a listing by NRC Staff reviewers of requirements in excess of what is currently found in the Standard Technical Specifications. This concern reflected a preception that the use of supplemental specifications would create a relaxation of constraints on NRC Staff generation of specifications.

The Commission acknowledges that the number of Technical Specifications has grown significantly in the last several years. This growth has been a factor in creating a need for the Policy Statement to bring current practice on Technical Specifications more in line with existing § 50.36 and to ensure that Technical Specifications are focused on the most important operational and safety features necessary to ensure adequate protection of public health and safety. The Policy Statement provides guidance as to material which must stay in Technical Specifications. The Commission intends that Staff adhere to this guidance and include in Technical Specifications only that material required by the Policy Statement. Since the Policy Statement would not create supplemental specifications there is no need to address adding new requirements to such a document. In addition, any new requirements that the Staff wishes to impose on licensees must be evaluated in light of 10 CFR 50.109.

The Commission hereby withdraws the notice of proposed rulemaking published on March 30, 1982 (47 FR 13369).

Dated at Washington, DC this 3d day of February, 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87-2561 Filed 2-5-87; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Permanent State Regulatory Program of Colorado

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of proposed program admendments to the Colorado Permanent Regulatory Program (hereinafter referred to as the Colorado program) received by OSMRE pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments submitted by the State on November 25, 1986, are intended to address two of the conditions of approval of the Colorado program pertaining to methods for measuring revegetation success.

This notice sets forth the times and locations that the Colorado program and proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and information pertinent to the public hearing.

DATES: Written comments relating to Colorado's proposed modification of its program not received on or before 4:00 p.m. on March 9, 1987, will not necessarily be considered in the Director's decision to approve or disapprove the proposed program modifications.

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business February 23, 1987. If no one requests to comment at the public hearing, the hearing will not be held.

If requested, a public hearing will be held on March 3, 1987, beginning at 10:00 a.m. at the location shown below under **"ADDRESSES."**

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue, NW., Albuquerque, New Mexico 87102. Telephone: (505) 766–1486.

If a public hearing is held, its location will be at: OSMRE Western Operations Center, Brooks Towers, 1020 Fifteenth Street, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue, NW., Albuquerque, New Mexico; Telephone: (505) 766–1406.

SUPPLEMENTARY INFORMATION:

I. Procedures for Public Comment

Availability of Copies

Copies of the Colorado program, the proposed amendments and a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSMRE offices and the Office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requester may receive free of charge, one copy of the proposed amendment by contacting the OSMRE Albuquerque Field Office.

Office of Surface Mining Reclamation and Enforcement, Room 5315A, 1100 "L" Street, NW., Washington, DC. 20240.

Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 219 Central Avenue, NW., Albuquerque, New Mexico 87102.

Colorado Mined Land Reclamation Division, Department of Natural Resources, Centennial Building, Room 423, 1313 Sherman Street, Denver, Colorado 80203.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than Albuquerque, New Mexico, will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business February 23, 1987. If no one requests to comment at the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."**

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be

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made a part of the Administrative Record.

II. Background on the Colorado Program

Information regarding the general background on the Colorado State Program, including the Secretary's Findings, the disposition of comments and detailed explanation of the conditions of approval of the Colorado program can be found in the December 15, 1980 **Federal Register** (45 FR 82173–82214). Subsequent action concerning the conditions of approval and program amendments are identified at 30 CFR 906.11, 906.15 and 906.16.

III. Discussion of the Proposed Amendment

On November 25, 1986, Colorado submitted for OSMRE's review and approval amendments to the approved Colorado program. The amendments are intended to address the Secretary's conditions of approval of the Colorado program listed at 30 CFR 906.11 (c) and (d).

Condition 906.11(c) requires Colorado to amend its program to include the requirement of 30 CFR 816.116(b) and 817.116(b) (redesignated §§ 816.116(a) and 817.116(a)) to obtain the approval of OSMRE in the selection of alternative technical guidance documents for revegetation success.

Condition 906.11(d) requires Colorado to modify its program to provide that revegetation success standards on small mines shall be approved by OSMRE.

Colorado has submitted proposed amendments to Rules 4.15.7(2)(d) (ii) and (vi) to address these conditions.

Colorado proposes to revise section 4.15.7(2)(d)(ii) to require OSMRE approval on a case-by-case basis of technical documents which establish the standards for comparisons to be made between the reclaimed and undisturbed areas in order to demonstrate that the revegetation success criteria have been met.

Colorado proposes to revise section 4.15.7(2)(d)(vi) to specify how the revegetation standards can be met for areas totalling 40 acres or less. The modified language provides that the standard will be set using premining data for the area to be disturbed which are obtained from statistically valid sampling procedures and collection methods. The pre-mine data must be representative of local conditions for land under proper management.

Colorado has also submitted explanatory material for the basis and purpose of the proposed rule changes.

OSMRE is seeking comment on the adequacy of the proposed rule changes in satisfying the criteria for approval of State program amendments set forth at 30 CFR 732.15 and 732.17 and the conditions of program approval at 30 CFR 906.11 (c) and (d).

IV. Procedural Matters

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 129(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 906

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: January 30, 1987.

James W. Workman,

Deputy Director, Operations and Technical Services.

[FR Doc. 87–2492 Filed 2–5–87; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 402

Tariff of Tolls; Proposed Revision

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Authority of Canada have jointly established and presently administer the St. Lawrence Seaway Tariff of Tolls. This Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the Corporation and the Authority. The Authority is proposing to the Corporation that the commodity tolls and vessel charges be increased by approximately 8% for the 1987 and approximately 8% for the 1988 navigation seasons at the Welland Canal section of the St. Lawrence Seaway. All of the Welland Canal revenues accrue to the Authority. The Corporation and the Authority have agreed that for the 1987 and 1988 navigation seasons, the level of commodity tolls and vessel charges for the Montreal-Lake Ontario section will remain unchanged for the fifth and sixth consecutive year. Furthermore, the Corporation will continue to receive 27% of the revenues generated on this section, reflecting another year's extension of the agreement in effect since 1985 to reduce the Corporation's share from 29% in order to avert a toll increase on the Montreal-Lake Ontario section.

DATES: The Corporation invites comments on the proposed revision to the Tariff of Tolls from any interested person(s) or organization(s). Any party wishing to present views or data on the proposed revision may file comments with the Corporation on or before March 20, 1987.

It is requested that data provided written comments include total transportation costs for the movements of cargo via the St. Lawrence Seaway and should detail individually all pertinent components thereof including all inland freight cost rail, truck or water, terminal or elevator charges and handling costs, ocean freight costs and other significant transportation costs. It would be very helpful if each analysis also detailed similar transportation costs by alternative routes in order to adequately evaluate the potential for diversion.

ADDRESS: Views, data, and comments are to be submitted to the Saint Lawrence Seaway Development Corporation, 400 7th Street SW., Washington, DC 20590. (Attention: Tolls Revision Docket.)

FOR FURTHER INFORMATION CONTACT: Frederick A. Bush (202) 366–0101.

SUPPLEMENTARY INFORMATION: As the result of lengthy discussions, between the Corporation and the Authority, the Authority, for the purpose of eliciting public comment, has proposed a revision of certain charges set forth in Tolls Schedule of the joint St. Lawrence Seaway Tariff of Tolls. In making this proposal, the Authority is projecting a deficit in revenues of 9 million dollars in both 1987 and 1988. These deficits are based on estimated revenues of 27.2 million dollars and expenses of 36.2 million dollars. The revenues estimate is based on tonnage and vessel transits of 42.3 million and 3,655 respectively for 1987 and 43.2 million and 3,591 respectively for 1988. In order to meet the projected revenue deficit of 9 million dollars, it would be necessary to have a 33.2% increase in the Tariff charges. The Authority's proposal would amount to a 4.0% increase in the Seaway system-wide transit costs in 1987 and a 4.0% increase in 1988.

As previously noted, this proposal is concerned with only those charges assessed on transiting the Welland Canal and may be subject to subsequent joint review by the Corporation and the Authority.

The Proposal:

It is proposed that the Tolls Schedule for the Welland Canal Section (presently codified as 33 CFR 402.8) of the St. Lawrence Seaway be revised as follows (for comparison purposes the rates presently in effect are included):

SCHEDULE OF TOLLS—WELLAND CANAL SECTION

	Present	1987	1988
(a) For transit of the Seaway, a composite toll, comprising:			
(1) A charge in dollars per gross registered ton, according to national registry of the vessel, applicable whether the vessel is wholly or partially laden, or is in ballast. (All vessels shall have an option to calculate gross registered tonnage according to prescribed rules for measurement in either Canada or the United States)	0.08	0.09	0.10
(2) A charge in dollars per metric ton of cargo as certified on ship's manifest or other documents, as follows:			
—Bulk cargo	0.36	0.39	0.42
—General cargo	0.58	0.63	0.68
—Containerized cargo	0.36	0.39	0.42
—Government aid cargo	0.36	0.39	0.42
—Food grains	0.36	0.39	0.42
—Feed grains	0.36	0.39	0.42
(3) A charge in dollars per passenger per lock	1.00	1.00	1.00
(4) A charge in dollars per lock for complete or partial transit of the Welland Canal in either direction by cargo or passenger vessels, which may be shared by vessels in tandem:			
(i) loaded: Per Lock	290.00	315.00	340.00
(ii) in ballast: Per Lock	215.00	230.00	250.00
(b) For partial transit of the Seaway:			
(1) Between Montreal and Lake Ontario, in either direction 15 percent per lock of the applicable toll			
(2) Between Lake Ontario and Lake Erie, in either direction (Welland Canal), 13 percent per lock of the applicable toll.			
(c) Minimum charge in dollars per vessel per lock transited for full or partial transit of the Seaway:			
—Pleasure craft	6.00	7.00	7.00
—Other vessels	11.00	13.00	13.00

Although the charges and tolls applicable to the Montreal-Lake Ontario section are not changed by the proposal set forth above § 402.8 is proposed to be revised by changing the "1986" heading to "1987" and by adding a new heading of "1988" both of which are presently contained under the column entitled "Montreal to or from Lake Ontario." Furthermore, the heading "1986" is to be changed to "1987" and a new heading "1988" is to be added, both of which are located under the column entitled "Lake Ontario to or from Lake Erie (Welland Canal)."

Regulatory Evaluation

This proposed regulation involves a foreign affairs function of the United States, and therefore, Executive Order 12291 does not apply. This regulation has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and the regulation is not considered significant under those procedures and its economic impact is expected to be so minimal that a full economic evaluation is not warranted.

Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls relates to the activities of commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne by foreign vessels.

Environmental Impact

This proposed regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major federal action significantly affecting the quality of human environment.

List of Subjects in 33 CFR Part 402

Vessels, Waterways.

PART 402—[AMENDED]

Accordingly, the Saint Lawrence Seaway Development Corporation proposes to amend Part 402—Tariff of Tolls (33 CFR Part 402) as follows:

1. The authority citation for 33 CFR Part 402 continues to read as follows:

Authority: 68 Stat. 93–96, 33 U.S.C. 981–990, as amended.

2. Section 402.8 is revised to read as follows:

§ 402.8 Schedule of tolls.

	Tolls			
	Montreal to or from Lake Ontario		Lake Ontario to or from Lake Erie (Welland Canal)	
	1987	1988	1987	1988
(a) For transit of the Seaway, a composite toll, comprising				
(1) A charge in dollars per gross registered ton, according to national registry of the vessel, applicable whether the vessel is wholly or partially laden, or is in ballast. (All vessels shall have an option to calculate gross registered tonnage according to prescribed rules for measurement in either Canada or the United States)	0.08	0.09	0.09	0.10
(2) A charge in dollars per metric ton of cargo as certified on ship's manifest or other document, as follows				
—Bulk cargo	.85	0.85	.39	.42
—General cargo	2.06	2.06	.63	.68
—Containerized cargo	.85	.85	.39	.42
—Government aid cargo	.52	.52	.39	.42
—Food grains	.52	.52	.38	.42
—Feed grains	.52	.52	.39	.42
(3) A charge in dollars per passenger per lock	1.00	1.00	1.00	1.00

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	Tolls			
	Montreal to or from Lake Ontario		Lake Ontario to or from Lake Erie (Welland Canal)	
	1987	1988	1987	1988
(4) A charge in dollars per lock for complete or partial transit of the Welland Canal in either direction by cargo or passenger vessels, which may be shared by vessels in tandem:				
(i) loaded: Per Lock	N/A	N/A	315.00	340.00
(ii) in ballast: Per Lock	N/A	N/A	230.00	250.00
(b) For partial transit of the Seaway:				
(1) Between Montreal and Lake Ontario, in either direction 15 percent per lock of the applicable toll				
(2) Between Lake Ontario and Lake Erie, in either direction, (Welland Canal), 13 percent per lock of applicable toll				
(c) Minimum charge in dollars per vessel per lock transited for full or partial transit of the Seaway:				
—Pleasure craft	5.00	5.00	7.00	7.00
—Other vessels	10.00	10.00	13.00	13.00

Issued at Washington, DC on January 30, 1987.
Saint Lawrence Seaway Development Corporation.
James L. Emery,
Administrator.
[FR Doc. 87-2483 Filed 2-5-87; 8:45 am]
BILLING CODE 4910-61-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6902]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 51 FR 37443 on October 22, 1986. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the City of Lake Oswego, Clackamas County, Oregon.

DATE: The period for comment will be thirty (30) days following the second publication of this proposed rule in a newspaper of local circulation in the community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Lake Oswego, Clackamas County, Oregon, published at 51 FR 37443 on October 22, 1986, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 67.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorg. Plan No. 3 of 1978, E. O. 12127.

PART 67—[AMENDED]

The proposed base (100-year) flood elevations for locations in the City of Lake Oswego, Clackamas County, Oregon, are correctly revised to read as follows:

Source of flooding	Location	*Elevation in feet national geodenc vertical datum
Lake Oswego	Along shoreline	*101
Oswego Canal	At upstream face of Bryant Road crossing	*110
Springbrook Creek	At downstream face of Iron Mountain Boulevard	*125
	At downstream face of Twin Fir Road	*160
Tualatin River	590 feet south from point located 570 feet west from intersection of River Run Drive and Trout Way	*120
Willamette River	270 feet east from intersection of Willow and Furnace Streets	*34
	200 feet south from point located 1,220 feet east from intersection of Oak and Bullock Streets	*35

Maps available for inspection at the Planning and Engineering Department, 348 North State Street, Lake Oswego, Oregon

Send comments to The Honorable William Young, Mayor, City of Lake Oswego, P.O. Box 369, Lake Oswego, Oregon 97034.

Issued: January 29, 1987.
Harold T. Duryee,
Administrator, Federal Insurance Administration.
[FR Doc. 87-2495 Filed 2-5-87; 8:45 am]
BILLING CODE 6718-05-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 65

[CC Docket No. 86-497; FCC 86-571]

Common Carrier Services; Amendment of the Commission's Rules Prescribing Components of the Rate Bases and Net Incomes of Dominant Carriers

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission has decided to issue a Notice of Proposed Rulemaking to prescribe components of the rate bases and net incomes of dominant carriers. This action is taken as a result of the length of time which has expired since the last extensive review of rate base issues.

DATES: Comments are due March 17, 1987. Reply comments are due April 1, 1987.

FOR FURTHER INFORMATION CONTACT: John T. Curry, Accounting Systems Branch, Accounting and Audits Division, Common Carrier Bureau, (202) 634-1861.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* adopted December 23, 1986, and released, January 16, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

1. In a recent *Report and Order* in CC Docket No. 84-800, Phase II, 51 FR 1795 (released January 15, 1986), the Commission stated that AT&T and the local exchange carriers should adhere as closely as possible to the rate-base determination principles adopted in Docket 19129 and CC Docket 79-63, except for the principles applicable to

"zero-cost" funds. With regard to these funds, the *Report and Order* adopted a procedure of deducting them from the rate base instead of including them in cost-of-capital calculations. However, the *Report and Order* provided no guideline for estimating the portion of zero-cost funds to be deducted from the rate base and indicated that a number of rate-base issues required further investigation. On April 16, 1986, the Commission addressed one such issue by proposing that each carrier's intrastate/interstate portion of zero-cost funds be defined as being proportionately the same as its intrastate/interstate portion of telephone plant-in-service. Also, while again noting that further refinements of existing rate-base guidelines would be necessary, the Commission announced its intention to address this matter in a separate proceeding, which is being initiated by this *Notice*.

2. Consistent with its guidelines in Docket 19129, the Commission proposes that the rate base include all used and useful assets for which the ratepayers bear the financial burden. Accordingly, in the telephone plant category of Part 32 (the Uniform System of Accounts for Class A and Class B Telecommunications Companies) the rate base would include Account 2001 (Telecommunications Plant in Service), Account 2002 (Property Held for Future Use), snd Account 2003 (Telecommunications Plant Under Construction—Short Term). In this category, the only substantive departure from prior practice is the Commission's proposal to include capitalized leases in the rate base instead of recognizing only the periodic rent expenses. Capitalization would be allowed if any one of four criteria is satisfied: (1) The lease transfers ownership of the property to the lessee by the end of the lease term; (2) the lease contains a bargain purchase option; (3) the lease term is equal to 75 percent or more of the estimated economic life of the property; or (4) the present value of the minimum lease payments at the inception of the lease is at least 90 percent of the market value of the leased property at that time. The amount to be capitalized would be the present value of future lease payments.

3. Sale-leaseback arrangements would be treated differently than other capital leases, particularly when property is sold to the lessor at a profit and then leased back. Any excess of the present value of future lease payments over the original carrying costs of the assets on the books of the selling company would be recorded in Account 2005 (Telecommunications Plant Adjustment). Further, the Commission proposes that the rate base include noncurrent assets only if they were expressly allowed in earlier proceedings (i.e., deferred expenses related to equal access).

4. As to current assets, the Commission proposes to include material and supplies that are necessary for maintaining service (Account 1220) or are being used in construction projects that will be placed in service within 12 months (Account 2003). All prepayments (Accounts 1280-1330) would be excluded. Instead of adjusting capital-cost calculations to recognize the availability of zero-cost funds, the Commission proposes to deduct an interstate-assigned portion of such funds from the rate base. Tbe proposed definition of zero-cost funds includes deferred taxes (Accounts 4100, 4110, 4340, and 4350), other deferred credits (Account 4360), unmatured interest and dividends (included in Account 4120), accounts payable (Account 4010), advance billings and payments (Account 4030), customer deposits (Account 4040), accrued taxes (Accounts 4070 and 4080), drafts outstanding (included in Account 4020), and changes in compensated absences (included in Account 1439). In an effort to minimize or eliminate the need for costly lead-lag studies, the Commission invites comment on the appropriateness of basing each carrier's initial cash working capital allowance for 1988 on its average interstate cssh balances for the five calendar quarters ending June 30, 1986. If this historical basis were implemented, tbe Commission's proposal would determine the proportion of total cash balances sssigned to interstate services by using the interstate portion of total operating expenses (exclusive of depreciation).

5. With regard to net income, the Commission proposes to continue recognizing interstate related expenses that are plant specific, plant nonspecific, customer operations, or corporate operations (Accounts 6110 through 6790). The Commission would also continue its prior practice of recognizing other operating income and expense accounts (Accounts 7100 through 7160), operating tax accounts (Accounts 7200 through 7250), and capital gains/losses on sales of depreciable nonoperating plant (Account 2006). However, net income would not include nonoperating income, expenses and taxes (Accounts 7300 through 7450) or extraordinary items (Accounts 7600 through 7640) unless a specific showing is made as to why they should be included.

Ordering Clauses

6. Accordingly, It Is Ordered, that pursuant to the provisions of sections 1, 4(i), 4(j), 201 through 205, 218, 220 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) through (j), 201 through 205, 218, 220 and 403, and section 553 of the Administrative Procedure Act, 5 U.S.C. 553, notice is hereby given of proposed amendments to Part 65 of the Commission's Rules, 47 CFR Part 65, in accordance with the proposals, discussion and statements in this *Notice of Proposed Rulemaking*. We hereby give notice that in reaching our decisions in this proceeding we will not necessarily be limited to the comments and reply comments that may be filed, and that we may utilize other information, analyses, and reports, provided that in each such case a copy of the material relied upon will be associated with the record of this proceeding.

7. *It Is Further Ordered*, that interested persons may file comments on the specific proposals discussed in this *Notice* on or before March 17, 1987. Reply comments shall be filed on or before April 1, 1987. In accordance with the provisions of § 1.419 of the Commission's Rules snd Regulations, 47 § 1.419, an original and five (5) copies of all comments shall be furnished to the Commission. Copies of the comments will be available for public inspection in the Commission's Docket Reference Room, 1919 M Street, NW., Washington, DC.

List of Subjects in 47 CFR Part 65

Interstate rate of return prescription procedures and methodologies.

William J. Tricarico,
Secretary.
[FR Doc. 87-2384 Filed 2-5-87; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 69

[CC Docket 78-72; FCC 86-595]

MTS and WATS Market Structure

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

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SUMMARY: This action requests comments on the establishment of permanent procedures for the recovery of equal access costs by the local exchange carriers (LECs). Comments are requested on whether a new separate rate element should be established for the recovery of the costs incurred in providing equal access, or if existing access charge rate elements should be used. Some LECs are presently recovering these costs pursuant to waivers that permit the use of a separate rate element. This action is taken to determine a permanent procedure for equal access cost recovery.

DATES: Comments are due March 17, 1987 and replies are due April 1, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Barbara Lynch, Common Carrier Bureau (202) 632–6363.

SUPPLEMENTARY INFORMATION: In the Matter of MTS and WATS Structure Amendment of Part 69 of the Commission's Rules for Recovery of Equal Access Costs, CC Docket No. 78–72.

This is a summary of the Commission's Notice of Proposed Rulemaking, CC Docket No. 78–72, adopted December 29, 1986 and released January 15, 1987.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

1. This Notice of Proposed Rulemaking (NPRM) initiates a proceeding to adopt permanent procedures for the recovery of costs incurred in providing equal access by the local exchange carriers (LECs). The proceeding will examine whether to create a new separate rate element for the recovery of these costs or use the rate elements already established in Part 69 of the Federal Communications Commission's (FCC) rules, 47 CFR Part 69 (1985), which distributes the cost among different elements. Several of the LECs have been granted waivers of the existing rules to permit recovery of equal access costs through use of a separate rate element. The tariffs implementing the separate rate elements have been made subject to separate investigation and accounting orders.

2. The FCC stated that the permanent method of cost recovery to be adopted must allow the LECs to recover their equal access costs, but in such a way that the relevant charges do not unnecessarily create substantial fluctuations in rates. Users benefitting from equal access should bear the cost of equal access over the time period during which these benefits are received. Commenters should explain how their proposals meet these objectives, and should support their proposals with an analysis of the impact their recovery method would have on the rates for equal access service.

3. Specifically, parties are asked to consider a number of issues concerning methods of cost recovery for equal access costs. In the *Notice*, the Commission seeks comments on whether to establish a separate rate element to recover equal access cost as a permanent part of its Part 69 access charge Rules, or to use the existing provisions in the Rules. At the outset, comments are solicited on whether equal access costs should be recovered on a usage-sensitive or flat-rate basis. Parties that advocate use of the existing rules should address how the inclusion of equal access costs would impact charges for the affected access elements. Those that advocate using a separate rate element on a flat-rate basis should address how the flat-rate method would affect the access service rates. Advocates of a separate, flat-rated element should also include a proposal for the rate structure of the separate element, including whether the charge should be assessed against all feature group switched access lines and trunks or solely against equal access (or feature group D). Comments are also sought on whether a flat-rate approach should be assessed on a per presubscribed access line or a per trunk basis.

4. The FCC has found that a regulatory flexibility analysis is not required for the adoption of access charge rules or jurisdictional separations procedures.

5. Members of the public are advised that for the purposes of *ex porte* contacts this proceeding is a non-restricted, informal inquiry and rulemaking proceeding. *See generally* § 1.1231 of the Commission 's Rules 47 CFR 1.1231 (1985).

6. The proposal contained herein has been analized with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements, and will not increase or decrease burden hours imposed on the public.

Ordering Clauses

7. Accordingly, it is ordered, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, that comments on the designated issues are to be filed not later than March 17, 1987. Replies are to be filed no later than April 1, 1987. 47 CFR 1.41.5 and 1.419 (1985).

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–2519 Filed 2–5–86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–66; RM–4802]

Radio Broadcasting Services; Sierra Vista, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: Proposal to allot Channel 210A to Sierra Vista, AZ, as that community's first local noncommercial educational FM service, as requested by Shiloh Educational Broadcasting Foundation, is dismissed for failure to file timely comments, and to fully respond to technical matters raised in the proceeding. See 51 FR 6763, February 26, 1986. With this action, this proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, (202) 634–6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No.86–66, adopted December 16, 1986, and released January 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–2387 Filed 2–5–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–249; RM–5064]

Radio Broadcasting Services; Ferriday, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a petition filed by Concordia Broadcasting Company proposing the allocation of Channel 283A to Ferriday, Louisiana. See 51 FR 23795, July 1, 1986. Petitioner failed to file comments expressing a continuing interest in the allotment in accordance with policies and procedures set forth in the Appendix to the *Notice*. With this action, this proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, (202) 634–6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MM Docket No. 86–249 adopted December 24, 1986 and released January 21, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–2390 Filed 2–5–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–59; RM–5062]

Radio Broadcasting Services; Eagle and Lincoln, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document dismisses the request of Jerrell E. Kautz to allocate Channel 287A to Eagle or Lincoln, Nebraska. See 51 FR 6444, February 24, 1986. No interest in the use of the channel at Eagle was received. Interest in the use of Channel 287A at Lincoln was received from Dan Norton. However, the Commission found that the allotment could not be made in compliance with the Commission's mileage separation requirements in that it would infringe on the buffer zone of Station KGRD, Channel 287A, at Orchard, Nebraska. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–59, adopted December 16, 1986, and released January 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–2389 Filed 2–5–87; 8:45 am]

BILLING CODE 6712-01-M

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Notices

Federal Register
Vol. 52, No. 25
Friday, February 6, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than February 17, 1987. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen, (703) 875–1573, IRM/PE, Room 1109, SA–14, Washington, DC 20523.

Date Submitted: January, 23, 1987.

Submitting Agency: Agency for International Development.

OMB Number: 0412–0518.

Type of Submission: Renewal.

Title: Matching Grant Schedule.

Purpose: Foreign Assistance legislation encourages A.I.D. to channel significant portions of economic development aid to developing countries through private voluntary agencies (PVOs). Through a competitive selection process, applications for funding of PVOs' international development programs on a cost-shared basis are considered each year. The Matching Grant Schedule invites interested PVOs to apply and provides the schedule for applications for the next selection cycle. Guidelines which state the selection criteria and format for grant applications are attached to the invitation.

Reviewer: Francine Picoult (202) 395–7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Dated: January 23, 1987.

Fred D. Allen,

Planning and Evaluation Division.

[FR Doc. 87–2478 Filed 2–5–87; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Quarterly Apparel Survey
Form number: Agency—MQ—23A; OMB—NA
Type of request: New collection
Burden:
4,000 respondents;
4,000 reporting hours
Needs and uses: The U.S. Government has a clear and immediate need for frequent apparel production data to monitor the effect of imports on the domestic apparel production industry. The users of these data will be Government agencies, business firms, trade associations, and research and consulting organizations.
Affected public: Businesses or other for-profit institutions
Frequency: Quarterly
Respondent's obligation: Mandatory
OMB desk officer: Don Arbuckle 395–7340

Agency: Bureau of the Census
Title: Quarterly Survey of the Finances of Public Employee Retirement Systems
Form number: Agency—F—10; OMB—0607–0143
Type of request: Extension of a currently approved collection
Burden:
340 respondents;
340 reporting hours
Needs and uses: The Census Bureau needs the F–10 in order to survey the receipts, payments, and asset balances of major public employee retirement systems. This form is the basis for a quarterly report that is used by groups such as the Council of Economic Advisors and the Federal Reserve Advisors and the Federal Reserve System to analyze factors affecting the securities market.
Affected public: State or local governments
Frequency: Quarterly
Respondent's obligation: Voluntary
OMB desk officer: Don Arbuckle 395–7340

Agency: Bureau of the Census
Title: Motor Freight Transportation and Warehousing
Form number: Agency—B–514, B–515, B–524, B–525; OMB—0607–0501
Type of request: Revision of a currently approved collection
Burden:
2,100 respondents;
2,100 reporting hours
Needs and uses: This survey is the only annual source of data for the universe of employer firms providing for-hire trucking and warehousing services. These data are used by the Federal Government for computation of the national accounts, and by private industry for marketing analysis.
Affected public: Businesses or other for-profit institutions
Frequency: Annually
Respondent's obligation: Mandatory
OMB desk officer: Don Arbuckle 395–7340

Agency: Bureau of the Census
Title: Carpet and Rugs
Form number: Agency—MQ—22Q; OMB—
Type of request: New collection
Burden:
140 respondents;
140 reporting hours
Needs and uses: The U.S. Government has a clear need for information on domestic output in the textile industry to monitor trade agreements with foreign countries. The users of these data are government agencies, trade associations, and business firms. The affected public will be larger carpet and rug manufacturers.
Affected public: Businesses or other for-profit institutions.
Frequency: Quarterly
Respondent's obligation: Mandatory
OMB desk officer: Don Arbuckle 395–7340

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearnance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: February 2, 1987.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 87–2513 Filed 2–5–87; 8:45 am]

BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Broadwoven Fabrics (Gray)
Form number: Agency—MQ–22T; OMB—NA
Type of request: New collection
Burden:
4,875 respondents;
4,875 reporting hours
Needs and uses: The U.S. Government has a clear need for information on the domestic production of broadwoven fabrics to monitor textile agreements with foreign countries. The users of these data are Government agencies, business firms, and trade associations for making production, investment, and trade policy decisions.
Affected public: Businesses or other for-profit institutions
Frequency: Quarterly
Respondent's obligation: Mandatory
OMB desk officer: Don Arbuckle 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: February 2, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–2514 Filed 2–5–87; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that tapered roller bearings and parts thereof, finished or unfinished (tapered roller bearings), from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by April 20, 1987.

EFFECTIVE DATE: February 6, 1987.

FOR FURTHER INFORMATION CONTACT: Michael Ready (202 377–2613) or Mary S. Clapp (202 377–1769), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that tapered roller bearings and parts thereof , finished or unfinished, from the PRC are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b). The weighted-average margin of sales at less than fair value is 9.65 percent.

Case History

On August 25, 1986, we received a petition in proper form filed by the Timken Company, on behalf of the U.S. industry producing tapered roller bearings. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from the PRC are being, or are likely to be sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated such an investigation on September 15, 1986 (51 FR 33283, September 19, 1986), and notified the ITC of our action. On October 2, 1986, the ITC determined that there is a reasonable indication that imports of tapered roller bearings and parts thereof are materially injuring a United States industry (U.S. ITC Pub. No. 1899 1986).

On November 4, 1986, a questionnaire was presented to counsel for China National Machinery and Equipment Import and Export Corporation (CMEC), the only known exporter of the subject merchandise from the PRC to the United States. An extension of time in which to respond was granted and on December 11, 1986, we received a response from CMEC.

On December 1, 1986, a questionnaire was presented to counsel for Premier Bearing and Equipment, Limited (Premier), a trading company based in Hong Kong that exports the subject merchandise produced in the PRC from Hong Kong to the United States. An extension of time in which to respond was granted, and on January 9, 1987, we received a reply from Premier.

As discussed under the "Foreign Market Value" section of this notice, we have preliminarily determined that the PRC is a state-controlled-economy country for the purpose of this investigation.

Scope of Investigation

The products covered by this investigation are tapered roller bearings and parts thereof, currently classified in *Tariff Schedules of the United States* (TSUS) item numbers 680.30 and 680.39; flange, take up cartridge, and hanger units incorporating tapered roller bearings, currently classified in TSUS item 681.10; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use, currently classified in TSUS item number 692.32 or elsewhere in the TSUS.

Fair Value Comparisons

Because CMEC and Premier accounted for all sales of this

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merchandise from the PRC, we limited our investigation to them. To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States prices with the foreign market value. We investigated all sales of the subject merchandise for the period September 1, 1985, through August 31, 1986. We used a twelve-month period of investigation because the respondents had insufficient sales in the original six-month period of investigation.

We have preliminarily determined to calculate a single weighted-average margin combining direct sales by CMEC and sales of PRC-origin tapered roller bearings through Premier. We have done this because Premier's bearings are produced by the same factories that produce for CMEC's direct sales. We are concerned that publishing separate rates for CMEC and Premier could lead the PRC factories to sell through the firm with the lower rate.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by CMEC and Premier because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated the purchase price for sales by CMEC based on the f.o.b. or c.& f. price to unrelated purchasers. We made deductions where applicable for inland and ocean freight. In accordance with the policy set forth in our final determination in the investigation of carbon steel wire rod from Poland (49 FR 29434, July 20, 1984), we based these deductions on similar charges in a non-state-controlled economy country.

We calculated the purchase price for sales by Premier based on the f.o.b. or c.i.f. price to unrelated purchasers. We made deductions, where applicable, for brokerage and handling charges, ocean freight and marine insurance.

Foreign Market Value

Petitioner alleged that the PRC is a state-controlled economy country and that sales of the subject merchandise in that country do not permit a determination of foreign market value under section 773(a) of the Act. After an analysis of the PRC's economy, and consideration of the briefs submitted by the parties, we have preliminarily concluded that the PRC is a state-controlled economy country for purposes of this investigation. Basic to our decision on this issue is the fact that the central government of the PRC controls the prices and levels of production of the bearing industry, as well as the internal pricing of the factors of production.

As a result, section 773(c) of the Act requires us to use prices or the constructed value of such or similar merchandise in a "non-state-controlled economy" country. Our regulations establish a preference for foreign market value based upon sales prices. They further stipulate that, to the extent possible, we should determine sales prices on the basis of prices in a "non-state-controlled economy" country at a stage of economic development comparable to the country with the state-controlled economy.

After an analysis of countries producing tapered roller bearings, we determined that India would be the most appropriate surrogate. We sent questionnaires requesting assistance in these investigations to six companies in India but to date we have received no affirmative reply.

Additionally, we could not use import prices from non-state-controlled economy countries in this case because the applicable Department of Commerce statistics for the subject merchandise were based on categories that were too broad to make product specific comparisons.

Therefore, as the best information otherwise available, we calculated constructed value based on the factors of production reported by the PRC producers. We valued PRC factors for energy and labor in Thailand and India, respectively. Information from Thailand was used because information from India was not available. Raw material costs were based on average prices obtained from the Special Summary Steel Invoices available to the Department. Factory overhead costs were calculated using information available in public ITC reports. We used the statutory minimum of 10 percent of the sum of material, fabrication costs, and overhead for general, sales and administrative expenses, and the statutory minimum of eight percent for profit. Packing value was obtained from publicly available data.

With respect to sales by Premier, in accordance with section 773(f) of the Act, we based foreign market value on the prices at which Premier sold such or similar merchandise to third countries (Pakistan and Singapore), since there were no sales in the home market of Hong Kong of tapered roller bearings from the PRC. From these prices, we deducted, where applicable, charges for brokerage and handling, ocean freight and marine insurance. We made adjustments, where applicable, for differences in credit costs.

We made currency conversions in accordance with § 353.56(a)(1) of the Commerce Regulations, using certified exchange rates as furnished by the Federal Reserve Bank of New York.

Verification

We will verify all data used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of tapered roller bearings and parts thereof, finished or unfinished, from the PRC that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price, which was 9.65 per cent of the ex-factory value. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to a U.S. industry before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 2:00 p.m. March 27, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by March 20, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination, or if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

February 2, 1987.

[FR Doc. 87-2548 Filed 2-5-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-603]

Tapered Roller Bearings and Parts Thereof, Finished or Unfinished From Italy; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that tapered roller bearings and parts thereof, finished or unfinished (tapered roller bearings), from Italy are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by April 20, 1987.

EFFECTIVE DATE: February 6, 1987.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp (202-377-1769) or Karen S. DiBenedetto (202-377-1778), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that tapered roller bearings and parts thereof, finished or unfinished, from Italy are being, or are likely to be, sold in the United States at less than fair value as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The margin of sales at less than fair value is 54.18 percent.

Case History

On August 25, 1986, we received a petition in proper form filed by the Timken Company, on behalf of the U.S. industry producing tapered roller bearings. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Italy are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on September 15, 1986 (51 FR 33285, September 19, 1986), and notified the ITC of our action.

On October 2, 1986, the ITC determined that there is a reasonable indication that imports of tapered roller bearings from Italy are materially injuring a U.S. industry (U.S. ITC Pub. No. 1899, October 1986).

On November 14, 1986, a questionnaire was presented to RIV-SKF, the only known exporter of the subject merchandise from Italy to the United States. We granted an extension of time in which to respond.

On December 29, 1986 and January 14, 1987, we received the narrative questionnaire responses. On December 31, 1986 and January 14, 1987, we received computer tapes listing data relating to the responses. We found that the questionnaire responses were insufficient. We sent a deficiency letter on January 15, 1986.

On January 20, 1987, petitioner alleged that sales of cup and cone sets in the home market were below the cost of production.

Scope of Investigation

The products covered by this investigation are tapered roller bearings and parts thereof (tapered roller bearings), currently classified under the *Tariff Schedules of the United States* (TSUS) under items 680.30 and 680.39; flange, take-up cartridge, and hanger units incorporating tapered roller bearings currently classified under TSUS item 681.10; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use, and currently classified under TSUS item 692.32 or elsewhere in the TSUS.

Fair Value Comparisons

Because RIV-SKF accounted for all sales of this merchandise from Italy, we limited our investigation to it. To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price to the foreign market value. We made comparisons on approximately 93% of the sales of RIV-SKF's products during the period of investigation, March 1, 1986 through August 31, 1986.

United States Price

As provided in section 772(b) of the Act, we based the United States price on purchase price because the merchandise was sold to unrelated purchasers in the United States prior to importation. We made deductions from f.o.b. U.S. warehouse prices for ocean freight, marine insurance, brokerage, U.S. inland freight, U.S. duty and foreign inland freight, as appropriate. Because the respondent provided us with only aggregate values for these deductions, we have allocated the deductions on a per unit basis for purposes of our preliminary determination. We have requested additional data to allow us to determine the most appropriate basis of allocation to be used for our final determination.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we based foreign market value for standard cups, cones, and sets on sales in the home market. In accordance with section 773(a)(1)(B) of the Act, we determined that there were insufficient home market sales of such or similar merchandise to be used as a basis for determining foreign market value for tapered bearing units (TBU's). The third country market with the largest volume of sales of the most similar TBU's is Canada. We made comparisons of "such or similar"

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merchandise based on use, size, and type of the particular TBU's involved.

On January 20, 1987, petitioner alleged that the home market prices for the cup and cone sets were below the cost of production. We did not have sufficient time to develop data for purposes of the preliminary determination. We will address this issue in the final determination.

We made no deductions from Canadian ex-warehouse or f.o.b. prices since we did not have sufficient information to justify such adjustments. We deducted rebates from the Italian ex-warehouse prices. We made adjustments to account for differences in the physical characteristics of the merchandise, in accordance with section 353.16 of the Commerce Regulations. We are seeking additional information for the cups and cones sold in the United States which were compared to sets sold in Italy.

Because we were not supplied with the actual dates of some of the respondent's United States sales, we were unable to make currency conversions based on the date of sale, as required by § 353.56(a) of our regulations. Accordingly, we used, as the best information available, the date of sale in the middle of the period of investigation. For the U.S. sales that did have dates of sale, we made currency conversions from Italian lire or Canadian dollars to U.S. dollars in accordance with § 353.56(a) of our regulations, using the certified daily exchange rates furnished by the Federal Reserve Bank of New York.

Verification

As provided in section 776(a) of the Act, we will verify all information used in reachin9 the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of tapered roller bearings and parts thereof, finished or unfinished, from Italy that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.**

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price, which was 54.18 percent of the ex-factory value. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring, or are threatening material injury to, a U.S. industry before the later of 120 days after the date of our preliminary affirmative determination or 45 days after we make our final affirmative determination.

Public Comment

In accordance with section 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1:30 p.m. on March 11, 1987, at the U.S. Department of Commerce, Room 3708, 14th and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by March 4, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination, or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

February 2, 1987.

[FR Doc. 87-2549 Filed 2-5-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-437-601]

Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Hungarian People's Republic; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that tapered roller bearings and parts thereof, finished or unfinished (tapered roller bearings), from the Hungarian People's Republic (Hungary) are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by April 20, 1987.

EFFECTIVE DATE: February 6, 1987.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins (202-377-1756) or John R. Brinkmann (202-377-3965), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that tapered roller bearings and parts thereof, finished or unfinished, from Hungary are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b). The weighted-average margin of sales at less than fair value is 3.66 percent.

Case History

On August 25, 1986, we received a petition in proper form filed by the Timken Company, on behalf of the United States industry producing tapered roller bearings. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Hungary are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated such an investigation on September 15, 1986 (51 FR 33284, September 19, 1986) and notified the ITC of our action.

On October 2, 1986, the ITC determined that there is a reasonable indication that imports of tapered roller bearings from Hungary are materially injuring an industry (U.S. ITC Pub. No. 1899, October 16, 1986).

On November 3, 1986, a questionnaire was presented to counsel for Magyar Gordulocsopagy Muvek (MGM), the only known exporter of the subject merchandise from Hungary to the United States. We received a questionnaire response on December 10, 1986.

As discussed under the "Foreign Market Value" section of this notice, we have preliminarily determined that Hungary is a state-controlled economy country for the purpose of this investigation.

Scope of Investigation

The products covered by this investigation are tapered roller bearings and parts thereof (tapered roller bearings), currently classified under *Tariff Schedules of the United States* (TSUS) item numbers 680.30 and 680.39; flange, take up cartridge, and hanger units incorporating tapered roller bearings currently classified under TSUS item number 681.10; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use, and currently classified under TSUS item numbers 692.32 or elsewhere in the TSUS.

Fair Value Comparisons

Because MGM accounted for all sales of this merchandise from Hungary, we limited our investigation to it.

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value. We investigated all sales for the period September 1, 1985 through August 31, 1986. We used a twelve-month period of investigation because the respondent had no sales in the original six-month period of investigation.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by MGM because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated the purchase price based on the f.o.b. port price to unrelated purchasers. We made deductions for foreign inland freight, handling, and loading charges.

In accordance with the policy set forth in our final determination in the investigation of carbon steel wire rod from Poland (49 FR 29434, July 20, 1984), we based the inland freight deductions on charges in a non-state-controlled economy country, Portugal. Handling and loading were based on publicly available data.

Foreign Market Value

Petitioner alleged that Hungary is a state-controlled economy country and that sales of the subject merchandise in that country do not permit a determination of foreign market value under section 773(a) of the Act. After an analysis of the Hungarian economy, and consideration of the briefs submitted by the parties, we have preliminarily concluded that Hungary is a state-controlled economy country for purposes of this investigation. Basic to our decision is the degree of direct and indirect central control that the Hungarian government exercises over the prices and levels of production of the tapered roller bearing industry, as well as the internal pricing of the factors of production.

As a result, section 773(c) of the Act requires us to use prices or the constructed value of such or similar merchandise in a "non-state-controlled economy" country. Our regulations establish a preference for foreign market value based upon sales prices. They further stipulate that, to the extent possible, we should determine sales prices on the basis of prices in a "non-state-controlled economy" country at a stage of economic development comparable to the country with the state-controlled economy.

After an analysis of countries producing tapered roller bearings, we determined that Argentina, Brazil, Mexico, Portugal and Yugoslavia would be the most appropriate surrogates. South Korea and Spain were selected as alternative surrogates. We sent questionnaires requesting assistance in this investigation to tapered roller bearing producers in Argentina, Brazil, Mexico, South Korea and Spain but to date, no affirmative response has been received. We will attempt to obtain surrogate company data and verify it prior to the final determination. Additionally, we could not use import prices from non-state-controlled economy countries in this case because the applicable Department of Commerce statistics for the subject merchandise were based on categories that were too broad to make specific comparisons.

As the best information otherwise available, we calculated constructed value based on the factors of production reported by the Hungarian producer which accounts for all of the Hungarian production to the United states of the subject merchandise. Where possible, we used Portugal for the surrogate country for this calculation using information from publicly available sources. We valued certain raw materials and labor inputs for tapered roller bearings in Portugal using such publicly available sources. Other raw material costs were based on costs to the Hungarian producer for imports of certain steel products from market economies. Factory overhead was calculated using information available in public ITC reports. Packing was obtained from publicly available data. We used the statutory minimum of 10 percent of the sum of material and production costs for general, sales and administrative expenses and the statutory minimum of eight percent for profit.

When using surrogate country data, we made currency conversions in accordance with section 353.56(a) of our regulations, using certified exchange rates as furnished by the Federal Reserve Bank of New York.

Verification

We will verify all data used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of tapered roller bearings and parts thereof, finished or unfinished, from Hungary that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.** The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-

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average amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price, which was 3.66 percent of the ex-factory value. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on March 27, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party s name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by March 20, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

February 2, 1987.

[FR Doc. 87-2550 Filed 2-5-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-485-602]

Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Socialist Republic of Romania; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that tapered roller bearings and parts thereof, finished or unfinished (tapered roller bearings), from the Socialist Republic of Romania (Romania) are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by April 20, 1987.

EFFECTIVE DATE: February 6, 1987.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins (202-377-1756) or John R. Brinkmann (202-377-3965), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that tapered roller bearings and parts thereof, finished or unfinished, from Romania are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act)(19 U.S.C. 1673b). The weighted-average margin of sales at less than fair value is 8.87 percent.

Case History

On August 25, 1986, we received a petition in proper form filed by the Timken Company, on behalf of the U.S. industry producing roller bearings. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Romania are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated such an investigation on September 15, 1986 (51 FR 33284, September 19, 1986) and notified the ITC of our action.

On October 2, 1986, the ITC determined that there is a reasonable indication that imports of tapered roller bearings from Romania are materially injuring a United States industry (U.S. ITC Pub. No. 1899, October 16, 1986).

On November 3, 1986, a questionnaire was presented to Embassy of Romania. We received a response from Technoimportexport, the only known exporter of the subject merchandise from Romania to the United States.

As discussed under the "Foreign Market Value" section of this notice, we have preliminarily determined that Romania is a state-controlled-economy country for the purpose of this investigation.

Scope of Investigation

The products covered by this investigation are tapered roller bearings and parts thereof (tapered roller bearings), currently classified under *Tariff Schedules of the United States* (TSUS) item numbers 680.30 and 680.39; flange, take up cartridge, and hanger units incorporating tapered roller bearings currently classified under TSUS item number 681.10; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use, and currently classified under TSUS item numbers 692.32 or elsewhere in the TSUS.

Fair Value Comparisons

Because Technoimportexport accounted for all sales of this merchandise from Romania, we limited our investigation to it.

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value. We investigated all sales of tapered roller bearings for the period September 1, 1985, through August 31, 1986. We used a twelve-month period of investigation because the respondent had insufficient sales in the original six-month period of investigation.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by Technoimportexport because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated the purchase price based on the f.o.b. price to unrelated purchasers. We made deductions for foreign inland freight, handling, and loading charges.

In accordance with the policy set forth in our final determination in the investigation of carbon steel wire rod from Poland (49 FR 29434, July 20, 1984), we based the inland freight deduction on similar charges in a non-state-controlled economy country, Portugal. Handling and loading were based on publicly available data.

Foreign Market Value

Petitioner alleged that Romania is a state-controlled economy country and that sales of the subject merchandise in that country do not permit a determination of foreign market value under section 773(a) of the Act. After an analysis of the Romanian economy, and consideration of the briefs submitted by the parties, we have preliminarily concluded that Romania is a state-controlled economy country for purposes of this investigation. Basic to our decision on this issue is the fact that the central government of Romania controls the prices and levels of production of the tapered roller bearing industry, as well as the internal pricing of the factors of production.

As a result, section 773(c) of the Act requires us to use prices or the constructed value of such or similar merchandise in a "non-state-controlled economy" country. Our regulations establish a preference for foreign market value based upon sales prices. They further stipulate that, to the extent possible, we should determine sales prices on the basis of prices in a "non-state-controlled economy" country at a stage of economic development comparable to the country with the state-controlled-economy.

After an analysis of countries producing tapered roller bearings, we determined that Argentina, Brazil, Mexico, Portugal and Yugoslavia would be the most appropriate surrogates. South Korea and Spain were selected as alternative surrogates. We sent questionnaires requesting assistance in this investigation to producers of tapered roller bearings in Argentina, Brazil, Mexico, South Korea and Spain but to date, no affirmative response has been received. We will attempt to obtain surrogate company data and to verify it prior to the final determination. Additionally, we could not use import prices from non-state-controlled economy countries in this case because the applicable Department of Commerce statistics for the subject merchandise were based on categories that were too broad to make specific comparisons.

As the best information otherwise available, we calculated constructed value based on the factors of production reported by Technoimportexport on behalf of the Romanian producer which accounts for 90 percent of the Romanian production and exports to the United States of the subject merchandise. Technoimportexport has been requested to provide the factors of production for the only other Romanian tapered roller bearing producer. Where possible, we used Portugal for the surrogate country for this calculation using information from publicly available sources. We valued labor and certain raw material inputs for tapered roller bearings in Portugal from such publicly available sources. Other raw material costs were based on average prices obtained from the Special Summary Steel Invoices available to the Department. Direct factory overhead was calculated using data in the petition and in public ITC reports. Packing was obtained from publicly available data. We used the statutory minimum of 10 percent of the sum of material and production costs for general, sales and administrative expenses and the statutory minimum of eight percent for profit.

When using surrogate country data, we made currency conversions in accordance with § 353.56(a)(1) of our regulations, using certified exchange rates as furnished by the Federal Reserve Bank of New York.

Verification

We will verify all data used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of tapered roller bearings, and parts thereof, finished or unfinished, from Romania that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price, which was 8.87 percent of the ex-factory value. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with section 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1:00 p.m. on March 26, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted

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to the Deputy Assistant Secretary by March 19, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

February 2, 1987.

[FR Doc. 87-2551 Filed 2-5-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-479-601]

Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From Yugoslavia; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that tapered roller bearings and parts thereof, finished or unfinished (tapered roller bearings), from Yugoslavia are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and have directed the U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by April 20, 1987.

EFFECTIVE DATE: February 6, 1987.

FOR FURTHER INFORMATION: Contact Judith L. Nehring (202-377-1776) or Charles Wilson (202-377-5288), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that tapered roller bearings and parts thereof, finished or unfinished (tapered roller bearings), from Yugoslavia are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b). The margin of sales at less than fair value is 33.61 percent.

Case History

On August 25, 1986, we received a petition in proper form filed by the Timken Company, on behalf of the United States industry producing tapered roller bearings. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Yugoslavia are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated such an investigation on September 15, 1986 (51 FR 33288, September 19, 1986), and notified the ITC of our action.

On October 2, 1986, the ITC determined that there is a reasonable indication that imports of tapered roller bearings from Yugoslavia are materially injuring a U.S. industry (U.S. ITC Pub. No. 1899, October 16, 1986).

On October 31, 1986, a questionnaire was presented to Unis, the only known exporter of the subject merchandise from Yugoslavia. We received a response on December 2, 1986.

On December 22, 1986 we sent a letter to Unis noting the deficiencies contained in their original response and requested that they revise the response and submit the revisions to the Department no later than January 9, 1987. On January 6, 1987, we granted a verbal extension to Unis until January 16, 1987. On January 16, 1987, we received a supplemental response.

On January 20, 1987, petitioner alleged that sales of tapered roller bearings in the home market were below the cost of production, pursuant to section 773(b) of the Act. They provided support for their request by comparing Timken's cost of production for two tapered roller bearings sold by Unis in the U.S. market adjusted for differences in labor costs and GS&A expenses to the U.S. price of these tapered roller bearings as reported in Unis' response. Petitioner then argued that to the extent that identical, or similar, merchandise is sold in the home market, such sales are likely also to be below the full cost of production. This, however, does not constitute evidence which, within the meaning of section 773(b) of the Act, gives the administering authority reasonable grounds to believe or suspect that sales in the home market of the country of exportation have been made at prices which represent less than the cost of producing the merchandise in question. Therefore, we have not initiated a cost of production investigation in this case.

Scope of Investigation

The products covered by this investigation are tapered roller bearings and parts thereof, finished or unfinished (tapered roller bearings), currently classified under *Tariff Schedules of the United States* (TSUS), item numbers 680.30 and 680.39; flange, take-up cartridge, and hanger units incorporating tapered roller bearings, currently classified under TSUS item 681.10; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use, currently classified under TSUS item 692.32 or elsewhere in the TSUS.

Fair Value Comparisons

Because Unis accounted for all sales of the subject merchandise from Yugoslavia, we limited our investigation to it.

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on the best information available. We used the best information available as required by section 776(b) of the Act, because we did not receive an adequate response. We investigated sales for the period March 1, through August 31, 1986.

United States Price

For purposes of our preliminary determination, we have not used sales data presented by respondent to calculate United States price. Although we were provided a listing of U.S. sales, we were unable to make comparisons of such or similar merchandise to home market sales. For example, bearing designations of U.S. sales, compared to home market bearing designations with different dimensions and static load ratings were not adjusted for in the response. Also, a weight ratio to price ratio was offered for comparison, while the unit of measurement in the sales data was presented in pieces. Using this data, an accurate comparison of U.S. merchandise to home market merchandise could not be made. Therefore, we used the petitioner's data as the best information available.

Foreign Market Value

For purposes of our preliminary determination, we also have not used sales data presented by respondent to calculate foreign market value. The home market sales section of the response contained deficiencies which rendered the data insufficient for the preliminary determination. Specifically, the respondent submitted an incomplete listing of home market sales which covered only the two largest customers in Yugoslavia and contained data on sales of "similar" merchandise identified by the respondent to that merchandise sold to the United States, instead of all home market sales made during the period of investigation. Furthermore, for sales that the respondent did report, those sales were not identifiable by dates, nor were there quantities which could be identified with those individual sales. For these reasons, we calculated the foreign market value of tapered roller bearings on the basis of the best information available, which are those prices furnished by the petitioner. We have adjusted the petitioner's prices by the average rate of exchange for the Yugoslavian dinar for the period of investigation, as reported by the International Monetary Fund.

We made currency conversions from Yugoslavian dinars to U.S. dollars in accordance with § 353.56(a) of our regulations. Normally, we use certified exchange rates furnished by the Federal Reserve Bank of New York, but no certified rates were available for Yugoslavia. Therefore, we used monthly exchange rates published by the International Monetary Fund, as best information available.

Verification

We will verify all information used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of tapered roller bearings and parts thereof, finished or unfinished from Yugoslavia that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price, which was 33.61 percent. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after the date of our preliminary affirmative determination or 45 days after we make our final affirmative determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1:00 p.m. on March 12, 1987, at the U.S. Department of Commerce, Room 3708, 14th and Constitution Avenue, NW., Washington, DC, 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, pre-hearing briefs in at least ten copies must be submitted to the Deputy Assistant Secretary by March 5, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination, or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 USC 1673b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

February 2, 1987.

[FR Doc. 87-2552 Filed 2-5-87; 8:45 am]

BILLING CODE 3510-DS-M

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.53a or 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to request a review: Not later than February 28, 1987, interested parties may request administrative review of the following, findings, or suspended investigations, with anniversary dates in February, for the following periods:

	Period
Antidumping Duty Proceeding:	
Melamine from Japan	02/01/86-01/31/87
Natural Bristle Paint Brushes from China	02/06/86-01/31/87
Birch 3-Ply Doorskins from Japan	02/01/86-01/31/87
Racing Plates from Canada	02/01/86-01/31/87
Railway Track Maintenance Equipment from Austria	02/01/86-01/31/87
Countervailing Duty Proceeding:	
Cotton Yarn from Peru	01/01/86-12/31/86
Cotton Sheeting and Sateen from Peru	01/01/86-12/31/86
Carbon Steel Wire Rod from Saudi Arabia	11/20/85-12/31/86
Suspensions:	
Stainless Steel Products from Brazil	01/01/86-12/31/86
Yarns of Polypropelene Fibers from Mexico	01/01/86-12/31/86
Unprocessed Float Glass from Mexico	01/01/86-12/31/86

A request must conform to the Department's interim final rule published in the **Federal Register** (50 FR

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32556) on August 13, 1985. Seven copies of the request should be submitted to the Deputy Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by February 28, 1987.

If the Department does not receive by February 28, 1987 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: February 30, 1987.

Joseph Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-2553 Filed 2-5-87; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

[Modification No. 1 to Permit No. 514; P53B]

Marine Mammals; Modification of Permit; Dolphin Research Center

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Public Display Permit No. 514 issued to Dolphin Research Center, P.O. Box 2875, Marathon Shores, Florida 33052, on August 2, 1985, (50 FR 32252), is modified by adding the following:

Section B.8

8. The Holder is authorized to conduct a human/dolphin diving program as described in the modification request. This modification is subject to periodic review by the Assistant Administrator for Fisheries and can be revoked at any time.

Section B.9

9. The Holder shall submit a quarterly report, listing the number of human/dolphin dives, any behavioral modifications of the animals, and any health related problems. This report should be submitted to the Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235.

This modifcation became effective on January 30, 1987.

Documents submitted in connection with the above modification are available for review in the following offices:

Protected Species Division, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC; and

Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: January 30, 1987.

Nancy M. Foster,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 87-2470 Filed 2-5-87; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

February 2, 1987.

The chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 6, 1987. For further information contact Kathryn Cabral, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

The bilateral Cotton and Man-Made Fiber Textile Agreement of February 19 and 24, 1986 between the Governments of the United States and Bangladesh provides, among other things, for designated percentage increases in certain categories (swing). An increase for swing is being applied to the restraint limit previously established for cotton textile products in Category 341, produced or manufactured in Bangladesh and exported during the agreement year which began on February 1, 1986 and extends through January 31, 1987.

The restraint limit for Categories 340/640, is being decreased to account for the swing applied to Category 341. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner Customs to adjust the restraint limits for these categories.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

February 2, 1987.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on February 26, 1986, by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1986 and extends through January 31, 1987.[1]

Effective on February 6, 1987, the directive of February 26, 1986 is hereby amended to include the following adjusted restraint limits:

Category	Adjusted limits
340/640	1,260,125 dozen
341	1,166,000 dozen

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] The agreement provides, in part, that: (1) specific limits may be adjusted during the agreement year by designated percentages; (2) specific limits may be adjusted for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreement.

[FR Doc. 87-2507 Filed 2-5-87; 8:45 am]

BILLING CODE 3510-DR-M

Establishing an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Mauritius

February 3, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 9, 1987. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715. For information on categories on which consultations have been requested call (202) 377-3740.

Background

On October 31, 1986, the Government of the United States requested the Government of Mauritius to enter into consultations concerning exports to the United States of spun plied acrylic yarn in Category 604-A (only TSUSA numbers 310.5049 and 310.6045), produced or manufactured in Mauritius and exported during the twelve-month period which began on October 31, 1986 and extends through October 30, 1987. Inasmuch as consultations have not been held on a mutually satisfactory limit for this category, the United States Government will control imports in Category 604-A, exported during the twelve-month period which began on October 31, 1986, at a level of 459,993 pounds.

Accordingly, in the letter published below the Chairman of CITA directs the Commissioner of Customs to prohibit entry, or withdrawal from warehouse, for consumption in the United States of textile products in Category 604-A in excess of the designated restraint limit.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Mauritius, further notice will be published in the **Federal Register**.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), a December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

February 3, 1987

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 9, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 604-A,[1] produced or manufactured in Mauritius and exported during the twelve-month period which began on October 31, 1986 and extends through October 30, 1987, in excess of the following level of restraint: [2]

Category	12-mo. restraint level
604-A	459,993 pounds.

Textile products in Category 604-A which have been exported to the United States prior to October 31, 1986 shall not be subject to this directive.

Textile products in Category 604-A which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States annotated (1987).

[1] In Category 604, only TSUSA numbers 310.5049 and 310.6045.

[2] The level has not been adjusted to account for any imports exported after October 30, 1986.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,

Ronald I Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-2508 Filed 2-5-87; 8:45 am]

BILLING CODE 3510-DR-M

Announcing Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Singapore, Effective on January 1, 1987; Correction

February 3, 1987.

On December 22, 1986 a notice was published in the **Federal Register** (51 FR 45797) which announced import restraint limits as a group, as well as specific limits for individual categories, for certain cotton, wool and man-made fiber textile products from Singapore. In paragraph 2 of the notice and in the table of the letter to the Commissioner of Customs which follows the notice, Categories 649-650 should be added to the group limit. Also in the letter to Customs, the limit for Category 636 should be corrected to 140,000 dozen, instead of 200,000 dozen.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-2509 Filed 2-5-87; 8:45 am]

BILLING CODE 3510-DR-M

Extending Coverage of the Macau Export Visa Requirements to Include Textile Products of Vegetable Fibers (Other Than Cotton) and Silk Blends in Category 845/846

February 3, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 9, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

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Background

The Governments of the United States and the Republic of Macau have agreed to extend coverage of the existing export visa requirement to include sweaters of vegetable fibers, other than cotton, such as ramie, linen, jute, abaca, etc., and silk blends in Category 845/846, produced or manufactured in Macau and exported to the United States. This coverage is in addition to the previously established coverage of cotton, wool and man-made fiber textiles and textile products. The visa itself and the official authorized by the Government of Macau to issue visas are not being changed at this time. Accordingly, in the letter published below the Chairman of CITA directs the Commissioner of Customs, effective on February 1, 1987, to amend the directive of November 17, 1981 (46 FR 57105) to extend coverage to the aforementioned products, exported on or after February 1, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on July 29, 1986.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements

Committee for the Implementation of Textile Agreements

February 3, 1987

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of November 17, 1981 from the Chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit entry and withdrawal from warehouse for consumption in the United States of cotton, wool and man-made fiber textile products, produced or manufactured in Macau for which the authorities in Macau had not issued an appropriate export visa.

Effective on February 9, 1987, the directive of November 17, 1981, is hereby further amended to require that sweaters of vegetable fibers, other than cotton, such as ramie, linen, jute, abaca, etc. and silk blends in Category 845/846 also be visaed if exported from Macau on or after February 1, 1987.

A description of the Textile categories in terms of T.S.U.S.A. numbers was publised in the **Federal Register** on July 29, 1986.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-12510 Filed 2-5-87; 8:45 am]

BILLING CODE 3510-DR-M

Announcing Bilateral Textile Consultations With the Government of Malaysia To Review Trade in Category 442

February 3, 1987.

On November 28, 1986, the Government of the United States, under Article 3 of the Arrangement Regarding International Trade in Textiles, requested consultations with the Government of Malaysia with respect to wool skirts in Category 442, produced or manufactured in Malaysia.

The purpose of this notice is to advise the public that consultations were held between the Governments of Malaysia and the United States on December 3, 1986. A summary market statement concerning Category 442 follows this notice.

The new limit for this category agreed in negotiations is 14,644 dozen for the period December 1, 1986 through December 31, 1987. Swing, carryover and carryforward shall be available pursuant to paragraph 5 of the agreement. The United States and Malaysia exchanged diplomatic notes on December 11, 1986 and December 19, 1986, respectively.

A summary market statement concerning category 442 follows this notice.

FOR FURTHER INFORMATION CONTACT: Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

For information on categories on which consultations have been requested call (202) 377-3740.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Malaysia—Market Statement

Category 442—Wool Skirts

November 1986

Summary and Conclusions

U.S. imports of Category 442 from Malaysia during the year ending September 1986 were 21,484 dozen, almost 6 times the 3,662 dozen imported a year earlier. During the first nine months of 1986, U.S. imports from Malaysia were 21,063 dozen, 10 times the 2,127 dozen imported during the same period of 1985 and 8 times the amount imported during calendar year 1985.

The market for Category 442 has been disrupted by imports. The sharp and substantial increase of imports from Malaysia has contributed to this disruption.

U.S. Production and Market Share

U.S. production of wool skirts declined 29 percent from 1,291 thousand dozen in 1983 to 923 thousand dozen in 1985. The U.S. producers' share of this market fell from 84 percent in 1983 to 66 percent in 1985.

U.S. Imports and Import Penetration

U.S. imports of Category 442 increased from 244 thousand dozen in 1983 to 444 thousand dozen in 1985, an 82 percent increase. Imports continue to grow in 1986. Category 442 imports are up 66 percent in the first nine months of 1986. The ratio of imports to domestic production increased from 19 percent in 1983 to 48 percent in 1985.

Duty Paid Value and U.S. Producer Price

Approximately 80 percent of Category 442 imports from Malaysia during the first nine months of 1986 entered under TSUSA number 384.7522—womens', girls', and infants' woven wool skirts, not ornamented. These skirts entered the U.S. at landed duty-paid values below the U.S. producers' prices for comparable skirts.

Committee for the Implementation of Textile Agreements

February 3, 1987.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Agreement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated July 1 and July 11, 1985, as amended, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 9, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 442, produced or manufactured in Malaysia and exported during the period beginning December 1, 1986 and extending through December 31, 1987, in excess of 14,644 dozen.[1]

[1]The limit has not been adjusted to account for any imports exported after November 30, 1986.

Textile products in Category 442 which have been exported to the United States prior to December 1, 1986 shall not be subject to this directive.

Textile products in Category 442 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements

[FR Doc. 87-2511 Filed 2-5-87; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Consultations With the Government of Mauritius on Category 335

February 3, 1987.

On December 29, 1986, the United States Government, under section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), requested consultations with the Government of Mauritius with respect to cotton textile products in Category 335 (women's, girls' and infants' coats), produced or manufactured in Mauritius.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations between the two governments, the Committee for the Implementation of Textile Agreements may later establish for the entry or withdrawal from warehouse for consumption of textile products in Category 335, produced or manufactured in Mauritius and exported to the United States during the twelve-month period which began on December 29, 1986 and extends through December 28, 1987, at a level of 23,063 dozen.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Mauritius, further notice will be published in the **Federal Register**

A summary market statement for this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Anyone wishing to comment or provide data or information regarding the treatment of Category 335, or to comment on domestic production or availability of textile products included in this category, is invited to submit such comments or information in ten copies to Mr. Ronald I. Levin, Acting Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because of the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon request.

Further comment may be invited regarding particular comments of information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

FOR FURTHER INFORMATION CONTACT: Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715. For information on categories on which consultations have been requested call (202) 377-3740.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

Mauritius—Market Statement

Category 335—Women's Girls' and Infants' Cotton Coats

Summary and Conclusions

U.S. imports of Category 335 from Mauritius were 26,474 dozen during the year ending October 1986, 45 times the 583 dozen imported a year earlier. During the first ten months of 1986, imports of Category 335 from Mauritius were 26,069 dozen, 70 times the amount imported during the same period of 1985 more than 30 times the amount imported during calendar year 1985.

The U.S. market for Category 335 has been disrupted by imports. The sharp and substantial increase of imports from Mauritius has contributed to this disruption.

U.S. Production and Market Share

U.S. production of women's, girls' and infants' cotton coats declined by nearly 12 percent from 661 thousand dozen in 1983 to 584 thousand dozen in 1985. The U.S. manufacturers' share of this market declined from 29 percent in 1983 to 23 percent in 1985.

U.S. Imports and Import Penetration

U.S. imports of Category 335 grew from 1.6 million dozen in 1983 to 2.0 million dozen in 1985, a 24 percent increase. During the first ten months of 1986 imports of Category 335 reached 1,872 thousand dozen, 15 percent higher than the level imported during the same period in 1985. The ratio of imports to domestic production rose from 247 percent in 1983 to 345 percent in 1985.

Duty-Paid Value and U.S. Producer Price

Approximately 60 percent of Category 335 imports from Mauritius during the first ten months of 1986 entered under TSUSA numbers 384.3777—women's other cotton woven coats not ornamented; and 384.3010—women's and girls' cotton knit jogging jackets, not ornamented. These coats entered the U.S. at duty-paid landed values below U.S. producers' prices for comparable coats.

[FR Doc. 87-2512 Filed 2-5-87; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

New York Mercantile Exchange; Proposed Amendments Relating to Platinum and Palladium Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The New York Mercantile Exchange (NYMEX or Exchange) has

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submitted proposals to amend its platinum and palladium futures contracts. The amendments would add a new delivery point and facility to the list of Exchange-approved depositories for the platinum and palladium futures contracts. The Director of the Division of Economic Analysis (Division) of the Commodity Futures Trading Commission (Commission) has determined that these proposals are of major economic significance and that, accordingly, publication of the proposals is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments should be received on or before March 9, 1987.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the proposed amendments to Supplement No. 1 of the rules of NYMEX paltinum and palladium futures contracts.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Deputy Director, or John Forkkio, Economist, Market Analysis Section, Division of Economic Analysis, Commodity Futures Trading commission, 2033 K Street, NW., Washington, DC 20581, (202) 254–7303.

SUPPLEMENTARY INFORMATION: The proposed amendments would add a new delivery point and facility to the list of Exchange-approved depositories for both the platinum and palladium futures contracts. The new delivery point and facility are, respectively, Wilmington, Delaware and Wilmington Trust Company.

The Exchange proposes to make these amendments effective on the first delivery day of the contract month which is two months from the month in which it receives Commission approval. Consequently, the proposed amendments would apply to both existing and newly listed platinum and palladium futures contracts.

Currently, there are six (6) NYMEX-approved depositories for the platinum and palladium futures contracts, all located in New York City. The Exchange submits that the addition of the Wilmington Trust Company depository to its approved list may increase metals stocks available for delivery and provide greater flexibility for market participants wishing to make or take delivery. The NYMEX further noted that, since 1978, Delaware has become a major market center for the investment segment of the precious metals industry. Consequently, according to the Exchange, various precious metals market participants maintain accounts in Delaware (for example, mining companies, refiners, major brokerage houses, primary and secondary suppliers/whole-salers and private investors).

The Division requests that persons commenting on the proposed amendments explicitly discuss the appropriateness of the proposed implementation precedure and its potential impact on the obligations of traders with open positions, or on the value of such positions, in both the platinum and palladium futures contracts. Further, if the proposed implementation procedure is deemed not appropriate, commenters may suggest alternative implementation procedures.

In accordance with section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12) (1982), and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis, on behalf of the Commission, has determined that the proposals submitted by the New York Mercantile Exchange relating to its platinum and palladium futures contracts are of major economic significance. The NYMEX proposals will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the NYMEX in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Issued in Washington, DC, on January 30, 1987.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 87–2504 Filed 2–5–87; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force Institute of Technology, Subcommittee of the Air University Board of Visitors; Meeting

January 12, 1987.

The Air Force Institute of Technology Subcommittee of the Air University Board of Visitors will hold an open meeting at 9:00 AM, 9 March 1987 in Building 125, Wright-Patterson Air Force Base, Ohio.

The purpose of the meeting is to present to the Commandant, Air Force Institute of Technology, a report of findings and recommendations concerning the Institute's educational programs. The findings of the Subcommittee will also be reported to the Commander, Air University, Maxwell Air Force Base, Alabama, at the next regularly scheduled meeting of the Air University Board of Visitors.

For further information on this meeting, contact Major Jolly Holden, Chief, Evaluation and Technology, Directorate of Operations and Plans, Air Force Institute of Technology, Wright-Patterson Air Force Base, Ohio 45433–6583, telephone (513) 255–5760 or 5480.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87–2488 Filed 2–5–87; 8:45 am]

BILLING CODE 3910–01–M

Air University Board of Visitors; Meeting

January 12, 1987.

The Air University Board of Visitors will hold an open meeting on April, 13–15, 1987 at Maxwell Air Force Base, Alabama. Meeting begins at 8:00 a.m., April 13, 1987 in Headquarters Air University Conference Room, Building 800. The purpose of the meeting is to give the board an opportunity to review Air University educational programs and to present to the Commander, Air University, a report of their findings and recommendations concerning these programs.

For further information on this meeting, contact Dr. Dorothy D. Reed, Coordinator, Air University Board of Visitors, Headquarters, Air University, Maxwell Air Force Base, Alabama 36112–5001, telephone (205) 293–5157.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 87–2487 Filed 2–5–87; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

January 22, 1987.

The USAF Scientific Advisory Board Ad Hoc Committee on Space-Based Radar will meet at the Pentagon, Room 5D982, on February 26–27, 1987, from 8:30 a.m. to 5:00 p.m. each day.

The purpose of this meeting is to receive briefings on and to discuss requirements for a space-based radar system. These meetings are being held to prepare Board members to advise senior Air Force personnel on appropriate means of achieving stated requirements.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–8404.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 87–2489 Filed 2–5–87; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board.

Dates of Meeting: 25–27 February 1987.

Times of Meeting: 0830–1630, 25 February 1987; 0830–1630, 26 February 1987; 0830–1130, 27 February 1987.

Place: Headquarters, US Army Information Systems Command (USAISC), Fort Huachuca, Arizona.

Agenda: The Army Science Board's Ad Hoc Panel on Army Information Mission Area Concepts and Architecture will meet for the purpose of gathering facts. On the first and second day of the meeting the panel will hear briefings on Information Management, Army Information Management concepts at the strategic and sustaining base levels, roles and functions of Army Information Managers, and sustaining base systems. On the third day, the panel will discuss Information Management issues and policy with the Commander, USAISC and identify preliminary topics for further investigation. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87–2469 Filed 2–5–87; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

Intent to prepare a Draft Environmental Impact Statement (DEIS) for Proposed Enlisted Barracks, Presidio of San Francisco, CA.

AGENCY: DOD, U.S. Army Corps of Engineers, Sacramento District.

SUMMARY: Proposed Action: A series of three barracks projects for enlisted persons is proposed for construction at the Presidio of San Francisco, California. These facilities are proposed to replace existing substandard facilities for personnel who currently live in inadequate quarters on the Presidio or in expensive rental units in the community. The inadequate quarters are deficient in seismic design and do not meet Department of Defense standards for space, privacy, or security. The requirements for these projects are not derived from new or expanded missions. The proposed projects would meet a portion of the total enlisted housing needs at the Presidio. The location of the proposed barracks is between the Letterman Army Medical Complex on the east, Highway 101 on the north, Presidio Headquarters and the main parade ground on the west, and Lincoln Boulevard on the south. The projects are number 098, Enlisted Barracks with Dining, Operations, and Supply; number 119, Medical Enlisted Barracks; and number 124, Enlisted Barracks without Dining, Operations, and Supply.

Alternatives: a. No action. b. Rehabilitation of existin facilities. c. Alternative site locations.

Scoping Process: Comments received as a result of this notice will be used to assist in identifying significant resources and impacts. Close coordination is being maintained with Federal, State, and local agencies, concerned organizations and individuals. The Golden Gate National Recreation Area (GGNRA) Citizens Advisory Committee held a public hearing in October 1986 at which the proposed siting and general concept for the barracks projects were discussed. Extensive coordination has occurred with the State Historic Preservation Officer (SHPO) and with the staff of the GGNRA. These discussions were initiated by the Army to outline the projects' effects on historic and cultural resources and the effects on open space and public recreation opportunities. A public meeting will be held after the release of the DEIS.

Comments on the proposed action and the scope of the DEIS should be addressed to the Sacramento District Corps of Engineers, attention: SPKPD, 650 Capital Mall, Sacramento, California 95814–4794. Questions or comments may be addressed to Mr. Robet Verkade or Mr. David Kruse, (916) 551–2903. The scoping process is scheduled to be completed by 23 February 1987 and the DEIS is scheduled to be available for review in March 1987.

John O. Roach, II

Army Liaison Officer, with the Federal Register.

[FR Doc. 87–2596 Filed 2–5–87; 8:45 am]

BILLING CODE 3710–08–M

Flood Control Projects; Certifying Work Carried Out by Non-Federal Interests; Guidelines

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: Section 104 of Pub. L. 99–662, the Water Resources Development Act of 1986, authorizes and directs the development of guidelines which include criteria for certifying that work carried out by non-Federal interests is compatible with a Corps of Engineers project for flood control. Non-Federal work which was carried out in the 5 year period prior to the legislation's enactment, November 17, 1986, can be considered part of the project and credited against the non-Federal share of the cost of the project, if the work is determined to be compatible with the project in accordance with the guidelines to be promulgated and the potential local sponsor of the Federal project applies for consideration of such work not later than March 31, 1987. If any such work has been done at a location where a Corps flood control project is authorized but as yet unconstructed, a study is underway, or a report has been forwarded for Executive Branch review or for consideration by Congress, and the potential local sponsor of the Federal project desires credit, the sponsor should notify the office indicated below on or before March 31, 1987. The notification should include a brief description of the work, its cost, and the date it was completed. If a notification is not submitted by the referenced date, a credit for completed

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compatible work will not be possible under the terms of Section 104. The local sponsors of the following projects with special credit provisions in the act must also apply by March 31st: Metropolitan Denver, Colorado; Quincy Coastal Streams, Massachusetts; Miami River, Fairfield, Ohio; Lock Haven, Pennsylvania; Boggy Creek, Texas; and West Bank Hurricane Protection Levee, Jefferson Parish, Louisiana. Guidelines for determining that local work is compatible with a Corps project are being developed and will be published in draft form for comment in the near future.

ADDRESS: USACE, DAEN–CWR–R, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Messrs. Dave Brouwer or Don Rogers at (202) 272–0123.

Dated: January 30, 1987.

John S. Doyle, Jr.,

Principal Deputy Assistant Secretary of the Army (Civil Works).

[FR Doc. 87–2605 Filed 2–5–87; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER87–232–000 et al.]

Electric Rate and Corporate Regulation Filings; Boston Edison Co. et al.

February 3, 1987.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Company

[Docket No. ER87–232–000]

Take notice that on January 27, 1987, Boston Edison Company of Boston, Massachusetts, tendered for filing as Supplement No. 18 to Rate Schedule No. 47 a proposed formula rate to recover the cost of investment additions to the subtransmission facilities serving the Town of Concord, Massachusetts. The Company asks that the formula rate be made effective on March 27, 1987.

The Company states that it has served a copy of this filing upon the Town of Concord, Massachusetts and the Massachusetts Department of Public Utilities.

Comment date: February 17, 1987, in accordance with Standard Paragraph E at the end of this document.

2. Carolina Power & Light Company

[Docket No. ER87–231–000]

Take notice that Carolina Power & Light Company on January 27, 1987, tendered for filing changes outlined below in its agreement with the Tri-County Electric Membership Corporation. The revised, unexecuted Exhibit A for Tri-County Electric Membership Corporation Mount Olive 115 KV point of delivery reflects the installation of special metering facilities required to provide metering pulse information. The metering pulse in formation will be provided under the Company's additional facililties plans.

Comment date: February 17, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Carolina Power & Light Company

[Docket No. ER87–240–000]

Take notice that Carolina Power & Light Company (CP&L) filed on January 30, 1987, revised rates for its resale customers that would produce a rate increase. CP&L has also tendered for filing Revised Sheet Nos. 5–8B to its FPC Electric Tariff, First Revised Volume No. 1, containing revised rates and charges applicable to CP&L's 3 municipal, 18 rural electric cooperatives, and 1 partial requirements sales-for-resale customers. The revised rates for the increase are contained in proposed Resale Service Schedules RS87–1, RS87–2, and RS87–3 and accompanying resale fuel adjustment Rider No. 87A applicable to CP&L's electric cooperative customers, municipal customers, and partial requirements customers, respectively. CP&L proposes to place the revised tariff sheets into effect as of April 1, 1987. The revised rates and charges would increase revenues from jurisdictional sales by $37,500,000 if the rates were in effect for all of the 12-month period ending December 31 1987.

CP&L states that, under the rates currently in effect, it expects to realize a rate of return on equity during Period II (calendar year 1987) from service to its electric cooperative resale customers of 4.9 percent, from its municipal resale customers of 6.3 percent, and from the partial requirements customer of 6.1 percent. These rates of return on common equity are lower than the Company's cost rate for both long-term debt and preferred stock and are clearly inadequate to compensate the common stockholder.

Copies of the appropriate portions of the filing have been served upon CP&L's jurisdictional resale customers and the State Commissions of North Carolina and South Carolina.

Comment date: February 17, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Central Vermont Public Service Corporation

[Docket No. ER87–230–000]

Take notice that on January 27, 1987, the Central Vermont Public Service Corporation ("CVS") tendered the filing as an initial rate schedule a System Sales & Exchange Agreement (the "Agreement") between the Niagara Mohawk Power Corporation ("NMPC") and Central Vermont Public Service Corporation. The Agreement, dated October 1, 1986, provides for the exchange of a portion of the CVPS system capacity and associated energy for an equal entitlement in capacity from the NMPC system (an "Exchange").

The agreement provides that the parties will determine not less than twelve (12) hours prior to such Exchange whether it is economically advantageous to the parties that an exchange, pursuant to this Agreement, take place during that day or week.

NMPC shall pay CVPS monthly an amount determined by multiplying the megawatt hours delivered by CVPS and received by NMPC for the preceding month by the energy reservation charge in dollars/MWH for each transaction occurring in that month plus an energy charge. The energy charge shall be determined by multiplying the megawatt hours delivered by CVPS for the preceding month by the energy rate for each transaction occurring in that month. The energy charge shall be based upon the forecasted incremental system energy cost adjusted for transmission losses to the delivery point.

CVPS shall pay NMPC for each month an Exchange occurs, an energy charge which shall be the sum of each of the hourly energy charges for each of the hours of exchange in such month. The hourly energy charge shall be the product of (1) The NEPEX Replacement Fuel Price for the Exchange Units; (2) the full loan average heat rate of the Exchange Units as recorded to NEPEX on Form NX12 (expressed in BTU/MWH or, for steam fossil fired exchange units, the experienced average monthly heat rate of each such unit expressed in BTU/MWH); (3) the net energy output in MWH from the Exchange Units for such hour; and (4) the CVPS Entitlement Fraction in the Exchange Units for such hour.

In order topermit NMPC to achieve the mutual benefit of this Agreement, CVPS hereby requests that the Commission, pursuant to § 35.11 of its regulations, waive the sixty day notice period and permit the rate schedule filed herewith to become effective on October 1, 1986. The waiver, if granted, will have no effect upon purchasers under any other rate schedule. If said waiver is not granted, the parties to the Agreement will have to defer receiving the benefits accruing from the Agreement, i.e. their respective systems will be compelled to operate at less than optimum economic efficiency.

Copies of the filing were served upon the respective jurisdictional state regulatory agencies of the parties hereto. CVPS further states that the filing is in accordance with section 35 of the Commission's Regulations.

Comment date: February 17, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Duke Power Company

[Docket No. ER87–228–000]

Take notice the Duke Power Company (Duke) on January 23, 1987 tendered for filing amendments to the Interconnection Agreement between Duke Power Company and Carolina Power and Light Company dated as of June 1, 1961, as amended, (designated Rate Schedule FERC No. 10), which amendments provide for an update in the demand and transmission use rates under service schedules for spinning reserve, short term power, limited term power and other agency. The amendments also provide that the rates calculated under Appendix B (Duke) and Appendix C (CP&L) will be "ceiling rates" and the parties will have the option of agreeing upon rates lower than the "ceiling rates" for specific transactions.

Duke has requested that the amendments become effective no later than sixty (60) days after the date of tender for filing or March 23, 1987.

Copies of this filing were served on Carolina Power and Light Company, the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: February 17, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Light & Power Company

[Docket No. ER87–154–000]

Take notice that on January 27, 1987, Florida Power & Light Company ("FPL") tendered for filing a revised Attachment B to each of the respective Agreements entitled: (1) Stanton Transmission Service Agreement Between Florida Power & Light Company and the Florida Municipal Power Agency ("Stanton Transmission Agreement"); and (2) Stanton Tri-City Transmission Service Agreement Between Florida Power & Light Company and the Florida Municipal Power Agency ("Stanton Tri-City Transmission Agreement").

As requested by the Commission Staff, these Attachments B have been revised to delineate the specific values for FPL's currently effective rates for transmission services provided under each of the respective Agreements. Each revised attachment B supersedes and replaces in its entirety the Attachment B to each of the respective Agreements that were initially filed in Docket No. ER87–154.

Copies of the filing were served upon Florida Municipal Power Agency, the FMPA Participating Members (as listed in the initial filing) and the Florida Public Service Commission.

FPL requests that these revised Attachments B be made effective upon commencement of the commercial operation of Stanton Unit No. 1 (estimated to be July 1, 1987).

Comment date: February 17, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. Idaho Power Company

[Docket No. ER87–235–000]

Take notice that on January 28, 1987, Idaho Power Company (Idaho) tendered for filing an Agreement for Supply of Power and Energy between Idaho Power Company and CP National Corporation dated December 29, 1986. Under the agreement, Idaho will continue to supply electric power to CP National Corporation in Oregon under the same provisions of a 1973 Agreement between the parties currently on file with the Commission. Rate Schedule FPC No. 57—Schedule O–B, Resale Service, CP National Corporation, Oregon Division. The rates for such supply of electric power will be at the rates currently approved by the Commission. Idaho Power Company, 26 FERC ¶61,411 (1985). The agreement proposes to revise the provisions of termination contained in Rate Schedule No. 57 to allow for termination by either party upon 12 months' prior written notice, provided termination may not be effective earlier than June 30, 1988. All other provisions and conditions of service under Rate Schedule No. 57 remain the same.

Comment date: February 17, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. The Montana Power Power Company

[Docket No. ER87–233–000]

Take notice that on January 27, 1987, The Montana Power Company (Montana) tendered for filing a revised Index of Purchasers, identified as Tenth Revised Sheet No. 10 under FERC Electric Tariff, 2nd Revised Volume No. 1, which has been revised to show the addition of Basin Electric Power Cooperative and Black Hills Power and Light Company. Also tendered for filing were summaries of sales made under the Company's FERC Electric Tariff, 2nd Revised Volume No. 1, during January 1986 through June 1986 with cost justifications for the rates charged.

Montana requests an effective date of January 1, 1986 for the service agreements between Montana and Basin Electric Power Cooperative and Black Hills Power and Light Company.

9. MSU System Services, Inc.

[Docket No. ER87–229–000]

Take notice that MSU System Services, Inc. ("SSI"), formerly Middle South Services, Inc. ("MSS"), as agent for Arkansas Power & Light Company ("AP&L"), Louisiana Power & Light Company ("LP&L"), Mississippi Power & Light Company ("MP&L") and New Orleans Public Service Inc. ("NOPSI"), on January 27, 1987 tendered for filing a Contract for Purchases of Economic Energy by Florida Power & Light Company from AP&L, LP&L, MP&L, NOPSI, and SSI, revised to incorporate pricing provisions which are within traditional regulatory practice.

SSI requests an effective date of January 1, 1987 for the Agreement. SSI requests waiver of the Commission's notice requirements under Section 35.11 of the Commission's Regulations.

Comment date: February 17, 1987, in accordance with Standard Paragraph E at the end of this notice.

10. Pacific Gas and Electric Company

[Docket No. ER87–234–000]

Take notice that on January 28, 1987, Pacific Gas and Electric Company (PGandE) tendered for filing an initial schedule for a one-time spot sale of capacity and energy to the City of Los Angeles, Department of Water and Power (LADWP).

The transaction which occasioned this spot sale occurred on July 1, 1985, when LADWP experienced high demand and arranged this short-term sale with PGandE's operators. For this urgent transaction, the operators drew rates from two existing agreements. The capacity rate of $.20 per kW-day was taken from LADWP's Contract No. 10574 (an Interchange Agreement with PGandE), and represents the rate for capacity which LADWP charges PGandE. The energy rate of 115 percent of seller's incremental cost was taken from the California Power Pool Agreement, which was accepted by the Federal Power Commission (FPC) on

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August 6, 1965 and designated as Rate Schedule FPC No. 27.

PGandE's agreement for the transaction involved in this filing with LADWP provides for a spot sale of 150 MW of electric capacity and 638,000 kWh of associated energy, delivered at the Midway substation. This was a one-time sale and neither party desires or intends this to have any precedential effect on future spot transactions. LADWP is responsible for its own transmission arrangements from Midway to its loads.

PGandE requests, pursuant to § 35.11 of the Commission's Regulations, that the Commission waive its usual notice requirements as may be necessary to permit acceptance of this filing and to permit an effective date of July 1, 1985. No customer under any other rate schedules will be affected if such waiver is granted.

The transaction governed by this agreement took place on July 1, 1985, beginning with the hour ending at 1500 hours and ceasing at the hour ending at 1900 hours. This agreement, and all rights to service under this agreement, terminated as of 2400 hours, on July 1, 1985. PGandE therefore also requests that this rate schedule terminate effective as of 2400 hours of July 1, 1985, without the necessity of any further filing by PGandE, and requests a waiver of the Commission's usual notice requirements under § 35.15 of the Commission's Regulations in order that this can be accomplished.

Comment date: February 17, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2523 Filed 2-5-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-164-000 et al.]

Natural Gas Certificate Filings; Great Lakes Gas Transmission Co. et al.

Take notice that the following filings have been made with the Commission:

1. Great Lakes Gas Transmission Company

[Docket No. CP87-164-000]

January 29, 1987.

Take notice that on January 15, 1987, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP87-164-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Great Lakes to transport natural gas, on an interruptible basis, for Southeastern Michigan Gas Company (Southeastern), a local distribution company, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Great Lakes states that Southeastern has requested that Great Lakes transport up to 20 Mcf of natural gas per day from a point on the International Border between the United States and Canada at Emerson, Manitoba, where the facilities of Great Lakes interconnect with the facilities of TransCanada PipeLines Limited (TransCanada), to a point where Great Lakes' facilities interconnect with those of ANR Pipeline Company (ANR), at Muttonville, Michigan.

Great Lakes states that similar service has been provided to Southeastern since May 28, 1985, under Part 284 of the Commission's Regulations, which is a grandfathered service under Order No. 436. It is further stated that this service terminates on March 1, 1987. By a transportation service agreement dated January 5, 1987, Great Lakes and Southeastern have agreed to continue the transportation, on an interruptible basis, for an additional two years, until the date of March 1, 1989, or the date two years after the effective date of regulatory approvals, it is stated.

Great Lakes states that there is no need for any new facilities to be constructed to implement this transportation.

Comment date: February 13, 1987, in accordance with Standard Paragraph F at the end of this notice.

2. United Gas Pipe Line Company

[Docket No. CP87-163-000]

January 30, 1987.

Take notice that on January 15, 1987, United Gas Pipe Line Comany (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-163-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for permission to abandon certain sales service under the blanket authorization issued in Docket No. CP82-430-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United requests authority to abandon certain sales services as follows:

Customer	Original docket No.	Contract expiration date
Hess Pipe Line Co.	CP65-75	Jan. 1, 1987.
Hess Pipe Line Co.	CP65-75	Jan. 1, 1987
Mississippi Power Co.	G-1,447	Sept. 1 1982
Mississippi Power Co.	G-11,200	Sept. 1 1982
Monsanto Co	CP60-14	Jan. 1, 1987

United states that the sales contracts have expired or will expire in the near future and that the proposed abandonments have been agreed to by the affected customers. United further states that its facilities will remain in place in anticipation of future service.

Comment date: March 16, 1987, in accordance with Standard Paragraph G at the end of this notice.

4. Panhandle Eastern Pipe Line Company

[Docket No. CP87-156-000]

February 2, 1987.

Take notice that on January 8, 1987, Panhandle Eastern Pipe Line Company (Panhandle), 3000 Bissonnet, Houston, Texas 77251, filed in Docket No. CP87-156-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon two segments of pipeline in Hansford and Hutchinson Counties, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle requests authorization to abandon approximately 19 miles of its Sneed 100 pipeline because of a decline in deliverability. It is stated that the Sneed 100 line has been looped by a 22-inch line which is a more efficient route for transmission and that Panhandle would have sufficient capacity for transmission of its gas supply behind the Sneed 100 line without the facilities proposed for abandonment. It is explained that the facilities proposed for abandonment are immediately upstream and downstream of a 17-mile segment of the Sneed 100 line which was abandoned in 1985 pursuant to a Commission order issued August 23, 1985, in Docket No. CP85-611-000. Panhandle asserts that the proposed abandonment would have no effect on customer service. It is further asserted that the proposed abandonment would have an economic benefit for Panhandle's customers by removing from service facilities which would require reconditioning or replacement to remain in service.

Comment date: February 23, 1987, in accordance with Standard Paragraph F at the end of this notice.

5. Southern Natural Gas Company

[Docket No. CP87-154-000]

February 2, 1987.

Take notice that on January 7, 1987, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP87-154-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for SNG Trading Inc. (SNG), and for permission and approval to abandon the transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 30 billion Btu of natual gas per day for SNG, on an interruptible basis for a term expiring October 31, 1987. Applicant states that it would receive the gas at various specified existing points in Mississippi, Texas, Alabama, Louisiana, and offshore Louisiana. Applicant proposes to deliver equivalent volumes of gas, less 3.25 percent for fuel and company-use gas and less shrinkage, fuel and losses from processing, at an existing point of connection between the facilities of Applicant and South Georgia Natural Gas Company (South Georgia) in Lee County, Alabama. Applicant indicates that South Georgia would be purchasing the gas from SNG for its system supply.

Applicant proposes to charge SNG a transportation rate of 39.9 cents per million Btu where the aggregate of the volumes transported by Applicant for South Georgia, when added to the volumes of gas delivered under Rate Schedule OCD of Applicant's FERC Gas Tariff do not exceed South Georgia's daily contract demand; for those volumes that exceed the daily contract demand, the transportation rate would be 64.9 cents per million Btu. In addition, Applicant proposes to collect the appropriate GRI surcharge.

Comment date: February 23, 1987, in accordance with Standard Paragraph F at the end of this notice.

6. West Lincoln Natural Gas District of Lincoln County, Mississippi

[Docket No. CP87-146-000]

February 2, 1987.

Take notice that on December 29, 1986, West Lincoln Natural Gas District of Lincoln County, Mississippi (West Lincoln), Route 3, Box 646, Brookhaven, Mississippi 39601, filed in Docket No. CP87-146-000 an application pursuant to section 7(a) of the Natural Gas Act for an order directing Southern Natural Gas Company (SNG) to establish an interconnection of its facilities with those proposed by West Lincoln and to sell and deliver to West Lincoln up to 34,350 Mcf for the first year and up to 41,625 Mcf by the third year for resale and distribution to approximately 1,600 people in the proposed service area, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

West Lincoln states that such gas service would be provided to an area west of Brookhaven, including the small communities of Vaugh, Cobbs, Zetus, Williams and Red Star along with the rural areas that have sufficient development, totaling 1,600 people. There are also 483 potential residential customers, 38 potential large commercial customers and 2 schools in the proposed service area that would utilize the service, it is explained.

West Lincoln indicated that Southern could serve the district from one meter station to be built by Southern and located in section 8, T7N, R7E, Lincoln County where Southern's transmission line crosses a parish road. West Lincoln would construct appurtenant facilities necessary to interconnect with Southern's transmission system, it is asserted. West Lincoln states that the project would cost $595,000 and would be financed by a 20-year loan.

Comment date: February 23, 1986, in accordance with Standard Paragraph F at the end of this notice.

7. Alabama-Tennessee Natural Gas Company

[Docket No. CP87-170-000]

February 2, 1987.

Take notice that on January 20, 1987, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), P.O. Box 918, Florence, Alabama, 35631, filed in Docket No. CP87-170-000 an application pursuant to section 7(b) of the Natural Gas Act, for permission and approval to abandon certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant seeks authorization to abandon by sale to the City of Decatur Utilities (Decatur), Alabama, 3.208 miles of 3½" O.D. pipeline and one (1) 3" valve and companion flanges originally built to serve the City of Hartselle, Alabama, all in the city limits of Decatur, County of Morgan, Alabama.

Comment date: February 23, 1987, in accordance with Standard Paragraph F at the end of this notice.

8. El Paso Natural Gas Company

[Docket No. CP87-68-001]

February 2, 1987.

Take notice that on November 13, 1986, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP87-68-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization: (1) To install and operate a sales meter station, to be located in Santa Cruz County, Arizona, in order to permit the delivery of natural gas to Citizens Utilities Company (Citizens) for direct sale to Citizens' Valencia Power Plant in Santa Cruz County, Arizona; and (2) to reassign, among existing delivery points, authorized contract quantities of natural gas currently delivered to Citizens for resale to consumers in Santa Cruz County, Arizona, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that El Paso is currently selling gas to Citizens, on a direct sale basis, pursuant to a Gas Sales Agreement dated April 1, 1983, as amended, between the parties. It is stated additionally that El Paso sells and delivers natural gas to Citizens for distribution and resale to consumers situated in various communities and areas in the State of Arizona, pursuant to a Service Agreement dated August 17, 1981, (Service Agreement) between El Paso and Citizens.

It is further stated that El Paso has received a written request from Citizens wherein Citizens has requested that El Paso provide additional direct sale natural gas service to Citizens for use at Citizens' new Valencia Power Plant located near Nogales, Arizona, and reassign, among existing delivery points situated in Santa Cruz County, Arizona, authorized contract quantities of gas. It is said that El Paso is advised by Citizens that the requested quantities of natural gas, to be provided by El Paso

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for the additional direct sale service, would be utilized by Citizens as fuel for three new gas turbine generators at Citizens' Valencia Power Plant in order to meet projected electric peak shaving requirements of residential and commercial customers primarily during the summer months. With respect to the requested reassignment among existing delivery points of the authorized contract quantities of natural gas in Santa Cruz County, Arizona, it is said that Citizens has advised El Paso that such reassignment of volumes would allow Citizens to better meet the present and anticipated load distribution in its service area in Santa Cruz County, Arizona. Additionally, it is said that reassignment of said volumes among existing delivery points would more accurately reflect the actual delivery conditions at each delivery point.

It is stated that in order to accommodate Citizens' request for additional direct sale of natural gas service, El Paso proposes to install a sales meter station consisting of two 4½-inch O.D. standard orifice-type meters, with appurtenances, at a point on El Paso's existing combination 6⅝-inch O.D. and 8⅝-inch O.D. line extending from the California Line to Twin Buttes and Nogales in Santa Cruz County, Arizona. It is further stated that the volumes of natural gas to be sold to Citizens at the proposed sales meter station would be delivered at a pressure of not less than 300 psig. Citizens has projected that the estimated annual and maximum peak day delivery requirements for use at Citizens' Valencia Power Plant during the first full year of service is 205,980 Mcf of gas per year and 5,800 Mcf of gas per day, respectively.

In accommodating Citizens' request for reassignment of natural gas, El Paso proposes to reassign among existing delivery points the authorized contract quantities of natural gas delivered to Citizens for resale by El Paso in Santa Cruz County, Arizona. It is said that no new or additional facilities would be required by El Paso to effectuate the proposed reassignment of contract quantities at any of the existing delivery points. In addition, it is said that the proposed reassignment of authorized contract quantities of natural gas among existing delivery points will not represent any increase in aggregate quantities delivered under the existing Service Agreement and will not alter Citizens' classification as a Category C Customer under El Paso's Permanent Allocation Plan.

On January 15, 1987, El Paso filed in Docket No. CP87-68-001 a request pursuant to section 7(c) of the Natural Gas Act to modify its filing in Docket No. CP87-68-000 so as to request a certificate of public convenience and necessity authorizing (1) the installation and operation of a sales meter station in order to permit the delivery of natural gas to Citizens for direct sale to Citizens' Valencia Power Plant in Santa Cruz County, Arizona; and (2) the reassignment, among existing delivery points, of authorized contract quantities of natural gas currently delivered to Citizens for resale to consumers in Santa Cruz County, Arizona, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Comment date: February 23, 1987, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's procedural rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2524 Filed 2-6-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS71-804 et al.]

R. L. Bolin, et al. (D. H. Bolin), et al.; Applications for Small Producer Certificates [1]

February 2, 1987.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before February 17, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20428, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS71—804	12-22-86[1]	R.L. Bolin, *et al.*, (D. H. Bolin), 1120 Oil and Gas Building, Wichita Falls, TX 76301.
CS74—152	1-12-87[2]	Wagner & Brown, (Stoltz, Wagner & Brown), P.O. Box 1714, Midland, TX 79702.
CS75—192	1-20-87[3]	Adobe Resources Corporation, (Adobe Oil & Gas Corporation), 1100 Western United Life Building, Midland, TX 79701.
CS87—33-000	12-15-86	Stirling Oil & Gas Company, 302 Fort Worth Club Building, Fort Worth, TX 76102.
CS87—34-000	12-15-86	R.J. Dixon, Inc., P.O. Box 51861, Lafayete, LA 70505.
CS87—35-000	12-31-86[4]	Angerman Associates, Inc., 109 Zeta Drive, Pittsburgh, PA 15238.
CS87—36-000	1-6-87	Daniel L. Veirs, 5101 N. Avenue "A" #152, Midland, TX 79705.

[1] Letter dated December 15, 1986, as amended by letter dated December 23, 1986, received December 30, 1986, advising that D.H. Bolin is deceased and requesting amendment of his small producer certificate in the name of the beneficianes of his estate, R.L. Bolin, C.W. Bolin, D.P. Bolin, Dolores P. Bolin, Dan H. Bolin and Pat S. Bolin.

[2] Letter dated January 13, 1987, requesting redesignation of small producer certificate to reflect a change in name.

[3] Letter dated January 7, 1987, requesting redesignation of small producer certificate to reflect that effective October 31, 1985, Adobe Oil & Gas Corporation changed its name to Adobe Resources Corporation.

[4] Additional material received January 6, 1987.

[FR Doc. 87-2525 Filed 2-5-87; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 9916-002 et al.]

Dam Four Hydro Partners et al.; Surrender of Preliminary Permits

February 3, 1987.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. Dan Four Hydro Partners

[Project No. 9916-002]

Take notice that Dam Four Hydro Partners, permittee for the Kentucky River Lock & Dam Number Four Project No. 9916, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9916 was issued on June 23, 1986, and would have expired on May 31, 1989. The project would have been located on the Kentucky River in Franklin County, Kentucky.

The permittee filed the request on January 13, 1987.

2. Dam Five Hydro Partners

[Project No. 9917-002]

Take notice that Dam Five Hydro Partners, permittee for the Kentucky River Lock & Dam Number Five Project No. 9917, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9917 was issued on June 23, 1986, and would have expired on May 31, 1989. The project would have been located on the Kentucky River in Anderson and Woodford Counties, Kentucky.

The permittee filed the request on January 13, 1987.

3. Dam Thirteen Hydro Partners

[Project No. 9918-002]

Take notice that Dam Thirteen Hydro Partners, permittee for the Kentucky River Lock & Dam Number Thirteen Project No. 9918, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9918 was issued on June 23, 1986, and would have expired on May 31, 1989. The project would have been located on the Kentucky River in Lee County, Kentucky.

The permittee filed the request on January 13, 1987.

4. Old Station Power Company

[Project No. 9242-001]

Take notice that Old Station Power Company, permittee for the Rock Creek Project No. 9242, located on Rock Creek, Shasta County, California, has requested that its preliminary permit be terminated. The preliminary permit was issued on December 4, 1985, and would have expired on November 30, 1988. The permittee states that analysis of the Rock Creek Project indicated that it was not economically feasible for development.

The permittee filed the request on January 13, 1987.

5. Old Station Power Company

[Project No. 9561-001]

Take notice that Old Station Power Company, permittee for the Old Station No. 1 Project No. 9561, located on Hat Creek, Shasta County, California, has requested that its preliminary permit be terminated. The preliminary permit was issued on May 5, 1986, and would have expired on April 30, 1989. The permittee states that analysis of the Old Station No. 1 Project indicated that it was not economically feasible for development.

The permittee filed the request on January 13, 1987.

Standard Paragraphs

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2526 Filed 2-5-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-452-048]

Columbia Gas Transmission Corp.; Columbia Gulf Transmission Co.; Proposed Notice of Request To Extend Authority

February 2, 1987.

Take notice that Columbia Gas Transmission Corporation (Columbia), a Delaware corporation, having its principal place of business at 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed on January 23, 1987, on behalf of itself and its producer-suppliers, a request to extend for a

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period of three years the authority granted by the Commission in Docket No. CP83-452-047, as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Columbia requests the Commission to extend until March 31, 1990, the authority to (a) make sales for resale in interstate commerce of NGA gas for which the maximum lawful price is higher than the NGPA section 104 price for 1973-74 biennium gas for large producers, and (b) abandon temporarily sales to Columbia for resale of NGA gas for which the maximum lawful price is higher than the NGPA section 104 price for 1973-74 biennium gas for large producers and which were previously certificated by the Commission, to the extent that such gas is released by Columbia pursuant to such conditions as may be imposed by the Commission, as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia Gulf Transmission Company and Columbia are transporting gas pursuant to the terms of Order No. 436. Gas released under the authority herein sought will be transported by Columbia to its wholesale customers, end-users and other parties on a non-discriminatory basis under the provisions of Order No. 436.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 18, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2527 Filed 2-5-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-240-000]

Diamond Shamrock Exploration Company, and Diamond Shamrock Offshore Partners Limited Partnership; Application for Certificate of Public Convenience and Necessity and for an Order Permitting and Approving Limited-Term Abandonment and Pre-Granted Abandonment

February 2, 1987.

Take notice that on January 23, 1987, Diamond Shamrock Exploration Company, and Diamond Shamrock Offshore Partners Limited Partnership (jointly referred to as "Diamond Shamrock") filed an Application pursuant to sections 4 and 7 of the Natural Gas Act (NGA), the provisions of 18 CFR Parts 154 and 157, and 18 CFR 2.77(a)(1), seeking (i) a certificate of public convenience and necessity authorizing the sale for resale in interstate commerce of certain natural gas produced by Diamond Shamrock and its co-owners, and (ii) an order authorizing limited-term abandonment and pre-granted permanent abandonment of certain sales as described therein, to effectuate the sale and purchase of gas on a short-term basis, or a best efforts basis, and on the spot market, as more fully described in the Application which is on file with the Commission and open for public inspection. The term of the authorizations requested by Diamond Shamrock is two years.

Diamond Shamrock states that the authority as requested is consistent with the Commission's rules and regulations and is necessary for Diamond Shamrock to make short-term, best efforts and spot gas sales. Further, Diamond Shamrock states that, absent said authorization, the flexibility and efficiency necessary for successful operation in the spot market would be hindered.

Specifically, Diamond Shamrock requests that the Commission authorize Diamond Shamrock:

(i) To make sales for resale in interstate commerce for a period of two years, without supply or market limitations, of gas subject to the Commission's NGA jurisdiction that is produced from various interests owned by Diamond Shamrock.

(ii) To make sales for resale in interstate commerce for a period of two years, without supply or market limitations, of gas subject to the Commission's NGA jurisdiction, that is produced from various interests attributable to other owners having interests in the same wells as Diamond Shamrock, to the extent that such co-owners agree to same;

(iii) To abandon for a two-year term sales for resale of gas subject to the Commission's NGA jurisdiction and previously certificated by the Commission, to the extent that such gas is released by interstate pipelines for resale to third parties; and

(iv) To abandon permanently (pre-granted abandonment) any sale for resale made on a short-term basis (a term less than or equal to the period of the authorizations requested) or in the spot market authorized pursuant to any certificate issued herein.

Certain sales proposed to be made by Diamond Shamrock and its co-owners will not involve a dedication of reserves but will be based on periodic nominations, either by purchasers or by Diamond Shamrock. The sales volumes, prices, purchasers, delivery points, transporter, and supply source will vary. Diamond Shamrock proposes to sell and deliver to various short-term and spot gas purchasers all or a portion of the gas Diamond Shamrock determines is available for sale at terms acceptable to Diamond Shamrock for a particular time frame. Diamond Shamrock will not be obligated to sell gas pursuant to any nomination or proposed nomination until the exact volumes, terms and conditions, and prices are agreed to by Diamond Shamrock and a purchaser. The actual contract between Diamond Shamrock and the short-term and spot gas purchaser may be for all or any portion of the quantity which was set out in the nomination or proposed nomination. Further, Diamond Shamrock proposes to make sales on a best efforts basis where the price and term are agreed upon but there is no requirement on the purchaser to purchase or Diamond Shamrock to sell a specific volume.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 18, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2529 Filed 2-5-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI84-466-002, et al.]

Plains Petroleum Operating Co.; Application

February 2, 1987.

Take notice that on January 13, 1987, Plains Petroleum Operating Company (Operating Company), of P.O. Box 15278, Lakewood, Colorado 80215, filed an application pursuant to Section 7 of the Natural Gas Act (NGA), as amended (15 U.S.C. 717f), and §§ 157.23 and 157.24 of the Federal Energy Regulatory Commission's Regulations thereunder (18 CFR 157.23 and 157.24), for a certificate of public convenience and necessity to make and continue sales of natural gas in interstate commerce as successor-in-interest to Plains Petroleum Company (Plains) and for redesignation of Plains' rate schedules as shown on the attached Exhibit "A", which is on file with the Commission and open to public inspection.

Effective December 1, 1986, certain properties were transferred by assignment from Plains Petroleum Company to Plains Petroleum Operating Company.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 18, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Appendix A—Rate Schedules of Plains Petroleum Company To Be Redesignated as Those of Plains Petroleum Operating Company

Plains Petroleum Company gas rate schedule No	Contract No	Buyer	Docket No
1	P-6051	KN Energy, Inc	CI84-466-000
2	P-5075	KN Energy, Inc	CI84-467-000
3	P-6050	KN Energy, Inc	CI84-468-000
4	P-2235	KN Energy, Inc	CI84-469-000
5	P-1089	KN Energy, Inc	CI84-470-000
6	P-731	KN Energy, Inc	CI84-471-000
7	P-5074	KN Energy, Inc	CI84-472-000
8	P-1090	KN Energy, Inc	CI84-473-000
9	P-4314	KN Energy, Inc	CI84-474-000
10		Northern Natural Gas Co	CI84-414-000

[FR Doc. 87-2530 Filed 2-5-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-673-002]

UER Marketing Co.; Petition of UER Marketing Company To Amend Limited-Term Abandonment and Sales Certificate

February 2, 1987.

Take notice that on January 21, 1987, UER Marketing Company (UER Marketing), pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717-717(2) (NGA), and § 2.77 and Part 157 of the regulations of the Federal Energy Regulatory Commission (Commission) filed a petition to amend its currently effective limited-term abandonment and sales certificate issued in the above-captioned docket to (i) extend such authority for an additional three-year period, and (ii) expand such authority to permit limited-term abandonments and sales of all Natural Gas Policy Act categories to gas, including volumes whose maximum lawful price is at or below that established by section 109 of the NGPA.

UER Marketing's currently effective LTA is due to expire on March 31, 1987 and is limited to gas whose maximum lawful price is above that specified for NGPA section 109 volumes.

Under this program, UER Marketing and the producer-suppliers participating in its LTA would be authorized to make interruptible sales of released volumes in the spot markets.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 18, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.21, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2531 Filed 2-5-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-65-004]

West Texas Utilities Co.; Compliance Filing

February 3, 1987.

Take notice that on January 27, 1987, West Texas Utilities Company ("WTU") submitted for filing, in accordance with the Commission's suspension order in this proceeding issued December 23, 1986, revised Level B rates reflecting a 34% federal income tax rate. Pursuant to the Commission's suspension order, the revised Level B rates will take effect July 1, 1987. The Level A and Level B rates originally filed in this proceeding reflect a 46% federal tax rate. The Level A rates took effect January 1, 1987 and will remain in effect through May 31, 1987. The originally filed Level B rates will become effective June 1, 1987 and will remain in effect through June 30, 1987.

Copies of this filing have been served on all parties to this proceeding and on the Public Utility Commission of Texas.

Persons desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, on or before February 17, 1987. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2528 Filed 2-5-87; 8:45 am]

BILLING CODE 6717-01-M

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ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3152-3]

Environmental Impact Statements and Regulations Availability of EPA Comments

Availability of EPA comments prepared January 19, 1987 through January 23, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. D-FHW-D40221-MD: Rating: Alter. 2/3 = LO, Alter. 1 and 2 = EC1, Alter. 4 = EC2, Alter. 3 = EO2; Beaver Dam Road Widening and Extension, Beaver Court to Padonia Rd., MD. **SUMMARY:** EPA has found that Alternate 2/3 is least environmentally damaging and recommends its further development. Alternate 1 thru 4, each, had some discernible environmental impact and could not be recommended.

ERP No. D-FHW-L40115-OR: Rating: DEIS = 2, Northern Alter. = EC, Southern Alter. = EO; N. Marine Drive/Swift Highway Improvement, I-5 to Rivergate Industrial District, OR. **SUMMARY:** EPA prefers the Northern alternative. The southern alternative would fill 6.4 acres of high quality wetland and would not be in compliance with section 404(b)(1) Guidelines for a permit, and the northern alternative would result in displacement of existing businesses as well as impacting a residential area.

ERP No. D-FHW-L40156-OR: Rating EC1, US 101/Oregon Coast Highway Improvement, Rogue River Bridge to Gold Beach, Right-of-Way Acquisition, OR. **SUMMARY:** EPA is concerned about the adverse estuarine wetland impacts and requested that the final EIS commit to a detailed mitigation plan.

ERP No. D-SFW-L61166-AK: Rating EC1, Koyukuk and the Northern Unit of Innoko Nat'l Wildlife Refuges, Comprehensive Conservation Plan, Wilderness Review and and Wild River Plan, AK. **SUMMARY:** EPA was concerned that the identified preferred alternative affords no additional protection for Refuge resources beyond that provided under the Minimum Management Category. EPA agrees with the draft EIS conclusion that selection of Alternative A should not result in adverse impacts to Refuge resources or subsistence uses given, careful monitoring and regulation to activities. A concern is that the required careful monitoring and regulation of activities will not occur without additional funding and staff support.

Final EISs

ERP No. F-FHW-D40145-MD: Great Seneca Highway Study, Middlebrook Rd. to MD-28, Construction, 404 Permit, MD. **SUMMARY:** EPA's previously expressed concerns have been addressed and no further objections to development of the project are offered, conditioned upon EPA's participation in the design of wetland mitigation plans.

ERP No. F-FHW-D40209-PA: I-95/LR-1000 Completion, Benjamin Franklin Bridge to Walt Whitman Bridge, PA. **SUMMARY:** EPA has determined that our preceding concerns have been adequately addressed and there is no further objection to the proposed project.

ERP No. F-FHW-E40593-TN: TN-27 Improvement, Corridor V, Alabama State Line to TN-156, 404 Permit, TN. **SUMMARY:** EPA's concerns include aspects of the air quality and noise assessments such as the absence of an air quality evaluation of the No-Build Alternative, use of Mobile 1 instead of Mobile 3 air quality modeling, and the lack of proposed noise mitigation. EPA requests a brief follow-up letter to address our remaining concerns.

Amended Notice

The following review was completed during the week of January 12, 1987 through January 16, 1987 and should have appeared in the **Federal Register** Notice published on January 30, 1987.

ERP No. F-AFS-J82004-00, Intermountain Region Nat'l Forest, System Lands, Noxious Weeds and Poisonous Plants Control Program, Continuation, UT, NV, ID, WY, CA, and CO. **SUMMARY:** EPA has no objections to the action as proposed, with strict adherence to the mitigation measures as described. Additionally, EPA recommends using an alternative to the herbicide amitrole whenever possible.

Dated: February 3, 1987.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 87-2557 Filed 2-5-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3152-2]

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075, Environmental Protection Agency

Availability of Environmental Impact Statements Filed January 26, 1987 Through January 30, 1987 Pursuant to 40 CFR 1506.9.

EIS No. 870005. DSuppl. BLM, NV, Shoshone-Eureka Resource Area, Resource Management Plan Amendment, Livestock Use and Wildlife Habitat Impacts, Due: April 16, 1987, Contact: Terry Plummer (702) 635-5181.

EIS No. 870033. Draft, SCS, CA, Kellogg Creek Detention Basin Flood Control Plan, Marsh-Kellogg Watershed, Contra Costa County, Due: March 23, 1987, Contact: Gene Andreuccetti (916) 449-2883.

EIS No. 870034. Final, SCS, PA, West Branch Brandywine Creek Watershed, Protection and Flood Prevention, Chester and Lancaster Counties, Due: March 9, 1987, Contact: James Olson (717) 782-4453.

EIS No. 870035. Draft, SCS, WV, Howard Creek Watershed, Flood Control and Watershed Protection, Greenbrier County, Due: March 23, 1987, Contact: Rollin Swank (304) 291-4151.

EIS No. 870036. DSuppl, BLM, OR, Oregon Statewide Wilderness Study Areas, Wilderness Designation, Additional Lands, Due: April 24, 1987, Contact: Jerry Magee (503) 231-6867.

EIS No. 870037. DSuppl, FHW, HI, Interstate H-3 Freeway Construction, Halawa Interchange to Halekou Interchange, Reevaluation, Honolulu County, Due: March 24, 1987, Contact: William Lake (808) 541-2700.

EIS No. 870038. Final, Adoption, FHA, KY, Mammoth Cave Wastewater Treatment Facilities, Loan, Hart and Barren Counties, Due: March 9, 1987, Contact: Robert Letton (606) 233-2733.

EIS No. 870039. Draft, FHW, MN, TH-77/I-494 Improvement, TH-77/Cedar Avenue from 70th Street to 86th Street and I-494 from West 12th Avenue to East 34th Avenue, Hennepin County, Due: March 23, 1987, Contact: Stephen Bahler (612) 349-5230.

EIS No. 870040. Final, UAF, AK, Alaska Radar System, Over-the-Horizon Backscatter Radar System, Construction and Operation, Elmendorf AFB, Due: March 9, 1987, Contact: V. G. Brown (617) 271-5364.

Amended Notices

EIS No. 860421. Draft, AFS, WY, Bridger-Teton National Forest, Land and Resource Management Plan, Teton County, Due: February 28, 1987, Published FR 10-17-86—Review period extended.

EIS No. 860484. Draft, AFS, WA, Olympic National Forest, Land and Resource Management Plan, Due: March 14, 1987, Published FR 11-28-86—Review period extended.

EIS No. 870006. Draft, FHW, NC, US 117 Construction, Mount Olive Bypass to I-40, Wayne, Duplin and Sampson Counties, Due: March 9, 1987, Contact: Kenneth Bellamy (919) 856-4346—Should have appeared in 01-23-87 FR.

Dated: February 3, 1987.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 87-2558 Filed 2-5-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59802; FRL-3148-8]

Certain Chemical Premanufacture Notices; Celanese Engineering Resins, Inc., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of five such polymer exemption submissions and provides a summary of each.

DATES: Close of Review Period:

Y 87-84, 87-85, 87-86 and 87-78—February 2, 1987.

Y 87-88—February 3, 1987.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460 (202) 382-3725.

SUPPLEMENTARY INFORMATION: Effective with this notice, a nonsubstantive change in format is being initiated for information published under sections 5(d)(2) and 5(h)(6) of the Toxic Substances Contorl Act. Toxicity data will only appear in the notice when submitted with the polymer exemption submission. Exposure and environmental release/disposal information will no longer be published in the notice. The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87-84

Importer. Celanese Engineering Resins, Inc.

Chemical. (G) Polyurethane.

Use/Import. (G) This engineering polymer is used in many industrial, material handling, automotive, appliance, electrical, plumbing, agricultural and hardware applications. Import range: Confidential.

Y 87-85

Manufacturer. Confidential.

Chemical. (G) Polyester.

Use/Production. (G) Adhesive, open, non-dispersive use. Prod. range: Confidential.

Y 87-86

Importer. Confidential.

Chemical. (G) Water-reducible methacryl-styrene copolymer.

Use/Import. (G) Open, non-dispersive. Import range: Confidential.

Y 87-87

Manufacturer. Reichhold Chemical, Inc.

Chemical. (G) Crosslinkable carboxylated butadiene styrene polymer.

Use/Production. (G) Adhesive. Prod. range: Confidential.

Y 87-88

Manufacturer. Confidential.

Chemical. (G) Polyester resin.

Use/Production. (G) Binder in coating. Prod. range: Confidential.

Dated: January 20, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87-1967 Filed 2-5-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51659; FRL-3150-4]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thrity-five such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87-430, 87-431, 87-432, 87-433 and 87-434—April 6, 1987.

P 87-435, 87-436, 87-437, 87-438, 87-439, 87-440, 87-441, 87-442, 87-443, 87-444, 87-445, 87-446, 87-447, 87-448, 87-449—April 12, 1987.

P 87-450, 87-451, 87-452, 87-453, 87-454, 87-455, 87-456, 87-457, 87-458, 87-459, 87-461, 87-462, 87-463 and 87-464—April 13, 1987.

P 87-465—April 14, 1987.

Written comments by:

P 87-430, 87-431, 87-432, 87-433 and 87-434—March 7, 1987.

P 87-435, 87-436, 87-437, 87-438, 87-439, 87-440, 87-441, 87-442, 87-443, 87-444, 87-445, 87-446, 87-447, 87-448, 87-449—March 11, 1987.

P 87-450, 87-451, 87-452, 87-453, 87-454, 87-455, 87-456, 87-457, 87-458, 87-459, 87-461, 87-462, 87-463 and 87-464—March 12, 1987.

P 87-465—March 13, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-51659]" and the specific PMN number should be sent to:

Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: Effective with this notice, a nonsubstantive change in format is being initiated for information published under sections 5(d)(2) and 5(h)(6) of the Toxic

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Substances Control Act. Toxicity data will only appear in the notice when submitted with the PMN. Exposure and environmental release/disposal information will no longer be published in the notice. The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87–430

Manufacture. Confidential.
Chemical. (G) Acrylic copolymer with methyl methacrylate and butyl acrylate.
Use/Production. (G) Industrial used coating having an open, non-dispersive use. Prod. range: 10,000 to 500,000 kg/yr.

P 87–431

Manufacturer. Confidential.
Chemical. (G) Acrylic polyol.
Use/Production. (G) Commercially used polymer with a dispersive use. Prod. range: 200,000 to 400,000 kg/yr.

P 87–432

Importer. Dainichiseika Color & Chemical America, Inc.
Chemical. (S) 2-Naphtalenecarboxamide,4-[[4-(benzoylamino)-5-methyl-2-methoxyphenyl]azo-3-hydroxy-N-phenyl-.
Use/Import. (S) Water based dispersion for textile, printing ink and paint, and packaging gravue ink. Prod. range: 3,000 kg/yr.

P 87–433

Importer. Confidential.
Chemical. (G) Copolymer of perfluoroalkylacrylate and cyclo methacrylate.
Use/Import. (G) Resin. Inport range: Confidential.
Toxicity Data. Acute oral: 18,565 g/kg; Ames test: Negative.

P 87–434

Importer. Confidential.
Chemical. (G) Substituted copper phythalocyonine.
Use/Import. (G) Dye. Import range: Confidential.
Toxicity Data. Acute oral: >2,000 mg/kg; Acute dermal: > 2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Mild: Skin Sentitization: Non-sensitizer; Ames test: Non-mutagenic; LC_{50} 96 hour (Rainbow trout): > 100 mg/1; EC_{50} 48 hour (Daphnia magna): 100 mg/1.

P 87–435

Manufacturer. Hercules Incorporated.
Chemical. (G) Aromatic modified terpene resin.
Use/Production. (S) Industrial trackifier resin for adhesives. Prod. range: Confidential.

P 87–436

Manufacturer. Hercules Incorporated.
Chemical. (G) Modified rosin.
Use/Production. (S) Industriasl resin for letter press inks. Prod. range: Confidential.

P 87–437

Manufacturer. Owens-Corning Fiberglas Corporation.
Chemical. (G) Unsymetrical fumaric acid diester.
Use/Production. (S) Industrial molding resin. Prod. range: Confidential.

P 87–438

Manufacturer. Confidential.
Chemical. (G) Polyester copolymer with neopentyl glycol.
Use/Production. (G) Industrial coating. Prod. range: 50,000 to 500,000 kg/yr.

P 87–439

Manufacturer. American Hoechst Corporation.
Chemical. (S) Acetamide, N-[3-(2-hydroxyethyl)sulfonyl]-6-methoxyphenyl].
Use/Production. (S) Site-limited intermediate for fiber reactive dyes. Prod. range: Confidential.

P 87–440

Manufacturer. Sanncor Industries, Incorporated.
Chemical. (G) Polyester urethane acrylate.
Use/Production. (G) Coating. Prod. range: Confidential.

P 87–441

Manufacturer. Sanncor Industries, Incorporated.
Chemical. (G) Polyester urethane acrylate.
Use/Production. (G) Coating. Prod. range: Confidential.

P 87–442

Manufacturer. Sanncor Industries, Incorporated.
Chemical. (G) Polyester urethane acrylate.
Use/Production. (G) Coating. Prod. range: Confidential.

P 87–443

Manufacturer. Sanncor Industries, Incorporated.
Chemical. (G) Polyester urethane acrylate.
Use/Production. (G) Coating. Prod. range: Confidential.

P 87–444

Manufacturer. Sanncor Industries, Incorporated.
Chemical. (G) Polyester urethane acrylate.
Use/Production. (G) Coating. Prod. range: Confidential.

P 87–445

Manufacturer. Sanncor Industries, Incorporated.
Chemical. (G) Polyester urethane acrylate.
Use/Production. (G) Coating. Prod. range: Confidential.

P 87–446

Manufacturer. Sanncor Industries, Incorporated.
Chemical. (G) Polyester urethane acrylate.
Use/Production. (G) Coating. Prod. range: Confiendtial.

P 87–447

Manufacturer. Confindential.
Chemical. (G) Perfluoroelastomer.
Use/Production. (S) Industrial tube, sealing, etc., for insustrial instruments. Prod. range: 100 to 1,100 kg/yr.
Toxicity Date. Ames test: Non-mutagenic.

P 87–448

Importer. Confidential.
Chemical. (G) Polyether plyurethane.
Use/Import. (G) Open, Non-dispersive use. Improt range: Confidential.

P 87–449

Manufacturer. Confidential.
Chemical. (G) Polyurethane.
Use/Production. (G) Oligomer. Prod. range: 1,000 to 3,000 kg/yr.

P 87–450

Manufacturer. Confidential.
Chemical. (G) Oxyalkylated terephthalate polyol esters.
Use/Production. (S) Industrial component for urethane foram insulating products. Prod. range: 455,000 to 1,229,000 kg/yr.

P 87–451

Manufacturer. Confidential.
Chemical. (G)Terephthalate polyolesters.
Use/Production. (S) Industrial component for polyurethane foam insulating products. Prod. range: 386,000 to 1,136,000 kg/yr.

P 87–452

Manufacturer. Fritzsche Dodge & Olcott.
Chemical. (S) 3,6-Dimethyl-1-octyn-3-ol.
Use/Production. (S) Site-limited use for the manufacture of 3,6-dimethyl-3-octanol]151–19–9]. Prod. range: Confidential.

P 87–453

Importer. Confidential.
Chemical. (G) Polyester resin.
Use/Import. (G) Resin for photo-copy or open, non-dispersice use. IMport range: confidential.

P 87–454

Importer. Confidential.
Chemical. (G) Polyester resin.
Use/Import. (G) Resin for photo-copy or open, non-dispersive use. Import range: Confidential.

P 87–455

Importer. Confidential.
Chemical. (G) Polyester resin.
Use/Import. (G) Resin for photo-copy or oper, non-dispersive use. Import range: Confidential.

P 87–456

Importer. Confidential.
Chemical. (G) Polyster resin.
Use/Import. (G) Resin for photo-copy or open, non-dispersive use. Import range: Confidential.

P87–457

Importer. Confidential.
Chemical. (G) Polyester resin.
Use/Import. (G) Resin for photo-copy or open, non-dispersive use. Import range: Confidential.

P 87–458

Importer. Confidential.
Chemical. (G) Alkane acid, ester.
Use/Import. (G) Raw materials for fragrances. Import range: Confidential.

P 87–459

Importer. Confidential.
Chemical. (G) Hydrogenated condensate of alkane and 2-Methoxy phenol.
Use/Import. (G) Raw materials for fragrances. Import range: Confidential

P 87–461

Manufacturer. General Electric Company.
Chemical. (G) Carbonic acid and 1,3-(and/or 1,4-) benzenedicarboxylic acid, copolymer with 4,4'-(1-methylenthylidence)bis(phenol) and hydroxy arene.
Use/Production. (G) Plastic components for electrical, medical, and information storage devices, business machines, automobiles and housewares. Prod. range: Confidential.

P 87–462

Manufacturer. General Electric Company.
Chemical. (G) Carbonic acid and 1,3-(and or 1,4-) benzenedicarboxylic acid, copolymer with 4,4'-(1-methylethylidene)bis (phenol) and 4-alkylphenol.
Use/Production. (G) Plastic components for electrical, medical, and information storage devices, business machines, automobiles and housewares. Prod. rante: Confidential.

P 87–463

Manufacturer. General Electric Company.
Chemical. (G) Carbonic acid and 1,3-(and or 1,4-) benzenedicarboxylic acid, copolymer with 4,4,'-(1-methylethylidene)bis (phenol) and 4-arakylphenol.
Use/Production. (G) Plastic components for electrical, medical, and information storage devices, business machines, automobiles and housewares. Prod. range: Confidential.

P 87–464

Manufacturer. General Electric Company.
Chemical. (G) Carbonic acid and 1,3-(and or 1,4-) benzenedicarboxylic acid, copolymer with 4,4'-(1-methylethylidene)bis (phenol) and 4-arcycloalkylphenol.
Use/Production. (G) Plastic components for electrical, medical, and information storage devices, business machines, automobiles and housewares. Prod. range: Confidential.

P 87–465

Manufacturer. Confidential.
Chemical. (G) Phosphite derivative.
Use/Production. (S) Site-limited pesticide intermediate. Prod. range: Confidential.

Dated: January 20, 1987.

Denise Devoe,
Acting Division Director, Information Management Division.

[FR Doc. 87–2083 Filed 2–5–87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS–59803; FRL 3152–7]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of eight such polymer exemption submissions and provides a summary of each.

DATES: Close of Review Period.

Y 87–89, February 5, 1987
Y 87–90, 87–91, 87–92, 87–93 and 87–94, February 9, 1987
Y 87–95 and 87–96, February 11, 1987

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: Effective with this notice, a nonsubstantive change in format is being initiated for information published under sections 5(d)(2) and 5(h)(6) of the Toxic Substances Control Act. Toxicity data will only appear in the notice when submitted with the polymer exemption submission. Exposure and environmental release/disposal information will no longer be published in the notice. The following notice contains information extracted from the non-confidential version of the exemption received by EPA. The complete non-confidential documents are available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87–89

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (S) Coatings. Prod. range: Confidential.

Y 87–90

Importer. Confidential.
Chemical. (G) Acrylate copolymer.

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Use/Import. (G) Destructive use. Import range: Confidential.

Y 87-91

Importer. Dainichiseika Color and Chemicals, America, Inc.

Chemical. (G) Diphenylmethane-4, 4-diisocyanate, polymer with 1,3-butanediol and (diamethyl polysiloxane, 6-hydroxy-4-oxahexyl terminated) and hexanedioic acid polymer with 1,4-butanediol and 1,6-hexanediol).

Use/Import. (G) Heat-resistant and slide of thermal-transfer sheet (blackcoating agent). Import range: 3,000 to 10,000 kg/yr.

Y 87-92

Manufacturer. General Electric Company.

Chemical. (G) 1,4-benzenecarboxylic acid, dimethyl ester, polymer with 1,4-butanediol and hexasubstituted heteromonocycle.

Use/Production. (G) Used as an intermediate for the final product. Prod. range: Confidential.

Y 87-93

Importer. Dynamit Nobel Chemicals

Chemical. (G) Polyester resin of an alkyl/dicarboxylic acid and alkyl diols.

Use/Import. (S) A prepolymer designed to be reacted with other substances for the manufacture of reactive hot melt adhesives. Import range: 115,000 to 225,000 kg/yr.

Y 87-94

Manufacturer. C. J. Osborn Chemicals, Inc.

Chemical. (G) Alkyd.

Use/Production. (S) Clear and pigmented finishes. Prod. range. Confidential.

Y 87-95

Manufacturer. Confidential.

Chemical. (G) Silicone phenolic alkyd resin.

Use/Production. (S) Industrial electrical coating. Prod range: 500 to 1,100 kg/yr.

Y 87-96

Manufacturer. Confidential.

Chemical. (G) Unsaturated polyester diol.

Use/Production. (S) Industrial component for industrial polyester molding compound. Prod. range: 47,000 to 161,000 kg/yr.

Dated: January 29, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87-2545 Filed 2-5-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51660; FRL-3152-6]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of eight such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87-467, 87-468 and 87-469, April 15, 1987

P 87-470, 87-471 and 87-472, April 19, 1987

P 87-473 and 87-474, April 21, 1987

Written comments by:

P 87-467, 87-468 and 87-469, March 15, 1987

P 87-470, 87-471 and 87-472, March 18, 1987

P 87-473 and 87-474, March 21, 1987

ADDRESS: Written comments, identified by the document control number "[OPTS-51660]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: Effective with this notice, a nonsubstantive change in format is being initiated for information published under sections 5(d)(2) and 5(h)(6) of the Toxic Substances Control Act. Toxicity data will only appear in the notice when submitted with the PMN. Exposure and environmental release/disposal information will no longer be published in the notice. The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87-467

Manufacturer. Confidential.

Chemical. (G) Copolymer of acrylic and methacrylic esters.

Use/Production. (S) General purpose coating and modifier for inks and adhesives for industrial, commercial and consumer use. Prod. range: Confidential.

P 87-468

Manufacturer. Estron Chemical, Incorporated.

Chemical. (G) Toluenesulfonamide caprolactam formaldehyde resin

Use/Production. (S) Site-limited and consumer use by paint and lacquer industries, as an additive for improving gloss and adhesion. Prod. range: 30,000 to 90,000 kg/yr.

P 87-469

Importer. Confidential.

Chemical. (G) 2-Propenoic acid sodium salt, 2-propenoic acid copolymer.

Use/Import. (S) Napkin; disposable diapers; and agricultural-horticultural use. Import range: Confidential.

P 87-470

Importer. DSM Resins U.S., Incorporated.

Chemical. (G) Dibasic acid/glycol ester.

Use/Import. (S) Industrial thermosetting powder paints. Import range: Confidential.

P 87-471

Importer. Confidential.

Chemical. (G) Substituted cyanoacetic acid.

Use/Import. (S) Intermediate for cyanoacrylate adhesive. Import range: Confidential.

P 87-472

Importer. DSM Resins U.S., Incorporated.

Chemical. (G) Dibasic acid/glycol ester.

Use/Import. (S) Industrial thermosetting powder paints. Import range: Confidential.

P 87-473

Manufacturer. Kenrich Petrochemicals, Incorporated.

Chemical. (S) Biscumylphenyl trimelitate.

Use/Production. (S) Industrial and commercial plasticizer; industrial antioxidant; and other. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Ames test: Non-mutagenic.

P 87-474

Manufacturer. Confidential.

Chemical. (G) Methacrylate terpolymer.

Use/Production. (G) Dispersively used coating. Prod. range: Confidential.

Dated: January 29, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87-2546 Filed 2-5-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59238; FRL 3152-8]

Phosphine Oxide, Diphenyl(2,4,6-Trimethylbenzoyl)-Test Market Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of an application for exemption, provides a summary, and requests comments on the appropriateness of granting the exemption.

DATE: Written comments by: February 23, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-59238]" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: Effective with this notice, a non-substantive change in format is being initiated for information published under sections 5(d)(2) and 5(h)(6) of the Toxic Substances Control Act. Toxicity data will only appear in the notice when submitted with the TME application. Exposure and environmental release/disposal information will no longer be published in the notice. The following notice contains information extracted from the non-confidential version of the TME application received by EPA. The complete non-confidential application is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87-7

Close of Review Period. March 1, 1987.

Importer. Berton Plastics, Inc.

Chemical. (S) Phosphine oxide, diphenyl(2,4,6-trimethylbenzoyl)-.

Use/Import. (S) Crosslinking agent for ultra-violet cured polyester resin. Import range: Confidential.

Toxicity Data. Acute oral: 5,000 mg/kg; Irritation: Skin—Slight, Eye—Non-irritant; Ames test: Non-mutagenic.

Dated: January 29, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87-2544 Filed 2-5-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

February 2, 1987.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB No.: 3060-0058.

Title: Section 43.31, Monthly Report of Revenues, Expenses, and Other Items—Telephone Companies.

Action: Extension.

Respondents: Telephone communications common carriers.

Frequency of Response: Monthly.

Estimated Annual Burden: 552 Responses; 4,416 Hours.

Needs and Uses: Filing of § 43.31 reports is required by subject telephone companies which had operating revenues for the preceding year in excess of $100 million. The data is used by the Commission, other government agencies and the public in the analysis of the telephone industry. Every three months, the § 43.31 data is used to tabulate the Quarterly Operating Data of Telephone Carriers.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-2520 Filed 2-5-87; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

January 30, 1987.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of this submission may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, telephone (202) 857-3800. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-4814. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

Title: Minority Ownership Report

Action: New (One-time)

Respondents: All AM, FM, and TV Broadcast Stations

Estimated Annual Burden:

11,000 Responses

1,837 Hours

The Commission is proposing to collect data on female and minority ownership of broadcast stations, and the degree of owner participation in station management. The data will be used to assess the effectiveness of present policies, including preferences in

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comparative licensing proceedings, and the resulting diversity of programming.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87-2521 Filed 2-5-87; 8:45 am]
BILLING CODE 6712-01-M

[Report No. W-11]

Window Notice for the Filing of FM Broadcast Applications

Released: January 30, 1987.

Notice is hereby given that applications for vacant FM broadcast allotment(s) listed below may be submitted for filing during the period beginning January 30, 1987 and ending March 13, 1987 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Channel—274 A

N Crossett, AR
China Lake, CA
Quincy, FL
Sparta, GA
Beaver Dam, KY
Cumberland, KY
Marion, KY
Springfield, KY
La Crescent, MN
Webster, NY
Narragansett Pier, RI
New Ellenton, SC
Mannington, WV
Jellico, TN

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87-2522 Filed 2-5-87; 8:45 am]
BILLING CODE 6712-01-M

Processing Procedures, 800 MHz Trunked Private Land Mobile Systems; Clarification

AGENCY: Federal Communications Commission.

ACTION: Public notice.

SUMMARY: On April 4, 1986, the Commission's Private Radio Bureau issued a Public Notice clarifying the processing procedures it used for applications for trunked private land mobile radio systems operating in the 800 MHz band. The Bureau did this to identify problems contained in applications that were causing major delays in the processing of these applications. The full text of this Public Notice is set forth below.

FOR FURTHER INFORMATION CONTACT: Harold Salters, Land Mobile and Microwave Division, Private Radio Bureau, (202) 632-7597, or Nia Chirigos Cresham, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

Private Radio Bureau Clarifies Processing Procedures for Trunked Radio Systems at 800 MHZ

The Private Radio Bureau receives numerous applications daily for 800 MHz trunked radio systems. Many of these applications do not comply with the Commission's regulations and requirement additional work by the Bureau's Licensing Division before they can be acted upon. This delays the Bureau's ability to process experditiously all applications, including those without serious defects, and delays service to the public. It is the purpose of this Pubic Notice to identify those problems that cause major delays and to clarify the procedures we will follow in processing such applications in the future.

1. Procedure for Expediting Review of Applications for Expansion of Fully Loaded trucked Systems

The Commission has adopted rules to grant a preference to applicants expanding fully loaded trunked systems. *Report and Order,* PR Docket No. 85-6, 50 FR 32419 (August 12, 1985). This preference applies to the 200 "old" channels governed by Subpart M of the Commission's rules and is applied when it is determined that an application must be placed on the waiting list due to a lack of available frequencies. 47 CFR 90.360. To expedite the placement of these appliations of the waithing list, we will couduct a preliminary review upon receipt of each application claiming a preference. If the appication is found acceptable and the system is loaded to a minimum of 70 percent of its authorized capacity, it will be placed on the waiting list immediatelfy, with the appropriate preference. After being placed on the waiting list, the applicant will be sent a copy of its mobile loading records as they appear on the Commission's license records and requested to certify to their accuracy.

II. Designation and Loading

We have encountered two problems in the processing of applications which can delay expedited processing for applicants clearly that they are applying for the "old" 800 MHz trunked channels to expand and existing system. Second, applicants do not submit complete or correct loading computations to enable the Commission to determined whether their systems have met the minimum loading standard of 70 percent of their authorized capacity to qualify for admission to a waiting list.

To eliminate these problems and implement the expedited processing procedures described in paragraph I, the Commision will be strictly enforcing its requirements for acceptable applications. Applicants must indicate clearly that they are applying for the "old" 800 MHz trunked channels to expand an existing system. If an applicant does not indicate that it is expanding an existing trunked system, that application will not be subject to the expeditied review process. All applicants expanding existing trunked systems must be loaded to a minimum of 70 percent of their authorized capacity to qualify for admission to a waiting list. If applicants expanding their systems claim credit in their loading counts for applications for additional mobile units pending before the Licensing Division, the applicants must provide pertinent information about the pending applications. This information inlcudes the number of operating units, the dates on which the applications for the units were filed and the application file numers. If an applicant's system is found to be loaded to less than 70 percent of its authorized capacity as of the date of receipt of the application by the Licensing Division, it will be dismissed as defective pursuant to 47 CFR 90.360 and 90.364.

III. Choice of Channels

Another problem we have encountered in the processing of applications is the applicants' failure to designate the group of channels for which they are applying. Applicants often do not designate whether they are applying for the "old" trunked channels governed by Subpart M of the Commission's rules or whether they are applying for "new" channels governed by Subpart S of the Commission's rules. For example, applicants will ask to be considered for both groups or do not specify any group. This results in duplicative processing and guesswork by the Commission's staff in processing such applications.

The Commission cannot process applications expeditiously without complete and correct information. Therefore, both applicants for new systems and applicants expanding existing systems must clearly designate whether they are applying for "old" trunked channels governed by Subpart M of the Commission's rules or whether they are applying for "new" channels governed by Subpart S of the Commission's rules. Applicants cannot request channels from both groups on the same application. If it is not clear from which group the applicant is requesting channels, the application will be dismissed.

IV. Simultaneous Applications

We are also addressing the problem of applicants who file multiple applications with transmitter sites within 40 miles of each other. While applicants may submit separate applications for both "old" trunked channels and for "new" channels with sites located within 40 miles of each other, they often do not notify the Licensing Division that both applications have been filed. If one of these applications is granted, the other will be dismissed pursuant to 47 CFR 90.364(b) and 90.627(b). Applicants who do not withdraw any pending applications upon grant of an application with a transmitter site within 40 miles of those pending applications cause duplicative work for the Commission and are in violation of the Commission's rules.

Henceforth, if the Licensing Division is not notified of such dual filings, *both* applications will be dismissed. If applicants have separate applications for both "old" trunked channels and "new" channels, and these applications are for sites located within 40 miles of each other, the applicant *must* notify the Licensing Division if one of the applications is granted so that the remaining application can be dismissed. If an applicant receives a grant within 40 miles of the site of any pending application involving the same party and does not inform the Licensing Division, the Bureau will dismiss the pending application and invoke administrative sanctions against the licensee. Finally, applicants are not permitted to file separate applications for channels in the same group, i.e., multiple applications for "old" channels and multiple applications for "new" channels, with sites located within 40 miles of each other. If such multiple applications are filed, *all* will be dismissed. *See* 47 CFR 90.364(b) and 90.627(b).

V. Public Access to Waiting List Information

Waiting lists are used for processing the "old" trunked frequencies. Waiting lists occur in geographic areas where there are more applicants than available channels. *See* CFR 90.360(c). The Bureau will publish the waiting lists by public notices. After release of the first public notice, the waiting lists will be issued on a monthly basis. Each public notice will state the effective date of the waiting lists.

The foregoing discussion clarifies existing regulations and procedures. Although all of the above requirements are contained in the Commission's rules, in some cases we will be taking a more stringent approach in applying these rules. Accordingly, to allow adequate time for compliance by applicants, the requirements discussed in paragraphs II, III, and IV above will become effective June 1, 1986.

For further information, contact Nia Chirigos Cresham, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, at (202) 634-2443.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87-2403 Filed 2-5-87; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities Under OMB Review

February 2, 1987.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-6880)

Proposal to approve under OMB delegated authority the implementation of the following report:

1. Report title: Senior Financial Officer Survey
Agency form number: FR 2023
OMB Docket number: 7100-0223
Frequency: Up to four times per year
Reporters: Commercial banks, other depository institutions, corporations or large money stock holders
Small businesses are not affected.

General description of report:

This information collection is voluntary [12 U.S.C. 225, 248(a) and 263] and the confidentiality will be determined on a case-by-case basis.

Survey collects qualitative and limited quantitative information about deposit relationships and other aspects of bank funding practices from a selection of commercial banks, or if appropriate, other depository institutions, corporations or large money-stock holders.

Board of Governors of the Federal Reserve System, February 2, 1987.
William W. Wiles,
Secretary of the Board.
[FR Doc. 87-2463 Filed 2-5-87; 8:45 am]
BILLING CODE 6210-01-M

Front Range Capital Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than February 26, 1987.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Front Range Capital Corporation,* Lafayette, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Bank VII, Lafayette, Colorado.

Board of Governors of the Federal Reserve System, February 2, 1987.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 87-2464 Filed 2-5-87; 8:45 am]
BILLING CODE 6210-01-M

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Beryle L. Johnston; Acquisition of Shares of Banks or Bank Holding Companies; Change in Bank Control Notice

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 20, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Beryle L. Johnston,* D. V. Snodgrass, and Harold R. Young, Jr., all of Papillion, Nebraska, Robert E. Schutte, Omaha, Nebraska, and D. Paul Hartnett, Bellevue, Nebraska, to acquire 98.18 percent of the voting shares of Morningside Development Company, Sioux City, Iowa.

Board of Governors of the Federal Reserve System, February 2, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2465 Filed 2-5-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on January 16, 1987.

Public Health Service (PHS)

(Call Reports Clearance Officer on 202-245-2100 for copies of packages)

Health Resources Service Administration

Subject: Health Education Assistance Loan Program Student Application—Revision—(0915-0038)
Respondents: Individuals or households; Businesses or other for-profit; Non-profit institutions
OMB Desk Officer: Shannah Koss

Food and Drug Administration (FDA)

Subject: Infant Formula Quality Control Procedures—Revision—(0910-0179)
Respondents: Businesses or other for-profit
Subject: Notices of Availability of Sample Electronic Product—Revision—(0910-0048)
Respondents: Businesses or other for-profit; Small businesses or organizations
Subject: Citizen Petition—Extension—(0910-0183)
Respondents: Individuals or households; State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
Subject: Filing of Objections and Requests for a Hearing on a Regulation or Order—NEW
Respondents: Businesses or other for-profit; Small businesses or organizations
Subject: Medical Device and Laboratory Product Problem Reporting Program—Reinstatement—(0910-0143)
Respondents: Individuals or households
Subject: Medical Device Reporting—Reinstatement—(0910-0201)
Respondents: Medical Device Manufacturers

National Institutes of Health

Subject: Cancer Prevention and Control Survey of the National Memberships of the Shrivers and the Daughters of Isis—NEW
Respondents: Individuals or households
Subject: Evaluation of a Consumer Education Project on Diet and Cancer (Giant Food, Inc.)—New
Respondents: Individuals or households

Alcohol, Drug Abuse and Mental Health Administration

Subject: Evaluation of Acquired Immune Deficiency Syndrome Training Workshops—NEW
Respondents: Individuals or households

Office of the Assistant Secretary For Health

Subject: 1988 National Health Interview Survey (Pretest)—NEW
Respondents: Individuals or households
OMB Desk Officer: Shannah Koss

Office of the Secretary (OS)

(Call Reports Clearance Office of 202-245-0509 for copies of package)

Office of Inspector General

Subject: Program Inspection of the Extent of Use and the Accuracy of Social Security Numbers by Agencies and Programs External to SSA—NEW
Respondents: State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit Institutions
OMB Desk Officer: Judy Egan

Social Security Administration (SSA)

(Call Reports Clearance Officer on 301-594-5706 for copies of package)
Subject: Field Test of Revised Social Security Administration Notices—NEW
Respondents: Individuals or households
Subject: Application for a Social Security Number Card (Original, Replacement or Correction)—Extension—(0960-0066)
Respondents: Individuals or households
OMB Desk Officer: Judy Egan.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202-245-2100
FDA: 202-245-2100
SSA: 301-594-5706
OS: 202-245-0509

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503. Attn: (name of OMB Desk Officer).

Dated: February 2, 1987.

Barbara S. Wamsley,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 87-2332 Filed 2-5-87; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 87N-0023]

Drug Export; Tolectin® 600 (Tolmetin Sodium) Tablets, 600 Milligrams

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that McNeil Pharmaceutical has filed an application requesting approval for the export of the human drug "TOLECTIN ® 600 (Tolmetin Sodium) Tablets, 600 milligrams" to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Center for Drugs and Biologics (HFN-310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that McNeil Pharmaceutical, Spring House, PA 19477-0776, has filed an application requesting approval for the export of the human drug "TOLECTIN ® 600 (Tolmetin Sodium) Tablets, 600 milligrams" to Canada. The application was received and filed in the Center for Drugs and Biologics on January 13, 1987, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by February 17, 1987, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

Dated: February 2, 1987.

John M Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-2466 Filed 2-5-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84P-0346]

Advisory Committee; Establishment

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the establishment by the Commissioner of Food and Drugs of the Ad Hoc Public Advisory Committee to Review the Denial of Premarket Approval for Surgical Simplex™ P Antibiotic Bone Cement.

DATES: Effective February 2, 1987. Authority for the committee being established will end on February 2, 1988.

FOR FURTHER INFORMATION CONTACT: Timothy C. Sottek, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463), section 515(g)(2) of the Federal Food, Drug, and Cosmetic Act (the act) 21 U.S.C. 360e(g)(2)), and § 14.40(b) of FDA's regulations governing public hearings before a public advisory committee (21 CFR 14.40(b)), FDA announces the establishment by the Commissioner of Food and Drugs of the Ad Hoc Public Advisory Committee to Review the Denial of Premarket Approval for Surgical Simplex™ P Antibiotic Bone Cement. In the **Federal Register** of May 30, 1986 (51 FR 19610), FDA announces that it intended to refer Howmedica, Inc.'s, petition for review to such an ad hoc advisory committee established under section 515(g)(2) of the act. The committee will review the Center for Devices and Radiological Health's decision under section 515(d)(1)(A)(ii) of the act (21 U.S.C. 360e(d)(1)(A)(ii)) to deny the premarket approval application (PMA) for Surgical Simplex™ P Antibiotic Bone Cement and will prepare a report and recommendation to the Commissioner of Food and Drugs with respect to the denial.

FDA will announce in a future issue of the **Federal Register**, the date, time, and place for the hearing.

Dated: February 2, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87-2505 Filed 2-5-87; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Privacy Act of 1974; System of Records

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "Physical Therapists in Independent Practice (Individuals)" HHS/HCFA/HSQB No. 09-70-1511. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the portion of the system which describes the routine uses of the system be published for comment, HCFA invites comment on all portions of this notice. Please note that comments with respect to routine uses must be received by 30 days after publication in the **Federal Register**.

DATES: HCFA filed a new system report with the Speaker of the House, the President of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Executive Office of Management and Budget (EOMB) on February 3, 1987. The new system of records, including routine uses, will become effective April 6, 1987, unless HCFA receives comments which would convince us to make a contrary determination.

ADDRESS: The public should address comments to Richard A. DeMeo, Privacy Act Officer, Office of Management and Budget, Health Care Financing Administration, Room G-A-1 ELR, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received

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will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Michael Moran, Health Standards and Quality Bureau, Health Care Financing Administration, Room 2–D–2 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Telephone 301–594–7902.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records collecting data under the authority of section 1861 x(p) and 1864 of the Social Security Act (42 U.S.C. 1395 x(p) and 1395 aa). These provisions allow HCFA to collect, record, store and reference necessary certification data on individual physical therapists in independent practic (PTIP).

The Privacy Act permits us to disclose information without the consent of the individual for "routine uses"—that is, disclosures for purposes that are compatible with the purpose for which we collected the information. The proposed routine uses in the new system meet the compatibility criteria since the data is collected to provide information of physical therapists relating to the quality, quantity and availability of health care related services in the United States for which HCFA is responsible. We anticipate that disclosures under the routine uses will not result in any unwarranted adverse effect on personal privacy.

Dated: January 30, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

09–70–1511

SYSTEM NAME

HHS/HCFA/HSQB
Physical Therapists In Independent Practice (Individuals).

SECURITY CLASSIFICATION

None.

SYSTEM LOCATION

HCFA Data Center in Central Office at Lyons Building 7131 Rutherford Rd. Baltimore, Maryland and DHHS ten Regional Offices (See Appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM

Physical Therapists in Independent Practice (PTIPs) who furnish outpatient physical therapy services and who have an individual practitioner status as approved under 42 CFR 405.1731.

CATEGORIES OF RECORDS IN THE SYSTEM

The system contains information about a therapist's name, identification number, address and survey and certification information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

Section 1861(p) and 1864 of the Social Security Act (42 U.S.C. 1395 x(p) and 1395(aa) Implementing regulation: 42 CFR 405.1730–405.1737.

PURPOSE OF THE SYSTEM:

To provide information of PTIPs as to the quality, quantity and availability of health care related services in the United States rendered by PTIPs. It serves as a unique source of program related and health management information on all PTIPs in the nation who participate in the Medicare/Medicaid programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosures may be made:

1. To providers and suppliers of services (and their authorized billing agents) directly or dealing through fiscal intermediaries or carriers, for administration of provisions of title XVIII and title XIX.

2. To the private sector in the health care industry requesting information generally relating to PTIPs without disclosing the identity of any individuals and as approved by HCFA that disclosure is compatible with the purpose for which the records were collected.

3. To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications sytems containing or supporting records in the system.

4. To a congressional office from the record of an individual in response to an inquiry from the congressional office at the request of that individual.

5. To a beneficiary who has the need to know the quality of care rendered by a particular PTIP.

6. To other government agencies requesting information generally relating to PTIPs without disclosing the identity of any individuals and as approved by HCFA that disclosure is compatible with the purpose for which the records were collected.

7. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM

Storage: Paper, magnetic tape and direct access storage device.

Retrievability: Information will be retrieved by the PTIP's identification number, name, address or survey and certification information.

Safeguards:

a. Authorized Users: Only agency employees and contractor personnel whose duties require the use of information in the system. In addition, such agency employees and contractor personnel are advised that the information is confidential and of criminal sanctions for unauthorized disclosure of information.

b. Physical Safeguards: Records are stored in locked files or secured areas. Computer terminals are in secured areas.

c. Procedural Safeguards: Employees who maintain records in the system are instructed to grant regular access only to authorized users. Data stored in computers are accessed through the use of passwords known only to authorized personnel.

Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager and permitted by the Privacy Act. Privacy Act language is included in contracts related to this system.

d. Implementation guidelines: Safeguards implemented in accordance with all guidelines required by the Department of Health and Human Services. Safeguards for automated records have been established in accordance with the Department of HHS' Automated Data Processing Manual, "Part 6, ADP System Security."

Retention and Disposal: Paper copies of the records are maintained in a secure storage area with identifiers.

Purging of paper copies occurs three years from the last completed survey. Computerized records are maintained for a period of the last four surveys.

System Manager(s) and Address: Director, Division of Data and Program Analysis, Health Standards and Quality Bureau, Health Care Financing Administration, 2–D–2 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Notification Procedure: To determine if a record exists, write to the system manager at the address indicated above and specify name or identification number.

Record Access Procedures: Same as notification procedure. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Departmental Regulations (45 CFR 5b.5(a)(2).)

Contesting Record Procedures: Contact the System Manager named above, and reasonably identify the record(s) and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete, or not current). (These procedures are in accordance with Departmental Regulations (45 CFR 5b.7).)

Record Source Categories: Sources of information contained in this record system include data collected from PTIPs with an individual practitioner status as surveyed and collected by the State agency and transmitted to the regional office and Baltimore.

Systems Exempted From Certain Provisions of the Act: None.

Appendix A—Regional Office Addresses

BOSTON REGION—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Room 1309
JFK Federal Building
Boston, Massachusetts 02203

NEW YORK REGION—New Jersey, New York, Pureto Rico, Virgin Islands

Room 3811
26 Federal Plaza
New York, New York 10278

PHILADELPHIA REGION—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia

3535 Market Street
P.O. Box 7760
Philadelphia, Pennsylvania 19101

ATLANTA REGION—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Suite 701
101 Marietta Tower
Atlanta, Georgia 30323

CHICAGO REGION—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Suite A–835
175 W. Jackson Boulevard
Chicago, Illinois 60604

DALLAS REGION—Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Room 2400
1200 Main Tower Building
Dallas, Texas 75202

KANSAS CITY REGION—Iowa, Kansas, Missouri, Nebraska

New Federal Office Building
Room 235
601 East 12th Street
Kansas City, Missouri 64106

DENVER REGION—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Federal Building
Room 574
1961 Stout Street
Denver, Colorado 80294

SAN FRANCISCO REGION—American Samoa, Arizona, California, Guam, Hawaii, Nevada

14th Floor
100 Van Ness Avenue
San Francisco, California 94102

SEATTLE REGION—Alaska, Idaho, Oregon, Washington

Mail Stop 502
2901 Third Avenue
Seattle, Washington 98121.

[FR Doc. 87–2467 Filed 2–5–87; 8:45 am]

BILLING CODE 4120–03–M

[IOA–006–N]

Task Force on Technology-Dependent Children; Meeting

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), this notice announces a meeting of the Task Force on Technology-Dependent Children.

DATES: The meeting will be held on March 5, 1987 from 9:00 a.m. to 4:30 p.m., and on March 6, 1987 from 9:00 a.m. to 1:30 a.m., p.s.t. The meeting will be open to the public.

ADDRESS: The meeting will be held at the Torrance Marriott, 3635 Fashion Way, Torrance, California 90510–03–4897.

FOR FURTHER INFORMATION CONTACT: Bill Pickens, Executive Director, Task Force on Technology-Dependent Children, Health Care Financing Administration, 330 Independence Avenue SW., Washington, DC 20201. Telephone (202) 245–0070.

SUPPLEMENTARY INFORMATION:

Purpose

The Task Force on Technology-Dependent Children, established under section 9520 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272), will investigate alternatives to institutional care for technology-dependent children. Technology-dependent children are those whose chronic conditions make them dependent on the continuing use of medical technology.

The Task Force is responsible for reporting to the Secretary of Health and Human Services, the Administrator of the Health Care Financing Administration (HCFA), and the Congress concerning alternatives to institutional care for technology-dependent children. The Task Force is responsible for developing recommendations designed to: (1) Identify barriers that prevent the provision of appropriate care in a home or community setting in order to meet the special needs of technology-dependent children; and (2) recommend changes in the provision and financing of health care in both private and public health care programs (including appropriate joint public-private initiatives) so as to provide home and community-based alternatives to the institutionalization of technology-dependent children.

To the extent that time and resources permit, the Task Force may develop recommendations that would address additional technology-dependent children concerns. The Task Force will address fully the two specified goals before it takes up any other questions. The Task Force recommendations are intended to be used only at the option of the Department of Health and Human Services and the Congress.

Agenda

Agenda items for the meeting will include Task Force definitions for technology-dependent children, appropriate care, case management, population, and standards of care. Report outline and structure will also be discussed. Presentations from invited experts in the fields of private insurance and technology-dependent children will focus on access, limits, innovations and the role of State and Federal regulations in achieving change.

The public is invited to present testimony to the Task Force. Those desiring to present testimony should contact the Task Force by February 20.

Agenda items are subject to change as priorities dictate.

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(Pub. L. 92-463, as amended (5 U.S.C. App. I); sec. 9520 of Pub. L. 99-272 (42 U.S.C. 1396a note); 45 CFR Part 11)

Dated: January 30, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 87-2535 Filed 2-5-87; 8:45 am]

BILLING CODE 4120-01-M

Office of Human Development Services

Federal Council on the Aging; Meeting

Agency Holding the Meeting: Federal Council on the Aging.

Time and Date: Meeting begins at 9:30 AM and ends at 5:00 PM on Wednesday, February 18, 1987 and begins at 9:30 AM and ends at 3:00 PM on Thursday, February 19, 1987.

Place: On Wednesday, February 18 from 9:30 to 1:30 p.m., Department of Health and Human Services, Room 4273 HHS North Building, 330 Independence Avenue, SW., Washington, DC 20201, and from 2:00 to 5:00 p.m., HOB, Room (To be announced), Washington, DC 20201. On Thursday, February 19, Department of Health and Human Services, OIG Conference Room, 5542 (Fifth Floor), 330 Independence Avenue, SW., Washington, DC 20201.

Status: Meeting is open to the public.

Contact Persons: Pete Conroy, Room 4243, HHS North Building, 245-2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (Pub. L. 93029, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 92-453, 5 U.S.C. App. 1, Sec. 10, 1976) that the Council will hold a meeting on February 18 and 19, 1987 from 9:30 AM-5:00 PM and from 9:30 AM-3:00 PM respectively. On February 18, the morning session will be held in Room 4273 HHS-North Building, and moved to HOB, Room (To be announced) in the afternoon. On February 19 the meeting will be held in Room 5542 in the Health & Human Services North Building, 330 Independence Avenue, SW., Washington, DC. 20201.

The agenda will include: a forum on the Housing and Living Arrangement Options for Noninstitutionalized Older Americans in conjunction with Department of Housing and Urban Development and the Housing Subcommittee of the House Select Committee on Aging; an update on the Administration on Aging programs by Commissioner, Carol Fraser Fisk; an outline of ACTION senior programs by Director, Donna M. Alvarado; a briefing on the closed captioned TV programming for hearing deficient individuals by Georgianna Fletcher, National Captioning Institute, Inc., and a briefing on the activities of the American International Association on Aging. In addition, a substantial amount of time will be devoted to FCoA committee meetings and reports.

Dated: February 2, 1987.

Ingrid Azvedo,

Chairperson, Federal Council on the Aging.

[FR Doc. 87-2471 Filed 2-5-87; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-87-1673]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

This Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information;; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Proposal

Report on Program Activity—Section 8 Moderate Rehabilitation Program

Office: Housing
Form Number: HUD-52686
Frequency of Submission: Semi-annually
Affected Public: State or Local Governments
Estimated Burden Hours: 1,000
Status: Reinstatement
Contact: Alfonso M. Bell, HUD, (202) 755-6887; Robert Fishman, OMB, (202) 395-6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d)

Dated: January 13, 1987.

Proposal

American Housing Survey—1987 National Sample

Office: Policy Development and Research
Form Number: AHS-21, 22, 23, 26, 27, and 28
Frequency of Submission: Biennially
Affected Public: Individuals or Households
Estimated Burden Hours: 28,176
Status: New
Contact: Duane T. McGough, HUD, (202) 755-5060; Arthur E. Young, Census, (301) 763-2863; Robert Fishman, OMB, (202) 395-6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: January 13, 1987.

Proposal

Notification of Extension of Contract Time and Assessment of Liquidated Damages

Office: Public and Indian Housing
Form Number: None
Frequency of Submission: On Occasion
Affected Public: State or Local Governments and Non-Profit Institutions
Estimated Burden Hours: 80
Status: Extension
Contact: William C. Thorson, HUD, (202) 755-6460; Robert Fishman, OMB, (202) 395-6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: January 13, 1987.

Proposal

Requisition for Funds—Advance Loans

Office: Public and Indian Housing
Form Number: HUD-5402
Frequency of Submission: On Occasion
Affected Public: State or Local Governments and Non-Profit Institutions
Estimated Burden Hours: 9,000
Status: Extension
Contact: George C. Davis, HUD, (202) 755-7920; Robert Fishman, OMB, (202) 395-6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 15, 1987.

Proposal

Property Disposition Handbook 4310.5, One-to-Four Family Properties

Office: Housing
Form Number: HUD-9516, 9516A, 9531, 9540, 9543, 9543A, 9544, 9545, 9551, and 9200W
Frequency of Submission: On Occasion
Affected Public: Individuals or Households, Businesses or Other For-Profit, and Small Businesses or Organizations
Estimated Burden Hours: 185,950
Status: Reinstatement
Contact: Joseph C. Bates, HUD, (202) 755-5740; Robert Fishman, OMB, (202) 395-6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: January 13, 1987.

Proposal

Monthly Survey of Private Mortgage Insurance Activity

Office: Housing
Form Number: HUD-9040
Frequency of Submission: Monthly
Affected Public: Businesses or Other For-Profit and Federal Agencies or Employees
Estimated Burden Hours: 13
Status: New
Contact: Jane A. McKnight, HUD, (202) 755-7270; Robert Fishman, OMB, (202) 395-6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 8, 1987.

John T. Murphy,

Director, Information Policy and Management Division.

[FR Doc. 87-2555 Filed 2-5-87; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. D-87-831; FR-2325]

Office of the Manager; New Orleans Office; Designation

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of line of succession.

SUMMARY: The Manager is designating officials who may serve as Acting Manager during the absence of, or vacancy in the position of, the Manager.

EFFECTIVE DATE: This designation is effective March 10, 1986.

FOR FURTHER INFORMATION CONTACT: Ann B. Hallan, Director, Management and Budget Division, Office of Administration, Fort Worth Regional Office, Department of Housing and Urban Development, 1600 Throckmorton, P.O. Box 2905, Fort Worth, Texas 76113-2905, Telephone (817) 885-5451 (not a toll-free number).

Designation

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability, or vacancy in the position of the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided that no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Deputy Manager
2. Chief Counsel
3. Director of Housing Development
4. Director of Housing Management
5. Director of Community Planning and Development Division
6. Director of Fair Housing and Equal Opportunity

Dated: December 30, 1986.

Sam R. Moseley,

Regional Administrator—Regional Housing Commissioner, Region VI.

[FR Doc. 87-2556 Filed 2-5-87; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Use and Distribution of Liquor Ordinance

January 21, 1987.

This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that Resolution No. 86-212-C enacting the "Three Affiliated Tribes of the Fort Berthold Reservation Alcoholic Beverages Control Law" was duly adopted by the Three Affiliated Tribes' Business Council on October 8, 1986. The ordinance provides for the distribution of alcoholic beverages in the area of Indian country under the jurisdiction of the Three Affiliated Tribes of the Fort Berthold Reservation and repeals the previous Resolution and Ordinance which were published in the **Federal Register** on February 10, 1956, 21 FR 1076. The ordinance reads as follows:

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

Resolution No. 86-212-C

Whereas, this Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and

Whereas, the Three Affiliated Tribes of the Fort Berthold Indian Reservation is organized under Constitution and Bylaws adopted by the Tribal people on May 15, 1936; and approved by the Secretary of the Interior June 29, 1936; and

Whereas, the Constitution of the Three Affiliated Tribes authorizes and empowers the Tribal Business Council to engage in activities on behalf of, and in the interest of, the welfare and benefit of all residents of the Fort Berthold Reservation; and

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Whereas, Article VI, section 3 of the Constitution of the Three Affiliated Tribes specifically authorizes and empowers the Tribal Business Council to exercise all necessary sovereign powers for the purpose of enforcing the jurisdication granted to the Tribal Council by the people in Article I of the Constitution; and

Whereas, Article I of the Constitution expressly provides that the jurisdication of the Three Affiliated Tribes shall extend to all persons and all lands, including lands held in fee, within the exterior boundaries of the Fort Berthold Reservation; and

Whereas, 18 U.S.C. 1161 provides that the Three Affiliated Tribes may adopt an ordinance that regulates the introduction, use and sale of liquor of the Fort Berthold Indian Reservation; and

Whereas, the Tribal Business Council recognizes the adverse social and economic effects and costs inflicted by the use of alcoholic beverages by the residents of the Fort Berthold Indian Reservation; and

Whereas, the introduction, sale, and use of alcoholic beverages within the exterior boundaries of the Fort Berthold Indian Reservation has substantial impacts on the social, economic, and health values of the residents of the Fort Berthold Indian Reservation; and

Whereas, the Tribal Business Council has chosen to regulate the introduction, sale and use of alcoholic beverages herein in order to protect the health, welfare, and social standards of the residents of the Fort Berthold Indian Reservation; and

Now, therefore, be it resolved, that the Three Affiliated Tribes' Business Council adopts the Three Affiliated Tribes' Liquor Control Ordinance.

Now, therefore, be it further resolved, that the Secretary of the Tribal Council is hereby directed to submit this Ordinance to the Secretary of the Interior for publication in the **Federal Register** as required by law.

Certification

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 11 members of whom 7 constitute a quorum, 7 were present at a Special Meeting thereof duly called, noticed, convened, and held on the 8th day of October, 1986; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 7 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

John Charging,

Secretary, Tribal Business Council.

Attest:

Alyce Spotted Bear,

Chairman, Tribal Business Council.

THREE AFFILIATED TRIBES ALCOHOLIC BEVERAGES CONTROL LAW

Chapter I. General Provisions

Section 1. Definitions

In this Ordinance, (1) "Alcohol" shall mean neutral spirits distilled at or above 190° proof, whether or not such product is subsequently reduced, for nonindustrial use.

(2) "Alcoholic beverages" shall mean any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume.

(3) "Beer" shall mean any malt beverage containing more than one-half of one percent of alcohol by volume.

(4) "Distilled spirits" shall mean any alcoholic beverage that is not beer, wine, sparkling wine or alcohol.

(5) "Licensed premises" means the premises on which beer, liquor, or alcoholic beverages are normally sold or dispensed and shall be delineated by diagram or blueprint which shall be included with the license application or the license renewal application.

(6) "Liquor" shall mean any alcoholic beverage except beer.

(7) "On-Sale" shall mean the sale of any alcoholic beverage for consumption only upon the premises where sold.

(8) "Off-Sale" shall mean the sale of any alcoholic beverage for consumption off the premises where sold.

(9) "Sale" shall mean the transfer of bottled or canned alcoholic beverage for currency exchange of title to such alcoholic beverages.

(10) "Sparkling wine" shall mean wine made effervescent with carbon dioxide.

(11) "Transport" shall mean the introduction of alcoholic beverage onto the Fort Berthold Reservation by any means of conveyance for the purpose of sale, or distribution, to any licensed retailer.

(12) "Tribal Council" shall mean the governing body of the Three Affiliated Tribes.

(13) "Wine" shall mean the alcoholic beverage obtained by fermentation of agricultural products containing natural or added sugar or such beverage fortified with brandy and containing not more than twenty-four percent alcohol by volume.

(14) The terms, "the provisions of this Ordinance" as provided in this Ordinance, or similar terms, shall include all rules and regulations established by the Tribal Legal Department, and approved by Council, to aid in the administration or enforcement of this Ordinance.

Section 2. Public Policy Declared

This Ordinance shall be cited as the "Three Affiliated Tribes Alcoholic Beverages Control Law" and, pursuant to the constitutional and inherent sovereignty of the Three Affiliated Tribes, shall be deemed an exercise of the Tribes' powers for the purpose of protecting the welfare, health, peace, morals and safety of all people residing on the Fort Berthold Reservation. All the provisions of this Ordinance shall be liberally construed to accomplish the above declared purpose. It is the Three Affiliated Tribes' declared intent in enacting this Ordinance to prohibit all traffic in liquor on the Fort Berthold Indian Reservation except to the extent allowed and permitted under the express terms of this Ordinance.

Section 3. Exceptions

Nothing contained in this title shall be construed to apply to the following articles, when they are unfit for beverages purposes:

(1) Denatured alcohol produced and used pursuant to acts of Congress, and the regulations thereunder;

(2) Patent, propriety, medical, pharmaceutical, antiseptic, and toilet preparations;

(3) Flavoring extracts, syrups, and food products; nor to the manufacture or sale of said articles containing alcohol. This title shall not apply to wines delivered to priests, rabbis, and ministers for sacramental use.

Section 4. General Prohibition

It shall be unlawful to manufacture for sale, sell, offer, or keep for sale, or transport alcoholic beverages on the Fort Berthold Reservation except upon the terms, conditions, limitations, and restrictions specified in this Ordinance.

Chapter II. Retail Licensing

Section 1. Tribal Retail License Required

No person shall engage in the sale of alcoholic beverages at retail without first securing an appropriate license from the Three Affiliated Tribes as provided herein.

Section 2. Qualifications for License

No retail license shall be issued to any person unless the applicant shall file a sworn application, accompanied by the required fee, showing the following qualifications:

(1) The applicant, other than corporate, must be a legal resident of the United States and a resident of the Fort Berthold Indian Reservation and be a person of good moral character.

(2) If the applicant is a corporation then the manager of the licensed premises and its officers, directors and stockholders must be legal residents of the United States and persons of good moral character. Corporate applicants must also be properly registered with the Three Affiliated Tribes as entitled to do business on the Fort Berthold Reservation.

(3) The applicant or manager must not have been convicted of an offense determined by the Tribes to have a direct bearing upon an applicant's or manager's ability to serve the reservation public as an alcoholic beverage retailer.

(4) The tribes may also require the applicant to set forth such other information in this application as is necessary to enable them to determine if a license should be granted.

Section 3. License Fees

The fee for an annual on and off sale liquor license shall be set by tribal resolution at not less than two hundred dollars nor more than two thousand and one hundred dollars. The fee for an annual on and off sale beer license shall be set by Tribal resolution at not less than fifty dollars nor more than six hundred dollars.

Section 4. Special Permit Authorized

The Three Affiliated Tribes may by special permit authorize an on sale, off sale, or on or off sale alcoholic beverage licensee to engage in the sale of alcoholic beverages at special events on licensed premises as may be designated by the permit. A fee for the special permit may be set by resolution at not more than twenty-five dollars. The permit shall not be valid for a period greater than three consecutive days.

Section 5. Disposal Prohibited on Certain Days

No person shall dispense or permit the consumption of alcoholic beverages on licensed premises after 1 a.m. on Sundays, before 8 a.m. on Mondays, or between the hours of 1 a.m. and 8 a.m. on all other days of the week; or on Memorial Day, Good Friday, Thanksgiving Day, Christmas Day, or after 6 p.m. on Christman Eve, or between the hours of 1 a.m. and 8 p.m. on the day of any Tribal special, primary, or general election.

Section 6. Prohibitions as to Persons Under Twenty-One Years of Age

No licensee shall dispense alcoholic beverages to a person under twenty-one years of age or permit such person to remain on the licensed premises while alcoholic beverages are being sold or displayed. Any person under twenty-one years of age may remain in a restaurant where alcoholic beverages are being sold if the restaurant is separated from the room in which alcoholic beverages are opened or mixed, if gross sales of food are at least equal to gross sales of alcoholic beverages which are consumed in the dining area or if (1) employed by the restaurant as a food waiter, food waitress, busboy, or busgirl under the direct supervision of a person twenty-one or more years of age, and not engaged in the sale, dispensing, delivery, or consumption of alcoholic beverages, or (2) if the person is a law enforcement officer entering the premises in the performance of official duty. Any establishment where alcoholic beverages are sold may employ persons from eighteen to twenty-one years of age to work in the capacity of musicians under the direct supervision of a person over twenty-one years of age.

Chapter III. Wholesale Licensing

Section 1. Tribal Wholesale License

No person shall engage in the sale of alcoholic beverages at wholesale without first securing an appropriate license from the Three Affiliated Tribes as provided herein. Such a license shall allow sale only to licensed retailers.

Section 2. Qualifications for License

No such license shall be issued unless the applicant shall file a sworn application, accompanied by the required fee, showing the following qualifications:

(1) Applicant other than corporate must be a legal resident of the United States and a person of good moral character. If the applicant is a corporation, the manager of the licensed premises must be a citizen of the United States and a person of good moral character, and the officers, directors and stockholders must be legal residents of the United States and persons of good moral character. Corporate applicants must also be registered with the Three Affiliated Tribes as entitled to do business on the Fort Berthold Reservation.

(2) The Tribal Council may require the applicant to set forth such other information as is necessary to enable it to determine if a license should be granted.

Section 3. License Fees

The fee for an annual wholesale license shall be set by tribal resolution at not less than two hundred dollars nor more than one thousand and one hundred dollars.

Chapter IV. Transport Licensing

Section 1. Tribal Transport License Required

No person shall engage in the transport for sale, or distribution, to licensed retailers of alcoholic beverages on the Fort Berthold Reservation without first securing an appropriate license from the Three Affiliated Tribes as provided herein. Such a license shall allow the delivery, or distribution, of alcoholic beverages only to licensed retailers.

Section 2. Qualifications for License

No such license shall be issued unless the applicant shall file a sworn application, accompanied by the required fee showing the following qualifications:

(1) Applicant other than cooperate must be a legal resident of the United States and a person of good moral character. If the applicant is a corporation, the manager of the licensed premises must be a citizen of the United States and a person of good moral character, and the officers, directors and stockholders must be legal residents of the United States and persons of good moral character. Corporate applicants must also be registered with the Three Affiliated Tribes as entitled to do business on the Fort Berthold Reservation.

(2) The Tribal Council may require the applicant to set forth such other information as is necessary to enable it to determine if a license should be granted.

Section 3. License Fees

The fee for an annual transport license shall be set by tribal resolution at not less than two hundred dollars and no more than one thousand and one hundred dollars.

Chapter V. Penalties Imposed for Violations of Ordinance

Section 1. General Penalties.

Anyone violating this ordinance shall be subject to civil penalties and/or suspension or revocation of their tribal license according to a schedule of penalties established by the Tribal Legal Department and approved for publication by the Tribal Council.

Section 2. Hearing on Alleged Violations

Anyone having information that a person has violated any provisions of this ordinance may file with the Tribal Legal Department an affidavit specifically setting forth such violation. Upon receipt of such affidavit, the Legal Department shall set the matter for hearing not later than the next regular meeting of the Tribal Council. A copy of the affidavit and notice of hearing shall be mailed to the affected person by registered mail not less than five days before such hearing. A record of such hearings will be made by stenographic notes or by the use of an electronic recording device. The person shall have the right to be represented by counsel, question witnesses and examine the evidence against him as well to present evidence and witnesses in his own defense.

Section 3. Suspension or Revocation of License

If after such hearing the Tribal Council finds the violation set forth in the affidavit has been proved by the evidence, an order shall be served on the licensee revoking or suspending his license for a period of time and imposing such other civil penalties as are consistent with a policy established by the Tribal Legal Department and approved by Council. Such action may be appealed to the Tribal Court, except that the order revoking or suspending the license, or imposing other penalties shall be effective while the appeal is pending.

Section 4. Other Penalties

The Tribal Council may impose such other civil penalties, according to a policy established by the Tribal Legal Department and approved by Council, for any violation of this ordance including the failure to apply for or to possess the appropriate tribal license. Such tribal action imposing such penalties on any person may be appealed to Tribal Court, except that the imposition of the penalties shall be effective while the appeal is pending.

Section 5. Powers of Tribal Chairman

The Tribal Chairman, or his designee, at a hearing under this Ordinance shall have the power to administer oaths and subpoena and examine witnesses.

Section 6. Effect of Findings on Tribal Court

The Tribal Court, in any matter heard on appeal under this ordinance, shall give substantial weight to the findings of fact made by the Tribal Council.

Chapter VI. Miscellaneous Provisions

Section 1. Agreement by Licensee to Grant Access for Inspection Purposes

Every licensee under this Ordinance, as a condition of the grant of a tribal license, consents to the inspection of his premises, including all buildings, safes, cabinents, lockers and storerooms thereon. Such inspection shall be available upon the demand of the Tribal Council. These inspections shall be conducted by a duly appointed designee of the Tribal Council, or tribal or federal police. All books and records dealing with the sale or ownership of alcoholic beverages shall be open for

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inspection purposes by the duly authorized tribal authorities.

Section 2. Recovery of Damages Resulting From Intoxication

Every spouse, child, parent, guardian, employer, or other person who is injured by any intoxicated person, or in consequence of intoxication, shall have a right of action in Tribal Court against any person who caused such intoxication by disposing, selling, bartering, or giving away alcoholic beverages for all damages sustained and in the event death ensues the survivors of the decedent may prosecute such an action in their own name.

Section 3. Surety Bond Required

(1) Every application for a license under this Ordinance, unless exempted by the Tribal Council, must be accompanied by a bond, which shall become operative and effective upon the issuance of a license unless the licensee already has a continuing bond in force. The bond shall be in the amount of $10,000.00 and must be in a form approved by the Council and it shall be conditioned that the licensee will faithfully obey and abide by all the provisions of this Ordinance and all existing laws relating to the conduct of its business and will promptly pay to the Three Affiliated Tribes when due all license fees payable by him under the provisions of this Ordinance and also any costs and penalties assessed against him in any determination that he violated the terms of this Ordinance.

(2) All bonds required by this Ordinance shall be with a corporate surety as surety, or shall be by cash deposit. If said bond is placed by cash, it shall be kept in a separate escrow account with a bank.

Section 4. Severability

If any section of this Ordinance, or any part thereof, is held to be invalid or inapplicable for any cause whatsoever, the remainder of this Ordinance shall not be affected thereby and shall remain in full force and effect as though no part thereof had been declared invalid.

[FR Doc. 87-2537 Filed 2-5-87; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[OR-935-07-4332-09:GP7-079]

Availability of the Supplement to the Draft Oregon Wilderness Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, BLM has prepared a supplement to the draft environmental impact statment (SDEIS) on wilderness suitability recommendations involving 85 wilderness study areas (WSAs) located primarily in eastern Oregon.

This document supplements the Oregon Wilderness DEIS (April 1985) to consider additional lands that have been restored or added to WSA status through court decision *(Sierra Club* v. *Watt)* and related agreements, through Interior Board of Land Appeals remand, and through wilderness inventory of lands acquired since completion of the original inventory (1978–1981) in Oregon.

The Proposed Action recommends 1,000,508 acres in 44 WSAs as suitable for wilderness designation and 1,648,241 acres as nonsuitable for wilderness designation. Six other alternatives are analyzed in the supplement. The alternatives and the acres recommended suitable for wilderness are: All Wilderness (2,648,749 acres), Wilderness Emphasis (2,280,071 acres), Conflict Resolution Emphasis (1,173,627 acres), Ecosystem Diversity Emphasis (1,098,074 acres), Commodity Development Emphasis (352,664 acres), and No Wilderness/No Action (0 acres).

The statewide volume has been published in its entirety due to the many changes between the DEIS and the Supplement. However, only new appendices and revised portions of original appendices appear in Volume II of this Supplement. For the complete text of unrevised appendices and portions of appendices that have not changed, see the original DEIS appendix volumes.

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the supplement to the draft EIS may be obtained upon request to the contact person identified below. In addition, copies are available for review at the following locations:

Office of Public Affairs, Bureau of Land Management, Interior Building, 18th and C Streets NW., Washington, DC 20240.

Oregon State Office, Bureau of Land Management, 825 NE. Multnomah Street, Portland, OR.

Nevada State Office, BLM, 300 Booth St., Reno, NV.

Burns District Office, BLM, 74 S. Alvord St., Burns, OR.

Coos Bay District Office, BLM, 333 S. Fourth St., Coos Bay, OR.

Eugene District Office, BLM, 1255 Pearl St., Eugene, OR.

Lakeview District Office, BLM, 1000 Ninth St. South, Lakeview, OR.

Medford District Office, BLM, 3040 Biddle Road, Medford, OR.

Prineville District Office, BLM, 185 E. Fourth St., Prineville, OR.

Roseburg District Office, BLM, 777 NW Garden Valley Blvd., Roseburg, OR.

Salem District Office, BLM, 1717 Fabry Road, SE, Salem, OR.

Spokane District Office, BLM, 4217 Main Ave., Spokane, WA.

Vale District Office, BLM, 100 Oregon St., Vale, OR.

Winnemucca District Office, BLM, 705 East 4th St., Winnemucca, NV.

Public hearings on the Supplement to the draft EIS will be conducted at the following times and locations:

March 9, 1987, 7:00 p.m. to 10:00 p.m., Conference Room, Boise District Office, 3948 Development Avenue, Boise, Idaho.

March 10, 1987, 7:00 p.m. to 10:00 p.m., Conference Room, Vale District Office, 100 Oregon Street, Vale, Oregon.

March 11, 1987, 7:00 p.m. to 10:00 p.m., Courthouse, 450 N. Buena Vista, Burns, Oregon.

March 12, 1987, 7:00 p.m. to 10:00 p.m., Conference Room, Lakeview District Office, 1000 Ninth Street South, Lakeview, Oregon.

March 16, 1987, 7:00 p.m. to 10:00 p.m., Catholic Parish Hall, 200 East 1st Street, Prineville, Oregon.

March 17, 1987, 2:00 p.m. to 5:00 p.m. and 7:00 p.m. to 10:00 p.m., Hearing Room/Auditorium, Second Floor, Portland Building, 1120 S.W. Fifth Avenue, Portland, Oregon.

March 18, 1987, 7:00 p.m. to 10:00 p.m., The Concord Room, Eugene-Springfield Red Lion Motor Inn, 3280 Gateway Road, Springfield, Oregon.

March 19, 1987, 7:00 p.m. to 10:00 p.m., Oregon Room, Medford District Office, 3040 Biddle Road, Medford, Oregon.

DATE: Comments will be accepted until April 24, 1987.

ADDRESS: Comments should be sent to: Wilderness Studies (935), Bureau of Land Management, P.O. Box 2965, Portland, OR 97208

FOR FURTHER INFORMATION CONTACT: Jerry Magee (935), Bureau of Land Management, P.O. Box 2965, Portland, OR 97208. Telephone (503) 231-6256.

Dated: January 21, 1987.

Glen Rose,

Acting State Director.

[FR Doc. 87-2559 Filed 2-5-87; 8:45 am]

BILLING CODE 4310-33-M

[AK-966-4213-15; AA-6670-M; AA-6670-A2]

Alaska Native Claims Selection; Vicinity of Iliamna

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Iliamna Natives Limited for approximately 3,980 acres. The lands involved are in the vicinity of Iliamna, Alaska.

Seward Meridian, AK

T. 3 S., R. 31 W.
T. 4 S., R. 33 W.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Times*. Copies of the decision may be obtained by contacting the Bureau of Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 (907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until March 9, 1987, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Mary Jane Clawson,

Chief, Branch of Southwest Adjudication.

[FR Doc. 87-2458 Filed 2-5-87; 8:45 am]

BILLING CODE 4310-JA-M

[AK-966-4213-15; AA-6686-A2]

Alaska Native Claims Selection; Kijik Corp.

In accordance with Department regulation 43 CFR 2650.7(d), notice is hereby given that the decision to issue conveyance (DIC) to Nondalton Native Corporation (now known as Kijik Corporation), notice of which was published in the **Federal Register** dated August 12, 1981 on pages 40809 and 40810, 46 FR 40809 (1981), is modified by adding lands, deleting lands, and amending easements in the following townships:

Seward Meridian, AK

T. 2 S., R. 30 W.
T. 2 S., R. 31 W.

A notice of the modified DIC will be published once a week, for four (4) consecutive weeks, in the *Anchorage Times*. Copies of the modified DIC may be obtained by contacting the Bureau of Land Management, Alaska State Office, 710 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until March 9, 1987, to file an appeal on the issue in the modified DIC. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Except as modified, the decision, notice of which was given August 12, 1981, is final.

Mary Jane Clawson,

Chief, Branch of Southwest Adjudication.

[FR Doc. 87-2459 Filed 2-5-87; 8:45 am]

BILLING CODE 4310-JA-M

[WY-010-07-4322-10]

Wyoming; Advisory Council Meeting for the Worland District

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the Worland District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Pub. L. 91-463, 94-579, and 95-514, and CFR Part 1780, that a meeting of the Worland District Advisory Council will be held at the Worland District Office on March 10, 1987.

The Agenda for the meeting includes:

1. Review of and recommendations on the Draft Washakie Resource Management Plan/Environmental Impact Statement and the Draft Washakie Wilderness Environmental Impact Statement.

2. Election of officers for calendar year 1987.

3. Review of the planning process and identification and discussion of concerns for the Cody Resource Management Plan/Environmental Impact Statement.

4. Statements from the public, if any.

DATE: Tuesday, March 10, 1987, 9:30 a.m.

ADDRESSES: Worland District Office, 101 South 23rd Street, Worland, Wyoming.

FOR FURTHER INFORMATION CONTACT: David Stout, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401, Telephone: (307)347-9871.

Edward L. Fisk,

Associate District Manager.

[FR Doc. 87-2472 Filed 2-5-87; 8:45 am]

BILLING CODE 4310-22-M

[AZ-040-07-4212-11; A 20916]

Realty Action; Recreation and Public Purposes Classification and Conveyance of Public Land in Graham County, AZ

AGENCY: Bureau of Land Management, Safford District, Interior.

ACTION: Notice of Realty Action: Recreation and Public Purposes Classification and Conveyance of Public Land in Graham County, Arizona.

SUMMARY: The following lands are classified as suitable for conveyance under the Recreation and Public Purposes Act of June 14, 1926 (44 Stat. 741), as amended by the Act of June 4, 1954 (68 Stat. 174; 43 U.S.C. 896), as amended, and the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) for no less than fifty percent of fair market value.

Gila and Salt River Meridian, Arizona

Legal description	Acres
T. 6 S., R. 25 E.	
Sec. 6, S½NW¼SW¼NE¼SE¼, S½NE¼SE¼NW¼SE¼	2.50
Sec. 26, S½S½SW¼NE¼SE¼, E½E½NW¼SE¼SE¼	5.00
	7.50

The land is being offered to Graham County for the purpose of expanding the size of two cemeteries, the Graham Cemetery and the Bryce Cemetery.

The land is not required for any federal purpose. Conveyance of the two parcels would best serve the public interest. This action is consistent with the Bureau's planning recommendations.

The patent issued as the result of the sale will be subject to all valid existing rights and reservations of record. It will contain the following reservations:

1. Rights-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All minerals shall be reserved to the United States. Such resources shall be subject to the right to explore, prospect for, mine and remove under applicable law and such regulations as prescribed by the Secretary of the Interior. The patent will be issued subject to:

1. Such rights for electric power distribution line right-of-way purposes as the Graham County Electric Cooperative, Inc. may have under the Act of March 4, 1911, 36 Stat. 1253 as amended, as the the N½SE¼ sec. 6, T. 6 S., R. 25 E. (AR 035240)

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public

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land laws and the mining laws. The segregative effect will end upon issuance of a patent or 18 months from the date of the publication, whichever occurs first.

DATE: For a period of 45 days from the date of this notice in the **Federal Register,** interested parties may submit comments to the Distict Manager at the above address. Any adverse comments will be evaluated by the State Director who may sustain, vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Detailed information concerning reservations, conditions, appraised price and other items may be obtained from the Safford District Office or by calling (602) 428–4040 during the office hours 7:45 to 4:15 MST.

Dated: January 28, 1987.

Vernon L. Saline,

Acting District Manager.

[FR Doc. 87–2476 Filed 2–5–87; 8:45 am]

BILLING CODE 4310–32–M

[AZ–940–07–4212–12; A–21760]

Issuance of Land Conveyance

ACTION: Notice of issuance of land conveyance document.

SUMMARY: On November 7, 1986, the United States issued an exchange conveyance document to the State of Arizona for the following described Federal Land pursuant to section 206 of the Federal land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 13 N., R. 20 W.,
Sec. 16, lots 3, 5, 6;
Sec. 21 NE¼NW¼NE¼, W½NW¼ NE¼NE¼.

Comprising 112.68 acres in Mohave County.

In exchange for these lands the United States acquired the following described land from the State of Arizona:

Gila and Salt River Meridian, Arizona

T. 17 N., R. 5 E., GSR Mer., Arizona
Sec. 33, a parcel of land situated in and being a part of the E½ described as follows:

Parcel A

Beginning at the Northeast corner of said Section 33, as established from the USBLM survey of 1956, run thence South 4°46' West (USBLM bearing—1956) along the East line of said Section 33, 700.28 feet; thence North 87°45'20" West, 136.61 feet; thence South 40°03'50" West, 84.39 feet; thence South 2°06'53" East,119.25 feet; thence South 18°49'04" East, 33.41 feet; thence South 46°42'39" East, 39.55 feet; thence South 55°22'04" East, 91.43 feet; thence South 51°44'22" East, 56.70 feet to a point on the East line of said Section 33; thence South 4°46' West along said East line of Section 33, 3703.40 feet to the Southeast corner of the Northeast Quarter of the Southeast Quarter of the Southeast Quarter (NE¼SE¼SE¼) of Section 33; thence North 89°55'31" West along the South line of said Northeast Quarter of the Southeast Quarter of the Southeast Quarter of Section 33, 662.45 feet to the Southwest corner of said Northeast Quarter of the Southeast Quarter of the Southeast Quarter of Section 33; thence North 4°21'47" East, 2004.54 feet to the Northwest corner of the East Half of the Northeast Quarter of the Southeast Quarter (E½NE¼SE¼) of Section 33; thence South 86°58'57" West along the North line of the Southeast Quarter (SE¼) of Section 33, 557.40 feet to the Southeast corner of that certain property as described in Book 697, Pages 908, 909, and 910, Records of Yavapai County, Arizona; (deed bearing North 88°40' East); thence along the Easterly line of that certain property as described in said Book 697, Pages 908, 909, and 910 (making an adjustment of 0°19'00" Easterly to said deed bearing) the following described courses and distances, i e.:

North 0°21' East (North 0°02' East deed), 1207.87 feet; North 85°16' East (North 84°57' East deed), 109.20 feet; North 63°43' East (North 63°24' East deed), 414.82 feet; North 5°32' West (North 5°51' West deed) 236.70 feet; North 61°29' East (North 61°10' East deed), 122.00 feet, to a point in Oak Creek; North 10°11' West (North 10°30' West deed), 183.60 feet; North 13°17' West (North 13°36' West deed), 221.97 feet; North 36°01' West (North 36°20' West deed), 171.35 feet; North 31°44' West (North 32°03' West deed), 131.32 feet; North 37°46' West (North 38°05' West deed), 90.34 feet; North 75°27' West (North 75°46' West deed), 420.53 feet; South 78°11' West (South 77°52' West deed), 308.39 feet; South 62°52' West (South 62°33' West deed), 107.63 feet; South 56°56' West (South 56°37' West deed), 356.66 feet; North 42°29' West (North 42°48' West deed), 383.50 feet; South 47°31' West (South 47°12' West deed), 58.20 feet, more or less to a point in Red Rock road; thence North 43°40'04" East, 40.45 feet to a point of curve on the center line of Red Rock Road, as described in Book 118, Pages 419, 420, and 421, said point of curve having a tangent bearing of North 50°47'30" East (North 50°57'30" East deed); thence along said curve in a Northeasterly direction, concave to the left, said curve having a central angle of 13°10'15", a radius of 727.01 feet and a length of 167.12 feet to a point on the North line of the Northeast Quarter (NE¼) of said Section 33; thence North 88°05' East (USBLM bearing—1956) along the North line of said Northeast Quarter of Section 33, 2468.40 feet to the Northeast corner of said Section 33 and the point of beginning.

Sec. 34, a parcel of land situated in and being a part of section 34 described as follows:

Parcel B

Beginning at the Southwest corner of the Northwest Quarter of the Northwest Quarter (NW¼NW¼) of said Section 34, from which the Northwest corner of said Section 34 bears North 4°46' East (USBLM bearing), 1355.31 feet; thence South 4°46' West along the West line of said Section 34, 3373.92 feet to the Southwest corner of the North Half of the South Half of the Southwest Quarter (N½S½SW¼) of said Section 34; thence North 88°25'09" East along the South line of said North Half of the South Half of the Southwest Quarter, 2583.54 feet to the Southeast corner of said North Half of the South Half of the Southwest Quarter (N½S½SW¼) of said Section 34, said corner being identical with the Southwest corner of the Northwest Quarter of the Southwest Quarter of the Southeast Quarter (NW¼SW¼SE¼) of said Section 34; thence North 89°33'04" East, 660.13 feet to the Southeast corner of said Northwest Quarter of the Southwest Quarter of the Southeast Quarter (NW¼SW¼SE¼) of Section 34; thence North 2°42'22" East along the East line of said Northwest Quarter of the Southwest Quarter of the Southeast Quarter (NW¼SW¼SE¼) of Section 34 and a prolongation thereof, 1015.11 feet to the Northeast corner of the South Half of the Southwest Quarter of the Northwest Quarter of the Southeast Quarter (S½SW¼N W¼SE¼) of said Section 34; thence North 9°18'16" East, 47.13 feet to the Southeasterly corner of the certain property as described in Book 564, Page 157, Records of Yavapai County, Arizona; thence along the Southerly and Westerly lines of said property as described in Book 564, Page 157 (making an adjustment of 0°02'00" Easterly to said deed bearings) the following courses, i.e.:

South 48°51' West (South 48°49' West deed), 52.5 feet; North 46°44' West (North 46°42' West deed), 327.9 feet; North 22°20' West (North 22°18' West deed), 105.6 feet; North 54°33' West (North 54°31' West deed), 197.5 feet; North 21°01' West (North 20°59' West deed), 235.0 feet; North 48°14' West (North 48°12' West deed), 152.8 feet; South 89°36' West (South 89°38' West deed), 148.7 feet; North 39°24' West (North 39°22' West deed), 304.9 feet to a point in Oak Creek; North 41°22' East (North 41°24' East deed), 123.3 feet up Oak Creek; North 11°45' West (North 11°43' West deed), 395.0 feet up Oak Creek to the Northwest corner of that certain property as described in said bood 564, Page 157 said Northwest corner also being the Southwest corner of that certain property as described in Book 559, Page 780, Records of Yavapai County, Arizona; thence along the Westerly line of said property as described in Book 559, Page 780 (making a bearing adjustment of 0°02'00" Easterly to said deed bearings) the following courses, i.e.: North 11°45' West (North 11°43' West deed), 505.0 feet up Oak Creek; North 33°02' West (North 33°00' West deed), 397.2 feet up Oak Creek to a point on the North line of the Southeast Quarter of the Northwest Quarter (SE¼NW¼) of said Section 34; thence South 88°39'22" West along the South line of the North Half of the Northwest Quarter (N½NW¼) of said Section 34, 1680.40 feet to the Southwest corner of the Northwest Quarter of the Northwest Quarter (NW¼NW¼) of said Section 34 and the point of beginning.

Exception therefrom the following described land:

The North 635.25 feet of the West 1200.00 feet of the Southwest Quarter of the Northwest Quarter (SW¼NW¼), the side lines being parallel with the North and West lines of said Southwest Quarter of the Northwest Quarter (SW¼NW¼), located in Section 34, Township Seventeen (17) North, Range Five (5) East of the Gila and Salt River base and Meridian, Yavapai County, Arizona.

Comprising 286.17 acres in Yavapai County.

The purpose of this notice is to inform the public and interested state and local governmental officials of the exchange.

Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87–2484 Filed 2–5–87; 8:45 am]

BILLING CODE 4310–32–M

[NV–020–07–4212–21; N–45086]

Realty Action, Nevada; Correction

ACTION: Correction of Notice of Realty Action N–45086.

SUMMARY: Private airstrip lease N–45086 is for the use of Hycroft Resources and Development for mining near Sulphur, Nevada. The description of the site proposed for leasing in the Notice of Realty Action published in the **Federal Register** as FR Doc. 87–964 on January 16, 1987, (52 FR 1976) is hereby corrected to read as follows:

Mount Diablo Meridian, Nevada

T. 35 N., R. 29 E.,
Sec. 28 SE¼SW¼SE¼;
Sec. 33 S½NE¼NE¼, E½W½NE¼, SE¼NE¼, N½NE¼SE¼, NE¼NW¼S E¼;
Sec. 34 NW¼SW¼NW¼.

The area described contains 8.7 acres more or less and is located in Humboldt County, Nevada.

For further information call (702) 623–3676 or write to District Manager, 705 E. 4th St., Winnemucca, NV 89445.

Dated: January 28, 1987.

Les W. Boni,

Acting District Manager, Winnemucca.

[FR Doc. 87–2479 Filed 2–5–87; 8:45 am]

BILLING CODE 4310–HC–M

[OR–050–4212–13; GP7–096; OR–40852]

Realty Action; Exchange of Public and Private Lands; Prineville District; OR

This modification does not change in any way the purpose of the proposed exchange. As originally stated in the Notice of Realty Action published in the **Federal Register** on December 11, 1986; the acquired lands have values associated with the furtherance of the Two-Rivers Resource Management Plan which embodies the precepts and principles of multiple use and sustained yield. Specifically and as stated in the original Notice of Realty Action, these values include grazing, minerals, fisheries, watershed, wildlife and recreation. Considering the general character of the land and the fact that the local economy can be characterized as a livestock based economy, grazing will continue to be a primary use of much of the offered private lands to be acquired.

The 45 day public comment period has been extended. Comments will now be accepted through March 18, 1987.

Donald L. Smith,

Acting District Manager.

January 27, 1987.

[FR Doc. 87–2475 Filed 2–5–87; 8:45 am]

BILLING CODE 4310–33–M

[NM–940–07–4520–12–OK40]

New Mexico; Filing of Plat of Survey

January 29, 1987.

The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effecive at 10:00 a.m. on January 29, 1987.

The survey representing the dependent resurvey of a portion of the subdivisional lines, a portion of the subdivision of section 3, and a metes and bounds survey of certain lots in section 3, of Township 5 North, Range 9 West, Indian Meridian, Oklahoma, executed under Group 40, Oklahoma.

The survey was requested by the Area Director, Bureau of Indian Affairs, Anadarko, Oklahoma.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Ronald E. Paisley,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 87–2473 Filed 2–5–87; 8:45 am]

BILLING CODE 4310–FB–M

[CO–940–07–4220–11; C–0101298]

Colorado; Proposed Continuation of Withdrawal

January 29, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, proposes that the order which withdrew lands for an indefinite period of time for various recreation areas and campgrounds, be modified and the withdrawal be continued for 20 years insofar as it affects 40 acres of National Forest System land. The land will remain closed to surface entry and mining, but not to mineral leasing.

DATE: Comments should be received on or before May 7, 1987.

ADDRESS: Comments should be addressed to State Director, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 236–1768.

The Forest Service, U.S. Department of Agriculture, proposes that the existing withdrawal made by Public Land Order 3143, dated July 30, 1963, as amended, for an indefinite period of time, be modified to expire in 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following identified lands:

Routt National Forest

Sixth Principal Meridian

T. 6 N., R. 77 W.,
Sec. 14, SW¼SW¼NW¼.
T. 5 N., R. 83 W.,
Sec. 21, NE¼SW¼SW¼, NW¼SE¼SW¼, S½/SW¼NE¼SW¼, and S½SE¼ NW¼SW¼.

The areas described aggregate 40 acres in Jackson and Routt Counties.

The purpose of this withdrawal is for the administration and protection of the Meadows Campground and Pines Campground Addition. No change is proposed in the purpose or segregative effect of the withdrawal. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake

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such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. Notice of the final determination will be published in the **Federal Register**. The existing withdrawal will continue until such determination is made.

Richard D. Tate,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-2481 Filed 2-5-87; 8:45 am]

BILLING CODE 4310-JB-M

[CO-940-07-4220-11; C-072838]

Colorado; Proposed Continuation of Withdrawal

January 29, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, proposes that the order which withdrew lands for an indefinite period of time for the Crested Butte Winter Sports Area, be modified and the withdrawal be continued in its entirety for 50 years. The 1,300.88 acres of National Forest System land will remain closed to surface entry and mining, but not to mineral leasing.

DATE: Comments should be received on or before May 7, 1987.

ADDRESS: Comments should be addressed to State Director, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 236-1768.

The Forest Service, U.S. Department of Agriculture, proposes that the existing withdrawal made by Public Land Order 2848, dated December 7, 1962, for an indefinite period of time, be modified to expire in 50 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. This order affects lands in T. 13 S., Rs. 85 and 86 W., Sixth Principal Meridian. This area aggregates approximately 1,300.88 acres of land in the Gunnison National Forest, Gunnison County, Colorado.

The purpose of this withdrawal is for the administration and protection of the Crested Butte Winter Sports Area. No change is proposed in the purpose or segregative effect of the withdrawal. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. Notice of the final determination will be published in the **Federal Register**. The existing withdrawal will continue until such determination is made.

Richard D. Tate,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-2482 Filed 2-5-87; 8:45 am]

BILLING CODE 4310-JB-M

[CO-940-07-4220-11; C-28300]

Colorado; Proposed Continuation of Withdrawal

January 29, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, proposes that the order which withdrew lands for an indefinite period of time for the Grizzly Creek Administrative Site and Campground, be modified and the withdrawal be continued for 20 years insofar as it affects 30 acres of National Forest System land. The land will remain closed to surface entry and mining, but not to mineral leasing.

DATE: Comments should be received on or before May 7, 1987.

ADDRESS: Comments should be addressed to State Director, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 236-1768.

The Forest Service, U.S. Department of Agriculture, proposes that the existing withdrawal made by Secretarial Order of August 20, 1908, for an indefinite period of time, be modified to expire in 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following identified lands:

Routt National Forest

Sixth Principal Meridian

T. 7 N., R. 82 W.,

Sec. 21, SE¼SE¼SE¼, and W½SE¼SE¼.

The area described aggregates 30 acres in Jackson County.

The purpose of this withdrawal is for the administration and protection of the Grizzly Creek Administrative Site and Campground. No change is proposed in the purpose or segregative effect of the withdrawal. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. Notice of the final determination will be published in the **Federal Register**. The existing withdrawal will continue until such determination is made.

Richard D. Tate,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-2480 Filed 2-5-87; 8:45 am]

BILLING CODE 4310-JB-M

[UT-040-4212-12; U-58196]

Realty Action; Exchange of Mineral Interests in Public and State Lands, Kane County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: The mineral estate of the following described public lands have been determined to be suitable for disposal by exchange under section 206 of the *Federal Land Policy and Management Act of 1976*, 43 U.S.C. 1716): T. 43 S., R. 1 E., SLB&M, Sec. 14, W2NW, SW, W2SE; Sec. 15, 21-23, 26, 27, 34 and 35, all; comprising 5,440 acres. In exchange for the mineral estate of these lands, the United States will acquire the mineral estate of the following described lands from the State of Utah: T. 43 S., R. 1 W., SLB&M, Sec. 32 and 36, all; T. 44 S., R. 1 W., SLB&M, Sec. 2, all; T. 44 S., R. 2 W., SLB&M, Sec. 2, all; comprising 2,560 acres. The mineral values of the lands to be exchanged are approximately equal on an acre per acre basis; full equalization of values will be achieved by an adjustment in acreage of the public lands based on the values to be determined by a mineral appraisal. The purpose of this exchange is to acquire the mineral estate of the Utah State lands which are inholdings in the Paria Canyon/Vermilion Cliffs Wilderness Area. By eliminating these inholdings the wilderness character and other values of the wilderness area will be better preserved. The public interest will be served by completing the exchange. The public lands described are hereby segregated from the operation of the Federal mining laws pending disposition of this action.

ADDRESS: Detailed information concerning this mineral exchange is available at the Bureau of Land Management, Kanab Area Office, 318 North First East, Kanab, Utah 84741, (801) 644-2672. Comments should be sent to the same address.

DATE: Interested parties may submit comments on or before March 23, 1987. any objections received during the comment period will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this Realty Action Notice will become the final determination of the Department of the Interior.

Dated: January 30, 1987.

Morgan S. Jensen,

District Manager.

[FR Doc. 87-2486 Filed 2-5-87; 8:45 am]

BILLING CODE 4310-DQ-M

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations; Proposed Contractual Actions Pending Through March 1987

Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273), and to § 426.20 of the rules and regulations published in the **Federal Register** December 6, 1983, Vol. 48, page 54785, the Bureau of Reclamation will publish notice of proposed or amendatory repayment contract actions or any contract for the delivery of irrigation water in newspapers of general circulation in the affected area at least 60 days prior to contract execution. The Bureau of Reclamation announcements of irrigation contract actions will be published in newspapers of general circulation in the areas determined by the Bureau of Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation requirements do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. The Secretary of the district may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act if the Bureau determines that the contract action may or will have "significant" environmental effects.

Pursuant to the "Final Revised Public Participation Procedures" for water service and repayment contract negotiations, published in the **Federal Register** February 22, 1982, Vol. 47, page 7763, a tabulation is provided below of all proposed contractual actions in each of the six Reclamation regions. Each proposed action listed is, or is expected to be, in some stage of the contract negotiation process during January, February, or March of 1987. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved. The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region.

This notice is one of a variety of means being used to inform the public about proposed contractual actions. Individual notices of intent to negotiate, and other appropriate announcements, are made in the **Federal Register** for those actions found to have widespread public interest. When this is the case, the date of publication is given.

Acronym Definitions Used Herein

(FR) Federal Register
(ID) Irrigation District
(IDD) Irrigation and Drainage District
(M&I) Municipal and Industrial
(D&MC) Drainage and Minor Construction
(R&B) Rehabilitation and Betterment
(O&M) Operation and Maintenance
(CAP) Central Arizona Project
(CVP) Central Valley Project
(P-SMBP) Pick-Sloan Missouri Basin Program
(CRSP) Colorado River Storage Project
(SRPA) Small Reclamation Projects Act

Pacific Northwest region: Bureau of Reclamation, 550 West Fort Street, Box 043, Boise ID 83724, telephone (208) 334-1961.

1. Four Irrigation Districts and the U.S. Forest Service, Boise Project, Idaho-Oregon; Irrigation repayment contracts, 23,000 acre-feet of storage in Arrowrock Reservoir, formerly reserved for the Hillcrest Unit under a 1921 contract which has been terminated; FR notice published July 14, 1986, Vol. 51, page 25406.

2. Cascade Reservoir Water Users, Boise Project, Idaho; Repayment contracts for irrigation and municipal and industrial water; 59,721 acre-feet of stored water in Cascade Reservoir.

3. Brewster Flat ID, Chief Joseph Dam Project, Washington; amendatory repayment contract; land reclassification of approximately 360 acres to irrigable; repayment obligation to increase by $189,000.

4. Boise Cascade Corporation, Columbia Basin Project, Washington; Industrial water service contract; 250 acre-feet FR notice published April 7, 1980, Vol. 45, page 23531.

5. Individual Irrigators, M&I, and Miscellaneous Water Users, Pacific Northwest Region, Idaho, Oregon, and Washington; Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

6. Rogue River Basin water users, Rogue River Basin Project, Oregon; Water service contracts; $5 per acre-foot or $20 minimum per annum, not to exceed 1,000 acre-feet of water per contractor for terms up to 40 years.

7. Willamette Basin water users, Willamette Basin Project, Oregon; Water service contracts; $1.50 per acre-foot or $20 minimum per annum, not to exceed 1,000 acre-feet of water annually per contractor for terms up to 40 years.

8. Irrigation Districts and Similar Water User Entities; Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 Pub. L. 97-293).

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9. Fifty-three Palisades Reservoir Spaceholders, Minidoka Project, Idaho-Wyoming, contract amendments to extend term for which contract water may be subleased to other parties.

10. South Columbia Basin Irrigation District, Columbia Basin Project, Washington; Supplemental repayment contract for Irrigation Block 24; 1,892 irrigable acres.

11. City of Boise, Boise Project, Idaho; M&I water service contract; 340 acre-feet annually of storage in Anderson Ranch Reservoir for a term of up to 40 years.

12. Douglass County, Galesville Project, Oregon; SRPA cost escalation loan repayment contract; $1,000,000 proposed obligation.

13. City of Cle Elum, Yakima Project, Washington; Amendatory or replacement M&I water service contract; 2,200 acre-feet (1,350 gallons per minute) annually for a term of up to 40 years.

14. Three irrigation districts, Flathead Indian Irrigation Project; replacement of costs associated with rehabilitation of irrigation facilities.

15. Baker Valley Irrigation District, Baker Project, Oregon; Irrigation water service contracts on a surplus interruptible basis to serve up to 13,000 acres; sale of excess capacity in Mason Reservoir for a term of up to 40 years.

16. Crooked River Project, Oregon: Repayment or water service contracts with several individuals for a total of approximately 1,100 acre-feet of project water; contract terms up to 40 years for the purpose of supplying water under the project water right held by the United States.

Mid-Pacific Region: Bureau of Reclamation (Federal Office Building), 2800 Cottage Way, Sacramento, CA 95825, telephone (916) 978–5030.

1. 2047 Drain Water Users Association, CVP California: Water right settlement contract; FR notice published July 25, 1979, Vol. 44, Page 43535.

2. Tuolumne Regional Water District, CVP, California: Water service contract; 3,200 acre-feet from New Melones Reservoir.

3. Calaveras County Water district, CVP, California: Water service contract; 400 acre-feet from New Melones Reservoir; FR notice published February 5, 1982, Vol. 47, page 5473.

4. Individual irrigators, M&I, and miscellaneous water, Mid-Pacific Region, California, Oregon, and Nevada: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Temporary Warren Act contracts to wheel nonproject water through project facilities for terms up to 1 year; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

5. Friant-Kern Canal Contractors, Friant-Kern Unit, CVP, California: Renewal of existing long-term water service contracts with numerous contractors on the Friant-Kern Canal whose contracts expire 1989–1995. Water quantities in existing contracts range from 1,200 to 175,440 acre-feet.

6. South San Joaquin ID and Oakdale ID, CVP, California: Operating agreement for conjunctive operation of New Melones Dam and Reservoir on the Stanislaus River; FR notice published June 6, 1979, Vol. 44, page 32483.

7. San Luis Water District, CVP, California: Amendatory water service contract providing for a change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

8. Mid-Valley Water Authority, CVP, California: Temporary water supplies up to 100,000 acre-feet.

9. City of Avenal, CVP, California: Amendment of existing water service contract to provide for furnishing project power to city canalside relift facilities and change the point of diversion.

10. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

11. United Water Conservation District, SRPA, California: Loan repayment contract, $18,730,000 proposed obligation.

12. State of Hawaii, Molokai Project, SRPA: Contract amendment to provide for use of facilities for M&I purposes.

13. State of California, CVP, California: Contract(s) for, (1) sale of interim water to the Department of Water Resources for use by the State Water Project Contractors, and (2) acquisition of conveyance capacity in the California Aqueduct for use by the CVP, as contemplated in the current draft of the Coordinated Operations Agreement.

14. Pixley ID, SRPA, California: Loan repayment contract, $12,300,000 proposed obligation.

15. Madera ID, Madera Canal, CVP, California: Warren Act contract to convey and/or store nonproject Soquel water through project facilities.

16. County of Tulare, CVP, California: Amendatory water service contract, to provide an additional 1,908 acre-feet and reallocate 400 acre-feet of water from the Ducor ID for a total increase of 2,308 acre-feet.

17. Truckee-Carson ID and Sierra Pacific Power Company, Newlands Project, Nevada: Warren Act contract to wheel 9,500 acre-feet of nonproject water through project facilities.

18. Panoche Water district, CVP, California: Amendatory water service contract providing for change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

19. Solano Irrigation District, Solano Project, California: Amendatory loan repayment contract providing for reconveyance and M&I water supply delivery.

20. Shasta Dam Area Public Utilities District, CVP, California: Renewal of M&I water supply contract. Less than 6,000 acre-feet.

21. Grasslands Water District, CVP, California: Interim interruptible water service contract; 100,000 acre-feet of Project water in lieu of agricultural drainage water for waterfowl habitat.

22. U.S. Fish and Wildlife Service, CVP, California: Long-term contract for water supply for Federal refuge in Grasslands area of California.

23. City of Redding, CVP, California: Amendatory M&I water supply contract.

24. P-Canal Water Users Association, Klamath Project, California/Oregon: Agricultural water service contract, less than 20,000 acre-feet.

Upper Colorado Region: Bureau of Reclamation, P.O. Box 11568 (125 South State Street), Salt Lake City, UT 84147, telephone (801) 524–5435.

1. Individual irrigators, M&I, and miscellaneous water users, Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Animas-La Plata Conservancy District, Animas-La Plata Project, Colorado: Repayment contract; 9,200 acre-feet per year for M&I use; 72,200 acre-feet per year for irrigation. Contract terms will be consistent with binding cost sharing agreement dated June 30, 1986.

3. La Plata Conservancy District, Animas-La Plata Project, New Mexico: Repayment contract; 16,000 acre-feet per year for irrigation. Contract terms consistent with binding cost sharing agreement, dated June 30, 1986.

4. San Juan Water Commission, Animas-La Plata Project, New Mexico: M&I repayment contract; 19,700 acre-feet per year. Contract terms consistent with binding cost sharing agreement, dated June 30, 1986.

5. San Juan Water Commission, Animas-La Plata Project, New Mexico: M&I repayment contract; 5,800 acre-feet per year. Contract terms consistent with binding cost sharing agreement, dated June 30, 1986.

6. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Repayment contract for 26,500 acre-feet per year for M&I use and 3,300 acre-feet per year for irrigation use. Contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement, in principle.

7. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado and New Mexico: Repayment contract; 6,000 acre-feet per year for M&I use in Colorado; 25,800 acre-feet per year for irrigation use in Colorado; 800 acre-feet per year for irrigation use in New Mexico. Contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement, in principle.

8. Navajo Indian Tribe, Animas-La Plata Project; New Mexico: Repayment contract for 7,600 acre-feet per year for M&I use. Contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement, in principle.

9. Grand Valley Water Users Association, Orchard Mesa Irrigation District, Grand Valley Project, Colorado: Contract to continue operation and maintenance of Grand Valley powerplant.

10. State of Wyoming, Seedskadee Project, Wyoming: One contract for repayment of reimbursable cost associated with the modification of Fontenella Dam pursuant to the Reclamation Safety of Dams Amendments of 1984 (Pub. L. 98–404).

11. Miscellaneous water users, Upper Colorado Region, Blue Mesa Reservoir, Colorado River Storage Project, Colorado. M&I uses, 20 acre-feet and less for 20–40 years.

12. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

13. Upper Yampa Water Conservancy District, Colorado: Repayment contract to repay a loan of $4,478,000 for the construction of Stagecoach Dam and Reservoir pursuant to the SRPA of 1956, Pub. L. 84–984, as amended.

14. Ute Mountain Ute Indian Tribe, Dolores Project, Colorado: Repayment contract for 1,000 acre-feet per year for M&I use and 22,900 acre-feet per year for irrigation.

15. Weber River Water Users, Weber River Project, Utah: Emergency contract to replace needle valves.

16. Emery County Water Conservancy District, Utah Power and Light, Emery County Water Project Utah: New repayment contract with Utah Power and Light for the purchase of approximately 2,600 acre-feet of project water; amendatory contract with Emery County Water Conservancy District relieving them of their repayment obligation for the 2,600 acre feet of project water.

17. Uncompahgre Valley Water Users Association, Lower Gunnison Basin Unit, Colorado River Water Quality Improvement Program, Colorado: Agreement for discontinuance for winter water flows and administration of associated operation and maintenance costs.

18. Ogden River Water Users Association, Ogden River Project, Utah: Amendatory emergency contracts for $243,000 to replace 200 feet of pipeline and supporting bridge structure.

Lower Colorado Region: Bureau of Reclamation, P.O. Box 427 (Nevada Highway and Park Street), Boulder City, NV 89005, telephone (702) 293–8536.

1. Amendment to Contract No. 176r–696 between the Bureau of Reclamation and the Department of the Army to increase the maximum amount of water delivered to the Yuma Proving Grounds from 55 acre-feet to 975 acre-feet, pursuant to the recommendation of the Arizona Department of Water Resources.

2. Agricultural and M&I water users, CAP, Arizona: Water service subcontracts; a certain percent of available supply for irrigation entities and up to 640,000 acre-feet per year for M&I use.

3. Southern Arizona Water Rights Settlement Act: Sale of up to 28,200 acre-feet per year of municipal effluent to the city of Tucson, Arizona.

4. Contracts with five agricultural entities located near the Colorado River in Arizona, Boulder Canyon Project: Water service contracts for up to 1,920 acre-feet per year total.

5. Gila River Indian Community, CAP, Arizona: Water service contract; contract for delivery of up to 173,100 acre-feet per year.

6. Sunset Mobile Home Park, Boulder Canyon Project, Arizona: M&I water service contract for delivery of 30 acre-feet of water per year, pursuant to the recommendation of Arizona Department of Water Resources.

7. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

8. Indian and non-Indian agricultural and M&I water users, CAP, Arizona: Contracts for repayment of Federal expenditures for constuction of distribution systems.

9. Water delivery contracts with the State of Arizona, the Bureau of Land Management, and several private entities which are in the process of being organized for a yet undetermined amount of Colorado River water for M&I use. The purpose of these contracts is to afford legal status to various noncontractual water users within the State of Arizona.

10. Contract with the State of Arizona for a yet undetermined amount of Colorado River water for agricultural use and related purposes on State-owned land.

11. Contract with 16 individual holders of miscellaneous present perfected rights to Colorado River water totalling 66 acre-feet, pursuant to the January 9, 1979, Supplemental Decree of the United States Supreme Court (439 U.S. 419) in *Arizona* v. *California*.

12. County of San Bernardino, San Bernardino, California: Repayment contract for $13.4 million SRPA loan.

13. Contracts for delivery of surplus water from the Colorado River, when available, with Emilio Soto and Sons, for 1,836 acre-feet per year; Kennedy Livestock, for 480 acre-feet per year; and the Metropolitan Water District of Southern California, for 180,000 acre-feet per year; and the Coachella Valley Water District for 100,000 acre-feet-per year.

14. Ramona Municipal Water District, Ramona, California: Repayment contract for $6.8 million SRPA escalation loan.

15. Amendatory contract with the Central Arizona Water Conservation District to increase the district's CAP repayment ceiling and to update other provisions of the contract.

16. Contract with Maricopa-Stanfield and Central Arizona Irrigation and Drainage Districts to establish a Santa Rosa Canal administrative committee and to transfer operation and maintenance of the canal to Maricopa-Stanfield, CAP, Arizona.

Southwest Region: Bureau of Reclamation, Commerce Building, Suite 201, 714 South Tyler, Amarillo, TX 79101, telephone (806) 378–5430.

1. Fort Cobb Reservoir Master Conservancy District, Washita Basin Project, Oklahoma: Amendatory repayment contract to convert 4,700 acre-feet of irrigation water to M&I use.

2. Foss Reservoir Master Conservancy District, Washita Basin Project,

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Oklahoma: Amendatory repayment contract for remedial work.

3. Vermejo Conservancy District, Vermejo Project, New Mexico: Amendatory contract to relieve the district of further repayment obligation, presently exceeding $2 million, pursuant to Pub. L. 96–550.

4. Hidalgo County Irrigation District No. 1, Lower Rio Grande Valley, Texas; Supplemental SRPA loan contract for approximately $13,205,000. The contracting process is dependent upon final approval of the supplemental loan report.

5. ID's and similar water user entities; Amendatory repayment and water service contracts; Purpose is to conform with the Reclamation Reform Act of 1982 (Pub. L. 97–293).

6. Rio Grande Water Conservation District, Alamosa, Colorado: Contract for the district to be the vender of the Closed Basin Division, San Luis Valley Project, surplus water if available.

7. Carlsbad ID, Carlsbad Project, New Mexico; Repayment contract for the costs incurred by the United States for replacing the needle values at Fort Summer Dam.

8. Conejos Water Conservancy District, San Luis Valley Project, Colorado: Amendatory contract to place OM&R costs on a variable basis commensurate with the availability of project water.

9. Arbuckle Master Conservancy District, Arbuckle Project, Oklahoma: Contract for the repayment of costs incurred by the United States for the construction of the Sulphur, Oklahoma, pipeline and pumping plant (if constructed).

10. A short-term water service contract with the Conejos Water Conservancy District, San Luis Valley Project, Colorado, for the sale of water during the 1987 irrigation season.

Missouri Basin Region: Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, Telephone (406) 657–6413.

1. Individual irrigators, M&T, and miscellaneous water users, Missouri Basin Region, Montana, Wyoming, North Dakota, South Dakota, Colorado, Kansas, and Nebraska: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Nokota Company, Lake Sakakawea, P–SMBP, North Dakota: Industrial water service contract; up to 16,800 acre-feet of water annually; FR notice published May 5, 1982, Vol. 47, Page 19472.

3. Fort Shaw ID, Sun River Project, Montana: R&B loan repayment contract; up to $1.5 million.

4. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

5. Oahe Unit, P–SMBP, South Dakota: Cancellation of master contract and participating and security contracts in accordance with Pub. L. 97–293 with South Dakota Board of Water and Natural Resources and Spink County and West Brown Irrigation Districts.

6. Owl Creek ID, Owl Creek Unit, P–SMBP, Wyoming; Amendatory water service contract to reflect water supply benefits being received from Anchor Reservoir.

7. Almena ID No. 5, Almena Unit, P–SMBP, Kansas; Deferment of repayment obligation for 1986 and 1987.

8. Almena Irrigation District No. 5, Almena Unit, P–SMBP, Kansas; Irrigation water service and repayment contract amendment to adjust payment due to reduced water supply, $576,090 outstanding.

9. Corn Creek ID and Earl Michael, Glendo Unit, P–SMBP, Wyoming, and Nebraska: Irrigation contracts.

10. Webster ID No. 4, Webster Unit, P–SMBP, Kansas; Irrigation water service and repayment contract amendment to adjust payment due to reduced water supply, $970,816 outstanding.

11. Webster Irrigation District No. 4, Webster Unit, P–SMBP, Kansas deferment or repayment obligation for 1986 and 1987.

12. Green Mountain Reservoir, Colorado-Big Thompson Project; Proposed contract negotiations for sale of water from the marketable yield to water users within the Colorado River drainage of Western Colorado.

13. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado; Second round of proposed contract negotiations for sale of water from the regulatory capacity of Ruedi Reservoir.

14. Lower South Platte Water Conservancy District, Central Colorado Water Conservancy District, and the Colorado Water Resources and Power Development Authority; Narrows Unit, P–SMBP, Colorado; Water service contracts for repayment of costs and cost sharing agreement.

15. Kirwin ID No. 1, Kirwin Unit, P–SMBP, Kansas; Deferment of repayment obligation for 1986.

16. Kirwin ID No. 1, Kirwin Unit, P–SMBP, Kansas; Irrigation water service and repayment contract and Emergency Drought Act loan contract amendment to adjust payments due to reduced water supply, $866,231 outstanding.

17. Fryingpan-Arkansas Project, Colorado; East Slope Storage system consisting of Pueblo, Twin Lakes, and Turquoise Reservoir; Contract negotiations for temporary and long-term storage and exchange contracts.

18. Twin Loups Irrigation District, Pick-Sloan Missouri Basin Program; Amend repayment contract to include increased project construction cost and adjust payments to full current payment capacity.

19. Cedar Bluff Irrigation District No. 6 and the State of Kansas, Cedar Bluff Unit, P–SMBP, Kansas; negotiate contract with the State of Kansas for use of all or part of the conservation pool of Cedar Bluff Reservior for recreation, and fish and wildlife purposes for payment of the irrigation district's cost obligation. Alternative action under consideration is to reallocate project purposes to flood control, and fish and wildlife, and recreation and a small amount of municipal and industrial, and irrigation use. Also to abandon the irrigation distribution works. Amend the Cedar Bluff Irrigation District's contract to relieve it of all contract obligations.

20. Whitney Irrigation District, Nebraska, SRPA Loan Contract; deferment of all or part of 1986 payment.

21. Garrison Diversion Conservancy District, Garrison Diversion Unit, P–SMBP, North Dakota; renegotiation of the master repayment contract to bring the terms in line with the Garrison Unit Reformulation Act of 1986.

Opportunity for public participation and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

(1) Ony persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

(2) Advance notice of meetings or hearing will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of the Bureau of Reclamation.

(3) All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

(4) Written comments on a proposed contract or contract action must be submitted to the appropriate Bureau of Reclamation officials at locations and within time limits set forth in the advance public notices.

(5) All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

(6) Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

(7) In the event modifications are made in the form of proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the 60-day comment period is necessary. Factors which shall be considered in making such a determination shall include, but are not limited to: (1) The significance of the impacts(s) of the modification and (ii) the public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Dated: January 30,, 1987.

C. Dale Duvall,

Commissioner of Reclamation.

[FR Doc.–2506 Filed 2–5–87; 8:45am]

BILLING CODE 4310–09–M

Minerals Management Service

Outer Continental Shelf Oil and Gas Lease Sale; Southern California; Request for Comments

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Request for Comments on Possible Mitigating Measures to be Applied to Blocks in the proposed Call for Information and Nominations for Southern California Outer Continental Shelf (OCS) Oil and Gas Lease Sale 95.

SUMMARY: This Notice requests comments on possible mitigating measures to allow joint use of portions of the Pacific Missile Test Center Sea Test Range (PMTCSTR). The measures which are being considered include various controls on exploration, development, and production on potential leases within the PMTCSTR in the area identified on the attached map.

The offshore oil and gas industry and any other parties are invited to comment on the effect the mitigating measures will have on the level of interest in blocks within the PMTCSTR. In addition, we are requesting the industry to provide detailed economic, geologic, and other technical information concerning the feasibility of these measures.

This Notice is published in accordance with existing law regarding presale activities for Lease Sale 95, especially P.L. 99–591, section 111(c). This Notice precedes the formal prelease step—a Call for Information and Nominations—and does not constitute a final decision to either lease blocks listed herein or to specifically apply these mitigating measures. The Secretary will make those decisions after full compliance with the OCS Lands Act and other applicable laws and regulations.

DATE: Comments must be received by March 23, 1987.

ADDRESS: Comments should be submitted to the Regional supervisor, Office of Leasing and Environment, Pacific OCS Region, MMS, 1340 W. Sixth Street, Los Angeles, California 90017. Hand deliveries to the Pacific OCS Region may be made to Room 274 at that address. One copy of comments and any associated materials should also be submitted to the Chief, Offshore Leasing Management Division, MMS, Room 4230, 18th & C Streets, NW., Washington, DC 20240. any privileged or proprietary information which the respondent wishes to be treated as such should be attached to the comments and the envelope marked "Contains Proprietary Date and Information."

FOR FURTHER INFORMATION CONTACT: Richard L. Wilhelmsen, Regional Supervisor, Office of Leasing and Environment, at (213) 894–6775.

Author: Frederick L. White, Leasing Activities Section, Pacific OCS Region, MMS.

SUPPLEMENTARY INFORMATION: The MMS is considering a variety of measures in conjunction with the PMTC to allow for the joint use of the OCS within portions of the PMTCSTR. The first measure which is being proposed is identical to parts (a) and (b) of a military stipulation used in OCS Oil and Gas Lease Sales 73 and 80. The second measure is a new stipulation for operational coordination and controls within the identified portion of the PMTCSTR. The third measure is identical to the "Hold Harmless" stipulation used in Sales 73 and 80. The other measures would preclude surface occupancy within 6 nautical miles of the Meteorological Rocket launch facility at PMTC and require subsea completions within the PMTCSTR. Areas within the PMTCSTR which are not shaded on the attached map would not be offered for lease.

Industry is invited to provide comments on the effect the described measures will have on their interest in the affected blocks. In addition, we are requesting detailed economic, geologic, and other technical information on the feasibility of these measures and the information to lessees clauses.

Measure 1—Operational Controls, Electomagnetic Emissions, and Evacuation

(a) The lessee agrees that, prior to operating or causing to be operated on its behalf, boat or aircraft traffic into individual designated warning areas, the lessee shall coordinate and comply with instructions from the Commander, Western Space and Missile Center (WSMC), the Commander, Pacific Missile Test Center (PMTC), and the Commander, Fleet Area Control and Surveillance Facility (FACSFAC), or other appropriate military agency. Such coordination and instruction will provide for positive control of boats and aircraft operating in warning areas at all times.

(b) The lessee agrees to control its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors, or subcontractors emanating from individual, designated defense warning areas in accordance with requirements specified by the commander, WSMC, the Commander, PMTC, and the Commander, FACSFAC, or other appropriate military agency, to the degree necessary to prevent damage to or unacceptable interference with Department of Defense flight, testing, or operations activities conducted within individual, designated warning areas. Necessary monitoring, control, and coordination with the lessee, its agents, employees, invitees, independent contractors or subcontractors will be effected by the Commander of the appropriate onshore military installation conducting operations in the particular warning area; provided, however, that control of such electomagnetic emissions shall permit at least one continuous channel of communication between a lessee, its agents, employees, invitees, independent contractors, or subcontractors, and onshore facilities.

Measure 2—Operational Coordination and Controls

(a) The lessee agrees that, prior to operating or causing to be operated on its behalf any exploration or development activities on the lease, and during such operatons, the lessee shall meet and coordinate with the Regional Director (RD), Mineral Management Service (MMS), and the Commander, Pacific Missile Test Center (PMTC), for

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operations scheduling. The lessee shall comply with instructions from the RD, MMS, after consultation with the Commander, PMTC, regarding operations scheduling. Such scheduling coordination shall commence at least 3 months prior to the expected start of operations and continue through completion of the operations. The lessee will be reqired to clear the lease for periods of up to 30 days following completion of the agreed upon scheduled operations. The 30-day period can be waived at the discretion of the Commander, PMTC.

(b) The lessee, recognizing that mineral exploration, development and production operations of the leased areas of submerged lands can impede military operations, hereby recognizes and agrees that the MMS reserves and has the right to temporarily suspend operations of the lessee under this lease in the interests of national security requirements, such temporary suspension of operations, including the removal of all surface facilities, the evacuation of personnel or appropriate sheltering of personnel not evacuated (appropriate shelter shall mean the protection of all lessee personnel for the entire duration of any Department of Defense activity from flying or failling objects or substances) will come into effect upon the order of the RD, MMS, after consultation with the Commander, PMTC, or higher authority, when national security interests necessitate such action. The RD may authorize time for stabilization of oil and gas operations in an emergency situation. It is understood that any temporary suspension of operations for national security purposes could extend from 3 to 14 days; however, any such suspension may be extended by order of the RD.

(c) The U.S. Navy (Navy) reserves the right to put a representative aboard any vessel or facility associated with exploration, drilling, or production activities within the PMTC Sea Test Range boundaries without prior notice. The Navy representative's activities shall not interefere with those of the vessel;'s crew, but the representative shall be allowed complete inspections of all spaces aboard. Navy representatives shall be reqired to sign an agreement provided by MMS to protect proprietary data.

Measure 3—Hold Harmless

Whether or not compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property which occurs in, on, or above the Outer Continental Shelf (OCS), to any person or persons or to any property of any person or persons who are agents, employees, or invitees, of the lessee, its agents, independent contractors, or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the OCS, if such injury by the lessee, or damage to such person or property occurs by reason of the activities of any agency of the U.S. Government, its contractors or subcontractors, or any of their officers, agents, or employees, being conducted as a part of, or in connection with, the programs and activities of the Western Space and Missile Center, the Pacific Missile Test Center, or other appropriate military agency.

Notwithstanding any limitations of the lessee's liability in section 14 of the lease, the lessee assumes the risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the U.S., its contractors, or subcontractors, or any of their officers, agents, or employees. The lessee further agrees to indemnify and save harmless the U.S. against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the U.S. against all claims for loss, damage, or injury sustained by agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installations and agencies, whether the same be caused in whole or in part of the negligence or fault of the U.S., its contractors or subcontractors, or any of their officers, agents, or employees and whether such claims might be sustained under theories of strict or absolute liability or otherwise.

Measure 4—No Surface Occupancy

If leased, those blocks and portions of blocks which are identified in this measure will be offered for lease with the requirement of no surface occupancy in the identified portions. The resources contained in the blocks subject to the provisions of this measure may be explored for and recovered by facilities placed on adjacent blocks or unrestricted portions of the same blocks.

All blocks subject to the provisions of this measure are included on Outer Continental Shelf Leasing Map No. 6B, Channel Islands. The provisions of this measure apply to those portions of the blocks listed within 6 nautical miles of the Pacific Missile Test Center Sea Test Range Meteorological Rocket launch facility as depicted on the attached map: Blocks 4657, 4558, 4557, 4556, 4457, 4456, 4455, 4356, and 4355.

Measure 5—Subsea Completions

Those blocks and portions of blocks which are identified in this measure will be offered for lease with the requirement of subsea completions in the identified portions.

All blocks subject to the provisions of this measure are located on Outer Continental Shelf Leasing Map No. 6B, Channel Islands. The provisions of this measure apply to those portions of the blocks listed within the Pacific Missile Test Center Sea Test Range but more than 6 nautical miles from the Meteorological Rocket launch facility as indicated on the attached map.

Whole Blocks:
4357, 4257, 4159, 4158, 4058, and 4057
Portions of Blocks: As shown on the attached map.
4558, 4557, 4457, 4456, 4455, 4356, 4355, 4259, 4258, 4255, and 4155

Information to lessees

This Information to Lessee clause is to inform potential lessees about the frequency and types of operations that take place in the Pacific Missile Test Center Sea Test Range (PMTCSTR) and to outline other measures which may affect oil and gas operations. Extensive, hazardous military operations take place in the PMTCSTR from 5 to 7 days a week. These operations include air to surface missiles, surface to surface missiles, low flying missiles, and gunnery. Pacific Missile Test Center (PMTC) operations are scheduled on a week-by-week basis. On occasion, the schedule is known up to 3 months in advance.

Close coordination between the industry and the PMTC schedulers will be necessary. It is expected that the PMTC will be able to schedule 120-day periods for industry operations (exploration, development, and production workovers). However, in the event of a sudden requirement for use of the area by PMTC, the industry may be required to shut down operations within 24 hours and, in some cases, to evacuate or vacate. The PMTC will need to schedule 30-day periods for their operations at different points throughout the lease period.

In addition to the limits on operations, national security may require the imposition of additional measures affecting leases within the PMTCSTR. The additional measures may include no direct illumination to the west except safety and navigation lights during certain times of the year and personnel security clearances.

Information requested: This Notice has been prepared to obtain the view of the oil and gas industry and any other parties on the above proposals. Comments should address the following topics:

(1) The effect the proposed mitigating measures will have on industry's interet in the blocks which are subject to the provisions detailed above. A ranking of relative interest for the blocks with the proposed mitigating measures would be useful in assessing the effects of the proposed measures.

(2) Alternative lease terms and conditions which would allow the industry to explore, develop, and produce hydrocarbon resources consistent with the intent of the mitigating measures included in this notice.

(3) The ability of industry to work within the 120-day periods allocated for operations (exploration, development, and production workovers). This assumes subsea completions for production operations within the Pacific Missile Test Center Sea Test Range as shown on the attached map.

(4) The feasibility of subsea completions or no surface occupancy operations within the areas identified in this Notice.

(5) Detailed economic, geologic, and other technical information concerning the feasibility of these measures. The information provided should include any cost differences between subsea completions and traditional offshore production methods.

All privileged or proprietary information including explanatory maps if provided will, upon request, be treated as for U.S. Government use only. However, summaries of the information submitted to MMS and the names of respondents submitting information will not be so treated.

Approved.

Dated: January 29, 1987.

William D. Bettenberg,

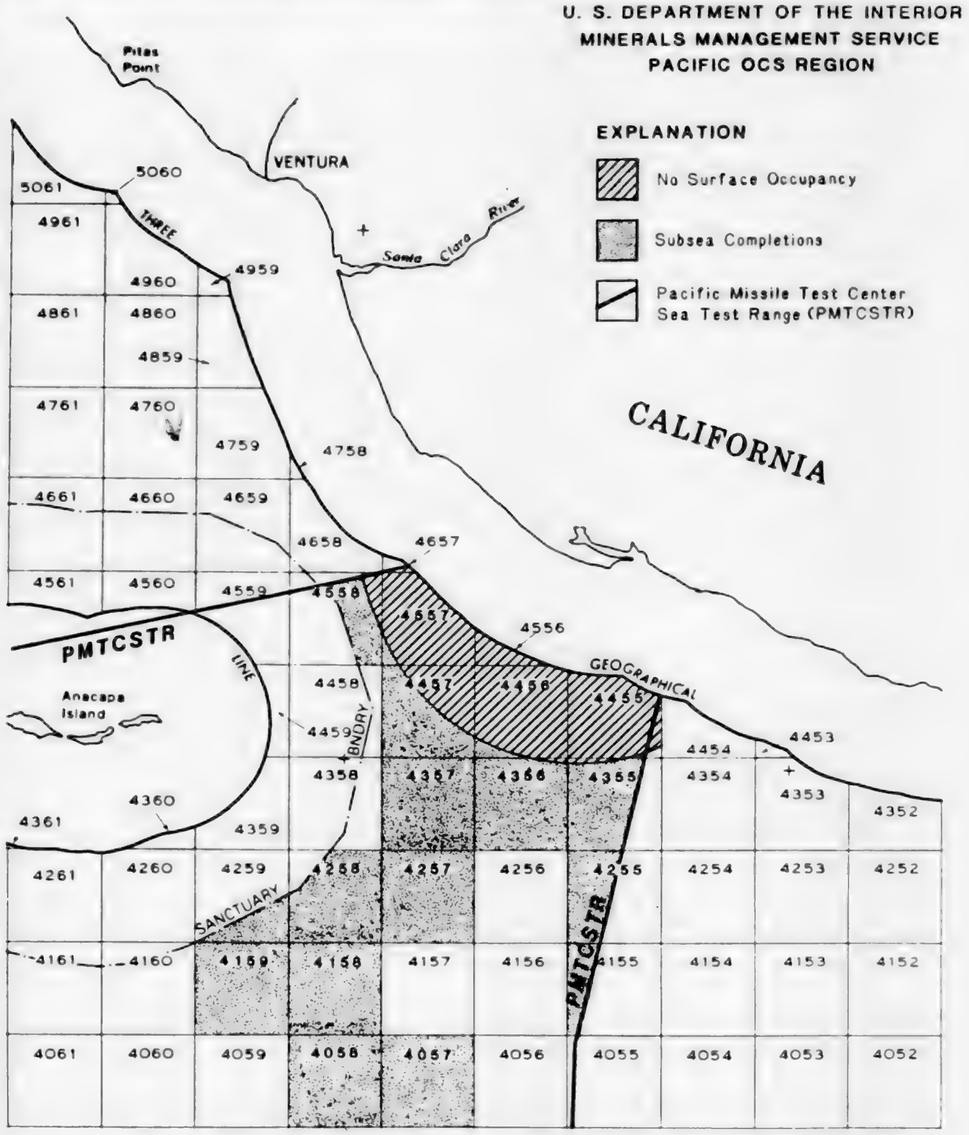
Director, Minerals Management Service.

J. Steven Griles,

Assistant Secretary—Land and Minerals Management.

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POTENTIAL MITIGATING MEASURES TO ALLOW JOINT USE WITHIN THE PACIFIC MISSILE TEST CENTER SEA TEST RANGE IN FUTURE LEASE SALES.

[FR Doc. 87-2139 Filed 2-5-87; 8:45 am]

BILLING CODE 4310-MR-C

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-18 (Sub-No. 91X]

The Chesapeake and Ohio Railway Co.—Abandonment Exemption—in Fayette County, KY

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by The Chesapeake and Ohio Railway Company of 4.11 miles of track in Fayette County, KY, subject to standard labor protection.

DATES: This exemption is effective March 9, 1987. Petitions to stay must be filed by February 23, 1987, and petitions for reconsideration must be filed by March 3, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB-18 (Sub-No. 91X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representatives:
Lawrence H. Richmond, 100 North Charles Street, Baltimore, MD 21201
and
Patricia Vail, 500 Water Street, Jacksonville, FL 32202

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystem, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area), or toll-free (800) 424-5403.

Decided: January 29, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,
Secretary.

[FR Doc. 87-2500 Filed 2-5-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30960]

Indiana and Ohio Railway Co.—Acquisition and Operation Exemption—Indiana and Ohio Railroad Co.; Exemption

Indiana and Ohio Railway Company (IORy) has filed a notice of exemption to acquire and operate two rail lines in Ohio owned and operated by the Indiana and Ohio Railroad Company (IOR), a corporate affiliate and a Class III railroad, as follows: (1) The 16.6-mile Middletown/Mason Secondary Track, extending from milepost 0 at Middletown, where it connects with the Consolidated Rail Corporation (Conrail), to milepost 12.2 at Mason, OH, and including a 4.4-mile branch line from Hageman Junction to Lebanon, OH; and (2) the 9.4-mile Blue Ash Secondary Track, extending from milepost 39.76 at Brecom to milepost 49.60 at the McCullough Yard, where it connects with Conrail, near Cincinnati, OH.

Comments must be filed with the Commission and served on Robert L. Calhoun, Sullivan and Worcester, 1025 Connecticut Avenue, NW., Suite 806, Washington, DC, 20036. (202) 775-8190.[1]

This notice is related to Finance Docket No. 30961, where the Indiana and Ohio Rail Corporation, the parent of IORy and IOR, has concurrently filed a notice of exemption to continue in control of IORy and IOR.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: January 21, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,
Secretary

[FR Doc. 87-2498 Filed 2-5-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30961]

Indiana and Ohio Rail Corp.—Continuance in Control Exemption—Indiana and Ohio Railway Co. and Indiana and Ohio Railroad Co.; Exemption

Indiana and Ohio Rail Corporation (IORC), a non-carrier, has filed a notice of exemption to continue in control of Indiana and Ohio Railway Company (IORy), after it becomes a rail carrier, and Indiana and Ohio Railroad Company (IOR), a Class III railroad.

IORC is the parent corporation of both IORy and IOR. IORy is a corporation organized for the purpose of acquiring two lines owned and operated in Ohio by IOR. The two lines total approximately 26 miles in length and run as follows: (1) Between Mason, OH, and Middletown, OH, where it connects with the Consolidated Rail Corporation (Conrail); and (2) between Brecon, OH and Norwood, OH, connecting with Conrail near Cincinnati, OH. The transaction by which IOR seeks to acquire these two lines is the subject of a notice of exemption in Finance Docket No. 39060, filed concurrently with this notice. IOR will continue to own and operate a third line that runs approximately 26 miles from Brookville, IN, to Valley Junction, OH, where it connects with Conrail.

IORC states that the three lines do not connect, although they are managed and operated as one entity. IORC also states that the continuance in control of IOR and IORy is not part of a series of anticipated transactions that would lead to a connection between them or any railroad in their corporate family. This is a transaction involving the acquisition or continuance in control of a nonconnecting carrier that is exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979). This will satisfy the requirements of 49 U.S.C. 10505(g)(2).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: January 21, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 87-2499 Filed 2-5-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-10 (Sub-No. 41X)]

Norfolk and Western Railway Co.—Abandonment Exemption—in Franklin County, OH

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exception.

SUMMARY: The Commission exempts from prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by Norfolk and Western Railway Company of 1.23 miles of track in Franklin County, OH, subject to standard labor protection.

[1] The Railway Labor Executives' Association (RLEA) filed an unsupported request for labor protection claiming that this transaction is subject to the mandatory labor protection provisions of 49 U.S.C. 11347. Since this transaction involves an exemption from 49 U.S.C. 10901, RLEA's request is rejected. *See* Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901, 1 I.C.C.2d 810 (1985).

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DATES: This exemption is effective March 9, 1987. Petitions to stay must be filed by February 17, 1987, and petitions for reconsideration must be filed by February 26, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB–10, (Sub.-No. 41X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Angelica D. Lloyd, Norfolk Southern Corporation, 204 S. Jefferson Street, Roanoke, VA 24042–0069.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: January 29, 1987

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary

[FR Doc. 87–2501 Filed 2–5–87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–10 (Sub-No. 40X)]

Norfolk and Western Railway Co.—Exemption—Abandonment in Madison County, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exception.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by Norfolk and Western Railway Company of 1.32 miles of track between milepost 27.92 and milepost 29.24 near Alton in Madison County, IL.subject to standard labor protection.

DATES: This exemption is effective March 9, 1987. Petitions to stay must be filed by February 17, 1987, and petitions for reconsideration must be filed by February 26, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB–10, (Sub.-No. 40X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Angelica D. Lloyd, Norfolk Southern Corporation, 204 South Jefferson Street, Roanoke, VA 24042–0069.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: January 29, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–2502 Filed 2–5–87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

February 3, 1987.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form/supporting documents is available); (2) the office of the agency issuing the form; (3) the title of the form; (4) the agency form number, if applicable; (5) how often the form must be filled out; (6) who will be required or asked to report; an estimate of the number of responses; (7) an estimate of the total number of respondents; (8) an estimate of the total number of hours needed to fill out the form; (9) an indication of whether Section 3504(h) of Pub. L. 96–511 applies; and, (10) the name and the telephone number of the person or office responsible for the OMB review. Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the item(s) contained in this list should be directed to the reviewer listed at the end of each entry *and* to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer *and* the Agency Clearance Officer of your intent as early as possible.

Department of Justice

Agency Clearance Officer: Larry E. Miesse 202/633–4312.

Revision of a Currently Approved Collection

(1) Larry E. Miesse, 202/633–4312
(2) Office for Victims of Crime, Office of Justice Programs, Department of Justice
(3) Crime Victims Compensation Grants; Revised Program Guideline
(4) No form number
(5) Semi-annually
(6) State and local governments. Information is necessary to submit a statutorily required report to the Congress on the effectiveness of the Victims of Crime Act of 1984 and to assure grantee's compliance with statutory criteria.
(7) 40 respondents
(8) 320 burden hours
(9) Not applicable under 3504(h)
(10) Jeff Hill—395–7340

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Larry E. Miesse, 202/633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Application to Extend Time of Temporary Stay
(4) I–539
(5) On occasion
(6) Individuals or households. Used by nonimmigrant aliens to extend time of temporary stay.
(7) 125,000 respondents
(8) 41,500 burden hours
(9) Not applicable under 3504(h)
(10) Jeff Hill—395–7340
(1) Larry E. Miesse, 202/633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Notice of Final Naturalization Hearing
(4) N–445B
(5) On occasion
(6) Individuals or households. Used to notify a U.S. citizen parent of the time and place of a final hearing for naturalization of his/her child.
(7) 9,000 respondents
(8) 747 burden hours
(9) Not applicable under 3504(h)
(10) Jeff Hill—395–7340
(1) Larry E. Miesse, 202/633–4312
(2) Office of the Comptroller, Office of Justice Programs, Department of Justice
(3) Categorical Assistance Progress Report
(4) OJARS 4587/1
(5) Other (Final Report)

(6) State or local governments, businesses or other for-profit, non-profit institutions
(7) 1,000 respondents
(8) 8,000 burden hours
(9) Not applicable under 3504(h)
(10) Jeff Hill—395–7340

New Collections

(1) Larry E. Miesse, 202/633–4312
(2) Bureau of Justice Statistics, Department of Justice
(3) 1987 Census of Public and Private Juvenile Detention, Correctional and Shelter Facilities
(4) CJ–17 (public), CJ–29 (private)
(5) Biennially
(6) State or local governments, non-profit institutions. This biennial undertaking provides descriptive data on public and private juvenile facilities and their residents used by policymakers, planners and practitioners.
(7) 3,150 respondents
(8) 5,250 burden hours
(9) Not applicable under 3504(h)
(10) Jeff Hill—395–7340
(1) Larry E. Miesse, 202/633–4312
(2) Office of Juvenile Justice and Delinquency Prevention, Department of Justice
(3) National Study of Law Enforcement Policies and Practices Regarding Missing Children and/or Homeless Youth
(4) No form number
(5) Other—One time
(6) State or local governments. This is the vehicle used to systematically study law enforcement agencies' investigative and case management practices in cases of missing or homeless children and youth.
(7) 2,528 respondents
(8) 1,055 burden hours
(9) Not applicable under 3504(h)
(10) Jeff Hill—395–7340

Larry E. Miesse,

Department Clearance Office, Department of Justice.

[FR Doc. 87–2468 Filed 2–5–87; 8:45 am]

BILLING CODE 4410-10-M

Federal Bureau of Investigation

Renewal; National Crime Information Center (NCIC) Advisory Policy Board

In accordance with the provisions of the Federal Advisory Committee Act [U.S.C. App. I (Supp. II, 1972)], and Title 41, CFR, 101–6.10, the Director, FBI, with the concurrence of the Attorney General, has determined that the renewal of the National Crime Information Center (NCIC) Advisory Policy Board is in the public interest in connection with the performance of duties imposed upon the FBI by law, and hereby gives notice of its renewal.

The Board recommends to the Director, FBI, general policy with respect to the philosophy, concept, and operational principles of the NCIC, particularly the system's relationship with local and State criminal justice systems.

The Board consists of thirty members of which twenty are elected from State and local criminal justice representatives; six are appointed by the Director, FBI, consisting of two members each from the judicial, prosecutorial, and correctional segments of the criminal justice community; four are representatives of criminal justice professional associations, e.g., American Probation and Parole Association, National Sheriff's Association, National District Attorney's Association, and the International Association of Chiefs of Police.

The Board functions solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed in accordance with the provisions of the Act.

Dated: December 20, 1986.

William H. Webster,

Director.

[FR Doc. 87–2496 Filed 2–5–87; 8:45 am]

BILLING CODE 4410-02-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–17,636]

Mead Corp. et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 18, 1986 applicable to all workers of the Mead Corporation, Chillicothe, Ohio. The Certification was published in the **Federal Register** on January 9, 1987 (52 FR 874).

Based on new information furnished to the Department, the certification notice is amended to properly reflect the correct worker group by inserting Chilpaco Mill in the notice.

The intent of the certification is to cover all workers of the Chilpaco Mill of Mead Corporation, Chillicothe, Ohio. The amended notice applicable to TA–W–17,636 is hereby issued as follows:

All workers of the Chilpaco Mill, Mead Corporation Chillicothe, Ohio who became totally or partially separated from employment on or after September 15, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 27th day of January, 1987.

Barbara Ann Farmer,

Acting Director, Office of Program Management, UIS.

[FR Doc. 87–2573 Filed 2–5–87; 8:45 am]

BILLING CODE 4510-30-M

[TA–W–17,613]

Muench-Kreuzer Candle, Syracuse, NY; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Correction

In FR Doc. 86–29085 appearing on page 46956 in the **Federal Register** of December 29, 1986, the June 24, 1985 impact date for workers at the subject plant is corrected by changing the impact date to February 21, 1986. All workers of Muench-Kreuzer Candle's Syracuse facility were covered under an earlier certification, TA–W–14,965 which expired on February 21, 1986.

Affirmative Determinations: TA–W–17,613: Muench-Kreuzer Candle Syracuse, NY.

The corrected Certification covers all workers of the firm separated on or after February 21, 1986.

Signed at Washington, DC, this 29th day of January 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87–2568 Filed 2–5–87; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total

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or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than Feburary 17, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 17, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 20th day of January 1987.

Marvin M. Fooks

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No	Articles produced
Pennzoil Products Co (Workers)	Charleston, WV	1/12/87	12/31/86	TA-W-18,967	Oil products
Pennzoil Exploration and Production Co (Workers)	Parkersburgh, WV	1/12/87	12/31/86	TA-W-18,968	Refined oil and related products
Chromalloy Drilling Fluids (Workers)	Houston, TX	1/12/87	12/16/86	TA-W-18,969	Oil field mud-drilling mud
LTV Energy (Workers)	Odessa, TX	1/20/86	12/28/86	TA-W-18,970	Oil field equipment.
Treolite Chemical (Company)	Midland, TX	1/20/87	1/1/87	TA-W-18,971	Oil field chemicals
Dresser Industries (Workers)	Edinburgh, TX	1/20/87	1/5/87	TA-W-18,972	Drilling fluids
Presto Lock, Inc (FIW)	Garfield, NJ	1/20/87	1/9/87	TA-W-18,973	Luggage hardware
Armco, Inc., National Supply Div (Workers)	Gainesville, TX	1/20/87	1/2/87	TA-W-18,974	Produce oil field equipment.
Berry Metal Co (Workers)	Harmony, PA	1/20/87	12/5/86	TA-W-18,975	Oxygen lances & Tips.
Gaffney Cline & Assoc (Co official)	Dallas, TX	1/20/87	12/10/86	TA-W-18,976	Financial consulting
Cooperweld Fine Wire, IAM	Oswego, NY	1/20/87	1/5/87	TA-W-18,977	Fine copper wire
Saturn Fuels, Ltd. (UMWA)	Uniontown, PA	1/20/87	1/5/87	TA-W-18,978	Coal
American Motors Corp. (UAW)	Milwaukee, WI	1/20/87	1/5/87	TA-W-18,979	Automatic stampings
Pine Bluff Indus. (Workers)	Pine Bluff, AK	1/20/87	1/5/87	TA-W-18,980	Women's blouses
Itmann Coal Co (UMWA)	Wyoming County, WV	1/20/87	1/6/87	TA-W-18,981	Metallurgical coal
Pioneer Fixture Corp. (Co official)	Paterson, NJ	1/20/87	1/5/87	TA-W-18,982	Display racks.
Bureau of Engraving (GCIU)	Minneapolis, MN	1/20/87	1/6/87	TA-W-18,983	Printed circuit boards
FIP, Inc (Workers)	Houston, TX	1/20/87	1/2/87	TA-W-18,984	High & low pressure oil valves.
LTV Steel (Workers)	Orange, CA	1/20/87	1/6/87	TA-W-18,985	Flat rolled steel
Amoco Production Co. (workers)	Edgewood, TX	1/20/87	1/2/87	TA-W-18,986	Sulphur liquid gas
Jackson blouse (ILGWU)	Mervesville, PA	1/20/87	1/8/87	TA-W-18,987	Blouses
Southland Royalty Co (Company)	Midland, TX	1/20/87	1/5/87	TA-W-18,988	Oil & Gas Exploration & Prod.
UTICA-Duxbak, Inc (Workers)	Utica, NY	1/20/87	1/8/87	TA-W-18,989	Hunting Clothing For Men.
Westinghouse Elec., Co (Workers)	Bellefo, OH	1/20/87	1/9/87	TA-W 18,990	Fractional H.P. Motors
D.J. Inspection Serv. (Workers)	Odessa, TX	1/20/87	1/5/87	TA-W-18,991	Inspect pipes used in oil wells.
E.K. Birdwell (Workers)	Keene, TX	1/20/87	1/7/87	TA-W-18,992	Brooms, mops, brushes, sponges, vacuum bags
LTV Steel Corp. (Workers)	Houston, TX	1/20/87	12/18/86	TA-W-18,993	Process orders to mills & ships to customers
Clayton Silver Mines (Workers)	Clayton, ID	1/20/87	12/30/86	TA-W-18,994	Raw silver ore
EIS Div. of Parker Hannifin Corp. (Union)	West Bend, WI	1/20/87	1/9/87	TA-W-18,995	Brake shoes & disc brakes.
Joy Mfg. (Workers)	Richmond, TX	1/20/87	1/8/87	TA-W-18,996	Casting for valves used in oil wells
Tenneco Oil (Workers)	San Anton, TX	1/20/87	1/9/87	TA-W-18,997	Natural gas & oil
US Steel Mining Co (UMWA)	Washington, TX	12/22/87	2/12/86	TA-W-18,998	Overhaul of mine machinery
Island Creek Coal Co (UMW)	Bayard, WV	1/20/87	12/19/86	TA-W-18,999	Coal
JICO Fishing Tools (Workers)	Odessa, TX	1/20/87	1/6/87	TA-W-19,001	Oil service
Panther Drilling, Inc (Company)	Dickinson, TX	1/20/87	1/1/87	TA-W-19,001	Oil service
CGG American Serv. (Company)	Houston, TX	1/20/87	1/5/87	TA-W-19,002	Oil service
Brown Shoe Co (Leather Goods Wkers.)	St. Louis, MO	1/20/87	1/7/87	TA-W 18,003	Women's casual shoes
Fire Check, Inc (Workers)	McAllen, TX	1/20/87	1/8/87	TA-W 19,004	Install fire sprinklers
Machem Well Service (Worker)	Midland, TX	1/20/87	1/6/87	TA-W-19,005	Repair oil wells & pumps
Harnischfeger Corp. (Workers)	Oak Creek, WI	1/20/87	1/8/87	TA-W-19,006	Hoists, overhead cranes components for mining shovels
Siemons Energy & Automation (I.U.E. Union)	Norwood, OH	1/20/87	1/6/87	TA-W-19,007	Electric motors & generators.
General Chemical (ICWU)	St. Louis, IL	1/20/87	1/6/86	TA-W-19,008	Aluminum sulfate
C.I. Walker Machinery (Workers)	Charleston, WV	1/20/87	12/17/86	TA-W-19,009	Caterpillar equipment.
Royal Coal Co (Workers)	Beckley, WV	1/20/87	12/22/86	TA-W-19,010	Coal production
Teledyne Wisc. Motor (Workers)	W. Allis, WI	1/20/87	1/9/87	TA-W-19,011	Air cooled gasoline engines
Fire Equipment Co. (Company)	Odessa, TX	1/20/87	12/17/86	TA-W-19,012	Repair oil field equipment

[FR Doc. 87-2570 Filed 2-5-87; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 17, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 17, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 26th day of January 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Troutman (workers)	Sparta, NC	1/22/87	1/15/87	TA-W-19,013	Men's and boys' slacks.
Meipmt, Inc. (GCIU union)	Milwaukee, WI	1/22/87	1/15/87	TA-W-19,014	Print rotogravure cylinders.
Analex (workers)	Aurora, CO	1/22/87	1/9/87	TA-W-19,015	Oil drilling.
J.D.L., Inc. (workers)	Lafayette, LA	1/26/87	1/7/87	TA-W-19,016	Hydraulic and oilfield hose.
Fuel Resources Devel. (president)	Denver, CO	1/26/87	1/6/87	TA-W-19,017	Crude oil and natural gas
Lowe Alpine Systems (workers)	Lafayette, LA	1/26/87	1/12/87	TA-W-19,018	Camera bags and back packs.
French Tool & Supply (manager)	Odessa, TX	1/26/87	1/6/87	TA-W-19,019	Sell trucks to oil companies.
Lone Star Industries (workers)	New Orleans, LA	1/26/87	1/13/87	TA-W-19,020	Production of cement.
Alan Meks (workers)	Odessa, TX	1/26/87	12/11/86	TA-W-19,021	Portrait Studio (service)
Paulsen Wire Rope Corp. (president)	Sunbury, PA	1/26/87	1/12/87	TA-W-19,022	Steel wire rope
Joy Mfg. Co. (workers)	Richmond, TX	1/26/87	1/12/87	TA-W-19,023	Drilling equipment.

[FR Doc. 87-2569 Filed 2-5-87 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Unemployment Insurance Program Letter No. 4-87, Interpreting Reasonable Assurance for Educational Employees

The Employment and Training Administration (ETA) interprets Federal law pretaining to unemployment insurance as part of the fulfillment of its role in administration of the Federal-State unemployment insurance system. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to State Employment Security Agencies.

Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA) requires, as one of several conditions for certain tax credits to employers, that individuals employed by State and local government entities and certain nonprofit organizations be covered by State unemployment insurance (UI) laws. UI benefits are payable to such individuals in the same amount, on the same terms, and subject to the same conditions as other services subject to the State UI law. However, section 3304(a)(6)(A) also contains a required exception for services performed for educational and certain other institutions. This exception requires the denial of benefits between academic years or terms and during vacation periods and holiday recesses within terms if the employee has a "reasonable assurance" of performing services in such educational employment in the following year, term or remainder of a term.

UIPL No. 4-87 clarifies the application of reasonable assurance for purposes of the between and within terms denial. The UIPL consolidates and restates, with one exception noted in the text, previous issuances regarding reasonable assurance. The UIPL is published in the **Federal Register** to inform the public.

Dated: January 28, 1987.

Roger D. Semerad,

Assistant Secretary of Labor.

Directive: Unemployment Insurance Program Letter No. 4-87
To: All State Employment Security Agencies
From: Donald J. Kulick, Administrator for Regional Management
Subject: Interpretation of "Reasonable Assurance" in Section 3304(a)(6)(A), Federal Unemployment Tax Act

1. *Purpose:* To provide guidance to State agencies on the interpretation of "reasonable assurance" as it relates to application of the denial provisions of Section 3304(a)(6)(A), Federal Unemployment Tax Act (FUTA).

2. *References:* Section 3304(a)(6)(A), FUTA; *Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976—Pub. L. 94-566* and its five supplements; UIPL 18-76 (March 16, 1978); UIPL 4-83 (November 15, 1982); UIPL 41-83 (September 13, 1983); UIPL 30-85 (50 FR 48,280, published November 22, 1985).

3. *Background:* Section 3304(a)(6)(A), FUTA, requires States to pay compensation based on services performed for certain governmental entities and non-profit organizations on the same terms and conditions as are applicable to other services covered by State law. Exceptions to this requirement are found in five distinct clauses of Section 3304(a)(6)(A). These exceptions provide that an employee of an educational institution, an education service agency, and certain other entities will be ineligible to receive unemployment compensation (based on such educational employment) between academic years or terms and during vacation periods and holiday recesses within terms if the employee has a "reasonable assurance" of performing services in such educational employment in the following year, term or remainder of a term. The provisions creating these exceptions are referred to as the "between and within terms denial" provisions.

"Reasonable assurance" is defined as a written, oral, or implied agreement that the employee will perform services in the same or similar capacity during the ensuing academic year, term, or remainder of a term. The "same or similar capacity" refers to the type of services provided; i.e., a "professional" capacity as provided by clause (i) or a "nonprofessional" capacity as provided by clause (ii). For a reasonable assurance to exist, the educational institution must provide a written statement to the State agency stating that the employee has been given a bona fide offer of a specified job (e.g., a teaching job) in the second academic period.

Reviews of court cases and selected States' procedures have revealed inconsistencies in the application of the between and within terms provisions, particularly where the circumstances of employment change from one academic period to the next. This interpretation is being issued to clarify the effect of the between and within terms denial on certain classes of claimants and to ensure that States consistently apply these Federal law requirements. This UIPL consolidates and restates, with one exception which is noted, previous issuances regarding reasonable assurance.

The interpretation in this UIPL applies to all clauses of Section 3304(a)(6)(A) regarding reasonable assurance, including optional clause (v).

4. *Interpretation.* The unemployment compensation program is intended in part to relieve the impact of involuntary unemployment on the claimant. The between and within terms denial provisions in Section 3304(a)(6)(A) reflect this in that they do not totally prohibit employees of educational institutions from receiving unemployment benefits between or within academic years. These provisions were created to prevent an employee with a reasonable assurance of resuming employment in the next ensuing academic period from receiving benefits during certain holiday and vacation periods or between academic years or terms. The provisions of Section 3304(a)(6)(A) have, therefore, been interpreted (1) to require denial of benefits to claimants between and within academic years who have a reasonable assurance of resuming employment in the next ensuing academic period, and (2) to require the payment of benefits to otherwise eligible claimants who

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do not have a reasonable assurance, or who have wage credits not earned in employment to which the between and within terms clauses apply.

Accordingly, the following principles apply to reasonable assurance and its effect on the between and within terms denial provisions in section 3304(a)(6)(A):

a. There must be a bona fide offer of employment in the second academic period in order for a reasonable assurance to exist. For example, if an individual providing an assurance had no authority to do so, then the offer is not bona fide. Moreover, a withdrawal of an offer of employment does not necessarily mean the original offer was not bona fide. Claimants may at any time challenge whether an offer of work is bona fide.

b. An offer of employment is not bona fide if only a *possibility* of employment exists. Generally, a possibility instead of a reasonable assurance of employment exists if (1) the circumstances under which the claimant would be employed are not within the educational institution's control, *and* (2) the educational institution cannot provide evidence that such claimants normally perform services the following academic year.

c. Reasonable assurance exists only if the economic terms and conditions of the job offered in the second period are not substantially less (as determined under State law) than the terms and conditions for the job in the first period. This position modifies that stated on page 23 of Supplement 5, of the *Draft Legislation*.

The State agency is responsible for determining whether a claimant has a reasonable assurance of performing services the following academic year. If an issue regarding reasonable assurance arises, States are to follow regular fact-finding procedures for determining a claimant's eligibility.

If a reasonable assurance exists, application of the between and within terms provisions remains subject to the crossover provisions discussed in UIPLs 18–78 and 30–85.

A claimant who initially has been determined to not have a reasonable assurance will subsequently become subject to the between and within terms denial provisions when the claimant is given such reasonable assurance.

5. *Examples.* The following examples have been developed to assist States in understanding how our interpretation may be applied to some of the more complex situations which may arise. States determine whether the specific economic terms and conditions of the job offered in the second period are substantially less than the job in the first period. Therefore, results in the examples of determinations regarding economic terms and conditions may not be identical in all States. Since not all cases can be anticipated, the general principles stated in the previous section should be consulted for cases not falling within these examples.

In the following examples, an "on-call" substitute teacher is one who is generally available whenever summoned to perform services for the employer, usually on a day to day basis. A "long-term" substitute, on the other hand, fills in under certain circumstances for other teachers for an extended period of time.

a. *Refusal of a Contract in the Second Academic Year.* (Principles 4.a and 4.c) A principal refuses a contract for the second academic year as a teacher; the school offers no other employment. The State agency determines that the economic terms and conditions are substantially the same as in the first academic year. Therefore, a reasonable assurance exists.

b. *Offers of Reduced Employment.* (Principles 4.a and 4.c) A full-time teacher during the first academic year is offered a contract to teach one hour per day during the second academic year. Rather than refuse the contract and risk no earnings at all, the teacher accepts. The State adjudicating the claim considers this reduction to be a substantial change in economic terms and conditions. Therefore, no reasonable assurance exists.

c. *Full-time Teacher Offered Long-Term Substitute Contract.* (Principles 4.a and 4.c) A full-time teacher is told that the teacher's current contract will not be renewed, but is offered a one-year contract as a "long-term" substitute teacher. In this district, a "long-term" substitute replaces a regular full-time teacher who may be ill or on leave of absence for as much as an entire school year. The rate of pay is the same as for a full-time teacher and daily employment is guaranteed for the term of the contract. In this case, the State agency determines that the economic terms and conditions are identical. Therefore, a reasonable assurance exists.

d. *Full-time Teacher Placed on On-call List.* (Principles 4.b and 4.c) A full-time teacher in the first academic year is placed on the on-call list for the next year. The State adjudicating the claim requires the educational institution to indicate that the claimant will be given substantially the same amount of employment for the between and within terms denial provisions to apply. This could occur if the employer indicates that teachers who were full-time the prior year are called to work before other substitute teachers and that those at the top of the substitute list usually work four to five days a week most weeks in the year. The educational institution indicates that the claimant is only added to the bottom of the substitute list and will be infrequently called. In this case, the State agency determines that this is a substantial reduction in the economic terms and conditions of the job. A reasonable assurance does not exist because (1) the claimant is offered only a possibility of work, and (2) any work that does materialize would probably result in a substantial reduction in the hours worked.

e. *On-call Substitute Teacher Retained on On-call List.* (Principles 4.a and 4.c) An on-call substitute teacher in the first academic year is kept on the on-call list for the next year. The circumstances under which the teacher will be called for work are not changed. The State determines that a substantial change in economic terms and conditions is not anticipated. Therefore, the between and within terms denial provisions would apply because the claimant has a reasonable assurance of performing services.

f. *On-Call Substitute Retained, but Offered Reduced Hours of Work.* (Principles 4.b and 4.c) An on-call substitute is retained on the on-call list. However, a new collective bargaining agreement provides that certified teachers will be called to work before non-certified teachers. The claimant is a non-certified teacher and had previously been one of the first substitutes called for work, but now will be called infrequently if at all. The State may determine that the between and within terms denial provisions would not apply for the same reasons cited in (d).

g. *Reasonable Assurance vs. a Possibility of Work.* (Principles 4.a and 4.b) A teacher is offered the same job in the second academic year in a special program which is funded from an outside source. This program has been funded for the past four years. However, at the beginning of summer recess, no notification of the following year's funding has been received. Other than this lack of notification, which usually arrives late in the summer, no reason exists to indicate that the program will be suspended or abolished. While the circumstances under which the teacher is employed are not within the school's control, the school can still establish a pattern showing that the program is likely to be funded in the second academic year. Therefore, the offer of work is bona fide and a reasonable assurance exists. If the program is not funded and the claimant is not employed in accordance with the assurance given earlier, the State must consider whether there was a bona fide offer of employment.

6. *Action Required.* States are requested to review their laws and procedures and make any changes needed to conform with this interpretation.

7. *Inquiries.* Direct inquiries to the appropriate Regional Office.

[FR Doc. 87–2571 Filed 2–5–87; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringes benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this date may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3504, Washington, DC 20210.

New General Wage Determination Decisions

The number of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume II

Oklahoma:
OK87–16—pp. 912a–912d
OK87–17—pp. 912e–912f

Volume III

Arizona:
AZ87–4—pp. 34a–34b

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Kentucky:
KY87–27 (Jan. 2, 1987—p. 361
Massachussetts:
MA87–1 (Jan. 2, 1987)—p. 373, pp. 383–386
MA87–2 (Jan. 2, 1987)—p. 388, pp. 397–399
MA87–3 (Jan. 2, 1987)—pp. 405–410
New York:
NY87–4 (Jan. 2, 1987)—pp.714–718
Pennsylvania:
PA87–14 (Jan. 2, 1987)—pp. 948–955

Volume II

Indiana:
IN87–2 (Jan. 2, 1987)—pp. 253–254, pp. 259–260
IN87–5 (Jan. 2, 1987)—pp. 293–294
Missouri:
MO87–5 (Jan. 2, 1987)—p. 622–624
Oklahoma:
OK87–14 (Jan. 2, 1987)—pp. 901–903, pp. 905–909
Texas:
TX87–29 (Jan. 2, 1987)—p998
TX87–47 (Jan. 2, 1987)—p. 1065
Listing by location (index)—pp. xlvi-xlvii
Listing by decision (index)—pp. lxi-lxiii

Volume III

California:
CA87–1 (Jan. 2, 1987)—p. 36
CA87–2 (Jan. 2, 1987)—p. 46, pp. 48–62
CA87–4 (Jan. 2, 1987)—pp. 68–100a
Idaho:
ID87–1 (Jan. 2, 1987)—pp. 140–152
Montana:
MT87–1 (Jan. 2, 1987)—pp. 166–182
Nevada:
NV87–2 (Jan. 2, 1987)—p. 258
NV87–4 (Jan. 2, 1987)—p. 268

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or abour January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 30 day of January 1987.

James L. Valin,

Assistant Administrator.

[FR Doc. 87–2265 Filed 2–5–87; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M–86–234–C]

Pyro Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Pyro Mining Company, P.O. Box 267 Sturgis, Kentucky 42459 has filed a petition to modify the application of 30 CFR 75.312 (air passing through abandoned, inaccessible, or robbed area) to its Pyro #9 Wheatcroft Mine (I.D. No. 15–13920) located in Webster County, Kentucky. The petition is filed

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under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air that has passed through an abandoned area or an area which is inaccessible or unsafe for inspection not be used to ventilate any working place in any mine.

2. Petitioner states that the northeast sub-mains serves as the intake air course for three operating sections. These sub-mains have taken considerable weight from horizontal and vertical stresses. As a result of these stresses, the effective area has been reduced, causing a high pressure area for the fan to overcome.

3. As an alternate method, petitioner proposes to cut the southwest panel into the main air course (northeast sub-main) at the intake air shaft and to use the panel to ventilate number one and three units.

4. In support of this request petitioner states that:

(a) Continuous reading methane and carbon monoxide sensors will be placed where intake air from the rooms dump into the 1st main southeast;

(b) The methane sensor will be set to alarm if the level reaches +/− 0.25%;

(c) An audible alarm will sound on number three unit to alert miners if the limits are exceeded. The alarm will be fail-safe and activated by the computer;

(d) An immediate investigation will begin if an alarm sounds. Persons will be withdrawn to a safe place until the cause of the alarm is determined; and

(e) The intake air course will be examined weekly.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standard, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 9, 1987. Copies of the petition are available for inspection at that address.

Dated: January 27, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-2574 Filed 2-5-87; 8:45 am]

BILLING CODE 4510-43-M

Office of the Assistant Secretary for Veterans' Employment and Training

Change in Procedures for Grant Application; Job Training Partnership Act, Title IV, Part C, Program Year 1987

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, Labor.

ACTION: Notice.

SUMMARY: This notice sets forth a change and schedule for the Solicitation for Grant Application (SGA) for the operation of employment and training programs in accordance with the State Allocation portion of Title IV, Part C of the Job Training Partnership Act (JTPA). State allocations are mandated by the JTPA regulations contained at 20 CFR 635.11. The change in procedure is that eligible applicants for Program Year 1987 (July 1, 1987–June 30, 1988) will be limited to State JTPA administrative entities. In previous Program Years, Service Delivery Areas (SDAs) designated by the Governor were also eligible to apply directly for funding.

SUPPLEMENTARY INFORMATION: Procedures in implementing the State allocation portion of JTPA, Title IV, Part C, until this time have utilized a competitive process. In some States, competition has been intense, with many SDAs and the State JPTA administrative entities applying for all or part of the funds available in a given State. In order to provide a fair and impartial evaluation of all proposals, a review process has been utilized by the Department that takes a great deal of time and effort to administer. Unfortunately, the average time from proposal submission to grant award decisions has proven to be approximately eight months. As a result, many grantees are faced with implementing a program that may not be as responsive as possible to eligible veterans' employment and training needs due to changed labor markets, training and placement opportunities.

This change in procedures will streamline the review and approval process, while still emphasizing local decisionmaking in the analysis of veterans' employment and training needs and development of programs to address them. While State JTPA administrative entities are the only eligible applicants, they will be encouraged in the SGA to utilize SDA's and local community-based organizations (CBOs), especially veterans' service organizations. As in the past, a 100% match will be required of the State.

It is anticipated that the SGA will be issued in late February, 1987. It will provide specific examples of how States can work effectively with SDAs and CBOs to obtain as wide a geographical impact as possible. It will also provide examples of the wide variety of resources that can be utilized as a match or in-kind contribution.

Consultation and technical assistance relative to the development of an application will be available upon request from the appropriate State Director for Veterans' Employment and Training Service for the particular State involved.

Signed at Washington, DC, this 2nd day of February, 1987.

Donald E. Shasteen,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 87-2572 Filed 2-5-87; 8:45 am]

BILLING CODE 4510-79-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Records Schedules; Availability

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least once monthly of agency requests for records disposition authority (records schedules) which include records being proposed for disposal or which will reduce the records retention period for records already authorized for disposal. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorize agencies to dispose of records that lack archival value. NARA invites public comment on proposed records disposals as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before March 23, 1987.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the title of the

requesting agency. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments. Supplementary Information: Each year U.S. Government agencies create billions of records in the form of paper, film, magnetic tape, and other media. [In order to control the accumulation of records, Federal agencies prepare records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the value of the records for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules. This public notice identifies the Federal agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records to be scheduled for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending Approval

1. Department of the Air Force, Directorate of Administration, Records, Management Branch (N1–AFU–87–10). Hospital recovery claims records.

2. Department of the Air Force Directorate of Administration, Records Management Branch (N1–AFU–87–11). Background investigations of applicants for child care positions.

3. Department of the Army, Information Systems Command, Records Management Branch (N1–AU–87–5, –6, and –7). Records relating to the Army Information Management Program (overall policy records of offices with Army-wide responsibility are permanent).

4. Department of the Army, Installations (N1–338–86–4). Housekeeping records of Army Installations, ca. 1945–65 (schedule provides for permanent retention of key policy and program records).

5. Department of Agriculture, National Agricultural Statistics Service (N1–355–86–1). Update of agency's comprehensive records schedule.

6. Department of Energy, Economic Regulatory Administration (NC1–434–82–5). Rulemaking Docket Files and forms submitted by energy companies pertaining to regulation of energy resources from 1973 to 1981.

7. Environmental Protection Agency, Office of Toxic Substances (NC1–412–85–12). Comprehensive schedule covering all records of the office.

8. Department of the Interior, Bureau of Land Management, Division of Information Resources Management (NC1–49–85–2). Comprehensive schedule for agency records.

9. Department of Justice, Federal Bureau of Investigation, Records Management Division (N1–65–86–11, and N1–65–87 –3 and –4). Documentation containing personal information of insufficient historical or other value to warrant archival retention. Expunction of the information has been mandated by order of a Federal court.

10. Department of Justice, Federal Bureau of Investigation, Records Management Division (N1–65–87–1, –2, and –6). Documentation containing personal information of insufficient historical or other value to warrant archival retention. Expunction of the information has been requested by the individual to whom it relates.

11. Department of State, Bureau of Public Affairs, Office of Public Programs (NC1–59–84–6). Records relating to seminars, conferences, and other meetings organized to inform the public of foreign affairs policy.

12. Tennessee Valley Authority, Corporate Administration and Planning (N1–142–87–4). Acquired utility property records.

13. Department of Transportation, Office of the Secretary (N1–398–86–4). Employee fitness records.

14. Department of the Treasury, Bureau of Public Debt, Office of Securities and Accounting Services (N1–53–87–1). Fiscal agency checks issued by the Federal Reserve Banks as fiscal agents of the United States for payments in connection with United States securities.

Dated: January 29, 1987.

Frank G. Burke,

Acting Archivist for the United States.

[FR Doc. 87-2474 Filed 2-5-87; 8:45 am]

BILLING CODE 7515-01-M

NUCLEAR REGULATORY COMMISSION

Availability of Final Generic Technical Position in High-Level Waste Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of the "Generic Technical Position on Determination of Radionuclide Sorption For High-Level Nuclear Waste Repositories."

ADDRESSES: This document is available for public inspection and copying at the U.S. Nuclear Regulatory Commission, Public Document Room, 1717 H Street, NW., Washington, DC 20555, telephone 202/634–3273.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth C. Jackson, Section Leader, Geochemistry Section, Geotechnical Branch, Division of Waste Management U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301/427–4541.

SUPPLEMENTARY INFORMATION: The Nuclear Waste Policy Act of 1982 (NWPA) (Pub. L. 97–425) and the Commission regulation 10 CFR Part 60 promote interaction between the Department of Energy (DOE) and NRC prior to submittal of a license application for a geologic repository. These interactions are to fully inform DOE about the level of information that must be provided in a license application to allow a licensing decision to be made by NRC.

The principal mechanism for providing guidance to the DOE is completion by the NRC staff of Site Characterization Analyses (SCA) submitted according to the NWPA and 10 CFR Part 60. Additional means have been developed to supplement the guidance provided in the SCA's. These include staff technical positions on both generic and site-specific issues. Generic Technical Positions (GTP) establish the staff's position on broad technical issues that would be applicable to any site. Site Technical Positions (STP) establish the staff's position on a site-specific technical issue. A number of GTP's will be developed by the staff to establish staff positions on generic issues or information requirements for their resolution.

On January 28, 1986, the NRC published for comment a draft version of the "Generic Technical Position on Determination of Radionuclide Sorption for High-Level Nuclear Waste Repositories" (51 FR 3525). Public comments on the draft version were received from a number of groups and individuals. Changes and clarifications have been made in the final GTP as a result of comments received. Copies of comments may be examined in the U.S. Nuclear Regulatory Commission Public Document Room—1717 H Street, NW., Washington, DC 20555.

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This GTP provides guidance to DOE on what information the staff considers to be needed to support assessments of the effects of radionuclide sorption upon the ability of a high-level waste repository to meet the performance objectives specified in 10 CFR Part 60. The GTP summarizes guidance which has been given to DOE through technical correspondence, documented technical meetings, and other mechanisms provided by NRC/DOE Procedural Agreement (48 FR 38701, dated 8/25/83).

Dated at Silver Spring, Maryland, this 30th day of January 1987.

For the Nuclear Regulatory Commission.

John J. Linehan,

Acting Chief, Repository Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 87-2562 Filed 2-5-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-237]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-19 issued to Commonwealth Edison Company (CECo), for operation of the Dresden Nuclear Power Station, Unit No. 2, located in Grundy County, Illinois.

The licensee's application for amendment dated December 10, 1986, as supplemented January 28, 1987, would change the Dresden Unit 2 License and Technical Specifications to support Cycle 11 operation. This latter submittal provides additional changes which supplement the Licence and Technical Specification changes requested in the licensee's application dated December 10, 1986, as follows. As part of the Electric Power Research Institute's alternate water chemistry program, CECo and General Electric Company (GE) are assessing the effects of hydrogen water addition on fuel rod performance. Three fuel rods are being removed for a precharacterized GE Lead Test Assembly (LTA) for shipment to GE for destructive examination. Replacement rods are being taken from another irradiated GE assembly. As a result of reconstitution, the LTA would have an approximate 3% increase in local peaking; therefore, a revision to the applicable maximum average planar linear heat generation rate (MAPLHGR) curve is required to assure adequate protection of the fuel assembly design criteria. In the January 28 application CECo proposes to amend Provisional Operating License DPR-19 for Dresden Unit 2 to modify the MAPLHGR curve for reconstituted GE assembly LY5458. In addition, minor labeling changes to specify fuel vendors have been included per NRC requests as well as pagination changes resulting from the MAPLHGR curve change. The December 10, 1986 application request was originally notices in the **Federal Register** on January 28, 1987 (52 FR 2876).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. In addition, the Commission published guidance in the **Federal Register** (March 6, 1986, 51 FR 7751) concerning examples of amendments that are not likely to involve a significant hazards consideration. Example (i) is "a purely administrative change to technical specifications: For example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." Example (i) encompasses the minor labeling and pagination changes requested by the licensee because these changes are purely administrative and have no material effect on the operation of the plant. Therefore, the staff proposes to determine that these adminsistrative changes involve no significant hazrds considerations. In accordance with 10 CFR 50.92 the licensee has performed the following analysis on the proposed MAPLHGR change:

CECo has evaluated the proposed Technical Specification amendment and determined that it does not represent a signficant hazards consideration. Based on the criteria for defining the significant hazards consideration established in 10 CFR 50.92, operation of Dresden Unit 2 Cycle 11 with reconstituted GE LTA will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated:

The reconstituted fuel assembly is mechanically identical to the original unreconstituted fuel assembly. Accident consequences are not increased by the small increase in local peaking in this assembly due the more restrictive MAPLHGR limits established by this amendment.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because:

All accidents involving reactor fuel, including refueling and fuel handling accidents, have previously been considered. The reconstituted assembly does not create any new scenarios beyond those previously analyzed.

3. Involve a significant reduction in the margin of safety because:

The reconstituted fuel assembly has been reanalyzed by GE using NRC approved methodolgies, as described in GESTAR; all applicable design criteria have been met. Therefore, the margin of safety is maintained.

The staff has reviewed the licensee's no significant hazards consideration determination on the proposed MAPLHGR change and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delievered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 9, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Comission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John A. Zwolinski, Director, BWR Project Directorate #1, Division of BWR Licensing: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Michael I. Miller; Isham, Lincoln and Beale, Three First National Plaza, Suite 5200, Chigago, Illinois 60602, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Dated at Bethesda, Maryland, this 3rd day of February 1987.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, BWR Project Directorate No. 1, Division of BWR Licensing.

[FR Doc. 87-2563 Filed 2-5-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-455]

Commonwealth Edison Co., Byron Station, Unit No. 2; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF-66 to Commonwealth Edison Company (the licensee) which authorizes operation of the Byron Station, Unit No. 2 (the facility) at reactor core power levels not in excess of 3411 megawatts thermal in accordance with the provisions of the license, the Technical Specifications and the Environmental Protection Plan. The issuance of this license was approved by the Nuclear Regulatory Commission at a meeting on January 30, 1987, and it supersedes the License for Fuel Loading and Low Power Testing, License No. NPF-60, issued on November 6, 1986.

Byron Station, Unit No. 2 is a pressurized water reactor located in north central Illinois, 2½ miles east of the Rock River, 3 miles south-south-west of the town of Byron, and 17 miles southwest of Rockford, Illinois. The station is within Rockvale Township.

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Ogle County, Illinois. The license is effective as of the date of issuance.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license for the Byron Station was published in the **Federal Register** on December 15, 1978 (43 FR 58659).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement and the Assessment of the Effect of License Duration on Matters Discussed in the Final Environmental Statement for the Byron Station, Units 1 and 2 (dated April 1982) since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Facility Operating License No. NPF-66, with Revisions to Technical Specifications (Appendix A); (2) Facility Operating License NPF-37, dated February 14, 1985 with Technical Specifications, Appendix A, NUREG-1113 and the Environmental Protection Plan, Appendix B; (3) Facility Operating License NPF-60, issued November 6, 1986; (4) the report of the Advisory Committee on Reactor Safeguards, dated March 9, 1982; (5) the Commission's Safety Evaluation Report, dated February 1982 (NUREG-0876), and Supplements 1 through 8; (6) the Final Safety Analysis Report and Amendments thereto; (7) the Environmental Report and supplements thereto; (8) and the Final Environmental Statement, dated April 1982 (NUREG-0848).

These items are available for inspection at the Commission's Public Document Room located at 1717 H Street, NW., Washington, DC 20555 and at the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois. A copy of Facility Operating License NPF-66 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing-A. Copies of the Safety Evaluation Report and Supplements 1 through 8 (NUREG-0876) and the Final Environmental Statement (NUREG-0848) may be purchased at current rates from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20012-7982 or by calling (202) 275-2060 or (202) 275-2171.

Dated at Bethesda, Maryland, this 30th day of January 1987.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Project Directorate No. 3, Division of PWR Licensing-A.

[FR Doc. 87-2564 Filed 2-5-87; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Hydropower Assessment Steering Committee; Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Hydropower Assessment Steering Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Hydro assessment study report.
- Cumulative impact assessment methods briefing.
- FERC update.
- Other.
- Public comment.

Status: Open.

DATE: February 4, 1987, 10:00 a.m.

ADDRESS: The meeting will be held in the Council's central office, 850 SW. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 87-2490 Filed 2-5-87; 8:45 am]

BILLING CODE 0000-00-M

PRESIDENT'S SPECIAL REVIEW BOARD

Notice of Meetings

SUMMARY: The President established by Executive Order 12575 of December 1, 1986 (51 FR 43718, December 3, 1986) the President's Special Review Board to review activities of the National Security Council. In accordance with the Federal Advisory Committee Act, Pub.L. 92-463, as amended, the Board announces the following meeting:

DATES AND TIMES: Monday, February 9, 1987; Beginning 2:00 p.m.;

Tuesday, February 10, 1987; Beginning 2:00 p.m.;

Friday, February 13, 1987; Beginning 10:00 a.m.

PLACE: Room 5221, New Executive Office Building, 726 Jackson Place NW., Washington, DC 20503.

TYPE OF MEETING: Closed.

CONTACT PERSON: Herbert Hetu, Public Affairs Officer, President's Special Review Board, Room 5221, New Executive Office Building, 726 Jackson Place NW. Washington, DC 20503. (202/395-2566).

PURPOSE OF MEETING: To discuss and deliberate facts determined as a result of Board interviews and briefings and to consider the status and course of the Board's review.

SUPPLEMENTARY INFORMATION: The President's Special Review Board was established and appointed with three distinguished former leaders of the government to conduct a comprehensive study of the future role and procedures of the National Security Council (NSC) staff in the development, coordination, oversight, and conduct of foreign and national security policy; to review the NSC staff's proper role in operational activities, especially extremely sensitive diplomatic, military, and intelligence missions; and provide recommendations to the President based upon its analysis of the manner in which foreign and national security policies established by the President have been implemented by the NSC staff. These meetings will be closed to the public pursuant to 5 U.S.C. 552b(c)(1) and (C)(9)(B) in the interests of national security and because the nature of the matters discussed at these meetings is likely to disclose information which, if disclosed prematurely, would be likely to significantly frustrate implementation of proposed action by the President's Special Review Board.

It was not reasonable to provide 15 days notice of these meetings because of the following exceptional circumstances: The meetings were required to be held promptly due to the Presidential direction that the Board review the activities of the National Security Council and submit its findings and recommendations to the President within 60 days of issuance of Executive Order 12575 dated December 1, 1986.

Michael L. Weinstein,

Committee Management Officer, President's Special Review Board.

[FR Doc. 87-2700 Filed 2-5-87; 12:16 pm]

BILLING CODE 3195-01-M

DEPARTMENT OF STATE

[CM-8/1044]

Advisory Committee on International Law; Partially Closed Meeting

A meeting of the Advisory Committee on International Law will take place at 10:30 a.m. on Thursday, February 12, in Room 6320 of the Department of State, 2201 C Street, NW., Washington, DC. The morning session will not be open to the public; the afternoon session (3:00 p.m. to 4:00 p.m.) will be open to the public up to the capacity of the meeting room.

The subject meeting will focus on policy and legal issues relating to the United States relationship to the International Court of Justice, and to the immunity of foreign States and their instrumentalities. As the morning session will include examination and discussion of material classified in accordance with Executive Order 12356 the disclosure of which could adversely affect the foreign policy interests of the United States, it has been closed pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1) and 5 U.S.C. 552b(c)(9)(B).

Entry to building is controlled and will be facilitated by advance arrangements. Members of the public desiring to attend the afternoon session should, prior to February 11, notify the Office of the Assistant Legal Adviser for Nuclear Affairs (telephone (202) 647-1043) of their name, affiliation, address and telephone number in order to arrange admittance.

Due to delays associated with the scheduling of the subject meeting to ensure the availability of Advisory Committee members, and recent extraordinary local weather conditions, it has not been possible to give the normal 15-day notice of the subject meeting.

Ted A. Borek,

Executive Director.

January 30, 1987.

[FR Doc. 87-2538 Filed 2-5-87; 8:45 am]

BILLING CODE 4710-08-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Information on Imports During First 10 Months of 1986 and Invitation of Comments

This notice is for information only and has no legal effect. It is provided to inform the public of certain import statistics covering the period of January through October 1986 and to afford the public an opportunity to comment on certain discretionary decisions the President must make on or about April 1, 1987 with respect to the GSP program. These decisions concern the GSP "competitive need" limits set forth in section 504(c) and section 504(d)(2) of the Trade Act of 1974 (19 U.S.C. 2464(c)), and possible redesignation of articles previously graduated from GSP.

Pursuant to section 504(c), any GSP eligible beneficiary country that exported to the United States during the most recent calendar year a quantity of any GSP-eligible article in excess of (1) $25 million indexed to the nominal growth of U.S. Gross National Product since 1974, or (2) 50 percent of the value of total U.S. imports of the article, is to be removed from GSP eligibility not later than 90 days after the close of that calendar year. Based on preliminary data and subject to revision, the aforementioned dollar limit is expected to be approximately $71,983,637 million for calendar year 1986.

As a result of the Trade and Tariff Act of 1984, a general review of the GSP was initiated in 1985 and the results of the review announced on January 2, 1987. (52 FR 389) The purpose of the review was to determine whether beneficiary countries have become "sufficiently competitive" in GSP-eligible products, on a product and country specific basis. For countries found to be sufficiently competitive with respect to a product, the percentage competitive need limit was reduced to 25 percent and the dollar limit was reduced to $25 million indexed to the nominal growth of U.S. GNP since 1974. Based on preliminary data and subject to revision, the aforementioned dollar limit for countries found to be sufficiently competitive is expected to be approximately $28,158,699 million for calendar year 1986.

Section 504(d)(2) of the Trade Act of 1974, as amended, permits the President to disregard the 50 percent competitive need limit with respect to any eligible article if the value of total imports of the article during the most recent calendar year did not exceed $5 million, adjusted annually to reflect changes in the U.S. Gross National Product. This *de minimis* level is expected to be approximately $8,453,672 million for calendar year 1986.

A proclamation will be issued to be effective July 1, 1987, making the adjustments that are required by section 504(c) of the Trade Act and announcing the discretionary decisions referred to in this notice, on the basis of official data covering all of calendar year 1986.

It should be emphasized that the information set forth below covers only the first 10 months of 1986. While this is not complete information, it is being published now in order to provide the maximum possible advance indication as to adjustments that may be made to meet the requirements of section 504(c) of the Trade Act and to afford the opportunity for comment on potential discretionary decisions.

List I below shows specific GSP eligible articles for which countries have already exceeded competitive need limitations (country supplied over $71,983,637 million, or $28,158,699 in the case where a country has been found sufficiently competitive in the product, during January-October 1986) or have been graduated from the GSP in earlier years pursuant to the President's discretionary authority.

List II below shows specific GSP eligible articles for which countries are approaching the competitive need limitations (country accounted for over 47 percent of the value of total U.S. imports and/or over $59 million, or for countries found to be "sufficiently competitive" over 23 percent and/or over $23 million during January-October 1986).

List III below shows specific GSP eligible articles for which countries, despite accounting for more than 50 percent (or 25 percent in the case of a country found sufficiently competitive in a product) of the value of total U.S. imports of an article, may be eligible to receive GSP benefits through the *de minimis* waiver (country accounted for more than the applicable percentage limit and the value of total U.S. imports was less than $8,453,672 million during January-October 1986).

List IV below shows specific articles for which countries are currently ineligible for GSP but which may be eligible for redesignation to GSP status pursuant to the President's discretionary authority (country accounted for less than 50 percent, or 25 percent in the case of products determined to be sufficiently competitive, of the value of U.S. imports and did not exceed the applicable dollar competitive need limit during January-October 1986).

The Column headed "TSUS" in the lists below set forth item numbers of the Tariff Schedules of the United States (19 U.S.C. 1202), representing categories of imported articles.

As noted above, the decisions that the President will make on whether to waive the percentage limit in cases where trade is *de minimis* and whether to redesignate countries with respect to products are discretionary. In this regard, the GSP Subcommittee of the Trade Policy Staff Committee invites public comment relevant to these upcoming decisions.

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All written comments with regard to these decisions should be addressed to: GSP Subcommittee, Office of the United States Trade Representative, 600 17th St, NW, Room 517, Washington, DC 20506. All such submissions should conform to 15 CFR 2007, particularly §§ 2007.0, 2007.1(a)(1), 2007.1(a)(2) and 2007.1(a)(3). These statements must be accompanied by twenty copies, in English, of all comments and must be received by the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee no later than the close of business Friday, February 20, 1987 at the address listed above. If the comments contain business confidential information, twenty copies of a nonconfidential version of the comments along with twelve copies of the confidential version must be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, the submission containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the submission. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page "public version" or "non-confidential.")

Written comments submitted in connection with these decisions will be subject to public inspection by appointment only with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2006.10. The GSP Information Center is located in the Office of the United States Trade Representative at the address listed above. The telephone number of the GSP Information Center is (202) 395–6971.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

LIST I: COUNTRIES GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS

[January–October 1986]

	TSUS	Country	Percent of World	Country Total	World Total
•	12161	Argentina	50.9	$68,877,939	$135,223,992
•	12165	Argentina	41.7	23,543,157	56,483,101
•	13551	Mexico	51.8	294,553	568,589
•	13595	Mexico	95.7	15,781,327	16,487,943
•	13620	Mexico	96.1	2,010,381	2,091,745
•	13622	Mexico	97.6	6,409,552	6,568,800
•	13710	Mexico	80.4	58,098,720	72,264,712
•	13740	Mexico	91.1	2,572,093	2,822,776
•	13750	Mexico	95.1	15,657,603	16,465,433
•	13763	Mexico	98.9	136,376,404	137,932,446
•	14678	Mexico	77.3	11,438,995	14,802,666
•	14803	Mexico	71.5	6,373,878	8,909,369
•	14817	Mexico	94.9	20,933,548	22,057,215
	15520	Dominican Republic	15.0	77,011,904	512,830,408
	15520	Brazil	14.9	76,456,292	512,830,408
*R	16705	Mexico	14.0	92,322,528	660,016,599
!R	19221 pt	Colombia	90.6	61,608,545	67,990,826
•	20660	Mexico	35.5	16,421,070	46,264,888
•	22250	Taiwan	40.9	944,900	2,312,530
R	24014	Taiwan	52.1	33,093,177	63,536,211
•	24520	Brazil	47.1	16,192,958	34,386,267
	25687	Mexico	81.7	98,696,377	120,862,578
•	33740	Korea, South	20.6	2,896,473	14,045,301
•	33740	Hong Kong	4.8	680,184	14,045,301
•	35581	Taiwan	20.8	15,367,822	73,748,841
•	38961	Hong Kong	10.0	15,653,551	155,859,534
*R	38961	Taiwan	24.7	38,477,766	155,859,534
•	40620	Israel	89.2	1,387,129	1,554,211
	41222	Bahamas	61.1	120,353,526	196,913,296
•	41324	Korea, South	25.5	677,683	2,660,418
•	41723	Israel	83.4	2,119,923	2,543,044
•	42949	Israel	51.1	1,619,165	3,168,313
R	43950	Singapore	37.0	90,248,534	243,859,894
•	44542	Taiwan	40.9	14,455,984	35,337,815
•	45244	Brazil	67.4	2,465,803	3,656,848
•	47356	Mexico	100.0	207,317	207,317
•	51164	Mexico	38.7	500,732	1,295,255
•	52221	Mexico	49.8	15,812,396	31,737,469
•	53222	Korea, South	19.9	2,647,745	13,335,821
•	53231	Mexico	33.3	2,501,673	7,519,558
•	53491	Taiwan	43.8	5,335,929	12,177,668
•	53531	Mexico	26.1	15,918,041	61,044,934
•	54553	Mexico	19.8	5,809,304	29,346,463
R	54567	Taiwan	62.7	32,623,384	52,008,369
•	54587	Taiwan	51.5	10,748,067	20,853,127
•	60636	Brazil	62.1	5,214,667	8,401,274
•	60637	Brazil	22.4	14,121,213	63,004,016
•	60644	Brazil	10.1	4,992,638	49,241,725
•	61065	Korea, South	3.3	169,660	5,118,284
•	61070	Taiwan	10.9	217,324	1,998,423
•	61074	Korea, South	6.2	1,201,500	19,227,650
•	61074	Taiwan	12.5	2,399,323	19,227,650
•	61082	Korea, South	28.1	4,329,571	15,386,448
•	61088	Taiwan	28.0	6,364,730	22,753,830

LIST I: COUNTRIES GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS—Continued

[January–October 1986]

	TSUS	Country	Percent of World	Country Total	World Total
R	61203	Mexico	82.6	47,837,484	57,884,481
•	61203	Chile	12.0	6,936,081	57,884,481
•	61206	Peru	9.0	52,070,580	575,603,345
	61206	Chile	32.0	184,071,186	575,603,345
•	61206	Zambia	6.1	35,210,482	575,603,345
•	61318	Taiwan	31.9	2,948,271	9,228,524
•	64214	Korea, South	73.9	3,712,762	5,027,364
•	64216	Korea, South	60.6	36,022,315	59,464,047
•	64217	Korea, South	22.9	316,198	1,379,700
•	64632	Korea, South	68.8	2,429,442	3,529,902
*R	64692	Taiwan	31.2	38,672,945	123,888,379
R	64703	Taiwan	37.9	52,826,001	139,491,550
•	64937	Taiwan	28.8	9,449,326	32,780,124
•	65089	Hong Kong	13.5	336,421	2,485,662
•	65089	Taiwan	50.9	1,264,170	2,485,662
•	65137	Taiwan	65.8	11,559,820	17,577,965
•	65146	Korea, South	8.1	329,638	4,092,867
•	65146	Taiwan	72.7	2,974,200	4,092,867
•	65149	Taiwan	58.8	1,864,065	3,168,081
•	65203	Korea, South	23.7	739,562	3,114,498
•	65260	Taiwan	55.1	1,940,193	3,521,267
•	65284	Mexico	35.3	26,666,795	75,536,573
•	65300	Korea, South	3.6	3,758,618	104,478,033
R	65335	Taiwan	71.3	29,056,567	40,756,753
R	65337	Taiwan	56.6	56,051,780	99,113,490
•	65338	Taiwan	6.5	153,228	2,351,655
	65339	Taiwan	50.9	85,719,927	168,489,831
•	65348	Taiwan	45.0	5,316,932	11,810,221
•	65393	Taiwan	74.1	3,265,932	4,406,044
*R	65394	Korea, South	46.0	46,529,759	101,127,556
R	65400	Taiwan	46.8	40,818,698	87,190,320
•	65408	Taiwan	36.4	19,735,448	54,225,260
R	65425	Taiwan	43.7	45,263,669	103,676,548
•	65430	Taiwan	18.9	1,540,849	8,135,868
•	65440	Taiwan	58.6	2,263,662	3,861,103
	65460	Hong Kong	25.1	3,051,528	12,156,609
	65725	Taiwan	16.1	79,024,123	491,627,725
*R	65735	Taiwan	38.1	33,074,406	86,826,062
R	65740	Taiwan	19.6	28,504,521	145,728,066
*R	66042	Brazil	14.3	44,881,188	314,850,846
	66048	Mexico	49.9	501,861,814	1,006,551,000
	66048	Brazil	10.0	100,647,589	1,006,551,000
R	66067	Mexico	6.9	41,797,131	607,637,010
R	66067	Brazil	8.6	52,472,157	607,637,010
R	66071	Brazil	5.4	41,355,096	769,250,546
	66106	Hong Kong	16.7	107,618,690	645,512,531
	66106	Taiwan	50.3	324,672,614	645,512,531
•	66109	Singapore	9.4	10,534,366	112,282,786
R	66120	Mexico	14.5	52,850,747	363,241,703
R	66135	Korea, South	15.0	44,245,516	295,575,433
•	66165	Israel	8.9	1,773,938	19,903,884
•	66194	Hong Kong	20.9	1,502,523	7,201,793
•	66194	Taiwan	19.5	1,406,721	7,201,793
•	66235	Mexico	26.5	5,670,634	21,374,587
R	66410	Mexico	6.6	55,360,022	840,489,934
*R	66410	Taiwan	6.2	52,035,653	840,489,934
*R	67216	Taiwan	41.1	48,127,137	117,199,535
•	67431	Taiwan	74.3	13,228,700	17,797,692
R	67434	Taiwan	6.6	36,304,408	548,715,563
*R	67435	Taiwan	3.6	42,852,637	1,205,162,676
R	67442	Taiwan	19.4	50,709,244	260,966,530
R	67615	Korea, South	11.4	174,574,589	1,536,168,383
	67615	Taiwan	12.3	189,523,544	1,536,168,383
*R	67620	Taiwan	18.1	48,564,153	268,727,249
	67630	Korea, South	3.0	123,933,348	4,132,280,408
R	67630	Kong Kong	1.5	62,756,104	4,132,280,408
	67630	Taiwan	9.7	402,660,184	4,132,280,408
•	67656	Mexico	2.6	19,161,931	728,889,755
•	67656	Korea, South	2.0	14,540,532	728,889,755
•	67656	Hong Kong	1.1	8,180,477	728,889,755
*R	67656	Taiwan	6.4	46,759,807	728,889,755
	67850	Mexico	6.0	174,047,573	2,886,712,364
R	67850	Brazil	2.9	84,168,432	2,886,712,364
•	67850	Korea, South	6.2	178,644,869	2,886,712,364
•	67850	Hong Kong	1.6	46,994,723	2,886,712,364
	67850	Taiwan	8.2	235,634,941	2,886,712,364

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LIST I: COUNTRIES GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS—Continued

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	TSUS	Country	Percent of World	Country Total	World Total
*R	68014	Taiwan	40.7	44,630,721	109,586,611
	68235	Mexico	53.7	87,886,507	163,685,115
	68260	Mexico	17.1	210,339,334	1,231,045,793
	68260	Hong Kong	8.0	98,576,748	1,231,045,793
	68260	Taiwan	8.4	103,699,918	1,231,045,793
*	68301	Korea, South	12.6	5,084,653	40,299,472
*	68301	Taiwan	17.1	6,882,018	40,299,472
*	68315	Mexico	19.7	29,406,336	149,532,424
*	68370	Hong Kong	24.0	3,088,732	12,895,375
*	68370	Taiwan	11.3	1,459,226	2,895,375
*	68380	Hong Kong	44.8	9,401,955	21,001,863
*	68410	Taiwan	46.5	5,078,316	10,919,082
	68425	Korea, South	36.3	230,237,489	634,103,772
	68448	Hong Kong	46.2	78,252,171	169,519,018
R	68448	Taiwan	21.6	36,636,991	169,519,018
*	68453	Taiwan	38.5	1,873,495	4,860,187
*	68455	Mexico	32.8	12,704,885	38,770,587
	68458	Korea, South	9.2	85,232,075	926,304,809
	68458	Taiwan	20.8	192,531,027	926,304,809
*	68459	Hong Kong	1.1	2,271,507	215,986,688
*	68459	Taiwan	1.6	3,514,649	215,986,688
*R	68470	Korea, South	6.1	46,189,934	754,472,796
	68470	Taiwan	18.3	137,791,900	754,472,796
*	68514	Korea, South	4.6	19,605,481	428,807,373
	68514	Hong Kong	21.7	92,893,878	428,807,373
*R	68514	Taiwan	11.2	48,220,632	428,807,373
*	68516	Korea, South	.7	387,045	57,520,350
*	68516	Hong Kong	2.1	1,210,227	57,520,350
*	68516	Taiwan	28.3	16,258,453	57,520,350
*	68524	Singapore	6.9	14,558,779	210,140,876
*	68524	Korea, South	5.1	10,723,336	210,140,876
*	68524	Taiwan	11.9	24,977,774	210,140,876
[2]R	68532pt	Mexico	9.8	45,328,627	461,458,133
*	68532	Korea, South	1.6	8,245,201	520,006,965
*R	68532	Taiwan	5.5	28,846,964	520,006,965
R	68539	Korea, South	3.3	52,212,081	224,301,292
R	68539	Hong Kong	21.3	47,695,721	224,301,292
*	68540	Korea, South	5.2	239,688,384	4,599,421,197
R	68540	Hong Kong	.7	34,438,832	4,599,421,197
*R	68540	Taiwan	.7	31,972,021	4,599,421,197
[3]R	68570pt	Hong Kong	7.7	29,051,148	378,297,433
	68590	Mexico	16.2	299,073,342	1,848,038,815
	68590	Taiwan	7.7	141,709,063	1,848,038,815
R	68690	Korea, South	25.0	30,808,484	123,226,972
	68810	Taiwan	84.1	93,972,973	111,713,722
	68812	Mexico	77.5	431,521,669	556,956,849
*	68812	Taiwan	12.2	68,125,007	556,956,849
*	68817	Mexico	2.0	188,236	9,402,017
	68818	Mexico	38.9	131,549,378	338,426,828
R	68818	Taiwan	22.6	76,520,832	338,426,828
*	68841	Hong Kong	15.8	1,875,039	11,840,471
*	68841	Taiwan	8.4	995,514	11,840,471
R	68842	Mexico	6.1	48,772,735	797,303,852
R	68842	Korea, South	5.8	46,199,915	797,303,852
	68842	Hong Kong	13.4	107,163,586	797,303,852
	68842	Taiwan	12.7	101,489,194	797,303,852
	69232	Mexico	10.0	391,437,226	3,897,347,908
*	69232	Brazil	4.0	157,547,271	3,897,347,908
R	69232	Korea, South	.9	36,548,803	3,897,347,908
	69232	Taiwan	3.4	133,084,663	3,897,347,908
*	69260	Taiwan	45.8	27,624,816	60,361,253
	69610	Taiwan	39.3	108,171,862	275,046,659
*	69635	Taiwan	33.9	3,278,936	9,661,540
*	70661	Hong Kong	16.3	5,752,525	35,243,769
*	70661	Taiwan	34.5	12,164,466	35,243,769
	70845	Taiwan	40.8	93,994,332	230,288,192
*	70847	Hong Kong	7.1	19,577,726	277,476,851
*	70909	Mexico	38.3	17,020,231	44,468,268
*	70915	Israel	10.9	15,267,426	140,255,905
*	70940	Hong Kong	14.1	3,336,543	3,729,441
*	71138	Mexico	22.7	4,029,410	17,750,160
*	72208	Korea, South	5.4	705,808	13,078,733
*	72208	Hong Kong	39.1	5,111,564	13,078,733
*	72208	Taiwan	33.9	4,429,594	13,078,733
*	72211	Korea, South	2.5	1,842,680	74,328,678
*	72211	Hong Kong	12.3	9,150,606	74,328,678

LIST I: COUNTRIES GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS—Continued

[January–October 1986]

	TSUS	Country	Percent of World	Country Total	World Total
*	72211	Taiwan	44.8	33,279,199	74,328,678
R	72445	Mexico	2.8	31,886,986	1,124,814,437
	72445	Korea, South	12.7	142,772,691	1,124,814,437
*	72501	Korea, South	48.5	16,675,874	34,357,406
*	72503	Korea, South	31.6	19,902,729	62,943,896
*	72532	Taiwan	37.5	4,433,028	11,816,525
*	72625	Taiwan	41.4	5,268,329	12,728,130
	72706	Mexico	61.6	127,367,986	206,776,667
*	72711	Hong Kong	10.2	11,197,477	109,501,764
R	72711	Taiwan	32.6	35,741,664	109,501,764
*	72723	Taiwan	48.4	2,697,530	5,575,487
R	72729	Yugoslavia	22.6	55,306,633	244,585,930
*R	72729	Taiwan	23.9	58,558,211	244,585,930
R	72735	Taiwan	28.3	308,925,783	1,092,221,133
R	72740	Taiwan	44.2	63,172,253	143,039,247
R	72759	Taiwan	35.7	29,889,243	83,721,957
	72770	Taiwan	28.5	222,845,422	780,832,516
*	72822	Taiwan	76.0	16,861,403	22,172,345
*	73094	Korea, South	43.5	7,319,339	16,815,320
*	73130	Taiwan	21.3	168,336	790,081
*	73415	Taiwan	41.1	17,357,968	42,253,171
*	73425	Hong Kong	28.8	1,222,640	4,249,979
R	73477	Korea, South	24.2	29,510,245	121,748,829
*R	73509	Taiwan	54.2	27,197,943	50,213,905
*	73512	Taiwan	75.3	9,140,896	12,146,368
R	73520	Korea, South	13.3	48,651,037	364,737,455
*	73520	Taiwan	59.1	215,490,189	364,737,455
*	73715	Hong Kong	18.0	19,326,080	107,513,194
*	73730	Korea, South	56.9	276,599,921	485,791,327
*	73742	Korea, South	22.6	966,509	4,279,754
*	73780	Hong Kong	35.9	9,745,912	27,112,731
[4]	73795pt	Hong Kong	32.5	178,665,464	550,571,814
*	74011	Israel	1.1	78,758	7,039,484
*	74012	Hong Kong	.7	49,831	7,093,058
*	74013	Hong Kong	.3	1,292,053	421,391,991
*R	74014	Hong Kong	8.9	67,085,061	755,968,785
*	74015	Hong Kong	35.7	72,689,318	203,745,281
R	74038	Korea, South	19.5	60,343,296	309,380,170
	74038	Taiwan	27.0	83,552,673	309,380,170
*	74125	Hong Kong	21.4	745,445	3,482,938
*	75020	Taiwan	50.2	9,812,085	19,550,798
*	75040	Hong Kong	21.9	3,829,342	17,484,268
*	75045	Korea, South	29.5	3,212,825	10,876,370
*	75525	Hong Kong	49.9	16,974,125	34,015,567
*	77141	Taiwan	36.4	16,259,698	44,666,262
*	77145	Taiwan	50.2	3,092,870	6,166,186
[5]	77215pt	Hong Kong	35.8	91,500,000	255,550,000
R	77220	Taiwan	21.8	45,378,944	208,079,432
	77235	Taiwan	88.7	146,504,648	165,100,771
	77251	Brazil	5.6	84,552,514	1,503,448,503
	77251	Korea, South	8.8	132,945,028	1,503,448,503
R	77251	Taiwan	2.8	42,739,572	1,503,448,503
*	77260	Korea, South	31.7	10,825,611	34,170,797
*	77305	Taiwan	38.6	2,661,073	6,895,710
*	77445	Hong Kong	27.6	5,372,021	19,450,621
R	77450	Taiwan	53.3	35,426,134	66,504,183
	77455	Taiwan	16.1	125,971,166	780,494,995
[6]R	77455pt	Hong Kong	7.2	33,125,098	457,205,456
*	79003	Taiwan	51.6	11,623,416	22,514,461
*	79010	Taiwan	44.3	4,800,415	10,843,390
R	79055	Taiwan	26.3	29,871,084	113,755,647
	79115	Korea, South	29.6	86,839,990	293,216,159
*	79128	Mexico	3.5	358,726	10,288,263
R	79160	Taiwan	41.5	30,095,405	72,562,619

*=Graduated; R=Reduced Limit Applies.
[1]=Entire Category Except for 192.2191.
[2]=Entire Category Except for 685.3260 and 685.3262.
[3]=Entire Category Except for 685.7032, 685.7036 and 658.7038.
[4]=Entire Category Except for 737.9525.
[5]=Entire Category Except for Plastic Pictue Frames.
[6]=Entire Category Except for 774.5580 and 774.5585.

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LIST II: COUNTRIES APPROACHING COMPETITIVE NEED LIMITS

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	TSUS	Country	Percent of world	Country total	World total
*	10584	Israel	91.7	$5,454,679	$5,946,776
*	10670	Thailand	100.0	2,550	2,550
*	10745	Brazil	47.1	418,639	889,319
*	11404	Thailand	50.2	2,090,959	4,166,031
	12162	India	59.0	12,461,815	21,128,615
*	13037	Argentina	90.5	4,490,421	4,959,547
*	13040	Mexico	69.8	15,885	22,749
*R	13120	Argentina	22.3	238,028	1,067,751
*	13180	Korea, South	61.9	7,991	12,908
*	13560	Mexico	50.9	106,601	209,337
*	13570	Mexico	52.1	137,676	264,379
*	13580	Guatemala	69.9	12,933	18,493
	13590	Mexico	95.7	35,158,226	36,721,262
*	13599	Mexico	54.9	787,689	1,435,503
*	13600	Dominican Republic	80.1	5,240,930	6,539,860
	13630	Mexico	59.6	11,561,545	19,407,510
*	13640	Honduras	60.5	1,127,784	1,863,585
*	13661	Mexico	95.2	2,405,311	2,525,828
*	13680	Mexico	68.5	2,587,372	3,777,118
*	13695	Guatemala	51.0	221,476	434,585
*	13697	Taiwan	74.5	1,316,939	1,767,972
*	13702	Dominican Republic	96.4	1,434,810	1,488,434
R	13704	Mexico	30.4	4,175,622	13,753,828
*	13771	Mexico	81.6	2,407,866	2,949,363
*	13788	Jamaica	48.6	3,109,430	6,399,445
*	13789	Dominican Republic	96.9	1,410,671	1,455,229
*	13793	Dominican Republic	68.7	686,995	1,000,615
	13805	Mexico	77.4	31,680,033	40,955,279
*	13835	Costa Rica	91.2	2,400,148	2,631,119
*	14021	Mexico	86.8	4,745,909	5,466,217
*	14054	Israel	84.4	1,185,037	1,404,009
	14177	Mexico	55.2	15,158,214	27,474,346
R	14198	Mexico	23.0	3,268,670	14,218,762
*	14509	Dominican Republic	53.4	1,311,871	2,454,557
*	14550	Mexico	80.7	1,526,857	1,891,564
*	14565	Taiwan	64.5	1,990,365	3,087,635
*R	14612	Argentina	27.2	1,055,402	3,878,310
*	14622	Turkey	78.6	5,850,264	7,485,770
*	14674	Yugoslavia	48.8	3,144,286	6,437,556
*	14687	Dominican Republic	91.5	452,753	494,929
*	14733	Jamaica	55.8	307,140	550,582
	14812	Mexico	64.2	8,060,275	12,548,050
*	14825	Mexico	75.5	3,205,385	4,243,459
R	14830	Mexico	31.5	5,313,327	16,880,112
*	14835	Guatemala	75.7	553,247	704,069
*R	14950	Mexico	49.4	1,808,828	3,665,189
*	14960	Thailand	56.0	3,264,362	5,828,971
*	15200	Ecuador	86.7	82,304	94,918
*	15205	Cyprus	48.1	284,231	591,099
*R	15254	Brazil	52.5	1,260,428	2,401,867
*	15320	Dominican Republic	87.7	44,345	50,551
*	15440	Taiwan	48.7	169,499	348,131
*	15443	Taiwan	52.9	126,568	239,348
*	15460	Thailand	71.6	414,817	579,620
*	15535	Dominican Republic	48.6	3,047,575	6,274,045
*	16169	Turkey	77.3	51,393	66,463
*	16175	Israel	62.5	173,518	177,832
*	16184	Korea, South	54.2	649,067	1,198,212
*	16211	Turkey	52.6	7,147	13,578
*	16813	Trinidad Island	82.9	398,878	480,883
R	16898	Mexico	46.5	5,716,215	12,280,423
*	16904	Brazil	69.8	10,389	14,889
*	17615	Mexico	75.0	92,147	122,931
*	18210	Thailand	53.8	2,019	3,754
*	18453	Argentina	54.1	110,975	205,176
*	20006	Hong Kong	62.4	2,975	4,766
*	20091	Honduras	67.9	3,040,615	4,475,488
	20262	Mexico	97.3	33,729,329	34,660,370
R	20266	Taiwan	29.9	11,481,107	38,410,209
*	20320	Honduras	58.6	670,965	1,141,261
*	20330	Taiwan	59.8	410,627	686,780
*	20405	Taiwan	71.4	926,702	1,297,181
*	20435	Honduras	53.2	341,385	641,895
	20440	Taiwan	81.1	17,039,494	21,005,056
P	20630	Taiwan	34.9	20,463,676	58,552,678
*	20647	Taiwan	62.5	1,351,331	2,160,675

LIST II: COUNTRIES APPROACHING COMPETITIVE NEED LIMITS—Continued

[January–October 1986]

	TSUS	Country	Percent of world	Country total	World total
*	20653	Taiwan	60.8	83,906	138,088
*	20665	Taiwan	65.9	888,879	1,348,808
	20698	Taiwan	66.6	63,189,235	94,862,836
*	22234	Taiwan	49.3	2,137	4,334
*	22236	Taiwan	70.6	543,217	769,026
*	24010	Brazil	99.9	3,772,302	3,774,879
*	24012	Brazil	97.7	2,484,059	2,542,741
	24014	Taiwan	52.1	33,093,177	63,536,211
*	24019	Taiwan	78.4	849,917	1,084,452
*	24030	Brazil	49.5	33,204	67,046
*	24030	Taiwan	50.5	33,842	67,046
*	24050	Taiwan	66.6	3,064	4,602
*	24052	Brazil	100.0	10,816	10,816
*	24054	Taiwan	88.7	113,720	128,245
*	25261	Mexico	100.0	1,884,077	1,884,077
*	25263	Mexico	56.8	1,291,777	2,273,160
*	25284	Brazil	47.2	401,294	850,147
*	25420	Mexico	100.0	11,878	11,878
*	25442	Brazil	92.3	260,734	282,380
*	30530	India	49.2	42,985	87,415
*R	31525	Mexico	41.5	1,178,287	2,836,761
*	31580	Thailand	75.6	644,135	852,410
*	31590	Thailand	73.3	55,915	76,234
*	31901	India	97.7	1,876,938	1,921,839
*	31903	India	98.1	1,955,382	1,992,579
*	31905	India	98.3	7,614,001	7,749,525
*	31907	India	92.6	226,337	244,485
*	35520	Taiwan	86.4	85,501	98,958
*	35542	Taiwan	68.2	32,681	47,923
*	36035	India	94.9	1,226,416	1,292,323
*	36584	Philippines	51.2	3,454,633	6,741,443
*	39016	Taiwan	86.4	20,155	23,327
*	40327	Hong Kong	51.8	58,379	112,773
*	40531	Korea, South	68.1	1,264,401	1,855,338
*R	40696	Brazil	28.8	487,261	1,690,691
*	40696	Korea, South	51.1	864,433	1,690,691
R	40872	Taiwan	43.1	14,718,841	34,144,485
*	41056	Taiwan	49.6	16,711	33,702
*	41108	Brazil	88.3	2,641,320	2,992,802
*	41126	Yugoslavia	83.7	310,890	371,483
*	41231	Israel	60.4	556,661	921,063
*	41276	Israel	56.6	954,223	1,686,209
*	41280	Mexico	47.3	436,364	922,805
*	41336	Romania	60.1	496,672	826,859
*R	41645	Taiwan	23.0	1,787,199	7,780,874
*	41722	Mexico	70.6	20,161	28,552
*	41764	Brazil	72.5	481,950	664,786
*	41790	Brazil	100.0	2,720	2,720
*	41824	India	84.0	117,772	140,181
*	41840	Singapore	100.0	39,871	39,871
*	41910	Chile	60.4	4,523,110	7,492,562
*	41950	India	58.4	92,341	158,030
*	41960	Mexico	52.7	2,226,369	4,222,024
*	42002	Israel	74.8	313,295	418,991
*	42020	India	50.5	205,785	407,222
*	42024	Israel	80.6	544,872	676,124
R	42060	Mexico	33.7	4,140,331	12,285,475
*	42082	Israel	65.0	127,609	196,384
*R	42106	Taiwan	47.9	1,108,845	2,315,572
*	42276	Mexico	55.3	935,187	1,691,662
*	42509	Hong Kong	65.1	91,480	140,583
*R	42582	Brazil	29.0	1,627,081	5,603,853
*	42584	Trinidad Island	70.2	945,339	1,346,825
*	42636	Argentina	75.3	442,651	587,858
*	42678	Israel	100.0	83,784	83,784
*	42716	Argentina	87.7	371,510	423,846
*	42746	Mexico	99.7	743,706	745,600
*	42774	Brazil	66.1	346,985	525,235
*R	42784	Brazil	40.3	2,165,561	5,375,350
*	42850	Brazil	52.4	9,974	19,032
*R	42858	Brazil	43.9	632,574	1,440,080
*	42868	Mexico	93.2	2,470,424	2,650,492
*	42890	Brazil	98.9	819,62	828,782
*	42896	Brazil	48.0	836,341	1,741,172
*	42929	Brazil	66.9	3,899,561	5,830,940
*	42970	Mexico	61.4	3,334,117	5,430,212

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LIST II: COUNTRIES APPROACHING COMPETITIVE NEED LIMITS—Continued

[January-October 1986]

	TSUS	Country	Percent of world	Country total	World total
R	43757	Mexico	22.5	5,874,788	26,066,004
	43764	Brazil	48.0	6,189,079	12,893,386
R	44546	Mexico	39.2	19,413,265	49,540,642
•	45254	Brazil	68.9	260,324	377,706
•	45522	India	70.6	55,547	78,698
•	45530	Taiwan	96.1	130,493	135,771
•	45546	Taiwan	67.7	160,241	236,609
•	46560	Mexico	64.9	642,817	989,781
•	46605	Philippines	78.1	449,064	574,631
•	47085	Mexico	56.6	4,077,535	7,198,164
•	47230	Thailand	100.0	1,015	1,015
•	47338	Cyprus	64.1	141,221	220,148
•	47352	Mexico	99.2	3,658,705	3,688,594
•	47382	Korea, South	99.1	346,041	349,138
•	49048	Taiwan	54.5	17,706	32,469
*R	49094	Brazil	28.7	416,186	1,449,262
•	49404	Taiwan	49.4	9,190	18,619
•	51131	Mexico	86.6	463,327	534,994
•	51224	Mexico	55.3	201,580	364,480
•	51554	Mexico	50.1	350,667	700,065
•	51624	India	100.0	1,100	1,100
•	51671	India	99.1	295,833	298,520
•	51673	India	66.5	18,315	27,555
•	51674	India	53.8	35,561	66,061
•	51676	India	59.7	94,377	158,000
•	51694	India	51.8	353,373	682,754
•	51841	Mexico	85.4	252,107	295,110
•	52187	Mexico	73.1	2,404,806	3,289,809
•	52241	Mexico	100.0	46,908	46,908
•	52351	Taiwan	93.7	59,160	63,109
R	53222	Taiwan	27.0	3,600,239	13,335,821
R	53411	Taiwan	26.5	20,911,099	78,800,413
•	53474	Taiwan	77.9	31,996	41,097
•	53481	Taiwan	58.9	4,143,470	7,035,945
	53484	Taiwan	68.1	20,167,039	29,605,655
R	53512	Mexico	47.2	19,423,064	41,120,996
R	53531	Brazil	34.9	21,282,639	61,044,934
*R	54021	Mexico	40.7	2,409,516	5,923,148
•	54065	Taiwan	50.9	946,900	1,859,183
*R	54277	Mexico	56.4	341,459	605,606
•	54292	Mexico	100.0	1,620	1,620
•	54294	Taiwan	87.1	27,104	31,110
R	54451	Taiwan	25.6	11,444,160	44,627,669
•	54534	Brazil	60.7	641,040	1,056,104
R	54553	Taiwan	59.4	17,432,458	29,346,463
•	54565	Mexico	70.7	743,453	1,051,487
	54567	Taiwan	62.7	32,623,384	52,008,369
•	54585	Taiwan	77.1	1,041,146	1,351,036
•	54647	Taiwan	61.0	903,208	1,480,779
R	54737	Taiwan	37.9	4,104,472	10,815,475
•	54741	Brazil	72.0	276,137	383,482
•	60210	Chile	72.6	677,437	933,277
•	60340	Chile	59.3	1,778,198	2,999,494
•	60503	Korea, South	52.2	36,865	70,657
R	60914	Brazil	62.0	8,366,678	13,504,654
•	61062	Korea, South	47.3	3,158,992	6,681,529
•	61065	Taiwan	62.8	3,216,266	5,118,284
•	61071	Taiwan	51.9	65,706	126,704
R	61082	Taiwan	32.1	4,938,627	15,386,448
	61203	Mexico	82.6	47,837,484	57,884,481
•	61230	Yugoslavia	76.0	404,902	532,438
•	61234	Thailand	99.3	186,480	187,848
•	61238	Yugoslavia	50.1	18,768	37,492
•	61270	Yugoslavia	47.6	586,318	1,232,284
•	61303	Brazil	100.0	2,099	2,099
	61815	Venezuela	76.8	54,087,924	70,460,392
•	61822	Israel	81.2	748,621	921,903
	61847	Brazil	63.7	22,360,295	35,126,294
•	62215	Venezuela	57.7	47,300	82,000
•	62217	Taiwan	100.0	3,312	3,312
•	62240	Taiwan	90.5	112,739	124,636
•	62402	Mexico	93.4	47,252	50,606
•	62404	Mexico	77.1	687,813	891,659
•	62615	Peru	93.3	2,224,449	2,383,238
*R	62640	Mexico	32.0	2,291,368	7,164,152
•	62890	Chile	84.1	1,969,977	2,343,207

LIST II: COUNTRIES APPROACHING COMPETITIVE NEED LIMITS—Continued

[January-October 1986]

	TSUS	Country	Percent of world	Country total	World total
R	63242	Brazil	39.5	10,661,819	27,020,105
•	63262	Peru	51.3	19,565	38,159
•	63266	Mexico	92.9	330,185	355,422
•	64208	Korea, South	58.7	942,637	1,605,556
	64209	Mexico	52.5	5,013,962	9,551,874
•	64225	Singapore	59.1	32,001	54,129
*R	64245	Mexico	55.5	521,606	939,999
•	64250	Taiwan	84.5	8,807	10,425
•	64258	Brazil	64.9	141,600	218,236
•	64270	Chile	76.8	88,560	115,320
•	64278	Taiwan	51.4	1,249,749	2,432,759
•	64285	Taiwan	68.7	84,900	123,511
•	64464	El Salvador	82.8	32,641	39,406
•	64606	Taiwan	67.9	183,505	270,127
•	64627	Korea, South	52.8	299,135	566,611
•	64628	Korea, South	65.3	442,001	676,804
R	64630	Korea, South	44.0	5,802,296	13,192,224
•	64647	Taiwan	74.6	621,926	833,890
*R	64665	Taiwan	41.7	3,224,457	7,732,662
•	64678	Taiwan	61.4	626,647	1,020,047
•	64682	Taiwan	73.6	259,701	352,848
•	64685	Taiwan	51.0	790,390	1,548,941
•	64687	Taiwan	82.1	247,503	301,634
•	64688	Taiwan	52.7	3,051	5,784
R	64695	Taiwan	29.6	7,467,540	25,213,242
R	64697	Taiwan	32.2	2,887,953	8,965,562
•	64698	Mexico	51.6	203,587	394,645
R	64705	Taiwan	32.1	8,908,275	27,714,784
•	64710	Taiwan	59.6	100,116	168,019
•	64855	Taiwan	62.6	2,783,528	4,449,412
•	64857	Taiwan	81.3	1,247,754	1,534,482
*R	64880	Hong Kong	48.6	207,554	426,939
R	64885	Taiwan	33.8	9,060,020	26,816,113
•	64891	Taiwan	82.9	936,899	1,130,779
*R	64895	Taiwan	36.6	2,496,432	6,814,524
	64897	Taiwan	61.7	63,663,046	103,125,807
•	64971	Hong Kong	65.2	35,610	54,635
•	64973	Taiwan	100.0	16,711	16,711
•	64975	Hong Kong	53.6	147,336	274,770
•	64989	Taiwan	66.0	200,062	303,190
R	65021	Taiwan	25.8	13,973,979	54,112,293
•	65047	Taiwan	73.8	484,065	656,151
•	65079	Taiwan	58.9	78,998	133,613
•	65087	Hong Kong	73.2	177,159	242,097
•	65104	Taiwan	89.0	30,804	34,605
•	65113	Taiwan	48.5	2,770,814	5,718,682
•	65115	Taiwan	70.0	181,234	258,931
	65121	Taiwan	64.6	6,752,398	10,450,423
R	65131	Taiwan	26.1	2,484,639	9,533,722
R	65148	Taiwan	36.8	24,756,168	67,322,619
•	65153	Taiwan	59.3	2,159,834	3,644,346
R	65155	Taiwan	29.4	4,737,348	16,104,717
•	65160	Mexico	56.1	8,853	15,776
•	65214	Taiwan	76.0	134,130	176,524
R	65224	Taiwan	23.6	2,524,902	10,712,279
•	65236	Taiwan	59.1	51,332	86,791
•	65303	Taiwan	49.7	173,388	348,768
	65335	Taiwan	71.3	29,056,567	40,756,753
	65337	Taiwan	56.6	56,051,780	99,113,490
	65345	Taiwan	72.7	21,901,595	30,134,941
•	65347	Taiwan	79.6	1,240,077	1,557,619
R	65396	Taiwan	39.0	9,904,691	25,427,338
•	65399	Taiwan	84.6	5,397,334	6,380,044
*R	65435	Taiwan	42.4	2,827,694	6,673,673
R	65445	Taiwan	41.9	8,409,030	20,072,742
	65450	Taiwan	64.2	9,632,897	15,012,757
•	65455	Taiwan	91.8	2,645,912	2,880,779
R	65460	Taiwan	25.8	3,135,299	12,156,609
•	65465	Taiwan	54.6	3,381,586	6,191,671
R	65470	Hong Kong	23.1	3,386,274	14,643,011
R	65475	Taiwan	51.5	10,315,182	20,013,472
	65724	Taiwan	75.5	9,427,267	12,491,918
	65780	Taiwan	68.9	6,841,952	9,932,691
•	65790	Mexico	71.6	467,085	651,948
•	66080	Hong Kong	80.4	1,720,636	2,138,913
R	66106	Mexico	4.3	27,739,055	645,512,531

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LIST II: COUNTRIES APPROACHING COMPETITIVE NEED LIMITS—Continued

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	TSUS	Country	Percent of world	Country total	World total
*	66218	Korea, South	76.9	120,980	157,311
R	66408	Brazil	2.6	26,505,753	1,002,760,301
	67630	Hong Kong	1.5	62,756,104	4,132,280,408
R	68019	Taiwan	27.9	9,098,074	32,593,521
*	68025	Taiwan	52.2	490,335	939,332
*	68220	Singapore	86.5	1,802,210	2,083,230
R	68312	Mexico	23.1	9,049,692	39,257,269
	68360	Mexico	14.2	61,599,337	433,566,741
R	68410	Hong Kong	22.7	2,473,356	10,919,082
1	68440pt	Hong Kong	36.9	5,900,000	16,000,000
R	68455	Taiwan	22.9	8,880,289	38,770,587
R	68506	Taiwan	43.2	5,162,200	11,949,989
R	68522	Korea, South	31.8	3,328,840	10,467,500
R	68522	Hong Kong	39.4	4,123,754	10,467,500
R	68618	Taiwan	25.2	4,608,108	18,269,915
	68630	Taiwan	89.7	18,996,117	21,178,600
	68817	Taiwan	66.3	6,233,533	9,402,017
*	68820	Venezuela	49.2	1,715,327	3,488,585
	68830	Korea, South	95.5	10,736,263	11,236,935
*	69015	Mexico	71.1	934,000	1,313,513
	70090	Mexico	86.6	10,450,122	12,068,861
*	70208	Korea, South	57.6	48,224	83,735
*	70232	Mexico	61.7	365,162	591,892
*	70245	Mexico	96.1	22,333	23,233
	70314	Mexico	87.8	10,239,992	11,665,349
*	70365	Mexico	47.1	97,702	207,597
R	70372	Taiwan	43.4	14,994,493	34,579,198
R	70582	Taiwan	38.1	5,074,923	13,312,363
R	70583	Taiwan	22.8	8,102,242	35,565,395
*	70633	Philippines	97.6	127,467	130,567
*	70645	Hong Kong	58.7	3,714,545	6,325,608
*	70650	Taiwan	86.4	971,238	1,124,521
*	70843	Hong Kong	52.0	2,272,349	4,369,589
*	70861	Singapore	68.3	970,365	1,421,660
*	70871	Taiwan	54.2	1,963,090	3,624,836
	70889	Israel	47.5	18,057,856	38,024,508
*	71027	Israel	81.0	73,538	90,810
*	71060	Hong Kong	60.7	649,212	1,069,273
*	71067	Taiwan	93.1	95,313	102,359
*	71070	Taiwan	52.5	439,745	837,004
*R	71131	Brazil	31.7	1,290,128	4,069,281
*	71131	India	57.5	2,341,389	4,069,281
	71315	Mexico	57.5	5,871,114	10,202,057
*	72202	Taiwan	69.9	357,777	511,794
*	72214	Taiwan	90.8	2,770,518	3,052,505
*	72255	Hong Kong	64.2	1,210,894	1,884,973
*	72278	Taiwan	90.1	1,554,463	1,724,860
R	72330	Brazil	9.0	25,460,348	283,049,142
*	72435	Hong Kong	71.4	3,100	4,344
R	72546	Korea, South	28.4	8,055,519	28,321,508
	72550	Taiwan	61.8	32,553,705	52,668,155
*	72552	Taiwan	56.0	2,547,483	4,550,311
R	72715	Taiwan	22.7	1,967,562	8,669,409
R	72725	Taiwan	35.6	3,818,898	10,732,111
	72740	Taiwan	44.2	63,172,253	143,039,247
R	72747	Taiwan	23.9	5,699,400	23,893,885
R	72765	Taiwan	42.7	12,267,130	28,702,058
R	72786	Taiwan	50.4	11,838,353	23,473,081
*R	73029	Brazil	23.8	794,165	3,331,964
*	73073	Korea, South	80.5	76,669	95,300
*	73105	Korea, South	56.4	831,876	1,474,756
*	73110	Taiwan	55.0	433,893	789,097
*	73130	Korea, South	47.6	376,297	790,081
*	73150	Taiwan	70.4	824,410	1,171,582
*R	73170	Taiwan	36.0	5,419,969	15,056,602
*	73243	Taiwan	67.1	2,408,955	3,588,419
*R	73252	Taiwan	71.3	16,406,009	23,000,962
	73260	Taiwan	87.7	47,297,848	53,960,280
R	73262	Taiwan	46.4	8,265,184	17,806,322
*	73410	Taiwan	72.7	4,106,188	5,647,254
*R	73420	Taiwan	13.9	24,183,438	174,341,552
*	73430	Hong Kong	78.2	550,021	702,946
*R	73442	Brazil	48.6	684,611	1,408,043
*	73451	Taiwan	88.4	4,283,617	4,846,568
*	73460	Taiwan	90.4	1,410,352	1,559,456
*	73471	Taiwan	87.2	826,169	947,634

LIST II: COUNTRIES APPROACHING COMPETITIVE NEED LIMITS—Continued

[January–October 1986]

	TSUS	Country	Percent of world	Country total	World total
*	73472	Taiwan	66.5	3,506,551	5,272,317
*	73485	Indonesia	59.4	634,488	1,067,494
	73487	Taiwan	83.9	16,144,907	19,234,126
R	73488	Taiwan	34.8	4,237,606	12,162,575
R	73491	Taiwan	30.1	3,554,522	11,796,711
R	73509	Korea, South	25.0	12,567,561	50,213,905
*R	73510	Taiwan	66.6	2,141,246	3,217,092
*	72511	Taiwan	77.9	1,689,577	2,168,791
R	73765	Taiwan	40.0	3,770,700	9,422,431
2 R	73795pt	Mexico	9.5	50,528,850	550,571,814
*	74030	Hong Kong	56.1	3,364,800	5,995,365
*	74034	Hong Kong	82.0	1,660,389	2,025,119
	74038	Korea, South	19.5	60,343,296	309,380,170
*	74120	Hong Kong	98.2	2,414,624	2,459,153
R	74150	Hong Kong	34.0	5,342,536	15,717,697
*	74508	Taiwan	48.3	190,155	393,604
*	74542	Taiwan	60.8	343,491	564,563
R	74545	Taiwan	32.2	6,972,619	21,635,365
R	74568	Taiwan	24.0	2,919,944	12,146,745
*	74570	Taiwan	93.2	1,201,305	1,288,585
*	74815	Taiwan	57.9	1,069,772	1,848,751
*	74836	Taiwan	57.7	659,740	1,143,402
*R	74855	Taiwan	25.6	1,900,709	7,427,025
*	75005	Hong Kong	51.2	276,190	539,224
*	75022	Taiwan	51.9	2,145,620	4,134,731
*	75025	Hong Kong	57.4	2,956,706	5,151,183
*	75035	Taiwan	73.0	1,503,648	2,059,885
R	75045	Taiwan	39.3	4,271,532	10,876,370
R	75047	Taiwan	45.0	7,816,539	17,369,564
*	75050	Korea, South	57.2	662,608	1,157,977
*	75055	Korea, South	60.5	1,600,193	2,646,014
R	75065	Taiwan	69.3	5,875,237	8,475,236
R	75070	Taiwan	34.2	11,983,997	35,075,061
*	75075	Hong Kong	48.3	1,341,647	2,778,490
*	75080	Taiwan	92.5	1,139,862	1,231,856
	75105	Taiwan	82.9	63,102,435	76,142,144
*	75111	Taiwan	48.5	768,821	1,586,367
*	75115	Taiwan	100.0	24,900	24,900
*	75120	Taiwan	98.6	5,755,347	5,834,257
*	75125	Taiwan	68.5	449,947	657,053
*	75615	Hong Kong	47.6	3,251,309	6,825,913
*	75623	India	81.6	74,503	91,248
*	76050	Taiwan	47.5	288,109	606,472
	77007	Mexico	95.1	45,285,750	47,617,846
R	77040	Mexico	38.6	7,120,610	18,425,492
	77143	Taiwan	15.2	60,666,302	400,135,528
R	77206	Taiwan	45.1	7,942,773	17,622,175
*	77229	Taiwan	61.2	241,360	394,701
R	77280	Taiwan	26.8	4,717,127	17,571,841
R	77295	Taiwan	43.9	12,529,455	28,555,007
R	77297	Taiwan	43.7	20,268,957	46,418,452
R	77310	Taiwan	36.0	4,233,875	11,744,887
*	77320	Taiwan	82.8	71,589	86,479
*	77435	Taiwan	82.9	38,570	46,523
	77450	Taiwan	53.3	35,426,134	66,504,183
	79039	Taiwan	87.3	67,913,845	77,793,074
*	79059	Taiwan	59.3	545,980	921,187
R	79060	Taiwan	27.8	3,554,022	12,804,255
*	79063	Hong Kong	64.1	417,815	652,045
	79070	Korea, South	81.0	32,664,333	40,313,814
*	79110	Hong Kong	89.0	2,116,357	2,378,608
	79115	Hong Kong	21.2	62,127,907	293,216,159
R	79127	Brazil	24.8	26,585,229	107,288,224
*	79260	Hong Kong	60.0	4,975,701	6,222,597
*	79275	Hong Kong	60.5	1,802,736	2,980,571

* = See List III; R = Reduced Limit Applies.
1 = 684.4020 Only.
2 = Entire Category Except For 737.9525.

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LIST III: POSSIBLE DE MINIMIS ITEMS

[January-October 1986]

	TSUS	Country	Percent of World	Country total	World total
	10584	Israel	91.7	$5,454,679	$5,946,778
	10670	Thailand	100.0	2,550	2,550
	10745	Brazil	47.1	418,639	889,319
	11404	Thailand	50.2	2,090,959	4,166,031
	13037	Argentina	90.5	4,490,421	4,959,547
	13040	Mexico	69.8	15,885	22,749
R	13120	Argentina	22.3	238,028	1,067,751
	13180	Korea, South	61.9	7,991	12,908
	13560	Mexico	50.9	106,801	209,337
	13570	Mexico	52.1	137,676	264,379
	13580	Guatemala	99.9	12,933	18,493
	13599	Mexico	54.9	787,689	1,435,503
	13600	Dominican Republic	80.1	5,240,930	6,539,860
	13640	Honduras	60.5	1,127,764	1,863,585
	13661	Mexico	95.2	2,405,311	2,525,828
	13680	Mexico	68.5	2,587,372	3,777,118
	13695	Guatemala	51.0	221,476	434,585
	13697	Taiwan	74.5	1,316,939	1,767,972
	13702	Dominican Republic	96.4	1,434,810	1,488,434
	13771	Mexico	81.6	2,407,866	2,949,363
	13788	Jamaica	48.6	3,109,430	6,399,445
	13789	Dominican Republic	95.9	1,410,671	1,455,229
	13793	Dominican Republic	68.7	686,995	1,000,615
	13835	Costa Rica	91.2	2,400,146	2,631,119
	14021	Mexico	86.8	4,745,909	5,466,217
	14054	Israel	84.4	1,185,037	1,404,009
	14509	Dominican Republic	53.4	1,311,871	2,454,557
	14550	Mexico	80.7	1,526,857	1,891,564
	14565	Taiwan	64.5	1,990,365	3,087,635
R	14612	Argentina	27.2	1,055,402	3,878,310
	14622	Turkey	78.6	5,880,264	7,485,770
	14674	Yugoslavia	48.8	3,144,286	6,437,556
	14687	Dominican Republic	91.5	452,753	494,929
	14733	Jamaica	55.8	307,140	550,582
	14825	Mexico	75.5	3,205,385	4,243,459
	14835	Guatemala	75.7	533,247	704,069
R	14950	Mexico	49.4	1,808,828	3,665,189
	14960	Thailand	56.0	3,264,362	5,828,971
	15200	Ecuador	86.7	82,304	94,918
	15205	Cyprus	48.1	284,231	591,099
R	15254	Brazil	52.5	1,260,428	2,401,867
	15320	Dominican Republic	87.7	44,345	50,551
	15440	Taiwan	48.7	169,499	348,131
	15443	Taiwan	52.9	126,568	239,348
	15460	Thailand	71.6	414,817	579,620
	15535	Dominican Republic	48.6	3,047,575	6,274,045
	16169	Turkey	77.3	51,393	66,463
	16175	Israel	62.5	173,518	277,832
	16184	Korea, South	54.2	649,067	1,198,212
	16211	Turkey	52.6	7,147	13,578
	16813	Trinidad Island	82.9	398,878	480,883
	16904	Brazil	59.8	10,389	14,889
	17615	Mexico	75.0	92,147	122,931
	18210	Thailand	53.8	2,019	3,754
	18453	Argentina	54.1	110,975	205,176
	20006	Hong Kong	62.4	2,975	4,766
	20091	Honduras	67.9	3,040,615	4,475,488
	20320	Honduras	58.8	670,965	1,141,261
	20330	Taiwan	59.8	410,627	686,780
	20405	Taiwan	71.4	926,702	1,297,181
	20435	Honduras	53.2	341,395	641,895
	20647	Taiwan	62.5	1,351,331	2,160,675
	20653	Taiwan	60.8	83,906	138,088
	20665	Taiwan	65.9	888,879	1,348,808
	22234	Taiwan	49.3	2,137	4,334
	22236	Taiwan	70.6	543,217	769,026
	24010	Brazil	99.9	3,662,302	3,774,879
	24012	Brazil	97.7	2,484,059	2,542,741
	24019	Taiwan	78.4	849,917	1,084,452
	24030	Brazil	49.5	33,204	67,046
	24030	Taiwan	50.5	33,842	67,046
	24050	Taiwan	66.6	3,064	4,602
	24052	Brazil	100.0	10,816	10,816
	24054	Taiwan	88.7	113,720	128,245
	25261	Mexico	100.0	1,884,077	1,884,077
	25263	Mexico	56.8	1,291,777	2,273,160

LIST III: POSSIBLE DE MINIMIS ITEMS—Continued

[January-October 1986]

	TSUS	Country	Percent of World	Country total	World total
	22236	Brazil	47.2	401,294	850,147
	22236	Mexico	100.0	11,878	11,878
	25442	Brazil	92.3	260,734	282,380
	30530	India	49.2	42,985	87,415
R	31525	Mexico	41.5	1,178,287	2,836,761
	31580	Thailand	75.6	644,135	852,410
	31590	Thailand	73.3	55,915	76,234
	31901	India	97.7	1,876,938	1,921,839
	31903	India	98.1	1,955,382	1,992,579
	31905	India	98.3	7,614,001	7,749,525
	31907	India	92.6	226,337	244,485
	35520	Taiwan	86.4	85,501	98,958
	35542	Taiwan	68.2	32,681	47,923
	36035	India	94.9	1,226,416	1,292,323
	36584	Philippines	51.2	3,454,633	6,741,443
	39016	Taiwan	86.4	20,155	23,327
	40327	Hong Kong	51.8	58,379	112,773
	40531	Korea, South	68.1	1,264,401	1,855,338
R	40696	Brazil	28.8	487,261	1,690,691
	40696	Korea, South	51.1	864,433	1,690,691
	41056	Taiwan	49.6	16,711	33,702
	41108	Brazil	88.3	2,641,320	2,992,802
	41126	Yugoslavia	83.7	310,890	371,483
	41231	Israel	60.4	556,661	921,063
	41276	Israel	56.6	954,223	1,686,209
	41280	Mexico	47.3	436,364	922,805
	41336	Romania	60.1	496,672	826,859
	41645	Taiwan	23.0	1,787,199	7,780,874
	41722	Mexico	70.6	20,161	28,552
	41764	Brazil	72.5	481,950	664,786
	41790	Brazil	100.0	2,720	2,720
	41824	India	84.0	117,772	140,181
	41840	Singapore	100.0	39,871	39,871
	41910	Chile	60.4	4,523,110	7,492,562
	41950	India	58.4	92,341	158,030
	41960	Mexico	52.7	2,226,369	4,222,024
	42002	Israel	74.8	313,295	418,991
	42020	India	50.5	205,785	407,229
	42024	Israel	80.6	544,872	676,124
	42082	Israel	65.0	127,609	196,384
R	42106	Taiwan	47.9	1,108,845	2,315,572
	42276	Mexico	55.3	935,187	1,691,662
	42509	Hong Kong	65.1	91,480	140,583
R	42582	Brazil	29.0	1,627,081	5,603,853
	42584	Trinidad Island	70.2	945,339	1,346,825
	42636	Argentina	75.3	442,651	587,858
	42678	Israel	100.0	83,784	83,784
	42716	Argentina	87.7	371,510	423,848
	42746	Mexico	99.7	743,706	745,600
	42774	Brazil	66.1	346,985	525,235
R	42784	Brazil	40.3	2,165,561	5,375,350
	42850	Brazil	52.4	9,974	19,032
R	42858	Brazil	43.9.1	632,574	1,440,080
	42868	Mexico	93.2	2,470,424	2,650,492
	42890	Brazil	98.9	819,642	828,762
	42929	Brazil	48.0	836,341	1,741,172
	42929	Brazil	66.9	3,899,561	5,830,940
	42970	Mexico	61.4	3,334,117	5,430,212
	45254	Brazil	68.9	260,324	377,706
	45522	India	70.6	55,547	78,698
	45530	Taiwan	96.1	130,493	135,771
	45546	Taiwan	67.7	160,241	236,609
	46560	Mexico	64.9	642,817	989,781
	46605	Philipines	78.1	449,064	574,631
	47085	Mexico	56.6	4,077,535	7,198,164
	47230	Thailand	100.0	1,015	1,015
	47338	Cyprus	64.1	141,221	220,148
	47352	Mexico	99.2	3,658,705	3,688,594
	47382	Korea, South	99.1	346,041	349,138
	49048	Taiwan	54.5	17,706	32,469
R	49094	Brazil	28.7	416,186	1,449,262
	49404	Taiwan	49.4	9,190	18,619
	51131	Mexico	86.6	463,327	534,994
	51224	Mexico	55.3	201,580	364,480
	51554	Mexico	50.1	350,667	700,065
	51624	India	100.0	1,100	1,100

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LIST III: POSSIBLE DE MINIMIS ITEMS—Continued

[January–October 1986]

	TSUS	Country	Percent of World	Country total	World total
	51671	India	99.1	295,833	298,520
	51673	India	66.5	18,315	27,555
	51674	India	53.8	35,561	66,061
	51676	India	59.7	94,377	158,000
	51684	India	51.6	353,373	682,754
	51841	Mexico	85.4	252,107	295,110
	52187	Mexico	73.1	2,404,806	3,289,809
	52241	Mexico	100.0	46,906	46,906
	52351	Taiwan	93.7	59,160	63,109
	53474	Taiwan	77.9	31,996	41,097
	53481	Taiwan	58.9	4,143,470	7,035,945
R	54021	Mexico	40.7	2,409,516	5,923,148
	54065	Taiwan	50.9	946,900	1,859,183
	54294	Taiwan	87.1	27,104	31,110
	54534	Brazil	60.7	641,040	1,056,104
	54565	Mexico	70.7	743,459	1,051,487
	54585	Taiwan	77.1	1,041,146	1,351,036
	54647	Taiwan	61.0	903,208	1,480,779
	54741	Brazil	72.0	276,137	383,462
	60210	Chile	72.6	677,437	933,277
	60340	Chile	59.3	1,778,198	2,999,494
	60503	Korea, South	52.2	36,865	70,657
	61062	Korea, South	47.3	3,158,992	6,681,529
	61065	Taiwan	62.8	3,216,266	5,118,284
	61071	Taiwan	51.9	65,706	126,704
	61230	Yugoslavia	76.0	404,902	532,438
	61290	Thailand	99.3	186,480	187,848
	61294	Thailand	99.3	186,480	187,848
	61298	Yugoslavia	50.1	18,788	37,492
	61298	Yugoslavia	50.1	18,788	37,492
	61270	Yugoslavia	47.6	586,318	1,232,284
	61309	Brazil	100.0	2,099	2,099
	61822	Israel	81.2	748,621	921,903
	62215	Venezuela	57.7	47,300	82,000
	62217	Taiwan	100.0	3,312	3,312
	62240	Taiwan	90.5	112,739	124,636
	62402	Mexico	93.4	47,252	50,606
	62404	Mexico	77.1	687,813	891,659
	62615	Peru	93.9	2,224,499	2,383,238
R	62640	Mexico	32.0	2,291,388	7,164,152
	62890	Chile	84.1	1,969,977	2,343,207
	63262	Peru	51.3	19,565	38,159
	63266	Mexico	92.9	330,185	355,422
	64208	Korea, South	58.7	942,637	1,605,556
	64225	Singapore	59.1	32,001	54,129
R	64245	Mexico	55.5	521,606	939,999
	64250	Taiwan	84.5	8,807	10,425
	64258	Brazil	64.9	141,660	218,236
	64270	Chile	76.6	88,560	115,320
	64278	Taiwan	51.4	1,249,749	2,432,759
	64285	Taiwan	68.7	84,900	123,511
	64464	El Salvador	82.8	32,641	39,406
	64606	Taiwan	67.9	183,505	270,127
	64627	Korea, South	52.8	299,135	566,611
	64628	Korea, South	65.3	442,001	676,804
	64647	Taiwan	74.6	621,926	833,890
R	64665	Taiwan	41.7	3,224,457	7,732,562
	64678	Taiwan	61.4	626,647	1,020,047
	64682	Taiwan	73.6	259,701	352,848
	64685	Taiwan	51.0	790,390	1,548,941
	64687	Taiwan	82.1	247,503	301,634
	64688	Taiwan	52.7	3,051	5,784
	64698	Mexico	51.6	203,587	394,645
	64710	Taiwan	59.6	100,116	168,019
	64855	Taiwan	62.6	2,783,528	4,449,412
	64857	Taiwan	81.3	1,247,754	1,534,482
R	64880	Hong Kong	48.6	207,554	426,939
	64891	Taiwan	82.9	936,899	1,130,779
R	64895	Taiwan	36.6	2,496,432	6,814,524
	654971	Hong Kong	65.2	35,610	54,635
	64973	Taiwan	100.0	16,711	16,711
	64975	Hong Kong	53.6	147,336	274,770
	64989	Taiwan	66.0	200,062	303,190
	65047	Taiwan	73.8	484,065	656,151
	65079	Taiwan	59.9	79,998	133,613
	65087	Hong Kong	73.2	177,159	242,097

LIST III: POSSIBLE DE MINIMIS ITEMS—Continued

[January–October 1986]

	TSUS	Country	Percent of World	Country total	World total
	65104	Taiwan	89.0	30,804	34,605
	65113	Taiwan	48.5	2,770,814	5,718,682
	65115	Taiwan	70.0	181,234	258,931
	65153	Taiwan	59.3	2,159,834	3,644,346
	65160	Mexico	56.1	8,853	15,776
	65214	Taiwan	76.0	134,130	176,524
	65236	Taiwan	59.1	51,332	86,791
	65303	Taiwan	49.7	173,388	348,768
	65347	Taiwan	79.6	1,240,077	1,557,619
	65399	Taiwan	84.6	5,397,334	6,380,044
R	65435	Taiwan	42.4	2,827,694	6,673,673
	65455	Taiwan	91.8	2,645,912	2,880,779
	65465	Taiwan	54.6	3,381,586	6,191,871
	65790	Mexico	71.6	467,085	651,948
	66080	Hong Kong	80.4	1,720,636	2,138,913
	66218	Korea, South	76.9	120,980	157,311
	68025	Taiwan	52.2	490,335	939,332
	68220	Singapore	86.5	1,802,210	2,083,230
	68820	Venezuela	49.2	1,715,327	3,488,585
	69015	Mexico	71.1	934,000	1,313,513
	70208	Korea, South	57.6	48,224	83,735
	70232	Mexico	61.7	365,162	591,892
	70245	Mexico	96.1	22,333	23,233
	70365	Mexico	47.1	97,702	207,597
	70633	Philippines	97.6	127,467	130,567
	70645	Hong Kong	58.7	3,714,545	6,325,608
	70650	Taiwan	86.4	971,238	1,124,521
	70843	Hong Kong	52.0	2,272,349	4,369,589
	70861	Singapore	68.3	970,365	1,421,660
	70871	Taiwan	54.2	1,963,090	3,624,836
	71027	Israel	81.0	73,538	90,810
	71060	Hong Kong	60.7	649,212	1,069,273
	71067	Taiwan	93.1	95,313	102,359
	71070	Taiwan	52.5	439,745	837,004
R	71131	Brazil	31.7	1,290,128	4,069,281
	71131	India	57.5	2,341,389	4,069,281
	72202	Taiwan	69.9	357,777	511,694
	72214	Taiwan	90.8	2,770,518	3,052,505
	72255	Hong Kong	64.2	1,210,894	1,884,973
	72278	Taiwan	90.1	1,554,463	1,724,860
	72435	Hong Kong	71.4	3,100	4,344
	72552	Taiwan	56.0	2,547,483	4,550,311
R	73029	Brazil	23.8	794,165	3,331,964
	73073	Korea, South	80.5	76,669	95,300
	73105	Korea, South	56.4	831,876	1,474,756
	73110	Taiwan	55.0	443,893	789,097
	73130	Korea, South	47.6	376,297	790,081
	73150	Taiwan	70.4	824,410	1,171,582
	73243	Taiwan	67.1	2,408,955	3,588,419
	73410	Taiwan	72.7	4,106,188	5,647,254
	73430	Hong Kong	78.2	550,021	702,946
R	73442	Brazil	48.6	684,611	1,408,043
	73451	Taiwan	88.4	4,283,617	4,846,568
	73460	Taiwan	90.4	1,410,352	1,559,456
	73471	Taiwan	87.2	826,169	947,634
	73472	Taiwan	66.5	3,508,551	5,272,317
	73485	Indonesia	59.4	634,488	1,067,494
R	73510	Taiwan	66.6	2,141,246	3,217,092
	73511	Taiwan	77.9	1,689,577	2,168,791
	74030	Hong Kong	56.1	3,364,800	5,995,365
	74034	Hong Kong	82.0	1,660,389	2,025,119
	74120	Hong Kong	98.2	2,414,624	2,459,153
	74508	Taiwan	48.3	190,155	393,604
	74542	Taiwan	60.8	343,491	564,563
	74570	Taiwan	93.2	1,201,305	1,288,585
	74815	Taiwan	57.9	1,069,772	1,848,751
	74836	Taiwan	57.7	659,740	1,143,402
R	74855	Taiwan	25.6	1,900,79	7,427,025
	75005	Hong Kong	51.2	276,190	539,224
	75022	Taiwan	51.9	2,145,620	4,134,731
	75025	Hong Kong	57.4	2,956,706	5,151,183
	75035	Taiwan	73.0	1,503,648	2,059,885
	75050	Korea, South	57.2	62,608	1,157,977
	75055	Korea, South	60.5	1,600,193	2,646,014
	75075	Hong Kong	48.3	1,341,847	2,778,490
	75080	Taiwan	92.5	1,139,862	1,856

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LIST III: POSSIBLE DE MINIMIS ITEMS—Continued

[January–October 1986]

	TSUS	Country	Percent of World	Country total	World total
	75111	Taiwan	48.5	768,821	1,586,367
	75115	Taiwan	100.0	24,900	24,900
	75120	Taiwan	98.6	5,755,347	5,834,257
	75125	Taiwan	68.5	449,947	657,053
	75615	Hong Kong	47.6	3,251,309	6,825,913
	75623	India	81.6	74,503	91,248
	76050	Taiwan	47.5	288,109	606,472
	77229	Taiwan	61.2	241,360	394,701
	77320	Taiwan	82.8	71,589	86,479
	77435	Taiwan	82.9	38,570	46,523
	79059	Taiwan	59.3	545,980	921,187
	79063	Hong Kong	64.1	417,815	652,045
	79110	Hong Kong	89.0	2,116,357	2,378,608
	79260	Hong Kong	80.0	4,975,701	6,222,597
	79275	Hong Kong	60.5	1,802,736	2,980,571

R=Reduced limit applies.

LIST IV: POSSIBLE REDESIGNATION ITEMS

[Jan–Oct 1986]

	TSUS	Country	Percent of world	Country total	World total
	12165	Argentina	41.7	$23,543,157	$56,483,101
W	15520	Philippines	12.8	65,426,976	512,830,408
W	19217	Colombia	44.8	3,818,330	8,515,451
1	19221pt	Colombia	16.4	12,219,019	74,684,750
	20660	Mexico	35.5	16,421,070	46,264,888
2W	20700pt	Taiwan	37.5	750,000	2,000,000
	24530	Brazil	43.9	5,046,485	11,484,928
	25660	Korea, South	2.4	991,493	41,839,402
R	33740	Korea, South	20.6	2,896,473	14,045,301
R	35581	Taiwan	20.8	15,367,822	73,748,841
3W	3861343pt	Taiwan	68.4	6,500,000	9,500,000
R	38961	Hong Kong	10.0	15,653,551	155,859,534
	40719	Mexico	10.6	3,888,471	36,609,709
	42896	Brazil	48.0	836,341	1,741,172
	43764	Brazil	48.0	6,189,079	12,893,386
	46505	Philippines	24.9	835,938	3,351,702
	52221	Mexico	49.8	15,812,398	31,737,469
R	53222	Korea, South	19.9	2,647,745	13,335,821
	53231	Mexico	33.3	2,501,673	7,519,558
W	53494	Taiwan	41.4	68,774,344	166,010,468
	53531	Mexico	26.1	15,918,041	61,044,934
	54553	Mexico	19.8	5,809,304	29,346,463
	60628	Mexico	27.2	6,493,626	23,916,225
R	61070	Taiwan	10.9	217,324	1,998,423
R	61074	Korea, South	6.2	1,201,500	19,227,650
R	61074	Taiwan	12.5	2,399,323	19,227,650
	61203	Chile	12.0	6,936,081	56,884,481
	61206	Peru	9.0	52,070,580	575,603,345
	61206	Zambia	6.1	35,210,482	575,603,345
R	64217	Korea, South	22.9	316,198	1,379,700
R	65089	Hong Kong	13.5	336,421	2,485,662
R	65203	Korea, South	23.7	739,562	3,114,498
W	65270	Korea, South	48.0	10,788,179	22,453,192
	65284	Mexico	35.3	26,666,795	75,536,573
R	65338	Taiwan	6.5	153,228	2,351,655
	65390	Hong Kong	45.2	4,340,455	9,598,827
	65430	Korea, South	40.7	3,309,436	8,135,868
R	65430	Taiwan	18.9	1,540,849	8,135,868
R	66109	Singapore	9.4	10,534,366	112,282,786
	66165	Israel	8.9	1,773,938	19,903,884
	66235	Mexico	26.5	5,670,634	21,374,587
	67656	Mexico	2.6	19,161,931	728,889,755
W	67656	Singapore	0.5	3,337,354	728,889,755
	67656	Korea, South	2.0	14,540,532	728,889,755
	67656	Hong Kong	1.1	8,180,477	728,889,755
	67850	Hong Kong	1.6	46,994,723	2,886,712,364
R	68301	Korea, South	12.6	5,084,653	40,299,472
R	68301	Taiwan	17.1	6,882,018	40,299,472
	68315	Mexico	19.7	29,406,336	149,532,424
R	68370	Hong Kong	24.0	3,088,732	12,895,375

LIST IV: POSSIBLE REDESIGNATION ITEMS—Continued

[Jan–Oct 1986]

	TSUS	Country	Percent of world	Country total	World total
R	68370	Taiwan	11.3	1,459,226	12,895,375
	68425	Singapore	7.5	47,433,809	634,103,772
	68455	Mexico	32.8	12,704,885	38,770,587
	68459	Hong Kong	1.1	2,271,507	215,986,688
	68459	Taiwan	1.6	3,514,649	215,986,688
W	68514	Singapore	5.1	21,778,820	428,807,373
R	68514	Korea, South	4.6	19,605,481	428,807,373
	68516	Korea, South	0.7	387,045	57,520,350
	68516	Hong Kong	2.1	1,210,227	57,520,350
	68516	Taiwan	28.3	16,259,453	57,520,350
4W	68532pt	Singapore	0.0	8,701	58,548,832
4W	68532pt	Hong Kong	0.2	142,098	58,548,832
4	68532pt	Korea, South	1.1	664,411	58,548,832
4 R	68532pt	Taiwan	18.9	11,049,593	58,548,832
5W	68532pt	Singapore	15.0	69,235,826	461,458,133
5W	68532pt	Hong Kong	6.4	29,584,609	461,458,133
5	68532pt	Korea, South	6.0	27,580,790	461,458,133
5 R	68532pt	Taiwan	3.9	17,797,371	461,458,133
6W	68570pt	Singapore	4.3	16,140,202	378,297,433
7	68570pt	Singapore	31.9	49,022,633	153,774,820
	68660	Mexico	42.4	5,985,923	14,134,236
	68812	Taiwan	12.2	68,125,007	556,956,849
	68817	Mexico	2.0	188,236	9,402,017
	68830	Costa Rica	0.6	63,747	11,236,935
R	68841	Hong Kong	15.8	1,875,039	11,840,471
	68841	Taiwan	8.4	995,514	11,840,471
	69635	Taiwan	33.9	3,278,936	9,661,540
	69640	Taiwan	43.7	3,500,116	8,015,123
	70661	Hong Kong	16.3	5,752,525	35,243,769
R	70847	Hong Kong	7.1	19,577,726	277,476,851
	70909	Mexico	38.3	17,020,231	44,468,268
	70940	Hong Kong	14.1	3,336,543	23,729,441
	71072	Taiwan	42.6	3,107,947	7,287,992
	71138	Mexico	22.7	4,029,410	17,750,160
R	72208	Korea, South	5.4	705,808	13,078,733
R	72211	Korea, South	2.5	1,842,680	74,328,678
	73486	Taiwan	40.2	11,075,596	27,559,575
	73507	Korea, South	46.2	8,538,293	18,466,386
W	73707	Hong Kong	26.1	7,746,625	29,661,007
8 R	73715pt	Hong Kong	19.4	11,816,301	60,752,537
9 R	73715pt	Hong Kong	16.1	7,509,779	46,760,657
W	73721	Hong Kong	28.0	8,821,230	31,545,597
	73723	Hong Kong	32.6	49,119,432	150,781,080
W	73740	Korea, South	6.5	6,458,209	99,789,302
W	73740	Hong Kong	30.1	30,008,894	99,789,302
R	73742	Korea, South	22.6	966,509	4,279,754
W	73747	Korea, South	29.4	4,629,751	15,757,362
W	73749	Hong Kong	17.6	4,702,884	26,715,216
W	73749	Taiwan	8.6	2,308,278	26,715,216
W	73760	Hong Kong	19.6	2,425,308	12,356,250
10W	73795pt	Hong Kong	16.5	17,332,800	105,074,299
10	73795pt	Taiwan	12.2	12,837,003	105,074,299
11W	73795pt	Taiwan	13.0	42,606,987	327,105,814
12	73795pt	Taiwan	21.3	47,685,727	223,466,000
	74011	Israel	1.1	78,958	7,039,484
R	74012	Hong Kong	0.7	49,831	7,093,058
R	74013	Hong Kong	0.3	1,292,053	421,391,991
13W	74038	Hong Kong	19.5	60,239,158	309,380,170
	74125	Hong Kong	21.4	745,445	3,482,938
W	74820	Taiwan	41.3	4,550,782	11,024,789
W	74821	Taiwan	13.0	3,405,885	26,263,897
R	75040	Hong Kong	21.9	3,829,342	17,484,268
	77143	Taiwan	15.2	60,666,302	400,135,528
14W	77215pt	Taiwan	22.3	3,000,000	13,450,000
15	77455pt	Taiwan	15.3	49,519,507	323,289,539
	79115	Hong Kong	21.2	62,127,907	293,216,159
	79128	Mexico	3.5	358,726	10,288,263

R=Reduced limit applies; W=Competitive need limits waived.
1=192.2192 only.
2=Wooden Christmas tree ornaments only.
3=Wall banners only.
4=685.3260 and 685.3262 only.
5=Entire category except for 685.3260 and 685.3262.
6=Entire category except for 685.7032, 685.7036 and 685.7038.
7=685.7032, 685.7036 and 685.7038 only.

Sunshine Act Meetings

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8=737.1560 only.
9=Entire category except for 737.1560.
10=737.9525 only.
11=737.9555 only.
12=Entire category except for 737.9525 and 737.9555.
13=Waiver applicable only to watch bracelet sets valued at less than $12 per dozen.
14=Plastic picture frames only
15=774.5580 and 774.5585 only.

[FR Doc. 87-2485 Filed 2-5-87; 8:45 am]
BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 25
Friday, February 6, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

February 4, 1987.

PLACE: Russell Senate Office Building, Room 385, Washington, DC 20510.

DATE AND TIME: Thursday, February 12, 1987, 9:00 a.m.-5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Opening Remarks.
II. SAC Chair Panel
III. General Discussion
IV. Panel Presentation on the Collection of Statistics on Racial, Ethnic, and Religious Violence
V. Commission Project Presentations and Discussion—Commissioners

PERSON TO CONTACT FOR FURTHER INFORMATION: Thomas Olsen, Press and Communications Division, (202) 376-8105.

William H. Gillers,
Solicitor, 376-8514.

[FR Doc. 87-2575 Filed 2-4-87; 9:21 am]
BILLING CODE 6335-01-M

COMMISSION ON CIVIL RIGHTS

February 4, 1987.

PLACE: Cannon House Office Building, Caucus Room, Washington, DC 20515.

DATE AND TIME: Friday, February 13, 1987, 9:00 a.m.—5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes for December 10, 1986 Meeting
III. Staff Director's Report
IV. Panel Presentation—Role of Commission in Immigration Legislation
V. Administrative Instruction on Monitoring
VI. Discussion: Project priorities for remainder of FY '87 and for FY '88

PERSON TO CONTACT FOR FURTHER INFORMATION: Thomas Olsen, Press and Communications Division, (202) 376-8105.

William H. Gillers,
Solicitor, 376-8514.

[FR Doc. 87-2576 Filed 2-4-87; 9:21 am]
BILLING CODE 6335-01-M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 1:30 p.m., Wednesday, February 11, 1987.

PLACE: 1776 G Street, NW, Washington, DC 20456, 7th Floor, Filene Board Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Review of Central Liquidity Facility Lending Rate.
4. Insurance Fund Report.
5. Proposed Semiannual Agenda of Regulations.

RECESS: 2:30 p.m.

TIME AND DATE: 2:45 p.m., Wednesday, February 11, 1987.

PLACE: 1776 G Street, NW, Washington, DC 20456, 7th Floor, Filene Board Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Board Briefings. Closed pursuant to exemptions (2), (6), (8), (9)(A)(ii) and (9)(B).
3. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Rebecca Baker, Acting Secretary of the Board, Telephone (202) 357-1100.

Rebecca Baker,
Acting Secretary of the Board.

[FR Doc. 87-2630 Filed 2-4-87; 8:45 am]
BILLING CODE 7535-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency meetings.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [52.FR 3203 February 2, 1987].

STATUS: Closed/open meetings.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, January 27, 1987.

CHANGES IN THE MEETINGS: Additional items/deletion.

The following item was considered at a closed meeting on Tuesday, February 3, 1987, at 2:30 p.m.

Institution of Administrative proceeding of an enforcement nature.

The following item will be considered at an open meeting on Thursday, February 5, 1987, at 10:00 a.m., in Room 1C30.

Consideration of whether to issue a concept release requesting comment on issues to be addressed by the Commission's study of the use of the exemption contained in Section 3(a)(2) of the Securities Act of 1933 for securities guaranteed by banks and the use of insurance policies to guarantee securities. For further information, please contact Matthew A. Chambers at (202) 272-2428 or Nancy M. Morris at (202) 272-2447.

The following item will not be considered at an open meeting on Thursday, February 5, 1987, at 10:00 a.m.:

Consideration of whether to publish for comment proposed amendments to Regulation S-X that would require accountants' reports included in Commission filings to be signed by an independent accountant who within the last three years has undergone a peer review of its accounting and auditing practice. For further information, please contact John Heyman at (202) 272-2130.

Commissioner Fleischman, as duty officer, determined that Commission business required the above changes.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bernard Black at (202) 272-2014.

Jonathan G. Katz,
Secretary.

February 4, 1987.

[FR Doc. 87-2657 Filed 2-4-87; 3:56 pm]
BILLING CODE 8010-01-M

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Corrections

Federal Register
Vol. 52, No. 25
Friday, February 6, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 672, and 675

[Docket No. 70103-7003]

Foreign Fishing, Groundfish of the Gulf of Alaska, Groundfish of the Bering Sea and Aleutian Islands Area

Correction

In rule document 87-294 beginning on page 785 in the issue of Friday, January 9, 1987, make the following corrections:

1. On page 787, in the third column, in the ninth line, "1.25" should read "1.250".

2. On page 790, in "Table 2", the fourth column head should read, "Original (footnote 2) TAC".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 61234-6234]

Groundfish of the Gulf of Alaska

Correction

In rule document 87-1301 beginning on page 2412 in the issue of Thursday, January 22, 1987, make the following corrections:

1. On page 2413, in the first column, in the third line "direct" should read "directed".

2. In the same column, under **SUPPLEMENTARY INFORMATION**, in the first paragraph, in the ninth line from the bottom, "§ 762.24(b)" should read "§ 672.24(b)".

3. On the same page, in the second column, in the first complete paragraph, in the 16th line, after "in" insert "any year and".

4. On page 2414, in the second column, in the seventh line, "June 18" should read "June 19".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300144B; FRL 3143-4]

Tolerance for Daminozide on Apples

Correction

In rule document 87-1009 beginning on page 1909 in the issue of Friday, January 16, 1987, make the following corrections:

1. On page 1911, in the second column, under the heading **III. Comments**, in the 25th line, "2¾" should read "2/3/4".

2. On the same page, in the third column, in the first complete paragraph, in the 22nd line, "2¾" should read "2/3/4".

3. On page 1913, in the first column, under the heading **IV. Response to Comments**, in the second paragraph, in the fifth line, "*197fo*" should read, "*1977a*".

§ 180.246 [Corrected]

4. On page 1914, in the third column, in § 180.246, in the table, in the third entry, in the second column, "02" should read "0.2".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-943-07-4220-10; N-16095]

Legal Description of Nellis Air Force Range Withdrawal; NV

Correction

In notice document 87-1596 beginning on page 2772 in the issue of Monday, January 26, 1987, make the following correction:

On page 2773, in the second column, in the 21st line "Sec. 46, All." should read "Sec. 36, All.".

BILLING CODE 1505-01-D

DEPARTMENT OF STATE

[Public Notice 996]

Fishermen's Protective Act Procedures; Fee

Correction

In notice document 87-1673 beginning on page 2842 in the issue of Friday, January 23, 1987, make the following correction:

On page 2843, in the first column, under **SUPPLEMENTARY INFORMATION**, in the 15th line from the bottom, "not" should read "now".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8113]

Withholding Upon Dispositions of U.S. Real Property Interests by Foreign Persons

Correction

In rule document 86-28511 beginning on page 46620 in the issue of Wednesday, December 24, 1986, make the following corrections:

1. On page 46623, in the second column, in the third line from the bottom, "§ 1.1445-2T(c)(93)" should read "§ 1.1445-2T(c)(3)".

§ 1.897-2 [Corrected]

2. On page 46627, in the second column, in § 1.897-2(c)(4)(ii), in the fourth line, "(c)(3)(i)" should read "(c)(4)(i)".

§ 1.445-1 [Corrected]

3. On page 46630, in the first column, in § 1.445-1(b)(4), in the fifth line, the section number reading "1.1145-3" should read "1.1445-3".

4. On page 46631, in the third column, in § 1.445-1(e)(4), in the fourth line, the section number reading "1.1445-8" should read "1.1445-8T".

5. On page 46632, in the first column, in § 1.445-1(f)(2), in the eighth and ninth lines, remove "If to establish the amount with that is available as a credit."

§ 1.1445-2 [Corrected]

6. On page 46635, in the first column, in § 1.1445-2(d)(1), in the 12th line, remove to the "transferee".

§ 1.1445-4 [Corrected]

7. On page 46641, in the second column, in § 1.1445-4(c)(2), in the 12th line, "§ 1.1445-1" should read, "§ 1.1445-1(g)(10).

§ 1.1445-5 [Corrected]

8. On page 46642, in the first column, in the section heading of § 1.1445-5, remove "(temporary)".

9. On the same page, in the same column, in § 1.1445-5(a), in the 21st line, "withholding" should read "withhold".

10. On page 46642, in the second column, in § 1.1445-5(b)(2)(ii), in the fifth line, "be" should read "by".

11. On page 46645, in the first column, in § 1.1445-5(b)(8), in the first line, the paragraph designation "(j)" should read "(i)".

12. On page 46645, in the second column, § 1.1445-5(b)(8), the second paragraph designation "(iv)" should read "(v)".

13. On page 46645, in the third column, in § 1.1445-5(c)(1)(ii), in the third line, "3.4" should read "34".

14. On page 46646, in § 1.1445-5(c)(1)(iii)(A), in the first column, in the 16th line, "§ 1.1445-8." should read "§ 1.1445-8T.".

15. On the same page, in the same column, in § 1.1445-5(c)(1)(iii)(B), the first paragraph designation "(2)" should read "(1)".

16. On the same page, in the same column, in § 1.1445-5(c)(1)(iii)(B)(2), in the third, fourth and fifth lines remove "[30 days after date of publication of this regulation]" and insert "January 23, 1987".

17. On page 46648, in the first column, in § 1.1445-5(e), in the first line, "of" should read "to".

§ 1.1445-6 [Corrected]

18. On page 46649, in the second column, in § 1.1445-6(c), in the fifth line, "withholding" should read "withhold".

[Note: An IRS document which makes other corrections to FR Doc. 86-28511 appears in the Rules and Regulations section of this issue.]

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

Federal Payments Made Through Financial Institutions by the Automated Clearing House Method

Correction

In rule document 87-1286 beginning on page 2405 in the issue of Thursday, January 22, 1987, make the following correction:

§ 210.14 [Corrected]

On page 2411, in the first column, in § 210.14, in paragraph (a), in the fifth line, "correct" should read "incorrect".

BILLING CODE 1505-01-D

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Federal Register

Friday
February 6, 1987

Part II

United States Sentencing Commission

Proposed Sentencing Guidelines for United States Courts

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UNITED STATES SENTENCING COMMISSION

Proposed Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of Proposed Sentencing Guidelines and Policy Statements for the United States Courts.

SUMMARY: These guidelines and policy statements are proposed for use by the federal courts in determining the sentences to be imposed in criminal cases. The sentencing reform provisions of the Comprehensive Crime Control Act of 1984 created the U.S. Sentencing Commission and charged it with the duty of promulgating sentencing guidelines. The guidelines are designed to provide certainty and fairness in meeting the purposes of sentencing. The objective is to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct, while maintaining sufficient flexibility to permit individualized sentencing when warranted by mitigating or aggravating factors not taken into account in the guidelines. Final guidelines must be submitted to Congress by April 13, 1987.

DATES: Written comments on the proposed guidelines must be received by the Commission on or before March 16, 1987. Because of the proximity of the statutory deadline for submission of final guidelines to Congress, the Commission encourages interested members of the public to submit their comments in writing as early in the comment period as practicable. To further facilitate public input on these proposed guidelines, the Commission has scheduled the following public hearings: Washington DC—March 11 & 12, 1987, 10:00 a.m., Ceremonial Courtroom, U.S. Courthouse, 3rd Street and Constitution Avenue, NW.

ADDRESS: Comments may be mailed to: United States Sentencing Commission, 1331 Pennsylvania Avenue, NW., Suite 1400, Washington, DC 20004, Attention: Guidelines Comments. All comments received on these proposed guidelines as well as comments previously received on the Preliminary Draft guidelines earlier published by the Commission (See 51 FR 35079) will be available for public inspection in the Commission offices.

FOR FURTHER INFORMATION CONTACT: Paul K. Martin, Communications Director for the Commission, telephone (202) 662-8800.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent commission in the judicial branch of the United States Government. Ordinarily, the Administrative Procedure Act rulemaking requirements (including publication in the **Federal Register**, public comment and public hearing procedures) are not applicable to judicial branch agencies. However, 28 U.S.C. § 994(x) makes the Administrative Procedure Act rulemaking provisions of 5 U.S.C. § 553 applicable to the promulgation of sentencing guidelines by the Sentencing Commission. Pursuant to this requirement, the Commission is publishing these proposed sentencing guidelines in the **Federal Register** for public comment. The Commission has scheduled the public hearings in Washington, D.C. for March 11 and 12, 1987, as an additional means of receiving public imput.

These proposed guidelines and policy statements are a substantial revision in both form and content of the preliminary draft guidelines previously published by the Commission in the October 1, 1986 **Federal Register** [51 FR 35079]. For the reasons cited in the Supplementary Information accompanying pubication of that preliminary document (See 51 FR 35080), the Commission is continuing the practice of publishing these proposed guidelines and policy statements in the Notices section of the **Register**.

In addition to publication of the earlier preliminary draft in the **Register**, the Commission disseminated more than 6000 copies of the preliminary draft to a wide variety of interested groups and individuals, and also held six regional public hearings. The substantially revised structure and contents of these proposed guidelines and policy statements reflect careful consideration by the Commission of the public comments received on the preliminary draft, as well as additional analysis or research data and further Commission deliberations.

Through the publication of these proposed guidelines and policy statements for public comment, the Commission seeks to accomplish the following goals: (1) fulfill the previously-referenced legal requirements of public notice and comment relating to promulgation of the guidelines; (2) continue its established policy of involving the public, particularly those who will be actively participating in the application and interpretation of the guidelines, in the process of developing them, and (3) receive comment on new or substantially revised proposals, as well as on several unresolved issues, to assist the Commission in its final revisions of the guidelines prior to submission to Congress.

The Commission welcomes public comment on any and all issues associated with these proposed guidelines and policy statements. At the same time, the Commission has specifically identified a number of issues and proposals in these proposed guidelines on which it particularly invites critique and recommendations from the public. Two such issues central to these proposed guidelines are (1) the use of offense levels and (2) the use of limited discretionary ranges of levels applicable to specific determinations under the guidelines. The Commission points out that the latter, i.e., limited ranges of levels, should be considered provisional. In light of public comment, additional research data, and further deliberations, the Commission may decide in the final guidelines submitted to Congress to modify the width of these ranges, substitute a specific numerical level, or employ some combination of these approaches. Because of the fundamental importance of these determinations, the Commission highlights these issues here and specifically invites public comment on them.

As it did with the preliminary draft guidelines, the Commission plans to disseminate a separately printed edition of these proposed guidelines to all Members of Congress, Federal Judges, U.S. Magistrates, U.S. Attorneys, Federal Public Defenders, U.S. Probation Offices, a wide variety of other individuals and groups on its mailing list, and others who request it. The final guidelines to be submitted to Congress by April 13, 1987, will take effect six months after their submission unless, by law, Congress modifies, rejects, or postpones them. Upon submission of the final guidelines to Congress, the Commission also intends to publish them in the **Federal Register.**

Authority: Section 217(a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. §§ 994(a), (x)).

William W. Wilkins, Jr.,

Chairman.

BILLING CODE 2210-01-M

THE UNITED STATES SENTENCING COMMISSION
1331 PENNSYLVANIA AVENUE, NW
SUITE 1400
WASHINGTON, D.C. 20004
(202) 662-8800

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Helen G. Corrothers
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Ilene H. Nagel
Paul H. Robinson
Benjamin F. Baer (ex officio)
Ronald L. Gainer (ex officio)

LETTER FROM THE COMMISSION

This revised draft of sentencing guidelines differs significantly in format and substance from the preliminary draft published by the Commission in September 1986. The revisions are due in part to suggestions from hundreds of judges, prosecutors, defense attorneys, probation officers, victim advocates, and other individuals who analyzed and commented on the preliminary draft. In its deliberations and redrafting, the Commission has been sensitive to these concerns.

The primary purpose of publishing a preliminary draft of guidelines in September was to provide a vehicle for extensive public comment. The Commission was under no statutory requirement to publish draft guidelines at that early date. The alternative, however, would have severely limited public comment, and the Commission found this unacceptable. The decision to publish a preliminary draft early proved to be correct. We learned a great deal and at the same time informed many people about guidelines and the positive effect they will have on our system of justice.

Guideline sentencing is an evolutionary process. We are developing a working framework for a system of guidelines that, over time, will be refined and amended as practical experience, analysis, and logic dictate. The Commission realizes that it cannot produce a perfect system. However, what will be accomplished is significant improvement in our system of justice through a progressive, informed, and just set of sentencing guidelines.

Once again we seek your critical analysis and comments.

Thank you.

Sincerely,

Billy Wilkins

William W. Wilkins, Jr.
Chairman

BILLING CODE 2210-01-C

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Part B—Special Offenders
Part C—Post-Offense Conduct
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Appendix A: Record of Commission Vote and Statement of Commissioner Robinson

CHAPTER ONE—INTRODUCTION AND OVERVIEW

I. Authority

The United States Sentencing Commission ("Commission") is an independent agency in the judicial branch composed of seven voting and two non-voting, ex officio members. Its principal purpose is to establish sentencing policies and practices for the federal criminal justice system, including detailed guidelines prescribing the appropriate form and severity of punishment for offenders convicted of federal crimes.

Created by the sentencing reform provisions of the Comprehensive Crime Control Act, Pub. L. No. 98-473 (1984), the Commission's authority and duties are set out in Chapter 58 of Title 28, United States Code. Procedures for implementing guideline sentencing are prescribed in a new Chapter 227 of Title 18, United States Code. The statutory authority affecting the Commission has been amended several times by Congress (See Appendix B).

As specified in 28 U.S.C. § 991(b), the policies, practices, and sentencing guidelines established by the Commission are designed to:

1. Effectuate the purposes of sentencing enumerated in 18 U.S.C. § 3553(a)(2) (in brief, those purposes are just punishment, deterrence, incapacitation, and rehabilitation);

2. Provide certainty and fairness in sentencing practices by avoiding unwarranted sentencing disparities among offenders with similar characteristics convicted of similar crimes, while permitting sufficient judicial flexibility to take into account relevant aggravating or mitigating factors; and

3. Provide honesty in sentencing so that the sentence given by the judge will be the sentence actually served; and

4. Reflect, to the extent practicable, advancements in knowledge of human behavior as related to the criminal justice process.

II. Administrative Procedure Act

In accordance with the directive in 28 U.S.C. § 994(x) and the rulemaking provisions of 5 U.S.C. § 553, this revised draft of sentencing guidelines was published in the **Federal Register**. In addition, these guidelines have been mailed to each Member of Congress, Article III Judge, United States Attorney, Federal Public Defender, United States Magistrate, Chief United States Probation Officer, United States Probation Office, and Federal Correctional Library. Copies were also sent to hundreds of other individuals and groups on the Commission's mailing lists, including defense attorneys, scholars, victim advocates, and private and professional membership groups.

Comments: The public comment period on the revised draft of guidelines extends until March 16, 1987. The Commission encourages all groups and individuals with an interest in criminal justice to study the revised draft and submit written comments to the Commission. All comments should be mailed to the following address: United States Sentencing Commission, 1331 Pennsylvania Avenue, NW., Suite 1400, Washington, DC 20004, Attention: Guideline Comments.

Public Hearings: Public hearings on the revised draft of sentencing guidelines are scheduled for March 11 and March 12, 1987, in Washington, DC. Further information on the hearings may be obtained from the Commission.

Under statute, the deadline for submission of the initial set of sentencing guidelines to Congress is April 13, 1987. In addition to the guidelines, the Commission shall submit to Congress a report stating the reasons for its recommendations. Upon submission of the guidelines, the General Accounting Office shall conduct a study assessing the potential impact of the guidelines in comparison with the operation of the existing sentencing and parole release system.

Congress has six months from the date the guidelines are submitted to study the guidelines and impact analysis. The guidelines become effective at the conclusion of the six month review period if no contrary action is taken.

III. Principles of Sentencing

The Commission bases its work on the premise that the fundamental objective of the Comprehensive Crime Control Act is to prevent crime and protect the public from criminal activity. In its deliberations, the Commission gives full consideration to the four purposes of criminal sentencing—just punishment for the offense, deterrence, incapacitation, and rehabilitation. In applying these purposes, we adopt neither a pure utilitarian crime control nor a pure retributivist just punishment model. Instead, our approach reflects both the need for just punishment and crime control.

Five general principles form the core of our policy:

1. Sentences should be commensurate with the seriousness of the offense, reflecting the physical, economic and psychological harms to the victim and society caused by the offense;

2. Sentences should aim to control crime through general deterrence, special deterrence, incapacitation, and rehabilitation;

3. Sentences should be sufficiently punitive so as to make clear to offenders and to society that crimes does not and will not pay;

4. To the extent that principles derived from retributive and crime control models conflict, justice for the public is the overreaching goal; and

5. Sentences should be effective, just, and efficient for the defendant, the victim and society.

IV. Historical Overview

The Commission has explored the strengths and potential viability of three different approaches to the development of a sentencing guideline system. The Commission first examined a pure real offense system that would essentially hold defendants accountable for the actual conduct in which they engaged regardless of the charge of conviction or the negotiated plea agreement. Conduct was divided into elements (e.g., taking money, striking a bank teller, using a gun), and each element was assigned a numerical point value. Points were ultimately combined according to mathematical formula to arrive at a sentence. The focus was on elements rather than on offense categories. Although the Commission devoted a great deal of time and resources to this effort, by mid-July 1986 it concluded that, as a practical matter and for policy reasons, this kind of approach was not viable.

Subsequently, the Commission examined the potential of a modified real offense approach, a version of which it published for comment in September 1986. Under this approach, the court would initially look to the elements of the crime of conviction to determine the offense value, but would modify that number dependent upon the presence or absence of certain specified aspects of actual conduct found in cross references to other offenses. This approach was organized around traditionally defined offense categories. Many who commented on the preliminary draft guidelines found virtue in this approach, but also noted considerable procedural complications and a certain amount of rigidity, complexity, and difficulty of application.

The modified real offense approach was also limited in its sophistication, moving in one step from identification of additional conduct relevant at sentencing to counting this cross-referenced conduct at the same value as if it were the subject of a separate prosecution and conviction. The effect was essentially to treat unadjudicated misconduct as a suitable object of punishment in itself, rather than as a circumstance in aggravation of the appropriate penalty for the offense of conviction.

In addition, the September draft approach created a potential for extensive litigation over disputed harms and a hearing procedure that was perceived as encouraging fact or charge bargaining by which discretion in the determination of sentences would pass from the judiciary to prosecutors and defense attorneys.

In light of extensive comment, continued research, and constant re-examination of the critical points of debate, the Commission devised the approach herein adopted. The revised draft uses traditional offense categories and takes as its base the offense of conviction. Related conduct not included in the offense of conviction may still be used to aggravate or mitigate a sentence, but it does not carry the weight of a separately charged and convicted offense. The goals of reducing disparity and permitting individualization where it is appropriate have simultaneously been pursued.

The approach taken is based on our presumption that sentencing guidelines will be evolutionary. The Commission expects to engage in a continuing process over many years to develop more precise categories as it learns more about the operation of the initial system and each succeeding iteration, as well as more about what are just and efficient sentences. It is empirically guided in that the Commission will monitor and measure actual sentencing practices and assessments of the effectiveness and fairness of those practices. The numerical assessments appearing in this draft were decided upon after an extensive review of available data relevant to present sentencing practice, data from a number of other sources, a review of Congressional action with respect to mandatory minimum sentences and statutory maximums, public comment, and other relevant materials and sources brought to the attention of the Commission.

V. Overview of the Guidelines

The Commission finds that the standard considered at sentencing must be realistic, predictable, and based upon concepts and terminology familiar to judges, prosecutors, defense attorneys, and probation officers. Towards that end, a relevant conduct standard has been adopted. The standard is defined and explained in the Overview of Chapter Two, Offense Conduct.

The guidelines are presented in numbered chapters that are divided into alphabetical parts. The parts are subdivided into sections and subsections. Each guideline is identified by a letter and a number that correspond to the chapter and part where the guideline is located. The letter represents the part of the chapter, the

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first number is the chapter, the second number the section, and the final number is the subsection. Section B211, for example, is the first subsection of the first section in Part B of Chapter Two. Or, § A312 is the second subsection of the first section in Part A of Chapter Three. Policy statements are similarly identified.

A commentary is provided within sections where necessary to explain the guideline in greater detail or to inform the reader of the statutory provisions governing the subject matter. Commentary also explains policy decisions made by the Commission in formulating the guidelines.

This draft differs substantially in format and substance from the September draft. It used offense values; this revised draft uses offense levels. The change is more than merely one in nomenclature.

The reasons for the use of the offense level approach are chiefly: (1) The presentation is clearer because the numbers representing the terms of imprisonment are smaller and more clearly associated with a range. (2) Adjustments that were multiplicative under the earlier system can be represented as simple increases or decreases in the offense level, thus eliminating all but the simplest mathematical calculations. (3) The effects of the various adjustments are readily apparent and more easily understood.

In this draft, offenses are assigned levels from 1 to 43. Each level corresponds with a potential imprisonment range. Level definitions satisfy three criteria: (1) In order to limit factual disputes, levels overlap substantially. The minimum of any range should be at or below the midpoint of the next lower range; ranges that are two levels apart should have at least one point in common. (2) Except at the lowest levels, ranges are generally as wide as legally permitted. (3) The adjustments to offense values that were made through multiplication under the preliminary draft should correspond closely to fixed increases or decreases in the level number. An increase of one level corresponds to an upward adjustment of the offense value by approximately 12 percent; two levels, 25 percent; three levels, 40 percent; four levels, 56 percent; and five levels, 75 percent.

In the September draft, prior record adjustments were calculated by using an arithmetical formula to increase the offense value. Prior record is now determined by columns in the sentencing table that correspond to a prior record category.

The chief advantages of using offense levels are clearer presentation and the virtual elimination of complex mathematical calculations. The overlapping ranges of the levels tend to make factual disputes less important. An increase or decrease of one or even two levels will not necessarily result in a different sentence. This is especially important in writing guidelines that depend upon continuous variables, such as dollar value or drug volume. By including each intermediate level in the table, the guidelines ensure that small changes in or disagreements over the precise value of these factors will not have a significant impact on the sentence. The need to litigate minor controverted factual issues is minimized.

A possible disadvantage is that the level system may not be graduated finely enough to take all relevant factors into account in determining the appropriate sentence. However, the distinctions made by 43 offense levels are fine enough that a change of one level only shifts half of the sentencing range. Factors that are not significant enough to call for aggravation or mitigation by at least one level can be taken into account within the range.

Guidelines have been drafted primarily for those federal criminal statutes generally prosecuted. As the Commission monitors the guidelines after implementation, additional guidelines will be written. When defendants are convicted of offenses not covered by these guidelines, the sentencing judge should use the guideline most analogous to the offense. A statutory index will be available for the final draft.

In no case shall a sentence imposed exceed the statutory maximum sentence. If a sentence determined by the guidelines is greater than the statutory maximum, the sentence imposed shall be the statutory maximum. However, when the guideline sentence exceeds the statutory maximum, imposition of consecutive sentences is warranted to adequately serve the purposes of sentencing. See Chapter Five, § A562(b).

In no case shall a sentence imposed be less than a statutory minimum sentence. If a sentence determined by the guidelines is less than the statutory minimum, the sentence imposed shall be the statutory minimum.

VI. Application Instructions

In general, the application of the guidelines is straightforward. A sentence is determined for each count of conviction by reference to specific offenses in Chapter Two, and adjusted by General Provisions and Role in the Offense, Chapter Three.

Specifically, the following abbreviated steps are applied (detailed instructions and worksheets are currently being prepared).

1. Compute the defendant's criminal history total from Chapter Three, Part A. Determine the appropriate criminal history category column by reference to the Sentencing Table.

2. Using the statute of conviction, turn to the part of Chapter Two that appropriately describes and references the offense of conviction (e.g., for 18 U.S.C. § 111, Assaulting a Federal Officer, apply the assault section of Part A). (Note, the final draft will include a Statutory Index for easy reference.)

3. Adjust the base offense level by applying specific offense characteristics from the appropriate offense section.

4. Refer to the General Provisions, Chapter Two, and make any appropriate adjustments to the offense level.

5. Refer to Role in the Offense, Chapter Two, and make any appropriate adjustments to the offense level.

6. Refer to sections on Obstruction of Justice and Perjury, Acceptance of Responsibility, and Cooperation in Chapter Three, and make any appropriate adjustments to the offense level.

7. Determine the length of sentence from the Sentencing Table, Chapter One, the appropriate type of sentence from Chapter Five.

8. Determine the appropriate fine from the Fine Table in Chapter Five.

9. Repeat steps 1 through 8 for each count of conviction.

10. If sentencing on multiple counts, refer to Chapter Five, §§ A561, et. seq. Work is currently being done to refine this section to give greater guidance to assist in resolving the complex issue of concurrent/consecutive sentences.

VII. The Sentencing System

The easiest way to understand the proposed system is to compare it with the preliminary guidelines issued in September. The three major criticisms of that draft were that it was inflexible, difficult to administer, and overly harsh compared to present practice. The revised draft addresses these criticisms in the following ways:

1. *Application:* The present draft is simple to administer. By and large, individualized offense categories are tied to specific statutes or generic terms familiar to judicial personnel. The number of general adjustments is fewer and reflects those major factors that judges presently take into account when sentencing.

Moreover, the vast majority of judges, prosecutors and defense lawyers have testified that plea agreements must be permitted to continue. The Commission seeks to bring rationality to this process by requiring judges to ascertain that plea agreements fully and accurately reflect the seriousness of offense behavior, and that sentences imposed under the agreements conform with the legislatively mandated purposes of sentencing.

2. *The Guideline Numbers:* The September draft specifically cautioned the reader that the numerical values assigned to various offenses did not reflect any Commission decision, but were intended only to assist comprehension through illustration. Nonetheless, commentators expressed concern that some of the numbers deviated substantially from the sentences that many judges consider appropriate. In the revised draft, the Commission has used numbers that, while still tentative, represent a closer approximation of sentences the Commission may ultimately determine are appropriate.

In arriving at these numbers, the Commission began with the purposes of sentencing, as defined by statute, and an analysis of present practices. Commission staff, assisted by United States Probation Officers, reviewed hundreds of presentence investigation reports and derived qualitative information about the nature of the offense, the importance of specific offense characteristics, and the types of sentences given. Data on approximately 10,000 presentence reports for offenders sentenced during fiscal year 1985 were analyzed to estimate the effect of various offense and offender characteristics on the sentence imposed.

This process was necessarily imperfect in producing measures of current practice because of the limitations of the available data and existing statistical procedures. Furthermore, because judges are not currently required to state reasons for the sentences imposed, the explanation of the great disparities in existing sentencing practices must be based upon hypotheses and projections.

The guideline ranges used by the United States Parole Commission provided an additional data source for estimating current practices. However, the parole guidelines are not dispositive of current sentencing practices, since they do not govern sentences imposed below the parole guidelines nor sentences of less than one year. Neither are parole guidelines a measure of time served currently, since they are only presumptive, and provide no information on cases that result in time in custody above or below the parole guideline ranges.

Studies by the Federal Judicial Center, the Administrative Office of the United States Courts, crime statistics, information received from law enforcement agencies, and written and oral testimony from judges, probation officers, prosecutors, defense attorneys, and victim's advocates were also considered before the Commission made its policy decisions with respect to relative severity of offenses and the appropriate level of punishment.

Changes in current sentencing practices might be mandated by Congressional statute, as in the case of the mandatory prison terms required by new drug laws. In some instances where present sentencing data are virtually nonexistent (as is true of a vast number of federal statutes for rarely prosecuted offenses), the Commission has created a range to call attention to the need for public comment on these values.

3. *Flexibility:* Through Section 1, General Provisions, the Commission elaborates upon (and seeks to guide) the courts' power to depart from the guidelines when special factors such as particularly heinous behavior or provocation are present.

Other unusual circumstances may also warrant departure from the guidelines sentence. In these cases, a judge must provide reasons for departure.

4. *Resolution of Sentencing Disputes:* Issues regarding disputed sentencing factors "important to the sentencing determination" are to be resolved in accordance with Rule 32(a)(1), Federal Rules of Criminal Procedure (effective November 1, 1987), and applicable case law. In resolving sentencing issues, the court may consider all reliable information concerning the defendant's background, character, and conduct. 18 U.S.C. § 3661. In cases involving significant disputed sentencing factors, the Commission recommends that the court notify the parties of its tentative findings and provide a reasonable time for the submission of written objections before imposition of sentence.

5. *Conclusion:* The Commission is aware that by creating guidelines that are simpler and more flexible it risks losing certain beneficial qualities of the preliminary draft. For example, the simplicity achieved by reducing the number and complexity of different categories means that each category will contain larger numbers of different offenders.

The Commission nonetheless has concluded that the need for simplicity and flexibility warrants this approach. Through commentary and specific guideline provisions, the Commission offers objective criteria to guide the exercise of structured discretion by the judge. Appellate review of departures from the guidelines will provide significant control.

The Commission's immediate task is to prevent significant and unwarranted deviations, not to seek the impossible goal of ending all disparity. Finally, and most importantly, the Commission, as a permanent body, sees its task as ongoing. It will continue to gather and analyze information about actual practice under the guidelines and promulgate new guidelines interactively over the years.

VIII. Probation and Sentencing Options

Chapter Five, Determining the Sentence, discusses the use of probation and sentencing options other than imprisonment. In some cases, the court will have discretion to impose probation rather than a term of imprisonment. If the guidelines call for a minimum term of imprisonment of six months or less, the sentencing judge may substitute nonincarcerative options for imprisonment. Those options include probation with conditions of intermittent confinement (e.g., weekends in jail), community confinement, home detention, or combinations of these conditions.

The guidelines encourage the courts to use other sentencing options. Imposition of a fine is required unless the court determines that the defendant is unable to pay a fine even on an installment schedule. The court must consider the use of other sanctions, preferably community service, with respect to those defendants who lack the ability to pay a fine.

Restitution is required if an identifiable victim has suffered a financial loss as a result of the offense, unless calculation of the loss would unduly prolong or complicate sentencing. The guidelines reflect the mandatory imposition of special assessments established by the Victims of Crime Act of 1984 and establish procedures and policies for notice to victims.

Chapter Six establishes policies for revocation of probation and supervised release. The guidelines classify violations of probation and supervised release into categories of seriousness. The probation officer and the court respond on the basis of the category of the violation and the number of the defendant's previous violations.

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IX. Research Program

The objectives of the research program are to assist in the development, implementation, monitoring, and evaluation of sentencing guidelines. The research staff is evaluating detailed information on current sentencing and correctional practices and the post-conviction activities of probationers and parolees. In addition to performing qualitative and quantitative studies, the research staff reviews criminal justice research, advises the Commission about the application of scientific theory and knowledge to sentencing practices, and provides general technical support.

To determine which factors currently are used to distinguish sentences among those convicted of the same offense, the research staff used qualitative techniques to (1) review federal statutes to determine factors that by law enter into the sentencing process; (2) read, with the assistance of United States Probation Officers, a sample of more than 10,000 presentence investigation reports to identify offender and offense factors considered by participants in the federal criminal justice system; and (3) review papers, critiques, and responses from judges, attorneys, probation officers, scholars, and other criminal justice authorities. The purpose of this research was to classify offense and offender characteristics that either do or should distinguish defendants convicted in federal district courts.

Drawing on the results of this exercise, the research and legal staffs developed empirical models to explain the variation in time served among federal offenders convicted of similar offenses. A key to developing these models was collecting detailed information about current sentencing and correctional practices. The starting point was a data file (FPSSIS) provided by the Probation Division of the Administrative Office of the United States Courts that contained basic data on defendants, their offenses, and their sentences. A representative sample of 10,000 cases was drawn from all offenders sentenced during fiscal year 1985. Detailed information concerning cases in this sample was provided by United States Probation Offices across the country and used to augment the Commission's data base. These data were merged with records from the Parole Commission and the Bureau of Prisons to obtain detailed information on time actually served in federal prisons.

Standard statistical techniques were used to analyze these data. As a result, the Commission was provided with a series of reports that identified and quantified factors that appear to influence current sentencing.

The research staff is responsible for determining the effect guidelines will have on the federal justice system in general and correctional resources in particular. If past trends continue, prison population will climb even without sentencing guidelines. Recent legislation mandates significant minimum terms of imprisonment for drug violators. And, as part of the statutory provisions that will become effective with the guidelines, mandatory terms of imprisonment will be required for certain repeat offenders. Each of these factors may increase prison population independent of any effect the guidelines may have.

To answer questions about impact, the research group is using the enhanced time served data supplemented with detailed information about offenders sentenced to prison or probation since 1984. Because these data contain detailed information about offenders and their offenses, it is possible to estimate the sentences of these offenders if recent changes in sentencing practices, including mandatory terms for certain drug law and repeat offenders, had been effective in 1984. These data also suggest trends in federal prosecutions. Thus, a baseline can be established against which the impact of guidelines can be assessed, assuming crime and prosecution patterns do not change. Once the baseline has been established, the sentencing guidelines can be applied to the data and the resulting impact on prisons can be estimated.

The data have been collected to test the guidelines and analysis of the impact of the sentencing provisions has begun. Final analysis will be completed during the next three months as the guidelines are refined.

SENTENCING TABLE.—GUIDELINE RANGE IN MONTHS OF IMPRISONMENT

Offense level	Criminal History Category I (0)	II (1 or 2)	III (3 or 4)	IV (5 or 6)	V (7 or 8)	VI (9 or more)
1	0 to 1	0 to 2	0 to 3	0 to 4	0 to 5	0 to 6.
2	0 to 2	0 to 3	0 to 4	0 to 5	0 to 6	1 to 7.
3	0 to 3	0 to 4	0 to 5	0 to 6	2 to 8	3 to 9.
4	0 to 4	0 to 5	0 to 6	2 to 8	4 to 10	6 to 12.
5	0 to 5	0 to 6	1 to 7	4 to 10	6 to 12	9 to 15.
6	0 to 6	1 to 7	2 to 8	6 to 12	9 to 15	12 to 18.
7	1 to 7	2 to 8	4 to 10	8 to 14	12 to 18	15 to 21.
8	2 to 8	4 to 10	6 to 12	10 to 16	15 to 21	18 to 24.
9	4 to 10	6 to 12	8 to 14	12 to 18	18 to 24	21 to 27.
10	6 to 12	8 to 14	10 to 16	15 to 21	21 to 27	24 to 30.
11	8 to 14	10 to 16	12 to 18	18 to 24	24 to 30	27 to 33.
12	10 to 16	12 to 18	15 to 21	21 to 27	27 to 33	30 to 37.
13	12 to 18	15 to 21	18 to 24	24 to 30	30 to 37	33 to 41.
14	15 to 21	18 to 24	21 to 27	27 to 33	33 to 41	37 to 46.
15	18 to 24	21 to 27	24 to 30	30 to 37	37 to 46	41 to 51.
16	21 to 27	24 to 30	27 to 33	33 to 41	41 to 51	46 to 57.
17	24 to 30	27 to 33	30 to 37	37 to 46	46 to 57	51 to 63.
18	27 to 33	30 to 37	33 to 41	41 to 51	51 to 63	57 to 71.
19	30 to 37	33 to 41	37 to 46	46 to 57	57 to 71	63 to 78.
20	33 to 41	37 to 46	41 to 51	51 to 63	63 to 78	70 to 87.
21	37 to 46	41 to 51	46 to 57	57 to 71	70 to 87	77 to 96.
22	41 to 51	46 to 57	51 to 63	63 to 78	77 to 96	84 to 105.
23	46 to 57	51 to 63	57 to 71	70 to 87	84 to 105	92 to 115.

SENTENCING TABLE.—GUIDELINE RANGE IN MONTHS OF IMPRISONMENT—Continued

Offense level	Criminal History Category I (0)	II (1 or 2)	III (3 or 4)	IV (5 or 6)	V (7 or 8)	VI (9 or more)
24	51 to 63	57 to 71	63 to 78	77 to 96	92 to 115	100 to 125.
25	57 to 71	63 to 78	70 to 87	84 to 105	100 to 125	110 to 137.
26	63 to 78	70 to 87	78 to 97	92 to 115	110 to 127	120 to 150.
27	70 to 87	78 to 97	87 to 108	100 to 125	120 to 150	130 to 162.
28	78 to 97	87 to 108	97 to 121	110 to 137	130 to 162	140 to 175.
29	87 to 108	97 to 121	108 to 135	121 to 151	140 to 175	151 to 188.
30	97 to 121	108 to 135	121 to 151	135 to 168	151 to 188	168 to 210.
31	108 to 135	121 to 151	135 to 168	151 to 188	168 to 210	188 to 235.
32	121 to 151	135 to 168	151 to 188	168 to 210	188 to 235	210 to 262.
33	135 to 168	151 to 188	168 to 210	188 to 235	210 to 262	235 to 293.
34	151 to 188	168 to 210	188 to 235	210 to 262	235 to 293	262 to 327.
35	168 to 210	188 to 235	210 to 262	235 to 293	262 to 327	292 to 365
36	188 to 235	210 to 262	235 to 293	262 to 327	292 to 365	324 to 405.
37	210 to 262	235 to 293	262 to 327	292 to 365	324 to 405	360 to life.
38	235 to 293	262 to 327	292 to 365	324 to 405	360 to life	360 to life.
39	262 to 327	292 to 365	324 to 405	360 to life	360 to life	360 to life.
40	292 to 365	324 to 405	360 to life	360 to life	360 to life	360 to life.
41	324 to 405	360 to life	360 to life	360 to life	360 to life	360 to life.
42	360 to life	360 to life	360 to life	360 to life	360 to life	360 to life.
43	Life	Life	Life	Life	Life	Life

CHAPTER TWO—OFFENSE CONDUCT

Overview

Chapter Two pertains to offense conduct. The chapter is organized by offenses and divided into parts and related sections that may cover one statute or many. Each offense has a corresponding base offense level. When a particular offense warrants a more individualized sentence, specific offense characteristics are provided within the guidelines. Factors relevant to criminal conduct that are not provided in specific guidelines are set forth in Part Y, General Provisions, and Part Z, Role in the Offense.

Sentencing Factors

To determine the sentence, all conduct, circumstances, and injuries relevant to the offense of conviction and all relevant offender characteristics shall be taken into account. "Relevant to the offense," unless otherwise specifically limited or excluded under the guidelines, means:

1. Acts or omissions committed, caused, or aided and abetted by the defendant (a) in preparation for the offense of conviction, (b) during or in the furtherance of the offense of conviction, or (c) during efforts to conceal or avoid detection or prosecution for the offense of conviction; or

2. Acts or omissions committed, caused, or aided and abetted by the defendant that (a) are part of the same course of conduct, or a common scheme or plan, as the offense of conviction, or (b) are relevant to the defendant's state of mind or motive in committing the offense of conviction, or (c) indicate the defendant's degree of dependence upon criminal activity for a livelihood.

Injury that is relevant to the offense includes all intended or foreseeable harm that resulted from the offense conduct.

COMMENTARY

Prior to sentencing, a judge should consider all relevant offense and offender characteristics. Relevant offender characteristics, which may include other similar misconduct, are determined under Chapter Three. Injury or loss resulting from the defendant's conduct is relevant to sentencing if it was intended or criminally negligent. For purposes of sentencing, the meaning of relevant defendant conduct is restricted to the following:

1. Conduct relevant to the offense of conviction, including preparation, commission, or efforts to avoid detection and responsibility for the crime;

2. Conduct that is relevant to the offense of conviction insofar as it indicates to some degree a broader purpose, scheme, or plan of which the offense of conviction was a part;

3. Conduct that is relevant to the state of mind or motive of the defendant in committing the crime;

4. Conduct that is relevant to the defendant's involvement in crime as a livelihood.

The first three criteria are derived generally from two sources. Rule 8(a) of the Federal Rules of Criminal Procedure, governing joinder of similar or related offenses, and Rule 404(b) of the Federal Rules of Evidence, permitting admission of evidence of other crimes to establish motive, intent, plan, and common scheme. These rules provide standards that govern consideration at trial of crimes "of the same or similar character," and utilize concepts and terminology familiar to judges, prosecutors, and defenders. The governing standard should be liberally construed in favor of considering information generally appropriate to sentencing. This construction is consistent with the existing rule that "no limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense . . . for the purpose of imposing an appropriate sentence," 18 U.S.C. § 3577, so long as the information "has sufficient indicia of reliability to support its probable accuracy." *United States* v. *Marshall*, 519 F. Supp. 751 (D.C. Wis. 1981), affirmed 719 F.2d 887 (7th Cir. 1983).

The last of these criteria is intended to assure that a judge may at sentencing consider information that, although not specifically within other criteria of relevance, indicates the defendant engages in crime for a living. Inclusion of this information in sentencing considerations is consistent with 28 U.S.C. § 994(d)(11).

Part A—Offenses Involving the Person

1. Homicide

18 U.S.C. § 111
18 U.S.C. § 113(a)
18 U.S.C. § 115
18 U.S.C. § 351
18 U.S.C. § 373
18 U.S.C. §§ 1111–1114
18 U.S.C. §§ 1116–1117
18 U.S.C. § 1153
18 U.S.C. § 1751
18 U.S.C. § 1952A
Also See Statutory Index

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Introduction. Homicide offenses are organized into several sections beginning with first degree murder, the most serious form of homicide, and ending with involuntary manslaughter. Each section includes base offense levels that take into account culpability and conduct that is inherent in the commission of the offense, current practices in sentencing for such behavior, and the effectiveness of imprisonment in protecting social interests addressed by federal laws against homicide.

In crimes of violence, the base offense levels reflect the assumption that some psychological injury occurred to the victim or to members of the victim's family. For cases in which psychological injury has been extreme, the court shall consider the injury under Part Y, General Provisions.

§ A211. First Degree Murder. The base offense level is 43.

§ A212. Second Degree Murder. The base offense level is 32.

§ A213. Conspiracy or Solicitation to Commit Murder. The base offense level is 31.

(a) Specific Offense Characteristic.

(1) If a solicitation included a payment or tender of money or other thing of value, increase by 2 levels.

§ A214. Attempted Murder (Assault with Intent to Kill). The base offense level is 28 to 33, depending upon the degree of preparation and planning.

(a) Specific Offense Characteristic.

(1) If the attempt included a payment or tender of money or other thing of value, increase by 2 levels.

§ A215. Voluntary Manslaughter. The base offense level is 25.

§ A216. Involuntary Manslaughter. The base offense level is 10 to 14, depending upon the circumstances of the offense and the degree of recklessness involved.

COMMENTARY

§ A211. First degree murder is subject to a mandatory sentence of life imprisonment unless the death penalty is imposed, as set forth in 18 U.S.C. § 1111 for premeditated murder and some felony murders.

§ A212. Second degree murder is subject to substantial punishment for those who cause death under circumstances not covered by first degree murder. The base offense level reflects time specified by the parole guidelines. The penalty when death results is not aggravated for the use of a weapon because the presence of a weapon is assumed in the base offense level. As a practical matter, a defendant who knowingly causes death during the course of a felony will be subject to life imprisonment, whether or not the felony is included in the list of felony murder predicates found in 18 U.S.C. § 1111. Persons involved in lesser predicate offenses will be punished at proportionally lower levels.

At the federal level homicides frequently involve domestic violence and alcohol and drug abuse. While the Commission does not find that either of these conditions, per se, warrant mitigation of the penalty, there are cases where significant victim participation should be taken into account. In the case of domestic violence where one partner has suffered prolonged abuse and retaliation results in death, mitigation under Part Y, § Y214, is warranted due to significant provocation. Where alcohol is involved and the context of the crime suggests that the roles of victim and defendant are essentially a matter of chance, § Y214 should be considered.

Penalties for second degree murder, as well as all remaining homicide offenses, may be enhanced or diminished by reference to Part Y, General Provisions. For § A212, the general provisions provide for an increase in the offense level for offenses that involve the President, President-elect, other high level government officials, and law enforcement and corrections personnel as victims. § Y224, General Provisions. This provision extends to members of the immediate families of such officials as reflected in 18 U.S.C. § 115. When disruption of governmental functions results from the offense, a departure above the guidelines may be warranted. § Y212, General Provisions.

If the victim was vulnerable due to age or physical or mental condition and the defendant exploited this vulnerability, an enhancement under general provisions applies. Should the court find that unusual psychological injury to members of the victim's immediate family resulted from the defendant's behavior, the court shall consider this factor in enhancing the sentence according to part Y, § 223.

On rare occasions, homicide results from the victim's consent, as in euthanasia or "mercy killings." These unusual cases present circumstances that might justify departure from the guidelines.

§ A213. This section combines the offenses of conspiracy to commit murder and solicitation to commit murder. Conspiratorial conduct proscribed by 18 U.S.C. § 1117 allows for a statutory maximum sentence of life imprisonment. Solicitation to commit murder applies to conduct proscribed by 18 U.S.C. 373, a provision that generally punishes solicitation to commit a crime of violence, defined as "conduct constituting a felony that has as an element the use, attempted use, or threatened use of physical force against the person or property of another in violation of the laws of the United States." The maximum sentence of imprisonment under this statute is one-half the maximum term for the crime solicited; or twenty years if the punishment for the crime solicited is death. The base offense level reflects time in custody specified for conspiracy and solicitation by the parole guidelines, and is relevant to the completed act. Conspiracy and solicitation would therefore apply only to first degree murder, and the base offense level should reflect a relationship to that offense.

Where conspiracy or solicitation has resulted in the completion of the conduct agreed upon (here, murder), the defendant is sentenced only for the completed underlying offense, in accordance with Congressional intent. 28 U.S.C. § 994(l)(2). In those cases where other injuries occur as an intended or foreseeable result of the conspiracy or solicitation, but do not constitute the object of that behavior, enhancements under general provisions for those injuries shall be added to the defendant's sentence.

If the victim of the conspiracy or solicitation is the President or other government official, including law enforcement and corrections personnel, an enhancement under general provisions is warranted to reflect the additional danger posed to the administration of government. An enhancement is similarly warranted where the defendant conspires or solicits the murder of foreign officials or guests.

Solicitations of murder-for-hire, 18 U.S.C. § 1952A, by payment of money or something else of value, warrant an increased penalty.

§ A214. Punishment for attempted murder, or assaults with intent to commit murder or manslaughter, varies widely according to the statutes under which a defendant is prosecuted. Under 18 U.S.C. § 1113, an attempt to commit murder or manslaughter carries a maximum sentence of three years imprisonment. However, assault with intent to commit murder is punishable under 18 U.S.C. § 113(a) by up to twenty years imprisonment. An attempted assassination of certain essential government officials is, under 18 U.S.C. § 351(c), subject to imprisonment for any term of years or for life. An attempted murder of foreign officials carries a maximum sentence of twenty years under 18 U.S.C. § 1116. Since there is insufficient data currently available to estimate current practices, the base offense level from the parole guidelines is adopted and is represented as a range to reflect distinctions in the degree of planning and preparation. In other words, the range reflects the relationship between the attempt and the nature of the underlying offense. Where no planning was involved, the minimum of the range is recommended. Where first degree murder was attempted, the maximum of the range is more appropriate.

An assault with intent to kill accomplished by means of a firearm, explosive, or other dangerous weapon, instrument, or substance, results in an enhancement under Part Y, General Provisions. This enhancement applies only when the use of a firearm has not been separately charged.

The general provisions provide for enhancements due to the nature and seriousness of injuries suffered in the commission of an attempted murder. The precise enhancement should reflect the true nature of the injuries. However, in designating the category of injury, the court shall support that decision with reasons specifying all reliable information considered. The information may include, but is not limited to, medical records, expert or other reliable testimony, victim impact statements, employment records, and the sentencing judge's observations of the victim.

An enhancement for payment of money or something else of value reflects the seriousness of murder-for-hire. This enhancement is supported by current practices under the parole guidelines, as well as a systematic examination of approximately 250 presentence investigation reports.

§ A215. The statutory recognition, 18 U.S.C. § 1112, that voluntary manslaughter should not be punished as severely as murder is reflected in the lower base offense level. Data limitations preclude Commission estimation of current practices, but the base offense level for voluntary manslaughter is consistent with time specified by the parole guidelines. The same general provision factors that enhance a murder sentence also apply to voluntary manslaughter.

§ A216. In accordance with 18 U.S.C. § 1112, the guideline for involuntary manslaughter does not provide a distinction between reckless and negligent homicide. Sentencing judges should therefore look to state practices for guidance. The base offense level is represented as a range to allow the sentencing judge to apply higher penalties for serious or reckless conduct. In recognition of the seriousness of felony drunk driving, the Commission recommends a maximum sentence within the sentencing range for involuntary manslaughter when drunk driving results in a homicide.

2. Assault

18 U.S.C. §§ 111–115
18 U.S.C. § 351
18 U.S.C. § 1751
Also See Statutory Index

Introduction. The same interests protected by federal laws involving homicide, physical security, and the ability of the government to function effectively and without disruption, are fostered by federal laws concerning assault and battery. Physical injury provisions may, of course, be applicable where there is a battery. Other general provisions may be applicable in determining the seriousness of the offense.

§ A221. Assault. The base offense level is 15.

(a) Specific Offense Characteristics.

(1) If a dangerous weapon was discharged, displayed, or used to threaten, increase by 1 to 4 levels, depending upon the use made of the weapon.

(2) If the assault involved planning or preparation, increase by 3 levels.

(3) If bodily injury resulted, increase the offense level depending upon the seriousness of the injury:

Degree of Physical Injury	Increase in level
Bodily Injury	Add 2.
Serious Bodily Injury	Add 4.
Permanent Bodily Injury	Add 6.

(4) If there were multiple victims of the assault, increase by 2 levels.

§ A222. Simple Assault. The base offense level is 8; where minor bodily injury results, the base offense level is 6.

COMMENTARY

Definitions applicable to the assault section are found at 18 U.S.C. §§ 111, 113, 115, 31(f)(3), and 2245, except definitions for physical injury. For convictions under the Assimilative Crimes Act, it is the nature of the conduct that is relevant. The federal code provides broad descriptions that encompass the variety of terms different jurisdictions use to describe similar conduct.

§ A221. There are a number of federal provisions that address varying degrees of assault and battery. The punishments under these statutes differ considerably, even among provisions directed to substantially similar defendant conduct. For example, if the assault is upon certain federal officers "while engaged in or on account of . . . official duties," the maximum term of imprisonment under 18 U.S.C. § 111 is three years. If a dangerous weapon is used in the assault on a federal officer, the maximum sentence is ten years. However, if the same weapon is used to assault a person not otherwise specifically protected, the maximum sentence under 18 U.S.C. 113(c) is five years. If the assault results in serious bodily injury, the maximum sentence under 18 U.S.C. 113(f) is ten years, unless the injury constitutes "maiming" by scalding, corrosive, or caustic substances under 18 U.S.C. § 114, in which case the maximum term of imprisonment is twenty years.

Definitions of various degrees of bodily injury are found in different parts of the federal code, see, 18 U.S.C. § 1365; 18 U.S.C. § 1515; 21 U.S.C. § 802(25), as amended, as well as under the presumptive parole guidelines.

For sentencing purposes the levels of physical injury are:

1. *Permanent Bodily Injury.* Permanent bodily injury means that the victim suffered a substantial risk of death from the injury, major disability, impairment, or loss of a bodily function or significant disfigurement.

2. *Serious Bodily Injury.* Serious bodily injury means that the victim suffered extreme pain from the injury, suffered substantial impairment of a bodily function, required medical intervention, such as surgery, hospitalization, or physical rehabilitation.

3. *Bodily Injury.* Bodily injury means any other physical injury.

The definitions for physical injury are meant to be suggestive only. If the injury lies between permanent and serious bodily injury, the sentencing judge shall increase by 5 levels. If the injury lies between serious and bodily injury, the sentencing judge shall increase by 3 levels.

The base offense level reflects current sentencing practices estimated by the Commission as well as parole guidelines. The enhancements for weapon, intent, and injury reflect statutory requirements. 18 U.S.C. §§ 113(c) and 113(f). The enhancement range for a dangerous weapon reflects the manner in which the weapon was used. The range for injury reflects a need for flexibility where all injury is not the same.

An enhancement is provided when multiple acts of assault occur and have not been separately charged or when the assault involves more than one victim. For example, when a defendant assaults three customs agents but is only charged and convicted of one assault, a single enhancement for the multiple victims is appropriate rather than adding levels for each victim. The enhancement reflects current practices in a systematic analysis of presentence investigation reports.

Although all general provisions shall be considered, specific attention to enhancements for vulnerable victims and victim officials is warranted in assault cases.

§ A222. Assaults represent a danger to personal safety whether or not bodily injury results to the victim. The base offense level for simple assault reflects the potential seriousness of any behavior that evidences a disregard for the physical security of others. The base offense level is the statutory maximum penalty for the least serious assault, 18 U.S.C. § 113(e). The additional penalty when minor bodily injury results reflects a statutory distinction that allows a six month term of imprisonment for striking, beating, or wounding, 18 U.S.C. § 113(d). The reference to minor bodily injury assumes that striking, beating, or wounding results in some minimal injury.

3. Criminal Sexual Conduct

18 U.S.C. § 113(a)
18 U.S.C. § 1153
18 U.S.C. § 1203
18 U.S.C. §§ 2031–2032
18 U.S.C. §§ 2241–2245
Also See Statutory Index

Introduction. The interest protected in guidelines for unlawful sexual conduct is the physical, emotional, and psychological security of the person. A number of offenses involving such acts are subject to federal jurisdiction under assimilative crimes provisions. Recent legislation to reform federal provisions governing criminal sexual conduct provides the basis for sentencing under this section of the guidelines. The general provisions for physical injury, unusual psychological injury, unlawful restraint, and weapons may be applicable.

§ A231. Criminal Sexual Conduct or Attempt to Commit or Assault with the Intent To Commit Criminal Sexual Conduct. The base offense level is 28.

(a) Specific Offense Characteristics.

(1) If the victim had not attained the age of twelve years, increase by 5 levels; otherwise, if the victim was under the age of sixteen, increase by 2 levels.

(2) If the criminal sexual conduct was accomplished through aggravated force or coercion, increase by 3 to 5 levels, depending upon the degree of force and the circumstances of the offense.

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(3) If the victim was in the custody, care, or supervisory control of the defendant, or was a corrections personnel or a person held in the custody of a correctional facility, increase by 2 levels.

(4) If multiple criminal sexual acts occurred or more than one perpetrator participated, increase by 2 levels.

(5) If the victim was subjected to acts of perversion increase by 3 to 5 levels, depending upon the nature of the conduct.

§ A232. Criminal Sexual Conduct with a Minor or Ward (Statutory Rape). If the defendant committed criminal sexual conduct with a minor, or a ward in official detention, the base offense level is 10.

(a) Specific Offense Characteristics.

(1) If the victim was under age sixteen, increase 1 to 3 levels, depending upon the age and immaturity of the victim.

(2) If the victim was under age sixteen and in the custody, care, or supervisory control of the defendant, increase by 1 level.

§ A233. Unlawful Sexual Contact. If the defendant engaged in or attempted to engage in unlawful sexual contact not covered by §§ A231 or A232, the base offense level is 6.

(a) Specific Offense Characteristics.

(1) If the victim had not attained the age of twelve years, increase by 5 levels; otherwise, if the victim was under the age of sixteen, increase by 2 levels.

(2) If the defendant used aggravated force or coercion, increase by 3 to 5 levels, depending upon the degree of force or coercion and the circumstances of the offense.

COMMENTARY

This section of the guidelines is modeled after the recent federal legislation dealing with criminal sexual abuse, 18 U.S.C. §§ 2241 to 2245. The language of the section, e.g., criminal sexual conduct, is left intentionally broad to include assimilated crimes. Definition of terms applicable to this section are set forth by Congress under 18 U.S.C. § 2245. Regardless of the specific language in the definitions, however, it is the nature of the conduct expressed that is of consequence for sentencing.

§ A231. Sexual offenses addressed in this section are crimes of violence. Under the new legislation, attempts are treated the same as completed acts of criminal sexual abuse. The statutory maximum penalty is any term of years or life imprisonment. The base offense level is three levels higher than the parole guidelines suggest. However, the new legislation reflects an intent that more serious penalties be imposed. The base offense level of 28 reflects that intent.

The Commission requests public comment on the advisability of sentencing attempted criminal conduct in the same manner as completed acts of criminal sexual conduct.

The primary factors that differentiate criminal sexual conduct offenses for sentencing purposes are the circumstances or means by which the act is accomplished and the vulnerability of the victim. Thus, the greatest sentence should be imposed for a sexual offense that is accomplished under circumstances of violence and coercion, or where a weapon is used, or where such conduct is directed to a victim particularly vulnerable to both the conduct and its foreseeable results. These distinctions are provided within 18 U.S.C. § 2241.

Although actual force of an aggravated nature is a primary consideration in determining seriousness of conduct, coercion by the threat of death or bodily injury, or use of a deadly weapon poses a danger to the victim that is similar to physical violence. This conduct is therefore punished to the same extent as the actual use of force. Section Y226, General Provisions, does not apply if the defendant used a weapon because that conduct is assumed in the base offense level.

An enhancement for a custodial relationship between defendant and victim is warranted in cases of criminal sexual conduct. Often, young victims must live within the same dwelling as defendants who present continuing threats. Whether the custodial relationship be transitory or permanent, the defendants in these cases are persons the victims trust or to whom the victims are entrusted. This sentencing aggravation represents the potential for greater and prolonged psychological damage.

When a sexual assault occurs within the privacy of one's home, it might well result in an unusual degree of psychological injury due to lasting fear of the loss of a safe shelter. If physical injury, unlawful restraint, or unusual psychological injury result from the conduct, these factors should be reflected in the sentence by application of the general provisions.

Criminal sexual conduct that occurs without aggravated force or coercion retains a relatively high base offense level. Regardless of the means, criminal sexual conduct results in physical and psychological trauma and a serious violation of the person. Means other than aggravated force or coercion include the use of force that would equate to simple assault and battery or when drugs, intoxicants, or similar substances are used to initiate the commission of the offense, or perpetuate it in the case of interstate transportation for immoral purposes or prostitution.

An enhancement is provided when multiple acts of criminal sexual conduct occur or when more than one offender participates. Each additional act of sexual assault, for example, creates increased trauma for the victim. Victims suffer additional trauma when assaulted by more than one offender or when forced into additional acts amounting to sexual perversion. One of the motivating factors for group participation of this nature is the potential for anonymity and safety in numbers that hinder victim recognition. Deterrence considerations compel enhancement for multiple offender behavior such as gang rape.

One of the important distinctions Congress has made under the new legislation (18 U.S.C. § 2241) involves the victimization of children under age twelve. Any criminal sexual conduct, including statutory rape, with children under twelve is punished more seriously than in the past and for sentencing purposes is governed by § A231.

§ A232. Under recent legislation, 18 U.S.C. § 2243, a new category of persons unable to give consent for sexual conduct is created. In addition to prohibiting sexual conduct with a minor, this legislation prohibits sexual conduct with a ward; i.e., a person in official detention under the custodial, supervisory, or disciplinary authority of the defendant. The statutory maximum sentence for criminal sexual conduct with a ward is one year. The base offense level includes this statutory maximum. With a minor, the statutory maximum is five years. An additional enhancement is provided for defendants who victimize minors under their supervision or care. This enhancement applies to wards only in the event that they are minors as well. The levels of enhancement reflect statutory distinctions between minors and wards.

If the defendant committed the criminal sexual act in furtherance of a commercial sex scheme such as pandering, transporting prostitutes, or pornographic materials, the court may consider this factor in imposing a sentence above the otherwise applicable offense level.

§ A233. Within this section, unlawful sexual contact addresses improper touching or fondling. If any sexual intrusion occurs, consult §§ A231 or A232. The base offense level reflects the statutory maximum penalty for the least serious distinction provided under 18 U.S.C. 2244(a)(4). The enhancements for youthfulness of the victim and the use of aggravated force or coercion reflect the additional statutory penalties.

4. Kidnapping, Abduction, or Unlawful Restraint

18 U.S.C. § 115
18 U.S.C. § 351
18 U.S.C. § 1201–1202
18 U.S.C. § 1751
18 U.S.C. § 2422–2423
See Also Statutory Index

Introduction. The principal interests protected by Federal laws against unlawful restraint are the physical security of the person and the ability of the government to function effectively and without disruption.

§ A241. Kidnapping, Abduction, Unlawful Restraint. If any victim was kidnapped, abducted, or unlawfully restrained, the base offense level is 24.

(a) Specific Offense Characteristics.

(1) If the victim was kidnapped, abducted, or unlawfully restrained to facilitate the commission of another offense, increase by 3 to 6 levels, depending upon the nature and seriousness of the other offense.

(2) If a ransom demand or a demand upon government was made, increase by 6 levels.

(3) If the victim was released unharmed (prior to any ransom or governmental demand), decrease by 1 to 4 levels, depending upon the duration of the offense.

§ A242. Ransom Money. If the defendant received, possessed, or disposed of any ransom money, the base offense level is 23.

§ A243. Attempt, Conspiracy, or Solicitation to Kidnap, Abduct or Restrain. The base offense level is 20 to 24, depending upon the circumstances of the offense and the reason the crime was not completed.

COMMENTARY

§ A241. The seriousness of this offense is reflected in the high base offense level. Although limited, Commission data on current practices provide an average sentence at level 30 (97 to 121 months). However, careful examination of presentence investigation reports on federal kidnapping cases identifies three categories: limited duration kidnapping where the victim is released unharmed; kidnapping that occurs as part of or to facilitate the commission of another offense (often, sexual assault); and kidnapping for ransom or political demand. Current practices, as reflected in the presentence investigation reports and parole guidelines, provide these distinctions. The specific offense characteristics provide mitigation for limited duration kidnappings and enhancements for the other two types. General provisions enhancements are available for particularly heinous conduct that often occurs in kidnapping offenses that include criminal sexual conduct.

A life sentence is possible if the President or President-elect is abducted, 18 U.S.C. § 1751(b). An enhancement for high level government officials and members of their immediate families may be appropriate under the general provisions, depending upon the circumstances of the offense. Sentences should reflect the disruption of government operations. See § Y212, General Provisions.

§ A242. This section specifically includes conduct prohibited by 18 U.S.C. § 1202, requiring that ransom money be received, possessed, or disposed of with knowledge of its criminal origins. The actual demand for ransom is reflected in § A241. The base offense level reflects an average of the federal parole guidelines for either (1) a ransom demand where a kidnapping occurred but the defendant did not participate in the kidnapping, or (2) a demand for ransom by threat or extortion where no kidnapping took place.

§ A243. Attempted kidnapping refers to conduct proscribed by 18 U.S.C. § 1201(d). The statutory maximum sentence for attempts to kidnap, abduct, or unlawfully restrain is twenty years. Also covered under this section are conspiracy and solicitation to kidnap, abduct, or unlawfully restrain. Conspiracy is generally proscribed by 18 U.S.C. § 1201(c). The statutory maximum sentence for these offenses is life imprisonment. Solicitation to kidnap, abduct, or unlawfully restrain is generally proscribed by 18 U.S.C. 373. The maximum sentence of imprisonment under that section is one-half the maximum term of the crime solicited, or life imprisonment for conspiring to kidnap, 18 U.S.C. § 1201(c).

The base offense level for attempt, conspiracy, or solicitation to kidnap is represented as a range in order to permit adequate consideration of seriousness of the offense, the degree to which the offense approached completion, and the reason the offense was not completed. The range of base offense levels reflects a similar range of sentences specified by the federal parole guidelines. For sentencing within the range, the court shall state reasons that may include the circumstances of the offense and reasons the offense was not completed.

In kidnapping cases, particular attention should be given to the general provisions for weapons and dangerous instrumentalities, physical and psychological injury, and victim officials. The danger presented by use of a weapon warrants a significant increase in the defendant's sentence. The likelihood of at least initial resistance by an intended kidnapping victim, and the increased possibility that severe physical injury or death may result or the attempt may succeed, also justifies significant additional punishment.

5. Air Piracy

49 U.S.C. § 1472 (c), (i), (j), (l), (m), (n)
Also See Statutory Index

Introduction. While aircraft piracy is the most serious of the offenses considered under the various subsections of 49 U.S.C. 1472, Congress has identified other criminal offenses involving air transportation. Provisions involving offenses against the person are considered within this section of the guidelines.

§ A251. Aircraft Piracy or Attempted Aircraft Piracy. The base offense level is 38.

(a) Specific Offense Characteristic.

(1) If death results, increase by 5 levels.

§ A252. Interference with Flight Crew Member or Flight Attendant. The base offense level is 10.

(a) Specific Offense Characteristic.

(1) If the defendant assaulted a crew member or flight attendant, increase by 1 to 5 levels, depending upon the circumstances of the offense and the degree of interference with the operation of the flight.

COMMENTARY

§ A251. This section covers aircraft piracy both within the special aircraft jurisdiction of the United States, 49 U.S.C. § 1472(i), and aircraft piracy outside that jurisdiction when the defendant is later found in the United States, 49 U.S.C. § 1472(n). Both of these offenses carry a mandatory minimum sentence of twenty years imprisonment as reflected in the base offense level. Seizure of control of an aircraft may be by force or violence, or threat of force or violence, or by any other form of intimidation. The presence of a weapon is considered in the base offense level. If death occurs during the commission of aircraft piracy, either a mandatory minimum term of life imprisonment or the death penalty should be imposed. 18 U.S.C. § 1472(i).

§ A252. The base offense level is set so that probation with special conditions may be available in cases not involving serious conduct. However, incarceration is also available at this level should the circumstances of the offense warrant more serious penalties.

If the defendant's interference consists of an assault, an enhancement is provided to reflect the seriousness of the conduct. The range for the enhancement allows the sentencing judge to grade the nature of the assault and the degree of danger presented. This guideline does not contemplate sentences for aggravated assault. Section Y225 provides for enhancement should physical injury occur.

Carrying a weapon or explosive aboard an aircraft is behavior proscribed by 49 U.S.C. § 1472(l). This offense is covered in Part K, Offenses Involving Public Order and Safety, § K216.

Part B—Offenses Involving Property

1. Theft, Embezzlement, Receipt of Stolen Property, and Property Destruction

18 U.S.C. § 553(a)(1)
18 U.S.C. § 641
18 U.S.C. §§ 656–657
18 U.S.C. § 659
18 U.S.C. § 661
18 U.S.C. §§ 1361–1363
18 U.S.C. §§ 1702–1703
18 U.S.C. § 1708
18 U.S.C. § 2113(b)
18 U.S.C. §§ 2312–2317
Also See Statutory Index

§ B211. Larceny, Embezzlement, and Other Forms of Theft.

The base offense level is 4.

(a) Specific Offense Characteristics.

(1) If undelivered United States mail was taken, increase by 1 level.

(2) If a firearm, destructive device, or controlled substance was taken, increase by 1 to 3 levels, depending upon the nature and quantity of the property taken.

(3) If the theft was from the person of another, increase by 2 levels.

(4) If the offense was planned or sophisticated, increase by 1 to 3 levels, depending upon the degree of planning and sophistication.

(5) If the offense involved multiple transactions or occurrences, increase by 1 to 6 levels, depending upon the number of transactions or occurrences. Do not apply this adjustment if adjustment (6) is greater.

(6) If the value of the property taken exceeded $1,000, increase the offense level as follows:

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Estimated value	Increase in level
Less than $1,000	No increase.
$1,000 to $2,000	Add 1.
$2,001 to $5,000	Add 2.
$5,001 to $10,000	Add 3.
$10,001 to $20,000	Add 4.
$20,001 to $50,000	Add 5.
$50,001 to $100,000	Add 6.
$100,001 to $200,000	Add 7.
$200,001 to $500,000	Add 8.
$500,001 to $1,000,000	Add 9.
$1,000,001 to $2,000,000	Add 10.
Over $2,000,000	Add 11 or more.

Do not apply this adjustment if adjustment (5) is greater. Value credit cards at $1,000 each.

§ B212. Receiving or Transporting Stolen Property. The base offense level is 4.

(a) Specific Offense Characteristics.

(1) If the property was received or transported for resale, increase by 4 levels.

(2) If the property included a firearm, destructive device, or a controlled substance, increase by 1 to 3 levels, depending upon the nature and quantity of the property taken.

(3) If the offense involved multiple transactions or occurrences, increase by 1 to 6 levels, depending upon the number of transactions or occurrences. Do not apply this adjustment if adjustment (4) is greater.

(4) If the value of the property stolen exceeded $1,000, increase by the appropriate number of levels from the Property Table (§ B211). Do not apply this adjustment if adjustment (3) is greater.

§ B213. Property Damage or Destruction. The base offense level is 4.

(a) Specific Offense Characteristics

(1) If the property destroyed was undelivered United States mail, increase by 1 level.

(2) If the amount of the property damage or destruction, or the cost of restoration was more than $1,000, increase by the appropriate number of levels from the Property Table (§ B211).

COMMENTARY

These sections address the simplest forms of property offenses: theft, embezzlement, transactions in stolen goods, and property damage or destruction. Arson is dealt with separately in Part K, Offenses Involving Public Order and Safety. This guideline also applies to conversion offenses that arise under the Assimilated Crimes Act, such as unauthorized use of a motor vehicle.

Section B211 applies to theft and embezzlement offenses. Embezzlement is treated as equivalent to theft. Current practices under the presumptive parole guidelines treat embezzlement of less than $2,000 more severely than theft of the same amount; however, actual sentences for embezzlement tend to be lower than for theft of the same amount. The two crimes are essentially equivalent and one guideline should apply to both. The base offense level assumes that one credit card (treated as worth $1,000) or property worth no more than $1,000 was taken, and provides for a sentencing range from probation to four months imprisonment. This sentence is equal to the time served under the presumptive parole guidelines for these thefts.

Consistent with statutory distinctions, aggravation of the sentence is provided for the theft of mail. Theft offenses receive enhanced sentences if they involved multiple occurrences. This is consistent with the Commission's authorizing legislation, providing that guidelines reflect the appropriateness of imposing incremental penalties for multiple offenses committed in the same course of conduct. 28 U.S.C. § 994(i). This factor reflects the perception of practitioners that a defendant is more culpable and likely to be a professional thief if the theft was accomplished in multiple acts rather than in one (possibly fortuitous) instance. It is particularly important when there are repeated small thefts, or when the value of the property taken is difficult to estimate. A complex scheme or related incidents of theft are indicative of an intention and potential to do considerable harm, and is often related to increased difficulties of detection and proof. Because this adjustment is one of degree and cannot be easily quantified, the guideline provides for a range of adjustments.

Public policy considerations compel additional punishment for the theft of drugs, firearms, and destructive devices, as defined in 18 U.S.C. 921. Independent studies show that stolen firearms are used disproportionately in the commission of crimes. The guidelines provide an enhancement for these cases in an effort to deter and incapacitate those involved in potentially violent and harmful criminal activity. Apply separate guidelines if the offense of conviction was possession of drugs, Part D, Offenses Involving Drugs, or stolen firearms, Part K, Offenses Involving Public Safety.

Theft from the person of another, such as pickpocketing or purse-snatching, also receives an aggravated sentence. Inclusion of this factor is supported by current practices data and is recognized in the presumptive parole guidelines. It is designed to punish thefts from persons more severely than thefts from buildings, because of the elements of stealth, fear, or force that these offenses entail. The aggravation added here results in a sentencing range for pickpocketing or purse-snatching of zero to five months. The presumptive parole guidelines for pickpocketing and purse-snatching are zero to ten months, and twenty-four to thirty-six months, respectively.

The value of property taken plays an important role in determining sentences for theft and embezzlement offenses. The property table provides an enhancement based on reliable information of the value of the property taken. Value is determined by the replacement cost to the victim, or the market value of the property, whichever is higher. Each stolen credit card should be treated as worth $1,000. A sentence above the guideline range may be appropriate when the amount of property stolen or embezzled exceeds $2 million. Theft from the mails, in violation of 18 U.S.C. § 1708, disrupts the integrity of a basic government function. The statute provides up to five years imprisonment for stealing or receiving stolen mail. The court may impose a sanction higher than would be accorded the dollar loss alone since the public harm may be an intangible factor. Some property, such as an archeological treasure or government investigative reports, cannot be reasonably valued in a dollar amount, and has significance or worth beyond monetary value. A sentence above the guideline range may be appropriate in unusual instances.

Receiving or transporting stolen property is treated like theft. The base offense level provides for a sentencing range of probation to four months imprisonment. This range is somewhat lower than current practices under presumptive parole guidelines (zero to six months). Section B212 generally provides the same aggravating factors for these offenses as for theft. Public policy considerations suggest inclusion of an additional aggravating factor to address offenses involving the receipt or transportation of stolen property for resale. By providing a market for stolen property, fencing activities provide an incentive for theft. Deterrence considerations support a significant additional sanction beyond that applied to the defendant who purchases stolen property for personal use.

The property table for theft and embezzlement enhances the sentence if the amount of property involved exceeded $1,000. The same considerations mentioned with regard to the theft of property difficult to value also apply to receipt and transportation of stolen property.

Section B213 addresses property damage or destruction, involving conduct such as malicious mischief and vandalism. Arson is provided for in Part K, Offenses Involving Public Order and Safety. The base offense level is the same as for theft and is below the zero to six months provided in the presumptive parole guidelines for property destruction not involving arson or explosives. There is no compelling reason to treat vandalism differently from theft. The willful destruction of government property in violation of 18 U.S.C. § 1361, is also covered by this subsection. The guidelines provide for aggravation of the sentence where destruction of United States mail is an element of the offense, because of the disruption of a basic public function. The relevant statute, 18 U.S.C. § 1703, provides a maximum term of imprisonment of five years for postal service personnel convicted of destruction of the mails and a one year maximum for others.

In cases of property damage involving public facilities, the monetary value of the property damaged or destroyed may not reflect the extent of the injury inflicted. For example, the destruction of a $500 telephone line may cause an interruption in service to thousands of people for several hours. Five hundred dollars worth of damage to the entrance of a post office may result only in inconvenience to workers and patrons for a few hours. The court shall refer to the general provisions and apply any provision warranted by the offense.

Consideration was given to the inclusion of a guideline to deal with offenses involving unauthorized use of property. Such a guideline would cover offenses such as unauthorized use of an automobile as assimilated crimes (e.g., "joy-riding," and late return of rental cars). A decision was made not to provide guidelines for this narrow range of offenses. Similar offenses involving conversion of government property in violation of 18 U.S.C. § 641 are covered by § B211.

2. Burglary and Trespass

18 U.S.C. § 1382
18 U.S.C. § 2113(a)
18 U.S.C. § 2115
18 U.S.C. § 2117
18 U.S.C. § 2118(b)
Also See Statutory Index

§ B221. Burglary. The base offense level is 14.

(a) Specific Offense Characteristics.

(1) If the building was a dwelling, increase by 7 levels.

(2) If the building was a pharmacy or other structure where controlled substances were legitimately manufactured or stored, increase by 4 levels.

(3) If the offense resulted in the theft or destruction of property worth more than $1,000, increase the offense level by the appropriate number of levels from the Property Table (§ B211).

§ B222. Trespass. The base offense level is 4.

(a) Specific Offense Characteristic.

(1) If the trespass occurred at a secured government facility, a nuclear energy facility, or upon the premises of a dwelling, increase by 2 levels.

COMMENTARY

Burglary is unlawful entry with intent to commit a felony, and therefore often occurs in connection with other offenses. The risk of other crimes is included in the base offense level for burglary, which applies to bank burglary as well as burglaries of other structures. Pursuant to 18 U.S.C. § 2113(a), burglaries and attempted burglaries of financial institutions carry a maximum sentence of twenty years imprisonment, increased to twenty-five years if an assault occurred or if life was threatened by the use of a dangerous weapon. If someone was killed or abducted in the commission of a burglary, attempted burglary, or avoidance of apprehension for a burglary of a financial institution, the statute provides for a minimum of ten years imprisonment and a maximum of the death penalty. Because the risk to other persons is especially high when a dwelling is involved, the guidelines reflect this factor in determining an appropriate sentence.

A specific offense factor is included to aggravate burglaries of businesses where drugs are likely to be found. Those who burglarize the business premises of Drug Enforcement Administration registrants may be sentenced up to twenty years, pursuant to 18 U.S.C. § 2118, if the value of the drugs the burglar intended to steal was at least $500, the defendant engaged in interstate travel or commerce to facilitate the offense, or death or significant bodily injury resulted. If an assault occurred or if life was threatened by the use of a dangerous weapon, a term of imprisonment of twenty-five years may be imposed. If death occurred, the statute authorizes up to life imprisonment. Additional sentence enhancement is provided in the guidelines for theft or destruction of property worth more than $1,000.

Presumptive parole guidelines provide zero to six months imprisonment for burglary of an unoccupied structure, and twenty-four to thirty-six months for burglary of an inhabited dwelling involving property loss of $1,000 or less. When other structures are burglarized, current practice under parole guidelines treats burglary as theft. Current parole guidelines do not distinguish burglary of a financial institution or the premises of a Drug Enforcement Administration registrant.

Most trespasses punishable under federal law involve federal lands or property. The trespass section provides an enhancement for offenses involving trespass on secured government installations, such as nuclear facilities, to protect a significant federal interest. Additionally, an enhancement is provided for trespass in a dwelling. There is obvious danger of personal injury in these trespasses, as well as greater actual harm through loss of personal security to the owner or occupant. The base offense level provides for a sentencing range of probation to four months imprisonment. There are no current practices data available for offenses involving trespass.

3. Robbery, Extortion, and Blackmail

18 U.S.C. § 873
18 U.S.C. §§ 875–877
18 U.S.C. § 1951
18 U.S.C. §§ 2113–2114
18 U.S.C. § 2118(a)
Also See Statutory Index

§ B231. Robbery and Attempted Robbery. The base offense level is 20.

(a) Specific Offense Characteristics.

(1) If a weapon or dangerous instrumentality was used, displayed, or possessed in the commission of the offense, increase by 3 to 6 levels, depending upon the use made of the weapon.

(2) If the robbery or attempted robbery involved a financial institution or a federal facility or institution, increase by 2 levels.

(3) If the object of the robbery or attempted robbery was a controlled substance and the offense occurred in a pharmacy or other location where controlled substances were legitimately manufactured or stored, increase by 2 levels.

(4) If the value of the property taken exceeds $10,000, increase the offense level as follows:

Estimated value	Increase in level
Less than $10,000	No increase
$10,000 to $100,000	Add 1.
$100,001 to $1,000,000	Add 2.
$1,000,001 to $10,000,000	Add 3.
Over $10,000,000	Add 4.

COMMENTARY

The application of the same base offense level to both robbery and attempted robbery is designed to punish an attempted robbery equally with a completed robbery of up to $10,000 and is consistent with the statute pertaining to robbery of a financial institution, 18 U.S.C. § 2113(a). Robbery combines the elements of an assault and larceny. The base offense level for robbery is consistent with the combination of the offense levels for larceny and assault with intent to commit a felony in violation of 18 U.S.C. § 114. The use of a firearm or dangerous weapon constitutes the most serious aggravating characteristic of a robbery. Since possession of a weapon during a robbery adds significantly to the potential danger of injury, the guidelines provide an enhancement where a weapon was present. This enhancement is supported by current practices data. The base offense level provides a sentencing range of thirty-three to forty-one months imprisonment for unarmed robbery or attempted robbery involving less than $10,000. Presumptive parole guidelines are twenty-four to thirty-six months imprisonment for unarmed robbery. Sentences for robbery, particularly armed robbery, should be increased relative to current practice to serve as a deterrent.

The mail robbery statute, 18 U.S.C. § 2114, provides for a higher maximum term of imprisonment for assaults with intent to rob the mails resulting in injury, or involving use of a dangerous weapon, or involving a defendant with a prior record. The maximum increases from ten to twenty-five years in these instances. If death occurred, the statute authorizes up to life imprisonment. If persons were killed, injured, or unlawfully restrained in the course of the robbery or attempted robbery, the court shall refer to the general provisions.

Drugs or other controlled substances are often the motive for robberies of a Veterans Administration Hospital, a pharmacy on a military base, or a similar facility. The specific offense characteristic dealing with robberies from Drug Enforcement Administration registrants is designed to take into consideration the dangers and security problems involved, and Congressional intent expressed in 18 U.S.C. § 2118(a) with regard to punishing such robberies more severely.

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Although the amount of money taken in robbery cases does affect sentence length, its importance is small compared to that of the other harm involved. Moreover, because of the relatively high base offense level for robbery, an increase of one or two levels brings about a considerable increase in sentence length in absolute terms. Accordingly, a separate property table, which increases more slowly than that used in theft offenses, is utilized.

§ B232. Extortion, Attempted Extortion, and Conspiracy to Extort. The base offense level is 18.

COMMENTARY

Section B232 provides the sanction for extortion in violation of 18 U.S.C. § 1951 (the Hobbs Act). Extortion is an offense affecting interstate commerce that involves obtaining property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right. The Act prohibits extortion, attempted extortion, and conspiracy to extort.

The maximum term of imprisonment for violations of 18 U.S.C. § 1951 is twenty years. The color of official right involved in an extortion may be an elected or appointed public office, or a position with a labor union or political party. Guidelines for extortion and bribery involving public officials are found in Part C, Offenses Involving Public Officials. Extortion carried out by officials of labor unions is covered under the labor racketeering provisions of Part E, Offenses Involving Criminal Enterprise.

The base offense level for extortion involving up to $10,000 in property or property damage provides for a sentencing range of twenty-seven to thirty-three months imprisonment. This treatment is consistent with presumptive parole guidelines for extortion involving threat of injury to a person or property. If property valued at more than $10,000 was extorted, damaged, or destroyed, the court shall use the general provisions to aggravate the offense level by the appropriate amount. If the offense involved the use of firearms or other dangerous weapons, or if persons were killed, injured, or unlawfully restrained in connection with the offense, the court shall also refer to the general provisions.

§ B233. Blackmail. If the offense involved:

(1) The threat of reporting an illegal act, the base offense level is 10.

(2) The communication of a threat to kidnap or injure, the base offense level is 20.

(3) The communication of a ransom demand for the release of a kidnapped person, the base offense level is 25.

COMMENTARY

Section B233 applies to acts prohibited by 18 U.S.C. §§ 873, 875–877. While blackmail is a form of extortion and should be treated similarly, the base offense level is determined by the nature of the threat or demand. 18 U.S.C. § 873 prohibits threats to disclose a violation of United States law in consideration for money or some other item of value, and provides a maximum one year term of imprisonment. The base offense level provides for a sentencing range of four to ten months imprisonment. Time served under presumptive parole guidelines is zero to ten months for the offense.

Violations of 18 U.S.C. §§ 875–877 are distinguished only by the method of communication of the extortionate demand. The maximum penalty under each statute varies from two to twenty years, depending upon the defendant's state of mind and whether the object of the demand was ransom for a kidnapped person or other property. Violations of 18 U.S.C. 875 involve threats or demands transmitted by interstate commerce. Violations of 18 U.S.C. § 876 involve the use of the United States mails to communicate threats involving personal injury, property damage, kidnapping, or ransom demands. Section 877 sets out parallel provisions, but prohibits the mailing of threatening communications from foreign countries.

Communication of an extortion threat to kidnap or inflict personal injury results in a sentencing range of twenty-four to thirty months. Presumptive parole guidelines provide a range of twenty-four to thirty-six months for the offense. Communication of a ransom demand for the release of a kidnapped person results in a sentencing range of fifty-seven to seventy-one months. Presumptive parole guidelines provide a range of fifty-two to eighty months for the least serious offense.

4. Commercial Bribery and Kickbacks

15 U.S.C. §§ 78dd–1, 78dd–2
15 U.S.C. § 78ff
18 U.S.C. § 215
18 U.S.C. § 224
18 U.S.C. § 1954
26 U.S.C. § 9012(e)
26 U.S.C. § 9042(d)
41 U.S.C. §§ 51–52
41 U.S.C. § 54
42 U.S.C. §§ 1395nn(b) (1),(2)
42 U.S.C. §§ 1396h(b) (1),(2)
49 U.S.C. § 11904
49 U.S.C. §§ 11907 (a), (b)
Also See Statutory Index

§ B241. Bribery in Procurement of Bank Loan. The base offense level is 9.

(a) Specific Offense Characteristic

(1) If the value of the bribe, or the value of the improper benefit to the borrower, exceeded $1,000, increase the offense level by the appropriate number of levels from the Property Table (§ B211).

§ B242. Other Commercial Bribery. The base offense level is 9.

(a) Specific Offense Characteristic

(1) If the value of the bribe or improper benefit to the briber exceeded $1,000, increase the offense level by the appropriate number of levels from the Property Table (§ B211).

§ B243. Bribery in Consignment or Transportation of Property by a Common Carrier or Rail Carrier. The base offense level is 9.

(a) Specific Offense Characteristic

(1) If the value of the bribe or the improper benefit to the briber exceeded $1,000, increase the offense level by the appropriate number of levels from the Property Table (§ B211).

COMMENTARY

This subsection applies to commercial bribery offenses and kickbacks that do not involve officials of federal, state, or local government. See Part C, Offenses Involving Public Officials. Because commercial bribery involves an expectation of financial gain on the part of one or more parties, the guidelines direct the use of the property table at § B211 to aggravate the offense level. The amount to be used is the value of the bribe, or the monetary benefit of the action to be taken or effected in return for the bribe, if the value can be reasonably ascertained. If the amount of the benefit cannot be ascertained, the court should apply at least the amount of the bribe. For example, if a bank officer agreed to the offer of a $25,000 bribe to approve a $250,000 loan, aggravation of the base offense level from the property table would provide for imposing a sentence on the bank officer based on the $25,000, and the sentence for the briber would be based on the benefit received, e.g. the savings in interest over the life of the loan compared with alternative lending sources. In no case would the amount be less than the value of the bribe. If, in another instance, a gambler paid a player $5,000 to shave points in a nationally televised basketball game, the value of the action to the gambler is the amount he and his confederates won or stood to gain. If that amount is not ascertainable, the amount of the bribe is used to determine the appropriate increase in offense level from the property table. If drugs were an element of the bribery, the sentence may be aggravated further.

Section B241 applies to violations of 18 U.S.C. § 215. The statute prohibits the offer or acceptance of a fee in connection with the procurement of a loan from a financial institution, and authorizes up to five years imprisonment. The base offense level shall be enhanced by application of the property table, based upon the value of the unlawful payment or the value of the action to be taken or effected in return for the unlawful payment, whichever is greater.

Section B242 applies to illegal behavior as defined in diverse federal bribery statutes, each authorizing up to five years imprisonment. Included are violations of 42 U.S.C. §§ 1395nn (b)(1) and (b)(2), that involve the offer or acceptance of a payment to refer an individual for services or items paid for under the Medicare program. Similar provisions in 42 U.S.C. §§ 1396h (b)(1) and (b)(2) cover the offer or acceptance of a payment for referral to the Medicaid program.

The section also relates to violations of law involving bribes and kickbacks in expenses incurred for a presidential nominating convention or presidential election campaign. These offenses are prohibited under 26 U.S.C. §§ 9012(e) and 9042(d), which apply to candidates for President and Vice President whose campaigns are eligible for federal matching funds.

Violations of the Foreign Corrupt Practices Act of 1977 are explicitly covered by § B243. The statute relating to these offenses is codified in Title 15 with securities violations. Domestic concerns are prohibited from bribing foreign officials in connection with obtaining or retaining business. 15 U.S.C. § 78dd–1 applies to issuers of a class of registered securities, and 15 U.S.C. § 78dd–2 applies to other domestic concerns. This section also applies to violations of 18 U.S.C. § 224, sports bribery.

Section B243 applies to violations of the Interstate Commerce Act involving the offer or taking of bribes or kickbacks to discriminate in the transportation of property by common carrier or rail carrier. 49 U.S.C. § 11904(a)(3) provides a maximum of two years imprisonment for paying a common carrier to discriminate against another consignor or consignee. 49 U.S.C. § 11907 (a) and (b) cover the parallel situation with respect to the offer or acceptance of a payment involving a rail carrier. Similarly, bribery involving subcontractors on federal projects is prohibited under 41 U.S.C. §§ 51 and 54. Violations of these statutes carry a maximum of two years imprisonment.

Presumptive parole guidelines treat commercial bribery as fraud based on the greater of the value of the bribe or the financial loss to the victim, with a base of zero to six months time served. Sports bribery is treated as theft and time served is based on the amount of the bribe, with zero to ten months as a base, subject to enhancement for aggravating circumstances. For bribes involving more than $500,000, presumptive parole guidelines provide forty to fifty-two months imprisonment.

5. Counterfeiting and Forgery

17 U.S.C. § 506(a)
18 U.S.C. §§ 471–473
18 U.S.C. § 495
18 U.S.C. §§ 500–501
18 U.S.C. § 510
18 U.S.C. § 1003
18 U.S.C. §§ 2314–2315
18 U.S.C. §§ 2318–2320
Also See Statutory Index

§ B251. Counterfeiting. The base offense level is 6.

(a) Specific Offense Characteristics

(1) If the defendant possessed or had custody or control over counterfeiting devices and materials for use in illegally printing or coining any currency, obligation, or security of the United States, increase by 6 to 9 levels, depending upon the number and nature of the devices or materials.

(2) If the offense involved multiple transactions or occurrences, increase by 1 to 6 levels, depending upon the number of transactions or occurrences. Do not apply this adjustment if adjustment (3) is greater.

(3) If the greater of the face value or the market value of the counterfeit items exceeded $1,000, increase the offense level by the appropriate number of levels from the Property Table (§ B211).

§ B252. Forgery. The base offense level is 4.

(a) Specific Offense Characteristics

(1) If the offense involved multiple transactions or occurrences, increase by 1 to 6 levels, depending upon the number of transactions or occurrences. Do not apply this adjustment if adjustment (2) is greater.

(2) If the greater of the face value or market value of the forged, altered, or fraudulently endorsed items exceeded $1,000, increase the offense level by the appropriate number of levels from the Property Table (§ B211).

§ B253. Criminal Infringement of Copyright. The base offense level is 6.

(a) Specific Offense Characteristics

(1) If the offense involved the reproduction or distribution of at least one thousand phonograph records or copies infringing the copyright in one or more sound recordings, increase by 10 levels; or, if the offense involved the reproduction or distribution of more than one hundred but less than one thousand phonograph records or copies infringing the copyright in one or more sound recordings, increase by 4 levels.

(2) If the offense involved the reproduction or distribution of at least sixty-five copies infringing the copyright in one or more motion pictures or other audiovisual works, increase by 10 levels; or, if the offense involved the reproduction or distribution of more than seven but less than sixty-five copies infringing the copyright in one or more motion pictures or other audiovisual works, increase by 4 levels.

(3) If the offense is a second or subsequent offense under either (b)(1) or (b)(2) of 18 U.S.C. § 2319, where a prior offense involved a sound recording, or a motion picture or other audiovisual work, increase by 6 levels.

COMMENTARY

Section B251 applies to offenses involving counterfeiting or passing of counterfeit items. Federal law protects a variety of items from counterfeiting, including United States currency and coins, food stamps, postage stamps, foreign bank notes, labels for phonograph records, and military discharge papers.

The more serious counterfeiting offenses are aggravated by application of the Property Table in § B211, to reflect the greater of the face value (if any) or market value of the counterfeit item. To the extent that the acceptance of counterfeit documents as genuine results in losses to private individuals, the amount of the loss should be taken into account at sentencing.

Possession of counterfeiting devices to copy obligations and securities of the United States are treated as an aggravated form of counterfeiting because of the sophistication and planning involved in manufacturing counterfeit obligations or securities and the public policy interest in protecting the integrity of government obligations.

Section B252 treats forgery and fraudulent endorsement in violation of 18 U.S.C. § 495, in a manner similar to counterfeiting offenses. Aggravation is warranted where the greater of the face value or market value of the forged item exceeds $1,000, or where the loss to private parties resulting from accepting the forged item as genuine exceeds $1,000. A defendant who forged or cashed one United States Treasury check for $500 is subject to a sentence ranging from probation to five months imprisonment. If the offense involved forgery or cashing of ten checks totalling $5,000, the offense level is six to ten, depending upon the court's assignment of additional levels for multiple occurrences. While federally prosecuted forgery offenses run the gamut in complexity and sophistication, a typical case may involve the forgery of a deceased payee's signature on a check issued by a federal agency. The base offense level and the amount of property loss are designed to provide adequate sanctions to deter these offenses. If a forgery involved less than $5,000, the court generally has a choice of imposing probation or a term of incarceration up to six months.

Section B253 applies to violations of 17 U.S.C. § 506(a) punished under 18 U.S.C. § 2319. Copyright infringements to which the base offense apply are misdemeanors. The aggravating factors reflect the statutory distinctions that make felonies of offenses involving sound recordings, and motion pictures and other audiovisual works. Specific offense characteristics § B253(a) (1) and (2) apply to offenses punished under 18 U.S.C. § 2319(b) (1) and (2), which allows for a maximum term of either two or five years imprisonment, depending upon the number of copies and the nature of the item copied. The statute provides a sentencing enhancement to allow for a maximum sentence of five years imprisonment if the offense is a second or subsequent violation of the statute.

Consideration was given to the inclusion of a specific offense characteristic in the counterfeiting and forgery guidelines that would take into account any losses experienced by private individuals who accepted the counterfeit or forged articles as genuine. This factor was not included since it might result in double counting, because the greater of the face value or the market value of the counterfeit or forged document is already included as a factor.

Presumptive parole guidelines distinguish between passing counterfeit currency and manufacturing counterfeit currency, while forgery offenses are distinguished only on the basis of the value of the object of the forgery. The minimum parole guidelines for passing counterfeit currency provide for time served of zero to ten months, compared with the guidelines sentencing range of zero to six months. Similarly, presumptive parole guidelines for more sophisticated counterfeiting offenses provide average time served of twenty-four to thirty-six months, compared with the guideline sentencing range of eighteen to twenty-four months. Time served for forgery of an item worth up to $5,000 is zero to ten months under

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presumptive parole guidelines, compared to a guideline sentence of zero to six months. The guideline range is narrower to allow for the possibility of probation for first offenders, while adhering to the Congressional mandate that the maximum sentence not exceed the minimum by more than six months or 25 percent, whichever is greater.

6. Motor Vehicle Identification Numbers

18 U.S.C. § 511
18 U.S.C. § 553(a)(2)
18 U.S.C. § 2320

§ B261. Altering or Removing Motor Vehicle Identification Numbers. The base offense level is 10.

(a) Specific Offense Characteristic

(1) If the value of the motor vehicles or parts involved is over $1,000, increase the offense level by the appropriate number of levels from the Property Table (§ B211).

COMMENTARY

Section B261 applies to violations of 18 U.S.C. § 511, which provides for a maximum of five years imprisonment. The base offense level provides for a sentence ranging from probation to six months imprisonment. The presumptive parole guidelines treat the value of the parts or the vehicle involved in the offense as the determining factor. The value of the vehicle or parts is not included as an aggravating factor in determining the sentence under § B261 since it would be included in sentencing for any related theft or receiving stolen property charges.

Section B262 applies to violations of 18 U.S.C. §§ 553(a)(2) and 2320. The statutes prohibit importing or exporting, or trafficking in motor vehicles or parts knowing that the identification numbers have been removed, altered, tampered with, or obliterated. Violations of 18 U.S.C. § 553(a)(2) carry a maximum of five years imprisonment for the import or export of motor vehicles or parts. Violations of 18 U.S.C. § 2320 carry a maximum of twenty years imprisonment. In some instances, violations of 18 U.S.C. § 553(a)(2) occur where violations of 18 U.S.C. § 553(a)(1), (import or export of motor vehicles known to be stolen) have also been charged. The base offense level provides for a sentencing range of six to twelve months imprisonment. The property table aggravates the sentence above the base offense level. Presumptive parole guidelines treat this offense as trafficking in stolen property, with the value of the vehicles or parts determining time served. The minimum average time served for this offense under the parole guidelines is zero to six months.

Part C—Offenses Involving Public Officials

18 U.S.C. §§ 201–214
18 U.S.C. §§ 216–219
18 U.S.C. § 371
18 U.S.C. § 872
18 U.S.C. § 1341
18 U.S.C. § 1343
18 U.S.C. § 1909
18 U.S.C. §§ 1951–1952
18 U.S.C. § 1962
Also See Statutory Index

Introduction. Because public officials are vested with authority, power, and trust over public matters, they are generally held to higher standards of conduct. Violation of an oath of office may seriously erode the values of a community and confidence in the integrity and fairness of governmental functions. The harm caused by corrupt public officials may be tangible: awarding a contract to an unqualified bidder or improper reduction of property taxes. Frequently the harm caused by the corruption of public officials is intangible, and therefore difficult to measure empirically. Sentences in these cases should reflect the seriousness of the offense, provide adequate and certain punishment, and provide a deterrent for those who would corrupt government processes.

Fifty-two percent of bribery defendants and nearly 20 percent of extortion defendants received probationary sentences during fiscal year 1985. On average, current sentencing practices do not adequately reflect the seriousness of public corruption offenses. Commission estimates of average time served for bribery ranges from one month to two years, depending principally upon the amount of the bribe. Therefore, with respect to the more serious bribery and extortion offenses, the guidelines provide the sentencing judge with sufficient latitude to impose a significant sentence. Systematic or pervasive corruption of a governmental institution, office, or function may justify a sentence above the applicable guideline range.

§ C211. Payment of a Bribe or Gratuity, Conspiracy, Solicitation, or Attempt. If the offense involved a gratuity for performing an official act, the base offense level is 10 to 15, depending upon the extent and duration of the offense. 18 U.S.C. § 201(f).

(a) Specific Offense Characteristic

(1) If the offense involved a bribe for the purpose of influencing an official act, or for committing a fraud against the United States, or any other unlawful purpose, increase by 1 to 8 levels, depending upon the nature and extent of the public interest or injury involved and the defendant's expected benefit. 18 U.S.C. § 201(b).

§ C212. Receipt of a Bribe or Gratuity, Conspiracy, Solicitation and Attempts. If the defendant was a public official who sought or received money or anything of value as a gratuity for performing an official act, the base offense level is 10 to 15, depending upon the extent and duration of the offense. 18 U.S.C. § 201(g).

(a) Specific Offense Characteristic.

(1) If the payment was sought or received as a bribe for the purpose of influencing an official act, or for committing a fraud against the United States, or any other illegal purpose, increase by 1 to 8 levels, depending upon the defendant's position, the nature and extent of the public interest or injury involved, and the personal benefit the defendant expected to derive from the offense. 18 U.S.C. § 201(c).

§ C213. Extortion, Conspiracy or Attempt to Extort under Color of Official Right. The base offense level is 18 to 23, depending upon the defendant's position, the nature of the conduct and any personal benefit derived or expected to be derived from the offense. 18 U.S.C. §§ 872, 1951.

§ C214. Conflict of Interest. The base offense level is 8 to 12, depending upon the defendant's position and the nature and circumstances of the offense. 18 U.S.C. §§ 207–208.

§ C215. Payment or Receipt of Unauthorized Compensation. The base offense level is 6 to 10, depending upon the nature, extent, and duration of the offense, and the defendant's position. 18 U.S.C. §§ 203, 209.

§ C216. Purchase or Sale of Appointive Public Office. The base offense level is 6 to 10, depending upon the nature of the office and the circumstances of the offense. 18 U.S.C. §§ 210–211.

§ C217. Offer or Acceptance of Loan or Gratuity to Bank Examiner; Bank Examiner Performing Other Services for Compensation; Offer or Receipt of Payment for Procuring Bank Loans, Discount of Commercial Paper or Financial Transaction, or Adjustment for Farm Indebtedness. The base offense level is 6 to 10, depending upon the defendant's position and the nature and extent of the offense. 18 U.S.C. §§ 212–214, 217, 1909.

COMMENTARY

The term "public official" may have broad or limited application under public integrity statutes. For example, the federal bribery statute, 18 U.S.C. § 201(a), defines a public official to include not only federal officers and employees, but also any "person acting for or on behalf of the United States" in any governmental function or by authority of any federal agency, department, or branch of government. United States v. Dixson, 104 S.Ct. 1172 (1984). Thus, jurisdiction under the federal bribery statute has been extended to persons entrusted with expenditure of federal funds, even though they may not be technically employed by the federal government. United States v. Hollingshead, 672 F.2d 751 (9th Cir. 1982). However, the conflict of interest statutes explicitly limit application to certain present and former officials or employees of the United States. 18 U.S.C. §§ 207 and 208.

A conspiracy to defraud the United States, in violation of 18 U.S.C. § 371, may involve corrupt activities by a public official. United States v. Thompson, 366 F.2d 167 (6th Cir.), cert. denied, sub. nom. Campbell v. United States, 385 U.S. 973 (1966). The Hobbs Act, 18 U.S.C. § 1951(b)(2), applies in part to any person who acts "under color of official right." This statute applies to extortionate conduct by, among others, officials and employees of state and local governments. United States v. Staszcuk, 502 F.2d 875 (7th Cir. 1974); United States v. Martin, 751 F.2d 258 (8th Cir. 1984). Corrupt activities prosecuted under the mail and wire fraud statutes, 18 U.S.C. §§ 1341 and 1343, may involve either federal or local officials in schemes to defraud the public of its right to honest government. United States v. Mandell, 602 F.2d 663 (4th Cir. 1979) (en banc), cert. denied, 445 U.S. 961 (1980); United States v. Margiotta, 688 F.2d 108 (2d Cir. 1982), cert. denied, 461 U.S. 913 (1983); United States v. Price, 788 F.2d 234 (4th Cir. 1986); Similarly, violations of the Travel Act, 18 U.S.C. § 1952, and the federal racketeering statute, 18 U.S.C. § 1962, may involve corruption of public officials covered by the guidelines in this section. When the offense of conviction is the general conspiracy statute, the mail or wire fraud statute, the Travel Act, or the racketeering act, the court shall apply the guideline that most accurately describes the underlying offense conduct.

Section C211 applies to defendants who give gratuities to public officials for committing an official act, in violation of 18 U.S.C. § 201(f). A corrupt purpose is not an element of these offenses, which carry a two year maximum penalty. United States v. Brewster, 506 F.2d 62 (D.C. Cir. 1974); United States v. Hsieh Hui Mei Chen, 754 F.2d 817 (9th Cir.), cert. denied, sub. nom. Tsang-Chi Chen v. United States 105 S.Ct. 2684 (1985). Section C211(a)(1) applies when a bribe is given for a corrupt purpose, such as inducing a public official to participate in a fraud or to influence his official actions, in violation of 18 U.S.C. § 201(b). Under this provision, the statutory maximum is increased to fifteen years. The guidelines provide for a minimum sentence in the range of six to twelve months for offenses involving payment of gratuities and eight to fourteen months for offenses involving payment of bribes. They also provide the court with substantial latitude in adjusting the offense level to reflect the degree of corruption involved.

Section C212 applies to public officials who solicit or accept gratuities for performing an official act, in violation of 18 U.S.C. § 201(g). The guidelines give the court the same latitude in affixing an appropriate punishment for the public official as for the person who offers or gives a gratuity. This is consistent with the statute that carries the same maximum sentence for the giver and the recipient of the unlawful payment. In some cases the public official is the instigator. In others, the private citizen who is attempting to ingratiate himself or his business with the public official may have been the aggressor. These factors should be considered by the court when determining appropriate adjustments to the base offense level by reference to Part Z, Role in the Offense.

Section C212(1) provides that a public official who accepts a bribe for a corrupt purpose, under 18 U.S.C. § 201(c), is subject to the same sentencing exposure as the corrupt person who pays a bribe. This approach is consistent with the statutory scheme and legislative intent of § 201. Presumptive parole guidelines provide for a minimum time served range of zero to ten months for giving or receiving an illegal payment. Parole guidelines do not differentiate bribes from gratuities, but the minimum range of presumptive time served is increased to twelve to eighteen months if the offense involved multiple instances, and the maximum time in custody extends to forty to fifty-two months based on the greater of the value of the illegal payment or the favor received. In addition, the parole guidelines provide that breach of trust causing injury beyond monetary gain may be considered as an aggravating factor in increasing the period of custody above the presumptive parole guidelines. Current practice estimates indicate a difference in average time served based on whether a bribe or gratuity was involved, whether the defendant was the giver or recipient, and whether dollar loss was reported. In those instances where it was not possible to determine the dollar loss, the estimated minimum average time served for the giver and the recipient of a gratuity were two to eight months and four to ten months, respectively. Where bribery was the offense and it was not possible to determine dollar loss, the estimated time served for the giver and the recipient of a bribe was six to twelve months and eight to fourteen months, respectively.

Section C213 applies to extortion by officers or employees of the United States in violation of 18 U.S.C. § 872, and Hobbs Act extortions, conspiracies, and attempts under color of official right, in violation of 18 U.S.C. § 1951. The panoply of conduct that may be prosecuted under the Hobbs Act varies from a city building inspector who demands a small amount of money from the owner of an apartment building to ignore code violations, to a state court judge who extracts substantial interest-free loans from attorneys who have cases pending in his court. Violations of 18 U.S.C. § 872 carry a three year statutory maximum, while violations of 18 U.S.C. § 1951 carry a statutory maximum of twenty years imprisonment. The guideline therefore provides a flexible range of offense levels, so that the sentencing judge may adequately consider the defendant's position and the degree the public trust was violated, the nature of the conduct, and any personal benefit expected or received.

The Hobbs Act treats extortion conspiracies and attempts in the same manner. The reason these offenses are often not completed is that the victim complains to authorities or is acting in an undercover capacity. Lack of completion is not a measure of the defendant's culpability in attempting to use a public position for personal gain. The guidelines therefore provide the same sentencing range for completed and incomplete Hobbs Act violations. Presumptive parole guidelines treat extortion under color of official right in the same manner as bribery, based on the amount of money received. Current practice estimates do not distinguish between extortion under color of official right and other extortion offenses. In general, current practice estimates indicate a minimum range of average time served of fifteen to twenty-one months for extortion not resulting in reported dollar loss.

Bribery conspiracies, solicitations, and attempts in violation of 18 U.S.C. §§ 201 (b) and (c) provide the same maximum penalty for unsuccessful corrupt activities. Since the same public policy considerations apply, the sentencing judge is given comparable sentencing latitude to evaluate the seriousness of the offense. Presumptive parole guidelines treat these offenses in the same manner. Current practice estimates also indicate that estimated time served for these offenses is not significantly different from that of the underlying offenses.

Section C214 applies to present and former federal officers and employees who act in the face of financial and non-financial conflicts of interest proscribed by 18 U.S.C. §§ 207 and 208. A two year maximum term of imprisonment is provided. The range of levels permit the sentencing judge to give probation to the technical violator. However, a sentence up to sixteen months incarceration may be imposed if the court finds the violation was serious in nature and substantial in scope. These offenses are not explicitly treated in the parole guidelines, but would presumptively be subject to a period of zero to six months in custody by application of the parole commission's grading of miscellaneous offenses. There are no current practice estimates available for these offenses.

Section C215 applies to violations of 18 U.S.C. §§ 203 and 209. Under 18 U.S.C. § 203, the offer or receipt of unlawful compensation by an appointed or elected officiel, or official-elect of the federal government are prohibited. The statute makes no distinction in punishment between the person who solicits or receives compensation and the person who offers or gives compensation, and is intended to ensure that government officials do not exert undue influence on government matters in response to the receipt of unlawful compensation. The statute provides a two year maximum penalty. 18 U.S.C. § 209 provides a maximum term of imprisonment of one year for the receipt or payment of salary, or supplementation of salary of an officer or employee of the executive branch or an independent agency of the federal government, or an employee of the District of Columbia. The guideline provides for sentences ranging from level 6 (probation to six months) to level 10 (six to twelve months) depending upon the nature, extent, and duration of the offense and the nature of the defendant's position. Application of the parole commission's grading of miscellaneous offenses indicates a minimum period of custody of zero to six months. Current practices data indicate a

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minimum range of average time served of one to seven months.

Section C216 applies to offenses involving the offer or acceptance of payment in return for appointment to government office, in violation of 18 U.S.C. §§ 210 and 211. Section 210 of Title 18 makes it illegal to pay, offer, or promise something of value to a person, firm, or corporation in consideration of procuring appointive office, while § 211 applies to the solicitation or acceptance of something of value in consideration of a promise of the use of influence in obtaining appointive federal office. These statutes are designed to penalize trafficking in federal appointive office. Both statutes carry a maximum of one year imprisonment. The guideline provides for a minimum sentence ranging from probation to six months, depending upon the nature and circumstances of the offense. Because the statutory maximum for these offenses is one year, presumptive parole guidelines do not apply. Current practice estimates are not available for these offenses.

Section C217 applies to violations of 18 U.S.C. §§ 212 to 214, 217, and 1909 involving the offer or acceptance of payments and gratuities by federal banking officials. These statutes carry a maximum of one year imprisonment. Violations of 18 U.S.C. §§ 212 and 213 involve the offer and acceptance of loans or gratuities to bank examiners. Violations of 18 U.S.C. § 214 entail the offer or receipt of something of value for procuring a loan, or discount of commercial paper from a Federal Reserve bank. 18 U.S.C. § 217 prohibits the acceptance of a fee or other consideration by a federal employee for adjusting or cancelling a farm debt. 18 U.S.C. § 1909 prohibits bank examiners from performing any service for compensation, for banks or bank officials. The base offense level for this guideline provides for a minimum sentence ranging from probation to six months imprisonment, depending upon the defendant's position and the nature and extent of the offense. Guidelines for offenses involving unlawful payments to bank officials in violation of 18 U.S.C. § 215 appear in Part B, Offenses Involving Property. Because the statutory maximum for these offenses is one year, presumptive parole guidelines do not apply. Current practice estimates indicate a minimum range of average time served for these offenses of one to seven months.

Federal officers and employees who fail to register as representatives of foreign principals as required under the Foreign Agents Registration Act, 18 U.S.C. § 219, should be sentenced under the relevant provisions of Part M, Offenses Involving National Defense.

Part D—Offenses Involving Drugs

1. Unlawful Manufacturing, Importing, Exporting, Trafficking, or Possession; Continuing Criminal Enterprise

21 U.S.C. § 841
21 U.S.C. § 843
21 U.S.C. § 845 (a), (b)
21 U.S.C. § 846
21 U.S.C. § 848
21 U.S.C. §§ 952–953
21 U.S.C. §§ 955, 955a, 955c
21 U.S.C. § 957
21 U.S.C. § 959
21 U.S.C. §§ 960–963
21 U.S.C. App. § 1903
Also See Statutory Index

Introduction. These guidelines are consistent with the provisions of the Anti-Drug Abuse Act of 1986. Many of the guideline sentences correspond to the mandatory minimum term of imprisonment required under the Act. Additionally, these guidelines have adopted the approach generally utilized in the Act of determining the amount of the controlled substance involved by reference to the weight of the overall mixture or compound in which it is found.

Other factors being equal, offenses involving substances that present a similar danger are treated similarly. The guidelines are designed to assure that larger quantities of a controlled substance considered to be less harmful result in the same punishment as smaller amounts of a substance considered more harmful.

Violations of laws that prohibit the use or distribution of controlled substances represent a serious harm to individuals and society. Illegal drug transactions may fund organized crime. Evidence has increasingly established a correlation between drug abuse and other crimes. Therefore, the controlling principles in formulating these guidelines were adequate punishment, deterrence, and public protection. Drug offenders show a high rate of recidivism. Those who have not been deterred should be incapacitated.

A majority of drug offenses require harsher penalties for defendants with prior drug related convictions. As a result, the guidelines enhance for prior drug offense convictions. To avoid double counting, convictions resulting from drug offenses should not be considered in computing the defendant's criminal history category in Chapter Three, Part A, Criminal history adjustments resulting from other offenses should be counted.

§ D211. Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses). The base offense value is determined as follows:

(1) For trafficking that results in serious bodily harm, with a prior drug related conviction, the base offense level is 43.

(2) For trafficking in controlled substances (except Schedule III, IV, and V controlled substances and relatively small amounts of marihuana and hashish), determine the base offense level from the following table:

Table I

I	II	III	IV
Controlled substances and amounts	Trafficking in controlled substances	Trafficking with a prior drug-related conviction	Trafficking resulting in serious bodily harm
1 KG Heroin, 5 KG Cocaine, 50 G Cocaine Base, 1 KG PCP or 100 G Pure PCP, 10 G LSD, 400 G Propanamide or 100 G Propanamide Analogue, 1000 KG Marihuana (or more of any of the above).	Level 32*	Level 38*	Level 38*
500–999 G Heroin, 2.5–4.9 KG Cocaine, 25–49 G Cocaine Base, 500–999 G PCP or 50–99 G Pure PCP, 5–9 LSD, 200–399 G Propanamide or 50–99 G Propanamide Analogue, 500–999 KG Marihuana.	Level 30	Level 36	Level 38*
250–499 G Heroin, 1.25–2.49 KG Cocaine, 12.5–24.9 G Cocaine Base, 250–499 G PCP or 25–49.9 G Pure PCP, 2.5–4.9 G LSD, 100–199 G Propanamide or 25–49 G Propanamide Analogue, 250–499 KG Marihuana.	Level 28	Level 34	Level 38*
100–249 G Heroin, 5–1.24 KG Cocaine, 5–12.4 G Cocaine Base, 100–249 G PCP or 10–249 G Pure PCP, 1–2.49 G LSD, 40–99 G Propanamide or 10–24.9 Propanamide Analogue, 100–249 KG Marihuana.	Level 26*	Level 32*	Level 38*
60–99 Heroin, 300–499 G Cocaine, 3–4.9 G Cocaine Base, 75–99 G PCP or 7.5–9.9 G Pure PCP, 750–999 MG LSD, 30–39 G Propanamide or 7.5–9.9 G Propanamide Analogue, 70–99 KG Marihuana, 1000+ KG other Schedule I or II Controlled Substances, 1000+ Marihuana Plants.	Level 24	Level 30	Level 38*

Table I—Continued

I	II	III	IV
Controlled substances and amounts	Trafficking in controlled substances	Trafficking with a prior drug-related conviction	Trafficking resulting in serious bodily harm
40–59 G Heroin, 200–299 G Cocaine, 2–2.9 G Cocaine Base, 50–74 G PCP or 5–7.4 G Pure PCP, 600–749 MG LSD, 20–29.9 G Propanamide or 5–7.4 G Propanamide Analogue, 50–69 KG Marihuana, 500–999 KG other Schedule I or II Controlled Substances, 750–1000 Marihuana Plants.	Level 22	Level 28	Level 38*
20–39 G Heroin, 100–199 G Cocaine, 1–1.9 G Cocaine Base, 30–49 G PCP or 3–4.9 G Pure PCP, 400–599 MG LSD, 12–19.9 G Propanamide or 3–4.9 G Propanamide Analogue, 250–499 KG other Schedule I or II Controlled Substances, 500–749 Marihuana Plants.	Level 20	Level 26	Level 38*
10–19 G Heroin, 50–100 G Cocaine, 500–999 MG Cocaine Base, 20–29 G PCP or 2–2.9 G Pure PCP, 200–399 MG LSD, 8–11.9 G Propanamide or 2–2.9 G Propanamide Analogue, 50–249 KG other Schedule I or II Controlled Substances, 400–499 Marihuana Plants.	Level 18	Level 24	Level 38*
5–9.9 G Heroin, 30–49 G Cocaine, 300–499 MG Cocaine Base, 10–19.9 G PCP or 1–1.9 G Pure PCP, 100–199 MG LSD, 6–7.9 G Propanamide or 1.5–1.9 G Propanamide Analogue, 5–50 KG other Schedule I or II Controlled Substances, 300–399 Marihuana Plants.	Level 16	Level 22	Level 38*
Less than 5 G Heroin, 20–29 G Cocaine, 200–299 MG Cocaine Base, 5–9.9 G PCP or 500–999 MG Pure PCP, 50–99 MG LSD, 4–5.9 G Propanamide or 1–1.4 G Propanamide Analogue, 1–4.9 KG other Schedule I or II Controlled Substances, 200–299 Marihuana Plants.	Level 14	Level 20	Level 38*
Less than the following 20 G Cocaine, 200 MG Cocaine Base, 5 G PCP or 500 MG Pure PCP, 50 MG LSD, 4 G Propanamide or 1 G Propanamide Analogue, 1 KG other Schedule I or II Controlled Substances, or 100–199 Marihuana Plants.	Level 12	Level 18	Level 38*

*Statute Specifies a Mandatory Minimum Sentence.

COMMENTARY

The offense levels assigned to offenses involving controlled substances depend upon the type and amount of the controlled substance, prior criminal history, the harm caused by the controlled substance, the circumstances of the offense, and the presence of mitigating or aggravating factors, such as the use of weapons and distribution to minors.

Table I is based on the classifications and punishments established in the Anti-Drug Abuse Act of 1986 and applies to all unlawful trafficking in schedule I and II controlled substances. "Trafficking" refers to all offenses under 21 U.S.C. §§ 841 and 960, which includes importing, exporting, manufacturing, distributing, and possessing with intent to distribute or manufacture offenses. Offenses under sections 841 and 960 receive identical punishment based upon the quantity of the controlled substance involved, the defendant's criminal history, and whether serious bodily harm resulted from the offense.

These factors are set out at 21 U.S.C. §§ 841(b)(1) (A), (B), and (C) and 960(b) (1), (2) and (3). They appear in Table I as follows: Column I contains the list of controlled substances identified in the statutory provisions. The statutes establish only three weight classifications. Five additional ones are included in the table in order to make finer distinctions in punishment based upon the quantity of the substance involved. Column II contains offense levels for the eight classifications of trafficking in controlled substances identified in Column I. Column III contains eight classifications that provide higher offense levels for defendants with a prior federal, state, or foreign drug related conviction. Column IV provides a mandatory minimum penalty of twenty years imprisonment for first offenders who are convicted for trafficking in a controlled substance that caused serious bodily harm.

The base offense levels with asterisks represent mandatory minimum sentences established by the Anti-Drug Abuse Act of 1986. These levels reflect sentences with a lower limit as close to the statutory requirement as possible; e.g., level 32 in Column II ranges from 121 to 151 months, where the statutory minimum is ten years or 120 months. The base offense levels that comply with statutory requirements serve as anchors in attributing offense levels to other categories. Those offense levels that are not defined by statute are proportional to those that are statutorily defined.

The recent legislation does not provide the same distinctions in drug amounts as provided in Table I. The Commission, in determining these distinctions, has consulted numerous experts and practitioners, including authorities at the Drug Enforcement Administration, chemists, attorneys, probation officers, and members of the Organized Crime Drug Enforcement Task Force, who advocate the necessity of finer distinctions.

Terms of imprisonment are calculated by reference to the offense level table, which provides a sentence range based upon the defendant's criminal history. In calculating the criminal history adjustment, any prior drug related conviction taken into account in determining the defendant's offense level in Table I shall not be considered in determining the defendant's criminal history for purposes of Chapter Three.

For each of the offenses listed in Table I, a term of supervised release to follow imprisonment is required by law. Guidelines for the imposition, duration, and conditions of supervised release are set forth in Chapter Five, §§ A531–A533.

While the new legislation provides mandatory minimum sentences for many offenses, it also provides the means by which sentences lower than the statutory minimum may be imposed. 28 U.S.C. § 994(n). A lower sentence may be imposed by reason of a "defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense." See Chapter Three, § C331, Cooperation.

The scale amounts for all controlled substances identified in Column I refer to the total weight of the controlled substance. Consistent with the provisions of the Anti-Drug Abuse Act, if any mixture of a compound contains any detectable amount of a controlled substance, the entire amount of the mixture or compound shall be considered in measuring the quantity. If a mixture or compound contains a detectable amount of more than one controlled substance, the more serious controlled substance, as determined by applicable guideline punishment, shall determine the name affixed to the entire quantity.

If a defendant trafficked in a large quantity of controlled substances, compounds or mixtures of unusually high purity, this shall constitute a sufficient basis for the sentencing judge to increase a sentence above the applicable guideline range. The purity of the controlled substance, particularly in the case of heroin, may be relevant in the sentencing process because it is probative of the defendant's role or position in the chain of distribution. Since controlled substances are often combined with other substances as they pass down the chain of distribution, the fact that a defendant is in possession of unusually pure narcotics may indicate that the individual has a prominent role in the criminal enterprise and is close to the source of the drugs.

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Congress provides an exception to purity considerations in the case of phencyclidine (PCP). 21 U.S.C. § 841(b)(1)(A). The legislation designates amounts of pure PCP and mixtures in establishing mandatory sentences. Row 1 of Table I illustrates this distinction as one kilogram of PCP or 100 grams of pure PCP. Allowance for higher sentences based on purity is not appropriate for PCP.

The reference to specific amounts, weights, or quantities of controlled substances in Table I serves only as a general guide. It is not necessary to find that the exact amount provided in a particular weight category exists in order to impose the guideline sentence applicable to that category. It is sufficient that the controlled substance approach or be substantially equivalent to that specified in Table I. If, for example, an offense involved 750 grams of heroin, the court should sentence the defendant under level 31. Similarly, if five kilograms of heroin were involved, the court could sentence at a level correspondingly greater than level 32.

In cases where there is no drug seizure or the amount seized does not reflect the scale of the offense, the sentencing judge shall approximate the quantity of the controlled substance. In making this determination, the sentencing judge may consider any reliable information relevant to quantity, including but not limited to the price generally obtained for the controlled substance, financial or other records, similar transactions in controlled substances by the defendant, and the size or capability of any laboratory involved.

Table I applies to trafficking in all marihuana products except amounts of less than fifty kilograms of marihuana, ten kilograms of hashish, or one kilogram of hashish oil, which are covered under Table II. Additionally, pursuant to 21 U.S.C. § 841(b)(1)(D), Table I applies to trafficking in 100 marihuana plants or more, regardless of weight. If 100 or more marihuana plants found to weigh fifty kilograms or more are seized, the appropriate offense levels shall be determined by reference to weight and not numbers of plants.

All controlled substance analogues are covered under Table I. Subtitle E of the Anti-Drug Abuse Act provides that these substances should be treated as schedule I controlled substances. Therefore, controlled substance analogues should be considered as "other schedule I or II controlled substances" beginning in row five of column I.

Any reference to a particular controlled substance in these guidelines is also meant to include all salts, isomers, and all salts of isomers. Any reference to cocaine includes ecgonine and coca leaves, except extracts of coca leaves from which cocaine and ecgonine have been removed. Any reference to heroin includes all Schedule I and II opiates. Any reference to marihuana includes all cannabis products.

The Commission recognizes that there are certain Schedule I and II substances that, although not encountered as frequently as heroin, have 'heroin like' effects. Where such substances are encountered in significant quantities, a decision above the applicable guideline for Schedule I and II substances may be warranted. The following chart lists these substances and their relative potency compared to heroin of equivalent purity.

Schedule I Substances With 'Heroin Like' Effects

1 gm of Alpha-Methylfanyl=100 gm of heroin
1 gm of Dextromoramide=0.66 gm of heroin
1 gm of Dipipanone=0.25 gm of heroin
1 gm of 3-Methylfentanyl=125 gm of heroin
1 gm of 1-Methyl-4-phenyl-4-propionoxypiperdine/MPPP=5 gm of heroin
1 gm of 1-(2-Phenylethyl)-4-phenyl-4-acetyloxypiperidine/PEPAP=5 gm of heroin

Schedule II Substances With 'Heroin Like' Effects

1 gm of Alphaprodine=0.1 gm of heroin
1 gm of Fentanyl=31.25 gm of heroin
1 gm of Hydromorphone/Dihydromorphinone=2.5 gm of heroin
1 gm of Levorphanol=2.5 gm of heroin
1 gm of Meperidine/Pethidine=0.05 gm of heroin
1 gm of Methadone=0.5 gm of heroin
1 gm of 6-Monoacetylmorphine=1 gm of heroin
1 gm of Morphine=0.5 gm of heroin
1 gm of Oxycodone=1 gm of heroin
1 gm of Oxymorphone=5 gm of heroin
1 gm of Racemorphan=1.66 gm of heroin

A defendant who used special skills in the commission of the offense may be subject to an enhancement for role in the offense. See Part Z, § Z212. Certain professionals often occupy essential positions in drug trafficking schemes. These professionals include doctors, pilots, boat captains, financiers, bankers, attorneys, chemists, accountants, and others who have a special skill, trade, profession, or position that may be used to significantly facilitate the commission of a drug offense. An aggravating factor is included to both enhance the punishment of the person convicted and to deter other individuals from criminal activity.

3. For trafficking in Schedule III, IV, and V controlled substances or less than fifty kilograms of marihuana, ten kilograms of hashish, and one kilogram of hashish oil, determine the base offense level from the following table.

TABLE II

Controlled substances and amounts	Trafficking in controlled substances	Trafficking with a prior drug-related conviction
500 KG Schedule III, 40–49 KG Marihuana, 8–9.9 KG Hashish, 800–999 MG Hashish Oil or more.	Level 20	Level 25.
250–499 KG Schedule III, 25–39 KG Marihuana, 5–7.9 Hashish, 500–799 MG Hashish Oil.	Level 18	Level 23.
50–249 KG Schedule III, 10–24.9 KG Marihuana, 2–4.9 KG Hashish, 200–499 MG Hashish Oil.	Level 16	Level 21.
1–49 KG Schedule III, 1–9.9 KG Marihuana, 200 MG–1.9 G Hashish, 20–199 MG Hashish Oil, or 500 KG or more of any Schedule IV.	Level 14	Level 19.
Less than 1 KG Schedule III, Less than 1 KG Marihuana, less than 200 MG Hashish Oil, 50–499 Schedule IV.	Level 12	Level 17.
Less than 50 KG Schedule IV, 500 KG Schedule V or more	Level 10	Level 14.
50–499 KG Schedule V	Level 8	Level 12.
Less than 50 KG Schedule V	Level 6	Level 10.

COMMENTARY

Table II applies to drug trafficking offenses involving relatively small amounts of marihuana and all Schedule III through V controlled substances. These offenses are punishable under 21 U.S.C. §§ 841(b) (1)(D), (2), and (3) and 960(b)(4).

Table II operates identically to Table I except that it does not contain columns for trafficking in controlled substances causing serious bodily harm because the statutory provisions do not make that distinction. The sole distinction established in these statutory provisions is between first offenders and traffickers with prior drug related convictions. The maximum allowable periods of imprisonment for defendants with a prior offense is double that allowed for first offenders. It should be noted that although Table II applies to trafficking in even small amounts of marihuana, under 21 U.S.C. § 841(b)(4), distribution of "a small amount of marihuana for no remuneration" must be treated as a simple possession offense. These offenses should be punished in accordance with § D221.

The base offense levels for Table II reflect the statutory penalties associated with particular amounts of drugs. The statutory maximum for trafficking in 500 kilograms of Schedule III drugs is five years imprisonment, and with a prior drug related conviction is ten years. The base offense levels in the first category serve as reference points for the other categories, providing a base proportional to smaller drug amounts and less serious drug types.

The distinctions among categories in Table II were provided by experts and practitioners, as in Table I. Also, as with Table I, specific amounts, weights, or quantities of controlled substances serve only as a general guide. For sentencing purposes, it is sufficient that the controlled substance

approach or be substantially equivalent to that specified in Table II. As stated in the previous commentary, in cases where there is no drug seizure or the amount seized does not reflect the actual scale of the offense, the sentencing judge shall approximate the quantity of the controlled substance. Criminal histories for drug convictions are included in Table II, and should not be added again in computing the defendant's Chapter Three criminal history category.

For various offenses listed in Table II, a term of supervised release to follow imprisonment may be required by law. Guidelines for the imposition, duration, and conditions of supervised release are set forth in Chapter Five, §§ A531–A533.

§ D212. Involving Juveniles in the Trafficking in Controlled Substances. The base offense level is determined as follows:

(1) For involving an individual who is less than fourteen years of age, the base offense level is 19.

(2) For involving an individual who is less than eighteen years of age and greater than fourteen years, the base offense level is 13.

COMMENTARY

Section D212 refers to 21 U.S.C. § 845b, that makes it unlawful for any person at least eighteen years of age to knowingly employ or use any person younger than eighteen years to violate or to conceal any violation of any provision of Title 21. Section 845b provides a minimum mandatory period of imprisonment of one year in addition to the punishment imposed for the applicable crime in which the defendant involved a juvenile. This mandatory minimum is reflected in the base offense level. The increased penalty for the employment or use of persons under age fourteen is statutorily directed by 21 U.S.C. § 845d.

§ D213. Distributing Controlled Substances to Individuals Younger than Twenty-One Years, To Pregnant Women, or Within 1000 Feet of a School or College. The base offense level is determined as follows:

(1) For distributing a controlled substance to a pregnant woman, the base offense level is 13.

(2) For distributing a controlled substance to an individual under the age of twenty-one years, the base offense level is 13; if the substance is five grams of marihuana or less, the base offense level is 6.

(3) For distributing or manufacturing a controlled substance within 1000 feet of a schoolyard, the base offense level is 13; if the substance is five grams of marihuana or less, the base offense level is 6.

(a) Specific Offense Characteristic.

(1) If the defendant has a prior drug related conviction, increase by 7 levels.

COMMENTARY

This section refers to conduct proscribed by three separate statutory provisions, 21 U.S.C. §§ 845, 845a, and 845b. Each of these provisions contains a mandatory minimum period of imprisonment of one year. This additional year is intended as an enhancement to the sentence imposed on the defendant for the distribution of controlled substances. If more than one enhancement provision is found applicable in any particular distribution, the punishment imposed under the separate enhancement provisions should be added together in calculating the appropriate guideline sentence.

The guideline sentences for distribution of controlled substances to individuals under twenty-one years of age or within 1000 feet of a school or college treats the distribution of less than five grams of marihuana less harshly than other controlled substances. This distinction is based on the statutory provisions that specifically exempt convictions for the distribution of less than five grams of marihuana from the mandatory minimum one year imprisonment requirement.

An enhancement is provided for defendants with prior drug related convictions. This enhancement is statutorily mandated and requires a three year minimum term of imprisonment.

§ D214. Unlawful Interstate Sale and Transporting of Drug Paraphernalia. The base offense level is 12; if the defendant has a prior conviction under this provision, the base offense level is 16.

COMMENTARY

Subtitle O of the Anti-Drug Abuse Act creates the new offense of interstate sale or transportation of drug paraphernalia. The base offense level is proportional to the new statutory maximum of three years. The controlling consideration in this guideline is deterrence.

§ D215. Renting or Managing an Establishment Used to Unlawfully Manufacture Controlled Substances. The base offense level is 16; if the defendant has a prior conviction under this provision, the base offense level is 24.

COMMENTARY

Subtitle P of the Anti-Drug Abuse Act adds a new category to the drug related offenses set out at 21 U.S.C. § 856. This provision makes it unlawful to knowingly maintain, manage, or control any building, room, or enclosure for the purpose of manufacturing, distributing, storing, or using a controlled substance contrary to law. A maximum period of twenty years imprisonment may be imposed for violation of this statute.

Part Y, General Provisions, should be consulted if physical injury was caused by maintaining an establishment used to produce, store, or sell controlled substances.

§ D216. Placing or Maintaining Dangerous Devices on Federal Property to Protect the Unlawful Production of Controlled Substances. The base offense level is 23; if the defendant has a prior conviction under this provision, the base offense level is 30.

COMMENTARY

This provision refers to offenses under 21 U.S.C. § 841(e)(1), making it unlawful to assemble, place, or maintain a "booby-trap" on federal property where a controlled substance is being manufactured or distributed. A maximum period of ten years imprisonment may be imposed under this statute, except where a prior conviction provides for a maximum sentence of twenty years. The controlling considerations are deterrence and just punishment.

§ D217. Continuing Criminal Enterprise. The base offense level is determined as follows:

(1) For the first conviction of engaging in a continuing criminal enterprise, the base offense level is 32.

(2) For two or more convictions of engaging in a continuing criminal enterprise, the base offense level is 38.

(3) For engaging in a continuing criminal enterprise as the principal administrator, leader, or organizer, if the amount involved was 300 times that specified in Row 1 of Table I or if the principal received $10 million in gross receipts for any twelve month period, the base offense level is 43.

COMMENTARY

Section D217 refers to conduct proscribed by 21 U.S.C. § 848. The base offense levels for continuing criminal enterprise are mandatory minimum sentences provided by the statute.

Notwithstanding the foregoing, the sentence shall be not less than would result from imposition of consecutive sentences for each of the predicate offenses, excluding offenses that have resulted in the imposition of a final sentence prior to sentencing for the current offense.

As in Part E, Offenses Involving Criminal Enterprises, § E211, which refers to violations of 18 U.S.C. § 1962 (Racketeering Influenced and Corrupt Organizations offenses), emphasis is placed on the predicate offenses required for conviction. The offense level reflects Congressional intent to provide a mandatory minimum term of imprisonment for leaders of large scale drug enterprises.

When sentencing for convictions under 21 U.S.C. § 848, § D217 reflects the defendant's role in the enterprise. A conviction establishes that the defendant controlled and exercised decision-making authority over one of the most serious forms of ongoing criminal activity. Therefore, an adjustment for role in the offense is not applicable to convictions under 21 U.S.C. § 848.

§ D218. Attempts and Conspiracies. If a defendant is convicted of participating in an unlawful conspiracy or an attempt to commit any offense involving a controlled substance, the offense level shall by the same as if the object(s) of the conspiracy or attempt had been completed.

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COMMENTARY

This section refers to conduct proscribed under 21 U.S.C. §§ 5, 846, and 963.

If the defendant is convicted of a conspiracy that includes transactions in controlled substances in addition to those that are the subject of substantive counts of conviction, each conspiracy transaction shall be included with those of the substantive counts of conviction to determine scale.

If the defendant is convicted of an offense involving negotiation to traffic in a controlled substance, the weight under negotiation in an uncompleted distribution shall be used to calculate the applicable amount, provided that the defendant was reasonably capable of providing the amount of the controlled substance under negotiation.

2. Unlawful Possession

18 U.S.C. § 342
21 U.S.C. § 843(a)(3)
21 U.S.C. § 844
Also See Statutory Index

§ D221. Unlawful Possession. The base offense level is determined as follows:

1. If the substance is heroin or any Schedule I–II opiate, the base offense level is 10.

2. If the substance is cocaine, PCP, or LSD, the base offense level is 9.

3. If the substance is any other controlled substance, the base offense level is 6.

(a) Specific Offense Characteristic

(1) If the defendant has one or more final prior convictions for an offense involving a controlled substance, increase by 1 to 4 levels, depending upon the number and seriousness of prior convictions.

COMMENTARY

The base offense levels reflect statutory distinctions as well as categorical distinctions provided by Drug Enforcement Administration authorities and practitioners. The enhancement for prior convictions is statutorily based. 21 U.S.C. § 844a. Criminal history points should not be added in Chapter Three for prior offenses applied under this provision.

§ D222. Acquiring a Controlled Substance by Forgery, Fraud, Deception, or Subterfuge. The base offense level is 4; if the defendant has one or more convictions for this offense, the base offense level is 8.

COMMENTARY

This violation is infrequently prosecuted. The enhancement for prior convictions is statutorily based. The controlling considerations are deterrence and just punishment.

§ D223. Operating or Directing the Operation of a Common Carrier under the Influence of Alcohol or Drugs. The base offense level is 15.

COMMENTARY

Under recent legislation, operating a common carrier while under the influence of alcohol or drugs is recognized as a serious offense, with a statutory maximum of five years imprisonment. 18 U.S.C. § 342. The controlling sentencing principle is deterrence.

3. Regulatory Violations

21 U.S.C. §§ 842 (a), (b), (c)(2)
21 U.S.C. § 843(a)
21 U.S.C. § 954
21 U.S.C. § 961(2)

§ D231. Illegal Use of Registration Number to Manufacture, Distribute, Acquire, or Dispense a Controlled Substance. The base offense level is 4; if the defendant has one or more prior convictions for this offense, the base offense level is 8.

§ D232. Illegal Use of Registration Number to Distribute or Dispense a Controlled Substance to Another Registrant or Authorized Person. The base offense level is 4; if the defendant has one or more prior convictions for this offense, the base offense level is 8.

§ D233. Illegal Transfer or Transshipment of a Controlled Substance. The base offense level is 4; if the defendant has one or more prior convictions for this offense, the base offense level is 8.

COMMENTARY

These violations are infrequently prosecuted. The enhancement for prior convictions is statutorily based. The controlling principles are deterrence and just punishment.

Part E—Offenses Involving Criminal Enterprises and Racketeering

Introduction. A variety of offenses involving criminal enterprises are commonly committed by members of criminal organizations. These offenses are frequently the result of intentional, coordinated, and repeated action by individuals who are career criminals. Many of these offenses involve conduct covered under other guidelines. Where the provisions of Part E are involved due to a jurisdictional statute, look to the nature of the underlying offenses.

When sentencing for racketeering offenses, it is especially important that the sentence reflect the defendant's role in the racketeering scheme. Attention is specifically directed to Part Z, Role in the Offense, for the appropriate adjustment to the offense levels. While the guidelines do not contain an offender characteristic based upon membership in a criminal enterprise, a sentence above the applicable guideline range is permissible if a defendant derives a substantial portion of income from criminal activity. See Chapter Three, § A316.

1. Racketeering

18 U.S.C. §§ 1951–1952
18 U.S.C. §§ 1952A–1952B
18 U.S.C. § 1962

§ E211. Unlawful Conduct Relating to Racketeer Influenced and Corrupt Organizations. The base offense level is the greater of 19 or the offense level applicable to the underlying racketeering activity. 18 U.S.C. § 1962.

§ E212. Interstate or Foreign Travel or Transportation in Aid of a Racketeering Enterprise. The base offense level is the greater of 6 or the offense level applicable to any crime of violence or any other unlawful activity as defined in 18 U.S.C. § 1952(b), for which the travel or transportation was undertaken. 18 U.S.C. § 1952.

§ E213. Violent Crimes in Aid of Racketeering Activity. The base offense level is the greater of 12 or the offense level applicable to the underlying conduct. 18 U.S.C. § 1952B.

§ E214. Use of Interstate Commerce Facilities in the Commission of Murder-For-Hire. The base offense level is the greater of 23 or the offense level applicable to the underlying conduct. 18 U.S.C. § 1952A.

§ E215. Interference with Commerce By Extortion. If the defendant extorted, conspired, or attempted to extort property, the base offense level is 18 to 23, depending upon the nature of the defendant's conduct and any personal benefit he derived or expected to derive from the offense. 18 U.S.C. § 1951.

§ E216. Interference with Commerce By Robbery. The base offense level is the greater of 20 or the offense level applicable to the underlying conduct. 18 U.S.C. § 1951.

COMMENTARY

Because of the jurisdictional nature of the offenses included in this section, a variety of criminal offenses fall under these provisions. For this reason, a minimal base offense level is provided for each guideline section. However, since the primary concern rests with the underlying conduct, the offense level is generally determined by the offense level of the underlying conduct, or the base offense level of the guideline section above, whichever is greater.

In § E211, the jurisdictional basis of the Racketeer Influenced and Corrupt Organizations Act (RICO) is an enterprise engaged in or affecting interstate commerce. 18 U.S.C. § 1962. The seriousness of the offense is reflected in the pattern of racketeering activity committed. To determine the base offense level, the offense level for each underlying offense should first be determined. If the underlying racketeering activity involves violations of state law, the offense level should be computed by using the offense level applicable to the corresponding or most analogous federal

statute. If a base offense level cannot be appropriately determined in this fashion, the court may, as to the undetermined conduct, impose a sentence consistent with the purposes of sentencing. 18 U.S.C. § 3553(a)(2).

Section E212 refers to Travel Act offenses proscribed by 18 U.S.C. § 1952. This jurisdictional statute is directed to a Variety of unlawful conduct. A minimum base offense level that is generally consistent with current practices under the presumptive parole guidelines is provided. If the offense level of the underlying crime of violence or unlawful activity exceeds 6, the offense level for the underlying activity shall constitute the base offense level.

Section E213 relates to violent crimes in aid of racketeering activity proscribed by 18 U.S.C. § 1952B. The base offense level is 12, or the level for the underlying conduct, whichever is greater. The proscribed activities in the statute range from threats to murder, with the statutory sentences ranging from three years to life imprisonment. If death results, then a sentence at or near the statutory maximum may be imposed.

Section E214 covers the "murder-for-hire" offense proscribed by 18 U.S.C. § 1952A. This statute is jurisdictional, reaching the underlying conduct of murder or intended murder committed for pecuniary gain, with the requisite nexus provided by interstate or foreign travel, or the use of facilities in interstate commerce. Sentences under this statute range from five years to life imprisonment, depending upon whether personal injury or death resulted from the offense. A base offense level of 23 is provided. The statute carries a maximum term of imprisonment of five years where the intended victim was not actually injured. If injury or death results, the base offense level should be increased to reflect the seriousness of the injury, with a sentence at or near the statutory maximum if death results.

Sections E215 and E216 concern two different aspects of the Hobbs Act (18 U.S.C. § 1951), which involves interference with interstate commerce by robbery or extortion. Since these two violations of the statute are different crimes, separate sections have been included to indicate that distinction. A range of offense levels is provided for extortion because of the significant variables in offense behavior.

2. Extortionate Extension of Credit

18 U.S.C. §§ 892–894

§ E221. Making, Financing, or Collecting an Extortionate Extension of Credit. The base offense level is 18 to 23, depending upon the nature of the defendant's conduct and any personal benefit derived or expected to be derived from the offense.

COMMENTARY

This section refers to offenses involving the making or financing of extortionate extensions of credit, or the collection of loans by extortionate means. These "loansharking" offenses typically involve violence or threats of violence and provide economic support for organized crime.

If actual violence or damage to property was associated with the extortionate extension of credit, then these factors may result in an enhanced sentence under the general provisions. No additional offense level should be assigned for threats of violence or other harm, since threatening conduct is inherent in the offense and subsumed in the base offense level. Among those factors to be considered in determining the appropriate level within the range are the degree of actual and immediate danger to the victim, the extent to which the victim reasonably perceived a danger that any threat would be acted upon, the extent to which any conduct against the victim constituted an isolated occurrence or was part of a pattern of harassment, and whether the offense involved an unlawful debt. For purposes of this section, the term "unlawful debt" is defined in 18 U.S.C. § 1961(6).

3. Gambling

15 U.S.C. §§ 1172–1175
18 U.S.C. § 1082
18 U.S.C. § 1084
18 U.S.C. §§ 1301–1304
18 U.S.C. § 1306
18 U.S.C. § 1511
18 U.S.C. § 1953
18 U.S.C. § 1955
Also See Statutory Index

§ E231. Engaging in a Gambling Business. The base offense level is 10. 18 U.S.C. § 1955.

§ E232. Transmission of Wagering Information. The base offense level is 10. 18 U.S.C. § 1084.

§ E233. Interstate Transportation of Wagering Paraphernalia. The base offense level is 10. 18 U.S.C. § 1953.

§ E234. Unlawful Conduct Relating to Gambling Ships. The base offense level is 10. 18 U.S.C. § 1082.

§ E235. Unlawful Conduct Relating to Lottery Tickets or Related Matter. The base offense level is 6. 18 U.S.C. §§ 1301–1304, and 1306.

§ E236. Other Gambling Offenses. The base offense level is 6. 18 U.S.C. §§ 1172–1176.

COMMENTARY

When gambling offenses are part of a criminal enterprise, they often provide economic support for organized crime. With these considerations in mind, minimal base offense levels have been set for isolated gambling transactions. The base offense levels under these provisions are generally consistent with current practices data and with treatment under the presumptive parole guidelines, provided there is an appropriate adjustment of the sentence based upon the defendant's role in the offense. See Role in the Offense, Part Z.

4. Trafficking in Contraband Cigarettes

18 U.S.C. § 2342(a)

§ E241. Unlawful Conduct Relating to Contraband Cigarettes. The base offense level is 9 to 14, depending upon the quantity of cigarettes, the amount of tax that is the object of the evasion, and the nature and circumstances of the offense.

COMMENTARY

This offense generally involves evasion of state excise taxes and becomes a federal matter only upon the establishment of minimum quantities transported in interstate commerce or by use of interstate communications. Volume typically suggests the involvement of criminal organizations. Since this offense is basically a tax matter, the tax table under § T241 should be used to assist in determining the appropriate level within the range.

5. Labor Racketeering

18 U.S.C. § 664
18 U.S.C. § 1027
18 U.S.C. § 1231
18 U.S.C. § 1954
29 U.S.C. § 162
29 U.S.C. § 186
29 U.S.C. § 439
29 U.S.C. § 461
29 U.S.C. § 501(c)
29 U.S.C. § 502
29 U.S.C. § 504
29 U.S.C. § 530
29 U.S.C. § 1111
29 U.S.C. § 1141

Introduction. This section includes a variety of offenses involving criminal activity in relation to labor unions and employee welfare or pension funds. These offenses are included in Criminal Enterprises because they frequently involve members of organized criminal groups who exploit labor unions and welfare and pension funds. While some of the offenses in this section may be relatively minor, they are serious in the context of systematic corruption or exploitation of a union or employee benefit plan by organized criminal groups.

§ E251. Bribery or Graft Affecting the Operation of an Employee Welfare or Pension Benefit Plan. The base offense level is 10 to 15, depending upon the extent and duration of the offense. 18 U.S.C. § 1954.

(a) Specific Offense Characteristics.

(1) If a thing of value was given, offered, requested, or received with an intent to influence or be influenced with respect to matters concerning a benefit plan, increase by 3 levels.

(2) If the offense was committed by a fiduciary of the benefit plan, increase by 3 levels.

§ E252. Theft or Embezzlement from Employee Pension and Welfare Benefit Plans. The base offense level is 4. 18 U.S.C.§ 664.

(a) Specific Offense Characteristics.

(1) If the defendant had a fiduciary obligation under the Employee Retirement Income Security Act, increase by 6 levels.

(2) If the value of the property stolen exceeded $1,000, increase by the

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appropriate offense level as specified in the Property Table, § B211.

(3) If the theft involved multiple occurrences, increase by 1 to 6 levels, depending upon the number of transactions or occurrences. Do not apply if § E252(2) is greater.

§ E253. False Statements and Concealment of Facts in Relation to Documents Required by the Employee Retirement Income Security Act. The base offense level is 6. 18 U.S.C § 1027.

(a) Specific Offense Characteristics.

(1) If false records were used for criminal conversion of plan funds or a scheme involving bribery or graft relating to the operation of an employee benefit plan, the defendant should be sentenced for theft or embezzlement, § E252, or bribery or graft, § E251.

(2) If the defendant had a fiduciary obligation under the Employee Retirement Income Security Act, increase by 6 levels.

(3) If the offense involved multiple ocurrences, increase by 1 to 6 levels, depending upon the nature and extent of the offense.

§ E254. Interference With the Exercise of Employee Benefit Plan Rights by Fraud or Coercion. The base offense value is 6. 29 U.S.C. § 1141.

§ E255. Prohibited Service by Convicted Persons in Connection with Employee Benefit Plans. The base offense value is 10 to 15, depending upon the nature and circumstances of the offense. 29 U.S.C. § 1111.

(a) Specific Offense Characteristic.

(1) If the prior disqualifying conviction was related to the embezzlement or theft of plan assets or a scheme involving bribery or graft in the operation of an employee benefit plan, increase by 6 levels.

§ E256. Embezzlement or Theft from Labor Unions in the Private Sector. The base offense level is 4. 29 U.S.C. § 501(c).

(a) Specific Offense Characteristics.

(1) If the defendant was a union officer or occupied a position of trust in the union, as set forth in 29 U.S.C. 501(a), increase by 6 levels.

(2) If the amount of the theft exceeds $1,000, increase by the appropriate offense level as specified in the Property Table, § B211.

(3) If the theft involved multiple occurrences, increase by 1 to 6 levels, depending upon the number of transactions or occurrences. Do not apply if § E256(2) is greater.

§ E257. Failure to Maintain and Falsification of Records Required by the Labor Management Reporting and Disclosure Act. The base offense level is 6. 29 U.S.C. § § 439 and 461.

§ E258. Prohibited Service by Convicted Persons in Labor Organizations, Employer Associations, and as Labor Relations Consultants. The base offense level is 15. 29 U.S.C. § 504.

(a) Specific Offense Characteristic.

(1) If the prior disqualifying conviction was related to the embezzlement or theft of labor union or employee benefit fund assets or a scheme involving bribery or graft in the operation of a labor organization or employee benefit plan, increase by 6 levels.

§ E259. Prohibited Payments or Lending of Money by Employer or Agent to Employees, Representatives, or Labor Organizations. The base offense level is 6 to 12, depending upon the amount and the nature of the transaction. 29 U.S.C. § 186.

(a) Specific Offense Characteristics.

(1) If the prohibited payment was made or received to influence the actions or decisions of a union official, increase by 6 levels.

(2) If the offense involved multiple occurrences or transactions, increase by 1 to 6 levels, depending upon the number of transactions or occurrences.

§ E260. Interstate Transportation of Strikebreakers. The base offense level is 6 to 10, depending upon the nature and circumstances of the offense. 18 U.S.C. § 1231.

§ E261. Interference With an Agent of the National Labor Relations Board. The base offense level is 6. 29 U.S.C. § 162.

COMMENTARY

The base offense levels for many of these provisions have been determined by reference to analogous sections of the guidelines. Thus, the base offense levels for bribery, theft and fraud in this section correspond to similar conduct under other parts of the guidelines. The Commission invites public comment as to whether this treatment is generally appropriate.

The statutes included in this section protect the rights of employees under the Taft-Hartley Act, of members of labor organizations under the Labor-Management Reporting and Disclosure Act of 1959, and of participants of employee pension and welfare benefit plans covered under the Employee Retirement Income Security Act. One of the primary concerns in determining the base offense levels for these offenses is distinguishing between those acts that are isolated or limited transactions and those acts that are part of a systematic attempt to loot employee benefit funds, dominate labor organizations, or generally exploit labor-management relationships. The higher base offense levels apply where violations are part of a systematic pattern of corruption or exploitation.

Section E251 covers the giving or receipt of bribes and other illegal gratuities involving employee welfare or pension benefit plans under 18 U.S.C. § 1954. This offense may involve persons who have a fiduciary duty to the benefit plan. The seriousness of the offense is determined by several factors, including the value of the gratuity, the nature of the "favor," and the magnitude of the loss resulting from the transaction. A more severe penalty is warranted in a bribery where the payment is the primary motivation for an action to be taken, as opposed to graft where the prohibited payment is given because of one's actions, duties, or decisions without a prior understanding that the recipient's performance will be directly influenced by the gift.

Section E252 applies to theft or conversion from employee benefit plans by fiduciaries, or by any person, including borrowers to whom loans are disbursed based upon materially defective loan applications, service providers who are paid on inflated billings, and beneficiaries paid as the result of fraudulent claims. 18 U.S.C. § 664. The base offense level corresponds to the base level for other forms of theft. Special offense characteristics address cases where a defendant has a fiduciary relationship to the benefit plan, or if the theft is part of a systematic looting of the plan by multiple occurrences of criminal conduct.

Section E253 involves the falsification of documents or records relating to a benefit plan covered by ERISA. Violations of 18 U.S.C. § 1027 sometimes occur in connection with the criminal conversion of plan funds or schemes involving bribery or graft. Where a violation of this section occurs in connection with another offense or as part of a long term scheme, or involves a fiduciary of the plan, a higher base offense level is warranted.

Section E254 refers to conduct proscribed by 29 U.S.C. § 1141. The conduct addressed by this provision is punishable by a maximum term of one year imprisonment.

Section E255 addresses conduct under 29 U.S.C. § 1111, which prohibits persons convicted of certain criminal offenses from holding particular positions or offices associated in specified capacities with employee benefit plans. Where the prior disqualifying conviction was related to the operation of a benefit plan or the prohibited employment consisted of a position carrying substantial decision making authority with respect to plan operations, the base offense level should be increased.

Section E256 refers to conduct proscribed by 29 U.S.C. § 501(c), embezzlement or theft from a labor organization. This section is directed at union officers and persons employed by the union. The seriousness of this offense is determined by the amount of money taken, the scope of the misconduct, and the nature of the defendant's position in the union.

Section E257 involves failure to maintain proper documents required by the LMRDA or falsification of such documents. While this offense is a misdemeanor, it can occur in conjunction with schemes to convert union funds or schemes involving prohibited payments to labor unions and labor union officials.

Section E258 refers to conduct proscribed by 29 U.S.C. § 504, which prohibits persons convicted of certain offenses from holding positions in labor organizations or serving in certain capacities associated with collective bargaining. This section involves the same considerations discussed in connection with § E255 regarding employee benefit plans.

Section E259 deals with bribery and other prohibited transactions with employers, labor relations consultants, and other persons acting in the interest of employers to labor officials in industries governed by the Taft-Hartley Act. The statute contains misdemeanor and felony provisions, depending upon whether the prohibited payment exceeds $1,000. The amount of the illegal payment should therefore be a sentencing consideration. Where the prohibited payment is made with an intent to influence the actions, duties, or decisions of the employee representative or union official, or is received with knowledge of such an intent, a more severe penalty is warranted for the special bribery characteristic of the offense. The scope of the misconduct will also result in some level of enhancement where multiple occurrences or transactions are involved.

Sections E260 and E261 deal with other offenses involving labor-management relations. Section E260 covers the interstate transportation of strikebreakers, a two-year felony proscribed by 18 U.S.C. § 1231. Section E261 covers the offense of interference with a National Labor Relations Board agent, a misdemeanor proscribed under 29 U.S.C. § 162.

Finally, with regard to the labor racketeering offenses, an important part of punishment is the prohibition imposed by 29 U.S.C. § § 504 and 511 of convicted persons from service in labor unions, employer associations, employee benefit plans, and as labor relations consultants. Violations of these provisions are felony offenses, discussed in §§ E255 and E259. Persons convicted after October 12, 1984, may petition the sentencing court to reduce the statutory disability (thirteen years after sentence or imprisonment, whichever is later) to a lesser period (not less than three years after entry of judgment in the trial court). After November 1, 1987, petitions for exemption from the disability that were formerly administered by the United States Parole Commission will be transferred to the courts. Relief shall not be given in such cases to aid rehabilitation, but may be granted only following a clear demonstration by the convicted person that he has been rehabilitated since commission of the crime.

Part F—Offenses Involving Fraud and Deception

7 U.S.C. §§ 6, 6b, 6c, 6h, 6o
7 U.S.C. § 13
7 U.S.C. § 23
15 U.S.C. §§ 77a–80b–17
18 U.S.C. §§ 285–291
18 U.S.C. § 371
18 U.S.C. § 656
18 U.S.C. § 659
18 U.S.C. §§ 1001–1030
18 U.S.C. §§ 1341–1344
Also See Statutory Index

§ F211. Fraud and Deception. The base offense level is determined as follows:

(1) If the fraud consisted of a single occurrence or transaction and did not involve more than one victim, the base offense level is 6.

(2) If the fraud consisted of more than one transaction or occurrence and did not involve more than one victim, the base offense level is 7.

(3) If the fraud consisted of a scheme or artifice to defraud more than one victim, the base offense level is 8.

(a) Specific Offense Characteristic.

(1) If the court determines that the seriousness of the offense is reflected by the financial loss to the victim or gain to the defendant, increase the base offense level by the appropriate level for the gain or loss, whichever is greater, in the following Property Table:

PROPERTY TABLE

Loss or gain	Increase in level
$5,000 to $10,000	Add 1.
$10,001 to $20,000	Add 2.
$20,001 to $50,000	Add 3.
$50,001 to $100,000	Add 4.
$100,001 to $200,000	Add 5.
$200,001 to $500,000	Add 6.
$500,001 to $1,000,000	Add 7.
$1,000,001 to $2,000,000	Add 8.
$2,000,001 to $5,000,000	Add 9.
over $5,000,000	Add 10.

(2) Alternatively, if the gravity of the offense is not reflected by the amount of financial loss or gain, the Property Table shall not be used; the base offense level may be increased by 3 to 9 levels, depending upon the nature, sophistication, and duration of the offense.

§ F212. Insider Trading. The base offense level is 8, plus the level from § F211(a)(1) corresponding to the defendant's market gain as the measure.

COMMENTARY

The base offense level for fraud offenses is determined by factors relating to single or multiple transactions and victims. The alternative base offense levels are mutually exclusive. The General Provisions, Part Y, should be consulted, particularly those applicable to vulnerable victims, public welfare, and psychological injury. In a complex fraud scheme, the defendant's role in the offense may be a significant sentencing factor.

The fraud section does not link offense characteristics to specific statutes, because most fraud statutes contain general language that applies to a broad range of offenses of widely varying severity. For example, the mail and wire fraud statutes, 18 U.S.C. §§ 1341 and 1343, apply to any person who devises or intends to devise a scheme or artifice to defraud by use of false or fraudulent pretenses, representations, or promises, in order to obtain money or property. By application of the statute, a mail order scheme to defraud an individual of $50 constitutes the same statutory violation as a multimillion dollar false billing scheme victimizing businesses nationwide.

The Commission has considered two alternative methods for evaluating the seriousness of fraud offenses. One is to use financial gain to the defendant or loss to the victim as the principal measuring device to aggravate the base offense level. This approach utilizes a property table that designates increases in the offense levels based on the dollar value of the gain or loss. The other approach focuses on the fraudulent conduct by using a range of offense levels. This approach leaves fact-finding determinations concerning the nature, sophistication, and duration of the offense to the sentencing judge in selecting the appropriate level in the range that reflects the seriousness of the offense.

The Commission has combined both approaches in this draft, leaving to the sentencing judge the determination of the appropriate approach to follow. Section F211(a)(1) contains a table designating the increase in the offense level to be in a given case used only if the financial loss or gain approach best reflects the gravity of the offense.

If the sentencing judge determines that other factors relating to offense conduct more accurately reflect the seriousness of the offense, § F211(a)(2) provides that the defendant's base offense level may be increased from 3 to 9 levels, depending upon the nature, sophistication, and duration of the offense. In evaluating the nature of the offense, the court may consider such factors as whether the defendant took advantage of a business, professional, or personal relationship to exploit the victim or whether the fraud was in the technical nature of a false statement to a government agency.

The sophistication of the scheme may be an extremely important sentencing factor. A complex, sophisticated scheme is indicative of an intention to do considerable harm, and is often related to increased difficulties of detection and proof. Some factors that may indicate the degree of sophistication are:

(a) The extent to which the offense involved careful planning;

(b) The number of victims;

(c) The number of transactions and the length of time over which they took place;

(d) The extent to which efforts were made to disguise or conceal the nature or proceeds of the offense or to prevent detection, apprehension, or prosecution;

(e) The extent to which the defendant used special skills or training in carrying out the offense, or utilized the special skills or training of others;

(f) The potential financial impact of the scheme; and

(g) The harm done to the integrity of a governmental or financial institution, a community, or business, and the resulting impact upon public confidence.

Sections F211(a) (1) and (2) are mutually exclusive. The property table may be an accurate measure of the seriousness of the

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offense in a financially successful scheme where loss to the victim or gain to the defendant may be reasonably determined, such as a well-documented securities or bank fraud scheme. However, the property table may not be a reliable indicator of the offense conduct in many cases. It may not be feasible to use the property table if the harm was intangible, the scheme was financially unsuccessful, or the loss or gain was difficult to establish or financially disproportionate to the nature of the offense. For example, if the defendant took cash from victims who are difficult to identify and his disposition of the funds cannot be traced, or if a co-conspirator cooperated with the government and the scheme was exposed before the victims actually lost money, the property table would not provide an accurate measure of the gravity of the offense.

On the other hand, application of the property table to situations where dollar loss or gain are disproportionately high in relation to the nature of the offense conduct would be inappropriate. Illustrations might include the defendant who commits a fraud of opportunity rather than one based on planning and manipulation, such as concealing a debt on an application for a $100,000 bank loan or withdrawing $12,000 in Social Security direct deposit payments from a deceased spouse's checking account over a considerable period of time. Section F211(b) would also not apply in these examples unless the court found aggravating factors relating to the nature, sophistication, and duration of the offense.

Section F212 applies to violations of Rule 10b–5 that are commonly referred to as "insider trading." A separate guideline is provided in order to make it clear that insider trading is treated essentially the same as any other fraud. Because the victims and their loss are difficult if not impossible to identify, the defendant's market gain, i.e., the total increase in value realized on securities in which he traded based on inside information, is used in lieu of the actual loss. The market gain should approximate the loss.

Presumptive time served for fraud under the parole guidelines varies directly with the amount of property involved. For fraud involving less than $2,000, the parole guidelines provided not more than six months in custody. For fraud offenses involving more than $500,000, the presumed time served is forty to fifty-two months. Current practice data indicate a distinction in estimated time served based on the sophistication of the offense, as well as the dollar amount involved. Commission estimates of current practices range from six to eighteen months in unsophisticated fraud cases, and from ten to twenty-seven months in sophisticated cases.

Ongoing fraud schemes usually result in multiple count indictments. The cumulative loss or gain produced by a common scheme or course of conduct shall be used in applying the property table. Similarly, all conduct relevant to the scheme shall be considered when determining any increase in the offense level under § F211(a)(2). Sophisticated fraud schemes may warrant imposition of consecutive sentences in order to serve the purposes of sentencing. See Chapter Five, § A562(b), and related commentary.

The Commission invites public comment concerning the two approaches presented here, either individually or in the alternative form.

Part G—Offenses Involving Prostitution, Sexual Exploitation of Minors, and Obscenity

1. Prostitution

18 U.S.C. § 1384
18 U.S.C. §§ 2421–2424
Also See Statutory Index

Introduction. Federal jurisdiction for prostitution primarily involves interstate or foreign transportation for the purposes of prostitution or other immoral purposes. Rarely does engaging in prostitution or owning and operating a place of prostitution occur under federal jurisdiction, except near or on military or naval installations.

§ G211. Transportation for the Purpose of Prostitution or Prohibited Sexual Conduct. The base offense level is 14.

(a) Specific Offense Characteristics.

(1) If the defendant used drugs, physical force, or coercion, increase by 2 to 4 levels, depending upon the degree of compulsion used.

(2) If the conduct involved the transportation of a person under eighteen, increase by 2 to 6 levels, depending upon the age and immaturity of the minor.

§ G212. Engaging in Prostitution. The base offense level is 6.

COMMENTARY

Section G211 applies to offenses listed under the white slave traffic statutes, 18 U.S.C. §§ 2421–2424. Transportation for the purpose of prostitution or any other immoral purpose carries a statutory maximum penalty of five years imprisonment. The base offense level reflects the time specified by the federal parole guidelines. An enhancement for minors and for force or coercion is provided by statute. 18 U.S.C. §§ 2422 and 2423.

Section G212 applies to conduct prohibited by 18 U.S.C. § 1384. The conduct covered by 18 U.S.C. 1384 includes engaging in prostitution as well as owning or maintaining a prostitution business. These offenses are rarely the subject of federal prosecutions. Therefore, a low base offense level is provided in § G212. Specific guidelines for owning or maintaining a prostitution business are not provided. Should a case of this nature be prosecuted, the Commission recommends that § G211 be followed subject to statutory maximums. The mandatory maximum penalty for both offenses is one year. The base offense level reflects the time specified under the parole guidelines.

If the offense resulted in physical injury, death, or psychological injury, reference should be made to Part Y, General Provisions.

2. Sexual Exploitation of a Minor

18 U.S.C. § 2252

§ G221. Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material. The base offense level is 22.

(a) Specific Offense Characteristic.

(1) If the person exploited was under age twelve at the time of the offense, increase by 2 to 4 levels, depending upon the age of the person exploited.

§ G222. Transporting, Receiving, or Trafficking in Material Involving the Sexual Exploitation of a Minor. The base offense level is 13.

(a) Specific Offense Characteristics.

(1) If the conduct involved transportation of the exploitive material, increase by 2 levels.

(2) If the offense involved trafficking in or transporting material that depicts a minor under age twelve, increase by 2 levels.

(3) If the retail value of the exploitive material exceeds $25,000, increase by 4 levels.

COMMENTARY

Section G221 applies to conduct prohibited by 18 U.S.C. § 2252. This offense commonly involves the production source of a child pornography enterprise. Because the offense directly involves the exploitation of minors, the base offense level is higher than for the distribution of the sexually explicit material after production. The base offense level reflects the time specified by the parole guidelines. The statutory requirement of higher penalties for defendants with prior convictions for similar conduct is covered under Chapter Three, § A314.

An enhancement is provided when the conduct involves the exploitation of a minor under age twelve to reflect the more serious nature of exploiting young children. The enhancement is provided as a range to reflect concern for particularly youthful victims. The Commission recommends an enhancement at the maximum of this range for children under eight years. Each minor child exploited shall be considered a separate offense.

If the exploitation involves physical or psychological injury, refer to Part Y, General Provisions.

Section G222 refers to the distribution of materials that visually depict a minor or minors engaging in sexually explicit conduct. The base offense level is substantially higher than that applicable to the distribution of obscene materials not involving minors (§ G231). The severity of the penalty reflects Congressional and Commission judgment (See preamble to the Child Protection Act of 1984, Pub. L. No. 98–292) that child pornography is a serious crime in which minors are exploited. The statutory requirement of higher penalties for defendants with prior similar convictions is covered under Chapter Three, § A314.

While the statute does not provide a distinction between those transporting and those receiving the exploitive material, the more serious offense rests with the purveyor. Therefore, an enhancement is provided for the defendant responsible for transporting the material.

The serious nature of this offense is reflected in the enhancement for the distribution of material depicting minors under age twelve. The amount of enhancement reflects the time specified by the parole guidelines. The enhancement for a retail value in excess of $25,000 provides significant punishment for defendants involved in large scale operations.

3. Obscenity

18 U.S.C. § 552
18 U.S.C. §§ 1461–1465
Also See Statutory Index

§ G231. Importing, Mailing, or Transporting Obscene Matter. The base offense level is 6.

(a) Specific Offense Characteristics.

(1) If the offense involved distribution for pecuniary gain, increase by 1 to 6 levels, depending upon the amount and value of the obscene material involved.

(2) If the defendant used his office as agent, employee, or officer of the United States in the commission of the offense, increase by 6 levels.

§ G232. Broadcasting Obscene Language. The base offense level is 4.

(a) Specific Offense Characteristic.

(1) If the offense was committed using, or on a communications frequency used by, a commercial broadcasting station, increase by 2 levels.

COMMENTARY

Section G231 applies to offenses involving the mailing, importation, and interstate transportation for sale or distribution of obscene materials. The base offense level reflects the time specified by the parole guidelines, and a judgment that these offenses pose a threat to accepted moral standards and values, and often provide economic support for organized crime. With the exception of broadcasting obscene language, all the above provisions carry a maximum penalty of five years. Defendants with prior convictions for similar offenses receive higher penalties through the criminal history adjustments in Chapter Three. The statute (18 U.S.C. § 1462) allows for twice the maximum penalty when prior similar convictions exist. Chapter Three, § A313, provides guidance for enhancing repeated violations of this offense.

When the obscenity distribution offense is part of a for-profit enterprise, the penalty is enhanced according to the scope of the criminal scheme. This enhancement reflects statutory recognition of a more serious offense when transportation is for commercial use. 18 U.S.C. § 1465.

A statutory enhancement is provided where the defendant is a federal employee acting as an agent of the United States government who contributes to the distribution of obscene material. 18 U.S.C. § 552.

Section G232, radio broadcasting of obscene language, 18 U.S.C. § 1464, is generally considered a less serious offense than the distribution of obscene printed matter, which has greater permanence and typically involves an organized business enterprise. The base offense level reflects the time specified by the parole guidelines. If the obscene or profane broadcast occurred over a commercial radio station, as opposed to a citizens' band or other limited transmission, the penalty increases to reflect the generally wider audience affected by the broadcast and its commercial nature.

Part H—Offenses Involving Individual Rights

1. Civil Rights

18 U.S.C. §§ 241–242
18 U.S.C. §§ 245–246
42 U.S.C. § 3631
Also See Statutory Index

§ H211. Interfering with Civil Rights. The base offense level is 10.

(a) Specific Offense Characteristics.

(1) If the defendant conspired to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any civil right, increase by 10 levels.

(2) If the defendant and at least one other person went in disguise on the highway or on the premises of another with intent to prevent or hinder the exercise of any civil right, increase by 10 levels.

COMMENTARY

This section refers to violations of civil rights or privileges secured under the Constitution or laws of the United States proscribed by 18 U.S.C. §§ 241, 242, 245, and 246, and 42 U.S.C. § 3631. A violation of these provisions may involve death, injury, or unlawful restraint. Reference should be made to Part Y, General Provisions, in those cases. If the defendant played a leadership role in a civil rights conspiracy or was a public official or law enforcement officer who used his position to facilitate the offense, refer to Part Z, Role in the Offense.

The base offense level applies to violations of civil rights under color of state law, 18 U.S.C. § 241. These offenses carry a statutory maximum term of imprisonment of only one year, unless death results when a sentence of life imprisonment is provided. An offense level near the statutory maximum is provided for non-death cases because of the compelling public interest in deterring and adequately punishing civil rights violators. A defendant who was a law enforcement or public official should be sentenced at the maximum end of the guideline range. The statutory maximum sentence for conspiracy to violate civil rights is ten years.

The specific offense characteristics are based on statutory language and reflect Congressional intent to punish more seriously those civil rights violators who act in concert with others or who wear a disguise to terrorize others. If both factors are present in the offense, the guidelines provide for a sentencing range of ninety-seven to 121 months. Average time served under presumptive parole guidelines is based on the level of the assault involved in the offense, or provide for zero to six months custody for civil rights offenses that do not result in assaults. In cases where death results, presumptive parole guidelines provide for not less than 100 months imprisonment. The number of cases available for these offenses in the Commission's data is insufficient to provide reliable estimates. The seriousness of these offenses, and the need to foster justice and fairness in the community, compel sentences that are generally higher than those imposed in the past.

2. Political Rights

2 U.S.C. § 437g(d)
18 U.S.C. §§ 241–242
18 U.S.C. § 245(b)(1), (A)
18 U.S.C. §§ 592–607
18 U.S.C. § 1341
18 U.S.C. § 1343
42 U.S.C. §§ 1973i(c),(d),(e)
Also See Statutory Index

§ H221. Obstructing an Election or Registration. The base offense level is determined as follows:

(1) If the obstruction occurred by use of force or threat of force against persons or property, the base offense level is 17.

(2) If the obstruction occurred by forgery, fraud, theft, or deceit, the base offense level is 12; if the obstruction involved multiple occurrences, the base offense level is 13.

(3) If the obstruction occurred by offering, giving, or agreeing to give anything of value to another person, or a member of that person's immediate family, for or because of that person's voting, refraining from voting, voting for or against a particular candidate, or for registering to vote, the base offense level is 12; if the obstruction involved multiple occurrences, the base offense level is 13.

(4) If the defendant (a) solicited, demanded, accepted, or agreed to accept anything of value for voting, to refrain from voting, to vote for or against a particular candidate, or to register to vote, (b) gave false information to establish eligibility to vote, or (c) voted more than once in a federal election, the base offense level is 6.

§ H222. Interfering with a Federal Benefit for a Political Purpose. The base offense level is 6.

§ H223. Misusing Authority Over Personnel for a Political Purpose. The base offense level is 6; if the offense involved multiple occurrences, the base offense level is 8.

(a) Specific Offense Characteristic.

(1) If the conduct adversely affected an individual's employment, increase by 2 levels.

§ H224. Unlawfully Soliciting a Political Contribution or Making an Unlawful Political Contribution as a Federal Public Servant, or Soliciting or Receiving a Political Contribution in a

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Federal Building. The base offense level is 6.

§ H225. Making, Receiving, or Failing to Report an Excess or Otherwise Unlawful Campaign Contribution or Expenditure. The base offense level is 6.

§ H226. Polling Armed Forces. The base offense level is 6.

§ H227. Promise of Appointment, Employment, or Other Benefit for Political Activity. The base offense level is 6.

§ H228. Deprivation of Employment or Other Benefit for Political Contribution. The base offense level is 6.

§ H229. Solicitation From, or Disclosure of Names of, Persons on Relief. The base offense level is 6.

COMMENTARY

Sections H221–H229 apply to violations of political rights. Section H221 refers to conduct proscribed by 2 U.S.C. § 437g(d), 18 U.S.C. §§ 241, 242, 245(b)(1)(A), 592, 593, 594, and 597, and 42 U.S.C. §§ 1973i (c), (d), (e). Aggravating factors are provided for obstructing an election: by force, by deceptive or dishonest conduct, or by bribery. If the use of force results in personal injury or property damage, or if the scheme to obstruct an election or registration involves corrupting a public official, the sentence should be enhanced in accordance with the general provisions. A defendant who directs others to engage in criminal conduct may have a sentence enhanced by reference to the provisions in Part Z, Role in the Offense.

Current practice under presumptive parole guidelines provide for twenty-four to thirty-six months imprisonment if obstructing an election or registration was caused by force or threat of force, and twelve to eighteen months in custody otherwise. There are no parole guidelines for the offenses covered by §§ H222 through H229 since they are misdemeanors.

Section H222 refers to conduct proscribed by 18 U.S.C. §§ 595 and 598.

Section H223 refers to conduct proscribed by 18 U.S.C. § 606. The base offense level is aggravated in a case where the misuse of personnel involves an actual loss of employment, compensation, or position. A promise of promotion, actual promotion, or threat of adverse action is treated less severely.

Section H224 covers conduct proscribed by 18 U.S.C. §§ 602, 603, and 607. These statutes are primarily intended to protect federal civil servants from on-the-job political pressures.

Section H225 pertains to conduct proscribed by 2 U.S.C. § 437g(d), i.e., regulatory offenses under the Federal Election Campaign Act.

Section H226 refers to conduct proscribed by 18 U.S.C. § 596, protecting the right to vote by secret ballot among members of the Armed Forces.

Section H227 refers to conduct proscribed by 18 U.S.C. §§ 599 and 600, prohibiting the "buying" of votes or political support through promises of future federal employment, appointment, or other federal benefit.

Section H228 refers to conduct proscribed by 18 U.S.C. § 601. This guideline applies to the deprivation of, or threat to deprive, federal employment or other federal benefits in order to gain a political contribution.

Section H229 refers to conduct proscribed by 18 U.S.C. §§ 604 and 605. The purpose of these statutes is to protect recipients of federal unemployment, welfare, and similar benefits from the solicitation of political contributions.

3. Privacy and Eavesdropping

18 U.S.C. § 1702
18 U.S.C. § 1905
18 U.S.C. §§ 2511–2512
21 U.S.C. § 842(a)(8)
47 U.S.C. § 605

§ H231. Eavesdropping. The base offense level is 6.

(a) Specific Offense Characteristics

(1) If the offense involved the interception or disclosure of wire, oral, or electronic communications, increase by 6 levels.

(2) If the purpose of the conduct was to facilitate another offense, increase by 6 levels.

(3) If the purpose of the conduct was direct or indirect commercial advantage or gain, and is not covered by (1) or (2) above, increase by 6 levels.

§ H232. Manufacturing or Trafficking in an Eavesdropping Device. The base offense level is 9.

§ H233. Possessing an Eavesdropping Device. The base offense level is 6.

COMMENTARY

Section H231 refers to conduct proscribed by 47 U.S.C. § 605, and the Electronic Communications Privacy Act of 1986, which amends 18 U.S.C. § 2511 and various sections of Title 18 dealing with unlawful interception and disclosure of communications. These statutes proscribe the interception and divulging of wire, oral, radio, and electronic communications. The interception of radio communications in violation of 47 U.S.C. § 605, carries a maximum term of imprisonment of one year for the first conviction and a maximum term of imprisonment of two years for any subsequent conviction. The new law provides for a maximum term of imprisonment of five years for violations involving most types of communication. If the offense involved a radio communication that was not scrambled or encrypted, and was a first offense not committed for a wrongful purpose or for commercial gain, the statutory maximum is one year imprisonment. If the conduct was intended to facilitate the commission of another offense, the base offense level is increased. Similarly, the base offense level is increased if the purpose of the conduct is commercial or economic gain. Current practice under presumptive parole guidelines provides for zero to six months imprisonment for these offenses, unless there was a more serious underlying offense.

Section H232 applies to conduct proscribed by 18 U.S.C. § 2512 covering commercial dealings in illegal eavesdropping devices. The current practice under presumptive parole guidelines is zero to ten months in custody.

Section H233 applies to possession of eavesdropping devices in violation of 18 U.S.C. § 2512(1)(b). Since it is the least serious of these offenses, it is assigned a lower offense level. The current practice under presumptive parole guidelines is zero to six months.

§ H234. Obstructing Correspondence. The base offense level is 6.

(a) Specific Offense Characteristic.

(1) If the obstruction involved multiple occurrences, increase by 4 to 6 levels, depending upon the number of occurrences.

§ H235. Revealing Private Information Submitted for a Government Purpose. The base offense level is 6.

(a) Specific Offense Characteristics

(1) If the offense involved multiple occurrences, increase by 8 levels.

(2) If the offense was committed for political or economic gain or for the purpose of obstructing a governmental function, increase by 6 levels.

COMMENTARY

Sections H234 and H235 apply to other statutes designed to protect the privacy of communications.

Section H234 pertains to the unlawful intercepting of correspondence, conduct proscribed by 18 U.S.C. § 1702. While this conduct often involves theft from the mails, it is not necessary that theft be involved. Opening, destroying, and misrouting of another's mail are also covered by the statute.

Section H235 refers to conduct proscribed by numerous statutes, including: 7 U.S.C. §§ 472, 608(d), 2105, 2157, 2278, 2619, 2623, 2706(c), 2904, 3204, 4307, 4504(k), 4534(c), 4810(c), 4908(c); 13 U.S.C. § 214; 18 U.S.C. §§ 1902, 1904–1908; 21 U.S.C. 842(a)(8); 26 U.S.C. § 7213(a)(1); and 42 U.S.C. §§ 2000g–2 and 2181.

Section H235 addresses a sensitive area. Valuable information, including trade secrets, marketing information, and crop reports, is provided to the government under various regulatory provisions with an understanding that the information will be kept confidential. Certain government regulatory functions depend upon the availability of this information. In order to protect the flow of information, it is necessary to punish and deter unlawful disclosures.

4. Peonage, Involuntary Servitude, and Slave Trade

18 U.S.C. § 1581–1588
Also See Statutory Index

§ H241. Peonage. The base offense level is 15.

§ H242. Enticement or Sale into Involuntary Servitude. The base offense level is 15.

§ H243. Slave Trade. The base offense level is 15.

COMMENTARY

Section H241 applies to conduct proscribed by 18 U.S.C. § 1581(a). The statute prohibits peonage, holding a person in involuntary servitude, or any activity contrary to the Thirteenth Amendment of the United States Constitution.

Section H242 applies to conduct proscribed by 18 U.S.C. §§ 1583 and 1584, statutes prohibiting the enticement, kidnapping, or sale of a person into involuntary servitude.

Section H243 covers conduct prohibited by 18 U.S.C. §§ 1582–1588, relating to seizing, detaining, transporting, or procuring of slaves. The base offense levels are sufficiently high to assure that a term of imprisonment will ordinarily be imposed for these offenses. This punishment is appropriate for purposes of both just punishment and deterrence.

Part J—Offenses Involving the Administration of Justice

18 U.S.C. §§ 401–402
18 U.S.C. §§ 912–913
18 U.S.C. §§ 1503–1513
18 U.S.C. § 1581(a)
18 U.S.C. §§ 1621–1623
18 U.S.C. §§ 3146–3147

§ J211. Contempt. If the defendant was adjudged guilty of contempt, the court shall impose a sentence based on stated reasons and the purposes of sentencing set forth in 18 U.S.C. § 3553(a)(2).

§ J212. Obstruction of Justice. If the defendant obstructed or attempted to obstruct the administration of justice, the base offense level is 13 to 18, depending upon the nature and circumstances of the offense, and its effect on the administration of justice.

§ J213. Perjury. If the defendant committed or suborned perjury, the base offense level is 13 to 18, depending upon the nature of the proceedings, and the circumstances under which the false testimony was given or suborned, and its effect on the administration of justice.

§ J214. Impersonation. If the defendant falsely represented himself as a federal officer, agent or employee, the base offense level is 10 to 12, depending upon the nature and circumstances of the offense.

§ J215. Failure to Appear by Material Witness. The base offense level is 6 to 10, depending upon the nature and circumstances of the offense.

§ J216. Failure to Appear by Defendant. If the defendant failed to appear in court as required by the conditions of his release, or if he failed to surrender for service of sentence, the base offense level is 6 to 15, depending upon the grading of the offense for which he was on release. See 18 U.S.C. § 3146(b).

§ J217. Commission of Offense While on Release. If the offense was a felony, increase the base offense level by 17 to 24 levels; if the offense was a misdemeanor, increase the base offense level by 3 to 6. 18 U.S.C. § 3147.

§ J218. Bribery of Witness, Conspiracy, Attempt, and Solicitation. If the offense involved a gratuity for testimony or for refusing to testify, the base offense level is 10 to 15, depending upon the nature of the proceedings and the circumstances of the offense. 18 U.S.C. § 201(f).

(a) Specific Offense Characteristic

(1) If the offense involved a bribe for the purpose of influencing the testimony of a witness or to influence a witness to absent himself from a proceeding, increase by 1 to 8 levels, depending upon the nature of the proceeding and the effect the offense had upon the administration of justice. 18 U.S.C. § 201(d).

COMMENTARY

Misconduct constituting contempt under 18 U.S.C. §§ 401 and 402 varies significantly. The nature of the contemptuous conduct, the circumstances under which the contempt was committed, the effect the misconduct had on the administration of justice, and the need to vindicate the authority of the court are context specific variables. Because the seriousness of a contempt violation can only be determined within the context of the often unique circumstances of the offense, the Commission leaves punishment to the discretion of the sentencing judge to be proportional to similar offenses. Explicit factual findings must be made if the contempt occurred in the presence of the court and is summarily punished. Rule 42(a), Federal Rules of Criminal Procedure.

The Commission has no data regarding sentences for contempt. Punishment by fine or imprisonment for criminal contempt is statutorily unlimited and is addressed to the sound discretion of the court. While the Commission finds that continued latitude must be afforded in the determination of an appropriate proportional sentence for criminal contempt, the court must state reasons based on the nature of the conduct, its effect on the administration of justice, and the need for the court to vindicate its authority, considered in light of the statutory purposes of sentencing.

Section J212 addresses offenses involving obstruction of justice, generally prosecuted under 18 U.S.C. §§ 1503–1513. This guideline only applies to independent prosecutions and convictions for obstruction offenses. However, conduct constituting obstruction in connection with the investigation or prosecution of another offense may be a relevant sentencing consideration as post-offense conduct. See Chapter Three, Part B, Post-Offense Conduct.

Numerous offenses of varying seriousness may constitute obstruction of justice: using threats or force to intimidate or influence a juror or federal officer (five year statutory maximum); obstructing a civil or administrative proceeding (five year maximum); stealing or altering court records (five year maximum); unlawfully intercepting grand jury deliberations (one year maximum); obstructing a criminal investigation (five year maximum); obstructing a state or local investigation of illegal gambling (five year maximum); using intimidation or force to influence testimony, alter evidence, evade legal process, or obstruct the communication of a judge or law enforcement officer (ten year maximum); or causing a witness bodily injury or property damage in retaliation for providing testimony, information or evidence in a federal proceeding (ten year maximum). The conduct that gives rise to the violation may therefore range from a mere threat to an act of extreme violence. The offense levels provided in § J212 approximate current practices.

Section J212 therefore provides flexibility in the determination of punishment, based upon the nature and circumstances of the offense and its effect on the administration of justice. However, because even a threat will also cause some interference with the judicial process, the base offense level is substantial. In selecting the appropriate offense level, the court shall identify the factors considered and state reasons for its decision to apply a specific offense level. Reference should be made to the Part Y, General Provisions, if a weapon was used or physical or psychological injury or property damage resulted from the commission of the offense.

Section J213 applies to perjury and subordination of perjury, generally prosecuted under 18 U.S.C. §§ 1621–1623. Under both provisions, the maximum statutory punishment is five years. This guideline only applies to independent prosecutions for perjury. Perjury and suborning perjury may be considered as an aggravating factor in sentencing for other offenses. See Chapter Three, Part B, Post-Offense Conduct. The guidelines provide a higher penalty for perjury than the current practice estimate of ten months imprisonment. The Commission finds that perjury should be treated as seriously as obstruction of justice.

In evaluating the appropriate offense level for a perjury offense, it is important to consider the nature of the proceedings and the attendant effect the offense had on the administration of justice. For example, if a defendant falsely testified against another during a grand jury proceeding and the victim of the perjury was consequently indicted, the maximum offense level may be appropriate. Similarly, if a defendant provided false alibi testimony in a criminal trial and an acquittal resulted, the maximum offense level may be appropriate. In both examples, the damage to the administration of justice would be irreparable. However, in any case of perjury a substantial minimum punishment is provided to reflect the resulting interference with an essential aspect of a judicial function.

Section J214 applies to violations of 18 U.S.C. § 912, impersonation of a federal officer, agent, or employee, and 18 U.S.C. § 913, engaging in such an impersonation in order to unlawfully conduct a search or arrest. The statutory maximum for both offenses is three years. The determination of the appropriate offense level depends upon

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the nature and circumstances of the offense. If the defendant perpetrated a fraud or restricted the liberty of another while posing as a law enforcement officer, the sentence should be at or near the guideline maximum of two years. If an unlawful arrest or search was motivated by some other criminal purpose, a sentence above the guideline range may be warranted under Part Y, General Provisions. See § Y229. No current practices information is available for these offenses.

Sections J215 and J216 apply to failures to appear by material witnesses and defendants released pending trial, sentencing, or appeal. 18 U.S.C. § 3146. The statutory maximum for material witnesses failing to appear is one year. However, if the failure to appear was by a defendant who was released pending trial, sentencing, appeal, or surrender for service, the statutory maximum for the violation increases in relation to the statutory maximum punishment for the underlying offense. 18 U.S.C. § 3146. A sentence imposed for failure to appear runs consecutively to a sentence of imprisonment for any other offense.

Section J217 implements a statutory sentencing enhancement for any offense committed by a defendant while on release. 18 U.S.C. § 3147. A mandatory minimum of two years imprisonment is added to the sentence prescribed for the offense if it was a felony; a mandatory minimum of ninety days imprisonment is added if the offense was a misdemeanor. If a sentence is enhanced under § J217, the adjustment for offenses committed by defendants in custody in Chapter Three, § A311(d), shall not apply.

Section J218 applies to gratuities offered, paid, demanded, or accepted by witnesses in federal proceedings. 18 U.S.C. § 201(f). Section J218(a)(1) addresses the more serious witness bribery provision of 18 U.S.C. § 201(d). The offense levels correspond to those for bribing federal officials and approximate current practice estimates.

Part K—Offenses Involving Public Order and Safety

1. Explosives and Arson

18 U.S.C. §§ 32–33
18 U.S.C. § 81
18 U.S.C. § 842
18 U.S.C. § 844
18 U.S.C. § 1153
18 U.S.C. § 1855
18 U.S.C. § 2275
26 U.S.C. § 5685
49 U.S.C. § 1472(1)

§ K211. Failure to Report Theft of Explosives. The base offense level is 6.

§ K212. Improper Storage of Explosives. The base offense level is 6.

§ K213. Unlawfully Trafficking in, Receiving, or Transporting Explosives. The base offense level is 12.

(a) Specific Offense Characteristic.

(1) If the defendant was a person prohibited by federal, state, or local law from possessing explosives, increase by 2 levels.

§ K214. Property Destruction by Arson or Explosives. The base offense level is determined as follows:

(1) If the defendant's conduct was intended to result in death or serious bodily injury, the base offense level is 24 to 27, depending upon the result intended.

(2) If the defendant used an explosive or destructive device to commit the offense, the base offense level is 24.

(3) If the conduct involved any place where persons were present or were likely to be present, the base offense level is 12 to 15, depending upon the danger actually presented.

(4) Otherwise, the base offense level is 8.

§ K215. Unlawfully Possessing an Explosive in a Government Building. The base offense level is 10.

§ K216. Dangerous Weapons and Materials Aboard an Aircraft. The base offense level is 12.

(a) Specific Offense Characteristics

(1) If the defendant acted with intent to commit another crime, increase by 12 levels.

(2) If the defendant was a person prohibited by federal, state, or local law from possessing the item, increase by 2 levels.

(3) If the defendant acted as a result of simple negligence, decrease by 3 levels.

§ K217. Shipping, Transporting, or Receiving Explosives with Felonious Intent or Knowledge. The base offense level is 18.

§ K218. Using or Carrying Explosives in Certain Crimes. The base offense level is 18.

COMMENTARY

Sections K211 and K212 refer to conduct proscribed by 18 U.S.C. §§ 842 (k) and (j), respectively. The conduct covered is generally a regulatory violation, punishable by a maximum term of one year imprisonment. A review of current sentencing practices under 18 U.S.C. § 842(j) indicates that the majority of defendants receive probation. If the defendant was prohibited by federal, state, or local law from possessing explosives or if the explosives were stolen, the sentence imposed shall be at or near the statutory maximum.

Section K213 refers to various forms of conduct proscribed by 18 U.S.C. § 842, ranging from violations of a regulatory nature pertaining to licensees or persons otherwise lawfully involved in explosives commerce, to more serious violations that involve substantial danger to public safety. A review of current sentencing practices indicates that the majority of prosecutions are under 18 U.S.C. § 842(a) and 18 U.S.C. § 842(h) and that sentences imposed under these subsections are comparable. The base offense level includes the average for convictions under both subsections. The notable exception would appear to be cases involving prohibited persons, usually convicted felons, under 18 U.S.C. § 842(i). Although limited, current practices data and presentence investigation reports indicate the average sentence for these defendants is substantial.

Section K214 refers to property destruction by fire or explosives under 18 U.S.C. §§ 32 and 33, 18 U.S.C. § 81, 18 U.S.C. § 844 (f) and (i), 18 U.S.C. §§ 1153, 1855, and 2275. Arson where death or serious bodily injury is intended, or involving any place where persons are present, or likely to be present, will result in a base offense level that corresponds to current practices under the presumptive parole guidelines. Current practices data indicate that arson sentences are significantly higher in cases where a destructive device or explosive is used. The base offense level corresponds to the average sentence imposed under current practices where the value of the resulting property damage was approximately $100,000. Review of arson presentence investigation reports indicates that many arson cases involve "malicious mischief." Many of these defendants receive probationary sentences. Those sentenced to a period of incarceration receive sentences between two and three years. The base offense level for § K214(4) approximates the average sentence for those currently sentenced to prison.

Sections K214 (1), (2), and (3) are not mutually exclusive. If a defendant plants a bomb in a residence with the intent to kill or seriously injure, he should be sentenced based on the most serious aspect of the conduct. If injury or property loss results, refer to Part Y, General Provisions.

Section K215 refers to conduct proscribed by 18 U.S.C. § 844(g). Possession of explosives in a government building poses a substantial danger to public safety and to the effective and orderly administration of government. The low base offense level reflects the statutory maximum prison term of one year. If the defendant was prohibited by federal, state, or local law from possessing explosives or if the explosives were stolen, a sentence at or near the statutory maximum shall be imposed. This consideration reflects public comment and assures that offenses posing a greater threat of danger receive a sentence at or near the statutory maximum. Possession of any armed explosive should result in the maximum sentence allowed by law.

Section K216 refers to additional conduct proscribed by 18 U.S.C. § 32 and by 49 U.S.C. § 1472(l). Carrying or placing the dangerous items aboard an aircraft constitutes a substantial danger to public safety and commerce. Enhancements for intent to commit another offense and for any prohibition from possessing explosives reflect statutory concerns. The reduction in penalty for simple negligence reflects a statutory consideration. Possession of any armed explosive should result in the maximum sentence allowed by law.

Sections K217 and K218 refer to conduct proscribed by 18 U.S.C. § 844(d) and 844(h), and 26 U.S.C. § 5685. The base offense level is consistent with time specified under the parole guidelines and reflects the added

seriousness of the offense if explosives were used.

2. Firearms

18 U.S.C. § 922
18 U.S.C. App. II § 1202
26 U.S.C. § 5861

Introduction. This section addresses only the most frequently prosecuted firearms offenses. With respect to other firearms offenses, an analogous guideline will be applied or, if an analogous guideline is not apparent, a sentence reflecting the statutory purposes of sentencing shall be imposed.

§ K221. Receipt, Possession, or Transportation of Firearms and Other Weapons by Prohibited Persons. The base offense level is 9.

(a) Specific Offense Characteristics

(1) If the firearm was stolen, increase by 2 levels.

(2) If the defendant intended to use the firearm solely for legitimate sporting purposes, decrease by 2 to 5 levels, depending upon the circumstances of possession, the defendant's criminal history, and the extent to which possession violated local law.

§ K222. Receipt, Possession, or Manufacture of Firearms or Other Weapons in Violation of National Firearms Act. The base offense level is 17.

(a) Specific Offense Characteristics

(1) If the firearm was stolen, increase by 2 levels.

(2) If the firearm was a silencer or assassination kit, increase by 3 levels.

(3) If the defendant received, possessed, or manufactured the firearm solely for purposes of legitimate sport or collection, decrease by 6 to 9 levels, depending upon the circumstances of possession and the defendant's criminal history.

§ K223. Unlicensed Dealing in Firearms. The base offense level is 9, except under 26 U.S.C. § 5861, the base offense level is 17.

(a) Specific Offense Characteristics

(1) If the defendant dealt in more than one firearm, increase by 1 to 6 levels, depending upon the quantity of firearms involved.

(2) If the defendant dealt in one or more stolen firearms, increase by 2 to 7 levels, depending upon the quantity stolen.

(3) If the defendant had reason to know that any of the firearms were likely to be used in criminal activity, increase by 3 to 6 levels, depending upon the nature and seriousness of the criminal activity and the extent of the defendant's knowledge as to the intended use of the firearms.

(4) If the defendant knew that the weapons were being obtained by prohibited persons, increase by 1 to 4 levels, depending upon the reasons the person was prohibited from possessing weapons.

§ K224. Use of Firearms or Armor-Piercing Ammunition During or in Relation to Certain Crimes. If the defendant, whether or not convicted of another crime, was convicted under 18 U.S.C. § 924(c) or § 929(a), the penalties are those required by statute.

COMMENTARY

Section K221 applies to violations of 18 U.S.C. §§ 922(g) and 922(h), which prohibit receipt or possession of firearms by certain persons and, 18 U.S.C. § 922(a)(6) for false statements concerning disqualification of the defendant from possessing a firearm. The statutory maximum sentence for violation of these sections is five years imprisonment. This guideline also applies to violations of 18 U.S.C. App. II § 1202, which prohibits similar conduct but ordinarily carries a maximum sentence of two years imprisonment. If, however, the defendant has "three previous convictions . . . for burglary or robbery, or both," § 1201 requires a term of imprisonment of at least fifteen years. In these cases, the statute supersedes the guideline.

Section K221 is intended to produce sentences that, on average, reflect current sentencing practices. There is, however, considerable sentencing variation. Based upon sentencing data and presentence investigation reports, as well as comment by probation officers, this variation may be attributable to the variety of circumstances under which these offenses occur. Apart from the nature of the defendant's criminal history, his intended use of the firearm is probably the most important factor.

Statistics show that sentences average two to three months lower if the firearm involved is a rifle or shotgun. This may reflect the fact that these weapons tend to be more suitable than others for recreational activities. However, some rifles or shotguns may be possessed for criminal purposes, while some handguns may be suitable primarily for recreation. Therefore, the guideline is not based upon the type of firearm. Lawful use, as determined by the surrounding circumstances, is a mitigating factor. These circumstances include, among others, the number and type of firearms and ammunition, the location and circumstances of possession, the defendant's criminal history, and the extent to which possession is limited by local law.

Available data are not sufficient to determine the effect a stolen firearm has on the average sentence. However, reviews of actual cases suggest that this is a factor that tends to result in more severe sentences. Independent studies show that stolen firearms are used disproportionately in the commission of crimes. The guideline specifies that the offense level be increased by two when the firearm is stolen. If the defendant in fact stole the firearm, a sentence above the otherwise applicable guideline range may be warranted. The court should also consider increasing the offense level when the firearm involved is a machine gun, sawed-off rifle or shotgun, silencer or destructive device, or has an altered or obliterated serial number. Ordinarily, however, these offenses are prosecuted under 26 U.S.C. § 5861, carrying a maximum term of imprisonment of ten years.

The general provisions enable the court to increase the offense level when there is evidence that the defendant intended or used the firearm to commit another crime. See § Y216.

Section K222 applies to violations of subdivisions (b) through (1) of 26 U.S.C. § 5861, that prohibit the unlicensed receipt, possession, or manufacture of certain firearms, such as machine guns, silencers, sawed-off rifles and shotguns, and destructive devices. The offense is a felony with a maximum prison sentence of ten years. For violations of 26 U.S.C. § 5861(a), refer to § K223.

As with § K221, there is considerable variation in the sentences currently given for this offense. The most important consideration is the defendant's intended use of the firearm.

Section K223 applies to violations of 18 U.S.C. § 922(a)(1). This statute has a maximum penalty of five years imprisonment. Considerable variation in sentencing for these offenses currently exists. Current practice studies by the Commission identify the specific offense characteristics as likely sources of that variation. While these factors relate to the harm against which the statute is intended to protect, their significance cannot be readily quantified. Accordingly, the guideline employs flexible ranges to adjust for them.

Sections K223 (a)(1) and (a)(2) are mutually exclusive.

Section K223(a)(3) should result in the highest sentences for persons who provide firearms to others who commit serious crimes. (If the purpose of the sale was to further the commission of another crime, the general provisions permit imposition of a more severe sentence.) This factor also should result in higher sentences for sales to felons or across state lines.

Section K224 refers to conduct proscribed by 18 U.S.C. § 924(c) or § 929(a). Convictions pursuant to other statutes for crimes where firearms are possessed or used should be addressed by reference to the General Provisions section of the guidelines. If the defendant was convicted under 18 U.S.C. § 924(c) or § 929(a), the penalties are mandatory and shall be imposed pursuant to the statute.

3. Transportation of Hazardous Materials

46 U.S.C. § 3718
49 U.S.C. § 1472(h)(2)
49 U.S.C. § 1809(b)
49 U.S.C. § 2007

§ K231. Unlawfully Transporting Hazardous Material Aboard an Aircraft. The base offense level is 7 to 15, depending upon the danger posed by the material.

(a) Specific Offense Characteristic

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(1) If the defendant acted with intent to commit another crime, increase by 5 levels.

§ K232. Unlawfully Transporting Hazardous Material in Commerce. The base offense level is 7 to 15, depending upon the danger posed by the material.

(a) Specific Offense Characteristic

(1) If the defendant acted with intent to commit another crime, increase by 5 levels.

§ K233. Unlawful Carriage of Dangerous Cargoes by Vessel. The base offense level is 6 to 10, depending upon the danger to the public presented by the violation.

§ K234. Violations of Liquid Pipeline Safety Act; Intentional Damage to Pipeline Facilities. If the violation involved:

(1) Intentional damage or attempts to damage any interstate pipeline facility, the base offense level is 15 to 19, depending upon the danger to the public arising from the violation.

(2) A failure to comply with the requirements of any applicable safety standard established by law, or with any order of the Secretary of Transportation relating thereto, the base offense level is 7 to 12, depending upon the danger to the public arising from the violation.

(3) A failure to establish and maintain a plan of inspection and maintenance as required by law, or failure to permit access to such information as required by law, the base offense level is 6.

COMMENTARY

Section K231 refers to conduct proscribed by 49 U.S.C. § 1472(h)(2). The conduct addressed by this provision is punishable by a maximum five years imprisonment. A distinction is made between the defendant who acts with intent to commit another crime, and the defendant who acts recklessly or with intent to ignore the safety of others but intends no other crime. These offenses are not addressed under the parole guidelines, nor are current practices data sufficient to provide a basis for establishing a base offense level. Therefore, a range of levels is provided and public comment is invited as to the appropriate punishment.

Section K232 refers to conduct proscribed by 49 U.S.C. § 1809(b). The conduct addressed by this provision is punishable by imprisonment for five years. Sentencing distinctions are the same as those under § K231. For reasons stated in the commentary above, a range of levels is provided and public comment as to the appropriate punishment is invited.

Section K233 refers to conduct proscribed by 46 U.S.C. § 3718. Conduct generally addressed by this provision is punishable by a maximum term of five years imprisonment. The base offense levels reflect the regulatory nature of offenses dealing with safety requirements for vessels transporting dangerous cargoes. The statute allows for twice the punishment in cases where a weapon is used to prevent enforcement officials from carrying out official duties, or where they are seriously injured or threatened with serious injury. In circumstances where a weapon is used or physical injury results, enhancement is provided in Part Y, General Provisions.

Section K234 refers to conduct proscribed by 49 U.S.C. § 2007. The conduct addressed by this provision ranges from violations that are regulatory in nature, carrying a maximum five year imprisonment term, to serious damage to an interstate pipeline facility, punishable by imprisonment for fifteen years. Sentencing distinctions are based upon the statute. A range of levels is provided and public comment as to the appropriate punishment is invited.

4. Rioting

18 U.S.C. § 231
18 U.S.C. § 2101
Also See Statutory Index

§ K241. Engaging In, Inciting, or Attempting to Incite a Riot. The base offense level is 7 to 13, depending upon the number of persons involved, the danger presented to public safety, and the extent of resulting community disruption.

COMMENTARY

Section K241 refers to conduct proscribed by 18 U.S.C. §§ 231 and 2101. The conduct addressed by these provisions is punishable by a maximum term of five years imprisonment. Data limitations preclude an estimate of current practices in sentencing, and the presumptive parole guidelines do not address these offenses. The range of base offense levels is intended to reflect the broad scope of activities encompassed by 18 U.S.C. §§ 231 and 2101. The minimum of the range is intended to assure minimal incarceration for any active participation. The maximum results in a substantial sentence in cases of serious disruption. Conduct resulting in death, physical injury, or property damage should be addressed under Part Y, General Provisions. Rioting misconduct that occurs in a federal facility for official detention is addressed in Part P, Offenses Involving Prisons and Correctional Facilities.

Part L—Offenses Involving Immigration, Naturalization, and Passports

1. Immigration

8 U.S.C. §§ 1324–1328

Introduction. The interests protected are maintaining the integrity of the borders, safeguarding a policy of controlled immigration, and excluding undesirable aliens.

§ L211. Smuggling, Transporting or Harboring an Unlawful Alien. The base offense level is 6.

(a) Specific Offense Characteristics.

(1) If the defendant committed the offense (a) for commercial advantage or private financial gain; (b) with knowledge of the alien's desired entry for unlawful purpose or (c) with knowledge that the alien was excludable as a dangerous offender, increase by 6 levels.

(2) If the defendant participated in bringing illegal aliens into the United States for profit on more than one occasion, increase by 3 levels.

(3) If the illegal aliens were transported for immoral purposes, increase by 6 levels.

§ L212. Unlawfully Entering or Remaining in the United States. The base offense level is 6.

§ L213. Engaging in a Pattern of Unlawful Employment of Aliens. The base offense level is 6.

COMMENTARY

§ L211. This section includes conduct proscribed by Section 112 of The Immigration and Reform Act of 1986 and 8 U.S.C. §§ 1327, 1328, 1324(a) (1), (2) and (4).

This section concerns the most serious immigration offenses covered under The Immigration Reform Act of 1986. This Act establishes a five year maximum term of imprisonment for smuggling or harboring illegal aliens in the case of a second or subsequent offense, an offense committed for commercial advantage, or for any offense in which the alien is not presented to an immigration officer immediately upon arrival. In all other cases, the maximum term is one year. The base offense level reflects the statutory maximum as well as current practice estimates. 8 U.S.C. § 1324.

Defendants who were involved in a general criminal conspiracy or business operation received longer sentences to reflect statutory recognition of the scale of their offense. Defendants assisting entry of aliens who intend to engage in unlawful activities or who are otherwise specifically excludable under the immigration laws as dangerous subversives, 8 U.S.C. §§ 1182(a) (27), (28), or (29), receive greater penalties by statute. 8 U.S.C. § 1324.

The enhancement for transporting illegal aliens for immoral purposes reflects statutory recognition of the seriousness of the offenses. 8 U.S.C. § 1328.

The additional enhancement for defendants who transport illegal aliens for profit reflects current practice estimates that suggest multiple recurrent acts, part of an ongoing scheme for profit, receive significantly higher sentences.

§ L212. This section includes conduct proscribed by 8 U.S.C. §§ 1325 and 1326. Repeated instances of deportation with or without criminal conviction shall constitute a sufficient basis for sentencing at the higher base offense level.

§ L213. This section includes conduct proscribed by Section 101 of The Immigration Reform and Control Act of 1986. This offense is specifically directed at defendants who engage in a pattern of unlawful employment of aliens. The unlawful employment of an alien carries a civil penalty. The low base offense level reflects the statutory maximum penalty of six months imprisonment.

2. Naturalization and Passports

18 U.S.C. § 1423–1429
18 U.S.C. § 1542–1544
18 U.S.C. § 1546

§ L221. Trafficking in Evidence of Citizenship or Documents Authorizing Entry. The base offense level is 6.

§ L222. Fraudulently Acquiring Evidence of Citizenship or Documents Authorizing Entry for Own Use. The base offense level is 6.

§ L223. Trafficking in a United States Passport. The base offense level is 8.

§ L224. Fraudulently Acquiring or Improperly Using a United States Passport. The base offense level is 6.

§ L225. Failure to Surrender Canceled Naturalization Certificate. The base offense level is 6.

§ L226. Neglect or Refusal to Answer Subpoena. The base offense level is 6.

COMMENTARY

§ L221. This section includes conduct proscribed by 18 U.S.C. §§ 1425–1427, and 1546, and section 103 of The Immigration Reform and Control Act of 1986. The base offense level reflects time specified by the parole guidelines.

§ L222. This section includes conduct proscribed by 18 U.S.C. §§ 1423, 1424, 1425, and 1546. The base offense levels are consistent with time specified by the parole guidelines.

§ L223. This section applies to conduct proscribed by 18 U.S.C. §§ 1542, 1543, and 1544. The base offense level is consistent with a reduction in the statutory maximum under 18 U.S.C. § 1543, and with time specified by the parole guidelines.

§ L224. This section includes conduct proscribed by 18 U.S.C. §§ 1543 and 1544. The base offense level is consistent with time specified by the parole guidelines.

§ L225. This section applies to conduct proscribed by 18 U.S.C. § 1428. The base offense level reflects time specified by the parole guidelines.

§ L226. This section includes conduct proscribed by 18 U.S.C. § 1429. There are no current practice data available to suggest a base offense level for this crime. Because of the similarity in the offenses, the base offense level has been set proportionate to the level in § L225, Failure to Surrender Canceled Naturalization Certificate.

Part M—Offenses Involving National Defense

1. Treason and Related Offenses

U.S. Const., Art. III, § 3
18 U.S.C. § 757
18 U.S.C. §§ 2381–2384
50 U.S.C. § 783

By their nature, treason and violent rebellion threaten the security of the United States and the peace and welfare of its citizens. The high offense levels assigned those crimes reflect the government's need to assure its continued preservation by punishing defendants who threaten its existence by violence or unlawful advocacy, and deterring others who may seek to do so in the future.

§ M211. Treason. The base offense level is 30.

(a) Specific Offense Characteristic.

(1) If the offense significantly threatened the national security, increase by 3 to 5 levels, depending upon the nature and circumstances of the offense.

§ M212. Misprision of Treason. The base offense level is 17.

(a) Specific Offense Characteristic.

(1) If the offense significantly threatened the national security, increase by 1 to 3 levels, depending upon the nature and circumstances of the offense.

§ M213. Violent Rebellion or Insurrection. The base offense level is 28.

(a) Specific Offense Characteristic.

(1) If the offense involved conspiracy to use force to overthrow or destroy the government of the United States, increase by 6 levels.

§ M214. Aiding Escape of Prisoner of War or Enemy Alien. The base offense level is 25.

COMMENTARY

Little empirical data exist to assist the Commission in assigning appropriate offense levels for offenses involving national defense. Presumptive parole guidelines specifically address only a few of these offenses; the limited number of prosecutions in these cases gives little guidance for drawing inferences regarding current sentencing practices.

Violations of national defense statutes are extremely serious offenses deserving significant punishment. In this regard, the Commission invites public comment on the details of this section, concentrating on two major issues: (1) organization (are all offenses and specific offense characteristics adequately identified), and (2) relative weighting of offense seriousness.

§ M211. This section sets forth the punishment for violations of Article III, section 3 of the United States Constitution and 18 U.S.C. § 2381. The statute provides a minimum term of imprisonment of five years and a maximum sentence of death. Defendants convicted of treason are barred from holding any United States office. Presumptive parole guidelines provide for a period of custody of not less than 100 months for treason.

§ M212. This section sets forth the guideline for violations of 18 U.S.C. § 2382. The statute provides a maximum term of imprisonment of seven years.

§ M213. This section sets forth the punishment for violations of 18 U.S.C. § 2383 and 50 U.S.C. § 783. The statutes prohibit inciting any rebellion or insurrection against the authority of the United States, conspiring to use force to prevent, hinder, or delay the execution of any law of the United States, conspiring to seize, take, or possess any property of the United States, or conspiring to establish a totalitarian dictatorship in the United States. Defendants convicted of this offense are barred from holding any federal office. The offense levels for violent rebellion or insurrection are graded by the object of the rebellion or insurrection. A rebellion to overthrow the government is treated as more harmful than a rebellion seeking to impede the execution of a federal law, seize federal property, or establish a totalitarian dictatorship, all of which are treated equally.

Although conspiring to establish a totalitarian dictatorship might be viewed as tantamount to conspiring to overthrow the government and therefore deserve the same penalty, Congress has established a ten year maximum for conspiring to establish a dictatorship, 50 U.S.C. § 783, and a twenty year maximum for conspiring to overthrow the government, 18 U.S.C. § 2385. The offense levels reflect the difference in the statutory maximums. If fire, explosives, or dangerous devices were used, or if persons were killed or injured or property damaged, the court shall refer to Part Y, General Provisions. Presumptive parole guidelines provide for imprisonment for fifty-two to eighty months for this offense.

§ M214. This section sets forth the base offense level for violations of 18 U.S.C. § 757.

2. Sabotage

18 U.S.C. §§ 2153–2156
42 U.S.C. § 2284

§ M221. Destruction of War Material, Premises, or Utilities. The base offense level is 32.

§ M222. Production of Defective War Material, Premises, or Utilities. The base offense level is 32.

§ M223. Destruction of National Defense Material, Premises, or Utilities. The base offense level is 26.

§ M224. Production of Defective National Defense Material, Premises, or Utilities. The base offense level is 26.

COMMENTARY

Congress has made distinctions in several sabotage statutes on the basis of whether the sabotage occurred with respect to "war materials" (18 U.S.C. §§ 2153 and 2154) or "national defense materials" (18 U.S.C. §§ 2155 and 2156). War materials, for the purpose of these statutes, are military-related materials sabotaged during war. National defense materials are the same materials sabotaged during peacetime. The offense levels in this section follow the statutory provisions that more severely punish the destruction or defective production of war materials than the destruction or defective production of national defense materials.

The guideline for sabotage also references conduct prohibited under 42 U.S.C. § 2884, i.e., sabotage of a nuclear production or utilization facility, nuclear waste storage facility, or nuclear fuel. While the statute does not make a wartime/peacetime distinction, it includes a provision for increasing the maximum term of imprisonment from five to ten years when the offense involves the intent to injure the

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United States or aid a foreign nation. Thus, these provisions are consistent with the wartime/peacetime distinctions that apply to war material, premises, and utilities.

Sections M221 and M222 apply to violations of 18 U.S.C. §§ 2153 and 2154, respectively. These offenses represent extreme conduct. Both the high statutory maximum (thirty years) and the base offense level reflect this. Violations of these statutes are treated as equivalent to second degree murder, since they are likely to lead to death in time of war. Presumptive parole guidelines provide for a period of imprisonment of not less than 100 months for sabotage.

Sections M223 and M224 apply to violations of 18 U.S.C. §§ 2155 and 2156, respectively. The statutes carry a maximum term of imprisonment of ten years. The guidelines treat these offenses equally since both the destruction of materials and the production of defective materials impose the same danger.

As with other offenses, if fire, explosives, or dangerous devices were used, or if persons were killed or injured or property damaged, the court shall refer to Part Y, General Provisions.

3. Espionage and Related Offenses

18 U.S.C. §§ 792–798
42 U.S.C. § 2274 (a), (b)
42 U.S.C. §§ 2275–2276
42 U.S.C. § 2278(b)
50 U.S.C. § 421
50 U.S.C. § 783
50 U.S.C. § 855

§ M231. Gathering or Transmitting National Defense Information With Intent or Reason to Believe the Information Would Injure the United States or Aid a Foreign Government. The base offense level is 24.

(a) Specific Offense Characteristics.

(1) If top secret information was gathered or transmitted, increase by 6 levels.

(2) If secret information was gathered or transmitted, increase by 4 levels.

§ M232. Communicating or Conspiracy to Communicate National Defense Documents or Information to A Person Not Entitled to Receive It. The base offense level is 16.

(a) Specific Offense Characteristics.

(1) If a top secret document or top secret information was communicated, increase by 12 levels.

(2) If a secret document or secret information was communicated, increase by 9 levels.

§ M233. Gathering, Delivering, or Conspiracy to Gather or Deliver National Defense Information to Aid a Foreign Government. The base offense level is 30.

(a) Specific Offense Characteristic.

(1) If secret or top secret information was gathered or transmitted in time of war, the base offense level is 43.

§ M234. Tampering with Restricted Data Concerning Atomic Energy. The base offense level is 30.

§ M235. Disclosure of Classified Cryptographic Information. The base offense level is 29.

(a) Specific Offense Characteristic.

(1) If top secret or secret information was disclosed, increase by 2 levels.

§ M236. Unauthorized Disclosure of Classified Information by Government Employee. The base offense level is 29.

(a) Specific Offense Characteristics.

(1) If top secret information was disclosed, increase by 2 levels.

(2) If secret information was disclosed, increase by 1 level.

§ M237. Receipt of Classified Information. The base offense level is 29.

(a) Specific Offense Characteristics.

(1) If top secret information was received, increase by 2 levels.

(2) If secret information was received, increase by 1 level.

§ M238. Disclosure of Information Identifying a Covert Agent. The base offense level is 20.

(a) Specific Offense Characteristics.

(1) If the information is disclosed by a person with authorized access to classified information identifying a covert agent, increase by 10 levels.

(2) If the information is disclosed by a person with authorized access to other classified information, increase by 5 levels.

§ M239. Negligent Delivery or Loss of National Defense Information. If the offense involved:

(1) Top secret national defense information, the base offense level is 14.

(2) Secret national defense information, the base offense level is 12.

(3) Classified national defense information, the base offense level is 10.

§ M240. Failure to Report Loss of National Defense Information. The base offense level is 10.

(a) Specific Offense Characteristics.

(1) If top secret national defense information was involved, increase by 4 levels.

(2) If secret national defense information was involved, increase by 2 levels.

§ M240A. Photographing or Sketching Defense or Nuclear Energy Installations. The base offense level is 10.

§ M240B. Failure to Register as a Person Trained in a Foreign Espionage System. The base offense level is 20.

§ M240C. Harboring or Concealing a Spy. The base offense level is 20.

COMMENTARY

The Commission has set base offense levels in this section on the assumption that the information at issue bears a significant relation to the nation's security, and that the revelation will significantly and adversely affect security interests. This is not the case, for example, when revelation is likely to cause little or no harm. The court may impose a sentence below the applicable guideline under these circumstances.

The court may depart from the guidelines upon representation by the President or his duly authorized designee that the imposition of a sanction other than that authorized under the guidelines for espionage and related offenses is necessary to protect national security or further the objectives of the nation's foreign policy.

§ M231. This section sets forth offense levels relevant to violations of 18 U.S.C. § 793, which proscribes diverse forms of obtaining and transmitting national defense information with intent or reason to believe the information would injure the United States or be used to the advantage of a foreign government. The statute carries a maximum term of ten years imprisonment. Pursuant to 18 U.S.C. § 793(g), conspiracy to violate the statute is subject to the same punishment as the offense that is the object of the conspiracy. The guideline similarly makes no distinction between the offense level for the conspiracy and the object of the conspiracy.

Attempts to violate section 793 (b) and (c) are also subject to the same punishment as the completed offenses proscribed by those sections and should be accorded an offense level identical to the completed offense.

Offense level distinctions in this section are based on the classifications of the information gathered or transmitted. The classifications in turn reflect the importance of the information to national security. Pursuant to Executive Order 12356, "Top Secret" information is information that, if disclosed, "reasonably could be expected to cause exceptionally grave damage to the national security." "Secret" information is information that, if disclosed, "reasonably could be expected to cause serious damage to the national security." "Confidential" information is information that, if disclosed, could reasonably be expected to cause "damage" to the national security. Presumptive parole guidelines provide for a period of imprisonment of not less than 100 months for espionage.

§ M232. This section sets forth offense levels relevant to violations of 18 U.S.C. § 793 (d) and (e). An offense is committed under those subsections whenever a "document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense" is willfully transmitted or communicated to a person not entitled to receive it. It need not be proven that the item was communicated with a "reason to believe" that it could be used to the injury of the United States or the advantage of a foreign nation. The statute only requires such intent when intangible "information" is communicated under subsections (d) and (e).

The base offense level for § M232 is substantially lower than the base offense level for § M231 primarily because

prosecutions under subsections (d) and (e) often do not involve defendants who have the intent or reason to believe the information could be used to injure the United States or aid a foreign nation. When such intent or reason to believe is present in a violation of subsection (d) or (e), § M231 applies.

§ M233. This section sets forth the offense levels relevant to 18 U.S.C. § 794, the general espionage statute, and 42 U.S.C. §§ 2274(a), 2274(b), and 2275, (that address communication of restricted data pertaining to nuclear material, weapons production, and use with reason to believe or intent that the data will be used to injure the United States or aid a foreign nation.) Although life imprisonment may be imposed for violations of any of these statutes, the death penalty may only be imposed for violations of 18 U.S.C. § 794.

Like the crimes of treason and violent rebellion, espionage poses a significant threat to the security and preservation of the United States and the peace and well being of its people. The high offense levels and prescribed punishments are intended to serve the purposes of public protection and deterrence.

No distinction in punishment was made on the basis of whether "secret" or "top secret" information was disclosed. The magnitude of the threat posed to the national security under these statutes may, in some circumstances, be sufficient to warrant imposition of life imprisonment or the death penalty even though the information disclosed was "secret" rather than "top secret."

Attempts to violate 18 U.S.C. § 794 and 42 U.S.C. §§ 2274 (a), (b) and 2275 are subject to the same punishment as the completed offenses proscribed by those sections and should be accorded an offense level identical to the completed offense.

Conspiracies to violate 18 U.S.C. § 794 and 42 U.S.C. §§ 2274 (a), (b) and 2275 are also subject to the same punishment as the offense that is the object of the conspiracy. The guideline similarly makes no distinction between the offense level for the conspiracy and the object of the conspiracy.

§ M234. This section applies to violations of 42 U.S.C. § 2276, which proscribes removing, concealing, tampering with, altering, mutilating or destroying restricted data involving atomic energy.

§ M235. This section sets forth the offense levels relevant to violations of 18 U.S.C. § 798, which proscribes the disclosure of confidential information concerning cryptographic or communication intelligence or for the benefit of a foreign government. While the offense is similar to that covered by § M233, the statutory maximum for violations of 18 U.S.C. § 798 is ten years.

§ M236. This section applies to violations of 50 U.S.C. § 783(b), which proscribes unauthorized disclosure of confidential information by a government employee to a foreign government or a Communist organization. With respect to §§ M236 and M237, the underlying statute makes no distinction in punishment on the basis of whether the classified information was provided to a foreign government or a Communist organization. The guideline similarly makes no distinction.

§ M237. This section applies to violations of 50 U.S.C. § 783(c), which proscribes the receipt of confidential information by an agent of a foreign government or a Communist organization.

§ M238. This section sets forth the offense levels relevant to violations of 50 U.S.C. § 421. The base offense level applies to violations of 50 U.S.C. § 421(c), which carries a statutory maximum of three years imprisonment.

The offense level distinctions in § M238 are based on distinctions made by Congress in the underlying statute. Subsections (a) and (b) carry maximum terms of imprisonment of ten years and five years, respectively. The statute establishes higher maximum punishments for those persons with higher security classifications and correspondingly higher obligations to maintain confidentiality. Accordingly, the statute and the guideline establish the highest penalties for officials with authorized access to classified information identifying covert agents, the next highest penalties for officials with authorized access to classified information generally and the lowest penalties for all other persons. Disclosure of information identifying covert agents may result in their death or injury. If disclosure resulted in death, the court would apply the general provisions in imposing a sentence above the otherwise applicable guideline range, not to exceed the statutory maximum for the offense of conviction. Similarly, if physical injury or property damage occurred, the court would enhance the sentence.

§ M239. This section sets forth offense levels relevant to violations of 18 U.S.C. § 793(f)(1). The lowest base offense level reflects the fact that offenses generally prosecuted under this statute do not involve subversive conduct on behalf of a foreign power, but rather the loss of national defense information by a grossly negligent employee of the federal government or a federal contractor.

§ M240. This section sets forth offense levels relevant to violations of 18 U.S.C. § 793(f)(2). The base offense level for failing to report the loss, theft, abstraction or destruction of national defense information is set significantly higher than the base offense level for loss of the same information, because the failure to report the loss also impedes or prevents efforts to recover the information, thereby exacerbating the harm caused by the loss. The higher value is intended to encourage those entrusted with the custody of national defense information to faithfully discharge their duty to report its loss.

§ M240A. This section sets forth the offense levels relevant to violations of 18 U.S.C. §§ 795, 796, and 797, and 42 U.S.C. § 2278(b), that proscribe photographing or sketching vital military installations or equipment, or nuclear energy installations, or publishing or selling photographs or sketches. The maximum statutory penalties (one year of imprisonment) are identical.

§ M240B. This section sets forth the offense levels relevant to violations of 50 U.S.C. § 855(a).

§ M240C. This section sets forth the offense levels relevant to violations of 18 U.S.C. § 792.

Guidelines for espionage and related offenses might include other aggravating factors to distinguish offense seriousness. For example, a factor might be included to indicate whether the offense was committed on behalf of a "hostile" or "non-hostile" government. This distinction was not made in the guidelines for several reasons. First, there is no statutory basis for making a distinction in sentencing. See Gorin v. United States, 312 U.S. 19, 29–30 (1941). Since Congress has not drawn a distinction, and since the punishment of espionage is a sensitive and important area of national policymaking, the Commission finds it imprudent to make the distinction.

Changes in the basis for sentencing in espionage cases might lead to changes in the intelligence gathering procedures of foreign governments. For example, in the recent case of United States v. Whitworth, —— F. Supp. ——, (N.D. Cal. 2986), the defendant claimed that he did not know that the information he was supplying to another person was provided to the Soviet Union. If a sentencing guideline distinguished punishment on the basis of "hostile" and "non-hostile" governments, foreign espionage systems might adapt by establishing procedures making it difficult to prove that their agents knew it was intended for a hostile power. For these reasons, the guidelines do not distinguish "hostile" or "non-hostile" status of the nation receiving the information.

No offense level distinctions were made on the basis of whether the person committing espionage was a United States citizen. The guidelines could be drafted to expose United States citizens to higher punishment than foreign nationals on the grounds that greater allegiance is expected of citizens. On the other hand, the guidelines could equally discourage espionage by citizen or alien. The guidelines adopt the latter approach.

4. Conduct Impairing Military Effectiveness

18 U.S.C. § 2387
18 U.S.C. § 2388
18 U.S.C. § 2389
18 U.S.C. § 2390
50 U.S.C. App. § 462

§ M241. Incitement to Insubordination, Disloyalty, Mutiny, or Refusal of Duty by Member of Armed Forces. The base offense level is 10 to 15, depending upon the nature and circumstances of the offense.

§ M242. Recruitment to Serve Against the United States. The base offense level is 25.

§ M243. Enlistment to Serve Against the United States. The base offense level is 20.

§ M244. Obstruction of Recruitment or Enlistment in the Armed Forces. The base offense level is 10 to 15, depending upon the nature and circumstances of the offense.

§ M245. Failure of Member of Selective Service System to Perform Duty. The base offense level is 10.

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(a) Specific Offense Characteristic.

(1) If the offense occurred during time of war, increase by 2 levels.

§ M246. Evasion of Military Service. The base offense level is determined as follows:

(1) If the offense involved failing to register, or otherwise evading military service, the base offense level is 10.

(2) If the offense occurred during a peacetime draft, the base offense level is 12.

(3) If the offense occurred during time of war, the base offense level is 25.

COMMENTARY

Section M241 applies to violations of 18 U.S.C. §§ 2387 and 2388. Conviction under the latter statute increases the maximum term of imprisonment from ten to twenty years for a violation occurring during wartime. By statute, a conviction of a peacetime violation under § M241 also entails a prohibition of government employment for a five year period. The court may wish to consider whether the offense occurred during wartime in determining the appropriate sentence. Presumptive parole guidelines for offenses involving incitement to desertion provide for twelve to eighteen months imprisonment during wartime, and zero to ten months otherwise.

Sections M242 and M243 apply to violations of 18 U.S.C. §§ 2389 and 2390, respectively. The maximum terms of imprisonment under these statutes are five and three years, respectively.

Sections M244 through M246 apply to violations of 50 U.S.C. App. § 462. In determining a sentence under § M244, the court may wish to consider whether the offense occurred during wartime. The base offense level for Evasion of Military Service (§ M246) is determined by whether the evasion occurred during a period when registration was required, peacetime draft, or time of war. Sections M241 and M244 may apply to offenses in which property damage or physical injury occurred. In these instances, the court shall refer to Part Y, General Provisions, and apply any provisions warranted by the circumstances of the offense. Presumptive parole guidelines for evasion of military service provide for twelve to eighteen months in custody in time of war or national defense emergency, zero to ten months during a peacetime draft, and zero to four months otherwise.

5. Prohibited Financial Transactions and Exports

18 U.S.C. § 955
22 U.S.C. § 2778
50 U.S.C. §§ 1701–1706
50 U.S.C. App. § 5(b)
50 U.S.C. App. § 2410

§ M251. Prohibited Financial Transactions With Foreign Governments. The base offense level is 10 to 18, depending upon the nature and circumstances of the offense.

§ M252. Financial Transactions With Foreign Governments and Foreign Nationals During a National Emergency. The base offense level is 20.

(a) Specific Offense Characteristic.

(1) If the offender willfully made a false statement of a material fact or willfully omitted any material fact in engaging in such financial transactions, increase by 2 levels.

§ M253. Exportation of Goods or Technology Without Required Validated Export License. If the offender knowingly violated or conspired or attempted to violate any law, regulation, order, or license pertaining to the control of exports, the base offense level is 10 to 18, depending upon the nature and circumstances of the offense.

§ M254. Failure to Report Exportation of Goods or Technology to a Controlled Country for Military or Intelligence-gathering Purposes. If the offender was issued a validated export license for exports to a controlled country, had knowledge that such exports were being used for military or intelligence-gathering purposes contrary to the conditions under which the license was issued, and willfully failed to report such use, the base offense level is 20.

§ M255. Possession of Goods or Technology With Intent to Export in Violation of Foreign Policy or National Security Controls. The base offense level is 20.

(a) Specific Offense Characteristic.

(1) If the offender possessed goods or technology with the intent to export them in violation of a national security export control, increase by 6 levels.

§ M256. Evasion of Export Controls. The base offense level is 10.

(a) Specific Offense Characteristics.

(1) If the offense involved the evasion of foreign policy or national security export controls, increase by 10 levels.

(2) If the offense involved the evasion of export controls to or for the benefit of a party previously denied export privileges, increase by 10 levels.

§ M257. Exportation of Goods or Technology to a Controlled Country. The base offense level is 22.

§ M258. Exportation of Arms, Munitions, or Military Equipment or Services Without Required Validated Export License. The base offense level is 22.

(a) Specific Offense Characteristic.

(1) If the offense involved multiple violations, increase by 1 to 7 levels for each violation, depending upon the nature and scope of the offense.

COMMENTARY

In determining the appropriate sentence within the guideline range for export violations, the court may consider: Whether the violation occurred during wartime; the degree to which the violation threatened a security interest; the volume of commerce involved; the extent of planning and sophistication; whether the offense involved a technical violation; the presence of willfulness or intent; and whether there were multiple occurrences or transactions.

Section M251 deals with violations of 18 U.S.C. § 955, which carries a maximum term of imprisonment of five years. Section M252 pertains to violations of 50 U.S.C. §§ 1701–1706, the International Emergency Economic Powers Act, which prohibits certain commercial transactions with foreign governments and foreign nationals during a declared national emergency. Included here is a provision not appearing in the statute that enhances the penalty for making false statements in conjunction with violating the law. The combination of the base offense level and the special offense characteristic equals the statutory maximum.

The language of §§ M253–257 follows the provisions of 50 U.S.C. App. § 2410 that set out the penalty provisions for violations of the Export Administration Act, which prohibits the exportation of strategic goods and technology without a license from the Secretary of Commerce. These provisions are designed, in part, to protect the United States by controlling exports of goods or technologies that could significantly contribute to the military potential of another country to the detriment of the national security of the United States.

Section M253 deals with exportation without a valid export license. In choosing the appropriate sentence under this guideline, the court may wish to consider, in addition to the factors mentioned earlier, whether the license would not have been approved. An offense where the license would have been denied is a more significant threat to the national security. Section M254 applies to offenses where a defendant willfully failed to report that goods or technology for which a valid export license had been issued were intended for military or intelligence-gathering use by a controlled country. Section M255 deals with the possession of goods or technology with intent to violate foreign policy controls and national security controls. The higher offense level for intent to violate national security controls in § M255(a)(1) reflects the statutory penalty for the increased gravity of such offenses.

Section M256 applies to willful evasion of export controls and reflects the statutory recognition of the greater seriousness of evasion of national security controls. The guidelines also increase the sentence for offenses where the evasion was for the benefit of or involved a party forbidden to engage in the export or re-export of United States goods. Section M257 applies to willful violation or conspiracy to violate controls on exports to a controlled country. Consistent with 50 U.S.C. App. § 2410(b)(1), § M257 makes no distinction between violations of foreign policy and national security controls. Presumptive parole guidelines provide for forty to fifty-two months in custody for exporting goods or technology to a controlled country in violation of national security or nuclear nonproliferation controls.

In addition to the provisions for imprisonment, 50 U.S.C. App. § 2410 also contains the following provisions for criminal fines and forfeiture as well as civil penalties.

§§ M253, 255, 256 Five times the value of the exports involved or $50,000, whichever is greater.

§§ M254, 255(a)(1), 256(a)(1), 257 Corporation: Five times the value of the exports or $1 million, whichever is greater; Individual: Not more than $250,000.

In addition to any other sanction, the defendant is subject to forfeiture of any interest in, security of, or claim against: any goods or tangible items that were the subject of the violation; property used to export or attempt to export that was the subject of the violation; and any proceeds obtained directly or indirectly as a result of the violation, under procedures specified in 18 U.S.C. § 1963. Prior related administrative sanctions may be indicative of recidivism and are to be appropriately considered at sentencing.

Section M258 applies to exports and imports of military arms, equipment, and services in violation of 22 U.S.C. § 2778, the Arms Export Control Act. The statute requires that, in the interest of world peace and the security and foreign policy of the United States, exports of military goods, equipment, and services be licensed by the Department of State's Office of Munitions Control. Since the statute specifies the sentence to be imposed upon conviction for each violation (count), the guidelines specify offense level increases for multiple violations.

The definition of false statements used in § M258 is exactly as it appears in the statute and in 18 U.S.C. § 1001. (See Part F, Offenses Involving Fraud and Deception), and includes the willful making of an untrue statement of a material fact in a license or registration application, or the omission of a material fact required to make a statement not misleading. A recent case prosecuted under both 50 U.S.C. App. § 2410 and 22 U.S.C. § 2778, involved illegal arms sales to Libya and included a conviction under 18 U.S.C. § 1001. *United States* v. *Malsom*, 779 F.2d 1228 (7th Cir. 1985). The provisions of § M258 follow the statutory provisions with regard to the maximum term of imprisonment. Since the nation's security requires that exporters act as a "first line" of defense against unauthorized exports of military hardware and services, imposing the full penalty of the law serves as a deterrent. Presumptive parole guidelines for unlicensed exportation offenses are based on the types of weapons involved. Presumptive time served for the unlicensed exportation of sophisticated weaponry (e.g., aircraft, armed vehicles, or high technology weapons), is forty to fifty-two months. The unlicensed exportation of machine guns or explosives would result in twenty-four to thirty-six months in custody, while the unlicensed export of other arms, munitions, or military equipment would result in twelve to eighteen months in custody.

6. Agent Registration

18 U.S.C. § 219
18 U.S.C. § 951
18 U.S.C. § 957
18 U.S.C. § 2386
22 U.S.C. §§ 611–621
50 U.S.C. §§ 851–857

§ M261. United States Government Officers and Employees Acting as Agents of Foreign Principals. The base offense level is 16.

§ M262. Failure to Register as an Agent of a Foreign Principal or Government. The base offense level is 20.

(a) Specific Offense Characteristic.

(1) If the offense involved acting in the United States as an agent of a foreign government without prior registration, increase by 6 levels.

§ M263. Possession of Property in Aid of a Foreign Government. The base offense level is 20.

§ M264. Failure to Register of an Organization Subject to Foreign Control and Engaged in Political Activity or Civilian Military Activity. The base offense level is 20.

§ M265. Failure to Register of a Person Who Has Knowledge Of or Has Received Instruction or Assignment in Espionage, Counter-espionage, or Sabotage Services or Tactics of a Foreign Government. The base offense level is 20.

§ M266. Failure to File Political Propaganda. The base offense level is 10.

§ M267. Failure to Label Political Propaganda. The base offense level is 6.

§ M268. Furnishing Information to Agency or Official of the United States Government. The base offense level is 6.

§ M269. Notice of Appearance Before Congressional Committee. The base offense level is 6.

§ M270. Noncomplying Registration Statement. The base offense level is 6.

§ M270A. Acceptance of Contingent Fee. The base offense level is 6.

COMMENTARY

Section M261 contains the sanction for violations of 18 U.S.C. § 219, which prohibits federal officers and employees from representing a foreign government required to register under the Foreign Agents Registration Act, 22 U.S.C. § 616.

Section M262 deals with violations of 18 U.S.C. § 951 and 22 U.S.C. § 612(a). These statutes require certain non-diplomatic personnel to register with the Attorney General as agents of a foreign principal or government. The base offense value applies to violations of 22 U.S.C. § 612(a), which requires an individual who acts as an agent of a foreign principal to register with the Attorney General. These offenses generally involve non-espionage agents who are engaged in activities that are legitimate as long as they are disclosed. A large proportion of violations of the statute are sanctioned with civil penalties. The specific offense characteristic enhances the sentence if the defendant was an agent for a foreign government.

Section M263 deals with violations of 18 U.S.C. § 957, which prohibits the possession of property or papers intended for use in the violation of United States law or interests in aid of a foreign government.

Section M264 deals with violations of 18 U.S.C. § 2386. This section is designed to punish the unregistered formation and functioning of paramilitary organizations within the United States. Registration is required of those organizations that are under foreign control, as well as those that aim to use force to establish, control, or overthrow a government whether such organizations are subject to foreign control or not.

Section M265 applies to violations of 50 U.S.C. § 851, the "Act of August 1, 1956" that deals with the registration of foreign agents trained in espionage who are not officials or diplomats of a foreign government. The statute is designed to provide a means of detecting foreign trained espionage agents operating in the United States. It provides for a maximum penalty of five years imprisonment as well as a fine of $10,000. Consideration was given to a factor that would distinguish those offenses in which the defendant complied with the registration requirement, but provided misleading information including willful false statements. There are two problems with that approach. First, failure to register goes to the heart of the legislation. It therefore is not appropriate to punish failure to register less severely than filing a false registration statement. Second, the burden on the government of proving false registration would be substantial, and difficult to justify in light of the intent of the law. Therefore, no sentence enhancement based on this factor is included.

Another possible basis for making a distinction in offense seriousness would be whether the offense occurred during wartime or a national emergency. This approach was rejected here as for other offenses because it would make the sanction dependent upon future Congressional action. Any alien convicted of violating the Act is subject to deportation under the provisions of 8 U.S.C. §§ 1251–1254, but deportation is rarely recommended.

Section M266 covers violations of 22 U.S.C. § 614(a), which requires agents of foreign principals who transmit propaganda in the United States to file copies with the Attorney General. Section M267 deals with violations of 22 U.S.C. § 614(b), which makes it illegal for an agent of a foreign principal to transmit propaganda that is not clearly labeled as such. Section M268 applies to offenses where an agent of a foreign principal conveyed information with respect to matters pertaining to the political or public interests of a foreign principal to an official of the United States, or requested information or advice from any official, without identifying himself as a registered agent of a foreign principal. 22 U.S.C. § 614(e). Section M269 deals with offenses where an agent testified before Congress and did not file a copy of his agent registration for inclusion in the committee records. 22 U.S.C. § 614(f). Section 270 applies to offenses where an agent of a foreign principal filed a registration

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statement that did not comply with the requirements of law or regulation. 22 U.S.C. § 618(g). Section 270A applies to violations of 22 U.S.C. § 618(h). The statute prohibits agents of foreign principals from being parties to contracts or agreements that make payment of fees or compensation contingent upon the success of any political activities they carry out.

7. Atomic Energy

18 U.S.C. § 831
42 U.S.C. § 2077
42 U.S.C. § 2122
42 U.S.C. § 2131
42 U.S.C. § 2138
42 U.S.C. § 2273

§ M271. Conspiracy to Unlawfully Acquire, Alter, Use, Transfer, or Possess Nuclear Material, Weapons, or Facilities. The base offense level is 30.

(a) Specific Offense Characteristic.

(1) If the object of the conspiracy was to injure the United States or to aid a foreign nation, increase by 12 levels.

§ M272. Unlawful Acquisition, Alteration, Use, Transfer, or Possession of Nuclear Materials, Weapons, or Facilities or Attempt to Do Same. The base offense level is 30.

(a) Specific Offense Characteristic.

(1) If with intent to injure the United States or to aid a foreign nation, increase by 12 levels.

§ M273. Interference with Recapture of Special Nuclear Material, Entry, or Operation Orders During Time of War or National Emergency. The base offense level is 30.

(a) Specific Offense Characteristic.

(1) If with intent to injure the United States or to secure an advantage to any foreign nation, increase by 12 levels.

§ M274. Violation of Other Federal Atomic Energy Agency Rules and Regulations. The base offense level is determined as follows:

(1) If the offense involved a conspiracy, an attempt, or a willful violation of any other federal atomic energy agency rules or regulations, the base offense level is 12.

(2) If the offense involved making a false statement of a material fact or the omission of any material fact, the base offense level is 15.

(3) If the offense involved intent to injure the United States or to secure an advantage to any foreign nation, the base offense level is 25.

COMMENTARY

While relatively few prosecutions occur for offenses under this section, the conduct covered often involves potential threats to the nation's public health, safety, and security. Most of the prosecutions that occur under this section are for trespass on federal installations, and often involve protest or civil disobedience. Section M271 deals with conspiracies to commit various acts of nuclear sabotage prohibited under 18 U.S.C. § 831, and 42 U.S.C. §§ 2077(b), 2122, and 2131. The former, 18 U.S.C. § 831, deals with the unlawful acquisition, possession, or use of nuclear materials. The statute distinguishes the seriousness of various offenses by penalizing conspiracies less severely than attempts or completed acts and increasing the penalty where death or serious injury occurred. And, 42 U.S.C. §§ 2077(b), 2122, and 2131 make it illegal to conspire, attempt, manufacture, obtain, transfer, deal in, or possess nuclear materials, devices, or facilities. The statutes provide a maximum life sentence for offenses intended to injure the United States or aid a foreign nation, and a maximum ten year sentence otherwise. These distinctions are reflected in the guidelines. Presumptive time served under the parole guidelines is not less than 100 months for this offense.

Section M272 deals with attempts and completed acts of acquisition, possession, or use of nuclear materials, nuclear weapons, or nuclear utilization or production facilities. It is designed, in part, to punish conduct prohibited by 18 U.S.C. § 831, such as instances of theft of nuclear materials for the purpose of blackmail or extortion. Section M272 also relates to 42 U.S.C. §§ 2077(b), 2122, and 2131, and it reflects the distinctions present in the statute. If the offense resulted in property damage, physical injury, or if it involved the disposal or dispersal of radioactive materials into the environment, the court shall consider this factor in imposing a sentence above the otherwise applicable guideline range. Presumptive parole guidelines provide for not less than 100 months in custody for this offense.

The offense covered in § M273 can, by definition, occur only during wartime or a national emergency. The statute on which it is based, 42 U.S.C. § 138, is designed to protect the government's ability to recapture nuclear materials and operate nuclear facilities during wartime or a national emergency. The statutory penalty is ten years imprisonment, unless the interference was intended to injure the United States or secure an advantage for a foreign nation, in which case life imprisonment is authorized. Because the nature of the offense involves a highly dangerous instrumentality, death, personal injury, property damage, and the release of radioactive materials into the environment are all possible consequences of an offense. If any of these factors are present, the general provisions in Part Y, should be applied.

Section M274 covers violations of 42 U.S.C. § 2273, which is a "catch-all" provision for nuclear energy related offenses not specifically addressed elsewhere. This provision covers violations of regulations, license conditions, and orders of the Nuclear Regulatory Commission and the Department of Energy, including accidental discharge of radioactive materials. The maximum term of imprisonment for violations is two years, unless the offense was intended to injure the United States or aid a foreign government, in which case the maximum is twenty years. This adjustment is reflected in the guidelines. A significant number of criminal prosecutions recommended by the Nuclear Regulatory Commission occur under 18 U.S.C. § 1001 (false statements). An enhancement for these violations is included. If death, personal injury, property damage, weapons use, or environmental damage occurred, the court should apply the appropriate general provisions in Part Y.

Part N—Offenses Involving Food, Drugs, Agricultural Products, and Consumer Products

1. Tampering

18 U.S.C. § 1365

§ N211. Tampering or Attempting to Tamper with Consumer Products. If the defendant tampered, conspired, or attempted to tamper with a consumer product, its labeling, or its container, with reckless disregard for the risk of death or bodily injury, the base offense level is 25.

§ N212. Tampering With Intent to Injure Business. If the defendant tampered, conspired, or attempted to tamper with a consumer product, its labeling, or its container with intent to cause serious injury to a business, the base offense level is 12.

§ N213. Providing False Information or Threatening to Tamper with Consumer Products. If the defendant threatened to tamper with a consumer product, its labeling, or its container, or communicated false information that a consumer product was tainted, the base offense level is 16.

COMMENTARY

Product tampering is a very serious offense, as evidenced by cases in recent years where tampering with over-the-counter drugs resulted in several deaths, widespread public concern, and significant losses by pharmaceutical manufacturers.

Section N211 applies to 18 U.S.C. §§ 1365 (a) and (e) and § N212 applies to 18 U.S.C. § 1365(b). Section N213 covers 18 U.S.C. § 1365 (c), (d). The term "consumer product" means any food, drug, device, or cosmetic as defined in 21 U.S.C. § 321 or any article, product, or commodity produced or distributed for consumption by individuals.

Protection of the health and safety of the individual and the integrity of the marketplace are of paramount importance. If death or injury results from product tampering, or if the target of a tampering suffers significant monetary losses, consult the appropriate sections of the General Provisions, Part Y.

Attempts are treated with the same severity as completed acts, pursuant to Commission decision and guidance from 18 U.S.C. § 1365, which provides for maximum sentences of ten years for both attempted and completed tamperings. As is the case with all conspiracies, appropriate adjustments should be made in Part Z, Role in the Offense.

2. Food, Drug, and Agricultural

7 U.S.C. §§ 150bb, 150gg
21 U.S.C. § 117

21 U.S.C. § 122
21 U.S.C. §§ 134–134e
21 U.S.C. §§ 151–158
21 U.S.C. § 331
21 U.S.C. § 333
21 U.S.C. § 458
21 U.S.C. §§ 460–461
21 U.S.C. §§ 610–620
21 U.S.C. §§ 642–644
21 U.S.C. § 676
42 U.S.C. § 262
Also See Statutory Index

§ N221. Violations of Statutes and Regulations Dealing With Any Food, Drug, Biological Product, Device, Cosmetic, or Agricultural Product. The base offense level is 4.

(a) Specific Offense Characteristics.

(1) If the defendant acted knowingly, increase by 2 to 3 levels.

(2) If the defendant acted with intent to defraud, mislead, or conceal a violation, increase by 3 to 6 levels.

(3) If the offense involved manufacture for distribution or distribution of any product, increase by 2 to 6 levels, depending upon the risk of injury and the scope of the violation.

COMMENTARY

If death, serious injury, property damage, or other harms occurred through offenses sentenced under this section, consult the appropriate provisions in Part Y, General Provisions.

Section N221 applies to most regulatory crimes involving food, drugs, biological products, devices, cosmetics, and agricultural products. Definitions are to be taken from the various statutes upon which conviction is based. However, because of their technical nature, practicality should be the rule. "Meat," for example, is also considered to be "food" for purposes of this section, even though the Food and Drug Administration and the United States Department of Agriculture have very different regulations depending upon whether the item is considered a food or a meat. Regulatory violations that amount to bribery, revealing trade secrets, theft, and destruction of property are covered more specifically elsewhere.

A defendant previously convicted under 21 U.S.C. § 333 is subject to a maximum potential term of imprisonment of three years. Section A314, Prior Similar Convictions, is applicable to repeat offenders.

Fraud schemes are to be sentenced under § F211, Fraud and Deception, even when the conduct involved the food or drug industries. For example, a person convicted of mail fraud under 18 U.S.C. § 1341 shall not, by virtue of the fact that the conduct involved the food industry, successfully claim that a lesser punishment should be meted out under the "intent to defraud" aggravator in § N211(a)(2).

3. Other Consumer Product

15 U.S.C. § 68h
15 U.S.C. § 69i
15 U.S.C. § 70i
15 U.S.C. § 1196
15 U.S.C. § 1212
15 U.S.C. § 1233
15 U.S.C. § 1264
15 U.S.C. §§ 1983–1988
15 U.S.C. § 1990c
15 U.S.C. § 2070
Also See Statutory Index

§ N231. Misbranding or Mislabeling Consumer Products. The base offense level is 6.

(a) Specific Offense Characteristic.

(1) If the product was hazardous or otherwise endangered a person or the general public, increase by 2 to 4 levels, depending upon the nature of the substance and the risk created.

§ N232. Unsafe Consumer Products. If the defendant violated consumer statutes, regulations, or standards other than labeling requirements, the base offense level is 6.

(a) Specific Offense Characteristic.

(1) If the offense involved the distribution of a banned hazardous product, increase by 2 to 6 levels, depending upon the extent and danger of the distribution.

§ N233. Odometer Laws and Regulations. The base offense level for odometer violations is determined as follows:

(1) If the offense consisted of a single occurrence, the base offense level is 6.

(2) If the offense involved a conspiracy to violate odometer requirements, the base offense level is 10.

(a) Specific Offense Characteristic.

(1) If the offense involved multiple motor vehicles, increase by 2 to 6 levels, depending upon the extent of the operation.

COMMENTARY

These consumer product guidelines apply to a variety of statutes designed to prevent consumer fraud and to protect the safety of the public. Similar sentencing factors are to be considered whether the offense involves new automobiles, wool products, textiles, fur products, refrigerators, or other products for which guidelines have not been specifically provided.

In § N231, the base offense level applies to only the deceptive aspect of mislabeling. This section applies to a variety of statutes in Title 15 of the U.S. Code including § 68h (wool products), § 69i (fur products), § 70i (textile fiber products), and § 1233 (automobiles).

In § N232, the base offense level includes both the affront to the regulatory process and risk to the public safety. The special offense characteristics require aggravation for the greater risk to the public posed by hazardous products. This section applies to a variety of statutes in Title 15 of the United States Code including § 1196 (flammable fabrics), § 1212 (refrigerators), § 1264 (hazardous substances), and § 2070 (product safety).

In § N233, the base offense level takes into account the deception aspect of the offense and a safety risk comparable to that of consumer product safety violations. This section applies to 15 U.S.C. §§ 1983–1988 and 1990c as amended by Pub. L. 99–579, Oct. 28, 1986.

Part P—Offenses Involving Prisons and Correctional Facilities

18 U.S.C. §§ 751–752
18 U.S.C. § 755
18 U.S.C. §§ 1791–1793
28 U.S.C. § 1826
Also See Statutory Index

Introduction. Certain offenses are unique to prisons and correctional institutions. The sanctions to be imposed for escape, the introduction and possession of contraband, riots, and trespass on prison property all relate to the nature of these facilities and reflect the potential consequences of the offenses to corrections personnel and other prisoners.

§ P211. Escape or Attempted Escape. The base offense level is determined as follows:

(1) If from lawful custody resulting from a conviction or process or as a result of a lawful arrest for a felony, the base offense level is 13.

(2) If from lawful custody resulting from designation as a recalcitrant witness, the base offense level is 10.

(3) If from lawful custody awaiting extradition or as a result of a lawful arrest for a misdemeanor, the base offense level is 8.

(a) Specific Offense Characteristic.

(1) If the escape or attempted escape was from non-secure custody, decrease by 2 levels.

§ P212. Instigating or Assisting Escape or Attempted Escape. The base offense level is determined as follows:

(1) If from lawful custody resulting from a conviction or process or as a result of a lawful arrest for a felony, the base offense level is 13.

(2) If from lawful custody resulting from designation as a recalcitrant witness, the base offense level is 10.

(3) If from lawful custody awaiting extradition or as a result of a lawful arrest for a misdemeanor, the base offense level is 8.

(a) Specific Offense Characteristic.

(1) If the escape or attempted escape instigated or assisted was from non-secure custody, decrease by 2 levels.

§ P213. Officer Permitting Escape. The base offense level is determined as follows:

(1) If a custodial officer voluntarily permitted a prisoner to escape, the base offense level is 23.

(2) If a custodial officer negligently permitted a prisoner to escape, the base offense level is 6.

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§ P214. Providing or Possessing Contraband in Prison (and Attempts). The base offense level is determined as follows:

(1) If the object provided to or possessed by an inmate in a federal correctional facility was a firearm or destructive device, the base offense level is 23.

(2) If the object provided to or possessed by an inmate in a federal correctional facility was a weapon (other than a firearm or a destructive device), ammunition, anything that might be used as a weapon or as a means of facilitating escape, or LSD, PCP, or a narcotic drug, the base offense level is 20.

(3) If the object provided to or possessed by an inmate in a federal correctional facility was an alcoholic beverage, United States or foreign currency, or a controlled substance (other than LSD, PCP, or a narcotic drug), the base offense level is 8.

(4) If the object provided to or possessed by an inmate in a federal correctional facility was any other object that threatened the order, discipline, or security of the institution or the life, health, or safety of an individual, the base offense level is 6.

(a) Specific Offense Characteristic.

(1) If the defendant who provided the contraband object was a correctional officer or other employee of the Department of Justice, increase by 2 levels.

§ P215. Engaging In, Inciting, or Attempting to Incite a Riot Involving Persons in a Facility for Official Detention. The base offense level is 15 to 23, depending upon the number of persons involved, the danger presented to other prisoners or corrections personnel, and the extent of disruption to the corrections facility that resulted.

§ P216. Trespass on Bureau of Prisons Facilities. The base offense level is 6.

COMMENTARY

Sections P211 and P212 refer to conduct proscribed by 18 U.S.C. §§ 751 and 752. While the base offense level reflects the seriousness of escape or attempted escape, it should be emphasized that the defendant's role in the offense and property damage, personal injury, or other serious harm attributable to his conduct are addressed by reference to Part Y, General Provisions. Non-secure custody refers to custody with no significant physical restraint (e.g., if a defendant walked away from a work detail outside the security perimeter of an institution; failure to return to any institution from a pass or unescorted furlough; or escape from an institution with no physical perimeter barrier). Section P213 refers to conduct proscribed by 18 U.S.C. § 755.

Sections P214 and P215 refer to conduct proscribed by 18 U.S.C. § 1791 as amended by the Comprehensive Crime Control Act Amendments of 1986 and 18 U.S.C. § 1792, respectively. Section P216 refers to conduct proscribed by 18 U.S.C. § 1793.

Under current practice, prisoners who commit the offenses in these guidelines are potentially subject to three, nonexclusive forms of sanction: A new sentence imposed by a federal court; loss of good conduct time through the inmate disciplinary system; and rescission of the previously approved parole release date through the presumptive parole guidelines. Since the Comprehensive Crime Control Act eliminates parole and significantly reduces the amount of good conduct time that may be forfeited, the offense levels for these offenses have been set somewhat higher than current sentencing practices.

Part Q—Offenses Involving the Environment

Introduction. Violations of the nation's environmental and conservation laws frequently arise from an economic motive. The nature of the damage and harm caused to public health, safety, and the environment is often intangible, and, therefore, difficult to measure empirically. Sentences should reflect the seriousness of the offense and provide just and sure punishment in order to deter those who disregard the public's health and safety. Sentences should also promote respect for the nation's environmental and conservation laws, remove the economic incentive giving rise to such acts, and protect the marketplace for those who do comply with the laws.

1. Environment

7 U.S.C. §§ 136j, 1361
15 U.S.C. §§ 2613–2615
33 U.S.C. § 403
33 U.S.C. §§ 406–407
33 U.S.C. § 411
33 U.S.C. § 1319
33 U.S.C. § 1321
33 U.S.C. § 1344(s)
33 U.S.C. § 1415
33 U.S.C. § 1517(d)
33 U.S.C. §§ 1907–1908
42 U.S.C. §§ 300i, 300j–4
42 U.S.C. § 4912
42 U.S.C. §§ 6928 (d), (e)
42 U.S.C. § 7413
42 U.S.C. § 9603
43 U.S.C. § 1816(a)
43 U.S.C. § 1822(b)
Also See Statutory Index

§ Q211. Mishandling of Hazardous or Toxic Substances or Pesticides; Record Keeping, Tampering, and Falsification. The base offense level is 9.

(a) Specific Offense Characteristics.

(1) If the defendant placed another person in imminent danger of death or serious bodily injury, increase by 6 to 12 levels, depending upon the nature of the risk and number of people at risk.

(2) If the offense resulted in disruption of public utilities or evacuation of a community or

if the cleanup required a substantial public expenditure, or

if the offense resulted in an ongoing, continuous, or repetitive release of hazardous or toxic substances or pesticides into the environment,

increase by 3 to 6 levels, depending upon the extent of the effect, the quantity and nature of the substance, and the duration of the offense.

(3) If the offense involved transportation, treatment, storage, or disposal without a permit or in violation of a permit, increase by 3 to 6 levels, depending upon the quantity and nature of the substance.

(4) If the offense concealed an environmental offense violation, increase by 3 to 6 levels, depending upon the nature of the concealed offense.

COMMENTARY

Section Q211 applies to mishandling, tampering with, and falsifying records with respect to pesticides and toxic and hazardous subetances, punished primarily by 7 U.S.C. §§ 136j–1361; 15 U.S.C. §§ 2614, 2615; 33 U.S.C. § 1319; 42 U.S.C. §§ 6928 and 7413; and 43 U.S.C. § 1350. The guideline applies to situations in which the defendant manufactured, processed, distributed in commerce, transported, treated, stored, mislabeled, disposed of, exported, or released into air, water, or land pesticides or substances designated hazardous or toxic by statute or by regulation. The guidelines also cover violations of a permit or its equivalent, omissions or falsified information in a statement or document or destroyed, altered, concealed, or failure to file or maintain required information. The base offense level covers not only violations resulting in harm or potential harm to the environment, but also violations that undermine the regulatory process or conceal other illegal conduct. Most environmental offenses involve one or more specific offense characteristics.

Section Q211 includes crimes of falsification when hazardous or toxic substances or pesticides are involved. The government functions aimed at regulating those materials rely heavily upon recording and providing accurate information. If those functions are not carried out properly, the regulatory efforts are undermined with potential adverse public and environmental impact.

A listing of hazardous and toxic substances in the guidelines would be impractical. Lists of toxic pollutants for which effluent standards (or prohibitions) are published under the Federal Water Pollution Control Act are revised from time to time (e.g., 33 U.S.C. § 1317) as are lists of hazardous substances under the Resource Conservation and Recovery Act (e.g., 42 U.S.C. § 9601). "Toxic" and "hazardous" are defined differently in various statutes, but the common dictionary meanings of the words are not significantly changed. Section Q211 applies to pesticides and to substances designated toxic or hazardous at the time of the offense. The Toxic Substances Control Act now covers PCBs (polychlorinated biphenyls). 15 U.S.C. § 2805(e). Regulated nuclear materials shall be treated at least as severely as those designated toxic or hazardous.

Section Q211(a)(1) applies to violations of 42 U.S.C. § 6928(e), offenses committed with knowledge that the violation placed another person in imminent danger of death or serious bodily injury. Any defendant convicted of violating this statute must be sentenced under this section. Defendants who have violated other statutes are sentenced under this section only if the court finds knowing endangerment.

Section Q211(a)(3) applies to 42 U.S.C. § 6928 (d)(1) and (d)(2), for which Congress has prescribed more stringent levels of maximum imprisonment than for other violations under 42 U.S.C. § 6928(d).

In selecting the appropriate level for a specific offense characteristic in § Q211(a) (2) and (3), the court should take into account the nature and quantity of the substance involved, the extent of resulting contamination, and the degree of public disruption and expense caused. Mishandling a small amount of a highly toxic substance may be of more serious consequence than mishandling a similar amount of a less hazardous substance. Plainly, mishandling that results in public disruption and expense should be taken into account. Hazardous waste dumped in a populous urban environment may force the evacuation of thousands of people to protect public health and safety, while the same dumping in a sparsely populated rural area might require evacuation of several families. The first situation justifies an offense level in the maximum of the range, while the second situation warrants the minimum of the range. Similarly, a contaminant in the urban area might be in secure containers that can be cleaned up at relatively little public expense, while that in the rural setting may saturate acres of soil and can only be cleaned up at considerable public expense. Finally, the longer an offense continues, the greater should be the criminal sanctions. A one time hazardous waste disposal may be treated less severely than continuous disposal of the same material. Factors including the nature and amount of contamination, continuity, disruption, and public expense combine in a variety of ways in actual situations; however, subsections Q211(a) (2) and (3) allow the court to separate these factors in assessing the severity of a crime.

While § Q211(a)(4) is similar to § Q214(a)(5), § Q211(a)(4) has higher offense levels because of the different substances involved. Falsification and other forms of misinformation are more serious if done to conceal other violations. If a defendant states on a required report that he produces no hazardous waste, when, in fact, he does generate that waste and is dumping it into a nearby river, then falsification takes on additional consequences.

Policy statement § A314, Similar Prior Convictions, applies if a defendant convicted under 42 U.S.C. § 6928(d) is subject to a doubling of the otherwise applicable maximum penalty because of a prior similar conviction.

If the offense involved mishandling of nuclear material, source material, byproduct material, or radioactive substances regulated by the Nuclear Regulatory Commission, a sentence at or near the statutory maximum is appropriate.

§ Q212. Tampering with Public Water System. The base offense level is 14.

(a) Specific Offense Characteristics.

(1) If a risk of death or serious injury was created, increase by 4 to 8 levels, depending upon the nature of the risk and the number of people at risk.

(2) If the offense resulted in disruption of a public water system or evacuation of a community or

if the cleanup required a substantial public expenditure, or

if the offense involved an ongoing, continuous, or repetitive release of a contaminant into a public water system or lasted for a substantial period of time, increase by 3 to 6 levels, depending upon the extent of effect, the quantity and nature of any contaminant involved, and the duration of the offense.

(3) If the purpose of the violation was to influence government action or to extort money, increase by 8 levels.

§ Q213. Attempted or Threatened Tampering with Public Water System. The base offense level is 10.

(a) Specific Offense Characteristics.

(1) If the threat or attempt resulted in disruption of a public water system or evacuation of a community or a substantial public expenditure, increase by 3 to 6 levels, depending upon the extent of the effect and the quantity and nature of any contaminant threatened or attempted.

(2) If the purpose of the violation was to influence government action or to extort money, increase by 8 levels.

COMMENTARY

Sections Q212 and Q213 apply to the new tampering section added to 42 U.S.C. § 300i in 1986. Since intent to harm persons is an element of the tampering and attempted tampering offenses, it is included in the base offense levels. Tampering or interference with a public water supply system has the potential for widespread and serious public health effects, justifying substantial base offense levels. Given the similarities between these offenses and those covered by § Q211, the specific offense characteristics and the factors to be taken into account in choosing among offense levels are similar.

Sections Q212(a)(2) and Q213(a)(3) take into account the fact that public water supplies are vulnerable targets for terrorists and extortionists.

§ Q214. Mishandling of Other Environmental Pollutants; Record Keeping, Tampering, and Falsification. The base offense level is 6.

(a) Specific Offense Characteristics.

(1) If the defendant discharged or emitted a pollutant into the water, air or land, increase by 4 levels.

(2) If the offense resulted in a substantial likelihood of death or serious illness, increase by 3 to 6 levels, depending upon the nature of the risk and the number of people at risk.

(3) If the offense resulted in disruption of public utilities or evacuation of a community, or

if the cleanup required a substantial public expenditure, or

if a single offense resulted in an ongoing, continuous, or repetitive release of a pollutant into the environment,

increase by 3 to 6 levels, depending upon the extent of the effect, on the quantity and nature of the pollutant, and the duration of the offense.

(4) If the offense concealed another environmental violation, increase by 3 to 5 levels, depending upon the nature of the concealed violation.

COMMENTARY

Section Q214 applies to offenses concerning substances not designated hazardous or toxic, usually punished under 33 U.S.C. §§ 403, 406, 407, 411, 1319, 1344(s), 1415(b), 1907, and 1908; and 42 U.S.C. §§ 300j–4, 4912, and 7413. They include violations of an order, plan, rule, regulation, limitation, standard, permit, or other requirement relating to pollution abatement, provided that the violation is not covered more precisely in another section. Also included are violations in which the defendant made a false statement in an application, record, report, plan, or other document; or falsified, destroyed, tampered with, or rendered inaccurate any monitoring device or method, or any record required to be maintained by law. If the violations involved a pesticide or a hazardous or toxic substance, § Q211 applies.

The base offense level considers negligent violations that may involve criminal liability under 33 U.S.C. § 1319(c)(1), as well as violations resulting from knowing conduct. Section Q214(a)(1) attaches higher penalties to violations that result in actual environmental contamination, whether its ultimate effect is detectable or not. The specific offense characteristics in § Q214(a) (2) and (3) are similar to those in § Q211(a) because similar environmental results occur even if the contaminants are not specifically designated as hazardous. Therefore, the relevant factors in selecting the offense level are basically those described under § Q211. For example, the introduction of raw, untreated sewage into water from which drinking water is taken may cause serious illness, public disruption, and expense. If it is of a continuous or repetitive nature, punishment should be increased accordingly.

Current environmental regulatory schemes rely heavily upon record-keeping, monitoring, and self-reporting. If regulated persons or

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entities fail to collect, keep, or report accurate information, the programs prescribed by Congress for the protection of the public are substantially undermined. Such failures may conceal significant amounts of pollutants entering the environment and may result in harm to the public or the environment.

Policy statement § A314, Similar Prior Convictions, applies to any defendant subject to a higher maximum penalty because of a prior similar conviction under 33 U.S.C. §§ 1319(c)(1) or 1344 (s)(4) or 42 U.S.C. § 7413(c)(1).

§ Q215. Failure to Comply With Notification Requirements After Release of Hazardous Substance or Oil. If the violation involved oil, the base offense level is 6; if the violation involved a hazardous substance, the base offense level is 9.

(a) Specific Offense Characteristics.

(1) If the failure to report resulted in a delay in the cleanup of the discharge or release, increase by 1 to 5 levels, depending upon the circumstances of the offense.

(2) If the failure to report resulted in an ongoing, continuous, or repetitive release that lasted a substantial period of time, increase by 2 to 5 levels, depending upon the circumstances of the offense.

(3) If the failure to report resulted in harm to the environment, wildlife or the public, increase by 2 to 5 levels, depending upon the circumstances of the offense.

COMMENTARY

Notifications of spills and releases are required by 33 U.S.C. § 1321(b)(5) for oil or hazardous substances; 42 U.S.C. § 9601 et seq., as amended in 1986 and Pub. L. 99-499, Title III, § 325, Oct. 17, 1986, for hazardous substances; 43 U.S.C. §§ 1816(a), 1822(b) for offshore oil spills; and 33 U.S.C. § 1517(b) for oil spills.

A major purpose of these requirements is to alert public officials so that threats to the environment and public health and safety may be minimized by prompt action. Even when the party responsible for the spill or release undertakes cleanup, public officials need to be alerted in order to monitor the work and assure that it is properly accomplished. The notification requirements are not substantial burdens; a toll-free number is provided for notifying federal authorities. Given the ease of compliance, non-compliance is particularly deserving of punishment. The specific offense characteristics take into account consequences of failure to report. The longer response and cleanup is delayed, the greater the likelihood of human or environmental harm. If the release is ongoing rather than of limited duration, the likelihood of harm increases.

Policy statement § A314, Similar Prior Convictions, applies to any defendant subject to a higher maximum penalty because of a prior similar conviction under 42 U.S.C. § 9603 and Pub. L. 99-499, Title III, § 325, October 17, 1986.

2. Conservation and Wildlife

16 U.S.C. § 668(a), dd(e)
16 U.S.C. § 707
16 U.S.C. § 742j-1(a)
16 U.S.C. § 1174(a)
16 U.S.C. § 1338(a)
16 U.S.C. § 1375(b)
16 U.S.C. § 1540(b)
16 U.S.C. § 1859
16 U.S.C. § 3373(d)
18 U.S.C. § 545
Also See Statutory Index

§ Q221. Specially Protected Fish, Wildlife, and Plants. If the defendant violated laws or regulations protecting fish, wildlife, or plants, the base offense level is 6.

(a) Specific Offense Characteristics.

(1) If the offense involved a commercial purpose, increase by 3 levels.

(2) If the offense involved fish, wildlife, or plants that were not quarantined as required by law, increase by 3 levels.

(3) If the offense involved a quantity of fish, wildlife, or plants, that was substantial in relation either to the overall population of the species or to a discrete subpopulation, increase by 3 to 5 levels, depending upon the circumstances of the offense.

(4) If the specially protected fish, wildlife, or plants had a market value in excess of $1,000, increase the offense level by the appropriate number of levels from the Property Table, § B211.

§ Q222. Lacey Act. The base offense level is determined as follows:

(1) If the defendant imported, exported, transported, sold, received, acquired, or purchased any fish, wildlife, or plant taken, possessed, transported, or sold in violation of any treaty or law of the United States or any state, or in violation of any foreign law or Indian tribal law, the base offense level is 6.

(2) If the defendant, having imported, exported, transported, sold, purchased or received any fish, wildlife, or plant, made or submitted a false record, account, label, or identification, the base offense level is 4.

(3) If the defendant imported, exported, or transported any container or package containing fish or wildlife without marking, labeling, or tagging in accordance with applicable regulations, the base offense level is 4.

(a) Specific Offense Characteristics.

(1) If the defendant knowingly imported or exported fish, wildlife, or plants referred to in § Q222(1), or if the defendant knowingly engaged in conduct involving the sale or purchase, or the offer or intent to sell or purchase fish, wildlife, or plants, with a market value in excess of $350, increase by 3 levels.

(2) If the offense involved fish, wildlife, or plants that were not quarantined as required by law, increase by 3 levels.

(3) If the offense involved a quantity of fish, wildlife, or plants, that was substantial in relation either to the overall population of the species or to a discrete subpopulation, increase by 3 to 5 levels, depending upon the circumstances of the offense.

(4) If the fish, wildlife, or plants had a market value in excess of $1,000, increase the offense level by the appropriate number of levels from the Property Table, § B211.

§ Q223. National Parks, Forests, and Wildlife Refuges. The base offense level is determined as follows:

(1) If property (other than fish or wildlife) was damaged or stolen, apply the appropriate sections in Part B, Offenses Involving Property.

(2) If the offense was trespassing, apply § B222 in Part B, Offenses Involving Property.

(3) If the defendant violated a hunting, fishing, or camping regulation or any other park, forest, or wildlife refuge regulation not covered elsewhere, the base offense level is 5.

§ Q224. Airborne Hunting. The base offense level is 6.

(a) Specific Offense Characteristics.

(1) If the offense involved the capture or killing of multiple birds, fish or animals, increase by 1 to 4 levels, depending upon the nature and extent of the offense.

(2) If the defendant knowingly captured or killed specially protected fish or wildlife, increase the offense level as indicated by the specific offense characteristics in § Q221 instead of (a)(1) above.

(3) If the defendant used or possessed for a commercial purpose any fish or wildlife taken in violation of airborne hunting laws or regulations, increase the offense level as indicated by the specific offense characteristics in § Q222 instead of (a)(1) above.

§ Q225. Magnuson Fishery Conservation and Management Act. The base offense level is 6.

§ Q226. Smuggling of Fish, Wildlife, and Plants. The base offense level is 6.

(a) Specific Offense Characteristics.

(1) If the offense involved a commercial purpose, increase by 3 levels.

(2) If the offense involved fish, wildlife, or plants that were not quarantined as required by law, increase by 3 levels.

(3) If the offense involved a quantity of fish, wildlife, or plants that was substantial in relation either to the overall population of the species or to a discrete subpopulation, increase by 3 to 5 levels, depending upon the circumstances of the offense.

(4) If the fish, wildlife, or plants had a market value in excess of $1,000, increase by the appropriate number of levels from the Property Table, § B211.

COMMENTARY

Section Q221 applies to violations of the Endangered Species Act, 16 U.S.C. § 1540(b); the Bald and Golden Eagle Protection Act, 16 U.S.C. § 668(a); the Migratory Bird Treaty Act, 16 U.S.C. § 707; the Marine Mammal Protection Act, 16 U.S.C. § 1375(b); the Wild Horse and Burro Act, 16 U.S.C. § 1338(a); and the Fur Seal Act, 16 U.S.C. § 1174(a). These statutes provide special protection to particular species of fish, wildlife, or plants. The base offense level for these statutes is low, so that probation may be imposed on first-time offenders. However, enhanced punishment is warranted where the offense involved a commercial purpose, the species were not quarantined as required by law, or the market value of the protected species was substantial. The Commission recognizes that an offense may have a serious impact upon protected species, even though the market value is negligible. In such circumstances if the species is either endangered or threatened, the greater enhancement should be applied. Policy statement § A314, Similar Prior Convictions, applies to defendants subject under the Bald and Golden Eagle Protection Act, 16 U.S.C. § 668(a) to a higher maximum sentence because of a prior conviction under the Act.

Section Q222 applies to violations of the Lacey Act Amendments of 1981, 16 U.S.C. § 3373(d). This is the principal enforcement statute utilized to combat interstate and foreign commerce in illegally taken fish, wildlife and plants. The Act distinguishes between misdemeanor and felony violations; the guidelines retain that distinction. The base levels for misdemeanor and felony violations are increased if the market value of the fish, wildlife, or plants exceeds $1,000.

Section Q223 applies to violations of laws governing conduct within National Parks, National Forests, or components of the National Wildlife Refuge System, and regulations implementing such laws. 16 U.S.C. Chapters 1, 2, 6-8; see 16 U.S.C. § 668dd(e). Specially protected wildlife are covered by § Q231.

Section Q224 applies to violations of the Airborne Hunting Act, 16 U.S.C. § 742j-1. Where multiple birds, fish, or animals are captured or killed, increased punishment is warranted. Enhancement is appropriate if the defendant captured or killed specially protected fish or wildlife for a commercial purpose (see specific offense characteristics in § Q222).

Section Q225 applies to violations of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. § 1859(b). The Act makes criminal any interference with the inspection and enforcement activities of authorized enforcement officers. Interference with these activities impairs the effective management of national fishery resources. The base offense level permits a probationary sentence for first offenders. These guidelines apply to similar penalty provisions in other fishery or conservation statutes. See North Pacific Fisheries Act, 16 U.S.C. § 1030(b); Antarctic Marine Living Resources Convention Act, 16 U.S.C. § 2438(b); Atlantic Salmon Convention Act, 16 U.S.C. § 3606(b)(2); and the Pacific Salmon Treaty Act, 16 U.S.C. § 3637(c). Where the offense involves the use of threats, intimidation, or bodily injury, the guidelines in Part A, Offenses Involving the Person, apply in lieu of § Q225.

Section Q226 applies to violations of 18 U.S.C. § 545 when a defendant smuggles or illegally brings fish, wildlife, or plants into the United States, or subsequently receives, conceals, buys, sells, or facilitates the transportation of fish, wildlife, or plants knowing the item was illegally brought into the United States. The guidelines in this section prevail over those in § T231 (also pertaining to violations of 18 U.S.C. § 545) since generally the primary purpose of smuggling wildlife is not tax evasion, but avoidance of other wildlife laws regulating importation of fish, wildlife, or plants. Enhanced punishment is warranted where the offense was for a commercial purpose, quarantine requirements were evaded, the offense involved a substantial quantity of fish, wildlife, plants or specially protected fish, wildlife, or plants, or the market value exceeded $1,000.

Part R—Antitrust Offenses

15 U.S.C. §§ 1-3

Introduction. These guidelines apply to violations of the antitrust laws. Although they are not unlawful in all countries, there is near universal agreement that restrictive agreements among competitors such as horizontal price fixing (including bid rigging) and horizontal market allocation can cause serious economic harm. However, there is little agreement about the harmfulness of other types of antitrust violations; the law involving them is frequently unsettled and criminal prosecutions are infrequent. Consequently, the guidelines divide antitrust offenses into two categories: Price Fixing or Market Allocation Agreements Among Competitors (§ R211) and Other Antitrust Violations (§ R212).

§ R211. Price Fixing or Market Allocation Agreements Among Competitors. The base offense level is 9, unless the volume of commerce attributable to the offender is less than $1 million or more than $4 million, in which case the base offense level is as follows:

Volume of commerce	Offense level
Under $1,000,000	8
$1,000,001 to $4,000,000	9
$4,000,001 to $15,000,000	10
$15,000,001 to $50,000,000	11
Over $50,000,000	12

For purposes of this guideline, the volume of commerce attributable to an individual participant in a conspiracy is the volume of commerce done by him or his principal in the goods or services that are the subject of the violation. When multiple counts or conspiracies are involved, the volume of commerce should be treated cumulatively to determine a single, combined offense level.

Fines. A fine shall be imposed in addition to any term of imprisonment. The guideline fine range for an individual conspirator is from 4 to 10 percent of the volume of commerce, but not less than $20,000. The fine range for an organization is from 20 to 50 percent of the volume of commerce, but not less than $100,000. The statutory maximum fine is $250,000 for individuals and $1,000,000 for organizations, but is increased when multiple counts are involved.

§ R212. Other Antitrust Violations. The base offense level is 6.

COMMENTARY

§ R211. The Commission finds that the most effective method to deter individuals from committing this crime is through imposing short prison sentences coupled with large fines. The guideline is designed with that purpose in mind. Absent adjustments, mandatory minimum prison sentences are two months in cases where the volume of commerce is not large, and will be four months or longer in the majority of cases that are prosecuted. Considerably longer sentences will be possible, and will be mandated for repeat offenders. Adjustments for acceptance of responsibility and, in a few instances, role in the offense, may decrease these minimum sentences, but should not affect the level of fines. Fines are greatly increased over current practice.

The guideline imprisonment terms represent a substantial change from present practice. Currently, approximately 20 percent of all individuals convicted of antitrust violations are imprisoned and they serve, on average, slightly more than three months. The guideline prison terms are, however, consistent with the parole guidelines. The current average fine for individuals is only approximately $16,000; for corporations, it is approximately $133,000.

Tying the offense level to the scale or scope of the offense is important in order to ensure that the sanction is in fact punitive and that there is some incentive to desist

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from a violation once it has begun. The offense levels are not based directly on the amount of damages caused by the violation because damages are difficult and time consuming to establish. The volume of commerce is a reasonable and more readily measurable substitute. The limited empirical data currently available show that fines increase with the volume of commerce and the term of imprisonment probably does also.

Substantial fines are an essential part of the sanction. It is estimated that the average additional profit attributable to price fixing is 10 percent of the selling price. The Commission has specified that a fine from two to five times that amount be imposed on organizational defendants because of the difficulty in identifying violators. Additional monetary penalties can be provided through private treble damage actions. The Commission has specified a lower fine for individuals. In setting the fine for individuals, the court should consider the extent of the defendant's participation in the offense, his role, and the degree to which he personally profited from the offense (including salary, bonuses, and career enhancement). The fines specified represent substantial increases over existing practice. The Commission finds that most antitrust defendants have the resources and earning capacity to pay fines, at least over time, and will monitor the level of fines that are imposed and actually paid. If the court concludes that the defendant lacks the ability to pay the guideline fine, it should impose community service in lieu of a portion of the fine. The community service should be equally burdensome as a fine.

No specific increase in the sanction is provided for defendants who initiate an antitrust conspiracy or coerce others to join it. These considerations are dealt with under Part Z, Role in the Offense.

Recidivist antitrust violators might warrant sentences at or above the guideline maximum, even after adjustment for prior record.

§ R212. The offense level for antitrust offenses other than price fixing or market allocation has been set at 6 because such offenses do not invariably cause serious harm. The civil system, which allows for private treble damage actions and injunctive relief, provides both a deterrent and a remedial effect, particularly because non-horizontal practices are generally difficult to conceal.

Part S—Money Laundering and Monetary Transaction Reporting

18 U.S.C. § 371
18 U.S.C. § 1001
18 U.S.C. §§ 1005–1008
18 U.S.C. § 1014
18 U.S.C. §§ 1956–1957
31 U.S.C. §§ 5313–5314
31 U.S.C. § 5316
31 U.S.C. § 5322
31 U.S.C. § 5324

§ S211. Failure to Report Monetary Transactions; Structuring Transactions to Evade Reporting Requirements. The base offense level is 10.

(a) Specific Offense Characteristics.

(1) If the defendant knew that the funds were the proceeds of:

(A) an unlawful activity involving the manufacture, importation, or distribution of narcotics or other controlled substances, increase by 5 levels;

(B) any other specified unlawful activity (see 18 U.S.C. § 1956(c)(7)), increase by 3 levels.

(2) If the defendant committed the offense with the intent to promote any specified unlawful activity, increase by 3 levels.

(3) If the value of the funds exceeded $100,000, increase the offense level as follows:

Value	Increase in level
$100,001 to $200,000	Add 1.
$200,001 to $350,000	Add 2.
$350,001 to $600,000	Add 3.
$600,001 to $1,000,000	Add 4.
$1,000,001 to $2,000,000	Add 5.
$2,000,001 to $3,500,000	Add 6.
$3,500,001 to $6,000,000	Add 7.
$6,000,001 to $10,000,000	Add 8.
$10,000,001 to $20,000,000	Add 9.
$20,000,001 to $35,000,000	Add 10.
$35,000,001 to $60,000,000	Add 11.
$60,000,001 to $100,000,000	Add 12.
Over $100,000,000	Add 13 or above.

COMMENTARY

This section applies to violations of 31 U.S.C. §§ 5313, 5314, 5316, 5322, 5324, which relate to records and reports of certain transactions involving currency and monetary instruments. The maximum prison sentence for these offenses is five years. These offenses sometimes are prosecuted as conspiracies, frauds, or false statements under 18 U.S.C. §§ 371, 1001, 1005–1008, or 1014.

Money laundering activities are essential to the operation of organized crime. Congress has recently increased the maximum penalties for a typical money laundering case from a one year misdemeanor to twenty years imprisonment. The guidelines provide substantial punishments for these offenses. In fiscal year 1985, the time served by defendants convicted of felonies involving monetary transaction reported under 31 U.S.C. §§ 5313, 5316, and 5322 averaged about ten months, and only a few defendants served as much as four to five years. However, courts have been imposing higher sentences as they come to appreciate the perniciousness of this activity, and sentences as long as thirty-five years have been reported. Congress has demonstrated its intent to increase the sanctions for money laundering offenses by making all reporting violations felonies in 1984, as well as by enacting the Money Laundering Control Act of 1986, which creates new offenses and provides higher maximum sentences for similar conduct when facilitation or concealment of serious criminal activity is involved.

The sentencing factors are derived from distinctions in the statute and in the Money Laundering Control Act. The dollar value of the transactions not reported is an indicator of several factors that are pertinent to the sentence, including the likely criminal source of the funds, the size of the criminal enterprise, and the extent to which the defendant participated. The defendant's intent and the nature of any associated criminal behavior are also important. In keeping with the Congressional intent of the Anti-Drug Abuse Act of 1986 (of which the Money Laundering Control Act is a part), the offense level is increased the most when any associated criminal activity is "specified unlawful activity" that involves trafficking in narcotics or other dangerous drugs. This includes a conspiracy or other inchoate offense, an object of which is the manufacture, importation, or distribution of narcotics or other controlled substances. A further increase is provided when the defendant actually intended to promote the carrying on of an illegal activity specified in the statute.

The offense levels in this section presume that the defendant should have suspected that the funds involved were likely to be the proceeds of crime. Section Y216, Criminal Purpose, authorizes the court to depart from the guidelines by enhancing the sentence if the defendant violated these statutes to facilitate or conceal another crime, or for some other criminal purpose. Conversely, if the circumstances would have indicated to a reasonable man that the funds were unlikely to be the proceeds of crime, the court should depart from the guidelines by reducing the otherwise applicable sentence.

§ S212. Laundering of Monetary Instruments. The base offense level is 20.

(a) Specific Offense Characteristics.

(1) If the defendant was convicted under 18 U.S.C. § 1956(a)(1)(A), increase by 3 levels.

(2) If the specified unlawful activity involved the manufacture, importation, or distribution of narcotics or other controlled substances, increase by 2 levels.

(3) If the value of the funds exceeded $100,000, increase the offense level as specified in § S222(a)(3).

COMMENTARY

This section applies to violations of 18 U.S.C. § 1956. That statute is a part of the Anti-Drug Abuse Act of 1986 that prohibits financial transactions involving funds that are the proceeds of "specified unlawful activity," if such transactions are intended to facilitate that activity, or conceal the nature of the proceeds or avoid a transaction reporting requirement. The maximum term of imprisonment specified is twenty years.

This guideline provides for significant punishment in keeping with the clear intent of the legislation. The punishment is higher than that specified in § S211 because of the higher statutory maximum, and the added elements and higher standard of proof as to knowledge and intent.

The base offense level is set to correspond roughly with the current parole guidelines when more than $500,000 is involved. A higher punishment is specified when the defendant is convicted under 18 U.S.C. § 1956(a)(1)(A) because that subsection applies to defendants who did not merely conceal a serious crime that had already taken place, but encouraged or facilitated the commission of further crimes.

The amount of money involved is included as a factor because it is an indicator of the scope of the criminal enterprise as well as the degree of the defendant's involvement. Narcotics trafficking is included as a factor because of the clearly expressed Congressional intent to adequately punish persons involved in that activity.

§ S213. Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity. The base offense level is 18.

(a) Specific Offense Characteristics.

(1) If the offender knew the transaction involved the proceeds of specified unlawful activity, increase by 2 levels.

(2) If the specified unlawful activity involved the manufacture, importation, or distribution of narcotics or other controlled substances, increase by 2 levels.

(3) If the value of the funds exceeded $100,000, increase the offense level as specified in § S211(a)(3).

COMMENTARY

This section applies to violations of 18 U.S.C. § 1957. That statute is a part of the Anti-Drug Abuse Act of 1986 prohibiting financial transactions that exceed $10,000 and involve the proceeds of "specified unlawful activity" (as defined in 18 U.S.C. § 1956), knowing that the funds were "criminally derived property." The maximum term of imprisonment specified is ten years.

The statute is similar to 18 U.S.C. § 1956. This guideline provides for significant punishment, in keeping with the intent of the legislation. The punishment is higher than that specified in § S211 because of the higher statutory maximum and the added element of knowing that the funds were criminally derived property. In keeping with the apparent legislative intent, expressed in the Money Laundering Control Act, to adequately punish those who aid specified criminal activity, a higher punishment is provided when the defendant knew that the funds were the proceeds of such activity, as opposed to merely criminally derived property. See § Y216, General Provisions.

The amount of money involved is included as a factor because it is an indicator of the scope of the criminal enterprise and the degree of the defendant's involvement. Narcotics trafficking is included as a factor because of the clearly expressed Congressional intent to adequately punish persons involved in that activity.

Part T—Offenses Involving Taxation

Introduction. The primary purpose of the laws that make certain tax offenses criminal is to ensure the full, prompt, and efficient collection of taxes. Accurate reporting of information is another interest protected. These guidelines are intended to provide for a just sentencing structure that advances the purposes of the tax laws.

1. Income Taxes

26 U.S.C. §§ 7201–7207
26 U.S.C. § 7215

§ T211. Tax Evasion. The base offense level is the level in the Tax Table, § T241, that corresponds to the tax deficiency. If the amount of the deficiency is not established, the base offense level is 9. For purposes of this guideline, "deficiency" means the total amount of tax that the taxpayer evaded or attempted to evade, but not less than 25 percent of the amount any misstatements or omissions decreased reported net income. When more than one year or more than one taxpayer is involved, the amounts are to be added. The deficiency does not include any interest or penalties.

(a) Specific Offense Characteristic.

(1) If the offense was committed in furtherance of or in conjunction with a movement to encourage others to violate the internal revenue laws, increase by 2 to 4 levels, depending upon the nature of the conduct and its potential to subvert the tax system.

§ T212. Willful Failure To File Return, Supply Information, or Pay Tax. The base offense level is one level lower than the level in the Tax Table, § T241, corresponding to the deficiency as defined below. If there is no deficiency, or its amount is not established, the base offense level is 6. For purposes of this guideline, "deficiency" means the total amount of tax that the taxpayer owed and did not pay, but not less than 10 percent of the amount by which the taxpayer's total income exceeded $20,000.

(a) Specific Offense Characteristic.

(1) If the offense was committed in furtherance of or in conjunction with a movement to violate the internal revenue laws, increase by 2 to 4 levels, depending upon the nature of the conduct and its potential to subvert the tax system.

§ T213. Fraud and False Statements (Under Penalty of Perjury). If the offense was committed in order to facilitate evasion of a tax, including a future tax, the base offense level is the level in the Tax Table, § T241, corresponding to a deficiency of 25 percent of the amount by which income was understated. Otherwise, the base offense level is 6.

(a) Specific Offense Characteristics.

(1) If the offender was in the business of preparing or assisting in the preparation of tax returns or of providing documentation for the substantiation of tax returns, increase by 1 level.

(2) If the offense was committed in furtherance of or in conjunction with an organized movement to encourage others to violate the internal revenue laws, increase by 2 to 4 levels, depending upon the nature of the conduct and its potential to subvert the tax system.

§ T214. Aiding, Assisting, Procuring, Counseling, or Advising Tax Fraud. The base offense level is the level in the Tax Table, § T241, corresponding to a deficiency of 25 percent of the total amount by which income was understated pursuant to the defendant's advice or instructions. If there is no deficiency, or its amount is not established, the base offense level is 6.

(a) Specific Offense Characteristics.

(1) If the defendant was in the business of preparing or assisting in the preparation of tax returns or of providing documentation for the substantiation of tax returns, increase by 1 level.

(2) If the defendant committed the offense in furtherance of or in conjunction with a fraudulent pattern or scheme from which he derived substantial income, increase by 2 to 4 levels, depending upon the nature and extent of the scheme.

(3) If the offense was committed in furtherance of or in conjunction with a movement to encourage others to violate the internal revenue laws, increase by 2 to 4 levels, depending upon the nature of the conduct and its potential to subvert the tax system.

§ T215. Fraudulent Returns, Statements, or Other Documents. The base offense level is 6.

§ T216. Failing To Collect or Truthfully Account for and Pay Over Tax. The base offense level is 4, or the level in the Tax Table, § T241, corresponding to the amount of tax not paid over, whichever is greater.

§ T217. Failing To Deposit Collected Taxes in Trust Account as Required After Notice. The base offense level is 4, or five less than the level in the Tax Table, § T241, corresponding to the amount not deposited, whichever is greater.

§ T218. Failing To Furnish an Employee a True Statement Regarding a Tax Withheld. The base offense level is 4.

§ T219. Furnishing False Information to an Employer in a Withholding

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Exemption Certificate, or Failing to Supply Information that Would Require an Increase in the Tax To Be withheld. The base offense level is 4.

2. Alcohol and Tobacco Taxes

§ T221. Non-Payment of Taxes. The base offense level is the level in the Tax Table, § T241, corresponding to the amount of taxes that the taxpayer failed to pay or attempted not to pay.

§ T222. Regulatory Offenses. The base offense level is 4.

3. Customs Taxes

§ T231. Evading Import Duties or Restrictions (Smuggling). The base offense level is the level in the Tax Table, § T241, corresponding to the duty evaded.

§ T232. Receiving or Trafficking in Smuggled Property. The offense level is the offense level from § T231 for smuggling the object into the United States without paying the duty.

4. Tax Table

§ T241. Tax Table.

Deficiency	Offense level
less than $2,000	6.
$2,000 to $5,000	7.
$5,001 to $10,000	8.
$10,001 to $20,000	9.
$20,001 to $40,000	10.
$40,001 to $70,000	11.
$70,001 to $120,000	12
$120,001 to $200,000	13
$200,001 to $350,000	14.
$350,001 to $600,000	15
$600,001 to $1,000,000	16
Over $1,000,000	17 or above.

COMMENTARY

Offenses Involving Income Taxes

This part deals with criminal violations of the internal revenue laws. The offense levels have been set independently of those for offenses such as fraud or theft because the collection of taxes involves a unique governmental interest and estimates of the level of evasion are extremely high.

§ T211. This section deals with conduct proscribed by 26 U.S.C. § 7201. In order for there to be a violation of 26 U.S.C. § 7201, there must be an affirmative act in furtherance of the evasion of taxes. If there was no affirmative act, another section may apply. (E.g., if the taxpayer did not pay the tax and did not file a return, see § T212.) False statements in furtherance of the evasion (See § T213, § T215, and § T219) are considered part of tax evasion, and generally would not warrant consecutive sentences unless they occur in connection with taxes other than those that the defendant is charged with evading or attempting to evade.

This guideline relies most heavily on the amount of tax evaded because the interest protected by the statute is the collection of taxes. A greater evasion is obviously more harmful to the treasury, and more serious than a smaller one with otherwise similar characteristics. The guideline adopts a definition of "deficiency" that is intended to minimize the number and significance of disputes regarding the amount or size of the evasion. It corresponds to neither the "criminal deficiency" nor the "civil deficiency" as those terms are commonly defined. Rather, for purposes of the guideline, the deficiency is the larger of any of three figures as to which the prosecution presents reliable information: (1) The amount of tax that the taxpayer evaded; (2) the amount of tax that he attempted to evade; or (3) 25 percent of the amount by which any false statement or omission made with scienter (i.e., knowingly or recklessly) caused income to be understated, exclusive of offsetting items. The court is to determine these amounts as it would any other guideline factor, and need only make a reasonable estimate of the range (level) in the Tax Table where the deficiency falls. The purpose of these alternative standards is to deal with differing methods of proof and to eliminate disputes as to whether the taxpayer was entitled to offsetting adjustments that he failed to claim. When the indirect method of proof is used, the amount of unreported income may be uncertain; the guideline contemplates that the court will simply make a plausible estimate based on the facts presented, keeping in mind that countervailing facts are within the control of the defendant.

The overlapping imprisonment ranges in the Tax Table should also result in minimizing disputes. The consequence of an inexact estimate of the deficiency is never severe, even when the deficiency is near the boundary of a range. For example, even though the difference between $39,999 and $40,001 results in a change from level 10 to level 11, a sentence of eight to twelve months would be within the guidelines for either level. Indeed, any sentence between ten and twelve months would be within the guidelines for a deficiency ranging from $20,000 to $120,000. Thus, for all dollar amounts, the Tax Table affords the court considerable latitude in evaluating other factors, even when the amount of the deficiency is uncertain.

The presumptive base offense level has been set at 9, which corresponds to an evasion of $10,000 to $20,000. The great majority of tax evasion cases that are prosecuted involve a deficiency of at least $10,000. Thus, the fact that an evasion involved a particularly small amount of taxes may be viewed as a mitigating factor.

This guideline is intended both to reduce disparity in sentencing for tax evasion and to increase average sentence length somewhat, particularly for large-scale evasions. As a result, the number of purely probationary sentences will be reduced. Roughly half of all tax evaders are sentenced to probation without imprisonment, while the other half receive sentences that require them to serve an average prison term of twelve months. The Commission finds that any additional costs of imprisonment that may be incurred as a result of the increase in the average term of imprisonment for tax evasion are inconsequential in relation to the potential increase in revenue. Current estimates are that income taxes are underpaid by some $90 billion annually.

Although currently some large-scale evaders serve as much as five years in prison, in practice the average sentence length, for defendants sentenced to a term of imprisonment, does not increase significantly with the amount of tax evaded. Thus, the average time served by those sentenced to a term of imprisonment for evading less than $10,000 in taxes is about nine months, while the corresponding figure for those evading over $100,000 in taxes is about sixteen months. Guideline sentences should result in small increases in the average length of imprisonment for most tax cases that involve less than $100,000 in tax evaded. The increase may be slightly larger for cases involving more taxes. Absent aggravating factors, all sentences will be well below the corresponding maximum presumptive parole guideline.

Factors considered for incorporation into the guidelines included: (1) The amount of tax evaded, (2) whether the income on which the tax was evaded was unlawfully obtained, (3) the proportion of the tax evaded to the total tax due, (4) the number of years of evasion, (5) whether there was careful planning, (6) whether the offender encouraged or assisted others to evade taxes, and (7) whether the offender notified the Internal Revenue Service of the violation. Only factors (1) and (6) have been expressly incorporated into the guideline.

Factor (1) (the amount of tax that the offender evaded or attempted to evade): As discussed above, this is the primary factor, since the primary interest protected by the laws against tax evasion is collection of revenue.

Factor (2) (whether the income was lawfully or unlawfully obtained): Inclusion of this factor for deterrence purposes would appear justified because unlawfully obtained income is generally unreported or otherwise difficult to establish. In practice, it appears to have an effect that is significant but difficult to measure. Because its impact is difficult to quantify, and it is substantially equivalent to § Y216, Criminal Purpose, the Commission has elected not to include this factor explicitly in the tax guidelines. Instead, the court is encouraged to rely upon the General Provisions and make the appropriate upward adjustment if faced with this type of conduct.

Factor (3) (the proportion of the tax due that was evaded): This factor raises the issue of whether, for example, one who evades $100,000 in tax when it is 90 percent of the tax due should be punished more than one who evades $100,000 in tax when that is 10 percent of the tax due. Proponents of this factor argue that the former situation merits more punishment than the latter. That is by no means clear. In either case, the harm to the treasury is identical. Moreover, it should, on average, be considerably easier to prove intentional evasion in the former case, implying that for deterrence purposes, the latter case might require more punishment.

On the other hand, it might be argued that persons in the latter category are likely to be more responsive to the threat of sanctions because of their enormous income, so that not as high a sentence would be required in order to deter them. The available evidence does not enable the Commission to determine whether this somewhat complex factor has a significant impact in current practice. For these reasons, the Commission has elected not to include it in the initial guidelines.

Factor (4) (the number of years of evasion): This factor is related in part to the amount of tax evaded. Proponents of the factor argue that it is worse, for example, to evade $10,000 in tax over four years than in a single year. Presence of the factor thus implies greater culpability. It is plausible that multiple years of evasion cause the court and the IRS to underestimate the amount of tax evaded. Under current practice, repeated instances of evasion appear to result in an average additional time served of approximately one month.

Factor (5) (careful planning): It is difficult to commit tax evasion without planning. However, unusually sophisticated efforts to conceal the evasion obviously decrease the likelihood of detection. It is also likely that this factor, which can be related to organized criminal activity, has some impact on current practices. However, available data do not permit the Commission to quantify its effect.

Factor (6) (aiding or encouraging others to evade taxes): This factor, which may amount to a violation of 26 U.S.C. § 7206(2), significantly increases the risk of revenue loss, particularly when an organized movement is involved, and therefore has been expressly included as an aggravating factor. Although this factor is quite significant in current practice, where its average effect appears to be to increase the average term of imprisonment by one year, its importance obviously depends upon the nature and extent of the conduct. Accordingly, the Commission has chosen to provide a range for the factor.

Factor (7) (filing a corrected return): Giving the Internal Revenue Service notice of an error obviously increases the likelihood that a fraud or evasion will be detected. However, filing a corrected return may also be a ploy to avoid criminal liability. Existing data do not address this factor, and to a large extent it overlaps with the Chapter Three adjustment for Acceptance of Responsibility. Accordingly, no adjustment has been provided for this factor.

The Commission has decided not to make a distinction in the guideline to treat an employee who prepares fraudulent returns on behalf of his employer less severely than the principal. The role in the offense adjustments (Part Z) should suffice for this purpose.

This guideline does not treat an unsuccessful attempt less severely because such attempts generally involve completed acts that, but for fortuitous circumstances such as action by the Internal Revenue Service would result in the evasion. The statute makes no distinction in punishment as between an attempt and a completed offense; indeed, the offense is an attempt.

§ T212. This section refers to violation of 26 U.S.C. § 7203. Such violations are usually serious misdemeanors that are similar to tax evasion, except that there need be no affirmative act in support of the offense. It is rarely prosecuted unless the defendant also owed taxes that he failed to pay. In instances where no tax was due, the court should consider whether a sentence at or below the guideline minimum is warranted, especially if the failure to file was unconnected with other unlawful activity.

Because the conduct generally is tantamount to tax evasion, the guideline is similar to that for tax evasion (§ T211). Because the offense is a misdemeanor, the offense level has been set at one below the level corresponding to evasion of the same amount of taxes. The commentary to § T211 regarding aggravating and mitigating factors also applies to this offense.

An alternative measure of the deficiency, 10 percent of total income in excess of $20,000, has been provided because of the difficulty of computing the deficiency, which may become the subject of protracted civil litigation. It is expected that this measure will generally understate the tax due, and will not call for a punishment approaching the maximum unless very large incomes are involved. Thus, the burden will remain on the prosecution to provide a more accurate estimate of the deficiency if it seeks enhanced punishment.

The intended impact of this guideline is to increase the average time served for this offense, and to increase significantly the number of violators who receive a term of imprisonment. Currently, the average time served for this offense is about 2.5 months, including those who are not sentenced to prison. Considering only those who do serve a term of imprisonment, the average term is about six to seven months.

§§ T213 and T214. § T213 refers to conduct proscribed by 26 U.S.C. §§ 7206(1), and 7206(3)–(5). Section T214 applies to conduct proscribed by 26 U.S.C. § 7206(2). Together, these guidelines cover the wide variety of conduct prohibited by 26 U.S.C. § 7206, conduct generally amounting to actual or attempted tax evasion (subsection 1), or assisting in tax evasion (subsection 2). Accordingly, the guidelines treat the offenses essentially as tax evasion.

In instances where the offender is setting the groundwork for future tax evasion, he may make false statements that underreport income but, as of the time of conviction, may not yet have resulted in a tax deficiency. To deal with those cases, the deficiency is to be computed using a rate of 25 percent, somewhat below the maximum under the new tax law. The same rate is used when the taxes of another person are involved, so as to avoid complex problems of proof and invasion of privacy. Misreporting of income by the principal that the defendant facilitated would have to be established.

In certain instances, such as promotion of a tax shelter scheme, the offender may advise other persons to violate their tax obligations through filing returns that find no support in the tax laws. If this type of conduct can be shown to have resulted in the filing of false returns (regardless of whether the principals were aware of their falsity), it will be treated as evasion of the approximate amount (computed by using a tax rate of 25 percent) by which the returns understate the taxes due.

A more severe punishment is specified for tax preparers because their misconduct poses a greater risk of revenue loss and is more clearly willful. The same is true for tax protesters.

See also commentary to § T211 regarding significant factors not expressly incorporated into these guidelines.

§ T215. This section refers to conduct proscribed by 26 U.S.C. § 7207, which is a misdemeanor. It is to be distinguished from 26 U.S.C. § 7206(1) (§ T213), which is a felony that requires a false statement under penalty of perjury. The offense level has been set at 5 in order to give the sentencing judge considerable latitude because the conduct may be similar to tax evasion.

§ T216. This section refers to conduct proscribed by 26 U.S.C. § 7202. This offense is a felony that is infrequently prosecuted. The failure to collect or truthfully account for the tax must be willful, as must the failure to pay.

Where no effort is made to defraud the employee, the offense is a form of tax evasion, and is treated as such in the guidelines. For purposes of applying the Tax Table, the deficiency is the amount of unpaid tax. In the event that the employer not only failed to account to the Internal Revenue Service and pay over the tax, but also collected the tax from employees and did not account to them for it, it is both tax evasion and a form of embezzlement. In such instances, the court should consider increasing the offense level.

§ T217. This section refers to conduct proscribed by 26 U.S.C. § 7215 and 7512(b). This offense is a misdemeanor that does not require any intent to evade taxes, nor even that taxes have not been paid. The more serious offense is 26 U.S.C. § 7202 (See § T216).

This offense should be relatively easy to detect and fines may be feasible. Accordingly, it has been graded considerably lower than tax evasion, although some effort has been made to tie the offense level to the level of taxes that were not deposited. The deficiency is the amount of tax that was not deposited. If funds are deposited and withdrawn without being paid to the Internal Revenue Service, they should be treated as never having been deposited.

A fine that is a percentage of the funds not deposited is suggested.

§ T218. This section refers to conduct proscribed by 26 U.S.C. § 7204, a misdemeanor that is infrequently prosecuted and rarely results in a substantial term of imprisonment.

§ T219. This section refers to conduct proscribed by 26 U.S.C. § 7205. This offense rarely results in a substantial term of imprisonment. The court should, however, consider increasing the offense level if the offender was attempting to evade, rather than delay, payment of taxes.

2. Offenses Involving Alcohol and Tobacco Taxes

This section deals with offenses contained in Parts I–IV of Subchapter J of Title 26.

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chiefly 26 U.S.C. §§ 5601–5605, 5607, 5608, 5661, 5671, 5697, and 5762. Where the essence of the conduct is tax evasion or a regulatory violation. Because these offenses are no longer a major enforcement priority, no effort has been made to provide a section-by-section set of guidelines. Rather, the conduct is dealt with by dividing offenses into two broad categories: tax evasion offenses and regulatory offenses.

§ T221. The most frequently prosecuted conduct violating this section is operating an illegal still. 26 U.S.C. § 5601(a)(1). Offenses in this subsection are treated as equivalent to income tax evasion offenses. The tax deficiency is the total amount of unpaid taxes that were due on the alcohol and/or tobacco.

Offense conduct directed at more than tax evasion, e.g., theft or fraud may warrant departure above the guideline.

§ T222. For offenses where there is no effort to evade taxes, such as record-keeping violations, the offense level is set at 5. Prosecution of these offenses is rare.

3. Offenses Involving Customs

This part deals with violations of 18 U.S.C. §§ 496, 541– 545, 547, 548, 550, 551, 1915 and 19 U.S.C. §§ 283, 1436, 1464, 1465, 1586(e), 1708(b). These guidelines are primarily aimed at revenue collection or trade regulation. They are not intended to deal with the importation of contraband, such as drugs, or other items such as obscene material, firearms or pelts of endangered species, importation of which is prohibited or restricted for non-economic reasons. Other, more specific legislation generally applies to most of these offenses. Importation of contraband or stolen goods would be a reason for referring to another, more specific guideline, or for imposing a sentence above that specified in these guidelines.

§ T231. This offense is treated as equivalent to tax evasion. A lower offense level, or a point near the minimum of the range, might be appropriate for cases involving tourists who bring in items for their own use. Such conduct generally poses a lesser threat to revenue collection.

Particular attention should be given to items whose entry is prohibited, limited, or restricted. Especially when such items are harmful or protective quotas are in effect, the duties evaded on such items may not adequately reflect the harm to society or protected industries resulting from their importation. In such instances, the court should impose a sentence above the guideline. A sentence based upon an alternative measure of the "duty" evaded, such as the increase in market value due to importation, or 25 percent of the items' fair market value in the United States, might be considered.

§ T232. This offense, encompassed by 18 U.S.C. § 545, is treated as equivalent to smuggling without payment of any duty.

Part X—Other Offenses

Introduction. The guidelines in this part have application to a broad variety of illegal activities that can occur in numerous contexts and are not covered by a specific guideline.

1. Conspiracies, Attempts, Solicitations

18 U.S.C. § 286
18 U.S.C. §§ 371–373
18 U.S.C. § 2271
Also See Statutory Index

§ X211. Conspiracies and Attempts. If the defendant was convicted of a conspiracy or an attempt not otherwise covered by a specific guideline, the offense level is the same level as that of the underlying offense(s).

§ X212. Solicitations. If the defendant was convicted of a solicitation not otherwise covered by a specific guideline, the offense level is one-half the level as that of the underlying offense.

COMMENTARY

Under § X211, the offense level for conspiracies and attempts is the same as that for the underlying conduct. This is consistent with the parole guidelines. This principle will normally result in a sentence for conspiracy less than that imposed had the underlying offense been completed. While the defendant will be punished according to the base offense level of the underlying offense, specific offense characteristics will not apply unless that conduct actually occurred. For example, if two defendants are arrested during the conspiratorial stage of planning an armed bank robbery, the offense level would not include speculative aggravating factors such as injury to others, hostage taking, the amount of money the defendants hoped to steal, and so forth. The offense level would reflect the level applicable to armed robbery of a financial institution.

Under § X212, the Commission has concluded that it is appropriate to treat one who solicits illegal conduct at an offense level of one-half the level for the underlying offense. The offense level in these cases shall include any specific offense characteristics that apply to elements of the crime actually intended, and to acts that actually occurred (and are conduct relevant to the underlying offense). Enhancement of sentence for defendants involved in this type of criminal activity may be appropriate under Part Z, Role in the Offense. If the underlying purpose of a conspiracy is not itself illegal, the base offense level shall be determined by the greater of any felonious conduct intended, or by reference to guidelines for criminal conduct similar to the underlying purpose of the conspiracy. If the offense level still cannot be determined, the court may impose a sentence consistent with the purposes of sentencing. 18 U.S.C. § 3553(a)(2). If there were multiple illegal objects of the conspiracy, the base offense level is that for the most serious underlying conduct intended by the defendant.

If a defendant was convicted of conspiracy or solicitation and also for the underlying conduct, the sentence for the conspiracy or solicitation shall generally be imposed to run concurrently with the substantive charge of conviction, except in cases where it is otherwise specifically provided for by the guidelines or by law. 26 U.S.C. § 994(l)(2). If a defendant is convicted of conspiracy, the sentence should be imposed only on the basis of the defendant's conduct or the conduct of co-conspirators over whom the defendant exercised control.

2. Aiding and Abetting

18 U.S.C. § 2
18 U.S.C. §§ 752–753
18 U.S.C. §§ 755–757
18 U.S.C. § 2383

§ X221. Aiding and Abetting. If the defendant was convicted of aiding and abetting in the commission of an offense, the offense level is the same as that of the underlying offense.

COMMENTARY

A defendant convicted of aiding and abetting is "punishable as a principal." 18 U.S.C. § 2. Section X221 provides that aiding and abetting the commission of an offense has the same offense level as that for the underlying offense. Varying degrees of involvement or assistance may be reflected by appropriate adjustment of the sentence under Part Z, Role in the Offense.

3. Accessory After the Fact

18 U.S.C. § 3
18 U.S.C. § 757
18 U.S.C. §§ 1071–1072
18 U.S.C. § 1381
18 U.S.C. § 2388(c)

§ X231. Accessory After the Fact. If the defendant was convicted as an accessory after the fact, the offense level is 2 to 10 levels lower than that of the underlying offense, depending upon the nature and extent of the defendant's misconduct.

COMMENTARY

An accessory after the fact may receive up to one-half the punishment prescribed for the principal offender, or if the principal is punishable by death, not more than ten years. 18 U.S.C. § 3. Section X231 provides that an accessory after the fact will be punished at an offense level 2 to 10 levels below the underlying offense. A range is provided to assure that an appropriate sentencing distinction is made between an accessory after the fact and the principal offender. The appropriate level within the range should reflect considerations that include, but are not limited to, the following:

(1) The nature and seriousness of the principal's conduct;
(2) The danger presented by the principal;
(3) The extent of the defendant's knowledge and appreciation of 1 or 2; and
(4) The extent of the defendant's aid to the principal.

4. All Other Offenses

§ X241. Other Offenses. If the offense was one for which no specific guideline was written, the court shall apply the most analogous guideline. If no analogous guideline is available, the court shall impose a sentence consistent with the purposes of sentencing. 18 U.S.C. § 3553(a)(2).

COMMENTARY

Section X241 addresses cases in which a defendant has been convicted of any other offense for which there is no specific guideline, such as threatening to commit a crime. For example, a broad range of federal threat offenses are distinguished by different felony classifications. For example, threatening foreign officials or official guests carries a maximum prison sentence of six months, 18 U.S.C. § 112(b), while threatening the President or those in line of succession carries a possible five year sentence. 18 U.S.C. § 871. Threatening violence by use of explosives, 18 U.S.C. § 844(e), and threatening to kidnap or injure, 18 U.S.C. § 875, both carry a possible five year sentence. A threat of violence affecting commerce carries a maximum twenty year sentence. 18 U.S.C. § 1951. Because of the extensive range of conduct and punishment addressed in these offenses, significant latitude is given a court in sentencing under § X241.

Part Y—General Provisions

Introduction. The general provisions are not applicable where guidelines expressly take account of the same factor, either in the base offense level or the specific offense characteristics. The provisions identify factors relevant to broad categories of criminal conduct, and provide flexibility for individualized sentences. Use of general provisions is governed by the definition of sentencing factors provided in the Overview to Chapter Two, and include all intended or foreseeable harm that resulted from the offense conduct. The general provisions apply where specific guidelines do not adequately reflect the nature of particular criminal conduct.

The general provisions are divided into two sections. Section 1 provides departures from the applicable guidelines. These provisions apply to offenses for which criminal behavior and its consequences are too individualized to quantify in a meaningful way. Therefore, the guidelines provide these factors as a basis for departure. The degree to which the court departs is left to the discretion of the sentencing judge.

For example, the death of the victim is expressly considered in the homicide guidelines. It is not, however, included as a factor in the fraud guidelines, because it would be unusual to have a death in a fraud case. If death occurred, the general provisions allow the court to depart from the applicable guidelines by increasing the offense level to reflect the seriousness of the offense. Thus, in a case where fraudulent substitution of inferior cord in parachutes by a defense contractor causes the death of a serviceman, the departure provision relating to death, § Y211, may be applied.

Like departures, Section 2 applies to criminal conduct not included in the base offense level or the specific offense characteristics of specific guidelines. This section provides adjustments that might appropriately apply to any other part of Chapter Two. Unlike the departures, guidance for their application is given. The court is directed to consider these adjustments and to increase or decrease the otherwise applicable offense level.

For example, the specific offense guidelines ordinarily assume psychological injury to the victim. However, the amount of injury may be so severe that a specific offense guideline fails to adequately reflect the seriousness of the offense. Section Y222 allows the judge to increase the penalty for that injury. Or, for example, if the defendant collected advance deposits from elderly victims for care in non-existent nursing homes, the adjustment for vulnerable victims, § Y223, is applicable.

It is possible that more than one adjustment or departure may apply, depending upon the facts and circumstances of the relevant offense conduct.

The provisions are not meant to be exhaustive. In addition to those factors identified in the general provisions, other factors justifying an enhancement or reduction of the offense level are found in Part Z, Role in the Offense. Cases will arise presenting other factors as well, perhaps very different from the ones set forth here, warranting departure or adjustment. Similarly, the court may depart from the guidelines, even though the reason for departure is listed under adjustments, if the court determines the adjustment range is inadequate. The departures and adjustments will be controlled by (1) the need for the judge to state reasons; (2) review by the appellate court; and (3) future guidance given by the Commission based upon analysis of guideline practice.

Note.—The Commission has considered three different ways of taking account of the factors in the general provisions. First, some or all factors might constitute grounds for departure from the guidelines. The Commission would offer in its commentary guidance for the courts in departing; while that guidance would not necessarily bind the courts, appellate courts may take the commentary into account when deciding whether a sentence that departed from the guidelines was unreasonable.

Second, the Commission might treat some or all factors as adjustments within the guidelines, providing specific adjustment levels to take account of the extent or the manner in which a particular factor appeared in a given case.

Third, the Commission might treat some or all factors as adjustments within the guidelines, but provide a range to which the court would refer in making the adjustment (e.g., in the case of coercion, adjust by one to five levels). The Commission would offer guidance in the commentary as to how the court should select within the range. This approach would avoid creating potentially litigable issues about precisely which offense level should apply. (The Commission has followed the approach in some instances within certain individual guidelines.) The Commission has not reached a conclusion, however, about whether its authorizing statute permits this approach.

Part Y, as presently written, illustrates both the first and second approach. The Commission solicits comment (1) as to the approaches that should be used for a particular factor; (2) as to whether other factors should be included in these general provisions; and (3) as to the advisability of the third approach here or elsewhere in the guidelines.

1. Departures

§ Y211. Death. If death resulted, the court should increase the offense level to reflect the seriousness of the misconduct.

§ Y212. Disruption of Governmental Function. If the defendant's conduct resulted in a significant disruption of a governmental function, the court should increase the offense level to reflect the nature and extent of the disruption and the importance of the governmental function affected.

§ Y213. Extreme Conduct. If the defendant's conduct was unusually heinous, cruel, brutal, or degrading to the victim, the court should increase the offense level to reflect the nature and extent of the conduct.

§ Y214. Victim Conduct. If the defendant committed homicide or assault (Part A) under circumstances that establish that the victim's wrongful conduct contributed significantly to the confrontation, the court should reduce the offense level to reflect the nature and circumstances of the offense.

§ Y215. Public Welfare. If national security, public health, or safety was significantly endangered, the court should increase the offense level to reflect the nature and circumstances of the offense.

§ Y216. Criminal Purpose. If the defendant committed the offense in order to facilitate or conceal the commission of another offense, or for another criminal purpose, the court shall increase the offense level to reflect the true nature and seriousness of the defendant's conduct.

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§ Y217. Altruistic Purpose. If the defendant committed the offense for an altruistic purpose that makes the defendant's conduct less harmful, or that significantly diminishes society's interest in punishing or preventing that conduct, reduce the offense level to reflect the nature and circumstances of the offense.

§ Y218. Diminished Capacity. If the defendant committed a non-violent offense while suffering from significantly reduced mental capacity not resulting from voluntary use of drugs or other intoxicants, decrease the offense level by not more than 4 levels to reflect the extent to which reduced mental capacity contributed to the commission of the offense, provided that the defendant's criminal history does not indicate a need for incarceration to protect the public.

COMMENTARY

These provisions are consistent with legislative intent that the Commission establish policies and practices to "permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices," 28 U.S.C. § 991(b)(1)(B), and with other legislation that indicates the sentencing process should retain some reasonable measure of discretion. 18 U.S.C. § 3553.

It shall be the probation officer's duty in the presentence report to provide an explanation "of any factors that may indicate that a sentence of a different kind or of a different length than one within the applicable guideline would be more appropriate under all the circumstances." Rule 32(c)(2)(B), as amended, effective November 1, 1987. It still remains for the court to state after finding "that an aggravating or mitigating circumstance exists that was not adequately taken into consideration by the Sentencing Commission . . . the specific reason for the imposition of a sentence different" from one that would otherwise be imposed under the applicable guideline for the offense of conviction.

There will be other factors in addition to those identified by the departures section that have not been given adequate consideration by the Commission. The statutory standard for departure from the guidelines arises when "the court finds that an aggravating or mitigating circumstance exists that was not adequately taken into consideration by the Sentencing Commission in formulating the guidelines." 18 U.S.C. § 3553(b). This does not mean that a sentencing judge must review the administrative record of the Commission to determine the extent or adequacy of consideration the Commission gave to any particular factor. Rather, a sentencing judge may depart from the guidelines when an aggravating or mitigating factor is present to an extreme degree or under extraordinary circumstances, supporting a reasonable conclusion that a factor substantially similar to that confronting the sentencing judge was not likely considered in the applicable guideline. Departures should be no more than necessary to reflect the seriousness of the offense conduct. When the guidelines require a specific type of sanction (e.g., imprisonment), the judge should ordinarily impose that type of sanction even though the terms, conditions, or length of the sentence may be increased or decreased depending upon the factor justifying the departure.

§ Y211. If death occurred as a result of the defendant's conduct, the sentencing judge may impose a sentence up to the statutory maximum for the offense of conviction. For example, if a case involving pollution of waters under 33 U.S.C. § 1319(c)(1) resulted in death, the resultant loss of life is paramount to any other environmental interests and should be the most significant factor in imposition of sentence. Other federal statutes, including 18 U.S.C. § 844(i), (arson) and 18 U.S.C. § 1992, (trainwrecking), provide up to life imprisonment where death resulted from the defendant's conduct. Although the sentencing judge determines the extent to which the loss of life should govern punishment for the underlying conduct, loss of life would not automatically suggest a sentence at or near the statutory maximum. In these cases the sentencing judge should give consideration to matters that would normally distinguish among levels of homicide, such as the defendant's state of mind in the underlying conduct, or the degree of planning or preparation involved in the offense. Other appropriate factors are whether multiple deaths resulted from the defendant's conduct, the level of victim suffering prior to death, the defendant's motive in the underlying conduct, the means by which life was taken, and the foreseeability that the underlying conduct would be life-threatening.

§ Y212. The commission of an offense that carries with it an additional impingement upon the authority of government presents a danger of obstructing or interfering with the process of government and warrants significant enhancement of punishment.

The following are suggested criteria for offenses involving disruption of governmental function:

1. the extent to which the crime disrupted a governmental function; and
2. the importance of that function.

§ Y213. Extreme violence or victim abuse occurs in a variety of ways. A specific guideline cannot fairly identify the various degrees of misconduct. Examples of extreme conduct include torture of a victim, gratuitous infliction of injury, or unnecessary prolonging of pain or humiliation. If the defendant engaged in conduct of this nature, the court should increase the punishment to reflect the severity of the conduct. A resulting sentence at or near the statutory maximum would be appropriate in most cases.

§ Y214. The wrongful conduct of the victim directed at the defendant may provoke the crime. In assaults and homicides this feature may amount to a significant mitigating circumstance. In deciding the extent of a sentencing reduction, the court should consider:

1. the size and strength of the victim, or other relevant physical characteristics, in comparison with those of the defendant;
2. the persistence of the victim's conduct and any efforts by the defendant to prevent confrontation;
3. the danger reasonably perceived by the defendant, including the victim's reputation for violence;
4. the danger actually presented to the defendant by the victim; and
5. any other relevant conduct by the victim that substantially contributed to the danger presented.

This provision does not apply to other crimes of violence such as criminal sexual conduct, nor does it generally justify reduction for offenses other than homicide or assault. However, there may be unusual or extreme cases that justify a decreased penalty due to victim conduct. This provision does not preclude a sentencing judge from departing from the guidelines in unusual cases.

§ Y215. Although most crimes are not directed at the general public, there are offenses in which the public suffers significant adverse effects. For example, if a scheme involved fraud by a medicaid provider who falsified laboratory reports, there may be special impact upon the public that should be reflected in sentencing.

Suggested criteria, among others, for consideration are:

1. The nature and significance of those interests affected; and
2. The extent to which any damage to the public welfare is permanent.

§ Y216. Sentences should reflect the true motivation for and purpose of the defendant's conduct. If, for example, the offense of conviction is tax evasion but the reason for not reporting income was not merely to avoid paying taxes but also to conceal an illegal source of income, an increase in the sentence for tax evasion is appropriate to reflect the true nature of the defendant's conduct. Other common examples include a defendant convicted of illegal possession of a handgun who acquired the weapon to use in a robbery, or a defendant convicted of failing to report currency transactions who was attempting to conceal the proceeds of narcotics trafficking.

§ Y217. If a defendant's intent in committing the offense was not to produce the ultimate harm against which the statute was designed to protect, society's interest in punishment and deterrence is significantly reduced. For example, if a war veteran possesses a machine gun or grenade as a trophy or memento, or a school teacher possesses controlled substances for display in a drug education program, a reduction in sentence is warranted. A decreased sentence may also be warranted if a defendant committed the offense out of altruism or in order to avoid some other serious harm.

This provision should not be utilized to decrease a sentence because the defendant perceives his motive to be beneficent unless his good motive makes his conduct less harmful or diminishes society's interest in punishing or preventing the conduct. Providing defense secrets to a hostile power deserves no less punishment because the defendant believes that government policies are misdirected. Similarly, a defendant who brings aliens into the United States unlawfully deserves no consideration simply because he disagrees with national immigration policies. His good motive should decrease the overall potential of his conduct for harming society in order to justify a departure.

Under no circumstances may this provision be utilized to reduce the sentence because of a mental state that is attributable to the voluntary use of alcohol, drugs, or other mind-altering substances.

§ Y218. A reduction in sentence may be justified when a defendant suffers from a significantly reduced mental capacity so that he did not fully appreciate the criminality of his conduct. This provision applies only when a defendant does not present a danger to the public. Thus, it may not be applied when the offense is a violent one, or a defendant's criminal history otherwise indicated that he would present a danger to the public if released. Furthermore, sentence reduction based on a mental state that is attributable to the voluntary use of alcohol, drugs, or other mind-altering substances is expressly prohibited.

2. Adjustments

§ Y221. Property Loss or Damage. If the offense caused property damage or loss (and neither property damage nor loss is a factor in the offense guideline), increase the offense level as follows:

(a) If the property loss or damage is small in relation to the other harm caused or risked but nonetheless significant, increase by 1 level;

(b) If the property loss or damage is approximately equal in magnitude to the other harm caused or risked, increase by 3 levels;

(c) If the property loss or damage is substantially more serious than the other harm caused or risked, increase by 5 levels.

In cases falling between these reference points, intermediate increases of 2 or 4 levels should be made.

§ Y222. Extreme Psychological Injury. If extreme psychological injury resulted, increase the offense level by 1 level. If extreme psychological injury is substantially more serious than the other harm caused or risked, increase the offense level by 3 levels.

§ Y223. Vulnerable Victims. If a victim, or class of victims, was especially vulnerable due to age (and age of the victim was not an element of the offense), or mental or physical condition, increase the offense level by 1 level. If the victim's vulnerability was the reason the victim was selected by the defendant, increase the offense level by 4 levels.

§ Y224. Victim Official. If, in any offense involving the person (Part A), the victim was selected or the crime was committed because the victim was: law enforcement or corrections personnel, the President, President-elect, Vice-President, a Member of Congress, member of the federal judiciary, high-level appointed official, other government official or employee, a foreign official, official guest, internationally protected person, or a member of the immediate family of such persons, increase the offense level by 3 levels.

§ Y225. Physical Injury. If significant physical injury resulted, increase the offense level as follows to reflect the nature and extent of the injury:

Degree of physical injury	Increase in level
Permanent bodily injury	6
Serious bodily injury	4
Bodily injury	2

§ Y226. Weapons and Dangerous Instrumentalities. If a weapon or dangerous instrumentality was involved, increase the offense level as follows:

Weapon use	Increase in level
Discharged	5
Otherwise used	4
Displayed	3
Possessed or only threatened use	2

In crimes of violence or drug trafficking crimes where a firearm is used or carried, separate prosecution and conviction under 18 U.S.C. § 924(c) will result in imposition of a statutory mandatory sentence of at least five years, consecutive to the underlying offense.

§ Y227. Abduction or Unlawful Restraint. If any person is abducted or taken hostage to facilitate commission of an offense or to escape from the scene of a crime, increase by 4 levels.

§ Y228. Coercion or Duress. If the defendant committed the offense because, as a result of a credible threat, the defendant reasonably believed that he or a member of his family would suffer serious, imminent physical harm unless he committed the offense, reduce the offense level by:

(a) 5 levels if the offense was a non-violent offense and the threatened harm substantially outweighed any harm resulting or risked by the offense;

(b) 4 levels if the offense was a non-violent offense and the threatened harm outweighed any harm resulting from or risked by the offense;

(c) 3 levels if the offense was a non-violent offense and the threatened harm was the same or less than any harm resulting from or risked by the offense;

(d) 2 levels if the offense was a violent offense and the threatened harm outweighed any harm resulting from or risked by the offense;

(e) 1 level if the offense was a violent offense and the threatened harm was the same or less than any harm resulting from or risked by the offense.

COMMENTARY

§ Y221. This adjustment is designed for crimes in which property loss or damage is incidental. In increasing the offense level because of property harm, the court must evaluate the magnitude of such harm in relation to the other harm caused by the offense. This is necessary because even a large property loss may be insignificant in a very serious crime, such as murder, but quite significant when it occurs in the context of a lesser crime, such as simple assault or a regulatory violation.

The procedure for making this adjustment can be implemented as follows: Evaluate the total property loss plus damage. Look up the dollar value in the property table in § B211(a)(6). Compare that number with the offense level of the offense of conviction to determine whether to apply adjustment (a), (b), or (c), or an intermediate adjustment.

This adjustment does not apply when the offense guideline contains an adjustment for either property loss or damage. If both loss and damage result, the two should be added and the adjustment from the offense guideline that corresponds to the total should be used.

§ Y222. Extreme psychological injury means a substantial impairment of the intellectual, psychological, emotional, or behavioral functioning of a victim following a crime that is likely to be of an extended and continuous duration, and that manifests itself by physical or psychological symptoms or by changes in behavior patterns.

Emotional injury suffered by victims is a relevant sentencing consideration, particularly in violent crimes. Although there is no specific provision in federal law that punishes the infliction of emotional or psychological injury, the Commission has generally included considerations of psychological injury in the base offense levels. However, if the sentencing judge determined that the victim's psychological injury is unusual, the court shall increase the sentence by increasing the offense level by 2 levels to reflect the fact that the severity of the injury suffered is beyond that injury ordinarily resulting from the offense of conviction. In a case where psychological harm is both extreme and makes up the bulk of the harm the offense caused or risked, the offense level should be increased by 3 levels. That is because the offense level otherwise specified for the offense itself in such a case is unlikely to reflect the seriousness of the harm caused or risked. For purposes of this provision, a member of the victim's immediate family is considered a victim.

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§ Y223. Conduct by a defendant that is particularly predatory in nature warrants special enhancement in sentencing. For example, the defendant who victimizes those least able to resist and defend against violent action or those more susceptible to fraudulent schemes, exhibits a characteristic of criminal behavior deserving additional punishment. Therefore, if the victim was especially vulnerable an enhancement is warranted. If, however, the victim's vulnerability was related to the defendant's selection of the particular victim, the offense level should be increased by a total of 4 levels.

§ Y224. The commission of an offense against the person of certain officials, such as the President and other high level officials or law enforcement or corrections personnel, or against someone who was an official guest or other person invoking the protection of the United States, carries with it an additional impingement upon the authority of government deserving of additional punishment.

§ Y225. Definitions of various degrees of bodily injury are found in different parts of the federal code. See, 18 U.S.C. § 1365; 18 U.S.C. § 1515; and 21 U.S.C. § 802(25), as amended, as well as under the presumptive parole guidelines.

For sentencing purposes the levels of physical injury are:

1. Permanent Bodily Injury. Permanent bodily injury means that the victim suffered a substantial risk of death from the injury, major disability, impairment, or loss of a bodily function or significant disfigurement.

2. Serious Bodily Injury. Serious bodily injury means that the victim suffered extreme pain from the injury, suffered substantial impairment of a bodily function, required medical intervention, such as surgery, hospitalization, or physical rehabilitation.

3. Bodily Injury. Bodily injury means any other physical injury.

The definitions for physical injury are meant to be suggestive only. If the injury lies between permanent and serious bodily injury, the sentencing judge shall increase by 5 levels. If the injury lies between serious and bodily injury, the sentencing judge shall increase by 3 levels.

§ Y226. A defendant's possession or use of a weapon or other dangerous instrumentality in the course of or in relation to the commission of the offense shall increase the sentence based on the added danger presented. A weapon or dangerous instrumentality is possessed if it is carried on or about the person of the defendant, but is not visible to other persons. The threat of use, without the item being apparent to other persons is treated the same as mere possession. Display of a weapon or dangerous instrument means that it is presented or shown for the view of others. Any other defendant conduct that employs a weapon or dangerous instrument, except discharge, to any degree greater than already set forth constitutes a "use" for purposes of this provision.

If a firearm was used or possessed in crimes of violence or drug trafficking, separate prosecution and conviction under 18 U.S.C. § 924(c) results in imposition of a statutory mandatory sentence of at least five years, consecutive to the underlying offense, and this provision does not apply.

§ Y227. If a person is taken hostage in order to facilitate commission of other criminal conduct or escape from its commission, substantial additional punishment is warranted.

§ Y228. Situations may occur in which a defendant who committed an offense deserves a reduction in sentence because the offense was committed only in response to an imminent credible threat of serious harm to the defendant or the defendant's family. The reduction, however, is not available unless the defendant reasonably believes that there is no alternative course of conduct open to avoid the threatened harm. In determining whether there were other courses of conduct open to the defendant, the court should consider the immediacy of the threat.

The extent of reduction is determined by the seriousness of the offense, including whether it was a violent offense, and the nature and extent of the threatened harm. The greatest reduction is allowed only, if on balance, the threatened harm substantially outweighs the harm resulting from the offense. Consequently, it is available only when the offense is non-violent. For example, a defendant convicted of bank embezzlement and who does so because of a credible threat of immediate substantial bodily harm would qualify for reduction of sentence if the defendant reasonably believed there was no other means of avoiding the threatened injury.

A defendant who is coerced into committing an offense is not by virtue of that fact alone a minor participant in the offense. Section Z214, Role in the Offense, may apply as well if the contribution made by the defendant was in fact minor.

Part Z—Role in the Offense

§ Z211. If the defendant's role in the offense was one of organization, leadership, direction, or supervision of others or the part he played was particularly prominent, making him more culpable than other participants, the court shall increase the offense level by 1 to 6 levels, depending upon the nature and extent of the defendant's activities.

§ Z212. If the defendant used a special skill, trade, training, education, or public position to facilitate the commission of an offense, the court shall increase the offense level by 1 to 4 levels, depending upon the special role of the defendant and his overall contribution to the commission of the offense.

§ Z213. If the defendant was either a sole participant not subject to § Z212 or if he shared comparable responsibility with other participants, no adjustment in the offense level shall be made for role.

§ Z214. If the defendant was a minor participant in the offense, or voluntarily withdrew from a conspiracy, or voluntarily abandoned participation in the crime after an attempt was made but before commission of the underlying offense, the court shall reduce the offense level by 1 to 6 levels, depending upon the defendant's relative culpability and the nature of the criminal conduct involved.

COMMENTARY

The sentencing judge shall select the most appropriate category in §§ Z211–Z214 to reflect the defendant's role in the offense and relative culpability.

Section Z211 gives latitude to the court in distinguishing levels of culpability. Titles such as "leader," "kingpin," or "boss" are not controlling. It is the defendant's actual role in the offense that is important. Factors the court should consider include the exercise of decision-making authority, the degree of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the planning or organization of the offense, the scope of the illegal activity, the nature and seriousness of the criminal activity, and the degree of control and authority exercised over others.

Section Z212 increases the sentence of a defendant who uses a special skill, training, education, trade, or public position to facilitate the commission of a crime. Thus, a pilot who smuggles cocaine from Colombia in a private plane, a doctor who prepares fraudulent drug prescriptions, or medical reports in an automobile accident insurance scheme, or a deputy sheriff who conspires with private citizens to commit a civil rights violation, would be subject to this provision. A sole participant in an offense who uses a special expertise or public position for criminal purposes qualifies for this adjustment because of the higher degree of culpability involved. Of course, a defendant who uses a skill common to many, such as the ability to drive an automobile or operate office equipment, would not be subject to an increase under this section. If § Z211 applies, do not apply § Z212.

Section Z213 applies to a sole participant in an offense who is not subject to § Z214 and to multiple defendants who have comparable roles in the offense.

Section Z214 applies to a defendant who has a limited role in an offense that is planned, directed, and controlled by another person or persons. A minor participant is one who is not in a position to make decisions affecting the offense or to benefit substantially from its commission. His participation may have been the result of a personal or business relationship with a more culpable individual who exerted a controlling influence. In determining the appropriate sentence, the court shall evaluate and state reasons based on the nature of the defendant's role and conduct in relation to other participants. Also, individuals who are convicted of conspiracy or attempts, but who voluntarily withdrew from the conspiracy or voluntarily abandoned participation before the commission of the underlying offense, may be entitled to some reduction in sentence, depending upon the facts and circumstances of the withdrawal or abandonment. The reason for the abandonment or withdrawal is of paramount importance. For example, if the defendant abandoned the criminal activity because of fear of apprehension or because of suspicion that a co-conspirator was cooperating with law enforcement officials, the defendant would not be entitled to a reduction.

CHAPTER THREE—OFFENDER CHARACTERISTICS

Part A—Criminal History

§ A311. Criminal History Category. The total points from items (a) through (e) provide the criminal history category used in the Sentencing Table in Chapter One.

(a) Add 3 points for each prior sentence of imprisonment for more than one year.

(b) Add 2 points for each prior sentence of imprisonment for sixty days or more not counted in (a).

(c) Add 1 point for each prior sentence not included in (a) or (b), up to a total of 6 points for this item.

(d) Add 2 points if the defendant committed the current offense while under any form of criminal justice control, including probation, parole, federal supervised release, custody or escape status, or any form of release pending trial, sentencing, or appeal.

(e) Add 2 points if the defendant committed the current offense (1) within three years after release from, or while in custody or escape status on, a prior sentence of imprisonment for more than one year, or (2) within three years after imposition of any other prior countable sentence.

§ A312. Definitions and Instructions for Computing Criminal History.

(a) Prior Sentence Defined.

(1) The term "prior sentence" means any sentence previously imposed upon adjudication of guilt, whether by guilty plea, trial, or plea of nolo contendere, for conduct not part of the current offense of conviction.

(2) Prior sentences imposed in unrelated cases are to be counted separately. Prior sentences imposed in related cases are to be treated as one sentence for purposes of the criminal history. Use the longest sentence of imprisonment if concurrent sentences were imposed and the aggregate sentence of imprisonment imposed in the case of consecutive sentences.

(3) A conviction for which the imposition of sentence was totally suspended or stayed shall be counted as a prior sentence under § A311(c).

(b) Sentence of Imprisonment Defined.

(1) The term "sentence of imprisonment" means a sentence of incarceration, and refers to the maximum sentence imposed.

(2) If part of a "sentence of imprisonment" was suspended, the "sentence of imprisonment" refers to the portion that was not suspended.

(c) Misdemeanors and Petty Offenses.

Sentences for all felonies are counted. Sentences for misdemeanors and petty offenses are counted, except as follows:

(1) Sentences for the following offenses are not counted unless the sentence was a term of probation of at least one year, imprisonment for thirty days or more, or the prior offense was similar to a current offense:

Disorderly conduct
Driving without a license or with a revoked or suspended license
Fish and game violations
Gambling
Local ordinance violations
Trespassing

(2) Sentences for the following offenses are not counted:

Hitchhiking
Juvenile status offenses and truancy
Loitering
Public intoxication and similar offenses
Vagrancy
Minor traffic infractions (Note, driving while intoxicated or under the influence, and hit and run offenses involving personal injury are not minor traffic infractions and, therefore, are counted.)

(d) Offenses Committed Prior to Age Eighteen.

(1) If the defendant was convicted as an adult and received a sentence of imprisonment for a term of more than one year, add 3 points under § A311(a).

(2) In any other case,

(A) add 2 points under § A311(b) for each adult or juvenile sentence to confinement for sixty days or more if the defendant was released from confinement within five years of the commencement of the current offense;

(B) add 1 point under § A311(c) for each adult or juvenile sentence imposed within five years of the commencement of the current offense not covered in (A).

(e) Applicable Time Period.

(1) Any sentence of imprisonment for more than one year that was imposed within fifteen years of the current offense shall be counted in computing criminal history. Also count any prior sentence of imprisonment for more than one year that resulted in the defendant's incarceration during any part of the fifteen year period.

(2) Any other prior sentence imposed more than ten years prior to the current offense is not counted.

(f) Diversionary Dispositions.

A diversionary agreement in which the defendant admitted guilt may be counted as a sentence under § A311(c). Diversions from juvenile court are not counted.

(g) Military Sentences.

Sentences resulting from military offenses are counted if imposed by a general or special court martial. Sentences imposed by a summary court martial or Article 15 proceeding are not counted.

(h) Foreign Sentences.

Sentences resulting from foreign convictions may only be considered under § A313, Similar Misconduct, or § A315, Adequacy of Criminal History Category.

(i) Tribal Court Sentences.

Sentences resulting from tribal court convictions may only be considered under § A313, Similar Misconduct, or § A315, Adequacy of Criminal History Category.

(j) Revocations of Probation, Parole, Mandatory Release, or Supervised Release.

(1) Revocation of probation or federal supervised release affects the total points for § A311 (a), (b), (c), and (e). Revocation of parole, special parole, or mandatory release affects the total points only for § A311(e), i.e., recency of the current offense.

(2) For a prior revocation of probation or federal supervised release, add the original term of imprisonment to any term of imprisonment imposed upon revocation. The resulting total is used to compute the criminal history category for § A311 (a), (b), and (c).

(3) If the sentence imposed on prior revocation of probation or federal supervised release was more than one year, use the date of release to compute § A311(e).

(4) If the sentence imposed on prior revocation of probation or federal supervised release was at least sixty days but less than one year, use the date of revocation to compute § A311(e).

(5) If the prior revocation of parole, special parole, or mandatory release resulted in incarceration for sixty days or more, use the date of release from imprisonment to compute § A311(e).

(k) Date of Current Offense

The date of the current offense is defined by the date of commission of the first overt act of the current offense(s).

Policy Statements

§ A313. Similar Misconduct.

(a) Aspects of a defendant's criminal history not included in § A311 may warrant consideration. Reliable information regarding the following misconduct may be the basis for a sentence at the maximum applicable guideline range, or for a departure above the guidelines:

(1) Prior similar misconduct established by a civil adjudication, by a

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failure to comply with an administrative order, or by other information that has not been used to aggravate the offense level in Chapter Two; or

(2) Prior similar adult criminal conduct not resulting in a criminal charge or conviction.

§ A314. Similar Prior Convictions. The sentencing judge may take into account the similarity between prior convictions and the current offense in selecting the point within the applicable sentencing range. Prior convictions similar to the current offense may warrant a sentence at or near the maximum of the applicable guideline range.

§ A315. Adequacy of Criminal History Category. The sentencing judge shall take into account the relative seriousness of the prior convictions in selecting a point within the sentencing range. If the criminal history category does not adequately reflect the seriousness of past criminal conduct; or if the defendant poses a danger to the public; or if there is a likelihood the defendant will commit other crimes, the court should depart from the guidelines in imposing the appropriate sentence.

§ A316. Criminal Livelihood. If the defendant derives a substantial portion of income from criminal activity, a sentence above the applicable guideline range may be imposed. This policy statement implements 28 U.S.C. § 994(i)(2).

COMMENTARY

Sections A311 and A312 provide instructions for calculation of criminal history. The total criminal history points determine a defendant's criminal history category for the Sentencing Table in Chapter One. The sentencing range for a given offense level increases with the number of criminal history points. If a defendant's total criminal history points exceed ten, a sentence above the applicable guideline range is warranted.

Criminal History Points. Three points are added for each sentence counted under § A311(a). There is no limit to the number of points countable under this item. Two points are added for each sentence counted under § A311(b). There is no limit to the number of points countable under this item. One point is added for each sentence counted under § A311(c), up to a maximum of six points for this item. If the defendant is under any form of criminal justice control as specified in § A311(d), two points are added for this item. If the defendant has committed the current offense under any condition specified in § A311(e), two points are added for this item.

Prior Convictions. Prior convictions represent convictions in the federal system, fifty state systems, the District of Columbia, territories, and foreign, tribal and military courts. There are jurisdictional variations in offense definitions, sentencing structures, and manner of sentence pronouncement. To minimize problems with imperfect measures of past crime seriousness, criminal history categories are based on the maximum term imposed in previous sentences rather than on other measures, such as whether the conviction was a felony or misdemeanor. Imposition of a sentence of more than a year of imprisonment generally reflects a judicial assessment of the seriousness and scope of the underlying criminal conduct, particularly when judges have considered total offense behavior. In recognition of the imperfection of this measure, however, § A313 and § A315 permit information about the significance or similarity of past conduct underlying prior convictions to be used in deciding where to sentence a defendant within the applicable sentencing range or in deciding whether to sentence outside the applicable guideline. For example, where a defendant's criminal history category does not adequately reflect the extent of recidivism demonstrated by the defendant, a sentence above the applicable guideline is warranted.

The sentence distinctions in § A311 (a), (b), and (c) represent a custody sentence longer than one year, a custody sentence of sixty days or more but not greater than one year, and other sentences including custody sentences of less than sixty days, probation, fines, and residency in a halfway house. Criminal history points are based on the sentence imposed. To be considered a custody sentence, time must have been served (or, if the defendant escaped, would have been served). The maximum sentence shall be the sentence of imprisonment for purposes of applying § A311 (a), (b), or (c).

In addition to the criminal history adjustments for the number and severity of prior convictions, § A311(d) provides an enhancement if the defendant was under criminal justice control during the commission of the offense. This section also applies if the defendant committed the current offense while on release pending trial, sentencing, or appeal of another case. This adjustment does not apply to a separate conviction for committing a crime while on release under 18 U.S.C. § 3147.

Section A311(e) provides an enhancement if the defendant was recently released from custody. For sentences exceeding one year, the date of release from custody was chosen because the release may have been some years after the date of imposition. For other sentences, the date of imposition of sentence was selected because of the difficulty in obtaining accurate release dates on short sentences served in jails, and because the date of imposition would be within a year of the release date.

Offenses Committed Prior to Age Eighteen. Attempting to count every juvenile adjudication would have the potential for creating large disparities due to availability of records. Therefore, for offenses committed prior to age eighteen, only those that resulted in adult sentences of imprisonment for more than one year, or resulted in imposition of an adult or juvenile sentence or release from confinement on that sentence within five years of the commencement of the current offense are counted. To avoid disparities from jurisdiction to jurisdiction in the age at which a defendant is considered a "juvenile," this provision applies to all offenses committed prior to age eighteen.

Applicable Time Period. Section A312(e) establishes the time period within which prior sentences may be considered by the court in assigning the criminal history category. If the government is able to show that a sentence imposed outside this time period is evidence of similar misconduct, the similarity or seriousness of prior convictions, or the defendant's receipt of a substantial portion of income from criminal livelihood, the court may consider this information in determining where within the guideline range to impose the sentence or whether to depart and sentence above the applicable guideline level.

Diversionary Dispositions. Section A312(f) authorizes but does not require the counting of prior diversionary dispositions. Diversions that are recent, similar to the current offense, or otherwise relevant for sentencing purposes are to be counted.

Revocations To Be Considered. Revocations of probation and federal supervised release result in modification of the sentence originally imposed. Rather than count the original sentence and the resentence after revocation as separate sentences, the sentence given upon revocation should be added to the original sentence of imprisonment, if any, and the total should be counted as if it were one sentence. By this approach, no more than three points will be assessed for a single conviction, even if probation or federal supervised release was subsequently revoked. If the sentence originally imposed, the sentence imposed upon revocation, or the total of both sentences exceeded one year, the maximum three points would be assigned. If, however, at the time of revocation another sentence was imposed for a new criminal conviction, that conviction would be computed separately from the sentence imposed for the revocation.

Revocations of parole, special parole, and mandatory release, as well as revocations of probation and supervised release, may result in additional points for recency of criminal record under § A311(e).

Factors Justifying Departure. The values assigned to determine the criminal history category do not take into account a pattern of violent criminal behavior, civil or administrative sanctions imposed as part of an enforcement or regulatory scheme, or any factors that might indicate ongoing criminal behavior, (such as evidence of significant income for which there is no legitimate source). These factors may justify a sentence above the guidelines.

Part B—Special Offenders

28 U.S.C. § 994(h)

§ B311. Special Offenders Defined. If (1) the defendant was at least eighteen years old at the time of the current offense, and (2) more than a minor participant in the current offense, and (3) the current offense is a crime of violence or trafficking in a controlled substance, and (4) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense, the sentence shall be at or near the maximum term of imprisonment authorized by statute for the offense of conviction.

COMMENTARY

The special offenders provision implements 28 U.S.C. § 994(h).

Crimes of violence are offenses that involve force or threat of force, including robbery, kidnapping, arson, criminal sexual conduct, and any other felony offenses that, by their nature, involve the use of physical force. The controlled substance offenses covered by this provision are identified in 21 U.S.C. § 841; 21 U.S.C. §§ 952(a), 955, 955a, 959; and in §§ 405B and 416 of the Controlled Substance Act as amended in 1986.

If the guideline range in the Sentencing Table provides for a maximum penalty less than the statutory maximum for the offense of conviction, increase the offense level to the lowest level that includes the statutory maximum for the offense of conviction. To that level, make any applicable adjustment in Part C, Post-Offense Conduct, and any authorized departure.

Part C—Post-Offense Conduct

1. Obstruction of Justice and Perjury

§ C311. If the defendant obstructed or attempted to obstruct the administration of justice during the investigation or prosecution of the offense of conviction, increase the offense level from Chapter Two by 1 to 4 levels, depending upon the nature of the conduct.

(a) The appropriate adjustment shall be determined by the court for reasons stated that may include, but are not limited to, consideration of the following conduct:

(1) destruction or concealment of material evidence or attempts to do so;

(2) direction to or procurement of another person to destroy or conceal material evidence or attempts to do so;

(3) Testifying untruthfully or suborning untruthful testimony concerning a material fact, or producing or attempting to produce an altered, forged, or counterfeit document or record before a preliminary or grand jury proceeding, during trial, during a sentencing hearing, or any other judicial proceeding;

(4) Threatening, intimidating, or otherwise unlawfully attempting to influence a witness or juror, directly or indirectly.

COMMENTARY

This section provides a range of sentence enhancements for a defendant who engages in conduct calculated to unlawfully mislead or deceive authorities or those involved in a judicial proceeding. Before a sentence may be aggravated under this section, the sentencing judge must state reasons and determine the appropriate adjustment according to the nature of the conduct and its impact on the administration of justice.

The aggravation of a sentence because of perjury or obstruction of justice is in recognition of a basic principle that no one has a right to lie, deceive, or direct others to do so.

This provision is not intended to punish a defendant for the exercise of any Constitutional right. A defendant's denial of guilt is not a basis for application of this provision.

This provision does not apply to sentences imposed after an independent prosecution for perjury or obstruction of justice.

2. Acceptance of Responsibility

§ C321. If the defendant demonstrates a recognition and affirmative acceptance of personal responsibility for the offense of conviction, the court may reduce the offense level by 1 to 3 levels, depending upon the nature of the case and manner and extent by which the defendant acknowledged responsibility.

(a) The appropriate adjustment shall be determined by the court for reasons stated that may include, but are not limited to, consideration of the following conduct:

(1) Voluntary surrender to authorities before charges are filed or an arrest warrant is executed;

(2) Voluntary termination or withdrawal from criminal activity or associations;

(3) Voluntary payment of restitution to victim(s) prior to adjudication of guilt;

(4) Voluntary and truthful admission to authorities of involvement in the offense and related conduct;

(5) Voluntary assistance to authorities in the recovery of the fruits and instrumentalities of the offense;

(6) Voluntary resignation from the office or position held during the commission of the offense;

(7) Timeliness of the manifested acceptance of responsibility; and

(8) Any other objective conduct that establishes the defendant's affirmative acceptance of personal responsibility for the offense.

§ C322. A defendant may be given consideration under § C321 without regard to whether his conviction is based upon a guilty plea or a finding of guilt by the court or a jury or the practical certainty of the evidence of the defendant's guilt.

§ C323. A defendant who enters a guilty plea is not entitled to a sentencing reduction under § C321 as a matter of right.

§ C324. Since an adjustment for acceptance of responsibility rests exclusively in the discretion of the sentencing judge, it may be denied without any requirement that the sentencing judge state reasons.

COMMENTARY

The reduction of sentence available under § C321 recognizes a number of societal interests. The defendant who affirmatively accepts personal responsibility for the offense, who takes affirmative steps to dissociate from past criminal conduct, and who attempts to rectify the harm caused by the conduct may be entitled to receive recognition for these socially desirable actions. The conduct listed is illustrative only. The timeliness of the defendant's conduct in manifesting an acceptance of responsibility for the offense is particularly important in determining the amount of reduction granted.

The sentencing judge is in a unique position to evaluate whether the defendant's expressions of remorse are sincere or merely self-serving. For this reason, the sentencing judge is not required to reduce an otherwise applicable guideline sentence. If the sentencing judge finds that the defendant is entitled to a reduction under this section, the amount of the reduction shall be determined by the court. However, the reduction may not exceed three offense levels. In the event a reduction is given, the sentencing judge shall state reasons for the level of reduction. If no reduction is given, there is no requirement that reasons be stated.

The availability of a reduction under § C321 is not governed by the plea entered. A defendant may manifest sincere contrition and take steps toward rehabilitation even if he exercises his constitutional right to a trial. This often occurs when a defendant decides to go to trial to assert and preserve issues that do not relate to factual guilt, a constitutional challenge to a statute, a challenge to the applicability of a statute to his conduct, or to raise evidentiary issues that might produce an acquittal. Conversely, although a guilty plea may be some evidence of the offender's acceptance of responsibility, it does not automatically entitle him to a sentencing adjustment.

3. Cooperation

§ C331. If the defendant cooperated with authorities by providing significant and truthful information or testimony regarding the criminal activities of others, by assisting in an ongoing investigation, or by providing authorities with other substantial assistance regarding the criminal activities of others, the court may decrease the sentence as appropriate.

(a) The appropriate adjustment shall be determined by the court for reasons stated that may include, but are not limited to, consideration of the following conduct:

(1) The court's evaluation of the significance and usefulness of the defendant's cooperation, taking into consideration the government's evaluation;

(2) The truthfulness, completeness, and reliability of any information or testimony provided by the defendant;

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(3) The nature and extent of the defendant's cooperation;

(4) Any injury suffered, or any danger or risk of injury to the defendant or his family resulting from his cooperation;

(5) The timeliness of the defendant's cooperation; or

(6) Any other relevant factor.

§ C332. A defendant's refusal to cooperate with authorities in the investigation of other persons may not be considered as a sentencing factor, except to the extent such conduct may reflect adversely upon the defendant's claim that he has abandoned criminal activity and associations under Acceptance of Responsibility, § C321.

COMMENTARY

A defendant's willingness to cooperate with authorities in the investigation of criminal activities has long been recognized as a mitigating sentencing factor. The nature, extent, and significance of cooperation can involve a broad spectrum of conduct that must be evaluated by the court on an individual basis. Latitude is therefore afforded the sentencing judge to reduce a sentence based upon variable relevant factors, including those listed above. The sentencing judge must, however, state the reasons for reducing a sentence under this section. 18 U.S.C. § 3553(c). The court may elect to provide its reasons to the defendant in camera and in writing under seal for the safety of the defendant or to avoid disclosure of an ongoing investigation.

The sentencing reduction for cooperation shall be considered independently of any reduction for acceptance of responsibility. Cooperation is directed to the investigation and prosecution of criminal activities of persons other than the defendant, while acceptance of responsibility is directed to the defendant's affirmative recognition of responsibility for his own conduct.

Substantial weight should be given to the government's evaluation of the extent of the defendant's cooperation, particularly where the extent and value of the cooperation are difficult to ascertain.

The Commission considered and rejected the use of a defendant's refusal to cooperate with authorities as an aggravating sentencing factor. Refusal to cooperate with authorities based upon continued involvement with criminal activities and accomplices may be considered, however, in evaluating a defendant's sincerity in claiming acceptance of responsibility.

Under circumstances set forth in 18 U.S.C. § 3553, as amended, cooperation may justify a sentence below a statutorily required minimum mandatory sentence.

Part D—Other Offender Characteristics

Introduction. Congress has directed the Commission to consider whether certain specific offender characteristics "have any relevance to the nature, extent, place of service, or other incidents of an appropriate sentence" and to take them into account only to the extent they are determined relevant by the Commission. 28 U.S.C. § 994(d).

§ D311. Age. Age is not ordinarily relevant in determining whether a sentence should be outside the guidelines or where within the guidelines a sentence should fall. Neither is it relevant in determining the type of sentence to be imposed when the guidelines provide sentencing options. However, age may be a reason to go above the guidelines when the offender is under the age of twenty-one and has an extensive criminal record, indicating the likelihood of future criminality and the need for incapacitation. Age may be a reason to go below the guidelines when the offender is elderly or infirm and where a form of punishment (e.g., house arrest) might be equally efficient as and less costly than incarceration. If, independent of the consideration of age, a defendant is sentenced to probation or supervised release, age may be relevant in the determination of the length and conditions of supervision.

§ D312. Education and Vocational Skills. Education and vocational skills are not ordinarily relevant in determining whether a sentence should be outside the guidelines or where within the guidelines a sentence should fall, except to the extent a defendant may have misused special training or education to facilitate criminal activity. See Chapter Two, Role in the Offense. Neither are education and vocational skills relevant in determining the type of sentence to be imposed when the guidelines provide sentencing options. If, independent of consideration of education and vocational skills, a defendant is sentenced to probation or supervised release, these considerations may be relevant in the determination of the length and conditions of supervision for rehabilitative purposes, for public protection by restricting activities that allow for the utilization of a certain skill, or in determining the type or length of community service.

§ D313. Mental and Emotional Conditions. Mental and emotional conditions that mitigate a defendant's culpability are discussed in the general provisions in Chapter Two. Mental and emotional conditions, whether mitigating or aggravating, may be relevant in determining the length and conditions of probation or supervised release.

§ D314. Physical Condition, Including Drug Dependence and Alcohol Abuse. Physical condition is not ordinarily relevant in determining whether a sentence should be outside the guidelines or where within the guidelines a sentence should fall. However, an extraordinary physical impairment may be a reason to impose a sentence other than imprisonment.

Drug dependence alone may be a reason for imposing a sentence above the guidelines to the extent that the drug dependence leads to an increased propensity to commit crimes. Drug dependence is not a reason for imposing a sentence below the guidelines. If a defendant is sentenced to probation or supervised release, drug dependence should be taken into consideration with respect to the length and conditions of supervision.

Alcohol abuse alone is not a reason for imposing a sentence below the guidelines. If a defendant is sentenced to probation or supervised release, alcohol abuse should be taken into consideration with respect to the length and conditions of supervision.

§ D315. Previous Employment Record. Employment record is not ordinarily relevant in determining whether a sentence should be outside the guidelines or where within the guidelines a sentence should fall. Employment record may be relevant in determining the type of sentence to be imposed when the guidelines provide for sentencing options. If, independent of the consideration of employment record, a defendant is sentenced to probation or supervised release, considerations of employment record may be relevant in the determination of the length and conditions of supervision. However, if a defendant derives a substantial portion of income from criminal activity, the sentence should be enhanced. 28 U.S.C. § 994(i)(2). See Part A, Criminal Livelihood, § A316.

§ D316. Family Ties and Responsibilities, and Community Ties. Family ties and responsibilities and community ties are not ordinarily relevant in determining whether a sentence should be outside the guidelines or where within the guidelines a sentence should fall. Family responsibilities are relevant in determining whether to impose restitution and fines. Where the guidelines provide probation as an option, these factors may be relevant in this determination. If a defendant is sentenced to probation or supervised release, family ties and responsibilities and community ties may be relevant in the determination of the length and conditions of supervision.

§ D317. Role in the Offense. A defendant's role in the offense is relevant in determining culpability and thus relevant in determining the appropriate sentence. See Chapter Two, Role in the Offense.

§ D318. Criminal History. A defendant's criminal history is relevant in determining the appropriate sentence. See Part A, Criminal History Category, § A311.

§ D319. Dependence Upon Criminal Activity for a Livelihood. The degree to which a defendant depends upon criminal activity for a livelihood is relevant in determining the appropriate sentence. See Part A, Criminal Livelihood, § A316.

§ D320. Race, Sex, National Origin, Creed, Religion and Socio-Economic Status. These factors are not relevant in the determination of a sentence.

CHAPTER FOUR—SENTENCING PROCEDURES, GUILTY PLEAS, AND PLEA AGREEMENTS

Introduction. These policy statements address sentencing procedures that are applicable in all cases, including those in which guilty or nolo contendere pleas are entered with or without a plea agreement, and convictions based upon guilty verdicts after trial.

Policy statements governing the acceptance of plea agreements under Rule 11(e)(1), Federal Rules of Criminal Procedure are intended to ensure that plea negotiation practices:

(1) promote the purposes of sentencing prescribed in 18 U.S.C. § 3553(a);

(2) provide for just sentencing of defendants based on criminal history and actual offense behavior; and

(3) do not perpetuate unwarranted sentencing disparity.

Policy Statements

§ A411. Notice of Sentencing Factors. In all cases, the court shall confirm that within a reasonable time before sentencing the attorney for the government and the attorney for the defendant, or the pro se defendant, have exchanged written statements of sentencing factors each party intends to rely on at sentencing. The parties are not precluded from asserting any additional sentencing factor if written notice is provided to the opposing party within a reasonable time before sentencing. Copies of all sentencing statements shall be filed contemporaneously with the court and submitted to the probation officer assigned to the case. This provision may be satisfied through a stipulation or plea agreement that complies with § A413.

§ A412. Plea Agreements. The court may accept a plea agreement conforming with Rule 11(e), Federal Rules of Criminal Procedure, provided that:

(a) if the plea agreement includes the dismissal of any charges or counts pursuant to Rule 11(e)(1)(A), the court shall determine that the remaining charges or counts reflect the seriousness of the offense behavior;

(b) if the plea agreement includes a nonbinding recommendation pursuant to Rule 11(e)(1)(B), the court shall advise the defendant that it is not bound by the sentencing recommendation. The court need not accept the recommendation, but, if it does it shall determine that either:

(1) the recommended sentence is within the applicable guidelines range; or

(2) if the recommended sentence departs from the applicable guideline range, that reason exists for departure from the guidelines. Rule 11(e)(2) requires the court to advise the defendant that he has no right to withdraw his guilty plea if the court does not accept the sentencing recommendation set forth in the plea agreement.

(c) if the plea agreement includes a specific sentence pursuant to Rule 11(e)(1)(C), the court before agreeing to impose this sentence shall determine that either:

(1) the agreed sentence is within the applicable sentencing guideline range; or

(2) if the agreed sentence departs from the applicable guideline range, the court shall independently determine that reason exists for departure from the guidelines and that the agreed sentence does not undermine any of the legislatively mandated purposes of sentencing.

(d) The court may accept a guilty plea but defer decision whether to accept a plea agreement to dismiss charges or counts under § A412(a) or for a specific sentence under § A412(c). In such cases, however, the court shall afford the defendant an opportunity to withdraw the guilty plea if the plea agreement is later rejected. Rule 11(e)(4), Federal Rules of Criminal Procedure.

§ A413. Ethical Standards for Plea Agreements. Plea agreements shall:

(a) set forth all relevant facts and circumstances of the offense conduct;

(b) not omit any material fact relevant to the commission of the offense; and

(c) not contain incomplete, non-existent, or misleading facts; or any other unethical representations.

§ A414. Resolution of Disputed Factors. In all cases, the court shall resolve disputed factors "important to the sentencing determination" in accordance with Rule 32(a)(1), Federal Rules of Criminal Procedure (effective November 1, 1987).

§ A415. Notice of Tentative Findings. In cases involving significant disputed sentencing factors, the Commission recommends that the court notify the parties of its tentative findings and provide a reasonable time for the submission of written objections before imposition of sentence.

CHAPTER FIVE—DETERMINING THE SENTENCE

Introduction. The Sentencing Reform Act directs the Commission to ensure that guidelines reflect the "general appropriateness" of imposing a nonincarcerative sentence on first offenders who have not been convicted of a violent crime or an otherwise serious offense. 28 U.S.C. § 994(j). The guidelines accomplish that result by the assignment of offense levels in Chapter Two, adjustments in Chapter Three, and the provisions of this chapter regarding sentencing options.

For certain categories of offenses and defendants, the guidelines permit the court to impose either imprisonment or some other sanction or combination of sanctions. In determining the type of sentence to impose, the sentencing judge should consider the nature and seriousness of the conduct, the statutory purposes of sentencing, and the pertinent offender characteristics. A sentence is within the guidelines if it complies with each applicable section of this chapter.

In general, the sentencing judge should impose the least restrictive alternative compatible with fulfilling the statutory purposes of sentencing. However, imprisonment should not be rejected simply because other, non-incarcerative sentences are within the guidelines. For example, imprisonment for a short period of time might be appropriate for some crimes having a relatively low statutory maximum, such as vote fraud or failure to file income tax returns, because it is likely to have a greater general deterrent effect than other sentences.

If the application of the guidelines results in a sentence greater than the maximum authorized by statute for the offense of conviction, then the maximum authorized by statute shall apply. A number of offenses carry statutory minimum mandatory sentences. If the application of the guidelines results in a sentence less than the minimum sentence required by statute, the statutory minimum shall apply.

1. Probation

18 U.S.C. § 3561

18 U.S.C. § 3563

§ A511. Imposition of a Term of Probation.

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(a) Subject to the restrictions in subsection (b) below, the court may impose a sentence of probation if:

(1) the minimum term of imprisonment in the range specified by the Sentencing Table in Chapter One is zero months;

(2) the minimum term of imprisonment specified by the Sentencing Table is not more than six months, provided that the court imposes a condition or combination of conditions requiring intermittent confinement, community confinement, or home detention as provided at § A521(c).

(b) A sentence of probation may not be imposed in the event:

(1) the offense of conviction is a Class A or B felony, 18 U.S.C. § 3561(a)(1);

(2) the offense of conviction expressly precludes probation as a sentence, 18 U.S.C. § 3561(a)(2);

(3) the defendant is sentenced at the same time to a sentence of imprisonment for the same or a different offense, 18 U.S.C. § 3561(a)(3).

(c) Where the Sentencing Table specifies a minimum term of imprisonment of more than six months (e.g., level 10 for first offenders), a sentence of probation is not authorized by the guidelines, and may be imposed only by the court departing from the guidelines for stated reasons.

§ A512. Term of Probation. When a term of probation is imposed, the guideline for the length of the term shall be:

(a) at least one year but not more than five years if the offense level is 6 or greater;

(b) no more than three years in any other case.

§ A513. Conditions of Probation.

(a) If a term of probation is imposed, the court shall impose a condition that the defendant shall not commit another federal, state, or local crime during the term of probation. 18 U.S.C. § 3563(a)(1).

(b) The court may impose other conditions that (1) are reasonably related to the nature and circumstances of the offense, the history and characteristics of the defendant, and the purposes of sentencing and (2) involve only such deprivations of liberty or property as are reasonably necessary to effect the purposes of sentencing. 18 U.S.C. 3563(b). See the recommended conditions set forth in the Commentary below.

(c) If a term of probation is imposed for a felony, the court shall impose at least one of the following as a condition of probation: a fine, an order of restitution, or community service. 18 U.S.C. § 3563(a)(2).

(d) Intermittent confinement (custody for intervals of time) may be ordered as a condition of probation during the first year of probation. 18 U.S.C. § 3563(a)(21). Intermittent confinement shall be credited toward the guideline for imprisonment at § A521 as provided in the schedule at § A521(c).

COMMENTARY

Section A511 provides for the imposition of a sentence of probation. The court may sentence a defendant to a term of probation in any case not prohibited by statute or inconsistent with the requirements of the guidelines set forth at § A521. Section A511(b)(3) reflects Congressional intent to abolish split sentences of imprisonment and probation. S. REP. NO. 225, 98th Cong., 1st Sess. 89.

Section A512 governs the length of a term of probation. Subject to statutory restrictions, the guidelines provide that a term of probation may not exceed three years if the offense level is less than six. If a defendant has an offense level of 6 or greater, the guidelines provide that a term of probation be at least one year but not more than five. Although some distinction in the length of a term of probation is warranted based on the circumstances of the case, a term of probation is also used to enforce conditions such as fine or restitution payments, or attendance in a program of treatment such as drug rehabilitation, and it may not often be possible to determine the amount of time required for the satisfaction of such payments or program in advance. This issue has been resolved by setting forth two broad ranges for the duration of a term of probation depending upon the defendant's offense level (the offense level from Chapter Two, as adjusted by any applicable offender characteristics from Chapter Three). Within the guidelines set forth in this section, the determination of the length of a term of probation is within the discretion of the sentencing judge.

Section A513 describes mandatory and discretionary conditions of probation. The following conditions are generally recommended for both probation and supervised release:

(1) The defendant shall not leave the judicial district or other specified geographic area without the permission of the court or probation officer;

(2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;

(3) The defendant shall answer inquiries by the probation officer and follow the instructions of the probation officer;

(4) The defendant shall support his dependents and meet other family responsibilities;

(5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

(6) The defendant shall promptly notify the probation officer of any change in residence or employment;

(7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;

(8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered, or other places specified by the court;

(9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

(10) The defendant shall permit a probation officer to visit him at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

(11) The defendant shall notify the probation officer within three days of being arrested or questioned by a law enforcement officer;

(12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

(13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

The following conditions of probation are required under the circumstances described:

(14) Restitution

If the court imposes an order of restitution, payment of restitution or adherence to a court ordered installment schedule becomes a condition of probation as a matter of law. 18 U.S.C. § 3663(g). See § A541, Restitution.

(15) Fines

If the court imposes a fine, payment or adherence to a court ordered installment schedule becomes a condition of probation as a matter of law. 18 U.S.C. § 3563(a). If an installment schedule is imposed, the court may impose a condition of probation prohibiting the defendant from incurring new credit charges or opening additional lines of credit without approval of the probation officer unless he is in compliance with the payment schedule.

The following conditions of probation may be warranted in specific circumstances:

(16) Possession of Weapons

If the current conviction is for a felony, or if the defendant was previously convicted of a felony or used a firearm or other dangerous weapon in the course of the current offense of conviction, it is recommended that a condition of probation be imposed prohibiting the defendant from possessing a firearm or other dangerous weapon.

(17) Access to Financial Information

If the court imposes an order of restitution, forfeiture, or notice to victims, or orders the defendant to pay a fine, it is recommended that a condition be imposed requiring the defendant to provide the probation officer access to any requested financial information.

(18) Community Confinement

Residence in a community treatment center, halfway house or similar facility may be imposed as a condition of probation. See § A551, Community Confinement.

(19) Home Detention

Home detention may be imposed as a condition of probation. See § A552, Home Detention.

(20) Community Service

Community service may be imposed as a condition of probation. See § A553, Community Service.

(21) Occupational Restrictions

Occupational restrictions may be imposed as a condition of probation. See § A555, Occupational Restrictions.

The court may impose any other conditions it deems appropriate.

2. Imprisonment

18 U.S.C. § 3581
18 U.S.C. § 3582

§ A521. Imposition of a Term of Imprisonment.

(a) A sentence conforms with the guidelines for imprisonment if it is within the minimum and maximum terms of the guideline range.

(b) If the minimum term of imprisonment in the guideline range is zero months, a sentence of imprisonment is not required unless the applicable guideline in Chapter Two expressly requires a term of imprisonment.

(c) If the minimum term of imprisonment in the guideline range is from one to six months, the guidelines require (1) a sentence of imprisonment, or (2) a sentence of probation that includes a condition or combination of conditions that substitute intermittent confinement, community confinement, or home detention for imprisonment, according to the following schedule (provided however, that this section is generally inapplicable to defendants with a criminal history category greater than Category II):

(1) Thirty days of intermittent confinement in prison or jail for one month of imprisonment (for purposes of this provision, each calendar day during which the defendant is confined for at least twelve hours counts as a day of intermittent confinement);

(2) One month of community confinement (residence in a community treatment center, halfway house, or similar residential facility) for one month of imprisonment;

(3) One month of home detention for one month of imprisonment.

(d) If the minimum term of imprisonment in the guideline range is more than six months, the guidelines require that the minimum be satisfied by a sentence of imprisonment.

COMMENTARY

Section A521(b) provides that if the minimum term of imprisonment set forth in the guidelines is zero months, the court is permitted, but not required, to impose a sentence of imprisonment or its equivalent is specifically required by the guideline applicable to the offense.

Section A521(c) provides that if the guidelines require a minimum term of imprisonment of six months or less, the term may be satisfied either by a sentence of imprisonment or by a sentence of probation with a condition requiring a period of intermittent confinement, community confinement, or home detention.

If § A521(c)(2) permits confinement in a community treatment center in lieu of imprisonment for reasons of addiction, such confinement should be used as a substitute for imprisonment only in cases where the defendant's dependence on an addictive substance contributed to the commission of the offense and there is a reasonable likelihood that completion of a treatment program will eliminate that dependence.

Although home detention may be substituted for imprisonment on the same scale as intermittent confinement and community confinement, this does not imply that home detention has a punitive or deterrent effect equivalent to those sanctions. Rather, the intent is to provide a sentencing judge the flexibility to use home detention as a meaningful sanction in cases in which a term of imprisonment is not warranted.

Section A521(d) provides that if the guidelines require a minimum period of imprisonment of more than six months, the minimum term must be satisfied by a sentence of imprisonment without the use of other sentencing options in § A521(c).

The sentencing judge shall determine the appropriate sentence within the applicable guideline range. For example, if the offense level is 20, Category I, a sentence of imprisonment of at least thirty-three months, but not more than forty-one months, is within the applicable guideline range.

In general, the maximum of the guideline range exceeds the minimum by the greater of 25 percent or six months, the limit allowed by 28 U.S.C. § 994(b) as amended by Pub. L. No. 99-363. An exception is made in the case of guideline ranges for extremely short terms of imprisonment. In such cases, the guideline range is generally narrower than the maximum range authorized by statute.

3. Supervised Release

18 U.S.C. § 3583

§ A531. Imposition of a Term of Supervised Release.

(a) The court shall order a term of supervised release to follow imprisonment when a sentence of imprisonment of more than one year is imposed, or when required by statute.

(b) The court may order a term of supervised release to follow imprisonment in any other case.

§ A532. Term of Supervised Release.

(a) If a defendant is convicted under a statute that requires a term of supervised release, the term shall be at least three years but not more than five years, or the minimum period required by statute, whichever is greater.

(b) Otherwise, when a term of supervised release is ordered, the length of the term shall be:

(1) Three years for a defendant convicted of a Class A or B felony;

(2) Two years for a defendant convicted of a Class C or D felony;

(3) One year for a defendant convicted of a Class E felony or a misdemeanor.

§ A533. Conditions of Supervised Release.

(a) If a term of supervised release is imposed, the court shall impose a condition that the defendant not commit another federal, state, or local crime. 18 U.S.C. § 3583(d).

(b) The court may impose other conditions reasonably related to (1) the nature and circumstances of the offense, (2) the history and characteristics of the defendant, (3) the need to generally deter the criminal conduct of others, and (4) the need to provide the defendant rehabilitative treatment. 18 U.S.C. § 3583(d).

COMMENTARY

Section A531(a) requires imposition of supervised release following any sentence of imprisonment for a term of more than one year or if required by a specific statute. While there may be cases within this category that do not require post release supervision, these cases are the exception and may be handled by departure from the guideline requiring post release supervision.

Under § A531(b), the court may impose a term of supervised release in cases involving imprisonment for a term of one year or less. The court may consider the need for a term of supervised release to facilitate the reintegration of the defendant into the community; to enforce a fine, restitution order, or other condition; or to fulfill any other purpose authorized by statute.

Section A532 specifies the length of a term of supervised release that is to be imposed. Subsection (a) applies to statutes, such as some provisions of the Anti-Drug Abuse Act of 1986, that require imposition of a specific minimum term of supervised release. Subsection (b) applies to all other statutes, and specifies terms that are the maximum permitted by law. The terms of supervisory release authorized by statute are considerably shorter than those authorized as terms of probation.

Section A533 applies to conditions of supervised release. The recommended conditions for supervised release are the same as those recommended for probation. (See Commentary under § A513.)

4. Restitution, Fines, Assessments, Forfeitures

18 U.S.C. §§ 1956–1957
18 U.S.C. § 1963
18 U.S.C. § 3013
18 U.S.C. §§ 3553–3554

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18 U.S.C. § 3556
18 U.S.C. §§ 3571–3572
18 U.S.C. § 3579
18 U.S.C. § 3614
18 U.S.C. §§ 3663–3664
18 U.S.C. §§ 3681–3682
21 U.S.C. § 841
21 U.S.C. § 848
21 U.S.C. § 853
21 U.S.C. § 960
49 U.S.C. § 1472

§ A541. Restitution.

(a) Restitution shall be ordered for convictions under Title 18 of the United States Code or under 49 U.S.C. § 1472 (h), (i), (j) or (n) in accordance with 18 U.S.C. § 3663(d).

(b) Restitution may be ordered as a condition of probation or supervised release or as an independent sentence. If restitution is imposed as an independent sentence, the restitution order becomes a condition of any probationary sentence or supervised release, as a matter of law.

(c) If a defendant is ordered to make restitution and to pay a fine, the court shall order that any money paid by the defendant shall first be applied to satisfy the order of restitution.

COMMENTARY

Section 3553(a)(7) of Title 18 requires the court, "in determining the particular sentence to be imposed," to consider "the need to provide restitution to any victims of the offense." Section 3556 of Title 18 authorizes the court to impose restitution in accordance with 18 U.S.C. §§ 3663 and 3664 for violations of Title 18 and of designated subdivisions of 49 U.S.C. § 1472. Restitution is not precluded, however, as a condition of probation or supervised release for other offenses. See S. REP. NO. 225, 98th Cong., 1st Sess. 95–96. An order of restitution may be appropriate in offenses not specifically referenced in 18 U.S.C. 3663 where victims require relief more promptly than the civil justice system provides.

Section 3663(d) requires the court to "impose an order of restitution to the extent that such order is as fair as possible to the victim and the imposition of such order will not unduly complicate or prolong sentencing." If the court does not order restitution, or orders only partial restitution, it must state its reasons for doing so. 18 U.S.C. § 3663(a)(2).

In determining whether to impose an order of restitution, and the amount of restitution, the court shall consider the amount of loss the victim suffered as a result of the offense, the financial resources of the defendant, the financial needs of the defendant and his dependents, and other factors the court deems appropriate. 18 U.S.C. § 3664(a).

Pursuant to Rule 32(c)(2)(D), Federal Rules of Criminal Procedure, the probation officer's presentence investigation report must contain a victim impact statement. The report must contain information about financial impact on the victim and the defendant's financial condition. The sentencing judge may base findings on the presentence report or other testimony or evidence, supported by a preponderance of evidence. 18 U.S.C. § 3664(d).

A court's authority to deny restitution is limited. Even "in those unusual cases where the precise amount owed is difficult to determine, section 3579(d) [the identical predecessor of section 3663(d)] authorizes the court to reach an expeditious, reasonable determination of appropriate restitution by resolving uncertainties with a view toward achieving fairness to the victim." S. REP. NO. 532, 97th Cong., 2d Sess. 31, reprinted in 1982 U.S. CODE CONG. & AD. NEWS 2515, 2537.

Unless the court orders otherwise, restitution must be made immediately. 18 U.S.C. § 3663(f)(3). The court may permit the defendant to make restitution within a specified period or in specified installments, provided that the last installment be paid not later than the expiration of probation, five years after the end of the defendant's term of imprisonment, or five years after the date of sentencing in any other case. 18 U.S.C. § 3663(f) (1) and (2). The restitution order should specify how and to whom payment is to be made.

§ A542. Fines for Individual Defendants. (a) Except as provided in subdivision (f) below, the court shall impose a fine, either as the sole sanction if a term of imprisonment is not required, or in conjunction with other sanctions.

(b)(1) The generally applicable guideline minimum and maximum fine for each offense level is shown in the Fine Table in subsection (c) below.

(2) If the guideline for the offense prescribes a different rule for imposing fines, that rule takes precedence. Unless a statute expressly authorizes a greater amount, no fine may exceed $250,000 for a felony or a misdemeanor resulting in the loss of human life; $25,000 for any other misdemeanor; or $1,000 for an infraction. 18 U.S.C. § 3571(b)(1).

(c)(1) The minimum of the guideline fine range is the greater of:

(a) the amount shown in column A of the table below; or

(b) any monetary gain to the defendant, less any restitution made or ordered.

(2) The maximum of the guideline fine range is the greater of:

(a) the amount shown in column B of the table below;

(b) twice the estimated loss to the victim; or

(c) three times the estimated gain to the defendant.

(3) Fine Table:

Offense level	A Minimum	B Maximum
1	$25	$250
2 to 3	100	1,000
4 to 5	250	2,500
6 to 7	500	5,000
8 to 9	1,000	10,000
10 to 11	2,000	20,000
12 to 13	3,000	30,000
14 to 15	4,000	40,000
16 to 17	5,000	50,000
18 to 19	6,000	60,000
20 to 22	7,500	75,000
23 to 25	10,000	100,000
26 to 28	12,500	125,000
29 to 31	15,000	150,000
32 to 34	17,500	175,000
35 to 37	20,000	200,000
38 and above	25,000	250,000

(4) Provision (c)(2), limiting the maximum fine, does not apply to statutes authorizing maximum fines greater than $250,000. For convictions under those statutes, however, the court should consider the factors set forth in subsection (d) in determining the amount of the fine.

(d) In determining the amount of the fine, the court shall consider:

(1) the need for the combined sentence to reflect the seriousness of the offense (including the harm or loss to the victim and the gain to the defendant), to promote respect for the law, to provide just punishment and to afford adequate deterrence;

(2) the ability of the defendant to pay the fine (including the ability to pay over a period of time) in light of his earning capacity and financial resources;

(3) the burden that the fine places on the defendant and his dependents relative to alternative punishments;

(4) any restitution or reparation that the defendant has made or is obligated to make;

(5) collateral consequences of conviction, including civil obligations arising from the defendant's conduct;

(6) whether the defendant previously has been fined a lesser amount for a similar offense; and

(7) any other pertinent equitable considerations.

(e) The amount of the fine should always be sufficient to ensure that the total sanction is punitive.

(f) If the defendant establishes that (1) he is not able and, even with the use of a reasonable installment schedule, is not likely to become able to pay all or part of the fine required by the preceding provisions, or (2) imposition of a fine would unduly burden the defendant's dependents, the court may impose a lesser fine or waive the fine. In these circumstances, the court shall consider other sanctions in lieu of all or a portion of the fine, and must impose a total combined sanction that is punitive. Community service is the preferred alternative when a fine is not feasible, but any additional sanction other than one which increases imprisonment beyond the applicable guideline range is permissible within the guidelines.

(g) If the defendant establishes that payment of the fine in a lump sum would have an unduly severe impact on him or his dependents, the court should establish an installment schedule for payment of the fine. The length of the installment schedule generally should not exceed twelve months, and shall not exceed the maximum term of probation authorized for the offense. The defendant should be required to pay a substantial installment at the time of sentencing. If the court authorizes a defendant sentenced to probation or supervised release to pay a fine on an installment schedule, the court shall require as a condition of probation or supervised release that the defendant pay the fine according to the schedule. The court also may impose a condition prohibiting the defendant from incurring new credit charges or opening additional lines of credit unless he is in compliance with the payment schedule.

(h) If the defendant knowingly fails to pay a delinquent fine, the court shall resentence him in accordance with 18 U.S.C. § 3614.

(i) Notwithstanding any other provisions of this section, the court shall impose an additional fine amount that is at least sufficient to pay the costs to the government of any imprisonment or probation ordered, unless the defendant is unable to pay such costs. For purposes of this section, the court shall presume that the cost of imprisonment is $1,500 per month, and the cost of probation supervision is $50 to $300 per month, depending upon the degree of supervision.

COMMENTARY

These guidelines provide for a relatively wide and flexible range of fines. More detailed guidelines for the imposition of fines may be promulgated after analyzing practice under these initial guidelines. Recent legislation provides for substantial increases in fines. 18 U.S.C. § 3571(b). With few restrictions, 42 U.S.C. 10601 (b), and (c) authorize fine payments up to $100 million to be deposited in the Crime Victims Fund in the United States Treasury. With vigorous enforcement by the Department of Justice and United States Probation Officers, higher fines will be effective punitive and deterrent sanctions.

Section A542(c)(2) provides for alternative calculations of the maximum fine as three times the gain or twice the loss. Different multiples were chosen to reflect the fact that most offenses result in losses to society and provable gains to defendants. When only the gain can be estimated, it is likely that the court will be unable to require restitution. Hence, a higher multiple of the gain is needed to approximate a fine based on the loss involved. It is intended that these alternatives will not require precise calculation.

Section A542(c)(4) applies to statutes that provide for larger fines than are applicable under § A542(c)(2). These statutes include, among others: 21 U.S.C. §§ 841(b) and 960(b), which authorize fines up to $8 million in offenses involving the manufacture, distribution, or importation of certain controlled substances; 21 U.S.C. 848(a), which authorizes fines up to $4 million in offenses involving the manufacture or distribution of controlled substances by a continuing criminal enterprise; 18 U.S.C. § 1956(a), which authorizes a fine equal to the greater of $500,000 or two times the value of the monetary instruments or funds involved in offenses involving money laundering of financial instruments; and 18 U.S.C. § 1957(b)(2), which authorizes a fine equal to two times the amount of any criminally derived property involved in a money laundering transaction.

If the court concludes the defendant has undisclosed income or assets that justify a greater fine to satisfy the purposes of sentencing in 18 U.S.C. § 3553(a)(2) (A) and (B), a fine higher than would otherwise be warranted under § A542 should be imposed. The court may base its conclusion on information revealing significant unexplained expenditures by the defendant or unexplained possession of assets that do not comport with the defendant's reported income. If the court concludes that the defendant willfully misrepresented all or part of his income or assets, it should aggravate his sentence in accordance with Chapter Three, Part B (Post-Offense Conduct).

If no term of imprisonment is imposed and the fine is not paid in full at the time of sentencing, it is recommended that the court sentence the defendant to a term of probation, and that payment of the fine be a condition of probation. If a fine is imposed in addition to a term of imprisonment, it is recommended that the court impose a term of supervised release following imprisonment as a means of enforcing payment of the fine.

§ A543. Special Assessments. A special assessment must be imposed on a convicted defendant in the amount prescribed by statute.

COMMENTARY

The Victims of Crime Act of 1984, Pub. L. No. 98–473, Title II, Chap. XIV, requires the courts to impose special assessments on convicted defendants for the purpose of funding the Crime Victims Fund established by the same legislation. Monies deposited in the fund are awarded to the states by the Attorney General for victim assistance and compensation programs.

The Act requires the court to impose assessments in the following amounts:

$25, if the defendant is an individual convicted of a misdemeanor;

$50, if the defendant is an individual convicted of a felony;

$100, if the defendant is an organization convicted of a misdemeanor; and

$200, if the defendant is an organization convicted of a felony. 18 U.S.C. § 3013.

The Act does not authorize the court to waive imposition of the assessment.

§ A544. Forfeiture. Forfeiture is to be imposed upon a convicted defendant as provided by statute.

COMMENTARY

Forfeiture generally. Forfeiture provisions exist in various statutes. For example, 18 U.S.C. § 3554 requires a court imposing a sentence under 18 U.S.C. § 1962 (proscribing the use of the proceeds of racketeering activities in the operation of an enterprise engaged in interstate commerce) or Titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (proscribing the manufacture and distribution of controlled substances) to order the forfeiture of property in accordance with 18 U.S.C. § 1963 and 21 U.S.C. § 853, respectively. Those provisions require the automatic forfeiture of certain property upon conviction of their respective underlying offenses.

Special Forfeiture of Collateral Profits of Crime. The provisions of 18 U.S.C. §§ 3681–3682 authorize a court, in certain circumstances, to order the forfeiture of a violent criminal's proceeds from the depiction of his crime in a book, movie, or other medium. Those sections authorize the deposit of proceeds in an escrow account in the Crime Victims Fund of the United States Treasury. The money is to remain available in the account for five years to satisfy claims brought against the defendant by the victim(s) of his offenses. At the end of the five-year period, the court may require that any proceeds remaining in the account be released from escrow and paid into the Fund 18 U.S.C. § 3681(c)(2).

5. Sentencing Options

18 U.S.C. § 3553
18 U.S.C. § 3555
18 U.S.C. § 3563
18 U.S.C. § 3583
18 U.S.C. § 3663
18 U.S.C. § 3742

§ A551. Community Confinement.

(a) Community confinement may be imposed as a condition of probation or supervised release.

(b) Community confinement may be imposed in lieu of imprisonment, as provided in § A521.

COMMENTARY

"Community confinement" means residence in a community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community facility, and community service, employment, or treatment during non-residential hours.

Community confinement generally should not be imposed for a period in excess of six months. A longer period may be imposed to accomplish the objectives of a specific

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rehabilitative program, such as drug rehabilitation. The sentencing judge may impose other discretionary conditions of probation or supervised release appropriate to effectuate community confinement.

§ A552. Home Detention.

(a) Home detention may be imposed as a condition of probation or supervised release.

(b) Home detention may be imposed in lieu of imprisonment, as provided in § A521, provided, however, that the circumstances of home confinement are sufficient to ensure compliance, including the detection of any violation.

COMMENTARY

"Home detention" means a program of confinement and supervision that restricts the defendant to his place of residence permanently, or during specified hours, enforced by appropriate means of surveillance by the probation office.

Home detention generally should not be imposed for a period in excess of six months. A longer term may be appropriate for disabled, elderly or extremely ill defendants who would otherwise be imprisoned. The sentencing judge should impose conditions of probation or supervised release assuring the defendant's participation in community service, treatment programs, or employment during non-detention hours. The judge may also impose other conditions of probation or supervised release appropriate to effectuate home detention.

§ A553. Community Service.

(a) Community service may be ordered as a condition of probation or supervised release. If the defendant was convicted of a felony, the court must order one or more of the following sanctions: a fine, restitution, or community service. § 18 U.S.C. 3563(a)(2).

(b) With the consent of the victim of the offense, the court may order a defendant to perform services for the benefit of the victim in lieu of monetary restitution. 18 U.S.C. § 3663(b)(4).

COMMENTARY

Community service should generally not be imposed in excess of 400 hours. Longer terms of community service impose heavy administrative burdens relating to the selection of suitable placements and the monitoring of attendance.

§ A554. Order of Notice to Victims.

The court may order the defendant to pay the cost of giving notice to victims pursuant to 18 U.S.C. § 3555. This cost may be set off against any fine imposed if the court determines that the imposition of both sanctions would be excessive.

COMMENTARY

In cases where a defendant has been convicted of an offense involving fraud or "other intentionally deceptive practices," the court may order the defendant to "give reasonable notice and explanation of the conviction, in such form as the court may approve" to the victims of the offense. 18 U.S.C. § 3555. The court may order the notice to be given by mail, by advertising in specific areas or through specific media, or by other appropriate means. In determining whether a notice is appropriate, the court must consider the generally applicable sentencing factors listed in 18 U.S.C. § 3553(a) and the cost involved in giving the notice as it relates to the loss caused by the crime. The court may not require the defendant to pay more than $20,000 to give notice.

If an order of notice to victims is under consideration, the court must notify the government and the defendant. 18 U.S.C. § 3553(d). Upon motion of either party, or on its own motion, the court must: (1) permit the parties to submit affidavits and memoranda relevant to the imposition of such an order; (2) provide counsel for both parties the opportunity to address orally, in open court, the appropriateness of such an order; and (3) if it issues such an order, state its reasons for doing so. The court may also order any additional procedures that will not unduly complicate or prolong the sentencing process.

The legislative history indicates that, although the sanction was designed to provide actual notice to victims, a court might properly limit notice to only those victims who could be most readily identified, if to do otherwise would unduly prolong or complicate the sentencing process.

§ A555. Occupational Restrictions.

(a) The court shall impose a condition of probation or supervised release prohibiting a defendant from engaging in a specified occupation, business, or profession, or limiting the terms on which he may do so, only if it determines that:

(1) a reasonably direct relationship existed between the defendant's occupation, business, or profession and his conduct relevant to the offense of conviction;

(2) there is a risk that, absent such restriction, the defendant will continue to engage in unlawful conduct similar to that for which he was convicted; and

(3) imposition of such a restriction is reasonably necessary to protect the public.

(b) If the court decides to impose a condition of probation or supervised release restricting a defendant's engagement in a specified occupation, business, or profession, the court shall impose the condition for the minimum time and to the minimum extent necessary to protect the public.

(c) If the defendant is an organization, occupational restrictions may only be imposed as a condition of probation or supervised release where necessary to prohibit the activities of a fraudulent enterprise.

COMMENTARY

The Comprehensive Crime Control Act authorizes the imposition of occupational restrictions as a condition of probation, 18 U.S.C. § 3563(b)(6), or supervised release, 18 U.S.C. § 3583(d). Pursuant to section 3563(b)(6), a court may require a defendant to:

"[R]efrain, in the case of an individual, from engaging in a specified occupation, business, or profession bearing a reasonably direct relationship to the conduct constituting the offense, or engage in such a specified occupation, business, or profession only to a stated degree or under stated circumstances."

Section 3583(d) incorporates this section by reference. The Senate Judiciary Committee Report on the Comprehensive Crime Control Act explains that the provision was "intended to be used to preclude the continuation or repetition of illegal activities while avoiding a bar from employment that exceeds that needed to achieve that result." S. REP. NO. 225, 98th Cong., 1st Sess. 96–97. The condition "should only be used as reasonably necessary to protect the public. It should not be used as a means of punishing the convicted person." Id. at 96. Section A555 accordingly limits the use of the condition and, if imposed, limits its scope, to the minimum reasonably necessary to protect the public.

Section A555(c) authorizes the application of occupational restrictions to organizations, "where necessary to restrict the activities of a fraudulent enterprise." The Senate Judiciary Committee Report notes that the limitation of § 3563(b)(6) to individuals "should not be construed to preclude the imposition of appropriate conditions designed to stop the continuation of a fraudulent business in the unusual case in which a business enterprise consistently operates outside the law." S. REP. NO. 225, 98th Cong., 1st Sess. 96–97.

The appellate review provisions permit a defendant to challenge the imposition of a probation condition under 18 U.S.C. § 3563(b)(6) if "the sentence includes . . . a more limiting condition of probation or supervised release under section 3563(b)(6) . . . than the maximum established in the guideline." 18 U.S.C. § 3742(a)(3)(A). The government may appeal if the sentence includes a "less limiting" condition of probation than the minimum established in the guideline. 18 U.S.C. § 3742(b)(3)(A).

The Comprehensive Crime Control Act expressly authorizes promulgation of policy statements regarding the appropriate use of conditions of probation and supervised release. 28 U.S.C. § 994(a)(2)(B). The Act does not expressly grant the authority to issue guidelines on the subject. The appellate review provisions of the Act, however, authorize appeals of occupational restrictions that deviate from the minimum and maximum limitations "established in the guideline" (emphasis added).

6. Concurrent and Consecutive Sentences of Imprisonment

18 U.S.C. § 924(c)
18 U.S.C. §§ 3146–3147
18 U.S.C. § 3553
18 U.S.C. § 3584

§ A561. Sentences imposed on multiple counts of an indictment, or on multiple consolidated indictments run concurrently, unless otherwise ordered by the court.

§ A562. Concurrent sentences shall not be imposed in the following cases:

(a) Offenses for which consecutive sentences are required by law;

(b) Multiple counts of an indictment or multiple consolidated indictments, if concurrent sentences would not adequately serve the statutory purposes of sentencing, including just punishment, general and special deterrence, and incapacitation.

§ A563. Sentences imposed at different times in separate cases run consecutively, unless the court finds that the underlying offenses in the separate cases arise from the same occurrences or transactions, or that the sentencing purposes set forth in 18 U.S.C. § 3553(a) would not be served by consecutive sentences.

§ A564. Sentences imposed for conspiracy or solicitation and for an offense that was the sole object of the conspiracy or solicitation are assumed to run concurrently. 28 U.S.C. § 994(1)(2). Sentences imposed for an attempt and for the offense that was the sole object of the attempt shall run concurrently. 18 U.S.C. § 3584(a).

§ A565. A sentence imposed for an offense involving a general prohibition shall run concurrently with a sentence imposed for an offense involving a violation of a specific prohibition encompassed in the general provision. 28 U.S.C. § 994(u).

COMMENTARY

Congress has directed that multiple terms of imprisonment imposed at the same time run concurrently unless the court orders, or a statute governing one of the offenses of conviction mandates, that the sentences are to run consecutively. 18 U.S.C. § 3584(a). Congress has also directed that multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms are to run concurrently. Id. In determining whether to impose concurrent or consecutive sentences, the court shall consider the purposes of sentencing, enumerated in 18 U.S.C. § 3553(a), as to each offense. 18 U.S.C. § 3584. With these legislative mandates in mind, guidelines were formulated pursuant to 28 U.S.C. § 944(a)(1)(D) for imposition of concurrent and consecutive sentences.

Concurrent sentencing for multiple count indictments is generally the current practice in routine cases. However, if the offense conduct violates substantial public interests or involves aggravated or ongoing criminal behavior, courts often impose consecutive sentences or a combination of consecutive and concurrent sentences. Congress clearly intended for the courts to retain the right to impose consecutive sentences, provided that a statutory mandate or a sentencing factor set forth in 18 U.S.C. § 3553(a) supports the court's decision.

Section A561 provides that multiple sentences imposed in the same case or in judicially consolidated cases run concurrently, unless otherwise ordered. This provides a mechanism for a determination whether to impose concurrent or consecutive sentences. It is not meant to create a presumption either for or against the imposition of concurrent or consecutive sentences. Section A563 provides that sentences imposed in different cases at different times run consecutively, unless the court finds that the underlying offense behavior is the same and the statutory purposes of sentencing would not be served by consecutive sentences.

Section A562(a) applies to offenses that are subject to statutorily required consecutive sentences. For example, a conviction for the use of a deadly or dangerous weapon or device in committing "a crime of violence" requires imposition of a consecutive five-year sentence for the first conviction and a mandatory consecutive sentence of ten years for subsequent convictions. 18 U.S.C. § 924(c). Similarly, a sentence imposed upon a conviction for failure to appear in court, as required by the conditions of release on bond, or to surrender for service of sentence, shall run consecutively to any other sentence imposed. 18 U.S.C. § 3146(b). A sentence imposed for commission of an offense while on release shall run consecutively to any other sentence of imprisonment. 18 U.S.C. § 3147.

Section A562(b) applies to criminal conduct that requires consecutive sentences to adequately punish the defendant for the scope and nature of his conduct and to deter others from chronic and often profitable criminal activity. Sophisticated fraud schemes, espionage, violent crimes, crimes involving corruption of governmental institutions, organized counterfeiting and theft operations, and willful, continuous violations of environmental laws are examples of ongoing conduct that may warrant consecutive sentences to adequately punish the defendant and to deter others.

Section A563 sets forth the general circumstances in which multiple sentences in the same or related cases do not run concurrently. In these cases, the court may impose consecutive sentences, or a combination of consecutive and concurrent sentences, to effectuate the sentencing purposes enumerated in 18 U.S.C. § 3553(a).

As explained at the beginning of Chapter Two, in determining the appropriate sentence the court should consider all conduct relevant to the offense of conviction and all relevant defendant characteristics. Thus, while concurrent sentences may be imposed in a multicount indictment, each sentence should reflect more than just a sentence imposed on an individual count of conviction as if the other acts of misconduct had not occurred. The sentence on any given count concurrent with others should incorporate all the relevant acts of misconduct committed by the defendant even though they may be recited in other counts. If the otherwise indicated sentence on any given count, taking into consideration all the relevant acts of misconduct by the defendant, calls for a sentence above the maximum permitted by law for the offense charged in that count, the court shall impose consecutive sentences to the extent necessary to fulfill the purposes enumerated in 18 U.S.C. § 3553(a).

CHAPTER SIX—VIOLATIONS OF PROBATION AND SUPERVISED RELEASE

Introduction. Regardless of the purposes for which a term of probation or supervised release is imposed, compliance with the conditions of supervision is essential if these sanctions are to be meaningful and acceptable. Only if the defendant perceives that failure to comply will result in a prompt and certain response from the court will the conditions be adhered to in a serious and conscientious manner. Consistency in handling violations of probation and supervised release is therefore necessary in order to reduce unwarranted disparity.

§ A611. Categories of Violations.

(a) A violation of any condition of probation or supervised release that constitutes new criminal conduct is a Category 1 violation.

(b) APPLICABLE TO FELONY PROBATION ONLY: A violation of any condition of probation resulting from a conviction for a felony requiring a defendant to pay a fine, restitution, or perform community service is a Category 2 violation.

(c) A violation of any condition of probation or supervised release except those in (a) and (b) above or in (d) below is a Category 3 violation.

(d) A violation of any condition of probation or supervised release, recommended in the commentary of Chapter Five, § A513, that does not constitute new criminal conduct is a Category 4 violation.

§ A612. Reporting of Violations.

(a) Category 1, 2, and 3 Violations.

The United States Probation Officer shall report all Category 1, 2, and 3 violations to the court. With respect to conditions such as payment of fines, restitution, or performance of community service, the court and probation office should establish policies as to when non-compliance constitutes a violation.

(b) Category 4 Violations.

The United States Probation Officer shall report all Category 4 violations to the court, unless the probation officer determines that the violation behavior can be handled through alternate means.

Alternatives should only be used if the probation officer determines that their use: (1) will not present undue risk

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to the public; (2) will not depreciate either the defendant's or the public's respect for the court or the probation system; and, (3) is consistent with the court's intention for placing the defendant on supervision.

§ A613. Court Response to Violation Reports.

(a) Category 1 Violations.

For violations of Category 1 (new criminal conduct), the court shall in most instances issue a violator's warrant and conduct a violation hearing. Rule 32.1, Federal Rules of Criminal Procedure. If the court determines that the violation has occurred, it normally shall revoke the probation or supervised release and impose a new sentence. If the court determines that revocation is not appropriate, it shall state its reasons and, in most instances, shall modify or increase the discretionary conditions of probation or supervised release to afford closer supervision.

(b) Category 2 and 3 Violations.

For violations of these mandatory and discretionary conditions, the court shall assess the nature and seriousness of the violation to determine whether a violation hearing is required. If the defendant either will not or cannot adhere to the conditions, despite efforts by the probation officer to enforce compliance, the court shall conduct a hearing to determine the action necessary. This action might include modification or release from the condition (with the exception that at least one of the mandatory conditions of fine, restitution, or community service shall be required for a defendant convicted of a felony), the inclusion of other discretionary conditions, or revocation of the probation or supervised release.

(c) Category 4 Violations.

For Category 4 violations, the court shall assess the nature and seriousness of the violation and determine whether a violation hearing is required. If the violation is deemed to be of a serious nature, or if it appears that despite efforts by the probation officer the defendant will not comply, the court shall conduct a hearing pursuant to Rule 32.1 and determine the appropriate action.

§ A614. Sentence to be Imposed Upon Revocation.

(a) Revocation of Probation.

(1) Category 1 Violations. Upon revocation for a Category 1 violation, the court shall impose a sentence between the midpoint and maximum guideline range originally applicable. However, if the offense is unusually serious, the court may depart from the guideline range and impose any appropriate sentence up to the statutory maximum.

(2) Category 2 Violations. Upon revocation for a Category 2 violation, the court shall impose a sentence between the midpoint and maximum guideline range originally applicable.

(3) Category 3 and 4 Violations. Upon revocation for a Category 3 or Category 4 violation, the court shall impose a sentence within the guideline range originally applicable.

(4) Consecutive Sentence. If at the time of revocation the defendant is serving or subject to a custody sentence in another case, the court shall order the sentence imposed upon revocation to run consecutively to the prior custody sentence. This shall occur whether or not the prior custody sentence is related to the violation of probation.

(5) Allowable Considerations Upon Revocation. Upon revocation, no credit for time served under supervision shall be given.

Additionally, no credit shall be given for time served as a special condition of probation in custody, community confinement, or home detention.

In determining the appropriate sentence upon revocation, the court shall consider the factors described in 18 U.S.C. § 3565(a), and the nature and seriousness of the violation. The court may consider the defendant's adjustment and compliance otherwise to the conditions of probation. These considerations may include the amount of time successfully spent under supervision, payments toward fines or restitution, performance of community service, residency or participation in halfway houses, drug or other rehabilitation programs, and compliance with other conditions of probation.

(b) Revocation of Supervised Release.

(1) Category 1 Violations. Upon revocation for a Category 1 violation, the court shall impose a sentence not less than one-third the term of supervised release originally imposed.

(2) Category 3 and 4 Violations. Upon revocation for a Category 3 or Category 4 violation, the court shall impose a sentence not to exceed two-thirds the term of supervised release originally imposed.

(3) Consecutive Sentence. If at the time of revocation the defendant is serving or subject to a custody sentence in another case, the court shall order the sentence imposed upon revocation to run consecutively to the prior custody sentence. This shall occur whether or not the prior custody sentence is related to the violation of supervised release.

(4) Allowable Considerations Upon Revocation. Upon revocation, the court shall give no credit for time served under supervision. Additionally, no credit shall be given for time served as a special condition of the supervised release in community confinement or home detention.

In determining the appropriate sentence upon revocation, the court shall consider the factors described in 18 U.S.C. § 3583(e), and the nature and seriousness of the violation. The court may consider the defendant's adjustment and compliance otherwise to the conditions of supervised release. These considerations may include the amount of time successfully spent under supervision, payments toward fines or restitution, performance of community service, residency or participation in halfway houses, drug or other rehabilitation programs, and compliance with other conditions of supervised release.

COMMENTARY

Categories of Violations. Violations of probation and supervised release and the sentence to be imposed upon revocation are affected by the category of the violation. While the guidelines establish when certain violations must be reported to the court, they are not intended to restrict action at an earlier point. The Commission emphasizes that at any time prior to that called for by these guidelines, the probation officer may report any violation to the court and request a violator's warrant. The court may then issue a warrant, conduct a hearing, and, upon determination that the violation has occurred, modify the conditions (through addition, deletion, or change of discretionary conditions), or revoke the probation or supervised release.

Category 1 violations include any violations of the statutorily required condition of not committing another crime. Category 2 violations apply to a felon placed on probation who fails to pay a fine, restitution, or perform community service. Category 3 violations are violations of any conditions imposed by the court that are not covered in Category 1, 2, or 4. Category 4 violations include any violations of the recommended conditions of probation or supervised release (except those constituting new criminal conduct).

Determining Category. Violations of certain conditions of probation and supervised release necessarily constitute new criminal behavior (e.g., violations of the mandatory condition prohibiting the commission of another crime, the recommended condition prohibiting possession of controlled substances, and, in the case of a convicted felon, possession of a firearm). When a violation of any condition constitutes new criminal behavior, the violation shall be treated under the guidelines applicable to Category 1 violations (new criminal behavior), both for purposes of handling the violation and resentencing if revocation occurs.

New Criminal Behavior. Probation officers shall immediately report new criminal behavior. Category 1 violations, to the court. In most instances, the court shall issue a violator's warrant and conduct a violation hearing. Upon determining that the violation has occurred, the anticipated disposition shall be revocation. If the court determines that revocation is not appropriate at that time, reasons shall be stated on the record. The court shall modify or increase the discretionary conditions of supervision to afford closer supervision.

The reporting of violations, issuance of violator warrants, and violation hearings based on new criminal behavior shall not be restricted to situations where new criminal charges have resulted. Rather, action shall be dependent upon the actual behavior of the defendant on probation or supervised released.

New Criminal Charges. In many instances where new criminal charges have been made but have not yet been disposed of, the court may wish to proceed in the issuance of a violator's warrant and in conduct a violation hearing. Instances where the court may wish to delay issuance of a warrant or conduct a violation hearing might include the following:

(1) the court determines that the new criminal charges are likely to be disposed of in the very near future;

(2) conducting a violation hearing prior to the disposition of the pending charges would place an unnecessary burden on the court because of extensive evidentiary proceedings or the unavailability of evidence for a violation hearing at the time; or

(3) the interests of justice are best served by delaying the issuance of a warrant or the violation hearing.

In deciding whether to delay the issuance of a violator's warrant or the violation hearing, the court shall consider the relative risk the defendant presents to the community during the pendency of the new criminal charges, and the seriousness of the alleged conduct. The court shall not permit the term of probation or supervised release to expire without issuance of a violator's warrant unless the probation officer's report indicates that the new criminal charges are without foundation and that the defendant has committed no act that constitutes new criminal behavior, or that the new prosecution is to be ended and that establishing the violation would place an undue burden on the court or would not be in the interests of justice.

When revocation occurs following conviction for new criminal charges, the sentence imposed shall be consecutive to any custody sentence that the defendant received for the new criminal conviction.

Violations for Drug Use. A recommended condition for probation and supervised release prohibits the possession, use, and other activities involving illicit drugs. A violation of this condition constitutes new criminal behavior. If a defendant submits to urinalysis pursuant to a discretionary condition of supervision, a positive reading would be a violation constituting new criminal behavior to be reported to the court. In instances where no new criminal charges have resulted and the indications are that the drug activities of the defendant are confined only to personal use, the court may wish to impose discretionary conditions requiring participation in a drug program and urinalysis. If there is continued drug use after placement in a drug program, the court should revoke the probation or supervised release because illegal drug use is closely correlated to other criminal activity and indicates unwillingness or inability on the part of the defendant to adhere to the conditions of supervision. If there are indications that the drug activities involve anything other than personal use, or if the defendant has a history of violence associated with drug use, the presumption is that supervision will be revoked.

Category 3 Violations. Category 3 violations are to be reported by the probation officer to the court. Should it become apparent that the defendant either cannot or will not adhere to the condition, the court should take the appropriate steps to address the violation. If the defendant is unable to comply, these steps may include modification, or release from, the condition if it was discretionary. If the defendant is unwilling to comply, the court may modify or increase the conditions of supervision to promote compliance, or revoke the probation or supervised release.

Violations Involving Fines, Restitution, and Community Service. Violations of mandatory or discretionary conditions involving fines, restitution, and community service are to be reported to the court. Because there may be situations where the defendant is under a payment or community service work schedule and does not fully meet the requirement during a given time period or may otherwise be in default, the court shall establish with the probation office the point at which the matter is to be reported as a violation. For example, the court may decide to require a report only after the defendant is two full months in arrears in fine or restitution payments, or is not fulfilling his community service obligations. As with other violations, such a plan would not prohibit the probation officer or the court from taking earlier action.

Violations of Recommended Conditions. The Comprehensive Crime Control Act requires only one condition of probation imposed in every case, i.e., that the defendant not commit another criminal act while under supervision. If the defendant is placed on probation as the result of a felony conviction, the law also requires that a condition be imposed requiring the defendant to pay a fine, restitution, or perform community service. To make probation an acceptable sentencing option, a list is provided of recommended conditions of probation that must be included in every case along with the statutorily required conditions.

Violation of recommended conditions (except those constituting new criminal behavior) are to be reported by the probation officer to the court unless the probation officer determines that compliance can be achieved through alternate means that do not present an undue risk to the public. In handling violations in such a fashion, documented in the chronological record in the case file, the probation officer is to consider the court's intent in placing the defendant on probation or supervised release, and both the defendant's and the public's respect for the court and probation system. When violations in this category are particularly serious or are continued or flagrant, the probation officer should report them to the court for appropriate action. Because the recommended conditions are to be imposed in every case of probation or supervised release, the court should require compliance as opposed to modifying or dismissing any of these conditions.

Violations Involving Petty Offenses. Violation of petty offenses, such as public drunkenness and minor traffic offenses (not to include driving under the influence), are covered by the guidelines for Category 4 violations, and are not considered new criminal conduct. If the offense is of a serious nature or similar to the offense for which the defendant was placed on supervision, the matter shall be reported to the court. Likewise, if a pattern of these violations occurs, the court shall be notified. Any offenses that involve assaultive behavior, theft, or other acts of moral turpitude should be treated as Category 1 violations.

Revocation of Probation. Upon revocation of probation, the sentence to be imposed is based upon the category of violation and the sentencing range originally computed for the defendant, without regard to events that have occurred since its original computation. For example, if the original offense level was decreased for acceptance of responsibility, the resulting range would remain unchanged despite the fact that the defendant later failed to demonstrate such acceptance (e.g., failure to pay restitution to a victim). The defendant's criminal history score as originally computed would remain unchanged for purposes of sentencing on revocation. In the instances where the defendant was placed on probation because the court departed from the applicable guideline range, the originally applicable guideline range is applicable upon revocation.

For revocation based on Category 1 violations, the sentence imposed should be between the midpoint and maximum of the guideline range originally applicable. Where the offense was unusually serious, the court may depart from the guideline range and impose any appropriate sentence up to the statutory maximum. For revocation based on Category 2 violations, the sentence imposed should be between the midpoint and the maximum of the guideline range originally applicable. These ranges are established to reflect the seriousness of violating those conditions that prohibit any criminal behavior or require a felon to pay a fine, restitution, or perform community service, the only statutorily required conditions of probation. For revocation based on other violations, the sentence should be within the originally applicable guideline range. Upon revocation the court may consider the seriousness of the violation as well as the defendant's adjustment and performance otherwise while under probation.

Revocation of Supervised Release. Upon revocation of supervised release, the sentence to be imposed is based upon the category of violation and the term of supervised release. For revocation based on

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Category 1 violations (new criminal behavior), a sentence of incarceration shall be imposed that is between one-third and the entire term of supervised release originally imposed. The minimum sentence is established to reflect the seriousness of violating the condition prohibiting any criminal behavior, the only statutorily required condition for an individual placed on supervised release. The latitude otherwise allowed the court in setting the sentence permits consideration of a number of factors, including the nature and seriousness of the criminal behavior, the relative length of the supervised release term, and the adjustment and compliance to the conditions of supervised release.

For revocation based on Category 3 and Category 4 violations (violations of discretionary conditions not involving new criminal behavior and recommended conditions of supervised release), a sentence not to exceed two-thirds of the supervised release term shall be imposed. While also allowing the court latitude in setting a sentence for these violations, the two-third restriction reflects that aggravated violations of Category 3 and Category 4 are not as serious as aggravated violations involving new criminal behavior. Within the permitted latitude, the court may consider factors including the nature and seriousness of the violation, the relative length of the supervised release, and the defendant's general adjustment and compliance with the conditions of supervised release.

Revocation for Violations of Conditions Involving Fines, Restitution, and Community Service. The Comprehensive Crime Control Act requires that individuals convicted of a felony who are sentenced to probation shall have as a condition of probation either payment of a fine, restitution, or performance of community service. 18 U.S.C. § 3563(a)(2). If the court orders a fine and places a defendant on probation, the payment of the fine or adherence to the court-established installment schedule shall be a condition of probation. Id. Emphasis is also placed on restitution. The court may order restitution upon conviction for certain offenses. If such an order is not included, the court must state its reasons on the record; if the defendant is sentenced to probation or supervised release, any restitution ordered shall be a condition of supervision. Id.

The conditions of fine, restitution, and community service are classified as Category 2 or Category 3 violations, depending upon whether they are mandatory or discretionary. Violations must always be reported to the court by the probation officer. Emphasis is given to the statutorily required conditions for felons placed on probation to pay a fine, restitution, or perform community service, through elimination of the lower half of the guideline range under which the felony probationer is to be sentenced upon revocation for violation of one of these conditions.

18 U.S.C. § 3614 provides that a defendant may be resentenced if he knowingly fails to pay a delinquent fine, and may be sentenced to imprisonment only if the court determines that he willfully refused to pay or failed to make sufficient efforts. The defendant may also be resentenced if the court determines that because of the nature of the offense and characteristics of the defendant, alternatives to imprisonment are not adequate to serve the purposes of punishment and deterrence.

18 U.S.C. § 3663(g) addresses revocation and modification of probation and supervised release based on failure to pay restitution. The court shall then consider the defendant's employment status, earning ability, financial resources, the willfulness of the failure to pay, and any other special circumstances that may have a bearing on the ability to pay.

The court must assess the nature and seriousness of any violation in determining the appropriate sentence within the guideline range. However, in most instances where the violation is a willful failure to pay a fine, restitution, or perform community service, the sentence should be at or near the maximum applicable guideline range.

Summary data on estimates of current sentencing practices are available on written request.

Appendix A.— Record of Commission Vote and Dissent of Commissioner Robinson

The vote of the Commission on a motion to publish this document was as follows:

William W. Wilkins, Jr.—Yes
Michael K. Block—Yes
Stephen G. Breyer—Yes
Helen G. Corrothers—Yes
George E. MacKinnon—Yes
Ilene H. Nagel—Yes
Paul H. Robinson—No

DISSENTING VIEW OF COMMISSIONER PAUL H. ROBINSON

I believe the Sentencing Reform Act of 1984, which created the United States Sentencing Commission, contains two main directives. First, the Commission's guidelines must provide a rational and principled sentencing system that will further the purposes of just punishment and crime control. Second, the guidelines must reduce unwarranted disparity among sentences for similar offenders who commit similar offenses. The Act provides that this is to be achieved through the Commission's promulgation of a comprehensive sentencing system that will bind all federal judges.[1] I opposed the Commission's Preliminary Draft of September, 1986, because I saw it as lacking both guiding principles and an effective means of reducing disparity. While the Commission's current proposed guidelines differ from the Preliminary Draft in many important respects, like its predecessor, this draft is not guided by rational unifying principles and it will not reduce sentencing disparity. Further, the current proposed guidelines transgress specific statutory limitations on the Commission's authority. Because I believe that the proposal violates both the intent and the letter of the Sentencing Reform Act, I cannot in good faith join the other members of the Commission in support of the proposed guidelines.

A Rational and Principled Sentencing System? Neither of the Commission's guidelines was drafted with a coherent, articulated sentencing philosophy in mind. Rather, the drafting was done in an ad hoc manner without the guidance of any set of sentencing principles. The inevitable result of this approach is guidelines that are haphazard and internally inconsistent, and that frequently generate improper results; they simply do not consistently and rationally distinguish cases according to relevant offense and offender characteristics.

A comparison of possible guideline sentences for different offenses illustrates one difficulty. Is it appropriate that the sentence for aggravated fish smuggling can be greater than that for armed bank robbery? that the sentence for aggravated forcible sexual contact with a 13-year-old child can be less than that for submitting a false record on protected wildlife? that the sentence for some antitrust violations can be less than that for failure to surrender a naturalization certificate? that the sentence for involuntary manslaughter can be less than that for impersonating a government employee? that the sentence for inciting a riot can be less than that for altering a motor vehicle ID number? The fact of the matter is that the Commission never systematically ranked offenses.

Further difficulties arise from the guidelines' peculiar two-track structure under which the same factor is in some instances treated under a specific offense guideline and in other instances under a general provision. Consider, for example, the discharge of a firearm. If it is discharged during an assault, the specific assault adjustments apply and the judge need not increase the sentence at all but may increase it by 3 months. If, however, the discharge occurs during serious property destruction, the general adjustment applies and the judge must increase the sentence by 3 times that amount (9 months) and may increase it by 7 times that amount (21 months).

Difficulties also arise from the use of invited or directed "departures" from the guidelines. For example, if an offender's prior conviction is similar to the offense at hand, it is suggested that a sentence at the high end of the guideline range may be appropriate. However, if the same prior misconduct did not result in a conviction, the judge is specifically invited to exceed the guideline range. Similarly, a recent similar offense—e.g., a 3 year old assault conviction—may increase the guideline sentence by 3 months. If the same conviction is over 10 years old, however, the court is invited to *exceed* the guideline range *without limit*.

Perhaps more troubling is the basic question: are such invited or directed "departures" permitted by the Sentencing Reform Act? If a judge follows an invitation or direction to depart, is the sentence subject to appellate review, as are all deviations from the guidelines? Or, is the sentence free from appellate review because the sentence is precisely what the guidelines invite or direct? The status of the Commission's "guidelines to go outside the guidelines" is further complicated by its attempt to regulate judges after they accept the invitation to depart. The extent of the permissible "departure" may be limited, to "not more than 4 levels," for example. One may wonder how such a "departure range" is different from a "guideline range" of 4 levels (a range of between 118% and 300%), which is illegal. By calling a guideline directive a "departure" (a term that does not appear in the Sentencing Reform Act), can the Commission escape from the 25% statutory limitation on the permissible width of a guideline range? Or, one may wonder, can a judge "depart" from a guideline that directs "departure"? If a judge refuses to depart when so directed, is his refusal to depart subject to appellate review?

While the proposed draft obviously does not generate peculiar results in all cases, it is all too easy to find difficulties like those noted above. The true significance of these examples is not the particular problems that they present but rather that they manifest an unsystematic approach to the complex task of guideline drafting. It is an approach that has produced a flawed structure and drafting of mixed quality.

Reduction of Disparity? In both the proposed draft and the Preliminary Draft, the Commission has failed to meet its obligation to reduce unwarranted sentencing disparity. The earlier Preliminary Draft failed because, while it attempted to meet the legislative mandate of a comprehensive sentencing system, it was not structured in a way that could effectively accommodate the wide variety of possible cases. The draft tried to account for some specific combinations of offense and offender characteristics yet ignored many others and failed to provide a general framework that made application feasible. The result was a complex, inconsistent, and unworkable document. The Preliminary Draft was like a Volkswagen "Bug" trying to pull a fully-loaded three-axle trailer. While it made an earnest effort, it was simply not powerful enough to do the job.

Unfortunately, when it became clear that the Preliminary Draft could not effectively implement a comprehensive system, the Commission's response was not to continue work toward designing a more flexible and workable comprehensive system. Instead, it abandoned the legislative mandate. Rather than trying to find a diesel cab to pull the trailer, the Commission decided to keep the "Bug" and dump the load.

It may well be possible to pull the empty trailer with the "Bug"; not much is required of guidelines that simply tell the judge to exercise discretion. And that is essentially what the Commission's current draft does. The guideline ranges for specific offenses are frequently far in excess of the 25% permitted by statute, and are so broad—as much as 600% and more—as to be of no practical value. Further, the offense ranges may be subject to one or more general adjustments, each of which gives the judge further discretion.

For example, for making illegal payments to influence the actions of a union official, Judge X can, under the guidelines, give the offender 12 months, while Judge Y, *applying the same guidelines in the same case*, can give the offender 60 months (a range of 400%). The offender who leads a prison riot can get 21 months from Judge X and 108 months from Judge Y (a range of 414%), *both under the guidelines*. The offender who bribes a federal legislator in order to influence his vote can get 8 months from Judge X and 57 months from Judge Y (a range of 612%), *both under the guidelines*.

Similarly, the offender who supervises the distribution of obscene matter for sale can get 2 months, or probation, from Judge X and 33 months from Judge Y (a range of 1550%), *both under the guidelines*. If he is convicted of two counts, Judge X can impose concurrent sentences for a total term of 2 months, or probation, while Judge Y can impose consecutive sentences for a total term of 66 months (a range of 3200%), *both under the guidelines*. The offender who is convicted of twice selling stolen guns to a known felon can get 10 months from Judge X and 82 months from Judge Y (a range of 720%), *both under the guidelines*. As long as the sentence is within the guidelines, it is not subject to appellate review.

The examples above are not uncommon. 70% of the 20 most prosecuted offenses have one or more ranges in excess of the 25% range authorized by statute. The average of these excessive ranges is well over 600%.[2] In addition to these offense ranges, general adjustments provide other sources of broad discretion: e.g., a range of increase between 118% and 300% (depending on the seriousness of the offense) is available to account for an offender's role in the offense (also available is a range of decrease between 118% and 300%); a range between 56% and 166% is available if the offender acknowledges responsibility for the offense (as through a plea of guilty); and a range between 74% and 200% is available if the offender obstructed the investigation of the case or lied at the trial. Still further, in every case of multiple counts the judge has complete discretion in deciding whether to impose concurrent or consecutive sentences. At least one such opportunity for additional broad discretion is likely to exist in nearly every case.[3]

As if the discretion *within* the guidelines were not enough, in over 100 instances the proposed guidelines or their official commentaries invite or direct judges to depart from the

[1] The three key provisions of the Act work together:

First, the guidelines are to take into account the relevant offense and offender characteristics. 28 U.S.C. 994 (c) and (d). The legislative history directs that the guidelines should "reflect *every* important factor relevant to sentencing." S. Rep. No. 225, 98th Cong., 1st Sess. 166 (1983) (emphasis added).

Second, for each combination of relevant offense and offender characteristics, the maximum of the imprisonment range may not exceed the minimum of that range by more than 25%. 28 U.S.C. 994(b).

Finally, a judge cannot deviate from the guideline range "unless the court finds that an aggravating or mitigating circumstance exists that was not adequately taken into consideration by the Sentencing Commission in formulating the guidelines . . . ." 18 U.S.C. 3553(b).

[2] The average of all of the ranges applicable to the 20 most prosecuted offenses is, by my calculations, 232%. The Commission has not yet developed information on such matters. I believe that it is critical, however, to determine the percentage of all cases for which, in practice, the applicable range will be in excess of 25% authorized by statute and the number of cases that are likely to result in departures. Another more important research project is determining the impact of the proposed guidelines on the prison population. This legislatively required study will be difficult if not impossible for guidelines that are so discretionary.

[3] For example, 87% of all federal criminal cases are settled by plea agreement, and, of those that go to trial, 63% end in multiple counts of conviction and thus permit the use of the broad concurrent-consecutive discretion.

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guidelines and to exercise their own complete, unguided, and frequently unlimited discretion. General rules invite or direct judges to depart from the guidelines when the offender: had an additional criminal purpose; has a drug dependency leading to an increased propensity to commit crimes; disrupted a governmental function or endangered the public welfare; engaged in ongoing criminal conduct; derived a substantial portion of income from criminal activity; engaged in a pattern of violent criminal conduct or a pattern of civil or administrative violations; cooperated with authorities; or has a criminal history score that, in the court's view, does not adequately reflect the seriousness of his past criminal conduct.

Indeed, the judge is told that departure is appropriate if the adjustment range of the guidelines is, in the judge's view, "inadequate." [4] And, as if this were still not enough, judges are told that in cases where the sentence is pursuant to a plea agreement—a common occurrence in the federal system—they are not bound by the guidelines.

The effect of the current draft is simply this: nearly any prison term that might be imposed presently can be imposed after these guidelines go into effect. I do not believe that this is what the Sentencing Reform Act intends, or permits.[5]

[4] This appears to be in direct conflict with the Sentencing Reform Act. Under the Act, judges may not deviate from the guidelines simply because, in their view, *the guideline range is not adequate* (e.g., because it does not allow the sentence that they want to give). The statute permits deviation only if an aggravating or mitigating circumstance exists that was *not adequately considered by the Sentencing Commission.* 18 U.S.C. 3553(b). If the judge wants to deviate from the guideline range because of a factor already fully considered by the Commission, the statute would bar his deviation but the guidelines attempt to permit it.

[5] It is not enough, of course, for the Commission to simply remove the discretion from these proposed guidelines. That might avoid some of the illegalities of the current draft but it would only increase, dramatically, the number of inappropriate sentences. The solution is to be found, instead, in the construction of a rational system that defines its principles of sentencing and implements them through a sophisticated and workable structure.

Some people argue that we ought not try to reduce disparity through comprehensive, binding sentencing guidelines. Many witnesses before the Commission suggested precisely this. But this issue was hotly debated in Congress and, with passage of the Sentencing Reform Act, was resolved in favor of binding and comprehensive guidelines. Until the Commission has explored all possible methods of performing the Legislature's mandate, it ought not abandon the assigned task.

More importantly, if the Commission ultimately concludes that it cannot perform its task, or at least not in the time allotted, it ought to admit this openly, report to Congress accordingly, and, perhaps, ask for an extension of time. The Commission ought not promulgate guidelines that only create the illusion of reducing disparity. Pretending to have disparity-reducing guidelines is worse than having no guidelines at all. Once the guidelines go into effect, the United States Parole Commission—the single source of uniformity under current practice, unsatisfactory though it may be—will expire under the terms of the Sentencing Reform Act.

I have always applauded the Sentencing Reform Act's abolition of early release on parole and, accordingly, abolition of the Parole Commission, for this moves us toward honesty in sentencing: the sentence publicly imposed by the court would be the sentence served. But I assumed, as Congress clearly did in enacting the Sentencing Reform Act, that the Sentencing Commission's guidelines would replace and improve upon the disparity-reducing function of the Parole Commission. Unfortunately, neither of the Commission's efforts to date will. Instead, the policies and decision-making of the Parole Commission will be replaced by that of 500 plus individual sentencing judges with little in the way of guidance or remedial control. It would be an unfortunate irony in the history of sentencing reform if the Sentencing Reform Act, enacted to reduce disparity, resulted in increased disparity.

Complexity and Discretion. My final concern arises from the complexity of the Commission's proposed guidelines. Some people see the Commission as facing the horns of a dilemma: a comprehensive system that will reduce disparity appears to require undesirable complexity; on the other hand, given the great variety of cases, the only alternative to complexity is broad discretion and its concomitant disparity. In its current proposal, the Commission has chosen to impale itself squarely on both horns. The guidelines are overwhelmingly complex yet, in the end, they simply defer to the discretion of judges and plea-bargain negotiators.

The Commission's approach of providing both complexity and discretion may well have some political value. Without close examination, one might take the complexity as evidence of significant restraints on discretion, the desired result for those who supported the Sentencing Reform Act. At the same time, those who prefer a discretionary system will be pleased with how the system really works. In addition, if the Commission is not capable of creating a sufficiently sophisticated sentencing system, there is value in deferring to judicial discretion in order to avoid the imposition of improper sentences. I understand both of these points. The Commission has been given an extremely difficult task and asked to perform it quickly under the bright lights generated by strong and conflicting political interests. Nonetheless, a complex and discretionary system would have unacceptable consequences that would set back the cause of federal sentencing reform.

Having concluded that the proposed guidelines are not rationally calculated to impose just punishment and to reduce crime, and that they are likely to increase rather than decrease unwarranted disparity, I must, regrettably, oppose the proposed guidelines, as I opposed the Preliminary Draft.

I dissent.

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Part III

Department of Health and Human Services

Office of Human Development Services

45 CFR Part 1340

Child Abuse and Neglect Prevention and Treatment Program; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Part 1340

Child Abuse and Neglect Prevention and Treatment Program

AGENCY: Office of Human Development Services, HHS.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services is issuing final regulations to implement certain provisions of the 1984 amendments to the Child Abuse Prevention and Treatment Act. The 1984 amendments to this Act (Pub. L. 98-457) made changes in several definitions regarding child abuse and neglect which may require changes in some State statutes and regulations. These and other provisions are the subject of this final rule. A Notice of Proposed Rulemaking was published April 24, 1985 (50 FR 16105).

DATE: This rule is effective March 9, 1987.

FOR FURTHER INFORMATION CONTACT: Jay Olson (202) 245-2859.

SUPPLEMENTARY INFORMATION:

Program Description

The Child Abuse Prevention and Treatment Act (the Act), Pub. L. 93-247, 42 U.S.C. 5101, et seq., was signed into law in 1974. It established in the Department the National Center on Child Abuse and Neglect (National Center). The National Center is located organizationally within the Children's Bureau of the Administration for Children, Youth and Families in the Office of Human Development Services.

Under the Act, the National Center carries out the following responsibilities:

- Makes grants to States to implement State child abuse and neglect prevention and treatment programs.
- Funds public or nonprofit private organizations to carry out research, demonstration, and service improvement programs and projects designed to prevent, identify and treat child abuse and neglect.
- Collects, analyzes, and disseminates information, e.g., compiles and disseminates training materials, prepares an annual summary of recent and on going research on child abuse and neglect, and maintains an information clearinghouse.
- Assists States and communities in implementing child abuse and neglect programs.
- Coordinates Federal programs and activities, in part through the Advisory Board on Child Abuse and Neglect.

The Act has been extended and amended several times since its passage, most recently by Pub. L. 98-457. Regulations for the State grant and discretionary fund programs are found at 45 CFR Part 1340; recent revisions were published on January 26, 1983 (48 FR 3698) and April 15, 1985 (50 FR 14878). The fifty States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and the Republic of Palau (formerly one of the Trust Territories of the Pacific Islands) are eligible to apply for State grants. We will refer to these jurisdictions as "States" in this preamble discussion. In FY 1985, all but two States received State grant funds either because they meet all of the eligibility requirements of the Act or because they are eligible under the waiver provisions of section 4(b)(3) of the Act.

State Child Protective Service System

Under section 4(b)(1) of the Act, the Secretary, through the National Center, is authorized to make grants to States to assist them in developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs. Funds from the State grant program are used to enhance the activities of the State Child Protective Services (CPS) system. The State CPS agency is typically the agency designated by the State to respond to reports or child abuse and neglect, particularly reports of intra-family abuse. (All States have a CPS system and a CPS agency whether they receive State grant funds under the Act or not.)

The CPS agency, or other designated agency, receives reports of abuse and/or neglect; assures prompt investigation of reports by the CPS agency or other properly constituted authority, making referrals to law enforcement officials, as appropriate; and provides treatment and services. In cases of intra-family abuse, the focus of the agency's efforts is on the family—to protect the child, preserve the home, prevent separation of the child from the family if at all possible, prevent further abuse or neglect, and alleviate or correct the factors leading to the report. The agency generally regards its contact with the family as a demonstration of community concern and evidence of a desire to be of help to both parents and children. Alternatively, the focus of the law enforcement agency's investigation may be criminal prosecution.

Anyone in a State may report known or suspected abuse or neglect: Local (city, county) telephone numbers for reporting are found in telephone directories. States that have a State-wide 24-hour hot line typically give that number wide publicity.

Investigations, services, and other activities may be provided by CPS agency staff, by law enforcement agencies, by multidisciplinary teams (many of which are located in major hospitals), and by utilizing the services of other public and voluntary agencies in the community. Most CPS workers have specialized training, and multidisciplinary teams often have some expertise in medicine, law and law enforcement, as well as in social work.

Summary of Recent Rulemaking Activity

The Child Abuse Amendments of 1984 (Pub. L. 98-457) were signed into law on October 9, 1984. In addition to changes in definitions, they contained a major new basic State grant requirement regarding medical neglect, i.e., the State's responsibility for the protection of disabled infants ("Baby Does"). To implement these latter provisions, the Department published a Notice of Proposed Rulemaking (NPRM) on December 10, 1984 (49 FR 48160) and a Final Rule and Model Guidelines for Health Care Providers to Establish Infant Care Review Committees on April 15, 1985 (50 FR 14878).

Regulations implementing the remaining provisions of the 1984 Amendments plus other proposed changes were published as an NPRM on April 24, 1985 (50 FR 16105). In that NPRM, we incorporated the new statutory definitions of child abuse and neglect; proposed a definition of "out-of-home care" to mean "center-based day care provided during a portion of a 24-hour day"; and proposed to allow States to share confidential information contained in a State's Central Registry (a repository of reports on known or suspected instances of child abuse) with certain individuals or organizations in order to prevent child abusers from being employed or used as volunteers in child care settings, and from being approved as foster or adoptive parents.

In response to that NPRM, the Department received letters from fifteen State and local child welfare agencies, six child welfare advocacy groups, four national or professional organizations, two Members of Congress, one provider of residential child care, and 24 individuals.

Summary of the Final Rule

In response to comments, we have made changes in the language of the NPRM. In this final rule we have (1) broadened the definition of the term "out-of-home-care" to mean child day care, i.e., family day care, group day care, and center-based day care; and, at State option, any other settings in which children are provided care; (2) deleted the three new categories of individuals and organizations to whom States may release confidential information for employment purposes and, instead, added a section allowing States to release such information with proper safeguards to any agency or individual as the State may determine by statute; (3) clarified that States may implement statutory changes made in the definition of child abuse and neglect either by enacting new State laws or by regulations that have the full force and effect of law; and (4) made a number of technical amendments to correct or clarify certain sections of the rule.

In addition, in response to a large number of comments, we are taking this opportunity to clarify the Department's position relating to the failure to provide adequate medical care as an element of negligent treatment or maltreatment.

Discussion of Major Comments and Changes

Following is a summary of the major comments, our response to those comments, and a discussion of the changes that we have made in the regulations.

1. Section 1340.2 Definitions

(a) *Definitions of the terms "child abuse and neglect"—§ 1340.2(d) and "sexual abuse"—§ 1340.2(d)(1).* In the NPRM, we added the language from section 3(1) of the Act to specify that, for purposes of the definition of child abuse and neglect, the term "child" means a "child under the age of eighteen, or the age specified by the child protection law of the State." We also replaced the definition of "sexual abuse" and "sexual exploitation" in §§ 1340.2(d) (1) and (2) with the new statutory definition of "sexual abuse" from section 3(2) of the Act. The new definition of "sexual abuse" describes a wide range of sexual abuses of children under the age of eighteen, including acts of sexual exploitation, in terms that are the same in substance as those in the current regulations. However, in contrast to the definition of "child abuse and neglect", the Act specifically defines "child" or "children" with respect to sexual abuse as "any individual who has not attained the age of eighteen."

Comment: Four commenters commented on the proposed definition of the term "sexual abuse." All expressed approval of the proposed definition. However, one respondent suggested that clarification was needed regarding the age definition with respect to child abuse and neglect and sexual abuse to make it clear that, for the purpose of the sexual abuse definition, the age of 18, and not the State's statutory definition of age, will govern.

Response: We believe it is clear both in the statute and the regulations that two different age limits apply. Therefore, we have decided that no further clarification is needed.

(b) *Definition of "a person responsible for a child's welfare"—§ 1340.2(d)(4).* Prior to the 1984 Child Abuse Amendments, section 3(1) of the Act defined the term "child abuse and neglect" to mean abuse or neglect "by a person who is responsible for a child's welfare . . . ." In implementing regulations at § 1340.2(d)(5), the Department defined "a person responsible" to include, among others, "an employee of a public or private residential home or facility."

The 1984 Amendments amended section 3(1) of the Act to add the words "including any employee of a residential facility or any staff person providing out-of-home-care."

In the NPRM, we amended § 1340.2(d)(4), the definition of "a person responsible", to incorporate the new statutory language and to define the term "out-of-home-care" to mean "center-based day care provided during a portion of a 24-hour day."

Comments: We received 23 letters from State and local child welfare agencies, Members of Congress, child welfare advocacy groups, and other national and professional organizations commenting on our definition of out-of-home-care.

Most of the commenters supported the statutory definition that requires reporting of abuse and neglect in out-of-home care, but objected to our proposal to limit such reports by defining out-of-home care as center-based day care. Commenters believed that the majority of children who are cared for in out-of-home settings would be denied the protection afforded to the smaller percentage of children who are cared for in center-based day care settings. Most commenters recommended that the definition be expanded. Two Members of Congress active in passage of the 1984 Amendments indicated that it was not their intent to limit the definition of out-of-home care to exclude family or group day care homes or other types of out-of-home child care.

Response: We concur. § 1340.2(d)(4) now includes the statutory language and the new sentence "For the purpose of this definition, out-of-home care means child day care, i.e., family day care, group day care, and center-based day care; and, at State option, any other settings in which children are provided care." This means that State reporting laws must define out-of-home care to mean child day care, i.e., family day care, group day care, and center-based day care, and may, at State option, include in the definition any other settings in which children are provided care.

Role of the CPS Agency

In the NPRM, we specifically invited public comment on the role of the State CPS agency in responding to reports of child abuse in non-family situations. Given the fact that all reports of abuse and neglect must be investigated, we asked for comments on which State agency(s) currently are or should be responsible for responding to reports of abuse in residential settings; for responding to reports of abuse by staff persons in various categories of out-of-home care; and, more generally, what should be the scope, focus, and role of the State child protective service agency in investigating other than intra-family reports of abuse.

Approximately 20 responses were received. Some objected to CPS agency involvement in any investigation of institutional or out-of-home care situations given the increasing number of reports of abuse and neglect and lack of trained staff and resources. Some took the position that all such situations should be investigated by law enforcement or licensing authorities. Others stated that responsibility for a child's welfare outside the home is the responsibilty of the parents. The majority of commenters, however, expressed a recognition of the need to involve the CPS agency but also urged coordination with and use of other agencies.

In developing the NPRM, the Department did not wish to indicate that the State CPS agency must be the only State agency responsible for investigating all reports of child abuse or neglect, whether such abuse or neglect occurs within or outside the family setting. Nor did the Department intend to limit the involvement of law enforcement, licensing, or other appropriate agencies in the investigation and resolution of such reports. We recognize that law enforcement, mental

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health, and protective services agencies have critical roles to play in addressing the problems associated with abuse and neglect.

Since the enactment of the Child Abuse Prevention and Treatment Act, implementation by the designated State CPS agency has focused primarily on the prevention and treatment of child abuse and neglect in intra-familial settings. Within this framework, State agency staff have directed their efforts not only towards protecting the child but also towards attempting to preserve the home and family. The expansion of the statutory definition of the term "person responsible for a child's welfare" does not automatically expand the role of the CPS agency. These final rules require that, in order to qualify for a State grant under this Act, a State must establish procedures whereby the State, through a designated agency or agencies, will receive and investigate reports of child abuse or neglect. States, not the Department, will determine which agency(s) within each State will be designated as the agency(s) to receive and/or investigate reports. There is no requirement that the CPS agency must investigate all reports although this is permissible. States must establish procedures tailored to the unique characteristics of each State's child protective services statute and organizational and administrative structure.

Given the new requirements in the Act, the Department encourages States to examine their current practices and procedures for responding to reports of child abuse or neglect in both in-home and out-of-home settings. We believe that such an overall assessment will provide States with an opportunity to identify problem areas, to explore the options available for receiving and responding to a variety of reports of abuse or neglect, and to develop procedures that will ensure that the appropriate agency(s) will investigate these reports in a timely and effective manner.

Finally, several commenters recommended changes in other definitions. These recommendations were not acted upon as the definitions they addressed were not proposed for change in the NPRM. A change was recommended in § 1340.2(d)(2) to define "negligent treatment" more broadly to include failure to provide "health care" rather than failure to provide medical care. A change was also recommended in § 1340.2(d)(3) to add new language to the definition of "threatened harm" to permit intervention on behalf of a child whose parents are practicing their religious beliefs with respect to medical care only if the child "is in imminent danger of death or permanent bodily injury."

2. Approval of Applications—§ 1340.13(a) (1) and (2)

In the preamble to the NPRM, the Department indicated that States would need to review their statutes and, where necessary, make appropriate State statutory changes in order to comply with the new definitions of "sexual abuse" and "person responsible."

Comments: Four commenters objected to the requirement that States must make statutory changes in order to comply with the new definitional requirements. Commenters recommended that those States which have the authority to effect these changes through their rulemaking process be allowed to do so.

Response: We agree. Therefore, we have amended § 1340.13(a) (1) and (2) to provide that, in order to comply with the new definitional requirements, States may effect the necessary changes through their rulemaking process, provided such rules have the full force and effect of law.

Comment: One commenter recommended that the regulations should make it clear that the State's definition of the beginning and end of its legislative session will govern.

Response: We were not aware that this was a problem area and would, of course, defer to a State's definition of the beginning and end of its legislative session. In addition, we have added the words "which convenes" in § 1340.13(a)(2) to make clear that States have until the close of the first general legislative session of the State legislature which convenes following the effective date of these regulations to make necessary changes in their State law.

3. Confidentiality—§ 1340.14

In the NPRM, the Department proposed to allow the States additional flexibility in the release of confidential information from the State's child abuse registry. We proposed to allow disclosure of certain information to three additional categories of individuals and agencies for the purpose of preventing the employment or utilization of known or suspected abusers. The three proposed categories were: the director (or his or her designee) of an agency designated by the State to license and/or register child day care facilities, a director (or his or her designee) of a child day care center, and the director (or his or her designee) of an agency licensed by the State to provide foster care placement and services and/or adoptive services.

Comments: Twenty-four letters contained comments or recommendations on this proposal.

Seven commenters opposed the proposed expansion of categories of individuals and agencies who would have access to confidential information in child abuse registries. They argued that the purpose of the registry was to serve (or to operate) as a repository of primarily unverified reports of known or suspected abuse. Its function was to serve as a resource to persons investigating, preventing, or treating child abuse and neglect; it was not set up to provide the type of accurate, verified information being sought for employment screening purposes.

Other commenters argued that the proposed list of employment-related exceptions to the confidentiality requirements was too limited; that the proposed expansion would result in efforts to restrict the type of information stored in the registry and thus hamper CPS agency investigations; and that use of the registries to identify abusers is not feasible since many registries are indexed by the child subject and not the perpetrator of the abuse.

Seventeen commenters expressed support for the proposed expansion, and some recommended further expansion to include other categories such as directors of family and group homes, residential facilities, and Head Start programs.

Almost all commenters expressed concern with respect to the threat to individual privacy and adequate due process safeguards in expanding access to this information. Commenters pointed out that the level of substantiation of these reports varies among States, as do the procedures and methods used to identify substantiated or unsubstantiated reports. They stated that, if adopted, such a proposal may do great disservice to individuals as well as raise legal questions of due process if the quality of information disclosed is not verified or screened in some manner.

Response: The Department's purpose in proposing to expand the categories of individuals who may have access to information from State child abuse registries was to allow States additional flexibility in the release of confidential information. This information can be used to screen known child abusers from being employed or used as volunteers in child care settings and from being approved as foster or adoptive parents.

We believe that pre-employment screening is one way to prevent and reduce child abuse in day care settings. This is reflected in the Department's "Model Child Care Standards Act-Guidance to States to Prevent Child Abuse in Day Care Facilities" issued in January 1985. In addition, in making available to States in FY 1985 an additional $25 million under the Social Services Block Grant program, Congress required States using those funds to establish, by law or regulation, procedures to provide for employment history and background checks for all operators and employees of child care facilities and others who deal directly with children.

Therefore, we continue to believe that increased access to information may be necessary, at State option, to prevent instances of child abuse or neglect. We agree with commenters, however, that, at the Federal level, it is not possible to identify, as we attempted to do in the NPRM, all agencies or individuals with whom the State may want to share information. Therefore, we have added a new paragraph (3) in § 1340.14(i) to permit States to authorize, by statute, disclosure to persons or agencies other than those already listed in § 1340.14 for employment and related purposes. Any information disclosed for these purposes is subject to the confidentiality requirements of State statutes and paragraph (i)(1).

Although many commenters recommended we specify due process procedures in regulations, we believe that States are sensitive to the issue of due process and individual privacy and will develop their own procedures consistent with due process protections for all individuals.

Comment: One State agency raised the question of whether the confidentiality rules should be re-examined. The commenter asked for a discussion of the philosophical and policy basis of these rules and expressed concern that the CPS agency's inability to respond to media inquiries or investigations of child abuse or neglect could prevent it from demonstrating its effective handling of child abuse or neglect matters.

Response: All of the provisions on confidentiality, including disclosure provisions, were re-examined in the course of developing this rule. Both philosophically and from a policy basis, we believe that the interests of the child and his or her family must be the principal considerations in determining the nature and extent of disclosure of confidential information. We also believe that disclosure serves the purposes of diagnosis, investigation, treatment, and prevention of abuse and neglect and that disclosure to certain agencies or individuals is essential to carry out these functions. On this basis, disclosure is permitted under current rules to such entities as agencies investigating reports of abuse and neglect, courts, grand juries, and physicians treating a child suspected of being maltreated. Disclosure to the media does not appear to serve these purposes.

Technical Amendment

In addition, in reviewing these rules for publication, we noted that § 1340.14(i)(2)(viii) provides that a State may authorize disclosure to "A person who is responsible for the child's welfare . . .". The purpose of this provision is to allow a person about whom a report of known or suspected abuse or neglect has been made to have access to information about him or herself, and thus an opportunity to correct such information.

Because most State central registries include information and reports on all persons, not just "persons responsible" (as defined in § 1340.2(d)(5)), and because we believe that States may want to allow all individuals access to information concerning themselves in the central registry as well as an opportunity to correct this information, we have revised paragraph (i)(2)(viii) to allow disclosure to "A person about whom a report has been made . . .".

Providing Adequate Medical Care

Comment: Although not raised for public comment in the NPRM, almost one half of the comment letters related to what constitutes negligent treatment or maltreatment of a child with respect to adequate medical care and under what circumstances, if any, parents providing spiritual or other alternative or remedial health care to their children should be reported to the CPS agency (see § 1340.2(d) (2) and (3)). Because of the importance of this issue and the diversity of the comments, the Department is taking this opportunity to clarify its position on this matter.

Some commenters expressed concern that State legislators, State agency officials, and some members of the public had interpreted the 1983 final child abuse rule to mean that a physician must be called even when only mild symptoms of illness are apparent, regardless of whether harm or a substantial risk of harm to the child's health is present; that failure to provide any type of medical care to children must be reported, and that the practice of spiritual healing, for example, automatically is considered negligent treatment, and thus must be reported. Many of these commenters feared that State officials were being urged to prosecute all families solely because they were practicing their religious beliefs in the matter of providing alternative or other remedial health care for their children. Other commenters thought that some children from families practicing spiritual or faith healing are being denied equal protection of their rights under the Fourteenth Amendment to the Constitution. As a result, they felt that the Departmental regulations should require reports to the CPS agency of all instances of failure to provide medical care to children in all families utilizing alternative or other types of health care. They also recommended that Departmental regulations require States to repeal "religious exception" statutes. (These are statutes which provide that parents practicing their religious beliefs with respect to providing health care for their children shall not, for that reason alone, be considered negligent parents or be considered to have neglected the child.)

Response: It was not, and is not, the Department's position that the rules for this program should be taken as a signal to States to prosecute or require reports on families practicing alternative or other remedial health care except where there is harm or substantial risk of harm to the child's health or welfare. Previous regulations for this program required that State statutes contain a provision that, when parents or guardians provide spiritual or other forms of remedial health care, they should not, *for that reason alone*, be considered negligent parents. Language to this effect was required in State law as a condition of eligibility for a State grant. This requirement was deleted in the final rules published January 26, 1983. The Department's action in this matter was based solely on the fact that such an eligibility requirement was not required by the Act and thus should not be imposed by Federal regulation. The regulatory philosophy of this Aministration has been to provide maximum State and local flexibility. The deletion of this provision in 1983 reflected our approach to regulating—not a policy shift regarding State protections for parents who practice their religious beliefs.

It is the Department's position that reports of known or suspected abuse or neglect should be made as required by the statute and regulations. Current child abuse and neglect rules contain the following definition of child abuse and neglect:

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"Child abuse and neglect means the physical or mental injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare."

The regulations further define phrases in that definition, e.g., "negligent treatment or maltreatment" is defined to include failure to provide adequate food, clothing, shelter, or medical care; "threatened harm to a child's health or welfare" is defined to mean "a substantial risk of harm to the child's health or welfare."

It is not now nor ever has been the Department's policy nor the intent of the regulations that reports be made to the State CPS agency or other State authorities except when there is harm or a substantial risk of harm.

It is the continuing intent of these rules to allow States to exercise their rights to provide medical services where there is harm or a substantial risk of harm to the child's health or welfare. Further, we want to emphasize that such decisions regarding needed medical care are best made at the State and local levels by the CPS agency and the juvenile courts. The CPS agency has the responsibility to investigate and decide what constitutes "adequate medical care"; what types of care are acceptable; and what constitutes harm or substantial risk of harm to the child's health or welfare. It is also the responsibility of the CPS agency to work with the juvenile court to assure that medical services are provided where necessary to protect the life and safety of the child.

Technical Amendments

a. In § 1340.1, Purpose and scope, we are revising paragraph (c) to delete the reference to title IV–A of the Social Security Act which no longer authorizes a social services program and to correct the Code of Federal Regulations (CFR) citation to the regulations for the title IV–B program.

b. In § 1340.3, Applicability of Department-wide regulations, we are revising paragraph (b) to correct the CFR citation to the Federal procurement regulations.

c. § 1340.13(a), Approval of applications, is amended by deleting the phrase "adequate health care" in the first sentence and replacing it with the phrase "adequate medical care" to be consistent with the words in the referenced section, § 1340.2(d)(2).

d. In § 1340.15, Services and treatment for disabled infants, we are adding at the end thereof the citation of the Office of Management and Budget (OMB) Control Number reflecting OMB approval of the information collection provisions contained in the final rules published on April 15, 1985 (50 FR 14878).

Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules—defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. Nothing in either the statute or the rule is likely to create substantial costs. Therefore, the Secretary concludes that this regulation is not a major rule within the meaning of the Executive Order because it does not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. Ch. 6), we try to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" we prepare an analysis describing the rule's impact on small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities.

The primary impact of these regulations is on the States, which are not "small entities" within the meaning of the Act. For these reasons, the Secretary certifies that these rules will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirement inherent in a proposed and final rule. These final rules do not contain information collection requirements or increase Federal paperwork burden on the public or private sector. Thus, no submission to OMB is required.

List of Subjects in 45 CFR Part 1340

Child welfare, Disabled, Family violence, Grant programs—health, Grant programs—social programs.

(Catalog of Federal Domestic Assistance Program Number 13.669, Child Abuse and Neglect Prevention and Treatment.)

Dated: August 29, 1986.

Jean K. Elder,

Acting Assistant Secretary for Human Development Services.

Approved: December 24, 1986.

Otis R. Bowen,

Secretary.

For the reasons set forth in the preamble, 45 CFR Part 1340 is amended as follows:

PART 1340—CHILD ABUSE AND NEGLECT PREVENTION AND TREATMENT

1. The authority citation for Part 1340 is revised to read as follows:

Authority: The Child Abuse Prevention and Treatment Act, Pub. L. 93–247, 88 Stat. 4; Pub. L. 95–266, 92 Stat. 205, sections 609–610; Pub. L. 97–35, 95 Stat. 488; Pub. L. 98–457, 98 Stat. 1749 (42 U.S.C. 5101 et seq.).

2. 45 CFR 1340.1(c) is revised to read as follows:

§ 1340.1 Purpose and scope.

* * * * *

(c) Requirements related to child abuse and neglect applicable to programs assisted under title IV–B of the Social Security Act are implemented by regulation at 45 CFR Parts 1355 and 1357.

2. 45 CFR 1340.2(d) is revised to read as follows:

§ 1340.2 Definitions.

* * * * *

(d) "Child abuse and neglect" means the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child under the age of eighteen, or the age specified by the child protection law of the State, by a person including any employee of a residential facility or any staff person providing out of home care who is responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare. The term encompasses both acts and omissions on the part of a responsible person.

(1) The term "sexual abuse" includes the following activities under circumstances which indicate that the child's health or welfare is harmed or threatened with harm: The employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in, any sexually explicit conduct (or any simulation of such conduct) for the purpose of producing any visual depiction of such conduct; or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children. With respect to the definition of sexual abuse, the term "child" or "children" means any individual who has not attained the age of eighteen.

(2) (i) "Negligent treatment or maltreatment" includes failure to provide adequate food, clothing, shelter, or medical care.

(ii) Nothing in this part should be construed as requiring or prohibiting a finding of negligent treatment or maltreatment when a parent practicing his or her religious beliefs does not, for that reason alone, provide medical treatment for a child; provided, however, that if such a finding is prohibited, the prohibition shall not limit the administrative or judicial authority of the State to ensure that medical services are provided to the child when his health requires it.

(3) "Threatened harm to a child's health or welfare" means a substantial risk of harm to the child's health or welfare.

(4) "A person responsible for a child's welfare" includes the child's parent, guardian, foster parent, an employee of a public or private residential home or facility or other person legally responsible under State law for the child's welfare in a residential setting, or any staff person providing out of home care. For purposes of this definition, out-of-home care means child day care, i.e., family day care, group day care, and center-based day care; and, at State option, any other settings in which children are provided care.

* * * * *

(4) Section 1340.3(b) is revised to provide the correct CFR citations as follows:

§ 1340.3 Applicability of Department-wide regulations.

* * * * *

(b) The following regulations are applicable to all contracts awarded under this part:

48 CFR Chapter 1—Federal Acquisition Regulations.

48 CFR Chapter 3—Federal Acquisition Regulations—Department of Health and Human Services.

5. Section 1340.13(a) is revised, and paragraph (c) is added to read as follows:

§ 1340.13 Approval of applications.

(a) The Commissioner shall approve an application for an award for funds under this subpart if he or she finds that:

(1) The State is qualified and has met all requirements of the Act and § 1340.14 of this part, except for the definitional requirement of § 1340.14(a) with regard to the definition of "sexual abuse" (see § 1340.2(d)(1)) and the definitional requirement of negligent treatment as it relates to the failure to provide adequate medical care (see § 1340.2(d)(2)). The State must include these two definitional requirements in its definition of child abuse and neglect either by statute or regulation having the force and effect of law no later than the close of the second general legislative session of the State legislature following February 25, 1983;

(2) Either by statute or regulation having the force and effect of law, the State modifies its definition of "child abuse and neglect" to provide that the phrase "person responsible for a child's welfare" includes an employee of a residential facility or a staff person providing out of home care no later than the close of the first general legislative session of the State legislature which convenes following the effective date of these regulations;

(3) The funds are to be used to improve and expand child abuse or neglect prevention or treatment programs; and

(4) The State is otherwise in compliance with these regulations.

* * * * *

(c) Except for any requirement under section 4(b)(2)(K) of the Act and § 1340.15 of this part pertaining to medical neglect, a State which, on October 9, 1984, did not meet the eligibility requirements of section 4(b)(2) of the Act and this part and thus did not receive a State grant in FY 1984 may apply for a waiver of any requirement. In order to apply for a waiver, the Governor of the State must submit documentation of the specific measures the State has taken and will be taking to meet the as yet unmet eligibility requirement(s).

(1) State's whose legislatures meet annually may be granted a one-year waiver if OHDS finds that the State is making a good faith effort to comply with such requirement(s). This waiver is renewable for a second year if, based on additional documentation, the Secretary finds the State is making substantial progress to achieve compliance.

(2) States whose legislatures meet biennially may be granted a waiver for a non-renewable period of not more than two years if OHDS finds, based on documentation, the State is making a good faith effort to comply with any such requirement(s).

6. Section 1340.14(i) is revised as follows:

A. Paragraph (i)(1) and the introductory text of (i)(2) are republished;

B. Paragraph (i)(2)(viii) is amended by deleting the words "A person who is responsible for the child's welfare" and substituting the words "A person about whom a report has been made,";

C. Paragraphs (i)(3) and (i)(4) are redesignated as paragraphs (i)(4) and (i)(5), respectively; and

D. A new paragraph (i)(3) is added as follows:

§ 1340.14 Eligibility requirements.

* * * * * *

(i) *Confidentiality.* (1) The State must provide by statute that all records concerning reports and reports of child abuse and neglect are confidential and that their unauthorized disclosure is a criminal offense.

(2) If a State chooses to, it may authorize by statute disclosure to any or all of the following persons and agencies, under limitations and procedures the State determines:

* * * * *

(viii) A person about whom a report has been made, with protection for the identity of any person reporting known or suspected child abuse or neglect and any other person where the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of such person.

* * * * *

(3) If a State chooses, it may authorize by statute disclosure to additional persons and agencies, as determined by the State, for the purpose of carrying out background and/or employment-related screening of individuals who are or may be engaged in specified categories of child related activities or employment. Any information disclosed for this purpose is subject to the confidentiality requirements in paragraph (i)(1) and may be subject to additional safeguards as determined by the State.

* * * * *

7. The Office of Management and Budget Control Number is added to the end of § 1340.15 as follows:

§ 1340.15 Services and treatment for disabled infants.

* * * * *

(Approved by the Office of Management and Budget under OMB Control Number 0980–0165.)

[FR Doc. 87–2410 Filed 2–5–87; 8:45 am]

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Rules and Regulations

Federal Register
Vol. 52, No. 26
Monday, February 9, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-02-AD; Amdt. 39-5549]

Airworthiness Directives; de Havilland DHC-6 Models 1, 100, 200, and 300 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to de Havilland DHC-6 Model 1, 100, 200, and 300 airplanes which supersedes AD 84-07-07, Amendment 39-4841. This superseded AD required a repetitive check every 50 hours time-in-service (TIS) of the engagement of the forward leg of a folding utility seat with the floor rail. Subsequent to the issuance of AD 84-07-07, the manufacturer, de Havilland, deemed it necessary to require the same repetitive check each time the seat is moved from stowed to deployed position, to identify those seat support assemblies associated with the various airplane serial numbers, and to modify the "Douglas" cargo tie-down track. Reports and inspection findings indicate that the seat legs may be dislodged from the mounting rails during normal usage. The inspections and modifications will eliminate hazards to seat occupants resulting from a loss or inadequately restrained seat during a crash.

EFFECTIVE DATE: February 13, 1987.
Compliance: As indicated in the body of the AD.

ADDRESSES: de Havilland Service Bulletin (S/B) No. 6/447, Revision C, dated May 16, 1986, applicable to this AD may be obtained from de Havilland Aircraft Company of Canada, A Division of Boeing of Canada Limited, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Lester Lipsius, Aerospace Engineer, Airframe Branch, ANE-172, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; Telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION: The British CAA reported an occurrence in a de Havilland DHC-6 Model airplane where the utility seat front leg was not engaged in the seat rail, presenting a hazard to the seat occupants in the event of a crash. As a result, de Havilland issued Service Bulletin No. 6/447, which provided for inspection and the optional installation of a positive locking mechanism (Modification No. 6/1828) to prevent disengagement of the seat forward leg from the seat rail. As a result, the Department of Transport, Canada (DOT-Canada), who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Canada, issued Airworthiness Directive No. CF-83-25 dated September 19, 1983. The FAA found that the condition addressed by this Service Bulletin was an unairworthy condition likely to exist on airplanes certificated for operation in the United States and issued AD 84-07-07, which required an initial and repetitive inspection of the side folding utility seat forward legs to ensure security of the seat to the rail and provide for the installation of a positive locking mechanism to prevent disengagement of the seat forward leg from the seat rail.

Subsequently, de Havilland determined that additional checks are necessary to ensure seat forward leg engagement with the floor rail each time the seat is moved from stowed to extended position, that these checks may be accomplished by a flightcrew member, and introduced rework for the optional "Douglas" cargo tie-down rack which may exist on certain airplanes. As a result, de Havilland has issued S/B 6/447, Revision A, dated February 3, 1984, which identified these seat support assemblies associated with the various airplane serial numbers, and incorporated additional accomplishment instructions and modification kits; Revision B dated August 31, 1984, which incorporated rework of the optional "Douglas" cargo tie-down tracks which may exist on certain airplanes; and Revision C dated May 16, 1986, to require inspection of the forward leg for security of attachment to the floor rails each time the seat is moved from stowed to deployed position, until Modification No. 6/1828 is incorporated. The Canadian authorities have issued AD CF-83-25R2 on this subject, which refers to Revision B of de Havilland S/B No. 6/447, or later revisions approved by the Director, Airworthiness Branch. This Canadian AD specifies a repetitive check not to exceed 100 hours TIS. While the Canadian AD shows relief in the repetitive check interval from 50 hours to 100 hours, this superseding AD to AD 84-07-07 maintains the 50 hour repetitive check interval since no additional substantiation has been presented to the FAA for the longer inspection interval.

DOT-Canada, who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Canada, has classified this service bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under DOT-Canada registration, this action has the same effect as an AD on airplanes certified for operation in the United States.

The FAA relies upon the certification of DOT-Canada combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of S/B 6/447, Revision C, dated May 16, 1986, and the mandatory classification of this service bulletin by DOT-Canada. Based on the foregoing, the FAA has determined that the condition addressed by de Havilland Service Bulletin No. 6/447, Revision C, dated May 16, 1986, is an unsafe condition that may exist on other products of the same type design certificated for operation in the United States.

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Therefore, an AD superseding AD 84-07-07 is being issued, which requires initial and repetitive checks of the engagement of the forward leg of the utility seat with the floor rail at intervals not to exceed 50 hours TIS and a check each time the seat is moved from stowed to deployed position until incorporation of the optional positive locking Modification No. 6/1828, and modification of the "Douglas" cargo tie-down tracks on de Havilland DHC-6 Models 1, 100, 200, and 300 airplanes.

The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption **"ADDRESSES"** at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

De Havilland: Applies to DHC-6 Models 1, 100, 200, and 300 airplanes certificated in any category, when fitted with side folding cabin utility seats.

Compliance: Required as indicated, unless already accomplished.

To prevent disengagement of the utility seat forward legs from the floor mounting rail, accomplish the following:

(a) Within 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished within the last 25 hours TIS, and at subsequent intervals not to exceed 50 hours TIS thereafter, attempt to move the lower end of each forward leg sideways into the open part of the keyhole slot using as much force as can be exerted by hand. If the leg can be removed from the keyhole slot, remove the seat from service until Modification No. 6/1828 is incorporated in accordance with the ACCOMPLISHMENT INSTRUCTIONS of de Havilland Service Bulletin (S/B) No. 6/447, Revision C, dated May 16, 1986.

(b) Repeat the check in paragraph (a) of this AD each time the seats are moved from stowed to deployed position.

(c) The check required by paragraph (b) of this AD may be accomplished by a flightcrew member, certificated under FAR 61 or FAR 63 rules, briefed on the procedure.

(d) When Modification No. 6/1828 is incorporated in accordance with the ACCOMPLISHMENT INSTRUCTIONS of de Havilland S/B No. 6/447, Revision C, on each seat, subsequent checks required by this AD are no longer required on that seat.

(e) An equivalent means of compliance may be used when approved by the Manager, New York Aircraft Certification Office, Federal Aviation Administration, ANE-170, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

This AD supersedes AD 84-07-07, Amendment 39-4841.

This amendment becomes effective on February 13, 1987.

Issued in Kansas City, Missouri, on January 29, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-2582 Filed 2-6-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-CE-41-AD; Amdt. 39-5548]

Airworthiness Directives; de Havilland Model DHC-6-1, DHC-6-100, DHC-6-200, and DHC-6-300 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to de Havilland Model DHC-6-1, DHC-6-100, DHC-6-200, and DHC-6-300 airplanes, which requires initial and repetitive inspections of both wing support strut assemblies for corrosion and, if necessary, replacement before further flight. The amendment is prompted by a report of a DHC-6 airplane that had both wing struts affected by corrosion in the beam flanges. Severely corroded wing struts could fail in flight, resulting in wing collapse. The required inspections will detect any corrosion before it can lead to failure of the wing struts.

EFFECTIVE DATE: March 16, 1987.

Compliance: As prescribed in the body of the AD.

ADDRESSES: De Havilland Service Bulletin (S/B) No. 6/474, Revision A, dated March 28, 1986, applicable to this AD may be obtained from the de Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; Telephone (416) 633-7310. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Lester Lipsius, Airframe Branch, ANE-172, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581; Telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring inspection for corrosion of both wing lift strut beam flanges enclosed by the skins on strut assemblies, P/N C6W1005-7 and P/N C6W1005-8, and replacement if necessary, before further flight, on all de Havilland DHC-6 airplanes, was published in the **Federal Register** on October 9, 1986 (51 FR 36229). The proposal resulted from a report that one Canadian DHC-6 airplane had corrosion in the beam flange enclosed by the skins of both wing support struts. Consequently, de Havilland issued S/B No. 6/474, "Wings—Wing Struts Special Inspection for Internal Beam Corrosion," dated June 14, 1985, and Revision A, dated March 28, 1986, which requires inspection for corrosion in the beam flanges of both wing support struts on all DHC-6 airplanes.

Transport Canada, who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Canada, made this service bulletin and the actions recommended therein by the manufacturer mandatory by issuance of Transport Canada AD CF-85-14, to assure the continued airworthiness of the affected airplanes. On airplanes operated under Canadian registration, this action has the same effect as an AD on airplanes certificated for operation in the United States. The FAA relies upon the certification of Transport Canada combined with FAA review of pertinent documentation in finding compliance of the designs of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States. The FAA examined the available information related to the issuance of S/B No. 6/474, Revision A, dated March 28, 1986, and the issuance of AD CF-85-14 by Transport Canada, and concluded that the condition addressed by S/B No. 6/474 was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include an AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change except for some minor editorial clarifications.

The FAA has determined that this regulation involves approximately 194 de Havilland DHC-6 series airplanes in the United States registry at an approximate annual cost of $640 for inspection of each airplane. The total cost for each inspection of the fleet is estimated to be $124,160 to the private sector. The cost of compliance with the AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

De Havilland: Applies to Model DHC-6-1, DHC-6-100, DHC-6-200, and DHC-6-300 (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated, after the effective date of this AD, unless already accomplished.

To prevent failure of the wing support struts due to corrosion, accomplish the following:

(a) Visually inspect each wing support strut for corrosion in accordance with the "ACCOMPLISHMENT INSTRUCTIONS" in de Havilland Service Bulletin (S/B) No. 6/474, dated June 14, 1985, Revision A, dated March 28, 1986, as follows:

(1) For aircraft that have accumulated 5,000 or more hours time-in-service (TIS) or are four and one half or more years old on the effective date of this AD, accomplish the inspection within the next 1,000 hours TIS or six months, whichever occurs first, after the effective date of this AD.

(2) For aircraft that have accumulated less than 5,000 hours TIS and are less than four and one half years old on the effective date of this AD, accomplish the inspection before the accumulation of 6,000 hours TIS or five years, whichever occurs first.

(3) For all airplanes, reinspect at intervals not to exceed 6,000 hours TIS or five years, whichever occurs first, following the previous inspection accomplished in accordance with this AD.

(b) If the inspections specified in paragraph (a) of this AD show moderate or severe corrosion anywhere on the wing support struts, or any corrosion within 20 inches from either end of the wing support struts, replace the affected support strut prior to further flight.

(c) If the inspections specified in paragraph (a) of this AD show light corrosion in areas other than 20 inches from either end of the struts, remove the corrosion within 30 days.

Note.—Advisory Circular (AC) 43-4, discusses corrosion evaluation, degree of damage, and rework procedures.

(d) An alternate method of compliance, which provides an equivalent level of safety, may be used if approved by the Manager, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581.

(e) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(f) Upon submission of substantiating data by an owner or operator, through an FAA Maintenance Inspector, the Manager, New York Aircraft Certification Office, FAA, New England Region, may adjust the compliance times in this AD.

All persons affected by this directive may obtain copies of the document referred to herein upon request to The de Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on March 16, 1987.

Issued in Kansas City, Missouri, on January 29, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-2583 Filed 2-6-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-ANE-20; Amdt. 39-5519]

Airworthiness Directives; Pratt & Whitney (PW) JT8D-209, -217, and -217A Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that requires the removal and replacement of stage 5 low pressure compressor (LPC) blades on certain PW JT8D-200 series engines. A stage 5 LPC blade flutter boundary has been identified in the engine operating envelope within the LPC rotor speed redline limit. The AD is needed to prevent flutter induced high cycle fatigue (HCF) failure of stage 5 LPC blades which could result in the loss of engine power.

EFFECTIVE DATES: February 16, 1987.

Compliance Schedule—As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the **Federal Register** as of February 16, 1987.

ADDRESSES: The applicable service bulletin (SB) may be obtained from Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457.

A copy of the SB is contained in Rules Docket Number 86-ANE-20, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Jones, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7121.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include a

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new AD requiring the removal and replacement of stage 5 LPC blades on certain PW JT8D–200 series engines was published in the **Federal Register** on June 13, 1986, (51 FR 21567). The proposal was developed when the FAA determined that stage 5 LPC blade flutter may be experienced on certain JT8D–200 series engines in the engine operating envelope within the LPC rotor speed redline limit. Blade flutter could result in blade fracture and the loss of engine power. Blade flutter and subsequent failure have been demonstrated during development testing at PW. There have been no failures in service.

The FAA has re-evaluated the data and determined that the compliance period as proposed in the notice of proposed rulemaking (NPRM) can be extended without compromising safe engine operation. It is significant to note that there has not been a stage 5 blade fracture in service due to flutter in over 4.3 million flight hours. In the unlikely event of a blade fracture due to flutter, the failure will be contained with no adverse consequences other than potential thrust loss or inflight shutdown. In addition, performance limitations introduced by Appendix 10 to the McDonnell Douglas Flight Manual prohibit engine operation within the blade flutter boundary, thereby preventing blade fracture due to flutter during normal operation. The compliance period to install the flutter resistant blade will therefore be extended from October 30, 1988 to July 30, 1990.

Since this condition is likely to exist or develop on other engines of the same type design, the AD requires replacement of existing stage 5 LPC blades with an improved durability blade in accordance with PW SB 5618, dated November 26, 1985.

Interested persons have been afforded the opportunity to participate in the making of this amendment, and due consideration has been given to all relevant data and comments received. Six comments were received concerning the proposed rule. Following consideration of those comments, it was determined that the proposal would be changed by extending the compliance period.

Six commenters requested an extension to the compliance deadline to allow for installation of a new flutter and foreign object damage resistant blade and strengthened disk. One of those commenters also questioned the justification for the New England Region NPRM in light of a Northwest Mountain NPRM which proposes engine and airplane performance limitations.

As stated above, the FAA has re-evaluated the data and determined that the compliance period as proposed in the NPRM can be extended without compromising safe operation of the engine. Although the proposed engine and airplane performance restrictions would prohibit engine operation within the blade flutter boundary, a blade flutter condition exists within the engine operating envelope and the LPC rotor speed redline limit that does not comply with the requirements of FAR Part 33. The rulemaking proposed by the Northwest Mountain Region is considered an interim measure. This rulemaking provides terminating action and will ultimately remove from service those blades susceptible to flutter and restore compliance with FAR Part 33.

Conclusion

The FAA has determined that this regulation involves 674 PW JT8D–200 series engines at an approximate cost of 12.6 million dollars. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since this regulation affects only operators using McDonnell Douglas MD–80 series aircraft in which the JT8D–200 series engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT8D–209, –217, and –217A turbofan engines.

Compliance is required on or before July 30, 1990, unless already accomplished.

To prevent failure of a stage 5 low pressure compressor (LPC) blade, remove from service LPC blades, Part Number 778505, and replace with serviceable blades in accordance with PW Service Bulletin (SB) 5618, dated November 26, 1985, or FAA approved equivalent.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

PW SB 5618, dated November 26, 1985, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457. This document also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Rules Docket Number 86–ANE–20, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

This amendment becomes effective on February 16, 1987.

Issued in Burlington, Massachusetts, on January 13, 1987.

Clyde DeHart, Jr.,

Acting Director, New England Region.

[FR Doc. 87–2585 Filed 2–6–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Limit on Future Effect of Applications and Related Changes in Appeals Council Procedures

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These final regulations revise our rules on the validity of an application filed before the first month the claimant meets all the requirements for Old-Age, Survivors, and Disability Insurance (OASDI) benefits under Title II of the Social Security Act (the Act). (Corresponding final regulations for the Supplemental Security Income (SSI) program under Title XVI of the Act were published on April 21, 1986 (51 FR 13489) and effective May 1, 1986.) These final regulations also revise our rules on acceptance of evidence in administrative appeals for both the OASDI and SSI programs. The changes are based on section 306 of the Social Security Disability Amendments of 1980.

Under these final regulations, if a person files a Title II application before the first month in which all the requirements for benefits are met, the application will be a valid application only if all the requirements are met on or before the date the administrative law judge (ALJ) makes a hearing decision. If there is no ALJ hearing decision (for example, the claimant does not request an ALJ hearing or the request is dismissed), the claim will be allowed only if the claimant meets all the requirements on or before the date a final determination is made. We are also changing our regulations on the administrative appeals process to provide that, in general, the Appeals Council (AC) will, in determining whether to review or in reviewing ALJ hearing decisions, only consider additional evidence which relates to the period on or before the date of the ALJ hearing decision. There are no changes in the final regulations which affect the AC's consideration of additional evidence in Title XVI cases not based on an application for benefits (e.g., suspension or termination of benefits). The regulations also do not change the AC's authority to remedy a defect in the administrative proceedings by remand to the ALJ. The right of the claimant to obtain consideration of new and additional evidence at the reconsideration or hearing level is also not affected by this change in AC procedures. Additional background information may be found in the preamble.

EFFECTIVE DATE: These rules are effective February 9, 1987.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–7452.

SUPPLEMENTARY INFORMATION:

Background

These final regulations affect Old-Age, Survivors, and Disability Insurance (OASDI) and Supplemental Security Income (SSI) benefits under the Social Security Act (the Act), but not special age 72 benefits. Our existing regulations on applications for OASDI benefits (including applications for a period of disability) provide that an application filed before the first month in which the claimant meets all the requirements for benefits is valid until a final decision on the claim is made by us or a court. If the claimant meets all the requirements before a final decision on the application is made, the regulations being amended treat the application as if it had been filed in the month the claimant first met all the requirements. On April 21, 1986, we promulgated final regulations for the SSI program at 51 FR 13489, including revisions to 20 CFR 416.330 which are consistent with the changes in these final OASDI regulations on applications. The revisions to 20 CFR 416.330 became effective May 1, 1986.

For a claimant dissatisfied with our initial determination, SSA's administrative appeals process provides generally for (1) reconsideration of the initial determination, (2) a hearing before an ALJ, and (3) review by the Appeals Council. Section 306 of Pub. L. 96–265, the Social Security Disability Amendments of 1980, limits the prospective effect of applications for OASDI benefits. (*Exception:* An application for special age 72 payments must still be filed no more than 3 months before the first month all requirements are met.) Under section 306, if a person files an application for OASDI benefits after June 30, 1980, and appeals our determination on it beyond the ALJ hearing level, the claimant must show that all the requirements for the benefits were met before the ALJ hearing decision in order to have us treat the application as if it had been filed in the month all the requirements were first met. If the claimant first meets all requirements after the date of the ALJ hearing decision, he or she must file a new application in order to get benefits.

Congress did not amend the SSI title (Title XVI) of the Act because, unlike the OASDI title (Title II), Title XVI leaves the period of validity for an application to be determined through regulations. However, the Senate Finance Committee report on Pub. L. 96–265 (S. Rep. No. 96–408, 96th Cong., 1st Sess. 57 (1979)) states that the Committee expects us to apply the rules required by section 306 to SSI applications as well as to OASDI applications. Consequently, under the Secretary's broad rulemaking authority, we have adopted the same rules for Title XVI applications as for Title II applications. However, since reestablishment of eligibility for Title XVI benefits during the course of an appeal does not require the filing of a new application, the AC will continue to consider evidence pertaining to any period before a final determination in Title XVI cases not based on an application (e.g., suspension and termination cases).

In proposing the provisions that became section 306 of Pub. L. 96–265, the House of Representatives indicated that its purpose was to permit the Secretary to issue regulations limiting the introduction of evidence after the ALJ hearing decision. Under the regulations being amended, the AC, in deciding whether to review an ALJ hearing decision and in actually reviewing it, considers any new and material evidence submitted.

The Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on May 16, 1983 at 48 FR 21967–21970 cited as one indication of Congressional intent the statement by the House Committee on Ways and Means that "the amendment . . . would allow the issuance of regulations to foreclose the introduction of new evidence with respect to a previously filed application after the decision is made at the administrative ALJ hearing, but would not affect remand authority to remedy an insufficiently documented case or other defect." (H.R. Rep. No. 96–100, 96th Cong., 1st Sess. 14 (1979).)

In accordance with what we considered as Congressional intent, the proposed regulations would have modified the general procedures under which the AC would consider additional evidence in connection with its review of an ALJ hearing decision. Under the proposed regulations, the AC would not consider any additional evidence submitted after the date of the ALJ hearing decision. The proposed regulations would not have permitted

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the AC to consider additional evidence in any circumstances, even where the evidence related to the period ending with the date of the ALJ hearing decision. In these cases, the claimant would have been given the option of either filing a new application if he or she believed that the evidence showed a new or worsened condition or of submitting the evidence to the ALJ for consideration of reopening of the hearing decision under the existing rules on reopening and revising determinations and decisions (20 CFR 404.987ff and 416.1487ff). The proposed regulations would have had no effect on the claimant's ability to submit new or additional evidence at either the reconsideration or ALJ hearing levels.

In view of the comments received in response to the NPRM, we have again reviewed the legislative history concerning section 306 of Pub. L. 96–265. We believe that the legislative history leaves us some flexibility concerning the degree to which the record should be closed to the receipt of additional evidence after the issuance of an ALJ hearing decision. In addition, the language of section 306 simply amends provisions of Title II of the Act concerning the prospective effect of certain OASDI applications to provide that the prospective life of an application filed prior to the claimant's meeting all the other entitlement requirements will end as of the date of the ALJ hearing decision. The effect of the statutory language, under which we have been operating with respect to OASDI applications filed after June 30, 1980, is that the AC will not consider additional evidence unless it relates to the period through the date of the ALJ hearing decision. Since the life of the application ends as of the date of the ALJ hearing decision, any evidence which indicates that entitlement begins subsequent to that date will not establish entitlement without the filing of a new application. In those cases the AC does not consider the evidence but advises the claimant to file a new application. However, it continues to process the request for review of the ALJ hearing decision.

Based on the above considerations, we have decided to promulgate final regulations under which the record will not be completely closed to AC consideration of additional evidence in connection with the review of an ALJ hearing decision. The only change we are making in existing regulations concerning the consideration of additional evidence by the AC is that the AC will consider only evidence relating to the period on or before the date of the ALJ hearing decision. That change is mandated, for Title II claims based on an application for benefits, by the language of section 306. Although not addressed by that provision, the reestablishment of entitlement to Title II benefits, where, for example, a claimant asserts a new disabling impairment arising subsequent to the ALJ hearing, generally would require the filing of a new application. Accordingly, we will apply the limitation on the AC consideration of new evidence to all Title II cases, including termination cases.

The Final Regulations

The final regulations provide that if an application for OASDI benefits, including a period of disability, is filed before the applicant satisfies the requirements for the benefits, the application continues to be valid until the ALJ hearing decision is issued. However, if there is no ALJ hearing decision (for example, the claimant does not request a hearing or the hearing request is dismissed under § 404.957), the application continues to be valid only until we make a final determination on the application. Thus, if the claimant first meets all the requirements for entitlement after the date of the ALJ hearing decision, he or she would have to file a new application to establish entitlement.

Under the final regulations, in all Title II cases and in Title XVI cases in which it is reviewing a decision based upon an application for benefits, the AC will only consider additional evidence which relates to the period on or before the date of the ALJ hearing decision. For example, if the AC receives evidence of a new or worsened condition which relates to a period after that date, it will return the evidence to the claimant and advise the claimant that he or she may file a new application if he or she believes that he or she became entitled based on that evidence. The AC will also advise the claimant that if a new application is filed within 60 days of the date of the AC's notice for Title XVI cases, or within 6 months of the date of the notice for Title II cases, the request for review will be considered as a written statement indicating an intent to claim benefits. In such cases, the date of the request for review will be used to establish the filing date for the subsequent application. Thus, cases involving any potential loss of benefits because of the policy of closing the record should seldom, if ever, occur. Processing of the new application will proceed while the AC is reviewing the ALJ hearing decision. In Title XVI cases not based on an application for benefits (e.g., cases involving the suspension or termination of benefits), eligibility can be reestablished without the filing of a new application while an appeal is pending. (20 CFR 416.305) In these cases, there will continue to be no restriction on the AC consideration of additional evidence.

These changes have no effect on the consideration of new or additional evidence either at the reconsideration or ALJ hearing levels. At either of these levels, the claimant can still obtain consideration of any material additional evidence and receive a completely new and independent determination or decision based on the entire record, including the additional evidence.

Comments Received Following Publication of Notice of Proposed Rulemaking

In order to obtain the public's views and comments before proceeding with these amendments, we published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on May 16, 1983 (48 FR 21967–21970). The public was invited to submit comments pertaining to the proposed amendments within a period of 60 days from the date of publication of the notice. We received comments from 55 commenters. The comments were primarily from attorneys in private practice who indicated that they represented claimants and from legal service organizations. The comments received with regard to the proposed rule under which the AC would not consider additional evidence under any circumstances were universally unfavorable. The majority of the commenters believed that the proposed regulations went beyond the intent of Congress in enacting section 306. These commenters believed that the provision was only intended to restrict AC consideration of evidence of a new or worsened condition which might establish entitlement subsequent to the date of the ALJ hearing decision, but not to restrict the AC from considering evidence that did relate to the period ruled on in the ALJ hearing decision. Our experience with cases at the AC level has shown that the bulk of the evidence submitted in connection with a request for AC review of an ALJ hearing decision does relate to the period ruled on in the ALJ hearing decision.

Other comments were to the effect that the proposed regulations were an attempt to restrict the disability program and make it more difficult for claimants to establish their claims. That was not our intent. Other commenters pointed out that the courts could still remand

cases to the Secretary of Health and Human Services for consideration of the additional evidence which the proposed regulations in the NPRM prevented the AC from considering. Other commenters proposed that we should permit the AC to accept additional evidence for "good cause." The comments were almost entirely based on the completely closed record regulations proposed in the NPRM and either objected to or proposed no limitations to those regulations. We believe that our decision not to promulgate final regulations which would completely close the record resolves the specific concerns raised by the commenters.

As indicated in the "Final Regulations" section, on the basis of a review of the legislative history and the comments received, we have revised the proposed regulations so that the final regulations do not completely close the record to consideration of additional evidence in connection with the review of an ALJ hearing decision. Under the final regulations, the AC will only consider additional evidence which relates to the period on or before the date of the ALJ hearing decision. If the AC receives evidence of a new or worsened condition relating to a later period, it will return the evidence to the claimant and advise the claimant that he or she can file a new application if he or she believes that he or she would be entitled based on that evidence.

The AC will also advise the claimant that if a new application is filed within 60 days of the AC's notice for Title XVI cases, or within 6 months of the date of the notice for Title II cases, the request for review will be considered as a written statement indicating an intent to claim benefits. In such cases, the date of the request for review will be used to establish the filing date for the subsequent application. Processing of the subsequent application will proceed while the AC is reviewing the hearing decision.

In Title XVI cases not based on an application for benefits (e.g., cases involving suspension or termination of benefits), the AC will consider additional evidence regardless of whether it relates to the period ruled on by the ALJ or to a subsequent period. The basis for this distinction is that eligibility for Title XVI benefits can be reestablished during the course of an appeal without the filing of a new application. In contrast, reestablishment of entitlement under Title II generally requires the filing of a new application.

Effective Dates

The statutory amendment is effective with respect to OASDI applications filed after June 30, 1980. An OASDI application filed before July 1, 1980, is valid until the final decision on it is made, even if this occurs after June 30, 1980. The effective date of the rule on the prospective life of SSI applications, however, was May 1986, the month following the month of publication of the final regulations (51 FR 13489, April 21, 1986). For SSI claims, this means that only applications filed on or after May 1, 1986 are subject to the provisions limiting the prospective life of applications. If someone filed applications under both programs between June 30, 1980, and May 1, 1986, the OASDI application is subject to the new rule on prospective life, while the SSI application is still subject to the old rule.

With respect to the changes in AC procedures, they have been in effect for OASDI applications under the 1980 statutory amendments. Specifically, the AC is no longer permitted to consider evidence relating to the time period following the ALJ hearing decision in situations involving Title II applications filed after June 30, 1980. The AC procedures with regard to cases involving SSI applications will affect applications filed on or after the effective date of these final regulations.

The changes in the regulations governing Title II applications (20 CFR Part 404, Subpart G) and the Title II administrative review process (20 CFR Part 404, Subpart J) also affect entitlement to Medicare benefits. Under 20 CFR 404.601, persons wishing to become entitled to Medicare benefits are referred to the provisions of Subpart G governing Title II applications "[s]ince the application form and procedures for filing a claim under this subpart are the same as those used to establish entitlement to Medicare benefits under 42 CFR Part 405." Except as specified in 42 CFR 405.701ff, the provisions of Subpart J which govern the Title II administrative review process are expressly made applicable to matters involving entitlement to Medicare benefits under 42 CFR 405.701(c).

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These final regulations impose no reporting/recordkeeping requirements that are subject to OMB clearance.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because these rules only affect individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 13.714, Medical Assistance Program; 13.800, Medicare—Hospital Insurance; 13.801, Medicare—Supplementary Medical Insurance; 13.802, Social Security—Disability Insurance; 13.803, Social Security—Retirement Insurance; 13.805, Social Security—Survivors Insurance; and 13.807, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disabled, Old-age, survivors and disability insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disabled, Public assistance programs, Social Security Administration, Supplemental Security Income (SSI).

Dated: October 7, 1986.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: November 21, 1986.

Otis R. Bowen,

Secretary of Health and Human Services.

PART 404—[AMENDED]

Parts 404 and 416 of Chapter III of 20 CFR are amended as follows:

Subpart G—[Amended]

1. The authority citation for Subpart G of Part 404 is revised to read as follows, and all other authority citations which appear throughout Subpart G are removed:

Authority: Secs. 202(j)(2), 205, and 1102 of the Social Security Act, as amended; 94 Stat. 457, 53 Stat. 1368 and 49 Stat. 647, as amended; sec. 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 631; 42 U.S.C. 402(j)(2), 405, 1302 and 5 U.S.C. Appendix.

2. Section 404.620(a) is revised to read as follows:

§ 404.620 Filing before the first month you meet the requirements for benefits.

(a) *General rule.* If you file an application for benefits (except special age 72 payments) before the first month you meet all the other requirements for entitlement, the application will remain in effect until we make a final

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determination on your application unless there is an administrative law judge hearing decision on your application. If there is an administrative law judge hearing decision, your application will remain in effect until the administrative law judge hearing decision is issued.

(1) If you meet all the requirements for entitlement while your application is in effect, we may pay you benefits from the first month that you meet all the requirements.

(2) If you first meet all the requirements for entitlement after the period for which your application was in effect, you must file a new application for benefits. In this case, we may pay you benefits only from the first month that you meet all the requirements based on the new application.

* * * * *

Subpart J—[Amended]

3. The authority citation for Subpart J of Part 404 is revised to read as follows, and all other authority citations which appear throughout Subpart J are removed:

Authority: Secs. 201, 204, 205, and 1102 of the Social Security Act, as amended; sec. 5 of Reorganization Plan No. 1 of 1953; sec. 6 of Pub. L. 98-460; 49 Stat. 647, 53 Stat. 1368, 67 Stat. 631, and 86 Stat. 1475; 42 U.S.C. 401, 404, 405, 1302 and 5 U.S.C. Appendix.

4. The third sentence of § 404.900(b) (published at 51 FR 300, January 3, 1986) is revised to read as follows:

§ 404.900 Introduction.

* * * * *

(b) *Nature of the administrative review process.* * * * Subject to the limitations on Appeals Council consideration of additional evidence (see §§ 404.970(b) and 404.976(b)), we will consider at each step of the review process any information you present as well as all the information in our records. * * *

5. Section 404.970(b) is revised to read as follows:

§ 404.970 Cases the Appeals Council will review.

* * * * *

(b) If new and material evidence is submitted, the Appeals Council shall consider the additional evidence only where it relates to the period on or before the date of the administrative law judge hearing decision. The Appeals Council shall evaluate the entire record including the new and material evidence submitted if it relates to the period on or before the date of the administrative law judge hearing decision. It will then review the case if it finds that the administrative law judge's action, findings, or conclusion is contrary to the weight of the evidence currently of record.

6. Section 404.976(b) is revised to read as follows:

§ 404.976 Procedures before Appeals Council on review.

* * * * *

(b) *Evidence.* (1) The Appeals Council will consider all the evidence in the administrative law judge hearing record as well as any new and material evidence submitted to it which relates to the period on or before the date of the administrative law judge hearing decision. If you submit evidence which does not relate to the period on or before the date of the administrative law judge hearing decision, the Appeals Council will return the additional evidence to you with an explanation as to why it did not accept the additional evidence and will advise you of your right to file a new application. The notice returning the evidence to you will also advise you that if you file a new application within 6 months after the date of the Appeals Council's notice, your request for review will constitute a written statement indicating an intent to claim benefits in accordance with § 404.630. If a new application is filed within 6 months of this notice, the date of the request for review will be used as the filing date for your application.

(2) If additional evidence is needed, the Appeals Council may remand the case to an administrative law judge to receive evidence and issue a new decision. However, if the Appeals Council decides that it can obtain the evidence more quickly, it may do so, unless it will adversely affect your rights.

* * * * *

7. Section 404.979 is revised to read as follows:

§ 404.979 Decision of Appeals Council.

After it has reviewed all the evidence in the administrative law judge hearing record and any additional evidence received, subject to the limitations on Appeals Council consideration of additional evidence in §§ 404.970(b) and 404.976(b), the Appeals Council will make a decision or remand the case to an administrative law judge. The Appeals Council may affirm, modify or reverse the administrative law judge hearing decision or it may adopt, modify or reject a recommended decision. A copy of the Appeals Council's decision will be mailed to the parties at their last known address.

PART 416—[AMENDED]

Subpart N—[Amended]

8. The authority citation for Subpart N of Part 416 is revised to read as follows, and all other authority citations which appear throughout Subpart N are removed:

Authority: Secs. 205, 1102, 1631, 1631(c), 1631(d) and 1633 of the Social Security Act, as amended; sec. 6 of Pub. L. 98-460; 49 Stat. 647, as amended, 53 Stat. 1368, 86 Stat. 1475, 86 Stat. 1478 (42 U.S.C. 405, 1302, 1383 (c) and (d), and 1383b).

9. The third sentence of § 416.1400(b) is revised to read as follows:

§ 416.1400 Introduction.

* * * * *

(b) *Nature of the administrative review process.* * * * Subject to the limitations on Appeals Council consideration of additional evidence (see §§ 416.1470(b) and 416.1476(b)), we will consider at each step of the review process any information you present as well as all the information in our records. * * *

10. Section 416.1470(b) is revised to read as follows:

§ 416.1470 Cases the Appeals Council will review.

* * * * *

(b) In reviewing decisions based on an application for benefits, if new and material evidence is submitted, the Appeals Council shall consider the additional evidence only where it relates to the period on or before the date of the administrative law judge hearing decision. In reviewing decisions other than those based on an application for benefits, the Appeals Council shall evaluate the entire record including any new and material evidence submitted. It will then review the case if it finds that the administrative law judge's action, findings, or conclusion is contrary to the weight of the evidence currently of record.

11. Section 416.1476(b) is revised to read as follows:

§ 416.1476 Procedures before Appeals Council on review.

* * * * *

(b) *Evidence.* (1) In reviewing decisions based on an application for benefits, the Appeals Council will consider the evidence in the administrative law judge hearing record and any new and material evidence only if it relates to the period on or before the date of the administrative law judge hearing decision. If you submit evidence which does not relate to the period on or before the date of the administrative law judge hearing decision, the Appeals Council will return the additional evidence to you with an explanation as to why it did not accept the additional evidence and will advise you of your right to file a new application. The notice returning the evidence to you will also advise you that if you file an application within 60 days after the date of the Appeals Council's notice, your request for review will constitute a written statement indicating an intent to claim benefits in accordance with § 416.340. If a new application is filed within 60 days of this notice, the date of the request for review will be used as the filing date for your application.

(2) In reviewing decisions other than those based on an application for benefits, the Appeals Council will consider the evidence in the administrative law judge hearing record and any additional evidence it believes is material to an issue being considered.

(3) If additional evidence is needed, the Appeals Council may remand the case to an administrative law judge to receive evidence and issue a new decision. However, if the Appeals Council decides that it can obtain the evidence more quickly, it may do so, unless it will adversely affect your rights.

* * * * *

12. Section 416.1479 is revised to read as follows:

§ 416.1479 Decision of Appeals Council.

After it has reviewed all the evidence in the administrative law judge hearing record and any additional evidence received, subject to the limitations on Appeals Council consideration of additional evidence in §§ 416.1470(b) and 416.1476(b), the Appeals Council will make a decision or remand the case to an administrative law judge. The Appeals Council may affirm, modify or reverse the administrative law judge hearing decision or it may adopt, modify or reject a recommended decision. A copy of the Appeals Council's decision will be mailed to the parties at their last known address.

* * * * *

[FR Doc. 87-2653 Filed 2-6-87; 8:45 am]

BILLING CODE 4190-11-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR PART 67

Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the Community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in floodprone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The modified base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
TEXAS	
Bedford (city), Tarrant County (FEMA Docket No. 6690)	
Bedford Creek	
Approximately 600 feet downstream of Tibbets Drive	*529
Upstream side of State Route 121	*552
Upstream side of Bedford Road	*567
Approximately 100 feet downstream of Harwood Road	*580
East Branch Bedford Creek	
Downstream side of Airport Freeway	*546
Upstream side of Commerce Place	*564
Upstream side of Bedford Road	*573
Approximately 100 feet downstream of northbound State Route 121	*584
East Fork Bedford Creek	
At confluence with Bedford Creek	*552
Upstream side of Bedford Forum Drive	*558
Upstream side of Bedford Road	*567
Approximately 200 feet upstream of Park Avenue	*576
West Branch Bedford Creek	
At downstream corporate limits	*536
Upstream side of Hospital Parkway	*545
Approximately 100 feet upstream of Park Place Avenue	*564
Approximately 300 feet downstream of Central Drive	*571
North Fork West Branch Bedford Creek	
At confluence with West Branch Bedford Creek	*551
Approximately 1,100 feet upstream of confluence with West Branch Bedford Creek	*566

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Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Little Bear Creek:	
Upstream side of State Route 121 access road	*538
Upstream side of southbound Frontage Road	*541
Approximately 1,200 feet upstream of southbound Frontage Road	*542
Sulphur Branch:	
At downstream corporate limits	*506
Upstream side of Circle Lane	*525
Upstream side of Bedford Road	*550
Upstream side of Harwood Road	*583
Approximately 200 feet downstream of Simpson Terrace	*605
Stream SB-1:	
At confluence with Sulphur Branch	*518
Upstream side of Schumac Lane	*536
Upstream side of westbound State Route 121	*568
Approximately 70 feet upstream of Parkwood Drive	*604
Valley View Branch:	
Approximately 250 feet downstream of Cheryl Avenue	*547
Upstream side of Bedford Road	*563
Upstream side of westbound State Route 121	*574
Approximately 650 feet upstream of westbound State Route 121	*575
Approximately 300 feet downstream of Harwood Road	*591
Approximately 70 feet downstream of Harwood Road	*592

Maps available for inspection at the City Hall, 2000 Forest Ridge Drive, Bedford, Texas

South Houston (City), Harris County (FEMA Docket No. 6645)

Berry Bayou (C106-00-00):	
At downstream corporate limits	*24
Approximately 200 upstream of College Avenue	*27
At confluence of Tributary 3.31	*31
At upstream corporate limits	*33
Tributary 2.00 to Berry Bayou (C106-03-00)	
At Winkler Drive	*23
Upstream side of Michigan Avenue	*32
Approximately 25 feet downstream of upstream corporate limits	*35
Tributary 3.31 to Berry Bayou (C106-06-00)	
At confluence with Berry Bayou	*31
Approximately .6 mile upstream of corporate limits	*35

*National Geodetic Vertical Datum 1973 relevelling

Maps available for inspection at the City Hall, 1018 Dallas Street, South Houston, Texas

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the 90-day period and the proposed base flood elevations have not been changed.

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
ALABAMA	
Ashville (Town), St. Clair County (FEMA Docket No. 6730)	
Big Canoe Creek:	
About 400 feet downstream of U.S. Highway 231	*549
About 2700 feet upstream of Pinedale Road	*556

Maps available for inspection at the City Hall, P.O. Drawer 70, Ashville, Alabama 35953

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
ARIZONA	
Cochise County (Unincorporated Areas) (FEMA Docket No. 6730)	
Graveyard Gulch: At downstream side of San Juan Capistrano Avenue	*4450
Buena #3 North Extension: 1,700 feet north of intersection of Colombo Avenue and Charleston Highway	*4,420
Savanna Drive Drainage: At Leonardo Da Vinci Drive centerline	*4,398
Coyote Wash: At downstream side of Fry Boulevard (State Highway 90)	*4,392
Coyote Wash: At City of Sierra Vista corporate limits, immediately east of Fort Huachuca Military Reservation	*4,674
Unnamed Wash: At State Highway 92	*4,550
Unnamed Wash: 100 feet downstream of Fry Boulevard (State Highway 90)	*4,339
Stream E Tributary: At Fort Huachuca Military Reservation boundary	*4,656
Stream K: At downstream side of State Highway 92	*4,619
Stream E Tributary No. 2: At center of El Camino Real, 530 feet south of its intersection with Stream E Tributary	*4,552
Stream J: 50 feet downstream of State Highway 92	*4,597

Maps are available for review at the Department of Public Works, Cochise County Courthouse, Bisbee, Arizona

Pinal County (Unincorporated Areas) (FEMA Docket No. 6730)

Santa Rosa Wash: 200 feet upstream of the intersection of Parter Road and the Southern Pacific Railroad, along Parter Road	#1
Vekol Wash: 200 feet south of the Southern Pacific Railroad along the boundary between R2E and R3E	*1,152
Vekol Wash: 2,100 feet west of the intersection between Vekol Wash Tributary and McDavid Road, along McDavid Road extended	#1
Vekol Wash Tributary: Intersection of Hathaway Avenue and King Street, downstream of Southern Pacific Railroad	#2

Maps are available for review at the County Planning and Zoning Department, 1301 Pinal, Florence, Arizona.

Pinetop-Lakeside (Town), Navajo County (FEMA Docket No. 6703)

Billy Creek: Approximately 200 Feet Above Center of Porter Mountain Road	*6,708
Walnut Gulch Creek: At Center of Nadean Drive	*6,937

Maps available for inspection at the Planning and Zoning Department, P.O. Drawer 1459, Pinetop-Lakeside, Arizona

ARKANSAS

Bald Knob (City), White County (FEMA Docket No. 6730)

Gum Creek:	
Upstream of corporate limits	*213
Approximately 1,700 feet downstream of East 1st Street	*216
Downstream of corporate limits	*228
Overflow Creek Tributary:	
Downstream of Missouri Pacific Railroad	*212
Upstream of Union Street	*252
Approximately 1,400 feet upstream of Union Street	*267

Maps available for inspection at the City Hall, 305 Main Street, Bald Knob, Arkansas

CALIFORNIA

Hanford, (City), Kings County (FEMA Docket No. 6719)

Shallow Flooding:	
About 1,220 feet east of 10th Avenue, 200 feet south of Clover Lane and 300 feet west of Niell Court	*243
About 900 feet east of 10th Avenue, 750 feet south of Clover Lane, and 1,100 feet north of Grangeville Boulevard	*248

Maps available for inspection at the office of the City Engineer, City Hall, 400 North Douty Street, Hanford, California

Lemoore (City), Kings County (FEMA Docket No. 6719)

Shallow Flooding:	
About 600 feet east of Lemoore Avenue and extends to the eastern corporate limits	*227

Maps available for inspection at the Department of Public Works, City Hall, 119 Fox Street, Lemoore, California.

Pacifica (City), San Mateo County (FEMA Docket No. 6676)

Pacific Ocean: 50 feet west of intersection of Beach Boulevard and Montecito Avenue	*27

Maps available for inspection at Engineering Department, 170 Santa Maria Avenue, Pacifica, California.

Siskiyou County (Unincorporated Areas) (FEMA Docket No. 6730)

Klamath River (Near Town of Klamath River): 200 feet upstream from center of Walker Road Bridge	*1,700
Scott River (Near Fort Jones): 100 feet upstream from center of State Highway 3	*2,723
Moffett Creek (Near Fort Jones): 100 feet upstream from center of Scott River Road	*2,725
Whitney Creek Alluvial Fan (Near Weed): 2,000 feet downstream from center of U.S. Highway 97	#1

Maps available for inspection at the Siskiyou County Public Works Department, 305 Butte Street, Yreka, California

COLORADO

Chaffee County (Unincorporated Areas) (FEMA Docket No. 6708)

South Arkansas River: Approximately 100 feet upstream from the center of U.S. Highway 50 bridge	*7,016
Poncha Creek: At Town of Poncha Springs corporate limits, approximately 200 feet west of the intersection of County Road 115 and Pinyon Drive	*7,477
Chalk Creek: Immediately upstream of U.S. Highway 285 bridge	*7,685
Cottonwood Creek: Approximately 60 feet upstream from the center of County Road 361 bridge	*8,155

Maps are available for review at the County Administrator's Office, Chaffee County Courthouse, 123 Crestone, Salida, Colorado

Estes Park (Town), Larimer County (FEMA Docket No. 6703)

Big Thompson River: Approximately 60 feet upstream of St. Vrain Avenue	*7,506
Big Thompson River Overflow: Approximately 320 feet upstream of confluence with Big Thompson River	*7,485
Fall River: Approximately 60 feet upstream of Spruce Drive	*7,549
Fall River Overflow: Approximately 80 feet upstream of confluence with Fall River	*7,561
Black Canyon Creek: Approximately 350 feet upstream of West Wonderview Avenue (U.S. Highway 34)	*7,546
Dry Gulch: Approximately 3000 feet north of intersection of Dry Gulch Road and U.S. Highway 34, along center of Dry Gulch Road	*7,481

Maps available for inspection at the Building Inspector's Office, 170 McGregor Street, Estes Park, Colorado

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Holyoke (City), Phillips County (FEMA Docket No. 6703)	
Frenchman Creek: Approximately 30 feet north of the centerline of US route 6, along Frenchman Creek	*3,728
North Fork Frenchman Creek: Approximately 395 feet upstream of the confluence with Frenchman Creek	*3,744
South Fork Frenchman Creek: Approximately 110 feet upstream of the centerline of Denver Street	*3,746

Maps available for inspection at the City Superintendents Office, 207 West Denver, Holyoke, Colorado.

Larimer County (Unincorporated Areas) (FEMA Docket No. 6709)

Big Thompson River: Approximately 25 feet upstream from center of Marys Lake Road bridge	*7,627
Fall River: Approximately 120 feet upstream from center of Fish Hatchery Road bridge	*8,010
Black Canyon Creek: Approximately 25 feet downstream from center of McGregor Avenue Bridge	*7,811

Maps are available for review at the Flood Plain Administrator's Office, 218 West Mountain Avenue, Fort Collins, Colorado.

Poncha Springs (Town), Chaffee County (FEMA Docket No. 6709)

South Arkansas River: Approximately 80 feet upstream of the center of Highway 285	*7,448
Poncha Creek: Approximately 125 feet downstream of the center of Hot Springs Road	*7,470

Maps are available for review at the Mayor's Office, 330 Burnett Street, Poncha Springs, Colorado.

Rio Grande County (Unincorporated Areas) (FEMA Docket No. 6730)

Rio Grande: Vicinity of Monte Vista. At Gunbarrel Road (U.S. Highway 285)	*7,659
Rio Grande: Vicinity of Del Norte. Approximately 260 feet east of the center of the intersection of First and Spruce Streets	*7,874
Rio Grande: Vicinity of South Fork. At Gerrard Road (County Road 19)	*8,137
South Fork Rio Grande: At U.S. Highway 160	*8,187

Maps are available for inspection at the County Commissioners Office, Rio Grande County Courthouse, 6th and Cherry Streets, Del Norte, Colorado.

DELAWARE

New Castle (City), New Castle County (FEMA Docket No. 6730)

Delaware River: Entire shoreline within community	*10

Maps available for inspection at the City Administration Building, 220 Delaware, New Castle, Delaware.

Newport (Town), New Castle County (FEMA Docket No. 6730)

Christina River:	
Approximately 375 feet downstream of corporate limits	*10
At upstream corporate limits	*12

Maps available for inspection at the Town Hall, 15 North Augustine Street, Newport, Delaware.

GEORGIA

Alma (City), Bacon County (FEMA Docket No. 6730)

Hurricane Creek:	
About 1500 feet downstream of State Route 32	*142
About 600 feet upstream of U.S. Route 1	*150

Maps available for inspection at the City Manager's Office, City Hall, P.O. Box 429, Alma, Georgia.

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Atlanta (City), Fulton and DeKalb Counties (FEMA Docket No. 6719)	
Caldwell Branch:	
About 2000 feet downstream of Melvin Drive	*824
About 2500 feet upstream of Melvin Drive	*867
Camp Creek:	
About 1800 feet downstream of Seaboard Coastline Railroad	*814
At confluence of North Fork Camp Creek	*822
North Fork Camp Creek:	
About 0.5 mile downstream of Redeene Road	*822
About 0.45 mile upstream of Interstate 285	*856
Center Hill Tributary:	
At mouth	*777
Just downstream of Spring Street	*791
Just upstream of Spring Street	*796
Just downstream of Bankhead Highway	*848
Just upstream of Bankhead Highway	*856
About 925 feet upstream of Detroit Avenue	*872
About 935 feet upstream of Detroit Avenue	*877
Just upstream of Simpson Road	*883
Chattahoochee River:	
About 3300 feet downstream of Bankhead Highway	*766
About 2100 feet upstream of Interstate 75	*778
Clear Creek:	
At mouth	*801
About 950 feet downstream of Polo Drive	*811
About 400 feet upstream of Polo Drive	*823
About 250 feet downstream of Park Drive	*846
Just downstream of Park Drive	*860
About 1350 feet upstream of Park Drive	*864
Cowart Lake Tributary:	
About 0.5 mile downstream of Tell Road	*830
Just downstream of Creek Valley Court	*884
Empire Park Tributary:	
At mouth	*802
Just downstream of Browns Mill Road	*822
Federal Prison Creek:	
At mouth	*793
About 0.74 mile upstream of Constitution Road	*844
About 0.78 mile upstream of Constitution Road	*856
About 1.35 miles upstream of Constitution Road	*908
About 1.38 miles upstream of Constitution Road	*918
About 1.53 miles upstream of Constitution Road	*925
Intrenchment Creek:	
Just upstream of Moreland Avenue	*865
About 0.9 mile upstream of Woodland Avenue	*880
Lenox Road Tributary:	
At mouth	*819
About 3000 feet upstream of Shady Valley Drive	*829
Mozley Park Tributary:	
At confluence with Proctor Creek	*832
Just downstream of North Avenue	*849
Just upstream of North Avenue	*855
Nancy Creek:	
At mouth	*774
About 850 feet upstream of Lake Forrest Road	*823
About 1,000 feet upstream of Lake Forrest Road	*830
About 0.9 mile upstream of Wieuca Road	*841
Niskey Lake Tributary:	
About 1.1 miles downstream of Niskey Lake Road	*809
About 0.8 mile downstream of Niskey Lake Road	*816
About 0.76 mile downstream of Niskey Lake Road	*845
About 850 feet downstream of Niskey Lake Road	*861
Just upstream of Niskey Lake Road	*870
About 0.6 mile upstream of Niskey Lake Road	*902
Peachtree Creek:	
At mouth	*774
About 900 feet upstream of Piedmont Road	*807
North Fork Peachtree Creek:	
At mouth	*807
Just upstream of confluence of Lenox Road Tributary	*819
South Fork Peachtree Creek:	
At mouth	*807
About 550 feet upstream of confluence of Rock Creek	*834
Poole Creek:	
At mouth	*797
About 3,000 feet upstream of Jonesboro Road	*827
Proctor Creek:	
At mouth	*768
Just downstream of Hollywood Road	*778
Just upstream of Hollywood Road	*783
Just downstream of Kerry Circle	*803
Just upstream of Kerry Circle	*810
Just downstream of North Avenue	*871
Just upstream of Seaboard Coastline Railroad	*900
About 1,700 feet upstream of Simpson Road	*906
Just upstream of Burbank Drive	*920
About 300 feet downstream of Martin Luther King Jr. Drive	*927
Just upstream of Martin Luther King Jr. Drive	*941
Sandy Creek	
About 800 feet downstream of Sandy Creek Road	*766
Just downstream of Interstate 285	*788
About 300 feet upstream of Interstate 285	*800
Just downstream of Waterford Road	*814
Just upstream of Waterford Road	*820
At Baker Ridge Drive	*843
South River:	
About 1,000 feet downstream of the confluence of Federal Prison Creek	*793
Just downstream of Jonesboro Road	*797
Just upstream of Jonesboro Road	*802
At confluence of South Fork South River	*818
North Fork South River:	
At confluence of South Fork South River	*818
Just downstream of confluence of Middle Branch South River	*822
Just upstream of Lakewood Avenue	*890
Just downstream of Pryor Road	*905
Just upstream of Pryor Road	*926
About 1,050 feet upstream of Joy Land Place	*927
Middle Branch South River:	
At mouth	*824
About 300 feet upstream of Lakewood Avenue	*890
About 1,300 feet upstream of Fair Drive	*908
South Fork South River:	
At mouth	*818
Just downstream of Springdale Road	*855
Just upstream of Springdale Road	*865
Sugar Creek:	
Just upstream of Glenwood Avenue	*922
Just downstream of Wyman Street	*931
Just upstream of Wyman Street	*936
About 300 feet upstream of Memorial Drive	*937
Utoy Creek	
About 0.9 mile downstream of confluence of Wildwood Lake Tributary	*781
About 1.3 miles upstream of confluence of Wildwood Lake Tributary	*804
North Utoy Creek:	
About 1,300 feet downstream of Benjamin E Mays Drive	*809
About 1,000 feet upstream of Beecher Road	*894
South Utoy Creek	
About 2,000 feet downstream of Childress Drive	*821
About 500 feet upstream of Alison Court	*895
Whetstone Creek: Within community	*773
East Fork Whetstone Creek:	
At confluence with Whetstone Creek	*773
Just downstream of La Dawn Lane	*783
Just upstream of La Dawn Lane	*790
Just downstream of Marietta Road	*818
Wildwood Lake Tributary:	
At mouth	*794
Just upstream of Plainville Drive	*809
About 500 feet upstream of Plainville Drive	*817
Just upstream of Branch Drive	*850

Maps available for inspection at the Bureau of Highways and Streets, Department of Public Works, 224 Central Avenue, SW, Atlanta, Georgia

Bainbridge (City), Decatur County (FEMA Docket No. 6730)

Flint River:	
About 2.4 miles downstream of U.S. Route 27	*91
About 2.85 miles upstream of U.S. Route 27 (Business)	*98

Maps available for inspection at the Building Inspection Department, City Hall, P.O. Box 158, Bainbridge, Georgia

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Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Chatham County (Unincorporated Areas) (FEMA Docket No. 6730)	
Savannah River:	
Just upstream of City of Port Wentworth Corporate Limits	^12
At upstream County Boundary	^15
Ogeechee River:	
Just upstream of Interstate 95	^12
About 2.1 miles upstream of State Route 204	^30
St. Augustine Creek:	
About 1,000 feet downstream of an unnamed road (about 0.7 mile upstream of Interstate 95)	^12
About 3.2 miles upstream of an unnamed road (about 0.7 mile upstream of Interstate 95)	^19
St. Augustine Creek Tributary:	
Just upstream of Godley Road	^12
About 4.9 miles upstream of Interstate 95	^19
Pipe Makers Canal:	
Just upstream of Norfolk Southern Railway	^12
Just downstream of U.S. Route 80	^22
Harden Canal:	
Just upstream of Interstate 16	^12
About 1.0 mile upstream of Wildcat Dam Road	^18
Dundee Canal:	
Just upstream of Norfolk Southern Railway	^12
About 1.5 miles upstream of Louisville Road	^15
Salt Creek Tributary:	
Just upstream of Interstate 16	^12
Just downstream of Louisville Road	^15
Lower Springfield Canal Tributary:	
Just upstream of Seaboard Coast Line Railroad	^12
Just downstream of Garrard Avenue (about 1.7 miles upstream of mouth)	^12
Springfield Canal: Within community	13
Springfield Canal Tributary A:	
Just downstream of Seaboard Coast Line Railroad	^13
Just downstream of U.S. Route 17 (about 1.0 mile upstream of Lynes Parkway)	^15
Casey Canal: Within community	^13
Atlantic Ocean:	
Along Middle River from mouth to U.S. Route 17	^11
At Atlantic Coastal Highway over Little Ogeechee River	^12
About 1,000 feet northwest of confluence of Williamson Creek with Herb River	^12
At Pennyworth Island	^12
At intersection of Bartram Road and Landings Way	^13
At confluence of Lazaretto Creek with Bull River	^17
Just northwest of divergence of Bear River from Ogeechee River	^16
Along shoreline	^20

Maps available for inspection at the County Engineer's Office, County Courthouse, Savannah, Georgia.

Cordele (City), Crisp County (FEMA Docket No. 6730)

Gum Creek:	
About 1,700 feet downstream of Seaboard Coast Line Railroad	^277
Just upstream of U.S. Route 41	^287
Cordele Creek:	
About 1,700 feet downstream of Sixth Avenue	^283
Just upstream of Norfolk Southern Railway	^292
Malcolm Branch:	
Just upstream of Sixth Street	^288
Just downstream of Eighth Avenue	^303

Maps available for inspection at the City Hall, Community Development Department, Rm 240, P.O. Box 569, Cordele, Georgia.

Effingham County (Unincorporated Areas) (FEMA Docket No. 6719)

Dasher Creek:	
About 700 feet upstream of Seckinger Ford Road	^20
About 3,900 feet upstream of Baker Hill Road Extension	^30
Willowpeg Creek:	
At confluence with Swegofter Creek	^24
Just downstream of Seaboard Coast Line Railroad	^50
Polly Creek:	
Just upstream of Zeigler Road	^39
About 2,200 feet upstream of State Route 21	^62
Swegofter Creek:	
Just upstream of Old Augusta Road	^17
Just downstream of South Blanford Road	^45
Ebenezer Creek:	
Just upstream of Log Landing Road	^28
About 5,000 feet upstream of State Route 119	^44
Jacks Branch:	
At mouth	^37
About 1.45 miles upstream of Tusculum-Springfield Road	^68
Snooks Branch:	
At mouth	^47
Just downstream of State Route 119	^55
Just upstream of State Route 119	^60
Just downstream of First Street	^77
White Deer Branch:	
At mouth	^48
About 1.4 miles upstream of State Route 119	^77

Maps available for inspection at the Board of Commissioners Office, County Courthouse, P.O. Box 307, Springfield, Georgia.

Floyd County (Unincorporated Areas) (FEMA Docket No. 6730)

Coosa River:	
Just upstream of State Route 100	^585
About 2,000 feet upstream of confluence of Horseleg Creek	^596
Etowah River:	
About 3,500 feet upstream of Norfolk Southern Railway	^599
At county boundary	^618
Oostanaula River:	
About 2,500 feet downstream of Norfolk Southern Railway	^596
About 2.2 miles upstream of confluence of Armuchee Creek	^604
Armuchee Creek:	
At mouth	^602
At county boundary	^636
Booze Creek:	
At mouth	^637
Just downstream of Booze Mountain Road	^673
Dykes Creek:	
At mouth	^605
Just downstream of Halls Lake Dam	^644
Just upstream of Halls Lake Dam	^652
Just downstream of Gentry Road	^735
Little Armuchee Creek:	
At mouth	^622
At county boundary	^636
Little Cedar Creek:	
At mouth	^604
About 0.9 mile upstream of Norfolk Southern Railway	^628
Little Dry Creek:	
At mouth	^596
Just downstream of Possum Trot Road	^653
Silver Creek:	
About 0.4 mile downstream of Darlington Drive	^602
About 1.7 miles upstream of Lindale Road	^672
Prants Branch:	
At mouth	^609
Just downstream of Eden Valley Road	^639
Tributary A:	
At mouth	^599
About 1,200 feet upstream of Turner Chapel Road	^600
Horseleg Creek:	
At confluence of South Fork Horseleg Creek	^607
About 500 feet upstream of Burnett Ferry Road	^614
South Fork Horseleg Creek:	
At mouth	^607
About 2,000 feet upstream of mouth	^617
Burwell Creek: Within community	^596

Maps available for inspection at the Code Enforcement Department, City of Rome, P.O. Box 1433, Rome, Georgia.

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Rincon (City), Effingham County (FEMA Docket No. 6703)	
Dasher Creek:	
About 1.3 miles downstream of State Route 21	^29
About 2,500 feet upstream of Seaboard Coast Line Railroad	^47
Polly Creek:	
About 1,100 feet downstream of State Route 21	^57
About 2,100 feet upstream of State Route 21	^62
Rincon Branch:	
At mouth	^34
Just downstream of Fourth Street	^46
Just upstream of Fourth Street	^56
Just downstream of Seaboard Coast Line Railroad	^57
Just upstream of Seaboard Coast Line Railroad	^67
About 2,500 feet upstream of Old Columbia Avenue	^67
Swegofter Creek:	
About 1,850 feet downstream of confluence of Willowpeg Creek	^21
At confluence of Willowpeg Creek	^23
Willowpeg Creek:	
At mouth	^23
Just downstream of State Route 21	^38

Maps available for inspection at the City Hall, Rincon, Georgia.

Springfield (City), Effingham County (FEMA Docket No. 6719)

Ebenezer Creek:	
Just downstream of Stillwell Road	^36
At confluence of Jacks Creek	^37
Jacks Creek:	
At confluence with Ebenezer Creek	^37
At confluence of Snooks Branch	^47
Snooks Branch:	
At confluence with Jacks Creek	^47
Just downstream of State Route 119	^55
Just upstream of State Route 119	^60
Just downstream of First Street bridge	^77

Maps available for inspection at the City Clerk's Office, City Hall, Springfield, Georgia.

HAWAII

Kauai County (FEMA Docket No. 6719)

Wainiha River: 2,180 feet upstream of Kuhio Highway Bridge	^23
Opaekaa Stream: 660 feet upstream of Opaekaa Road Bridge	^299
Opaekaa Tributary: At Poo Road Bridge	^311
Kekaka Drainageway: At intersection of Kokee Road and Kekaha Road	^12
Waimea Stream: 580 feet upstream of Kaumauila Highway Bridge	^14
Lawai Stream: 180 feet upstream of Kaumauila Highway Bridge	^483
Hulelia Stream: 700 feet downstream of confluence with Papakolea Stream	^14
Papakolea Stream: 2,000 feet upstream of confluence with Hulelia Stream	^15
Coastal Flooding: At coastal mile marker 97	^11

Maps are available for review at the County Engineer's Office, County of Kauai, Department of Public Works, 4396 Rice Street, Lihue, Kauai, Hawaii.

IDAHO

Cambridge (City), Washington County (FEMA Docket No. 6709)

Rush Creek: Approximately 15 feet north of the center of Superior Street, along Rush Creek	^2,642

Maps are available for review at the City Hall, Cambridge, Idaho.

Midvale (City), Washington County (FEMA Docket No. 6709)

Weiser River: At Bridge Street	^2,538

Maps are available for review at the City Hall, Midvale, Idaho.

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Weiser (City), Washington County (FEMA Docket No. 6709)	
Snake River: Approximately 660 feet downstream from the center of U.S. Highway 30N Bridge	^2,102
Weiser River: Approximately 30 feet upstream from the center of East Eleventh Street, along the Union Pacific Railroad	^2,109
Monroe Creek: Approximately 20 feet upstream of and parallel to East Park Street	^2,125

Maps are available for review at the City Planning and Zoning Department, 55 West Idaho, Weiser, Idaho.

IDAHO

Washington County (Unincorporated Areas) (FEMA Docket No. 6709)

Snake River: Approximately 600 feet downstream from center of U.S. Highway 30N Bridge	^2,102
Weiser River: Approximately 50 feet upstream from center of U.S. Highway 95-30N Bridge	^2,106
Monroe Creek: Approximately 50 feet upstream from Calloway Canal	^2,146
Rush Creek: Approximately 25 feet upstream from center of Union Pacific Railroad	^2,639

Maps are available for review at the County Courthouse, 256 East Court Street, Weiser, Idaho.

INDIANA

Lafontaine (Town), Wabash County (FEMA Docket No. 6730)

Grant Creek:	
About 1750 feet downstream of State Route 15	^786
About 2100 feet upstream of Main Street	^805

Maps available for inspection at the Town Hall, P.O. Box 207, 23 West Branson, Lafontaine, Indiana.

KANSAS

Bel Aire (City), Sedgewick County (FEMA Docket No. 6730)

East Fork Chisholm Creek:	
Just upstream of Missouri Pacific Railroad	^1,376
Just downstream of 45th Street	^1,377
East Fork Chisholm Creek Tributary No. 3:	
Just upstream of 37th Street	^1,372
Just downstream of East Fork Chisholm Creek Tributary No. 3 Dam	^1,377
Just upstream of East Fork Chisholm Creek Tributary No. 3 Dam	^1,383
About 0.46 mile upstream of Harding Avenue	^1,387
East Fork Chisholm Creek Tributary No. 7:	
Just upstream of Missouri Pacific Railroad	^1,374
About 0.25 mile upstream of Forty Fifth Street	^1,405

Maps available for inspection at the City of Bel Aire, 4343 North Woodlawn, Wichita, Kansas.

Cedar Point (City), Chase County (FEMA Docket No. 6719)

Cottonwood Creek:	
About 1500 feet downstream of First Street	^1,252
About 2100 feet upstream of First Street	^1,254

Maps available for inspection at the City Hall, Cedar Point, Kansas.

Junction City (City), Geary County (FEMA Docket No. 6730)

Smoky Hill River:	
At confluence of Republican River	^1,070
About 0.55 mile upstream of U.S. Highway 77	^1,089
Smoky Hill River Overflow:	
Just upstream of 6th Street	^1,074
About 1.9 miles upstream of 6th Street	^1,083
Republican River:	
At confluence with Smoky Hill River	^1,070
About 0.8 mile upstream of Washington Street	^1,074

Maps available for inspection at the City Engineer's Office, Municipal Building, P.O. Box 287, Junction City, Kansas.

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
KENTUCKY	
Lewis County (Unincorporated Areas) (FEMA Docket No. 6703)	
Ohio River:	
At downstream county boundary	^518
At upstream county boundary	^535

Maps available for inspection at the County Courthouse, Vanceburg, Kentucky.

Vanceburg (City), Lewis County (FEMA Docket No. 6703)

Ohio River: Within community	^527

Maps available for inspection at the Municipal Building, 609 Front Street, Vanceburg, Kentucky.

MAINE

Bowdoinham (Town), Sacadahoc County (FEMA Docket No. 6730)

Kennebec River:	
At downstream corporate limits	^9
At the Obald Point	^13
At upstream corporate limits	^16
Merrymeeting Bay: Entire shoreline within community	^9
Abagadasset River: From confluence with Merrymeeting Bay to approximately .44 mile downstream confluence of Baker Brook	^9

Maps available for inspection at the Planning Board, Bowdoinham, Maine.

Dresden (Town), Lincoln County (FEMA Docket No. 6730)

Kennebec River:	
At downstream corporate limits	^12
Upstream side of State Route 197	^17
At upstream corporate limits	^24

Maps available for inspection at the Town Hall, Dresden, Maine.

Greenville (Town), Piscataquis County (FEMA Docket No. 6709)

Moosehead Lake: Entire shoreline affecting community	^1,030

Maps available for inspection at the Town Office, Minden Street, Greenville, Maine.

Hudson (Town), Penobscot County (FEMA Docket No. 6730)

Pushaw Stream:	
Approximately 800 feet upstream of State Route 221	^138
At Jeep Trail Crossing	^143
At confluence with Little Pushaw Pond	^147

Maps available for inspection at the Selectman's Office, Hudson, Maine.

MARYLAND

St. Mary's County (FEMA Docket No. 6719)

Chaptico Creek:	
At Chaptico Point	^6
Upstream side of State Route 234 Bridge	^16
0.77 mile downstream of Asher Road	^36
At Asher Road Bridge	^55
Beverly Road extended	^56
Coffee Hill Run:	
Downstream side of Chaptico-Mechanicsville Road Bridge	^17
Approximately .65 mile upstream of Chaptico-Mechanicsville Road Bridge	^28
Hayden Run:	
At confluence with Chaptico Creek	^17
Approximately .8 mile upstream of confluence with Chaptico Creek	^25
Approximately .3 mile downstream of confluence with Forrest Hall Branch	^32
At confluence with Forrest Hall Branch	^36
Forrest Hall Branch:	
At confluence with Hayden Run	^36
Approximately .5 mile upstream of Baptist Church Road Bridge	^50
Hilltop Run:	
Approximately 575 feet downstream of State Route 5 Bridge	^6
Approximately 1 mile upstream of State Route 5 Bridge	^30
Approximately 2.2 miles upstream of State Route 5 Bridge	^52
McIntosh Run:	
At Buzzard Point	^6
Approximately 550 feet downstream of Waldorf Leonardtown Road Bridge	^10
Approximately 1 mile upstream of Waldorf Leonardtown Road Bridge	^21
Approximately 1 mile downstream of McIntosh Road Bridge	^29
Upstream side of McIntosh Road Bridge	^39
Jarboesville Run:	
At confluence with St. Mary's River	^29
Downstream side of Chancellors Run Road Bridge	^46
Approximately 2 miles upstream of Chancellors Run Road Bridge	^74
St. Mary's River:	
At Warehouse Point	^5
Downstream side of State Route 5 Bridge	^17
Downstream side of Indian Bridge Road Bridge, 1st downstream crossing	^21
Downstream side of Indian Bridge Road Bridge, 2nd downstream crossing	^27
Confluence with Jarboesville Run	^29
Wicomico River:	
Shoreline at Luckland Point	^6
Shoreline at Bluff Point	^8
Potomac River:	
Shoreline at Lane Pond	^5
Shoreline at Poseys Bluff	^8
Entire western shoreline at St. Clements Island	^9
Chesapeake Bay:	
At Oyster Point	^5
Shoreline at Cedar Point	^8
Patuxent River:	
Shoreline at Captain Point	^6
Shoreline at Green Holly Road extended	^8
Eastern Branch:	
At confluence with St. Mary's River	^5
At confluence of Hilton Run	^6

Maps available for inspection at the Office of Planning and Zoning, Leonardtown, Maryland.

MASSACHUSETTS

Malden (City), Middlesex County (FEMA Docket No. 6730)

Town Line Brook:	
At downstream corporate limits	^6
Upstream side of first upstream bridge	^7
Upstream side of Lynn Street	^8
Lower Spot Pond Brook: Upstream side of Malden River Tunnel	^37
Malden River:	
At downstream corporate limits	^4
Upstream side of Medford Street	^5

Maps available for inspection at the City Engineer's Office, Malden Governor Center, 200 Pleasant Street, Malden, Massachusetts.

MICHIGAN

Alabaster (Township), Iosco County (FEMA Docket No. 6719)

Lake Huron: Along shoreline (Saginaw Bay)	^584

Maps available for inspection at the Township Hall, 1716 South U.S. 23, Tawas, Michigan.

Chocolay (Township), Marquette County (FEMA Docket No. 6730)

Chocolay River:	
At mouth	^604
About 3.4 miles upstream of State Highway 28	^617
Silver Creek:	
At mouth	^612
Just downstream of U.S. Highway 41	^633

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Just upstream of U.S. Highway 41	*639
About 600 feet upstream of Willow Road	*653
Maps available for inspection at the Township Hall, Marquette, Michigan.	
Dexter (Township), Washtenaw County (FEMA Docket No. 6719)	
Huron River:	
Just downstream of North Territorial Road	*845
About 1,000 feet upstream of Flook Dam	*852
Portage Lake: Entire shoreline	*852
Little Portage Lake: Entire shoreline	*852
Silver Lake: Entire shoreline	*876
Losee Lake: Entire shoreline	*880
Hartmoon Lake: Entire shoreline	*885
North Lake: Entire shoreline	*939
Blind Lake: Entire shoreline	*885
Maps available for inspection at the Dexter Township Hall, 6880 Dexter-Pinckney Road, Dexter, Michigan	
Fowlerville (Village), Livingston County (FEMA Docket No. 6719)	
Red Cedar River:	
About 0.6 mile downstream of Grand River	*883
About 1,900 feet upstream of Chessie System	*887
County Drain No. 2:	
At mouth	*884
About 250 feet upstream of Pinewood Drive	*899
Maps available for inspection at the Village Hall, 137 North Grand Avenue Fowlerville, Michigan	
Manistee (City), Manistee County (FEMA Docket No. 6719)	
Lake Michigan: Within community	*584
Manistee Lake: Within community	*584
Maps available for inspection at the Assessor Office, City Hall, Manistee, Michigan.	
MINNESOTA	
Scott County (Unincorporated Areas) (FEMA Docket No. 6719)	
Minnesota River:	
About 3.6 miles upstream of Chicago and North Western Railroad	*725
At southern County Boundary	*740
Sand Creek:	
At mouth	*725
About 1.5 miles upstream of County Road 61	*834
Maps available for inspection at the Scott County Courthouse, P.I.E. Office, Room A102, Shakopee, Minnesota.	
MISSISSIPPI	
Warren County (Unincorporated Areas) (FEMA Docket No. 6730)	
Bliss Creek:	
Just downstream Illinois Central Gulf Railroad	*105
Just upstream Illinois Central Gulf Railroad	*111
About 1.2 miles upstream of Bypass 61	*129
Maps available for inspection at the County Courthouse, P.O. Box 351, Vicksburg, Mississippi	
MISSOURI	
Kirkwood (City), St. Louis County (FEMA Docket No. 6730)	
Kirkwood Creek:	
Just upstream of Big Bend Road	*568
About 800 feet upstream of Burlington Northern Railroad	*583
Sugar Creek:	
Just upstream of I-270 at corporate limits	*463
About 1100 feet upstream of Second Private Road Crossing	*500
Meramec River:	
Downstream corporate limits	*425
Upstream corporate limits	*428
Maps available for inspection at the City Hall, 139 South Kirkwood, Kirkwood, Missouri	
Miner (City), Scott County (FEMA Docket No. 6730)	
Shallow Flooding (St. John's Bayou Main Ditch):	
Just north of Ables Street	*309
Just north of County Highway HH	*312
Shallow Flooding (North Cut Ditch):	
About 0.5 mile south of Woods Lane	*309
About 0.3 mile east of intersection of County Highway HH and Main Street	*314
Maps available for inspection at the Miner City Hall, 103 H Road, Sikeston, Missouri.	
Scott County (Unincorporated Areas) (FEMA Docket No. 6730)	
Mississippi River:	
At downstream County Boundary	*338
About 0.15 mile upstream of confluence of Headwater Diversion Channel	*353
Shallow Flooding (Ditch No. 1):	
Just downstream of State Highway 114	*300
About 0.5 mile upstream of County Highway ZZ	*306
Shallow Flooding (Ditch No. 2):	
At downstream County Boundary	*301
About 0.5 mile upstream of County Highway ZZ	*306
Shallow Flooding (Ditch No. 4):	
Just upstream of City of Sikeston corporate limits	*304
About 0.5 mile upstream of County Highway ZZ	*306
Shallow Flooding (St. Johns Bayou Main Ditch):	
At downstream County Boundary	*309
About 2.9 miles upstream of County Highway HH	*316
Shallow Flooding (North Cut Ditch):	
At downstream County Boundary	*306
Just downstream County Highway D	*323
Ramsey Creek Diversion Channel: Within Community	*353
Ramsey Creek:	
Just upstream of Burlington Northern Railroad	*353
Just downstream of confluence of Illmo Branch	*354
Illmo Branch:	
Just upstream of confluence with Ramsey Creek	*354
Just downstream of Interstate 55	*355
Maps available for inspection at the County Courthouse, Box 188, Benton, Missouri.	
Ste. Genevieve County (Unincorporated Areas) (FEMA Docket No. 6730)	
Mississippi River:	
About 5.1 miles downstream of state boundary	*393
At upstream county boundary	*406
North Gaboun Creek:	
About 1.3 miles upstream of Burlington Northern Railroad	*403
About 3.2 miles upstream of Burlington Northern Railroad	*463
South Gabourt:	
Just upstream of U.S. Highway 61	*413
Just downstream of Missouri Pacific Railroad	*470
Maps available for inspection at the County Courthouse, Ste. Genevieve, Missouri.	
MONTANA	
Blaine County (Unincorporated Areas) (FEMA Docket No. 6730)	
Lodge Creek: 150 feet downstream of U.S. Highway 2	*2,404
Lodge Creek (Overbank 1): 420 feet east of North Chinook Road, along north edge of Burlington Northern Railroad	*2,403
Lodge Creek (Overbank 2): 0.7 mile east of Fort Belknap Canal crossing on Lodge Creek	*2,412
Milk River (Near Chinook): 750 feet downstream of County Highway 529	*2,410
Milk River (Near Zurich): At intersection of Zurich and Paradise Valley Roads	*2,377
Redrock Coulee: At intersection of Redrock Coulee and U.S. Highway 2	*2,411
Thirtymile Creek: 780 feet downstream of County Road 241	*2,367
Maps are available for review at the Flood Plain Administrator's Office, Blaine County Courthouse, Chinook, Montana.	
Chinook (City), Blaine County (FEMA Docket No. 6730)	
Lodge Creek: At intersection of 13th and Missouri Streets	*2,409
Milk River: 100 feet southwest of intersection of County Roads 240 and 529	*2,408
Maps are available for review at the Town Hall, Chinook, Montana.	
Harlem (City), Blaine County (FEMA Docket No. 6730)	
Thirtymile Creek: At intersection of Water Street and Buckeye Avenue	*2,366
Maps are available for review at the City Engineer's Office, City Hall, Harlem, Montana.	
Livingston (City), Park County (FEMA Docket No. 6730)	
Yellowstone River: At intersection of I and Clark Streets	*4,475
Maps are available for review at the City Superintendent's Office, 414 East Callender, Livingston, Montana.	
Malta (City), Phillips County (FEMA Docket No. 6730)	
Milk River: At intersection of South 2nd Avenue West and South 1st Street	*2,249
Maps are available for review at the City Hall, Malta, Montana.	
Phillips County (Unincorporated Areas) (FEMA Docket No. 6730)	
Milk River: 100 feet upstream of U.S. Highway 2	*2,248
Shallow Flooding: 500 feet south of confluence of Alkali Creek and Milk River	*2,256
Maps are available for review at the County Clerk and Recorder's Office, Phillips County Courthouse, Malta, Montana.	
NEVADA	
Storey County (Unincorporated Areas) (FEMA Docket No. 6709)	
Truckee River: Approximately 100 feet downstream from center of McCarren Ranch Road	*4,291
Maps are available for review at the Storey County Courthouse, Virginia City, Nevada.	
NEW JERSEY	
Wharton (Borough), Morris County (FEMA Docket No. 6719)	
Rockaway River:	
Downstream corporate limits	*591
At confluence of Green Pond Brook	*612
Downstream side of North Main Street	*635
Approximately 1,200 feet downstream of Pine Street	*644
Upstream corporate limits	*660
Green Pond Brook:	
At confluence with Rockaway River	*612
Upstream side of State Route 15	*622
Upstream side of culvert under abandoned bridge	*653
Upstream corporate limits	*683
Maps available for inspection at the Municipal Building, Wharton, New Jersey.	
NEW YORK	
Alexander (Town), Genesee County (FEMA Docket No. 6730)	
Tonawanda Creek:	
Upstream side of U.S. Route 20	*930
Upstream side of Stroh Road	*945
Upstream corporate limits	*955

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 3,700 feet upstream of upstream corporate limits	*962
Maps available for inspection at the Town Clerk's Home, 3361 Buffalo Street, Alexander, New York.	
Alexander (Village), Genesee County (FEMA Docket No. 6730)	
Tonawanda Creek:	
Upstream corporate limits	*932
Downstream corporate limits	*930
Maps available for inspection at the Village Clerk's Home, Alexander, New York.	
Beekmantown (Town), Clinton County (FEMA Docket No. 6730)	
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Town Hall, Spellman Road, Beekmantown, New York.	
Chazy (Town), Clinton County (FEMA Docket No. 6730)	
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Town Hall, Main Street, Route 9, Chazy, New York.	
Chesterfield (Town), Essex County (FEMA Docket No. 6730)	
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Town Office, Clinton Street, Keeseville, New York.	
Deerpark (Town), Orange County (FEMA Docket No. 6719)	
Delaware River:	
Downstream corporate limits	*449
Approximately 200 feet downstream of CONRAIL bridge	*464
Neversink River:	
Downstream side of Interstate Route 84	*426
At confluence of Gold Creek	*432
Downstream side of Neversink Drive	*441
Downstream side of Graham Road	*469
Downstream side of State Route 209	*497
Approximately .83 mile upstream of State Route 209	*520
Approximately 1.24 miles upstream of State Route 209	*538
Approximately 1.86 miles upstream of State Route 209	*560
Approximately 1.64 miles downstream of Oakland Valley Road	*580
Approximately 1.11 miles downstream of Oakland Valley Road	*600
Approximately .57 mile downstream of Oakland Valley Road	*620
Upstream corporate limits	*646
Basher Kill:	
Confluence with Neversink River	*484
Upstream side of State Route 211	*488
Upstream side of Port Orange Road	*490
Downstream side of Otisville Road	*501
Upstream corporate limits	*506
Maps available for inspection at the Huguenot Town Hall, Route 209, Huguenot, New York.	
Essex (Town), Essex County (FEMA Docket No. 6730)	
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Town Hall, Essex, New York.	
Fremont (Town), Sullivan County (FEMA Docket No. 6730)	
Delaware River:	
At downstream corporate limits	*790
At confluence of Hankins Creek	*806
Upstream side of Kellams Bridge	*816
At upstream corporate limits	*841
Hankins Creek:	
Upstream side of State Route 97 Bridge	*806
Upstream side of County Route 94 Bridge	*945
Approximately 345 feet upstream of Private Bridge	*1,073
Maps available for inspection at the Fremont Town Hall, Fremont Center, New York.	
Groton (Village), Tompkins County (FEMA Docket No. 6730)	
Owasco Inlet:	
At downstream corporate limits	*964
Upstream side of Spring Street	*997
Approximately 30 feet downstream of upstream corporate limits	*1,005
Maps available for inspection at the Village Hall, 108 Courtland Street, Groton, New York.	
Highland (Town), Sullivan County (FEMA Docket No. 6719)	
Delaware River:	
At the downstream corporate limits	*577
At State Route 55	*589
Approximately 200 feet upstream of confluence of Beaver Brook	*604
Approximately 350 feet downstream of Roebling Bridge	*619
Approximately 0.5 mile upstream of confluence of Lackawaxen River	*624
Maps available for inspection at the Town Hall, Eldred, New York.	
Highland (Town), Orange County (FEMA Docket No. 6902)	
Hudson River: Entire shoreline within community	*8
Maps available for inspection at Town Hall, 213 Main Street, Highland Falls, New York 10928.	
Highland Falls (Village), Orange County (FEMA Docket No. 6902)	
Hudson River: Entire shoreline within community	*8
Maps available for inspection at the Village Hall, 180 Main Street, Highland Falls, New York.	
Hounsfield (Town), Jefferson (FEMA Docket No. 6719)	
Lake Ontario: Entire shoreline within community	*249
Maps available for inspection at the Town Hall, 240 Dodge Avenue, Sacketts Harbor, New York.	
Lenox (Town), Madison County (FEMA Docket No. 6730)	
Cowaselon Creek:	
At most downstream corporate limits	*386
Approximately 1,240 upstream of downstream corporate limits with the Village of Canastota	*392
At upstream corporate limits with the Village of Canastota	*403
Approximately 220 upstream of most upstream corporate limits	*419
Owiville Creek:	
At downstream corporate limits	*402
Upstream side of Beebe Bridge Road	*412
Upstream side of CONRAIL	*438
Approximately 300 upstream of U.S. Route 5	*466
Approximately 930 upstream of Bruce Road	*496
Canastota Creek:	
At downstream corporate limits at U.S. Route 5	*464
Approximately .38 mile upstream of U.S. Route 5	*480
At upstream corporate limits	*497
Oneida Creek:	
At confluence with Oneida Lake	*373
Approximately 300 upstream of State Route 31	*382
At first upstream corporate limits	*386
Approximately 175 upstream of Swallow Road	*397
Oneida Lake: Entire shoreline within community	*373
Maps available for inspection at the Town Hall, 205 South Peterboro, Canastota, New York	
Palatine (Town), Montgomery County (FEMA Docket No. 6730)	
Mohawk River:	
Approximately 2.4 miles upstream of corporate limits	*298
At Failing Hill Road (extended)	*300
Most upstream corporate limits	*310
Maps available for inspection at the Town Clerk's Office, Box 254 Arnold Lane, Nellston, New York.	
Peru (Town), Clinton County (FEMA Docket No. 6730)	
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Town Hall North Main Street, Peru, New York.	
Tusten (Town), Sullivan County (FEMA Docket No. 6709)	
Delaware River:	
Approximately 1.1 miles downstream of Tenmile River	*665
At the confluence of Tenmile River	*672
Approximately 100 feet upstream of CONRAIL bridge	*679
Approximately 2.4 miles downstream of U.S. Route 652 bridge	*690
Approximately 500 feet upstream of U.S. Route 652 bridge	*700
Approximately 1.9 miles upstream of U.S. Route 652 bridge	*708
At upstream corporate limits	*715
Maps available for inspection at the Town Clerk's Office, Narrowsburg, New York	
Ulysses (Town), Tompkins County (FEMA Docket No. 6690)	
Lake Cayuga: Entire shoreline within community	*386
Maps available for inspection at the Ulysses Town Hall, Trumansburg, New York	
Willsboro (Town), Essex County (FEMA Docket No. 6719)	
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Town Hall, Willsboro, New York	
Woodbury (Town), Orange County (FEMA Docket No. 6730)	
Downstream corporate limits	*289
Approximately 50 feet upstream of Interstate Route 87	*338
Downstream side of Old State Route 32	*398
Approximately 420 feet upstream of CONRAIL bridge	*432
Upstream side of Pine Hill Road	*475
Approximately 900 feet upstream of Estrada Road	*486
Maps available for inspection at the Woodbury Town Hall, Highland Mills, New York 10930.	
NORTH CAROLINA	
Bridgeton (Town), Craven County (FEMA Docket No. 6730)	
Neuse River: Within Community	*9
Maps available for inspection at the Town Hall, Bridgeton, North Carolina.	
Craven County (Unincorporated Areas) (FEMA Docket No. 6730)	
Atlantic Ocean/Pamlico Sound/Neuse River:	
About 1,500 feet northeast of the intersection of SR 1907 and S.R. 1905	*9

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Source of flooding and location	#Depth in feet above ground. ‡Elevation in feet (NGVD)
At intersection of Berkentine Drive and St. Michael Drive	*9
Atlantic Ocean/Pamlico Sound/Neuse River/Trent River: Within community	*9
Atlantic Ocean/Pamlico Sound/Neuse River/Hancock Creek: Just downstream of New Bern Road	*9
Atlantic Ocean/Pamlico Sound/Neuse River/Clubfoot Creek/Mitchell Creek: Within community	*9
Maple Cypress:	
Just upstream of SR 1400	*19
Just downstream of SR 1462	*29
Mauls Swamp:	
At confluence with Swift Creek	*13
Just downstream of SR 1637	*16
Mills Branch:	
At confluence with Neuse River	*9
About 2,500 feet upstream of SR 1433	*17
Mills Branch Tributary:	
At confluence with Mills Branch	*9
Just downstream of SR 1616	*13
Mosley Creek:	
About 2,000 feet upstream of confluence with Neuse River	*20
Just downstream of SR 1264	*43
Mosley Creek Tributary:	
About 1,500 feet downstream of NC 55	*34
Just downstream of NC 55	*34
Samuels Creek: Within community	*9
Rocky Run:	
At confluence with Samuels Creek	*9
About 3,800 feet upstream of Seaboard Coast Line Railroad	*21
Scotts Creek:	
At confluence with Neuse River	*9
About 2,000 feet upstream of Airport Road	*21
Snake Branch:	
At confluence with Mitchell Creek	*9
Just downstream of SR 1711	*13
Swift Creek:	
Just upstream of SR 1482	*9
About 1.4 miles upstream of SR 1440	*14
Tucker Creek:	
About 1.5 miles downstream of U.S. Highway 70	*9
About 2,600 feet upstream of Seaboard Coast Line Railroad	*21
Village Creek:	
Just upstream of SR 1472	*20
Just downstream of NC 55	*45
Wilson Creek:	
Just upstream of SR 1278	*14
About 1,600 feet upstream of Seaboard Coast Line Railroad	*18

Maps available for inspection at the County Courthouse, P.O. Box 1425, New Bern, North Carolina.

Havelock (City), Craven County (FEMA Docket No. 6730)

East Prong Slocum Creek:	
At Confluence with Sandy Branch	*9
About 2,200 feet upstream of Gray Fox Road	*15
East Prong Slocum Creek Tributary:	
At Confluence with East Prong Slocum Creek	*9
About 1,150 feet upstream of Cunningham Boulevard	*20
Southwest Prong Slocum Creek: Within Community	*9
Tucker Creek: Within Community	*9
Slocum Creek: Within Community	*9
Hancock Creek: Within Community	*9
Neuse River: Within Community	*9

Maps available for inspection at the City Hall, Havelock, North Carolina.

Morganton (City), Burke County (FEMA Docket No. 6719)

Catawba River:	
About 0.76 mile downstream of confluence of Hunting Creek	*1,004
About 3.4 miles upstream of Independence Boulevard	*1,033
Warrior Fork: Within community	*1,014
Wilson Creek:	
At mouth	*1,014
About 0.80 mile upstream of State Road 1414	*1,082
Hunting Creek:	
At mouth	*1,006
About 3,150 feet upstream of State Road 1940	*1,105
Hunting Creek Tributary No. 1:	
At mouth	*1,032
About 3,950 feet upstream of mouth	*1,045
Canoe Creek:	
At mouth	*1,023
Just downstream of State Road 126	*1,038
Silver Creek:	
At mouth	*1,022
About 1.57 miles upstream of Interstate 40	*1,046
Little Silver Creek:	
At mouth	*1,025
About 3,750 feet upstream of Causby Road	*1,115
Bailey Fork:	
At mouth	*1,024
About 3,800 feet upstream of Interstate 40	*1,037
Sandy Run:	
At mouth	*1,038
About 2.4 miles upstream of mouth	*1,157
Fiddlers Run:	
At mouth	*1,047
Just downstream of State Road 1940	*1,124
East Prong Creek:	
At mouth	*1,043
About 1.36 miles upstream of State Road 1972	*1,106

Maps available for inspection at the City Hall, 201 West Meeting Street, Morganton, North Carolina.

Mount Airy (City), Surry County (FEMA Docket No. 6719)

Ararat River:	
About 3,750 feet downstream of confluence of Loulis Creek	*986
About 1,200 feet upstream of Limville Road	*1,034
Loulis Creek:	
At mouth	*991
About 3,850 feet upstream of West Lebanon Street	*1,051
Tumbling Rock Branch:	
At mouth	*1,027
Just downstream of Tumbling Rock Lake Dam	*1,081
Just upstream of Tumbling Rock Lake Dam	*1,102
About 1,900 feet upstream of Industrial Park Road	*1,151

Maps available for inspection at the City Hall, 300 S. Main Street, Mt. Airy, North Carolina.

New Bern (City), Craven County (FEMA Docket No. 6730)

Neuse River: Within community	*9
Trent River: Within community	*9
Jack Smith Creek: Within community	*9
Lawson Creek: Within community	*9

Maps available for inspection at the City Hall, New Bern, North Carolina.

Pineville (Town), Mecklenburg County (FEMA Docket No. 6719)

Sugar Irwin Creek:	
About 3,300 feet downstream of the confluence of McCullough Branch	*537
About 1,600 feet upstream of Pineville—Matthews Road	*542
Little Sugar Creek:	
About 2.5 miles downstream of Lancaster Highway	*540
About 0.9 mile upstream of Pineville—Matthews Road	*555
McMullen Creek:	
Just upstream of Pineville—Matthews Road	*539
Just downstream of Johnston Road	*541

Maps available for inspection at the Town Hall, 118 College Street, Pineville, North Carolina.

Southern Shores Town), Dare County (FEMA Docket No. 6730)

Atlantic Ocean:	
About 500 feet east of the intersection of Porpoise Run and Ocean Boulevard	*11
Along shoreline	*12
Atlantic Ocean/Currituck Sound:	
About 1,800 feet west of the intersection of 12th Avenue and Duck Road	*7
At the intersection of Birch Lane and Holly Trail	*8

Maps available for inspection at the Town Hall, Kitty Hawk, North Carolina.

Trent Woods (Town), Craven County (FEMA Docket No. 6730)

Atlantic Ocean/Pamlico Sound/Pamlico River/Neuse River/ Trent River: Within community	*9
Jammies Creek:	
At confluence with Wilson Creek	*9
Just downstream of Trent Road	*18
Morris Branch:	
At confluence with Wilson Creek	*9
Just downstream of River Road	*14
Trent River Tributary:	
At confluence with Trent River	*9
Just downstream of Longwood Drive	*17
Wilson Creek:	
At confluence with Trent River	*9
Just downstream of Trent Road	*12

Maps available for inspection at the Trent Woods Town Hall, New Bern, North Carolina.

NORTH DAKOTA

Center (City), Oliver County (FEMA Docket No. 6709)

Square Butte Creek: Approximately 50 feet upstream from center of State Highway 25 Bridge	*1,967
Tributary 1: Immediately upstream of State Highway 25 Bridge	*1,978
Tributary 2: Approximately 250 feet upstream from center of State Highway 25 Bridge	*1,966
Tributary 3: Approximately 50 feet upstream from center of treatment plant access road bridge	*1,970
Tributary 4: Immediately upstream of Third Street Bridge	*1,980
Tributary 1 Overflow: Along overflow channel, approximately 300 feet west of Tributary 1	*1,972

Maps are available for review at the City Hall, 312 Lincoln Avenue North, Center, North Dakota.

Fargo (City), Cass County (FEMA Docket No. 6709)

Red River of the North: At center of Main Avenue	*899
Sheyenne River: Approximately 50 feet downstream from center of Interstate 94 Bridge	*904
Shallow Ponding: Between County Roads 14 and 20, west of 45th Street North	*894

Maps available for review at the Engineering Department, 306 North 4th Street, Fargo, North Dakota.

OHIO

Bowerston (Village), Harrison County (FEMA Docket No. 6719)

Conotton Creek:	
About 500 feet downstream of State Route 151	*937
About 2,000 feet upstream of State Street	*941

Maps available for inspection at the Town Hall, 205 Penn Avenue, Box 46, Bowerston, Ohio.

Enon (Village), Clark County (FEMA Docket No. 6730)

Mad River:	
Just downstream of State Route 4	*876
Just upstream of Enon Road	*879
Mud Run:	
Just upstream of Enon-Xenia Pike	*882
About 1.1 miles upstream of Hunter Road	*895

Maps available for inspection at the Municipal Building, Enon, Ohio.

Scio (Village), Harrison County (FEMA Docket No. 6719)

Conotton Creek:	
About 1,200 feet downstream of Eastport Road	*966
About 1,400 feet upstream of Main Street	*971
Irish Creek: Within community	*971

Maps available for inspection at the Municipal Building, Scio, Ohio.

OKLAHOMA

Cache (City), Comanche County (FEMA Docket No. 6730)

West Cache Creek:	
At downstream limits	*1,237
At upstream corporate limits	*1,247
Crater Creek:	
Approximately 550 feet downstream of corporate limits	*1,224
Approximately 120 feet of Old U.S. Highway 62	*1,242
Approximately 150 feet upstream of St. Louis-San Francisco Railway	*1,247
At upstream corporate limits	*1,262
Approximately 0.6 mile upstream of U.S. Highway 62	*1,275
Rock Creek:	
At Old U.S. Highway 62	*1,240
At upstream corporate limits	*1,246
Tributary A—West:	
At confluence with Tributary A	*1,239
At upstream corporate limits	*1,242
Tributary A:	
At downstream corporate limits	*1,226
Approximately 40 feet upstream of St. Louis-San Francisco Railway	*1,238
Approximately 565 feet upstream of confluence of Tributary A-West	*1,239
Tributary B:	
At downstream corporate limits	*1,244
Approximately 75 feet upstream of U.S. Highway 62 bridge	*1,250
Approximately 165 feet upstream of U.S. Highway 62 bridge	*1,255
At upstream corporate limits	*1,264
West Branch Blue Beaver Creek:	
At downstream corporate limits	*1,239
Approximately 300 feet upstream of corporate limits	*1,241
Approximately 50 feet downstream of U.S. Highway 62 bridges	*1,247
At upstream corporate limits	*1,255

Maps available for inspection at the City Hall, 520 C Avenue, Cache, Oklahoma.

OREGON

Curry County (Unincorporated Areas) (FEMA Docket No. 6719)

Sixes River: The west edge of U.S. Highway 101, 40 feet north from its intersection with Sixes River Road	*32
Rouge Road: Intersection of Indian Creek and Jerry's Flat Road	*23
Rouge River (at Agness): The west edge of Agness Road at its intersection with Bear Camp Road	*178
Hunter Creek: 75 feet upstream from the center of Swinging Bridge Road	*57
Chetco River: 100 feet downstream from the center of U.S. Highway 101	*12
Winchuck Creek: 100 feet upstream from the center of U.S. Highway 101	*14
Elk River: 90 feet downstream from the center of U.S. Highway 101	*35
Pistol River: 100 feet upstream from the center of Pistol Road	*15
Pacific Ocean at Hunter Creek: 500 feet due west from the middle of the U.S. Highway 101 and the Hunter Creek Road intersection	*17
Pacific Ocean at Winchuck River: 600 feet due west from the center of the north end of the runway at Cissy Airport	*25

Maps are available for review at the Building Department, Division of Public Services, P.O. Box 746, Gold Beach, Oregon.

Pendleton (City), Umatilla County (FEMA Docket No. 6703)

Umatilla River: At Main Street	*1,067
Tutuilla Creek: Approximately 100 feet upstream of the center of Tutuilla Street (County Road 382)	*1,069
McKay Creek: At the intersection of Southwest Perkins and Southwest 44th Street	*1,060
Nelson Creek: Approximately 500 feet upstream of the center of Northgate Bridge	*1,059
Patawa Creek: Approximately 470 feet upstream of the center of Tutuilla Street	*1,089

Maps available for inspection at the Planning Department, City Hall, P.O. Box 190, Pendleton, Oregon.

Tualatin (City), Washington County (FEMA Docket No. 6703)

Tualatin River: Along Cipole Road 1,600 feet south of Southwest Pacific Highway (West 99)	*129
Nyberg Slough: At Interstate Highway 5	*122

Maps available for review at the City Engineer's Office, 18880 SW Martinazzi Avenue, Tualatin, Oregon.

Umatilla County (Unincorporated Areas) (FEMA Docket No. 6719)

Umatilla River: Approximately 50 feet upstream from the center of Bridge Road	*450
South Fork Walla Walla River: Approximately 65 feet upstream from the center of South Fork Walla Walla River Road (County Road 600)	*1,977
Patawa Creek: At the Western Road oasing of Old Dump Road (County Road 991)	*1,161
Waterman Gulch: Approximately 260 feet upstream from the center of County Road 725	*1,741
Stage Gulch: Approximately 600 feet northwest along the upstream side of Union Pacific Railroad from the intersection of Union Pacific Railroad and Stage Gulch	*591
Walla Walla River: Approximately 20 feet upstream from the center of McCoy Bridge	*853
Mill Creek: Approximately 20 feet upstream from the center of Mill Creek Glen Bridge	*2,111
McKay Creek: Approximately 30 feet upstream from the center of South West Kirk Street	*1,045
Tutuilla Creek: At confluence with Umatilla River near Interstate 84	*1,024
Wildhorse Creek: Approximately 20 feet upstream from the center of Saxe Station Road	*1,161

Maps are available for review at the Planning Department, 216 South East 4th, Pendleton, Oregon.

Wilsonville (City), Clackamas and Washington Counties (FEMA Docket No. 6696)

Seely Ditch: 10 feet downstream of centerline of Southwest Orepac Road	*137
East Overflow Ditch: 670 feet upstream of centerline of Wilsonville Road	None

Maps available for inspection at City Hall, 30000 SW Town Center Loop E, Wilsonville, Oregon 97070–0220.

PENNSYLVANIA

Complanter (Township), Venango County (FEMA Docket No. 6730)

Allegheny River:	
Downstream corporate limits	*1,002
Upstream corporate limits	*1,020
Oil Creek:	
Downstream corporate limits	*1,009
Downstream side of CONRAIL downstream crossing	*1,026
Downstream side of State Route 8 upstream crossing	*1,041
Upstream side of CONRAIL upstream crossing	*1,056
Cherry Run:	
Downstream corporate limits	*1,089
Upstream side of State Route 227 upstream crossing	*1,116
Approximately 0.73 mile upstream of State Route 227 upstream crossing	*1,158
Approximately 2,420 feet downstream of Old Bankson Road	*1,200
Approximately 140 feet upstream of Old Bankson Road	*1,234

Maps available for inspection at the Township Municipal Building, Oil City, Pennsylvania

East Chillisquaque (Township), Northumberland County (FEMA Docket No. 6730)

Chillisquaque Creek:	
Approximately 400 feet downstream of the downstream corporate limits	*465
At State Route 45	*469

Maps available for inspection at the Potts Grove Fire Company, Potts Grove, Pennsylvania

Ford City (Borough), Armstrong County (FEMA Docket No. 6730)

Allegheny River:	
Downstream corporate limits	*776
Approximately 275 feet upstream from confluence of Fort Run	*791
Entire shoreline of Fort Run within community	*791

Maps available for inspection at the Municipal Offices, Ford City, Pennsylvania

Frenchcreek (Township), Venango County (FEMA Docket No. 6730)

French Creek:	
At downstream corporate limits	*988
Confluence of Sugar Creek	*1,012
Downstream corporate limits with Utica	*1,032

Maps available for inspection at the Township Building, Franklin, Pennsylvania

Indiana (Borough), Indiana County (FEMA Docket No. 6730)

Marsh Run:	
Downstream corporate limits	*1,242
Upstream side of Nixon Alley	*1,265
Upstream side of Oak Street	*1,273
Upstream corporate limits	1,286
Whites Run:	
Downstream corporate limits	*1,244
Downstream side of Klondike Avenue	*1,258
Upstream corporate limits	*1,279

Maps available for inspection at the Municipal Building, Indiana, Pennsylvania.

Manor (Township), Armstrong County (FEMA Docket No. 6902)

Allegheny River:	
Downstream corporate limits	*787
At upstream corporate limits	*793
Crooked Creek:	
At confluence with Allegheny River	*787
Upstream side of T-522	*790
Approximately 1,650 feet upstream of State Route 66	*796
Garrett's Run:	
At confluence with Allegheny River	*791
Upstream side of State Route 359 (3rd upstream crossing)	*828
Upstream side LR 03095	*866
Upstream side of Hawk Hollow Road	*887
Upstream side of State Route 359 (6th upstream crossing)	*920
Approximately 0.6 mile downstream of State Route 359 (7th upstream crossing)	*980
Approximately 50 feet upstream of upstream corporate limits	*1,026
Campbell Run:	
At confluence with Crooked Creek	*787
Approximately 0.4 mile upstream of confluence with Crooked Creek	*817
Fort Run:	
At confluence with Allegheny River	*791
Approximately 450 feet upstream of T-447	*804

Maps available for inspection at 116 Raceway Ford City, Pennsylvania

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Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Northampton (Township), Somerset County (FEMA Docket No. 6730)	
Wills Creek	
Approximately 560 feet downstream of LR 55014	*1,593
Upstream side of LR 55014	*1,601
Approximately 200 feet upstream of Chessie System	*1,621
Fitchner Run	
At confluence with Wills Creek	*1,603
Upstream side of access road	*1,610
Approximately 70 feet upstream of T-377	*1,628
Maps available for inspection at the Municipal Office, Glencoe, Pennsylvania.	
Rouseville (Borough), Venango County (FEMA Docket No. 6730)	
Oil Creek	
Downstream corporate limits	*1,027
At confluence of Cherry Run	*1,030
Upstream corporate limits	*1,037
Cherry Run	
At confluence with Oil Creek	*1,030
Upstream side of State Route 8	*1,037
Upstream side of State Route 227	*1,074
Upstream corporate limits	*1,089
Shallow Flooding	
Area east of CONRAIL, west of State Route 8, 400 feet north of corporate limits	#2
At south corporate limits between CONRAIL and State Route 8	#1
Maps available for inspection at the Borough Building, Rouseville, Pennsylvania.	
Sugarcreek (Borough), Venango County (FEMA Docket No. 6730)	
Allegheny River	
Downstream corporate limits	*976
Upstream corporate limits	*990
French Creek	
Downstream corporate limits	*996
At the confluence of Sugar Creek	*1,012
Approximately 1.5 miles upstream of Sugar Creek confluence	*1,020
Upstream corporate limits	*1,027
Sugar Creek	
Confluence with French Creek	*1,012
Approximately 170 feet upstream of Sugar Creek Road	*1,027
Downstream side of U.S. Route 322	*1,060
Upstream side of McCleary Road	*1,082
Upstream corporate limits	*1,095
Maps available for inspection at the Borough Manager's Office, Pennsylvania.	
Summit (Township), Crawford County (FEMA Docket No. 6730)	
Inlet Run	
At confluence with Conneaut Lake	*1,075
Upstream side of State Route 18	*1,090
Approximately 1,825 feet upstream of LR 20046	*1,127
Maps available for inspection at the Township Building, Summit, Pennsylvania	
White (Township), Indiana County (FEMA Docket No. 6730)	
Stoney Run	
Downstream of corporate limits	*1,070
Upstream side of CONRAIL first crossing	*1,115
Approximately 0.3 mile upstream of Indian Springs Road	*1,177
At confluence of Whites and Marsh Run	*1,238
Marsh Run	
At confluence with Stoney Run	*1,238
Approximately 528 feet upstream of corporate limits	*1,242
Whites Run	
At confluence with Stoney Run	*1,238
At upstream corporate limits	*1,244
McCarthy Run	
At confluence with Stoney Run	*1,140
Upstream side of Indian Springs Road	*1,200

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Upstream side of Rustic Lodge Road	*1,245
Approximately 800 feet upstream of Warren Road	*1,265
Approximately 63 mile upstream of Benjamin Franklin Road	*1,302
Maps available for inspection at the Township Building, White, Pennsylvania.	
SOUTH CAROLINA	
Unincorporated Areas of Charleston County (FEMA Docket No. 6730)	
Atlantic Ocean	
At Bream Drive	*8
About 3500 feet east of the intersection of Davidson Road and Parkers Ferry Road	*8
Just upstream of River Road bridge over Cedar Creek	*8
At the mouth of MacBeth Creek	*9
Along Wando River from confluence of Rathall Creek to the confluence of Mill Creek	*11
At the mouth of Church Creek	*12
At the mouth of Alligator Creek	*13
At the mouth of Dawho River	*15
At the mouth of Toogoodoo Creek	*15
At the mouth of Schooner Creek	*17
At the mouth of Venning Creek	*18
Along shoreline from about 1.0 mile northeast of Sandy Point to the Charleston County—Georgetown County boundary	*19
Along shoreline from Dewees Inlet to Northeast Point	*19
Along shoreline from about 2 miles southwest of the mouth of Captain Sams Inlet to the mouth of Stono Inlet	*19
Along shoreline from Jeremy Inlet to just northeast of the mouth of South Creek	*20
Along shoreline from just east of the mouth of Bull River to Sandy Point	*20
Along shoreline of Bull Bay from just west of mouth of Saltpond Creek to the mouth of Harbor River	*22
Sawmill Creek	
At downstream county boundary	*46
At upstream county boundary	*54
Maps available for inspection at the County Courthouse, 2 Courthouse Square, Charleston, South Carolina.	
Colleton County (Unincorporated Areas) (FEMA Docket No. 6730)	
Atlantic Ocean	
Along Edisto River from about 2.7 miles downstream of Route 17 to about 8.4 miles upstream of U.S. Route 17	*8
At mouth of Two Sisters Creek	*22
Ireland Creek	
At mouth	*32
Just upstream of Stevens Road	*52
Great Swamp	
About 2.6 miles downstream of U.S. Route 17A	*23
About 0.95 miles upstream of U.S. Route 17A	*35
Maps available for inspection at the County Courthouse, P.O. Box 1176, Walterboro, South Carolina.	
Folly Beach (Township), Charleston County (FEMA Docket No. 6730)	
Atlantic Ocean	
At intersection of Center Street and Indian Avenue	*12
At mouth of Second Sister Creek	*15
Along shoreline	*19
Maps available for inspection at the City Hall, P.O. Box 22, Folly Beach, South Carolina.	
Greenwood County (Unincorporated Areas) (FEMA Docket No. 6719)	
Hard Labor Creek	
About 2,100 feet downstream of U.S. Route 221	*483
Just downstream of Seaboard Coast Line Railroad	*576
Wilson Creek	

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Just upstream of Siloam Church Road	*449
Just downstream of Kateway Road	*515
Just upstream of Kateway Road	*520
Just downstream of U.S. Route 25 Bypass	*530
About 1,250 feet upstream of U.S. Route 25 Bypass	*536
Stockman Branch	
At mouth	*500
About 0.9 mile upstream of mouth	*526
Coronaca Creek	
At mouth	*468
Just downstream of U.S. Route 221	*486
Just upstream of U.S. Route 221	*491
About 1.6 miles upstream of State Route 254	*548
Rocky Creek	
At mouth	*495
Just downstream of Center Street	*595
Just upstream of Center Street	*608
Maps available for inspection at the County Courthouse, Room 203, Greenwood, South Carolina.	
Marion (City), Marion County (FEMA Docket No. 6730)	
Catfish Canal	
About 4,000 feet downstream of U.S. Route 76	*53
About 1,000 feet upstream of English Park Road	*56
Smith Swamp	
About 2,500 feet downstream of State Route 19	*59
About 300 feet downstream of State Route 19	*61
Maps available for inspection at the Town Hall, P.O. Box 1190, Marion, South Carolina.	
McClellanville (Town), Charleston County (FEMA Docket No. 6730)	
Atlantic Ocean	
About 400 feet northwest of the intersection of U.S. Route 17 and State Route 45	*14
At the intersection of Morrison Street and Baker Street	*15
Along shoreline of Intracoastal Waterway	*19
Maps available for inspection at the City Hall, 405 Pinckney Street, McClellanville, South Carolina.	
Walterboro (City), Colleton County (FEMA Docket No. 6730)	
Great Swamp	
About 1.97 miles downstream of U.S. Route 17A	*25
Just upstream of U.S. Route 17A	*34
Ireland Creek	
At mouth	*32
About 0.6 mile upstream of U.S. Route 15	*43
Maps available for inspection at the City Hall, P.O. Box 109, Walterboro, South Carolina.	
TENNESSEE	
Covington (City), Tipton County (FEMA Docket No. 6719)	
Town Creek	
About 700 feet downstream of Flat Iron Road	*279
About 0.8 mile upstream of Hope Street	*294
Lateral A	
At mouth	*282
About 500 feet upstream of College Street	*295
Maps available for inspection at the City Hall, P.O. Box 768, Covington, Tennessee.	
Graysville (City), Rhea County (FEMA Docket No. 6709)	
Roaring Creek	
About 1,850 feet downstream of Harrison Street	*730
About 3,700 feet upstream of Harrison Street	*802
Sale Creek	
About 1,690 feet downstream of U.S. Route 27	*722
About 1,850 feet upstream of Dayton Avenue	*736
Maps available for inspection at the City Hall, P.O. Box 100, Graysville, Tennessee	

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Halls (Town), Lauderdale County (FEMA Docket No. 6719)	
North Creek	
About 1,100 feet downstream of Illinois Central Gulf Railroad	*289
Just upstream of Wilson Street	*306
Sumrow Creek	
Just downstream of Illinois Central Gulf Railroad	*293
About 600 feet upstream of State Route 88	*298
Maps available for inspection at the City Hall, Halls, Tennessee.	
Kimball (Town), Marion County (FEMA Docket No. 6730)	
Kimball Cove Branch	
Just downstream of Interstate 24	*614
Just downstream of Lee Highway	*644
Just upstream of Lee Highway	*653
About 1.0 mile upstream of Interstate 24	*802
Reuston Branch	
Just downstream of Dixie Highway	*617
About 0.45 mile upstream of Old U.S. Route 64	*698
Battle Creek	
About 0.5 mile downstream of Lee Highway	*614
About 1.6 miles upstream of Lee Highway	*617
Tennessee River	
About 1.6 miles downstream of confluence of Glover Creek	*614
About 0.62 miles upstream of confluence of Glover Creek	*615
Maps available for inspection at the City Hall, P.O. Box 367, Jasper, Tennessee.	
Ripley (Town), Lauderdale County (FEMA Docket No. 6719)	
Hyde Creek	
About 1.28 miles downstream of U.S. Route 51 Bypass	*328
About 500 feet upstream of Illinois Central Gulf Railroad	*339
Cane Creek	
Just downstream of State Route 19	*322
About 500 feet upstream of East Webb Avenue	*338
Maps available for inspection at the City Hall, 110 South Washington, Ripley, Tennessee.	
Spring Hill (City), Maury & Williamson Counties (FEMA Docket No. 6730)	
McCutcheon Creek	
At mouth	*656
About 1,400 feet upstream of Duplex Road	*707
McCormack Branch	
At mouth	*683
About 375 feet upstream of Beechcroft Road	*740
Orphanage Branch	
At mouth	*683
Just upstream of Louisville and Nashville Railroad	*756
Maps available for inspection at the City Hall, Springhill, Tennessee.	
TEXAS	
Denton County (FEMA Docket No. 6730)	
Elm Fork Trinity River below Lewisville Lake:	
At County boundary	*448
At confluence with Indian Creek	*452
Elm Fork Trinity River above Lewisville Lake:	
At confluence with Lewisville Lake	*537
Approximately 120 feet upstream of FM 428	*542
At downstream side of Ray Roberts dam	*553
Denton Creek	
Approximately 100 feet upstream of State Route 121	*468
Approximately 0.8 mile upstream of confluence of Baker's Branch	*472
Marshall Branch	
At confluence with Grapevine Lake	*564
At downstream side of State Route 114	*596
Timber Creek	
Approximately 350 feet downstream of the County boundary	*597
Approximately 700 feet upstream of Woodland Trail Street	*629

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Furneaux Creek	
Approximately 50 feet downstream of Old Denton Road (FM 2281)	*467
Approximately 0.5 mile upstream of Old Denton Road	*472
Dudley Branch	
At confluence with Elm Fork Trinity River	*451
Approximately 2.4 miles upstream of the Missouri-Kansas-Texas Railroad	*474
Approximately 50 feet upstream of Denton Road (FM 2281)	*477
Indian Creek	
Approximately 5.2 miles upstream of confluence with Elm Fork Trinity River	*490
At upstream County boundary	*620
Hickory Creek	
At confluence with Lewisville Lake	*537
Approximately 50 feet downstream of FM 1830	*562
Approximately 125 feet downstream of northbound lanes of Interstate Route 35W	*585
At confluence of North Hickory Creek	*618
Bryant Branch	
Approximately 550 feet downstream of FM 2181	*540
Approximately 100 feet upstream of FM 2181	*547
Loving Branch	
At confluence with Hickory Creek	*543
Approximately 50 feet upstream of Mayhill Road (FM 407)	*614
Fincher Branch	
At confluence with Hickory Creek	*547
At downstream side of Gibbons Road	*623
Fletcher Branch	
At confluence with Hickory Creek	*551
At downstream side of El Paso Street	*611
Dry Fork Hickory Creek	
At confluence with Hickory Creek	*579
At Jim Crystal Road	*644
Approximately 0.7 mile upstream of U.S. Route 380	*665
Stream DF-1	
At confluence with Dry Fork Hickory Creek	*596
At most upstream County boundary	*607
North Hickory Creek	
At confluence of Hickory Creek	*618
At upstream side of U.S. Route 380	*649
Approximately 50 feet upstream of FM 156	*675
Stream LC-1	
Approximately 520 feet upstream of Shady Shores Road	*560
Approximately 730 feet upstream of Shady Shores Road	*560
Pecan Creek	
At confluence with Lewisville Lake	*537
At downstream side of Mayhill Road	*571
Stream PEC-1	
At confluence with Pecan Creek	*537
Approximately 0.5 mile upstream of Missouri-Kansas-Texas Railroad crossing	*581
Cooper Creek	
At confluence with Lewisville Lake	*537
At downstream side of Mayhill Road	*573
Culp Branch	
At confluence with Elm Fork Trinity River	*537
At upstream side of FM 428	*573
Approximately 200 feet upstream of most upstream crossing of FM 2153	*645
Maps available for inspection at the Denton County Planning Department, 300 East McKinney, Denton, Texas.	
Double Oak (Town), Denton County (FEMA Docket No. 6719)	
Timber Creek	
Approximately 580 feet downstream of Skillern Lusk Road	*616
At upstream corporate limits	*624
Approximately 40 feet downstream of Forest Lane	*625
Approximately 700 feet upstream of Woodland Trail Drive	*629
Maps available for inspection at the Town Hall, 1100 Cross Timbers Road, Double Oak, Texas.	

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Willow Park (City), Parker County (FEMA Docket Nos. 6696 and 6719)	
Clear Fork Trinity River	
Approximately 260 feet downstream of East Bankhead Drive	*833
At upstream side of Kings Gate Road	*840
At upstream corporate limits	*845
Approximately 2,560 feet downstream from Lake Weatherford Dam	*858
Squaw Creek	
Approximately 750 feet downstream of Sam Bass Road	*840
At downstream side of Squaw Creek Reservoir	*845
Stream CR(WP)-1	
At downstream corporate limits	*841
At confluence of Stream CF(WP)-1A	*876
At upstream side of Ranch House Road	*906
At upstream side of Surrey Lane	*937
At downstream side of Valley Court (extended)	*953
Stream CR(WP)-1A	
At confluence with Stream CF(WP)-1	*876
At upstream side of Lanat Court (extended)	*893
At upstream side of Ranch House Road	*917
Lake Weatherford Entire shoreline affecting community	*909
Maps available for inspection at the City Hall, 101 Stage Coach Trail, Willow Park, Texas.	
VERMONT	
Johnson (Town), Lamoille County (FEMA Docket No. 6730)	
Lamoille River	
Downstream corporate limits	*457
Confluence of Smith Brook	*484
At Village of Johnson downstream corporate limits	*495
Downstream side of Vermont Northern Railway	*527
Upstream corporate limits	*535
Gihon River	
Downstream corporate limits	*566
Approximately 0.7 mile upstream of Town Highway 33	*621
Bell Brook	
Confluence with Gihon River	*577
Approximately 0.1 mile upstream of Town Highway 32	*634
Foot Brook	
At confluence with Lamoille River	*488
Approximately 635 feet upstream of State Route 15	*503
Maps available for inspection at the Town Clerk's Office, Johnson, Vermont	
Johnson (Village), Lamoille County (FEMA Docket No. 6730)	
Lamoille River	
At downstream corporate limits	*494
Downstream side of Railroad Street	*496
At upstream corporate limits	*497
Gihon River	
At confluence with Lamoille River	*496
Upstream side of School Street	*526
At upstream corporate limits	*565
Maps available for inspection at the Town Clerk's Office, Johnson, Vermont	
VIRGINIA	
Lee County (FEMA Docket No. 6709)	
Straight Creek	
At confluence with North Fork Powell River	*1,435
At State Route 352	*1,471
At second downstream Southern Railroad crossing	*1,477
Downstream corporate limit of Town of St. Charles	*1,521
Upstream corporate limit of Town of St. Charles	*1,538
At confluence of Gin Creek	*1,586
At downstream side of first upstream Southern Railway crossing	*1,668
Approximately 900' upstream of confluence of Miller Cove Creek	*1,750
Gin Creek	
At confluence with Straight Creek	*1,586

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At downstream County Road	*1,615
At State Route 635	*1,630
Approximately 400' upstream of upstream County Road	*1,736
Big Branch	
At confluence with Straight Creek	*1,520
At State Route 628	*1,592
Approximately 0.41 mile upstream of State Route 628	*1,636
Baileys Trace	
At Corporate Limit of Town of St. Charles	*1,538
At confluence of Fawn Branch	*1,571
Approximately 50' upstream of State Route 717	*1,635
Approximately 0.29 mile upstream of State Route 717	*1,661
Wallen Creek	
Approximately 0.31 mile upstream of State Routes 612 and 826 extended	*1,567
Approximately 0.5 mile southwest on State Route 612 from County Road Intersection	*1,598
At confluence of Dry Creek	*1,614
Approximately 0.28 mile upstream of U.S. Routes 58 and 421	*1,629
Dry Creek	
At confluence with Wallen Creek	*1,614
Upstream side of U.S. Route 58 and 421	*1,640
Upstream side of State Route 738	*1,745
Approximately 0.25 mile upstream of State Route 738	*1,779
North Fork Clinch River	
At County Boundary	*1,484
Upstream side of State Route 611	*1,515
At Southern Railway	*1,535
Mud Creek	
At State Route 708	*1,461
Upstream side of State Route 622	*1,471
Approximately 0.3 mile upstream of State Route 622	*1,476
Powell River	
Approximately 1,000' southeast from 621 and 845 State Route Junction	*1,413
At Alternate U.S. Route 58	*1,405
Approximately 0.61 mile downstream of Alternate U.S. Route 58	*1,398
At State Route 619	*1,391
Approximately 1 mile upstream of U.S. Route 421	*1,348
At U.S. Route 421 upstream side	*1,344
Approximately 0.9 mile downstream of U.S. Route 421	*1,339
Poor Valley Branch	
At confluence with Martin Creek	*1,393
Approximately 525' downstream of Louisville and Nashville Railroad	*1,406
Indian Creek	
Approximately 750' downstream of U.S. Route 58	*1,309
At confluence with Dry Branch	*1,321
Downstream side of State Route 684	*1,327
Upstream side of Mill Dam at State Route 690	*1,346
Upstream side of Mill Dam at State Route 698	*1,365
Upstream side of State Route 687	*1,373
At confluence with Roaring Branch	*1,389
Approximately 630' upstream of Louisville and Nashville Railroad	*1,400
Martin Creek	
Approximately 350' downstream of confluence of Poor Valley Branch	*1,391
At U.S. Route 58	*1,402
Approximately 750' upstream from U.S. Route 58	*1,404
Cane Creek	
At corporate limits of Town of Pennington Gap	*1,369
Downstream side of State Route 643	*1,391
Approximately 1 mile upstream of first downstream crossing of U.S. Alternate Route 58	*1,411
Approximately 0.5 mile downstream of State Route 644	*1,430
At State Route 644 and U.S. Alternate 58	*1,455
Approximately 350' upstream of U.S. Alternate Route 58	*1,466
North Fork Powell River	
Confluence with Powell River	*1,345
At State Route 633	*1,352
Downstream corporate limits of Town of Pennington Gap	*1,353
Second downstream corporate limits of Town of Pennington Gap	1,355
Approximately 1,000' southeast from State Route 621 on State Route 633	*1,358
At State Route 621 (new)	*1,376
At Southern Railway	*1,401
Approximately 200' downstream of confluence of Bobs Branch	*1,435
Fawn Branch	
At confluence with Baileys Trace	*1,571
Upstream side of County Road	*1,618
Upstream side of State Route 637	*1,646
Approximately .57 mile upstream of State Route 637	*1,756
Dry Branch	
At confluence with North Fork Powell River	*1,351
At confluence of Ely Creek	*1,389
Approximately 100' downstream of County Road	*1,482
Poor Valley Creek	
At confluence with North Fork Powell River	*1,371
Farm Road upstream side	*1,429
Approximately 0.24 mile upstream of second crossing of State Route 621	*1,600

Maps available for inspection at the County Administrator's Office, Jonesville, Virginia.

WEST VIRGINIA

Elkins (City), Randolph County (FEMA Docket No. 6730)

Tygart Valley River:	
Approximately 1,700 feet downstream of cutoff channel	*1,912
Downstream side of outlet works	*1,913
Upstream side of outlet works	*1,912
Upstream corporate limits	*1,912
Craven Run:	
Downstream corporate limits	*1,910
Upstream corporate limits	*1,940

Maps available for inspection at the City Hall, 401 Davis Avenue, Elkins, West Virginia.

WISCONSIN

Dousman (Village), Waukesha County (FEMA Docket No. 6730)

Bark River	
About 0.62 mile downstream of Main Street	*858
About 750 feet upstream of U.S. Highway 18	*865

Maps available for inspection at the Clerk Treasurer's Office, Village Hall, Box 325, 118 South Main Street, Dousman, Wisconsin.

New Berlin (City), Waukesha County (FEMA Docket No. 6719)

Calhoun Creek	
Just upstream of College Avenue	*816
About 150 feet upstream of College Avenue	*821
Just downstream of State Highway 15	*875
Dakota Street Tributary	
At mouth	*786
About 1,500 feet upstream of mouth	*805
Deer Creek	
Just upstream of Greenfield Avenue	*840
About 1.1 miles upstream of National Avenue	*873
Root River	
Just upstream of South 124th Street	*761
About 1.3 miles upstream of South 124th Street	*821
South Branch Underwood Creek	
About 0.34 mile downstream of Elm Grove Road	*761
About 0.46 mile upstream of Arcadian Drive	*826
South 130th Street Tributary	
At mouth	*764
About 0.33 mile upstream of South 128th Street	*783
West Branch Root River	
Just upstream of South 124th Street	*751
Just upstream of Sunny Slope Road	*827
Poplar Creek	
About 0.36 mile downstream of Arcadian Drive	*830
Just downstream of Cleveland Avenue	*851
Just upstream of Cleveland Avenue	*859
Just downstream of Coffee Road	*868
Upper Kelly Lake Tributary	
At mouth	*808
About 1,000 feet upstream of Radisson Drive	*855
Upper Kelly Lake Shoreline	*808

Maps available for inspection at the City Planners's Office, City Hall, 16000 West National Avenue, New Berlin, Wisconsin.

Issued: February 2, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-2494 Filed 2-6-87; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15, 20, 22, 25, and 90

[General Docket Nos. 84-1231, 1233 and 1234; RM-4812, 4829 and 4247]

Amendments of the Rules Concerning Cellular Communications Systems and Private Land Mobile Frequencies

AGENCY: Federal Communications Commission.

ACTION: Petitions for reconsideration; extension of reply comment period.

SUMMARY: This Order extends the time period in which parties may reply to filings submitted in response to eight petitions for reconsideration of the *Report and Order* in General Docket Nos. 84-1231, 84-1233, and 84-1234 (51 FR 37398, 10/22/86). This extension is necessary due to the substantial amount of factual and legal material filed in opposition to the petitions for reconsideration.

DATES: Reply comments may now be filed on or before February 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, Federal Communications Commission, Washington, DC 20554, (202) 653-8116.

Federal Communications Commission.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 87-2518 Filed 2-6-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 25

[Gen. Docket 84-1234]

Mobile Satellite Service; Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services

AGENCY: Federal Communications Commission.

ACTION: Policies and procedures; Report and Order.

SUMMARY: The Commission has established policies and procedures to govern the licensing of a mobile satellite service (MSS) system. This action follows a Notice of Proposed Rulemaking, 50 FR 8149 (February 28, 1985), proposing to allocate frequencies for this service and to establish associated licensing policies, and a final rule allocating frequencies, 51 FR 37398 (October 22, 1986). This action directs qualified and willing entities with MSS applications currently on file to negotiate a joint venture contract and file an amended mobile satellite system application to be reviewed by the FCC.

EFFECTIVE DATE: The policies set forth herein shall be effective March 12, 1987.

FOR FURTHER INFORMATION CONTACT: Fern Jarmulnek or Cecily Holiday, Satellite Radio Branch, Common Carrier Bureau, (202) 634-1624.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order, Gen. Docket 84-1234, adopted December 19, 1986 and released January 26, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Second Report and Order

In 1984, the Federal Communications Commission issued a *Notice of Proposed Rulemaking* (*Notice*), 50 FR 8149 (February 28, 1985), proposing to allocate frequencies for a mobile satellite service (MSS) and to establish associated licensing policies and procedures. In addition to the extensive comments filed, MSS system applications were filed by Global Land Mobile Satellite, Inc., Globesat Express, Hughes Communications Mobile Satellite Services, Inc., MCCA American Satellite Service Corporation, McCaw Space Technologies, Inc., Mobile Satellite Corporation, Mobile Satellite Service, Inc., North American Mobile Satellite, Inc., Omninet Corporation, Satellite Mobile Telephone Company, Skylink Corporation, and Wismer & Becker/Transit Communications, Inc. On July 24, 1986 the FCC allocated frequencies for the provision of MSS. 51 FR 37398 (October 22, 1986).

By this *Second Report and Order*, the FCC adopted policies and procedures for the licensing of a mobile satellite system. The FCC concluded that joint ownership of a single MSS system would best serve the needs of MSS users in the most expeditious manner possible. First, the FCC decided that only one MSS system would be authorized to operate on the allocated frequencies. The FCC stated that none of the applicants proposed systems capable of sharing the same frequencies with other systems, and noted that the technology that would permit this is not currently available at a reasonable cost. Moreover, the FCC found that it was inadvisable to divide the allocated frequencies to accommodate multiple MSS systems. The FCC agreed with the majority of applicants who claimed that it is essential that an MSS system be used to the fullest extent possible if these systems are to be economically viable and the widest range of users served. Further, the FCC found that the development of sharing criteria and the implementation of priority access for AMSS(R) requirements would be facilitated by involving only one MSS licensee.

Having determined that only one MSS system would be authorized, the FCC found that a multi-ownership arrangement for the system would be more apt to meet its goals than any other licensing alternative. It said a consortium would permit broad participation by competing, qualified applicants and the expeditious development of a service that is most responsive to the needs of the various users targeted by the different applicants.

The FCC instructed those entities with applications currently on file to form a consortium and file an amended application for a joint MSS license by July 27, 1987. Participation in the consortium was conditioned on the applicant's ability and willingness to help finance the estimated $400 million MSS system. The FCC stated that because implementation of the system would be delayed if members of the consortium did not have the necessary financing, it would require each applicant to contribute its share of the financing at the outset. Rather than holding time-consuming hearings regarding an applicant's financial qualifications, each applicant was required to make an initial $5 million cash contribution to participate in the consortium. Pending applicants wishing to participate in the consortium were required to place this amount in an escrow account no later than April 13, 1987.

Since only one MSS license would be granted, the Commission stated that the MSS space segment operator would be regulated as a common carrier. However, because there appears to be, at least for some of the proposed MSS services, substitute services available, and because the service is in a developmental stage, the FCC said it would classify the MSS licensee as nondominant at this time, subject to streamlined tariff filing and facilities authorizations procedures. The FCC indicated it would reevaluate this decision after the system is in operation.

The Commission further said it would preempt state regulation over technical standards, entry and rate regulation of the space segment. Since only one MSS license would be authorized to provide service nationwide, permitting states to impose their individual regulatory schemes over the space station licensee would not only be impractical but would jeopardize the operation of the system. Thus, the FCC said it would impose an open access requirement, streamlined regulatory regime and other technical and entry standards on the space segment licensee.

With respect to the ground segment, i.e., the gateway station and user unit licensees or resellers that provide service to end users, the FCC said it would not preempt state regulation of any intrastate common carrier services within the meaning of Section 2(b) of the Communications Act. Although the FCC indicated that preemption would be proper for interstate MSS services, it said it would not reach definitive conclusions regarding preemption until the MSS system is implemented and a specific service is before it for review.

Final Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

Paperwork Reduction Act

The requirements contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified requirement on the public. This new requirement relates only to the exhibit

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required to be submitted with applications for MSS user units to demonstrate compatibility with the MSS system protocol. All other information requirements have been previously approved by the Office of Management and Budget.

Ordering Clauses

Accordingly, pursuant to sections 4(i) and 303(r) of the Communications Act, 47 U.S.C. 154(i) and 303(r), *It Is Ordererd* that the applicants that have system applications currently under consideration, *i.e.*, those referenced in the caption of this order, may form a consortium and file an amended application for a joint mobile satellite system license in accordance with the following requirements and consistent with the other policies set forth in this order:

(a) Applicants wishing to participate in the consortium must make an initial $5 million cash contribution and place this sum in an escrow account no later than April 13, 1987. These applicants shall notify the Commission and all other applicants at the time the deposit is made.

(b) The consortium must develop a joint ownership structure with ownership interests proportional to the contributions of the participant. The joint ownership contract, including FCC Form 430, and a joint amendment containing the information specified in Appendix B to the *1983 Processing Order*, 54 Rad. Reg. 2d (P&F) 565 (1983), must be submitted to the Commission no later than July 27, 1987.

It Is Further Ordered that the above-referenced applications of any applicant not making an initial contribution to the consortium by the required date will be denied for noncompliance with the Commission's policies.

List of Subjects in 47 CFR Part 25

Satellite radio communication, Satellites.

William J. Tricarico,

Secretary.

[FR Doc. 87-2354 Filed 2-6-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-137; RM-5176]

Radio Broadcasting Services; Montauk, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 284A to Montauk, New York, as the community's first local FM service, at the request of Markey Broadcasting Company. The channel can be allocated without the imposition of a site restriction. With this action, this proceeding is terminated.

DATES: *Effective* March 9, 1987. The filing window for applications will open on March 10, 1987, and close on April 8, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-137, adopted December 4, 1986, and released January 22, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b) Table of Allotments is amended by adding an entry for Montauk, New York, Channel 284A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2372 Filed 2-6-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-85; RM-5186, 5437]

Radio Broadcasting Services; Waco and Clifton, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 233A to Waco, Texas, as that community's fifth FM channel at the request of Kennelwood Broadcasting Company. In addition, Channel 277A is allotted to Clifton, Texas, as that community's first FM service at the request of Clifton Broadcasting Company. Channel 233A requires a site restriction of 10.0 kilometers (6.3 miles) northeast of Waco. Also the window periods for filing applications on Channel 233A at Waco will be announced at a later date. With this action, this proceeding is terminated.

DATES: Effective March 6, 1987. The window period for filing applications on Channel 277A at Clifton, Texas will open on March 9, 1987, and close on April 6, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-85, adopted December 16, 1986, and released January 21, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, the entry for Waco, Texas, Channel 233A is added, and an entry for Clifton, Texas, Channel 277A is added.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2517 Filed 2-6-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 60600-6130]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) closes the commercial fishery in the exclusive economic zone (EEZ) for king mackerel from the Gulf of Mexico migratory group in the eastern and western allocation zones. The Regional Director, Southeast Region, NMFS, has determined that the commercial allocations of 0.6 million pounds for the eastern allocation zone and 0.27 million pounds for the western allocation zone have been reached. This closure will ensure that the commercial allocation for king mackerel from the Gulf migratory group is not exceeded during the current fishing year for these zones.

EFFECTIVE DATE: Closure is effective 2400 hours local time, February 4, 1987, until 2400 hours local time, June 30, 1987.

FOR FURTHER INFORMATION CONTACT: William N. Lindall, Jr., 813-893-3722.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP) was developed by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) under authority of the Magnuson Fishery Conservation and Management Act, and is implemented by regulations appearing at 50 CFR Part 642. Amendment 1 to the FMP, which went into effect on September 22, 1985 (50 CFR 34840, August 28, 1985), established separate allocations for the Gulf and Atlantic migratory groups of king mackerel.

Tagging studies indicate that the Gulf migratory group extends from the U.S./Mexico border, across the Gulf, through the Keys, and up the east coast of Florida, migrating farther north in winter than in summer. For management purposes, its extent is defined as the latitude of the Collier/Monroe County, Florida, boundary (25°48' N.) from April 1 through October 31; and of the Volusia/ Flagler County, Florida, boundary (29°25' N.) from November 1 through March 31.

The Councils set the catch limit for the Gulf migratory group for the fishing year (July 1, 1986, through June 30, 1987) at 2.9 million pounds. The recreational quota is 1.97 million pounds and the commercial quota is 0.93 million pounds. The commercial quota is further divided into quotas of 0.06 million pounds for purse seines; 0.6 million pounds for the eastern allocation zone; and 0.27 million pounds for the western allocation zone. When a quota is reached, that sector of the fishery will be closed for the remainder of the fishing year. Permits are required for persons fishing under a commercial quota and bag limits remain in effect for recreational fishermen. Recreational bag limits for charter vessels are three fish per person per trip (excluding captain and crew) or two fish per person per trip (including captain and crew), whichever is greater. The bag limit for private recreational vessels is two fish per person per trip.

The dividing line between the eastern and western allocation zones begins at the Florida-Alabama State line (30°16'53" N. latitude, 87°31'06" W. longitude) and runs due south to its intersection with the outer limit of the EEZ.

The Secretary is required under § 642.22 to close any segment of the king mackerel fishery when its annual allocation or quota has been harvested, by publishing a notice in the **Federal Register.** The Regional Director has determined, based on the most recently reported catch figures, that the commercial allocations of the Gulf migratory group of king mackerel in the eastern and western allocation zones have been harvested. Hence, commercial fishing for king mackerel from the Gulf migratory group in these allocation zones must cease and nets must be out of the water at 2400 hours local time, February 4, 1987.

The closure will remain in effect until 2400 hours local time, June 30, 1987, the end of the current fishing year for the Gulf migratory group of king mackerel.

During the period of the closure, the purchase, barter, trade, or sale of Gulf migratory group king mackerel taken from these zones of the EEZ, including those harvested under the recreational bag limit, is illegal. This prohibition does not apply to trade in king mackerel harvested, landed, bartered, traded, or sold prior to the closure and held in cold storage by dealers and processors.

Vessels with permits to fish under commercial quotas, except charterboats, are prohibited from fishing under the recreational bag limit. Purse seining for Gulf migratory group king mackerel is under separate quota and may continue until the purse seine quota is reached.

This action is required by 50 CFR 642.22, and complies with Executive Order 12291.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 642

Fisheries, Fishing.

Dated: February 4, 1987.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 87-2664 Filed 2-4-87; 4:43 pm]

BILLING CODE 3510-22-M

50 CFR Part 652

[Docket No. 60229-6072]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of surf clam fishery time adjustment.

SUMMARY: NOAA issues this notice to specify allowable fishing time for vessels harvesting surf clams in the Mid-Atlantic Area of the exclusive economic zone. Three six-hour fishing periods may be scheduled during the remainder of the first quarter of 1987. This action will provide greater flexibility to operators in the use of fishing time during the period. The intended effect is to match fishing effort to the available quota for the area.

EFFECTIVE DATES: February 8 through April 4, 1987.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, 617-281-3600, ext. 263.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries contain at § 652.22(a)(3) a provision allowing the Regional Director to revise allowable fishing times to promote fishing for surf clams throughout the year with a minimum of changes. Experience during 1986 made it clear that even with only six hours of fishing time every other week, the 1987 surf clam quota for the Mid-Atlantic Area would be exceeded substantially unless closures of more than two months occurred.

The Regional Director and the Mid-Atlantic Fishery Management Council (Council) both considered reducing fishing time to six hours every three weeks. Negative reaction to that proposal from many in the industry led the Regional Director and Council to seek an alternative. The Regional Director has decided, with the unanimous support of the Council, to exercise his authority under § 652.22(a)(3) to allocate fishing time by

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quarter and allow each operator the maximum flexibility possible to schedule that time to his best advantage.

Each operator is allotted 18 hours of fishing time for the remainder of the first quarter (February 8 through April 4, 1987). That time must be scheduled in three six-hour periods, which may be taken on any three separate days during the normal daily and weekly surf clam fishing times established in § 652.22(a)(1), (2) and (3). New letters of authorization required under § 652.22(a)(2) have been provided to vessel owners to carry out this effort management program. Each operator must select each six-hour fishing period at least seven days in advance of the intended date of operation by calling the telephone number for the area of operation: For New Jersey: 609–390–8303; for Delmarva: 301–546–8714. Immediately after the period has been scheduled, the operator must write the date of the period in indelible ink on the letter of authorization. No change in period is allowed once scheduled, except that the make-up provisions contained at § 652.22(a)(4) will apply during the season and under the conditions specified in that paragraph of the regulations. The letter of authorization must be retained on board the vessel for inspection through April 2, 1987.

The Regional Director and the Council will, with industry advice, review the results of this program at the end of the first quarter. An effort control program for the second quarter will be specified before the start of that quarter.

Other Matters

This action is taken under the authority of 50 CFR Part 652 and is in compliance with Executive Order 12291.

(16 U.S.C. 1801 et seq.)

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: February 3, 1987.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 87–2641 Filed 2–6–87; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 652

[Docket No. 60229–6072]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed reopening of surf clam closed areas and public hearings; request for comments.

SUMMARY: NOAA proposes to reopen all three of the areas currently closed to surf clam fishing due to the presence of small surf clams, and invites public review and comment on the proposal. Hearings are scheduled to permit presentation of additional information about the proposed reopenings. The area reopenings will allow harvest of surf clams which have until now been protected to allow them to grow to produce greater yields.

DATES: Comments will be accepted through February 28, 1987. The public hearings will be held on February 13 and 14, 1987, at 7:30 p.m. and 2:00 p.m., respectively.

ADDRESSES: Comments should be sent to National Marine Fisheries Service, 2 State Fish Pier, Gloucester, MA 01930–3097.

The public hearing at 7:30 p.m. on February 13, 1987, will be held at the Cape May County Extension Education Center, Dennisville Road Route 657, Cape May Courthouse, New Jersey.

The public hearing at 2:00 p.m. on February 14, 1987, will be held at the Sheraton Salisbury Inn, 300 South Salisbury Boulevard, Salisbury, Maryland.

FOR ADDITIONAL INFORMATION CONTACT: Bruce Nicholls, Surf Clam Coordinator, 617–281–3600, ext. 263.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) is implemented by regulations appearing at 50 CFR Part 652. Under § 652.23, the Secretary of Commerce will publish notice of any proposed action to reopen any area closed to surf clam fishing. The Mid-Atlantic Fishery Management Council (Council) has recommended to NOAA that each of the three areas now closed to surf clam fishing due to the presence of small surf clams (located offshore of Atlantic City, New Jersey; Ocean City, Maryland; and Chincoteague, Virginia) should be reopened as quickly as possible. A change to the regulations may be required, making the reopening criteria consistent with the prevailing surf clam minimum size. Such a change is now being considered by NOAA. The Council has also recommended (subject to the results of these public hearings and recommendations of its own Scientific and Statistical Committee) that the effort controls in the reopened areas should be no more stringent than those applying to the general surf clam fishery.

The regulations at § 652.23(c) provide that the Director, Northeast Region, NMFS, may hold a public hearing on the proposed reopening of any area closed under § 652.23 (a) or (b). The Regional Director is especially interested in the public response to the areas proposed for reopening, the schedule for reopening, and any recommendations for control of fishing effort in the reopened areas. Comments on the proposed reopening may be submitted to the Regional Director until February 28, 1987. The public hearings announced above will be held to present information about the proposals and discuss any alternatives to the areas proposed, the schedule of reopening, or the control mechanisms to be used in the areas. The Regional Director will review the results of the hearings and any comments received during the comment period. The Secretary will then publish a final notice defining the areas and specifying any restrictions on harvest within the areas.

Other Matters

This action is taken under § 652.23 and is in compliance with Executive Order 12291. The action is covered by the certification for Amendment 3 to the FMP (47 FR 4268, January 29, 1982), and under the Regulatory Flexibility Act, that the authorizing regulations do not have a significant economic impact on a substantial number of small entities.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 652

Fisheries.

Dated: February 3, 1987.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 87–2642 Filed 2–6–87; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 52, No. 26
Monday, February 9, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–CE–67–AD]

Airworthiness Directives; Cessna Models 140A, 150 Through 150M, A150K Through A150M, 170 Through 170B, 172 Through 172H, 180 Through 180K, 182 Through 182R, 188 Through 188B, F150F Through F150M, FA150K Through FA150L, F172D Through F172K, F182(P), and F182(Q) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Extension of NPRM comment period.

SUMMARY: This action extends the comment period of the subject NPRM which requires modification of the airplanes by installing springs on carburetor throttle shafts to cause the throttle to open when the airplane throttle control separates from the carburetor.

DATES: Extends comment period of Docket No. 86–CE–67–AD to March 30, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Pendleton, Aerospace Engineer, Airplane Certification Office, ACE–140W, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4427.

SUPPLEMENTARY INFORMATION: The FAA issued an NPRM on December 8, 1986, applicable to Cessna Models 140A, 150 through 150M, A150K through A150M, 170 through 170B, 172 through 172H, 180 through 180K, 182 through 182R, 188 through 188B, F150F through F150M, FA150K through FA150L, F172D through F172K, F182(P), and F182(Q) airplanes, which was published in the **Federal Register** on January 6, 1987 (52 FR 435). The comment period closed January 22, 1987. This Notice would require modification of the airplanes by installing springs on carburetor throttle shafts to cause the throttle to open when the airplane throttle control separates from the carburetor.

Subsequent to the closing date for comments on this NPRM, a request was received from The Aircraft Owners and Pilots Association to extend the comment period to allow additional time to comment on the proposed rule. The FAA believes it is in the public interest to reopen and extend the comment period in order to allow any comments deemed necessary.

This document involves only an extension of a comment period for a proposed regulation. Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A regulatory evaluation has not been prepared for this action as the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR by revising the effective date of the comment period for Docket No. 86–CE–67–AD as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new date for comment:

DATES: Comments must be received on or before March 30, 1987.

Issued in Kansas City, Missouri on January 28, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87–2581 Filed 2–6–87; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 9

Commission Review of Exchange Disciplinary, Access Denial and Other Adverse Action; Proposed Rules

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") proposes to revise its regulations governing the procedures and standards for Commission review of exchange disciplinary, access denial and other adverse actions under section 8c of the Commodity Exchange Act ("Act"). These revisions are intended to streamline and clarify the procedures and standards governing the disposition of notices of appeal filed with the Commission and reflect recent developments in Federal case law.

DATE: Comments must be submitted by April 10, 1987.

ADDRESS: Comments should be sent to: Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Attention: Secretariat.

FOR FURTHER INFORMATION CONTACT: Philip V. McGuire, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: Section 8c of the Act authorizes the Commission, in its discretion, and in accordance with such standards as it deems appropriate, to review any decision by an exchange whereby a person is suspended, expelled, otherwise disciplined or denied access. Section 8c additionally authorizes the Commission, in its discretion and upon application of any person who is adversely affected by any other action of an exchange, to review such action.

Part 9 of the Commission's regulations (17 CFR Part 9) implements section 8c. The Commission now is proposing substantial revisions to those regulations in order to streamline and clarify the procedures and standards governing Commission review of exchange disciplinary, access denial,

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and "other adverse" actions. The principal proposed changes are summarized below.

In order to lend more certainty and to facilitate the appellate process, the Commission is proposing to take review of all exchange disciplinary, access denial and other adverse actions for which notices of appeal have been filed and perfected, with certain specific limited exceptions. In this connection, the Commission is also proposing a summary affirmance procedure whereby, upon finding that the result reached in the decision of the exchange is substantially correct and that none of the arguments on appeal made by the appellant raise important questions of law or policy, the Commission would summarily affirm the decision of the exchange without opinion. Any such order would constitute the Commission's final decision.

The proposed regulations also would clarify and refine the criteria employed by the Commission in determining whether to affirm, reverse or otherwise modify the decision of the exchange. As proposed, the Commission in reviewing an exchange disciplinary, access denial or other adverse action will consider whether: (1) The exchange disciplinary, access denial or other adverse action was taken in accordance with the rules of the exchange; (2) fundamental fairness was observed in the conduct of the proceeding resulting in the disciplinary, access denial or other adverse action; (3) in the case of a disciplinary action, the record contains substantial evidence of a violation of the rules of the exchange, or, in the case of an access denial or other adverse action, the record contains substantial evidence supporting the access denial or other adverse action; and (4) the disciplinary, access denial or other adverse action otherwise accords with the Act and the rules, regulations and orders of the Commission thereunder.

In addition, and in an effort to expedite the appellate process and to minimize the burden on the exchanges and on persons seeking review by the Commission, the Commission is proposing to condense the appellate process. The current rules involve several steps. First, an applicant initiates the apeal by filing a notice of appeal and, second, must perfect that appeal by filing a more detailed application for review. If the Commission grants review, the applicant must then file a brief. In response to the application for review, the exchange may file an answer. If the Commission grants review, the exchange must also file the record of the exchange proceeding and serve a copy on the applicant (provided the applicant agrees to pay the exchange reasonable fees for printing that copy). Subsequently, the exchange may file a brief in response to the applicant's brief.

In contrast, the proposed rules simplify that process. First, an appellant would initiate the appeal by filing an expanded notice of appeal (effectively combining the current notice of appeal and application for review). The exchange would then file two copies of the record of the exchange proceeding and serve one copy on the appellant (provided the appellant agrees to pay the exchange reasonable fees for printing that copy). The appellant would then perfect the appeal by filing an appeal brief. In response, the exchange would be permitted to file its answerihng brief.

I. Scope of Review

As discussed above, the proposed revisions provide that the Commission, with certain limited exceptions, will review all exchange disciplinary, access denial, and other adverse actions for which notices of appeal have been filed. The proposed rules further provide that the Commission will not accept notice of appeal for certain enumerated exchange actions (arbitrations, minor summary actions and cash market transactions) for which the Commission believes review under Section 8c is not appropriate.

A. Generally

Section 8c of the Act authorizes the Commission, in its discretion and in accordance with such standards and procedures as it deems appropriate, to review exchange disciplinary, access denial, and other adverse actions. The Commission's current regulations implementing section 8c have required persons seeking commission review of exchange actions to demonstrate, among other things, that the issues presented in a particular application involve an important policy under the Act, that there would be some precedential benefit from a Commission decision on the issues, or that the exchange action might have been inconsistent with the rules of the exchange or not supported by substantial evidence. *See* current Rules 9.30 and 9.37. This procedure has operated such that review has been granted in only a small percentage of the cases presented to the Commission. Although this procedure is well within the discretionary authority provided by section 8c of the Act, the Commission believes it more appropriate to exercise that discretion in such a manner that the Commission, by regulation, would take review of virtually all exchange disciplinary, access denial and other adverse actions for which notices of appeals are filed and perfected.

The Commission's proposal to so exercise its direction is prompted in part by its belief that an appropriate expert forum should be available for review of exchange disciplinary, access denial and other adverse actions. A series of decisions by the Seventh Circuity interpreting section 8c and the Commission's denial of review thereunder, [1] when read in conjunction with state courts' refusal to take review of exchange disciplinary or access denial actions, [2] may effectively preclude review by a court on the merits of exchange disciplinary or access denial actions for a substantial number of exchange members and applicants for exchange membership. [3]

As noted above, the Commission has denied review and, therefore, not disturbed the decision of an exchange in a preponderance of the cases where notices of appeal have been filed with the Commission. Under the proposed revisions, however, the Commission would typically take review and, as appropriate, affirm, modify, set aside, or remand for further proceedings, in whole or in part, the decision of the exchange. The standards or review (contained in proposed § 9.33(c)) have been made more specific so that the Commission would typically affirm the decision of the exchange where the exchange action was taken in accordance with exchange

[1] *See Cardoza v. CFTC and Chicago Board of Trade*, 768 F.2d 1542 (7th Cir. 1985); *Korach v. Chicago Mercantile Exchange*, 747 F.2d 414 (7th Cir. 1984). *See also Rosee v. Chicago Board of Trade*, 311 F.2d 524 (7th Cir. 1963); *Shea v. Chicago Board of Trade*, No. 84 C 2105 (N.D. Ill. January 25, 1985).

[2] *E.g., Chicago Board of Trade v. Nelson*, 162 Ill. 431 (1896); *People ex rel. Rice v. Chicago Board of Trade*, 80 Ill. 134 (18750) *Shea v. Chicago Board of Trade*, No. 83 L 50765 (Ill. Cir. Ct. July 19, 1985); *Comenzo v. Mound*, No. 6440/1984, slip op. (N.Y. App. Div. June 13, 1984); *Cardoza v. Chicago Board of Trade* No. 83 L 50312 (Ill. Cir. Ct. May 29, 1983; *see Buckley v. Chicago Board Options Exchange*, 109 Ill. App. 3d 462 (1982). *See also Willette V. Coffee, Sugar and Cocoa Exchange*, 86 Civ. 4601 (S.D.N.Y. Sept. 25, 1986) (order dismissing action).

[3] The decisions of the Seventh Circuit and the Illinois State courts presumably would affect any judicial review of any disciplinary, access denial or other adverse action taken by the two largest exchanges, the Chicago Board of Trade and the Chicago Mercantile Exchange, as well as the MidAmerica Commodity Exchange and the Chicago Rice and Cotton Exchange. In addition, the decisions of the U.S. District Court for the Southern District of New York and the New York state courts similarly would affect any judicial review of any disciplinary, access denial or other adverse action taken by the Amex Commodities Corporation, the Coffee, Sugar & Cocoa Exchange, Inc., the Commodity Exchange, Inc., the New York Cotton Exchange, the New York Futures Exchange, Inc., and the New York Mercantile Exchange.

rules, the record contains substantial evidence supporting the exchange action, and the exchange action otherwise accords with the Act and the rules, regulations and orders of the Commission thereunder. The Commission further expects that these proposed standards for review, when considered in conjunction with the proposed appellate procedures described earlier, also would serve to expedite Commission consideration of appeals of exchange disciplinary, access denial and other adverse actions.

B. Exchange Actions Excluded From the Commission's Review Jurisdiction

The limited types of exchange actions, for which the Commission proposes not to accept notices of appeal (or petitions for stay) are set out in proposed § 9.1(b). As proposed, the Commission would not accept notices of appeal (or petitions for stay) of: (1) Any arbitration proceeding, regardless of whether the proceeding was conducted pursuant to the provisions of section 5a(11) of the Act or involved a controversy between members of an exchange; (2) any summary action authorized under the provisions of Commission Rule 8.27 which results in the imposition of a minor penalty for the violation of exchange rules relating to decorum or attire, or the timely submission of accurate records required for clearing or verifying each day's transactions or other similar activities; and (3) any exchange action arising from a claim, grievance, or dispute involving cash market transactions which are not a part of, or directly connected with, any transaction for the purchase, sale, delivery or exercise of a commodity for future delivery or a commodity option.

The Commission has, as a matter of practice, traditionally declined to review exchange arbitration proceedings. Indeed, the Commission previously has articulated its belief that the legislative history of section 8c did not indicate that the term "other exchange action" was intended to encompass exchange-sponsored arbitration proceedings where the exchange was merely providing a forum for dispute resolution and had no substantial interest in the outcome of the dispute.[4] The Commission's experience, involving both the disposition of individual applications for review as well as its general oversight of the exchange's arbitration programs, to date has not indicated any need for the Commission to exercise its discretion to review exchange-sponsored arbitration proceedings. However, the Commission notes that it retains the authority to conduct oversight reviews of an exchange's conduct of arbitration proceedings in the event the exchange fails to comply with its own rules or the Commission's regulations governing arbitration proceedings and the authority to review such matters *sua sponte*. 48 FR 22136, 22141 n.37 (May 17, 1983).[5]

The Commission's proposal expressly to exclude from Commission review Rule 8.27 summary actions resulting in minor penalties is also a continuation of current Commission policy.[6] Specifically, the Commission is now proposing to make explicit that it will not accept notices of appeal (or petitions for stay) of any summary action which results in the imposition of a minor penalty for the violation of exchange rules relating to decorum or attire, or relating to the timely submission of accurate records required for clearing or verifying each day's transactions or other similar activities. The Commission believes that it should continue to refuse to accept notices of appeal for these minor summary actions because, among other things, such appeals are not likely to raise important policy considerations, are likely to be numerous and repetitive, and otherwise would engage unnecessarily the limited resources of the Commission and the exchanges.

The Commission's proposal to exclude expressly from commission review any exchange action arising from "a claim, grievance, or dispute involving cash market transactions which are not a part of, or directly connected with, any transaction for the purchase, sale, delivery or exercise of a commodity for future delivery or a commodity option" is based on the Commission's determination that, in most instances, the Commission's regulatory interest in such matters likely would be attenuated at best, and that the Commission probably would not provide the most appropriate forum for the resolution of disputes involving any such transaction.[7] In this connection, the Commission anticipates that it would not accept a notice of appeal involving a cash market transaction unless the applicant clearly establishes that the cash market transaction is "part of, or directly connected with any transaction for the purchase, sale, delivery or exercise of a commodity for future delivery or a commodity option," and, if so, that the matter involves the type of exchange action which the Commission should review under section 8c.

Upon making a determination to decline to accept a notice of appeal (or petition for stay) pursuant to proposed § 9.1(b), the Commission promptly would notify the appellant and the exchange that it will not accept the notice of appeal (or petition for stay). The determination to decline to accept a notice of appeal under proposed § 9.1(b) merely would indicate that the matter appealed did not qualify for Commission review and would be considered by the Commission to be without prejudice to the appellant's right to seek review of the exchange action in some other forum. As a result, the aggrieved parties should remain free to challenge such exchange actions in any other available forum without being adversely affected by the Commission's refusal to accept the appeal.

II. Standards Governing Review

The proposed standards governing Commission review of an exchange action are set forth in proposed § 9.33(c). These proposed standards, which are similar to those contained in current Commisison Rules 9.37(b), are derived from three important policies of the Act: That in exercising their self-regulatory responsibilities, the exchange should take vigorous action against those who engage in activities that violate their rules; that exchange disciplinary and access denial proceedings should be conducted in a manner consistent with considerations of due process; and that the penalities or denials of access imposed by exchanges must be fair and have a reasonable basis in fact.[8]

[4] *See, e.g., In re Chicago Board of Trade and Robert Pitts, et al.* (CFTC July 9, 1985); *In re Chicago Mercantile Exchange, et al. and Henry W. Stein* (CFTC December 19, 1979); *In re Board of Trade of City of Chicago, et al. and Abdallah Tamori, et al.* (CFTC February 14, 1978); 43 FR 59343, 59344 n.4 (December 20, 1978). The Commission's policy of not reviewing arbitration proceedings is consistent with the courts' traditional reluctance to disturb arbitration awards where one of the parties seeks to challenge the award. Generally, judicial review of an arbitration award (which is not in the nature of an appeal, but rather in the nature of a procedure to vacate the award) is strictly limited to such matters as the fairness of the procedures, authority granted to the arbitrators, and possible bias by arbitrators. *E.G., Ballantine Books, Inc. v. Capital Distributing Co.*, 302 F.2d 17 (2d Cir. 1962); *see* 9 U.S.C. 1 *et seq.*

[5] *See* footnote 19 *infra* regarding proposed § 9.9(a).

[6] Current Commission Rule 9.2(a) excludes from the definition of "disciplinary action" any exchange disciplinary "penalty" which results in "the imposition of a minor sanction against a person for violation of exchange rules of decorum, attire or similar rule."

[7] Nonetheless, the Commission notes that this proposed exclusion from Commission review under Part 9 would not affect the Commission's authority under the act to otherwise regulate cash market transactions where appropriate.

[8] 43 FR 59349, 59349–59350 (December 20, 1978)

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As proposed, the Commission in reviewing an exchange disciplinary, access denial or other adverse action would consider whether: (1) The exchange disciplinary, access denial or other adverse action was taken in accordance with the rules of the exchange; (2) fundamental fairness was observed in the conduct of the proceeding resulting in the disciplinary, access denial or other adverse action; (3) in the case of a disciplinary action, the record contains substantial evidence of a violation of the rules of the exchange, or, in the case of an access denial or other adverse action, the record contains substantial evidence supporting the access denial or other adverse action; and (4) the disciplinary, access denial or other adverse action otherwise accords with the Act and the rules, regulations and orders of the Commission thereunder. *Compare* Commission Rule 3.78.

Under the proposed procedures, the Commission anticipates that it may receive notices of appeal of disciplinary, access denial and other adverse actions where significant legal or factual issues outside the scope of the Act exist or predominate. In such matters, the Commission will carefully consider the existence of these non-Act issues in fashioning its final disposition, including any remedies.

As under current Commission Rule 9.37, in reviewing the exchange action the Commission could affirm, modify, set aside or remand for further proceedings, in whole or in part, the decision of the exchange. The Commission's decision would be contained in its opinion and order and would be based upon the record before it, including the record of the exchange proceeding, and any oral argument made in accordance with proposed § 9.32. Proposed § 9.31 provides that, on review, the Commission could, in its discretion, consider *sua sponte* any issues arising from the record before it and could base its determination thereon, or limit the issues to those presented in the statement of issues in the briefs, treating those issues not raised as waived.

Proposed § 9.33(b) provides for a summary affirmance procedure. As proposed, if the Commission finds that the result reached in the decision of the exchange is substantially correct and that none of the arguments on appeal made by the appellant raise important questions of law or policy, the Commission could, by appropriate order, summarily affirm the decision of the exchange without opinion.

The Commission, in its discretion, would also provide that an order of summary affirmance is not to be construed as expressing its views on the merits of a particular matter. For example, where the Commission previously has reviewed an exchange rule in accordance with the provisions of section 5a(12) of the Act and Regulation 1.41, the Commission generally would not entertain a challenge, under section 8c, to the underlying exchange rule. Instead, the Commission would be willing to consider only whether, in the circumstances of a particular case, the rule in question had been applied in a manner not inconsistent with the standards enumerated in proposed § 9.33(c).[9] In such a case, a summary affirmance of an appeal from an access denial or other adverse action involving an exchange rule which the Commission had earlier permtited to become effective under § 1.41(c) of the Commission's regulations would involve only a determination by the Commission that the applicliation of the rule in this specific context was substantially correct (and did not otherwise raise important questions of law or policy) and would not, therefore, constitute Commission approval of the underlying rule.

III. Appeals Procedure

As discussed in detail below, the proposed rules would make substantial changes to the procedures governing appeals to the Commission under section 8c of the Act. As proposed, an appeal would be initiated by the timely filing and service of a notice of appeal. The exchange would then file and serve the record of the exchange proceeding. The appellant would perfect the appeal by filing an appeal brief and, in response, the exchange then would file an answering brief. Generally, the proposed rules would neither require nor permit further submissions. For illustrative purposes, the following chart summarizes some of these proposed changes as they would apply to the Commission review of an exchange disciplinary action. All of these items are discussed in greater detail below.

Current Part 9 Rules	Proposed Part 9 Rules
1. Final exchange decision. § 8.20.	1. Final exchange decision § 8.20.
2. Notice of exchange action to person disciplined and to Commission within 30 days. Section 8c(1)(B) of the Act. § 9.11(a)	2. Notice of exchange action to person disciplined and to Commission within 30 days. Section 8c(1)(B). § 9.11(a)
3. Effective date of final exchange action. 10 days after "9.11" notice delivered to Commission. § 9.13	3. Effective date of final exchange action. 15 days after "9.11" notice delivered to person disciplined § 9.12(a)
4. a. Notice of appeal filed with Commission within 10 days after "9.11" notice provided to the person disciplined § 9.21(a)	4. a. Notice of appeal filed with Commission within 15 days after "9.11" notice delivered to person disciplined § 9.20(a)
b. Petition for stay filed any time after filing notice of appeal § 9.22(a)	b. Petition for stay filed within 10 days after "9.11" notice delivered to person disciplined. § 9.24(a)
Exchange response filed within 10 days after service of petition. § 9.22(b)	Exchange response filed within 5 days after service of petition. § 9.24(c)
5. Application for review filed within 30 days after "9.11" notice has been mailed § 9.21(a).	5. Record of exchange proceeding filed within 15 days after service of notice of appeal § 9.21(a)
6. Answer filed within 20 days after receipt of application for review. § 9.23	6. Appeal brief filed within 30 days after service of record. § 9.22(a)
7. Commission determination to grant or deny review. § 9.31	7. Answering brief filed within 30 days after service of appeal brief. § 9.23(a)
8. Record of exchange proceeding filed within 10 days of receipt of order granting review. § 9.34(a)	8. Commission decision. § 9.33
9. Opening brief filed within 20 days of receipt of order granting review. § 9.35(a)	
10. Answering brief filed within 20 days of service of opening brief. § 9.35(b)	
11. Commission decision. § 9.37	

A. Notice of Appeal; Record; Appeal Brief; Answering Brief

1. Current Procedure

Under current Commission Rule 9.21(a), an applicant must file a notice of appeal, and subsequently a more detailed application for review. The notice of appeal, which need merely state "an intention to apply to the Commission for review of the exchange action," must be filed within ten days after notice of the disciplinary (or access denial) action [10] is "provided" or within the ten days of any other adverse action; the application for review must be filed within thirty days after the notice of the disciplinary (or access denial) action or other adverse action "has been mailed." [11] The exchange may file an answer

[9] For example, some of the contract markets from time to time adopted trading incentive and membership permit programs which confer permanent floor trading privileges for certain selected contracts only upon those individuals who meet certain minimum trading requirements. Similarly, the exchange have had occasion to re-evaluate their existing membership classifications and to revise or realign the attributes of their various membership categories. The exchange in question has adopted and submitted to the Commission, in accordance with the requirements of section 5a(12) of the Act and Commission Regulation 1.41, rules implementing its proposed course of conduct.

[10] Current Commission Rule 9.2(a) defines "disciplinary action" to include "any action by an exchange that denies access to that exchange to any person."

[11] Current Commission Rule 9.21(b) provides that the application for review must include: (1) The name and residence address of the applicant; (2) the name of the exchange; (3) if known, the specific rule or rules of the exchange which resulted in the applicant's being the subject of disciplinary or other adverse action; (4) a concise statement of all facts relevant to the consideration of the application.

Continued

within twenty days after service of the application for review (current Commission Rule 9.23). The answer must set forth "facts which support the disciplinary action or other adverse action taken by the exchange," and contain "a statement expressing why, notwithstanding the claims made in the application, the disciplinary [or access denial] action or other adverse action by the exchange is in accordance with the rules of the exchange and the policies of the Act."

Current Commission Rule 9.35 does not contemplate the filing of briefs, however, until after review is granted. Thus, under the current rules, the notice of appeal, application for review and the exchange's answer may be the only documents reviewed by the commission in determining whether to grant or deny review.

2. Proposed Procedure

In contrast, the proposed rules would combine the current notice of appeal and application for review into one simplified submission and would require that the record of the exchange proceeding and the briefs be filed with the Commission prior to institution of Commission review. Thus, as proposed, the appeal would be initiated by filing a notice of appeal with the Commission within fifteen days after notice of the disciplinary, access denial or other adverse action (proposed § 9.20).

Proposed § 9.20 provides that the notice of appeal would be in the form of a brief statement indicating that the appellant is requesting Commission review of the exchange action. The notice of appeal also would include: (1) The name and address of the appellant, and any authorized agent or officer of the appellant; (2) the name and docket number of the exchange proceeding; (3) the date on which the disciplinary, access denial, or other adverse action was imposed by the exchange or the date on which the final exchange decision was rendered, and the date upon which the exchange action has or will become final and effective; (4) a copy of the notice provided to the applicant by the exchange in accordance with the provisions of proposed § 9.11, in the case of a disciplinary or access denial action, or otherwise, in the case of any other adverse exchange action; (5) the relief sought from the action of the exchange; (6) the applellant's request for receipt of a copy of the record of the exchange proceeding, and a representation that the appellant agrees to pay the exchange reasonable fees, as provided in the rules of the exchange for printing that copy; and (7) a nonrefundable filing fee of $100.

Proposed § 9.21 provides that within fifteen days after service of the notice of appeal, the exchange would file two copies of the record of the exchange proceeding, [12] and serve a copy on the appellant and any other party to the proceeding, provided that such person has agreed to pay the exchange reasonable fees, as provided in the rules of the exchange, for printing that copy. Proposed § 9.21 also provides that the exchange may file a motion to postpone the filing of the record pending a ruling on a motion requesting that the Commission decline to accept a notice of appeal of any matter that the exchange contends is excluded by proposed § 9.1(b). The filing of such a motion will operate to suspend any obligation of the exchange to file further submissions pending a ruling by the Commission on the motion.

Within thirty days after service of the record of the exchange proceeding, the appellant must perfect the appeal by filing an appeal brief. Proposed § 9.22 provides that the appeal brief must include: (1) A statement of the issues presented for review; (2) a statement of the case which must first indicate briefly the nature of the case and include a full description of the disciplinary, access denial, or other adverse action and which must also include a clear and concise statement of all facts relevant to the consideration of the application, including, if known, each alleged act or omission forming the basis of the exchange action, with appropriate references to the record of the exchange proceeding; (3) an argument which must contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, and citations to relevant authorities and to parts of the record of the exchange proceeding; and (4) a conclusion stating the precise relief sought.

As proposed, the exchange would file its answering brief within thirty days after service of the appeal brief. The answering brief generally would follow the same style as prescribed for the appeal brief but could omit a statement of the issues or of the case if the exchange does not dispute the issues or the statement of the case contained in the appeal brief. Proposed § 9.23.

The Commission proposes to expand the time for initiating the appeal from ten of fifteen days because it believes the additional time will permit an applicant a better opportunity to evaluate and, if necessary, prepare a proper course of action. Similarly, the Commission proposes to expand the time for an exchange's response from twenty to thirty days, because it believes the additional time will permit the exchange adequate time to develop a full response to the notice of appeal. Moreover, the thirty-day period for filing an answering brief is the same as the time period provided to file an appeal brief.

Requiring that briefs be filed earlier in the proceeding, as compared to the current procedure, imposes no additional burden on the parties, and indeed provides for a complete exposition of the opposing arguments. Under present practice, briefs filed by the parties in cases where the Commission has granted review tend to be largely cumulative of information and arguments that previously have been presented in the application for review and the exchange answer. The increased time frames (*i.e.*, fifteen days for initial submission of the notice of appeal, thirty days for filing the record and thirty days each for submission of appeal and answering briefs) and the omission of an additional round of submissions generally should reduce the burden on the parties.

B. Petition for Stay; Reply to Petition

Proposed § 9.24(a) provides that a party who is the subject of a disciplinary or access denial action may petition the Commission for a stay of the effectiveness of the action pending consideration by the Commission of a notice of appeal. Any such petition would have to be filed within ten days after notice of the disciplinary or access denial action has been delivered to the person and would have to be accompanied by the notice of appeal. In addition, as is the case under current Commission Rule 9.22, an exchange

including, if known, the date and place of each alleged act or commission forming the basis of the exchange's action; (5) the date on which the disciplinary or other adverse action was imposed by the exchange or the date on which the final exchange decision was rendered; (6) a full description of the disciplinary action or other adverse action imposed and the relief sought; and (7) a statement of the reasons why it is claimed that the disciplinary action or other adverse action is not in accordance with the rules of the exchange or the policies of the Act, and the specific facts which support those reasons.

[12] Proposed § 9.2(i) defines "record of the exchange proceeding" to mean all testimony, exhibits, papers and records produced at or filed in an exchange proceeding or served on a party to that proceeding; all documents, minutes or other exchange records serving as a basis for or reflecting the deliberations concerning the disciplinary action, access denial action or other adverse action taken by an exchange; a transcript or recording of any oral argument made before any body of the exchange in connection with the exchange proceeding; and a copy of all exchange rules which form the basis for the exchange action.

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member who is the subject of a member responsibility action authorized by Commission Rule 8.25 could petition the Commission to stay the effectiveness of any such action pending completion of the exchange proceeding.

Proposed § 9.24(c) provides that the exchange may file its response to the petition for stay within five days after service of the petition. However, the Commission may act on the petition at any time, without waiting for the exchange response. (A stay of an exchange disciplinary or access denial action would result in the maintenance of the *status quo*. Thus, a person who is appealing the denial of an application for exchange membership would not become a member by operation of a stay. 43 FR 59343, 59348 (December 20, 1978.)

Because proposed § 9.12 would permit an exchange disciplinary or access denial action to become effective fifteen days after the written notice prescribed by proposed § 9.11 is delivered to the person disciplined or denied access, a petition for stay generally requires expedited consideration. The Commission previously had indicated that, in evaluating any petition for a stay of an exchange decision under section 8c(4) of the Act and current Rule 9.22, it would apply criteria analogous to those applied by the federal courts.[13] Proposed § 9.24(d) codifies these standards and provides that in determining whether to grant or deny a petition for stay, the Commission would consider whether the petitioner has established: (1) Petitioner's likelihood of success on the merits; (2) that denial of the stay would cause irreparable harm to the petitioner; (3) that granting the stay would not endanger orderly trading or otherwise cause substantial harm to the exchang or market participants; and (4) that granting the stay would not be contrary to the Act and the rules, regulatios and orders of the Commission.

C. Limited Participation by Interested Persons; Participation by Commission Staff

Proposed § 9.25 provides that upon the Commission's own motion or motion of any person asserting a direct and substantial interest in the outcome of the Commission proceeding, the Commission could permit limited participation in the proceeding before the Commission. Any such motion for leave to participate would have to identify the interest implicated and state the reasons why participation in the Commission proceeding would be desirable In the event the request to participate is granted, such participation would usually be limited to submission of a brief.

Proposed § 9.26 provides that the Commission's Division of Trading and Markets may file a notice of intent to participate in the proceeding as *amicus curiae* within ten days of its receipt of the exchange's answering brief. (A copy of the answering brief would be forwarded to the Division by the Proceedings Clerk.) The Division's *amicus* brief would be due within thirty days after the filing of the notice of intent to participate. Any party may file a reply within ten days after service of the Division's brief. Upon making such an *amicus* filings, no employee of the Division of Trading and Markets could make any communication relating to the proceeding, other than on the record of the proceeding before the Commission, to any Commissioner or Commission decisional employee.

D. Commission Review on Its Own Motion

Proposed § 9.31(b) implements section 8c(2) of the Act, which authorizes the Commission to review on its own motion any exchange action which suspends, expels, otherwise disciplines or denies access to a person. As would be the case with review initiated by a notice of appeal, the Commission could affirm, modify, set aside, or remand for further proceedings, in whole or in part, the exchange decision, pursuant to the standards set out in proposed § 9.33(c). Other than in extraordinary circumstances, such review would be initiated within 180 days after the Commission has received the notice of exchange action provided for in § 9.11. The Commission recognizes, however, that self-regulation is an important policy of the Act and therefore does not intend to review exchange disciplinary and access denial actions on its own motion as a common practice. *See* 43 FR 59343, 59344 (December 20, 1978).

In this connection, proposed § 9.31(a) provides that where the person disciplined or denied access has not appealed the exchange decision to the Commission, upon review of the notice specified in proposed § 9.11, the Division of Trading and Markets could request that the exchange file with the Division the record of the exchange proceeding, or designated portions of the record, a brief statement of the evidence and testimony adduced to support the exchange's findings that a rule or rules of the exchange were violated and such recordings, transcripts and other documents applicable to the particular exchange proceeding as the Division may specify. The exchange would be required to promptly advise the person who is the subject of the disciplinary or access denial action of the Division's request. The exchange would be required to file the information requested within thirty days and, upon request, to the person who is the subject of the disciplinary or access denial action. If the Commission should institute review on its own motion, it would grant the person who is the subject of the disciplinary or access denial action an opportunity to file an appropriate submission, and grant the exchange an opportunity to file a reply thereto.

E. General Provisions

Proposed § 9.1(a) sets forth the scope purpose of the rules. Proposed § 9.2 defines various terms used in the proposed rules. In addition to the definitions discussed above, proposed § 9.2(b) would define the term "disciplinary action" to mean any suspension, expulsion or other penalty (as defined in Commission Rule 8.03(i)) imposed on a member of an exchange by that exchange for violation of rules of the exchange, including summary action.[14] This proposed definition of "disciplinary action" differs from the definition of that term contained in current Commission Rule 9.2(a) in several ways.

First, unlike the current rule, the proposed definition of "disciplinary action" no longer would include "any action by an exchange which denies access to that exchange to any person." Rather, "access denial action" would be defined separately in proposed § 9.2(a) to mean "any proceeding other than a disciplinary action by an exchange that denies or limits the privileges of membership." [15]

[13] 43 FR 59343, 59348 (December 20, 1978). *See, e.g., In re Morrow*, Comm. Fut. L. Rep. (CCH) ¶23,051 (CFTC March 28, 1986); *In re Morrissey*, Comm. Fut. L. Rep. (CCH) ¶22,854 (CFTC January 2, 1986) (*citing Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977) and *Virginia Petroleum Jobbers Association v. Federal Power Commission*, 259 F.2d 921 (D.C. Cir 1958)). *See also In re Murphy*, Comm. Fut. L. Rep (CCH) ¶22,800 (CFTC October 28, 1985)

[14] As is the Commission's current practice, warning and cautionary letters would not be considered to be disciplinary actions within the scope of these rules unless issued pursuant to a finding that a rule has been violated. *See* 43 FR 59343, 59345 n.5 (December 20, 1978).

[15] A denial of membership is an access denial action within the meaning of section 8c(1)(A) of the Act. Therefore, an exchange has the burden of insuring that there are sufficient grounds upon which to deny an application for membership, and that an applicant must be given an opportunity to

Continued

The proposed definition of "disciplinary action" would also no longer expressly exclude those summary actions which result in the imposition of a minor penalty for the violation of exchange rules relating to decorum or attire, or the timely submission of accurate records required for clearing or verifying each day's transactions or other similar activities. As discussed above, however, proposed § 9.1(b)(2) would continue to exclude these types of summary actions from the Commission's appellate jurisdiction.[16]

"Summary action" would be defined to mean a disciplinary action resulting in the imposition of a penalty on a member of an exchange for violation of rules of the exchange authorized under the provisions of Commission Rules 8.17(b) (penalty for impeding progress of hearing), Commission Rule 8.25 (member responsibility action), or Commission Rule 8.27 (penalty for violation of rules relating to decorum, attire, submission of records or similar activities). Proposed § 9.2(j).

Proposed § 9.2(g) defines "other adverse action" and "adverse action" to include "any exchange action, other than an access denial action or disciplinary action, that adversely affects any person, whether or not a member of the exchange." The Commission expects, therefore, that the term "other adverse action" would include those exchange actions which are not governed by the disciplinary processes of the exchange and which do not involve denials of access. For example, claims by customers or other members against the proceeds resulting from the sale of exchange memberships or the denial of deliverable status to a warehouse would be "other adverse actions" which could be appealed to the Commission.

As is already the case, certain provisions of Part 9 would not apply to "other adverse actions." Specifically, proposed §§ 9.11 through 9.13 governing notice and effective date of disciplinary or access denial actions, proposed § 9.24 governing petitions for stay, and proposed § 9.31 governing Commission review on its own motion would not apply to other adverse actions.

Proposed § 9.2(c) would define the term "exchange" to mean "any board of trade which has been designated as a contract market." Proposed § 9.2(d) defines "exchange proceeding" to mean "any formal or informal proceeding which results in a disciplinary action, access denial action or other adverse action." The term "member of an exchange" would continue to be defined as "any person who is admitted to membership or has been granted membership privileges on an exchange, any employee, officer, partner, director or affiliate of such member or person with membership privileges including any associated person, and any other person under the supervision or control of such member or person with membership privileges" (proposed § 9.2(f)). The proposed definition of "rules of the exchange" parallels the provisions of Commission Rule 1.41(a)(1) and would be defined to mean "any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, or written and publicly available interpretation or stated policy of the exchange or instrument corresponding thereto" (proposed § 9.2(j)).

Proposed § 9.2(e) defines "mail" to mean "properly addressed and postpaid first class mail" and includes "overnight delivery service." Proposed § 9.2(h) defines "party" to include the person filing a notice of appeal or petition for stay who has been the subject of a disciplinary, access denial or other adverse action by an exchange; that exchange; any person participating pursuant to proposed § 9.25; and the Division of Trading and Markets when participating in a proceeding pursuant to proposed § 9.26.

Proposed § 9.3 incorporates by reference certain provisions of the Commission's Rules Relating to Reparations (17 CFR Part 12). These provisions include regulations governing business address and hours (§ 12.3); compution of time (§ 12.5); extensions of time, adjournments, and postponements (§ 12.6); *ex parte* communications (§ 12.7); and signature (§ 12.12). Commission opinions and orders interpreting these provisions in the context of reparations proceedings would be precedential.

Proposed § 9.4(a) provides that, unless otherwise specifically provided,[17] an original and two conformed copies of all documents required to be filed would be filed with the Proceedings Clerk by delivery in person or by mail. Proposed § 9.4(b) also sets out the formalities of filing and the requirements governing service. Among other things, any document required to be filed with the Proceedings Clerk must, at or before the time of filing, be served upon the other parties. Also, a party would be required to use a means of filing which is at least as expeditious as that used in serving that document upon the other parties.

One copy of all motions, petitions or applications made in the course of the proceeding, all notices of appeal, all briefs, and letters to the Commission or an employee thereof would be served by a party upon all other parties. Service could be either personal or by mail, but a party would be required to use a means of service that is at least as expeditious as that used in filing a document with the Commission. Service by mail would be complete upon deposit of the document in the mail. Where service is effected by mail, the time within which the person served may respond thereto would be increased by three days. Proposed § 9.4(c).

Proposed § 9.4(d) further provides that the Proceedings Clerk would assign a docket number upon receipt of the notice of appeal (or petition for stay) and thereupon maintain the official docket. Under current Rule 9.32, the docket number is not assigned until the Commission grants review.

Proposed § 9.5 provides that an application for a form of relief not otherwise specifically provided for in this part could be made by a written motion. The motion would state the relief sought and the basis therefor and set forth the authority relied upon. Any party coud serve and file a written response to a motion within ten days. Proposed § 9.5 also provides that the Commission could act on motions for procedural orders at any time, without awaiting a response thereto, but any party adversely affected by such Commission action could request reconsideration, vacation or modification of the action.

Proposed § 9.6 provides that if any party fails to file any document or make any appearance which is required under this part, the Commission could, upon its own motion or upon the motion of any party, dismiss the proceeding, or, based

rebut the reasons which were the basis for the denial. 43 FR 41950, 41962 (September 19, 1978). If an exchange determines to deny an application, section 8c(1) of the Act provides, *inter alia*, that the action must be taken in accordance with exchange rules and that the exchange must provide written notice to the Commission and the person denied access within 30 days and include the reasons for the exchange action. Current Rule 9.11 as well as proposed § 9.11 set forth the required form and manner of this notice.

[16] In order to reduce the paperwork burden on exchanges and the Commission, proposed § 9.11(a) no longer would require an exchange to notify the Commission of any summary action which results in the imposition of a minor penalty for violation of exchange rules regarding decorum or attire. The exchange still would be required to notify the sanctioned member(s) and publish the notice relating to that summary action (proposed §§ 9.11(a), 9.13). The provisions governing notice to the affected person and to the Commission are discussed in more detail below.

[17] *See, e.g.*, proposed § 9.21(a) (two copies, but no original, of record of exchange proceeding to be filed with Proceedings Clerk).

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on the record before it, affirm, modify, set aside, or remand for further proceedings, in whole or in part, the decision of the exchange.

Proposed § 9.7 provides that at any time before there has been a final determination by the Commission, the parties may file a stipulation for dismissal based on a settlement agreement.[18] The Commission would issue an order which would terminate the proceeding before the Commission as to the parties to the settlement agreement. As under current Rule 9.5, the entry of such an order would not affect the Commission's authority under the Act.

In order to facilitate and expedite Commission review of exchange actions, proposed § 9.9(b)(1) would delegate to the Chief of the Opinions Section authority to issue orders which may dispose of or otherwise affect applications for review or cases on the Commission's review docket. Specifically, proposed § 9.9(b)(1) would delegate to the Chief of the Opinions Section, or the Chief's designee, the authority: (1) To waive or modify any of the requirements of proposed §§ 9.20 through 9.25 and to waive or modify the requirements of the Commission's Rules Relating to Reparations incorporated by proposed § 9.3 insofar as such requirements pertain to changes in time permitted for filing, and to the form, execution, service and filing of documents; (2) to enter orders under proposed § 9.5 (motions), § 9.6 (sanctions for noncompliance), and § 9.7 (settlement); (3) to decline to accept any notice of appeal, or petition for stay pending review, of matters specified in proposed § 9.1(b) and to so notify the appellant and the exchange; (4) to stay the effective date of a disciplinary action for a period of time, not to exceed two days, to enable the Commission to rule on a petition for stay filed under proposed § 9.24; (5) to decline to accept any document which has not been timely filed or perfected, as specified in the proposed rules; (6) to permit or deny permission to participate in a proceeding, as specified in proposed § 9.25; and (7) to enter orders which will facilitate or expedite Commission review. Proposed § 9.9(b)(2) provides that within seven days after service of a ruling issued pursuant to delegated authority, a party may file a petition for reconsideration by the Commission of the ruling. Unless the Commission orders otherwise, however, the filing of a petition for reconsideration would not operate to stay the effective date of such ruling.

Proposed § 9.9(a) provides that, to prevent undue hardship on any party or for other good cause shown, the Commission may waive any of the Part 9 rules in a particular case if it determines that no party will be prejudiced and that the end of justice will be served. *Compare* Commission rules 10.3(b), 12.4(b).[19]

Finally, under proposed § 9.32, the Commission, in its discretion, could hear oral agrument if any party requests it concurrently with the submission of its brief or if the Commission orders oral argument on its own motion.

IV. Notice of Disciplinary or Access Denial Proceeding

Current Commission Rule 9.11(a) requires exchanges to provide notice to the affected person and to the Commission of all disciplinary actions (and access denial actions) as well as other disciplinary penalties. Thus, the Commission's rules currently require an exchange to notify the Commission of minor summary sanctions for violations of exchange rules of decorum, attire or similar rules, even though these minor summary sanctions are not otherwise subject to Commission review under current Part 9.[20]

As proposed, however, the exchanges no longer would be required to notify the Commission of any summary action which results in the imposition of minor penalties, as authorized by Commission Rule 8.27, for the violation of exchange rules relating to decorum and attire (proposed § 9.11(a). In these instances, the exchanges would continue to be required to notify the person sanctioned and to provide notice to its membership (proposed §§ 9.11(c), 9.13). The Commission anticipates that this change, if adopted, would reduce substantially the exchanges' and the Commission's paperwork burdens.

This exemption from the general requirement that "9.11 notices" must be filed with the Commission would apply only to decorum and attire violations. An exchange would continue to be required to notify the Commission of any summary action which results in the imposition of minor penalties, as authorized by Commission Rule 8.27, for violation of exchange rules relating to the timely submission of records or similar activities. This distinction between the two types of summary actions reflects the Commission's judgment that evidence of the latter type of violation may be of some value in monitoring the effectiveness of the exchanges' self-regulatory enforcement programs and, more particularly, the exchanges' implementation of improved trade time recordation procedures. As discussed elsewhere in this **Federal Register** notice, however, neither of these types of summary actions would be appealable to the Commission. With the exception noted above, the notice provisions of proposed §§ 9.11 through 9.13 do not differ materially from the provisions of current Commission Rules 9.11 through 9.13.

As required by section 8c(1)(B) of the Act, the written notice must be provided to the affected person and to the Commission within thirty days after an exchange disciplinary or access denial action becomes final (proposed § 9.11(a). The written notice would include: (1) The name of the person against whom the disciplinary action or access denial action was taken; (2) a statement of the reasons for the disciplinary action or access denial action together with a listing of any rules which the person who was the subject of the disciplinary action or access denial action was charged with having violated or which otherwise serve as the basis of the exchange action; (3) a statement of the conclusions and findings made by the exchange with regard to each rule violation charged, or, in the event of settlement, a statement specifying those rule violations which the exchange has reason to believe were committed; (4) the terms of the disciplinary action or access denial action; (5) the date on which the exchange intends to make the disciplinary or access denial action effective; and (6) except as otherwise provided in proposed § 9.1(b), a statement informing the party subject to the disciplinary action or access denial action of the availability of Commission review of the exchange action pursuant to section 8c of the Act and Part 9 (proposed § 9.11(b)).

The last item (*i.e.*, proposed § 9.11(b)(6)) is not currently required to be included in a "9.11 notice." In light of the fifteen-day period permitted for initiating an appeal, the Commission proposes to require that the notice state the availability of Commission review pursuant to Section 8c to ensure that persons aggrieved by exchange actions will be informed adquately of their legal

[18] *Cf.* Fed. R. App. P. 42.

[19] Pursuant to this provision and notwithstanding proposed § 9.1(b), the Commission could, for example, determine to hear an appeal from an exchange arbitration proceeding where fraud or egregious prejudice is indicated. However, nothing herein is intended to limit access to any other forum for purposes of raising any matter referred to in proposed § 9.1(b).

[20] 43 FR 59343, 59346 (December 20, 1978).

rights and be able to act on them in a timely manner.

Proposed § 9.12(a) generally provides that an exchange disciplinary or access denial action may not become effective until at least fifteen days after the notice is delivered to the person disciplined or denied access. This fifteen-day period, which conforms to the fifteen-day deadline for the filing of a notice of appeal, would permit the person disciplined or denied access adequate time to apply to the Commission for a stay of the disciplinary or access denial action in appropriate cases.

In this connection, the Commission is well aware that certain situations may arise in which the integrity of the exchange's disciplinary program or the contracts trade on the exchange may be threatened and that the exchange must take prompt action. Therefore, proposed § 9.12(a) provides that an exchange may cause a disciplinary action to become effective before the expiration of the fifteen-day period if the exchange determines and states that (1) immediate action is necessary to protect the best interests of the marketplace (*see* Commission Rule 8.25) or (2) the actions of a person who is within the exchange's jurisdiction have impeded the progress of a disciplinary hearing (*see* Commission Rule 8.17(b)).

In addition, and consistent with current practice, an exchange may cause a disciplinary action to become effective immediately where a person has violated exchange rules relating to decorum or attire, or timely submission of accurate records required for clearing or verifying each day's transactions or other similar activities (*see* Commission Rule 8.27). Finally, an exchange may cause a disciplinary or access denial action to become effective in less than fifteen days if the person who is the subject of the disciplinary or access denial action has consented to the penalty and the timing of its effectiveness.

Proposed § 9.13 would continue the provisions of current Commission Rule 9.12, which require that whenever an exchange suspends, expels or otherwise disciplines, or denies any person access to the exchange, it must make public its findings by disclosing at least the information contained in the notice required by proposed § 9.11. The exchange must make such findings public as soon as the disciplinary action or access denial action becomes effective in accordance with the provisions of proposed § 9.12 by posting a notice in a conspicuous place on its premises to which its members and the public regularly have access for a period of five consecutive business days. Thereafter, the exchange must maintain and make available for public inspection a record of the information contained in the disciplinary or access denial notice.

V. Miscellaneous Provisions

Proposed § 9.1(c) provides that, unless otherwise ordered, the amendments being proposed by the Commission would apply in their entirety to all appeals, and all matters relating thereto, filed on and after the effective date of the revised Part 9. Proposed § 9.1(c) also provides, however, that parties to any Part 9 proceeding pending on the effective date could, within thirty days of the effective date, elect to have the matter governed by the provisions of the revised Part 9. The Commission invites public comment on this aspect of its proposal and reiterates its interest in receiving additional comments on suggested changes in the Part 9 rules that would help streamline the procedures and clarify the standards governing appeal and review.

VI. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with that Act, the Commission has submitted this proposed rule and its associated information collection requirements to the Office of Management and Budget.

Persons wishing to comment on the information collection requirements should contact Robert Neal, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503. Telephone: (202) 395-7340. Copies of the information collection submission to OMB are available from Joseph G. Salazar, Clearance Officer, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-9735.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. With respect to persons seeking Commission review, the proposed regulation would impose no additional regulatory burden since Commission review of exchange disciplinary, access denial, and other adverse actions is already provided for by the provisions of current Part 9 of the Commission's rules. Indeed, the proposed revisions would ease the regulatory burden by reducing the number of submissions and by providing greater certainty to the standards and procedures governing such review. Finally, appeal to the Commission pursuant to this part is elective and one of several forums in many instances. The Commission previously has determined that contract markets are not "small entities" within the RFA and, accordingly, the requirements of the RFA do not apply to those entities. 47 FR 18618 (April 30, 1982). Accordingly, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman of the Commission hereby certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 9

Administrative practice and procedure, Commodity exchanges, Commodity futures.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a), 4c, 5a, 6a, and 8c thereof, 7 U.S.C. 4a, 6c, 7a, 12a and 12c, and the authority contained in section 26(c) of the Futures Trading Act of 1978, 7 U.S.C. 16a, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

17 CFR Part 9 is proposed to be revised to read as follows:

PART 9—RULES RELATING TO REVIEW OF EXCHANGE DISCIPLINARY, ACCESS DENIAL OR OTHER ADVERSE ACTIONS

Subpart A—General Provisions

Sec.

9.1 Scope of rules.
9.2 Definitions.
9.3 Applicable provisions of 17 CFR Part 12.
9.4 Filing and service; official docket.
9.5 Motions.
9.6 Sanctions for noncompliance.
9.7 Settlement.
9.8 Practice before the Commission.
9.9 Waiver of rules; delegation of authority

Subpart B—Notice and Effective Date of Disciplinary Action or Access Denial Action

9.10 [Reserved]
9.11 Form, contents and delivery of notice of disciplinary or access denial action.
9.12 Effective date of disciplinary or access denial action.
9.13 Publication of notice.
9.14–9.19 [Reserved]

Subpart C—Initial Procedure With Respect to Appeals

9.20 Notice of appeal.
9.21 Record of exchange proceeding.
9.22 Appeal brief.
9.23 Answering brief.

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9.24 Petition for stay pending review.
9.25 Limited participation of interested persons.
9.26 Participation of Commission staff.
9.27–9.29 [Reserved]

Subpart D—Commission Review of Disciplinary, Access Denial or Other Adverse Action

9.30 Scope of review.
9.31 Commission review of disciplinary or access denial action on its own motion.
9.32 Oral argument.
9.33 Final decision by the Commission.

Authority: 7 U.S.C. 4a, 6c, 7a, 12a, 12c, 16a.

Subpart A—General Provisions

§ 9.1 Scope of rules.

(a) *Matters included.* This part governs the review by the Commission, pursuant to section 8c of the Act, as amended, of any suspension, expulsion, disciplinary or access denial action, or other adverse action by an exchange.

(b) *Matters excluded.* This part does not apply to and the Commission will not accept notices of appeal, or petitions for stay pending review, of:

(1) Any arbitration proceeding, regardless of whether the proceeding was conducted pursuant to the provisions of section 5a(11) of the Act or involved a controversy between members of an exchange;

(2) Except as provided in §§ 9.11(a), 9.11(b) (1) through (5), 9.11(c), 9.12(a) and 9.13 (concerning the notice, effective date and publication of a disciplinary or access denial action), any summary action authorized under the provisions of § 8.27 of this chapter imposing a minor penalty for the violation of exchange rules relating to decorum or attire, or relating to the timely submission of accurate records required for clearing or verifying each day's transactions or other similar activities; and

(3) Any exchange action arising from a claim, grievance, or dispute involving cash market transactions which are not a part of, or directly connected with, any transaction for the purchase, sale, delivery or exercise of a commodity for future delivery or a commomdity option.

The Commission will, upon its own motion or upon motion filed pursuant to § 9.21(b), promptly notify the appellant and the exchange that it will not accept the notice of appeal of petition for stay of matters specified in this paragraph. The determination to decline to accept a notice of appeal will be without prejudice to the appellant's right to seek alternate forms of relief that may be available in any other forum.

(c) *Applicability of these Part 9 Rules.* Unless otherwise ordered, these rules will apply in their entirety to all appeals, and matters relating thereto filed on or after [effective date]. Any Part 9 proceeding pending before the Commission on [effective date] will continue to be governed by the Commission's former Part 9 Rules, 17 CFR Part 9 (1986), except that the parties to any proceeding pending on [effective date] may, within 30 days of [effective date], by written stipulation executed by all parties, and filed with the Proceeding Clerk before the Commission's final decision is rendered, elect to have the matter governed by the provisions of this Part 9, as amended.

§ 9.2 Definitions.

For purposes of this part:

(a) "Access denial action" means any proceeding other than a disciplinary action by an exchange that denies or limits the privileges of membership.

(b) "Disciplinary action" means any suspension, expulsion or other penalty (as defined in § 8.03(i) of this chapter) imposed on a member of an exchange by that exchange for violation of rules of the exchange, including summary actions.

(c) "Exchange" means any board of trade which has been designated as a contract market.

(d) "Exchange proceeding" means any formal or informal proceeding by an exchange which results in a disciplinary action, access denial action or other adverse action.

(e) "Mail" means properly addressed and postpaid first class mail, and includes overnight delivery service.

(f) "Member of an exchange" means any person who is admitted to membership or has been granted membership privileges on an exchange, any employee, officer, partner, director or affiliate of such member or person with membership privileges including any associated person, and any other person under the supervision or control of such member or person with membership privileges.

(g) "Other adverse action" and "adverse action" include any exchange action, other than an access denial action or disciplinary action, that adversely affects any person, whether or not a member of the exchange.

(h) "Party" includes the person filing a notice of appeal or petition for stay who has been the subject of a disciplinary, access denial or other adverse action by an exchange; that exchange; any person participating in a proceeding under this part pursuant to § 9.25; and the Division of Trading and Markets when participating in a proceeding under this part pursuant to § 9.26.

(i) "Record of the exchange proceeding" means all testimony, exhibits, papers and records produced at or filed in an exchange proceeding or served on a party to that proceeding; all documents, minutes or other exchange records serving as a basis for or reflecting the deliberations concerning the disciplinary action, access denial action or other adverse action taken by an exchange; a transcript or recording of any proceeding before any body of the exchange in connection with the exchange proceeding; and a copy of all exchange rules which form the basis for the exchange proceeding.

(j) "Rules of the exchange" means any constitutional provision, article of incorporation, by law, rule, regulation, resolution, or written and publicly available interpretation or stated policy of the exchange, or instrument corresponding thereto.

(k) "Summary action" means a disciplinary action resulting in the imposition of a penalty on a member of an exchange for violation of rules of the exchange authorized under the provisions of § 8.17(b) (penalty for impeding progress of hearing), § 8.25 (member responsibility action), or § 8.27 (penalty for violation of rules relating to decorum, attire, submission of records or similar activities) of this chapter.

§ 9.3 Applicable provisions of 17 CFR Part 12.

Except as otherwise provided in this part, the following provisions of the Commission's Rules Relating to Reparations contained in Part 12 of this chapter apply to this part: § 12.3 (Business Address; Hours); § 12.5 (Computation of Time); § 12.6 (Extension of Time; Adjournments; Postponements); § 12.7 (Ex Parte Communications); and § 12.12 (Signature).

§ 9.4 Filing and service; official docket.

(a) *Filing with the Proceedings Clerk; proof of filing; proof of service.* Any document that is required by this part to be filed with the Proceedings Clerk must be filed by delivering it in person or by mail to: Proceedings Clerk, Office of Proceedings, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. To be timely filed under this part, a document must be delivered or mailed to the Proceedings Clerk within the time prescribed for filing. A party must use a means of filing which is at least as expeditious as that used in serving that document upon the other parties. Proof of filing must be made by attaching to the document for filing an affidavit of filing executed by any person 18 years of age or older or a proof of filing executed by an attorney-at-law qualified to practice before the Commission. The proof of filing must certify that the attached document was deposited in the mail, with first-class postage prepaid, addressed to the Proceedings Clerk, Office of Proceedings, 2033 K Street, NW., Washington, DC 20581, on the date specified in the affidavit. Proof of service of a document must be made by filing with the Proceedings Clerk, simultaneously with the filing of the required document, an affidavit of service executed by any person 18 years of age or older or a certification of service executed by an attorney-at-law qualified to practice before the Commission. The proof of service must identify the persons served, state that service has been made, set forth the date of service, and recite the manner of service.

(b) *Formalities of filing.*—(1) *Number of copies.* Unless otherwise specifically provided, an original and two conformed copies of all documents filed with the Commission in accordance with the provisions of this part must be filed with the Proceedings Clerk.

(2) *Title page.* All documents filed with the Proceedings Clerk must include at the head thereof, or on a title page, the name of the Commission, the title of the proceeding, the docket number (if one has been assigned by the Proceedings Clerk), the subject of the particular document and the name of the person on whose behalf the document is being filed.

(3) *Paper, spacing, type.* All documents filed with the Proceedings Clerk must be typewritten, must be on one grade of good white paper no less than 8 or more than 8½ inches wide and no less than 10½ or more than 11½ inches long, and must be bound on the top only. They must be double-spaced, except for long quotations (3 or more lines) and footnotes which should be single-spaced.

(4) *Signature.* The original copy of all papers must be signed in ink by the person filing the same or by his duly authorized agent or attorney.

(c) *Service.*—(1) *General requirements.* All documents filed with the Proceedings Clerk must, at or before the time of filing, be served upon all parties. A party must use a means of service which is at least as expeditious as that used in filing that document with the Proceedings Clerk. One copy of all motions, petitions or applications made in the course of the proceeding, all notices of appeal, all briefs, and letters to the Commission or an employee thereof must be served by a party upon all other parties.

(2) *Manner of service.* Service may be either personal or by mail. Service by mail is complete upon deposit of the document in the mail. Where service is effected by mail, the time within which the person served may respond thereto will be increased by three days.

(3) *Designation of person to receive service.* The first document filed in a proceeding by or on behalf of any party must state on the first page the name and postal address of the person who is authorized to receive service for the party of all documents filed in the proceeding. Thereafter, service of documents must be made upon the person authorized unless service on a different authorized person or on the party himself is ordered by the Commission, or unless pursuant to § 9.8 the person authorized is changed by the party upon due notice to all other parties. Parties must file and serve notification of any changes in the information provided pursuant to this subparagraph as soon as practicable after the change occurs.

(4) *Service of orders and decisions.* A copy of all notices, rulings, opinions and orders of the Commission will be served on each of the parties and will be deemed served upon deposit in the mail.

(d) *Official docket.* Upon receipt of a notice of appeal filed in accordance with § 9.20, or a petition for stay pending review filed in accordance with § 9.24, the Proceedings Clerk will establish and thereafter maintain the official docket of that proceeding and will assign a docket number to the proceeding.

§ 9.5 Motions.

(a) *In general.* An application for a form of relief not otherwise specifically provided for in this part must be made by a written motion, filed with the Proceedings Clerk. The motion must state the relief sought and the basis for the relief and may set forth the authority relied upon.

(b) *Answer to motions.* Any party may serve and file a written response to a motion within ten days after service of the motion, or within such longer or shorter period as established by these rules, or as the Commission may direct.

(c) *Motions for procedural orders.* Motions for procedural orders, including motions for extensions of time, may be acted on at any time, without awaiting a response thereto. Any party adversely affected by such action may request reconsideration, vacation or modification of the action.

(d) *Dilatory motions.* Frivolous or repetitive motions dealing with the same subject matter will not be permitted and such motions will be summarily denied.

§ 9.6 Sanctions for noncompliance.

In the event that any party fails to file any document or make any appearance which is required under this part, the Commission may, in its discretion, and upon its own motion or upon the motion of any party to the proceeding, dismiss the proceeding before it, or, based on the record before it, affirm, modify, set aside, or remand for further proceedings, in whole or in part, the decision of the exchange.

§ 9.7 Settlement.

At any time before there has been a final determination by the Commission with respect to any notice of appeal filed in accordance with § 9.20, the parties may file a stipulation for dismissal based on a settlement agreement. The Commission will issue an order which will terminate the proceeding before the Commission as to the parties to the settlement agreement. The entry of such an order does not affect the Commission's authority under the Act.

§ 9.8 Practice before the Commission.

(a) *Practice.*—(1) *By non-attorneys.* An individual may appear *pro se* (on his own behalf); a general partner may represent the partnership; a *bona fide* officer of a corporation, trust or association may represent the corporation, trust or association.

(2) *By attorneys.* An attorney-at-law who is admitted to practice before the highest Court in any State or territory, or of the District of Columbia, who has not been suspended or disbarred from appearance and practice before the Commission in accordance with provisions of Part 14 of this chapter may represent parties as an attorney in proceedings before the Commission.

(b) *Debarment of counsel or representative during the course of a proceeding.* Whenever, while a proceeding is pending before the Commission, the Commission finds that a person acting as counsel or representative for any party to the proceeding is guilty of contemptuous conduct, the Commission may order that such person be precluded from further acting as counsel or representative in the proceeding. The proceeding will not be delayed or suspended pending disposition of the appeal; *Provided,* That the Commission may suspend the proceedings for a reasonable time for the purpose of enabling the party to obtain other counsel or representative.

(c) *Withdrawal or representation.* Withdrawal from representation of a party will be only by leave of the Commission. Such leave to withdraw

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may be conditioned on the attorney's (or representative's) submission of an affidavit averring that the party represented has actual knowledge of the withdrawal, and such affidavit must include the name and address of a successor counsel (or representative) or a statement that the represented party has determined to proceed *pro se*, in which case, the statement must include the address where the party can thereafter be served.

§ 9.9 Waiver of rules; delegation of authority.

(a) *Standards for waiver; notice to parties.* To prevent undue hardship on any party or for other good cause shown the Commission may waive any rule in this part in a particular case and may order proceedings in accordance with its direction upon a determination that no party will be prejudiced thereby and that the ends of justice will be served. Reasonable notice will be given to all parties of any action taken pursuant to this paragraph.

(b) *Delegation of authority.* (1) The Commission hereby delegates, until the Commission orders otherwise, to the Chief of the Opinions Section, or the Chief's designee, the authority:

(i) To waive or modify any of the requirements of §§ 9.20–9.25 and to waive or modify the requirements of the Commission's Rules Relating to Reparations incorporated by § 9.3 insofar as such requirements pertain to changes in time permitted for filing, and to the form, execution, service and filing of documents;

(ii) To enter orders under §§ 9.5, 9.6 and 9.7;

(iii) To decline to accept any notice of appeal, or petition for stay pending review, of matters specified in § 9.1(b) and to so notify the appellant and the exchange;

(iv) To stay the effective date of a disciplinary action for a period of time, not to exceed two days, to enable the Commission to rule on a petition for stay filed under § 9.24;

(v) To decline to accept any document which has not been timely filed or perfected, as specified in these rules;

(vi) To permit or deny permission to participate in a proceeding as specified in § 9.25; and

(vii) To enter any order which will facilitate or expedite Commission review.

(2) Within seven days after service of a ruling issued pursuant to paragraph (b)(1) of this section, a party may file with the Proceeding Clerk a petition for Commission reconsideration of the ruling. Unless the Commission orders otherwise, the filing of a petition for reconsideration will not operate to stay the effective date of such ruling.

(3) The Chief of the Opinions Section may submit to the Commission for its consideration any matter which has been delegated pursuant to paragraph (b)(1) of this section.

(4) Nothing in this section will be deemed to prohibit the Commission, at its election, from exercising the authority delegated to the Chief of the Opinions Section under this section.

Subpart B—Notice and Effective Date of Disciplinary Action or Access Denial Action

§ 9.10 [Reserved]

§ 9.11 Form, contents and delivery of notice of disciplinary or access denial action.

(a) *When required.* Whenever an exchange decision pursuant to which a disciplinary action or access denial action is to be imposed has become final, the exchange must, within thirty days thereafter, provide written notice of such action to the person against whom the action was taken and to the Commission: *Provided,* That the exchange is not required to notify the Commission of any summary action, as authorized under the provisions of § 8.27 of this chapter, which results in the imposition of minor penalties for the violation of exchange rules relating to decorum or attire. No final disciplinary or access denial action may be made effective by the exchange except as provided in § 9.12.

(b) *Contents of notice.* For purposes of this part, the written notice of a disciplinary action or access denial action may be either a copy of a written decision which accords with §§ 8.16, 8.18, or 8.19(c) of this chapter (including copies of any materials incorporated by reference) or other written notice which must include:

(1) The name of the person against whom the disciplinary action or access denial action was taken;

(2) A statement of the reasons for the disciplinary action or access denial action together with a listing of any rules which the person who was the subject of the disciplinary action or access denial action was charged with having violated or which otherwise serve as the basis of the exchange action;

(3) A statement of the conclusions and findings made by the exchange with regard to each rule violation charged or, in the event of settlement, a statement specifying those rule violations which the exchange has reason to believe were committed;

(4) The terms of the disciplinary action or access denial action;

(5) The date on which the action was taken and the date of the exchange intends to make the disciplinary or access denial action effective; and

(6) Except as otherwise provided in § 9.1(b), a statement informing the party subject to the disciplinary action or access denial action of the availability of Commission review of the exchange action pursuant to section 8c of the Act and this part.

(c) *Delivery and filing of the notice.* Delivery of the notice must be made either personally to the person who was the subject of the disciplinary action of access denial action or by mail to such person at the person's last known address. A copy of the notice must be filed on the same date with the Commission, either in person during normal business hours or by mail to: Contract Markets Section, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K St., NW., Washington, DC 20581. The notice filed with the Commission must additionally include the date on which the notice was delivered to the person disciplined or denied access and state whether delivery was personal or by mail.

(d) *Effect of delivery and filing by mail.* Filing by mail to the Commission and the delivery by mail to the person disciplined or denied access will be complete upon deposit in the mail of a properly addressed and postpaid document. Where delivery to the person disciplined or denied access is effected by such mail, the time within which a notice of appeal or petition for stay may be filed will be increased by three days.

(e) *Certification.* Copies of the notice and the submission of any additional information provided pursuant to this section must be certified as true and correct by a duly authorized officer, agent or employee of the exchange.

§ 9.12 Effective date of disciplinary or access denial action.

(a) *Effective date.* Any disciplinary or access denial action taken by an exchange will not become effective until at least fifteen days after the written notice prescribed by § 9.11 is delivered to the person disciplined or denied access: *Provided, however,* That the exchange may cause a disciplinary action to become effective prior to that time if:

(1) As authorized by § 8.25 of this chapter, the exchange reasonably believes, and so states in its written decision, that immediate action is necessary to protect the best interests of the marketplace; or

(2) As authorized by § 8.17(b) of this chapter, the exchange determines, and so states in its written decision, that the actions of a person who is within the exchange's jurisdiction have impeded the progress of a disciplinary hearing; or

(3) As authorized by § 8.27 of this chapter, the exchange determines that a person has violated exchange rules relating to decorum or attire, or timely submission of accurate records required for clearing or verifying each day's transactions or other similar activities; or

(4) The person against whom the action is taken has consented to the penalty to be imposed and to the timing of its effectiveness.

(b) *Notice of early effective date.* If the exchange determines in accordance with paragraph (a)(1) of this section that a disciplinary action will become effective prior to the expiration of fifteen days after written notice thereof, it must notify the person disciplined in writing, either personally or by telegram or other means of written telecommunication to the person's last known address, stating the reasons for the determination. The exchange must also by telegram or other means of written telecommunication immediately notify the Commission (Attention: Contracts Markets Section, Division of Trading and Markets). Where notice is delivered telegram or other means of written telecommunication, the time within which the person so notified may file a petition for stay pursuant to § 9.24(a)(2) will be increased by one day.

§ 9.13 Publication of notice.

Whenever an exchange suspends, expels of otherwise disciplines, or denies any person access to the exchange, it must make public its findings by disclosing at least the information contained in the notice required by § 9.11(b). An exchange must make such findings public as soon as the disciplinary action or access denial action becomes effective in accordance with the provisions of § 9.12 by posting a notice in a conspicuous place on its premises to which its members and the public regularly have access for a period of five consecutive business days. Thereafter, the exchange must maintain and make available for public inspection a record of the information contained in the disciplinary or access denial notice.

§§ 9.14–9.19 [Reserved]

Subpart C—Initial Procedure With Respect to Appeals

§ 9.20 Notice of appeal.

(a) *Time of file.* Except as provided in § 9.1(b), any person who is the subject of disciplinary or access denial action by an exchange or any person who is otherwise adversely affected by any other action of an exchange may, at any time within fifteen days after notice of the disciplinary or access denial action has been delivered to the person disciplined or denied access in accordance with § 9.11, or within fifteen days after notice of an other adverse action, file a a notice of appeal of such disciplinary, access denial or other adverse action. The Commission may dismiss any notice of appeal that is not timely filed.

(b) *Contents.* The notice of appeal need consist only of a brief statement indicating that the party is requesting Commission review of the exchange action, and must include:

(1) The name and address of the appellant, and any duly authorized agent or officer of the appellant;

(2) The name and docket number of the exchange proceeding;

(3) The date on which the disciplinary, access denial or other adverse action was imposed by the exchange or the date on which the final exchange decision was rendered, and the dates upon which the exchange action has or will become final and effective;

(4) A copy of the notice provided to the appellant by the exchange in accordance with the provisions of § 9.11, in the case of a disciplinary or access denial action, or otherwise, in the case of any other adverse exchange action;

(5) The relief sought from the action of the exchange;

(6) The appellant's request for a copy of the record of the exchange proceeding, and a representation that the appellant agrees to pay to the exchange reasonable fees, as provided in the rules of the exchange, for printing that copy; and

(7) A nonrefundable filing fee of $100 remitted by check, bank draft or money order, payable to the Commodity Futures Trading Commission.

§ 9.21 Record of exchange proceeding.

(a) *Filing of record.* Within fifteen days after service of the notice of appeal, the exchange must file two copies of the record of the exchange proceeding (as defined in § 9.2(i)) with the Proceedings Clerk, and serve a copy of the appellant and any other party to the proceeding, provided that such person has agreed to pay the exchange reasonable fees, as provided in the rules of the exchange, for printing the copy. The record must be bound as a unit, must be chronologically indexed and tabbed, must be certified as correct by a duly authorized official, agent or employee of the exchange, and must contain a certificate of service on the appellant or any other party to the proceeding (or waiver of service for failure to pay costs pursuant to this rule).

(b) *Motion to postpone the filing of the record.* Within fifteen days after service of the notice of appeal, the exchange may file a motion to postpone the filing of the record pending a ruling on a motion that the Commission not accept a notice of appeal of any matter that the exchange contends is excluded by § 9.1(b).

§ 9.22 Appeal brief.

(a) *Time to file.* Any person who has filed a notice of appeal in accordance with the provisions of § 9.20 must perfect the appeal by filing an appeal brief with the Proceedings Clerk within thirty days after service of the record of the exchange proceeding. The Commission may dismiss any appeal for which an appeal brief is not timely filed.

(b) *Contents.* Each appeal brief submitted to the Commission pursuant to this section must include, in the order indicated:

(1) A statement of the issues presented for review;

(2) A statement of the case. The statement must first indicated briefly the nature of the case and include a full description of the disciplinary, access denial or other adverse action. There must follow a clear and concise statement of all facts relevant to the consideration of the appeal including, if known, each alleged act or omission forming the basis of the exchange action, with appropriate references to the record of the exchange proceeding;

(3) An argument. The argument may be preceded by a summary. The argument must contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, and citations to relevant authorities and to parts of the record of the exchange proceeding; and

(4) A conclusion stating the precise relief sought.

(c) *Length of appeal brief.* Without prior leave of the Commission, the apppeal brief may not exceed thirty-five pages, exclusive of any table of contents, table of cases, index and appendix containing transcripts of

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testimony, exhibits, statutes, rules, regulations or similar materials.

§ 9.23 Answering brief.

(a) *Time for filing answering brief.* Within thirty days after service of the appeal brief, the exchange must file with the Commission an answering brief.

(b) *Contents of answering brief.* The answering brief generally must follow the same style as prescribed for the appeal brief but may omit a statement of the issues or of the case if the exchange does not dispute the issues or the statement of the case contained in the appeal brief.

(c) *Length of answering brief.* Without prior leave of the Commission, the answering brief may not exceed thirty-five pages, exclusive of any table of contents, table of cases, index and appendix containing transcripts of testimony, exhibits, statutes, rules, regulations or similar materials.

§ 9.24 Petition of stay pending review.

(a) *Time to file.* (1) Within ten days after the notice of the disciplinary or access denial action has been delivered in accordance with § 9.11 to a person disciplined or denied access, that person may petition the Commission to stay the disciplinary or access denial action pending consideration by the Commission of the notice of appeal and, if granted, the appeal underlying the notice of appeal. The petition for stay must be accompanied by the notice of appeal.

(2) Within ten days after a notice of summary action has been delivered in accordance with § 9.12(b) to a person who is the subject of a summary action authorized by § 8.25 of this chapter, that person may petition the Commission to stay the effectiveness of the summary action pending completion of the exchange proceeding conducted as authorized by § 8.26 of this chapter.

(3) The Commission may deny any petition for stay which is not timely filed or which is not otherwise in accord with these rules.

(b) *Contents of petition for stay.* A petition filed under this section must state the reasons that the stay is requested and the facts relied upon, as specified in § 9.20. Averments of the petition must be supported by affidavits, other sworn statements or copies thereof, or a stipulation as to those facts which are not in dispute. Based upon the petition, the Commission, in its discretion, may order a stay of the disciplinary action or access denial action.

(c) *Response to petition.* The exchange may serve and file a written response to any petition for a stay within five days after service of the petition.

(d) *Standards for granting petition for stay.* The Commission will promptly determine whether to grant or deny a petition for stay and may act upon a petition at any time, without waiting for a response thereto. In determining whether to grant or deny the petition for stay, the Commission will consider, among other things, whether the petitioner has established:

(1) Petitioner's likelihood of success on the merits; and

(2) The denial of the stay would cause irreparable harm to the petitioner; and

(3) That granting the stay would not endanger orderly trading or otherwise cause substantial harm to the exchange or market participants; and

(4) That granting the stay would not be contrary to the Act, and the rules, regulations and orders of the Commission thereunder.

§ 9.25 Limited participation of interested persons.

On its own motion or upon motion of any person asserting a direct and substantial interest in the outcome of a proceeding conducted under this part, the Commission, in its discretion, may permit the limited participation by such interested person in the proceeding. A motion for leave to participate in the proceeding must be filed promptly, must identify the interest of that person and must state the reasons why participation in the proceeding by that person is desirable, and must state whether that person requests a copy of the record of the exchange proceeding to the extent permitted by section 8c(1) (B) of the Act and that such person agrees to pay the exchange reasonable fees, as provided in the rules of the exchange, for printing the copy.

§ 9.26 Participation of Commission staff.

Within ten days after the receipt by the Division of Trading and Markets of the answering brief, the Division of Trading and Marketing may file with the Proceedings Clerk a notice of intention to participate in the proceedings as *amicus curiae*. Within thirty days after filing the notice of intention to participate, the Division may file a brief as *amicus curiae*. Without prior leave of the Commission, the brief may not exceed thirty-five pages. The brief must be filed and served on the appellant, exchange and any other parties to the proceeding in the manner specified by these rules. Within ten days after service of the Division's brief, any party may file a reply to the Division's brief. After the filing of the notice of intent to participate, no employee of the Division of Trading and Markets may thereafter make any communication relating to the proceeding, other than on the record of the proceeding before the Commission, to any Commissioner or Commission decisional employee.

§§ 9.27–29 [Reserved]

Subpart D—Commission Review of Disciplinary, Access Denial or Other Adverse Action

§ 9.30 Scope of review.

On review, the Commission may, in its discretion, consider *sua sponte* any issues arising from the record before it and may base its determination thereon, or limit the issues to those presented in the statement of issues in the briefs, treating those issues not raised as waived.

§ 9.31 Commission review of disciplinary or access denial action on its own motion.

(a) *Request for additional information.* Where a person disciplined or denied access has not appealed the exchange decision to the Commission, upon review of the notice specified in § 9.11, the Division of Trading and Markets may request that the exchange file with the Division the record of the exchange proceeding, or designated portions of the record, a brief statement of the evidence and testimony adduced to support the exchange's findings that a rule or rules of the exchange were violated and such recordings, transcripts and other documents applicable to the particular exchange proceeding as the Division may specify. The exchange must promptly advise the person who is the subject of the disciplinary or access denial action of the Division's request. Within thirty days after service of the Division's request, the exchange must file the information requested with the Division and, upon request, deliver that information to the person who is the subject of the disciplinary or access denial action. Delivery and filing must be in the manner prescribed by §9.11(c). A person subject to the disciplinary action or access denial action requesting a copy of the information furnished to the Division must, if the exchange rules so provide, agree to pay the exchange reasonable fees for printing the copy.

(b) *Review on motion of the Commission.* The Commission may institute review of an exchange disciplinary or access denial action on its own motion. Other than in extraordinary circumstances, such review will be initiated within 180 days after the Commission has received the notice of exchange action provided for in § 9.11. If the Commission should institute review on its own motion, it will issue an order permitting the person who is the subject of the disciplinary or access denial action an opportunity to file an appropriate submission, and the exchange of an opportunity to file a reply thereto.

§ 9.32 Oral argument.

(a) *On motion of Commission.* On its own motion, the Commission may, in its discretion, hear oral argument by the parties any time before the decision of the Commission is filed with the Proceedings Clerk.

(b) *On request of party.* Any party may file with the Proceedings Clerk a request in writing for the opportunity to present oral argument before the Commission, which the Commission may, in its discretion, grant or deny. A request under this paragraph must be filed concurrently with the party's brief.

(c) *Reporting and transcription.* Oral argument before the Commission will be recorded and transcribed unless the Commission directs otherwise. In the event the Commission affords the parties the opportunity to present oral argument before the Commission, the oral argument will proceed in accordance with the provisions of § 10.103(b) of this chapter.

§ 9.33 Final decision by the Commission.

(a) *Opinion and order.* Upon review, the Commission may affirm, modify, set aside, or remand for further proceedings, in whole or in part, the decision of the exchange. The Commission's decision will be contained in its opinion and order which will be based upon the record before it, including the record of the exchange proceeding, and any oral argument made in accordance with § 9.32. Except as provided in paragraph (b) of this section, the opinion and order will constitute the final decision of the Commission, effective upon service on the parties. In the event the Commission is equally divided as to its decision, the Commission will affirm without opinion the decision of the exchange, which will constitute the Commission's final decision.

(b) *Order of summary affirmance.* If the Commission finds that the result reached in the decision of the exchange is substantially correct and that none of the arguments on appeal made by the appellant raise important questions of law or policy, the Commission may, by appropriate order, summarily affirm the decision of the exchange without opinion, which will constitute the Commission's final decision. The Commission, in its discretion, may provide that an order of summary affirmance is not to be construed as expressing its views on the merits of a particular matter.

(c) *Standards of review.* In reviewing an exchange disciplinary, access denial or other adverse action, the Commission will consider whether:

(1) The exchange disciplinary, access denial or other adverse action was taken in accordance with the rules of the exchange;

(2) Fundamental fairness was observed in the conduct of the proceeding resulting in the disciplinary, access denial or other adverse action;

(3)(i) In the case of a disciplinary action, the record contains substantial evidence of a violation of the rules of the exchange, or (ii) in the case of an access denial or other adverse action, the record contains substantial evidence supporting the exchange action; and

(4) The disciplinary, access denial or other adverse action otherwise accords with the Act and the rules, regulations and orders of the Commission thereunder.

Issued in Washington, D.C. on February 3, 1987, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-2503 Filed 2-6-87; 8:45 am]

BILLING CODE 6351-01-M

Federal Energy Regulatory Commission

18 CFR Ch. 1

Basket Termination; Order Granting Rehearing for Purposes of Further Consideration

Issued February 4, 1987.

[Docket Nos. RM79-27-000, RM79-76-252, RM80-12-000, RM80-38-000, RM81-30-000, RM81-35-000, RM82-1-000, RM82-8-000, RM82-17-000, RM82-19-000, RM82-20-000, RM82-26-000, RM82-32-000, RM82-33-000, RM83-46-000, RM84-7-000, RM84-13-000, RM84-17-000]

AGENCY: Federal Energy Regulatory Commission DOE.

ACTION: Order granting rehearing for purposes of further consideration.

SUMMARY: On December 5, 1986, the Federal Energy Regulatory Commission (Commission) issued Order No. 459 terminating eighteen rulemaking dockets. On January 5, 1987, four applicants filed for rehearing of Commission Order No. 459, pursuant to Rule 713 of the Commission's rules of practice and procedure.

In this order, the Commission grants rehearing of its decision solely for the purpose of further consideration.

EFFECTIVE DATE: February 4, 1987.

FOR FURTHER INFORMATION CONTACT: Michael A. Stosser, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Petition for Rulemaking in the Matter of Determinations Whether Wells Drilled in More than 500-Foot Water Depth Should be Determined to be "High Cost Gas" Under Section 107(c)(5) of the Natural Gas Policy of 1978; Docket No. RM79-27-001.

Petition of Montana-Dakota Utilities Company to Reopen Order No. 99; Docket No. RM79-76-253, 254.

New, Onshore Production Wells; Proposed Rulemaking Amending Final Regulations Implementing the Natural Gas Policy Act of 1978; Docket No. RM80-12-001.

High-Cost Natural Gas Produced from Wells Drilled in Deep Water; Docket No. RM80-38-001, 002.

Petition for Rulemaking to Restrain Prices for Deregulated Gas; Docket No. RM81-30-001.

Petition for Rulemaking for Implementation of the Commission's Rulemaking Authority to Require Filing of Contracts Under section 315(c) of the Natural Gas Policy Act; Docket No. RM81-35-001.

Petition for Rulemaking to Establish Revised Policies Under the Natural Gas Act Respecting the Purchase and Use of Gas; Docket No. RM82-1-001.

High-Cost Natural Gas Produced from Intermediate Deep Drilling; Docket No. RM82-8-001.

Petition for Rulemaking to Investigate and Establish Rules Mitigating Market Distortions Under the Natural Gas Policy Act; Docket No. RM82-17-001.

Petition to Institute a Proceeding, Pursuant to the Natural Gas Policy Act, sections 104(b) and 106(c), to Increase the Price of Flowing Interstate Natural Gas; Docket No. RM82-19-001.

Petition for Rulemaking to Require Filing of Contracts Under section 315(c) of the Natural Gas Policy Act; Docket No. RM82-20-001.

Impact of the Natural Gas Policy Act on Current and Projected Natural Gas Markets; Docket No. RM82-26-001.

Limitation on Incentive Prices for High-Cost Gas to Commodity Values; Docket No. RM82-32-001, 002.

Comments in Opposition to Proposed Rulemaking in the Matter of High-Cost Gas Produced from Tight Formations, Docket No. RM79-76 (Ohio-2); Docket No. RM82-33-001, 002.

Petition for Rulemaking in the Matter of Take-or-Pay Clauses in Producer/Pipeline Contracts; Docket No. RM83-46-001.

Impact of Special Marketing Programs on Natural Gas Companies and Consumers; Docket No. RM84-7-001.

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Petition for Rulemaking on the Effect of Price Escalator Clauses; Docket No. RM84–13–001.

Petition for Rulemaking in the Matter of Reformation of Take-or-Pay Clauses; Docket No. RM84–17–001.

Order Granting Rehearing for Purposes of Further Consideration

(Issued February 4, 1987).

On January 5, 1987, certain applicants [1] filed for rehearing of Commission Order No. 459 [2] pursuant to Rule 713 of the Commission's rules of practice and procedure.[3] Order No. 459 terminated eighteen rulemaking dockets.

The Commission orders:

To have sufficient time to consider the issues raised in these applications the Commission grants rehearing of Order No. 459 solely for the purpose of further consideration. This order is effective on the date of issuances. This action does not constitute a grant or denial of any application on its merits, either in whole or part. As provided in § 385.713 of the Commission's rules of practice and procedure (18 CFR 385.713), no answers to these applications will be entertained by the Commission.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–2636 Filed 2–6–87; 8:45 am]

BILLING CODE 6717–01–M

[1] Exxon Corporation, Texas Gas Transmission Corporation, Texas Eastern Transmission Corporation, and Williams Natural Gas Company. Applicants respectively request rehearing of the termination of certain of the above-captioned dockets.

[2] 37 FERC ¶ 61,212 (1986).

[3] 18 CFR 385.713 (1986).

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 619]

Ozark Highlands, South Central Missouri Viticultural Area; Establishment

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in south central Missouri, to be known as "Ozark Highlands." This proposal is the result of a petition submitted by the Ozark Highland Vintners, an association of seven bonded wineries in the proposed area. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising will enable winemakers to label wines more precisely and will help consumers to better identify the wines they purchase.

COMMENT DATE: Written comments must be received by March 26, 1987.

ADDRESSES: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385, (Notice No. 619).

Copies of the petition, the proposed regulations, the appropriate maps, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4406, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226; (202) 566–7626.

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR Part 4 provide for the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

Part 9 of 27 CFR provides for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

ATF has received a petition, prepared by Mr. Laurence R. Carver of the Carver Wine Cellar and submitted on behalf of the Ozark Highland Vintners. The Ozark Highland Vintners is an association of seven Missouri wineries, of which the Carver Wine Cellar is one. The petition proposes establishment of a viticultural area to be known as "Ozark Highlands." All seven of the bonded wineries forming the Ozark Highland Vintners are located in the proposed area. An eighth winery in the area is not a member of that organization.

The proposed area includes portions of eleven Missouri counties, namely, Phelps, Maries, Osage, Gasconade, Franklin, Crawford, Texas, Shannon, Dent, Reynolds, and Pulaski. The area contains an estimated 2,000 square miles, within which there are approximately 500 acres planted to winegrapes. (Another 500 acres are in table grapes.) Grapes have been grown in the area since 1898, and commercial winemaking dates from 1930. The proposed area is entirely within the boundaries of the approved "Ozark Mountain" viticultural area.

Geography of the Area

According to the petition, the term " 'Ozark Highlands' refers specifically to the region formed by the undissected northern uplands of the Ozark plateau." The most distinctive of the region's distinguishing geographical features is its topography. Topographically, the proposed viticultural area consists of an elevated plateau, surrounded by highly dissected river and stream valleys. Relative to the surrounding areas, the "Ozark Highlands" are flat. They are also higher in elevation than their immediate surroundings. To support the claim of a topographical distinction, the petitioner submitted a map titled "Topography of Missouri," prepared in 1978 by the Geology and Land Survey of the Missouri Department of Natural Resources. This map shows the proposed "Ozark Highlands" area to be "Isolated Rolling Plains," which are surrounded by "Highly Dissected Plateaus." The topographical distinction is also apparent by examination of contour lines on the U.S.G.S. maps that

the petitioner submitted. One effect of topography on the viticulture of the "Ozark Highlands" is described by the petitioner as follows: "The higher elevations are often in the form of flat to rolling 'ridge tops' producing prominent and completely unshaded hilltops that are excellent sites for vineyards."

The "Ozark Highlands" can also be distinguished from surrounding areas by soil. In support of this distinction, the petitioner submitted a publication of the U.S. Department of Agriculture's Soil Conservation Service, entitled *Missouri General Soil Map & Soil Association Descriptions.* This publication shows that the soils of the Lebanon-Hobson-Clarksville series are especially distinctive of the proposed area. This soil series occurs extensively within the proposed area, but is found in only a few isolated spots outside of it. Other soils in the proposed area include the Gerald-Union-Goss series and the Hobson-Coulstone-Clarksville series. The latter series occurs to a limited extent within the proposed area, but immediately outside of the area, it becomes predominant.

Distinctive soil patterns often reflect distinctive underlying geologic structures. That this is so in the "Ozark Highlands" is demonstrated by a map called "Geologic Map of Missouri," published in 1979 by the Missouri Geological Society. A copy of this map was submitted by the petitioner. It shows that the soil of the proposed viticultural area is predominantly derived from the Roubidoux Formation, with some Smithville Formation and Pennsylvanian Undifferentiated. That pattern contrasts with the Gasconade Dolomite soil in many of the immediately surrounding areas.

Finally, it is possible to distinguish the "Ozark Highlands" from surrounding areas on the basis of climate. The petition states: "These upper portions are relatively frost-free for longer periods of the year. The cooler frost-causing air in the Spring and Fall of the year flows down the hillsides from the higher to the lower elevations, especially into the deeply trenched river valleys. This leaves the . . . Highlands relatively frost free as compared to the lower elevations."

Name of the Area

On occasion, the name "Ozark Highlands" has been used synonymously with "Ozark Mountains" to refer to the entire Ozark region, encompassing most of southern Missouri and northern Arkansas. (For example, see *The Geography of the Ozark Highland of Missouri* by Carl O. Sauer, University of Chicago Press, 1920, and *Early History of the Northern Ozarks* by Gerard Schultz, M.A., Midland Printing Company, 1937.) However, in recent years, the name "Ozark Highlands" has developed an additional meaning. Due to the efforts of the Ozark Highland Vintners, this name has come to refer specifically to the more limited area proposed in this Notice. To demonstrate this, the petitioner submitted more than a dozen newspaper clippings and magazine articles relating to wine production in the "Ozark Highlands" area. In each case, the name "Ozark Highlands" refers to the petitioned area, not to the entire Ozark region. One such article even includes a map pinpointing the location of the area within the State of Missouri. The articles are from well-known local and national publications, including the *St. Louis Post-Dispatch* and *Wines and Vines.*

Under 27 CFR 4.30(a) and 4.64(a)(1), no wine label or advertisement may be misleading. However, ATF believes that the name "Ozark Highlands," if used to refer to the area proposed in this Notice, would not be misleading, because: (1) A viticultural area encompassing the entire Ozark region has already been approved under the name "Ozark Mountain" (see T.D. ATF–231, 51 FR 24142), and (2) the broad meaning of "Ozark Highlands" (having reference to the entire Ozark region) seems to be found primarily in geological and geographical treatises, whereas the narrower meaning is found in publications having wide popular distribution (e.g. newspapers), and in contexts relating to wine and viticulture.

Therefore, ATF believes that the regulatory requirement for evidence supporting the proposed name has been met, and that use of the proposed name in wine labeling and advertising would not be misleading. Nevertheless, comments are requested concerning the appropriateness of the proposed name, and as to whether any other name for this area would be more appropriate. Possible alternative names could include the following: "Missouri Ozark Highlands," "Ozark Highlands of Missouri," and "Ozark Highlands (Missouri)." Commenters may also suggest other names. (A further possibility is that "Missouri" could be required to appear in direct conjunction with "Ozark Highlands," but be permitted in reduced type on labels—as with "Solano County Green Valley" (§ 9.44) and "Sonoma County Green Valley" (§ 9.57).)

Boundaries of the Area

The natural boundaries of the proposed "Ozark Highlands" viticultural area are extremely convoluted. It would be impossible to define those boundaries precisely and functionally by features that appear on the U.S.G.S. maps submitted by the petitioner. Accordingly, this Notice proposes boundaries that define the proposed area as closely as practicable on those maps. The proposed boundaries reflect the location of the "Ozark Highlands" on land generally over 1,000 feet in elevation, between a number of major rivers and streams. Those rivers and streams are: The Big Piney, Gasconade, Bourbeuse, Meramec, and Current Rivers, and Jack's Fork. The proposed boundaries include all land associated with the geographical features distinguishing the area, as discussed above under *Geography of the Area.* See proposed § 9.115, below, for a complete description of the boundaries.

The proposed boundaries would place the "Ozark Highlands" viticultural area entirely within the approved "Ozark Mountain" viticultural area. In proposing a viticultural area based on geographical features that affect viticultural features, ATF recognizes that the distinctions between a smaller area and its surroundings are more refined than the differences between a larger area and its surroundings. It is possible for a large viticultural area to contain smaller approved viticultural areas, if each area fulfills the requirements for establishment of a viticultural area.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal, because the Notice of Proposed Rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities. Further, the proposal will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this Notice of Proposed Rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291 of February 17, 1981, the Bureau

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has determined that this proposal is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this Notice, because no requirement to collect information is proposed.

Public Participation—Written Comments

ATF requests comments concerning this proposed viticultural area from all interested persons. Further, while this document proposes possible boundaries for the "Ozark Highlands" viticultural area, comments concerning other possible boundaries for this area will be given consideration.

Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as suggestions for future ATF action.

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing, to the Director within the 45-day comment period. The request should include reasons why the commenter feels that a public hearing is necessary. The Director, however, reserves the right to determine, in light of all the circumstances, whether a public hearing will be held.

List of Subjects in 27 CFR Part 9

Administrative practice and procedures, Consumer protection, Viticultural areas, Wine.

Drafting Information

The principal author of this document is Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Issuance

Accordingly, the Director proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph A. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. B. The table of sections in 27 CFR Part 9, Subpart C, is, amended to add the title of § 9.115, to read as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

* * * * *

Sec.
9.115 Ozark Highlands.

* * * * *

Par. C. Subpart C of 27 CFR Part 9 is amended by adding § 9.115, which reads as follows:

§ 9.115 Ozark Highlands.

(a) *Name.* The name of the viticultural area described in this section is "Ozark Highlands."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Ozark Highlands viticultural area are three U.S.G.S. maps of the 1:250,000 series. They are titled:

(1) Rolla, Missouri; Illinois, 1954 (revised 1969).

(2) St. Louis, Missouri; Illinois, 1963 (revised 1969).

(3) Springfield, Missouri, 1954 (revised 1969).

(c) *Boundary*—(1) *General.* The Ozark Highlands viticultural area is located in south central Missouri. The area comprises portions of the following counties: Phelps, Maries, Osage, Gasconade, Franklin, Crawford, Texas, Shannon, Dent, Reynolds, and Pulaski. The beginning point of the following boundary description is the junction of Little Piney Creek and the Gasconade River, near Jerome, Missouri (in the northwest corner of the Rolla map).

(2) *Boundary description*—(i) From the beginning point, the boundary goes northward along the Gasconade River to the latitude line 38°00' (the dividing line between the Rolla and St. Louis maps);

(ii) Then eastward along that latitude line to U.S. Highway 63;

(iii) Then northward along U.S. 63 to Spring Creek;

(iv) Then north-northwestward along Spring Creek to the Gasconade River;

(v) Then northward along the Gasconade River to a power transmission line (less than 1 mile north of Buck Elk Creek);

(vi) Then eastward and east-northeastward along that power transmission line to Missouri Route 19;

(vii) Then southward along Route 19 to the Bourbeuse River;

(viii) Then east-northeastward along the Bourbeuse River to the range line dividing R. 2 W. and R. 1 W.;

(ix) Then southward along that range line to the Meramec River;

(x) Then southwestward along the Meramec River to Huzzah Creek;

(xi) Then southward along Huzzah Creek to Dry Creek (on the Rolla map, where Missouri Route 8 crosses Huzzah Creek);

(xii) Then southward along Dry Creek to Cherry Valley Creek;

(xiii) Then south-southwestward along Cherry Valley Creek to Missouri Route 19;

(xiv) Then southward and southwestward along Route 19 to Crooked Creek;

(xv) Then northwestward along Crooked Creek to the Meramec River;

(xvi) Then southward along the Meramec River to Hutchins Creek;

(xvii) Then southeastward along Hutchins Creek to its source near Missouri Route 32, across from the Howes Mill Post Office;

(xviii) Then in a straight line toward the Howes Mill Post Office to Route 32;

(xix) Then eastward along Route 32 to the range line dividing R. 3 W. and R. 2 W.;

(xx) Then southward along that range line to the township line dividing T. 33 N. and T. 32 N.;

(xxi) Then westward along that township line (which coincides, in R. 3 W., with the Reynolds County/Dent County line) to the boundary of Clark National Forest;

(xxii) Then generally southward along that national forest boundary to the Dent County/Shannon County line;

(xxiii) Then westward along that county line to the Current River;

(xxiv) Then southeastward along the Current River to Missouri Route 19;

(xxv) Then southward along Route 19 to Jack's Fork;

(xxvi) Then westward, southwestward and northwestward along Jack's Fork, taking the North Prong, to its northwesternmost source;

(xxvii) Then in a straight line northwestward to the southeasternmost source of Hog Creek;

(xxviii) Then northwestward along Hog Creek to the Big Piney River (on the Springfield map);

(xxix) Then northward along the Big Piney River to the township line dividing T. 35 N. and T. 36 N.;

(xxx) Then eastward along that township line to Little Piney Creek (on the Rolla map);

(xxxi) Then northward and westward along Little Piney Creek to the beginning point.

Approved: January 30, 1987.

Stephen E. Higgins,

Director.

[FR Doc. 87-2534 Filed 2-6-87; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[86-40]

Safety Zone; San Juan Harbor, San Juan, PR

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering establishing a Safety Zone in the Army Terminal Turning Basin in San Juan Harbor. A new Liquified Petroleum Gas (LPG) facility is being constructed in this area, and this safety zone is needed to protect its operations. The safety zone would prevent vessels from coming within 100 yards of an LPG carrier while inside San Juan Harbor and vessels greater than 100 feet from using the Army Terminal Turning Basin while a LPG carrier is in port, without first obtaining permission from the Captain of the Port, (COTP).

DATES: Comments must be received on or before March 26, 1987.

ADDRESSES: Comments should be mailed to Marine Safety Office, P.O. Box S-3666, Old San Juan, PR 00904. The Comments and other materials referenced in this notice will be available for inspection and copying at the Marine Safety Office, La Puntilla Final, Old San Juan, PR. Normal office hours are between 7:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTJG John R. Bingaman at telephone number (809) 725-0857.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (86-40) and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafter of this notice is LTJG John R. Bingaman, project officer, and LCDR S. T. Fuger, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Proposed Regulations

The New LPG terminal is being constructed in San Juan Harbor immediately adjacent to the Army Terminal Turning Basin. In addition, there is already a facility that currently handles LPG on a routine basis in this same area. The configuration of the new facility is such that LPG vessels will extend into the Turning Basin. The Army Terminal Turning Basin is at the junction of two channels; the Army Terminal Channel and the Puerto Nuevo Channel and requires vessels to navigate an extremely sharp turn in order to transit between the channels. Within the past year, there have been two vessel casualties in this area where vessels attempting to make the turn have been involved in collisions. These casualties are in part due to the extreme difficulty in navigating in this area.

LPG is a Cargo of Particular Hazard and as such poses serious risks. The consequences of a vessel casualty involving an LPG vessel could be catastrophic. Given this risk, the configuration of the waterway in the area, and its recent accident history, the Coast Guard feels that a Safety Zone is appropriate to protect the LPG vessels and facilities from accidents.

The Safety Zone is designed to prevent large, relatively unmaneuverable vessels from transiting the Army Terminal Turning Basin while a non gas-free LPG carrier is moored there. Small craft such as Pilot boats and tugs would be permitted to transit the area. However, these small craft would be required to remain 100 yards away from any LPG vessel.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Those vessels greater than 100 feet will not be significantly affected by this safety zone. When an LPG carrier is in port, vessels requiring access to Puerto Nuevo Channel can transit Graving Dock Channel via Army Terminal Channel. While an LPG carrier is transiting San Juan Harbor, only minor delays to other mariners can be foreseen.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. Section 165.740 is added to read as follows:

§ 165.740 San Juan Harbor, San Juan, PR.

(a) The waters and waterfront facilities located within the following areas are established as Safety Zones during the specified conditions:

(1) For inbound non gas-free Liquified Petroleum Gas (LPG) carriers; the waters within a 100 yard radius of the LPG carrier while the vessel transits the waters of San Juan Harbor to the LPG receiving facility commencing with it's entry into the Bar Channel.

(2) For non gas-free LPG carriers maneuvering in the vicinity of the Army Terminal Turning Basin and when an LPG carrier is moored; a line beginning at the point located at 18 Deg 26'01.0" N. Latitude, 66 Deg 6'40.5" W. Longitude; thence 050 Deg T to Army Terminal Channel bouy "7" located at 18 Deg 26'9.5" N. Latitude, 66 Deg 6'29.0" W. Longitude; thence 150 Deg T to Army Terminal Channel bouy "9" located at 18

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Deg 26'01.0" N., 66 Deg 6'24.0" W. Longitude; thence 103 Deg T to Puerto Nuevo Channel bouy "1" located at 18 Deg 25'59" N. Latitude, 66 Deg 6'17.C" W. Longitude; thence 160 Deg T to a point located at 18 Deg 25'55" N. Latitude, 66 Deg 06'15" W. Longitude; and an area extending 100 yards shoreward of the LPG terminal.

(3) For outbound non gas-free LPG carriers, the waters within a 100 yard radius of the LPG carrier while the vessel transits the waters of San Juan Harbor until the vessel exits the Bar Channel.

(4) The general regulations governing safety zones contained in 33 CFR 165.23 apply; with the exception that vessels less than 100 feet in length are allowed in the Army Terminal Turning Basin. Such vessels, however, must remain at least 100 yards away from any non gas-free LPG vessel.

(5) The Captain of the Port will notify the maritime community of periods during which this safety zone will be in effect by providing advance notice of scheduled arrivals and departures of loaded LPG vessels via a Marine Safety Information Radio Broadcast.

Dated: January 27, 1987.

M. W. Brown,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port, San Juan, PR.

[FR Doc. 87-2441 Filed 2-6-87; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL MARITIME COMMISSION

46 CFR Part 550

[Docket No. 87-1]

Automobile Measurement Rule

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its rules pertaining to the publishing, filing and posting of tariffs in domestic offshore commerce to permit the rating of automobiles on other than a weight or cube measurement basis.

DATE: Comments due on or before March 11, 1987.

ADDRESS: Comments (original and 20 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT:

Robert G. Drew, Director, Bureau of Tariffs, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5796

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5740

SUPPLEMENTARY INFORMATION:

On September 19, 1986, Matson Navigation Company, Inc. (Matson) filed a Petition for Rulemaking (Petition) urging the Commission to amend its regulations to permit the publication of rates for automobiles on other than a weight or measurement basis. At present, 46 CFR 550.5(b)(8)(xiv) reads in part:

> (xiv) *Automobile measurement.* When rates for automobiles are published (or the published rate tariff does not specifically prohibit carriage of automobiles), the basis for applying these rates must be stated in terms of either weight or measurement, but not both. One of the following rules (i.e., (A) or (B)) must be employed in its entirety. . . .

Subparagraph (A) requires that all measurement rates be based on the *cubic measure* of the automobile being shipped. Alternatively, subparagraph (B) requires automobiles to be rated on the basis of *weight.*

By its Petition, Matson requested that the introductory paragraph of 46 CFR 550.5(b)(8)(xiv) be amended to read:

> (xiv) *Automobile Rates.* If rates for automobiles are published on a weight or measurement basis, one of the following rules (i.e., (A) or (B)) must be employed in its entirety. . . .

The requested amendment would preserve the existing requirements governing rates applied on a measurement or weight basis, if that is the basis utilized. However, it would also permit freighting on other bases such as "per unit."

The Commission published Matson's Petition in the **Federal Register** (51 FR 34502) and requested comments from interested parties. Chrysler Motors (Chrysler) filed a comment in support of Matson's Petition.

In urging amendment of the Commission's existing automobile measurement regulation, Matson alleged that circumstances concerning the carriage of automobiles have changed substantially since 1967, when the Commission adopted the present rule in *Uniform Weights and Measurements of Automobiles,* 9 S.R.R. 148 (FMC, 1967). Matson argued that "[t]he costs of stevedoring and transporting automobiles in garage stalls, automobile frames and containers bear little relation to vehicle weight or cube."

Matson also claimed the automobile manufacturers prefer a "per unit" charge which would be simpler to apply and would readily lend itself to computerization. Finally, Matson stated that because competing carriers that are subject to the jurisdiction of the Interstate Commerce Commission are not precluded from rating automobiles on a per unit basis, Matson is placed at a competitive disadvantage by the existing rule.

In support of Matson's proposed rule, Chrysler advised that it favors a "per unit" rate because it is simple to apply and could be readily computerized.

Discussion

The need for a uniform automobile measurement rule was discussed by the Commission in *Uniform Weights and Measurements of Automobiles,* the rulemaking proceeding that established the current rule. The Commission explained there:

> Because passenger automobiles vary extensively in size and are susceptible to mismeasurement it is believed that publication of uniform measurements is a necessity in order to provide identical treatment for all such shipments; to enable shippers of automobiles to accurately ascertain ocean transportation charges prior to movement; and to facilitate billing of automobile shipments by the carrier.

9 S.R.R. at 149.

Nevertheless, Matson may be correct in stating that, at present, the cost of transporting an automobile may have little relation to the vehicle's weight or cube. The regulations governing financial reports in the domestic offshore trades, 46 CFR 552.5(h), state in part:

> In computing cargo cube for containerized cargo, the outside dimensions of the container, trailer or other equipment shall be used.

Thus, in the case of automobiles moving in containers or frames, the outside dimensions of the container or frame would be used in calculating the cargo cube for cost allocation purposes. The actual dimensions of an automobile being carried in a container or frame are irrelevant to the allocation of cost. This suggests that it may no longer be appropriate for the Commission to require that *all* automobiles, even those carried in frames or containers, be rated on the weight or cubic measurement of the vehicle.

Accordingly, the Commission is instituting a rulemaking proceeding for the purpose of removing the prohibition against rates that are not based upon weight or cube. The proposed rule will take the form of Matson's proposal. This will leave the rules pertaining to the rating of automobiles on the basis of cube or weight but would permit the rating of automobiles on other bases, such as per unit.

As an alternative to the rule proposed, the Commission could repeal the automobile measurement rule in its entirety. Without a specific rule pertaining to automobiles, the carriers would be free to rate automobiles in the same fashion that they rate other types of cargo. This alternative approach would also avoid the expense of publishing the *Automobile Manufacturers Measurements.* The Commission is therefore also inviting comment on the possible deletion of the automobile measurement rule in its entirety.

The Commission has determined that this proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions; or

(3) Significant adverse effects on competition, employment, investment productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Federal Maritime Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental organizations.

List of Subjects in 46 CFR Part 550

Maritime carriers, Reporting and recordkeeping requirements, Rates and fares.

The Paperwork Reduction Act, 44 U.S.C. 3501-3520, does not apply to this Notice of Proposed Rulemaking because the proposed amendments to Part 550 of Title 46, Code of Federal Regulations, do not impose any additional reporting or recordkeeping requirements or change the collection of information from members of the public which require the approval of the Office of Management and Budget.

PART 550—[AMENDED]

Therefore, for the reasons set forth above, Part 550 of Title 46, Code of Federal Regulations, is proposed to be amended as follows:

1. The authority citation for Part 550 continues to read as follows:

> **Authority:** 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817(a), 820, 833a, 841a and 843-847.

2. Section 550.5(b)(8)(xiv) introductory text is revised to read as follows:

§ 550.5 Contents of Tariffs.

* * * * *

(b) * * *

(8) * * *

(xiv) *Automobile rates.* If rates for automobiles are published on a weight or measurement basis, one of the following rules (i.e., (A) or (B)) must be employed in its entirety:

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-2644 Filed 2-6-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 86-404]

Specialized Mobile Radio Service; Order Extending Comment Period

AGENCY: Federal Communication Commission.

ACTION: Proposed rule extension of comment period.

SUMMARY: The Commission has extended the date for filing comments to the Notice of Proposed Rulemaking in this proceeding dealing with amendment to Subparts M and S of Part 90 of the Commission's Rules. This extention was in response to a request by the National Association of Business and Educational Radio, Inc. for additional time to study the significant policy implications of the Commission's proposals.

DATES: Comments are due on February 20, 1987. Reply comments are due on April 3, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:

Ronald Netro, Private Radio Bureau (202) 634-2443.

SUPPLEMENTARY INFORMATION:

Adopted: January 23, 1987.

Released: January 28, 1987.

By the Chief, Private Radio Bureau.

1. On October 16, 1986, the Commission adopted a *Notice of Proposed Rule Making (Notice)* in the above captioned matter. A summary of this *Notice* appeared in the **Federal Register**, 51 FR 45025, on December 16, 1986. Comments are due by January 30, 1987, and reply comments by March 13, 1987.

2. On January 14, 1987, the National Association of Business and Educational Radio, Inc. (NABER) filed a request to extend both the comment and reply comment dates. NABER supports its request by emphasizing the significant departure of the proposed rules to current Commission policy regarding the 800 MHz spectrum. Specifically, NABER points to the elimination of loading standards and to the expansion of eligible users of Specialized Mobile Radio (SMR) systems as being issues deserving considerable legal and policy attention. As a related issue, NABER references a separate proceeding, PR Docket No. 86-160, regarding inter-category sharing that could have a direct impact and must be fully reviewed before commenting on the current proceeding. NABER therefore requests adequate time to address the novel and interrelated issues presented in the *Notice.*

3. We recognize the complexity and importance of the Commission's proposals as well as the impact such proposals may have on the SMR industry. Furthermore, complete and considered comments are essential to the Commission's reaching a valued decision in the public interest. Therefore, to permit additional time to review the proposals and to formulate positions, we are extending the comment periods in the subject *Notice.*

4. Accordingly, *It Is Ordered,* pursuant to the authority set forth in § 0.331 of the Commission's Rules and Regulations, that interested parties will have until February 20, 1987 to file comments and until April 3, 1987 to file reply comments in this proceeding.

Federal Communications Commission.

Michael T.N. Fitch,

Chief, Private Radio Bureau.

[FR Doc. 87-2533 Filed 2-6-87; 8:45 am]

BILLING CODE 6712-01-M

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Notices

Federal Register
Vol. 52, No. 26
Monday, February 9, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[Case No. OEE-4-86]

Order Renewing Temporary Denial of Export Privileges; George Lartides and Globtime Commercial Services Ltd.

In the Matter of: George Lartides, with addresses at Ellis 3 Strovolos, Nicosia, Cyprus and c/o Globtime Commercial Services Ltd., 9 Zenonos Kitieos Street, P.O. Box 1223, Nicosia, Cyprus, Respondent.

The Office of Export Enforcement, International Trade Administration, United States Department of Commerce (Department), pursuant to the provisions of § 388.19 of the Export Administration Regulations, 15 CFR Parts 368 through 399 (1986) (the Regulations), issued pursuant to the Export Administration Act of 1979, 50 U.S.C. app. sections 2401 through 2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985) (the Act), has asked the Deputy Assistant Secretary for Export Enforcement to renew an order temporarily denying all United States export privileges to respondents George Lartides,[1] individually and doing business as Stamatiou & Lartides Ltd. (S&L), and MIS Services Ltd. (hereinafter collectively referred to as respondents). All respondents named by the Department reside or are located in Nicosia, Cyprus. The initial order was issued on December 5, 1986 (51 FR 44660, December 11, 1986).

The Department states that, as a result of an ongoing investigation, it has reason to believe that respondents have (1) engaged in the unauthorized reexport of U.S.-origin commodities, including computer equipment, from Cyprus to proscribed destinations, including the Soviet Union, and (2) indirectly caused by filing of false and misleading information with the Department for the purpose of effecting reexports from Western Europe to Cyprus and through Cyprus to proscribed destinations.

The Department further states that it has reason to believe that the respondents are continuing in their efforts to obtain U.S.-origin goods for diversion from Cyprus to proscribed destinations by misrepresenting the ultimate destination of the goods to be purchased. If the respondents are successful in their continuing efforts to acquire U.S.-origin goods, the Department states that there is reason to believe respondents would again attempt to reexport them to proscribed destinations without obtaining the required authorization from the Department.

The Department states that its investigation gives it reason to believe that the violations under investigation were deliberate, covert and likely to occur again. The Department submits that a temporary denial order naming respondents is necessary in order to give notice to companies in the United States and abroad to cease dealing with respondents in goods and technical data subject to the Act and the Regulations in order to reduce the likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations. Furthermore, the Department has represented that Data Services Ltd., Globtime Commercial Services Ltd., Officeworld Business Systems Ltd. and Computer Manufacturers Ltd. are parties related to at least one of the respondents in the conduct of trade or related services and should also be temporarily denied export privileges to prevent evasion of this order. All related parties named by the Department are located in Nicosia, Cyprus.

In response to the Department's request for renewal, the firms Stamatiou and Lartides Ltd. of Nicosia and Data Services Ltd. of Nicosia have filed an opposition before the Deputy Assistant Secretary for Export Enforcement. This document seeks to establish that George Lartides no longer maintains any "legal, beneficial or other interests" in either company. Attached to the opposition are ledger statements showing the complete sale of all shares held by George Lartides in both companies to the remaining partner. These statements are accompanied by a statement by a known accounting firm corroborating the transfer of funds. Also accompanying these statement in an affadavit sworn in Cypriot court indicating the severance of affiliation of George Lartides with the firms Stamatiou and Lartides Ltd. and Data Services Ltd.

I find there is an insufficient showing on the part of the Department supporting the claim that George Lartides carries out or directs business as Stamatiou and Lartides Ltd. or as Data Services Ltd. or is otherwise affiliated with these firms. Given that the violations under investigation by the Department are suspected of having been directed by George Lartides, at this time there is no independent reason for continuing the denial of privileges against these firms which are not shown to be related to him. Therefore, the name Stamatiou and Lartides Ltd. has been removed as a respondent and Data Services Ltd. is no longer listed as a known related party. However, § 37.12(c) of the Regulations states "orders which revoke or deny the export privileges of any person . . . may provide that the terms and prohibitions of such orders apply not only to the person expressly named therein but also, for the purpose of preventing evasion, to any other person, firm, corporation or other business organization with which that person may then or thereafter (during the term of the order) be related of affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services." Sections III and IV of this order do provide for the terms and prohibitions of this order to apply to parties not expressly named and would apply to Stamatiou and Lartides Ltd. or Data Services Ltd. were either firm to consider conducting business with a denied party in the future.

In the case of MIS Services Ltd., I note the failure on the part of the Department to serve this respondent with the request for renewal, thereby denying the firm knowledge of this action and the ability to submit opposition as provided by the Regulations. Without passing judgment as to the threat of imminent violation posed by this party, I decline to renew this order with respect to any party not properly served as provided by the Regulations. Therefore, for the purpose of this renewal of the temporary denial order, the name of MIS Services Ltd. has been removed from the list of respondents.

Finally, in the case of George Lartides, two letters have been received from him contesting the order. In both his letter to the Deputy Assistant Secretary dated December 12, 1986 and his letter to the Administrative Law Judge dated January 15, 1987, Lartides disputes the claims of the Department but offers no evidence. He does, however, offer to talk with the Department and present necessary documentation.

Despite this offer of assistance, and based upon the showing made by the Department, I find that an order temporarily denying all United States export privileges to the sole respondent, George Lartides, and to parties related to him is necessary in the public interest to prevent an imminent violation of the Act and the Regulations.

Accordingly, it is hereby ordered,

I. All outstanding individual validated export licenses in which any respondent appears to participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. The respondent, his successors, or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participating, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying or negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which any respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services. Those parties now known to be related to at least one of the respondents, and which are accordingly subject to the provisions of this order, are:

GLOBTIME COMMERCIAL SERVICES LTD. with addresses at:

MITSI Building 3, Flat 608, 6th Floor, Nicosia, Cyprus.

and

9 Zenonos Kitieos Street, P.O. Box 1223, Nicosia, Cyprus.

OFFICEWORLD BUSINESS SYSTEMS LTD., P.O. Box 1604, 22 Ionos Street, Nicosia, Cyprus.

and

COMPUTER MANUFACTURERS LTD., c/o Stamatiou & Lartides, Ltd., P.O. Box 1604 Ionos Street, Nicosia, Cyprus.

IV. No person, firm, coporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with the respondent or any related party, or whereby the respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported whole or in part, or to be exported by, to, or for any respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. In accordance with the provisions of § 388.19(e) of the Regulations, the respondent may, at any time, appeal this temporary denial order and any related party may appeal the issue of his relationship by filing with the Office of Administrative Law Judges, U.S. Department of Commerce, Room H-6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order is effective February 3, 1987 and shall remain in effect for 60 days.

VII. In accordance with the provisions of § 388.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. The respondent may oppose any request to renew this temporary denial order by filing a written submission with the Deputy Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order shall be served upon respondent and published in the **Federal Register.**

Dated: February 3, 1987.

Theodore W. Wu,

Deputy Assistant Secretary for Export Enforcement.

[FR Doc. 87-2668 Filed 2-6-87; 8:45am]

BILLING CODE 3510-DR-M

[1] "George" Lartides is also know as "Georgios" Lartides.

President's Export Council

International Competitiveness and Productivity Subcommittee Meeting; Open Meeting

A meeting of the President's Export Council Subcommittee on International Competitiveness and Productivity will be held February 23, 1987, 10:00 a.m.-12:00 p.m. and 12:45 p.m.-2:30 p.m. in Room 4830 of the Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC. The Council's purpose is to advise the President on matters relating to United States export trade.

Open Session

The Subcommittee will discuss requirements for national competitiveness. Under consideration will be steps to increase productivity, decrease capital-related costs, limiting the growth of U.S. indebtness, and other related matters.

The meeting will be open to the public with a limited number of seats available. For further information, reservations to attend the meeting, or copies of the minutes, contact Laureen Daly, (202) 377-1125.

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Dated: February 2, 1987.
Wendy H. Smith,
Director, President's Export Council.
[FR Doc. 87-2669 Filed 2-6-87; 8:45 am]
BILLING CODE 3510-DR-M

Trade Expansion Subcommittee Meeting, President's Export Council; Open Meeting

A meeting of the President's Export Council Trade Expansion Subcommittee will be held February 24, 1987, 9:30 a.m.-12 noon in the Departmental Auditorium Conference Room, Constitution Avenue, NW., between 12th & 14th Streets, Washington, DC. The Subcommittee's purpose is to advise the President's Export Council on matters relating to trade expansion.

Agenda

Opening remarks; presentations on disincentives for agricultural trade, small business issues, mixed credits, Eximbank, and trade legislation relating to trade expansion.

The meeting will be open to the public with a limited number of seats available. For further information, or copies of the minutes, contact Sylvia Lino, (202) 377-1125.

Dated: February 2, 1987.
Wendy H. Smith,
Director, President's Export Council.
[FR Doc. 87-2670 Filed 2-6-87; 8:45 am]
BILLING CODE 3510-DR-M

[P-146-B]

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit: Dr. Steven L. Swartz

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531 through 1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217 through 222).

1. Applicant: Dr. Steven L. Swartz, Cetacean Research Associates, P.O. Box 7990, San Diego, California 92107.
2. Type of Permit: Scientific Research.
3. Name and Number of Marine Mammals: A permit is requested to radio tag up to 10 individual gray whales (*Eschrichtius robustus*) each year for a five year period beginning in winter 1987-88. The whales' movements will be tracked by systematic shore surveys by vehicle and aerial surveys of the California coast from the Farallone Islands and the Point Reyes National Marine Sanctuary in the north, to the U.S.-Mexico border in the south.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administratior for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices.

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Dated: February 3, 1987.
Nancy Foster,
Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.
[FR Doc. 87-2643 Filed 2-6-87; 8:45 am]
BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amending Export Licensing System for Certain Man-Made Fiber Textile Products in Category 670-L Produced or Manufactured in the People's Republic of China

February 3, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 9, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983 and the Bilateral Category 670-L Agreement of September 8 and 9, 1986, the Governments of the United States and the People's Republic of China have agreed to further amend the existing export licensing system to require the use of visas of Category 670-L (luggage in TSUSA numbers 706.3415, 706.4130 and 706.4135), produced or manufactured in the People's Republic of China and exported to the United States beginning on February 1, 1987 and until further notice.

A description of the texile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 3, 1987.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of February 23, 1984 from the Chairman of the Committee for the Implementation of Textile Agreements which established an export licensing system for certain specified categories of cotton, wool, and man-made fiber textile products, produced or manufactured in the People's Republic of China.

Effective on February 9, 1987, the directive of February 23, 1984 is hereby further amended to require that man-made fiber luggage in Category 670-L [1] also be visaed if

[1] In category 670, only TSUSA numbers 706.3415, 706.4130 and 706.4135.

produced or manufactured in the People's Republic of China and exported on or after February 1, 1987.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,
Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 87-2667 Filed 2-6-87; 8:45 am]
BILLING CODE 3510-DR-M

COMMISSION ON EDUCATION OF THE DEAF

Executive Committee; Meeting

AGENCY: Commission on Education of the Deaf.
ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92-463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Commission on Education of the Deaf. The purpose of the meeting is to prepare an agenda package for the Commission meeting planned in March and to prepare a budget for the Commission. This meeting will be open to the public.

DATE: February 16, 1987, 9:00 a.m. until 5:00 p.m.

ADDRESS: Columbia Foyer, Ballroom Level, Hyatt Regency Washington, 400 New Jersey Avenue, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy L. Creason, Administrative Officer, Commission on Education of the Deaf, GSA Regional Office Building, Room 6646, 7th and D Streets, SW., Washington, DC 20407, 202/453-4353 (TDD) or 202/453-4684 (voice).

Patricia L. Johanson,
Staff Director, Commission on Education of the Deaf.
February 3, 1987.
[FR Doc. 87-2601 Filed 2-6-87; 8:45 am]
BILLING CODE 6820-SD-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Information School Board of Visitors, Meeting

AGENCY: Defense Information School Board of Visitors, DoD.
ACTION: Notice of meeting.

SUMMARY: A meeting will be held to review administration and content of the Defense Information School's public affairs programs of instruction. The meeting is open to the public and will be conducted in Room 270A, Building 400, The Defense Information School, Ft. Benjamin Harrison, Indiana 46216-6200.

DATES:
March 12, 1987—8:00 a.m. to 4:00 p.m.
and
March 13, 1987—8:00 a.m. to 1:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Daniel, Director for Management, Office of the Assistant Secretary of Defense Public Affairs, Room 2E811, the Pentagon, Washington, DC 20301. Mr. Daniel's telephone number is (202) 697-8959.

Linda M. Lawson,
Alternate OSD, Federal Register Liaison Officer, Department of Defense.
February 3, 1987.
[FR Doc. 87-2628 Filed 2-6-87; 8:45 am]
BILLING CODE 3810-01-M

Ada Board Environment Panel, Meeting

ACTION: Notice of Meeting.

SUMMARY: A meeting of the Ada Board Environment Panel will be held Wednesday, 18 February 1987 from 8:30 a.m. to 5:00 p.m. at the Institute for Defense Analyses, 1801 N. Beauregard Street, Alexandria, VA 22311.

FOR FURTHER INFORMATION CONTACT: Dr Erhard Ploedereder, Tartan Laboratories, 447 Melwood Avenue, Pittsburgh, PA 15213 (412) 621-2210.

Linda Lawson,
Alternate Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.
February 3, 1987.
[FR Doc. 87-2629 Filed 2-6-87; 8:45 am]
BILLING CODE 3810-01-M

Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Monday, 23 February 1987.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 S. Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Microelectronics area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92-463, as amended, [5 U.S.C. App. II section 10(d) (1982)], it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Linda Lawson,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
February 3, 1987.
[FR Doc. 87-2626 Filed 2-6-87; 8:45 am]
BILLING CODE 3810-01-M

Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Tuesday, 24 February 1987.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 201 Varick Street, New York, NY 10014.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Microelectronics area includes such programs as integrated circuits, charge coupled devices and

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memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92-463, as amended (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 3, 1987.

[FR Doc. 87-2627 Filed 2-6-87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Intent To Prepare an Environmental Impact Statement and Conduct Public Scoping Meetings—Otis Air National Guard Wastewater Treatment Plant, Cape Cod, MA

Action: The Air National Guard (ANG) intends to prepare an Environmental Impact Statement (EIS) to assess the environmental implications of a proposed ANG action: the development of new sand filter beds next to the Cape Cod Canal along the northern edge of Camp Edwards, Massachusetts Military Reservation, Cape Cod, Massachusetts for the land disposal of 0.3 MGD of secondarily treated wastewater. A new land disposal location is necessary in order to reduce groundwater contamination caused by current land disposal at the southern boundary of Otis ANG Base. The action requires the construction and operation of a 50,000 foot pipeline and sand filter beds. Implementation of this proposed action also requires a Class III designation by the Commonwealth of Massachusetts for the potentially affected groundwater area.

Alternatives: Other alternatives to be considered are as follows:

(1) Pump treated effluent from the Otis ANGB Base treatment facility for land disposal at the Town of Falmouth facility;

(2) Pump untreated effluent for treatment and disposal at the Town of Falmouth treatment facility;

(3) Use the existing Otis ANG Base treatment facility and dispose of secondarily treated effluent by spray irrigation of vegetation on the Massachusetts Military Reservation;

(4) Install additional equipment on the current Otis ANG treatment facility to remove nitrogen and dispose of treated effluent in the current manner;

(5) Continue operating the current Otis ANG treatment facility (no action).

Interested agencies, organizations, and the general public desiring to submit written comments or suggestions for consideration in connection with the preparation of the EIS are invited to do so and/or attend the public scoping meetings which will be held in order to assist the ANG in identifying significant environmental issues and the appropriate scope of the EIS. Parties who desire to present oral comments at one of the scoping meetings will be allotted approximately five minutes and should provide advanced notice to the ANG. The time and the location of the scoping meetings will be announced in the local news media. Written scoping comments are due by 15 March. Written comments should be addressed to: Mr. William Sullivan, OLAA/PA, Otis ANG Base, Massachusetts, 02542. Questions should be directed to Mr. Sullivan at (617)968-4090.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-2565 Filed 2-6-87; 8:45 am]

BILLING CODE 3910-01-M

Intent To Prepare Environmental Impact Statement; Malmstrom Air Force Base, MT

The United States Air Force, Department of Defense, will prepare an Environmental Impact Statement (EIS) for use in decision making regarding the proposed deployment and operation of the advanced land-based Small Intercontinental Ballistic Missile (Small ICBM) at Malmstrom Air Force Base, Montana.

On November 7, 1986, the Air Force published a Legislative EIS analyzing the full-scale development decision and the concurrent selection of deployment area(s) and basing mode(s) for the Small ICBM. On December 19, 1986, the President announced his decision to proceed with full scale development of the Small ICBM in two Hard Mobile Launcher basing modes. These modes are called Hard Mobile Launchers at Minuteman Facilities and Hard Mobile Launchers in Random Movement. The initial operating capability for the Small ICBM would be achieved in 1992 with the first 200 systems positioned at Minuteman facilities. Malmstrom AFB will serve as the main operating base for these missiles. As a continuation of the tiering process described in the Legislative EIS, this EIS will focus on the impact on Malmstrom AFB and its Minuteman launch facilities of the implementing actions and their alternative, including the no-action alternatives, and on mitigation measures.

The Department of the Air Force is planning to conduct a series of scoping meetings to determine the nature, extent and scope of the issues and concerns that should be addressed in the EIS related to the proposed action. These meetings are scheduled for Conrad, Great Falls, Lewistown and Helena, Montana. Notice of the time and place of the planned scoping meetings will be made available to public officials and announced in the news media in the area where the meeting will be held.

To assure that the Department of the Air Force will have sufficient time to consider public inputs on issues which are to be included in the development of an EIS, comments should be forwarded to the addressee listed below by April 17, 1987.

For further information concerning the Small ICBM program and the EIS activities, contact Lt Col Peter Walsh, AFRCE-BMS/DEV, Norton Air Force Base, California 92409, (714) 382-4891.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-2566 Filed 2-6-87; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. C.W. Mathews, Office of Federal Acquisition and Regulatory Policy (202) 523-3856.

SUPPLEMENTARY INFORMATION:

a. Purpose

Firms proposing to provide supplies or services to the Government must indicate their type of business to ensure

that any subsequent contracts contain the proper provisions and clauses.

b. Annual reporting burden

The annual reporting burden is estimated as follows: Respondents, *79,397*; responses per respondent, *14*; total annual responses, *1,111,558*; hours per response, *.07*; and total burden hours, *77,810*.

Obtaining Copies of Proposals

Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0046, Type of Business.

Dated: January 27, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87-2613 Filed 2-6-87; 8:45 am]

BILLING CODE 6820-61-M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Office of Federal Acquisition and Regulatory Policy, (202) 523-3775.

SUPPLEMENTARY INFORMATION:

a. Purpose

Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air U.S.-flag carrier is available to provide such services. In the event that the contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the contractor shall include a certification on vouchers involving such transportation.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *150*; responses per respondent, *2*; total annual responses, *300*; hours per response, *.25*; and total burden hours, *75*.

Obtaining Copies of Proposals

Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0054, U.S.-Flag Air Carriers Certification.

Dated: January 27, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87-2615 Filed 2-6-87; 8:45 am]

BILLING CODE 6820-61-M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. C.W. Mathews, Office of Federal Acquisition and Regulatory Policy (202) 523-3856.

SUPPLEMENTARY INFORMATION:

a. Purpose

The information relative to the place of performance and owner of plant or facility, if other than the prospective contractor, is a basic requirement when contracting for supplies or services (including construction). This information is instrumental in determining bidder responsibility.

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responsiveness, and price reasonableness. A prospective contractor must affirmatively demonstrate its responsibility. Hence, the Government must be apprised of this information prior to award.

The contracting officer must know the place of performance and the owner of the plant or facility to (a) determine bidder responsibility; (b) determine price reasonableness; (c) conduct plant or source inspections; and (d) determine whether the prospective contractor is a manufacturer or a regular dealer.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *79,397;* responses per respondent, *14;* total annual responses, *1,111,558;* hours per response, *.07;* and total burden hours, *77,781.*

Obtaining Copies of Proposals

Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0047, Place of Performance.

Dated: January 27, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87–2616 Filed 2–6–87; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF ENERGY

Special Isotope Separation Project; Scoping Meeting

AGENCY: U.S. Department of Energy.

ACTION: Notice of public scoping meetings for the Environmental Impact Statement (EIS) for the proposed Special Isotope Separation (SIS) facility.

SUMMARY: Notice is hereby given that the Department of Energy (DOE) has scheduled public scoping meetings to provide an opportunity for public participation and comment regarding the EIS for the SIS Project. On October 31, 1986, (51 FR 39785) the DOE announced its intent to prepare an EIS for siting, constructing and operating the proposed SIS facility based on the Atomic Vapor Laser Isotope Separation (AVLIS) process technology. The purpose of the SIS facility is to segregate the isotopes of DOE's Defense Programs' plutonium into specific isotopic concentrations required for various national defense materials and research activities. More background information on the SIS project is contained in the previously published Notice and should be referred to for more detail.

Several written comments pursuant to the previously published Notice of Intent requested that public scoping meetings be held. In response to these comments, DOE has decided to conduct public scoping meetings and extend the scoping period during which written comments will be received and considered. Once the Draft Environmental Impact Statement (DEIS) has been completed, that document will be made available for public review and additional meetings/hearings will be conducted to solicit public comments.

FOR FURTHER INFORMATION: Written comments or suggestions on the scope of the EIS, requests to speak at the scoping meetings, or questions concerning the SIS project should be directed to: Mr. Carl P. Gertz, SIS Project Manager, Idaho Operations Office, U.S. Department of Energy, 785 DOE Place, Idaho Falls, ID 83402, telephone (208) 526–0306. For general information on the DOE EIS process, please contact the Office of the Assistant Secretary for Environment, Safety and Health, U.S. Department of Energy, Attention: Ms. Carol M. Borgstrom (EH–25), Room 3G–092, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–4600.

Scoping

I. Previous Notice Of Intent

The DOE published a Notice Of Intent on October 31, 1986, (51 FR 39785–3986) regarding the preparation of an EIS for the proposed SIS facility.

II. Background for the Proposed Project

Background information, a description of the proposed action, and an identification of environmental issues and alternatives to be considered are contained in the previously published Notice of Intent. In addition, an information packet will be available at the time of each meeting and may be requested in advance by contacting Mr. Carl P. Gertz, U.S. Department of Energy (address given above).

III. Comments and Scoping

Several of the written comments received in response to the previously published Notice of Intent have included requests for public scoping meetings for the EIS on the SIS Project. In response to these requests and in accordance with the National Environmental Policy Act (NEPA), as implemented by the Council on Enivornmental Quality Regulations (40 CFR Part 1500 *et seq.*), the DOE will conduct public scoping meetings to assist DOE in determining the appropriate scope of the EIS and the significant environmental issues to be addressed. The Department is also extending the written comment period to March 2, 1987. Written comments received during this period will be considered in preparing the EIS.

Two public scoping meetings will be held on the following dates, at the following locations and times: February 24, 1987, in Idaho Falls, Idaho, at University Place, 1776 Science Center Drive, commencing at 7:00 p.m.; on February 26, 1987, in Boise, Idaho, at the Red Lion Inn-Riverside, commencing at 7:00 p.m.

IV. Written Comment Procedures

Interested agencies, organizations, and members of the general public who desire to submit written comments or suggestions for consideration in connection with the preparation of this EIS are invited to do so in order to assist the DOE in identifying significant environmental issues and the appropriate scope of the EIS. Any written comments received will be given equal weight with oral comments presented at the scoping meetings. Written comments or suggestions on the scope of the EIS should be sent to Mr. Carl P. Gertz (address given above), and should be postmarked by March 2, 1987, to assure consideration.

V. Public Meeting Participation Procedure

Those parties interested in making oral comments or suggestions for consideration in connection with the preparation of this EIS are invited to do so by attending the public scoping meetings cited above. Intentions to present oral testimony should be received by Mr. Carl P. Gertz (address given above) by February 17, 1987.

The public scoping meetings will be held at the times and locations and on the dates specified above. The DOE will designate a presiding officer to chair these meetings. These meetings will be conducted as formal hearings. All interested individuals will be afforded an opportunity to speak. There will be no cross-examination of persons presenting statements. The presiding officer may ask questions of persons presenting statements, if needed for clarification, to assure that DOE understands the comments or suggestions made. The presiding officer will establish the order of speakers and provide any additional procedures necessary for the conduct of the meeting. As time permits, speakers will be allowed about five minutes for their oral statements and are requested to provide a brief written summary of their oral presentation. Speakers who desire additional time to speak or who wish to provide further information for the record should be sure to submit such a request or information along with their notice of intent to speak. Individuals who do not make an advance arrangement to speak may register to speak at the time of each meeting. After all scheduled speakers have been given an opportunity to make their presentation, an opportunity will be provided to these registrants to speak.

A transcript of these scoping meetings will be prepared at the time of each meeting and the entire record of the meetings, including the transcript together with other information pertaining to the SIS Project will be retained by the DOE and made available for inspection at the DOE-Idaho public reading room located at the INEL Technical Library, University Place, 1776 Science Center Drive, Idaho Falls, ID 83415, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. Additional copies of the complete transcript will also be available for a fee. In addition, anyone may make arrangements with Brent Jacobsen at the INEL Technical Library (address given above), telephone (208) 526–1144, to purchase a copy of the transcripts.

Issued in Washington, DC, February 2, 1987.

Mary L. Walker,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 87–2635 Filed 2–6–87; 8:45 am]

BILLING CODE 6450–01–M

Office of Assistant Secretary for International Affairs and Energy Emergencies

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; Civil Australia

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Australia concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/EU(AU)–5, for the transfer of 16.286 kilograms of uranium, containing 16.923 kilograms of uranium-235 (92.546 percent enrichment) from the Australian Atomic Energy Commission to the United Kingdom Atomic Energy Authority, for fabrication of fuel elements (60 percent enrichment) for the HIFAR research reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: February 2, 1987.

For the Department of Energy.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87–2590 Filed 2–6–87; 8:45 am]

BILLING CODE 6450–01–M

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; Germany

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval for the loan of 200 micrograms of plutonium-242 to the European Institute for Transuranium Elements, Karlsruhe, the Federal Republic of Germany, for collaborative experiments. The material is to be returned to the United States upon conclusion of the experiments. Contract No. WC–EU–244 has been assigned to this proposed subsequent arrangement.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after this date of publication of this notice.

Dated: February 2, 1987.

For the Department of Energy.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87–2591 Filed 2–6–87; 8:45 am]

BILLING CODE 6450–01–M

Atomic Energy Agreements; Proposed Subsequent Arrangement With European Atomic Energy Community; Correction

In a document published on page 45512 in the **Federal Register** of Friday, December 19, 1986, the following correction should be made:

In the fourth line of the second paragraph of the document the "4 kilograms" should read "approximately 20 kilograms".

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

February 2, 1987.

[FR Doc. 87–2592 Filed 2–6–87; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Proposed Consent Order With Agway, Inc., Agway Petroleum Corp., and Texas City Refining, Inc.

AGENCY: Department of Energy (DOE).

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) hereby gives the notice required by 10 CFR 205.199J that it has entered into a Consent Order with Agway, Inc., Agway Petroleum Corporation, and Texas City Refining, Inc., ("Agway"). The Consent Order proposes to resolve matters relating to Agway's compliance with the federal petroleum price and allocation regulations for the period January 1, 1973, through January 27, 1981. To remedy any violations that may have occurred during the period, Agway has agreed to make three payments totalling $1 million plus interest from the date of execution of the Consent Order. The settlement reflects the negotiated compromises present in every settlement, including assessments of litigation risks in the significant areas of dispute between ERA and Agway.

ERA will petition the Office of Hearings and Appeals (OHA) to implement a Special Refund Proceeding pursuant to 10 CFR Part 205, Subpart V

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to distribute the $1 million payment plus interest. In that proceeding, any person who claims to have suffered injury from Agway's alleged overcharges would have the opportunity to submit a claim to OHA.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for a period of thirty (30) days following publication of this Notice.

ERA will consider the comments, information and recommendations received from the public in finally evaluating the proposed settlement. This will result in one of the following courses of action: Rejection of the settlement; acceptance of the settlement and issuance of a final Order; or renegotiation of the agreement and, if successful, issuance of the modified agreement as a final Order. DOE's final decision will be published in the **Federal Register**, along with an analysis of and response to the significant written comments, as well as any other considerations that were relevant to the decision.

FOR FURTHER INFORMATION CONTACT:
Emily Sommers, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6727.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Resolution of Issues
III. Determination of Reasonable Settlement Amount
IV. Terms and Conditions of the Consent Order

I. Introduction

Agway is a petroleum refiner subject to the jurisdiction of the ERA to determine compliance with the federal petroleum price and allocation regulations. As determined by Interpretation 77–6,[1] Agway, Inc., an agricultural cooperative whose common stock is owned by over 100,000 farmer-members, owned during the period covered by this Consent Order all the capital stock of Agway Petroleum Corporation ("Agway Petroleum") which in turn owned two-thirds of the capital stock of Texas City Refining, Inc. ("TCR"). The remaining one-third of TCR's capital stock is owned by Southern States Cooperative, Incorporated, an agricultural cooperative. At the time of the Interpretation, TCR sold 60% of the refined petroleum products it produced to Agway Petroleum, which constituted 93% of Agway Petroleum's requirements. Agway Petroleum then resold these products to member-owners of Agway and others. On the basis of these interrelationships, Interpretation 77–6 found that Agway, Agway Petroleum and TCR constituted a single firm for purposes of the federal petroleum price and allocation regulations.

ERA conducted an audit of Agway's compliance with the Federal price and allocation regulations, which were terminated on January 28, 1981 (Executive Order 12287). During this audit, ERA identified areas in the pricing and sales of refined petroleum products in which it believes that Agway failed to comply with the requirements of the federal price and allocation regulations. A number of issues arose in which ERA disagreed with Agway's calculation of the maximum lawful prices it could charge for refined products.

ERA preliminarily determined that for the issues covered by this proposed settlement, Agway may be liable for a maximum potential liability of $13.7 million in overcharges (excluding interest) in its sales to all of its categories of customers, including its substantial sales to its member-owners. ERA has preliminarily agreed to the settlement amount after examining the nature of TCR's sales and Agway Petroleum's sales, assessing the litigation risks associated with establishing the alleged overcharges, and considering the factual veracity and appropriate settlement compromises related to the many various issues.

The settlement calls for Agway to pay $1 million (plus interest from the date of execution by DOE) to discharge in full its obligations under the price and allocation regulations, except for those matters excluded from the agreement. Under the terms of the proposed Consent Order, the ERA would petition the OHA to implement a Special Refund Proceeding pursuant to 10 CFR Part 205, Subpart V.

II. Resolution of Issues

In the negotiation process which led to this proposed settlement, ERA analyzed the results of the audit, the nature of the alleged regulatory violations, and the "banks" of costs that Agway was entitled to recover in previous months but did not. ERA also considered the extent to which these banks were available to offset alleged cost and recovery violations and thus prevent the occurrence of overcharges on refined products. Finally, ERA examined Agway's corporate and cooperative structure, the extent of Agway's sales to its cooperative members, and the effect these had on possible overcharges.

Initially ERA identified $122 million in cost and recovery issues.[2] Following those original allegations, the cooperative gave ERA information concerning those cost and recovery claims which resulted in certain issues being dropped, either because DOE was satisfied there was no violation or because the issue had no impact on possible overcharges. As a result, the remaining issues total $77 million in overstated costs and/or understated recoveries. The issues concern cost reallocations, crude oil cost increases, purchased product cost increases, non-product cost increases and cost recoveries.

ERA determined that if it were successful on all of the issues, Agway could be liable for $13.7 million (plus interest on that amount) in its sales of refined products to all of its customers, including transfers of product to the equity owners of Agway and/or TCR.[3]

III. Determination of Reasonable Settlement Amount

In determining a reasonable settlement amount, ERA considered the $13.7 million in possible overcharges initially calculated, and the percentage of Agway's sales from 1973–1981 which were made to unrelated entities[4] who may have been harmed by Agway's pricing practices. On a proportionate basis, ERA determined that the maximum amount of overcharges to outsiders was $3.15 million plus interest.

In determining a reasonable settlement, ERA reviewed Agway's maximum overcharge determinations,

[1] Interpretation 77–6 was issued by the Federal Energy Administration on February 25, 1977, 5 F.E.G. ¶ 56,316, and was upheld in a decision by the Office of Exceptions and Appeals (now the Office of Hearings and Appeals) on August 3, 1977, 6 FEA ¶ 80,532.

[2] On January 9, 1981, ERA issued five Notices of Probable Violation (NOPV) to Agway alleging the following:
NOPV Case No.: RTYE00101—$33,000,000 in crude oil cost issues alleged.
NOPV Case No.: RTYK00101—$54,254,419 in purchased product issues.
NOPV Case No.: RTYL01401—$18,783,037 in non-product cost issues.
NOPV Case No.: RTYM00101—$16,254,421 in recoveries issues.
NOPV Case No.: RTYB00101—Unquantified class of purchaser issues.

[3] The possible overcharges would have occurred primarily in sales and transfers of general refinery products during certain months prior to February 1976.

[4] As discussed above, because two-thirds of TCR's stock was owned by Agway, Inc. which owns Agway Petroleum Corporation and one-third of TCR's stock was owned by Southern States Cooperative, TCR's sales to these entities, as well as Agway Petroleum's sales to the 100,000 farm cooperative members have resulted in no legal overcharges inasmuch as such "purchasers" were equity owners of TCR and/or Agway.

particularly considering the $3.15 million attributable to sales to outside entities. ERA also considered the fact that its assessments were based on audit samples, estimates, projections and extrapolations and represents the estimated maximum recovery, excluding interest, that could result if all regulatory issues resolved by this settlement were adjudicated in ERA's favor and a maximum allowable price calculation was done on the basis of those issues. Those facts, as well as the risks inherent in litigation, were considered by ERA in its preliminary determination that Agway's agreement to pay $1 million for alleged regulatory violations in its sales to outside customers constitutes a reasonable resolution of these matters and is in the public interest.

IV. Terms and Conditions of the Consent Order

Within thirty days of the effective date of the Consent Order or March 1, 1987, whichever is later, Agway will make a first payment to DOE of $300,000 including accrued interest on the entire $1 million principal. Within 120 days of the first payment, Agway will make a second payment to DOE of $400,000 including accrued interest on the remaining principal. Within 120 days of the second payment, Agway will pay to DOE the remaining principal plus accrued interest on the remaining principal.

If the settlement is not made final by May 12, 1987, Agway may withdraw from the proposed agreement. If the Consent Order is made final, ERA will petition OHA to implement a Special Refund Proceeding under the provisions of Subpart V of the regulations. In the proceeding, OHA will develop procedures for the receipt and evaluation of applications for refund in order to distribute the refund amount. To ensure that OHA has sufficient information to evaluate the claims, the proposed Consent Order requires that Agway provide necessary information to OHA.

Unless specifically excluded, Agway and DOE mutually release each other from claims and actions arising under the subject matter covered by the proposed Consent Order. The proposed Order does not affect the right of any other party to take action against Agway, or of Agway or the DOE to take action against any other party.

Two matters are excluded from the settlement. The proposed Order does not resolve:

(a) Agway's rights in all regards concerning claims under 10 CFR Part 205, Subpart V or its claims arising from violations or settlements of alleged violations of the Federal petroleum price and allocation regulations by third parties; and

(b) Agway's rights in all regards under the terms of the Final Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan.).

Finally, this agreement only resolves certain civil liabilities and makes no attempt to resolve any criminal liability that might be established by the government against Agway.

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part. Interested parties are invited to submit written comments concerning this proposed Consent Order to: Agway Consent Order Comments, RG–30, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585. All comments received by the thirtieth day following publication of this Notice in the **Federal Register** will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comment. If, after considering the comments it has received, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the **Federal Register.**

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

Issued in Washington, DC, on January 28, 1987.

Milton C. Lorenz,
Special Counsel, Economic Regulatory Administration.

[Case No. RTYA00001]

Consent Order With Agway, Inc., Agway Petroleum Corporation, and Texas City Refining, Inc.

I. Introduction

101. This Consent Order is entered into between Agway, Inc., Agway Petroleum Corporation, and Texas City Refining, Inc. (hereinafter collectively referred to as "TCR") and the United States Department of Energy ("DOE"). Except as specifically excluded herein, this Consent Order settles and finally resolves all civil and administrative claims and disputes whether or not heretofore raised or asserted, between the DOE, as hereinafter defined, and TCR, as hereinafter defined, relating to TCR's compliance with the Federal petroleum price and allocation regulations, as hereinafter defined, during the period January 1, 1973 through January 27, 1981 (all the matters settled and resolved by this Consent Order are referred to hereafter as "the matters covered by this Consent Order").

II. Jurisdiction, Regulatory Authority, and Definitions

201

This Consent Order is entered into by DOE pursuant to the authority conferred upon it by sections 301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193; Executive Order No. 12009, 42 FR 46267 (1977); Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202

The Economic Regulatory Administration ("ERA") was created by Section 206 of the DOE Act, 42 U.S.C. 7136. In Delegation No. 0204–4, the Secretary of Energy delegated responsibility for the administration of the Federal petroleum price and allocation regulations to the Administrator of the ERA. In Delegation No. 0204–4A, the Administrator delegated to the Special Counsel authority to audit the compliance of refiners, including TCR, with the Federal petroleum price and allocation regulations and to take appropriate enforcement actions based upon such audits.

203

For purposes of this Consent Order:

(a) "DOE" includes the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Department of Energy, the Office of Special Counsel ("OSC"), the Economic Regulatory Administration, and all predecessor and successor agencies.

(b) "Federal petroleum price and allocation regulations" means all statutory requirements and administrative regulations regarding the pricing and allocation of crude oil and refined petroleum products, natural gas liquids, and natural gas liquid products, including the entitlements and mandatory oil import programs, administered by DOE. The Federal petroleum Price and allocation regulations include (without limitation) the pricing, allocation, reporting, certification, and recordkeeping requirements imposed by or under the Economic Stabilization Act of 1970, the

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Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974; Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR Parts 130 and 150 and in 10 CFR Parts 205, 210, 211, 212 and 213; and all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, notices, forms, subpoenas, relating to the pricing and allocation of petroleum products. The provisions of 10 CFR 205.199J, and the definitions under the Federal petroleum price and allocation regulations, shall apply to this Consent Order, except to the extent inconsistent herewith.

(c) "TCR" includes (without limitation) Agway, Inc., Agway Petroleum Corporation, Texas City Refining, Inc., TCR Inc. (formerly Rebel Oil Company) as well as their subsidiaries and affiliates and Predecessors, but only for the acts of such companies while they were subsidiaries or affiliates of TCR. TCR's petroleum-related activities as refiner, producer, operator, working interest or royalty interest owner, reseller, retailer, natural gas processor or otherwise, and, except for Part IV, *infra*, the officers, directors, and employees of such entities.

As set forth in an Interpretation of the General Counsel of the Federal Energy Administration issued February 25, 1977. Interpretation 77–6, 5 F.E.G. ¶ 56,316, upheld in a decision by the Office of Exceptions and Appeals (now the Office of Hearings and Appeals) on August 3, 1977, 6 FEA ¶ 80,532, Agway Inc. ("Agway"), an agricultural cooperative whose common voting stock is owned by over 100,000 farmer-members, owned during the period covered by this Consent Order all the capital stock of Agway Petroleum Corporation ("Agway Petroleum"), which in turn owns two-thirds of the capital stock of Texas City Refining, Inc. ("TCR"). The remaining one-third of TCR's capital stock is owned by Southern States Cooperative, Incorporated, an agricultural cooperative. At the time of the Exceptions and Appeals' decision, TCR sold 60% of the refined petroleum products it produced to Agway Petroleum, which constituted 93% of Agway Petroleum's requirements. Agway Petroleum then resold these products to member-owners of Agway and others. On the basis of these interrelationships, the Federal Energy Administration found that Agway, Agway Petroleum and TCR constituted a single firm for purposes of the Federal petroleum price and allocation regulations.

III. Facts

The stipulated facts upon which this Consent Order is based are as follows:

301

During the period covered by this Consent Order, TCR was a "refiner" and a "producer" of crude oil as those terms are defined in the Federal petroleum price and allocation regulations, and was subject to the jurisdiction of the DOE. During the period covered by this Consent Order, TCR engaged in, among other things, the production, refining, processing, reselling, and marketing of crude oil, gasoline, distillates, propane and other refined petroleum products.

302

DOE has conducted an audit to determine TCR's compliance with the Federal petroleum price and allocation regulations. TCR cooperated fully with the audit. TCR made its books, records, and other requested information available to DOE's auditors, attorneys and other personnel, who examined and reviewed a substantial volume of such materials. DOE found no evidence that TCR committed any willful or intentional violations of the Federal petroleum price and allocation regulations during the period covered by this Consent Order.

303

During the course of its audit, DOE raised certain issues with respect to TCR's application of the Federal petroleum price and allocation regulations and took various formal and informal administrative actions, including, among others, the issuance of letters and Notices of Probable Violations ("NOPVs"). TCR maintains, however, that it has calculated its costs, determined its prices, sold its crude oil and petroleum products, and operated in all other respects in accordance with the Federal petroleum price and allocation regulations.

304

DOE and TCR disagree in several respects concerning the proper application of the Federal petroleum price and allocation regulations to TCR's activities during the period covered by this Consent Order, and each believes that its respective legal and factual positions on the matters resolved by this Consent Order are meritorious. These positions were emphasized in the intensive review and exchange of information conducted during the negotiation process. However, in order to avoid the expense of protracted, complex litigation and disruption of its orderly business functions, TCR has agreed to enter into this Consent Order. DOE believes this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest.

Terms and Conditions

IV. Remedial Provisions

401

In full and final settlement of all matters covered by this Consent Order and in lieu of all other remedies which might have been sought by the DOE against TCR for such matters under 10 CFR 205.199I or otherwise, TCR shall pay one million dollars ($1,000,000), plus interest accruing at the rates specified in paragraphs 404 and 405 between the date of execution of this Consent Order and the date of each payment, pursuant to paragraph 403, to be disbursed as provided in paragraph 402.

402

OSC and TCR agree that OSC will petition DOE's Office of Hearings and Appeals (OHA) to implement special refund procedures pursuant to 10 CFR Part 205, Subpart V to distribute the amount specified in paragraph 403.

403

TCR agrees to pay the one million dollars ($1,000,000) plus interest to DOE as follows:

a. Within 30 days of the effective date of the Consent Order or March 1, 1987, whichever is later, TCR will make a first payment to DOE of $300,000 including accrued interest on the entire principal computed in accordance with paragraphs 404 and 406.

b. Within 120 days of the first payment, TCR will make a second payment to DOE of $400,000 including accrued interest on the remaining principal computed in accordance with paragraphs 405 and 406.

c. Within 120 days of the second payment, TCR will pay to DOE the remaining principal plus accrued interest on the remaining principal computed in accordance with Paragraphs 405 and 406.

404

Interest shall be earned on the principal amount of $1 million from the date of execution of this Consent Order through the date of first payment at an initial interest rate equal to the annual coupon equivalent for the average price bid at the most recent auction of 13-week U.S. Treasury Bills preceding said date of execution. Thereafter and through the date of first payment, the interest rate shall be periodically adjusted to the level of the annual coupon equivalent for the average price bid at the auction of 13-week Treasury Bills next following the first day of each calendar quarter, beginning with the calendar quarter next following said date of execution. The adjusted interest rate will apply on the first day after said auction and will continue to apply until and including the day of the next such auction following the first day of the next calendar quarter or until payment, whichever is earlier. Interest shall be deemed earned each day as of 2:00 p.m. Eastern Time at 1/365th of the rate then in force and shall be compounded as of the first date of each calendar quarter upon which the rate is adjusted.

405

Interest on the amount remaining after the first payment shall be computed from the day after the first payment through the date of each subsequent payment at the annual rate of 7.50%. Interest shall be deemed earned each day as of 2:00 p.m. Eastern Time at 1/365th of the rate then in force and shall be compounded quarterly.

406

In the attribution of payments made pursuant to paragraph 403, interest shall be deemed earned before reduction of principal.

V. Issues Resolved

501

All pending and potential civil and administrative claims, whether or not known, demands, liabilities, causes of action or other proceedings by the DOE against TCR regarding TCR's compliance with and obligations under the Federal petroleum price and allocation regulations during the period covered by this Consent Order, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Proposed Remedial Order, Remedial Order, action in court or otherwise, are resolved and extinguished as to TCR by this Consent Order, except that this Consent Order does not cover or affect:

(a) TCR's rights in all regards concerning claims under 10 CFR Part 205, Subpart V, or its claims arising from violations or settlements of alleged violations of the Federal petroleum price and allocation regulations by third parties; and

(b) TCR's rights in all regards under the terms of the Final Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan.).

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(a) Except as otherwise provided herein, compliance by TCR with this Consent Order shall be deemed by the DOE to constitute full compliance for administrative and civil purposes with all Federal petroleum price and allocation regulations for matters covered by this Consent Order. In consideration for performance as required under this Consent Order by TCR, except as to those matters excluded by paragraph 501, the DOE hereby releases TCR completely and for all purposes from all administrative and civil judicial claims, demands, liabilities or causes of action, including without limitation claims for civil penalties, that the DOE has asserted or may otherwise be able to assert against TCR before or after the date of this Consent Order, for alleged violations of the Federal petroleum price and allocation regulations with respect to matters covered by this Consent Order. The DOE will not initiate or prosecute any such administrative or civil matter against TCR or cause or refer any such matter to be initiated or prosecuted, nor will the DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil matter against TCR or participate voluntarily in the prosecution of such actions. The DOE will not assert voluntarily in any administrative or civil judicial proceeding that TCR has violated the Federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order, or otherwise take action with respect to TCR in derogation of this Consent Order.

(b) Nothing contained herein shall preclude the DOE from defending the validity of the Federal petroleum price and allocation regulations. The DOE also reserves the right to initiate and prosecute enforcement actions against any party other than TCR for non-compliance with the Federal petroleum price and allocation regulations, including, for example, suits against operators for overcharges for crude oil when TCR is a working interest or royalty interest owner in such crude oil production. However, if TCR was the operator of a property that produced crude oil for all or part of the period covered by this Consent Order, the DOE shall not initiate or prosecute any enforcement action against any party for non-compliance with the Federal petroleum price and allocation regulations during such period relative to such property, except to the extent such party received its interest from such property in kind. TCR and the DOE agree that the amount paid to the DOE pursuant to this Consent Order is not attributable to TCR's activities as a working interest or royalty interest owner on properties on which it is not the operator. Furthermore, TCR and the DOE agree that the Consent Order and the payments hereunder do not resolve, reduce or release the liability of any other party for violations on properties of which (but only for the times during which) TCR is or was a working interest or royalty interest owner (and not the operator) or affect any rights or obligations between TCR and such working interest or royalty interest owners. Except for the matters excluded by this paragraph and paragraph 501, the DOE agrees that this Consent Order settles and finally resolves all aspects of TCR's liability to the DOE under the Federal petroleum price and allocation regulations in its capacity as a producer, including but not limited to its capacity as an operator or working interest or royalty interest owner of a crude oil producing property.

(c) Nothing contained herein may be construed as a bar, an estoppel, or a defense against any criminal action, or against any civil action brought by any purchaser of covered products from TCR, or against any civil action brought by an agency of the United States other than by the DOE under (i) section 210 of the Economic Stabilization Act or (ii) any statute or regulations other than the Federal petroleum price and allocation regulations. However, the DOE expressly agrees that it will not seek or recommend any criminal fines or penalties based solely on the information and evidence presently in its possession for the matters covered by this Consent Order; provided that nothing in the Consent Order precludes the DOE from exercising its obligations under law with regard to forwarding information of possible criminal violations of law to the appropriate authorities. Finally, except as herein specifically provided, this Consent Order does not affect or prejudice any private action brought by a third party against TCR, or by TCR against any third parties, including an action for contribution; nor may this Consent Order be used to establish, enlarge, or abridge the rights of third parties seeking contribution from TCR, or the rights of TCR to seek contribution from third parties. Nothing herein shall preclude TCR from asserting any legal or factual position or argument in any action brought against TCR by any third party under section 210 of the Economic Stabilization Act, the Federal petroleum

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price and allocation regulations or any other statute, rule, regulation or order.

(d) TCR expressly agrees that in consideration for the DOE's performance under the Consent Order, TCR releases the DOE completely and for all purposes from all administrative and civil judicial claims, liabilities or causes of action that TCR has asserted or may otherwise be able to assert against the DOE under the Federal petroleum price and allocation regulations, except for matters specifically excluded from this Consent Order. This release, however, does not preclude TCR from asserting any factual or legal position or argument as a defense against any action, claim, or proceeding brought by the DOE, the United States, or any agency of the United States.

503

Execution of this Consent Order constitutes neither an admission by TCR nor a finding by the DOE of any violation by TCR of any statute or regulation. The DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and the DOE expressly agrees that it will not seek any such civil penalties. None of the payments or expenditures made by TCR pursuant to this Consent Order are to be considered for any purpose as penalties, fines, or forfeitures or as settlement of any potential liability for penalties, fines or forfeitures. Payments made by TCR pursuant to this Consent Order are attributable only to the matters resolved by this Consent Order which do not include any willful violation of Federal petroleum price and allocation regulations.

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Notwithstanding any other provision herein, with respect to the matters covered by this Consent Order, the DOE reserves the right to initiate an enforcement proceeding or to seek appropriate penalties for any newly discovered regulatory violations committed by TCR, but only if TCR has concealed facts relating to such violations. The DOE and TCR also reserve the right to seek appropriate judicial remedies, other than full rescission of this Consent Order, for any misrepresentation of fact material to this Consent Order during the course of the audit or the negotiations that preceded this Consent Order.

VI. Reporting, Recordkeeping Requirements and Confidentiality

601

TCR shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. To assist DOE in the distribution of the monies paid pursuant to paragraph 402, TCR shall also maintain sales volume data and customers' names and addresses regarding its initial sales of crude oil and refined petroleum products for the transactions covered by this Consent Order until one year after the date ERA's Subpart V petition is filed with OHA. ERA shall file its Subpart V petition with OHA within 45 days after the date upon which TCR makes full and final payment pursuant to paragraph 403. If requested, TCR shall make such information available to DOE. Except as otherwise provided in this paragraph, upon completion of payment to DOE of the amount set forth in paragraph 403 of this Consent Order, TCR is relieved of its obligation to comply with the recordkeeping requirements of the Federal petroleum price and allocation regulations relating to the matters settled by this Consent Order. Except for formal requests for information regarding other firms subject to DOE's information gathering and reporting authority, TCR will not be subject to any audit requests, report orders, subpoenas, or other administrative discovery by DOE relating to TCR's compliance with the Federal petroleum price and allocation regulations relating to the matters settled by this Consent Order for the period covered by this Consent Order; provided, however, that TCR will not invoke this Consent Order as a defense to report orders, subpoenas and other administrative discovery it may receive regarding other firms subject to DOE's information gathering and reporting authority.

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The DOE will treat the sensitive commercial and financial information provided by TCR pursuant to negotiations which were conducted with respect to the settlement agreed to in this Consent Order or obtained by DOE in its audit of TCR and related to matters covered by this Consent Order as confidential and proprietary and will not disclose such information unless required to do so by law, including a request by a duly authorized committee or subcommittee of Congress. If a request or demand for release of any such information is made pursuant to law, the DOE will claim any privilege or exemption reasonably available to it. The DOE will provide TCR with ten (10) days actual notice, if possible, of any pending disclosure of such information, unless prohibited or precluded from doing so by law or request of Congress. The DOE will retain the audit information which it has acquired during its review of TCR's compliance with the federal petroleum price and allocation regulations in accordance with the DOE's established records retention procedures. Notwithstanding the otherwise confidential treatment afforded such information by the terms of this Consent Order, the DOE will make such information available to the Department of Justice ("DOJ") in response to a request pursuant to the DOJ's statutory authority by a duly authorized representative of the DOJ. If requested by the DOJ, the DOE shall not disclose that such a request has been made. Nothing in this paragraph shall be deemed to waive or prejudice any right TCR may have independent of this Consent Order regarding the disclosure of sensitive commercial and financial information.

VII. Contractual Undertaking

701

It is the understanding and express intention of TCR and the DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns.

Notwithstanding any other provision herein, TCR and the DOE each reserves the right to institute a civil action in an appropriate United States district court, if necessary, to secure enforcement of the terms of this Consent Order, and the DOE also reserves the right to seek appropriate penalties and interest for any failure to comply with the terms of this Consent Order. Consistent with its Departmental policy, the DOE will undertake the defense of the Consent Order as finalized, in response to any litigation challenging the Consent Order's validity in which the DOE is named a party. TCR agrees to cooperate with the DOE in the defense of any such challenge.

VIII. Final Order

801

Upon becoming effective, this Consent Order shall be a final order of DOE having the same force and effect as a remedial order issued pursuant to section 503 of the DOE Act, 42 U.S.C. 7139, and 10 CFR 205.199B. TCR hereby waives its right to administrative or judicial review of this Order, but TCR reserves the right to participate in any such review initiated by a third party.

IX. Effective Date

901

This Consent Order shall become effective as a final order of the DOE upon notice to that effect being published in the **Federal Register**. Prior to that date, the DOE will publish notice in the **Federal Register** that it proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments to DOE. The DOE will consider all written comments to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order or to attempt to renegotiate the terms of the Consent Order.

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Until the effective date, the DOE reserves the right to withdraw consent to this Consent Order by written notice to TCR, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred twentieth (120th) day following execution by TCR, TCR reserves the right, at any time thereafter until the effective date, to withdraw its agreement to this Consent Order by written notice to the DOE in which event this Consent Order shall be null and void.

I, the undersigned, a duly authorized representative of Agway, Inc., Agway Petroleum Corporation, and Texas City Refining, Inc. hereby agree to and accept on behalf of Agway, Inc., Agway Petroleum Corporation and Texas City Refining, Inc. the foregoing Consent Order.

Joseph L. Stratman,

Senior Vice President, Texas City Refining, Inc.

Dated: January 12, 1987.

I, the undersigned, a duly authorized representative of the Department of Energy, hereby agree to and accept on behalf of the Department of Energy the foregoing Consent Order.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

Dated: January 5, 1987.

[FR Doc. 87-2589 Filed 2-6-87; 8:45 am]

BILLING CODE 6450-01-M

Proposed Remedial Order; the Crude Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed remedial order to: the Crude Company.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to The Crude Company; 701 W. Antler, Box 1968; Casper, Wyoming 82602; ATTN: John A. Masek, President. This Proposed Remedial Order alleges pricing violations in the amount of $8,993,470 plus interest in connection with the purchase and resale of crude oil during the period April 1974 through December 1980. The impact of the alleged violation is nationwide.

A copy of the Proposed Remedial Order may be obtained from the Office of Freedom of Information Reading Room; U.S. Department of Energy; Forrestal Building; 1000 Independence Avenue, SW.; Room 1E-190; Washington, DC 20585. Within fifteen (15) days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals; U.S. Department of Energy; Forrestal Building, Room 6F078; 1000 Independence Ave., SW.; Washington, DC 20585, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas, on the 9th day of January 1987.

Ben Lemos,

Director, Office of Field Operations, Economic Regulatory Administration.

[FR Doc. 87-2593 Filed 2-6-87; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-59-NG]

Forest Marketing Corp.; Order Approving Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order approving blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting blanket authorization to Forest Marketing Corporation (FMC) to import Canadian natural gas on a short-term basis. The order issued in ERA Docket No. 86-59-NG authorizes FMC to import up to 100 Bcf of Canadian natural gas during a two-year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 30, 1987.

Robert L. Davies,

Director, Office of Fuels Program, Economic Regulatory Administration.

[FR Doc. 87-2594 Filed 2-6-87; 8:45 am]

BILLING CODE 6450-01-M

Final Consent Order With Murphy Oil Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final action on proposed consent order.

SUMMARY: The Administrator of the Economic Regulatory Administration (ERA) has determined that a proposed Consent Order between the Department of Energy (DOE) and Murphy Oil Corporation (Murphy) shall be made final as proposed. The Consent Order resolves, with certain exceptions, matters relating to Murphy's compliance with the Federal price and allocation regulations for the period January 1, 1973 to January 28, 1981. To resolve those matters, Murphy will pay the DOE seven million dollars, plus interest from the date the proposed Consent Order was executed. Persons claiming to have been harmed by Murphy's alleged overcharges will be able to present their claims for refunds in an administrative claims proceeding before the Office of Hearings and Appeals (OHA). The decision to make the Murphy Consent Order final was made after a full review of written comments from the public.

FOR FURTHER INFORMATION CONTACT: Emily E. Sommers, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586-8872.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Comments Received
III. Analysis of Comment
IV. Decision

I. Introduction

On December 18, 1986, ERA issued a notice announcing a proposed Consent Order between DOE and Murphy which, with certain exceptions, would resolve matters relating to Murphy's compliance with Federal petroleum price and allocation regulations for the period January 1, 1973 to January 28, 1981. 51 FR 45385 (December 18, 1986). The proposed Consent Order, which requires

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Murphy to pay DOE seven million dollars,[1] is for the settlement of Murphy's potential liability for $10.4 million in alleged overcharges including attributable interest. The December 18 . notice provided in detail the basis for ERA's preliminary view that the settlement was favorable to the government and in the public interest. The **Federal Register** notice solicited written comments from the public relating to the adequacy of the terms and conditions of the settlement and whether the settlement should be made final.

II. Comments Received

ERA received one written comment. That comment was considered in making the decision as to whether the proposed Consent Order should be made final. The comment, which was submitted by the Attorneys General of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island and West Virginia, addressed the use of OHA Subpart V procedures to distribute the settlement monies, along with suggestions concerning the specific disposition of the Consent Order monies.

III. Analysis of Comment

The December 18 notice solicited written comments to enable the ERA to receive information from the public relevant to the decision whether the proposed Consent Order should be finalized as proposed, modified or rejected. To ensure public understanding of the basis for the proposed settlement, the December 18 notice provided detailed information regarding Murphy's overcharge liability and the considerations that went into the government's preliminary agreement with the proposed terms. This settlement information enabled the public to address more specifically the areas in which questions or concerns may have existed.

The Attorneys General of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island and West Virginia objected to the provision in the Consent Order that requires the DOE's Office of Special Counsel (OSC) to petition the OHA to implement special refund procedures under Subpart V (10 CFR Part 205) to distribute the settlement funds. These states expressed the view that use of the Subpart V procedures was unnecessary and that the Consent Order itself should direct refunds to the states, to be used in any energy-related programs or projects which would benefit all the states' citizens, when it is impossible to identify the victims of overcharges. As DOE has previously explained in, *inter alia*, the Exxon **Federal Register** Notice, 51 FR 36052 (October 8, 1986), in response to the same comment made by the Attorneys General for these states, the ERA believes as a general policy that the Subpart V procedures are best suited for cases such as Murphy, where ERA could not readily identify the injured parties or their relative amount of economic harm. This commenter may most appropriately present its claim for monies from the Consent Order fund and express its views concerning the use of these monies in that forum.

In the December 18 **Federal Register** notice, ERA sought to provide the maximum amount of information possible. That notice resulted in one comment, and ERA's review and analysis of the comment did not provide any information that would support the modification or rejection of the proposed Consent Order with Murphy. Accordingly, ERA concludes that the Consent Order is in the public interest and should be made final.

IV. Decision

By this notice, and pursuant to 10 CFR 205.199J, the proposed Consent Order between Murphy and DOE is made a final order of the Department of Energy, effective the date of publication of this notice in the **Federal Register**.

Issued in Washington, DC, on January 28, 1987.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 87-2595 Filed 2-6-87; 8:45 am]

BILLING CODE 6450-01-M

[1] The seven million dollars, plus interest accrued from the date the proposed Consent Order was executed, will be disbursed to DOE within 30 days of publication of this notice.

Federal Energy Regulatory Commission

[Project No. 6346-002]

Wawa, Inc.; Surrender of Exemption

February 3, 1987.

Take notice that the Wawa, Incorporated, Exemptee for the proposed Union Lake Hydro Project No. 6346, requested by letter dated January 13, 1987, that its exemption be terminated. The order granting exemption was issued on November 22, 1982. The project would have been located on Union Lake in Cumberland County, New Jersey. Exemptee has not started project construction.

The Exemptee filed the request on January 13, 1987, and the Exemption from Licensing for Project No. 6346, shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2639 Filed 2-6-87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5605-002]

Woodbridge Irrigation District; Surrender of Exemption

February 3, 1987.

Take notice that Woodbridge Irrigation District (District), exemptee for the Woodbridge Dam Project No. 5605, has requested that its exemption be terminated. The project would have been located on the Mokelumne River in San Joaquin County, California. Construction on the project has not commenced.

The District filed the request on December 29, 1986, and the exemption for Project No. 5605 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2640 Filed 2-6-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[A-9-FRL-3153-1; EPA Project No. NV 83-01]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to White Pine Power

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice; correction.

SUMMARY: The Environmental Protection Agency is correcting the notice published in the **Federal Register** on October 29, 1986 (51 FR 39576)

concerning the PSD permit named above. The original notice stated in the **SUMMARY,** "Notice is hereby given that on August 6, 1986 the Environmental Protection Agency issued a PSD permit under EPA's Federal regulations 40 CFR 52.21 to the applicant named above." The correct date of permit issuance is August 6, 1985.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address request to: Anita Tenley (A-3-1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8240, FTS 454-8240.

SUPPLEMENTARY INFORMATION: The PSD permit grants approval to construct a 1500 MW coal-fired electric utility steam generating plant and associated facilities to be located approximately 48 miles north of Ely, Nevada. The permit is subject to certain conditions, including an allowable emission rate (for each of the two boilers) as follows: SO_2-0.19 lbs/10^6 Btu (30-day average) with at least 84% control efficiency and 1490 lbs/hr (24-hour average), CO-383 lbs/hr (30-day average), NO_x-0.55 lbs/10^6 Btu when firing bituminous coal or 0.45 lbs/10^6 Btu when firing sub-bituminous coal (30-day average), TSP-0.02 lbs/10^6 Btu or 160.9 lbs/hr, fluoride-24 lbs/hr, and mercury at 0.05 lbs/hr (.006 grams per second).

DATE: The PSD permit was issued to White Pine Power on August 6, 1985.

Dated: January 28, 1987.

David P. Howekamp,

Director, Air Management Division, Region 9.

[FR Doc. 87-2632 Filed 2-6-87; 8:45 am]

BILLING CODE 6560-50-M

[SAB-FRL-3153-2]

Science Advisory Board; Environmental Effects, Transport and Fate Committee Surface Water Monitoring Subcommittee; Open Meeting

Under the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given that a two-day meeting of the Surface Water Monitoring Subcommittee of the Science Advisory Board's Environmental Effects, Transport and Fate Committee will be held on February 23 and 24, 1987. The meeting will begin at 9:00 a.m. on February 23, in Conference Room 309 of the General Academy Building, on the corner of Avenues B and Mulberry, North Texas State University, Denton, Texas, and will adjourn on February 24, no later than 4:00 p.m.

The main purpose of the meeting is to independently review the scientific adequacy of the Surface Water Monitoring Study prepared by the Agency's Office of Water. The Subcommittee will discuss and assess the scientific basis for the objectives, findings and recommendations presented in the study. Copies of the Agency document to be reviewed may be obtained from Ms. Mary E. Blakeslee, U.S. Environmental Protection Agency, Office of Water (WH 556), 401 M Street, SW., Washington, DC 20460, (202) 382-7818.

The meeting will be open to the public. Any member of the public wishing to attend, present information to the subcommittee, or obtain information concerning the meeting, should contact Ms. Janis Kurtz, Executive Secretary, or Mrs. Lutithia Barbee, Staff Secretary, (A101-F) Environmental Effects, Transport and Fate Committee, Science Advisory Board, U.S. EPA, 401 M Street SW., Washington, DC 20460, Telephone: (202) 382-2552 or FTS 8-382-2552. Written comments will he accepted, and can be sent to Ms. Kurtz at the address above. Persons interested in making statements before the Subcommittee must contact Ms. Kurtz no later than January 19, 1987 in order to be assured of space on the agenda.

Dated: February 3, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 87-2633 Filed 2-6-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59237A; FRL-3153-3]

Certain Chemical; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-87-6. The test marketing conditions are described below.

EFFECTIVE DATE: February 2, 1987.

FOR FURTHER INFORMATION CONTACT: Darlene Jones, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-608, 401 M Street, SW., Washington, DC 20460, (202-382-2279).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-87-6. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TML application, and for the time period and restriction specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the numbers of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-87-6. A bill of lading and Material Safety Data Sheet (MSDS) accompanying each shipment must state that use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until 5 years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of dates of the shipments to the customers and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T-87-6

Date of Receipt: December 22, 1986.

Notice of Receipt: January 9, 1987 (52 FR 857).

Applicant: Confidential.

Chemical: (G) Alkyd Resin.

Use: (S) Architectural coatings.

Production Volume: Confidential.

Number of Customers: 2,275

Consumers: 850 Contractors.

Worker Exposure: Consumer use: Dermal and inhalation, 2,275 consumers. Contractor use: Dermal and inhalation, 5,100 workers.

Test Marketing Period: 180 Days.

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Commencing on: February 2, 1987.

Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test market activities will not present any reasonable risk of injury to health or the environment.

Dated: February 2, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances

[FR Doc. 87-2634 Filed 2-6-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-786-DR]

Federated States of Micronesia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Federated States of Micronesia, (FEMA-786-DR), dated February 2, 1987, and related determinations.

DATED: February 2, 1987.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3616.

Notice: Notice is hereby given that, in a letter of February 2, 1987, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the Federated States of Micronesia resulting from Typhoon Orchid on January 10-11, 1987, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the Federated States of Micronesia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Tommie C. Hamner of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Federated States of Micronesia to have been affected adversely by this declared major disaster and are designated eligible as follows:

Ulithi Atoll and the Island of Fais for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director.

[FR Doc. 87-2625 Filed 2-6-87; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-006190-049
Title: United States Atlantic & Gulf/Venezuela Freight Conference
Parties:
Compania Anonima Venezolana de Navigacion
Crowley Caribbean Transport, Inc.
United States Lines (S.A.) Inc.
Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Agreement No.: 202-010424-013
Title: United States Atlantic & Gulf/Hispaniola Freight Association
Parties:
Crowley Caribbean Transport, Inc./CTMT, Inc./Trailer Marine Transport Corporation (as one party)
Puerto Rico Maritime Shipping Authority
Sea-Land Service, Inc.
Shipping Corporation of Trinidad and Tobago, Ltd.
Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Agreement No.: 213-011059
Title: Crowley Caribbean Transport/American Transport Lines Space Charter Agreement
Parties:
Crowley Caribbean Transport, Inc. (Crowley)
American Transport Lines, Inc. (ATL)
Synopsis: The proposed agreement would permit Crowley to charter space on ATL vessels operating in the trade between U.S. Atlantic and Gulf ports and ports in Venezuela. It would also permit the parties to interchange containers and related equipment and to agree on sailing schedules and ports of call. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: February 4, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87-2599 Filed 2-6-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Cheatham State Bank Employee Stock Ownership Plan, et. al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 27, 1987.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Cheatham State Bank Employee Stock Ownership Plan*, Kingston Springs, Tennessee; to become a bank holding company by acquiring 26.7 percent of the voting shares of CSB Financial Corporation, Ashland City, Tennessee, and thereby indirectly acquire Cheatham State Bank, Kingston Springs, Tennessee.

B. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Banks of Iowa, Inc.*, Des Moines, Iowa; to acquire 100 percent of the voting shares of Central Trust and Savings Bank, Eldridge, Iowa. Comments on this application must be received by February 24, 1987.

Board of Governors of the Federal Reserve System, February 3, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2587 Filed 2-6-87; 8:45 am]

BILLING CODE 6210-01-M

Lake Ariel Bankcorp, Inc., et. al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 2, 1987.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Lake Ariel Bankcorp, Inc.*, Lake Ariel, Pennsylvania; to engage *de novo* through its subsidiary, L. A. Lease, Inc., Lake Ariel, Pennsylvania, in the leasing of personal property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Society Corporation*, Cleveland, Ohio; to engage *de novo* through its subsidiary, Society Mortgage Company, Cleveland, Ohio, in the servicing of mortgage loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Amcore Financial, Inc.*, Rockford, Illinois; to engage *de novo* through its subsidiary, Amcore Mortgage, Inc., Rockford, Illinois, in the origination, acquisition, selling and servicing of residential and commercial mortgage loans on its own behalf and on the behalf of other mortgage companies and financial institutions pursuant to § 225.25(b)(1) of the Board's Regulation Y. Comments on this application must be received by February 25, 1987.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. **Wells Fargo & Company**, San Francisco, California; to engage *de novo* through its subsidiary, Wells Fargo Investment Advisors, San Francisco, California, in providing investment advice on financial futures and options on futures pursuant to § 225.25(b)(19) of the Board's Regulation Y. Comments on this application must be received by February 27, 1987.

Board of Governors of the Federal Reserve System, February 3, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2588 Filed 2-6-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisitions of Shares of Banks or Bank Holding Companies; Samuel C. Johnson, et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 24, 1987.

A. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Samuel C. Johnson as Trustee of the Heritage Financial Trust*, Racine, Wisconsin; Notificant proposes to exchange 21,908 class A shares of Heritage Racine Corporation, Racine, Wisconsin, With the H.F. Johnson personal trust for 21,908 shares of Class B shares of Heritage Racine Corporation.

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B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Donald K. Wilder,* Oakland City, Indiana; to acquire 26.40 percent of the voting shares of Oakland City Bancshares Corp., Oakland City, Indiana.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *FLS Partnership,* Lenders Corporation, Scott M. Ferguson and James M. Shadlaus, all of San Diego, California; to acquire 15.28 percent of the voting shares of SDNB Financial Corp., San Diego, California.

Board of Governors of the Federal Reserve System, February 3, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2586 Filed 2-6-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87N-0035]

Merrell Dow Pharmaceuticals, Inc., et al; Withdrawal of Approval of New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) withdraws approval of 13 new drug applications (NDAs) based on the written request of the applicant.

EFFECTIVE DATE: March 11, 1987.

FOR FURTHER INFORMATION CONTACT: Ron Lyles, Center for Drugs and Biologics (HFN-46), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4320.

SUPPLEMENTARY INFORMATION: The holders of the NDAs listed below have informed FDA that these drug products are no longer marketed. They have requested that FDA withdraw approval of the NDAs and have waived their opportunity for hearing.

NDA	Drug name	Applicant's name and address
1-941	Diothane Ointment.	Merrell Dow Pharmaceuticals, Inc., 2110 E. Galbraith Rd., Cincinnati, OH 45215.
6-931	Syncurine Injection.	Burroughs Wellcome Co., 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
9-313	Romilar Expectorant.	Hoffmann-La Roache, Inc., Nutley, NJ 07110.
10-489	Harvamine Tablets.	The Purdue Frederick Co., 100 Connecticut Ave., Norwalk, CT 06856.
11-165	Romilar CF Syrup.	Hoffmann-La Roche, Inc.
11-845	Pharycidin Concentrate.	The Purdue Frederick Co.
12-509	Tegunor Medicated Ointment and Powder.	Do.
12-755	Chlorephrine Sustained Action Capsules.	USV Laboratories, 303 S. Broadway, Tarrytown, NY 10591.
12-779	Reactrol Tablets	The Purdue Frederick Co.
12-913	Metoprorne Injection.	Ciba-Geigy, Summit, NJ 07901.
14-717	Afrin Nasal Spray and Solution.	Schering Corp., 2000 Galloping Hill Rd., Kenilworth, NJ 07033.
16-905	Ducon Concentrate Antacid Suspension.	Smith, Kline & French Laboratories, 1500 Spring Garden St., P.O. Box 7929, Philadelphia, PA 19101.
18-173	Fluidil Tablets	Adria Laboratories, Inc., P.O. Box 16529, Columbus, OH 43216.

The agency has determined that, in accordance with 21 CFR 25.24(c)(3) this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (section 505(e), 76 Stat. 782 amended (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drugs and Biologics (21 CFR 5.82), approval of the new drug applications listed above is hereby withdrawn.

This order becomes effective on March 11, 1987.

Dated: February 2, 1987.

Paul Parkman,

Acting Director, Office of Compliance, Center for Veterinary Medicine.

[FR Doc. 87-2597 Filed 2-6-87; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

National Toxicology Program: Notification of the Disposal of Wet Tissues From Toxicology and Carcinogenesis Studies Stored in the National Toxicology Program Archives

The National Toxicology Program (NTP) Archives currently maintains records and pathology materials for over 300 National Cancer Institue and NTP toxicology and carcinogenesis studies, some of which were started and completed more than 10 years ago. The storage space for the wet tissues (animal organs and carcasses in formalin) is no longer adequate and additional storage space would be required. Since these studies were completed years ago, and for most studies histological slides and paraffin blocks are available, we plan to discard the wet tissues from selected studies where it is anticipated that there is either little current interest or the tissues are considered no longer viable. The histological slides and paraffin blocks will remain available for these studies.

Attached is the second list of studies for which the wet tissues are to be discarded. (The first list was publised in the **Federal Register** on September 19, 1986, 51 FR 33303-33304.) The chemicals are from studies conducted at Litton Bionetics where the final sacrifices occurred between 1971 and 1976. Anyone who has questions about the studies listed should contact Dr. Gray A. Boorman, Project Officer for the NTP Archives, by telephone at (919) 541-3440, FTS 629-3440, or in writing at NIEHS, MD C2-01, P.O. Box 12233, Research Triangle Park, NC 27709.

If no objections are received by 30 days after publication of this notice, the formalin fixed wet tissues from these studies will be discarded.

Attachment:

Dated: January 9, 1987.

David P. Rall,

Director, National Toxicology Program.

List II

PROPOSED DISPOSAL OF WET TISSUES FOR TOXICOLOGY AND CARCINOGENISTS STUDIES

Exp. No. Chemical	Single dose study		14-day study		90-day study		2-year study	
	Start	end	start	end	start	end	start	end
C00384A 2-Acetylaminofluorene							03/15/69A	03/15/71A
Ref. No. 21 Positive controls and studies with inadequate data Positive control—no Technical Report issued								
C00384B 2-Acetylaminofluorene							01/15/71A	03/15/75A

PROPOSED DISPOSAL OF WET TISSUES FOR TOXICOLOGY AND CARCINOGENISTS STUDIES—Continued

Exp. No. Chemical	Single dose study		14-day study		90-day study		2-year study	
	Start	end	start	end	start	end	start	end
Ref. No. 21 Positive controls and studies with inadequate data Positive control—no Technical Report issued								
C00384C 2-Acetylaminofluorene	09/00/70A		11/00/70A		12/00/70A	08/00/71A	09/00/71A	12/00/73A
Ref. No. 21 Positive controls and studies with inadequate data Positive control—no Technical Report issued								
C00384D 2-Acetylaminofluorene	02/00/71A		04/00/71A		05/00/71A	10/00/71A	02/00/72A	04/00/73A
Ref. No. 21 Positive controls and studies with inadequate data Positive control—no Technical Report issued								
C00384E 2-Acetylaminofluorene	05/00/71A		07/00/71A		08/00/71A	01/00/72A	05/00/72A	06/00/74A
Ref. No. 21 Positive controls and studies with inadequate data Positive control—no Technical Report issued								
C00384F 2-Acetylaminofluorene	03/00/72A		05/00/72A		06/00/72A	11/00/72A	02/00/73A	03/00/75A
Ref. No. 21 Positive controls and studies with inadequate data Positive control—no Technical Report issued								
C00384G 2-Acetylaminofluorene							03/15/73A	02/15/75A
Ref. No. 21 Positive controls and studies with inadequate data Positive control—no Technical Report issued								
C00384H 2-Acetylaminofluorene	11/00/70A		01/00/71A		02/00/71A	08/00/71A	03/00/73A	03/00/75A
Ref. No. 21 Positive controls and studies with inadequate data Positive control—no Technical Report issued								
C03963 4-Amino-2-Nitrophenol	03/00/73A		05/00/73A		06/00/73A	12/00/73A	03/00/74A	04/00/76A
TR-094 P Under the conditions of the bioassay, 4-Amino-2-Nitrophenol was carcinogenic for male Fisher 344 rats, inducing transitional-cell carcinomas of the urinary bladder. The transitional-cell carcinomas of the urinary bladder observed in three dosed female rats may also have been associated with administration of the 4-Amino-2-Nitrophenol. The test chemical was not carcinogenic for male or female B6C3F1 mice at the doses tested.								
C00373A 3-Aminotriazole	10/00/70A		12/00/70A		01/00/71A	10/00/71A	10/00/71A	02/00/74A
Ref. No. 21 Positive controls and studies with inadequate data Positive control—no Technical Report issued								
C00373B 3-Aminotriazole	09/00/71A		11/00/71A		12/00/71A	05/00/72A	09/00/72A	10/00/74A
Ref. No. 21 Positive controls and studies with inadequate data Positive control—no Technical Report issued								
C00373C 3-Aminotriazole	08/00/71A		10/00/71A		11/00/71A	05/00/72A	08/00/72A	11/00/74A
Ref. No. 21 Positive controls and studies with inadequate data Positive control—no Technical Report issued								
C00373D 3-Aminotriazole	11/00/71A		01/00/72A		02/00/72A	10/00/72A	11/00/72A	11/00/74A
Ref. No. 21 Positive controls and studies with inadequate data Positive control—no Technical Report issued								
C00373E 3-Aminotriazole	11/00/71A		01/00/72A		02/00/72A	07/00/72A	11/00/72A	03/00/75A
Ref. No. 21 Positive controls and studies with inadequate data Positive control—no Technical Report issued								
C03805 Carbromal	05/00/72A		07/00/72A		08/00/72A	04/00/73A	05/00/73A	08/00/75A
TR-173 P Under the conditions of this bioassay, dietary administration of Carbromal was not carcinogenic in Fischer 344 rats or B6C3F1 mice.								
C03770 4-(Chloroacetyl)Acetanil	11/00/72A		01/00/73A		02/00/73A	10/00/73A	11/00/73A	02/00/76A
TR-177 P Under the conditions of this bioassay, 4-(Chloroacetyl)-Acetanilide was not carcinogenic when administered in the diet to Fischer 344 rats or B6C3F1 mice of either sex.								
C03907 2-Chloromethylpyridine HY	11/00/72A		01/00/73A		02/00/73A	12/00/73A	11/00/73A	04/00/76A
TR-178 P Under the conditions of this bioassay, administration of 2-(Chloromethyl)-Pyridine Hydrochloride was not carcinogenic to Fischer 344 rats or B6C3F1 mice.								
C03838 3-Chloromethylpyridine HY	10/00/72A		12/00/72A		01/00/73A	07/00/73A	10/00/73A	11/00/75A
TR-095 P Under the conditions of this bioassay, 3-(Chloroacetyl)Pyridine Hydrochloridine was carcinogenic in male to Fischer 344 rats or B6C3F1 mice of both sexes, producing papillomas and carcinomas of the forestomach. Neoplastic lesions related to chemical administration were restricted to the site of topical application, the stomach.								
C02040 3-Chloro-P-Toluidine	07/00/71A		09/00/71A		10/00/71A	04/00/72A	07/00/72A	08/00/74A
TR-145 P Under the conditions of this bioassay, there were no convincing evidence for the carcinogenicity of 3-Chloro-P-Toluidine in Fischer 344 rats or B6C3F1 mice.								
C02051 5-Chloro-O-Toulidine	08/00/71A		10/00/71A		11/00/71A	06/00/72A	08/00/72A	12/00/74A
TR-187 P Under the conditions of this bioassay, 5-(Chlor-O-Toluidine was carcinogenic to B6C3F1 mice inducing hemangiosarcomas and hepatocellular carcinomas in both males and females. There was no conclusive evidence of the carcinogenicity of the compound in Fisher 344 rats.								
C02028 Dibutyltin Diacetate	06/00/72A		08/00/72A		09/00/72A	04/00/73A	06/00/73A	08/00/75A
TR-183 P Under the conditions of this bioassay, there was no conclusive evidence of the carcinogenicity of Dibutyltin Diacetate in male Fischer 344 rats or B6C3F1 mice of either sex. The loss of tissues taken from high dose female rats in this bioassay precluded an evaluation of the carcinogenicity of Dibutyltin Diacetate to female Fischer 344 rats.								
C03816 N,N'-Diethylthiourea	07/00/72A		09/00/72A		10/00/72A	05/00/73A	07/00/73A	11/00/75A
TR-149 P Under the conditions of this bioassay, N,N'-Diethylthiourea was carcinogenic to Fischer 344 rats, causing follicular-cell carcinomas of the thyroid in males and follicular-cell neoplasms of the thyroid in females. There was no evidence for the carcinogenicity of the compound in B6C3F1 mice.								
C02255 2,4-Diemthoxyaniline HYDR	01	00/73A		03/00/73A		04/00/74A	09/00/73A	01/00/74A
TR-171 P Under the conditions of this bioassay, there were no convincing evidence for the carcinogenicity of 2,4-Diemthoxyaniline HCL in Fischer 344 rats or B6C3F1 mice. Liver-hepatocellular carcinomas & adenoma-B6C3F1 mouse male								
C02175 3,3'-Dimethoxybenzidine-4	05/00/72A		07/00/72A		08/00/72A	01/00/73A	05/00/73A	06/00/75A
TR-128 P Under the conditions of this bioassay, 3,3'-Dimethoxybenzidine-4,4'-Diisocyanate was carcinogenic to Fischer 344 rats, causing neoplasms of the skin (excluding skin of the ear) in males, endometrial stromal polyps in females, and leukemia and malignant lymphoma in both sexes. The compound was also associated with the development of a combination of squamous-cell carcinomas and sebaceous adenocarcinomas of the Zymbal's gland and skin of the ear in rats of both sexes. There was no evidence for the carcinogenicity of the compound in B6C3F1 mice.								
C03974 Ethylenediamine Tetraacet	07/00/72A		09/00/72A		10/00/72A	04/00/73A	07/00/73A	08/00/75A
TR-011 P There was no evidence of the carcinogenicity of EDTA at the concentrations administered, and no tumors or lesions of the kidney or other organs were related to the treatment survival of all groups of animals of both species was good, thus, the lack of appearance of treatment-related tumors could not be attributed to early mortality. It should be noted that the confidence intervals for all tumors sites include a positive value, this indicates that the possibility of tumorigenicity is not theoretically precluded. However, under the conditions of this study, using concentrations of 3,500 ppm and 7,500 ppm in feed, NA3EDTA.3H20 was not demonstrated to be carcinogenic in rats or mice.								
C03861 Lithocholic acid	06/00/72A		08/00/72A		09/00/72A	05/00/73A	06/00/73A	10/00/75A
TR-175 P Under the conditions of this bioassay, Lithocholic acid was not carcinogenic when administered by gavage to Fischer 344 rats or B6C3F1 mice.								
C03792 Nithiazide	10/00/72A		12/00/72A		01/00/73A	11/00/73A	10/00/73A	03/00/76A
TR-146 P Under the conditions of this bioassay, Nithiazide was carcinogenic in male and probably female B6C3F1 mice, causing a combination of hepatocellular carcinomas and hepatocellular adenomas. Nithiazide was also carcinogenic in female Fischer 344 rats, causing an increased incidence of a combination of skin and mammary neoplasms. The compound was not carcinogenic in male Fischer 344 rats.								

PROPOSED DISPOSAL OF WET TISSUES FOR TOXICOLOGY AND CARCINOGENISTS STUDIES—Continued

Exp. No. Chemical	Single dose study		14-day study		90-day study		2-year study	
	Start	end	start	end	start	end	start	end
C02786 NTA(Nitrilotriacetic acid)	02/00/72A		04/00/72A		05/00/72A	10/00/72A	02/00/73A	01/00/75A
TR-006 P NTA and NA3NTA H20 were shown to be carcinogenic to urinary tract of both rats and mice at higher doses tested. Lower doses, as delineated in this report, did not induce significant numbers of such lessons								
C00420B Nitrofen	12/00/70A		02/00/71A		03/00/71A	12/00/71A	12/00/71A	01/00/74A
TR-026 P The results of this study indicate that Nitrofen is a liver carcinogen, causing hepatocellular carcinomas in B6C3F1 mice of both sexes and hemangiosarcoma of the liver in male mice. In addition, the compound is carcinogenic to female Osborne-Mendel rats, causing an increased incidence of pancreatic carcinomas. Survival of the high dose male rats was not adequate for meaningful statistical analysis of tumor incidence								
C02222 2-Nitro-P-Phenylenediamin	08/00/71A		10/00/71A		11/00/71A	05/00/72A	08/00/72A	10/00/74A
TR-169 P Under the conditions of this bioassay, dietary administration of 2-Nitro-P-Phenylenediamine was carcinogenic to female B6C3F1 mice, causing an increased incidence of hepatocellular neoplasms, primarily hepatocellular adenomas. There was no convincing evidence for the carcinogenicity of the compound in Fischer 344 rats or in male B6C3F1 mice								
C03941 4-Nitro-O-Phenylenediamin	10/00/72A		12/00/72A		01/00/73A	06/00/73A	10/00/73A	10/00/75A
TR-180 P Under the conditions of this bioassay, dietary administration of 4-Nitro-O-Phenylenediamine was not carcinogenic in Fischer 344 rats or B6C3F1 mice.								
C02211 Beta-Nitrostyrene	09/00/71A		11/00/71A		12/00/71A	10/00/72A	09/00/72A	09/00/75A
TR-170 P Under the conditions of this bioassay, there was no convincing evidence for the carcinogenicity of a solution of B-Nitrostyrene and styrene in Fischer 344 rats or in B6C3F1 mice.								
C03930 P-Phenylenediamine Dihydr	02/00/72A		04/00/72A		05/00/72A	01/00/74A	02/00/73A	05/00/76A
TR-174 Under the conditions of this bioassay, there was no convincing evidence that dietary administration of P-Phenylenediamine Dihydrochloride was carcinogenic in Fischer 344 rats or B6C3F1 mice.								
C03952 1-Phenyl-3-Methyl-5-Pyraz	10/00/72A		12/00/72A		01/00/73A	06/00/73A	10/00/73A	12/00/75A
TR-141 P Under the conditions of this bioassay, there was no evidence for the carcinogenicity of 1-Phenyl-3-Methyl-5-Pyrazolone in Fischer 344 rats of B6C3F1 mice.								
C02233 N-Phenyl-P-Phenylenediami	11/00/71A		01/00/72A		02/00/72A	08/00/72A	11/00/72A	12/00/74A
TR-082 P It is concluded that under the conditions of this bioassay, N-Phenyl-P-Phenylenediamine was not carcinogenic for Fischer 344 rats or for B6C3F1 mice.								
C02017 1-Phenyl-2-Thiourea	09/00/71A		11/00/71A		12/00/71A	02/00/73A	09/00/72A	06/00/75A
TR-148 P Under the conditions of this bioassay, 1-Phenyl-2-Thiourea was not carcinogenic to Fischer 344 rats or B6C3F1 mice.								
C04126 Pivalolactone	08/00/72A		10/00/72A		11/00/72A	05/00/73A	08/00/73A	09/00/75A
TR-140 P Under the conditions of this bioassay, Pivalolactone was carcinogenic in male and female Fischer 344 rats, causing a significant increase in the combined incidence of squamous-cell carcinomas and squamous-cell papillomas at the site of chemical administration, the forestomach. This study provided no evidence for the carcinogenicity of Pivalolactone in B6C3F1 mice of either sex.								
C03849 Sodium Iodomethanesulfona	06/00/72A		08/00/72A		09/00/72A	04/00/73A	06/00/73A	08/00/75A
TR-188 Withdrawn								
C03827 Succinic acid 2,2-DIMETHY	06/10/72A		08/00/72A		09/00/72A	03/00/73A	06/00/73A	07/00/75A
TR-083 P Under the conditions of this bioassay, Daminozide was not carcinogenic in the male Fischer 344 rats or in the female B6C3F1 mice. In male B6C3F1 mice, the induction of hepatocellular carcinomas may have been associated with the administration of the test chemical. Daminozide was carcinogenic in female Fischer 344 rats, inducing adenocarcinomas of the endometrium of the uterus and leiomyosarcomas of the uterus								
C03781 Trimethylphosphate	10/00/72A		12/00/72A		01/00/73A	08/00/73A	10/00/73A	12/00/75A
TR-081 P Under the conditions of this bioassay, Trimethylphosphate was carcinogenic in female B6C3F1 mice, inducing adenocarcinomas of the uterus/endometrium. Trimethylphosphate was associated with the induction of benign fibromas of the subcutaneous tissue in male Fischer 344 rats. No evidence of carcinogenicity of the compound was obtained in female rats or in male mice.								
C02186 Trimethylthiourea	10/00/71A		12/00/71A		01/00/72A	06/00/72A	10/00/72A	10/00/74A
TR-129 P Under the conditions of this bioassay, dietary administration of Trimethylthiourea was carcinogenic to female Fischer 344 rats, in ducing follicular-cell carcinomas of the thyroid. There was no sufficient evidence for the carcinogenicity of the compound in male Fischer 344 rats or in B6C3F1 mice of either sex.								
C00260 Triphenyltin Hydroxide	05/00/72A		07/00/72A		08/00/72A	01/00/73A	05/00/73A	11/00/75A
TR-139 PF Under the conditions of this bioassay, there was no evidence for the carcinogenicity of Triphenyltin Hydroxide to Fischer 344 rats or the B6C3F1 mice								
C01445A Trisodium Nitrilotriacets							06/15/72A	08/00/74A
TR-006 P NTA and NA3NTA H20 were shown to be carcinogenic to the urinary tracts of both rats and mice at the higher doses tested. Lower doses, as delineated in this report, did not induce significant numbers of such lesions								
C01445B Trisodium Nitrilotriacets	02/00/72A		04/00/72A		05/00/72A	10/00/72A	02/00/73A	02/00/75A
TR-006 P NTA and NA3NTA H20 were shown to be carcinogenic to the urinary tracts of both rats and mice at the higher doses tested. Lower doses, as delineated in this report, did not induce significant numbers of such lessions								

[FR Doc. 87-1070 Filed 2-6-87; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Department's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Department Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340. Copies of the information collection and related documents may be obtained by calling the Department Clearance Officer at the number given below. This information collection was the subject of public review and comment for the proposed rule published on May 5, 1986, at 51 FR 16636.

Title: Natural Resource Damage Assessment Regulations, 43 CFR 11, Subpart D

Abstract: The information is being collected to perform a natural resource damage assessment under Subpart D. The information will be used to complete the Assessment Plan for the Subpart D damage assessment. Respondents supply the information to obtain the benefit of the rebuttable presumption for assessments performed in accordance with the 43 CFR Part 11 regulations.

Bureau Form Number: None
Frequency: On occasion
Description of Respondents: Federal and State agencies acting on behalf of the public as trustees of natural resources.
Annual Responses: 1,075
Annual Burden Hours: 11,180
Department Clearance Officer: John Strylowski, 202-343-6191

Dated: February 3, 1987.

Ralph W. Tarr,

Solicitor.

[FR Doc. 87-2804 Filed 2-6-87; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[NV-010-07-4322-10]

Elko District Grazing Advisory Board; Meeting

In accordance with the Federal Advisory Committee Act, The Taylor Grazing Act, The Federal Land Policy and Management Act, The Public Rangelands Improvement Act, and section 3, Executive Order 12548 of February 14, 1987, notice is hereby given that the Elko District Grazing Advisory Board will meet on March 18, 1987. The meeting will start at 0930 a.m. in the Elko District Office conference room, 3900 E. Idaho Street, Elko, Nevada.

The agenda for the meeting will include: (1) Organization of the Board (2) update FY 87 R.I. projects (3) discuss Proposed FY 88 R.I. projects (4) progress report on existing AMPs (5) discuss and make recommendations on Draft AMPs (6) increased costs of R.I. projects (7) review progress on monitoring (8) review proposed agreements and decisions.

The meeting is open to the public. Interested persons may make oral statements to the Board between 11:30 a.m. and 12:00 p.m. or file written statements for the Boards consideration. Anyone wishing to make an oral statement must notify the District Manager, BLM, 3900 E. Idaho Street, Elko, Nevada 89801 by March 12, 1987. Depending on the number of persons wishing to make oral statements, a per person time limit may be established.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Rodney Harris,

District Manager.

[FR Doc. 87-2675 Filed 2-6-87; 8:45 am]

BILLING CODE 4310-4C-M

[NM-040-07-4212-14; OK NM 58570 to OK NM 58573]

Realty Action; Dewey, Ellis, and Roger Mills Counties, OK; Land Sale

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land sale notice.

SUMMARY: The following described lands have been examined and identified as suitable for disposal under Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2743, 43 U.S.C. 1701) at no less than the appraised fair market value:

Tract	Legal description	Acres plus accretions
Dewey County (DW)		
DW-4	T. 16 N., R. 19 W., I.M. Sec. 5, Lot 6	0.22
DW-10	T. 17 N., R. 15 W., I.M. Sec. 20, Lot 1	6.30
DW-11	T. 17 N., R. 15 W., I.M. Sec. 28, Lot 6	3.15
Ellis County (EL)		
EL-5	T. 17 N., R. 25 W., I.M. Sec. 5, SW¼NW¼	40.00
EL-6	T. 17 N., R. 25 W., I.M. Sec. 7, Lot 1	6.25
EL-15	T. 18 N., R. 25 W., I.M. Sec. 26, Lot 8	3.12
EL-18 [1]	T. 18 N., R. 25 W., I.M. Sec. 26, Lot 10	3.49
EL-19 [1]	T. 18 N., R. 25 W., I.M. Sec. 26, Lot 9	26.72
Roger Mills County (RM)		
RM-15 [1]	T. 18 N., R. 25 W., I.M. Sec. 33, Lot 7	16.36

Aggregating 105.63 acres plus accretions.

[1] The lands have been resurveyed and new lot numbers have been designated for the identified tracts.

The publication of this Notice in the **Federal Register** shall segregate the public lands in this Notice of Realty Action (NORA) from all appropriation under the public land laws, including the mining laws. The segregative effect of the NORA shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

The sale is for the surface estate only and all minerals will be reserved to the U.S. Government. The sale will be held on Friday, April 10, 1987. Bidding procedures, specific patent reservations, and other pertinent information concerning the sale will be outlined in a sales brochure. The sales brochure will be available approximately three weeks prior to the sale upon request from the Oklahoma Resource Area Headquarters, 200 NW., Fifth Street, Room 548, Oklahoma City, OK 73102.

Comments

For a period of 45 days after the date of publication of this Notice in the **Federal Register**, interested parties may submit comments in writing to the District Manager, Bureau of Land Management, 9522-H East 47th Place, Tulsa, Oklahoma, 74145. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will

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become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Hans Sallani, Oklahoma Resource Area Headquarters, telephone 405–231–5491.

Jim Sims,

District Manager.

[FR Doc. 87–2658 Filed 2–16–87; 8:45 am]

BILLING CODE 4310-FB-M

Fish and Wildlife Service

Alaska Land Bank Agreement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that on May 27, 1986, the Fish and Wildlife Service and Gana-a' Yoo, Limited, executed an agreement to include 92 percent of the corporation's land in the Alaska Land Bank Program. This notice is issued pursuant to section 907 of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, 94 Stat. 2371.

FOR FURTHER INFORMATION CONTACT: William H. Mattice, Deputy Chief, Division of Realty, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, (907) 786–3498.

Robert E. Gilmore,

Regional Director.

[FR Doc. 87–2645 Filed 2–6–87; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Cohanzick Zoo, Bridgeton, NJ, PRT–713719.

The applicant requests a permit to buy in interstate commerce one permanently injured male peregrine falcon (*Falco peregrinus*) from the Raptor Rehabilitation Center, University of Minnesota, St. Paul, MN, for exhibition and conservation education.

Applicant: Soco Gardens Zoo, Maggie Valley, NC, PRT–714699.

The applicant requests a permit to harass one male jaguar (*Panthera onca*) donated to them January 23, 1979, and one female jaguar (*Panthera onca*) on loan since January 21, 1976, from the Knoxville Zoological Park, Knoxville, Tennessee. These animals are being maintained for the purpose of exhibit.

Applicant: Kenneth Winters, Brewer, Main, PRT–714188.

The applicant requests a permit to import a trophy from a bontebok (*Damaliscus dorcas dorcas*) which was a member of a captive herd maintained by F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa. The herd is maintained for the purpose of sport hunting. The applicant contends that permission to import this trophy will enhance the likelihood of the continued maintenance of this herd and thereby enhance the likelihood of the survivial of the species.

Applicant: New York Zoological Society, Bronx, NY, PRT–714273.

The applicant requests a permit to import 1 male and 1 female proboscis monkey (*Nasalis larvatus*) as they become available, from Sepilok, a Malaysan government holding facility for confiscated wildlife, for the purpose of enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of the these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: February 3, 1987.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87–2646 Filed 2–6–87; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

Availability of Final Environmental Assessment and Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of availability of final environmental assessment and finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR Parts 1500 through 1508); and the U.S. Section's Operational Procedures for Implementing section 102 of the National Environmental Policy Act (NEPA), published in the **Federal Register** September 2, 1981 (46 FR 44083–44094), the U.S. Section hereby gives notice that the Final Environmental Assessment and Finding of No Significant Impact for an international agreement for solution of the border sanitation problem at Naco, Sonora and Naco, Arizona are available. A Notice of finding of no significant impact dated December 23, 1986 provided a thirty (30) day comment period before making the finding final. The notice was published in the **Federal Register** on January 2, 1987 (52 FR 179–180).

FOR FURTHER INFORMATION CONTACT: Mr. M.R. Ybarra, U.S. Section Secretary; International Boundary and Water Commission, United States and Mexico; United States Section; The Commons, C–310; 4171 North Mesa; Paso, Texas 79902. Telephone: (915) 534–6698, FTS 570–6698.

SUPPLEMENTARY INFORMATION:

Proposed Action

The action proposed is that the Government of the United States enter into an agreement with the Government of Mexico, through the International Boundary and Water Commission, to provide that Mexico construct in its territory adequate sewage treatment and disposal facilities for the City of Naco, Sonora, Mexico and operate and maintain the facilities in such manner that there are no discharges of untreated or treated domestic and industrial wastewaters crossing the boundary into the United States at Naco, Arizona.

Alternatives Considered

Two alternatives were considered:

Preferred Alternatives

The Proposed Action Alternative provides for the Governments of the United States and Mexico to enter into an agreement for Mexico to construct, operate and maintain sewage treatment and disposal facilities in its territory for the treatment and disposal of sewage from Naco, Sonora with assurances that there are no discharges of untreated or treated domestic and industrial wastewaters crossing the boundary into the United States at Naco, Arizona.

No Action Alternative

The No Action Alternative will result in no anticipated change in existing conditions. In the event Mexico constructs, operates, and maintains the proposed system without the proposed agreement, there will be no firm means to assure that this construction, operation, and maintenance will avoid pollution in U.S. territory. The risk is great that sewage will continue to cross the boundary and potential pollution of water supplies and other health hazards will continue without a firm basis for obtaining immediate and effective corrective actions.

Availability

Single copies of the Final Environmental Assessment and Final Finding of No Significant Impact may be obtained by request at the above address.

Dated: January 27, 1987.

Suzette Zaboroski,

Staff Counsel.

[FR Doc. 87–2674 Filed 2–6–87; 8:45 am]

BILLING CODE 4710-03-M

DEPARTMENT OF JUSTICE

Antitrust Division

The National Cooperative Research Act of 1984; the Industry/University Cooperative Research Center for Software Engineering; Notification of Venture

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98–462 ("the Act"), the Industry/University Cooperative Research Center for Software Engineering, co-located at the University of Florida and Purdue University, has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties to the venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Industry/University Cooperative Research Center for Software Engineering and its general areas of planned activities are given below:

The parties to the Industry/University Cooperative Research Center for Software Engineering are as follows:

—AT&T Information Systems
—Computer Sciences Corporation
—Digital Equipment Corporation
—GTE Data Services
—Harris Corporation
—Hewlett Packard Corporation
—IBM Corporation
—Magnavox Government and Industrial Electronics Company
—Modular Computer Systems, Inc.
—Racal-Milgo, Inc.

The objectives of the Industry/University Cooperative Research Center for Software Engineering are as follows:

To sponsor research designed to improve the productivity of computer software developers and the quality of computer software; to build models and prototypes of tools which are related to these objectives; and to train graduate level students in the field of software engineering.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87–2673 Filed 2–6–87; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 87–12]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATE AND TIME: March 11, 1987, 1:30 p.m. to 3:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Federal Building 6, 400 Maryland Avenue, SW, Washington, DC 20546, Room 7002.

FOR FURTHER INFORMATION CONTACT: Mr. Gilbert L. Roth, Code LB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–8341).

SUPPLEMENTARY INFORMATION: The Panel will present its annual report to the NASA Administrator. This is pursuant to carrying out its statutory duties for which the Panel reviews, evaluates, and advises on those program activities, systems, procedures, and management policies that contribute to risk and the identification of assessment of these for management. Priority is given to those programs that involve the safety of manned flight. The major subjects will be the Space Shuttle Program, Space Flight Operations, Space Station, and Aeronautical Operations.

Visitors will be admitted to the meeting room up to the capacity, which is approximately 60 persons including Panel members and other participants. Visitors will be requested to sign a visitor's register.

Type of Meeting: Open.

Date: March 11, 1987.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 87–2579 Filed 2–6–87; 8:45 am]

BILLING CODE 7510-01-M

[Notice 87–11]

NASA Advisory Council, Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Aviation Safety Research.

DATE AND TIME: March 3, 1987, 8:30 a.m. to 4:30 p.m.; March 4, 1987, 8:30 a.m. to 4:30 p.m.

ADDRESS: Technical Building, Director's Conference Room, Federal Aviation Administration (FAA) Technical Center, Atlantic City Airport, Atlantic City, NJ 08405.

FOR FURTHER INFORMATION CONTACT: Mr. Louis J. Williams, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2798.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance and direction to the aeronautics research and technology activities in the Office of Aeronautics and Space Technology (OAST). Special ad hoc teams were formed to address specific topics. The ad hoc team on Aviation Safety Research, chaired by Mr. Donald Pritchett, is comprised of nine members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the team members and other participants).

Type of Meeting: Open.

Agenda

March 3, 1987: 8:30 a.m.—Welcome to FAA Technical Center.

8:45 a.m.—Opening Remarks.

9 a.m.—NASA Aviation Safety Resources Summary.

9:30 a.m.—FAA Safety Related Research.

1 p.m.—Cockpit Technology Program.

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2 p.m.—FAA Accident-Incident Data Collection Programs.
3 p.m.—Summary of Safety-Related Certification.
4 p.m.—Crashworthiness Testing.
4:30 p.m.—Adjourn.
March 4, 1987: 8:30 a.m.—Summary of Air Traffic Control Automation.
11 a.m.—Update on Results of B757 Study.
11:30 a.m.—NASA Langley Research Center/Ames Research Center Coordination.
1:30 p.m.—Review Team Caucus.
4:30 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 87-2578 Filed 2-6-87; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ENDOWMENT ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting; Music Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Professional Training Section) to the National Council on the Arts will be held on February 25, 1987, from 9:00 a.m.—8:00 p.m. and on February 26, 1987 from 9:00 a.m.—6:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 26, 1987, from 11:30 a.m.—12:30 p.m. for a discussion of policy and guidelines.

The remaining sessions of this meeting on February 25, 1987, from 9:00 a.m.—8:00 p.m. and on February 26, 1987, from 9:00 a.m.—11:30 a.m. and from 1:30 p.m.—6:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

February 2, 1987.

[FR Doc. 87-2607 Filed 2-6-87; 8:45 am]

BILLING CODE 7537-01-M

National Endowment on the Arts; Meeting; Theater Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Mimes Section) to the National Council on the Arts will be held on February 25, 1987, from 10:00 a.m.-5:30 p.m. in room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

February 2, 1987.

[FR Doc. 87-2607 Filed 2-6-87; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Earth Sciences; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Earth Sciences.
Date: February 25, 26 and 27, 1987.
Time: 8:30 a.m. to 5:00 p.m. on February 25 and 26; 8:30 a.m. to 12:00 p.m. on February 27.
Place: The National Science Foundation, Room 642, 1800 G Street NW., Washington, DC 20550.
Type of Meeting: Open.
Contact Person: Dr. James Fred Hays, Division Director, Earth Sciences, Room 602, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-7958.
Summary Minutes: May be obtained from the Contact Person at the above address.
Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for research and research-related activities in the Earth Sciences.
Agenda:
Wednesday, 25 February 1987
8:30 a.m.-12:00 p.m., Introduction and Opening Remarks—Dr. James Hays
Update on Long-Range Plan—Dr. Daniel Weill
Committee Discussion of Long-Range Plan
1:30 p.m.-5:00 p.m. Long-Range Planning Process
Thursday, 26 February 1987
8:30 a.m.-11:30 a.m. Long-Range Planning Process
1:00 p.m.-2:30 p.m. Joint Session with A/C for Polar Programs
Discussion with the NSF Director—Mr. Erich Bloch
Global Geosciences—Assistant Director, GEO Dr. William Merrell
2:30 p.m.-5:00 p.m. Continuation of Long-Range Planning Process
5:00 p.m.-6:30 p.m. Joint Social with A/C for Polar Programs
Friday, 27 February 1987
8:30 a.m.-12:00 p.m. Wrap-up/discussion, Future schedule and agenda.

M. Rebecca Winkler,

Committee Management Officer.

February 4, 1987.

[FR Doc. 87-2655 Filed 2-6-87; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Polar Programs; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Polar Programs.
Date and Time: February 25, 1987, 8:30 a.m.-5:30 p.m.; February 26, 1987, 8:30 a.m.-5:00 p.m.; February 27, 1987, 8:30 a.m.-12:00 noon.
Place: Room 540, National Science Foundation, 1800 G Street NW., Washington, DC 20550.
Type of Meeting:
Closed—February 25, 1987, 1:00 p.m.-5:30 p.m.; February 26, 1987, 3:30 a.m.-11:30 a.m.
Open—February 25, 1987, 8:30 a.m.-11:30 a.m.; February 26, 1987, 1:00 p.m.-5:00 p.m.; February 27, 1987, 8:30 a.m.-12:00 noon.
Contact Person: Dr. Peter E. Wilkniss, Division Director, Division of Polar Programs, Room 620, National Science Foundation, Washington, DC 20550, Telephone: 202/357-7766.
Purpose of Committee: Serves to provide expert advice to the U.S. Antarctic Program and the Arctic Program, including advice on polar operations support, budgetary planning, polar coordination and information, and science programs.
Agenda:
February 25, 1987
—8:30 a.m.-9:00 a.m., Welcome and Introductions, Administrative Announcements, Review and Adopt Agenda
—9:00 a.m.-10:15 a.m., Briefing on NSB Review of NSF Role in Polar Regions
—10:30 a.m.-11:30 a.m., Response to DAC Review of R/V POLAR DUKE
—1:00 p.m.-5:30 p.m., Oversight Review of Polar Earth Sciences Program.
February 26, 1987
—8:30 a.m.-11:30 a.m., Continue Peer Oversight Review of Polar Earth Sciences including Antarctic Mapping, Sediment Coring, and Field Camp Operations
—1:00 p.m.-5:00 p.m., NSF and Polar Programs Overview, Global Geosciences, and Arctic Research Discussion.
February 27, 1987
—8:30 a.m.-10:00 a.m., Summary and Report on Oversight Review
—10:00 a.m.-11:30 a.m., DAC Membership, Plans and Schedule for Future Meetings.
Reason for Closing: The meeting will deal with a review of grants and declinations in which the Committee will review materials containing the names of applicant institutions and principal investigators and privileged information contained in declined proposals. This meeting will also include a review of peer review documentation pertaining to applicants. Any non-exempt materials that may be discussed at this meeting (proposals that have been awarded) will be inextricably intertwined with the discussion of exempt materials and no further separation is practical. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.
Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, National Science Foundation, on July 6, 1979.
Summary Minutes: May be obtained from Contact Person.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87-2656 Filed 2-6-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-320]

General Public Utilities Nuclear Corp.; Environmental Assessment and Notice of Finding of No Significant Environmental Impact

The U.S. Nuclear Regulatory Commission (the Commission) is planning to issue two Exemptions to the requirements of 10 CFR Part 50, Appendix A, General Design Criteria 17 and 19, relative to Facility Operating License No. DPR-73, issued to General Public Utilities Nuclear Corporation (the licensee), for operation of the Three Mile Island Nuclear Station Unit 2 (TMI-2), located in Londonderry Township, Dauphin County Pennsylvania. By Order for Modification of License, dated July 20, 1979, the licensee's authority to operate the facility was suspended and the licensee's authority was limited to maintenance of the facility in the present shutdown cooling mode (44 FR 45271). By further Order of the Director, Office of Nuclear Reactor Regulation, dated February 11, 1980, a new set of formal license requirements was imposed to reflect the post-accident condition of the facility and to assure the continued maintenance of the current safe, stable, long-term cooling condition of the facility (45 FR 11292). The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

Environmental Assessment

Identification of Proposed Action

The actions being considered by the Commission are exemptions from 10 CFR Part 50, Appendix A, General Design Criteria (GDC) 17 and 19 relating to requirements for electric power systems and nuclear station control rooms. Specifically, GDC 17 requires that an onsite and offsite electric power system shall be provided to permit functioninq of structures, systems, and components important to safety. As relevant to the licensee's request, GDC 19 requires that a control room shall be provided from which actions can be taken to operate the nuclear power unit safely under normal conditions and to maintain it in a safe condition under accident conditions. GDC 19 further requires that radiation protection shall be provided to permit access and occupancy of the control room under accident conditions, within specified exposure limits.

The Need for the Proposed Action

TMI-2 is currently in a post-accident, cold shutdown, long-term recovery mode, with sufficient decay heat removal assured by direct heat loss from the reactor coolant system (RCS) to the reactor building atmosphere. In case of a TMI-2 loss of coolant event, sufficient borated makeup water will be provided by a passive gravity feed system to maintain the level of the RCS above the damaged fuel for a minimum of 10 days. Dedicated equipment is available and procedures have been established to provide recirculation to assure long-term core coverage, if necessary, even in the unlikely event that the Unit 2 control room is temporarily uninhabitable. Consequently, the facility can be maintained for the short term in a safe, stable shutdown condition without relying upon action from control room personnel and continuous manning of the TMI-2 control room is not necessary under worst-case accident conditions to achieve the underlying purpose of the requirement. For this reason, a partial exemption to the requirements of GDC 19 is justified.

Since continuous control room manning is no longer necessary for all postulated events, with TMI-2 in its current long-term cold shutdown mode, control room emergency air cleanup system operability does not have to be continuously maintained. Therefore, onsite emergency backup power provided by the diesel generators is not needed for the system. This removes the need for the last load on the diesel generators still required by the facility license, and safe shutdown of the plant is no longer dependent on the onsite backup emergency power source. Thus, the performance of maintenance and surveillance of the emergency diesel generators required by GDC 17 would impose an unnecessary burden and expense on the licensee with no concomitant benefit in terms of achieving the underlying purpose of the requirement.

Environmental Impact of the Proposed Action

The staff has evaluated the subject exemptions and concludes that in light of the current and future condition of the facility described above, there are no significant radiological or nonradiological impacts to the environment as a result of this action. The exemptions remove specific features of the Commission's requirements to provide an onsite electric power system and a control room to maintain the nuclear power unit

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in a safe condition following an accident.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no significant environmental impact associated with the proposed exemptions, any alternatives to this action will have either no significant environmental impact or greater environmental impact. This would not reduce significant environmental impacts of plant operations and would result in the application of unnecessary regulatory requirements.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Programmatic Environmental Impact Statement for TMI–2, dated March 1981.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions. Based upon the foregoing environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action see: (1) Letter from F.P. Standerfer, GPUNC to W.D. Travers, USNRC, Exemption from 10 CFR Part 50 Appendix A, General Design Criteria 17 and 19, dated December 10, 1986. This document is available for inspection at the Commission's Local Public Document Room, 1717 H Street, NW., Washington, DC, and at the Commission's Local Public Document Room at the State Library of Pennsylvania, Government Publications Section, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Dated at Bethesda, Maryland, this 3rd day of February 1987.

For the Nuclear Regulatory Commission.

Michael T. Masnik,

Acting Director, TMI–2 Cleanup Project Directorate, Office of Nuclear Reactor Regulation.

[FR Doc. 87–2663 Filed 2–6–87; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–24037; File No. SR–ISE–1986–1]

Self-Regulatory Organizations; Proposed Rule Change By Intermountain Stock Exchange ("ISE") Relating to the Withdrawal of the ISE's Current Rules

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 31, 1986 the Intermountain Stock Exchange ("ISE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ISE hereby announces as a proposed rule change the withdrawal of its current rules permitting it to operate as a national securities exchange. Solely to avoid involuntary or inadvertent forfeiture of its legal status as a corporation under Utah law, ISE has not repealed its Constitution, or Articles I, II, IX(1), X(1) and XV(2) of its Rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below.[1] The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In an agreement reached with the Commodities Exchange, Inc. ("COMEX") on June 25, 1986, in which COMEX acquired certain assets of the ISE, the ISE agreed to fulfill certain terms and conditions of the agreement, including the withdrawal of their rules and delisting of all securities.

The withdrawal of ISE's rules package will afford the self-regulatory organization an opportunity to devise a new set of rules meeting Commission requirements, if COMEX decides in the future to reapply ISE as a national securities exchange. The withdrawal follows the delisting of or revocation of unlisted trading privileges for all stocks traded on the ISE.[2]

B. Self-Regulatory Organization's Statement on Burden on Competition

ISE believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change were not received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in

[1] A current copy of the ISE Constitution and Rules has been included in the materials filed by the self-regulatory organization.

[2] *See* Securities Exchange Act Release No. 23760 (October 30, 1986).

accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the COMEX. All submissions should refer to the file number in the caption above and should be submitted by March 2, 1987.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

Dated: January 29, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–2618 Filed 2–6–87; 8:45 am]

BILLING CODE 8010–01–M

[[Release No. 34–24041; File No. SR–AMEX–87–4]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc.; Relating to Extension of AUTOAMOS Emergency Pilot Plan

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 13, 1987, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("AMEX" or "Exchange") proposes to enhance and extend for an additional year the pilot plan which permits the implementation of emergency procedures for the execution of AUTOAMOS orders during unusual market conditions. The details of the policy change are set forth below in Item II–A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In November, 1985, the Exchange implemented a pilot program under which two Floor Governors were permitted to authorize implementation of emergency AUTOAMOS procedures, for short periods of extremely high order flow, in any listed class or series of options (*see* SR–AMEX–85–28). Under the pilot plan, the specialist is permitted, after approval of two Floor Governors and appropriate notification, to execute incoming AUTOAMOS orders, either as agent against the book or as principal, without exposing them to the crowd.

Since the pilot plan was approved, the emergency procedures were implemented only twice in Major Market Index ("XMI") options. The principal reason for the apparent infrequent emergency procedures in XMI options was the commencement of the AUTO–EX* XMI pilot (SR–AMEX–85–29) the following month (December 1985). The AUTO–EX pilot was so successful in enhancing execution and operational efficiencies in the XMI market, without sacrificing protection for customer orders on the book, that the procedures of the emergency pilot plan were not required to be implemented thereafter in XMI.

The Exchange now has the capability of utilizing AUTO–EX for short emergency periods in equity options. While there has been no use of the emergency procedures for equity options during the past year, the Amex believes it is important to have available the most efficient means of dealing with emergency high volume situations if and as they arise. Accordingly, the Exchange proposes to extend the AUTOAMOS pilot program and enhance its efficiency by using AUTO–EX when it has been determined by two Floor Governors that a "breakout" situation is occurring.

The proposed change is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange by developing procedures to maintain the speed and efficiency of the AUTOAMOS system.

Therefore, the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden of Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Options Market Makers Association, an association of Exchange members who are Registered Options Traders has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

* AUTO–EX is an automatic system which permits member firms to route public customer market and marketable limit orders of up to 10 contracts through AUTOAMOS for automatic execution at the best bid or offer displayed at the time the order is entered into the system. If the best bid or offer is on the specialist's book, the incoming order is routed to the specialist's post where it is executed against the book order. If the best bid or offer is not on the specialist book, the contra side of the AUTO–EX trade is assigned to one of the Amex Registered Option Traders who have signed on the system or to the specialist who participates in the rotation.

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communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 2, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 30, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2622 Filed 2-6-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24040; File No. SR-CBOE-86-34]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

On October 28, 1986, the Chicago Board Options Exchange, Incorporated ("CBOE") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change clarifying the articulation of market-maker obligations.

The proposed rule change was noticed in Securities Exchange Act Release No. 23882 (December 11, 1986), 51 FR 45412 (December 18, 1986). No comments were received on the proposed rule change.

The rule change is designed to clarify market-maker obligations. In its rule filing, CBOE indicates that the purpose of the proposed rule change is to make the CBOE's rules more enforceable and to improve market quality. The CBOE summarized the specific rule changes as follows.

A new subpart (c) has been added to Rule 8.3, to limit market-maker appointments to the options classes at three trading stations. This would limit appointments to approximately ten option classes, since most stations have three or four classes.[3]

Rule 8.7 has been amended to add more detailed articulation of a market-maker's obligations. Current Subpart (b)(ii) of the rule has been made part of a guideline, at Interpretation .02(b).

The bid-ask differential subpart of Rule 8.7 has been amended. In part, the proposal eliminates the general allowance of differentials of up to twice the maximum allowable differential, which has been allowed in the furthest term options.

The articulation of market-making obligations states that market-makers should compete to make the best markets, make markets for a reasonable size and update market quotations on changed market conditions. Interpretations .02, .05, and .06 further articulate these concepts. Interpretation .02 to Rule 8.7 is new. In addition to setting forth the "one point" rule as a guideline, Interpretation .02 provides that it is a violation to buy a call or sell a put ¼ point or more below parity, absent circumstances justifying such a trade.[4] Interpretation .02 also clarifies that the "one point" rule applies to inter-day and intra-day transactions within the time limit specified therein.

Interpretation .05 interprets new section (b)(ii) of the Rule, calling for a market-maker to make markets which will ordinarily be honored to a reasonable number of contracts. Interpretation .05 defines reasonable as five contracts, unless an option class is exempted by the Market Performance Committee. Rule 6.44, which provides that a bid or offer is deemed to be for one contract, is being made subject to Rule 8.7. This will allow Rule 8.7 to increase the market-maker's normal minimum bid or offer to five contracts under Interpretation .05.

Interpretation .06 is new. It provides that market-makers, who are expected to maintain two-sided markets, are deemed to be making two-sided markets by bidding or offering for an options contracts. Thus, under Interpretation .06, a bid or offer by a market-maker implies, respectively, an offer or bid at the price differential allowed under Rule 8.7(b)(iv).

Interpretation .01 to Rule 8.7 has been modified to extend the price continuity obligation from one day to the next, except in unusual conditions. Interpretation .03, concerning in-person transactions, has been modified (1) to require in-person transaction calculations to be performed on a quarterly basis not monthly, and (2) to allow the Market Performance Committee to exempt options classes from the 25 percent in-person transaction calculation.

The CBOE contends that the statutory basis for the proposed rule change is section 6(b) of the Act in that it is designed to protect investors and the public interest by more detailed articulation of market-maker obligations and by narrowing permissible bid-ask differentials. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 30, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2623 Filed 2-6-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24048; File No. SR-PCC-87-01]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Clearing Corp. Amending Its Purchase and Sales Department Procedures

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 13, 1987, the Pacific Clearing Corporation ("PCC") filed with the Commission the proposed rule change described below. The Commission is publishing this notice to solicit comments on the proposed rule change.

PCC's proposed rule change amends its current Purchase and Sales ("P&S") Department's procedures on handling inquiries from member firms and post specialists. PCC states that the proposal limits the responsibility on the part of P&S to that of a referral between the executing broker and the member firms or specialists. The amended procedures ensure that the P&S Department does not initiate corrections to erroneous transactions.

Furthermore, PCC states that the proposed rule change is consistent with

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1985).

[3] According to CBOE, the new provision also allows the Market Performance Committee to exempt a market-maker from this limitation, which will ensure that, where necessary for the market, market-makers can have additional appointments.

[4] The "one point" rule provides that a market-maker should not bid or offer more than one point away from the previous transaction price for a particular options contract plus or minus any change in the underlying security's sales price.

section 17A(b)(3)(F) of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions and fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the change if it appears to the Commission that it is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of PCC. All submissions should refer to File No. SR-PCC-87-01 and should be submitted by March 2, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 2, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2620 Filed 2-6-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24043; File No. SR-Amex-86-29]

Self-Regulatory Organizations; Order Granting Partial Approval to Proposed Rule Change by the American Stock Exchange, Inc. Relating to Numerical Criteria for the Original Listing of Securities and to Suspension and Delisting Policies

I. Introduction and Background

The American Stock Exchange, Inc. ("Amex") submitted, on November 14, 1986, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend sections 101, 102, 104, and 107 of the Amex *Company Guide*, relating to numerical criteria for the original listing of securities, and section 1003 of the *Company Guide*, relating to suspension and delisting policies.

In its filing, the Amex stated that the intention of the proposal was to update its numerical listing criteria while continuing to ensure that only financially secure companies with sufficient numbers of investors are listed on the Exchange. In particular, the Amex intended the modifications to accommodate new "growth" industries, such as bio-technology companies, cable television franchises, and other service or research oriented enterprises. The Amex noted that some of these companies have sufficient growth potential to merit listing on the Exchange, but, due to their nature, may lack the necessary tangible assets or extended history of profitable performance to qualify under the existing standards.[1]

Notice of the proposed rule change, together with the terms of substance of the proposal, was given by the issuance of a Commission release (Securities Exchange Act Release No. 23863, December 5, 1986) and by publication in the **Federal Register** (51 FR 44964, December 15, 1986). No comments were received regarding the proposal.

II. Description of the Proposal

A. Financial Guidelines

Presently, section 101 of the *Company Guide* requires that a company have tangible net worth of four million dollars, pre-tax income of $750,000 for the previous fiscal year, and net income of $400,000 for the previous fiscal year, to be eligible for listing. The Amex proposes to eliminate the net income standard and instead require a minimum pre-tax income of $750,000 for the last fiscal year, or for two of the last three fiscal years.[2] The Amex also proposes to replace tangible net worth requirement with a four million dollar shareholders' equity standard. The newer standard would allow the Amex to consider, as part of an issuer's net worth, the value assigned to copyrights, franchises, and other "intangibles" that clearly have monetary value.

B. Distribution Guidelines

Section 102(a) of the Company Guide provides that a company must have at least 500,000 shares in public distribution,[3] held by at least 1,000 stockholders, including 800 holders of 100 shares or more. In addition, at least 150,000 shares must be held in lots of between 100 and 1,000 by at least 500 holders. Issues that fall below these guidelines may be accepted provided there are at least 800 shareholders and daily volume in the stock over a six-month period averages 2,000 shares per day. The Amex proposes to streamline this standard by mandating an 800 holder requirement for companies with between 500,000 and 1 million shares publicly held, and a 400 holder requirement for companies with a public float in excess of one million. The Amex also proposes an alternative standard of 400 shareholders for companies with 500,000 shares and daily volume in excess of 2,000 shares per day over a six-month period. The Amex also proposes to lower its minimum price per share from $5. to $3.

C. Bonds and Debentures

The Amex proposes to amend section 104, concerning listing requirements for bonds and debentures, by reducing from 300 to 100 the number of holders required for the listing of debt securities issued by companies that do not have common stock listed on either the Amex or New York Stock Exchange.

D. Alternate Listing Criteria

The Amex proposes to amend its alternate listing guidelines [4] by reducing

[1] The listing standards promulgated by the Exchange are not always dispositive of a company's application for listing. *See* section 101 of the *Company Guide*. Specifically, section 101 states, "[t]he fact that an applicant may meet the guidelines set forth below does not necessarily mean that the Exchange will approve the applicant for listing. On the other hand, in certain circumstances, an application may be approved even though the company does not meet all the statistical guidelines." *Id.*

[2] In its filing, the Amex also proposed, as an alternative to the pre-tax income standard, a minimum requirement of $1.5 million in operating cash flow for the previous fiscal year. The Amex has consented to an extension of time for Commission consideration of that proposed provision, and therefore does not object to partial approval of SR-Amex-86-29, excluding the provision noted above. *See* letter from Benjamin Krause, Executive Vice-President, Amex, to Sharon Lawson, Branch Chief, Division of Market Regulation, SEC, dated January 26, 1987. Accordingly, the Commission is not addressing the Amex's proposed cash flow provision in this approval order.

[3] *See* section 102(a). The term "public distribution" is defined as holdings exclusive of officers, directors, controlling shareholders, and other concentrated or family holdings.

[4] *See* section 102. According to the *Company Guide*, the alternate standards were promulgated to facilitate listing "certain financially sound companies [that] are unable to fully meet the Exchange's existing earnings criteria because of the nature of their business, or because of continuing large expenditures of funds for research and development." *Id.*

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its five year operational history requirement to three years and by replacing its $12 million tangible net worth standard with a $4 million shareholders' equity standard. To offset those amendments, the Amex proposes to raise the minimum market value of publicly held shares from $10 million to $15 million. Finally, the Amex intends to implement the same distribution requirements for companies listed under the alternate criteria as exist for other listing applicants.

E. Delisting Criteria

The Amex proposes to amend sections 1003(a) (i) and (ii) by replacing the minimum tangible net worth standards with the shareholders' equity standard. In addition, section 1003(b) would be amended to reduce from 600 to 300 the number of holders below which a company would be considered for delisting.

III. Discussion

The Commission does not believe that the proposed amendments to the financial and distribution standards constitute a material lowering of the Amex listing criteria, despite the fact that they effectively increase the number of potential Amex listees. In particular, the replacement of the dual income standard (pre-tax income and net income) with the single net income standard puts the Amex in line with the single income standards of the New York Stock Exchange ("NYSE") and the National Association of Securities Dealers Automated Quotation ("NASDAQ") system.[5] The replacement of the tangible net worth standard with the shareholders' equity standard, which takes into account patents, copyrights, and other intangible assets possessing assignable monetary value, implements an easily defined, readily available standard that has increased utility for evaluating companies that are not engaged exclusively in manufacturing.

Further, the Commission is pursuaded by the comments of the Amex that the amendments to their distribution guidelines will not affect the ability of Amex specialists to maintain a fair and orderly market in a newly listed security. Primarily, the Amex pointed to changed auction market conditions as support for their decision to remove the distribution requirement mandating 150,000 shares held in lots of between 100 to 1,000 shares by at least 500 holders. The Amex argued that this moderately sized distribution category is now of limited importance to liquidity, since a substantial and growing percentage of trading activity occurs in blocks of 1,000 shares or more, making the requirement for smaller block holders both unnecessary and difficult to achieve.

Note.—*See* 1986 *Amex Fact Book.* According to the *Fact Book,* the breakdown by transaction for 1985 is as follows:

Share size	Percent of transactions	Percent of volume
0–99	0.2	0.01
100–199	21.8	1.74
200–499	30.6	6.59
500–999	19.3	8.97
1,000–4,999	23.7	31.57
5,000+	4.2	51.12

The Amex also argued that the predominance of larger investors, making larger transactions, with the concomitant decline in importance of odd-lot and small round-lot holders, makes the requirement of a larger shareholder base less important.

The Amex further suggested, and the Commission agrees, that trading volume and public float minimums, if coupled with a reasonable requirement on the minimum number of shareholders for a company, will enable a specialist to maintain a fair and orderly market. Therefore, the Commission endorses the Amex minimums of 800 shareholders for companies with a public float of between 500,000 and one million shares, a 400 holder requirement for those companies with a public float in excess of one million shares, and a 400 holder requirement when the potential listee can demonstrate a 500,000 share float and average trading volumes in excess of 2,000 shares per day over the previous six months.

The Commission finds the remaining proposals presented by the Amex to be consistent with the goals of the *Company Guide* and the purposes of the Act. The proposed amendments to the alternate listing criteria in section 107 should add utility to that section while continuing to maintain standards similar to those traditionally employed by the Amex. The Commission likewise finds credible Amex's claim that, due to the predominance of institutional holdings, a 300 holder requirement for bond listings for companies that do not trade common stock on the NYSE or Amex is practically impossible to achieve. Given the present nature of exchange bond trading, the Commission agrees that a 100 holder requirement is sufficient to ensure a relatively liquid market for bond trading. Lastly, the Commission endorses the Amex's reasoning on its delisting and minimum price-per-share amendments.

The Commission does not believe the Amex proposal imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal should increase competition for new listings between the Amex and other self-regulatory organizations, particularly in the area of young, high technology companies possessing significant growth potential. Finally, in addition to the Commission's findings that the listing standard changes are consistent with the Act and should not impair market liquidity or the ability to maintain fair and orderly markets, the Commission notes that any Amex listing decision will continue to be guided by the exchange's own business and marketing interests.

IV. Conclusion

Based on the above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b)(5) and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned portions of the proposed rule change be, and hereby are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 30, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–2619 Filed 2–6–87; 8:45 am]

BILLING CODE 8010–01–M

[5] *See* § 240.11Aa2–1(b)(4)(ii)(A), which mandates that an issuer of a security must have an annual net income of $300,000 to meet the NASDAQ Tier 2 requirement; NYSE Rule 495B.30, which requires that an issuer have pre-tax income of $2.5 million in the previous year and $2 million for each of the preceding 2 years, or 6.5 million in pre-tax income over the last three years, with a minimum of $4.5 million in the last year.

[Release No. 34–24042; File No. SR–NSCC–86–16]

Notice of Filing and Immediate Effectiveness of Proposed Rule Change By National Securities Clearing Corp.

Relating to an amendment to National Securities Clearing Corporation's ("NSCC") Rules and Fee Structure.

Comments are requested within 21 days after the date of this publication.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 23, 1986, NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The rule change is set forth in the Important Notice as Exhibit 1 to NSCC's filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC enclosed statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the placed specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC's present discount policy, when revenues exceed costs, is to discount certain fees. NSCC has determined that, in certain cases, while overall revenues may exceed costs, it is not appropriate to discount fees for a new service that would otherwise be eligible for a discount, until the development costs for the service have been recovered.

Accordingly, the purpose of this rule change is to notify participants that the fees paid for comparison of transactions in municipal securities are ineligible for a discount until NSCC has recovered its development costs for the National Municipal Comparison System.[1]

Insofar as the proposed rule change provides for the equitable allocation of reasonable fees among its participants, it is consistent with the requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder applicable to NSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No comments on the proposed rule change have been solicited or received. NSCC will notify the Securities and Exchange Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the 1934 Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the 1934 Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withhold from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 2, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

[1] Other fees related to municipal security transactions are not affected by this change. Specifically, trade correction fees and receive and deliver fees with respect to municipal securities will continue to be subject to the discount because of difficulties in separating charges relating to municipal securities from charges related to other securities. In addition, Participant Fees are not affected because such fees generally are not subject to the NSCC discount.

Dated: January 30, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–2621 Filed 2–6–87; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Region VIII Advisory Council; Public Meeting

The U.S. Small Business Administration, Region VIII Advisory Council, located in the geographical area of Casper, Wyoming, will hold a public meeting at 8:30 a.m., on Friday, March 13, 1987, at the 49er Inn, 330 West Pearl Street, Jackson, Wyoming, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Paul W. Nemetz, District Director, U.S. Small Business Administration, 100 East B Street, Federal Building, Room 4001, Casper, Wyoming 82601, (307) 261–5761.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 3, 1987.

[FR Doc. 87–2666 Filed 2–6–87; 8:45 am]

BILLING CODE 8025–01–M

Presidential Advisory Committee on Small and Minority Business Ownership; Public Meeting

The presidential Advisory Committee on Small and Minority Business Ownership; Public Meeting

The Presidential Advisory Committee on Small and Minority Business Ownership, located in Washington, DC, will meet on Monday, February 23, 1987, at 9:00 a.m. until 4:00 p.m., Ceremonial Courtroom on the 19th floor of the Federal Building, 450 Golden Gate Avenue, San Francisco, California, 94102. At the hearing, private sector executives, local officials, trade associations, small and minority business entrepreneurs, will present testimony regarding the challenges they face in the development of their businesses, along with proposed solutions to these problems for possible implementation by the Federal Government.

Persons wishing to obtain further information should contact Milton Wilson, Jr., Office of Private Industry Programs, U.S. Small Business Administration, 1441 L Street, NW.,

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Room 602, Washington, DC 20416, telephone (202) 653–6526.

Jean M. Nowak,
Director, Office of Advisory Councils.
February 3, 1987.
[FR Doc. 87–2665 Filed 2–6–87; 8:45 am]
BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Bureau of Oceans and International Environmental and Scientific Affairs

[Public Notice 998]

Finding of No Significant Impact; Annex V Regulations for the Prevention of Pollution by Garbage From Ships

The United States Coast Guard has prepared an environmental assessment for the Department of State concerning the proposed ratification of Annex V, Regulations for the Prevention of Pollution by Garbage from Ships, an optional annex to the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78). The Annex provides international regulations for limiting at sea disposal of potentially harmful debris generated during the normal operation of vessels, and contains a provision that prohibits, subject to limited exceptions, the disposal into the sea of all plastics.

Based on the findings of the environmental assessment, the Department concludes that no significant adverse environmental impacts will result from ratification of the Annex to the 1978 Protocol. To the contrary, it is anticipated that ratification will be environmentally beneficial.

Copies of the environmental assessment may be obtained from the Office of Oceans and Polar Affairs, Room 5801, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520 (202/647–3262).

Dated: January 21, 1987.

Edmund M. Parsons,
Director, Office of Environment and Natural Resources.
[FR Doc. 87–2617 Filed 2–6–87; 8:45 am]
BILLING CODE 4710–09–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended January 30, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 44631

Date Filed: January 28, 1987.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 25, 1987.
Description: Application of Piedmont Aviation, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations, requests a certificate of public convenience and necessity to provide round-trip air transportation between Charlotte, North Carolina and Nassau, Bahamas.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 87–2649 Filed 2–6–87; 8:45 am]
BILLING CODE 4910–62–M

[Docket No. 44380]

Seattle/Portland—Japan Service Review Case; Hearing

Notice is hereby given that a hearing in the above-entitled matter is assigned to be on March 9, 1987, at 10:00 a.m. (local time) in Room 5332, Department of Transportation, 400 7th Street, SW., Washington, DC 20410, before the undersigned administrative law judge.

Dated at Washington, DC, February 3, 1987.

John M. Vittone,
Administrative Law Judge.
[FR Doc. 87–2650 Filed 2–6–87; 8:45 am]
BILLING CODE 4910–62–M

[Docket No. 4467, et al.]

Aviation Proceedings; Agreements Filed During the Week Ending January 30, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 44637

Parties: Members of International Air Transport Association.
Date Filed: January 30, 1987.
Subject: GIT Fares for Central/South America-TC3 except Japan.
Proposed Effective Date: April 1, 1987.

Docket No. 44638 R–1 & R–2

Parties: Members of International Air Transport Association.
Date Filed: January 30, 1987.
Subject: TC3 Special Amending Resolution—South West Pacific Adopt fares between Perth and Christchurch.
Proposed Effective Date: February 1 and April 1, 1987.

Docket No. 44639

Parties: Members of International Air Transport Association.
Date Filed: January 30, 1987.
Subject: Increase fares to/from Morocco—Airport tax.
Proposed Effective Date: April 1, 1987.

Docket No. 44640

Parties: Members of International Air Transport Association.
Date Filed: January 30, 1987.
Subject: I.A79 within Europe—fares between Denmark, Norway, Sweden & USSR.
Proposed Effective Date: April 1, 1987.

Docket No. 44641 R–1 & R–2

Parties: Members of International Air Transport Association.
Date Filed: January 30, 1987.
Subject: Introduce New Zealand domestic proportional fares and amend U.S. proportional fares for travel from New Zealand & Cook Islands.
Proposed Effective Date: April 1, 1987.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 87–2651 Filed 2–6–87; 8:45 am]
BILLING CODE 4910–62–M

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Pub. L. 96–192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile. Order 80–2–69 established the first interim SFFL and Order 86–12–9 set the currently effective two-month SFFL applicable through January 31, 1987.

In establishing the SFFL for the two-month period beginning February 1, 1987, we have projected nonfuel costs based on the year ended September 30, 1986 data, and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department.

By Order 87–2–3 fares may be increased by the following adjustment factors over the October 1, 1979, level:

Atlantic	0.9567
Latin America	1.0496
Pacific	1.3061
Canada	1.1232

For further information contact: Julien R. Schrenk (202) 366–2441.

By the Department of Transportation:
Dated: February 2, 1987.

Vance Fort,
Deputy Assistant Secretary for Policy and International Affairs.
[FR Doc. 87–2652 Filed 2–6–87; 8:45 am]
BILLING CODE 4910–62–M

Coast Guard

[CGD 87–007]

Houston/Galveston Navigation Safety Advisory Committee; Applications for Appointment to Membership

AGENCY: Coast Guard, DOT.
ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Houston/Galveston Navigation Safety Advisory Committee.

The purpose of the Committee is to provide local expertise on such matters as communications, surveillance, traffic control, anchorages, and other related topics dealing with navigation safety in the Houston/Galveston area which are within the purview of Coast Guard regulation.

Three members from the public in the Houston/Galveston area are needed to fill vacancies. Applicants may be from State and local government agencies, the marine industry, environmental groups, academia, and other interested parties. To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women. The Advisory Committee normally meets three times a year at various locations within the Houston/Galveston area. Members serve voluntarily, without compensation from the Federal Government for salary, travel or per diem. Term of membership will not exceed the expiration date of the present committee charter, November 6, 1988, unless reappointed.

DATE: Requests for applications should be received no later than 15 March 1987.

ADDRESS: Persons interested in applying should write to Commander, Eighth Coast Guard District (mps), Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130–3396.

FOR FURTHER INFORMATION CONTACT: Commander David F. Withee, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (mps), Hale Boggs Federal Building, Room 1341, 500 Camp Street, New Orleans, LA 70130–3396; (504) 589–6901.

Dated: January 28, 1987.

Peter J. Rots,
Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.
[FR Doc. 87–2662 Filed 2–6–87; 8:45 am]
BILLING CODE 4910–14–M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 159—Minimum Aviation System Performance Standards for Global Positioning System; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 159 on Minimum Aviation System Performance Standards for Global Positioning System to be held on February 24–25, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Remarks; (2) Approval of Minutes of the Fourth Meeting; (3) Report of the Integrity Working Group Activities; (4) Briefing on Long Term GPS Reliability; (5) Consideration of EUROCAE WG–28 Recommendations; (6) Review of Additions to Draft Committee Report; (7) Development of Committee Work Program and Schedule; (8) Assignment of Tasks; (9) Other Business; and (10) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 2, 1987.

Wendie F. Chapman,
Designated Officer.
[FR Doc. 87–2584 Filed 2–6–87; 8:45 am]
BILLING CODE 4910–13–M

St. Louis Regional Airport, East Alton, IL; Approval of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the St. Louis Regional Airport Authority under the provisions of Title 1 of the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (Pub. L. 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On October 7, 1985, the FAA determined that the noise exposure maps submitted by the St. Louis Regional Airport Authority under Part 150 were in compliance with applicable requirements. On October 27, 1986, the Administrator approved the St. Louis Regional Airport noise compatibility program. All of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the St. Louis Regional Airport noise compatibility program is October 27, 1986.

FOR FURTHER INFORMATION CONTACT: David L. Schein, Federal Aviation Administration, Great Lakes Region, Airports Division, AGL–611, 2300 East Devon Avenue, Des Plaines, Illinois 60018 (312) 694–7538. Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for St. Louis Regional Airport, effective October 27, 1986.

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Under section 104(a) the Aviation Safety and Noise Abatement Act (ASNA) of 1979, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with FAR Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Aviation Safety and Noise Abatement Act of 1979, and is limited to the following determinations:

The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government.

Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the Navigable Airspace and Air Traffic Control Systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982, or successor legislation. Where Federal funding is sought, requests for project grants must be submitted to the FAA Chicago Airports District Office in Des Plaines, Illinois.

The St. Louis Regional Airport Authority submitted to the FAA on May 9, 1985, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from September 1984 through September 1986. The St. Louis Regional Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on October 7, 1985. Notice of this determination was published in the **Federal Register** on October 24, 1985.

The St. Louis Regional Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to 1991, and beyond. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on May 12, 1986, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 13 proposed actions for noise mitigation, both on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective October 27, 1986.

Outright approval was granted for all the specific program elements. Program elements include extensions to runways 11/29 and 17/35, use of new airport facility development to buffer noise, acquisition of navigation easements, acquisition of eight residences and a church, the initiation of a noise monitoring and management program, and adoption of compatible land use zoning regulations in the airport vicinity.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator October 27, 1986. The Record of Approval, as well as other evaluation materials and documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the St. Louis Regional Airport Authority.

Issued in Des Plaines, Illinois, on January 7, 1987.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 87-2580 Filed 2-6-87; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

Technical Hazardous Liquid Pipeline Safety Standards Committee; Advisory Committee Charter

This notice announces the renewal of the Technical Hazardous Liquid Pipeline Safety Standards Committee under section 14 of the Federal Advisory Committee Act (5 U.S.C. App. 1; Pub. L. 92-463) and sets forth the charter of the Committee prepared in accordance with section 9 of that Act. This charter replaces the charter effective January 16, 1985, which is hereby terminated.

The purpose of the Technical Hazardous Liquid Pipeline Safety Standards Committee is to review proposed hazardous liquid pipeline safety standards and report to the Assistant Director for Regulation on the technical feasibility, reasonableness, and practicability of each such proposal. The Committee may propose safety standards to the Assistant Director for his consideration for hazardous liquid pipeline facilities.

It has been determined that renewal of the Technical Hazardous Liquid Pipeline Safety Standards Committee is in the public interest in connection with the performance of duties imposed by law on the Department under section 204(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2003(a)).

The charter of the Committee is set forth below:

Charter—Technical Hazardous Liquid Pipeline Safety Standards Committee

1. Purpose

This charter of the Technical Hazardous Liquid Pipeline Safety Standards Committee is prepared in accordance with the Federal Advisory Committee Act (FACA) enacted October 6, 1972.

2. Background

Section 204 of the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA) authorizes the establishment and prescribes the duties of the Technical Hazardous Liquid Pipeline Safety Standards Committee. The Committee was established on January 16, 1981, with the appointment of 15 members.

3. Sponsor

The Office of Pipeline Safety is the Committee sponsor. The Assistant Director for Regulation is designated the Executive Director of the Committee and shall be the Department of Transportation (DOT) official authorized to call or adjourn meetings, approve the agenda, and otherwise monitor the Committee's meetings and progress.

4. Committee Objectives and Duties

The Assistant Director for Regulations shall submit to the Committee for its consideration any notice of proposed hazardous liquid pipeline safety standards published in the **Federal Register** (including both new standards and amendments to existing standards). Within 90 days after receipt by the Committee of any such proposal, the Committee shall prepare a report on the technical feasibility, reasonableness, and practicability of the proposal. Each report by the Committee, including any minority views, shall, if timely made, be published and form a part of the proceedings for the promulgation of standards. The Administrator, Research and Special Programs Administration, may prescribe a final standard at any time after the 90th day after a proposal's submission to the Committee, whether or not the Committee has reported on such proposal. The Committee may propose safety standards to the Assistant Director for his or her consideration for hazardous liquid pipeline facilities. The Assistant Director shall not be bound by conclusions of the Committee, but in the event that the conclusions of the majority of the current members of the Committee are rejected, the reasons for rejection shall be incorporated in the preamble published with the final rule (HLPSA, section 204, and 49 CFR 1.53). The Committee may also review and report on other matters related to the Department's hazardous liquid pipeline safety rulemaking function as are presented by the Assistant Director.

5. Membership

a. The Committee shall be composed of 15 members, each of whom shall be appointed by the Secretary, after consultation with public and private agencies concerned with the technical aspect of the transportation of hazardous liquids or the operation of pipeline facilities. Members shall be appointed on the basis of their experience in the safety regulation of the transportation of hazardous liquids and of pipeline facilities, or their training, experience, or knowledge in one or more fields of engineering applied in the transportation of hazardous liquids or the operation of pipeline facilities to evaluate hazardous liquid safety standards, as follows:

(1) Five members shall be selected from Federal, State, or local governmental agencies, and two of the five shall be State Commissioners selected after consultation with representatives of the national organization of State commissions;

(2) Four members shall be selected from the hazardous liquids industry, after consultation with industry representatives, and not less than three of the four shall be currently engaged in the active operation of pipeline facilities; and

(3) Six members shall be selected from the general public.

b. The membership shall be fairly balanced in terms of the points of view represented, and the advice and recommendations of the Committee shall be the result of its independent judgment (FACA, section 5(b) (2) and (3)).

c. Members are appointed for a term of 3 years except that a member may serve until a successor is appointed, but for not more than a total of 6 years.

6. Appointment of Officers

At the first meeting of each calendar year, the Assistant Director shall appoint a Chairman and Vice-Chairman, and the Committee shall, by majority vote of the members present, elect a Secretary. These three officers, who will serve until their successors are appointed, shall constitute an executive committee.

7. Meetings and Procedures

a. Calling Meetings

The Assistant Director for Regulation shall approve in advance the scheduling and agenda of each Committee meeting (FACA, section 10(f)). The Committee may recommend agenda items to the Assistant Director. A designated officer or employee of the Federal government shall attend each Committee meeting and is authorized to adjourn the meeting whenever he or she determines it to be in the public interest (FACA, section 10(e)).

b. Presiding at Meetings

The Chairman shall preside at all meetings of the Committee and of the Executive Committee, except that the Assistant Director or his or her delegate may preside whenever the Committee is, at the request of an official of the Department of Transportation, advising the Department on matters other than notices of proposed rulemaking. The Vice-Chairman shall assume and perform the duties of the Chairman in the event of his or her absence. A majority of the current members of the Committee must be present at a meeting to perform the Committee's statutory duties.

c. Duties of Secretary

The Committee Secretary shall, as directed by the Chairman, monitor records, summarize activities, prepare and process letter ballots, and prepare reports for submission to the Assistant Director. In the absence of the Secretary, the Chairman appoints a member of the Committee to perform the duties of the Secretary.

d. Notice of Meetings

Notice of each Committee meeting shall be published in the **Federal Register** at least 15 days in advance of the meeting, except in emergency situations. Other forms of notice are to be used to the extent practicable (FACA, section 10(a)(2)).

e. Frequency of Committee Meetings

The Committee meets at least twice each calendar year. In addition, Committee members may be polled or asked for comments on notices of proposed rulemaking or other matters at any time without formally assembling at one place.

f. Public Participation

Each Committee meeting shall be open to the public except where the Executive Director of the Committee determines in writing that the meeting, or a portion thereof, shall be closed for one of the reasons specified in 5 U.S.C. 552b(c) (FACA, section 10 (a)(1) and (d)). Public participation in the meeting may be limited by reasonable rules (FACA, section 10(a)(3)).

g. Minutes.

Detailed minutes of each Committee meeting shall be kept and certified to by the Committee Chairman. The minutes shall contain a record of the persons participating, a complete and accurate description of the matters discussed and conclusions reached, and copies of all reports received, issued, or approved by

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the Committee (FACA, section 10(c)).

h. Availability of Records

The records, reports, transcripts, minutes, and other documents of the Committee shall be available for public inspection and copying at the Office of Pipeline Safety, 400 Seventh Street, SW., Washington, DC 20590, subject ot the Freedom of Information Act, 5 U.S.C. 552 (FACA, section 10(b)).

8. Compensation

Members of the Committee shall not be compensated. However, all members, while away from their homes or regular places of business, shall be allowed travel expenses, including per diem in lieu of subsistence.

9. Duration of the Committee

Under the provisions of the HLPSA, the Committee's purposes are continuing in nature; therefore, the Committee has an indefinite duration. The Committee itself must be renewed at successive 2 year intervals by the appropriate action of the Secretary (FACA, section 14(c)).

10. Administrative Support

The Assistant Director for Regulation is responsible for providing office space, equipment, supplies, clerical help, and other administrative and financial support for the Committee.

11. Annual Operating Cost

Estimated annual operating cost is approximately $20,000 for travel and recording the proceedings, plus about one-eighth person-year of staff support.

12. Public Interest

The formation and use of the Technical Hazardous Liquid Pipeline Safety Standards Committee is determined to be in the public interest in connection with the performance of duties imposed on the DOT by law. In fact, the HLPSA specifically requires DOT to submit all proposed hazardous liquid pipeline safety standards to the Committee as part of the proceedings for the promulgation of such standards.

13. Filing Date

January 16, 1987. This is the effective date of the charter which will expire 2 years from the date unless sooner terminated.

Richard L. Beam,

Director, Office of Pipeline Safety.

[FR Doc. 87-2598 Filed 2-6-87; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: February 3, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington, DC. 20220.

Bureau of the Public Debt

OMB Number: New
Form Number: PD 5237
Type of Review: New

Title: Subscription for Purchase of U.S. Treasury Securities State and Local Government Series One-Day Certificates of Indebtedness.

OMB Number: New
Form Number: PD 5238
Type of Review: New

Title: Request for Redemption of U.S. Treasury Securities—State and Local Government Series One-Day Certificates of Indebtedness.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Clearance Officer: Peter Laugesen (202) 376-4902, Bureau of the Public Debt, Room 445, 999 E. Street NW., Washington, DC 20226.

Dale A. Morgan,

Departmental Reports Management Office.

[FR Doc. 87-2654 Filed 2-6-87; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Change Other Than Routine Use Statements; Privacy Act of 1974; Amendment of System Notices

Notice is hereby given that the Veterans Administration (VA) is revising the numeric designation of the system name as set forth on page 738 oF the document entitled Privacy Act Issuances, 1984 Comp., Volume V and as amended at 50 FR 10886 (March 18, 1985), 50 FR 26875 (June 28, 1985), 50 FR 31453 (August 2, 1985), 51 FR 21782 (July 8, 1986), 51 FR 25141 (July 10, 1986), 51 FR 28289 (August 6, 1986) and 51 FR 36894 (October 16, 1986). In addition, the paragraph entitled, "System Manager(s) and Address:", is also being modified. These changes are necessary because of a recent merger in VA's Central Office. The Vocational Rehabilitation and Counseling Service (28) was merged with the Education Service (22) and is now the Vocational Rehabilitation and Education Service (22).

Notice of System of Records

In the system identified as 58 VA 21/22/28, "Compensation, Pension, Education and Rehabilitation Records-VA," appearing at page 738 of the document entitled Privacy Act Issuances, 1984 Comp., Volume V and as amended at 50 FR 10886 (March 18, 1985), 50 FR 26875 (June 28, 1985), 50 FR 31453 (August 2, 1985), 51 FR 24782 (July 8, 1986), 51 FR 25141 (July 10, 1986), 51 FR 28289 (August 6, 1986) and 51 FR 36894 (October 16, 1986), the system notice is revised as follows:

SYSTEM NAME:

Compensation, Pension, Education and Rehabilitation Records-VA (58 VA 21/22)

. . . . . .

SYSTEM MANAGER(S) AND ADDRESS:

Director, Compensation and Pension Service (21); Director, Vocational Rehabilitation and Education Service (22), VA Central Office, Washington, DC 20420.

The Privacy Act of 1974, 5 U.S.C. 552a(e), requires agencies to inform the public of any changes to their system of records. However, since these changes do not alter the uses of the information in the system of records, public comment is not required. The changes to the system notice are effective January 21, 1987.

Approved: January 21, 1987.

Thomas K. Turnage,

Administrator.

[FR Doc. 87-2659 Filed 2-5-87; 8:45 am]

BILLING CODE 8320-01-M

Corrections

Federal Register
Vol. 52, No. 26
Monday, February 9, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 712

[OPTS-82031; FRL-3109-6]

Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals

Correction

In rule document 86-25581 beginning on page 41328 in the issue of Friday, November 14, 1986, make the following correction:

§ 712.30 [Corrected]

On page 41330, in the third column, in § 712.30(t), in the third line, the date should read "February 12, 1987".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50537A; FRL-3146-8]

PBBs and Tris; Significant New Uses of Chemical Substances

Correction

In rule document 87-1631 beginning on page 2699 in the issue of Monday, January 26, 1987, make the following correction:

§ 721.230 [Corrected]

On page 2703, in the first column, in § 721.230(a)(1), in the seventh line, "21,2',", should read "2,2',".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940-06-4212-12; A-20347-C]

Exchange of Public and State Land; AZ

Correction

In notice document 86-29479 beginning on page 174 in the issue of Friday, January 2, 1987, make the following corrections:

1. On page 174, in the second column, in T. 5 S., R. 31 E., in Sec. 6, the first lot should read "4".

2. On page 175, in the first column, in T. 9 S., R. 32 E., in Sec. 28, "E½W¼" should read "E½SW¼".

3. On the same page, in the second column, in T. 6 S., R. 28 E., in Sec. 36, before "SE¼" insert "SE¼NE¼,".

4. In the same column, in T. 8 S., R. 30 E., in Sec. 28, "N½, NW¼" should read "N½NW¼".

5. On the same page, in the third column, in T. 7 S., R. 31 E., in Sec. 21, "SW½NW¼" should read "SW¼NW¼".

6. On page 176, in the first column, in T. 12 S., R. 32 E., in Sec. 2, "S½,NW¼" should read "S½NW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A-20346-P]

Realty Action; Exchange of Public Lands, Maricopa, LaPaz, Yuma, Pima, and Yavapai Counties, AZ; Phoenix District Office

Correction

In notice document 86-28325 beginning on page 45401 in the issue of Thursday, December 18, 1986, make the following corrections:

1. On page 45402, in the first column, the 33rd line should read, "Secs. 13, 24,".

2. On the same page, in the same column, in the 39th line, "12,859.64", should read "12,979.64".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AWA-37]

Establishment of Airport Radar Service Area

Correction

In rule document 87-729 beginning on page 1426 in the issue of Tuesday, January 13, 1987, make the following corrections:

§ 71.501 [Corrected]

On page 1430, in § 71.501, in the third column, in the fourth line of text, "International" was misspelled; and the latitude should read "23°53'55"N.".

BILLING CODE 1505-01-D

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federal register

Monday
February 9, 1987

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 9, 15, 31, 45, and 52
Federal Acquisition Regulation (FAR); Definition of Special Test Equipment, Qualification Requirements, and Termination of Defined Benefit Pension Plans; Proposed Rules

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9 and 52

Federal Acquisition Regulation (FAR); Qualification Requirements

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulatory Council (DARC) are considering revisions to FAR 9.201, 9.202, and 9.206 and the clause at 52.209–1 to clarify what constitutes a "qualification requirement" and to whom or to what it applies.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before April 10, 1987, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th and F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 86–67 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Acquisition Circular (FAC) 84–11 was issued as an interim rule on August 30, 1985, to implement certain provisions of Pub. L. 98–525 and Pub. L. 98–577. Item III of FAC 84–11 implemented those provisions of the public laws related to "qualification requirements" and imposed new procedural obligations on Federal agencies before they could require testing or other quality assurance demonstration as a condition to award of a Government contract.

After reviewing public and agency comments on FAC 84–11, Item III, two significant problems have come to light. First, the interim rule appears to have defined "qualification requirement" too broadly by impliedly covering industry specifications and restrictions which the Government has neither approved nor endorsed. Typically, this form of restricted specification arises when the Government buys a system or other complex end item based on a performance or functional specification. That system or end item may contain numerous components that are subject to restrictions contained in the prime contractor's or subcontractors' specifications or drawings. When the Government does not approve or endorse these specifications or drawings, they should not become "qualification requirements" as contemplated by Pub. L. 98–525 and Pub. L. 98–577. To subject these specifications and drawings to the new procedural obligations for establishing qualification requirements would burden industry and increase prices without any express statutory mandate to do so or even any apparent Government interest. The proposed rule, therefore, modifies the definition of "qualification requirement" at FAR 9.201 and as used in the clause at FAR 52.209–1 as well as the policy in 9.202 to eliminate this unnecessary and unintended extension of the new coverage on qualification requirements.

Second, the interim rule may have applied the new policies concerning "qualification requirements," even when properly defined, too narrowly by treating components of end items differently from the specific supplies or services actually purchased on a Government prime contract. In this regard, when a component of an end item is subject to a qualification requirement properly established by the Government, FAC 84–11 allows the prime contractor two options for satisfying the requirement *after award* of the prime contract. If the prime contractor intends to acquire the component, FAR 9.206–1(d) requires simply that the prime furnish ". . . a component that has met the qualification requirement *before award of a subcontract for the component.*" (Emphasis added.) Similarly, if the prime contractor elects to manufacture the component, the clause at FAR 52.209–2 requires simply that the prime ". . . have demonstrated its ability to meet the standards specified for qualification *before beginning to manufacture the components.*" (Emphasis added.) Neither of these options is consistent with Pub. L. 98–525's and Pub. L. 98–577's basic stipulation that a qualification requirement ". . . must be completed by an offeror *before award of a contract.*" (Emphasis added.) The public laws do not distinguish between end items and components. If, before award of a contract, an agency demands that a product, manufacturer, or source satisfy a requirement for advance testing or other quality assurance, that agency has established a "qualification requirement." To be able to enforce the qualification requirement when buying the product or service as an end item, it would appear that the agency must enforce the qualification equally when the product or service is only a component of the end item.

To implement Pub. L. 98–525 and Pub. L. 98–577 more accurately, the proposed rule modifies FAR 9.206–1(d) and the clause at FAR 52.209–1 to require that any qualification requirement applicable to a component be met before award of the prime contract, whether the contractor intends to purchase or manufacture the component. In light of these revisions, the proposed rule deletes the clause at FAR 52.209–2 as no longer necessary.

B. Regulatory Flexibility Act

The proposed rule applies to all small businesses that want to contract with the Government and which will either offer a product which is listed on a qualified products list, or which will participate in an acquisition which is limited to certain manufacturers, bidders, or sources that can meet established requirements prior to award. It is not feasible to estimate the number of small entities to which the proposed rule applies because the number of small businesses who would participate in these types of acquisitions is unknown. Also, the number of qualification requirements which will be modified or eliminated as the result of this proposed rule is unknown. An Initial Regulatory Flexibility Analysis has been prepared and forwarded to the Chief Counsel for Advocacy for the Small Business Administration.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, Pub. L. 96–354, specifies circumstances under which a regulatory flexibility analysis is required in connection with the issuance of a general notice of proposed rulemaking consistent with the Act. FAC 84–11, as published on August 30, 1985, contained an initial regulatory flexibility analysis because it appeared that the interim rule on qualification requirements would have a significant beneficial economic impact on a substantial number of small entities. In this connection, the interim rule attempts to carry out faithfully the basic congressional policy behind the new procedural obligations imposed by Pub. L. 98–525 and Pub. L. 98–577 on any agency wishing to establish and use a qualification requirement. By requiring agencies to (1) justify in writing the necessity for qualification requirements, (2) provide all interested parties with the standards that must be met and opportunity to qualify for award, and (3) reimburse small businesses under certain circumstances for the costs incurred to qualify, Pub. L. 98–525 and Pub. L. 98–577 seek to increase competition, particularly among small businesses, on Government procurements. The legislative history of Pub. L. 98–525 and Pub. L. 98–577 reflects Congress' belief that these new procedural obligations would discourage agencies from using unnecessary qualification requirements which have the natural effect of limiting competition and foreclosing many markets entirely to small business.

The proposed rule should expand the beneficial economic impact anticipated from the interim rule (FAC 84–11, Item III) by clarifying that the new procedural obligations regarding qualification requirements apply equally to components of end items as to the end items actually purchased on the prime contract. This clarification should further discourage unnecessary qualification requirements, thereby removing barriers to small businesses and increasing competition among suppliers of component parts.

Reason for Proposed Agency Action

Congress amended Title 10 and Title 41 of the United States Code to require agencies to prescribe policies and procedures regarding qualification requirements for acquisitions that are subject to these requirements.

Objectives and Legal Basis

The proposed rule further implements Pub. L. 98–525 (10 U.S.C. 2319) and Pub. L. 98–577 (41 U.S.C. 253(e)) with the objective of encouraging new competitors for Government contracts. The proposed rule seeks to accomplish this by requiring agencies to justify, with respect to components of end items, the necessity for establishing qualification requirements assuring that the requirements are available to all offerors and sources and permitting offerors to demonstrate their ability to meet these requirements up to the time of award.

Description of and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

The proposed rule applies to all small businesses that want to contract with the Government and which will either offer a product which is listed on a qualified products list, or which will participate in an acquisition which is limited to certain manufacturers, bidders, or sources that can meet established requirements prior to award. It is not feasible to estimate the number of small entities to which the proposed rule applies because the number of small businesses who would participate in these types of acquisitions is unknown. Also, the number of qualification requirements which will be modified or eliminated as the result of this proposed rule is unknown.

Projected Reporting, Recordkeeping, and Other Compliance Requirements

There are no additional projected reporting, recordkeeping or other compliance requirements likely to result from the proposed rule. Small businesses which qualify for reimbursement of testing and evaluation costs by the United States are required by the law to certify to their status as a small business under section 3 of the Small Business Act. This should not impose an additional burden on small businesses because they are already required to determine their status under Government contracts.

Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule

There do not appear to be any relevant Federal rules which duplicate, overlap, or conflict with the proposed rule.

Significant Alternatives

The Regulatory Flexibility Act requires consideration of significant alternatives to the proposed rule that would accomplish the objectives of the statute and minimize any significant economic impact on small entities.

These alternatives include—

(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) The clarification, consolidation, or simplification of compliance and reporting requirements under the proposed rule for such small entities;

(3) The use of performance rather than design standards; and,

(4) An exemption from coverage of the proposed rule, or any part thereof, for such small entities. The proposed rule does not itself establish reporting or recordkeeping requirements. The use of performance rather than design standards, if feasible, is already mandated by Part 10 of the FAR. Qualification requirements which must be met by manufacturers or bidders (or their products) before being awarded a contract, are necessary to assure that the Government obtains a product which meets its minimum needs. Although these requirements cannot be waived or relaxed for small entities, they may be reimbursed for costs of testing and evaluation in some cases which should help them to become more competitive on these types of acquisitions.

C. Paperwork Reduction Act.

The Office of Management and Budget granted approval under OMB control number 9000–0083 on September 9, 1985, for an estimated total annual burden of 66,209 hours associated with FAC 84–11, Item III, Qualification Requirements. Since the proposed rule should not alter this burden, the approval number remains valid.

List of Subjects in 48 CFR Parts 9 and 52

Government procurement.

Dated: January 28, 1987.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 9 and 52 be amended as set forth below:

1. The authority citation for Parts 9 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Ch. 137; and 42 U.S.C. 2453(c).

PART 9—CONTRACTOR QUALIFICATIONS

2. Section 9.201 is amended by revising the definition "Qualification requirement" to read as follows:

9.201 Definitions.

* * * * *

"Qualification requirement" means a Government requirement for testing or other quality assurance demonstration that must be completed before award of a contract.

* * * * *

3. Section 9.202 is amended by revising paragraph (a)(1)(ii) to read as follows:

9.202 Policy.

(a) * * *

(1) * * *

(ii) Estimating the likely costs for testing and evaluation which will be incurred to become qualified; and

* * * * *

4. Section 9.206–1 is amended by revising paragraphs (b), (c), and (d) to read as follows:

9.206–1 General.

* * * * *

(b) Except when the agency head or designee determines that an emergency exists, whenever an agency elects, whether before or after award, not to enforce a qualification requirement which it established, the requirement

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may not thereafter be enforced unless the agency complies with 9.202(a).

(c) If a qualification requirement applies, the contracting officer need consider only those offers identified as meeting the requirement or included on the applicable QPL, QML, or QBL, unless an offeror can satisfactorily demonstrate to the contracting officer that it or its product or its subcontractor or its product can meet the standards established for qualification before the date specified for award.

(d) If a product subject to a qualification requirement is to be acquired as a component of an end item, the contracting officer must assure that all such components and their qualification requirements are properly identified in the solicitation since the product or source must meet the standards specified for qualification before award.

* * * * *

5. Section 9.206–2 is revised to read as follows:

9.206–2 Contract clause.

The contracting officer shall insert the clause at 52.209–1, Qualification Requirements, in solicitations and contracts when the acquisition is subject to a qualification requirement.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 52.209–1 is revised to read as follows:

52.209–1 Qualification Requirements.

As prescribed in 9.206–2, insert the following clause:

Qualification Requirements (Jan. 1987)

(a) *Definition:* "Qualification Requirement," as used in this clause, means a Government requirement for testing or other quality assurance demonstration that must be completed before award.

(b) One or more qualification requirements apply to the supplies or services covered by this contract. For those supplies or services requiring qualification, whether the covered product or service is an end item under this contract or simply a component of an end item, the product, manufacturer, or source must have demonstrated that it meets the standards prescribed for qualification before award of this contract. The product, manufacturer, or source must be qualified at the time of award whether or not the name of the product, manufacturer, or source is actually included on a qualified products list, qualified manufacturers list, or qualified bidders list. Offerors should contact the agency activity designated below to obtain all requirements that they or their products or services, or their subcontractors or their products or services, must satisfy to become qualified and to arrange for an opportunity to demonstrate their abilities to meet the standards specified for qualification.

(Name) _____

(Address) _____

(c) If an offeror, manufacturer, source, product or service covered by a qualification requirement has already met the standards specified, the relevant information noted below should be provided.

Offeror's Name _____

Manufacturer's Name _____

Source's Name _____

Item Name _____

Service Identification _____

Test Number _____

(to the extent known)

(d) Even though a product or service subject to a qualification requirement is not itself an end item under this contract, the product, manufacturer, or source must nevertheless be qualified at the time of award of this contract, whether or not the Contractor or subcontractor will ultimately provide the product or service in question. If, after award, the Contracting Officer discovers that an applicable qualification requirement was not in fact met at the time of award, the Contracting Officer may either terminate this contract for default or allow performance to continue if adequate consideration is offered and the action is determined to be otherwise in the Government's best interests.

(e) If an offeror, manufacturer, source, product, or service has met the qualification requirement but is not yet on a qualified products list, qualified manufacturers list, or qualified bidders list, the offeror shall submit evidence of qualification with its offer in order to receive consideration. If this is a sealed bid acquisition and the product, manufacturer, or offeror that is already qualified or is to be qualified before award is not identified, either above or elsewhere in the bid, the Contracting Officer shall reject the bid. Unless determined to be in the Government's interests, this acquisition will not be delayed in order to provide an offeror with an opportunity to meet the standards specified for qualification.

(f) Any change in location or ownership of the plant where a previously qualified product or service was manufactured or performed requires reevaluation of the qualification. Similarly, any change in location or ownership of a previously qualified manufacturer or source requires reevaluation of the qualification. The reevaluation must be accomplished before the date of award.

(End of clause)

52.209–2 [Reserved]

7. Section 52.209–2 is removed and reserved.

[FR Doc. 87–2610 Filed 2–6–87; 8:45 am]

BILLING CODE 6820–61–M

48 CFR Parts 15, 31, and 52

Federal Acquisition Regulation (FAR); Termination of Defined Benefit Pension Plans

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council propose to issue more specific regulatory coverage concerning the termination of overfunded defined benefit pension plans and the resultant employer withdrawal of excess pension fund assets. The purpose of the new coverage is to provide rules for determining the amount of the Government's equitable share of the credit of prior periods' pension costs that arises from such asset reversion transactions.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before April 10, 1987 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 86–69 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

Charges for pension costs have been accepted on Government contracts on the basis that funding was irrevocable and therefore that the Government would participate in all gains and losses incurred by pension plans. In recent years, many pension plans have been terminated and excess pension plan assets have reverted to and have been used by the sponsoring company for other purposes. Such proceeds represent an adjustment of prior period's pension costs. If the actual cost had been known, the prices the Government previously paid would have been reduced commensurately.

The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering more detailed FAR coverage dealing with Government receipt of a refund or credit when a contractor terminates an overfunded defined benefit pension plan and withdraws excess funds from pension fund assets. The new coverage provides rules for determining the Government's equitable share of prior periods' pension costs which are recaptured by contractors when an underfunded pension plan is terminated. The same rules are also applicable when an underfunded plan is terminated and indemnification payments must be made to the Pension Benefit Guaranty Corporation (PBGC).

A new sentence added to FAR 31.201–5 provides a cross reference to the rules related to determination of the amount of refund or credit due to the Government upon termination of an overfunded defined benefit pension plan. The new cost principles coverage at FAR 31.205–6(j)(4) establishes an administratively feasible method for computing the Government's equitable share of any such adjustments of prior periods' pension costs. The new contract clause at FAR 52.215–27, applicable to certain contracts with commercial organizations as prescribed at FAR 15.804–8(e), requires a notification of intent to terminate a defined benefit pension plan and clarifies the Government's right to a refund or credit when excess assets are withdrawn from pension funds. When the new clause is included in *any* contract, it will serve as a "trigger" to initiate the process of sharing of the proceeds of a termination on a basis proportionate to the amount of pension costs absorbed by *all* Government contracts, competitive and noncompetitive, fixed price and cost reimbursement types, and small purchases and major purchases.

List of Subjects in 48 CFR Parts 15, 31, and 52

Government procurement.

Dated: January 28, 1987.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 15, 31, and 52 be amended as set forth below:

1. The authority citation for Parts 15, 31, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Ch. 137; and 42 U.S.C. 2453(c).

PART 15—CONTRACTING BY NEGOTIATION

2. Section 15.804–8 is amended by adding paragraph (e) to read as follows:

15.804–8 Contract clauses.

* * * * *

(e) *Termination of Defined Benefit Pension Plans.* The contracting officer shall insert the clause at 52.215–27, Termination of Defined Benefit Pension Plans, in all solicitations and contracts, unless it is contemplated that the contract will be in one or more of the following categories:

(1) Small purchases awarded under the procedures of Part 13.

(2) Contracts awarded on the basis of sealed bids.

(3) Negotiated firm-fixed-price contracts not in excess of $100,000 awarded to small businesses.

(4) Contracts in which the price is set by law or regulation.

(5) Contracts in which the price is based on the established catalog or market price of commercial items sold in substantial quantities to the general public.

(6) Contracts described in Subpart 5.5, Paid Advertisements.

(7) Nondefense contracts awarded on the basis of adequate price competition.

(8) Firm-fixed-price contracts awarded without submission of any cost data; *Provided,* That the absence of the submission of such cost data is not attributable to a waiver of the requirement for certified cost or pricing data.

(9) Contracts with educational institutions, other than those contracts to be performed by a Federally Funded Research and Development Center (FFRDC) operated by such institutions.

(10) Contracts with State or local governments, or their instrumentalities.

(11) Contracts with Government agencies.

(12) Contracts with foreign governments, or their agents or instrumentalities, and contracts with foreign concerns to be performed entirely outside the United States, its territories, and possessions.

(13) Contracts awarded to United Kingdom contractors for performance substantially in the United Kingdom.

(14) Any other exceptions authorized under agency procedures.

B. Regulatory Flexibility Act

The new coverage at FAR 31.205–6(j)(4) is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because small entities rarely establish defined benefit pension plans but instead employ other, less administratively burdensome, deferred compensation plans. Therefore, an initial Regulatory Flexibility Analysis has not been prepared. Comments are invited.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed rule does not impose any additional recordkeeping or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

3. Section 31.201–5 is amended by adding a second sentence to read as follows:

31.201–5 Credits.

* * * See 31.205–6(j)(4) for rules related to determination of the amount of refund or credit to the Government upon termination of an overfunded defined benefit pension plan.

4. Section 31.205–6 is amended by revising the fourth sentence in paragraph (j)(2); by removing in paragraph (j)(2)(iii) the reference "(j)(6) below" and inserting in its place the reference "(j)(7) of this paragraph"; by removing paragraph (j)(3)(iv); by adding a new paragraph (j)(4); by redesignating existing paragraphs (j)(4) through (j)(7) as new paragraphs (j)(5) through (j)(8); by revising new paragraph (j)(5)(iii); by revising (j)(6)(vi); by revising the third sentence in new paragraph (j)(7); and by revising new paragraph (j)(7)(i) to read as follows:

31.205–6 Compensation costs.

* * * * *

(j) * * *

(2) * * * Pension costs are allowable subject to the referenced standards and the cost limitations and exclusions set forth below in this subparagraph and in paragraphs (j) (3) through (8) of this section.

* * * * *

(4) *Termination of defined benefit pension plans.* Termination of a defined benefit pension plan refers to a transaction in which pension benefit obligations (i.e., liabilities for vested benefits) of the plan are irrevocably settled, such as by purchasing paid-up annuity contracts or by making lump-sum cash payments to plan participants in exchange for their rights to vested benefits. Because of the unique manner in which pension costs for an accounting period are determined (i.e., the actuarial methods and techniques employed), Government recognition of such costs has always been on a basis that funding is irrevocable and that the Government will fully participate, to the extent of its fair share, in gains and losses incurred by the plan. When a pension plan is terminated, the termination value of the

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liabilities of the plan, based on employee service and/or earnings through the date of termination, shall be the lesser of the amount determined under the Pension Benefit Guaranty Corporation (PBGC) valuation method, or the amount paid for an annuity contract(s) purchased to settle the plan's liabilities. When the market value of the assets exceeds the termination value of the liabilities, the residual assets are generally refunded to the contractor upon settlement of all liabilities. When the termination value of the liabilities exceeds the market value of the assets, additional funding may be required. For contract costing purposes, the funding change which results from termination of a defined benefit pension plan shall be treated in the current year as an adjustment of pension costs for accounting periods preceding the date of plan termination. Government participation in such adjustments of prior periods' pension costs shall be determined in accordance with paragraphs (j)(4) (i) through (vi) of this section.

(i) When CAS 413.50(c) requires that separate pension costs be calculated for a segment(s), or that segmented pension records be maintained, the amount of the adjustment of prior periods' pension costs shall be apportioned initially to segments based on the market value of the assets and the termination value of the liabilities applicable to each segment, and on a basis consistent with the actuarial method(s) used to compute pension costs and the accounting procedures used to allocate such costs to final objectives.

(ii) The Government's share of the adjustment of prior periods' pension costs, calculated for each segment in accordance with paragraph (j)(4)(i) of this section, shall be the product of such adjustment (net of any amount prefunded) and the ratio of pension expense absorbed by all Government contracts and subcontracts (including Foreign Military Sales) to total pension costs incurred during the 10-year period preceding the date of plan termination, or the period from the inception date of the plan being terminated, whichever is shorter. If this ratio cannot be determined readily, a surrogate for it may be used provided the contracting officer determines that it achieves an equitable result.

(iii) In order to determine the total amount of the Government's share of the adjustment of prior periods' pension costs, the share calculated in accordance with paragraph (j)(4)(ii) of this section, shall be further adjusted as follows

(A) It shall give effect to any unallowable costs included in the segment's pension liabilities immediately before termination.

(B) It shall give effect to the consequence of any delayed funding, such as when the Government vs. non-Government portions of pension plan contributions have not been funded on the same schedule, or funding has been deferred under a waiver granted under the requirements of ERISA (see paragraph (j)(3)(i) of this section).

(iv) When a participating annuity contract is used to settle pension plan liabilities, the Government's share of dividends paid to the contractor under the annuity contract in future periods shall be the product of the ratio determined in paragraph (j)(4)(ii) of this section and the dividends paid.

(v) The cost of indemnifying the PBGC under ERISA section 4062 or 4064 is allowable, provided that if insurance was required by the PBGC under section 4023, it was so purchased and the indemnification payment is not recoverable under the insurance. The Government will participate, notwithstanding the requirements of 31.205–19(f), in the contractor's indemnification payment to the PBGC to the extent of its fair share determined in accordance with paragraph (j)(4)(iii) of this section.

(vi) The contracting officer shall determine whether the amount due to the Government shall be received by refund or by credit to specific contracts. Any amount due to the Government shall be payable in full on the date of plan termination, or for dividends declared under participating annuity contracts, on the date the dividends are payable to the contractor. Interest at the rate specified by the Secretary of Treasury pursuant to 50 U.S.C. App. 1215(B)(2) shall be assessed on the amount due for the period from the date payable until the date of receipt by the Government.

(5) * * *

(iii) The provisions of paragraph (j)(4)(v) of this section concerning payments to PBGC apply to defined contribution plans.

(6) * * *

(vi) The requirements of paragraph (j)(3) of this section are also applicable to pay-as-you-go plans.

(7) * * * However, for contract costing purposes, early retirement incentive payments are allowable subject to the pension cost criteria contained in paragraph (j)(3) of this section provided—

(i) The costs are accounted for and allocated in accordance with the contractor's system of accounting for pension costs (see paragraph (j)(6)(v) of this section for supplemental pension benefits);

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.215–27 is added to read as follows:

52.215–27 Termination of Defined Benefit Pension Plans.

As prescribed in 15.804–8(e), insert the following clause:

Termination of Defined Benefit Pension Plans (Jan. 1987)

The Contractor shall notify the Contracting Officer in writing when it determines that it will terminate a defined benefit pension plan. If pension fund assets revert to the Contractor under any such termination, the Contractor shall make a refund or credit to the Government for an equitable share determined in accordance with FAR 31.205–6(j)(4). If indemnification payments must be made to the Pension Benefit Guaranty Corporation (PBGC) under any such termination, the Government's share of such payments shall be determined in accordance with FAR 31.205–6(j)(4)(v). The Contractor shall include the substance of this clause in all subcontracts under this contract, except for those types of contracts specified in FAR 15.804–8(e).

(End of clause)

[FR Doc. 87–2612 Filed 2–6–87; 8:45 am]

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48 CFR Parts 45 and 52

Federal Acquisition Regulation (FAR); Definition of Special Test Equipment

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to FAR 45.101, Definitions, and FAR 52.245–18, Special Test Equipment clause, to provide a clearer statement of what constitutes special versus general purpose test equipment.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before April 10, 1987, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 86–68 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

This proposed regulation does not have a significant effect beyond the internal operating procedures of the Federal Government and is therefore not required to be published for public comment. However, any comments received will be considered in the formulation of a final rule. Because these proposed changes are not required to be published for public comment, the Regulatory Flexibility Act does not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed rule does not impose any additional recordkeeping or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 45 and 52

Government procurement.

Dated: January 30, 1987.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 45 and 52 be amended as set forth below:

1. The authority citation for Parts 45 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Ch. 137; and 42 U.S.C. 2453(c).

PART 45—GOVERNMENT PROPERTY

45.101 [Amended]

2. Section 45.101 is amended by adding in the second sentence of the definition "Special test equipment" the words ", including standard or general purpose items or components," following the word "equipment".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.245–18 is amended by inserting in the introductory text a colon following the word "clause" and removing the remainder of the sentence; by removing in the title of the clause the words "(APR 1984)" and inserting in their place the words "(FEB 1987); by revising paragraph (a) of the clause; and by removing the derivation line following "(End of clause)" to read as follows:

52.245–18 Special Test Equipment.

* * * * *

(a) "Special test equipment," as used in this clause, means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment, including standard or general purpose items or components, that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include material, special tooling, facilities (except foundations and similar improvements necessary for installing special test equipment), and plant equipment items used for general plant testing purposes.

* * * * *

[FR Doc. 87–2611 Filed 2–6–87; 8:45 am]

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Part III

Department of Health and Human Services

Office of Community Services

Availability of Funds and Requests for Applications Under the Office of Community Services Discretionary Authority; Notice of Announcement

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

[Program Announcement No. OCS-87-1]

Availability of Funds and Requests for Applications Under the Office of Community Services Discretionary Authority

AGENCY: Office of Community Services, Family Support Administration, Department of Health and Human Services.

ACTION: Announcement of availability of funds and requests for applications under the Office of Community Services Discretionary Authority.

SUMMARY: The Office of Community Services (OCS) announces that competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under section 681 of the Community Services Block Grant Act of 1981, as amended. This program announcement consists of five parts. Part I covers general information, who is eligible to apply, what funds are available, the overall purposes of the OCS Discretionary Grants Program and the funding authority, and briefly describes the Fiscal Year 1987 competitive review process. Part II describes the program priority areas in which grants will be awarded. Part III describes the application process and the review and selection criteria. Part IV gives specific guidance on how to prepare and submit an application under each separate published program priority area. (Applications must be limited to no more than 60 single-spaced typed pages.) Part V provides instructions for completing applications.

DATE: The closing date for submission of applications is April 10, 1987. Applicants may meet this deadline either by delivering or mailing the application on or before April 10, 1987, in accordance with the detailed instructions in Part IV below. Late applications will be returned to the senders without consideration in the competition.

FOR FURTHER INFORMATION CONTACT: Office of Community Services, Family Support Administration, Division of Discretionary Grants, 200 Independence Avenue, SW., Room 425B, Washington, DC 20201, (202) 475-0396.

Part I—Overall Guidance

A. Scope of This Program Announcement

Section 681 of the Community Services Block Grant (CSBG) Act authorizes the Secretary of Health and Human Services to make funds available to support program activities of national or regional significance to alleviate the causes of poverty in distressed communities. Included are special emphasis programs which sponsor enterprises providing employment and business development opportunities for low-income residents of the community, technical assistance and training programs in rural housing and community facilities development, and assistance for migrants and seasonal farmworkers.

Eligible Applicants

In accordance with the CSBG Act, as amended, eligible applicants in the Urban and Rural Community Economic Development Program Priority Area must be "private, locally initiated, nonprofit community development corporations, (or affiliates of such corporations) governed by a board consisting of residents of the community and business and civic leaders." (Note: This is a change from prior years based on a legislative amendment contained in the Human Services Reauthorization Act of 1986.) In each of the other Program Priority Areas (Assistance in Rural Housing Repairs and Rehabilitation, Rural Community Facilities Development, and Assistance to Migrants and Seasonal Farmworkers) eligible applicants may be States, public agencies or private non-profit organizations.

Projects proposed for funding under this announcement must result in direct benefits targeted toward low-income people (including at-risk teenagers) as defined in the most recent Annual Revision of Poverty Income Guidelines, published in the **Federal Register**, Vol. 51, No. 28, dated February 11, 1986, pp. 5105-5106, which is appended to this announcement. Annual revisions of these guidelines are normally published in February or early March of each year and are applicable to projects being implemented at the time of publication. (These revised guidelines may be obtained through the U.S. Government Printing Office at the following address: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.) No other government agency or privately defined poverty guidelines ar applicable for the determination of low-income eligibility for this OCS Discretionary Grants Program.

For most projects, the OCS will grant funds for one year. However, depending on the characteristics of any individual project and the justification presented by the applicant in its proposal, a grant may be made for a longer period of time, i.e. up to two years. Regardless of the time provided in a grant, it must be clearly demonstrated that the project work plan will achieve measurable results and can be successfully completed within the funding period provided in the particular grant.

The Fiscal Year 1987 program will be conducted under the same basic policies established in previous years for the OCS Discretionary Grants Programs including the awarding of grants on a competitive basis.

The OCS policy direction for discretionary grants is to promote:

1. Full-time permanent jobs for poverty level project area residents;

2. Income and/or ownership opportunities for low-income community members;

3. A better standard of living for low-income individuals through technical assistance and training projects in the areas of water and waste-water treatment;

4. Better housing for low-income individuals through technical assistance projects and innovative methods of meeting the housing needs of the poor; and

5. Implementation of projects which provide crisis relief, upgraded employment skills, and improved housing including projects proposing new and innovative strategies for addressing the special needs of migrants and seasonal farmworkers.

The OCS believes that these policy objectives can be best met at the local level through local organizations that can coordinate linkages with other private and public sector initiatives and enhance private sector involvement.

For purposes of this Program Announcement, a "distressed community" is defined as a geographic urban neighborhood or rural community of high unemployment and pervasive poverty.

Available Funds

The Office of Community Services expects to award approximately $24,000,000 in the fourth quarter of Fiscal Year 1987 for new grants. The funding expected to be available for each program priority area is summarized below:

Funding Summary

Program priority area	Fiscal year 1987 funds
1.0 Urban and Rural Community Economic Development	$17,614,000
2.0 Rural Housing and Community Facilities Development	3,570,000
3.0 Assistance for Migrants and Seasonal Farmworkers	2,686,000

B. Application Prerequisites

All proposed projects must meet the basic criteria of (a) being projects that are designed and intended to provide benefits to a targeted low-income group of people and (b) including matching funds from other sources sufficient to meet the requirements of this grant announcement. [Note exception: Matching requirements do not apply to applications submitted under Program Priority Area 1.2, Urban and Rural Community Economic Development (Pre-Developmental Grants)].

The OCS will not consider applications that are geared toward the establishment of Small Business Investment Corporations or Minority Enterprise Small Business Investment Corporations. The OCS, in Fiscal Year 1987, will consider grant applications for the purpose of establishing revolving loan funds where they are part of an applicant's business or commerical development activities under Priority Area 1.1, Urban and Rural Community Economic Development (Operational Grants).

C. FY 1987 Application Process

All instructions and forms required for submittal of applications under the OCS Discretionary Grants Program are included in this program announcement. (The information collection requirements contained in this announcement have been approved by the Office of Management and Budget under control number 0990-0147.) Additional copies of this announcement may be obtained by writing or telephoning the Division of Discretionary Grants, Office of Community Services, at the address and phone number listed above.

All timely applications initially will be screened by FSA staff to determine whether they are complete and in conformance with the requirements of this announcement using the screening factors contained in Part III of this announcement. Those applications which pass this screening will be given further consideration by referral to independent readers for scoring and analytical comment based upon the criteria detailed in Part III of this announcement and the specific requirements contained under each published program priority area. Following the final review by the Director of OCS and staff, it is anticipated that awards under this announcement will be made in the fourth quarter of Fiscal Year 1987.

D. General Grant Terms

1. Applicants are reminded that grantees are subject to the provisions of Office of Management and Budget Circular A-122 which prohibits the use of grant funds for (a) electioneering activities at the Federal, State or local level and (b) attempts to influence Federal or State legislation through either grassroots lobbying or direct contacts with Federal or State legislators or their staffs.

2. Applicants are reminded that quarterly progress and financial reports, as well as an audit, will be required for any project that receives OCS funds. Costs associated with the completion and submission of the required grant audit may be chargeable to the grant and will not be considered as part of the up to 10% of the grant that is allowable for administrative costs.

Part II—Program Priority Areas

A. Priority Area 1.0: Urban and Rural Community Economic Development

The purpose of this priority area is to encourage the development of special programs by which private, locally initiated, nonprofit community development corporations, (or affiliates of such corporations) governed by a board consisting of residents of the community and business and civic leaders, which serve economically depressed urban and rural areas and/or State designated enterprise zones, may with appropriate Federal assistance, initiate projects intended to provide employment and business development opportunities and generally improve the quality of the economic and social environment of low-income residents of the areas they plan to serve. It is intended to provide resources to eligible applicants, but also has the broader objectives of arresting tendencies toward dependency, chronic unemployment, and community deterioration in urban and rural areas. The emphases of projects must be on self-help and mobilization of the community-at-large and on providing opportunities for employment and/or ownership within the targeted population. To this end, the program seeks: (a) To attract additional private capital into distressed communities, including enterprise zones; (b) to build and expand the ability of local institutions to better serve the economic needs of local residents; and (c) to provide new employment and ownership opportunities for low-income people through business, physical or commercial development.

1. Priority Area 1.1: Urban and Rural Community Economic Development (Operational Grants)

a. *Narrative description.* The Office of Community Services will provide funds to a limited number of non-profit community development corporations (or affiliates of such corporations) for business development activities at the local level. Funding under this Program Priority Area will be provided for specific projects with up to 10% allowed for administrative purposes and will require the submission of business or community development proposals that meet the test of economic feasibility.

Projects must further Administration goals of public-private partnerships, and Federal initiatives such as urban and rural enterprise zones. OCS is particularly interested in receiving applications that stress public-private partnerships that are directed toward the development of economic self-sufficiency through a focus on economic expansion.

Applications must show significant ability to create new permanent private sector jobs and/or maintain existing jobs, all targeted towards the poverty level area residents, including at-risk teenagers, who are either unemployed or underemployed. While projected employment in future years may be included in the application, it is essential that the focus of employment projections concentrate on those jobs saved or created during the duration of the OCS grant period. The description of employment must include a discussion of the types of jobs noting those created or saved, a discussion of skill requirements and training plans (if any), any upward mobility potential and the wage structure that will be characteristic of the project. It also must indicate how the applicant intends to insure that low-income area residents will be targeted for jobs that will be created or saved as a result of the OCS grant award.

Any funds that are proposed to be used for training purposes must be limited to providing specific job related training to poverty level individuals who have been selected for employment in the grant-supported project or who have been selected for training or participation in a project where potential jobs have actually been identified.

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Investments in projects which would result in the relocation of a business from one geographic area to another are discouraged.

Applicants located in a State designated enterprise zone in which a legislative entity has enacted a program of tax and regulatory relief to encourage business development, are encouraged to submit applications. Such applications must be linked with and complement enterprise zone initiatives, and may be for either a business development project or for a demonstration of innovative ways of involving the poverty community in the implementation of the enterprise zone concept.

b. *Submission requirements.* Although applicants may submit more than one application for OCS funding under this Priority Area, each application must be a request for grant support for only one project. Single applications requesting grant support for more than one project may be disqualified and returned.

Project narratives should contain a full and accurate description of the proposed use of the requested financial assistance, whether it is for a business enterprise or a physical or commercial development project. The project narrative must show how increased employment, income and/or ownership opportunities will be provided by the proposed project. The applicant must also clearly document an ability to strengthen links with and mobilize additional resources from other private and public sources. Evidence of a commitment on the part of the public or private sector to participate in the proposed project must be fully documented.

Each application submitted under this program priority area must include a complete Business Plan as a part of its project narrative that is in Part IV of the SF 424. The format of such plans may be found in Part V. of this announcement.

The Business Plan is one of the major components in the required project narrative that will be evaluated by OCS in terms of feasibility and community benefits. Therefore, the Business Plan must be well prepared and address all the major elements of a business plan as detailed herein. The use of these guidelines should produce a complete and professional business plan of not more than 30 pages that makes an orderly presentation of the facts as required by this program announcement. It must include clearly defined quarterly goals for the project.

The Business Plan is to be a part of the application proper and will be included in the application's 60 page limitation.

The Business Plan must demonstrate to OCS that there is reasonable assurance that the amount of OCS funds requested, together with other funds available, is adequate for the completion of the proposed project or achievement of the stated purposes for which the OCS grant funds are being requested.

Because the Business Plan guidelines are written to cover a variety of possibilities, rigid adherence to them is neither possible nor necessarily desirable for all projects. For example, a plan for a service business would not require a discussion of manufacturing or product design. Common sense should be used in applying the guidelines to develop a business plan for the project.

Applicants that do not include a Business Plan as part of their application may be found to be non-responsive and their application may be disqualified and returned to them.

Any applicant applying under this priority area must document previous involvement in substantial economic development activities and a record of successful project implementation which justifies a high degree of confidence that the proposed project will succeed. Therefore, applicants in this priority area must document a firmly established and quantifiable performance record that shows the following:

- The ability to implement major activities such as (a) business development, (b) commercial development, (c) physical development, or (d) financial services;
- To mobilize dollars from such sources as (a) the private sector (corporations, banks, etc.), (b) foundations, (c) the public sector, including State and local governments, or (d) individuals;
- Successful working relationships within the community including public officials, financial institutions, corporations, other community organizations and residents;
- A sound asset base and organizational structure in terms of (a) net worth, (b) management stability, and (c) organizational capability;
- An ability to develop and maintain a stable program in terms of business, physical or community development activities that will provide needed permanent jobs, services and other benefits to community residents, and impact on community-wide economic problems and needs;
- A qualified and demonstrably competent staff and a functioning board of directors that consists of residents of the community and business and civic leaders, that are capable of setting policy, making program decisions, and providing adequate programmatic oversight;
- Sound administrative and fiscal systems and controls; and,
- The ability to establish and maintain partnerships with the private sector in such forms as financial support, volunteerism, or executives on loan.

2. Priority Area 1.2: Urban and Rural Community Economic Development (Pre-developmental Grants)

OCS intends in this priority area to provide funds to recently-established private, non-profit community development corporations (CDCs) or affiliates of such corporations (see Part I, Section A, Eligible Applicants) which propose to undertake economic development activities in distressed communities currently not served by a community development corporation.

OCS recognizes that there are a number of newly-organized non-profit community development corporations who have identified needs in their communities but who have not had the staff or other resources to develop projects to address those needs. This lack of resources also might be affecting their ability to compete for funds, such as those provided under OCS's Urban and Rural Community Economic Development (Operational Grants) since their limited resources would preclude them from developing a comprehensive business plan and/or mobilizing resources.

OCS has an interest in providing support to these new entities in order to enable them to become more firmly established in their communities thereby bringing technical expertise and new resources to these previously unserved or underserved communities. Therefore, OCS is setting aside $1.5 million in Fiscal Year 1987 for grants to private non-profit community development corporations or affiliates of such corporations which have been in existence for no more than three years and have never received OCS funding. From this sum grants of up to $75,000 each will be made to eligible applicants.

These grants will be made for a period of one year and will not require matching funds.

The grants will be pre-developmental grants under which CDCs or their affiliates may incur costs to: (1) Evaluate the feasibility of potential projects which address identified needs in the low-income community and which conform to those projects and activities allowable under Priority Area 1.1, subsection a., Narrative Description; (2) develop a Business Plan related to one of those projects; and (3) mobilize resources to be contributed to the project.

Based on the availability of funds in Fiscal Year 1988, OCS would propose to include in its Fiscal Year 1988 Program Announcement a separate Priority Area with a set-aside of $2.5 million to competitively fund some of the projects designed with the Fiscal Year 1987 pre-developmental grant funds. Grants would be for a maximum of $250,000 and competition for those funds would be restricted to those organizations receiving Fiscal Year 1987 pre-developmental grants. The Business Plan developed as part of the pre-developmental grants would be submitted as part of the competitive application. There would be a matching requirement in Fiscal Year 1988 and it would be the same as that required for Priority Area 1.1.

Each application for Fiscal Year 1987 funding under this Priority Area must include the following as part of the project narrative in Part IV of the SF 424:

1. Description of the impact area, i.e. a description of the low-income area it proposes to address;
2. analysis of need in the distressed community;
3. project objectives and measurable impact, i.e. a discussion of the types of projects that might be implemented to address the identified needs and how the proposed projects relate to the applicant's organizational goals and previous experience (if any); and
5. implementation factors: quarterly work plans with specific task timelines.

B. Priority Area 2.0: Assistance for Rural Housing and Community Facilities Development

The purpose of this Priority Area is to target funds in a limited number of low-income rural communities to address two major needs: Assistance in Housing Repair and Rehabilitation and Water and Waste Water Treatment.

Under this OCS Discretionary Grants Program, the eligibility guidelines for participation are the Annual Revision of Poverty Income Guidelines published by the Department of Health and Human Services with the most recent edition being dated February 11, 1986. No other low-income guidelines, such as those used by HUD or FmHA, may be used to determine participant eligibility. All applications must state in detail what criteria were used by the applicant to determine participant eligibility.

For purposes of this section, *rural* is defined as any area that is not within the outer boundary of a metropolitan entity having a population of 25,000 or more and the contiguous communities with population density of 100 persons or more per square mile according to the latest decennial census. Such an entity may be located entirely within one State or made up of contiguous interstate communities.

1. Priority Area 2.1: Assistance in Rural Housing Repairs and Rehabilitation

The primary purpose of this priority area is to assist low-income residents in rural communities by providing grants to eligible entities to: (a) Provide technical assistance to help low-income families and individuals to more effectively utilize existing local, State and Federal housing assistance programs; (b) develop innovative ways to meet the housing needs of low-income people, e.g. the rehabilitation or repair of existing substandard housing units for occupancy by low-income residents, the conversion of non-residential buildings to low-income residential use, and the purchase of homes by low-income people. OCS encourages applications that will assist low-income homeowners to improve their housing through self-help rehabilitation. These efforts should not be duplicative of programs which can be funded through other existing Federal programs.

Applications calling for new construction or "gut" rehabilitation will only be considered if the application clearly documents that there is insufficient existing housing stock that can be economically rehabilitated.

Funds will not be available for the repair or rehabilitation of low-income rental housing unless the structure is either occupied by a low-income owner or the properties to be repaired are (a) owned by a private non-profit organization and (b) covered by a written agreement which will ensure continued occupancy for at least three years by low-income people, as defined by DHHS Poverty Income Guidelines noted above. Such applications must state the current rents for the units in question as well as what rents will be charged for the rehabilitated units.

Funds will not be made available under this program priority area for establishing or expanding a revolving loan fund.

OCS will consider applications from such entities as rural housing development corporations, cooperatives and other public and private organizations with proven accomplishments in the area of rural housing.

Proposals should fully describe how the proposed use of grant funds will result in tangible improvements and benefits for rural poor people in housing conditions such as the following:

—Interior or exterior structural repairs including weatherization and alternative energy systems;

—Job opportunities for local unskilled residents while assuring quality work;

—Technical assistance and professional services related to housing and community planning by community-based design and planning organizations. (Projects should be conducted with maximum use of voluntary services of professional and community personnel);

—Development of innovative housing strategies to help low-income rural residents acquire housing.

Each applicant must include in Part IV, Program Narrative of the SF 424, a full discussion of the project including the following sections:

—*Basic housing data for targeted area.* Information on the status of housing in the targeted area, including but not limited to vacancy rates, housing deficiencies, characteristics of housing units to be repaired, new construction inventory, property values, rents and mortgage rates. (While specific census data may be included, this information must be project specific.)

—*Analysis of needs/priorities.* The nature and extent of the problem(s) to be addressed by the project with adequate description and documentation identifying specific housing needs of the rural poor in the area targeted and a rationale for the strategies and priorities for which OCS support is requested.

—*Participant application process.* A description of the participant application process including: (a) Verification of participant need and income eligibility, (b) proposed diagnostic repair forms and contract bid procedures (where applicable), and (c) completion verification and quality workmanship assurance procedures.

—*Types of work to be performed.* The application must contain a detailed and specific work plan that is both sound and feasible. It must include quantitative and qualitative measures which reflect the types of work to be performed, e.g. (a) technical assistance and training for each proposed organization/community; and/or (b) repairs or rehabilitation or construction work, noting which types of work will be done in order to bring properties up to minimum housing standards, inspection procedures and construction schedules.

—*Job creation.* Data regarding the number of direct jobs that will be created in the proposed project, noting

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the number of low-income residents that will be trained and/or placed in these jobs.

2. Priority Area 2.2: Rural Community Facilities Development (Water and Waste Water Treatment Systems Development)

The purpose of this priority area is to help low-income rural communities develop the capability and expertise to establish and maintain or preserve affordable, adequate and safe water and waste water treatment facilities.

The OCS will consider applications from Regional Technical Resource Centers and public or private organizations with proven technical expertise and accomplishments in water and waste water treatment programs. In accordance with the authorizing legislation, funding priority will be given to private nonprofit organizations that, before the date of the enactment of the Human Services Reauthorization Act of 1986, carried out such programs under the authority found at section 681(a)(2)(D) of the CSBG Act.

Non-profit organizations applying under this program area must include in their board membership or in an advisory body a significant representation of low-income community residents to ensure that project efforts are meeting the needs of low-income people in the areas served and to meet the program objective of helping rural low-income communities to develop expertise in the overall management of water and waste water systems.

Each applicant must include in Part IV of the SF 424, a full discussion of how the proposed use of funds will result in preservation of the quality of water and waste water treatment systems for the rural poor, or tangible improvements and other benefits such as:

—Dissemination of information on water and waste water programs serving rural communities;

—Increased local expertise and capability in water and waste water development and engineering services;

—Assistance to rural communities in developing the capability to operate and manage water and waste water facilities; and

—Better coordination of Federal, State and local water and waste water program financing and development to assure improved service to rural communities.

While matching funds may be used for construction of water and waste water treatment systems or for operating subsidies for such systems and for individual home hook-ups (ECUs), OCS funds may not be used for these purposes. Applicants that define measurable benefits in terms of equivalent connection units (ECUs) should report the actual number of connection units to be completed during the grant program year as well. Applicants should coordinate projects with the Farmers Home Administration (FmHA) and other Federal and State agencies to ensure that funds for hardware for local community projects are available.

C. Priority Area 3.0: Assistance to Migrants and Seasonal Farmworkers

The purpose of this priority area is to fund a limited number of projects which focus exclusively on the problems and special needs of migrants and seasonal farmworkers in order to improve their quality of life and advance self-sufficiency.

The following are definitions of terms for purposes of this section:

A migrant farmworker means an individual who works in agricultural employment of a seasonal or other temporary nature and who is required to be absent from his/her permanent place of residence in order to secure such employment.

A seasonal farmworker means an individual who works in agricultural employment of a seasonal or other temporary nature but is able to remain at his/her place of permanent residence while employed.

Special consideration will be given to projects that emphasize the involvement of the private sector in addressing the unique problems of migrants or seasonal farmworkers, with priority afforded to migrant farmworkers since local commuting farmworkers have greater access to other social services and poverty programs.

OCS will entertain proposals that directly meet farmworker needs in such areas as crisis nutritional relief, the development of self-help systems of food production, emergency health and social services referral and assistance, and activities in the areas of home repair, rehabilitation, and ownership.

Applicants may also request funding to address the need for longer term and permanent employment and may submit proposals that aim to:

(a) Assist low-income farmworkers (including at-risk teenagers) directly in improving their job skills so as to qualify them for longer term and permanent full-time employment in agriculture, and/or;

(b) Assist low-income farmworkers, including at-risk teenagers, who wish to leave agricultural employment and find jobs in other lines of work.

Applications submitted under this discretionary grant priority area must not request OCS funding for projects that would duplicate CSBG funding or activities for which funding can be requested from other Federal agencies such as Department of Labor, the Department of Agriculture's Food and Women, Infants and Children (WIC) programs, etc. However, programs designed to expand existing Federally-sponsored activities in isolated geographical regions will be considered favorably.

Part III—Application Process

A. Number of Grants and Amounts

The OCS anticipates making approximately 90 new awards pursuant to this announcement.

In Fiscal Year 1987 OCS will provide no more than $500,000 or 25% of the total project costs, whichever is the lesser amount, for real estate projects under Priority Area 1.1 and strongly encourages other applicants for funds under this Priority Area to refrain from submitting requests that are for more than $500,000. In Priority Area 1.2 requests may not exceed $75,000 and in Priority Areas 2.0 and 3.0 applicants are strongly encouraged not to apply for funds exceeding $250,000.

Projects to be funded under this authority will normally be for a period of twelve months, but projects may be approved, at the discretion of the funding agency for longer (but not to exceed two years) or shorter periods, depending on the characteristics of any individual project and the justification presented by the applicant in its proposal.

If a project is intended to continue beyond the OCS grant expiration date, the applicant must demonstrate that it will be able to continue project operations with other sources of funding.

B. Administrative Costs

The OCS will accept applications that include administrative costs. However, since grant funds are extremely limited, no awards for only administrative costs will be made and no more than 10% of the OCS discretionary funds awarded under a single grant may be used for administrative purposes. More favorable consideration may be given to applications where administrative costs are less than 10% of total project funds from all sources.

Administrative costs are defined as costs that are necessary to protect, monitor, properly account for and apply to the approved project, those Federal funds awarded. Costs associated with the internal operational management of the approved project are not considered to be administrative costs. Administrative costs must be identifiable within grantee records in order to allow auditors and OCS to verify that the grantee has not exceeded the 10% administrative cost limitation.

In all cases where an applicant has been awarded and claims a current indirect cost rate approved by the Department of Health and Human Services, the Defense Contracting Agency, or some other Federal Agency, this rate should be documented in the application and will ordinarily be recognized by OCS and applied to any OCS grant award. However, it is understood that both administrative and indirect costs are part of and not in addition to the amount of funds awarded in the subject grant. (In most cases, the indirect cost rate approved will include not only administrative costs but also other allowable costs that were negotiated under the grantee's approved indirect cost rate. Therefore, applicants with applicable indirect cost rate exceeding 10% may not propose any administrative funds in excess of that rate. Thus, the approved indirect cost rate may often exceed the normal 10% administrative cost restrictions which otherwise apply to OCS discretionary grants. In such cases, the entire approved indirect cost rate will be accepted.)

C. Matching Funds Requirement

Except for an applicant applying under Program Priority Area 1.2, the applicant is required to obtain commitment of minimum prescribed amounts of private or public funds as noted below to match each OCS dollar awarded. This match must be either one private sector dollar or two public sector dollars to each dollar of OCS discretionary funds awarded in Priority Areas 1.1, 2.1 and 2.2. For projects submitted under Program Priority Area 1.2 there is no match requirement. For projects submitted under Program Priority Area 1.2 there is no match requirement. For projects submitted under Program Priority Area 3.0, Assistance to Migrants and Seasonal Farmworkers, and for any project which will be carried out on an Indian Reservation (regardless of which Program Priority Area it is submitted under), a match of one private or public sector dollar to each dollar of OCS discretionary funds awarded is acceptable. The firm commitment of these required matching funds must be documented in the project application. Except in unusual situations, this documentation must be in the form of letters of commitment from the organization(s)/institution(s) from which the funds will be received.

Matching funds must be definite, or contingent only on receipt of the OCS grant. Speculative match, or match based on independent contingencies (such as receipt of another grant or lines of credit at the current market rate set aside by banks for program participants) will not be counted towards the matching requirement.

Matching funds may be in such forms as loans for construction financing, mortgages, grants from other Federal sources, or from States, counties, municipalities or private individuals or organizations or equity investments that are made to the project supported by the OCS grant. Matching funds might also be in the form of correlated training programs, related water or waste water installations, foundation support, private and charitable contributions and/or in-kind contributions.

In-kind matching contributions must show the bases for computation by indicating such data as: (a) The number and types of volunteers and rates at which their services are valued, (b) the value of donated space or equipment, noting rental value, use charges, square feet, etc., and/or the fair market value of any property or equipment that is specifically part of the project.

Funds that are eligible to be counted as "matching" funds must be committed for specific project activities within the OCS approved project during the duration of the OCS grant. A grantee may not claim as matching funds wages earned as a result of training or skill improvements that are expected to come from the OCS funded project.

Funds expended or obligated prior to the approved OCS starting date for a grant cannot be considered as matching funds, although currently owned assets may be applied against the matching requirement.

Applicants should describe clearly how they plan to use their own resources and the requested OCS funds to generate additional private sources of funding or investment as well as funding from other government agencies.

While the above matching requirement must be met and documented for an application to be eligible for consideration, applicants generating support greater than that required, may be eligible for additional points to be awarded by the independent readers.

Documentation of any commitment of matching funds must be valid at least through September, 1987.

D. Application Procedures

Organizations wishing to compete for an award under this announcement must submit an application by April 10, 1987. Any application not received, postmarked or identified by a commercial carrier processing date by the above closing date will be disqualified and returned to the applicant.

1. Availability of Forms

Applications for awards under the OCS Discretionary Program must be submitted on Standard Form (SF) 424 provided for that purpose. Part V and Appendix B contain all forms and instructions required for submittal of applications. Additional copies of the announcement may be obtained by writing or telephoning:Family Support Administration, Office of Grants Management, Room 2222—Switzer Building, 330 C Street, SW., Washington, DC 20201, Attn: OCS 87-1-DP, Telephone: (202) 245-0323.

2. Application Submission

An original signed application and six copies must be submitted to the Office of Community Services at the above address.

The application cover must contain a Program Priority Area designation in the lower right hand corner. The following Program Priority Area designations must be used:

UR (OG)—for Urban and Rural Community Economic Development (Operational Grants)
UR (*PD*)—for Urban and Rural Community Economic Development (Pre-developmental Grants)
RH—for Rural Housing Repairs and Rehabilitation,
RF—for Rural Community Facilities Development,
MS—for Migrants and Seasonal Farmworkers projects.

3. Table of Contents

All applications must include, as the first item, a Table of Contents with page numbers noted for each major section and subsection of the proposal and each section of the appendices. Each page in the application, including those in all appendices, must be numbered consecutively. (This will facilitate review as well as future referencing once the application becomes part of the Agency's permanent files.)

The Table of Contents should list the following and the application should present material in the order herein noted:

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a. Executive Summary (not to exceed 5 single-spaced typewritten pages).

b. Standard Form 424, Parts I through III, accompanied by:

(1) Justification for indicating in Part I a grant period exceeding 12 months.

(2) A Detailed Budget Breakdown for Part III, Section B.

(3) Documentation of Required Matching Funds (if applicable), and

(4) Evidence of Applicant Support from other Government and/or private sources.

c. Narrative Description of project applicant and implementing organizations (if grant is to be implemented by an organization other than the entity which is making application to OCS), must include, at a minimum, the following:

(1) Organizational Experience in Program Area,

(2) Management History,

(3) [1] Staffing, (Organizational Chart, Job Descriptions, Resumes),

(4) Senior Staff Responsibilities (including definite statements of who will have the responsibilities of the chief executive officer and who will be responsible for grant coordination with OCS),

(5) [1] Articles of Incorporation and By-laws,

(6) [1] Governing Boards and Representational Structure.

d. Description of Impact Area

(1) Standard Demographic Data,

(2) Participant/Beneficiary Characteristics,

(3) Analysis of Need.

e. Project Implementation

(1) Project Objectives and Measurable Impact,

(2) Implementation Factors: Resource Coordination, Quarterly Work Plans with Specific Task Timelines, Financial/Business Plans (where applicable), Identification of Problems and Issues, etc.

f. Evaluation Component.

Applications must be uniform in composition. They must be submitted on 8½ × 11 inch paper only. They must not include colored, oversized or folded materials. (Please do not include organizational brochures or other promotional materials in the proposal unless they have been copied to conform with the size requirements noted above.)

Please submit applications in binders that will allow for easy separation and reassembly. While applications must be comprehensive, OCS encourages conciseness and brevity in the presentation of materials and cautions you to avoid unnecessary duplication of information.

Failure to comply with the above formatting requirements may result in disqualification and return of an application.

4. Intergovernmental Review

The OCS Discretionary Grants Program is covered by Executive Order 12372 which provides for review of proposed Federal assistance by State and local governments.

Therefore, applicants for funds under this announcement are subject to the clearance procedures and requirements established by the State(s) in which their projects will be conducted. Consequently, applicants are reminded that clearance action through appropriate State clearinghouses must be initiated by them prior to submittal of applications to OCS. These initial actions must be reported on the SF 424, Page 1, which is submitted to OCS. Clearance action by States need not be completed before applications are submitted to OCS.

5. Application Consideration

Complete applications that conform to the requirements of this Program Announcement will be reviewed competitively and evaluated by Federal officials and qualified independent readers. Each complete application will be referred to qualified independent readers for a numerical score and explanatory comments based solely on responsiveness to program priority area guidelines and review criteria published in this announcement. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Evaluation scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will generally be considered in order of the mean scores assigned by reviewers. However, highly ranked applications are not guaranteed funding.

The Director may also consider other factors deemed relevant including, but not limited to comments of independent readers and State and local officials; staff evaluation and input; geographical distribution of funding; the previous program performance of applicants, especially those that have had previous HHS grants; audit reports and investigative reports; and applicant's progress in resolving any final audit disallowances on OCS or other Federal agency grants.

The OCS reserves the option of discussing applications with other Federal or non-Federal funding sources to determine the applicant's performance record.

The official award document is the Notice of Grant Award which sets forth in writing to the recipient the amount of funds awarded, the purpose of the award, other terms and conditions of the award, the effective date of the award, the budget period for which support is given, the total project period for which support is contemplated and the total recipient financial participation required.

E. Criteria for OCS Screening and Review of All Applications

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only complete and conforming applications will then be reviewed and evaluated competitively.

1. Screening Requirements

In order for an application to be processed under this announcement, it must meet all of the following requirements:

a. It must not exceed 60 pages in total, including the Business Plan (not to exceed 30 pages) and the Executive Summary (not to exceed 5 pages), but appendices may be in addition to the 60 page limitation.

b. *Standard Form 424:* The application must include a SF 424, completed according to instructions. Item 23b of Part I of this form must be signed by an official of the applicant organization having authority to obligate the applicant legally.

c. *Number of copies:* A signed original application and six copies must be submitted.

d. *Executive Summary:* A narrative summary of the project, not to exceed five single spaced typed pages, must be included in each application, immediately following the table of contents. This summary must directly address the program specifics within this announcement and the evaluation criteria contained below. (Applicants are cautioned that OCS will not accept a 5 page executive summary as the complete application or as a substitute for a properly detailed Part IV, Program Narrative of the SF 424.)

e. *OCS' Priorities:* Except for applications submitted under Priority Area 1.2, an application may contain only one project and this project must be identified as responding to one of the program priority areas stated in the announcement. An application which does not identify one program priority area or which shows multiple program priority areas, will be deemed non-conforming and may be disqualified and returned to the applicant.

f. *Multiple Submittals:* A project can only be proposed once under this announcement. Multiple submittals of the same—or essentially the same—project as an application under different priority areas will be deemed non-conforming and may be disqualified and returned to the applicant.

g. *OCS Target Populations:* The application must clearly target the specific outcomes and benefits of the project to low-income participants and beneficiaries eligible under the DHHS Annual Revision of Poverty Guidelines.

h. *Match Requirements:* A match of one contributed private sector or two public sector dollars to each OCS discretionary dollar sought must be documented for all program priority areas, except Priority Area 1.2, Urban and Rural Economic Development (Pre-developmental Grants), Priority Area 3.0, Assistance to Migrants and Seasonal Farmworkers, and any Priority Area where the project will be carried out on an Indian Reservation. There is no match requirement for Priority Area 1.2. The match requirement for Priority Area 3.0 and projects on Indian Reservations is one private or public sector dollar to each OCS dollar.

i. *Project Implementation—Program Priority Areas 1.1 and 1.2:* OCS does not anticipate approving grants that will subsequently be subgranted to an unrelated entity.

j. *Support from other Government Agencies or Private Institutions:* Each applicant must provide a list of all financial assistance (loans, loan guarantees, grants, contracts, cooperative agreements or other investment assistance) received from any government agency (Federal, State or local), private institution or individual during the three-year period beginning January 1, 1984 and ending December 31, 1986. In cases of applicants which are units of government (e.g. a city or county) which receive extensive assistance from many sources, the funding history need be only for that office or agency which is actually conducting the activities for which the OCS grant is being requested. The list must include the title of the project for which assistance was received, the name and address of the governmental agency, private institution or individual which provided the assistance and the name and telephone number of the responsible official or program officer, within the grantor agency or institution, who administered the assistance. The list should be certified by the applicant as accurate and complete. Where no assistance has been received during the three year period, the applicant must specifically so certify.

Special Note.—Failure to include the above information by the deadline for submission of an application may disqualify the applicant from further consideration. In addition, should OCS discover that the applicant has omitted or distorted any information submitted as part of its application, it may be grounds for no further review of the application or for the recovery of any grant award already made.

APPLICATIONS MUST MEET ALL OF THE ABOVE REQUIREMENTS TO BE CONSIDERED FOR FUNDING.

2. Criteria for Review and Evaluation of Applications Submitted Under Priority Areas 1.1, 2.1, 2.2, and 3.0

Applications which are judged to be in complete compliance with the announcement will be reviewed on a competitive basis. The OCS will use qualified independent readers, other than OCS employees, to conduct a formal objective review of the applications.

Each reader will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and major weaknesses under each applicable criterion published in this notice. An overall rating will include the reader's judgment of each application. The readers will be instructed to assign one of the following ratings to each application consistent with the points given under the evaluation criteria: (a) Not recommended for funding; (b) recommended for funding with conditions; or (c) unconditionally recommended for funding.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements contained under each program priority area.

a. Criterion I: Organizational Capability and Capacity (Maximum: 20 points)—(1) *Organizational experience in program area (sub-rating: 5 points).* Each applicant must document competence in the specific program priority area under which an application is submitted. Where the applicant has a history of two or more years of prior achievement in that area, the documentation must address the relevance and effectiveness of projects undertaken, especially their cost effectiveness and the relevance and effectiveness of any services and the permanent benefits provided to the targeted population. Applicants with a history of less than two years of prior achievement in the program area should so identify themselves. They must also indicate those activities that they have carried out in the area in question and the reasons why they feel that they can successfully implement the project for which they are requesting funding. Organizations which propose providing training and technical assistance must document competence in the specific program priority area and as a deliverer with expertise in the fields of training and technical assistance. If applicable, documentation provided by these applicants must also address related achievements and competence of each cooperating or sponsoring organization. The commitment of these organizations to the applicant organization and the project and the relevant experiences and achievements of key personnel including board members, executive staff and project management staff must also be included.

(2) *Management history (sub-rating: 5 points).* Applicants must fully detail a history of sound and effective management practices and if they have been recipients of other Federal or other governmental grants, they must also detail that they have consistently complied with financial and program progress reporting and audit requirements. Applicants with less than 2 years of such corporate management history should so identify themselves. These applicants should submit any available documentation on their management practices and progress reporting procedures along with a certification by a Certified or License Public Accountant as to the sufficiency of the applicant's financial management system to protect adequately any Federal funds awarded under the application submitted.

(3) *Staffing and resources (sub-rating: 5 points).* The application must fully describe (e.g. resumes) the experience and skills of key staff showing that they are not only well qualified but that their professional capabilities are relevant to the successful implementation of the project. It must also show that the applicant has adequate facilities and physical resources to carry out successfully the work plan specified.

(4) *Staff responsibilities (sub-rating: 5 points).* The application must describe how the assigned responsibilities of the staff are appropriate to the tasks identified for the project. It must show clearly that sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project.

b. Criterion II: Significant and beneficial impact (Maximum: 30 points).

[1] These items may be included as appendices to the project proposal.

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Projects funded under this announcement must produce permanent and measurable results that will reduce the incidence of poverty in the areas targeted. Results should be quantifiable in terms of program area expectations, e.g., business or physical development accomplished, number of jobs saved/created, number of units of housing rehabilitated, etc. The OCS grant funds, in combination with private and/or other public resources, must be targeted into low-income communities, distressed communities, and/or designated enterprise zones, with the goal of increasing the economic conditions and social self-sufficiency of residents. Projects must be designed to achieve the specific program priority area objectives defined in this program announcement.

The following are examples of specific impact measures for the various program priority areas:

(1) *Area 1.1: Urban and rural community economic development (Operational grants).* The number of new permanent direct jobs to be created for low-income residents of the area that the project is intended to serve, the number of such jobs maintained; increase in taxes paid; new technical skills development and associated career opportunities for low-income community residents; development of the community's economic and physical assets; the amount of non-Discretionary Program dollars to be mobilized and the degree of involvement by private sector individuals, corporations, and foundations in the implementation of the project.

(2) *Area 2.1: Assistance in rural housing repairs and rehabilitation.* The types of training and technical assistance proposed including specific outcomes of such assistance, e.g. number of organizations and individuals trained, the proposed number of on-site days or training days provided, sample curricula; the number of sub-standard housing units to be repaired and/or rehabilitated, noting by number those which will be occupied by a low-income owner and/or those which will be rental units; the number of low-income residents who will be helped to purchase or acquire adequate housing; the number of low-income people to be employed in such projects; the number of units to be converted or newly constructed; total non-Discretionary Program dollars mobilized; and justifications for selecting target communities that are based on the housing needs of low-income local residents and which show the types and amounts of assistance that have been provided in the communities in previous years. (In cases where new construction is proposed, it will only be approved if the applicant clearly documents that there is insufficient existing housing stock that can be economically rehabilitated.)

(3) *Area 2.2: Rural community facilities development.* The number of rural communities to be provided with technical and advisory services; the number of rural poor individuals who are expected to be directly served by applicant supported improved water and waste water systems; the decrease in the number of inadequate water systems related to applicant activity; the number of newly-established and applicant supported treatment systems (all of the above may be expressed in terms of equivalent connections); the increase in local capacity in engineering and other areas of expertise; and the amount of non-Discretionary Program dollars expected to be mobilized.

(4) *Area 3.0: Assistance to migrants and seasonal farmworkers.* The number of farmworkers who are expected to improve their agricultural skills and thus improve their agricultural employment situation; the number of farmworkers/families who will receive crisis nutritional relief, emergency health and social services referrals and assistance, and assistance in development of self-help systems of food production; the number of farmworkers who are expected to gain longer term or permanent private sector employment in areas outside agriculture; the number of farmworkers who will receive help in the areas of housing; the number of housing units to be repaired or rehabilitated; the degree and kind of such help; the amount of non-Discretionary Program dollars expected to be mobilized; and the degree of private sector involvement that will be utilized in developing and carrying out projects funded under this announcement.

c. Criterion III: Project Implementation and Evaluation (Maximum: 30 points)—(1) *Project Implementation Component (sub-rating: 25 points).* The application must contain a detailed and specific work plan that is both sound and feasible. It must set forth realistic quarterly time targets by which the various work tasks will be completed. Because quarterly time schedules are used by OCS as a key instrument to monitor progress, failure to include these time targets may seriously reduce an applicant's point score in this criterion. It must define critical issues or potential problems that might impact negatively on the project and it must indicate how the project objectives will be attained notwithstanding any such potential problems.

(2) *Evaluation component (sub-rating: 5 points).* All proposals should include a self-evaluation component. The evaluation data collection and analysis procedures should be specifically oriented to assess the degree to which the stated goals and objectives are achieved. Qualitative and quantitative measures reflective of the scheduling and task delineation in (1) above should be used to the maximum extent possible. This component should indicate the ways in which the potential grantee would integrate qualitative and quantitative measures of accomplishment and specific data into its program progress reports that are required by OCS from all grantees.

d. Criterion IV: Public—Private Partnerships (Maximum: 5 points). All applications must document that the private and/or public matching funds requirement will be met as part of the grant. This commitment of non-Discretionary Grant funds is necessary for an application to be considered.

An application may be eligible for points under this criterion only if, in addition to the required matching funds, it documents that it will mobilize from public or private sources additional project support and assistance which will directly benefit the project and poverty level target area residents.

e. Criterion V: Budget appropriateness and reasonableness (Maximum: 15 points). Each applicant should carefully review the requirements of the specific program priority area and the budget submitted must coincide with these requirements.

The proposed request for funds must be commensurate with the level of effort necessary to accomplish the goals and objectives of the project. It must include a detailed budget breakout for each of the budget categories in Part III, Section B of the SF 424. (Please identify any positions for which less than full-time funding is requested.) The estimated cost to the government of the project must also be reasonable in relation to the value of the anticipated results.

The contribution of any other private and/or public sector agencies or organizations must be assured in writing in the application when it is submitted.

3. Criteria for Review and Evaluation of Applications Submitted Under Priority Area 1.2

a. Criterion I: Organizational capability and capacity (Maximum: 20 points)—(1) *Organizational experience in program area (sub-rating: 5 points).* Where the applicant has a history of prior activity or achievement in economic development, the documentation must address the relevance and effectiveness of projects undertaken, especially their cost effectiveness and the relevance and effectiveness of any services and the permanent benefits provided to the targeted population. Applicants must also indicate why they feel that they can successfully implement the project for which they are requesting funding.

(2) *Management capacity (sub-rating: 5 points).* Applicants must fully detail their ability to implement sound and effective management practices and if they have been recipients of other Federal or other governmental grants, they must also detail that they have consistently complied with financial and program progress reporting and audit requirements. Applicants should submit any available documentation on their management practices and progress reporting procedures along with a certification by a Certified or Licensed Public Accountant as to the sufficiency of the applicant's financial management system to protect adequately any Federal funds awarded under the application submitted.

(3) *Staffing (sub-rating: 5 points).* The application must fully describe (e.g. resumes) the experience and skills of key staff showing that they are not only well qualified but that their professional capabilities are relevant to the successful implementation of the project.

(4) *Staff responsibilities (sub-rating: 5 points).* The application must describe how the assigned responsibilities of the staff are appropriate to the tasks identified for the project.

b. Criterion II: Significant and beneficial impact (Maximum: 35 points). A work plan funded under this announcement must show that there is a clearly identified need in a low-income area which is not being effectively addressed currently.

Project funds under this announcement must be used to develop a Business Plan for a project which would produce permanent and measurable results that will reduce the incidence of poverty in the areas targeted and mobilize non-Discretionary Program dollars from private sector individuals, corporations, and foundations if the project is implemented. The project around which the Business Plan is developed with the use of OCS grant funds, must be targeted into low-income communities, distressed communities, and/or designated enterprise zones, with the goal of increasing the economic conditions and social self-sufficiency of residents. Activities must be designed to achieve the specific Program Priority Area 1.2 objectives as defined in this program announcement.

c. Criterion III: Project implementation and evaluation (Maximum: 30 points).—(1) *Project Implementation Component (sub-rating: 25 points).* The application must contain a detailed and specific work plan that is both sound and feasible. It must set forth realistic quarterly time targets by which the various work tasks will be completed. Because quarterly time schedules are used by OCS as a key instrument to monitor progress, failure to include these time targets may seriously reduce an applicant's point score in this criterion. It must define critical issues or potential problems that might impact negatively on the project and it must indicate how the project objectives will be attained notwithstanding any such potential problems.

(2) *Evaluation Component (sub-rating: 5 points).* All proposals should include a self-evaluation component. The evaluation data collection and analysis procedures should be specifically oriented to assess the degree to which the stated goals and objectives are achieved. Qualitative and quantitative measures reflective of the scheduling and task delineation in (1) above should be used to the maximum extent possible. This component should indicate the ways in which the potential grantee would integrate qualitative and quantitative measures of accomplishment and specific data into its program progress reports that are required by OCS from all grantees.

d. Criterion IV: Budget appropriateness and reasonableness (Maximum: 15 points). Each applicant should carefully review the requirements of Program Priority Area 1.2 and the budget submitted must coincide with those requirements.

The proposed request for funds must include a detailed budget breakout for each of the pertinent budget categories in Part III, section B of the SF–424. (Please identify any positions for which less than full-time funding is requested.)

Part VI: Instructions for Completing Applications, Closing Date and Delivery of Applications

A. Submission Date

The closing date for applications submitted under this program announcement is April 10, 1987. Applications may be mailed or hand delivered to: Family Support Administration/DHHS, Office of Grants Management, Room 2222—Switzer Building, 330 C Street, SW., Washington, DC 20201.

Hand delivered applications will be accepted during the normal working hours of 8:45 a.m. to 5:30 p.m., Monday through Friday (excluding Federal legal holidays), up through the closing date of April 10, 1987. All other applications must be postmarked or dated by a commercial carrier not later than midnight, April 10, 1987.

An application will be considered to be received on time under either one of the following two circumstances:

1. The application was sent by registered or certified mail or by private commercial carrier no later than the closing date, as evidenced by a U.S. Postal Service date postmark or by commercial carrier dating, unless it arrives too late to be considered by the independent readers.

Applicants are responsible for assuring that the U.S. Post Office or private commercial carrier dates the application package. Applicants should be aware that not all post offices or private commercial carriers provide a dated postmark unless specifically instructed to do so.

2. The application is hand delivered on or before the closing date to the Office of Grants Management, FSA, at the address indicated above. In establishing the date of receipt of hand delivered applications, reliance will be placed on documentary evidence of receipt maintained by FSA. Any application not meeting the above closing date for submission will be disqualified and returned to the applicant organization.

B. Application Package

Each application must include:

1. A signed original and six additional copies of the application.

The original must bear original signatures of the certifying representative of the applicant organization. Do not include extraneous materials such as agency promotional brochures, slides, tapes, film clips, etc. It is not feasible to use such items in the review process, and they will be discarded if included.

2. A self-addressed, franked postcard so that acknowledgment of recipt can be returned. (This requirement applies even if the application is accompanied by a "return recepit requested card".) All applications will be assigned an identification number which will be noted on the acknowledgment. This number and the program priority area must be referred to in all subsequent communication with OCS concerning the application. If you do not receive the

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acknowledgment within three weeks after the deadline date, please notify OCS by telephone (202) 475–0396.

Special note.—After an identification number is assigned and the applicant has been notified of the number, applications will be filed serially by the number to aid in quick retrieval. It is not possible for FSA staff to provide a timely response to inquiries about a specific application unless this number and program priority area are given along with the applicant's name.

C. Contents of Applications

Each copy of the application must contain in the order listed, each of the following (more detailed instructions are noted in Part III.D.3., above, and in Part V.)

1. A Table of Contents as noted in Part III, above;

2. Executive Summary no more than the equivalent of 5 single spaced typed pages;

3. Standard Form 424, Part I, Federal Assistance—to be completed according to instructions contained on that form and in Part V of this Announcement.

4. Standard Form 424, Part II, Project Approval Information items 1 through 10, with attachments;

5. Standard Form 424, Part III, Budget Information—Sections A through F with attachments; and

6. Standard Form 424, Part IV, Project Narrative, fully describing the project being proposed in response to this announcement. The narrative should be fully responsive to the specific requirements contained under each program priority area and address the review criteria.

Applications once submitted are considered final and no additions will be accepted by OCS.

Again, applicants are reminded that failure to meet the specific programmatic format and the submission requirements stated herein may result in the disqualification and return of an application.

Part V. Instructions For Completing Applications (OMB Approval Number 0990–0147. Expiration date 9–30–87)

A. Introduction

Use of Forms

The forms included in this Announcement shall be used to apply for all new discretionary grants awarded by the Office of Community Services (OCS) under the Community Services Block Grant (CSBG) Discretionary Program. They shall also be used to request post award supplemental assistance, or proposed changes or amendments, from the OCS. For an original application for a grant, an original and six copies of the forms should be submitted to the Office of Community Services. For subsequent requests for post award assistance, proposed changes or amendments, only three copies of material are required. If an item cannot be answered or does not appear to be related or relevant to the assistance required, write "NA" for not applicable.

B. Applications

Applicants for new awards are required to submit a complete application which consists of Standard Form 424 Part I through Part V. Applicants for new projects must also include completed Forms HHS–441, Civil Rights Assurance and HHS-641 Rehabilitation Act Assurance and Certification on Small, Minority, and Woman-Owned Business. All applications must be complete and comprehensive documents and may not require reference to documents which may have been submitted as part of earlier applications to OCS.

C. Submission of Applications

In applications for assistance under the OCS Discretionary Program, SF–424, Part IV, the Program Narrative, must be limited to no more than 60 pages.

This limitation includes any appendices that serve to further explain the content of Part IV. However, the following documents and materials may be submitted as appendices in addition to the 60 page limitation on the Program Narrative: Articles of Incorporation, By-laws, and Resumes.

The 60 page limitation does not apply to Parts I, II, III and V of the Standard Form 424 or any documentation or explanatory materials relating to these Parts.

1. Instructions For Completion of Part I, SF–424

Section I of Part I, SF–424

Applicants shall complete all items in Section I. If an item is not applicable, write "NA". If additional space is needed, insert an asterisk (*) and use the remarks section (Part I, section IV).

Item. 1. Mark "Application" when used as a grant application. (The applicant, unless otherwise advised by the State or area-wide clearinghouse shall use a copy of the SF–424 Part I as a notification of intent to apply for Federal Assistance in accordance with procedures established by these clearinghouses and Executive Order 12372. When used for this purpose, mark "Notice of Intent".)

2a. Applicant's own control number, if desired.

2b. Date section I is prepared.

3a. All applicants shall enter the number assigned by State clearinghouses or, if delegated by State, by area-wide clearinghouse(s). Applications submitted to OCS must contain this identifier if provided by the applicable State/area-wide clearinghouse(s). If in doubt, consult your clearinghouse(s).

3b. Date applicant notified of clearinghouse(s) identifier code(s).

4a/4h. Enter legal name of applicant/recipient, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, name and telephone number of person who can provide further information about this request. IF THE PAYEE WILL BE OTHER THAN THE APPLICANT, ENTER IN THE REMARKS SECTION (SECTION IV OF PART I), UNDER THE HEADING "PAYEE", THE PAYEE'S NAME, DEPARTMENT OR DIVISION, COMPLETE ADDRESS AND EMPLOYER IDENTIFICATION NUMBER, AS ASSIGNED BY THE INTERNAL REVENUE SERVICE, OR THE DHHS ENTITY NUMBER, IF KNOWN. If an individual's name and/or title is desired on the payment instrument, the name and/or title of the designated individual must be specified.

5. Enter Employer Identification Number of applicant as assigned by Internal Revenue Service. If the applicant organization has been assigned a DHHS entity number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full entity number. If applicant has other grants with DHHS and has been assigned a Pay Identification Number (PIN), enter this PIN in parenthesis ( ) beside employer identification number.

6a. Enter the Catalog of Federal Domestic Assistance number assigned to program under which assistance is requested. If more than one program (e.g., joint funding) enter "multiple" and explain in remarks. If unknown, cite applicable Pub. L. or U.S. Code.

6b. Enter the program title from Catalog of Federal Domestic Assistance. Abbreviate, if necessary.

7. Enter a title and appropriate description of project.

8. Enter appropriate letter to designate grantee type—"City" includes town, township or other municipality. If the grantee is other than that listed, specify type on "Other" line e.g., Council of Governments.

Note.—Non-profit organizations which have not previously received OCS program support must submit proof of non-profit status.

9. Enter Governmental unit where significant and meaningful impact could be observed. List only largest unit or units affected, such as state, county, or city. If entire unit is affected, list it rather than sub-units.

10. Identify estimated number of persons directly benefiting from project, as described in the program narrative (SF–424, Part IV).

11. All applicants for OCS discretionary grant funds should enter the letter "A".

12. Enter amount requested or to be contributed during the funding/budget period by each contributor. Item 12 must include all funding for the proposed project including all non-OCS funds which the applicant plans to mobilize. (See Part III, D of the FY–87 Program Announcement).

Note.—When completing item 12a, "Federal" funding is to be taken to refer to the requested OCS discretionary funding only. All other Federal funds are to be included in item 12e "OTHER".

Section IV of Part I (reverse side of page 1) must include a further two columns detailing item 12 (b through e) in which public funds are distinguished from private funds, and in which total mobilized funds (including 12b, 12c, 12d and 12e) are divided into separate public and private funds components by source. This information will be used in both the initial screening and outside review of applications. Where allowable the value of in-kind contributions will be included. If the action is a change in the dollar amount of an existing grant (a revision or augmentation), indicate only the amount of change. For decreases, enclose the amount in parentheses. For multiple program funding, use totals and show program breakdowns in remarks. Item definitions: 12a, amount requested from OCS; 12b, amount applicant will contribute; 12c, amount from State, if applicant is not a State; 12d, amount from local government, if applicant is not a local government; 12e, amount from any other sources INCLUDING NON-OCS FEDERAL FUNDS.

13a. The Congressional District identified by its State and number should correspond with the applicant's address under item 4 above.

13b. Enter the number of the Congressional District(s) and State(s) where most of actual work of the project will be accomplished. If city-wide or State-wide covering several Districts, write "City-wide" or "State-wide".

14. Enter appropriate letter. Definitions are:

a. *New.* A submittal for the first time for a new project or project period.

b. *Renewal.* Not applicable to the OCS CSBG Discretionary Grant Program.

c. *Revision.* A modification to project after the initial funding/budget period and within the approved project period.

d. *Continuation.* Not applicable to the OCS CSBG Discretionary Grant Program.

e. *Augmentation.* Not applicable to the OCS CSBG Discretionary Grant Program.

15. Enter approximate date project is expected to begin. If initial budget period is other than 12 months, check item 21 and explain in both section IV of Part I and in Part IV of the SF–424.

16. Enter estimated number of months to complete project after Federal funds are available.

17. Complete only for revisions (item 14c).

18. Estimated date application will be submitted to Federal agency.

19. Indicate Federal agency to which this request is addressed—HHS/FSA, Washington, DC, 20201

20. Write "NA".

21. Check appropriate box as to whether Part I, section IV of SF 424 contains remarks and/or additional "remarks" sheets are attached.

Section II of Part I SF–424

Applicants shall always complete items 22a or 22b as well as 23a and 23b. An explanation follows for each item.

22a and b. Self explanatory.

23a. Enter name and title of authorized representative of legal applicant.

23b. Self explanatory.

Note.—Authorized representative must personnally execute this document.

Note.—Applicant completes only sections I and II of Part I. Section III is completed by the Federal agency to whom application is being made.

2. Instructions for Completion of Part II SF–424

Negative answers will not require an explanation unless the responsible program office requests more information at a later date. All "Yes" answers must be explained on a separate page in accordance with these instructions.

Item 1.—Provide the name of the governing body establishing the priority system and the priority rating assigned to this project. If the priority rating is not available, give the approximate date that it will be obtained.

Item 2.—Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval. If the clearance is not available, give the approximate date that it will be obtained.

Item 3.—Attach the clearinghouse comments for the application in accordance wit the instructions contained in regulations or procedures established under Executive Order 12372.

Item 4.—Furnish the name of the approving agency and the approval date. If the approval has not been received, state approximately when it will be obtained.

Item 5.—Show whether the approved comprehensive plan is State, local or regional; or, if none of these, explain the scope of the plan. Give the location where the approved plan is available for examination, and state whether this project is in conformance with the plan. If the plan is not available, explain why.

Item 6.—Show the population residing or working on the Federal installation who will benefit from this project. (Federally recognized Indian reservations are not "Federal Installations".)

Item 7.—Show the percentage of the project work that will be conducted on Federally-owned land or leased land. Give the name of the Federal installation and its location.

Item 8.—Briefly describe the possible beneficial and/or harmful effect on the environment because of the proposed project. If an adverse environmental effect is anticipated, explain what action will be taken to minimize it.

Item 9.—State the number of individuals, families, businesses, or farm this project will displace, if any.

Item 10.—Show the Catalog of Federal Domestic Assistance number, the program number, the type of assistance, the status, the amount of each project where there is related previous, pending or anticipated assistance from another funding source.

Item 10 will generally be answered in the affirmative, particularly for community economic development applications. Whenever it is answered in the affirmative (i.e. whenever items 12c, 12d, or 12e of Part I have non-zero entries), Part II must be accompanied by additional documentation which identifies the source of all of the State, local and other funds listed in item 12 of Part I of the SF 424. This documentation must include assurances of the availability of these funds. Funds previously awarded for this project but yet to be expended must be evidenced by copies of applicants to, and award documents or letters of commitment from, the expected source of these funds. OCS reserves the right to contact

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these sources regarding anticipated funding or previous assistance.

3. Instructions for completion of Part III of SF–424

This form is designed so that application can be made for funds to support one or more functions or activities.

OCS requires that activities commonly identified by program accounts be displayed separately on individual lines (Lines 1–4 under Section A and Columns 1–4 under Section B).

Note.—In completing these sections the "Federal" fund budget entries will relate to the requested OCS discretionary funds only, and "Non-Federal" will include mobilized funds from all other sources—applicant, State, local and other. Federal funds other than requested OCS discretionary funding should be included in "Non-Federal" Entries.

Whenever budget data—divided by Grant Program, Function or Activity — are called for, as in Sections A, B, and C, the following four elements are to be used:

Element	Use in: Section and Item
Administrative Costs of the Applicant Organization (See Program Announcement, Part III, B.).	A(1), B(1), C(8).
Administrative Costs of specific project or business to be financed by the applicant.	A(2), B(2), C(9).
*Working Capital for the specific project to be financed by the applicant.	A(3), B(3), C(10).
*Cost of Fixed Assets of the specific project to be financed by the applicant.	A(4), B(4), C(11).

* Use these categories only where applicable—e.g. in some economic development applications. For other applicants, enter all other non-administrative costs in Section B Column 2.

Note.—The budget forms in Part III of SF 424 are only to be used to present grant administrative costs and major budget categories. Financial data that is generated as part of a project Business Plan or other internal project cost data must be separate and should appear as part of the project Business Plan or other project implementation data.

Sections A and D of Part III must contain entries for both Federal (OCS) and non-Federal (mobilized) funds. Section B contains entries for Federal (OCS) funds only. Section C contains entries for non-Federal (mobilized) funds only. Clearly identified continuation sheets in SF–424, Part III format should be used as necessary.

Section A—Budget Summary—Lines 1–4

Col. (a): Enter on Line 1 under Column (a) "Administrative, applicant"; enter on Line 2 under Column (a) "Administrative, project:" enter on Line 3 under Column (3) "Working Capital"; enter on Line 4 under Column (a) "Fixed Assets".

Col. (b): Enter on Line 1 under Column (b) the Program Announcement Number OCS–87–1–DP. Enter on Line 2 under Column (b) the appropriate Catalog of Federal Domestic Assistance Number (13.665) for all applications under Announcement No. OCS–87–1–DP.

Col. (c)–(g): For new applications, leave Columns (c) and (d) blank. For each line entry, enter in Columns (e), (f), and (g) the appropriate amounts needed to support the project for the budget period.

Line 5—Enter the totals for all columns completed, (c) through (g).

Section B—Budget Categories—

Columns 1–5. In OCS applications, it is only necessary to complete Columns 1 and 5.

In the Column headings (1) through (4) enter the same title of the application programs and/or program accounts shown on Line 1, Column (a), Section A. above. For the grant program or activity (program account) entered in Columns 1, enter the total requirements for OCS Federal funds by the Object Class Categories of this section.

Allowability of costs are governed by applicable cost principles set forth in Sub-part Q of 45 CFR Part 74.

Personnel-line 6a. Enter the total costs of salaries and wages of applicant/grantee staff only. Do not include costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant. (See Section F. for additional requirements).

Fringe benefits-line 6b. Enter the total costs of fringe benefits unless treated as part of an approved indirect costs rate which is entered on Line 6.j. Provide a breakdown of amounts and percentages that comprise fringe benefit costs.

Travel-line 6c. Enter total costs of out-of-town travel by employees of the project. Do not enter costs for consultant's travel or local transportation. Provide justification for requested travel costs. (See Line 6h and section F, Line 21, for additional instructions).

Equipment-line 6d. Enter the total costs of all non-expendable personal property to be acquired by the project. "Non-expendable personal property" means tangible personal property having a useful life of more than two years and an acquisition cost of $500 or more per unit. An applicant may use its own definition of non-expendable personal property, provided that such a definition would at least include all tangible personal property as defined in the preceding sentence. (See section F, Line 21 for additional requirements).

Supplies-line 6e. Enter the total costs of all tangible personal property (supplies) other than that included on line 6d.

Contractual-line 6f. Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and, (2) contracts with secondary recipient organizations including delegate agencies and specific project(s) or businesses to be financed by the applicant. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individual service contractors on this line. If available at the time of application, attach a list of contractors indicating the name of the organization, the purpose of the contract and the estimated dollar amount of the award. If the Name of Contractor, Scope of Work, Estimated Total are not available or have not been negotiated, include in Line h, "Other".

Note.—Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must submit sections A and B of Part III, Budget Section, completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions. The total costs of all such agencies will be part of the amount shown on Line 6(f). Provide back-up documentation identifying name of contractor, purpose of contract and major cost elements.

Construction-line 6g. Enter the costs of renovation or repair. Provide narrative justification and break-down of costs.

Other-line 6h. Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which dos not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use, training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Total direct changes-line 6i. Show the total of Lines 6(a) through 6(h).

Indirect charges-line 6j. Enter the total amount of indirect costs. If no indirect costs, under a currently approved agreement, are requested enter "none". This line should be used only when the applicant (except local governments)

currently has an indirect cost rate approved by the Department of Health and Human Services or other Federal agencies. Please enclose a copy of current rate. Local governments shall enter the amount of the indirect costs determined in accordance with the Federal agency's requirements. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.

Total-line 6k. Enter the total amounts of Lines 6(i) and 6(j). For all new applications the total amount shown in Column (5), Line 6(k), should be the same as the amount shown in section A, Column (e), Line 5.

Program income-line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and that generated from matching funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement in Part IV of the SF–424.

Section C—Non-Federal Resources—Line 8–11

Enter amounts of "non-Federal" resources that will be used to support the project if required by the Priority Area. Provide a brief explanation, on a separate sheet, showing the type of contribution, and whether it is in cash or in-kind. If inkind is allowable and included, show the basis for computation including:

(1) Numbers and types of volunteers and rates at which their services are valued;

(2) Valuation of donated space to be used in the project, including the number of square feet and the annual rental value assigned per square foot.

(3) Determination of use allowance for grantee-owned space; (Include statement whether space was purchased or constructed, totally or in part, with Federal funds for items (2) and (3));

(4) Type and value of other in-kind contributions expected.

Note. Speculative match, or match based on independent contingencies (such as receipt of another grant) will not be counted toward the matching requirement.

Column (a). Enter the program title or activities (program accounts).

Column (b). Enter the amount of cash and in-kind contributions to be made by the applicant.

Column (c). Enter the State contribution. If the applicant is a State agency, enter the non-Federal funds to be contributed by the State other than the applicant State agency.

Column (d). Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e). Enter the total of Columns (b), (c), and (d).

Line 12—Enter toal of each Columns (b) through (e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D—Forcasted Cash Needs

Line 13—Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the budget period.

Line 14—Enter the amount of cash from all other sources needed by quarter during the budget period.

Line 15.—Enter the totals of amounts on Line 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of Project(s)—

No entries are required for OCS grants.

Section F—Other Budget Information

Line 21—Use this space and continuation sheets as necessary to fully explain and justify the major items included in the budget categories shown in Section B. Include sufficient detail to facilitate determination of allowability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the Federal agency. Budget items which require identification and justification shall include, but not be limited to, the following:

A. Salary amounts and percentage of time worked for those key individuals who are identified in the project narrative;

B. Any foreign travel;

C. A list of all equipment and estimated cost of each item to be purchased wholly or in part with grant funds which meet the definition of nonexpendable personal property provided on Line 6d, Section B. Need for equipment must be supported in program narrative;

D. *Contractual:* Major items or groups of smaller items; and

E. *Other:* group into major categories, all costs for consultants, local transportation, space, rental, training allowances, staff training, computer equipment, etc. Provide a complete breakdown of all costs that make up this category.

Line 22—Enter the type of HHS or other Federal agency approved indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of rate agreement.

Line 23—Provide any other explanations and continuation sheets required or deemed necessary to justify or explain any SF–424, Part III entries.

4. Instructions for Completion of Part IV of SF–424

The program narrative (Part IV) for all applications must follow a prescribed outline reflective of the Program Announcement Table of Contents.

Specific Program Guidance found in the **Federal Register** Program Announcement No. OCS–87–1–DP for each priority area provides more detailed instructions for Part IV. This announcement also includes requirements regarding format and content to be included in preparation of applications and criteria to be used for screening and evaluation in all priority areas.

Applications under Priority Area 1.1, Urban and Rural Community Economic Development (Operational Grants), must also follow the special instructions below:

Each application submitted under this program priority area must include a valid and complete business plan as part of its project work plan as required in Part IV of the SF–424.

The Business Plan is one of the major components that will be evaluated by OCS to determine the feasibility of an economic development project. Therefore, the Business Plan must be well prepared and address all the major issues noted herein.

It should contain a full and accurate description of the proposed use of the requested financial assistance, whether it is for a business investment or a physical or commercial development project. The program narrative must show how increased employment, income and ownership opportunities will be provided for target area low-income residents by the proposed project. The applicant must also clearly document an ability to strengthen linkages with and mobilization of other private and public resources. Wherever applicable, assurances of participation of the private and/or public sector in the proposed project must be fully documented.

It must demonstrate to OCS that there is a reasonable assurance that the amount of the requested OCS funds, together with other funds available, is

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adequate for the completion of the project or achievement of the purposes for which an allocation of OCS funds is requested.

The following guidelines show the necessary sections of a Business Plan, and what should be included in each section.

Use of these guidelines should result in a complete and professional Business Plan which makes an orderly presentation of the facts necessary to be judged responsive to the program announcement.

Because the guidelines were written to cover a variety of possibilities, rigid adherence to them is not possible nor even desirable for all projects. For example, a plan for a service business would not require a discussion of manufacturing nor product design.

Summary Business Plan: A 1–2 page summary of the Business Plan should be a brief and accurate presentation of the highlights of the project and its opportunities and should include the following:

The Project: Indicate when the company was founded, what is special or unique about it and what it intends to accomplish in this project for which funds are being requested. Also indicate what in the background of the management team makes its members particularly qualified (e.g. unique know-how) to pursue the business opportunity.

Market Opportunity: Identify and briefly explain the market opportunity. This explanation should include information on the size and growth rate of the market for the business' product or service, and a statement indicating the percentage of that market that will be captured. A brief statement about industrywide trends is also useful and any indication of plans for the expansion of the initial product line should be included.

Financial Data: State sales and profit goals for the three years following an OCS award. State clearly the size of the OCS grant request for investment purposes and all other funds already obtained or committed.

The format for the complete Business Plan is as follows:

1. *The Business and its industry:* This section should describe the nature and history of the business and provide some background on its industry.

A. *The Business:* (legal entity, general business category);

B. *Description and Discussion of Industry:* (Current status and prospects for the industry);

2. *Products and Services:* This section deals with the following:

A. *Description:* Describe in detail the products or services to be sold.

B. *Proprietary Position:* Describe proprietary features if any of product (patents, trade secrets).

C. *Potential:* Features of the product or service that may give it an advantage over the competition.

3. *Market Research and Evaluation:* (The purpose of this section is to present sufficient information to show that the product or service has a substantial market and can achieve sales in the face of competition.)

A. *Customers:* Who are the actual and potential purchasers for the product or service by market segment?

B. *Market Size and Trends:* What is the size of the current total market for the product or service offered?

C. *Competition:* An assessment of the strengths and weaknesses of competitive products and services.

D. *Estimated Market Share and Sales:* What it is about your product or services that will make it saleable in the face of current and potential competition.

4. *Marketing Plan:* The marketing plan should detail the product, pricing, distribution, and promotion strategies that will be used to achieve the estimated market share and sales projections. The marketing plan must describe what is to be done, how it will be done and who will do it. The plan should address the following topics—Overall Marketing Strategy, Packaging, Service and Warranty, Pricing, Distribution and Promotion.

5. *Design and Development Plans:* If the product, process or service of the proposed venture requires any design and development before it is ready to be placed on the market, the nature and extent and cost of this work should be fully discussed. The section should cover items such as Development Status and Tasks, Difficulties and Risks, Product Improvement and New Products, and Costs.

6. *Manufacturing and Operations Plan:* A manufacturing and operations plan should describe the kind of facilities, plant location, space, capital equipment and labor force (part and/or full time and wage structure) that are required to provide the company's product or service.

7. *Management Team:* (The management team is the key in starting and operating a successful business. The management team should be committed with a proper balance of technical, managerial and business skills and experience in doing what is proposed.) This section must include a description of: The key management personnel and their primary duties; compensation and/or ownership; the organizational structure, Board of Directors; management assistance and training needs; and supporting professional services.

8. *Overall Schedule:* A schedule that shows the timing and interrelationships of the major events necessary to launch the venture and realize its objectives. Prepare, as part of this section, a month-by-month schedule that shows the timing of such activities as product development, market planning, sales programs, production and operations. Sufficient detail should be included to show the timing of the primary tasks required to accomplish an activity.

9. *Critical Risks and Assumptions:* The development of a business has risks and problems and the Business Plan should contain some explicit assumptions about them. Accordingly, identify and discuss the critical assumptions in the Business Plan and the major problems that will have to be solved to develop the venture. This should include a description of the risks and critical assumptions relating to the industry, the venture, its personnel, the product's market appeal, and the timing and financing of the venture.

10. *Community Benefits:* The proposed project must contribute to economic, community and human development within the project's target area. A section that describes and discusses the potential economic and non-economic benefits to low-income members of the community must be included.

Among the benefits that merit discussion are:

Economic

—Number of permanent jobs generated or maintained in each of the first three years of the project;
—Number and type of new permanent employment opportunities for previously unemployed or under-employed individuals;
—Number of skilled jobs and the number of other higher paying permanent jobs;
—Number of these jobs that are filled by poverty level project area residents;
—Ownership opportunities created for poverty level project area residents;
—Purchase of goods and services from local suppliers;
—Increases in personal, property and/or business taxes paid

Human Development

—New technical skills development and associated career opportunities for community residents;
—Management development and training.

Community Development

—Development of community's physical assets;
—Provision of needed, but currently unsupplied, services or products to community;
—Improvement in the living environment

11. *The Financial Plan:* The Financial Plan is basic to the development of a Business Plan. Its purpose is to indicate the project's potential and the timetable for financial self-sufficiency. In developing the Financial Plan, the following exhibits must be prepared for the grant year and for each of the next two years following an OCS grant period:

a. Profit and Loss Forecasts—Quarterly for each year;

b. Cash Flow Projections—Quarterly for each year;

c. Pro Forma Balance Sheets—Quarterly for each year;

d. Initial Sources of Capital Funds; and

e. Any Future Capital Requirements and Sources.

(The Catalog of Federal Domestic Assistance Number for this Office of Community Services Block Grant Discretionary Program is 13.665.)

Dated: February 4, 1987.

David J. Kirker,

Director, Office of Community Services.

Appendices

A—Annual Revision of Poverty Income Guidelines (February 11, 1986)
B—SF–424, Federal Assistance
C—Assurances

Poverty Income Guidelines; Annual Revision

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice provides a revision of the poverty income guidelines to account for increases in the Consumer Price Index.

DATE: Effective upon publication.

ADDRESS: Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: For information about the poverty guidelines in general, contact Joan Turek-Brezina (telephone: (202) 245–6141).

Questions about applying these guidelines to a particular program should be referred to the Federal office which is responsible for the program.

For information about the Hill-Burton Uncompensated Services Program, contact the Office of the Director, Division of Facilities Compliance (telephone: (301) 443–6512).

This notice provides the 1986 revision of the poverty income guidelines required by sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35). As required by the statute, this revision reflects changes in the Consumer Price Index; it was accomplished using the same methodology used in previous years.

These poverty income guidelines are used as an eligibility criterion by a number of Federal programs. The guidelines are a simplified version of the poverty thresholds used by the Bureau of the Census to prepare its statistical estimates of the number of persons and families in poverty. The *poverty income guidelines* issued by the Department of Health and Human Services (formerly by the Community Services Administration) are used for administrative purposes—for instance, for determining whether a person or family is financially eligible for assistance or services under a particular Federal program. The *poverty thresholds* are used primarily for statistical purposes.

In certain cases, as noted in the relevant authorizing legislation or program regulations, a program uses the poverty guidelines as only one of several eligibility criteria, or uses a modification of the guidelines (for example, 130 percent or 185 percent of the guidelines). Some other programs, while not using the guidelines as a criterion of individual eligibility, use them for the purpose of targeting assistance or services. In some cases, these poverty income guidelines may not become effective for a particular program until a regulation or notice specifically applying to the program in question has been issued.

The poverty guidelines given below are applicable to both farm and nonfarm families.

The following definitions (derived for the most part from language used in U.S. Bureau of the Census. Current Population Reports, Series P–60, No. 147 and earlier reports in the same series) are made available for use in connection with the poverty income guidelines. Programs may use somewhat different definitions.

(a) Family

A family is a group of two or more persons related by birth, marriage, or adoption who reside together; all such related persons are considered as members of one family. (If a household includes more than one family and/or more than one unrelated individual, the poverty guidelines are applied separately to each family and/or unrelated individual, and not, to the household as a whole.)

(b) Family unit of size one

In conjunction with the poverty income guidelines, a family unit of size one is an unrelated individual (as defined by the Census Bureau)—That is, a person 15 years old or over (other than an inmate of an institution) who is not living with any relatives. An unrelated individual may be the sole occupant of a housing unit, or may be residing in a housing unit (or in group quarters such as a rooming house) in which one or more persons also reside who are not related to the individual in question by birth, marriage, or adoption. (Examples of unrelated individuals residing with others include a lodger, a foster child, a ward, or an employee.)

(c) Income

Refers to total annual cash receipts before taxes from all sources. (Income data for a part of a year may be annualized in order to determine eligibility—for instance, by multiplying by four the amount of income received during the most recent three months.) Income includes money wages and salaries before any deductions, but does not include food or rent received in lieu of wages. Income also includes net receipts from nonfarm or farm self-employment (receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses). Income includes regular payments from social security, railroad retirement, unemployment compensation, workers' compensation, strike benefits from union funds, veterans' benefits, public assistance (including Aid to Families with Dependent Children, Supplemental Security Income, and General Assistance money payments), training stipends, alimony, child support, and military family allotments or other regular support from an absent family member or someone not living in the household; private pensions, government employee pensions, and regular insurance or annuity payments; and income from dividends, interest, rents, royalties, or periodic receipts from estates or trusts. For eligibility purposes, income does not include the following money receipts: capital gains; any assets drawn down as withdrawals from a bank, the sale of property, a house, or a car, tax refunds, gifts, lump-sum inheritances, one-time insurance payments, or compensation for injury. Also excluded are noncash benefits.

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such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or rent received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, and such Federal noncash benefit programs as Medicare, Medicaid, Food Stamps, school lunches, and housing assistance.

1986 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	$5,360
2	7,240
3	9,120
4	11,000
5	12,880
6	14,760
7	16,640
8	18,520

For family units with more than 8 members, add $1,880 for each additional member.

POVERTY INCOME GUIDELINES FOR ALASKA

Size of family unit	Poverty guideline
1	$6,700
2	9,050
3	11,400
4	13,750
5	16,100
6	18,450
7	20,800
8	23,150

For family units with more than 8 members, add $2,350 for each additional member.

POVERTY INCOME GUIDELINES FOR HAWAII

Size of family unit	Poverty guideline
1	$6,170
2	8,330
3	10,490
4	12,550
5	14,810
6	16,970
7	19,130
8	21,290

For family units with more than 8 members, add $2,160 for each additional member.

Dated: February 5, 1986.

Otis R. Bowen,

Secretary of Health and Human Services.

[FR Doc. 87-2964 Filed 2-10-86; 8:45 am]

BILLING CODE 4150-04-M

OMB Approval No. 0348-0006

FEDERAL ASSISTANCE

1 TYPE OF SUBMISSION (Mark appropriate box) ☐ NOTICE OF INTENT (OPTIONAL) ☐ PREAPPLICATION ☐ APPLICATION

2 APPLICANT'S APPLICATION IDENTIFIER — a. NUMBER; b. DATE (Year month day) 19

3 STATE APPLICATION IDENTIFIER NOTE: TO BE ASSIGNED BY STATE — a. NUMBER; b. DATE ASSIGNED (Year month day) 19

Leave Blank

SECTION I—APPLICANT/RECIPIENT DATA

4 LEGAL APPLICANT/RECIPIENT
a. Applicant Name
b. Organization Unit
c. Street/P.O. Box
d. City
e. County
f. State
g. ZIP Code
h. Contact Person (Name & Telephone No.)

5 EMPLOYER IDENTIFICATION NUMBER (EIN)

6 PROGRAM (From CFDA) — a. NUMBER; MULTIPLE ☐; b. TITLE

7 TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)

8 TYPE OF APPLICANT/RECIPIENT
A—State; B—Interstate; C—Substate Organization; D—County; E—City; F—School District; G—Special Purpose District; H—Community Action Agency; I—Higher Educational Institution; J—Indian Tribe; K—Other (Specify)
Enter appropriate letter ☐

9 AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)

10 ESTIMATED NUMBER OF PERSONS BENEFITING

11 TYPE OF ASSISTANCE
A—Basic Grant; B—Supplemental Grant; C—Loan; D—Insurance; E—Other
Enter appropriate letter(s) ☐☐

12 PROPOSED FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. Total	$	.00

13 CONGRESSIONAL DISTRICTS OF: a. APPLICANT; b. PROJECT

14 TYPE OF APPLICATION
A—New; B—Renewal; C—Revision; D—Continuation; E—Augmentation
Enter appropriate letter ☐

15 PROJECT START DATE (Year month day) 19

16 PROJECT DURATION Months

17 TYPE OF CHANGE (For 14c or 14e)
A—Increase Dollars; B—Decrease Dollars; C—Increase Duration; D—Decrease Duration; E—Cancellation; F—Other (Specify)
Enter appropriate letter(s) ☐☐☐

18 DATE DUE TO FEDERAL AGENCY ▶ (Year month day) 19

19 FEDERAL AGENCY TO RECEIVE REQUEST

20 EXISTING FEDERAL GRANT IDENTIFICATION NUMBER

a. ORGANIZATIONAL UNIT (IF APPROPRIATE)

b. ADMINISTRATIVE CONTACT (IF KNOWN)

c. ADDRESS

21 REMARKS ADDED ☐ Yes ☐ No

SECTION II—CERTIFICATION

22 THE APPLICANT CERTIFIES THAT ▶ To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.

a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____

b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23 CERTIFYING REPRESENTATIVE — a. TYPED NAME AND TITLE; b. SIGNATURE

SECTION III—FEDERAL AGENCY ACTION

24 APPLICATION RECEIVED (Year month day) 19

25 FEDERAL APPLICATION IDENTIFICATION NUMBER

26 FEDERAL GRANT IDENTIFICATION

27 ACTION TAKEN
☐ a. AWARDED
☐ b. REJECTED
☐ c. RETURNED FOR AMENDMENT
☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
☐ e. DEFERRED
☐ f. WITHDRAWN

28 FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. TOTAL	$	.00

29 ACTION DATE ▶ (Year month day) 19

30 STARTING DATE (Year month date) 19

31 CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)

32 ENDING DATE (Year month date) 19

33 REMARKS ADDED ☐ Yes ☐ No

NSN 7540-01-008-8162
PREVIOUS EDITION IS NOT USABLE

424-103

STANDARD FORM 424 PAGE 1 (Rev. 4-84)
Prescribed by OMB Circular A-102

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SECTION IV—REMARKS *(Please reference the proper item number from Sections I, II or III, if applicable)*

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PART II
PROJECT APPROVAL INFORMATION

Item 1.
Does this assistance request require State, local regional, or other priority rating?
_____ Yes _____ No
Name of Governing Body _____
Priority Rating _____

Item 2.
Does this assistance request require State, or local advisory, educational or health clearances?
_____ Yes _____ No
Name of Agency or Board _____
(Attach Documentation)

Item 3.
Does this assistance request require State, local, regional or other planning approval?
_____ Yes _____ No
Name of Approving Agency _____
Date _____

Item 4.
Is the proposed project covered by an approved comprehensive plan?
_____ Yes _____ No
Check one: State ☐ Local ☐ Regional ☐
Location of Plan _____

Item 5.
Will the assistance requested serve a Federal installation?
_____ Yes _____ No
Name of Federal Installation _____
Federal Population benefiting from Project _____

Item 6.
Will the assistance requested be on Federal land or installation?
_____ Yes _____ No
Name of Federal Installation _____
Location of Federal Land _____
Percent of Project _____

Item 7.
Will the assistance requested have an impact or effect on the environment
_____ Yes _____ No
See instructions for additional information to be provided.

Item 8.
Will the assistance requested cause the displacement of individuals, families, businesses, or farms?
_____ Yes _____ No
Number of:
Individuals _____
Families _____
Businesses _____
Farms _____

Item 9.
Is there other related assistance on this project previous, pending, or anticipated
_____ Yes _____ No
See instructions for additional information to be provided.

Item 10.
Is the assistance requested available to serve all or most of the citizens of the community?
_____ Yes _____ No
If not, explain briefly.

Item 11.
Will the assistance requested result in significant increase in the need for any public facilities or services (water, sewer, waste disposal, transportation, fire protection, etc.)?
_____ Yes _____ No
If yes, explain briefly.

Item 12.
Will the assistance requested stimulate substantial commercial development?
_____ Yes _____ No
If yes, explain briefly.

Item 13.
Will the assistance requested result in significant increase in employment in the area?
_____ Yes _____ No
If yes, explain briefly.

Item 14.
Will the assistance requested result in significant energy impacts?
_____ Yes _____ No
If yes, explain briefly.

Item 15.
Will the assistance requested require the relocation of residents or industry to the community?
_____ Yes _____ No
If yes, explain briefly.

Item 16.
Will the assistance requested affect wetlands, floodplains, water or air quality, stream flows, historic properties, prime agricultural lands, or areas affecting coastal zones?
_____ Yes _____ No
If yes, explain briefly.

Item 17.
Will the assistance requested produce significant amounts of solid waste or emissions?
_____ Yes _____ No
If yes, explain briefly.

Item 18.
Will the assistance requested require significant amounts of urban services (water, sewer, waste disposal, transportation, fire protection, etc.)?
_____ Yes _____ No
If yes, explain briefly.

Item 19.
Will the assistance requested disturb any unique cultural, historical or archeological resources in the community or area?
_____ Yes _____ No
If yes, explain briefly.

Item 20.
Will the assistance requested affect a sole source aquifer?
_____ Yes _____ No
If yes, explain briefly.

Item 21.
Will the assistance requested affect threatened or endangered species habitat?
_____ Yes _____ No
If yes, explain briefly.

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PART III - BUDGET INFORMATION

SECTION A - BUDGET SUMMARY

Grant Program, Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	- Grant Program, Function or Activity				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges					
j. Indirect Charges					
k. TOTALS	$	$	$	$	$
7. Program Income	$	$	$	$	$

OMB NO. 0348-0006

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) APPLICANT	(c) STATE	(d) OTHER SOURCES	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (YEARS)			
	(b) FIRST	(c) SECOND	(d) THIRD	(e) FOURTH
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach Additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

PART IV PROGRAM NARRATIVE (Attach per instruction)

BILLING CODE 4150-04-C

BEST COPY AVAILABLE

BEST COPY AVAILABLE

Part V—Assurances

The Applicant hereby assures and certifies that it will comply with the regulations, policies, guidelines and requirements, including 45 CFR Part 74 and OMB Circulars No. A–102, A–110 and applicable cost principles, (Circulars: A–21, "Educational Institutions"; A–87, "Cost Principles for State and Local Governments"; and A–122, "Nonprofit Organizations"), as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. Also the applicant assures and certifies with respect to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

2. It will comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

3. It will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

4. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Pub. L. 91–646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally-assisted programs.

5. It will comply with the provisions of the Hatch Act which limit the political activity of State and local government employees.

6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201) as they apply to employees of institutions of higher education, hospitals, other nonprofit organizations, and to employees of State and local governments who are not employed in integral operations in areas of traditional governmental functions.

Head Start, Certification of Minimum Wage: It certifies that it has reviewed the salary structures and wages for all positions and certifies that persons employed in carrying out this program shall not receive compensation at a rate which is (a) in excess of the average rate of compensation paid in the area to persons providing substantially comparable services: or (b) less than the minimum wage rate prescribed in section 6(a) of the Fair Labor Standards Act of 1938. Documentation of the methods by which it established wage scales is available in their files for review by audit and HDS personnel.

7. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

8. It will give the sponsoring agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant, including the records of contractors and subcontractors performing under the grant.

9. It will comply with all requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.

10. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

11. It will comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93–234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

12. It will assist the Federal grantor agency in its compliance with section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historical Preservation Act of 1966 (16 U.S.C. 469a–1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR 800.8) by the grantee's activity and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

13. Applicants for the Administration for Native Americans Programs, hereby certify in accordance with 45 CFR 1336.53, that the financial assistance provided by the Office of Human Development Services for the specified activities to be performed under this program, will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

14. It will comply with the Age Discrimination Act of 1975 enacted as an amendment to the Older Americans Act (Pub. L. 94–135), which provides that: No person in the United States shall, on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity for which the applicant receives Federal financial assistance.

15. It will comply with section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 CFR Part 84), and all guidelines and interpretations issued pursuant thereto, which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance.

16. It will comply with Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, *et seq.*) which prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance (whether or not the programs or activities are offered or sponsored by an educational institution).

17. It will comply with Pub. L. 93–348 as implemented by Part 46 of Title 45 (45 CFR Part 46, 42 U.S.C. 2891) regarding the protection of human subjects involved in research, development, and related activities supported by the grant.

18. It will comply with the equal opportunity clause prescribed by Executive Order 11246, as amended, and will require that its subrecipients include the clause in all construction contracts and subcontracts which have or are expected to have an aggregate value within a 12-month period exceeding $10,000, in accordance with Department of Labor regulations at 41 CFR Part 60.

19. It will include, and will require that its subrecipients include, the provision set forth in 29 CFR 5.5(c) pertaining to overtime and unpaid wages in any nonexempt nonconstruction contract which involves the employment of mechanics and laborers (including watchmen, guards, apprentices, and trainees) if the contract exceeds $2,500.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

ASSURANCE OF COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED

The undersigned (hereinafter called the "recipient") HEREBY AGREES THAT it will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto.

Pursuant to §84.5(a) of the regulation [45 C.F.R. 84.5(a)], the recipient gives this Assurance in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (except procurement contracts and contracts of insurance or guaranty), property, discounts, or other Federal financial assistance extended by the Department of Health and Human Services after the date of this Assurance, including payments or other assistance made after such date on applications for Federal financial assistance that were approved before such date. The recipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance and that the United States will have the right to enforce this Assurance through lawful means. This Assurance is binding on the recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the recipient.

This Assurance obligates the recipient for the period during which Federal financial assistance is extended to it by the Department of Health and Human Services or, where the assistance is in the form of real or personal property, for the period provided for in §84.5(b) of the regulation [45 C.F.R. 84.5(b)].

The recipient: [Check (a) or (b)]

a. ( ) employs fewer than fifteen persons;

b. ( ) employs fifteen or more persons and, pursuant to §84.7(a) of the regulation [45 C.F.R. 84.7(a)], has designated the following person(s) to coordinate its efforts to comply with the HHS regulations:

_____
Name of Designee(s) (Type or Print)

_____ _____
Name of Recipient (Type or Print) Street Address or P.O. Box

_____ _____
(IRS) Employer Identification Number City

_____
State Zip

I certify that the above information is complete and correct to the best of my knowledge.

_____ _____
Date Signature and Title of Authorized Official

If there has been a change in name or ownership within the last year, please PRINT the former name below:

NOTE: If this form is not returned with the application for financial assistance, return it to DHHS, Office for Civil Rights, 330 Independence Avenue, S.W., Washington, D.C. 20201.

HHS-641 (Rev. 12/82)

[FR Doc. 87-2648 Filed 2-6-87; 8:45 am]
BILLING CODE 4150-04-C

federal register

Monday
February 9, 1987

Part IV

Department of Transportation

Coast Guard

33 CFR Part 95

Operation of a Vessel While Intoxicated; Notice of Proposed Rulemaking; Supplemental Notice of Proposed Rulemaking

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DEPARTMENT OF TRANSPORTATION
Coast Guard
33 CFR Part 95
[CGD 84-099A; CGD 84-099]

Operation of a Vessel While Intoxicated

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing regulations designed to reduce alcohol and drug use in recreational vessel operation. The Coast Guard Authorization Act of 1984, enacted October 30, 1984, provides civil and criminal penalties for an individual who is intoxicated while operating a vessel, as determined under standards prescribed by the Secretary of the Department in which the Coast Guard operates. This Notice proposes standards for determining intoxication caused by alcohol or drugs, either based on a percentage of alcohol in the blood, resulting from blood or breath tests, or on observations of the individual's demeanor or performance. Because this Notice modifies a Notice of Proposed Rulemaking published in the Federal Register on May 23, 1986 (51 FR 18902) that applied primarily to commercial vessels, it is also a supplemental notice to that Notice of Proposed Rulemaking. This supplemental proposal would expand those proposed rules (51 FR 18902) to include all vessels. For vessels used for recreational purposes the Federal BAC standard would conform to State BAC standards for intoxication, where enacted. These proposals are based on indications that alcohol and/or drugs are involved in a substantial number of recreational boating casualties. The proposals are intended to reduce boating accidents caused by intoxication.

DATES: Comments must be received on or before May 11, 1987.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/21), (CGD 84-099A), U.S. Coast Guard, Washington, DC 20593. Comments will be available for examination at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, between 8 a.m. and 3 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Perry, Boating Safety Division (G-BBS/43), Office of Boating, Public, and Consumer Affairs, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593 (202) 267-0979, between 9 a.m. and 3 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: On May 23, 1986, the Coast Guard published an Advance Notice of Proposed Rulemaking in the Federal Register (51 FR 18900). The purpose of the Advance Notice was to solicit information and views on the problem of intoxicant use by individuals operating recreational vessels and the appropriate means of prescribing a standard for determining intoxication.

Interested persons are invited to submit written views, data or arguments on these proposed rules. Persons submitting comments should include their names and addresses, identify this Notice (CGD 84-099A) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons desiring acknowledgment that their comments have been received should include a stamped, self-addressed postcard or envelope. The proposal may be changed in light of the comments received. All comments received by the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing has been scheduled, but one may be held at a time and place to be set in a later notice in the Federal Register, if requested by persons raising a genuine issue and it is determined that the rulemaking will benefit from oral presentations.

Drafting Information

The principal persons involved in the drafting of this proposed rule are Mr. Carlton Perry, Project Manager, Office of Boating, Public, and Consumer Affairs and LT Sandra Sylvester, Project Attorney, Office of the Chief Counsel.

Background

The Coast Guard has dealt with the problem of alcohol and drug use on vessels through civil penalty or criminal enforcement action for negligent operation of a vessel under 46 U.S.C. 2302 and its predecessor statutes.

Data on recreational boating accidents compiled by the Coast Guard indicates that alcohol consumption is a causal or contributing factor in approximately ten percent of the more than 1100 fatalities which result from boating accidents each year. However, the accident reports submitted to the Coast Guard under the provisions of 33 CFR Parts 173 and 174 currently understate the extent of alcohol involvement. The procedures and requirements for investigations vary from State to State and locality to locality. Accident reports are submitted by individuals and by State or local authorities. Some of these reported accidents have undergone extensive investigation while others have had only cursory examination. Furthermore, individuals submitting reports may have strong reasons not to volunteer information about alcohol involvement.

Not all States require that toxicological tests be taken in accidential deaths. Based upon toxicological testing by States which have a mandatory requirement for these tests in cases of accidental deaths, and studies conducted by the Coast Guard and the National Transportation Safety Board, the Coast Guard believes that the involvement of alcohol is much greater than indicated by current reports and that some degree of impairment by alcohol may be involved in as many as fifty percent of recreational boating fatalities.

The Coast Guard has not maintained separate data on the involvement of drugs in recreational boating accidents, however, it may be assumed that the use of drugs by boaters is similar to that of persons driving automobiles. According to preliminary data on fatal motor vehicle accidents compiled by the National Highway Traffic Safety Administration, in 5% to 15% of accidents resulting in driver fatalities and approximately 10% of accidents causing driver injuries, there was evidence of drug use by the driver.

In the recreational boating area, the Coast Guard has concentrated on educational efforts to combat the problem. The Coast Guard and State enforcement officials have recognized that the consumption of alcoholic beverages among recreational boaters is widespread. Drinking is facilitated because there are no laws prohibiting the consumption of alcoholic beverages while underway in a boat; picnic coolers or galley facilities are frequently available to store and serve alcoholic beverages; and, whether fishing, cruising, or sailing, there are lengthy periods of time when the boaters, including the operator, are not fully occupied. The slow speed of most boating activity, compared to operation of an automobile, and the relatively unconfined nature of most waterways have contributed to a lack of awareness of the risks involved. The educational effort has concentrated on making boaters aware that "Boating and alcohol don't mix."

The Coast Guard and National Transportation Safety Board have worked in concert with the various States and boating organizations to address the alcohol problem. The National Safe Boating Council, Inc. with a volunteer membership of 39 organizations including the Coast Guard Auxiliary, U.S. Power Squadrons, American Red Cross, Boy Scouts, Girl Scouts, YMCA, other Federal agencies concerned with boating safety, and numerous manufacturer and boating organizations, sponsors National Safe Boating Week. For the past two years the theme of National Safe Boating Week has been "Be a responsible boat operator." The slogan used was "Think before you drink."

In addition to the educational efforts, the Coast Guard and the States have coordinated law enforcement efforts and have recommended improvements in boating safety laws, including laws directed towards intoxicated operators. At its meeting on October 3, 1984, the National Association of State Boating Law Administrators issued guidelines for State programs to attack the problem. These guidelines included suggestions for State laws.

For many years the Coast Guard has been enforcing statutes which prohibit the operation of a vessel in a negligent manner. The Motorboat Act of 1940 provided that no person shall operate a vessel in a reckless or negligent manner so as to endanger the life, limb, or property of any person. Under this section the word "negligent" has been held to mean failure to use that care which a reasonable man would exercise under similar circumstances. (U.S. v. Meckling, 141 F. Supp. 608, D. Md. 1956). The provisions were amended with the passage of the Federal Boat Safety Act of 1971 and criminal penalties were prescribed for a person who willfully violates the statute. The prohibition against negligent operation was continued with the codification of Subtitle II of Title 46 United States Code, Shipping, (Pub. L. 98-89, August 16, 1983). The prohibition against negligent operation is now contained in 46 U.S.C. 2302 (a) and (b).

The instructions to Coast Guard Boarding Officers concerning enforcement procedures of statutory prohibitions against negligent operation of vessels have contained provisions interpreting these prohibitions to include operating vessels while under the influence of alcohol or drugs, or other intoxicants, since May 14, 1960.

Section 7 of the Coast Guard Authorization Act of 1984 (CGAA), (Pub. L. 98-557 October 30, 1984), added specific emphasis on intoxicated operation of vessels to the existing statutes by adding paragraph (c) to 46 U.S.C. 2302 which provides that:

An individual who is intoxicated when operating a vessel, as determined under standards prescribed by the Secretary by regulation, shall be—

(1) Liable to the United States Government for civil penalty of not more than $1,000; or

(2) Fined not more than $5,000, imprisoned for not more than one year, or both.

While the primary impetus for this amendment appears to have been to provide an enforcement tool to reduce the numbers of recreational vessel casualties due to intoxication, it applies to all vessels operated on waters subject to the jurisdiction of the United States (including foreign and domestic vessels used for recreation or in commercial service) and to all vessels that are owned in the United States while the vessel is on the high seas. It is noted that the penalties provided by this statute do not apply to a U.S. vessel while it is in the territorial waters of another country.

It is necessary to set a standard before any enforcement of 46 U.S.C. 2302(c) can take place. Implementation of 46 U.S.C. 2302 and its predecessor statutes has been delegated to the Coast Guard. It is the Coast Guard's position that, although the impetus for the 1984 amendment may have been related to the perceived abuse of alcohol, the statute is broad enough to include intoxication due to the ingestion of drugs. The Random House College Dictionary (1980) defines intoxicate as, "to affect temporarily with diminished control over the physical and mental powers, by means of an alcoholic liquor, a drug or other substance . . .". Certainly, the results of operating a vessel while intoxicated are the same regardless of the source of the impairment.

The Advance Notice of Proposed Rulemaking (ANPRM) solicited input on the establishment of a Federal standard by asking 12 questions. A total of 76 comments were received. Included in this number were comments from twelve recreational and commercial organizations and national boating interests, with memberships totaling in the millions of boaters. The National Transportation Safety Board also commented on all twelve questions, based on their research into accidents and accident prevention.

Discussion of Comments

The comments came from the following groups in the numbers noted.

25 Recreational boaters.
11 Commercial or licensed operators.
05 Recreational boating associations.
04 Commercial boating interests.
04 National boating interests.
06 State boating law administrators.
21 Individual boating interests.

Most of the comments did not address the specific questions posed in the ANPRM, but strongly supported having the Coast Guard also enforce the laws prohibiting intoxicated operation of a vessel. Some comments suggested additional intensive boating programs such as requiring operator licensing, evidence of boating safety and rules of the road knowledge for licensing or boat purchase, suspension of the license for offenses, and penalties, fines and imprisonment higher than the law currently allows. Although the comments did not clearly favor any specific approach, they overwhelmingly supported the Coast Guard taking strong action against intoxicated operators.

The following is a summary of the comments received to each question asked in the ANPRM. Many comments addressed only some of the questions.

Concerning Federal vs. State Standards for Recreational Vessels

Question. 1: Should the Federal Regulations promulgate a Federal standard for operating a vessel while intoxicated?

Thirty-seven comments responded to this question. Twenty-one were in favor of setting a Federal standard, five cited the variety of State laws and standards, three stated a Federal standard would provide incentive to the States, or could be a guide for uniformity in State laws, two stated the Coast Guard needs one standard for determining intoxication, one supported a tough Federal regulation because, in the individual's State, the recently enacted State law against drunk boating was only useable after an accident, not before. Eleven supported some Coast Guard, action, without favoring Federal or State standards, three supported the intent of the ANPRM. Five opposed a Federal standard, two asserting there are enough laws already, one asserted it was a State prerogative, one stated the Coast Guard should resist additional "social missions," and one recommended that State laws for operating motor vehicles should also be applied to boat owners.

Question 2: Should the Federal Regulations adopt State laws by reference, so that where a State has prescribed a standard for intoxication, Federal law would not conflict?

Eleven comments responded to this question. Six recommended the Coast Guard adopt State laws by reference, one stated this allowed flexibility as a State law may be revised, one stated Federal regulations should not conflict with State standards, where they exist, one asserted there are enough laws

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already, one cautioned against discouraging State legislatures from the trend to set State standards, and one comment recommended providing a Federal standard only for States that has no standards, explaining that deference to the State legislatures and making it easy for boaters to comply with current standards outweighed the burden on the Coast Guard to train for more than one State's law. Five opposed adopting State laws by reference, four were concerned over the variety of States' laws, one emphasized the vagueness of some State laws and one explained that a recently enacated State law against drunk boating was only useable after an accident, not before.

Question 3: If State laws are adopted by reference, what Federal standard should apply on the high seas (33 CFR 2.05.1(a)) and on waters subject to the jurisdiction of the United States (33 CFR 2.05.30) but not of any State (i.e., Federal enclaves) or on waters located within National Parks (16 U.S.C. 1a.2(h)).

Eleven comments responded to this question. Seven supported a blood alcohol concentration (BAC) level standard, five favored the standard adopted by the majority of the States, .10 percent, two favored .04 percent BAC for all boats, recreational and commercial. One individual submitted two comments stating .04 to .10 percent BAC was too great a spread, and suggested using a national State standard average currently used for motor vehicles, i.e., .08 percent in Oregon. Two recommended applying a Federal standard in all areas, one recommended applying State standards, where they exist, to Federal waters, enclaves and National Parks within State boundaries. One recommended applying a Federal standard on the high seas, waters in National Parks and waters subject to U.S. jurisdiction, but not within a State. This last comment also recommended the Federal standard be based on behavior and demeanor.

Concerning Definition of "Intoxication" for Recreational Vessels

Question 1: Should any Federal rule specify a blood alcohol concentration (BAC) that would constitute presumptive evidence of intoxication? What level is appropriate? Should the Coast Guard adopt the BAC level adopted by a majority of the States for motor vehicle operation (i.e., .10 percent)?

Twenty-three comments responded to this question. Twenty-one favored a Federal rule specifying a BAC level, and one opposed a Federal rule asserting the standard for intoxication should remain a State prerogative. Two recommended .04 percent, one suggested .05 percent, the BAC level for motor vehicles in the State of New York, one suggested that .07 or .08 percent be more reasonable than the .10 percent for motor vehicles considering the compounding effects of dehydration and motion, one recommended .08 percent to reflect a lowering trend in State motor vehicle standards. One individual submitted two comments urging the Coast Guard to pick any one BAC standard, .04, .08 or .10 percent. Fourteen comments favored the .10 percent BAC level adopted by the majority of States with BAC standards. One comment advised the Coast Guard to also establish evidentiary requirements and procedures for chemical tests.

Question 2: Should a Federal rule be developed which would define a behavioral definition of intoxication? For example, "An individual may not operate or be in actual physical control of the movement of a vessel while under the influence of drugs or alcohol to a degree which impairs his or her physical or mental responses and activities."

Twelve comments responded to this question. Seven favored a Federal rule defining a behavioral standard, three suggesting the example language posed in the ANPRM, or very similar. One opposed a Federal rule defining a behavioral standard for drugs. Four opposed a Federal rule defining a behavioral standard for alcohol or drugs, three stating belief that conditions such as sea sickness, fatigue, hypothermia, etc. could simulate an intoxicated condition, two citing difficulty and cost of training Coast Guard personnel to become irrefutable diagnosticians, and two explaining it would require a boarding officer to exercise too much subjective judgment.

Question 3: Should a Federal rule include both a behavioral definition and BAC level?

Eight comments responded to this question. All eight favored combining BAC and behavioral standards into a Federal regulation, one also cautioning that it would require boarding officers to exercise too much subjective judgment.

Question 4: For a State that has only a behavioral definition, should there be a Federal BAC standard to supplement State law?

Five comments responded to this question. Four supported a Federal BAC standard to supplement a State which has only a behavioral standard. The fifth opposed having a Federal BAC level on the basis that establishing a standard of intoxication should remain a State prerogative.

Question 5: Should a Federal standard include drugs?

Fourteen comments responded to this question. All fourteen supported including drugs in any Federal standard, one cautioning the Coast Guard on the use of a behavioral standard for drugs, and one asserting there should be a level of intoxication standard for controlled substances similar to the BAC standard for alcohol.

Concerning Enforcement for Recreational Vessels

Question 1: Since the primary enforcement of boating laws is conducted by State and local agencies, what is the proper Coast Guard enforcement role? A determination must be made on the extent it is practical to combine this role with other Coast Guard law enforcement functions.

Twenty-four comments responded to this question. Eighteen supported active Coast Guard enforcement of intoxication laws, five acknowledging the primary role of State and local agencies, but emphasizing the need for Coast Guard boarding officers to have a tool of enforcement while conducting routine boardings. Three opposed active Coast Guard enforcement, one suggesting the Coast Guard leave enforcement to the States, except on the high seas or in situations arising from specific Coast Guard concerns, one asserting the Coast Guard should get out of pleasure boat regulations completely, permitting the States to exercise total jurisdiction over what is not a Federal matter, and one urging the Coast Guard to resist any more "social missions" and be more available for MAYDAY calls (Search and Rescue). One also suggested the Coast Guard differentiate between operating a vessel underway and moored.

Question 2: If testing for blood alcohol concentration (BAC) is adopted, how and under what circumstances should concentrations be measured? Who should administer the tests?

Seventeen comments responded to this question. Two suggested testing the operator when a boat is observed operating in an unsafe manner, two suggested testing an operator after an accident. Fourteen suggested that Coast Guard boarding officers conduct the testing, but disagreed on which tests to use, five emphasizing training qualification, and one specifying State certification. Two urged testing suspects at special centers on shore by physicians or other qualified persons under clinical conditions. Nine advocated administering a breath test and four advocated testing motor skills by the boarding officer, while two suggested conducting a breath test at a shore station or medical center. Four suggested conducting blood tests at a medical center and two suggested conducting urine testing at a medical center.

Question 3: In a separate rulemaking, the Coast Guard is proposing that if a person operating a commercial vessel refuses to take a test for intoxication, the individual will be presumed to have been intoxicated for the purposes of any subsequent administrative proceeding. Should refusal of the operator of a recreational vessel to take a test be a separate violation of admission of intoxication?

Sixteen comments responded to this question. Six favored a refusal to submit to a test as an admission of intoxication, five favored refusal to submit to a test as a separate violation, and one suggested that refusal to submit to a test be noted in the citation as additional information. One emphasized the difficulty in enforcing implied consent without having required operator's licenses, one suggested the Coast Guard include an administrative appeal process to an automatic penalty assessment for refusal to submit to a test, and one cautioned that if refusal to take a breath or urine test were a rebuttable presumption of intoxication, considerable weight would have to be given to the sworn testimony of others on the boat about alcohol or drug abuse.

Question 4: Should testing for drug intoxication be conducted in the field? If so, how and under what circumstances should the drug presence and concentration be measured? Who should administer the tests?

Ten comments responded to this question. All ten favored Coast Guard personnel administering tests for drug intoxication, two cautioning the Coast Guard to wait until adequate testing equipment became available, two suggesting testing the suspect's motor skills, one suggesting testing suspects on the shore, one including testing suspects at a Coast Guard station as an alternative to testing at sea, and one favoring collecting blood or urine samples in the field for later forensic lab analysis. One suggested random tests on operators of vessels ready to leave the harbor, and one recommended urine tests on operators of boats observed operating unsafely.

Discussion of Proposed Rules

Proposed Federal Standard

The Coast Guard is proposing Federal standards to comply with the direction of Congress in its passage of the Coast Guard Authorization Act of 1984, Pub. L. 98–557. The act provides civil and criminal penalties for an individual who is intoxicated when operating a vessel, as determined under standards prescribed by the Secretary by regulation. The Federal standard proposed in this rulemaking would not pre-empt application of any State law. However, it is hoped that this proposal will encourage States to strengthen their boating safety laws. This was clearly the Congressional intent. The House of Representatives Report 98–631, March 22, 1984, prepared by the Committee on Merchant Marine and Fisheries stated that "the Committee recognizes that the primary responsibility for enforcing laws with respect to the operation of recreational vessels resides with State and local officials, not with the Coast Guard. This provision supplements, not pre-empts, State law." In his remarks concerning this legislation, the Honorable Gerald Studds stated that "this provision is important, in that it will demonstrate a determination on the part of Congress to encourage State governments to enact—and enforce—strong boating safety laws."

The Coast Guard has examined four approaches including taking no action, setting a Federal standard regardless of State standards, adopting State standards by reference, and setting a Federal standard that provides for the Federal standard to conform to a State BAC standard concerning intoxication, where enacted, on waters within the geographic boundaries of that State.

The first approach, taking no action, would defy the intent of Congress for the Secretary to prescribe standards by regulation under which an individual may be determined to be intoxicated, and was, therefore, rejected.

The second approach, setting a Federal standard regardless of State standards, was not the subject of a specific question in the ANPRM. The questions only addressed whether there should be a Federal standard and how that standard should relate to State laws. Although there was clear support for a Federal standard, there was no clear consensus on whether it should adopt or be independent of State laws. Coast Guard personnel cannot enforce a State law. There must be a Federal law or regulation to allow the Coast Guard to enforce a standard of intoxication. The Coast Guard Authorization Act of 1984 provides Federal law, but requires a Federal regulation to prescribe standards to implement the Federal law. Although setting an independent Federal standard would implement the statute, give a "tool" to Coast Guard law enforcement officers, and could be viewed as a guide to State legislatures, it may also conflict with certain States' laws. This conflict could confuse the public in those States where State legislatures enacted different standards. It may also dissuade State legislatures from strengthening their laws beyond the Federal standard. In deference to those State legislatures and in consideration of potential public confusion in complying with the laws, this approach was rejected.

The third approach, adopting State laws by reference, was the subject of a specific question in the ANPRM. As noted above, the comments responding to this question did not clearly support or reject this approach. Some comments cited State prerogative, avoidance of conflict with State laws and opposition to any new laws, while others cited difficulties caused by the variety of State standards, some of which are too vague to enforce.

A companion question to this approach in the ANPRM asked what Federal standard should be used on the high seas, Federal enclaves and waters in National Parks. Responses to this question were also mixed. Comments included applying a Federal standard in all areas, applying the laws of the State in which an area is located, and a combination approach, applying a Federal standard in those areas where a State standard did not exist. The adoption of State laws would give a "tool" to Coast Guard law enforcement officers and would eliminate conflicts. However, it would not meet the intent of Congress to encourage strengthening of State laws, particularly those that do not have defined standards for intoxication. The Coast Guard has considered this approach very carefully. Concern that the Coast Guard would be dealing with the laws of 50 States was tempered by the practical limitation that a given boarding officer would likely be involved only with two to four State jurisdictions. The exact position of the violation may also become a critical issue under that approach. However, the facts remain that some State laws are too vague to enforce, a district civil penalty hearing officer's jurisdiction may span as many as 22 States, and Coast Guard law enforcement training must be comprehensive enough to address any of the 50 State laws. In consideration of having too many "tools", or unuseable "tools", and probable discouragement to State legislatures to improve their laws due to perceived acquiescence of the Coast Guard to the current disparity of State laws, including unenforceable laws, this approach was rejected.

The fourth approach, providing for the Federal regulation to conform to a

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State's BAC standard on waters within the geographical boundaries of those States which have enacted a law with a BAC standard applicable to vessel operation, was developed after considering the comments responding to the ANPRM questions on the second and third approaches. This fourth approach complies with the intent of Congress to prescribe standards by regulation, provides a "tool" to the Coast Guard boarding officer that is useable wherever the Coast Guard has jurisdiction, and provides encouragement to State legislatures to enact stronger laws, without conflicting with those State legislatures which have enacted specific BAC standards concerning intoxication. The Coast Guard acknowledges that the States have primary enforcement responsibilities. However, as discussed below, where a State has no statutory BAC standard the Coast Guard is proposing a Federal standard to fill the gap. Prescribing a Federal standard which conforms to State BAC levels concerning intoxication, provides a useble "tool" for Coast Guard boarding officers, simplifies training Coast Guard personnel, and eases the burden on Coast Guard civil penalty hearing officers. This approach also relieves conflicts with States' laws and confusion for the recreational boaters by avoiding disparity between Federal and State BAC standards. In consideration of the above benefits, and in deference to the State legislatures which have enacted BAC standards concerning intoxication, the Coast Guard is proposing this approach.

Definition of "Intoxication" for Recreational Vessels

Defining "Intoxication" was the subject of a series of questions in the ANPRM. The questions asked whether a Federal rule should specify a BAC level that would constitute presumptive evidence of intoxication, specify a behavioral definition of intoxication, specify both a BAC level and behavioral standard, apply a Federal BAC level standard in waters of a State which has no State BAC standard, and whether to include drugs in a Federal standard.

An overwhelming number of comments responding to the question, whether a Federal rule should specify a BAC level, favored such a rule. Most of the comments recommended .10 percent BAC, the BAC level adopted by the majority of States with a BAC standard.

Currently, all of the States have laws which prohibit the operation of vessels while intoxicated. However, only 21 States define by statute blood alcohol concentration (BAC) for intoxication, or under the influence, which is applicable to vessel operation. However, the manner in which the statutory BAC levels are applied varies from State to State. Some States use the BAC level as a per se determination of intoxication. Other States use the BAC level as evidentiary rules to establish a presumption of intoxication or only provide evidence of intoxication. Also, the scope of applicability of the standards is not uniform. Some States' laws only apply to motorboats or "mechanically propelled vessels" while others apply to all vessels, as does the Federal statute. One State has a .08 percent BAC. One State has a .06 percent BAC as prima facie evidence of operating under the influence, and a .13 percent BAC as prima facie evidence for operating while intoxicated. The other 19 States apply, in some manner, a .10 percent BAC for measuring impairment due to alcohol. The setting of a Federal BAC level would not interfere with a State's ability to set and enforce a different standard on its waters. Setting a Federal BAC standard that conforms to the State scheme for any State having a BAC standard should not interfere with the States' prerogatives to set their own standards. Also, the Federal standard would not apply on any waters within the State that were solely subject to State jurisdiction. However, the Coast Guard does hope to encourage those States without BAC standards to enact more effective enforcement tools to deal with the problem of intoxicated vessel operators.

Therefore, the Coast Guard is proposing to prescribe .10 percent BAC as a Federal standard for vessels being used for recreational purposes, except that the Federal BAC standard will conform to a State statutory BAC standard on the waters within the geographical boundaries of that State. In order to deal with the various approaches used by States in applying BAC standards, the Coast Guard is proposing to follow the manner States apply their BAC standard as closely as possible, with the exception that the Federal standard will apply to all recreational vessles, even if the applicability of the state statute is limited to certain types of vessels. In a State that uses BAC as an evidentiary standard, the Federal standard will be an evidentiary standard. In a State that has duel standards, one for under the influence and one for intoxication, only the standard for intoxication will be used. In States that do not clearly establish a BAC level for intoxication the highest defined percentage of alcohol in the blood will be considered to be the prohibited level for the purpose of this regulation. For example, if the State statute establishes .08 BAC as ability impaired and .12 BAC as under the influence, the .12 BAC will be considered intoxicated for the purpose of the rule. Since 46 U.S.C. 2303 applies to all vessels, for Federal enforcement purposes the State BAC standard will be considered applicable to all types of recreational vessels within the State. Thus, in a State where the standard applies only to motorboats, for Federal enforcement purposes, that standard will apply to all vessels then being used for recreational purposes. This approach will leave States complete flexibility in establishing their own programs and allow for States to enact stronger statutes without requiring any modification to the Federal standard. Thus, if a trend develops among the States to change their BAC standard from .10 percent to .08 percent, the Coast Guard need only adjust its training program, not revise a regulation.

The majority of comments responding to the question, should a Federal rule include a behavioral standard, favored specifying such a standard. Those opposing specifying a behavioral standard expressed concern that conditions such as sea sickness, fatigue, hypothermia, etc., could simulate an intoxicated condition. Also, most of those opposed were concerned about the exercise of too much subjective judgment by the boarding officers.

Many States currently enforce intoxicated operation statutes through behavioral standards. There are many variations in the States' statutes defining intoxication in terms of observed behavior. The Coast Guard examined the possibility of adopting State behavioral standards. Many are the result of judicial interpretations of the State statutes. In view of the multitude of standards that the Coast Guard would encounter enforcing State laws including uncodified definitions, a Federal behavioral standard is being proposed. The Coast Guard is proposing that a person is intoxicated when "under the influence of an intoxicant to the degree that the effect of the intoxicant on the person's manner, disposition, speech, muscular movement, general appearance or behavior is apparent to observation." This is based on the definition in section 4–2(14), Code of Virginia. This particular definition has been upheld by both the Virginia courts and Federal courts, which have also recognized that a behavioral definition and a blood alcohol level standard co-exist. See: United States v. Gholson, (319 F. Supp. 499, E.D. Va. 1970). This standard is less subjective than that suggested in the ANPRM.

All comments responding to the question, should the Federal rule include both a BAC standard and a behavioral standard supported the use of both standards. Also, all comments responding to the question, should a Federal standard include drugs, favored including drugs in the Federal standard of intoxication.

A behavioral standard, although less precise than a BAC standard, is essential for several reasons. First, in many instances, testing for blood alcohol concentration level may not be available within an acceptable time frame or the person may refuse to consent to the chemical test. Second, intoxication may be caused by drugs, or a combination of drugs and alcohol where the BAC level is not exceeded. In addition, while the proposed blood alcohol levels are statistically sound, there may be individuals with a susceptibility to alcohol or drug/alcohol combinations such that they are seriously impaired at levels lower than the proposed BAC standards. The behavioral standard may also be used as a measure of what constitutes reasonable cause to test a person for drugs or alcohol. Whatever the cause, the Coast Guard must have a standard in order to remove dangerously impaired operators from the navigable waters of the United States.

It must be stressed that the BAC and behavioral standards are independent of each other. A person may be tested and may not reach the threshold of .10 percent BAC, yet be intoxicated under the behavioral standard. In all cases where the behavioral standard is violated without violating the BAC levels, the behavioral standard will apply. In cases where the behavioral standard is not violated but the BAC standards are, the BAC standards will apply. Thus, the standards take into account a person's ability to "mask" intoxication or a person's susceptibility to intoxication. Either standard determines intoxication and constitutes a violation of 46 U.S.C. 2302(c).

Enforcement for Recreational Vessels

The House of Representatives Report 98–631, March 22, 1984, prepared by the Committee on Merchant Marine and Fisheries stated that "the Committee recognizes that the primary reponsibility for enforcing laws with respect to the operation of recreational vessels resides with State and local officials, not with the Coast Guard. This provision supplements, not pre-empts, State law." The Coast Guard acknowledges the States' primary role of enforcing boating laws. The Coast Guard asked a series of questions in the ANPRM to discern the public views on the Coast Guard's role, including the proper Coast Guard role, BAC test administration, use of test refusal as an admission of intoxication and drug testing administration.

Most of the comments responding to the question, what is the proper Coast Guard role, supported active Coast Guard enforcement of intoxication laws. A few opposed Coast Guard enforcement of intoxication laws. The Coast Guard's intent, and proposal, is to comply with Congressional mandate to prescribe standards by regulation, and to provide a "tool" to the Coast Guard boarding officers so they can take effective action when an intoxicated operator is encountered during search and rescue or law enforcement boardings. The Coast Guard intends to develop proper training and procure needed equipment to provide sufficiently trained and equipped boarding officers through existing agency training programs, acquisition procedures and policy directives.

The Coast Guard intends to mount an aggressive publicity campaign to notify all boaters that the standards needed to enforce the law have been prescribed and that the operator of any boat boarded after a search and rescue or stopped for a law enforcement boarding, may be subject to the boarding officer's determination of intoxication, as well. The publicity campaign for National Safe Boating Week is a good example. The Coast Guard hopes that boaters will heed the announcements that the intoxicated operation law is being enforced in greater numbers than those heeding the prior safety campaigns against drinking and boating.

In the NPRM published on May 23, 1986, the Coast Guard proposed that if a person operating a commercial vessel refuses to take a test for intoxication, the individual will be presumed to have been intoxicated for the purposes of any subsequent administrative proceeding. In the ANPRM for recreational vessels, the Coast Guard asked whether refusal of an operator of a recreational vessel to take a test should be a separate violation or admission of intoxication. All comments responding to this question favored the concept of required testing for recreation vessel operators, but split on whether refusal should be an admission of intoxication or a separate violation. The Coast Guard is proposing that refusal to submit to a test is presumptive evidence of intoxication.

In the ANPRM, the Coast Guard asked whether testing for drug intoxication should be conducted in the field, and, if so, when, how, and by whom. All ten comments responding to this question favored Coast Guard personnel testing for drug intoxication, but provided no clear direction on when or how. In consideration of the effectiveness of testing motor skills for alcohol or drugs conducted by State law enforcement officers, and the impracticality of obtaining blood or urine samples on-the-water, the Coast Guard is proposing to determine drug intoxication of operators based on behavioral standard, and at the discretion of the boarding officer, toxicological methods.

Defining "Operating a Vessel"

The requirement to be "operating a vessel" is essential for the imposition of civil or criminal penalties under 46 U.S.C. 2302(c).

For vessels subject to manning requirements, all members of the crew, pilots, and other persons standing watches are considered to be operating the vessel. Specifying who is "operating a vessel" by regulation is not feasible for recreational vessels and other vessels not subject to manning requirements, however, the proposed rule would limit the applicability of 46 U.S.C. 2302 to those individuals essential to the operation of the vessel. For a recreational motor vessel whose power and steering is controllable by a single person at a central location, that person is clearly the person operating the vessel. However, for a large recreational sailing vessel, which may have several persons assisting with the sails, the difference between operators and non-operators is difficult to distinguish. Thus, the determination of whether an individual is "operating a vessel" must be conducted on a case by case basis. For the majority of recreational vessels, the person at the vessel's helm and/or controlling the vessel's primary means of propulsion will be considered to be the person operating the vessel.

Supplemental Notice of Proposed Rulemaking for Commercial Operations and Licensed and Documented Personnel

The Coast Guard has issued a Notice of Proposed Rulemaking (NPRM) (CGD 84–099) in the **Federal Register** (May 23, 1986, 51 FR 18902) which proposes to add a new Part 95 to Title 33, Code of Federal Regulations. In that NPRM, the Coast Guard proposed rules concerning operating a vessel while intoxicated which affected commercial vessels and licensed mariners. Specifically, the Coast Guard proposed a BAC standard of .04 percent for operation of vessels

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subject to the manning requirements of Part F of Subtitle II of Title 46 United States Code and a BAC standard of .10 percent for all other vessels in commercial operation. After consideration of the comments received in response to questions in an ANPRM published in the **Federal Register** on May 23, 1986, at 51 FR 18900, the Coast Guard is proposing an expansion of the rules proposed for commercial vessel operations to provide standards of intoxication that cover all vessels. In this Notice of Proposed Rulemaking (84-099A), the Coast Guard is proposing to apply a variable BAC standard to all vessels operated for recreational use. The .04 and .10 BAC standards originally proposed are continued; however, the material formerly in § 95.015 has been reorganized for clarity. The Coast Guard position is that a BAC standard above .10 percent for persons engaged in commercial operations is not desirable. Consideration was given to applying stricter BAC limits to these vessels when operating within the geographic limits of States having a lower statutory BAC standard. There is only one State that currently has a statutory BAC standard for intoxication that is below .10 percent. Regardless of the Federal standard, any State having a lower BAC standard can continue to enforce its law. In addition, in the Anti-Drug Abuse Act of 1986 (Pub. L. 99-570, Oct. 27, 1986) a BAC standard of .10 percent has been established for operators of "water common carriers." The Coast Guard is currently evaluating the effect of this statute on the standards proposed for commercial vessels. For these reasons, the standards originally proposed for commercial vessel operations have not been changed in this supplemental notice.

In the interest of clarity and public understanding, portions of the proposed Part 95 have been republished in this proposed rulemaking to put the changes in context.

Regulatory Evaluation

It has been determined that this rulemaking is not a major regulation under Executive Order 12291; however, this rule is considered significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, Feb. 26, 1979). A regulatory evaluation has been prepared for this action, and is contained in the regulatory docket. A copy may be obtained by contacting the Commandant (G-CMC/21) as indicated under **"ADDRESSES."**

It is expected that this proposed rule will reduce the risk to the lives and safety of the boating public that is caused by intoxicated operation of vessels. The existence of the proposed rule should deter a person from operating a recreational vessel while intoxicated due to publicity that the law is now enforceable. Experience with mandatory seat belt laws and usage in 26 States is a corollary. In 1982, only 11 percent of drivers used seat belts while 89 percent went unprotected. In 1986, after a publicity campaign advised motorists of the mandatory seatbelt law and intended enforcement methods and penalties, the use of seat belts in those States rose noticeably to 34 percent (66 percent unprotected). In other words, the number of people who had previously elected to engage in unsafe behavior decreased 26 percent as a result of Federal and State action. If the Coast Guard regulations and publicity campaign achieved similar results, recreational boating accidents involving alcohol or drugs could be reduced by 26 percent. The benefits to society of such a reduction could be $30.6 million to $152.2 million. Experience with educational campaigns addressing intoxicated operation of motor vehicles has also shown reductions in accidents. An extensive education campaign and State BAC laws have reduced the number of intoxicated drivers involved in fatal accidents from 30 percent to 25 percent, a 16.7 percent reduction. A comparable reduction in recreational boating accidents involving alcohol or drugs could yield benefits to society of $19.6 million to $97.8 million. Although the exact number of accidents prevented cannot be accurately predicted, it is expected this proposal will reduce the number of casualties and cost to society. By either of the above cost reduction estimates, the benefit/cost ratio is very favorable. Moreover, if this regulation, as an opening wedge, can reduce recreational boating accident costs by just 1 percent, its benefits will have exceeded its modest costs. Compliance with these proposed rules will not impose any cost or burden on persons operating a recreational vessel except for those operators who regard denial of the privilege of enjoying "a few beers" as another example of "Big Brother's" heavy hand. The Coast Guard believes the probable benefits of reasonable limits on drinking far outweigh the burden imposed. It is also hoped that the proposed rule will encourage State legislatures to strengthen their present laws in this area.

Information on the number of casualties occurring in calendar year 1985 and reported to the Coast Guard is contained in Table 1. Ten percent of those reported casualties involved the use of alcohol or drugs. Various studies and State statistics indicate that the actual percentage of reportable accidents involving alcohol or drugs may be in the fifty to sixty percent range. An estimate of fifty percent of reportable accidents is being used in addition to ten percent of the reported accidents to present a clearer picture of the magnitude of the problem involving alcohol or drugs. The cost of property damage due to accidents is not difficult to calculate. Placing a value on human lives and injuries is much more complex. Most economists consider the value of a human life to be no less than one million dollars. Therefore, we have used this value for the purpose of this evaluation. The National Highway Traffic Safety Administration (NHTSA) publishes a report that considers loss of potential lifetime income, but not pain and suffering, to assess the cost to society for injuries due to motor vehicle accidents. The Coast Guard decided to use the NHTSA motor vehicle injury costs because of the lack of recreational boating injury costs data and a belief that injuries from boat accidents on the water are likely to be more severe.

TABLE 1.—SUMMARY OF REPORTED RECREATIONAL BOATING ACCIDENTS FOR 1985 AND ESTIMATED COSTS [1] TO SOCIETY ATTRIBUTABLE TO ALCOHOL AND DRUG USE

		Fatalities	Injuries	Damages
Reported accidents [2]	6,237	1,116	2,757	$20.0
Reported alcohol or drugs involved, 10%	624	112	276	$2.0
Estimated economic cost to society at 10%		$112.0	$3.5	
Estimated alcohol or drugs involved, 50%	3,118	558	1,878	$10.0
Estimated economic cost to society at 50%		$558.0	$17.5	
Percentage involving alcohol or drugs	10%	50%		

TABLE 1.—SUMMARY OF REPORTED RECREATIONAL BOATING ACCIDENTS FOR 1985 AND ESTIMATED COSTS [1] TO SOCIETY ATTRIBUTABLE TO ALCOHOL AND DRUG USE—Continued

		Fatalities	Injuries	Damages
Total cost to society	$117.5	$585.5		

[1] All costs are in millions of dollars.
[2] All fatalities are reported to the Coast Guard; the total number of reportable accidents involving only injuries or property damage is estimated to be ten times greater than number of accident reports received.

Information on the anticipated administrative costs incurred by the Coast Guard to train and equip Coast Guard Boarding Officers to enforce the proposed rules and that attributable to Coast Guard Civil Penalty Hearing Officers reviewing cases involving operating while intoxicated citations are contained in Table 2.

TABLE 2.—SUMMARY OF COSTS [1] TO THE COAST GUARD TO ADMINISTER THE PROPOSED RULES FOR RECREATIONAL VESSELS

Annual cost of training Boarding Officers	$0.68
Annual cost of equipping Boarding Officers	0.47
One year cost of publicity campaign	0.10
Annual cost of reviewing intoxication cases [2] by Civil Penalty Hearing Officers (10% of cases)	0.07
Total administrative costs	1.32

[1] All costs are in millions of dollars.
[2] Costs are based on an estimated 10% increase in the civil penalty caseload.

All of the approaches considered, except for the "no action" approach will result in virtually the same administrative cost to the Coast Guard. The Coast Guard intends to determine whether an operator of a vessel is intoxicated while conducting a search and rescue of law enforcement boarding. The most significant factors controlling administrative costs are how many Coast Guard Boarding Officers the Coast Guard is able to train each year and whether each trainee is provided with a breath sensor upon course completion. The training costs reflect a mixture of retraining one-fourth of the currently qualified Boarding Officers annually for four years, retraining two Maritime Law Enforcement (MLE) instructors annually, and additional training for MLE students.

The proposed rules will have a favorable Benefit/Cost ratio if the costs to society due to recreational boating accidents involving alcohol or drugs are reduced by even a conservative 1.1 percent, or 0.2 percent using the 50 percent estimate of alcohol or drug involvement. Experience with mandatory seat belt laws and State BAC laws for motor vehicles shows a potential reduction of 16.7 to 26 percent. The "no action" approach will not add to training or administrative costs, and will not reduce boating accidents. Approaches two and four will reflect the same estimated training and administrative costs. Approach two may, however, discourage some States from efforts to strengthen their laws to further reduce intoxicated operation of recreational vessels, counteracting the reductions from the Coast Guard effort. Approach three will add a relatively small amount to training costs to incorporate background in the various State laws that a Boarding Officer may be using. However, the third approach is expected to be less effective than either the second or fourth approaches, due to some States not having either BAC or behavioral standards. Enforcement in those States that do not have a BAC standard or behavioral standard cannot be as effective.

Since these amendments have a minor cost impact and primarily apply to individuals rather than businesses or other small entities, the Coast Guard certifies under the Regulatory Flexibility Act (Pub. L. 96-354) that these amendments will not have significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 95

Marine safety, Vessels, Alcohol and alcoholic beverages, Drugs.

In consideration of the foregoing, the Coast Guard proposes to amend the previously proposed amendment to Title 33, Code of Federal Regulations, published in the **Federal Register** on May 23, 1986, at 51 FR 18902 as set forth below:

PART 95—OPERATING A VESSEL WHILE INTOXICATED

1. The authority for proposed Part 95 continues to read as follows.

Authority: 46 U.S.C. 2302, 3306, 7101, 7301, 7701 and 8105; 49 CFR 1.46(b).

2. In proposed Part 95, §§ 95.001 and 95.010 are republished, and in § 95.005, paragraph (a) is revised to read as follows.

§ 95.001 Purpose.

The purpose of this part is to establish intoxication standards under 46 U.S.C. 2302, which prohibits operation of a vessel while intoxicated, and to prescribe restrictions and responsibilities for personnel serving on vessels required to be manned by licensed, certificated, or documented personnel. This part does not pre-empt enforcement of state laws and regulations concerning operation of a vessel while intoxicated.

§ 95.005 Applicability.

(a) This part is applicable to all vessels (except those excluded by 46 U.S.C. 2109) operating on waters subject to the jurisdiction of the United States and vessels owned in the United States on the high seas. This includes foreign vessels operating on waters subject to the jurisdiction of the United States.

* * * * *

§ 95.010 Definition of terms used in this part.

"Alcohol" means any form or derivative of ethyl alcohol (ethanol).

"Controlled substance" has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR Part 1308).

"Drug" means any substance (other than alcohol) that has known mind or function-altering effects on a human subject, specifically including any psychoactive substance, and including, but not limited to, controlled substances.

"Intoxicant" means any form of alcohol or drug or combination thereof.

"Vessel owned in the United States" means any vessel documented or numbered under the laws of the United States; and, any vessel (owned by a citizen of the United States) that is not documented or numbered by any nation.

3. Sections 95.013 and 95.016 are added and proposed § 95.015 is revised to read as follows:

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§ 95.013 Operating a Vessel.

For purposes of this part, an individual is considered to be operating a vessel when:

(a) The individual is a crewmember, pilot, or watchstander not a regular member of the crew, of a vessel subject to any manning requirement under Part F of Subtitle II of Title 46, United States Code.

(b) The individual has an essential role in the operation of a vessel not subject to the manning requirements of Part F of Subtitle II of Title 46, United States Code, including but not limited to navigation of the vessel and functioning of the vessel's propulsion system.

§ 95.015 Standard of Intoxication.

(a) An individual operating a vessel subject to any manning requirement under Part F of Subtitle II of Title 46, United States Code is intoxicated when:

(1) The individual has .04 percent by weight or more alcohol in the blood; or,

(2) The effect of the intoxicant on the person's manner, disposition, speech, muscular movement, general appearance or behavior is apparent to observation.

(b) An individual operating a vessel that is not subject to any manning requirement under Part F of Subtitle II of Title 46, United States Code and is not then being used solely for recreational purposes, is intoxicated when:

(1) The individual has .10 percent by weight or more alcohol in the blood; or,

(2) The effect of the intoxicant on the person's manner, disposition, speech, muscular movement, general appearance or behavior is apparent to observation.

(c) Except as provided in § 95.016, an individual operating a vessel then being used solely for recreational purposes and not subject to any manning requirement under Part F of Subtitle II of Title 46, United States Code is intoxicated when:

(1) The individual has .10 percent by weight or more alcohol in the blood; or,

(2) The effect of the intoxicant on the person's manner, disposition, speech, muscular movement, general appearance or behavior is apparent to observation.

§ 95.016 Adoption of State Standards.

(a) This section applies to vessels when being used solely for recreational purposes within the geographical boundaries of a State, territory, or possession having a statute defining a percentage of alcohol in the blood for the purposes of establishing that a person operating a vessel is intoxicated or impaired due to alcohol.

(b) If the applicable State statute defining a percentage of alcohol in the blood standard for determining impairment due to alcohol uses the terms "under the influence", "operating while impaired", or equivalent terminology and does not separately define a percentage of alcohol in the blood for the purpose of establishing "intoxication," the standard containing the highest defined percentage of alcohol in the blood applies in lieu of the standard in § 95.015(c)(1). If the applicable State statute contains a standard specifically applicable to establishing intoxication, in addition to standards applicable to lesser degrees of impairment, the standard specifically applicable to establishing intoxication applies in lieu of the standard in § 95.015(c)(1).

(c) For the purposes of this Part, a standard established by State statute and adopted under this section is applicable to the operation of any vessel being operated for recreational purposes within the geographical boundaries of the State.

4. In proposed § 95.017, paragraphs (a) and (b) are republished and paragraph (c) is revised to read as follows.

§ 95.017 Determination of intoxication.

(a) A determination of intoxication may be made by the following:

(1) Personal or reported observation of alcohol or drug use;

(2) Personal or reported observation of a person's manner, disposition, speech, muscular movement, general appearance or behavior; or,

(3) Toxicological methods including breath analysis, urine, or blood sample testing.

(b) Testing may be directed by a Coast Guard law enforcement officer, investigating officer, or any law enforcement officer authorized to obtain a test under State or local law. If an individual refuses to submit to or cooperate in the administration of a timely toxicological test, when directed by a law enforcement officer or investigating officer having reasonable basis for believing the individual to be intoxicated, evidence of the refusal is admissable in any administrative proceeding and the individual will be presumed to have been intoxicated.

(c) The master or person in charge of a commercial vessel or a vessel subject to the manning requirements of Part F of Subtitle II of Title 46, United States Code, in addition to those persons identified in paragraph (b) of this section, may direct such testing. Evidence of refusal to submit to or cooperate in the administration of a timely toxicological test is admissible in evidence in any administrative proceeding.

Dated: February 4, 1987.

P.A. Yost,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 87-2661 Filed 2-6-87; 8:45 am]

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H.R. 1/Pub. L. 100–4

Water Quality Act of 1987. (Feb. 4, 1987; 101 Stat. 7; 84 pages) Price: $2.50

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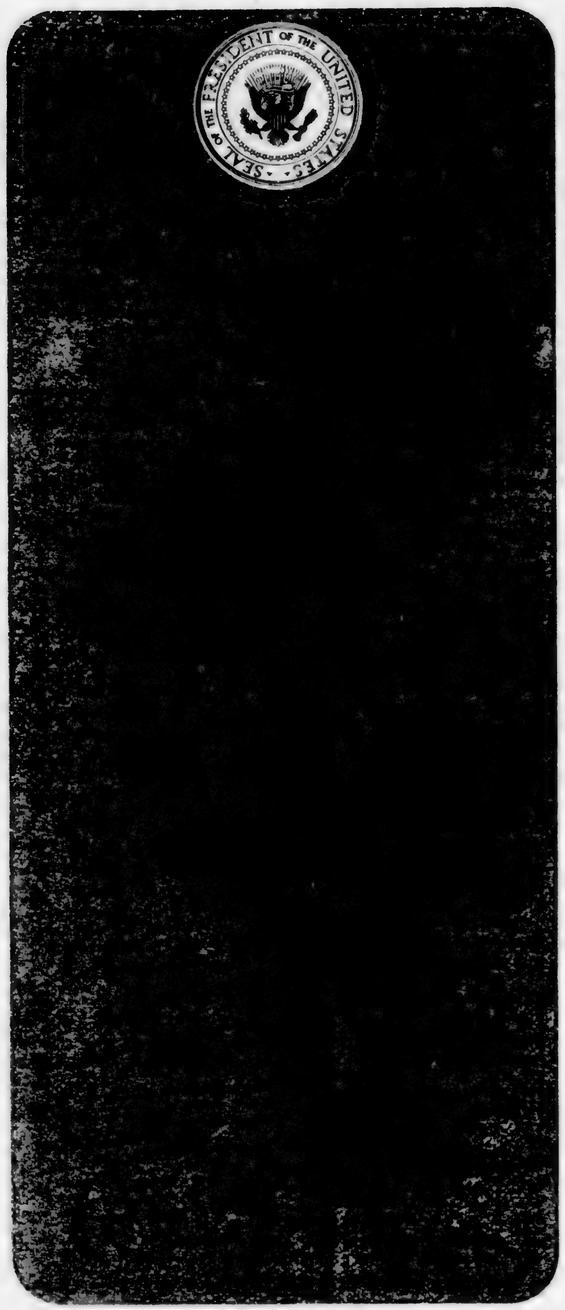
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[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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Presidential Documents

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Federal Register
Vol. 52, No. 27
Tuesday, February 10, 1987

Presidential Documents

Title 3—

The President

Recommendations for Executive, Legislative, and Judicial Salaries [1]

Dear Mr. Speaker: (Dear Mr. President:)

As required by Section 225 of the Federal Salary Act of 1967, Public Law 90–206, (2 U.S.C. 351 et seq.), the latest Quadrennial Commission on Executive, Legislative, and Judicial Salaries ("Quad Commission") has submitted to me recommendations on salaries for Senators, Representatives, Federal judges, Cabinet officers, and other agency heads, and certain other officials in the executive, legislative, and judicial branches.

The statute requires that, in the budget next submitted after receipt of the report of the Commission, I set forth recommendations for adjustment of these salaries. Pursuant to section 225(i), as amended by section 135 of Public Law 99–190, these recommendations will be effective unless Congress disapproves the recommendations by a joint resolution within 30 days following the transmittal of my budget.

As referred to in my Budget Message, I am recommending increases in executive level pay for offices and positions within the executive, legislative, and judicial branches of the Federal Government. The Quad Commission's report, submitted to me on December 15th, 1986, documented both the substantial erosion in the real level of Federal executive pay which has occurred since 1969 and the recruitment and retention problems that have resulted, especially for the Federal judiciary. The Commission found that Federal executives and legislators have experienced a decline of over 40 percent in real income since 1969. The Quad Commission is to be commended for its diligent and conscientious effort to address the complicated and complex problems associated with Federal pay levels.

Every one of the Quad Commissions that has met over the past 18 years concluded that a pay increase for key Federal officials was necessary. Each Commission found that pay for senior government officials fell far behind that of their counterparts in the private sector. They also surmised that we cannot afford a Government composed primarily of those wealthy enough to serve. Unfortunately, the last major Quad Commission pay adjustment was in 1977—a decade ago.

In considering the Quad Commission's recommendations, I recognize that we are under a mandate to reduce the Federal deficit and hold the costs of government to an absolute minimum. In this environment, I do not believe that we can overcome the erosion of real income since 1969 of these senior government officials in one step and thus do not believe it would be appropriate to fully implement the Quad Commission's recommendations at this time.

---

[1] **Editorial note:** This is the text of identical letters addressed to the Speaker of the House of Representatives and the President of the Senate, which were transmitted on January 5, 1987. The recommendations are effective at the beginning of the first day of the first pay period which begins for such office or position after the end of the thirty day period for congressional consideration (2 U.S.C. 359). The text is published in accordance with 2 U.S.C. 361.

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Accordingly, I have decided to propose a pay increase, but have cut substantially the recommendations made by the Quad Commissioners in their report to me last month. This increase is but the first step in addressing the loss of real income documented by the Quad Commission. In addition to this pay raise, I anticipate submitting another salary recommendation prior to leaving office—in response to the recommendations of the next Quad Commission, which will be appointed and will make its recommendations in 1988. While I cannot pre-judge those recommendations, assuming continued progress toward eliminating the deficit and favorable economic conditions, I would expect to recommend at that time another step toward overcoming that erosion of real income.

Moreover, I have decided to establish a Career Manager Pay Commission to review and report to me by next August on appropriate pay scales for our elite corps of career Government managers—those technically not included in the Quad Commission's mandate. The pay increases I am now proposing to Congress, together with responses to the recommendations of the new Career Manager Pay Commission and the next Quad Commission, are intended to constitute a significant advancement toward placing Government compensation on a fairer and more comparable footing.

Accordingly, pursuant to subparagraphs (A), (B), (C), (D), and (E) of subsection (f) of section 225(h) of Public Law 90–206 (81 Stat. 644):

For the Vice President of the United States	$115,000
For offices and positions under the Executive Schedule in subchapter II of chapter 53 of title 5, United States Code, as follows:	
Positions at level I	99,500
Positions at level II	89,500
Positions at level III	82,500
Positions at level IV	77,500
Positions at level V	72,500
For the Board of Governors, United States Postal Service	10,000
For Speaker of the House of Representatives	115,000
For the President Pro Tempore of the Senate, majority leader and minority leader of the Senate, and majority leader and minority leader of the House of Representatives	99,500
For Senators, Members of the House of Representatives, Delegates to the House of Representatives, and the Resident Commissioner from Puerto Rico	89,500
For other officers and positions in the legislative branch as follows:	
Comptroller General of the United States	89,500
Deputy Comptroller General of the United States, Librarian of Congress, and Architect of the Capitol	82,500
Public Printer, General Counsel of the General Accounting Office, Deputy Librarian of Congress, and Assistant Architect of the Capitol	77,500
Deputy Public Printer	72,500
For Justices, judges, and other personnel in the judicial branch as follows:	
Chief Justice of the United States	115,000
Associate Justices of the Supreme Court	110,000
Judges:	
Circuit Court of Appeals	95,000
Court of Military Appeals	95,000
U.S. District Courts	89,500
Court of International Trade	89,500
Tax Court of the United States	89,500
U.S. Claims Court	82,500
Special Trial Judges of the Tax Court [2]	72,500
Bankruptcy Judges	72,500
Director of the Administrative Office of the U.S. Courts	89,500
Deputy Director of the Administrative Office of the U.S. Courts	72,500
U.S. Magistrates (full-time) (maximum)	72,500
U.S. Magistrates (part-time) (maximum)	36,200

Sincerely,

Ronald Reagan

THE WHITE HOUSE,
Washington, January 5, 1987.

[FR Doc. 87–2643
Filed 2–6–87; 12:08 pm]
Billing code 3195–01–M

[2] **Editorial note:** This is the text of identical letters addressed to William D. Ford, Chairman of the House of Representatives Committee on Post Office and Civil Service, and John Glenn, Chairman of the Senate Committee on Governmental Affairs.

January 23, 1987

Dear Mr. Chairman:

As you undoubtedly realize, the recommendations for Executive, Legislative, and Judicial Salaries accompanying the Fiscal Year 1988 Budget erroneously included one category of position that is no longer directly subject to the quadrennial review process. Under section 1556 of Public Law 99–514, the Tax Reform Act of 1986, Special Trial Judges of the Tax Court no longer have their pay set directly under the quadrennial review process, but are instead paid 90 percent of the salary paid to judges of the Tax Court, a position that does remain under the quadrennial review process. Thus, the inclusion of these positions in the report can be ignored since it was erroneous and of no force and effect.

Under the President's executive pay recommendations, the Tax Court Judges would be paid $89,500; the Tax Court's Special Trial Judges would consequently be paid $80,550, rather than the amount shown in the executive pay message ($72,500).

Sincerely yours,

James C. Miller III,
Director.

Rules and Regulations

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Rules and Regulations

Federal Register
Vol. 52, No. 27
Tuesday, February 10, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1477

Disaster Payment Program for 1986 Crops

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends the regulations at 7 CFR Part 1477 with respect to the definition of the eligible acreage for nonprogram crops for purposes of making disaster payments due to low yields as the result of drought, excessive heat, flood, hail or excessive moisture in certain eligible counties. Section 1477.3 is amended to provide that such acreage shall be the acreage planted to the crop for harvest in 1986 without regard to the acreage planted to harvest in prior years.

EFFECTIVE DATES: This interim rule shall become effective on February 9, 1987. Comments must be received on or before February 20, 1987 in order to be assured of consideration.

ADDRESSES: Send comments on this interim rule to: Director, Emergency Operations and Livestock Programs Division, ASCS, Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. All written submissions made pursuant to this rule will be made available for public inspection in Room 4095 South Building, USDA, between the hours of 8:15 AM and 4:45 PM, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jerry W. Newcomb, Director, Emergency Operations and Livestock Program Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, D.C. Telephone: (202) 447–5621.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under U.S. Department of Agriculture (USDA) procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified as "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

The title and number of the federal assistance program to which this rule applies are: Title—Commodity Loans and Purchases; Number 10.051, as found in the Catalog of Federal Domestic Assistance.

An Environmental Evaluation with respect to the Disaster Payment Program is being completed. It has been determined that this action is not expected to have a significant impact on the quality of the human environment. In addition, it has been determined that this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

An interim rule was published in the **Federal Register** on November 19, 1986 (51 FR 41757) implementing the 1986 disaster payment program authorized by section 633 of the Agriculture, Rural Development and Related Agencies Appropriations Act, 1987, as included in Pub. L. 99–500 and 99–591. The interim rule provided for a disaster payment program for eligible producers for losses of 1986 crop production due to drought, excessive heat, flood, hail or excessive moisture in 1986. The interim rule also established the criteria for eligibility of individual producers to receive a disaster payment. A final rule, which was published on December 24, 1986 (51 FR 46593), amended the interim rule with respect to provisions for determining the payment rate for sugar beets and sugar cane and the provisions for determining payments for producers of nonprogram crops.

Based upon a review of existing conditions in eligible counties, it has been determined that producers of nonprogram crops who had actually incurred the costs and assumed the risk of planting such a crop in 1986 and are otherwise eligible for a 1986 disaster payment under this program should be eligible for disaster payments with respect to losses incurred on the acreage planted to the crop for harvest in 1986 without regard to prior year planting history. Accordingly, this interim rule amends the provisions of 7 CFR 1477.3(e) with respect to the eligible disaster acreage for nonprogram crops involving low yield losses in order to provide that such acreage shall be the 1986 acreage planted to harvest to such a crop, as determined by the county committee in accordance with instructions issued by the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service (ASCS).

List of Subjects in 7 CFR Part 1477

Crop insurance, Indemnity payments.

Interim Rule

Accordingly, the regulations at 7 CFR Part 1477 are amended to read as follows:

1. The authority citation for Part 1477 is revised to read as follows:

Authority: Sec. 633 of the Agriculture, Rural Development and Related Agencies Appropriations Act, 1987, as included in Pub. L. 99–500 and Pub. L. 99–591.

2. Section 1477.3(e) (2), (3) and (4) are added to read as follows:

§ 1477.3 Definitions.

* * * * *

(e) * * *

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(1) * * *

(2) For soybeans, sugar beets, sugar cane and peanuts, the sum of the 1986 acreage planted to the crop for harvest, as determined by the county committee in accordance with instructions issued by the Deputy Administrator, and the 1986 acreage which the county committee determines the producer was prevented from planting to the crop or any other nonconserving crop. Such sum shall not exceed the sum of the acreage planted to the crop for harvest in 1985 (or the corresponding year if there is an approved rotation for the crop on the farm) plus the prevented planted acreage in 1985.

(3) For prevented planted losses with respect to nonprogram crops, the 1986 acreage which the county committee determines the producer was prevented from planting to the crop or any other nonconserving crop. Such acreage shall not exceed the difference between the sum of the acreage planted to the crop for harvest in 1985 (or the corresponding year if there is an approved rotation for the crop on the farm) plus the prevented planted acreage in 1985 minus the actual 1986 planted acreage of the crop.

(4) For low yield losses with respect to nonprogram crops, the acreage planted to the crop for harvest in 1986, as determined by the county committee in accordance with instructions issued by the Deputy Administrator.

* * * * *

Signed at Washington, D.C. on January 30, 1987.

Richard E. Lyng

Secretary.

[FR Doc. 87-2707 Filed 2-9-87; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AGL-11]

Alteration of Federal Airways V-219, V-412 and V-456—Minnesota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters Federal Airways V-219, V-412 and V-456. These alteration actions are designed to accommodate an improved flow of traffic by enhancing the traffic metering program in the Minneapolis/St. Paul area.

EFFECTIVE DATE: 0901 UTC, April 9, 1987.

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9249.

SUPPLEMENTARY INFORMATION:

History

On October 22, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter VOR Federal Airways V-219, V-412 and V-456 (51 FR 37415). The actions were proposed to enhance air traffic control metering in the Minneapolis/St. Paul area and provide airspace configuration more suitable to the traffic flow. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters VOR Federal Airways V-219, V-412 and V-456. These alterations are deletion of that portion of V-219 between Mankato, MN, and Farmington, MN; the rerouting of that portion of V-412 now made up by the Flying Cloud, MN, VOR to the Minneapolis, MN, VOR; and the extension of V-456 from Mankato, MN, to Flying Cloud, MN.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-219 [Amended]

By removing the words "; Farmington, MN".

V-412 [Amended]

By removing the words "Flying Cloud, MN, 270° radials; Flying Cloud" and substituting the words "Minneapolis, MN, 258° radials; Minneapolis".

V-456 [Amended]

By removing the words ", to Mankato, MN." and substituting the words "; Mankato, MN; to Flying Cloud, MN".

Issued in Washington, DC, on February 3, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-2683 Filed 2-9-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 86-AAL-5]

Alteration of Restricted Area R-2205 Yukon, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the times of use for Restricted Area R-2205 located near Yukon, AK, indicating more accurately when the areas are being utilized. This action will reduce the time the restricted area is in effect.

EFFECTIVE DATE: 0901 UTC, April 9, 1987.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9245.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations changes the times of use for Restricted Area R-2205 located near Yukon, AK, from continuous to "0700-1900, local time Monday-Friday; other times by NOTAM." This action would amend the time of designation to reflect actual times of use and would reduce the time the restricted area is in effect, but would have no effect on the configuration of restricted airspace. Because this action is a minor amendment in which the public would not be particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 73.22 of Part 73 of the Federal Aviation Regulations was published in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

PART 73—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.22 [Amended]

2. Section 73.22 is amended as follows:

R-2205 Yukon, AK [Amended]

By removing the present Time of designation and by substituting the following:

Time of designation. 0700-1900, local time Monday-Friday; other times by NOTAM.

Issued in Washington, DC, on January 30, 1987.

Harold H. Downey,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-2681 Filed 2-9-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 95

[Docket No. 25182; Amdt. No. 335]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required FR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC, on February 3, 1987.

John S. Kern,

Director of Flight Standards.

Adoption of the Amendment

PART 95—[AMENDED]

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 GMT:

1. The authority citation for Part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354 and 1510; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended as follows:

BILLING CODE 4910-13-M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 33S EFFECTIVE DATE, FEBRUARY 12, 1987

FROM	TO	MEA

§95.1001 DIRECT ROUTES-U.S.

IS AMENDED TO READ IN PART

BARNES, MA VORTAC	KIBBE, MA FIX	2200
		MAA-17500
FRANKLIN, VA VORTAC	FRANKLIN, VA VORTAC 071/48	3000
		MAA-10000
HANCOCK, NY VORTAC	HANCOCK, NY VORTAC 035/30	3900
		MAA-17500
LANCASTER, PA VORTAC *2100 - MOCA	PADRE, PA FIX	*2600
		MAA-17500
LIBBR, WV FIX	CLARKSBURG, WV VOR/DME	3100
		MAA-17500
NANTUCKET, MA VORTAC *1900 - MOCA	BOSTON, MA VORTAC	*3900
		MAA-17500

IS AMENDED TO DELETE

ACOVE, NY FIX *4000 - MOCA	ALBANY, NY VORTAC	*5500
ALLENTOWN, PA VORTAC *3000 - MOCA	INT ABE VORTAC 069 & JFK VORTAC 292	*3300
COYLE, NJ VORTAC	ALBEK, NJ FIX	2000
		MAA- 7000
EAST TEXAS, PA VORTAC *2500 - MOCA	SOLBERG, NJ VORTAC	*2700
ELLAN, NY FIX *5500 - MOCA	INT SAX VORTAC 034 & ALB VORTAC 205	*6000
INT SAX VORTAC 034 & ALB VORTAC 205	ACOVE, NY FIX	5500
KENNEBUNK, ME VORTAC *9000 - MRA	*SCUPP, MA FIX	10000
		MAA-39000
SOLBERG, NJ VORTAC	SPARTA, NJ VORTAC	3000
		MAA- 7000

§95.1001 DIRECT ROUTES-U.S.

ATLANTIC ROUTES

[illegible] IS ADDED TO READ

*MODUX, PR FIX *4000 - MRA	ST CROIX, VI VOR/DME COP 108 MODUX	4000
		MAA-45000

§95.6003 VOR FEDERAL AIRWAY 3

IS AMENDED TO READ IN PART

SOLBERG, NJ VORTAC	CARMEL, NY VORTAC	2500
EAGRE, CT FIX *2500 - MOCA	LAYER, MA FIX	*3000

§95.6006 VOR FEDERAL AIRWAY 6

IS AMENDED TO READ IN PART

ALLENTOWN, PA VORTAC *2100 - MOCA	SOLBERG, NJ VORTAC	*3000
SOLBERG, NJ VORTAC	EMPYR, NY FIX	2000
EMPYR, NY FIX	LA GUARDIA, NY VOR/DME	2700

§95.6012 VOR FEDERAL AIRWAY 12

IS AMENDED TO READ IN PART

ALLEGHENY, PA VORTAC *3000 - MOCA	MILWO, PA FIX	*4000
BOYER, PA FIX *2400 - MOCA	EAST TEXAS, PA VORTAC	*3000

§95.6016 VOR FEDERAL AIRWAY 16

IS AMENDED TO READ IN PART

FRIE, PA VORTAC	HAWIT, PA FIX	3200
GARDNER, MA VORTAC *2500 - MOCA	SPENO, MA FIX	*3000

§95.6016 VOR FEDERAL AIRWAY 16

IS AMENDED TO READ IN PART

NORWICH, CT VORTAC	WOONS, RI FIX	2500

§95.6020 VOR FEDERAL AIRWAY 20

IS AMENDED TO READ IN PART

AMELIA, VA FIX *1500 - MOCA	RICHMOND, VA VORTAC	*2000

§95.6025 VOR FEDERAL AIRWAY 25

IS AMENDED TO READ IN PART

SUTRO, CA FIX	GOBBS, CA FIX	3000
GOBBS, CA FIX	STINS, CA FIX	3500

§95.6030 VOR FEDERAL AIRWAY 30

IS AMENDED TO READ IN PART

FROM	TO	MEA

§95.6030 VOR FEDERAL AIRWAY 30—Continued

EAST TEXAS, PA VORTAC	LANNA, NJ FIX	2600
LANNA, NJ FIX	SOLBERG, NJ VORTAC	2000

§95.6031 VOR FEDERAL AIRWAY 31

IS AMENDED TO READ IN PART

ROCHESTER, NY VORTAC *2200 - MOCA	AIRCO, NY FIX	*4000
AIRCO, NY FIX *2200 - MOCA	BUFFALO, NY FIX	*4000
BUFFALO, NY FIX *2500 - MOCA	U.S. CANADIAN BORDER	*3100

§95.6033 VOR FEDERAL AIRWAY 33

IS AMENDED TO READ IN PART

HARRISBURG, PA VORTAC *3400 - MOCA	RASHE, PA FIX	*4800
RASHE, PA FIX	PHILIPSBURG, PA VORTAC	4000

§95.6034 VOR FEDERAL AIRWAY 34

IS AMENDED TO DELETE

ROCHESTER, NY VORTAC	U.S. CANADIAN BORDER	2400

§95.6036 VOR FEDERAL AIRWAY 36

IS AMENDED TO READ IN PART

U.S. CANADIAN BORDER	BUFFALO, NY VORTAC	2800
LAKE HENRY, PA VORTAC *3500 - MOCA	SPARTA, NJ VORTAC	*4000
SPARTA, NJ VORTAC	LA GUARDIA, NY VOR/DME	2500
LA GUARDIA, NY VOR/DME *3000 - MOCA	DEER PARK, NY VORTAC	*4000

§95.6038 VOR FEDERAL AIRWAY 38

IS AMENDED TO READ IN PART

NARCUM, VA VORTAC *1400 - MOCA	CAPE CHARLES, VA VORTAC	*2000

§95.6039 VOR FEDERAL AIRWAY 39

IS AMENDED TO READ IN PART

LANCASTER, PA VORTAC *2400 - MOCA	BOYER, PA FIX	*2900
BOYER, PA FIX *2400 - MOCA	EAST TEXAS, PA VORTAC	*3000
EAST TEXAS, PA VORTAC	SPARTA, NJ VORTAC	2700
SPARTA, NJ VORTAC	CARMEL, NY VORTAC	2600
AUGUSTA, ME VORTAC *2000 - MOCA	RINTH, ME FIX	*3000

FROM	TO	MEA

§95.6051 VOR FEDERAL AIRWAY 51

IS AMENDED TO READ IN PART

SHELBYVILLE, IN VORTAC	LEBAN, IN FIX	2900
LEBAN, IN FIX	BOILER, IN VORTAC	2700

§95.6091 VOR FEDERAL AIRWAY 91

IS AMENDED TO READ IN PART

SARDI, NY FIX *1700 - MOCA	CALVERTON, NY VORTAC	*2500

§95.6093 VOR FEDERAL AIRWAY 93

IS AMENDED TO READ IN PART

BALTIMORE, MD VORTAC *2400 - MOCA	LANCASTER, PA VORTAC	*4000

§95.6097 VOR FEDERAL AIRWAY 97

IS AMENDED TO READ IN PART

SHELBYVILLE, IN VORTAC	LEBAN, IN FIX	2900
LEBAN, IN FIX	BOILER, IN VORTAC	2700

IS AMENDED TO DELETE

SHELBYVILLE, IN VORTAC	INDIANAPOLIS, IN VORTAC	
VIA W ALTER	VIA W ALTER.	2900
INDIANAPOLIS, IN VORTAC	LEBAN, IN FIX	
VIA W ALTER.	VIA W ALTER	2700
LEBAN, IN FIX	OCKEL, IN FIX	
VIA W ALTER.	VIA W ALTER	2900
OCKEL, IN FIX	BOILER, IN VORTAC	
VIA W ALTER	VIA W ALTER.	*2600
*2000 - MOCA		

§95.6099 VOR FEDERAL AIRWAY 99

IS AMENDED TO READ IN PART

EAGRE, CT FIX *2500 - MOCA	LAYER, MA FIX	*3000
AMNOT, MA FIX	LAWRENCE, MA VOR/DME	2400

§95.6139 VOR FEDERAL AIRWAY 139

IS AMENDED TO READ IN PART

DULUTH, MN VORTAC	HIBBING, MN VOR/DME	3300

IS AMENDED TO DELETE

DULUTH, MN VORTAC VIA E ALTER.	HIBBING, MN VOR/DME VIA E ALTER	3000

FROM	TO	MEA
§95.6129 VOR FEDERAL AIRWAY 129—Continued		
HIBBING, MN VOR/DME VIA W ALTER *3100 - MOCA	BEBEL, MN FIX VIA W ALTER	*5000
BEBEL, MN FIX VIA W ALTER	INTERNATIONAL FALLS, MN VORTAC VIA W ALTER	3000
§95.6139 VOR FEDERAL AIRWAY 139		
IS AMENDED TO READ IN PART		
BEADS, NY FIX *1600 - MOCA	HAMPTON, NY VORTAC	*2500
CELTS, MA FIX *5000 - MRA **1200 - MOCA	*TOWNN, MA FIX	**3000
§95.6147 VOR FEDERAL AIRWAY 147		
IS AMENDED BY ADDING		
YARDLEY, PA VORTAC	EAST TEXAS, PA VORTAC	2500
IS AMENDED TO DELETE		
POTTSTOWN, PA VORTAC *4000 - MRA **2400 - MOCA	*HIKES, PA FIX	**2900
HIKES, PA FIX *2400 - MOCA	EAST TEXAS, PA VORTAC	*2900
§95.6157 VOR FEDERAL AIRWAY 157		
IS AMENDED TO READ IN PART		
DALTO, VA FIX	RICHMOND, VA VORTAC	2000
MUFFLA, NJ FIX	COBUS, NJ FIX	2000
COBUS, NJ FIX *1500 - MOCA	ROBBINSVILLE, NJ VORTAC	*2000
ROBBINSVILLE, NJ VORTAC *1500 - MOCA	COLTS NECK, NJ VORTAC	*2000
COLTS NECK, NJ VORTAC *2700 - MOCA	NYACK, NY FIX	*4000
NYACK, NY FIX *2500 - MOCA	KINGSTON, NY VORTAC	*4000
KINGSTON, NY VORTAC *2100 - MOCA	ATHOS, NY FIX	*2600
§95.6161 VOR FEDERAL AIRWAY 161		
IS AMENDED TO READ IN PART		
TULSA, OK VORTAC	NOVEL, OK FIX	3000
§95.6164 VOR FEDERAL AIRWAY 164		
IS AMENDED TO READ IN PART		
BUFFALO, NY VORTAC *1900 - MOCA	BULGE, NY FIX	*2500

FROM	TO	MEA
§95.6164 VOR FEDERAL AIRWAY 164—Continued		
BULGE, NY FIX *2500 - MOCA	U.S. CANADIAN BORDER	*3100
§95.6170 VOR FEDERAL AIRWAY 170		
IS AMENDED TO DELETE		
WORTHINGTON, MN VOR/DME VIA N ALTER *2800 - MOCA	PECOR, MN FIX VIA N ALTER	*3400
PECOR, MN FIX VIA N ALTER	FAIRMONT, MN VOR/DME VIA N ALTER	3400
§95.6171 VOR FEDERAL AIRWAY 171		
IS AMENDED TO READ IN PART		
SHELS, MN FIX	GRAND FORKS, ND VOR/DME	2700
§95.6181 VOR FEDERAL AIRWAY 181		
IS AMENDED TO DELETE		
YANKTON, SD VOR/DME VIA W ALTER	SIOUX FALLS, SD VORTAC VIA W ALTER	3400
SIOUX FALLS, SD VORTAC VIA E ALTER *3200 - MOCA	WATERTOWN, SD VORTAC VIA E ALTER	*3700
WATERTOWN, SD VORTAC VIA E ALTER	FARGO, ND VORTAC VIA E ALTER	5000
FARGO, ND VORTAC VIA E ALTER	GRAND FORKS, ND VOR/DME VIA E ALTER	2600 MAA-16500
§95.6184 VOR FEDERAL AIRWAY 184		
IS AMENDED TO READ IN PART		
PHILIPSBURG, PA VORTAC	RASHE, PA FIX	4000
RASHE, PA FIX *3400 - MOCA	HARRISBURG, PA VORTAC	*4000
PADRE, PA FIX	MODENA, PA VORTAC	2500
CEDAR LAKE, NJ VORTAC	ATLANTIC CITY, NJ VORTAC	1800
§95.6188 VOR FEDERAL AIRWAY 188		
IS AMENDED TO READ IN PART		
WILKES-BARRE, PA VORTAC *3500 - MOCA	SPARTA, NJ VORTAC	*4000

FROM	TO	MEA
§95.6191 VOR FEDERAL AIRWAY 191		
IS AMENDED BY ADDING		
DULUTH, MN VORTAC	HIBBING, MN VOR/DME	3300
HIBBING, MN VOR/DME	GRAND RAPIDS, MN VOR/DME	3000
GRAND RAPIDS, MN VOR/DME	BEMIDJI, MN VORTAC	3400
BEMIDJI, MN VORTAC	THIEF RIVER FALLS, MN VOR/DME	3000
THIEF RIVER FALLS, MN VOR/DME	GRAND FORKS, ND VOR/DME	2800
§95.6196 VOR FEDERAL AIRWAY 196		
IS AMENDED TO READ IN PART		
HOBBY, TX VOR/DME	SABINE PASS, TX VORTAC	2000
§95.6198 VOR FEDERAL AIRWAY 198		
IS AMENDED TO READ IN PART		
HOBBY, TX VOR/DME	SABINE PASS, TX VORTAC	2000
§95.6199 VOR FEDERAL AIRWAY 199		
IS AMENDED TO READ IN PART		
SUTRO, CA FIX	GOBBS, CA FIX	3000
GOBBS, CA FIX	STINS, CA FIX	3500
STINS, CA FIX	DUBRY, CA FIX	4500
DUBRY, CA FIX	MENDOCINO, CA VORTAC	6000
§95.6205 VOR FEDERAL AIRWAY 205		
IS AMENDED TO READ IN PART		
SCUPP, MA FIX *5000 - MRA **2100 - MOCA	*SILVE, NH FIX	**3000
§95.6213 VOR FEDERAL AIRWAY 213		
IS AMENDED TO READ IN PART		
WOODSTOWN, NJ VORTAC *2000 - MOCA	HOLEY, NJ FIX	*3000
WARRD, NJ FIX *2500 - MOCA	SHOTT, NJ FIX	*3000 MAA-10000
§95.6217 VOR FEDERAL AIRWAY 217		
IS AMENDED TO READ IN PART		

FROM	TO	MEA
§95.6217 VOR FEDERAL AIRWAY 217—Continued		
DULUTH, MN VORTAC	HIBBING, MN VOR/DME	3300
§95.6220 VOR FEDERAL AIRWAY 220		
IS AMENDED BY ADDING		
NORFOLK, ME VOR	YANKTON, SD VOR/DME	3700
YANKTON, SD VOR/DME	SIOUX FALLS, SD VORTAC	3400
SIOUX FALLS, SD VORTAC	WATERTOWN, SD VORTAC	3700
WATERTOWN, SD VORTAC	FARGO, ND VORTAC	5000
FARGO, ND VORTAC	GRAND FORKS, ND VOR/DME	2700 MAA-16500
§95.6229 VOR FEDERAL AIRWAY 229		
IS AMENDED TO READ IN PART		
SPENO, MA FIX *2500 - MOCA	GARDNER, MA VORTAC	*3000
§95.6252 VOR FEDERAL AIRWAY 252		
IS AMENDED BY ADDING		
ROBBINSVILLE, NJ VORTAC	SLYNG, NJ FIX	2600
SLYNG, NJ FIX *2700 - MOCA	COATE, NY FIX	*5000
COATE, NY FIX *3100 - MOCA	HUGUENOT, NY VORTAC	*4000
IS AMENDED TO READ IN PART		
GENESEO, NY VORTAC *2200 - MOCA	BULGE, NY FIX	*4000
BULGE, NY FIX *2500 - MOCA	U.S. CANADIAN BORDER	*3100
§95.6265 VOR FEDERAL AIRWAY 265		
IS AMENDED BY ADDING		
DUNKIRK, NY VORTAC	U.S. CANADIAN BORDER	1900
IS AMENDED TO READ IN PART		
HARRISBURG, PA VORTAC *3400 - MOCA	RASHE, PA FIX	*4000
RASHE, PA FIX	PHILIPSBURG, PA VORTAC	4000
§95.6266 VOR FEDERAL AIRWAY 266		
IS AMENDED TO READ IN PART		
FRANKLIN, VA VORTAC *5000 - MCA SUNNS FIX, SE BND **1400 - MOCA	*SUNNS, NC FIX	**2000

FROM	TO	MEA
§95.6266 VOR FEDERAL AIRWAY 266—Continued		
SUNNS, NC FIX	ELIZABETH CITY, NC VOR/DME	*5000
*4000 - MOCA		
§95.6276 VOR FEDERAL AIRWAY 276		
IS AMENDED BY ADDING		
MANTA, NJ FIX	PREPI, NY FIX	*3000
*2000 - MOCA		
IS AMENDED TO READ IN PART		
YARDLEY, PA VORTAC	ROBBINSVILLE, NJ VORTAC	2100
§95.6302 VOR FEDERAL AIRWAY 302		
IS AMENDED TO READ IN PART		
AUGUSTA, ME VORTAC	AMCOR, ME FIX	2200
§95.6303 VOR FEDERAL AIRWAY 303		
IS AMENDED BY ADDING		
INDIANAPOLIS, IN VORTAC	WELDO, IN FIX	2900
WELDO, IN FIX	KOKOMO, IN VORTAC	2700
§95.6308 VOR FEDERAL AIRWAY 308		
IS AMENDED TO READ IN PART		
BEADS, NY FIX	HAMPTON, NY VORTAC	*2500
*1600 - MOCA		
§95.6312 VOR FEDERAL AIRWAY 312		
IS AMENDED BY ADDING		
DRIFT, NJ FIX	SHALL, NY FIX	2000
§95.6403 VOR FEDERAL AIRWAY 403		
IS AMENDED TO READ IN PART		
BUCKS, PA FIX	POTTSTOWN, PA VORTAC	*3000
*2100 - MOCA		
§95.6405 VOR FEDERAL AIRWAY 405		
IS AMENDED TO READ IN PART		
BUCKS, PA FIX	POTTSTOWN, PA VORTAC	*3000
*2100 - MOCA		

FROM	TO	MEA
§95.6408 VOR FEDERAL AIRWAY 408		
IS AMENDED TO READ		
BALTIMORE, MD VORTAC	KLACK, PA	*4000
*2400 - MOCA		
KLACK, PA	MODENA, PA VORTAC	*5000
*2000 - MOCA		
MODENA, PA VORTAC	POTTSTOWN, PA VORTAC	2400
POTTSTOWN, PA VORTAC	*HIKES, PA FIX	**2900
*6000 - MRA		
**2400 - MOCA		
HIKES, PA FIX	EAST TEXAS, PA VORTAC	2900
EAST TEXAS, PA VORTAC	ALLENTOWN, PA VORTAC	*3000
*2400 - MOCA		
ALLENTOWN, PA VORTAC	LAKE HENRY, PA VORTAC	4000
LAKE HENRY, PA VORTAC	NOAAH, NY FIX	4000
§95.6430 VOR FEDERAL AIRWAY 430		
IS AMENDED TO DELETE		
GRAND FORKS, ND VOR/DME	THIEF RIVER FALLS, MN VOR/DME	
VIA N ALTER	VIA N ALTER	2800
THIEF RIVER FALLS, MN VOR/DME	BEMIDJI, MN VORTAC	
VIA N ALTER	VIA N ALTER	3000
GRAND RAPIDS, MN VOR/DME	HIBBING, MN VOR/DME	
VIA N ALTER	VIA N ALTER	3000
HIBBING, MN VOR/DME	DULUTH, MN VORTAC	
VIA N ALTER	VIA N ALTER	3000
§95.6433 VOR FEDERAL AIRWAY 433		
IS AMENDED TO READ IN PART		
MITCH, MD FIX	SWANN, MD FIX	*3000
*2200 - MOCA		
SWANN, MD FIX	KERNO, MD FIX	*2500
*1400 - MOCA		
KERNO, MD FIX	DUPONT, DE VORTAC	2000
DUPONT, DE VORTAC	YARDLEY, PA VORTAC	2400
YARDLEY, PA VORTAC	METRO, NJ FIX	*3000
*2000 - MOCA		MAA-10000
METRO, NJ FIX	GRITY, NJ FIX	*4000
*1700 - MOCA		
GRITY, NJ FIX	LA GUARDIA, NY VOR/DME	2700
§95.6445 VOR FEDERAL AIRWAY 445		
IS AMENDED TO READ IN PART		
MITCH, MD FIX	SWANN, MD FIX	*3000
*2200 - MOCA		
SWANN, MD FIX	KERNO, MD FIX	*2500
*1400 - MOCA		

FROM	TO	MEA
§95.6445 VOR FEDERAL AIRWAY 445—Continued		
KERNO, MD FIX	DUPONT, DE VORTAC	2000
DUPONT, DE VORTAC	YARDLEY, PA VORTAC	2400
YARDLEY, PA VORTAC	EMPYR, NY FIX	2100
EMPYR, NY FIX	LA GUARDIA, NY VOR/DME	2700
STAMS, CT FIX	VAAMP, CT FIX	2500
§95.6451 VOR FEDERAL AIRWAY 451		
IS AMENDED TO READ IN PART		
CELTS, MA FIX	*TONNI, MA FIX	**3000
*5000 - MRA		
**1200 - MOCA		
TONNI, MA FIX	*WIMPY, MA FIX	**5000
*5000 - MRA		
**1300 - MOCA		
WIMPY, MA FIX	*EXALT, NH FIX	**5000
*5500 - MRA		
**1300 - MOCA		
§95.6457 VOR FEDERAL AIRWAY 457		
IS AMENDED BY ADDING		
LANCASTER, PA VORTAC	BROADWAY, NJ VOR/DME	*3000
*2600 - MOCA		
§95.6474 VOR FEDERAL AIRWAY 474		
IS AMENDED TO READ IN PART		
PADRE, PA FIX	MODENA, PA VORTAC	2500
§95.6475 VOR FEDERAL AIRWAY 475		
IS AMENDED TO READ IN PART		
NORWICH, CT VORTAC	PROVIDENCE, RI VORTAC	*2400
*1900 - MOCA		
§95.6477 VOR FEDERAL AIRWAY 477		
IS AMENDED TO READ IN PART		
HUMBLE, TX VORTAC	LEONA, TX VORTAC	3000
§95.6479 VOR FEDERAL AIRWAY 479		
IS AMENDED TO READ IN PART		
MAFLA, NJ FIX	YARDLEY, PA VORTAC	*2500
*1700 - MOCA		

FROM	TO	MEA
§95.6483 VOR FEDERAL AIRWAY 483		
IS AMENDED TO READ IN PART		
LYSAN, NY FIX	SODUS, NY FIX	2300
§95.6505 VOR FEDERAL AIRWAY 505		
IS AMENDED BY ADDING		
GRANTSBURG, WI VOR	*BARUM, MN FIX	**3300
*4000 - MRA		MAA-10000
**2500 - MOCA		
BARUM, MN FIX	DULUTH, MN VORTAC	3000
DULUTH, MN VORTAC	HIBBING, MN VOR/DME	3300
HIBBING, MN VOR/DME	BEBEL, MN FIX	*5000
*3100 - MOCA		
BEBEL, MN FIX	INTERNATIONAL FALLS, MN VORTAC	3000
§95.6522 VOR FEDERAL AIRWAY 522		
IS AMENDED TO READ IN PART		
ERIE, PA VORTAC	HAMIT, PA FIX	3200
§95.6556 VOR FEDERAL AIRWAY 556		
IS AMENDED BY ADDING		
SCHOLES, TX VORTAC	SABINE PASS, TX VORTAC	2000
IS AMENDED TO READ IN PART		
EAGLE LAKE, TX VOR/DME	KEEDS, TX FIX	2500
KEEDS, TX FIX	SCHOLES, TX VORTAC	3000
§95.6613 VOR FEDERAL AIRWAY 613		
IS AMENDED TO READ		
ALLENTOWN, PA VORTAC	WILKES-BARRE, PA VORTAC	4000
§95.6191 VOR FEDERAL AIRWAY 191		
IS AMENDED TO DELETE		
RHINELANDER, WI VORTAC VIA E ALTER	IRONWOOD, MI VORTAC VIA E ALTER	3500

FROM	TO	MEA	MAA
§95.7037 JET ROUTE NO. 37			
	IS AMENDED TO READ IN PART		
SPARTANBURG, SC VORTAC	GORDONSVILLE, VA VORTAC	37000	45000
§95.7048 JET ROUTE NO. 48			
	IS AMENDED TO READ		
PULASKI, VA VORTAC	CASANOVA, VA VORTAC	18000	45000
CASANOVA, VA VORTAC	WESTMINSTER, MD VORTAC	18000	45000
WESTMINSTER, MD VORTAC	POTTSTOWN, PA VORTAC	18000	45000
POTTSTOWN, PA VORTAC	CARMEL, NY VORTAC	18000	20000
CARMEL, NY VORTAC	BOSTON, MA VORTAC	18000	45000
§95.7070 JET ROUTE NO. 70			
	IS AMENDED TO READ IN PART		
JAMESTOWN, NY VOR/DME	WILKES-BARRE, PA VORTAC	18000	45000
WILKES-BARRE, PA VORTAC	STILLWATER, NJ VORTAC	18000	45000
STILLWATER, NJ VORTAC	LA GUARDIA, NY VOR/DME	18000	45000
LA GUARDIA, NY VOR/DME	KENNEDY, NY VORTAC	18000	45000
§95.7075 JET ROUTE NO. 75			
	IS AMENDED TO READ IN PART		
WESTMINSTER, MD VORTAC	MODENA, PA VORTAC	18000	45000
MODENA, PA VORTAC	SOLBERG, NJ VORTAC	18000	32000
SOLBERG, NJ VORTAC	CARMEL, NY VORTAC	18000	32000
CARMEL, NY VORTAC	BOSTON, MA VORTAC	18000	45000
§95.7077 JET ROUTE NO. 77			
	IS AMENDED TO READ		
WESTMINSTER, MD VORTAC	POTTSTOWN, PA VORTAC	18000	45000
POTTSTOWN, PA VORTAC	BROADWAY, NJ VOR/DME	18000	45000
BROADWAY, NJ VOR/DME	SPARTA, NJ VORTAC	18000	45000
SPARTA, NJ VORTAC	BARNES, MA VORTAC	18000	45000
BARNES, MA VORTAC	BOSTON, MA VORTAC	18000	45000
§95.7078 JET ROUTE NO. 78			
	IS AMENDED TO READ IN PART		
PHILIPSBURG, PA VORTAC	MILTON, PA VORTAC	18000	45000
§95.7080 JET ROUTE NO. 80			

FROM	TO	MEA	MAA
§95.7080 JET ROUTE NO. 80—Continued			
	IS AMENDED TO READ IN PART		
BELLAIRE, OH VORTAC	EAST TEXAS, PA VORTAC	18000	45000
EAST TEXAS, PA VORTAC	SPARTA, NJ VORTAC	18000	45000
SPARTA, NJ VORTAC	BARNES, MA VORTAC	18000	45000
BARNES, MA VORTAC	BANGOR, ME VORTAC	18000	45000
§95.7146 JET ROUTE NO. 146			
	IS AMENDED TO READ IN PART		
KEATING, PA VORTAC	MILTON, PA VORTAC	18000	45000
MILTON, PA VORTAC	ALLENTOWN, PA VORTAC	18000	45000
ALLENTOWN, PA VORTAC	KENNEDY, NY VORTAC	18000	45000
§95.7211 JET ROUTE NO. 211			
	IS ADDED TO READ		
WESTMINSTER, MD VORTAC	JOHNSTOWN, PA VORTAC	18000	45000
§95.7217 JET ROUTE NO. 217			
	IS ADDED TO READ		
GRACE, PA FIX	CLARION, PA VORTAC	18000	45000
CLARION, PA VORTAC	KEATING, PA VORTAC	18000	45000
KEATING, PA VORTAC	HANCOCK, NY VORTAC	18000	45000
§95.7220 JET ROUTE NO. 220			
	IS ADDED TO READ		
ARMEL, VA VORTAC	STONYFORK, PA VORTAC	18000	23000
STONYFORK, PA VORTAC	WELLSVILLE, NY VORTAC	18000	45000
WELLSVILLE, NY VORTAC	BUFFALO, NY VORTAC	18000	39000
§95.7221 JET ROUTE NO. 221			
	IS ADDED TO READ		
SPARTA, NJ VORTAC	LAKE HENRY, PA VORTAC	18000	45000
LAKE HENRY, PA VORTAC	WELLSVILLE, NY VORTAC	18000	25000
WELLSVILLE, NY VORTAC	BUFFALO, NY VORTAC	18000	39000
§95.7228 JET ROUTE NO. 228			
	IS ADDED TO READ		
BECKLEY, WV VORTAC	LINDEN, VA VORTAC	18000	45000

FROM	TO	MEA	MAA
§95.7228 JET ROUTE NO. 228—Continued			
LINDEN, VA VORTAC	LANCASTER, PA VORTAC	18000	45000
LANCASTER, PA VORTAC	BROADWAY, NJ VOR/DME	18000	45000
BROADWAY, NJ VOR/DME	SPARTA, NJ VORTAC	18000	45000
SPARTA, NJ VORTAC	ALBANY, NY VORTAC	18000	45000
ALBANY, NY VORTAC	PLATTSBURGH, NY VORTAC	18000	45000
PLATTSBURGH, NY VORTAC	U S CANADIAN BORDER	18000	45000
§95.7230 JET ROUTE NO. 230			
IS AMENDED TO READ			
BELLAIRE, OH VORTAC	ROBBINSVILLE, NJ VORTAC	18000	45000
§95.7504 JET ROUTE NO. 504			
IS AMENDED TO READ IN PART			
SLATE RUN, PA VORTAC	WILLIAMSPORT, PA VORTAC	18000	33000
WILLIAMSPORT, PA VORTAC	BROADWAY, NJ VOR/DME	18000	31000

§95.8005 JET ROUTES CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
J-48			
IS AMENDED BY ADDING			
PULASKI, VA VORTAC	CASANOVA, VA VORTAC	126	PULASKI
J-91			
IS AMENDED TO DELETE			
KNOXVILLE, TN VORTAC	HENDERSON, WV VORTAC	135	KNOXVILLE
J-220			
IS AMENDED BY ADDING			
ARMEL, VA VORTAC	STONYFORK, PA VORTAC	111	ARMEL
J-221			
IS AMENDED BY ADDING			
LAKE HENRY, PA VORTAC	WELLSVILLE, NY VORTAC	50	LAKE HENRY

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM 84-14-025 and Order No. 406-C]

18 CFR Part 271

Deregulation and Other Pricing Charges on January 1, 1985, Under the Natural Gas Policy Act; Order Clarification

Issued February 3, 1987.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; clarification.

SUMMARY: On November 16, 1984, the Commission issued a final rule, Order No. 406, amending its regulations to prepare for price deregulation under section 121 of the NGPA for certain types of natural gas subject to sections 102, 103, 105, and 106, and published new maximum lawful prices under sections 103(b) and 105(b)(3). The Commission received a request for clarification of certain language within the preamble of Order No. 406 concerning "production-related costs" and its applicability to gas deregulated on November 1, 1979. This order clarifies the language in question.

EFFECTIVE DATE: This order, issued subject to leave of court, will be effective March 12, 1987.

FOR FURTHER INFORMATION CONTACT: Arthur W. Iler, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt, and C.M. Naeve.

I. Introduction

The Federal Energy Regulatory Commission is issuing a clarification of Order No. 406[1] concerning the applicability of the Commission's regulations[2] which allow and limit the recovery of production-related costs by a first seller of gas, in connection with gas which is no longer subject to the price ceilings of the Natural Gas Policy Act of 1978 (NGPA) or the Commission's jurisdiction under the Natural Gas Act. The Commission is clarifying the determination that the Commission's regulations do not act as authorization for or limitation on the amount parties may allocate for production-related costs in a contract for the sale of deregulated gas.

II. Background

NGPA section 107(c) (1), (2), (3) and (4) "high-cost" natural gas was deregulated as to price pursuant to NGPA section 121(b) on November 1, 1979, the effective date of the Commission's incremental pricing regulations.[3] The gas was also removed from the Commission's Natural Gas Act jurisdiction by operation of NGPA section 601(a). On November 16, 1984, the Commission issued Order No. 406 to implement NGPA section 121(a) which deregulated the price for NGPA section 102(c) "new natural gas" and NGPA section 103(c) "new, onshore production" gas produced from depths below 5,000 feet, effective January 1, 1985. NGPA section 121(a) also deregulated the price of intrastate gas categorized under NGPA sections 105 and 106(b), under certain circumstances, if the price paid, or the price which would have been paid absent regulation, for such gas was in excess of $1.00 per MMBtu on December 31, 1984.

On April 29, 1986, FMF Oil & Gas Properties, Inc. (FMF) petitioned the Commission for clarification of Order No. 406 pursuant to Rule 207 of the Commission's Rules of Practice and Procedure.[4] Specifically, FMF seeks clarification of the applicability of certain language in Order No. 406 to contracts for the sale of gas deregulated prior to the issuance of Order No. 406, that contain provisions for the payment of production-related costs. FMF argues that payment of production-related costs provided for by contract are not prohibited just because the gas is decontrolled.

III. Discussion

FMF sells NGPA section 107(c) (1), (2), (3), or (4) "high-cost" gas to Columbia Gas Transmission Corporation (Columbia). FMF has made its request because Columbia has ceased paying for production-related costs on the basis of its interpretation of Order No. 406. Specifically, FMF is concerned with the language in Order No. 406 which provides:

> The Commission believes that the allowances in § 271.1104 [of the Commission's Regulations, 18 CFR 271.1104 (1986)] for production-related costs should cease to apply to gas that is deregulated on January 1, 1985. Because the price for deregulated gas will be determined by market forces, presumably any production-related costs will be considered in the price ultimately charged.[5]

FMF argues that Order No. 406 should be clarified to provide that deregulation of NGPA section 107(c) (1)–(4) "high-cost" gas on November 1, 1979, did not render such gas ineligible for the receipt of such production-related costs as are provided for in its contract with Columbia. In the alternative, FMF argues that Order No. 406 should be clarified to permit allowances for production-related costs attributable to sales of "high-cost" gas made before the effective date of Order No. 406. FMF states that it relied on its contract authorization to collect such costs since the Commission's Order No. 78,[6] which implemented the NGPA's deregulation of the high-cost gas at issue here, did not address the availability of production-related costs for such gas. FMF argues that it should not be precluded from collecting such costs by extension of the above-quoted language in Order No. 406, issued in 1984, to gas deregulated by Order No. 78, issued in 1980.

Columbia argues [7] that the principles of Order No. 406 also apply to gas deregulated in 1979. Columbia has refused to pay FMF for production-related costs provided for in its contract with FMF based on its analysis of the above-quoted language in Order No. 406. Columbia argues that Order No. 406 clearly provides that after deregulation, provisions in a gas sales contract for recovery of production-related costs are not enforceable because an allowance for the recovery of such costs is deemed

[1] Deregulation and Other Pricing Changes on January 1, 1985, under the Natural Gas Policy Act, 49 FR 46,874 (Nov. 29, 1984), FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,614. Order No. 406 is currently on appeal to the United States Court of Appeals for the Tenth Circuit in Martin Oil Service, Inc. *et al.* v. FERC, Docket Nos. 84–2756 *et al.* (argued Sept. 9, 1986). Therefore, this order is issued subject to leave of court.

[2] 18 CFR 271.1104 (1986).

[3] Regulations Implementing the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978, 44 FR 57,726 (Oct. 5, 1979), FERC Stats. & Regs. [Regulations Preambles 1977–1981] ¶ 30,085. Interim Rules Defining and Deregulating Certain High-Cost Natural Gas, 44 FR 61,950 (Oct. 29, 1979) F.E.R.C. Stats. & Regs. [Regulations Preambles 1977–1981] ¶ 30,094.

[4] 18 CFR 385.207 (1986).

[5] 49 FR at 46,882, FERC Stats. & Regs. [Regulations Preambles 1982–1985] at 31,235.

[6] Final Rules Defining and Deregulating Certain High-Cost Gas, 45 FR 28,092 (April 28, 1980) (Order No. 78), FERC Stats. & Regs. [Regulations Preambles 1977–1981] ¶ 30,147.

[7] Columbia Gas Transmission Corporation filed on May 30, 1986, an untimely answer to FMF's request for clarification. Nevertheless, the Commission has considered Columbia's answer in order to provide full and fair consideration of the issues presented in this proceeding.

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to be included in the price ultimately agreed to by the parties.

Columbia is correct in stating that the principles of Order No. 406 are equally applicable to gas deregulated on November 1, 1979. However, FMP and Columbia have misinterpreted the Commission's intent when it issued Order No. 406 and Congress' intent when it deregulated the gas in question. Congress intended to allow the market to control the price for deregulated gas. Order No. 406 merely provides that any allowance for production-related costs should be determined by market forces, thus eliminating the regulations implementing NGPA section 110 as a limit on the amount which may be allocated in a contract to cover production-related costs.[8] In Order No. 406 we concluded that it would be inconsistent with Congressional intent for the Commission to implement rules which deregulate the price of gas while leaving any component of the price subject to a ceiling. Thus, Order No. 406 does not stand for the proposition, as both parties seem to have mistakenly assumed, that a freely negotiated contract for the sale of deregulated gas may not contain a provision which permits an allowance for production-related costs.

The Commission has no authority to require the parties to a contract for deregulated gas to include or exclude any pricing provisions.[9] The Commission had no intent, when issuing Order No. 406, to prohibit the parties to a freely negotiated contract from including in their contract a separate pricing provision for production-related costs. Nor did we intend to imply that production-related costs are not collectible unless thay are included in the ultimately agreed upon commodity price. In sum, the Commission's rules neither provide for nor prohibit the inclusion of such contract terms and to the extent that the parties disagree on the effect of such terms, their remedy lies with a court of competent jurisdiction rather than with this Commission.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2638 Filed 2-9-87; 8:45 am]

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[8] FERC Stats. & Regs. [Regulation Preambles 1982-1985] at 31,235.

[9] This order is intended merely to clarify Order No. 406 and does not construe any clause in the contract

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203 and 234

[Docket No. R-87-1296; FR-2197]

Refinancing of FHA Insured Single Family Mortgages

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This rule revises HUD's regulations concerning the insurance of mortgages given to refinance existing FHA-insured single family mortgages. It also extends the authority to insure refinancing mortgages to FHA-insured mortgages covering units in condominium projects. In essence, the rule extends the maximum term allowable on the refinancing mortgage from the unexpired term of the existing FHA insured mortgage to the unexpired term plus twelve years, but not exceeding thirty years.

DATES: Effective date: March 23, 1987.

Comment due date: April 13, 1987.

FOR FURTHER INFORMATION CONTACT: Morris Carter, Director, Single Family Development Division, Department of Housing and Urban Development, Room 9270, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-6720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The current trend toward lower mortgage interest rates makes it advantageous for many FHA mortgagors who purchased their homes in recent years to refinance their mortgage loans. Such refinancings would also be advantageous to HUD, since a lowering of monthly mortgage payments based on lower interest charges should decrease the risk of default and, consequently, the risk exposure of the FHA insurance funds. This rule revises HUD's single family refinancing policies in an effort to make it possible for a larger number of FHA morgagors to take advantage of current market conditions.

HUD's authority to insure morgages given to refinance single family insured mortgages, where the refinancing mortgage does not meet all eligibility requirements, is derived from section 223(a)(7) of the National Housing Act. The refinancing provisions in section 223(a)(7) were enacted to authorize the Department to insure mortgages given to refinance existing FHA insured mortgages, when the refinancing mortgages do not meet all of the requirements of the section of the National Housing Act under which the mortgages were originally insured. After enactment of section 223(a)(7), HUD issued a regulation (24 CFR 203.43(b)(7)), the refinancing provisions of which provide that the Department may accept a mortgage for insurance if

> given to refinance an existing mortgage insured under the (National Housing) Act. The amount of the refinancing mortgage shall not exceed the original principal amount of the existing mortgage. It shall have a maturity limited to the unexpired term of the existing mortgage.

The basic statute, section 223(a)(7) of the National Housing Act, also provided that

> in any case involving the refinancing of a loan in which the Secretary determines that the insurance of a mortgage for an additional term will inure to the benefit of the applicable insurance fund, taking into consideration the outstanding insurance liability under the existing insured mortgage, such refinancing mortgage may have a term not more than twelve years in excess of the unexpired term of such existing insured mortgage.

This provision for an increased mortgage term was not incorporated in the HUD regulation—24 CFR 203.43(b)(7). In this rule, the Department does incorporate the statutory provision—with the addition of safeguards relating to review of the mortgagor's prior payment record and assurances that the refinancing will result in lower monthly payments. This change is based upon HUD's findings, stated earlier, concerning current mortgage market trends and their probable impact upon FHA mortgagors and the FHA insurance funds.

This rule also changes the maximum mortgage amount of the refinancing mortgage so that it is the lesser of the original principal amount for the existing mortgage or the unpaid principal balance of such mortgage plus closing costs as approved by the Commissioner. 24 CFR 203.43(b)(7) currently provides that the mortgage amount of the refinancing mortgage shall not exceed the original principal amount of the existing mortgage.

In this rule the current § 203.43(b)(7) is removed and a new § 203.43(c), containing the provisions referred to above, is substituted. In addition, this rule amends 24 CFR Part 234 (Condominium Ownership Mortgage Insurance) to authorize the refinancing of insured condominium unit mortgages under the same terms and conditions.

With respect to the other large category of FHA single family mortgages that falls outside Part 203—namely section 221(d)(2) mortgages covering low-cost homes—it should be noted that 24 CFR 221.1 incorporates by reference the refinancing provisions contained in 24 CFR 203.43 as revised by this rule. Through similar incorporations by reference, other miscellaneous single family programs are also covered by this rule. It should be noted, however, that the rule is *not* being made applicable to mortgages insured under section 235 of the National Housing Act (see 24 CFR 235.1).

The Department recognizes that this rule will not be capable of being applied to Graduated Payment Mortgages and Modified Graduated Payment Mortgages until their negative amortization has been paid down to the original principal amount. "Original principal amount" is not to be equated with the "maximum principal amount" permitted in the GPM and modified GPM programs.

Also, the rule makes clear that any refund of a one-time MIP which was included in the amount of an existing mortgage shall be deducted in determining that mortgage's original principal amount and unpaid principal balance, but the amount of one-time MIP (if any) associated with the refinancing mortgage may be included in that mortgage.

The Department traditionally provides for prior notice and comment even when not required by the Administrative Procedure Act, before a rule is published for effect. Although this is the general policy of the Department, we have determined in this instance that to delay the rule's implementation would not be in the public interest, since the principal goal of the rule is to make available a potential benefit to FHA mortgagors. Accordingly, the Department has determined that good cause exists for publishing these revisions as an interim rule. The Department is, however, soliciting post-publication comments for a 60-day period and will consider all comments received in its preparation of a final rule.

Procedural Requirements

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumer, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United State-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been make in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. While the rule will have some impact on those mortgagors who choose to refinance their existing FHA-insured mortgages, and on their mortgagees, the rule's impact on individual borrowers and lenders should not be economically substantive, and in all instances its impact will be in accord with existing contractual rights reflected in these parties' mortgage loan contracts.

This rule was listed as item H-8-86 [Sequence Number 813] under the Office of Housing in the Department's Semiannual Agenda of Regulations published on October 27, 1986 (51 FR 38424) under Executive Order 12291 and the Regulatory Flexibility Act.

The FHA home mortgage insurance and condominium unit mortgage insurance programs are listed in the Catalog of Federal Domestic Assistance as 14.117, Mortgage Insurance—Homes and 14.133 Mortgage Insurance—Purchase of Units in Condominiums.

List of Subjects

24 CFR Part 203

Mortgage insurance.

24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

Accordingly, 24 CFR Parts 203 and 234 are amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for 24 CFR Part 203 continues to read as follows:

Authority: Secs. 203 and 211, National Housing Act, (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d). In addition, Subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715(u)).

2. Section 203.43 is amended by removing the semicolon and the word "or" at the end of paragraph (b)(6) and inserting a period, removing paragraph (b)(7) and adding a new paragraph (c) to read as follows:

§ 203.43 Eligibility of miscellaneous type of mortgages.

* * * * *

(b) * * *

(6) Executed in connection with the first resale, within two years from the date of its acquisition from the Government, of any portion of a project or property of the character described in paragraphs (b) (1), (2), (3), and (4) of this section

(c) The Commissioner may insure under this part, without regard to any limitation upon eligibility contained in this subpart, any mortgage given to refinance an existing mortgage which is insured under the National Housing Act. The refinancing mortgage must meet the following special requirements:

(1) It must be in an amount which does not exceed the lesser of (i) the original principal amount of the existing mortgage, or (ii) the sum of the unpaid principal balance of the existing mortgage plus loan closing charges as approved by the Commissioner. Where a one-time mortgage insurance premium (MIP) was financed as part of the existing mortgage, the amount of any refund of such premium to which the mortgagor may be entitled shall be deducted in determining the original principal amount and the unpaid principal balance of the existing mortgage. However, the maximum amount of the refinancing mortgage computed in accordance with this paragraph (c)(1) may be increased by the amount of the one-time MIP (if any) associated with such mortgage. Any increase in the original principal amount of the existing mortgage resulting from any negative amortization associated with mortgages insured under section 203 of the National Housing Act pursuant to section 245 (a) or (b) of the Act (24 CFR 203.45 or 203.46) shall not be included in determining the original principal amount of the existing mortgage;

(2) It must have a term which does not exceed the unexpired term of the existing mortgage, except that in any case where the Commissioner determines that an extension of the term of the mortgage will inure to the benefit of the applicable insurance fund, taking

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into consideration the outstanding insurance liability under the existing insured mortgage, the term may be extended to the lesser of (i) 30 years or (ii) the unexpired term of the existing mortgage, plus 12 years;

(3) It must result in a reduction in regular monthly mortgage payments by the mortgagor; and

(4) It must be made by a mortgagor whose record of payment on the existing mortgage meets standards established by the Commissioner.

* * * * *

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

3. The authority citation for 24 CFR Part 234 continues to read as follows:

Authority: Secs. 211 and 234, National Housing Act, (12 U.S.C. 1715b, 1715y); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. 24 CFR Part 234 is amended by adding a new § 234.52 to read as follows:

§ 234.52 Refinancing of existing mortgages.

The Commissioner may insure under this part, without regard to any limitation upon eligibility contained in this subpart, any mortgage covering a family unit given to refinance an existing mortgage which is insured under the National Housing Act. The refinancing mortgage must meet the following special requirements:

(a) It must be in an amount which does not exceed the lesser of (1) the original principal amount of the existing mortgage, or (2) the sum of the unpaid principal balance of the existing mortgage plus loan closing charges as approved by the Commissioner. Any increase in the original principal amount of the existing mortgage resulting from any negative amortization associated with mortgages insured under section 234(c) of the National Housing Act pursuant to section 245 (a) or (b) of the Act (24 CFR 234.75 or 234.76) shall not be included in determining the original principal amount of the existing mortgage;

(b) It must have a term which does not exceed the unexpired term of the existing mortgage, except that in cases where the Commissioner determines that an extension of the term of the mortgage will inure to the benefit of the insurance fund, taking into consideration the outstanding insurance liability under the existing insured mortgage, the term may be extended to the lesser of (1) 30 years or (2) the unexpired term of the existing mortgage, plus 12 years;

(c) It must result in a reduction in regular monthly mortgage payments by the mortgagor; and

(d) It must be made by a mortgagor whose record of payment on the existing mortgage meets standards established by the Commissioner.

Dated: November 25, 1986.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 87-2780 Filed 2-9-87; 8:45 am]

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FEDERAL MARITIME COMMISSION

46 CFR Part 502

[Docket No. 86-22]

Miscellaneous Amendments to Rules of Practice and Procedure

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission amends its Rules of Practice and Procedure to: allow for appeals from Commission staff actions; establish a procedure for the filing of a brief of an amicus curiae in adjudicatory proceedings and authorize U.S. Government agencies to file amicus pleadings without first asking leave of the Commission; bring special docket procedures into conformity with the Shipping Act of 1984 and recent Commission decisions; and require persons requesting oral argument to set forth the specific issues they propose to address at oral argument.

EFFECTIVE DATE: March 12, 1987.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573-0001, (202) 523-5740.

SUPPLEMENTARY INFORMATION:

Background

This proceeding was initiated by a Notice of Proposed Rulemaking (Proposed Rule) published in the **Federal Register** on August 14, 1986 (51 FR 29124-29126). The Proposed Rule would amend the Commission's Rules of Practice and Procedure (Rules), 46 CFR Part 502, to provide for appeals from Commission staff actions; to establish a procedure for the filing of a brief of an amicus curiae in adjudicatory proceedings; to bring special docket procedures into conformity with the Shipping Act of 1984 (Act or 1984 Act), 46 U.S.C. app. 1701-1720, and recent Commission decisions; and to set forth the grounds upon which a request for oral argument should be based.

Comments in response to the Notice of Proposed Rulemaking were submitted by the Department of Transportation (DOT or Executive Agencies);[1] by the Transpacific Westbound Rate Agreement (TWRA); by Sea-Land Service, Inc. (Sea-Land); and by Messrs. C. Jonathan Benner, Joseph A. Klausner, Neal M. Mayer, and Russell T. Weil, attorneys who practice before the Commission.[2]

The Commission has considered the comments received and made certain modifications to the Proposed Rule. These changes and the related comments are discussed in the following section-by-section analysis of the Final Rule.

Discussion

I. Section 502.69 Petitions—general and fee (Rule 69)

The Proposed Rule would add the phrase "including appeals from Commission staff action," after the words "affirmative action by the Commission," in order to make clear that the petition procedure provided in Rule 69 is available in an appeal from a staff action. TWRA urges that either Rule 69 or the Supplementary Information should indicate that when reference is made to the Commission it means "the Commission acting as the sitting Commissioners and not simply a member or members of the staff."

A reasonable reading of the reference to "relief or other affirmative action by the Commission" in Rule 69 indicates that matters submitted under Rule 69 are ultimately to be decided by the Commission acting as a collegial body.[3] Therefore, no specific language to that effect is necessary in Rule 69 itself.

II. Section 502.76—Brief of an amicus curiae (Rule 76)

As proposed, Rule 76 would: (1) Allow a United States government entity, or a State, Territory or Commonwealth, to file a brief as an amicus curiae without leave of the Commission; (2) clarify the distinction between participation as an

[1] This comment was submitted by the Department of Transportation on its own behalf and on behalf of the Departments of State and Commerce and the United States Trade Representative.

[2] A comment by the Trans-Pacific Freight Conference of Japan and the Japan-Atlantic & Gulf Freight Conference was not accepted because it was not timely filed and hence is not part of the record in this proceeding.

[3] Moreover, a definition of the reference to "Commission" in this instance could create uncertainty as to the meaning of that term where it appears elsewhere in the Rules.

intervenor and as an amicus curiae; and (3) provide that amicus participation in oral argument will be granted only for extraordinary reasons.

The Executive Agencies support the Proposed Rule without modification. Both TWRA and Sea-Land object to the provision which would allow government entities to file an amicus brief without leave of the Commission. In addition, TWRA states that Rule 76 should be modified to: (1) Limit an amicus brief to comments on law or policy questions already at issue in the proceeding; (2) grant presiding officers the discretion to determine whether or not to accept amicus briefs and to determine the timing and terms of filing such briefs; (3) require that government briefs be filed at the same time as the first brief filed by the party it supports; and (4) liberalize the oral argument standard for an amicus.

A. Treatment of Government Entities

Rule 76(a), as proposed, would permit the filing of an amicus brief only with leave of the Commission or the presiding officer, except that leave would not be required of a United States government entity, or a State, Territory or Commonwealth.

The Executive Agencies support the exception for government agencies. They argue that it is consistent with federal court rules and the practice of other federal agencies. The Executive Agencies contend that this exception will not prejudice any party because an amicus agency would be required to submit its brief at the same time as parties taking the same position. They point out that responding parties will therefore have the same amount of time to respond to an agency amicus brief. In their view, the exception will not expand or prolong a proceeding. The Executive Agencies believe the benefit of such a rule is that it will facilitate communication between the Commission and those agencies directly concerned with U.S. maritime policy.

TWRA and Sea-Land argue that no special exception should be made for government entities. Sea-Land argues that such an exception for U.S. government entities is unnecessary, preferential, and likely to unduly broaden the scope of a proceeding and increase expenses for parties to the proceeding as well as the Commission. TWRA contends that it is inappropriate to allow federal, state and local agencies to file briefs as a matter of right and without advance notice to other parties. TWRA argues that Rule 29 of the Federal Rules of Appellate Procedure, which permits such filings at an appellate level, is not analogous to trial level proceedings before an administrative law judge. TWRA also argues that if preferential treatment is to be given to U.S. government entities, it should also be given to foreign government entities in the interest of comity. TWRA points out that government entities are sometimes either regulated persons (*e.g.*, state and local port districts) or shippers and consignees. TWRA believes it is discriminatory and inappropriate to permit a government class of regulated persons or government shippers to have preferred status as compared to private sector counterparts. Finally, TWRA contends that no need or justification for granting such preferred status has been demonstrated.

The issue raised here is whether the need for and benefit derived from the proposed special treatment of government entities outweighs any potential adverse effects this provision might have such as increased expense or delay, non-observance of principles of international comity, or preferential treatment of government entities that may also be regulated persons, shippers, or consignees.

The need for a provision such as this arose during several recent proceedings in which the Department of Transportation sought to participate and submit its views. In Docket No. 85-18, the Commission upheld the presiding officer's determination that DOT had failed to satisfy the requirements for intervention but allowed DOT, upon application, to participate as an amicus curiae. *Member Lines of the Transpacific Westbound Rate Agreement-Possible Violations of the Shipping Act of 1984*, 23 S.R.R. 574, 578 (1985). In Docket No. 86-3, the Commission rejected an untimely "comment amicus curiae" submitted by DOT in a show cause proceeding. *See* "Order Granting Motion To Reject Comments Amicus Curiae of the United States Department of Transportation," *Modifications to the Trans-Pacific Freight Conference of Japan Agreement, et al.*, 23 S.R.R. 1161 (1986). These specific instances, however, were not expressly referred to in the Supplementary Information to the Proposed Rule. This may explain why TWRA asks whether any agency has been denied amicus status or has sought preferential treatment and questions whether a need for this provision has been shown.

The benefit to be derived from the amicus rule is that it establishes a vehicle for receiving the views of other government agencies that may have an interest in maritime matters. DOT has not perhaps expressly asked for such preferred status prior to issuance of the Proposed Rule, but it has in its prior filings relied on Rule 29 of the Federal Rules of Appellate Procedure and rules of other agencies and has urged the Commission to treat sister agencies in the same way.

While the alleged potential adverse effects of the preferred status accorded U.S. Government entities are not all necessarily without merit,[4] they do not appear to be substantial enough to stand as a barrier to retaining this feature in the Final Rule. Moreover, as noted in the Proposed Rule, a number of other government agencies do in fact so provide in their rules of practice. Therefore, the Final Rule shall allow U.S. Government entities to file an amicus brief without leave of the Commission.

There is, however, merit to the contention that non-federal government entities should not be permitted to file an amicus brief without leave of the Commission. Many states, for example, operate port authorities and these authorities are entities regulated by the Commission. There is thus a reasonable concern that allowing state authorities to file without leave could result in a burdensome avalanche of filings. There would therefore appear to be a need in the case of state government entities to exercise control over their participation in Commission proceedings. Therefore, the Final Rule is modified to delete the phrase "or by a State, Territory or Commonwealth." State government entities would, of course, still be able to participate as an amicus by filing for, and obtaining, leave.

B. Limit Amicus Brief to Law or Policy Questions

As proposed, Rule 76 did not expressly limit an amicus brief to comment on law or policy questions already at issue in the proceeding. TWRA urges that the rule do so. TWRA states that an amicus should be confined to the issues addressed by the parties or raised by an order. TWRA is particularly concerned that, at the trial level, an amicus might assume the role of an unofficial litigant arguing facts and making proposed findings. TWRA states that at the trial level it is important that the line between an amicus and an intervenor be clearly drawn.

The clarifying limitation urged by TWRA shall be adopted. In most cases,

[4] There appears to be little, if any, danger, however, that permitting U.S. Government entities to file an amicus brief without leave would unduly broaden the scope of proceedings or place excessive burdens on the parties.

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an amicus would address legal issues put forward by the parties or the Commission. This is the classic role of an amicus, namely to assist the court with legal issues or to call a legal matter to the court's attention which might otherwise escape the court's notice. Moreover, the clarification requested by TWRA can be accommodated without greatly diminishing the benefit of amicus participation. Therefore, § 502.76(a) shall be modified in the Final Rule by adding the following sentence: "A brief of an amicus curiae shall be limited to questions of law or policy."

C. Broader Discretion for the Administrative Law Judge

As proposed, Rule 76(a) would allow the presiding officer to grant a motion for leave to file an amicus brief or to request that such a brief be filed. Proposed Rule 76(c) would allow the presiding officer to grant leave for a later filing of an amicus brief, if cause is shown.

TWRA urges that the presiding officer also be given discretion over whether or not to accept amicus briefs from any person, including a government entity, and over the time and terms of filing such briefs. This is necessary, according to TWRA, to protect litigating parties from surprise during the course of a proceeding.

The Final Rule requires that all persons, except U.S. Government entities, obtain leave of the presiding officer (or the Commission) to file an amicus brief. Thus, this discretion, except as to U.S. Government entities, is already vested in the presiding officer. The Final Rule does not expressly give the presiding officer discretion over the timing and terms of filing such briefs. However, such discretion is inherent in the presiding officer's authority to control and direct the course of a proceeding. No modification of the language of Rule 76 appears necessary.

D. Filing With the Initial Brief

As proposed, Rule 76(c) would require that an amicus file its brief ". . . within the time allowed the party whose position as to affirmance or reversal the amicus brief will support."

TWRA urges ". . . that at the ALJ level, if any party is to have leave to file an amicus brief as of right it must file its brief at the same time as the due date of the *first* brief of the party with whose position the amicus is aligned (emphasis in original)." TWRA seeks to avoid a situation where an amicus files its brief on the date the last party files its reply brief.

It was intended in the Proposed Rule that an amicus file its brief at the same time as the initial brief of the party it supports. Certainly, an amicus should not be permitted to enter at the reply phase and thereby preclude any opportunity for the opposing side to address the amicus brief. An amicus must file its brief on or before the due date of the initial brief of the party it supports. In view of the presiding officer's authority to control proceedings, it does not appear necessary to expressly state this in the Final Rule.

E. Standard For Oral Argument By Amicus Curiae

As proposed, Rule 76(d) would provide that: "A motion of an amicus curiae to participate in oral argument will be granted only for extraordinary reasons."

TWRA argues that this standard is too restrictive. TWRA states: "It should be sufficient to require that an amicus show that the position it wished to urge on oral argument (a) would not be adequately represented by actual parties, (b) was one bearing on important issues of law and policy and (c) would be heard only in the Commission's discretion upon application."

As proposed to be amended in this proceeding, Rule 241 would set forth a standard for evaluating requests for oral argument by parties to a proceeding. Proposed amended Rule 241 attracted substantial comment which is discussed below. In light of the changes recommended and made in Rule 241, it would appear preferable to evaluate a request by an amicus curiae to participate in oral argument under the same standard as that of parties to the proceeding. Therefore, Rule 76(d) shall be modified to provide that such requests by an amicus curiae shall be governed by the requirements of Rule 241.

III. Section 502.92(a)—Special docket applications and fee (Rule 92(a))

This section sets forth the special docket procedure for claiming refund or waiver relief. The proposed revisions are generally aimed at bringing Rule 92(a) into conformity with section 8(e) of the 1984 Act, 46 U.S.C. app. 1707(e).

Sea-Land maintains that the amendment to Rule 92 is unclear as to whether a shipper must file a corrected tariff when applying for a refund or waiver. It argues that the statute contains no exception to the requirement that a corrected tariff be filed with the Commission prior to the filing of the application. In Sea-Land's opinion, were the shipper allowed to file an application without the concurrence of the carrier, a simple procedure for review of mutually acknowledged mistakes might be converted into an adversarial process more appropriately handled under section 11 of the 1984 Act. Sea-Land suggests that Rule 92 be amended to require the shipper to attach to its application an affidavit from the carrier in support of the application, together with a copy of the corrected tariff.

Section 8(e), which gives the shipper the right to file an application for refund or waiver, does not subject the exercise of that right to the consent of the carrier or conference. Nor does the statute, which explicitly directs only the carrier or conference to file a new tariff, appear to contemplate the submission of a tariff by a shipper.[5] Consequently, Sea-Land's suggested amendment finds no support in the statute. Moreover, such an amendment would frustrate the shipper's right to file its own application.[6]

IV. Section 502.241—Oral Argument (Rule 241).

As proposed to be amended, Rule 241(b) would provide that oral argument generally will not be granted unless: (1) The requesting party demonstrates with specificity that the matter to be addressed presents a significant regulatory issue; (2) the legal arguments have not been adequately addressed on briefs; and (3) the decisional process would be significantly aided by oral presentation.

Messrs. Benner, Klausner, Mayer, and Weil, and TWRA, by its attorney Mr. R. Frederic Fisher, uniformly express the view that the proposed changes would unduly restrict the Commission's discretion to hear oral argument.[7] The

[5] Section 8(e) provides in part:

(e) REFUNDS.—The Commission may, *upon application of a carrier or shipper*, permit a common carrier or conference to refund a portion of freight charges collected from a shipper or to waive the collection of a portion of the charges from a shipper if—

(2) the common carrier or conference has, prior to filing an application for authority to make a refund, filed a new tariff with the Commission that sets forth the rate on which the refund or waiver would be based. (Emphasis added).

[6] The Commission may one day be called upon to address the effect of a carrier's or conference's refusal to concur in a shipper's special docket application, and/or to file the conforming tariff rate and other tariff matter required by section 8(e) of the 1984 Act. However, that issue is best left to resolution in an appropriate case.

[7] None of the comments addresses the proposed changes in Rule 241(a), 46 CFR 502.241(a), which merely incorporate the Commission's practice for scheduling oral argument, either on its own initiative or at the request of a party.

commenters, all of whom are attorneys who practice before the Commission, urge rejection of the Proposed Rule and argue that oral argument provides the only opportunity for the parties to address the Commission directly. They point out that courts generally insist on hearing oral argument rather than deciding cases on briefs, and all commenters find objectionable the burden placed on a party requesting oral argument to be compelled to acknowledge the inadequacy of its briefs.

The proposed oral argument rule has generated strong opposition from members of the maritime bar. Some of the arguments advanced against the proposed changes in Rule 241 have merit and were anticipated when the rule was proposed. The fact remains, however, that the present "oral argument" procedure serves well neither the Commission nor the parties, whom the bar represents.

Clearly, and contrary to the conclusions drawn by some commenters, proposed amended Rule 241(b) was *not* intended to remove the Commission's unfettered discretion to grant oral argument, nor to reflect any fundamental bias against oral argument on the part of the Commission. On the other hand, it would appear that something more than tacking on "we request oral argument" to the end of exceptions or replies to exceptions (which is a common existing practice), is necessary.

Under these circumstances, while it does not seem advisable to list in Rule 241(b)(2), as suggested by some commenters, the types of reasons which are likely to result in a grant or denial of oral argument, it would appear reasonable to at least require the parties to set forth in their request the issues they believe need to be addressed on oral argument. Such a declaration would serve to focus the oral argument presentations and thereby assist the deliberative process.

Finally, it should be emphasized that a request for oral argument which conforms to the technical requirements of Rule 241 does not automatically entitle the requesting party to an affirmative disposition of that request. A grant or denial of a request for oral argument remains a matter of Commission discretion.

Conclusion

The Final Rule, as modified where appropriate to accommodate the comments submitted, amends the Commission's Rules of Practice and Procedure by updating and clarifying certain existing sections of the Rules and by adding a new section governing amicus participation. These changes make significant improvements to the Commission's Rules which should promote greater efficiency in Commission proceedings.

The Commission has determined that this rule is not a "major rule" as defined in Executive Order 12291, 46 FR 12193 (February 27, 1981).

The Chairman of the Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this rule will not have a significant economic impact on a substantial number of small business entities.

List of Subjects in 46 CFR Part 502

Administrative practice and procedure.

Therefore, for the reasons set forth in the preamble, and pursuant to section 5 U.S.C. 553, section 43 of the Shipping Act, 1916, 46 U.S.C. app. 841a, and sections 8(e) and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1707(e) and 1716(a), Part 502 of Title 46, Code of Federal Regulations, is amended as follows:

PART 502—[AMENDED]

1. The Authority Citation for Part 502 continues to read as follows:

Authority: 5 U.S.C. 552, 553, 559; 18 U.S.C. 207; 46 U.S.C. app. 817, 820, 821, 826, 841a, 1114(b), 1705, 1707–1711, and 1713–1716; and E.O. 11222 of May 8, 1965 (30 FR 6469).

2. Section 502.69 paragraph (a) is revised to read as follows:

§ 502.69 Petitions—general and fee.

(a) Except when submitted in connection with a formal proceeding, all claims for relief or other affirmative action by the Commission, including appeals from Commission staff action, except as otherwise provided in this part, shall be by written petition, which shall state clearly and concisely the petitioner's grounds of interest in the subject matter, the facts relied upon and the relief sought, shall cite by appropriate reference the statutory provisions or other authority relied upon for relief, shall be served upon all parties named therein, and shall conform otherwise to the requirements of Subpart H of this part. Replies thereto shall conform to the requirements of § 502.74.

* * * * *

§ 502.72 [Amended]

3. Section 502.72 paragraph (c)(3) is amended by removing the word "amicus."

4. Part 502 Subpart E is amended by adding new § 502.76 to read as follows:

§ 502.76 Brief of an amicus curiae.

(a) A brief of an amicus curiae may be filed only by leave of the Commission or the presiding officer granted on motion with notice to the parties, or at the request of the Commission or the presiding officer, except that leave shall not be required when the brief is presented by the United States or any agency or officer of the United States. The brief may be conditionally filed with the motion for leave. A brief of an amicus curiae shall be limited to questions of law or policy.

(b) A motion for leave to file an amicus brief shall identify the interest of the applicant and shall state the reasons why such a brief is desirable.

(c) Except as otherwise permitted by the Commission or the presiding officer, an amicus curiae shall file its brief within the time allowed the party whose position as to affirmance or reversal the amicus brief will support. The Commisson or the presiding officer shall grant leave for a later filling only for cause shown, in which event the period within which an opposing party may answer shall be specified.

(d) A motion of an amicus curiae to participate in oral argument will be granted only in accordance with the requirements of § 502.241. [Rule 76.]

5. Section 502.92 paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 502.92 Special docket applications and fee.

(a)(1) A common carrier by water in foreign commerce which publishes its own tariff or, if the common carrier does not publish its own tariff, the carrier and the conference to which it belongs, or a shipper, may file an application for permission to refund or waive collection of a portion of freight charges where it appears that there is (i) an error in the tariff of a clerical or administrative nature or (ii) an error due to inadvertence in failing to file a new tariff. Such refund or waiver must not result in discrimination among shippers, ports, or carriers.

(2) When the application is filed by a carrier or conference the Commission must have received prior to the filing of the application a new tariff which sets forth the rate on which refund or waiver would be based.

* * * * *

6. In Exhibit No. 1 to Subpart F

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[§ 502.92] paragraph 1. (d), and paragraphs 3 and 4 are revised to read as follows:

Exhibit No. 1 to Subpart F [§ 502.92]—Application for Refund of or Waiver for Freight Charges Due to Tariff Error

* * * * *

1. * * *

(d) Date(s) of shipment(s), i.e., sailing(s) [furnish supporting evidence].

* * * * *

3. Furnish any information or evidence as to whether grant of the application will result in discrimination among shippers, ports or carriers.

4. State whether there are shipments of other shippers of the same commodity which (i) moved via the carrier(s) or conference involved in this application during the period of time beginning on the date the tariff omitting the intended rate become effective or on the date the intended rate absent the mistake would have became effective and ending on the day before the effective date of the conforming tariff, and (ii) moved on the same voyage(s) of the vessel(s) carrying the shipment(s) described in No. 1, above.

* * * * *

7. Section 502.241 paragraphs (a) and (b) are revised to read as follows:

§ 502.241 Oral argument.

(a) The Commission may hear oral argument either on its own motion or upon the written request if a party. If oral argument before the Commission is desired on exceptions to an initial or recommended decision, or on a motion, petition, or application, a request therefor shall be made in writing. Any party may make such a request irrespective of its filing exceptions under § 502.227. If a brief on exceptions is filed, the request for oral argument shall be incorporated in such brief. Requests for oral argument on any motion, petiton, or application shall be made in the motion, petition, or application, or in the reply thereto. If the Commission determines to hear oral argument, a notice will be issued setting forth the order of presentation and the amount of time allotted to each party.

(b)(1) Requests for oral argument will be granted or denied in the discretion of the Commission.

(2) Parties requesting oral argument shall set forth the specific issues they propose to address at oral argument.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-2717 Filed 2-9-87; 8:45 am]

BILLING CODE 6730-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 725, 728, 732, 733, 752, Appendices D and G

[AIDAR Notice 87-5]

Miscellaneous Amendments to Acquisition Regulations

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The AID Acquisition Regulation (AIDAR) is being amended to update information and make various editorial changes and corrections.

EFFECTIVE DATE: February 10, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Kelly, M/SER/PPE, Room 1600I, SA-14, Agency for International Development, Washington, DC 20523. Telephone (703) 875-1534.

SUPPLEMENTARY INFORMATION: The AIDAR is being amended to:

—Correct a cross-reference in 725.706, changing it from "Delegation of Authority No. 40" to "Delegation of Authority No. 405";

—Update the list of countries for which Defense Base Act waivers are in effect, adding Burkina Faso, Grenada, St. Christopher and Nevis, South Africa, Turkey and Zaire;

—Remove references to an obsolete financing method (the Letter of Credit—Federal Reserve Bank, or LOC-FRB) from our coverage of letters of credit;

—Change the title of Part 733 from "Disputes and Appeals" to "Protests, Disputes, and Appeals" to conform to the Federal Acquisition Regulation;

—Correct a cross-reference in 752.202(d), changing it from "48 CFR 702.170-14" to "48 CFR 702.170-15";

—Correct a typographical error in Appendix D, Section 11, General Provision 14. The word "not" was misplaced, erroneously indicating that hospitalization, predeparture and end of tour medical exams were available, when in fact they are not, and that medications, immunizations, preventative health measures, diagnostic exams and advice, emergency treatment, and home visits, were not available, when in fact they are; and

—Correct a cross-reference in Appendix G, changing it from "731.311-6, and 731.703" to "731.371, and 731.772".

This Notice makes editorial changes only, and is not considered a significant rule subject to FAR 1.301 or 1.5. This Notice is exempted from the requirements of Executive Order 12291 by OMB Circular 85-7. This Notice will not have an impact on a substantial number of small entities, nor will it require any information collection as contemplated by the Regulatory Flexibility Act and Paperwork Reduction Act, respectively.

List of Subjects in 48 CFR Parts 725, 728, 732, 733, 752, and Appendices D and G

Government procurement.

For the reasons set out in the Preamble, Chapter 7 of Title 48 of the Code of Federal Regulations is amended as follows:

1. The authority citations in Parts 725, 728, 732, 733, 752, and Appendices D and G to Chapter 7 are unchanged, and continue to read as follows:

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979 44 FR 56673, 3 CFR 1979 Comp., p. 435.

PART 725—FOREIGN ACQUISITION

Subpart 725.70—Source, Origin, and Nationality

725.706 [Amended]

2. Paragraph (a) of section 725.706, geographic source waivers, is amended by removing the reference to "Delegation of Authority No. 40", replacing it with a reference to "Delegation of Authority No. 405".

PART 728—BONDS AND INSURANCE

Subpart 728.3—Insurance

3. The list of countries in subparagraph (a)(2) of section 728.305 is revised as follows:

728.305 Overseas worker's compensation and war-hazard insurance.

(a) * * *

(2) * * *

1. Afghanistan
2. Antigua
3. Bahamas
4. Bangladesh
5. Barbados
6. Belize
7. Benin
8. Bolivia
9. Botswana
10. Brazil
11. Burkina Faso
12. Burundi
13. Cameroon
14. Cape Verde
15. Chad
16. Chile
17. Colombia
18. Costa Rica
19. Djibouti
20. Dominica
21. Dominican Republic
22. Ecuador
23. Egypt
24. El Salvador
25. Equitorial Guinea
26. Ethiopia
27. Fiji
28. Gambia
29. Ghana
30. Grenada
31. Guatemala
32. Guinea
33. Guinea-Bissau
34. Guyana
35. Haiti
36. Honduras
37. India
38. Indonesia
39. Israel
40. Italy
41. Ivory Coast
42. Jamaica
43. Jordan
44. Kenya
45. Korea
46. Lebanon
47. Lesotho
48. Liberia
49. Madagascar
50. Malawi
51. Mali
52. Mauritania
53. Mauritius
54. Mexico
55. Morocco
56. Mozambique
57. Nepal
58. New Caledonia
59. Nicaragua
60. Niger
61. Nigeria
62. Oman
63. Pakistan
64. Panama
65. Papua New Guinea
66. Paraguay
67. Peru
68. Philippines
69. Portugal
70. Rwanda
71. St. Christopher & Nevis
72. St. Lucia
73. St. Vincent
74. Senegal
75. Sechelles
76. Sierra Leone
77. Sinai Support Mission
78. Somalia
79. South Africa
80. Sri Lanka
81. Sudan
82. Swaziland
83. Syria
84. Tanzania
85. Thailand
86. Togo
87. Tonga
88. Tunisia
89. Turkey
90. Uganda
91. Uruguay
92. Western Samoa
93. Yemen Arab Republic
94. Zaire
95. Zambia
96. Zimbabwe

* * * * *

PART 732—CONTRACT FINANCING

Subpart 732.4—Advance Payments

4. Subsections 732.406-70, 732.406-70-1, 732.406-70-2, 732.406-70-3, 732.406-70-4 and 732.406-70-5 are revised to read as follows:

732.406-70 Letters of Credit (LOC)—AID procedures.

732.406-70-1 Purpose.

This subsection provides guidance on use of the Letter of Credit—Treasury Financial Communication System (LOC) for advance payments.

732.406-70-2 Circumstances for use of an LOC.

The LOC shall be used under the following circumstances:

(a) The contracting officer has determined that an advance payment is necessary and appropriate in accordance with this subpart, the guidance provided in Subpart 32.4 of the FAR, and Chapter 15E of AID Handbook 1, Supplement B;

(b) The agency has, or expects to have, a continuing relationship of at least one year with the recipient organization, and the annual amount required for advance financing will be at least $120,000;

(c) The Office of Financial Management, Program Accounting and Finance Division (M/FM/PAFD) agrees that the LOC payment method is appropriate; and

(d) The recipient organization's financial institution has entered into an agreement with the U.S. Treasury on the use of the LOC.

732.406-70-3 Establishing an LOC.

(a) An LOC is established by M/FM/PAFD under rules and procedures issued by the Treasury Department. While the contract will provide for the use of an LOC when it is justified under 732.406-70-2, the LOC is a separate agreement between the contractor and M/FM/PAFD, acting on behalf of the AID Controller. The terms and conditions of the LOC are established by the LOC.

(b) An LOC is established upon the request of the contracting officer, with the consent of M/FM/PAFD. The request to M/FM/PAFD must be made in writing as early in the negotiation cycle as possible, and must include the following information:

(1) The name and address of the contractor, and the name, address, and telephone number of the contractor's representative for matters concerning establishment of the LOC.

(2) The name and address of the contractor's financial institution.

(3) The contracting officer's justification for an advance payment.

(4) The estimated total amount of the contract, and estimated frequency and amount of drawdowns against the LOC.

(5) A copy of the contractor's proposal.

(6) A copy of the PIO/T.

(7) Any other information specified by M/FM/PAFD.

(8) Any special conditions or restrictions to be addressed in the LOC such as subadvances, special approval for subadvances, etc.

(c) M/FM/PAFD will respond to the contracting officer's request within 5 working days of receipt by either:

(1) Concurring in the request (either as received, or with suggested changes).

(2) Requesting additional information.

(3) Rejecting the request for specified reasons.

(d) Rejection by M/FM/PAFD may be appealed to the head of the contracting activity (HCA) and the AID Controller for a final decision.

(e) If an LOC is to be used:

(1) The contracting officer will:

(i) Prepare the appropriate findings, determination, and authorization for advance payment for signature by the HCA or his/her authorized designee.

(ii) Transmit a signed copy of the findings, determination and authorization to M/FM/PAFD, together with a signed copy of the contract authorizing the LOC (see 732.406-70-4).

(iii) Include the LOC material provided by M/FM/PAFD, under 732.406-70 3(e)(2)(iv), in the official contract file.

(2) M/FM/PAFD will:

(i) Prepare the LOC in accordance with the procedures issued by Treasury and implemented by AID.

(ii) Enter into the LOC with the contractor.

(iii) Maintain the LOC in accordance with its terms, and Treasury and AID procedures and regulations.

(iv) Provide the contracting officer(s) a copy of each LOC and any other material governing its use at the time the LOC is issued or when it is amended or modified.

732.406-70-4 LOC contract clause.

If payment is to be provided by LOC, the contract shall contain the clause in 752.232-70.

732.406-70-5 Revocation of the LOC.

After consultation with the contracting officer, M/FM/PAFD may revoke the LOC by written notification to the contractor. A copy of any such revocation notice will immediately be provided to the cognizant contracting officer(s).

PART 733—PROTESTS, DISPUTES AND APPEALS

5. The heading of Part 733 is revised to read as set forth above.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Supbart 752.2—Texts of Provisions and Clauses

6. In section 752.202, *Definitions*, paragraph (d), *Alternate 72*, the contract clause titled "AID Definitions Clause—Supplement for AID Contracts Involving Performance Overseas" is amended by:

(a) Changing the date of the clause from "(Apr 1984)" to "(Dec 1986)"; and

(b) Amending paragraph (h), "Third Country National (TCN) employee" by removing the reference "48 CFR 702.170-14", replacing it with a reference to "48 CFR 702.170-15".

APPENDICES TO CHAPTER 7

Appendix D—Direct AID Contracts With U.S. Citizens or U.S. Resident Aliens for Personal Services Abroad

7. In Appendix D, General Provision 14, Post of Assignment Privileges, of Section 11, *General Provisions* is amended by:

(a) Changing the clause date from "(Aug. 1986)" to "(Dec. 1986)"; and

(b) Revising paragraph (a) of the clause to read as follows:

(a) Health room services of the same type that are normally provided to AID direct-hire

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U.S. citizen employees shall be available for U.S. citizen contractors and their authorized dependents (regardless of citizenship) at the post of duty. These services do not include hospitalization or predeparture or end of tour medical examinations. The services do include such medications as may be available, immunizations and preventive health measures, diagnostic examinations and advice, emergency treatment, and home visits as medically indicated.

Appendix G—Approval and Reporting Procedures for Contractor Salaries

8. In Appendix G subparagraph 2(a), *Procedures—Salary Approvals*, is amended by removing the reference to "731.311–6, and 731.703" appearing in the first sentence, replacing them with reference to "731.371, and 731.772".

Dated: January 14, 1987.

John F. Owens,

Procurement Executive.

[FR Doc. 87–2809 Filed 2–9–87; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 61104–7012]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement the seventh amendment (amendment) to the Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California Commencing in 1978 (FMP). The amendment provides a formula for annual alteration of the escapement goal for Oregon coastal natural coho salmon based on stock abundance, inceases the flexibility of inseason management provisions, and modifies the allocation scheme for coho salmon south of Cape Falcon, Oregon. It is intended to allow an equitable division of ocean harvest between recreational and commercial fisheries of the maximum number of salmon surplus to inside fishery and spawning needs.

EFFECTIVE DATE: March 8, 1987.

ADDRESSES: Copies of the amendment, including the environmental assessment and the regulatory impact review/regulatory flexibility analysis, are available from the Pacific Fishery Management Council, 2000 SW. First Avenue, Suite 420, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Director, Northwest Region, NMFS), 206–526–6150; or E. Charles Fullerton (Director, Southwest Region, NMFS), 213–514–6196.

SUPPLEMENTARY INFORMATION:

Background

Under the Magnuson Fishery Conservation and Management Act (Magnuson Act), the FMP was prepared by the Pacific Fishery Management Council (Council), and was approved by the Secretary of Commerce (Secretary) on March 2, 1978. Since then, the FMP has been amended six times with implementing regulations at 50 CFR Part 661.

The major purposes of the amendment are to (1) provide a formula for annual alteration of the escapement goal for Oregon coastal natural (OCN) coho salmon based on stock abundance; (2) increase the flexibility of inseason management provisions to be more responsive to changing biological, social, and economic conditions during the season; and (3) modify the allocation schedule for coho salmon south of Cape Falcon, Oregon, to provide the optimum yield to recreational and commercial fisheries at varying stock abundance levels.

Proposed regulations to implement the amendment were filed with the Office of the Federal Register on November 19, 1986 (51 FR 42273, November 24, 1986) and were followed by a 45-day public comment period. The preamble to the proposed regulations discussed the rationale for the proposed amendments. Comments received during the public comment period are summarized and responded to below:

Comment 1: The new OCN coho escapement goal will allow continued overfishing of naturally-spawning coho in violation of National Standard 1 of the Magnuson Act.

Response: National Standard 1 states that "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery." "Overfishing" is defined in the National Guidelines for Fishery Management Plans as "a level of fishing mortality that jeopardizes the capacity of a stock(s) to recover to a level at which it can produce maximum biological yield or economic value on a long-term basis under prevailing biological and environmental conditions." Significant downward trends in spawning stock sizes and in average annual recruitment over a period of several years may signal that overfishing is occurring [50 CFR 602.11(d)].

Recent escapements show no indication of overfishing. On the contrary, OCN coho stocks gradually are being rebuilt under Council management. Escapement in 1984 exceeded the 135,000 goal by 65,100 fish and in 1985 the 170,000 goal was exceeded by 6,300 fish. Although firm data will not be available for several months, preliminary indications are that 1986 escapement will be within five percent of the 1986 target of 170,000 OCN coho.

The new OCN coho escapement goal also establishes for the first time a "threshold" or "floor" escapement during periods of low stock abundance. State and Federal fishery managers agree that the floor escapement of 135,000 OCN coho will not jeopardize the productive capability of natural coho stocks. There have been nine instances since 1967 when OCN coho spawning populations were below 135,000 fish, and subsequent production three years later rebounded well. For example, in 1969 escapement was about 133,000 coho but three years later the OCN coho production was nearly 700,000 fish.

Comment 2: The new OCN coho escapement goal was developed because 1983 spawners did not produce enough fish for harvest and escapement in 1986.

Response: In 1983, adverse environmental conditions, caused by "El Nino", drastically reduced abundance and made attainment of the 1983 goal, and three years later the 1986 goal, incompatible with socio-economic needs of the ocean fisheries. In 1983, the parent stock of the 1986 run returned to coastal streams at only 41 percent of that year's escapement goal of 140,000 fish. Nevertheless, the stock rebounded well and 1986 escapement is expected to be nearly 290 percent of the 1983 parent stock size. The new stock abundance dependent goal was developed to ensure that future natural disasters would not preclude an ocean fishery while still maintaining a viable natural population.

Comment 3: Adoption of an OCN coho escapement goal based on estimated stock abundance is premature because a reliable method of prediction has yet to be developed.

Response: Specific changes brought about by improvement in forecasting techniques or outside/inside allocation procedures due to treaty or user sharing revisions were anticipated in the framework mechanism so that they could be adopted without formal amendment. Any change in procedure must be described along with the rationale for the change during the preseason regulatory process. (see p. 3–22 of FMP). Two alternate methods of estimating the abundance of coho salmon south of Leadbetter Point, Washington, have been employed in recent years. One method, recommended by the Oregon Department of Fish and Wildlife (ODFW), was used in 1985 and 1986 and is known as the "partitioning method." The partitioning method is being refined by ODFW. Another method of estimating coho abundance, the Oregon Production Index method, was used prior to 1985 and is described in the FMP and the appendix to the framework regulations.

The amendment and this final rule delete the description of methodology to estimate coho abundance while the two methods are undergoing changes and scientific review. Instead, with advice from its scientific advisors, the Council will choose the best scientific methodology to estimate coho abundance each year. The public will have an opportunity to comment on alternative methodologies during preseason meetings of the Council and its advisory groups. An explanation of the methodology used to determine the preseason estimate of coho abundance will be included in the documents supporting the preseason regulations each year.

Comment 4: Adoption of the new OCN coho escapement goal is a major federal action significantly affecting the human environment and thus requires an environmental impact statement.

Response: NOAA directives require an environmental impact statement to be prepared if any one of the following five criteria may be reasonably expected to occur:

1. The proposed action may be reasonably expected to jeopardize the productive capability of the target resource species or any related stocks that may be affected by this action. (See response to comment 2, above.)
2. The proposed action may be reasonably expected to allow substantial damage to the ocean and coastal habitats.
3. The proposed action may be reasonably expected to have a substantial adverse impact on public health or safety.
4. The proposed action may be reasonably expected to effect adversely an endangered or threatened species or a marine mammal population.
5. The proposed action may be reasonably expected to result in cumulative adverse effects that could have a substantial effect on the target resource species or any related stocks that may be affected by the action. (See response to comment 1, above.)

The amendment contains an environmental assessment which concludes that the action is not reasonably expected to meet any of the criteria for an environmental impact statement.

Comment 5: The stock abundance dependent approach incorporated in the new Oregon coastal natural (OCN) coho escapement goal does not meet the Magnuson Act requirements that optimum yield be prescribed on the basis of maximum sustainable yield (MSY) as modified by relevant economic, social, or ecological factors.

Response: "MSY" is described at § 602.11(c) as ". . . a theoretical concept . . . the largest average annual catch or yield that can be taken over a period of time from each stock under prevailing ecological and environmental conditions." However, the Magnuson Act provides that optimum yield (OY), not MSY, should be the primary fishery management objective. MSY is modified by economic, social, and ecological factors to arrive at OY. The OY for ocean salmon off Washington, Oregon, and California is defined in the FMP as follows:

> The amount of salmon caught by United States fishermen in the FCZ adjacent to the States of Washington, Oregon, and California, and in the waters (including internal waters) of those States, and Idaho, which will to the greatest extent practicable fulfill the following:
>
> 1. The spawning escapement goals for natural and hatchery stocks, as established by the Council;
> 2. The obligation to provide for treaty Indian harvest opportunity, as mandated by applicable decisions of the Federal courts;
> 3. The requirements of the Indian fishery for salmon on the Klamath River;
> 4. The allocation goals between or among ocean fisheries as established by the Council;
> 5. The allocation goals between ocean and "inside" fisheries conducted by other than treaty Indian, as recommended by the various States and Council; and
> 6. Other social/economic objectives of the FMP and its amendments.

As the amendment indicates, the original escapement goal of 200,000 naturally spawning adult OCN coho approximates MSY for this stock. The amendment's revised, stock abundance-dependent escapement goal allows additional harvest during periods of low abundance (below 400,000 fish) for socio-economic reasons in conformance with the Magnuson Act's procedure for determining optimum yield. The amendment also establishes a lower limit escapement "floor" of 135,000 adults which should assure the stock is not overfished and can rebound to an MSY production level. As the National Standard guidelines provide, MSY is the starting point in providing a realistic biological description of allowable fishery removals, a departure from which is permitted to arrive at optimum yield (50 CFR 602.11).

The Council will use the new escapement goal schedule to determine the allowable ocean harvest of coho salmon south of Leadbetter Point each year. In setting the preseason management measures, departure from the amendment's escapement goal schedule is authorized only when implemented by one of three actions: (1) an FMP amendment; (2) an emergency rule; or (3) a notice, if the following criteria are met:

> A comprehensive technical review of the best scientific information available provides conclusive evidence which, in the view of the Salmon Plan Development Team and the Council, justifies modification of the escapement goal, or
>
> Action by a Federal court indicates that modification of an escapement goal is appropriate. (50 CFR 661.22)

This has been clarified in the final amendment.

Comment 6: The new OCN coho escapement goal is contrary to Oregon law.

Response: According to the Oregon Department of Fish and Wildlife, the Oregon Land Conservation and Development Commission, and the Oregon Attorney General's Office, the new OCN coho escapement goal does not violate any existing Oregon law.

Comment 7: The more flexible inseason management provisions are too open ended and do not provide an opportunity for public input on regulatory changes.

Response: Inseason adjustments to management measures must meet specific criteria (e.g., escapement goals, allocation schedules) which are not subject to change during the season. Both the total allowable ocean harvest and the number of salmon allocated to each user group will have been analyzed before the fishing season and the public will have had an opportunity to comment on them. Actions taken under this inseason management authority are limited to those which meet these specific criteria which were analyzed before the fishing season began. The regulations also provide that the Regional Director consult with the council chairman and the directors of appropriate State fishery management agencies before implementing inseason changes. The State and Federal managers are on record as ensuring the

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public that user representatives will be contacted prior to decisionmaking. In addition, a fifteen-day public comment period is provided after implementation of each inseason change.

Comment 8: The United States Coast Guard pointed out that enforcement issues should be addressed prior to approval of any inseason management action, especially measures which can be enforced only at sea, such as boundary modifications.

Response: No changes in notification and coordination procedures, nor in enforcement costs and effectiveness, are anticipated as a result of this amendment. A committee of enforcement experts will comment on the effectiveness of alternative preseason regulations during their development, and the NMFS Enforcement Office is consulted before inseason management actions are implemented. Enforcement issues and potential problems are discussed by State fishery management directors, the Council chairman, and the Regional Director during the decision-making process for inseason changes. State and Federal enforcement agencies are notified promptly of inseason management changes when the decisions are made, and enforcement efforts are coordinated among the enforcement agencies. The estimated costs of developing, administering, and enforcing regulations under the framework salmon plan are contained in the 1984 framework amendment.

Classification

The Regional Director determined that the FMP amendment is necessary for the conservation and management of the ocean salmon fishery and that it is consistent with the Magnuson Act and other applicable law.

The Council also prepared a final environmental impact statement for the FMP and concluded that there will be no significant adverse impact on the human environment. The Council prepared an environmental assessment for this FMP amendment. Based on this assessment, the Assistant Administrator for Fisheries concluded that there will be no significant impact on the environment as a result of this rule. The environmental assessment is part of the amendment and may be otained from the Council at the address listed above.

The Administrator of NOAA determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination was based on analysis of the regulatory impact review (RIR) prepared for this rule. This rule may have a significant economic impact on a substantial number of small businesses for purposes of the Regulatory Flexibility Act, and thus required an initial regulatory flexibility analysis (IRFA). The RIR/IRFA is part of the amendment and may be obtained from the Council at the address listed above. A summary of the RIR/IRFA was published at 51 FR 42274. No public comments were received on the RIR/IRFA and no changes were made in the initial document. Therefore, the document is now a final RIR/RFA.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of the States of Washington, Oregon, and California, and the San Francisco Bay Conservation and Development Commission (Commission). This determination was submitted to the responsible State agencies and Commission for review under section 307 of the Coastal Zone Management Act. All agencies either agreed with this determination or failed to comment within the statutory time period for comment.

List of Subjects in 50 CFR Part 661

Fisheries, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 5, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

PART 661—[AMENDED]

For the reasons set forth in the preamble, 50 CFR Part 661 is amended to read as follows:

1. The authority citation for Part 661 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 661.20, the introductory text of paragraph (a) is revised to read as follows:

§ 661.20 Annual actions.

(a) The Secretary will annually establish or, as necessary, adjust management specifications for the commercial, recreational, and treaty Indian fisheries by publishing a notice in the **Federal Register** under § 661.23. Management specifications may include allowable ocean harvest levels (including quotas), allocations, management boundaries and zones, minimum size limits, gear definitions, seasons, and selective fisheries for each fishery and may be specified as follows:

* * * * *

3. In § 661.21, paragraph (b) is revised to read as follows:

§ 661.21 Inseason actions.

* * * * *

(b) *Flexible inseason management provisions.* (1) Flexible inseason management provisions include, but are not limited to, the following:

(i) Modification of quotas and/or fishing seasons.

(ii) Modifications in the species which may be caught and landed during specific seasons and the establishment or modification of limited retention regulations.

(iii) Changes in recreational bag limits and recreational fishing days per calendar week.

(iv) Establishment or modification of gear restrictions.

(v) Modification of boundaries, including landing boundaries, and establishment of closed areas.

(2) The procedures for development and implementation of flexible inseason management provisions are described in § 661.23 and in the Appendix to this Part, Section III.

4. In the Appendix, paragraph II.B.1(a) is revised to read as follows:

Appendix

* * * * *

II. Annual Changes to Management Specifications

* * * * *

B. *Procedures for Establishing and Adjusting Annual Management Measures.*

1. Allowable ocean harvest levels and quotas.

* * * * *

(a) *Coho south of Leadbetter Point.* A preseason estimate will be made each year of the Oregon coastal natural coho salmon stock size, using the best scientific information and methodology available as determined by the Council.

5. In the Appendix, paragraphs II.B.2 (b)(i) and (b)(ii) are revised, paragraph II.B.2(b)(iii) is redesignated as paragraph (b)(iv), and a new paragraph II.B.2(b)(iii) is added to read as follows:

Appendix

* * * * *

II. * * *

* * * * *

B. * * *

2. Allocation of ocean harvest levels.

* * * * *

(b) *Coho south of Cape Falcon.* (i) The following allocation schedule will be used in determining preseason allocation shares of coho salmon south of Cape Falcon, Oregon. The respective shares may be altered inseason if coho initially allocated to the recreational fishery but surplus to completing the recreational seasons are reallocated to the commercial fishery in accordance with paragraph 2(b)(iii) of this section.

Allowable ocean harvest (thousands of fish)	Commercial		Recreational	
	Number (thousands)	Percentage	Number (thousands)	Percentage
2,700	2,230	82.6	470	17.4
2,600	2,140	82.3	460	17.7
2,500	2,050	82.0	450	18.0
2,400	1,960	81.7	440	18.3
2,300	1,870	81.3	430	18.7
2,200	1,780	80.9	420	19.1
2,100	1,690	80.5	410	19.5
2,000	1,600	80.0	400	20.0
1,900	1,510	79.5	390	20.5
1,800	1,420	78.9	380	21.1
1,700	1,330	78.2	370	21.8
1,600	1,240	77.5	360	22.5
1,500	1,150	76.7	350	23.3
1,400	1,060	75.7	340	24.3
1,300	970	74.6	330	25.4
1,200	880	73.3	320	26.7
1,100	790	71.8	310	28.2
1,000	700	70.0	300	30.0
900	610	67.8	290	32.2
800	520	65.0	280	35.0
700	434	62.0	266	38.0
600	348	58.0	252	42.0
500	262	52.4	238	47.6
400	176	44.0	224	56.0
350	133	38.0	217	62.0
300	100	33.3	200	66.7
200	[1] 33	[1] 16.5	[1] 167	[1]83.5
100	[1]	[1]	[1]	[1]

[1] An incidental coho allowance associated with any commercial all-salmon-except-coho fishery will be deducted from the recreational share of coho during periods of low coho abundance when the commercial allocation of coho under the schedule would be insufficient to allow for incidental hooking mortality of coho in the commercial all-salmon-except-coho fishery.

(ii) The allocation schedule is based on the following formula.

(A) Up to 350,000 allowable ocean harvest: the first 150,000 fish will be allocated to the recreational fishery. Additional fish will be allocated 66.7 percent of troll and 33.3 percent to recreational. The incidental coho mortality for a commercial all-salmon-except-coho fishery will be deducted from the troll allocation. If the troll allocation is insufficient for this purpose, the remaining number of coho needed for this estimated incidental coho mortality will be deducted from the recreational share.

(B) From 350,000 to 800,000 allowable ocean harvest: the recreational allocation is equal to 14 percent of the allowable harvest above 350,000 fish, plus 217,000 fish. The remainder of the allowable ocean harvest will be allocated to the troll fishery.

(C) Above 800,000 allowable ocean harvest: the recreational allocation is equal to 10 percent of the allowable harvest above 800,000 fish, plus 280,000 fish. The remainder of the allowable ocean harvest will be allocated to the troll fishery.

(D) The above formula will be used to interpolate between allowable harvest levels shown in the table above.

(iii) On or about August 1 each year, the Salmon Plan Development Team will estimate the number of coho salmon needed to complete the recreational seasons. Any coho salmon allocated to the recreational fishery which are not needed to complete the recreational seasons will be reallocated to the commercial fishery.

* * * * *

6. In the Appendix, the heading of section III.B. is revised to read "General procedures for flexible inseason management provisions" and paragraph III.B.1 is revised to read as follows:

Appendix

* * * * *

III. Inseason Changes to Management Measures

* * * * *

B. *General procedures for flexible inseason management provisions.*

1. Fishery managers must determine that any inseason adjustment in management measures is consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, ocean escapement goals, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation scheme in the FMP. In addition, all inseason adjustments will be based on consideration of the following factors:

(a) Predicted sizes of salmon runs;

(b) Harvest quotas and hooking mortality limits for the area and total allowable impact limitations if applicable;

(c) Amount of the recreational, commercial, and treaty Indian catch for each species in the area to date;

(d) Amount of recreational, commercial, and treaty Indian fishing effort in the area to date;

(e) Estimated average daily catch per fisherman;

(f) Predicted fishing effort for the area to the end of the scheduled season; and

(g) Other factors as appropriate.

* * * * *

7. In the Appendix, the introductory text of paragraph III.B.2 is revised to read as follows:

Appendix

* * * * *

III. * * *

* * * * *

B. * * *

2. For those actions taken during the season, the following procedures will be followed:

* * * * *

8. In the Appendix, sections III.C through III.F are removed.

9. In Appendix section IV, the table entitled "Summary of Specific Management Goals for Stocks in the Salmon Management Unit" is revised to read as follows:

SUMMARY OF SPECIFIC MANAGEMENT GOALS FOR STOCKS IN THE SALMON MANAGEMENT UNIT

System	Spawning [1] escapement goal	Rebuilding schedule
Sacramento Fall Chinook [2]	Range of 122-160,000 for natural and hatchery.	
Klamath Fall Chinook	97,500 natural; 17,500 hatchery	Achieve in-river run sizes (natural and hatchery continued) as follows:
		1983-86 68,900
		1987-90 82,700
		1991-94 99,200
		1995-98 ..... [3] +115,000
Oregon Coastal Chinook	150-200,000 natural	
Columbia River Chinook:		

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SUMMARY OF SPECIFIC MANAGEMENT GOALS FOR STOCKS IN THE SALMON MANAGEMENT UNIT—Continued

System	Spawning [1] escapement goal	Rebuilding schedule
Upper River Fall	40,000 bright adults above McNary Dam	
Upper River Summer	80,000 adults above Bonneville	
Upper River Spring	100–200,000 adults above Bonneville	
Lower River Spring (Willamette)	30–35,000	
Columbia River and Oregon Coastal Coho	Oregon coastal natural (OCN) coho spawning escapement goal is based on OCN coho stock abundance. See footnote 4, below.	
Puget Sound Pink	900,000 natural	
Lake Washington Sockeye [5]	300,000 to Lake Washington	
Columbia River Sockeye [5]	80,000 over Priest Rapids	

[1] Represents adult natural spawning escapement goal for viable natural stocks or adult hatchery return goal for stocks managed for artificial production.

[2] The Sacramento River escapement goal is presented as a range within which annual escapements can be expected to vary. Achieving the upper end of the range, especially for the up-river chinook stocks, will be contingent upon solving the problems associated with the Red Bluff Diversion Dam.

[3] The long-term Klamath River escapement goals of 115,000 chinook is spawning escapement to which in-river harvest must be added to calculate the ocean escapement goal.

[4] Achieve escapement of OCN coho natural spawning stocks as follows:

Estimated stock size	Spawning escapement goal
Up to 270,000	135,000
270,000 to 400,000	one-half of stock size
Over 400,000	200,000

[5] These stocks represent a negligible component of the Washington ocean harvest.

[FR Doc. 87–2781 Filed 2–5–87; 4:40 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 27
Tuesday, February 10, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 810

Optimal Grain Grading

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Request for public comment.

SUMMARY: Pursuant to the provisions of section 306 of the Grain Quality Improvement Act of 1986, Pub. L. 99–641, the Federal Grain Inspection Service (Service) is soliciting comments on the desirability of adopting an optimal grain grading system. Comments are also solicited on the manner in which the U.S. Standards for Grain might be revised to improve grain quality and provide greater economic incentives for the production and sale of high quality grain.

DATE: Comments must be submitted on or before April 13, 1987.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Information Resources Staff, USDA, FGIS, Room 1661 South Building, 1400 Independence Avenue, SW., Washington, DC 20250, telephone (202) 382–1738. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., address as above, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: The Grain Quality Improvement Act of 1986, Pub. L. 99–641, amending the United States Grain Standards Act (7 U.S.C. 71 *et seq.*), became effective November 10, 1986. Section 306 of the Grain Quality Improvement Act provides:

Section 306. Review of Optimal Grade Proposal.

(a) *Notice and comment.* To evaluate the effects of moving to an optimal grain grading system, the Administrator of the Federal Grain Inspection Service shall—

(1) Publish in the **Federal Register** a detail description of the proposals contained in H.R. 5354, 99th Congress, the optimal Grain Grading Act of 1986; and

(2) Solicit public comment, during a period of not less than 60 days on—

(A) The optimal grain grading system as proposed in H.R. 5354; and

(B) The general objective of improving grain quality by revising the Official United States Grain Standards to provide greater economic incentives for production and sale of high-quality grain.

(b) *Report.* The Administrator shall report to Congress, by May 1, 1987, on the comments received and on the recommendations of the Administrator with respect to the matters on which comments were solicited.

H.R. 5354 would have established a single optimal grade for grain quality and condition to replace the current numerical grading provisions in the Official U.S. Grain Standards. The optimal grade designation would contain maximum limits for foreign material, damaged kernels and broken kernels, splits, or shrunken or broken kernels. For grain to be designated as optimal grade, it would contain no more than one-half of one percent of each of (1) foreign material, (2) damaged kernels, with not more than one-tenth of one percent heat damaged, and (3) broken kernels, splits, or shrunken or broken kernels, as applicable. A sample grade designation would also be included in this grading system. For grain other than optimal grade or sample grade, the provisions of H.R. 5354 provided for "a deviation from the optimal grade" which would be a description that would measure the deviation of grain from the optimal grade.

The Service is soliciting comments on the optimal grain grading provisions contained in H.R. 5354. In addition, comments are solicited from all interested parties on the manner in which the Official United States Standards for Grain might be revised to improve grain quality and to provide greater economic incentives for the production and sale of high quality grain.

The Administrator will report to Congress by May 1, 1987, on the comments received and on his recommendations with respect to these matters.

The request for public comment does not constitute notification that changes to the grain standards or inspection procedures are or will be made.

(Sec. 306, Pub. L. 99–641, Grain Quality Improvement Act of 1986 (7 U.S.C. 74))

Dated: February 5, 1987.

W. Kirk Miller,

Administrator.

[FR Doc. 87–2697 Filed 2–9–87; 8:45 am]

BILLING CODE 3410-EN-M

DEPARTMENT OF ENERGY

10 CFR Part 763

Proposed Uranium Enrichment Late Payment Charges

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy (DOE) is proposing to change the method of assessing interest charges for overdue uranium enrichment customer accounts. This change will raise the late payment charge due DOE. The proposed new interest charge applicable to uranium enrichment only will be Treasury's current value of funds rate plus 6 percent pro rata on a daily basis.

The primary reason for this change is to motivate customers to pay on time and reduce uncertainty in DOE's estimate of revenue collections.

DATES: Written comments should be received no later than March 12, 1987. DOE will hold a public hearing on the proposed rulemaking on March 5, 1987. Requests for an opportunity to speak at the public hearing must be received by DOE on or before March 2, 1987.

ADDRESSES: Comments (6 copies) should be addressed to: U.S. Department of Energy, Sherry E. Peske, Director, Office of Marketing Business Operations (NE–32), Washington, DC 20545. All requests to speak at the hearing should be directed to Arthur G. Wolman. The public hearing will begin at 9:30 a.m. at the following location: U.S. Department of Energy, 1000 Independence Avenue, SW., Room: 1E–245, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Arthur G. Wolman, Office of Marketing and Business Operations (NE–32), Washington, DC 20545, (301) 353–5841; and Lawrence Leiken, Attorney for Office of General Counsel (GC–31), Washington, DC 20585, (202) 586–6975.

SUPPLEMENTARY INFORMATION:

I. Background

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II. Public Comment Procedures
A. Written Comments
B. Public Hearing
III. Procedural Requirements
A. Review Under Executive Order 12291
B. Review Under the Regulatory Flexibility Act
C. Paperwork Reduction Act
D. National Environmental Policy Act

I. Background

The current late payment charge applicable to all DOE accounts including uranium enrichment customers is tied to the Treasury's current value funds rate and was established in a **Federal Register** notice, 46 FR 21408, April 10, 1981. The Treasury Funds' rate is an annualized percentage rate determined by the Treasury and represents the average of the current value of funds to the Treasury for a recent 3-month period. In that April 10, 1981, Notice, it was stated that interest should be collected on all overdue accounts in order for the Federal Government to manage its accounts receivable more efficiently. At that time, the quarterly publishing of the Treasury Funds' rate was deemed a good barometer of current economic conditions. The use of the rate would enable the Government to recoup the approximate value that has been lost by the delayed receipt of funds.

In the recent history of uranium enrichment revenue collections, it has been determined that the use of the Treasury's current value of funds rate for setting the late payment charge may recoup the value of delayed receipts, but has not been adequate to ensure timely payment of customer accounts. The late payment charge (i.e., Treasury Funds' rate) is currently at 7 percent. Over the last few years, the rate has been relatively low compared to the Public Utility Bond Rates (Appendix A). Thus, enrichment customers may view the Department's late payment charge as an attractive source of financing compared to the rates available to them through private sources.

To the extent that DOE's late payment rate encourages customers to delay payments, it contributes to the Federal deficit. Additionally, the Department attempts to maintain its enrichment budget outlays within the level of revenues estimated to be collected each fiscal year. If there is uncertainty about revenue collections, then enrichment outlays must be reduced to reflect this uncertainty. The only significant program vehicle available to the Department for reducing outlays is to reduce power purchases which will cause a drop in production levels to uneconomical levels. The lost production must be replaced in later years when the cost of production is estimated to increase significantly due to escalation, economies of scale, and existing power contract commitments. As the typical annual customer delivery is worth over $10 million, the programmatic impact of late payments from even a single customer can be significant, penalizing customers who have paid on time.

II. Public Comment Procedures

A. Written Comments

The public is invited to participate in this proceeding by submitting data, views, or arguments with respect to the issues set forth in this Notice. All comments should be submitted by 5:00 p.m., on the day specified in the **"DATES"** section to the address indicated in the **"ADDRESSES"** section of this Notice and should be identified on the outside envelope and on documents submitted with the designation, "Comments on Proposed Uranium Enrichment Late Payment Charges." Six copies should be submitted. All comments received by DOE will be available for public inspection in the DOE Freedom of Information Office, Room 1E–190, Forrestal Building, 1000 Independence Ave., SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Any information or data submitted which you consider to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information or data in accordance with the provisions of 10 CFR 1004.11.

B. Public Hearing

1. Procedure for submitting requests to make oral presentations. Requests to speak should be in writing and contain a telephone number where you may be contacted during working hours. Requests must be submitted to the address indicated in the **"ADDRESSES"** section of this notice and received by DOE by the date indicated in the **"DATES"** section of this Notice. Each person to speak at the hearing is requested to bring six copies of his statement.

2. Conduct of the hearing. DOE reserves the right to select the persons to be heard at the hearing (in the event there are more requests to be heard than time allows), to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based upon the number of persons requesting to be heard.

A DOE official will be designated to preside at the hearing. This will not be a judicial-type hearing. Questions may be asked only by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

If you wish to ask a question at the hearing, you may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made. The entire record including the transcript and written comments will be retained by the DOE and made available for inspection in the DOE Freedom of Information Office, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. A copy of the transcript may be purchased from the reporter.

III. Procedural Requirements

A. Review Under Executive Order 12291

Executive Order 12291 (46 FR 13191, February 19, 1981), requires an agency to prepare a regulatory impact analysis for any proposed major rule. DOE has determined that this proposal does not constitute a "major rule," as defined in the Executive Order, because: (1) The proposed late payment charge increase applicable to uranium enrichment customers will not directly result in the level of impact necessary to meet the definition of a "major rule;" and (2) in keeping with the purpose and intents of the Executive Order, the proposed late payment charge increase applicable to uranium enrichment customers will not increase the regulatory burdens on American society. The Office of Management and Budget has reviewed and commented on this proposed rule.

B. Review Under the Regulatory Flexibility Act

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, DOE certifies that the proposal will not have a significant economic impact on a substantial number of small entities because: (1) The proposed late payment charge applicable to uranium enrichment customers will not directly result in the level of impact required to meet the standard set forth in the Regulatory Flexibility Act; (2) to the extent the proposed late payment charge increase applicable to uranium enrichment customers may have any direct impact, such impact will not be adverse to small entities; and (3) the number of small entities that may be affected by the proposed late payment charge increase applicable to uranium enrichment customers is not large enough to meet the standard set forth in the Regulatory Flexibility Act.

C. Paperwork Reduction Act

The proposed late payment charge increase for uranium enrichment customers does not directly provide for the collection of new information. DOE will submit the collection of any new information requests concerning the proposed rulemaking amendments to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501.1 *et seq.*, and the procedures implementing that Act. 5 CFR 1320.1 *et seq.*

D. National Environmental Policy Act

The Department of Energy has determined that this proposed rulemaking clearly will have no effect on the quality of the human environment. Since the proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment, neither an Environmental Assessment nor an Environmental Impact Statement is required.

List of Subjects in 10 CFR Part 763

Uranium.

For the reasons set out in the preamble, Chapter III of Title 10 of the Code of Federal Regulations is proposed to be amended as set forth below.

Issued in Washington, DC on February 4, 1987.

A. David Rossin,

Assistant Secretary for Nuclear Energy.

Chapter III of Title 10 is proposed to be amended by adding a new Part 763 to read as follows:

PART 763—URANIUM ENRICHMENT LATE PAYMENT CHARGES

Authority: Section 161(v), 68 Stat. 943, 42 U.S.C. 2201(v).

§ 763.1 Uranium enrichment late payment charges.

The late payment charge for uranium enrichment customers will be the current Treasury Funds' rate plus 6 percent pro rata on a daily basis.

APPENDIX A—Comparison of Recent Treasury Current Value of Funds Rates to Public Utility Rates

Note: This appendix will not be codified in the Code of Federal Regulations.

Year	Average yearly Treasury rates[1] Percent	Public utility bond rates (percent)[2] AAA Hi	AAA Lo	AA Hi	AA Lo
1986	8.00	10.87	8.76	10.42	8.12
1985	9.00	13.24	9.49	13.70	10.30
1984	9.00	13.35	12.28	15.18	12.59
1983	11.50	13.40	11.73	13.45	12.17
1982	13.46	16.27	11.88	16.85	12.49

[1] The uranium enrichment late payment charge is tied to the Treasury Funds rate which is published in the FEDERAL REGISTER.
[2] Source is Moody's Investors Service.

[FR Doc. 87–2722 Filed 2–9–87; 8:45 am]
BILLING CODE 6450–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 75

[Airspace Docket No. 86–ANM–27]

Proposed Alteration of Jet Route J–67—OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Jet Route J–67 located in the vicinity of Portland, OR. Currently J–67 begins at Lakeview, OR, and this proposal would extend J–67 southward to Linden, CA. This action would support a preferential route that would enhance and improve traffic flow between California and Oregon.

DATES: Comments must be received on or before April 13, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Northwest Mountain Region, Attention: Manager Air Traffic Division, Docket No. 86–ANM–27, Federal Aviation Administration, 17900 Pacific Highway South, C–68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9254.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86–ANM–27." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All

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comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 267-3484. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the description of Jet Route J-67 by extending it from Lakeview, OR, to Linden, CA. The jet route extension is part of a plan to improve traffic flow in the California/Oregon area by designating this extension as a preferential route. This action would aid flight planning and enhance traffic management between these two states. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore— (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes

The Proposed Amendment

PART 75—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854, 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-67 [Revised]

From Linden, CA, via Lakeview, OR, to Portland, OR.

Issued in Washington, DC., on February 3, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-2684 Filed 2-9-87; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 33

Cross-Margining of Commodity Futures, Commodity Options, and Securities Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On November 13, 1986, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** a request for comments on a petition for rulemaking submitted by the Intermarket Clearing Corporation ("ICC"). 51 FR 41117. The ICC petition seeks to have the Commission issue a rule that would permit the cross-margining of positions in commodity futures, commodity options, and securities options relating to the same underlying assets. The comment period is scheduled to expire on February 11, 1987.

By letters dated January 23 and 27, 1987, the Futures Industry Association and the Chicago Board of Trade respectively requested a 60-day extension of the comment period. In a letter dated January 27, 1987, the Chicago Mercantile Exchange has requested a 90-day extension. All of those letters state that further time is needed to analyze the proposal because of the complexity of the issues involved. In order to ensure that all interested persons have an opportunity to submit meaningful comments, the Commission has determined to grant a 60-day extension of the comment period.

DATE: Comments must be submitted by April 13, 1987.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Rosenzweig, Associate Director, or John C. Lawton, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC. 20581. Telephone: (202) 254-8955.

Issued in Washington, DC on February 5, 1987, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-2729 Filed 2-9-87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket Nos. GP87-27-000; RM79-76-250]

High-Cost Gas Produced From Tight Formations, Texas; Notice of Formal Hearing

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Formal Hearing.

SUMMARY: The Commission has ordered a formal hearing to consider additional evidence and arguments in this proceeding which involves a recommendation by the Railroad Commission of Texas that Travis Peak Formation be designated as a tight formation under the Commission's Regulations. This notice describes the history and issues of the proceeding and provides procedures for intervention.

DATE: Interventions are due on or before February 25, 1987.

ADDRESS: Interventions should be filed with: Office of the Secretary, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary, 357-8400.

SUPPLEMENTARY INFORMATION:

In the matter of High-Cost Gas Produced from Tight Formation, Docket No. GP87-27-000 [1] and RM79-76-250 (Texas—9 Addition II, Travis Peak Formation); (Issued February 3, 1987).

On January 9, 1987, the Federal Energy Regulatory Commission (Commission) issued an Order Granting Rehearing,

Vacating Order No. 450 and Establishing Procedures in the above-cited proceeding.[1] In the order on rehearing, the Commission directed the Secretary to publish this Notice of Formal Hearing in the **Federal Register** in order to alert interested parties of their opportunity to file a motion to intervene in this proceeding.

This new docket number has been assigned to the formal hearing so that a service list can be established and maintained separately from the general mailing list for other high-cost gas rulemakings.

Under section 107(c)(5) of the Natural Gas Policy Act of 1978, the Commission may designate certain types of natural gas as high-cost gas. High-cost gas is produced under conditions which present extraordinary risks or costs and once designated may be eligible for an incentive price. Under section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas. Jurisdictional agencies may submit recommendations for designation of certain areas as tight formations. The Commission will designate as a tight formation any formation recommended by a jurisdictional agency if the Commission finds that the average gas permeability, stabilized pre-stimulation natural gas flow rate, and the prestimulation oil flow rate of the formation do not exceed designated limits.[2]

The instant matter concerns a recommendation by the Railroad Commission of Texas (Texas) that the Travis Peak Formation be designated as a tight formation under section 271.703(d).[3] On November 2, 1981, the Commission received Texas' recommendation that the Travis Peak Formation,[4] underlying 47 counties in Districts 5 and 6 in the northeastern part of the State of Texas, be designated as a tight formation. The recommendation was proposed in a Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation issued on December 15, 1981.[5] On January 22, 1982, Commission staff informed Texas by letter that the recommendation did not meet the Commission's guidelines for tight formation designation. On September 19, 1983, Texas submitted an amended recommendation. An Amended Notice of Proposed Rulemaking was issued on November 14, 1983.[6]

Texas' original recommendation was based on data from 606 gas wells. This data was obtained from operators and public records, but was listed by code number so that specific well identities and locations were not disclosed. Staff analysis revealed that the formation's average permeability, stabilized natural gas flow rate and the oil flow rate appeared to exceed the permissible levels.

In its September 1983 amended recommendation, Texas continued to recommend that the entire Travis Peak Formation be designated as a tight formation. However, Texas suggested as an alternative that the top 200 feet of 45 specific gas wells be excluded from the recommended area, as well as all oil wells producing in the area. Texas' alternative recommendation contained no new data and continued to list all wells by code number. Staff analysis of the alternative recommendation revealed that the formation's average permeability and stabilized natural gas flow rate still exceeded the permissible levels.

On December 13, 1983, Commission staff met with members of the Texas staff to discuss the Travis Peak recommendation. Data in support of the recommendation by Texas contained summary data only and all well identities were coded for proprietary reasons. Commission staff was informed at that meeting that Texas staff did not have access to the well codes and it was not possible to determine the location of the data wells. Accordingly, neither Texas staff nor the Commission staff could properly analyze TXO's application. However, in order to facilitate Commission consideration of the recommendation, TXO provided Commission staff with additional permeability and flow rate data, referenced by code number, in 1985.

Review of the data submitted by TXO revealed that a large number of high permeability and high flow rate wells are located in two Panola County fields, the Bethany Field and the Carthage Field. Specifically, 31 of 44 data wells in the Bethany Field and 46 of 65 data wells in the Carthage Field exceed either the permeability or flow rate guidelines. These two fields thus represent "sweet spots" within an otherwise apparently tight formation and were proposed for exclusion by Commission staff, along with 31 other gas wells which have very high permeability values or high pre-stimulation flow rates, in order to bring the remaining area within Commission guidelines.[7] Since there was still no specific flow rate data with respect to oil production, staff recommended that all oil wells be excluded from the recommended area.[8]

On December 6, 1985, Commission staff notified Texas of the proposed exclusions. Texas replied by letter of January 7, 1986, that the data analyzed by the Commission staff were never filed with or through Texas. Texas stated that it could not support any designation which would exclude any areas and/or wells from the area originally recommended.

Based on the data submitted by TXO, the Commission on May 23, 1986, issued Order No. 450 [9] which modified and adopted the recommendation of Texas that Travis Peak be designated as a tight formation under section 107(c)(5) of the NGPA, but excluded the sweet spots from the designation. On June 19, 1986, Delhi Gas Pipeline Corporation (Delhi) filed an application for rehearing arguing that certain unspecified areas within the designated tight formation have characteristics similar to those which caused the Commission to exclude the sweet spots. Delhi asked the Commission to permit submission of certain studies of other wells drilled after 1980 that Delhi believes will show that the formation does not meet the Commission's criteria. The Commission on July 21, 1986, granted rehearing for the purpose of further consideration. On January 9, 1987, the Commission issued

[1] 38 FERC ¶ 61,006; 52 FR 2401 (1987).

[2] 18 CFR § 271.703(c)(2)(i)(A)-(C) (1985).

[3] 18 CFR 271.703(d) (1985).

[4] The Travis Peak is the basal formation of the Lower Cretaceous series and is encountered immediately below the last limestone zone of the Sligo/Pettit Formation. It overlies the Jurassic Cotton Valley Group and is composed of lenticular, alternating sandstone and shale beds. Its thickness ranges from 500 to 2,500 feet throughout the proposed area; the depth to the top of the formation varies from 3,140 feet to 10,850 feet.

[5] 46 FR 62,086 (Dec. 22, 1981). Comments in support of the recommendation were filed by Mitchell Energy Corporation, Champlin Petroleum Company, and Husky Oil Company.

[6] 48 FR 52,482 (Nov. 18, 1983). Comments in support of the amended recommendation were filed by Champlin Petroleum Company and Crystal Oil Company. No party requested a hearing and no hearing was held.

[7] The 31 gas wells are those wells among the remaining data wells which exceed either the permeability or flow rate guidelines by the greatest magnitude.

[8] Commission guidelines provide that the pre-stimulation oil flow rate of all wells in a tight formation may not exceed five barrels of oil per day. Texas' recommendation states that 98 percent of total production from the recommended area on a Btu basis is natural gas, twenty percent of the wells are oil wells, and 11 percent of the wells may produce as much as five barrels of oil per day. It is therefore reasonable to conclude that the flow rate of some oil wells may be within permissible levels. Based on the limited information available, however, excluding all oil wells from the recommended area ensures that the Commission's guidelines are met.

[9] Docket No. RM79-76-090, 51 FR 19,164 (May 28, 1986), III FERC Stats. & Regs. ¶ 30,698.

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an Order Granting Rehearing, Vacating Order No. 450 and Establishing Procedures for a formal hearing to take evidence and hear arguments from any interested party regarding whether or not Travis Peak should be designated as a tight formation.[10]

Pursuant to the Commission's order granting rehearing, the Presiding Administrative Law Judge will allow each party the maximum degree of participation permitted under the Commission's procedural regulations in order to bring out all relevant information regarding the character of the Travis Peak formation. Each party will be allowed to submit whatever permeability and production data it believes supports its position on the issue of the qualification of Travis Peak as a tight formation.

Any person desiring to be heard should file a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the requirements of Rule 214 of the Commission's rules of practice and procedure (18 CFR 385.214). Motions to intervene should be filed not later than 15 days following publication of this notice in the **Federal Register**. Any person wishing to become a party must file a motion to intervene.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2757 Filed 2-9-87; 8:45 am]

BILLING CODE 6717-01

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Public Comment Procedures and Opportunity for Public Hearing on Proposed Modifications to Permanent State Regulatory Program of Indiana

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of proposed program amendments to the Indiana Permanent Regulatory Program (hereinafter referred to as the Indiana program) received by OSMRE pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

[10] *See* note 1 *supra.*

The proposed amendments submitted by the State on December 29, 1986, would amend the Indiana regulations concerning applications and renewals for certification for blasters, and accompanying fees.

This document sets forth the times and locations that the Indiana program and proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and information pertinent to the public hearing.

DATE: Written comments relating to Indiana's proposed modification of its program not received on or before 4:00 p.m., March 12, 1987, will not necessarily be considered.

If requested, a public hearing will be held on March 9, 1987, beginning at 10:00 a.m. at the location shown below under "**ADDRESSES.**"

ADDRESSES: Written comments should be mailed or hand-delivered to: Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone: (317) 296-2600.

If a public hearing is held, its location will be at: OSMRE Indianapolis Field Office, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana; Telephone: (317) 296-2600.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204; Telephone: (317) 296-2600.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Indiana program, the proposed amendment, and a listing of any scheduled public meeting and all written comments received in response to this notice will be available for review at the OSMRE offices and the Office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive free of charge, one copy of the proposed amendment by contacting the Indianapolis Field Office listed below:

Office of Surface Mining Reclamation and Enforcement, Room 5315, 1100 "L" Street, NW., Washington, DC 20240

Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204

Indianapolis Department of Natural Resources, 608 State Office Building, Indianapolis, Indiana 46204.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanation in support of the commenter's recommendations. Comments not received by March 12, 1987, or received at locations other than the OSMRE Indianapolis, Indiana Field Office, will not necessarily be considered.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by the close of business March 2, 1987. If no one requests to comment at the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE office listed in "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT."

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Discussion of the Proposed Amendment

Information regarding the general background on the Indiana State Program, including the Secretary's Findings, the disposition of comments and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 16, 1982 **Federal Register** (47 FR 32071-32108).

On December 29, 1986, the Indiana Department of Natural Resources submitted to OSMRE pursuant to 30 CFR 732.17, a proposed State program amendment for approval. The amendment would modify regulations at 310 IAC 12-8-4 to require that an application for certification as a certified blaster be accompanied by a non-refundable fee of $80. Other minor changes are proposed to clarify the rules. The amendment would also modify 310 IAC 12-8-8 to require that blaster certification renewals be accompanied by a $25 fee. Other minor changes are proposed for clarification.

Pursuant to 30 CFR 732.15 and 732.17, the Director requests public comment on the adequacy of the above modifications. If the Director determines that the proposed modifications are in accordance with SMCRA and consistent with the Federal regulations, the amendment will be incorporated as part of the approved Indiana program.

Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption for sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this section is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: February 3, 1987.

James W. Workman,

Deputy Director, Operations and Technical Services.

[FR Doc. 87-2745 Filed 2-9-87; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 935

Public Comment Procedures and Opportunity for Public Hearing on Proposed Modifications to the Ohio Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of a program amendment submitted by Ohio as an amendment to the State's permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment submitted consists of a proposed change to Ohio bonding rules [O.A.C.1501:13-7-03]. The amendment is proposed to extend the period of time a coal mine permittee would have to replace the bond of a surety who has become incapacitated by reason of bankruptcy, insolvency, or suspension or revocation of the surety's license from sixty to ninety days.

This notice sets forth the times and locations that the Ohio program and proposed amendment will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for the public hearing.

DATES: Written comments from the public not received by 4:30 p.m., March 12, 1987 will not necessarily be considered in the decision on whether the proposed amendment should be approved and incorporated into the Ohio regulatory program. If requested, a public hearing on the proposed amendment will be scheduled for March 2, 1987. Any person interested on speaking at the hearing should contact Ms. Nina Rose Hatfield at the address or telephone number listed below by February 25, 1987. If no person has contacted Ms. Hatfield by that date to express an interest in the hearing, the hearing will be cancelled. If only one person requests an opportunity to speak at the public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: The public hearing if requested, is scheduled for 1:00 p.m. in Room 202, Columbus Field Office, 2242 South Hamilton Road, Columbus, Ohio 43227.

Written comments and requests for an opportunity to speak at the hearing should be directed to Ms. Nina Rose Hatfield, Field Office Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus Ohio 43227; Telephone: (614) 866-0578.

Copies of the Ohio program, the proposed modification to the program, a lisiting of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the OSMRE Field Office listed above and at the OSMRE Headquarters Office and the office of State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Room 5315A, 1100 "L" Street, N.W., Washington, D.C. 20240.

Ohio Division of Reclamation, Building B, Fountain Square, Columbus, Ohio 43224.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, 43227; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982 **Federal Register** (47 FR 34688). Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register**. Subsequent

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actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11 and 935.15.

II. Submission of Revisions

By letter dated December 1, 1986, the Ohio Department of Natural Resources, Division of Reclamation submitted a proposed amendment to Ohio's regulatory program at 1501:13–7–03. The proposed change to OAC section 1501:13–7–03 would extend from sixty to ninety days the period of time a coal mine permittee has to replace the performance bond of a surety that has become incapacitated due to bankruptcy, insolvency, or suspension or revocation of the surety's license.

The full text of the proposed program amendment submitted by Ohio is available for public inspection at the addresses listed above. Upon request to OSMRE's Field Office Director, each person may receive, free of charge, one single copy of the proposed amendment. The Director now seeks public comment on whether the proposed amendment is no less effective than the Federal regulations. If approved, the amendment will become part of the Ohio program.

III. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C., 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from Section 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by the Office of Management of Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: February 3, 1987.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 87–2746 Filed 2–9–87; 8:45 am]

BILLING CODE 4310–5–M

NATIONAL SCIENCE FOUNDATION

45 CFR Part 689

Misconduct in Science and Engineering Research

AGENCY: National Science Foundation.

ACTION: Proposed Regulations.

SUMMARY: The National Science Foundation proposes to issue regulations to establish what the NSF and its staff do if they learn of possible misconduct under an NSF award and if they find actual misconduct under an NSF award. Responsibilities of grantee institutions are also set out.

DATE: Comments must be received on or before April 13, 1987.

ADDRESS: National Science Foundation, Office of the General Counsel, Room 501, 1800 G Street, NW., Washington, D.C. 20550.

FOR FURTHER INFORMATION CONTACT: Arthur J. Kusinski or Sukari Smith, (202 357–7439. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Although the National Science Foundation (NSF) has received relatively few allegations of misconduct or fraud occurring in NSF-supported research, or in proposals for the support of research, allegations of this nature are serious enough to warrant establishing formal policies and procedures to handle them. The Foundation believes that grantee institutions bear primary responsibility for preventing and detecting misconduct, and the proposed regulations set forth the role which institutions are expected to take. The proposed regulations, in establishing policies and internal procedures for handling allegations of misconduct, provide for interim administrative actions and appeals procedures.

The proposed regulations are similar to policies and procedures of the Public Health Service (PHS) of the Department of Health and Human Services.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects primarily the internal procedures of a Federal agency.

List of Subjects in 45 CFR Part 689

Misconduct, Debarment and suspension, Fraud.

Dated: February 3, 1987.

National Science Foundation.

Charles H. Herz,

General Counsel.

Accordingly, the National Science Foundation is proposing to add a new Part 689 to Title 45 of the Code of Federal Regulations as follows:

Title 45 Code of Federal Regulations—Public Welfare

PART 689—MISCONDUCT IN SCIENCE AND ENGINEERING RESEARCH

Sec.

689.1 General policies and responsibilities.
689.2 Actions.
689.3 Role of awardee institutions.
689.4 Initial NSF handling of misconduct matters.
689.5 Investigations.
689.6 Pending proposals and awards.
689.7 Interim administrative actions.
689.8 Dispositions.
689.9 Appeals.

Authority: Sec. 11(a) of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(a)).

§ 689.1 General policies and responsibilities.

(a) "Misconduct" means (1) fabrication, falsification, plagiarism, or other serious deviation from accepted practices in proposing, carrying out, or reporting results from research; (2) material failure to comply with Federal requirements for protection of researchers, human subjects, or the public or for ensuring the welfare of laboratory animals; or (3) failure to meet other material legal requirements governing research.

(b) The NSF will take appropriate action against individuals or institutions upon a determination that misconduct has occurred under an NSF award. It may also take interim action during an investigation. Possible actions are described in section 689.2.

(c) NSF will find misconduct only after careful inquiry and investigation by an awardee institution, by another

Federal agency, or by NSF. An "inquiry" consists of information-gathering and preliminary fact-finding to determine whether an allegation or apparent instance of misconduct warrants an investigation. An "investigation" is a formal examination and evaluation of relevant facts to determine whether misconduct has taken place or, if misconduct has already been confirmed, to assess its extent and consequences or determine appropriate NSF action.

(d) Before NSF makes any final finding of misconduct or takes any final action on such a finding, the individual or institution accused of misconduct normally will be given notice, a chance to provide comments and rebuttal, and a chance to appeal.

(e) Debarment, suspension, or termination of an award for misconduct will be imposed only after further procedures described in applicable debarment and suspension regulations.

(f) The Division of Audit and Oversight (DAO) in the Office of Budget, Audit, and Control, oversees and coordinates NSF activities related to misconduct, conducts any NSF inquiries and investigations into suspected or alleged misconduct, and except where otherwise provided, speaks and acts for NSF with affected individuals and institutions. The Office of the General Counsel (OGC) advises DAO and represents NSF on any current or potential criminal prosecution, current or potential litigation, or significant legal questions that arise.

§ 689.2 Actions.

(a) Possible final actions listed below for guidance range from minimal restrictions (Group I) to the most severe and restrictive (Group III). They are not exhaustive and do not include possible criminal sanctions.

(1) *Group I actions.* (i) Send a letter of reprimand to the individual or institution.

(ii) Require as a condition of an award that for a specified period an individual, department, or institution obtain special prior approval of particular activities from NSF.

(iii) Require for a specified period that an institutional official other than those guilty of misconduct certify the accuracy of reports generated under an award or provide assurance of compliance with particular policies, regulations, guidelines, or special terms and conditions.

(2) *Group II actions.* (i) Restrict for a specified period designated activities or expenditures under an active award.

(ii) Require for a specified period special reviews of all requests for funding from an affected individual, department, or institution to ensure that steps have been taken to prevent repetition of the misconduct.

(3) *Group III actions.* I(i) mmediately suspend or terminate an active award under appropriate NSF regulations.

(ii) Debar or suspend an individual, department, or institution from participation in NSF programs for a specified period after further proceedings under applicable regulations.

(iii) Prohibit participation of an individual as an NSF reviewer, advisor, or consultant for a specified period.

(b) In deciding what actions are appropriate when misconduct is found, NSF officials should consider:

(1) How serious the misconduct was;

(2) Whether it was deliberate or merely careless;

(3) Whether it was an isolated event or part of a pattern;

(4) Whether it is relevant only to certain funding requests or awards or to all requests or awards involving an institution or individual found guilty of misconduct.

(c) Interim actions may include, but are not limited to:

(1) Totally or partially suspending an existing award;

(2) Totally or partially suspending eligibility for NSF awards in accordance with debarment-and-suspension regulations;

(3) Proscribing or restricting particular research activities, as, for example, to protect human or animal subjects;

(4) Requiring special certifications, assurances, or other administrative arrangements to ensure compliance with applicable regulations or terms of the award;

(5) Requiring more prior approvals by NSF;

(6) Deferring funding action on continuing grant increments;

(7) Deferring a pending award;

(8) Restricting or suspending use of individuals as NSF reviewers, advisors, or consultants.

§ 689.3 Role of awardee institutions.

(a) Awardee institutions bear primary responsibility for prevention and detection of misconduct. In most instances, NSF will rely on awardee institutions to promptly:

(1) Initiate an inquiry into any suspected or alleged misconduct;

(2) Conduct a subsequent investigation, if warranted; and

(3) Take action necessary to ensure the integrity of research, the rights and interests of research subjects and the public, and the observance of legal requirements or responsibilities.

(b) If an institution wishes NSF to defer independent inquiry or investigation, NSF expects it to:

(1) Inform NSF immediately if an initial inquiry supports a formal investigation.

(2) Keep NSF informed during such an investigation.

(3) Notify NSF even before deciding to initiate an investigation or as required during an investigation (i) if the seriousness of apparent misconduct warrants; (ii) if immediate health hazards are involved; (iii) if NSF's resources, reputation, or other interests need protecting; (iv) if Federal action may be needed to protect the interests of a subject of the investigation or of others potentially affected; or (v) if the scientific community or the public should be informed.

(4) Provide NSF with the final report from any investigation.

(c) If an institution wishes NSF to defer independent inquiry or investigation, it should complete any inquiry and decide whether an investigation is warranted within 30 days. It should similarly complete any investigation and reach a disposition within 120 days. If completion of an inquiry or investigation is delayed, but the institution wishes NSF deferral to continue, NSF may require submission of periodic status reports.

(d) Awardee institutions should maintain and effectively communicate to their staffs appropriate policies and procedures relating to misconduct, which should indicate when NSF must or should be notified.

§ 689.4 Initial NSF handling of misconduct matters.

(a) NSF staff who learn of alleged misconduct will promptly and discreetly inform DAO or refer informants to DAO.

(b) To the extent possible the identity of informants who wish to remain anonymous will be kept confidential.

(c) If alleged misconduct may involve a crime, DAO will promptly consult with OGC, which will determine whether any criminal investigation is already pending or projected. If not, OGC and DAO will determine whether the matter should be referred to the Department of Justice.

(d) Otherwise DAO may:

(1) Inform the awardee institution of the alleged misconduct and encourage it to undertake an inquiry;

(2) Defer to inquiries or investigations of the awardee institution or of another Federal agency;

(3) At any time proceed with its own inquiry.

(e) If DAO proceeds with its own inquiry it will normally complete the

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inquiry no more than 60 days after initiating it.

(f) On the basis of what it learns from an inquiry and in consultation as appropriate with other NSF offices, DAO will decide whether a formal NSF investigation is warranted.

§ 689.5 Investigations.

(a) When an awardee institution or another Federal agency has promptly initiated its own investigation, DAO may defer any NSF inquiry or investigation until it receives the results of that external investigation. If it does not receive the results within 120 days, DAO will ordinarily proceed with its own investigation.

(b) If DAO decides to initiate an NSF investigation, it must give prompt written notice to the individuals or institutions to be investigated, unless notice would prejudice the investigation or unless a criminal investigation is under way or under active consideration. If notice is delayed, it must be given as soon as it will no longer prejudice the investigation or contravene requirements of law or Federal law-enforcement policies.

(c) If a criminal investigation by the Department of Justice, the Federal Bureau of Investigation, or another Federal agency is under way or under active consideration by these agencies or the NSF, OGC will advise DAO what information, if any, may be disclosed to the subject of the investigation or to other NSF employees.

(d) An NSF investigation *may* include:

(1) Review of award files, reports, and other documents already readily available at NSF or in the public domain;

(2) Review of procedures or methods and inspection of laboratories, laboratory materials, specimens, and records at awardee institutions;

(3) Interviews with parties or witnesses;

(4) Review of any documents or other evidence provided by or properly obtainable from parties, witnesses, or other sources;

(5) Cooperation with other Federal agencies;

(6) Opportunity for the subject of the investigation to be heard; and

(7) Full adjudicatory hearings or other formal proceedings, as described in appropriate regulations.

(e) NSF may invite outside consultants or experts to participate in an NSF investigation. They should be appointed in a manner that ensures the official nature of their involvement and provides them with legal protections available to federal employees.

(f) DAO will make every reasonable effort to complete an NSF investigation and to report within 120 days after initiating it. If DAO cannot report within 120 days, it should submit to the Deputy Director within 90 days an interim report and an estimated schedule for completion of the final report.

§ 689.6 Pending proposals and awards.

(a) Upon learning of alleged misconduct DAO will identify potentially implicated awards or proposals and, when appropriate, will ensure that program and DGC officials handling them are informed (subject to § 689.5(c)).

(b) Neither a suspicion or allegation of misconduct nor a pending inquiry or investigation will normally delay review of proposals. To avoid influencing reviews, reviewers or panelists will *not* be informed of allegations or of ongoing inquiries or investigations. However, if allegations, inquiries, or investigations have been rumored or publicized, the responsible Assistant Director may, in consultation with DAO, either defer review or inform reviews of the status of the matter.

§ 689.7 Interim administrative actions.

(a) After an inquiry or during an external or NSF investigation the Deputy Director may order that interim actions (as described in § 689.2(c)) be taken to protect Federal resources or to guard against continuation of any suspected or alleged misconduct. Such an order will normally be issued on recommendation from DAO and in consultation with DGC, OGC, the responsible Directorate, and other parts of the Foundation as appropriate.

(b) Such interim actions may be taken whenever information developed during an investigation indicates a need to do so. Any interim action will be reviewed periodically during and investigation and modified as warranted.

(c) The Deputy Director will make and DAO will retain a record of interim actions taken and the reasons for taking them.

(d) Interim administrative actions are not final agency actions subject to appeal.

§ 689.8 Dispositions.

(a) After receiving a report from an external investigation by an awardee institution or another Federal agency DAO will assess the accuracy and completeness of the report and whether the investigating entity followed usual and reasonable procedures. It will either recommend adoption of the findings in whole or in part or, normally within 30 days, initiate a new investigation.

(b) When any satisfactory external investigation or an NSF investigation fails to confirm alleged misconduct and the Deptuy Director concurs,

(1) DAO will notify the subject of the investigation and, if appropriate, those who reported the suspected or alleged misconduct. This notification may include the investigation report.

(2) Any interim administrative restrictions that were imposed will be lifted.

(c) When any satisfactory investigation confirms misconduct,

(1) Except in unusual circumstances, the investigation report will be provided by DAO to the subject of the investigation, who will be invited to submit comments or rebuttal. Comments or rebuttal submitted within the period allowed, normally thirty days, will receive full consideration and may lead to revision of the report or of a recommended disposition.

(2) Normally within 45 days after completing an NSF investigation or receiving the report from a satisfactory external investigation, DAO will submit to the Deputy Director the investigation report, any comments or rebuttal from the subject of the investigation, and a recommended disposition. The recommended disposition will propose any final actions to be taken by NSF. Section 689.2 lists possible final actions and considerations to be used in determining them.

(d) The Deputy Director will review the investigative report and DAO's recommended disposition. Before issuing a disposition the Deputy Director may initiate further hearings or investigation. Normally within thirty days after receiving DAO's recommendations or after completion of any further proceedings, the Deputy Director will send the affected individual or institution a written disposition, specifying actions to be taken. The decision will include instructions on how to pursue an appeal.

§ 689.9 Appeals.

(a) In case of debarment, suspension, or termination of an award for misconduct, the appeals provided for in NSF regulations will be available. In all other cases, an affected individual or institution may appeal to the director in writing within 30 days after receiving the Deputy Director's written decision. The Deputy Director's decision becomes a final administrative action if it is not appealed within the 30 day period.

(b) The Director may appoint an uninvolved NSF officer or employee to review an appeal and make recommendations.

(c) The Director will inform the appellant of a final decision within 30 days after receiving the appeal. That decision will be the final administrative action of the Foundation. Findings from completed investigations may be shared with scientific review groups if the information bears directly on an investigator's scientific intergrity or if necessary to provide an accurate account of relevant facts.

[FR Doc. 87-2705 Filed 2-9-87; 8:45 am]
BILLING CODE 7555-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 94

[PR Docket No. 87-5; FCC 87-25]

Multiple Address System Operations

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission has issued a Notice of Proposed Rulemaking proposing amendment of certain rules in Part 94 pertaining to multiple address systems. The action is being taken to provide for the increased use of the multiple address spectrum.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Herb Zeiler or Molly Nichols, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, PR Docket No. 87-5, adopted Janaury 15, 1987 and released January 29, 1987. The full text of this Commission notice is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's Copy Contractor, International Transcription Service, 2100 M Street, NW., Washington, DC 22037, telephone (202) 857-3800.

Summary of Notice of Proposed Rulemaking

1. The Commission received four petitions for rulemaking requesting amendments of various portions of the rules governing multiple address system (MAS) operations. These petitions were filed by Granger Associates (Granger), the Central Station Electrical Protection Association (CSEPA), DEI Energy Systems (DEI), and Radscan, Inc. (Radscan).

2. Granger petitioned the Commission to amend §§ 94.65(a)(1) of the rules to establish 12.5 kHz as the standard bandwidth for all multiple address frequencies. Determining that many MAS licensees could satisfy their communication needs with a narrower bandwidth than 25 kHz, the Commission proposed to employ a 12.5 kHz channeling plan in the multiple address spectrum. Under the Commission's proposal, entities needing a data rate higher than that obtainable with 12.5 kHz channels can be licensed for larger bandwidths on a case-by-case basis.

3. CSEPA asked the Commission to remove the separate power utility set aside in § 94.65(a)(1), footnote 3 of the rules and open the 900 MHz multiple address spectrum to all Part 94 users. Additionally, CSEPA urged the Commission to adopt a liberal waiver policy for Part 94 applicants seeking power utility frequencies during the pendancy of this rulemaking. CSEPA argued that general pool licensees were unable to obtain needed multiple address frequencies in major metropolitan areas where power radio service channels remained unused. The Commission stated that its licensing records supported CSEPA's study, and concluded that it was in the public interest to reallocate the Power Radio Service MAS frequencies to allow for increased utilization of this specturm. Accordingly, the Commission proposed to reassign all of the 952 MHz band frequencies now allocated for exclusive power utility use for access by all Part 94 eligibles. Recognizing the unique problem faced by utilities in implementing their systems, however, the Commission requested comments as to whether a partial reallocation of these frequencies would be more appropriate at this time. The Commission declined to liberalize its waiver policies pending resolution of this proceeding.

4. DEI developed a mobile meter reading system for the purpose of increasing utility efficiency and eliminating traditional problems associated with manual readings. The current rules permit mobile operations on the 952 and 956 MHz multiple address frequencies only on a secondary, case-by-case basis. DEI requested that the Commission amend its rules and allow mobile meter reading systems to operate on a primary basis on the twenty Power Radio Service paired multiple address channels. An an initial matter, the Commission determined that DEI's mobile meter reading system would benefit the public, and that the existing restrictions discouraged implementation of the system. However, the Commission concluded that the 956 MHz spectrum was best suited for mobile meter reading, since DEI's system involved use of only one MAS frequency. The Commission therefore proposed to authorize primary mobile operation on the single channels in the 956 MHz spectrum.

5. Radscan filed a petiton for rulemaking requesting that the Commission allow MAS master stations to intercommunicate on frequencies in the 952 MHz band on a secondary basis. The rules currently permit such communications only on point-to-point microwave frequencies. Radscan argued that amendment of the rules would eliminate the need for separate master-to-master communications systems and would not increase the potential for interference with master-to-remote transmissions. The Commission concluded that Radscan's proposal would increase spectrum efficiency, and therefore it proposed that the rule be amended in accordance with Radscan's petition.

6. In addition to consideration of the four petitions for rulemaking, the Commission's notice also addressed recurrent multiple address licensing problems. Under the present rule, the border of an applicant's service area may be no closer than 70 miles from the service area of existing co-channel users. The Commission noted that the need to calculate the service area burdens Commission resources and increases the waiting period for licensing. The Commission therefore proposed to establish a standard separation requirement of 110 miles for co-channel master stations.

7. This action is taken pursuant to sections 4(i), 303(r), and 331 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) , 303(r), and 332.

8. This is a non-restricted notice and comment rulemaking proceeding. *See* § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

9. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, an initial regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

10. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or

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record retention requirements, and will not increase or decrease burden hours imposed on the public.

11. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419, interested parties may file comments on or before March 24, 1987, and reply comments on or before April 8, 1987. All relevant and timely comments will be considered by the Commission before finl action is taken in this proceeding.

List of Subjects in 47 CFR Part 94

Private microwave service, Multiple address systems.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-2698 Filed 2-9-87; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register

Vol. 52, No. 27

Tuesday, February 10, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ARMS CONTROL AND DISARMAMENT AGENCY

General Advisory Committee; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following meeting:

Name: General Advisory Committee on Arms Control and Disarmament.

Date: February 19, 1987.

Time: 9:30 AM.

Place: State Department Building, Washington, DC.

Type of Meeting: Closed.

Contact Person: William B. Staples, Executive Secretary, U.S. Arms Control and Disarmament Agency, Room 5933, Washington, DC 20451 (202) 647-8478.

Purpose of Advisory Committee: To advise the Director of the U.S. Arms Control and Disarmament Agency on arms control and disarmament policy and activities, and from time to time to advise the President and the Secretary of State respecting matters affecting arms control, disarmament, and world peace.

Agenda: Will present the following discussions and presentations:

February 19

Receive briefings on and discuss arms control related issues relative to Space defense.

Reason for Closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

Authority to Close Meeting: The closing of this meeting is in accordance with a determination by the Director of the U.S. Arms Control and Disarmament Agency dated February 4, 1987, made pursuant to the provisions of section 10(d) of the Federal Advisory Committee Act as amended.

William J. Montgomery,

Committee Management Officer.

[FR Doc. 87-2719 Filed 2-9-87; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

AGENCY: Bureau of the Census
TITLE: Manufacturers' Shipments, Inventories, and Orders M3 Supplement; Unfilled Orders Benchmark Survey
FORM NUMBER: Agency—MA-300; OMB—NA
TYPE OF REQUEST: New collection
BURDEN: 8,900 respondents; 4,100 reporting hours
NEEDS AND USES: This survey will collect data on unfilled orders as of December 1986 from multiestablishment manufacturing companies. The results will be used to benchmark the unfilled orders estimates tabulated in the M3 monthly survey. They will be published in an annual report in early 1988 when the shipments and inventory benchmark data for the 1986 Annual Survey of Manufacturers are introduced to the monthly M3 survey estimates.
AFFECTED PUBLIC: Businesses or other for-profit institutions
FREQUENCY: Every 5 years
RESPONDENT'S OBLIGATION: Mandatory
OMB DESK OFFICER: Don Arbuckle 395-7340

AGENCY: Bureau of the Census
TITLE: 1987 Post Enumeration Survey of North Central North Dakota
FORM NUMBER: Agency—DR-1300, DF-1302; OMB—NA
TYPE OF REQUEST: New collection
BURDEN: 1,500 respondents; 435 reporting hours
NEEDS AND USES: This survey is needed to evaluate person coverage for the two types of enumeration areas (conventional and prelist) for the 1987 test census, and to gain experience in rural matching.
AFFECTED PUBLIC: Individuals or households
FREQUENCY: One time
RESPONDENT'S OBLIGATION: Mandatory
OMB DESK OFFICER: Don Arbuckle 395-7340

Copies of the above information collection proposals can be obtained by calling or wirting DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room H6622, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, D.C. 20503.

Dated: February 4, 1987.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 87-2734 Filed 2-9-87; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Applications For Duty-Free Entry of Scientific Instruments; University of Florida

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87-081 Applicant: University of Florida, Department of Geology, 1112 Turlington Hall, Gainesville, FL 32611. Instrument: Precision Isotope Ratio Mass Spectrometer, Model PRISM.

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Manufacturer: VG Isogas Ltd., United Kingdom. Intended Use: The instrument is intended to be used for studies of minute quantities of carbonate material taken from (a) deep-sea sediment cores (micro fossils) and (b) lake cores (authigenic minerals), drilled from (c) exact positions in rock specimens (diagenetic carbonates and carbonate cements) and (d) dissolved inorganic carbon from water samples precipitated as barium carbonate. Graduate and undergraduate students will use the instrument in their research and thesis projects. Application received by Commissioner of Customs: December 18, 1986.

Docket No.: 87-082 Applicant: University of California, San Diego, 3175 Miramar Road, Building 509, Q-046, La Jolla, CA 92093. Instrument: Triaxial Load Cell Apparatus, Model LLP. Manufacturer: Seiken Inc., Japan. Intended Use: The instrument is intended to be used for a systematic and coordinated experimental and theoretical study of the mechanical response and failure modes of soils and other granular materials under monotonic and cyclic loads. In addition, the instrument will be used for quantifying various constitutive parameters and in testing the validity of various constitutive assumptions. Application received by Commissioner of Customs: December 18, 1986.

Docket No.: 87-083 Applicant: The Pennsylvania State University, College of Earth and Mineral Sciences, 226 Steidle Building, University Park, PA 16802. Instrument: Electro Optical Extensometer, Model 200X. Manufacturer: Zimmer OHG, West Germany. Intended Use: The instrument is intended to be used for creep experiments at elevated temperatures and various applied stress levels to determine the mechanisms which control the creep resistance and time-to-failure of silicon carbide materials. Application received by Commissioner of Customs: December 18, 1986.

Docket No.: 87-084 Applicant: University of Hawaii, Hawaii Institute of Marine Biology, P.O. Box 1346, Coconut Island, Kaneohe, HI 96744. Instrument: Six (6) Ultrasonic Transmitters for Monitoring Animal Movements, Model V3P-XX. Manufacturer: VEMCO, Canada. Intended Use: The instrument is intended to be used to study the horizontal and vertical movements of tuna in the open ocean to better understand the movement patterns of free-ranging tuna in nearshore environments. Application received by Commissioner of Customs: December 19, 1986.

Frank W. Creel,
Director, Statutory Import Programs Staff.
[FR Doc. 87-2741 Filed 2-10-87; 8:45 am]
BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; NOAA/National Marine Fisheries

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87-043. Applicant: NOAA/National Marine Fisheries Service, Pascagoula, MS 39567. Instrument: Towed Underwater Submersible System, Model MANTA. Manufacturer: Sea-I Research Canada Ltd., Canada. Intended Use: See notice at 51 FR 44652.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign article was previously granted duty-free entry (see notice 51 FR 17384) and is being returned to the applicant after the foreign manufacturer performed warranty servicing and testing. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

Frank W. Creel,
Director, Statutory Import Programs Staff.
[FR Doc. 87-2739 Filed 2-10-87; 8:45 am]
BILLING CODE 3510-DS-M

Northwestern University; for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Wshington, DC.

Docket No.: 87-025. Applicant: Northwestern University, Evanston, IL 60201. Instrument: Surface Analysis Instrument, Model Mk II. Manufacturer: VG Instruments, United Kingdom. Intended Use: See notice at 51 FR 42126.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the instrument was ordered (January 6, 1986).

Reasons: The foreign instrument provides a guaranteed unmonochromatized signal count rate of 100 000 cps at 0.80 eV resolution on Ag3d5/2 and a count rate of 24 000 cps at 0.65 eV on Ag3d5/2 using monochromatic x-ray radiation. The capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use being manufactured at the time the foreign instrument was ordered.

Frank W. Creel,
Director, Statutory Import Programs Staff.
[fR Doc. 87-2740 Filed 2-10-87; 8:45 am]
BILLING CODE 3510-DS-M

University of Kentucky; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 86-326. Applicant: University of Kentucky, Lexington, KY 40506. Instrument: NMR Magnetometer System with Accessories. Manufacturer: Nuclear Research Centre, Canada. Intended Use: See notice at 51 FR 36738.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a magnetic field range of 1,000 to 20,000 gauss and an absolute accuracy of 1.0×10^{-3}. The Department of the Navy advises in its memorandum dated December 9, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,
Director, Statutory Import Programs Staff.
[FR Doc. 87-2742 Filed 2-10-87; 8:45 am]
BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; University of Pennsylvania

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87-019. Applicant: University of Pennsylvania, Philadelphia, PA 19104. Instrument: Mass Spectrometer, Model VG ZAB-E with Accessories. Manufacturer: VG Analytical Ltd., United Kingdom. Intended use: See notice at 51 FR 41379.

Comments: None received.

Decision: Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with Subsection 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (August 6, 1986).

Reasons: The foreign instrument provides a resolution up to 125,000 and a mass range of 10,000 amu at 8 kV. This capability is pertient to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purposes of comparison with the foreign instrument. Where an applicant, as in this case, received no response to a formal request for quotation, it is apparent that the domestic manufacturer was either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

Frank W. Creel,
Director, Statutory Import Programs Staff.
[FR Doc. 87-2743 Filed 2-9-87; 8:45 am]
BILLING CODE 3510-DS-M

Short Supply Review on Certain Tin-Free Steel: Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products with respect to certain tin-free steel.

DATE: Comments must be submitted no later than February 23, 1987.

ADDRESS: Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Linda D. Ludwig, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230, Room 3099 (202) 377-3833.

SUPPLEMENTARY INFORMATION: Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. ". . . determines that because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the United States of America for a particular category or sub-category (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such category or sub-category. . . ."

We have received a short supply request for certain tin-free steel made to the following specifications:

(a) Chromium Coating Weight: aim for metallic chromium 100 mg/m²; chromium oxide 10mg/m².

(b) Width: 28 through 36 inches (—0.0, +0.25 inch).

(c) Thickness: 0.0066 and 0.0094 (±0.0005 inch).

(d) Appearance: scratch-free, hole-free, rust-free.

Any party interested in commenting on this request should send written comments as soon as possible, but no later than February 23, 1987. Comments should focus on the economic factors involved in granting or denying this request.

The Department will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly label the business proprietary portion of their submission, and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, room B-099 at the above address.

Joseph A. Spetrini,
Acting Deputy Assistant Secretary for Import Administration.
February 4, 1987.
[FR Doc. 87-2738 Filed 2-10-87; 8:45 am]
BILLING CODE 3510-DS-M

[A-122-085]

Preliminary Results of Antidumping Duty Administrative Review; Sugar and Syrups From Canada

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review, tentative determination to revoke in part, and intent to revoke in part.

SUMMARY: In response to requests by respondents, the Department of Commerce has conducted an administrative review of the antidumping order on sugar and syrups from Canada. The review covers five

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manufacturers and/or exporters of this merchandise to the United States and generally the period from April 1, 1983 through March 31, 1985. The review indicates the existence of dumping margins for one firm during the period.

As a result of the review, the Department has tentatively determined to revoke the order with respect to Lantic Sugar Ltd. (formerly Atlantic Sugar Ltd.), and intends to revoke the order with respect to Redpath Sugars Ltd.

Interested parties are invited to comment on these preliminary results, tentative determination to revoke in part, and intent to revoke in part.

EFFECTIVE DATE: February 10, 1987.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3601/5255.

SUPPLEMENTARY INFORMATION:

Background

On July 20, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 29438–9) a tentative determination to revoke in part the antidumping duty order on sugar and syrups from Canada (45 FR 24126, April 9, 1980). On June 4, 1986, the Department published in the Federal Register (51 FR 20322–3) the final results of its last administrative review of the antidumping order on sugar and syrups from Canada. After the promulgation of our new regulations, respondents requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published the notice of initiation on February 12, 1986 (51 FR 5219). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Canadian sugar and syrups produced from sugar cane and sugar beets. The sugar is refined into granulated or powdered sugar, icing, or liquid sugar. Sugar and syrups are currently classifiable under items 155.2025, 155.2045, and 155.3000 of the Tariff Schedules of the United States Annotated.

The review covers five manufacturers and/or exporters of Canadian sugar and syrups and generally the period April 1, 1983 through March 31, 1985. Two manufacturers covered in the review, St. Lawrence Sugar Ltd. and Westcane Sugar Ltd., ceased sales after merging with Lantic Sugar Ltd. during the review period. Lentzco Ltd. failed to adequately respond to the Department's questionnaire and we used best information available for assessment and estimated antidumping duty cash deposit purposes. The best information available was that firm's rate from the last review.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act, since all sales were made to unrelated purchasers in the United States prior to importation. Purchase price was based on the packed, delivered or f.o.b. duty-paid plant price to unrelated purchasers in the United States. Where applicable, we made adjustments for U.S. duty, brokerage, cash discounts, and U.S. and Canadian inland freight. Where applicable, we added Canadian duties paid at the time of importation into Canada of the raw material used to produce the sugar and syrups because these duties were rebated when the sugar and syrups were exported to the United States. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price as defined in section 773 of the Tariff Act since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis of comparison. Home market price was based on the packed, f.o.b. or delivered price with adjustments, where applicable, for inland freight, cash discounts, rebates, and other selling expenses when a commission was paid in the U.S. market and not in the home market. No other adjustments were claimed or allowed.

Preliminary Results of the Review, Tentative Determination to Revoke in Part, and Intent to Revoke in Part

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Lantic Sugar, Ltd. (formerly Atlantic Sugar Ltd.)	4/1/83–3/31/85	0
Lentzco Ltd.	4/1/83–3/31/85	10.18
Redpath Sugars, Ltd.	4/1/83–7/20/84	0
St. Lawrence Sugar, Ltd. (merged with Lantic Sugar Ltd.)	4/1/83–10/27/84	0
Westcane Sugar Ltd. (merged with Lantic Sugar Ltd.)	4/1/83–12/31/83	0

Lantic Sugar, Ltd. (formerly Atlantic Sugar Ltd.) requested partial revocation of the order and, as provided for in § 353.54(e) of the Commerce Regulations, has agreed in writing to an immediate suspension of liquidation and reinstatement in the order under circumstances specified in the written agreement. Lantic Sugar, Ltd. had no margins for three years.

Therefore, we tentatively determine to revoke the antidumping order on sugar and syrups from Canada with respect to Lantic Sugar, Ltd. If this partial revocation is made final, it will apply to all unliquidated entries of this merchandise manufactured and exported by Lantic Sugar, Ltd., and entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

As a result of our review we intend to revoke the order with respect to this merchandise manufactured and exported by Redpath Sugars Ltd. Redpath had *de minimis* margins during the period April 1, 1982 through March 31, 1983, and made all sales at not less than fair value during the period April 1, 1983 through July 20, 1984, the date of our tentative determination to revoke in part with regard to Redpath. As provided for in § 353.54(e) of the Commerce Regulations, Redpath has agreed in writing to an immediate suspension of liquidation and reinstatement in the order under circumstances as specified in the written agreement. If the order is revoked with respect to Redpath, it shall apply to unliquidated entries of Canadian sugar and syrups manufactured and exported to the United States by Redpath Sugars, Ltd. and entered, or withdrawn from warehouse, for consumption on or after July 20, 1984.

Interested parties may submit written comments on these preliminary results, tentative determination to revoke in part, and intent to revoke in part within 21 days of the date of publication of this notice and may request disclosure and/or hearing within 5 days of the date of publication. Any hearing, if requested, will be held 21 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the

administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for those firms. For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after March 31, 1985, and who is unrelated to any reviewed firm, or any previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Canadian sugar and syrups entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

The administrative review, tentative determination to revoke in part, intent to revoke in part, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1)(c) and §§ 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a, 353.54).

Dated: February 5, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87–2736 Filed 2–9–87; 8:45 am]

BILLING CODE 3510-DS-M

[A–588–602]

Antidumping Duty Order: Certain Carbon Steel Butt-Weld Pipe Fittings From Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In an investigation concerning certain carbon steel butt-weld pipe fittings from Japan, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that certain carbon steel butt-weld pipe fittings from Japan are being sold at less than fair value and that imports of this merchandise from Japan are materially injuring a United States industry.

Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of certain carbon steel butt-weld pipe fittings from Japan made on or after August 11, 1986, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: February 10, 1987.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 377–1769.

SUPPLEMENTARY INFORMATION: The products covered by this investigation are certain carbon steel butt-weld type pipe fittings, other than couplings, under 14 inches in inside diameter, whether finished or unfinished, that have been formed in the shape of elbows, tees, reducers, caps, etc., and, if forged, have been advanced after forging. These advancements may include any one or more of the following: coining, heat treatment, shot blasting, grinding, die stamping or painting. These fittings are currently provided for under item 610.8800 of the *Tariff Schedules of the United States Annotated (TSUSA)*. Induction pipe bends classifiable under item 610.8800 which have at one or both ends tangents that equal or exceed 12 inches in length are excluded from the scope of this investigation.

In accordance with section 733 of the Tariff of 1930, as amended (the Act) (19 U.S.C. 1673b), on August 4, 1986, the Department preliminarily determined that there was reason to believe or suspect that certain carbon steel butt-weld pipe fittings from Japan were being sold at less than fair value (51 FR 28734, August 11, 1986). On December 19, 1986, the Department made its final determination that these imports were being sold at less than fair value (51 FR 46892, December 29, 1986).

On January 27, 1987, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such importations materially injure a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e (a)(1), antidumping duties equal to the amount by which the foreign market value of the merchandise subject to the order exceeds the United States price for all entries of such merchandise from Japan. These antidumping duties will be assessed on all unliquidated entries of such merchandise entered, or withdrawn from warehouse, for consumption on or after August 11, 1986, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**.

On or after the date of publication of this notice, United States Customs officers must require at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/producers/exporters	Weighted-average (percent)
Awaji Sangyo, K.K.	30.83
Nippon Benkan Kogyo Limited Co.	65.61
All Others	62.79

This determination constitutes an antidumping order with respect to certain carbon steel butt-weld pipe fittings from Japan, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and section 353.48 of the Commerce Regulations (19 CFR 353.48).

Dated: February 4, 1987.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 87–2735 Filed 2–9–87; 8:45 am]

BILLING CODE 3510-DS-M

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[C-351-609]

Extension of the Deadline for the Final Countervailing Duty Determination and Postponement of the Public Hearing: Certain Forged Steel Crankshafts From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioner, the Wyman-Gordon Company, Inc., we are extending the deadline date for the final determination in the countervailing duty investigation of certain forged steel crankshafts from Brazil to correspond to the date of the earliest of the final determinations in the antidumping duty investigations of the same product from Japan, the Federal Republic of Germany and the United Kingdom pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98–573). In addition, we are postponing the public hearing.

EFFECTIVE DATE: February 9, 1987.

FOR FURTHER INFORMATION CONTACT: Thomas Bombelles, Bradford Ward or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–3174, 377–2239 or 377–2438.

SUPPLEMENTARY INFORMATION:

Case History

On October 9, 1986, we received antidumping duty petitions filed by the Wyman-Gordon Company, Inc. on certain forged steel crankshafts from Brazil, Japan, the Federal Republic of Germany, and the United Kingdom, and a countervailing duty petition on the same product from Brazil.

In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the antidumping petitions alleged that imports of certain forged steel crankshafts from these countries, are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

On October 29, 1986, the petitioner withdrew the antidumping petition with respect to Brazil. We found that the remaining petitions contained sufficient grounds on which to initiate antidumping duty investigations, and on October 29, 1986, we initiated such investigations on this product from Japan, the Federal Republic of Germany, and the United Kingdom (51 FR 40347, 51 FR 40349, and 51 FR 40348, November 6, 1986).

In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the countervailing duty petition alleged that manufacturers, producers, or exporters in Brazil of certain forged steel crankshafts directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds on which to initiate a countervailing duty investigation, and on October 29, 1986, we initiated such an investigation (51 FR 40240, November 5, 1986). Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the U.S. International Trade Commission (ITC) of our initiation.

On November 24, 1986, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil, Japan, the Federal Republic of Germany, and the United Kingdom of certain forged steel crankshafts (51 FR 44537, December 10, 1986).

On January 2, 1987, we issued a preliminary affirmative determination in the countervailing duty investigation (52 FR 699, January 8, 1987). The preliminary determinations in the antidumping investigations will be made on or before March 18, 1987 and the final determinations are scheduled to be made on or before June 1, 1987.

On January 8, 1987, petitioner filed a request for extension of the deadline date for the final determination in the countervailing duty investigation to correspond with the date of the first final determination in the antidumping investigations of the same product. Section 705(a)(1) of the Act, as amended by section 606 of the Trade and Tariff Act of 1984, provides that when a countervailing duty investigation is "initiated simultaneously with an [antidumping] investigation . . . which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination [in the countervailing duty investigation] to the date of the final determination" in the antidumping duty investigation (19 U.S.C. 1671d(a)(1)). Pursuant to this provision, we are granting an extension of the deadline date for the final determination in the countervailing duty investigation of certain forged steel crankshafts from Brazil until not later than June 1, 1987, the current deadline for the final determinations in the antidumping duty investigations. In accordance with petitioner's request, if some or all of the three antidumping duty investigations are extended after the preliminary determination in accordance with section 735(a)(2) of the Act, the deadline for the final countervailing duty determination will correspond to the date of the earliest of the final antidumping duty determinations.

To comply with the requirements of Article 5, paragraph 3 of the Subsidies Code, the Department will direct the U.S. Customs Service to terminate the suspension of liquidation in the countervailing duty investigation on May 8, 1987, which is 120 days from the date of publication of the preliminary determination in this case. No cash deposits or bonds for potential countervailing duties will be required for merchandise which enters after May 8, 1987. The suspension of liquidation will not be resumed unless and until a final affirmative ITC determination is made in this case. We will also direct the U.S. Customs Service to hold the entries suspended prior to May 8, 1987, until the conclusion of this investigation.

In addition, due to the extension of the final determination in the countervailing duty investigation, we are postponing the public hearing, originally set for February 13, 1987. The hearing will be rescheduled for a later date.

In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, all written views will be considered if received not less than 30 days before the final determination is due.

This notice is published pursuant to section 705(d) of the Act, as amended (19 U.S.C. 1671d(d)).

Dated: February 4, 1987.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 87–2737 Filed 2–9–87; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Regional Fishery Management Councils; Chairmen's Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Administrator, National Oceanic and Atmospheric Administration, and the Assistant Administrator, National Marine Fisheries Service will meet with the Chairmen of the eight Regional Fishery Management Councils (Councils), February 25–27, 1987, at the Hotel "Villa Parguera" at La Parguera, Lajas, Puerto Rico. The participants will discuss: (1) The budget process, administrative and programmatic policies and guidelines as they relate to the Councils; (2) legal issues, including proposed amendments to the Magnuson Fishery Conservation and Management Act; (3) the fishery management plan development process and plan monitoring, as well as other appropriate fishery management and administrative issues.

On February 25, the public meeting will convene at 2 p.m. and recess at approximately 4 p.m., for a visit to the School of Marine Sciences, University of Puerto Rico. On February 26, the meeting will reconvene at 8 a.m. and adjourn at approximately noon, for a visit at 2 p.m. to the Star Kist Tuna Cannery at Mayaguez, Puerto Rico. On February 27, the meeting will reconvene at 9 a.m. and will adjourn at approximately 4:30 p.m.

Seating will be available for approximately 20 members of the public on a first come-first aserve basis. Public participation will be permitted to the extent time permits. For further information contact the Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, PR 00918; telephone: (809) 753–4926.

Dated: February 4, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87–2718 Filed 2–9–87; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

Interim Protection for Mask Works of Nationals, Domiciliaries, and Sovereign Authorities of Switzerland

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of Initiation of Proceeding.

SUMMARY: The Secretary of Commerce has delegated the authority under section 914 of title 17 of the United States Code to make findings and issue orders for interim protection of mask works to the Assistant Secretary and Commissioner of Patents and Trademarks by Amendment 1 to Department Organization Order 10–14. Guidelines for the submission of petitions for the issuance of interim orders were published on November 7, 1984, in the **Federal Register**, 49 FR 44517–9, and on November 13, 1984, in the *Official Gazette*, 1048 O.G. 30.

On January 27, 1987, the Patent and Trademark Office received a petition for the issuance of an interim order from the Swiss Federal Intellectual Property Office. Consequently, in accordance with paragraph F of the guidelines, this notice announces the initiation of a proceeding for consideration of the issuance of an interim order.

In the interests of time a date is being set for the submission of comments in accordance with paragraph F(a), and a public hearing is being scheduled.

DATES: Comments and requests to testify must be received in the Office of the Commissioner of Patents and Trademarks before 5:00 P.M. on February 27, 1987. A public hearing has been scheduled for March 5, 1987, at 1:00 P.M.

ADDRESSES: Address written comments to: Commissioner of Patents and Trademarks, Attention: Assistant Commissioner for External Affairs, Box 4, Washington, DC 20231. The hearing will be held in the Commissioner's Conference Room, 11th Floor, Crystal Plaza Building 3, Room 11–C–10, 2021 Jefferson Davis Highway, Arlington, Virginia.

Materials submitted and a transcript of the hearing will be available for public inspection in Room 11–C–28, Crystal Plaza 3, 2021 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs, by telephone at (703) 557–3065 or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Chapter 9 of title 17 of the United States Code establishes an entirely new form of intellectual property protection for mask works that are fixed in semiconductor chip products. Mask works are defined in 17 U.S.C. 901(a)(2) as:

"A series of related images, however, fixed or encoded

(A) Having or representing the predetermined, three-dimensional pattern of metallic, insulating or semiconductor material present or removed from the layers of a semiconductor chip product; and

(B) In which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product."

Chapter 9 further provides for a 10-year term of protection for original mask works measured from their date of registration in the U.S. Copyright Office, or their first commercial exploitation anywhere in the world. Mask works must be registered within 2 years of their first commercial exploitation to maintain this protection.

Foreign mask works are eligible for protection under this chapter under basic criteria set out in section 902; first, that the owner of the mask works is a national, domiciliary, or sovereign authority of a foreign nation that is a party to a treaty providing for the protection of the mask works to which the United States is also a party, or a stateless person wherever domiciled; second, that the mask work is first commercially exploited in the United States; or that the mask work comes within the scope of a Presidential proclamation. Section 902(a)(2) provides that the President may issue such a proclamation upon a finding that:

"A foreign nation extends to mask works of owners who are nationals or domiciliaries of the United States protection (A) on substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation, or (B) on substantially the same basis as provided under this chapter, the President may by proclamation extend protection under this chapter to mask works (i) of owners who are, on the date on which the mask works are registered under section 908, or the date on which the mask works are first commercially exploited anywhere in the world, whichever occurs, first, nationals, domiciliaries, or sovereign authorities of that nation, or (ii) which are first commercially exploited in that nation."

Although this chapter generally does not provide protection to foreign owners of mask works unless the works are first commercially exploited in the United States, it is contemplated that foreign nationals, domiciliaries, and sovereign authorities may obtain full protection if their nation enters into an appropriate treaty or enacts mask works protection legislation. To encourage steps toward a regime of international comity in mask works protection, section 914(a) provides that the Secretary of Commerce may extend the privilege of obtaining interim protection under

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chapter 9 to nationals, domiciliaries and sovereign authorities of foreign nations if the Secretary finds:

"(1) That the foreign nation is making good faith efforts and reasonable progress toward—

(A) Entering into a treaty described in section 902(a)(1)(A), or

(B) Enacting legislation that would be in compliance with subparagraph (A) or (B) of section 902(a)(2); and

(2) That the nationals, domiciliaries, and sovereign authorities of the foreign nation, and persons controlled by them, are not engaged in the misappropriation, or unauthorized distribution or commercial exploitation of mask works; and

(3) That issuing the order would promote the purposes of this chapter and international comity with respect to the protection of mask works."

On January 27, 1987, a petition for the issuance of an interim order under 17 U.S.C. 914 was submitted to the Commissioner by the Swiss Federal Intellectual Property Office on behalf of the Swiss Authorities and following their consultations with Swiss industry. The petition, including the supplemental information is sufficient to permit the initiation of proceedings under the guidelines and is reproduced as part of this notice.

In remarks in the *Congressional Record* of October 3, 1984, at page S12919 and of October 10, 1984, at page E4434, both Senator Mathias and Representative Kastenmeier suggest that "[i]n making determinations of good faith efforts and progress . . ., the Secretary should take into account the attitudes and efforts of the foreign nation's private sector, as well as its Government. If the private sector encourages and supports action toward chip protection, that progress is much more likely to continue. . . . With respect to the participation of foreign nationals and those controlled by them in chip piracy, the Secretary should consider whether any chip designs, not simply those provided full protection under the Act, are subjected to misappropriation. The degree to which a foreign concern that distributes products containing misappropriated chips knows or should have known that it is selling infringing chips is a relevant factor in making a finding under section 914(a)(2). Finally, under section 914(a)(3), the Secretary should bear in mind the role that issuance of the order itself may have in promoting the purposes of this chapter and international comity."

We are considering issuing an interim order extending the protection of chapter 9 of title 17 of the United States Code to the nationals, domiciliaries, and sovereign authorities of Switzerland. Written comment on the request of the petitioners and requests to testify must be received in the Office of the Commissioner of Patents and Trademarks on or before 5:00 P.M., February 27, 1987. A public hearing is scheduled for March 5, 1987, at 1:00 P.M. to receive further public comment on this petition.

Dated: February 5, 1987.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

Bundesamt für geistiges Eigentum

Office fédéral de la propriété intellettuale

Office federal della proprieta intellettuale

3003 Bern

December 23, 1986.

Petition to the Assistant Secretary of Commerce and Commissioner of Patents and Trademarks to Issue an Order Extending Interim Protection for Mask Works

On behalf of the Swiss Authorities and following consultations with the Swiss Industry, the Swiss Federal Intellectual Property Office should like to submit, by means of this letter, to the United States Commissioner of Patents and Trademarks a request for an order extending the privilege of interim protection under the Semiconductor Chip Protection Act of 1984 to nationals, domiciliaries and sovereign authorities of Switzerland.

Substantiation

A. The Semiconductor Chip Protection Act of 1984 (Chapter 9 of Title 17 United States Code) grants protection for mask works basically only to owners who are nationals or domiciliaries of the United States. Mask works of foreigners are not protected unless they have been first commercially exploited in the United States. Section 914(a) of the Act, however, provides that the Secretary of Commerce may under certain conditions extend the privilege of interim protection under Chapter 9 also to nationals, domiciliaries and sovereign authorities of foreign nations. The Secretary of Commerce has delegated to the Assistant Secretary and Commissioner of Patents and Trademarks the authority to receive petitions for such orders and to issue and terminate them.

Pursuant to sections 914(a) and 902(a)(2) of the Act the Assistant Secretary will extend interim protection upon finding that:

1. The foreign nation is making reasonable progress toward enacting legislation—

1.1. Granting nationals or domiciliaries of the United States substantially the same mask work protection as its own nationals,

or

1.2. Providing for reciprocal mask work protection generally similar to that of the Act;

2. The nationals, domiciliaries and sovereign authorities of the foreign nation are not engaged in the misappropriation, unauthorized distribution or commercial exploitation of mask works;

3. Issuing the order will promote the purposes of the Act and of achieving international cooperation toward mask work protection.

B. Within the Swiss Federal Administration the Federal Intelectual Property Office is responsible for industrial property law and copyright with regard to national and international aspects. The Office is therefore entitled to submit the following statement:

1. The questions relating to the protection of integrated circuits are given high priority in the context of the current *total revision of the Swiss Copyright Act and the Law against Unfair Competition*. Both bills have already been submitted to the Parliament.

2. The *Government Bill on Copyright* does not explicitly provide for a protection of integrated circuits. Its definition of "protected works" corresponds substantially with the one in the existing Swiss Copyright Act which is considered to be very broad. Therefore, the proposed definition of "protected works" could be deemed to cover also e.g. mask works and integrated circuits. Furthermore the protection against unauthorized reproduction under the Copyright Bill as well as the existing law might accordingly be interpreted as including the various steps of using the original copy of a mask work in the process of manufacturing the semiconductor chip product.

However, for lack of Swiss Federal Supreme Court cases on the scope of application of the existing Copyright Act and in order to avoid any uncertainty, the Parliament decided to send the bill back to the Federal Council with the binding instruction to introduce an effective and detailed protection of technical results of work, such as computer software and integrated circuits (cf. encl. 1).

The Federal Department of Justice and Police has therefore appointed a commission to revise the whole bill once more and to ascertain in this context that all relevant aspects aiming at the establishment of an efficient and appropriate legal protection of integrated circuits are taken into account.

This commission should terminate its work by the end of 1987 as the bill must be returned to the Parliament by the end of 1988. The new law is scheduled to be enacted by the end of 1989.

Evidence for the efforts being made in order to set up an effective protection for integrated circuits is provided by the enclosed examples of working papers of the commission revising the Copyright Bill (cf. encl. 2–7). These papers contain possible legal solutions with regard to various problems connected, inter alia, with the protection of integrated circuits (e.g. requirments of protection, rights to be granted etc.). It goes without saying that the American and Japanese legislation as well as the draft Treaty which is presently being elaborated at the World Intellectual Property Organization will also be studied very closely in order to set up an adequate national chip protection system.

Although the questions related to chip protection are being dealt with in the context of the Copyright Bill revision, the decision on the legal nature of this protection remains to be taken. Various discussions show that a sui generis form of statutory protection seems to be favored.

3. Furthermore mask works and integrated circuits will also be protected under the future *Act against Unfair Competition* which will enter into force in autumn 1987.

One provision of this Act prohibits the reproduction by any technicial process of a marketable product of others and its exploitation without an appropriation expenditure of the reproducer. The corresponding explanatory notes state explicitly that computer software and similar technical products are protected by this provision. Hence integrated circits are also included.

However, unfair competition law does not grant any exclusive rights to the owners of technical products. On the other hand the established protection is independent of any formalities like registration and is also granted to aliens.

The duration of protection of intergrated circuits under the provision mentioned above is not limited to a fixed period of time. It varies depending on the costs of production of the chip. As soon as these costs have been amortized the reproduction of the chip is no longer unlawful.

4. Apart from the efforts concerning national legislation Switzerland also takes a close interest in the corresponding efforts on the *international level*. In this context reference must particularly be made to the "Treaty on the Protection of Integrated Circuits" drafted by the World Intellectual Property Organization. On the occassion of the first and second meeting of the committee of experts held in November 1985 and in June 1986 in Geneva as well as at the meeting of the governing bodies in September 1986, the Swiss delegation emphasized the great importance which is attributed to such an international agreement (cf. WIPO documents IPIC/CE/I/7 page 8, IPIC/CE/II/8 page 12, AB/XVII/11 page 15, encl. 8–10).

5. In support of the above submissions we should finally like to point out that to our knowledge no chip piracy or similar misappropriation of semiconductor chip products has taken place in Switzerland and that issuing the order would promote the purposes of the Act and of achieving international cooperation toward mask work protection (cf. also the declaration by the Federation of the Swiss Industries, encl. 11).

6. Nothing in this petition shall be interpreted as an acceptance of the compatibility of the provisions of the Semiconductor Chip Protection Act of 1984 with the obligations of the United States under international law.

Swiss Federal Intellectual Property Office

Dr. J.-L. Comte

(Director)

(pp. Dr. R. Grossenbacher,

Assistant Director)

Enclosures:

(As the translation of documents in German has been furnished by the Federal Intellectual Property Office, it is taken that no certification is required).

1. Decision of the Federal Parliament of June 10, 1986
2. Working paper of the revision commission)
3. Working paper of the revision commission)
4. Working paper of the revision commission) confidential
5. Working paper of the revision commission)
6. Working paper of the revision commission)
7. Working paper of the revision commission)
8. WIPO document IPIC/CE/I/7, page 8
9. WIPO document IPIC/CE/II/8, page 12
10. WIPO document AB/XVII/II, page 15
11. Declaration of the Swiss Federation of Commerce and Industry

Encl. 1 (Translation)

Berne, June 10, 1986.

The Council of States to the Federal Council

Mr. President of the Confederation

We have the honour to inform you that the legislating Councils, the Council of States on October 3, 1985 and the National Council on June 10, 1986, have decided to send the Bill 84.064 s Copyright back to the Federal Council with the instruction to examine, by which means the protection of the producers and the various users could be improved. Above all a detailed protection of achievements (performers, computer software etc.) should be introduced and the supervision of the collecting societies should be reinforced

Accept, Mr. President of the Confederation, the expression of our excellent esteem.

By order of the Council of States.

The Secretary.

BILLING CODE 3510-16-M

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Copyright Commission
Subcommission "Structure"

Encl. 2/ (Translation)
Berne, October 3, 1986

FUNDAMENTAL QUESTIONS CONCERNING THE STRUCTURE

Reciprocity
(Art. 1 Copyright Bill)

Possibilities	Copyright	Neighboring Rights			Computer (i.e. technical achievements)	
		Performers	Phonograms	Programmes	Software	Chips
a) Protection of all works (technical achievements*) independent of nationality	☐	☐	☐	☐	☐	☐
b) Limited reciprocity** (nationality/domicile and/or place of publication (1) and/or treaty	☐	☐	☐	☐	☐	☐
c) Full reciprocity (nationality/domicile and/or treaty ***)	☐	☐	☐	☐	☐	☐

*) Example:

**) Example: Article 1 Copyright Bill (present wording)

***) Example

(1) Publication: ☐ according Article 11 Copyright Act
☐ according the Berne Convention (Article 3 Paris / Article 4 Brussels)
☐ according Article 12, 2 Copyright Bill

Copyright Commission
Subcommission "Structure"

Encl. 3/ (Translation)
Berne, October 3, 1986

FUNDAMENTAL QUESTIONS CONCERNING THE STRUCTURE

Subject matter of protection

Possibilities	Copyright	Neighboring Rights			Computer (i.e. technical achievements)	
		Performers	Phonograms	Programmes	Software	Chips
a) Statistical singularity only	☐	☐	☐	☐	☐	☐
b) Individuality (expression of the personality of the creator)	☐	☐	☐	☐	☐	☐
c) Originality (minimal standard of)	☐	☐	☐	☐	☐	☐
d) Novelty as a condition	☐	☐	☐	☐	☐	☐
e) Work as basis for protection by neighboring rights law		☐	☐	☐		
f) Subject matter of protection						
1. Protection of the form a) exterior appearance	☐	☐	☐	☐	☐	☐
b) inherent structure	☐	☐	☐	☐	☐	☐

2. Protection of the idea (intellectual contents)	☐	☐	☐	☐	☐	☐
g) Relevance of a) competition) b) economic interests) to protection c) moral interests)	☐	☐	☐	☐	☐	☐
	☐	☐	☐	☐	☐	☐
	☐	☐	☐	☐	☐	☐
h) Shall original computer software be protected by copyright or by a law "sui generis"?	☐				☐	
i) Shall works/performances created by means of computer programmes be protected by copyright?	☐					
k) Relationship between unfair competition law and copyright/neigboring rights/protection of technical achievements						
- cumulative protection	☐	☐	☐	☐	☐	☐
- alternative protection	☐	☐	☐	☐	☐	☐
- no protection by unfair competition law	☐	☐	☐	☐	☐	☐

Copyright Commission
Subcommission "Structure"

Encl. 4/ (Translation)
Berne, October 3, 1986

FUNDAMENTAL QUESTIONS CONCERNING THE STRUCTURE

Nature of the rights to be granted
(Article 11 Copyright Bill)

Possibilities	Copyright	Neighboring Rights			Computer (i.e. technical achievements)	
		Performers	Phonograms	Programmes	Software	Chips
a) Exclusive intellectual property right	☐	☐	☐	☐	☐	☐
b) Mere right to prohibit	☐	☐	☐	☐	☐	☐
c) Right of recognition of creatorship (right to be named)	☐	☐	☐	☐	☐	☐
d) Element of a personal right (work/technical achievement as the expression of personality)	☐	☐	☐	☐	☐	☐

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Copyright Commission
Subcommission "Structure"

Encl. 5/ (Translation)
Berne, October 3, 1986

FUNDAMENTAL QUESTIONS CONCERNING THE STRUCTURE

Rights to be granted
(Article 13 Copyright Bill)

Possibilities	Copyright	Neighboring Rights			Computer (i.e. technical achievements)	
		Performers	Phonograms	Programmes	Software	Chips
a) Concluding enumeration of the rights to be granted	☐	☐	☐	☐	☐	☐
b) Exemplary enumeration of the rights to be granted	☐	☐	☐	☐	☐	☐

Copyright Commission
Subcommission "Structure"

Encl. 6/ (Translation)
Berne, October 3, 1986

FUNDAMENTAL QUESTIONS CONCERNING THE STRUCTURE

Integrity of the work
(Article 14 Copyright Bill)

Possibilities	Copyright	Neighboring Rights			Computer (i.e. technical achievements)	
		Performers	Phonograms	Programmes	Software	Chips
a) Modification right; restrictions in favor of the creator	☐	☐	☐	☐	☐	☐
b) Free use lawful	☐	☐	☐	☐	☐	☐
c) Adaptation right; restrictions in favor of the creator	☐	☐	☐	☐	☐	☐
d) Modification and adaptation lawful for private use						
- not for commercial/industrial use	☐	☐	☐	☐	☐	☐
- also for commercial/industrial use	☐	☐	☐	☐	☐	☐

Copyright Commission
Subcommission "Structure"

Encl. 7/ (Translation)
Berne, October 3, 1986

FUNDAMENTAL QUESTIONS CONCERNING THE STRUCTURE

Transferability
(Article 20 Copyright Bill)

Possibilities	Copyright	Neighboring Rights			Computer (i.e. technical achievements)	
		Performers	Phonograms	Programmes	Software	Chips
a) Not transferable	☐	☐	☐	☐	☐	☐
b) Transferable						
- transferable: economic rights	☐	☐	☐	☐	☐	☐
- transferable: moral rights of creator	☐	☐	☐	☐	☐	☐
- transferable: creatorship (right to be named)	☐	☐	☐	☐	☐	☐
c) Original ownership ex lege to vest not in the creator but, e.g., in the employer, editor, producer etc.	☐	☐	☐	☐	☐	☐

28. The Delegation of Switzerland indicated that the protection of integrated circuits was considered of great importance for its country, and that a draft copyright law had been sent back to the Federal Council by the Council of States because the draft did not comprise the protection of certain achievements, among which the protection of integrated circuits could be included. In addition, a provision concerning protection of achievements was foreseen within the framework of the revision of the provisions concerning unfair competition, which could apply to integrated circuits. The Delegation of Switzerland therefore emphasized that the Treaty to be adopted would have to be sufficiently flexible and open in order to accommodate the various solutions being envisaged in the different countries.

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44. The Expert from Switzerland declared himself very much in favor of the protection of integrated circuits and the conclusion of a multilateral treaty. He said that, at the national level, the Law on Unfair Competition at present undergoing revision would provide a certain amount of protection in that respect. The provision of the Law that could apply to the protection of integrated circuits had not given rise to any controversy in Parliament. It prohibited the appropriation of the results of the work of a third party by means of reproduction without the provision of adequate compensation. Under the circumstances, it was possible that the new law would enter into force at the end of next year. In the opinion of the Expert from Switzerland, the Treaty should enter into force as rapidly as possible, and the schedule envisaged by the International Bureau should be respected.

Encl. 10

AB/XVII/11
page 15

46. The Delegation of Switzerland pointed out that it was necessary to pursue the preparatory work in the Committee of Governmental Experts, which should be organized according to WIPO's tradition and in which, therefore, non-governmental organizations should be represented, as selected by the Director General. A diplomatic conference should be convened as rapidly as possible, preferably before the end of 1987. It was important that international law in this area precede the enactment of national legislation, as this had been the case to some extent with respect to the questions regulated by the Paris and Berne Conventions.

BILLING CODE 3510-16-C

Encl. 11

Vorort

Des Schweizerischen Handels- und Industrievereins

Declaration

The *VORORT* of the Swiss Federation of Commerce and Industry is the oldest, biggest and most important organization of Swiss economy. Founded in 1870, it represents today some 140 organizations of industry and commerce. As an influential factor in Swiss economic policy, it is in a constant and close contact with the Swiss Federal Administration and all relevant political bodies and personalities.

Switzerland is a small country with virtually a total lack of prime materials. Therefore Swiss industry is based mainly on the results of its research and development activities. An effective protection of intellectual (industrial) property rights ranks under the top priorities of Swiss economic policy and legislation.

The US-Semiconductor Chip Protection Act of 1984 sweeps away and denies an adequate protection for swiss made masks works in the US. The *VORORT* strongly underlines the requests made by Swiss authorities to grant a sufficient protection of swiss made mask works, at least for a grace period.

To our knowledge no chip piracy, no counterfeiting or similar procedures have occurred in Switzerland.

"VORORT" of the Swiss Federation of Commerce and Industry

The Executive Member of the Presidential Board: The Secretary:
Dr. G. Winterberger
M. Kummer

[FR Doc. 87-2744 Filed 2-9-87; 8:45 am]

BILLING CODE 3510-16-M

DEPARTMENT OF EDUCATION

National Advisory Council on Women's Educational Programs Meeting

AGENCY: National Advisory Council on Women's Educational Programs, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the Executive Committee of the National Advisory Council on Women's Educational Programs. The agenda will include review of the annual report, budget review and review of the agenda for the next full Council meeting. This notice also describes the function of the Council. Notice of this meeting is required under section 10 (a) (2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: February 24, 1987: 11:00 a.m. to close of business.

ADDRESS: The meeting will be held in the offices of the National Advisory Council on Women's Educational Programs, 2000 "L" Street, NW., Suite 568, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Patricia Weber, Acting Executive Director, National Advisory Council on Women's Educational Programs, 2000 "L" Street, NW., Suite 568, Washington, DC 20036, (202) 634-6105.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Women's Educational Programs is established pursuant to Pub. L. 95-561. The Council is mandated to (a) advise the Secretary on matters relating to equal education opportunities for women and policy matters relating to the administration of the Women's Educational Equity Act of 1978; (b) make recommendations to the Secretary with respect to the allocation of any funds pursuant to the Act, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation; (c) make recommendations to the Secretary with respect to the establishment of program priorities; (d) make such reports as the Council determines appropriate to the President and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council.

The meeting of the Executive Committee of the National Advisory Council on Women's Educational Programs is open to the public.

Records will be kept of the proceedings and will be available for public inspection at the office of the National Advisory Council on Women's Educational Programs, 2000 L Street, NW., Suite 568, Washington, DC 20036.

Signed at Washington, DC on February 5, 1987.

Patricia A. Weber,

Acting Executive Director.

[FR Doc. 87-2762 Filed 2-9-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Cooperative Agreements; Energy Analysis and Diagnostic Center Program

AGENCY: Department of Energy.

ACTION: Notice of Solicitation for Cooperative Agreements Proposals (SCAP) Number DE-PSO1-87CE40806, Energy Analysis and Diagnostic Center (EADC) Program.

SUMMARY: U.S. Department of Energy, Office of Industrial Programs, CE, is entering into a competitive assistance program to stimulate the industrial energy conservation ethic by making small and medium sized manufacturing plants aware of energy conservation opportunities. This will facilitate transfer of energy scorings technology and methods to this portion of the manufacturing sector; and provide engineering students training and "hands on" experience in energy management. It is the Department's intent to award one cooperative agreement pursuant to this solicitation. The period of performance will be for five years. Incremental funding is available for the first year. Subsequent funding is subject to the availability of appropriated funds.

A single copy of the solicitation can only be obtained by writing to U.S. Department of Energy, Office of Procurement Operations, ATTN: Document Control Specialist, MA-451.1, 1000 Independence Avenue, SW., Washington, DC 20585. Solicitation will be issued o/a January 31, 1987.

For further information contact Rosemarie Marshall on (202) 586-1688.

Stephen J. Michelsen,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 87-2720 Filed 2-9-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. G-13931-000 and CI87-216-000]

Sun Exploration and Production Co.; Application for Limited-term Abandonment and Blanket Limited-term Certificate With Pregranted Abandonment

February 4, 1987.

Take notice that on January 8, 1987, as supplemented on January 16 and 27, 1987, Sun Exploration and Production

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Company (Sun) of P.O. Box 2880, Dallas, Texas 75221–2880, filed applications pursuant to section 7 of the Natural Gas Act, 15 U.S.C. section 717f (1982) (NGA), and Part 157 of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR Part 157, for (1) authorization in Docket No. G–13921–000 to abandon for a two-year limited-term sales of gas to Northern Natural Gas Company, Division of Enron Corp. (Northern) for two wells in the Emperor Field, Winkler County, Texas, and (2) a blanket two-year limited-term certificate of public convenience and necessity with pregranted abandonment in Docket No. CI87–216–000 authorizing spot market sales for resale in interstate commerce of such gas. Sun also requests waiver of certain portions of Parts 154 and 271 of the Commission's Regulations, and requests expedited approval of the applications pursuant to the procedures of § 2.77 of the Commission's Regulations, 18 CFR 2.77.

Sales to Northern are made pursuant to a contract dated October 28, 1957, as amended, in file as Sun's FERC Gas Rate Schedule No. 94 certificated in Docket No. G–13931. Sun plans to sell to others surplus gas not needed by Northern to meet its current marketing demands. The gas will remain subject to recall by Northern. Northern has reduced takes to 12% of deliverability and because the contract has expired Northern is incurring no take-or-pay liability; thus Sun states it is experiencing substantially reduced takes without payment. Sun's deliverability is 3800 Mcf/d for the S. M. Halley "B" No. 22 and 3700 Mcf/d for the S. M. Halley "B" No. 25 and all of the subject gas qualifies as NGPA section 104 replacement contract gas.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436–A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85–1–000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–2751 Filed 2–9–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI87–122–000 et al.]

Applications for Abandonment; Triton Oil & Gas Corporation et al.

February 4, 1987.

Take notice that the Applicants listed herein have filed applications pursuant to section 7 of the Natural Gas Act for authorization to abandon service as described herein.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436–A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85–1–000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI87–122–000, B, Nov. 19, 1986[1]	Triton Oil & Gas Corporation, 1000 Two Energy Square, 4849 Greenville Avenue, Dallas, Texas 75206.	Texas Gas Transmission Corporation, St. John And Chacahoula Fields, LaFourche Parish, Louisiana.	(2)	
CI87–159–000, B, Dec. 1, 1986[3]	H.L. Bammert, P.O. Box 97, Weesatche, Texas 77993.	United Gas Pipe Line Company, Gottschalt Field, Goliad County, Texas.	(4)	
CI87–166–000, B, Dec. 5, 1986	C.C. Operating Company, P.O. Box 2266, Victoria, Texas 77902.	United Gas Pipe Line Company, Redfish Bay, Mustang Island, 10 Common Field, Nueces County, Texas.	(5)	
CI87–170–000, B, Dec. 8, 1986[6]	Hutton Gas Company (Successor in interest to Lubell Oil Company), 9 East 4th Street, Suite 1000, Tulsa, Oklahoma 74103	Arkla Energy Resources, a division of Arkla, Inc., Patrick Unit No. 1 well, Pittsburg County, Oklahoma.	(7)	
CI87–173–000, B, Dec. 10, 1986[8]	Horace F. McKay, Jr. and El PamCo, Inc., P.O. Box 14738, Albuquerque, New Mexico 87191–0738.	El Paso Natural Gas Company, Bloomfield Field, San Juan County, New Mexico.	(9)	

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[1] Additional information filed November 26, 1986, and January 13, 1987.

[2] Applicant, a small producer certificate holder in Docket No. CS71–1103, requests limited-term authorization to abandon a sale to Texas Gas from the Energy Realty Inv. Co. #1 and #4 and the Operc #3 and #4 wells and limited-term pregranted abandonment authorization for sales of the subject gas made under Applicant's small producer certificate, all for a two-year term. In support of its application, Applicant states that in recent months Texas Gas has reduced its takes to approximately 8% of deliverability, that it is Applicant's understanding that the reduced takes will continue through the next two years and that Applicant is not being paid for gas not taken. In addition, Applicant has advised that it has become uneconomical for Applicant to compress the gas from the subject wells. The gas from the subject wells qualifies as NGPA section 104 gas and the estimated deliverability from the subject wells is approximately 929 Mcf per day. Applicant indicates that Texas Gas has agreed to release all gas available from the subject wells for a two-year period and that Texas Gas will be relieved of its take-or-pay obligation for these wells and will receive take-or-pay credit for gas released and sold during the two-year period.

[3] Additional information filed January 7, 1987.

[4] Applicant, a small producer certificate holder in Docket No. CS75–542, requests limited-term authorization to abandon a sale of gas to United from the Dennis Arnold et al., No. 2 well for a two-year period. In support of its application, Applicant states that the well is currently shut in and that Applicant is not being paid for gas not taken. The gas from the subject well qualifies as NGPA section 104 replacement contract gas and the estimated deliverability from the well is approximately 100 000 Mcf per day. By letter dated October 31, 1986, United agreed to release that portion of the gas deliverable from the subject well which United does not desire to purchase on any day for a two-year period from the date of abandonment authorization.

[5] Applicant requests limited-term authorization to abandon a sale to United from the State Tract 348–3 well to the extent such gas is not purchased by United and pregranted abandonment authorization for subsequent jurisdictional sales of the abandoned gas all for a two-year period. In support of its application, Applicant states that the subject well is shut in and that it is subject to substantially reduced takes without payment. The gas from the subject well qualifies as NGPA section 104 replacement contract gas and the estimated deliverability from the well is approximately 400 Mcf per day. Applicant intends to sell the subject gas to Gulf Coast Energy, Inc., an intrastate purchaser.

[6] Additional information filed January 16, 1987.

[7] Applicant requests permanent authorization to abandon a sale to Arkla from the Patrick Unit No. 1 well. In support of its application, Applicant states that Arkla has substantially reduced its gas takes from the subject well such that drainage from offset wells is occurring and that Arkla has refused to acknowledge any take-or-pay obligation under the subject contract. The estimated deliverability from the subject well is approximately 500 Mcf per day and Applicant advises that Arkla is currently taking 60 Mcf per day. The gas from the subject well qualifies as NGPA section 106(a) interstate rollover gas.

[8] Applicant information filed January 13, 1987.

[9] Applicant, a small producer certificate holder in Docket No. CS71–969, requests limited-term authorization to abandon a sale to El Paso from 11 wells and pregranted abandonment authorization for sales of the subject gas made under Applicant's small producer certificate all for a one-year term, in support of its application, Applicant states that the subject wells have been shut in approximatley 75% of 1986 and that it is subject to substantially reduced takes without payment. The wells have an estimated deliverability of 1200 Mcf per day but Applicant indicates that El Paso is taking approximately 400 Mcf per day. The subject wells and the NGPA categories of the gas are as follows:

HORACE F. MCKAY, JR.,

Well	Formation	NGPA section
Beardon 1A	Pictured Cliff/Fruitland	104
Beardon 1	Fruitland	108
Maxwell	Pictured Cliff	108
Uptegrove	Pictured Cliff	108
Sullivan 3	Pictured Cliff	108
Sanchez 1	Fruitland	108
El PamCo., Inc		
Valdez 1A	Pictured Cliff/Fruitland	104
Valdez 1	Fruitland	108
Sullivan 5	Fruitland	108
Sulivan 6	Fruitland	108
Lechner 1	Fruitland	104

Applicant intends to sell the subject gas on the spot market or directly to end users.

[FR Doc. 87–2755 Filed 2–9–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA87–2–28–000, 001]

Panhandle Eastern Pipe Line Co.; Change in Tariff

February 4, 1987.

Take notice that on January 29, 1987 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Fifty-Eighth Revised Sheet No. 3–A
Thirty-Fifth Revised Sheet No. 3–B
Sixteenth Revised Sheet No. 3–C.1
Sixteenth Revised Sheet No. 3–C.2
Sixteenth Revised Sheet No. 3–C.3

The proposed effective date of these revised tariff sheets is March 1, 1987.

Panhandle states that these revised tariff sheets reflect a commodity rate decrease of (3.42¢) per Dt. This decrease includes:

(1) a (3.09¢) per Dt decrease in the projected purchased gas cost component;

(2) a (0.37¢) per Dt decrease in the surcharge to recover the Current Deferred Account Balance at December 31, 1986 and related carrying charges; and

(3) a 0.04¢ per Dt increase pursuant to Section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism).

Panhandle further states that the revised tariff sheets filed herewith reflect the following changes to Panhandle's D_1 and D_2 demand rates:

(1) no change for D_1 and a decrease of (0.01¢) for D_2, pursuant to Section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism); and

(2) a decrease of ($.02) for D_1 and (0.09¢) for D_2, to reflect a decrease in the Section 18.4 pipeline supplier demand costs.

Additionally, the revised tariff sheets filed herewith reflect Projected Incremental Pricing Surcharges in accordance with Section 21 of the General Terms and Conditions of Panhandle's Tariff.

Panhandle has included in this filing projected gas purchase volumes from its suppliers for the six (6) month period commencing March 1, 1987, as detailed in § 18.2, Schedule A.

A report which shows producer-supplier refunds recovered through billing adjustments is submitted in § 18.2 of this filing.

Panhandle included in its PGA filing in Docket No. TA86–3–28–000 and 001 (effective March 1, 1986 through August 31, 1986) the last six months of the three-year amortization of the deferred account balance at May 31, 1983 as approved by Commission Order dated August 31, 1983 in Docket No. TA83–2–28–000. Panhandle recorded the actual recoveries of these amortized amounts through August 31, 1986. The ramaining balance at August 31, 1986 in Sub-Account No. 191.1005 amounts to an underrecovery of $13,229,739. Although Panhandle is entitled to recover said amount, it has made the decision to forego the recovery of the $13,229,739. Moreover, Panhandle is not now and will not in the future, request Commission approval to recover the $13,229,739 underrecovery. Therefore, Panhandle has included an adjustment to eliminate the effect of this remaining balance from the PGA rate computations reflected in Section 18.2 herein.

Panhandle's Schedule A included herein reflects costs under the Commission's Order No. 94–A for gas to be purchased by Panhandle during the six-month period commencing March 1, 1987. Panhandle will supply to the Commission within thirty (30) days hereof, under separate cover, additional workpapers containing the information required under § 271.1104(f) of the Commission's Regulations for production-related costs reflected in this filing to the extent such information has not already been provided.

On November 14, 1985 in Docket No. RP85–203 the Commission issued an order granting Panhandle's petition to institute a direct billing procedure for retractive production-related costs, subject to refund. Pursuant to the Commission's order, Panhandle established a separate sub-account, Sub-Account 191.1012, to account for this procedure. Panhandle charged to this sub-account its payments to suppliers and credited the amounts received under its direct billing procedure. A final report regarding this special sub-account was filed with the Commission on December 3, 1986. As stated in Panhandle's final report dated December 3, 1986, any remaining unpaid balances would be credited to Sub-Account No. 191.1012 and that Panhandle would not seek to recover these unpaid balances from its other customers. Accordingly, Panhandle has made an adjustment at December 31, 1986 to credit the remaining balance of $70,319 in Sub-Account No. 191.1012.

Additionally, Panhandle is filing herewith six (6) copies of the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Thirteenth Revised Sheet No. 43–2

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VOL 52 ISS 27 FE 10 1987 UMI

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Fifteenth Revised Sheet No. 43-4

The proposed effective date of these revised tariff sheets is March 1, 1987.

These revised tariff sheets reflect a modification to the timing of the filing requirements as contained in section 18 (Purchased Gas Cost Rate Adjustment (PGA)) of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1. This modification will permit Panhandle to compute the PGA Surcharge Adjustment and the Carrying Cost Surcharge Adjustment on the balance of the respective current sub-accounts two months prior to the effective date of the PGA adjustments. Currently, Panhandle computes its PGA Surcharge Adjustment and Carrying Cost Surcharge Adjustment based on the balances of the respective current subaccounts three months prior to the effective date of the PGA Rate Adjustment. The basis for this one-month modification is explained below.

Effective October 1, 1985 pursuant to the Commission's Order dated September 30, 1985 in Docket No. RP85-194, Panhandle modified its PGA filing requirements to provide for the filing of the PGA adjustments to at least 30 days prior to the effective date of the PGA Rate Adjustment as authorized under § 154.22 of the Commission's Rules and Regulations in lieu of the previously effective 45-day requirement. Due to the additional time Panhandle has for filing its PGA Rate Adjustments effective March 1 and September 1, Panhandle is able to reflect its actual Deferred Purchased Gas Cost Account and Deferred Purchased Gas Cost Carrying Charge Account balances on a more timely basis, thus allowing the surcharges to be based on the balances in the respective current subaccounts at December 31 and June 30 of each calendar year.

To the extent required, if any, Panhandle requests that the Commission grant such waivers as may be necessary for the acceptance of these tariff sheets submitted herewith, to become effective March 1, 1987, as previously described.

Copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2756 Filed 2-5-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-9705-000 et al.]

Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates [1]

February 4, 1987.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 19, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-9705-000 D, Jan. 12, 1987	Texaco, Inc. P.O. Box 52332, Houston, Texas 77052	Tennessee Gas Pipeline Company, North Rincon Field, Starr County, Texas.	(1)	
C164-71-004 D, Jan. 15, 1987	do	Panhandle Eastern Pipe Line Company, N.W. Midwell Field, Cimarron County, Oklahoma	(2)	
C178-768-001 D, Jan. 12, 1987	Texaco Producing Inc., P.O. Box 52332, Houston, Texas 77052	Transco Gas Supply Company, High Island Area Block 110 Field, Blocks 110, 111, and North Half of Block 138, Offshore Texas.	(3)	
C185-703-002-C, Jan. 8, 1987	Texaco Inc.	Bridgeline Gas Distribution Company, South Marsh Island Block 229, Offshore Louisiana.	(4)	
C187-224-000 (G-15530) B, Jan. 12, 1987	do	West Lake Natural Gas Company, South Lake Tramel Field, Nolan County, Texas.	(5)	
C187-234-000 F, Jan. 21, 1987	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, Calif. 94120-7309.	Tennessee Gas Pipeline Company, West Delta 83 and Burnwood Fields, Plaquemines Parish, Louisiana.	(6)	
C187-235-000 F, Jan. 21, 1987	do	Southern Natural Gas Company, West Black Bay Field, Plaquemines Parish, Louisiana.	(7)	
G-4949-000 D, Jan. 13, 1987	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880	United Gas Pipe Line Company, Boyce Field, Goliad County, Texas.	(8)	
C163-503-001 D, Jan. 20, 1987	BNP Petroleum (Americas) Inc., 1300 Post Oak Tower, 5051 Westheimer, Houston, Texas 77056	Natural Gas Pipeline Company of America, Boonsville Field, Wise County, Texas.	(9)	
C187-218-000 (C180-308) B, Jan. 7, 1987.	Champlin Petroleum Company, Four Allen Center, 1400 Smith Street—Suite 1500, Houston, Texas 77002.	Natural Gas Pipeline Company of America, Shaeffer Ranch Area, Jim Wells County, Texas.	(10)	
C187-221-000 (C162-416) B, Jan. 5, 1987.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Trunkline Gas Company, Rickeland and South Mermentau Fields, Acadia and Vermilion Parishes, Louisiana.	(11)	

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
C187-222-000 B, Jan. 9, 1987	Stockade Petroleum Corp. (Operator for Orlyn Terry), P.O. Box 305, Waverly, W. Va. 26186	Carnegie Natural Gas Company, Ritchie County, West Virginia	(12)	
C187-226-000 F, Jan. 12, 1987	ENSTAR Corp. (Succ. in interest to C&K Petroleum, Inc.), P.O. Box 2120, Houston, Texas 77252-2120	Transwestern Pipeline Company, Crawford Field, Eddy County, New Mexico	(13)	
C187-226-000 B, Jan. 12, 1987	Jones & Pellow Oil Company, 2821 N.W. 50th, Oklahoma City, Okla. 73112.	Lone Star Gas Company a/k/a Ensearch Corp., Eola Field, Garvin County, Oklahoma.	(14)	
C187-230-000 B, Jan. 14, 1987	Dandex Petroleum, Inc., *et al.*, P.O. Box 5084, Borger, Texas 79008	Northern Natural Gas Company, Division of Enron Corp., Texas Hugoton and Hanna's Draw Fields, Hansford and Sherman Counties, Texas	(15)	
C187-231-000 B, Jan. 16, 1987	Gordon Oil Company, Inc., P.O. Drawer 1660, Sherman, Texas 75090	Union Texas Petroleum, Sherman Penn Lower Field, Grayson County, Texas	(16)	
C187-233-000 B, Jan. 20, 1987	Donald J. Zadeck, 504 Texas Street, Shreveport, La. 71101	Arkla Energy Resources, Belle Bower and Logansport Fields, Stonewall Field, DeSoto Parish, Louisiana.	(17)	
G-14832-001 D, Jan. 27, 1987	ARC Oil and Gas Company, Division of Atlantic Richfield Company	United Gas Pipe Line Company, Abbeville Field, Vermilion Parish, Louisiana	(18)	
G-17379-005 D, Jan. 8, 1987	Texaco Inc.	Transwestern Pipeline Company, S.E. Gnggs Field, Cimarron County, Oklahoma.	(19)	
C169-894-001 D, Jan. 27, 1987	Union Oil Company of California, P.O. Box 7600, Los Angeles, California 90051	Panhandle Eastern Pipe Line Company, Putnam Field, Dewey County, Oklahoma.	(20)	
C168-894-002 D, Jan. 27, 1987	do	do	(21)	
C168-1241-001 B, Sept. 29, 1987	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, CA 94120-7309.	Trunkline Gas Company, OCS-G-South, Timbalier Block 51, *et al.*, Offshore Louisiana.	(22)	
C175-346-002 D, Jan. 21, 1987	Sohio Petroleum Company, P.O. Box 4587, Houston, Texas 77210.	Panhandle Eastern Pipe Line Company, Bear Gulch Field, Adams County, Colorado.	(23)	
C176-768-001 B, Jan. 12, 1987	Texaco Producing Inc.	Transco Gas Supply Company, High Island Area Block 110 Field, Offshore Texas.	(24)	
C177-400-003 B, Jan. 8, 1987	Texaco Inc.	United Gas Pipe Line Company and Southern Natural Gas Company, Eugene Island Blocks 26, 27 and 47, Offshore Louisiana.	(25)	
C180-471-002 C, Jan. 27, 1987	CanadianOxy Offshore Production Co, P.O. Box 300, Tulsa, Oklahoma 74102	Tennessee Gas Pipeline Company, Vermilion Block 119 H-7 well, Offshore Louisiana.	(26)	
C187-219-000 B, Jan. 5, 1987	Howard Hampton, P.O. Box 72, Metaire, Louisiana 70004	United Gas Pipe Line Company, Houma Field, Terrebonne Parish, Louisiana.	(27)	
C187-236-000 A, Jan. 21, 1987	Chevron U.S.C.A. Inc.	Various Purchasers, OCs-G-South, Timbalier Block 51, *et al.*, Offshore Louisiana.	(28)	
C187-243-000 F, Jan. 27, 1987	Cities Service Oil and Gas Corporation, P.O. Box 300, Tulsa, Oklahoma 74102	Transco Gas Supply Company, OCS Lease G-2699, Eugene Island Block, 243, Offshore Louisiana.	(29)	
C187-249-000 (C161-129) B, Jan. 23, 1987	Texas Eastern Exploration Co. P.O. Box 2521, Houston, Texas 77252	Texas Eastern Transmission Corporation, West Cameron Area, Offshore Louisiana.	(30)	
C187-250-000 (C175-19) B, Jan 23, 1987	Texas Eastern Exploration Co.	Texas Eastern Transmission Corporation, West Cameron Area, Offshore Louisiana.	(30)	
C187-252-000 (C183-101-000) B, Jan. 28, 1987	Chevron U.S.A. Inc.	United Gas Pipe Line Company, Iberia Field, Iberia Parish, Louisiana.	(31)	
C187-259-000 (C164-195) B, Jan. 29, 1987	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Southern Natural Gas Company, Iberia Field, Iberia Parish, Louisiana.	(31)	
C187-260-000 B, Jan. 27, 1987	Petroleum Development Corporation P.O. Box 26, Ridgeport, W. Va. 26330.	Consolidated Gas Transmission Corporation, Monongalia County, West Virginia.	(32)	

[1] On 3-1-86, Texaco Inc. assigned to P.B. Productions Inc. all of its right, title and interest in certain acreage.
[2] By assignment executed 10-26-86, but effective 11-1-86, Texaco assigned all of its right, title, and interest in and to the Paul Henke Unit to Crouch Petroleum Corporation.
[3] Federal Lease OCS-G-2680 (North Half of High Island Block 138) terminated 10-9-85.
[4] Applicant is filing under Gas Purchase Contract dated 9-25-85, amended by Amendment dated 11-4-86.
[5] By assignment dated 2-16-82, effective 2-1-82, Texaco Inc. assigned to Arden Oil Corporation all of its right, title and interest in properties covered by contract dated 2-27-56 and certificated in Docket No. G-15530.
[6] By assignment dated 5-17-84, Chevron acquired Taylor Energy Company's interest in gas produced from certain portions of State Leases Nos. 1009 and 1010 in the West Delta Block 83 Area and State Lease No. 2585 in the Burnwood Area, Plaquemines Parish, Louisiana.
[7] By assignment dated 5-17-84, Chevron acquired Taylor Energy Company's interests in gas produced from certain portions of State Leases Nos. 3354 and 335 in the West Black Bay Field, Plaquemines Parish, Louisiana.
[8] Assignment of Property No. 826409, Els Ferdinand, to Texaco, Inc.
[9] BHP Petroleum (Americas) Inc. has assigned to Mediafton Petroleum, Inc., all of its right, title and interest effective 4-1-86 in the Cody-Caraway Unit covered under Rate Schedule No. 156.
[10] By Assignment and Bill of Sale executed by Applicant 8-18-86, but effective 9-5-86, Applicant assigned its remaining rights, title and interest in the acreage to Tersh Baker, d/b/a/ Baker Petroleum Company, a small producer.
[11] ARCO assigned certain acreage under the Rate Schedule to Scott W. Myers by assignment executed 7-25-62. The remaining interest was assigned to Vernon E. Faulconer effective 9-1-84.
[12] Contract permits either party to request cancellation once production drops below 16.4 Mcf/day.
[13] On 12-20-83, C&K Petroleum, Inc. and ENSTAR Petroleum Inc. were merged into ENSTAR Corporation.
[14] Discontinued operation of the Kaiser Gasoline Plant effective November, 1986. Shall sell gas intra-state thru a contract with Standard Oil Production Company.
[15] Northern has permanently released the Spivey No. 1 Unit Well. The well's high pressure raises the pressure of Northern's entire low pressure gathering system such that other wells connected to the system have difficulty delivering into the system. Applicant proposes to sell to another purchaser who will install 3 miles of gathering line provided permanent abandonment of dedication to Northern is granted. A 2 year abandonment was granted Applicant by order dated August 29, 1986, Docket No. C186-516 *et al.*
[16] Applicant needs to get more than what they are presently getting for their gas. Well is a deep well (10,400 ft) and it costs to keep it producing. Applicant may have to plug the well because Applicant cannot afford to keep it going at the rate that Union Texas pays them.
[17] To market excess release gas on a short term basis.
[18] By assignment dated and effective May 1, 1986, ARCO assigned certain interests to Great Southern Oil and Gas Company, Inc.
[19] By assignment executed November 25, 1986, effective November 11, 1986, Texaco assigned certain lands and leases in Cimarron County, Oklahoma, to Crouch Petroleum Company.
[20] By assignment dated August 14, 1986, effective September 1, 1986, Union Oil Company of California assigned certain interests to Meadowbrook Oil Corporation.
[21] By assignment dated October 25, 1985, effective November 1, 1985, Union Oil Company of California assigned certain interests to Meadowbrook Oil Corporation.
[22] Applicant requests authorization to permanently abandon 50% of deliverability of its sale of gas to Trunkline and authorization for a three-year limited-term partial abandonment of its sale of any excess gas not requested by Trunkline from the remaining 50% of deliverability. In support of its application Applicant states that a settlement between the parties was reached for all outstanding take-or-pay issues for all contract years ending in the years prior to January 1, 1986. Pursuant to the release agreement dated August 22, 1986, Trunkline released 50% of Applicants gas deliverability.
[23] By assignment dated October 15, 1986, effective November 1, 1986, Sohio assigned certain interests to Pape's Oilfield Service.
[24] Federal Lease OCS-G-2680 terminated October 9, 1985.
[25] Due to an oversupply of available gas, Southern Natural Gas Company agreed to release from the contract a portion of Eugene Island Block 26. Applicant anticipates selling the released gas to Bridgeline Gas Distribution Company.
[26] Applicant is filing under Gas Purchase Contract dated 7-21-80 as amended by Amendment dated 10-24-86.
[27] Applicant requests abandonment for the sale of gas covered under a January 2, 1975, contract for which the primary term expires January 1, 1988. By letter agreement dated October 30, 1986, United released this gas which it does not wish to purchase for a period ending on January 1, 1988. Applicant also requests pregranted abandonment authorization for a three-year period for sales of the subject gas it may make under its small producer certificate issued in Docket No. CS75-286.
[28] Applicant requests a blanket sales certificate with pregranted abandonment for a three-year period for the gas for which abandonment authority is requested in Docket No. C168-1241-001.
[29] Effective June 1, 1986, Applicant acquired an 8.33334% interest in OCS Lease G-2699, Eugene Island Block 243, Offshore Louisiana, from ARCO Oil and Gas Company.
[30] Permanent depletion of reservoirs, lease expired of its own terms.
[31] Reserves depleted and well plugged. Applicant no longer has an interest in the subject lease(s).
[32] Well is noncommercial.

Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 87-2754 Filed 2-9-87; 8:45 am]

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[Docket No. TA87-7-20-000 & 001]

Proposed Changes in FERC Gas Tariff; Algonquin Gas Transmission Co.

February 4, 1987

Take notice that Algonquin Gas Transmission Company ("Algonquin") on January 29, 1987 tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Nineteenth Revised Sheet No. 201
Eighth Revised Sheet No. 231
Eleventh Revised Sheet No. 241

Algonquin states that such tariff sheets are being filed pursuant to Algonquin's Purchased Gas Cost Adjustment Provision as set forth in Section 17 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. The rates as shown on Nineteenth Revised Sheet No. 201 reflect (i) an adjustment to amortize the December 31, 1986 balance in Algonquin's Unrecovered Purchased Gas Cost Account (Account No. 191) and (ii) an adjustment to reflect a change in purchased gas cost to be charged by its supplier, Texas Eastern Transmission Corporation ("Texas Eastern") Eighth Revised Sheet No. 231 reflects Projected Incremental Pricing Surcharges for the period March, 1987 through August, 1987. Eleventh Revised Sheet No. 241 identifies the gas cost included in the revised sales rates.

Algonquin proposes the effective date of the above tariff sheets to be March 1, 1987.

Algonquin notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests must be filed on or before February 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2752 Filed 2-9-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-3-21-000, 001]

Proposed Changes in FERC Gas Tariff; Columbia Gas Transmission Corp.

February 4, 1987.

Take notice that Columbia Gas Transmission Corporation (Columbia) on January 29, 1987 tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective on March 1, 1987:

One hundred and fourteenth Revised Sheet No. 16
Forty-seventh Revised Sheet No. 64

Columbia states that consistent with the terms of the Stipulation and Agreement in Docket No. TA82-1-21-001, *et al.*, approved by the Commission's order dated June 14, 1985, as modified by order dated June 25, 1985, this filing reflects only changes in Columbia's demand charges applicable to its sales rate schedules. In addition, in accordance with Article II of the Stipulation, Columbia will make a PGA filing to be effective April 1, 1987, covering the period April 1, 1987 through August 31, 1987. This filing will reflect both revised demand and commodity rates.

Columbia further states that the rates set forth on One hundred and fourteenth Revised Sheet No. 16 reflect a $1.451/Dth reduction in the Demand Rate Applicable to Non-Shielded Customers and a $1.262/Dth reduction in Demand Rate Applicable to Shielded Customers, which results in an approximate reduction of $36.5 million for the subject PGA period. This reduction is comprised of the net of (1) a Demand Purchased Gas Cost Adjustment which reflects a reduction in the current cost of gas, (2) a negative Demand Surcharge Adjustment for the current PGA period, and (3) the elimination of a negative Demand Surcharge Adjustment applicable to the prior PGA period.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2753 Filed 2-9-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER87-86-000 et al.]

Arizona Public Service Company et al.; Electric Rate and Corporate Regulation Filings

February 4, 1987.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Co.

[Docket No. ER87-86-000]

Take notice that on January 30, 1987, Southwestern Public Service Company ("SPS") tendered for filing additional information concerning the Economy Energy Interchange previously filed in this docket by Arizona Public Service Company (APS).

SPS states that copies of its supplemental filing have been served upon APS and upon the state public service commissions of Arizona, New Mexico and Texas.

Comment date: February 18, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Illinois Power Co.

[Docket No. ER87-199-000]

Take notice that on January 27, 1987, Illinois Power Company (Illinois Power) tendered for filing addendums to ten interconnection agreements between Illinois Power and neighboring utilities.

Illinois Power states that the purpose of these addendums was to replace the fixed energy charges when Illinois Power is supplying energy to a receiving party which was purchased from a third party to a cost supported charge up to 1.60 mills per kilowatt-hour.

Comment date: February 18, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Puget Sound Power & Light Co.

[Docket No. ER87-236-000]

Take notice that on January 28, 1987, Puget Sound Power & Light Company (Puget) tendered for filing Appendix 1 to the Residential Purchase and Sale Agreement between Puget and The Bonneville Power Administration (BPA), which demonstrates the calculation of the Average System Cost (ASC) for Puget for the Exchange Period effective June 1, 1986 through September 30, 1986. Puget states that this filing is pursuant to the revised ASC methodology which was approved by FERC effective October 1, 1984.

Comment date: February 18, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Puget Sound Power & Light Co.

[Docket No. ER87-237-000]

Take notice that on January 28, 1987, Puget Sound Power & Light Company (Puget) tendered for filing Appendix 1 to the Residential Purchase and Sale Agreement between Puget and The Bonneville Power Administration (BPA), which demonstrates the calculation of the Average System Cost (ASC) for Puget for the Exchange Period beginning May 24, 1986. Puget states that this filing is pursuant to the revised ASC methodology which was approved by FERC effective October 1, 1984.

Comment date: February 18, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Utah Power & Light Co.

[Docket No. ER87-24-001]

Take notice that Utah Power & Light Company on January 16, 1987 tendered for filing an amendment to its filing to modify the Fuel Adjustment Clause. The amendment was submitted in compliance with the Deficiency Notice issued on December 4, 1986. Copies of this amended filing, together with all additional data was served upon UP&L's wholesale purchasers and upon the State Commission of Utah, Idaho, Wyoming, Nevada, California and Colorado.

Comment date: February 18, 1987, in accordance with Standard Paragraph E at the end of this document.

6. Virginia Electric and Power Co.

[Docket No. ER87-239-000]

Take notice that Virginia Electric and Power Company (the Company) on January 29, 1987 tendered for filing to become effective January 1, 1987 changes in the Facilities Charge and in the rates for transmission service pursuant to the Agreement for Transmission Use and Other Electric Service between the Company and North Carolina Municipal Power Agency Number 3 (now North Carolina Eastern Municipal Power Agency (NCEMPA)). The Company requests waiver of the notice requirements.

The changed rates reflect changes in costs since the rates were last adjusted in Docket No. ER85-165-000.

Copies of the proposed rates were served upon the affected customer and upon the North Carolina Utilities Commission.

Comment date: February 18, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-2749 Filed 2-9-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-160-000, et al.]

El Paso Natural Gas Company et al; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company

[Docket No. CP87-160-000]

February 2, 1987.

Take notice that on January 13, 1987, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP87-160-000 a request for authorization pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act to install and operate a sales tap and valve assembly, to be located in Mohave County, Arizona, in order to permit the delivery of natural gas to Southern Union Gas Company (SUG) for resale to the Petro Track Stop located in Mohave County, Arizona, under El Paso's blanket certificate issued in Docket No. CP82-435-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso states that it has received a written request from SUG for natural gas service at a location on El Paso's existing 24-inch San Juan Line and 30-inch San Juan Loop Line in Mohave County, Arizona. El Paso states that it has been advised by SUG that the requested quantities of natural gas would be utilized to serve commercial water heating and/or cooking uses and commercial space heating requirements of the Petro Truck Stip located 12 miles east of Kingman, Arizona, in an unincorporated area of Mohave County, Arizona.

In order to accommodate the subject request for natural gas service, El Paso proposes to install two 1-inch tap and valve assemblies on El Paso's existing 24-inch San Juan Line and 30-inch San Juan Loop Line in Mohave County, Arizona, at an estimated cost of $3,800. El Paso states that it is advised that SUG would install other related facilities, as needed, for ultimate distribution of the requested quantities of natural gas to the Petro Truck Stop. SUG has projected that the estimated annual and maximum peak day deliveries required to serve the Petro Truck Stop during the third full year of service is 11,700 Mcf per year and 90 Mcf per day, respectively.

El Paso states that the additional quantities of natural gas to be delivered will be sold by El Paso to SUG for resale to the Petro Truck Stop in order to accommodate projected Priority 2(c) requirements. The anticipated Priority 2(c) load growth, which has precipitated SUG's request for natural gas service described herein, will not alter SUG's entitlements under El Paso's Permanent Allocation Plan, it is stated.

Comment date: March 19, 1987, in accordance with Standard Paragraph G at the end of this notice.

2. Florida Gas Transmission Company

[Docket No. CP86-704-001]

February 2, 1987.

Take notice that on January 28, 1987,[1] Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77001, filed in Docket No. CP86-704-001 an amendment to its pending application filed on August 29, 1986, in Docket No. CP86-704-000 pursuant to section 7(c) of the Natural

[1] The notice of amendment was tendered for filing January 21, 1987; however, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until January 28, 1987. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

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Gas Act to provide firm transportation service for Metropolitan Dade County, Florida (Dade County) pursuant to proposed Rate Schedule FTS–1 and to construct and operate certain facilities, all as more fully set forth in the amendment on file with the Commission and open to public inspection.

On August 29, 1986, FGT states that it proposed, among other things, to implement a new firm transportation service under new Rate Schedule FTS–1 in Docket No. CP86–704–000.[2] By this amendment, FGT is requesting authorization to transport natural gas for Dade County pursuant to the proposed Rate Schedule FTS–1. FGT proposes to transport and deliver up to 72,000 dekatherm (dt) per day and up to 23,650,000 dt per year for Dade County. FGT states that under a transportation agreement dated January 20, 1987, it would accept natural gas at the following interconnections existing between FGT's system and other pipelines:

1. Interconnection between FGT and ANR pipeline Company in St. Landry Parish, Louisiana;

2. Interconnection between FGT and Transcontinental Gas Pipe Line Corporation in Calcasieu Parish, Louisiana;

3. Interconnection between FGT and Houston Pipe Line Company in San Patrocio County, Texas;

4. Interconnection between FGT and United Gas Pipe Line Company in Refugio County, Texas; and

5. Interconnection between FGT and United Texas Transmission Company in Jefferson County, Texas.

It is stated that FGT would redeliver the natural gas for Dade County at FGT's existing point of delivery to Peoples Gas System, Inc. (Peoples), an existing customer of FGT, or at a new tap and meter proposed to be constructed in the vicinity of the existing point of delivery in Miami, Dade County, Florida. Under the provisions of the transportation agreement, Dade County would have the opetion to be excused not later than April 1, 1987, to reduce the proposed firm transportation quantities to not less than 35,000 dt per day and 11,500,000 dt per year, it is stated. FGT also states that it has agreed to an initial term of service ending December 31, 2003, with an option available to Dade County to extend for an additional term of up to fifteen years.

[2] By Commission order issued January 16, 1987, the Commission consolidated and set for formal hearing FGT's proposals in Docket No. CP74–192–009 and CP86–704–000.

FGT states that its proposal to provide firm transportation service is subject to the following conditions:

1. Commencement of service would start on the later of (a) the in-service date of the facilities proposed by FGT in Docket No. CP74–192–009 or (b) the date on which a Commission order authorizing FGT to provide firm transportation service is issued and accepted by FGT in Docket No. CP86–704–000;

2. Dade County must support, or at least not oppose, FGT's motion filed October 22, 1986, in Docket No. CP74–192–009 and CP86–704–000;

3. FGT has agreed not to oppose, either directly or indirectly, the efforts by Dade County to secure an allocation of capacity in the proceedings in Docket No. CP74–192–009 and CP86–704–000; and

4. If Dade County is successful in obtaining an allocation of the Docket No. CP74–192–009 capacity and FGT is required by the Commission to commence firm transportation service to Dade County through Docket No. CP74–192–009 capacity earlier than otherwise agreed to, then FGT would commence the proposed transportation service on the date specified in the order.

FGT asserts that it has been advised that Dade County is attempting to negotiate a transportation agreement with Peoples for the further transportation and delivery of the transportation volumes to a new government center to be constructed by Dade County. In the event such negotiations are unsuccessful, FGT states that it proposes to construct and operate a tap and meter station which would interconnect with facilities to be constructed by Dade County. The estimated cost of FGT's proposed tap and meter station is $112,600. FGT asserts that Dade County has agreed to reimburse FGT for the cost of materials and the installation expense.

Comment date: February 17, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. National Fuel Gas Supply Corporation

[Docket No. CP87–167–000]

February 4, 1987.

Take notice that on January 20, 1987, National Fuel Gas Supply Corporation (National) 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP87–167–000 an application pursuant to section 7(c) of the Natural Gas Act, for permission and approval to construct and operate a 720 horsepower compressor unit at its existing East Fork Compressor Station located in Potter County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

National states that the additional unit, which would cost an estimated $729,000 to acquire and install would afford it greater flexibility and security in operations by allowing proper scheduling of maintenance and continuation of service in the event of an unscheduled shutdown of any of the three existing 540 horsepower units.

Comment date: February 25, 1987, in accordance with Standard Paragraph F at the end of this notice.

4. Natural Gas Pipeline Company of America

[Docket No. CP86–136–006]

February 4, 1987.

Take notice that on January 20, 1987, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP86–136–006 a petition to amend the order issued May 1, 1986, in Docket No. CP86–136–000, as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas on an interruptible basis for USI Chemicals Inc. (USI) for an additional term ending July 2, 1988 and month to month thereafter and to increase the maximum daily volume transported from 20 billion Btu to 25 billion Btu equivalent of natural gas, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Natural states that pursuant to Amendment No. 6 dated December 31, 1986, to the gas transportation agreement dated June 28, 1985, as amended, Natural and USI (formerly Northern Petrochemical Company, Norchem Inc. and then Enron Chemical Company) agreed to extend the term of the agreement for a period ending July 2, 1988, and month to month thereafter. Natural states that it and USI have also agreed to increase the maximum daily volume transported from 20 billion Btu to 25 billion Btu equivalent of natural gas for use at USI's plant in Morris, Illinois.

Comment date: February 25, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Natural Gas Pipeline Company of America

[Docket No. CP86–137–006]

February 4, 1987.

Take notice that on January 21, 1987, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP86–137–006 a petition to amend the order issued May 1, 1986, in Docket No. CP86–137–000, as amended, pursuant to sections 7(b) and 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas on an interruptible basis for Inland Steel Company (Inland) for an additional term ending April 30, 1988 and to increase the maximum daily volume transported from 60 billion Btu to 80 billion Btu equivalent of natural gas, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Natural states that pursuant to Amendment No. 10 dated December 12, 1986, to the gas transportation agreement dated February 18, 1985, as amended, Natural and Inland have agreed to extend the term of the agreement for a period ending April 30, 1988. Natural states that it and inland have also agreed to increase the maximum daily volume transported from 60 billion Btu to 80 billion Btu equivalent of natural gas for use by Inland at its Indiana Harbor Works.

Comment date: February 25, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Natural Gas Pipeline Company of America

[Docket No. CP87–162–006]

February 4, 1987.

Take notice that on January 15, 1987, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP86–162–000 an application pursuant to sections 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Natural proposes to transport up to 85,633 billion Btu equivalent of natural gas per day on an interruptible basis for Iowa Electric Light and Power Company (Iowa Electric). Natural states that it would receive natural gas for Iowa Electric's account at thirty points of receipt specified in Exhibit B to the transportation agreement between the parties. Natrual would redeliver such gas for the account of Iowa Electric at fifteen existing delivery points in Iowa, it is explained. It is further explained that the redelivery volumes would be reduced by a certain percentage for fuel consumed and 0.5 percent for unaccounted for gas. Natural, at its option, may institute a monetary charge for fuel consumed and unaccounted for gas, it is stated. It is further stated that such a charge would be calculated by multiplying the volume of gas that would otherwise be deducted by Natural's weighted average cost of gas for the most recent prior month such information is available.

Natural proposes to charge Iowa Electric for the transportation service herein transportation rates consistent with Natural's Rate Schedule TRT–1. Natural states that for illustrative purposes only, the rates that it proposes to charge Iowa Electric range between 26.7 cents and 57.7 cents per MMBtu equivalent as indicated in Exhibit B to the transportation agreement. Natural also proposes to charge Iowa Electric the currently efffective GRI surcharge.

Natural also requests blanket authorization to add and/or delete receipt points in the future that may be necessary to support this service.

Comment date: February 25, 1986, in accordance with Standard Paragraph F at the end of this notice.

Northwest Pipeline Corporation

[Docket No. CP87–161–000]

February 4, 1987

Take notice that on January 14, 1987, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP87–161–000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas in interstate commerce for the account of Texaco, Inc., Texaco Oils Inc., and Texaco Producing Inc., (Texaco), all as more fully set forth in the application which is on file with the Commission and open to the public inspection.

Northwest proposes to transport up to 50 billion Btu equivalent of natural gas per day, on an interruptible basis, for the account of Texaco, for a term of five years and year-to-year there-after, commencing with the initial delivery pursuant to a gas transportation agreement dated October 20, 1986, which provides for transportation under Rate Schedule T–2 of Northwest's FERC Gas Tariff, Volume 1–A.

Northwest states that Texaco has its own gas supplies which it would deliver to Northwest at various existing receipt points on Northwest's transmission system.

Northwest proposes to transport Texaco's gas through its transmission system and redeliver thermally equivalent volumes, less transmission fuel, to El Paso Natural Gas Company (El Paso), for the account of Texaco, at the existing delivery point at Ignacio. It is stated that El Paso would then deliver Texaco's natural gas supply to an intrastate pipeline for ultimate delivery to Texaco's steamflood and congeneration projects in the area of Kern River, California.

Northwest states that it would charge Texaco for all volumes of gas transported and delivered under the transportation agreement at the interruptible off-system transportation rate as set forth in Northwest's FERC Gas Tariff, Volume 1–A. The currently effective interruptible off-system transportation rate is 6.77 cents per MMBtu equivalent of natural gas for each 100 mile billing unit, plus a GRI charge of 1.50 cents per MMBtu equivalent of natural gas and a fuel reimbursement charge. It is stated that the transportation would involve three billing mileage units for gas received at Red Wash and Piceance Creek and four billing mileage units for gas received at the other identified receipt points.

Comment date: February 25, 1987, in accordance with Standard Paragraph F at the end of this notice.

Columbia Gulf Transmission Company and Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP77–21–002]

February 4, 1987.

Take notice that on January 20, 1987, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, and Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, collectively referred to as "Applicants", filed in Docket No. CP77–21–002 a petition to amend the order issued in said docket on April 26, 1977, as amended, pursuant to section 7(c) of the Natural Gas Act, for authority to include additional volumes in the exchange arrangement between them; to exchange gas on a thermal-equivalent basis; and to add a new exchange point, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Pursuant to the certificate order issued in this docket, Applicants are authorized, *inter alia* to exchange up to

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170,000 Mcf of natural gas per day, Columbia Gulf to make such gas available to Tennessee at the Cocodrie Separation and Dehydration Plant in Terrebonne Parish, Louisiana (Cocodrie Delivery Point), and Tennessee to make exchange gas available to Columbia Gulf: (a) at an interconnection between the pipelines of Columbia Gulf and Trunkline Gas Company near Centerville, Louisiana (Centerville Delivery Point); (b) at an interconnection of Columbia Gulf's 24-inch line at the northern terminus of Project 37 pipeline, Lafourche Parish, Louisiana (Lafourche Delivery Point); and (c) at or near the tailgate of Exxon's Lirette Processing Plant in Terrebone Parish, Louisiana (Lirette Delivery Point).

Applicants now seek authority to further amend the certificate to authorize Tennessee to include its South Timbalier Block 53 volumes in the exchange; to authorize the exchange of gas on a thermal-equivalent basis, retroactive to July 1, 1983; and to authorize an additional point of exchange (at which point Tennessee will deliver exchange volumes to Columbia Gulf), on Tennessee's Muskrat Line at Measuring Station 524 in Lafourche Parish, Louisiana (Leeville Delivery point).

Comment date: February 25, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-2750 Filed 2-9-87; 8:45 am]
BILLING CODE 6717-01-M

Southwestern Power Administration

Federal Hydroelectric Power and Energy Projects; Intent To Develop Policy

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of intent to develop policy for the selection of new customers to receive Federal hydroelectric power and energy.

SUMMARY: The Southwestern Power Administration (SWPA), Department of Energy, markets Federal hydroelectric power and energy to public bodies and cooperatives under the provisions of Section 5 of the Flood Control Act of 1944 (16 U.S.C 825s), as amended. The SWPA marketing area is generally recognized as the states of Arkansas, Kansas, Louisiana, Missouri, Oklahoma, and Texas. Future non-Federal financial participation in the construction of new Federal hydroelectric power facilities, may make new power and energy available for marketing. Some of that power and energy could be marketed to new customers. In view of the numerous requests received by SWPA for Federal hydroelectric power and energy, this agency intends to develop a policy for the selection of new customers. SWPA, therefore, solicits comments and suggestions concerning the formulation of such a policy by March 12, 1987.

ADDRESS: Written comments and/or suggestions should be submitted to the Director, Division of Power Marketing, Southwestern Power Administration, P.O. Box 1619, Tulsa, Oklahoma 74101.

FOR FURTHER INFORMATION CONTACT: Francis R. Gajan, Director, Division of Power Marketing, Southwestern Power Administration, P.O. Box 1619, Tulsa, Oklahoma 74101, or telephone (918) 581-7529.

Issued in Tulsa, Oklahoma, this 15th of January 1987.

Ronald H. Wilkerson,
Administrator, Southwestern Power Administration.

[FR Doc. 87-2721 Filed 2-9-87; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3153-7]

Guidelines for Ground-Water Classification Under the EPA Ground-Water Protection Strategy; Extension of Public Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of draft document for public comment; extension of public comment period.

SUMMARY: In the **Federal Register** of December 3, 1986 (51 FR 43664), the Environmental Protection Agency (EPA) announced the availability for public review and comment of draft "Guidelines for Gound-Water Protection Strategy" under the EPA Ground-Water Protection Strategy" and asked that written comments be submitted by February 8, 1987. In response, a number of public requests for extension of the comment period have been received and EPA has determined that additional time should be allowed for public comment.

DATE: The deadline for submitting written public comments is hereby extended to March 2, 1987.

FOR FURTHER INFORMATION CONTACT: Jose Valdes, Office of Ground-Water Protection, U.S. Environmental Protection Agency, 401 M Street., SW. (WH-550G), Washington, DC 20460; 202/382-7077 or FTS: 382-7077.

Dated: February 3, 1987.

Rebecca W. Hanmer,
Acting Assistant Administrator for Water.

[FR Doc. 87-2716 Filed 2-9-87; 8:45 am]
BILLING CODE 6560-50-M

[FRL-3152-4]

Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Patricia Minami, (202) 382-1712 (FTS 382-2712) or Jackie Rivers, (202) 382-2740 (FTS 382-2740).

SUPPLEMENTARY INFORMATION:

Office of External Affairs

Title: President's Environmental Youth Awards (EPA ICR #0292). (Extension, without change, of a currently approved collection.)

Abstract: Youth organizations submit community environmental projects of EPA to receive an award for enhancing and/or protecting the environment. EPA uses the data to recognize these youths both regionally and nationally.

Respondents: Children from kindergarten through 12th grade involved in environmentally-oriented activities.

Office of Pesticides and Toxic Substances

Title: Asbestos School Hazard Abatement Act—Grant and Loan Program (EPA #1233). (This is a revised application form reinstating the information requirements of the Asbestos School Hazard Abatement Act.)

Abstract: This is an application form voluntarily submitted by public and private local education agencies (LEAs) to request Federal assistance for asbestos abatement projects.

Respondents: Public and private local education agencies.

* * * * *

Agency PRA Clearance Requests Completed by OMB

EPA ICR #0143, Recordkeeping requirements for Producers of Pesticides, was approved 1/7/87 (OMB #2070-0028; expires 1/31/89).

EPA ICR #1038, Procurement Solicitations (REP and IFB), was approved 12/29/86 (OMB #2030-0006; expires 12/31/87).

EPA ICR #1190, National Survey of Hazardous Waste Facilities (Pretest), was approved 12/12/86 (OMB #2050-0063; expires 12/31/87).

* * * * *

Comments on the abstracts in this notice may be sent to:

Patricia Minami, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460

and

Rick Otis (#0292) and Carlos Tellez (#1233), Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, DC 20503.

Dated: February 5, 1987.

Daniel J. Fiorino,
Director, Information and Regulatory Systems.

[FR Doc. 87-2715 Filed 2-9-87; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Travel Reimbursement Authority; Report

AGENCY: Federal Communications Commission.

ACTION: Publishing of Report on Travel Reimbursement Authority.

SUMMARY: In Pub. L. 97-259, the Congress authorized the Federal Communications Commission to accept reimbursement from non-government organizations for travel of employees of the Commission. The Federal Communications Commission must keep records of such travel by each event and prepare a report of all reimbursements allowed and provide copies of each report to the Senate Committee on Appropriations, House Committee on Appropriations, Senate Committee on Commerce, Science and Transportation, and the House Committee on Energy and Commerce. This must be done until September 30, 1987. In addition, the Federal Communications Commission must publish each report in the **Federal Register** until September 30, 1987.

DATE: This report is for the period from October 1, 1986 through December 31, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Geoffrey Sherman, Office of the Managing Director (202) 632-6900.

SUPPLEMENTARY INFORMATION: The report for the period October 1, 1986 through December 31, 1986 is as follows:

FEDERAL COMMUNICATIONS COMMISSION, TRAVEL REIMBURSEMENT PROGRAM

October 1, 1986—December 31, 1986—Summary Report

Total number of sponsored events	21
Total number of sponsoring organizations	16
Total number of commissioners/employees attending	32
Total amount of reimbursement expected:	
Transportation	$9,513.65
Subsistence	6,483.94
Other expenses	1,104.01
Total	17,101.60

Individual Event Reports Attached. Amount of Reimbursement Shown May Be Estimated.

FEDERAL COMMUNICATIONS COMMISSION, TRAVEL REIMBURSEMENT PROGRAM

Individual Event Report

Sponsoring Organization: Coopers & Lybrand, 1251 Avenue of the Americas, New York, NY 10020
Date of the Event: October 1, 1986
Description of the Event: To speak at the 1986 annual Telecom Partner/Manager Infocom Industry Conference in Washington, DC.
Commissioners Attending: N/A
Other Employees Attending: Peter Pitsch, Chief, Office of Plans & Policy

Amount of reimbursement:	
Transportation	$14.10
Subsistence	0
Other expenses	0
Total	14.10

Sponsoring Organization: Society of Broadcast Engineers, c/o Booth, Freret

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& Imlay, 1920 N Street, N.W., Suite 520, Washington, DC 20036
Date of the Event: October 15, 1986
Description of the Event: To address the Society of Broadcast Engineers meeting in St. Louis, MO.
Commissioners Attending: N/A
Other Employees Attending: James McKinney, Chief, Mass Media Bureau

Amount of Reimbursement:

Transportation	$238.00
Subsistence	12.50
Other expenses	14.20
Total	264.70

Sponsoring Organization: United States Telephone Association, 900 19th Street, N.W., Suite 800, Washington, DC 20006–2102
Date of the Event: October 2–3, 1986
Description of the Event: To serve as a panelist in USTA's Cost Separations Course in Lansing, MI.
Commissioners Attending: N/A
Other Employees Attending: Robin Holmes, Public Utilities Specialist, Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$338.00
Subsistence	70.00
Other expenses	30.00
Total	438.00

Sponsoring Organization: Bell Atlantic, 1133 Twentieth Street, NW., Suite 810, Washington, DC 20036
Date of the Event: October 2–3, 1986
Description of the Event: To participate in a panel discussion of RCC/Cellular issues in Hershey, PA.
Commissioners Attending: N/A
Other Employees Attending: Kevin Kelley, Supervisory Attorney-Advisor, Common Carrier Bureau

Amount of reimbursement:

Transportation	$61.50
Subsistence	83.00
Other expenses	0
Total	144.50

Sponsoring Organization: AT&T, Room 2C129, Bedminister, NJ 07921
Date of the Event: October 8, 1986
Description of the Event: To speak at an AT&T management meeting held in North Branch, N.J.
Commissioners Attending: N/A
Other Employees Attending: Marcia Alterman, Supervisory General Attorney; Randolph Smith, Public Utilities Specialist, Common Carrier Bureau

Amount of reimbursement:

Transportation	$216.00
Subsistence	25.00
Other expenses	40.00
Total	283.00

Sponsoring Organization: United Telephone Company of Ohio, P.O. Box 3555, Mansfield, OH 44907
Date of the Event: October 7–8, 1986
Description of the Event: To speak at the 1986 Administrative Affairs Conference in Columbia, OH.
Commissioners Attending: N/A
Other Employees Attending: Colleen Boothby, Attorney-Adviser, Common Carrier Bureau

Amount of reimbursement:

Transportation	$204.00
Subsistence	78.00
Other expenses	50.00
Total	330.00

Sponsoring Organization: Carolina-Virginias Telephone Membership Association, Inc., P.O. Box 1046, Clinton, NC 28328
Date of the Event: October 9, 1986
Description of the Event: To speak at the Carolina-Virginias Telephone Membership Association's Fall Meeting in Asheville, N.C.
Commissioners Attending: N/A
Other Employees Attending: John Curry, Supervisory Systems Accountant, Common Carrier Bureau

Amount of reimbursement:

Transportation	$318.00
Subsistence	104.94
Other expenses	19.55
Total	442.49

Sponsoring Organization: Iowa Telephone Association, 1601 22nd Street, Suite 209, West Des Moines, Iowa 50265
Date of the Event: October 20–22, 1986
Description of the Event: To speak at the Iowa Telephone Association's Fall Convention in West Des Moines, IA.
Commissioners Attending: N/A
Other Employees Attending: John Windhausen, Attorney-Adviser, Common Carrier Bureau

Amount of reimbursement:

Transportation	$460.00
Subsistence	146.00
Other expenses	30.00
Total	656.00

Sponsoring Organization: Special Industrial Radio Service Association, Inc., 1700 N. Moore St., Suite 910, Rosslyn, VA 22209
Date of the Event: October 22–25, 1986
Description of the Event: To attend the 1986 Annual Membership Meeting of the Special, Industrial Radio Service Association in Hilton Head, SC.
Commissioners Attending: N/A
Other Employees Attending: Michael Fitch, Deputy Chief, Private Radio Bureau

Amount of reimbursement:

Transportation	$218.00
Subsistence	218.00
Other expenses	35.00
Total	471.00

Sponsoring Organization: Mountain Bell, 1801 California Street, MBC 1730, Denver, Colorado 80202
Date of the Event: October 21–23, 1986
Description of the Event: To speak at the 1986 Mountain Bell Academic Seminar in Denver, CO.
Commissioners Attending: N/A
Other Employees Attending: Claudia Pabo, Attorney-Adviser, Common Carrier Bureau

Amount of reimbursement:

Transportation	$370.00
Subsistence	180.00
Other expenses	75.00
Total	625.00

Sponsoring Organization: Bell Communications Research, 2101 L Street, NW., Washington, DC 20037
Date of the Event: October 27, 1986
Description of the Event: To participate in the Bell Communications Research Senior Management Conference in Atlantic City, NJ.
Commissioners Attending: N/A
Other Employees Attending: Albert Halprin, Chief, Common Carrier Bureau

Amount of reimbursement:

Transportation	$166.00
Subsistence	126.00
Other expenses	25.00
Total	319.00

Sponsoring Organization: Northern Telecom Inc., 600 Maryland Avenue, S.W., Suite 805–607, Washington, DC 20024–2520
Date of the Event: October 22–24, 1986
Description of the Event: To speak at Northern Telecom's "Business Services Marketing Forum", in Phoenix, AZ.
Commissioners Attending: N/A

Other Employees Attending: Raymond Dujack, Electronics Engineer, Common Carrier Bureau

Amount of reimbursement:

Transportation	$341.00
Subsistence	150.00
Other expenses	25.00
Total	516.00

Sponsoring Organization: Association of American Railroads, 50 F. Street, N.W., Washington, D.C. 20001
Date of the Event: November 4–6, 1986
Description of the Event: To attend annual conference of the Association of American Railroads in Kansas City, MO.
Commissioners Attending: N/A
Other Employees Attending: Charles Turner, Supervisory Electronics Engineer, Private Radio Radio Bureau

Amount of reimbursement:

Transportation	$218.00
Subsistence	255.00
Other expenses	40.00
Total	513.00

Sponsoring Organization: California Cable Television Association, 4341 Piedmont Avenue, Oakland, CA 94611
Date of the Event: December 3–5, 1986
Description of the Event: To participate in the Calfornia Cable TV Association's Western Cable Show in Anaheim, CA.
Commissioners Attending: N/A
Other Employees Attending: John Wong, Electronics Engineer, Mass Media Bureau, Jack Smith, General Counsel, James McKinney, Chief, Mass Media Bureau

Amount of reimbursement:

Transportation	$840.00
Subsistence	660.00
Other expenses	105.00
Total	1,605.00

Sponsoring Organization: Bell Communications Reserarch, 2101 L. Street, N.W., Washington, DC. 20037
Date of the Event: November 24, 1986
Description of the Event: To speak at the Bell Communication Research Regulatory Symposium in Lisk, IL
Commissioners Attending: N/A
Other Employees Attending: Peter Pitsch, Chief, Office of Plans & Policy

Amount of reimbursement:

Transportation	$290.00
Subsistence	105.00
Other expenses	25.00
Total	420.00

Sponsoring Organization: Northern Telecom Inc., 600 Maryland Avenue, S.E., Washington, DC 20024–2520
Date of the Event: November 5, 1986
Description of the Event: To speak at Northern Telecom's Management Association Meeting in Raleigh, NC.
Commissioners Attending: N/A
Other Employees Attending: Albert Halprin, Chief, Common Carrier Bureau

Amount of reimbursement:

Transportation	$156.00
Subsistence	79.00
Other expenses	25.00
Total	260.00

Sponsoring Organization: United States Telephone Association, 900 19th Street, N.W., Suite 800, Washington, DC 20006–2102
Date of the Event: November 14, 1986
Description of the Event: To speak at a meeting on the improvement of data presently provided to the FCC sponsored by the local exchange carriers in Washington, D.C.
Commissioners Attending: N/A
Other Employees Attending: Robin Holmes, Public Utilities Specialist, Common Carrier Bureau

Amount of reimbursement:

Transportation	$94.00
Subsistence	224.00
Other expenses	50.00
Total	368.00

Sponsoring Organization: Wisconsin Telecommunications Association, P.O. Box 393, Milwaukee, WI 53201
Date of the Event: December 10, 1986
Description of the Event: To speak at the Association's December meeting in Milwaukee, WI.
Commissioners Attending: N/A
Other Employees Attending: Peter Pitsch, Chief, Office of Plans & Policy

Amount of reimbursement:

Transportation	$172.00
Subsistence	76.00
Other expenses	25.00
Total	273.00

Sponsoring Organization: GTE Service Corporation, 1850 M. Street, N.W., Suite 1200, Washington, D.C. 20036
Date of the Event: December 8, 1986
Description of the Event: Tour GTE facilities in Tampa, FL.
Commissioners Attending: Patricia Dennis
Other Employees Attending: N/A

Amount of reimbursement:

Transportation	$30.00
Subsistence	77.00
Other expenses	20.00
Total	127.00

Sponsoring Organization: United States Telephone Association, 900 19th Street, N.W., Suite 800, Washington, D.C. 20006–2102
Date of the Event: October 6–8, 1966
Description of the Event: To participate in the United States Telephone Association's 89th National Convention in Seattle, WA.
Commissioners Attending: Mark S. Fowler
Other Employees Attending: Albert Halprin, Chief, Common Carrier Bureau; Gerald Vaughan, Deputy Chief, Common Carrier Bureau; John Cimko, Chief, Tariff Division; Thomas Sugrue, Chief, Policy & Program Planning Division; Cynthia Work, Supervisory Attorney Advisor; Gregory Vogt, Supervisory General Attorney, Common Carrier Bureau; Janice Obuchowski, Senior Advisor to the Chairman, Office of the Chairman; Dale Brown, Legislative Affairs Officer, Office of Congressional & Public Affairs

Amount of reimbursement:

Transportation	$3,137.05
Subsistence	2,957.00
Other expenses	354.86
Total	$6,448.91

Sponsoring Organization: Research Institute of Telecommunications & Economics, 2–29–5, Nishigotanda, Shinagawa-Ku, Tokyo 141, Japan
Date of the Event: November 11–19, 1986
Description of the Event: To participate in the Institute's "Competition Summit 86" conference in Tokyo, Japan
Commissioner Attending: N/A
Other Employees Attending: James Schlichting, Attorney-Adviser, Common Carrier Bureau

Amount of reimbursement:

Transportation	$1,608.00
Subsistence	859.50
Miscellaneous	115.40
Total	2,582.90

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87–2694 Filed 2–9–87; 8:45 am]
BILLING CODE 6712–01–M

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[DA 87-112]

900 MHz SMR Applications; Opening of Third Filing Window

AGENCY: Federal Communications Commission.

ACTION: Public notice.

SUMMARY: The Commission confirms that its third filing window for 900 MHz SMR applications will open on February 23, 1987 and close on February 27, 1987.

EFFECTIVE DATE: February 10, 1987.

FOR FURTHER INFORMATION CONTACT: Harold Salters, Land Mobile and Microwave Division, Private Radio Bureau, (202) 632-7597.

SUPPLEMENTARY INFORMATION: February 5, 1987.

900 MHz SMR Application Filing Window #3 To Be Open From February 23-27, 1987

The filing of applications for SMR facilities in the 900 MHz band for window #3 will open on February 23, 1987 and close on February 27, 1987. During this third filing window, 900 MHz SMR applications will be accepted for facilities to serve the following Designated Filing Areas (DFAs):

#17—Minneapolis-St. Paul
#18—Seattle
#19—San Diego
#20—Tampa-St. Petersburg
#21—Denver
#22—Phoenix
#23—Cincinnati-Dayton
#25—Kansas City
#26—Portland, OR
#27—New Orleans
#28—Columbus, OH
#29—Norfolk
#31—Buffalo
#38—Rochester
#47—Orlando
#49—Richmond

Applicants are reminded that Tentative selectees in the following DFAs must negotiate with each other as described in the November 4th Public Notice: #20 Tampa-St. Petersburg and #47 Orlando; #23 Cincinnati-Dayton and #28 Columbus; #29 Norfolk and #49 Richmond; and #31 Buffalo and #38 Rochester. To facilitate this negotiation process, we are including these eight DFAs in this window.

Applicants should follow the procedures for filing 900 MHz SMR applications as set forth in the Commission's Public Notices of November 4, 1986, entitled "Private Land Mobile Application Procedures for Spectrum in the 896-901 MHz and 935-940 MHz Bands," and December 30, 1986, entitled "900 MHz SMR Application Filing Window for Markets #6 Through #15 To Be Open From January 26-30, 1987." Both public notices were published in the **Federal Register**, 52 FR 1302 (January 12, 1987).

For further information contact Harold Salters, (202) 632-7597.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-2824 Filed 2-9-87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Shares of Banks or Bank Holding Companies; Change in Bank Control; Eugene A. Platt

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. section 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. section 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 25, 1987.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Eugene A. Platt*, Rushmore, Minnesota; to acquire an additional 6.33 percent of the voting shares of First Rushmore Bancshares, Inc., Rushmore, Minnesota.

Board of Governors of the Federal Reserve System, February 4, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2689 Filed 2-9-87; 8:45 am]

BILLING CODE 6210-01-M

First Citizens-Crenshaw Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 2, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Citizens-Crenshaw Bancshares, Inc.*, Luverne, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of First Citizens Bank Luverne, Alabama.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Heritage Bancorp, Co.*, Cleveland, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Cleveland, Cleveland, Oklahoma.

Board of Governors of the Federal Reserve System, February 4, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2690 Filed 2-9-87; 8:45 am]

BILLING CODE 6210-01-M

United Community Financial Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) of (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 25, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *United Community Financial Corporation*, Wayland, Michigan; to acquire assets of McIntyre & Associates, and thereby engage in general insurance activities in towns of under 5,000 pursuant to § 225.25(b)(8)(ii) of the Board's Regulation Y. These activities will be conducted in Clarksville and Georgetown Township, Michigan.

Board of Governors of the Federal Reserve System, February 4, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2691 Filed 2-9-87; 8:45 am]

BILLING CODE 6210-01-M

Notice of Application to Engage de novo in Permissible Nonbanking Activities; Dixie Bancshares, Inc.

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8)) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 2, 1987.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Dixie Bancshares, Inc.*, Dukedom, Tennessee; to engage *de novo* in the sale of credit life insurance for extensions of credit by Dukedom Bank, Dukedom, Tennessee, pursuant to § 225.25(b)(8) of the Board's Regulation Y. This activity will be conducted in and around Dukedom, Tennessee.

Board of Governors of the Federal Reserve System, February 4, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2688 Filed 2-9-87; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Being Reviewed by the Office of Management and Budget (OMB)

AGENCY: Directives and Reports Management Branch, GSA.

SUMMARY: Under the Paperwork Reduction Reauthorization Act of 1986 (44 U.S.C. 811), the General Services Administration (GSA) requests the OMB to reinstate a recently lapsed information collection.

PURPOSE: The collection consists of bids, proposals, contracts, and similar documents created in purchasing goods and services.

Annual Reporting Burden: Estimated as follows: Respondents, 7,859; responses, 14,932; burden hours, 324,858.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Rodney P. Lantier, GSA Clearance Officer, General Services Administration (CAID), Washington, DC 20405.

FOR FURTHER INFORMATION TELEPHONE: William McHugh, Directives & Reports Management Branch, GSA (202) 566-0668.

Copy of Proposal: A copy of the proposal may be obtained by writing the Directives & Reports Management Branch (CAID), Room 3015, GS Bldg., Washington, DC 20405, or by telephoning (202) 566-0668.

Dated: January 30, 1987.

Mary Cunningham,

Acting Director, Information Management Division.

[FR Doc. 87-2704 Filed 2-9-87; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Meeting (Division of Cancer Treatment Board of Scientific Counselors)

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, February 19-20, 1987, Building 31, 6th Floor, "C" Wing, Conference Room 6, Bethesda, Maryland 20892.

This meeting will be open to the public on February 19 from 8:30 a.m. to approximately 4:30 p.m., and again on February 20 from 8 a.m. until

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adjournment, to review program plans, contract recompetitions and budget for the DCT program. In addition, there will be scientific reviews by several programs in the Division. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 19 from 4:30 p.m. until recess, for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A–06, National Institutes of Health, Bethesda, Maryland 20892 (301–496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Bruce A. Chabner, Director, Division of Cancer Treatment, National Cancer Institute, Building 31, Room 3A–52, National Institutes of Health, Bethesda, Maryland 20892 (301–496–4291) will furnish substantive program information.

Dated: January 27, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–2678 Filed 2–9–87; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Pulmonary Diseases Advisory Committee of the National Heart, Lung, and Blood Institute, which was published in the **Federal Register** on January 8, 1987, (52 FR 707). The committee will meet in open session on February 19 from 8:30 a.m. to recess and again on February 20 from approximately 11 a.m. to adjournment.

It is now necessary to close a portion of this meeting to review abstracts of unpublished research of clinical investigators and physician scientists supported by the Division of Lung Diseases for the purpose of selecting the most meritorious for recognition by the NIH during the centennial year. The selection will be based on the evaluation of unpublished scientific research data.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 20 from 8:30 a.m. until approximately 11 a.m. for the review, discussion and evaluation of individual abstracts. These abstracts and the discussions could reveal confidential trade secrets or commercial property, such as patentable material and personal information concerning individuals associated with the abstracts, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Suzanne Hurd, Executive Secretary, Pulmonary Diseases Advisory Committee, NHLBI, Westwood Building, Room 6A–16, Bethesda, Maryland 20892, phone (301) 496–7208 will furnish substantive program information.

Dated: January 28, 1987.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 87–2676 Filed 2–9–87; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung and Blood Institute, Meeting of Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Institute Board of Scientific Counselors, June 25 and 26, 1987, National Institutes of Health, 9000 Rockville Pike, Building 10, Room 7N214, Bethesda, Maryland 20892.

This meeting will be open to the public from 9 a.m. to 4 p.m. June 25 and from 9:30 a.m. to 12 noon on June 26 for discussion of the general trends in research relating to cardiovascular, pulmonary and certain hematologic diseases. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 12 noon to adjournment June 26 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–4236, will provide a summary of the meeting and a roster of the Board members. Substantive program information may be obtained from Dr. Jack Orloff, Executive Secretary and Director, Division of Intramural Research, NHLBI, NIH, Building 10, Room 7N214, phone (301) 496–2116.

Dated: January 27, 1987.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 87–2680 Filed 2–9–87; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Meeting of Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, NIEHS, February 19–20, 1987, in Building 101 Conference Room, South Campus, NIEHS, Research Triangle Park, North Carolina.

This meeting will be open to the public 9 a.m. to 12 noon on February 19, for the purpose of presenting an overview of the organization and conduct of research in the Laboratory of Pulmonary Pathobiology. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6) of Title 5 U.S. Code and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 19 from approximately 1 p.m. to adjournment on February 20, for the evaluation of the programs of the Laboratory of Pulmonary Pathobiology, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Martin Rodbell, Scientific Director, NIEHS, Research Triangle Park, NC 27709, telephone (919) 541–3205, FTS 629–3205, will furnish summaries of the meeting, rosters of committee members and substantive program information.

Dated: January 27, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–2679 Filed 2–9–87; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination for Federal Acknowledgment of the Wampanoag Tribal Council of Gay Head, Inc.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(h), notice is hereby given that the Assistant Secretary acknowledges that the

Wampanoag Tribal Council of Gay Head, Inc., c/o Mrs. Gladys Widdiss, State Road, RFD Box 137, Gay Head, Massachusetts 02535

exists as an Indian tribe within the meaning of Federal law. This notice is based on a determination, following a review of public comments on the proposed finding, that the tribe satisfies all of the criteria set forth in 25 CFR 83.7, and, therefore, meets the requirements for a government-to-government relationship with the United States.

Notice of the proposed finding to decline to acknowledge the tribe was published on page 23604 of the **Federal Register** on June 30, 1986. This finding was based on a determination that the tribe met criteria a, d, e, f, and g, but did not meet criteria b and c of Part 83.7 of the Acknowledgment regulations (25 CFR Part 83). In accordance with 25 CFR 83.9(g), interested parties were given 120 days in which to submit factual or legal arguments and evidence to rebut or support the evidence relied upon in the finding. Pursuant to a request by the tribe's legal counsel, the Native American Rights Fund (NARF), the Assistant Secretary—Indian Affairs, by a letter dated October 15, 1986, extended the comment period an additional 34 days.

During the comment period, a rebuttal containing substantive new evidence and arguments challenging the proposed finding was submitted by the petitioner. Comments were also received from Dr. Gloria Levitas, Assistant Chairman of the Department of Anthropology of Queens College in Flushing, New York; from Dr. Francis Jennings, Director Emeritus of the D'Arcy McNickle Center for the History of the American Indian of the Newberry Library in Chicago; from Dr. William S. Simmons, Chairman of the Department of Anthropology at the University of California, Berkeley; from Mr. Robert T. Morgan, Sr., Chairman of the Dukes County (Massachusetts) Commissioners; from Mr. Doug Cabral, edior of the *Martha's Vineyard Times* in Vineyard Haven, Massachusetts; and from Reverend Peter R. Sanborn, pastor of the Community Baptist Church in Gay Head, Massachusetts.

The comments of Dr. Levitas, Dr. Jennings, Dr. Simmons, and Rev. Sanborn were critical of the proposed finding, while those of Mr. Morton and Mr. Cabral were neutral in this regard. Observations regarding the political influence of the petitioner were presented by Dr. Levitas, Dr. Jennings, Dr. Simmons, Mr. Morgan and Mr. Cabral. In addition, Dr. Jennings, Dr. Simmons, and Rev. Sanborn commented on the community activities of the petitioner. Dr. Simmons also elaborated on the petitioner's retention of traditional Wampanoag legends. Letters were also received after the expiration of the extended comment period from Mr. William Honey, a bank president from West Tisbury, Massachusetts, and from Mr. James L Quarles, III, an attorney in the Washington, DC office of Hale and Dorr, a Boston law firm which serves as legal counsel for the Gay Head Taxpayers Association. These latter two letters have not been considered as part of the official comment materials.

All submissions were carefully considered, the new evidence was evaluated, and data and conclusions in both the tribe's original petition and the proposed finding were reconsidered in light of the arguments presented. The tribe's rebuttal presented substantive new evidence and arguments which served to greatly strengthen its petition. It has been found that this evidence, when considered along with the arguments and observations presented by the other interested parties and a reconsideration of the evidence presented in the proposed finding, warrants a final determination that the tribe does meet criteria b and c of Part 83.7 of the Acknowledgment regulations.

The proposed finding concluded that the petitioner did not meet criterion 83.7(b) because the absence of extensive social contact within the extended Gay Head Wampanoag community precluded the maintenance of tribal relations. The finding noted that a substantial portion of the Gay Head Wampanoags live in a specific area viewed as American Indian, that they are descendants of an Indian tribe which historically inhabited the area, and that they are distinct from other populations. Yet, at the time the finding was being prepared, evidence to support a positive determination for social interaction and social cohesion—the remaining and significant element of criterion (b)—was insufficient.

The tribe's rebuttal, along with responses received from other interested parties, has provided information previously lacking and documentation demonstrating social interaction and social cohesion. These data show that the Gay Head Wampanoags have an extensive and interrelated communication network connecting those Wampanoags in Gay Head and elsewhere on Martha's Vineyard with each other and with those members living off-island. Included in this network are the major families in the tribe and the tribal officers. Some of the tribal officers are also Gay Head town officials. The petitioner's rebuttal indicates that the communication network was used for "overtly political purposes by the tribal leaders."

The petitioner also supplied additional information about the tribe's social interaction during important tribal occasions such as birthdays, weddings, retirements, and funerals. The proposed finding concluded that group interaction at these times was minimal, but the new evidence submitted demonstrates that this was not the case. The petitioner's evidence was reinforced by the observations of Rev. Sanborn. Information provided by several other interested parties also demonstrated the existence of specific locations in and around Gay Head which serve as informal gathering places where tribal members congregate.

In addition to providing information about the communication network, the petitioner's rebuttal pointed out that social columns, formerly published in the *Vineyard Gazette*, served as a means of communication and also were used to define the tribe's social boundaries. When Gay Head Wampanoags were the reporters, the social news from Gay Head tended to focus on the activities of the Indian residents, but when non-Indians were the reporters, the news tended to emphasize the activities of the non-Indian residents.

There new data, when taken collectively and conjoined with those originally provided by the petitioner and those obtained by the Acknowledgment staff in the course of their research, are deemed sufficient to conclude that the Gay Head Wampanoags maintain the requisite degree of social interaction or tribal relations to meet criterion (b).

The proposed finding concluded that the tribe did not meet criterion 83.7(c) because it could not demonstrate that it had maintained political influence or other authority over all of its members throughout history. The original petition focused on the town government of Gay Head as being the only means by which tribal political influence or authority was maintained over the Gay Head

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Wampanoags between 1870 and 1972, the year in which the Wampanoag Tribal Council of Gay Head was organized formally. The picture that emerges from the rebuttal evidence and arguments and from a reconsideration of the evidence in the proposed finding is of a tribal political situation which is considerably more fluid and diffused than that which was initially described. The available evidence shows that the Gay Head Wampanoags adapted the principal elements of the town governmental system which was imposed upon them by the Commonwealth of Massachusetts and that, within the limits possible, the town government served as the primary structure by which the tribe maintained political influence and/or authority over both its resident and non-resident members. Further evidence presented in the petitioner's rebuttal demonstrated that political influence or other authority was also maintained over members through organizational bodies which functioned outside of and/or parallel to the town government, such as the Howwaswee and Pawkunnawakutt councils and the Wampanoag Tribal Council of Gay Head, and by leaders such as Harrison Vanderhoop, Lorenzo Jeffers, Napolean Madison, and Donald Malonson, who have functioned both outside and within the municipal structure of the town of Gay Head. Therefore, we conclude that the tribe has maintained tribal political influence or other authority over its members, independent of the control of any other Indian governing body, throughout history until the present.

Based on these new findings, we conclude that the Gay Head Wampanoags meet criteria b and c of § 83.7 of the Acknowledgment regulations. Consequently, the petitioner satisfies all of the mandatory criteria for Federal acknowledgment and, therefore, meets all of the requirements for a government-to-government relationship with the United States.

A report summarizing the Department's response to the evidence and arguments submitted to refute the proposed finding is available to interested parties upon request. Requests for copies of this supplement report or the proposed finding published earlier should be addressed to the Assistant Secretary—Indian Affairs, 1951 Constitution Avenue NW., Washington, DC 20245, Attention: Branch of Acknowledgment and Research, Mail Stop 32–SIB.

This determination is final and will become effective 60 days from the date of publication of this notice unless the Secretary of the Interior requests that the determination be reconsidered pursuant to 25 CFR 83.10 (a–c).

Ross Q. Swimmer,

Assistant Secretary—Indian Affairs.

[FR Doc. 87–2677 Filed 2–9–87; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[MT–930–4410–14]

Designation of an Outstanding Natural Area; Montana

AGENCY: Bureau of Land Management—Lewistown District Office, Interior.

ACTION: Notice of designation of an Outstanding Natural Area in the Lewistown District

SUMMARY: Pursuant to the authority in the Federal Land Policy and Management Act of October 21, 1976, (Section 103 (e) and 43 CFR Parts 8352, I have designated 1,041.75 acres in the following area of special management direction: T. 24 N., R. 8 W., Section 5: E½E½, SW¼NE¼, S½NW¼, N½SW¼, NW¼SE¼; Section 6: S½N½, SW¼, SE¼; Section 7: N½; Section 8: W½NW¼, Teton County, Lewistown District, Great Falls Resource Area, Montana. This designation was developed with public involvement in the Lewistown District.

In 1983, the Headwaters Resource Management Plan established the adjacent Ear Mountain Area as an Outstanding Natural Area (ONA). This 1,041.75 acre addition was obtained through a land exchange (M–59763) with the Nature Conservancy; and a planning amendment completed December 1986 recommended this parcel of ONA management. This designation aligns itself with the resource management plan direction for blocks of public land along the Rocky Mountain Front that contain unique resources.

This area provides additional public access to the Ear Mountain ONA as well as to the adjacent Lewis and Clark National Forest, the nearby Bob Marshall Wilderness, and the Ear Mountain State Wildlife Management Area.

The ONA designation provides protection and management direction for: the critical habitat for the threatened grizzly bear; prey base habitat for the endangered grey wolf; important seasonal habitat for numerous wildlife species including elk, bighorn sheep, mountain goat, mule deer, black bear, mountain lion, plus various other wildlife. This designation will also protect the area's scenic quality, rated as Class A (outstanding), and provide for continued educational and recreational use. Regulated commodity production will be permitted by this designation. Regulation will occur through off-road vehicle restriction, no-surface occupancy designation relative to oil and gas development, and designation of a selected portion as a no lease area.

The area will be managed to maintain generally undisturbed conditions and to promote recreational use of the public lands. A 12.75-acre parcel will be managed as a multiple-use area and public access trailhead.

DATE: These decisions were included in the Decision Record for the Resource Management Plan amendment for the Special Designation of the Ear Mountain Addition, Great Falls Resource Area, Lewistown District, Montana. Bureau of Land Management, December 24, 1986. This decision became final 30 days after receipt by the public.

ADDRESSES: Questions on specific management plans, research opportunities, or protection plans should be addressed: Area Manager, Great Falls Resource Area, P.O. Box 2865, Great Falls, Montana.

Dated: February 2, 1987.

Robert Haburchak,

Acting District Manager.

[FR Doc. 87–2703 Filed 2–9–87; 8:45 am]

BILLING CODE 4310–DN–M

Fish and Wildlife Service

Availability of the Draft Environmental Impact Statement; Upper Mississippi River National Wildlife and Fish Refuge

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability of a draft environmental impact statement (EIS) for the proposed Master Plan on the Upper Mississippi River National Wildlife and Fish Refuge.

DATE: Comments will be accepted until May 15, 1987.

ADDRESS: Comments should be sent to:

Deborah Southworth, U.S. Fish and Wildlife Service, Federal Bldg., Fort Snelling, Twin Cities, MN 55111, 612–725–3306

or

Jim Lennartson, U.S. Fish and Wildlife Service, 51 E. 4th Street, Winona, MN 55987, 507–452–4232

FOR FURTHER INFORMATION CONTACT: Same as above.

SUPPLEMENTARY INFORMATION: Deborah Southworth is the primary author of this document. The Fish and Wildlife Service, Department of the Interior, has prepared a draft EIS on its proposal to implement a Master Plan for the Upper Mississippi River National Wildlife and Fish Refuge.

The refuge is located in the Mississippi River floodplain, an area which serves major commercial navigation interests and recreationists as well as providing many wildlife benefits. As use has increased, the pressure on the wildlife has increased, and environmental quality has decreased. Many interagency planning efforts have already been completed in an attempt to deal with the problems on the river. This draft EIS/Master Plan takes proposals from those plans to a more specific level, and deals only with refuge lands.

The preferred alternative is designed to slow or reverse the loss of habitat on the refuge. A major goal is water quality improvement, which impacts most refuge habitat and wildlife species. Some limits on recreational developments are proposed, and redirection of use to less sensitive areas or seasons, but no new limits on numbers of users are proposed.

Public meetings have already occurred to gain general input for developing the alternatives. A series of meetings will be held along the river to explain the preferred alternative and gather comments on the proposals. The meeting dates and locations are listed below. All meetings are at 7 p.m.

March 24, 1987—Main Conference Room, Fridell Building, 1200 South Broadway, Rochester, Minnesota
March 25, 1987—Area Vocational Technical Institute, (AVTI), 1250 Homer Road, Winona, Minnesota
March 26, 1987—Commons Area, Wabasha High School, Old Highway 61, South, Wabasha, Minnesota
April 7, 1987—Valhalla B, Cartwright Center, University of Wisconsin, 1471 State Street, La Crosse, Wisconsin
April 8, 1987—B.A. Kennedy School Auditorium, 420 South Wacouta Street, Prairie du Chien, Wisconsin
April 9, 1987—Lansing Kee High School Cafeteria, Center Street, Lansing, Iowa
April 21, 1987—Bijou Room, Lower Level, Five Flags Center, Fourth and Main, Dubuque, Iowa
April 22, 1987—Clinton Community College Auditorium, 1000 Lincoln Boulevard, Clinton, Iowa
April 23, 1987—Black Hawk College Cafeteria, 6600 34th Avenue, Moline, Illinois

Copies of the Draft EIS/Master Plan are available for review at all the refuge district offices as well as the two offices listed above.

District Offices:

Winona District, Upper Mississippi Refuge, 51 E. 4th Street, Room 101, Winona, Minnesota 55987
McGregor District, Upper Mississippi Refuge, P.O. Box 460, McGregor, Iowa 52157
La Crosse District, Upper Mississippi Refuge, P.O. Box 415, La Crosse, Wisconsin 54601
Savanna District, Upper Mississippi Refuge, Post Office Building, Savanna, Illinois 61074

All agencies and individuals are urged to provide comments and suggestions for improving this EIS as soon as possible. All comments received by the date given above will be considered in preparation of the final EIS for this proposed action.

Harvey K. Nelson,

Director, Fish and Wildlife Service, Region 3.

[FR Doc. 87–2698 Filed 2–9–87; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Procedures for Determining Natural Gas Value for Royalty Purposes

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of proposed modification to Notice to Lessees–5; extension of comment period.

SUMMARY: This Notice extends the comment period from February 17, 1987 to March 19, 1987 on the Notice of Proposed Modification to NIL–5 (concerning procedures for determining natural gas value for royalty purposes) which was published in the **Federal Register** on January 15, 1987 (52 FR 1671). The extension of the comment period is in response to requests received from the public to allow additional time for comments.

DATES: Comments must be delivered or postmarked no later than March 19, 1987.

FOR FURTHER INFORMATION CONTACT: Dennis Whitcomb, Chief, Rules and Procedures Branch, telephone: (303) 231–3432, (FTS) 326–432.

Dated: February 4, 1987.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 87–2687 Filed 2–9–87; 8:45am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production, Unit Operator of the Vermilion Block 218 Federal Unit Agreement No. 14–08–0001–8816, has submitted a DOCD describing the activities it proposes to conduct on the Vermilion Block 218 Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intercoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on January 15, 1987.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Al Durr; Minerals Management Service; Gulf of Mexico OCS Region; Production and Development; Development and Unitization Section; Unitization Unit; Phone (504) 736–2659.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 2, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–2732 Filed 2–9–87; 8:45 am]

BILLING CODE 4310–MR–M

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National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 31, 1987. Pursuant to § 60.13 of 36 CFR Part 60, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by February 25, 1986.

Carol D. Shull,

Chief of Registration, National Register.

MASSACHUSETTS

Barnstable County

Sandy Neck Cultural Resources District (Barnstable MRA),
Barnstable, *Adams—Crocker—Fish House (Barnstable MRA),* 449 Willow St.
Barnstable, *Allen, Capt. Allen H., House (Barnstable MRA),* 48 Camp St.
Barnstable, *Ames, Josiah A., House (Barnstable MRA),* 145 Bridge St.
Barnstable, *Ancient Burying Ground (Barnstable MRA),* Phinneys La.
Barnstable, *Baker, Capt. Seth Jr., House (Barnstable MRA),* 35 Main St.
Barnstable, *Baker, Nathaniel, House (Barnstable MRA),* 1606 Hyannis Rd.
Barnstable, *Baxter, Capt. Rodney J., House (Barnstable MRA),* South and Pearl Sts.
Barnstable, *Baxter, Capt. Sylvester House (Barnstable MRA),* 156 Main St.
Barnstable, *Baxter, Charles L., House (Barnstable MRA),* 77 Main St.
Barnstable, *Baxter, Shubael, House (Barnstable MRA),* 9 E. Bay Rd.
Barnstable, *Bearse, Capt., House (Barnstable MRA),* 31 Pearl St.
Barnstable, *Blish—Garret House (Barnstable MRA),* 350 Plum St.
Barnstable, *Building at 237–239 Main Street (Barnstable MRA),* 237–239 Main St.
Barnstable, *Building at 600 Main Street (Barnstable MRA),* 600 Main St.
Barnstable, *Building at 606 Main Street (Barnstable MRA),* 606 Main St.
Barnstable, *Building at 614 Main Street (Barnstable MRA),* 614 Main St.
Barnstable, *Campbell, Collen C., House (Barnstable MRA),* 599 Main St.
Barnstable, *Canary—Hartnett House (Barnstable MRA),* 113 Winter St.
Barnstable, *Centerville Historic District (Barnstable MRA),* Main St.
Barnstable, *Chase, Lemuel B., House (Barnstable MRA),* 340 Scudder Ave.
Barnstable, *Codman, Col. Charles, Estate (Barnstable MRA),* 43 Ocean View Ave.
Barnstable, *Cotuit Historic District (Barnstable MRA),* Main St., Lowell & Ocean View Aves. bounded by Osterville Harbor, Nantucket Sound, & Popponessett Bay
Barnstable, *Craigville Historic District (Barnstable MRA),* Centerville Harbor, Nantucket Sound, Red Lily Pond, and Lake Elizabeth
Barnstable, *Crocker, Benomi and Barnabas, House (Barnstable MRA),* 325 Willow St.
Barnstable, *Crocker, Capt. Alexander, House (Barnstable MRA),* 358 Sea St.
Barnstable, *Crocker, Ebenezer Jr., House (Barnstable MRA),* 49 Putnam Ave.
Barnstable, *Crocker, Lot, House (Barnstable MRA),* 284 Gosnold St.
Barnstable, *Crosby House (Barnstable MRA),* 33 Pine St.
Barnstable, *Crosby Yacht Company Incorporated (Barnstable MRA),* 72 Crosby Circle
Barnstable, *Crosby, Daniel, House (Barnstable MRA),* 18 Bay St.
Barnstable, *Francis, Dr. Edward (Barnstable MRA),* 88 Lewis Bay Rd.
Barnstable, *Fuller House (Barnstable MRA),* Parker Rd.
Barnstable, *Gifford Farm (Barnstable MRA),* 261 Cotuit Rd.
Barnstable, *Goodspeed House (Barnstable MRA),* 271 River Rd.
Barnstable, *Goodspeed, Allen, House (Barnstable MRA),* 1381 Main St.
Barnstable, *Gray, Capt. Thomas, House (Barnstable MRA),* 14 Main St.
Barnstable, *Hallett, Capt. William (Barnstable MRA),* 570 Main St.
Barnstable, *Hallett, Seth, House (Barnstable MRA),* 110 Main St.
Barnstable, *Harlow Homestead (Barnstable MRA),* 391 Main St.
Barnstable, *Hawley, Giden, House (Barnstable MRA),* 4766 Falmouth Rd.
Barnstable, *Hinckley Homestead (Barnstable MRA),* 1740 S. County Rd.
Barnstable, *Hinckley, Capt. Joseph, House (Barnstable MRA),* 142 Old Stage Rd.
Barnstable, *Hinckley, Nymphus, House (Barnstable MRA),* 38 Bay St.
Barnstable, *Hinckley, S. Alexander, House (Barnstable MRA),* 151 Pine St.
Barnstable, *Hyannis National Guard Armory Battery D of the 685th AAA Battalion (Barnstable MRA),* South St.
Barnstable, *Hyannis Port Historic District (Barnstable MRA),* Roughly bounded by Massachusetts Ave. & Edgehill Rd., Hyannis Ave., Hyannis Harbor, and Scudder Ave.
Barnstable, *Hyannis Road Historic District (Barnstable MRA),* Bounded by Old King's Hwy., Bow Lane, Cape Cod Branch RR tracks, and Hyannis Rd.
Barnstable, *Isham, Herman, House (Barnstable MRA),* 1322 Main St.
Barnstable, *Jenkins, John, Homestead (Barnstable MRA),* Church St.
Barnstable, *Jenkins, Joseph, House (Barnstable MRA),* 310 Pine St.
Barnstable, *Jenkins—Wheldon Farmstead (Barnstable MRA),* 221 Pine St.
Barnstable, *Liberty Hall (Barnstable MRA),* Main St.
Barnstable, *Lincoln House Club (Barnstable MRA),* 135 Bridge St.
Barnstable, *Lovell, Capt. George, House (Barnstable MRA),* 8 E. Bay Rd.
Barnstable, *Lovell, Nehemiah, House (Barnstable MRA),* 891 Main St.
Barnstable, *Marston, William, House (Barnstable MRA),* 71 Cotuit Rd.
Barnstable, *Marstons Mills Hearse House and Cemetery (Barnstable MRA),* MA 149
Barnstable, *Meetinghouse Way Historic District (Barnstable MRA),* Meeting House Way from County Rd. to Meetinghouse
Barnstable, *Merrill Estate (Barnstable MRA),* 1874 S. County Rd.
Barnstable, *Methodist Church (Barnstable MRA),* Main St.
Barnstable, *Mill Way Historic District (Barnstable MRA),* Mill Way Rd.
Barnstable, *Municipal Group Historic District (Barnstable MRA),* Roughly bounded by Main, Municipal Bldgs., South, and Pearl Sts.
Barnstable, *Old King's Highway Historic Distric (Barnstable MRA),* Old King's Hwy. between Sandwich town line on the West to Yarmouth town line on the East
Barnstable, *Osterville Baptist Church (Barnstable MRA),* Main Sts.
Barnstable, *Osterville Community Church (Barnstable MRA),* 857 Main St.
Barnstable, *Phinney, William and Jane, House (Barnstable MRA),* 555 Phinney's La.
Barnstable, *Pleasant—School Street Historic District (Barnstable MRA),* Roughly bounded by Main, School, South, and Pleasant Sts.
Barnstable, *Rhodehouse, Nelson, House (Barnstable MRA),* 131 Main St.
Barnstable, *Richardson, John, House (Barnstable MRA),* 242 Phinney's La.
Barnstable, *Robbins, Joseph, House (Barnstable MRA),* 12 Bay St.
Barnstable, *Round House (Barnstable MRA),* 971 W. Main St.
Barnstable, *Sampson's Folly-Josiah Sampson House (Barnstable MRA),* 40 Old King's Rd.
Barnstable, *Santuit Historic District (Barnstable MRA),* MA 28
Barnstable, *Santuit Post Office (Barnstable MRA),* Main St.
Barnstable, *Smith, Matthias, House (Barnstable MRA),* 375 Cedar St.
Barnstable, *Town Boundary Marker (Barnstable MRA),* Race La. at Sandwich town line
Barnstable, *Town Line Boundary Marker (Barnstable MRA),* 410 High St.
Barnstable, *Town Line Boundary Marker (Barnstable MRA),* Great Hill Rd.
Barnstable, *Weeks, Barzillai, House (Barnstable MRA),* 313 High St.
Barnstable, *West Barnstable Village—Meetinghouse Way Historic District (Barnstable MRA),* Meeting House Way from County Rd. to Meeting House
Barnstable, *Whitman, Josiah B., House (Barnstable MRA),* 210 Maple St.
Barnstable, *Wianno Historic District (Barnstable MRA),* Roughly E. Bay Rd., Wianno and Sea View Aves. between Nantucket Sound and Crystal Lake

MICHIGAN

Allegan County

Allegan, *Born, Edward D., House (Allegan MRA),* 158 Hill St.
Allegan, *Born, Englebert B., House (Allegan MRA),* 128 Hill St.
Allegan, *Brown, William H., House (Allegan MRA),* 800 Ely St.

Allegan, *Downtown Allegan Historic District (Allegan MRA),* Roughly bounded by Trowbridge, Locust, Hubbard, Brady, and Water Sts.
Allegan, *Franks, Henry, House (Allegan MRA),* 535 Ely St.
Allegan, *Griswold Civic Center Historic District (Allegan MRA),* Roughly bounded by Hubbard, Walnut, and Trowbridge Sts.
Allegan, *Lilly, Augustus, House (Allegan MRA),* 132 Cora St.
Allegan, *Marshall Street Historic District (Allegan MRA),* 231–237, 335–705, 232–630 Marshall St.
Allegan, *Messenger, William C., House (Allegan MRA),* 310 River St.
Allegan, *Oakwood Cemetery Chapel (Allegan MRA),* Arbor St.
Allegan, *Pritchard's Outlook Historic District (Allegan MRA),* Roughly bounded by Park Dr., Walnut, Crescent, and Davis Sts.
Allegan, *Stedman, Sarah Lowe, House (Allegan MRA),* 632 Grand St.

MISSISSIPPI

Attala County

Kosciusko, *Anderson, Col. Chap, House (Johnson, Andrew, Architecture in North Mississippi TR),* 402 N. Jackson St.

Harrison County

Bass, Raymond, Site (22–Hr–636)

Holmes County

Rebecca Springs No. 1 Site (22 Ho–650)
Cowsert, Joe, Place Site (22–Ho–507)

Madison County

White Perch Paradise Site (22–Md–641)

Warren County

Vicksburg, *Magnolias, The,* 1617 Monroe St.

NEW YORK

Essex County

Schroon, *Fried, Sampson, Estate,* NY 74

SOUTH DAKOTA

Brookings County

Brookings, *Coolidge Sylvan Theatre,* Medary Ave.
Brookings, *Coughlin Campanile,* Medary Ave.

Codington County

Watertown, *Sheafe, General Mark W., House,* 57 Fourth Ave., NW

Grant County

Revillo, *First State Building,* Main St.

Lincoln County

Sioux Falls, *Penmarch Place,* Penmarch Pl., RD 1, Box 142

WEST VIRGINIA

Lewis County

Walkersville vicinity, *Annamede,* RD 1, Box 126, US 19

[FR Doc. 87–2602 Filed 2–9–87; 8:45 am]
BILLING CODE 4310–70–M

Realty Action Proposed Exchange of Federally-Owned Lands for Privately-Owned Lands Both Within Washington County, UT

I. The following described Federally-owned lands which were acquired by the National Park Service, have been determined to be suitable for disposal by exchange. The authority for this exchange is the Act of July 15, 1968 (16 U.S.C. 460*l*–22).

These selected Federal lands lie outside the boundary of Zion National Park and are not required for inclusion into that park area. The lands have been surveyed for cultural resources and endangered and threatened species. Plans have been made and safeguards provided for the mitigation and excavation of the archeological sites on the property. The Land Protection Plan and the accompanying Environmental Assessment discuss the use of this land for exchange purposes and these reports along with the Findings of No Significant Impact are available upon request.

Both the surface and the mineral estates are to be exchanged. There are no leases or permits affecting these lands.

Salt Lake Base nd Meridian

Township 40 South, Range 11 West,
Section 5, SE¼ SE¼, E½ SW¼ SE¼, SW¼ SW¼ SE¼;
Section 8, NE¼, N½ SE¼.
Containing 310 acres, more or less.

Title to the above lands will be conveyed with the reservation of a right for the United States of America to enter the lands and to excavate and remove artifacts and historic objects; title will be subject to a right of ingress and egress over the south 20 feet and to reservations and exceptions as contained in the original patents as well as existing easements for public roads and highways, public utilities and pipelines.

II. In exchange for the lands identified in Paragraph I the United States of America will acquire various parcels of land owned by Kenneth and Kathryn Cornelius lying within the boundary of Zion National Park. Acquisition of these private lands will eliminate livestock grazing and hunting on the acquired property. Oil and gas leases have been cancelled on the properties by the owner. Both the surface and mineral estates are to be exchanged and these lands will be administered by the National Park Service as part of Zion National Park upon completion of the exchange. The lands are being acquired in fee simple with no reservations subject only to rights-of-way and easements of record.

The lands to be acquired by the United States of America are generally described as follows:

Township 39 South, Range 11 West, SLBM
Section 28, Parts of Government Lot 6;
Section 33, Parts of the N½ N½ and Parts of the SE¼ SE¼.
Section 34, Part of the W½ SW¼.

The above private lands contain 103 acres, more or less. The exact acreage is still pending the final survey results.

The value of the properties exchanged shall be determined by a current fair market value appraisal and if they are not appropriately equal, the values shall be equalized by payment of cash as circumstances require.

Detailed information concerning this exchange including precise legal descriptions, Land Protection Plan, environmental assessment, cultural reports, and Finding of No Significant Impact are available at the Land Resources Division, Rocky Mountain Regional Office, 655 Parfet Street, P.O. Box 25287, Denver, Colorado 80225.

For a period of 45 calendar days from the date of this notice, interested parties may submit comments to the above address. Adverse comments will be evaluated and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate, this realty action will become the final determination of the Department of Interior.

Dated: January 26, 1987.

Jack Neckels,

Acting Regional Director, Rocky Mountain Region.

[FR Doc. 87–2784 Filed 2–9–87; 8:45 am]
BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–372 (Preliminary)]

175 Watt Mercury Vapor Light Fixtures From Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–372 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material

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injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Taiwan of 175 watt mercury vapor light fixtures, provided for in items 653.39 and 688.42 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by March 16, 1987.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's rules of practice and procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: January 28, 1987.

FOR FURTHER INFORMATION CONTACT: Lawrence Rausch (202–523–0300), Office of Investigations, U.S. International Trade Commission, 701 E Street, NW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTAL INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on January 28, 1987, by the American Electric Division of FL Industries, Inc., Southaven, MS.

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on February 19, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Lawrence Rausch (202–523–0300) not later than February 13, 1987, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before February 23, 1987, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 207.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: February 3, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–2692 Filed 2–9–87; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–19 (Sub-No. 126X)]

The Baltimore and Ohio Railroad Company; Exemption; Abandonment in Miami County, OH

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts The Baltimore and Ohio Railroad Company from the requirements of prior approval under 49 U.S.C. 10903, *et seq.*, to abandon a 2.10-mile line of railroad in Miami County, OH, subject to standard employee protective conditions.

DATES: The exemption will be effective on March 12, 1987. Petitions to stay must be filed by February 25, 1987, and petitions for reconsideration must be filed by March 9, 1987.

ADDRESSES: Send pleading referring to Docket No. AB–19 (Sub-No. 126X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Lawrence H. Richmond, 100 North Charles Street, Baltimore, MD 21201

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll-free (800) 424–5403.

Decided: January 30, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–2710 Filed 2–9–87; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–31 (Sub-No. 24X)]

The Grand Trunk Western Railroad Company; Exemption; Abandonment in Midland County, MI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by the Grand Trunk Western Railroad Company of approximately 2.3 miles of track in Midland County, MI subject to standard labor protective conditions.

DATES: This exemption will be effective on March 12, 1987. Petitions to stay must be filed by February 25, 1987, and petitions for reconsideration must be filed by March 9, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB–31 (Sub-No. 24X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representatives: John C. Danielson, 131 West Lafayette Boulevard, Detroit, MI 48226

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: February 2, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87–2711 Filed 2–9–87; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB-280X]

Hillsboro & Northeastern Railway Company; Exemption; Abandonment in Juneau and Vernon Counties, WI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by Hillsboro & Northeastern Railway Company of its rail line between Union Center and Hillsboro, a distance of approximately 5 miles, in Juneau and Vernon Counties, WI.

DATES: This exemption is effective on March 12, 1987. Petitions to stay must be filed by February 20, 1987, and petitions for reconsideration must be filed by March 2, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB–280X to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: John F. Jenswold, 16 North Carroll St., Madison, WI 53703

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area), or toll-Fee (800) 424–5403.

Decided: January 30, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–2712 Filed 2–9–87; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance, J.D.L., Inc., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 20, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 20, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 2nd day of February 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
J.D.L., Inc. (workers)	Lafayette LA	1/26/87	1/7/87	TA–W 19,016	Hydraulic & oilfield hose.
Fuel Resources Devel. (President)	Denver, CO	1/26/87	1/6/87	TA–W 19,017	Crude Oil & Natural Gas.
Lowe Alpine Systems (Workers)	Lafayette, LA	1/26/87	1/12/87	TA–W 19,018	Camera Bags & Back Packs.
French Tool & Supply (Manager)	Odessa, TX	1/26/87	1/6/87	TA–W 19,019	Sell trucks to oil companies.
Lone Star Industries (Workers)	New Orleans, LA	1/26/87	1/13/87	TA–W 19,020	Production of cement.
Alan Mills (Workers)	Odessa, TX	1/26/87	12/11/86	TA–W 19,021	Portrait Studio (service)
Paulsen Wire Rope Corp. (President)	Sunbury, PA	1/26/87	1/12/87	TA–W 19,022	Steel Wire Rope
Joy Mfg. Co. (Workers)	Richmond, TX	1/26/87	1/12/87	TA–W 19,023	Drilling equipment.
Olin Company (Workers)	Peru, IN	1/26/87	1/15/87	TA–W 19,024	Railroad products.
Regal Ware, Inc. (AIW)	Kewaskum, WI	1/26/87	1/12/87	TA–W 19,025	Cookware
Cat Mack Company (Workers)	Conroe, TX	1/26/87	1/15/87	TA–W 19,026	Oil & gas instrumentation.
Western Gas Processors (Company)	Northglenn, CO	1/26/87	1/13/87	TA–W 19,027	Natural gas.
Dowell Schlumberger (Workers)	Tulsa, OK	1/26/87	1/8/87	TA–W 19,028	Services to oil & gas industry.
Hawes Pine Mills, Inc (Workers)	Pendleton, OR	1/26/87	12/18/86	TA–W 19,029	Indoor furniture.

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APPENDIX—Continued

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Optimized Gas Systems (Company)	Tulsa, OK	1/26/87	1/14/87	TA-W 19,030	Natural gas liquids.
Tektronix, Inc (Workers)	Wilsonville, OR	1/26/87	1/17/87	TA-W 19,031	Information display products.
Marathon Oil Co. (Workers)	Houston, TX	1/26/87	1/13/87	TA-W 19,032	Oil and gas exploration.
Marc Dress (Workers)	Hazelton, PA	1/26/87	1/14/87	TA-W 19,033	Women's blouses & sportswear
Cotton Petroleum (Workers)	Tulsa, OK	1/26/87	1/13/87	TA-W 19,034	Crude oil and natural gas.
Philips Petroleum Co (Workers)	Denver, CO	1/26/87	1/7/87	TA-W 19,035	Crude oil and natural gas.
Int'l Titanium, Inc. (USWOA)	Moses Lake, WA	1/26/87	1/5/87	TA-W 19,036	Titanium sponge
Roblin Steel Co. (IAMAW)	N. Tonawanda, NY	1/26/87	1/14/87	TA-W 19,037	Steel bars & coils.
Milwaukee Faucets, Inc. (AIW/AFL-CIO)	Milwaukee, WI	1/26/87	12/26/86	TA-W 19,038	Faucets
Metro Hanger Corp. (Workers)	Boston, MA	1/26/87	1/16/87	TA-W 19,039	Hangers, plastic bags, tapes
Cornstalk Engineers (Workers)	Pittsburgh, PA	1/26/87	1/13/87	TA-W 19,040	Electrogalvanized steel sheets.
Newmann Engineers (Workers)	Madison Hts., MI	1/26/87	1/14/87	TA-W 19,041	Injection molding.
Stippott/Di-Acro, Houdaille, Inc. (Workers)	Akron, NY	1/26/87	1/14/87	TA-W 19,042	Machine tools.
Genesco, Inc., Co. Headquarters (Company)	Nashville, TN	2/2/87	1/20/87	TA-W 19,043	Footwear.
Genesco, Inc., J&M Plant (Company)	Nashville, TN	2/2/87	1/20/87	TA-W 19,044	Footwear
Genesco, Inc., Danville Plant (Company)	Danville, KY	2/2/87	1/20/87	TA-W 19,045	Footwear
Genesco, Inc., Fulton Plant (Company)	Fulton, MS	2/2/87	1/20/87	TA-W 19,046	Footwear
Genesco, Inc., Iuka Plant (Company)	Iuka, MS	2/2/87	1/20/87	TA-W 19,047	Footwear
Genesco, Inc., Waynesboro Plant (Company)	Waynesboro, TN	2/2/87	1/20/87	TA-W 19,048	Footwear
Genesco, Inc., Hohenwald Plant (Company)	Hohenwald, TN	2/2/87	1/20/87	TA-W 19,049	Footwear
Genesco, Inc., Fayetteville Terminal (Company)	Fayetteville, TN	2/2/87	1/20/87	TA-W 19,050	Footwear
Genesco, Inc., 63rd Ave. Warehouse (Company)	Nashville, TN	2/2/87	1/20/87	TA-W 19,051	Footwear
Genesco, Inc., Volunteer Leather Co. (Company)	Milan, TN	2/2/87	1/20/87	TA-W 19,052	Footwear
Genesco, Inc., Whitehall Leather Co. (Company)	Whitehall, MI	2/2/87	1/20/87	TA-W 19,053	Footwear
BJ-Titan Services (Workers)	Hays, KS	1/12/87	1/1/87	TA-W 19,054	Cementing surface pipe strings
G.E. Medical Systems (IAMAW)	Milwaukee, WS	2/2/87	1/23/87	TA-W 19,055	Medical equipment
S.W. Oilfield Products (Workers)	Houston, TX	2/2/87	1/15/87	TA-W 19,056	Oilfield pumps, cylinder heads, piston rods
Atlas Foundry (Workers)	Tacoma, WA	2/2/87	1/5/87	TA-W 19,057	Steel castings.
Kitt Energy Corp., Kitt # 1 Mine (UMWA)	Philippi, WV	2/2/87	1/23/87	TA-W 19,058	Coal
Consolidated Coal Co. (Workers)	Bluefield, VA	2/2/87	1/27/87	TA-W 19,060	Bituminous coal
Trimfoot Shoe Co. (ILGWU)	Garyle, IL	2/2/87	1/21/87	TA-W 19,059	Infant's shoes
H&H Trucking, Inc. (Workers)	Lamesa, TX	2/2/87	1/15/87	TA-W 19,061	Service (trucking)
Sentry Test Systems (Workers)	Edina, MN	2/2/87	1/26/87	TA-W 19,062	Service (installation)
Marathon Oil Co. (Workers)	Houston, TX	2/2/87	1/23/87	TA-W 19,063	Service (exploration oil)
M-I Drilling Fluids (workers)	Houston, TX	2/2/87	1/14/87	TA-W 19,064	Drilling fluid chemicals

[FR Doc. 87-2768 Filed 2-9-87; 8:45 am]
BILLING CODE 4510-3-M

[TA-W-18,474, et al.]

Kerr-McGee Corp., Adjustment Assistance

In the matter of Kerr-McGee Corporation, Petroleum Exploration Division, Oil & Gas Production Division, Oklahoma City, Oklahoma (TA-W-18,474), and all other locations of the Petroleum Exploration Division and the Oil and Gas Production Division in the following states: Oklahoma (TA-W-18,474-A), Louisiana (TA-18,474-B) and Texas (TA-W-18,474-C); Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 23, 1986 applicable to all workers of the Petroleum Exploration and Production Division of the Kerr-McGee Corporation, Oklahoma City, Oklahoma. The Certification will soon be published in the **Federal Register.**

Based on new information furnished to the Department, the certification notice is amended to properly reflect the correct worker group by eliminating "Petroleum Exploration and Production Division, Headquartered in Morgan City, Louisiana" and inserting Petroleum and Exploration Division and Gas and Oil Production Division, Oklahoma City, Oklahoma and all locations in Oklahoma, Texas and Louisiana in the title. The company has oil and gas fields in several states as well as offices which support crude oil production. Worker separations have occurred at locations in several different states.

The intent of the certification is to cover all workers of the Petroleum Exploration and Production Division in Oklahoma, Louisiana and Texas. The amended notice applicable to TA-W-18,474 is hereby issued as follows:

All workers of Kerr-McGee Corporation, Petroleum Exploration and Oil and Gas Production Divisions, Oklahoma City, Oklahoma and all other Kerr-McGee Corporation locations of the Petroleum Exploration and Oil and Gas Production Divisions in Oklahoma, Louisiana and Texas who became totally or partially separated from employment on are after September 10, 1985 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of January 1987.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-2769 Filed 2-9-87; 8:45 am]
BILLING CODE 4510-30-M

Targeted Jobs Tax Credit Program

AGENCY: Employment and Training, Labor.

ACTION: Notice; questions and answers regarding the Targeted Jobs Tax Credit Program (TJTC).

SUMMARY: The Targeted Jobs Tax Credit Program was reinstated under the Tax Reform Act of 1986. This notice provides answers to questions regarding the operation of the program.

FOR FURTHER INFORMATION CONTACT: Nearest Office of the State Employment Security Agency (SESA), unsually listed in the telephone directory under "State Government," "Employment Security Commission," "Employment and Training," "Job Service," or "Employment Service."

SUPPLEMENTARY INFORMATION: The Targeted Jobs Tax Credit (TJTC) Program was reinstated by the Tax Reform Act of 1986. The comprehensive list of questions and answers that follow have been compiled as a result of concerns raised or anticipated regarding the Targeted jobs Tax Credit Program. They are intended to assist State Employment Security Agencies (SESAs) and other participants to implement an effective program and minimize disruptions. These questions and answers (Q & A) are being issued by the U.S. Department of Labor, Employment and Training Administration, to SESAs in an Employment Service Program Letter (ESPL). The ESPL and Q & A attachment are set forth below:

1. *Purpose.* To respond to questions about the reauthorized Targeted Jobs Tax Credit (TJTC) program, and provide additional information.

2. *Reference.* ESPL 1–87, dated November 4, 1986; Employment and Training Handbook No. 377 (3rd Edition).

3. *Technical Guidance.* Reauthorization of TJTC program under provisions of the Tax Reform Act of 1986 (Public Law 99–514) not only restored the program, but added signficant changes. Language in the Continuing Resolution for 1987 introduced additional variations not previously encountered in the TJTC program. Questions have been raised because of these issuances. The attached list of Questions and Answers (Q & A) attempts to address these questions. In addition, there are other explanations and other information that may be helpful to some SESAs for the implementation and cost effective operation of the program.

4. *Action.* The attached Q & A list is provided for use in the SESA wherever understanding of the TJTC program is helpful or questions by employers, applicants, or others are raised.

5. *Additional Information.* Questions pertaining to the attachment may be directed to your ETA Regional Office.

Signed at Washington, D.C., this 3rd day of February, 1987.

Roger D. Semerad,

Assistant Secretary of Labor.

Targeted Jobs Tax Credit (TJTC) Program; Questions and Answers

January, 1987.

1. *Question:* Who or what agency is responsible for providing services related to the certification for employers who hire eligible individuals under the TJTC program?

Answer: The Economic Recovery Tax Act of 1981, (ERTA) designates responsibility for certification processing under TJTC to the State Employment Security Agency (SESA). SESAs may use specific "participating agencies" to perform part of the processing (ET Handbook #377).

2. *Question:* Will there be administrative funding for the TJTC program?

Answer: No funds have been provided to SESAs specifically for TJTC, although the Act authorizes expenditure of funds for administrative and publicity purposes. However, the Continuing Resolution for 1987 specifies that funds authorized under Section 6, Wagner-Peyser Act, may be used for TJTC. The U.S. Department of Labor does not anticipate requesting special funds for the TJTC program.

3. *Question:* What are the major changes in the TJTC program as a result of the Tax Reform Act of 1986?

Answer: a. TJTC is extended for three years through December 31, 1988.

b. Second year wages are eliminated for tax credit purposes.

c. Credit for first year wages are limited to 40% of up to the first $6,000 of wages paid only.

d. *Retention period* is established as 90 days or 120 hours of employment (14 days or 20 hours in the case of summer youth employees) before the employer can claim the tax credit.

4. *Question:* Do the wages paid during the required retention period apply to the tax credit?

Answer: Yes, provided that the minimum retention period requirement is fulfilled.

5. *Question:* What is the "retroactive period" under the new law?

Answer: The "retroactive period" is on or after January 1, 1986, and before October 22, 1986.

6. *Question:* What processing procedures are changed for "requests for certification?"

Answer: Essentially the same processing procedures are retained as suggested in the ET Handbook #377 (3rd edition). The processing includes issuing of vouchers for eligible individuals, employer requests for certification filed in a "timely" manner, issuance of the certification by the SESA, and verification by the SESA of a sample of the vouchers and certificates issued.

However, to ease the burden on SESAs, Federal forms are no longer required for vouchering; applicant charteristics, income and eligibility determination; or for certification. States may choose the way they record the information and processing, so long as the records are maintained.

Some procedural "shortcuts" are suggested below (See Question No. 18). Some are especially to help with the workload resulting from the "retroactive provisions" of the new authorization for TJTC.

7. *Question:* Who or what organizations may issue vouchers?

Answer: The SESA, or "participating agencies" designated by the SESA, or qualified cooperative education programs, may issue vouchers to eligible individuals.

8. *Question:* Can individuals vouchered after December 31, 1985 (expiration date of previous legislation) be certified under the new TJTC?

Answer: Yes—but only if a timely request for certification was submitted to the SESA.

9. *Question:* Is telephone vouchering an acceptable practice?

Answer: While it is not impermissible, telephone vouchering has been tried and generally found to be inefficient. Vouchering is established to obtain documentation in support of the target group eligibility determination. Nevertheless, the signature of the individual must be obtained in order to attest to the veracity of the information.

10. *Question:* What is a timely request for certification?

Answer: a. One which is submitted to the SESA by the employer within 5 days of the starting date of employment for *vouchered* individuals.

b. For *non-vouchered* individuals, those requests (or "letters of intent") submitted to the SESA by the employer on or before the starting date of employment.

11. *Question:* How will SESA reporting requirements be affected?

Answer: The U.S. Department of Labor and the Office of Management and Budget will review reporting requirements before any are approved. However, no changes are anticipated for the information to be reported. It is likely that reporting for processing of requests submitted during the "retroactive period" will be requested as one report for the nine-month period, then quarterly reporting resumed as of October 1, 1986 (see ET Handbook #377, 3rd edition).

12. *Question:* How have targeted group eligibility criteria been affected?

Answer: The same criteria for determining target group eligibility are retained as in 1984–85.

13. *Question:* How have certification criteria and procedures been affected?

Answer: Certification criteria and procedures remain essentially the same for processing requests by employers for individuals who began work prior to January 1, 1986, or on or after October 22, 1986. The determination of timely filing of requests is slightly different for individuals who began work during the period from January 1, 1986, through October 21, 1986, (the "retroactive period" under the new law).

14. *Question:* What is different about the criteria for timely filing of requests for certification for those who began work during the "retroactive period?"

Answer: Requests for certification submitted during the "retroactive period" to the legislatively designated State agency either on or before the date the individual started work, if without a voucher assuring TJTC eligibility, or

employers, their representatives, or to

detected in the belt entry. A four hour

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within 5 days after starting work, for individuals already having a voucher, and on hand in the State agency, will be honored as in the past. If the request is not available in the State agency, but the employer can show clear and convincing documentary evidence of timely filing during the "retroactive period," the request will be honored. Requests that were not timely filed will not be honored, even if the filing was withheld because the employer decided on his own not to file, or because the employer was told by the State agency that it would not accept a request.

15. *Question:* Will the ET Handbook #377 (3rd Edition) be revised?

Answer: Yes—page changes are being prepared for publication.

16. *Question.* Will formal regulations be issued on the TJTC program?

Answer: ETA does not plan to issue formal regulations. Guidance has been or will be provided in IRS publication #906; ET Handbook #377; Federal Register Notice dated November 26, 1986 (51 FR 42948); Field Memoranda (FM); Employment Service Program Letters (ESPL); and other communications as necessary.

17. *Question:* Will training and orientation for the new program be provided Regions and SESAs?

Answer: Yes—training or training materials will be provided. ETA Regional Offices may request assistance as needed.

18. *Question:* Are there ways that a State Employment Security Agency may minimize processing workload for TJTC requests for certification?

Answer: The following are some suggested ways States may wish to consider to minimize the workload.

a. If the request for certification is timely filed, the employer instead of the State agency can be asked to locate and arrange for the employee or former employee to provide necessary documentation, information, and signature at the State agency offices. Processing for requests during the "retroactive period" is only useful if the employment met the "retention period" requirement (Q & A No. 3).

b. If the request for certification is timely filed, the individual was not vouchered, and is available to provide necessary documentation, information, and signature, the agency need not issue a voucher, but must record adequate information to make a determination of eligibility, and then issue the certification.

c. The State agency may negotiate a written agreement with "participating agencies" as indicated on pages 23–26, Chapter III and IV, ET Handbook No. 377 (3rd edition), since they are independent of the employer. The agreement should specify vouchering, and timely filed requests could be transferred to them for eligibility determination.

d. Cease mailing certification copies to the IRS Regional Offices.

e. If the same employer hired more than one eligible individual within a reasonable number of days, all those who qualify for certification may be certified on a single form. The form must identify each individual by name and Social Security Number, and show the date that each started to work for the employer (multiple certification).

19. *Question:* Is verification or audit required for the vouchers and certifications issued?

Answer: Yes, the adequacy and accuracy of at least a 10 percent sample of all certifications issued by the State agency and the cooperative education agencies must be tested, and all deficiencies tabulated. The sample is to be a statistically random selection.

The Office of Inspector General report on TJTC processing (No. 06–5–810–7–320), entitled "Review of Targeted Jobs Tax Credit Participant Eligibility Procedures," dated March 28, 1986, recommends that the sample be continuously extracted from the actual processing stream rather than waiting until later, and the verification conducted promptly so that corrective action or employer notification of ineligibility is effective.

In addition, corrective actions to avoid further deficiencies should be initiated promptly.

20. *Question:* Must the verification survey be conducted for the certifications issued for the "retroactive period?"

Answer: Yes. Promptness for effective corrective action is a keynote for the retroactive period certifications.

21. *Question:* What some examples of likely situations which may arise in processing requests for certification filed timely during the "retroactive period?"

Answer: Situation 1. Voucher was issued and in effect at the time of hire and employee is on the job at processing time.

Action: Verify timely filing of request for certification, certify, and mail the certification to the employer.

Situation 2. No voucher was issued at time of hire; and employee is on the job at processing time.

Action: Verify timely filing of request for certification and contact employer to schedule appointment. Process, certify and mail certification to employer.

Situation 3. Voucher was issued and in effect at the time of hire; and employee is no longer on the payroll of the requesting employer.

Action: Verify timely filing of request for certification. Contact the employer of record who requested the certification and notify him that it is his responsibility to get the individual to the State agency office with documentation and information for processing. Determine that the "retention period" requirement was met. Interview individual, certify, and mail certification to the requesting employer.

Situation 4. No voucher was issued or in effect at time of hire, and individual is no longer on the payroll of the requesting employer.

Action: Verify timely filing of request for certification. Contact the employer of record who requested the voucher or certification and notify him that it is his responsibility to get the individual into the State agency office with documentation and information for processing. Determine that the "retention period" requirement was met. Process the request, certify, and mail certification to the requesting employer. If the individual is not available within the three year IRS statute of limitation, no action is needed.

22. *Question:* May an employer or his representative compete the voucher, or applicant characteristics, and make the determination of target group eligibility?

Answer: The employer or his representative may complete the applicant identification blocks on a form the State agency designates, complete the applicant characteristics data, and assemble probable documentation and information to be used in determining target group eligibility (if the applicant agrees).

The employer or his representative, however, must submit the information to the State agency or a designated participating agency for economic eligibility determination. The information obtained to determine economic status is confidential (i.e., between the State agency and the individual). This precludes the employer from making the eligibility determination.

The signature of the applicant must be obtained where the eligibility determination is made, or if affixed elsewhere, must be notorized. The regular criteria for timely filing for an unvouchered individual must be met when submitting a request for certification to the State agency.

23. *Question:* May a State agency charge a fee for processing TJTC requests?

Answer: There is nothing in the TJTC legislation barring fee-charging to employers, their representatives, or to applicants. The Wagner-Peyser Act, as amended in 1981, provides that SESA referrals of applicants to private employment agencies are permitted only as long as the applicant is not charged a fee.

Note that under the Continuing Resolution for 1987, States are authorized, but not required, to use Wagner-Peyser funds, appropriated under Section 6, for TJTC.

23. *Question:* May a TJTC eligible to be certified for an employer while a strike is in progress which affects the positions being filed?

Answer: The TJTC legislation does not include any restriction regarding strikes against employers. The certification of a TJTC eligible is separate from the job referral process.

In addition, so long as the State agency is not referring the individual to the strike affected position, or gives proper written notification to the applicant that a strike is in progress, if the individual is referred to an opening at the place of employment not affected by the strike, the TJTC certification may be processed.

[FR Doc. 87–2770 Filed 2–9–87; 8:454 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–86–235–C]

Kentucky Carbon Corp.; Petition for Modification of Application of Mandatory Safety Standard

Kentucky Carbon Corporation, H.C. 67 Box 1277, Phelps, Kentucky 41553 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Kencar No. 3 Mine (I.D. No. 15–15632) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use belt air to ventilate active working places. In support of this request, petitioner proposes to install a computer aided carbon monoxide (CO) mine monitoring system at intervals not to exceed two thousand lineal feet, and at each belt drive and tailpiece. Both visual and audible warning devices will be activated when carbon monoxide is detected in the belt entry. A four hour battery back-up will provide power to the detection system in the event of power failure to the mine. The system will be located at an attended surface location where there is two-way communication.

(b) If one of the sensors becomes inoperative, the sensor will be changed, repaired or a qualified person will patrol and monitor the belt conveyor using a hand-held detection device.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 11, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

Dated: January 15, 1987.

[FR Doc. 87–2775 Filed 2–9–87; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–86–236–C]

Kentucky Carbon Corp.; Petition for Modification of Application of Mandatory Safety Standard

Kentucky Carbon Corporation, H.C. 67 Box 1277, Phelps, Kentucky 41553 has filed a petition to modify the application of 30 CFR 75.1103–4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its Kencar No. 3 Mine (I.D. No. 15–15632) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. In a separate petition (M–86–235–C), petitioner proposes to use belt air to ventilate active working places.

3. As an alternate method, petitioner proposes to install an early warning fire detection system with specific conditions as outlined in the petition and M–86–235–C.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 12, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

Dated: January 15, 1987.

[FR Doc. 87–2776 Filed 2–9–87; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–86–237–C]

Kerr-McGee Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Kerr-McGee Coal Corporation, P.O. Box 727, Harrisburg, Illinois 62946 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Galatia Mine (I.D. No. 11–02752) located in Saline County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use belt air to ventilate active working places. In support of this request, petitioner proposes to install a carbon monoxide (CO) detection system in all belt haulage entries and at each belt flight located in intake air courses. The monitoring devices will alarm at an attended location when the level of carbon monoxide exceeds 10 parts per million (ppm) above the ambient CO level.

3. The carbon monoxide detectors will be calibrated once a month and detectors will be visually examined daily when belts are operating.

4. If the CO monitoring system becomes inoperative, the belt conveyor will continue to operate and a qualified person will patrol and monitor for the presence of carbon monoxide.

5. If a warning signal is transmitted to the attended location or the person patrolling detects CO, employees will be

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notified and an investigation will be made to discover the cause of the increase.

6. The belt entries will be separated from the air course designated as the intake escapeway with permanent type control measures.

7. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 12, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

Dated: January 20, 1987.

[FR Doc. 87-2777 Filed 2-9-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-223-C]

Rand Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Rand Coal Company, Inc., 217 Main Street, Oak Hill, West Virginia 25901 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 46-07139) located in Boone County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs and canopies be installed on the mine's electric face equipment.

2. The No. 1 Mine is 44 inches in height, with adverse bottom conditions and continuous bottom rolls.

3. Petitioner states that the use of canopies on the mine's electric equipment would result in a diminution of safety for the miners affected because the canopy would dislodge the roof bolts and restrict the equipment operator's visibility.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 12, 1987. Copies of the petition are available for inspection at that address.

Dated: January 20, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mines Safety and Health.

[FR Doc. 87-2778 Filed 2-9-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-15-M]

Blue Ridge Stone Corp.; Petition for Modification of Application of Mandatory Safety Standard

Blue Ridge Stone Corporation, P.O. Box 10, Blue Ridge, Virginia 24064 has filed a petition to modify the application of 30 CFR 56.9087 (audible warning devices and back-up alarms) to its Blue Ridge Plant (I.D. No. 44-00014) located in Bedford County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that heavy duty mobile equipment be provided with audible warning devices or an observer to signal safe backup when the operator of the equipment has an obstructed view to the rear.

2. Petitioners has received complaints daily from the neighbors adjacent to the stockpiles about the noise of the backup alarms.

3. An an alternate method, petitioner proposes to use a visual warning in lieu of the audible warning on the two loaders working in the area.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 12, 1987. Copies of the petition are available for inspection at that address.

Dated: January 15, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-2771 Filed 2-9-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-247-C]

Drummond Co., Inc., Petition for Modification of Application of Mandatory Safety Standard

Drummond Company, Inc., P.O. Box 10246, Birmingham, Alabama 35202 has filed a petition to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its Mary Lee No. 2 Mine (I.D. No. 01-00821) located in Walker County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. In a separate petition (M-86-73-C), petitioner proposes to use belt air to ventilate active working places.

3. As an alternated method, petitioner proposes to install low level carbon monoxide (CO) detectors. In support of this request, petitioner states that:

(a) The CO monitors will be capable of detecting CO at a level of 1 ppm or less with an accuracy of +/- 1% of the full scale CO indication;

(b) These monitors will be positioned to monitor the air traveling in the belt haulage entry and provide alarm at an attended location when the CO exceeds 10 ppm above the ambient CO level;

(c) When velocity is less than 50 feet per minute (fpm), CO monitors will not be used; when velocity is between 50-200 fpm, CO monitors will be spaced no more than 2000 feet apart; and when velocity is greater than 200 fpm, CO monitors will be spaced no more than 3000 feet apart;

(d) Monitors will be visually checked daily and checked for calibration with a known concentration of CO at least once monthly; and

(e) The belt entries which are used as intake entries will be isolated from other intake and return entries with the use of continuous permanent-type stoppings.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miner affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 12, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

Dated: February 2, 1987.

[FR Doc. 87-2772 Filed 2-9-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-239-C]

Jim Walter Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Jim Walter Resources, Inc., P.O. Box C-79, Birmingham, Alabama 35283 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its No. 4 Mine (I.D. No. 01-01247) located in Tuscaloosa County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps be housed in fireproof structures.

2. Petitioner has a compressor station which is located in a crosscut near an intake air shaft. All entries close to the compressor station are maintained as intake airways and there are no return airways available for ventilating the compressor station.

3. As an alternate method, petitioner proposes to install a heat activated fire suppression system. The compressor station will be housed in a fireproof structure with self-closing doors.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 12, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health

Dated: February 2, 1987.

[FR Doc. 87-2773 Filed 2-9-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-232-C]

Kanawha Coal Co. Petition for Modification of Application of Mandatory Safety Standard

Kanawha Coal Company, Rt. 1 Box 420, Ashford, West Virginia 25009 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Mill Branch Mine (I.D. No. 46-07176) located in Boone County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use belt air for ventilating the working places. In support of this request, petitioner proposes to install a low-level cargon monoxide (CO) detection system in all belt entries used as intake or return air courses and at each belt drive and tailpiece located in intake air courses. The monitoring devices will be capable of giving a warning of a fire for four hours should the power fail; a visual alert signal will be activated when the CO level is 10 parts per million (ppm) above ambient air, and an audible signal will sound at 15 ppm above ambient air. All persons will be witdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The fire alarm signal will be activated at an attended surface location where there is two-way communication. The CO system will be capable of identifying any activated sensor and monitoring electrical continuity to detect for malfunctions.

4. The CO monitoring system will be visually examined at least once each coal producing shift and tested for functional operation weekly to insure the system is functioning properly. The monitoring system will be calibrated with known concentrations of CO and air mixtures at least monthly.

5. If the CO monitoring system is deenergized for routine maintenance or for failure of a sensor unit, the belt conveyor will continue to operate and qualified persons will patrol and monitor the belt conveyor using hand-held CO detecting devices.

6. The permanent stoppings separating the conveyor belt entries from the intake escapeway will be specifically approved in the Ventilation System and Methane and Dust Control Plan for the mine.

7. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 12, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

Dated: January 15, 1987.

[FR Doc. 87-2774 Filed 2-9-87; 8:45 am]

BILLING CODE 4510-43-M

Wage and Hour Division

Certificates Authorizing the Employment of Learners at Special Minimum Wages

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act (52 Stat. 1062, as amended; U.S.C. 214), Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and Administrative Order No. 1-76 (41 FR 18949), the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the Act. For each certificate, the effective and expiration dates, number or proportion

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of learners and the principal product manufactured by the establishment are as indicated. Conditions on occupations, wage rates and learning periods which are provided in certificates issued under the supplemental industry regulations cited in the captions below are as established in those regulations.

The following certificates were issued under the apparel industry learner regulations (29 CFR 522.1 to 522.9, as amended and 522.20 to 522.25, as amended). The following normal labor turnover certificates authorize 10 percent of the total number of factory production workers except as otherwise indicated.

Flushing Shirt Mfg. Co., Inc., Frostburg, MD; 10–24–86 to 10–23–87; 10 learners for normal labor turnover purposes. (Men's shirts);

McCreary Mfg. Co., Stearns, KY; 12–8–86 to 12–7–87. (Men's and boy's shirts); and

Monticello Mfg. Co., Inc. Monticello, KY; 12–8–86 to 12–7–87. (Men's and boys' shirts).

Each learner certificate has been issued upon the representations of the employer which, among other things were that employment of learners at special minimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learners occupations are not available.

The certificate may be annulled or withdrawn as indicated therein, in the manner provided in 29 CFR Part 528. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof on or before February 25, 1987.

Signed at Washington, D.C. this 4th day of February 1987.

Corlis Sellers,

Representative of the Administrative.

[FR Doc. 87–2779 Filed 2–9–87; 8:45 am]

BILLING CODE 4510–7–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (87–13)]

NASA Advisory Council (NAC), Space Applications Advisory Committee (SAAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Applications Advisory Committee.

DATE AND TIME: February 17, 1987, 1 p.m.–5 p.m., February 18, 1987, 8:30 a.m.–5 p.m., February 19, 1987, 8 a.m.–2 p.m.

ADDRESS: Capitol Holiday Inn, Columbia Room, 550 C Street SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. Dudley G. McConnell, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–1420).

SUPPLEMENTARY INFORMATION: The NAC Space Applications Advisory Committee consults with and advises the Council and NASA on plans for work in progress on, and accomplishments for NASA's Space Applications programs. The Committee is chaired by Mr. Leonard Jaffe and is composed of 31 members. The Committee operates both through a number of informal subcommittees and as a whole. The agenda which follows includes all Committee and subcommittee sessions. The Microgravity Subcommittee will be closed Tuesday, February 17, to allow for a discussion of the performance of individuals associated with the extramural research centers. Such a discussion would invade the privacy of the individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the rooms. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

TYPE OF MEETING: Open—except for a closed session as noted in the agenda below.

AGENDA:

February 17, 1987

Remote Sensing Subcommittee—Capitol Holiday Inn, Columbia Room.

1 p.m. Consider and Update Subcommittee Workplan for 1987.

2 p.m. Review Report of Remote Sensing Applications Workshop and Recommend Remote Sensing Applications Strategy to NASA.

5 p.m. Adjourn.

Microgravity Subcommittee—National Council on the Aging, Room 141A.

1 p.m. Closed Session.

5 p.m. Adjourn.

February 18, 1987

Full Committee—Capitol Holiday Inn, Clark Room.

8:30 a.m. Office of Space Science and Applications Update.

—Review of NASA Planning Activities.

—Review of Space Transportation System Manifest and Mixed Fleet Study.

11 a.m. Recess Full Committee to Convene Subcommittee Meetings.

Communications Subcommittee—Capitol Gallery East, Suite 770.

11 a.m. Consider Final Version of the Report to NASA on a Strategic Plan for Communications Research and Development.

5 p.m. Adjourn.

Information Systems Subcommittee

11 a.m. Visit National Space Science Data Center and Information Systems Activities at Goddard Space Flight Center.

5 p.m. Adjourn.

Microgravity Subcommittee—National Council on the Aging, Room 141A.

11 a.m. Review of Extramural Research Program.

3 p.m. Formulate Appraisal Report to NASA.

5 p.m. Adjourn.

Remote Sensing Subcommittee—Capitol Holiday Inn, Clark Room.

11 a.m. Review Status of Remote Sensing Commercialization and Formulate Recommendations for NASA Cooperation with the Remote Sensing Industry.

5 p.m. Adjourn.

February 19, 1987

Communications Subcommittee—Capitol Gallery East, Suite 770.

8 a.m. Formulate Report to NASA.

1 p.m. Reconvene Full Committee

Information Systems Subcommittee—NASA Headquarters, Room 226B.

8 a.m. Formulate Report to NASA.

1 p.m. Reconvene Full Committee

Microgravity Subcommittee—National Council on the Aging, Room 141A.

8 a.m. Formulate Report to NASA.

1 p.m. Reconvene Full Committee.

Remote Sensing Subcommittee—Capitol Holiday Inn, Clark Room.

8 a.m. Formulate Remote to NASA

1 p.m. Reconvene Full Committee

Full Committee—Capitol Holiday Inn, Clark Room.

1 p.m. Wrap-up Session and Subcommittee Reports to Full Committee.

2 p.m. Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

February 4, 1987.

[FR Doc. 87–2713 Filed 2–9–87; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. Date: March 16, 1987.
Time: 10:00 a.m. to 5:00 p.m.
Room: M–14.
Program: This meeting will review applications for support of fellowships programs in the humanities at Centers for Advanced Study, submitted to the Regrant Programs, Division of Research Programs, for projects beginning after July 1, 1987.

2. Date: March 16, 1987.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for State and Regional Exemplary Awards, submitted to the Division of State Programs, for projects beginning after July 1, 1987.

3. Date: March 2–3, 1987.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Research Interpretive, submitted to the Division of Research Programs, for projects beginning after July 1, 1987.

4. Date: March 6, 1987.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Research Access, submitted to the Division of Research Programs, for projects beginning after July 1, 1987.

5. Date: March 9–10, 1987.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Research Interpretive, submitted to the Division of Research Programs, for projects beginning after July 1, 1987.

6. Date: March 13, 1987.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Research Access, submitted to the Division of Research Programs, for projects beginning after July 1, 1987.

7. Date: March 20, 1987.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Research Access, submitted to the Division of Research Programs, for projects beginning after July 1, 1987.

8. Date: March 27, 1987.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Research Tools, submitted to the Division of Research Programs, for projects beginning after July 1, 1987.

9. Date: March 5–6, 1987.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Exemplary Projects in Undergraduate and Graduate Education, submitted to the Division of Education Programs, for projects beginning after July 1, 1987.

1. Date: March 12–13, 1987.
Time: 8:30 a.m. to 5:00 p.m.
Room: M–14.
Program: This meeting will review applications for Humanities Instruction in Elementary and Secondary Schools Program, submitted to the Division of Education Programs, for projects beginning after May 31, 1987.

Stephen J. McCleary,

Advisory Committee Management Officer

[FR Doc. 87–2709 Filed 2–9–87; 8:45 am]

BILLING CODE 7536–01–M

National Endowment for the Arts; Design Arts Advisory Panel (Design Advancement/Organization Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the Design Arts Advisory Panel (Design Advancement/Organizations Section) to the National Council on the Arts will be held on February 25–27, 1987, from 9:00 a.m.–6:30 p.m. and on February 28, 1987 from 9:00 a.m.–6:00 p.m. in room MO–9 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on February 26, 1987 from 1:30–3:30 p.m. on a space available basis for a discussion of policy issues.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

February 5, 1987.

[FR Doc. 87–2783 Filed 2–9–87; 8:45 am]

BILLING CODE 7537–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Brazil Informatics Section 301 Case

AGENCY: Office of the United States Trade Representative.

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ACTION: Notice of public hearings and written comments.

SUMMARY: The Office of the United States Trade Representative invites written comments and will conduct public hearings on Brazil's inadequate protection of intellectual property and its proposed commercialization legislation for computer software and investment restrictions in the informatics sector. Comments received will be considered by the Trade Representative in making his final recommendation to the President regarding what action, if any, the President should take in response to Brazil's informatics policies and law.

EFFECTIVE DATE: February 10, 1987.

FOR FURTHER INFORMATION CONTACT: Christina Lund, Director for Brazil and Southern Cone Affairs, Office of the United States Trade Representative, (202) 395–5190.

SUPPLEMENTARY INFORMATION: On December 30, under section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411), the President directed the United States Trade Representative to continue negotiations with Brazil to achieve adequate and effective intellectual property protection for computer software and the elimination of barriers to U.S. investment in the Brazilian informatics sector (52 FR 1619). As part of that effort, the Office of the United States Trade Representative is soliciting written comments and will conduct public hearings.

Specifically, we are requesting comments regarding: (1) Brazil's lack of adequate copyright protection for computer software, as well as Brazil's proposed copyright and commercialization legislation; and (2) barriers on U.S. investment in Brazil's informatics sector, including discriminatory incentives provided by the Government of Brazil and restrictions on: the formation of joint ventures, the upgrading and modernization of existing facilities, the products that can be manufactured and/or sold in Brazil from those facilities, and the treatment of royalties, trade secrets and technology transfer. We are interested in the impact of these investment measures on the trade flows of the company, including from Brazilian operations to third markets, within Brazil, and between Brazil and the U.S. We are also seeking comments on the extent to which Brazil's overall investment climate is affected by its informatics policies, and the treatment of U.S. investors compared to other foreign and domestic companies in Brazil.

We solicit in particular the views of U.S. firms that are interested in entering the Brazilian informatics market, have closed down or licensed their operations to Brazilian companies as a result of Brazil's informatics policies, or are currently operating in the Brazilian informatics market. Comments should focus on the problems, impact and suggested solutions to Brazil's software and investment policies.

Hearings will be held on Thursday, March 12, at 10:00 a.m. in Room 303, Office of the United States Trade Representative, 600 Seventeenth Street, NW., Washington, DC. Interested persons wishing to present oral testimony must submit a request in writing, accompanied by a statement or brief in twenty copies in English by noon, Thursday, March 5, to Christina Lund, Director, Brazil and Southern Cone Affairs, at the address listed above. Remarks at the hearings should be limited to a 15-minute summary of the written statement to allow for possible questions from the hearing officers.

Persons not wishing to participate at the hearings but wishing to submit comments should provide a written statement in twenty copies in English by Wednesday, March 11, 1987, to Christina Lund at the address listed above.

Judith H. Bello,

Chairman, Section 301 Committee.

[FR Doc. 87–2856 Filed 2–9–87; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–15563; 812–6545]

American Republic Insurance Co., et al.

February 3, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

Applicant(s): American Republic Insurance Company ("American Republic") and American Republic Variable Annuity Account ("Separate Account").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 26(a) and 27(c)(2).

Summary of Application: Applicants seek an order to permit American Republic to deduct from the Separate Account the mortality, expense and distribution risk charges imposed under the PaineWebber Advantage Annuity ("Contract"), an individual flexible payment deferred annuity contract funded in the Separate Account.

Filing Date: The application was filed on November 25, 1986 and amended on January 20, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 2, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant(s) with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, American Republic Insurance Company, 601 Sixth Avenue, Des Moines, Iowa 50334.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Denise M. Furey (202) 272–2067 or Special Counsel Lewis B. Reich (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. The Separate Account was established by American Republic pursuant to Iowa law to fund the Contracts. The Separate Account, is registered as a unit investment trust under the 1940 Act. A registration statement on Form N–4 under the Securities Act of 1933, as amended, has been filed to register the offering of the Contracts. The Separate Account presently consists of seven divisions, each of which invests solely in the shares of one of the portfolios of the PaineWebber Series Trust ("Fund").

2. No initial sales charge is deducted from purchase payments. An early withdrawal charge of 5% is assessed to purchase payments made within six years prior to the date of redemption. The withdrawals are made first from the purchase payments with the longest early withdrawal charge period. A distribution expense risk charge of .15% is taken on an annual basis from net asset value. This risk charge combined with the sales charge will not exceed 9% of purchase payments.

3. For assuming certain risks under the Contracts, American Republic imposes mortality and expense risk charges in the amount of .85% and .40% respectively, of the total net assets of each division. Applicants represent that the mortality and expense risk charges cannot be increased under the Contract.

4. Applicants represent that the mortality and expense risk charges are reasonable in relation to the risks assumed by American Republic under the Contracts, are consistent with the protection of investors insofar as they are designed to be competitive while not exposing American Republic to undue risk of loss, and fall within the range of similar charges imposed under competitive variable annuity products.

5. Applicants represent that the mortality, expense and distribution risk charges are reasonable in amount as determined by industry practice with respect to comparable annuity products. Applicants state that this representation is based on their analysis of publicly available information about similar industry practices, taking into consideration such factors as current charge levels and the existence of expense charge guarantees and guaranteed annuity rates.

6. Applicants represent that the Separate Account's distribution financing arrangement will benefit the Separate Account and contractowners.

7. Applicants represent that there is a reasonable likelihood that the Separate Account's distribution financing arrangement will benefit the Separate Account and investors.

Applicant's Conditions: If the requested order is granted, the Applicant agrees to the following conditions:

1. American Republic will maintain at its home office and make available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, American Republic's comparative survey of competitive annuity products.

2. American Republic will maintain and make available to the Commission upon request a memorandum setting forth the basis of its conclusion that the Separate Account's distribution financing arrangement will benefit the Separate Account and contractowners.

3. The Separate Account will only invest in open-end management investment companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end management company, formulate and approve any plan pursuant to Rule 12b–1 under the Act to finance distribution expenses.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–2724 Filed 2–9–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 35–24306]

Filings Under the Public Utility Holding Company Act of 1935 ("Act"); Consolidated Natural Gas Co., et al.

January 29, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 23, 1987, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevent applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Consolidated Natural Gas Company (70–7336)

Consolidated Natural Gas Company ("Consolidated"), 100 Broadway, New York, New York 10005, a registered holding company, has filed a declaration subject to sections 6(a) and 7 of the Act and Rules 50 and 50(a)(5) thereunder.

Consolidated proposes to issue and sell, within two years of the effective date of authorization, up to $250 million principal amount of its debentures, in one or more series, with maturities of up to 30 years ("Debentures"), at competitive bidding pursuant to Rule 50 or in accordance with the alternative procedures authorized by the Statement of Policy dated September 2, 1982 (HCAR No. 22623) or, alternatively, pursuant to an exception under Rule 50(a)(5) from the competitive bidding requirements of Rule 50. Consolidated may negotiate the terms and conditions of the Debentures.

Kanawha Valley Power Company, et al. (70–7348)

Kanawha Valley Power Company ("KVPCo"), 301 Virginia Street East, Charleston, West Virginia 25327 and its parent, Appalachian Power Company ("APCo"), 40 Franklin Road, SW., Roanoke, Virginia 24022, an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, have filed an application with this Commission pursuant to section 6(b) of the Act.

During the period prior to December 31, 1988, KVPCo proposes to issue and sell short-term notes to banks in aggregate amounts not to exceed $6 million outstanding at any one time. All notes will mature not more than 270 days after the date of issuance or renewal. None will mature later than June 30, 1989. The notes to banks will be sold under various lines of credit with different terms, including rates at prime. Compensating balances may be required under certain conditions of up to 10% of the line of credit or 10% of the amount borrowed. Fees in the amount ⅜% of a line of credit will generally be required. It is expected that these borrowings will be retired with the proceeds from subsequent permanent financings or capital contributions from APCo to KVPCo, subject to Commission authorization.

Arkansas Power & Light Company (70–7349)

Arkansas Power & Light Company ("AP&L"), Capitol Tower, P.O. Box 551, Little Rock, Arkansas 72203, an electric utility subsidiary of Middle South Utilities, Inc. (" Middle South"), a registered holding company, has filed an application pursuant to Rule 50(a)(5) of the Act.

By order dated May 5, 1971 (HCAR No. 17116), Middle South was authorized to acquire all of the outstanding stock of Arkansas-Missouri Power Company ("Ark-Mo"), a combination electric and gas utility company, subject to certain conditions, including that Middle South dispose of any direct or indirect interest in the gas properties of Ark-Mo and its wholly owned subsidiary, Associated Natural Gas Company ("Associated").

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Efforts to comply with the order of May 5, 1971 were unsuccessful.

Consequently, by order dated May 2, 1978 (HCAR No. 20528), Ark-Mo and Associated were granted authority to transfer to Associated all of the gas properties owned by Ark-Mo in order to consolidate all of the gas properties into one corporate entity, Associated, which could then establish an operating record to provide a basis for the eventual disposition of the securities of Associated then held by Ark-Mo. In connection therewith, Associated issued to Ark-Mo, among other securities, a $4 million subordinated note. By order dated December 31, 1980 (HCAR No. 21873), Middle South transferred ownership of all of the common stock of Ark-Mo to AP&L, and AP&L caused Ark-Mo to be liquidated and dissolved and all of its assets, including all of the common stock and the subordinated note of Associated, to be transferred to AP&L. Associated consequently became a subsidiary to AP&L which became an exempt holding company pursuant to section 3(a)(2) of the Act.

AP&L has received preliminary expressions of interest in a sale of all of the common stock and subordinated note of Associated. AP&L thus seeks authorization to solicit proposals for the purchase, and to structure appropriate arrangements for the disposition, of all of the common stock and a subordinated note of Associated pursuant to an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder. AP&L believes that compliance with the competitive bidding requirements of Rule 50 under the Act would not be practicable and would not result in terms most favorable to AP&L and its investors and consumers. Any such solicitation would be structured so as to comply with the requirements of section 12(d) of the Act and Rule 44 thereunder, including those with respect to maintenance of competitive conditions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2727 Filed 2-9-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC- 15565; 813-76]

Pemco; Employees' Securities Company Application

February 4, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("the 1940 Act").

Applicant: Pemco.

Relevant 1940 Act Sections: Exemption requested under section 6(b) from Section 12(b) and Rule 12b-1.

Summary of Application: Applicant seeks an order to permit it to act as a distributor of its securities other than through an underwriter.

Filing Date: The application was filed on September 19, 1986, and amended on January 21, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 25, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, Washington DC. 20549. Pemco, 345 Park Avenue, New York, NY 10154.

FOR FURTHER INFORMATION CONTACT: Denis R. Molleur, Staff Attorney (202) 272-2363 or Brion R. Thompson, Special Counsel (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicant's Representations and Statements

1. Applicant is a limited partnership organized under the laws of the State of New York in December 1969. Under an exemptive order issued by the SEC in Investment Company Act Release No. 7332, dated August 21, 1972 (the "1972 Order"), Applicant is exempt from various provisions of the 1940 Act in connection with its operation as an "employees' securities company" within the meaning of section 2(a) (13) of the 1940 Act.

2. Applicant was organized to provide a personal investment program for the partners and principals of Peat, Marwick, Mitchell & Co. ("Peat Marwick"), a national firm of certified public accountants, as a supplement to the retirement arangements of Peat Marwick's partners and principals, and designed in such a manner that the policies and operating concepts of Applicant will be free from conflicts with the client business of Peat Marwick and provide an investment vehicle for its partners and principals to help insure that investments made by them through the Applicant cannot impair the independence of Peat Marwick. The only persons eligible to invest in the Applicant are active partners or principals of Peat Marwick, and trusts created by any such partner or principal or by members of his or her immediate family and for which such partner or principal makes investment decisions and the beneficiaries of which trusts are active partners or principals of Peat Marwick or members of their immediate families.

3. As permitted by an exemption from section 10(a) of the 1940 Act granted by the SEC under the 1972 Order, the business and affairs of the Applicant are managed by its general partners, each of whom is required to be an active partner or principal of Peat Marwick and all of whom may be deemed to be "interested persons" of the Applicant as defined in section 2(a)(19) of the 1940 Act. Each partner of the Applicant has an undivided interest in the Applicant equal to that percentage which his or her capital account bears to the capital accounts of all partners, and each limited partner has the right to a vote, representing his or her undivided interest in the Applicant, in connection with the annual approval of Applicant's general partners, the approval or termination of its investment advisory contract and on other matters that the 1940 Act requires to be approved by the holders of beneficial interests in the Applicant. Additional interests in the Applicant are offered to eligible investors in units of $1,000 each as of the first day of January, April, July and October in each year, any eligible investor who at such date is not a limited partner of the Applicant being required to make an initial minimum investment of $2,000.

4. There is no sales commission charge on the sale of Applicant's partnership interests and its general partners do not receive any renumeration for their services in connection with its operation. The full amount paid by the investor is received by Applicant, credited to that partner's capital account and available for investment in accordance with the Applicant's primary investment objective.

5. Since commencement of its operations in 1972, Applicant has distributed its partnership interests to eligible investors directly, rather than through an underwriter, in the absence of any benefit to the Applicant or its partners that could be realized or other useful purposes served by engaging an underwriter to perform such function. Applicant bears all expenses of its operations, including certain expenses that might be considered to be incurred from an activity primarily intended to result in the sale of its partnership interests subject to the requirements of Rule 12b-1, which provides an exemption from the prohibition in section 12(b) of the 1940 Act against an investment company bearing its own distribution expenses.

6. None of Applicant's expenses are attributable to advertising or compensation to underwriters, dealers or sales personnel in connection with the distribution of its partnership interests, and that that part thereof that could be attributable to other activities that Applicant believes might possibly be considered to be primarily intended to result in the sale of its partnership interests within the purview of Rule 12b-1, including the printing and mailing of prospectuses to persons other than its current limited partners, is insignificant in amount. No solicitation of prospective investors is made, other than a written inquiry by Peat Marwick of its partners and principals prior to each offering date seeking an indication of interest from eligible investors, and prospectuses are distributed by Applicant only to those eligible investors who have indicated that they are interested in investing in the Applicant. The total cost of printing and mailing prospectuses to all eligible investors during Applicant's last six fiscal years averaged less than $5,000 a year, and represented a range over that period declining from approximately .04% to .014% of Applicant's average net assets during each of those years, and that part of such cost that could be attributable to the distribution of prospectuses to persons other than its then current limited partners is substantially less, estimated as being under $500 a year over that six-year period.

7. This request is consistent with the protection of investors for the following reasons: (a) The Community of economic and other interests among the partners of the Applicant as partners or principals of Peat Marwick, and the absence of any broad public group of investors in the Applicant; (b) The investment operation conducted by Applicant was conceived an organized by the persons eligible to invest in the Applicant, is managed by persons who have interests in the Applicant, and is not promoted by persons outside the Peat Marwick organization seeking to profit from fees for investment advice or from the distribution of securities; (c) No useful purpose would be served by requiring Applicant to use an underwriter for the sale of its partnership interests to eligible investors, since such interests are issued only at limited times each year and then only when requests for their purchase are received from eligible investors; (d) Paragraph (c) of Rule 12b-1 appears to preclude Applicant from relying on the provisions of that Rule that might otherwise permit it to act as a distributor of partnership interests, because, as permitted by the 1972 Order, all of its general partners are "interested persons", and, in any event, any plan under Rule 12b-1 that might permit it to act in such capacity technically could not be approved, implemented or continued in accordance with the procedural reuirements of that Rule for the same reason; (e) Certain aspects of compliance with the provisions of Rule 12b-1, to the extent they could be complied with by the Applicant, are potentially burdensome and unnecessary under the circumstances, requiring the imposition of unnecessary expenditures of both money and time on the part of the Applicant, and to some extent on the part of the staff of the SEC; (f) No sales commission is charged to the partners of the Applicant, its general partners do not receive any compensation from the Applicant or its partners, and the full amount invested by any partner is credited to that partner's capital account with the Applicant; (g) The assets of the Applicant that might be used for the payment of distribution expenses are insignificant in amount, and in all likelihood completely offset by the additional proceeds received from each investor in the absence of an underwriting spread that would be involved in its securities were distributed through an underwriter; (h) If the investment operation conducted by Applicant were conducted directly by Peat Marwick, rather than through the Applicant as a separate partnership, the provisions of the 1940 Act, including section 12(b), would not be applicable to Peat Marwick by reason of section 3(b) (1) thereof, Peat Marwick being primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2759 Filed 2-9-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24308]

Filings Under the Public Utility Holding Company Act of 1935 ("Act"); Public Service Company of Oklahoma

January 29, 1987

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 23, 1987, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact of law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Public Service Company of Oklahoma (70-7335)

Notice of Issuance and Sale of Preferred Stock; Amendment of Articles of Incorporation; Exception from Competitive Bidding. Order Authorizing Proxy Solicitation.

Public Service Company of Oklahoma ("PSO") 212 East 67 Street, Tulsa, Oklahoma 74119, an electric utility subsidiary of Central and South West Corporation, a registered holding company, has filed a declaration pursuant to sections 6(a), 7 and 12(e) of the Act and Rules 50, 50(a)(5), 62 and 65 promulgated thereunder.

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PSO proposes to issue and sell by December 31, 1987, up to 500,000 shares of preferred stock, par value $100 per share, at competitive bidding with, at the option of PSO, fixed or adjustable dividend rates. Alternatively, PSO proposes to issue and sell adjustable rate preferred stock in a negotiated underwriting pursuant to an exception from the competitive bidding requirements of Rule 50 under subsection 50(a)(5) thereunder either as auction rate preferred stock, the dividend on which is established by an auction process, or as market rate preferred stock, the dividend on which is established by a remarketing process. The proceeds of the offering are to be used to redeem PSO's 7.92% and 8.88% Preferred Stock, each with 250,000 shares outstanding.

In addition, PSO proposes to amend its Amended Articles of Incorporation, ("Amended Articles"), subject to shareholder approval, to permit the issuance of adjustable rate preferred stock and to make certain other changes. PSO proposes to change provisions with regard to preferred stock dividend payment dates, rate of dividends, payment of dividends, notice of redemption procedures and to eliminate publication of notice of redemption requirements. PSO has filed its proxy solicitation material and requests that the effectiveness of its declaration with request to the solicitation of proxies for voting by its shareholders on the proposal to amend its Amended Articles be accelerated as provided in Rule 62. PSO proposes to mail the notice of meeting, proxy statement and proxy to its shareholders on February 3, 1987, with a specified meeting date of March 17, 1987.

It appearing to the Commission that PSO's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith, pursuant to Rule 62:

It is ordered that, the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith, pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2728 Filed 2-9-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15584; 811-2755]

Selected Tax-Exempt Bond Fund, Inc.; Application for Deregistration

February 4, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Selected Tax-Exempt Bond Fund, Inc.

Relevant 1940 Act Section: Deregistration under section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on October 27, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 27, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 230 West Monroe Street, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney (202) 272-3015, or Special Counsel Karen L. Skidmore (202) 272-3023, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant filed a registration statement pursuant to section 8(b) of the Act on July 6, 1977, to register under the Act as an open-end, diversified management investment company. It also filed a registration statement pursuant to the Securities Act of 1933 (the "1933 Act") in order to make a public offering of common stock, and this registration statement became effective on October 17, 1977.

2. Applicant is a Maryland Corporation in good standing, has filed Articles of Transfer and intends to file its Articles of Dissolution with the State of Maryland in the near future.

3. On April 17, 1986, Applicant's Board of Directors authorized and recommended acquisition of Applicant's assets by Kemper Municipal Bond Fund ("KMBF") and the subsequent dissolution of Applicant. KMBF is a Massachusetts business trust registered under the Act as an open-end, diversified management investment company. The Agreement and Plan of Reorganization ("Agreement") and the terms of the acquisition are set forth in the Form N-14 Registration Statement under the 1933 Act filed by KMBF on May 28, 1986. A Prospectus/Proxy Statement dated June 30, 1986, was distributed to all shareholders. The Agreement and the subsequent dissolution of the Applicant were approved by Applicant's stockholders at a Special Meeting on July 31, 1986. On August 8, 1986, and pursuant to the Agreement dated as of June 1, 1986, substantially all of the assets of Applicant were acquired by KMBF in an exchange at net asset value for shares of beneficial interest of KMBF.

4. Applicant states that it does not currently have any shareholders; it does not have any assets or liabilities; it is not a party to any litigation or administrative proceeding, and it does not propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2767 Filed 2-9-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15559; 812-6386]

Thomson McKinnon Mortgage Assets Corporation; Notice of Application

February 3, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Thomson McKinnon Mortgage Assets Corporation ("Applicant").

Relevant 1940 Act Sections: Exemption requested under Section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks an order conditionally exempting it and certain trusts that it may form from time to time from all provisions of the 1940 Act for the limited purposes of issuing collateralized mortgage obligations, investing in certain mortgage certificates, and selling beneficial interests in such trusts.

Filing Date: The Application was filed on May 15, 1986, and amended on August 15, October 3, December 9, 1986, January 23 and January 29, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on February 26, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, One New York Plaza, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Richard Pfordte at (202) 272-2811 or Special Counsel Karen L. Skidmore at (202) 272-3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicant's Representatives

1. Applicant is a direct, wholly-owned limited purpose financing subsidiary of Thomson McKinnon Inc. Applicant, a Delaware corporation, was organized to facilitate the financing of mortgage loans through the issuance of one or more series of bonds secured by such mortgages and it will not engage in any business or investment activities unrelated to such purpose.

2. Applicant will form separate trusts ("Trusts") for the limited purpose of issuing one or more series ("Series") or collateralized mortgage obligations ("Bonds") and investing in certain Mortgage Certificates [1] which will be used to collateralize such Bonds.

3. Each Trust will be established under a separate deposit trust agreement ("Trust Agreement") between Applicant, acting as depositor, and a bank or trust company or other fiduciary acting as owner-trustee ("Owner Trustee"). Each Trust will issue one or more Series of Bonds under the terms of an indenture ("Indenture") between the Owner Trustee and an independent trustee ("Trustee"), as supplemented by one or more series supplements. The Indenture will be qualified under the Trust Indenture Act of 1939 unless an appropriate exemption is available.

4. In the case of each Series of Bonds: (a) each Trust will hold no substantial assets other than the Mortgage Certificates; (b) the Bonds will be secured by Mortgage Certificates having a collateral value determined under the Indenture, at the time of issuance and following each payment date, equal to or greater than the outstanding principal balance of the Bonds; (c) distributions of principal and interest received on the Mortgage Certificates securing the Bonds and any applicable reserve funds, plus reinvestment income thereon, will be sufficient to pay all interest on the Bonds and to retire each Class of Bonds by its stated maturity; and (d) the Mortgage Certificates will be assigned by the Owner Trustee to the Trustee and will be subject to the lien of the related Indenture.

5. In addition to the issue and sale of the Bonds, Applicant intends to sell the beneficial interests in each Trust to a limited number, in no event more than one hundred, of sophisticated institutional investors in transactions exempt from the registration requirements of the Securities Act of 1933 ("1933 Act") under section 4(2) thereof. Such institutional investors may include one or more banks, savings and loan associations, insurance companies, and pension plans or other investors that would have prior experience in making investments in mortgage related securities or real estate ("Eligible Institutions"). Each Eligible Institution will be required to represent that it is purchasing such beneficial interests for investment purposes. In addition, the Trust Agreement relating to each Trust will further prohibit the transfer of any certificates for such beneficial interests if there would be more than one hundred owners of such certificates at any time.

6. Neither the holders of the beneficial interests of any of the Trusts, the Owner Trustee nor the Trustee will be able to impair the security afforded by the Mortgage Certificates to the holders of the Bonds. That is, without the consent of each Bondholder to be affected, neither the holders of the beneficial interest of any of the Trusts, the Owner Trustee nor the Trustee will be able to: (1) Change the stated maturity on any Bonds; (2) reduce the principal amount of the rate of interest on any Bonds; (3) change the priority of payment on any Class of any Series of Bonds; (4) impair or adversely affect the Mortgage Certificates securing a Series of Bonds; (5) permit the creation of a lien ranking prior to or on a parity with the lien of the related indenture with respect to the Mortgage Certificates; or (6) otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture.

7. The sale of the beneficial interests in each Trust will not alter the payment of cash flows under the Indenture, including the amounts to be deposited in the collection account or any reserve fund created pursuant to the Indenture, to support payments of principal and interest on the Bonds.

8. No holder of a controlling interest in a Trust (as the term "control" is defined in Rule 405 under the 1933 Act), will be affiliated with either the custodian or the statistical rating agency rating the Bonds. None of the owners of the beneficial interests in a Trust will be affiliated with the Trustee.

9. The interests of the Bondholders will not be compromised or impaired by the ability of the Applicant to sell beneficial interests in each Trust, and there will not be a conflict of interest between the Bondholders and the holders of the beneficial interests for several reasons: (a) the collateral which initially will be deposited into each Trust and will be pledged to secure the Bonds issued by such Trust will not be speculative in nature because it will consist solely of GNMA Certificates.

[1] By definition, the "Mortgage Certificates" collateralizing the Bonds will consist of (1) "fully-modified" pass-through mortgage-backed certificates guaranteed by the Government National Mortgage Association ("GNMA Certificates"); (2) mortgage participation certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"), and (3) guaranteed mortgage pass-through securities issued by the Federal National Mortgage Association ("FNMA Certificates"). All or a portion of the Mortgage Certificates securing a Series of Bonds may be "partial pool" Mortgage Certificates. Some of the GNMA Certificates securing a Series of Bonds may be backed by mortgage loans that provide for payments during the initial portion of their term that are less than the actual amount of principal and interest payable thereon on a level debt service basis ("GPM GNMA Certificates"). In addition to the Mortgage Certificates directly securing the Bonds, a series may have additional collateral which may include certain collection accounts and reserve funds as specified in the related Indenture.

aggregate principal amount of the

and interest on the mortgage collateral

Relevant 1940 Act Sections:

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FNMA Certificates or FHLMC Certificates, which Mortgage Certificates are guaranteed as to timely payment of interest and timely or ultimate payment of principal by each respective agency; (b) the Bonds will only be issued provided an independent nationally recognized statistical rating agency has rated such Bonds in one of the two highest rating categories, which by definition means that the capacity of the issuing Trust to repay principal and interest on the Bonds is extremely strong; (c) the Indenture under which the Bonds will be issued subjects the collateral pledged to secure the Bonds, all income distributions thereon and all proceeds from a conversion, voluntary or involuntary, of any such collateral to a first priority perfected security interest in the name of the Trustee on behalf of the Bondholders; [2] and (d) the owners of the beneficial interests will be entitled to receive current distributions representing the residual payments on the collateral from each Trust in accordance with the terms of the applicable Trust Agreement, which distributions are analogous to dividends payable to a shareholder of a corporate issuer of collateralized mortgage obligations. Furthermore, if a Trust does not elect to be treated as a "real estate mortgage investment conduit" ("REMIC") under the Internal Revenue Code of 1986, the beneficial interest owners will be liable for the expenses, taxes and other liabilities of the Trust (other than the principal and interest on the Bonds) to the extent not previously paid from the trust estate. The choice of the form of issuer for the Bonds and the identity of the owners of the beneficial interests in such issuer, however, will not alter in any way the payments made to the Bondholders which payments are governed by an Indenture which will meet the requirements of the Trust Indenture Act of 1939.

10. The aggregate interests of the owners of the beneficial interests in the collateral and the expected returns earned by such owners will be far less than the payments made to Bondholders. Applicant does not intend to deposit in any Trust, Mortgage Certificates with a collateral value which exceeds 110% of the aggregate principal amount of the related Bonds.

11. Except to the extent permitted by the limited right to substitute collateral, it will not be possible for the owners of the beneficial interests to alter the collateral initially deposited into a Trust, and in no event will such right to substitute collateral result in a diminution in the value or quality of such collateral. Althought it is possible that any collateral substituted for collateral initially deposited into a Trust may have a different prepayment experience than the original collateral, the interests of the Bondholders will not be impaired because: (a) the prepayment experience of any collateral will be determined by market conditions beyond the control of the owners of the beneficial interests, which market conditions are likely to affect all Mortgage Certificates of similar payment terms and maturities in a similar fashion; (b) the interests of the holders of the beneficial interests are not likely to be greatly different from those of the Bondholders with respect to collateral prepayment experience; and (c) to the extent that it may be possible for the owners of the beneficial interests to cause the substitution of collateral which has a different prepayment experience than the original collateral, this situation is no different for the Bondholders than the traditional collateralized mortgage obligation structure where bonds are issued by an entity that is a wholly-owned subsidiary. Further, due to the fact that there usually will be more than one owner of a Trust, it appears less likely that the owners will be able to agree on any desired substitution of collateral than if there were a single owner who could unilaterally decide on the timing and execution of the substitution.

12. Each Series of Bonds will consist of one or more Classes of Bonds, including one or more Classes of non-compound interest Bonds, compound interest Bonds or adjustable interest rate Bonds. For additional representations and conditions concerning Classes of Bonds, certain optional and mandatory redemption features, and the distribution of "excess cash flow," see the application.

13. The requested order is necessary and appropriate in the public interest because: (a) the Trusts should not be deemed to be entities to which the provisions of the 1940 Act were intended to be applied; (b) the Trusts may be unable to proceed with their proposed activities if the uncertainties concerning the applicability of the 1940 Act are not removed; (c) the Trust's activities are intended to serve a recognized and critical public need; (d) granting of the requested order will be consistent with the protection of investors because they will be protected during the offering and sale of the Bonds by the registration or exemption provisions of the 1933 Act and thereafter by the Trustee representing their interests under the Indenture; and (e) the beneficial interests in the Trust will be held entirely by the Applicant or offered only to a limited number of sophisticated institutional investors through private placements.

14. The election by any Trust to be treated as a REMIC will have no effect on the level of the expenses that would be incurred by any such Trust. If a Trust elects to be treated as a REMIC, it will provide for the payment of administrative fees and expenses incurred in connection with the issuance of the Bonds and the administration of the Trust by one of the following methods or a combination of one or more of such methods: (a) A third party, whose credit is acceptable to the agency or agencies rating the Bonds, the Trustee and the Owner Trustee, will guaranty the payment of such fees and expenses; (b) One or more reserve funds will be established to provide for the payment of such fees and expenses, which maximum fees typically shall be projected, assuming current inflation factor scenarios required by the independent agency or agencies rating the Bonds, at the time of the issuance of the Bonds and the establishing of such reserve funds. The procedure used to calculate the anticipated level of fees and expenses is reasonable and has been used successfully in the past, in that it has provided available funds sufficient to pay such fees and expenses and to insure that funds will be sufficient to cover future fees and expenses. In addition, under the Indenture, the Trustee will look solely to such reserve funds for the payment of the Trustee's fees and expenses; (c) The Bonds will be secured by collateral, the value of which is in excess of the amount necessary to make payments of principal and interest on the Bonds, and such excess or a portion thereof will be applied to the payment of such fees and expenses, and may be used in combination with any of the other methods described herein. In no event will Applicant deposit in any Trust, Mortgage Certificates with a collateral value which exceeds 110% of the aggregate principal amount of the related Bonds; and (d) The owners of the beneficial interest in any Trust will be personally liable, pursuant to the Trust Agreement, for the fees and expenses of the Trust not otherwise payable from one of the sources described above.

[2] The Indenture further specifically provides that no amounts may be released from the lien of the Indenture to be remitted to the issuing Trust (and any owner of the beneficial interests thereof) until (i) the Trustee has made the scheduled payment of principal and interest on the Bonds, (ii) the Trustee has received all fees currently owed to it, and (iii) to the extent required by any supplemental indentures executed in connection with the issuance of the Bonds, deposits have been made to certain reserve funds which will ultimately be used to make payments of principal and interest on the Bonds. Once amounts have been released from the lien of the Indenture, the Trust Agreement for each Trust will provide that the Owner Trustee under the Trust Agreement will have a lien superior to that of the owners of the beneficial interests of the Trust to the remaining cash flow.

Applicant's Conditions

Applicant agrees that if an order is granted it will be expressly conditioned on the following conditions:

1. Each Series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

2. The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934, as amended.

However, the collateral directly securing the Bonds will be limited to GNMA Certificates, FNMA Certificates, or FHLMC Certificate, i.e., Mortgage Certificates.

3. If new mortgage collateral is substituted, the substitute collateral will: (i) be of equal or better quality than the collateral replaced; (ii) have similar payment terms and cash flow as the collateral replaced; (iii) be insured or guaranteed to the same extent as the collateral replaced; and (vi) meet the conditions set forth in paragraphs (2) and (4). In addition, new collateral may not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as mortgage collateral. In no event may any new mortgage collateral be substituted for any substitute mortgage collateral.

4. All Mortgage Certificates, funds, accounts or other collateral securing a Series of Bonds ("Collateral") will be held by a Trustee, or on behalf of a Trustee by an indpendent custodian. The custodian may not be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of the Applicant. The Trustee will be provided with a first priority perfected security or lien interest in and to all Collateral.

5. Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating agency that is not affiliated with the Applicant. The Bonds will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

6. No less often than annually, an independent public account will audit the books and records of each Trust and, in addition, will report on whether the anticipated payments of principal and interest on the mortgage collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's reports will be provided to the Trustee.

7. Each Trust will insure that the anticipated level of fees and expenses will be more than adequately provided for regardless of which or all of the methods, summarized in the representations listed above, (which methods may be used in combination) are selected by such Trust to provide for the payment of such fees and expenses.

8. Each Class of adjustable interest rate Bonds will have a set maximum interest rate (an interest rate cap).

9. At the time of the deposit of the collateral with the issuing Trust, as well as during the life of the Bonds, the scheduled payments of principal and interest to be received by the Trustee on all Mortgage Certificates pledged to secure the Bonds, plus reinvestment income thereon, and funds, if any, pledged to secure the Bonds (as described in the application) will be sufficient to make all payments of principal and interest on the Bonds then outstanding, assuming the maximum interest rate on each Class of adjustable interest rate Bonds. Such collateral will be paid down as the mortgages underlying the Mortage Certificates are repaid, but will not be released from the lien of the Indenture prior to the payment of the Bonds.

10. In addition, the above representations regarding the beneficial interests (and more fully described in the application) will be express conditions to the requested order.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2725 Filed 2-10-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15562; 812-6581]

WM Life Insurance Co., et al.

February 3, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: WM Life Insurance Company ("WML"); Composit Deferred Variable Account (the "Variable Account"); and Murphey Favre, Inc. ("MFI").

Relevant 1940 Act Sections: Exemption requested under Sections 6(c) from sections 26(a)(2) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order to permit them to issue flexible premium deferred variable annuity contracts (the "Contracts") that permit a deduction of mortality and expense risk changes.

FILING DATE: December 29, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 5, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant(s) with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants' addresses: WML and the Variable Account, 1123 Second Avenue, Seattle, Washington 98101, MFI, 601 Riverside Avenue, Spokane, Washington 99201.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Jeffrey M. Ulness (202) 272-3027 or Special Counsel Lewis B. Reich (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. WML is a stock life insurance company that was incorporated under the laws of Arizona in 1975. It is principally engaged in the sale of individual annuities and individual life insurance. WML is a wholly-owned subsidiary of WM Financial, Inc., which in turn in wholly-owned by Washington Mutual Savings Bank.

2. The Variable Account was established by WML as a separate account under the laws of Arizona on December 23, 1986 and registered under the 1940 Act as a unit investment trust. The Variable Account was established in connection with the proposed issuance of certain individual flexible

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premium deferred variable annuity contracts ("Contracts").

3. The Variable Account will invest in shares of one or more of the investment portfolios of the Composite Deferred Series, Inc. (the "Fund"). The Fund, a diversified open-end management investment company, organized as a Washington corporation on December 8, 1986, has three portfolios: the Money Market Portfolio, the Growth Portfolio, and the Income Portfolio. The Variable Account has three subaccounts, each of which invests in a corresponding portfolio of the Fund.

4. The Contracts are individual flexible premium deferred variable annuity contracts. The Contracts may be purchased with a first purchase payment of at least $1,000. Subsequent purchase payments must be at least $100. The contract owner can allocate purchase payments to one or more sub-accounts of the Variable Account, each of which will invest in a corresponding portfolio of the Fund. Purchase payments will be credited with the investment experience of the selected sub-account(s). WML may establish new sub-accounts at its discretion. Each additional sub-account will purchase shares in a portfolio of the Fund or in another mutual fund. Any new sub-account would be made available to existing contract owners on a basis to be determined by WML. WML may eliminate one or more sub-accounts if, in its sole discretion, conditions so warrant. Prior to the income starting date, a contract holder may surrender the Contract in its entirety or withdraw a portion of the contract value. Transfers between sub-accounts of the Variable Account generally are permitted both prior to and subsequent to the income starting date.

5. An amount will be deducted from the daily net asset value of the Variable Account to reimburse WML for certain mortality and expense risks assumed under the Contracts. The mortality risk borne by WML under the Contracts is the guarantee that the variable annuity payments made to contract owners will not be affected by the mortality experience (life span) of persons receiving such payments or of the general population. The expense risk undertaken by WML is that the deductions for administration costs under the Contracts may be insufficient to cover the actual future costs incurred by WML. This asset charge will be deducted from the contract value of each Contract daily in an amount equal to an effective annual rate of 1.20%. Of that amount, approximately .40% is allocable to the mortality risks, and .80% is allocable to the administrative and distribution expense risks. The rate of this charge is guaranteed never to increase.

6. WML represents that the mortality and expense risk charge is a reasonable charge to compensate WML for the risk that annuitants under the Contracts will live longer as a group that has been anticipated in setting the annuity rates guaranteed in the Contracts; for the risk that a contract owner's death benefit could exceed his/her contract value; for the risk that administrative expenses will be greater than the amounts derived from the administration charges; and for the risk that the amounts realized from the surrender charge will be insufficient to cover actual distribution expenses. WML further represents that the charge of 1.20% for mortality and expense risks assumed by WML is within the range of industry practice with respect to comparable annuity products. This representation is based upon WML's analysis of publicly available information about similiar industry products, taking into consideration such factors as current charge levels, existence of charge level guarantees, and guaranteed annuity rates. WML represents that it will maintain at its administrative offices, and make available to the SEC, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey made to support this representation.

7. In certain cases a contingent deferred sales charge will be assessed upon surrender of a Contract or withdrawal of part of the contract value prior to the income starting date. The charge will be based on the elapsed time between the date of the purchase payment and the date of the surrender or partial withdrawal. For purposes of calculating the charge, WML assumes that the purchase payments are withdrawn on a first-in, first-out basis, and that all purchase payments are withdrawn before any earnings are withdrawn. The following surrender charges apply:

Elapsed time since date of purchase payment	Applicable surrender charge percentage
Less than 1 year	6
1 Year, but less than 2 years	5
2 Years, but less than 3 years	4
3 Years, but less than 4 years	3
4 Years, but less than 5 years	2
5 Years, but less than 6 years	1
6 Years, or more	0

In no event, however, will the total sales charges for a particular Contract exceed 9% of the purchase payments for the Contract. Surrender charges will be used to pay sales commissions and other promotional or distibution expenses associated with the marketing of the Contracts. WML does not anticipate that the sales charge will cover all distribution expenses in connection with the Contract. However, WML hopes to profit form the daily deduction for mortality and expense risks. Any such profit, as well as any other profit realized by WML and held in its general account, would be available for any proper corporate purpose, including, but not limited to, payment of distribution expenses.

8. In the event that a portion of the mortality and expense risk charge might be viewed as providing for a portion of the costs relating to the distribution of the Contracts, WML has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Variable Account and the contract owners. A memorandum setting forth the basis for this representation will be maintained by WML at its administrative offices and will be available to the SEC. Furthermore, applicants also represent that the Variable Account will invest only in management investment companies which undertake, in the event that it should adopt any plan under Rule 12b-1 to finance distribution expenses, to have their board of directors (or trustees), a majority of whom are not "interested persons" of the company within the meaning of section 2(a)(19) of the Act, approve any plan under Rule 12b-1 to finance distribution expenses.

9. WML will deduct a contract maintenance charge of $2.50 per month. Prior to the income starting date, this charge will be deducted from the contract value on each contract monthly anniversary to compensate WML for the administrative services provided to contract owners. After the income starting date, a contract maintenance charge of $2.50 will be deducted from each income payment. WML does not intend to profit from the contract maintenance charge.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2726 Filed 2-9-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

February 4, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Acme Cleveland Corporation
Common Stock, $1.00 Par Value (File No. 7-9623)
Adams Express Company
Common Stock, $1.00 Par Value (File No. 7-9624)
Alberto-Culver Co.
Common Stock, No Par Value (File No. 7-9625)
American Capital Corporation
Common Stock, Par Value $.10 (File No. 7-9626)
BankAmerica Realty Investors
Shares of Beneficial Interest, Par Value $1.00 (File No. 7-9627)
Bemis Company, Inc.
Common Stock, Par Value $5.00 (File No. 7-9628)
Brown & Sharpe Manufacturing Co.
Common Stock, Par Value $1.00 (File No. 7-9629)
Brown Group, Inc.
Common Stock, $3.75 Par Value (File No. 7-9630)
Centex Corporation
Common Stock, $.25 Par Value (File No. 7-9631)
First Union Real Estate Equity & Mortgage Investments
Interest (File No. 7-9632)
General American Investors Co.
Common Stock, $1.00 Par Value (File No. 7-9633)
Illinois Tool Works, Inc.
Common Stock, No Par Value (File No. 7-9634)
Intercapital Income Securities, Inc.
Common Stock, $.01 Par Value (File No. 7-9635)
Longs Drug Stores Corporation
Common Stock, $.50 Par Value (File No. 7-9636)
Lubys Cafeterias, Inc.
Common Stock, $.32 Par Value (File No. 7-9637)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 26, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2760 Filed 2-9-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

February 4, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

MEI Diversified, Inc.
Common Stock, $.05 Par Value (File No. 7-9638)
Massmutual Income Investors, Inc.
Common Stock, $1.00 Par Value (File No. 7-9639)
Meredith Corporation
Common Stock, $1.00 Par Value (File No. 7-9640)
Montgomery Street Income Securities, Inc.
Common Stock, $1.00 Par Value (File No. 7-9641)
Mony Real Estate Investors
Common Stock, $.50 Par Value (File No. 7-9642)
Roper Corporation
Common Stock, $.50 Par Value (File No. 7-9643)
Russell Corporation
Common Stock, $.01 Par Value (File No. 7-9644)
Sealed Power Corporation
Common Stock, $10.00 Par Value (File No. 7-9645)
Springs Industries, Inc.
Common Stock, $.50 Par Value (File No. 7-9646)
Stone Container Corporation
Common Stock, No Par Value (File No. 7-9647)
United Cable Television Corporation
Common Stock, $.10 Par Value (File No. 7-9648)
Wrigley, (Wm) Jr., Inc.
Common Stock, No Par Value (File No. 7-9649)
Coachmen Industries, Inc.
Common Stock, No Par Value (File No. 7-9650)
Esterline Corporation
Common Stock, $.20 Par Value (File No. 7-9651)
Kollmorgen Corporation
Common Stock, $2.50 Par Value (File No. 7-9652)
Newell Company
Common Stock, $1.00 Par Value (File No. 7-9653)
Pandick, Inc.
Common Stock, $.10 Par Value (File No. 7-9654)
Trinity Industries, Inc.
Common Stock, $1.00 Par Value (File No. 7-9655)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 26, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2761 Filed 2-9-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Incorporated

February 4, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted

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trading privileges in the following stocks:

Atari Corporation
Common Stock, $.01 Par Value (File No. 7–9610)
C–3, Inc.
Common Stock, $.01 Par Value (File No. 7–9611)
Freeport-McMoran Energy Partners, Ltd.
Depository Units, No Par Value (File No. 7–9612)
Freeport-McMoran Resources Partners
Common Stock, $1.00 Par Value (File No. 7–9613)
First Australia Prime Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–9614)
Hillenbrand Industries, Inc.
Common Stock, Par Value (File No. 7–9615)
J.P. Industries, Inc.
Common Stock, Par Value (File No. 7–9616)
Halmi, (Robert), Inc.
Common Stock, $1.00 Par Value (File No. 7–9617)
Snap-On-Tools, Inc.
Common Stock, $1.00 Par Value (File No. 7–9618)
Servotronics, Inc.
Common Stock, $1.00 Par Value (File No. 7–9619)
Tracor, Inc.
Common Stock, 33⅓ Par Value (File No. 7–9620)
Universal Leaf Tobacco, Inc.
Common Stock, No Par Value (File No. 7–9621)
Wherehouse Entertainment, Inc.
Common Stock, No Par Value (File No. 7–9622)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 26, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–2762 Filed 2–9–87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 24046; File No. 600–22]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Granting Registration as a Clearing Agency and Statement of Reasons

The MBS Clearing Corporation ("MBSCC"), on December 23, 1986, filed an application under section 19(a)(1) of the securities Exchange Act of 1934 ("Act"), for registration as a clearing agency under Section 17A of the Act and Rule 17Ab2–1(c) thereunder, which allows the Commission to grant registration for a period of 18 months while exempting MBSCC from complying with one or more of the statutory standards contained in section 17A(b)(3). Notice of the application appeared in the **Federal Register** on January 5, 1987, to solicit public comment.[1] No comments were received. This Order grants MBSCC registration for a period not to exceed 18 months and exempts MBSCC from certain provisions of section 17A(b)(3).

I. Overview

MBSCC is a wholly-owned subsidiary of the Midwest Stock Exchange, Incorporated ("MSE") and has two divisions—a Clearing Division and a Depository Division. MBSCC was organized in and has been performing clearing agency services since January 1979. MBSCC's Clearing and Depository Divisions provide clearing agency services for mortgage-backed securities issued or guaranteed by the Federal National Mortgage Association ("FNMA"), Federal Home Loan Mortgage Corporation ("FHLMC") and Government National Mortgage Association ("GNMA"). The Clearing Division has designated securities issued or guaranteed by any of those organizations as eligible for clearing services ("Eligible Securities"). Only GNMA securities, however, are eligible currently for deposit in the Depository Division.[2] Services include trade recording and comparison, trade netting to reduce the number of settlements, certificate safekeeping, book-entry deliveries and other services related to the immobilization of securities certificates.

MSE elects MBSCC's Board of Directors, which in turn appoints MBSCC officers. MBSCC's Board of Directors currently consists of two MBSCC officers and eleven representatives of MBSCC's Participants. Those Participants include mortgage-backed securities brokers and dealers, and banks that provide a variety of services for mortgage-backed securities.

1. Clearing Division

The Clearing Division provides trade recording and comparison services and two accounting systems for trade settlement. A trade between MBSCC Participants for the purchase or sale of Eligible Securities with a future settlement date, including option contracts, may be cleared through the Clearing Division. Once a trade is executed, the purchasing and selling Participants must submit specified trade information to MBSCC. If the parties submit inconsistent or incomplete trade information, MBSCC will notify them and will not record the transaction until the trade information is consistent and complete. For compared trades, the Clearing Division calculates and collects daily margin requirements, denoted as Market Margin Differential ("Margin").

Compared trades are cleared through the Trade-for-Trade or Settlement Balance Order ("SBO") System. Settlement through the Trade-for-Trade System is available for all trades and maintains the identity of the parties to the transaction without any netting of transactions. Trades may be settled through the SBO System if they have a face value of $1,000,000 or more, have a face value evenly divisible by $1,000,000, and are executed prior to a designated settlement cut-off date. Under the SBO System, trades of the same Settlement Class (those involving a particular type of Eligible Security having the same settlement month and coupon rate) are grouped together and netted on a monthly settlement cycle. MBSCC then matches net buyers and sellers for settlement.

Participants are responsible for arranging settlement of transactions in both the Trade-for-Trade and SBO Systems. Settlement may be effected by physical delivery, or by book-entry if both Participants have access to the Depository Division (and the security is an Eligible Security in the Depository Division). Related payment obligations are settled among Participants in same-day funds (either through the Federal Reserve's Fedwire System or at the Depository Division).

[1] Securities Exchange Act Release No. 23929 (December 23, 1986), 52 FR 373 (January 5, 1987).

[2] MBSCC expects to add FNMA and FHLMC securities as Eligible Securities for deposit into the Depository Division in the future after establishment of an interface with the Second District Federal Reserve Bank.

2. Depository Division

MBSCC's Depository Division enables Participants to deposit securities, which are credited to participants' accounts and registered in MBSCC's nominee name. Deposited securities are then available for book-entry delivery for transaction settlements, repurchase agreements, or pledge as collateral for loans. MBSCC collects principal and interest payments on deposited securities and credits those payments to appropriate Participant accounts. The Depository Division also provides repurchase agreement accounting, money settlement services, and withdrawals of deposited securities.

MBSCC maintains three categories of depository accounts for Participants: (1) A Proprietary Account, for Participants acting as principals; (2) Agency Accounts, for Participants acting as agents for third parties; and (3) Pledgee Accounts, for Participants acting in a lending capacity. In addition, MBSCC maintains an associated Transfer Account for each of these accounts. Participants may transfer securities by book-entry by filing an appropriate Account Transfer Instruction. Transfers may be made against payment from the receiving Participant ("DVP") or without payment in return ("free"). MBSCC also computes a cash balance or cash balances for each of the three categories of depository accounts and settlement of net cash balances must occur by the end of each business day in immediately available funds.

II. Statutory Standards

Section 17A of the Act sets forth the clearing agency registration requirement, and requires the Commission to make nine specific determinations concerning an applicant clearing agency's rules. In addition, section 19 of the Act provides procedural standards for clearing agency registration and for continuing regulatory oversight of registered clearing agencies. Rule 17Ab2–1(c) provides for temporary clearing agency registration, for a period not to exceed 18 months, and allows the Commission to exempt a temporarily registered clearing agency from certain statutory standards. In addition, the Commission has published Division standards ("Standards"),[3] which illustrate specific objectives that a clearing agency's rules, procedures, or systems should achieve to be granted full registration.

A. Clearing Agency Registration Requirement

Section 17A of the Act generally requires a clearing agency to register with the Commission. A "clearing agency" is defined in section 3(a)(23) of the Act to include, among others, any person who facilitates the reduction or allocation of securities settlement responsibilities and any securities depository that acts as a securities custodian for central handling of securities that are treated as fungible and can be transferred by bookkeeping entry. For the purposes of section 17A and clearing agency registration, the definition of the term "security," effective July 25, 1987, will include U.S. government and U.S. government agency securities, such as GNMA securities.[4]

B. Section 17A

Section 17A of the Act directs the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions ("National System"). That section charges the Commission to act in accordance with specific Congressional findings,[5] with due regard for the public interest, the protection of investors; the safeguarding of securities and funds; and maintenance of fair competition among brokers, dealers, clearing agencies, and transfer agents. Section 17A also directs the Commission to use its authority to end the physical movement of securities certificates for transaction settlements among brokers and dealers.

Section 17A(b)(3) of the Act sets forth the specific determinations the Commission must make in granting registration. These include, among other things, that the clearing agency can facilitate prompt and accurate clearance and settlement, and safeguard securities and funds.[6]

[3] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (June 23, 1980) ("Standards Release").

[4] *See* Government Securities Act of 1986, Pub. L. No. 99–571.

[5] Section 17A(a)(1) states:

The Congress finds that—

(A) The prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors.

(B) Inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.

(C) New data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement.

(D) The linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors.

[6] Section 17A(b)(3) states:

(3) A clearing agency shall not be registered unless the Commission determines that—

(A) Such clearing agency is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, to comply with the provisions of this title and the rules and regulations thereunder, to enforce (subject to any rule or order of the Commission pursuant to section 17(d) or 19(g)(2) of this title) compliance by its participants with the rules of the clearing agency, and to carry out the purposes of this section.

(B) Subject to the provisions of paragraph (4) of this subsection, the rules of the clearing agency provide that any (i) registered broker or dealer, (ii) other registered clearing agency, (iii) registered investment company, (iv) bank, (v) insurance company, or (vi) other person or class of persons as the Commission, by rule, may from time to time designate as appropriate to the development of a national system for the prompt and accurate clearance and settlement of securities transactions may become a participant in such clearing agency.

(C) The rules of the clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. (The Commission may determine that the representation of participants is fair if they are afforded a reasonable opportunity to acquire voting stock of the clearing agency, directly or indirectly, in reasonable proportion to their use of such clearing agency.)

(D) The rules of the clearing agency provide for the equitable allocation of reasonable dues, fees and other charges among its participants.

(E) The rules of the clearing agency do not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants.

(F) The rules of the clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this section or the administration of the clearing agency.

(G) The rules of the clearing agency provide that (subject to any rule or order of the Commission pursuant to section 17(d) or 19(g)(2) of this title) its participants shall be appropriately disciplined for violation of any provision of the rules of the clearing agency by expulsion, suspension, limitation of

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C. Standards for the Registration of Clearing Agencies

As indicated above, the Commission has published standards that the Division of Market Regulation ("Division") uses in evaluating clearing agency registration applications ("Standards"). The Standards provide additional information concerning the Division's interpretation of subparagraphs (A) through (I) of section 17A(b)(3) and also discuss the Division's views on the National System. Specific references to the Standards appear below in applicable sections of the Commission's discussion.[7]

D. Registration Under Rule 17Ab2–1(c)

As indicated above, MBSCC has filed for registration for a period not to exceed 18 months. Rule 17Ab2–1(c) provides that the Commission may grant a clearing agency temporary registration and exempt the registrant from one or more of the requirements under subparagraphs (A)–(I) of section 17A(b)(3). Thus, an applicant clearing agency can commence operations and the Commission can assess those operations and related safeguards to determine whether registration should be continued. On or before the end of that eighteen month period, the Commission will either grant registration without exemptions from statutory standards or consider whether such exemptions, as the applicant may request, are appropriate under the Act. During the eighteen month period, the applicant is, for all purposes under the Act, a registered clearing agency.[8]

III. Discussion

A. Scope of this Order

This Order concerns the registration of MBSCC as a clearing agency under section 17A of the Act for a period not to exceed 18 months. The determinations made today reflect a review of the Commission's current information and analysis of MBSCC's by-laws, rules and procedures and all other aspects of its operations contained in MBSCC's application. The determination also reflect discussions during the past 21 months among Commission staff, GNMA officials, staff of the Federal Reserve Bank of New York, dealers custodians, investors, industry associations, and counsel representing mortgage-backed securities dealers and custodians.[9]

The Commission expects to review its determinations within 18 months to consider whether to grant MBSCC full registration as a clearing agency. During this time, the Commission will monitor and oversee MBSCC operations through review of Rule 19b–4 submissions,[10] notices to members [11] and disciplinary filings.[12] The Commission staff also plans to inspect MBSCC facilities.

B. Capacity to Promote Prompt and Accurate Clearance and Settlement

MBSCC's rules and procedures appear well designed to promote the prompt and accurate clearance and settlement of transactions in mortgage-backed securities. As discussed below, MBSCC's services bring to the mortgage-backed securities market the benefits of centralized, automated clearance and settlement, including processing efficiencies and cost savings, that are already enjoyed by broker-dealers and banks in corporate and municipal securities markets.[13]

1. Need for Centralized Clearance and Settlement in the Mortgage-Backed Securities Markets

The mortgage-backed securities markets still operate under inefficient physical settlement procedures that threaten to create a paperwork crisis for dealers, investors, and custodians at current or increased trading levels.[14] Current trading volume exceeds $150 billion per month and is second in dollar volume only to the markets for U.S. Treasury securities. The inefficiencies of current decentralized, paper-intensive processing systems are costly to all market players, including issuers of mortgage-backed securities (financial institutions and mortgage bankers), warehouse lenders (regional and other banks), dealers, custodian banks and investors.

The labor intensive trade processing tasks have resulted in frequent settlement delays, often exceeding 30% of all trades.[15] It appears that only extensive dealer and bank efforts to date, at considerable unnecessary expenses, have prevented significant financial losses to public investors. Nevertheless, public investors continue to bear the brunt of this expense, through unnecessarily high commission and custodial fees.

Mortgage-backed securities represent direct ownership interests in specific "pools" of mortgages and entitle the owner to a monthly "pass-through" of principal and interest ("P&I") payments on the underlying mortgages. Pools have a face amount reflecting original issuance value and a current principal amount reflecting mortgage pay-downs.[16] Mortgage-backed securities trade on a cash and forward-commitment basis, with 85–90% of all trading in the forward market.[17] Settlement of each class [18] of forward market trades occurs on a single designated day each month.[19] Settlement dates for each class of securities are adjusted as necessary by the Public Securities Association ("PSA").[20]

Physical deliveries of certificates are made on settlement day and frequently these certificates must be turned around for immediate redelivery to an investor, custodian bank, or dealer. One failure to deliver often sets off a chain of failed deliveries, resulting in a typical failure rate exceeding 30 percent each settlement cycle.

Because mortgage-backed securities involve a monthly return of principal and interest, trades are executed on an assumed principal amount (generally, in trading units of $1 million) and settlement payments are adjusted to reflect the actual outstanding principal amount on securities delivered to settle those trades.[21] Because the deliverer must advise the receiver of the actual outstanding principal amount of certificates to be delivered, industry custom requires 48 hours notice of all deliveries. This information is communicated by telephone, a process that is time consuming and expensive.

Settlement delays that extend beyond the end of the month appear to be the principal cause of misdirected P&I payments. Because the last day of each month is the record date for all mortgage-backed securities, failure to settle transactions and transfer ownership to those securities means that the issuer sends P&I payments to the seller, instead of the buyer. The buyer (or his agent) must identify the seller, submit a claim for the misdirected payment, and collect the appropriate amount.[22] The Commission understands that approximately $200-$300 million in P&I payments must be claimed each month. Expenses associated with researching and collecting P&I claims are substantial and essentially unnecessary. The Commission believes that most of these expenses could be avoided through use of the centralized, automated clearance and settlement facilities.

2. MBSCC Clearing Division

The Commission believes that the MBSCC Clearing Division has demonstrated the ability to promote prompt and accurate clearance and settlement in a consistent manner. As discussed above, the Clearing Division was formed in 1979 to provide trade recording and netting functions for inter-dealer trades. Clearing Division services include daily Margin calculation and collection, daily trade comparison, trade netting and settlement accounting systems.

In many respects, MBSCC's record speaks for itself. For example, in 1986, the MBSCC Clearing Division recorded 146,410 trades in the SBO System at a value of $642.5 billion. Approximately 85% of these trades were netted and the value of Margin deposits totalled $334.3 million. SBO net settlement obligations in 1986 totalled approximately $133 billion.

Participant trades are compared in an automated, centralized environment by the Clearing Division. Trade data is submitted to the Clearing Division by both sides to a trade for automated comparison of contract terms and issuance of matched and unmatched trade reports. The labor-intensive process of trade comparison with multiple trading parties is thus reduced to submission of contract sheet to MBSCC; reveiw of MBSCC reports of compared and uncompared trades; and reconciliation of unmatched trades on an exception basis.

The Clearing Division provides Participants with trade netting for each class of securities through the SBO System. Instead of settling purchase or sale trades with a different opposing party for each transaction, a Clearing Division Participant is given a net "buy" or "sell" position to settle for each class of securities.[23] Thus, netting reduces the number of deliveries that must be processed to settle Participant trades and reduces settlement costs.

The SBO System uses a two-step netting process. First, MBSCC generates a net deliver/receive position for each SBO Participant vis-a-vis each other SBO Participant. The resulting deliever/receive obligations are then netted to arrive at a single deliver/receive obligation and single payment obligation for that class for each Participant.

To calculate SBO Participant payment obligations, MBSCC uses the current market value of the eligible securities. Payments between Participants for SBO settlement do not immediately account for the difference between SBO System market values and contract prices Accordingly, MBSCC calculates the net difference between SBO market prices and each Participant's contract prices for trades settling in the SBO System. That adjustment is termed "Market Differential Adjustment," which MBSCC pays to or collects from Participants on settlement date.

Payment of the Market Differential Adjustment, coupled with payment against the delivery of securities on the SBO deliver/receive ticket, yields SBO Participants almost the same funds they would receive if each trade had settled without netting. Because the actual principal amounts delivered in trade settlements on mortgage-backed securities can vary from the contractual quantity by up to 2.49999%, MBSCC calculates a further payment adjustment (denoted the "Amortized Value Adjustment") based on reported deliveries on all SBO deliver/receive tickets. MBSCC generally collects and pays Amortized Value Adjustments during the next month's settlement cycle.

Centralized margin collection at MBSCC's Clearing Division reduces Participants credit administration and collateralization costs. In the decentralized clearance and settlement system, margin generally is collected for each trade by the purchasing or selling party. Margin collection by the Clearing

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activities, functions, and operations, fines, censure, or any other fitting sanction.

(H) The rules of the clearing agency are in accordance with the provisions of paragraph (5) of this subsection, and, in general, provide a fair procedure with respect to the disciplining of participants, the denial of participation to any person seeking participation therein, and the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency.

(I) The rules of the clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purpose of this title.

In addition, section 17(b) (4) and (5) authorize a registered clearing agency to deny participation in the clearing agency to certain persons and set forth procedural requirements for clearing agency discipline or suspension of participants.

[7] The Commission notes that the Standards were developed in the context of registration of 10 clearing agencies engaged primarily in clearing domestic corporate debt and equity securities and, to a lesser extent, municipal securities. The Commission recognizes that some of the Standards may not be appropriate for clearing agencies that provide services for other investment products such as mortgage-backed securities. Accordingly, the Commission intends to apply the Division Standards flexibly and on a case-by-case basis. In addition, the Standards allow clearing agencies to submit reasons why a particular Standard may be inappropriate and to suggest alternatives that are consistent with the Act.

[8] Thus, for example, the applicant must file for review all changes to its by-laws, rules and procedures with the Commission under Section 19 of the Act.

[9] *See, e.g.*, Division of Market Regulation Draft Staff Report, *Progress and Prospects: Depository Immobilization of Securities and Use of Book-Entry Systems*, June 14, 1985.

[10] Rule 19b–4 requires proposed rule changes by a self-regulatory organization (including clearing agencies) to be filed with the Commission for approval pursuant to section 19(b) of the Act.

[11] Rule 17a–22 requires a registered clearing agency to file with the Commission, within ten days of release, three copies of any material including manuals, notices, circulars, bulletins, lists or periodicals issued or made generally available to its participants or to other entities with whom it has a significant relationship.

[12] *See* section 19(d) of the Act.

[13] *See, e.g.*, Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (October 3, 1983) ("Full Registration Order").

[14] Although MBSCC has been in operation several years, the Depository Division has only recently finalized its rules and procedures. In recent months, as many as 30 institutions have applied for membership in the Depository Division. The Commission understands that MBSCC's registration as a clearing agency under the Act may encourage other institutions to apply for MBSCC membership.

[15] Tasks associated with processing transactions in mortgage-backed securities forward, cash or repo market trades currently include: comparison, clearance, physical delivery and money payment. First, parties trade over the telephone and confirm in writing the price, quantity, interest rate and settlement date. Trading parties then resolve any discrepancies by telephone. Two days before settlement date of forward market trades, the seller advises the buyer of the pool numbers he intends to deliver. On settlement date, the seller prepares physical certificates for delivery via messenger to the buyer or its agent bank. The buyer examines certificates for good delivery and makes payment via Fedwire transfers. Up to 70% of those deliveries are then redelivered on the same day to other parties.

[16] Information on current principal amount is released monthly (usually the 10th day of each month) in the form of factors reflecting mortgages payments made in the prior month.

[17] Dealers, banks, and investors also use mortgage-backed securities extensively as collateral for repurchase agreements. Repo and cash market trades settle under the terms of the contracts. Cash market trades are compared manually and settle by physical delivery of the certificates versus payment within 1 to 20 days of the trade date. Repos are effected on a daily or overnight basis and often require physical delivery of securities and transfer of funds.

[18] A class is defined by interest rate, guarantor (*e.g.*, GNMA, FNMA) and type of mortgage (*e.g.*, fixed rate, graduated payment, mobile home).

[19] Generally, high-volume classes settle on the third Wednesday each month and other classes settle on Tuesday or the following Monday.

[20] The PSA is an association of brokers, dealers, and banks active in U.S. government and municipal securities markets. The PSA publishes "The Uniform Practices for the Clearance and Settlement of Mortgage-Backed Securities," which provide standard procedures under which transactions in mortgage-backed securities are confirmed, compared and settled by dealers and institutional investors.

[21] Industry guidelines permit delivery on trades of $1 million of up to three pools where the pools consist of identical coupons at any rate below 12%. For trades of $1 million, industry guidelines also permit a seller to deliver securities with a total outstanding principal amount within 2.499999% of $1 million.

[22] Identifying the correct party to claim may entail considerable research effort because certificates are passed through many institutions throughout the settlement cycle.

[23] Further reductions in cost can be realized if both Participants are members of the Depository Division and settle the trade through a book-entry movement.

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Division nets the margin obligations for the Participant's trades and issues a single margin payment or credit each day. The margin payment, without the redundancy of payments under the decentralized system, is normally a smaller amount and frees more of a Participant's capital for other uses.

3. MBSCC Depository Division

The Commission believes that the MBSCC Depository Division has the capacity to promote prompt and accurate clearance and settlement of mortgage-backed securities transactions. The Commission also believes that the Depository Division represents a significant step in the effort to end the physical movement of securities certificates for transaction settlements among brokers, dealers and custodians consistent with Section 17A(e) of the Act. The Depository Division was formed in 1984 to provide a centralized depository for the immobilization of mortgage-backed securities. Depository Division services include book-entry movement of securities and related same-day funds settlements, principal and interest collection and payment, and repurchase agreement accounting.

The Depository Division is a necessary complement to the Clearing Division in the goal of achieving prompt and accurate clearance and settlement. Absent a mortgage-backed securities depository, the benefits of centralized clearance and settlement and netting cannot be fully realized. Although netting reduces the number of settlements, physical delivery of the certificates must still be made on net inter-dealer trades and all customer transactions. Indeed, dealers and custodian banks must devote significant human resources to prepare certificates for delivery, effect those deliveries, and check certificates received throughout the day.

The physical delivery process results in late deliveries and misdeliveries of certificates and resulting failed trades. Furthermore, the risk of loss while transporting certificates for delivery is great. Moreover, physical delivery limits the number of trades that can be settled during a given settlement cycle. Finally, concentration of deliveries for settlement of forward trades on specific designated days creates a huge strain on industry processing resources. Replacement of physical delivery, centralized certificate immobilization, and book-entry transfer capabilities eliminate most, if not all, of these problems.[24]

The Commission believes that the Depository Division can reduce delivery costs for Participants and reduce settlement delays. Deposit of securities in the Depository Division and settlement of trades by book-entry movement will allow Participants and non-participants that use agency accounts to realize substantial cost savings. The book-entry movement of certificates at settlement is instantaneous and turnaround deliveries can be handled without delay. Potential savings include reduced personnel and equipment requirements, insurance premiums, messenger costs, and financing costs associated with failed deliveries and trades.

The Commission understands that some investors may pay their agents as much as $125 to process one purchase or sale of certificated mortgage-backed securities. Because the Commission understands that book-entry delivery through MBSCC's Depository Division is approximately one-quarter of the cost of a physical delivery, the Commission believes the potential savings to settlement agents and investors through use of the Depository Division will be substantial and, on an aggregate basis, could approach several hundred million dollars annually.

Deposit of securities in the Depository Division for book-entry movement should reduce risk of certificate loss or theft. Physical delivery of certificates, with frequent multiple movements on the streets on settlement day, presents a high risk of certificates loss or theft. In 1986, GNMA certificates with an approximate value of $60 million were reported either lost or stolen. Immobilization of certificates should reduce the risk of loss significantly.

The Commission believes that widespread use of MBSCC's Depository Division is essential to increasing industry capacity to handle high-volume trading. Computerized book-entry movement of securities can handle a great increase in trading volume without a loss of efficiency or a substantial increase in costs. Indeed, the Commission believes that today's trading volumes in equity markets would be impossible absent the near universal use of securities depositories.[25] The Commission and securities industry sources have estimated that the extension of book-entry settlement to institutional customer-side settlements has resulted in annual industry cost savings of approximately $300 million.[26] In addition, the Depository Division's capacity to track repo positions will allow continued growth and increased safety in that segment of the market.

C. Capacity to Safeguard Funds and Securities

As discussed in detail below, the Commission believes that MBSCC has the capacity to safeguard securities and funds, as required by the Act. The Commission bases that determination on its review of the rules, procedures, and facilities management arrangements for MBSCC's Clearing Division and Depository Division. Specifically, the Commission has reviewed physical security procedures surrounding MBSCC's certificate custody functions, MBSCC's internal accounting controls related to recordkeeping and data processing, and MBSCC's financial risk management rules.

1. MBSCC Clearing Division

a. *Facilities management.* MBSCC has a facilities management arrangement with the Midwest Clearing Corporation ("MCC"), a registered clearing agency and subsidiary of MSE. Under that arrangement, MCC provides to MBSCC computer hardware and software, operating premises and personnel. MCC provides services to the MBSCC Clearing Division pursuant to MBSCC's instructions and in accordance with MBSCC rules and procedures. Those services include maintenance of Participant accounts, operation of SBO and Trade-for-Trade Systems, and preparation of MBSCC Clearing Division reports.

As a registered clearing agency, MCC is subject to Commission oversight under the Act, which includes periodic Commission examination and annual independent accountant review of internal accounting controls. MCC has provided clearing agency services for corporate equity and debt securities for more than 12 years, and since 1980 has provided comprehensive clearing services for municipal securities. The

[24] Depository Participants will still need to communicate delivery information 48 hours before settlements date, by telephone. Nevertheless, because book-entry delivery capability will reduce Participants' resources currently used to process certificates, the Commission believes that operational stress associated with delivery notification can be reduced. Moreover, the Commission understands that MBSCC is exploring ways to use its existing communications network to facilitate the delivery notification process.

[25] *See* Securities Exchange Act Rel. No. 19227 (November 9, 1982), 47 FR 51658 (November 16, 1982).

[26] *See* Securities and Exchange Commission, 1983 Annual Report, at 21.

Commission's experience with MCC is that MCC is a responsible and innovative clearing agency that complies with the Act.[27]

b. *Recordkeeping and data processing.* The Commission believes that the systemic and other controls surrounding the Clearing Division's recordkeeping and data processing functions are adequate to meet the needs of the burgeoning mortgage-backed securities market. MBSCC's Clearing Division performs initial trade recording and comparison services by collecting specific, standardized trade data from both sides of a transaction. MBSCC notifies participants of inconsistent data and when relevant data matches, records the trade in its SBO or Trade-for-Trade accounting systems. Those accounting systems then generate Margin and settlement information for Participants. For each of those services, MBSCC generates daily and other periodic reports to participants and reconciles daily those reports with Participants' own records.

MBSCC's internal audit program reviews the adequacy of its systems and controls. The Audit Committee of MBSCC's Board of Directors, composed of non-management directors, oversees that program as implemented by internal or MSE auditors, selects MBSCC independent public accountant, and reviews the system of internal accounting control with that accountant. Under MBSCC's rules, the independent public accountant performs annually an evaluation of MBSCC internal accounting controls, and MBSCC must make the independent public accountant's opinion and report available to all Participants.

MBSCC Clearing Division procedures also provide for backup computer and recordkeeping functions. MBSCC duplicates computer programs and daily system data and stores them at offsite locations, which enables MBSCC to reconstruct quickly its data base in the event of disaster. MBSCC's computer center is equipped with redundant power, air conditioning, and water to assure a continuous processing environment. Although MBSCC's Clearing Division does not maintain redundant computer hardware, its duplicate software and data enable reconstruction and continued processing on new hardware if MBSCC's computer hardware is damaged.

c. *Financial risk management.* The Commission believes that MBSCC's Clearing Division rules adequately designed to protect MBSCC and its Participants against financial losses associated with its services. The principal source of financial risk to MBSCC and its Participants is that Participants may fail to pay their settlement obligations in a timely manner or default on those obligations, for example, because of financial insolvency. MBSCC's Clearing Division safeguards against these risks include membership applicant standards and continuing financial qualifications for Participants, a Participants Fund, daily margin requirements, and procedures to allocate any loss to Participants that traded with an insolvent Participant.

MBSCC's membership standards require applicants to have a minimum net worth of $10,000,000, except mortgage bankers who must have a minimum net worth of $5,000,000. Applicants are required to submit recent financial statements independently certified without qualification. An applicant also must satisfy MBSCC that it has sufficient financial ability to meet its obligations under MBSCC rules. If admitted, a Participant must maintain these minimum capital requirements and must continue to submit audited financial statements and quarterly unaudited financial statements. If a Participant fails to meet these requirements, MBSCC is authorized to take a variety of actions, including increasing the Participant's deposit requirement to the Participants Fund, limiting the Participant's activity, or ceasing to act for the Participant.

The Clearing Division's Participants Fund is composed of cash, government securities, and irrevocable letters of credit [28] and is maintained to cover losses due to Participant default or insolvency. Each Participant must make a minimum deposit of $10,000. Participants also must deposit daily Margin for their activity in the Clearing Division. MBSCC collects Margin generally for security purchases at prices greater than market value [29] and sales below market value. The MBSCC Margin requirement generally is 130% of the difference between contract value and market value.

In the event of Participant default or insolvency, MBSCC's rules authorize MBSCC to cease to act on behalf of that Participant, marshal that Participant's Participants Fund contributions or other deposits with MBSCC, determine how to dispose of that Participant's open contractual commitments and notify that Participant and other Participants concerning the disposition of those commitments. Generally, if the default or insolvency occurs prior to a settlement date, MBSCC would remove all of the Participant's trades pending in the SBO system and direct the settlement of those trades through the Trade-for-Trade system. Participants that traded with the insolvent ("original *contra*-side Participants") would be directed to obtain three bids for assumption of the defaulting Participant's open commitments, take the best of those bids, settle the resulting trades, and report to MBSCC any ensuing losses or gains. MBSCC would use the defaulting Participant's Participants Fund contribution and other deposits to make good Participant losses. Any losses in excess of those funds would be allocated *pro rata* among original *contra*-side Participants.

If the default or insolvency occurs on a settlement date and the defaulting Participant had open contractual commitments in the SBO system, MBSCC would seek to determine whether delivery and payment by the defaulting Participant had nonetheless occurred. Unsettled SBO trades would be transferred to the Trade-for-Trade system and MBSCC would reprocess net unsettled SBO trades excluding the defaulting Participant's unsettled SBO trades. With all of the defaulting Participant's unsettled trades in the Trade-for-Trade system, MBSCC rules require the original *contra*-side Participant to each trade to obtain three bids for assumption of the defaulting Participant's open commitment, take the best of those bids and settle the resulting trades. Following settlement of those commitments, the original *contra*-side Participants must report to MBSCC

[27] *See* Full Registration Order, note 13, *supra*, in which the Commission determined that MCC was operating in substantial compliance with the Act and granted MCC full registration as a clearing agency.

[28] MBSCC Participants, including brokers' brokers, are required to provide MBSCC information concerning market values for Eligible Securities. On a daily basis, MBSCC obtains the last sale price of each class of Eligible Securities (by coupon and settlement month) from a group of three to five Participants (who are selected on a random basis for this purpose). MBSCC averages those prices to arrive at one marking price per coupon per settlement month. MBSCC uses that information to calculate Margin requirements.

[29] Participants can deposit letters of credit issued by MBSCC-approved banks or trust companies. MBSCC's Clearing Division procedures require issuers to have at least and A— Standard and Poor's debt rating or an A3 Moody's bond rating. In the absence of one of these ratings, the issuer must have a P—2 Moody's or an A2 Standard and Poor's Commercial Paper rating. Letters of credit must be irrevocable or revocable only with MBSCC's consent. MBSCC's Clearing Division rules restrict 25% of the Participants Fund (or less if MBSCC deems a lesser percentage to be appropriate), the amount of letters of credit that can be issued by any one letter of credit issuer.

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any gain or loss on disposition. Gains would be paid to MBSCC and added to the defaulting Participant's liquidated Participants Fund deposit. Those aggregate funds, less any unpaid obligations of the defaulting Participant to MBSCC, would then be used *pro rata* to satisfy losses, including interest losses, suffered by SBO *contra*-side Participants and any amount remaining would be used *pro rata* to satisfy losses of original *contra*-side Participants.

MBSCC Clearing Division rules also provide for the recovery of losses suffered by MBSCC or SBO *contra*-side Participants that are not recovered under the procedures above. [30] Such losses would be recovered *pro rata* from original *contra*-side Participants. MBSCC's insolvency procedures give priority for loss compensation to MBSCC and SBO *contra*-side Participants and ultimately charge unrecovered losses to original *contra*-side Participants because those Participants chose voluntarily to trade with the defaulting Participant and should bear the related credit risks.

The Commission believes that the MBSCC Clearing Division's financial risk allocation scheme is well designed to limit the risk of loss to all Participants, especially Participants who have not dealt with the defaulting or insolvent Participant. Indeed, MBSCC's experience liquidating open contractual commitments of Comark Securities supports this conclusion.[31]

2. MBSCC Depository Division and Certificate Custody Functions

a. *Facilities management.* MBSCC has a facilities management arrangement with Chemical Bank, which is a National Bank and member of the Federal Reserve System. Under that arrangement, Chemical Bank provides computer hardware and software, operating premises and personnel to perform a variety of services to the Depository Division at its direction and in accordance with its rules. MBSCC also has a custodian agreement with Chemical Bank, under which Chemical Bank provides comprehensive services for certificate processing and safekeeping.[32]

Chemical Bank, as a National Bank and member of the Federal Reserve System, is regulated and examined by the Office of the Comptroller of the Currency ("Comptroller") and Board of Governors of the Federal Reserve System ("Fed"). Chemical Bank stores all securities held for MBSCC in time-locked vaults monitored by closed circuit television and armed guards. Chemical Bank also maintains several alarm systems and has procedures to monitor and control employee access to the vault. Chemical Bank's procedures for safeguarding MBSCC-related securities and funds are audited by Chemical Bank's internal and external auditors and by MBSCC's auditors.

Chemical Bank is the contractor to GNMA to perform transfer agent functions for all GNMA securities. Chemical Bank receives securities deposits for MBSCC accounts and registers those securities in MBSCC's nominee name. Chemical Bank also processes securities withdrawal requests, registers certificates according to Participant instructions and makes those certificates available for pick-up by Participants. In each case, Chemical Bank's role as custodian and transfer agent eliminates physical shipments to multiple third-party transfer agents.

Under the custodian agreement between Chemical Bank and MBSCC, Chemical Bank is required to maintain Banker's Blanket Bond Insurance that includes mortgage-backed securities and covers breach of fidelity, theft, loss on premises and in transit, and forgery. Chemical Bank currently maintains insurance coverage in the amount of $100,000,000. Irrespective of insurance coverage, Chemical Bank is required to replace any securities in its custody that are lost, stolen, or misappropriated.

b. *Recordkeeping and data processing.* The Commission believes that the systemic and other controls surrounding the Depository Division's recordkeeping and data processing functions satisfy the requirements of the Act. The Depository Division is linked to its users through on-line computer terminals, which Participants use to communicate instructions to the Depository Division. At the end of every business day, the Depository Division provides Participants with reports, including transaction and position reports.[33] Under MBSCC rules, Participants must review daily reports and report any errors or discrepancies to facilitate daily reconciliation with the Depository Division. The Depository Division computes, on a real-time basis, Participant settlement obligations and collateral requirements.

The Depository Division's computer system is designed to prevent unauthorized access by using dual-level security passwords. The system edits for invalid entry codes and other invalid data in an on-line environment. Chemical Bank records and reviews daily all attempts to gain access to the system.

The Depository Division's computer equipment has been configured to assure back-up capability in all critical areas. Chemical Bank maintains redundant computer hardware and software, which can be brought quickly on-line. Chemical Bank also maintains duplicate data files and program libraries that are stored off-site, but are retrievable within 30 minutes. For communications back-up, Chemical Bank maintains dial-up circuits in addition to leased lines that can support the loss of 16 leased lines at any given time. Chemical Bank also maintains back-up power systems to support the MBSCC data center indefinitely.

The Depository Division's data processing and recordkeeping functions are audited by internal and external auditors under the same procedures used by the Clearing Division.[34] In addition, Chemical Bank undergoes internal and external audits and is examined by the Fed and Comptroller.

c. *Financial risk management.* The Commission has received the Depository Division's risk management procedures and Commission staff have discussed those procedures with present and potential Depository Division Participants, counsel for those Participants, and staff of the Federal Reserve Bank of New York. Based on that review and discussion, the Commission has determined that the Depository Division has the capacity to safeguard funds and securities in a manner consistent with the Act. The principal financial risk to the Depository

[30] Those losses generally would result from the insolvent Participant's failure to pay Margin or Amortized Value Adjustments.

[31] The Commission understands that Comark failed to meet its SBO delivery and payment obligations related to the June 1982 settlement cycle and that MBSCC was required to transfer Comark's trades from the SBO System to the Trade-for-Trade System, and follow the procedures outlined above. As a result of those procedures, the Commission understands that Comark's Participants Fund contribution and Market Differential Adjustment were sufficient to cover all MBSCC and Participant losses and that all remaining funds were returned to Comark's representative. The Commission notes that the Comark trustee has filed suit against MBSCC, dealers and others alleging that transfers in connection with the liquidation of Comark's open commitments constituted preferential transfers, seeking to recover approximately $750,000.

[32] MBSCC also expects to enter into a custodial agreement with Security Pacific Clearing and Services Corporation ("SPC&SC"), under which SPC&SC will hold letters of credit and securities deposited in MBSCC's Participants Funds. Any such arrangement must be filed for Commission review in accordance with section 19(b) and Rule 19b-4 thereunder.

[33] Because the Depository Division provides real-time, on-line processing capabilities, Participants can obtain reports of activity and positions tailored to their specific needs throughout the day.

[34] See discussion following note 27 *supra*.

Division and its Participants is the failure of Participants to pay net cash debit balances. As discussed below, MBSCC uses a variety of procedures to guard against such a loss and to allocate among Participants any loss that might occur.

The Depository Division rules contain generally the same qualifications as the Clearing Division for Participant applicants and continuing membership.[35] Those qualifications are designed to assure that Participants have and maintain sufficient resources to meet their obligations to MBSCC and enable MBSCC to take certain actions against Participants that fail to maintain MBSCC standards.

The Depository Division also maintains a Participants Fund, similar to the Clearing Division, and requires a minimum cash deposit of $10,000 for each account (Proprietary, Agency, or Pledgee). As discussed below, Participants can deposit additional cash, government securities or letters of credit,[36] to the Participants Fund to collateralize transactions in the Depository Division.

The MBSCC Depository Division is the first securities depository to design a same-day securities and funds settlement service capable of processing, on a net basis, Participant mortgage-backed securities trading activity involving several hundred billion dollars monthly. Moreover, MBSCC differs from other securities depositories registered under the Act in two important respects. First MBSCC's Depository Division rules require Participants to collateralize all movements that could expose MBSCC to financial loss. Other securities depositories do not provide explicit collateralization requirements. Second, MBSCC limits Participant liability for MBSCC's potential losses in connection with Participant defaults to Participants that received cash credits from the defaulting Participant on the day of default. Other securities depositories can assess all participants, *pro-rata*, for such potential losses in excess of the defaulting participant's available assets subject to depository liens. Accordingly, the Commission believes it is appropriate to review, in some detail, MBSCC's financial risk management procedures.

The fundamental financial safeguard in the Depository Division is that movements for value must be fully collateralized before they will be processed. The Depository Division rules restrict a Participant from processing book-entry movements, or effecting securities withdrawals, that would result in negative "Net Free Equity" [37] in the applicable account that is not offset by other collateral. Negative Net Free Equity can be off-set by other collateral in the form of additional contributions to the Participants Fund, a percentage of securities pledged to the "MBSCC Depository Pledgee Account," [38] or by a Participant's Excess Margin deposited with the Clearing division.[39]

To secure collateral for book-entry movements, MBSCC Depository Division rules provide for a "Transfer Account" for every depository account. All securities transfers subject to money payment are transferred first to the receiving Participant's appropriate MBSCC Transfer Account.[40] Those transfers are deemed to be transfers to MBSCC, and not to the receiving Participant, and MBSCC holds title to those securities for the purpose of securing Participant obligations to the Depository Division. The receiving Participant may not redeliver securities in the MBSCC Transfer Account or withdraw securities from that account unless that Participant satisfies the Net Free Equity test or pays all cash settlement obligations for that depository account. At the end of each business day, MBSCC transfers securities in the Transfer Account to the receiving Participant's associated depository account only after the receiving Participant has paid all cash settlement obligations for that account.

Special provisions are made for MBSCC Agency Accounts to permit delivery and receipt of securities without subjecting those securities or proceeds to MBSCC liens. Thus, for example, banks delivering customer fully-paid securities to a dealer can process that delivery without subjecting the securities or cash proceeds to MBSCC liens.

First, MBSCC does not include in Agency Account Net Free Equity the value of securities in the Agency Account and does not assert a lien over those securities (MBSCC does claim title to securities in the Agency Transfer Account). Participants may move securities from the Agency Transfer Account to the Agency Account for segregation (f the Participant has sufficient Net Free Equity or other collateral), and may move securities to the MBSCC Depository Pledgee Account [41] from the Agency Account (to increase Net Free Equity), if those securities have been pledged to the Participant or the customer otherwise consents.

Second, MBSCC uses two cash accounts for Agency Accounts: a general cash position for the Agency Account (Agency Cash Balance) and a specific cash position reflecting transfers for value and MBSCC charges (Agency Transfer Cash Balance). Separate cash settlements are made for those two cash balances. The effect is not to count proceeds from the sale of one customer's fully paid for securities as collateral for activity by other customers. Participants may transfer funds from the Agency Credit Balance to the Agency Transfer Credit Balance (to increase Net Free Equity).

MBSCC Depository Division rules provide that Participants maintaining Agency Accounts warrant that all securities and funds movements for Agency Accounts are effected in conformity with applicable law and customer agreements. MBSCC Depository Division rules also explicitly disclaim MBSCC's liability to third parties who may be affected by such movements.

At the end of each business day, MBSCC effects cash settlement with its Participants. Participants with a net debit balance in any depository account must pay MBSCC the balance in immediately available funds (*i.e.*, by Fedwire transfer).[42] Shortly thereafter,

[35] *See* discussion *supra*.

[36] Participants can deposit letters of credit issued by MBSCC-approved banks or trust companies. MBSCC's Depository Division rules contain the same standards for letters of credit as the Clearing Division. *See* note 29, *supra*. MBSCC's Depository Division rules restrict to 25% of collateral held for Participants (or less if MBSCC deems a lesser percentage to be appropriate), the amount of letters of credit that can be issued by any one letter of credit issuer.

[37] Net Free Equity is defined separately in MBSCC rules for each of the three types of depository accounts. Generally, Net Free Equity is defined by formula to include a percentage ("haircut") of the market value of securities in the account plus any credit cash balance or minus a debit cash balance. As discussed below, a special formula is used for Agency Accounts. Net Free Equity does not include securities held in segregated accounts associated with Proprietary and Agency Accounts, and MBSCC does not assert a lien over segregated positions.

[38] *See* note 41, *infra*.

[39] MBSCC rules enable a Participant of both the Clearing Division and Depository Division to use Excess Margin in the Clearing Division to offset negative Net Free Equity in the Depository Division. Excess Margin used for that purpose is deemed not to be a contribution to the Clearing Division's Participants Fund and, in the event of a default or insolvency, may be disposed of under Depository Division Rules.

[40] Such transfers initially are subject to the Net Free Equity test for the delivering Participant.

[41] That account is maintained by MBSCC for the purpose of enabling pledges from Agency Accounts to offset negative Agency Account Net Free Equity.

[42] Fedwire transfer of funds are immediately available for transfer and are irrevocable once received.

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MBSCC pays those Participants who have net credit balances. MBSCC makes those payments in immediately available funds by deposit or Fedwire transfer to Participants' designated settlement bank accounts. If a Participant fails to pay a debit balance, MBSCC would take the steps outlined below.

MBSCC default procedures employ a five-step process to cover the default and to assess any remaining loss to certain Participants that received funds from the defaulting Participant in connection with securities deliveries. Generally, those steps are: (1) use of the defaulting Participant's cash assets, including cash contributions to the Participants Fund; (2) borrowing by MBSCC collateralized by the defaulting Participant's securities, non-cash contributions to the Participant Fund, and any excess Margin at the Clearing Division; (3) debiting cash balances of Participants that received cash credits from the defaulting Participant on the day of default; (4) reversal of securities deliveries to the defaulting Participant; and (5) assessing Participants that received cash credits from the defaulting Participant in proportion to those credits and charging any remaining loss to MBSCC's undivided profits and retained earnings.

MBSCC's first procedure in the event of default is to offset the defaulting Participant's unpaid debit balance with any Proprietary Account Credit Balance payable by MBSCC to the defaulting Participant.[43] MBSCC also would apply the defaulting Participant's cash contributions to the Participant's Fund maintained for the account in default. Next, MBSCC would apply any cash the defaulting Participant contributed to the Participants Fund for other depository accounts, if that cash is not needed to pay a debit balance for such other account.

If the cash available above cannot cover the default, MBSCC would borrow funds by pledging securities in the MBSCC Transfer Account associated with the account in default.[44] MBSCC also could pledge any securities of the defaulting Participant over which MBSCC has a lien (*e.g.*, securities in the defaulting Participant's Proprietary Account (other than securities in the segregated account)),[45] provided MBSCC first used securities in any particular account to obtain funds to cover an unpaid debit balance in that account. In addition, MBSCC would be able to pledge non-cash collateral in the Participants Fund for the account in default,[46] such as letters of credit or securities, and property constituting Excess Margin at the Clearing Division. To facilitate borrowing under these procedures, MBSCC is negotiating a credit agreement with a syndicate of lenders that would commit to making collateralized loans to MBSCC.[47]

If the above procedures cannot raise sufficient funds to cover an unpaid debit balance, MBSCC would either allocate the deficiency among Participants that received cash credits from the defaulting Participant or reverse certain transactions of the defaulting Participant. The allocation procedure applies to all Participants that received credits to their cash balances on the day of default that correspond to debits to the cash balance of the defaulting Participant. MBSCC would debit those Participant's cash balances in proportion to the credits received from the defaulting Participant. MBSCC would grant those Participants a subordinated security interest in securities pledgeable by MBSCC to cover the default.

MBSCC procedures enable MBSCC to reverse intended securities transfers to the defaulting Participant that are reflected in the defaulting Participant's MBSCC Transfer Account. If the delivering Participant consents,[48] MBSCC would transfer securities back to the delivering Participant and reverse the corresponding cash debit to the defaulting Participant and cash credit to the delivering Participant. A reversed cash credit of such delivering Participant would not be subject to the assessment procedure mentioned above.

If MBSCC cannot cure a default after resorting to all of the procedures above, MBSCC would be required under its rules to assess all Participants that received cash credits from the defaulting Participant on the date of default in proportion to the relative dollar value of such credits. Any remaining loss would be charged to MBSCC's undivided profits and retained earnings.

The Commission believes that the MBSCC Depository Division rules are well designed to limit MBSCC's and its Participant's risks related to Participant payment defaults or insolvencies. As outlined above, those rules assure that Participants who have not had any activity with a defaulting or insolvent Participant will not be liable for any losses or liabilities that other Participants or MBSCC may incur because of the default or insolvency. At the same time, the requirement that all transfers be fully collateralized, in conjunction with the ability to reverse transactions, should protect MBSCC from significant exposure in the event of default or insolvency. For these reasons, the Commission find that MBSCC meets the statutory requirements notwithstanding the absence of *pro rata* assessment capability.

The Commission also believes that MBSCC's rules have been drafted to assure that MBSCC will have title and perfected security interests, where appropriate. The Commission notes that in drafting these rules, MBSCC has consulted with counsel to the Federal Reserve Bank of New York, clearing and custodian banks, dealers, GNMA and other interested parties.

d. *Standard of care.* The Standards provide that the rules of a clearing agency, subject to several exceptions, must require the clearing agency to promptly deliver securities in its custody or control to, or as directed by, the Participant for whom they are held.[49] The Standards except from that requirement securities delivered against payment (for which the Participant has not made payment) and securities pledged by the Participant through the clearing agency. The Standards also require that a clearing agency's rules and agreements enable broker-dealers to comply with applicable provisions of the Act and related Commission rules concerning protection of customer assets, such as Sections 8 and 15 of the Act and Rules 8c–1,[50] 15c2–1,[51] and 15c3–3 under the Act.[52]

MBSCC rules enable its Participants to comply with customer-protection rules in a variety of ways. As discussed above, MBSCC's Proprietary and Agency Accounts enable Participants to move securities to a segregated position free of MBSCC's or any third-party liens.

MBSCC rules create such lien-free segregation accounts for both Proprietary and Agency Accounts and enable Participants to move securities at any time [53] into segregated accounts from the Propietary Account, Agency Account, and the Proprietary or Agency Transfer Accounts [54] MBSCC rules provide that MBSCC shall maintain and shall require any custodian to maintain, the same degree of ordinary care with respect to deposited securities as is given to similar property held by banks generally and shall be responsible for the loss of securities to the same extent as banks holding similar property under the same circumstances. As discussed above, MBSCC and its custodian have developed comprehensive safeguards for securities and funds, maintain fidelity bonding coverage, and are examined periodically by independent public accountants. Accordingly, the Commission believes that MBSCC rules are consistent with the Act concerning the protection of customer assets and the standard of care with respect to deposited securities and property.[55]

D. Other Determinations

1. Capacity to Comply With the Act and Enforce Compliance by Members and Participants

(i) *MBSCC Compliance with the Act.* Section 17A(b)(3)(A) of the Act requires that MBSCC have the capacity to comply with the provisions of the Act and the rules and regulations thereunder. Commission rules require MBSCC to keep and preserve certain records,[56] obtain and retain fingerprints from personnel,[57] and register and participate in the Commission's Lost and Stolen Securities Program.[58] The Commission's staff intends to examine MBSCC, within the next year, to assure its compliance with the Act. Nevertheless, based upon a review of MBSCC's rules and procedures, MBSCC's facilities management arrangement with MCC and the Commission's continuing experience with MCC as a registered clearing agency in its own right, the Commission believes that MBSCC has the capacity to comply with the Act and its rules and regulations.

(ii) *MBSCC enforcement of member compliance.* MBSCC has an obligation under the Act to enforce Participant compliance with its rules.[59] MBSCC must have tha authority and ability to discipline Participants that violate MBSCC's rules with appropriate sanctions for such violations [60] and must provide fair procedures for the imposition of such sanctions.[61] As discussed below, MBSCC's rules contain disciplinary procedures to enforce compliance with its rules. In addition, the President and Vice President of MBSCC are charged with the administration of the procedures and are familiar with disciplinary procedures of other self-regulatory organizations, including MCC and MSE. Therefore, based on its consideration of MBSCC's disciplinary rules and knowledge of the personnel administering the rules, the Commission believes that MBSCC has the ability to enforce compliance with its rules.

Under MBSCC rules, the President or Vice-President may impose a fine or other sanction upon a Participant and must furnish the Participant with a written statement of the charges. The Participant may appeal the fine or other sanction to an impartial panel consisting of three directors chosen by the Board of Directors. Except where a Participant in summarily suspended or where MBSCC has ceased to act for the Participant, the fine or other sanction shall be stayed for the pendency of the appeal. Any decision of the panel is reviewable by the Board of Directors on its own motion or by the written motion of the Participant. Under MBSCC's rules, the Board's decision must be sent to the affected Participant and the Commission. Under the Act, the affected Participant may appeal the Board's decision to the Commission or its appropriate regulatory agency. The Commission believes that these procedures substantially fulfill the requirements of the Act.

2. Fair Representation

Section 17A(b)(3)(C) requires that a clearing agency's rules assure fair representation to its Participants and shareholders in the selection of its directors and administration of its affairs. As noted above, MBSCC's current Board of Directors generally consists of representatives of a cross-section of MBSCC Participants. The Commission believes that MBSCC's effort to expand its universe of Participants to include brokers, dealers, and custodian banks will provide strong incentives to assure fair representation to a cross-section of that universe. Absent such opportunity for full and active participation in the selection of directors and management of MBSCC's affairs, many potential participants may not join MBSCC. Thus, the Commission is confident that, during the next eighteen months, MBSCC will continue to provide fair representation to Participants consistent with the spirit of the Act.

The Commission has interpreted the fair representation standard to require specific clearing agency rules that are designed to facilitate continuing fair

[43] If, for example, a Participant maintained a Proprietary Account with a credit balance and also maintained a Pledgee or Agency Account with an unpaid debit balance, MBSCC would charge the Proprietary Account credit to cover the unpaid debit balance.

[44] If the account in default was not a Proprietary Account, MBSCC also would have access to securities in the Transfer Account of the defaulting Participant's Proprietary Account if such securities were not needed to cover a Proprietary Account debit balance.

[45] Securities pledged to the MBSCC Depository Pledgee Account would be available under this procedure if the default was in a Pledgee Account.

[46] MBSCC also is authorized to pledge property contributed by the defaulting Participant to a Participant Fund for another account if not needed to cover a debit balance in that account.

[47] The Commission believes that this procedure should be very effective because mortgage-backed securities are guaranteed as to P & I payments and trade in highly liquid markets.

[48] Consent is not required of Pledgee Accounts because MBSCC assumes that the borrower would want its securities back to make other borrowing arrangements. If the Pledgee account is in default, MBSCC Depository Division rules require MBSCC to return securities and reverse related payment credits before taking other remedial action.

[49] *See* Securities Exchange Act Release No. 16300, at note 57.

[50] Rule 8c–1 generally prohibits a broker-dealer from commingling customers' securities under specified circumstances and from subjecting customers' securities to certain liens. Rule 8c–1(g) provides that customer securities and other securities may be held by a broker-dealer at a clearing agency that maintains certificates in a fungible bulk and provides a system for securities hypothecation by bookkeeping entry. The Rule states that such an arrangement will not in and of itself violate Rule 8c–1 if certain conditions are met. Those conditions generally require the clearing agency's custodian to agree not to refrain from promptly delivering such securities (other than securities then hypothecated in accordance with the system) to the clearing agency or as directed by the clearing agency it. Rule 8c–1(g) also requires that the clearing agency system provides adequate safeguards for handling securities certificates, maintain fidelity bonding coverage, and be examined periodically by an independent public accountant.

[51] Rule 15c2–1 parallles Rule 8c–1 and prohibits hypothecation of customers' securities under specified circumstances. Rule 15c2–1 provides broader coverage than Rule 8c–1 by defining prohibited hypothecation of customer securities to be a "fraudulent, deceptive, or manipulative act or practice" under section 15(c)(2) of the Act.

[52] Rule 15c3–3 generally requires broker-dealers promptly to obtain possession or control of securities purchased by customers and maintain customers' fully-paid and excess-margin securities and free credit balances in accounts that are free of liens and claims against the broker-dealer.

[53] To effect such a movement, however, the Participant must have sufficient Net Free Equity or other offsetting collateral.

[54] As discussed above, title to securities in Transfer Accounts vests in MBCC.

[55] *See* Securities Exchange Act Release No. 20221, at notes 134–137.

[56] Rule 17a–1 requires a registered clearing agency to keep and preserve at least one copy of all documents, including correspondence, memoranda, papers, books, notices, accounts, and other records, as are made or received by it in the course of business.

[57] Ruel 17f–2 requires a registered clearing agency to obtain and maintain a record of fingerprints of each of its directors, officer and employees who do not qualify for an exemption from fingerprinting contained within the rule. A copy of each set of fingerprints must also be sent to the Federal Bureau of Investigation.

[58] Rule 17f–1 requires a registered clearing agency to register and participate in the Lost and Stolen Securities Program ("Program"). Under the Program, a participant is required to report the discovery of a theft or loss of a security and to inquire with respect to securities which come into its possession whether the security has been reported lost, missing or stolen.

[59] *See* section 17A(a)(3)(A) of the Act.

[60] *See* section 17A(a)(3)(G) of the Act.

[61] *See* section 17A(a)(3)(H) of the Act.

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representation of a clearing agency's Participants.[62] MBSCC's by-laws currently provide that MSE will choose the directors of MBSCC. MBSCC believes that during the incipient stages of the depository, it is important to maintain flexibility in the appointment of directors. In this way, MBSCC and MSE can respond to the need to quickly include additional members on the Board who may be crucial to contributing to the acceptance of the depository to the banking community or other representative groups. The Commission recognizes the importance of flexibility in the developing stages of conversion from physical settlement of mortgage-backed securities. The Commission expects, however, that MBSCC will file proposed rule changes that will be designed to satisfy that standard as soon as possible, in no event later than the termination of temporary registration in 18 months. Therefore, in recognition of the representative nature of MBSCC's current Board and the competitive factors that should ensure that future selections will be representative of a cross-section of Participants, the Commission is temporarily exempting MBSCC from compliance with section 17A(b)(3)(C) of the Act.

3. Competition

Section 17A of the Act directs the Commission to have due regard for the maintenance of fair competition among brokers, dealers, clearing agencies,[63] and transfer agents.[64] Section 17A(b)(3)(I) provides that a clearing agency's rules not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As discussed below, the Commission believes that MBSCC's rules and its registration as a clearing agency will not impose any inappropriate burdens on competition and may promote increased competition.

The Commission believes that MBSCC services can make efficient, automated processing available to a wider universe of institutions by decreasing the need for each institution to develop its own in-house, decentralized processing systems and reducing personnel and other expenses associated with transaction processing. Consistent with section 17A(b)(3)(B), MBSCC's rules provide that a wide variety of financial institutions may apply for MBSCC membership. MBSCC conditions membership on satisfaction of applicable financial responsibility standards, as contemplated by section 17A(b)(4)(B). Institutions that lack adequate financial or operational resources necessary for full MBSCC membership nevertheless can access MBSCC services through Participants that provide clearing services ("clearing firms"). Those clearing firms compete for clearing business based on fees and extent and quality of services.

The Commission believes that MBSCC's registration will not result in any inappropriate burdens on competition among banks or other entities providing clearing services. The Commission anticipated that many dealers will continue to engage clearing firms because overnight financing of dealer inventory is an important element in a dealer's decision whether to clear in house or through another entity and MBSCC does not provide oversight financing services. Moreover, availability of MBSCC services to clearing firms should increse their efficiency and permit them to reduce charges to their dealer customers.

4. MBSCC Fees

Section 17A(b)(3) of the Act requires a clearing agency's rules to allocate equitably among participants reasonable fees, dues, and other charges. That Section also provides that clearing agency rules not impose any schedule of prices, or fix rates, for services rendered by participants. The Commission's staff has reviewed MBSCC's fee schedules and found each service fee to apply equally to all Participants using that service. Moreover, the Commission believes that MBSCC fees are reasonably based on near-term volume estimates and, in many instances, provide significant cost savings compared to clearance and settlement outside MBSCC's system.[65] Finally, MBSCC's rules do not in any manner impose prices or fix rates for services provided by its Participants. Accordingly, the Commission believes that MBSCC's rules and fees are consistent with the above statutory standards.

IV. Conclusions and Determinations

MBSCC having made application for registration as a clearing agency pursuant to section 17A(b) and 19(a)(1) of the Act and, pursuant to Rule 17Ab2–1 under the Act, having requested the Commission to exempt MBSCC from one or more of the requirements as to which the Commission is directed to make determinations pursuant to subparagraphs (A)–(I) at section 17A(b)(3) of the Act;

And the Commission having determined: that MBSCC is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, to comply with the provisions of the Act and the rules and regulations thereunder and to carry out the purposes of section 17A of the Act; that the rules of MBSCC do not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants; that the rules of MBSCC are designed to promote the prompt and

[62] The Act does not define fair representation or set up particular standards of representation. Instead, it provides that the Commission must determine whether the rules of the clearing agency regarding the manner in which decisions are made give fair voice to participants as well as to shareholders in the selection of directors and the administration of its affairs. *See* note 6, supra. With respect to providing participants with a meaningful opportunity to be represented in the selection of the board of directors and the administration of the clearing agency's affairs, the Standards counsel that each clearing agency's procedures be evaluated on a case-by-case basis. The Standards also describe several methods by which a clearing agency could comply with the fair representation standard, including nominations for board of directors by a nominating committee which would be composed of, and selected by, participants or their representatives, or direct selection of a number of the directors by, and from among, the users. See Standards Release, 45 FR at 41923. MCC's procedures represent one example of acceptable clearing agency procedures concerning fair representation. Those procedures provide for an MCC nominating committee composed of participant representatives and charged with nominating director candidates with a view toward providing fair representation for a cross-section of MCC participants; additional nomination by Participant petition; and an MSE rule requiring MSE, as sole shareholder of MCC, to elect MCC directors in a manner that assures fair representation of MCC participants. *See* Securities Exchange Act Release No. 20221, at notes 53–56.

[63] Because MBSCC is the only clearing agency that provides services for mortgage-backed securities, the Commission does not believe MBSCC's registration would directly affect clearing agency competition. Nonetheless, MBSCC's rules provide that clearing agencies are eligible for participation in the Clearing and Depository Divisions.

[64] Only a limited number of transfer agents service mortgage-backed securities. Indeed, GNMA, FNMA and FHLMC each appoint the transfer agent for their securities.

[65] As indicated above, the Commission understands that transactions processed through MBSCC may cost as little as one-quarter the expense associated with ex-depository transaction processing. *See* discussion in text at notes 24–25, *supra*. Moreover, the Commission fully expects that MBSCC will continue to charge cost-based fees and as volume estimates change, will adjust its fees accordingly. As a consequence, the Commission believes that increased use of Depository Division services, in particular, would result in significant fee reductions over the next few years.

accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in MBSCC's custody or control or for which it is responsible, to foster cooperation and coordination with persons engaged in clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the import and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest; and that the rules of MBSCC do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act; and that it is appropriate to temporarily exempt MBSCC from the fair representation requirements of section 17A.

It is ordered, that MBSCC's registration be and it hereby is granted, subject to the terms contained in this order, this 2nd day of February 1987, to be effective for not more than 18 months.

By the Commission.

Dated: February 2, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–2723 Filed 2–9–87; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

February 4, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Greenman Brothers, Inc., Common Stock, $0.10 Par Value (File No. 7–9657)
Lee Pharmaceuticals, Common Stock, $0.10 Par Value (File No. 7–9658)
Matrix Corporation, Common Stock, $1.00 Par Value (File No. 7–9659)
Philippine Long Distance Telephone Co., 10 Philippine Peso Par Capital (File No. 7–9660)
Recapital Corporation, Common Stock, $0.10 Par Value (File No. 7–9661)
Duff & Phelps Selected Utilities Inc., Common Stock, $.001 Par Value (File No. 7–9662)
Standard Federal Bank, Common Stock, $1.00 Par Value (File No. 7–9663)
Turner Broadcasting Systems, Inc., Common Stock, $1.25 Par Value (File No. 7–9664)
Copperweld Corporation (Delaware), Common Stock, 83⅓ Par Value (File No. 7–9665)
Mesa Limited Partnership, Depository Receipts, No Par Value (File No. 7–9666)
Navistar International Corporation, Common Stock, $6.00 Cumulative Convertible Preferred Stock, $1.00 Par Value (File No. 7–9667)
Western Digital Corporation, Common Stock, $0.10 Par Value (File No. 7–9668)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 26, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–2763, Filed 2–9–87; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

February 4, 1987.

The above named national securities exchange has filed applications with the Securities and Exchanges Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Charter Power Systems Inc., Common Stock, $.01 Par Value (File No. 7–9669)
American Realty Trust Shares of Beneficial Interest, $1.00 Par Value (File No. 7–9670)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 26, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary

[FR Doc. 87–2764 Filed 2–9–87; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing, Philadelphia Stock Exchange, Inc.

February 4, 1987

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 threreunder, for unlisted trading privileges in the following securities:

Eli Lilly and Company, Warrants (File No. 7–9607)
New World Pictures, Common Stock, $0.01 Par Value (File No. 7–9608)
Tultex Corporation, Common Stock, $1.00 Par Value (File No. 7–9609)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 26, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

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For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary

[FR Doc. 87-2766 Filed 2-9-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

February 4, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Lomas & Nettleton Financial Corporation, Common Stock, $2.00 Par Value (File No. 7-9656)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 26, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2765 Filed 2-9-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-24057; File No. Phlx-86-44]

Self-Regulatory Organizations; The Philadelphia Stock Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Change Relating to Facilitation of Affiliated Upstairs Firms as Options Specialists

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78S(b)(1), notice is hereby given that on December 8, 1986 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange ("Phlx") proposes to amend its rules to ease restrictions imposed on approved persons or member organizations affiliated with options specialists or specialists units in order to facilitate entry into the options specialist business by retail-broker dealers, among others. The Phlx has requested that the Commission approve the proposed rule change for a period of up to one year.[1] The proposed rule change is similar to rule changes of the American Stock Exchange and the New York Stock Exchange recently approved by the Securities and Exchange Commission in Release No. 23768 (November 3, 1986).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to facilitate the entry of diversified retail member organizations with corporate finance retail sales and research departments into the options specialist business. Since the start of the PHLX options program, Exchange rules have imposed restrictions on options specialists, and on various persons affiliated with options specialists. These rules have stood as serious obstacles to attracting diversified, well capitalized retail member organizations to act as options specialists at the Exchange. In general, these rules prohibit options specialists and their member organizations and their corporate parents from engaging in business transactions with issuers of specialty securities (or insiders of such issuers), from accepting orders in speciality securities from the issuer insiders or other parties, from trading in options on their specialty securities and from trading in specialty securities, except pursuant to market making functions. As a result, with some exceptions, such member organizations have avoided the options specialist business since they would be required to curtail or eliminate portions of their present business activities as they relate to specialty securities.

These restrictions derived principally from a concern that any business relationship between an issuer and its options specialist could either give rise to the improper transmission or use of material non-public corporate or market information or to conflicts of interest. It was previously believed that specialists due to their unique position in the market should carry out their market making responsibilities free from any outside influences or undertakings. The restrictions on specialist organizations were extended to cover approved persons or affiliated upstairs firms of a specialist unit whose business relationship with issuers raised similar conflicts of interest problems as that they would not be placed in a more advantageous position vis-a-vis other market participants because of their association with the specialist unit.

The regulatory and competitive environment has changed significantly since these rules were first adopted. At that time, there existed a perception that specialists had a measure of control over markets in their specialty securities, however, that control has been greatly eroded due to a number of changes in the regulatory and competitive environments. These include the adoption of SEC Rules 19c-1 and 19c-3, and the increased vigor of both the over-the-counter market and the regional and other competitive national securities exchanges, as well as the increase in member firm block trading activity reducing the control specialists were perceived to have over the market in their specialty securities. In light of the highly sophisticated surveillance techniques in effect at the Exchange and increased competition from other markets, there is no longer a

[1] See letter to Howard Kramer, Esq., Assistant Director, Division of Market Regulation, SEC, from Barbara Rothenberg, Senior Vice President and General Counsel, Phlx, dated January 30, 1987, amending File No. SR-86-44.

continuing need for these prohibitions as they relate to affiliated upstairs firms. Such diversified member organizations have asked the Exchange from time to time to ease these restrictions. Similarly restrictions are not imposed on over-the-counter market makers and the NYSE and the AMEX both which had similar rules have recently been granted approval of proposed rule change amendments relaxing the rules restricting the activities of affiliated upstairs firms. The proposed rule change will assist the Exchange in remaining competitive with these other markets.

Specifically, the Exchange proposes to amend Rule 1020 to provide an exemption (for the affiliated upstairs firm only) from the trading restrictions pertaining to purchase and sales of speciality securities for the account of an approved person, as specified in Rule 1020(e); the prohibitions against entering into business transactions with issuers (of specialty securities as specified in Rule 1023(a) and the prohibition against accepting orders in specialty securities from the issuer, insiders and other parties as specified in Rule 1023(b). This exemption will be available to an approved person or other affiliated upstairs member organization which obtains prior exchange approval for the procedures on restricting the flow of material non-public information between it and its affiliated specialist *i.e.*, a "Chinese Wall". Formal Exchange guidelines, as stated above, which firms will be required to meet in establishing these procedures are discussed below.

The Chinese Wall

Today, many diversified retail firms have established internal policies and procedures, known as Chinese Walls, restricting interdepartmental flow of material non-public information about the firm's corporate clients. The goal of these procedures is to prevent the communication of unpublished price-sensitive information about issuers of publicly held securities to those departments of the firm which might misuse the information for market trading purposes. The Chinese Wall concept operates on the principle that adequate control over access to inside information will preclude its misuse and reduce conflicts of interest problems. In diversified securities firms, personnel in the retail sales, research and investment advisory divisions are generally denied access to information held by the firm's investment banking division. Usually this is accomplished by an express policy statement which prohibits personnel who have knowledge of material non-public information about a publicly held corporation from communicating that information to personnel in other departments of the firm. In addition, some firms bolster their walls by restricting access, such as personnel transfers between departments, physically separating the "knowledgeable" department from the remainder of the firm, by creating a separate subsidiary or affiliate.

Any firm wishing to obtain an exemption for its non-specialist activities from the restrictions specified in amended Rule 1020 must establish a Chinese Wall in conformity with Exchange guidelines between the specialist unit and its affiliated upstairs member firm. The exemption is voluntary. Any affiliated upstairs firm not wishing to satisfy the Exchange criteria will remain subject to the restrictions discussed above.

The Chinese Wall envisioned in these rule changes is designed to prevent the specialist organization and the affiliated upstairs firm from making material non-public corporate or market information available to each other and to ensure the specialist does no trading while in possession of material non-public information derived for the affiliated upstairs firm from its relationship with the issuer or with knowledge of pending transactions or the upstairs firms recommendation. The guidelines provide procedures to be used in temporary allocation of the book where a specialist unit becomes "contaminated" following a breach of the "Chinese Wall". The guidelines also specify that a firm's procedures should ensure that information regarding securities positions, trading activities and margin financing arrangements between the affiliated upstairs firm and the specialist unit should be available solely to senior management in the upstairs firm exercising general managerial oversight of the specialist unit. Once in place, these procedures will substantially lessen the need for the prohibitions contained in the rules discussed above to the extent they apply to upstairs firms affiliated with specialists. The restrictions themselves would remain in effect as to the specialist organization itself.

The Exchange believes the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations applicable to the Exchange as it will facilitate the entry of large diversified retail broker-dealers into the specialist business on the Exchange floor and in so doing will enhance depth and liquidity in the equity options market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 [2] and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the **Federal Register** in that the Commission recently approved similiar proposals by the American and New York Stock Exchanges,[3] and in so doing, stated its desire that regional exchanges consider requiring specialists affiliated with integrated firms to establish an adequate Chinese Wall and review the exchanges' surveillance and compliance procedures regarding the specialists. The proposed rule filing is intended to address these concerns, and is being approved by the Commission on an accelerated basis for a one year period in order to permit the Phlx to implement these procedures as soon as possible.[4]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission

[2] 15 U.S.C. 78f (1982).

[3] *See* Securities Release No. 23768 (November 3, 1986), 51 FR 41183 (November 13, 1986).

[4] The Phlx also has submitted to the Commission a proposed rule change to make these procedures permanent. *See* File No. Phlx 87-2. The Commission will publish shortly Phlx-87-2 for notice and public comment

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and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from date of publication].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 4, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2758 Filed 2-9-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) Air Traffic Procedures Advisory Committee (ATPAC) to be held from April 6, at 9 a.m., through April 10, 1987, at 4 p.m., at FAA headquarters, 800 Independence Avenue, SW., Washington, DC.

The agenda for this meeting is as follows: A continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Discussion of agenda items.
3. Discussion of urgent priority items.
4. Report from Executive Director.
5. Old Business.
6. New Business.
7. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public, but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify, not later than April 3, 1987, Mr. Walter H. Mitchell, Executive Director, ATPAC, Air Traffic, Acting ATO-100, 800 Independence Avenue, SW., Washington, DC, 20591, telephone (202) 267-9358. Information may be obtained from the same source.

The next quarterly meeting of the FAA ATPAC is planned to be held from July 14 through July 17, 1987, location to be determined.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on February 2, 1987.

Walter H. Mitchell,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 87-2685 Filed 2-9-87; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Florida

AGENCY: Federal Aviation Administration.

ACTION: Noice.

SUMMARY: The Federa Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Hillsborough County Aviation Authority, Tampa, Florida, for Tampa International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Tampa International Airport under Part 150 in conjunction with the noise exposure map, and that this Program will be approved or disapproved on or before July 20, 1987.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is January 21, 1987. The public comment period ends March 22, 1987.

FOR FURTHER INFORMATION CONTACT: Tommy J. Pickering, Plans and Programs Metro Area Manager, Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32812, (305) 648-6583.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Tampa International Airport are in compliance with applicable requirements of Part 150, effective January 21, 1987. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before July 20, 1987. This notice also announces the availability of this program for public review and comment

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations, Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and the prevention of the introduction of additional noncompatible uses.

The Hillsborough County Aviation Authority, Tampa, Florida, submitted to the FAA on November 5, 1986, noise exposure maps, descriptions and other documentation which were produced during the development of the Tampa International Airport FAR Part 150 Compatibility Study. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Hillsborough County Aviation Authority, Tampa, Florida. The specific maps under consideration are the "Noise Exposure Map 1985" (current NEM) and the "Noise Exposure Map 1990" (5-year NEM) in the submissions. The FAA has determined that these maps for Tampa International Airport are in compliance with applicable requirements. This determination is effective on January 21, 1987. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Tampa International Airport, also effective on January 21, 1987. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before July 20, 1987.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC

Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, FL 32812

Mr. William J. Connors, Jr., Director of Planning and Development, Hillsborough County Aviation Authority, Tampa International Airport, Terminal Building, Third Floor, Post Office Box 22287, Tampa, FL 33622.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, January 21, 1987.

James E. Sheppard,

Manager, Orlando Airports District Office.

[FR Doc. 87-2686 Filed 2-9-87; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Martin County, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescind Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will not be prepared for a proposed highway project in Martin County, Florida.

FOR FURTHER INFORMATION CONTACT: R. V. Robertson, District Engineer, Federal Highway Administration, 227 North Bronough Street, Room 2015, Tallahassee, Florida 32201, Telephone: (904) 681-7231.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare an Environmental Impact Statement (EIS) for a proposed highway project to construct an interchange on I-95 near Mapps Creek in Martin County, Florida was issued on September 5, 1985 and published in the September 13, 1985 **Federal Register** (50 FR 37462). The FHWA, in cooperation with the Florida Department of Transportation, has since determined that preparation of an EIS is not necessary for this proposed highway project and hereby rescinds the previous Notice of Intent.

(Catalog of Federal Domestic Assistant Program Number 20.205, Highway Research, Planning and Constructions. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued On: January 30, 1987.

James E. St. John,

Assistant Division Administrator, Tallahassee, Florida.

[FR Doc. 87-2706 Filed 2-9-87; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: Counties of Chesterfield, Powhatan, Goochland and Henrico, VA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the Counties of Chesterfield, Powhatan, Goochland and Henrico, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert B. Welton, District Engineer, Federal Highway Administration, Post Office Box 10045, Richmond, Virginia 23240-0045, telephone (804) 771-2682.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Transportation (VDOT), will prepare an environmental impact statement (EIS) on a proposal to construct Route 288, a four (4) to six (6) lane divided limited access facility, from the interchange of proposed Powhite Parkway and Route 288 in Chesterfield County to the interchange of Route 64 and Route 295 in Henrico County. The proposed project would provide for a western bypass of the City of Richmond by completing the southwest quadrant.

There are several alternatives to the proposed project under consideration:

1. Null or No-Built Condition—which includes all elements of the Regional Transportation Plan with the exception of the proposed project.

2. Mass Transit—to evaluate the ability of mass transit to accommodate the transportation demands in the study area.

3. Traffic System Management—to evaluate the ability of non-major construction activities on the existing roadway network to accommodate the transportation demands in the study area.

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4. Build Alternatives—A minimum of three alignments on new location will be evaluated.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens who have previously expressed interest in this proposal. No formal scoping meeting is planned at this time. The Draft EIS will be available for public and agency review and comment. Following publication of the Draft EIS, a public hearing will be held. Public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this program.

Issued on: February 3, 1987.

Robert B. Welton,

District Engineer, Richmond, Virginia.

[FR Doc. 87-2733 Filed 2-9-87; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

[Docket S-800]

Farrell Lines Inc.; Application For an Increase in Privilege Calls to North African Ports

Farrell Lines Incorporated (Farrell), by application dated January 27, 1987, requests that the TR 10/13 (U.S. Atlantic/Mediterranean) service description set forth in "Privilege 5." of Appendix A-4 to Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB-482 be amended as follows: "U.S. South Atlantic ports in South Carolina, Georgia, Florida, except that cargo for ports in North Africa (Morocco, Algeria, Tunisia, Libya and Egypt) shall not be carried on more than 44 outbound sailings annually, and inbound cargo shall not be carried to the State of Florida." (Underlined figure indicates change.) Farrell's ODSA currently permits 15 of such sailings.

Farrell states that it is competitively disadvantaged by the restriction of 15 outbound sailings from South Atlantic ports to North African ports, particularly those in Morocco and Egypt.

Farrell inaugurated a four-ship service on TR 10/13 in July of 1986 which permitted the expansion of service to the South Atlantic range. Since that time, Farrell notes that its vessels have called regularly at Charleston, South Carolina, for the loading of cargo destined for Morocco, Tunisia and Egypt, three of the countries upon which service limitations are placed by the current contractual language.

The importance of increasing the number of outbound calls in South Atlantic ports, Farrell avers, is evidenced by the 36 sailings projected to be made by Farrell on TR 10/13 in 1987, all of which are planned to call at Charleston for cargo offerings to one or more of the North African countries described in "Privilege 5.". Farrell estimates that if it deploys the AUSTRAL RAINBOW (which is authorized for operation in TR 10/13 service) to the Mediterranean trade, 44 outbound sailings from South Atlantic ports would be readily achievable.

According to Farrell, authority to increase the number of outbound sailings from South Atlantic ports to North African ports will permit it to increase its carryings and meet in part the penetration of foreign-flag consortia into the American southern market. This has become of particular importance since the cessation of service by Prudential Lines, Inc. has lessened the participation of American-flag carriers in the trade.

Furthermore, Farrell states that it carries significant quantities of cargo inbound from North Africa to the South Atlantic. If Farrell were restricted to discharging the cargo in the South Atlantic but precluded from loading export cargo destined for North Africa, considerable extra expenses and inefficiencies would result. Farrell emphasizes that areas such as equipment balances and vessel operations would be adversely affected.

In support of its contention that there is a need for additional U.S.-flag service from the South Atlantic range, Farrell submitted a statement of tonnages in the U.S. South Atlantic to North Africa trade 1982–1986 which shows that only approximately 35 percent of the available tonnage in the past three years moved in U.S.-flag vessels.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590. Comments must be received no later than 5:00 P.M. on February 24, 1987. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies).

By Order of the Maritime Subsidy Board.

Dated: February 5, 1987.

James E. Saari,

Secretary.

[FR Doc. 87-2730 Filed 2-9-87; 8:45 am]

BILLING CODE 4910-81-M

VETERANS ADMINISTRATION

Advisory Committee on Former Prisoners of War; Meeting

The Veterans Administration gives notice under Pub. L. 92-463, section 10(a)(2) that a meeting of the Advisory Committee on Former Prisoners of War will be held at the Disabled American Veterans, National Service and Legislative Headquarters, 807 Maine Avenue, SW., Washington, DC 20024, on March 3 and 4, 1987. The purpose of the Committee is to consult with and advise the Administrator of Veterans' Affairs on the administration of benefits under Title 38, United States Code, for veterans who are former prisoners of war and on the need of such veterans for compensation, health care and rehabilitation.

The meeting will convene at 9 a.m., each day, and will be open to the public.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to: Herbert Mars, Deputy Director, Compensation and Pension Service, Department of Veterans Benefits, Room 400, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. Submitted material must be received at least five days prior to the meeting. Such members of the public may be asked to clarify submitted material prior consideration by the Committee.

A summary report of the meeting and rosters of the Committee members may be obtained from Mr. Herbert Mars at the aforementioned address.

Dated: January 21, 1987.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Office.

[FR Doc. 87-2699 Filed 2-9-87; 8:45 am]

BILLING CODE 8320-01-M

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Sunshine Act Meetings

Federal Register
Vol. 52, No. 27
Tuesday, February 10, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 3202 Dated February 2, 1987.

PREVIOUS ANNOUNCEMENT TIME AND DATE OF MEETING: 2:00 p.m. (eastern time) Monday, February 9, 1987.

CHANGE IN THE MEETING: The meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat (202) 634–6748.

Dated: February 6, 1987.

Cynthia C. Matthews,

Executive Officer.

This Notice Issued February 6, 1987.

[FR Doc. 87–2812 Filed 2–6–87; 10:20 am]

BILLING CODE 6750–06–M

FEDERAL MARITIME COMMISSION

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: February 5, 1987, 52 FR 3746.

PREVIOUSLY ANNOUNCED DATE AND TIME OF THE MEETING: February 11, 1987, 10:00 a.m.

CHANGE IN THE MEETING: Addition of the following item to the closed session:

4. Agreement No. 202–010676–023: Modification to the Mediterranean/U.S./A Freight Conference.

Joseph C. Polking,

Secretary.

[FR Doc. 87–2875 Filed 2–6–87; 3:28 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, February 13, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 5, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–2785 Filed 2–6–87; 8:55 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Tuesday, February 17, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 6, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–2884 Filed 2–6–87; 3:55 pm]

BILLING CODE 6210–01–M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Thursday, February 12, 1987 at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. 701–TA–271 and 731–TA–318 (F) (Oil country tubular goods from Israel)—briefing and vote.
6. Inv. 701–TA–270 and 731–TA–313, 314, 316 and 317 (F) (Certain brass sheet and strip from France, Italy, Sweden, and West Germany)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Kenneth R. Mason,

Secretary.

January 30, 1987.

[FR Doc. 87–2857 Filed 2–6–87; 2:57 pm]

BILLING CODE 7020–02–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 9, 16, 23, and March 2, 1987.

PLACE: Commissioner's Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of February 9

Thursday, February 12

10:00 a.m.
Meeting with Regional Administrators (Public Meeting)

2:00 p.m.
Briefing on Advanced Reactor Designs (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)

a. Final Rulemaking for Revisions to Operator Licensing—10 CFR 55 and Conforming Amendments (Tentative)

b. Material Control and Accounting Requirements for Facilities Licensed to Possess and Use Formula Quantities of Strategic SNM (Tentative)

c. October 20, 1986 Order to Show Cause—Northern States Power Company (Tentative)

Friday, February 13

10:00 a.m.
Briefing by GPUNC on Status of TMI–2 Cleanup (Public Meeting)

Week of February 16—Tentative

Tuesday, February 17

2:00 p.m.
Briefing on Final Version of Draft NUREG–1150 (Source Term) (Public Meeting)

Wednesday, February 18

2:30 p.m.
Briefing on Status of EEO Program (Public Meeting)

4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 23—Tentative

Monday, February 23

2:30 p.m.
Briefing on Surry Incident (Public Meeting)

Tuesday, February 24

2:00 p.m.
Briefing on National Academy of Sciences Report, "Revitalizing Nuclear Safety Research" (Public Meeting)

Wednesday, February 25

10:00 a.m.
Discussion on Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.
Discussion/Possible Vote on Restart of Palisades (Public Meeting)

Thursday, February 26

10:00 a.m.
Briefing on Status of and Possible Vote on Restricted Power Levels for Fort St. Vrain (Public Meeting)

3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 2—Tentative

Thursday, March 5

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for Clinton (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634–1410.

Robert B. McOsker,

Office of the Secretary.

February 5, 1987.

[FR Doc. 87–2876 Filed 2–6–87; 3:45 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of February 9, 1987:

A closed meeting will be held on Tuesday, February 10, 1987, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9) (A) and (10) and 17 CFR 200.402(a) (4), (8), (9) (i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioners Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, February 10, 1987, at 2:30 p.m., will be:

Regulatory matter regarding financial institution.
Institution of administrative proceedings of an enforcement nature.
Subpoena enforcement actions.
Institution of injunctive action.
Formal orders of investigation.
Settlement of administrative proceeding of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Judith Axe at (202) 272–2092.

Jonathan G. Katz,

Secretary.

February 5, 1987.

[FR Doc. 87–2845 Filed 2–6–87; 1:10 pm]

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Part II

Office of Management and Budget

Revision to Circular A-110, "Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations;" Notice

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OFFICE OF MANAGEMENT AND BUDGET

Revision to Circular A-110, "Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations"

AGENCY: Office of Management and Budget.

ACTION: Final revision to circular A-110, "Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations."

SUMMARY: This notice revises OMB Circular A-110, "Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," originally published July 30, 1976. The revision provides that recipients shall maintain advances of Federal funds in interest bearing accounts. Interest earned on Federal advances deposited in such accounts shall be remitted promptly to the Federal agencies that provided the funds.

The revision is based on a recommendation by the Inspector General (IG), Department of Health and Human Services. The IG made an audit to determine what percentage of grantees were using interest bearing accounts for deposits of Federal funds. The IG reviewed about 4,000 nonprofit grantees of the Office of Human Development Services and the Public Health Service. The review disclosed that 80 percent of the grantees did not earn interest on Federal funds kept in banks, 16 percent earned interest but did not report or return any of it to the Federal Government and only 4 percent earned and returned interest. From the limited test made, the IG estimated that the Federal Government lost about $15 million in potential interest income.

OMB Circular A-110 provides that Federal cash made available to recipients of grants shall be timed to coincide with their cash needs. This proposed revision is not intended to change that policy by encouraging grantees to maintain unnecessary balances of Federal funds. The revision recognizes that all Federal cash will not always be disbursed immediately upon receipt. Therefore, it is proposed that when cash is available it should be deposited in interest bearing accounts.

EFFECTIVE DATE: These revisions to Circular A-110 are effective immediately.

FOR FURTHER INFORMATION CONTACT: Office of Management and Budget, Financial Management Division, New Executive Office Buliding, 726 Jackson Place NW., Room 10235, Washington, DC 20503, (202) 395-3993.

SUPPLEMENTARY INFORMATION: Notice of the proposed revision was published for comment in the **Federal Register** on October 30, 1985, (50 FR 45183). In response, OMB received over 100 comments from Federal agencies, States, universities and other nonprofit organizations.

Following is a summary of the major comments grouped by subject and a response to each.

Comment: The requirement to remit interest earned to individual Federal agencies would impose an unreasonable administrative burden on recipients.

Response: The requirement to return interest to individual Federal agencies has been in effect for a number of years. Therefore, we do not anticipate any new burdens being placed on grantees as a result of this revision. However, we have asked the Treasury Department to explore the feasibility of having grantees remit interest earned on Federal advances directly to the Treasury.

Comment: Any interest accured from excess cash on grants or cooperative agreements should be deducted from interest that would have been earned on institutional funds that were used for cost reimbursement contracts.

Reponse: Institutions accepting cost reimbursement contracts do so with the understanding that they will be required to use their own working capital. There is no provision in the *Federal Acquisition Regulations* for institutions to take credit for interest which would have been earned on working capital. If Federal agencies are late in paying bills the Prompt Payment Act, Pub. L. 97-177, and OMB Circular A-125, "Prompt Payment," require Federal agencies to pay interest penalties when payments are made late.

Comments: Revision of Circular A-110 as proposed would require the creation of separate bank accounts for Federal cash, thus increasing administrative activities and costs.

Response: There appears to be a misunderstanding here. Attachment A, "Cash Depositories," to Circular A-110 specifically prohibits Federal agencies from requiring separate bank accounts. This prohibition remains in effect.

Comment: Interest earned on Federal funds should be applied to related program activities rather than returned to the Federal Government.

Response: In a 1962 decision (42 Comp. Gen. 289 (1962)), the Comptroller General held that grantees may not retain interest earned on grant funds unless specifically authorized by law. Interest earned on grant funds, according to the decision should accrue to the United States and should be accounted for and deposited in the Treasury as miscellaneous receipts.

Comment: If the recipient has an overall negative balance, the Federal Government should be willing to pay interest to the recipient.

Response: Attachment I, "Payment Requirements," to Circular A-110, provides for recipients to get advances or grants and cooperative agreements when the recipient has procedures for minimizing cash balances. Therefore, generally recipients should not be running negative balances. Instances where Federal agencies are unwilling or unable to provide advance funding in accordance with the provision of the circular should be referred to the Financial Management Division, Office of Management and Budget.

Comment: The proposed revision did not provide procedures for computing interest.

Response: The revision now calls for interest to be remitted at least quarterly. The requirement to return interest to the Federal Government is not a new one and recipients should have well established procedures to account for interest on Federal funds. Since 1976 Attachment D, "Program Income" to Circular A-110 has required interest earned on advances of Federal funds to be remitted to the Federal Government. Procedures should be consistent with sound cash management procedures and Treasury Department guidance in this area.

Comment: The proposed revision is not clear as to whether State universities, covered by Circular A-110, will be required to remit interest income to the Federal Government.

Response: Section 203 of the Intergovernmental Cooperation Act of 1968; 42 U.S.C. 34213 (1976) provides that States and their instrumentalities generally are not accountable for

interest earned on grant-in-aid funds. Therefore, State universities that are instrumentalities of a State would not be subject to the proposed revision.

Comment: Increased administrative cost as a result of the revision will in some cases exceed interest income, particularly when accounting for small amount of interest.

Response: The revision now authorizes recipients to keep interest income up to $100 to pay administrative expenses.

The following paragraph is added to Attachment I, "Payment Requirements."

"8.a Recipients shall maintain advances of Federal funds in interest bearing accounts. Interest earned on Federal advances deposited in such accounts shall be remitted promptly, but at least quarterly, to the Federal agencies that provided the funds. Interest amounts up to $100 per year may be retained by the recipient for administrative expense.

James C. Miller III,

Director.

[FR Doc. 87-2701 Filed 2-9-87; 8:45 am]

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Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 731, etc.

Protecting Historic Properties From Surface Coal Mining Operations; Final Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 731, 732, 761, 772, 773, 779, 780, 783, and 784

Protecting Historic Properties From Surface Coal Mining Operations

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is amending its regulations with respect to how historic properties are considered during conduct of surface coal mining operations. Provisions addressing the definition of cemetery, collection of information on historic properties, preparation of reclamation plans by applicants for permits to conduct coal mining operations, and consideration of historic properties by State regulatory authorities are included. These rules are being promulgated (1) to implement a decision by the U.S. District Court for the District of Columbia, (2) in order to facilitate the implementation of OSMRE's responsibilities under the Surface Mining Control and Reclamation Act of 1977 (the Act or SMCRA), and under the National Historic Preservation Act of 1966, as amended (NHPA), and (3) in response to a petition for rulemaking filed with OSMRE by the Society of Professional Archeologists (SOPA). These rules clarify the responsibilities of OSMRE, State regulatory authorities, and applicants for permits to conduct surface coal mining operations and coal exploration to ensure appropriate consideration of important historic properties.

EFFECTIVE DATE: March 12, 1987.

FOR FURTHER INFORMATION CONTACT: Annetta L. Cheek, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Washington, DC 20240. Telephone (202) 343-7951 (FTS or commercial).

SUPPLEMENTARY INFORMATION:

I. Background
II. Rules Adopted and Responses to Public Comments
III. Procedural Matters

I. Background

A. Introduction

These rules are being promulgated (1) to implement a decision by the U.S. District Court for the District of Columbia, (2) in order to facilitate the implementation of OSMRE's responsibilities under the Surface Mining Control and Reclamation Act of 1977, and under the National Historic Preservation Act of 1966, as amended, and (3) in response to a petition for rulemaking filed with OSMRE by the Society of Professional Archeologists (SOPA).

B. Statutory Authority

Surface Mining Control and Reclamation Act

Historic properties are addressed by the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.* Section 102 of the Act provides that the purposes of the Act include establishing a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations, assuring that the rights of surface landowners and other persons with a legal interest in the land or appurtenances are fully protected from such operations, and assuring that such operations are conducted to protect the environment. Section 201(c)(2) provides that the Secretary, acting through OSMRE, shall publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of the Act, and section 201(c)(13) provides that the Secretary shall perform such other duties as may be provided by law and related to the purposes of the Act. Section 501(b) requires the Secretary to promulgate regulations covering a permanent regulatory program and establishing procedures and requirements for State programs. Historic properties are addressed specifically in sections 507(b)(13), 522(a)(3)(B), 522(e)(3) and 522(e)(5) of the Act. Section 507(b)(13) of the Act requires applicants for permits to conduct coal mining operations to include in their applications accurate maps showing all manmade features and significant known archeological sites existing on the date of application.

Section 522(a)(3)(B) of the Act authorizes regulatory authorities to determine that an area is unsuitable for all or certain types of coal mining if it would affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems.

Section 522(e) of the Act prohibits or limits surface coal mining operations on or near certain private, Federal, and other public lands. Section 522(e)(3) prohibits surface coal mining operations "which will adversely affect any publicly owned park or places included in the National Register of Historic Sites (sic) unless approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or the historic site," and section 522(e)(5) prohibits surface coal mining operations "within one hundred feet of a cemetery." The prohibitions in section 522(e) are subject to valid existing rights and do not apply to operations existing on August 3, 1977.

National Historic Preservation Act

The National Historic Preservation Act of 1966, as amended (Pub. L. 89-665, 16 U.S.C. 470 *et seq.*), established that it was national policy to encourage historic preservation in Federal, State, and private sectors. It established the National Register of Historic Places, State Historic Preservation Programs, and the President's Advisory Council on Historic Preservation.

The National Register of Historic Places is a Federal list of historic properties important in American history, architecture, archeology, engineering, and culture. Properties listed on and eligible for listing on the National Register receive special consideration during the planning and implementation of Federal, federally assisted, and federally licensed projects.

The State Historic Preservation Officer is responsible for administering the State Historic Preservation Program. Among other duties, this officer is to prepare and implement a comprehensive statewide historic preservation plan and to advise and assist, as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities. He is also to cooperate with the Department of the Interior, the Advisory Council on Historic Preservation, and other Federal and State agencies, local governments, and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development.

The President's Advisory Council on Historic Preservation advises the President and the Congress on matters relating to historic preservation. Among other functions, the Advisory Council recommends measures to coordinate activities of Federal, State, and local agencies and private institutions and individuals in relation to historic preservation, and reviews the policies and programs of Federal agencies and recommends to such agencies methods to improve the effectiveness, coordination, and consistency of those policies and programs with the National Historic Preservation Act.

Section 106 of the National Historic Preservation Act requires Federal agency heads, prior to authorizing

expenditure of Federal funds on a Federal or federally assisted undertaking; or prior to issuing a Federal license for such an undertaking; to consider the effect of the undertaking on historic resources and to provide the Advisory Council on Historic Preservation (Advisory Council) with a reasonable opportunity to comment on the undertaking. The States do not have any direct responsibilities under this section. However, OSMRE's responsibilities for the review and approval of State programs are subject to this section. In order to meet its own section 106 responsibilities, OSMRE reviews State program provisions as well as its own operations to ensure that appropriate consideration is being given to historic properties.

C. Regulatory History

Provisions for consideration of historic properties were promulgated by OSMRE as part of the permanent regulatory program for surface coal mining and reclamation operations on March 13, 1979 [44 FR 15324 *et seq.*] and on September 14, 1983 [48 FR 41348 *et seq.*]. Amendments to relevant sections of the individual parts which deal with historic properties were promulgated on the following dates: 30 CFR Part 731—June 17, 1982, (47 FR 26364) and January 18, 1983 (48 FR 2272); 30 CFR Part 732—January 23, 1981 (46 FR 7907), and June 17, 1982 (47 FR 26366 and 26367); 30 CFR Part 772—September 8, 1983 (48 FR 40634); 30 CFR Part 773—September 28, 1983 (48 FR 44391); and 30 CFR Part 779—August 24, 1979 (44 FR 49685), August 4, 1980 (45 FR 51550), April 5, 1983 (48 FR 14822), and September 14, 1983 (48 FR 41356).

OSMRE's regulations established certain procedures which affect the consideration of historic properties, as follows:

1. An applicant for a permit must identify eligible and listed properties based on all available information. [§§ 779.12(b) and 779.24(i)]

The regulations further specify that available information includes, but is not limited to, data of State and local preservation agencies.

2. The State Historic Preservation Officer (SHPO) is notified of all permit applications, and given an opportunity to comment. [§§ 773.13(a)(3)(ii) and 773.13(b)]

3. The public is also notified in a local newspaper of the complete permit application and given an opportunity to comment. [§ 773.13]

4. Any person having an interest that may be adversely affected may request an informal conference to submit information to the regulatory authority. [§ 773.13(c)]

5. The regulatory authority, based on such comments, records of any informal conferences, and on the information in the application, may require modification of the permit application. [§ 773.15]

This modification could include a requirement to obtain additional information and conduct new analyses to determine whether historic properties eligible for inclusion in the National Register of Historic Places are present in a proposed permit area.

Although not mandatory, the use of a field survey or background research could be required by the regulatory authority at this time.

6. The regulatory authority should be able to demonstrate that it has given consideration to a State Historic Preservation Officer's well reasoned comments. [§ 773.15]

7. The regulatory authority has the authority to require the operator to conduct appropriate mitigation measures to preserve important historic resources. Such measures could include a variety of activities from photographic recordation through archeological data recovery. [§ 773.15]

8. Procedures are available for the administrative and judicial review of decisions or permits. [Part 775]

In late 1980, OSMRE and the Advisory Council on Historic Preservation entered into a programmatic memorandum of agreement setting forth a process for consultation between OSMRE and the Advisory Council in connection with the Secretary of the Interior's approval of State permanent regulatory program submissions. The agreement required OSMRE to propose amendments to certain of its permanent program regulations and to provide the Advisory Council with the opportunity to comment on proposed State programs and amendments prior to OSMRE's recommendation to the Secretary of the Interior on the approval or disapproval of the proposed programs. OSMRE will review this agreement for consistency with the provisions of these rules, once these rules become effective, and will renegotiate it, if necessary.

In the last two years, OSMRE has directed substantial resources to interpreting the regulatory program to provide clearer guidance on appropriate consideration of historic resources. OSMRE's historic preservation requirements were set forth in several letters to State Historic Preservation Officers and the State regulatory authorities. In these letters, OSMRE set forth the following basic concepts:

1. In accepting financial assistance for its program from OSMRE, a State regulatory authority assures the Secretary that it will assist him in his compliance with section 106 of the NHPA by consulting with the State Historic Preservation Officer on the identification of properties listed on or eligible for listing on the National Register of Historic Places and by complying with the Secretary's requirements to avoid or mitigate adverse impacts upon such properties. (This assurance is required to be included in every Federal grant by the Office of Management and Budget Circular A-102, Attachment M.)

2. State programs must contain provisions no less effective than OSMRE's permanent program regulations.

3. OSMRE requires through the national regulations that individual permit decisions by the State regulatory authority take into account comments or recommendations from the State Historic Preservation Officer concerning the effect of the decision on historic properties.

4. The national regulatory program provides the basis and authority for State programs to assure that appropriate consideration is given to historic properties.

OSMRE has received a large number of inquiries from State regulatory authorities, State Historic Preservation Officers, the professional archeological and historic preservation community, and the coal mining industry concerning the historic preservation requirements in the program. Clarification of the responsibility and authority of the State regulatory authorities regarding historic properties has been sought by a number of correspondents. Additionally, information on the effect of the provisions of the National Historic Preservation Act on the State programs has been sought by the States, industry, and the preservation community.

D. District Court Decisions

Section 522(e)(3) of SMCRA prohibits surface coal mining operations "which will adversely affect any publicly owned park or places included in the National Register of Historic Sites (sic), unless approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or the historic site." In March 1979, OSMRE implemented this section of the Act through rules at 30 CFR Part 761 by providing protection both for those historic properties eligible for listing on the National Register of Historic Places, and properties actually listed on the

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National Register. The regulations protected privately owned places in addition to publicly owned places eligible for or listed on the National Register. These provisions of the permanent program regulations were challenged in the U.S. District Court for the District of Columbia (*In Re: Permanent Surface Mining Regulation Litigation*, No. 79–1144 D.D.C. 1980) by citizen, industry, and environmental plaintiffs. As a result, OSMRE voluntarily suspended those provisions of the rules on November 27, 1979 (44 FR 67942) to the extent that such rules applied to any places eligible for listing on the National Register and to privately owned places listed on the National Register. On February 26, 1980, the district court recognized the government's concession that the Secretary's rules implementing section 522(e)(3) of SMCRA should not extend to places eligible for listing, but only to places listed on the National Register. (*ibid* at p. 22–23). In 1983, OSMRE revised sections 761.11(c) and 761.12(f) to limit the protections of section 522(e)(3) of the Act to publicly owned properties listed on the National Register of Historic Places (48 FR 41348).

The 1983 regulations were also challenged in *In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79–1144 (D.D.C. 1985), July 15, 1985, Mem. Op. at p. 77. In that litigation, the District Court held that OSMRE had properly excluded properties eligible for listing on the National Register of Historic Places from the protections offered by section 522(e)(3) of the Act.

However, the court also determined that the exclusion of privately owned properties listed on the National Register of Historic Places from the protections offered by section 522(e)(3) was improper, and that the Congress intended to protect both privately owned and publicly owned places on the National Register of Historic Places. These final rules respond to this decision of the District Court.

Citizen and environmental plaintiffs in *In Re: Permanent (II)* also challenged OSMRE's definition of "cemetery" in § 761.5. Section 522(e)(5) of the Act prohibits surface coal mining operations "within one hundred feet of a cemetery." In 1979, OSMRE defined a cemetery as "any area of land where human bodies are interred" (30 CFR 761.5, March 13, 1979, 44 FR 15342). However, in September 1983, OSMRE amended the definition of "cemetery" to be "any area of land where human bodies are interred, except for private family burial grounds" (48 FR 41348, September 14, 1983). This revision was made in response to the type of situation that arose in *Holmes Limestone Co.* v. *Andrus*, 655 F. 2d 732 (6th Cir. 1981), *cert. denied*, 456 U.S. 995 (1982), in which the owners of a private burial plot wanted to allow mining closer to the plot than the 1979 regulations allowed. The District Court decided that the 1983 definition was inconsistent with the Act (July 15, 1985 Mem. Op. at p. 83). Consequently, the court remanded the definition of "cemetery" in Section 761.5. The final rules promulgated here respond to this decision by eliminating the exclusion for "private family burial grounds" from the definition of "cemetery".

E. Petition for Rulemaking

The Society of Professional Archeologists filed a petition for rulemaking with OSMRE on September 15, 1983. The petition asserted that because of the absence of guidance in the regulatory program, State regulatory authorities are implementing historic preservation provisions inconsistently; Subsequently, that Society joined with the National Trust for Historic Preservation in the legal challenge before the District Court for the District of Columbia to OSMRE's regulations implementing section 522 of SMCRA promulgated during 1983. This case is discussed above under D. *Court Decisions*.

The Society for Professional Archeologists' principal concerns in the petition were that the existing regulations are silent as to (1) how properties eligible for, but not yet listed on, the National Register of Historic Places are to be identified by applicants, and (2) what a State regulatory authority is to do when mining will impact such properties.

On August 23, 1985 (50 FR 34167), OSMRE published a notice requesting public comment on the rulemaking petition. On December 13, 1985, the Director of OSMRE decided to grant the petition in principle by initiating rulemaking to address the concerns of the petitioner. However, the Director determined that it would be inappropriate to propose the specific provisions suggested by the petitioner. This decision is discussed in more detail in the January 30, 1986, **Federal Register** (51 FR 3802). The final rules published here result in part from the proposed rules OSMRE committed to publish in response to the Society for Professional Archeologists petition.

F. Public Participation

OSMRE issued a notice of proposed rulemaking on March 11, 1986 (51 FR 8466). The proposed regulations were available for public comment until June 9, 1986. In the notice, OSMRE provided an opportunity for the public to request hearings on the issue. One hearing was requested; it was held in Columbus, Ohio, on June 3, 1986.

Comments were received from a broad array of private individuals, local, State, and Federal agencies, amateur and professional historic resource associations, scientific and educational institutions, and industry representatives. Seventeen individuals presented testimony at the public hearing. A total of 52 written responses were received prior to the end of the public comment period; these public comments addressed all sections of the proposed rules, as well as some sections for which OSMRE had not proposed any changes. These responses addressed well over 300 separate issues, many of which were general in nature rather than directed at specific sections in the proposal.

II. Rules Adopted and Responses to Public Comments

A. Regulatory Approach

Section 101(f) of SMCRA provides that because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface coal mining and reclamation operations should rest with the States.

At this time, twenty-four States have been granted primacy for the regulation of surface coal mining operations. Prior to assuming primacy, those States developed programs meeting the requirements of SMCRA. The intent of the rules adopted here is to ensure that as part of those programs regulatory authorities have regulations and procedures which enable them to make reasonable and informed decisions about the disposition of important historic resources. The rules are designed to allow regulatory authorities maximum flexibility in adopting procedures which are suitable for conditions existing in the individual States. The rules emphasize reasonable decisionmaking about historic resources without specifying all the means by which State regulatory authorities choose to achieve the specified results. This approach is consistent with that adopted by OSMRE throughout its regulatory program and with the intent of SMCRA to place primary regulatory responsibility on the States.

OSMRE recognizes that this approach requires regulatory authorities to develop provisions for the consideration of historic resources and for making decisions about those resources, including about situations that are open to differing interpretations. Nevertheless, OSMRE believes that this flexible approach is critical to the principle of State primacy and, properly applied by the regulatory authorities, will facilitate protection of important historic resources with minimum impact on the mining industry in each State.

B. Summary of Rules Adopted

These final rules include the following provisions:

Part 731—Submission of State Programs. Section 731.14(g) contains a new paragraph (17) separating the requirement for States to provide OSMRE with information on their provisions to consult with State, Federal, and local agencies with responsibility for historic and archeological resources from the requirement to consult with agencies with responsibility for fish and wildlife and related resources.

Part 732—Procedures and Criteria for Approval or disapproval of State Program submissions. Section 732.17 contains a new paragraph (h)(4) requiring that OSMRE submit all State program amendments which may have an effect on historic or archeological resources to the State Historic Preservation Officer and to the Advisory Council on Historic Preservation for comment.

Part 761—Areas Designated by Act of Congress. The definition of cemetery in § 761.5 is revised to mean "an area of land where human bodies are interred."

Section 761.11(c) is amended to provide that, unless an operator has valid existing rights or an operation existed on August 3, 1977, any places listed on the National Register of Historic Places cannot be adversely affected by surface coal mining operations, regardless of ownership, unless joint approval is obtained from the regulatory authority and the agency with jurisdiction over the place. Section 761.11(g) is amended expressly to acknowledge that cemeteries may be relocated if relocation is authorized by applicable State law or regulations.

Paragraph 761.12(f)(1) is amended to require that the regulatory authority transmit to an agency with jurisdiction over a place listed on the National Register of Historic Places, regardless of ownership, a copy of applicable parts of the permit application, where the regulatory authority determines that the proposed operation will adversely affect that place.

Part 772—Requirements for Coal Exploration. Paragraph 772.12(b)(8)(iv) is amended to provide that the regulatory authority can require an applicant to provide necessary information on historic or archeological resources as part of an application for permission to explore for coal.

Part 773—Requirements for Permits and Permit Processing. Section 773.12 is amended to add the Archaeological Resources Protection Act to the list of statutes with which the review and issuance of permits under SMCRA must be coordinated.

Paragraph 773.15(c)(11) provides that the regulatory authority must make a finding that the effect of a proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places has been taken into account in the permitting process, which may be evidenced in part by appropriate conditions on the permit protecting important historic properties.

Parts 779 and 783—Permit Applications—Minimum Requirements for Information on Environmental Resources. Sections 779.12(b) and 783.12(b) provide that permit applications must include information on the nature of historic and archeological resources listed or eligible for listing on the National Register of Historic Places, based on all available information, including information from the State Historic Preservation Officer and local archeological and historical groups. The sections are amended further to provide that the regulatory authority may require an applicant to identify and evaluate important historic and archeological resources that may be eligible for listing on the National Register of Historic Places through collection of additional information, conduct of field investigations, or other appropriate analyses.

Sections 779.24(j) and 783.24(j) are amended to provide that maps included with a permit application must show each cemetery that is located in or within 100 feet of the proposed permit area.

Parts 780 and 784—Permit Applications—Minimum Requirements for Reclamation and Operation Plan. Sections 780.31 and 784.17 are amended to require that the reclamation and operation plan shall describe the measures to be used to prevent adverse impacts to any places listed on the National Register of Historic Places, regardless of ownership. If valid existing rights exist, or if approval to mine is to be obtained from the regulatory authority and the agency with jurisdiction over the place, as required under 30 CFR 761.12(f), the plan shall describe the measures to be used to minimize impacts. The regulatory authority may require the applicant to protect historic and archeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. However, any such measures may be implemented prior to the time the properties would be affected by the mining operation, rather than prior to permit issuance.

B. General Comments.

Numerous comments were made that addressed the overall rulemaking, rather than specific sections. Additionally, many respondents made similar comments about several different sections of the proposed rule. These comments are addressed in this section.

Authority. Several respondents questioned OSMRE's authority to promulgate regulations placing requirements for the consideration of historic properties on applicants for permits to conduct surface coal mining operations OSMRE believes that it has the authority under SMCRA to require States and permit applicants to undertake activities necessary to enable the Secretary to meet his responsibilities under the National Historic Preservation Act. These rules enable the States to assist the Secretary in carrying out his responsibilities under SMCRA and under the National Historic Preservation act by specifying that regulatory authorities have the authority to ensure that adequate information on historic resources is contained in the permit application so that informed and reasoned decisions about such resources can be made. Additionally, they clarify that regulatory authorities have the responsibility and authority to require protection of important historic properties when it is in the public interest to do so.

As discussed more fully above under Statutory Authority, Section 106 of the National Historic Preservation Act requires Federal agency heads, prior to authorizing expenditure of Federal funds on a Federal or federally assisted undertaking, to consider the effect of the undertaking on historic resources and to provide the Advisory Council on Historic Preservation with a reasonable opportunity to comment on the undertaking. The regulations implementing that section of the National Historic Preservation Act, 36 CFR 800.2(o), define "undertaking" as any project, activity, or program that is under the direct or indirect jurisdiction

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of a Federal agency or licensed or assisted by a Federal agency, and that can result in changes in the character or use of historic properties.

The Secretary's approval of State programs to regulate surface coal mining operations under SMCRA, and OSMRE's approval of amendments to such State programs are Federal undertakings. The continued implementation of those programs and subsequent amendments constitute Federally-assisted programs within the meaning of the term "undertaking," because those programs are supported by Federal grants under Section 705 of SMCRA. Thus the Secretary, acting through OSMRE, is responsible for assuring that those programs include consideration of historic resources and alternatives to avoid or mitigate adverse effects. Consideration of the effects of surface coal mining operations extends both to know resources and to situations where a well reasoned conclusion has been reached that there may be resources which are likely to be impacted, as well as to properties listed on, and those eligible for listing on, the National Register of Historic Properties.

OSMRE has implemented its responsibilities both by consulting with the Advisory council concerning initial approval of State programs, and by ensuring that the substantive provisions of those programs will enable States to assist OSMRE in carrying out its Section 106 responsibilities. The substantive provisions include the State's process for consulting with federal, State and local agencies having responsibility for historic resources, permit application information, permitting decisions, and decisions on areas unsuitable for mining under section 522. The States, in turn, are responsible for implementing those substantive provisions so that decisions at the State level are consistent with the assurances they provided in accepting Federal funds that they would assist OSMRE to meet its Section 106 responsibilities.

Several commenters asserted that in the proposed rules OSMRE was attempting to justify imposition of substantive requirments on the States and permittees on the basis of the National Historic Preservation Act because, in the commenters' view, OSMRE lacks authority to do so under SMCRA. Some of these commenters also asserted that OSMRE is limited in its authority to impose requirements for the content of State programs and permit applications to those requirements specifically enumerated in SMCRA in sections 503, 507, and 508, among others. OSMRE does not agree with these assertions. OSMRE does not rely on the National Historic Preservation Act for its authority to impose these requirements. SMCRA contains a broad grant of rulemaking authority to the Secretary under sections 201(c)(2) and 501(b) to promulgate those regulations necessary to carry out the purposes and provisions of SMCRA.

The Secretary's authority to promulgate regulations specifying permit application requirements beyond those specifically enumerated in SMCRA has been upheld by the Court of Appeals for the District of Columbia Circuit, as found *In Re: Permanent Surface Mining Regulation Litigation*, 653 F. 2d 514 (D.C. Cir. 1981). The court stated that "the Act's explicit listings of information required to permit applicants are not exhaustive, and do not preclude the Secretary from requiring the states to secure additional information needed to ensure compliance with the Act" (653 F. 2d 514, 527).

Several commenters objected to what they perceived as OSMRE's use of OMB Circular A–102 as an authority for these rules. OSMRE has not used this circular as a source of regulatory authority. However, this circular does not reaffirm the application of the requirements of the National Historic Preservation Act to OSMRE's continued funding of State programs.

Compliance with Executive Order 12291 and the Regulatory Flexibility Act. Two commenters took issue with OSMRE's statement that these rules are not a major rule requiring a regulatory impact analysis under Executive Order 12291 or a regulatory flexibility analysis under the Regulatory Flexibility Act. OSMRE bases this statement on the fact that in general these rules are a clarification of existing provisions, in OSMRE's rules. As enumerated earlier in this preamble, OSMRE's existing regulatory program already provided the authority and responsibility for State regulatory authorities to consider historic resources. Therefore, although these rules provide greater specificity and guidance, they should not have a major effect within the meaning of EO 12291 or the Regulatory Flexibility Act.

One commenter stated that if OSMRE requires archeological surveys, this will duplicate programs of the State Historic Preservation Officer established under the National Historic Preservation Act, and will therefore violate the provisions of Executive Order 12291 intended to avoid such duplication. OSMRE does not agree that these are duplicate programs. First, these rules do not require surveys; rather, they authorize the regulatory authority to require them, if appropriate. The programs of the State Historic Preservation Officer are intended to prepare and implement a comprehensive statewide historic preservation plan and to advise and assist, as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities. OSMRE's responsibility is to protect society and the environments from the adverse effects of surface coal mining operations. These specific rules are intended to ensure that OSMRE and State regulatory authorities can carry out that responsibility with respect to historic resources. Duplicative surveys are not needed or required for areas where surveys have already been conducted nor are surveys necessary in all instances.

Consistency of terminology. Several commenters noted that OSMRE did not use such terms as "historic," "cultural," and "archeological" consistently in its proposed rule. OSMRE agrees, and will change all references to the types of resources protected by this rule itself to "historic and archeological" for purposes of consistency. This phrase is intended to include all property types defined in section 301(5) of the National Historic Preservation Act. Throughout this preamble, any references to "historic" resources should generally be considered to cover archeological properties as well.

Detail of the rule. A number of commenters suggested that the rule as proposed did not contain enough information and definition of terms to provide adequate direction to regulatory authorities for the consideration of important historic properties. Some commenters were concerned that this lack of specificity would result in uneven treatment of historic resources and of applicants under different State regulatory programs. One commenter asked what were the limits of regulatory discretion under these rules.

Like other parts of OSMRE's regulatory program, these rules assure that State regulatory authorities have the authority and obligation to meet minimum Federal requirements for compliance with the statutory mandates. Regulatory authorities may impose additional requirements if they believe that such requirements are appropriate. Additionally, OSMRE believes that the details of procedures used in each State for considering important historic properties in an effective and efficient manner are best developed on a State by State basis by the regulatory authority that must implement them, with continuing oversight by OSMRE. Although this will require regulatory

authorities to use judgment in determining what is an appropriate action in a specific case, this approach will allow each regulatory authority to develop procedures best suited to the individual circumstances of its State. Through its State program review OSMRE will monitor State activities to ensure that the requirements of the approved State program are being met.

Moreover, technical guidance is available to regulatory authorities from the State Historic Preservation Officer, the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (discussed below), and from other similar sources. Should it become apparent in the future that regulatory authorities need additional assistance, OSMRE will consider developing guidance to address specific issues.

Clarification of Existing Provisions. Several commenters disagreed with OSMRE's statement in the preamble to the proposed rules that the proposed rules clarify existing authorities and responsibilities, and impose no new responsibilities. One reason these rules are being promulgated is to resolve questions from industry, State Historic Preservation Officers, historic preservation groups, and others concerning those authorities and responsibilities. In resolving these questions, additional detail has been added to the regulatory program. This detail may introduce more specific program requirements in certain cases where States did not interpret their programs to provide the authority which OSMRE maintains existed in the national rules. OSMRE is primarily concerned whether these rules can be reasonably implemented and are consistent with law. OSMRE has concluded that these criteria have beer satisfied in this rulemaking.

Role of the State Historic Preservation Officer. Numerous commenters requested that OSMRE include a formal role throughout the permitting process for the State Historic Preservation Officer. They stated that OSMRE should specify that regulatory authorities had to seek the input of that official on eligibility of sites to the National Register of Historic Places, need for and types of surveys, effects of proposed surface coal mining activities on important historic resources, need for and types of mitigation or treatment, and on any other decisions involving historic resources. OSMRE agrees that the SHPO has an important role to play in determining eligibility of historic resources to the National Register of Historic Places, as specified by the National Historic Preservation Act, and in providing the regulatory authority with advice and technical assistance throughout the permitting process. Therefore, the State Historic Preservation Officer is notified of each permit application and given an opportunity to comment. Moreover, the permit application is to be based in part on information available from the State Historic Preservation Officer. However, both the State Historic Preservation Officer and the regulatory authority are State agencies, and OSMRE believes that it is appropriate to leave the details of the consultation processes between them to the individual States.

Requirements of State programs. Some commenters stated that they believed the proposed rules did not include any requirements that would cause regulatory authorities to adequately consider the effects of their undertakings on significant historic properties. OSMRE does not agree. Under these rules, regulatory authorities will be required to make a written finding, prior to issuing a permit, that significant historic resources have been considered. This finding, in turn, is based on a requirement to determine that a permit application is complete and accurate. The permit applicant is required to include both the environmental information in Parts 779 and 783 and the reclamation and operation plan in Parts 780 and 784. These must include information on historic resources.

One commenter stated that operators should be required to develop a plan to provide for adequate evaluation and mitigation measures. Parts 780 and 784 provide authority to the regulatory authority to require adequate evaluation and mitigation measures. OSMRE believes it is appropriate for the regulatory authority to determine, on a case by case basis, whether such measures are necessary.

Numerous commenters stated that OSMRE should require State regulatory authorities to undertake certain activities to ensure protection of important historic resources. They criticized the proposed rules as providing too much discretion, and stated that it was unlikely that regulatory authorities would undertake any activities to protect such properties unless they were required to do so.

OSMRE intends these rules to ensure that important historic properties receive adequate consideration during the permitting process. The regulatory authority is required by the revised paragraph 773.15(c)(11) to make a written finding that properties listed on and eligible for listing on the National Register of Historic Places have been taken into account in the permit process. Under section 522(e) of SMCRA, the regulatory authority (and OSMRE for permits it issues) must protect publicly and privately owned properties listed on the National Register of Historic Places. There is no obligation under section 522(e)(3) to protect properties that are eligible for, but not listed on, the National Register. However, this finding requires the regulatory authority to consider such resources when making permitting decisions in order to assure that the regulatory authority can assist the Secretary in implementing his responsibilities under section 106 of the National Historic Preservation Act. For regulatory authorities to give adequate consideration to such properties, additional information about their existence, location, and nature may be necessary. Regulatory authorities will have to undertake whatever steps are needed as a basis for the finding. As discussed above, OSMRE has concluded that the specific process selected by a particular State in a particular permit situation should be determined by the State itself. It is neither necessary nor desirable to specify particular activities that States must undertake at any specific stage of the permitting process.

Relationship to the 36 CFR Part 800 Process. A number of commenters suggested that the regulations should include provisions which would require the State regulatory authorities to establish a system parallel to that established by the Advisory Council on Historic Preservation in 36 CFR Part 800. Those regulations (which have been revised, effective October 1, 1986, since submission of the comments on this rulemaking (51 FR 31115)), implement section 106 of the National Historic Preservation Act. These comments were based on the incorrect premise that State regulatory authority implementation of State programs is subject to 36 CFR Part 800 because OSMRE is subject to those rules when it administers a regulatory program.

Because considerable confusion exists about the relationship of the requirements in 36 CFR Part 800 to the different programs which OSMRE implements, further explanation is appropriate.

1. In some cases, OSMRE functions as the regulatory authority in the permitting of surface coal mining operations. This occurs in Federal program states and on Indian lands. In these situations, permits issued by OSMRE are direct Federal actions or undertakings, subject to all the requirements of various Federal

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laws such as the National Environmental Policy Act (NEPA) and the National Historic Preservation Act, including section 106.

2. In States with regulatory programs approved by OSMRE, the regulatory authority issues permits for surface coal mining operations. These permits are State undertakings, not Federal undertakings, and thus the provisions of Federal laws and rules, such as NEPA, the National Historic Preservation Act and 36 CFR Part 800, do not apply directly. The provisions of 30 CFR 730.5 require State programs to be consistent with SMCRA and rules adopted by OSMRE under SMCRA. However, they do not require direct State program implementation of other Federal laws such as the National Historic Preservation Act. Thus, State programs must be no less stringent than SMCRA, and no less effective than the Secretary's regulations in meeting the requirements of SMCRA. There is no requirement in SMCRA that the approved State programs be "no less effective" than the requirements of the National Historic Preservation Act.

On the other hand, the Secretary's approval of State regulatory programs and OSMRE's approval of amendments to approved State programs under SMCRA are Federal undertakings. Therefore, in order to implement its responsibilities under section 106 of the National Historic Preservation Act, OSMRE is promulgating these regulations to ensure that State regulatory authorities can assist the Secretary in the implementation of those responsibilities. Moreover, because the granting of Federal monies constitutes a Federally assisted undertaking subject to section 106, all Federal grantees, including State regulatory authorities, are required to assure Federal grantor agencies that they will provide such assistance, as a condition of receiving the Federal grants.

3. In States with cooperative agreements with OSMRE that make the State the regulatory authority on Federal lands, the provisions of section 106 do not apply to the issuance of permits by the State regulatory authority. However, permit issuance is, with rare exceptions, accompanied by other Federal actions, such as leasing or mining plan approval, which are subject to section 106. Additionally, whenever Federal lands are involved the land managing agency has responsibilities for protection of historic resources under section 110 of the National Historic Preservation Act.

Application of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. A number of commenters noted that OSMRE had not mentioned the Secretary's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716) in its discussion of what historic preservation activities are appropriate under particular circumstances. This document was issued by the Secretary under the authority of the National Historic Preservation Act to provide general guidance to Federal agencies, States, and the public on appropriate archeological and historic preservation activities. Some of these commenters recommended that OSMRE require that these standards be applied to the State programs. OSMRE does not believe it is appropriate to require application of a document which was meant to be advisory. However, OSMRE uses these Standards and Guidelines, when appropriate, in its Federal program activities, and it does agree that these Standards and Guidelines offer useful assistance to anyone involved in the consideration of important historic properties.

Eligibility. Several commenters asked what process would be followed in making determinations of the eligibility of properties for listing on the National Register of Historic Places, and how eligibility was defined. There are four basic criteria for eligibility; these criteria are found at 36 CFR 60.4. The Advisory Council's regulations at 36 CFR 800.2(e) state that properties eligible for inclusion in the National Register includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register listing criteria. The National Register has regulations at 36 CFR 60 and 63 which describe the process through which such determinations are made. In brief, the process established by the National Register's rules requires the State Historic Preservation Officer and the Federal agency to make such determinations.

In cases of unresolved conflicts regarding eligibility of properties, they can be submitted to the Keeper of the National Register, National Park Service, whose decision is final.

Determinations of effect. Several commenters asked how "effect" was defined, and how regulatory authorities will determine when an important historic resource would be adversely affected by surface coal mining operations. For Federal undertakings subject to the provisions of section 106 of the National Historic Preservation Act OSMRE will use the definition of effects and adverse effects in 36 CFR 800.9 for purposes of complying with 36 CFR Part 800. The concepts of effect and adverse effect are relevant under that Part in initiating the consultation process among the Federal agency, the State Historic Preservation Officer, and the Advisory Council on Historic Preservation. Briefly, 36 CFR 800.9 states that adverse effects occur when an activity diminishes the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Regulatory authorities administering the prohibitions of section 522(e)(3) of SMCRA are not obligated to use the definitions at 36 CFR 800.9 for determining an adverse effect on historic resources from surface coal mining operations. However, regulatory authorities may want to use the definitions in 36 CFR 800.9 as guidance in applying section 522(e)(3) to places listed on the National Register of Historic Places.

Predictive modeling. Two commenters expressed concern that the entire approach taken in the proposed rules would preclude use of predictive modeling techniques and was based on a view that proper management of historic resources mandates that all such resources should be preserved undisturbed or mitigated at all costs regardless of the site's historic value in relation to other similar sites outside the impact area. This is not the case. Nothing in the proposed rules discourages State regulatory authorities from using predictive modeling techniques when such techniques are appropriate; nothing in these rules requires identification, treatment or preservation of all historic resources. Indeed, OSMRE's commitment to allowing regulatory authorities flexibility in determining what specific processes are necessary to ensure adequate consideration of important historic resources would clearly allow predictive modeling to be used and encourages regulatory authorities to make decisions concerning historic resources which balances the interest of the public in such resources against the need to mine coal. Furthermore, the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, which OSMRE recommends to regulatory authorities as a guide to determine what activities might be appropriate in any particular case to protect historic resources, is based on the concept that decisions about historic properties should take place within the historic context of the area, including what other similar resources occur.

Qualified staff. Numerous commenters suggested that OSMRE should require that any historic resource

activities conducted or caused to be conducted by a regulatory authority be done by qualified professional personnel, and that regulatory authorities themselves be required to hire an historic resource professional. OSMRE does not agree that it is necessary to specify that all historic resource activities that a regulatory authority may require a permittee or permit applicant to conduct be carried out by professional personnel. The regulatory authorities are responsible for making reasonable decisions about historic resources and for ensuring that they have been considered in the permitting process. Issuance of a permit requires a finding that they have fulfilled this responsibility. Regulatory authorities have to ensure that the information available to them as a basis for such decisionmaking is of a dependable professional nature, and thus they may want such information to be collected by qualified professionals. However, this does not need to be specified in the rules.

As far as requiring the regulatory authority to have its own professional historic resource staff is concerned, the State Historic Preservation Officer is the official representative of the State on matters dealing with historic resources. Although some regulatory authorities may decide to hire their own staff historic resource personnel, they may also decide that the assistance available to them in the State Historic Preservation Office is adequate to deal with these issues.

Existing mines and resources discovered after permit issuance. Several commenters asked whether the specific provisions of these rules will apply to existing mines. Although the general provisions discussed here already exist in OSMRE's rules, and therefore apply to all existing mines, any specific permitting requirements not already included in OSMRE's rules will not apply retroactively to existing, permitted mines. However, they will apply to pertinent permit revisions that occur in the future. The portions of section 522(e) covered by this rule, including extension of the mining prohibitions to privately owned places listed in the National Register of Historic Places and privately owned burial grounds, apply to all mines.

Similarly, several commenters asked how historic resources discovered subsequent to permit issuance or during mining activities will be handled. Regulatory authorities will have taken into account the probability that currently unknown resources may occur in a particular permit area and will have taken appropriate steps, such as conditioning the permit, to ensure adequate consideration of such properties. However, resources discovered after permit issuance or during mining will not be protected unless they are properties covered by section 522(e) of SMCRA or unless the regulatory authority has conditioned the permit to provide for their protection.

Application to other resource types. One commenter stated that these rules should apply to other resource types, such as limestone, sandstone and gravel. SMCRA applies only to surface coal mining and reclamation operations. These rules are intended to cover OSMRE and State activities regarding such operations.

D. Discussion of Final Rules.

The following text, which describes the final rule and responds to the specific public comments OSMRE received on the proposed rules, is organized by the part and section numbers of the affected provisions. Grammatical or stylistic changes that do not affect the substance of the final rule are not discussed.

1. Part 700—General

Although OSMRE had not proposed any changes for this Part, one commenter suggested that definitions of certain terms dealing with historic resources be included in this Part. OSMRE believes that it is neither appropriate nor necessary to include definitions in this general section. Necessary definitions are included in Parts 701, 705, 761 or in the specific part dealing with the term being defined.

2. Part 731—Submission of State Programs

Section 731.14(g) Content requirements for program submissions. Part 731 provides authority for a State to submit a program to OSMRE for review which, when, approved, allows the State to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within its boundaries. It also establishes general content requirements for program submissions.

OSMRE proposed to amend paragraph 731.14(g)(10), which requires program submissions to include a narrative description, flow chart, or other appropriate documents of the State's proposed system for consulting with State and Federal agencies having responsibility for the protection or management of fish and wildlife and related environmental values; and historic, cultural, and archeological resources. OSMRE proposed to remove the reference to historic, cultural, and archeological resources from paragraph 731.14(g)(10), and create a new paragraph 731.14(g)(17), to address these resources specifically. OSMRE proposed that the new paragraph require the description to include the State's proposed system for consulting with local as well as State agencies having responsibility for historic and archeological resources, and include a description of the State's system for making decisions regarding such resources. This provision was included to clarify the procedures to be followed in a specific State to ensure that the regulatory authority has enough information to make reasonable decisions concerning the effect on historic properties of surface coal mining and reclamation operations and coal exploration under SMCRA. The provision was also intended to provide the Secretary with additional information to assess the effect of State program approval on cultural and historic resources.

In the final rule, OSMRE has adopted the proposal, but has added a requirement to consult with Federal agencies, for the reasons descussed below. No other changes were made to the proposed language.

Several commenters believed that the language proposed for this section would require most State programs to be resubmitted to OSMRE for approval. This is not the case. Following promulgation of these rules, OSMRE will follow the process established in rules at 30 CFR Part 732 to notify States of any program changes which will be necessary to bring that State's program into compliance with these rules.

Several commenters suggested that OSMRE require the regulatory authority to consult with the State Historic Preservation Officer (SHPO) to develop the systems for consultation required under this section of the rule. OSMRE believes that such a requirement is redundant, because § 731.14 already requires consultation with "State agencies having responsibility" for historic resources.

Other commenters suggested that the list of agencies to be consulted under this section be expanded to include various professional societies, Federal agencies, museums, Indian tribes and other preservation groups. OSMRE believes that State and local preservation groups, museums, research institutions, and others can ensure that their concerns are considered by making them known to the State Historic Preservation Officer. They can also contact the regulatory authority directly

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to comment or to request an informal hearing on a permit application or other area of concern. It would be unduly burdensome to require the regulatory authority to consult with such groups routinely.

In the proposed rule OSMRE inadvertently omitted Federal agencies from the required narrative description of agencies to be consulted. A description of the State's system for consulting with Federal and State agencies concerning historic resources has been required since the permanent program regulations were promulgated in 1979. OSMRE has rectified this oversight in the final rule.

Two commenters asked why suggested language for this and other sections of the proposed rules submitted by the Society for American Archaeology during the public comment period on the Society of Professional Archeologists' petition for rulemaking, had not been used. The Society for American Archaeology's suggested language was considered during the initial drafting of the proposed rule. While the proposed rules reflected the general concerns of the Society for American Archaeology, OSMRE determined that the language suggested was too detailed and conflicted with the general principle of State primacy and regulatory flexibility taken throughout OSMRE 's regulatory program. The comments were considered again during the development of these final rules, and OSMRE has reached the same conclusion concerning the specific suggestions make. The suggested language would have specified requirements for State programs in this part; as dicussed earlier, OSMRE believes it is more desirable to establish general standards which will allow individual State regulators to make decisions about the specific means to be used to meet those standards.

Several commenters asked how OSMRE would evaluate decisions made by the State regulatory authorities pursuant to State programs described in response to § 731.14. As with any program component, OSMRE will evaluate the State's process through oversight by examining whether the process is operating in accordance with the approved State program. This evaluation will consider procedures followed and the overall pattern and consistency of the regulatory authority's decisionmaking. Among the factors to be examined, OSMRE will evaluate whether the record indicates that the regulatory authority considered comments on historic resources from the State Historic Preservation Officer and from interested members of the public. OSMRE will follow the same method it uses to evaluate the regulatory authority's consideration of comments from other agencies with special technical expertise, such as the Soil Conservation Service and the Fish and Wildlife Service.

Several commenters noted that OSMRE should provide for annual review and revision of the system established by State regulatory authorities. OSMRE evaluates the administration of each State program annually, including this component.

One commenter asked that OSMRE ensure that there was adequate opportunity for public participation in the development of each State's system for consulting with agencies having responsibility for historic resources, and for making decisions about those resources. Adequate provision for public participation is made at § 731.14(g)(14), which requires the State program to include a narrative description of the proposed system for providing for public participation in the development, revision, and enforcement of State regulations, the State program, and permits issued under the program, and 30 CFR 731.15(b)(10), which provides that the Secretary may not approve a State program unless he finds that it provides for public participation consistent with the requirements of SMCRA and the Federal regulations. In addition, the Secretary may not approve a State program or program amendment until the public has had the opportunity to comment on the program or amendment.

Several commenters believed that the requirements for historic resources contained in this section were not consistent with section 503 of SMCRA, which specifies the required content of an approvable State program. SMCRA specifies minimum requirements for the development of State programs. The Secretary has the authority to promulgate such regulations as are necessary to meet the purposes and provisions of SMCRA, and of related statutory requirements. Section 503(a)(7) provides that State programs have rules and regulations consistent with regulations issued by the Secretary.

3. Part 732—Procedures and Criteria for Approval or Disapproval of State Program Submissions.

Section 732.15 Criteria for approval or disapproval of State programs. Although OSMRE had not proposed any changes for this section, three commenters suggested additions that would have required State programs to contain provisions consistent with the National Historic Preservation Act and its implementing regulations. As discussed above in the section on general comments, this is based on a misunderstanding of the relationship of the National Historic Preservation Act to State programs. Therefore, OSMRE has made no changes to this section.

Section 732.17 State Program Amendments. Section 732.17 details the procedures and criteria that OSMRE uses in approving or disapproving amendments to approved State programs. OSMRE uses the applicable criteria for approval or disapproval of State programs at 30 CFR 732.15 in reviewing State program amendments. For approval, such criteria require that a State's laws and regulations be in accordance with the provisions of the Act and consistent with the requirements of 30 CFR Chapter VII.

OSMRE proposed to amend § 732.17(h) by adding a new paragraph (4). The proposed paragraph required OSMRE to provide all State program amendments for comment to the State Historic Preservation Officer for the State to which the amendment applied, and required that all program amendments which may have a significant impact on historic properties also be submitted to the Advisory Council on Historic Preservation for comment.

Under the proposed rule, the State Historic Preservation Officer and the Advisory Council would have been provided the same comment period the public is provided under paragraph (h)(3) of § 732.17. This section provides a minimum of 30 days for public comment for each proposed State program amendment, with certain exceptions when 15 days are allowed.

The Advisory Council objected to this proposal because it believed that it would establish a separate comment process that would contradict its own rules at 36 CFR Part 800. In response, OSMRE has changed the final rule to indicate simply that amendments will be provided to the State Historic Preservation Officer and to the Advisory Council for comment. Currently, these amendments are provided to the Council under the terms of a 1980 agreement between OSMRE and the Advisory Council. OSMRE will continue submitting amendments to the Advisory Council following the procedures in this agreement until after these regulations become effective. At that time, OSMRE will review the agreement for consistency with these rules, and will consider renegotiating or terminating the agreement, as appropriate.

In the final rule, in addition to the change discussed above, OSMRE has added the term "archeological" resources for consistency with other sections of the rules, and has changed the term "significant impact" to "effect," for consistency with the Advisory Council's rules at 36 CFR Part 800.

Finally, the requirement to send all proposed amendments to the State Historic Preservation Officer for comment has been replaced with a requirement to send only those amendments which may have an effect on historic properties. This change was made to eliminate unnecessary and burdensome paperwork which would have been placed on both OSMRE and the State Historic Preservation Officer if there were a requirement to send all proposed amendments for comment, even if they would have had no impact on historic resources.

One commenter suggested that the term "significant impact" be changed to "clear effect." OSMRE agrees in part, and has changed the term to "effect" to be consistent with the language of the regulations of the Advisory Council in 36 CFR Part 800. OSMRE sees no need to add the term "clear," which is an undefined term not in common use in the process established in 36 CFR Part 800.

One commenter asked how OSMRE would evaluate comments received from the Advisory Council on Historic Preservation on proposed State program amendments. Since the Advisory Council is expert on matters involving the effect of Federal undertakings on historic properties, OSMRE intends to give serious consideration to any comments from the Advisory Council on proposed State program amendments, in order to ensure that OSMRE's responsibilities under the National Historic Preservation Act have been met.

Several commenters noted that any State program amendments provided to the Advisory Council on Historic Preservation should be provided by OSMRE, not the State, because this is a Federal agency responsibility under section 106 of the NHPA, as amended. OSMRE agrees with this comment. However, it is not necessary to add such language to the rule, since this section refers specifically to actions that OSMRE, not a State regulatory authority, would undertake.

Several commenters questioned whether OSMRE should provide the Advisory Council on Historic Preservation and the State Historic Preservation Officer an opportunity to comment on proposed State program amendments, because Section 503 of SMCRA requires only that OSMRE obtain the views of Federal agencies with expertise pertinent to the State program in question. These commenters questioned whether the Advisory Council was an "agency" for purposes of this part.

OSMRE will submit any program amendments which affect historic resources to the Advisory Council to fulfill its responsibilities under Section 106 of the National Historic Preservation Act. OSMRE's review and approval of such amendments are Federal undertakings, subject to the provisions of the National Historic Preservation Act. Thus, OSMRE is required by that Act and its implementing regulations to provide the Advisory Council and the State Historic Preservation Officer with an opportunity to comment. Accordingly, a determination of whether the Advisory Council is a Federal agency under the provisions of Section 503 of SMCRA is not essential.

Two commenters requested that OSMRE define the term "significant impact" as used in this section of the rule. Since OSMRE is not using this term in the final rule, a definition of the term is not relevant.

One commenter asked whether OSMRE intended that the State Historic Preservation Officer make the determination that a particular State program amendment should be sent to the Advisory Council on Historic Preservation. Responsibility for this decision lies with OSMRE, not the State Historic Preservation Officer. However, since the State Historic Preservation Officer is the State's expert on historic resource matters OSMRE intends to consider carefully any opinion from that official that a particular proposed State program amendment will have an adverse effect on historic resources.

Two commenters, including the Advisory Council on Historic Preservation, noted that this section was not consistent with the Advisory Council's own regulations, and appeared to establish a process separate and different from those regulations, by which OSMRE will provide proposed State program amendments to the Advisory Council for comment. The Advisory Council requested that it be consulted further before the rule was finalized. OSMRE has consulted with the Advisory Council on this matter, and has changed the rule to provide simply that amendments will be provided by OSMRE to the Advisory Council and the State Historic Preservation Officer for comment. As discussed above, at present OSMRE is providing amendments to the Advisory Council according to the terms of an agreement between OSMRE and the Advisory Council.

One commenter stated that this proposed section was unclear with regard to the consequences of a "negative" review of a State program amendment by either the State Historic Preservation Officer or the Advisory Council. OSMRE is required by the National Historic Preservation Act to consider the impacts of its undertakings on historic resources. OSMRE will follow the process outlined in that Act and its implementing regulations in consulting with the State Historic Preservation Officer and the Advisory Council on State program amendments. Once that process has been satisfied, OSMRE will make a decision based on all pertinent considerations.

4. Part 761—Areas Designated by Act of Congress

This part establishes the procedures and standards to be followed in determining whether a proposed surface coal mining and reclamation operation can be authorized in light of the prohibitions and limitations established by Congress in section 522(e) of the Act on certain Federal, public, and private lands. Section 761.5 defines a series of terms and phrases of special importance for areas designated by Congress in that section of the Act. These definitions are used consistently for purposes of this part. Section 761.11 discusses areas where mining is prohibited. Section 761.11 discusses procedures used by the regulatory authority to determine whether surface coal mining operations are limited or prohibited by § 761.11 in a particular area that could be impacted by proposed operations.

Section 761.5 Definitions. OSMRE proposed to amend the definition of "cemetery" to mean "any area of land where human bodies are purposely interred." The word "purposely" in the proposed rule was included to emphasize that only intentional interments are cemeteries. The proposed definition thus included private family burial grounds and other sites where human bodies were intentionally buried, such as Indian burial mounds.

In the final rule, OSMRE has removed the term "purposely" from the definition of cemetery. No other change has been made in the proposed rule.

Many commenters objected to the inclusion of the term "purposely" in the definition of cemetery. They reasoned that the term "interred" necessarily implied that the act of burial was intentional. OSMRE agrees with this reasoning, and has deleted this term from the final rule. As OSMRE noted in

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the preamble to its 1979 definition of cemetery (44 FR 14991, March 13, 1979), the term "interred" indicates that a cemetery is where bodies are intentionally buried.

Other commenters asserted that the word "purposely" in the proposal clouded the definition by requiring an analysis of intent or speculation on whether the burial was intentional, and asked how determinations that a burial was or was not purposeful will be verified. As noted above, OSMRE has taken out the term "purposely" from the final rule. OSMRE interprets these rules to mean that burials are intentional unless there is clear evidence to the contrary. This is now a new interpretation. Furthermore, OSMRE believes it is less burdensome, overall, to presume that burials are intentional that to require an analysis of intent in every case.

Other commenters suggested that a more formal definition of cemetery was in order and should include the concepts of dedication or recognition of lands specifically set apart for a cemetery. OSMRE believes that this is too limited an interpretation of Congress' intent to protect human remains from disturbance by surface coal mining operations. Additionally, any such definition would require the regulatory authority to make a judgment, often in the absence of relevant information, concerning the intent and attitude of the individual(s) who originally interred the remains.

Several commenters suggested that "bodies" be changed to "remains", to clarify that all types of human remains in various states of preservation are covered by this definition. While OSMRE agrees that all types of human remains are indeed covered by this definition, it does not believe that this wording is necessary or advisable. The term "bodies" has been part of this definition for a number of years, and there does not seem to be any confusion about its meaning. Additionally, the term "remains" could be confused with material cultural remains, such as pottery, jewelry, and other similar items. OSMRE does not want the definition to imply that a cemetery can exist in the absence of some remnant of human bodies. A burial area with no trace of human bodies remaining but with burial goods or furniture might be an archeological site but it would not be a cemetery.

Some commenters questioned whether "bodies" was meant to imply that more than one body must be present before an area could be considered a cemetery; others asserted that more than one burial must be present for a cemetery to exist. Clearly, depending on the specific situation, a single body could constitute a cemetery. However, the plural "bodies" more adequately expresses the typical situation, and rather than include the awkward phrase "body or bodies" in this instance OSMRE intends that the plural term include the singular.

Numerous commenters were concerned about the process for identifying unmarked cemeteries. Some suggested that permit applicants should be required to identify and locate all cemeteries within a permit area, whether presently marked or not. OSMRE believes that this would be unduly burdensome on the applicant. The regulatory authority is required by paragraph 773.15(c)(3)(ii) to make a written finding that a proposed permit area is not within an area designated as unsuitable for mining, which includes cemeteries and a 100 foot zone around them. Moreover, the regulatory authority is required by the newly revised paragraph 773.15(c)(11) to make a written finding that properties listed on and eligible for listing on the National Register of Historic Places have been taken into account in the permit process. Sections 779.24(j) and 783.24(j) require the applicant to include maps showing each cemetery that is located in or within 100 feet of the proposed permit area. If the regulatory authority had reason to believe that the information in a permit application was inadequate concerning these resources, the regulatory authority must require the information that would allow those two findings to be made, as well as the finding at § 773.15(c)(1) that a permit application is complete and accurate. However, it is not practical to require the applicant to undertake possibly expensive identification projects in the absence of information indicating the likelihood that a cemetery might be present.

A decision that a permit application is incomplete and must be supplemented needs to be based on all information available to the regulatory authority, not just on maps or records of known cemeteries. Indeed, the regulatory authority should be particularly sensitive to all information on the occurrence or location of cemeteries because they may be unmarked, because there is a prohibition of mining within 100 feet of such areas, and because once such resources have been destroyed by mining they are impossible to restore. For example, if evidence suggests that a specific permit area has a high likelihood of containing a type of prehistoric village site that is known to contain human interments, the regulatory authority will probably want to require additional information on the presence or absence of such a site to make the two findings.

Several commenters asked how cemeteries discovered after permits were issued were to be treated. Because of the requirements of section 522(e)(5) of SMCRA, mining could not proceed within 100 feet of any cemetery, even one discovered after a permit is issued. However, OSMRE expects that the provision to relocate cemeteries, discussed at § 761.11(g) below, would allow operators in many instances to continue mining following removal of the cemetery under State law.

Section 761.11 Areas where mining is prohibited or limited. This section discusses what lands are covered by the prohibitions against mining contained in section 522(e) of SMCRA. Two separate paragraphs of this section were affected by proposed changes: § 761.11(c) and (g).

OSMRE proposed to amend paragraph 761.11(c) to extend the prohibition on mining to privately owned places, as well as publicly owned places, listed on the National Register of Historic Places. This proposed change was in response to the July 15, 1985 decision of the District Court, discussed above. The final rule is adopted as it was proposed.

One commenter requested that the term "publicly or privately owned" be added to clarify explicitly that all National Register listed properties, regardless of ownership, are protected by these provisions. OSMRE believes it is clear that all listed properties are protected, and that the language suggested would be redundant.

OSMRE proposed to amend paragraph 761.11(g) to include a provision previously included in § 773.15(c)(11). Section 773.15(c)(11) specified that private family burial grounds could be relocated, if authorized by applicable State law or regulations.

The provision as proposed in paragraph 761.11(g) specified that cemeteries could be relocated if authorized by applicable State law or regulations. This amendment was proposed in conjunction with the proposed definition of cemetery in § 761.5, which deleted the exception for private family burial grounds found in the 1983 rule. Since such burial grounds are no longer singled out for separate treatment, there was no reason to retain the provision in paragraph 773.15(c)(11). However, since such grounds are now included in the definition of cemetery, as are all other areas where human bodies are interred, OSMRE considered it reasonable to acknowledge that all such properties may be relocated in accordance with applicable State law, and that once cemeteries are relocated

the prohibition of section 522(e)(5) no longer applies. OSMRE has made no changes in the final rule.

Most comments on this paragraph were concerned about the identification of cemeteries and their scientific importance. Commenters were concerned that OSMRE's provision to relocate cemeteries consistent with State law would allow remains with scientific and historic importance to be moved without any protection for the information they contain. This concern results from the dual nature of cemeteries, and the somewhat differing provisions for their protection contained in SMCRA and in various pieces of historic preservation legislation. Section 522(e)(5) of SMCRA protects cemeteries due to their association with cultural values involving disposition of and reverence for the dead. However, cemeteries may also be significant for their scientific and historic value. These values are not protected by section 522(e)(5), but can be protected by regulatory authorities under the provisions of these rules requiring consideration of important historic properties.

One commenter believed that OSMRE should provide guidance for recording the information content of gravestones. OSMRE does not believe that it would be appropriate to include such direction in these regulations. As noted above, regulatory authorities can, on a case by case basis, determine what, if any, means are appropriate to protect the historic value in cemeteries, based on comments from the State Historic Preservation Officer, other public comments, and information contained in the permit application.

One commenter suggested that permission of the regulatory authority should be required prior to the relocation of a cemetery. Regulatory authorities would have to be given such authority by State law, not by OSMRE.

Section 761.12 Procedures. This section specifies how the regulatory authority will review applications for permits to conduct surface coal mining operations to determine whether the operations are limited or prohibited under § 761.11. OSMRE proposed to amend paragraph 761.12(f), consistent with the proposed amendment to paragraph 761.11(c), to require the regulatory authority to transmit a copy of the permit application to the Federal, State, or local agency with jurisdiction where it determines that a proposed operation would adversely affect any place, whether publicly or privately owned, that is listed on the National Register of Historic Places. This proposed change was in response to the July 15, 1985, decision of the District Court, discussed above. The final rule is adopted as proposed.

Two commenters asked for clarification on which agency or entity has jurisdiction over privately owned places listed on the National Register. Generally, the agency with jurisdiction would be the agency responsible in the State or local area for determining what properties are historic and for designating them as such. For example, this could be a State Historic Preservation Officer, the preservation officer for a local government "certified" by the Secretary of the Interior to assume some of the State's responsibilities under the National Historic Preservation Act, a local zoning board or landmark commission, or a County Board of Supervisors. As noted by the District Court for the District of Columbia in its July 15, 1985, memorandum opinion in *In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79–1144 at p. 76, "jurisdiction" does not necessarily imply ownership or control over a property.

One commenter stated that the procedures in this section were inconsistent with 36 CFR Part 800, in that they allowed the regulatory authority to make the initial determination that a proposed surface coal mining operation would adversely affect a park or National Register site, and that other concerned agencies would not be allowed to comment on an application unless such a determination had been made.

These procedures are intended to implement the provisions in section 522(e) of SMCRA, not the provisions of the National Historic Preservation Act or 36 CFR Part 800. (The relationship between State programs and 36 CFR Part 800 is discussed earlier in this preamble.) While these rules do provide for the regulatory authority to make an initial decision on what resources will be affected by surface coal mining operations, the State Historic Preservation Officer or any other concerned agency or individual can comment on or object to such decisions through the permitting process specified in Part 773.

The same commenter believed that this section should provide protection for both National Register listed and National Register eligible properties. This comment confuses the provisions of this part, which apply to areas designated by Congress in section 522(e) of SMCRA as unsuitable for mining, with the permitting provisions contained elsewhere in these rules. The court's decision in *In Re: Surface Coal Mining Regulation Litigation* discussed above specified that this prohibition against mining in section 522(e)(3) does not extend to properties eligible for listing on the National Register of Historic Places. However, such properties can be protected by regulatory authorities under the permit requirements and other provisions contained elsewhere in these rules.

5. Part 722—Requirements for Coal Exploration

Section 772.12 Permit requirements for exploration removing more than 250 tons of coal. This part establishes the requirements and procedures applicable to coal exploration operations. Specific consideration of historic properties is found in paragraph 772.12(B)(8). OSMRE proposed to amend paragraph 772.12(b)(8) to clarify that the regulatory authority could require additional information regarding known or unknown historic resources needed to process permits for coal exploration.

In the final rule, OSMRE has added the word "archeological" to the term "historic resources" in order to be consistent throughout the rules. No other changes to the proposal were made.

Several commenters asked how the regulatory authority would determine whether additional information is needed. OSMRE expects comments from the State Historic Preservation Officer, and any comments submitted by other interested parties. The procedure followed by the regulatory authority in making such decisions will be determined on a State by State basis, and will be part of the State's system to ensure adequate consideration of these resources.

Several commenters suggested that OSMRE clarify the process by which the regulatory authority would obtain additional information by adding a phrase specifying that surveys of the exploration area by qualified professionals could be required. OSMRE believes that it is not necessary to add this detail in the body of the regulations. When a regulatory authority determines that additional information is needed as a basis for making a reasonable decision about historic resources, the regulatory authority would require the information to be collected in a manner that would obtain dependable results. In general, this means that the information will need to be collected by qualified professionals. However, OSMRE believes that this is a decision to be made by the regulatory authority on a case by case basis. One commenter suggested making the language of this section identical to the language at § 779.12(b), which concerns permit

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application information required for surface coal mining operations. OSMRE believes that the added detail at § 779.12(b) is not appropriate that the regulatory authority would make this decision based on information previously submitted with the exploration application, for § 772.12. Exploration activities typically involve small areas of disturbance and may result in little or no damage to resources, in comparison with the relatively large areas of disturbance that would result from the surface coal mining operations addressed by § 779.12(b). Thus, OSMRE believes that the requirement adopted for § 772.12 is appropriate, because it provides more latitude to the regulatory authority to determine what information is necessary and how it should be collected.

Several commenters stated that they do not believe that OSMRE has any authority to require information on unknown archeological sites. Section 772.12(b) does not require submission of information on unknown archeological sites. Rather, OSMRE is making explicit that the regulatory authority has the discretion to require such information, should the regulatory authority need the information to make informed decisions in the public interest concerning important historic properties that may be disturbed by coal exploration activities. The basis for such authority is the same as for requiring information on historic resources in the permitting process, discussed in the preceding portion of this preamble.

One commenter was concerned about protecting the integrity of information about historic resources, given the fact that permit information is public. OSMRE shares this concern. Section 304 of the National Historic Preservation Act requires the head of Federal agencies, after consulting with the Secretary of the Interior, to withhold information on the location or nature of historic properties from the public when disclosure of such information may result in harm to such properties. Each regulatory authority may develop procedures to protect such sensitive information. In the future, if OSMRE finds that disclosure of such information is resulting in harm to historic properties, OSMRE will consider appropriate regulatory changes to ensure that such properties are protected.

Several commenters stated that they believed that OSMRE should not make the requirements for exploration more stringent than for permit applications, and that this section was more stringent than the provisions for historic resources in permit applications in parts 779 and 783. OSMRE does not agree that the provisions in this part are more stringent. Section 772.12 merely clarifies that the regulatory authority has the authority to require information it may need to make reasoned decisions about historic resources. Parts 779 and 783 require specific information about such resources.

6. Part 773 Requirements for Permits and Permit Processing

This part provides minimum requirements for permits and permit processing and covers obtaining and reviewing permits, coordination with other laws, public participation, permit decisions and notification, permit conditions, and permit term and right of renewal.

Specific consideration of historic properties is found in § 773.12, which lists other laws with which surface coal mining permitting processes must be coordinated. These include the National Historic Preservation Act of 1966, as amended, Executive Order 11593 (subsequently codified as section 110 of the NHPA), and for Federal programs only, the Archeological and Historic Preservation Act.

Section 773.12 Regulatory coordination with requirements under other laws. OSMRE proposed to amend Section 773.12 to add the Archaeological Resources Protection Act of 1979 (ARPA) to the existing list of Federal statutes with which the processing of permits for coal mining operations needs to be coordinated. The proposed rule limited the requirement to coordinate with the requirements of ARPA to those situations where OSMRE is the regulatory authority, and where lands covered by that Act are involved. Any archeological excavation or removal of archeological materials from either Federal or Indian lands is governed by the provisions of ARPA. State and private lands are not covered by ARPA. ARPA requires a permit for such activities, issued by the land manager. Because OSMRE, or a State under a Federal lands cooperative agreement, is responsible for environmental compliance activities prior to the issuance of permits to mine coal on Federal and Indian lands, coordination of processing of permits to conduct coal mining operations with the specific provisions of ARPA is needed to prevent delay and duplication of compliance activities.

In the final rule, OSMRE has deleted the phrase "where OSMRE is the regulatory authority" and has added the phrase "Federal and Indian lands" to clarify the application of ARPA. OSMRE has also deleted the reference to Executive Order 11593 in both the text and the authority section as redundant. No other substantive changes were made to the proposed rule.

Several commenters noted that, contrary to the implications of the preamble to the proposed rule (51 FR 8489), coordination with the requirements of other laws is required to avoid duplication of activities in the review and issuance of permits undr SMCRA, rather than requiring general coordination in the overall SMCRA program. This interpretation is correct. However, it is appropriate to list statutes which themselves contain no permitting requirement, since those statutes may require activities which might be duplicated during the SMCRA permitting process, if coordination did not occur.

Several commenters expressed confusion about the application of ARPA to mining, and asked that OSMRE provide clarification. As those commenters note, an ARPA permit is not needed to conduct mining, although archeological activities performed in advance of, and because of, mining on Federal and Indian lands do require such a permit. As discussed above, OSMRE has changed the wording of the final rule to clarify that ARPA applies only to Federal and Indian lands.

Several commenters requested that OSMRE provide more detail on the exact nature of "applicable requirements" of the National Historic Preservation Act. The exact nature of the "applicable provisions" of the National Historic Preservation Act, or any other statute in the list, would depend on the specific circumstances of the situation. For example, if a permit to conduct surface coal mining operations were to be issued by OSMRE, the issuance would be a Federal undertaking, and OSMRE would be required to comply with the requirements of section 106 of NHPA.

Several commenters noted that the reference in this section to Executive Order 11593 could be deleted, since that order was codified by amendments to the National Historic Preservation Act passed by Congress in 1980. OSMRE agrees that this reference is redundant, and has deleted it accordingly.

Section 773.15 Review of permit applications. OSMRE proposed to amend paragraph 773.15(c) (11) to delete a provision concerning treatment of private family burial grounds. This provision is no longer necessary since the definition of cemetery is being revised to include private family burial grounds. OSMRE proposed to add a new paragraph 773.15(c) (11), requiring that the regulatory authority make a written finding that it has taken into account the effect of a proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places.

In the final rule, OSMRE has added a sentence specifying some of the ways in which the regulatory authority can demonstrate that the finding requirement has been satisfied.

Most of the comments on this section suggested that additional detail be added, consistent with the National Historic Preservation Act and the regulations which implement that Act. As explained above, provisions of that Act and its implementing regulations do not apply directly to permits to conduct surface coal mining operations issued by State regulatory authorities. Therefore, it is not appropriate to add such terminology.

One commenter suggested that the regulation should require language in the finding specifying that appropriate conditions be placed on permits to protect the public interest. OSMRE believes that the decision to include conditions on a permit is best made on a case-by-case basis by the regulatory authority. However, OSMRE agrees that a regulatory authority has the authority to fulfill this requirement by inclusion of appropriate permit conditions, and has added language to clarify that authority in the final rule. For example, appropriate permit conditions could establish certain procedures to be followed by an operator if a previously unknown historic resource were discovered, or to treat important historic properties that would not be affected by surface coal mining operations for several years after permit issuance. However, inclusion of permit conditions is not intended to be an allowable substitute for the provision of information, or for any other permitting requirements upon which the decision to issue a permit has to be based.

One commenter requested that OSMRE revise the language of the finding to require regulatory authorities to specify how they have taken into account impacts of surface mining operations on historic properties. OSMRE does not believe this is necessary or desirable, since the process followed by the regulatory authority may vary from one permit application to another to allow for specific circumstances. However, OSMRE has added a sentence describing some of the options available to the regulatory authority to support the finding.

One commenter asked if a regulatory authority could issue a permit in contravention of a recommendation by the State Historic Preservation Officer, when a known eligible site would be destroyed. OSMRE believes that, since the regulatory authority is responsible for all final decisions about such properties, it has the authority to make such a decision. However, OSMRE expects that the regulatory authority will make well-reasoned decisions based on all available information, including the public interest, and would allow such destruction only if it were reasonable under the circumstances.

7. Parts 779 and 783 Permit Applications—Minimum Requirements for Information on Environmental Resources

These two parts will be discussed together, since they contain similar provisions and revisions for surface mining and underground mining permit applications, respectively. Sections 779.12 and 783.12 discuss general environmental resources information which must be included in permit applications, including the nature of cultural and historic resources listed or eligible for listing on the National Register of Historic Places and known archeological features within the proposed permit and adjacent areas. The description is to be based on all available information, including, but not limited to, that from State and local archeological, historical, and cultural preservation agencies.

Sections 779.24 and 783.24 discuss the general requirements for maps which must accompany permit applications, which include an indication of the boundaries of any public park and locations of any resources listed or eligible for listing on the National Register of Historic Places and known archeological sites within the permit and adjacent areas, and each area where human bodies are interred that is located in or within 100 feet of the proposed permit area.

Sections 779.12(b)(1) and (2)/ 783.12(b)(1) and (2) GENERAL Environmental Resources Information. OSMRE proposed to amend § 779.12(b) and 783.12(b) to place the existing language in an introductory sentence and in a new paragraph (b)(1), and add a new paragraph (b)(2). OSMRE proposed to amend the existing language in paragraph (b)(1) to change the phrase "archeological features" to "archeological sites" to be consistent with section 507(b)(13) of SMCRA and with the language in other sections of the rules.

OSMRE also proposed to add a sentence at the end of paragraph (b)(1) that would allow the applicant to recommend to the regulatory authority what identification, evaluation, or mitigation measures were appropriate for a proposed permit area. This sentence was intended to provide an applicant with an opportunity to plan a complete sequence of whatever preservation activities were appropriate, to ensure that there would be no delay in mining because of such activities required later by the regulatory authority.

In the final rule at paragraph (b), OSMRE has reworded the language listing the resource types covered, for consistency with other sections of the rule. In paragraph (b)(1), the term "data" was changed to "information." OSMRE believes that the latter, more general term more accurately reflects the need of the regulatory authority to obtain not just factual data, but guidance, from the State Historic Preservation Officer and other suitable sources on appropriate activities to preserve important historic values in a proposed permit area. This change responds to a series of comments, discussed below. In the same paragraph, OSMRE has not adopted the last sentence referring to the applicant suggesting appropriate preservation activities because of the confusion this sentence caused among the commenters. This issue is discussed in more detail below.

OSMRE proposed to add a new paragraph (2) to clarify that the regulatory authority can, when appropriate, require applicants to identify and evaluate important historic resources and archeological sites that may be eligible for listing on the National Register of Historic Places. This could be accomplished through (1) the collection of additional information, (2) the conduct of field investigations, or (3) other appropriate measures. Because field investigations could be costly, it would be expected that they would be required only where substantial likelihood of undiscovered resources exists.

In the final rule at paragraph (b)(2), OSMRE has added the word "archeological" to indicate coverage of that resource type, and for consistency with other portions of the rule.

Several commenters asked OSMRE to clarify the purpose of the last sentence of paragraph (b)(1). As noted above, OSMRE intended this sentence to provide an opportunity for the applicant to propose a program to deal with historic resource issues, rather than waiting for the regulatory authority to make determinations as to appropriate actions. This would allow the applicant to move forward with necessary

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preservation activities and would ensure that there would be no unnecessary delay in mining caused by such activities. This provision was not intended to shift any of the regulatory authority's responsibilities to the permit applicant, but to give the applicant more flexibility in providing information on, and any necessary treatment or mitigation of, historic resources. However, since this sentence caused much confusion among the commenters, OSMRE has not adopted it. Removing this specific provision from the rule in no way prevents the applicant from proposing such activities to the regulatory authority, if the applicant so desires.

Numerous commenters believed that it was important for the regulatory authority to consult with the State Historic Preservation Officer concerning historic resources in proposed permit areas, not to just obtain "data" from the State Historic Preservation Officer. OSMRE agrees that in many cases the regulatory authority would need more than "data" from the State Historic Preservation Officer. That official has a responsibility to advise and assist, as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities, and to cooperate with such agencies to ensure that historic properties are taken into consideration at all levels of planning and development. Accordingly, OSMRE has changed the term "data" to the more general term "information," to reflect the need of the regulatory authority to obtain more than just factual data from the State Historic Preservation Officer and other suitable sources on appropriate activities to preserve important historic resources in a proposed permit area. The State Historic Preservation Officer should have ample opportunity to provide such information to the regulatory authority during the permitting process.

Numerous commenters suggested that OSMRE should clarify how the regulatory authority would arrive at decisions, based on the data required by this section, concerning additional identification, evaluation, and/or mitigation of historic resources. OSMRE believes that it is more desirable to allow the individual regulatory authority to develop such procedures on a State by State basis. This approach provides flexibility to tailor the procedures to local conditions. The exact procedure to be followed by the regulatory authority in making such decisions will be determined on a State by State basis. OSMRE expects that these procedures will be designed to ensure that the regulatory authorities acquire information needed to make reasonable, informed decisions about these resource types, and to determine that permit applications are complete and accurate.

One commenter requested that OSMRE add at the end of (b)(1) a sentence stating that surveys would be required only where there was a substantial likelihood of important resources being found. OSMRE does not believe it is appropriate to add such language to the regulation. It is more appropriate for the regulatory authority to make such decisions on a case by case basis. However, OSMRE agrees that in general the regulatory authority should strive to limit survey requirements to situations in which there is a substantial likelihood of important resources being found.

One commenter noted that the description of historic resources required by § 779.12(b) should include information from the results of any field surveys. OSMRE agrees that such information would be appropriately included when field surveys have been conducted. However, it is not necessary to add language to this effect since this would be "available information," as specified in paragraph (b)(1).

Several commenters believed that OSMRE was impermissibly extending the provisions of this section to sites eligible for listing on the National Register of Historic Places. OSMRE did not propose to change this language. The existing regulation already required permit application information on resources eligible for listing on the National Register.

One commenter stated that section 106 of the National Historic Preservation Act covered only public properties. This is not correct. Section 106 applies to any properties listed on or eligible for listing on the National Register of Historic Places which would be affected by any Federal undertaking or any Federally licensed or assisted undertaking.

A number of commenters asked what "eligible" for listing on the National Register meant. This term is defined by the criteria for the National Register found at 36 CFR 60.4 and by the regulations of the Advisory Council at 36 CFR 800.2.

Several commenters believed that this section should include the phrase "known and unknown" before the phrase "cultural and historic resources." OSMRE does not believe this is necessary. Clearly, paragraph (b)(2) allows the regulatory authority to require identification and necessary treatment or mitigation of currently unknown resources, when the regulatory authority determines that such activities are appropriate.

One commenter believed that OSMRE should specify that resources found by surveys must be evaluated according to the National Register of Historic Places criteria in 36 CFR Part 60. The same commenter noted that this evaluation is OSMRE's responsibility under the National Historic Preservation Act. OSMRE agrees that historic resources to be evaluated for eligibility should be evaluated according to the National Register criteria. However, it does not believe that it is necessary to specify this further within the body of the regulations themselves. The reference to the National Register in these sections should make it clear that those criteria are to be used. Moreover, regulatory authorities seem to be working satisfactorily with State Historic Preservation Officers in determining what properties are eligible to the National Register of Historic Places. Although OSMRE can of course become involved in cases where the SHPO and a regulatory authority do not agree on the eligibility of a particular property, it is not appropriate for OSMRE to become involved routinely in questions of eligibility arising from State actions.

Numerous commenters suggested that regulatory authorities should discuss the disposition of historic properties with the State Historic Preservation Officer not only during the initial review of permit applications, but as a basis for any subsequent decisions by the regulatory authority concerning historic resources. OSMRE does not believe that this is a matter to be covered in these regulations, since conditions may differ from State to State which would require different procedures to be followed. Each regulatory authority will establish its own procedures for obtaining information from the State Historic Preservation Officer and other concerned parties that it needs to make reasonable decisions about the identification, evaluation, or mitigation of historic resources.

Several commenters stated that applicants should be required to obtain information not only from the State Historic Preservation Officer, but also from relevant professional and amateur societies, museums, universities, and other appropriate experts. OSMRE believes it is unduly burdensome and unnecessary to place this requirement on applicants. State Historic Preservation Officers are the official representatives of historic resources in the States. As such, they can be expected to possess the relevant data concerning such resources. Regulatory authorities can make other provisions in their own programs in those States where this is not the case, for example where State site files reside at a university rather than with the State Historic Preservation Office. This is a problem to be resolved on a State by State basis.

One commenter asked how OSMRE defined "adjacent areas." This term is defined in 30 CFR 701.5 as the area outside a permit area where a resource or resources are or reasonably could be expected to be adversely impacted by proposed mining operations.

Sections 779.24/783.24 Maps: General requirements. OSMRE proposed to revise these sections to include a minor change at paragraph (j). These changes removed specific references to Indian burial grounds, private cemeteries, and other areas where human bodies are interred, which would make the language in these sections consistent with the revised definition of "cemetery" in § 761.5, discussed above. OSMRE is adopting the rule as proposed.

Several commenters stated that it would be desirable to retain language concerning Indian burial grounds and mounds. OSMRE believes that Indian burial grounds are included in the definition of "cemetery" and thus inclusion of this language in §§ 779.24 and 783.24 would be redundant.

Parts 780 and 784 Permit Applications—Minimum Requirements for Reclamation and Operation Plan. These two parts will be discussed together, since they contain similar provisions and revisions regarding requirements for reclamation and operation plans for surface and underground mining permit applications, respectively. They provide that, for any public parks or historic places that may be adversely affected by the proposed operations, each plan shall describe the measure to be used to minimize or prevent these impacts and to obtain approval of the regulatory authority and other agencies as required in paragraph 761.12(f). These sections ensure that the regulatory authority has the information necessary to meet the provisions of section 522(e)(3) of the Act, which states that, subject to valid existing rights, and except for operations existing on August 3, 1977, no surface coal mining operations shall be permitted which will adversely affect any publicly owned park or places included in the National Register of Historic Places unless approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or the historic site. This statutory language does not provide for adverse impacts to occur absent this joint approval, unless the applicant has valid existing rights or the operation existed on August 3, 1977.

These two sections also help ensure that the regulatory authorities will be able to assist the Secretary implement his responsibilities under the National Historic Preservation Act.

Sections 780.31/784.17 Protection of public parks and historic places. OSMRE proposed to restructure these two sections by placing a modified version of the previous provision in paragraph (a), and by adding a new paragraph (b). The proposal tracked the statutory requirements of section 522(e)(3) to prevent adverse impacts and, if the prohibition is not applicable, to protect such parks or places using a minimization standard. Thus, each permit application would need to include a description of the measures to be used either (1) to prevent impacts to publicly owned parks or any places listed on the National Register of Historic Places, or (2) if valid existing rights exists or joint agency approval is to be obtained under § 761.12(f), to minimize impacts. This revised language clarified that unless valid existing rights exists or joint approval is obtained, the statutory intent is avoidance, not minimization, of adverse impacts.

OSMRE proposed to add a new paragraph (b) in §§ 780.31 and 784.17 to clarify the authority of the regulatory authority specifically to require operators to perform necessary mitigation and treatment activities for historic properties listed on or eligible for listing on the National Register of Historic Places prior to the commencement of any specific mining operations which would affect such properties. This change was not intended to implement section 522(e)(3) of SMCRA, but rather to aid in enabling the States to assist the Secretary in fulfilling his responsibilities under seciton 106 of the National Historic Preservation Act. The proposed sections allowed regulatory authorities to require operators to perform the necessary activities either before or after permit issuance, for example by conditioning a permit, so long as it would occur before the commencement of mining operations that would affect such properties. Taken together with proposed §§ 773.15(c)(11), 779.12(b), and 783.12(b), §§ 780.31(b) and 784.17(b) clarified the State's authority and responsibility regarding historic properties.

OSMRE has made several changes in the final rule. In paragraph (a) of these sections, the word "any" has been added before "places listed on the National Register of Historic Places." This change was made for consistency with other sections of the rule and to clarify that privately owned, as well as publicly owned, National Register listed properties are covered by these provisions. Additionally, the word "adverse" has been added before the term "impacts" in paragraph (1) of this section to clarify that only adverse impacts must be prevented. In the same paragraph, OSMRE has changed the term "public parks" to "publicly owned parks," to track the language of SMCRA more accurately. This is discussed in more detail below.

In paragraph (b) of these sections, OSMRE had added the term "archeological" properties to clarify that any properties listed on or eligible for listing on the National Register of Historic Places are covered by this provision. It should be noted that, as specified in paragraph (a) of these sections, in general it will not be possible for regulatory authorities to allow permit applicants to impact adversely properties actually listed on the National Register. However, the provision for listed properties has been retained in paragraph (b) because in some instances such impacts may occur because of the existence of valid existing rights or because joint agency approval has been obtained.

Finally, a new sentence has been forced out of what was previously the last phrase of paragraph (b), to specify that any required mitigation and treatment measures need not be completed prior to permit issuance, but must be completed prior to any impacts from specific mining operations.

Numerous commenters noted that the word "any" needed to be added before "places listed in the National Register" in paragraph (a), to clarify that all places on the National Register, regardless of ownership, were covered. OSMRE agrees, and has made the suggested change. This is consistent with language in other sections of these rules.

Numerous commenters noted that the statute intended that only adverse impacts, not any impacts, to publicly owned parks and properties listed on the National Register of Historic Places were to be avoided. OSMRE agrees, and has added the term "adverse" to clarify this.

One commenter noted that these sections should apply to "publicly owned parks" rather than "public parks," since these sections implement section 522(e)(3) of SMCRA, which uses the former terminology. The term "public park" is appropriate in reference to section 522(e)(5) of SMCRA. OSMRE

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agrees, and has changed the language in these sections to read "publicly owned parks."

Other commenters believed it was not appropriate to require minimization of impacts to publicly owned parks or places listed on or eligible for listing on the National Register of Historic Places, if valid existing rights exist or if joint agency approval is obtained. OSMRE did not propose any changes to the protection afforded publicly owned parks by this regulation. The provision for minimizing impacts to properties listed on or eligible for listing on the National Register of Historic Places is intended to ensure that the regulatory authority can help the Secretary meet his obligations under the National Historic Preservation Act. OSMRE believes that requiring minimization of impacts to properties listed on the National Register of Historic Places is appropriate for that purpose, and has retained this provision in the final rule. Morever, the Secretary has ample authority under sections 201(c)(2), 201(c)(13) and 501(b) of SMCRA for the protection of environmental and historic resources.

Several commenters suggested that it was more appropriate to have these sections apply to historic properties that will be affected by mining operations, rather than properties that may be affected. OSMRE believes it is more appropriate to retain the terminology "may be affected." At times, particularly with regard to archeological sites, it is difficult to determine whether a property would be affected without some additional investigation. Thus, it is appropriate to allow the regulatory authority the discretion to determine whether such additional investigation is necessary.

Numerous commenters believed that additional detail was necessary to ensure that the regulatory authority makes the decisions required by these provisions in an appropriate manner. OSMRE believes that it is more desirable to allow the individual regulatory authority to develop such procedures on a State by State basis. This approach provides flexibility to tailor the procedures to local conditions. The exact procedure followed by the regulatory authority in making such decisions will be determined on a State by State basis. OSMRE expects that these procedures will be designed to ensure that the regulatory authority acquires the information needed to make informed decisions about these resource types, and to determine that permit applications are complete and accurate.

Several commenters noted that although it was appropriate to allow permittees to delay treatment or mitigation activities until historic properties were about to be disturbed by mining operations, it was not appropriate to delay identification activities until this late in the process. OSMRE agrees. In general, early identification of important historic resources will benefit the resources by ensuring that adequate time is available for evaluation and to plan for any necessary treatment, and will benefit the operator by ensuring that historic resource issues do not cause a delay in mining. However, OSMRE believes that the regulatory authority should have the discretion to determine appropriate timing of needed preservation activities on a case by case basis. Nothing in this section is inconsistent with either of these principles.

One commenter suggested that OSMRE did not understand the nature of the interaction between joint agency approval and valid existing rights in section 522(e) of SMCRA. This commenter suggested that impacts should be prevented even if joint agency approval is to be obtained, but could simply be minimized where valid existing rights exist. OSMRE disagrees, and believes that if joint agency approval is to be obtained, it is sufficient to minimize impacts to properties covered by these provisions.

Another commenter stated that if valid existing rights exist, there should be no requirement for minimization of impacts. Under section 522(e), if such rights exist there is no authority to preclude mining, and these regulations do not create an absolute requirement for minimization of impacts. However, OSMRE has clarified that the regulatory authority has the discretion to require minimization of impacts when it determines that such minimization is in the public interest. This provision helps ensure that the regulatory authority can assist the Secretary in meeting the requirements of Section 106 of the National Historic Preservation Act.

One commenter asked whether preservation in place is an appropriate treatment option. Preservation in place is certainly an appropriate, and often preferable, option for important historic resources. OSMRE did not treat this issue specifically in the rules since it assumes that in most cases where surface mining operations will affect an historic resource, preservation in place will not be practical.

Several commenters requested that OSMRE clarify the timing of any necessary mitigation and treatment measures for historic resources and their relationship to permit issuance. OSMRE has done so with the addition of new paragraph (c), which specifies that required measures can be completed after permit issuance, as long as they are completed prior to affected properties being affected by mining operations.

Parts 816 and 817—Permanent Program Performance Standards.

One commenter suggested that language be added to these parts to cover historic preservation activities. OSMRE believes that the existing standards, coupled with the foregoing clarifications of OSMRE's rules, will provide adequate protection for important historic properties.

III. Procedural Matters

Federal Paperwork Reduction Act

The information collection requirements in this rule were submitted to the Office of Management and Budget under 44 U.S.C. 3507. The following clearance numbers were assigned: 30 CFR Part 732–1029–0024, 30 CFR Part 772–1029–0033, 30 CFR Part 773–1029–0041, 30 CFR Part 779–1029–0035, 30 CFR Part 780–1029–0036, 30 CFR Part 783–1029–0038, and 30 CFR Part 784–1029–0038. The information is needed to meet the requirements of sections 507, 508 and 522 of Pub. L. 95–87 and Section 106 of the National Historic Preservation Act, and will be used by the regulatory authority to evaluate the presence and importance of historic and archeological properties in the proposed permit area.

Executive Order 12291

The DOI has examined this rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis.

The primary purposes of this rule is to clarify the authorities previously existing in OSMRE's regulatory program. Additional requirements imposed upon coal operators are not expected to be major.

Regulatory Flexibility Act

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* that the rule will not have a significant economic impact on a substantial number of small entities. The primary purpose of this rule is to clarify the authorities previously existing in OSMRE's regulatory program. Additional requirements imposed upon coal operators are not expected to be major. Moreover, the principal economic impacts of these rules will be borne by coal operators which are not small entities. Thus, any impact of the rule on small entities would not be significant.

National Environmental Policy Act

OSMRE has prepared an environmental assessment (EA) on the impacts on the human environment of this rulemaking. This EA is on file in the OSMRE Administrative Record at the address listed in the "**ADDRESSES**" section of this preamble. On the basis of the analysis in this EA, OSMRE has determined that these rules would not have a significant impact on the quality of the human environment, as specified by section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)], and that an environmental impact statement is not required.

Author: The author of this final rule is Dr. Annetta Cheek, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–7951 (Commercial or FTS).

List of Subjects:

30 CFR 731

Coal mining, Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR 732

Coal mining, Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR 761

Coal mining, Historic preservation, Monuments and memorials, National Forests, National Parks, Reporting and recordkeeping requirements, Surface mining, Underground mining, Wildlife refuges.

30 CFR 772

Coal mining, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR 773

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR 779

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR 780

Coal mining, Reporting and recordkeeping requirements, Surface mining.

30 CFR 783

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

30 CFR 784

Coal mining, Reporting and recordkeeping requirements, Underground mining.

For the reasons set forth in this preamble 30 CFR Parts 731, 732, 761, 772, 773, 779, 780, 783, and 784 are amended as set forth below.

Dated: January 5, 1987.

J. Steven Griles,

Assistant Secretary—Land and Minerals Management.

PART 731—SUBMISSION OF STATE PROGRAMS

1. The authority citation for Part 731 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* and 16 U.S.C. 470 *et seq.*

2. Section 731.14 is amended by revising paragraph (g)(10) and by adding a new paragraph (g)(17) to read as follows:

§ 731.14 Content requirements for program submissions.

. . . . . .

(g) * * *

(10) Consulting with State and Federal agencies having responsibility for the protection or management of fish and wildlife and related environmental values.

. . . . . .

(17) Consulting with State, Federal, and local agencies having responsibility for historic, cultural, and archeological resources, and for making decisions regarding such resources.

. . . . . .

PART 732—PROCEDURES AND CRITERIA FOR APPROVAL OR DISAPPROVAL OF STATE PROGRAM SUBMISSIONS

3. The authority citation for Part 732 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* and 16 U.S.C. 470 *et seq.*

4. Section 732.17 is amended by redesignating paragraphs (h)(4) through (h)(12) as paragraphs (h)(5) through (h)(13), respectively, and by adding a new paragraph at (h)(4) to read as follows:

§ 732.17 State program amendments.

. . . . . .

(h) * * *

(4) All State program amendments which may have an effect on historic properties shall be provided to the State Historic Preservation Officer and to the Advisory Council on Historic Preservation for comment.

. . . . . .

PART 761—AREAS DESIGNATED BY ACT OF CONGRESS

5. The authority section for Part 761 continues to read as follows:

Authority: Secs. 102, 201, 501(b), 503, 504, 510, 512, 513, 514, 522 and 701 of Pub. L. 95–87 91 Stat. 448, 449, 468, 470, 471, 480, 483, 484, 485, 507 and 518 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1260, 1262, 1263, 1264, 1272, and 1291.)

6. Section 761.5 is amended by revising the definition of cemetery to read as follows:

§ 761.5 Definitions.

For the purposes of this part—

Cemetery means any area of land where human bodies are interred.

. . . . . .

7. Section 761.11 is amended by revising paragraphs (c) and (g) to read as follows:

§ 761.11 Areas where mining is prohibited or limited.

. . . . . .

(c) On any lands where mining will adversely affect any publicly owned park or any places included in the National Register of Historic Places, unless jointly approved by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or place;

. . . . . .

(g) Within 100 feet, measured horizontally, of a cemetery; cemeteries may be relocated if authorized by applicable State law or regulations.

8. Section 761.12 is amended by revising paragraph (f)(1) to read as follows:

§ 761.12 Procedures.

. . . . . .

(f)(1) Where the regulatory authority determines that the proposed surface coal mining operation will adversely affect any publicly owned park or any place included in the National Register of Historic Places, the regulatory authority shall transmit to the Federal, State, or local agency with jurisdiction over the park or place a copy of applicable parts of the permit application, together with a request for

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that agency's approval or disapproval of the operation, and a notice to that agency that it has 30 days from receipt of the request within which to respond and that failure to interpose a timely objection will constitute approval. The regulatory authority, upon request by the appropriate agency, may grant an extension to the 30-day period of an additional 30 days. Failure to interpose an objection within 30 days or the extended period granted shall constitute an approval of the proposed permit.

. . . . . .

PART 772—REQUIREMENTS FOR COAL EXPLORATION

9. The authority citation for Part 772 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* and 16 U.S.C. 470 *et seq.*

10. Section 772.12 is amended by adding a new paragraph, (b)(8)(iv), to read as follows:

§ 772.12 Permit requirements for exploration removing more than 250 tons of coal.

. . . . . .

(b) * * *

(8) * * *

(iv) Any other information which the regulatory authority may require regarding known or unknown historic or archeological resources.

. . . . . .

PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

11. The authority citation for Part 773 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, 16 U.S.C. 470 *et seq.*, 16 U.S.C. 1531 *et seq.*, 16 U.S.C. 661 *et seq.*, 16 U.S.C. 703 *et seq.*, 16 U.S.C. 668a, 16 U.S.C. 469 *et seq.*, and 16 U.S.C 470aa *et seq.*

12. Section 773.12 is revised to read as follows:

§ 773.12 Regulatory coordination with requirements under other laws.

Each regulatory program shall, to avoid duplication, provide for the coordination of review and issuance of permits for surface coal mining and reclamation operations with applicable requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 *et seq.*); the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 *et seq.*); The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*); the Bald Eagle Protection Act, as amended (16 U.S.C. 668a); for Federal programs only, the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 *et seq.*); and the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa *et seq.*) where Federal and Indian lands covered by that Act are involved.

13. Section 773.15 is amended by revising paragraph (c)(11) to read as follows:

§ 773.15 Review of permit applications.

. . . . . .

(c) * * *

(11) The regulatory authority has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources, or a documented decision that the regulatory authority has determined that no additional protection measures are necessary.

. . . . . .

PART 779—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

14. The authority citation for part 779 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, sec. 115 of Pub. L. 98–146, (30 U.S.C. 1257), and 16 U.S.C. 470 *et seq.*

15. Section 779.12 is amended by revising paragraph (b) to read as follows:

§ 779.12 General environmental resources information.

. . . . . .

(b)(1) The nature of cultural, historic and archeological resources listed or eligible for listing on the National Register of Historic Places and known archeological sites within the proposed permit and adjacent areas. The description shall be based on all available information, including, but not limited to, information from the State Historic Preservation Officer and from local archeological, historical, and cultural preservation agencies.

(2) The regulatory authority may require the applicant to identify and evaluate important historic and archeological resources that may be eligible for listing on the National Register of Historic Places, through

(i) Collection of additional information,

(ii) Conduct of field investigations, or

(iii) Other appropriate analyses.

16. Section 779.24 is amended by revising paragraph (j) to read as follows:

§ 779.24 Maps: General requirements.

. . . . . .

(j) Each cemetery that is located in or within 100 feet of the proposed permit area.

. . . . . .

PART 780—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

17. The authority citation for Part 780 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, sec. 115 of Pub. L. 98–146, (30 U.S.C. 1257), and 16 U.S.C. 470 *et seq.*

18. Section 780.31 is revised to read as follows:

§ 780.31 Protection of public parks and historic places.

(a) For any publicly owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operation, each plan shall describe the measures to be used

(1) To prevent adverse impacts, or

(2) If valid existing rights exist or joint agency approval is to be obtained under § 761.12(f) of this chapter, to minimize adverse impacts.

(b) The regulatory authority may require the applicant to protect historic or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. Appropriate mitigation and treatment measures may be required to be taken after permit issuance provided that the required measures are completed before the properties are affected by any mining operation.

PART 783—UNDERGROUND MINING PERMIT APPLICATION—MINIMUM REQUIREMENT FOR INFORMATION ON ENVIRONMENTAL RESOURCES

19. The authority citation for Part 783 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, sec. 115 of Pub. L. 98–146, (30 U.S.C. 1257), and 16 U.S.C. 470 *et seq.*

20. Section 783.12 is revised by amending paragraph (b) to read as follows:

§ 783.12 General environmental resources information.

. . . . . .

(b) The nature of cultural historic and archeological resources listed or eligible for listing on the National Register of Historic Places and known archeological

sites within the proposed permit and adjacent areas.

(1) The description shall be based on all available information, including, but not limited to, information from the State Historic Preservation Officer and local archeological, historical, and cultural preservation groups.

(2) The regulatory authority may require the applicant to identify and evaluate important historic and archeological resources that may be eligible for listing on the National Register of Historic Places, through the

(i) Collection of additional information,

(ii) Conduct of field investigations, or

(iii) Other appropriate analyses.

21. Section 783.24 is amended by revising paragraph (j) to read as follows:

§ 783.24 Maps: General requirements.

. . . . . .

(j) Each cemetery that is located in or within 100 feet of the proposed permit area.

. . . . . .

PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

22. The authority citation for Part 784 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, sec. 115 of Pub. L. 98–146, (30 U.S.C. 1257), and 16 U.S.C. 470 *et seq.*

23. Section 784.17 is revised to read as follows:

§ 784.17 Protection of public parks and historic places.

(a) For any publicly owned parks or any places listed on the National Register of Historic Places that may be adversely affected by the proposed operation, each plan shall describe the measures to be used.

(1) To prevent adverse impacts, or

(2) If valid existing rights exist or joint agency approval is to be obtained under § 761.12(f) of this chapter, to minimize impacts.

(b) The regulatory authority may require the applicant to protect historic and archeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. Appropriate mitigation and treatment measures may be required to be taken after permit issuance provided that the required measures are completed before the properties are affected by any mining operation.

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DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Part 704

Conservation Reserve Program (CRP)

AGENCY: Agricultural Stabilization and Conservation Service, Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to adopt the interim rule published in the **Federal Register** at 51 FR 8780 and 51 FR 17167 as a final rule with updates, amendments, and clarifications. This final rule sets forth the terms and conditions of the Conservation Reserve Program (CRP) authorized by Title XII of the Food Security Act of 1985, as amended, Pub. L. 99–198 (the "Act"). Under the CRP, the Secretary of Agriculture is authorized to enter into long-term contracts with owners and operators of highly erodible cropland to assist such owners and operators in conserving and improving the Nation's soil and water resources. By entering into a contract, the owner or operator agrees to implement a conservation plan approved by the local Conservation District for converting highly erodible cropland normally devoted to the production of an agricultural commodity to a less intensive use. The Secretary will provide technical assistance, share some of the costs of establishing the conservation practices required by the conservation plan, and make an annual land rental payment to compensate the owner or operator for taking the cropland out of production. This final rule incorporates needed changes or corrections and clarifies the interim rule in response to experience gained during implementation of the program in crop year 1986, public comments received, and subsequent amendments to the Act.

EFFECTIVE DATE: February 6, 1987.

FOR FURTHER INFORMATION CONTACT: James McMullen, Director, Conservation and Protection Division, ASCS, P.O. Box 2415, Washington, DC 20013, (202) 447–6221.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and provisions of Departmental Regulation 1512–1 and has been classified as "major." It has been determined that these provisions will result in an annual effect on the national economy of $100 million or more.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental assessment that this action will have no significant adverse impact on the quality of the human environment. Therefore, an environmental impact statement is not needed. Copies of the environmental assessment are available upon written request.

The titles and numbers of the Federal Assistance Program to which this rule applies are: Title: Conservation Reserve Program; Number 10.069, as found in the catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Section 1231 of Title XII of the Food Security Act of 1985, as amended (the "Act"), directs the Secretary of Agriculture to formulate and carry out a conservation reserve program during the 1986 through 1990 crop years. The Secretary is authorized to enter into contracts with eligible owners and operators of highly erodible cropland to assist them in conserving and improving the soil and water resources of their farms and ranches by converting such land to permanent vegetative cover. The Secretary is authorized to place in the CRP up to 45 million acres of highly erodible cropland during the 1986 through 1990 crop years.

An interim rule implementing the CRP was published on pages 8780–8787 of Volume 51 of the **Federal Register** dated March 13, 1986. Comments on the interim rule were requested for a 60 day period ending May 12, 1986. The interim rule was amended on May 9, 1986, (51 FR 17167), and the comment period was extended through June 9, 1986.

Comments on the interim rule were received from 28 sources including agri-businesses, Soil and Water Conservation Districts and associations, fish and wildlife associations and agencies, forestry associations and agencies, State departments of natural resources, and the U.S. Environmental Protection Agency. No comments were received from individuals. All letters received are on file and available for public inspection in Room 4714, South Agricultural Building, 14th and Independence Avenue, SW., Washington, DC. The following is a discussion of the comments and suggestions received.

Discussion of Comments (7 CFR Part 704)

General description of the program, § 704.1: Several respondents recommended that the several CRP objectives listed in § 704.1 be treated as equivalent factors when offers to participate are being evaluated. Several respondents also suggested that CCC publish an established bid acceptance formula giving these factors equal weight.

After a review of these comments, it was determined that no modification of § 704.1 should be made in the final rule. The primary purpose of the CRP is reducing the amount of erosion occurring on our Nation's cropland. Therefore, the erodibility of the land offered to be placed in the CRP will remain the primary criteria when offers to participate are reviewed.

The other objectives listed in § 704.1 are secondary benefits that may ultimately result from the CRP. For example, to assure that the secondary objective of a curb in the production of surplus commodities is met, § 704.12(a)(3) requires that participants reduce the aggregate total of crop acreage bases, allotments, and quotas for the period of the CRP contract by an

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amount based upon the ratio between the total cropland acreage on the farm and the total acreage on the farm placed in the reserve. In addition, annual rental payments may be increased on a temporary basis in order to encourage owners and operators of highly erodible land to designate base acreage of those crops where there are excessive stocks and price support costs for placement in the CRP. For example, it has been announced that persons who enter into 1987 CRP contracts based on offers submitted to CCC during the sign-up period, February 9, 1987–February 27, 1987, shall be paid an increased annual rental for the first year of the CRP contract based upon the amount of corn acreage base such persons agree to place in the CRP.

Another example is the secondary benefit of water quality improvement which usually results from preventing soil erosion.

It was also determined not to publish an established bid acceptance formula. Offers to participate in the CRP for 1986 were accepted on the basis of the lowest bids received, with a per acre bid ceiling established by the Secretary within a geographic area. It is necessary for CCC to maintain flexibility in the offer acceptance process in order to ensure that the goals of the CRP are achieved by the most cost-effective means possible.

Administration, § 704.3: Several comments were received concerning the use of other Federal agencies, conservation districts, and other governmental entities for providing technical assistance when necessary and for insuring that conservation practices are installed according to design and specification. One comment was concerned that some local Soil Conservation Service (SCS) field offices might not have adequate budget and staffing to provide effective technical assistance.

After reviewing these comments, it was determined that a change should be made in the final rule to provide that the Agricultural Stabilization and Conservation Service (ASCS) shall, in its operating procedures, list the conservation agencies and other agencies, such as the Fish and Wildlife Service, that provide services that may be utilized by ASCS in carrying out the CRP. No further change is necessary because CCC, on behalf of the Secretary, has the authority to enter into reimbursable agreements with conservation districts and other governmental entities to provide technical assistance to carry out the CRP if it is determined to be necessary.

Applicability, §704.4(b): One comment was received suggesting that State and local units of government not be eligible to participate in the CRP because such entities should be setting an example of soil stewardship.

After reviewing this issue, it was determined that § 704.4(b) should not be modified. The CRP should be applicable to State and local government-owned highly erodible croplands to encourage the conversion of such land from argicultural production. All operators, tenants, or sharecroppers on such land will be allowed to participate in the CRP if they are eligible.

Maximum county acreage, § 704.5: Five comments were received concerning the maximum amount of acreage in a county which may be placed in the CRP. Generally, these comments requested (1) an explanation of the basis for the limit, (2) a listing of the criteria which must be met for the limit to be exceeded, and (3) provisions for the public announcement of any request to authorize this limit to be exceeded.

After a review of all the comments received on this issue, it was determined that § 704.5 should not be modified. Section 1231(d) of the Act provides that the Secretary shall not place more than 25 percent of the cropland in a county into the CRP unless the Secretary determines that a higher percentage would not adversely affect the local economy of the county. This limitation is intended to protect local businesses, such as seed and fertilzer salesmen, implement dealers, and other agriculture and nonagriculture related businesses from losses that might occur if CRP participation in a county rose to a very high percentage of the cropland acreage in such county. When making determinations under this section, CCC will rely on surveys conducted by local ASC county committees and will consider all of the above mentioned impacts.

Eligible cropland, § 704.7: One respondent recommended that highly erodible land on which hay was produced in the crop rotation should be eligible for CRP, regardless of whether an argicultural commodity was produced on the land during 2 of the 5 crop years, 1981 through 1985.

Section 643(f) of Pub. L. 99–500 and Pub. L. 99–591 amended § 1231 of the Act to provide that alfalfa and other multiyear grasses and legumes in rotation, as approved by the Secretary, shall be considered to be agricultural commodities for the purpose of the CRP. The definition of an agricultural commodity in § 704.2(a)(1) of the rule has been revised accordingly. Therefore, it is possible for highly erodible cropland that was in a rotation during the years 1981–1985 to be eligible to be placed in the CRP, if such rotation is approved by the Secretary.

Several respondents recommended that land under expiring Water Bank Program (WBP) contracts be exempt from the CRP eligibility criteria which requires annual planting of a commodity in 2 of the 5 years, 1981 through 1985.

After reviewing the recommendations, it was determined that land subject to WBP contracts would not be exempt from the planting requirement. This would not be in keeping with CRP's primary goal of converting highly erodible land from crop production to permanent vegetative cover.

Twenty four comments were received concerning the criteria used for determining whether land was highly erodible. Eight comments suggested that the Secretary allow land that was eroding at only 2 times the soil loss tolerance level (2T) into the CRP; 4 comments recommended that the Secretary continue to require an erosion rate of 3 times the soil loss tolerance level (3T) on land eligible to be placed into the CRP; 1 respondent suggested that fields eroding at 2T be eligible for the CRP if part of the field is eroding at 3T; and 1 respondent suggested that with respect to fields where applied conservation practices have reduced the erosion rate to less than 3T, such fields should be eligible for CRP if additional economically justifiable conservation practices would not reduce erosion to the 2T level.

Six comments received suggested that a method which evaluated the erosion potential of soils be used to determine whether land was highly erodible. Four comments suggested that gully erosion be considered when making determinations of highly erodible land.

After a review of this issue, it has been determined that § 704.7 should be modified to provide that the eligibility of land for the CRP shall be determined based upon the erosion potential of soils and upon the amount of erosion actually occurring on the land. Accordingly, § 704.7(a) of the rule had been modified to provide the fields eligible to be placed in the CRP must, among other things, (1) consist predominantly of soils determined to be highly erodible based upon a method which measures the erosion potential of soils and (2) have been eroding at a rate greater than that recommended by the SCS Field Office Technical Guide during the crop years 1981–1985. A new § 704.8, which sets forth the application of the Erodibility

Index (EI) as the method to be used to determine erodibility of land, has been added to the final rule.

Because some producers may have already taken steps to place their land in the CRP during the 1987 crop year, the eligibility criteria contained in the interim rule will be retained, in addition to the EI criteria, for land placed in the CRP during the 1987 crop year.

The major advantages of using potential erosion criteria rather than actual erosion criteria are as follows: (1) The criteria may be applied to soil map units without making a field visit to determine cover and without determining the applicant's crop rotation; (2) soil map units are the smallest delineations of soil properties, thus facilitating the preparation of a list of eligible soil map units; (3) more acreage will be eligible for the CRP, and (4) this methodology is consistent with that used to implement the highly erodible land conservation provisions in the Food Security Act of 1985. The EI is an index number which indicates a soil's potential to erode. The higher the index, the greater the potential of the soil to erode and the more difficult it is to control erosion if used for intensive crop production. The EI uses the Universal Soil Loss Equation (USLE) and Wind Erosion Equation (WEQ) factors representing the effect of climate, topography, and soil properties on erosion. It excludes the cropping and management (C) factor and conservation practice (P) factor. Thus, the EI estimates the soil's potential to erode, and disregards the applicant's past use of the land. An EI equal to or greater than 8 was selected to identify highly erodible land.

With respect to gully erosion, the definition of highly erodible land in § 704.7 includes land with an EI of 8 or greater. This definition captures most fields with potential for gully erosion.

Four comments were received that suggested the provision in the interim regulations that a field must consist of 66⅔ percent highly erodible land in order to be determined to be predominantly highly erodible was too restrictive and could discourage participation in the CRP. The comments recommended lowering the amount of highly erodible land in a field necessary to make the field eligible for participation in the CRP.

After reviewing this issue it has been determined that the provisions of the rule should not be modified. Lowering the amount of highly erodible land necessary to make a field eligible for participation would allow too much land which is not highly erodible to be placed into the CRP.

Seven comments were received that recommended that certain nonerodible land that poses an off-farm environmental threat, such as cropland encroachment on riparian areas or proximity to sinkholes, streambanks, or stream channels, should be eligible to be placed in the CRP.

After reviewing this recommendation it has been determined that the regulation should not be modified. The primary objective of CRP is to convert highly erodible land from crop production to permanent vegetative cover. The program's 45 million acre enrollment goal can be met with land which satisfies this objective.

Conservation plan, § 704.9: Several comments were received recommending that participants in the CRP be allowed to install conservation practices on land subject to the CRP contract which meet the requirements of 7 CFR Part 12, Highly Erodible Land and Wetland Conservation. The comments suggested that the installation of such practices be included in the conservation plan developed in accordance with the CRP.

After a review of this issue, it has been determined that § 704.9 of the rule (§ 704.8 of the interim rule) should be modified to allow conservation practices designed to meet the requirements of the regulations governing highly erodible land conservation (7 CFR Part 12) to be installed on land subject to the CRP contract. However, any participant desiring to install such practices must agree to minimize soil erosion on the land during the installation of the conservation system and must, at no cost to CCC, re-establish any vegetative cover disturbed during the installation of the system. Cost-share assistance will not be provided under the CRP for the installation of conservation systems not necessary to comply with the terms and conditions of the CRP contract.

Five comments were received that recommended more consideration be given in the conservation plan to the objectives of benefiting fish and wildlife, improving and maintaining water quality, and the other stated objectives of CRP.

After reviewing this issue, it was determined that the provisions of the rule should not be modified. These objectives are currently given strong consideration in the development of conservation plans. State and County Conservation Review Groups are required to consult with fish and wildlife and water quality agencies when developing conservation practice guidelines for local use. The National and State guidelines for developing conservation practices at the local level require that fish and wildlife needs be considered when making determinations about seed varieties, other practice specifications, and maintenance of vegetative cover. Two specific wildlife practices, Permanent Wildlife Habitat and Shallow Water Areas for Wildlife, are eligible for inclusion in the conservation plan where appropriate and desired by the landowner or operator. To protect human health and wildlife, all chemicals used in establishing vegetative cover practices must be registered and authorized at the Federal, State and local levels.

Eligible Conservation Practices, § 704.10: One comment recommended that the following sentence be added to the definition of vegetative cover: "The vegetative cover should be capable of maintaining itself in a vigorous condition naturally through the contract period (10 years) or through appropriate management."

After a review of this issue, it was determined that no modification of the rule is necessary because § 704.10 of the final rule (§ 704.9 of the interim rule) provides that eligible conservation practices must provide adequate erosion control for the entire contract period.

CRP Contract, § 704.11: One comment was received which recommended that CCC announce the maximum acceptable rental rates prior to the time a person submits an offer to participate in the CRP. CCC has used a competitive bidding process during previous signups to determine whether offers to enter the CRP would be accepted. Another comment suggested that the bidding process be specifically set forth in the final rule.

After a review of these issues, it was determined that the provisions of the rule should not be modified. First, the competitive bid system has proven to be a cost-effective method for determining the acceptability of offers to participate in the CRP. However, CCC intends to provide for the submission of offers to enter into future CRP contracts during periods that are well in advance of normal planting times to decrease uncertainty on the part of applicants.

Second, it is important that CCC maintain flexibility when establishing the offer process, so that improvements in the process can be implemented as needed. Information describing the offer process is available to interested persons at all State and county ASCS offices.

Two respondents questioned the need for a 30-day irrevocable period for contract offers.

After a review of this issue, it was determined that no modification of the rule was necessary. As stated in the

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interim rule, the 30-day period is necessary in order to discourage applicants from withdrawing offers before CCC may review and evaluate them. If an applicant was allowed to withdraw an offer during this period, a re-evaluation of offers received would be required thereby resulting in additional administrative costs to CCC, as well as increased annual rental payments if a higher bid had to be accepted to meet the acreage goal.

Obligations of the participant, § 704.12: Several comments were received which suggested modifications in the terms and conditions of the CRP. These suggestions and the determinations of CCC with respect to these comments are as follows:

(1) It was recommended that the CRP contract period be extended from a 10 to a 15 year period to ensure a more gradual phase-out of contracts and to encourage the permanent conversion of land from cultivation. No modification of this provision of the rule has been made to reflect this recommendation. A gradual phase-out of contracts is ensured because contracts are entered into over a 5 year period. Further, highly erodible land placed in the CRP will be subject to the regulations governing highly erodible land conservation (7 CFR Part 12).

(2) It was recommended that participants be given the option of permanently retiring any crop acreage bases which are reduced because of the participant's participation in the CRP. However, it was determined that increased rental payments for the permanent reduction of bases would not be a cost-efficient method of reducing the production of surplus commodities because of increased costs, uncertainties about the future terms of the production adjustment programs, and the voluntary nature of these programs.

(3) It was recommended that participants be required to comply with the water quality standards of the state in which the land is located. The provisions of the rule have not been modified to reflect this recommendation because the standards and specifications of eligible conservation practices include requirements for the protection and improvement of water quality.

(4) It was recommended that the rule be modified to clarify that (1) the commercial sale or harvesting as nursery stock or Christmas trees of trees planted in accordance with the CRP is prohibited, and (2) the charging of fees for the recreational use of land subject to the CRP contract is permissible. In accordance with this recommendation, § 704.12(a)(6) (§ 704.11(a) of the interim rule) has been modified to specifically prohibit the commercial sale or harvest as nursery stock or Christmas trees of trees planted in accordance with the CRP. It was not necessary to modify the final rule to specifically allow the charging of recreational fees because such activity does not constitute the harvesting or selling of forage from land subject to the CRP contract.

(5) It was recommended that the vegetative cover be required to be maintained in such a way as to benefit wildlife. It was not necessary to modify the rule to reflect this recommendation because participants are currently encouraged to enhance wildlife through management practices incorporated in the conservation plan.

(6) It was recommended that haying or grazing of forage on land subject to a CRP contract should not be allowed. No modification of the rule (704.11(a)(5) of the interim rule) is necessary with respect to this recommendation. Section 704.12(a)(5) of the final rule prohibits the grazing, harvesting, or other commercial use of any crop from the land subject to the CRP contract except when specifically permitted by the Secretary in response to a drought or other similar emergency.

Obligations of the Commodity Credit Corporation, § 704.13: One respondent recommended that the interim rule be amended to: (1) provide that the provisions of the Balanced Budget and Emergency Deficit Control Act (Gramm-Rudman-Hollings) will have no effect on rental payments guaranteed to farmers under CRP contracts, and (2) delete the words "subject to the availability of funds" which are contained in § 704.12 of the interim rule (§ 704.13 of the final rule).

After a review of these issues, it was determined that no modification of the interim rule is necessary. It should be noted that section 1241(a) of the Act provides that, beginning with fiscal year 1988, no funds of the CCC may be used to carry out the CRP unless funds have been appropriated in advance for such purpose.

Availability of cost-share payment, § 704.14: Two comments were received which recommended that the interim rule be amended to provide that an entity other than CCC may share all or a part of a participant's cost incurred in establishing permanent vegetative cover.

After a review of this issue, it was determined that the rule should not be modified because other entities are not precluded by the rule from paying all or part of a participant's cost of installing conservation practices. However, CCC will not make cost-share payments available to the participant in an amount that exceeds the participant's actual contribution to the cost of installing the eligible practice.

Levels and rates for cost-share payments, § 704.15, Several comments were received which recommended that CCC provide higher levels of cost-share assistance. Another respondent was concerned that CCC would not share the cost of the acquisition of trees, seedlings, and shrubs from commercial growers or consider the cost of private nursery stock in determining cost-share rates. The respondent was also concerned that commercial growers would not be able to immediately meet an increased demand for commercial nursery stock.

After a review of the comments received on this issue, it was determined that no modification of the rule is necessary. First, the 50 percent level of cost-share assistance provided for by the interim rule was required by section 1234(b) of the Act. Second, the commercial prices of seedlings, trees, and shrubs are considered by CCC in determining cost-share rates. Finally, § 704.12(a)(2)(i) of the final rule provides that an extension of time may be granted by a county ASC committee for the participant to establish the conservation practices if the participant cannot fully establish such practices for reasons beyond the participant's control.

Method of payment, § 704.17: Two comments received recommended that all CRP payments be made in cash because in-kind payment or payment in the form of commodity certificates is less attractive to participants and, therefore, results in reduced program participation.

After a review of this issue, it was determined that no modification of the rule is necessary. The in-kind payments provision was included in the Act to enable the Secretary, in times of commodity surpluses, to make payments that result in reduction of CCC commodity storage and handling costs. To accommodate participants, commodity certificates are being issued which allow participants to take immediate possession of the commodities, to reduce their CCC commodity loan indebtedness, or to sell the certificates. It is in the public interest to continue to make CRP payments available both in cash and in the form of commodity certificates in order to reduce Federal program costs and to better manage existing surpluses of commodities.

Contract modifications, § 704.20: Five comments were received which suggested that the provisions of this section that allow participants, by mutual agreement with CCC, to decrease CRP acreage and produce an agricultural commodity on such CRP acreage during a crop year are either vague or inconsistent with intent of the CRP. They recommended that the provisions of this section be better defined and restricted in scope or deleted.

After a review of this issue, it was determined that no modification of the rule is necessary. The provisions of § 704.20 of the final rule (§ 704.19 of the interim rule) are simply a restatement of the provisions of § 1235(c) of the Act and are needed to provide CCC with the flexibility to permit the production of an agricultural commodity on CRP land in response to national emergencies, to grant relief to a participant in cases of severe hardship, or to decrease the acreage under contract where the land will be devoted to nonagricultural uses such as residential, commercial, or industrial development. Modifications of CRP contracts in accordance with the provisions of this section will be made by CCC on a case-by-case basis.

Another comment recommended that the interim rule be revised to require the concurrence of all appropriate technical agencies when a proposed modification of a CRP contract involves a technical aspect of a conservation plan.

After a review of this issue, it was determined that § 704.19(b) of the interim rule (§ 704.20(b) of the final rule) should be modified to provide that the concurrence of the SCS, State Forester (where applicable), and the CD are necessary if modifications to a CRP contract involve a technical aspect of the participant's conservation plan.

Violations, § 704.22: One respondent recommended that § 704.21(c) of the interim rule (§ 704.22(c) of the final rule), which allows CCC to make adjustments in payments or to require payment refunds in response to minor violations of the contract, should be deleted because it appears to allow a contract modification when the participant fails to carry out the terms of the CRP contract.

After a review of this issue, it was determined that no modification of the rule is necessary. Minor or inadvertent violations of a CRP contract, such as accidental grazing of forage, might not warrant the termination of a contract. Therefore, CCC needs the flexibility to respond to such minor contract violations in order to discourage such violations without losing the conservation benefits for the remainder of the term of the contract.

Other Changes or Updates

A new paragraph (f) concerning the right of CCC to reject any and all offers to place land into CRP was added to § 704.10 of the interim rule (§ 704.11 of the final rule) by an interim rule published in the **Federal Register** on May 6, 1986.

Section 704.18 has been amended to allow participants who may be entitled to any cash payment under this program to assign the right to receive such cash payment to secure or pay pre-existing indebtedness.

Section 704.21 of the final rule (§ 704.20 of the interim rule), which governs transfer of, and succession-of-interest in, land, has been updated to prevent CRP participants from unduly benefiting from the program by placing land into the CRP for the purpose of transferring such land at an enhanced value.

Section 704.24 has been amended to provide for the granting of relief in order to provide fair and equitable treatment to persons who take action based upon the advice of a representative of a conservation district, a representative of SCS, or the State or county ASC committees.

Section 704.27 is updated to include a reference to the recently published provisions of 7 CFR Part 614 which govern a participant's right to request reconsideration of, or to appeal, certain technical determinations made by the Soil Conservation Service or the local conservation district.

Other sections have been modified in order to provide clarifications or to correct grammatical errors.

Lists of Subjects in 7 CFR Part 704

Administrative practices and procedures, Conservation plan, Contracts, Technical assistance, Natural resources, Wildlife.

Final Rule

Accordingly, the interim rule published at 51 FR 8780 and 51 FR 17169 is revised and adopted as a final rule to read as follows:

PART 704—CONSERVATION RESERVE PROGRAM

Sec.

704.1 General description of the program.
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704.3 Administration.
704.4 Applicability.
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704.6 Eligible person.
704.7 Eligible cropland.
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704.10 Eligible conservation practices.
704.11 CRP contract.
704.12 Obligations of the participant.
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704.16 Annual rental payments.
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704.19 Payments not subject to claim.
704.20 Contract modifications.
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704.22 Violations.
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704.24 Performance based upon advice or action of representatives of the Department or a Conservation District.
704.25 Access of land.
704.26 Division of program payments and provisions relating to tenants and sharecroppers.
704.27 Appeals.
704.28 Depriving others of payments.
704.29 Filing of false claims.
704.30 Miscellaneous.
704.31 Paperwork Reduction Act assigned numbers.

Authority: Secs. 1201, 1231–1244, Pub. L. 99–198, 99 Stat. 1354, as amended (16 U.S.C. 3801, 3831–3844).

§ 704.1 General Description of the Program.

(a) The regulations in this part set forth the terms and conditions for the Conservation Reserve Program (CRP) authorized by Title XII of the Food Security Act of 1985 (Pub. L. 99–198). The Secretary of Agriculture is authorized to enter into contracts and make payments to eligible owners and operators of eligible cropland to assist them in conserving and improving the soil and water resources of their farms and ranches by converting such land to permanent vegetative cover in accordance with an approved conservation plan. A conservation plan for specified highly erodible croplands shall be developed in cooperation with the Conservation District (CD) in which the lands are located.

(b) The objectives of the CRP are to:

(1) Reduce water and wind erosion,

(2) Protect our long-term capability to produce food and fiber,

(3) Reduce sedimentation,

(4) Improve water quality,

(5) Create better habitat for fish and wildlife through improved food and cover,

(6) Curb production of surplus commodities, and

(7) Provide needed income support for farmers.

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§ 704.2 Definitions.

(a) The following definitions shall be applicable for the purposes of this part:

(1) "Agricultural commodity" means any crop planted and produced by annual tilling of the soil or on an annual basis by one-trip planters or sugar cane planted or produced in a State or alfalfa and other multiyear grasses and legumes in rotation, as approved by the Secretary;

(2) "Annual rental payment" means the annual payment specified in the CRP Contract which is made to a participant to compensate such participant for placing eligible cropland in the CRP;

(3) "Applicant" means a person who submits an offer to CCC to enter into a CRP Contract;

(4) "Bid" means the per acre rental payment requested by the owner or operator in such owner or operator's offer to participate in the CRP;

(5) "Conservation District (CD)" means a subdivision of a State organized pursuant to the applicable State Soil Conservation District Law;

(6) "Conservation plan" means the plan describing and scheduling the conservation practices which must be established on eligible cropland placed in the CRP in order for erosion on such land to be adequately controlled. The conservation plan shall include the approved vegetative cover and other required conservation practices necessary for the establishment and maintenance of vegetative cover;

(7) "Commodity Credit Corporation (CCC)" means a wholly-owned government corporation within the U.S. Department of Agriculture;

(8) "CRP Contract" means the approved agreement, including the conservation plan, entered into in writing between CCC and the participant which sets forth the terms and conditions for participation in the CRP established under this part;

(9) "Cost-share payment" means the payment made by CCC to assist program participants in establishing the conservation practices eligible for cost-share assistance and required in the CRP Contract;

(10) "Department" means the United States Department of Agriculture and includes CCC;

(11) "Eligible cropland" means highly erodible land which meets the requirements of § 704.7;

(12) "Field" means a part of a farm which is separated from the balance of the farm by permanent boundaries such as fences, roads, permanent waterways, woodlands, or corp line in cases where the predominantly eligible cropland and farming practices make it a manageable unit and probable that such crop line is not subject to change during the duration of the contract, or other similar features;

(13) "Field windbreak" means a vegetative barrier with a linear configuration composed of trees or shrubs planted for the purpose of wind erosion control;

(14) "Local ASCS office" means the county office of the Agricultural Stabilization and Conservation Service serving the county or a combination of counties in the area in which the landowner's farm or ranch is located;

(15) "Manageable unit" means a part of a field that can be farmed in a normal manner;

(16) "Operator" means a person who is in general control of the farming operations on the farm;

(17) "Owner" means a person who has legal ownership of farmland including a person who is buying farmland under a purchase agreement;

(18) "Participant" means an owner or operator who has entered into a CRP Contract;

(19) "Person" means an individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity and, whenever applicable, a State, a political subdivision of a State, or any agency thereof;

(20) "Secretary" means the Secretary of the U.S. Department of Agriculture;

(21) "Soil Loss Tolerance (T)" represents the maximum level of annual soil erosion that will permit a high level of crop productivity to be sustained economically and indefinitely;

(22) "Technical assistance" means the assistance provided to owners or operators by a representative of the Department in classifying cropland, developing conservation plans, inspecting eligibility of a designated area, and implementing and certifying conservation practices;

(23) "Tree planting plan" means the plan that sets forth the silvicultural treatment necessary for planting trees, in order to obtain adequate erosion control on eligible cropland. The plan shall include site location, number of acres, requirements for site preparation, tree species and specifications, planting dates, pre- and post-care of nursery stock, and maintenance to ensure survival; and

(24) "Vegetative cover" means perennial or permanent grasses, legumes, forbs, and shurbs with a lifespan of 5 or more years, or trees.

(b) In the regulations in this part and in all instructions, forms, and documents in connection therewith, all other words and phrases specifically relating to ASCS operations shall, unless the context of subject matter otherwise requires, have the meanings assigned to them in the regulations governing reconstitution of farms, allotments and bases, 7 CFR Part 719.

§ 704.3 Administration.

(a) The program will be administered on behalf of CCC under the general supervision of the Administrator of the Agricultural Stabilization and Conservation Service (ASCS) and shall be carried out in the field by State ASC Committees (STC) and County ASC Committees (COC).

(b) The Soil Conservation Service (SCS) shall determine whether land is highly erodible and suitable for permanent vegetative cover, and the adequacy of the planned conservation practice to achieve the necessary erosion control and shall provide such other technical assistance in the implementation of the CRP as determined necessary.

(c) The Forest Service (FS) or the State Forestry Agency shall provide such assistance as determined necessary for developing and implementing conservation plans which include tree planting as the appropriate conservation practice.

(d) The Extension Service (ES) shall coordinate the related information and education program concerning implementation of the CRP.

(e) The ASCS shall, in its operating procedures, list the conservation agencies and other agencies, such as the Fish and Wildlife Service, that provide services that may be utilized by ASCS in carrying out the program provided for in this part.

(f) Except as provided in paragraph (b), the Deputy Administrator, State and County Operations, ASCS (Deputy Administrator), may determine any question arising under the CRP, may reverse or modify any determination made by a STC or COC in connection with the CRP, and may administer any or all phases of the CRP delegated to the COC, STC, or any employee(s) where the COC, STC, or any employee fails to perform a function required in these regulations. In exercising this authority the Deputy Administrator may authorize a person or persons to carry out the CRP or other function(s) for such period of time as is deemed necessary by the Deputy Administrator.

§ 704.4 Applicability.

(a) The CRP is applicable in the 50 States, the Commonwealth of Puerto Rico, and the Virgin Islands of the United States.

(b) The CRP is applicable to private croplands, Indian tribal croplands, and State or local government croplands that otherwise meet the requirements of eligibility set forth in § 704.7.

§ 704.5 Maximum county acreage.

The maximum acreage in a county which may be placed in the CRP may not exceed 25 percent of the total cropland in the county unless CCC determines that such action would not adversely affect the local economy of the county.

§ 704.6 Eligible person.

In order to be eligible to enter into a CRP Contract in accordance with this part, a person must be an owner or operator of eligible cropland and—

(a) If an operator of eligible cropland, must have operated such cropland for the period beginning not less than 3 years prior to the close of the applicable signup period of January 1, 1985, whichever is later, and must provide satisfactory evidence that such person will be the operator of such cropland for the CRP Contract period; or

(b) If an owner of eligible cropland, must have owned such cropland for not less than 3 years prior to the close of the applicable signup period, unless:

(1) The new owner acquired such cropland by will or succession as a result of the death of the previous owner;

(2) The new owner acquired such cropland prior to January 1, 1985; or

(3) It is determined that the new owner of such cropland did not acquire such cropland for the purpose of placing it in the CRP.

§ 704.7 Eligible cropland.

(a) In order to be eligible to be placed in the CRP, a field must—

(1) Have been annually planted or considered planted to produce an agricultural commodity other than orchards, vineyards, or ornamental plantings in 2 of the 5 crop years, 1981 through 1985;

(2) Be physically possible to be planted to produce an agricultural commodity other than orchards, vineyards, or ornamental plantings;

(3) With respect to CRP Contracts effective beginning with the 1986 crop year, consist predominantly of soils that meet the criteria set forth in paragraph (a)(4)(ii) of this section;

(4) With respect to CRP Contracts effective beginning with the 1987 crop year, consist predominantly of soils—

(i) Identified as being highly erodible in accordance with § 704.8 of this part and having an erosion rate during the crop years 1981–1985 greater than that recommended by the Soil Conservation Service Field Office Technical Guide; or

(ii) Be classified by SCS as being predominantly Land Capability Classes II, III, IV, and V with an average annual erosion rate of 2T or greater, as announced by the Secretary; or be classified by SCS as being predominantly Land Capability Classes VI, VII, or VIII;

(5) With respect to CRP Contracts effective beginning with the 1988 and subsequent crop years, consist predominantly of soils that meet the criteria set forth in paragraph (a)(4)(i) of this section; and

(6) If a redefined field, be a manageable unit which meets the minimum acreage requirements as established by CCC for the county.

(b) Land subject to a contract under the Great Plains Conservation Program, Agricultural Conservation Program, Forestry Incentives Program, Rural Clean Water Program, or similar program contract or land currently under an annual program with maintenance on lifespan requirements may be eligible to be placed in the CRP if the eligible cropland meets the requirements of paragraph (a) and the conservation practices required under the CRP are consistent with the requirements of the existing contracts.

(c) A field shall be considered to be predominantly highly erodible if 66⅔ percent or more of the land in such field meets the requirements of paragraph (a)(3), (4), or (5), as applicable.

§ 704.8 Criteria for identifying highly erodible land.

(a) Soil map units will be used as the basis for identifying highly erodible land. The erodibility of a soil is determined by dividing the potential average annual rate of erosion for each soil by the predetermined soil loss tolerance (T) value for the soil.

(1) The potential average annual rate of sheet and rill erosion is estimated by multiplying the following factors of the Universal Soil Loss Equation (USLE):

(i) Rainfall and runoff (R),

(ii) The degree to which the soil resists water erosion (K), and

(iii) The function (LS), which includes the effects of slope length (L) and steepness (S).

(2) The potential average annual rate of wind erosion is estimated by multiplying the following factors of the Wind Erosion Equation (WEQ): Climatic characterization of wind speed and surface soil moisture (C) and the degree to which soil resists wind erosion (I).

(3) The USLE is explained in U.S. Department of Agriculture Handbook 537, "Predicting Rainfall Erosion Losses." The WEQ is explained in Agriculture Handbook 346, "Wind Erosion Forces in the United States and Their Use in Predicting Soil Loss." Copies of the handbook may be obtained by writing: U.S. Department of Agriculture, Soil Conservation Service, Land Treatment Programs Division, Washington, D.C. 20013–2890. Values for all the factors used in these equations are contained in the SCS field office technical guide and the references which are a part of the guide.

(b) A soil map unit subject to significant erosion by water or by wind shall be determined to be highly erodible if either the RKLS/T or the CI/T value equals or exceeds 8.

(c) Whenever a soil map unit description contains a range of slope length and steepness characteristics that produce a range of LS values which result in RKLS/T quotients both above and below 8, the soil map unit will be entered on the list of highly erodible soil map units as "potentially highly erodible." The final determination of erodibility for an individual field containing these soil map delineations shall be made by an on-site investigation.

§ 704.9 Conservation plan.

(a) The applicant, in consultation with the Soil Conservation Service (SCS), shall develop the conservation plan.

(b) The SCS shall ensure that the conservation practices included in the conservation plan and agreed to by the applicant will achieve the reduction in erosion necessary to maintain the production capability of the soil.

(c) If applicable, a tree planting plan shall be developed by the State Forester and shall be included with the conservation plan.

(d) All conservation plans must be approved by the CD, or for areas not located within a CD, a representative of SCS.

(e) The conservation plan may include practices which will enable participants to be in compliance with provisions of 7 CFR Part 12 governing production of agricultural commodities on highly erodible land when the contract expires, if the participant agrees in writing to: (1) Minimize soil erosion on the land during the installation of such conservation practices, and (2) re-establish disturbed vegetative cover at no cost to CCC.

§ 704.10 Eligible conservation practices.

(a) Eligible conservation practices are those practices specified in the conservation plan that meet all quantity and quality standards needed to establish permanent vegetative cover.

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including introduced or native species of grasses and legumes, forest trees, permanent wildlife habitat, field windbreaks, and shallow water areas for wildlife that will provide adequate erosion control for the contract period.

(b) Other conservation practices may be determined to be eligible if such practices are required in the conservation plan to assure establishment or permanent vegetative cover.

(c) Conservation practices installed according to paragraph 704.9(e) are not eligible for cost-share payments under the provisions of this part.

§ 704.11 CRP Contract.

(a) In order to enter into the CRP, the owner or operator must enter into a CRP Contract with CCC.

(b) The CRP Contract will be comprised of: (1) The terms and conditions for participation in the CRP, (2) the offer of the applicant, and (3) the conservation plan.

(c) In order to enter into a CRP Contract, the applicant must submit an offer to participate on a Form CRP–1 at the local county ASCS office during the announced signup period for the applicable crop year.

(1) The offer shall be irrevocable for a period of 30 days subsequent to the close of the applicable signup period.

(2) The applicant shall be assessed liquidated damages in an amount provided in the CRP Contract if the applicant revokes an offer prior to 30 days after the close of the applicable signup period. Once an offer has been received by CCC, it shall be reviewed and evaluated. The revocation of offers during this 30-day review and evaluation period would require a re-evaluation of bids reviewed and would result in additional administrative expenditures by CCC as well as increased annual rental payments; however, it would be impossible to compute the actual damages suffered by CCC.

(3) CCC may waive payment of liquidated damages if CCC determines that the assessment of such damages in a particular case is not in the best interest of the CRP.

(d) The CRP Contract must be signed within the dates established by the COC by: (1) The applicant, and (2) the owners of the cropland to be placed in the CRP.

(e) The COC or its designee is authorized to approve CRP Contracts on behalf of CCC in accordance with instructions issued by the Deputy Administrator.

(f) CCC may reject any and all offers to place land into the CRP, including offers received from:

(1) Applicants who have submitted a previous offer to place such land into the CRP at a lower annual rental rate and revoked such earlier offer in violation of the provisions of § 704.10(c);

(2) Applicants who have violated any other terms and conditions of an earlier CRP Contract covering such land; and

(3) Applicants who had previously entered into CRP contracts with CCC if the total annual rental payments due under such prior contracts (excluding contracts entered into in accordance with § 704.21 of this part) plus the total annual rental payments called for in the offer exceeds $50,000.

§ 704.12 Obligations of the participant.

(a) All participants in the CRP must:

(1) Carry out the terms and conditions of the CRP Contract for a period of 10 crop years from the date the CRP Contract is entered into by the participant and CCC;

(2) Implement the conservation plan:

(i) The participant shall implement the conservation plan in accordance with the plan's scehdule of operation, unless and extension of time for practice completion is granted by the COC. Such as extension shall be granted only if the participant cannot fully implement the plan as scheduled for reasons beyond the participant's control; and

(ii) The participant shall establish temporary vegetative cover when required by the conservation plan or the COC to control soil erosion until permanent vegetative cover can be adequately established;

(3) Agree to reduction in the aggregate total of crop acreage bases, allotments, and quotas for the contract period for each farm which contains land which is the subject of the CRP Contract by an amount based upon the ratio between the total cropland acreage on such farm and the total acreage on such farm subject to the CRP Contract;

(4) Not undertake any action on other land under the participant's control during the contract period that tends to defeat the purpose of the CRP, including the production of any agricultural commodity on land subject to 7 CFR Part 12 which sets forth the terms and conditions under which a person shall be determined ineligible for certain benefits provided by the U.S. Department of Agriculture because of the production of an agricultural commodity on highly erodible land or converted wetland;

(5) Not knowingly or willingly allow grazing, harvesting, or other commercial use of any crop from the cropland subject to the CRP Contract except for those periods of time in accordance with instructions issued by the Secretary in response to drought or similar emergency;

(6) Not knowingly or willingly allow harvesting, as Christman trees or nursery stock, of any trees planted during the contract period on land subject to the CRP Contract;

(7) Maintain the vegetative cover and the required conservation practices on the land subject to the CRP Contract and take other actions that may be required by CCC to achieve the reduction in soil erosion necessary to maintain the production capability of the soil throughout the CRP Contract period; and

(8) Comply with the noxious weed laws of the applicable State on land subject to the CRP Contract.

(b) The participant and each other person signing the CRP Contract shall be jointly and severally responsible for compliance with the CRP Contract and the provisions of this part and for any refunds or payment adjustments which may be required for violation of any of the terms and conditions of the CRP Contract and the provisions of this part.

§ 704.13 Obligations of the Commodity Credit Corporation.

(a) CCC shall, subject to the availability of funds:

(1) Share the cost with participants of establishing eligible conservation practices specified in the conservation plan at the levels and rates of cost-sharing determined in accordance with the provisions of § 704.15;

(2) Pay to the participant for a period of years not in excess of the contract period an annual rental payment in such amounts as may be specified in the CRP Contract; and

(3) Provide such technical assistance as may be necessary to assist the participant in carrying out the CRP Contract.

(b) CCC shall preserve the participant's cropping history during the contract period, for use in establishing any bases, allotments and quotas required by federal farm programs in effect upon expiration of the contract.

§ 704.14 Availability of cost-share payments.

(a) Cost-share payments shall be made available upon a determination by CCC that the eligible conservation practice, or an identifiable unit thereof, has been established in compliance with the appropriate standards and specifications.

(b) Cost-share payments may be made under the CRP only for the establishment or installation of an eligible conservation practice.

(c) Except as provided in paragraph (d) of this section, cost-share payments shall not be made to the same owner or operator on the same acreage for any eligible conservation practices which have been previously established, and for which such owner or operator has received cost-share assistance from the Department.

(d) Cost-share payments may be authorized for the replacement or restoration of conservation practices for which cost-share assistance has been previously allowed under the CRP only if:

(1) Replacement or restoration of the practice is needed to achieve adequate erosion control; and

(2) The failure of the original practice was not due to the lack of proper maintenance by the participant.

(e) The cost-share payment made to a participant shall not exceed the participant's actual contribution to the cost of establishing the conservation practice.

§ 704.15 Levels and rates for cost-share payments.

(a) CCC will share not more than 50 percent of the actual or average cost of establishing the eligible conservation practices specified in the conservation plan.

(b) The average cost of performing a conservation practice shall be determined by the STC or COC, based upon the recommendation of the State and county Conservation Review Groups as identified in 7 CFR 701.2 (a) and (f), and may be the average cost in a State, a county, or a part of a county or counties.

§ 704.16 Annual rental payments.

(a) Annual rental payments shall be made in such amount and in accordance with such time schedule as may be agreed upon and specified in the CRP Contract.

(b) The annual rental payment shall be divided among the participants in the manner agreed upon in the CRP Contract.

(c) The maximum amount of rental payments which a person may receive under the CRP for any fiscal year shall not exceed $50,000. The regulations set forth at 7 CFR Part 795 shall be applicable in determining whether certain persons as individuals or other entities are to be considered as a separate person for payment limitation purposes.

(d) Annual rental payments made by CCC will not be reduced by amounts paid to CRP participants in cash or services by other natural resources entities.

§ 704.17 Method of payment.

Payments made by the Department under this part may be made in cash, in-kind, in commodity certificates or in any combination of such methods of payment in accordance with 7 CFR Part 770.

§ 704.18 Assignments.

Any participant who may be entitled to any cash payment under this program may assign the right to receive such cash payment, in whole or in part, as provided in the regulations at 7 CFR Part 709, Assignment of Payment, except that assignments may also be made to secure or pay pre-existing indebtedness.

§ 704.19 Payments not subject to claim.

Subject to the regulations found at 7 CFR Part 13, any cost-share or annual payment or portion thereof due any person shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any creditor, except agencies of the U.S. Government.

§ 704.20 Contract modifications.

(a) CCC, by mutual agreement with the participant, may modify the CRP Contract in order to:

(1) Decrease acreage placed in the CRP;

(2) Permit the production of an agricultural commodity during a crop year on all or part of the land subject to the CRP Contract; or

(3) Facilitate the practical administration of the CRP.

(b) The concurrence of the SCS, State Forester where applicable, and the CD are necessary when modifications to a CRP Contract involve a technical aspect of the participant's conservation plan.

(c) CCC may modify CRP Contracts to add, delete, or substitute conservation practices when:

(1) The installed conservation practice failed to adequately control erosion through no fault of the participant;

(2) The installed measure deteriorated because of conditions beyond the control of the participant; or

(3) Another conservation practice will achieve at least the same level of erosion control.

§ 704.21 Transfer of land.

(a) Participation by new owner.

(1) If a new owner or operator purchases or obtains the right and interest in, or right to occupancy of, the land subject to CRP Contract, such new owner or operator, upon the approval of the COC, may become a participant to the existing contract with the same terms and conditions or may offer to enter into a new CRP Contract with CCC covering such transferred land.

(2) If the new owner or operator becomes a participant to the existing CRP Contract, the new owner or operator shall assume all obligations under the CRP Contract of the previous participant with respect to the transferred land.

(3) The following provisions shall be applicable if the new owner or operator becomes a participant to the existing CRP Contract or enters into a new CRP Contract with CCC:

(i) Cost-share payments shall be made to the participant who established the conservation practice as specified in the contract; and

(ii) Annual rental payments to be paid during the fiscal year when the land was transferred shall be divided:

(A) Between the new participant and the previous participant based upon the period of time during the fiscal year during which such participants had control of the land or

(B) As agreed upon between the participants and approved by the COC.

(b) If a participant transfers all or part of the right and interest in, or right to occupancy of, the land subject to CRP Contract and the new owner or operator does not become a participant to the existing CRP Contract or a new CRP Contract in accordance with the provisions of this section, the CRP Contract shall be terminated with respect to the affected portion of the land subject to the CRP Contract, and the participant:

(1) Must forfeit all rights to any future annual rental or cost-share payments with respect to the transferred acreage;

(2) Must refund all or part of the payments plus interest thereon, as determined by CCC, that have been made on the transferred land, except a portion of the payments may be retained to the extent CCC determines, after consultation with the technical agency and the CD, that the established conservation practices have achieved desired conservation benefits for an acceptable period; and

(3) Must pay liquidated damages to CCC as set forth in §704.22(a)(3) of this part if no annual payments have been made under the CRP Contract.

(c) An offer to modify an existing CRP Contract upon the transfer of land subject to a CRP Contract will be accepted only if, under the terms of the modified CRP Contract and any new CRP Contracts entered into with respect to the transferred land, CCC would not pay an increased total annual rental for the land covered by the existing CRP Contract.

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§ 704.22 Violations.

(a) Termination of CRP Contract.

(1) If the participant fails to carry out the terms and conditions of the CRP Contract, CCC may, after considering the recommendations of the CD and SCS, terminate the CRP Contract.

(2) If the CRP Contract is terminated by CCC in accordance with this paragraph (a), the participant shall:

(i) Forfeit all rights to further payments under the CRP Contract and refund all payments received together with interest thereon as determined by CCC; or

(ii) Forfeit all rights to payments under the CRP Contract and pay liquidated damages to CCC in an amount specified in the CRP Contract if no payments have been received by the participant under the CRP Contract.

(3) The purpose of the CRP is to control erosion on highly erodible lands thereby protecting the Nation's soil and water resources for succeeding generations. Once a CRP Contract has been entered into between CCC and the owner or operator, CCC and other segments of the agricultural community will act based on the assumption that the CRP Contract will be fulfilled and the reduction in erosion and production will be obtained. CCC's action includes budgeting and planning for the CRP in subsequent crop years. A participant's failure to carry out the terms and conditions of the CRP Contract undermines the basis for these actions, damages the credibility of CCC's programs with other segments of the agricultural community, and requires additional expenditures in subsequent crop years in order for the required levels of acreage to be placed in the CRP and in order for an adequate reduction in erosion to be obtained. While the adverse effects on CCC of the participant's failure to comply with the CRP Contract is obvious, it would be impossible to compute the actual damage suffered by CCC. Therefore, participants shall be required to refund all payments received, plus interest, upon the termination of the CRP Contract in accordance with this paragraph (a), or to pay liquidated damages in an amount specified in the CRP Contract if no payments under the CRP have been received prior to termination.

(b) CCC may also terminate a CRP Contract if the participant agrees to such termination and CCC determines that termination would be in the public interest.

(c) If the participant fails to carry out the terms and conditions of the CRP Contract but CCC determines that such failure does not warrant termination of the CRP Contract, CCC may require such participant to refund payments received under the CRP Contract or to accept such adjustments in the payment as are determined to be appropriate by CCC.

§ 704.23 CRP Contracts not in conformity with regulations.

If, after a CRP Contract is approved by the COC on behalf of CCC, it is discovered that such CRP Contract is not in conformity with the provisions of this part as the result of a misunderstanding of the program procedures by a signatory to the contract, a modification of the contract may be made by mutual agreement. If the parties to the CRP Contract cannot reach agreement with respect to such modification, the CRP Contract shall be terminated and all payments paid or payable under the contract shall be forfeited or refunded to CCC, except as may otherwise be allowed by CCC in accordance with the provisions of § 704.24.

§ 704.24 Performance based upon advice or action of representatives of the Department or a Conservation District.

(a) Notwithstanding any other provision of law, performance rendered in good faith in reliance upon the action or advice of any authorized representative of a CD (where performance relates to the Conservation Plan or the erodibility determination), a representative of SCS, or the STC or COC (where performance relates to any other program requirement) may be accepted by the Chief of SCS or the Deputy Administrator, as applicable, as meeting the requirements of this program. The Chief of SCS or the Deputy Administrator respectively, may grant relief because of such good faith reliance to the extent it is deemed desirable in order to provide fair and equitable treatment.

(b) The provisions of this section shall be applicable only if a person relied upon the action or advice of an authorized representative of a CD, SCS, or the STC or COC, in rendering performance which the person believed in good faith met the requirements of the program established by this part. The authority provided in this section does not extend to cases where the person knew or had sufficient reason to know that the action or advice of the authorized representative of SCS or the STC or COC, upon which the person relied was improper or erroneous, or where the person acted in reliance on the person's own misunderstanding or misinterpretation of program provisions, notices or advice.

(c) Any person seeking consideration under the provisions of this section may file a request therefor with the local SCS field office and the COC (where performance related to the Conservation Plan or erodibility determination) or the COC (where performance relates to any other program requirement).

§ 704.25 Access to land.

Any representative of the Department, or designate thereof, shall have the right of access to land which is the subject of an application for a CRP Contract or land which is the subject of a CRP Contract and shall have the right to examine any other cropland under the applicant's or participant's control for the purpose of determining whether the land is highly erodible and for the purpose of determining whether there is compliance with the terms and conditions of the CRP.

§ 704.26 Division of program payments and provisions relating to tenants and sharecroppers.

Payments received under a CRP Contract shall be divided fairly and equitably among all participants to the contract. Producers who would have shared in the risk of producing crops on the land to be placed in the CRP shall receive equitable treatment in accordance with the regulations set forth in 7 CFR 713.109 and 713.150 which relate to division of payments and the rights of tenants and sharecroppers.

§ 704.27 Appeals.

(a) Except as provided in paragraph (b) of this section, the participant may obtain a review in accordance with the administrative appeal regulations (7 CFR Part 780) of any administrative determination rendered under this program.

(b) The participant may obtain a review in accordance with appeal regulations at 7 CFR Part 614 of any determinations rendered under this program by SCS or a CD.

§ 704.28 Depriving others of payments.

If it is determined by CCC that any participant has employed any scheme or device to deprive any other person of cost-share assistance or land rental payments, any part of any program payment otherwise due or paid such participant during the CRP Contract period may be withheld or required to be refunded with interest thereon as determined by CCC. A scheme or device includes, but is not limited to, coercion, fraud, or misrepresentation.

§ 704.29 Filing of false claims.

If it is determined by CCC that any participant has knowingly supplied false information or has knowingly filed a false claim, such participant shall be ineligible for payments under the CRP with respect to the crop year in which the false information or claim was filed. False information or false claims include a claim for payment for a conservation practice which is not carried out or a claim for payment for conservation practices which do not meet the specifications of the applicable conservation plan. Any amounts paid under these circumstances shall be refunded, together with interest as determined by CCC, and any amounts otherwise due such participant shall be withheld. The withholding or refunding of such payments will be in additional to any other penalty or liability otherwise imposed by law.

§ 704.30 Miscellaneous.

(a) In accordance with the regulations set forth at 7 CFR Part 796:

(1) No payment shall be made to any participant who harvests or knowingly permits to be harvested for illegal use, marihuana or other such prohibited drug-producing plants on any part of the lands owned or controlled by such participant; and

(2) Any participant who is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance in any crop year shall be ineligible for any payments under this part during the crop year and the four (4) succeeding crop years.

(b) In case of death, incompetency, or disappearance of any participant, any payment due shall be paid to the participant's successor in accordance with the provisions of 7 CFR Part 707.

§ 704.31 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these Regulations under provisions of 44 U.S.C. Chapter 33 and OMB Number 0560–0125 has been assigned.

Signed at Washington, DC on February 6, 1987.

Peter C. Myers,

Acting Secretary of Agriculture.

[FR Doc. 87–2909 Filed 2–6–87; 5:08 pm]

BILLING CODE 3410–03–M

Commodity Credit Corporation

7 CFR Part 1468 and 1472

Mohair and Shorn Wool and Unshorn Wool; Payment Program (1986–1990)

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends the regulations at 7 CFR Parts 1468 and 1472 with respect to a producer's eligibility for price support payments for mohair and wool, respectively, and makes certain minor changes.

EFFECTIVE DATES: This interim rule shall become effective on February 11, 1987. Comments must be received on or before April 13, 1987 in order to be assured of consideration.

ADDRESS: Send comments on the interim rule to: Director, Emergency Operations and Livestock Programs Division, ASCS, Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to this rule will be made available for public inspection in Room 4095 South Building, USDA, between the hours of 8:15 AM and 4:45 PM, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jerry W. Newcomb, Director, Emergency Operations and Livestock Programs Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013. Telephone (202) 447–5621.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in these regulations (7 CFR Parts 1468 and 1472) have been approved by the Office of Management and Budget in accordance with provisions of 44 U.S.C. Chapter 35 and OMB Number 0560–0023 has been assigned.

This interim rule has been reviewed under U.S. Department of Agriculture (USDA) procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified as "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance programs to which this rule applies are: Title—Commodity loans and Purchases; Number—10.051; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

These programs/activities are not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 F.R. 29115 (June 24, 1983).

Since the marketing of the 1986 crop of mohair and wool has begun, it has been determined that the provisions of this interim rule must be effective on February 11, 1987. However, comments on this interim rule are requested and must be received not later than 60 days from the date of publication in the **Federal Register** in order to be assured of consideration. A final rule will be published discussing any amendments which are determined to be necessary.

Section 703(a) of the National Wool Act of 1954, as amended ("the Wool Act"), was amended by 201 of the Food Security Act of 1985 to authorize the Secretary of Agriculture ("the Secretary") to support the price of wool and mohair marketed through December 31, 1990. Section 703(a) provides that the Secretary shall support the prices of wool and mohair to producers by means of loans, purchasers, payments or other operations. Section 704 of the Wool Act provides that if payments are utilized as a means of price support, the payments shall be such as the Secretary determines to be sufficient, when added to the national average price received by all producers, to give producers a national average return for the commodity equal to the support level. On August 12, 1986, a notice of final determinations was published in the **Federal Register** at 51 FR 28852 which, in part, determined that the price of wool and mohair will be supported for the

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1986 through 1990 marketing years by means of payments to producers.

On May 14, 1986, two final rules were published which made the price support program regulations for mohair (7 CFR Part 1468) at 51 FR 17611 and wool (7 CFR Part 1472) at 51 FR 17612 for the 1982–1985 marketing years applicable for such programs for the 1986–1990 marketing years. However, these two final rules inadvertently failed to change the phrase "four marketing years" to "five marketing years" in the respective regulations when referring to the 1986–1990 marketing years. Accordingly, this interim rule makes those corrections by amending sections 1468.103 and 1472.1503.

The provision in the mohair and wool price support regulations (7 CFR 1468.107 and 1472.1507, respectively) concerning bona fide marketing were amended on November 14, 1985 (50 FR 47033) and on August 23, 1985 (50 FR 34082), respectively, to clarify the requirements for a bona fide marketing. A review conducted by this Department of a selected number of applications for 1983 price support payments for shorn wool revealed marketing practices which defeated the purposes of the programs which are designed to encourage the continued domestic production of mohair and wool at prices fair to both producers and consumers in a manner which would assure a viable domestic mohair and wool industry.

The review disclosed that, in many instances, payments were being made to producers who sold wool to persons not previously engaged in the business of purchasing or selling wool. These transactions also often resulted in reports of sales of wool at substantially higher prices than the prices generally received by producers who marketed their wool through normal channels. Thus, these producers received higher price support payments on wool sold at these higher prices. The review further revealed attempts to submit to CCC documents representing sales, transfers, or other arrangements with respect to wool which were fictitious or not legally binding. Accordingly, it was determined that the wool price support payment program should be revised to prevent these abuses and, since the marketing of mohair is similar to the marketing of wool, the mohair price support program should be similarly revised.

The mohair and wool price support regulations were amended in 1985 to correct these abuses. Among other changes, the regulations at 7 CFR 1468.107 and 1472.1507 were amended to clearly set forth the requirements which producers have to meet in order to become eligible to receive price support payments for their marketings of mohair or wool. Those requirements provided that, in order to be considered as a bona fide marketing, the mohair or wool must be sold to a person or business engaged in the business of buying and selling grease basis mohair or wool and that the mohair or wool was purchased in the course of that business.

However, after thorough consideration of the impact on the producers who market grease basis mohair or wool and on purchasers of mohair or wool, it has been determined by the Deputy Administrator, State and County Operations (DASCO) that the amended regulations at 7 CFR 1468.107 and 1472.1507 were too restrictive in that they could effectively disqualify sales of mohair or wool, which were otherwise considered bona fide marketings under the regulations, solely because they were marketed by a producer to a purchaser who was not engaged in the business of buying and selling grease basis mohair or wool. While it is intended that a producer must sell grease basis mohair or wool to be eligible for a price support payment, it is not intended that the person who purchases such mohair or wool must also be in the business of selling mohair or wool on a grease basis. Thus, this interim rule amends the regulations at 7 CFR 1468.107 and 1472.1507 to provide that price support payments may be made to eligible producers who market mohair or wool to persons or businesses that do not normally purchase or sell mohair or wool, respectively, on a grease basis.

DASCO also determined that making price support payments on the basis of the full sales proceeds of mohair or wool sold at substantially higher prices generally received by producers who market mohair or wool through normal channels defeats the intent of the mohair or wool price support programs.

The legislative history of the Wool Act shows that its main purpose is to enable . . . [producers] to compete successfully with the wool which is brought in from cheaper production areas of the world, and thus encourage the rebuilding of sheep herds, and it is hoped, the eventual production of a larger proportion of our wool requirements in the United States. H.R. Rep. No. 1927, 83d Cong., 2d Sess. 21–22 (1954).

DASCO has determined in the cases where the sales price of mohair or wool is so high that there appears to be no relationship between the price received and the inherent grease basis value of the mohair or wool, that the higher price is attributable to specialized marketing techniques.

The specialized marketing techniques for which the person purchasing the mohair or wool is charged include advertising and the direct retailing of the fleeces from a particular animal which received special care and treatment or the fleeces that have been specially handled.

While these innovative marketing techniques which result in the mohair or wool producer receiving a substantially higher price for their mohair or wool are to be commended, it has been determined that these marketing techniques do not contibute to the rebuilding of goat or sheep herds, or increase the amount of domestically produced mohair and wool as envisioned by the Wool Act. Price support payments should not compensate producers for advertising expenses or other expenses associated with specialized marketing techniques of mohair or wool which do not contribute to the encouragement of the continued domestic production of mohair or wool at prices which are fair to both producers and consumers in a manner which will assure a viable domestic mohair and wool industry in the future.

Accordingly, this interim rule amends the regulations at 7 CFR 1468.116(b) and 1472.1545(b) to provide that price support payments will not be made with respect to that portion of the sales proceeds received by a producer which is based on sales in excess of the maximum sales price per pound as determined by DASCO for each marketing year and publicy announced by the Department at the end of the marketing year for mohair and wool, respectively. The maximum sales price for mohair and wool shall be determined on the basis of the national average market price for mohair and wool computed each marketing year and shall be an amount which will reasonably fall within specified bounds of prices received by the preponderance of producers and will enable such producers of mohair or wool to compete with foreign produced mohair or wool, rebuild herds, and increase the domestic production of mohair and wool.

Lists of Subjects

7 CFR Part 1468

Commodity Credit Corporation, Mohair, Price support program, Reporting and recordkeeping requirements.

7 CFR Part 1472

Commodity Credit Corporation, Price support program, Reporting and recordkeeping requirements, Wool.

Interim Rule

PART 1468—MOHAIR

Accordingly, the regulations at 7 CFR Parts 1468 and 1472 are amended as follows:

1. The authority citation for Part 1468 continues to read as follows:

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended, 1072, as amended (15 U.S.C. 714b, 714c); secs. 702–708, 68 Stat. 910–912, as amended (7 U.S.C. 1781–1787).

§ 1468.103 [Amended]

2. Section 1468.103 is amended by removing the phrase, "4 marketing years" and adding in lieu thereof "five marketing years".

3. Section 1468.107(c) is amended by removing paragraphs (c) (3) and (4), and by revising paragraphs (c)(1) and (c)(2) to read as follows:

§ 1468.107 Bona fide marketing within a specified marketing year.

* * * * *

(c) * * * (1) The mohair is sold to a person or business which normally purchases grease basis mohair and (2) the producer selling the mohair does not sell the mohair to a family member or to any business in which the producer and/or family member has more than a 20 percent interest.

* * * * *

§ 1468.116 [Amended]

4. Section 1468.116 is amended as follows:

a. Paragraphs (c), (d) and (e) are redesignated as paragraphs (d), (e) and (f) respectively.

b. A new paragraph (c) is added to read as follows:

* * * * *

(c) Notwithstanding any other provision of this Part, price support payments shall not be made with respect to that portion of the sales proceeds received by a producer for eligible mohair which is based on sales prices in excess of the maximum sales price per pound for mohair as determined by the Deputy Administrator. The Deputy Administrator shall determine the maximum sales price per pound for mohair marketed in each marketing year on the basis of the national average market price for mohair computed for each marketing year. The maximum sales price shall be an amount which the Deputy Administrator determines will encourage the continued domestic production of mohair at prices fair to both producers and consumers in a manner which would assure a viable domestic mohair industry. The maximum sales price shall be publicly announced by the Department of Agriculture at the end of each marketing year for mohair.

* * * * *

PART 1472—WOOL

5. The authority citation for Part 1472 continues to read as follows:

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended, 1072, as amended (15 U.S.C. 714b, 714c); secs. 702–708, 68 Stat. 910–912, as amended (7 U.S.C. 1781–1787).

§ 1472.1503 [Amended]

6. Section 1472.1503 is amended by removing the phrase "four marketing years" and adding in lieu thereof "five marketing years".

7. Section 1472.1507(c) is amended by removing paragraphs (c) (4) and (5), and by revising paragraphs (c) (1) and (2) to read as follows:

§ 1472.1507 Bona fide marketing within a specified marketing year.

* * * * *

(c) * * * (1) The wool is sold to a person or business which normally purchases grease basis wool and (2) the producer selling the wool does not sell the wool to a family member or to any business in which the producer and/or family member has more than a 20 percent interest.

* * * * *

§ 1472.1545 [Amended]

8. Section 1472.1545 is amended as follows:

a. Paragraph (c), (d), and (e) are redesignated as paragraph (d), (e) and (f) respectively.

b. A new paragraph (c) is added to read as follows:

* * * * *

(c) Notwithstanding any other provision of this Part, price support payments shall not be made with respect to that portion of the sales proceeds received by a producer for eligible wool which is based on sales prices in excess of the maximum sales price per pound for wool as determined by the Deputy Administrator. The Deputy Administrator shall determine the maximum sales price per pound for wool marketed in each marketing year on the basis of the national average market price for wool computed for each marketing year. The maximum sales price shall be an amount which the Deputy Administrator determines will encourage the continued domestic production of wool at prices fair to both producers and consumers in a manner which would assure a viable domestic wool industry. The maximum sales price shall be publicly announced by the Department of Agriculture at the end of each marketing year for wool.

* * * * *

Signed at Washington, D.C. on February 4, 1987.

William C. Bailey,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87–2708 Filed 2–10–87; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–NM–144–AD; Amdt. 39–5551]

Airworthiness Directives: Short Brothers PLC Model SD3–30 Series Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Short Brothers PLC Model SD3–30 series airplanes, that requires sealing the fuselage top skin. This action is needed to prevent fuel leaks, should they occur in certain areas, from entering the main fuselage cabin.

DATES: Effective March 18, 1987.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to Shorts Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires application of a sealant to certain areas

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of the fuselage top skin of certain Short Brothers Model SD3–30 airplanes to prevent fuel from entering into the main cabin, was published in the **Federal Register** on September 3, 1986 (51 FR 31343).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

Since the issuance of the Notice, the manufacturer has issued a revision to the service bulletin specified in the proposal, which modifies and clarifies the procedures. The United Kingdom Civil Aviation Authority (CAA) has declared the revision to be mandatory. This final rule has been revised to allow modification in accordance with the procedures contained in this revision, in lieu of the original issue of the service bulletin. The FAA has determined that this change will have no significant impact on the safety of flight, nor will it impose any additional financial burden on any operator.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above.

It is estimated that 68 airplanes of U.S. registry will be affected by this AD, that it will take approximately 30 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $81,600.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($1,200). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended].

2. By adding the following new airworthiness directive:

Short Brothers PLC: Applies to Model SD3–30 airplanes, Serial Numbers SH3002 through SH3116 inclusive, certificated in any category. Compliance is required within 90 days after the effective date of this AD, unless previously accomplished:

A. To prevent fuel entering into the main cabin, seal certain areas of the fuselage top skin in accordance with Short Brothers PLC, Service Bulletin SD330–53–58, dated January 1986, or Revision 1, dated May 1986.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3702. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 18, 1987.

Issued in Seattle, Washington, on February 4, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–2811 Filed 2–10–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 86–CE–51–AD; Amdt. 39–5547]

Airworthiness Directives; Partenavia Models P–68, P–68B, P–68C, P–68C–TC, P68 "OBSERVER" and P68TC "OBSERVER" Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Partenavia Models P–68, P–68B, P–68C, P–68C–TC, P68 "OBSERVER" and P68TC "OBSERVER" airplanes equipped with photogrammetric hatch, which requires an inspection and modification of the aileron control cable at the right side of this hatch to prevent chafing/cutting of the brake oil line. An incident was reported where the aileron control cable sawed through the brake oil line, causing loss of the brake system. This action will detect and prevent any interference and preclude possible loss of braking and/or the loss of aileron control.

EFFECTIVE DATE: March 18, 1987.

Compliance: Required within 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

ADDRESSES: Partenavia Service Bulletin (S/B) No. 68 dated January 31, 1986, applicable to this AD may be obtained from Partenavia Costruzioni Aeronautiche S.p.A., Via Cava, 80026 Casoria (Naples), Italy. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. M. Dearing, Brussels Aircraft Certification Staff, AEU–100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, B–1000, Brussels, Belgium; Telephone 513.38.30; or Mr. Harvey Chimerine, FAA, ACE–109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374–6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring an inspection for interference between the right aileron control and brake oil line, which will preclude possible chafing/cutting of the brake oil line, the loss of braking ability on the right side of the aircraft as well as possible loss of right aileron control on certain Partenavia Models P–68, P–68B, P–68C, P–68C–TC, P68 "OBSERVER" and P68TC "OBSERVER" airplanes was published in the **Federal Register** on November 4, 1986 (51 FR 40035). The proposal resulted from a reported incident where the aileron control cable at the right side of the photogrammetric hatch sawed through the brake oil line on a Partenavia P–68. Consequently, Partenavia issued S/B No. 68 dated January 31, 1986, which required a one-time visual inspection for interference between the right aileron control cable and brake oil line.

The Registro Aeronautico Italiano (RAI), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in Italy, classified this service bulletin and the actions recommended therein by the manufacturer as mandatory, and has issued Italian AD No. 86–22 dated March 30, 1986, to assure the continued airworthiness of the affected airplanes.

On airplanes operated under Italian registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the RAI combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of Partenavia S/B No. 68 dated January 31, 1986, and the mandatory classification of this service bulletin by the RAI, and concluded that the condition addressed by Partenavia S/B No. 68 dated January 31, 1986, was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include an AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal. One positive comment was received on this proposal, and no objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change. The FAA has determined that this regulation involves 15 airplanes at an approximate one-time cost of $80 for each airplane, or a total one-time fleet cost of $1,200.

The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Partenavia: Applies to certain Partenavia Models P–68, P–68B, P–68C, P–68C–TC, P68 "OBSERVER" and P68TC "OBSERVER" (Serial Numbers (S/N) 1 to 340 inclusive) airplanes equipped with photogrammetric hatch, certificated in any category.

Compliance: Required within 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To preclude possible loss of braking and/or loss of aileron control, accomplish the following:

(a) For airplanes with Serial Numbers (S/N) 1 to 298 inclusive, visually inspect the aileron control cable to the right side of the photogrammetric hatch for interference with the brake oil line in accordance with steps 1 through 6 of Part 1A, "INSPECTION INSTRUCTIONS" of Partenavia Service Bulletin (S/B) No. 68 dated January 31, 1986 (referred to hereafter as S/B No. 68).

(1) If no discrepancy is found, return the airplane to service.

(2) If a discrepancy is found, prior to further flight, accomplish the following:

(i) Replace damaged oil tube. Carefully inspect and, if necessary, replace the aileron control cable.

(ii) To prevent further interference between the brake oil lines and the aileron control cable, install a clamp (MS 21919–DG9) as shown in figure 2 on page 3/3 of S/B No. 68.

(iii) Visually check that the clamp is properly installed and the interference is no longer present.

(iv) Return the airplane to service.

(b) For airplanes with S/N 299 to 340 inclusive:

(1) Remove carpeting from around the photogrammetric hatch.

(2) Cut a rectangular inspection hole 3.35 inches by 2.35 inches (85 x 60mm) in accordance with figures 1 and 2 on page 3/3 of S/B No. 68.

(3) Manufacture a rectangular cover plate for the above inspection hole in accordance with figure 2 on page 3/3 of S/B No. 68.

(4) Visually inspect the aileron cable to the right of the photogrammetric hatch for interference with the brake oil line in accordance with steps 3 through 6 of Part 1A, "INSPECTION INSTRUCTIONS" of S/B No. 68.

(i) If no discrepancy is found, return the airplane to service.

(ii) If a discrepancy is found, prior to further flight, accomplish paragraph (a)(2) of this AD.

(c) For all aircraft having clamp (P/N MS 21919–DG9) installed on the brake oil line in accordance with Part II, "Repair Instructions" of Partenavia S/B No. 68 dated January 31, 1986, no further action is necessary.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Staff, AEU–100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, B–1000 Brussels, Belgium.

All persons affected by this directive may obtain copies of the document referred to herein upon request to Partenavia Costruzioni Aeronautiche S.p.A., Via Cava, 80026 Casoria (Naples), Italy; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on March 18, 1987.

Issued in Kansas City, Missouri, on January 29, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87–2810 Filed 2–10–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 86–NM–185–AD; Amdt. 39–5550]

Airworthiness Directives: Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends an existing airworthiness directive (AD), applicable to Boeing Model 747 series airplanes, which requires repetitive inspection and replacement, as necessary, of all main and nose landing gear wheel bearings. The FAA has determined that a certain group of wheel bearings, which the existing AD requires to be inspected, may be eliminated from the repetitive inspection requirement.

DATES: Effective February 26, 1987.

ADDRESSES: The applicable service information specified in this AD may be obtained upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft

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Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Weston B. Slifer, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1945. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by amending AD 86-11-01, Amendment 39-5322, which requires the repetitive inspection and replacement, as necessary, of all main and nose landing gear wheel bearings, was published in the **Federal Register** on September 22, 1986 (51 FR 33619). The proposed change to the AD was the removal of a certain group of bearings from the repetitive inspection requirement. These bearings are identified by part number LM229146 and LM229139, date-stamped prior to date code LS. Bearings date-stamped LS and subsequent must continue to be inspected in accordance with the AD.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One comment was received from the Air Transport Association (ATA) of America, which stated that all ATA members have already removed all pre-LS bearings from service, and would, therefore, not be affected by the proposed change. The ATA, nonetheless, supported the proposed rule.

The second comment was from a foreign operator, which stated that it inspects all wheel bearings at each tire change, approximately every 120 landings, as a routine procedure, and would not be affected by the removal of the mandatory requirement to make these inspections.

The third comment was from the Boeing Company. Boeing stated that it believes the most probable cause of the in-service failure of a certain pre-LS bearing was due to sub-surface cracking due to the through-section effects of case hardening. In support of their statements, Boeing presented the following:

1. Evidence of the presence of a cracking pattern in the cone back face rib of that bearing which is more open internally than at the surface.

2. Results of a quality control ultrasonic inspection of some new cones revealing that some cone back face ribs exhibited internal discontinuities. Further metallurgical examination of these cones revealed small internal cracks.

For these reasons, Boeing requested the inspection requirements for all pre-LS bearings be retained.

The FAA does not concur. The FAA does not consider that the evidence submitted by Boeing is conclusive. Boeing has not shown that a direct causal relationship existed between the internal discontinuities cited and in-service failure of the pre-LS bearings. This also includes the incident which preceded issuance of AD 86-11-01.

In fact, preliminary reports released by the National Transportation Safety Board, following an accident involving a Boeing Model 747 airplane, indicate that, while the failed bearing did contain certain irregularities, it also exhibited other evidence suggesting that the cause of the bearing failure was external to the bearing.

Based on all of the above, the FAA has determined that deletion of the repetitive inspection requirements for the pre-LS bearings is appropriate.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require amending the existing AD as proposed.

Since this amendment eliminates certain inspection requirements, it imposes no additional economic burden on any operator, and may be made effective in less than 30 days.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, Model 747 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended].

2. By amending Airworthiness Directive 86-11-01, Amendment 39-5322 (51 FR 19324; May 29, 1986), by deleting paragraph B.3.

This amends Amendment 39-5322.

This amendment becomes effective February 26, 1987.

Issued in Seattle, Washington, on February 4, 1987.

Wayne J. Barlow,

Director, Mountain Region.

[FR Doc. 87-2808 Filed 2-10-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-153-AD; Amdt. 39-5552]

Airworthiness Directives: EON Corporation Technical Standard Order (TSO) C22 Safety Belt Assemblies

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires replacement of EON safety belt assemblies which incorporate EON E6000 safety belt buckle assemblies. This action is prompted by reports of a buckle assembly which pulled apart under load, and other assemblies which could be pulled apart by wiggling the latch in the buckle. This condition, if not corrected, could result in the inadvertent unbuckling of a safety belt assembly, and the resultant lack of restraint of the occupant under either flight loads or crash loads.

DATES: Effective March 18, 1987.

ADDRESSES: The EON Corporation no longer exists. A copy of all documents applicable to this AD may be examined at the Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Eierman, Aerospace Engineer, Systems & Equipment Section, ANM-173W, FAA, Northwest Mountain Region, Western Aircraft Certification Office; telephone (213) 297-1386. Mailing address: FAA, Northwest Mountain Region, Western Aircraft Certification Office, ANM-173W, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive to require replacement of certain inadequate safety belt assemblies with other FAA-approved assemblies, was published in the **Federal Register** on August 28, 1986 (51 FR 30672).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

The first commenter suggested that the AD include provisions for disposal or marking of the affected safety belts to eliminate their future use in aircraft. The FAA concurs with this suggestion. The final rule has been revised to require removing or obliterating the TSO markings on the safety belts required to be removed by this AD. The FAA has determined that this change will impose no additional financial burden on any operator.

The second commenter expressed no objection to the proposal.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and public interest require the adoption of the rule, with the change previously mentioned.

Because of the wide range of aircraft which may be equipped with these safety belt assemblies, and because parts of these assemblies may be interchanged with other assemblies, the FAA is unable to estimate the number of assemblies that must be replaced in order to comply with the requirements of this AD. The FAA has determined, however, that the cost for each safety belt assembly replacement would be less than $100, including labor costs.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because of the minimum cost of compliance per aircraft (replacement of each safety belt assembly has been determined to be less than $100). A final regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

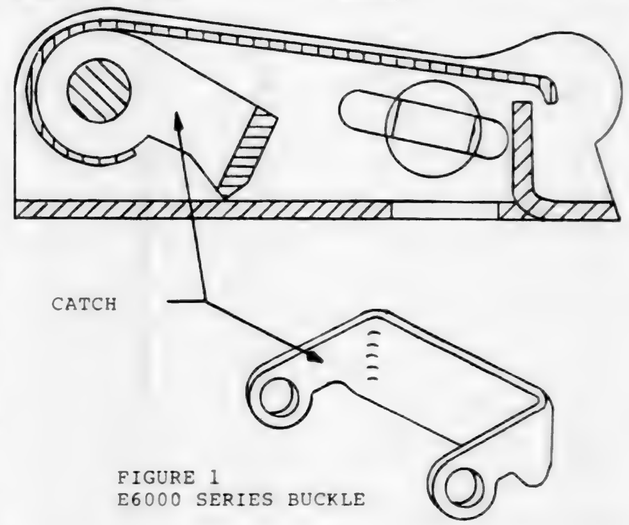


FIGURE 1
E6000 SERIES BUCKLE

EON Corporation

Applies to EON Corporation TSO C22 safety belt assemblies incorporating E6000 buckle assemblies.

Compliance is required within 30 days after the effective date of this AD, unless previously accomplished.

To prevent inadvertent opening of safety belt assemblies, accomplish the following:

A. Inspect all EON Corporation TSO C22 safety belt assemblies to determines if they use E6000 buckle assemblies. If a safety belt assembly with E6000 buckles is installed, remove and replace it with another FAA-approved safety belt assembly. The removed belts, if not destroyed, must have the TSO approval markings either permanently obliterated or removed.

Note.—This type of buckle assembly has a front cover plate which is pivoted at one end and is pulled at the other end through an arc to release the latch from the buckle. The E6000 buckle assemblies can be identified by the type of catch they use. Figure 1 (following) shows the configuration of the catch and how it is located within the buckle assembly.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region.

This amendment becomes effective March 18, 1987.

Issued in Seattle, Washington, on February 4, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-2809 Filed 2-10-87; 8:45 am]

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14 CFR Part 71

[Airspace Docket No. 86-ASO-27]

Designation of Transition Area, Lincolnton, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates the Lincolnton, North Carolina, transition area to accommodate Instrument Flight Rules (IFR) operations at the Lincolnton County Airport. This action will lower the base of controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure, based on the proposed Lincolnton Nondirectional Radio Beacon (RBN), is being developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical activities.

EFFECTIVE DATE: 0901 UTC, April 9, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald T. Niklasson, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, December 2, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by designating the Lincolnton, North Carolina, transition area. This action will provide controlled airspace for aircraft executing a new instrument approach procedure to the Lincolnton County Airport. The operating status of the airport is changed to IFR and establishment of the RBN approved (51 FR 43384). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates the Lincolnton, North Carolina, transition area to accommodate Instrument Flight Rules operations at the Lincolnton County Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Lincolnton, NC [New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Lincolnton County Airport (Lat. 35°29'01" N., Long. 81°09'39" W.).

Issued in East Point, Georgia, on February 2, 1987.

James L. Wright,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 87-2812 Filed 2-10-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Liquid and Nonliquid Resources and Resources Determinations

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We are amending our regulations to include a 20-day rule for distinguishing between liquid and nonliquid resources and a first-of-the-month rule which applies to the determination and valuation of resources and to the point at which income becomes subject to resource counting rules.

EFFECTIVE DATE: These regulations are effective February 11, 1987.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-7463.

SUPPLEMENTARY INFORMATION: We published a Notice of Proposed Rulemaking (NPRM) covering all the rules on the resources provisions on November 8, 1982 (47 FR 50511). The rules distinguishing liquid resources from nonliquid resources and establishing when resources determinations are made are being finalized at this time, separately from other provisions of the NPRM, because they are current operating policies already detailed in manual instructions and they are needed for accurate and consistent adjudication. Some portions of the NPRM have already been published as final rules, 50 FR 42683 (October 22, 1985) and other portions are still under consideration. Only one comment was received regarding these two policies and our response is discussed later in the preamble.

Section 416.1201 (which was § 416.1202 in the NPRM) explains that, as a general rule, resources are any cash or other liquid assets or any real or personal property a person can use to meet his or her needs for food, clothing, or shelter. We have included a rule distinguishing between liquid and nonliquid resources. Liquid resources are those items such as cash on hand, bank savings and checking accounts and similar items which can be converted to cash within 20 days, excluding certain nonwork days as explained in § 416.120(d). All other resources are nonliquid. It is necessary to distinguish between liquid and nonliquid resources because under our regulations, liquid resources cannot be excluded as property essential to self-support unless they are part of a trade or business (§ 416.1220). In addition, a person cannot receive conditional payments if liquid resources exceed a certain limit (§ 416.1240).

Section 416.1207 (which was § 416.1204(b), (c), and (d) in the NPRM) is being added to clarify that changes during a month in the existence, value, or excludability of resources are not

taken into account until the first moment of the next month. We also make explicit in the regulations that items received during a month are evaluated first under the income counting rules and, if retained until the first moment of the following month, will be subject to the rules for counting resources at that time. The statement in the NPRM as to when income "becomes" a resource has been changed to clarify that the focus of these regulations is on how and when the Secretary counts an item as income or resources and not on a transformation in the nature of the item. In addition, the final rule breaks out as a separate subsection (e) the rule related to changing the form of a resource and shows the relationship between this provision and the transfer of assets provisions of § 416.1246.

Comment Received Following Publication of the NPRM on Liquid and Nonliquid Resources (Published November 8, 1982 (47 FR 50511))

Comment: A State clearinghouse questioned the rationale for including in the difinition of liquid resources "other property which you can convert to cash within 20 work days." The commenter recommended that, because the property cannot be used until it has been converted, it should be considered *nonliquid* unless conversion actually occurs within the 20-day period.

Response: In a program such as SSI, it is necessary to have some point in time at which resources are evaluated. For SSI purposes, that point is the first moment of the month. It would be inconsistent with the first-of-the-month rule to wait 20 days before making a decision about eligibility based on resources. A nonexcluded resource, whether liquid or nonliquid, is counted as of the first of the month against the statutory resources limitation. However, if an individual does not have countable resources in excess of the statutory limit, then a distinction between liquid and nonliquid resources is not material to eligibility. If the individual meets all other eligibility criteria, SSI payments can be made for the month. If, however, countable resources exceed the statutory limit, a decision as to liquidity/nonliquidity must be made to determine whether the individual meets the requirements for conditional payment (see § 416.1240). One of the requirements for conditional payment is a dollar limitation on the amount of liquid resources. Because liquid resources generally are readily convertible to cash, and thus available for meeting basic needs for food, clothing, and shelter, we expect an individual to use such resources toward his or her own support before qualifying for SSI. The 20-day rule encourages people to convert such assets quickly, and thus reinforces the basic purpose of the SSI program. Of course, if evidence shows that there is some obstacle which precludes disposition in 20 days (e.g., a life insurance policy may not be payable on demand but rather must be presented to the home office and such processing will take more than 20 days), then the resource is considered nonliquid and, if appropriate, a previous decision can be revised. Given the purpose of the SSI program to make payments to individuals who have limited income and resources available for meeting current needs, we do not believe that the commenter's recommended change of policy is appropriate.

Executive Order 12291: The Secretary has determined that this is not a major rule under Executive Order 12291. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act: We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these rules affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act: These regulations impose no additional reporting or recordkeeping requirements requiring OMB clearance.

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income program)

Dated: August 8, 1986.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: October 2, 1986.

Otis R. Bowen,

Secretary of Health and Human Services.

Subpart L of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for Subpart L of Part 416 continues to read as follows:

Authority: Secs. 1102, 1611, 1613, 1614 and 1631 of the Social Security Act, as amended; Sec. 211 of Pub. L. 93-66; 49 Stat. 647, as amended; 86 Stat. 1466, 1470, 1471 and 1475, as amended; 42 U.S.C. 1302, 1382, 1382b, 1382c and 1383.

2. In § 416.1201, paragraphs (b) and (c)(1) are revised to read as follows:

§ 416.1201 Resources; general.

* * * * *

(b) *Liquid resources.* Liquid resources are cash or other property which can be converted to cash within 20 days, excluding certain nonwork days as explained in § 416.120(d). Examples of resources that are ordinarily liquid are stocks, bonds, mutual fund shares, promissory notes, mortgages, life insurance policies, bank accounts (savings and checking), certificates of deposit and similar items. Liquid resources, other than cash, are evaluated according to the individual's equity in the resources.

(c) *Nonliquid resources.* (1) Nonliquid resources are property which is not cash and which cannot be converted to cash within 20 days excluding nonwork certain days as explained in § 416.120(d). Examples of resources that are ordinarily nonliquid are loan agreements, household goods, automobiles, trucks, tractors, boats, machinery, livestock, buildings and land. Nonliquid resources are evaluated according to their equity value except as otherwise provided. (See § 416.1218 for treatment of automobiles.)

* * * * *

3. Section 416.1207 is added to read as follows:

§ 416.1207 Resources determinations.

(a) *General.* Resources determinations are made as of the first moment of the month. A resource determination is based on what assets an individual has, what their values are, and whether or not they are excluded as of the first moment of the month.

(b) *Increase in value of resources.* If, during a month, a resource increases in value or an individual acquires an additional resource or replaces an excluded resource with one that is not excluded, the increase in the value of the resources is counted as of the first moment of the next month

(c) *Decrease in value of resources.* If, during a month, a resource decreases in value or an individual spends a resource or replaces a resource that is not excluded with one that is excluded, the decrease in the value of the resources is counted as of the first moment of the next month.

(d) *Treatment of items under income and resource counting rules.* Items received in cash or in kind during a month are evaluated first under the income counting rules and, if retained until the first moment of the following

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month, are subject to the rules for counting resources at that time.

(e) *Receipts from the sale, exchange, or replacement of a resource.* If an individual sells, exchanges or replaces a resource, the receipts are not income. They are still considered to be a resource. This rule includes resources that have never been counted as such because they were sold, exchanged or replaced in the month in which they were received. See § 416.1246 for the rule on resources disposed of for less than fair market value (including those disposed of during the month of receipt).

Example: Miss L., a disabled individual, receives a $350 unemployment insurance benefit on January 10, 1986. The benefit is unearned income to Miss L. when she receives it. On January 14, Miss L. uses the $350 payment to purchase shares of stock. Miss L. has exchanged one item (cash) for another item (stock). The $350 payment is never counted as a resource to Miss L. because she exchanged it in the same month she received it. The stock is not income; it is a different form of a resource exchanged for the cash. Since a resource is not countable until the first moment of the month following its receipt, the stock is not a countable resource to Miss L. until February 1.

[FR Doc. 87-2874 Filed 2-10-87; 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Narasin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Products Co. providing for revised assay specification for narasin Type C feeds. The feed is used for broilers for prevention of certain forms of coccidiosis.

EFFECTIVE DATE: February 11, 1987.

FOR FURTHER INFORMATION CONTACT: Henry E. Schmaus, Center for Veterinary Medicine (HFV-140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6971.

SUPPLEMENTARY INFORMATION: Elanco Products Co., A Division of Eli Lilly & Co., 740 South Alabama St., Indianapolis, IN 46285, is sponsor of NADA 118-960 which provides for use of Monteban® (narasin) Type A article to make Type C broiler feeds containing 54 to 72 grams narasin per ton used to prevent certain forms of *Eimeria* coccidiosis. The NADA was originally approved August 14, 1986 (51 FR 29097). Elanco filed a supplement which provides for Type C feed assay limits of 75 to 125 percent instead of the currently approved 85 to 115 percent limits. The NADA supplement is approved and the regulation in 21 CFR 558.4(d) is amended to reflect this approval.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.4 [Amended]

2. Section 558.4 *Medicated feed applications* is amended in paragraph (d) in the table entitled "Category I" in the entry for "Narasin" in the 4th column by changing the assay from 85-115 to "85-115/75-125."

Dated: February 4, 1987.

Marvin A. Norcross,

Associate Director for New Animal Drug Evaluation.

[FR Doc. 87-2821 Filed 2-10-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 968

[Docket No. N-87-1636; FR-2263]

Cost Containment Policy Statement—Indian Housing Program and Comprehensive Improvement Assistance Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Policy statement.

SUMMARY: The Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1986 (Pub. L. 99-160, approved November 25, 1985) repealed section 6(b) of the United States Housing Act of 1937. Section 6(b) required the Secretary to establish prototype costs for the development of public and Indian housing. These prototype costs were used to limit costs associated with public and Indian housing development, and also for modernization. The purpose of this statement is to announce interim cost containment policies for the Indian Housing development program and the Comprehensive Improvement Assistance Program (CIAP). These policies are to be applied by the Department pending the issuance of rules amending existing regulations. This policy notice is applicable to the Indian housing development program and to CIAP only. A related notice has been published to explain interim cost containment policies for public housing development projects.

FOR FURTHER INFORMATION CONTACT: Nancy Chisholm, Director, Policy Staff, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-6713. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Until recently, section 6(b) of the United States Housing Act of 1937 required the Secretary of HUD to establish prototype costs for the development of public and Indian housing projects. These prototype costs were established for different areas of the country and were based on construction costs of new dwelling units of various sizes and types that were suitable for occupancy by persons assisted under the Act. Section 6(b) required every contract for loans (other than preliminary loans) or annual contributions to provide that the cost of construction and equipment of the project (excluding land, demolition, and nondwelling facilities) on which the computation of annual contributions under the Act was based, not exceed by more than 10 percent the appropriate prototype cost for the area. These statutory requirements were incorporated in HUD's Indian housing development regulations. In addition, HUD promulgated other regulations that limited total development costs based on the published Indian prototype costs limits; e.g., for new construction projects, total development costs were limited to 160 percent of project prototype costs for detached, semi-detached, row or walk-up projects, and to 145 percent of project prototype costs for elevator projects. Additionally, under the Comprehensive Improvement Assistance Program (CIAP), HUD assessed the financial feasibility of proposed modernization of a project by determining whether the cost of a proposed modernization program (excluding the cost of management improvements) exceeded the prototype cost of a new project. Cost containment regulations based on the Department's prototype cost determinations appear in other program regulations.

In 1985, Congress expressed its concern that the available data for the calculation of prototype costs were inadequate. It believed that this shortcoming, coupled with what congressional critics saw as the relatively inflexible approach adopted by the Department in applying prototype cost requirements, had become a significant and unreasonable impediment to the utilization of development funds. (S. Rep. No. 99-129, 99th Cong. 1st Sess. 10). Accordingly, section 6(b) was repealed in the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1986 (Pub. L. 99-160).

Purpose of statement

The repeal of section 6(b) eliminated the statutory requirement that HUD limit dwelling construction and equipment costs based on prototype cost determinations. It did not, however, eliminate HUD's responsibility to approve assistance applications on the basis of reasonable criteria designed to promote economy. (S. Rep. No. 99-129, at 10.) Despite the absence of statutory prototype limitations, HUD believes that it is essential to limit costs in assisted housing programs so that the Department can develop or modernize the largest number of units with available funds.

Since the cost containment regulations contained in 24 CFR Part 905 are based on prototype cost determinations which are no longer mandated by the statute, HUD is now responsible for developing its own cost containment policy for Indian housing development. Similarly, the use of prototype costs to limit CIAP costs under 24 CFR Part 968 also raises the question of appropriate cost containment policy for that program. HUD intends to develop new cost containment policy for both programs in a rulemaking procedure which will include a notice of proposed rulemaking and an opportunity for public comment. The development of a final rule under this procedure, however, will be time-consuming. Accordingly, it is necessary to announce the cost containment policy that the Department will follow pending the effective date of the final rule. The features of this interim policy are discussed below.

This policy notice describes the cost containment policies applicable to (1) Indian Housing Authorities (IHAs) in the development of Indian housing; and (2) Public Housing Agencies (PHAs) and IHAs in the modernization of existing public and Indian housing projects under CIAP. The cost containment policies applicable to PHAs in the development of public housing projects were explained in a related notice published on *September 24, 1986* (51 FR *33898*).

Indian Housing Development

HUD's Indian housing development cost containment procedures will be based upon total development cost standards. These standards will be issued by the Department on a regular basis and will reflect the total development cost for various unit sizes, housing types and market areas (*i.e.*, areas within which trade conditions and economic influences tend to make development costs substantially the same). The standards will be based on actual Indian housing project data as well as cost data provided by commercially available cost and valuation services specified by the Department. The standards will be adjusted to reflect current cost levels and the cost of building in remote areas.

To ensure that the cost standards will more accurately reflect costs than the prototype costs procedures, IHAs may request HUD to revise the total development cost standard for their market area or to establish a separate market area for their jurisdiction. To assist IHAs in the preparation of their request, HUD will issue with the standards a description of the methodology used to compute the standards and information concerning the documentation that must be submitted in support of the requests. HUD's first Field Notice announcing the cost guidelines and providing this additional data was PIH Notice 86-10, issued June 20, 1986.

IHA documentation supporting revised total development cost standards will be reviewed by the appropriate HUD Indian Field Office. After review, the Indian Field Office will forward the IHA's documentation with a recommendation to HUD Headquarters through the Regional Administrator. The Assistant Secretary will review the IHA's documentation and the Field Office recommendation and will issue revised standards for a market area if the evidence shows that the revised standards are reasonable and necessary to develop a project which is durable, safe and secure and which provides for economical maintenance, healthy family life, good design and energy conservation.

The total development cost standards will be applied in a significantly more flexible manner than were past prototype cost limits. Prototype costs served as an absolute limit on dwelling construction and equipment costs and were used to compute a limit on total development costs of the project. The standards, on the other hand, will be used to limit only the total development costs of a project. (Under the regulations, the total development cost of a project may include the costs of certain off-site sewer and water facilities. Such costs will continue to be permissible development costs, but will not be included in the computation of, nor subject to, the total development cost standard limitation.) To provide for additional flexibility in the application of the standards, the Department will, under certain circumstances, permit a project to exceed the costs computed under the cost standards.

The Department will use the following procedures to compute the total development cost limitation for Indian new construction and acquisition projects.

1. Fund Reservation

The amount of the initial reservation of funds for the development of an Indian housing project will be computed by applying the most recently issued cost standards for the market area. (While IHAs may request revised guidelines at any time following their issuance, to affect the initial reservation of funds for a project, the Assistant Secretary must have approved revised guidelines before the initial reservation is made.) The Indian Field Office will multiply the cost guideline issued for each unit size and structure type times the number of units proposed for that unit and structure type. These figures will be totaled. The Indian Field Office may reserve funds up to this amount for the total development cost for the project. At the initial reservation stage, total development costs above the described level may not be authorized.

2. Cost Amendments

Field Offices may approve proposals, annual contribution contracts (ACCs) and amended ACCs for projects with total development costs up to the most recently issued cost standards. An IHA may file a request with the Indian Field Office seeking approval of project development costs in excess of the

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applicable cost standards. The Indian Field Office will forward the request through the Regional Administrator to the Assistant Secretary for Public and Indian Housing. The Assistant Secretary may approve project costs in excess of the applicable cost standards if the costs are reasonable and necessary to the development of a project that provides durability, safety, security, and economical maintenance, healthy family life, good design and energy conservation. For example, higher costs for a project may be justified on the basis of special circumstances relating to security in high crime areas, unusual environmental or site considerations, remoteness, etc.

Once funds are reserved, the Indian Field Office may not terminate a project merely because the total development cost will exceed approved or approvable cost limits, unless such termination has been approved by the Assistant Secretary for Public and Indian Housing.[1]

In addition to current limitations on total development costs and dwelling construction and equipment costs, the Indian housing regulations contain several miscellaneous references to prototype cost; *i.e.*, The regulations require that certain public advertisements disclose the prototype cost limit (§§ 905.203(g) and 905.212(d)); state that an IHA's development cost program outline must be sufficiently detailed to permit HUD to determine if the project can be developed within the applicable prototype cost limit (§ 905.212(c)); and provide that the initial purchase price of a home under the mutual help homeownership opportunity program may be computed based on the ratio that the prototype cost of the unit (home) bears to the prototype cost for all units in the project (§ 905.422). In each of these instances, the total development cost computed under the guidelines or the unit guidelines, as appropriate, will be substituted.

Modernization of Public and Indian Housing Projects

In addition to explaining the cost containment policies applicable to the Indian housing development program, this statement also addresses cost containment policies applicable to the modernization of public and Indian Housing projects under CIAP.

Under CIAP, HUD provides financial assistance to PHAs and IHAs to improve the physical condition and upgrade the management and operation of existing projects. As noted above, the current regulations require HUD to assess the financial feasibility of proposed modernization of a project based on the prototype cost of a new project.

HUD intends to continue to make its financial feasibility determination for modernization of projects based on the cost of dwelling construction and equipment for new projects. With the elimination of the prototype cost determinations, HUD will make this financial feasibility assessment based on the newly established cost containment procedures.

For the Indian housing modernization program, the Department will determine the financial feasibility of the project based on the Indian housing standards discussed above. Because the standards reflect total development costs, the dwelling construction and equipment costs must be imputed from the standards. HUD intends to make this calculation by applying a factor to the standards. Under this procedure, the Department will find that the modernization of an Indian housing project is financially feasible if the modernization cost (excluding the cost of management improvements) does not exceed 62.5 percent (nonelevator projects) or 69 percent (elevator projects) of the standards for a new project with the same structure type, number and size of units and market area.

For the public housing modernization program, the Department will determine the financial feasibility by applying the cost containment procedures for public housing development contained in the policy statement published September 24, 1986, 51 FR 33898. As described in that statement, public housing development cost containment policies are based on the application of "guidelines." Unlike the Indian housing standards which reflect total development costs, public housing guidelines are based on dwelling construction and equipment costs. Accordingly, for modernization of public housing projects, it is not necessary to impute these costs by applying an adjustment factor to the guidelines. To assess the financial feasibility of the modernization of a public housing project, the Department will determine whether the modernization cost (excluding the cost of management improvements) exceeds the guidelines for a new project with the same structure type, number and size of units, and market area.

The Department will permit PHAs and IHAs to request revisions to the guidelines and standards applicable in their market areas (See the discussion above for Indian housing standards and 51 FR 33898, 33899 for public housing guidelines.) For both the public and Indian housing modernization programs, the financial feasibility determination will be made by applying the guidelines or standards that are current at the time the funds for the project are reserved.

In addition, the new procedures will continue to permit the Assistant Secretary to authorize the modernization of certain projects even though the project fails to meet the financial feasibility requirements. A PHA or IHA may file a request with the appropriate Field Office seeking a determination that the modernization project may be approved even though the financial feasibility requirements are not met. Where the Field Office recommends approval, the Field Office may forward the request through the Regional Office. Where the Regional Office concurs in the approval, the Regional Office may forward the request to the Assistant Secretary for approval or disapproval. A project may be approved if the Assistant Secretary determines that the costs are reasonable and necessary for the modernization of a project that provides durability, safety, security, and economic maintenance, healthy family life in a neighborhood environment, good design and energy conservation. For example, higher costs for a project may be justified on the basis of special circumstances relating to security in high crime areas, unusual environmental or site considerations, relocation expenses, remoteness, etc.

Effect of Existing Regulations

Based on the statutory repealer, HUD could immediately issue a final rule (without notice and public comment) removing prototype cost requirements contained in 24 CFR Part 905. The removal of the provisions of existing regulations, however, involves certain technical problems. For administrative simplicity, the formal removal will be consolidated with the rulemaking

[1] As noted above, HUD previously used Indian prototype cost limits to generate a total development cost limitation for the project. (See § 905.214(b) (2) and (3).) Under procedures adopted in 1974, development projects in Alaska were not subject to this cost limitation, but rather were subject to an administratively determined cost cap. Notwithstanding the procedures announced in this notice, projects in Alaska will continue to be governed by this cost cap rather than the cost standards.

Currently the cost cap for Alaska is $92,200 per dwelling unit. The cost cap, like the cost standards, will be used to limit the total development costs permitted for a project (exclusive of off-site sewer and water facilities) and will be used instead of the Indian housing standard to determine the financial feasibility of the project. (See discussion below.) This cost cap will not be subject to change absent a further administrative finding by the Assistant Secretary.

implementing the new cost containment provisions. While the provisions of existing regulations will remain a part of the Code of Federal Regulations pending their formal removal, they have no binding effect, in light of the repeal of section 6(b), and will be disregarded in favor of the policies announced in this statement. Affected regulations pertaining to Indian housing development are:

24 CFR 905.203
24 CFR 905.212 (c) and (d)
24 CFR 905.213
24 CFR 905.214 (a) and (b)
24 CFR 905.422

The same approach will be taken for the modernization prototype cost regulations at 24 CFR 968.3.

The information collection requirements contained in this policy statement have been approved by the Office of Management and Budget under the provisions of the Paper Reduction Act of 1980 (44 U.S.C. 3501–3520). The OMB Control Number is 2577–0101.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Dated: October 6, 1986.

J. Michael Dorsey,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 87–2853 Filed 2–10–87; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, USS Jouett

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS JOUETT (CG–29) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS without interfering with its special function as a naval cruiser. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: January 27, 1987.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS Jouett (CG–29) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights, without interfering with its special function as a Navy ship. The Secretary of the Navy has also certified that the abovementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table Five of § 706.2 is amended by adding the following Navy ship to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(c)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	Aft masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS JOUETT	OG-29						X	X	31

Dated: January 27, 1987.
Approved:

John Lehman,

Secretary of the Navy.

[FR Doc. 87–2792 Filed 2–10–87; 8:45 am]

BILLING CODE 3810–AE–M

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32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS VANCOVER (LPD–2) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS without interfering with its special function as a naval amphibious transport dock ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: January 27, 1987.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS VANCOUVER (LPD–2) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special function as a Navy ship. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table Five of § 706.2 is amended by adding the following Navy ship to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS VANCOUVER	LPD-2							x	57

Dated: January 27, 1987.
Approved:
John Lehman,
Secretary of the Navy.
[FR Doc. 87–2794 Filed 2–10–87; 8:45am]
BILLING CODE 3810-AE-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–4–FRL–3151–5; AL–012]

Approval and Promulgation of Implementation Plans; Lead Plan for Jefferson County, AL

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving conditionally under section 110(a) of the Clean Air Act, 42 U.S.C. 7410(a), the plan submitted by the State of Alabama for attaining and maintaining the national ambient air quality standard (NAAQS) for lead, 40 CFR 50.12 (1986), in Jefferson County, Alabama. The condition of approval is that the state fulfill by October 1, 1987, its commitment to submit to EPA (1) whatever additional measures, if any, are necessary to assure timely attainment and maintenance and (2) an appropriate demonstration that those measures together with the measures EPA is approving now will assure such attainment and maintenance.

EFFECTIVE DATE: This conditional approval takes effect on March 13, 1987.

ADDRESSES: Copies of the state submittal and other relevant documents are available for public inspection at the following locations:

U.S. Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365

Public Information Reference Unit, U.S. Environmental Protection Agency Library, 401 M Street, SW., Washington, DC 20460

Alabama Department of Environmental Management, Air Division, 1751 Federal Drive, Montgomery, Alabama 36130

FOR FURTHER INFORMATION CONTACT: Mr. Raymond S. Gregory, U.S. Environmental Protection Agency, Region IV, Air Programs Branch, at the above listed address or at 404–347–2864 or FTS–257–2864.

SUPPLEMENTARY INFORMATION:

A. Background

1. Clean Air Act

The Clean Air Act sets forth a joint state and federal program for bringing air quality to the level of a NAAQS and

keeping it there. Section 110(a)(1) directs each state to submit, within a short period after the promulgation of a NAAQS, a plan for implementing it. Section 110(a)(2) directs EPA to approve or disapprove the plan. Section 110(a)(2) explicitly states that, when a plan meets certain requirements, EPA must approve it. In contrast, the Act nowhere explicitly states what action EPA must take when the plan does not meet those requirements. The key requirement is that the plan provide for attainment and maintenance of the NAAQS expeditiously as practicable, but no later than three years from approval, using emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary. Section 110(e) allows EPA, upon application of the relevant Governor, to extend the attainment deadline as much as two years beyond the original three years, if the technology or other means necessary for attainment will not be reasonably available within that three-year period. Section 110(c) directs EPA, in the event that it disapproves a submission or certain other events occur, to promulgate an implementation plan of its own. The Act emphasizes, however, that "the prevention and control of air pollution at its source is the primary responsibility of States and local governments". Section 101(a)(3), 42 U.S.C. 7401(a)(3); see also section 107(a), 42 U.S.C. 7407(a).

2. Plan for Jefferson County

Alabama submitted a plan for implementing the NAAQS for lead in Jefferson County in October 1985. The plan primarily addresses violations of the NAAQS near a secondary lead smelter operated by the Interstate Lead Corporation (ILCO). A monitor located just outside the plant boundary recorded average concentrations of about six micrograms of lead per cubic meter for the fourth quarter of 1985, a level that is four times that of the NAAQS.

The smelter extracts lead from manufactured products such as batteries. It consists of a blast furnace, a reverberatory furnace, five refining and alloying kettles, a battery breakdown operation, storage piles, conveyors, and roads. A single stack vents the main emissions from the furnaces. The height of the stack equals roughly that of a nearby ridge. The boundaries of the plant encompass a relatively small work area of about 20 acres and run along the base of the ridge, so that the distance available for dispersion between the work areas and the ambient air, especially the ambient air over the ridge, is unusually short. Finally, the plant has been operating for several years under a bankruptcy petition.

The plan submitted by the state to cure the violations consists largely of a regulation adopted by the Jefferson County Board of Heath, Regulation 6.11. It requires (1) abatement of emissions from the primary exhaust stack to a level of 0.012 grams of particulate/dscf, (2) the use of enclosed buildings or containers for the storage and transport of all lead-bearing materials; (3) the washing of certain paved areas external to buildings so that "no visible emissions are observed emanating from the paved area"; (4) vacuum sweeping of other paved areas; (5) the planting of ground cover on unpaved areas; (6) the washing of truck tires; and (7) prevention of visible emissions to certain degrees from certain processes. The state regarded these provisions as reflecting "reasonably available control technology" (RACT). The schedule requires that RACT be in place by December 31, 1986.

In addition to setting these core requirements, however, Regulation 6.11 gives the Health Officer for the county authority unilaterally to vary certain control requirements. For example, one section requires twice daily vacuum sweeping of paved areas "except under specific conditions as approved by the Health Officer".

Beyond Regulation 6.11, the plan also contained (1) a commitment to identify and adopt whatever additional measures beyond RACT would be necessary to assure timely attainment and (2) a request pursuant to section 110(e) for a two-year extension of the attainment deadline. The state, with extensive help from EPA, performed several analyses using dispersion modeling of whether Regulation 6.11 would bring about attainment. The analysis predicted concentrations after control that were in excess of the NAAQS. However, predicted concentrations before control were inconsistent with the readings from the monitors before control; in some cases, the predicted concentrations were up to ten times higher than the monitored concentrations. The likely causes of this discrepancy are, first, the fact that dispersion models cannot perfectly reflect the peculiarities of the specific topography surrounding the plant, especially the contours of the ridge abutting the plant; second, the monitors used for the pre-control comparison may not have been located in areas that experienced the highest concentrations; and third, the failure of the input data to reflect the unique characteristics of the plant, including its meteorology, specific rates and places of emissions, and stack parameters. In view of this, the state was unable to determine rationally whether any controls beyond RACT would in fact be required to attain the NAAQS, where to focus any such additional control requirements, and how stringent to make them. Hence, it asked for more time—essentially several years—to place three new monitors around the plant, better define the characteristics of the plant, collect site-specific meteorological data, improve the modeling using these new data and refine information about the plant, design whatever additional controls would be necessary, adopt them, submit them for approval, and implement them by the attainment date.

The plan submitted by the state identified only one other troublespot, an area in downtown Birmingham where a monitor recorded a marginal violation for the fourth quarter of 1978 despite the absence of any nearby stationary source of lead. The state proposed to rely on the federal program for reducing lead in gasoline as its strategy for assuring attainment in that area.

Finally, the plan included a permit program for the preconstruction review of new stationary sources of lead.

3. EPA Proposal

On July 16, 1986 (51 FR 25715), EPA proposed to approve Regulation 6.11. EPA stated, however, that, although it was intending to approve the provisions in Regulation 6.11 that give discretion to grant variances at the state level, it was not intending to approve those variances in advance. Thus, according to EPA, no variance could alter the previously approved implementation plan until EPA had approved the variance. See 51 FR 25717 col. 3. See also sections 110(d), (i), 42 U.S.C. 7410(d), (i). EPA also proposed to disapprove the request for an extension of the attainment deadline from three years to five years on ground that the extension was unnecessary. In EPA's view, the state and ILCO could complete the necessary studying and plan development within one year and bring about attainment within two years thereafter. See 51 FR 25717 col. 3, 25718 col. 1.

Finally, EPA proposed to approve the overall "RACT, plus studies" plan as meeting the requirements of section 110(a)(2), so long as the State submitted before September 16, 1986, a detailed schedule for the studying and plan development. See 51 FR 25716 col. 2, 25718 col. 2.

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4. Comments

EPA received only one comment on this proposal, a letter dated August 14, 1986, from the Natural Resources Defense Council (NRDC). NRDC supported the proposal to deny the request for an extension. But it opposed the proposal to approve the plan because of (1) the plan's failure to demonstrate attainment, (2) its lack of specificity on the schedule for further studying and plan development, and (3) the variance provisions. NRDC argued that, in view of the longstanding failure of the state to submit an approvable plan and the four-fold violations of the NAAQS near ILCO, EPA should promulgate its own measures to fill the gaps in the state's submission, rather than consume even more time waiting for the state to fill those gaps.

5. Subsequent Developments

Since the close of the comment period, the state has submitted a detailed schedule for further studying and plan development. This schedule was adopted by the Jefferson County Board of Health as a binding appendix (Appendix C) to Regulation 6.11. It directs ILCO to perform the following tasks by March 1, 1987:

a. *Operations and maintenance (O/M) study:* Investigate the performance of existing control equipment; correlate operational conditions with monitoring and other air qualify data to identify which conditions are contributing to the problem; write an O/M manual.

b. *Engineering study:* Determine through a formal engineering study the best way to further reduce emissions from the furnaces and kettles, including enclosure of the building and venting through a baghouse.

c. *Meteorological data:* Establish an onsite meteorological monitoring station to collect data; obtain approval by the Jefferson County Board of Health for the equipment and methods.

d. *Fugitive dust study:* Study extent to which process areas, roads, and parking areas within the plant contribute to dust emissions and identify ways to minimize those emissions.

e. *Material balance:* Conduct material balances around sources, including measuring actual air flows, temperature and velocities to all control devices, and fugitive emissions and fugitive dust.

f. *Inventory:* Establish a complete listing of all sources of lead emissions within the plant.

Appendix C also directs the Jefferson County Board of Health to perform the following tasks by the indicated dates:

a. *Modeling analysis (June 1, 1987):* Using the data generated by ILCO, perform a modeling analysis to determine what levels of emissions reduction will produce attainment.

b. *Control requirements (July 1, 1987):* Using the results of the modeling, formulate the necessary additional regulations, if any.

c. *Public participation (August 15, 1987):* Solicit and take comment on the regulations.

d. *Adoption and submittal (October 1, 1987):* Adopt and submit the regulations to EPA for approval, with an attainment demonstration.

Finally, Appendix C sets in advance a schedule (denominated "Phase III") for compliance by ILCO with whatever additional requirements the Jefferson County Board of Health adopts to assure timely attainment. Specifically, it requires ILCO to meet those requirements ultimately by October 1, 1989, and to accomplish certain intermediate tasks, such as the design, purchase, and installation of control equipment, by certain intermediate deadlines.

In addition to receiving this schedule, EPA learned that the monitor which recorded a concentration of 6.0 micrograms per cubic meter for the last quarter of 1985 recorded a level of 4.5 micrograms for the second quarter of 1986. This decrease occurred during a drought period when concentrations would be expected to have increased. The decrease appears to have resulted from initial compliance by ILCO with some of the RACT measures, in particular, plant surface washing to control fugitive dust.

B. Final Action and Rationale

The State, by its submission of Appendix C, appears to have withdrawn its request for an extension of the attainment deadline under section 110(e). But, in case the State did not intend to withdraw that request, EPA hereby denies it for the reasons given in the proposal.

EPA also approves Regulation 6.11. The effect of this approval is to render the regulation fully enforceable by the Federal government. EPA, however, does not intend to approve in advance any variance the Health Officer might make in the facial requirements of the regulation pursuant to the several discretionary provisions in it. Those requirements remain the operative elements of the State implementation plan until such time as the State submits and EPA approves any variance. EPA announced in its proposal that it would treat the discretionary provisions in this manner. The State, however, did not raise any objection during the comment period. EPA, therefore, assumes that this approach is not inconsistent with the intentions of the State. In response to the comments on this issue, EPA has added language to the relevant portions of 40 CFR Part 52 to clarify this point.

EPA also approves all of Appendix C, thereby rendering all of it federally enforceable. EPA, however, approves Phase III of the appendix only to the extent that it sets an outer boundary on compliance with whatever additional requirements that the county board may adopt and, hence, an attainment deadline. This deadline is acceptable inasmuch as it falls within a period of three years from the approval actions EPA is announcing in this notice and, hence, is consistent with section 110(a)(2)(A). EPA, however, withholds approval of Phase III on the question of whether it is necessary to assure attainment and, if so, whether it assures attainment as expeditiously as practicable. Without knowing what the additional requirements will be, it is not possible to say that compliance could not occur more quickly than Phase III requires. When the state submits those additional measures, it should provide either some support for Phase III or else such tightenings in the schedule as may be appropriate. NRDC commented that the schedule the state submitted originally was too vague. This comment, while apt, has been mooted by the submission of Appendix C.

Finally, in response to NRDC's comments, EPA has decided to conditionally approve the plan. NRDC argued, first, that EPA may not approve a plan fully in the absence of an adequate attainment demonstration and, second, that EPA's only alternative to approval is disapproval and federal promulgation. EPA agrees with the first point as a general principle. See, e.g., 40 CFR 51.112, 51 FR 40656, 40666 col. 1 (November 7, 1986). Hence, it is not fully approving the plan. On the other hand, EPA does not agree that it must disapprove the plan. The Act empowers EPA to approve or disapprove state plans, but it nowhere bars EPA from taking other intermediate actions, such as a conditional approval, in appropriate circumstances. Indeed, it seems highly unlikely that Congress would have intended to give EPA solely the device of disapproval as the only possible response to an incomplete state plan. A disapproval of an original plan, such as Alabama has submitted here, automatically triggers a duty on EPA's part to promulgate a substitute plan. Often, however, the deficiencies in a plan can be cured more quickly or effectively by the state than by EPA. Hence, where there is a good reason to believe that the state will cure the deficiencies as quickly as possible, there is no point in federal intervention and, hence, no point in a disapproval. Such unnecessary intervention, moreover,

would offend one of the central tenets of the Act, that the states are to have the primary role in controlling air pollution. That EPA has the power to approve conditionally—with the effect of putting off any duty on EPA's part to promulgate—is now well recognized by the courts. See, e.g., *City of Seabrook* v. *EPA*, 659 F.2d 1349, 1353–57 (5th Cir. 1981), cert. denied sub. nom., *Vavra* v. *EPA*, 459 U.S. 822 (1982); *Connecticut Fund for the Environment, Inc.* v. *EPA*, 672 F.2d 998, 1010–11 (2d Cir. 1982) cert. denied sub. nom., *Manchester Environmental Coalition* v. *EPA*, 459 U.S. 1035 (1982).

EPA's actions on the Alabama plan are further guided by the course of litigation presently before the district court for the District of Columbia to determine a schedule for EPA's actions on the implementation plan for Alabama (along with the plans for several other states and territories). *Natural Resources Defense Council, Inc.* v. *Thomas*, No. 82–2137 (D.D.C. filed July 30, 1982); see Plaintiff's Motion to Enforce the Court Order (August 20, 1986) and subsequent filings. By order dated July 26, 1983, the district court placed EPA on a schedule for approving or promulgating a lead implementation plan for Alabama (along with plans for other states and territories). By motion dated August 20, 1986 (after publication of the notice of proposed rulemaking for the Alabama plan), as amended by filings dated December 11, 1986, NRDC petitioned to enforce the court decree by requiring EPA forthwith to approve or disapprove the Alabama plan (among other state plans) and, in the event of disapproval, expeditiously to promulgate a federal plan. EPA responded with a motion to revise the schedule of EPA's actions with respect to Alabama to conform with the actions being taken today, i.e., conditional approval of the Alabama plan in its present form, to be followed by further state submissions by October 1, 1987 and subsequent EPA actions thereon. The matter is presently pending before the district court.

In the context of this pending litigation, in which the district court ultimately will determine the schedule for further state and federal actions on the Alabama plan, EPA believes that conditional approval, and thus deferral of federal promulgation, is the best way to proceed. Conditional approval has the significant advantage of rendering federally enforceable the measures taken to date by the state. Regulation 6.11 is reasonably stringent. This is especially the case for the primary exhaust stack, inasmuch as the applicable emission limitation is numerically about one-half of the standard of performance under section 111 of the Act applicable to new or modified secondary lead smelters. See 40 CFR 60.120(a)(1) (1986). It is comprehensive, in that it applies to the full range of sources within the ILCO plant, from furnaces to roads and lots. And it may produce attainment by itself. Indeed, the recent substantial decrease in monitored concentrations appears to be due to partial compliance by ILCO.

Beyond that, the state has committed itself, as well as ILCO, to an intensive program of studying and plan development that is to end in October 1987, less than a year away. EPA could not move any more quickly or effectively under the unusual impediments to rational formulation of a plan that are presented by the topography of the area and the close proximity of the plant to a ridge. There are many options for further control, ranging from further dust suppression to complete enclosure of the smelting processes. But it is not at all clear whether further control is necessary or, if it is, which option is the most appropriate. The state, in addition, faces the technically difficult task of preparing a demonstration that the measures it ultimately selects will produce timely attainment and maintenance. As a result, it is entirely appropriate here for EPA to defer federal promulgation temporarily. Federal promulgation would be pointless, and it would interfere with the state's perogatives to create its own plan.

Consequently, EPA conditionally approves the Jefferson County lead plan on the condition that the State submit an attainment demonstration and any required additional control measures by October 1, 1987.

C. Miscellaneous

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 13, 1987. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution, Lead, Intergovernmental relations, Incorporation by reference.

Incorporation by reference of the state implementation plan for the State of Alabama was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: January 29, 1987.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

§ 52.50 [Amended]

2. Section 52.50 is amended by adding paragraph (c)(45) as follows:

* * * * *

(c) * * *

(45) State implementation plan for attainment and maintenance of lead standards in Jefferson County, submitted on October 7, 1985, by the Alabama Department of Environmental Management, and on November 13, 1986, by the Jefferson County Health Department.

(i) Incorporation by reference.

(A) Jefferson County Department of Health Regulation 611, Secondary Lead Smelters (excluding paragraphs 6.11.2(a) and 6.11.2(b)) which was adopted on September 11, 1985.

(B) November 13, 1986, letter to EPA from the Jefferson County Department of Health, and Appendix C of the Alabama Lead SIP for Jefferson County (Revised Schedule for the RACT-plus study) which was adopted on November 12, 1986.

(ii) Other material.

(A) Narrative SIP, entitled "State Implementation Plan for the Attainment of the National Ambient Air Quality Standard for Lead in Jefferson County" dated September 1984.

§ 52.54 [Amended]

3. The table in § 52.54 is amended by adding the notation "j" in the "Lead" column for Jefferson County and by adding a corresponding line to the legend of the table as follows: "j [March 13, 1990"]."

4. Section 52.58 is amended by adding the following sentences to the end of that section:

§ 52.58 Control Strategy: Lead.

* * * The lead plan submitted by the State on October 7, 1985, and November 13, 1986, for Jefferson County is conditionally approved on the condition that the State by October 1, 1987, determine what additional control measures may be necessary, if any, to assure attainment and maintenance as

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expeditiously as practicable but no later than the applicable attainment deadline and submit those measures to EPA for approval, together with an appropriate demonstration of attainment. The provisions in the regulation submitted on October 7, 1985, that give the Jefferson County Health Officer discretion to vary the requirements of the regulation are approved as limits on that discretion, but any variances that may result from those provisions are not approved in advance and hence change the applicable implementation plan only when approved by EPA on a case-by-case basis.

[FR Doc. 87-2421 Filed 2-10-87; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 52

[A-4-FRL-3154-2]

Approval and Promulgation of Air Quality Implementation Plans; Alabama; Extension of Notification Period on Bubble for Union Camp's Prattville Mill

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of notification period.

SUMMARY: On January 25, 1984 (49 FR 3096), EPA proposed to approve an Alabama State Implementation Plan (SIP) revision involving an emissions trading action (bubble) at Union Camp's kraft pulp mill in Prattville, Alabama. The pollutant involved was total suspended particulate (TSP). EPA received no comments on the package during the 30-day public comment period. However, the State did submit supplemental information on January 20, 1984, March 9, 1984, and October 9, 1985, in response to EPA concern. EPA wished to provide the public an opportunity to comment on the supplemental information (e.g., Level II modeling analysis). However, since the new information was viewed by EPA as noncontroversial, EPA on December 24, 1986 (51 FR 46655), announced final approval of Alabama's revision without prior proposal of the new facts. The notice provided that the revisions would be effective on February 23, 1987 (60 days from date of publication), unless notification was received by EPA within 30 days of publication (by January 24, 1987) that someone wished to submit adverse or critical comments on this package.

On January 23, 1987, a representative of the Natural Resources Defense Council requested that EPA grant an extension of 30 days to the deadline for giving notice of intent to submit adverse or critical comments. EPA, after review of the request, is now granting the extension.

DATES: The final approval of the Union Camp TSP bubble will now be effective on March 25, 1987, unless notice is received by February 23, 1987, that someone wishes to submit adverse or critical comments on the package.

FOR FURTHER INFORMATION CONTACT: Roger O. Pfaff, Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365, Telephone (404) 347-2864 or FTS 257-1864.

Dated: January 30, 1987.

Lee A. DeHihns, III,

Acting Regional Administrator.

[FR Doc. 87-2865 Filed 2-10-87; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP 6F3316/R868; FRL-3153-4]

Pesticide Tolerances for Fenoxaprop-Ethyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the herbicide fenoxaprop-ethyl and its metabolites in or on the raw agricultural commodities rice grain and soybeans. This regulation, to establish maximum permissible levels of residues for the herbicide in or on the commodities, was requested in a petition submitted by the American Hoechst Corp.

EFFECTIVE DATE: Effective on February 11, 1987.

ADDRESS: Written objections, identified by the document control number [PP 6F3316/R868] may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office of location and telephone number: Room 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of December 4, 1985 (50 FR 49762), which announced that American Hoechst Corp., Agricultural Division, Rte. 202-206, North Somerville, NJ 08876, had filed with EPA pesticide petition 6F3316 proposing to amend 40 CFR Part 180 by establishing tolerances for the combined residues of the herbicide fenoxaprop-ethyl [(±)-ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoate] and its metabolites [2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]-propanoic acid and 6-chloro-2,3-dihydrobenzoxazol-2-one], each expressed as fenoxaprop-ethyl, in or on the commodities rice grain and soybeans at 0.05 part per million (ppm).

No comments were received in response to the notice of filing.

The Agency has evaluated the data submitted in the petition and other relevant materials. The data considered in support of the tolerances include plant and animal metabolism studies; a rat oral median lethal dose (LD50) study with an LD50 of 2,357 milligrams per kilogram (mg/kg); a 90-day rat feeding study with a no-observed-effect-level (NOEL) of 20 ppm (1.0 mg/kg/day); a 90-day dog feeding study with a NOEL of 16 ppm (0.4 mg/kg/day); a 1-year dog feeding study with no toxic effects at 75 ppm (1.875 mg/kg/day), the highest tested; a rat teratology study with a teratogenicity NOEL of 100 mg/kg/day (highest dose tested) and a NOEL of 32 mg/kg/day for developmental effects and maternal toxicity; a rabbit teratology study with a maternal toxicity NOEL of 12.5 mg/kg/day and a developmental toxicity and teratogenicity toxic effect level of 200 mg/kg/day (highest dose) with an increased incidence of rib anomalies and diaphragmatic hernias, and a NOEL of 50 mg/kg/day (Margin of Safety values are based on the teratogenic and developmental toxicity NOEL of 50/mg/kg/day); a 2-generation rat reproduction study with a NOEL of 5 ppm (0.25 mg/kg/day); a 2-year dog chronic feeding study with a NOEL of 15 ppm (0.37 mg/kg/day); a rat oncogenicity (28 months)/chronic feeding (24 months) study with no observed oncogenic potential at any dose up to 180 ppm (9.0 mg/kg/day), the highest dose tested and a NOEL for chronic toxicity at 30 ppm (1.5 mg/kg/day); a 2-year mouse oncogenicity study with no observed oncogenic potential at any dose up to 40 ppm (6 mg/kg/day), the highest dose tested; a chromosomal aberration mutagenicity study, negative; an Ames Test, negative; an Unscheduled DNA Synthesis (UDS) assay, negative; and mouse in micronucleus study, negative.

Based on a NOEL of 0.25 mg/kg/day in the 2-generation rat reproduction study and a 100-fold safety factor, the acceptable daily intake (ADI) has been set at 0.0025 mg/kg/day with a maximum permissible intake (MPI) of 0.15 mg/kg/day for a 60-kg person. These tolerances have a theoretical maximum residue contribution (TMRC) of 0.0011 mg/day in a 1.5 kg diet and would utilize 0.73 percent of the ADI.

There are no regulatory actions pending against the registration of this pesticide. The nature of the residue of the pesticide is adequately understood for use or rice and soybeans, and an adequate analytical method, gas chromatography with electron capture detector, is available for enforcement purposes. There is no expectation of secondary residues in meat, milk, poultry or eggs.

Because of the long lead-time from establishing these tolerances to publication of the enforcement methodology in the Pesticide Analytical Manual II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from:

By mail: William Grosse, Chief, Information Service Branch (TS-767C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Room 223, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2613).

Based on the information and data considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number or small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24650).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 30, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.430 is added to read as follows:

§ 180.430 Fenoxaprop-ethyl; tolerances for residues.

Tolerances are established for the combined residues of the herbicide fenoxaprop-ethyl [(±)-ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoate] and its metabolites [2-[4-](6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoic acid and 6-chloro-2,3-dihydrobenzoxazol-2-one], each expressed as fenoxaprop-ethyl, in or on the following raw agricultural commodities:

Commodities	Parts per million
Rice grain	0.05
Soybeans	0.05

[FR Doc. 87-2631 Filed 2-10-87; 8:45 am]
BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-17

[FPMR Temp. Reg. D-73]

Quality Workplace Environment Program

AGENCY: Public Buildings Service, General Services Administration.

ACTION: Temporary regulation.

SUMMARY: This regulation institutes the Quality Workplace Environment Program. Additionally, it provides procedures for the development and maintenance of planning, information and reporting systems to ensure the efficient utilization of Federal work space and related furnishings. It also implements Executive Order 12411, signed by the President on March 29, 1983. The General Services Administration's authority for issuing this regulation is contained in Executive Order 12411 and in the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)).

DATES: Effective date: February 11, 1987.

Expiration date: February 11, 1989.

Comments due by: To ensure their consideration in drafting additional regulations and bulletins regarding workplace environment, comments should be received by GSA no later than April 13, 1987.

ADDRESS: Comments should be submitted to the General Services Administration, (PG), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Judy Kraft, Governmentwide Policy Division (202-566-0507).

SUPPLEMENTARY INFORMATION: GSA's authority for issuing this temporary regulation is contained in the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)) and in Executive Order 12411.

The purpose of this regulation is to implement the Quality Workplace Environment Program. In addition, it further refines the work space management reform program and reflects the policies of the Balanced Budget and Emergency Deficit Control Act of 1985, as well as the President's deficit reduction and budget priorities.

With this regulation, a program is effected to enhance the quality of the working environment for Federal employees which will improve the Government's efficiency and productivity. This will be accomplished by modernizing existing space; making health and safety improvements; consolidating agencies; purchasing and leasing high quality, efficient buildings; and encouraging the use of furniture systems where cost effective.

Additionally, this regulation retains the Federal work space management reform program which reflects the President's announced goal to strengthen the management and improve the efficiency of the Federal Government. The program emphasizes the improvement in the utilization of Government work space and resultant cost savings. The regulation implements the Executive Order 12411 provisions that make agency heads responsible for achieving the goal of reducing Federal work space used or held, to that amount which is essential to known agency missions.

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Prior Comments

The comments received in conjunction with FPMR Temporary Regulation D–71 have been considered and reconciled with this document.

GSA has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Before issuing a final rule, GSA will make all necessary evaluations of economic effects, major costs to consumers or others, and significant adverse effects.

List of Subjects in 41 CFR Part 101–17

Administrative practices and procedures, Federal buildings and facilities, Government property management.

Authority: Sec. 205(c), 63 Stat. 390 40 U.S.C. 486(c).

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter D to read as follows:

Federal Property Management Regulations, Temporary Regulation D–73

January 8, 1987.

To: Heads of Federal Agencies.

Subject: Quality Workplace Environment

1. *Philosophy.* These regulations establish a program through which the quality of Federal office space is improved and productivity is enhanced, while the total amount of space is reduced. The ultimate goal of the program is to accomplish cost-effective space reductions which will result in long-term monetary savings to the Federal Government. However, the regulations recognize that space costs for most agencies represent less than 2 percent of their operational costs and GSA's efforts must focus primarily on the quality of the work environment. In fact, recent experiences have shown that well designed space using modern technologies can both substantially increase productivity and reduce total space costs. These goals will be accomplished by placing greater emphasis on modernizing existing space; making health and safety improvements; consolidating agencies; purchasing and leasing high quality, efficient buildings; and encouraging the use of furniture systems where cost-effective. These regulations are an important part of the total effort. Through this program, GSA will help make the Federal Government operate more efficiently and economically, and make it a better place to work for its employees.

2. *Purpose.* This regulation supersedes FPMR Temporary Regulation D–71 and reflects the policies of the Balanced Budget and Emergency Deficit Control Act of 1985 (99 Stat. 1038), the President's deficit reduction and budget priorities, and implements the Quality Workplace Environment Program. Additionally, even though many sections of this temporary regulation are unchanged from Temporary Regulation D–71, it has been superseded rather than amended in order to provide a complete document for convenient reference.

3. *Effective date.* This regulation is effective February 11, 1987.

4. *Expiration date.* This regulation expires February 11, 1989.

5. *Background.* Executive Order 12411, Government Work Space Management Reforms, was signed by the President on March 29, 1983. The Order recognizes the importance of reducing the amount and cost of Federal work space while ensuring that work space is effectively used to support agency missions. Executive Order 12512, Federal Real Property Management, signed by the President on April 29, 1985, reinforces the accountability and responsibility of agency heads for managing real property assets. These Executive Orders authorize the Administrator of General Services to provide Governmentwide policy oversight and guidance for managing Federal real property and to establish procedures, guidelines, and regulations to guide agencies in managing real property assets. The Balanced Budget and Emergency Deficit Control Act of 1985 recognizes the importance of reducing deficits and achieving a balanced budget through reduced Government spending. FPMR Temporary Regulation D–71 has been replaced in order to implement the priorities and goals of this Act, as well as the requirements of Executive Orders 12411 and 12512.

6. *Summary of revisions.* Attachment A contains revised regulations concerning agency-controlled space and GSA-controlled space. The significant changes incorporated in this regulation are described below:

(a) The Quality Workplace Environment Program is established to ensure that Federal agencies are housed efficiently and economically in space that fully meets their needs. Principal elements of the program include free space planning services, advanced funding for space alterations, criteria for new assignments, and acquisition of furniture systems.

(b) A utilization rate improvement program is established as a means for achieving space reduction. The goal is to ensure that agencies are housed in the most economical and efficient manner possible given their mission needs and the nature of the space they occupy. By the end of fiscal year 1990, each agency bureau shall achieve an average adjusted office utilization rate [i.e., excluding supplemental space) of 135 square feet or less in both agency-controlled and GSA-controlled space.

(c) Criteria for new assignments are established for space reduction and utilization rate improvements in GSA-controlled space. These criteria apply to all new assignments whether or not the agency bureau has achieved its 1990 goal. The new criteria require that all new assignments in GSA-controlled space be made at an adjusted office utilization rate of less than or, in rare instances, equal to 135 square feet per workstation. The 135 square feet is a maximum not to be exceeded. Supplemental space requirements for a given assignment are also a maximum not to be exceeded. Most new space actions will require less than these maximum amounts. The following limits will govern all new assignments made by GSA regional offices in GSA-controlled space:

(1) An average of 135 square feet per workstation (excluding supplemental space) is a maximum not to be exceeded.

(2) Supplemental space factors are to be applied as a maximum not to be exceeded except in the most unusual situations which will be addressed on a case by case basis.

(3) Examples of space assignments which are expected to average less than 135 square feet per workstation are listed below. These include:

(i) *Assignments in newly acquired or constructed Government-owned space.* Regional officials should make assignments in new Government-owned space at an average of 135 square feet or less per workstation, *including* supplemental space requirements. New Government-owned space will be designed to accommodate more efficient use of space and an average 135 square feet, including supplemental space requirements, is the goal.

(ii) *Assignments in existing space altered to provide efficient utilization.* Assignments in altered space should average 135 square feet per workstation, *including* supplemental space requirements. Building configuration and onsite conditions may vary in unusual cases and make it difficult to achieve the 135 square foot average. In such rare instances, a maximum of 135 square feet, plus a maximum of the supplemental space factors, shall be the upper limit.

(iii) *Assignments in newly acquired leased space.* The assignments shall be made at the most efficient utilization rate the space will allow. The goal shall be an average of 135 square feet per workstation, *including* supplemental space, when first class leased space is acquired.

(iv) *Assignments in space with furniture systems.* These assignments should be made at a utilization rate ranging from 122 to 135 square feet per workstation, *including* supplemental space requirements. In the case of newly acquired Government-owned or leased space where furniture systems are used, the goal shall be an average of 122 square feet or less per workstation, *including* supplemental space requirements. In the case of altered existing Government-owned space, the goal shall be an average of 135 square feet or less per workstation, *including* supplemental space requirements.

(v) *Assignments in space which has been redesigned using professional space planning/programming techniques.* The goal for these assignments will be an average of 135 square feet or less per workstation, *including* supplemental space. Criteria for new and newly altered Government-owned space, new leased space, and space where furniture systems are used shall apply as appropriate.

(d) GSA regional offices will provide technical assistance to agencies in complying with these criteria. Each GSA regional office is given authority for determining on a case by case basis the appropriate amount of space for each new assignment within the specified limitations.

(e) Agencies shall identify their quality workplace environment and space reduction goals, to be accomplished by each agency bureau by the end of fiscal year 1990, in annual work space management plans to be submitted to GSA for review and approval and to OMB as part of the agencies' annual budget submissions. These plans must meet the requirements of this regulation and must explain how the agency intends to meet the utilization rate criteria.

(f) The supplemental space policy is retained to assist agencies and GSA in planning space assignments which meet the new assignment criteria. The supplemental space factors established for agencies' operational units are maximums, and most space assignments will be made with less than the maximum amount.

(g) Location of space shall continue to be determined by agency mission needs, provisions of the Rural Development Act of 1972 and relevant Federal policies. GSA shall survey agencies and develop community specific location policies and plans based on agency mission, housing, and location requirements in a community. These community plans shall call for the location of agencies in leased and other federally controlled space at the most economical cost to the Government consistent with the agencies' mission.

7. *Comments.* Comments concerning the effect or impact of this regulation may be submitted to the General Services Administration, Office of Governmentwide Real Property Policy and Oversight (PG), Washington, DC 20405. Comments should be submitted within 60 days of publication of this regulation.

8. *Effect on other directives.* The provisions of Federal Property Management Regulations (FPMR) Temporary Regulation D–71 and Supplements 1 and 2 to D–71 are superseded by this regulation.

T.C. Golden,

Administrator of General Services.

PART 101–17—QUALITY WORKPLACE ENVIRONMENT

Sec.

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Subpart 101–17.49—Forms

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§ 101–17.000 Scope of part.

This part prescribes policies and procedures for implementing a Quality Workplace Environment Program. The procedures of this part apply to all Federal work space.

§ 101–17.001 Authority.

This Part 101–17 implements Executive Order 12411 of March 29, 1983, 48 FR 13391; Executive Order 12512 of April 29, 1985, 50 FR 18453; and applicable provisions of the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended

§ 101–17.002 Basic policy.

(a) This regulation implements the Quality Workplace Environment Program. The goal of this program is to increase efficiency and provide a quality working environment while reducing the amount and cost of Federal work space. A quality workplace environment will contribute to increased productivity and enhanced delivery of Government programs. This goal also reflects the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985; the requirements of Executive Order 12411, Government Work Space Management Reforms; and the overall need to reduce Government operating costs. Together these efforts will assist in improving employee productivity, reducing deficits, and achieving balanced budgets.

(b) The General Services Administration (GSA) developed the Quality Workplace Environment Program to assist agencies occupying GSA space to reduce their space while creating a fully responsive workplace environment. These same concepts should be applied in agency-controlled space. Important elements of this program include professional space programming and planning; agency consolidations to promote efficiency; criteria for new space assignments; advanced funding for space-saving alterations to existing assignments; procurement of furniture systems by purchase or lease; reuse of vacant space; and sensitivity to the human element in providing space.

(c) GSA shall provide details of the Quality Workplace Environment Program to Federal agency officials through the Commissioner, Public Buildings Service. This information should be used in developing plans and programs for reducing agency-controlled and GSA-controlled space, and for developing and implementing Quality Workplace Environment Programs for agency-controlled space.

(d) It is the responsibility of the head of each Federal agency to ensure that the provisions of Executive Order 12411 and this regulation are implemented expeditiously and effectively for both GSA and agency-controlled space. To accomplish this, Federal agencies shall maintain plans and programs to reduce the amount of work space used or held, to that amount which is the essential minimum for known agency missions. Work space shall be acquired by GSA or by the agencies only when such space

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is essential to existing or known and planned programs, and existing Government-controlled space held by other Federal agencies is not suitable to satisfy the need. GSA will issue guidance to aid agencies in developing goals for a Quality Workplace Environment Program including space reduction. Agencies will be responsible for complying with plans and programs and meeting goals for a quality workplace environment and space reduction.

(e) Agency heads will continue to dispose of real property as currently provided by law and regulation. Generally, this requires reporting excess property to the Administrator of General Services under FPMR 101–47. Agency heads shall notify the Administrator of all vacant work space that may be made available for the temporary use of other Federal agencies to the extent consistent with cost-effectiveness and with national defense requirements.

(f) An adjusted office utilization rate (i.e., excluding supplemental space) of 135 square feet or less per workstation for both agency-controlled and GSA-controlled office space shall be achieved by each agency bureau by the end of fiscal year 1990.

(g) Each agency head shall ensure that requests for space are consistent with quality workplace environment goals, and that the amount of office space is held to the minimum necessary to accomplish the tasks which must be performed. The following limits will govern all new assignments made by GSA regional offices in GSA-controlled space:

(1) An average of 135 square feet per workstation (excluding supplemental space) is a maximum not to be exceeded.

(2) Supplemental space factors are to be applied as a maximum not to be exceeded except in the most unusual situations which will be addressed on a case by case basis.

(3) Examples of space assignments which are expected to average less than 135 square feet per workstation are listed below. These include:

(i) *Assignments in newly acquired or constructed Government-owned space.* Regional officials should make assignments in new Government-owned space at an average of 135 square feet or less per workstation, *including* supplemental space requirements. New Government-owned space will be designed to accommodate more efficient use of space and an average 135 square feet, including supplemental space requirements, is the goal.

(ii) *Assignments in existing space altered to provide efficient utilization.* Assignments in altered space should average 135 square feet per workstation, *including* supplemental space requirements. Building configuration and onsite conditions may vary in unusual cases and make it difficult to achieve the 135 square foot average. In such rare instances, a maximum of 135 square feet, plus a maximum of the supplemental space factors, shall be the upper limit.

(iii) *Assignments in newly acquired leased space.* The assignments shall be made at the most efficient utilization rate the space will allow. The goal shall be an average of 135 square feet per workstation, *including* supplemental space, when first class leased space is acquired.

(iv) *Assignments in space with furniture systems.* These assignments should be made at a utilization rate ranging from 122 to 135 square feet per workstation, *including* supplemental space requirements. In the case of newly acquired Government-owned or leased space where furniture systems are used, the goal shall be an average of 122 square feet or less per workstation, *including* supplemental space requirements. In the case of altered existing Government-owned space, the goal shall be an average of 135 square feet or less per workstation, *including* supplemental space requirements.

(v) *Assignments in space which has been redesigned using professional space planning/programming techniques.* The goal for these assignments will be an average of 135 square feet or less per workstation, *including* supplemental space. Criteria for new and newly altered Government-owned space, new leased space, and space where furniture systems are used shall apply as appropriate.

(h) Each head of a Federal agency shall:

(1) Establish and implement an agency-wide Quality Workplace Environment Program, as well as prepare a work space management plan in accordance with § 101–17.007, Work space management plan. This program must meet the utilization criteria and objectives established by this regulation.

(2) Institute agency Quality Workplace Environment Programs in compliance with Executive Order 12411 and with this regulation.

(3) Ensure that standards and criteria for the use of furniture and related furnishings reflect a judicious use of public monies.

(4) Annually report the agency's total inventory of Government-wide work space, whether owned, leased, or otherwise controlled, to the Administrator of General Services, in order that the Administrator may publish a detailed listing of real property owned, leased, and otherwise controlled by all Federal agencies in accordance with FPMR 101–3.

(5) Maintain internal inventory records on furnishings related to work space in accordance with GAO thresholds.

(i) The Administrator of General Services shall:

(1) Establish procedures, guidelines and regulations to be followed by the agencies in developing the work space planning, information and reporting systems required by Executive Order 12411, and in developing Quality Workplace Environment Programs pursuant to this regulation.

(2) In accordance with § 101–17.007, receive, analyze, and approve the annual work space management plans developed by all Federal agencies and communicate his findings to OMB for their use in establishing agency budgets.

(3) Conduct surveys, space inspections and space utilization studies as prescribed by existing laws and regulations. These shall include surveys to identify under-utilized real property in accordance with FPMR 101–47.802 and Executive Order 12411.

§ 101–17.003 Definition of terms.

(a) "Acquisition of work space" means the process of obtaining work space by purchase, lease, donation, exchange eminent domain, construction, or by any other means permissible by law.

(b) "Agency-controlled space" means federally owned, leased, or controlled space acquired or used by Federal agencies under any authority other than the Federal Property and Administrative Services Act of 1949, as amended. It also includes space for which authorities for acquisition, use, or disposal have been delegated to other agencies by GSA. It includes any space for which an agency does not pay GSA directly.

(c) "Consistent with national defense requirements" means conforming with security considerations, as determined by the head of each Federal agency in consultation with the Administrator of General Services.

(d) "Conversion" is a technique for agencies to convert space under their control from "gross square feet" or "net square feet" to "occupiable square feet". Agency-controlled work space measured in terms of gross square feet will be converted to occupiable square feet by subtracting a factor of up to 25 percent. Agency-controlled work space measured in terms of net square feet

will be converted to occupiable square feet by subtracting a factor of up to 10 percent.

(e) "Conversion factor" is the percentage determined by the agencies to convert space under their control from gross and net square footage to occupiable square feet. For offices space, see § 101–17.004, Utilization standards for work space.

(f) "Cost-effective" means justified by an economic analysis which evaluates alternatives in terms of expenses incurred by the Government. These analyses should reflect costs using present value calculations.

(g) "Excess holdings" means any work space or related furnishings which are not essential to a Federal agency's existing or planned programs.

(h) "Federal agency" means any department, agency, or independent establishment in the Government, including any wholly-owned corporation.

(i) "Federally owned, leased, or controlled work space":

(1) "Federally owned" means work space, the title to which is vested, or will become vested pursuant to existing agreement, in the United States Government.

(2) "Federally leased" means work space for which the United States Government has a right of occupancy by virture of having acquired a leasehold interest.

(3) "Federal controlled" means work space for which the United States Government has a right of occupancy by ownership, by lease, or by any other means, such as by contract, barter, license, easement, permit, requisition, or condemnation, whether or not paid for. This does not include space owned or leased by private sector entities performing work on Government contracts. In reporting to GSA in accordance with FPMR 101–3.2, on real property owned by or leased to the Federal Government, some federally controlled properties, such as those under permit, are excluded from that reporting requirement.

(j) "GSA-controlled space" means space assigned to the agency by GSA by authority of the Federal Property and Administrative Services Act of 1949, as amended, or by authority of any other statute. It includes any space for which an agency pays GSA directly.

(k) "Inventory" means a summary, survey, or itemized list of the space, assets, or materials under the control of a Federal agency.

(l) "Measurement of space":

(1) "Gross square footage" means all floor area (including all openings in floor slabs) measured to the outer surfaces of exterior or enclosing walls, and includes all floors, mezzanines, halls, vestibules, stairwells, service and equipment rooms, penthouses, enclosed passages and walks, finished usable space with sloping ceilings (such as attic space) having 5 feet or more headroom, and appended covered shipping or receiving platforms as truck or railroad car height. Also included in gross floor area, but calculated on one-half of actual floor area, are covered open porches, passages and walks, with appended uncovered receiving and shipping platforms at truck or railroad car height. For the purposes of reporting under this regulation, this definition applies to agency-controlled space only.

(2) "Net square footage" means that area defined as gross square footage less space occupied by outside walls; interior partitions; stair towers; elevator shafts and machinery; toilets; basement and attic space unsuitable for use; permanent hallways and corridors; and rooms housing machinery or equipment for heating or ventilating and for furnishing light, power, and water suply for the building. For the purposes of reporting under this regulation, this definition applies to agency-controlled space only.

(3) "Occupiable area" means that portion of the gross area which is available for use by an occupant's personnel or furnishings, including space which is available jointly to the various occupants of the buildings, such as auditoriums, health units, and snack bars. Occupiable area does not include space in the building which is devoted to its operations and maintenance, including craft shops, gear rooms, and building supply storage and issue rooms. Ceiling-high corridors solely serving a single space assignment are "occupiable." Occupiable area is computed by measuring from the occupant's side of ceiling-high corridor partitions or partitions enclosing mechanical, toilet, and/or custodial space to the inside finish of permanent exterior building walls ro the face of the convector if the convector occupies at least 50 percent of the length of the exterior wall. When computing occupiable area separated by partitions, measurements are taken from the center line of the partitions.

(m) "Office utilization rate" is an indicator of the efficiency with which office space is used. It is calculated by dividing the total occupiable office square footage by the total number of workstations occupying that space. Since total office space includes supplemental space which is not used for office purposes, it is necessary to adjust the average office utilization rate by subtracting the supplemental space factor for purposes of measuring agency progress against the 135 square feet per workstation goal. See § 101–17.003(t) for the definition of "supplemental space factor" and § 101–17.003(y) for the definition of "workstation."

(n) "Personnel" means that peak number of persons to be housed, regardless of how many workstations are provided for them. In addition to permanent employees of the agency, personnel includes temporaries, part-time, seasonal, and contractual employees and budgeted vacancies. Employees of other agencies and organizatons who are housed in the space assignment are also included in the personnel total.

(o) "Related furnishings" means items in work space which do not become fixed and part of the building, including such items as furniture (furniture systems), equipment, computers, telephones, etc.

(p) "Space" means space in buildings, and land incidental to the use thereof, which is under the custody and control of a Federal agency.

(q) "Space survey" means the process of employing recognized professional techniques to determined how efficiently and agency is utilizing its work space, and to verify that space is being used in accordance with this regulation. The term "survey" also refers to space inspections. (See § 101–17.103(k).)

(r) "Special purpose space" means work space which is predominantly utilized for the special purpose of an agency and is not generally suitable for the use of other agencies. This includes, but is not limited to, schools, hospitals, mints, embassies, and consulates.

(s) "Supplemental space" means specific and discrete areas constructed as office space but used to meet needs outside the agency's ordinary office requirements, such as public-oriented or centralized reception, hearing or meeting facilities, service, inspection, distribution, storage or processing activities. Such space is most cost-effectively collocated with normal office space. Illustrations are contained in § 101–17.600.

(t) "Supplemental space factor" is the average amount of supplemental space per workstation. It is computed by dividing the square foot area of supplemental space by the total number of workstations. It is expressed as the number of square feet per workstation, not a percentage. This factor will be subtracted from an agency bureau's average office utilization rate to develop an adjusted office utilization rate to

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determine the bureau's progress in achieving the 135 square foot or less per workstation goal by the end of fiscal year 1990.

(u) "Used or held by a Federal agency" means space occupied or used by that agency in the performance of its missions, whether or not paid for, regardless of whether such occupancy or use is obtained as a result of an assignment from GSA, as a result of a permit or other right-of-use obtained from another agency, or as a result of the agency's exercise of its own acquisition authority, whether granted by statute or obtained by delegation from GSA.

(v) "Vacant space available for temporary use" means work space which is:

(1) Not currently occupied or utilized to perform an agency's mission, but which is retained for future use, and

(2) In a condition presently suitable for occupancy, or capable of being made suitable at minimal expense, and

(3) Of a character and in a geographical location such that it would be suitable for use by a Federal agency other than the agency which presently controls it.

(w) "Work space" means federally-controlled space in buildings and structures (permanent, semipermanent, or temporary) which provides an acceptable environment for the performance of agency mission requirements by employees or by other persons occupying it. It is further classified as "office space", "storage space", or "special space".

(1) "Office space" means space which provides an environment suitable in its present state for an office operation.

(2) "Storage space" means space generally consisting of concrete, wood block, or unfinished floors; bare block or brick interior walls; unfinished ceilings; and similar construction containing minimal lighting and heating. It includes attics, basements, sheds, parking structures and other unimproved building areas.

(3) "Special space" means space which has unique architectural features, requires the installation of special equipment or requires varying sums to construct, maintain and/or operate as compared to office and storage space.

(x) "Work space management plan" means an annual plan prepared and submitted to GSA in accordance with § 101–17.007.

(y) "Workstation" means a location within an office space assignment that provides a working area for one or more persons during a single 8-hour shift. The number of workstations in an office space assignment is the number of such locations that must be provided to support the maximum number of personnel housed in that office space during any 8-hour shift. In general, the number of workstations in an office space assignment should not exceed the number of personnel housed in that assignment. Agencies that require more workstations than office personnel must attach a justification for this requirement to their work space management plans.

§ 101–17.004 Utilization standards for work space.

(a) The objective of the Quality Workplace Environment Program is to improve the quality of Federal office space and enhance productivity while reducing the total amount of space occupied by the Federal Government. It has been demonstrated that well-designed space using modern technologies can effect increases in productivity while allowing space reductions. The utilization rate target of 135 square feet or less per person, plus supplemental space, is merely one of the means to the objective of reducing the total amount of space used by the Federal Government while ensuring its quality. This target must be met by each agency bureau by the end of fiscal year 1990. In addition, it is necessary that each agency pursue the most efficient space utilization possible not only on a national average basis, but also on an assignment by assignment basis. Therefore, agencies that have met the nationwide average target utilization rates must continue to examine their space usage in order to identify opportunities for better efficiency. In this regard, GSA will work with agencies on each new assignment in order to achieve the optimal space efficiency possible for that particular assignment. The criteria will apply to all new assignments whether or not the agency bureau has met its 1990 goal. In addition, agencies should establish total space reduction targets each year in recognition of additional efficiencies that can be achieved.

(b) The following limits will govern new assignments made by GSA regional offices in GSA-controlled space:

(1) An average of 135 square feet per workstation (excluding supplemental space) is a maximum not to be exceeded.

(2) Supplemental space factors are to be applied as a maximum not to be exceeded except in the most unusual situations which will be addressed on a case by case basis.

(3) Examples of space assignments which are expected to average less than 135 square feet per workstation are listed below. These include:

(i) *Assignments in newly acquired or constructed Government-owned space.* Regional officials should make assignments in new Government-owned space at an average of 135 square feet or less per workstation, *including* supplemental space requirements. New Government-owned space will be designed to accommodate more efficient use of space and an average 135 square feet, including supplemental space requirements, is the goal.

(ii) *Assignments in existing space altered to provide efficient utilization.* Assignments in altered space should average 135 square feet per workstation, *including* supplemental space requirements. Building configuration and onsite conditions may vary in unusual cases and make it difficult to achieve the 135 square foot average. In such rare instances, a maximum of 135 square feet, plus a maximum of the supplemental space factors, shall be the upper limit.

(iii) *Assignments in newly acquired leased space.* The assignments shall be made at the most efficient utilization rate the space will allow. The goal shall be an average of 135 square feet per workstation, *including* supplemental space, when first class leased space is acquired.

(iv) *Assignments in space with furniture systems.* These assignments should be made at a utilization rate ranging from 122 to 135 square feet per workstation, *including* supplemental space requirements. In the case of newly acquired Government-owned or leased space where furniture systems are used, the goal shall be an average of 122 square feet or less per workstation, *including* supplemental space requirements. In the case of altered existing Government-owned space, the goal shall be an average of 135 square feet or less per workstation, *including* supplemental space requirements.

(v) *Assignments in space which has been redesigned using professional space planning/programming techniques.* The goal for these assignments will be an average of 135 square feet or less per workstation, *including* supplemental space. Criteria for new and newly altered Government-owned space, new leased space, and space where furniture systems are used shall apply as appropriate.

(c) All agencies must report to GSA their adjusted office utilization rates in GSA-controlled work space in their annual work space management plans. However, only agencies that classify their agency-controlled work space by

actual use, i.e., by assignment, will be able to report the office utilization rates in that space. Agencies that classify their agency-controlled work space by predominant use, i.e., by building, will not be able to identify their actual office space or the corresponding office utilization rates. These agencies are required to report only their total occupiable work space, which is converted from gross or net square footage estimates according to § 101–17.003(d). Agencies that classify their agency-controlled space by predominant use should report the conversion factors used in an attachment to their plans.

Note.—It is the responsibility of all heads of agencies to ensure that standards and criteria for the use of related furnishings reflect a judicious use of public monies.

§ 101–17.005 Excess work space and related furnishings.

(a) The identification of unneeded work space held by Federal agencies will continue to be accomplished in accordance with the guidelines set forth in § 101–47.8. Transfers of excess property between Government agencies will generally be effected in accordance with FPMR 101–47.2. Disposal of work space will be made in strict accordance with FPMR 101–47.3.

(b) Federal agencies with authority to identify, transfer, and dispose of work space, whether the authority is delegated to them by the Administrator of General Services or statute, may continue to exercise these authorities. Section 1(e) of Executive Order 12411 states that heads of all Federal executive agencies shall "consider, in making decisions concerning the use, acquisition or disposal of work space and related furnishings, the effects of its actions on costs incurred by other Federal agencies."

(c) All transfers and disposals, however done, will be reflected in agencies' reports and work space management plans to GSA.

(d) Excess related furnishings shall be identified in accordance with standards, criteria and procedures established by heads of Federal agencies. Excess related furnishings shall be reported to the Administrator in accordance with FPMR 101–43 and other applicable laws and regulations.

(e) Vacant work space in facilities held in the custody and control of Federal agencies other than GSA shall be reported to the Administrator by those agency heads in accordance with the provisions of FPMR 101–3 and of this Part 101–17. Notification of the space which will become available for temporary use will be made to the Administrator 120 days before the projected date of availability. Notification will include a description of the property, the amount of space, the dates of availability and an agency contact. Alternatively, consistent with cost-effectiveness and with national defense requirements, agency heads may determine that vacant space is not suitable for temporary use by other Federal agencies. Agencies should attach to their work space management plan, a list of vacant space which is available for use by other agencies as of the end of the prior year shown on the Work Space Management Plan and Justification, GSA Form 3530. (See § 101–17.007, Work space management plans.)

(f) Agency heads shall ensure that vacant space available for temporary use is included in the space reported in Section 1 of their work space management plans.

(g) In addition to reporting agency-controlled vacant space available for temporary use, agency heads may identify other potential agency users and may assign such vacant space to them in accordance with applicable laws and regulations.

(h) The holding agency may determine that the space in question can be made available to potential users other than Federal agencies.

(i) To facilitate Federal agencies' cost-effective planning and utilization of work space, the Administrator shall maintain listings of vacant GSA and agency-controlled space available for temporary use. These listings will enable agencies requiring additional work space to identify space which is available for their use within the Federal inventory. Available Federal space should be used rather than additional space being acquired by a Federal agency. It is the responsibility of all agency heads to determine, before acquiring work space, that existing vacant space used or held by other agencies is not available to satisfy the need.

§ 101–17.006 Inventories.

(a) Procedures and forms for use by executive agencies in preparing and submitting annual reports necessary for maintaining and publishing Annual Real Property Inventories are contained in FPMR 101–3. Inventory reports shall cover those categories of property specified in FPMR 101–3. Reports shall be submitted by the agency responsible for the maintenance of real property records and accounts as prescribed in FPMR 101–3. Interagency report control number 0315–GSA–QU is assigned to this reporting requirement.

(b) It is the responsibility of the head of each executive agency to ensure that data submitted in accordance with FPMR 101–3 is consistent with the data required by § 101–17.007.

(c) The Administrator of General Services shall consult with the heads of other agencies before issuing additional reporting requirements in order to ensure that such reports do not impose excessive cost burdens not contemplated by Executive Order 12411.

§ 101–17.007 Work space management plan.

(a) The head of each Federal agency shall prepare an annual work space management plan to establish square footage targets, to report progress and plans for achieving the Government's work space management goals, and to support the annual budget request to OMB. An agency plan should be organized to support the agency's budget justification. Each agency plan will provide estimates of office utilization rates, personnel and workstations, work space, and rent and related obligation amounts for the fiscal years covered by the corresponding budget cycle.

(b) Agency plans will be submitted on GSA Form 3530, Work Space Management Plan and Budget Justification, and completed according to the instructions which accompany that form. (See § 101–17.4902–3530, GSA forms.) All references in this regulation to the "work space management plan" or "plan" mean this form. This report has been cleared in accordance with FIRMR 201–45.6 and has the same control number, 0323–GSA–XX, as the previous Work Space Management Plan. In addition, this report supersedes 0307–GSA–AN, Annual Space Reduction Plan and 0308–GSA–AN, Work Space Management Plan.

(c) Agencies shall report all work space owned or paid for, whether GSA-controlled or agency controlled, wherever located. Agency estimates of GSA-controlled work space should only include work space assigned to the agency. Space leased by an agency under a lease acquisition delegation from GSA will be considered agency-controlled space in the plan. Agencies should contact GSA to resolve any major differences (+/−5% in any category) between their estimates and GSA's and should submit an explanation of these differences with their plans.

(d) Each plan will show separately the agency's estimates of FTE, personnel, and workstations that are housed in the work space reported on the plan.

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Agencies that require more workstations than the number of personnel housed in the corresponding work space must attach a justification for this requirement to their plans. Agencies which show a reduction in FTE are expected to show a reduction in square footage sufficient to ensure compliance with the utilization rate requirements of this regulation. A narrative statement should be attached to the plan indicating when and where the reductions will be made.

(e) Agencies must estimate their average office utilization rates for each year reported in their plans. Agencies must only use supplemental space factors approved by GSA in computing adjusted office utilization rates. The plans will also indicate the respective years in which the end of fiscal year 1990 goal of 135 square feet or less per workstation, excluding supplemental space, is expected to be achieved in GSA-controlled and agency-controlled work space by each agency bureau.

(f) Agencies' estimates of rent and related obligation amounts will be based on the work space estimates reported in their plans. The rent and related obligation estimates will be developed according to the guidance provided in OMB Circular No. A–11.

(g) Agencies will submit copies of their plans to both GSA and OMB to coincide with their budget submissions. In addition, agencies will update their plans to reflect final budget decisions and submit copies of their updated plans to both GSA and OMB by the March 1 following the publication of the President's Budget.

(h) Each plan shall guide agencies in determining the amounts and type of work space to be acquired under direct or delegated authority or requested from GSA. Any such space acquired under authority delegated by GSA or requested from GSA must be in accordance with the criteria for new assignments prescribed in § 101–17.104. Agencies are responsible for ensuring compliance with their plans in the acquisition of work space. If major acquisitions (through purchase, construction, or leasing), renovations, or consolidations are required to implement an agency's plan, the agency must submit with its plan a list of such actions, their timing, the amounts of work space involved, and the cost.

(i) GSA shall, upon agency request, provide technical assistance in the development and implementation of plans.

§ 101–17.008 Review and approval of work space management plans.

(a) GSA shall review agency plans for accuracy and technical feasibility in conformity with Executive Order 12411; the provisions of this regulation including the 135 square feet or less goal, excluding supplemental space, by the end of fiscal year 1990; and other relevant factors. GSA will complete its review and notify the agencies of its findings within 60 days of plan submission. GSA shall also report agencies' progress in improving the management of work space.

(b) As part of its review, GSA will evaluate the projected end-of-year square footages of GSA-controlled space projected by each agency. These targets will be analyzed for compliance with the provisions of this regulation.

Subpart 101–17.1—Assignment and Utilization of GSA-Controlled Space

§ 101–17.100 Scope of part.

This part prescribes the policies and procedures for the assignment, utilization, and planning of space in buildings under the custody or control of GSA. The term "United States", as used in this subchapter, means the 50 States of the United States, the District of Columbia, and the Commonwealths, territories and possessions of the United States.

§ 101–17.101 Authority.

This part implements the applicable provisions of the Federal Property and Administrative Services Act of 1949, (63 Stat. 377), as amended; the Act of July 1, 1898 (40 U.S.C. 285); the Act of April 28, 1902 (40 U.S.C. 19); the Act of August 27, 1935 (40 U.S.C. 304c); the Public Buildings Act of 1959, as amended (40 U.S.C. 601 et seq.); the Rural Development Act of 1972 (86 Stat. 674); Reorganization Plan No. 18 of 1950 (40 U.S.C. 490, note); the Federal Urban Land Use Act (40 U.S.C. 531–535); Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321); Executive Order 12072 of August 16, 1978 (43 FR 36869); Executive Order 12411 of March 29, 1983 (48 FR 13391); and Executive Order 12512 of April 29, 1985 (50 FR 18453).

§ 101–17.102 Basic policy.

(a) GSA and other Federal agencies shall take all necessary measures to provide a quality workplace environment for all Federal activities and to reduce the amount and cost of Federal work space to the essential minimum required for known agency missions. This reflects the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985 (99 Stat. 1038), Executive Order 12411, and Executive Order 12512.

(b) A Quality Workplace Environment Program is implemented as a means for assisting agencies in achieving space reduction and improved utilization in GSA and agency-controlled office space while improving the quality of Federal offices and enhancing productivity. The goal for each agency bureau is to achieve as soon as practicable, but no later than the end of fiscal year 1990, an adjusted office utilization rate (i.e., excluding supplemental space) of 135 square feet or less per workstation.

(c) New assignments will be made at an average office utilization rate less than or, in rare instances, equal to an average 135 square feet per workstation, plus supplemental space less than or equal to the factor. The 135 square feet is a maximum not to be exceeded. Most assignments will average less than 135 square feet. Established supplemental space factors are also a maximum not to be exceeded except in the most unusual situations when GSA determines that additional supplemental space is essential. Most new space assignments will be less than these maximums. The criteria for new assignments will apply to assignment actions of 10 workstations or more. New assignment actions for fewer than 10 workstations will be processed on a case by case basis and housed as efficiently as possible. It is GSA's desire to develop and issue at a later date criteria for typical assignments for fewer than 10 workstations. (See § 101–17.104 for the specific criteria.)

(d) GSA regional offices will provide technical assistance to agencies in complying with criteria for new assignments. The responsibility for meeting the criteria rests with agency heads. However, each GSA regional office shall be responsible for determining the appropriate amount of space for each new assignment within the specified limitations.

(e) Agencies shall identify their space reduction goals in the annual work space management plans prepared in accordance with § 101–17.007. These plans shall guide GSA and agencies in the acquisition of space, including requests for space from GSA, and in making the most cost-effective decisions regarding assignment and reassignment of space.

(f) Agencies shall request the essential minimum amount of space required to support known agency missions.

(g) Each agency shall determine the appropriate geographical area for its

facilities. The agency shall define the broadest possible area compatible with its mission, employment considerations impacting productivity, recruitment and retention, and functional requirements to ensure the maximum competitive area for space procurement. Based on the geographical areas determined by agencies, GSA's regional offices will establish delineated areas for use in solicitations for offers to lease space. Agencies shall comply with all applicable statutes and Executive Orders, including those cited in § 101–17.101. GSA shall develop community-specific location policies and plans based on a survey of agency mission, housing, location requirements, and employment considerations impacting productivity, recruitment and retention as defined by the agency. Locational policies shall be developed in accordance with § 101–17.205, Location of space. These plans shall also consider social, economic, environmental, historic preservation, and cultural effects upon communities, and shall support local development and revitalization objectives wherever feasible in meeting agency space needs.

(h) GSA may require agencies to relinquish all or a portion of assigned space if this action is in the best interests of the Government and would not unreasonably interfere with the agency's performance of its mission. (See § 101–17.103(c).) GSA will be responsible for all expenses, including moving and alterations, as well as any above-standard alterations that were approved and provided for the agency in the existing space, for which a continuing need is justified, when an agency requests justifiable contiguous expansion space and GSA cannot provide it at the present location. However, when an agency is moved (displaced) because of another agency's expansion, GSA will only fund for the cost of the initial space alterations (ISA's). The expanding agency should, in the space being provided for the displaced agency, fund for moving and telephone relocation costs, and for all above-standard ISA's required to make the displaced agency's new space comparable to the previous assignment. GSA funds only standard ISA's in the agency's expansion space.

(i) GSA recognizes the benefits of Space Allocation Standards to client agencies and to GSA. The principle benefit is the efficiency of negotiating a standard with GSA's Central Office which will be followed by all regional offices in the satisfaction of space requests. GSA wishes to establish Space Allocation Standards with those agencies who believe it would be helpful, particularly for agencies who have similar space requirements at many locations. In the interim, the provisions of Space Allocation Standards concerning quantities of space to be provided for those agencies having such agreements with GSA are hereby superseded. The portions of the agreements describing features to be provided will remain in effect. All new space assignments will be made in accordance with the provisions of this temporary regulation. If the agencies so request, portions of existing space allocation standards pertaining to square footages may be renegotiated in accordance with the provisions of this regulation.

§ 101–17.103 Definition of terms.

In addition to definitions included in § 101–17.003, the following definitions apply to space assignments, utilization and planning in GSA-controlled space.

(a) "Acceptance of space" means a certification from an agency that GSA may award a lease, make a commitment for initial alterations, and/or establish a date of occupancy.

(b) "Delineated area" means the specific boundaries, as determined by GSA, within which space will be obtained to satisfy an agency space requirement. It is based upon the agency's geographic service area and mission, employment considerations, the amount of available Government-owned space, and the potential for competitive offers from the marketplace.

(c) "Forced relocation" means any GSA-directed action, not initiated by agency request, that forces an agency to move from its present space assignment in whole or in part.

(d) "General purpose space" means space which is determined by GSA to be suitable for the general use of agencies. General purpose space is categorized as office, storage or special. The physical characteristics are the basis for determining the proper space category.

(e) "Initial space layout" means the specific placement of workstations, furniture and equipment for new space assignments. These initial services are provided by GSA at no cost to the agencies, upon agency request.

(f) "Joint-use space" means occupiable space, such as cafeterias, conference rooms, credit unions, snack bars, and certain physical fitness and day care centers, which is available for common use by personnel of any Federal agency.

(g) "Non-Federal organizations" means organizations such as credit unions, concessions operated by the blind and handicapped, and organizations under the direct sponsorship of a Federal agency such as grantees and contractors.

(h) "Request for space" or "space request" means a written document upon which an agency provides GSA with the information necessary to assign space. A request for space shall be submitted on Standard Form 81 and Standard Form 81–A. (See §§ 101–17.4901–81 and 101–17.4901–81A, Standard forms.) The request shall, at a minimum, contain descriptions of the amount of space, personnel to be housed, geographic area, time period required and funding availability.

(i) "Space assigned by GSA" means space in buildings, and land incidental to its use, which is under the custody and control of GSA; space made available by the U.S. Postal Service; or space for which a permit for use has been issued to GSA by another agency. Examples of types of space assigned by GSA are listed in § 101–17.601.

(j) "Space assignment" means an administrative action by GSA which authorizes the occupancy and use of space by a Federal agency or other eligible entity.

(k) "Space inspection" is a form of space utilization survey as defined in § 101–17.003(q) and means a reconnaissance type evaluation of the manner in which assignments are being utilized to determine whether immediate or scheduled corrective action is warranted.

(l) "Space planning" means the process of using recognized professional techniques of space programming, planning, layout and interior design to determine the best location and the most efficient configuration for agency facilities.

(m) "Space requirements program" means the statement of an agency's space needs as expressed on Standard Form 81–A, Space Requirements Worksheet, and additional supporting documentation such as adjacency diagrams, and summarized on Standard Form 81, Request for Space. (See §§ 101–17.4901–81 and 101–17.490181A, Standard forms.)

(n) "Unique agency space" means any general purpose space which either consists of more than 50 percent special-type space not likely to be needed by another agency, or space of any type located in an area where it would be impractical to house another agency.

§ 101–17.104 Criteria for new space assignments.

(a) It is the Federal Government's policy to provide a quality workplace environment for all Federal activities

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and to reduce work space to the essential minimum required for known agency missions. Utilization rate improvement is a means for achieving this goal. This Quality Workplace Environment Program requires all Federal agency bureaus to achieve a bureau-wide adjusted office utilization rate of 135 square feet or less per workstation, excluding supplemental space, by the end of fiscal year 1990.

(b) In order to house Federal activities in the most efficient manner, all new assignments will be made at a workstation utilization rate less than or, in rare instances, equal to an average 135 square feet per workstation, plus supplemental space less than or equal to the factor. These criteria will assist agencies in achieving their office space and inventory reduction goals, and they apply whether or not the agency bureau has achieved its 1990 goal.

(c) The following limits will govern new assignments made by GSA regional offices in GSA-controlled space:

(1) An average 135 square feet per workstation (excluding supplemental space) is a maximum not to be exceeded.

(2) Supplemental space factors are to be applied as a maximum not to be exceeded except in the most unusual situations which will be addressed on a case by case basis.

(3) Examples of space assignments which are expected to average less than 135 square feet per workstation are listed below. These include:

(i) *Assignments in newly acquired or constructed Government-owned space.* Regional officials should make assignments in new Government-owned space at an average of 135 square feet or less per workstation, *including* supplemental space requirements. New Government-owned space will be designed to accommodate more efficient use of space and an average 135 square feet, including supplemental space requirements, is the goal.

(ii) *Assignments in existing space altered to provide efficient utilization.* Assignments in altered space should average 135 square feet per workstation, *including* supplemental space requirements. Building configuration and onsite conditions may vary in unusual cases and make it difficult to achieve the 135 square foot average. In such rare instances, a maximum of 135 square feet, plus a maximum of the supplemental space factors, shall be the upper limit.

(iii) *Assignments in newly acquired leased space.* The assignments shall be made at the most efficient utilization rate the space will allow. The goal shall be an average of 135 square feet per workstation, *including* supplemental space, when first class leased space is acquired.

(iv) *Assignments in space with furniture systems.* These assignments should be made at a utilization rate ranging from 122 to 135 square feet per workstation, *including* supplemental space requirements. In the case of newly acquired Government-owned or leased space where furniture systems are used, the goal shall be an average of 122 square feet or less per workstation, *including* supplemental space requirements. In the case of altered existing Government-owned space, the goal shall be an average of 135 square feet or less per workstation, *including* supplemental space requirements.

(v) *Assignments in space which has been redesigned using professional space planning/programming techniques.* The goal for these assignments will be an average of 135 square feet or less per workstation, *including* supplemental space. Criteria for new and newly altered Government-owned space, new leased space, and space where furniture systems are used shall apply as appropriate.

(d) The final decision concerning the appropriate amount of space and utilization rate for a given space assignment shall be made by the GSA regional office which has the responsibility for making the assignment.

(e) Consideration must be given to the provision of handicapped accessibility consistent with Federal standards.

(f) Agency heads shall issue necessary instructions and procedures to ensure that all space requests to GSA are consistent with the new assignment criteria.

(g) "Space assignment" means an administrative action by GSA which authorizes the occupancy and use of space by a Federal agency or other eligible entity. Any space assignment which provides an opportunity for utilization rate improvement is subject to the assignment criteria contained in this section. Such assignments include, but are not limited to, those resulting from an initial request for space and relocations from one building to another or within a building, initiated either by the agency or GSA. Relocations can result from agency requests for expansion or reduction to existing assignments; expansion by other agencies within a building; new construction or major renovation; building purchase or lease acquisition.

(h) In most cases, assignments will be made effective on the date the space is ready for occupancy by the agency. However, in leased space, if, under the terms of the contract, GSA begins paying rent for the space on an earlier date, the assignment should be made effective on that earlier date.

§ 101-17.105 Supplemental space policy.

§ 101-17.105-1 Policy overview.

This policy is designed to identify and take into account those areas not used for typical office work in calculating adjusted office utilization rates. Supplemental space will continue to be classified, measured, and billed to agencies as office space.

§ 101-17.105-2 Supplemental space factors.

Supplemental space factors will be developed and approved by GSA for agency functions which are:

(a) Housed in office space and accommodate non-workstation activities such as public reception areas, public inspection rooms, bid rooms, areas which accommodate files which by law must be maintained for public use, centralized mail, copy and storage operations and the like (see § 101-17.600 for examples of supplemental areas);

(b) Housed in space used more than 50 percent of the time for that purpose; and

(c) Housed in distinct and identifiable areas.

§ 101-17.105-3 Supplemental space factors procedures.

(a) Each agency is responsible, on behalf of its bureaus, for submitting to GSA narrative descriptions for each allowance type. This narrative must explain what the function is and why it qualifies. One concise paragraph should suffice to explain each request.

(b) The description must contain the quantity of space nationwide and a certification from the agency head of the validity of the data and compliance with supplemental space criteria.

(c) GSA will develop with each agency and approve the supplemental space factors for its bureaus or operational units as appropriate. For example, GSA and the Department of Transportation will develop supplemental space factors for the Federal Railroad Administration, the Urban Mass Transportation Administration, etc. However, in cases where there is an operationally-distinct component of a bureau which requires its own supplemental space factor, a separate factor will be developed. For example, an agency with regional offices, district offices and field offices, all under one bureau but with distinctly different operating characteristics, would require separate factors. Each

supplemental space factor will remain in effect until: (1) An agency mission change dictates that a new factor be developed; or (2) GSA determines that the factor must be modified to more accurately reflect actual requirements.

(d) The supplemental space factor will indicate the types of supplemental space required for an operational unit, as well as the maximum amount of supplemental space required in relation to workstation space for all new assignments in that operational unit.

Subpart 101-17.2—Assignment of Space

§ 101-17.200 Requests for space.

(a) Federal agencies shall document their space needs by submitting Standard Form 81, Request for Space; Standard Form 81-A, Space Requirements Worksheet (see §§ 101-17.4901-81 and 101-17.4901-81A, Standard forms); and all other appropriate information, to the GSA regional office responsible for the geographic area in which the space is required. These requests must conform to the assignment criteria in § 101-17.104. GSA will advise agencies when space requested has been determined to be unique agency space.

(b) When appropriate, GSA will request agencies to submit GSA Form 144, Net Space Requirements for Future Federal Building Construction. (See § 101-17.4902-144, GSA forms.)

(c) The need for space requested, the number of workstations housed, and the availability of funds for reimbursement to GSA shall be certified by an authorized official of the requesting agency on Standard Form 81.

(d) Space requests for the U.S. Postal Service will be processed in accordance with the "Agreement Between GSA and the U.S. Postal Service Covering Real Property Relationships."

(e) GSA has the responsibility to assign space in an efficient manner using professional space management techniques. In making its determination of the amount of space assigned, each GSA regional office will consider the prudent and judicious use of Government funds and resources and will base its decision on local market conditions, available vacant space, restrictions imposed by furniture and equipment, professional space management principles, agency mission needs, and the criteria for new assignments. Whenever possible, GSA will satisfy new space requests through the reassignment of vacant available space in the inventory.

(f) Each agency has the responsibility to request no more than the minimum amount of space required to perform known agency mission and no more than the allowances provided by the new assignment criteria.

§ 101-17.201 Delegation of authority.

(a) Upon written request from an agency head, the Administrator may delegate authority to acquire space by lease when, in GSA's sole opinion, the delegation is in the best interests of the requesting agency and the Government. GSA will specify the terms and conditions of any delegation in writing at the time the delegation is made. Space proposed for acquisition by an agency under authority delegated by GSA must comply with the criteria for new assignments found in § 101-17.104.

Note.—An authorization to procure parking is not a delegation of leasing authority but rather an authorization for an agency to use its own procurement authority to acquire parking by service contract. This determination can be made at the regional level and does not require the authorization of the Administrator of General Services.

(b) Agencies acting under delegations shall make every reasonable effort to utilize existing Government-controlled facilities before acquiring new space. Agencies shall make inquiries to GSA regional offices regarding the availability of Government-controlled space, and the agencies shall document their lease files if such space is not available. This documentation shall include the date of contact and the name and position of the GSA individual contacted.

(c) Agencies acting under delegation from GSA are required to comply with all relevant sections of this part 101-17.

§ 101-17.202 Action when existing space is not available.

(a) If no suitable federally-controlled space is available, GSA will advise the requesting agency by returning a signed copy of the Standard Form 81, showing the action to be taken.

(b) When the agency has acquisition authority or has been delegated such authority by GSA, it may proceed to acquire the requested space consistent with existing laws and regulations. The signed copy of the Standard Form 81, if required, shall be attached to the leasing or related instrument made available to the General Accounting Office.

(c) At the agency's option, GSA may take necessary action to acquire space for agencies having acquisition authority when the latter so requests.

§ 101-17.203 Space for short-term use.

Agencies having a need for facilities for short-term use (such as conferences and meetings, judicial proceedings, and emergency situations) shall utilize available Government-owned or -leased facilities. Agencies shall make inquiries regarding availability to GSA regional offices and document such inquiries as outlined in § 101-17.201(b). If no suitable Government-controlled facilities are available, an agency may arrange for the use of privately owned facilities for a period not to exceed 180 days, provided that the agency has authority to contract for such facilities and that any extensions beyond 180 days are approved by GSA.

§ 101-17.204 Space requirements for ADP, office automation and telecommunications equipment.

Agencies requiring space for the installation of specialized equipment shall provide information as described in Subpart 101-17.602. This information should be forwarded to GSA at least six months in advance of equipment delivery so that space can be provided in a timely and efficient manner.

§ 101-17.205 Location of space.

(a) In locating facilities, GSA shall survey agency mission, housing, and location requirements in a community and develop community specific location policies and plans. These plans shall call for the location of leased space and other interests in real property including purchase at the most economical cost possible to the Government consistent with the agency's requirements. When permitted by agencies' missions, consideration will be given to locating agencies in quality space outside of central business areas. This will aid in employee recruitment and retention by housing agencies near employee residences, public transportation end support services such as day care centers.

(b) Policies and plans will be developed to ensure that space requirements are met in a manner that is economically feasible and prudent and will improve the management and administration of Government activities. Whenever practicable and cost-effective, GSA will consolidate elements of the same agency or multiple agencies in order to achieve the economic and programmatic benefits of consolidation. In the policy and plan development process, first consideration shall be given to rural areas, central business areas and other redevelopment areas if the location is contained within an agency's geographical requirements. Plans shall comply with all applicable statutes and Executive Orders, including those cited in § 101-17.101.

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(c) GSA will consult with appropriate Federal, State, regional and local Government officials and consider their recommendations for, and review of, general areas of possible space or site acquisition. GSA will advise local officials of the availability of data on GSA plans and programs, and will agree upon the exchange of planning information with local officials.

(d) The presence of the Federal Government in the National Capital Region (NCR) is such that the distribution of Federal installations will continue to be a major influence in the extent and character of development. These policies shall be applied in the GSA National Capital Region on the most cost-effective basis, in conjunction with regional policies established by the National Capital Planning Commission and consistent with the general purposes of the National Capital Planning Act of 1959 (66 Stat. 781), as amended. These policies shall guide the development of strategic plans for the housing of Federal agencies within the National Capital Region.

(e) Consistent with the policies cited in paragraphs (a), (b), (c) and (d) above, the use of buildings of historic, architectural, or cultural significance within the meaning of Section 105 of the Public Buildings Cooperative Use Act of 1976 (90 Stat. 2507) will be considered as alternative sources for meeting Federal space needs.

§ 101-17.206 Application of socioeconomic considerations.

When actions are proposed to accomplish the reassignment or utilization of space through the relocation of an existing major workforce, the impact on employees with low and moderate incomes and minority employees shall be considered. Under these circumstances, the requesting agency shall consult the Department of Housing and Urban Development in accordance with the memorandum of understanding between the Department of Housing and Urban Development and the General Services Administration.

§ 101-17.207 Reviews and appeals of space assignment actions.

§ 101-17.207-1 Formal review.

A request for a formal review of a space assignment or space acquisition action shall initially be submitted to the appropriate GSA regional office by the agency official authorized to sign the Standard Form 81, Request for Space. A request for a formal review shall be in writing and shall include all pertinent information and supporting documentation. The GSA Real Estate Division will verify the data, perform additional investigations, as necessary, and issue a decision.

§ 101-17.207-2 Initial appeal.

(a) Within 15 calendar days after receiving the decision, the regional agency head or his/her designee may submit an appeal of the decision to the Regional Administrator, GSA. In the appeal, the agency official shall state, in writing, the basis for the original request for formal review. Only information provided with that request will be considered. Any new or additional information introduced at this level will require that the appeal undergo another formal review.

(b) Within 15 calendar days, the Regional Administrator, GSA, will notify the agency of his/her decision. In cases requiring more detailed analysis than can be accomplished in 15 days, the Regional Administrator will notify the agency and establish a date on which his/her decision will be rendered.

§ 101-17.207-3 Final appeal.

Within 15 calendar days after the agency has been notified of the Regional Administrator's decision, a final appeal may be filed by the agency head with the Administrator of General Services. The Administrator will render the agency's final decision within 30 calendar days of receipt of the appeal whenever possible; if additional time is required, the Administrator shall notify the agency of the date a decision will be made.

Subpart 101-17.3—Utilization of Space

§ 101-17.300 Responsibility of GSA.

(a) GSA shall conduct space utilization surveys to promote and ensure efficient utilization, recapturing for release or reassignment any space the agencies do not justify as being required. The agency will be provided with a written summary of significant findings and recommendations, together with data concerning improvements which are planned by the agency, and those which are planned by GSA.

(b) As part of the Quality Workplace Environment Program, GSA will place greater emphasis on the use of vacant space in its inventory. All new requests for space will be carefully screened against vacant available space. GSA, in consultation with the requesting agency, will determine whether the request will be satisfied through the reassignment of suitable vacant space before action is taken to acquire new space.

§ 101-17.301 Responsibility of agencies.

Agencies shall cooperate with GSA in the assignment and utilization of space. Agencies shall:

(a) Furnish information regarding the use of assigned space;

(b) Furnish data on personnel consistent with budget submissions to the Office of Management and Budget and with existing appropriations;

(c) Continually study and survey space occupied to ensure efficient and economical utilization of office space consistent with the minimum amount required to perform the agency mission; and

(d) Promptly report to GSA any space which is excess to their needs for assignment to other agencies.

§ 101-17.302 Procedures for agency-initiated relinquishment of space.

(a) An agency occupying GSA-controlled space shall notify the appropriate GSA regional office as soon as possible, but at least 120 calendar days before vacating, whenever space is no longer needed. Notification shall be in writing, giving a description of the space and the estimated date of release.

(b) When a portion of space is relinquished, that space shall be consolidated, accessible, and readily assignable or marketable. Expenses required to alter the space to these conditions shall be borne by the agency. Agencies should contact the GSA regional office to determine alteration requirements prior to initiating such alterations under their own authority.

(c) The agency shall be responsible for space charges until the date of release specified in the notification, or until the date space is actually vacated, whichever occurs later. When an agency has not made timely notification to GSA, that agency shall be responsible for space charges for a period of 120 calendar days following the date of notification or until the space has been reassigned, whichever occurs first.

(d) When the space relinquished is unique agency space, the agency shall also be responsible for space charges for a period of 120 days following notification. Further, beyond 120 days the agency shall be responsible for actual expenses incurred by GSA until:

(1) The space is assigned or otherwise disposed of by GSA, or

(2) The expiration of the term specified on the most recent Standard Form 81 applicable to the area in question, or

(3) Notification by the Office of Management and Budget that agency responsibility is no longer required.

(e) Agencies who commit to occupy space but never occupy that space are responsible for space charges for 120 days from the day they notify GSA that the space is not required. If the space is unique agency space, the provisions of § 10117.302(d) shall apply.

(f) When an agency is reponsible for the operation, maintenance, and protection of Government-owned space assigned by GSA, and the agency determines that this space is no longer needed, the agency shall so notify GSA at least six months before relinquishing the space. The operation, maintenance, and protection of the space shall continue to be the responsibility of the agency until the beginning of the next fiscal quarter following the end of the 6-month period.

Subpart 101-17.4—Space Programming, Planning, Layout and Design Services

§ 101-17.400 Initial layout services.

(a) Upon agency request, GSA will be responsible for providing space layouts for an initial space assignment or a forced relocation at no cost to the agency. The agency shall be responsible for preparation of a space requirements program, which shall be used as the basis for developing layouts. Wherever possible, the space program shall be prepared by professionally-trained agency staff. All requests shall be made to the appropriate GSA regional office.

(b) Agencies may also request other services in conjunction with initial layouts, such as space programming, master planning, macro-level programming and interior design. GSA will consult with the agency to determine the scope of assistance required. Such services will be provided on a reimbursable basis. Agencies must certify funding before performance of services.

(c) As part of the Quality Workplace Environment program, GSA will offer free space programming and planning services for a limited time. This offer applies to the reconfiguration of existing assignments which meet GSA's criteria for utilization improvement.

§ 101-17.401 Other services.

(a) Agencies may request space programming, planning, layout and interior design services for space actions other than initial layouts, such as reconfigurations, alterations, reductions, consolidations, relocations, as-built drawings and use of specialized furniture or equipment. Such services will be provided on a reimbursable basis except as noted in (b) below. Agencies must certify funding before performance of services.

(b) In order to provide an incentive for agencies to implement cost effective design and layout of space in fiscal year 1987, subject to the availability of funds, GSA will provide free space planning and Programming services for agency initiated space moves which will reduce the adjusted office utilization rate to 135 square feet or less per workstation for a given assignment or project and which show a utilization rate improvement of at least 20 square feet per workstation.

§ 101-17.402 Provision of services.

(a) No Federal agency occupying GSA-controlled space shall contract for these services without first consulting GSA. GSA may provide requested services through use of in-house professional staff or contracted professional space planning firms. If necessary to meet contractual commitments, avoid duplicated services and/or ensure cost-effectiveness, GSA may require agencies to use existing GSA space planning contracts or new contracts awarded by GSA.

(b) In the event that GSA is unable to provide requested services, either in-house or by contract, agencies may request a project waiver from the provisions of paragraph (a) above to procure such services on their own authority. The request should be made to the GSA regional Public Buildings Service and should document the unavailability of GSA-provided services, the basic scope of service required, and the name, location, and size of the Project. If the request is approved by the regional office, the agency may consult with GSA on contract scope, tasks, and deliverables.

(c) Regardless of the method used to provide these services, work performed on an agency's behalf in GSA-controlled space will be reviewed by GSA to ensure that no adverse impacts on technical sufficiency, mechanical or utility systems, structural integrity, fire and safety requirements, or assignment management considerations would result.

(d) Requests for services which apply across GSA regional boundaries, such as nationwide bureau-level space standards, shall be made to the GSA Central Office, Assignment and Utilization Policy Division.

(e) GSA will provide services on a reimbursable basis and on request for agency-controlled space as resources permit; however, priority must be given to requests from agencies occupying GSA-controlled space.

Subpart 101-17.5 Workstation Census

Note.—GSA will conduct an annual workstation census to determine space efficiency. A computer printout will be distributed for each agency assignment by the GSA regional office. Verification of the data requires a local agency representative to provide the peak number of workstations to be housed during the fiscal year. This printout is to be returned to the appropriate GSA regional office within 30 days of receipt.

Subpart 101-17.6 Exhibits

§ 101-17.600 Illustrations of support space and supplemental space.

The following lists describe types of workstation-related support space which are included in the calculation of adjusted office space utilization rates, and types of supplemental space which are excluded from the calculation of adjusted office utilization rates. These lists are provided as guides and, regardless of specific language used here, supplemental space factors must satisfy basic policy criteria stated in this regulation.

Support space	Workstation-related support space include in adjusted office utilization rate if:	Supplemental space, do not include in adjusted office utilization rate if:
Type A: Reception, Waiting Areas	Waiting area with a few chairs or sofas, typically expected to be found outside private offices or within executive suites. For occasional outside visitors or routine staff	Consistently used for people outside of operational unit, usually for a significant volume of walk-in patron/clientele traffic which is there to be served by the agency AND/OR Associated with conference areas, must be waiting for scheduled meetings or appointments, events must occur more than 50% of the time that area is required
Type B: Conference, Hearing, Meeting, Interview Areas	Meeting areas within or immediately adjacent to an office or work area Occasional meeting area for 5 or 6 people Larger meeting areas used primarily by members of the operational unit without outside people attending	More than 50% of the time people external to the operational unit site must use the area, AND Room use is scheduled in advance and log of hours and users is maintained AND Room is used primarily for outside consultants, contractor, public liaison groups, task forces, etc., for purposes external to the work of the group housed

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Support space	Workstation-related support space; include in adjusted office utilization rate if:	Supplemental space; do not include in adjusted office utilization rate if:
Type C: File Areas.	Ordinary clusters of file cabinets in active use. Files housing internal materials or routine case papers accessible by internal staff in daily operations.	Centralized files of material primarily from outside the operational unit (e.g., job applications, mortgage applications, etc.); official personnel files maintained by a central personnel office. All such files must be housed in a distinct area separated from other files.
Type D: Central Storage Areas.	Supply areas for routine administrative supplies, materials, etc.	Must be separate; may be physically secured, with restricted access; centrally-stored supplies distributed by staff assigned to that function, may serve a large field work force, not more than one such space per operational unit site.
Type E: Processing Areas.	Space dedicated to personnel needs.	In general, space dedicated to a machine or process.
—Copier Areas, reproduction and printing.	Self-service copier areas for occasional use by all staff.	Physically delineated area with staff dedicated to operate equipment.
—Mail Rooms.	Small mail sorting areas for routine internal mail.	Secured area where outside mail enters and exits the building (maximum of one per operational unit site); includes area for sorting, wrapping, carts, postage, and other major tasks.
Equipment-Dominated Area	An occasional microfiche machine, word processing areas; computer terminal used or assigned to employees as a routine part of their work.	Must be of a type where people support equipment, not vice-versa. Microfiche areas; Computer terminal areas (if used by undedicated staff from outside one's own working group) —Dry lab areas—i.e., no plumbing.
Type F Reference/ Study Areas: —Libraries	Occasional alcove or wall in meeting room used for storage of small collections of books or magazines.	Physically secured area dedicated to functions normally associated with libraries, libraries necessary to performance of official functions.
—Public Reference Rooms.	Use by public is incidental to use by staff.	Dedicated exclusively or more than 50% to use by visitors, outside contractors, press, etc.; preferably a use mandated by law or statute.

§ 101–17.601 Supplemental definitions.

This section contains information to supplement the definitions of office, storage, and special space in § 101–17.003(w).

(a) The following are representative of uses of office space:

(1) General purpose office space,

(2) Private corridors,

(3) Conference rooms (without special equipment and additional heating, ventilation, and air-conditioning (HVAC)),

(4) Training rooms (without special equipment and HVAC),

(5) Libraries (without extensive built-in stacks and special floor loading),

(6) Dry laboratories,

(7) Storage in office space,

(8) Credit unions (without fixed equipment),

(9) Lounges (other than toilet areas),

(10) Reception areas,

(11) Hearing rooms (without special equipment and HVAC),

(12) Telephone switchboard rooms,

(13) Mail rooms,

(14) Health rooms (without special equipment), and

(15) Table areas in cafeterias.

(b) All storage space will be classified under subsets of general storage area, inside parking area, or warehouse areas, as follows:

(1) General storage areas (storage in general purpose buildings) including:

(i) Basements,

(ii) Attics,

(iii) Closets (not finished to office standards),

(iv) Supply rooms (not finished to office standards);

(v) Storerooms (not finished to office standards), and

(vi) File rooms (not finished to office standards).

(2) Inside parking areas (garage space located in either a federally owned or leased building which is utilized for the parking of motor vehicles) including:

(i) Garages,

(ii) Parking areas, and

(iii) Motor pool parking.

(3) Warehouse areas (entire buildings with warehouse features, including minor amounts of supporting office space).

(c) Special space is further defined as follows:

(1) Laboratory and clinic areas (space containing built-in equipment and utilities required for the qualitative or quantitative analysis of matter, experimentation, the processing of materials, and/or the physical welfare of employees or the public) including:

(i) Wet laboratories,

(ii) Clean laboratories,

(iii) Photographic laboratories,

(iv) Clinics,

(v) Health units and rooms (with special equipment), and

(vi) Private toilets.

(2) Food service areas (space in buildings devoted to the preparation and dispensing of foodstuffs) including:

(i) Cafeterias (kitchens, related storage and service areas),

(ii) Snack bars,

(iii) Mechanical vending areas, and

(iv) Private kitchens.

(3) Structurally changed areas (areas having architectural features differing from normal office or storage areas, such as sloped floors, high ceilings, and increased floor loading) including:

(i) Auditoriums,

(ii) Gymnasiums,

(iii) Libraries (with special stacks and floor loading),

(iv) Target ranges,

(v) Security vaults,

(vi) Courtrooms, and

(vii) U.S. Postal Service workrooms.

(4) Automatic data processing areas (areas having special features such as humidity and temperature control, raised flooring, and special wiring) including:

(i) Computer rooms, telecommunication and office automation facilities;

(ii) Support areas (with special flooring and wiring); and

(iii) Tape vaults.

Note.—See § 101–17.602.

(5) Conference and training areas (areas used for conferences, training, and hearings with special equipment and supplemental HVAC) including:

(i) Conference rooms,

(ii) Hearing rooms,

(iii) Training rooms,

(iv) Exhibit areas, and

(v) Small courtrooms (no structural changes).

(6) Light industrial areas including:

(i) Records storage (with humidity control);

(ii) Storage type space (with air-conditioning);

(iii) Printing plants;

(iv) Product classifying laboratories;

(v) Motor pool service areas;

(vi) Postal workrooms, swingrooms, locker rooms, mailing vestibules and platforms, and lock box lobbies;

(vii) Shops (other than PBS);

(viii) Loading docks and shipping platforms;

(ix) Canopy areas; and

(x) Vertical improved mail system areas.

(7) Quarters and residential housing areas (housing and quarters that do not logically fall in the other categories).

§ 101–17.602 Space for data processing, office automation and telecommunications equipment.

This section contains the information required on space requests for these specialized functions.

(a) Agencies requiring space for the installation of such equipment must provide the following information in addition to the requirements of § 101–17.204;

(1) Type of equipment (including make, model number, manufacturer, and number of units of each);

(2) Space and environmental requirements, including:

(i) Floor weight (lbs.);

(ii) Machine dimensions (width, depth, and height in inches);

(iii) Service clearance (front, rear, right and left sides);

(iv) Power in voltage and kv.–a, (starting loads and operating loads);

(v) Heat dissipation in B.T.U./hr. and air flow (c.f.m.); and

(vi) Need for raised floor, acoustic ceiling, and air-conditioning.

(3) Related requirements, such as storage space for supplies, tapes, and disks; work space, including desk and aisle space; and future expansion needs;

(4) Agency responsibility for funding; and

(5) Required occupancy date.

(b) The above information should be provided as separate supplemental data to Standard Form 81, Request for Space, and forwarded to the GSA regional office. The space requirements indicated on Standard Form 81 must include the space requirements for all components of Automated Data Processing, Office Automation and Telecommunications Equipment. The supplier should be consulted prior to establishing space needs in order to ascertain any specific or peculiar space requirements of the equipment involved.

(c) It is essential that this information regarding the requirement for such space be transmitted to GSA as far as possible in advance of delivery of equipment so that space can be provided in a timely and economical manner.

Subpart 101–17.49—Forms

§ 101–17.4900 Scope of subpart.

This subpart contains information on forms that pertain to the assignment and utilization of space and instructions in their use.

§ 101–17.4901 Standard forms.

(a) Forms referenced to this § 101–17.4901 are Government standard forms. The subsection numbers in this section correspond with the standard form numbers.

(b) Supplies of standard forms can be obtained from the nearest GSA supply distribution facility.

§ 101–17.4902 GSA forms.

(a) Forms referenced to this § 101–17.4902 are GSA forms. The subsection numbers in this section correspond to the GSA form number.

(b) Agencies may obtain their initial supply of GSA forms from GSA National Forms and Publications Center, Box 17550, 819 Taylor Street, Fort Worth, TX 76102–0550. Agency field offices should submit all future requirements to their Washington headquarters office which will forward consolidated annual requirements to the General Services Administration (CAR), Washington, DC 20405.

BILLING CODE 6820–23–M

101-17.4901-81 Standard Form 81. Request for Space

FPMR Temp. Reg. D-73
Attachment A

REQUEST FOR SPACE
(See Instructions on back)

1. DATE	2. AGENCY REQUEST NUMBER	3. SPACE REQUESTED IS FOR	4. SPACE REQUIRED AT
		☐ INITIAL REQUEST ☐ SUPPLEMENTAL REQUEST ☐ REPLACEMENT OF EXISTING SPACE	City & State ▶

5. TO
General Services Administration
Public Buildings Service
No., street ▶
City, State & ZIP code ▶

6. FROM
Agency ▶
No., street ▶
City, State & ZIP code ▶

7. SPACE TO BE OCCUPIED BY (Bureau, Division, Branch, etc.)

8. OFFICE TO BE BILLED (Address only)
No., street ▶
City, State & ZIP code ▶

9. OFFICE TO RECEIVE SPACE ASSIGNMENT RECORD (Address only)
No., street ▶
City, State & ZIP code ▶

10. TERM OF OCCUPANCY

FROM	TO	NO. YEARS FIRM LEASE
Mo. & Year	Mo. & Year	

11. SPACE REQUIREMENTS

TYPE	LINE	CATEGORY		WORK STATION ALLOWANCE (a) BY GRADE	WORK STATION ALLOWANCE (a) BY JOB TITLE	ON BOARD PERSONNEL (b)	NUMBER OF BUDGETED PERSONNEL TO BE HOUSED IN SPACE REQUESTED (c)	TOTAL SQUARE FEET (d) = b × c	FOR GSA USE ONLY (e)
OFFICE-TYPE SPACE	1	GS 1– 6	Supvr. & Nonsupvr.	60					
	2	GS 7	Nonsupervisory (Add 25 sq. ft. for supervisory positions)	75					
	3	GS 8		75					
	4	GS 9		75					
	5	GS 10		75					
	6	GS 11		75					
	7	GS 12–13	Supervisory	150					
	8		Nonsupervisory	100					
	9	GS 14–15	Supervisory	225					
	10		Nonsupervisory	150					
	11	GS 16, 17, 18		300					
	12	Other (Explain in item 14)							
	13	**SUBTOTAL (Lines 1 through 12)**							
STORAGE	14	General storage							
	15	Inside parking (No. of spaces _____ X 300 sq. ft.)							
	16	Warehouse area							
	17	**SUBTOTAL (Lines 14 through 16)**							
SPECIAL	18	Laboratory and clinic area							
	19	Food service area							
	20	Structurally changed area							
	21	Automatic data processing area							
	22	Conference-training area							
	23	Light industrial area							
	24	Quarters and residential housing area							
	25	**SUBTOTAL (Lines 18 through 24)**							
	26	**TOTAL (Lines 13, 17, and 25)**							
	27	Outside parking (Number of spaces ____)							
	28	Open land (Acres)							

12. ARE FUNDS AVAILABLE FOR REIMBURSEMENT OF RENT AND OTHER ASSOCIATED COSTS?
☐ YES ☐ NO If yes, show appropriation symbol ▶

13. EXTENDED OPERATIONAL REQUIREMENTS (See instruction 3 and explain in item 14)

14. SPECIAL REQUIREMENTS (Furnish details) **AND/OR REMARKS**

(Continue on reverse)

15. CERTIFICATION BY AUTHORIZED REQUESTING OFFICIAL

I certify to the validity of the data presented herein and that the space requested is necessary for the proper functioning of the above named activity. Also, that request is in compliance with FPMR 101–17.103, 101–18.107, 101–19.101.

SIGNATURE	DATE
TYPED NAME AND TITLE	**TELEPHONE NO.**

16. ACTION BY AUTHORIZED GSA OFFICIAL — **FOR GSA USE ONLY**

☐ Government-controlled space to be assigned.
☐ No government controlled space available and leasing action will be required
☐ Agency authorized to acquire space under its authority.

SIGNATURE AND ORGANIZATION OFFICE SYMBOL		DATE
PBS CONTROL NUMBER	**REGION NO.**	**DATE REQUEST RECEIVED**

81-106

STANDARD FORM 81 (Rev. 5–74)
Prescribed by GSA, FPMR (41 CFR) 101–17.101

INSTRUCTIONS

1. Submission of Requests for Space.
   a. This form should be submitted in triplicate to the General Services Administration Regional Office having jurisdiction for the geographical area in which the space requested (item 4) is located.
   b. Agency field components requesting space should submit this form only if the field component has been delegated authority to do so and to obligate funds for reimbursement to GSA for costs of rental, moving, alterations, outlets, etc. Otherwise, the request must be coordinated with and approval obtained from the proper agency office having such authority.
   c. Approximately 180 days will be required to complete transactions and have space ready for occupancy if leased space is to be acquired.
2. Official Vehicle Parking.
   When parking is required for assigned official vehicles, indicate in item 14 the type and number of vehicles for which space must be provided.
3. Extended Operational Requirements.
   If there is a requirement for access to and/or for services in the space requested during evening hours or over weekends, it should be noted and fully explained in item 14. An estimate of the number of hours per day and days per month that access and services will be required should be included.
4. Specific Location.
   If a particular location within the community indicated in item 4 is critical to agency operations, it should be noted and fully explained in item 14.
5. Work Station Allowance.
   Under column 11(a), Job Title enter square feet allowed for grade in Occupancy Guide or in other GSA Standards. Indicate in item 14 the percent of male to female personnel.
6. For futher classification of office, storage and special space, see FPMR 101–17.003–2a.

SPACE ALLOWANCE FOR COMMON FUNCTIONS

Function	*Allowance*
Conference and meeting rooms	Twenty square feet per person based on 50 percent time/use basis and on the average number of persons in attendance.
Classrooms and training rooms	Desk/arm chair at 10 square feet per person. Desk and chair at 40 square feet per person.
Reception areas	Based on average visitor load at 10 square feet per person.
Exhibit areas, internal duplicating, libraries, mail rooms, and supply rooms.	Actual measurement of equipment plus circulation.

Item 14, continued:

☆ U.S. GOVERNMENT PRINTING OFFICE: 1980—311-153/5385

FPMR Temp. Reg. D-73
Attachment A

101-17.4901-81A Standard Form 81A. Space Requirements Worksheet

SPACE REQUIREMENTS WORKSHEET ▶ *This form must accompany SF-81, Request for Space.* ◀ PAGE OF

DEPT./BUREAU — PREPARED BY

AGENCY/OFFICE — TITLE

DIVISION — DATE

CITY AND STATE

ORGANIZATIONAL UNIT DESCRIBED ON THIS PAGE

(SEE INSTRUCTIONS, STANDARDS, AND SYMBOLS ON REVERSE.)

STANDARD WORKSPACE CODE	EMPLOYEE NAME OR SUPPORT SPACE	FUNCTIONAL TITLE	GRADE	SPACE TYPE	ENCLOSURE TYPE	SQUARE FEET REQUIRED	DESKS (D, TDL, TDR, CD, UDL, UDR)	CR & MTG	C	LG	TABLES (TConf, T, TS, TM, TR-36, TR-42, TR-54)	STORAGE UNITS (F, LF, LAT, ST, BC, LS, SS)	COMPUTER (CM-6, CM-12)	MISC EQUIPMENT (DI, SF, TH, TE, DB-5, DB-6, MC)	FOOTNOTE FOR REMARKS

◀ PERSONS – TOTALS – SPACE ▶

REMARKS:

GSA USE ONLY

STANDARD FORM 81-A (10-83)
Prescribed by GSA
FPMR (41 CFR) 101-17.101

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Attachment A

Page 2 of Standard Form 81A

SECTION 1 INSTRUCTIONS, STANDARDS AND SYMBOLS

DESKS

D	Standard Desk 60x30
TDL or TDR	Typist Desk 60x34 w/Left or Right Typing Bed
UDL or UDR	Unitized Desk 60x30 w/Left or Right L-unit Return 36x18
CD	Conference Desk 72x36

STORAGE UNITS

F	File, Letter 15x28 (7)
LF	File, Legal 18x28 (8)
LAT	Lateral File 36x18 (9)
BC	Bookcase 34x14 (6)

TABLES

TConf.	Table, Conference 72x36
T	Standard Table 60x34
TM	Table, Medium 45x34
TS	Table, Small 36x24
MTU	Modular Table Unit 66x18
TR-54	Table, Round 54"
TR-42	Table, Round 42"
TR-36	Table, Round 36"
TH	Table, Host 42x18
TE	Table, End 18x24

DIVAN

DI	Divan or Sofa 72x40

CHAIR

C LC	Guest Chair Lounge Chair

MISCELLANEOUS

ST	Storage Cabinet 2-Door 36x18 (12)
SS	Steel Shelving 36x18 (10)
LS	Library Shelving 36x15
DB-6 (S)	Drawing Boards DB-5 60x40 DB-6 72x45 S: Stool
MC	Map Cabinet 54x42
CM-12	Costumer 12-Hanger 51x20 (14)
CM-6	Costumer 6-Hanger 30x20 (8)
CR	Credenza 66x18

SPACE TYPE SYMBOLS

O	Open Area
P	Private Area
SP	Semi-Private Area

ENCLOSURE TYPE SYMBOLS

CH	Ceiling-High Partition
PS	Privacy Screen
O	Open

SECTION 2 PROGRAMMING INSTRUCTIONS

(1) Organize the data supporting your request by functional work groups. When one work group has been described begin the next work group on a new page.

(2) The requesting agency is responsible for describing the following workspace elements of the *Space Requirements Program*.

- **Workstations** are indicated by employee name, functional title and grade for each *authorized and budgeted* position. *If the authorized position is vacant, so indicate.* Square feet required are determined by layout design on SF-81A, Part 2.
- **Common Function** spaces are indicated by the appropriate name of the workspace (conference, reception, etc.) and the symbol C/F in the grade column. Square feet required are determine by layout design on SF-81A, Part 2.
- **Administrative Support** spaces are either *centralized files* or miscellaneous equipment (i.e., costumers, an extra bookcase) not appropriately contained within other workspaces. Indicate A/S in the grade column. Square feet required may be determined by multiples of the allowance indicated in ( ) in Section 1 above.

(3) Develop the space requirements program in the following manner:

Step 1: List all workspace elements described in (2) above in an order determined by adjacency relationships.

Step 2: As necessary, prepare a standard workspace design on SF-81A, Part 2 for each workstation or common function workspace element. Indicate the dimensions of the workspace and calculate the square feet required.

Step 3: Use the symbols shown within the illustrations above in Section 1 to itemize furnishings and equipment on SF-81A. DO NOT LIST EXCESS. Itemized listings need not be shown for line items previously standardized. Simply code the line entry appropriately.

Step 4: Complete the line item entry by indicating space and enclosure type, square feet required and workspace code No.

(4) Describe, in *Remarks*, all special needs such as: weight of heavy items, special utilities, service access requirements, supplemental HVAC, etc. Develop a separate specification sheet if necessary.

(5) The information provided on these worksheets is to be summarized on SF-81, Request for Space, and submitted attached thereto.

☆ GPO: 1984—429-909

STANDARD FORM 81-A (10-83) BACK

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FPMR Temp. Reg. D-73
Attachment A

101-17.4902-3530 GSA Form 3530. Work Space Management Plan and Budget Justification

WORK SPACE MANAGEMENT PLAN AND BUDGET JUSTIFICATION — INTERAGENCY REPORT CONTROL NO. 0323-GSA-XX

AGENCY | ACCOUNT TITLE

BUREAU | ACCOUNT ID CODE

SECTION I – WORK SPACE MANAGEMENT PLAN

				PRIOR YEAR 19__	CURRENT YEAR 19__	BUDGET YEAR 19__
A. OFFICE UTILIZATION RATE ESTIMATES (NOTE: Only agencies that classify their rented or owned office space according to actual use rather than predominant use will be able to complete items 2, 3, and 4.)	1. GSA CONTROLLED SPACE		AVERAGE OFFICE UTILIZATION RATE			
			SUPPLEMENTAL SPACE FACTOR			
			ADJUSTED OFFICE UTILIZATION RATE			
	2. AGENCY-RENTED SPACE		AVERAGE OFFICE UTILIZATION RATE			
			SUPPLEMENTAL SPACE FACTOR			
			ADJUSTED OFFICE UTILIZATION RATE			
	3. AGENCY-OWNED SPACE		AVERAGE OFFICE UTILIZATION RATE			
			SUPPLEMENTAL SPACE FACTOR			
			ADJUSTED OFFICE UTILIZATION RATE			
	4. TOTAL SPACE		AVERAGE OFFICE UTILIZATION RATE			
			SUPPLEMENTAL SPACE FACTOR			
			ADJUSTED OFFICE UTILIZATION RATE			
	5. FY UTILIZATION RATE OF 135 WILL BE ACHIEVED	GSA CONTROLLED SPACE	AGENCY-CONTROLLED SPACE			
B. PERSONNEL AND WORK-STATION ESTIMATES (Applies only to space reported on this form.) NOTE: Only agencies that classify their rented or owned office space according to actual use rather than predominant use will be able to complete items 3b, 3c, and 3d.	1. TOTAL AGENCY FTE					
	2. PERSONNEL	a. GSA CONTROLLED SPACE	PERMANENT			
			PEAK PT AND CYCLICAL			
			NON-AGENCY			
			TOTAL GSA SPACE			
		b. AGENCY-RENTED SPACE	PERMANENT			
			PEAK PT AND CYCLICAL			
			NON-AGENCY			
			TOTAL AGENCY-RENTED SP			
		c. AGENCY-OWNED SPACE	PERMANENT			
			PEAK PT AND CYCLICAL			
			NON-AGENCY			
			TOTAL AGENCY-OWNED SP			
	3. WORK-STATIONS	a. GSA-CONTROLLED SPACE				
		b. AGENCY-RENTED SPACE				
		c. AGENCY-OWNED SPACE				
		d. TOTAL WORKSTATIONS				
C. WORK SPACE ESTIMATES (SQ. FT. 000) (Use end of year estimates, except where noted.) NOTE: Item 2 must include all space obtained from non-Federal sources, whether or not the agency pays for it. Items 2, 3, and 4. Agencies that classify their rented or owned space according to actual use must report all categories. Agencies that classify their rented or owned space by predominant use should convert their total gross or net space to occupiable as prescribed in Sect. 101-17.003(d) of FPMR Temp. Reg. D-73.	1. GSA CONTROLLED SPACE	a. MARCH 15 PY BASE (Agency estimates)	OFFICE SPACE			
			NON-OFFICE SPACE (Ex. park.)			
			PARKING-INSIDE			
			PARKING-OUTSIDE			
			TOTAL			
		b. REQUIRED	OFFICE SPACE			
			NON-OFFICE SPACE (Ex. park.)			
			PARKING-INSIDE			
			PARKING-OUTSIDE			
			TOTAL			
	2. AGENCY-RENTED SPACE		OFFICE SPACE			
			NON-OFFICE SPACE (Ex. park.)			
			PARKING			
			TOTAL			
	3. AGENCY-OWNED SPACE		OFFICE SPACE			
			TOTAL			
	4. TOTAL SPACE NOTE: This total is the sum of 1b, 2, and 3.		OFFICE SPACE			
			PARKING (1b and 2 only)			
			TOTAL			

NAME AND TITLE OF PREPARER | TELEPHONE NO. | DATE

GENERAL SERVICES ADMINISTRATION — GSA FORM 3530 (REV. 1-87)

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Attachment A

Page 2 of GSA Form 3530

WORK SPACE MANAGEMENT PLAN AND BUDGET JUSTIFICATION — INTERAGENCY REPORT CONTROL NO. 0323-GSA-XX

AGENCY | ACCOUNT TITLE

BUREAU | ACCOUNT ID CODE

SECTION II – RENT AND RELATED OBLIGATION ESTIMATES

				PRIOR YEAR 19__	CURRENT YEAR 19__	BUDGET YEAR 19__
A. GSA CONTROLLED SPACE	1. AVERAGE RATES PER SQUARE FOOT ($/Sq. Ft.)	a. FROM GSA RENT BILLS OR BUDGET ESTIMATES	OFFICE SPACE			
			NON-OFFICE SPACE			
			TOTAL			
		b. AGENCY EST (Explain difference over +/– 5% in "REMARKS")	OFFICE SPACE			
			NON-OFFICE SPACE			
			TOTAL			
	2. AVERAGE WORK SPACE ESTIMATES (Sq. Ft. 000) (To compute annual GSA rental amounts)		OFFICE SPACE			
			NON-OFFICE SPACE			
			TOTAL			
	3. ANNUAL GSA RENTAL AMOUNTS ($000)		OFFICE SPACE			
			NON-OFFICE SPACE			
			TOTAL			
	4. ADJUSTMENTS ($000)		– CONGRESSIONAL LIMITATIONS			
			+ JOINT USE SPACE			
			+/– OTHER (Explain in "REMARKS")			
	5. TOTAL RENTAL PAYMENTS TO GSA ($000) (Object Class 23.1)					
	6. FUNDING SOURCES ($000)		a. DIRECT APPROPRIATION			
			b. OTHER (List separately in "REMARKS")			
	7. OTHER PAYMENTS ($000) (Object Class 25.0)		a. EXTRA SERVICES (Above level provided by basic GSA rent)			
			b. SUB-LEASES OF GSA CONTROLLED SPACE			
B. AGENCY-RENTED SPACE AND LAND	1. RENTAL PAYMENTS BY TYPE ($000)		OFFICE SPACE			
			NON-OFFICE SPACE (Ex. parking)			
			PARKING			
			OTHER LAND			
			OTHER RENTALS			
	2. TOTAL RENTAL PAYMENTS TO OTHERS ($000) (Object Class 23.2)					
	3. OTHER PAYMENTS ($000) (Object Class 25.0)		a. EXTRA SERVICES (Above level provided by basic rent)			
			b. SUB-LEASES OF NON-GSA CONTROLLED SPACE			

REMARKS (If additional space necessary, attach separate sheets and key answers to item numbers)

NAME AND TITLE OF PREPARER | TELEPHONE NO. | DATE

GSA FORM 3530 BACK (REV. 1-87)

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Attachment A

Page 3 of GSA Form 3530 (Instructions for Completing GSA Form 3530)

INSTRUCTIONS FOR COMPLETING GSA FORM 3530

GENERAL

Authority. FPMR Temporary Regulation D-73, Quality Workplace Environment, requires the head of each Federal agency to prepare an annual work space management plan. Both this regulation and OMB Circular No. A-11, Preparation and Submission of Budget Estimates, require that agencies submit to GSA and OMB copies of their work space management plans and related rent and obligation estimates as part of their annual budget submissions.

Organization of Agency Submissions. Each agency's submission must be organized to support its budget request. This means that, for most large agencies, the agency's submission will consist of: (1) separate plans prepared by each bureau, operating entity, or other subordinate organization that makes rental payments or owns property, and (2) an agency-wide summary of the bureau plans. Agencies whose real property is held and/or paid for centrally will only have to submit a single agency-wide plan.

Fiscal Years Covered by Plans. Each plan will provide estimates for the fiscal years covered by the corresponding budget cycle. For example, for the 1989 budget cycle, the "prior year" is 1987, the "current year" is 1988, and the "budget year" is 1989.

Timing of Submissions. Plans are to be submitted to GSA and OMB with the agency's initial budget submission according to the schedule established by OMB. Agencies must also submit updated plans which reflect any changes based on OMB budget guidance for the budget year, Congressional action for the current year, and final end-of-year actual numbers for the prior year. The updated plans are due by March 1.

Agencies are encouraged to submit their plans in a computer-readable format. Those agencies wishing to do so should contact GSA for the proper record format.

SECTION I: WORK SPACE MANAGEMENT PLAN

Part A — Office Utilization Rate Estimates

Item 1. GSA-controlled space. Compute the average office utilization rate by dividing the square feet of GSA-controlled office space, including supplemental space, by the number of workstations in GSA-controlled space. Compute the adjusted office utilization rate by subtracting the supplemental space factor from the average office utilization rate. Only use supplemental space factors that have been approved by GSA. If the agency and GSA have not reached agreement on the supplemental space factors, leave these fields blank. An example for computing the adjusted office utilization rate follows:

> If the average office utilization rate, including supplemental space, is 135 square feet per workstation and the supplemental space factor is 15 square feet per workstation, compute the adjusted office utilization as:
>
> Adj. office util. rate = 135 — 15
> = 120 square feet per workstation

Items 2 and 3. Agency-rented space and agency-owned space. Compute the average and adjusted office utilization rates in the same manner as the corresponding rates for GSA-controlled space. Note that only agencies that classify their rented or owned office space according to actual use (by assignment) rather than predominant use (by building) will be able to compute rates for such space.

Item 4. Total space. Compute the agency's total average office utilization rates in the same manner as the corresponding rates for GSA-controlled space. Compute the supplemental space factor for the total agency based on the total supplemental space and workstations throughout the agency.

Note that only agencies that complete Items 2 and 3 will be able to compute office utilization rates for their total space.

Item 5. FY utilization rate of 135 will be achieved. Show separately for both GSA-controlled and agency-controlled space the fiscal years in which the agency plans to achieve the 135 square feet per workstation adjusted office utilization rate goal.

Part B — Personnel and Workstation Estimates

Item 1. Total Agency FTE. Note that these estimates only apply to work space reported on the form. For example, bureau-level plans should only report that portion of the agency's total FTE ceiling that applies to the bureau.

Item 2. Personnel. Estimate and report all personnel housed in all types of work space in the following categories: full-time permanent personnel, part-time, cyclical or temporary employees of the agency, and non-agency personnel (i.e., contractors or other agencies' staff).

Item 3. Workstations. Develop workstation estimates only for personnel housed in office space. Note that agencies that are not able to estimate separately their office space for agency-rented or agency-owned space will not be able to estimate the number of workstations in that space. However, all agencies are required to estimate the number of workstations in their GSA-controlled space. If the agency requires more workstations in its office space than the number of personnel housed there, attach a justification for this requirement.

Part C — Work Space Estimates

Item 1. GSA-controlled space. Present all estimates of GSA-controlled work space levels according to the categories shown on the form. Except for the "March 15, PY Base" estimates, all work space estimates should be end-of-year square footage levels. All estimates must only include work space assigned to the agency and must not include any joint-use space that is shown on the GSA rent bills but is not assigned to the agency. Obtain the "March 15, PY Base" data from agency records of GSA-controlled work space rather than from the information reported by GSA in its annual rent budget estimates. Attach an explanation of any major differences (i.e., +/—5% in any category) between agency and GSA estimates and the actions taken to resolve them.

If major acquisition, renovation, or consolidation projects are required to implement an agency's plan, full details must be attached in accordance with Section 101-17.007(h) of FPMR Temporary Regulation D-73.

Items 2 and 3. Agency-rented and agency-owned space. Estimate and report separately the total occupiable work space leased directly from **non-Federal sources** (i.e., agency-rented space) and occupiable work space owned (i.e., agency-owned space). Non-Federal sources include commercial landlords, other governments, private individuals, universities, and other institutions. If the agency classifies its rented or owned work space according to actual use rather than predominant use, provide separate estimates of agency-rented office, non-office, and parking space and agency-owned office space. If the agency classifies its rented or owned space by predominant use, convert total gross or net square feet estimates to occupiable square feet as prescribed in Section 101-17.003(d) of FPMR Temporary Regulation D-73. Conversion factors used by agencies should be attached to the plan. Do not include in the estimates of agency-rented space any work space leased, subleased, or otherwise obtained from other Federal entities. Such work space is reported in the plans of those entities. Space leased by the agency under a lease acquisition delegation from GSA will be considered agency-rented space. Space available for temporary use by other agencies should be listed in an attachment to the plan in accordance with Section 101-17.005(e) of FPMR Temporary Regulation D-73.

Item 4. Total space. Report the total end-of-year estimates for all work space owned or paid for. Note that only those agencies that report their rented and owned office space and parking will be able to provide subtotals of their total work space in these categories. The total office space should be the sum of only the office space shown in Items 1b, 2 and 3. The total line in item 4 will reflect non-office space and should be the sum of the totals shown in items 1b, 2 and 3.

SECTION II: RENT AND RELATED OBLIGATION ESTIMATES

Agencies that wish to do so may use this section to report to OMB the budget information that it requires to justify estimated rental payments for space and land. Otherwise, agencies are required to submit to OMB Section I of this form and a separate report in the format of Exhibit 24D in the OMB budget circular. The following instructions for completing Section II of this form are consistent with OMB guidance.

Part A — GSA-Controlled Space

Item 1. Average rates per square foot. Report the average GSA rental rates for each year based on the most recent GSA rent bills or budget estimates for that year. Then, show the average rental rate estimates used by the agency to compute its annual GSA rental amounts. If the agency's estimates differ from the corresponding GSA-published rates by more than 5%, attach an explanation of those differences.

Item 2. Average work space estimates. Compute and report average work space estimates for each fiscal year that are weighted to reflect the size and timing of planned increases and decreases from the end of year square footage estimates shown in Section I. Do not include any joint-use space in the average work space estimates.

Item 3. Annual GSA rental amounts. Compute the estimated total annual GSA rental amounts for each fiscal year by multiplying the average work space estimates for the year by the corresponding average rental rates.

(Continued on reverse)

FPMR Temp. Reg. D-73
Attachment A

Page 4 of GSA Form 3530 (Instructions for Completing GSA Form 3530)

Item 4. Adjustments. Estimate and report separately any adjustments that must be made to the estimated annual GSA rental amounts to determine the final obligation estimates for rental payments to GSA. Guidance on these adjustments is given in Section 24.4 of the OMB budget circular.

Item 5. Total rental payments to GSA. Compute the final obligation estimates for total rental payments to GSA for each year as the sum of the total annual GSA rental payment plus or minus the indicated rent adjustments. Verify that these estimates equal the corresponding amounts reported to OMB under object class 23.1 in the object classification schedule.

Item 6. Funding sources. Indicate the amount of the estimated obligations funded out of direct appropriations to the agency and the amounts funded from other sources (e.g., revolving funds or reimbursements).

Item 7. Other payments. Estimate and report any payments for extra services (e.g., cleaning, security, etc.) in GSA-controlled space beyond those services provided by the basic GSA rental rate. Also estimate and report any reimbursements to be made to other agencies or bureaus for GSA-controlled space subleased by the agency but for which the other agencies or bureaus actually pay GSA. Such space and the rental payments associated with it are reported by the agency or bureau that pays GSA. Include both types of estimates in the amount reported to OMB under object class 25.0 in the object classification schedule.

Part B — Agency-Rented Space and Land

Item 1. Rental payments by type. For space, other structures and facilities, and land rented by the agency from non-Federal sources (e.g., commercial landords, other governments, private owners, etc.), estimate and report separately the annual rental payments for office space, non-office space (excluding parking if identified separately), parking, other land, and other rentals (e.g., other structures and facilities).

Item 2. Total rental payments to others. Compute and report the total rental payments to others (i.e., to non-Federal sources) for each year as the sum of the rental payments by type for that year. Verify that these totals equal the corresponding amounts reported to OMB under object class 23.2 in the object classification schedule.

Item 3. Other payments. Estimate any payments for extra services (e.g., cleaning, security, etc.) in space obtained from non-Federal sources beyond those services provided by the basic rental rate. Also estimate any reimbursements to other agencies or bureaus for any non-GSA space which the other agencies own or for which those agencies pay non-Federal sources. Such space and any rental payments associated with it are reported by the agency or bureau that owns the space or pays the rent bills. Include both types of estimates in the amounts reported to OMB under object class 25.0 in the object classification schedule.

SUMMARY OF POTENTIAL ATTACHMENTS:

(NOTE: Please refer to the following attachment numbers when combining separate attachments on a single sheet of paper.)

1. Justification for number of workstations exceeding number of personnel in office space.
2. Explanation of differences of 5% or more between GSA and agency estimates of "March 15, PY Base" square footage.
3. List of major acquisitions, renovations, or consolidations required to implement agency plan. This list must also include timing, amount of work space, and cost of each action.
4. Conversion factors used by agencies that classify their owned or rented work space by predominate rather than actual use in converting gross or net square footage estimates to occupiable square footage.
5. Explanation of differences of 5% or more between GSA and agency average rates per square foot used to compute annual GSA rental amounts.
6. Explanation of unusual adjustments to annual GSA rental amounts to determine annual obligations estimates.
7. List of vacant, agency-controlled space available for use by other Federal agencies.

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FPMR Temp. Reg. D-73
Attachment A

101-17.4902-144 GSA Form 144. Net Space Requirements for Future Federal Building Construction

GENERAL SERVICES ADMINISTRATION
PUBLIC BUILDINGS SERVICE

NET SPACE REQUIREMENTS FOR FUTURE FEDERAL BUILDING CONSTRUCTION

CITY AND STATE	CONTEMPLATED BUILDING TITLE

PART I — NET SPACE NOW OCCUPIED

A. IN GOVERNMENT-OWNED BUILDINGS

BUILDING NAME	(1)		(2)		(3)	
TYPE OF SPACE	AREA (SQ. FT.)	NO. OF PERSONNEL	AREA (SQ. FT.)	NO. OF PERSONNEL	AREA (SQ. FT.)	NO. OF PERSONNEL
OFFICE						
FILE						
STORAGE						
OTHER						
TOTALS						

B. IN LEASED BUILDINGS

BUILDING NAME	(1)		(2)		(3)	
ADDRESS						
TYPE OF SPACE	AREA (SQ. FT.)	NO. OF PERSONNEL	AREA (SQ. FT.)	NO. OF PERSONNEL	AREA (SQ. FT.)	NO. OF PERSONNEL
OFFICE						
FILE						
STORAGE						
OTHER						
TOTALS						
ANNUAL RENTAL						
LEASE EXPIRES						
NOTICE TO CANCEL						
PROBABLE OCCUPANCY						

PART II — NET SPACE REQUIREMENTS (Including A and B of PART I)

PROPOSED USE OF ROOMS (List according to plan arrangement and continuity desired)	NUMBER OF ROOMS	AREA OF EACH ROOM	TOTAL SPACE REQUIRED	PERSONNEL MALE	PERSONNEL FEMALE	SQ. FT. PER PERSON	THIS COLUMN FOR GSA USE
TOTALS							

DEPARTMENT OR AGENCY	BUREAU OR DIVISION	
APPROVED BY (Signature)	TITLE	DATE

(See instructions on reverse)

GSA FORM FEB '85 144

FPMR Temp. Reg. D-73
Attachment A

Page 2 of GSA Form 144

INSTRUCTIONS

This report is to provide information as a basis for the design of the Federal building specified on the face of this form.

Additional copies of the form, or attachments on plain paper with appropriate headings, should be used if necessary to furnish complete information. If space is not desired in the proposed building, enter a statement to that effect at the bottom of Part II of this form.

PART I

A and B: NET SPACE NOW OCCUPIED. Enter complete information for each kind of occupancy. Use a separate column for each building. Enter the building name in the space provided, and give the aggregate of each kind of space occupied in the building. The dimensions for computing net space are taken from the inside faces of exterior walls to the faces of corridor walls, and from center to center of cross partitions (or the faces of partitions separating net assignable areas from other areas).

PART II

NET SPACE REQUIREMENTS. The entries here should indicate the net space requirements based on staffing permitted by current appropriations or authorizations. Space allowances for additional staffing based on future programs will be allowed by GSA only if such programs have Bureau of the Budget approval. Space ultimately will be assigned in accordance with GSA Reg. 2-II, with due regard to the allowances set forth in section 502.00 of that Chapter. Agencies should be guided accordingly in stating estimated net space requirements. Exclude estimated space requirements for temporary or emergency expansion.

PROPOSED USE OF ROOMS: List the types of occupants such as "Executives", "Junior Executives", "Secretaries", and "Clerks" in the order of planning arrangement, or in the order of preferred arrangement if no plan has been made. If any of the following types of rooms or facilities are needed, give the additional information required for each:

Conference or meeting room	- Number of persons to be seated.
Counters	- Length and location.
File Room	- Number and type (letter, legal or special) of file cases.
Laboratory	- Quantity and dimensions of fixed equipment.
Library	- Number of volumes and readers.
Service platform and yard	- Number and size of vehicles and extent of shipping activities.
Storage and supply room	- Quantity and type of material stored and extent of activity.
Vaults	- Size and purpose.

A special justification is required, explaining the need in detail, for any unusual requests for space.

Complete and accurate data must be entered in Part II: the size and cost of the contemplated building will depend upon these data.

GSA FORM FEB '85 144 (BACK)

[FR Doc. 87-2702 Filed 2-10-87; 8:45 am]
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DEPARTMENT OF DEFENSE

48 CFR Parts 204 and 252

Department of Defense Federal Acquisition Regulation Supplement; Very High Speed Integrated Circuits Safeguards

AGENCY: Department of Defense (DOD).

ACTION: Interim rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council has approved temporary revisions to the Defense Federal Acquisition Regulation Supplement (DFARS) which address requirements specified within DoDI 5230.26, entitled "Very High Speed Integrated Circuits (VHSIC) Technology Security Program," dated 17 March 1986. The DFARS revisions prescribed a contract clause for uniform use in all contracts involving VHSIC, which clause incorporates Enclosure (4) to DoDI 5230.26 by reference. Unless sooner rescinded or extended this coverage expires 31 January 1988, which period will allow sufficient time for conversion of the VHSIC safeguards within Enclosure (4) to DoDI 5230.26 to an appropriate military specification, military standard, or manual.

DATES: *Effective date:* The interim rule is effective February 4, 1987, and expires on 31 January 1988 unless sooner rescinded.

Comments: Interested parties are invited to submit written comments on or before April 13, 1987 to the Executive Secretary, DAR Council, at the address below. Please cite DAR Case *86–134* in all correspondence relating to this subject. Comments received will be considered in revising the interim rule which will be implemented by Departmental guidance. A Defense Acquisition Circular will not be issued in view of the temporary nature of the rule.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD (P) DARS, c/o OASD (A&L) (M&RS) Room 3C841, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

The DFARS revisions approved by the DAR Council include a contract clause which incorporates Enclosure (4) to DoDI 5230.26 and includes in part (1) the requirement that contractors allow representatives of the Defense Investigative Service (DIS) access to facilities at reasonable times for compliance reviews, and (2) the requirement that subcontractors must also comply with Enclosure (4) to DoDI 5230.26 where subcontracts involve VHSIC. Pending conversion to a military specification, standard, or manual, contracting officers are directed by the revisions to provide a copy of Enclosure (4) to DoDI 5230.26 to contractors/offerors upon request.

B. Determination to Issue an Interim Rule

It is the desire of DoD to increase the use of VHSIC-sensitive information and/or program products within the Defense industry as quickly as possible. Disclosure of VHSIC–sensitive information and/or program products to potential adversaries has reduced and could continue to reduce the United States' technological advantage to the detriment of our national security. Contractor compliance with VHSIC safeguards is therefore essential. The DoD therfore concludes that compelling reasons require issuance of an interim rule without prior publication for public comment.

C. Regulatory Flexibility Act

The interim rule incorporates by reference, in standard contract format, requirements which are already being applied by VHSIC contractors on a voluntary basis with the costs thereof being reimbursable under Government contracts. Also, there currently are only ten small businesses with contracts involving VHSIC. Accordingly, the Department certifies that this rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq. A regulatory flexibility analysis has therefore not been performed. Comments are invited from small entities and other interested parties.

D. Paper Reduction Act

This rule does contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq. The collection of information requirements have been submitted to OMB for review under section 3504(h) of the Act.

List of Subjects in 48 CFR Parts 204 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, 48 CFR Parts 204 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 204 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.202 is amended by adding to paragraph (c) paragraph (6) to read as follows:

204.202 DoD Distribution Requirements.

• • • • •

(c) • • •

(6) One copy or an extract to the cognizant Defense Investigative Service (DIS) office as listed in Enclosure (5) to DoDI 5230.26 Very High Speed Integrated Circuits (VHSIC) Technology Security Program whenever the clause prescribed at 204.7204 is included in the contract.

3. Subpart 204.4, consisting of section 204.471, is added to read as follows:

Subpart 204.4—Safeguarding Classified Information Within Industry

204.471 Very High Speed Integrated Circuits (VHSIC) Safeguards.

Policies and procedures regarding protection of technologies and products developed under the VHSIC program are addressed in Subpart 204.721.

4. Subpart 204.72, consisting of sections 204.7200 through 204.7204, is added to read as follows:

Subpart 204.72—Very High Speed Integrated Circuits Safeguards

Sec.
204.7200 Scope of subpart.
204.7201 Definitions.
204.7202 General.
204.7202–1 Policy.
204.7202–2 Preaward responsibilities.
204.7203 Notification to DIS.
204.7204 Contract clause.

Subpart 204.72—Safeguarding Classified Information Within Industry

204.7200 Scope of subpart.

This subpart prescribes policy, procedures, responsibilities and requirements for establishing the Very High Speed Integrated Circuits (VHSIC) Technology Security Program for Defense contractors and subcontractors

in order to protect technology and products developed under the VHSIC program, in accordance with DoD Instruction (DoDI) 5210.75, "Very High Speed Integrated Circuits (VHSIC) Program Security Classification Guide."

204.7201 Definitions.

"VHSIC-sensitive Information and/or Program Products," as used in this subpart consist of unclassified technical information, subject to DoDI 5230.25, "Withholding of Unclassified Technical Data from Public Disclosure", that would significantly enhance the ability of a potential adversary to reduce the U.S. technological lead. Such information includes all unclassified information developed under DoD funding and listed in DoDI 5210.75 and excludes that information for which no special controls are required.

(a) *VHSIC-sensitive Information includes the following:*

(1) Internal reports dealing with technical details, particularly the solutions of problems common to VHSIC program contractors.

(2) Fabrication process data parameters and internal specification sheets.

(3) Detailed architecture and logic representations of chip and custom-macro cells, for example, hardware description language, system design language descriptions, and computer data base information unique to the VHSIC program.

(4) Recipe technology and other special technology developments.

(5) Design and layout ground rules when related to the VHSIC program.

(b) *VHSIC-Sensitive Program Products include the following:*

(1) VHSIC-sensitive chips, wafers and rejected parts created or received.

(2) Masks, reticles, pattern generation media (geometry information).

(3) Computer aided design, chip logic design, and chip integration tools unique to the VHSIC program.

(4) Special semiconductor process equipment.

(5) Modules of VHSIC hardware products.

(6) Military systems brassboards.

204.7202 General.

204.7202–1 Policy.

The VHSIC program is a technology initiative sharing roots with commercial microcircuit developments. The objective of the VHSIC program is to enhance the performance of U.S. military forces in relation to those of potential adversaries. The policy is to provide effective protection against disclosure to adversaries of the capabilities developed under the VHSIC program. This protection should neither impede the use of VHSIC products in U.S. military systems nor intrude into commercial microcircuit product design and production.

204.7202–2 Preaward responsibilities.

In accordance with applicable Department and Agency procedures implementing DoDI 5230.26, technical or requirements organizations initiating purchase requests must identify to the contracting officer, the nature and extent of VHSIC-sensitive information and/or program products involved for each purchase request and provide a copy of Enclosures (2) and (4) to DoDI 5230.26.

204.7203 Notification to DIS.

Whenever the clause prescribed at 204.7204 is included in the contract, the contracting activity shall provide an extract or a copy of the contract to the cognizant DIS office (see 204.202(c)(6)).

204.7204 Contract clause.

The contracting officer shall insert the clause at 252.204–7006 Very High Speed Integrated Circuits Technology Security Program in all solicitations and contracts involving VHSIC-sensitive information and/or program products. The contracting officer shall provide a copy of Enclosures (2) and (4) to DoDI 5230.26 to each offeror/contractor upon request.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 252.204–7006 is added to read as follows:

252.204–7006 Very High Speed Integrated Circuits Technology Security Program.

As prescribed at 204.7204, insert the following clauses:

Very High Speed Integrated Circuits Technology Security Program (Jan 87)

(a) The Contractor shall comply with the applicable requirements of Enclosures (2) and (4) to DoDI 5230.26, entitled "Very High Speed Integrated Circuits (VHSIC) Technology Security Program," in effect on the date of award of this contract which is available from the contracting officer upon request.

(b) The Contractor shall allow representatives of the Defense Investigative Service (DIS) access, at all reasonable times, into its facilities for purposes of reviewing its compliance with the VHSIC safeguards applicable to this contract.

(c) The Contractor shall insert this clause, including this paragraph (c) with appropriate changes in the designation of the parties, in all subcontracts hereunder which involve VHSIC-sensitive Information and/or Program Products as defined in section 204.7201 of the Department of Defense Federal Acquisition Regulation Supplement.

(d) The Contractor shall provide a copy of any subcontract involving VHSIC to the cognizant DIS office within ten (10) days after issuance of the subcontract.

(End of clause)

[FR Doc. 87–2864 Filed 2–10–87; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF JUSTICE

48 CFR Parts 2804, 2807 and 2812

[Justice Acquisition Circular 86–1]

Amendments to the Justice Acquisition Regulations (JAR) Regarding Advance Procurement Planning, Procurement Lead Times and Rated Orders Under the Defense Production Act of 1950

AGENCY: Justice Management Division, Office of the Procurement Executive, Justice.

ACTION: Final rule.

SUMMARY: The Justice Acquisition Regulations, Parts 2804, 2807, and 2812 are revised to implement agency requirements under DOJ order 2300.5A, Advance Procurement Planning, and to provide JAR coverage of procedures for placing rated orders. The Department's Advance Procurement Planning order contains requirements for contract file documentation. This JAR amendment will add the documentation requirements to the existing contract file checklist in JAR 2804.803–70. A requirement to provide lead times and cut-off dates for receipt of requisitions is being added as an element of the procurement planning process and to reissue in the JAR previous implementation of OFPP Policy Letter 81–1. The former implementation was contained in the DOJ Directive System. Because major organizational components in DOJ have delegated procurement authority and their own particular needs and requirements, it will be left to the Bureaus to establish the lead times and cut-off dates within the broad guidelines established in the JAR. Finally, procedures are being implemented for review and coordination of rated orders under the Defense Production Act of 1950. DOJ infrequently has requirements for rated orders, however, past experience has shown that there is a need to increase awareness of the Procurement Executive's delegated responsibility to exercise this authority on behalf of the Department. Further FAR 12.3 requires

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that agencies implement procedures for obtaining rated orders.

EFFECTIVE DATE: February 11, 1987.

FOR FURTHER INFORMATION CONTACT: W.L. Vann on (202) 272–8354.

SUPPLEMENTARY INFORMATION: These revisions were not published for public comment because they do not have an effect beyond the internal operating procedures of the agency. The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1986 exempted agency procurement regulations from review under Executive Order 12291 except for selected areas. The exemption applies to this rule. The Department of Justice certifies that this document will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 60 et seq.).

List of Subjects in 48 CFR Parts 2804, 2807 and 2812

Government procurement.

Harry H. Flickinger,

Acting Assistant Attorney General for Administration.

1. The authority citation for 48 CFR Parts 2804, 2807, and 2812 continues to read as follows:

Authority: 28 U.S.C. 510; 40 U.S.C. 486 (c); 28 CFR 0.75 (j) and 0.76 (j)

PART 2804—ADMINISTRATIVE MATTERS

2804.803—70 [Amended]

2. In § 2804.803–70, in paragraphs (b)(1), (2) and (3), the entry for Tab No. 4 under "Flap B" in the IFB and RFP preaward file checklists and the entry for Tab No. 1 under "Document" in the Modifications checklist are revised to read as follows:

Tab No	Document	In file	N/A
	Requisition with Advance Procurement Plan (APP) number		
	Supported by a Statement of Need and APP documentation (DOJ Order 2300.5A):		
	Pertinent page from the APP (Form DOJ 528)		
	Individual Acquisition Planning Form (Form DOJ 525 or Bureau equivalent)		
	Class Acquisition Lead Time		
	Representation Statement (Form DOJ 527 or Bureau equivalent)		
	Request to postpone APP revision and FAR 6.302–2 justification and approval		
	Written acquisition plan (Far 7.105) and supporting Major Acquisition Planning Checklist (Form DOJ 526 or Bureau equivalent)		
	Specification review by the Bureau competition advocate		

3. In section 2804.803–70(b)(4), the Contract file award checklist is amended by adding to Flap A under "Item No." the entry "5.1 Consolidated List of Debarred, Suspended and Ineligible Contractors (FAR 9.404(c)(5))" and by adding to Flap B under "Item No." the entry "9.1 Contract Administration Approvals, e.g., approval of subcontracts, etc."

PART 2807—ACQUISITION PLANNING

4. Subpart 2807.70 is added to read as follows:

Subpart 2807.70—End-of-Year Procurements

2807.7000 Scope of subpart.

OFPP Policy Letter 81–1 requires that agencies establish lead times and firm cut-off dates for processing procurement requests that are to be obligated against expiring current year funds. The purposes of the OFPP policy are to prevent wasteful year-end spending and promote competitive contracting. The need to advise requiring activities of the lead times necessary to process a particular procurement action has become even more important with passage of the Competition in Contracting Act of 1984. This subpart provides requirements for meeting these objectives in DOJ.

2807.7001 Lead times and cut-off dates.

(a) DOJ procurement activities shall establish lead times and cut-off dates for acceptance and processing of procurement requests that require use of expiring current year funds. Procedures implemented by the procurement activities shall include:

(1) Lead times required to process procurement requests according to the method of contracting (sealed bid or competitive proposals, etc.) and type of action (new award, modification, or option). Procurement activities may further refine the lead times in accordance with their experience and types of requirements;

(2) Firm cut-off dates beyond which a procurement request will not be accepted if the requirement is to use expiring current year funds. Cut-off dates will be issued consistent with the lead times established in (a)(1) above; and

(3) A statement that failure to submit a requisition prior to the cut-off date applicable to processing a fully competitive procurement does not, in itself, establish justification for contracting by other than full and open competition.

(b) Fourth Quarter procurements.

(1) Instructions provided to Federal agencies by the Office of Management and Budget state that fourth quarter obligations should not exceed the average obligations for the first three quarters, except where seasonal requirements, essential program objectives, or lead times justify a higher level. Excessive and wasteful year-end spending can be prevented by firmly enforcing the procurement cut-off dates, the Department's Advance Procurement Planning Order, reviewing questioned procurements with procurement supervisors and appropriate program personnel and giving particular attention to fourth quarter procurement requests in areas that are particularly vulnerable to wasteful spending. In addition, chiefs of procurement activities shall ensure that their staffs are aware of OFPP Policy Letter 81–1 and the OFPP checklist for use in detecting and preventing wasteful year-end spending.

PART 2812—CONTRACT DELIVERY OR PERFORMANCE

5. Subpart 2812.3 is added to read as follows:

Subpart 2812.3—Priorities and Allocations

2812.303 Procedures

(a) The Procurement Executive, in accordance with paragraph 1.e., of the Procurement Executive Charter, issued with Attorney General Order 1085–85, is the agency official delegated authority to exercise priority authority on behalf of the Department. Any request for a priority rating on a contract or order must be submitted to the Office of the Procurement Executive in accordance with the procedures in this subpart.

(1) The requesting activity shall submit to the Procurement Executive a description of the supplies or services requiring a priority rating and a complete justification for the necessity of a rated order including the method and type of contract and the anticipated award date. The justification must also state the level of priority rating requested and comply with the requirements of the Defense Priorities and Allocations System (DPAS) (15 CFR 350).

(2) Upon receipt the Office of the Procurement Executive shall review the request for completeness and establish appropriate liaison with the Department of Commerce (DOC), the administering agency. Depending on the nature of the requirement, the OPE may schedule a meeting with DOC officials to present the proposal. In such cases, a representative from the requiring activity may be requested to attend.

(3) DOJ activities requesting rated orders that concern classified material shall call the Procurement Executive before submitting their request to ensure appropriate transmission and handling between the requesting activity and the Office of the Procurement Executive.

[FR Doc. 87–2608 Filed 2–10–87; 8:45 am]

BILLING CODE 4410–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1201

[Ex Parte No. 455*]

Revision to the Uniform System of Accounts for Railroads

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Interstate Commerce Commission is revising the Uniform System of Accounts for Railroads (USOA) (49 CFR Part 1201, Subpart A). On June 13, 1984 the Commission served a Notice of Proposed Rulemaking (NPR) 49 FR 116, June 14, 1984 on this proceeding. By adopting these revisions, this Final rule presents an abbreviated (USOA) that satisfies Commission costing objectives while improving future carrier account text retrieval and overall usefulness. The revised system includes certain refinements to comply with generally accepted accounting principles (GAAP), revised instructions or account texts for clarity or to introduce new accounting approaches to improve reporting and a revised account presentation for operating expense accounts to simplify retrieving account text details.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: William F. Moss III, (202) 275–7510

SUPPLEMENTARY INFORMATION: The effective date of these rules shall be January 1, 1987 because the reporting year runs from January 1 thru December 31 of each calendar year.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

This action will not significantly affect either the quality of the human environment or energy conservation. This rule will not have a significant economic impact on a substantial number of small entities.

This revision will be submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). Respondents may direct comments to OMB by addressing them to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for Interstate Commerce Commission, Washington, DC 20503.

List of Subjects in 49 CFR Part 1201

Railroads, Uniform system of accounts.

Part 1201, Subpart A of Title 49 of the Code of Federal Regulations is amended as set forth in the Appendix to this notice:

Decided: January 29, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Moreta R. McGee,

Secretary.

Appendix

49 CFR Part 1201, Subpart A, is amended as follows:

PART 1201—[AMENDED]

1. The authority citations following **"Regulations Prescribed," "General Instructions"** 1–1, 1–2, 1–10, 1–15, 1–16, 2–7, 2–12, 2–18, 2–20, 2–21, 2–23, 2–24, 4–2, 4–3, and 5–7 are removed, and the authority citation for 49 CFR Part 1201, Subpart A is revised to read as follows:

Authority: 5 U.S.C. 553 and 49 U.S.C. 11166.

2. In the Table of Contents, under the list of Instructions and Accounts, amend the property account listing by adding account 59 to read as follows:

PROPERTY ACCOUNTS

* * * * *

Equipment

* * * * *

59 Computer systems and word processing equipment.

* * * * *

3. Under Regulations Prescribed, revise (ii) *Definitions* to read as follows:

1. "Abandonment" means the withdrawal from transportation service of a branch line or other track segment or facility, representing a permanent reduction in plant.

2. "Accounts" means the accounts prescribed in this system of accounts.

3. "Actually issued" as applied to funded debt securities or capital stock issued or assumed by the company, means those which have been sold to bona fide purchasers or holders for a valuable consideration (including those issued in exchange for other securities or other property) and such purchasers or holders secured them free from control by the carriers. Also securities issued as dividends on stock.

4. "Actually outstanding" as applied to funded debt securities or capital stock issued or assumed by the carrier means those which have been actually issued and are neither retired and canceled nor reacquired and held by or for the accounting company.

5. (a) "Affiliated companies" means companies or persons that directly, or indirectly through one or more intermediaries control, or are controlled by, or are under common control with, the accounting carrier.

(b) "Control" (including the terms "controlling", "controlled by", and "under common control with") means the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement, and whether such power is established through a majority of minority ownership or voting of securities, common directors, officers or stockholders, voting trusts, holding trusts, associated companies, contract or any other direct or indirect means.

6. "Amortization" means the gradual extinguishment of an amount in an account by distributing such amount over a fixed period dependent on the requirements of regulatory bodies, over the life of the asset or liability to which it applies, or over the period during which it is anticipated the benefit will be realized.

7. "Carrier" as used herein and when not otherwise indicated in the context means any carrier to which this system of accounts is applicable.

*Initially assigned No. 39155.

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8. "Consolidation" means the formation of a new company. See instruction 2–15.

9. "Commission" means the Interstate Commerce Commission.

10. "Compensating balance" means the portion of any demand deposit (or any time deposit or certificate of deposit) maintained by a carrier (or by any person on behalf of the carrier) which constitutes support for existing borrowing arrangements of the carrier with a lending institution. Such arrangements include both outstanding borrowings and the assurance of future credit availability. (The compensating balance requirement should be adjusted by the amount of float unless such adjustment would cause the compensating balance to be greater than the cash balance per carrier's books.) The float adjustment is made by subtracting the float from the compensating balance requirement if the collected bank ledger balance exceeds the cash balance per carrier's books or by adding the float to the compensating balance requirement if the collected bank ledger balance is less than the cash balance per carrier's books.

(a) "Float" means deposits and withdrawals in transit which constitute a difference between the collected bank ledger balance and the cash balance per carrier's books.

11. "Cost center" refers to an organizational subdivision for which cost data are desired and for which provision is made to accumulate costs such as a terminal, yard, or track segment. A cost center may correspond to a given area of responsibility for which costs are presently accumulated for planning and control. A cost center is the smallest segment of activity or area of responsibility for which costs are accumulated and directly traceable.

12. "Cost of renewal" means the cost of additional material applied (other than the value assigned second-hand parts remaining in the rebuilt unit) plus the cost of labor used in the rebuilding process, exclusive of the portion applicable to dismantling and repair of old parts reused.

13. "Cost of removal" means cost of demolishing, dismantling, tearing down or otherwise removing property.

14. "Debt issue cost" means all costs in connection with the issuance and sale of evidences of debt, such as fees for drafting mortgages and trust deeds; fees for issuing or recording evidences of debt; cost of engraving and printing bonds and certificates of indebtedness; fees paid trustees, specific costs of obtaining governmental authority; fees for legal services; fees and commissions paid underwriters, brokers and salespeople for marketing such evidences for debt; fees and costs of listing on exchanges; and other like costs.

15. "Discount" as applied to funded debt securities or capital stock issued or assumed by the carrier, means the excess of the par or face value of the securities plus interest or dividends accrued at the date of the sale over the cash value of the consideration received from their sale.

16. "Equity security" encompasses any instrument representing ownership shares (e.g., common, preferred and other capital stock), or the right to acquire (e.g., warrants, rights, and call options) or dispose of (e.g., put options) ownership shares in an enterprise at fixed or determinable prices. The term does not encompass preferred stock that by its terms either must be redeemed by the issuing enterprise or is redeemable at the option of the investor, nor does it include treasury stock or convertible bonds.

(a) "Marketable," as applied to an equity security, means an equity security as to which sales prices or bid and ask prices are currently available on a national securities exchange (i.e., those registered with the Securities and Exchange Commission) or in the over-the-counter market. In the over-the-counter market, an equity security shall be considered marketable when a quotation is publicly reported by the National Association of Securities Dealers Automatic Quotations System or by the National Quotations Bureau, Inc. (provided, in the latter case, that quotations are available from at least three dealers). Equity securities traded in foreign markets shall be considered marketable when such markets are of a breadth and scope comparable to those referred to above. This definition is not met by restricted stock (securities for which sale is restricted by a governmental or contractual requirement except where such requirement terminates within one year or where the holder has the power to cause the requirement to be met within one year). Any portion of the stock which can reasonably be expected to qualify for sale within one year, such as may be the case under Rule 144 or similar rules of the Securities and Exchange Commission, is not considered restricted.

(b) "Market value" refers to the aggregate of the market price of a single share or unit times the number of shares or units of each marketable equity security in the portfolio. When an equity has taken positions involving short sales, sales of calls, and purchases of puts for marketable equity securities and the same securities are included in the portfolio, those contracts shall be taken into consideration in the determination of market value of the marketable equity securities.

(c) "Cost," as applied to a marketable equity security, refers to the original cost unless a new cost basis has been assigned based on recognition of an impairment of value that was deemed other than temporary or as the result of a transfer between current and noncurrent classifications. In such cases, the new cost basis assigned shall be considered cost.

17. (a) "Income taxes" means taxes based on income determined under provisions of the United States Internal Revenue Code and foreign, state and other taxes (including franchise taxes) based on income.

(b) "Income tax expense" means the amount of income taxes (whether or not currently payable or refundable) allocable to a period in the determination of net income.

(c) "Pretax accounting income" means income or loss for a period, exclusive of related income tax expense.

(d) "Taxable income" means the excess of revenues over deductions or the excess of deductions over revenue to be reported for income tax purposes for a period.

(e) "Timing differences" means differences between the periods in which transactions affect taxable income and the periods in which they enter into the determination of pretax accounting income. Timing differences originate in one period and reverse or "turn around" in one or more subsequent periods. Some timing differences reduce income taxes that would otherwise be payable currently; others increase income taxes that would otherwise be payable currently.

(f) "Permanent differences" means differences between taxable income and pretax accounting income arising from transactions that, under applicable tax laws and regulations, will not be offset by corresponding differences or "turn around" in other periods.

(g) "Tax effects" means differentials in income taxes of a period attributable to (1) revenue or expense transactions which enter into the determination of pretax accounting income in one period and into the determination of taxable income in another period, (2) deductions or credits that may be carried backward or forward for income tax purposes and (3) adjustments of prior periods and direct entries to other stockholders' equity accounts which enter into the determination of taxable income in a period but which do not enter into the determination of pretax accounting income of that period. A permanent difference does not result in a "tax effect" as that term is used in this definition.

(h) "Deferred taxes" means tax effects which are deferred for allocation to income tax expense of future periods.

(i) "Interperiod tax allocation" means the process of apportioning income taxes among periods.

(j) "Tax allocation within a period" means the process of apportioning income tax expenses applicable to a given period between income before extraordinary items and extraordinary items, and of associating the income tax effects of adjustments of prior periods and direct entries to other stockholders' equity accounts with these items.

18. (a) "Investor" means a business entity that holds an investment in voting stock of another company.

(b) "Investee" means a corporation that issued voting stock held by an investor.

(c) "Corporate joint venture" is a company owned and operated as a separate and specific business or project for the mutual benefit of the members of the group. Joint facilities for purposes of this system of accounts are not considered corporate joint ventures.

(d) "Dividends" when applied to distributions received from investees unless otherwise specified, means dividends received or receivable in cash, other assets, or another class of stock and does not include stock dividends or stock splits.

(e) "Earnings or losses of an investee" and "financial position of an investee" refer to net income (or net loss) and financial position of an investee determined in accordance with generally accepted accounting principles.

(f) "Undistributed earnings of an investee" means net income less dividends declared whether received or not.

(9) "Date of acquisition" is the date on which the investor assumes the rights of ownership. Ordinarily, this is the date assets are received and other assets are given or securities issued.

19. "Joint facility" means any owned or leased carrier operating property occupied or operated jointly by the carrier and one or more other carriers, under an arrangement whereby the cost and income are apportioned to the parties to the joint agreement. Portions of a structure or other property used exclusively by each of two or more carriers are not joint facilities.

20. "Ledger value" of an account means the undepreciated or unamortized cost of acquisition of the item to the carrier, recorded in the general ledger. In case the cost of any item of property is not shown separately in the ledger, the ledger value of that item shall be its proportionate share of the value of the entire group in which the particular property is included.

21. "Merger" means the acquisition of one company by another. See instruction 2–15.

22. "Minor items of property" means the associated parts or items of which units of property are composed.

23. "Net railway operating income": Operating revenue remaining after deducting operating expenses, income taxes on ordinary income, and the provision for deferred income taxes. Also, in arriving at NROI, deduct the Income from Lease of Road and Equipment and add the Rent for Leased Road and Equipment, formerly accounts 509 and 542, respectively.

24. "Net salvage value" means salvage value of property retired less the cost of removal.

25. "Nominally issued" as applied to funded debt securities or capital stock issued or assumed by the carrier, means those which have been signed, certified by trustees, or otherwise executed, and placed with the proper officer for sale and delivery, or pledged, or otherwise placed in some special fund of the accounting company, but which have not been sold or issued directly to the trustees of such fund in accordance with contractual requirements.

26. "Nominally outstanding" as applied to funded debt securities or capital stock issued or assumed by the carrier, means those which, after being actually issued, have been reacquired by or for the accounting company under such circumstances which require them to be considered as held alive and not retired and canceled.

27. "Premium" as applied to funded debt securities or capital stock issued or assumed by the carrier, means the excess of the cash value of the consideration received from their sale over the sum of their par (stated value of no par stock) or face value and interest or dividends accrued at the date of sale.

28. "Programmed track replacements" are costs incurred as part of a track replacement program or planned expenditures. Programmed track replacements are generally performed by relatively large work gangs which, on the basis of programmed and authorized work orders, use heavy mechanized equipment to replace rail, ties and other track material. For guidance on what not to capitalize, see the notes to the text of Accounts 8, 9 and 11.

29. "Property retired" means units of property which have been removed, sold, abandoned, destroyed, or which for any cause have been permanently withdrawn from service; also minor items of property not replaced.

30. "Rail Transportation Property." Rail transportation property is all property and other assets, irrespective of ownership, that comprise the entire operating unit devoted to rail transportation service. This definition comprises the following accounts:

701	Cash
703	Special deposits
704	Loans and notes receivable
705	Accounts receivable—interline and other balances
706	Accounts receivable—customers
707	Accounts receivable—other
708.5	Receivable with affiliated companies
709	Accrued accounts receivable
710	Working funds
711	Prepayments
712	Material and supplies
713	Other current assets
714	Deferred income tax charges
731	Road and equipment property
732	Improvements on leased property

31. "Salvage value" means the amount received from the sale of operating property retired less any expenses in connection with the sale or in preparing the property for sale. If the property is retained for reuse, the salvage value shall be recorded in account 712, Materials and Supplies, or other appropriate account at an amount not to exceed its recorded cost (actual or average), or current market value, whichever is lower.

32. "Segment of a business" refers to a component of an entity whose activities represent a separate major line of business or class of customer. A segment may be in the form of a subsidiary, a division, or a department, and in some cases a joint venture or other non-subsidiary investee, provided that its assets, results of operations, and activities can be clearly distinguished, physically and operationally and for financial reporting purposes, from the other assets, results of operations, and activities of the entity. The fact that the results of operations of the segment being sold or abandoned cannot be separately identified strongly suggests that the transaction should not be classified as a disposal of a segment of business.

(a) "Measurement date" means the date on which the management having authority to approve the action commits itself to a formal plan to dispose of a segment of the business, whether by abandonment or sale. The measurement date for disposals requiring Commission approval shall be the service date of the Order authorizing the disposal.

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(b) "Disposal date" refers to the date of closing the sale, if the disposal is by sale or the date that operations cease if the disposal is by abandonment.

33. "Service life" means the period between the date when operating property is placed in service and the date of its retirement.

34. "Service value" means the ledger value of operating property less its salvage value (see definition 17).

35. "Track maintenance" is material and labor costs of routine track repairs such as sporadic tie replacement, repair of broken rails, tightening track bolts and track spikes. A more complete list of maintenance items are included in notes to the text of Accounts 8, 9 and 11.

36. "Work equipment" means equipment which can be coupled in a train for movement over the carrier's tracks, and which is used in the carrier's work service. See equipment listing for account 57, "Work equipment".

4. Under **General Instructions:**

a. Revise Instruction 1–2(d)(5), Accounting Changes, to read as follows:

1–2 *Classification of accounts.*

* * * * * *

(d) * * *

(5) *Accounting Changes.* Errors in financial statements result from mathematical mistakes, mistakes in the application of accounting principles, or oversight or misuse of facts that existed at the time the financial statements were prepared. In contrast, a change in an accounting estimate results from new information or subsequent developments and from better insight or judgment. Correction of an error should be accomplished through a prior period adjustment [See Instruction 1–2(d)(4)]. Changes in an accounting estimate should be accounted for in the period of change (and future period if the change affects both)(See Instruction 1–7). A change in an accounting principle or accounting entity should be referred to this Commission for approval. The cumulative effect of a change in accounting principle should ordinarily be reflected in the account provided for in determining net income.

* * * * * *

b. Add paragraph (9) to Instruction 1–3, Records, to read as follows:

1–3 *Records*

* * * * * *

(g) Regulations and instructions governing the recording of changes in physical property for Class I railroads are detailed in Part 1262 of this chapter.

c. Revise the heading and text of Instruction 1–7, Delayed Items, to read as follows:

1–7 *Changes in accounting estimates.* Changes in accounting estimate arising during the current year which are applicable to prior years shall be included in the same account which would have been charged or credited if the item had been taken up or the adjustment made in the year to which it pertained. [See Instruction 1–2(d)(5) for Accounting Changes].

d. Revise the heading and text of Instruction 1–8, Distribution of Expenses for Material, Tools, Fuel, Lubricants, Purchased Services and General, to read:

1–8 *Accounting for computer systems and word processing costs.* (a) Capitalized costs for computer systems and word processing equipment shall be charged to property account 59, when such costs are not dedicated to a particular function (See Account 59). Related depreciation expenses for capitalized costs shall be charged to account 62–23–00, Depreciation, Other Equipment.

(b) Repair and maintenance costs related to computer systems and word processing equipment shall be charged to function 46 of the Other equipment subactivity by appropriate natural expense (labor, material, purchased services, other). Repairs performed by an outside company shall be charged to operating expense account 39–23–46.

(c) Operating costs related to computer systems and word processing equipment shall be charged to function 87, Management services and data and word processing, when the equipment benefits more than one activity. When the equipment benefits one activity only, such operating costs shall be charged to the activity/function benefited.

e. Add Instruction 1–17, Disclosure Guideline, to read as follows:

1–17 *Disclosure guideline.* In addition to the accounting policies presented in these regulations, all disclosures relating to APB Opinions and FASB Statements adopted by the Commission are required.

5. Under **Instructions for Property Accounts:**

a. Revise Instruction 2–1 to read as follows:

2–1 *Items to be charged.* (a) To the road and equipment property accounts shall be charged the cost of purchasing land, the cost of purchasing and constructing buildings, facilities and equipment, and the cost of additions and betterments to property. "Cost" means the amount of cash disbursed, or the fair value of other assets distributed, or the present value of amounts to be paid. Where the fair market value of resources given up (assets, services or items of stockholder's equity) is not clearly determinable, the cost may be determined by the fair market value of the resources acquired. The carrier shall be prepared to furnish the Commission with the particulars of its method of determining cash value when the consideration is other than monetary. The amount of liabilities incurred with suppliers in the normal course of business, which are due in customary trade terms not exceeding approximately one year, shall be recorded at the maturity value. Acquisition date is the date title passes to the carrier.

(b) The cost of road and equipment purchased under a plan involving other deferred payments (debt or capital lease) shall be recorded at the discounted present value of the payment, net of executory costs such as insurance, maintenance, and taxes. The interest rate used to discount the payments should be the prevailing market rate for similar debt instruments of issues with similar credit ratings. In any event, the rate used for valuation purposes will normally be at least equal to the rate at which the carrier can obtain financing of a similar nature from other sources at the date of the transaction (the carrier's incremental borrowing rate). In the case of a capital lease, when it is practical to ascertain the implicit rate computed by the lessor, and that rate is less than the carrier's incremental borrowing rate, the carrier should use the implicit rate. Acquisition date for a capital lease is the date the lease agreement is signed. If the property covered by the lease has yet to be constructed or has not been acquired by the lessor at the date the lease agreement or commitment is signed, the acquisition date shall be the date the property under construction is completed or the date the property not yet acquired is acquired by the lessor. (See Instruction 2–20.)

(c) Where actually incurred, interest cost is to be added to the cost of road and equipment deemed "qualifying assets" during the period of time required to get them ready for their intended use (acquisition period). "Qualifying assets" are those that are (1) either constructed or otherwise produced for a carrier's own use (including assets constructed or produced for the carrier by others for which deposits or progress payments have been made) or (2) assets intended for sale or lease that are constructed or otherwise produced as discrete projects. The amount of interest to be capitalized for qualifying assets shall be based upon the average amount of accumulated expenditures for the asset during the acquisition period at the rate used on specific new borrowings associated with the qualifying asset. If average accumulated expenditures for the asset exceed the amount of specific new borrowings associated with the asset, the rate to be applied to such excess shall be a weighted average of the rates applicable to other borrowings of the enterprise. The total amount of interest cost capitalized in an accounting period shall not exceed the total amount of interest cost incurred by the enterprise during that period.

(d) Suitable records shall be maintained showing expenditures during the year for original road and equipment and road extensions; for merger and purchase of existing lines and reorganizations; for additions and betterments; and credits for property retirement.

(e) When the carrier exchanges road and equipment for other road and equipment with no other consideration involved, the road and equipment received shall be recorded at the ledger value of the road and equipment relinquished. Where the carrier receives a monetary consideration in the exchange, the carrier shall recognize gain on the exchange to the extent that the consideration received exceeds a proportionate share of the recorded cost of the road and equipment surrendered. The portion of the cost applicable to the realized amount shall be based on the ratio of the monetary consideration to the total consideration received (monetary consideration plus the estimate fair value of the road and equipment received) or, if more clearly evident, the fair value of the road and equipment transferred. Where the carrier pays a monetary consideration in the exchange, it shall not recognize any gain on the transaction but shall record the road and equipment received at the amount of the monetary consideration paid plus the recorded costs of the road and equipment surrendered. If a loss is indicated by the terms of an exchange transaction, the carrier shall recognize the entire loss on the exchange. Immaterial gains and losses on these exchanges shall be included in account 519, Miscellaneous Income, or 551, Miscellaneous Income Charges, as appropriate. Material amounts shall be recorded in accordance with Instruction 1–2(d).

b. Remove Instruction 2–3(b) and reserve it for future use.

c. Add paragraph (k) to Instruction 2–6 to read as follows:

2–6 *Components of construction cost.*

* * * * * *

(k) *Interest cost.* [See Instruction 2–1(c)].

d. Redesignate Accounts 3, Grading through Account 58, Miscellaneous Equipment, from instruction 2–20, to follow instruction 2–19.

e. Amend instruction 2–19, List of Units of Property, by adding Account 59, to follow Account 58, to read as follows:

2–19 *List of units of property.*

* * * * * *

Account 59, Computer Systems and Word Processing Equipment

A Mainframe
A Mini-computer
A Word processing system
A Printer
A Monitor
A Modem
A Storage device

f. Revise paragraph (d) of Instruction 2–20 to read as follows:

2–20 *Accounting for leases.*

* * * * * *

(d) Leased assets that meet the criteria for classification as a capital lease shall be subject to depreciation over their useful lives in the same manner as assets owned. If the capital lease meets the criteria of either Instruction 2–20(a)(1) or 2–20(a)(2), the asset shall be amortized in a manner consistent with the lessee's normal depreciation policy for owned assets. If the lease does not meet either of these two criteria, the asset shall be amortized in a manner consistent with the lessee's normal depreciation policy except that the period of amortization shall be the lease term.

* * * * * *

g. Revise Note A which follows paragraph (f) of Instruction 2–21 to read as follows:

2–21 *Freight train car repair costing.*

* * * * * *

(f) * * *

Note A.—The following accounts and reference pertain to the freight train car repair process:

11–22–42
21–22–42
39–22–42
40–22–42
41–22–42
61–22–42

Instruction 2–12, "Units of property rebuilt or converted".

6. Under **Instructions for Maintenance Expenses:**

a. Add paragraph (d) to Instruction 3–1, Items to be Charged, to read as follows:

3–1 *Items to be charged.*

* * * * * *

(d) An employee's job classification shall not govern the accounting for work performed. Charges to a particular expense function shall be based on the nature of the work performed.

7. Under **Intructions for Depreciation Accounts:**

a. Revise Instruction 4–1(c) to read as follows:

4–1 *Method.*

* * * * * *

(c) For the purpose of the group plan of depreciation accounting, the following primary accounts are classed as depreciable accounts:

Road accounts:
3. Grading.
4. Other right-of-way expenditures.
5. Tunnels and subways.
6. Bridges, trestles and culverts.
7. Elevated structures.
8. Ties.
9. Rails and other track material.
11. Ballast.
13. Fences, snowsheds, and signs.
16. Station and office buildings.
17. Roadway buildings.
18. Water stations.
19. Fuel stations.
20. Shops and enginehouses.
22. Storage warehouses.
23. Wharves and docks.
24. Coal and ore wharves.
25. TOFC/COFC terminals.
26. Communication systems.
27. Signals and interlockers.
29. Power plants.
31. Power transmission systems.
35. Miscellaneous structures.
37. Roadway machines.
39. Public improvements-construction.
44. Shop machinery.
45. Power plant machinery.

Equipment accounts:
52. Locomotives.
53. Freight-train cars.
54. Passenger-train cars.
55. Highway revenue equipment.
56. Floating equipment.
57. Work equipment.
58. Miscellaneous equipment.
59. Computer systems and word processing equipment.

8. Under **Instructions for Income and Balance Sheet Accounts:**

a. Amend Instruction 5–3, Discounts, Expenses, and Premiums on Debt, by adding the following sentence to the end of paragraph (b):

5–3 *Discounts, expenses, and premiums on debt.* * * * (b) * * * The method of apportioning debt discount, issue costs, and premium to accounts 517 and 548 shall be the "interest method," where the effective interest rate on the date of issuance is applied to the carrying value (debt, less related discount, and issue cost, plus related premium of each specific issue to the beginning of any given period.) However, other methods of amortization may be used if the results obtained are not materially different from those

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which would result from the interest method.

* * * * *

b. Revise the heading and text of Instruction 5–6, Contingent Assets and Liabilities, to read as follows:

5–6 *Contingencies.* (a) The proper accounting treatment for contingencies depends upon whether the contingency is: *Probable:* the event or events are likely to occur; *Reasonably possible:* the chance of occurrence of the future event or events is more than remote, but less than likely; or *Remote:* the chance of occurrence of the future event or events is slight.

(b) Loss contingencies must be accrued when they are probable and the amount of loss can be reasonably estimated. Where they are only reasonably possible, only footnote disclosure is required. Where they are remote, footnote disclosure is not required, but is permitted.

(c) Gain contingencies usually are not reflected in the accounts since to do so might be to recognize revenue prior to its realization. Adequate disclosure shall be made of contingencies that might result in gain, but care shall be exercised to avoid misleading implications as to the likelihood of realization.

9. Under **Property Accounts:**

a. Revise Note B of Account 9, Rails and other track material to read as follows:

9 Rails and other track material.

* * * * *

Note B.—The following activities are considered as maintenance and should be expensed accordingly.

- Rail flaw detection
- Track inspection
- Shifting of existing track
- Removing weeds in track
- Transposing rail
- Restoring chipped and battered rail ends by welding and/or by rail grinding train or other such equipment.
- Gauging track
- Loading scrap track materials
- Lubricating rail
- Tightening bolts
- Resetting spikes and rail anchors in existing track
- Any other maintenance work not involving the placement of track material

b. Remove the word "Computers" from the list of "Station and Office Structures and Details" in Account 16, Station and Office Buildings.

c. Revise Notes B and C of Account 27, Signals and interlockers to read as follows:

27 Signals and interlockers.

* * * * *

Note B.—The cost of track material, such as switches, special rail braces, special roads, special track fastenings, split rails, derails, derail stands, and frogs, used in connection with interlockers, shall be included in account 9, "Rail and other track material."

Note C.—When derails are arranged so as to be thrown from switch stands, the cost of labor expended in the installation of the connections between the switch stand and derail and the devices for throwing the derail shall be included in account 9, "Rail and other track material." The cost of the material shall be included in account 9, "Rail and other track material."

* * * * *

d. Revise Note E of Account 39, Public Improvements; Construction, to read as follows:

39 Public improvements; construction.

* * * * *

Note E.—Interest imposed for failure to pay assessments within the allocated time shall be charged to Account 547, Interest on unfunded debt. Any related penalties shall be charged to Account 551, Miscellaneous income charges.

* * * * *

e. Under the Equipment heading, after the text of account 58, Miscellaneous Equipment, add Account 59, Computer Systems and Word Processing Equipment, to read as follows:

59 Computer systems and word processing equipment.

This account shall include the cost of mainframe and mini-computers and data processing equipment as well as the cost of word processing equipment that is not dedicated to a particular function. Essentially this account consists of all computer-related equipment that remains under the control of the data processing department. This account shall also include the cost of foundations, power supply, fixtures, appurtenances and other devices to prepare this equipment for use.

Items

Mainframes, Mini-computers, Word processing systems, Printers, Monitors, Modems, Storage devices.

Note A.—The cost of micro computers, data processing equipment, and word processing equipment which are an integral part of and essential to the operation of a separate facility shall be charged to the appropriate property account for that facility.

Note B.—Carriers desiring to adopt other methods of accounting for computers and word processing equipment that are considered more suitable for their operational structure shall submit justification and supporting documents to the Commission for consideration and decision.

10. Under **Railway Operating Revenue Accounts,** amend Account 100, Transportation; Rail Line, by adding the following as the concluding sentence:

100 Transportation; rail line.

* * * The detail accounts include in this general account series are summarized in account 501, Railway Operating Revenues.

11. Remove the tables Coding Structure or Railway Operating Expense Accounts, Function Code Use—Way and Structures, Function Code Use—Equipment, Function Code Use—Transportation and Function Code Use—General and Administrative, which follow Railway Operating Revenue Accounts.

12. Revise the text of Operating Expense Account Explanations to read as follows:

OPERATING EXPENSE ACCOUNTS

Instruction

(1) The operating expense accounts use a six-digit code. The first two digits denote natural expense, the second two digits denote activity/subactivity, and the third two digits denote detailed functions. [See Table A for an overview of the coding structure and Tables B–E for detailed functions.]

(2) The operating expense account explanations use a three-tier format. Section 1 contains natural expense explanations with applicable activity/subactivity and function assignment. Section 2 details the activity/subactivity explanations. Section 3 explains the functions appropriate for each activity/subactivity. To obtain a complete explanation for a particular account, refer to section 1 to locate the natural expense and activity/subactivity (first four digits) and read the appropriate account text. Accounts that are assigned to functions are appropriately listed. For further information, refer to section 2 and section 3.

(3) All accounts listed in Table A and section 1 are for freight only. Refer to Table F for applicable passenger or common account codes. Account numbers designated with an asterisk in section 1 denote freight only accounts, while other accounts are used for both freight and passenger or common accounts.

(4) All expense assigned to common operating accounts shall be allocated to freight and passenger accounts in accordance with Part 1242 of this chapter.

TABLE. A—CODING STRUCTURE FOR RAILWAY OPERATING EXPENSE ACCOUNTS [1]

	XX–00	Way and structures XX–10			Equipment XX–20			Transportation XX–30, 40, 50					XX–60
	Control	Running	Switching	Other	Locomotive	Freight cars	Other equipment	Train	Yard	Train and yard common	Specialized SVDS	Administrative support	General and administrative
Freight [2]	XX–00	XX–11	XX–12	XX–13	XX–21	XX–22	XX–23	XX–31	XX–32	XX–33	XX–34	XX–35	XX–61
Personnel	10–00												
Salaries and wages	11–00	[3] 11–11	[3] 11–12	[3] 11–13	[3] 11–21	[3] 11–22	11–23	[3] 11–31	[3] 11–32	[3] 11–33	[3] 11–34	[3] 11–35	[3] 11–61
Fringe benefits	12–00	12–11	12–12	12–13	12–21	12–22	12–23	12–31	12–32	12–33	12–34	12–35	12–61
Materiel	20–00												
Materiel, tools, supp, fuel, lubricants	21–00	[3] 21–11	[3] 21–12	[3] 21–13	[3] 21–21	[3] 21–22	[3] 21–23	[3] 21–31	[3] 21–32	[3] 21–33	[3] 21–34	[3] 21–35	[3] 21–61
Purchased services	30–00												
Lease rentals—DR	31–00	31–11	31–12	31–13	31–21	31–22	31–23						
Lease rentals—CR	32–00	32–11	32–12	32–13	32–21	32–22	32–23						
Jt. Fac. Rent—DR	33–00	33–11	33–12	33–13	33–21	33–22	33–23						
Jt. Fac. Rent—CR	34–00	34–11	34–12	34–13	34–21	34–22	34–23						
Other rents—DR	35–00	35–11	35–12	35–13	35–21	35–22	35–23						
Other rents—CR	36–00	36–11	36–12	36–13	36–21	36–22	36–23						
Jt. facility—DR	37–00	37–11	37–12	37–13	37–21	37–22	37–23	37–31	37–32		37–34	37–35	37–61
Jt. facility—CR	38–00	38–11	38–12	38–13	38–21	38–22	38–23	38–31	38–32		38–34	38–35	38–61
Repairs billed by others—DR	39–00	[3] 39–11	[3] 39–12	[3] 39–13	[3] 39–21	[3] 39–22	[3] 39–23						
Repairs billed to others—CR	40–00	[3] 40–11	[3] 40–12	[3] 40–13	[3] 40–21	[3] 40–22	[3] 40–23						
Other purchase services	41–00	[3] 41–11	[3] 41–12	[3] 41–13	[3] 41–21	[3] 41–22	[3] 41–23	[3] 41–31	[3] 41–32	[3] 41–33	[3] 41–34	[3] 41–35	[3] 41–61
Claims and insurance	50–00												
Loss damage claims	51–00							51–31	51–32	51–33	51–34		
Other casualties	52–00	52–11	52–12	52–13	52–21	52–22	52–23	52–31	52–32		52–34	52–35	52–61
Insurance	53–00	53–11	53–12	53–13	53–21	53–22	53–23	53–31	53–32		53–34	53–35	53–61
General	60–00												
Other expenses	61–00	[3] 61–11	[3] 61–12	[3] 61–13	[3] 61–21	[3] 61–22	[3] 61–23	[3] 61–31	[3] 61–32		[3] 61–34	[3] 61–35	[3] 61–61
Depreciation	62–00	62–11	62–12	62–13	62–21	62–22	62–23						
Uncollectible account	63–00												63–61
Property taxes	64–00												64–61

[1] Each operating expense account has a six-digit code divided into three two-digit groups. The first two-digit group denotes the natural expense [see control column], the second group denotes the activity/subactivity for freight, passenger or common service [see Table F]; and the third group signifies applicable function assignment [see Tables B, C, D & E].

[2] The account numbers shown on this matrix are for freight only. The account numbers for passenger and common are derived by applying the natural expense code (first two digits) to the activity codes shown in Table F. Natural expenses are used only in the same activities as shown for freight.

[3] Expenses shall be reported by applicable functions [see account text].

Table B.—Function Code Use—Way and Structures

Code	Functions	Running			Switching			Other		
		[1] F	P	C	F	P	C	F	P	C
	ADMINISTRATION									
02	Track							X	X	X
03	Bridges and buildings							X	X	X
04	Signals							X	X	X
05	Communications							X	X	X
06	Other							X	X	X
	REPAIRS AND MAINTENANCE									
10	Roadway	X	X	X	X	X	X			
11	Tunnels and subways	X	X	X	X	X	X			
12	Bridges and culverts	X	X	X	X	X	X			
13	Ties	X	X	X	X	X	X			
14	Rails and other track material	X	X	X	X	X	X			
16	Ballast	X	X	X	X	X	X			
19	Signals and interlockers	X	X	X	X	X	X			
20	Communication systems							X	X	X
21	Power systems							X	X	X
22	Highway grade crossings	X	X	X	X	X	X			
23	Station and office buildings							X	X	X

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Table B.—Function Code Use—Way and Structures—Continued

Code	Functions	Running			Switching			Other		
		[1]F	P	C	F	P	C	F	P	C
24	Shop bldgs.—Locomotives							X	X	X
25	Shop bldgs.—Freight cars							X		
26	Shop bldgs.—Other equipment							X	X	X
27	Locomotive servicing facilities							X	X	X
28	Misc. buildings and structures							X	X	X
29	Coal terminals							X		
30	Ore terminals							X		
31	TOFC/COFC terminals							X		
32	Other marine terminals							X		
33	Motor vehicle loading and distribution facilities							X		
35	Facilities—Other specialized services operations							X		
36	Roadway machines							X	X	X
37	Small tools and supplies							X	X	X
38	Snow removal							X	X	X
39	Dismantling retired property	X	X	X	X	X	X	X	X	X
48	Road property damaged	X	X	X	X	X	X	X	X	X
	OTHER									
99	Other	X	X	X	X	X	X	X	X	X

[1] F—Freight; P—Passenger; C—Common.

TABLE C.—FUNCTION CODE USE—EQUIPMENT

Code	Functions	Locomotives			Freight Cars			Other Equipment		
		[1]F	P	C	F	P	C	F	P	C
	ADMINISTRATION									
01	Administration	X	X	X	X			X	X	X
	REPAIR AND MAINTENANCE									
39	Dismantling retired property	X	X	X	X			X	X	X
41	Locomotives	X	X	X						
42	Freight cars				X					
43	Trucks, trailers, containers in revenue service							X		
44	Floating equipment in revenue service							X		
45	Passenger and other revenue equipment							X	X	X
46	Computer systems and word processing equipment							X	X	X
47	Work and other nonrevenue equipment							X	X	X
48	Equipment damaged	X	X	X	X			X	X	X
49	Shop machinery—locomotives							X	X	X
50	Shop machinery—freight cars							X	X	X
51	Shop machinery—other equipment							X	X	X
99	Other	X	X	X	X			X	X	X

[1] F—Freight; P—Passenger; C—Common.

TABLE D.—FUNCTION CODE USE—TRANSPORTATION

Code		Train			Yard			Train and yard common			Specialized services			Administrative support		
		*F	P	C	F	P	C	F	P	C	F	P	C	F	P	C
	ADMINISTRATION															
01		X	X	X	X	X	X				X			X	X	X
	OPERATIONS															
56	Engine	X	X	X												
57	Train crews	X	X	X												
58	Dispatching trains	X	X	X												
59	Operating switches, signals, interlockers, retarders, humps	X	X	X	X	X	X									
60	Operating drawbridges	X	X	X												

TABLE D.—FUNCTION CODE USE—TRANSPORTATION—Continued

Code		Train			Yard			Train and yard common			Specialized services			Administrative support		
		*F	P	C	F	P	C	F	P	C	F	P	C	F	P	C
61	Highway crossing protection	X	X	X												
62	Train inspection and lubrication	X	X	X												
63	Clearing wrecks	X	X	X	X	X	X									
64	Switch crews				X	X	X									
65	Controlling operations				X	X	X									
66	Yard and terminal clerical				X	X	X									
67	Locomotive fuel	X	X	X	X	X	X									
68	Power purchased/produced for motive power	X	X	X	X	X	X									
69	Servicing locomotives	X	X	X	X	X	X									
70	Cleaning car interior							X	X	X						
71	Adjusting, transferring loads							X								
72	Car loading devices and grain doors							X								
73	Pick up and delivery, marine haul, rail substitute service										X					
74	Loading, unloading, local marine										X					
75	Protective services										X					
76	Clerks and accounting employees													X	X	X
77	Communications systems operations													X	X	X
78	Loss and damage claims processing													X	X	X
	OTHER															
99	Other	X	X	X	X	X	X				X			X	X	X

Table E.—Functional Code Use—General and Administrative

Code	Functions	Freight	Passenger	Common
	ADMINISTRATION			
	Administration	X	X	X
	GENERAL			
86	Accounting, auditing, finance	X	X	X
87	Management services and data and word processing	X	X	X
88	Marketing	X	X	X
89	Sales	X	X	X
90	Industrial development	X		
91	Personnel, labor relations	X	X	X
92	Legal and secretarial	X	X	X
93	Public relations and advertising	X	X	X
94	Research and development	X	X	X
	OTHER			
99	Other	X	X	X

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TABLE F.—ACTIVITY/SUBACTIVITY CODE USE

Activity/subactivity	Freight	Code passenger	Common
Way and structures:			
Running	11	14	17
Switching	12	15	18
Other	13	16	19
Equipment:			
Locomotives	21	24	26
Freight cars	22	N/A	N/A
Other	23	25	27
Transportation:			
Train	31	41	51
Yard	32	42	52
Train and yard common	33	43	53
Specialized services	34	N/A	N/A
Administrative support	35	45	55
General and administrative	61	62	63

OPERATING EXPENSE ACCOUNTS

*Section 1—Natural Expense Explanations**

Personnel

Control—10–00–00

This account may be used as a control account for all accounts in the **Personnel** Series: Salaries and Wages, Fringe Benefits Not Included in Compensation.

Salaries and Wages—Control 11–00–00

This account series includes the compensation payable to employees for services performed. It includes amounts payable in connection with profit sharing and stock option plans that are part of employee compensation. This account series also includes amounts of compensation payable to employees for paid time off as a fringe benefit: Vacation pay, holiday pay, sick pay, and other payments considered direct compensation for time not worked. Amounts of labor billed by contractors, other companies, and joint facilities, are not considered salaries and wages of the carrier company and are not to be included in this account group. Its components shall be distributed to the following accounts in accordance with Instruction 1–12.

Salaries and Wages—Way and Structures—Running—11–11–XX

This account includes the compensation payable to all repair and maintenance employees and others who are associated with the repair and maintenance of the carrier's roadway and track on the line of road and outside of classification yards. Compensation payable to officers and technical and clerical employees shall only be assigned to Way and Structures—Other. This account shall be subdivided by the following functions:

Repair and Maintenance:
- Roadway 11–11–10
- Tunnels and Subways 11–11–11
- Bridges and Culverts 11–11–12
- Ties 11–11–13
- Rails and Other Track Material 11–11–14
- Ballast 11–11–16
- Signals and Interlockers 11–11–19
- Highway Grade Crossings 11–11–22
- Dismantling Retired Property 11–11–39
- Road Property and Equipment Damaged 11–11–48
- Other—Other 11–11–99

Salaries and Wages—Way and Structures—Switching—11–12–XX

This account includes the compensation payable to all repair and maintenance employees and others who are associated with the repair and maintenance of the carrier's roadway and track within classification yards and stations. Compensation payable to officers and technical and clerical employees shall be assigned to Way and Structures—Other. This account shall be subdivided by the following functions:

Repair and Maintenance:
- Roadway 11–12–10
- Tunnels and Subways 11–12–11
- Bridges and Culverts 11–12–12
- Ties 11–12–13
- Rails and Other Track Material 11–12–14
- Ballast 11–12–16
- Signals and Interlockers 11–12–19
- Highway Grade Crossings 11–12–22
- Dismantling Retired Property 11–12–39
- Road Property and Equipment Damaged 11–12–48
- Other—Other 11–12–99

Salaries and Wages—Way and Structures—Other—11–13–XX

This account includes the compensation payable to all repair and maintenance employees and others who are associated with the repair and maintenance of the carrier's structures other than roadway and track. Each administration account (functions 02–06) includes the compensation payable to all officers and technical and clerical employees associated with the Way and Structures Activity. This account shall be subdivided by the following functions:

Administration:
- Track 11–13–02
- Bridges and Buildings 11–13–03
- Signals 11–13–04
- Communications 11–13–05
- Other 11–13–06

Repair and Maintenance:
- Communication Systems 11–13–20
- Power Systems 11–13–21
- Station and Office Buildings 11–13–23
- Shop Buildings—Locomotives 11–13–24
- Shop Buildings—Freight Cars *11–13–25
- Shop Buildings—Other 11–13–26
- Locomotive Servicing Facilities 11–13–27
- Miscellaneous Buildings and Structures *11–13–28
- Coal Terminals *11–13–29
- Ore Terminals *11–13–30
- TOFC/COFC Terminals *11–13–31
- Other Marine Terminals *11–13–32
- Motor Vehicle Loading and Distribution Facilities *11–13–33
- Facilities for Other Specialized Services Operations *11–13–35
- Roadway Machines 11–13–36
- Snow Removal 11–13–38
- Dismantling Retired Property 11–13–39
- Road Property and Equipment Damaged 11–13–48
- Other—Other 11–13–99

Salaries and Wages—Equipment—Locomotives—11–21–XX

This account includes the compensation payable to all officers and technical and clerical employees, repair and maintenance employees, and others who are associated with the repair and maintenance of locomotives, whether owned by the carrier or by others. This account shall be subdivided by the following functions:

- Administration—General 11–21–01

Repair and Maintenance:
- Dismantling Retired Property 11–21–39
- Locomotives 11–21–41
- Road Property and Equipment Damaged 11–21–48
- Other—Other 11–21–99

Salaries and Wages—Equipment—Freight Cars—11–22–XX*

This account includes the compensation payable to all officers, technical and clerical employees, repair and maintenance employees, and others, who are associated with the repair and maintenance of freight cars, whether owned by the carrier or by others. This account shall be subdivided by the following functions:

- Administration—General 11–22–01

Repair and Maintenance:
- Dismantling Retired Property 11–22–39
- Freight Cars 11–22–42
- Road Property and Equipment Damaged 11–22–48
- Other—Other 11–22–99

Salaries and Wages—Equipment—Other Equipment—11–23–XX

This account includes the compensation payable to all officers, technical and clerical employees, repair and maintenance employees, and others, who are associated with the repair and maintenance of equipment other than locomotives and freight cars, whether owned by the carrier or by others. This account shall be subdivided by the following functions:

- Administration—General 11–23–01

Repair and Maintenance:
- Dismantling Retired Property 11–23–39
- Trucks, Trailers, Containers in Revenue Service *11–23–43
- Floating Equipment—Revenue Service *11–23–44
- Passenger and Other Revenue Service 11–23–45
- Work and Other Non-Revenue Equipment 11–23–47
- Road Property and Equipment Damaged 11–23–48
- Shop Machinery—Locomotives 11–23–49
- Shop Machinery—Other Equipment 11–23–51
- Other—Other 11–23–99

Salaries and Wages—Transportation—Train—11–31–XX

This account includes the compensation payable to all officers, technical and clerical employees, engine and train crews, and other operational employees, who are associated with the dispatching and operation of freight trains over the roadway and outside of classification yards. This account shall be subdivided by the following functions:

- Administration—General 11–31–01

Operations:
- Engine Crews 11–31–56
- Train Crews 11–31–57
- Dispatching Trains 11–31–58
- Operating Switches, Signals, Interlockers, Retarders, Humps 11–31–59
- Operating Drawbridges 11–31–60
- Highway Crossing Protection 11–31–61
- Train Inspection and Lubrication 11–31–62
- Clearing Wrecks 11–31–63
- Locomotive Fuel 11–31–67
- Electric Power Purchased/Produced for Motive Power 11–31–68
- Servicing Locomotives 11–31–69

- Other—Other 11–31–99

Salaries and Wages—Transportation—Yard—11–32–XX

This account includes the compensation payable to all officers, technical and clerical employees, engine and train crews, and other operational employees, who are associated with the movement of freight cars within classification yards and in terminal switching and transfer service. This account shall be subdivided by the following functions:

- Administration—General 11–32–01

Operations:
- Operating Switches, Signals, Interlockers, Retarders, Humps 11–32–59
- Clearing Wrecks 11–32–63
- Switch Crews 11–32–64
- Controlling Operations 11–32–65
- Yard and Terminal Clerical 11–32–66
- Locomotive Fuel 11–32–67
- Electric Power Purchased/Produced for Motive Power 11–32–68
- Servicing Locomotives 11–32–69

- Other—Other 11–32–99

Salaries and Wages—Transportation—Train and Yard—Common—11–33–XX

This account includes the compensation payable to all officers, performing functions incurred on behalf of both train and yard operations. This account shall be subdivided by the following functions:

Operations:
- Cleaning Car Interiors 11–33–70
- Adjusting and Transferring Loads *11–33–71
- Car Loading Devices and Grain Doors *11–33–72

Salaries and Wages—Transportation—Specialized Services—11–34–XX*

This account includes the compensation payable to all officers, technical and clerical employees, and other operational employees who are associated with operating services which are specialized in nature and in cost characteristics. The specialized services designated by the Commission appear within the explanation of activities/subactivities. This account shall be subdivided by the following functions:

- Administration—General 11–34–01

Operations:
- Pick Up and Delivery, Marine Line Haul, and Rail Substitute Service 11–34–73
- Loading, Unloading, and Local Marine 11–34–74
- Protective Services 11–34–75

- Other—Other 11–34–99

Salaries and Wages—Transportation—Administrative Support—11–35–XX

This account includes the compensation payable to all officers, are associated with providing direct administrative support for the Transportation Activity. For further clarification refer to the explanation of the Administrative Support Operations Subactivity. Each account shall be subdivided by the following functions:

- Administration—General 11–35–01

Operations:
- Clerical and Accounting Employees 11–35–76
- Communication Systems Operations 11–35–77
- Loss and Damage Claims Processing 11–35–78

- Other—Other 11–35–99

Salaries and Wages—General and Administrative—11–61–XX

This account includes the compensation payable to all employees who are associated with overall administration or other general support for carrier operations. Overall administration includes executive, legal, financial, treasury, accounting, budgeting, taxation, corporate planning, costing, marketing, advertising, traffic, corporate secretary, public relations, real estate, insurance administration, personnel administration, pension plan administration, general purchasing, labor relations, internal auditing, industrial engineering, and regulatory reporting. For further clarification refer to the explanation of the General and Administrative Activity. This account shall be subdivided by the following functions:

- Administration—General 11–61–01

General:
- Accounting, Auditing, Finance 11–61–86
- Marketing 11–61–88
- Sales 11–61–89
- Industrial Development *11–61–90
- Personnel and Labor Relations 11–61–91
- Legal and Secretarial 11–61–92
- Public Relations and Advertising 11–61–93
- Research and Development 11–61–94

- Other—Other 11–61–99

Fringe Benefits Not Included in Compensation—Control—12–00–00

This account series includes amounts payable to others, or other costs charged to expense, for employee benefits which are not considered part of direct compensation. These benefits include the carrier portions of Railroad Retirement contributions, pension expense, unemployment taxes, dental plans, health plans, hospitalization insurance, life insurance, subsidies for employee lunchrooms, company entertainment facilities for personal use, and other benefits to employees that are not includible in direct compensation. They exclude travel expense on company business, casualties, workmen's compensation, as well as dues, memberships, and similar items when the direct beneficiary is clearly the company rather than the employee.

Fringe Benefits Not Included in Compensation—Way and Structures—Running 12–11–00

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Fringe Benefits Not Included in Compensation—Way and Structures—Switching 12–12–00
Fringe Benefits Not Included in Compensation—Way and Structures—Other 12–13–00
Fringe Benefits Not Included in Compensation—Equipment Locomotives 12–21–00
Fringe Benefits Not Included in Compensation—Equipment—Freight Cars *12–22–00
Fringe Benefits Not Included in Compensation—Equipment—Other Equipment 12–23–00
Fringe Benefits Not Included in Compensation—Transportation— Train 12–31–00
Fringe Benefits Not Included in Compensation—Transportation— Yard 12–32–00
Fringe Benefits Not Included in Compensation—Transportation— Train and Yard Common 12–33–00
Fringe Benefits Not Included in Compensation—Transportation— Specialized Services 12–34–00
Fringe Benefits Not Included in Compensation—Transportation—Administrative Support 12–35–00
Fringe Benefits Not Included in Compensation—General and Administrative 12–61–00

Materiel Control—20–00–00

This account may be used as a control account for the **Materiel** series: Materials, Tools, Supplies, Fuels, Lubricants.

Materials, Tools, Supplies, Fuels, Lubricants—Control—21–00–00

This account group includes the cost of items installed or commodities consumed which are charged to expense in connection with carrier operations. This account group includes charges to expense for all materials, small tools, supplies, fuels, lubricants, purchased standard stationery and forms, freight-in on materials and supplies, and similar items. This account group excludes purchased services such as utilities, communications, postage and other items of similar nature. Its components shall be distributed to the following accounts:

Materials, Tools, Supplies, Fuels, Lubricants—Way and Structures—Running—21–11–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in the performance or support of the repair and maintenance of the carrier's roadway and track on the line of the road and outside of classification yards. Each account includes charges to expense for all materials, small tools, supplies, fuels, lubricants, purchased standard stationery and forms, freight-in on materials and supplies, and similar items. Its components shall be distributed to the following functions in accordance with Instruction 3–2:

Repair and Maintenance:
Roadway 21–11–10
Tunnels and Subways 21–11–11
Bridges and Culverts 21–11–12
Ties 21–11–13
Rails and Other Track Material 21–11–14
Ballast 21–11–16
Signals and Interlockers 21–11–19
Dismantling Retired Property 21–11–39
Road Property and Equipment Damaged 21–11–48
Other—Other 21–11–99

Materials, Tools, Supplies, Fuels, Lubricants—Way and Structures—Switching—21–12–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in the performance or support of the repair and maintenance of the carrier's roadway and track within classification yards and stations. This account includes charges to expense for all materials, small tools, supplies, fuels, lubricants, purchased standard stationery and forms, freight-in on materials and supplies, and similar items. Its components shall be distributed to the following functions in accordance with Instruction 3–2:

Repair and Maintenance:
Roadway 21–12–10
Tunnels and Subways 21–12–11
Bridges and Culverts 21–12–12
Ties 21–12–13
Rails and Other Track Material 21–12–14
Ballast 21–12–16
Signals and Interlockers 21–12–19
Highway Grade Crossings 21–12–22
Dismantling Retired Property 21–12–29
Road Property and Equipment Damaged 21–12–48

Materials, Tools, Supplies, Fuels, Lubricants—Way and Structures—Other—21–13–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in the performance or support of the repair and maintenance of the carrier's structures not provided for in running or switching. Each account includes charges to expense for all materials, small tools, supplies, fuels, lubricants, purchased standard stationery and forms, freight-in on materials and supplies, and similar items. Its components shall be distributed to the following functions in accordance with Instruction 3–2:

Administration:
Track 21–13–02
Bridges and Buildings 21–13–03
Signals 21–13–04
Communications 21–13–05
Other 21–13–06
Repair and Maintenance:
Communication Systems 21–13–20
Power Systems 21–13–21
Station and Office Buildings 21–13–23
Shop Buildings—Locomotives 21–13–24
Shop Buildings—Freight Cars *21–13–25
Shop Buildings—Other Equipment 21–13–26
Locomotive Servicing Facilities 21–13–27
Coal Terminals *21–13–29
Ore Terminals *21–13–30
TOFC/COFC Terminals *21–13–31
Other Marine Terminals *21–13–32
Motor Vehicle Loading and Distribution Facilities *21–13–33
Facilities for Other Specialized Services Operations *21–13–35
Roadway Machines 21–13–36
Snow Removal 21–13–38
Dismantling Retired Property 21–13–39
Road Property and Equipment Damaged 21–13–48
Other—Other 21–13–99

Materials, Tools, Supplies, Fuels, Lubricants—Equipment—Locomotives—21–21–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in the performance or support of the repair and maintenance of locomotives, whether owned by the carrier or by others. This account includes charges to expense for all materials, small tools, supplies, fuels, lubricants, purchased standard stationery and forms, freight-in on materials and supplies, and similar items. Its components shall be distributed to the following functions in accordance with Instruction 3–2:

Administration—General 21–21–01
Repair and Maintenance:
Locomotives 21–21–41
Road Property and Equipment Damaged 21–21–48
Other—Other 21–21–99

Materials, Tools, Supplies, Fuels, Lubricants—Equipment—Freight Cars—21–22–XX*

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in the performance or support of the repair and maintenance of freight-cars, whether owned by the carrier or by others. This account includes charges to expense for all materials, small tools, supplies, fuels, lubricants, purchased standard stationery and forms, freight-in on materials and supplies, and similar items. Its components

shall be distributed to the following functions in accordance with Instruction 3–2:

Administration—General 21–22–01
Repair and Maintenance:
Dismantling Retired Property 21–22–39
Freight Cars 21–22–42
Road Property and Equipment Damaged 21–22–48
Other—Other 21–22–99

Materials, Tools, Supplies, Fuels, Lubricants—Equipment—Other Equipment—21–23–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in the performance or support of the repair and maintenance of equipment by others. This account includes charges to expense for all materials, small tools, supplies, fuels, lubricants, purchased standard stationery and forms, freight-in on materials and supplies, and similar items. Its components shall be distributed to the following functions in accordance with Instruction 3–2:

Administration—General 21–23–01
Repair and Maintenance:
Dismantling Retired Property 21–23–39
Trucks, Trailers, Containers in Revenue Service *21–23–43
Floating Equipment—Revenue Service *21–23–44
Passenger and Other Revenue Equipment 21–23–45
Computer Systems and Word Processing Equipment 21–23–46
Work and Other Non-Revenue Equipment 21–23–47
Road Property and Equipment Damaged 21–23–48
Shop Machinery—Locomotives 21–23–49
Shop Machinery—Freight Cars *21–23–50
Shop Machinery—Other Equipment 21–23–51
Other—Other 21–23–99

Materials, Tools, Supplies, Fuels, Lubricants—Transportation—Train—21–31–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in association with the dispatching and operation of freight trains over the charges to expense for all materials, small tools, supplies, fuels, lubricants, purchased standard stationery and forms, freight-in on materials and supplies, and similar items. Its components shall be distributed to the following functions in accordance with Instruction 3–2:

Administration—General 21–31–01
Operations:
Engine Crews 21–31–56
Train Crews 21–31–57
Dispatching Trains 21–31–58
Operating Switches, Signals, Interlockers, Retarders, Humps 21–31–59
Operating Drawbridges 21–31–60
Highway Crossing Protection 21–31–61
Train Inspection and Lubrication 21–31–62
Clearing Wrecks 21–31–63
Locomotive Fuels 21–31–67
Electric Power Purchased/Produced for Motive Power 21–31–68
Servicing Locomotives 21–31–69
Other—Other 21–31–99

Materials, Tools, Supplies, Fuels, Lubricants—Transportation—Yard—21–32–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in and in terminal switching and transfer service. This account includes charges to expense for all materials, small tools, supplies, fuels, lubricants, purchased standard stationery and forms, freight-in on materials and supplies, and similar items. Its components shall be distributed to the following functions in accordance with Instruction 3–2:

Administration—General 21–32–01
Operations:
Operating Switches, Signals, Interlockers, Retarders, Humps 21–32–59
Clearing Wrecks 21–32–63
Switch Crews 21–32–64
Controlling Operations 21–32–65
Yard and Terminal Clerical 21–32–66
Locomotive Fuel 21–32–67
Electric Power Purchased/Produced for Motive Power 21–32–68
Servicing Locomotives 21–32–69
Other—Other 21–32–99

Materials, Tools, Supplies, Fuels, Lubricants—Transportation—Train and Yard Common—21–33–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed on behalf of both train and yard operations. This account includes charges to expense for all materials, small tools, supplies, fuels, lubricants, supplies, and similar items. Its components shall be distributed to the following functions in accordance with Instruction 3–2:

Operations:
Cleaning Car Interiors 21–33–70
Adjusting, Transferring Loads *21–33–71
Car Loading Devices and Grain Doors *21–33–72

Materials, Tools, Supplies, Fuels, Lubricants—Transportation—Specialized Services—21–34–XX*

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in operating services which are specialized in nature and in cost characteristics. The specialized services designated by the Commission appear within the explanation of specialized services. This account shall be subdivided by the following functions:

Administration—General 21–34–01
Operations:
Pick Up and Delivery, Marine Line Haul, and Rail Substitute Service 21–34–73
Loading, Unloading, and Local Marine 21–34–74
Protective Services 21–34–75
Other—Other 21–34–99

Materials, Tools, Supplies, Fuels, Lubricants—Transportation—Administrative Support—21–35–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in association with providing direct administrative support for the Transportation Activity. For further clarification refer to the explanation of the Administrative Support Operations Subactivity. This account shall be subdivided by the following functions:

Administration—General 21–35–01
Operations:
Clerks, Accounting Employees 21–35–76
Communication Systems Operations 21–35–77
Loss and Damage Claims Processing 21–35–78
Other—Other 21–35–99

Materials, Tools, Supplies, Fuels, Lubricants—General and Administrative—21–61–XX

This account includes the cost of items installed or commodities consumed which are charged to expense, where such items are consumed in providing overall administration or other general support for carrier operations. For further clarification refer to the definition of the General and Administrative Activity. This account shall be subdivided by the following functions:

Administration—General 21–61–01
General:
Accounting, Auditing, Finance 21–61–86
Management Services and Data and Word Processing 21–61–87
Marketing 21–61–88
Sales 21–61–89
Industrial Development *21–61–90
Legal and Secretarial 21–61–92

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Public Relations and Advertising	21-61-93
Research and Development	21-61-94
Other—Other	21-61-99

Purchased Services

Control—30-00-00

This account may be used as a control account for all accounts in the **Purchased services** series:

Lease Rentals—Dr.
Lease Rentals—Cr.
Joint Facility Rent—Dr.
Joint Facility Rent—Cr.
Other Rents—Dr.
Other Rents—Cr.
Joint Facility—Dr.
Joint Facility—Cr.
Repairs Billed by Others—Dr.
Repairs Billed to Others—Cr.
Other Purchased Services

Lease Rentals—Debit—Control—31-00-00

This account series includes the rentals of road property and equipment with terms of 30 days or more. This account excludes joint facility and joint trackage rents, insurance and maintenance elements of lease payments, and all elements of capital leases as defined in FASB Statement No. 13. Capitalized leases shall be included in the applicable property account for the particular asset leased [See Instruction 2-11b]. The components of this natural expense will be distributed to the following accounts in accordance with Instruction 3-2:

Lease Rentals—Dr.—Way and Structures—Running	31-11-00
Lease Rentals—Dr.—Way and Structures—Switching	31-12-00
Lease Rentals—Dr.—Way and Structures—Other	31-13-00
Lease Rentals—Dr.—Equipment—Locomotives	31-21-00
Lease Rentals—Dr.—Equipment—Freight Cars	*31-22-00
Lease Rentals—Dr.—Equipment—Other Equipment	31-23-00

Lease Rentals—Credit—Control—32-00-00

This account group includes the rentals of owned property and equipment or subleases of leased road property and equipment with terms of from 30 days to one year. Longer term leases are indicative of a noncarrier operation and all revenues and expenses related to such property and equipment should be classified accordingly and excluded from railroad operations. This account excludes joint facilities and joint trackage, capital leases, and portions of lease receipts covering maintenance and insurance. The components of this natural expense account will be distributed to the following accounts in accordance with Instruction 3-2:

Lease Rentals—Cr.—Way and Structures—Running	32-11-00
Lease Rentals—Cr.—Way and Structures—Switching	32-12-00
Lease Rentals—Cr.—Way and Structures—Other	32-13-00
Lease Rentals—Cr.—Equipment—Locomotives	32-21-00
Lease Rentals—Cr.—Equipment—Freight Cars	*32-22-00

Joint Facility Rents—Debits—Control—33-00-00

This account group includes amounts payable accrued as rent for equipment, tracks, yards, terminals, and other facilities owned or controlled by other carriers, companies, or individuals, and in the joint use of which the accounting company participates. Amounts paid or payable by the accounting company in reimbursement for taxes on property jointly used shall be charged to this account.

The cost of maintenance, operation, or administration of joint facilities, chargeable to the accounting company, shall be charged to the various joint facility accounts (37-XX-00). When the compensation for the use of joint facilities is a fixed amount or is based upon a charge per passenger, ton, car, or other unit, it shall be fairly apportioned between this account and Joint Facility—Dr. (37-XX-00). This apportionment shall be made by the operating company and shall be followed by the accounting company.

The components of this natural expense consist of the following accounts:

Joint Facility Rents—Dr.—Way and Structures—Running	33-11-00
Joint Facility Rents—Dr.—Way and Structures—Switching	33-12-00
Joint Facility Rents—Dr.—Way and Structures—Other	33-13-00
Joint Facility Rents—Dr. Equipment—Locomotives	*33-21-00
Joint Facility Rents—Dr. Equipment—Freight Cars	*33-22-00
Joint Facility Rents—Dr. Equipment—Other Equipment	33-23-00

Joint Facility Rents—Credit—Control—34-00-00

This account series includes amounts receivable accrued for rent of equipment, tracks, yards, terminals and other facilities owned or controlled by other companies or individuals. Amounts receivable from other companies in reimbursement for taxes on property jointly used shall be credited to this account.

The portion of the cost of maintenance, operation, or administration of joint facilities recoverable from others shall be credited to the various joint facility accounts (38-XX-00). When the compensation for the use of joint facilities is a fixed amount or is based upon a charge per passenger, ton, car, or other unit, it shall be fairly apportioned by the creditor between this account and Joint Facility—Cr. (38-XX-00).

The components of this account series shall be distributed to the following accounts:

Joint Facility Rents—Cr.—Way and Structures—Running	34-11-00
Joint Facility Rents—Cr.—Way and Structures—Switching	34-12-00
Joint Facility Rents—Cr.—Way and Structures—Other	34-13-00
Joint Facility Rents—Cr.—Equipment—Locomotives	*34-21-00
Joint Facility Rents—Cr.—Equipment—Freight Cars	*34-22-00
Joint Facility Rents—Cr.—Equipment—Other Equipment	34-23-00

Other Rents—Debit—Control—35-00-00

This account group includes the rents with terms of less than 30 days which are not renewed. This account includes all time and mileage payments for interchange locomotive, freight car, and other revenue equipment hire. The components of this account will be distributed to the following accounts in accordance with Instruction 3-2:

Other Rents—Dr.—Way and Structures—Running	35-11-00
Other Rents—Dr.—Way and Structures—Switching	35-12-00
Other Rents—Dr.—Way and Structures—Other	35-13-00
Other Rents—Dr.—Equipment—Locomotives	35-21-00
Other Rents—Dr.—Equipment—Freight Cars	*35-22-00
Other Rents—Dr.—Equipment—Other Equipment	35-23-00

Other Rents—Credit—Control—36-00-00

This account includes rents with terms of less than 30 days which are not renewed. This account includes all time and mileage receipts for interchanged locomotive, freight car, and other

revenue equipment hire. The components of this account will be distributed to the following accounts in accordance with Instruction 3-2:

Other Rents—Cr.—Way and Structures—Running	36-11-00
Other Rents—Cr.—Way and Structures—Switching	36-12-00
Other Rents—Cr.—Way and Structures—Other	36-13-00
Other Rents—Cr.—Equipment—Locomotives	36-21-00
Other Rents—Cr.—Equipment—Freight Cars	*36-22-00
Other Rents—Cr.—Equipment—Other Equipment	36-23-00

Joint Facility—Debit—Control— 37-00-00

This account includes joint trackage and joint facility costs, exclusive of rents, payable by the railroad to others. The components of this account will be distributed to the following accounts in accordance with Instruction 3-2:

Joint Facility—Dr.—Way and Structures—Running	37-11-00
Joint Facility—Dr.—Way and Structures—Switching	37-12-00
Joint Facility—Dr.—Way and Structures—Other	37-13-00
Joint Facility—Dr.—Equipment—Locomotives	37-21-00
Joint Facility—Dr.—Equipment—Freight Cars	*37-22-00
Joint Facility—Dr.—Equipment—Other Equipment	37-23-00
Joint Facility—Dr.—Transportation—Train	37-31-00
Joint Facility—Dr.—Transportation—Yard	37-32-00
Joint Facility—Dr.—Transportation—Specialized Services	*37-34-00
Joint Facility—Dr.—Transportation—Administrative Support	37-35-00
Joint Facility—Dr.—General and Administrative	37-61-00

Joint Facility—Credit—Control— 38-00-00

This account group includes joint trackage and joint facility costs, exclusive of rents, payable by others to the railroad. The components of this account will be distributed to the following accounts in accordance with Instruction 3-2:

Joint Facility—Cr.—Way and Structures—Running	38-11-00
Joint Facility—Cr.—Way and Structures—Switching	38-12-00
Joint Facility—Cr.—Way and Structures—Other	38-13-00
Joint Facility—Cr.—Equipment—Locomotives	38-21-00
Joint Facility—Cr.—Equipment—Freight Cars	*38-22-00
Joint Facility—Cr.—Equipment—Other Equipment	38-23-00
Joint Facility—Cr.—Transportation—Train	38-31-00
Joint Facility—Cr.—Transportation—Yard	38-32-00
Joint Facility—Cr.—Transportation—Specialized Services	*38-34-00
Joint Facility—Cr.—Transportation—Administrative Support	38-35-00
Joint Facility—Cr.—General and Administrative	38-61-00

Repairs Billed by Others—Debit—Control—39-00-00

This account group includes amounts payable by the railroad to others for repair and maintenance of the reporting railroad's property and equipment. The components of this account shall be distributed to the following accounts in accordance with Instruction 3-2:

Repairs Billed by Others—Dr.—Way and Structures—Running—39-11-XX

This account includes amounts payable by the railroad to others for repair and maintenance of the reporting railroad's property associated with the carrier's roadway and track on the line of road and outside of classification yards. This account shall be subdivided by the following functions:

Repair and Maintenance:

Roadway	39-11-10
Tunnels and Subways	39-11-11
Bridges and Culverts	39-11-12
Ties	39-11-13
Rails and Other Track Material	39-11-14
Ballast	39-11-16
Signals and Interlockers	39-11-19
Highway Grade Crossings	39-11-22
Road Property and Equipment Damaged	39-11-48

Repairs Billed by Others—Dr.—Way and Structures—Switching—39-12-XX

This account includes amounts payable by the railroad to others for repair and maintenance of the reporting railroad's property associated with the carrier's roadway and track within classification yards and stations. This account shall be subdivided by the following functions:

Repair and Maintenance:

Roadway	39-12-10
Tunnels and Subways	39-12-11
Bridges and Culverts	39-12-12
Ties	39-12-13
Rails and Other Track Material	39-12-14
Ballast	39-12-16
Signals and Interlockers	39-12-19
Highway Grade Crossings	39-12-22
Road Property and Equipment Damaged	39-12-48

Repairs Billed by Others—Dr.—Way and Structures—Other—39-13-XX

This account includes amounts payable by the railroad to others for repair and maintenance of the carrier's structures other than roadway and track. This account shall be subdivided by the following functions:

Repair and Maintenance:

Communication Systems	39-13-20
Power Systems	39-13-21
Station and Office Buildings	39-13-23
Shop Buildings—Locomotives	39-13-24
Shop Buildings—Freight Cars	*39-13-25
Shop Buildings—Other Equipment	39-13-26
Locomotive Servicing Facilities	39-13-27
Miscellaneous Buildings and Structures	39-13-28
Coal Terminals	*39-13-29
Ore Terminals	*39-13-30
TOFC/COFC Terminals	*39-13-31
Other Marine Terminals	*39-13-32
Motor Vehicle Loading and Distribution Facilities	*39-13-33
Facilities for Other Specialized Services Operations	*39-13-35
Roadway Machines	39-13-36
Snow Removal	39-13-38
Road Property and Equipment Damaged	39-13-48

Repairs Billed by Others—Dr.—Equipment—Locomotives—39-21-XX

This account includes amounts payable by the railroad to others for repair and maintenance under the Locomotive subactivity. This account shall be subdivided by the following functions:

Repair and Maintenance:

Locomotives	39-21-41
Road Property and Equipment Damaged	39-21-48

Repairs Billed by Others—Dr.—Equipment—Freight Cars—39-22-XX*

This account includes amounts payable by the railroad to others for repair and maintenance under the Freight Car subactivity. This account shall be subdivided by the following functions:

Repair and Maintenance:

Freight Cars	39-22-42
Road Property and Equipment Damaged	39-22-48

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Repairs Billed by Others—Dr.—Equipment Other Equipment—39–23–XX

This account includes amounts payable by the railroad to others for the repair and maintenance of equipment not pertaining to the Locomotive or Freight Car subactivity. This account shall be subdivided by the following functions:

Repair and Maintenance:	
Trucks, Trailers, and Containers in Revenue Service	*39–23–43
Floating Equipment—Revenue Service	*39–23–44
Passenger and Other Revenue Equipment	39–23–45
Computer Systems and Word Processing Equipment	39–23–46
Work and Other Non-Revenue Equipment	39–23–47
Road Property and Equipment Damaged	39–23–48
Shop Machinery—Locomotives	39–23–49
Shop Machinery—Freight Cars	*39–23–50
Shop Machinery—Other Equipment	39–23–51

Repairs Billed to Others—Cr.—Control 40–00–00

This account series includes amounts payable by others to the railroad for repair and maintenance of others' road property and equipment. The components of this account shall be distributed to the following accounts in accordance with Instruction 3–2:

Repairs Billed to Others—Cr.—Way and Structures— Running—40–11–XX

This account includes amounts payable by others to the railroad for repair and maintenance of other railroads' roadway and track on the line of road and outside of classification yards. This account shall be subdivided by the following functions:

Repair and Maintenance:	
Roadway	40–11–10
Tunnels and Subways	40–11–11
Bridges and Culverts	40–11–12
Ties	40–11–13
Rails and Other Track Material	40–11–14
Ballast	40–11–16
Signals and Interlockers	40–11–19
Highway Grade Crossings	40–11–22
Road Property and Equipment Damaged	40–11–48

Repairs Billed to Others—Cr.—Way and Structures Switching—40–12–XX

This account includes amounts payable by others to the railroad for repair and maintenance of other railroads' roadway and track within classification yards and stations. This account shall be subdivided by the following functions:

Repair and Maintenance:	
Roadway	40–12–10
Tunnels and Subways	40–12–11
Bridges and Culverts	40–12–12
Ties	40–12–13
Rails and Other Track Material	40–12–14
Ballast	40–12–16
Signals and Interlockers	40–12–19
Highway Grade Crossings	40–12–22
Road Property and Equipment Damaged	40–12–48

Repairs Billed to Others—Cr.—Way and Structures— Other—40–13–XX

This account includes amounts payable by others to the railroad for repair and maintenance of other railroads' structures other than roadway and track. This account shall be subdivided by the following functions:

Repair and Maintenance:	
Communication Systems	40–13–20
Power Systems	40–13–21
Station and Office Buildings	40–13–23
Shop Buildings Locomotives	40–13–24
Shop Buildings—Freight Cars	*40–13–25
Shop Buildings—Other Equipment	40–13–26
Locomotive Servicing Facilities	40–13–27
Miscellaneous Buildings and Structures	40–13–28
Coal Terminals	*40–13–29
Ore Terminals	*40–13–30
TOFC/COFC Terminals	*40–13–31
Other Marine Terminals	*40–13–32
Motor Vehicle Loading and Distribution Facilities	*40–13–33
Facilities for Other Specialized Services Operations	*40–13–35
Roadway Machines	40–13–36
Snow Removal	40–13–38
Road Property and Equipment Damaged	40–13–48

Repairs Billed to Others—Cr.—Equipment Locomotives—40–21–XX

This account includes amounts payable by others to the railroad for repair and maintenance of other railroads' locomotives. This account shall be subdivided by the following functions:

Repair and Maintenance:	
Locomotives	40–21–41
Road Property and Equipment Damaged	40–21–48

Repairs Billed to Others—Cr.—Equipment—Freight Cars—40–22–XX*

This account includes amounts payable by others to the railroad for repair and maintenance of other railroads' freight cars. This account shall be subdivided by the following functions:

Repair and Maintenance:	
Freight Cars	40–22–42
Road Property and Equipment Damaged	40–22–48

Repairs Billed to Others—Cr.—Equipment—Other Equipment—40–23–XX

This account includes amounts payable by others to the railroad for repair and maintenance of other railroads' other equipment. Each account shall be subdivided by the following functions:

Repair and Maintenance:	
Trucks, Trailers, and Containers in Revenue Service	*40–23–43
Floating Equipment—Revenue Service	*40–23–44
Passenger and Other Revenue Equipment	40–23–45
Computer Systems and Word Processing Equipment	40–23–46
Road Property and Equipment Damaged	40–23–48
Shop Machinery—Locomotives	40–23–49
Shop Machinery—Freight Cars	*40–23–50
Shop Machinery—Other Equipment	40–23–51

Other Purchased Services—Control—41–00–00

This account group includes amounts charged or credited to operating expenses for purchased advertising; purchased printing; outside professional services such as legal, accounting, audit, engineering, and consulting; payments for detour of trains; utilities, telephone, postage, subscriptions, communications, purchased electric power for train and locomotive propulsion; and other services purchased. The components of this account group shall be distributed to the following accounts in accordance with Instruction 3–2:

Other Purchased Services—Way and Structures—Running—41–11–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Repair and Maintenance:	
Roadway	41–11–10
Tunnels and Subways	41–11–11
Bridges and Culverts	41–11–12
Ties	41–11–13
Rails and Other Track Material	41–11–14
Ballast	41–11–16
Signals and Interlockers	41–11–19
Highway Grade Crossings	41–11–22
Dismantling Retired Property	41–11–39
Road Property and Equipment Damaged	41–11–48
Other—Other	41–11–99

Other Purchased Services—Way and Structures—Switching—41–12–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Repair and Maintenance:	
Roadway	41–12–10
Tunnels and Subways	41–12–11
Bridges and Culverts	41–12–12
Ties	41–12–13
Rails and Other Track Material	41–12–14
Ballast	41–12–16
Signals and Interlockers	41–12–19
Highway Grade Crossings	41–12–22
Dismantling Retired Property	41–12–39
Road Property and Equipment Damaged	41–12–48
Other—Other	41–12–99

Other Purchased Services—Way and Structures—Other—41–13–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Administration:	
Track	41–13–02
Bridges and Buildings	41–13–03
Signals	41–13–04
Communications	41–13–05
Other	41–13–06
Repair and Maintenance:	
Communication Systems	41–13–20
Power Systems	41–13–21
Station and Office Buildings	41–13–23
Shop Buildings—Locomotives	41–13–24
Shop Buildings—Freight Cars	*41–13–25
Shop Buildings—Other Equipment	41–13–26
Locomotive Servicing Facilities	41–13–27
Miscellaneous Buildings and Structures	41–13–28
Coal Terminals	*41–13–29
Ore Terminals	*41–13–30
TOFC/COFC Terminals	*41–13–31
Other Marine Terminals	*41–13–32
Motor Vehicle Loading and Distribution Facilities	*41–13–33
Facilities for Other Specialized Services Operations	*41–13–35
Roadway Machines	41–13–36
Snow Removal	41–13–38
Dismantling Retired Property	41–13–39
Road Property and Equipment Damaged	41–13–48
Other—Other	41–13–99

Other Purchased Services—Equipment—Locomotives—41–21–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Administrative—General	41–21–01
Repair and Maintenance:	
Dismantling Retired Property	41–21–39
Locomotives	41–21–41
Road Property and Equipment Damaged	41–21–48
Other—Other	41–21–99

Other Purchased Services—Equipment—Freight Cars—41–22–XX*

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Administrative—General	41–22–01
Repair and Maintenance:	
Dismantling Retired Property	41–22–39
Freight Cars	41–22–42
Road Property and Equipment Damaged	41–22–48
Other—Other	41–22–99

Other Purchased Services—Equipment—Other Equipment—41–23–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Administrative—General	41–23–01
Repair and Maintenance:	
Dismantling Retired Property	41–23–39
Trucks, Trailers, Containers in Revenue Service	41–23–43
Floating Equipment—Revenue Service	*41–23–44
Passenger and Other Revenue Equipment	41–23–45
Computer Systems and Word Processing Equipment	41–23–46
Work and Other Non-Revenue Equipment	41–23–47
Road Property and Equipment Damaged	41–23–48
Shop Machinery—Locomotives	41–23–49
Shop Machinery—Freight Cars	*41–23–50
Shop Machinery—Other Equipment	41–23–51
Other—Other	41–23–99

Other Purchased Services—Transportation—Train—41–31–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Administration—General	41–31–01
Operations:	
Engine Crews	41–31–56
Train Crews	41–31–57
Dispatching Trains	41–31–58
Operating Switches, Signals, Interlockers, Retarders, Humps	41–31–59
Operating Drawbridges	41–31–60
Highway Crossing Protection	41–31–61
Train Inspection and Lubrication	41–31–62
Clearing Wrecks	41–31–63
Locomotive Fuel	41–31–67
Electric Power Purchased/Produced for Motive Power	41–31–68
Servicing Locomotives	41–31–69
Other—Other	41–31–99

Other Purchased Services—Transportation—Yard—41–32–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Administration—General	41–32–01
Operations:	
Operating Switches, Signals, Interlockers, Retarders, Humps	41–32–59
Clearing Wrecks	41–32–63
Switch Crews	41–32–64
Controlling Operations	41–32–65
Yard and Terminal Clerical	41–32–66
Locomotive Fuel	41–32–67
Electric Power Purchased/Produced for Motive Power	41–32–68
Servicing Locomotives	41–32–69
Other—Other	41–32–99

Other Purchased Services—Transportation—Train and Yard Common—41–33–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Operations:	
Cleaning Car Interiors	41–33–70
Adjusting, Transferring Loads	41–33–71
Car Loading Devices and Grain Doors	41–33–72

Other Purchased Services—Transportation—Specialized Services—41–34–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

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Administration—General	41–34–73
Operations:	
Pick Up and Delivery, Marine Line Haul, and Rail Substitute Service	41–34–73
Loading, Unloading, and Local Marine	41–34–74
Protective Services	41–34–75
Other—Other	41–34–99

Other Purchased Services—Transportation—Administrative Support—41–35–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Administration—General	41–35–01
Operations:	
Clerks, Accounting Employees	41–35–76
Communication Systems Operations	41–35–77
Loss and Damage Claims Processing	41–35–78
Other—Other	41–35–99

Other Purchased Services—General and Administrative—41–61–XX

This account includes amounts charged or credited to operating expenses for other purchased services specified in control account 41–00–00. This account shall be subdivided by the following functions:

Administration—General	41–61–01
General:	
Accounting, Auditing, Finance	41–61–86
Management Services and Data and Word Processing	41–61–87
Marketing	41–61–88
Sales	41–61–89
Industrial Development	*41–61–90
Personnel and Labor Relations	41–61–91
Legal and Secretarial	41–61–92
Public Relations and Advertising	41–61–93
Research and Development	41–61–94
Other—Other	41–61–99

Claims and Insurance

Control—50–00–00

This account may be used as a control account for all accounts in the **Claims and Insurance** series: Loss and Damage Claims, Other Casualties, Insurance.

Loss and Damage Claims—Control—51–00–00

This account series includes amounts payable to compensate for the loss or damage of freight or other goods carried in revenue service. Loss and damage claims should not be allocated. When specific identification of loss and damage claims is possible, the related expenses shall be directly assigned to the Train, Yard, or Specialized service Subactivity. If a solely related determination cannot be made the loss and damage claim shall be charged to the Train and Yard Subactivity. This account series excludes amounts payable to employees or other parties for injuries sustained or loss of life; for damage to real property of others or personal property not carried in revenue services; all payments for other damages of any kind; and related insurance premiums. These costs are appropriately charged to the following accounts:

Loss and Damage Claims—Transportation—Train	51–31–00
Loss and Damage Claims—Transportation—Yard	51–32–00
Loss and Damage Claims—Transportation—Train and Yard Common	51–33–00
Loss and Damage Claims—Transportation—Specialized Services	*51–34–00

Other Casualties—Control—52–00–00

This account includes amounts payable to employees or other parties for injuries sustained or loss of life in connection with the construction, maintenance, operations, and administration of railroad property and equipment; for damage to real property, property of others or personal property not carried in revenue service; all payments for other damages of any kind. This account excludes freight and other goods carried in a revenue service, and insurance premiums related to the casualties chargeable to this account.

Note.—The costs of clearing wrecks and repairing casualty-caused damage to the railroad's property and equipment are properly classified under other natural expense accounts as appropriate and further classified by relevant activities and functions. These costs are appropriately charged to the following accounts:

Other Casualties—Way and Structures—Running	52–11–00
Other Casualties—Way and Structures—Switching	52–12–00
Other Casualties—Way and Structures—Other	52–13–00
Other Casualties—Equipment—Locomotives	52–21–00
Other Casualties—Equipment—Freight Cars	*52–22–00
Other Casualties—Equipment—Other Equipment	52–34–00
Other Casualties—Transportation—Train	52–31–00
Other Casualties—Transportation—Yard	52–32–00
Other Casualties—Transportation—Specialized Services	*52–34–00
Other Casualties—Transportation—Administrative Support	52–35–00
Other Casualties—General and Administrative	52–61–00

Insurance—Control—53–00–00

This account series include premiums for insurance to cover property and equipment loss and damage, liability, business interruption, and the like. These costs are appropriately charged to the following accounts:

Insurance—Way and Structures—Running	53–11–00
Insurance—Way and Structures—Switching	53–12–00
Insurance—Way and Structures—Other	53–13–00
Insurance—Equipment—Locomotives	53–21–00
Insurance—Equipment—Freight Cars	*53–22–00
Insurance—Equipment—Other Equipment	53–23–00
Insurance—Transportation—Train	53–31–00
Insurance—Transportation—Yard	53–32–00
Insurance—Transportation—Specialized Services	*53–34–00
Insurance—Transportation—Administrative Support	53–35–00
Insurance—General and Administrative	53–61–00

General

Control—60–00–00

This account may be used as a control account for all accounts in the **General** series: Other Expenses, Depreciation, Uncollectible Accounts, Property Taxes, Other Taxes.

Other Expenses—Control—61–00–00

This account series includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, road property and equipment retirement losses, and other items of a general nature.

Other Expenses—Way and Structures—Running—61–11–XX

Each account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, road property retirement losses, and other items of a general nature associated with the carrier's roadway and track on the line of road and outside of classification yards. Each account shall be subdivided by the following functions:

Repair Maintenance:	
Roadway	61–11–10
Tunnels and Subways	61–11–11
Bridges and Culverts	61–11–12
Ties	61–11–13
Rails and Other Track Material	61–11–14
Ballast	61–11–16
Signals and Interlockers	61–11–19
Highway Grade Crossings	61–11–22
Dismantling Retired Property	61–11–39
Road Property and Equipment Damaged	61–11–48
Other—Other	61–11–99

Other Expenses—Way and Structures—Switching—61–12–XX

Each account includes amount charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, road property retirement losses, and other items of a general nature associated with the carrier's roadway and track within classification yards and stations. Each account shall be subdivided by the following functions:

Repair and Maintenance:	
Roadway	61–12–10
Tunnels and Subways	61–12–11
Bridges and Culverts	61–12–12
Ties	61–12–13
Rails and Other Track Material	61–12–14
Ballast	61–12–16
Signals and Interlockers	61–12–19
Highway Grade Crossings	61–12–22
Dismantling Retired Property	61–12–39
Road Property and Equipment Damaged	61–12–48
Other—Other	61–12–99

Other Expenses—Way and Structures—Other—61–13–XX

This account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, road property retirement losses, and other items of a general nature associated with the carrier's structures other than roadway and track. This account shall be subdivided by the following functions:

Administration:	
Track	61–13–02
Bridges and Buildings	61–13–03
Signals	61–13–04
Communications	61–13–05
Other	61–13–06
Repair and Maintenance:	
Communication Systems	61–13–20
Power Systems	61–13–21
Station and Office Buildings	61–13–23
Shop Buildings—Locomotives	61–13–24
Shop Buildings—Freight Cars	*61–13–25
Shop Buildings—Other Equipment	61–13–26
Locomotive Servicing Facilities	61–13–27
Miscellaneous Buildings and Structures	61–13–28
Coal Terminals	*61–13–29
Ore Terminals	*61–13–30
TOFC/COFC Terminals	*61–13–31
Other Marine Terminals	*61–13–32
Motor Vehicle Loading and Distribution Facilities	*61–13–33
Facilities for Other Specialized Services Operations	*61–13–35
Roadway Machines	61–13–36
Snow Removal	61–13–38
Dismantling Retired Property	61–13–39
Road Property and Equipment Damaged	61–13–48
Other—Other	61–13–99

Other Expenses—Equipment—Locomotives 61–21–XX

This account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees and equipment retirement losses, associated with the repair and maintenance of locomotives, whether owned by the carrier or by others. This account shall be subdivided by the following functions:

Administration—General	61–21–01
Repair and Maintenance:	
Dismantling Retired Property	61–21–39
Locomotives	61–21–41
Road Property and Equipment Damaged	61–21–48
Other—Other	61–21–99

Other Expenses—Equipment—Freight Cars—61–22–XX*

This account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, equipment retirement losses, associated with the repair and maintenance of freight cars, whether owned by the carrier or by others. This account shall be subdivided by the following functions:

Administration—General	61–22–01
Repair and Maintenance:	
Dismantling Retired Property	61–22–39
Freight Cars	61–22–42
Road Property and Equipment Damaged	61–22–48
Other—Other	61–22–99

Other Expenses—Equipment—Other Equipment—61–23–XX

This account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, equipment retirement losses, associated with the repair and maintenance of equipment other than locomotives and freight cars, whether owned by the carrier or by others. This account shall be subdivided by the following functions:

Administration—General	61–23–01
Repair and Maintenance:	
Dismantling Retired Property	61–23–39
Trucks, Trailers, Containers in Revenue Service	*61–23–43
Floating Equipment—Revenue Service	*61–23–44
Passenger and Other Revenue Equipment	61–23–45
Computer Systems and Word Processing Equipment	61–23–46
Work and Other Non-Revenue Equipment	61–23–47
Road Property and Equipment Damaged	61–23–48
Shop Machinery—Locomotives	61–23–49
Shop Machinery—Freight Cars	*61–23–50
Shop Machinery—Other Equipment	61–23–51
Other—Other	61–23–99

Other Expenses—Transportation—Train—61–23–XX

This account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, associated with the dispatching and operations of freight-trains over the roadway and outside of classification yards. This account shall be subdivided by the following functions:

Administration—General	61–31–01
Operations:	
Engine Crews	61–31–56
Train Crews	61–31–57
Dispatching Trains	61–31–58
Operating Switches, Signals, Interlockers, Retarders, Humps	61–31–59
Operating Drawbridges	61–31–60
Highway Crossing Protection	61–31–61
Train Inspection and Lubrication	61–31–62
Clearing Wrecks	61–31–63
Locomotive Fuel	61–31–67
Electric Power Purchased/Produced for Motive Power	61–31–68
Servicing Locomotives	61–31–69
Other—Other	61–31–99

Other Expenses—Transportation—Yard—61–32–XX

This account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, and other items of a general nature associated with the movement of freight cars within classification yards and in

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terminal switching and transfer service. This account shall be subdivided by the following functions:

Administration—General	61–32–01
Operations:	
Operating Switches, Signals, Interlockers, Retarders, Humps	61–32–59
Clearing Wrecks	61–32–63
Switch Crews	61–32–64
Controlling Operations	61–32–65
Yard and Terminal Clerical	61–32–66
Locomotive Fuel	61–32–67
Electric Power Purchased/ Produced for Motive Power	61–32–68
Servicing Locomotives	61–32–69
Other—Other	61–32–99

Other Expenses—Transportation—Specialized Services—61–34–XX*

This account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, and other items of a general nature incurred in operating services which are specialized in nature and in cost characteristics. The specialized services designated by the Commission appear within the explanation of activities/ subactivities. This account shall be subdivided by the following functions:

Administration—General	61–34–01
Operations:	
Pick Up and Delivery, Marine Line Haul, and Rail Substitute Service	61–34–73
Loading, Unloading, and Local Marine	61–34–74
Protective Services	61–34–75
Other—Other	61–34–99

Other Expenses—Transportation—Administrative Support—61–35–XX

This account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, and other items of a general nature incurred in association with providing direct administrative support for the Transportation Activity. This account shall be subdivided by the following functions:

Administration—General	61–35–01
Operations:	
Clerks, Accounting Employees	61–35–76
Communication Systems Operations	61–35–77
Loss and Damage Claims Processing	61–35–78
Other—Other	61–35–99

Other Expenses—General and Administrative—61–61–XX

This account includes amounts charged to operating expenses for items not otherwise provided for in the other natural expense accounts, including travel and other expenses of employees, and other items of a general nature incurred in providing overall administration or other support for carrier operations. This account shall be subdivided by the following functions:

Administration—General	61–61–01
General:	
Accounting, Auditing, Finance	61–61–86
Management Services and Data Processing	61–61–87
Marketing	61–61–88
Sales	61–61–89
Industrial Development	*61–61–90
Personnel Labor Relations	61–61–91
Legal and Secretarial	61–61–92
Public Relations and Advertising	61–61–93
Research and Development	61–61–94
Other—Other	61–61–99

Depreciation—Control—62–00–00

This account group includes the amounts charged to operating expenses for depreciation of owned road property and equipment, and the depreciation element of road property held under capital lease in accordance with FASB Statement No. 13. These costs are appropriately charged to the following accounts:

Depreciation—Way and Structures—Running	62–11–00
Depreciation—Way and Structures—Switching	62–12–00
Depreciation—Way and Structures—Other	62–13–00
Depreciation—Equipment—Locomotives	62–21–00
Depreciation—Equipment—Freight Cars	*62–22–00
Depreciation—Equipment—Other Equipment	62–23–00

Uncollectible Accounts—Control— 63–00–00

This account includes charges to operating expenses for the writedown of accounts and notes due to the railroad, whether classified as current or long-term. This account includes any credits to allowance accounts for collectibility and total writeoff of receivables. This account does not include writedowns of property, equipment, or investments (except accounts, notes, or other receivables held as investments). Proper adjustments of incorrect receivables are not to be charged to this account. Collections of amounts previously written off or down are to be credited to this account. The total of this account shall be charged to the following account:

Uncollectible Accounts—General and Administrative	63–61–00

Property Taxes—Control—64–00–00

This account includes only taxes based on the value of real estate and personal property used in railroad operations. The total of this account shall be charged to the following account:

Property Taxes—General and Administrative	64–61–00

Other Taxes—Control—65–00–00

This account includes taxes on gross receipts, franchise fees, excise taxes, and similar items. This account excludes property taxes and taxes chargeable as employee benefits. The total of this account shall be charged to the following account:

Other Taxes—General and Administrative	65–61–00

OPERATING EXPENSE ACCOUNTS

Section 2—Activity/Subactivity Explanations

Way and Structures Activity—(XX–10–XX)

(A) "Way and Structures" activity refers to repairing, maintaining, leasing, renting, depreciating, and retiring right-of-way and trackage, structures, buildings, and facilities. It includes all natural expense object subclassifications such as salaries and wages, fringe benefits, material and supplies, lease rentals, purchased services, casualties, depreciation and retirements, where such objects are in the performance or support of the above functions. Specifically included are all natural expense objects in the performance of the above described functions on property of the type included in property accounts 2 through 45, excluding 44, whether such property is owned or leased. It includes the costs of operating work trains in support of this activity.

This activity excludes all expenses related to transportation and other equipment described in property accounts 44, 46 and 52 through 58, all of which should be charged to the Equipment activity. It also excludes

expenses in performance or support of Transportation, General and Administrative activities, property used for noncarrier operations, non-operating property, and interest or other fixed charges.

Running Subactivity—(XX–11–XX)

(1) "Running" subactivity of the Way and Structures activity refers to the functions of repairing, maintaining, leasing, renting, depreciating, and retiring right-of-way, trackage, signals and interlockers, and highway grade crossings for running tracks, passing tracks, crossovers, etc., including turnouts from those tracks, passing clearance points. It includes all natural expense object subclassifications under the Way and Structures activity that are applicable to right-of-way and trackage as defined above. This subactivity specifically excludes expenses incurred in operating signals and interlockers and highway grade crossings, which are properly charged to the Transportation activity.

Switching Subactivity—(XX–12–XX)

(2) "Switching" subactivity of the Way and Structures activity refers to the function of repairing, maintaining, leasing, renting, depreciating, and retiring right-of-way, trackage, signals and interlockers, and highway grade crossings for yards where separate switching services are maintained, including classification, house, team, industry, and other tracks switched by yard locomotives, and for station, team, industry, and other switching tracks for which no separate switching service is maintained. It includes all natural expense object subclassifications under the Way and Structures activity that are applicable to right-of-way and trackage as defined above. This subactivity specifically excludes expenses incurred in operating signals and interlockers, and highway grade crossings, which are properly charged to the Transportation activity.

Other Subactivity—(XX–13–XX)

(3) "Other" subactivity of the Way and Structures activity refers to the function of repairing, maintaining, leasing, renting, depreciating, and retiring other roadway property structures, buildings, and facilities not provided for in the Running and Switching subactivities. It includes all natural expense object subclassifications under the Way and Structures activity that are applicable to the structures, buildings, and facilities as defined above. The specifically excludes expenses incurred in operating such structures, buildings, and facilities, which are properly charged to the Equipment, Transportation, and General and Administrative activities.

Equipment Activity—(XX–20–XX)

(B) "Equipment" activity refers to repairing, maintaining, leasing, renting, depreciating, and retiring transportation and other operating equipment. It includes all natural expense object subclassifications such as salaries and wages, fringe benefits, material and supplies, lease rentals, purchased services, casualties, depreciation, and retirements. Specifically included are all natural expense objects in the performance of the above functions on property of the type included in property accounts 44, 46 and 52 through 58, whether such property is owned or leased. The costs of operating work trains in support of the Equipment activity are to be included herein.

This activity excludes all expenses related to road property as described in property accounts 2 through 45, excluding account 44, all of which should be charged to the Way and Structures activity. It also excludes expenses in performance of, or support for Transportation, General and Administrative activities, property used for noncarrier operations, nonoperating property, and interest or other fixed charges.

Locomotives Subactivity—(XX–21–XX)

(1) "Locomotives" subactivity of the Equipment activity refers to repairing, maintaining, leasing, renting, depreciating, and retiring locomotives. It includes all natural expense object subclassifications under the Equipment activity that are applicable to locomotives. This subactivity specifically excludes expenses incurred in operating locomotives, such as locomotive fuel and lubricants, train crew wages, operating supplies, servicing (as opposed to maintaining or repairing), and cleaning which are includable in the Transportation activity, except when locomotive use is clearly in support of other activities or subactivities. When locomotives are operated in support of repairing or maintaining locomotives, the operating costs shall be charged to this subactivity.

Freight Train Cars Subactivity—(XX–22–XX)

(2) "Freight Train Cars" subactivity of the Equipment activity refers to repairing, maintaining, leasing, renting, depreciating, and retiring freight train cars. It includes all natural expense object subclassifications under the Equipment activity that are applicable to freight train cars. This subactivity pertains to all freight train cars described in property account 53, whether owned or leased, including freight cars used for hauling freight in company service and cabooses. It does not pertain to work equipment. This subactivity specifically excludes expenses incurred in running trains or operating freight cars, such as for locomotive fuel and lubricants, train crew wages, inspecting trains, operating supplies, servicing (as opposed to maintaining or repairing), and cleaning, which are includable in the Transportation activity, except where such costs are clearly in support of repairing or maintaining freight cars, other activities or subactivities. When locomotives or trains are operated in support of repairing or maintaining freight cars, the operating costs shall be charged to this subactivity.

Other Equipment Subactivity—(XX–23–XX)

(3) "Other Equipment" subactivity of the Equipment activity refers to repairing, maintaining, leasing, renting, depreciating, and retiring other equipment. It includes all natural expense object subclassifications under the Equipment activity which are applicable to other equipment. The subactivity pertains to all equipment described in property accounts 44, 46 and 54 through 58, whether such property is owned or leased. This subactivity specifically excludes expenses incurred in operating other equipment, such as for fuel and lubricants, crew wages, inspecting equipment, operating supplies, servicing (as opposed to maintaining or repairing), and cleaning, which are includible in the Transportation activity, except where such costs are clearly in support of other activities or subactivities. When locomotives, trains, or other equipment are operating in support of repairing or maintaining other equipment, the operating costs shall be charged to this subactivity.

Transportation Activity—(XX–30–XX)

(C) "Transportation" activity refers to operating, servicing, inspecting, weighing, assembling, and switching trains; operating highway revenue services; operating facilities in connection with carrier transportation operations including coal and ore terminals, intermodal terminals, terminal grain elevators, and others; operating carfloat and carferry services and related facilities; operating communications systems which primarily support train operations; and

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joint facility transportation operations. It includes various administrative functions directly supporting transportation operations including those described in the Administrative Support Operations subactivity. Work train costs in support of the Way and Structures or the Equipment activities should be charged to those activities. However, shipments of company materials, handled in predominantly revenue freight trains, are appropriately included in this activity. This activity includes all natural expense object subclassifications such as salaries and wages, fringe benefits, material and supplies, purchased services, lost or damaged freight, and casualties.

Train Operations Subactivity—(XX–31–XX)

This activity excludes all expenses assignable to the Way and Structures, Equipment, and General and Administrative activities, as well as those expenses for noncarrier operations and nonoperating functions.

(1) "Train Operations" subactivity of the Transportation activity refers to operations of all trains except those performing yard functions in terminals. It includes running trains in road or way service; switching trains except where such switching is performed within yards or terminals; and making customer pick-ups and deliveries except in yards and terminals.

It also provides for dispatching, controlling, reporting, and monitoring road train movements; inspecting and lubricating trains; servicing, fueling, and cleaning (not repairing or maintaining) locomotives; purchasing or producing electric power for motive power; and operating supporting activities such as communications, signaling, crossing protection, and interlockings.

This subactivity also includes crew calling and transporting; crew lodging, meals, and other expenses; lost or damaged freight; casualties and insurance; clearing wrecks; and operating joint tracks and facilities except for yards or specialized services. It also includes salaries and wages, fringe benefits, material and supplies, fuel and lubricants, purchased services, casualty and damages, and other natural expense elements incurred in operating trains.

The Train Operations subactivity excludes the operation of specialized services, all of which should be charged to the Specialized Services Operations subactivity. However, road or way switching between trains and specialized service facilities outside of terminal areas belongs to the Train Operations subactivity.

Work and other nonrevenue train operating costs are to be charged to the appropriate supported activity. Shipments of company materials normally should be charged to this subactivity, except where the train movement is exclusively or predominantly for such nonrevenue purpose where the supported activity should bear the train operating costs.

Yard Operations Subactivity—(XX–32–XX)

(2) "Yard Operations" subactivity of the Transportation activity refers to classifying cars to make-up or break-down trains; sorting and handling waybills in connection with freight car classification and switching in yards or terminals; inspecting, servicing, fueling, and cleaning (not repairing or maintaining) locomotives and cabooses used to provide yard or terminal services; purchasing or producing electric power for motive power; diverting or holding cars; and reporting operating and car movement data related to yards and terminals. It also includes operating supporting activities in yards or terminals, such as communications, signaling, and interlockings; yard crew calling and transporting; yard crew lodging, meals, and other expenses; lost or damaged freight specifically traceable to occurrences resulting from the performance of yard operations; casualties and insurance related to yard operations; clearing wrecks which occurred in the performance of yard operations; and operating joint yards and terminals.

Within terminals, this subactivity includes pick-up or delivery of freight cars from or to customer spur tracks, team tracks, freight houses, interchange tracks, rip tracks, and specialized service facilities. It also includes salaries and wages, fringe benefits, material and supplies, fuel and lubricants, purchased services, casualty and damages, and other natural expense elements incurred in operating yards and terminals.

The Yard Operations subactivity includes the cost of switching operations within facilities for Specialized Services and switching or transfer operations between yards and the specialized service facilities. The latter is not limited or affected by definitions or restrictions contained in carrier operating rules or labor agreements. It is related solely to the defined operations when they are performed in a yard or terminal area.

Train and Yard Common Subactivity—(XX–33–XX)

(3) "Train and Yard Common" subactivity of the Transportation activity refers to the function of adjusting and transferring loads; and placing and removing car loading devices and grain doors. It also includes lost or damaged freight not specifically traceable to numerous activities resulting from performance of train, yard, or specialized services operations. It also includes salaries and wages, fringe benefits, material and supplies, purchased services, and other natural expense elements incurred in performing the functions defined above. It excludes the natural expense elements of casualties and insurance, which shall be charged to the Train Operations and Yard Operations subactivities.

Specialized Services Operations Subactivity—(XX–34–XX)

(4) "Specialized Services Operations" subactivity of the Transportation activity refers to operating services which are specialized in nature and in cost characteristics, including all of those so designated by the Commission. The purpose of segregating the cost of such services is primarily to preclude distortion of general costs applicable to the Train Operations and Yard Operations subactivities. Secondarily, further breakout of the costs of operating individual specialized services can be provided in less detail than the full range of natural expense accounts, in reports used for recurring cost analysis purposes pertaining to each type of specialized service.

The designated specialized services operations are as follows:

(a) "TOFC/COFC Operations" refers to the function of operating rail-to-ground or water and ground or water-to-rail transfer facilities for handling trailers or containers, including related storage; and the highway movement of trailers or containers within a terminal area for purposes of pick-up, delivery, or interchange.

The service includes loading, tie-down, and/or unloading flat cars or dollies and piggyback trailers to or from highway tractors; moving trailers, dollies, or containers within the facility; servicing, cleaning, and fueling (but not repairing or maintaining) facility equipment; operating storage areas; and casualties, claims, and insurance relating to the facility.

TOFC/COFC Operations do not include Plan V or other arrangements, where there is a division of revenues between the rail and motor carrier. They

do not include switching services performed within the facility by yard or road crews. They also do not include the functions of the Way and Structures, Equipment, and General and Administrative activities, or the Train, Yard, Train and Yard Common, or Administrative Support Operations subactivities.

(b) "Floating Operations" refers to operations of water vessels and equipment in revenue service. They include the operation of carferries, tugs, barges, lighterage, and all other forms of water craft.

Floating operations exclude operations includable in the Administrative Support Operations subactivity, and the switching transfer of cars between general yards or trains and the facility or a dedicated yard serving the facility, or switching within the dedicated supporting terminal facility when performed by yard crews. They also do not include costs appropriate to the Way and Structures, Equipment, or General and Administrative activities.

Floating operations should be classified by line and terminal operations. The distribution should be made based on the nature of the operation and not the facility or equipment. When the service occurs between distinct terminals, the operation should be considered a line operation. When the service is conducted within a general terminal or harbor area, the operation should be considered a terminal operation.

(c) "Coal Terminal Operations and Ore Terminal Operations" refers to operations of rail-to-water or water-to-rail transloading facilities for coal or for ores, including related storage, blending, and other processing or handling at the facility. These operations include loading and/or unloading rail cars or water vessels at the facility; moving commodities within the facility by whatever means; operating the facility's pollution control equipment; operating and directing the operations of moorings and tugboats; servicing, cleaning, and fueling (but not repairing or maintaining) facility equipment; operating storage areas; and casualties, claims, and insurance relating to the facility.

These terminal operations do not include costs appropriate to the Way and Structures, Equipment, or General and Administrative activities. They also do not include costs appropriate to the Train Operations, Yard Operations, Train and Yard Operations Common, or Administrative Support Services Operations subactivities. Switching transfer of cars between general yards or trains and the facility or a dedicated yard serving the facility and switching within the dedicated supporting terminal facility when performed by yard crews should be charged to the Yard Operations subactivity.

(d) "Other Marine Terminal Operations" refers to the operations of marine terminals other than those for which a separate designated specialized service operation category is provided.

(e) "Motor Vehicle Loading and Distribution Facility Operations" refers to the operations of facilities for loading, unloading, or storing motor vehicles.

(f) "Protective Service Operations" refers to the function of servicing, cleaning, and fueling (but not repairing or maintaining) mechanical protective service equipment.

(g) "Other Specialized Services Operations" refers to the function of performing rail substitute service, other highway revenue service, LCL terminal operations, warehouse operations, freight car transloading, grain elevator terminal operations, livestock feeding operations, and other specialized services designated by the Commission. It includes the transportation operating expenses of only those services listed above.

Administrative Support Operations Subactivity—(XX–35–XX)

(5) "Administrative Support Operations" subactivity refers to operations providing direct administrative support to the overall Transportation activity. It includes administrative support for the Common, and the Specialized Services Operations subactivities. The administrative support operations includes receiving and processing customer orders, requesting cars, preparing waybills, rating shipments, billing customers, collecting customer receivables in the ordinary course of business (not to include treasury, legal, general accounting, revenue accounting, or credit operations, all of which are chargeable to the General and Administrative activity), billing and recording demurrage, reporting interchanges, reporting advances, and the initial reporting and summarization of input documents for purposes of cash collection and accounting. Any operations beyond the initial summarization and reporting of input data are assignable to the General and Administrative activity except for those otherwise included in the definition of this subactivity.

Carrier staff, administrative, or clerical operations related to operating or transportation department general administration should not be charged to this subactivity. The Administrative Support Operations subactivity may be performed at local stations, regional offices, or even at the general offices; however, the location of the operation performance does not affect its nature. The operations included in this subactivity should reasonably correlate to the quantity of shipments or to the quantity of carloadings.

General and Administrative Activity—(XX–60–XX)

(D) "General and Administrative" activity refers to the providing of overall administration or other general support for carrier operations. It comprehends only that portion of general and administrative activities that relates to carrier operations (as distinguished from noncarrier operations or nonoperating activities) including executive, legal, financial, treasury, accounting, budgeting, taxation, corporate planning, costing, marketing, advertising, traffic, corporate secretary, public relations, real estate, insurance administration, personnel administration, pension plan administration, general purchasing, labor relations, internal auditing, industrial engineering, and regulatory reporting.

This activity excludes expenses incurred for noncarrier operations of the carrier company as well as for general administration of the corporate entity and nonoperating income or expenses. It also excludes expenses in performance of or direct support for Way and Structures, Equipment, and Transportation activities, with particular attention to the Administrative Support Operations subactivity.

OPERATING EXPENSE ACCOUNTS

Section 3—Function Explanations

Note.—Functions do not necessarily correlate to organizational structure. A particular department may not have a specific USOA expense function code. However, its costs may be includable under various function codes. Costs not properly chargeable to specific functions should be assigned to Function Code 99, Other.

(a) Functions Related to the Way and Structures Activity

(1) Administration Functions.

(02) Administration, Track—General administration and supervision of central, regional, and divisional engineering functions related to repair and maintenance of track. Used only in Way and Structures— Other. Included are:

- General engineering and design.
- Valuation engineering for maintenance and improvements.

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- Planning and supervision of repair and maintenance work.
- Budget preparation, clerical support, and similar functions.

(03) Administration, Bridges and Buildings—General administration and supervision of central, regional and divisional engineering functions related to repair and maintenance of bridges and buildings. Used only in Way and Structures—Other. Included are:

- General engineering and design.
- Valuation engineering for maintenance and improvements.
- Planning and supervision of repair and maintenance work.
- Budget preparation, clerical support, and similar functions.

(04) Administration, Signals—General administration and supervision of central, regional, and divisional engineering functions related to repair and maintenance of signals. Used only in Way and Structures—Other. Included are:

- General engineering and design.
- Valuation engineering for maintenance and improvements.
- Planning and supervision of repair and maintenance work.
- Budget preparation, clerical support, and similar functions.

(05) Administration, Communications—General administration and supervision of central, regional, and divisional engineering functions related to repair and maintenance of communication facilities. Used only in Way and Structures—Other. Included are:

- General engineering and design.
- Valuation engineering for maintenance and improvements.
- Planning and supervision of repair and maintenance work.
- Budget preparation, clerical support, and similar functions.

(06) Administration, Other—General administration and supervision of central, regional, and divisional engineering functions related to repair and maintenance of other roadway property. Used only in Way and Structures—Other. Included are:

- General engineering and design.
- Valuation engineering for maintenance and improvements.
- Planning and supervision of repair and maintenance work.
- Budget preparation, clerical support, and similar functions.

(2) Repair and Maintenance Functions—These functions include:

- Repair and maintenance work on road property and equipment, including gang foreman, shop foreman, and other supervisors with direct authority over workers; all higher levels of supervision are included in the Administration function.
- Work train service. Crew wages are to be charged directly; other work train expenses except fuel may be apportioned if not solely identifiable to work train service.
- Store expense and shop expense.

(10) Repair and Maintenance, Roadway—Roadway, cuts, fills, banks, embankments, subgrade, roadbed, ditches, drains, landscaping; cutting and removing grass, brush, debris; dressing ballast; preventing and extinguishing fires; patrolling and inspection; roadway relocation.

(11) Repair and Maintenance, Tunnels and Subways—Repaving, ventilating, lighting, other maintenance.

(12) Repair and Maintenance, Bridges and Culverts—Bridges, trestles, culverts and elevated structures which carry tracks; repairing, filling, dredging, cleaning, watching these structures.

(13) Repair and Maintenance, Ties—Cross, switch, bridge, and other track ties. This function includes expenses associated with unloading, distributing and placing ties in tracks.

(14) Repair and Maintenance, Rails and Other Track Material—All track material used in repair of tracks except ballast and ties. This function includes expenses associated with unloading and installing Rail and Other Track Material.

(16) Repair and Maintenance, Ballast—Gravel, stone, slag, cinders, sand, and like material.

(19) Repair and Maintenance, Signals and Interlockers—Signals and interlockers and related apparatus governing train movement.

(20) Repair and Maintenance, Communications Systems—Telephone, telegraph, radio, radar, inductive train communication, and other communication systems, including terminal equipment.

(21) Repair and Maintenance, Power Systems—Power plants, substations, transmission and distribution systems.

(22) Repair and Maintenance, Highway Grade Crossings—Highway grade crossing signals, gates, and related apparatus.

(23) Repair and Maintenance, Station and Office Buildings—Station and office buildings, fixtures, appurtenances, and grounds.

(24) Repair and Maintenance, Shop Buildings—Locomotives—Shops and buildings, fixtures, appurtenances, and grounds, used for the repair, maintenance and servicing of locomotives.

(25) Repair and Maintenance, Shop Buildings—Freight Cars—Shops and buildings, fixtures, appurtenances, and grounds, used for the repair, maintenance, and servicing of freight cars.

(26) Repair and Maintenance, Shop Buildings—Other—Shops and buildings, fixtures, appurtenances, and grounds, used for the repair, maintenance, and servicing of revenue service equipment other than locomotives and freight cars; roadway machines; work equipment and the like.

(27) Repair and Maintenance, Locomotive Servicing Facilities—Fuel and water stations, fixtures, appurtenances, and grounds.

(28) Repair and Maintenance, Miscellaneous Buildings and Structures. All permanent buildings and structures, and their fixtures, appurtenances, and grounds, not otherwise provided for. (Includes storehouses.)

(29) Repair and Maintenance, Coal Terminals—Wharves, docks, and other loading or unloading facilities for handling coal, including conveyors, machinery and fixtures.

(30) Repair and Maintenance, Ore Terminal—Wharves, docks, and other loading or unloading facilities for handling ores and other bulk mineral commodities, including conveyors, machinery and fixtures.

(31) Repair and Maintenance, TOFC/COFC—Terminals—TOFC/COFC terminal structures, fixtures, machinery and appurtenances, used for transfer of trailers and containers.

(32) Repair and Maintenance, Other Marine Terminals—Marine terminal structures, fixtures, machinery and appurtenances not otherwise provided for.

(33) Repair and Maintenance, Motor Vehicle Loading and Distribution Facilities—Buildings, structures, fixtures, machinery and appurtenances used for receipt, loading, unloading, and distribution of motor vehicles.

(35) Repair and Maintenance Facilities for Other Specialized Services Operations—Buildings, structures, machinery, fixtures and grounds, used as part or whole of a revenue-producing specialized service.

(36) Repair and Maintenance, Roadway Machines—Machines and equipment used for repairs of roadway and structures.

(37) Small tools and Supplies—Cost of small tools and supplies used in repair and maintenances.

(38) Snow Removal—Removal of snow and ice; plow and flange service; setting up, taking down and storing fences. If the amount of labor expense is not substantial, the wages of those employees who perform snow removal duties may be included in the appropriate expense accounts for the duties they are normally assigned.

(39) Dismantling Retired Property—Dismantling retired road property when the property is not to be replaced through normal maintenance, addition or betterment.

(48) Road Property Damaged—Repair of roadway property and structures, used in revenue service, and all equipment not used in revenue service, when damage is caused by derailments, collision, fire, explosions, sabotage, other casualties, and excluding damage resulting through normal operations or use; such as part failures, overloads, overheating, short circuits and similar events. Part failures through normal operations are those where the resulting damage is restricted to the unit of road property which experienced the failure. When the damage extends to other units of road property, related expenses shall be charged to this function.

(3) Other Function.

(99) Other—All expenses not properly includable in the above functions.

(b) Functions Related to the Equipment Activity

(1) Administrative Functions.

(01) Administration, General—General administration and supervision of central, regional, and divisional repair and maintenance functions. Included are:

- General engineering and design.
- Valuation engineering for maintenance and improvements.
- Planning and supervision of repair and maintenance of equipment.
- Budget preparation, clerical support, and similar functions.

(2) Repair and Maintenance Functions—These functions include:

- Repair and maintenance work on equipment including gang foreman, shop foreman, and other supervisors with direct authority over workers; all higher levels of supervision are included in the Administrative function.
- Store expense and shop expense.

(39) Dismantling Retired Property—Dismantling retired equipment when the property is not to be replaced through normal maintenance, addition or betterment.

(40) [Reserved]

(41) Repair and Maintenance, Locomotives—Repair of locomotives in revenue service.

(42) Repair and Maintenance, Freight Cars—Repair of freight cars and attached motor equipment in revenue service.

(43) Repair and Maintenance, Trucks, Trailers, Containers in Revenue Service—Repair, inspection, and lubrication of trucks, trailers and containers in revenue service.

(44) Repair and Maintenance, Floating Equipment in Revenue Service—Floating equipment including appurtenances.

(45) Repair and Maintenance, Passenger and Other Revenue Equipment—Repair, inspection and lubrication of passenger train cars and attached motor equipment, and other equipment used in revenue service.

(46) Repair and Maintenance, Computer Systems and Word Processing Systems—Computers and attached peripheral equipment; data recording and punch-card processing equipment; word processing equipment.

(47) Repair and Maintenance, Work and Other Non-Revenue Equipment—Rail and floating work equipment and appurtenances, and all other equipment not used in revenue service and not provided for elsewhere.

(48) Equipment Damaged—Repair of locomotives, freight cars, other equipment used in revenue service, and all equipment not used in revenue service, when damage is caused by derailment, collision, fire, explosions, sabotage, washouts, or other casualties, and excluding damage resulting through normal operations or use, such as part failures, overloads, overheating, short circuits and the like. Part failures through normal operations are those where the resulting damage is restricted to the equipment that experienced the failure. When the damage extends to other units of equipment, related repairs shall be charged to this function.

(49) Repair and Maintenance, Shop Machinery—Locomotives—Repair of shop machinery and other apparatus, including special foundations used for the repair, maintenance and servicing of locomotives.

(50) Repair and Maintenance, Shop Machinery—Freight Cars—Repair of shop machinery and other apparatus, including special foundations for the repair, maintenance and servicing of freight cars.

(51) Repair and Maintenance, Shop Machinery—Other Equipment—Repair of shop machinery and other apparatus, including special foundations for the repair, maintenance and servicing of other equipment.

(3) Other Function.

(99) Other—All equipment expenses not properly includable in the above functions.

(C) Functions Related to the Transportation Activity

(1) Administrative Function.

(01) Administration, General—General administration and supervision of central, regional, and divisional operational functions. Included are:

- Planning and supervision of train, yard, common, specialized services and support operations.
- Budget preparation, clerical support, and similar functions.

[Not applicable to the Train and Yard Common Subactivity.]

(2) Operations Functions.

(56) Engine Crews—Operation of trains in line-haul revenue service by enginemen, including crew meals, lodging, deadheading and other expenses.

(57) Train Crews—Operation of trains in line-haul revenue service by trainmen, including crew meals, lodging, deadheading, and other expenses.

(58) Dispatching Trains—Costs include dispatchers, supporting staff, train order stations and operators, office and supplies expense.

(59) Operating Switches, Signals, Interlockers, Retarders, Humps—Operators, switch tenders, supplies, etc.

(60) Operating Drawbridges—Engineers, tenders, watchmen, supplies, etc.

(61) Highway Crossing Protection—Gatekeepers, flagmen, lighting, supplies, etc.

(62) Train Inspection and Lubrication—Inspection and lubrication of trains (cars and locomotives), including minor repairs made by inspectors. This includes the inspection of train locomotives when indistinguishable from the inspection and lubrication of train cars.

(63) Clearing Wrecks—Removal of equipment, freight or other goods, and property of others damaged in wrecks; note that repair of wreck damage caused to roadway property and equipment is classified as function Code 48—Road Property and Equipment Damaged.

(64) Switch Crews—Operation of trains and locomotives in yard and terminal revenue switching service by enginemen and trainmen, including associated expenses.

(65) Controlling Operations—Directing the operations of yard and terminal interchange and classification service, including office and supplies expense.

(66) Yard and Terminal Clerical—Clerical work in support of the operation of yard and terminal switching and classification service, including office and supplies expense.

(67) Locomotive Fuel—Cost of locomotive fuel used in all service, including the receipt, storage, and dispensing of the fuel.

(68) Electric Power Purchased/Produced for Motive Power—Purchase cost and cost of producing electric power for use by electrically-powered motive equipment in all service.

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(69) Servicing Locomotives—Preparing locomotives for switching service in yards and for train service, including moving locomotives around engine yards. This includes the inspection and lubrication of yard locomotives and may include the inspection and lubrication of train locomotives where distinguishable from the inspection and lubrication of train cars.

(70) Cleaning Car Interiors—Cleaning and preparing car interiors for revenue service, including minor repairs made by car cleaners. This includes payment for cleaning cars due to spoilage of perishable shipments.

(71) Adjusting and Transferring Loads—Transferring, picking up, straightening, and reloading freight in the ordinary course of transportation.

(72) Car Loading Devices and Grain Doors—Servicing car loading devices and placing and removing grain doors.

(73) Pickup & Delivery, Marine Line Haul & Rail Substitute Service—Operation of trucks, floating equipment, and all other specialized equipment providing line haul movement for revenue including TOFC/COFC pick-up and delivery.

(74) Loading & Unloading and Local Marine—All other specialized services in the transportation activity such as TOFC/COFC loading, unloading, and tie down; coal and ore loading and unloading; and other similar functions.

(75) Protective Services—Inspecting, servicing, cleaning, and fueling protective equipment and devices.

(76) Clerical and Accounting Employees—Direct administrative support to the Transportation Activity, including receiving and processing customer orders, requesting cars, preparing waybills, rating shipments, billing customers, collecting customer receivables in the ordinary course of business, billing and recording demurrage, reporting interchanges, reporting advances, and the initial summarization and reporting of input data.

(77) Communications Systems Operation—Cost of operating communications systems; when such operations are an integral part of other functions, only specifically identifiable costs of operating communications systems are to be allocated to this function.

(78) Loss and Damage Claims Processing—Receipt, investigation, other handling, and adjustment and settlement of claims for loss or damage of freight or other goods carried in revenue service. Does not include handling claims for personal injury or for loss or damage of other property.

(3) Other Function.

(99) Other—All transportation expenses not properly includable in the above functions.

(d) Functions Related to the General and Administration Activity

(1) Administrative Function.

(01) Administration, General—General administration and supervision of central, regional, and divisional general functions. Included are:

- Planning and supervision of general and administrative functions.
- Budget preparation, clerical support, and similar functions. It includes the overall responsibility for two or more of the General and Administrative functions listed below or the responsibility that expands to more than one activity.

(2) General Functions.

(86) Accounting, Auditing, Finance—General and corporate accounting, auditing by internal auditors and outside accountants, treasury, tax accounting and returns, financial reporting, corporate planning related to investment decisions and budgeting.

(87) Management Services and Data and Word Processing—Systems planning and design, programming, computer operations, data control, key entry of data, and related activities; This includes operating expenses associated with a particular computer system or word processing equipment that is dedicated to more than one activity. This does not include expenses associated with computer systems or word processing equipment dedicated exclusively to the Way and Structure, Equipment or Transportation Activity; these expenses shall be charged to the appropriate subactivity/function.

(88) Marketing—Market planning and analysis, traffic analysis, costing, pricing, and related activities.

(89) Sales—Traffic solicitation and related sales efforts.

(90) Industrial Development—Efforts to locate industries on real estate accessible to the railroad's lines for the purpose of creating future revenues.

(91) Personnel and Labor Relations—Efforts to attract and retain employees, handle fringe benefit plans, monitor and negotiate labor contracts, maintain employee data and records, coordinate training programs, handle grievances, handle employee transfers, operate job safety and equal opportunity programs, and related activities.

(92) Legal and Secretarial—Legal functions handled by attorneys and supporting staff; including lawsuits, injury and damage claims, commerce matters, and similar functions; corporate secretarial functions involving shareholder records, corporate minutes, stock certificates, and similar items.

(93) Public Relations and Advertising—Public relations activities with governmental bodies, shippers, and the general public; advertising in the media, booklets, publications; open houses and tours; and similar activities.

(94) Research and Development—Research into the use of methods, procedures, practices, equipment, machinery tools, and plant, and in determining and measuring the impact of factors or costs not previously known, with the intention of finding ways to improve maintenance, operations, administration, rates, productivity, environmental impact, and similar items. Does not include specific studies or development efforts for which an implementation decision has already been made.

(3) Other Function.

(99) Other—All general and administration expenses not properly includable in the above functions.

13. Under Income Accounts:

a. Revise the heading and entire text of Account 501, Railway Operating Revenues, to read as follows:

501 Railway operating revenues.

This account is a summarization of Railway Operating Revenue Accounts 101 to 122. It excludes transfers from governmental authorities except when the transfer payment is for specific services for transporting property or persons by rail line other than commuter operations and local rail service subsidies granted under authority of the Railroad Revitalization and Regulatory Reform Act of 1976 [See Instruction 1-15(e)(2)].

b. Revise Notes A, B and C to Account 510, Miscellaneous Rent Income, to read as follows:

510 Miscellaneous rent income.

* * * * *

Note A.—Taxes on property the rent of which is creditable to this account shall be charged to account 64-61-00, Property Taxes.

Note B.—The rent from property carried in account 737, Property used in other than carrier operations, shall not be included in this account. Such rents shall be included in account 506, Revenues from property used in other than carrier operations.

Note C.—Rent and other income from real estate acquired for new lines or for additions and betterments shall be credited to the appropriate road and equipment accounts until the completion or coming into service of the property.

* * * * *

c. Revise paragraph (a) and Note A of Account 512, Separately Operated Properties; Profit, to read as follows:

512 Separately operated properties; profit.

(a) This account shall include amounts earned under the terms of agreements or contracts whereby the net income resulting from the operation by others or properties of other companies having a separate corporate existence is to be paid, in whole or in part, to the accounting company.

* * * * *

Note A.—The amount payable by the operating company shall be charged by it to account 550, Income Transferred under Contracts and Agreements.

* * * * *

d. Revise the heading and text of paragraph (a) of Account 518, Contributions from Other Companies, to read as follows:

518 Reimbursement received under contracts and agreements.

(a) This account shall include amounts received or receivable from other companies or individuals, representing the whole or a part of the net loss of the accounting company, when under the terms of agreements or contract, no obligation for subsequent reimbursement is incurred.

* * * * *

e. Revise Account 534, Expenses of Property Used in Other than Carrier Operations, to read as follows:

534 Expenses of property used in other than carrier operations.

This account shall include depreciation, rent, taxes, and other expenses incurred on property used in other than carrier operations.

Note.—If property for which rent expense is includable in this account is sublet, the rent from the sublease shall be included in account 506, Revenues from property used in other than carrier operations.

f. Remove Account 535, Taxes on Property Used in Other than Carrier Operations, and Account 543, Miscellaneous Rent Expense.

g. Revise paragraph (a) and Note A of Account 545, Separately Operated Properties; Loss, to read as follows:

545 Separately operated properties; loss.

(a) This account shall include amounts payable under the terms of agreements or contracts whereby the net loss resulting from the operation by others of properties of other companies having a separate corporate existence is to be paid, in whole or in part, by the accounting company.

* * * * *

Note A.—The amounts receivable by the operating company shall be credited by it to account 518, Reimbursements received under contracts and agreements.

* * * * *

h. Revise the text preceding the notes of Account 546, Interest on funded debt, to read as follows:

546 Interest on funded debt.

This account shall include the current accruals of interest on all classes of long-term debt, the principal of which is includable in accounts 765, Funded debt unmatured; 766, Equipment obligations; 767, Receivers' and trustees' securities; 768, Debt in default; and 769, Accounts Payable; affiliated companies.

* * * * *

i. Revise the first sentence of Account 547, Interest on unfunded debt, to read as follows:

547 Interest on unfunded debt.

This account shall include interest accrued on unfunded debt, such as short-term notes payable on demand or having maturity dates of one year or less from dates of issue, and open accounts, including discount and expense on demand and short-term loans, interest on receipts outstanding for installments paid on capital stock, interest on deferred payments for public improvements, interest on tax deficiencies, overcharge claims and court awards, and other analogous items. * * *

* * * * *

j. Revise the heading of Account 550, Income transferred to other companies, to read as follows:

550 Income transferred under contracts and agreements.

* * * * *

k. Revise paragraph (a) of Account 551, Miscellaneous income charges, to read as follows:

551 Miscellaneous income charges.

(a) This account shall include items, not otherwise provided for in the other income accounts. This includes:

Income tax on the interest on the accounting company's funded debt when these taxes are assumed by the company.

Payments of old accounts previously written off.

Penalties and fines for violation of the Interstate Commerce Act or other federal and state laws.

Loss on sale of securities carried as temporary cash investments.

Loss on sale of land used for transportation purposes and of noncarrier property.

Loss on sale of securities acquired for investment purposes, and charges to write down the ledger value of such securities because of impairment in their value.

Loss from company bonds reacquired.

Increases in the valuation allowance (contained within account 702) for the marketable equity securities included in current assets.

* * * * *

l. Revise paragraph (a) of Account 557, Provison for Deferred Taxes, to read as follows:

557 Provision for deferred taxes.

(a) This account shall include the net tax effect of all material timing differences [See definition 20(e)] originating and reversing in the current accounting period and the future tax benefits of loss carryforwards recognized in accordance with Instruction 1-10.

* * * * *

14. Under General Balance Sheet Accounts Explanations.

a. Revise the heading of Account 792, Liability for Conversion of Capital Stock, and add a sentence to the end of the text to read as follows:

792 Capital stock to be distributed.

* * * This account shall also include stock dividends declared that remain undistributed at the end of an accounting period.

[FR Doc. 87-2624 Filed 2-10-87; 8:45 am]
BILLING CODE 7035-01-M

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Proposed Rules

Federal Register
Vol. 52, No. 28
Wednesday, February 11, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AWP-40]

Proposed Amendment to Vandenberg Air Force Base, CA, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the description of the Vandenberg AFB, California, control zone and include portions within R-2516 which are presently excluded. This action will provide controlled airspace at Vandenberg AFB for conducting Special Visual Flight Rules (SVFR) flight operations when visibility is less than 3 statute miles.

DATES: Comments must be received on or before March 23, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP-530, Docket No. 86-AWP-40, Air Traffic Division, P.O. Box 90027, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace and Procedures Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90260, telephone (213) 297-1648.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWP-40." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace and Procedures Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90260, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of the NPRM. Person interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the description of the Vandenberg AFB, California, control zone and include portions within R-2516 which are presently excluded. This action will provide controlled airspace for SVFR flight operations when visibility is less than 3 statute miles. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.171 is amended as follows:

Vandenberg AFB, CA [Amended]

Remove "excluding that portion within R-2516" from the control zone description.

Issued in Los Angeles, California, on January 29, 1987.

Wayne C. Newcomb,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 87-2813 Filed 2-10-87; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

23 CFR Part 645

[FHWA Docket No. 86-15, Notice No. 2]

Accommodation of Utilities; Longitudinal Utility Use of Freeway Right-of-Way

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period.

SUMMARY: The FHWA issued a notice of proposed rulemaking (FHWA Docket No. 86-15, 51 FR 45479, December 19, 1986, FR Doc. 86-28569) which proposed to revise the accommodation of utility facilities and private lines on the right-of-way of Federal-aid and direct Federal highway projects. The proposal seeks to clarify requirements regarding utility use of Federal-aid highway right-of-way and modify the conditions under which certain types of utilities, such as fiber optics, may be located longitudinally on Federal-aid freeways (Interstate Highways). All comments to the docket were to be received on or before February 17, 1987. The comment period is being extended to March 17, 1987. This extension will provide more time for the public to prepare responses to this docket.

DATE: Written comments must be received on or before March 17, 1987.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 86-15, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: James A. Carney, Office of Engineering, (202) 366-4652, or Michael J. Laska, Office of the Chief Counsel, (202) 366-1383, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e. t., Monday through Friday, except legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: February 4, 1987.

Robert E. Farris,

Deputy Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 87-2877 Filed 2-10-87; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 968

[Docket No. R-87-1308; FR-2262]

Indian Housing Program and Comprehensive Improvement Assistance Program—Cost Containment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of proposed rulemaking.

SUMMARY: Elsewhere in today's issue of the **Federal Register**, HUD is publishing a statement announcing cost containment policies for the Indian housing program and the Comprehensive Improvement Assistance Program. These policies are to be applied as a replacement for the use of recently repealed statutory prototype provisions. This notice of proposed rulemaking references that policy statement, states HUD's intention to use the substance of the policy statement as the basis for a final rule amending Parts 905 and 968, and invites public comment on the announced cost containment policies. A related procedure is being used to develop revised cost containment regulations for public housing development projects.

DATE: Comments must be submitted on or before April 13, 1987.

ADDRESS: Comments on proposal: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment received will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Nancy Chisholm, Director, Policy Staff, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-6713. (This is not a toll-free number.).

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1986 (Pub. L. 99-160, approved November 25, 1985) repealed section 6(b) of the United States Housing Act of 1937. Section 6(b) required the Secretary to establish prototype costs for the development of public and Indian housing. These prototype costs were used to limit costs associated with public and Indian housing development and also for modernization.

Elsewhere in today's **Federal Register**, HUD is publishing a statement announcing cost containment policies for the Indian Housing program and the Comprehensive Improvement Assistance Program (CIAP). These policies are to be applied as a replacement for the use of statutory prototype provisions. The policy statement announces that HUD will develop cost standards and will use these standards to limit total development costs for Indian housing projects. The policy statement also describes procedures under which an Indian Housing Authority may request HUD to revise the cost standards for an entire market area (or establish a new market area within an existing market area), and circumstances under which the Department will permit a specific project to exceed the total development cost limitation computed under the cost standards. Finally, the policy statement announces that the Department will use the standards to determine the financial feasibility of modernizing Indian housing projects and will use the previously announced public housing guidelines to determine the financial feasibility of modernizing public housing projects under CIAP (see 51 FR 33818).

HUD intends to use today's policy statement as the basis for a final rule amending the cost containment provisions contained in 24 CFR Parts 905 and 968. For this reason, HUD is inviting public comment on the policy statement, so that the final rule on the subject matter will have the benefit of public participation. This notice applies to Indian housing development projects and CIAP. (A related procedure is being used to develop cost containment regulations for public housing development projects. See 51 FR 33904.)

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the

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National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, at the address listed above.

This proposal does not constitute a "major rule", as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981. Analysis of the proposal indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned hereby certifies that this proposal does not have a significant economic impact on a substantial number of small entities. Since the proposal is intended to have the effect of containing development costs for Indian housing and CIAP projects, it may have an economic impact on builders or developers of such housing, some of whom may constitute small entities, but it is not believed that the number of small entities affected will be substantial.

This proceeding was listed as item 962 in the Department's Semiannual Agenda of Regulations published October 27, 1986 (51 FR 38424, 38468) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

The information collection requirements contained in this proposal have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The OMB control number is 2577–0101.

The Catalog of Federal Domestic Assistance Program numbers and titles are 14.850, Public and Indian Housing, 14.851, Low-Income Housing Homeownership Opportunities for Low Income Families and 14.852, Public Housing—Comprehensive Improvement Assistance Program.

List of Subjects

24 CFR Part 905

Grant program: housing and community development, Loan programs: housing and community development, Low and moderate income housing, Public housing, Homeownership.

24 CFR Part 968

Loan programs: housing and community development, Public housing, Reporting and recordkeeping requirements, Grant programs: housing and community development, Indians.

Authority: United States Housing Act of 1937 (42 U.S.C. 1437–1437q); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: October 6, 1986.

J. Michael Dorsey,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 87–2854 Filed 2–10–87; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 620]

Stags Leap District Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in Napa County, California, to be known as "Stags Leap District." This proposal is the result of a petition submitted by the Stags Leap District Appellation Committee. ATF feels that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers identify the wines they may purchase.

DATE: Written comments must be received by April 13, 1987.

ADDRESS: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385, (Notice No. 620).

Copies of the petition, the proposed regulations, the appropriate map, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Room 4406, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

Petition

ATF has received a petition proposing an area in Napa County, California, as a viticultural area to be known as "Stags Leap District." The proposed area, located east of the city of Yountville and five to eight miles north of the city of Napa, consists of approximately 2,550 acres. It includes eight bonded wineries and approximately 30 vineyards, with approximately 1,250 acres of grapes. If approved, Stags Leap District would be the third viticultural area within the Napa Valley viticultural area, along with Los Carneros and Howell Mountain.

Name

Evidence that the name of the proposed area is locally and/or nationally known as referring to the area specified in the petition includes:

(a) Copies of recent wine labels (1979 Pine Ridge Chardonnay, 1980 Pine Ridge Merlot, 1979 Steltzner Vineyards Cabernet Sauvignon, 1980 Markham Merlot), each of which indicates the grapes as having come from the Stags Leap District.

(b) Excerpts from articles appearing in *Trumpetvine Wines, San Francisco Chronicle, Academie Du Vin, San Francisco Examiner,* and *Ashbury Market,* which consistently make references to the proposed "Stags Leap District."

(c) Articles showing that the term "Stags Leap" was in use since Horace and Minnie Chase first used the phrase in reference to their summer manor house, constructed in 1890, and their winery, built in 1893.

(d) U.S.G.S. field report dated 1951 using the name "Stags Leap" to indicate the mountains and mountain formations along the eastern boundary of the proposed viticultural area.

(e) A shipping label dating from the mid-1920's identifying table grapes produced and shipped east under the name "STAG LEAP."

(f) Description of a U.S. Post Office branch called "Stag's Leap" which was located in the basement of Stag's Leap Manor (referred to in paragraph c above), from 1927 to 1944.

Boundaries

Evidence that the boundaries of the proposed area are as specified in the petition includes the following:

(a) In the April/May (1984) issue of *Friends of Wine,* the proposed viticultural area is described as being "east of Yountville, at the Silverado Trail," and includes Stag's Leap Wine Cellars, Shafer Vineyards, Pine Ridge, and Silverado Vineyards. The locations of these vineyards and wineries closely approximate the parameters of the proposed Stags Leap District viticultural area.

(b) Similar references to the above wineries and vineyards as being in the proposed viticultural area are found in Alexis Lichine's *New Encyclopedia of Wines & Spirits* (1984). In addition, reference is made to Clos du Val winery as being within the proposed viticultural area. This winery is located just inside the southern boundary of the proposed Stags Leap District area.

(c) In the March 9, 1983 issue of the *S.F. Examiner,* the proposed viticultural area is described as being on the east side of the Napa Valley where, "[T]wo famous wines from this region are Stags' Leap Wine Cellars . . . and Clos du Val. . . . Dick Steltzner's vineyard, . . . is here. Robert Mondavi has vineyards here. You should also be hearing about Silverado Cellars in coming years."

(d) Further references to Silverado Vineyards as being included in the proposed viticultural area can be found in the January 1–15, 1982 issue of *The Wine Spectator,* where the winery, then under construction, was described as being "located . . . in the Stags' Leap area."

Collectively taken, this evidence describes the proposed viticultural area as being south of the Yountville Cross Road, 4 to 6 miles north of the city of Napa, bounded on the west by the Napa River, and on the east by the Mayacamas Mountains (also called "Stags Leap").

Geography

Evidence that the geographical features of the proposed viticultural area are different from the surrounding areas includes the following:

(a) The combination of low hills and mountains, west or southwest facing slopes, and the resulting westerly to southerly water drainage within the proposed area creates a climatic zone that is different from the surrounding areas of the Napa Valley.

(b) Throughout the proposed viticultural area Bale clay loam is the predominant soil, common from north to south. Conversely, west of the Napa River, Cole silt loam predominates, while the soils to the east of the proposed area consist of rock out-crops.

(c) The topography and soils of the proposed area also influence drainage and water-holding capacity. Generally speaking, the soils west of the Napa River are deeper, richer and hold more water than those within the proposed Stags Leap District.

(d) With respect to water-holding capacity, Bale clay loam (soil within the proposed viticultural area) contains only 0.08–0.11 inches of available water per inch of soil, while the Cole silt loam contains 0.16–0.21 inches of water per inch of soil, or approximately double the water-holding capacity.

(e) The low hills and west-facing exposure contribute to air flow patterns and temperature profiles that result in days that are warmer earlier and nights that are cooler than the surrounding areas. The proximity of the proposed viticultural area to San Pablo Bay (located south of the proposed area), and its prevailing winds, moderated by the hills, also influences the climate in the proposed Stags Leap District.

(f) The configuration of the proposed viticultural area favors an inflow of cool air from San Pablo Bay. The air then exits to the mountain elevations to the north, or moves to the main valley floor through the narrow passes at the northern boundary of the proposed Stags Leap District.

(g) Due to the hilliness of the proposed area, fog and low clouds clear earlier in this area when compared to the lower elevations to the west of the Napa River.

Boundaries of the Area

The boundaries of the proposed Stags Leap District viticultural area may be found on one United States Geological Survey (U.S.G.S.) map of the 7.5 minute series, titled Yountville, California.

The boundaries, as referred to in the petition, are described in § 9.117.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this notice of proposed rulemaking because the proposal is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities; nor (2) to impose, nor otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact nor compliance burdens on a substantial number of small entities.

Compliance With Executive Order 12291

It has been determined that this proposed rulemaking is not classified as a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-

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based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation—Written Comments

ATF requests comments from all interested persons concerning this proposed viticultural area. This document proposes possible boundaries for the Stags Leap District viticultural area. However, comments concerning other possible boundaries for this viticultural area will be given consideration.

Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing, to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

List of Subjects in 27 CFR Part 9

Administrative Practice and Procedure, Viticultural Areas, Consumer Protection, and Wine.

Drafting Information

The principal author of this document is James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

PART 9—AMERICAN VITICULTURAL AREAS

Accordingly, the Director proposes the amendment of 27 CFR Part 9 as follows:

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.117 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.117 Stags Leap District.

Par. 3. Subpart C of 27 CFR Part 9 is amended by adding § 9.117 to read as follows:

§ 9.117 Stags Leap District.

(a) *Name.* The name of the viticultural area described in this section is "Stags Leap District."

(b) *Approved map.* The appropriate map for determining the boundaries of the Stags Leap District viticultural area is one U.S.G.S. topographic map in the 7.5 minute series titled "Yountville, Calif.," 1951 (photorevised 1968).

(c) *Boundaries.* The proposed Stags Leap District viticultural area is located in Napa County, California, within the Napa Valley viticultural area. The exact boundaries of the proposed area, based on landmarks and points of reference on the approved map, are as follows:

(1) Commencing at the intersection of the intermittent stream with the Silverado Trail at the 60 foot contour line in T6N/R4W, approximately 7 miles north of the city of Napa.

(2) Then southwest in a straight line, approximately 900 feet, to the Napa River.

(3) Then in a northwest direction, at an angle of 212 degrees, along the Napa River until it intersects the intermittent stream in T7N/R4W, approximately 1,500 feet southeast of the secondary highway, Grant Body (Yountville Cross Rd.).

(4) Then northeast in a straight line to the summit of the adjacent hill, approximately 330 feet in elevation, west of the Silverado Trail, in T7N/R4W.

(5) Then northeast in a straight line to the summit of the adjacent hill, approximately 310 feet in elevation.

(6) Then northeast in a straight line to the summit of the adjacent hill, approximately 210 feet in elevation.

(7) Then southeast in a straight line, across the Silverado Trail, to the summit of the adjacent hill, approximately 290 feet in elevation, located in the southwest corner of Section 29 in T7N/R4W.

(8) Then east in a straight line to the summit of the adjacent hill, approximately 270 feet in elevation.

(9) Then northeast in a straight line, at an angle of 47 degrees, to the 400 foot contour line in Section 29 of T7N/R4W.

(10) Then in a generally southeast direction, following the 400 foot contour line through Sections 32, 33, 4, and 3, until it intersects the intermittent stream in the southwest corner of Section 3 in T6N/R4W.

(11) Then in a generally southwest direction along that intermittent stream to the beginning point, at the intersection with the Silverado Trail.

Signed: January 9, 1987.

Stephen E. Higgins,

Director.

Approved: January 15, 1987.

John P. Simpson,

Deputy Assistant Secretary, (Regulatory, Trade and Tariff Enforcement).

[FR Doc. 87-2748 Filed 2-10-87; 8:45 am]

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ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1190

Minimum Guidelines and Requirements for Accessible Design

AGENCY: United States Architectural and Transportation Barriers Compliance Board (ATBCB).

ACTION: Notice of proposed rulemaking.

SUMMARY: Public comment is invited on a proposal that would amend the *Minimum Guidelines and Requirements for Accessible Design* (MGRAD). MGRAD is issued by the ATBCB pursuant to section 502(b)(7) of the Rehabilitation Act of 1973, to establish minimum guidelines and requirements for standards issued by the four standard-setting agencies under the Architectural Barriers Act of 1968. First, the amendment would add requirements for standards to be applied to leased facilities at the time of leasing. Due to litigation which was pending when the MGRAD was adopted and which was concluded in early 1986, the ATBCB had deferred the adoption of MGRAD provisions on this subject. Second, the amendment would add an advisory paragraph concerning detectable tactile surface treatments that may be used as warnings for visually impaired people. Because information on detectable tactile surface treatments was limited at the time MGRAD was published in 1982, the section on detectable warnings was reserved. Research has now been completed on this subject and the ATBCB has made a determination based on these findings and other information.

DATE: Written comments must be submitted on or before April 13, 1987.

ADDRESS: Written comments should be addressed to the General Counsel, Architectural and Transportation Barriers Compliance Board, 330 C Street, SW., Room 1010, Washington, DC 20202. Comments received will be available for public inspection at the above address from 9 a.m. to 5 p.m., Monday through Friday. This proposed rule is available on cassette at the above address for persons with visual impairments.

FOR FURTHER INFORMATION CONTACT: Debra Fischer, ATBCB, 330 C Street, SW., Room 1010, Washington, DC 20202, (202) 245-1801 (v/TDD). This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background of Proposed Rule

The Architectural and Transportation Barriers Compliance Board (ATBCB) was established by section 502 of the Rehabilitation Act of 1972, as amended (Pub. L. 93-112, 29 U.S.C. 792) to insure compliance with standards prescribed pursuant to the Architectural Barriers Act of 1968, as amended (Pub. L. 90-480, 42 U.S.C. 4151 *et. seq.*) (the Act). The Act is intended to insure that certain buildings financed with Federal funds are designed, constructed, and altered in accordance with standards issued by four Federal agencies to provide ready access and use of such buildings to physically handicapped people. The four agencies authorized to issue standards for all design, construction and alternation subject to the Act are the Department of Defense for its buildings and facilities; the Department of Housing and Urban Development for residential structures; the U.S. Postal Service for its buildings and facilities; and the General Services Administration for all other buildings and facilities.

A 1978 amendment to section 502 of the Rehabilitation Act, Pub L. 95-602, authorized the Board to issue minimum guidelines and requirements (MGRAD) for these standards. The MGRAD now in effect was published on August 20, 1982 (47 FR 33862), and are codified at 36 CFR Part 1190.

One MGRAD section, 36 CFR 1190.34, was originally intended to contain requirements for standards for leased buildings. It was reserved, however, in recognition of the fact that litigation was pending concerning whether the Act requires that buildings be made accessible at the time of leasing, or only as they are otherwise altered. That litigation was resolved by a court decision holding that the Architectural Barriers Act (the Act) requires that buildings be made accessible at the time of leasing. *Rose v. United States Postal Service*, 774 F.2d 1355 (9th Cir. 1985). In early 1986, a decision was made not to seek *certiorari* in the United States Supreme Court. One standard-issuing authority has issued interim standards intended to carry out the court's mandate. 51 FR 13122 (April 17, 1986). This proposal would add MGRAD provisions for the standards required by the court holding.

The ATBCB's staff was directed by the Board Chairperson at the Board's meeting on March 13, 1986, to begin development of MGRAD provisions for § 1190.34 and to work with the four standard-setting agencies in that effort. The resulting working group also included representatives of the Department of Justice, whose member of the Board is the chairperson of the Board's Standards Committee. The Standards Committee approved the resulting proposal at its meeting on November 18, 1986. The Board approved the proposal on November 19, 1986.

It also was determined at the time MGRAD was published that the section on tactile warnings (1190.190) would remain "Reserved." Upon review of the American Natural Standards Institute's *Specifications for Making Buildings and Facilities Accessible to and Usuable by Physically Handicapped People* (ANSI A117.1-1980) and other available information, the ATBCB found at that time that there was not sufficient research and/or field experience to support a Federal requirement. In addition, concerns were raised regarding the potential for detectable surfaces to become tripping hazards at locations such as the top of stairs. As a result, in 1984, the ATBCB sponsored research on detectable tactile surface treatments. This research was intended to provide the ATBCB with sufficient research data to establish, as needed, technical and usage requirements for surface treatments at stairs; curb ramps; edges of streets without curbs, guardrails, planted areas, or similar boundary elements; edges of pools; changes in direction; means of egress; and other locations as necessary. Specific research objectives included: (1) Determining a range of detectable materials; (2) determining the effectiveness of detectable surfaces as warning and as information devices; (3) examininig detectable tactile surfaces in terms of their acceptance and use; (4) determining if detectable tactile surface treatments have any adverse effects; and (5) recommending requirements for surface treatments.

The research report was completed in 1985, reviewed by the ATBCB, and circulated to interested parties for review and comment. The comments received, along with issues outlined in the research report, were then reviewed by a working group comprised of staff representatives from the four standard-setting agencies, the Department of Justice, and the ATBCB. The working group members reviewed the research findings on an issue-by-issue basis, discussing the research report recommendations, the comments received, the legal issues raised, and the *Uniform Federal Accessibility Standards* (UFAS) and ANSI provisions relating to the specific issues.

While the research report did outline specific issues and areas for possible provisions, the final report recommended against mandating Federal requirements for use of detectable surface treatments. The report raised questions about the usefulness of detectable surface treatments for wayfinding and orientation and questioned the cost, effectiveness, maintenance, and durability of the reviewed materials. The report also was unable to find a single universally detectable surface treatment that was appropriate for all applications, and suggested that mandating the use of specific materials through codes and standards may not be advisable.

Because of this the ATBCB is proposing to amend §§ 1190.190, 1190.70, and 1190.80 by deleting the word "reserved" in those sections of MGRAD and inserting at § 1190.190 a paragraph directing readers to the 1986 ANSI standard for specifications and to the ATBCB for technical assistance. The ATBCB notes two issues on which there is not full agreement with the ANSI standard. First, the ANSI standard requires detectable warning surfaces on curb ramps. Concerns have been raised about the difficulties which people with certain mobility impairments (particularly amputees or persons using braces) have in walking on the surface treatments typically used for detectable warnings. These problems are particularly acute when the treatments are applied to sloping surfaces such as curb cuts. An additional point is that the ANSI standard requires only a textural contrast for detectable warnings, while the ATBCB research indicated that other cues such as sound and resiliency are equally or more useful. This issue is discussed in a summary of the ATBCB research report that is available from the office identified in the proposed rule.

Should additional research and information on detectable tactile surface

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treatments become available, the Board will reconsider the issue as appropriate.

Provisions of the Proposed Rule

Leased Facilities

The proposed new provision at § 1190.34 would establish the following requirements:

Subsection (a). Section 1190.34(a) would require that any building or facility or portion thereof subject to the Architectural Barriers Act that is to be leased by the Federal Government, without having been designed or constructed in accordance with its specifications, must comply with the accessibility requirements of § 1190.31, New construction, or incorporate the features listed in § 1190.33(c), Alterations. It would further require, where buildings complying with both § 1190.31 and § 1190.33 were available, that reasonable preference be given to buildings offered for lease that met the requriements for new construction. This would recognize that other requirements such as location may override the marginal increase in accessibility that a building meeting new construction standards might afford, compared to a building meeting the requirements for alterations.

Subsection (b). Since facilities available for leasing by the Federal Government (other than those designed and constructed to meet Federal standards) are limited to the building stock in a given locality that is offered on the market at that particular time, there may be cases where no space is offered for lease that meets either § 1190.31 or § 1190.33. To cover those situations, § 1190.34(b) would establish minimum guidlines and requirements that would have to be met by making alterations to the space before it could be occupied. These requirements would assure that accessible routes were provided to those spaces where the principal functions are carried out and to certain building features—toilet rooms and parking areas—where such features are determined to be necessary for access to and use of the building or facility. Subsection (b) also specifies the minimum number of accessible toilet rooms that must be provided based on the number and locations of toilet rooms in the building or facility.

The requirements in subsection (b) are intended to permit leased space to have an accessible route to public activity areas, toilets, and other elements necessary for access to or use of the space different from the accessible route to other areas such as those used by employees. This subsection is not intended to require an accessible route between public use and other activity areas, where the different areas are intended to be kept separate.

This subsection, moreover, is not intended to require accessible toilet or other facilities to be provided where the intended use of the facility does not require such facilities to be provided for non-handicapped persons. In post offices, for example, where the work area and public retail areas are typically kept separate, and typically only the employees are provided with toilet facilities, this subsection would not require that the public be provided with either a toilet in the public areas or an accessible route to the employee toilet. An accessible route, however, would be required to the public area toilet, if there were a public toilet.

The rule applies to buildings, facilities, or portions thereof leased by the Federal Government. If a portion of a building, such as a third floor, is leased, the rule requires an accessible route from an accessible entrance to the building, not just from the entrance to the third floor.

Proposed § 1190.34(b)(2) would require that consideration be given to providing certain other accessible spaces or features complying with appropriate MGRAD sections. This is consistent with present 36 CFR § 1190.33(c)(6).

Subsections (c) and (d). Section 1190.34(c) would provide that when leased space is subsequently altered, the alterations would be required to compy with § 1190.33, Alterations. Similarly, paragraph 1190.34(d) would provide that, if leased space is increased by the construction of an addition which is also leased by the Federal Government, the addition would have to be constructed in accordance with § 1190.32, Additions.

Subsection (e). Section 1190.34(e) would permit space to be leased without further alteration if it meets past or present state or local access codes or the standards recommended by the American National Standards Institute (ANSI) A117.1, and provides features required by § 1190.34. The purpose of this provision is to allow buildings which already have the features needed for accessibility to the proposed area to be leased as is, even though the building may not comply in one respect or another with the present federally-prescribed way of achieving the goal of accessibility. There are many buildings of relatively recent construction which were privately designed and constructed in accordance with ANSI A117.1 or with state or local building codes, which are generally consistent with or identical to standards recommended by ANSI. Thus the rule permits the leasing of space that complies with other codes and that provides the accessibility features required by the rule, even though the space may not meet all of the technical requirements of this rule.

Subsection (e) would not, however, permit leasing inaccessible space in a building which otherwise met non-Federal accessibility requirements referenced in this section. For example, if a building met ANSI requirements by having only one of several entrances accessible, and there were no accessible route from the accessible entrance to the portion of the building available for leasing, leasing the inaccessible portion of the building would not be consistent with this provision.

Subsection (f). This subsection would provide that once leased space is accessible or made accessible under these provisions, no new accessibility alterations will be required, except where alterations or additions covered by § 1190.34(c) and (d) are made.

Subsection (g). Exceptions are specified in § 1190.34(g). The first exception would be for cases where the space is necessary for officials servicing natural or human-made disasters. In such situations, space generally must be leased on an emergency basis, without the opportunity for planning. The second exception would be for space leased for use on an intermittent basis. This would allow leasing of special use spaces, such as Department of Defense test sites that may be used as locations for test instruments and are visited only on an intermittent basis to check or service such instruments. The third exception would be for short-term leases not to exceed twelve months, which, for example, occasionally must be obtained quickly on short notice, when new leased space does not become available as planned (such as when a lease expires but unanticipated construction delays prevent the planned occupation of new space). This exception is intended to provide for continuity of government oprations until such time as space meeting Federal accessibility requirements does become available.

An additional exception would be provided for mechanical rooms and other spaces which normally are not frequented by the public or by handicapped employees of the occupant agency or which by nature of their use are not required to be accessible. This exception also is provided under § 1190.33, Alterations and § 1190.32, Additions.

Detectable Warnings

The proposed paragraph at § 1190.190 would direct readers to ANSI A117.1–1986, section 4.27, for specifications on detectable warnings and to the ATBCB for technical assistance. This approach encourages uniformity in recommended standards (by referencing the existing standards in ANSI) where the designer or builder chooses to provide detectable warnings, while not mandating that they be used. While the ATBCB is not fully satisfied with all of the provisions in ANSI, referencing ANSI *and* providing technical assistance gives the user sufficient information on which to make a design decision.

Other Information

This proposed rule has been submitted to the Office of Management and Budget and reviewed under procedures established in Executive Order 12291.

The ATBCB has determined, as required by the National Environmental Policy Act of 1969, 42 U.S.C. 4332, that the proposal will not have any significant impact on the environment. This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order 12291 on Federal Regulations. With regard to the proposed § 1190.34, both the United States Postal Service and the General Services Administration, the two agencies which issue standards covering the majority of the buildings currently leased by the Federal Government that are subject to the Architectural Barriers Act, already have standards governing accessibility of leased buildings which in their view impose costs substantially equivalent to any impact of the proposed rulemaking. The proposed § 1190.190 and related revisions do not impose any requirements.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the ATBCB certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 36 CFR Part 1190

Buildings, Handicapped, Leasing.

Accordingly, 36 CFR Part 1190 is proposed to be amended as set forth below.

By vote of the Board on November 19, 1986.

Charles Hauser,

Chairperson, Architectural and Transportation Barriers Compliance Board.

PART 1190—MINIMUM GUIDELINES AND REQUIREMENTS FOR ACCESSIBLE DESIGN

1. The authority citation for Part 1190 continues to read as follows:

Authority: Section 502(b) of the Rehabilitation Act of 1973 (29 U.S.C. 792(b)(7)), as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602), 92 Stat. 2979, and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506).

2. The table of contents is amended by (1) removing the word "[Reserved]" after § 1190.34 in Subpart C and inserting in its place the words, "Accessible buildings and facilities: Leased", and (2) removing "Tactile Warnings: [Reserved]." after § 1190.190 and adding "Detectable Warnings".

3. Section 1190.34 is added to read as follows:

§ 1190.34 Accessible buildings and facilities: Leased.

(a) Buildings or facilities or portions thereof leased by the Federal Government shall comply with § 1190.31, New construction, or shall incorporate the features listed in § 1190.33(c), Alterations. Where both types of buildings are available for leasing, reasonable preference must be given to buildings or facilities complying with § 1190.31, New construction.

(b) If space complying with paragraph (a) of this section is not available, space may be leased only if the space meets, or is altered to meet, the following conditions:

(1) At least one accessible route is provided from an accessible entrance complying with § 1190.120, Entrances, to those areas in which the principal activities for which the building or facility was leased are conducted. Separate accessible routes may be provided to areas serving different groups of users (e.g., the public, employees).

(2) The accessible route shall comply with the requirements of § 1190.50, Walks, floors, and accessible routes, and provide access to whatever accessible facilities are either required or provided, such as accessible toilets.

(i) Toilet facilities, to the extent required for the ready intended use of the building or facility, shall be provided as follows—

(A) Where more than one toilet for each sex is provided in a building or facility, at least one toilet facility which complies with § 1190.150, Toilet and bathing facilities, shall be provided for each sex on each floor having toilets; or

(B) In a building or facility providing only one toilet for each sex or where the only toilet provided is a unisex toilet, either one unisex toilet or one toilet for each sex complying with § 1190.150 shall be provided.

(ii) Parking facilities, if a parking area is included within the lease, shall be provided complying with § 1190.60, Parking and passenger loading zones, to the extent feasible.

(3) Where an agency determines that an area does not require the provision of toilets or parking facilities for the users or occupants of that area, nothing in this section shall be construed to require the provision of any such facilities.

(4) Consideration shall be given to providing accessible elements and space in each altered building or facility complying with:

(i) Section 1190.120 Drinking fountains;

(ii) Section 1190.160 Telephones;

(iii) Section 1190.180 Alarms;

(iv) Section 1190.220 Seating, tables, and work surfaces;

(v) Section 1190.230 Assembly areas; and

(vi) Section 1190.240 Storage.

(c) If space leased in accordance with the requirements of paragraph (a) or (b) of this section is subsequently altered, then the alterations shall comply with the requirements of § 1190.33, Alterations.

(d) If space leased in accordance with the requirements of paragraph (a) or (b) of this section is increased by construction of an addition, the addition shall comply with § 1190.32, Additions, to the extent it is leased by the Federal Government.

(e) If leased space at the time of leasing meets past or present state or local codes or the recommended standards of the American National Standards Institute (ANSI) A117.1 for accessibility to physically handicapped people, and provides the features required by this section, the space may be used as is or altered to comply with such technical requirements of paragraph (a) or (b) of this section.

(f) Once leased space in an existing building is accessible or is made accessible hereunder, no new accessibility alterations shall be required except where alterations or additions are made to the building which are covered by paragraphs (c) and (d) of this section.

(g) Exceptions. (1) If no space complying with paragraph (a) or (b) of this section is available for leasing, space as available may be leased without alterations:

(i) If the lease is necessary for officials servicing natural or human-made disasters;

(ii) If the space is used on an intermittent basis; or

(iii) If the occupancy of the space is for no more than twelve months.

(2) Mechanical rooms and other spaces which normally are not frequented by the public or handicapped

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employees of the occupant agency or which by nature of their use are not required to be accessible are excepted from this section.

§ 1190.70 [Amended]

4. Section 1190.70 is amended by removing paragraph (e)(9) including the note.

§ 1190.80 [Amended]

5. Section 1190.80 is amended by removing paragraph (f) including the note.

6. Section 1190.190 is revised to read as follows:

§ 1190.190 Detectable warnings.

Note.—The ATBCB has funded research in the area of detectable tactile surface treatments. The research findings were inconclusive and, therefore, recommended no mandatory requirements at this time. The ATBCB refers those needing technical specifications for detectable warnings to the American National Standards Institute A117.1–1986, *American National Standard for Buildings and Facilities—Accessibility and Usability for Physically Handicapped People*, Section 4.27.

Technical assistance materials are available from ATBCB, 330 C Street, SW., Room 1010–2101, Washington, DC 20202, (202) 472–2700 (voice or TDD).

[FR Doc. 87–1800 Filed 2–10–87; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6E3426/P410; FRL–3153–8]

Pesticide Tolerance for Iprodione

AGENCY: Office of Pesticides and Toxic Substances, Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes a tolerance for the combined residues of the fungicide iprodione, its isomer and metabolite in or on the raw agricultural commodity ginseng. The proposed regulation to establish a maximum permissible level for residues of the fungicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments, identified by the document control number [PP 6E3426/P410], should be received on or before March 13, 1987.

ADDRESS: By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1806).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, submitted pesticide petition 6E3426 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project and the Agricultural Experiment Stations of Kentucky and North Carolina.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide] its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide] and its metabolite 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboxamide in or on the raw agricultural commodity ginseng at 2 parts per million (ppm). In addition, IR–4 has submitted a related food additive petition 6H5504 proposing a regulation to permit residues of the fungicide in dried ginseng at 4 ppm, resulting from application to the growing crop.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A three-generation rat reproduction study with a no-observed-effect level (NOEL) of 500 ppm (25 milligram (mg)/kilogram (kg) of body weight per day), a reproductive lowest-effect level (LEL) of 2,000 ppm (100 mg/kg/day), and a systemic NOEL equal to or greater than 2,000 ppm (100 mg/kg/day, highest dose tested).

2. A rabbit teratology study in which the following doses were administered by gavage, 0, 100, 200 and 400 mg/kg/day resulting in a teratogenic NOEL equal to or greater than 400 mg/kg/day (highest dose tested). This study is considered unacceptable under current guidelines because no NOEL for fetotoxic effects were demonstrated. A second rabbit teratology study in which the doses were administered by gavage at 0, 20, 60 and 200 mg/kg/day indicated a maternal NOEL of 20 mg/kg/day and a NOEL for developmental toxicity at 60 mg/kg/day. Developmental toxicity (skeletal variations) was demonstrated at 200 mg/kg/day.

3. A 24-month rat feeding/oncogenicity study using dosage levels of 125, 250, and 1,000 ppm (6.25, 12.5, and 50 mg/kg body weight/day), which showed no oncogenic effects under the conditions of the study and resulted in a systemic NOEL equal to or greater than 1,000 ppm.

4. An 18-month oncogenicity study in mice using dosage levels of 200, 500 and 1,250 ppm (28.6, 71.4, 178.6 mg/kg body weight/day), which showed no oncogenic effects under the conditions of the study.

5. A 1-year dog feeding study using dosage levels of 100, 600 and 3,600 ppm (2.5, 15 and 90 mg/kg body weight/day) with a NOEL of 100 ppm (2.5 mg/kg body weight/day) and a LEL of 600 ppm (15 mg/kg body weight/day, hematopoietic effects).

6. A 90-day dog feeding study using dosage levels of 800, 2,400 and 7,200 ppm (20, 60 and 180 mg/kg body weight/day) with a NOEL of 2,400 ppm (60 mg/kg body weight/day) and a LEL of 7,200 ppm (180 mg/kg body weight/day, liver hypertrophy).

7. A mammalian cell forward mutation study, a Chinese hamster ovary (CHO) metaphase analysis study, and a sister chromatid exchange study which were negative for mutagenic effects and a DNA damage study which was positive.

The acceptable daily intake (ADI), based on the 3-generation reproduction study NOEL of 25 mg/kg/day (equivalent to 500 ppm) and using a 100-fold safety factor, is calculated to be 0.25 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 15 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.0325 mg/kg/day; the current action including the associated food additive regulation (6H5504), is calculated to increase the TMRC by 0.0018 mg/day (0.1 percent). Published tolerances utilize 10.51 percent of the ADI; the current action will utilize an additional 0.01 percent.

The nature of the residues is adequately understood and an adequate analytical method, gas liquid chromatography using an electron capture detector, is available for enforcement purposes. An analytical enforcement method is currently available in the Pesticide Analytical Manual (PAM) Volume II. There are presently no actions pending against the continued registration of this chemical.

No secondary residues in meat, milk, poultry or eggs are anticipated since ginseng is not considered a livestock feed commodity. Based on the information and data considered, the Agency concludes that the tolerance will protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments should bear a notation indicating the document control number, [PP 6E3426/P410]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was Published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: February 2, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.399(a) table is amended, by adding and alphabetically inserting, the commodity ginseng to read as follows:

§ 180.399 Iprodione; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Ginseng	2.0
* * * * *	

[FR Doc. 87–2714 Filed 2–10–87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 386

Regulations Governing Public Buildings and Grounds at the United States Merchant Marine Academy

AGENCY: Maritime Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Maritime Administration (MARAD) is proposing new regulations to enhance the security of buildings and grounds at the United States Merchant Marine Academy, located at Kings Point, New York (Academy), as well as the security of persons entering in or on such property. MARAD has the responsibility for operating the Academy pursuant to authority delegated by the Secretary of Transportation (Secretary). The Administrator of General Services has delegated authority to the Secretary to appoint special police for the protection of buildings, grounds, and equipment at the Academy, and the Secretary has redelegated this authority to the Maritime Administrator. The proposed regulations would formally implement this authority.

DATE: Comments must be received on or before March 30, 1987.

ADDRESS: Send original and two copies of comments to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. All comments will be made available for inspection during normal business hours at this address. Commenters wishing MARAD to acknowledge receipt should enclose a self-addressed and stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: John J. White, Office of Management Services, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590, Tel. (202) 366–2812.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of June 1, 1948 (62 Stat. 281), as amended, the Administrator of General Services (Administrator), the head of the General Services Administration (GSA), may appoint uniformed guards as special police for duty in connection with the policing of public buildings under the jurisdiction of the Administrator. "Such special policemen shall have the same powers as sheriffs and constables upon such Federal property to enforce the laws enacted for the protection of persons and property, and to prevent breaches of the peace . . . and to enforce any rules and regulations made and promulgated by the Administrator or such duly authorized officials of the Administration for the property under their jurisdiction." (40 U.S.C. 318). The Administrator delegated to the Secretary of Commerce the authority "to appoint uniformed guards as special policemen and to make all needful rules and regulations for the protection of those parcels of property at the U.S. Merchant Marine Academy at Kings Point, New York . . . which are not protected by the GSA guards, and over which the Federal Government has exclusive or concurrent jurisdiction" (32 FR 11969, August 18, 1967).

Prior to the transfer of MARAD to the Department of Transportation (DOT) by Pub. L. 97–31 (95 Stat. 151, August 6,

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1981), MARAD was a unit of the Department of Commerce, and was responsible for operating the Academy, pursuant to authority in Title XIII of the Merchant Marine Act, 1936 (Act), as amended (46 U.S.C. 1295). That authority had been delegated to MARAD by the Secretary of Commerce. After MARAD's transfer to DOT, the Secretary delegated authority to the Maritime Administrator to carry out the Act, and specifically authorized the Maritime Administrator to exercise the authority delegated by the Administrator for protection duties on those parcels of property at the Academy which are not protected by GSA guards, and over which the Federal Government has exclusive or concurrent jurisdiction. (49 CFR 1.66).

MARAD administers the Academy under the direction of the Superintendent, and maintains its extensive grounds and numerous buildings. There is a uniformed security guard at the entrance to the Academy, but admission is routine and virtually unrestricted. Moreover, the Academy has only a few uniformed security personnel, none of whom can now exercise police power to enforce existing uncodified Academy regulations governing such matters as operation of motor vehicles, entry on the premises and use of alcohol and controlled substances. This situation has resulted because MARAD has not actually exercised its delegated authority to appoint such guards as uniformed special police and has not formally issued regulations governing Academy protection, to be enforced by these special police. Moreover, in the event of a serious violation of Federal law, Academy officials now must seek the assistance of the Federal Bureau of Investigation in enforcing that law.

By informal agreement with the Village of Kings Point and the Nassau County Police, the Academy may seek the assistance of its police force in enforcing State or local law. However, the absence of on-site law enforcement officials hampers the Academy in providing adequate, continuous security for its premises and the people thereon. It requires the Academy to delay enforcement action because of the necessity to seek outside assistance.

These proposed regulations would implement authority that has been delegated to the Secretary by the Administrator of GSA, and redelegated to MARAD, to appoint uniformed guards as special police and to make all necessary regulations for the protection of Academy property. Enforcement of these proposed regulations would be through arrest and/or the issuance of process. If these regulations are finalized, they would be posted for public notice at appropriate locations. Imposition of fines would be according to the governing statute and a Schedule of Fines for Petty Offenses to be established by order of the United States District Court, Eastern District of New York. The proposed regulations specify the prohibited conduct that would be subject to legal action.

The following is a summary description of the proposed regulations.

Academy Hours

Section 386.1 sets forth the hours Academy property is closed to the public. This section also provides for and describes appropriate identification credentials for persons admitted to Academy grounds.

Prohibited Acts

Section 386.3 prohibits the theft of or damage to Academy property, and the creation of litter or hazards.

Sections 386.5 and 386.7 require compliance with official signs and Academy police and security personnel regulations, and prohibit loitering, disturbances and disorderly conduct on Academy grounds.

Further Prohibitions

Section 386.9 prohibits gambling, except under certain circumstances, and § 386.11 prohibits the operation of an automobile while under the influence of alcohol or drugs not prescribed by a physician. The general use and possession of alcohol on Academy premises is also prohibited, unless there is a special written exemption from the Superintendent or a designee.

Sections 386.13 through 386.21 prohibit soliciting, vending and debt collection, distribution of handbills, unauthorized photographic activities and the presence of animals at the Academy, with exceptions, as well as the possession of weapons, explosives, incendiary materials, and parts thereof.

Traffic Violations

Section 386.23 sets forth vehicular and pedestrian traffic rules.

Penalties

Finally § 386.25 provides for penalties for violations of this part.

The Maritime Administrator has determined that this proposed rule is not a major rule, as defined in E.O. 12291, nor a significant rule under DOT Order 2100.5. The proposed rule would implement statutory authority, delegated to MARAD, to protect property and persons at the Academy. It would affect a very limited group of people, namely, the Midshipmen and the faculty and other employees of the Academy, as well as visitors to the Academy. It would merely result in the appointment of existing Academy employees as special police. For these reasons, the Maritime Administrator certifies, pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), that the rule would not exert a significant economic impact on a substantial number of small entities. The budgeted cost for security and fire protection at the Academy is almost $249,000 for FY 1987 and $263,000 for FY 1988. The appointment of Special Police will not increase the cost of security since existing staff would be used. Because of this minimal economic impact, further economic evaluation is unnecessary. This proposed rule contains no reporting requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 46 CFR Part 386

Federal buildings and facilities, Law enforcement officers, Penalties.

Accordingly, it is proposed to add a new 46 CFR Part 386, to read as follows:

PART 386—REGULATIONS GOVERNING PUBLIC BUILDINGS AND GROUNDS AT THE UNITED STATES MERCHANT MARINE ACADEMY

Sec.

386.1 Hours of admission to property.
386.3 Preservation of property.
386.5 Conformity with signs and posted regulations.
386.7 Disturbances.
386.9 Gambling.
386.11 Alcoholic beverages and controlled substances.
386.13 Soliciting, vending, and debt collection.
386.15 Distribution of handbills.
386.17 Photographs for news, advertising or commercial purposes.
386.19 Dogs and other animals.
386.21 Vehicular and pedestrian traffic.
386.23 Weapons and explosives.
386.25 Enforcement, penalties and other laws.

Authority: 40 U.S.C. 318; 32 FR 11969 (August 18, 1967), Pub. L. 97–31 (95 Stat. 151, August 6, 1981); 49 CFR 1.66.

§ 386.1 Hours of admission to property.

Academy property shall be closed to the public during other than normal working hours, as well as during Regimental leave periods and indoctrination training for the fourth class year. The closing of property shall not apply where the Superintendent has approved the after normal working hours use of buildings or athletic facilities for authorized activities. During normal working hours, property shall be closed to the public only when situations require this action to ensure the orderly conduct of Academy business. The Superintendent, or a designated representative of the Superintendent, shall make the decision to close all or any areas of Academy property. This action shall be coordinated with the Head, Department of Public Safety and Security (Security), of the Academy. When property, or a portion thereof, is closed to the public, admission to the property, or to any area thereof, shall be restricted to authorized persons, who shall register with Security personnel upon entry to the property. When requested, any person shall display Government or other identifying credentials to Security personnel when entering, leaving, or while on Academy property.

§ 386.3 Preservation of property.

Prohibited actions against property on the Academy grounds are improper disposal of rubbish; theft of or damage to property; throwing articles from an Academy building; and climbing on statues, fountains or any part of a building.

§ 386.5 Conformity with signs and posted regulations.

Persons in and on academy property shall, at all times, comply with official signs and posted regulations of a prohibitional, instructional or directional nature, and shall also comply with the directions of Academy special police and other authorized officials. These regulations shall be enforced by uniformed special police and other designated security personnel.

§ 386.7 Disturbances.

Any loitering, disorderly conduct or other conduct on Academy property which creates loud or unusual noise or a nuisance which unreasonably obstructs the use of any area, including entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots; or impedes or disrupts the performance of official duties by Government employees or Midshipmen activities is prohibited.

§ 386.9 Gambling.

Unless permitted by Executive or Department of Transportation Order, participating in games of chance for money or other consideration, or in the operation of gambling devices, or the conduct of a lottery or a pool, or the selling or purchasing of numbers tickets, is prohibited on Academy property.

§ 386.11 Alcoholic beverages and controlled substances.

Operation of a motor vehicle on Academy property while intoxicated, under criteria set forth in the statutes of the State of New York, is prohibited. The consumption or possession by any person on Academy property of alcoholic beverages, narcotic durgs, hallucinogens, marijuana, barbiturates, amphetamines or any other substances controlled under the laws of the State of New York or the United States is prohibited. These prohibitions shall not apply in cases where drugs are being used as prescribed for a patient by a licensed physician. The prohibition against possession and consumption of alcoholic beverages shall not apply when pussessed or consumed by staff or resident officers in private residences, or when the Superintendent, or a designee of the Superintendent, has granted an exemption in writing for an appropriate reason.

§ 386.13 Soliciting, vending, and debt collection.

Soliciting alms, or commercial soliciting and vending of all kinds, displaying or distributing commercial advertising, or collecting private debts is prohibited on Academy property. This prohibition does not apply to national or local drives for funds for charitable purposes, welfare, health, or other purposes as authorized by the "Manual on Fund Raising Within the Federal Service," issued by the U.S. Office of Personnel Management under Executive Order 10927 of March 18, 1961, and sponsored or approved by the Superintendent; and to commercial lessees and contractors authorized to sell goods or services.

§ 386.15 Distribution of handbills.

The distribution of materials such as pamphlets, handbills and flyers, and the displaying of placards or posting of materials on bulletin boards or elsewhere in or an Academy property shall be coordinated with the Head, Department of Public Safety and Security, of the Academy so as not to impede Academy employees in the performance of their duties or Midshipmen activities.

§ 386.17 Photographs for news, advertising, or commercial purposes.

Such photographs for news, advertising or commercial purposes may be taken on Academy premises only with the written consent of the Office of External Affairs at the Academy. Except where national security regulations apply or a Federal Court Order or rule prohibits, photographs for news purposes may be taken in entrances, lobbies, foyers or corridors, or in auditoriums in which public meetings are being held. Photographs for advertising and commercial purposes may be taken only with the written permission of and in locations specified by the Office of External Affairs.

§ 386.19 Dogs and other animals.

Persons are prohibited from bringing dogs and other animals on to the Academy premises, except for authorized purposes and except for seeing eye or other guide dogs, or pets approved in writing by the Superintendent or a designee of the Superintendent.

§ 386.21 Vehicular and pedestrian traffic.

Operators of all vehicles on Academy property shall drive in a careful and safe manner at all times and shall comply with the signals and directions of Academy special police, Security personnel or other authorized individuals, and all posted traffic signs and with restrictions indicated by marked traffic areas. The following acts are prohibited on Academy property: the blocking with vehicles of entrances, driveways, walks, loading platforms or fire hydrants; parking without a permit, except in emergencies; parking in unauthorized locations or in locations reserved for other persons, or parking contrary to the direction of posted signs or marked traffic areas, including yellow curbs. Vehicles parked in violation of the foregoing shall be subject to the issuance of a Traffic Violation Notice and/or removal of the vehicle at the owner's risk and expense. The Superintendent may issue and post other specific traffic directives as may be required, applicable to drivers and pedestrians. When so issued and posted, such directives shall have the same force and effect as if made a part hereof. Proof that a motor vehicle was in violation of these regulations or such directives shall be evidence that the registered owner was responsible for the violation.

§ 386.23 Weapons and explosives.

No person shall carry or possess firearms, other dangerous or deadly weapons or parts thereof, explosives or items intended to be used to fabricate an explosive or incendiary device, or parts thereof, either openly or concealed, while on Academy property, except for official purposes specifically authorized in writing by the Superintendent or a designee of the Superintendent.

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§ 386.25 Enforcement, penalties and other laws.

Whoever shall be found guilty of violating any regulations in this part while in or on Academy property is subject to a fine of not more than $50 or imprisonment of not more than 30 days, or both (40 U.S.C. 318c). Nothing in these regulations shall be construed to abrogate any other Federal laws or regulations or any State and local laws and regulations applicable to any area in which the property is situated. These regulations shall be posted prominently throughout the Academy. Penalties for their violation shall be incorporated in Schedule of Fines for Petty Offenses established by order of the United States District Court for the Eastern District of New York.

Dated: February 5, 1987.

By order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 87-2731 Filed 2-10-87; 8:45 am]

BILLING CODE 4910-81-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket 86-495; FCC 86-555]

Common Carrier Services; Basic Exchange Telecommunications Radio Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is requesting comments on proposed amendments to 47 CFR 22.2, 22.601, 22.903, 22.911, and 22.913. The proposed changes would make certain common carrier mobile frequencies available for radio loops to connect remote, isolated basic exchange telephone subscribers to Central Offices. The Commission is taking this action because there may be nearly 900,000 households with no basic exchange telephone service or with party-line telephone service due to the prohibitive cost of constructing and maintaining wire or cable to remote locations.

DATES: Comments are due March 30, 1987; reply comments are due April 27, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Susan E. Magnotti, Mobile Services Division, Common Carrier Bureau, (202) 632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, CC Docket 86-495, adopted December 18, 1986 and released January 16, 1987. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037

Summary of Notice of Proposed Rulemaking

The Rural Electrification Administration and several rural telephone company associations petitioned the Commission to allocate frequencies for radio loops to connect remote or isolated subscribers to the nearest Central Office so that they could receive basic exchange telephone service for the first time, or to upgrade party line service. The Notice of Proposed Rulemaking suggests three alternatives as sources of frequencies for this service: co-primary sharing of frequencies currently available for Rural Radio Service; cellular allocations to Rural Cellular Area licensees; and certain Private Radio frequencies not generally in use in rural areas.

List of Subjects in 47 CFR Part 22

Communications common carriers, Communications equipment, Radio Reporting and recordkeeping requirements, Rural areas.

Part 22 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for Part 22 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303), sec. 553 of the Administrative Procedure Act (5 U.S.C. 553), unless otherwise noted.

2. Section 22.2 will be amended by alphabetically adding the following definition:

§ 22.2 Definitions

* * * * *

Basic Exchange Telecommunications Radio Service. A fixed service offered by licensees in the Domestic Cellular Radio Telecommunications service for Rural Service Areas (RSAs). Also, a fixed service offered by licensees in the Rural Radio Service. Both services provide basic telephone exchange service by connecting remote subscriber locations through a radio loop to the central office.

* * * * *

3. Section 22.903 will be amended by adding new paragraph (f) to read as follows:

§ 22.903 Cellular System Service Areas.

* * * * *

(f) Use of cellular frequencies for Basic Exchange Telephone Service by a Rural Service Area licensee may not cause interference outside the boundaries of the RSA.

4. Section 22.913 will be amended by adding a new paragraph (a)(12) to read as follows:

§ 22.913 Content of applications.

(a) * * *

(12) Applicants for an RSA who intend to use cellular frequencies for BETR service must include the areas in which the service will be offered within their proposed CGSA.

* * * * *

5.4. Section 22.911 will be amended by adding paragraph (e):

§22.911 Permissible communications.

* * * * *

(e) Use of cellular frequencies by RSA licensees for BETR service is permitted. Such use may not exceed emission, bandwidth, and height/power limitations set forth in §22.905, 22.904, 22.906, and 22.907, as amended.

6. Section 22.601 will be amended by revising paragraph (a) to read as set forth below, by redesignating paragraphs (c) through (f) as paragraphs (d) through (g), and by adding a new paragraph (c) to read as follows:

§22.601 [Amended]

(a)(1) The frequencies in paragraph (b) of this section are available to applicants in the rural radio service, provided no harmful interference is caused to stations in the Public Land Mobile Service;

(2) The frequencies in paragraph (c) of this section are available to applicants in the rural radio service, for the provision of Basic Exchange Telecommunications Radio Service, provided the following conditions are met:

(i) rural radio service licensees may not use these frequencies within 100 miles of the border of the top 54 SMSAs as defined in the Domestic Cellular Radio Service;

(ii) the frequencies must be used as grouped and paired;

(iii) rural radio licensees must protect existing systems at the time of grant;

(iv) the same frequency groups may not be reassigned to a base station within 70 miles of another base station on the same channels;

(v) technical parameters for the use of these frequencies are the same as those in §§ 22.904, 22.905, 22.906, and 22.907, and the use of directionalized antennas is acceptable;

(3) for the Canadian Regions and within 68.4 miles of the Mexican border, the frequencies in paragraph (c) of this section are not available, however, a suitable allocation will be made on a case-by-case basis.

* * * * *

(c) The following frequencies are available on a co-primary basis for Basic Exchange Telecommunications Radio Service:

Subscriber location	*Central Office*
816.2375	861.2375
817.2375	862.2375
818.2375	863.2375
819.2375	864.2375
820.2375	865.2375
816.2125	861.2125
817.2125	862.2125
818.2125	863.2125
819.2125	864.2125
820.2125	865.2125
816.1875	861.1875
817.1875	862.1875
818.1875	863.1875
819.1875	864.1875
820.1875	865.1875
816.1625	861.1625
817.1625	862.1625
818.1625	863.1625
819.1625	864.1625
820.1625	865.1625
816.1375	861.1375
817.1375	862.1375
818.1375	863.1375
819.1375	864.1375
820.1375	865.1375
816.1125	861.1125
817.1125	862.1125
818.1125	863.1125
819.1125	864.1125
820.1125	865.1125
816.0875	861.0875
817.0875	817.0875
818.0875	818.0875
819.0875	819.0875
820.0875	820.0875
816.0625	861.0625
817.0625	862.0625
818.0625	863.0625
819.0625	864.0625
820.0625	865.0625
816.0375	861.0325
817.0375	862.0325
818.0375	863.0325
819.0375	864.0325
820.0375	865.0325
816.0125	861.0125
817.0125	862.0125
818.0125	863.0125
819.0125	864.0125
820.0125	865.0125

* * * * *

Federal Communications Commission,

William J. Tricarico,

Secretary.

[FR Doc. 87-2695 Filed 2-10-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. PS-93; Notice 1]

Proposals for Pipeline Safety; Request for Comment

AGENCY: Office of Pipeline Safety (OPS), Research and Special Programs Administration, DOT.

ACTION: Advance Notice of Proposed Rulemaking (ANPRM).

SUMMARY: This notice, issued in advance of a proposed rule invites public comment on whether certain proposals for new or amended standards are needed for the safety of gas or hazardous liquid pipelines. Current requirements may be insufficient to provide an acceptable level of safety. The comments are to assist OPS in developing a final position on the proposals.

DATE: Interested persons are invited to submit written comments in triplicate before March 30, 1987. Late filed comments will be considered if practical.

ADDRESS: Send comments to the Dockets Unit, Office of Hazardous Materials Transportation, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice numbers stated in the headings of this notice. All comments and docketed materials will be available for inspection and copying in Room 8426 between 8:30 a.m. and 5:00 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow, (202) 366-2392, regarding the subject matter of this notice, or Sandra Cureton, (202) 366-5046, for copies of this notice or other material in the docket.

SUPPLEMENTARY INFORMATION: On July 8, 1986, about 4:20 a.m., an 8-inch petroleum products pipeline operated by Williams Pipeline Company ruptured in Mounds View, Minnesota. Gasoline, spilling from an opening in the longitudinal seam of the electric resistance welded pipe, flowed along the town streets. In about 20 minutes, the vapors were ignited, and an explosion and fired killed a mother and her young daughter, who were escaping their smoke-filled home. One other person was severely burned, and many Mounds View homes suffered extensive damage as the fire followed the path of the spreading gasoline. There was also serious environmental damage.

In the wake of this accident, the National Transportation Safety Board conducted hearings (the results of which are not yet available) and the OPS began enforcement action against Williams Pipeline. The Governor of Minnesota formed a Commission on Pipeline Safety, which on November 20, 1986, issued a report (hereafter "Minn. Rep.") which included its "Findings and Recommendations" on pipeline safety. (A copy of the report is in the docket). During the 99th Congress, Senator Durenberger introduced S2780 (132 Cong. Rec. S11956, August 15, 1986), proposing several amendments to the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA); while in the House of Representatives, Mr. Vento introduced H.R. 5401 (132 Cong. Rec. H6047, August 12, 1986) to make various other amendments to both the HLPSA and the Natural Gas Pipeline Safety Act of 1968 (NGPSA). Then on September 16, 1986, in the House Mr. Sikorski voiced his concerns about pipeline safety in support of H.R. 4426, the House Energy and Commerce Committee's pipeline safety bill (132 Cong. Rec. H6937). Additionally, Mr. Sharp, Chairman of the Subcommittee on Fossil and Synthetic fuels, reported the Committee's pipeline safety recommendations fomulated earlier in the year in conjunction with H.R. 4426 (132 Cong. Rec. H6938).

Except for the reporting provisions of H.R. 4426 that were included in Pub. L. No. 99-516 (approved October 22, 1986), none of the proposed legislation has been enacted. It is expected, however, that the issues will be debated again during further Congressional hearings this year. Already, Mr. Vento has introduced H.R. 262, the "Safe Pipeline Act of 1987," an expanded version of H.R. 5401 noted above.

OPS is considering each of the proposals to determine whether changes are needed in the Federal pipeline safety program now in effect under the HLPSA and NGPSA. The proposals cover a broad range of topics, including regulations, enforcement activities, research, and relations with State agencies. However, the ones of concern in this notice involve adoption of new or amended Federal safety standards for gas pipeline subject to 49 CFR Part 192 and hazardous liquid pipelines subject to 49 CFR Part 195. The purpose of this notice, therefore, is to seek comments from all knowledgeable sources about the need to carry out the standards-related proposals. OPS will use the information provided to assess the

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problems the proposals imply and to identify and evaluate possible alternative solutions to these problems. OPS then will choose an appropriate course of action which may be to issue a notice of proposed rulemaking based on one or more of the proposals.

The proposals, with sources noted, are enumerated below. In a few cases related ones are grouped together. Also included under each number are the current Federal pipeline safety standards that bear on the proposal and a few relevant questions. The questions are intended to focus public discussion on issues OPS believes are important, but should not be viewed as limiting comments just to those issues. OPS is particularly interested in receiving comments that address the safety problem implied by each proposal, discuss the effectiveness of any current Federal, State, or voluntary standard that relates to the problem, describe ways now being applied or available to resolve the problem, and discuss the feasibility and cost-effectiveness of implementing the proposal or any alternative way to resolve the problem. In responding to this notice, commenters are requested to use subheadings to identify the proposal and question to which their specific remarks are addressed. Unless otherwise specified, commenters may assume that the proposals relate to gas transmission and distribution pipelines and to interstate and intrastate hazardous liquid pipelines.

1. Proposal

Require operators to provide local jurisdictions, fire departments, and public safety agencies with ½ mile of pipelines, maps, inventories, and descriptions of transported substances, updated as appropriate. In addition, provide local fire departments and public safety agencies a copy of each operator's operations, maintenance and emergency manual. (H.R. 262; Min. Rep., Rec. 1.4).

Applicable Federal Standards

The Federal standards do not specifically require that operators provide the recommended information to local jurisdictions or agencies. However, liaison with public officials is required by § 192.615(c) and § 195.402(c)(12) to plan responses in an emergency.

Questions

(a) Should the Federal government mandate that operators provide the information regardless of whether a local jurisdiction or agency has requested it?

(b) Could local jurisdictions or agencies that want the information obtain it under their own authority without Federal intervention?

(c) At present, do operators voluntarily provide the information upon request of local authorities?

(d) How will the proposed requirement benefit emergency preparedness?

2. Proposal

• Require operators to provide land owners within ½ mile of pipelines, written notice of each pipeline's existence, its location, and how to identify and respond to hazards. (H.R. 262)

• Establish standards for uniform public education programs. (Minn. Rep., Rec. 2.3)

Applicable Federal Standards

The Federal standards do not require that operators provide each land owner written notice of a pipeline's location and hazards. However, § 192.615(d) and §195.440 require operators to conduct a continuing educational program through comprehensive media to enable customers and the public to recognize and report a pipeline emergency. These programs vary from operator to operator.

Questions

(a) Would the proposed written notice to land owners of a pipeline's location and emergency response information be a beneficial addition to the communication required by the current standard?

(b) What would be the cost of notifying all such landowners?

(c) What compliance difficulties are foreseen for gas distribution systems or other pipelines in residential and urban areas in giving the proposed written notice?

(d) Should public education programs be uniform or be allowed to vary according to local conditions?

(e) What additional standards should be established for uniform public education programs?

3. Proposal

Require operators to post conspicuous signs at road crossings. (H.R. 262)

Applicable Federal Standards

Line markers are required at public road crossings by § 192.707 and § 195.410, but sign size is not regulated. Certain exceptions apply to urban areas.

Questions

(a) Are pipeline markers at road crossings an important factor in preventing damage from roadway excavation activities or providing quicker response time to emergency situations?

(b) If roadway signs are important, should conspicuous signs be required in all neighborhoods and urban areas without regard for the problems of land use, installation, or esthetic considerations?

(c) What should be the standard for conspicuousness?

(d) Would "conspicuous" signs at road crossings interfere with other safety signs such as stop signs or railroad crossing signs?

4. Proposal

• Convert required shutoff valves on existing pipelines to work automatically and require new pipelines to be equipped with automatic shutoff valves. (H.R. 262)

• On new lines, install remote-control shutoff valves every 20 miles in rural areas; every 4 miles in urban areas. Periodically test these valves. (Minn. Rep., Rec. 5.3)

Applicable Federal Standards

Shutoff valves are required by § 192.179, § 192.181, and § 192.260 at certain locations, but they need not operate automatically or be remotely controllable.

Questions

(a) For new pipelines, are automatic or remote-control shutoff valves included in the design, and, if so, where are they installed?

(b) Are automatic or remote-control shutoff valves effective in mitigating the consequences of a pipeline accident?

(c) Do automatic or remote-control shutoff valves present any optional difficulties?

(d) What would be the conversion costs for existing pipelines; the installation costs for new lines; the operating costs for both?

5. Proposal

• Require operators to determine and submit (to OPS) an inventory, including specifications, of the types of pipeline in their systems. (H.R. 262)

Applicable Federal Standards

Operators of hazardous liquid pipelines are required by § 195.404(a)(4) to keep a record of the type of pipe in their systems as well as the pipe grade, diameter and wall thickness, but they do not have to submit this information to OPS. Gas operators are not required to record or submit this information.

Questions

(a) What information should be submitted under the category of "type" of pipeline?

(b) What are the benefits of requiring operators to submit this information to OPS?

(c) Would the benefits outweigh the costs of collecting and submitting it, and of maintaining it?

6. Proposal

• Require integrity testing at least every 2 years, with frequency and type of test determined case-by-case in light of certain pipeline and environmental factors. (H.R. 262)

• Require tests every 3 years to detect release potential. (S2780)

• Require increased use of "smart pigs" to detect flaws, based on population density and certain pipeline and environmental factors. (Subcommittee, Fossil and Synthetic Fuels; Mr. Sikorski)

Applicable Federal Standards

An initial pressure test is required for new pipelines during construction, but the standards do not require subsequent periodic tests to demonstrate the continued physical integrity of pipelines. Since the initial pressure test requirement does not apply to existing pipelines (unless they are replaced or relocated), there may be existing pipelines in operation that have not been tested. However, § 195.302 requires that existing pipelines transporting highly volatile liquids (HVL) which were not initially pressure tested to 1.25 times their maximum operating pressure must be tested to that level or have their operating pressure reduced commensurately. Also, periodic testing for corrosion is required by § 192.465(e) and §195.416.

Questions

(a) Should the 1.25 safety margin mandated for existing HVL pipelines be required for existing pipelines carrying other petroleum products or natural gas?

(b) Should periodic integrity testing be mandated for all product, HVL, or gas pipelines in populated areas?

(c) Are there any adverse safety consequences associated with periodic pressure testing?

(d) What would be the costs and benefits of industry wide testing or testing on a selective basis?

(e) Under what conditions should OPS require the use of "smart pigs"?

7. Proposal

Prohibit new pipelines within 150 feet of any permanently inhabited facility. (H.R. 262) (Assume this proposal does not apply to gas distribution systems).

Applicable Federal Standards

The location of new gas pipelines is not restricted, but new rights-of-way for hazardous liquid pipelines must avoid inhabited areas as far as practicable (§ 195.210).

Questions

(a) How would the proposed 300-foot zone affect the occurrence or results of accidents?

(b) What compliance or operational difficulties are foreseen?

(c) Should exemptions be permitted for new pipelines on existing, or enlargements of existing, rights-of-way; for replacements or relocations of existing pipelines?

(d) Island use for pipelines an appropriate Federal function, or are State and local governments better suited to plan such use?

(e) How would land use be controlled within the proposed zone after the pipeline is constructed?

8. Proposal

Specify "chemical fertilizer products" as a "Hazardous liquid." (H.R. 262)

Applicable Federal Standards

The Part 195 standards define "Hazardous liquid" to include "anhydrous ammonia," which is the predominate chemical fertilizer products. (§ 195.2)

Question

(a) Besides anhydrous ammonia, what products transported by pipeline would be covered by the suggested definitional change?

(b) Are any of these products transported in pipelines that are already subject to Part 195 because the pipeline also carries a regulated commodity such as anhydrous ammonia?

(c) Do any unregulated pipelines carrying these products pose a sufficient threat to public safety to warrant imposition of Part 195 safety standards?

9. Proposal

Include carbon dioxide (CO_2) pipelines in the regulation of hazardous liquid pipelines. (Subcommittee on Fossil and Synthetic Fuels)

Applicable Federal Standards

The Part 195 standards do not apply to CO_2 pipeline.

Question

(a) Do CO_2 pipelines pose a sufficient threat to life or property to warrant imposition of Federal safety regulations?

(b) If Federal standards are imposed, should there be exceptions for gathering or transmission lines in rural areas?

10. Proposal

Require existing hazardous liquid pipelines to be coated or cathodically protected to prevent corrosion. (S2780)

Applicable Federal Standards

The standards require that new and effectively coated existing pipelines be cathodically protected in areas of active corrosion. Periodic tests are required to discover areas of active corrosion. (§§ 195.242 and 195.414)

Questions

(a) What would be the added costs of requiring full cathodic protection on existing pipelines that are ineffectively coated or bare?

(b) Would this investment pay for itself in terms of preventing corrosion caused accidents?

(c) What alternatives to the present or proposed requirement are there to preventing corrosion-caused leaks on existing pipelines?

(d) Should more frequent tests be required to discover areas of active corrosion?

11. Proposal

Require new hazardous liquid pipelines and existing ones in populated areas to have double-wall construction with continuous leak detection systems. (S2780; Minn. Rep. Rec. 5.5)

Applicable Federal Standards

None

Questions

(a) What has been the operating experience, if any, with this technology?

(b) What would be the costs of implementation?

(c) After implementation, what would be the expected impact on safety in terms of accidents prevented or consequences lessened?

12. Proposal

• Require operators to improve ability to rapidly locate and isolate leaks, through remote-controlled valves, (spaced according to population) remotely monitored gauges and meters at pump stations, and more specific emergency procedures. (Minn. Rep. Rec. 4.4)

• Establish release (leak) detection standards and hazardous liquid pipelines. (S2780)

Applicable Federal Standards

Under § 195.412, hazardous liquid pipeline rights-of-way must be inspected

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for signs of leaks every 2 weeks. Gas pipelines must be checked for leads at various intervals under §§ 192.705, 192.706, 192.721, and 192.723. Emergency procedures are required by § 192.615 and § 195.402.

Questions

(a) What technology is commercially available that would enable prompt leak detection so that corrective action could be taken in populated areas before deaths, injuries or substantial property damages would be likely to occur?

(b) What are the costs of implementation?

(c) What changes might be made to the emergency procedures to improve operators' response to emergencies?

13. Proposal

Require siting standards for hazardous liquid pipelines similar to those in effect for gas pipelines. (Mr. Sikorski)

Applicable Federal Standards

There are no standards in Part 191 or Part 195 for "siting" pipelines but many of the standards for gas and hazardous liquid pipelines increase in stringency as pipelines enter more populated areas. The gas standards increase in stringency according to a set of "class location" criteria based on population density near the pipeline. In contrast, the stringency of the hazardous liquid standards varies by the use of such terms as "residential" or 'industrial" areas.

Questions

(a) How would the class location criteria in Part 192 improve the safety of hazardous liquid pipelines if applied to the regulations in Part 195?

(b) Should any of the Part 192 standards based on class location for which there is no comparable Part 195 requirement be added to Part 195, and why?

14. Proposal

Require for hazardous liquid pipelines an increased safety margin between test and operating pressure depending on population or environmental factors. (Minn. Rep., Rec. 4.1)

Applicable Federal Standards

Section 195.406 requires at least a 20 percent margin between test and operating pressure for all new pipelines. The margin for new gas pipelines is either 10, 20, or 33 percent depending on population (§ 192.619).

Questions

(a) What would be the rationale for development and selection of an increased safety margin for hazardous liquid pipelines?

(b) What would be the result in terms of accidents prevented if the current safety margin were increased?

(c) What would be the incremental cost of increasing the margin?

15. Proposal

Require submission of 4-year comprehensive reports on the condition of pipelines (corrosion, leaks, etc.). Use them as basis for remedial action, i.e., pigs, pressure tests, replacement. (Minn. Rep., Rec. 4.2)

Applicable Federal Standards

Operators are required by § 192.491 and § 195.404 to record the results of each required corrosion control test or inspection. Serious leaks must be reported as required by 49 CFR Parts 191 and 195. Repairs on gas transmission lines must be recorded under § 192.709 and on hazardous pipelines under § 195.404. Also, pursuant to Pub. L. No. 99–156 (approved October 22, 1986), operators will be required to report adverse safety related conditions within 5 days of discovery.

Questions

(a) What additional information about a pipeline's condition, besides what is now or will be required to be recorded or reported, would be useful in determining the need for integrity testing?

(b) What would be the paperwork brudens/cost of filing the proposed information with OPS?

16. Proposal.

Since seam failure in electric resistance welded pipe have caused a number of accidents, a study should be conducted to learn which ERW pipe is susceptible to seam degradation. (Minn. Rep., Rec. 4.5)

Applicable Federal Standards

None

Questions.

(a) Because accident data show the rate of ERW failures is diminishing, would the expected benefits of any generally applied remedy be expected to exceed costs?

(b) Should particular ERW pipelines that have experienced ERW-related ruptures be replaced or tested frequently in densely populated areas?

(c) What remedy, if any, should be applied to deter continued ERW-degradation discovered on pipelines in any area?

17. Proposal

Require operators to create or partcipate in "one call" systems. (H.R. 262)

Applicable Federal Standards

Operators of gas pipelines in populated areas are now required by § 192.614 to conduct or participate in "one call" or other damage prevention programs. There is no such requirement for hazardous liquid pipeline operators, although OPS is studying the costs and benefits of such a requirement.

Questions

(a) Should "one call" systems be required to the exclusion of alternative programs?

(b) Should participation be required in areas of low population, such as Class 1 and 2 locations for gas pipelines or rural areas for hazardous liquid pipelines, where the cost of participation may exceed the potential benefits?

18. Proposal

- Provide for Increased Federal oversight in design and construction of new pipelines. (H.R. 262)
- Study the need for certification of pipeline design and construction personnel (Minn. Rep., Rec. 5.6)

Applicable Federal Standards

Parts 192 and 195 contain extensive design standards which OPS and State agencies enforce through site visits. However, there are no Federal standards governing the qualifications of *design* personnel, and only those *construction* personnel who weld steel pipe or join plastic pipe are subject to qualification standards (§§ 192.227, § 192.285 and § 195.222). Also, the Federal standards do not require operators to notify OPS of pending construction or to submit design plans for approval prior to construction, although upon request by the Federal Energy Regulatory Commission OPS reviews the design of interstate transmission facilities.

Questions

(a) What safety problems are there in the design and construction of pipelines that current Federal standards do not cover adequately?

(b) If these problems involve the abilities of persons who design or construct pipelines, could they be resolved by amending or enlarging the scope of the current qualification requirements, or is a Federal certification program needed to control the problem?

(c) Do State or local jurisdictions commonly require review or certification of pipeline design plans by a licensed professional engineer before granting construction permits?

Issued in Washington, DC on February 6, 1987.

Richard L. Beam,

Director, Office of Pipeline Safety.

[FR Doc. 87–2878 Filed 2–10–87; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 50219–6214]

North Pacific Fur Seal—Pribilof Island Population; Designation as Depleted

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The NMFS is extending the comment period on the proposed rule to designate the Pribilof Island population of North Pacific fur seals as depleted under the Marine Mammal Protection Act. The proposed rule was published in the **Federal Register** on December 30, 1986, (51 FR 47155). The extension from a 39-day comment period (ending February 6, 1987) to a 67-day comment period (March 6, 1987) is being granted to accommodate the special needs of rural Alaskans.

DATES: Comments on the proposed rule must be submitted on or before March 6, 1987.

ADDRESSES: Comments may be mailed to Nancy Foster, Director, Office of Protected Species and Habitat Conservation, F/M4, NMFS, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 202–673–5351.

Dated: February 5, 1987.

James E. Douglas, Jr.

Acting Deputy Administrator, National Marine Fisheries Service.

[FR Doc. 87–2830 Filed 2–10–87; 8:45 am]

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Notices

Federal Register
Vol. 52, No. 28
Wednesday, February 11, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

February 6, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• *Agricultural Marketing Service*

Reporting requirements under 7 CFR Part 51, Regulations Governing Inspection, Certification and Standards for Fresh Fruits, Vegetables, and Other Products.
FV–237 and FV–292
On occasion
State or local governments; Businesses or other for-profit; 212,206 responses; 6,341 hours; not applicable under 3504(h)
Donald Paradis, (202) 447–2482

• *Animal and Plant Health Inspection Service*

Application for Inspection and Certification of Animal Byproducts
VS Form 16–24
On occasion
Businesses or other for-profit; 20 responses; 10 hours; not applicable under 3504(h)
Mark P. Dulin, (301) 436–8499

• *Animal and Plant Health Inspection Service*

9 CFR Part 11 Horse Protection Regulations
VS Form 19–7
Recordkeeping; On occasion; Monthly; Quarterly
Businesses or other for-profit; 73,182 responses; 11,917 hours; not applicable under 3504(h)
Dr. W.C. Stewart, (301) 436–7833

• *Food and Nutrition Service*

Report of the Summer Food Service Program for Children Agreement Between Sponsor and USDA (Summer Food Service Program for Children)
7 CFR Part 225
FNS 80 and FNS 418
Monthly May through September, Annually
State or local governments; Non-profit institutions; 8,770 responses; 64,682 hours; not applicable under 3504(h)
Alan Rich, (703) 756–3100

• *Forest Service*

Timber Sale Operating Plans
On occasion
Businesses or other for-profit; Small businesses or organizations; 3,000 responses; 14,250 hours; not applicable under 3504(h)
Stephen J. Paulson, (202) 475–3755

New

• *Farmers Home Administration*

7 CFR Part 1942–J, Technical Assistance and Training Grants
On occasion, Monthly, Quarterly
Non-profit institutions; 800 responses; 810 hours; not applicable under 3504(h)
Jack Holston, (202) 382–9736

Revision

• *Forest Service*

Timber Export Restriction Certifications and Records FS–2400–43, FS–2400–44, FS–2400–45, and FS–2400–46
Recordkeeping; On occasion; Annually
Businesses or other for-profit; Small businesses or organizations; 37,800 responses; 11,760 hours; not applicable under 3504(h)
Stephen J. Paulson (202) 475–3755.

Jane A. Benoit,
Departmental Clearance Officer.

[FR Doc. 87–2888 Filed 2–10–87; 8:45 am]
BILLING CODE 3410–01–M

Agricultural Stabilization and Conservation Service

Agricultural Marketing Service

Mohair Advertising and Promotion

AGENCIES: Agricultural Stabilization and Conservation Service and Agricultural Marketing Service, USDA.

ACTION: Notice of results of mohair producer referendum.

SUMMARY: The purpose of this notice is to announce that the requisite number of mohair producers voting in a referendum have approved a new agreement between the U.S. Department of Agriculture (USDA) and the Mohair Council of America, Inc. (MCA). The referendum was conducted by the Secretary of Agriculture in accordance with provisions of section 708 of the National Wool Act of 1954, as amended (7 U.S.C. 1787), the "Wool Act." The agreement provides for deductions to be made from the price support payments made to producers under the Wool Act on mohair from Angora goats marketed during the years 1986 through 1990. Amounts so deducted are to be used by the MCA for advertising and sales promotion programs and for programs pertaining to the dissemination of

information on product quality, production management, and marketing improvement for mohair or the products thereof.

EFFECTIVE DATE: February 11, 1987.

FOR FURTHER INFORMATION CONTACT: Jerry W. Newcomb, Director, Emergency Operations and Livestock Programs Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013. Telephone (202) 447–5621.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." It has been determined that this notice will not result in: (1) an annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of result of referendum since the USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

The title and number of the Federal assistance program to which this notice applies as found in the Catalog of Federal Domestic Assistance are: National Wool Act Payments; 10.059.

Section 708 of the Wool Act authorizes the Secretary of Agriculture to enter into agreements with, or to approve agreements entered between, marketing cooperatives, trade associations, or others engaged or whose members are engaged in the handling of wool, mohair, sheep, or goats or the products thereof for the purpose of developing and conducting advertising and sales promotion programs and programs for the development and dissemination of information on product quality, production management, and marketing improvement, for wool, mohair, sheep, or goats or their products. Section 708 further provides that such agreements may provide for the deduction of amounts from payments due producers under the mohair price support program, such amounts to be used in paying costs of such activities, if a minimum of two-thirds of the voting producers or producers who have produced two-thirds of the total volume of production represented in the referendum approve the agreements.

A referendum was held during the period of July 14 through July 25, 1986, to determine whether mohair producers approved such an agreement for the 1986 through 1990 marketing years. Anyone who owned Angora goats 6 months of age or older in the United States, continuously, for a period of a least 30 days during the calendar year 1985 was eligible to vote. In the referendum 1,834 producers, constituting 82.2 percent of the voting producers, voted in favor of the agreement and 397 producers or 17.8 percent voted against it.

Notice

An agreement providing for pro rata reductions to be made from price support payments made to producers of mohair for the 1986 through 1990 marketing years has been approved by producers, in accordance with section 708 of the National Wood Act of 1954, as amended, in a referendum conducted during the period July 14 through July 25, 1986. More than two-thirds of the total number of producers voting in the referendum indicated their approval of such agreement.

The agreement entered into with USDA provides for deductions to be made from price support payments at a rate not to exceed 4½ cents per pound of mohair marketed. Deductions of 4½ cents per pound will be made from payments on 1986 marketings of mohair. Amounts deducted will be made available to the MCA to be used to finance domestic and foreign advertising and sales promotion programs and programs for the development and dissemination of information on product quality, production management, and marketing improvement for mohair or the products thereof.

The agreement was signed and became effective on October 15, 1986.

Dated: January 14, 1987.

Milton J. Hertz,
Administrator, Agricultural Stabilization and Conservation Service.

Dated: February 4, 1987.

J. Patrick Boyle
Administrator, Agricultural Marketing Service.

[FR Doc. 87–2837 Filed 2–10–87; 8:45 am]
BILLING CODE 3410–05–M

Wool Advertising and Promotion

AGENCIES: Agricultural Stabilization and Conservation Service and Agricultural Marketing Service, USDA.

ACTION: Notice of results of wool producer referendum.

SUMMARY: The purpose of this notice is to announce that the requisite number of wool producers voting in a referendum have approved an agreement between the U.S. Department of Agriculture (USDA) and the American Sheep Producers Council, Inc. (ASPC). The referendum was conducted by the Secretary of Agriculture in accordance with provisions of section 708 of the National Wool Act of 1954, as amended (7 U.S.C. 1787), the "Wool Act." The agreement provides for deductions to be made from the price support payments made to producers under the Wool Act on shorn wool and unshorn lambs marketed during the years 1986 through 1990. Amounts so deducted are to be used by ASPC for advertising and sales promotion programs and for programs pertaining to the dissemination of information on product quality, production management, and marketing improvement for wool, sheep, or the products thereof.

EFFECTIVE DATE: February 11, 1987.

FOR FURTHER INFORMATION CONTACT: Jerry W. Newcomb, Director, Emergency Operations and Livestock Programs Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013. Telephone (202) 447–5621.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." It has been determined that this notice will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of result of referendum since the USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of

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proposed rulemaking with respect to the subject matter of this notice.

The title and number of the Federal assistance program to which this notice applies as found in the Catalog of Federal Domestic Assistance are: National Wool Act Payments; 10.059.

Section 708 of the Wool Act authorizes the Secretary of Agriculture to enter into agreements with, or to approve agreements entered between, marketing cooperatives, trade associations, or others engaged or whose members are engaged in the handling of wool, mohair, sheep, or goats or the products thereof for the purpose of developing and conducting advertising and sales promotion programs and programs for the development and dissemination of information on product quality, production management, and marketing improvement, for wool, mohair, sheep or goats or their products. Section 708 further provides that such agreements may provide for the deduction of amounts from payments due producers under the wool price support program, such amount to be used in paying costs of such activity, if a minimum of two-thirds of the voting producers or producers who have produced two-thirds of the total volume of production represented in the referendum approve the agreements.

A referendum was held during the period of August 18 through August 29, 1986, to determine whether wool producers approved such an agreement for the 1986 through 1990 marketing years. Anyone who owned sheep or lambs 6 months of age or older in the United States, continuously, for a period of a least 30 days during the calendar year 1985 was eligible to vote. In the referendum 19,098 producers, constituting 62.3 percent of the voting producers, voted in favor of the agreement and 11,570 producers or 37.7 percent voted against it. Producers owning 2,127,753 sheep or lambs or 31.3 percent of the sheep or lambs owned by all the voting producers opposed the agreement. However, producers voting in favor of the agreement owned 4,670,486 sheep or 68.7 percent of the sheep or lambs owned by the voting producers.

Notice

An agreement providing for pro rata deductions to be made from price support payments made to producers of shorn wool, unshorn lambs, and pulled wool for the 1986 through 1990 marketing years has been approved by producers, in accordance with section 708 of the National Wool Act of 1954, as amended, in a referendum conducted during the period August 18 through August 29, 1986. Producers of more than two-thirds of the total volume of production represented in the referendum indicated their approval of such agreement.

The agreement entered into with USDA provides for deductions to be made from price support payments at a rate not to exceed 6 cents per pound of shorn wool marketed and at a comparable rate of 30 cents per pound on unshorn lambs marketed. Amounts deducted will be made available to ASPC to be used to finance domestic and foreign advertising and sales promotion programs and programs for the development and dissemination of information on product quality, production management, and marketing improvement for wool, sheep, or the products thereof.

The agreement was signed and became effective on October 14, 1986.

Dated: January 14, 1987.

Milton J. Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

Dated: February 4, 1987.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 87-2838 Filed 2-10-87; 8:45am]

BILLING CODE 3410-05-M

Commodity Credit Corporation

Uniform Grain and Rice Storage Agreement Contract Fees

AGENCY: Commodity Credit Corporation USDA.

ACTION: Notice of 1987-88 Contract Year Fees.

SUMMARY: The purpose of this notice is to publish a schedule of 1987-88 contract fees to be paid to Commodity Credit Corporation (CCC) by grain and rice warehousemen requesting renewal of an existing storage agreement or requesting initial approval of a storage agreement in accordance with the regulations governing the Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed (7 CFR 1421.5551 *et seq*). The fees are charged by CCC to defray the costs of examination and warehouses operated by such warehousemen who do not have a Federal warehouse license or State warehouse license issued by a State having a cooperative agreement with CCC for warehouse examination services.

EFFECTIVE DATE: April 1, 1987.

FOR FURTHER INFORMATION CONTACT: Steven Closson, Chief, Storage Contract Branch, Warehouse Division, ASCS, USDA, Roon 5962-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447-5647.

SUPPLEMENTARY INFORMATION: .

This notice has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major" since implementation will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined by an environmental evaluation that this section will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is required.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since CCC is not required by 5 U.S.C. 553 or any other provisons of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

The Commodity Credit Corporation Charter Act (15 U.S.C. 714) provides authority for CCC for conduct a number of operations to stabilize, support, and protect farm income and prices. CCC is authorized to carry out such activities as making price support available with respect to various agricultural commodities, removing and disposing of surplus agricultural commodities, exporting or aiding in the exportation of agricultural commodities, and procuring agricultural commodities for sale both in the domestic market and abroad.

Section 4(h) of the CCC Charter Act provides that CCC shall not acquire real property in order to provide stroage facilities for agricultural commodities unless CCC determines that private facilities for the storage of such commodities are inadequate. Further, section 5 of the CCC Charter Act provides that in carrying out CCC's purchasing and selling operations, and in the warehousing, transporting, of handling or agricultural commodities, CCC is directed to use, to the maximum extent practicable, the usual and customary channels facilities, and arrangement of trade and commerce.

Pursuant to these provisions, CCC enters into storage agreements with private grain and rice warehousemen which provide for the storage of commodities owned by CCC or pledged as security to CCC for price support loans. CCC examines all grain and rice warehouses which are the subject of a storage agreement, or for which a warehouseman has requested approval of a new storage agreement, to determine whether the warehouseman is complying with the terms and conditions of the storage agreement and the standards of approval or has the ability to do so.

The regulations found at 7 CFR 1421.5558 provide that each warehouseman who has a non-federally licensed grain or rice warehouse in States that do not have a cooperative agreement with CCC for warehouse examinations must pay an annual contract fee fo CCC for each such warehouse which is approved by CCC or for which CCC approval is sought. A grain or rice warehouseman who has entered into a storage agreement with CCC must pay the annual contract fee in advance of the renewal date of the agreement. A grain or rice warehouseman who is seeking to enter into a storage agreement with CCC must pay the annual contract fee for each warehouse for which CCC approval is sought prior to the time that the agreement is approved by CCC. Section 1421.5558 also provides that the amount of the contract fee shall be determined and announced annually in the Federal Register. The contract fee is designed to reimburse CCC for approximately 50 percent of the cost of the warehouse examinations.

A review of the 1986-87 contract fees indicates that they generated sufficient revenues to cover approximately 50 percent of the cost of the warehouse examinations for the 1986-87 contract year. Projections of program costs for the 1987-88 contract year indicate that CCC's expenditures for the examination of grain and rice warehouses should remain relatively stable. Accordingly, the fees for the 1987-88 contract year are unchanged from those fees which were applicable to the 1986-87 contract year.

Determination

The fees set forth in the following schedule will be collected for the 1987-88 contract year by the Commodity Credit Corporation (CCC) from warehousemen who have entered into a Uniform Rice Storage Agreement (URSA) or a Uniform Grain Storage Agreement (UGSA) with CCC or who are seeking to enter into a URSA or UGSA with CCC but who do not have a Federal warehouse license or a State warehouse license issued by a State having a cooperative agreement with CCC for warehouse examination services.

TWELVE-MONTH CONTRACT FEE SCHEDULE

Location capacity (bushels)	Contract fees (dollars)
1 to 150,000	$100
150,001 to 250,000	200
250,001 to 500,000	300
500,001 to 750,000	400
750,001 to 1,000,000	500
1,000,001 to 1,200,000	600
1,200,001 to 1,500,000	700
1,500,001 to 2,000,000	800
2,000,001 to 2,500,000	900
2,500,001 to 5,000,000	1,000
5,000,001 to 7,500,000	1,100
7,500,001 to 10,000,000	1,200
10,000,001 +	1,200 plus $30 per million bushels of capacity above 10 million or fraction thereof.

The location capacity of the warehouse shall be determined by the Secretary of Agriculture and shall be the capacity of a fully functional facility operated as a public warehouse or functional unit of a group of warehouses usually within the same town or freight tariff point. A functional facility is one which could operate independently if it was separated from other facilities that may be included in a merged warehouse code. Any outlying unit which is not a fully functional facility would have its capacity included as part of the combined capacity of the nearest fully functional operating location.

The contract fee shall be the sum total of the fees for all functional units within the warehouse code and shall be assessed and must be paid in advance of the annual contract renewal date or, in the case of a warehouseman who is seeking approval of a new URSA or UGSA, prior to the time that the agreement is approved by CCC. The failure of a warehouseman to pay such fee at that time shall be grounds for termination of an existing URSA or UGSA or for rejection of approval of a new URSA and UGSA.

Signed at Washington, DC, on February 5, 1987.

Milton J. Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87-2836 Filed 2-10-87; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Idaho Timber Supply Report

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given of the availability to the public of the publication "A Report on Idaho's Timber Supply". The purpose of the report is to identify the potential of the National Forests and lands in other ownerships in the State of Idaho to sustain or increase present regional levels of timber supply. The report focuses primarily on the next 10 to 15 years.

DATE: The report will be available beginning February 9, 1987.

ADDRESSES: The public may obtain copies of the report from the following offices:

Regional Forester, Northern Region, Forest Service, USDA, Federal Bldg., P.O. Box 7669, Missoula, MT 59807

Regional Forester, Intermountain Region, Forest Service, USDA, Federal Bldg., 324 25th St., Ogden, UT 84401.

FOR FURTHER INFORMATION CONTACT: Karl Bergsvik, Assistant Director, Timber Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20013-6090; Telephone 202-447-8709.

SUPPLEMENTARY INFORMATION: This report on timber supply represents one source of information to be used in evaluating alternatives for National Forest plans in the State of Idaho. It is not a decision document.

In preparing the report, fifty-eight different timber supply scenarios were developed and analyzed for both northern and southern Idaho. The scenarios assume various supply options for National Forest System lands, private industrial forest lands, private nonindustrial forest lands, State lands, and other public lands. National Forest planning information was used for supply projections on National Forest lands. The Timber Resource Analysis System (TRAS) model was used to create supply projections for the other ownership classes. TRAS is a stand table simulation program developed by the Forest Service to project changes in timber inventory. It

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has been used to make the national assessment of future timber supplies that is completed every ten years, as required by the Forest and Rangeland Renewable Resources Planning Act of 1974.

Dated: February 5, 1987.

George M. Leonard,

Associate Chief.

[FR Doc. 87-2786 Filed 2-10-87; 8:45 am]

BILLING CODE 3410-11-M

National Agricultural Statistics Service

Discontinuation of Index Numbers of Meat Animals

Notice is hereby given that the National Agricultural Statistics Service (NASS) plans to discontinue publication of the Index Numbers of Livestock and Poultry (Meat Animals). This action will be effective for the *Cattle* report issued in early 1988. Individual species estimates in the index computations will be continued.

Comments from interested parties regarding the proposed action should be sent to William L. Pratt, Chief, Livestock, Dairy and Poultry Branch, Estimates Division, Room 5906-S, NASS/USDA, Washington, DC 20250.

Dated: February 5, 1987.

W.E. Kibler,

Administrator.

[FR Doc. 87-2834 Filed 2-10-87; 8:45 am]

BILLING CODE 3410-20-M

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 61222-7004]

University Center Program; Policy Changes for Grant Awards

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Notice.

SUMMARY: The Economic Development Administration (EDA) announces policy changes it intends to institute for basic university center grant awards. The purpose of this announcement is to communicate to current university center grantees and potential applicants for EDA university center funds the proposed policy changes. The changes would go into effect in FY 1988 if Congress makes funds available for the University Center Program beyond FY 1987.

I. Purpose of Basic University Center Grants

Basic university center grants are used as seed money to help selected colleges and universities mobilize their own and other resources to assist in the economic development of distressed areas. The economic development efforts of such colleges and universities could involve aid to public bodies, nonprofit organizations, and private firms. Support for these types of projects is authorized under section 301(a) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151(a).

II. Policy Changes for Basic University Center Grants

EDA funds are normally appropriated on a an annual basis; therefore, no assurance of funding beyond FY 1987 is possible. If, however, funds are made available by Congress for the University Center Program beyond FY 1987, EDA intends to institute the following policies governing basic university center grant awards. These policies will apply only to centers performing satisfactorily. Centers failing to carry out grant agreement obligations in an acceptable manner will not continue to receive assistance.

a. For centers initiated prior to FY 1982 (October 1, 1981) and which had more than $500,000 in support from all other sources during calendar year 1986, EDA's funding will be reduced in FY'S 1988, 1989, and 1990 by 30, 60, and 75 percent, respectively. No funding will be provided in FY 1991.

2. For centers initiated prior to FY 1982 and with $500,000 or less in support from all other sources during calendar year 1986, EDA's funding will be reduced in FY'S 1988, 1989, and 1990 by 20, 40, and 50 percent, respectively. No funding will be provided in FY 1991.

3. For centers initiated during FY'S 1982, 1983, 1984 or 1985, EDA will provide between $75,000 and $100,000 for the first year, $100,000, annually, for the next four years, and $75,000 and $50,000, annually, for the sixth and seventh years. No funding will be provided after the seventh year of EDA support.

4. For centers initiated after FY 1985 (September 30, 1985), EDA will provide $100,000, annually, for the first five years and $50,000, annually, for the sixth and seventh years. No funding will be provided after the seventh year of EDA support.

5. University centers are currently required to match the EDA grant dollar-for-dollar by the end of their fifth year of funding. This is FY 1990 for centers initially funded prior to FY 1986 (October 1, 1985). For centers initially funded in or after FY 1986, EDA requires that the local share be $33,334 in the first year, $45,000 in the second year, $60,000 in the third year, $80,000 in the fourth year, and $100,000 in the fifth year. At least half the local share must be in cash. In addition, EDA intends to require that the local share be $125,000 in year six and $140,000 in the seventh and final year of EDA support.

Exceptions to these policies may be made in unusual cases, such as when no other qualified institution exists to provide services to an area with extreme economic distress.

Further Information: For further information, contact Beverly L. Milkman, Deputy Director for Grant Programs, Economic Development Admnistration, Room 7866, U.S. Department of Commerce, Washington, DC 20230; telephone, 202-377-5111.

Dated: February 3, 1987.

Orson G. Swindle III,

Assistant Secretary for Economic Development.

[FR Doc. 87-2833 Filed 2-10-87; 8:45 am]

BILLING CODE 3510-24-M

Foreign-Trade Zones Board

[Order No. 339]

Resolution and Order Approving the Application of Partners for Economic Progress, Inc., for a Foreign-Trade Zone in Chattanooga, TN

Resolution and order: Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of Partners for Economic Progress, Inc., a Tennessee non-profit economic development corporation, filed with the Foreign-Trade Zones Board (the Board) on September 25, 1985, requesting a grant of authority for establishing, operating and maintaining a general-purpose foreign-trade zone in Chattanooga, Tennessee, within the Chattanooga Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the pblic interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as

are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone in Chattanooga, Tennessee

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Partners for Economic Progress, Inc. (the Grantee), a Tennessee non-profit corporation, has made application (filed September 25, 1985, Docket No. 34-85, 50 FR 40884) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Chattanooga, Tennessee, within the Chattanooga Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 134 at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witnesses whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C., this 30th day of January 1987, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Malcolm Baldrige,

Chairman and Executive Officer.

[FR Doc. 87-2883 Filed 2-10-87; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-421-060]

Animal Glue and Inedible Gelatin From the Netherlands; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On December 16, 1986, the Department of Commerce published the preliminary results of its administrative review and tentative determination to revoke in part the antidumping finding on animal glue and inedible gelatin from the Netherlands. The review covers one manufacturer/exporter of this merchandise and the period December 1, 1982 through May 31, 1984.

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke in part. We received no comments. The final results are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: February 11, 1987.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On December 18, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 45364) the preliminary result of its administrative review and tentative determination to revoke in part the antidumping finding on animal glue and inedible gelatin from the Netherlands (42 FR 64115, December 22, 1977). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of animal glue and inedible gelatin, of which there are two principal types, hide glue and bone glue. Animal glue is an organic colloid of protein derivation. There is no significant difference between animal glue and inedible gelatin. Animal glues are odorless, dry, hard, hornlike materials. They are used as general purpose adhesives in industries producing abrasives, paper containers, book and magazine bindings, and leather goods. They are also used as sizing agents and as colloids in emulsions and cleaning compounds. Animal glue and inedible gelatin are currently classifiable under items 455.4000 and 455.4200 of the Tariff Schedules of the United States Annotated.

The review covers one manufacturer/exporter of Dutch animal glue and inedible gelatin, Holding Trobas, and the period December 1, 1982 through May 31, 1984.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke in part. We received no comments. The final results of our review are the same as those presented in the preliminary results of review, and we determine that no

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margins exist for Holding Trobas for the period December 1, 1982 through May 31, 1984.

The Department will instruct the Customs Service not to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in section 715(a)(1)(B) of the Tariff Act, since there was no margin for Holding Trobas the Department shall not require a cash deposit of estimated antidumping duties for Holding Trobas. For any shipments from the two remaining known manufacturers/exporters or third-country resellers not covered in this administrative review, the cash deposit will continue to be at the rates published in the final results of the last administrative review for each of those firms (49 FR 19550, May 8, 1984). For any entries of this merchandise from a new exporter not covered in this administrative review, whose first shipments occurred after May 31, 1984 and who is unrelated to the reviewed firm or any previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Dutch animal glue and inedible gelatin entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675 (a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: February 5, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-2885 Filed 2-10-87; 8:45am]

BILLING CODE 3510-DS-M

[A-588-049]

Calcium Pantothenate From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty Administrative review.

SUMMARY: On December 16, 1986, the Department of Commerce published the perliminary results of its administrative review of the antidumping finding on calcium pantothenate from Japan. The review covers one exporter and four third-country resellers of this merchandise and various periods from July 1, 1981 through December 31, 1984.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. The final results of review are unchanged from those presented in the perliminary results.

EFFECTIVE DATE: February 11, 1987.

FOR FURTHER INFORMATION CONTACT: Sheila Forbes or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On December 16, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 45029) the preliminary results of its administrative review of the antidumping finding on calcium pantothenate from Japan (39 FR 2086, January 17, 1974). We began this review of the finding under our old regulations. After the promulgation of our new regulations, two importers, two third-country resellers, and an exporter requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of calcium pantothenate, a member of the B-complex vitamin family, which is produced in two grades: D-Cal Pan (USP Grade, which is used for human nutrition in the form of multi-vitamin tablets) and DL-Cal Pan (Feed Grade, which is used as a food supplement for swine and poultry). Both grades of calcium pantothenate are currently classifiable under item 437.8225 of the Tariff Schedules of the United States Annotated.

The review covers one exporter and four third-country resellers of Japanese calcium pantothenate and varius periods from July 1, 1981 through December 31, 1984.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. The final results of our review are the same as those presented in the preliminary results of review, and we determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Nagase & Co., Ltd.	1/1/82-5/31/82	[1] 0
Third-country Reseller (Country):		
BMP GmbH (W. Germany)	1/1/82-12/31/84	3.98
Chemeta BV (Netherlands)	6/1/82-12/31/84	3.98
M. Gurvey & Berry Co. (Canada)	6/1/82-6/31/83	3.98
Kompanie Ultramar Sievers (W. Germany)	7/1/81-3/31/82	0

[1] No shipments during the period.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, the Department will isntruct the Customs Service to collect a cash deposit of estimated antidumping duties for each firm based upon the above margins, as provided in section 75(a)(1) of the Tariff Act. For any shipments from the remaining known producers and/or exporters not covered by this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for each of those firms (48 FR 38526, August 24, 1983). For any shipments from a new producer and/or exporter not covered by this or prior administrative reviews, whose first shipments of Japanese calcium pantothenate occurred after December 31, 1984, and who is unrelated to any reviewed firm or any previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Japanese calcium pantothenate entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: February 5, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-2886 Filed 2-10-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-068]

Steel Wire Strand For Prestressed Concrete From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 9, 1987, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on steel wire strand for prestressed concrete from Japan. The review covers eight manufacturers and/or exporters of this merchandise to the United States and the period December 1, 1982 through November 30, 1985.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: February 11, 1987.

FOR FURTHER INFORMATION CONTACT: Edward Haley or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5289/5255.

SUPPLEMENTARY INFORMATION:

Background

On January 9, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 827) the preliminary results of its administrative review of the antidumping finding on steel wire strand for prestressed concrete from Japan (43 FR 57599), December 8, 1978. The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of steel wire strand, other than alloy steel, stress-relieved and suitable for use in prestressed concrete. Steel wire strand for prestressed concrete is currently classifiable under item 642.1120 of the Tariff Schedules of the United States annotated.

The review covers eight manufacturers and/or exporters of Japanese steel wire strand for prestressed concrete to the United States and the period December 1, 1982 through November 30, 1985. We deferred review of Mitsui & Co., Ltd. We will cover that firm in a separate review.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results, and we determine that the following weighted-average margins exist for the period December 1, 1982 through November 30, 1985:

Manufacturer/Exporter	Margin (percent)
Mitsubishi Corp./All manufacturers	4.5
Shinko Wire Co., Ltd./All other exporters (except Mitsui & Co., Ltd.)	[1] 0
Suzuki Metal Industry Co., Ltd./All other exporters (except Mitsui & Co., Ltd.)	[1] 0
Tokyo Rope Mfg. Co., Ltd./All other exporters (except Mitsui & Co., Ltd.)	[1] 4.5

[1] No shipments during the period.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. We will issue appraisement instructions directly to the Customs Service.

Further, as provided for in section 751(a)(1) of the Tariff Act, the Department will instruct the Customs Service to collect a cash deposit of estimated antidumping duties for each firm based upon the above margins. For any shipments from the remaining known manufacturers and/or exporters not covered by this review, a cash deposit shall be required at the rates published in the final results of the last administrative review for each of those firms. For any shipments from a new exporter, whose first shipments occurred after November 30, 1985 and who is unrelated to any reviewed firm, or previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Japanese steel wire strand for prestressed concrete entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the text administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: February 5, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR. Doc. 87-2887 Filed 2-10-87; 8:45am]

BILLING CODE 3510-DS-M

National Bureau of Standards

Senior Executive Service; Membership of General and Limited Performance Review Boards

The purpose of the General Performance Review Board (GPRB) is to review performance agreements, appraisals, ratings, and recommended action pertaining to employees in the Senior Executive Service and to make appropriate recommendations to the Director of NBS concerning such matters in such a manner as will assure the fair and equitable treatment of senior executives. The GPRB performs its review functions for all NBS senior executives except those who are members of the NBS Executive Board and those who are members of the GPRB.

The Limited Performance Review Board (LPRB) performs its review functions for all NBS senior executive who are members of the NBS Executive Board (except the NBS Deputy Director) and those senior executives who are members of the NBS GPRB.

The individuals who have been newly appointed by the Director of NBS to membership on the GPRB and LPRB or have had their term of membership extended are listed below

GPRB

Dr. Karl G. Kessler, Chair Deputy Associate Director for International Affairs, Office of the Director, National Bureau of Standards, Gaithersburg, Maryland 20899. Term: January 1, 1987 to December 31, 1988.

Dr. Donald J. Sullivan, Chief, Time and Frequency Division, National Measurement Laboratory, National Bureau of Standards, Boulder, Colorado 80303. Term: January 1, 1987 to December 31, 1988.

Dr. Sheldon Wiedershorn, Group Leader, Mechanical Properties Institute for Materials Science and Engineering, National Bureau of Standards,

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Gaithersburg, Maryland 20899. Term: January 1, 1987 to December 31, 1988.

LPBB

Dr. Edward L. Brady, Chair, Associate Director for International Affairs, National Bureau of Standards, Gaitherburg, Maryland 20899. Term extended to December 31, 1988.

Dr. Donald K. Stevens, Associate Director for Basic Energy Sciences, Office of Energy Research, Department of Energy, Washington, D.C. 20545. Term extended to December 31, 1988.

The full membership and expiration dates of the GPRB and LBRB are listed below:

GPRB

Dr. Karl G. Kessler, Chair, Deputy Associate Director for International Affairs, Office of the Director, National Bureau of Standards, Gaithersburg, Maryland 20899. Term: January 1, 1987 to December 31, 1988.

Dr. James E. Hill, Chief, Building Equipment Division, National Engineering Laboratory, National Bureau of Standards, Gaithersburg, Maryland 20899. Expiration of appointment—December 31, 1987.

Dr. Theodore E. Madey, Group Leader, Surface Structure and Kinetics, National Measurement Laboratory, National Bureau of Standards, Gaithersburg, Maryland 20899. Expiration of appointment — December 31, 1987.

Dr. Lewis H. Nosanow, Director, Division of Materials Research, National Science Foundation, Washington, D.C. 20550. Expiration of appointment — December 31, 1987.

Dr. Donald J. Sullivan, Chief, Time and Frequency Division, National Measurement Laboratory, National Bureau of Standards, Boulder, Colorado 80303. Term: January 1, 1987 to December 31, 1988.

Dr. Sheldon Wiederhorn, Group Leader, Mechanical Properties, Institute for Materials Science and Engineering, National Bureau of Standards, Gaithersburg, Maryland 20899. Term: January 1, 1987 to December 31, 1988.

Ms. Helen M. Wood, Chief, Information Systems Engineering Division, Institute for Computer Sciences and Engineering, National Bureau of Standards, Gaithersburg, Maryland. Expiration of appointment—December 31, 1988.

LPRB

Dr. Edward L. Brady, Chair, Associate Director for International Affairs, National Bureau of Standards, Gaithersburg, Maryland 20899. Term extended to December 31, 1988.

Dr. Jeffrey D. Rosendhal, Assistant Associate Administrator (Science), National Aeronautics and Space Administration, Washington, D.C. 20546. Expiration of appointment—December 31, 1987.

Dr. Donald K. Stevens, Associate Director for Basic Energy Sciences, Office of Energy Research, Department of Energy, Washington, D.C. 20545. Term extended to December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Mrs. Elizabeth W. Stroud, Chief Personnel Division, National Bureau of Standards, Gaithersburg, Maryland, telephone 301–975–3000.

Dated: February 3, 1987.

Ernest Ambler,

Director.

[FR Doc. 87–2832 Filed 2–10–87; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Restraint Limit for Certain Wool Textile Products Produced or Manufactured in Uruguay

February 6, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 12, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

The Bilateral Wool Textile Agreement effected by exchange of notes dated December 30, 1983 and January 23, 1984, as amended, between the Governments of the United States and the Republic of Uruguay establishes an import restraint limit for wool textile products in Category 410, during the agreement period which began on February 1, 1987 and extends through January 31, 1988. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the bilateral agreement, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of textile products in Category 410, produced or manufactured in Uruguay and exported during the specified twelve-month period, in excess of the designated limit.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 6, 1987.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Agreement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Wool Textile Agreement, effected by exchange of notes dated December 30, 1983 and January 23, 1984, as amended, between the Governments of the United States and the Republic of Uruguay; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 12, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 410, produced or manufactured in Uruguay and exported during the twelve-month period which began on February 1, 1987 and extends through January 31, 1988, in excess of 2,121,000 square yards equivalent.[1]

In carrying out this directive, textile products in Category 410, which have been exported to the United States during the restraint period immediately previous to that established in this directive, shall, to the extent of any unfilled balances, be charged against the limit established for such goods during that period. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the limit set forth in this letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–2833 Filed 2–10–87; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to reflect any imports exported after January 31, 1987.

Requesting Public Comment on Bilateral Consultations With the Government of Peru on Category 338/339

February 6, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 12, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715. For information on categories on which consultations have been requested call (202) 377–3740.

Background

On December 30, 1986, the Government of the United States requested consultations with the Government of Peru with respect to cotton textile products in Category 338/339 (shirts and blouses). This request was made on the basis of the agreement between the Governments of the United States and Peru of January 3, 1985, as amended, relating to trade in cotton, wool and man-made fiber textile products. The agreement provides for consultations when imports, due to market disruption, or the threat thereof, threaten to impede the orderly development of trade between the two countries.

A summary market statement for this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Anyone wishing to comment or provide data or information regarding the treatment of Category 338/339 under the agreement with the Government of Peru, or to comment on domestic production or availability of textile products included in this category, is invited to submit such comments or information in ten copies to Mr. Ronald I. Levin, Acting Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because of the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon request.

Further comment may be invited regarding particular comments of information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which consitute "a foreign affairs function of the United States."

The Government of the United States has decided, pending a mutually satisfactory solution, to control imports in Category 338/339 exported during the 90-day consultation period which began on December 30, 1986 and extends through March 29, 1987, at the prescribed limit of 81,522 dozen.

According to the terms of the bilateral agreement, if no mutually satisfactory solution is reached during consultations, the United States may establish a prorated specific limit for the period following the ninety-day consultation period (March 30, 1987–April 30, 1987) to 24,504 dozen.

In the event the limit established for the ninety-day period is exceeded, such excess amount, if allowed to enter, may be charged to the limit established during the subsequent restraint period.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Peru, further notice will be published in the **Federal Register**.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

Peru—Market Statement

Category 338/339—Cotton Knit Shirts and Blouses

December 1986.

Summary and Conclusions: U.S. imports of Category 338/339 from Peru were 254,386 dozen during the year ending October 1986, three times the 77,267 dozen imported a year earlier. During the first ten months of 1986, imports of Category 338/339 from Peru were 240,770 dozen, nearly four times the 61,871 dozen imported during the same period in 1985 and three times the amount imported during calendar year 1985.

The U.S. market for Category 338/339 has been disrupted by imports. The sharp and substantial increase of imports from Peru has contributed to this disruption.

U.S. Production and Market Share: U.S. production of cotton knit shirts and blouses declined seven percent from 24,138 thousand dozen in 1983 to 22,468 thousand dozen in 1985. The U.S. manufacturers' share of this market declined from 60 percent in 1983 to 55 percent in 1985.

U.S. Imports and Import Penetration: U.S. imports of Category 338/339 grew from 16,116 thousand dozen in 1983 to 18,457 thousand dozen in 1985, a 15 percent increase. During the first ten months of 1986, imports of Category 338/339 reached 21,046 thousand dozen, 37 percent higher than the level imported during the same period in 1985 and 14 percent above the amount imported during calendar year 1985. The ratio of imports to domestic production increased from 67 percent in 1983 to 82 percent in 1985.

Duty-Paid Value and U.S. Producers' Price: Approximately 66 percent of Category 338/339 imports from Peru during the first ten months of 1986 entered under TSUSA numbers: 384.2806—women's cotton knit tank tops, not ornamented; 384.2920—women's, girls' and infants' cotton knit T-shirts, not ornamented, excludes those T-shirts for infant boys' over 24 months of age; and

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384.2935—women's and girls' cotton knit sweatshirts, not ornamented. These garments entered the U.S. at duty-paid landed values below U.S. producers' prices for comparable garments.

Committee for the Implementation of Textile Agreements

February 6, 1987

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Agreement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 3, 1985, as amended, between the Governments of the United States and Peru; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 12, 1987 entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 338/339, produced or manufactured in Peru and exported during the ninety-day consultation period which began on December 30, 1986 and extends through March 29, 1987, in excess of 81,522 dozen.[1]

Textile products in Category 338/339 which have been exported to the United States prior to December 30, 1986 shall not be subject to this directive.

Textile products in Category 338/339 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-2882 Filed 2-10-87; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after December 29, 1986.

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Detection and Neutralization of Illegal Drugs and/or Terrorist Devices; Meeting

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Detection and Neutalization of Illegal Drugs and/or Terrorist Devices will meet in closed session on April 22–23, May 12–13, June 16–17, and July 14–15, 1987 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will provide new and innovative technology to improve the detection and/or neutralization of drugs, explosives, and weapons as they move towards their ultimate destination.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Dated: February 5, 1987.

Linda Lawson

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 87-2825 Filed 2-10-87; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Follow on Forces Attack; Meeting

SUMMARY: The Defense Science Board Task force on Follow on Forces Attack will meet in closed session on March 30–31, 1987 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Aquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will continue to review, in detail, classified meterial associated with conventional military capabilities in NATO to include special targeting requirements.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Dated: February 5, 1987.

Linda Lawson

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 87-2826 Filed 2-10-87; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Image Recognition Systems; Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Image Recognition Systems will meet in closed session on March 10–12, 1987 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will study the current status and probable near- to medium-term development of computer-based image recognition systems with emphasis on the potential for further development in "smart weapons," especially those for attacking ground vehicles.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Dated: February 5, 1987.

Linda Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 87-2827 Filed 2-10-87; 8:45]

BILLING CODE 3810-10-M

Defense Science Board Task Force on Multi-National Cooperation for Follow-On Forces Attack Requirements; Meeting

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Multi-National Cooperation for Follow-On Forces Attack Requirements will meet in closed session on April 28–30, 1987 at Brussels, Belgium.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Aquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will continue to review, in detail, classified material associated with conventional military capabilities in NATO with a view towards future U.S. and NATO requirements.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. Appl II, (1982), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552[c](1) (1982), and that accordingly these meetings will be closed to the public.

Dated: February 5, 1987.

Linda Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 87-2828 Filed 2-10-87; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Non-Nuclear Strategic Capability; Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Non-Nuclear Strategic Capability will meet in closed session on March 5–6, April 15–16, and June 24–25, 1987 at Science Applications International Corporation, Crystal City, Virginia, and on May 13–14, 1987 at the Lockheed Corporation Conference Center, Calabasas, California.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will review and report on the potential of non-nuclear technology, to provide alternative weapons for use in supporting strategic options for U.S. forces.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly these meetings will be closed to the public.

Dated: February 5, 1987.

Linda Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 87-2829 Filed 2-10-87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Intent To Prepare an Environmental Impact Statement; Laughlin Air Force Base, TX

The United States Air Force will prepare an Environmental Impact Statement (EIS) for the proposed acquisition and construction of a permanent auxiliary airfield for Laughlin Air Force Base, Texas pilot training. The proposed site is located in the vicinity of Maverick County and Kinney County, Texas. The permanent airfield will replace the Eagle Pass Auxiliary Airfield currently leased from Maverick County. However, purchase of the Eagle Pass Auxiliary Airfield is an alternative to construction of a new airfield. This proposed action will reduce the safety hazards from bird strikes at Eagle Pass and improve operations and reduce costs.

The Air Force is planning to conduct scoping meetings to determine the nature, extent and scope of the issues and concerns that should be addressed in the EIS. Notice of the time and place of the planned scoping meetings will be made available to public officials and announced in the news media.

For further information concerning the preparation of the Environmental Impact Statement contact: Air Training Command/DEEV, Lt. Col. Potter, Randolph Air Force Base, Texas 78150–5000, Telephone: (512) 652–6340.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-2798 Filed 2-10-87; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Group; Meeting

March 3, 1987.

The USAF Scientific Advisory Board Space Division Advisory Group will hold meetings on March 3, 1987 from 8:00 AM to 5:00 PM and on March 4, 1987 from 8:00 AM to 12:00 noon, at Vandenberg Air Force Base, California, Building 6505, the SAMTO Conference Center.

The Group will receive classified briefings and hold classified discussions on selected Air Force space programs. The meeting will be closed to the public in accordance with section 552b(c) of Title 5, United States Code, specifically paragraph (1) thereof.

For further information contact the Scientific Advisory Board Secretariat at (202) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-2799 Filed 2-10-87; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 2–3 March 1987.

Times of meeting: 0900–1700 hours, 2 March 1987, 0800–1630 hours, 3 March 1987.

Place: Pentagon, Washington, D.C.

Agenda: The Army Science Board's Ad Hoc Committee on Implementing Competitive Strategies will meet. In response to SECDEF Memorandum, 12 August 1986, the Army is taking initiatives to implement the Competitive Strategy concept. This will be the initial session of the ASB ad hoc committee during which the Terms of Reference for the study will be discussed. Briefings on the FY 89 POM and discussions with OSD Net Assessment office will be conducted. The objectives of this session will be to define and gain a common understanding of Competitive Strategies concept and development approach to the study. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FE Doc. 87-2800 Filed 2-10-87; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Commission on Merchant Marine and Defense; Meeting

Time and date: 2:00 P.M., February 26, 1987.

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Place: Center for Naval Analyses Auditorium, First Floor, 4401 Ford Avenue, Alexandria, Virginia 22302.

Status: Open.

Matters to be considered: The purpose of the meeting is to receive statements on the perspective of the operators of bulk ships on the problem of providing adequate shipping to support the defense needs of the United States. Witnesses presenting oral testimony have been invited by the Commission to appear, and will represent the major operators and organizations of bulk shipping.

Other interested persons are invited to submit written statements about the bulk shipping industry and the shipping needs of United States defense policy. Written statements should be received by the close of business on February 24, 1987. All written submissions will be made available for inspection by interested parties, and may be published as part of the Commission's proceedings. All submissions should be addressed to the Executive Director at the Commission's office in Alexandria, Virginia.

Contact person for Allan W. Cameron. more information: Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22302–0268, Telephone: (703) 756–0411.

Dated: February 6, 1987.

Harold L. Stoller,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 87–2855 Filed 2–10–87; 8:45 am]

BILLING CODE 3810-AE-M

Record of Decision to Implement Certain Actions Associated with Modernization and Expansion of Logistic Support Systems, Naval Weapons Station, Earle, Colts Neck, NJ

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations (40 CFR Part 1500), the U.S. Navy announces its decision to implement certain actions associated with the Modernization and Expansion of Logistic Support Systems at Naval Weapons Station (NWS) Earle, Colts Neck, New Jersey. In 1979, the U.S. Department of the Navy filed a Draft Environmental Impact Statement (DEIS) for the Modernization and Expansion of the Logistic Support System (MELSS) at NWS Earle. The primary action was the relocation of two Auxiliary Oil and Explosive Ships (AOEs) from Norfolk, Virginia, to Earle to provide a safe explosive handling environment. After submittal of the Final Environmental Impact Statement (FEIS) in April 1980, no further action was taken until 1983.

In July 1983, the Navy issued a record of decision adopting an interim support plan to homeport the AOEs at NWS Earle (**Federal Register** Vol. 48, No. 134). This plan required the AOEs to load ammunition and other ordnance at Earle and refuel and defuel at Craney Island, Virginia, an operational procedure recognized at the time to be acceptable but not optimal. Loading of ammunition on the AOEs at Earle after first taking fuel in the Norfolk area would present continued operational constraints to military readiness as well as being considerably more costly. Providing improved ammunition and fuel facilities at NWS Earle offers distinct economic advantages and enhanced military readiness. However, should the refueling facilities at Earle never be built, the Navy would continue to operate the AOEs at Earle indefinitely under the planned development program described below.

A Draft Supplemental Environmental Impact Statement (DSEIS) was prepared in June 1986 to address a changed pier and trestle siting plan, reduced dredging requirements, dredged disposal options, ship fuel replenishment system relocation, and construction of additional ammunition magazines. The Final Supplemental Environmental Impact Statement (FSEIS) was completed in November 1986 and in response to comments received on the DSEIS, additional changes have been made which were detailed in the FSEIS.

The Record of Decision, which modifies the planned development program documented in the DSEIS and FSEIS, and which the Navy now plans to implement, includes the following:

—A new pile supported pier (No. 4) would be constructed adjacent and parallel to Pier No. 3. The pier will be about 945 feet long by 143 feet wide and would be connected to the existing trestle/pier system by a new 1,500-foot long pile supported trestle.

—Dredging and disposal of an estimated total of 8.2 million cubic yards of material is included with a portion of the total being suitable for beach nourishment. Dredging would be to −47 feet and would include the immediate area surrounding the new pier, provision of a turning basin and terminal channel, and deepening of one-half of the width of the Sandy Hook Channel. This depth is necessary with or without fueling capability at Earle since Navy regulations require that ammunition be loaded after refueling. Three dredge disposal options are detailed in the DSEIS and FSEIS and all are found to be environmentally beneficial. Dredged material from the first phase would be deposited at the Mud Dump site; however, the use of clean sands from the second dredging phase for nourishment of local beaches is possible. While the Navy wishes to maximize environmental benefit, it cannot incur the highest cost. A final determination on beach nourishment will depend upon the outcome of discussions and cost analyses now underway that take advantage of new laws for cost sharing between the State(s) and the Federal Government. This decision will be made by the Secretary of the Navy based upon the actual dredging bid costs and the availability of State and local funding at the time of dredging.

—Six smokeless powder and projectile magazines would also be constructed at the main station area.

—The fuel storage facility portion of the Ship Fuel Replenishment System (SFRS) is given a no action status. The selection of a land based site is deferred while thorough site and risks alternatives analyses are conducted. As previously noted, the Navy postulates that a more economical fueling operation and enhanced military readiness would result through provision of SFRS at Earle. Accordingly, the Navy will embark on these studies anticipating that a solution which is both satisfactory to the public and meeting the requirements of NEPA and appropriate permitting processes is achievable and affordable. Any further decision in this regard will be the subject of additional environmental documentation. Pending the outcome of these studies, the AOEs will be replenished while underway or at Craney Island in Norfolk, Virginia. It is recognized that there is a long term potential for this operation should refueling facilities never be constructed at Earle.

—The oil water separation system, which is required whether or not the SFRS storage tanks are provided, would be constructed at the site shown in the FSEIS to service to the two AOEs or other ships using Earle facilities. The system would include pier lines, oil water separators, and associated piping.

Concerning environmental impacts, there would be the loss of existing benthic habitat around the pier area; however, no impacts are know to be associated with the deepening of the navigation channel itself, outside of short-term, local impacts associated with turbidity. The increased level of naval activities would also result in a slight increase in the restricted navigation area.

Construction ashore would include normal short-term environmental impacts such as a slight increase in runoff and sedimentation inputs into the local streams. Standard erosion and sediment control measures would be used in all cases to minimize these impacts. Temporary impacts to air quality and noise levels would occur. The existing woodlands and associated wildlife habitats in the areas of magazine construction would be eliminated and replaced by a lawn-type environment. No endangered or threatened species would be impacted. No sites of historic or archaeological importance are located in the construction areas. Areas to the north of the proposed magazine construction site are suspected to possess some archaeological importance and would be protected.

The Navy believes there are no outstanding issues to be resolved with respect to this action. An SFRS at or near the NSW Earle would provide a substantially more economical fuel operation for the long term, would enhance military readiness by avoiding steaming time between Craney Island and NWS Earle, but is not required to fulfill the homeporting mission. It is our intention, however, to embark on additional siting alternative studies to find a location or solution which is both satisfactory to the public and meets all the requirements of NEPA and appropriate permit processes. In addition an update of the Environmental Assessment incorporated by reference in the Supplemental EIS is being conducted to address the proposed construction of 300 additional housing units.

Dated: February 5, 1987.

Harold L. Stoller,

CDR, JAGC Federal Register Liaison Officer.

[FR Doc. 87–2796 Filed 2–10–87; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on U.S. Marine Corps Command and Control Systems Interoperability will meet on February 26–27, 1987, at the First Marine Amphibious Force (MAF), Marine Corps Base, Camp Pendleton, California. The meeting will commence at 8:30 A.M. and terminate at 4:00 P.M. on February 28; and commence at 8:00 A.M. and terminate at 2:00 P.M. on February 27, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to review interservice command and control systems requirements for naval forces in the near and mid-term, and identify future communications and command and control systems architecture features with a veiw toward improving interoperability. The agenda will include technical briefings and discussions addressing warfighting and interoperability procedures. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research, (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, telephone number (202) 696–4870.

Dated: February 3, 1987.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 87–2795 Filed 2–10–87; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before March 13, 1987.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) agency form number (if any); (4) frequency of collection; (5) the affected public; (6) reporting burden; and/or (7) recordkeeping burden; and (8) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: February 5, 1987.

Carlos U. Rice,

Director, Information Technology Services.

Office of Elementary and Secondary Education

Type of Review: Reinstatement
Title: Application for Title IV, Section 418A of the HEA, as amended, College Assistance Migrant Program
Agency Form Number: ED 818–1
Frequency: On occasion
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 35
Burden Hours: 700
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This application is used by Institutes of Higher Education (IHE) and other agencies working closely with an

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IHE to obtain grants for projects that address the special educational needs of first year college students who are engaged, or whose families are engaged, in migrant and other seasonal farmwork.

Office of Elementary and Secondary Education

Type of Review: Reinstatement
Title: Application for Title IV, Section 418A of the Higher Education Act, as amended, High School Equivalency Program
Agency Form Number: ED 819
Frequency: On occasion
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 45
Burden Hours: 900
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This application is used by Institutes of Higher Education (IHE) and other agencies working closely with an IHE to implement projects that address the special educational needs of high school students who are engaged, or whose families are engaged, in migrant and other seasonal farmwork.

Office of Postsecondary Education

Type of Review: Revision
Title: Fiscal Operations Report and Application to Participate in the Perkins Loan, Supplemental Educational Opportunity Grants, and College Work Study Programs
Agency Form Number: ED 646–1
Frequency: Annually
Affected Public: State of local governments, non-profit institutions
Reporting Burden:
Responses: 5300
Burden Hours: 179,153
Recordkeeping Burden:
Recordkeepers: 5300
Burden Hours: 424

Abstract: Under the Higher Education Act of 1965, as amended, institutions are required to apply and subsequently report the expenditures for the Perkins Loan (formerly the National Direct Student Loan), the Supplemental Educational Opportunity Grant, and the College Work Study Programs, on an annual basis. The data collected on the report and application will be used to assess program effectiveness and accountability of funds expended during the award period 1986–87 and to compute the amount of funds needed by each institution during the 1988–89 award year.

Office of Postsecondary Education

Type of Review: Revision
Title: Guaranteed Student Loan (GSL) Tape Dump Procedures and PLUS Loan Tape Dump Procedures
Agency Form Number: E40–15P
Frequency: Annually
Affected Public: State or local governments; non-profit institutions
Reporting Burden:
Responses: 69
Burden Hours: 2273
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: The collection of this information is needed to describe the characteristics of borrowers under the Guaranteed Student Loan (GLS), Supplemental Loans for Students (SLS) and PLUS programs; to assess the impact of various legislative, regulatory, and budgetary proposals in terms of program costs and students served; and to monitor borrower fraud and abuse in the programs.

Office of Management

Type of Review: Reinstatement
Title: Federal Cash Transactions Report
Agency Form Number: ED PMS 272
Frequency: On occasion
Affected Public: State or local governments; businesses or other for profit; non-profit institutions
Reporting Burden:
Responses: 30,000
Burden Hours: 120,000
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This report collects cash disbursement information from recipients of grant awards in order for the Department to monitor Federal cash advances to grantees.

Office of Bilingual Education and Minority Language Affairs

Type of Review: Extension
Title: Application for Emergency Immigrant Education Program
Agency Form Number: T85–IP
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 57
Burden Hours: 8892
Recordkeeping Burden:
Recordkeepers: 57
Burden Hours: 57

Abstract: This application will collect data from State educational agencies on the number of eligible immigrant children enrolled in their elementary and secondary (public and non-public) schools. The data will be used by the Department of Education to determine the amount of grants to be awarded to SEA's under the Emergency Immigrant Education Program.

[FR Doc. 87–2871 Filed 2–10–87; 8:45 am]
BILLING CODE 4000–01–M

Invitation of Applications for New Awards Under the Undergraduate International Studies and Foreign Language Program for Fiscal Year 1987 (CFDA No. 84.016)

Purpose: Provides grants to institutions of higher education, combinations of those institutions and public and private nonprofit agencies and organizations, including professional and scholarly associations, to strengthen and improve undergraduate instruction in international studies and foreign languages in the United States.

Deadlines for transmittal of applications: March 30, 1987.
Applications available: February 20, 1987.

Available funds: Of the funds appropriated by the Congress for International Education for Fiscal Year 1987, approximately $1,200,000 will be used to fund applications submitted under sections 604(a) and (c) of Title VI of the Higher Education Act of 1965, as amended (HEA). No money will be used to fund model foreign language projects under section 604(b) of the HFA. Applicants should be aware that the President has proposed budget rescissions to the Congress that may eliminate funds for this program. The deadline established in this notice will not be extended, and applicants should prepare and submit applications pending further notification.

Estimated range of awards: $20,000 to $70,000.

Estimated average size of awards: 48,000.

Estimated number of awards: 24–26.

Project period: 24 months of single institutions of higher education; up to 36 months for all other applicants.

Applicable Regulations: (a) Undergraduate International Studies and Foreign Language Program, 34 CFR Parts 655 and 658, and (b) Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78. To conform to the recent revisions to the statute, the word "comprehensive" will be deleted each time it appears in Part 658, and in § 658.11(g), the phrase "pre-service and in-service" will be inserted before the word "teacher".

For applications or information contact: Ralph Hines, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3053, ROB 3, Washington, DC 20202. Telephone: (202) 732–3290.

Program Authority: 20 U.S.C. 1124.

Dated: February 6, 1987.

C. Ronald Kimberling,
Assistant Secretary for Postsecondary Education.

[FR Doc. 87–2872 Filed 2–10–87; 8:45 am]
BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OAR-FRL-3154-1]

Gasoline Marketing: Availability of Documents for Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of EPA documents on the issue of gasoline marketing. These documents will be available for review at the following address: Environmental Protection Agency, Public Information References Unit, 401 M Street SW., Room 2904, Washington DC 20460.

Individuals wishing to review these documents should call (202) 382–5926 in advance.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency has been doing extensive analysis on the issue of whether and how to regulate emissions of volitale organic compounds associated with vehicle refueling. This notice announces the fact that EPA is making a large portion of that analysis available for public review. Additionally, this public docket will include copies of EPA's response to Congressional correspondence on this issue. Over the next several weeks, it is likely that additional documents and correspondence will be placed in this docket.

FOR FURTHER INFORMATION CONTACT: Paul Horwitz or Angeline Holowka, 401 M Street SW., Washington DC 20460 (202) 382–7432.

Dated: February 4, 1987.

Don R. Glay,
Acting Assistant Administrator for Air and Radiation.

[FR Doc. 87–2866 Filed 2–10–87; 8:45 am]
BILLING CODE 6560–50–M

[OPTS-59804; FRL-3154-4]

Toxic and Hazardous Substances Control; Certain Chemicals Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA Published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of two such PMN's and provides a summary of each.

DATE: Close of Review Period:

Y 87–97 and 87–98, February 17, 1987.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611 401 M Street, S.W., Washington, D.C. 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: Effective with this notice, a non-substantive change in format is being initiated for information published under sections 5(d)(2) and 5 (h)(6) of the Toxic Substances Control Act. Toxicity data will only appear in the notice when submitted with the polymer exemption submission. Exposure and environmental release/disposal information will no longer be published in the notice. The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87–96

Manufacturer. C.J. Osborn and Company.
Chemical. (G) Alkyd.
Use/Production. (S) Clear and Pigmented finishes. Prod. range: Confidential.

Y 87–98

Manufacturer. SUVAR Corporation, Superior Varnish and Drier Division.
Chemical. (G) Polyester.
Use/Production. (S) Metal decorating printing ink vehicle. Prod. range. Confidential.

Dated: February 3, 1987.

Denise Devoe,
Acting Division Director, Information Management Division.

[FR Doc. 87–2868 Filed 2–10–87; 8:45 am]
BILLING CODE 6560–50–M

[OPTS-51661; FRL-3154-3]

Toxic and Hazardous Substances Control; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FE 21722). This notice announces receipt of forty-one such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87–477 and 87–478, April 20, 1987
P 87–475, 87–476, 87–482, 87–483, 87–484, 87–485, 87–486, 87–487, 87–488, 87–489, 87–490, 87–491, 87–492, 87–493, 87–494, 87–497, 87–498 and 87–499, April 22, 1987
P 87–479, 87–480, 87–481, 87–495, 87–496, 87–500, 87–501, 87–502, 87–503, 87–506, 87–507 and 87–508, April 26, 1987
P 87–504, 87–505, 87–509, 87–510, 87–511, 87–512, 87–513, 87–514 and 87–515, April 27, 1987

Written comments by:

P 87–477 and 87–478, March 19, 1987
P 87–475, 87–476, 87–482, 87–483, 87–484, 87–485, 87–486, 87–487, 87–488, 87–489, 87–490, 87–491, 87–492, 87–493, 87–494, 87–497, 87–498 and 87–499, March 21, 1987
P 87–479, 87–480, 87–481, 87–495, 87–496, 87–500, 87–501, 87–502, 87–503, 87–506, 87–507 and 87–508, March 23, 1987

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P 87-504, 87-505, 87-509, 87-510, 87-511, 87-512, 87-513, 87-514 and 87-515.

March 27, 1987

ADDRESS: Written comments, identified by the document control number "[OPTS-51661]" and the specific PMN number should be sent to: document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, S.W., Washington, D.C. 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, S.W., Washington, D.C. 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: Effecitve with this notice, a non-substantive change in format is being initiated for information published under sections 5(d)(2) and 5(h)(6) of the Toxic Substances Control Act. Toxicity data will only appear in the notice when submitted with the PMN. Exposure and environmental release/disposal information will no longer be published in the notice. The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87-475

Manufacturer. H. B. Fuller Company.
Chemical. (G) Epoxy functional vinyl acrylic multipolymer.
Use/Production. (G) Binder. Prod. range: 500,000 to 1,500,000 kg/yr.

P 87-476

Manufacturer. Confidential.
Chemical. (G) Potassium sulfonate.
Use/Production. (G) Destructive. Prod. range: Confidential.

P 87-477

Manufacturer. The C. P. Hall Company.
Chemical. (G) Aliphatic polyester.
Use/Production. (S) Plasticizer. Prod. range: Confidential.

P 87-478

Manufacturer. Hercules Incorporated.
Chemical. (G) Oligomers of C_6-C_9 alkenes.
Use/Production. (S) Hot melt adhesives and pressure sensitive adhesives for industrial, commercial and consumer use. Prod. range: Confidential.

P 87-479

Manufacturer. The Goodyear Tire and Rubber Company.
Chemical. (S) 4,4'-Tetrathiobismorpholine
Use/Production. (S) Industrial rubber curing agent. Prod. range: 4,500 to 10,000 kg/yr.
Toxicity Data. Acute oral: > 5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Slight; Ames test: Non-mutagenic.

P 87-480

Manufacturer. Confidential.
Chemical. (G) Dithiocarbamyl substituted triazine.
Use/Production. (S) Industrial rubber curing agent. Prod. range: 4,550 to 10,000 kg/yr.
Toxicity Data. Acute oral: > 5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Severe; Ames test: Non-mutagenic.

P 87-481

Importer. Confidential.
Chemical. (G) Salt of perfluoro fatty acids.
Use/Import. (G) Emulsifier. Import range: Confidential.

P 87-482

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (G) Resin converted to paint. Prod. range: Confidential.

P 87-483

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (G) Resin converted to paint. Prod. range: Confidential.

P 87-484

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (G) Resin converted to paint. Prod. range: Confidential.

P 87-485

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (G) Resin converted to paint. Prod. range: Confidential.

P 87-486

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (G) Resin converted to paint. Prod. range: Confidential.

P 87-487

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (G) Resin converted to paint. Prod. range: Confidential.

P 87-488

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (G) Resin converted to paint. Prod. range: Confidential.

P 87-489

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (G) Resin converted to paint. Prod. range: Confidential.

P 87-490

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (G) Resin converted to paint. Prod. range: Confidential.

P 87-491

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (G) Resin converted to paint. Prod. range: Confidential.

P 87-492

Manufacturer. Confidential.
Chemical. (G) Acrylated alkyd resin.
Use/Production. (G) Resin converted to paint. Prod. range: Confidential.

P 87-493

Manufacturer. Confidential.
Chemical. (G) Oil modified polyurethane.
Use/Production. (G) Ink varnishes. Prod. range: Confidential.

P 87-494

Manufacturer. Confidential.
Chemical. (G) Acrylated alkyd resin.
Use/Production. (G) Isocyanate modified alkyd resin. Prod. range: Confidential.

P 87-495

Importer. Mobil Oil Corporation.
Chemical. (S) Light MTG Gasoline Stream.
Use/Production. (S) Automotive fuel. Prod. range: $560X10^6$ kg/yr.
Toxicity Data. Acute oral: > 5.0 g/kg; Acute dermal: > 2 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Negative; Skin sensitization: Non-sensitizing; LC_{50} 96 hr (Rainbow trout): 10 ml/L; LC_{50} 96 hr (Bluegill Sunfish): 10 ml/L; LC_{50} 96 hr (Sheepshead minnow): 10 ml/L; LC_{50} 48 hr (Water flea): 10 ml/L; LC_{50} 48 hr (Mysid shrimp): 10 ml/L.

P 87-496

Importer. Mobil Oil Corporation.
Chemical. (G) Treated heavy MTG gasoline stream.
Use/Production. (S) Automotive fuel. Import range: $560X10^6$.
Toxicity Data. Acute oral: > 5.0 g/kg; Acute dermal: > 2 g/kg; Irritation: Skin—Non-irritant; Eye—Non-irritant, Ames test: Negative; Skin sensitization: Non-sensitizing; LC_{50} 96 hr (Rainbow trout): 10 ml/L; LC_{50} 96 hr (Bluegill Sunfish): 10 ml/L; LC_{50} 96 hr (Sheepshead minnow): 10 ml/L; LC_{50} 48 hr (Water flea): 10 ml/L; LC_{50} 48 hr (Mysid shrimp): 10 ml/L.

P 87-497

Manufacturer. Confidential.
Chemical. (G) Modified epoxy resin.
Use/Production. (G) Resin converted to paint. Prod. range: Confidential.

P 87-498

Manufacturer. Confidential.
Chemical. (G) Modified epoxy resin.
Use/Production. (G) Resin converted to paint. Prod. range: Confidential.

P 87-499

Manufacturer. Confidential.
Chemical. (G) Modified epoxy resin.
Use/Production. (G) Resin converted to paint. Prod. range: Confidential.

P 87-500

Importer. Confidential.
Chemical. (G) Substituted benzene sulfonamide.
Use/Import. (G) Polymer additive. Import range: Confidential.
Toxicity Data. Acute oral: > 5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.

P 87-501

Manufacturer. Confidential.
Chemical. (G) Organo-aluminum compound.
Use/Production. (G) Contained Use. Prod. range: Confidential.

P 87-502

Manufacturer. Confidential.
Chemical. (G) Dialkenylamide.
Use/Production. (G) Polymer modifying agent. Prod. range: Confidential.
Toxicity Data. Acute oral: > 908 mg/kg; Acute dermal: 1,600 mg/kg; Irritation: Skin—Non-irritant, Eye—Irritant; Ames test: Non-mutagenic.

P 87-503

Manufacturer. Confidential.
Chemical. (G) Alkylated phenol.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 87-504

Manufacturer. Dynamit Nobel Chemicals.
Chemical. (G) Zirconium chelate.
Use/Production. (S) Industiral adhesion promoter-printing ink industry; and crosslinker-oil field hydraulic facturing fluids. Prod. range: Confidential.

P 87-505

Importer. E. I. du Pont de Nemours and Company, Inc.
Chemical. (S) Decanedioic acid, polymer with 1,2-ethanediol.
Use/Import. (S) Lubricant in medical x-ray film overcoat.
Import range: 500 to 1,000 kg/yr.

P 87-506

Manufacturer. Confidential.
Chemical. (G) Hydrogen bis[1-[(3,5-disubstituted-2-hydroxyphenyl) azo]-3-(N-monosubsituted)-2-naphthalenolate(2-)]chromate(1-).
Use/Import. (G) Toner for plain paper copy machine (electrographic copy machine). Import range: Confidential.
Toxicity Data. Acute oral: > 5.0 g/kg; Acute dermal: > 2.0 g/kg; Irritation: Skin—Non-irritant, Eye—Mild; Ames test: Non-mutagenic; Sking sensitization: Non-sensitizer; Micronucleus test: 8,000 mg/kg; LC_{50} 48 hr (Daphnia magna): 10 mg;L; BOD 28 days: 3.20 mg/L.

P 87-507

Manufacturer. Confidential.
Chemical. (G) Alkyl phenol formaldehyde polymer.
Use/Production. (G) Petroleum additive. Prod. range: Confidential.
Toxicity Data. Acute oral: 2,000 mg/kg; Irritation: Eye—Minimal.

P 87-508

Manufacturer. Confidential.
Chemical. (G) Substituted bis-urea.
Use/Production. (G) Additive in coating having an open, industrial use. Prod. range: 1,000 to 3,300 kg/yr.

P 87-509

Manufacturer. Bedoukian Research Incorporated.
Chemical. (S) Benzoic acid, 2-[(3-(4-methoxyphenyl)-2-methyl-1-propenyl)amino]-,methylester.
Use/Production. (S) Commercial perfume and soap components. Prod. range: 1,000 to 1,200 kg/yr.

P 87-510

Manufacturer. Confidential.
Chemical. (G) NCO terminated urethane.
Use/Production. (G) Adhesive for open, non-dispersive use on varying substrates. Prod. range: Confidential.

P 87-511

Manufacturer. Gelanese Advance Technology Company.
Chemical. (S) Phenol 4,4',4"-(ethylidene)tris.
Use/Production. (S) Industrial crosslinking agent for polymers, intermediate/hardener for epoxies and intermediate for synthesis of other chemicals. Prod. range: Confidential.
Toxicity Data. Acute oral: > 5.0 g/kg; Acute dermal > 5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Non-Mutagenic.

P 87-512

Manufacturer. Exxon Chemical Company.
Chemical. (G) polyester of alpha-unsaturated carbonyl compounds and oxyalkylated phenol-formaldehyde resins.
Use/Production. (G) Crude oil production aid. Prod. range: Confidential.
Toxicity Data. Acute oral: 5.0 g/kg; Acute dermal: 3.16 g/kg; Irritation: Skin—Moderate, Eye—Moderate.

P 87-513

Manufacturer. Exxon Chemical Company.
Chemical. (G) Polyester of alpha-unsaturated carbonyl compounds and oxyalkylated phenol-formaldehyde resins.
Use/Production. (G) Crude oil production aid. Prod. range: Confidential.
Toxicity Data. Acute oral: 5.0 g/kg; Acute dermal: 3.16 g/kg; Irritation: Skin—Moderate, Eye Moderate.

P 87-514

Importer. Confidential.
Chemical. (G) 2,6-bis(substitutedamino)-3-methyl fluoran.
Use/Import. (G) Used in the manufacture of thermal paper. Import range: Confidential.
Toxicity Data. Acute oral: 5.0 g/kg; Acute dermal: 2.0 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Non-mutagenic; Skin sensitization: Non-sensitizer; Micronucleus test: 10,000 mg/kg; EC_{50} 24 hr (Daphnia magna): 710 mg/L; EC_{50} 48 hr (Daphnia magna): 9.4 mg/L.

P 87-515

Importer. Confidential.
Chemical. (G) Poly ether glycol.
Use/Import. (G) Polyurethane elastomer, coating and binder. Import range. Confidential.

Dated: February 3, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87-2869 Filed 2-10-87; 8:45 am]

BILLING CODE 6560-50-M

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[FRL-3153-9]

Advisory Committee Negotiating Regulations Governing Major and Minor Modifications of Resource Conservation and Recovery Act (RCRA) Permits; Meeting

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of an open meeting of the Advisory Committee negotiating regulations governing major and minor modifications of Resource Conservation and Recovery Act (RCRA) permits.

The meeting will be held on Monday, February 23, 1987, at The Conservation Foundation, 1255 23rd Street, N.W., First Floor Library, Washington, D.C. The meeting will start at 10:00 a.m. and will run until at least 5:00 p.m. The purpose of the meeting is to complete consensus on the substantive issues which the Committee has identified for resolution, and to ratify language reflecting the Committee's agreed upon consensus.

If interested in receiving more information, please contact Kathy Tyson at (202) 382-5479.

Dated: February 4, 1987.

Milton Russell,

Assistant Administrator.

[FR Doc. 87-2867 Filed 2-10-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-00075; FRL-3155-3]

Biotechnology Science Advisory Committee; Subcommittee on the Definition of Pathogen; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 2-day meeting of the Biotechnology Science Advisory Committee's Subcommittee on the Definition of Pathogen to discuss formulating a definition of pathogen for regulatory purposes under EPA's biotechnology policy. The meeting will be open to the public.

DATES: The meeting will be held on Thursday and Friday, February 26 and 27, 1987, starting at 9 a.m. both days and ending at approximately 5 p.m. on February 27.

ADDRESS: The meeting will be held at: Environmental Protection Agency, Rm. 1112, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Environmental Protection Agency, The TSCA Assistance Office, Office of Pesticides and Toxic Substances (TS-799), 401 M St., SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION: This open meeting is being held to discuss the definition of pathogen. Attendance by the public will be limited to available space. The TSCA Assistance Office will provide rosters of the committee members and additional information, upon request after February 20, 1987. A summary of the meeting will be available from that office at a later date.

Dated: February 4, 1987.

Victor J. Kimm,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 87-2978 Filed 2-10-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

Approval of Application for Unlisted Trading Privileges; Cincinnati Stock Exchange, Inc.

Dated: December 15, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: On August 29, 1986, The Cincinnati Stock Exchange, Inc. filed with the Federal Home Loan Bank Board ("Board") an application ("Application"), pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following securities which are listed on one or more national securities exchange:

Mercury Savings and Loan Association
Huntington Beach, California (FHLBB No. 6649)
Guarantee Stock, $1.00 Par Value

Notice of the Application and opportunity for hearing was published in the **Federal Register** on September 30, 1986, and interested persons were invited to submit written data, views and arguments within 15 days. See Board Resolution No. 86-1044, dated September 24, 1986. (51 FR 34685, September 30, 1986). The Board received no comments with respect to the Application. Notice is hereby given that the Office of General Counsel of the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Application for unlisted trading privileges in these securities on October 29, 1986.

SUPPLEMENTARY INFORMATION: The Board finds that the approval of the Application for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Securities and Exchange Commission ("Commission") pursuant to Section 6 of the Act, the Cincinnati Stock Exchange is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under Sections 17 and 19 of the Act and the rules and regulations thereunder. Transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the Cincinnati Stock Exchange are executed at prices which are reasonably related to those occurring in other markets. Further, the approval of the Application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system. Finally, the Board received no comments indicating that the granting of the Application would not be consistent with the maintenance of fair and orderly markets and the protection of investors.

Accordingly, pursuant to section 12(f)(1)(B) of the Act, the Office of General Counsel of the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Application for unlisted trading privileges in the above named securities on October 29, 1986.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Acting Secretary.

[FR Doc. 87-2797 Filed 2-10-87; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Service Contract Provisions; Most Favored Shipper and Liquidated Damages Clauses; Filing of Petition for Rulemaking; Time for Comment

The Federal Maritime Commission, by notice published January 22, 1987 (52 FR 2443), invited comments on subject petition for rulemaking which was filed by the International Council of Containership Operators (Petitioner). A twenty-day period for comment was provided.

Counsel for Chemical Manufacturers Association (CMA) now has requested a 30-day enlargement of time to March 12, 1987 to comment. Counsel cites several grounds including prior commitments and the snow-forced cancellation of a CMA Work Group meeting which had been scheduled to consider how to respond to the petition, and inability to reschedule the meeting until March. Counsel also suggests that the requested delay in action on these issues would not unduly prejudice the proceeding.

Petitioner has filed a reply in opposition to the enlargement of time. Petitioner disagrees that further delay would be inconsequential and suggests that the delay already experienced provides the very reason to move forward promptly. Petitioner also points out that CMA either has had or will have ample opportunity to comment under the present procedural framework and schedule.

Upon consideration of the request for enlargement of time and reply thereto, we have determined that the request should be granted only in part. A 15-day extension to February 27, 1987, is appropriate. This is in recognition of the fairly short (20 days) original comment period and in consideration of CMA's prior commitment problem, balanced against the need to expeditiously resolve the position. This would also accommodate other interested parties who have informally indicated a need for a short extension.

By the Commission February 6, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87-2890 Filed 2-10-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Griffin Holdings, Inc., et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 4, 1987.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Griffin Holdings, Inc.*, Los Angeles, California; to engage *de novo* in mortgage lending, consumer finance, credit card finance, and commercial finance and factoring, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. *Standard Chartered PLC*, Standard Chartered Bank, Standard Chartered Overseas Holdings Limited, all of London, England, and Standard Chartered Holdings Inc. and Union Bancorp, both of Los Angeles, California; to engage *de novo* through Union BancSystems, Inc., Sherman Oaks, California, in management consulting to, and data processing for, depository institutions pursuant to § 225.25(b)(11) and (b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 5, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2815 Filed 2-10-87; 8:45 am]

BILLING CODE 6210-01-M

Meadowlands Financial Corp. of New Jersey, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 3, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33

FEDERAL RESERVE SYSTEM

Granite State Bankshares, Inc., et al.; Notice of Application To Engage de Novo in Permissable Nonbanking Activities; Correction

This notice corrects a previous **Federal Register** document.

1. (FR. Doc. 87-2071), published at page 3347 of the issue for Tuesday, February 3, 1987.

Under the Federal Reserve Bank of Boston, the entry for Granite State Bankshares, Inc. is corrected to read as follows:

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Granite State Bankshares, Inc.*, Keene, New Hampshire; to engage *de novo* through its subsidiary, GSBI Mortgage, Inc., Keene, New Hampshire, in mortgage banking activities pursuant to § 225.25(b)(1)(iii) of the Board's

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Liberty Street, New York, New York 10045:

1. *Meadowlands Financial Corporation of New Jersey*, North Bergen, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Meadowlands National Bank, North Bergen, New Jersey.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Greatbanc, Inc.*, Aurora, Illinois; to acquire 82 percent of the voting shares of Evco, Inc., Evanston, Illinois, and thereby indirectly acquire Evanston Bank, Evanston, Illinois.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Tennessee National Corporation*, Memphis, Tennessee; to acquire at least 90 percent of the voting shares of Lebanon Bank, Lebanon, Tennessee. Comments on this application must be received by March 2, 1987.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Cherokee Bancorp, Inc.*, Cherokee, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Alfala County Bancshares, Inc., Cherokee, Oklahoma, and thereby indirectly acquire Alfala County Bank, Cherokee, Oklahoma. Bank engages in the sale of general insurance in a town of less than 5,000. Comments on this application must be received by March 2, 1987.

2. *Gladstone Bancshares*, Gladstone, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Northland National Bank, Gladstone, Missouri, a *de novo* bank.

Board of Governors of the Federal Reserve System, February 5, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-2816 Filed 2-10-87; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Under Review by the Office of Management and Budget (OMB): GSA Form 1195, Application for Placement on GSA Register of Available Real Estate Appraisers

AGENCY: Office of Real Estate Policy and Sales (DRON), GSA.

ACTION: Notifying the public that GSA proposes to continue using the above information collection.

SUMMARY: Under the Paperwork Reduction Act of 1980 (44 U.S.C. ch. 35), the General Services Administration has requested the OMB to extend its approval of this information collection, listing appraisers who want to make themselves available to GSA.

Annual Reporting Burden: Respondents, 150; responses, 1 each; total hours, 75.

ADDRESS: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Rodney P. Lantier, GSA Clearance Officer (CAID), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ronald Peppe/Zebulum Mathews, DRON, (202) 535-7072.

Copy of Proposal: A copy of the proposal may be obtained by calling (202) 566-0668 or writing to the Directives and Reports Management Branch (CAID), Room 3015, GS Bldg., Washington, DC 20405.

Dated: February 3, 1987.

Michael G. Barbour,

Director, Information Management Division.

[FR Doc. 87-2801 Filed 2-10-87; 8:45 am]

BILLING CODE 6820-96-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

National Advisory Council on Drug Abuse, etc.; Meetings; Correction

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration.

ACTION: Correction notice.

SUMMARY: Public notice was given in the **Federal Register** on February 2, 1987 on page 3170 that the Child and Family and Prevention Subcommittee of the Life Course and Prevention Research Review Committee, NIMH, would meet at the River Inn. The notice is being corrected to read as follows:

Place: St. James Hotel, 25th and Pennsylvania Avenue, NW., Washington, DC.

All other information for this committee remains the same.

Dated: February 9, 1987.

Brenda L. Williamson,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 87-2990 Filed 2-9-87; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following District consumer exchange meeting:

San Francisco District Office, chaired by Ronald Johnson, District Director. Topic to be discussed is proposed regulation on cholesterol labeling.

Date: Thursday, February 26, 1987, 1 p.m. to 3 p.m.

Address: San Francisco District Office, 50 U.N. Plaza Federal Office Bldg., Rm. 406, San Francisco, CA 94102.

For further information contact: Lula Holland, Consumer Affairs Officer, Food and Drug Administration, 50 U.N. Plaza Federal Office Bldg., San Francisco, CA 94102, 415-556-1364.

Newark District Office, chaired by Matthew H. Lewis, District Director. Topic to be discussed is proposed regulation on cholesterol labeling.

Date: Thursday, February 26, 1987, 10 a.m. to 12 m.

Address: Newark District Office, 61 Main St., West Orange, NJ 07502.

For further information contact: Lillie Dortch-Wright, Consumer Affairs Officer, Food and Drug Administration, Newark District Office, 61 Main St., West Orange, NJ 07502, 201-645-3265.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: February 4, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-2823 Filed 2-10-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86N-0465]

Action Levels for Residues of Benzene Hexachloride in Food and Feed

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that on November 6, 1986, the agency established new action levels and revised a number of its existing action levels for residues of the cancelled pesticide benzene hexachloride (BHC) in food and feed. FDA has taken this action in response to the Environmental Protection Agency's (EPA) recommendation that FDA establish action levels to replace tolerances and the food additive regulation that was revoked by EPA. The EPA action level recommendations are intended to cover unavoidable residues of this pesticide in the food commodities affected by the revocation of the tolerances and the food additive regulation. Additionally, based upon EPA's recommendations, FDA has revised or reaffirmed the previously established FDA action levels for unavoidable BHC residues in other food and feed commodities that had not been subject to EPA tolerances or food additive regulations. FDA's Compliance Policy Guide 7141.01, Attachment B.2, has been revised to reflect these changes.

DATE: Written comments by April 13, 1987.

ADDRESS: Written comments concerning the new and revised action levels for BHC residues and requests for single copies of FDA Compliance Policy Guide 7141.01, Attachment B.2, should be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John R. Wessel, Office of Regulatory Affairs (HFC-205), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1815.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 16, 1986, EPA issued two final rules (51 FR 25697 and 25685) revoking the tolerances under 40 CFR 180.40 for the pesticide BHC in raw agricultural commodities and a food additive regulation under 21 CFR 193.35 for BHC in residues of dehydrated peppers (paprika). EPA revoked these regulations because all food uses of BHC had previously been cancelled.

EPA recommended in the preamble to its final rules and in a letter dated July 8, 1986, from the Assistant Administrator for Pesticides and Toxic Substances, EPA, to the Associate Commissioner for Regulatory Affairs, FDA, that FDA establish specified action levels to replace the tolerances and a food additive regulation. These action levels are necessary to regulate unavoidable residues of this environmentally persistent pesticide in the food which had previously been covered by tolerances and the food additive regulation. They were recommended by EPA in accordance with the agency's policy statement on the revocation of tolerances for cancelled pesticides, which was published in the **Federal Register** of September 29, 1982 (47 FR 42956). Additionally, in the preamble of its final rules and its letter, EPA recommended revision or reaffirmation of FDA's previously established action levels for unavoidable residues of BHC in raw agricultural commodities and processed animal feed that were not subject to EPA tolerances or food additive regulations.

In considering the EPA action level recommendations, FDA requested that EPA modify its recommendations to include, where possible for purposes of the BHC action levels, crop groups, as specified in 40 CFR 180.34(f), rather than individual commodities as specified in the EPA notices. In a letter dated September 17, 1986, the Assistant Administrator for Pesticides and Toxic Substances advised the Associate Commissioner for Regulatory Affairs that EPA recommended that the crop groupings of citrus fruits, small fruits and berries, and root and tuber vegetables be used for the action levels that EPA originally had recommended for individual commodities that are part of these crop groups. In making this recommendation, EPA concluded that the use of these crop groups for purposes of the action levels would not significantly increase dietary exposures to BHC residues.

On November 6, 1986, FDA established the new and revised action levels for unavoidable residues of BHC for food and feed that were recommended by EPA, including use of the EPA recommended crop groups. Attachment B.2 of FDA Compliance Policy Guide 7141.01, which listed the BHC action levels previously established by FDA, has been revised to reflect these changes. The BHC action levels now in effect are as follows:

Commodities[1]	Action level (parts per million)
Animal feed, porcessed	0.05
Apples	0.05
Asparagus	0.05
Avocados	0.05
Beans	0.05
Brassica (cole) leafy vegetables (except broccoli raab, rape greens).	0.05
Celery	0.05
Carrots	0.3
Cereal grains (except buckwheat, millet, popcorn, teosinte, wild rice).	0.05
Citrus fruits	0.05
Cocoa beans	0.5
Cucurbit vegetables (except Balsam pears, chinese waxgrourds, gherkins, gourds).	0.05
Eggplant	0.05
Eggs	0.05
Endive	0.05
Figs	0.05
Frog legs (edible portion)	0.3
Guavas	0.05
Hays (animal feed)	0.05
Lettuce	0.05
Mangoes	0.05
Milks	0.3 (fat basis)
Okra	0.05
Onions	0.05
Paprika	1.0
Pears	0.05
Peas	0.05
Pecans	0.05
Peppers	0.05
Pineapples	0.05
Quinces	0.05
Rabbits	0.03 (fat basis)[2]
Root and tuber vegetables (except carrots).	0.05
Small fruits and berries	0.05
Spinach	0.05
Swiss chard	0.05
Stone fruits (except Chickasaw, Damson, and Japanese plums).	0.05
Tomatoes	0.05
Turnip greens	0.05

[1] Action levels for crop groups cover all commodities specified on 40 CFR 180.34(f), except where an exception is noted.

[2] For rabbits that contain insufficent fat to conduct an analysis on a fat basis, analyze the rabbits on a whole product basis (edible portion) and use 0.1 part per million, the limit of determination, as the action level.

Copies of the EPA correspondence recommending the new and revised action levels, the revised Attachment B.2 of Compliance Policy Guide 7141.01, and the memorandum to FDA Field Offices notifying them of the establishment of the action levels are on file in the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this document.

Interested persons may, on or before April 13, 1987, submit written comments, data, and information regarding these action levels to the Dockets Management Branch. Two copies of any comments are to be submitted, except that individuals may submit one copy.

Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

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Dated: February 4, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-2822 Filed 2-10-87; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Pub. L. 92-463, the Annual Report for the following Health Resources and Services Administration Federal Advisory Committee has been filed with the Library of Congress: National Advisory Council on Migrant Health.

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC, or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, North Building, Room 400, 200 Independence Avenue, SW., Washington, DC 20201, Telephone (202) 245-6791. Copies may be obtained from Sonia M. Leon Reig, Acting Executive Secretary, National Advisory Council on Migrant Health, Room 7A-55, Parklawn Building, 5700 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-1153.

Dated: January 29, 1987.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 87-2820 Filed 2-10-87; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting (Frederick Cancer Research Facility Advisory Committee)

The notice of the meeting of the Frederick Cancer Research Facility Advisory Committee, February 13, 1987, published in the **Federal Register** on January 23 (52 FR 2611) is hereby amended. The closed portion of the meeting scheduled from 11:30 a.m. to adjournment ahs been cancelled. The entire meeting from 8:30 a.m. to adjournment will be open to the public. This meeting is to be held at the National Institutes of Health, Building 31C, Conference Room 7, Bethesda, Maryland 20892 for the concept review of future directions in AIDS vaccine and interventive strategies.

For further information, call Dr. Cedric W. Long, Executive Secretary, Frederick Cancer Research Facility Advisory Committee, National Cancer Institute, Frederick Cancer Research Facility, Building 427, Frederick, Maryland 21701 (301/695-1108).

Dated: February 9, 1987.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 87-3016 Filed 2-10-87; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Health Education Assistance Loan Program; Maximum Interest Rates for Quarter Ending March 31, 1987

Section 727 of the Public Health Service Act (42 U.S.C. 294) authorizes the Secretary of Health and Human Services to establish a Federal program of student loan insurance for graduate students in health professions schools.

A. Section 60.13(a)(4) of the program's implementing regulations (42 CFR Part 60, previously 45 CFR Part 126) provides that the Secretary will announce the interest rate in effect on a quarterly basis.

The Secretary announces that for the period ending March 31, 1987, three interest rates are in effect for loans executed through the Health Education Assistance Loan (HEAL) program.

1. For loans made before January 27, 1981, the variable interest rate is 9⅛ percent. Using the regulatory formula (45 CFR 126.13(a)(2) and (3)) in effect prior to January 27, 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by subtracting 3.50 percent from the average bond equivalent rate of 91-day U.S. Treasury bills for the preceding calendar quarter (5.51 percent), and rounding the result (9.01 percent) upward to the nearest ⅛ percent (9⅛ percent). However, the regulatory formula also provides that the annual rate of the variable interest rate for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate not in excess of 12 percent for the 12-month period concluded by those 3 months. Because the average rate of the 4 quarters ending March 31, 1987, is not in excess of 12 percent, there is no necessity for reducing the interest rate. For the previous 3 quarters the variable interest at the annual rate was as follows: 10⅝ percent for the quarter ending June 30, 1986; 9⅞ percent for the quarter ending September 30, 1986; and 9¼ percent for the quarter ending December 31, 1986.

2. For variable rate loans executed during the period of January 27, 1981 through October 21, 1985, the interest rate is 9⅛ percent. Using the regulatory formula (42 CFR 60.13 (a)(3)) in effect since January 27, 1981, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (5.51 percent); adding 3.50 percent (9.01 percent); and rounding that figure to the next higher one-eighth of 1 percent (9⅛ percent).

3. For fixed rate loans executed during the period of January 1, 1987 through March 31, 1987, and for variable rate loans executed on or after October 22, 1985, the interest rate is 8⅝ percent. The Health Professions Training Assistance Act of 1985 (Pub. L. 99-129), enacted October 22, 1985, amended the formula for calculating the interest rate by changing 3.5 percent to 3 percent. Using the regulatory formula (42 CFR 60.13(a)(2) and (3)) and the statutory change of 3 percent (42 CFR 60.13(a)(1)), the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the perceding quarter (5.51 percent); adding 3.0 percent (8.51 percent) and rounding that figure to the next higher one-eighth of 1 percent (8⅝ percent).

(Catalog of Federal Domestic Assistance No. 13.108, Health Education Assistance Loans)

Dated: February 5, 1987.

John H. Kelso,

Acting Administrator.

[FR Doc. 87-2819 Filed 2-10-87; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Kingman Resource Area Grazing Board Meeting

AGENCY: Bureau of Land Management, Phoenix District.

ACTION: Notice of meeting—Kingman Resource Area Grazing Board.

SUMMARY: The Kingman Resource Area Grazing Advisory Board will hold a meeting on Wednesday, March 11, 1987. The meeting will start at 9:00 a.m. in the Kingman Resource Area Conference Room, 2475 Beverly Avenue, Kingman, Arizona 86401.

The agenda for the meeting will include:

1. Update of the Bureau's Exchange Program.
2. Status of the Bureau's Planning and Environmental Impact Statements.
3. Status of Grazing Program.
4. Report of Range Improvements for F.Y. '87.
5. Range Policy Update.
6. Request for Advisory Board Expenditures.
7. Arrangements for future meetings.

The meeting is open to the public. Anyone wishing to make oral or written statements to the Board is requested to do so through the office of the District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027 at least seven days prior to the meeting date.

Summary minutes of the Board meeting will be maintained in the District Office and be made available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: February 3, 1987.

Henri R. Bisson,

Acting District Manager.

[FR Doc. 87-2851 Filed 2-10-87; 8:45 am]

BILLING CODE 4310-32-M

Phoenix Lower Gila, Resource Areas Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting—Phoenix/Lower Gila Resource Areas grazing Advisory Board.

SUMMARY: The Phoenix/Lower Gila Resource Areas Grazing Advisory board will hold a meeting on Tuesday, March 17, 1987. The meeting will start ata 9:00 a.m. in the Phoenix District Office Conference Room, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

The agenda for the meeting will include:

1. Update of the Bureau's Exchange Program.
2. Status of the Bureau's Planning and Environmental Impact Statements.
3. Report on Range Improvements for F.Y. 1987.
4. Range Policy Update.
5. Request for Advisory Board Expenditures.
6. Arrangements for Future Meetings.

The meeting is open to the public. ANyone wishing to make oral or wrtitten statements to the Board is requested to do so through the office of the District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027, at least seven days prior to the meeting date.

Summary minutes of the Board meeting will be maintained in the District office and be made available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: February 3, 1987.

Henri, R. Bisson,

Acting District Manager.

[FR Doc. 87-12802 Filed 2-10-87; 8:45 am]

BILLING CODE 4310-32-M

[CA-060-07-5101-09-YBDC]

All American Crude Oil Pipeline, Texas Extension; Public Hearings for Draft Supplemental Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearings.

SUMMARY: The Bureau of Land Management will conduct eleven formal public hearings to receive oral testimony from interested persons on the Draft Supplemental Environmental Impact Statement concerning the Texas extension of the All American crude oil pipeline.

ADDRESS: For further information, contact; Public Affairs Officer, U.S. Bureau of Land Management, 1695 Spruce Street, Riverside, California, 92507; (714) 351-6383 or 351-6391.

SUPPLEMENTARY INFORMATION: The all American Pipeline Company proposes to extend its crude oil pipeline transportation system from McCamey, Texas to webster, Texas. A Draft Supplemental Environmental Impact Statement, which examines the environmental aspects of this proposal, was released for a sixty-day public review on January 30, 1987. A Notice of availability was published in the **Federal Register** on that date. This review will end on March 31, 1987.

Eleven formal public hearings will be conducted by the Federal Government to receive oral testimony from interested persons, or the organizations they represent, with respect to the adequacy, or inadequacy, of the Statement. The presiding official at each hearing will be an Administrative Law Judge from the Department of the Interior Office of Hearings and Appeals. Oral testimony will be limited to the adequacy of the Statement and/or to any errors found therein. Depending on the number of persons who wish to present testimony at any hearing, the Administrative Law Judge may limit the time period allowed for oral testimony.

All testimony, written and oral, together with any other comments received, will be considered for changes, deletions or additions made to the Final Supplemental Environmental Impact Statement. The Final Statement is scheduled to be available for public review and comment in June, 1987. Thirty days after its publication, a final Federal decision will be published in the **Federal Register** identifying the approved alternative and citing the reasons for the decision.

The date, time, and location of each of the eleven hearings are listed below.

Date and Time	Location
Mar. 2, 1987—1:00 p.m. and 7:00 p.m.	Austin, Texas, Auditorium (Room 1.110), Joe E. Thompson Conference Center, 26th & Red River Streets.
Mar. 3, 1987—7:00 p.m.	San Antonio, Texas, Central A—Second Floor, San Antonio Convenbon Center, 200 E. Market Street.
Mar. 4, 1987—7:00 p.m.	Yoakum, Texas, Yoakum National Bank Building, 301 W. Grand Street.
Mar. 5, 1987—7:00 p.m.	Fredericksburg, Texas, District Courtroom, Gillespie County Court House 101 W. Main Street.
Mar. 9, 1987—7:00 p.m.	Del Rio, Texas, Dmk Wardlaw Agn Complex, 300 E. 17th street.
Mar. 10, 1987—7:00 p.m.	San Angelo, Texas, Riverside Room—Holiday Inn, 333 Rio Concho Drive.
Mar. 11, 1987—7:00 p.m.	Brownwood, Texas, City Council Chambers, 110 S. Greenleaf Street.
Mar. 12, 1987—7:00 p.m.	Waco, Texas, DeCordova Room—Sheraton Inn, 801 S. 4th Street.
Mar. 13, 1987—7:00 p.m.	Brenham, Texas, Preference Inn, 201 Loop 290 East.
Mar. 16, 1987—7:00 p.m.	Texas City, Texas, Surf Room—Nessler Center, 2010 5th Avenue North.
Mar. 17, 1987—7:00 p.m.	San Marcos, Texas, University Savings Building, 308 E. Hopkins.

FOR FURTHER INFORMATION CONTACT: William S. Haigh, Project Manager, Bureau of Land Management, California Desert District, 1695 Spruce Street, Riverside, CA 92507 (714) 351-6428.

Dated: February 5, 1987.

Zola M. Williams,

Acting District Manager.

[FR Doc. 87-2840 Filed 2-10-87; 8:45 am]

BILLING CODE 4310-40-M

[NV-930-07-4410-10]

Management Framework Plan; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent (NOI) to prepare an amendment to the Schell Management Framework Plan (MFP) and an invitation to participate in identification of issues and review of the preliminary planning criteria.

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SUMMARY: This notice describes the action to be analyzed for the MFP amendment, the geographic area that would be affected, the preliminary issue and planning criteria, the disciplines to be represented and used in preparation of the plan, the kind and extent of public participation activities, and the BLM office to contact for further information. Also, this notice is an invitation to participate in the identification of issues and review of the planning criteria.

DATES: Written comments on the issue(s) and proposed planning criteria are due to the Ely District, Star Route 5, Box 1, Ely, Nevada 89301 30 days from when this notice is published.

FOR FURTHER INFORMATION CONTACT: Gerald M. Smith, Schell Area Manager, Star Route 5, Box 1, Ely, Nevada 89301, telephone (702) 289–4865.

SUPPLEMENTARY INFORMATION: Description of the Proposed Planning Action—Pursuant to 43 CFR 1610.5–5, the Bureau of Land Management's Ely District Office is in the process of initiating an amendment to the comprehensive land use plan for the Schell Resource Area.

The Schell MFP describes management actions to accomplish and/or partly accomplish the objectives as set forth in the Schell Grazing EIS. This proposed planning action is to amend, in part, one of the management actions identified in the Schell MFP. The Environmental Assessment (EA) will analyze the impacts from changing the management action on the accomplishment of the identified objectives. The five objectives are as follows:

1. Objective: Manage the vegetation resource and its uses to attain utilization rates not to exceed those recommended by the Nevada Rangeland Monitoring Task Force for sustained yield.
2. Objective: Attain and maintain habitat for reasonable numbers of wildlife, reestablish bighorn, pronghorn antelope, and elk on historic ranges, and protect crucial wildlife habitat.
3. Objective: Upgrade and maintain all riparian and wetland areas in good or better condition.
4. Objective: Maximize livestock based on sustained yield of the forage resource.
5. Objective: Maximize wild horse numbers based on sustained yield of the forage resource.

The Schell Resource Area Record of Decision dated July 1, 1983, describes the management actions that were chosen in the Plan and Implementation portion. This amendment will analyze the impacts of deviation in the number of new water sources from those analyzed in the EIS and directed in the following management action:

2. Projects will be implemented on the Priority "I" Category Allotments as defined through the Selective Management Process. The actual projects will be identified through consultation with the effected interest groups. Projects will be consistent with those analyzed in the EIS.

The amendment proposal is to increase the number of water sources from 28 analyzed in the Schell EIS/MFP to 180 in the long term. The proposed action as analyzed in the Schell Grazing EIS met objective No. 1 completely and only partially met objectives 2 through 5. Amending the Land Use Plan to allow for the development of more water sources is intended to provide increased opportunities to accomplish the four partially met objectives. An EA will be prepared in conformance with the National Environmental Policy Act of 1969 to analyze the impact of more water developments. In addition to the proposed amendment, the no action alternative will be analyzed which is the implementation of the existing land use plan.

The Geographic Area Covered by the MFP Amendment. The Schell Resource Area contains approximately 4,183,000 acres of public land located in east-central Nevada. It contains the towns of Baker and Hiko. The area includes the eastern third of White Pine County, the northern third Lincoln County, and a portion of Nye County.

General Types of Issues Anticipated and Preliminary Planning Criteria. The major issue to be addressed for the plan amendment is the impact of 152 new water sources in meeting the five objectives identified in the Schell Grazing EIS. Other issues may be identified through public participation. The preliminary planning criteria consists of the following:

1. Decision Criteria

The five objectives identified in the Schell Grazing EIS will be used as the standard to evaluate impacts from implementing the proposed amendment. The decision to implement the proposed amendment will be based on the degree to which the five objectives are met.

2. Inventory Criteria

No new inventory will be conducted. The best data currently available will be used to analyze the impacts of the proposed amendment.

3. Criteria for Estimating Effects

The impacts of the proposed amendment on the environment will be based on the implied legal, social, economic, biological, and physical consequences (both positive and negative).

Disciplines Represented on the Planning Team. The planning team will consist of individuals with expertise in the following disciplines: (1) range management, (2) land use planning, (3) wildlife biology, (4) wild horse management, and (5) watershed management.

Public Participation. Public comment is solicited during this identification of issues, and the development of the criteria to guide the planning process. Upon publication of the draft plan amendment and EA there will be a 30-day comment period. Persons interested in participating in this planning process should submit their name and address for inclusion on the Schell MFP Amendment mailing list to Bureau of Land Management, Ely District Office, Star Route 5, Box 1, Ely, Nevada 89301.

Location of planning documents: A complete file of the MFP documents will be maintained at the Bureau of Land Management, Ely District Office, Star Route 5, Box 1, Ely, Nevada 89301.

Dated: February 5, 1987.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 87–2831 Filed 2–10–87; 8:45 am]

BILLING CODE 4310-HC-M

[CO–940–07–4220–11; C–28323]

Colorado; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, proposes that the order which withdrew lands for an indefinite period of time for use as an administrative site, be modified and the withdrawal be continued for 20 years insofar as it affects 10 acres of public land. The land will remain closed to surface entry and mining, but not to mineral leasing.

DATE: Comments should be received within 90 days of publication date.

ADDRESS: Comments should be addressed to State Director, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 236–1768.

The Forest Service, U.S. Department of Agriculture, proposes that the existing withdrawal made by Secretarial Order of October 23, 1908, for an indefinite period of time, be modified to expire in 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following identified lands:

New Mexico Principal Meridian

T. 45 N., R. 5 E.,

Sec. 19 SE¼NE¼SE¼

The area described aggregates 10 acres in Saguache County.

The purpose of this withdrawal is for the administration and protection of the Upper Saguache Administrative Site. No change is proposed in the purpose or segregative effect of the withdrawal. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. Notice of the final determination will be published in the **Federal Register.** The existing withdrawal will continue until such determination is made.

Richard D. Tate,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87–2803 Filed 2–10–87; 8:45 am]

BILLING CODE 4310-JB-M

National Park Service

Upper Delaware National Scenic and Recreational River; Citizens Advisory Council; Meeting

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: February 27, 1987 7:00 p.m.

Inclement weather reschedule date: March 13, 1987.[1]

ADDRESS: Town of Tusten Hall, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, Upper Delaware Scenic and Recreational River, Drawer C, Narrowsburg, NY 12764–0159, (717) 729–8251.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95–625, 16 U.S.C. 1274 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Counsel is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will include discussion of the implementation of the River Management Plan. The meeting will be open to the public.

Any member of the public may file with the council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, N.Y. 12764. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Upper Delaware Scenic and Recreational River, River Road, 1¾ miles North of Narrowsburg, N.Y., Damascus Township, Pennsylvania.

Dated: January 27, 1987.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 87–2917 Filed 2–10–87; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

Notice of Meeting of the Colorado River Floodway Task Force

SUMMARY: The Colorado River Floodway Protection Act, Pub. L. 99–450, requires the Secretary of the Interior to establish a federally declared floodway along the Colorado River below Davis Dam on the Arizona/Nevada border and the southerly international border between the United States and Mexico. The Act requires that a task force be established to assist in the development of the floodway boundaries. The Task Force report is required to be filed with the Congress 9 months from the October 8, 1986, enactment of Pub. L. 99–450.

Open meetings will be held as described below:

Dates: February 26 and 27, 1987

Time: 10 a.m.

Address: Holiday Inn, 245 London Bridge Road, Lake Havasu City, Arizona 86403, (602) 855–4071

FOR FURTHER INFORMATION CONTACT: Robert Brose, Bureau of Reclamation, Nevada Highway and Park Street, P.O. Box 427, Boulder City, Nevada 89005, (702) 293–8520.

Dated: February 6, 1987.

C. Dale Duvall,

Commissioner.

[FR Doc. 87–2852 Filed 2–10–87; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–276 (Final)]

Certain Fresh Cut Flowers From Chile

AGENCY: United States International Trade Commission.

ACTION: Institution of final countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701–TA–276 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Chile of certain fresh cut flowers which have been found by the Department of Commerce, in its final determination, to be subsidized. Certain fresh cut flowers from Chile are standard carnations provided for in item 192.21 of the Tariff Schedules of the United States. On October 27, 1986, Commerce published in the **Federal Register** its negative preliminary determination that imports of this product from Chile were not being subsidized. The Commission will make its final injury determination 75 days after receipt of Commerce's notification of its final determinations (see sections 705(a) and 705(b) of the act (19 U.S.C. 1671d(a) and 1671d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's

[1] Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

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rules of practice and procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: February 3, 1987.

FOR FURTHER INFORMATION CONTACT: Dan Dwyer (202–523–4618), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of a final affirmative determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 701 of the act (19 U.S.C. 1671) are being provided to manufacturers, producers, or exporters in Chile of standard carnations. This investigation was requested in petitions filed on May 21, 1986, by the Floral Trade Council, Davis, California. In response to those petitions the Commission conducted a preliminary countervailing duty investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (51 FR 25751, July 16, 1986).

Participation in the investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report

A public version of the prehearing staff report was placed in the public record on January 20, 1987, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission held a hearing on a related antidumping investigation, Certain Fresh Cut Flowers from Chile, inv. No. 731–TA–328 (Final), on February 2, 1987. Requests for a separate hearing in this investigation for the limited purpose of supplementing the February 2, 1987, hearing record with testimony and evidence solely related to the countervailing duty investigation, should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on February 17, 1987. If such a hearing is requested, it will be held on Friday, February 20, 1987, at 9:30 a.m. If such a hearing is requested, parties will be contacted regarding dates for the filing and content of briefs and time allocations at the hearing.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, Title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: February 6, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–2894 Filed 2–10–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–248]

Certain Plastic Fasteners and Processes for the Manufacture Thereof; Commission Decision Not to Review Initial Determination Terminating Investigation as to Five Respondents on the Basis of Settlement Agreements

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation as to five respondents on the basis of settlement agreements.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 23) issued by the presiding administrative law judge (ALJ) granting motions to terminate the investigation as to respondents Texamerican, Inc. (Texamerican), Acme Thread and Supply, Inc. (Acme), LeMar Textile Co. (LeMar), DARA, Inc. (DARA), and B&N Industries (B&N) on the basis of settlement agreements.

FOR FURTHER INFORMATION CONTACT: Stephen A. McLaughlin, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0421.

SUPPLEMENTARY INFORMATION: This investigation was instituted upon a complaint (as amended) filed by Dennison Manufacturing Corporation alleging unfair methods of competition and unfair acts in the importation of certain plastic fasteners into the United States, and in their sale, by reason of alleged manufacture abroad by a process that, if practiced in the United States, would infringe certain U.S. patents owned by Dennison, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Notice of the investigation was published in the **Federal Register** on June 18, 1986 (51 FR 22144).

In its complaint, complainant Dennison alleged that respondents Texamerican, Acme, LeMar, DARA (a/k/a Angelland, Inc.), and B&N have imported and sold plastic fastener assemblies that infringe Dennison's product-by-product patent—U.S. Letters Patent 4,429,437—and were made by processes covered by three process patents owned by Dennison—U.S. Letters Patent 4,183,894, U.S. Letters Patent 4,304,743, and U.S. Letters Patent 4,416,838.

By motions dated September 6, 1986, September 18, 1986, and November 17, 1986, Dennison moved to terminate the investigation as to respondents Texamerican, Acme, LeMar, DARA, and B&N on the basis of settlement agreements pursuant to Commission rule 210.51. The motions were supported by the Commission investigative attorney.

On December 5, 1986, the ALJ issued an ID (Order No. 23) granting the motions and terminating the investigation as to the above-referenced five respondents on the basis of the settlement agreements. No petitions for review nor comments from other Government agencies or the public were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930 and Commission rule § 210.53 (19 CFR 210.53).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: January 30, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–2862 Filed 2–10–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–242]

Certain Dynamic Random Access Memories, Components Thereof, and Products Containing Same; Commission Determination not To Review Initial Determination Terminating Two Respondents on the Basis of a Settlement and License Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Termination of two respondents, Fujitsu Limited and Fujitsu Microelectronics, Inc., on the basis of a settlement and license agreement.

SUMMARY: The U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 250) terminating respondents Fujitsu Limited and Fujitsu Microelectronics, Inc. (the Fujitsu respondents) in the above-captioned investigation on the basis of a settlement and license agreement.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0359.

SUPPLEMENTARY INFORMATION: On January 5, 1987, complainant Texas Instruments Incorporated (TI) and the Fujitsu respondents filed a joint motion to terminate this investigation as to the Fujitsu respondents on the basis of a license and settlement agreement. The Commission investigative attorney filed a response supporting the motion. The presiding administrative law judge issued an ID on January 8, 1987, terminating the Fujitsu respondents on the basis of the settlement and license agreement. No petitions for review or comments from Government agencies concerning the ID were received.

The authority for the Commission's action is found in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.51 of the Commission's Rules of Practice and Procedure (19 CFR 210.51).

Copies of the non-confidential ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: February 4, 1987

By order of the Commission.

Kenneth R. Mason,

Secretary

[FR Doc. 87–2859 Filed 2–10–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–242]

Certain Dynamic Random Access Memories, Components Thereof, and Products Containing Same; Commission Determination Not To Review Initial Determination Terminating Two Respondents on the Basis of a Settlement and License Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Termination of two respondents, Sharp Corporation and Sharp Electronics Corporation, on the basis of a settlement and license agreement.

SUMMARY: The U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 218) terminating respondents Sharp Corporation and Sharp Electronics Corporation (the Sharp respondents) in the above-captioned investigation on the basis of a settlement and license agreement.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0359.

SUPPLEMENTARY INFORMATION: On November 20, 1986, complainant Texas Instruments (TI) and the Sharp respondents filed a joint motion to terminate this investigation as to the Sharp respondents on the basis of a license and settlement agreement. The Commission investigative attorney filed a response supporting the motion. The administrative law judge (Judge Saxon) issued an ID on December 23, 1986, terminating the Sharp respondents on the basis of the settlement and license agreement. No petitions for review or comments from Government agencies concerning the ID were received.

Copies of the non-confidential ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: January 29, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–2860 Filed 2–10–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–242]

Certain Dynamic Random Access Memories, Components Thereof, and Products Containing Same; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Toshiba Corporation and Toshiba America, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on February 6, 1987.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are

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available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E. Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.

Issued: February 6, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–2861 Filed 2–10–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–336 (Final)]

Porcelain-on-Steel Cooking Ware From Spain

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On January 28, 1987, the Commission received a letter from the U.S. Department of Commerce stating that, having received a letter from petitioner in the subject investigation (General Housewares Corp., Terre Haute, IN) withdrawing its petition, Commerce was terminating its antidumping investigation on porcelain-on-steel cooking ware from Spain. Accordingly, pursuant to § 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the subject investigation is terminated.

EFFECTIVE DATE: January 28, 1987.

FOR FURTHER INFORMATION CONTACT: Martha Mitchell (202–523–0291), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Authority: This investigation is being terminated under authority of the Tariff Act of 1930, Title VII. This notice is published pursuant to § 207.40 of the Commission's rules (19 CFR 207.40).

By order of the Commission.

Issued: February 4, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–2863 Filed 2–10–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–259]

Certain Battery-Powered Smoke Detectors; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Emhart Corporation ("Emhart") and Notifier Company ("Notifier").

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirth (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on February 4, 1987.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0276.

By order of the Commission.

Issued: February 4, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–2858 Filed 2–10–87; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Section 5a Application No. 66]

Western Tank Truck Carriers Conference, Inc.; Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of institution of show-cause proceeding.

SUMMARY: The Commission has made preliminary findings relating to the application of Western Tank Truck Carriers' Conference, Inc. (WTTCC) for approval of its collective ratemaking agreement and directed WTTCC to show cause: (1) why it and its member carriers should not be directed to cease and desist from engaging in certain collective ratemaking activity; and (2) why any claimed antitrust immunity should not be revoked. This action is taken to update the record in this proceeding in light of the statutory changes made by the Motor Carrier Act of 1980 and to ensure compliance with all requirements for rate bureaus continuing to receive antitrust immunity for collective activity.

DATES: WTTCC's response to the show cause order is due March 13, 1987. Comments from other parties are due April 13, 1987. WTTCC's rebuttal is due May 4, 1987.

FOR FURTHER INFORMATION CONTACT: Marion Guyton, (202) 275–7965 or Louis E. Gitomer, (202) 275–7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's full decision. A copy may be purchased from T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Building, Washington, DC 20423, or call toll-free (800) 424–5403, or (202) 289–4357 in the Washington, DC, metropolitan area.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

(Sections 11701, 10706, and 10321 of the Interstate Commerce Act. 49 U.S.C. 11701, 10706, and 10321)

Decided: February 3, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–2848 Filed 2–10–87; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30968]

City of Los Angeles, et al.

Southern Pacific Transportation Company (SPT), Los Angeles & and Salt Lake Railroad Company and its lessee, Union Pacific Railroad Company (UP) and The Atchison, Topeka and Santa Fe Railroad Company (SF) together with the City of Los Angeles, by its Boad of Harbor Commissioners, have amended their agreement dated February 1, 1928 providing for unified operations of railroad facilities at Los Angeles Harbor by expanding the rights of each carrier to operate unit trains to and from existing and future unit train facilities on the Harbor Belt Line Railroad.

The supplemental agreement was entered into on June 15, 1984, and took effect on July 1, 1984. However, due to an apparent oversight, a request for approval of this agreement under 49 U.S.C. 11343(a)(6), or, alternatively, a request for exemption under 49 U.S.C. 10505, was not submitted timely. This Notice of Exemption cannot be applied retroactively to July 1, 1984, to correct this omission, because the rules agreements from regulation did not become effective until May 22, 1985, eleven months after the effective date of the supplemental agreement. See Ex Parte No. 282 (Sub-No. 9), Rail *Consolidation Procedures—Trackage Rights Exemption*, ___ I.C.C.2d ___ (1985). However, the prospective exemption of the amendment to the trackage rights agreement took effect January 7, 1987.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: January 30, 1987.

By the Commission.

Noreta R. McGee,

Secretary.

[FR Doc. 87–2849 Filed 2–10–87; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–3 (Sub.-No. 61X)]

Missouri Pacific Railroad Co.; Abandonment and Discontinuance of Operations in Acadia Parish, LA

Applications has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to discontinue operations over, and to abandon its 0.6-mile line of railroad between milepost 591.95 and milepost 592.55 at Crowley, in Acadia Parish, LA.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Lines R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective March 13, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by February 23, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by March 3, 1987, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Dated: January 27, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–2850 Filed 2–10–87; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

Criminal Justice Discretionary Grants

AGENCY: Bureau of Justice Assistance Department of Justice.

ACTION: Notice of Proposed Program Priorities.

SUMMARY: The Bureau of Justice Assistance is publishing for public comment a notice of proposed program priorities for criminal justice discretionary grant funding.

DATE: Comments are due on or before March 31, 1987.

ADDRESS: Send comments to: James C. Swain, Director, Discretionary Grants Program Division, 633 Indiana Avenue NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Jay Marshall, Bureau of Justice Assistance, 633 Indiana Avenue NW., Washington, DC 20531, (202) 272–4601.

SUPPLEMENTAL INFORMATION: On October 12, 1984, President Reagan signed into law the Justice Assistance Act of 1984. Part E of the Act establishes a program of criminal justice discretionary grants to public agencies and private non-profit organizations for the purposes of: (1) Demonstration programs; (2) education and training for criminal justice personnel; (3) technical assistance to states and local governments; and (4) national or multi-state programs.

The discretionary grant program is intended to complement and enhance the criminal justice block grant program authorized under Part D of the Act and to address criminal justice issues which are national or multi-state in scope. Block grants, administered by the states, provide funds to carry out state and local programs which offer a high probability of improving the criminal

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justice system, with special emphasis on violent crime and serious offenders. National/multi-state programs are designed to address issues of national concern and to provide leadership in criminal justice system improvement. For fiscal year 1987, the amount available for discretionary programs is $8.0 million.

Responsibility for administering the discretionary grant program rests with the Bureau of Justice Assistance of the Office of Justice Programs. As required by the Act, the Bureau is announcing its proposed priorities for discretionary grants and inviting public comment. After the 60-day comment period has ended and the Bureau has considered all comments received, it will publish a final notice of its priorities in the **Federal Register** detailing specific programmatic and application requirements.

The proposed priorities for fiscal year 1987 reflect two broad themes: the first is to facilitate the successful implementation of the block grant program through the continued provision of training and technical assistance; and the second is to continue the emphasis on programs that deal with violent crimes, serious offenders, victims and crime prevention through demonstration and national scope programs. These priorities originate from initial consultation with representatives throughout the criminal justice system. We foresee that the funds available will not permit us to implement all of the proposed program priorities. Comments should identify those programs which are more critical than others. The reader will notice that this year's announcement is somewhat different in character from previous issues. This preliminary notice is much less structured so that the participation of commenters is enhanced. We are inviting you to assist more fully in the shaping of the final program selections.

With few exceptions, such as continuation grants, the funds indicated in this announcement will not be awarded until the 60-day period for public comment has expired and the final notice of program priorities has been published.

I. Demonstration

Demonstration programs provide a means for testing in a variety of sites, programs that, based on research or experience, are likely to be a success in more than one jurisdiction and are not likely to be funded with monies from other sources. All demonstration programs will be evaluated and applicants will be required to cooperate with the evaluation effort. Programs that prove successful may be approved by the Bureau as eligible for block grant support in future years.

The Bureau proposes to undertake demonstration programs in the following priority areas:

a. Comprehensive Crime Prevention Program. To continue demonstration of enhanced crime prevention delivery through active coordination of law enforcement agencies, communities, and private agencies.

b. Police/School Drug Abuse Prevention. To identify, document, and demonstrate police/school drug abuse prevention strategies as an alternative to the Drug Abuse Resistance Education (DARE) Program.

c. Family Violance and the Role of the Juvenile and Family Court. To demonstrate the role and capability of family and juvenile courts to intervene in the cycle of spouse abuse.

d. Effective Prosecution of Child Abuse. To continue implementation of recommendations from the Family Violence Task Force focusing on prosecution of cases involving child sexual and physical abuse.

e. Structured Sentencing Program. To improve consistency and uniformity of sentencing within existing state correctional policies.

f. Shock Incarceration/Probation Program. To service youthful offenders through rigorous physical conditioning, work, motivational training, and structured probation.

g. Stress for Police Personnel. To identify and demonstrate models to help police personnel deal with stress and its impact on careers and families.

h. Innovative Technology/Computer Use. To demonstrate application of new advances in technology to improve police operations and reduce cost.

i. Managing Policy Integrity. To identify and demonstrate strategies for law enforcement agencies to reduce opportunities which could affect integrity of services.

j. Recruit Field Training. To intensify field practice during the recruit and training stage to improve police officer performance during early careers.

k. Violent Crime Victims and Evidence. To increase the presence of acceptance evidence, resulting from violent crimes, which can become lost, damaged, or removed from the chain of custody.

l. Criminal Justice Modeling Development/Demonstration. To use modeling technology as a tool for criminal justice agencies to determine or predict impact of alternative policies and actions.

The Bureau anticipates conducting each of these demonstration programs in several sites. Recommendations for promising programs, which, based on research or experience are likely to prove successful, are invited. Individual program announcements will be published in the **Federal Register**.

II. Training and Technical Assistance

A major purpose for the use of discretionary grant funds is to support education and training programs for criminal justice personnel and provide technical assistance to state and local criminal justice agencies.

The Bureau proposes to undertake training and technical assistance activities in the following priorities areas:

a. Crime Prevention Technical Assistance. To provide technical assistance and training in support of block grant programs.

b. Drug Abuse Resistance Education (DARE). To document critical elements of the program and conduct regional training for intensive program development and implementation.

c. Adjudication Technical Assistance and Training. To provide technical assistance and training in support of Block Grant programs.

d. Strategic Planning and Technical Assistance for Prison Industries. To facilitate development of long term plans for correctional industries, and to identify business objectives, growth markets and means of financial growth.

e. National Conference on Prison Based Business and Industry. To emphasize the new work-oriented philosophy of corrections, and the trend towards operation of prisons along private business lines.

f. Prison Industry Facility Construction Support. To collect model facility plans and provide technical assistance in support of construction renovation of buildings used for prison industries.

g. Private Sector/Prison Industry Expansion. To train, provide technical assistance in support of, and evaluate public/private partnerships to foster prison industries for certification.

h. Financial Institutions and Drug Laws Enforcement. To explore the issues and processes to gain access to financial records and other information for law enforcement use.

i. Exploratory Grants. To support development of emerging concepts in police management and operations consistent with Justice Assistance Act (JAA) statutory purposes.

j. Visiting Fellows. To permit selected law enforcement professionals to prepare special studies to address critical issues facing law enforcement.

k. Policy Review Center. To develop and compile model policies for the broad range of state and local police agencies.

l. Model Legislation Series. To develop model legislation dealing with critical issues in law enforcement and criminal justice, and facilitate adoption of such legislation.

m. Program Briefs and Documentation. To develop critical program elements and operations manuals in the areas of white collar crime investigation, aerial surveillance, and other programs/operations.

n. Uniform Crime Report (UCR) Reform Guidance and Training. To develop a brief to train jurisdictions to implement the incident—based UCR program developed to establish a new national reporting standard for the Federal Bureau of Investigation's Crime Reporting Program.

o. Turnkey Software Development. To develop additional micro-based, public domain software packages for management programs implemented in jails, correctional facilities, probation, TASC, and law enforcement agencies.

p. National Symposium on Integrated Systems. To discuss state-of-the-art operations and concepts to integrate criminal justice information systems.

q. Micro-Systems Standards and Training. To establish standards for micro-based systems used by criminal justice agencies and initiate a training center/lab for development/application of systems technology.

Individual announcements or solicitations will be published in the final notice of the **Federal Register**.

III. National/Multi-State Programs

National and multi-state programs address national priorities and initiatives that cannot be met or easily addressed through the state block grants. They reflect administration priorities or recognition of gaps in criminal justice funding that are not being met from other sources.

a. National Citizens Crime Prevention Campaign. To continue engaging citizens in community crime prevention techniques and programs.

b. Demand Reduction. To expand the current Sports and Drug Abuse awareness Program through general media, schools and training workshops.

c. Commission on Accreditation for Law Enforcement Agencies (CALEA). To continue and expand the work of the Commission to promote an accreditation process for law enforcement agencies in addition to Police Departments already accredited.

d. Task Force on Families in Crisis. To continue efforts of the task force to document work conducted by five sites in order to gain maximum benefit in understanding varying responses to spouse abuse and domestic violence.

e. National Victims Resource Center. To continue work of the Center to provide information and documents relating to victim assistance, family violence and other special classes of victim programs and activities.

f. Victim Assistance. To continue work by the National Organization for Victim Assistance to promote advocacy for crime victims through programs, tranining, and conferences.

Announcements for new initiatives will be published in the final notice of the **Federal Register**.

IV. General Requirements

a. Match. Grants may be awarded for up to 100 percent of program or project costs. Either cash (hard) or service/resource (soft) match may be required where suggested by program requirements.

b. Eligibility. Public agencies and private non-profit organizations are eligible to apply. Specifc eligibility requirements will be set forth in individual announcements.

c. Period of Support. Grants may support projects for up to three year and may be renewed for an additional two years if an evaluation indicates that the project has been effective and if the grantee agrees to provide (match) at least one-half of the total cost of the project.

d. Financial Requirements. Discretionary grants are governed by the provisions of the Office of Management and Budget (OMB) Circulars applicable to financial assistance. The Circulars along with additional information and guidance are contained in the "Financial and Administrative Guide for Grants" OJP Guideline Manual, OJP M71001C, available from the Office of Justice Programs.

e. Non-Discrimination. The Justice Assistance Act provides that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity funded in whole or in part with funds made available under the Act. Applicants for discretionary grants are also subject to the provisions of the Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973, as amended; Title XI of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulation 28 CFR Part 42, Subparts C, D, E, and G.

Benjamin H. Renshaw

Acting Director.

[FR Doc. 87-2790 Filed 2-10-87; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts in Education Advisory Panel (Formerly Artists in Education Advisory Panel); Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Arts in Education Panel (formerly Artists in Education Advisory Panel) has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 6, 1989. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 5, 1987.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts

[FR Doc. 87-2897 Filed 2-10-87; 8:45 am]

BILLING CODE 7537-01-M

Dance Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office of Management and Budget

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Circular A–63) notice is hereby given that renewal of the Dance Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 6, 1989. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 5, 1987.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87–2898 Filed 2–10–87; 8:45 am]

BILLING CODE 7537–01–M

Design Arts Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office of Management and Budget Circular A–63) notice is hereby given that renewal of the Design Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 6, 1989. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 5, 1987.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87–2900 Filed 2–10–87; 8:45 am]

BILLING CODE 7537–01–M

Expansion Arts Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office of Management and Budget Circular A–63) notice is hereby given that renewal of the Expansion Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 6, 1989. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 5, 1987.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87–2899 Filed 2–10–87; 8:45 am]

BILLING CODE 7537–01–M

Inter-Arts Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office of Management and Budget Circular A–63) notice is hereby given that renewal of the Inter-Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 6, 1989. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 5, 1987.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87–2901 Filed 2–10–87; 8:45 am]

BILLING CODE 7537–01–M

Literature Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office of Management and Budget Circular A–63) notice is hereby given that renewal of the Literature Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 6, 1989. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having

legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 5, 1987.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87–2902 Filed 2–10–87; 8:45 am]

BILLING CODE 7537–01–M

Media Arts Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office of Management and Budget Circular A–63) notice is hereby given that renewal of the Media Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 6, 1989. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 5, 1987.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87–2903 Filed 2–10–87; 8:45 am]

BILLING CODE 7537–01–M

Museum Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office of Management and Budget Circular A–63) notice is hereby given that renewal of the Museum Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 6, 1989. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 5, 1987.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87–2904 Filed 2–10–87; 8:45 am]

BILLING CODE 7537–01–M

Music Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office of Management and Budget Circular A–63) notice is hereby given that renewal of the Literature Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 6, 1989. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 5, 1987.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87–2905 Filed 2–10–87; 8:45 am]

BILLING CODE 7537–01–M

Office for Partnership Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), section 10(a) (4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a) (4) and Paragraph 9 of Office of Management and Budget Circular A–63) notice is hereby given that renewal of the Office for Partnership Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 6, 1989. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 5, 1987.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87–2906 Filed 2–10–87; 8:45 am]

BILLING CODE 7537–01–M

Theater Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office of Management and Budget Circular A–63) notice is hereby given that renewal of the Theater Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until

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February 6, 1989. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 5, 1987.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87-2907 Filed 2-10-87; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Uisual Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 6, 1989. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 5, 1987.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87-2908 Filed 2-10-87; 8:45 am]

BILLING CODE 7537-01-M

Media Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Programming in the Arts Section) to the National Council on the Arts will be held on March 3, 1987, from 9:00 a.m.-6:30 p.m. and March 4, 1987 from 9:00 a.m.-4:00 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

February 6, 1987.

[FR Doc. 87-2895 Filed 2-10-87; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Forums Section) to the National Council on the Arts will be held on March 3-5, 1987, from 9:00 a.m.-6:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register**, of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

February 6, 1987.

[FR Doc. 87-2896 Filed 2-10-87; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Bi-Weekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Pub. L. (P. L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on January 28, 1987 (52 FR 2870) through February 2, 1987.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW, Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 13, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings," in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Branch Chief*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests

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for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1) (i) through (v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company et al., Docket Nos. STN 50-528 and STN 50-529, Palo Verde Nuclear Generating Station PVNGS , Units 1 and 2, Maricopa County, Arizona

Date of amendment request: January 19, 1987.

Description of amendment request: The proposed amendments consist of a proposed change to the Technical Specifications (Appendix A to Facility Operating License Nos. NPF-41 for PVNGS, Unit 1 and NPF-51 for PVNGS, Unit 2).

The proposed change would revise Table 3.6-1 in the Technical Specifications to remove the four main steam line isolation valves (MSLIV) from the list of valves that are subjected to the requirements of Technical Specification 3/4.6.3, "Containment Isolation Valves". Technical Specification 3/4.7.1.5, "Main Steam Line Isolation Valves," specifically provides operability and surveillance requirements for the MSLIVs which are consistent with the assumptions for MSLIV operability used in the PVNGS safety analyses. Removal of the MSLIVs from Table 3.6-1 would provide an additional four hours to restore an inoperable valve to operable status before a plant power reduction is required. However, the proposed amendment would not change the valve design, performance requirements, or any of the instrumentation and control settings associated with these valves.

At the request of the licensees, the change is also being considered by the NRC staff in the development of the Technical Specifications for PVNGS, Unit 3 (STN 50-530), which is currently under review for an operating license. PVNGS, Unit 3 is of the same design as PVNGS, Units 1 and 2.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

A discussion of the proposed change, as it relates to these standards is presented below.

Standard 1—Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed amendments do not change any of the design. requirements or accident evaluations involving the MSLIVs. The change would only delete the valves from the requirements of Technical Specification 3/4.6.3, however, Technical Specification 3/4.7.1.5 will continue to provide requirements which are consistent with the assumptions used in the PVNGS safety analyses. Therefore, the proposed amendments do not significantly increase the probability or consequences of an accident previously evaluated.

Standard 2—Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed amendments would not vary or affect any plant operating condition or parameter. Therefore, the amendments do not create the possibility of a new or different kind of accident previously evaluated.

Standard 3—Involve a Significant Reduction in a Margin of Safety

The proposed amendments would not change any of the design basis or operating conditions for the plants. Therefore, the proposed amendments do not involve a significant reduction in any margins of safety. Based on the above considerations, the Commission proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Directorate: George. W. Knighton.

Arizona Public Service Company et al., Docket Nos. STN 50-528 and STN 50-529, Palo Verde Nuclear Generating Station (PVNGS), Units 1 and 2, Maricopa County, Arizona

Date of amendment request: January 23, 1987

Description of amendment request: The proposed amendments consist of a proposed change to the Technical Specifications (Appendix A to Facility Operating License Nos. NPF-41 for PVNGS, Unit 1 and NPF-51 for PVNGS, Unit 2). The proposed change would make the surveillance requirements in Technical Specification 4.6.4.2 for the hydrogen. recombiner power control cabinets consistent with the expanded testing regimen prescribed by the vendor. The function of the hydrogen recombiner is to maintain the hydrogen. concentration within containment below its flammable limit in the event of a loss-of-coolant accident. The purpose of the surveillance requirements is to ensure the operability of the equipment in the event that it is needed. At the request of the licensees, the change is also being considered by the NRC staff in the development of the Technical Specifications for PVNGS, Unit 3 (STN 50-530), which is currently under review for an operating license. PVNGS, Units 1, 2 and 3 will use the same hydrogen recombiner system.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751) of amendments that are considered not likely to involve significant hazards considerations. Example (ii) in 51 FR 7751 is a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications; e.g., a more stringent surveillance requirement. The proposed amendment request is similar to Example (ii) in 51 FR 7751 since the request involves expanded surveillance testing for the hydrogen recombiner power control cabinets to be consistent with vendor recommendations. Therefore, the Commission proposes to determine that the proposed amendment does not involve any significant hazards considerations.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton.

Arkansas Power and Light Company, Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: November 17, 1986.

Description of amendment request: NRC Generic Letter 83-43 dated December 19, 1983, requested licensees to amend their Technical Specifications (TSs) to reflect changes. in reporting requirements of 10 CFR 50.72 and 50.73. A model TS was enclosed showing revisions to be made in the "Administrative Control" and "Definitions" sections of the TSs. The generic letter further requested that other conforming changes to TSs be made in order to reflect the revised reporting requirements.

The purpose of this amendment request is to revise the reporting requirements of the TSs for Arkansas Nuclear One, Unit 1, to be consistent with the rule changes to 10 CFR 50.72 and 50.73.

Basis for Proposed no significant hazards consideration determination: The Commission's staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. The Commission has provided guidelines pertaining to the application of the three no significant hazards consideration standards by listing. specific examples in 51 FR 7750. The proposed amendment is being made to comply with reporting. requirements in 10 CFR 50.72 and 50.73. The proposed amendment is in the same category as example (vii) of amendments that are considered not likely to involve significant hazards considerations, i.e., a change to make a license conform to changes in the regulations, where the license change. results in very minor changes to facility operations clearly in keeping with the regulations.

Based on the above, the Commission makes a proposed determination that this amendment request does not involve significant hazards considerations.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Suite 700, Washington, DC 20036

NRC Project Director: John F. Stolz.

Carolina Power & Light Company, Docket No. 50-325 Brunswick Steam Electric Plant, Unit No. 1, Brunswick County, North Carolina

Date of application for amendment: December 16, 1986.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) for Brunswick Steam Electric Plant, Unit 1 (Brunswick-1). The proposed change to TS Table 3.6.3-1 revises the description of valve 1-CAC-V172 from drywell purge exhaust isolation valve to suppression chamber purge exhaust isolation valve.

The proposed revision reflects modifications being made to the containment atmospheric dilution (CAD) system during the upcoming Brunswick-1 Reload 5 outage. The Brunswick-1 CAD system was previously modified to meet the requirements of NUREG-0737, Item II.E.4.1 during the Reload 4 outage. As installed, the primary means of containment purging is through purge exhaust isolation valve 1-CAC-V172, which discharges from the drywell through a 2-inch bypass line to the standby gas treatment system. The proposed change modifies the CAD system so that containment purging takes place through the suppression chamber rather than the drywell. This design is consistent with that approved for Brunswick-2 on May 5, 1986 when Amendment 125 to Brunswick-2 TS was issued.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The CAD system provides for post-accident control of combustible gases. Since this system provides an accident mitigation function, its modification can not involve an increase in the probability of an accident previously evaluated. The proposed modification allows for controlled venting of the containment through the suppression chamber under post-accident conditions. This is the preferred venting pathway because the suppression chamber water will act as a scrubbing agent for potential gaseous radioactivity, thereby, reducing the consequences of an accident involving a radioactive release to the primary containment. The modification does not affect the redundancy or the single failure design of the CAD system. The modified piping and components will be safety grade and the electrical equipment will conform to Class 1E requirements. The modified CAD system meets the requirements of NUREG-0737, Item II.E.4.1, and its design is consistent with that approved for Brunswick-2 on May 5, 1986, when Amendment 125 to Brunswick-2 TS was issued.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The CAD system provides post-accident combustible gas control through purging of the containment. Post-accident venting of the containment can still be accomplished via three pathways, only one of which is necessary during post-accident operation. The modification merely makes the primary pathway through the suppression chamber rather than from the drywell. This is the preferred venting pathway because the suppression chamber water will act as a scrubber for potential gaseous radioactivity. This design has been reviewed and approved by the NRC for Brunswick-2 on May 5, 1986, when Amendment 125 to the Brunswick-2 TS was issued.

3. The proposed amendment does not involve a significant reduction in a margin of safety. Post-accident venting of the containment through the suppression chamber water provides scrubbing of potential radio-active gases, thereby, reducing the activity of potential releases. The modification does not affect the redundancy or the single failure design of the CAD system. The modified piping and components will be safety grade and the electrical equipment will conform to Class 1E requirements. As such, the proposed amendment will increase the margin of safety.

Based on the above reasoning, the licensee has determined that the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff therefore proposed to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room Location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: Thomas A Baxter, Esquire, Shaw, Pittman, Potts &

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Trowbridge,. 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Daniel R. Muller.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Units 1 and 2, Ogle County, Illinois

Date of application for amendments: October 29, 1986.

Description of amendments request: The amendment would add Technical Specifications to require the availability of the essential service water system crosstie between Units 1 and 2 whenever either or both units are in Modes 1, 2, 3 or 4. This amendment is required because a Probabilistic Risk Assessment done by the staff determined that the two-pump ESW system for each unit was the main contributor to a core melt frequency estimate of 10^{-3}/year. Having an ESW pump available from the other unit reduces this core melt frequency. This amendment supplements the August 15, 1986 amendment request which was noticed in the **Federal Register** on September 24, 1986 (51 FR 33946).

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

This proposed amendment is a new technical specification which requires the availability of the essential service water system crosstie whenever either or both units are in Modes 1, 2, 3 or 4. The proposed amendment only addresses the probability and consequences of a loss of all essential service water to one of the units. This event has not been previously evaluated. The probability or consequences of accidents which have been previously evaluated are not affected by requiring the availability of additional components in the essential service water system.

As stated above, the sole purpose of this amendment is to address loss of all essential service water to one of the units. Loss of all essential service water to one of the units is a new or different kind of accident which has not been previously evaluated. Instead of creating this accident, this proposed amendment minimizes the possibility of its occurrence.

Since this proposed amendment requires additional availability of components in the essential service water system, there is no reduction in any margin of safety.

Based on the preceding assessment, the staff believes this proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103.

Attorney to licensee: Michael Miller, Isham, Lincoln & Beal, One First National Plaza, 42nd Floor, Chicago, Illinois 60603.

NRC Project Director: Steven A. Varga.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of application for amendments: January 6, 1987.

Description of amendments request: The amendment would revise Technical Specification Design Features Section 5.3.1 on Page 5–4. The change would allow for the reconstitution of a fuel assembly by insertion of a filler rod fabricated from stainless steel or Zircaloy–4 or leaving a vacancy when a rod is leaking or failed.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards consideration. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The proposed amendment revises the Design Features Section 5.3.1 regarding the fuel assemblies description to allow for fuel assembly reconstitution. The revision allows for each fuel assembly to contain 264 fuel rod locations. A fuel rod location may consist of a fuel rod, a filler rod, or a vacancy as determined in accordance with the cycle specific reload analysis.

The reconstituted fuel assemblies meet essentially the same design requirements, satisfy the same design criteria as the original fuel assembly, and the use of reconstituted assemblies will not result in a change to existing safety criteria and design limits. Therefore, they do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The actual reconstitution of a fuel assembly and the procedures by which it is accomplished will be in accordance with the approved cycle specific reload analysis. Separate 10 CFR 50.59 safety evaluations will be performed to verify the reconstitution process does not involve an unreviewed safety question before it is implemented. The reload safety analysis will evaluate the effect of the actual reconstitution on core operation of equipment important to plant safety. Revising the Technical Specification ensures that if reconstitution is required and approved, it would not be inconsistent with the fuel assembly design description wording currently in the Technical Specifications. Since no more than one assembly is reconstituted at one time, the consequences of an accident are bounded by the fuel handling accident which is the most severe accident related to fuel manipulation. This proposed amendment will not create the possibility of a new or different kind of accident.

The margin of safety as defined in the Technical Specification basis has not been reduced since the existing safety criteria design limits will not be changed. Allowing the use of reconstituted assemblies in Design Features Section 5.3.1 does not directly affect any safety system or the safety limits, and thus, does not affect the plant margin of safety.

Therefore, based on the above considerations the staff has determined that these changes do not involve significant hazards considerations.

Local Public Document Room location: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103.

Attorney to licensee: Michael Miller, Isham, Lincoln and Beale, One First National Plaza, 42nd Floor, Chicago, Illinois 60603.

NRC Project Director: Steven A. Varga.

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Benton County, Illinois

Date of application for amendments: December 5, 1986.

Description of amendments request: Technical Specification Sections 3.3.2, and 4.3.2 contain the reactor coolant system heatup and cooldown limitation curves that are presently applicable to 8 effective full power years (EFPY). Zion Units 1 and 2 are approaching 8 EFPY and require revisions to the curves for continued operation. Additionally, portions of Sections 3.3.2, and 4.3.2 are being updated to reflect current methods, conditions, and analyses used in generating the new heatup and cooldown curves. Specific reasons for the updating and explanation of changes follow:

1. *Bases:* Changes to the heatup, cooldown curves have been made to conform with requirements of the Standardized Technical Specifications.

2. *Page 79, Specification 3.3.2.A.1.a:* Heatup rates are changed to reflect the revised heatup curve (p.84) to extend curve applicability to 15 EFPY.

3. *Page 84:* The heatup curve is being updated to derive the 15 EFPY curve as addressed in WCAP–11247.

4. *Page 85:* The cooldown curve is being updated to derive the 15 EFPY curve as addressed in WCAP–11247.

5. *Page 86:* The current figure. 3.3.2–3 has been removed and replaced with a Neutron Fluence vs EFPY figure for Unit 1. Information pertaining to the old figure is contained in WCAP's–10902, 11247, and 7924–A. This information is required only for deriving the limitation curves and is used in the WCAP's.

6. *Page 87:* Figure 3.3.2–4 is being replaced by more accurate curves for Unit 2 which were used in the analysis of the 15 EFPY heatup, cooldown curves. Actual derivation of the fluence curves is explained in WCAP–10902 and are referenced in WCAP–11247. This information also applies to the new figure 3.3.2–3.

7. *Pages 88–89:* Table 3.3.2–1 is being replaced by more current information used in deriving the limitation curves. The values in the 50 ft–lb/35 MIL and TRANS USE columns are different due to the use of methods in NUREG–0800. These values replace the old ones which were generated by Westinghouse and were accepted by the NRC at that time. Some of the values in the RT_{NDT} column changed due to influence of the 50 ft-lb/35 MIL column. The table currently in the Technical Specifications is only for Unit 1; no information was available at that time for Unit 2. These new tables are referenced on page 90 of the proposed Technical Specifications.

8. *Pages 90–93:* The bases section on fracture toughness properties is being changed to conform with the Standardized Technical Specifications. Changes in this section were also made to correspond with the proposed LCO section (e.g., 15 EFPY curves, figures, tables). It should also be noted that equation $2.0\ K_{IM}+1.25K_{R}$ is less than or equal to K_{IR} has been modified to reflect the equation contained in the Standardized Technical Specifications.

9. *Page 93a:* The listing of references has been updated.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possiblity of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following discussion regarding the above three criteria:

Criterion 1

The purpose of this amendment request is to update the pre-existing heatup and cooldown limitations as the Zion Units accumulate exposure. The purpose of these curves is to ensure that the reactor vessel is not subjected to excessive levels of stress during the heatup and cooldown phases of reactor operation.

The revised limitations provide an equivalent level of protection to the previous limitations. The acceptance criteria for the calculations performed have not been significantly altered. Thus, there will be no change in the probability of vessel failure through crack propagation.

This amendment will not effect the performance of any Zion's safety systems or structures beyond ensuring the continued integrity of Zion reactor vessels as discussed above. Thus, the consequences of all previously evaluated accidents will be unaltered.

Criterion 2

The updating of the administrative controls regarding the heatup and cooldown rates allowable at Zion Station has no effect on any of Zion's systems or structures. In addition, the imposition of a more conservative heatup and cooldown rate will not interact with any other phase of Zion's operation.

The analyses contained in the Zion FSAR were examined for any potential alterations. Based upon the lack of system and component interaction discussed above, the specific accident sequences will not be affected.

Thus, this revision of the current limitations to include the higher levels of exposure will not create the possibility of any new or different kind of accident.

Criterion 3

WCAP–11247 addressed the criteria for the acceptability of these calculations. The revised heatup and cooldown limitations for Zion Station provide an equivalent level of safety to that which currently exists.

The allowable stresses that the reactor vessel could be subjected to have not been altered from the currently existing levels. Thus, there will be no change in the margin of safety at Zion Station.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. The proposed amendment updates the exposure limitations for the heatup and cooldown curves at Zion Station from eight EFPY to fifteen EFPY. The mechanical acceptance criteria for the allowable stresses has not been significantly altered. Thus, example (i) is applicable in this instance. Example (i) reads as follows:

(i) A purely administrative change to Technical Specifications; for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specification involve no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney to licensee: P. Steptoe, Esq., Isham, Lincoln and Beale, Counselors at Law, Three First National Plaza, 51st Floor, Chicago, Illinois 60602.

NRC Project Director: Steven A. Varga.

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Benton County, Illinois

Date of application for amendments: December 16, 1986.

Description of amendments request: These amendments provide clarifications, corrections of typographic errors and errors of inadvertent ommissions or deletions in the recently

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approved Zion Radiological Effluent Technical Specifications (RETS).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequence of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following discussion regarding the above three criteria:

Criterion 1

The proposed change involves clarifications to the exiting RETS and the correction of minor typographical errors. None of the proposed changes involve the alteration of any definition or of any limiting condition for operation.

None of these administrative clarifications will effect any of Zion's systems or the integrity of any of its structures. In addition, these clarifications will not affect the probability of occurrence of an external event such as a tornado or an earthquake.

Since these clarifications will not involve any system interaction, will not alter Zion's operation, or affect the performance of Zion's structures, the pre-existing safety analysis will remain valid. Thus, this proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2

As discussed above, these administrative clarifications will not affect the performance of any of Zion's systems or structures. They are administrative clarifications or corrections of minor errors.

These clarifications could not conceivably have any significant effect on Zion's operation during either normal or abnormal conditions. The specific accident sequences contained in Zion Safety Analysis have been reviewed. Based upon the lack of interaction discussed above, none of these sequences will be altered by this proposed change.

Thus, the proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3

These clarifications and corrections will not affect the performance of any of Zion's systems or structures. Thus, all of Zion's systems will continue to perform their intended functions.

Since all of Zion's individual components and systems will continue to perform their intended safety function, there can be no change in the plant's overall performance during normal and abnormal operations. Thus, this proposed change will not involve a significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. This proposed change consists of administrative clarifications and minor corrections. Thus, example (i) is applicable in this instance. Example (i) reads as follows:

(i) A purely administrative change to technical specifications: For example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specification involve no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney to licensee: P. Steptoe, Esq., Isham, Lincoln and Beale, Counselors at Law, Three First National Plaza, 51st Floor, Chicago, Illinois 60602.

NRC Project Director: Steven A. Varga.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: November 26, 1986.

Description of amendment request: The proposed amendment would revise the Technical Specifications for Indian Point Unit Nos. 1 and 2 to incorporate changes to the Facility Organization. The amendment would revise the organizational figures contained in the Technical Specifications and revise the affected titles of the members of the Station Nuclear Safety Committee.

As a result of organizational restructuring, the offsite Technical Support Organization is now known as the offsite Independent Safety Review and Audit Organization. The responsibilities of the Vice President of Nuclear Engineering and Quality Assurance have been split between the Director of Power Generation Services taking over Quality Assurance and Reliability, offsite, and the Vice President of Nuclear Power taking over Nuclear Engineering, onsite.

The Nuclear Power Generation Department now includes an Operations Manager and staff instead of a Chief Operations Engineer, elimination of the position of Operations Superintendent and the addition of a new Planning and Project Manager and staff. The Operations Manager is responsible for managing the activities of the Senior Watch Supervisors, the Support Facilities Supervisors, the rotating shifts and has additional personnel who assist in the day-to-day management of Operations. The Projects and Planning Manager and staff organization includes the transfer of the Major Projects Manager and staff from the Technical Support Department to the Nuclear Power Generation Department.

All fire protection responsibilities of the Chief Technical Engineer of the Technical Support Department have been transferred to the newly created position of Fire Protection, Safety and Security, and transfers them from the Security Administrator.

The proposed revision includes a change in the following titles: Maintenance Engineer to Maintenance Manager, Chief Technical Engineer to Chief Plant Engineer, Radwaste General Supervisor to Radwaste Manager, Test and Performance Engineer to Test and Performance Manager, Nuclear Training Director to Nuclear Training Manager, and Emergency Planning Director to Emergency Planning Manager. The Nuclear Environmental Monitoring Engineer and staff has become a functional responsibility and has been absorbed by the Manager of Emergency Planning.

The Technical Support Department has been merged with the Nuclear Engineering Department resulting in the addition of the Safety Assessment and Nuclear Analysis Managers to the Technical Support Department.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a sigificant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operations of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident from any accident previously evaluated (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following discussion regarding the above criteria. The proposed change does not involve a significant hazards consideration because operating of Indian Point Units 1 and 2 in accordance with this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. This is an administrative change which reflects a recent facility reorganization with consolidation and realignment of responsibilities. Therefore, this change cannot increase in the probability or consequences of an accident.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. It has been determined that a new or different kind of accident will not be possible due to this change. An administrative change such as a facility re-organization does not create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety. The administrative change as described above in the safety assessment discussion has been determined not to impact the preservation or reduction of any margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specification involve no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Steven A. Varga.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: December 8, 1986.

Description of amendment request: The proposed amendment would modify the Indian Point 2 Technical Specifications using provisions regarding the limiting conditions of operation for inoperable main steam safety relief valves contained in the Standard Technical Specifications for Westinghouse Pressurized Water Reactors, NUREG–0452, Revision 4.

Currently Technical Specification 3.4.A(1) requires that a minimum of twenty ASME code approved main steam safety valves (MSSV's) be operable when the reactor coolant system is above 350 °F. If this requirement cannot be met within 72 hours, the Technical Specifications require the reactor to be placed in the hot shutdown condition within the next 12 hours and subsequently cooled below 350 using normal operating procedures. The proposed change would allow up to three inoperable main steam safety valves on any steam generator on the basis of the reduction of secondary system steam flow and thermal power required by reduced reactor trip settings of the Power Range Neutron Flux Channels.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists [10 CFR 50.92(c)]. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in margin of safety.

The licensee provided the following discussion with regard to the above three criteria. The proposed change to the limiting condition of operation for the main steam safety valves would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated, since the specified limits on power (per Table 3.4–1) with one or more inoperable main steam safety valves will not increase the consequences of a full loss of load accident and will ensure meeting the required heat removal capability at the reduced power level.

(2) Create the possibility for a new or different kind of accident from any previously evaluated, since the proposed change only involves a reduction in power in order to compensate for any reduction in steam relieving capability with inoperable main steam safety valves. This is no different than operating at full power with 20 MSSVs.

(3) Involve a significant reduction in the margin of safety, since the power reduction compensates for any reduction in heat removal capability at full power caused by the inoperability of one, two or three main steam safety valves on any operating steam generator, thereby ensuring the same margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Steven A. Varga.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: December 2, 1986.

Description of amendment request: The proposed amendment would revise the steam generator low water level trip setpoints specified in Table 2.2–1 and Table 3.3–4 of the Technical Specifications (TS) and the associated Bases. Specifically, the Reactor Protection System (RPS) trip setpoint would be reduced from 39.5% narrow range (NR) to 20.5% NR and the Engineered Safety Features Actuation System (ESFAS) trip setpoint would be reduced from 20.6% NR to 19.0% NR. Similarly, the allowable values for the RPS and ESFAS trip setpoints would be reduced from 39.1% NR to 19.5% NR and from 20.0% NR to 18.0% NR, respectively. The proposed reduction of the RPS and ESFAS trip setpoints is expected to decrease the likelihood of an unnecessary reactor trip or Auxiliary Feedwater Actuation System (AFAS) initiation on low steam generator level.

The purpose of the steam generator low water level reactor trip is to provide protection against a loss of normal feedwater flow incident. The reactor trip setpoint should provide allowance that there will be sufficient water inventory in the steam generators at the time of the trip to provide a sufficient margin before emergency feedwater is required. Automatic actuation of the AFAS is initiated when several parameters, including the steam generator water level, reach the ESFAS trip values.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a

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significant hazards consideration exists as stated in 10 CFR Part 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The proposed changes will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The current RPS trip setpoint corresponds to a Cycle 1 analysis assumption of steam generator low level RPS trip setpoint of 30% NR for the most limiting event, Loss of Feedwater, and 5% NR setpoint for all other accidents. The current RPS setpoint also includes an uncertainty factor of 9.5% due to the uncertainties associated with the equipment, response times, and RPS cabinet, thereby arriving at the current setpoint value of 39.5%. The ESFAS setpoint value in the TS's reflects the 5% NR assumption value plus the respective uncertainty value.

However, the Safety Analyses presented for Cycles 2 and 3 incorporated the assumed setpoint value of 5% NR (and the related instrument uncertainties) for the RPS and ESFAS. The proposed setpoints would incorporate the 5% NR limit as used in the Cycle 2 and 3 analyses plus the respective instrument uncertainties, as derived using accepted methodology for instrument uncertainty calculations. Therefore, the proposed setpoints do not impact the result of the Safety Analyses presented for Cycles 2 and 3, but merely reflects a change in the analysis assumptions made for Cycle 1 versus Cycles 2 or 3. The Cycle 2 and 3 setpoint was set at 5% NR to ensure actuation prior to reaching 0% under accident conditions. The Cycle 2 Reload Safety Evaluation used the 5% NR setpoint and evaluated the results for all events which could be impacted, namely the Loss of Feedwater event, the Feedwater Line Break event, the Steam Line Break event, and the Inadvertent Opening of a Steam Generator Safety Valve or Atmospheric Dump Valve. The results of the analyses for the Cycle 2 Reload Safety Evaluation demonstrated that all key parameters were below the acceptance criteria. Therefore, on the basis that the proposed amendment has been addressed by the existing Analyses of Record, the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The setpoints for the RPS trip and the AFAS have been established such that they ensure actuation of these functions before the instrumentation goes off scale. This starts with a minimum level of 5% NR and includes appropriate errors for an inside containment accident such as a Steam Line Break. The difference between the setpoint and allowable values accounts for the instrumentation drift over the specified surveillance interval. As stated above, the proposed setpoints correspond to values for which safety analyses have previously been evaluated. Therefore, the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in the margin of safety.

The proposed setpoints incorporate the same narrow range setpoints as those incorporated in the Cycle 2 Reload Safety Evaluation for which the results of the analyses for the events presented demonstrated that all key parameters were below the acceptance criteria. Based on this evaluation, it can be concluded that the proposed amendment has been addressed by the existing Analyses of Record and therefore, would not involve a significant reduction in the margin of safety.

Based on the above discussion, the staff proposes to determine that this proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: Ashok C. Thadani.

General Public Utilities Nuclear Corporation, Docket No. 50–320, Three Mile Island Nuclear Station Unit 2 (TMI–2), Dauphin County, Pennsylvania

Date of amendment request: June 18, 1985 and July 31, 1985, as supplemented November 20, 1985, February 26, 1986 and May 20, 1986.

Description of amendment request: The proposed amendment would revise TMI–2 Operating License No. DPR–73 by modifying Appendix A Technical Specifications 3.7.4, 3.7.7, 3.7.10, 3.8.1, 3.8.2, 3.9.12.1, 3.9.12.2, 3/4.7.4, 3/4.7.7, 4.3, 4.7.4, 4.7.7, 4.8.1, 4.8.2, 4.9.12.1, and 4.9.12 2. Specifically, the proposed amendment would: (1) Delete all operability requirements for the emergency diesel generators and supporting systems, (2) modify the operability requirements for the control room emergency air cleanup system so that a backup onsite AC power source (the diesel generators) is not required, and (3) modify the requirements for both the fuel handling building and auxiliary building air cleanup systems, by reducing the number of required operable exhaust fans from two to one for each system.

TMI–2 is currently maintained in a stable, long-term cold shutdown mode without a need for forced cooling of the core. Active safety systems previously required to assure safe shutdown of the plant, such as the decay heat removal system and the high pressure safety injection system, have been deleted from the Technical Specifications by earlier license amendments. Therefore, the need for emergency backup power to these systems no longer exists and the emergency diesel generators are not necessary for the maintenance of the facility in a safe, cold shutdown condition. Consequently, retaining the operability requirements for the diesel generators and supporting systems (e.g., cooling water, fire suppression) places an undue burden and expense on the licensee without significantly contributing to plant safety.

Control room actions are not necessary to maintain the current safe shutdown of TMI–2, however, habitability of the TMI–2 control room in the event of an accident is assured through operation of the control room emergency air cleanup system. The licensee and the staff have evaluated a broad spectrum of accidents for TMI–2 in the current recovery mode. The only accident scenario having a potential to affect habitability of the TMI–2 control room is a TMI–1 loss-of-coolant accident (LOCA) coincident with a loss of offsite power (LOOP) to TMI–2. In this extremely unlikely scenario, without backup power provided by the diesel generators, the control room emergency air cleanup system would be inoperable and evacuation of control room personnel could become necessary. The staff has previously determined that offsite power to TMI–2 can be restored within 5 hours and concurs in the licensee's assessment that temporary evacuation of the TMI–2 control room will not affect the maintenance of the plant in a safe shutdown condition. Therefore, the operability requirements for the TMI–2 control room emergency air cleanup system can be modified so that backup power from the emergency diesel generators is not required, without impacting plant safety.

The proposed amendment would also reduce from two to one the number of operable exhaust fans required for both the fuel handling building air cleanup system and the auxiliary building air cleanup system. Regardless of the number of operable fans, both systems would still be required to maintain a ⅛ inch water gauge negative pressure in the respective buildings to limit exfiltration in the event of radioactive releases. The staff has added a requirement to perform a daily check of pressure indication or the pressure alarm to assure early detection of system degradation. Thus, this change represents an improvement to safety since the negative pressure requirement remains the same and system surveillance is enhanced.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

TMI–2 is in a long-term cold shutdown for accident recovery. Short-lived fission products which make up the preponderance of the source term for operating reactors have decayed to negligible levels. The decay heat produced by the core has now dropped to less than 10 kilowatts and forced cooling of the core has not been required or used since 1981. Consequently, in previous license amendments, the staff has determined that the potential accidents analyzed for TMI–2 in the current recovery mode are bounded in scope and severity by the range of accidents originally analyzed in the facility FSAR.

The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated because no changes to current safety systems or setpoints are proposed. No active systems are required to maintain TMI–2 in its current safe shutdown condition and temporary evacuation of the control room for the duration of a loss of offsite power event, if necessary, will not impact plant safety. As the requirements for those safety systems formerly provided with emergency power by the diesel generators have been deleted by previous license amendments, deletion of the requirements for the diesel generators will not have a significant impact on the prevention or mitigation of previously analyzed accidents. The proposed change to the operability requirements for the exhaust fans for the auxiliary and fuel handling building air cleanup systems will not have a significant impact on the probability or consequences of previously evaluated accidents because system performance requirements and required corrective actions would remain unchanged.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because no new modes of operation or new equipment are being introduced. Deletion of the license requirements for the diesel generators is consistent with those previous license amendments that deleted requirements for safety systems formerly dependent on the diesel generators for emergency backup power. The functions of the auxiliary and fuel handling building air cleanup systems will remain unchanged.

The proposed changes do not involve a significant reduction in a margin of safety because, as mentioned previously, no active components are required to maintain the current safe shutdown of TMI–2 and the diesel generators are not needed to provide emergency power to safety systems. Also, the negative pressure required to be maintained in the auxiliary and fuel handling buildings remains unchanged.

Based on the above considerations, the Commission proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State Library of Pennsylvania Government Publications Section, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for licensee: Ernest L. Blake, Jr., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: William D. Travers.

Indiana and Michigan Electric Company, Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan

Date of amendment request: January 9, 1987.

Description of amendment request: The proposed amendment would change the Technical Specifications to allow certain tests or surveillances to be delayed until the end of the next refueling outage currently scheduled to begin during the second quarter of 1987. These tests include battery charger and battery service tests on the AB and CD batteries, response time testing of equipment which actuates on an engineered safety feature (ESF) signal, reserve power transfer tests, tests of the monitoring system for ice condenser lower inlet doors, channel calibration of seismic monitoring instrumentation, power operated relief valve (PORV) calibration, inspection of containment penetration seals on doors and hatches, channel calibration of the safety valve position indicator acoustic monitor, and tests on the pressurizer heaters. The proposed amendment is similar to two previous requests which were approved by license amendment 100 dated December 20, 1986 (published 52 FR 1561).

Basis for proposed no significant hazards consideration determination: The Commission's standard for determining whether a significant hazards consideration exists is as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The changes proposed by the licensee will extend certain tests to the next refueling outage beginning about mid-April rather than shutdown the plant or place the plant or personnel in a less safe condition. The safety significance, therefore, is in extending the tests for one or two months and the confidence that the components or systems will still perform their intended function with the extension of time.

An additional consideration is the risk of unwarranted reactor trips and plant transients if the licensee attempts to perform some tests at power with new or revised procedures. ALARA concerns are also weighed against the short period of the extension. We have revised the licensee's submittal and summarize below our agreement with the licensee's findings.

The AB and CD batteries are new and have passed all factory and post-installation tests and the subcomponent

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testing performed weekly and quarterly. The test proposed for extension is the capacity test (without charger) which discharges the battery below the technical specification minimum operable level. The test is required to be done at shutdown. Based on the results of the tests on these new batteries to date and the batteries are not normally subject to operation that would limit or reduce their life, the short extension of time to perform the tests should have no discernible effect on the batteries. The extension will not significantly increase the probabilities or consequences of a previously analyzed accident nor will it create a new or different kind of accident. There should be no significant reduction in a margin of safety.

The proposed amendment would extend the surveillance tests frequency for response testing of certain equipment which activates on an ESF signal. Most of the tests must be done at shutdown and the remaining tests would require removing an entire train of safety equipment from operation. The surveillance history of the equipment has been good; the only problem with limit switch wiring was corrected. The systems have not been found unable to perform their safety function and the short extension should have little if any effect on response times. The reserve power transfer is somewhat like the response time testing in that the automatic transfer capability from the normal auxiliary source to the preferred reserve source and the manual transfer to the alternate reserve source are measures of the capabilities of these systems which are not usually operated and subject to operational degradation. This testing also removes entire trains of safety equipment from service and is not considered feasible (or desirable) at power. The extension of time to perform the test is small and should have little effect on system operation. The extension of time should not significantly increase the probabilities or consequences of a previously analyzed accident nor will it create the possibility of new accidents. There is no significant reduction in any margin of safety.

The proposal to extend the test period for the ice condenser lower inlet door position monitoring system and the inspection of the containment personnel access door and equipment hatch seals is due to ALARA considerations while the plant is at power. The recent inspection history of these systems and the short extension period until shutdown supports the licensee's position that exposing the personnel needlessly to radiation is unwarranted. For the short period of the extension, these systems should continue to function with little or no safety consequences. We agree there should be no significant increase in the probabilities or consequences of previously analyzed accidents nor should the extension create any new or different accidents. There should be no significant reduction in any margin of safety.

The test of the pressurizer heaters is to demonstrate the capability to power the heaters from the emergency diesel generators. This test at power would require operation in an abnormal mode with emergency power on one train of safety related equipment. The successful tests of the individual components of this system and the short period of the extension provides confidence in the operability or capability of the emergency diesel generators to power the heaters if called upon to do so. The short extension of time should not significantly increase the probabilities or consequences of any previously analyzed accident nor would it create any new or different kind of accident. There should be no significant reduction in any margin of safety.

The remaining proposed changes relate to extending the period for calibration of seismic monitoring channels, PORV block valve limit switches, and safety valve position indicator-acoustic monitor channels. The latter two items have monthly channel checks which have not indicated any problems with operation or adverse calibration effects. The seismic channels involved in the extension period are two (out of eight) strong motion triaxial acceloqraphs which are located in the lower containment and inaccessible due to high radiation during operation. There is no reason to believe these instruments will not function adequately for the short extension period. For all the calibrations, the short extension of the test period will not significantly increase the probabilities or consequences of any previously analyzed accident nor will it create any new or different kind of accident. There should be no significant reduction in any margin of safety.

Based on the above, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 M Street, NW., Washington, DC 20037.

NRC Project Director: B.J. Youngblood.

Long Island Lighting Company, Docket No. 50–322, Shoreham Nuclear Power Station, Suffolk County, New York

Date of amendment request: January 21, 1987.

Description of amendment request: The proposed amendment would revise the Technical Specifications regarding the water level setpoint for closure of the Main Steam Isolation Valves (MSIVs). This setpoint would be changed from reactor low-low water level (Level 2) to reactor low-low-low water level (Level 1). Since the setpoint of water level instruments controlling the MSIVs also controls the main steam line drain valves the setpoint for closure of these valves is also changed by the proposed amendment.

The proposed change would reduce the possibility of spurious MSIV closure due to variations in reactor water level. This, in turn, would increase plant availability, reduce challenges to the safety relief valves (with attendant suppression pool heatup), and simplify plant operation.

Basis for proposed no significant hazards consideration determination: In accordance with the Commission's Regulations in 10 CFR 50.92, the Commission has made a determination that the proposed amendment involves no significant hazards considerations. To make this determination the staff must establish that operation in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

All accidents or events previously evaluated in the Final Safety Analysis Report have been reevaluated using the proposed, revised water-level setpoint. These include abnormal operational transients, loss of coolant accidents and anticipated transients without scram (ATWS). In each case, reanalysis shows that the probability or consequence of the previously evaluated accident or event is not increased as a result of the proposed revision. Therefore, criterion (1) above is satisfied.

The reactor water-level setpoint is a safety feature which, through closure of the MSIVs, serves to mitigate the consequences of previously evaluated events. A change in this setpoint will not

create the possibility of a new or different kind of accident from any previously evaluated since the change does not entail a hardware modification or any change in plant operating procedures, nor would the change in setpoint create a new accident sequence. Criterion (2) above is therefore satisfied.

The effects of the proposed setpoint change on operating parameters indicative of plant safety margin such as minimum critical power ratio and peak vessel pressure have been evaluated. Also evaluated were the effects on radiation release and shutdown capability during abnormal operational transients, fuel cladding integrity during a loss of coolant accident, and the reactor response during an ATWS event. These analyses have indicated that the proposed revision would not cause a reduction in safety margin. Furthermore, since the proposed revision would decrease the possibility of spurious MSIV closure due to variations in reactor water level, challenges to the safety relief valves and attendant suppression pool heatup would be reduced, resulting in an improved safety margin. Therefore, criterion (3) above is satisfied.

Because it has been established that plant operation in accordance with the proposed amendment would satisfy the three above stated criteria, the staff has, therefore, made a proposed determination that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786.

Attorney for licensee: W. Taylor Reveley, III, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Walter R. Butler.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: January 12, 1987 and January 21, 1987.

Description of amendment request: The proposed amendment would modify the Technical Specifications (TS) to reflect the operating limits for the Cycle 10 reload core as follows:

1. The steady state peak linear heat rate would be modified to reflect Cycle 10 specified acceptable fuel design limits for prevention of centerline melting.

2. The text would be modified to clarify that each fuel type has its own linear heat generation rate limit.

3. The figure in the TS which describes the Power Dependent Insertion Limit would be modified to reflect Cycle 10 control element assembly insertion limit.

4. The figure in the TS which describes the Allowable Unrodded Radial Peak versus Cycle A Average Burnup would be modified to reflect Cycle 10 radial peaking.

5. The figure in the TS which describes the Allowable Power Level versus Increase In Total Radial Peak would be modified to reflect Cycle 10 power distributions and Reactor Protection System setpoints.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in margin of safety.

The licensee has evaluated the proposed changes to the Technical Specifications for the Cycle 10 operation of the Maine Yankee plant against the standards of 10 CFR 50.92 and has determined they do not involve a significant hazards consideration. The licensee's discussion follows.

These proposed changes do not: 1. Involve a significant increase in the probability or consequence of any accident previously evaluated. The Cycle 10 refueling will involve the discharge of 73 fuel assemblies and insertion of 72 new assemblies and one previously irradiated assembly. The new fuel assemblies are fabricated by Combustion Engineering and are not significantly different from those previously used at Maine Yankee. In previous reload cores at Maine Yankee and other facilities, the NRC has found the fuel design to be acceptable. The Control Element Assembly (CEA) pattern for Cycle 10 is identical to that used in Cycle 9. Also, the thermal, thermal-hydraulic, and physics characteristics for Cycle 10 are not significantly different from those of Cycle 9. Therefore, these proposed changes which support the operation of Maine Yankee for Cycle 10 do not increase in probability of an accident previously evaluated.

The Cycle 10 design has been evaluated to demonstrate the acceptability of events previously evaluated in the Maine Yankee FSAR. The acceptance criteria for the evaluation are identical to those which were employed for Cycle 9. Furthermore, the analytical methods used to demonstrate conformance of the Cycle 10 design are identical to those used in Cycle 9 except for the removal of the flux augmentation factor. The removal of the flux augmentation factor was proposed by Maine Yankee Atomic Power Company (MYAPCo) by letter dated May 20, 1986 and approved by the NRC by letter dated September 15, 1986.

The effects of Cycle 10 operation on the consequence of accidents previously evaluated in the Maine Yankee FSAR were analyzed in MYAPCo's submittal.

For these transients where the parameters for Cycle 10 are not bounded by previous safety analyses, a new or revised analysis was performed. They are:

(1) Boron Dilution
(2) Ejection
(3) CEA Withdrawal
(4) CEA Drop
(5) Loss of Load

Other transients that required a partial reanalysis or review included:

(1) Seized Reactor Coolant Pump (RCP) Rotor
(2) Excess Load
(3) Loss of Feedwater
(4) Loss of Coolant Flow
(5) Steam Line Rupture
(6) Steam Generator Tube Rupture

In each case, the reanalysis demonstrated that the applicable acceptance criteria for the accident or transient continue to be met. For the remaining transients, the parameters were bounded by previous safety analyses and therefore are not adversely affected by the reload.

The evaluation of accidents previously analyzed in the FSAR has demonstrated that all applicable acceptance criteria continue to be met.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. As indicated in Item 1, above, and the Cycle 10 Core Performance Analysis Report (CPAR), the reload core for Cycle 10 operation is similar in fuel design, CEA placement, and thermal, thermal-hydraulic, and physics characteristics to that of Cycle 9. It is concluded that Cycle 10 does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety. As indicated in Item 1,

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above, and the Cycle 10 CPAR, the design of Cycle 10 is similar to Cycle 9. The methods used to analyze Cycle 10 are the same as were used for Cycle 9 or they have been previously approved by the NRC staff. Additionally, the acceptance criteria for Cycle 10 are the same as Cycle 9. It is demonstrated that these acceptance criteria continue to be met. It is therefore concluded that Cycle 10 operation does not involve any reduction in a margin of safety.

Based on the above discussion, the staff agrees with the licensee's evaluation and proposes to determine that the proposed amendment would involve no significant hazards considerations.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Attorney for licensee: J.A. Ritscher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

NRC Project Director: Ashok C. Thadani.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: November 24, 1986.

Description of amendment request: The proposed amendment would revise the Appendix A Technical Specifications as follows:

1. Section 3.6.B.2 would be revised to state that the reactor coolant system water chemistry limits apply "when the reactor is pressurized (i.e. equal to or greater than 212 deg. F) and during operation up to 10% of rated power." The present 3.6.B.2 applies "prior to startup and during operation of the reactor up to 10% of rated power, and during hot standby."

2. Section 3.6.B.2 would be revised to change the reactor water conductivity limit from less than 5 micromho/cm at 25 deg. C to equal to or less than 2.0 micromho/cm at 25 deg. C.

3. Section 3.6.B.2 would be revised such that should a conductivity, chloride, or pH limit be out-of-limit for more than 48 hours during one continuous time interval, the facility must be in at least hot shutdown within the next 12 hours and (or if already in hot shutdown) cold shutdown within the following 24 hours. The present requirement states that the facility shall be shut down if pH is out-of-limit for a 24 hour period.

4. Section 3.6.B.3 and Section 3.6.B.4 would be combined to include, in one specification, normal limits for conductivity, chloride, and pH; time limits for chloride, conductivity, and pH; and maximum limits for conductivity and chloride.

5. Section 3.6.B.3 would be revised to require, that in event pH is out-of-limit for more than 72 hours during one continuous time interval, the reactor be placed in startup/hot standby within the next eight hours. The existing Section 3.6.B.4 requires, in such event, that the reactor be shut down if pH is out-of-limit for 24 hours.

6. Section 3.6.B.3 would be revised to specify that, should the normal chloride or conductivity limits be out-of-limit for more than 336 hours per year or 72 hours during one continuous interval, the reactor shall be placed in startup/hot standby within the next eight hours. The existing Section 3.6.B.4 requires the reactor to be placed in cold shutdown if the normal limits are exceeded for two weeks/year.

7. Section 3.6.B.3 would be revised to specify that should the maximum conductivity or chloride limits be exceeded, the reactor shall be placed in cold shutdown within 24 hours. The existing Section 3.6.B.4 requires, in such case, the reactor be "placed in the cold shutdown condition."

8. Section 3.6.B.4 would be revised to specify reactor coolant chemistry limits that apply "at all other times." This specification would replace the existing Section 3.6.B.5 which applies when the reactor is not pressurized. The new Section 3.6.B.4 would include limits on pH. The existing Section 3.6.B.4 does not include pH limits. The new 3.6.B.4 would also require the licensee to perform an engineering evaluation in event the conductivity or pH limit is out-of-limit for more than 72 hours during one continuous interval or the chloride limit for more than 24 hours.

9. A new Section 3.6.B.5 would be added. Section 3.6.B.5 would state that the provisions of Specification 1.0.J are not applicable. Specification 1.0.J defines actions to be taken for circumstances in excess of the limiting conditions for operation.

10. Section 4.6.B.2 would be revised to indicate that, in the event the continuous conductivity monitor is inoperable, reactor coolant samples shall be periodically analyzed; every four hours prior to startup, during operation, and during hot standby; and every 80 hours when not pressurized.

11. Section 4.6.B.3.d would be revised to delete a requirement for periodic sampling of the reactor coolant system when the continuous conductivity monitor is inoperable. That requirement would be included in Section 4.6.B.2 as described above.

12. Section 4.6.B.4 would be revised to include pH as one of the parameters to be sampled every 80 hours when the reactor is not pressurized. At present, only chloride and conductivity are required to be sampled when depressurized.

13. Note 8 of Table 3.2.A would be revised to delete the statement that reactor water cleanup system high system temperature is a group 3 isolation signal.

14. Section 6.4.2.H would be revised to state that life retention would be required for "Records of current individual plant staff members showing qualifications and the completion of training." This would replace a requirement for life retention of "Records of individual plant staff members showing qualifications, training and retraining."

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). These examples include:

(i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature.

(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications, e.g., a more stringent surveillance requirement.

(vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan, e.g., a change resulting from the application of a small refinement of a previously used calculational model or design method.

Change 1 eliminates the use of the vague term "prior to startup" replacing it with the more definitive term "when pressurized." Since pressurization occurs coincident with startup, there is no substantial change as to when the specification actually becomes applicable. The change serves only to provide clarification and is therefore within the scope of example (i).

Change 2 revises a limit to specify a more restrictive value. It is therefore within the scope of example (ii).

Change 3 would allow additional time to correct an out-of-limit condition prior to commencing a required shutdown. This may in some way possibly decrease a safety margin. However, the additional time is consistent with the criteria of the Standard Review Plan which references NUREG–0123 "Standard Technical Specifications for BWRs" for the staff position on Technical Specifications for BWRs. The proposed change is consistent with Section 3.4.4.b of NUREG–0123 and is within the scope of example (vi).

Change 4 is a reformatting or editorial change and is within the scope of example (i).

Change 5 would allow additional time to correct an out-of-limit condition prior to commencing a required shutdown. This may in some way possibly decrease a safety margin. However, the additional time is consistent with the criteria of the Standard Review Plan which references NUREG–0123 "Standard Technical Specifications for BWRs" for the staff position on Technical Specifications for BWRs. The proposed change is consistent with Section 3.4.4.a.2 of NUREG–0123 and is therefore within the scope of example (vi).

Change 6 would provide an additional restriction, the 72 hour continuous time limit, and is therefore within the scope of example (ii).

Change 7 adds a definitive time limit within which the licensee must accomplish a required action. This provides a clarification or additional restriction and is therefore within the scope of example (i).

Change 8 would provide clarification as to which chemistry limits apply during various reactor conditions, assures that all reactor conditions are covered by appropriate chemistry limits, and adds new restrictions. It is therefore within the scope of example (ii).

Change 9 would provide clarification by giving the new specifications precedence over the general, less restrictive requirements of Technical Specification 1.0.J. This change is within the scope of example (i).

Changes 10 and 11 are editorial changes. A requirement is being relocated from one section to another without being changed. They are therefore within the scope of example (i).

Change 12 is an additional restriction and is therefore within the scope of example (ii).

Change 13 corrects an error made in a previous amendment. In Amendment 62 the Staff approved the deletion of the reactor water cleanup system high temperature signal as being a Group 3 isolation signal. Note 8 of Table 3.2.A should have been changed as part of Amendment 62. This change corrects the error and is therefore within the scope of example (i).

Change 14 is a clarification intended to ensure that permanent records are kept for plant staff individuals documenting the completion of training activities. The change clarifies that it is not the intent of the requirement that each such record thoroughly describe the subject matter covered during the training.

Since the application for amendment involves proposed changes that are encompassed by examples for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

NRC Project Director: Daniel R. Muller.

Northeast Nuclear Energy Company (NNECO), Docket No. 50–245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: December 22, 1986.

Description of amendment request: The proposed amendment would change the operating license expiration date for the Millstone Nuclear Power Station, Unit No. 1 (Millstone 1), from May 19, 2006 to October 6, 2010, which would be forty years from its October 7, 1970 date of issuance.

Basis for proposed no significant hazards consideration determination: The currently licensed term of operation for Millstone 1 is 40 years beginning with issuance of the construction permit. Accounting for the more than 52 months required for plant construction results in an effective current operating license term of 35 years and seven plus (7+) months. The NNECO (the licensee) application requests a 40-year operating license term for Millstone 1 in place of the currently shorter term. The licensee's request for extension of the operating license is based primarily on the fact that a 40-year service life was considered during the design and construction of the plant.

The licensee has determined that the structures, systems and components are designed and maintained to perform for the full 40 year operating term and are subject to detailed inspection, surveillance and maintenance requirements that assure detection of any abnormal degradation and provide for appropriate corrective action.

Only the reactor pressure vessel (RPV) is considered to be a nonreplaceable component. However, the licensee has determined that the RPV, consistent with its original design, will maintain its functional capability for the full 40-year operating term requested. The original design of the RPV and associated internals considered the effects of 40 years of operation within the cyclic limits identified in the Millstone 1 Final Safety Analysis Report (FSAR). These cyclic limits equate to 40 years of operation at full power (2011 MW thermal) with a plant capacity factor of 80%, including expected operational and thermal transients. The cummulative capacity factor at this point in time is 68%. The design of the RPV meets the intent of 10 CFR 50, Appendix A, General Design Criteria (GDC) 31, "Fracture Prevention of Reactor Coolant Pressure Boundary", and is therefore acceptable. In addition, the licensee has determined that total neutron fluence over the 40 year term of the proposed operating license will be no greater than 16 percent of the design limit for neutron fluence in the RPV wall. Limiting conditions of operation and surveillance requirements are identified in Technical Specifications 3.6 and 4.6. Included is the requirement for RPV test specimens (TS 4.6.B.5). In accordance with 10 CFR Part 50, Appendix H, the changes that appear in the mechanical and impact properties of the material contained in the surveillance capsules inside the reactor vessel are used to monitor the radiation-induced changes in the mechanical and impact properties of the RPV materials. This program provides a means of assuring that the cumulative effects of power operation are within design allowances.

In accordance with 10 CFR 50.49, the licensee has established programs for electrical equipment requiring environmental qualification. These programs assure that electrical equipment important to safety is maintained in a qualified state at all times during plant operation, regardless of the length of operation. The programs include: Aging analysis to determine qualified life, maintenance designed to preserve qualification, surveillance according to procedures, qualification of affected portions of plant modifications and scheduled replacement of the equipment at the end of its qualified life. These programs provide assurance that equipment will perform as required, if called upon to mitigate design basis events, regardless of the term of the license.

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Based upon the above, the licensee concluded that extension of the operating license for Millstone to allow a 40-year service life is consistent with the safety analysis in that all issues associated with plant aging have already been addressed. Since the proposed amendment involves no changes in the technical specifications or safety analyses, the licensee concludes that the proposed amendment would not: (i) Involve any significant increase in the probability or consequences of an accident previously evaluated; or (ii) create a possibility of a new or different kind of accident from any accident previously evaluated; or (iii) involve any reduction in the margin of safety.

The staff has reviewed the licensee's determination and concurs with its conclusions. Therefore, based on the above, the Commission proposes to determined that the proposed amendment, which would provide a 40 year operating life for the Millstone Nuclear Power Station, Unit No. 1, involves no significant hazards considerations.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry, & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: Christopher I. Grimes.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: January 7, 1986 [Sic] (1987).

Description of amendment request: Section 2.9.1(2)d of the Fort Calhoun Technical Specifications states that the hydrogen and oxygen monitors shall be monitoring the in-service gas decay tank during the transfer of waste gases to the gas decay tank. Whenever the monitors are inoperable, transfer of waste gases to a gas decay tank may continue provided grab samples are taken and analyzed in accordance with the frequency specified in Section 2.9.1(2)d. The purpose of monitoring the hydrogen and oxygen concentrations is to assure that these concentrations will be maintained below the flammability limits of these gases to prevent a potential rapid release of the radioactive waste gas. The proposed amendment would modify Section 3.12.1(2)d(i) of the surveillance requirements for the hydrogen and oxygen monitoring system for the gas decay tanks to clarify that a daily channel check is required for this system when it is in service.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The proposed changes will not:

(1) Involve a significant increase in the probability or consequences of an accident previously analyzed. Specifically, the proposed change does not increase the likelihood of an explosive concentration of hydrogen and oxygen in the waste gas decay tank. The proposed amendment would change the requirement for performing channel checks of the hydrogen and oxygen monitors from "daily" to "daily when in service." This change, for example, would not make it necessary to perform a daily channel check if the hydrogen and oxygen monitoring system was inoperable. As discussed above, whenever the hydrogen and oxygen monitors are inoperable, transfer of waste gases to a gas decay tank may continue provided grab samples are taken and analyzed in accordance with Section 2.9.1(2)d of the Technical Specifications. Therefore, this change does not affect the current requirements for monitoring hydrogen and oxygen concentration in the waste gas decay tanks. This change does not increase the probability or consequences of a previously evaluated accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. Because the proposed chance does not modify the present design, the possibility of a different type of accident other than that previously analyzed has not been created.

(3) Involve a significant reduction in the margin of safety. Because the proposed change does not affect the requirement to monitor the hydrogen and oxygen concentrations during the transfer of waste gases to the gas decay tank, the proposed change will not involve a significant reduction in a margin of safety.

Based on the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, NW., Washington, DC 20036.

NRC Project Director: Ashok C. Thadani.

Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of amendment request: December 12, 1986.

Description of amendment request: The proposed amendment would revise the Susquehanna Steam Electric Station (SSES) Unit 1 Technical Specifications (TS) to incorporate changes to: (a) General Electric (GE) fuel and Exxon Nuclear Company (ENC) fuel MAPLHGR Limits; (b) MCPR operating limits reflecting the results of the XCOBRA-T analyses; (c) set the single loop operation (SLO) MAPLHGR multiplier for ENC fuel to 0.0 to preclude extended operation with one recirculation loop out-of-service, and (d) change bases to provide consistency between Unit 1 and Unit 2 Technical Specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed and concurs with the following basis provided by the licensee in its December 12, 1986 submittal for its 50.92 determination.

(a) *MAPLHGR Limits.*

(i) GE Fuel. The current GE MAPLHGR limits are provided in the Technical Specifications to an average planar exposure of 33,069 MWD/MT. However, the GE fuel bundles are projected to attain average planar exposures greater than 33,069 MWD/MT in both Cycle 3 and Cycle 4 operation.

GE performed a LOCA analysis to determine the MAPLHGR limits for an average planar exposure of 40,675 MWD/MT. The analysis was performed based on the same plant conditions and systems analysis that were used as a basis for the derivation of the current MAPLHGR limits defined in the FSAR. Using a MAPLHGR limit of 9.2 kw/ft at an average planar exposure of 40,675 MWD/MT, the Peak Cladding Temperature (PCT) is 1621 °F and the local oxidation fraction is 0.3 percent. These values are not significantly different from the previous values (PCT range 1753 °F to 1823 °F and local oxidation 0.5 to 0.6 percent), when compared to 10 CFR 50.46 limits of 2200 °F and 17 percent local oxidation rate.

In addition, the projected peak bundle average exposure at the End-of-Cycle (EOC) 3 and EOC 4 was calculated to assure the fuel does not exceed the limits of the fuel mechanical design analysis (NEDE-20944-P, Revision 1, "Licensing Topical Report: BWR-4 and BWR-5 Fuel Design," October 1976). The projected EOC3 and EOC4 peak bundle average exposure for the GE fuel is 26,000 MWD/ST (28,600 MWD/MT) which is well within the design bundle average exposure limit of 30,000 MWD/ST.

(ii) ENC Fuel. The current MAPLHGR limits for ENC fuel are provided to assure that the PCT resulting from the LOCA analysis is less than 2000 °F and that during steady state operation, the fuel remains within the assumptions of the fuel mechanical design analyses. In the Unit 1 Cycle 3 (U1C3) reload analysis Technical Specification revision (Amendment 57 to license No. NPF-14, dated April 11, 1986), a Linear Heat Generation Rate (LHGR) Limit was added for the Exxon fuel to assure the fuel operates within the assumptions of the mechanical design analysis for steady state operation and anticipated operational occurrences. Therefore, the proposed MAPLHGRs are based only on the LOCA analysis.

The ENC LOCA Analysis showed that the LHGR limit currently in the Technical Specifications assures that the fuel remains within the assumptions of the fuel mechanical design analysis and the 10 CFR 50.46 limits are not exceeded with the revised MAPLHGR limits.

(b) *MCPR Operating Limits.*

During the review of the Unit 2 Cycle 2 reload analysis, the ENC method for calculating the MCPR operating limits was shown to be non-conservative for transients which involved recirculation pump trips (RPT). Therefore, administrative MCPR limits were implemented to assure that the Unit 1 core did not exceed the Safety Limit MCPR during a transient which resulted in a recirculation pump trip.

ENC has reanalyzed the U1C3 transients with an improved computer code, XCOBRA-T, to determine conservative MCPR operating limits. As shown in the XCOBRA-T documentation (SN-NF-84-105, Volume 1 and Revision 1 of Supplements 1 and 2, "XCOBRA-T: A computer Code for BWR Transient Thermal-Hydraulic Core Analysis," May, 1985 and March, 1986), XCOBRA-T has been benchmarked against power increase and flow decrease boiling transition tests. The results show that XCOBRA-T is conservative for predicting the onset of transition boiling. From the results of the XCOBRA-T analyses the transient delta CPR and the Rod Withdrawal Error delta CPR are added to the MCPR Safety Limit to obtain the MCPR operating limits shown in the new Technical Specification Figures 3.2.3-1 and 3.2.3-2. In addition, the Rod Block Monitor (RBM) setpoint Technical Specification can be changed since the MCPR operating limit is not decreased for a reduced setpoint. With these MCPR operating limits, 99.9 percent of the fuel rods are not expected to experience transition boiling during normal operation and anticipated operational occurrences. This result is the same as the previous calculated value of percent rods not expected to experience transition boiling.

(c) *MAPLHGR Multipliers for SLO.*

The Unit 1 Technical Specifications were revised to allow extended operation with one recirculation loop out-of-service. GE performed single loop safety analyses and ENC provided justification that the GE operating limits were applicable to the ENC fuel. However, while implementing the SLO Technical Specification, it was found that no explicit analyses were available to support ENC's justification of the applicability of the GE operating limits. Therefore, administrative limits were implemented which precluded extended single loop operation. This Technical Specification change set the SLOs MAPLHGR limit for ENC fuel to 0.0 which precludes extended operation with one recirculation pump out-of-service until ENC can perform the required analyses to determine operating limits for the ENC fuel.

(d) *TS Bases.*

Section 3/4 7.8 Bases were revised to provide a direct reference to the transient analyses. This change was made to provide a consistent description of the Bases between the Unit 1 and Unit 2 Technical Specifications.

Based on the above licensee evaluation, the staff finds that:

(1) The proposed changes do not involve a significant increase in the probability or the consequences of an accident previously evaluated because:

(a) Changes in the MAPLHGR for both GE and ENC fuels, when included in the LOCA analysis, result in PCT and local oxidation fractions well within the 10 CFR 50.46 limits;

(b) With proposed MCPR operating limits, the percentage of the fuel rods not expected to experience transition boiling during normal operation and anticipated operational occurrences is not changed;

(c) The TS for SLO has been changed to preclude extended operation in SLO mode until analyses can be performed to determine appropriate operating limits; and

(d) Changes to bases do not affect the probabilities and consequences of previously evaluated accidents.

(2) The proposed changes do not create the possibility of a new or different kind of accident because:

(a) The proposed MAPLHGR changes do not create any new events;

(b) The use of improved calculation methods do not create the possibility of any new events;

(c) The specification has been changed to preclude extended operation in SLO mode to prevent operation without appropriate operating limits; and

(d) The changes in the bases are administrative in nature and do not create any new events.

(3) The proposed changes do not involve a significant reduction in a margin of safety because:

(a) The LOCA analyses show that MAPLHGR changes will not result in a significant reduction in PCT and local oxidation safety margin;

(b) The use of the staff approved improved methodologies to determine MCPR limits were used to show that the changes will not result in a significant reduction in a margin of safety;

(c) Precluding extended operation in SLO mode is not expected to result in significant reduction in a margin of safety; and

(d) The changes in the bases are administrative in nature and do not affect any margin of safety.

Based on the above considerations, the Commission proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South

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Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, DC 20036.

NRC Project Director: Elinor G. Adensam.

Pennsylvania Power and Light Company, Docket No. 50–387 and 50–388, Susquehanna Steam Electric Station, Unit 1 and 2, Luzerne County, Pennsylvania

Date of amendments request: February 10, 1986, as supplemented March 4, June 24, and August 29, October 1, 1986, and January 21, 1987.

Description of amendments request: The licensee's request for the proposed amendments to revise the Susquehanna Steam Electric Station (SSES) Unit 1 and Unit 2 Technical Specifications (TS) was published in a bi-weekly Federal Register notice dated September 24, 1986, (51 FR 33956). As a result of the staff review of the licensee's request and subsequent staff discussions with the licensee, the licensee submitted a letter dated January 21, 1987, revising the request for TS changes.

In its January 21, 1987 submittal, the licensee requested (a) to add two tests of diesel startup using simulated signals for LOCA and loss of offsite power (LOOP), (b) a one time exception from testing requirements to verify diesel generator E's capability to synchronize with the offsite power source while the generator is loaded with emergency loads, and a substitution of the excepted test by an equivalent startup test, and (c) that it be permitted to change the earlier rating for the E diesel generator from 5000 kw to 4000 kw for the purposes of testing.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a signficant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the licensee's basis provided in January 21, 1987 submittal.

Based on its evaluation, the staff finds that:

(1) The proposed change to the licensee's February 10, 1986 request, as revised does not involve a significant increase in the probability or consequences of an accident previously evaluated because (a) the added tests are the same as those for the existing diesels, (b) one time exception from testing requirement to verify diesel generation E's capability to synchronize with the offsite power source while the generator is loaded with emergency loads will be substituted by an equivalent startup test which demonstrates that the intent of the test will be satisfied, and (c) derating of the E diesel generator from 5000 kw to 4000 kw still provides the diesel generator capability identical to each of the four existing diesel generators;

(2) The proposed revision does not create a possibility of a new or different kind of accident because (a) the added tests are the same as those for the existing diesels, (b) one time exception from testing requirement to verify diesel generator E's capability to synchronize with the offsite power source while the generator is loaded with emergency loads will be substituted by equivalent startup tests, and (c) derating of the E diesel generator from 5000 kw to 4000 kw will still provide rated power equal to any of the existing diesel generators; and

(3) the proposed revision does not involve a significant reduction in a margin of safety because (a) the added tests are the same as those for the existing diesels, (b) one time exception from a diesel generator E synchronization test is substituted by an equivalent startup test, and (c) derating of the diesel generator E from 5000 kw to 4000 kw will still provide diesel generator E capability equivalent to any of the four existing diesel generators.

Based on the above considerations, the Commission proposes to determine that the proposed changes, as revised, do not involve a significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, DC 20036.

NRC Project Director: Elinor G. Adensam.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: October 24, 1986.

Description of amendment request: The proposed amendments would modify the Peach Bottom Technical Specifications (TS) by changing the currently specified range for the drywell temperature indicator and recorder. The changes are necessary to reflect the new equipment to be installed during the next refueling outages to meet the NRC's requirements for wide-range accident monitoring instrumentation as specified in Regulatory Guide 1.97 (Instrumentation for Light Water-Cooled Nuclear Power Plants to Assess Plant and Environs During and Following an Accident).

Basis for proposed no significant hazards consideration determination: The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in a margin of safety. A discussion of these standards as they relate to the proposed amendments follows:

Currently, drywell temperature is displayed in the control room on a recorder which has a range of 0 to plus 240 °F. This recorder will be replaced with new recorder which has a range of 40 to 440 °F. The temperature indicator, which monitors drywell temperature and feeds its input to the recorder, has a current range of minus 150 to plus 300 °F. This temperature indicator will be modified to have a range of minus 300 °F to plus 750 °F. As a result of the TMI–2 accident, NRC has required that all plants have "wide-range" accident monitoring instrumentation so that during both normal and postulated accident conditions it would be highly unlikely that offscale readings will occur. The present TS specify not only the operability requirements on surveillance instrumentation such as the drywell temperature indicator and recorder but also the range over which this instrumentation must be periodically calibrated.

In the same table (Table 3.2.F) listing the above drywell temperature instrumentation, there is an error in how the range for the suppression chamber water level is specified. The licensee has proposed a change to the TS to clarify this parameter. This is an administrative type change which does not change the actual range in which the water must be maintained and has no safety significance.

The proposed changes to the TS on the drywell temperature instrumentation are necessary to reflect the new modified instrumentation being installed to meet an NRC requirement. The changes do not involve a significant increase in the probability on consequences of any previously evaluated accident, create the possibility of a new or different kind of accident or involve a significant reduction is a margin of safety. In fact, in imposing the requirements for wide-range accident monitoring instrumentation, the NRC concluded that this would enhance the margin of safety in the event of an accident.

Accordingly, the staff proposes to determine that the proposed changes to the Technical Specifications do not involve a significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

Attorney for Licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW. Washington, DC 20006.

NRC Project Director: Daniel R. Muller.

Portland General Electric Company, et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: October 31, 1986 as supplemented December 8, 1986.

Description of amendment request: This amendment proposes to revise the Trojan Technical Specifications, Section 3.1.3.4, "Shutdown Rod Insertion Limit," and 3.1.3.5, "Control Rod Insertion Limit," to redefine fully withdrawn rods as greater than 225 steps instead of the currently specified 228 steps. This change is proposed to minimize the likelihood of localized fretting wear which results from rubbing contact between the rod and its alignment card caused by flow induced vibration. Concentrated fretting wear which can occur at 228 steps may be eliminated by subjecting a different portion of the rod to wear against the alignment card, thereby significantly extending the rod life.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether license amendments involve no significant hazards considerations by providing certain examples (March 6, 1986, 51 FR 7751). One example of an amendment that is considered not likely to involve significant hazards considerations is Example (vi) a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan.

Rod insertion limits are imposed during operation to ensure that power distribution limits are not exceeded, and that minimum shutdown margin is maintained. Since neither the power distribution limit or minimum shutdown margin is changed, the proposed amendment does not result in an increase in the probability or consequences of an accident previously evaluated, nor does it create the possibility of a new or different kind of accident from any accident previously evaluated.

Redefining "fully withdrawn rods" to be greater than 225 steps represents approximately one inch of rod insertion. Because of the low rod worth in the top region of the core, the represented insertion has a negligible effect on power distribution. The available excess shutdown margin of approximately 400 pcm margin would be decreased by a negligible amount (4 to 6 pcm), and would not encroach the minimum shutdown margin requirement. As such, the proposed change does not significantly reduce a margin of safety. Since the proposed change does not alter the existing power distribution limit or minimum shutdown margin, the change is acceptable with respect to the criteria specified by SRP Section 4.3.

The staff has reviewed the licensee's no significant hazards analysis and concludes that the proposed change is within the scope of the Commission's cited example. Thus, the staff proposes to determine that the requested change does not involve a significant hazards consideration.

Local Public Document Room location: Multnomah County Library, 801 SW. 10th Avenue, Portland, Oregon.

Attorney for licensee: J.W. Durham, Senior Vice President, Portland General Electric Company, 121 SW. Salmon Street, Portland, Oregon 97204.

NRC Project Director: Steven A. Varga.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: December 17, 1986.

Description of amendment request: The proposed changes to the technical specifications requested by Rochester Gas and Electric Corporation (the licensee) involve administrative changes in the licensee's Engineering organization and the Electric Transmission and Distribution organization. The Engineering organization changes involve the elimination of the position of Assistant Chief Engineer and the creation of a Research and Science Group. The function that reported to the Assistant Chief Engineer would under the proposed change report to the Chief Engineer directly or through the Research and Science Director or Manager of Divisional Services. The proposed changes associated with the Electric Transmission and Distribution organization involve duties currently assigned to Engineering and Electric Meter and Laboratory which would be shared under the proposed changes with the Electric Substations department. Another proposed change in the Ginna organization consists of the Ginna Quality Control Inspection Supervisor reporting directly to the Nuclear Assurance Manager in lieu of the Quality Control Engineer. Specifically, the proposed changes modify four figures in the Administrative Section of the technical specifications that describe the management organization, the Ginna Station organization, the Health Physics and Chemistry Group and the Maintenance and Nuclear Assurance Groups.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of standards for determining if a no significant hazards consideration exists by providing examples of amendments that are considered not likely to involve significant hazards consideration (51 FR 7751). One of these examples (i) is a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The proposed changes

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consist primarily of changes in nomenclature involving administrative functions that are normally under an organizational position and would be transferred to a new Research and Science Group. Other changes involving the sharing of duties between two organizations do not involve a reduction in the level of plant safety. These changes are administrative in nature and do not impact in any way the independent review of safety issues nor do they reduce the level of plant safety. In addition, the proposed changes do not relax the intent of the TS; involve a significant increase in the probability or consequences of an accident previously evaluated; or create the possibility of a new or different kind of accident from any accident previously evaluated. As a consequence of the above, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Harry Voigt, LeBoeuf, Lamb, Leiby and McRae, Suite 1100, 1333 New Hampshire, NW., Washington, DC 20036.

NRC Project Director: George E. Lear, Director.

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: November 12, 1986.

Description of amendment request: The proposed change to the Technical Specifications would lower the pressurizer high level reactor trip setpoint from 70% to 50% in order to achieve consistency with the recently revised safety analysis for the loss of normal feedwater (LONF) accident. The previous LONF safety analysis relied upon the steamflow/feedflow mismatch reactor trip; however, recent operational experience has revealed that this reactor trip function is not single-failure proof. Thus, the safety analysis has been revised to rely upon the high pressurizer level trip signal, which is single-failure proof; however, the setpoint for this trip has been lowered from 70% to 50% to ensure that previously established acceptance criteria are met.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee's November 12, 1986 submittal states the following with respect to these three factors:

> This proposed change does not significantly increase the probability or consequences of an accident previously evaluated. As discussed in Attachment 1, the reanalysis of the events affected by the failure of PT-459, demonstrates that for the LONF event reducing the Pressurizer High Level Reactor Trip setpoint to 50% will result in a system response which is within the previously established acceptance criteria. This change does not affect the system response to a Feedwater Line Break event. In addition, the change does not impact the probability of occurrence of the affected transients since the reduction of the trip setpoint is not related to any of the event initiators such as loss of offsite power, feedwater system equipment failures and pipe break.
>
> The proposed change does not create the possibility of a new or different kind of accident. The change will only lower the initiation setpoint of a safety trip system to provide for earlier initiation of the trip during a transient. The change is a move in the conservative direction with respect to this safety function.
>
> Operation of the facility in accordance with this proposed change does not involve a significant reduction in a margin of safety. The reduction in the Pressurizer High Level Trip setpoint to 50% results in a transient system response for the affected event (LONF) which is within the previously established acceptance criteria for the event and therefore equivalent to the previously analyzed margin of safety.

The staff has reviewed the licensee's determination and agrees with their analysis. Therefore, the staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19559, Irvine, California 92713.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, James Beoletto, Esquire, Southern Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George E. Lear.

Southern California Edison Company, et al, Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Dates of amendment request: March 17, and June 13, and September 30, 1986 (Reference PCN-192).

Description of amendment request: The proposed change would revise Technical Specification (T.S.) 3/4.8.1.1 "Electrical Power Systems, AC Sources" to reduce the required number of fast cold start surveillance tests of the emergency diesel generators. The proposed change also would modify diesel fuel oil testing requirements to more accurately determine the quality of the diesel fuel oil and its ability to power the diesel generators. In addition, the proposed change would clarify the requirements for offsite power for each engineered safety features (ESF) train.

The purpose of Technical Specification 3/4.8.1.1 is to ensure that sufficient power will be available to supply the safety related equipment required for (1) the safe shutdown of the facility and (2) the mitigation and control of accident conditions within the facility. The proposed change to this technical specification consists of the following parts:

(a) Technical Specification 3.8.1.1.a currently requires two physically independent circuits between the offsite transmission network and the onsite Class IE distribution system. The proposed change would require two physically independent circuits between the offsite transmission network and each Class 1E 4kV bus. This change would also require that Action Statement "a" associated with T.S. 3.8.1.1 be entered on a bus-by-bus basis rather than a circuit-by-circuit basis. The proposed change would also modify Technical Specification 4.8.1.1.1 to be consistent with T.S. 3.8.1.1.a. This change would remove the existing requirement for cold start testing of a diesel generator on an unaffected Class IE 4kV bus, thereby reducing the number of fast cold start tests of the diesel generators.

(b) For Modes 1, 2, 3 and 4, existing Technical Specification 3.8.1.1 requires that if a diesel generator has become inoperable, it be restored to operable status within 72 hours or the plant be brought to cold shutdown within the next 36 hours. However, the existing technical specification does not provide any limitation on the frequency of diesel inoperability or the total number of days lost per year due to inoperability.

The proposed change would provide a limit of 800 hours on the combined out-of-service time available to the two diesel generators in one calendar year. Should additional time be needed in a specific situation, the proposed change would require that the NRC be notified of the circumstances. Having thus established a minimum availability goal, this proposed change would increase the existing 72 hour individual out-of-service limit to 7 days (168 hours), thereby permitting greater flexibility in handling diesel generator malfunction and/or servicing needs without recourse to plant shutdown. Both of these proposed limits would be applicable in Modes 1, 2, 3 and 4 only.

(c) Technical Specification 3.8.1.1 Action Statements (a) and (b) require the diesel generators to be demonstrated operable by fast cold start testing within one hour and once per eight hours thereafter when either one offsite AC circuit and/or diesel generator is inoperable. The proposed change would reduce the number of diesel generator fast cold start tests by requiring only one test of the diesel generators within 24 hours when one diesel generator or one offsite AC circuit is inoperable.

(d) Technical Specification 3.8.1.1 Action Statement (d) requires that with two offsite AC sources inoperable, two diesel generators must be demonstrated operable by fast cold start testing within one hour and once per eight hours thereafter. The proposed change would modify this action statement by requiring the two diesel generators to be verified operable by start testing within eight hours unless the diesels are already operating. This would reduce the number of fast cold start tests of the diesel generators.

(e) Technical Specification 4.8.1.1.2.a.4 currently requires the diesel generators to be verified operable by fast cold start testing in accordance with the frequency specified in Table 4.8.1. This testing requires the diesel generators to start from ambient conditions and accelerate to 900 rpm in less than or equal to 10 seconds.

Additionally, the generator voltage and frequency are required to be at 4,360±436 volts and 60±1.2 Hz within 10 seconds. The proposed change would require a fast cold start from ambient conditions only once per 184 days. For all other surveillance starts, the proposed change would allow the diesel generators to be started in accordance with the manufacturers recommendations regarding engine prelube and warmup procedures and allow the diesel generator to be gradually loaded. The proposed change would also specify that the diesel generators are to be started for the purpose of surveillance testing by the following signals only: (1) manual, (2) simulated loss of offsite power by itself and (3) simulated loss of offsite power in conjunction with an ESF actuation test signal.

(f) Technical Specification Table 4.8.1 prescribes the test frequency for diesel generators based on the number of failures in the last 100 valid demands. The proposed change would revise the diesel generator test base from the last 100 valid demands to the last 20 valid demands. The proposed change would also delete the last two tiers of test frequency, reducing the most frequent diesel generator testing from 3 days to 7 days.

(g) Technical Specification 4.8.1.1.2.c requires that diesel fuel oil be tested for water and sediment content, viscosity, and insolubles once every 92 days as well as from new fuel prior to addition to the fuel storage tanks. The proposed change would upgrade the testing methods to be consistent with current industry practice and would replace the current test for insolubles with a more accurate and effective test.

Basis for Proposed No Significant Hazards Consideration Determination: The NRC staff proposes to determine that the proposed change does not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in the margin of safety.

1. The NRC staff proposes to determine that operation of the facility in accordance with these proposed changes does not involve a significant increase in the probability or consequences of any accident previously evaluated for the reasons given below.

(a) Surveillance Starts

As noted above, the proposed change affects only the surveillance requirements pertaining to the diesels and not those pertaining to the offsite circuits. Upon loss of required AC power, only one surveillance start is deemed necessary to confirm the operability of a diesel generator. By eliminating the repeat diesel surveillance starts at less than or equal to eight hour intervals, the proposed change would prevent premature diesel engine degradation and contribute to enhanced plant safety over the long term. Whereas the existing technical specifications require demonstration of diesel generator operability within one hour of the initial power loss, the proposed change permits a delay of up to 24 hours after losing one source and 8 hours after losing two sources. These new time limits conform to Generic Letter 84-15 and are consistent with the goal of minimizing wear on the diesel engine parts. These limits would permit the inoperable power source(s) to be repaired and restored, if possible, while avoiding an unscheduled diesel start. Although the new limits are a relaxation from the existing surveillance requirements, it is not considered a significant relaxation, in light of the requirement to test the offsite circuits within 1 hour of the initial power loss and every 8 hours thereafter for the duration of the loss. If the inoperable power source cannot be restored to service within the specified time interval, the technical specifications would require plant shutdown within the next 36 hours.

By enhancing both long term diesel reliability and immediate plant safety requirements under different power loss situations, a decrease in the probability and/or consequences of an accident will result from the proposed change.

(b) Out of Service Time Limits

Increasing the individual out of service limit from 72 hours to 7 days does not involve a significant increase in the probability or consequences of any accident previously evaluated, considering that:

(1) The safety requirement to be in cold shutdown within 36 hours if the out-of-service limit has been exceeded and the inoperable power source remains inoperable is unchanged.

(2) The annual limit will insure that the actual out-of-service time is in all cases within reasonable limits and unnecessary diesel out-of-service time is avoided.

(3) In the history of San Onofre Units 2 and 3, the switchyard has never been completely de-energized. Presently, eight offsite transmission circuits serve San Onofre, whereas only two circuits are required by the technical specifications.

The proposed 800 hour limit on the total annually allowed diesel out-of-service time in Modes 1, 2, 3 and 4 instead of the unlimited number of 72 hour outages currently allowed will serve as an incentive in scheduling and completing all diesel maintenance in such a manner that diesel availability

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remains high. If downtime in excess of the 800 hour limit is needed, the technical specifications would require notification of the NRC instead of requiring plant shutdown. This provision is based on the recognition that exceeding the 800 hour limit in itself does not represent an unsafe condition. Rather, each individual case would be evaluated in the light of all the relevant factors and concerns. Based on the above, it is concluded that the introduction of an 800 hour annual out-of-service limit will not result in the probability or consequences of an accident previously evaluated being increased.

(c) Basis to Technical Specification 3.8.1.1. The changes to the Basis are only for the purposes of updating and clarifying the text to be consistent with the proposed configuration of the diesel generator systems.

(d) Diesel Fuel Oil Testing Requirements. By changing the current diesel fuel oil testing requirements to those that are in current industry use and that more accurately determine fuel oil quality, the probability of degraded fuel is reduced. Therefore, the probability or consequences of previously evaluated accidents would not be increased.

2. The NRC staff proposes to determine that operation of the facility in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes would not change the configuration of the plant, or its manner of operation. Rather, in order to prolong diesel engine life and provide better diesel maintenance, the proposed changes would reduce the amount of diesel testing and increase the time allowed for diesel repair and maintenance in individual cases. The safety requirement to complete cold shutdown within 36 hours if a limiting condition for operation is not met would not be changed. Based on these considerations, the proposed changes would not create the possibility of a new or different kind of accident from any previously evaluated.

3. The NRC staff proposes to determine that operation of the facility in accordance with these proposed changes does not involve a significant reduction in a margin of safety because the proposed changes affect only the surveillance requirements for fast cold starts of the diesel engines and fuel oil testing. The proposed changes would reduce premature diesel engine degradation and increase assurance of fuel oil quality and thus increase the overall reliability of the diesel generators. Therefore, operation in accordance with these proposed changes would not involve a reduction in a margin of safety.

Local Public Document Room Location: General Library, University of California at Irvine, Irvine, California 92713.

Attorney for licensees: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Project Director: George W. Knighton.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: December 17, 1986.

Description of amendment request: The licensee proposes to increase the loading sequence delay for the containment spray pumps onto the emergency power supply powered by the diesel generators. This technical specification change would increase the response time in seconds by 150 seconds from 58 to 208 seconds.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance (51 FR 7744) concerning the application of standards for determining whether a significant hazards consideration exists. Example (v) identifies a proposed change as having no significant hazard if it is as follows:

> Upon satisfactory completion of construction in connection with an operating facility, a relief granted from an operating restriction that was imposed because the construction was not yet completed satisfactorily. This is intended to involve only restrictions where it is justified that construction has been completed satisfactorily.

Since the proposed amendment makes the Technical Specifications consistent with the change of loading sequence of the containment spray, it is similar to Example (v).

Therefore, the Commission has proposed to find that the amendment contains no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

Attorney for licensee: Mr. Lewis E. Wallace, Acting General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, EIIB33, Knoxville, Tennessee 37902.

NRC Project Director: B.J. Youngblood.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: January 20, 1987.

Description of amendment request: The proposed change would add a requirement to limiting condition for operation (LCO) 3.3.1.1 for Unit 1 and 3.3.1 for Unit 2. This additional requirement in the LCOs would demonstrate the operability of the shunt trip attachment to the reactor trip breaker. Also, the amendment request would incorporate testing requirements in surveillance requirement 4.3.1.1 for both units for the reactor trip bypass breakers. This request was previously published on July 2, 1986 (FR 51 FR 24264).

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance in the form of examples of amendments that are not considered likely to involve a significant hazards determination (FR 51 7744). Example (ii) states "a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement."

As discussed above, the licensee's request to add a requirement for the operability of the new shunt trip attachment to the reactor trip breakers to LCO 3.3.1.1 for Unit 1 and LCO 3.3.1 for Unit 2 would be based on NRC Generic Letters 83–28 and 85–09. Therefore, this proposed change is similar to example (ii) and does not involve a significant hazard consideration.

Local Public Document Room location: Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

Attorney for licensee: Lewis E. Wallace, Esquire, Acting General Counsel Tennessee Valley Authority, 400 Commerce Avenue, EIIB33, Knoxville, Tennessee 37902.

NRC Project Director: B.J. Youngblood.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has

determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated.

All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: March 17, 1986, as supplemented October 13, 1986.

Brief description of amendments: The amendments change the Technical Specifications (TS) by deleting nonsafety-related instruments from the surveillance requirements related to reactor coolant system leakage and leakage detection systems. The nonsafety-related instrument tag numbers are deleted from the TS Sections 4.4.3.1.b and 4.4.3.2.a.

Date of issuance: January 21, 1987.

Effective date: January 21, 1987.

Amendments Nos.: 103 and 133.

Facility Operating Licenses Nos. DPR–71 and DPR–62. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 21, 1986 (51 FR 18679).

The October 13, 1986 submittal provided clarifying information and did not change the determination of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 21, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Carolina Power and Light Company, Docket No. 50–261, H.B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: October 13, 1986, as supplemented December 11, 1986.

Brief description of amendment: The amendment revises Technical Specification Section 5.3.13 to: increase the fuel enrichment from 3.5 w/o to 3.9 w/o; reformat and rewrite section 5.4 to mention the previously approved 21-inch center-to-center spacing of the new fuel storage racks; allow storage of fuel with a maximum axial plane enrichment of 3.9 w/o in both new and spent fuel racks; inclusion of the design k_{eff} for worst accident conditions; adding boron concentration for the spent fuel pit during fuel handling; and revising Table 4.1–2 to correct an error and specify a sampling requirement prior to new fuel movement in the spent fuel storage pit.

Date of issuance: January 20, 1987.

Effective date: January 20, 1987.

Amendment No. 112.

Facility Operating License No. DPR–23. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 19, 1986 (51 FR 41848). The December 11, 1986 letter, which supplemented the application did not change the initial determination published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 20, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Units 1 and 2, Ogle County, Illinois

Date of application for amendments: August 13, 1986 and August 27, 1986.

Description of amendments: The amendment approves changes to the Technical Specifications that (1) replaces "86% of total volume" with "50%" for the water level in the ultimate heat sink cooling tower basin; (2) permits a crosstie between Units 1 and 2 Class IE 125-vdc buses; and (3) deletes two pages that are no longer effective.

Date of issuance: December 12, 1986.

Effective date: December 12, 1986.

Amendment No.: 5.

Facility Operating License Nos. DPR–37 and DPR–60. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 8, 1986 (50 FR 36084).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 12, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: June 28, 1985.

Brief description of amendments: The amendments change the technical specifications to delete certain emergency diesel generator surveillance testing requirements. A portion of the amendment request has been denied by the Commission and a separate Notice of Denial of Amendment has been forwarded to the Office of the Federal Register for publication.

Date of issuance: January 21, 1987.

Effective date: January 21, 1987.

Amendment Nos.: 99 and 96.

Facility Operating License Nos. DPR–29 and DPR–30. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 14, 1985 (50 FR 32790).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 21, 1987.

No significant hazards consideration comments received: No.

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Local Public Document Room location: Moline Public Library, 504—17th Street, Moline, Illinois 61265.

Commonwealth Edison Company, Docket No. 50–265, Quad Cities Nuclear Power Station, Unit 2, Rock Island County, Illinois

Date of application for amendment: September 18, 1986, as clarified December 10 and 23, 1986.

Brief description of amendment: The amendment reflects Cycle 9 reload fuel transient analysis and amends the license to provide for Single Loop Operation as part of the Technical Specifications and not a specific License Condition.

Date of issuance: January 16, 1987.

Effective date: January 16, 1987.

Amendment No.: 95.

Facility Operating License No. DPR–30. Amendments revised the license and the Technical Specifications.

Date of initial notice in **Federal Register:** November 5, 1986 (51 FR 40278). By letters dated December 10 and 23, 1986, Commonwealth Edison submitted clarifying information and written confirmation of commitments made to NRC regarding related plant operation. These submittals did not significantly change the initial application nor did they change the initial no significant hazards consideration determination. Therefore, no renotice of the application was warranted.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 16, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Moline Public Library, 504—17th Street, Moline, Illinois 61265.

Consumers Power Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix County, Michigan

Date of application for amendment: August 15, 1986.

Brief description of amendment: The amendment changes the Technical Specifications in support of the installation of new source range neutron monitoring instrumentation by changing the associated terminology of the previous existing system.

Date of issuance: January 28, 1987.

Effective date: January 28, 1987.

Amendment No. 87.

Facility Operating License No. DPR–6. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 24, 1986 (51 FR 33948).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 28, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Detroit Edison Company, Docket No. 50–341, Fermi-2, Monroe County, Michigan

Date of application for amendment: September 30, 1986.

Brief description of amendment: This amendment revises the Fermi-2 Technical Specifications changing the upper limit for the pressure detector's alarm calibration setpoint of each control rod drive scram accumulator to be greater than or equal to 940 psig.

Date of issuance: January 28, 1987.

Effective date: January 28, 1987.

Amendment No.: 5.

Facility Operating License No. NPF–43: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 3, 1986 (51 FR 43679).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 28, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: April 9, 1986, as supplemented June 5 and September 2, 1986.

Brief description of amendments: The amendments modify Technical Specification Table 3.3–6, Table Notations, to allow changing the alarm/trip setpoint for the containment radiation monitor EMF–39.

Date of issuance: January 29, 1987.

Effective date: January 29, 1987.

Amendment Nos.: 21 and 11.

Facility Operating License Nos. NPF–35 and NPF–52. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 27, 1986 (51 FR 30565).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 29, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, Dockets Nos. 50–269, 50–270 and 50–287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, South Carolina

Date of application for amendments: January 14, 1986, as supplemented on April 10 and June 18, 1986, and January 15, 1987.

Brief description of amendments: These amendments extended the duration of the licenses to 40 years from the date of issuance of the full power licenses. Therefore, the Oconee Operating Licenses were extended to February 6, 2013 for Unit 1; to October 6, 2013 for Unit 2; and to July 19, 2014 for Unit 3. All three Oconee Units would have expired on November 6, 2007 without these amendments.

Date of issuance: January 30, 1987.

Effective date: January 30, 1987.

Amendments Nos : 153, 153 and 150.

Facility Operating Licenses Nos. DPR–38, DPR–47 and DPR–55. Amendments revised the Facility Operating Licenses.

Date of initial notice in **Federal Register:** July 2, 1986 (51 FR 24254). Since the date of the initial notice, the licensee submitted clarifying information dated June 18, 1986, and January 15, 1987. This information did not change the original application in any way and, therefore, did not warrant renoticing. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 30, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: June 18, 1986, as amended July 23, 1986.

Brief description of amendment: This amendment increased the high pressure trip setpoint from 2300 psig to 2355 psig and added anticipatory reactor trips on turbine trip and trip of both main feedwater pumps.

Date of issuance: January 21, 1987.

Effective date: January 21, 1987.

Amendment No.: 95.

Facility Operating License No. DPR–72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 22, 1986 (51 FR 37509) Since the date of the initial notice, the licensee submitted clarifying information dated October 24, 1986. This information did not change the original application in any way and, therefore, did not warrant renoticing.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 21, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629.

Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: May 22, 1986.

Brief Description of amendment: The amendment revises the Duane Arnold Technical Specifications relative to diesel generator (DG) testing, to make them responsive to GL 83–30 and 84–15 and Information Notice 85–32 and includes changes which meet the intent of GL 84–15 to reduce unnecessary DG testing.

Date of issuance: January 20, 1987.

Effective date: January 20, 1987.

Amendment No.: 139.

Facility Operating License No. DPR–49. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 2, 1986 (51 FR 24257).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 20, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: November 14, 1986 as clarified January 2, 1987.

Brief Description of amendment: The amendment revises the current TS requirements to allow an extension, on a one-time-only basis, of approximately 10 weeks to the surveillance test intervals for the functional testing of snubbers, the local leak rate testing of primary containment isolation valves and penetrations and the replacement of the T-ring seals in the primary containment purge and vent valves.

Date of issuance: January 30, 1987.

Effective date: January 30, 1987.

Amendment No.: 140.

Facility Operating License No. DPR–49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 17, 1986 (51 FR 45204). The licensee's January 2, 1987, letter furnished clarification for staff review and decreased the extent of the original request. It did not, in any way, change the staff's conclusion in the above notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 30, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of applications for amendment: October 1, 1986, as supplemented by letters dated October 29 and November 19, 1986.

Brief description of amendment: The amendment changed the Technical Specification by revising the core protection calculator DNBR setpoint; (2) revising the core operating limit supervisory system out-of-service DNBR limits; (3) revising the peak linear heat rate; (4) revising the reactor protection instrumentation response times; and (5) revising the control element assembly insertion limits.

Date of issuance: January 16, 1987.

Effective date: January 17, 1987.

Amendment No.: 12.

Facility Operating License No.: NPF–38: Amendment revised the Technical Specifications.

Dates of initial notices in **Federal Register:** November 19, 1986 (51 FR 41860 and 51 FR 41861), December 3, 1986 (51 FR 43683) and December 17, 1986 (51 FR 45208).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 16, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of applications for amendment: July 15, 1986.

Brief description of amendment: The amendment revised the Technical Specification by revising the axial shape index allowable ranges; revising the moderator temperature coefficient allowable range; revising the part-length control element assembly insertion limits; and allowing the suspension of the part-length control element assembly insertion limits during certain startup tests.

Date of issuance: January 16, 1987.

Effective date: January 16, 1987.

Amendment No.: 13.

Facility Operating License No.: NPF–38: Amendment revised the Technical Specifications.

Dates of initial notices in **Federal Register:** August. 27, 1986 (51 FR 30575), September 24, 1986 (51 FR 33952), and October 8, 1986 (51 FR 36093).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 16, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of application for amendment: October 23, 1986.

Brief description of amendment: The amendment deleted the short term reporting requirements related to primary coolant specific activity levels and no longer requires plant shutdown if the primary coolant specific activity exceeds the limit of 1.0 microcurie/gram dose equivalent I–131 for an accumulated period over 800 hours in a 12-month period.

Date of issuance: January 20, 1987.

Effective date: January 20, 1987.

Amendment No.: 102.

Facility Operating License No. DPR–40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 17, 1986 (51 FR 45191 at 45212).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 20, 1987.

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No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: October 15, 1986.

Brief description of amendment: The review and audit section (6.7) of the Technical Specifications (TS) requires the licensee to have an independent audit and review group known as the "Nuclear Safety Audit and Review Board (NSARB)". The NSARB provides an independent review and audit of activities dealing with plant operations, engineering design changes, radiological safety, and quality assurance practices. The amendment increased the membership of the plant staff to the NSARB from two to three members and to allow the three members to vote. A restriction was imposed to the quorum requirements for the board to assure that plant personnel would not make up a majority of the board members.

Date of issuance: January 28, 1987.

Effective date: January 28, 1987.

Amendment No.: 21.

Facility Operating License No. DPR-18: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 19, 1986 (51 FR 41868).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 28, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

NRC Project Director: George E. Lear, Director.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Dates of applications for amendments: March 2 and April 2, 1984.

Brief description of amendments: The amendments revise Technical Specification 3/4.3.3.6, "Radioactive Effluent Monitoring Instrumentation".

Date of issuance: January 20, 1987.

Effective date: January 20, 1987, to be implemented within 30 days of issuance.

Amendment Nos.: 57 and 46.

Facility Operating License Nos. NPF-10 and NPF-15: Amendments revise the Technical Specifications.

Date of initial notices in **Federal Register:** February 27, 1985 (50 FR 8007).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 20, 1987. No significant hazards consideration comments received: No.

Local Public Document Room location: General Library, University of California at Irvine, Irvine, California 92713.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of applications for amendment: November 2, 1984 as supplemented March 4, 1986, and application dated December 29, 1981.

Brief description of amendment: The amendment changes the Technical Specifications to provide trip settings, operability requirements and testing requirements for control and instrumentation circuitry which provides protection in case of degraded grid voltage. The amendment also provides limiting conditions of operation and surveillance requirements for noble gas effluent monitors.

Date of issuance: January 29, 1987.

Effective date: January 29, 1987.

Amendment No.: 98.

Facility Operating License No. DPR-28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 27, 1985 (50 FR 8010) August 23, 1983 (48 FR 38425).

The March 4, 1986 submittal supplemented the November 2, 1984 application. That supplement provided clarifying information and did not change the determination of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 29, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Dates of amendment request: April 8, 1986, and clarified November 20, 1986.

Brief description of amendment: This amendment revises Sections 3.3.7.8 and 4.3.7.8 (Chlorine Detection System), Section 4.7.2 (Control Room Emergency Filtration System) and Bases Section 3/4.3.7.8 (Chlorine Detection System) of the WNP-2 Technical Specifications by eliminating portions of these sections because chlorine gas is no longer stored in the immediate plant site area. As a result, the threat to control room habitability due to chlorine gas leakage has been eliminated; and the Technical Specification sections are no longer relevant.

Date of issuance: January 21, 1987.

Effective date: January 21, 1987.

Amendment No.: 36.

Facility Operating License No. NPF-21: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** September 10, 1986 (51 FR 32281).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 21, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: August 1, 1986 and as supplemented October 1, 1986.

Brief description of amendment: The amendment corrects errors, replaces obsolete references with current references and reinserts an inadvertently deleted requirement in the Technical Specifications. The Operating License is updated to reflect a previous License Amendment.

Date of issuance: January 21, 1987.

Effective date: January 21, 1987.

Amendment No.: 71.

Facility Operating License No. DPR-43. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 10, 1986 (51 FR 32282).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 21, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration Determination and Opportunity for Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By March 13, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards

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consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram. Identification Number 3737 and the following message addressed to (*Branch Chief*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia

Date of application for amendments: November 20, 1986, as supplemented January 27, 1987.

Brief description of amendments: The amendment changes the Technical Specifications to delete the requirement that snubbers are declared inoperable if visible signs of leakage are present.

Date of issuance: January 29, 1987.

Effective date: January 29, 1987.

Amendments Nos.: 134 and 72.

Facility Operating Licenses Nos. DPR–57 and NPF–5. Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment and final determination of no significant hazards consideration are contained in a Safety Evaluation dated January 29, 1987.

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N. Street, NW., Washington, DC 20037.

Local Public Document Room Location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–366, Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County, Georgia

Date of application for amendment: January 27, 1987.

Brief description of amendment: The amendment adds a note to the Technical Specifications in support of a waiver granted orally on January 26, 1987, to restart following a forced outage that occurred earlier the same day. The waived requirement was one that prevents Unit 2 from changing modes of operation with the standby service water system inoperable.

Date of issuance: January 30, 1987.

Effective date: January 26, 1987.

Amendment No.: 73.

Facility Operating License No. NPF–5. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment and final determination of no significant hazards consideration are contained in a Safety Evaluation dated January 30, 1987.

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N. Street, NW., Washington, DC 20037.

Local Public Document Room Location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Dated at Bethesda, Maryland this 5th day of February, 1987.

For the Nuclear Regulatory Commission.

R. Wayne Houston,

Acting Director, Division of BWR Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 87–2747 Filed 2–10–87; 8:45 am]

BILLING CODE 7590–01–M

Privacy Act of 1974; Report of New Routine Uses

AGENCY: Nuclear Regulatory Commission.

ACTION: Notification of new routine uses.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend two of its systems of records notices to add new routine uses to assure that each employee's name, address, and telephone number (both work and home) are as accurate and up-to-date as possible (NRC–36) and to reflect changes in NRC's regulations regarding criminal history checks of individuals who are to be granted unescorted access to nuclear power facilities or access to Safeguards information (NRC–39). Other minor amendments are also being made to these two systems of records.

EFFECTIVE DATE: The proposed new routine uses will take effect without further notice on February 27, 1987, unless comments received on or before that date cause a contrary decision. If, based on NRC's review of comments received, changes are made, NRC will publish a new final notice.

ADDRESSES: Send comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments may be examined at the NRC Public Document Room at 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sarah N. Wigginton, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone: 301–492–7752.

SUPPLEMENTARY INFORMATION: NRC–36, Employee Locator Records Files, is being revised in order to indicate dual system managers and, as part of an agency-wide effort, to have each employee's name, work address and telephone number, and home address (including zip code) and telephone number as accurate and up-to-date as possible. Since NRC is in the midst of a major consolidation effort, demographic studies will be conducted to show where employees originate their commute to the work place, how their movement to and from work affects established traffic patterns, etc. The expansion of the routine uses category will permit access to these types of statistics and thus facilitate preparation of these demographic studies. Other minor revisions are also being made to NRC–36.

Pub. L. 99–399, "Omnibus Diplomatic Security and Anti-Terrorism Act of 1986," signed by the President on August 27, 1986, requires the NRC to issue final regulations to establish conditions for the use and control of criminal history data received from the Federal Bureau of Investigation no later than six months after the date of enactment of the Act. On November 7, 1986, the proposed rule entitled "Requirements for Criminal History Checks" was published in the **Federal Register** for a 30-day public comment period (51 FR 40438). The comment period expires on December 8, 1986. The NRC must have final regulations in place by February 27, 1987, the deadline in the Act. NRC–39, Personnel Security Files and Associated Records, must be expanded to include the new categories of records, new routine uses created for the criminal history data, new authorities for the system, and other minor revisions.

A report for each system of records required by 5 U.S.C. 552a(o), as implemented by OMB Circular A–130, was sent to the President of the Senate, the Speaker of the House of Representatives, and the Office of Management and Budget on December 19, 1986.

1. NRC–36, Employee Locator Records Files—NRC, is being revised to read as follows to indicate dual systems managers and locations, new routine uses, and expanded storage descriptions.

NRC–36

* * * * *

SYSTEM LOCATION:

Primary system—Part A: Computer and Telephone Operations Branch, Division of Information Support Services, Office of Information Resource Management, 7920 Norfolk Avenue, Bethesda, Maryland.

Part B: Director, Division of Organization and Personnel, Office of Administration, 8120 Woodmont Avenue, Bethesda, Maryland.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used for:

a. Notification of employee in case of an emergency;

b. Notification of employee regarding matters of official business;

c. Verification of accuracy of and update of Automated Payroll System file on employee home addresses and zip codes;

d. Conducting statistical studies, and

e. The routine use specified in paragraph number 6 of the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained within a computerized telephone directory system.

* * * * *

SYSTEM MANAGERS AND ADDRESSES:

Part A: Chief, Computer and Telephone Operations Branch, Division of Information Support Services, Office of Information Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Part B: Director, Division of Organization and Personnel, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

* * * * *

2. NRC–39, Personnel Security Files and Associated Records—39, is being revised to read as follows to indicate additions to the categories of individuals covered by the system, categories of records in the system, authorities for maintenance of the system, new routine uses, storage, retrievability, and retention and disposal.

NRC–39

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons including NRC employees, employment applicants, consultants, contractors, and licensees; other Government agency personnel (e.g., General Service Administration personnel), other persons who have been considered for a personnel clearance, special nuclear material access authorization, NRC building access, access to Federal automated information systems or data, or participants in the criminal history program; aliens who visit at NRC's facilities; and actual or suspected violators of laws administered by NRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to personnel, including name, address, date and place of birth, social security account number, citizenship, residence history, employment history, foreign travel, foreign contacts, education, personal references, organizational membership, and security clearance history. These records also contain copies of personnel security investigative reports from other agencies (primarily from the Office of Personnel Management or the Federal Bureau of Investigation), summaries of investigative reports, results of Federal agency indices checks, records necessary for participation in the criminal history program, reports of personnel security interviews, clearance actions information (e.g., grants and terminations), access approval/disapproval actions related to NRC building access, or access to Federal automated information systems or data, violations of laws, reports of security infraction, "Request for Visit or Access Approval" (Form NRC–277), and other related personnel security processing documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

* * * * *

e. 10 CFR Part 11 (1981);

f. Pub. L. 99–399, "Omnibus Diplomatic Security/Anti-Terrorism Act";

g. 40 U.S.C. 318;

h. OMB Circular No. A–130, December 12, 1985; Federal Personnel Manual 732 and authorities cited therein; and

i. Pub. L. 99–500.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

a. To determine clearance or access authorization eligibility;

b. To determine eligibility for access to NRC buildings or access to Federal automated information systems or data;

c. To certify clearance or access authorization;

d. To maintain the NRC personnel security program;

e. To provide licensees information needed for their unescorted access or access to safeguard information determinations; and

f. For any of the routine uses specified in the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained primarily in file folders, on tape, disk, diskette, microfiche, and index cards.

RETRIEVABILITY:

Indexed and accessed by name, social security account number, docket number, or case file number or a combination thereof.

* * * * *

RETENTION AND DISPOSAL:

* * * * *

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b. Request for Visit or Access Approval—Maximum security areas retained 5 years after final entry or after date of document, as appropriate; Other areas: Retained 2 years after final entry or after date of document, then destroyed by an approved method of destruction;

c. Other security clearance/access authorization administration files—retained 2 years after final entry or after date of document, then destroyed by an approved method of destruction;

d. Criminal history record files will be retained by name for 1 year while the Federal Bureau of Investigation actions are completed and submitter has been notified; retained in statistical format for 4 years, then destroyed by an approved method of destruction.

* * * * *

Dated at Bethesda, MD, this 5th day of February 1987.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 87-2911 Filed 2-10-87; 8:45 am]

BILLING CODE 7590-1-M

Abnormal Occurrences for Second Quarter CY 1986; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incidents at NRC licensees were determined to be abnormal occurrences (AOs) using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). These abnormal occurrences are described below, together with the remedial actions taken. These events are also being included in NUREG-0090, Vol. 9, No. 2 ("Report to Congress on Abnormal Occurrences: April-June, 1986"). This report will be available in the NRC's Public Document Room, 1717 H Street NW., Washington, DC, about three weeks after the publication date of this **Federal Register** Notice.

Nuclear Power Plants

AO 86-8 Out of Sequence Control Rod withdrawal

One of the examples of abnormal occurrence criteria notes that a serious deficiency in management or procedural control in major areas can be considered an abnormal occurrence.

Date and Place—On March 18, 1986, during a startup of Peach Bottom Unit 3, personnel errors by four licensed operators resulted in a control rod being withdrawn out-of-sequence without being detected by these operators. The next operating shift detected the error and manually scrammed the unit. Peach Bottom Unit 3 is a General Electric-designed boiling water reactor (BWR) operated by Philadelphia Electric Company (the licensee) and located in York Country, Pennsylvania.

Nature and Probable Consequences—To limit reactivity additions during startup and low power operations, BWRs utilize a variety of procedural controls and monitoring systems. The reactor operator follows a control rod withdrawal sequence procedure developed by reactor engineers. A rod worth minimizer (RWM) computer system monitors this sequence and blocks control rod movement upon significant deviation from the prescribed sequence. A rod sequence control system (RSCS) complements and backs up the RWM in restricting control rod movement. A major purpose of these controls is to limit the consequences of a control rod drop event during the startup.

On March 17, 1986, a startup was begun on Peach Bottom Unit 3. The RWM was bypassed due to a computer hardware fault. As allowed by technical specifications, a second licensed reactor operator was assigned to monitor another licensed reactor operator as the latter withdrew control rods in accordance with the sequence prescribed by procedure. At 1:28 a.m. on March 18, 1986, the operator withdrew control rod 10-23 out of sequence instead of rod 02-23. The second operator monitoring the rod withdrawals failed to notice the error.

Later, at its prescribed place in the procedure, both operators signed off the withdrawal of control rod 10-23. Shortly afterward, the reactor attained criticality. At 2:30 a.m., withdrawal of additional control rods in an attempt to increase reactor power was blocked by the RSCS since rod 02-23 was not in its prescribed position. The Shift Superintendent and Shift Supervisor then bypassed the RSCS rod 02-23 full out logic with a keylock switch without verifying the rod position and conformance to the rod withdrawal sequence as required by the procedure for bypassing RSCS logic.

Rod withdrawal and startup continued with rod 02-23 fully inserted instead of being fully withdrawn as required.

After 7:00 a.m., the oncoming shift requested that the RWM be returned to service. This was accomplished at 7:38 a.m.; the operators noted an insert error for rod 02-23. The rod was confirmed to be out of position for the sequence. The Shift Supervisor returned the RSCS bypass for control rod 02-23 to normal. Two control rods were inserted and then the reactor was manually scrammed from approximately 3% power at 8:55 a.m. The NRC Senior Resident Inspector and Duty Officer were notified of the scram and the out-of-sequence rod shortly afterward.

The licensee presented an analysis of potential consequences of a rod drop event for various rod pairs for the March 18 event. The peak enthalpy deposition in a fuel pin, had a rod drop occurred with rod 02-23 inserted, for the worst case was calculated to be 118 cal/gm. This is less than the peak enthalpy deposition of 215 cal/gm from the reload analysis for the current fuel cycle and the 280 cal/gm design criterion.

Cause of Causes—The out-of-sequence control rod withdrawal resulted from numerous personnel errors by four licensed operators. One licensed reactor operator withdrew the wrong control rod from the core. The RWM, designed to detect such an occurrence, was inoperable. A second licensed operator was assigned to independently verify the correct rod withdrawal sequence as required by Peach Bottom Technical Specifications; he did not identify the error. When the point in the sequence to withdraw the rod already incorrectly withdrawn was reached, neither reactor operator identified the previous error. The Shift Supervisor and Shift Superintendent who were overseeing the startup activities failed to note the error. Further, they bypassed the RSCS without assuring that the bypassed control rod was in its correct position, as required by the procedure for use of the bypass keys. These personnel errors by four licensed individuals showed an inattention to detail and failures to adhere to procedural requirements, possibly resulting from complacent attitudes.

Actions Taken to Prevent Recurrence

Licensee—The four individuals involved in this event were disciplined. Plant staff management meetings were held with all operations personnel to discuss the event and their individual responsibilities. Procedural controls were strengthened to, among other things, use best efforts to place the RWM in service, dedicate a second operator to sequence verification if RWM is bypassed, generate rod position maps at specific withdrawal points and compare with prepared rod position maps and require positive rod position verification prior to RSCS bypass.

NRC—After notification of the out-of-sequence control rod withdrawal by the licensee on March 18, a special safety inspection into the event was conducted at Peach Bottom Atomic Power Station on March 18-21, 1986. The inspection results were forwarded to the licensee in a letter dated March 25, 1986.

An enforcement conference was held at NRC Region I on March 27, 1986, between NRC and licensee personnel to discuss the causes of the event and the corrective actions taken and planned. A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $200,000, dated June 9, 1986, was sent to the licensee describing the violations resulting from numerous personnel errors by several licensed personnel.

The enforcement letter stated that these personnel errors indicate that a pattern of inattention to detail, failure to adhere to procedural requirements, and a generally complacent attitude of staff toward performance of their duties continues to exist at Peach Bottom. Since 1983, the licensee has been cited three times, and civil penalties imposed, for violations pertaining to personnel not following procedures. The latest incident demonstrates that the actions taken to correct this pattern have not been effective. Such problems are indicative of a lack of management involvement in and attention to station activities to assure that the station personnel respect, understand the need for, and adhere to licensee policies and precedures for the safe operation of the facility. The proposed civil penalty of $200,000 represented a 100% escalation because: (1) In each case, an opportunity existed for a licensed individual to detect and correct the rod pull error, but the error was not recognized, and (2) the enforcement history at Peach Bottom regarding personnel adherence to procedures has been poor.

AO 86-9 Boiling Water Reactor Emergency Core Cooling System Design Deficiency

One of the general abnormal occurrence criteria notes that major deficiencies in design, construction, use of, or management controls for licensed facilities or material can be considered an abnormal occurrence. In addition, one of the abnormal occurrence examples notes that a major deficiency in design having safety implications requiring immediate remedial action can be considered an abnormal occurrence; another example notes that incidents with implications for similar facilities (generic incidents) which create major safety concern can be considered an abnormal occurrence.

Date and Place—On May 19, 1986, the Boston Edison Company (BECO) notified the NRC that a significant design deficiency in the residual heat removal (RHR) system minimum flow protection logic at the Pilgrim Nuclear Power Station (PNPS) had been discovered. Pilgrim is a General Electric (GE)-designed boiling water reactor (BWR) located in Plymouth County, Massachusetts. Later, it was found that some other GE-designed BWRs also contained the same design deficiency.

Background—The RHR system, which operates at low pressure, functions in different modes to remove reactor decay heat under normal and emergency situations (e.g., loss-of-coolant accident, LOCA). For normal situations, the RHR system can be operated in the shutdown cooling/head spray mode and the steam condensing mode. For emergency situations, the RHR system functions as part of the emergency core cooling system [at Pilgrim, this system is called the core standby cooling system (CSCS)] operating in the containment spray/cooling mode and the low pressure coolant injection [LPCI] mode.

At Pilgrim, to prevent the RHR pumps from running dead headed, each pair of pumps is provided with a minimum flow bypass capability. The minimum flow bypass consists of an orifice flow bypass which allows a flow of approximately 10 percent of rated flow to bypass the reactor vessel and be returned to the suction source. The minimum flow bypass line for each pair of RHR pumps is connected to a single line and controlled by a single minimum flow bypass valve. The minimum flow bypass valves are normally open. The valves will close upon sensing flow in either of the RHR loops.

Prior to the deficiency found at Pilgrim, the NRC had issued on December 13, 1985, Inspection and Enforcement Information Notice No. 85-94, "Potential for Loss of Minimum Flow Paths Leading to ECCS Pump Damage During a LOCA" to all nuclear power reactor facilities holding an operating license or a construction permit. The Notice alerted licensees of recent instances at various BWR and pressurized water reactor (PWR) plants where it was discovered that minimum flow requirements might not or could not be met for some ECCS pumps under small-break LOCA conditions. The Notice suggested that licensees review the information for applicability to their facilities and consider actions, if appropriate, to preclude similar problems at their facilities.

Nature and Probable Consequences—While reviewing Information Notice No. 85-94 for applicability to Pilgrim, BECO discovered that a single failure under certain accident sequences could result in all RHR minimum flow bypass valves being signaled to close while all other pump discharge valves also closed. The current logic configuration for Pilgrim minimum flow bypass valves is that a high flow signal from either the A or B RHR loops will close both A and B bypass valves. Thus, a postulated single failure of a flow sensing instrument may result in all RHR pumps running without flow. This condition would lead to the pumps running dead headed with potential for pump damage in a few minutes.

The design deficiency is significant to public health or safety because if this single failure occurred in conjunction with an automatic start of the RHR system, RHR pump damage may occur if unrecognized by the operator. This event could disable RHR functions including LPCI, head spray, drywell spray, shutdown cooling, torus spray and suppression pool cooling. As a result of the loss of suppression pool cooling over a long period of time, core spray pumps could ultimately lose net positive suction head and also be unavailable. Thus, systems designed to remove decay heat under both normal and accident conditions could be severely degraded.

Cause or Causes—The deficiency is attributed to error in design of the logic for RHR mini-flow control. The NRC Staff believes that the error was most likely the result of inadequate consideration of the effects of mini-flow isolation during design of logic for determining the proper (intact) coolant loop into which emergency core coolant would be injected following a LOCA.

Actions Taken to Prevent Recurrence

Licensee—Following discovery of the deficiency, all operating shifts at Pilgrim were briefed on the problem. In addition to this, the licensee performed a design review of other CSCS systems to determine if they had a similar deficiency. The results of the review confirmed that only the RHR minimum flow protection logic was deficient. Since the plant was in the cold shutdown condition at the time of the discovery of the deficiency, no other immediate mitigative actions were deemed necessary. The licensee is currently evaluating short-term and long-term modifications to correct the problem. In a May 30, 1986, letter to the NRC Staff, the licensee made a commitment to implement the short-term

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modifications prior to restart from the current outage.

NRC—The NRC Staff was first notified of the deficiency by the licensee in a report made to the NRC Headquarters Operation Center per 10 CFR 50.72 on May 19, 1986. A followup letter, pursuant to 10 CFR 21.21, was submitted on May 23, 1986. Followup discussions between the staff, licensee, and GE indicated a high likelihood that other GE BWRs in operation also had the problem.

Based on the generic applicability and the potentially significant consequences of such a failure, the NRC sent on May 23, 1986, Inspection and Enforcement Compliance Bulletin No. 86–1, "Minimum Flow Logic Problems that Could Disable RHR Pumps" to all GE BWR facilities holding an operating license or a construction permit. Recipients were required to:

1. Promptly determine whether or not their facility has this single failure vulnerability.

2. If the problem exists, immediately instruct all operating shifts of the problem and measures to recognize and mitigate the problem.

3. Within seven days of receipt of the Bulletin, provide (a) a written report to the NRC which identifies whether or not this problem exists at their facility, and (b) if the problem exists, identify the short-term modifications to plant operating procedures or hardware that have been or are being implemented to assure safe plant operations.

4. If the problem exists, provide a written report within 30 days of receipt of the Bulletin informing the NRC of the schedule for long-term resolution of problems that are identified as a result of the Bulletin.

The Bulletin noted that one of the potential fixes being proposed by GE is to remove the automatic closing signal from the RHR minimum flow bypass valves. This fix will result in some of the LPCI flow being diverted through the minimum flow line. For other RHR modes of operation, the values may be manually closed. However, the Bulletin also cautioned that although safety analyses may justify this interim fix, there are a number of problems that need to be considered. For example, on many plants the minimum flow bypass valves must be closed during shutdown cooling in order to prevent draining the reactor vessel inventory to the torus. The minimum flow bypass valves are considered containment isolation valves on some plants.

Review of the short-term responses required by the Bulletin showed that four plants other than Pilgrim also have the subject RHR minimum flow protection logic error. These plants are Quad Cities Units 1 and 2 (located in Rock Island County, Illinois) and Dresden Units 2 and 3 (located in Grundy County, Illinois). Both the Quad Cities and Dresden facilities are operated by Commonwealth Edison Company.

Short-term correction actions and plans for long term correction actions proposed for the plants are currently under review by the Staff.

Fuel Cycle Facilities (Other Than Nuclear Power Plants)

The NRC is reviewing events reported by these licensees during the second calendar quarter of 1986. As of the date of this report, the NRC had not determined that any events were abnormal occurrences.

Other NRC Licensees (industrial Radiographers, Medical Institutions, Industrial Users, etc.)

AO–86–10 Willful Failure to Report a Diagnostic Medical Misadministration

The general abnormal occurrence criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence. In addition, one of the abnormal occurrence examples notes that serious deficiencies in management or procedural controls can be considered an abnormal occurrence.

Date and Place—On May 8, 1985, a patient at Mercy Hospital, Wilkes-Barre, Pennsylvania, received an injection of a radiopharmaceutical (a diagnostic dose of technetium-99m) intended for another patient. The misadministration was willfull not reported to the NRC as required by 10 CFR 35.43.

Nature and Probable Consequences—An anonymous allegation was received by NRC Region I on May 8, 1985. The alleger stated that a misadministration had occurred that morning at Mercy Hospital when the Chief Nuclear Medicine Technician mistakenly injected the wrong patient with a radiopharmaceutical. Further, the alleger stated that the misadministration would not be reported to the NRC. The required report of the misadministration was due to the NRC by July 10, 1985.

On July 17, 1985, two NRC Region I inspectors performed a routine unannounced inspection and followup of the allegation at the licensee's facility. During the inspection, the Chief Nuclear Medicine Technician stated that no misadministrations had occurred since the one reported to the NRC in 1984.

However, the inspectors noted that records showed one patient had received two radiopharmaceutical injections in a one-hour period on May 8, 1985. The Chief Nuclear Medicine Technician stated that this was not because of a misadministration.

On August 7, 1985, an investigator from the NRC's Office of Investigations (OI) went to Mercy Hospital. During an interview with the Chief Nuclear Medicine Technician, she admitted she had lied to the NRC on July 17, 1985. The Chief Nuclear Medicine Technician also stated she was told that the Medical Director of Radiology, who is also the licensee's Radiation Safety Officer (RSO), did not want the misadministration reported. The RSO stated during an interview with the OI investigator on August 7, 1985, that he had informed some of his staff not to report the misadministration.

The consequences of the licensee's actions in this incident are that (1) it decreases the NRC's confidence that this licensee will report incidents as required by regulations, and (2) it delays implementation of procedures to prevent further misadministrations of a similar nature.

The effects on the patient, mistakenly receiving the radiopharmaceutical, would be expected to be small due to the relatively low levels of exposure involved. However, it did represent an unnecessary exposure.

Cause or Causes—The cause is due to the deliberate failure of the RSO to follow the NRC requirements for reporting misadministrations and instructing the hospital staff not to report this particular misadministration.

Actions Taken to Prevent Recurrence

Licensee—The licensee, as well as another licensee in which the RSO is involved, requested an extension to respond to the NRC enforcement actions described below.

NRC—On June 17, 1986, the NRC forwarded to Mercy Hospital (1) an Order requring the licensee to show cause why the Chief Nuclear Technician and the RSO should not be prohibited from the performance or supervision of any licensed activities, and (2) a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $5,000.

The RSO at Mercy Hospital is also listed as an authorized user of NRC licensed material on the license of Valley Radiology Associates, Inc., Kingston, Pennsylvania. Therefore, on June 17, 1986, the NRC issued a similar Order to this licensee.

Information regarding these enforcement actions was sent to all NRC medical licensees on October 3, 1986 by Inspection and Enforcement Information Notice No. 86–85.

AO 86–11 Therapeutic Medical Misadministration

The general abnormal occurrence criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—On April 9, 1986, at Maryview Hospital, Portsmouth, Virginia, a patient received a therapy dose in a chemical form other than that intended. This resulted in an unintended dose of several hundred rads to the patient's bone marrow.

Nature and Probable Consequences—A physician asked the Nuclear Medicine Department to order a dose of phosphorus-32 as colloidal chromic phosphate on April 7, 1986, for administration to a kidney carcinoma patient for abdominal ascites reduction on April 9, 1986. This verbal order was relayed to Nuclear Medicine through a third party, and the chemical form of phosphorus-32 was not made clear. Nuclear Medicine proceeded to order 15 millicuries of phosphorus-32 as sodium phosphate because this chemical form was used more frequently that the colloidal form. The order was processed and received in the hospital in the normal manner.

On April 9, 1986, the physicist drew up the dose in a syringe, assayed it in the dose calibrator, and then put it aside. Shortly thereafter, a physician (other than the physician who ordered the dose) administered the dose intraperitoneally to the patient. Later the same day, the Chief Nuclear Medicine Technologist, while discussing this particular patient with a nurse, discovered that the soluble form, in lieu of the colliodal form of the phosphorus-32, was administered intraperitoneally. Subsequently, the radionuclide was no longer confined in the peritoneal cavity. This information was relayed to several physicians and was also reported later that day to the NRC.

On April 10, 1986, the patient was administered stable phosphorus to accelerate excretion of the phosphorus-32. Blood counts for leucocytes, red blood cells, hematocrits and platelets showed no significant depression as of April 21, 1986.

The consequences of the misadministration was a significant unintended dose to the patient's bone marrow. The licensee estimated the dose to be at least 150 rads. However, the NRC's medical consultant believes the dose could have been as much as 700–800 rads to the patient's bone marrow with an increased chance of the patient contracting leukemia.

The misadministration constituted a significant failure to comply with NRC regulatory requirements. The patient was subjected to a procedure unrelated to the authorized uses of phosphorus-32 as sodium phosphate.

Cause or Causes—The root cause was the lack of written prescriptions for ordering therapeutic doses.

Actions Taken to Prevent Recurrence

License—The licensee established written procedures and forms to provide for written prescriptions and therapeutic radionuclide procedures. The licensee's agreement to establish procedures for ordering and administering therapy doses had been previously documented in an NRC Confirmation of Action Letter, dated April 10, 1986.

NRC—In addition to engaging a medical consultant and issuing the Confirmation of Action Letter, the NRC Region II conducted a special inspection at the hospital on April 11, 1986. An Enforcement Conference with the licensee was held on May 2, 1986, to discuss NRC concerns regarding the inspection findings. At the conference, the licensee presented the previously mentioned written procedures and forms.

On August 7, 1986, the NRC issued to the licensee (1) a Confirmatory Order Modifying License, and, (2) a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $2,500. The Order, effective immediately, was issued to confirm implementation of corrective procedures and to ensure their continued implementation. The license paid the civil penalty.

NRC Region will review the effectiveness of the procedures during subsequent inspections.

AO 86–12 Willful Failure to Report Diagnostic Medical Misadministrations

The general abnormal occurrence criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence. In addition, one of the abnormal occurrence examples notes that serious deficiency in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and Place—On April 22, 1986, the NRC Office of Inspection and Enforcement issued an Order, effective immediately, removing a physician from the position of Radiation Safety Officer (RSO) and Authorized User at Bloomington Hospital, Bloomington, Indiana.

Nature and Probable Consequences—On October 12, 1984, NRC Region III received an allegation that five diagnostic misadministrations had occurred at Bloomington Hospital and that they had not been reported to the NRC as required. (A diagnostic misadministration involves an error in the administration of a radioactive pharmaceutical used for a diagnostic medical test.) During a subsequent inspection, the physician serving as RSO informed the NRC that only one misadministration had occurred. After further interviews were conducted, and additional information gathered by the inspectors, the physician admitted that the other four diagnostic misadministrations did occur.

During the inspection, however, the physician obstructed the inspection and misled the inspectors by instructing hospital employees to inform the inspectors that the misadministrations had not occurred and by withholding or concealing nuclear medicine films from the inspectors.

Because of the low levels of radiation exposures to the patients in diagnostic tests, no detrimental medical effects are anticipated as a result of these misadministrations.

Cause or Causes—The NRC determined that the failure to report the misadministrations was willful.

Actions Taken To Prevent Recurrence

Licensee—As required by the NRC Order dated April 22, 1986, the licensee removed the physician from the position of RSO and as an Authorized User designated in the NRC license. Another individual on the hospital staff was place in the position of RSO with the approval of NRC Region III.

NRC—The NRC (including the Office of Investigations) investigated the allegation and the RSO's subsequent actions described above and concluded that there was no longer reasonable assurance that the physician could be relied upon to comply with Commission requirements in the performance or supervision of licensed activities, or that the licensee would comply with Commission requirements while the physician is conducting or supervising licensed activities as an Authorized User or as the RSO at the hospital. The license was subsequently amended to designate the new RSO.

Information regarding this enforcement action was sent to all NRC medical licensees on October 3, 1986 by Inspection and Enforcement Information Notice No. 86–85.

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AO 86–13 Diagnostic Medical Misadministration

The general abnormal occurrence criterion notes that an event involving a moderate or more severe impaction public health or safety can be considered an abnormal occurrence.

Date and Place—On May 16, 1986, NRC received written notification that on May 7, 1986, an out-patient of the Robert Packer Hospital and Guthrie Clinic in Sayre, Pennsylvania, received 10 millicuries of iodine-131 rather than the prescribed radiopharmaceutical for a bone scan, technetium-99m.

Nature and Probable Consequences—Approximately two weeks before the scheduled appointment, an out-patient was mistakenly scheduled for a whole body iodine-131 scan rather than a whole body bone scan. At the time of scheduling, a verbal confirmation for an iodine-131 whole body scan was received from the doctor's office.

The patient arrived without a requisition for the study and the technician administered 10 millicuries of iodine-131 without the consultation with a radiologist required by department policy. The patient was instructed to return the following day for the imaging procedure. On return to the hospital the following morning, the patient produced an order from her physician requesting that technetium-99m bone scan be performed. The technician proceeded to perform the whole body iodine-131 scan and then notified the radiologist of the misadministration.

The licensee informed the NRC of the misadministration and the probable medical effects were explained to the patient. The misadministration would result in a considerable dose to the thyroid. The patient was given Lugol's Solution (to help reduce the uptake of the iodine-131 by the thyroid) and instructed to take six milliliters four times per day for four days. Arrangements were made for the patient's thyroid function to be evaluated and followed.

Cause or Causes—The cause was failure on the part of a nuclear medicine technologist to adhere to department policy on the prerequisites required for radiopharmaceutical administration.

Actions Taken To Prevent Recurrence

Licensee—All concerned personnel have been retrained on the policy of not administering radioisotopes without a written requisition and of the requirement to obtain the specific consent of a radiologist for all cases requiring the administration of greater than 300 microcuries of iodine-131.

NRC—The incident was reviewed by an NRC medical consultant who concluded there was a probability of inducing hypothyroidism and that the medical care provided the individual was adequate. NRC Region I plans to review the incident as part of a routine inspection.

AO 86–14 Diagnostic Medical Misadministration

The general abnormal occurrence criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—On June 17, 1986, at the Tripler Army Medical Center, Tripler AMC, Hawaii, a patient received a dose of 3.09 mci of I–131 instead of a prescribed dose of 50 uCi for a thyroid imaging procedure.

Nature and Probable Consequences—A 54 year old female patient was given a 3.09 mci dose of I–131 by mistake. The patient was scheduled for a thyroid imaging procedure which utilizes only 50 uCi of I–131. The radiation exposure received by the patient due to the 3.09 mci I–131 dose is estimated to be 2472 rad to the thyroid, 0.43 rad to the ovaries, and 1.45 rad to the whole body.

Contact with the licensee was made on July 9, 1986, regarding any possible clinical symptoms or adverse health effects due to the 3.09 mci I–131 dose. The licensee stated that the patient had been hospitalized for observation. On July 6, 1986, the patient was discharged due to the lack of any clinical symptoms. The patient has been scheduled for 90 days interval checkups at her duty station on Guam. An annual medical workup has also been scheduled. The high exposure to the thyroid may result in some degree of impairment in its function.

Cause or Causes—This misadministration was the result of an isolated incident of misreading the consultation sheet.

Actions Taken To Prevent Recurrence

Licensee—Effective immediately, the dispensing procedure for radioactive iodine is as follows:

(a) In all cases, the final dispensing and checking of the dose will be done by a staff physician or radiology resident assigned to Nuclear Medicine Service.

(b) The identification of the patient as well as the final amount dispensed will be co-signed by the physician involved in that particular procedure.

(c) The quality assurance manual for Nuclear Medicine Service is being updated to stipulate the new review procedures.

NRC—The circumstances of the misadministration were discussed in detail with the licensee on July 3, 1986 by a member of the NRC Region V management staff. The licensee's corrective actions appear to be acceptable. The NRC will not issue any further requirements in this matter at this time. The matter will be reviewed again during the next inspection.

Dated in Washington, DC, this 6th day of February 1987.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87–2880 Filed 2–10–87; 8:45 am]

BILLING CODE 7590–01–M

Cleveland Electric Illuminating Co. et. al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

[Docket No. 50–440]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–58 issued to Cleveland Electric Illuminating Company (CEI), Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, and Toledo Edison Company for operation of the Perry Nuclear Power Plant Unit No. 1, located in Lake County, Ohio.

The proposed amendment would allow sale and leaseback transactions by Ohio Edison Company (OE) relating to its 30.0% ownership interest in Perry Unit 1 and common facilities, in accordance with the licensee's application for amendment dated January 23, 1987. Specifically, the application requests authorization for OE's transfer of a portion of its interests in Perry Unit 1 to equity investors and for the simultaneous transfer by the equity investors back to OE of a long term (approximately 29½ years) possessory leasehold interest of these shares under the terms described in the application and other identified documents.

It is contemplated that the equity investors will be third parties not affiliated with OE. These equity investors might include electric utilities, or affiliates or subsidiaries thereof, in which case antitrust considerations may be present. Under the proposed transaction, it is represented that OE will remain in possession of its partial interests in the Perry facilities under leaseholds rather than by virtue of ownership. CEI would continue to be the sole licensed operator of the facility. OE will have the full and exclusive authority and responsibility to exercise and perform all of its rights and duties as a party to the Perry Unit 1 operating agreement. OE will also retain its responsibility to comply with the antitrust license conditions contained in the Perry license and for the payment of its share of the operating and maintenance expenses and costs of capital improvements during the term of the leaseholds and thereafter, in the absence of other Commission action, for its share of the cost of decommissioning Perry Unit 1.

The proposed amendment is similar to a request filed on October 18, 1985, by Arizona Public Service Company (APS) regarding the sale and leaseback transactions by Public Service Company of New Mexico (PNM) of a portion of PNM's ownership interests in Palo Verde Nuclear Generating Station (PVNGS) Unit 1. See 50 FR 45955. By Order of December 12, 1985, the Commission approved the proposed sale and leaseback transactions and authorized the amendment of the PVNGS unit 1 license subject to certain conditions. On December 26, 1985, the PVNGS Unit 1 license was amended and conditioned pursuant to the Commission's order. See 51 FR 1883.

The Commission has received and approved requests for additional similar transactions related to sale and leaseback of Palo Verde Units 1 and 2 ownership shares by PNM (see 51 FR 8259, 51 FR 8587, 51 FR 9125 and 51 FR 40275) and requests for smiliar transactions related to sale and leaseback of Palo Verde Unit 2 ownership shares by El Paso Electric Company (see 51 FR 20366 and 51 FR 40275) and by Arizona Public Service Company (see 51 FR 20367 and 51 FR 40275). On June 2, August 12 and 15, and December 11, 1986, the PVNGS Units 1 and 2 licenses were amended to allow the requested sale and leaseback transactions.

This application proposes that the Perry Unit 1 license be amended and conditioned in the same manner, by adding the following new paragraph 2.B(7):

(a) Ohio Edison company is authorized to transfer any portion of its 30.0% ownership share in PNPP Unit 1 and a proportionate share of its interest in the PNPP common facilities to certain equity investors identified in its submission of ———, and at the same time to lease back from such purchasers such interest sold in the PNPP Unit 1 facility. The term of the lease is for approximately 29½ years subject to a right of renewal. Such sale and leaseback transactions are subject to the representations and conditions set forth in the aforementioned application of January 23, 1987, as well as the letter of the Director of the Office of Nuclear Reactor Regulation dated ———, consenting to such transactions. Specifically, a lessor and anyone else who may acquire an interest under these transactions are prohibited from exercising directly or indirectly any control over the licensees of PNPP, Unit 1. For purposes of this condition the limitations in 10 CFR 50.81, as now in effect and as may be subsequently amended, are fully applicable to the lessor and any successor in interest to that lessor as long as the license for PNPP Unit 1 remains in effect; the financial transactions shall have no effect on the license for the Perry Nuclear facility throughout the term of the license.

(b) Further, the licensees are also required to notify the NRC in writing prior to any change in: (i) The terms or conditions of any lease agreements executed as part of these transactions, (ii) the PNPP Operating Agreement, (iii) the existing property insurance coverage for PNPP, Unit 1, and (iv) any action by a lessor or others that may have an adverse effect on the safe operation of the facility.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The above determination is based upon the fact that the proposed amendment would not change or affect any aspect of the plant design, criteria or operation. The amendment would maintain OE in possession of its present interests in the Perry Nuclear Power Plant and OE would continue to be obligated to pay its share of all costs of construction, maintenance, operation, capital improvements and decommissioning. The equity investors would not have any rights of possession in, absent further license amendment, or control over Perry. The Cleveland Electric Illuminating Company would continue to be the sole licensee authorized to use and operate the facility.

Based on the above considerations, the staff concluded that the proposed amendment meets the criteria in 10 CFR 50.92(c). The Commission, therefore, proposes to determine that the requested amendment does not involve significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 13, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be

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made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler, Director, BWR Project Directorate No. 4, Division of BWR Licensing: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to David R. Lewis, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 23, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Bethesda, Maryland, this 5th day of February 1987.

For the Nuclear Regulatory Commission.

Ralph Caruso,

Acting Director, BWR Project Directorate No. 4, Division of BWR Licensing.

[FR Doc. 87–2912 Filed 2–10–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–315 and 50–316]

Indiana and Michigan Electric Co., Donald C. Cook Nuclear Plant, Units 1 and 2; Withdrawal of Application for Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Indiana and Michigan Electric Company (the licensee) to withdraw its December 3, 1984, amendment application for the Donald C. Cook Nuclear Plant, Units 1 and 2, located in Berrien County, Michigan. The proposed amendments would have changed the Technical Specifications to require that at least two reactor coolant loops be in operation during mode 3 unless the reactor trip breakers were disconnected and to require that at least one reactor coolant loop be in operation if the reactor trip breakers are disconnected. The Commission issued a Notice of Consideration of Issuance of the Amendments in the **Federal Register** on January 23, 1985 (50 FR 3051). By letter dated January 9, 1987, the licensee withdrew its application for the proposed amendments. The Commission has determined that permission to withdraw the December 3, 1984, application for amendments should be granted.

For further details with respect to this action, see: (1) The application for amendment dated December 3, 1984, (2) the licensee's letter dated January 9, 1987, withdrawing the application for amendments, and (3) our letter dated February 2, 1987. All of the above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Bethesda, Maryland, this 6th day of February 1987.

For the Nuclear Regulatory Commission.

B.J. Youngblood,

Director, PWR Project Directorate No. 4 Division of PWR Licensing-A.

[FR Doc. 87–2913 Filed 2–10–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–286]

Power Authority of the State of New York, Indian Point Nuclear Generating Unit No. 3; Exemption

I

The Power Authority of the State of New York (the licensee) is the holder of Facility Operating License No. DPR–64 which authorizes operation of the Indian Point Nuclear Generating Unit No. 3 (IP3). This license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility consists of one pressurized water reactor at the licensee's site located in Westchester County, New York.

II

On November 19, 1980, the Commission published a revised Section 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding the fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R. Section III of Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of fire protection features at a nuclear power plant. Two of the fifteen subsections, III.G and III.J, are the subjects of this exemption request.

By letter dated August 16, 1984, as supplemented September 10, 1986, the licensee submitted the results of a re-evaluation of Indian Point 3 to the technical requirements of Section III.G, and III.L. Four new exemptions to Section III.G were requested. By letter dated June 14, 1985, the licensee also requested an exemption from the requirements of Section III.J. Additional information was provided by letters dated March 15 and September 19, 1985. In the September 19, 1985 letter, the licensee requested approval for 2 additional exemptions to Section III.G. Exemptions for the following areas were requested.

1. Primary Auxiliary Building.
2. Cable Tunnel.
3. Auxiliary Feedwater Pump Room.
4. 8-hour battery powered emergency lighting in the yard area.
5. Yard Area-Service Water Pumps.
6. Turbine Building.

The exemption requested for the Turbine Building was determined by the staff to be not necessary. Therefore, only exemptions for the first five areas are summarized herein. Details of these exemptions are discussed in the Safety Evaluation enclosed with this Exemption.

1. Primary Auxiliary Building (Fire Area PAP–2)

The exemption was requested from Section III.G.2(b) of Appendix R to 10 CFR Part 50 to the extent that redundant shutdown systems be separated by 20 feet, free of intervening combustibles, and protected by an automatic sprinkler system. An exemption was also requested from the requirements of Section III.G.3 to the extent that it requires a fixed fire protection system in an area for which an alternate shutdown capability has been provided.

2. Electric Cable Tunnels (Fire Area ETN–4)

The exemption was requested from Section III.G.2 of Appendix R to 10 CFR Part 50 to the extent that it requires that redundant shutdown systems be separated by more than 20 feet, free of intervening combustibles or fire hazards and to the extent that it requires that redundant systems be separated by a 1-hour fire barrier in an area which is protected by automatic fire detection and suppression systems.

3. Auxiliary Boiler Feedwater Pump Room (Fire Area AFW–6)

The exemption was requested from Section III.G.2.(b) of Appendix R to 10 CFR Part 50 to the extent that it requires that redundant shutdown systems be separated by more than 20 feet, free of intervening combustible materials.

4. Emergency Lighting

An exemption was requested from Section III.J of Appendix R to 10 CFR Part 50 to the extent that it requires that all areas needed for operation of safe shutdown equipment and in access and egress routes thereto be provided with 8-hour battery powered emergency lighting units.

5. Yard Area—Service Water Pumps

The exemption was requested from Section III.G.2.b of Appendix R to the extent it requires that redundant shutdown systems be protected by automatic fire detection and suppression systems.

Based on our evaluation, we conclude that the level of fire safety in the areas listed is equivalent to that achieved by compliance with the technical requirements of Appendix R and, therefore, the licensee's request for exemption in these areas should be granted.

By letter dated October 31, 1986, the licensee provided information relevant to the "special circumstances" finding required by revised 10 CFR 50.12(a) (see 50 FR 50764). The licensee stated that existing and proposed fire protection features at Indian Point 3 accomplish the underlying purpose of the rule. Implementing additional modifications to provide additional suppression systems, detection systems, and fire barriers would require the expenditure of engineering and construction resources as well as the associated capital costs which would represent an unwarranted burden on the licensee. The licensee stated that the costs to be incurred would be as follows:

1. Engineering and installation of fire barriers to:
—Isolate the common stairway enclosure between the Upper and Lower Electrical Cable Tunnels,
—Wrap exposed cable insulation considered intervening combustibles between Auxiliary Feedwater Pumps (AFW),
—Separate redundant Residual Heat Removal Pumps (RHR) and Charging Pumps in lieu of the existing configuration consisting of full or partial height and width concrete barriers in the Primary Auxiliary Building, and
—Separate redundant Component Cooling (CCW) Pumps with a fully rated barrier in lieu of the installed radiant energy shield.

2. Engineering and installation of additional piping, sprinkler heads, and supporting structures to provide:
—Full area automatic suppression on the 15 ft, 41 ft and 55 ft elevations of the Primary Auxiliary Building,
—Fixed automatic suppression where alternate shutdown capability has been provided for motor control centers for Charging Pumps, CCW and Diesel Ventilation systems,
—Detection and automatic suppression for Atmospheric Steam Dump Valves in the Turbine Building, and
—Detection and automatic suppression for Service Water Pumps and Backup Service Water Pumps in the Yard Area.

3. Installation and maintenance of eight hour battery powered lighting for the access route through the yard to the Appendix R diesel which is currently provided by yard security lighting.

4. Significant rerouting of power, control and instrumentation cabling along with associated conduits, ducts and supports for:
—Atmospheric Relief Valves, Charging Pumps, CCW, AFW and RHR Pumps in Electrical Cable Tunnels, and

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—RHR, Charging and CCW Pumps in the Primary Auxiliary Building.

5. Increased surveillance on new or extended fire suppression and fire detection systems.

6. Evaluation of and possible need to provide additional fire main capacity if the fire main system is modified.

7. Consideration of the increased congestion that will result from additional modifications in numerous plant locations which will complicate future plant modifications/operations.

The licensee stated that these costs are significantly in excess of those required to meet the underlying purpose of the rule. The staff concludes that "special circumstances" exist for the licensee's requested exemptions in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. See 10 CFR 50.12(a)(2)(ii).

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), (1) these exemptions as described in Section II are authorized by law and will not present an undue risk to the public health and safety, and are consistent with the common defense and security and (2) special circumstances are present for the exemptions in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. Therefore, the Commission hereby grants exemptions from the requirements of Section III.G and III.J of Appendix R to 10 CFR Part 50.

A copy of the Safety Evaluation dated January 7, 1987, related to this action is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Room, White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the Exemption will have no significant impact on the environment (51 FR 45824).

This exemption is effective upon issuance.

Dated at Bethesda, Maryland this 7th day of January, 1987.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Acting Director Division of PWR Licensing-A Office of Nuclear Reactor Regulation.

[FR Doc. 87–2914 Filed 2–10–87; 8:45am]

BILLING CODE 7590-01-M

[Docket No. 50–346]

Toledo Edison Co. and the Cleveland Electric Illuminating Co.; Correction

On February 2, 1987, the **Federal Register** published (52 FR 3182) "Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing" related to Toledo Edison Company's January 21, 1987, application for amendment of Facility Operating License No. NPF–3 for the Davis-Besse Nuclear Power Station, Unit No. 1 located in Ottawa County, Ohio. The requested amendment involves the DC electrical power distribution system.

This Notice stated March 2, 1987, as the date by which the licensees may request a hearing and interested parties may file a written petition for leave to intervene. This date was based on an anticipated publication date of January 30, 1987; however, the Notice was not published until February 2, 1987. Accordingly, the date by which the licensees may request a hearing and interested parties may file a written petition for leave to intervene is hereby extended to March 4, 1987.

Dated at Bethesda, Maryland, this 5th day of February, 1987.

For the Nuclear Regulatory Commission.

John E. Stolz,

Director, PWR Project Directorate #6, Division of PWR Licensing–B.

[FR Doc. 87–2915 Filed 2–10–87; 8:45 am]

BILLING CODE 7590-01-M

Bi-Weekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations; Correction

In order to correct several typographical errors, in FR Doc. 87–1765, beginning on page 2870 in the issue of Wednesday, January 28, 1987, make the following corrections:

1. On page 2882, in the third column, beginning with the bold type that begins with "Indiana and Michigan Electric Company", remove the entire entry under that heading that ends at the bottom of the first column on page 2883.

2. On page 2894, in the first column, in the second complete paragraph under the bold type that begins with "Union Electric Company, Docket No. 50–", in the sixth line, the letters "FT" should read "GT".

3. On page 2895, in the first column, in the second complete paragraph under the bold type that begins with "Vermont Yankee Nuclear Power", in the sixth line, the number "200" should read "2000".

Dated at Bethesda, Maryland, this 5th day of February, 1987.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Rules and Records, Office of Administration.

[FR Doc. 87–2910 Filed 2–10–87; 8:45 am]

BILLING CODE 7590-01-M

State of Illinois; Staff Assessment of Proposed Agreement Between the NRC and the State of Illinois

[Editorial Note: The following document was originally published at page 2309 in the issue of Wednesday, January 21, 1987. The document is being republished at the request of the agency.]

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of proposed agreement with State of Illinois.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission is publishing for public comment the NRC staff assessment of a proposed agreement received from the Governor of the State of Illinois for the assumption of certain of the Commission's regulatory authority pursuant to section 274 of the Atomic Energy Act of 1954, as amended. Comments are requested on the public health and safety aspects of the proposal.

A staff assessment of the State's proposed program for control over sources of radiation is set forth below as supplementary information to this notice. A copy of the proposed agreement, program narrative, including the referenced appendices, applicable State legislation and Illinois regulations, is available for public inspection in the Commission's public document room at 1717 H Street NW., Washington, DC, the Commission's Region III Office, 799 Roosevelt Road, Building No. 4, Glen Ellyn, Illinois, and the Illinois Department of Nuclear Safety, 1035 Outer Park Drive, Springfield, Illinois. Exemptions from the Commission's regulatory authority, which would implement this proposed agreement, have been published in the **Federal Register** and codified as Part 150 of the Commission's regulations in Title 10 of the Code of Federal Regulations.

DATE: Comments must be received on or before January 30, 1987 * .

* The Nuclear Regulatory Commission revised the deadline for comments to February 20, 1987, in a document published at page 2309 in the issue of Wednesday, January 21, 1987.

ADDRESSES: Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Monday through Friday. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Joel O. Lubenau, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301–492–9887.

SUPPLEMENTARY INFORMATION: Assessment of Proposed Illinois Program to Regulate Certain Radioactive Materials Pursuant to section 274 of the Atomic Energy Act of 1954, as amended.

The Commission has received a proposal from the Governor of Illinois for the State to enter into an agreement with the NRC whereby the NRC would relinquish and the State would assume certain regulatory authority pursuant to section 274 of the Atomic Energy Act of 1954, as amended.

Section 274e of the Atomic Energy Act of 1954, as amended, requires that the terms of the proposed agreement be published for public comment once each week for four consecutive weeks. Accordingly, this notice will be published four times in the **Federal Register.**

I. Background

A. Section 274 of the Atomic Energy Act of 1954, as amended, provides a mechanism whereby the NRC may transfer to the States certain regulatory authority over agreement materials [1] when a State desires to assume this authority and the Governor certifies that the State has an adequate regulatory program, and when the Commission finds that the State's program is compatible with that of the NRC and is adequate to protect the public health and safety. Section 274g directs the Commission to cooperate with the States in the formulation of standards for protection against radiation hazards to assure that State and Commission programs for radiation protection will be coordinated and compatible. Further, section 274j provides that the Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

B. In a letter dated October 2, 1986, Governor James P. Thompson of the State of Illinois requested that the Commission enter into an agreement with the State pursuant to section 274 of the Atomic Energy Act of 1954, as amended. The Governor certified that the State of Illinois has a program for control of radiation hazards which is adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State of Illinois desires to assume regulatory responsibility for such materials. The text of the proposed agreement is shown in Appendix A.

The specific authority requested is for (1) byproduct material as defined in section 11e.(1) of the Act, (2) source material, (3) special nuclear material in quantities not sufficient to form a critical mass and (4) permanent disposal of low-level waste containing one or more of the foregoing materials but not containing uranium and thorium mill tailings (byproduct material as defined in section 11e.(2) of the Act. The State does not wish to assume authority over uranium recovery activities. The State, however, reserves the right to apply at a future date to NRC for an amended agreement to assume authority in this area. The nine articles of the proposed agreement cover the following areas:

I. Lists the materials covered by the agreement.

II. Lists the Commission's continued authority and responsibility for certain activities.

III. Allows for future amendment of the agreement.

IV. Allows for certain regulatory changes by the Commission.

V. References the continued authority of the Commission for common defense and security for safeguard purposes.

VI. Pledges the best efforts of the Commission and the State to achieve coordinated and compatible programs.

VII. Recognizes reciprocity of licenses issued by the respective agencies.

VIII. Sets forth criteria for termination or suspension of the agreement.

IX. Specifies the effective date of the agreement.

C. Ill. Rev. Stat. 1985, ch. 127, par. 63b17, the enabling statute for the Illinois Department of Nuclear Safety authorizes the Department to issue licenses to, and perform inspections of, users of radioactive materials under the proposed agreement and otherwise carry out a total radiation control program. Illinois regulations for radiation protection were adopted on September 25, 1986 under authority of the enabling statute and provide standards, licensing, inspection, enforcement and administrative procedures for agreement and non-agreement materials. Pursuant to § 330.360 the regulations will apply to agreement materials on the effective date of the agreement. The regulations provide for the State to license and inspect users of naturally-occurring and accelerator-produced radioactive materials.

D. Illinois is one of two States with a cabinet-level agency devoted exclusively to radiation safety and control. Illinois' role in radiation safety is traceable to 1955 when the Illinois General Assembly created the Atomic Power Investigating Commission. The Illinois Department of Nuclear Safety Program provides a comprehensive program encompassing radiation protection regulation for radioactive materials and machine produced radiation, lasers, low-level radioactive waste management, surveillance of transportation of radioactive materials and environmental radiation, coordination of State government functions concerning nuclear power and emergency preparedness.

E. The proposed illinois Agreement will cover several unique facets. It will include (1) regulation of a low-level waste disposal site which is no longer accepting low-level radioactive waste for disposal (Sheffield), (2) regulation of a new regional low-level waste disposal facility, (3) regulation of one of only two licensed uranium conversion plants in the United States (Allied-Chemical) and (4) assumption of regulatory responsibility for off-site source material resulting from operation of the Kerr-McGee West Chicago Rare Earths Facility (including such material which is, or may be, stored on the Kerr-McGee site). Jurisdiction over the tailings materials at this site (by-product material as defined by section 11e(2) of the Act) will remain with NRC. The State's proposed programs for low-level radioactive waste disposal and the Allied Chemical plant are assessed under Criteria nos. 9, "Radioactive Waste Disposal" and 20 "Personnel." The disposition of the regulatory responsibility for the Kerr-McGee radioactive materials resulting from the operation of the Rare Earths Facility is covered in the assessment under

[1] A. Byproduct materials as defined in 11e(1)
B. Byproduct materials as defined in 11e(2)
C. Source materials; and
D. Special nuclear materials in quantities not sufficient to form a critical mass

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Crtierion 25, "Existing NRC Licenses and Pending Applications."

Under the proposed agreement jurisdiction for health and safety for Allied Chemical's plant would be transferred to Illinois. The Allied Chemical plant is one of 2 plants in the United States licensed to convert uranium "yellowcake" to UF_6. NRC staff is reviewing the common defense and security significance of the Allied Chemical plant in consultation with appropriate Federal agencies. Section 274 agreements are approved by the Commission when, among other things, the proposed State program is adequate to protect the public health and safety. The NRC staff assessment finds the proposed Illinois program will provide adequately for public health and safety. The Atomic Energy Act, as amended, however, states that such agreements shall not affect the Commission's authority to protect the common defense and security. The decision on whether to exclude the Allied Chemical plant from the Agreement will be made by the Commission concurrent with its decision on the Illinois request for an Agreement.

II. NRC Staff Assessment of Proposed Illinois Program for Control of Agreement Materials

Reference: Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement.[2]

Objectives

1. Protection. A State regulatory program shall be designed to protect the health and safety of the people against radiation hazards.

Based upon the analysis of the State's proposed regulatory program the staff believes the Illinois proposed regulatory program for agreement materials is adequately designed to protect the health and safety of the public against radiation hazards.

Reference: Illinois Program Statement, Application for Agreement State Status.

Radiation Protection Standards

2. *Standards.* The State regulatory program shall adopt a set of standards for protection against radiation which shall apply to byproduct, source and special nuclear materials in quantities not sufficient to form a critical mass.

Statutory authority to formulate and promulgate rules for controlling exposure to sources of radiation is contained in the enabling statute. In accordance with that authority, the State adopted radiation control regulations on September 25, 1986 which include radiation protection standards which would apply to byproduct, source and special nuclear materials in quantities not sufficient to form a critical mass upon the effective date of an agreement between the State and the Commission pursuant to section 274b of the Atomic Energy Act of 1954, as amended.

Reference: 32 ILL. ADM. CODE Parts 310, 320, 330, 340, 341, 350, 351, 370, 400 and 601.

3. *Uniformity in Radiation Standards.* It is important to strive for uniformity in technical definitions and terminology, particularly as related to such things as units of measurement and radiation dose. There shall be uniformity on maximum permissible doses and levels of radiation and concentrations of radioactivity, as fixed by 10 CFR Part 20 of the NRC regulations based on officially approved radiation protection guides.

Technical definitions and terminology contained in the Illinois Radiation Control Regulations including those related to units of measurement and radiation doses are uniform with those contained in 10 CFR Part 20.

Reference: 32 ILL. ADM. CODE 310.20, 3410.20, 350.30, 351.30, 370.20, and 601.20.

4. *Total Occupational Radiation Exposure.* The regulatory authority shall consider the total occupational radiation exposure of individuals, including that from sources which are not regulated by it.

The Illinois regulations cover all sources of radiation within the State's jurisdiction and provide for consideration of the total radiation exposure of individuals from all sources of radiation in the possession of a licensee or registrant.

Reference: 32 ILL. ADM. CODE 340.1010 to 340.1060.

5. *Surveys, Monitoring.* Appropriate surveys and personnel monitoring under the close supervision of technically competent people are essential in achieving radiological protection and shall be made in determining compliance with safety regulations.

The Illinois requirements for surveys to evaluate potential exposures from sources of radiation and the personnel monitoring requirements are uniform with those contained in 10 CFR Part 20. Additionally, for personnel dosimeters (except extremity dosimeters and pocket ionization chambers) that require processing, the accreditation criteria in the January 1, 1985 revision of 15 CFR 7b and in American National Standards Institute N13.11–1983, 1983 edition, must be met.

References: 32 ILL. ADM. CODE 340.2010, 340.2020 and 340.2070.

6. *Labels, Signs, Symbols.* It is desirable to achieve uniformity in labels, signs, and symbols, and the posting thereof. However, it is essential that there be uniformity in labels, signs, and symbols affixed to radioactive products which are transferred from person to person.

The prescribed radiation labels, signs and symbols are uniform with those contained in 10 CFR Parts 20, 30 thru 32 and 34. The Illinois posting requirements are also uniform with those of Part 20.

References: 32 ILL. ADM. CODE 330.220(g), 330.220(i), 330.280(d), 330.280(g), 340.2030 and .2040, 350.1050.

7. *Instruction.* Persons working in or frequenting restricted areas shall be instructed with respect to the health risks associated with exposure to radioactive materials and in precautions to minimize exposure. Workers shall have the right to request regulatory authority inspections as per 10 CFR 19, Section 19.16 and to be represented during inspections as specified in Section 19.14 of 10 CFR 19.

The Illinois regulation contain requirements for instruction and notices to workers that are uniform with those of 10 CFR Part 19.

Reference: 32 ILL. ADM. CODE Part 400.

8. *Storage.* Licensed radioactive material in storage shall be secured against unauthorized removal.

The Illinois regulations contain a requirement for security of stored radioactive material.

Reference: 32 ILL ADM. CODE 340.2060.

9. *Radioactive Waste Disposal.* (a) Waste disposal by material users. The standards for the disposal of radioactive materials into the air, water and sewer, and burial in the soil shall be in accordance with 10 CFR Part 20. Holders of radioactive material desiring to release or dispose of quantities or concentrations of radioactive materials in excess of prescribed limits shall be required to obtain special permission from the appropriate regulatory authority.

Requirements for transfer of waste for the purpose of ultimate disposal at a land disposal facility (waste transfer and manifest system) shall be in accordance with 10 CFR Part 20.

The waste disposal standards shall include a waste classification scheme and provisions for waste form, applicable to waste generators, that is equivalent to that contained in 10 CFR Part 61.

(b) Land Disposal of waste received from other persons. The State shall promulgate regulations containing licensing requirements for land disposal of radioactive waste received from other persons which are compatible with the applicable technical definitions, performance objectives, technical requirements and applicable supporting sections set forth in 10 CFR Part 61. Adequate financial arrangements (under terms established by regulation) shall be required of each waste disposal site licensee to ensure sufficient funds for decontamination, closure and stabilization of a disposal site. In addition, Agreement State financial arrangements for long-term monitoring and maintenance of a specific site must be reviewed and approved by the Commission prior to relieving the site operator of licensed responsibility (section 151(a)(2), Pub. L. 97—425).

The Illinois regulations contain provisions relating to the disposal of radioactive materials into the air, water and sewer and burial in soil which are essentially uniform with those of 10 CFR Part 20. Waste transfer and manifest system requirements for transfer of waste for ultimate disposal at a land disposal facility are included in the Illinois regulations. The waste disposal requirements include a waste classification scheme and provisions for waste form equivalent to that in 10 CFR Part 61.

The Illinois regulations provide for land disposal of low—level radioactive waste received from other persons which are compatible with the applicable technical definitions, performance objectives, technical requirements and supporting sections set out in 10 CFR Part 61. The Illinois regulations include provisions for financial arrangements for decontamination, closure and stabilization. Under the Nuclear Waste Policy Act of 1982 (Pub. L. 97—425) the financial arrangements for long-term monitoring and maintenance at specific sites in Illinois will be subject to Commission review and approval prior to Illinois relieving the site operator of licensed responsibility.

References: 32 ILL. ADM. CODE 340.1060, 340.3010 to 340. 3110, Part 601; Section 151(a)(2), Pub. L. 97–425.

10. *Regulations Governing Shipment of Radioactive Materials.* The State shall to the extent of its jurisdiction promulgate regulations applicable to the shipment of radioactive materials, such regulations to be compatible with those established by the U.S. Department of Transportation and other agencies of the United States whose jurisdiction over interstate shipment of such materials necessarily continues. State regulations regarding transportation of radioactive materials must be compatible with 10 CFR Part 71.

The Illinois regulations are uniform with those contained in NRC regulations 10 CFR Part 71.

References: 32 ILL. ADM. CODE Part 341.

11. *Records and Reports.* The State regulatory program shall require that holders and users of radioactive materials (a) maintain records covering personnel radiation exposures, radiation surveys, and disaposals of materials; (b) keep records of the receipt and transfer of the materials; (c) report significant incidents involving the materials, as prescribed by the regulatory authority; (d) make available upon request of a former employee a report of the employee's exposure to radiation; (e) at request of an employee advise the employee of his or her annual radiation exposure; and (f) inform each employee in writing when the employee has received radiation exposure in excess of the prescribed limits.

The Illinois regulations require the following records and reports licensees and registrants:

(a) Records covering personnel radiation exposures, radiation surveys, and disposals of materials.

(b) Records of receipt and transfer of materials.

(c) Reports concerning incidents involving radioactive materials.

(d) Reports to former employees of their radiation exposure.

(e) Reports to employees of their annual radiation exposure.

(f) Reports to employees of radiation exposure in excess of prescribed limits.

Reference: 32 ILL. ADM. CODE 310.40, 340.4010, 340.4030, 340.4050 and 400.130.

12. *Additional Requirements and Exemptions.* Consistent with the overall criteria here enumerated and to accommodate special cases and circumstances, the State regulatory authority shall be authorized in individual cases to impose additional requirements to protect health and safety, or to grant necessary exemptions which will not jeopardize health and safety.

The Illinois Department of Nuclear Safety is authorized to impose upon any licensee or registrant by rule, regulation, or order such requirements in addition to those established in the regulations as it deems appropriate or necessary to minimize danger to public health and safety or property.

Reference: 32 ILL. ADM. CODE 310.70.

The Department may also grant such exemptions from the requirements of the regulations as it determines are authorized by law and will not result in undue hazard to public health and safety or property.

Reference: 32 ILL. ADM. CODE 310.30.

Prior Evaluation of Uses of Radioactive Materials

13. *Prior Evaluation of Hazards and Uses, Exceptions.* In the present state of knowledge, it is necessary in regulating the possession and use of byproduct, source and special nuclear materials that the State regulatory authority require the submission of information on, and evaluation of, the potential hazards and the capability of the user or possessor prior to his receipt of the materials. This criterion is subject to certain exceptions and to continuing reappraisal as knowledge and experience in the atomic energy field increase. Frequently there are, and increasingly in the future there may be, categories of materials and uses as to which there is sufficient knowledge to permit possession and use without prior evaluation of the hazards and the capability of the possessor and user. These categories fall into two groups—those materials and uses which may be completely exempt from regulatory controls, and those materials and uses in which sanctions for misuse are maintained without pre-evaluation of the individual possession or use. In authorizing research and development or other activities involving multiple uses of radioactive materials, where an institution has people with extensive training and experience, the State regulatory authority may wish to provide a means for authorizing broad use of materials without evaluating each specific use.

Prior to the issuance of a specific license for the use of radioactive materials, the Illinois Department of Nuclear Safety will require the submission of information on, and will make an evaluation of, the potential hazards of such uses, and the capability of the applicant.

References: 32 ILL. ADM. CODE 330.240 to 330.340 and Part 601; Illinois Program Statement, Sections II.B.1(a)(1) "Licensing," II.C.1(a)(3) "Regulating Low-Level Waste Disposal" and III.B. "Licensing."

Provision is made for the issuance of general licenses for byproduct, source and special nuclear materials in situations where prior evaluation of the licensee's qualifications, facilities, equipment and procedures are not required. The regulations grant general

[2] NRC Statement of Policy published in the Federal Register January 23, 1981 (46 FR 7540–7546), a correction was published July 16, 1987 (46 FR 36969) and a revision of Criterion 9 published in the Federal Register July 23, 1983 (48 FR 33376).

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licenses under the same circumstances as those under which general licenses are granted in the Commission's regulations.

References: 32 ILL. ADM. CODE 330.210 and 330.220.

Provision is made for exemption of certain source and other radioactive materials and devices containing radioactive materials. The exemptions for materials covered by the Agreement are the same as those granted by NRC regulations.

References: 32 ILL. ADM. CODE 330.30 and 330.40.

14. *Evaluation Criteria.* In evaluating a proposal to use radioactive materials, the regulatory authority shall determine the adequacy of the applicant's facilities and safety equipment, his training and experience in the use of the materials for the purpose requested, and his proposed administrative controls. States should develop guidance documents for use by license applicants. This guidance should be consistent with NRC licensing and regulatory guides for various categories of licensed activities.

In evaluating a proposal to use agreement materials, the Illinois Department of Nuclear Safety will determine that:

(1) The applicant is qualified by reason of training and experience to use the material in question for the purpose requested in accordance with the regulations in such a manner as to minimize danger to public health and safety or property;

(2) The applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property; and

(3) The issuance of the license will not be inimical to the health and safety of the public.

Other special requirements for the issuance of specific licenses are contained in the regulations.

References: 32 ILL. ADM. CODE 330.250 to 330.280 and Part 601; Illinois Program Statement, Sections II.B.1.a(1) "Licensing" II.C.1.(a) "Low-Level Radioactive Waste Management" and III.B "Licensing."

15. *Human Use.* The use of radioactive materials and radiation on or in humans shall not be permitted except by properly qualified persons (normally licensed physicians) possessing prescribed minimum experience in the use of radioisotopes or radiation.

The Illinois regulations require that the use of radioactive materials (including sealed sources) on or in humans shall be by a physician having substantial experience in the handling and administration of radioactive material and, where applicable, the clinical management of radioactive patients.

Reference: 32 ILL. ADM. CODE 330.260(a), (b), and (c).

Inspection

16. *Purpose, Frequency.* The possession and use of radioactive materials shall be subject to inspection by the regulatory authority and shall be subject to the performance of tests, as required by the regulatory authority. Inspection and testing is conducted to determine and to assist in obtaining compliance with regulatory requirements. Frequency of inspection shall be related directly to the amount and kind of material and type of operation licensed, and it shall be adequate to insure compliance.

Illinois materials licensees will be subject to inspection by the Department of Nuclear Safety. Upon instruction from the Department, licensees shall perform or permit the Department to perform such reasonable tests and surveys as the Department deems appropriate or necessary. The frequency of inspections is dependent upon the type and scope of the licensed activities and will be at least as frequent as inspections of similar licensees by NRC. Generally, inspections will be unannounced.

References: 32 ILL. ADM. CODE 310.50, 310.60, 310.70 and 400.140(a); Illinois Program Statement, Section II.B.1.(a)(2) "Inspection and Compliance," Section III.C, "Inspection and Enforcement" and Section IV.C., "Division of Responsibilities."

17. *Inspections Compulsory.* Licensees shall be under obligation by law to provide access to inspectors.

Illinois regulations state that licensees shall afford the Department at all reasonable times opportunity to inspect sources of radiation and the premises and facilities wherein such sources of radiation are used or stored.

Reference: 32 ILL. ADM. CODE 310.50.

18. *Notification of Results of Inspection.* Licensees are entitled to be advised of the results of inspections and to notice as to whether or not they are in compliance.

Following Department inspections, each licensee will be notified in writing of the results of the inspection. The letters and written notices indicate if the licensee is in compliance and if not, list the areas of noncompliance.

Reference: Illinois Program Statement, Section II.B.1.(a)(2) "Inspection and Compliance," Section III.C, "Inspection and Enforcement" and Section IV.C., "Division of Responsibilities."

Enforcement

19. *Enforcement.* Possession and use of radioactive materials should be amenable to enforcement through legal sanctions, and the regulatory authority shall be equipped or assisted by law with the necessary powers for prompt enforcement. This may include, as appropriate, administrative remedies looking toward issuance of orders requiring affirmative action or suspension or revocation of the right to possess and use materials, and the impounding of materials; the obtaining of injunctive relief; and the imposing of civil or criminal penalties.

The Illinois Department of Nuclear Safety is equipped with the necessary powers for prompt enforcement of the regulations. Where conditions exist that create a clear presence of a hazard to the public health that requires immediate action to protect human health and safety, the Department may issue orders to reduce, discontinue or eliminate such conditions. The department actions may also include impounding of radioactive material, imposition of a civil penalty, revocation of a license, and requesting the State Attorney General to seek injunctions and convictions for criminal violations.

References: 32 ILL. ADM. CODE 310.70, 310.80, 310.90, 330.500; Ill. Rev. Stat. 1985, ch. 111½, pars. 219, 222, 223 and 224; Illinois Program Statement, Section II.B.1.(a)(2), "Inspection and Compliance," Section III.C, "Inspection and Enforcement" and Section IV.C., "Division of Responsibilities."

Personnel

20. *Qualifications of Regulatory and Inspection Personnel.* The regulatory agency shall be staffed with sufficient trained personnel. Prior evaluation of applications for licenses or authorizations and inspection of licensees must be conducted by persons possessing the training and experience relevant to the type and level of radioactivity in the proposed use to be evaluated and inspected.

To perform the functions involved in evaluation and inspection, it is desirable that there be personnel educated and trained in the physical and/or life sciences, including biology, chemistry, physics and engineering, and that the personnel have had training and experience in radiation protection. The person who will be responsible for the actual performance of evaluation and inspection of all of the various uses of byproduct, source and special nuclear material which might come to the regulatory body should have substantial

training and extensive experience in the field of radiation protection.

It is recognized that there will also be persons in the program performing a more limited function in evaluation and inspection. These persons will perform the day-to-day work of the regulatory program and deal with both routine situations as well as some which will be out of the ordinary. These people should have a bachelor's degree or equivalent in the physical or life sciences, training in health physics, and approximately two years of actual work experience in the field of radiation protection.

The foregoing are considered desirable qualifications for the staff who will be responsible for the actual performance of evaluation and inspection. In addition, there will probably be trainees associated with the regulatory program who will have an academic background in the physical or life sciences as well as varying amounts of specific training in radiation protection but little or no actual work experience in this field. The background and specific training of these persons will indicate to some extent their potential role in the regulatory program. These trainees, of course, could be used initially to evaluate and inspect those applications of radioactive materials which are considered routine or more standardized from the radiation safety standpoint, for example, inspection of industrial gauges, small research programs, and diagnostic medical programs. As they gain experience and competence in the field, the trainees could be used progressively to deal with the more complex or difficult types of radioactive material applications. It is desirable that such trainees have a bachelor's degree or equivalent in the physical or life sciences and specific training in radiation protection. In determining the requirement for academic training of individuals in all of the foregoing categories, proper consideration should be given to equivalent competency which has been gained by appropriate technical and radiation protection experience.

It is recognized that radioactive materials and their uses are so varied that the evaluation and inspection functions will require skills and experience in the different disciplines which will not always reside in one person. The regulatory authority should have the composite of such skills either in its employ or at its command, not only for routine functions, but also for emergency cases.

a. *Radioactive Materials Program.*

i. *Personnel.*

There are approximately 880 NRC specific licenses in the State of Illinois. Under the proposed agreement, the State would assume responsibility for about 800 of these licenses. The Department's Division of Nuclear Materials is currently staffed with 13 professional persons and has one vacancy. Including the Manager of the Office of Radiation Safety (in which the Division of Nuclear Materials is located), four individuals will be assigned management and supervisory duties in the materials program. Exclusive of the low-level radioactive waste regulatory program and the regulatory oversight for a uranium conversion plant (discussed below) we estimate the State will need to apply between 7.9 to 12 staff-years of professional effort to the radioactive materials program. Illinois will apply about 14.4 staff-years to this program. The personnel together with summaries of their assigned responsibilities, training and experience are as follows (except as noted percentage of time devoted to the radioactive materials program will be 90% or more):

Terry R. Lash: Director, Illinois Department of Nuclear Safety, Governor's Designated Liaison to NRC. (10% of time devoted to materials program).

Training:

Ph.D.—Yale University (1970)
—Molecular Biophysics and Biochemistry, Yale University
M.Ph.—Molecular Biophysics and Chemistry
—Yale University (1967)
B.A.—Reed College (1965)
—Physics Major

Experience:

1984—Present: Director, Illinois Department of Nuclear Safety
1983—1984: Deputy Director, Illinois Department of Nuclear Safety
1983—1983: Independent Consultant
1982—1983: Science Director, Scientists' Institute for Public Information, New York City
1981—1982: Independent Consultant
1980—1981: Director, Science and Public Policy, The Keystone Center, Dillon, Colorado
1972—1980: Staff Scientist, Natural Resources Defense Council, San Francisco, California
1970—1972: Postdoctoral Research Fellow, Yale University Medical School, New Haven, Connecticut

Paul D. Eastvold: Manager, Office of Radiation Safety. Responsible for managing the programs, functions and activities of four technical divisions: Nuclear Materials, Electronic Products, Radiologic Technologist Accreditation and Medical Physics (33% of time devoted to materials program).

Training:

B.S.—University of Iowa (1970)
—General Science/Nuclear Medicine Technology

"Special Topics in Licensing: Contingency Plans," US NRC, San Francisco, CA (1986)
"Impact of Proposed Changes to 10 CFR 20," Technical Management Services, Inc., Gaithersburg, Maryland (1986)
"Large Irradiation Radiation Safety Workshop," US NRC, New Jersey (1985)
"Incinertion of Radioactive Material Workshop," University of California (1984)
"Transportation of Radioactive Materials," US NRC, Illinois (1983)
"Recognition, Evaluation, and Control of Non-Ionizing Radiation," US Dept. of Labor, Illinois (1981)
"Inspection Procedures," US NRC, Illinois (1980)
"Safety Aspects of Industrial Radiography," US NRC, Louisiana (1980)
"Quality Assurance in Nuclear Medicine," US FDA, Maryland (1979)
"Health Physics in Radiation Accidents," Oak Ridge Associated Universities, Tennessee (1979)
"Laser Safety Seminar," US Food and Drug Admin., Wisconsin (1979)
"Radiological Response Operations Training Course," US NRC, Nevada (1978)
"Radiopharmacies—Problems and Solutions," Univ. of Southern California, California (1978)
"Radiological Emergency Response Planning Course," US NRC, Minnesota (1977)
"Health Physics and Radiation Protection," US NRC, Tennessee (1977)
"Fundamentals of Non-Ionizing Radiation Protection," U.S. Food and Drug Administration, Maryland (1973)
"Licensing Course—Byproduct, Source, and Special Nuclear Materials," US NRC, Maryland (1972)

Experience:

1980—Present: Illinois Department of Nuclear Safety
1971—1980: Illinois Department of Public Health, Division of Radiological Health
1970—1971: University of Iowa Radiation Protection Office

Michael Ewan: Chief, Division of Nuclear Materials. Manages the Division including supervision of staff and establishment of program objectives.

Training:

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M.A.—Sangamon State University , IL (1980)
—Business Administration
B.S.—University of Iowa (1971)
—General Science/Nuclear Medicine Technology
"Uranium and Thorium: A Perspective on the Hazard," Radiation Safety Associates, Inc., Springfield, Illinois (1986)
"Special Topics in Licensing: Contingency Plans," US NRC, San Francisco, CA (1986)
"Incineration Basics," Univ. of California, Irvine, Charlotte, N.C. (1986)
"Basic Supervision," Keye Productivity Center, Springield, Illinois (1986)
"Impact of Proposed Changes to 10 CFR 20," Technical Management Services, Inc., Gaithersburg, Maryland (1986)
"Transportation of Radioactive Materials," US DOE, Illinois (1985)
"Technical Writing," Richmond Staff Development, Illinois (1985)
"Health Physics and Radiation Protection," Oak Ridge Associated Universities, Tennessee (1985)
"Gas and Oil Well Logging," US NRC, Texas (1984)
"Licensing Practices and Procedures," US NRC, Maryland (1984)
"Transportation of Radioactive Materials," US NRC, Illinois (1983)
"Current Applications of Nuclear Imaging," Siemens Gammasonics, Inc., Illinois (1981)
"Nuclear Cardiology," Univ. of Wisconsin, Wisconsin (1980)

Experience:

1982–Present: Illinois Department of Nuclear Safety
1973–1982: St. John's Hospital, Springfield, Illinois
1981: Lincoln Land Community College, Springfield, Illinois (Instructor)
1973–1977: Nuclear Medicine Institute, Ohio (Affiliate Instructor)
1971–1973: Wesley Medical Center, Kansas

Jou-Guang (Joe) Hwang: Licensing Section Head, Division of Nuclear Materials. Responsible for supervising the review of radioactive material license applications.

Training:

Ph.D.—Purdue University (1985)
—Health Physics
MSPH—University of South Carolina (1981)
—Industrial Hygiene and Environmental Quality Assessment
B.S.—National Taiwan University (1978)
—Pharmacy
"Uranium and Thorium: A Perspective on the Hazard," Radiation Safety Associates, Inc., Springfield, Illinois (1986)
"External Dosimetry," Health Physics Society, State College, Pennsylvania (1986)
"Introduction to Licensing Practices and Procedures," US NRC, Bethesda, Maryland (1986)
"Medical Uses of Radionuclides for State Regulatory Personnel," US NRC, Oak Ridge Tennessee (1986)

Experience:

1986–Present: Illinois Department of Nuclear Safety
1983–1986: Purdue University, Graduate Teaching Instructor, School of Pharmacy, Nursing and Health Sciences
1980–1982: Purdue University, Graduate Research Instructor, School of Health Sciences
1980–1981: University of South Carolina, Graduate Teaching Assistant, Department of Environmental Health Sciences
1980–1980: University of South Carolina, Graduate Research Assistant, Department of Environmental Health Sciences
1978–1979: The Church of Taipei, Minister, Taipei, Taiwan
1978–1979: Yun-Fu Pharmaceutical Ltd., Pharmacist, Taipei, Taiwan
1977–1977: National Taiwan University, Hospital, Pharmacy Intern, Taipei, Taiwan
1977–1977: Pfizer Pharmaceutical Company, Assistant Pharmacist (Intern), Tan-Shui, Taiwan ROC

Y. David La Touche: Radioactive Materials License Reviewer, Division of Nuclear Materials. Performs reviews of radioactive material license applications and performs inspections of radioactive materials licensees.

Training:

Ph.D.—Oregon State University (1981)
—Radiation Biology
M.S.—Oregon State University (1978)
—Biological Science
B.S.—Concordia University, Montreal, Canada (1976)
—Biology
"Special Topics in Licensing: Contingency Plans," US NRC, San Francisco, CA (1986)
"Health Physics and Radiation Protection," US NRC, Oak Ridge, Tennessee (1986)
"Uranium and Thorium: A Perspective on the Hazard," Radiation Safety Associates, Inc., Springfield, Illinois (1986)
"Introduction to Licensing Practices and Procedures," US NRC, Bethesda, Maryland (1986)

Experience:

1986—Present: Illinois Department of Nuclear Safety
1982–1986: Oregon State University, Corvallis, Oregon Research Associate
1979–1981: Oregon State University, Corvallis, Oregon Graduate Research Associate
1977–1979: Oregon State University, Corvallis, Oregon Graduate, Teaching Assistant

Yu-Ann Stephen Hsu: Radioactive Materials License Reviewer, Division of Nuclear Materials. Performs reviews of radioactive material license applications and performs inspections of radioactive materials licensees.

Training:

M.S.—Old Dominion University (1982)
—Norfolk, Virginia
—Physics
B.S.—Tam Kang college of Arts and Sciences
—Physics
"Introduction to Air Toxics," US EPA, Kansas City, Missouri (1985)
"Health Physics and Radiation Protection," US NRC, Oak Ridge, Tennessee (1984)
"Safety Aspects of Industrial Radiography for State Regulatory Personnel," US NRC, Baton Rouge, Louisiana (1984)
"Cobalt Teletherapy Calibration," US NRC, Houston, Texas (1984)
"Medical Use of Radionuclides for State Regulatory Personnel," US NRC, Tennessee (1984)
"Gas and Oil Well-Logging for State Regulatory Personnel," US NRC, (1983)
"Hazardous Waste Management," Old Dominion University, Virginia Beach, Virginia (1982)
"Inspection Procedures," US NRC, Atlanta, Georgia (1986)

Experience:

1986—Present Illinois Department of Nuclear Safety
1985—1986: Iowa Electric Light & Power Company, Cedar Rapids, Iowa, Radiological Engineer
1982—1985: Kansas Department of Health and Environment, Topeka, Kansas, Radiation Control Inspector
1981—1982: Eastern Virginia Medical Authority, Norfolk, Virginia, Assistant Radiation Safety Officer
1980—1981: Eastern Virginia Medical Authority, Norfolk, Virginia, Radiation Safety Research Technician
1979—1980: Old Dominion University Norfolk, Virginia, Research Assistant

Steve Meiners: Radioactive Materials License Reviewer, Division of Nuclear Materials. Performs reviews of radioactive material license applications and performs inspections of radioactive materials licensees.

Training:

M.S.—University of Arkansas for Medical Sciences (1985)
—Radiation Health Physics
B.A.—Harding University (1981)
—Biology
"Medical Uses of Radionuclides for State Regulatory Personnel," US NRC, Oak Ridge, Tennessee (1986)

Experience:

1985—1985: Texas Tech University, Radiation Safety Officer
1984—1984: University of Arkansas, Graduate Assistant
1981—1984: University of Ankansas, Laboratory Technologist
1981—1983: University of Arkansas, Aquatic Ecologist
1980—1981: Harding University, Teaching Assistant

Sheryl O. Soderdahl: Support Services Section Head, Division of Nuclear Materials. Responsible for the Division's data processing system and registration program, assists in license reviews and inspections, assists in review and revision of regulations and standards and serves as the Department's Radiation Safety Officer.

Training:

B.S.—Purdue University, Indiana (1980)
Health Physics
"Inspection Procedures," US NRC, Atlanta, Georgia (1985)
"Writing for Results," Sangamon State University, Springfield, Illinois (1985)
"Introduction to Licensing Practices and Procedures," US NRC, Washington, D.C. (1985)
"Environmental Health Practices," University of Massachusetts, Amherst, Massachusetts (1982)

Experience:

1985—Present: Illinois Department of Nuclear Safety
1980—1985: University of Massachusetts, Department of Environmental Health and Safety, Amherst, Massachusetts, Staff Health Physicist
1979—1979: Fermi National Accelerator Laboratory, Proton Department, Batavia, Illinois

Bruce J. Sanza: Inspection and Enforcement Section Head, Division of Nuclear Materials. Manages the inspection and enforcement program.

Training:

M.S.—Texas A & M University (1985)
—Nuclear Engineering (Health Physics)
B.S.—University of Virginia (1979)
—Nuclear Engineering
"Uranium and Thorium: A Perspective on the Hazard," Radiation Safety Associated, Springfield, Illinois (1986)
"Inspection Procedure," US NRC, Atlanta, Georgia (1986)
"Gas & Oil Well Logging for Regulatory Personnel," (Accepted for attendance at November, 1986 course, Houston, Texas)

Experience:

1986—Present: Illinois Department of Nuclear Safety
1983—1986: Texas A & M University, Health Physicist, College Station, Texas
1980—1983: Carolina Power & Light Company, Radiation Control Specialist, Hartsville, South Carolina

George E. Merrihew: Radioactive Materials License Inspector. Performs reviews of radioactive materials license applications and performs inspections of radioactive materials licensees.

Training:

M.A.—Sangamon State University (1972)
—Biology/Psychology
B.A.—Sangamon State University (1971)
—Biology/Psychology
A.A.—Springfield, College in Illinois (1969)
—General Secience
"Radiological Emergency Response Operation," FEMA, Las Vegas, Nevada (1986)
"Medical Uses of Radionuclides," US NRC, Oak Ridge, Tennessee (1986)
"Gas and Well Logging for Regulatory Personnel," US NRC, Houston, Texas (1985)
"Radioactive Material Training Course: Hazardous Material Regulations of the United States Department of Transportation," Chicago, Illinois (1985)
"Safety Aspects of Industrial Radiography," US NRC, Baton Rouge, Louisiana (1985)
"Introduction to Licensing Practices and Procedures," US NRC, Bethesda, Maryland (1984)
"Inspection Procedures," US NRC, Atlanta, Georgia (1984)
"Health Physics and Radiation Protection," US NRC, Oak Ridge, Tennessee (1984)
"Radiation Protection Technology," Rockwell International, Energy Systems Group (1983)
"Transportation of Nuclear Materials," US NRC Illinois (1983)
"Executive Development Academy," Illinois Department of Personnel, Illinois (1981)
"ANS Cobol Course," (1980); "Basic Systems Analysis: (1980); "General Introduction to Statistical Package for the Social Sciences" (1979): "DP Concepts" (1979); "IMS Environment Course" (1979); "Easytrieve/IMS Class" (1979); "Basics in Easytrieve," State of Illinois Data Processing Training Center (1977)
"Air Pollution Control Orientation," US EPA (1978)
"Community Hygiene," US HEW, Georgia (1978)
University of Illinois, School of Clinical Medicine, (1974)
University of Illinois, School of Basic Medical Sciences (1973)

Experience:

1983–Present: Illinois Department of Nuclear Safety
1974–1983: Illinois Department of Public Health, Division of Engineering
1971–1972: Sangamon State University, Department of Biology, Graduate Assistant
1965–1967: Memorial Medical Center, Clinical Laboratory

Lori Kim Podolak: Radioactive Materials License Inspector. Performs reviews of radioactive materials license applications and performs inspections of radioactive materials licensees.

Training:

M.S.—University of Lowell (1986)
—Radiological Sciences
B.S.—Kentucky Wesleyan College (1984)
—Physics

Experience:

1986–Present: Illinois Department of Nuclear Safety
1984–1986: University of Lowell
1985: Brookhaven National Laboratory
1983: Oak Ridge National Laboratory

Andrew S. Gulczynski: Chicago Inspection and Enforcement Section Head, Division of Nuclear Materials. Supervises Chicago office materials license inspectors.

Training:

B.S—Northeastern Illinois University (1981)
—Biology
"Five Week Health Physics and Radiation Protection Course," US NRC, Oak Ridge, Tennessee (1986)
"Internal Dose Assessment," Technical Management Services, Inc., Illinois (1985)
"Transportation of Radioactive Materials," US DOE, Chicago, Illinois (1985)
"Medical Uses of Radionuclides for State Regulatory Personnel," US NRC, Oak Ridge, Tennessee (1984)
"Safety Aspects of Industrial Radiography for State Regulatory Personnel," US NRC, Baton Rouge, Louisiana (1983)
"Inspection Procedures for State Regulatory Personnel," US NRC, Atlanta, Georgia (1983)
"Radiological Emergency Response Operations," FEMA, Las Vegas, Nevada (1983)

Experience:

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1985–Present: Illinois Department of Nuclear Safety
1982–1985: Kansas Department of Health and Environment, Bureau of Radiation Control, Topeka, Kansas.
1981–1982: Argonne National Laboratory, Argonne, Illinois
1977–1981: Northeastern Illinois University, Chicago, Illinois

John D. Papendorf: Radioactive Materials License Inspector. Performs reviews of radiactive materials license applications and performs inspections of radioactive materials licensees.

Training:
N.M.T.—Oak Park Hospital (1975)
—Nuclear Medicine Technologist Certification
R.T.—Hines V.A. Hospital (1972)
—X-Ray Technologist Certification
A.S.—Central YMCA College (1972)
"Inspection of Transportation of Radioactive Materials," U.S. NRC, Glen Ellyn, Illinois (1985)
"Nuclear Transportation for State Regulatory Personnel," US NRC, Columbia South Carolina (1984)
"Hazardous Materials Training Course," U.S. DOE, Chicago, Illinois (1983)
"Radiation Safety," Northwestern University, Evanston, Illinois (1982)
"Radiation Therapy Workshop, Medical Linear Accelerators," US Public Health Service, Chicago, Illinois (1981)
"Acceptance Testing of Radiological Imaging Equipment," American Association of Physicists in Medicine, American College of Radiology and Society for Radiological Engineering, Chicago, Illinois (1981)
"Safety Aspects of Industrial Radiography for State Programs," US NRC, Baton Rouge, Louisiana (1981)
"Inspection Procedures," US NRC, Glen Ellyn, Illinois (1980)
"Quality Assurance in Nuclear Medicine Departments," US Food and Drug Administration, Rockville, Maryland (1979)
"Radiological Emergency Response Operations Training Course for State and Local Government Emergency Preparedness Personnel," FEMA, Las Vegas, Nevada (1979)
"Special Procedures on CT Scanners" US Public Health service, Chicago, Illinois (1976)
"Radiological Workshop," US Public Health Service, Chicago, Illinois (1976)

Experience:
1980–Present: Illinois Department of Nuclear Safety
1976–1980: Illinois Department of Public Health, Division of Radiological Health
1973–1976: Oak Park Hospital, Nuclear Medicine Technologist, Oak Park, Illinois
1972–1973: Oak Park Hospital, X-Ray Technologist, Oak Park, Illinois

Robin Gehrhardt Bauer: Radioactive Materials License Inspector. Performs reviews of radioactive materials license applications and performs inspections of radioactive materials licensees.

Training:
M.S.—Emory University (1985)
—Radiological Physics
B.S.—University of Miami (1983)
—Biology
"Health Physics and Radiation Protection," US NRC, Oak Ridge, Tennessee (1986)

Experience:
1986–Present: Illinois Department of Nuclear Safety
1985–1985: Georgia Baptist Hospital, Internship, Medical Physics, Atlanta, Georgia
1985–1985: Emory University, X-Ray, Nuclear Medicine, Calibration, Atlanta, Georgia
19893–1984: Loyola University, Research Technician, Maywood, Illinois

Joanne B. Kark: Radioactive Materials License Inspector. Performs reviews of radioactive materials license applications and performs inspections of radioactive materials licensees.

Training:
Graduate work toward M.S.—Colorado State University (1985)
—University of Tennessee (1982)
—Health Physics
B.S.—Villanova University (1975)
—Biology
Certificate—St. Joseph's Hospital and Medical Center School of Nuclear Medicine Technology Paterson, New Jersey (1977)
"Inspection Procedures," US NRC, Atlanta, Georgia (1986)

Experience:
1986–Present: Illinois Department of Nuclear Safety
1981–1984: Oak Ridge National Laboratory, Health and Safety Research Division, Senior Laboratory Technician
1979–1981: Oak Ridge National Laboratory, Biology Division, Biological Technician
1977–1979: Radiology Associates, Albert Einstein Medical Center, No. Division, Nuclear Medicine Technologist.
1976–1977: SpectroChem Laboratories, Inc., Analytical Chemistry Technician

John W. Cooper: Manager, Office of Environmental Safety. Provides technical support to the Division of Nuclear Materials on an as needed basis.

Training:
Ph.D—University of Iowa (1971)
—Radiation Biology
M.S.—University of Iowa (1966)
—Pharmacy
B.S.—Drake University (1960)
—Pharmacy
"Industrial Ventilation Systems," OSHA Training Institute, Illinois (1983)
"Respirator Safety for CSHO's," OSHA Training Institute, Illinois (1982)

Experience:
1981–Present: Illinois Department of Nuclear Safety
1975–1981: U.S. Nuclear Regulatory Commission, Region III, Inspector and license reviewer
1971–1975: Allegheny General Medical Center, Radiation Biology Laboratory
1964–1971: University of Iowa, Radiation research and teaching

Apparao Devata: Chief, Division of Medical Physics. Provides technical support to the Division of Nuclear Materials on an as needed basis.

Training:
Ph.D.—University of New Orleans (1975)—Physics
M.S.—University of New Orleans (1972)—Physics
MSc.—Andhra University (1968)—Applied Physics
BSc.—Andhra Loyola College (1965)—Mathematics
Experience:
1985–Present: Illinois Department of Nuclear Safety
1985: Medical Physics Consultant
1983–1985: St. James Hospital Medical Center, Chicago Heights, Illinois, Medical physicist
1975–1983: St. Joseph's Hospital, Elgin, Illinois, Medical physicist
1975: Mt. Sinai Hospital, Chicago, Illinois, Medical physicist
VA Hines Hospital, Hines, Illinois, Medical physicist
1969–1975: University of New Orleans Research and teaching

Reference: Illinois Program Statement, Section III, "Implementation of the Agreement State Program for Materials Licenses," Section IV.A.3, "Staff Requirements" and Appendix 5, "Current Agreement State Staff Positions: Byproduct Material, Source Material and Special Nuclear Materials in Quantities Not Sufficient to Form a Critical Mass."

b. Regulatory Oversight of Uranium Conversion Plant

i. Personnel

There are two plants in the United States which convert natural uranium oxide (yellowcake) to uranium hexafluoride. These activities are conducted pursuant to source materials licenses issued by the NRC. Under the proposed Agreement, the source material license for the Allied Chemical uranium conversion facility located in Metropolis will be transferred to Illinois.* The Office of Radiation Safety, Division of Nuclear Materials will be responsible for regulatory oversight with technical support from the Offices of Environmental Safety and Nuclear Facility Safety. Overall IDNS will commit 0.6 full-time equivalent professionals effort to this program. Key staff assigned to this program together with summaries of their duties and training and experience are:

(a) Staff previously identified in the materials program (Section 20.a)

Jou-Guang (Joe) Hwang, Y. David La Touche, Bruce J. Sanza, John W. Cooper.

(b) Other IDNS staff:

Lih-Ching Chu: Chief, Division of Radiochemistry Laboratories, Office of Environmental Safety. Supervises analytical support for all Department programs. Provides technical support in radiochemistry and radioanalysis.

Training:
Ph.D—Washington University (1981)—Chemistry
M.A.—Washington University (1981)—Chemistry
M.S.—East Texas State University (1976)—Chemistry
B.S.—Tamkang College of Arts and Sciences (1971)—Chemistry
"Vax Applications Manager," Canberra Industries, Inc., CT, 1984
"Introduction to S–90–VMS Apogee System Operations," Canberra Industries, Inc., CT, 1984

Experience:
1984–Present: Illinois Department of Nuclear Safety
1981–1984: Illinois Department of Energy and Natural Resources
1976–1981: Washington University, St. Louis, Missouri
1974–1976: East Texas State University, Commerce, Texas
1973–1974: Young-Ho Middle School, Young-Ho, Taiwan, ROC
1971–1973: Military Service, Taiwan, ROC

David A. Filler: Assistance Chief, Division of Radiochemistry Laboratories, Office of Environmental Safety. Provides radiochemistry support.

Training:
Ph.D.—University of Michigan, (1976)—Biochemistry
M.S.—University of Michigan, (1973)—Biochemistry
B.S.—Purdue University (1969)—Chemistry
"Vax Applications Manager," Canberra Industries, Inc., Connecticut (1984)
"Introduction to S–90–VMS Apogee System Operations," Canberra Industries, Inc., Connecticut (1984)
"Auditor Training," Gilbert/Commonwealth (1984)
"Radiological Monitor," Indiana Department of Civil Defense and Emergency Management (1983)
"Radiochemistry for State Regulatory Personnel," NRC (1983)
"Radiological Monitoring, Sampling and Analysis of Nuclear Facilities," US DOE (1983)
"Radiological Emergency Response Training for State Government Emergency Preparedness Personnel," FEMA/US DOE (1982)

Experience:
1984–Present: Illinois Department of Nuclear Safety
1981–1984: Indiana State Board of Health, Radiochemistry Lab, Indianapolis, Indiana
1977–1981: Indiana University Medical Center, Indianapolis, Indiana
1976–1977: St. Jude Children's Research Hospital, Memphis, Tennessee

James F. Scheweitzer: Health Physicist, Office of Environmental Safety. Serves as a specialist in environmental monitoring and will provide technical support and guidance in this area.

Training:
Ph.D.—Purdue University (1985)—Environmental Toxicology
M.S.—Purdue University (1981)—Health Physics
B.S.—Randolph-Macon College (1976)—Biology
Environmental Laws and Compliance Course
Short Course: Uranium and Thorium: A Perspective on the Hazard (1986)

Experience:
1986–Present: Illinois Department of Nuclear Safety
1985–1986: Purdue University, Office of Radiological and Chemical Control
1980–1980: Purdue University, Office of Radiological and Chemical Control

Michael H. Momeni: Chief, Low-Level Waste Siting Section, Office of Environmental Safety. Provides radiological and environmental support for the Office of Environmental Safety and will provide technical support for Allied Chemical regulatory actions.

Training:
Ph.D—University of Iowa—Biophysics/Radiation Biology
M.S.—University of Iowa—Nuclear Physics
B.A.—Luther College—Physics-Mathematics

Experience:
1986–Present: Illinois Department of Nuclear Safety
1985–1986: Scientist, Oak Ridge Associated Universities, Oak Ridge, Tennessee
1983–1985: Professor-Director of Health Physics Program, San Diego State University, San Diego, California
1975–1983: Senior Scientist, Argonne National Laboratory, Argonne, Illinois
1970–1975: Biophysicist-Lecturer, The University of California, Davis, California
1962–1963: Science Teacher, Urbana Consolidated Schools, Iowa

Gary Wright: Manager, Office of Nuclear Facility Safety. Provides technical assistance concerning engineering principles and emergency planning and response.

Training:
—Sangamon State University (1974)
—Degree approx. half complete in Public Administration
M.S.—University of Illinois (1965)—Nuclear Engineering
B.S.—Millikin University (1964)—Physics/Mathematics
"Management Education Workshop," Ill. Dept. of Personnel, Champaign (1978)
"International Symposium on Migration of Tritium in the Environment," International Atomic Energy Agency, California (1978)
"Radiological Emergency Response Operations," US NRC, Nevada (1977)
"Workshop on Collective Bargaining for Public Employees," Ill. Dept. of Personnel (1976)
"Administrative and Organizational Behavior," Ill. Dept. of Public Health (1975)
"Professional Engineering Review," Univ. of Ill. (1974)
"Response of Structures to External Forces, i.e., Earthquakes, Tornados, etc.," Penn. State Univ. (1968)

Experience:
1980–Present: Illinois Department of Nuclear Safety
1973–1980: Illinois Department of Public Health
1967–1973: Sangamo-Weston Electronics Company, Springfield, Illinois
1965–1967: Westinghouse Electric Company, Forrest Hills, Pennsylvania

Reference: Illinois Program Statement, Section III.D," Allied Chemical Uranium Conversion Facility," Appendix 5, and Appendix 9, "Current Agreement State Staff Positions: Low-Level Radioactive

*The Commission is considering whether continued NRC regulation of the Allied Chemical Plant is necessary in the interest of the common defense and security of the United States.

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Waste Management Program, Office of Environmental Safety."

c. Licensing and Regulation of Permanent Disposal of Low-Level Radioactive Waste

i. Personnel

The Office of Environmental Safety has responsibility for the low-level waste (LLW) management regulatory program which includes the Sheffield site and the regional waste disposal facility. The assessment of the regulatory framework is included under Criterion 9, "Radioactive Waste Disposal." The LLW and transportation management program is staffed by 13 technical staff members. The Manager of the Office of Environmental Safety will provide overall supevision and management and the Chief of the Office's Division of Nuclear Chemistry will provide laboratory support. Technical support will also be available from the Division of Nuclear Materials. These personnel and summaries of their duties are:

(a) Staff previously identified in the materials or uranium conversion plant regulatory oversight programs (Section 20 a and b):

Michael H. Momeni, Lih-Ching Chu, John W. Cooper, James F. Schweitzer.

(b) Other IDNS Staff:

Robert A. Lommler: Chief, Division of Waste and Transportation. Has responsibilities for implementing the Illinois LLW management act, supervises staff in the LLW program and manages the spent nuclear fuel and LLW shipment inspection program.

Training:

B.S.—Kent State University (1971)—Chemistry
"10 CFR 61," US NRC, Springfield, Illinois (1986)
"Incinerator Basics," Univ. of California, Charlotte, N.C. (1986)
"Radioactive Material Transportation Workshop," US DOE, Chicago, Illinois (1985)
"10 CFR 61 Compliance," TMS, Inc., Washington, D.C. (1984)
"Radiological Protection Officer Course," U.S. Army (1978)
"Chemical Officer Advanced Course," U.S. Army (1978–1979)
"Transportation of Hazardous Materials by Air," US DOT (1972)
"Chemical Officer Basic Course," U.S. Army (1971)

Experience:

1984–Present: Illinois Department of Nuclear Safety
1979–1983: U.S. Army, Radiation Safety Officer, Ft. Riley, Kansas
1975–1978: U.S. Army, Mannehim, West Germany
1971–1975: U.S. Army, Edgewood, Maryland

Michael Klebe: Nuclear Safety Engineer. Serves as technical resource on LLW management environmental problems, decomissioning and disposal facility siting.

Training:

M.S.—Montana College of Mineral Science and Technology (1982)—Mining Engineering
B.S.—Montana College of Mineral Science and Technology (1980)—Mining Engineering

Experience:

1986–Present: Illinois Department of Nuclear Safety
1982–1986: Shell Mining Company, Houston, Texas and Elkhart, Illinois, Mining Engineer

David Flynn: Geologist. Evaluates geological and hydrologic factors relating to LLW management.

Training:

B.S.—Southern Illinois University (1979)—Geology
"Uranium and Thorium: A Perspective on the Hazard," Radiation Safety Associates, Springfield, Illinois (1986)
"Corrective Actions for Containing and Controlling Ground Water Contamination," National Water Well Association, Columbus, Ohio (1986)
"A Standardized System for Evaluation of Groundwater Pollution Potential Using Hydrogeologic Setting," National Water Well Association, Denver, Colorado (1986)
"Groundwater Pollution and Hydrology," Princeton & Associates, Miami, Florida (1986)
"Engineering and Design of Waste Disposal Systems," Civil Engineering Department, Colorado State University, Fort Collins, Colorado (1985)
""Groundwater Monitoring Workshop," Illinois Department of Energy and Natural Resources, Champaign, Illinois (1984)
"Radiological Emergency Response Training for State and Local Government Emergency Preparedness Personnel," FEMA, Nevada Test Site (1983)

Experience:

1983–Present: Illinois Department of Nuclear Safety
1981–1983: Mine Geologist, Atlas Minerals Corporation, Moab, Utah
1980–1981: Associate Mine Geologist, Rancher's Exploration & Development Corporation, Albuquerque, New Mexico
1979–1980: Junior Geologist, Rancher's Exploration & Development Corporation, Albuquerque, New Mexico

Shannon M. Flannigan: Geologist. Reviews, interprets and evaluates geologic hydrologic, physical and environmental data related to environmental impact, design, location, construction and decommissioning of facilities.

Training:

B.S.–Drake University (1978) Geology
A.A.–Springfield College in Illinois (1976)–Business
"Radiological Emergency Response," FEMA, Nevada (1986)
"Groundwater Contaminant Transport Modeling," Princeton University, Princeton, New Jersey (1986)
"A standardized System for Evaluating Groundwater Pollution Using Hydrogeologic Setting," Denver, Colorado (1986)
"Groundwater Pollution & Hydrology," Princeton Associates, Princeton, New Jersey (1986)
"Borehole Geophysics Techniques for Solving Groundwater Problems," National Water Well Association, Denver, Colorado (1986)
"Soil Mechanics and Foundations," Lincoln Land Community College, Springfield, Illinois (1981)
"Environmental Risk Assessment," Sagamon State University, Springfield, Illinois (1985)
"Recognition, Evaluation, and Control of Ionizing Radiation," OSHA Training Institute, Illinois (1985)

Experience:

1985–Present: Illinois Department of Nuclear Safety
1984–1985: Hanson Engineers, Inc. Springfield, Illinois
1981–1984: Veesay Geoservice, Inc. Denver, Colorado
1978–1981: Hanson Engineers, Inc. Springfield, Illinois.

George T. FitzGerald: Nuclear Safety Engineer I. Principally responsible for geology.

Training:

B.A.–Humboldt State University, California (1968)–Geology
Post-Graduate Work: Education, Humboldt State University, Economic Evaluation, Colorado School of Mines, Golden, Colorado

Experience:

1986–Present: Illinois Department of Nuclear Safety
1984–1986: Boliden Minerals, Inc., Silver City, New Mexico
1980–1984: Minatome Corporation, Denver, Colorado
1975–1980: SOHIO, Seboyeta, New Mexico

1968–1975: Kerr McGee Corporation Grants, New Mexico

Dana M. Willaford: Nuclear Safety Supervisor. Responsible for overall operation of waste generator registration and inspection program.

Training:

M.P.A.–Sangamon State University (1983)
B.A.–University of Illinois (1981)–Political Science, Math/Physics Minor
"Radioactive Materials Transportation Course," US DOE, Kansas City, Missouri (1986)
"Uranium and Thorium: A Perspective on the Hazard," Radiation Safety Associates, Inc., Springfield, Illinois (1986)
"Recognition, Evaluation, and Control of Ionizing Radiation," OSHA, Des Plaines, Illinois (1985)
"Environmental Laws and Regulations Compliance Course," government institutes, Washington, D.C. (1985)
"Radiological Emergency Response Operations Course," FEMA, Nevada (1983)

Experience:

1983–Present: Illinois Department of Nuclear Safety
1981–1983: Illinois Department of Nuclear Safety/Sangamon State University (Graduate Public Service Intern)
1977–1981: University of Illinois (Student Worker)

Tim Runyon: Nuclear Safety Inspector. Assists the Chief, Waste & Transportation Management.

Training:

A.S.–Illinois Central College–Radiologic Technology
"Hazardous Materials Transportation Course," ISP, Illinois State Policy Academy, Springfield, Illinois (1985)
"Review of USDOT Regulations," US NRC, Hanford, Washington (1985)
"Evaluation and Control of Ionizing Radiation," OSHA, Argonne National Laboratory (1981)
"Emergency Response for Radiological Accidents," REECO, Las Vegas, Nevada (1981)

Experience:

1985–Present: Illinois Department of Nuclear Safety, Office of Environmental Safety
1979–1985: Illinois Department of Nuclear Safety, Office of Radiation Safety

Stephen B. Shafer: Nuclear Safety Inspector II. Performs inspections and health physics surveys.

Training:

Graduate Classes (non-degree) University of Illinois (1984)
B.S.–Western Illinois University (1983)–Geophysics
Hazardous Materials Transportation Enforcement Course, Illinois State Police, Springfield, Illinois (1986)
Radiological Emergency Response Operations Course, FEMA, Nevada (1986)
Short Course: Uranium and Thorium: A Perspective on the Hazard (1986)

Experience:

1986–Present: Illinois Department of Nuclear Safety
1984–1984: Illinois Department of Nuclear Safety, Summer Intern

Eric Schwing: Attorney. Provides legal counsel to the Director and technical staff in low-level radioactive waste management.

Training:

Ph.D. Candidate (presently enrolled), Michigan State University, Resource Development/Environmental Toxicology
Doctor of Laws (1982), Thomas M. Cooley Law School
B.A.—Michigan State University (1976) —Chemistry

Experience:

1986–Present: Illinois Department of Nuclear Safety
1978–1986: Michigan Department of Public Health
1973–1978: Michigan State University
1971–1972: William Beaumont Geneal Hospital (U.S. Army)

Gregory P. Crouch: Chief, Division of Radioecology. Directs the Office's environmental surveillance program.

Training:

M.P.H.—University of Minnesota (1986) —Environmental Health
M.S.—Purdue University (1977) —Bionucleonics/Health Physics
B.S.—Purdue University (1975) —Biology
"Seminar on the Transportation of Nuclear Materials," US NRC, Springfield, Illinois (1983)
"Radiological Emergency Response Course," US DOE/FEMA, Nevada Test Site (1983)
"Inspection Procedures Course," US NRC, Atlanta, Georgia (1982)

Experience:

1986–Present: Illinois Department of Nuclear Safety
1981–1984: Illinois Department of Nuclear Safety
1977–1978: Indiana University Medical Center, Assistant Radiation Safety Officer
1976–1977: Purdue University, Radiological Services, Graduate Assistant

Gregory J. Shott: Nuclear Safety Supervisor. Supervises the Department's—Mobile Radiochemistry Laboratory.

Training:

M.S.—University of Michigan (1985), Fisheries
B.S.—University of New Hampshire (1981), Biology

Experience:

1986–Present: Illinois Department of Nuclear Safety
1985–1986: Environmental & Chemical Sciences, Inc.; Environmental Scientist
1984: Lawrence Livermore National Laboratory; Research Associate, Environmental Intern Program
1981–1984: University of Washington, Laboratory of Radiation Ecology, Research Assistant

David D. Ed: Assistant Manager, Office of Environmental Safety.

Training:

B.S.—University of Illinois, Urbana (1971)
—Chemistry
"Radon Training for State Personnel," US EPA (1986)
"Comprehensive Health Physics," Rockwell International (1985)
"Biological Effects of Ionizing Radiation," Harvard University, School of Public Health (1982)
"Dose Projection, Accident Assessment and Protective Action Decision Making for Radiological Emergency Response," US NRC, FEMA (1980)
"Environmental Radiation Surveillance," Georgia Institute of Technology (1977)
"Radiological Emergency Response Operations Training," US NRC, ERDA (1977)
"Environmental Source Term Modeling," University of Chicago, Argonne National Laboratory (1971)

Experience:

1980–Present: Illinois Department of Nuclear Safety
1973–1980: Illinois Department of Public Health
1972–1973: Illinois Environmental Protection Agency

Abdul Khalique: Nuclear Safety Scientist I. Plans, implements and participates in radioanalytical programs.

Training:

Ph.D.—University of Birmingham, England (1976), Analytical Chemistry
M.S.—University of Karachi, Pakistan (1967), Chemistry
B.S.—University of Karachi, Pakistan (1964)
Quality Control Course, University of Business Administration, University of Karachi, Pakistan 1964)

Experience:

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1981–1986: Department of Pharmacology, Southern Illinois University School of Medicine
1975–1980: Glaxo Laboratories (Pakistan), Ltd.
1968–1970: Opal Laboratories, Ltd. (Pakistan)

Melanie A. Hamel: Health Physicist. Functions as a health physics specialist in the environmental monitoring division.

Training:
B.S.—University of Lowell, MA (1977), Health Physics
University of Lowell, MA (1977), Environmental Monitoring and Surveillance, Health Physics Certification Review, Medical Health Physics
"Environmental Law and the Citizen," Sangamon State University, Springfield, Illinois
"Post-Accident Radiation Assessment," Northwestern University, Illinois
"Radiation Protection Instrumentation," Harvard University, Boston, MA
"Radon Training Session for State Personnel," US EPA

Experience:
1982–Present: Illinois Department of Nuclear Safety
1977–1981: Yankee Atomic Electric Company
1975: University of Lowell, Research Reactor Facility, Health Physics Technician

Michael V. Madonia: Nuclear Safety Associate. Performs technical duties concerning nuclear facility monitoring and environmental radiation control.

Training:
B.S.—University of Illinois
—Nuclear Engineering, Radiation Protection and Shielding
"Air Sampling for Radioactive Materials," Oak Ridge Associated Universities; Oak Ridge, Tennessee (1986)
"Personal Computer Applications in Health Physics," TMS, Inc.; Boston, MA (1986)
Nuclear-General Employee Training (NGET), Commonwealth Edison, Chicago, Illinois (1985)
"Radiation Detection and Measurement—Advanced Course," Eberline Analytical, Albuquerque, New Mexico (1985)
"Fundamentals of Ground Water Contamination," Geraghty & Miller, Chicago, Illinois (1985)

Experience:
1985–Present: Illinois Department of Nuclear Safety
1983–1984 (Summers): Illinois Department of Nuclear Safety

Richard Walker: Nuclear Policy Analyst. Performs review and analysis of Federal and State regulations.

Training:
Ph.D—Purdue University (1976)
—Sociology (Research Methods and Statistics)
M.S.—Purdue University (1974)
—Sociology
B.S.—Marietta College (1972)
—Sociology
Environmental Radiation Surveillance, Harvard University, Massachusetts (1985)
"Fundamentals of Radiation Safety," Radiation Safety Associates (1985)

Experience:
1985–Present: Illinois Department of Nuclear Safety
1978–1984: Chairman, Department of Sociology, Blackburn College, Carlinville, Illinois
1976–1978: Department of Sociology Muhlenberg College, Allentown, Pennsylvania

Teresa A. Adams: Nuclear Policy Analyst. Performs staff functions coordinating and assisting with the direction of office programs.

Training:
B.A.—Wellesley College (1981)
—German
Massachusetts Institute of Technology, Department of Urban Studies and Planning (1982–1984)
University of Hanover, West Germany; Department of Planning and Architecture (1981–1982)
Additional coursework in decision analysis, fundamentals of radiation protection, hazardous waste minimization

Experience:
1985–Present: Illinois Department of Nuclear Safety
1984: Parliamentary Research Service; Bonn, West Germany
1982–1984: Worked on a variety of projects dealing with policy development and dispute resolution in environmental issues

Paul E. Seidler: Nuclear Policy Analyst. Responsible for implementing the Illinois public participation plan, also performs as liaison with local government groups.

Experience:
M.A.—University of Chicago (1986)
—Public Policy
B.A.—University of Illinois (1983)
—Political Science, Communications Studies
Urban & Regional Information Systems Association, 1986 Annual Conference (1986)

Experience:
1986–Present: Illinois Department of Nuclear Safety
1985–1986: University of Chicago, Office of the Comptroller
1985–1985: Illinois Bureau of the Budget
1984–1985: Compass Health Plans
1984–1984: U.S. Senator Paul Simon
1982–1982: Creative Research Associates

Reference: Illinois Program Statement, (Section II.C.1.a), "Low-Level Waste Management," (Section II.C.1.b) "Sheffield Low-Level Waste Disposal Facility," Section IV.B, "Low-Level Radioactive Waste Management Program," and Appendices 5 and 9.

21. *Conditions Applicable to Special Nuclear Material, Source Material, and Tritium.* Nothing in the State's regulatory program shall interfere with the duties imposed on the holder of the materials by the NRC, for example, the duty to report to the NRC, on NRC prescribed forms (1) transfers of special nuclear material, source material, and tritium; and (2) periodic inventory data.

The State's regulations do not prohibit or interfere with the duties imposed by the NRC on holders of special nuclear material owned by the U.S. Department of Energy or licensed by NRC, such as the responsibility of licensees to supply to the NRC reports of transfer and inventory.

Reference: 32 ILL. Adm. Code 310.10.

22. *Special Nuclear Material Defined.* The definition of special nuclear material in quantities not sufficient to form a critical mass, as contained in the Illinois regulations, is uniform with the definition in 10 CFR Part 150.

Reference: 32 ILL. Adm. Code 310.20, Definition of Special Nuclear Material in Quantities Not Sufficient to Form a Critical Mass.

Administration

23. *Fair and Impartial Administration.* The Illinois statute and regulations provide for administrative and judicial review of actions taken by the Department of Nuclear Safety.

Reference: 32 Ill. Adm. Code Parts 200, 310.90, 310.110, 330.500, Part 400.

24. *State Agency Designation.* The Illinois Department of Nuclear Safety has been designated as the State's radiation control agency.

References: Enabling statute for Illinois Department of Nuclear Safety, Ill. Rev. Stat. 1985, ch. 127, par. 63b17.

25. *Existing NRC Licenses and Pending Applications.* The Department has made provision to continue NRC licenses in effect temporarily after the transfer of jurisdiction. Such licenses will expire on the date of expiration specified in the NRC license.

With respect to the radioactive materials covered by the NRC license issued to Kerr-McGee Chemical Corporation for the West Chicago Rare Earth's Facility (Docket No. 40–2061–SC) the NRC staff has determined that the radioactive materials at the facility are most appropriately treated as thorium mill tailings, i.e., byproduct materials are defined in Section 11e.(2) of the Atomic Energy Act of 1954, as amended, whereas the thorium-bearing materials recovered from off-site residential properties and sewer treatment plant in West Chicago and stored at the Kerr-McGee facility are source material. The former material [11e(2) by product material] will not be subject to the Agreement and NRC will retain regulatory jurisdiction. The latter material will be regulated by IDNS when the Agreement becomes effective.

Radiologically contaminated materials in Kress Creek and in Reed-Keppler Part, West Chicago have also been determined by NRC staff to be source material. The former is the subject of an Atomic Safety and Licensing Board (ASLB) Proceeding [Docket 40–2061–SC (ASLBP No 84–502–01–SC)]. In the Kress Creek proceeding, in which Kerr-McGee and the People of the State of Illinois are parties, the ASLB found that the presence of this material in Kress Creek and the West Branch of the DuPage River probably resulted from the conduct of an NRC (and AEC) licensed activity at the West Chicago Rare Earths Facility. The ASLB, however, declined to require clean-up of the Creek and River based upon its analysis of the hazard posed by the radiologically contaminated material. The NRC staff has appealed that decision to the Atomic Safety and Licensing Appeal Board, but a decision on appeal has not yet been issued. Jurisdiction over source material in Kress Creek and the West Branch of the DuPage River will be relinquished to Illinois when the Agreement becomes effective. At that time, the NRC staff will request termination of the ASLB proceeding. Jurisdiction over the source material in Reed-Keppler Park will also be relinquished to Illinois when the Agreement becomes effective.

With respect to the Sheffield low-level radioactive waste disposal site, jurisdiction will be relinquished by the NRC to Illinois when the Agreement becomes effective. At that time, NRC staff will request termination of the ASLB proceeding [Docket 27–39–SC (ASLB No. 78–374–01–OT)].

Reference: 32 ILL. ADM. CODE 330.360.

26. *Relations With Federal Government and Other States.* There should be an interchange of Federal and State information and assistance in connection with the issuance of regulations and licenses or authorizations, inspection of licensees, reporting of incidents and violations, and training and education problems.

The proposed agreement declares that the State will use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that the State's program will continue to be compatible with the Commission's program for the regulation of like materials.

Reference: Proposed Agreement between the State of Illinois and the Nuclear Regulatory Commission, Article VI.

27. *Coverage, Amendments, Reciprocity.*

The proposed Illinois agreement provides for the assumption of regulatory authority over the following categories of materials within the State:

(a) Byproduct material, as defined by Section 11e(1) of the Atomic Energy Act, as amended.

(b) Source materials.

(c) Special nuclear materials in quantities not sufficient to form a critical mass.

(d) The land disposal of source, by-product and special nuclear material received from other persons.

Reference: Proposed Agreement, Article I.

Provision has been made by Illinois for the reciprocal recognition of licenses to permit activities within Illinois of persons licensed by other jurisdictions. This reciprocity is like that granted under 10 CFR Part 150.

Reference: 32 ILL. ADM. CODE 330.900.

28. *NRC and Department of Energy Contractors.*

The State's regulations provide that certain NRC and DOE contractors or subcontractors are exempt from the State's requirements for licensing and registration of sources of radiation which such persons receive, possess, use, transfer, or acquire.

Reference: 32 ILL. ADM. CODE 310.30.

III. Staff conclusion

Section 274d of the Atomic Energy Act of 1954, as amended, states;

> The Commission shall enter into an agreement under subsection b of this section with any State if:
>
> (1) The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and
>
> (2) The Commission finds that the State program is in accordance with the requirements of subsection o, and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed amendment.

The staff has concluded that the State of Illinois meets the requirements of Section 274 of the Act. The State's statutes, regulations, personnel, licensing, inspection and administrative procedures are compatible with those of the Commission and adequate to protect the public health and safety with respect to the materials covered by the proposed agreement. Since the State is not seeking authority over uranium milling activities, subsection o, is not applicable to the proposed Illinois agreement.

Dated at Bethesda, Maryland, this 24th day of December 1986.

For the U.S. Nuclear Regulatory Commission.

G. Wayne Kerr,

Director, Office of State Programs.

Appendix A—Proposed Agreement Between the United States Nuclear Regulatory Commission and the State of Illinois for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant To Section 274 of the Atomic Energy Act of 1954, as Amended

WHEREAS, the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7 and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1) and (2) of the Act, source materials and special nuclear materials in quantities not sufficient to form a critical mass; and,

WHEREAS, the Governor of the State of Illinois is authorized under Illinois Revised Statutes, 1985, ch. 111 ½, par. 216b and ch. 111 ½, par. 241–19 to enter into this Agreement with the Commission; and,

WHEREAS, the Governor of the State of Illinois certified on _____ that the

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State of Illinois (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and,

WHEREAS, the Commission found on _____ that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and,

WHEREAS, the State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

WHEREAS, the Commission and the State recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to this Agreement; and,

WHEREAS, this Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

NOW, THEREFORE, IT IS HEREBY AGREED between the Commission and the Governor of the State, acting in behalf of the State as follows:

Article I

Subject to the exceptions provided in Articles II, IV and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7 and 8, and Section 161 of the Act with respect to the following:

A. Byproduct material as defined in section 11e.(1) of the Act;

B. Source materials;

C. Special nuclear materials in quantities not sufficient to form a critical mass; and,

D. The land disposal of source, byproduct and special nuclear material received from other persons.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with rspect to regulation of:

A. The construction and operation of any production or utilization facility;

B. The export from or import into the United States of byproduct, source or special nuclear material, or of any production or utilization facility;

C. The disposal into the ocean or sea of byproduct, source or special nuclear waste materials as defined in regulations or orders of the Commission;

D. The disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission; and,

E. The extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material.

Article III

This Agreement may be amended, upon application by the State and approval by the Commission, to include the additional area specified in Article II, paragraph E, whereby the State can exert regulatory control over the materials stated therein.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under subsection 161 b. or i. of the Act to issue rules, regulations or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will use its best efforts to cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible. The State will use its best efforts to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of like materials. The State and the Commission will use their best efforts to keep each other informed of proposed changes in their respective rules and regulations and licensing, inspection and enforcement policies and criteria and to obtain the comments and assistance of the other party thereon.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any Agreement State. Accordingly, the Commission and the State agree to use their best efforts to develop appropriate rules, regulations and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act. The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act.

Article IX

This Agreement shall become effective on _____, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at _____, in triplicate, this _____ day of _____.

For the United States Nuclear Regulatory Commission.

Chairman

For the State of Illinois.

Governor

[FR Doc. 86-29382 Filed 12-30-86; 8:45 am]

BILLING CODE 7590-01-T

POSTAL RATE COMMISSION

[Order No. 743, Docket No. A87-9]

Fackler, Alabama 35746; Order Accepting Appeal and Establishing Procedural Schedule

Issued February 5, 1987.

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice-Chairman; John W. Crutcher; Henry R. Folsom; Patti Birge Tyson.

Docket number: A87-9.

Name of affected post office: Fackler, Alabama 35746.

Name(s) of petitioner(s): Charles E. Stewart, Jr.

Type of determination: Consolidation.

Date of filing of appeal papers: February 2, 1987.

Categories of issues apparently raised:

1. Effect on community [39 U.S.C. 404(b)(2)(A)].

2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders: (A) The record in this appeal shall be filed on or before February 17, 1987.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Cyril J. Pittack,

Acting Secretary.

Appendix

February 2, 1987—Filing of Petition
February 5, 1987—Notice and Order of Filing of Appeal
February 27, 1987—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].
March 9, 1987—Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)].
March 30, 1987—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].
April 14, 1987—Petitioner's Reply Brief should petitioner choose to file one [*see* 39 CFR 3001.115(d)].
April 21, 1987—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].
June 2, 1987—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 87-2769 Filed 2-10-87; 8:45 am]

BILLING CODE 7715-01-M

[Order No. 742; Docket No. A87-10]

Rogers, Nebraska 68659; Order Accepting Appeal and Establishing Procedural Schedule

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice-Chairman; John W. Crutcher; Henry R. Folsom; Patti Birge Tyson.

Issued February 4, 1987.

Docket number: A87-10.

Name of affected post office: Rogers, Nebraska 68659.

Name(s) of petitioner(s): Charlotte L. Keller.

Type of determination: Consolidation.

Date of filing of appeal papers: February 2, 1987.

Categories of issues apparently raised:

1. Effect on community [39 U.S.C. 404(b)(2)(A)].

2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders: (A) The record in this appeal shall be filed on or before February 17, 1987.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Cyril J. Pittack,

Acting Secretary.

Appendix

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April 21, 1987—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].
June 2, 1987—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(a)(5)].

[FR Doc. 87-2804 Filed 2-10-87; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24049; File No. SR-OCC-86-27]

Self-Regulatory Organization; Filing of Proposed Rule Change by Options Clearing Corp.

The Options Clearing Corporation ("OCC"), on December 31, 1986, filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") concerning the pledge of non-equity options under OCC's options pledge program. As decribed in greater detail below and in OCC's filing, the proposed rule change authorizes OCC to offer its non-equity options pledge program to all clearing members on a permanent basis [1] and permits clearing members to exercise or sell pledged non-equity options. The Commission is publishing this notice to solicit comments on the proposed rule change.

I. Background

The proposal amends OCC Rule 614, which governs pledges of option positions and which previously applied only to equity options.[2] The proposal

[1] On October 31, 1986, OCC filed a similar proposal that provided the non-equity options pledge program with temporary effectiveness through February 28, 1987, at which time the program would terminate. *See* Securities Exchange Act Rel. No. 23980 (January 7, 1987), 52 FR 3187 (File No. SR-OCC-86-24). The instant proposal, if approval by the Commission, would allow the non-equity options pledge program to become permanent.

[2] OCC began its Option Pledge Program for equity options in March 1983 with the adoption of OCC Rule 614. *See* Securities Exchange Act Rel. No. 19956 (July 19, 1983), 48 FR 33956 (File No. SR-OCC-82-25).

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follows a pilot program that OCC introduced in March 1986.[3] The pilot permitted a limited number of clearing members to pledge non-equity options, but the pilot prohibited clearing members from selling or exercising pledged non-equity options.

II. Description

A. Rights of Parties

OCC is expanding its Rule 614 to cover the rights and obligations of the pledgees, clearing members, and OCC, in the event a pledged option is sold or exercised. First, under the rule, OCC must deliver to pledgees and clearing members, on the business day following the exercise or sale of a pledge option ("Report Day"), a written report stating which pledge options have been exercised or sold. Second, any clearing member with an overpledged position [4] must pay an "Overpledged Value Amount" to OCC, prior to 9:00 a.m. (Central Time) on Report Day. The Overpledged Value Amount consists of a cash deposit equal to the current market value of the option contract for each pledged option that gave rise to an overpledged position by having been exercised or sold.[5] As described below, if OCC fails to receive the Overpledged Value Amount (*i.e.*, if a clearing member fails to make the required deposit), OCC must take action under the terms of the second paragraph of OCC Rule 614(i). Third, OCC is authorized to withdraw the Overpledged Value Amount from the clearing member's bank account.[6] Fourth, OCC, as promptly as practicable after it receives the Overpledged Value Amount from the clearing member, must deposit such amount in the pledgee's deposit account.[7] Fifth, the pledgee has the right to receive the Overpledged Value Amount, but upon OCC's deposit of that amount into the pledgee's deposit account, the pledgee has no further right to either the pledged options that gave rise to the overpledged option position or to the proceeds thereof.

[3] *See* Securities Exchange Act Rel. No. 23087 (April 2, 1986), 51 FR 12254 (File No. SR–OCC–86–3).

[4] The term "overpledged position" means a pledged option position that has been exercised or sold.

[5] The "Overpledged Value Amount" is the product of: (1) The unit of trading for the series of options of the pledged option, and (2) the current highest asked price on the premium for that option series at or about the close of trading on the preceding business day. Additionally, OCC may fix a different value in accordance with OCC Rule 601.

[6] *See* OCC Rule 614(a).

[7] The "Pledgee's Deposit Account" or "collateral account" is an account with a clearing bank designated by the Pledgee for accepting cash deposits. *See* OCC Rule 614(a).

B. Failure to Receive Deposit

If OCC fails to receive the Overpledged Value Amount from the clearing member on the Report Day, special procedures apply as set forth in OCC Rule 614(i). Under subparagraph (1) of Rule 614(i), the sales or exercises are reallocated pursuant to subparagraph (f)(2) of Rule 614. Rule 614(f)(2) generally requires: (1) Reallocation of the sales and exercises to the primary account and then to the pledge accounts on a proportional basis, and (2) establishment of a short position in the Primary Account for any remaining sales after the long positions have been closed out. Under subparagraph (2), OCC is required: (1) To suspend the defaulting clearing member as promptly as practicable, and (2) deposit the proceeds of each pledged option that had been sold into the pledgee's deposit account. The terms of subparagraphs (1) and (2) are not modified by this rule change.

Subparagraph (3) deals with pledged options that have been exercised. In event of a clearing member's failure to pay the cash deposit, it requires OCC to notify the clearing member to whom the exercised option has been assigned (*i.e.*, the clearing member on the other side of the default): (1) To close out the option contract through buy-in or sell-out procedures and (2) to pay over any profit to OCC. OCC is required to deposit that settlement amount into the pledgee's deposit account. In event that the settlement amount is less than the full amount due, the deficiency shall be paid to the assigned clearing member from the following sources: (1) The funds obtained from the primary account until such funds are exhausted, and (2) the liquidating settlement account.[8]

The new text of subparagraph (3) would define "Assigned Clearing Member" (for purposes of that subparagraph) in terms of the assignee's duties with respect to: (1) Pledged equity options or Treasury securities, and (2) pledged foreign currency options. With respect to pledged equity options or Treasury securities, the close out obligations of option contracts assigned on the the previous day will be delegated to that clearing member that is obligated to deliver to or receive from the exercising clearing member (*i.e.*, the defaulting clearing member). For pledged foreign currency options, close out obligations will be delegated to the clearing member that is obligated to deliver to or receive from OCC, on the settlement date of the pledged option, the foreign currency underlying the pledged option. Because of OCC netting rules that apply in settling exercises of Treasury securities options and foreign currency options [9] and OCC's system of post-netting allocation, which instructs a clearing member to effect settlement with another clearing member, the clearing member that ultimately is obligated to settle with an exercising clearing member will not necessarily be the Assigned Clearing Member pursuant to subparagraph (3).

Subparagraph (4), which is entirely new, applies only to pledged index options. It provides that if a clearing member fails to make the required cash deposit after exercising a pledged index option, OCC promptly will deposit the amount due into the pledgee's deposit account.[10]

Subparagraph (5), which also is entirely new, applies to pledged Treasury securities options and pledged foreign currency options that net against other settlement obligations thereby relieving the exercising clearing member of the need to deliver or receive the underlying security or currency.[11] In this case, where a clearing member fails to make its required deposit, OCC will deposit into the pledgee's deposit account an amount equal to the in-the-money value of the pledged option as of the close of trading on the exercise date.[12]

Finally, the rule change: (1) Deletes Interpretation .01 (the provision that established the pilot program) from Rule 614; and (2) revises Rule 1807 to recognize the possibility that, in the event of a clearing member's insolvency, a pledgee (rather than the clearing member itself) might be entitled to receive the exercise settlement amount from the exercised index options.

[8] Upon the suspension of a clearing member, OCC must convert to cash all margins deposited with the OCC by that clearing member in all accounts. Such funds then are placed by OCC in a special account known as a "Liquidating Settlement Account." *See* OCC Rule 1104.

OCC's ultimate source of funds to make good losses resulting from the failure of a clearing member to perform its obligations under an assigned option contract is OCC's Clearing Fund. *See* OCC's By-Laws, Art. VIII, Sect. 1.

[9] *See* OCC Rules 1406 and 1605.

[10] In the case of index options, the need for buy-in and sell-out provisions is eliminated by the absence of an underlying asset to deliver or receive.

[11] With these options, as with index options, there is no obligation to be bought in or sold out.

[12] The amounts to be deposited in the deposit accounts are amounts that OCC would have paid to the clearing member in any event if the exercise has settled in due course, either as a return of margin (on equity options or currency options) or in settlement of the exercises (with foreign currency options).

III. Comments Period

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission on or before March 4, 1987. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Reference should be made to File No. SR–OCC–86–27.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L. Street, NW., Washington, DC. Copies of the filing and of any subsequent amendments also will be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: February 3, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–2846 Filed 2–10–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–15567; 811–2615]

State Street Exchange Fund (A Limited Partnership); Application

February 5, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("1940 Act").

Applicant: State Street Exchange Fund (A Limited Partnership).

Relevant 1940 Act Section: Section 8(f), and Rule 8f–1 thereunder.

Filing Date: The application was filed on October 22, 1986, and amended on December 12, 1986 and January 14, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 2, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, Washington, DC 20549. Applicant, One Financial Center, Boston, MA 02111.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Carson G. Frailey (202) 272–3037, or Special Counsel, Karen L. Skidmore, (202) 272–3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 252–4300).

Applicant's Representations

1. Applicant was organized as a limited partnership under the laws of the States of Massachusetts and California. On December 19, 1975, Applicant registered under the 1940 Act as an open-end, diversified management investment company, by filing a Form N–8A Notification of Registration. On January 2, 1976, Applicant filed a registration statement pursuant to section 8(b) of the 1940 Act.

2. On December 19, 1975, Applicant filed a registration statement under the Securities Act of 1933 ("1933 Act"), registering two million units of limited partnership interest for sale to the public. A public offering of these units began on May 20, 1976.

3. At an annual meeting on Applicant's partners held December 11, 1984, for which meeting proxy material had been filed with the Commission, the reorganization and liquidation of Applicant was approved by the requisite affirmative vote of a majority of Applicant's partnership interests ("Shares") outstanding on the record date. On the date of liquidation, May 1, 1985, 1,410,251.824 shares were outstanding, each having a net asset value of $86.72. In accordance with the approved plan of reorganization and liquidation, Applicant transferred all of its assets, including all portfolio securities, to State Street Exchange Fund, Inc. ("Successor"), a Massachusetts business corporation that is registered under the 1940 Act (File No. 811–4256) and that is the successor to Applicant, in exchange for shares of the common stock of the Successor. Thereafter, all of Applicant's shares of the common stock of Successor were distributed to partners of Applicant on the basis of one share of stock of the Successor for each Share owned on May 1, 1985. Thus, all partners of Applicant have received distributions in complete liquidation of their Shares.

4. In accordance with the foregoing, Applicant has retained no assets, no liabilities outstanding, and no securityholders. Further, Applicant is not a party to any litigation, or administrative proceeding, nor does it engage, or propose to engage, in any business activity. Certificates of cancellation have been filed for Applicant in the States of Massachusetts and California, cancelling Applicant's certificate of limited partnership in both of those states.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–2847 Filed 2–10–87; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 30 days of this publication in the Federal Register. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83s), supporting statements, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

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FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Elizabeth M. Zaic, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653–6623.

OMB Reviewer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395–7340.

Title: SBIR Annual Presolication Activities

Frequency: Annual

Description of Respondents: Federal agencies report to SBA on the progress of their respective SBIR activities.

Annual Responses: 18

Annual Burden Hours: 45

Type of Request: Extension and Revision

Title: Stockholder Confirmation

Frequency: On occasion

Description of Respondents: Stockholders are requested to confirm their equity interest in the SBIC and to determine the source of funds they used to acquire this interest.

Annual Responses: 160

Annual Burden Hours: 27

Type of Request: Extension

Elizabeth M. Zaic,

Deputy Director, Office of Administrative Services, Small Business Administration.

[FR Doc. 87–2787 Filed 2–10–87; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area # 2266]

South Dakota; Declaration of Disaster Loan Area

The City of Redfield, South Dakota, constitutes a disaster area because of damages resulting from a major fire in the downtown business district which occurred on November 16, 1986. Applications for loans for physical damage may be filed until the close of business on April 6, 1987, and for economic injury until the close of business on November 4, 1987, at the address listed below: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, P.O. Box 13795, Sacramento, California 95853.

or other locally announced locations.

The interest rates are:

Homeowners with credit available elsewhere—8.000%

Homeowners without credit available elsewhere—4.000%

Businesses with credit available elsewhere—7.500%

Businesses without credit available elsewhere—4.000%

Businesses (EIDL) without credit available elsewhere—4.000%

Other (Non-profit organizations including charitable and religious organizations)—9.500%

The number assigned to this disaster is 226605 for physical damage and for economic injury the number is 650000.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: February 4, 1987.

Charles L. Heatherly,

Deputy Administrator.

[FR Doc. 87–2892 Filed 2–10–87; 8:45 am]

BILLING CODE 8025–01–M

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration, Region I Advisory Council, located in the geographical area of Concord, New Hampshire, will hold a public meeting at 10:00 a.m., Wednesday, March 4, 1987, in the James Cleveland Federal Building, Grand Jury Room—Room 404, 55 Pleasant Street, Concord, New Hampshire, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call William K. Phillips, District Director, U.S. Small Business Administration, 55 Pleasant Street, Concord, New Hampshire 03301, (603) 225–1400.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 5, 1987.

[FR Doc. 87–2891; Filed 2–10–87; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 997]

Strategic Minerals Listing

Pursuant to Section 303(a)(2) of the Comprehensive Anti-Apartheid Act of 1986, as amended (Public Law 99–440), I hereby certify that quantities of the following strategic minerals essential for the economy or defense of the United States are unavailable from reliable and secure suppliers:

Andalusite
Antimony
Asbestos, chrysotile
Chromium (includes ferrochromium)
Cobalt
Diamonds, Industrial (natural)
Manganese (includes ferromanganese and ferrosilicomanganese)
Platinum Group Metals
Rutile (includes titanium-bearing slag)
Vanadium (includes ferrovanadium)

This certification shall be reported to the Congress and published in the **Federal Register.**

Dated: January 7, 1987.

John C. Whitehead,

Acting, Secretary of State.

[FR Doc. 87–2805 Filed 2–10–87; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM—8/1046]

Study Group 4 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 4 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on March 5, 1987 in the first floor Theater, Communications Satellite Corporation, 950 L'Enfant Plaza, SW., Washington, DC. The meeting will begin at 9:30 a.m.

Study Group 4 deals with matters relating to systems of radiocommunications for the fixed service using satellites. The purpose of the meeting will be to continue the plan of work for the Study Group during the 1986–1990 period.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, DC 20520; telephone (202) 647–2592.

Dated: February 3, 1987.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 87–2806 Filed 2–10–87; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM—8/1045]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea, Working Group on Containers and Cargoes, Bulk Cargoes Panel; Meeting

The Bulk Cargoes Panel of the Working Group on Containers and Cargoes of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on March 11, 1987 at 10:00 A.M. in Room 1303 at Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593.

The purpose of this meeting is to discuss—

1. United States positions on matters to be discussed at the 28th Session of the International Maritime Organization (IMO) Subcommittee on Containers and Cargoes to be held March 23–27, 1987.

2. Proposed revision of CHAPTER VI of the International Convention on Safety of Life at Sea (SOLAS) to include basic regulations for the safe carriage of cargoes which owing to their particular hazards to ships or persons on board may require special precautions (except liquids and gases in bulk and those aspects otherwise covered by the Convention).

3. Proposed amendments to the Code of Safe Practice for Solid Bulk Cargoes, including:

—Development of new criteria in respect of liquefaction and sliding failures in solid bulk cargoes;

—Entry into enclosed spaces; and

—Requirements for materials possessing chemical hazards.

4. Carriage of timber deck cargoes.

5. Carriage of grain.

6. IMO activities of a continuing nature.

Members of the public may attend up to the seating capacity of this room. For further information contact Commander Larry H. Gibson, U.S. Coast Guard Headquarters (G–MTH–1), 2100 2nd Street, SW., Washington, DC 20593. Telephone: (202) 267–1577.

Dated: February 3, 1987.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 87–2807 Filed 2–10–87; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

[Docket 43940]

Aviation Proceedings; Galaxy Airlines, Inc.; Continuing Fitness Investigation; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on February 17, 1987, at 10:00 a.m. (local time) in Room 5332, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, before the undersigned administrative law judge.

Dated at Washington, DC, February 4, 1987.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 87–2842 Filed 2–10–87; 8:45 am]

BILLING CODE 4910–62–M

[Order 87–2–9; Dockets 40267 and 42577]

Aviation Proceedings; Standard International Airways, Inc.; Proposed Denial of Application and Revocation of the Section 401 Certificates

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Department is directing all interested persons to show cause why it should not issue an order denying the application of Standard International Airways, Inc., for a redetermination of its fitness under § 204.8 of the Department's regulations and revoking the carrier's interstate, overseas, and foreign charter certificates.

DATES: Persons wishing to file objections shall do so no later than February 27, 1987.

ADDRESSES: Responses should be filed in Dockets 40267 and 42577 and addressed to the Office of Documentary Services, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590, and should be served upon the persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Carol A. Szekely, Special Authorities Division, P–47, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: February 5, 1987.

Vance Fort,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 87–2841 Filed 2–10–87; 8:45 am]

BILLING CODE 4910–62–M

Urban Mass Transportation Administration

Intent To Prepare an Environmental Impact Statement and To Conduct A Scoping Meeting on Transit Improvements in the City and County of Honolulu, HI

AGENCY: Urban Mass Transportation Administration, U.S. Department of Transportation (USDOT).

ACTION: Notice to prepare an environmental impact statement.

SUMMARY: The Urban Mass Transportation Administration (UMTA) of the USDOT and the City and County of Honolulu, through the Department of Transportation Services and the Rapid Transit Development Division (RTDD), are undertaking the preparation of an Environmental Impact Statement (EIS) on transit improvement alternatives in the City and County of Honolulu, Hawaii. The EIS is being prepared pursuant to the National Environmental Policy Act (42 U.S.C. 4321); the Council on Environmental Quality's implementing regulations (40 CFR Part 1500); the Federal Highway Administration and Urban Mass Transportation Administration Environmental Impact and Related Procedure (49 CFR Part 622); and related statutes and orders including Executive Order 11990 on the Protection of Wetlands and Executive Order 11988 on Floodplain Management.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert E. Hom, Program Manager, Urban Mass Transportation Administration, 211 Main Street, Suite 1160, San Francisco, CA 94105, Telephone (415) 974–7543

or

Mr. Charles J. Izumoto, Chief of Public Information, Rapid Transit Development Division, City and County of Honolulu, 720 Kapiolani Boulevard, Honolulu, HI 96813, Telephone (808) 527–6975.

SUPPLEMENTARY INFORMATION:

Scoping Meeting

The Public Scoping Meeting shall consist of three meetings held at different locations and times to facilitate the receipt of comments. Interested and concerned citizens and public officials are invited to attend one or more meetings.

The first meeting will be held on Monday, March 2, 1987, at 2:00 p.m. in the Civil Service Conference Room of the City and County of Honolulu, 530 South King Street, Honolulu, Hawaii.

A second meeting will be held on Wednesday, March 4, 1987, at 6:30 p.m. in the multi-purpose room of the Aiea Recreation Center, 99–350 Aiea Heights Drive, Honolulu, Hawaii.

A third meeting will be held on Thursday, March 5, 1987, at 6:30 p.m. in the Cafetorium of Washington Intermediate School, 1633 South King Street, Honolulu, Hawaii.

Comments are being solicited to help establish the purpose, scope, framework, and approach for the analysis. At the scoping meeting, staff will present a description of the proposed scope of the EIS. This will include description of the proposed work plan and overall methodology alternatives to be considered, projected work schedule, and a detailed plan for continuing citizen involvement. Members of the public and interested Federal, State, and local agencies are invited to comment on the proposed scope of work, alternatives, impacts to be assessed,

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and evaluation criteria to be used in the EIS. Comments may be made orally at the meetings or in writing.

A detailed Work Plan and List of Alternatives will be available at the scoping meeting. Copies are also available for inspection in the RTDD office at 720 Kapiolani Boulevard, 3rd Floor, Honolulu, Hawaii.

In order that comments may be considered in a timely fashion, written comments should be received not later than 30 days after the scoping meeting (before April 6, 1987) addressed to: Scoping Meeting Comments, Rapid Transit Development Division, Department of Transportation Services, 650 South King Street, 3rd Floor, Honolulu, Hawaii 96813.

Background

Approximately 60% of Hawaii's population live and work in Honolulu's "Primary Urban Center", a narrow strip one to three miles wide and approximately 20 miles long, between the Koolau Mountains and the Pacific Ocean. Existing roads are congested much of the day, and there is virtually no potential to build additional roads. The existing bus system is very heavily used, carrying per-capita ridership matched only by New York City and San Francisco.

Between 1971 and 1978 the Preliminary Engineering and Evaluation Programs (PEEP I and PEEP II) considered various lengths of rapid transit system, and various technologies including boats, rubber-tired and steel-wheeled rapid transit, light rail, and elevated busways. In 1982 UMTA approved a Final EIS for an eight-mile rapid transit system. However, the system was not implemented. In the interim, the Hali 2000 program revised ridership estimates, and reconsidered bus-only and light rail alternatives, as well as a controversial system of road tolls. Although Hali 2000 made no specific conclusions, it again confirmed that rapid transit could provide substantially improved travel times to existing and future travellers, compared with other alternatives.

Alternatives

Two modal alternatives are proposed for considerations:

1. A rapid transit system through Honolulu's Primary Urban Center, extending into Ewa District.

At this time RTDD is considering a fully grade-separated rapid transit system extending from the University area and Waikiki to Waiawa. The system would be primarily elevated, carrying passengers at speeds up to 60 miles per hour. Most existing bus routes on the island would connect with the system, for maximum efficiency and convenience to passengers.

Due to recent advances in rapid transit technology, many alignment and station location alternatives that were rejected in the 1982 EIS must be re-considered. Generally, the alternatives include alignments along Kamehameha Highway, the O.R. & L. railway right-of-way, Interstate H-1 freeway, Salt Lake Boulevard, King Street, Dillingham Boulevard or Nimitz Highway, various elevated and underground routes through the Downtown, Capitol District, and Kaka'ako, and along Kapiolani Boulevard and University Avenue. Alignments and stations may be located above, beside, or below these named streets, or through adjacent and connecting property.

At least one maintenance and storage facility would be required. Potential locations include the Navy Barrel Yard adjacent to Leeward Community College, the Aloha Stadium south parking area, Fort Shafter Flats, and the 1982 EIS proposal for the Diamond Head (East) side of Keehi Lagoon.

2. Bus-only alternatives, as a baseline for estimating relative costs and benefits, and as potential "fall-back" alternatives.

The bus-only alternatives would use the existing and committed high-occupancy vehicle (HOV) lanes on Interstate H-1, and the Hotel Street bus mall. Additional HOV lanes might be required on Dillingham Boulevard, King, Beretania, and other connecting streets. Commuter car-pooling lots and bus terminal facility sites might include the Navy Barrel Yard, and/or the "Waikele" site adjacent to the Waipahu Street/Kamehameha Highway Intersection.

A complete list of alternatives to be evaluated will be available at the scoping meeting, or can be obtained by writing or telephoning the Project Office at Rapid Transit Development Division, 650 South King Street, Honolulu, Hawaii 96813, (808) 527-6975.

Probable Effects

Construction of the proposed rapid system would substantially reduce peak hour and all day travel times from the Ewa and Central Oahu areas to Downtown. This will remove one of the major constraints to moderate-income housing development in these areas. Travelers from all other parts of the Honolulu area might experience faster trips, reduced highway congestion, and reduced parking demand.

Impacts during construction could include acquisition of property, relocation of homes and businsses, construction noise and dust, temporary disruption of auto traffic, disruption of parks and recreation areas, and disturbance of archeological and historic resources.

Permanent impacts could include visual and shadow impacts of elevated guideways, stations, and related facilities, changes in travel patterns and transit ridership, noise and vibration impacts, and changes in localized air and water quality.

However, it is the objective of the Project Planning and Engineering to avoid or mitigate any negative impacts.

Comments at the scoping meeting should focus on the appropriateness of the alternatives and other options for consideration in the study and the completeness of the proposed sets of impacts and evaluation criteria, not on individual preferences for a particular alternative as most desirable for implementation.

Issued on February 4, 1987.

Brigid Hines-Cherin,

Regional Administrator, UMTA, Region IX.

[FR Doc. 87-2879 Filed 2-10-87; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Dated: February 4, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, P.L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, N.W., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0134
Form Number: IRS Form 1128
Type of Review: Resubmission
Title: Application for Change in Accounting Period

OMB Number: 1545-0874
Form Number: IRS Form 8328
Type of Review: Resubmission
Title: Limitation on Aggregate Amount of Private Activity Bonds

Clearance Officer: Garrick Shear (202) 566-6150 Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 396-6880, Office of Management and Budget, Room 3208, New Executive Office Building Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Office.

[FR Doc. 87-2835 Filed 2-10-87; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF TREASURY

Fiscal Service

[Dept. Circ. 570, 1986 Rev., Supp. No. 11]

Surety Companies Acceptable on Federal Bonds: Southeastern Reinsurance Company, Inc.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308, Title 31, of the United States Code. Federal bond approving officers should annotate their reference copies of the Treasury Circular 570, 1986 Revision, on page 23950 to reflect this addition:

Southeastern Reinsurance Company, Inc.

BUSINESS ADDRESS: 499 NW. 70th Avenue, Suite 200, Plantation, FL 33317. UNDERWRITING LIMITATION [b]: *$2,700,000* SURETY LICENSES [c]: FL. INCORPORATED IN: Florida. FEDERAL PROCESS AGENTS [d].

Certificates of Authority expire on June 30 of each year, unless revoked prior to that date. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to Underwriting Limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Department of Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 834-2119.

Dated: January 30, 1987.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 87-2791 Filed 2-10-87; 8:45 am]

BILLING CODE 4810-35-M

FISCAL SERVICE

[Dept. Circ. 570, 1986 Rev., Supp. No. 12]

Surety Companies Acceptable on Federal Bonds: Termination of Authority Issued to Universal of Omaha Casualty Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Universal of Omaha Casualty Insurance Company, under the United States Code, Title 31, sections 9304 through 9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 51 FR 23953, July 1, 1986.

With respect to any bonds currently in force with Universal of Omaha Casualty Insurance Company, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Department of Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634-2119.

Dated: January 30, 1987.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 87-2814 Filed 2-10-87; 8:45 am]

BILLING CODE 4810-35-M

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Sunshine Act Meetings

Federal Register
Vol. 52, No. 28
Wednesday, February 11, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., February 18, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Quarterly Goals

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–2932 Filed 2–9–87; 10:34 am]

BILLING CODE 6351-01-M

FEDERAL COMMUNICATIONS COMMISSION

February 5, 1987.

The Federal Communications Commission will hold an Open Meeting on the Subjects listed below on Thursday, February 12, 1987, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

General—1—Title: Responsibility of the Federal Communications Commission to consider biological effects of radiofrequency radiation when authorizing the use of radiofrequency devices. Amendment of Part 1 and proposed amendment of Part 80 of the Rules. (Gen. Docket 79–144) Summary: The Commission will consider whether to amend its rules concerning those services subject to environmental evaluation with respect to radiofrequency radiation and those to be excluded categorically from such evaluation.

General—2—Title: Inquiry into Scrambling of Satellite Television Signals and Access to those signals by owners of Home Satellite Dish Antennas. Summary: The Commission will consider a study of the effects of scrambling satellite television signals on access to those signals.

General—3—Title: Amendment of Parts 73 and 76 of the Commission's Rules relating to program exclusivity in the cable and broadcast industries. Summary: The Commission will consider whether to reexamine its rules governing exclusivity agreements covering television programming.

General—4—Title: Compulsory Copyright License for Cable Retransmission. Summary: The Commission will consider whether to initiate an inquiry proceeding concerning compulsory license provisions of the Copyright Revisions Act of 1976.

Common Carrier—1—Title: Implementation and Scope of the International Settlements Policy for Parallel International Communications Routes—Order on Reconsideration. CC Docket No. 85–204. Summary: The Commission will consider whether petitions for modification of certain aspects of its Report and Order on the International Settlements Policy should be granted. Specifically, the Commission will consider the policy's application to voice, indirect, and enhanced services, and the concomitant procedural requirements.

Common Carrier—2—Title: Reconsideration of RCA Global Communications Inc. vs. The Western Union Telegraph Company. File No. E–83–24. Summary: The Commission will consider two petitions for reconsideration, one from RCAGC regarding a Bureau order, and one from Western Union regarding a Commission order. The proceeding concerns the application of the international settlements policy to indirect traffic with various Central American administrations.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, FCC Office of Congressional and Public Affairs, telephone number (202) 632–5050.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–2992 Filed 2–9–87; 2:36 pm]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:09 p.m. on Friday, January 16, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to the possible failure of an insured bank.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8)(c)(9)(A)(ii), and (c)(9)(B)).

Dated: January 21, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–3011 Filed 2–9–87; 3:55 p.m.]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Tuesday, January 20, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Memorandum and resolution re: Final amendments to Part 328 of the Corporation's rules and regulations, entitled "Minimum Security Devices and Procedures for Insured Nonmember Banks," which require regulated institutions to establish and maintain procedures to comply with the requirements of the Money Laundering Control Act of 1986.

By the same majority vote, the Board further determined that no notice earlier than January 15, 1987 of this change in the subject matter of the meeting was practicable.

Dated: January 21, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–3012 Filed 2–9–87; 3:55 p.m.]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, January 20, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than severn days' notice to the public, of the application of Gateway American Bank of Florida, a proposed new bank to be located at 1451 NW. 62nd Street, Fort Lauderdale, Florida, for Federal deposit insurance.

The Board further determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the currency), that Corporation business required the addition to the agenda for consideration at this meeting, on less than seven days' notice to the public, of (1) a memorandum regarding the renovation of the third and fourth floors in the headquarters building located at 550—17th Street, NW., Washington, DC, and (2) a recommendation regarding the Corporation's assistance agreement with an insured bank pursuant to section 13(c) of the Federal Deposit Insurance Act.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), and (c)(9)(B)).

Dated: January 21, 1987

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–3013 Filed 2–9–87; 3:55 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:37 p.m. on Thursday, February 5, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider (1) a personnel matter, and (2) matters relating to the possible failure of an insured bank.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(6), (c)(8), (c)(9)(S)(ii), and (c)(9)(B)).

Dated: February 6, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–2950 Filed 2–9–87; 12:14 pm]

BILLING CODE 6714-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

February 5, 1987.

TIME AND DATE: 10:00 a.m., Thursday, February 5, 1987.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: In addition to the previously announced items (52 FR 3202; February 2, 1987), the Commission considered the following:

3. *Secretary of Labor on behalf of Corbin, et al. v. Sugartree Corporation*, KENT 86–131–D. (Issues included consideration of the Secretary's motion to dismiss or vacate portions of the direction for review).

4. *Upright Mining, Inc.*, Docket No. KENT 86–115. (Issues included consideration of possible relief from an order of default).

5. *Southern Ohio Coal Company*, Docket Nos. WEVA 86–35–R, etc. (Issues included consideration of the operator's petition for discretionary review.)

It was determined by a unanimous vote of Commissioners that these items be included in the meeting and that no earlier announcement of the additions was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 87–2973 Filed 2–9–87; 1:22 pm]

BILLING CODE 6735-01-M

POSTAL RATE COMMISSION

TIME AND DATE: 9:00, a.m. on Wednesday, February 18, 1987.

PLACE: Office of the Chairman, 1333 H.Street, NW., Suite 300, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: To consider the motions to dismiss the Complaint of the American Newspaper Publishers Association, Docket No. C87–2.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission Room 300, 1333 H. Street, NW., Washington, DC 20268–0001, Telephone (202) 789–6840.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 87–3003 Filed 2–9–87; 3:15 pm]

BILLING CODE 7715-01-M

UNITED STATES INSTITUTE OF PEACE

TIMES AND DATES: 9:00 a.m.-5.00 p.m., Thursday, February 19, 1987, and 9:00 a.m.-5.00 p.m., Friday, February 20, 1987.

PLACE: Hoover Institution on War, Revolution, and Peace; DeWitt, Lila, Acheson, Wallace Conference Room Number 30; Herbert Hoover Memorial Building; Stanford University, Stanford, California 94305.

STATUS: Open.

AGENDA (TENTATIVE):

Thursday Morning

—Dr. Herbert York (Director, Center for Arms Control, University of California at San Diego)
—Mr. Robert Pickus (World Without War)
—Mr. Richard Rathbun (Beyond War)
—Dr. Sidney Hook (Senior Fellow, Hoover Institution)

Thursday Afternoon

—Dr. Charles Wolfe (Rand Corporation)
—Prof. Henry Rowen (Professor of Business, Stanford Business School)
—Dr. Robert Conquest (Senior Fellow, Hoover Institution)
—Prof. Robert Scalapino (University of California at Berkeley)

Friday Morning

—Dr. Coit Blacker (Stanford Arms Control Program)
—Carlos Warter, M.D. (President, World Health and World Peace)
—Prof. Donald Treadgold (University of Washington)

Friday Afternoon

—Dr. Robert North (Professor Emeritus, Stanford University)
—Prof. Kenneth Boulding (University of California at Santa Cruz)

CONTACT: Ms Bernice Carney. Telephone (202) 789–5700.

Dated: February 6, 1987.

Robert F. Turner,

President, United States Institute of Peace.

[FR Doc. 87–2893 Filed 2–6–87; 4:16 pm]

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federal register

Wednesday
February 11, 1987

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 928

Papayas Grown in Hawaii; Recommended Decision on Proposed Amendment of the Marketing Agreement and Order; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

[Docket No. AC-371-A1]

Papayas Grown in Hawaii; Recommended Decision on Proposed Amendment of the Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice of recommended decision invites written exceptions on proposed amendment of the Marketing Agreement and Marketing Order 928, covering papayas grown in Hawaii. The proposed amendment provisions would: (1) Authorize a public member on the committee and changes in the size and composition of the committee, and limit committee member tenure to 3 consecutive 2-year terms of office, (2) provide an additional method of nominating persons to fill committee vacancies, (3) require an affirmative vote by a majority of the committee members to take any action, (4) authorize a late payment charge on past due assessments, (5) authorize container marking regulations, and container identification of inspected papayas, (6) provide for different grade, size, container, container marking, and pack regulations for papayas shipped to different geographical areas and market types, (7) provide for periodic continuance referenda every 6 years, and (8) make conforming changes. The amendments are designed to improve the effectivenes of the marketing order program.

DATE: Written exceptions to this recommended decision filed by interested persons must be received by March 13, 1987.

ADDRESS: Interested persons may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Room 1079, South Building, Washington, DC 20250. Four copies of all written exceptions should be submitted, and they will be made available for public inspection during regular business hours. Copies of this decision may be obtained by contacting the person listed below.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, telephone 202-447-5697.

SUPPLEMENTARY INFORMATION: Prior Document in this Proceeding: Notice of Hearing issued November 8, 1985, and published in the **Federal Register** (50 FR 46773, November 13, 1985).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this Recommended Decision with respect to the proposed amendment of the Marketing Agreement and Marketing Order 928, regulating the handling of papayas grown in Hawaii, hereinafter referred to collectively as the "order".

This notice of filing of the Recommended Decision and of opportunity to file exception thereto is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) hereinafter referred to as the "Act", and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900).

This proposed amendment of the order was formulated on the record of a public hearing held on November 20-21, 1985, at Hilo, Hawaii. Notice of this hearing was published in the **Federal Register** (50 FR 46773, November 13, 1985). The notice of hearing contained amendment proposals submitted by the Papaya Administrative Committee established under the order, hereinafter referred to as the "committee". The Department of Agriculture proposed that it be authorized to make any necessary conforming changes.

The Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). As stated in the Notice of Hearing, interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the amendment proposals on small business for purposes of the RFA.

During the fiscal year ending December 31, 1985, approximately 100 handlers regulated under Marketing Order 928 handled papayas for fresh market with an estimated crop value of $8.4 million. The average value per handler was approximately $84,000. Given an appropriate definition of a small business concern (i.e., for purposes of review pursuant to the Regulatory Flexibility Act, an agricultural services firm with average annual receipts not exceeding $3,500,000), almost all of the handlers of papayas would fall within that definition. Thus, few handlers, if any, can be considered large or predominant in a relative or absolute sense.

The amendment contains provisions pertaining to the structure and functioning of the committee and operations of the order which would: (1) Authorize a public member on the committee to provide public input; (2) authorize changes in the size and composition of the committee to maintain equitable grower and handler representation on the committee; (3) limit committee member tenure to 6 years to broaden the base of participation in order decisions; (4) provide an additional method of nomination to facilities filling committee vacancies; (5) require an affirmative vote by a majority of the committee members to take any action to accommodate changes in committee size, and (6) provide for periodic continuance referenda to allow producers an opportunity to evaluate and express support or disapproval of the order. Such amendments are designed to enhance the administration and functioning of the marketing order, and would have negligible, if any, economic impact on small businesses.

The amendment also contains a provision pertaining to assessments levied under the order paid by papaya handlers, authorizing a late payment charge on overdue assessments. This provision, if implemented by informal rulemaking, would only be applicable to those papaya handlers who fail to pay their assessments on time. The provision is designed to improve the financial operations of the order by encouraging handlers to pay these assessments in a timely manner. The amendment would not affect a substantial number of small entities since most of the handlers traditionally make timely assessment payments. The extra cost to delinquent handlers would not be a significant economic impact on their total operations and could be entirely avoided by making timely assessment payments.

One of the amendment provisions would add authority to the order providing for the issuance of container marking regulations and container identification of inspected papayas. While the major handlers currently mark their containers, such markings are not uniform throughout the industry, and a few handlers either incorrectly mark or do not mark their containers.

Including container marking authority in the order would permit the issuance of mandatory standardized container marking requirements. Markings on containers provide information used by the committee, handlers, and the trade to identify the contents in the container. Mandatory marking requirements would primarily impact handlers who practice mismarking or do not mark containers, and such handlers would incur the additional minimal costs associated with container marking. On the other hand, papaya handlers who currently mark their containers would only be impacted negligibly as they would only need meet the standardized marking requirements. Any requirements would be designed to provide the papaya industry and trade information necessary for efficient marketing of the papaya crop.

The remaining amendment provision would authorize the issuance of different grade, size, container, container marking, and pack regulations for papayas shipped to different geographical areas and market types identified by the committee and approved by the Secretary. The order now authorizes that regulations for shipments within Hawaii may differ from those shipped outside the State. The proposed provision would enable the committee to recommend and the Secretary to issue different regulations for different markets depending on the characteristics of those markets. As all fresh papaya shipments are now regulated under the order, the issuance of separate regulations would not measurably increase the regulatory burden on handlers. Any such different regulations issued would be designed to improve returns to papaya producers, by tailoring the regulations to the demands of specific markets. Thus, any possible slight economic impact on handlers should be offset by increased sales opportunities.

Finally, the amendments to the order would have no significant impact on small businesses' recordkeeping and reporting burdens.

Material Issues

The material issues of record are as follows:

(1) Whether the order should authorize a public member on the committee and changes in the size and composition of the grower and handler members on the committee, and limit committee member tenure to 3 consecutive 2-year terms of office;

(2) Whether a new method should be authorized to nominate persons to fill vacancies on the committee;

(3) Whether to require an affirmative vote by a majority of the committee members to take any action;

(4) Whether authority should be provided in the order authorizing the establishment of a late payment charge on past due assessments;

(5) Whether to add authority providing for container marking regulations, and container identification of inspected papayas;

(6) Whether to provide for the issuance of different grade, size, container, container marking, and pack regulations for papayas shipped to different geographical areas and market types;

(7) Whether the order should require a referendum every 6 years to determine if producers favor continuance of the order; and

(8) Whether conforming changes should be made.

Findings and Conclusions

The findings and conclusions on the material issues, all of which are based on the record of the hearing, are as follows:

(1) Section 928.20 should be amended to provide that the committee may be increased by one public member and one alternate public member nominated by the committee and selected by the Secretary. Presently, the public member and alternate member positions are not expressly provided for in the order. However, the committee currently is functioning with a public member and alternate serving in unofficial capacities, who provide substantial assistance to the committee in its advertising and promotion programs, and research efforts on nutrition. The current public member has served on the committee since 1980 on an informal basis. Due to their current status, the public member and alternate are not officially selected by the Secretary, and they do not have voting rights, and their qualifications and terms of office are not specified in the order.

The testimony indicates that the order should be amended to authorize the selection of a public member and alternate member to serve on the committee. The term of office of the public member should be two years, to be served concurrently with the grower and handler members' term of office on the committee. As the public member and alternate member are expected to actively participate in the committee's activities, they should be afforded full voting rights upon all matters which may come before the committee. The public member and alternate should be nominated by the committee, which will submit the candidates' names to the Secretary for selection.

The committee, with the approval of the Secretary, shall establish such qualifications and nomination procedures as it deems necessary for the public member and alternate. However, the committee should nominate persons who are not papaya growers or handlers, and who do not have a direct financial interest in the papaya industry. Types of experience which would be desirable on the part of both the public member and alternate public member is that gained as nutritionists, University Extension Service persons, and public relations persons.

The committee should have full discretion as to when and if the public member and alternate should be added. There may be times when the committee is unable to find qualified candidates for the public member and alternate positions, or it may not be able to agree on suitable candidates. In such instances the positions should remain vacant until suitable candidates are found.

Also, §§ 928.20 and 928.31 should be amended to provide that the number of grower and handler member positions on the committee may be increased or decreased, and that the composition of the committee may be changed by changing the ratio between the grower and handler members. Such changes should be permitted under informal rulemaking upon the recommendation of the committee and approval of the Secretary. At the present time, the order provides for a 13-member committee comprised of 10 grower and 3 handler members, with an alternate for each, but does not provide for changes to be made in its size and composition by informal rulemaking.

The evidence indicates that substantial change has occurred in the size and structure of the Hawaiian papaya industry since the order's inception in 1971. One such change is that the number of papaya growers increased from 153 in 1971 to 306 in 1984. In addition, during the 1971-84 period, the number of papaya acres more than doubled reaching 2,165 acres in 1984, while papaya production more than tripled amounting to 66.1 million pounds in 1984. Another change is that the number of major handlers has increased from 3 in 1971 to 7 at the present time. The testimony indicates that these 7 major handlers are actually 7 packinghouses representing, to a considerable extent, the interests of various growers' groups which utilize the packing facilities.

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Another type of change has been continual shifting of papaya production among the larger Hawaiian islands. While major production has always been on the island of Hawaii, where now about 90 percent of the papayas are produced, there have been substantial plantings on other islands from time-to-time. During the 1972-79 period, substantial papaya plantings occurred on the island of Maui, but most of these were later abandoned. Substantial papaya plantings occurred on the island of Kauai in the late 1970's, but production has fluctuated considerably due to disease and weather problems. In the future, additional production shifts could occur, especially resulting from the development of new varieties of papayas and better disease control methods.

In recognition of these changes and changes which may occur in the future, the evidence indicates that the order should be amended to authorize the committee to recommend and the Secretary to change the size and composition of the committee by the issuance of rules and regulations under the order. Such changes may be necessary to obtain as well as maintain equitable grower and handler representation on the committee reflecting the size and structure of the Hawaiian papaya industry at a particular point in time. This amendment provision would permit the committee to hold committee meetings, open to the public, when necessary to fully consider the merits of making any changes in the size and composition of the committee, and to submit its recommendations to the Secretary for approval. Such amendment provision would provide flexibility in the order to permit needed changes to be made in the size and composition of the committee when and if warranted, without the need to conduct a formal rulemaking proceeding to amend the order, which would be time consuming and costly.

In addition, §§ 928.11 and 928.20 should be amended to reflect changes made under § 928.31 of the order by the issuance of an informal rule in 1984 which redefined the districts into which the production area is divided, and reapportioned committee members' representation among the districts. That rule established § 928.111 redefining the 4 districts into which the production area had been divided into 3 districts by combining districts 2 and 3. That rule also established § 928.120 reapportioning the committee membership among the 3 redefined districts. Shifts in papaya production within the production area made the district redefinition and member reapportionment necessary at that time to obtain more equitable grower representation on the committee. At the hearing, proponents supported changing § 928.20 as published in Proposal No. 1 of the notice of hearing. In addition, they supported incorporating the current provisions of § 928.120 and § 928.20. However, the language in the notice of hearing did not include a proviso contained in paragraph (b) of § 928.120. That proviso specifies that of the 2 grower members and 2 alternates from District 2, at least one alternate grower member shall be a producer of papayas in either Maui or Kalawao county. If the committee or any other interested persons are of the opinion that the proviso in § 928.120 should be incorporated into § 928.20 they should file written exceptions to this recommended decision, containing an explanation of their views. Sections 928.111 and 928.120 would later be removed by informal rulemaking because they then would be redundant.

Hawaii's papaya industry is still relatively young and in a rapid growth stage. Therefore, further shifts in papaya production within the production area are likely to continue to occur. Thus, there may be a need to redistrict and reapportion the committee in the future and the order should continue to provide authority for making any needed changes.

Furthermore, several changes are needed in § 928.23 to conform with recommended amendments to §§ 928.20 and 928.26. Reference to the number of grower and handler members to be selected in § 928.23 should be deleted because the amendment of § 928.20 would authorize changes to be made in the number of committee members. Also, selection of a public member and alternate should be specified in § 928.23, as amendment of § 928.20 would authorize the addition of a public member to the committee. In addition, reference to nominations made under § 928.26 should be specified in § 928.23. Finally, obsolete language pertaining to selection of the initial members of the committee in 1971 should be removed from § 928.23, as such language no longer serves any constructive purpose.

Furthermore, § 928.24 should be amended to conform with the recommended amendment of § 928.20 which would authorize the nomination of a public member and alternate, and the amendment of § 928.26 which would provide another method for nominating grower and handler members.

Section 928.21 should be amended to limit each member's tenure on the committee to three 2-year consecutive terms of office. Presently, the tenure of committee members is not limited under the order. Testimony was received in support of this proposal, with the reservation expressed that the committee at times has had difficulty finding enough qualified candidates. However, the testimony also indicates that more alternate members could attend committee meetings to gain experience in committee operations, and thereby become more highly qualified to serve in the member positions at some future date. Any member who becomes ineligible to serve another term as member after having served three 2-year consecutive terms shall again be eligible to serve in a member position after having served as an alternate member on the committee for at least a one 2-year term of office, or after having not served on the committee as a member or as an alternate member for a one 2-year term of office. This provision limiting each member's tenure to three 2-year consecutive terms of office as a member on the committee should not be applied retroactively to members currently serving on the committee. Thus, this provision would be applicable only to members selected after the effective date of this proposed amendment, and it would not apply to limit the number of consecutive terms of alternate members. Limiting the tenure of committee members as proposed would be in accordance with the Department's guidelines for marketing orders. In general, such limitations will help bring additional persons into active roles in the administration of the order.

Obsolete language in § 928.21 pertaining to the initial members whose terms of office expired in 1972 should be deleted as it no longer serves any constructive purpose.

(2) Sections 928.22 and 928.26 should be amended to authorize another nomination method whereby the committee nominates persons to fill vacancies on the committee. Currently the committee is required to hold nomination meetings to obtain names of candidates to fill all vacancies occurring on the committee. The testimony indicates that at times it may not be necessary or prudent to spend the time and money needed to obtain the names of qualified candidates to fill vacancies as currently required. The committee's testimony indicates that when a grower vacates a position on the committee, that position is usually filled by a person nominated by fellow growers associated with the same grower group with which the former member was associated, and that when a handler vacates a position on the committee, that position is usually filled by a person nominated by the packinghouse with which the former member was associated. Both the incumbent grower and handler members on the committee, and the various grower groups and packinghouses are knowledgeable of and in a good position to submit the names of highly qualified growers or handlers to the committee to fill vacancies when they occur. The committee should be authorized to solicit the names of qualified candidates from such persons and organizations to fillll any vacancy occurring on the committee, and submit the name of the candidate which it considers most highly qualified to the Secretary for selection.

There may be situations in which it is more appropriate or even necessary that the committee hold nomination meetings to obtain candidates to fill vacancies. For instance, the incumbent committee members, or the grower group or packinghouse responsible for supplying a candidate's name to fill a vacancy, may not be able to agree on a candidate, or a candidate's name may not be supplied to the committee for some other reason. Therefore, the committee should be able to either conduct formal nomination meetings, or use the proposed new method, to obtain candidates names to fill vacancies when they occur on the committee.

The committee should decide which method is most appropriate to use under the circumstances in obtaining the names of the most highly qualified candidate at the time the vacancy occurs. The committee is currently responsible for the conduct of nomination meetings every 2 years to obtain the names of growers and handlers willing to serve on the committee for the ensuing 2-year term of office, as well as the conduct of special nomination meetings to fill vacancies, and it is in a good position to determine which method should be used to obtain candidates.

Occasionally, the situation may arise in which no one is nominated at regular committee nomination meetings to fill a particular position on the committee, and in that event the committee should have the option of obtaining the name of a candidate to fill the position using the proposed new method. The conduct of a second nomination meeting to fill positions in such instances is time consuming and costly, and may not be necessary to obtain highly qualified candidates. When there is failure to nominate a candidate for a committee position at a scheduled nomination meeting, this position should be considered vacant under the order, so that the committee can name a candidate using the proposed new method, and thereby not be required to conduct another nomination meeting.

In addition, in § 928.22 paragraph (a) should be deleted as it pertains to the nomination of the initial members of the committee, which occurred shortly after the order became effective in 1971. Such language is now obsolete and no longer serves any constructive purpose.

Finally, under § 928.21 the beginning and ending dates of the term of office of committee members may be changed by informal rulemaking. Section 928.22 currently provides that nomination meetings will be held ny November 15 of each even numbered year. Since it has always been the intent that nomination meetings be held at least 45 days before the beginning of the term of office, § 928.22 should be amended to better reflect this intent.

(3) Section 928.32 should be amended to require an affirmative vote by a majority of the committee members to take any action at all committee meetings. Currently, the order provides that a majority of the committee, including alternates acting for members, shall constitute a quorum, and that any action of the committee shall require at least 7 concurring votes, which is a majority of the 13-member committee as it is currently constituted. Testimony in favor of amending current order provisions was presented to continue the current quroum requirements, and to require an affirmative vote of a majority of committee members to take any action. Specifying 7 concurring votes is no longer appropriate because other amendment proposals would authorize the committee with the approval of the Secretary to change the size of the committee. One such proposal would permit the Secretary to increase or decrease the number of grower and handler members on the committee, and another would permit the addition of a public member to the committee. Both of these proposed changes were discussed in material issue (1). Therefore, it is appropriate that § 928.32 be amended to provide that any committee action be based on the affirmative vote of a majority of the committee members, including alternates acting for members.

(4) Section 928.41 should be amended to provide authority in the order for the Secretary to establish, upon the recommendation of the committee, a late payment charge on past due assessments owed to the committee by papaya handlers. Currently, the order does not authorize this, but it does provide for the charging of interest on unpaid assessments. The testimony indicates that authority is needed in the order to establish late payment charges on unpaid assessments in addition to interest charges already authorized, as an added inducement to encorage handlers to pay assessments owed to the committee on a timely basis. Such assessments are established under the order, and are based on the quantity of fresh papayas each handler ships to market.

Late payment and non-payment of assessments by some handlers have increased in recent years and now constitutes a serious problem to the detriment of committee operations. Some handlers have apparently found it more advantageous to make late payments (plus the interest charges), than to seek commercial financing in conducting their operations. The committee has been unable to collect substantial amounts of assessments owed by papaya handlers when due, and has found it necessary at times to borrow substantial sums of money to meet its financial obligations. Also, the committee has incurred substantial expenses in attempts to collect overdue assessments. The practice of not paying assessments or paying them late has placed an unfair burden on handlers who pay their assessments on time. They have ended up paying more than their fair share of committee expenses.

The testimony also indicates that the late payment charge should be an amount of money levied by the committee on any handler who fails to pay his or her assessments owed to the committee within a prescribed period of time after the assessments become due, and after the handler has been notified by the committee that the late payment charge is owed to the committee. The period of time and the amount of late payment charge should be recommended by the committee and established by the Secretary by the issuance of rules and regulations under the order. This would add flexibility to the order permitting any needed changes to be made as necessary without amending the order. The late payment charge should be an amount sufficient to induce handlers to pay their assessments on a timely basis. One suggestion expressed at the hearing was that the amount established for individual handlers should be directly related to the amount of unpaid assessments owed by handlers. Any rule providing for a late payment charge should apply uniformly to all handlers who do not make timely assessment

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payments. Of course, handlers who pay their assessment obligations when due would not have to pay the late payment charge.

Testimony also was introduced in opposition to certain aspects of the proposal to authorize a late payment charge in the order. In general, the major objection was that it would provide an inflexible rule which would not take into account the special circumstances confronting handlers who could not pay their assessments on time. Such testimony suggested that the proposed amendment should provide flexibility whereby the committee could deal with each delinquent assessment case on an individual basis taking into account the financial conditions confronting the handler at that time. Such proposed modification is not recommended because it would necessitate the adoption of a nonuniform rule which would have to be applied to handlers differently. Furthermore, if this amendment proposal is adopted, affected handlers would have an opportunity to discuss the merits of any proposed late payment charge at committee meetings held at some future date. At those meetings all aspects of the matter would be open for discussion, including the amount of the late payment charge, the method of calculating the late payment charge, and under what conditions late payment charges should be levied. In addition, any committee recommendation for a late payment charge would need to be submitted to the Secretary who would consider the merits of the proposed late payment charge, and a rule establishing a late payment charge would only be issued after interested persons had an opportunity to comment on its merits.

(5) Section 928.52 should be amended by revising paragraph (a)(3) to permit issuance of container marking regulations under the order, and § 928.55 should be amended to permit issuance of rules and regulations designed to make sure inspection and certification requirements are met and that containers of papayas which have been inspected and certified are properly identified. Currently, the order does not contain authority to require that handlers appropriately mark containers of papayas shipped under the order, nor does it require the identification of containers of papayas which have been inspected and met order requirements.

The testimony indicates that authority is needed in the order to permit the committee to recommend and the Secretary to issue container marking regulations, including the marking of containers which have been inspected and certified for handling. At the present time, papayas are generally packaged in 10 and 25 pound fibreboard containers for shipping. The markings contemplated under this proposed authority would be required to be placed on these 2 containers, as well as any other container which handlers might use to ship papayas.

Currently, the 7 major handlers are marking their containers to indicate that the papayas have been inspected and certified by the Federal-State Inspection Service. On the other hand, there have been occasions in the past when certain handlers have shipped papayas in containers which were incorrectly marked or not marked at all to evade quality, inspection, and assessment payment requirements effective under the order. Such activities have led to situations where substandard papayas have been delivered to retailers or wholesalers without going through proper procedures. Because papayas are marketed as a generic product, shipment of even limited quantities of substandard fruit tends to demoralize the market for better quality fruit meeting order requirements. This is not in the interest of growers, handlers, and consumers. Also, the shipment of papayas in containers without markings or with improper markings has made the committee's compliance efforts extemely difficult. The reason for this is that the committee uses the markings on containers as a means of determining if the papapas have been inspected, and who packed and handled the fruit. The committee also uses container marking information to determine who first handled the papapas, and who is obligated to pay assessments to the committee on the fruit handled.

The testimony also indicates that the authority in the order should be broad enough to provide that any container marking requirements issued under rules and regulations be uniform. Uniform container markings would provide persons in the marketing chain with necessary information about the fruit in the containers needed to make informed decisions, and help lead to stable marketing conditions for papayas.

Types of container marking requirements which may be needed to properly identify the containers, and provide safeguards against the shipment of uninspected papayas include: (1) Labels to identify the packer and/or handler of the papayas, (2) the grade, size, weight, and variety of the papayas, and (3) the inspection and lot stamps applied by or under the direction of the Federal-State Inspection Service. Also, the marking of containers, possibly with color codes, may be necessary for compliance purposes, if the amendment proposal discussed in material issue (6) authorizing separate regulations for papayas shipped to different geographical areas and market types is ultimately adopted.

(6) Section 928.52 should be amended by revising paragraph (a)(4) to permit different grade, size, quality, maturity, pack, and container marking regulations for papayas shipped to different markets such as different geographical areas and market types when recommended by the committee and approved by the Secretary. Currently, the order provides that such regulations may only differ for papayas shipped to markets within the State of Hawaii, from those for papayas shipped to markets outside the State. The testimony indicates that there is a need to expand authority in the order to provide for separate papaya regulations for additional markets, both inside and outside of Hawaii. Such markets could be geographical areas, such as an island, city, county, state, country, group of countries, or continent, or they could be a specific market type, such as the farmers' markets in Hawaii. A market type should be defined as a particular type of market within a geographical area or areas identified by the committee at some future date.

Over the past several years it has become more and more difficult for the committee to recommend appropriate regulations to the Secretary because the order currently only provides for separate regulations for 2 different geographical areas (i.e., markets within Hawaii, and markets outside Hawaii). Since the order became effective in 1971, the marketing conditions for papayas have changed considerably. For instance, now the market for papayas in Japan is quite different from that in the United States, and the market in the city of Honolulu on the island of Oahu is quite different from markets in the smaller towns and rural areas in the other Hawaiian islands. Farmers' markets in Hawaii have proliferated over the past several years, and such markets have different characteristics and clientele than those in the retail stores in the major cities.

Due to market differentiation among various markets separate grade, size, quality, maturity, pack, container, and container marking regulations should be permitted for papayas shipped to different geographical areas and market types. Expanding authority in the order to provide for such different regulations for different geographical areas and market types should enable the committee to recommend and the Secretary to issue more suitable regulations, and thereby ultimately increase papaya sales and improve returns to producers. Such added authority in the order would enable the marketing order to more nearly meet the needs of the papaya industry in the future. The papaya industry will be better able to react to changes in the marketplace over time, and the anticipated development of new papaya varieties over the next several years with different characteristics suitable for different markets.

(7) Section 928.64 should be amended by redesignating current paragraph (e) as paragraph (f) and by adding a new paragraph (e) to provide that the Secretary shall conduct a continuance referendum every 6 years prior to October 1, beginning 6 years from the effective date of this proposed amendment, to ascertain whether continuance of this order is favored by producers. Currently, the order does not provide for the conduct of periodic continuance referenda, but does provide that the Secretary shall conduct a continuance referendum when recommended by the committee. Of course, in the event there is a demonstrated reason, the order provides that the Secretary can hold a continuance referendum at any time.

The order provides that the Secretary shall terminate the order if a majority of all producers favor termination and such majority produced more than 50 percent of the papayas for market. Since less than 50 percent of all producers usually participate in a referendum, it is difficult to determine producer support for termination of an order. In order to provide a basis for determining whether producers favor continuance of the order, a new paragraph (e) should be added to § 928.64 to authorize periodic continuance referenda. The results of such referenda should be based upon the same percentage set forth in section 8(c)(8) of the Act with respect to producer approval of the issuance of a marketing agreement and order. This section of the Act requires approval by two-thirds of the producers voting in the referendum or by producers who have produced two-thirds of the volume of production voted during a representative period. This is an appropriate basis for ascertaining whether papaya producers favor continuation of the order.

In the event that the requisite majority of producers, by number or volume of production represented in the referendum, do not approve continuation of the order, the Secretary should consider termination of the order but would not be required to terminate. In evaluating the merits of termination, the Secretary should not only consider the results of the continuance referendum, but also should consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act. In this regard, the Secretary may solicit input from the public through meetings, press releases, or any other means. In any event, section 8c(16)(B) of the Act requires the Secretary to terminate the order whenever the Secretary finds that a majority of all producers favor termination and such majority produced more than 50 percent of the papayas for market. To be effective, termination of the order should be announced on or before December 15 of the then current fiscal year. This date precedes the beginning of committee operations for a new fiscal year and is considered to be appropriate under the circumstances.

This amendment to the order would provide papaya producers with the opportunity periodically to indicate their support for or rejection of the order, and the periodic continuance referenda provided for would help to ensure that the order continues to be accountable to the producers. Such authority would also obligate producers to periodically evaluate their order and so involve them more closely in its operation.

Testimony was also received proposing that the period between periodic continuance referenda should be 10 years. Such proposal is not recommended because a 10-year period would be too long. Producer sentiment toward the order could change in a shorter period of time, and a 6-year period is considered more appropriate.

Testimony also was received recommending that a periodic continuance referendum only should be conducted as scheduled, if a substantive amendment to the order had not been approved by producers within the 10-year period since the prior referendum. Such proposal is not recommended because a favorable vote in a referendum on a particular amendment to the order, would not necessarily demonstrate producer approval for the entire order.

Testimony also was received recommending that the decision to conduct a periodic continuance referendum be predicated on an affirmative vote of 50 percent or more of the papaya producers obtained in an informal mail survey conducted to determine if there is a need for a continuance referendum. The primary reason presented in support of this proposal was that the conduct of continuance referenda are time consuming and costly. This proposal is not recommended because an informal mail survey of producers would not necessarily provide a definitive indication of producer support for or against continuation of the order, especially if producer support was marginal. Also, with respect to the issue of time and cost incurred in the conduct of continuance referenda, such referenda would be conducted by and any related costs incurred by the Secretary.

(8) A proposal in the notice of hearing by the Department of Agriculture was that it be authorized to make any necessary changes in the order language to make the entire order conform with any amendments resulting from this proceeding. This proposal was supported at the hearing without opposition, and such changes as are necessary have been incorporated into this order. These conforming changes include various miscellaneous nonsubstantive formating changes in the order language, and removal of obsolete material. These changes have been discussed in the material issues where appropriate.

Rulings on Briefs of Interested Persons

At the conclusion of the hearing, the Administrative Law Judge fixed February 3, 1986, as the final date for interested persons to file proposed findings and conclusions and written arguments or briefs, based on the evidence received at the hearing. None were filed.

General Findings

Upon the basis of the record, it is found that:

(1) The findings hereinafter set forth are supplementary, and in addition to, the previous findings and determinations which were made in connection with the issuance of the marketing agreement and order. Except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein, all of said prior findings and determinations are hereby ratified and affirmed;

(2) The marketing agreement and order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(3) The marketing agreement and order, as hereby proposed to be

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amended, regulate the handling of papayas grown in the production area in the same manner as, and are applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(4) The marketing agreement and order, as hereby proposed to be amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(5) There are no differences in the production and marketing of papayas grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(6) All handling of papayas grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 928

Marketing agreements and orders, Papayas, Hawaii.

Recommended Amendment of the Marketing Agreement and Order

The following amendment of the marketing agreement and order is recommended as the detailed means by which the foregoing conclusions may be carried out.

PART 928—PAPAYAS GROWN IN HAWAII

The authority citation for 7 CFR Part 928 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Revise § 928.11 to read as follows:

§ 928.11 District.

"District" means the applicable one of the following described subdivisions of the production area, or such other subdivisions as may be prescribed pursuant to § 928.31(o):

(a) District 1 shall include the island of Hawaii.

(b) District 2 shall include the county of Kauai which consists of the islands of Kauia and Niihau; the county of Maui which consists of the islands of Maui, Molakai, Lanai, and Kahoolawe; and Kalawao County.

(c) District 3 shall include the county of Honolulu which includes all of the island of Oahu.

3. Revise § 928.20 to read as follows:

§ 928.20 Establishment and membership.

There is hereby established a Papaya Administrative Committee consisting of 13 members, each of whom shall have an alternate who shall have the same qualifications as the member. Ten of the members and their alternates shall be growers and are referred to as "grower" members of the committee. Seven of the grower members and their alternates shall be producers of papayas in District 1, two grower members and their alternates shall be producers of papayas in District 2, and one grower member and alternate shall be producers of papayas in District 3. No grower organization shall be permitted to have more than 3 members on the committee. Three of the members and their alternates shall be representatives of handlers and are referred to as "handler" members of the committee. The 3 handler members and their alternates shall be selected from the production area at large. No handler organization shall be permitted to have more than one handler member on the committee. The number of grower and handler members and alternates on the committee, and the composition of the committee between growers and handlers may be changed as provided in § 928.31(o). The committee also may be increased by one public member and one alternate public member nominated by the committee and selected by the Secretary. The committee, with the approval of the Secretary, shall prescribe the qualifications of, and the nominating procedure for, the public member and alternate.

4. Revise § 928.21 to read as follows:

§ 928.21 Term of office.

The term of office of each member and alternate member of the committee shall be for 2 years beginning January 1 and ending on the second succeeding December 31, or such other dates recommended by the committee and established by the Secretary. The consecutive terms of office of a member shall be limited to three 2-year terms. Members and alternate members shall serve in such capacity for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified.

5. Amend § 928.22 by removing paragraph (a), by redesignating current paragraph (b) as (a), by revising the first sentence of new paragraph (a), and by adding a new paragraph (b) to read as follows:

§ 928.22 Nomination.

(a) *Succesor Members.* (1) The committee shall hold or cause to be held, not later than 45 days before the beginning of the term of office of committee members, separate meetings of growers in each district and a meeting of handlers for the purpose of designating nominees for successor members and alternate members of the committee, which shall be publicized and open to all growers and handlers. * * *

(b) In the event that nominees for all available positions are not provided by the aforesaid procedure, then such unfilled positions shall be treated as vacancies and the provisions of § 928.26 shall apply.

6. Revise § 928.23 to read as follows:

§ 928.23 Selection.

The Secretary shall select the grower, handler, and public members, and an alternate for each, from nominations made under §§ 928.20, 928.22 and 928.26, or from other qualified persons.

7. Revise § 928.24 to read as follows:

§ 928.24 Failure to nominate.

If nominations are not made in the time and manner prescribed in §§ 928.20, 928.22 and 928.26, the Secretary may without regard to nominations select the members and alternate members of the committee.

8. Revise § 928.26 to read as follows:

§ 928.26 Vacancies.

To fill any vacancy occassioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in §§ 928.20, 928.22, and 928.23: *Provided*, That the committee may in its discretion submit its recommendation to the Secretary of a nominee eligible to serve in accordance with the requirements specified in § 928.20. To the extent practicable, the committee's recommended nominee for a grower member or alternate grower member position to represent a particular district shall be a grower recommended to this committee by the incumbent grower representatives of the committee from a particular district, or such nominee shall be a qualified grower recommended by the grower group with which the former member was associated immediately prior to vacating the position; and the recommended nominee for a handler member or alternate handler member position shall be the handler recommended to the committee by the incumbent handler representatives of the committee, or such nominee shall be a qualified handler recommended by the packinghouse with which the former member was associated immediately prior to vacating the position.

9. Amend § 928.31 by revising paragraph (o) to read as follows:

§ 928.31 Duties.

* * * * *

(o) With the approval of the Secretary, to redefine the districts into which the production area is divided, to reapportion the grower member representation on the committee among the districts, to increase or decrease the number of grower and handler members and alternates on the committee, and to change the composition of the committee by changing the ratio between grower and handler members including their alternates. Any such changes shall reflect, insofar as practicable, structural changes within the papaya industry and shifts in papaya production among the districts within the production area.

10. Amend § 928.32 by revising paragraph (a) to read as follows:

§ 928.32 Procedure.

(a) A majority of all members of the committee, including alternates acting for members, shall be necessary to constitute a quorum and such majority must concur to approve any committee action.

* * * * *

11. Amend § 928.41 by revising the last sentence in paragraph (b) to read as follows:

§ 928.41 Assessments.

* * * * *

(b) * * * Assessments not paid within a period of time prescribed by the committee may be made subject to interest or late payment charges, or both. The period of time, rate of interest, and late payment charge shall be as recommended by the committee and approved by the Secretary. When such interest or late payment charges are in effect, they shall be applied to all assessments not paid within the prescribed period of time.

12. Amend § 928.52 by revising paragraph (a)(3) and (a)(4) to read as follows:

§ 928.52 Issuance of regulations.

(a) * * *

(3) Fix the size, capacity, weight, dimension, marking, or pack of the container, or containers, which may be used in the packaging or handling of papayas.

(4) Prescribe different requirements under paragraph (a)(1) through (a)(3) of this section for the handling of any variety of papayas to destinations within any geographical area or market type identified and recommended by the committee and approved by the Secretary.

* * * * *

13. Amend § 928.55 by adding a new paragraph (c) to read as follows:

§ 928.55 Inspection and certification.

* * * * *

(c) The committee, with the approval of the Secretary, may prescribe such rules and regulations as it may deem necessary to assure compliance with this section and provide for identification of containers of papayas which have been inspected and certified for handling.

14. Revise § 928.64 to read as follows:

§ 928.64 Termination.

(a) The Secretary may at any time terminate the provisions of this order by giving at least one day's notice by means of a press release or in any other manner which the Secretary may determine.

(b) The Secretay shall terminate or suspend the operation of any and all of the provisions of this order whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

(c) The Secretary shall terminate the provisions of this order at the end of any fiscal year whenever the Secretary finds by a referendum or otherwise that continuance is not favored by the majority of producers who, during a representative period determined by the Secretary, were engaged in the production area in the production of papayas for market: *Provided*, That such majority has produced for market during such period more than 50 percent of the volume of papayas produced in the production area. Such termination shall be effective only if announced on or before December 15 of the then current fiscal year.

(d) Upon recommendation of the committee, received not later than October 1 of an even-numbered year, the Secretary shall conduct a referendum prior to December 1 of such year to ascertain whether continuance of this order is favored by the producers.

(e) The Secretary shall conduct a continuance referendum every sixth fiscal year prior to October 1, with the first such referendum to be conducted within 6 years from the effective date of this amendment of this section, to ascertain whether continuance of this order is favored by producers. The Secretary may terminate the provisions of this order at the end of any fiscal year in which the Secretary has found that continuance of this order is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of papayas in the production area. Such termination of the order shall be effective only if announced on or before December 15 of the then current fiscal year.

(f) The provisions of this order, shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

Signed at Washington, DC, on February 5, 1987.

J. Patrick Boyle,

Administrator.

[FR Doc. 87–2839 Filed 2–10–87; 8:45 am]

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Part III

Office of Personnel Management

5 CFR Part 842

Federal Employees Retirement System-Basic Annuity; Eligibility Requirements and Basic Annuity Computation; Interim Rule With Request For Comments

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 842

Federal Employees Retirement Sytem—Basic Annuity; Eligibility Requirements and Basic Annuity Computation

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing rules to implement the basic annuity provisions of the Federal Employees' Retirement System (FERS) Act of 1986. These rules regulate the eligibility requirements for receiving benefits, and basic computation of those benefits.

DATES: Interim rules effective January 1, 1987; comments must be received on or before April 13, 1987.

ADDRESS: Send comments to Frank D. Titus; Director, FERS Implementation Task Force; Retirement and Insurance Group; Office of Personnel Management, P.O. Box 884, Washington, DC 20044; or deliver to OPM, Room 3311, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Rosenblatt, (202) 632–5560.

SUPPLEMENTARY INFORMATION: The FERS Act of 1986, Pub. L. 99–335, as amended by the Federal Employees' Retirement System Technical Corrections Act of 1986, Pub. L. 99–556, created a new retirement system for some Federal employees.

These interim rules implement the nondisability provisions concerning eligibility for retirement and basic annuity computation. Other provisions of FERS, including the method of computing an annuity for an employee whose service includes part-time service, will be implemented by separate rulemaking.

I. Eligibility

Subpart B of these rules regulates the age and service requirements for nondisability retirement under FERS.

Section 842.202 defines "minimum retirement age" relative to an individual's year of birth. The definition is designed to simplify the language of 5 U.S.C. 8412(h). The minimum retirement age, the earliest age at which an individual may receive an immediate, regular voluntary retirement, is 55 for persons born before 1948. It gradually rises to age 57 for persons born in 1970 and after.

Section 842.203 restates the general eligibility requirement of 5 U.S.C. 8410 that an employee or Member must have at least 5 years of creditable civilian service to retire under the nondisability provisions of FERS. That service may include civilian service performed under the Civil Service Retirement System (CSRS) in the case of employees who have transferred from CSRS to FERS.

Section 842.204 sets forth the age and service requirements for voluntary retirement generally applicable to all employees and Members of Congress. Special eligibility requirements applicable to Members of Congress and other specific categories of employees are treated separately under §§ 842.207 through 842.211.

Under FERS general eligibility provisions, there are two important new provisions. The first is that, for regular voluntary retirement with 30 years of service, an employee must be at the "minimum retirement age" (MRA) which, as explained earlier, begins at age 55 and rises to age 57, depending on an individual's date of birth.

The second important new provision is that, under FERS, employees who meet the MRA and who have at least 10 years of service are eligible to retire. Employees who retire under the "MRA plus 10" provision, and are not eligible to retire under any other provision, may elect to postpone receipt of their retirement benefits as explained in §842.204(c). However, their benefits will be reduced by 5 percent for each year for which the commencing date of annuity precedes their 62nd birthday, unless they (1) have at least 30 years of service; (2) have 20 years of service, and postpone receipt of benefits until age 60; or (3) have at least 20 years of service as an air traffic controller, firefighter, law enforcement officer, or Member of Congress.

Sections 842.205 and 842.206 restate, respectively, the statutory requirements for voluntary early retirement when an agency is undergoing a major reduction in force, reorganization, or transfer of function, and the requirements for early retirement based on involuntary separation.

Under § 842.205, an employee is eligible for early voluntary retirement if he or she occupies a position in a location designated by the Director of OPM as being in an agency that is undergoing a major reorganization, a major reduction in force, or a major transfer of function. The employee must be at least 50 years old and have 20 years of service or be any age with 25 years of service. Under FERS, there is no age reduction for this type of retirement. We will apply existing guidelines contained in appendix E of FPM chapter 351 in determining whether an agency is undergoing a major reduction in force, reorganization, or transfer of function.

Under § 842.206, an employee who is separated involuntarily, but not for cause on charges of misconduct or delinquency, may be eligible for early retirement benefits. In addition to meeting the same age and service requirements that apply to early voluntary retirements, the employee may not have declined a reasonable offer of another position.

To be a reasonable offer, the offered position must meet the requirements enumerated in paragraph (c) of § 842.206. Among these are that the position must be in the same commuting area, unless geographic mobility is a condition of the employee's employment. A mobility requirement may have been established in a vacancy announcement, position description, or other document when the employee was selected for the position. A position must be of the same tenure and work schedule. Same tenure means, for example, a career position in the competitive service if that is the type of position the employee currently has. For the Senior Executive Service (SES), it means another SES position. Same work schedule means, for a full-time employee, another full-time position; and for a part-time employee, another part-time position.

In addition, the position must not be lower than two grades or pay levels below the employee's current grade or pay level, without considering the employee's entitlement to grade or pay retention. To determine whether a position under a different pay schedule or pay system meets this criterion, we are using the definition of "representative rate" in the grade and pay retention regulations (§ 536.102). Because of the individual status of SES members, the SES is considered to be a single grade or pay level.

Like the early voluntary retirement provisions, no age reduction applies to this benefit under FERS.

Section 842.212, which addresses deferred benefits, includes an important new feature. Persons who separate from service before attaining the minimum retirement age may elect to receive a deferred annuity after they attain that age (or they may elect to postpone the commencing date of annuity until any later date up to age 62). However, benefits commencing before age 62 are, with some exceptions, subject to an age reduction, as explained in § 842.404.

Section 842.212 also consolidates the statutory provisions of 5 U.S.C. 8413 and 8464(a)(1)(A)(ii). The latter provision requires that the annuity begin on the first day of the month after the "age and service requirements are met." Thus, even though 5 U.S.C. 8413(a) provides for an annuity "beginning at age of 62 years," the annuity cannot actually commence until the first day of the month after that age is attained. Similarly, under 5 U.S.C. 8413(b), an annuity could not commence before the first day of the month after attainment of the minimum retirement age.

II. Computations

Subpart D regulates computation of the basic nondisability annuity payable under FERS. This subpart is derived from 5 U.S.C. 8415.

Section 842.403 explains the basic computations applicable to all employees and Members except those eligible for the more liberal formulae covered in §§ 842.405 and 842.406. The basic computation is 1 percent of average pay multiplied by the total number of years of service. However, an employee or Member who is at least age 62 at the time of separation and has completed at least 20 years of service is entitled to an additional tenth of a percent in the formula. That higher accrual does not apply to individuals who, at the time of their separation, are Members of Congress, Congressional employees, military reserve technicians, law enforcement officers, firefighters, or air traffic controllers.

Section 842.404 explains the reduction in basic annuity, and the exceptions to the reduction, applicable in the case of an employee who retires under 5 U.S.C. 8412(g) or 8413(b).

Sections 842.405 and 842.406 restate the statutory provisions of 5 U.S.C. 8415(b) through (d). These provisions establish an enhanced accrual formula for certain Members of Congress, Congressional employees, firefighters, law enforcement officers, and air traffic controllers.

III. Waiver of Notice of Proposed Rulemaking

Under 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these amendments effective in less than 30 days. OPM must issue regulations to implement an entire new retirement system, which is effective January 1, 1987. In addition, clear rules must be in place to allow preparation of materials and to distribute them worldwide to employees who are eligible to elect FERS coverage during the "open season" between July 1 and December 31, 1987. These tasks, along with the necessity to prepare, publish, and distribute the necessary forms and informational materials make the publication of proposed rules impracticable.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect retirement payments to retired Government employees, spouses, and former spouses.

List of Subjects in 5 CFR Part 842

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending Part 842 of Title 5 of the Code of Federal Regulations as follows:

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

1. Subpart B, consisting of §§ 842.201 through 842.212, is added to read as follows:

* * * * *

Subpart B—Eligibility

Sec.
842.201 Purpose.
842.202 Definitions.
842.203 General eligibility requirement.
842.204 Immediate voluntary retirement—basic age and service requirements.
842.205 Early retirement—major RIF, reorganization, or transfer of function.
842.206 Involuntary retirement.
842.207 Air traffic controllers.
842.208 Firefighters and law enforcement officers.
842.209 Members of Congress.
842.210 Military reserve technicians.
842.211 Senior Executive Service, Defense Intelligence Senior Executive Service, and Senior Cryptologic Executive Service.
842.212 Deferred retirement.

* * * * *

Subpart B—Eligibility

Authority: 5 U.S.C. 8461.

§ 842.201 Purpose.

This subpart regulates the statutory provisions on eligibility for nondisability retirement under the Federal Employees Retirement System (FERS).

§ 842.202 Definitions.

In this subpart—

"Commuting area" has the same meaning given that term in § 351.203 of this chapter.

"Minimum retirement age" means an age based on an individual's year of birth, as follows:

Year of Birth	Minimum Retirement Age
Before 1948	55 years.
1948	55 years and 2 months.
1949	55 years and 4 months.
1950	55 years and 6 months.
1951	55 years and 8 months.
1952	55 years and 10 months.
1953–1964	56 years.
1965	56 years and 2 months.
1966	56 years and 4 months.
1967	56 years and 6 months.
1968	56 years and 8 months.
1969	56 years and 10 months.
1970 and after	57 years.

§ 842.203 General eligibility requirement.

An employee must have at least 5 years of civilian service creditable under FERS to be eligibile for an annuity under this subpart, except as provided under Part 846 of this chapter.

§ 842.204 Immediate voluntary retirement—basic age and service requirements.

(a) An employee or Member who separates from service is entitled to an annuity—

(1) After attaining the minimum retirement age and completing 10 years of service; or

(2) After becoming age 60 and completing 20 years of service; or

(3) After becoming age 62 and completing 5 years of service.

(b)(1) Except as provided in paragraph (b)(2) or (c) of this section, an annuity payable under paragraph (a) of this section commences on the first day of the month following separation.

(2) An annuity payable under paragraph (a) of this section commences on the day after separation, if that separation occurs upon the expiration of a term (or other period) for which the individual was appointed or elected.

(c)(1) An employee or Member entitled to an annuity under paragraph (a)(1) of this section may elect to postpone the commencing date of that annuity, provided the individual—

(i) Has completed less than 30 years of service; and

(ii) Is not entitled to an immediate annuity under any other provision of this subpart. An immediate annuity means an annuity that will begin within 31 days of separation.

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(2) A postponed commencing date may not precede the later of—

(i) The first day of the month after the date of separation of the employee or Member; or

(ii) The 31st day after the date of filing the election of a commencing date.

(3) A postponed commencing date must precede the date on which the employee or Member becomes age 62.

(4) The election of a commencing date may be filed not more than 90 days before the commencing date elected by the employee or Member, and must be filed in a form prescribed by the Office of Personnel Management (OPM).

(5) A written election that is not in the prescribed form, but which designates a specific commencing date, and otherwise conforms to the time limits in paragraphs (c)(2) through (c)(4) of this section, will be accepted as an informal election subject to ratification in the prescribed form.

(6) The election of a commencing date becomes irrevocable on the date OPM authorizes the first annuity payment.

§ 842.205 Early retirement—major RIF, reorganization, or transfer of function.

(a) An employee other than an employee entitled to an annuity under § 842.207 or § 842.208, who separates from the service voluntarily after completing 25 years of service, or after becoming age 50 and completing 20 years of service is entitled to an annuity if, on the date of separation, the employee is—

(1) Serving in a position and in a geographic area designated by the Director of OPM or his or her designee; and

(2) Serving during a period in which the Director of OPM or his designee determines, in accordance with instructions issued under appendix E of FPM Chapter 351, that—

(i) The employing agency is undergoing a major reorganization, a major reduction in force, or a major transfer of function; and

(ii) A significant percent of the employees serving in the employing agency will be separated or subject to a reduction in basic pay.

(b) Determinations of major reorganization, major reduction in force, or major transfer of function will be made by the Director of OPM or his or her designee only after receipt of a written request to make the determination from the head of the agency, or his or her designee.

§ 842.206 Involuntary retirement.

(a) An employee, other than an employee entitled to an annuity under § 842.207 or § 842.208, who separates from the service involuntarily after completing 25 years of service, or after becoming age 50 and completing 20 years of service is entitled to an annuity, except as provided in paragraphs (b) and (c) of this section.

(b) An employee who is separated for cause on charges of misconduct or delinquency is not entitled to an annuity under paragraph (a) of this section.

(c) An employee who would otherwise be entitled to an annuity under paragraph (a) of this section is not so entitled if the employee has declined a reasonable offer of another position that meets all of the following conditions:

(1) The offer must be made in writing;

(2) The employee must meet established qualification requirements; and

(3) The offered position must be—

(i) In the employee's agency, including an agency to which the employee would be transferred in a transfer of function(s) between agencies;

(ii) Within the employee's commuting area unless geographic mobility is a condition of the employee's employment;

(iii) Of the same tenure and work schedule; and

(iv) Not lower than the equivalent of two grades or pay levels below the employee's current grade or pay level, without consideration of the employee's eligibility to retain his or her current grade or pay under Part 536 of this chapter or other authority. In movements between pay schedules or pay systems, the representative rate of the grade or pay level that is two grades below that of the current position will be compared with the representative rate of the grade or pay level of the offered position. For this purpose, "representative rate" has the meaning given that term in § 536.102 of this chapter.

(d) An annuity payable under paragraph (a) of this section commences on the day after separation from the service.

§ 842.207 Air traffic controllers.

(a) An employee who separates from service, except by removal for cause or charges of delinquency or misconduct, is entitled to an annuity—

(1) After completing 25 years of service as an air traffic controller; or

(2) After becoming age 50 and completing 20 years of service as an air traffic controller.

(b) An annuity payable under paragraph (a) of this section commences on the first day of the month following separation.

§ 842.208 Firefighters and law enforcement officers.

(a) An employee who separates from service, except by removal for cause on charges of delinquency or misconduct, is entitled to an annuity—

(1) After completing any combination of service as a firefighter or law enforcement officer totaling 25 years; or

(2) After becoming age 50 and completing any combination of service as a firefighter or law enforcement officer totaling 20 years.

(b) An annuity payable under paragraph (a) of this section commences on the first day of the month following separation.

§ 842.209 Members of Congress.

(a) A Member, except one separated by resignation or expulsion, is entitled to an annuity—

(1) After completing 25 years of service; or

(2) After becoming age 50 and completing 20 years of service.

(b) An annuity payable under paragraph (a) of this section commences on the day after separation from the service.

§ 842.210 Military reserve technicians.

(a) A military reserve technician as defined in 5 U.S.C. 8401(30) who is separated from civilian service because of ceasing to qualify as a member of a military reserve component after reaching age 50 and completing 25 years of service is entitled to an annuity.

(b) An annuity payable under paragraph (a) of this section commences on the day after separation.

§ 842.211 Senior Executive Service, Defense Intelligence Senior Executive Service, and Senior Cryptologic Executive Service.

(a) A member of the Senior Executive Service, the Defense Intelligence Senior Executive Service, or the Senior Cryptologic Executive Service who is removed or who resigns after receipt of written notice of proposed removal for less than fully successful executive performance is entitled to an annuity—

(1) After completing 25 years of service; or

(2) After becoming age 50 and completing 20 years of service.

(b) "Removed for less than fully successful executive performance" means (1) with respect to a member of the Senior Executive Service, removal in accordance with procedures in Subpart E of Part 359 of this chapter; and (2) with respect to a member of the Defense Intelligence Senior Executive Service or the Senior Cryptologic Executive Service, a certification by the head of the Defense Intelligence Agency or National Security Agency (or their designees) that the employee has been removed for less than fully successful executive performance.

(c) An annuity payable under paragraph (a) of this section commences on the day after separation from service.

§ 842.212 Deferred retirement.

(a) An employee or Member who, after completing 5 years of service, separates from service or transfers to a position not covered by FERS is entitled to a deferred annuity beginning on the first day of the month after the individual attains age 62.

(b)(1) Except as provided in paragraph (b)(3) of this section, an employee or Member who has not attained the minimum retirement age, and who, after completing 10 years of service, is separated or transferred to a position in which the individual is no longer covered by FERS, is entitled to a deferred annuity commencing on the later of—

(i) The first day of the month following the date on which the employee or Member attains the minimum retirement age; or

(ii) A date designated by the individual.

(2) The election of a commencing date may be filed no more than 90 days before that commencing date, and must be elected in a form prescribed by OPM. A written election that is not in the prescribed form, but which designates a specific commencing date, will be accepted for as an informal election, subject to ratification in the prescribed form.

(3) An employee or Member is not entitled to a deferred annuity under paragraph (b)(1) of this section if the individual is eligible for an annuity under §§ 842.205 through 842.211 or will, within 31 days after filing the election of a commencing date, attain age 62.

(4) The election of a commencing date becomes irrevocable on the date OPM authorizes the first annuity payment.

2. Subpart D, consisting of §§ 842.401 through 842.406, is added to read as follows:

• • • • •

Subpart D—Computations

Sec.

842.401 Purpose.
842.402 Definition.
842.403 Computation of basic annuity.
842.404 Reductions in basic annuity.
842.405 Air traffic controllers, firefighters, and law enforcement officers.
842.406 Members of Congress and Congressional employees.

• • • • •

Subpart D—Computations

Authority: 5 U.S.C. 8461.

§ 842.401 Purpose.

This subpart regulates the basic annuity computation under the Federal Employees Retirement System (FERS).

§ 842.402 Definition.

In this Subpart—

"Total service" means the full years and twelfth parts thereof of an employee's or Member's service creditable under Subpart C of this part, excluding any fractional part of a month.

§ 842.403 Compution of basic annuity.

(a) Except as provided in paragraph (b) of this section and § 842.405 and § 842.406, the annuity of an employee or Member is 1 percent of average pay multiplied by total service.

(b) The annuity of an employee is 1.1 percent of average pay multiplied by total service, provided the individual—

(1) Has completed 20 years of service; and

(2) At the time of separation on which entitlement to an annuity is based—

(i) Is at least age 62; and

(ii) Is not a Member, Congressional employee, military reserve technician, law enforcement officer, firefighter, or air traffic controller.

§ 842.404 Reductions in basic annuity.

The annuity of an employee or Member retiring under § 842.204(a)(1) or § 842.212(b) is reduced by five-twelfths of 1 percent for each full month by which the commencing date of annuity precedes the 62nd birthday of the employee or Member, unless the individual—

(a) Has completed 30 years of service; or

(b)(1) Has completed 20 years of service; and

(2) Is at least age 60 on the commencing date of annuity; or

(c) Has completed 20 years of service as—

(1) An air traffic controller, except one separated by removal for cause on charges of misconduct or delinquency;

(2) A firefighter and/or law enforcement officer, except one separated by removal for cause on charges of misconduct of delinquency; or

(3) A Member, except one separated by resignation or expulsion.

§ 842.405 Air traffic controllers, firefighters, and law enforcement officers.

The annuity of an air traffic controller retiring under § 842.207 or a law enforcement officer or firefighter retiring under § 842.208 is—

(a) One and seven-tenths percent of average pay multiplied by 20 years; plus

(b) One percent of average pay multiplied by the years of service exceeding 20 years.

§ 842.406 Members of Congress and Congressional employees.

The annuity of an employee or Member who has had at least 5 years of service as a congressional employee, Member, or any combination thereof totaling 5 years is—

(a) One and seven-tenths percent of average pay multiplied by the total number of years of service as a Member and/or congressional employee not exceeding 20 years; plus

(b) One percent of average pay multiplied by the years of service other than that of a Member and/or congressional employee.

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Part IV

Office of Personnel Management

5 CFR Part 842

Federal Employees Retirement System—Basic Annuity; Annuity Supplement; Interim Rule with Request for Comments

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 842

Federal Employees Retirement System—Basic Annuity; Annuity Supplement

AGENCY: Office of Personnel Management.

ACTION: Interim rules with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim rules to implement provisions of the Federal Employees' Retirement System (FERS) Act of 1986, which require OPM to pay an annuity supplement to certain employees who retire under the Federal Employees Retirement System. These interim rules regulate eligibility for the supplement, its computation, and reduction of the amount payable on account of excess earnings.

DATES: Interim rules effective January 1, 1987; comments must be received on or before April 13, 1987.

ADDRESS: Send comments to Frank D. Titus, Director, FERS Implementation Task Force; Retirement and Insurance Group; P.O. Box 884, Washington, DC 20044; or deliver to OPM, Room 3311, 1900 E Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Rosenblatt, (202) 632–5560.

SUPPLEMENTARY INFORMATION:

I. Introduction

The FERS Act of 1986, Pub. L. 99–335, as amended by the Federal Employees' Retirement System Technical Corrections Act of 1986, Pub. L. 99–556, created a new retirement system for Federal employees. These rules implement a provision of FERS which requires payment of an annuity supplement to certain eligible retirees. Section 8421 of FERS provides for a supplement equal to a portion of a hypothetical social security retirement benefit based on the employee's pay during FERS-covered civilian employment and deemed earnings during years before FERS service. Payment of the supplement is subject to an earnings test similar to the test under the Social Security Act applicable to social security recipients.

II. Eligibility

The supplement is payable to persons retiring on an immediate (not deferred) annuity at the "minimum retirement age" (MRA) who have at least 30 years of service; to persons retiring at age 60 with 20 years of service; and to persons retiring under the special retirement provisions for firefighters, law enforcement officers, air traffic controllers, and military service technicians (5 U.S.C. 8412(a), (b), (d), or (e) and 5 U.S.C. 8414(c)).

The supplement is also payable to certain other individuals who retire early: Members of Congress; members of the Senior Executive Service retiring under 5 U.S.C. 8414(a); involuntary retirees (except those removed for cause); and employees who separate voluntarily when their agency is undergoing a major reduction in force, reorganization, or transfer of function (5 U.S.C. 8412(f) and 5 U.S.C. 8414 (a) and (b)). However, these retirees may not begin to receive the supplement until they attain the minimum retirement age.

The supplement stops when the recipient becomes entitled to an actual social security benefit based on his or her own earnings, but does not continue in any case beyond age 62.

III. Computation

The supplement is a hypothetical social security benefit computed as if the annuitant were age 62 and fully insured in the year the supplement commences. The computation ignores the Social Security windfall elimination provision and uses the maximum possible actuarial reduction applicable to an individual born in the same year as the annuitant.

The earnings history needed to compute the supplement will be based on basic pay during civilian service creditable under FERS and deemed wages for years after age 21 and prior to the first full year of FERS service. The "deemed" wages are equal to the national average wage in each year times a ratio of basic pay in the first full year of FERS service. (The national average wage is a figure published annually by the Social Security Administration.) For those employees who retire before attaining the MRA, but whose entitlement to the supplement is delayed until attainment of the MRA—Members of Congress, SES employees, early voluntary and discontinued service retirees—earnings for years of service after the date of separation and prior to attainment of the MRA are deemed to be zero.

Once this earnings history is constructed, the earnings in each year are updated (indexed) to reflect national average wage levels during the second year before supplement commences. (The Social Security retirement benefit calculation indexes earnings to the year of attainment of age 60; therefore the assumption that the employee is age 62 when the supplement begins requires indexing to the second year before the supplement begins.)

The supplement is then computed using the same formula used to derive the primary insurance amount (PIA) under social security that is applicable in the year the supplement begins. The maximum actuarial reduction for early retirement is then applied. The resulting amount is then multiplied by a faction to approximate the proportion of the career benefit earned under FERS. The fraction is the years of FERS service over 40.

IV. Reduction for excess earnings

Like Social Security benefits, the annuity supplement is subject to an earnings test. The law provides that the test will use the same definition of "earnings" and the exempt amounts as apply to Social Security benefits under section 203 of the Social Security Act. However, unlike the social security earnings test, earnings in the prior year (rather than the current year) will be used to determine the supplement in the current year.

V. Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date

Under 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists to make these amendments effective without prior publication of notice of proposed rules and in less than 30 days. OPM must issue regulations to implement an entire new retirement system which is effective January 1, 1987. In addition, clear rules must be in place to allow preparation of materials and to distribute them world-wide to employees who are eligible to elect FERS coverage during the "open season" between July 1 and December 31, 1987. These tasks make impracticable the publication of proposed rules.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations will affect only retired Government employees and spouses.

List of Subjects in 5 CFR Part 842

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending Part 842 of Title 5 of the Code of Federal Regulations to add a new Subpart E to read as follows:

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

* * * * *

Subpart E—Annuity Supplement

Sec.

842.501 Purpose.
842.502 Definitions.
842.503 Eligibility for annuity supplement.
842.504 Amount of annuity supplement.
842.505 Reduction in annuity supplement because of excess earnings.

* * * * *

Subpart E—Annuity Supplement

Authority: 5 U.S.C. 8461.

§ 842.501 Purpose.

This subpart regulates the annuity supplement payable to eligible employees under sections 8421 and 8421(a) of Title 5, united State Code.

§ 842.502 Definitions.

In this subpart—

"Age 62" means the day before an individual's sixty-second birthday.

"Annuity Supplement" means the monthly benefit described in § 842.504.

"Applicable exempt amount" and "earnings" have the same meanings as in section 203 of the Social Security Act.

"Excess earnings" means 50 percent of an individual's earnings which exceed the applicable exempt amount during a calendar year or, if less, an amount equal to the total annuity supplement paid to the individual in that year, but does not include earnings prior to an individual's attainment of the minimum retirement age.

"FERS" means Chapter 84 of Title 5, United States Code.

"Minimum retirement age" has the same meaning as in § 842.202.

"Test year" means the calendar year immediately before the one in which any reductions required by 5 U.S.C. 8421a and § 842.505 are applied.

§ 842.503 Eligibility for annuity supplement.

(a) Except as provided in paragraph (b) of this section, an employee or Member receiving an annuity under any of the following sections is entitled to receive an annuity supplement:

(1) Section 842.204(a)(1) if the employee or Member has completed at least 30 years of service;

(2) Section 842.204(a)(2) governing retirement at age 60 with 20 years of service;

(3) Section 842.205 governing retirement at age 50 with 20 years of service or at any age during a major reorganization or reduction in force;

(4) Section 842.206 governing discontinued service retirement;

(5) Section 842.07 governing early retirement for air traffic controllers;

(6) Section 842.208 governing early retirement for law enforcement officers;

(7) Section 842.209 governing early retirement for Members of Congress;

(8) Section 842.210 governing early retirement for military reserve technicians; or

(9) Section 842.211 governing early retirement for members of the Senior Executive Service.

(b) An employee or Member who retires under any of the following sections before attaining the minimum retirement age, is not entitled to receive an annuity supplement until he or she attains that age:

(1) Section 842.205;

(2) Section 842.206;

(3) Section 842.209; or

(4) Section 842.211;

(c) An employee or Member ceases to be entitled to an annuity supplement on the earlier of—

(1) The last day of the month in which the individual becomes age 62; or

(2) The last day of the month before the first month for which the individual would, upon proper application, be entitled to social security benefits.

§ 842.504 Amount of annuity supplement.

(a) Subject to paragraph (b) of this section, an annuity supplement is an amount equal to the old-age insurance benefit payable under title II of the Social Security Act, multiplied by a fraction—

(1) The numerator of which is the annuitant's total service creditable under FERS, excluding military service not performed during an absence of leave without pay from civilian service, rounded to the nearest whole number of years not exceeding 40 years; and

(2) The denominator of which is 40.

(b)(1) The benefit referred to in paragraph (a) of this section is computed—

(i) As if the annuitant were age 62 and fully insured on January 1 of the year the annuity supplement commences;

(ii) Without regard to the Social Security earnings test (section 203 of the Social Security Act);

(iii) Without regard to the Social Security windfall elimination provisions (sections 215(a)(7) and 215(d)(5) of the Social Security Act); and

(iv) Using the actuarial reduction (section 202(q) of the Social Security Act) prescribed in the following table:

Year of Birth	Reduction (percent)
1937 and before	20
1938	20⅔
1939	21⅓
1940	22
1941	23⅓
1942	24⅔
1943–54	25
1955	25⅔
1956	26⅓
1957	27⅓
1958	28⅓
1959	29⅔
1960 and later	30

(2) In computing the primary insurance amount—

(i) The number of elapsed years used to compute the number of benefit computation years does not include the years beginning with the year in which the annuity supplement commences;

(ii) For an employee or Member who retires under §§ 842.205, 842.206, 842.209, or 842.211 before reaching the minimum retirement age, wages in calendar years beginning after the date of separation on which the retirement is based, are deemed to be zero.

(iii) Only basic pay for full calendar years of service creditable under FERS is taken into account in computing the retiree's wages for a benefit computation year;

(iv) For a benefit computation year after age 21 during which the retiree did not perform a full calendar year of service creditable under FERS the retiree's wages are deemed to equal the product of—

(A) The amount in Appendix B of Subpart C of Part 843 corresponding to that year, multiplied by

(B) A fraction—

(*1*) The numerator of which is the retiree's basic pay for his or her first full year of service creditable under FERS; and

(*2*) The denominator of which is the amount in Appendix B of Subpart C of Part 843, corresponding to the retiree's first full year of service creditable under FERS.

§ 842.505 Reduction in annuity supplement because of excess earnings.

(a)(1) Except as provided in paragraphs (a)(2) and (b) of this section, the annuity supplement payable under § 842.504 is reduced by excess earnings in the test year, divided by twelve.

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(2) Any annuity supplement payable during the year in which an individual loses entitlement to the annuity supplement by reason of § 842.503(c) is reduced by excess earnings in the test year divided by the number of months for which the annuity supplement is payable.

(b) Any reduction in the annuity supplement during a month because of excess earnings may not exceed the amount of annuity supplement payable during that month.

(c) Earnings and estimated earnings for each test year will be furnished by retirees in a form prescribed by OPM.

(d) Failure to furnish earnings and estimated earnings in the form or at the times prescribed by OPM is cause to suspend payment of the supplement until the annuitant establishes to the satisfaction of OPM that he/she continues to be eligible for the supplement.

(e) The reductions described in paragraphs (a) and (b) of this section are not subject to the due process procedures described in 5 U.S.C. 8461(e).

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Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of Airport Radar Service Areas; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AWA-36]

Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates Airport Radar Service Areas (ARSA) at Atlantic City Airport, NJ; Fort Myers Southwest Florida Regional Airport, FL; Savannah International Airport, GA; and Tallahassee Municipal Airport, FL. The locations designated are public airports at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of these ARSA's will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at these locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

EFFECTIVE DATE: 0901 UTC, March 12, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Burns, Airspace and Air Traffic Rules Branch (ATO-230), Airspace—Rules and Aeronautical Information Divison, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," in Notice 83-9 (48 FR 34286, July 28, 1983) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. Those locations were designated ARSA's by SFAR No. 45 (48 FR 50038, October 28, 1983) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis. The original expiration dates for SFAR 45, December 22, 1984, for Austin and January 19, 1985, for Columbus were extended to June 20, 1985 (49 FR 47176, November 30, 1984).

On March 6, 1985, the FAA adopted the NAR recommendation and amended Parts 71, 91, 103 and 105 of the Federal Aviation Regulations (14 CFR Parts 71, 91, 103 and 105) to establish the general definition and operating rules for an ARSA (50 FR 9252), and designated Austin and Columbus airports as ARSA's as well as the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250). Thus far the FAA has designated 69 ARSA's as published in the **Federal Register** in the implementation of this NAR recommendation.

On August 18, 1986, the FAA proposed to designate ARSA's at Atlantic City Airport, NJ; Fort Myers Southwest Florida Regional Airport, FL; Savannah International Airport, GA; and Tallahassee Municipal Airport, FL, (51 FR 29534). This rule designates ARSA's at these airports. Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposal to the FAA. Additionally, the FAA has held informal airspace meetings for each of these proposed airports.

Discussion of Comments

The FAA has received comments on the basic ARSA program as well as comments directed toward the proposed individual designation. Additionally, several of the comments on individual designation are common or speak to the basic program itself. Discussion of the comments is divided into two sections. The first addresses common and ARSA program comments, the second addresses comments on the proposal at Charleston AFB/International Airport.

ARSA Program Comments

Aircraft Owners and Pilots Association (AOPA) and others commented that, notwithstanding the statement by the FAA in the Regulatory Evaluation contained in the notice, increased air traffic controller personnel and equipment would be needed to handle the increased traffic expected due to the mandatory provisions of the ARSA. FAA's experience with the current ARSA's has been that while there is an increase in the amount of traffic being handled by controllers, this increase is significantly offset by the reduction in the amount of control instructions that must be issued under ARSA procedures as compared to TRSA procedures. However, the FAA recognizes that the potential exists for a need to establish additional controller positions at some facilities due to increased workload should the expected efficiency improvements in handling traffic not fully offset the increased number of aircraft handled. Further, FAA does not expect to incur additional equipment costs in implementing the ARSA program. In some instances, previously adopted plans to replace or modify older existing equipment may be rescheduled to accommodate the ARSA program. However, no new equipment is expected to be required as a result of the ARSA program.

Several commenters, including AOPA, disagreed with the FAA's conclusion that the additional air traffic could be accommodated with existing manpower at locations where TRSA participation was low. The FAA's conclusion for the total program was in part based upon the fact that participation in the existing TRSA's was quite high and, therefore, an increase from the present levels to 100% would not be a significant change. The commenters, while not agreeing with this conclusion, claimed that the FAA's rationale did not apply where participation was low and thus additional manpower would be needed at these locations if ARSA was designated. The FAA recognizes that participation in the TRSA program is relatively low at some of the candidate locations. However, this is in large part due to the controllers' walkout of 1981 and the subsequent reduction in fully qualified controllers which led to the discontinuance of TRSA services. A sufficient number of controllers is assigned at the facilities to which the commenters refer and those facilities are ready to provide the service to the increased number of pilots. This factor was considered by the FAA in its initial evaluation of the ARSA program.

The Soaring Society of America (SSA) objected to the ARSA program because it does not provide the same level of safety and service to all classes of aviation. As with other regulations, this rule affects different operators in different ways depending on their respective need to operate in controlled airspace or near the airports involved. The FAA does not agree that this variation in impact is reason not to adopt a rule which benefits the majority of users.

AOPA and others claim the FAA is changing the criteria that an operating control tower is the only requirement for an airport to be eligible for an ARSA. The FAA has not departed from the NAR criteria which would replace TRSA with ARSA at airports with an operating control tower served by a Level III, IV, or V radar approach control facility.

The SSA claimed that the ARSA rule should state that the ultimate responsibility for separation from other aircraft operating in visual flight rule (VFR) conditions rests with the pilot. While the FAA agrees that such is the case, the agency does not agree that the ARSA rule must so state. Unless a new or amending provision to the Federal Aviation Regulations (FAR) specifically deletes, amends, or supersedes existing sections, the existing regulations still apply. The ARSA rule (50 FR 9252, 9257, March 6, 1985) did not alter the sections of the FAR that establish that level of responsibility.

AOPA faulted the FAA's implementation of the ARSA program. The FAA stated in the proposal that the benefits of standardization and simplicity were nonquantifiable, and that the safety benefits anticipated by the FAA were not attributable to any given candidate but were based upon implementation of the program on a national basis. According to AOPA this evidenced the need to further evaluate the program at the current locations so that benefits could be individually assessed and each candidate evaluated accordingly. The FAA does not agree. The benefits of standardization and simplicity would always be nonquantifiable regardless of the amount of evaluation, yet they received considerable emphasis by the NAR Task Group. Overall national midair collision accident rates are relatively low, and accident rates within individual categories of airspace are lower still. Additionally, accidents at specific locations are random occurrences. Therefore, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Additionally, the FAA does not believe that these considerations should be cause for delaying a program that was recommended by a majority of the members of the National Airspace Review, and which has already produced positive results at most of the designated locations.

Numerous commenters also objected to the proposals based upon their belief that the volume of air traffic in several of the proposed locations was too great for the ARSA program. The FAA believes that such a point argues strongly for the establishment of an ARSA rather than the converse.

Some commenters, including AOPA, predicted that user costs incurred due to delays will be greater than was estimated by the FAA, and that these costs will be experienced more at some sites than at others. In the NPRM, FAA acknowledged that initial delay problems would vary from site to site, that estimates of delays were quite preliminary, that at some facilities the transition process is expected to go very smoothly, and that at other sites delay problems will dominate the initial adjustment period. These cost estimates are expected to be transitory in nature in that actual delays will be reduced as pilots and controllers become experienced with ARSA procedures. This has been the case at the three locations where ARSA has been in effect for an appreciable period, and is the trend at those locations more recently designated.

Several comments claimed that some aircraft would have to purchase two-way radios in order to enter the ARSA and land at or depart from airports within the ARSA. The FAA does not agree. Each primary airport receiving ARSA designation has an airport traffic area requiring two-way radio communications at present. Therefore, no additional cost will be incurred for purchase of radios for aircraft landing at or departing from primary airports receiving ARSA designation

Further, some commenters, including AOPA, expressed concern that older 360 channel transceivers would not be adequate to operate within an ARSA. Frequencies compatible with 360 channel transceivers are available at all ARSA locations. Therefore, operators of 360 channel equipment will not need to install new radios to operate within an ARSA.

AOPA and other commenters stated that the proposed ARSA's would derogate rather than improve safety, as a result of increased frequency congestion, pilots concentrating on their instruments and placing too much reliance upon ATC rather than "see and avoid," and the compression of air traffic into narrow corridors as pilots elect to circumnavigate an ARSA rather than receive ARSA services. In addition to increasing the risk of aircraft collision, the commenters claimed that compression would increase the impact of aircraft noise on underlying communities and cause aircraft to be flown closer to obstructions.

As indicated above, while an increased number of aircraft will be using radio frequencies, the amount of "frequency time" needed for each aircraft is reduced in an ARSA compared to the current TRSA. This has been the experience of the FAA at the current ARSA facilities.

AOPA claims that since the communications and readback procedures in ARSA's do not differ from those utilized in TRSA's there would be no reduction in "frequency time" needed for each pilot to acknowledge instructions or information, and thus, the partial offset indicated by the FAA was not justified. The offset is based upon fewer as well as shorter transmissions for each pilot, thus the FAA does not agree with this claim.

The FAA evaluated the flow of air traffic around the Austin, TX, and Columbus, OH, ARSA's during the confirmation period to determine if compression was occurring. This evaluation was performed by observing the radar at Austin, TX, and by both radar observations and the use of extracted computer data at Columbus, OH. Following the designation of an ARSA at Baltimore/Washington International Airport (BWI), the FAA evaluated the flow of air traffic there for a period of 90 days by observing the radar and extracting computer data to determine if compression was occurring. Additionally, the FAA has continually monitored for the possibility of compression at all recently designated locations. Compression has not been detected at any of these locations. However, compression of air traffic is a site-specific effect that could occur at a particular location regardless of its absence elsewhere. Thus, although the FAA does not believe compression of traffic will occur at any of the proposed airports, the agency will continue to monitor each designated ARSA and make adjustments if necessary.

AOPA, and other commenters claimed that the FAA provided no demonstrable evidence that the ARSA program would improve aviation safety. The FAA continues to believe the implementation of the ARSA program will enhance aviation safety. The program requires two-way radio communication between ATC and all pilots within the designated areas. Air traffic controllers will thus be in a much improved position to issue complete traffic information to the pilots involved, and thus, safety will be improved.

AOPA, and several other commenters, requested that VFR corridors be established at several of the subject locations along routes that are currently contained within an airport traffic area (ATA). The NAR Task Group noted in their evaluation of the TRSA program that under FAR § 91.87 pilots operating under VFR to or from a satellite airport within an ATA are excluded from the two-way radio communications requirement. The Task Group noted that this was acceptable until the volume of air traffic at the primary airport dictated the installation of a radar approach control. The Task Group recommended.

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and the FAA adopted, the ARSA program as a safety improvement addressing this problem. Thus, the FAA does not believe provisions for VFR corridors that penetrate an ATA in most cases are warranted or in keeping with that recommendation.

One commenter claimed that the grouping of ARSA's such as that adopted in the Sacramento Valley area would create "squeezing" of traffic in the corridors between the blocks of ARSA airspace. One area in question, between Sacramento and Beale Air Force Base (AFB), is approximately 20 miles wide. The FAA does not agree that "squeezing" will occur in this area. Additionally, other user organizations have requested VFR corridors between adjacent or grouped ARSA's and these ARSA's have been modified to accommodate this request.

AOPA and others commented that several of the proposals will require pilots to violate FAR section 91.79 (14 CFR 91.79) regarding minimum safe altitudes. The section states in part, "Except when necessary for takeoff or landing, no person may operate an aircraft below . . . an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft [when over any congested area of a city, town, or settlement, or over any open air assembly of persons]." The commenters claim that the 1,200-foot base altitude of the 5- to 10-mile portion of the ARSA will force pilots to violate FAR section 91.79 where obstacles extend more than 200 feet above the ground. There are two alternatives available to pilots in such a situation which permit compliance with the regulation. Namely, pilots may participate in ARSA services and thus not be limited to the 1,200-foot base, and secondly, a pilot may deviate 2,000 feet horizontally from the obstacle.

Furthermore, AOPA claims that the above response does not adequately respond to the issue. They claim that deviations of 2,000 feet horizontally would increase workload and reduce the efficiency of see-and-avoid, and thus, potentially reduce safety. The FAA does not encourage deviation but encourages particiption which will not require deviation and will result in controllers providing radar assistance for see-and-avoid.

Several commenters noted that the proposal did not contain an environmental assessment. Under existing environmental regulations the proposed establishment of a Terminal Control Area (TCA) or a TRSA does not require an environmental assessment. The agency environmental regulations have not yet been amended to reflect ARSA procedures. However, because the potential environmental impact and regulatory effects of ARSA designation fall between those of the TCA and TRSA designations, the FAA finds that no environmental assessment is required for an ARSA designation.

AOPA, the Experimental Aircraft Association (EAA), and other commenters indicated that the FAA had failed to demonstrates a need for the ARSA program itself, as well as a need for several of the individual proposed locations. Additionally, comments were received that faulted some of the features of the ARSA. Most of these comments went beyond the scope of the subject proposal and were addressed when the FAA adopted the recommendation of National Airspace Review (NAR) Task Group 1–2.2 (50 FR 9252 March 6, 1985). However, the FAA believes the need for the ARSA program was adequately demonstrated by the task group that reviewed the TRSA program and recommended the ARSA as the former's replacement. The task group faulted the TRSA program in several of its aspects and through consensus agreement determined the preferred features of the ARSA prior to making their recommendation to the FAA. Justification for the ARSA program has been the subject of previous FAA rulemaking, and the program was adopted after consideration of public comment. Response to comments on ARSA's at particular locations is made below.

AOPA, EAA, and others commented that several of the proposed ARSA's failed to meet the criteria for designation. The criteria for this airport was recommended by the NAR Task Group and adopted by the FAA. Namely, " . . . excluding TCA locations, all airports with an operational airport traffic control tower and currently contained within a TRSA serviced by a Level III, IV, or V radar approach control facility shall have [an ARSA] designated; unless a study indicates that such designation is inappropriate for a particular location." (49 FR 47184, November 30, 1984).

Several commenters suggested the top of the ARSA be lowered from 4,000 feet above field elevation. Absent strong justification for lowering this altitude, the FAA has not adopted these recommendations. The agency's rationale for nonadoption is set forth immediately above.

Several commenters, including AOPA and EAA, indicated that at several of the proposed ARSA's the TRSA was working quite well and that there was no need to change something that was working. The FAA acknowledges that TRSA's are functional and beneficial, to a point. However, the NAR Task Group did not fault individual TRSA locations but the TRSA program itself and recommended its replacement. The FAA concurred with that assessment and has determined that the ARSA program is an improvement over the TRSA program from the standpoints of both safety and service. Thus, the quality of service being provided at TRSA locations should not constitute a roadblock to improvement.

Several commenters claimed the reduced separation standards of the ARSA program would derogate rather than enhance safety. The elimination of the Stage III separation requirements was recommended by users, all of whom are vitally interested in aviation safety, and adopted by the FAA. This aspect of the ARSA program received considerable FAA attention during the confirmation period at Austin, TX, and Columbus, OH. The FAA agrees with the task group that the Stage III separation standards are not needed for safety in a mandatory participation area.

Several commenters requested that the ARSA be described in statute rather than nautical miles. Numerous user organizations and the NAR itself have recommended that the FAA adopt nautical-mile descriptions rather than statute. It is the intention of the FAA to establish all new descriptions according to that recommendation.

Several commenters objected to proposals where the ARSA was in proximity to other airports. According to these commenters pilots would not know whether they should be in contact with the ARSA approach control facility or in contact with the control tower at the secondary airport, or on unicom. The FAA does not view this situation as different from that existing at many of these locations today. Through pilot education programs and experience with ARSA procedures this situation will improve. Also, as at present, when a pilot contacts the wrong FAA facility the controllers will give appropriate instructions.

AOPA, and other commenters objected to several of the proposed ARSA's based upon the claim that the FAA has failed to evaluate the cumulative effect of the proposed ARSA's and other regulatory airspace. The evaluation for each ARSA included all factors known to the FAA, including the proximity of other regulatory airspace.

Underlying a great many of the comments received was the idea that some provision should be made so that

pilots could continue their current practices without contacting the responsible ATC facility. While the FAA has made modifications from the standard ARSA in cases where circumstances warrant, the basic thrust of the ARSA program is to require two-way communication with the responsible approach control facility, and not to make modifications in the program to provide for nonparticipation.

Information on ARSA's following the establishing of a new site will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues, and, therefore, will not involve additional costs strictly as a result of the ARSA program.

Additionally, no significant costs are expected to be incurred as a result of the follow-on user meetings. These meetings are being held at public or other facilities which are being provided free of charge or at nominal cost. Further, because these meetings are being conducted by local FAA facility personnel, no travel, per diem, or overtime costs will be incurred by regional or headquarters personnel.

SSA faulted the FAA for using the aviation safety seminars for pilot education on ARSA's. They claim these seminars do not reach many pilots and the seminars are reserved during this year for the FAA "Back to Basics" program. The FAA does not agree. The aviation safety seminars are for all pilots and for education on all aspects of aviation which would include the ARSA program.

SSA commented that the FAA should take into consideration the unique operating characteristics of gliders in defining the ARSA airspace at some locations. The FAA has modified the configurations of the ARSA at locations where glider operations would be adversely affected by a standard configuration.

Numerous commenters objected to the ARSA designations claiming they would simply provide the FAA with the basis for additional regulatory restrictions. The FAA does not believe this to be a valid objection. While the agency has no current plans for further regulatory action which imposes additional restrictions, such action if it should ever become a reality would be the subject of additional rulemaking and would of necessity be judged on its own merits, as should these proposals.

The Air Line Pilots Association (ALPA) concurred with the proposal as an improvement in operational efficiency and a significant contribution to a reduction of midair collision potential.

The Air Transport Association (ATA) endorsed the proposed designations as an improvement in safety with specific comments indicated below.

The General Aviation Manufacturers Association endorsed the ARSA's as an improvement in safety and concurred with the FAA's philosophy regarding some deviation from the standard model.

Comments were received which were supportive of each of the ARSA's addressed here as an improvement in aviation safety, and stating that participation by all pilots was only equitable and that normal safety concerns dictated mandatory two-way communications. The FAA agrees.

Comments on Specific Locations

Atlantic City Airport, NJ

One commenter expressed concern that the ARSA would restrict operations to and from Bader Field. The ARSA in the vicinity of Bader Field has a base of 1,300 feet MSL which should allow unrestricted ingress/egress to this airport.

One commenter expressed concern that the ARSA would unduly restrict or prohibit the numerous NORDO equipped aircraft at Nordheim Airport. The FAA notes that there are numerous NORDO aircraft operations from this airport involved in aerial advertising. In order to avoid a negative impact on these operations, the FAA has excluded the airspace within a 1-mile radius of Nordheim Airport from the ARSA core, from the surface to 1,300 feet MSL.

SSA stated that they are not aware of any glider operations in close proximity to the proposed Atlantic City ARSA. However, they request assurance that, should any glider operators wish to locate in an area tangential to the ARSA, the local FAA personnel work closely with them to ensure a safe operation for all concerned. As stated above, the FAA will continue to cooperate with local glider operators and operations to ensure safety with the minimum impact on both operations.

Other commenters addressed general issues which have been discussed above.

ATA and ALPA commented in strong support for an ARSA in Atlantic City.

Fort Myers Southwest Regional Airport, FL

One commenter requested the outer core boundary to the west be moved east to allow flight at low altitudes over the beaches. The FAA does not agree that this should be done. The majority of the beach area appears to be outside this outer core.

One commenter claimed that the ARSA would curtail soaring activity from Lehigh Acres West Airport and requested a cutout for this area of activity. The claimant further stated that the glider pilots operating from this airport were experienced "Diamond Rated" pilots who normally flew cross country flights or speed circuits from this airport. The FAA does not believe a cutout of this area is warranted for this reason. However, the local facility can, through local agreements, provide for the accommodation of regular users at Lehigh Acres West Airport.

The Executive Director of Lee County Department of Airports responded in support of the ARSA as proposed. He stated a concern for aircraft departing Page Field proceeding south and southeast. These aircraft departing will be in contact with Page Tower and transferred to approach/departure control through local procedures developed between the ATC facilities involved.

Several commenters made claims that were general in nature and have been addressed above.

ATA also responded in favor of the Fort Myers ARSA as a definite improvement in safety.

Savannah International Airport, GA

Some commenters, including AOPA, claimed that obstacle clearance cannot be maintained from the tall antennae located southwest of Savannah Airport and requested raising the base altitude of the ARSA in this area to allow vertical clearance from these antennae. The FAA does not agree that the shelf altitude should be raised. As stated above, horizontal clearance can easily be maintained from the individual antenna by nonparticipants wishing to avoid the ARSA. However, participation in ARSA services will ensure that vertical clearance can be maintained if desired. One commenter who is based at Hopetown Airport, a private airport southwest of Savannah Airport, stated that most of the lower level VFR flights through this area are below the antenna tops.

SSA stated that they are not aware of any glider operations in close proximity to the proposed Savannah ARSA. However, they request assurance that, should any glider operators wish to locate in an area tangential to the ARSA, the local FAA personnel work closely with them to ensure a safe operation for all concerned. As stated above, the FAA will continue to cooperate with local glider operators

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and operations to ensure safety with the minimum impact on both operations.

Some commenters stated that the ARSA is a good idea and thought all aircraft should have two-way radios in order to communicate with ATC.

The State of Georgia supported the ARSA stating that it is considered to be consistent with state goals and objectives.

ATA responded in support of the Savannah ARSA stating that it will add to the level of safety for all flight operations.

Tallahassee Municipal Airport, FL

SSA stated that they are not aware of any glider operations in close proximity to the proposed Tallahassee ARSA. However, they request assurance that, should any glider operators wish to locate in an area tangential to the ARSA, the local FAA personnel work closely with them to ensure a safe operation for all concerned. As stated above, the FAA will continue to cooperate with local glider operators and operations to ensure safety with the minimum impact on both operations.

ATA responded in support of the Tallahassee ARSA claiming that the ARSA would be an improvement in aviation safety.

Additional comments were received which were general in nature and were discussed above under General Comments.

Other Comments

A number of other comments were received addressing matters beyond the scope of these proposals such as charting, the number of frequencies depicted on a chart, the general design features of an ARSA, etc. The FAA will give consideration to all of the points raised in these comments but will not address them as a part of this rulemaking.

Regulatory Evaluation

Those comments that addressed information presented in the Regulatory Evaluation of the notice have been discussed above. The Regulatory Evaluation of the notice, as clarified by the "Discussion of Comments" contained in the preamble to the final rule, constitutes the Regulatory Evaluation of the final rule. Both documents have been placed in the regulatory docket.

Briefly, the FAA finds that a direct comparison of the costs and benefits of this rule is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, especially those associated with simplification and standardization of terminal airspace procedures. Further, the benefits of standardization result collectively from the overall ARSA program, and as discussed previously, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Therefore, it is difficult to specifically attribute these benefits to individual ARSA sites. Finally, until more experience has been gained with ARSA operations, estimates of *both* the efficiency improvements resulting in time savings to aircraft operators, and the potential delays resulting from mandatory participation, will be quite preliminary.

ATC personnel at some facilities anticipate that the process will go very smoothly, that delays will be minimal, and that efficiency gains will be realized from the start. Other sites anticipate that delay problems will dominate the initial adjustment period.

FAA believes these adjustment problems will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. These overall gains which FAA expects for the ARSA site established by this rule typify the benefits which FAA expects to achieve nationally from the ARSA program. These benefits are expected to be achieved without any additional controller staffing or radar equipment costs to the FAA.

In addition to these operational efficiency improvements, establishment of this ARSA site will contribute to a reduction in midair collisions. The quantifiable benefits of this safety improvement could range from less than $100 thousand, to as much as $300 million, for each accident prevented.

For these reasons, FAA expects that the ARSA site established in this rule will produce long term, ongoing benefits which will exceed their costs, which are essentially transitional in nature.

Regulatory Flexibility Determination

Under the terms of the Regulatory Flexibility Act, the FAA has reviewed this rulemaking action to determine what impact it may have on small entities. FAA's Regulatory Flexibility Determination was published in the NPRM. Some of the small entities which could be potentially affected by implementation of the ARSA program include the fixed-based operators, flight schools, agricultural operations and other small aviation businesses located at satellite airports located within five miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. Because FAA is excluding some satellite airports located within the five-mile ring to avoid adversely impacting their operations, and in other cases will achieve the same purposes through Letters of Agreement between ATC and the affected airports establishing special procedures for operating to and from these airports, FAA expects to virtually eliminate any adverse impact on the operations of small satellite airports which potentially could result from the ARSA program. Similarly, FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as, soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures which will accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA has determined that this rulemaking action is not expected to affect a substantial number of small entities. Therefore, the FAA certifies that this regulatory action will not result in a significant economic impact on a substantial number of small entities.

The Rule

This action designates Airport Radar Service Areas (ARSA) at Atlantic City Airport, NJ; Fort Myers Southwest Florida Regional Airport, FL; Savannah International Airport, GA; and Tallahassee Municipal Airport, FL. Each location designated is a public airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of these ARSA's will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at these locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

For the reasons discussed above, the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.50 [Amended]

2. Section 71.501 is amended as follows:

Atlantic City Airport, NJ [New]

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Atlantic City Airport (lat. 39°27'24"N., long. 74°34'41"W.) excluding that airspace within a 1-mile radius of the Nordheim Flying K Airport (lat. 39°23'33"N., long. 74°36'24"W.); and that airspace extending upward from 1,300 feet MSL to and including 4,100 feet MSL within a 10-mile radius of the Atlantic City Airport.

Fort Myers Southwest Florida Regional Airport, FL [New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Southwest Florida Regional Airport (lat. 26°32'10"N., long. 81°45'18"W.); and that airspace extending upward from 1,200 feet MSL to and including 4,000 feet MSL within a 10-mile radius of the airport. This airport radar service area is effective during the specific days and hours of operation of Southwest Florida Regional Tower and Approach Control as established in advance by a Notice to Airmen. The effecitve dates and times will thereafter be continuously published in the Airport/Facility Directory.

Savannah International Airport, GA [New]

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Savannah International Airport (lat. 32°07'39"N., long. 81°12'09"W.); and that airspace extending upward from 1,300 feet MSL to and including 4,100 feet MSL within a 10-mile radius of the airport, excluding that airspace within R-3005C. This airport radar service area is effective during the specific days and hours of operation of Savannah Tower and Approach Control as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Tallahassee Municipal Airport, FL [New]

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Tallahassee Municipal Airport (lat. 30°23'45"N., long. 84°21'02"W.); and that airspace extending upward from 1,400 feet MSL to and including 4,100 feet MSL within a 10-mile radius of the airport. This airport radar service area is effective during the specific days and hours of operation of Tallahassee Tower and Approach Control as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in Washington, DC, on February 4, 1987.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

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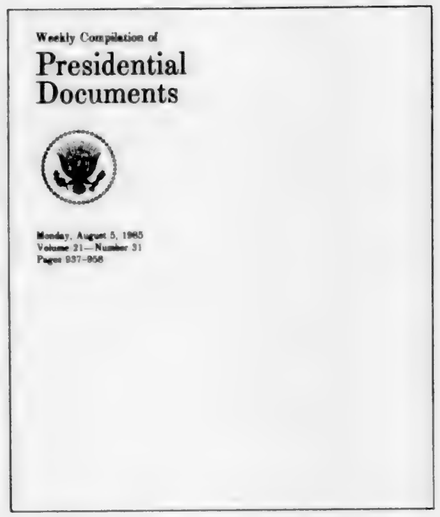
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Briefings on How To Use the Federal Register—
For information on briefings in Portland, OR, Los Angeles, CA, San Diego, CA, and Houston, TX, see announcement on the inside cover of this issue.

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
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2. The relationship between the Federal Register and Code of Federal Regulations.
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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

PORTLAND, OR

WHEN: February 17; at 9 am.
WHERE: Bonneville Power Administration Auditorium, 1002 N.E. Holladay Street, Portland, OR.
RESERVATIONS: Call the Portland Federal Information Center on the following local numbers:
Portland 503-221-2222
Seattle 206-442-0570
Tacoma 206-383-5230

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WHEN: February 18; at 1:30 pm.
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WHEN: February 20; at 9 am.
WHERE: Room 2S31, Federal Building, 880 Front Street, San Diego, CA.
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HOUSTON, TX

WHEN: March 10; at 9 am.
WHERE: Room 4415, Federal Building, 515 Rusk Avenue, Houston, TX.
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Title 3—

The President

Proclamation 5607 of February 9, 1987

Congratulating *Stars and Stripes* on Its Victory in the America's Cup

By the President of the United States of America

A Proclamation

All Americans congratulate Dennis Conner and the crew of *Stars and Stripes* for their splendid victory in the America's Cup.

The *Stars and Stripes* team, representing the San Diego Yacht Club, traveled to the west coast of Australia to compete with the best yachts and best yachtsmen in the world. In a lengthy series of exhausting and exciting races, it successfully defeated eleven challengers for the right to face New Zealand in the finals of the challenger's division. Although the *Kiwi* had compiled a most impressive record in earlier races, *Stars and Stripes* defeated the New Zealand boat 4 to 1 to earn the right to sail for the Cup against the Australian defender.

In the final series, *Stars and Stripes* defeated *Kookaburra III* 4 to 0 to capture the America's Cup and bring the trophy back to the United States. Throughout the competition, the Australian team and the Australian people demonstrated to the world their sportsmanship and their unsurpassed hospitality.

The skill and determination of the *Stars and Stripes* team captured the imagination of the American people. They demonstrated the traits that have long characterized this country at its best—optimism, dedication, teamwork, and an eagerness to master the most advanced technology and put it to good use.

In honor of the *Stars and Stripes'* victory in the America's Cup, the Congress, by House Joint Resolution 131, has authorized and requested the President to issue a proclamation expressing to Dennis Conner and the crew the thanks and admiration of our Nation.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim to Dennis Conner and the crew of *Stars and Stripes* the heartfelt congratulations and appreciation of our Nation for a job well done and for filling our sails with confidence and pride.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of February, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-3118
Filed 2-10-87; 2:27 pm]
Billing code 3195-01-M

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 911

Procedures for States and Localities To Request Indemnification

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing regulations for States and localities to use in requesting an indemnification agreement for providing criminal history record information to OPM under Title VIII, Access to Criminal History Records for National Security Purposes, of the Intelligence Authorization Act for Fiscal Year 1986. These regulations describe who may request an indemnification agreement, prescribe the mandatory provisions of the agreement, and specify procedures for requesting an agreement and for giving notice of claims within the scope of the agreement.

DATES: Interim regulations are effective on February 12, 1987. Comments must be submitted on or before April 13, 1987.

ADDRESSES: Written comments may be sent to Peter Garcia, Assistant Director for Federal Investigations, Office of Personnel Management, P.O. Box 886, Washington, DC 20044, or delivered to OPM, Matomic Building, Room 913, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert J. Longo, (202) 632–6180.

SUPPLEMENTARY INFORMATION: OPM conducts national security investigations of individuals to determine eligibility for access to classified information, or for assignment to or retention in sensitive national security duties. An essential element of these investigations is the review of State and local criminal history record information. While many States and localities have provided criminal history record information to OPM voluntarily, a significant number, because of their laws or policies, have not done so. Congress, therefore, enacted Title VIII, Access to Criminal History Records for National Security Purposes, of the Intelligence Authorization Act for Fiscal Year 1986, Pub. L. 99–169, sections 801–803, 99 Stat. 1002, 1008–1011 (1985) (codified in part at 5 U.S.C. 9101), which establishes a mandatory mechanism for access to such records for the purposes described above. The unique combination of national security concerns, issues of States' rights, and a need to respect the privacy rights of individuals, led Congress to include an indemnification provision in the law.

These are interpretative and procedural regulations developed in consultation with the U.S. Department of Justice by a working group of the agencies authorized to obtain criminal history record information under Title VIII of Pub. L. 99–169, comprised of the Department of Defense (DOD), the Office of Personnel Management (OPM), and the Central Intelligence Agency (CIA). These regulations represent these agencies' interpretation of Title VIII of Pub. L. 99–169 with specific reference to OPM. Notice of proposed rulemaking is not required pursuant to section 553(b)(3)(A) of title 5 of the United States Code.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations only affect State and local governments.

List of Subjects in 5 CFR Part 911

Indemnification, National security investigations.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending Title 5 of the Code of Federal Regulations to add Part 911 to read as follows:

PART 911—PROCEDURES FOR STATES AND LOCALITIES TO REQUEST INDEMNIFICATION

Sec.
911.101 Scope and purpose.
911.102 General definitions.
911.103 Eligibility for indemnification.
911.104 Procedures for requesting an indemnification agreement.
911.105 Terms of indemnification.

Authority: Title VIII, Access to Criminal History Records for National Security Purposes, of the Intelligence Authorization Act for Fiscal Year 1986, Pub. L. 99–169, sections 801–803, 99 Stat. 1002, 1008–1011 (1985) (codified in part at 5 U.S.C. 9101).

§ 911.101 Scope and purpose.

(a) The Office of Personnel Management (OPM) has the right to criminal history record information of State and local criminal justice agencies to determine whether a person may—

(1) Be eligible for access to classified information;

(2) Be assigned to sensitive national security duties; or

(3) Continue to be assigned to sensitive national security duties.

(b) This part sets out the conditions under which OPM may sign an agreement to indemnify and hold harmless a State or locality against claims for damages, costs, and other monetary loss caused by disclosure or use of criminal history record information by OPM.

(c) The procedures set forth in this part do not apply to situations when OPM seeks access to the criminal history records of another Federal agency.

(d) By law these provisions implementing 5 U.S.C. 9101(b)(3) will expire December 4, 1988, unless the duration of this section is extended or limited by Congress.

§ 911.102 General definitions.

In this part—

"Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision, and release. The term does not include identification information such as fingerprint records to the extent

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that such information does not indicate involvement of the individual in the criminal justice system. The term does not include those records of a State or locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality.

"Criminal justice agency" includes Federal, State, and local agencies and means (a) courts; or (b) a Government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or Executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.

"Locality" means any local government authority or agency or component thereof within a State having jurisdiction over matters at a county, municipal, or other local government level.

"State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of Pacific Islands, and any other territory or possession of the United States.

§ 911.103 Eligibility for indemnification.

As provided for under 5 U.S.C. 9101(b)(3), a State or locality may request an indemnification agreement.

(a) To be eligible for an indemnification agreement, a State or locality must have had a law in effect on December 4, 1985, that prohibited or had the effect of prohibiting the disclosure of criminal history record information to OPM.

(b) A State or locality is also eligible for an indemnification agreement if it meets the conditions of paragraph (a) of this section, but nevertheless provided criminal history record information to OPM on or before December 4, 1985.

§ 911.104 Procedures for requesting an indemnification agreement.

When requesting an indemnification agreement, the State or locality must—

(a) Certify that on December 4, 1985, the State or locality had in effect a law that prohibited or had the effect of prohibiting the disclosure of criminal history record information to OPM;

(b) Attach a copy of the law to the request for an indemnification agreement;

(c) Notify OPM, at the address below, of its eligibility for an indemnification agreement.

Office of Personnel Management, Office of Federal Investigations, P.O. Box 886, Washington, DC 20044

§ 911.105 Terms of indemnification.

The terms of the indemnification agreement must conform to the following provisions:

(a) *Eligibility.* The State or locality must certify that its law prohibits or has the effect of prohibiting the disclosure of criminal history record information to OPM for the purposes described in § 911.101(a) and that such law was in effect on December 4, 1985.

(b) *Liability.* (1) OPM must agree to indemnify and hold harmless the State or locality from any claim for damages, costs, and other monetary loss arising from the disclosure or negligent use by OPM of criminal history record information obtained from that State or locality pursuant to 5 U.S.C. 9101(b). The indemnification will include the officers, employees, and agents of the State or locality.

(2) The indemnification agreement will not extend to any act or omission prior to the transmittal of the criminal history record information to OPM.

(3) The indemnification agreement will not extend to any negligent acts on the part of the State or locality in compiling, transcribing, or failing to delete or purge any of the information transmitted.

(c) *Consent and access requirements.* By requesting the release of criminal history record information from the State or locality, OPM represents that—

(1) It has obtained the written consent of the individual under investigation to request criminal history record information about the individual from criminal justice agencies in accordance with 5 U.S.C. 9101, after advising the individual of the purposes for which the information is intended to be used by a Privacy Act of 1974 (5 U.S.C. 552a), or an equivalent, notice; and

(2) Upon request, OPM will provide the individual access to criminal history record information received from the State or locality, as required by 5 U.S.C. 9101(d).

(d) *Purpose requirements.* OPM will use the criminal history record information only for the purposes stated in § 911.101(a).

(e) *Notice, litigation, and settlement procedures.*

(1) The State or locality must give notice of any claim against it on or before the 10th day after the day on which a claim against it is received, or it has notice of such a claim.

(2) The notice must be given to the Attorney General and to the United States Attorney of the district embracing the place wherein the claim is made.

(3) The Attorney General will make all determinations regarding the settlement or defense of such claims.

[FR Doc. 87-2918 Filed 2-11-87; 8:45 am]

BILLING CODE 4325-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 85F-0519]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of butanediol formal monomer as a reactant to form polyoxymethylene copolymer and for the use of melamine-formaldehyde resin and nylon 6/66 as stabilizers in polyoxymethylene copolymer intended for use in contact with food. This action responds to a petition filed by BASF Aktiengesellschaft.

DATES: Effective February 12, 1987; objections by March 16, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 9, 1985 (50 FR 50232), FDA announced that a petition (FAP 5B3883) had been filed by BASF Aktiengesellschaft, c/o BASF Corp., P.O. Box 405, Bridgeport, NJ 08014, proposing that § 177.2470 *Polyoxymethylene copolymer* (21 CFR 177.2470) be amended to provide for the safe use of butanediol formal monomer as a reactant to form polyoxymethylene copolymer and to add melamine-formaldehyde resin and nylon 6/66 to the list of permitted stabilizers for polyoxymethylene copolymer intended for use in contact with food. The notice of filing contained a typographical error. The petitioned stabilizer is actually nylon 6/66 and not nylon 66/6.

FDA is also correcting the Chemical Abstracts Service Registry Number (CAS Reg. No.) for the trioxane and ethylene oxide adduct that is listed in § 177.2470. A search of the CAS Registry showed that the appropriate number for this compound is CAS Reg. No. 24969-25-3. The correct number is included in this final rule.

FDA is aware that, in some studies, formaldehyde has caused tumors in rats at the site of intranasal administration. No study exists, however, that suggests that formaldehyde is tumorigenic when ingested by animals. In fact, there are studies in the literature in which a precursor to formaldehyde (hexamethylenetetramine) did not cause tumors when ingested by mice and rats (Ref. 1). Because hexamethylenetetramine is broken down in the stomach to formaldehyde, these studies directly tested whether orally administered formaldehyde is carcinogenic. For the reasons discussed more fully in the agency's denial of requests for a hearing on aspartame (49 FR 6672, 6679; February 22, 1984), the inhalation study is not appropriate for use in evaluating the safety of this resin because formaldehyde has not been demonstrated to be a systemic carcinogen.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before March 16, 1987 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Reference

The following reference has been placed on display in the Dockets Management Branch, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Della Porta, G., M.E. Colnaghi, and G. Parmiani, "Un-carcinogenicity of Hexamethylenetetramine in Mice and Rats," *Food and Cosmetics Toxicology*, 6:707-715, 1968.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 177.2470 is amended by revising paragraph (a) and in paragraph (b)(1) by alphabetically inserting two new items, to read as follows:

§ 177.2470 Polyoxymethylene copolymer.

* * * * *

(a) *Identity.* For the purpose of this section, polyoxymethylene copolymers are identified as the following: The reaction product of trioxane (cyclic trimer of formaldehyde) and ethylene oxide (CAS Reg. No. 24969-25-3) or the reaction product of trioxane (cyclic trimer of formaldehyde) and a maximum of 5 percent by weight of butanediol formal (CAS Reg. No. 25214 65-1). Both copolymers may have certain optional substances added to impart desired technological properties to the copolymer.

(b) * * *

(1) * * *

* * * * * *

Melamine-formaldehyde resin.

* * * * * *

Nylon 6/66, weight ratio 2/3.

* * * * * *

Dated: February 5, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-2931 Filed 2-11-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 201, 203, and 234

[Docket No. N-87-1661; FR-2311]

Mortgage Insurance; Changes to the Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of revisions to FHA maximum mortgage limits for high-cost areas.

SUMMARY: This Notice amends the listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act by adding the limits of three newly designated high-cost areas to the list and increasing the limits for five high-cost areas. Mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices.

DATE: Effective Date: February 12, 1987.

FOR FURTHER INFORMATION CONTACT: For single family: Morris Carter,

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Director, Single Family Development Division, Room 9270; telephone (202) 755–6720. For manufactured homes: Christopher Peterson, Director, Office of Title I Insured Loans, Room 9160; telephone (202) 755–6880; 451 Seventh Street SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA) (12 U.S.C. 1710 through 1749) authorizes HUD to insure mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and combination manufactured homes and lots. The NHA, as amended by the Housing and Community Development Amendments of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, sections 2(b) and 214 of the NHA provide for special high-cost limits for insured mortgages in Alaska, Guam and Hawaii.

On May 22, 1984, the Department published a revised list of areas eligible for "high-cost" mortgage limits, which contained several new features (see 49 FR 21520). First, there was no separate listing for condominium units, since these limits are now the same as those for other one-family residences. Second, the listing included instructions on how to compute the high-cost limits for combination manufactured homes and lots and individual lots, and specified the special high-cost amounts for manufactured homes, combination manufactured homes and lots and individual lots insured in Alaska, Guam and Hawaii. And, third, it made changes to the list based on a new definition of "metropolitan area".

On October 1, 1986 (51 FR 34961), the Department published its annual complete listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act and their applicable limits.

This Document

Today's document adds Pitkin County, Colorado; Hampden County, Massachusetts; and Spotsylvania County/Fredericksburg City, Virginia to the list of high-cost areas. In addition, it revises the high-cost mortgage amounts for the following areas: The Baltimore, Maryland MSA (Baltimore City, Maryland; Baltimore County, Maryland; Carroll County, Maryland; Harford County, Maryland; and Queen Anne's County, Maryland); the Jackson, Mississippi MSA (Hinds County, Mississippi; Madison County, Mississippi; and Rankin County, Mississippi); Albany County, New York; Saratoga County, New York; and Schenectady County, New York.

These amendments to the high-cost areas appear in two parts. Part I explains high-cost limits for mortgages insured under Title I of the National Housing Act. Part II lists changes for single family residences insured under sections 203(b) or 234(c) of the National Housing Act.

National Housing Act High Cost Mortgage Limits

I. Title I: Method of Computing Limits

A. *Section 2(b)(1)(D). Combination manufactured home and lot (excluding Alaska, Guam and Hawaii):* To determine the high-cost limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one family" column of Part II of this list by .80. For example, Hampden County, Massachusetts has a one-family limit of $73,500. The combination home and lot loan limit for Hampden County is $73,500×.80, or $58,800.

B. *Section 2(b)(1)(E): Lot only (excluding Alaska, Guam and Hawaii):* To determine the high-cost limit for a lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .20. For example, Hampden County, Massachusetts has a one-family limit of $73,500. The lot-only loan limit for Hampden County is $73,500×.20, or $14,700.

C. *Section 2(b)(2). Alaska, Guam and Hawaii limits:* The maximum dollar limits for Alaska, Guam and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1).

Accordingly, the dollar limits for Alaska, Guam and Hawaii are as follows:

1. For manufactured homes: $56,700. ($40,500×140%).
2. For combination manufactured homes and lots: $75,600. ($54,000×140%).
3. For lots only: $18,900. ($13,500×140%).

II. Title II: Updating of FHA Sections 203(b), 234(c) and 214 Area Wide Mortgage Limits

REGION I—HUD FIELD OFFICE—BOSTON, MA

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Hampden County	$73,500	$82,800	$100,600	$116,100

REGION II—HUD FIELD OFFICE—ALBANY, NY

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Albany County, Saratoga County, Schenectady, County	$90,000	$101,300	$122,650	$142,650

REGION III—HUD FIELD OFFICE—BALTIMORE, MD

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Baltimore MSA, Baltimore City, Baltimore County, Carroll County, Harford County, Queen Anne's County	$87,850	$98,950	$120,250	$138,750

REGION III—HUD FIELD OFFICE—RICHMOND, VA

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Spotsylvania County/Fredericksburg City	$74,100	$83,450	$101,400	$117,000

REGION IV—HUD FIELD OFFICE—JACKSON, MS

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Jackson MSA, Hinds County, Rankin County, Madison County	$86,450	$97,350	$118,300	$136,500

REGION VIII—HUD FIELD OFFICE—DENVER, CO

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Pitkin County	$90,000	$101,300	$122,650	$142,650

Dated: February 6, 1987.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 87–2920 Filed 2–11–87; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 354

Book-Entry Securities of the Student Loan Marketing Association (Sallie Mae)

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Interim rule.

SUMMARY: The Department of the Treasury, acting for the Student Loan Marketing Association ("Sallie Mae") pursuant to section 439 of the Higher Education Amendments of 1986, Pub. L. 99–498, hereby amends the regulations, in 31 CFR Part 354, governing Sallie Mae book-entry securities to extend the applicability and effect of those regulations to all Sallie Mae securities which are issued in or converted to book-entry form and to remove a provision which had made the regulations applicable only to Sallie Mae securities issued in book-entry form on or before September 30, 1983.

EFFECTIVE DATE: February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Marianne Keler, Assistant General Counsel, Sallie Mae, 1050 Thomas Jefferson St. NW., Washington, DC 20007 (202–298–3156).

SUPPLEMENTARY INFORMATION: The Student Loan Marketing Association, established by the Congress as a private corporation and financed by private capital, serves as a secondary market and warehousing facility for student loans. The Association, popularly referred to as "Sallie Mae," is authorized, with the approval of the Secretary of the Treasury, to issue obligations having such maturities and bearing such rate or rates of interest as may be determined by the Association.

Sallie Mae's Federal charter, contained in section 439, Part B of the Higher Education Act, as amended, was recently supplemented by the Higher Education Amendments of 1986 to allow the Federal Reserve Banks to act as fiscal agents for Sallie Mae and to authorize the Secretary of the Treasury to promulgate regulations on Sallie Mae's behalf with regard to its book-entry securities. During a temporary period in 1983, the Secretary of the Treasury, who has responsibility for approving Sallie Mae's issuance of debt obligations, had authorized the Federal Reserve Banks to act as fiscal agents for Sallie Mae and to maintain its securities in book-entry form. The regulations applied to issuances on or prior to September 30, 1983, and were designed to facilitate Sallie Mae's transition from borrowing through the Federal Financing Bank to private capital financing. Congress, through enactment of the Higher Education Amendments of 1986, recently determined that it is in the public interest for Sallie Mae, like other government-sponsored corporations (*e.g.*, Farm Credit System, Federal Home Loan Banks, Federal Home Loan Mortgage Corporation, and Federal National Mortgage Association), to issue securities through the Federal Reserve book-entry system. The regulations promulgated in 1983 largely mirror existing regulations governing Treasury securities held in the commercial book-entry system. The regulations governing it, now referred to as the Treasury/Reserve Automated Debt Entry System ("TRADES"), 51 FR 43027, are presently undergoing revision, and Treasury expects to publish such revised regulations in final form in the near future. Once its own revised book-entry regulations are finalized, Treasury anticipates replacing the existing Sallie Mae book-entry regulations with a similar revised set of rules.

Accordingly, as an interim measure to effectuate the provisions of the Higher Education Act Amendments, this rule will extend the applicability of regulations already promulgated for Sallie Mae securities to securities issued after September 30, 1983. Because the rule simply follows the mandate of the Higher Education Act Amendments to allow Sallie Mae to make use of the book-entry securities system and does not impose any regulatory burdens on investors in Sallie Mae securities or on the general public, the Department has determined, pursuant to 5 U.S.C. 553(b)(B) and (d)(3) that notice and public procedure and a delayed effective date are unnecessary.

The Department of the Treasury has determined that this interim rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is not required. Because no notice of proposed rulemaking is required by 5 U.S.C. 553 or any other statute, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply to this interim rule.

List of Subjects in 31 CFR Part 354

Bonds, Government securities, Securities.

PART 354—[AMENDED]

1. The authority citation for Part 354 is revised to read as follows:

Authority: Sec. 1087–2(h)(1) of the Higher Education Act of 1965, as amended, 86 Stat. 265; 94 Stat. 1427–1430; 95 Stat. 457; Pub. L. No. 99–498, 100 Stat. 1418 (20 U.S.C. 1087–2); 12 U.S.C. 391; and 5 U.S.C. 301.

2. Section 354.0 is amended by revising paragraph (a) to read as follows:

§ 354.0 Applicability and effect.

(a) *Applicability.* The regulations in this part govern the issuance of, and transactions in, all securities issued by the Student Loan Marketing Association, sometimes hereafter referred to as "Sallie Mae" or "Association."

* * * * * *

§ 354.2 [Amended]

3. Section 354.2 is amended by removing paragraph (e).

Dated: February 5, 1987.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87–2937 Filed 2–11–87; 8:45 am]

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POSTAL SERVICE

39 CFR Part 111

Identification of Bulk Third-Class Mail Bearing References to Expedited Handling or Delivery

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends postal regulations governing the preparation of permit imprints for Bulk Third-Class Mail bearing potentially misleading references to expedited handling or delivery. This change will make the permit imprint more prominent for quicker identification, so that postal employees can handle the mail properly and quickly.

EFFECTIVE DATE: March 14, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. George T. Hurst, (202) 268–5232.

SUPPLEMENTARY INFORMATION: On December 5, 1986, the Postal Service published for comment in the **Federal Register** a proposed change to section 145.3 of the Domestic Mail Manual as described above (51 FR 43936). Interested persons were invited to submit written comments concerning the proposed change by January 4, 1987.

The Postal Service received written comments from seven individuals and organizations. Four were from individual commercial mailers, two were from mail preparation companies, and one was from an organization representing third-class mailers. All of the comments received were in general agreement with the proposal. Two commenters agreed completely; three suggested additional alternatives to expand the options available to mailers; one recommended excluding from the proposal mail pieces which suggest only that the contents are "important"; and one offered a more stringent approach that would restrict the prominence or size of all print on the face of this type of mail piece.

The additional alternatives suggested were underlining, capitalizing, using the term "bolder print" instead of "boldface," and using backgrounds of contrasting color or ⅛ inch space rather than a ⅜ inch "clear space" around the permit imprint to enhance its visibility. These comments noted that mailers use a variety of different printing devices to prepare envelopes, and may have difficulty complying with regulations providing only the two proposed alternatives (boldface or larger print). Therefore, more options would accommodate a wider variety of available and existing equipment.

Permitting mailers to underscore or underline, capitalize, or boldface (print in characters bolder than all others in the imprint) would give all mailers the ability to adopt the new regulations without undue hardship while still satisfying the Postal Service's need to increase permit imprint visibility in these cases. The final rule has been changed to require that the words "Bulk Rate" or "Non Profit Org." be displayed more prominently than other words used in the permit imprint, thus making several alternatives permissible.

The Postal Service does not consider the word "important" to be one which implies expedited handling or delivery. Mail bearing this word is not covered by this rule. All mail, regardless of class, is considered important and this wording alone should not cause postal employees additional work in determining its treatment. Only mail which bears references to expedited handling or delivery is dealt with in this revision.

The two suggestions concerning the "clear space" around the permit imprint were carefully considered. The first of these, to "permit the mailer to prepare the envelope with contrasting backgrounds inside and immediately surrounding the indicia," falls within the intended interpretation of this rule. For purposes of this ruling "clear space" means that at least ⅜ inch of space around the permit imprint must not contain any print, design, or mixed color combinations. Mailers using solid colors around the indicia must insure that they contrast sufficiently to make the imprint readable.

The second recommendation concerning the "clear space" around the permit imprint was to limit it to ¼ inch instead of ⅜ inch. Since the intent of this rule is to ensure high visibility of the permit imprint, we do not believe the suggestion would adequately achieve this purpose. Eliminating the possibility of any characters, letters, graphics, or other printing in this ⅜ inch area is intended to alleviate the confusion and interruption caused when employees cannot readily identify the permit imprint. A smaller space would not be sufficient.

The final comment was to print the first phrase of the permit imprint in letters bolder or larger than any others used on the face of the mail piece. This same suggestion had been offered earlier as one of more stringent measures to solve the problems the Postal Service faces in handling these pieces. After discussing this suggestion with representatives of the mailing industry before publication of the proposed rule on December 5, 1986, however, we felt that this would unnecessarily restrict mailers from printing information on their mail pieces in large type.

After consideration of all the comments the Postal Service hereby adopts the following changes to section 145.3 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation of 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. In section 145.3, insert ".31 General" preceding the text and add new .32 reading as follows:

145.3 Preparation of Permit Imprints

* * * * *

.32 Bulk Third-Class Mail Bearing References to Expedited Handling or Delivery

With the exception of post card size mail and imprints placed on address labels, permit imprints on bulk third-class mail bearing references to expedited handling or delivery (such as PRIORITY, EXPRESS, OVERNIGHT, et cetera), must be prepared as follows:

a. Mailers must display the words "Bulk Rate" or "Non Profit Org." more prominently than any other words used in the permit imprint.

b. Mailers must leave a clear space of not less than ⅜ of an inch around the entire permit imprint.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87–3000 Filed 2–11–87; 8:45 am]

BILLING CODE 7710-12-M

39 CFR Part 233

Forfeiture; Delegation of Functions to Chief Postal Inspector, United States Postal Inspection Service

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to implement the forfeiture provisions

of the Postal Service Appropriations Act, 1987, Pub. L. 99–591. These provisions authorize the Postal Service to conduct civil forfeitures of property subject to forfeiture under the Protection of Children Against Sexual Exploitation Act of 1977, as amended by the Child Protection Act of 1984 (18 U.S.C. 2251–2256). This final rule establishes the procedures which will be followed by the Postal Service in carrying out these responsibilities.

EFFECTIVE DATE: March 14, 1987.

FOR FURTHER INFORMATION CONTACT: George C. Davis, (202) 268–3076.

SUPPLEMENTARY INFORMATION: On August 22, 1986, the Attorney General of the United States issued an order granting authority to the Postal Service to conduct civil forfeitures under section 2254 of the Protection of Children Against Sexual Exploitation Act of 1977, as amended, 18 U.S.C. 254. On September 3, 1986, the Postal Service published in the **Federal Register** new 39 CFR 233.7 to implement the Attorney General's grant of authority (51 FR 31328). As amended by Pub. L. 99–591, the Postal Service Appropriations Act of 1987, 18 U.S.C. 2254 itself authorizes the Postal Service to perform various duties with respect to the civil forfeiture of property subject to forfeiture under section 2254(a). In order to reflect the replacing of the designated authority from the Attorney General with the direct statutory authority of 18 U.S.C. 2254, and to adopt appropriate implementing regulations, the Postal Service amends Part 233 of title 39 CFR as follows:

List of Subjects in 39 CFR Part 233

Crime, Postal Service.

PART 233—INSPECTION SERVICE AUTHORITY

1. The authority citation for Part 233 is revised to read as follows:

Authority: 39 U.S.C. 101, 401, 402, 403, 404, 406, 410, 411, 3005(e)(1); 12 U.S.C. 3401–3422; 18 U.S.C. 2254.

2. Revise § 233.7 to read as follows:

§ 233.7 Forfeiture Authority and Procedures Pursuant to the Protection of Children Against Sexual Exploitation Act of 1977, as amended by the Child Protection Act of 1984—18 U.S.C. 2251–2256.

(a) *Designation of officials having forfeiture authority.* The Chief Postal Inspector is authorized to perform all duties and responsibilities necessary on behalf of the Postal Service to enforce 18 U.S.C. 2254, to delegate all or any part of this authority to Assistant Chief Inspectors, Inspectors in Charge, and Inspectors of the Postal Inspection Service, and to issue such instructions as may be necessary to carry out this authority.

(b) *Administrative forfeiture authority.* The Chief Postal Inspector is authorized to conduct administrative forfeitures authorized by 18 U.S.C. 2254 and 19 U.S.C. 1600–1619 as incorporated by 18 U.S.C. 2254(b), to pay all necessary expenses of the forfeiture, and to pay valid liens and mortgages against property that has been forfeited under section 2254.

(c) *Inventory.* An inventory of all property seized for forfeiture under section 2254 shall be prepared and maintained by the Postal Inspection Service. The inventory should occur within seven days of the seizure. The inventory must, at a minimum, identify all property seized, state the exact location of the property at the time of its seizure, and describe in detail the condition of the property. A written receipt containing such information and identifying the Postal Inspector who conducted the seizure must be provided to the party from whom the property was seized, or the party's agent or representative, at the time of seizure or as soon thereafter as practical, but in no event less than ten days after the seizure.

(d) *Custody.* Custody of all property seized for forfeiture under 18 U.S.C. 2254 is maintained by the U.S. Marshals Service, except property held for evidentiary purposes; retained for official use upon forfeiture; subject to equitable transfer to federal, state or local law enforcement agencies; or subject to civil administrative forfeiture.

(e) *Appraisal.* The Postal Inspection Service must promptly obtain or complete an appraisal of all seized property. The appraisal value is the fair market value of the property, which is the highest price, in terms of money, which a property will bring in a competitive and open market.

(f) *Quick-release.* Property subject to administrative forfeiture may, prior to forfeiture, be released by the Postal Inspection Service to the owner of the property having an immediate right to possession of the property when the Postal Inspection Service concludes that release of the property is in the best interest of justice. An agreement to hold harmless the United States, the Postal Inspection Service, and all other involved entities should be obtained from the owner. A decision for quick release of the property should be made within five days of the seizure.

(g) *Judicial forfeiture.* If the appraised value of property seized exceeds $100,000 or if a claim and satisfactory bond have been received for property appraised at $100,000 or less, the Postal Inspection Service must transmit the claim and bond to the U.S. Attorney for the judicial district in which the seizure was made and request that the U.S. Attorney promptly institute a judicial forfeiture proceeding against the property. The Postal Inspection Service must provide the U.S. Attorney a complete written description of the property, a statement of the facts and circumstances leading to the seizure of the property, including all facts and documentation leading to the conclusion that the seized property is subject to forfeiture, and such additional information as the U.S. Attorney may require for the purpose of instituting a judicial forfeiture action.

(h) *Notice of seizure of property having a value of $100,000 or less; advertisement; declaration of forfeiture.*

(1) The Postal Inspection Service must cause written notice of the seizure of all property subject to civil administrative forfeiture to be sent to each known party that may have a possessory or ownership interest in the seized property. The notice must describe the property seized; state the date, place, and statutory basis for seizure; provide a brief narration of the facts leading to the conclusion that the property is subject to forfeiture; and inform the party of the intent of the Postal Inspection Service to forfeit the property. In addition, the notice must state that any person desiring a judicial determination of forfeiture must file a claim and bond (see paragraph 2 of this subsection) with a designated official of the Postal Inspection Service, within twenty days from the date of the first publication of the notice of seizure (see paragraph (4) of this subsection), or of the date of the letter of personal notice required by this paragraph, whichever is later. Any claim submitted pursuant to this paragraph is invalid unless accompanied by a bond meeting the requirements of paragraph (2), or a completed PS Form 1518, *Petition to Proceed in Forma Pauperis.*

(2) A bond in the amount of $5,000 or ten percent of the value of the claimed property, whichever is lower, but in no event less than $250, must accompany any claim submitted pursuant to paragraph (1). The bond may be in the form of a cashier's check, certified check, or money order made payable to the United States of America, or satisfactory sureties. If a claimant is financially unable to post the bond because of indigency, such a person may require a waiver of the bond by completion of PS Form 1518, *Petition to Proceed in Forma Pauperis.*

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(3) Upon receipt of the claim and bond, the Postal Inspection Service must, upon determining that the documents are in proper form and the sureties satisfactory, transmit the documents to the appropriate U.S. Attorney as provided in subsection (g). If the documents are not satisfactory, the Postal Inspection Service must notify the party making the claim and may allow a reasonable time for correction. If correction is not made within the time allowed for that purpose, the administrative forfeiture must proceed as though the claim and bond had not been tendered.

(4) Notice of administrative forfeiture proceedings containing the information required by subsection (h)(1) must be published once each week for at least three successive weeks in a newspaper of general circulation in the judicial district in which the property was seized. If a claim and satisfactory bond is not filed within the time allowed, the Postal Inspection Service may declare the property forfeited.

(i) *Disposition of forfeited property.*

(1) Whenever property is forfeited administratively, the Postal Inspection Service may:

(i) Retain the property for official use;

(ii) Transfer ownership of the property to any federal, state or local law enforcement agency that participated in the investigation leading to the forfeiture;

(iii) Sell any property which is not required to be destroyed by law and which is not harmful to the public;

(iv) Destroy the property;

(v) Donate the property to a charitable organization; or

(vi) Dispose of the property as otherwise permitted by law.

(2) If the laws of a state in which an article of forfeited property is located prohibit the sale or possession of such property or if the Postal Service and the Marshals Service are of the opinion that it would be more advantageous to sell the forfeited property in another district, the property may be moved to and sold in such other district.

(3) If, after an administrative forfeiture of property is completed, it appears that the proceeds of sale will not be sufficient to pay the costs of sale or the proceeds will be insignificant in relation to the expenses involved in the forfeiture, then the Postal Service or the Marshals Service may order destruction or other disposition of the property including alteration of the property into an article that is not prohibited.

(j) *Remission or mitigation of forfeiture.*

(1) Any person claiming a legal or equitable interest in any property which has been forfeited administratively pursuant to this section or is subject to such forfeiture may file in triplicate with the Postal Inspection Service a Petition for Remission or Mitigation of the forfeiture or a Petition for Restoration of the Proceeds of Sale for the value of forfeited property sold or placed into official use. The Petition must contain the information required by paragraph (2). The Petition must be addressed to the Chief Postal Inspector and must be executed and sworn to by the person alleging an interest in the property or by his counsel upon information and belief. If the forfeiture proceedings are judicial, the Petition must be addressed to the Attorney General of the United States and must be filed in triplicate with the Inspector in Charge of the Inspection Service field office that seized the property. The Petition pertaining to a judicial forfeiture must be executed and sworn to by the person alleging an interest in the property or by his counsel upon information and belief. The Petition must be forwarded promptly to the U.S. Attorney responsible for the judicial prosecution.

(2) All such Petitions must include, at a minimum, the following: (i) A complete description of the property, including model and serial numbers, if any; (ii) the date and place of seizure; (iii) the Petitioner's interest in the property, which must be supported by bills of sale, contracts, mortgages, or other satisfactory documentary evidence; and, (iv) any facts and circumstances, established by satisfactory proof, relied upon by the Petitioner to justify the granting of the Petition. For further information regarding the content of a Petition, see 28 CFR 9.5.

(3) Where the Petition is for the restoration of the proceeds of the sale of forfeited property or for the value of forfeited property placed into official use, it must be supported by satisfactory proof that the Petitioner did not know of the seizure or forfeiture prior to the declaration of forfeiture due to circumstances which prevented his acquiring such knowledge.

(4) A Petition for Remission or Mitigation of forfeiture must be filed within thirty days from the date of the personal notice letter or within thirty days from the date of publication notice. After property is disposed of, a Petition for Remission or Mitigation of forfeiture will no longer be accepted; a Petition for Restoration of Proceeds of Sale for the value of property placed in official use must thereafter be filed. Such Petition shall be filed within ninety days of the sale of the property, or within ninety days of the date the property is placed in official use.

(5) Upon receipt of a Petition for Remission or Mitigation, or a Petition for Restoration of Proceeds of Sale, an investigation must be conducted by the Postal Inspection Service to determine the validity of the facts asserted in the Petition. No hearing shall be held. Results of the investigation relating to an administrative forfeiture action must be forwarded in writing to the Assistant Chief Inspector, Criminal Investigations, Headquarters, Postal Inspection Service. Final decisions on such Petitions are made by the Assistant Chief Inspector, Criminal Investigations or his designee, who must promptly notify the Petitioner of the decision. Results of the investigation relating to a judicial forfeiture must be promptly forwarded to the U.S. Attorney responsible for the judicial prosecution (see paragraph (1) of this subsection).

(6) A Request for Reconsideration of the denial of the Petition for Remission or Mitigation in an administrative forfeiture action must be submitted within ten days from receipt of the letter denying the Petition. The request must be addressed to the Chief Postal Inspector and must be based on evidence recently developed or not previously considered. Only one request for reconsideration of the denial of a Petition may be considered.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87-2999 Filed 2-11-87; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 409, 410, 417, 418, 421, and 431

[BERC-360-CN]

Medicare and Medicaid Program; Corrections and Technical Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction notice.

SUMMARY: **Federal Register** document 86-25328, beginning on page 41332 of the issue of Friday, November 14, 1986, redesignated certain portions of 42 CFR Part 405 as 42 CFR Part 410 and corrected references to the redesignated sections. This document corrects errors in the November 14 publication, and makes a technical amendment that was overlooked.

FOR FURTHER INFORMATION CONTACT: Luisa V. Iglesias, (202) 245-0383.

Corrections

§ 405.152 [Corrected]

1. On page 41336, column 2, paragraph (d), "Part 498 of this chapter," is changed to "Subpart O of this part.".

§ 409.42 [Corrected]

2. On page 41339, column 1, paragraph (b)(2) is corrected by changing the phrase "a doctor of medicine or osteopathy" to a "doctor of medicine, osteopathy, or podiatric medicine"; and paragraph (b)(3), line 6, is corrected by removing the word "continued".

§ 410.32 [Corrected]

3. On page 41342, column 2, paragraph (a)(1), last line, "§ 482.27" is changed to "§ 482.26"; and in column 3, paragraph (b)(3) is corrected by inserting "podiatric medicine," immediately before "dental surgery".

§ 410.40 [Corrected]

4. On page 41343, column 2, paragraph (e)(1)—

a. In line 1, "NSF" is changed to "SNF".

b. In line 2, "and" is changed to "the".

§ 410.100 [Corrected]

5. On page 41345, column 2, paragraph (k)(2), "§ 410.28" is changed to "§ 410.29".

§ 410.152 [Corrected]

6a. On page 41346, column 2, paragraph (a)(2)(i), the cross-reference is changed to "Parts 405 (Subparts E, P, and X) and 413 of this chapter.".

b. On page 41347, column 1, paragraph (e)(1), "§ 405.439" is changed to "§ 413.170".

§ 421.200 [Corrected]

7. On page 41350, column 1, paragraph (c), "assure" is changed to "ensure".

§ 431.56 [Corrected]

8. On page 41350, column 2, paragraph (b)(2), "of medicaid" is changed to "for Medicaid".

§ 405.903 [Amended]

9. 12. In paragraph (b), "his $50 deductible (see § 405.245)" is changed to "his $75 deductible, as specified in § 410.160 of this chapter.".

§ 417.222 [Corrected]

10. On page 41351, column 3, the amendment to § 417.222 is corrected by changing the first cited section from "§ 406.113" to "§ 405.113".

Technical Amendment

§ 418.3 [Amended]

In § 418.3, in the definition of "physician", reference to "§ 405.232a" is changed to "§ 410.20".

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance, No. 13.773, Medicare—Hospital Insurance, and No. 13.774, Medicare—Supplementary Medical Insurance.)

Dated: February 6, 1987.

Barbara S. Wamsley,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 87-2972 Filed 2-11-87; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-130; RM-5216]

Radio Broadcasting Services; Vestal, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 277A to Vestal, New York, at the request of David Mitchell. A site restriction of 5.8 kilometers (3.6 miles) southeast is imposed. Canadian concurrence has been received. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 23, 1987. The filing window for applications will open on March 24, 1987, and close on April 22, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-130, adopted December 4, 1986 and released February 5, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), in the entry for Vestal, New York, Channel 277A is added.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2983 Filed 2-11-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-203, RM-5247]

Radio Broadcasting Services; Scotland Neck, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 274A to Scotland Neck, North Carolina, as the community's first local FM service, at the request of WYAL Radio, Inc. The channel can be allocated in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.

With this action, this proceeding is terminated.

EFFECTIVE DATE: March 23, 1987. The window period for filing applications will open on March 24, 1987, and close on April 22, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-203, adopted November 28, 1986, and released February 5, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

2. Section 90.267 is amended by

Order which became effective

irreparable injury; (3) granting a stay

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PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the table of allotments for North Carolina is amended by adding Scotland Neck, Channel 274A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2984 Filed 2-11-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-255, RM-5270]

Radio Broadcasting Services; Wahpeton, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 296A to Wahpeton, North Dakota, as the community's first local FM service, at the request of Indian Broadcasting. The channel can be allocated in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. Canadian concurrence has been received since the community is located within 320 kilometers of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective March 23, 1987. The window period for filing applications will open on March 24, 1987, and close on April 22, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-255, adopted November 18, 1986, and released February 5, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for North Dakota is amended by adding Wahpeton, Channel 296A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-2985 Filed 2-11-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 86-169; FCC 87-15]

Private Land Mobile Services, Special Industrial Radio Service; Increased Power and Antenna Heights

AGENCY: Federal Communication Commission.

ACTION: Final rule.

SUMMARY: This document eliminates the secondary restriction and increases the power and antenna permitted to 100 watts (ERP) and 100 feet, respectively on 450 MHz band 12.5 KHz offset frequencies available exclusively in the Special Industrial Radio Service.

EFFECTIVE DATE: March 23, 1987.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Herb Zeiler, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket 86-169, adopted January 5, 1987 and released February 3, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete test of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. On May 2, 1986, the FCC released a Notice of Proposed Rulemaking (NPRM), PR Docket 86-169, 51 FR 17367 (May 12, 1986), proposing to eliminate the secondary restriction and increase the power and antenna height permitted on 450 MHz band 12.5 KHz offset frequencies available exclusively in the Special Industrial Radio Service to 20 watts (ERP) and 100 feet above ground, respectively.

2. All of the comments supported the Commission's proposal to expand the use of 450 MHz band offsets available exclusively in the Special Industrial Radio Service. In supporting the NPRM, however, one commenter requested that entities be allowed to use a maximum ERP of up to 100 watts instead of the 20 watts proposed in the NPRM.

3. By this Report and Order the Commission eliminated the secondary restriction on 450 MHz band offsets available exclusively in the Special Industrial Radio Service and increased the permissible antenna height above ground to 100 feet. The Commission agreed with the commenters that relaxing the restrictions somewhat on these channels would make them more attractive to users without significantly increasing the potential for adjacent channel interference. In response to the comments, the Commission allowed a maximum ERP on these channels of up to 100 watts. Again, the Commission agreed that increasing the permissible power would make the channels more attractive. As before, the Commission concluded that the coordinator, with its knowledge of user needs and local conditions will minimize the likelihood of interference occurring with a 12.5 KHz frequency separation.

Ordering Clauses

Accordingly, it is ordered, that pursuant to sections 4(i) and 303(l) of the Communications Act of 1934, as amended, Part 90 of the Commission's Rules is amended effective March 23, 1987, as shown at the end of this document.

List of Subjects in 47 CFR Part 90

Radio, Private land mobile radio service.

It is further ordered that this proceeding is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Rules Changes

Part 90 of the Commission's rules is amended as follows:

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303 unless otherwise noted.

2. Section 90.267 is amended by revising paragraphs (a)(1) and (a)(2) and adding a new paragraph (a)(6)(iii) to read as follows:

§ 90.267 Assignment and use of 12.5 kHz frequency offsets.

(a) * * *

(1) All stations shall be licensed as mobiles but may serve the functions of base, fixed or mobile relay stations. Except in the Special Industrial Radio Service, stations are limited to 2 watts output power. Stations operating on offsets available exclusively in the Special Industrial Radio Service may be authorized an effective radiated power of up to 100 watts.

(2) Except for stations authorized on offsets available exclusively in the Special Industrial Radio Service, all operations shall be on a secondary basis to the primary operations and shall be entitled to no protection from such stations. Stations operating on offsets available exclusively in the Special Industrial Radio Service shall be licensed on a primary basis.

* * * * *

(6) * * *

(iii) Stations operating on offsets available exclusively in the Special Industrial Radio Service may be authorized an antenna height up to 35 m. (100 ft) above ground.

* * * * * *

[FR Doc. 87-2987 Filed 2-11-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 97

[PR Docket No. 85-196]

Maintenance of Question Pools for Amateur Operator Examinations

AGENCY: Federal Communications Commission.

ACTION: Order denying request for stay.

SUMMARY: This document denies a Request for Stay of the Report and Order which became effective December 31, 1986. Action on the stay request is necessary so that the amateur community will know whether the transfer of question pools to the Volunteer-Examiner Coordinators (VECs) has been postponed. The effect of the action is to affirm that the transfer of the question pools has taken place and has not been held in abeyance.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Amateur radio, Examinations, Radio.

In the matter of amendment of part 97 of the Commission's Rules to Permit Volunteer-Examiner Coordinators (VECs) to Maintain Pools of Questions for Amateur Operator Examinations; PR Docket No. 85-196.

Order

Adopted: January 29, 1987.
Released: February 5, 1987.

By the Chief, Private Radio Bureau.

1. The Commission by its Chief, Private Radio Bureau, acting under delegated authority, has under consideration a Request for Stay, filed December 10, 1986, by the American Radio Relay League, Inc. (ARRL). ARRL requests that the Report and Order in the subject proceeding, which became effective December 31, 1986[1] be stayed pending final action on its Petition for Reconsideration, also filed in this proceeding.

2. Before a grant of a request for stay is warranted, a fourfold test must be met: (1) Petitioner must demonstrate a likelihood of success on the merits of the Petition for Reconsideration; (2) a failure to grant a stay would lead to petitioner's irreparable injury; (3) granting a stay would not harm other interested parties; and (4) the stay would be in the public interest. See *Pochahontas Cable TV, Inc.* and *Newport TV Cable, Inc.*, 40 RR 2d 891 (1977); 64 FCC 2d 698 (1977).

3. After examining the Request for Stay in the light of the criteria set forth above, it is concluded that the petitioner has not demonstrated that a stay should be granted.

4. ARRL's statements in support of its Request for Stay are a reiteration of its comments in this proceeding, i.e. that the FCC must continue to maintain the question pools in order to carry out the intent of Congress. As a matter of procedure, however, reiteration or arguments previously made and rejected is not sufficient to demonstrate a likelihood of success on the merits when the Petition for Reconsideration is considered.

5. While ARRL has not met the first requirement for grant of a stay, we consider that, as a practical matter, its concerns have already been satisfied. At the August 8, 1986, Conference of Volunteer-Examiner Coordinators (VECs), the participants agreed unanimously to maintain the existing examination questions until January 30, 1988. In the interim the VECs will cooperate in developing a common pool of examination questions. We have since stated in our Public Notice of December 19, 1986 (52 FR 277; January 5, 1987) that we expect all VECs to adhere to this plan of action. Thus, while ARRL's Petition for Reconsideration is pending, the *status quo* will be maintained.

6. In veiw of the foregoing, and under the authority delegated by Section 0.331 of the Commission's Rules, it is ordered, That the Request for Stay is denied.

Federal Communications Commission.

Michael T.N. Fitch,

Chief, Private Radio Bureau.

[FR Doc. 87-2986 Filed 2-11-87; 8:45 am]

BILLING CODE 6712-01-M

[1] See **Federal Register** of November 18, 1986, 51 FR 41630.

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Proposed Rules

Federal Register
Vol. 52, No. 29
Thursday, February 12, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-6688; File No. S7-2-87]

Securities Guaranteed by Banks and the Use of Insurance Policies To Guarantee Debt Securities; Exemption

AGENCY: Securities and Exchange Commission.

ACTION: Request for Comments.

SUMMARY: The Commission solicits comments on the use of the exemption in section 3(a)(2) of the Securities Act of 1933 for securities guaranteed by banks and the use of insurance policies to guarantee securities. This request is part of a Commission study mandated by the Government Securities Act of 1986 (Pub. L. No. 99-571) (the "Act"). As provided by the Act, the study will be conducted in consultation with the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, and other federal bank regulatory agencies. The study is to be completed by April 28, 1987 (six months after the date of enactment of the Act).

The Commission will hold a public hearing during the course of the study. Interested individuals and organizations will have an opportunity to discuss their views on the topics covered in this release.

DATES: Comments are to be received by March 13, 1987. The public hearing is tentatively scheduled for March 23, 1987, 1:30 p.m. at the Public Meeting Room (Room IC-30) of the Securities and Exchange Commission in Washington, DC 450 Fifth Street, NW. Individuals or organizations wishing to present their views at the public hearing should contact the Commission officials listed below by March 9, 1987.

ADDRESS: Persons wishing to submit comments should file three copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All comments should refer to File No. S7-2-87 and will be available for inspection at the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: Matthew A. Chambers, Esq., (202)272-2428, Office of the General Counsel, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Section 105 of the Government Securities Act of 1986

Section 105 of the Government Securities Act of 1986 directs the Commission to perform a "study of the use of the exemption contained in [S]ection 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) for securities guaranteed by banks, and the use of insurance policies to guarantee securities." As directed by Congress, the study will focus on:

(1) The impact of the guarantee provision of the exemption in Section 3(a)(2) of the Securities Act on investor protection and the public interest;

(2) The impact of the guarantee provision of Section 3(a)(2) on competition between banks and insurance companies and between domestic and foreign guarantors;

(3) Whether, and under what circumstances, debt securities guaranteed by insurance policies should be exempt from registration under the Securities Act;

(4) The impact of such an exemption on investor protection and the public interest; and

(5) Such other issues as the Commission deems relevant.

II. Background

A "financial guarantee" is defined, generally, as a third party's guarantee, for a fee, that another party's obligations in a financial transaction will be met. Financial guarantees first gained widespread acceptance in the 1970s to insure payment of principal and interest on municipal bonds. Since that time, they have been used to back issues of corporate bonds, commercial paper, limited partnerships, and debt securities backed by assets (including mortgages, automobile loans, and credit card receivables.) [1] The entities engaging in the financial guarantee business include insurance companies and domestic and foreign banks.[2]

Insurance companies entered the financial guarantee market with municipal bond insurance. In that market, a municipality with a low credit rating in a debt offering purchases an insurance policy to insure payment of principal of and interest on its bonds.[3] The guarantee raises the market's perception of the creditworthiness of the municipality's obligation, gives the municipality more access to credit, and allows it to pay lower interest rates to investors. The guarantor charges a premium or fee which the municipality is willing to pay because the cost will be recovered through the difference between the insured rate of interest and the interest rate that would be paid without the guarantee.[4]

The use of municipal bond insurance has grown rapidly. According to one estimate, financial guarantees backed 20% of long-term debt issued by municipalities in 1985 as compared to 3% in 1980.[5] As of mid-1985, it was estimated that municipal bond insurers had guaranteed a cumulative $125 billion to $150 billion in principal and interest and collected $750 million to $1 billion in premiums.[6]

Insurance companies also underwrite guaranteed investment contracts ("GICs") in connection with the issuance of publicly held debt securities.[7] Like an insurance policy, a GIC allows a municipality to borrow at a lower cost.

Domestic banks participate in the financial guarantee market primarily through the use of standby letters of credit.[8] These standby letters of credit are considered by some to be functionally equivalent to insurance policies.[9] One source estimated that, in 1984, United States commercial banks issued standby letters of credit guaranteeing total debt of $146 billion, up from $46.8 billion in 1980.[10] Bank fees for standby letters of credit in 1984 were estimated to be $730 million.[11]

Foreign banks also have entered the financial guarantee market. According to one estimate, in mid-1985, United States branches and agencies of foreign banks had $20.7 billion in standby letters of credit outstanding.[12] More recently, it was estimated that foreign banks had increased their share of the domestic market for standby letters of credit to over 50%.[13]

III. Treatment of Financial Guarantees Under the Securities Act of 1933

Under the Securities Act of 1933, public offerings of securities must be registered unless an exemption from the registration requirements is available. Under section 2(1) of the Securities Act, a guarantee of a security is a separate security; the guarantee also must be registered unless an exemption from registration is available. Financial guarantees in the forms of bank standby letters of credit and insurance policies, however, have generally not been registered, in reliance on sections 3(a)(2) and 3(a)(8) of the Act.

Financial guarantees issued by domestic banks in the form of standby letters of credit are exempt from registration pursuant to section 3(a)(2) of the Securities Act, which exempts "any security issued * * * [by] any national bank, or any banking institution organized under the laws of any State, Territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official * * *." In addition, section 3(a)(2) exempts from registration "any security * * * guaranteed by" such a bank. Although a standby letter of credit may be deemed not to be a guarantee for some purposes, but rather an "engagement * * * [of] the issuer [to] * * * honor drafts or other demands for payment upon compliance with the conditions specified,"[14] the Commission's Division of Corporation Finance has treated standby letters of credit as being "tantamount to guarantees by [a] bank." Thus, the security backed by the letter of credit and the letter of credit itself have not been registered under the Securities Act.[15]

In September 1986, the Commission issued an interpretive release setting forth its position on the application of the section 3(a)(2) exemption to securities issued or guaranteed by United States branches and agencies of foreign banks.[16] In that release, the Commission announced that it deemed a branch or agency of a foreign bank located in the United States to be a "national bank," or a "banking institution organized under the laws of any state, territory, or the District of Columbia," within the meaning of section 3(a)(2), provided that the nature and extent of federal and/or state regulation and supervision of the particular branch or agency is substantially equivalent to that applicable to federal or state chartered domestic banks doing business in the same jurisdiction. Thus, a security backed by a standby letter of credit or otherwise "guaranteed" by a domestic branch or agency of a foreign bank subject to regulation substantially equivalent to that applicable to a domestic bank is exempt from registration under the Securities Act.[17]

Insurance companies providing financial guarantees backing debt securities have not registered the guarantees in reliance on section 3(a)(8) of the Securities Act. That section provides an exemption from registration for certain insurance policies and annuity contracts regulated by state insurance commissioners.[18] Although

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[1] Freedman, *Financial Guarantees: Too Hot to Handle?* 86 Best's Rev. (Property/Casualty Insurance Edition) 16, 133 (Oct. 1985). *See also* Haine, *Developments in Financial Guarantee Insurance*, Bus. Law. Update, Nov.-Dec. 1986, at 5.

Financial guarantees may also be used to provide credit support to demand agreements relating to variable or floating rate instruments, such as variable rate tax-free municipal bonds. The demand feature may enable such an instrument to be treated as short-term debt, and the credit support of the demand feature may raise the quality of an instrument and, thus, make it marketable to tax-free money market funds that invest only in high quality short-term instruments. *See* Investment Company Act Release No. 14983 (March 12, 1986).

[2] In addition to insurance companies and banks, industrial companies, consortiums of financial institutions, and other financial intermediaries have entered the financial guarantee market. *See* Freedman, *supra* note 1, at 18; Registration Statement of General Electric Credit Corporation on Form S-3, File No. 2-80000 (filed Oct. 27, 1982) (registration of standby letter of credit in connection with exempt municipal bond offering).

[3] Sometimes the insurance is purchased by another party, such as the sponsor of a unit investment trust, to cover securities in the trust's portfolios. Such insurance may be applicable only so long as the insured security is held by the unit investment trust. The insurance allows the trust to get a higher rating for its portfolio as a whole.

[4] Freedman, *supra* note 1, at 16.

[5] *Insurers and SEC Battle Over Measure to Alter Debt-Registration Requirement*, Wall St. J., Sept. 29, 1986, at 24.

[6] Brenner, *Booming Financial Guarantees Market Generates Profits and Some Questions*, Am. Banker, June 24, 1985, at 1.

[7] A GIC may take any of a variety of forms. Nearly all, however, are deferred annuities issued by insurance companies under which the purchaser agrees to pay money to an insurer (in one or more installments), and the insurer promises to pay interest at a guaranteed rate for the life of the contract. In some contracts, the insurer may periodically pay discretionary excess interest over and above the guaranteed rate.

The insurer may tailor the terms of the GIC to meet the needs of the individual bond issuer. In general, however, the arrangement usually includes two annuity forms—a single premium deferred annuity and a single premium immediate annuity. Under the deferred annuity, benefit payments do not begin until the end of an initial period during which funds are accumulated at compound interest with the insurance company. In contrast, benefit payments under the immediate annuity begin at the end of the first payment interval after purchase (*e.g.*, if payments were to be made on a monthly basis, the first payment would be made at the end of the first month following purchase of the contract).

In a taxable municipal bond offering backed by GICs, a portion of the total proceeds is invested in a GIC of the single premium immediate annuity type as a debt service reserve fund and used to provide money to pay the interest on the bonds. The remainder of the bond proceeds is invested initially in a GIC of the single premium deferred annuity type that contains full and partial surrender clauses that permit the municipality to draw on the GIC to finance its municipal operations.

[8] In general, state and national banks have traditionally lacked the power, under state and federal law, respectively, to guarantee the payment of indebtedness. *See* Verkuil, *Bank Solvency and Guaranty Letters of Credit*, 25 Stan. L. Rev. 716, 725 & n.44 (1972-1973); Comment, *Recent Extensions in the Use of Commercial Letters of Credit*, 66 Yale L.J. 902, 911-12 & n.38 (1956-1957); Harfield, *The National Bank Act and Foreign Practices*, 61 Harv. L. Rev. 782, 788 & n.12 (1947-1948). The Office of the Comptroller of the Currency has determined, nevertheless, that national banks generally are empowered to issue standby letters of credit. *See* 12 CFR 7.7016 (1986). Because letters of credit bear some resemblance to guarantees, however, the question often arises as to whether a particular letter of credit is an impermissible guarantee. *See, e.g., Letter No. 295* (July 3, 1984) (interpretative letter issued by the Office of the Comptroller of the Currency).

[9] *See* Letter to Patrick Mulhern, Senior Vice President and General Counsel, Citibank, N.A. from Michael Patriarca, Deputy Comptroller for Multinational Banking, Office of the Comptroller of the Currency, May 2, 1985 (concurring in opinion that national bank may acquire or establish municipal bond insurance subsidiary).

[10] Brenner, *Regulators Worry About Guarantees*, Am. Banker, June 26, 1985, at 17.

[11] *Id.* at 18.

[12] Brenner, *supra* note 10, at 17.

[13] Wong, *Foreign Banks Grab a Market Segment*, Wall St. J., December 15, 1986, at 6.

[14] U.C.C. 5-103.

[15] *Merrill Lynch, Pierce, Fenner & Smith, Inc.* (May 3, 1982) (Division of Corporation Finance no-action letter).

[16] Securities Act Release No. 6661 (Sept. 23, 1986).

[17] The Commission also stated that the determination whether the requirement of substantially equivalent regulation was met was one which must be made by the particular branch or agency and its counsel. *Id. See also* Investment Company Act Release No. 15314 (Sept. 17, 1986) for a discussion of the treatment of foreign banks under the Investment Company Act of 1940.

[18] Although the guarantee is exempt from registration, under Rule 3-10 of Regulation S-X (the Commission's regulation prescribing the form and content of financial statements filed with the Commission), the financial statements of the guarantor must be filed as part of the registration statement concerning the guaranteed securities.

On February 5, 1987, the Commission voted to repropose Form N-7, a form for registration of unit investment trusts under the Investment Company Act and the Securities Act. As reproposed, the form would require unit investment trusts whose portfolios are insured or guaranteed to include financial statements of the insurer or guarantor in their registration statements.

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phrased as an exemption, the Commission has taken the position that section 3(a)(8) provides an exclusion from all provisions of the Securities Act.[19]

An insurance company guarantee of principal of and interest on a tax-exempt municipal bond has been deemed to be exempt under section 3(a)(8) of the Securities Act.[20] Similarly, an insurance company's financial guarantee bond insuring the timely payment of amounts due under debentures to be offered publicly by a noninsurance subsidiary of an insurance company has also been treated as exempt under section 3(a)(8).[21]

Not every instrument labeled as an insurance policy or an annuity contract, however, falls within the exclusion of section 3(a)(8). For example, a variable annuity contract in which the entire investment risk remains with the annuity holder is deemed not to be an annuity contract for purposes of section 3(a)(8).[22] Similarly, variable annuity contracts in which the investment risks borne by the respective insurance companies are not deemed significant also are not considered to be annuity contracts for purposes of section 3(a)(8).[23]

The Commission has adopted Rule 151 under the Securities Act, which establishes a "safe harbor" within section 3(a)(8) for certain types of annuity contracts.[24] To come within the Rule, the contract must (1) be issued by a corporation subject to the supervision of the state insurance commissioner, bank commissioner, or any agency or officer performing like functions, (2) include guarantees of principal and interest sufficient in degree for the issuer to be deemed to have assumed the investment risk, and (3) not be marketed primarily as an investment. While compliance with Rule 151 will assure "non-security status," failure to comply does not necessarily result in the annuity contract being denominated a security outside the section 3(a)(8) exclusion. The Commission, however, has taken the position that the rationale underlying the conditions set forth in the rule is relevant to any section 3(a)(8) determination.[25]

Thus, under the Securities Act, any security guaranteed by a bank, and the guarantee itself, are exempt from the registration requirements and from the private liability provisions of section 12(2). Both the guaranteed security and the guarantee itself, however, are subject to the antifraud provisions of section 17.[26] Insurance policies that guarantee securities are excluded from the Act in its entirety if those policies come within section 3(a)(8). Securities guaranteed by insurance policies, however, generally are subject to all of the Securities Act's requirements, including the registration requirements of section 5, unless a separate exemption applies.[27]

IV. Request for Comment

Congress directed the Commission to examine the impact of the exemption in section 3(a)(2) for securities guaranteed by banks on investor protection and the public interest and on competition among guarantors, and whether a similar exemption from registration should be provided for securities guaranteed by insurance policies. For ease of discussion and to focus the responses of commentators, the discussion set forth below has been divided into three sections. The first section concerns the use of the exemption in section 3(a)(2) and its impact on investor protection and the public interest; the second, the impact of that exemption on competition among banks and insurance companies, and domestic and foreign guarantors; and the third, whether and under what circumstances debt securities guaranteed by insurance policies should be exempt from registration. Of course, many of the issues to be addressed are interrelated, and commentators need not structure their answers to conform to this organization. In responding to the issues discussed below, the Commission requests that commentators be as specific as possible, and, where appropriate, provide quantitative data and cite to the source of the data. The Commission also invites commentators to address any other matters that they believe are relevant to the study.

A. The Use of the Guarantee Provision of the Exemption in Section 3(a)(2) and Its Impact on Investor Protection and the Public Interest

In evaluating the use of the guarantee provision of the exemption in section 3(a)(2) and its impact on investor protection and the public interest, the Commission requests information on the market for securities guaranteed by banks, the banking regulatory scheme currently applicable to standby letters of credit and other financial guarantees issued by banks, the rights of security holders under standby letters of credit, and the record of those banks that have issued guarantees.

As noted above, banks are major participants in the financial guarantee market. The Commission requests that the commentators address the nature and extent of bank participation in that market, with particular emphasis on guarantees of publicly offered securities. What specific types of securities are being offered with standby letter of credit backing? What is the volume of these offerings by type of security? What are the current trends in this market, and what future developments are likely? What types of banks are issuing standby letters of credit in connection with public offerings?

The Commission believes that the impact of the guarantee provision in section 3(a)(2) should be assessed in light of the current banking regulatory scheme. While the legislative history of the section 3(a)(2) exemption for securities issued or guaranteed by banks is relatively sparse, that history indicates that the exemption was provided because it was believed at the time that the existing bank regulatory authorities exercised "adequate supervision over the issuance of [bank] securities * * *."[28] The legislative history does not separately examine the rationale for the guarantee provision, or address the extent to which banks were issuing financial guarantees at that time.

State and federal banking authorities regulate the issuance of standby letters of credit by banks. For example, letters of credit issued by national banks and state member banks are deemed to be extensions of credit and are subject to lending limits.[29] In addition, the volume of standby letters of credit issued by a bank may affect capital requirements.[30] The Commission requests that commentators address the relationship of these banking regulatory requirements and policies to the investor protection concerns of the Securities Act. In particular, are these banking law requirements adequate substitutes for the full disclosure requirements of the Securities Act? Do bank regulators impose any other requirements on bank issuances of financial guarantees?

As noted above, foreign banks apparently have greatly increased their financial guarantee activity in recent years. The Commission requests that commentators address the domestic banking regulations applicable to branches or agencies of foreign banks located in the United States, and any differences between the regulation of domestic banks and domestic branches and agencies of foreign banks in this market.[31]

The Commission also requests comment on the rights of security holders under bank standby letters of credit and other bank financial guarantees. Are such rights uniform across all standby letters of credit? Does a bank have any defenses against the calling down of a standby letter of credit backing a publicly-held security? For example, if a letter of credit were procured by fraud on the part of the issuer of the security, is the bank nonetheless obligated to security holders? How promptly must payment on the letter of credit be made?

Finally, the Commission asks that commentators address the experience with securities backed by bank guarantees. How often have issuers defaulted and banks been called upon to honor guarantees? Have any banks been unable to fulfill, or sought to avoid, their commitments? Is past history an adequate guide to future events in light of the rapid growth in this market in recent years?

B. The Impact of the Guarantee Provision in Section 3(a)(2) on Competition

As noted above, under section 3(a)(2) of the Securities Act, securities guaranteed by banks are exempt from registration, but securities guaranteed by insurance polices are not. Insurance companies have argued that this difference in regulation creates an unfair and unjustified competitive disparity.[32] It has been said that this disparity "makes it virtually impossible for insurance companies to provide cost-effective coverage to issuers."[33] To evaluate the impact of the exemption for securities guaranteed by banks on competition between these guarantors, the Commission requests information on the guarantee markets in which domestic banks, foreign banks, and insurance companies compete, the bases on which guarantors compete, and how the guarantee provision in section 3(a)(2) affects competition.

The Commission requests that commentators provide information on the financial guarantee markets in which the guarantors compete. The Commission requests data on market shares of domestic banks, foreign banks, and insurance companies among each type of security backed by these guarantors, and the current trends in the markets.

The Commission also requests comment on the bases of the competition among the various types of guarantors. Clearly, the price paid by the issuer for the guarantee and the borrowing savings to the issuer are important factors in that competition. According to some reports, far more insurance companies have received AAA ratings in connection with their financial guarantee business than have banks, which would seem to give those insurance companies a significant competitive advantage.[34] Does the section 3(a)(2) guarantee provision significantly affect competition by allowing banks to offer issuers an exemption from registration? The Commission also requests information on the costs attributable to the registration process and whether the registration of a security results in any savings to the issuer.

It has been said that letters of credit and insurance policies are functionally equivalent. Are there differences in function between these guarantees, and how does the difference affect competition? Are there any differences between the defenses that may be raised to insurance company liability on an insurance guarantee, such as fraud on the part of the issuer of an insured security, and the defenses that may be raised to bank liability on a standby letter of credit?

The Commission requests that commentators address the similarities and differences in the banking and insurance regulatory schemes, as they affect the competition between domestic banks, domestic branches and agencies of foreign banks, and insurance companies. For example, federal banking regulators have recently proposed increased capital requirements for banks that incur off-balance sheet liabilities, including standby letters of credit.[35] It appears that risk-based capital requirements would impose additional costs on banks that guarantee securities, which could affect those

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[19] Securities Act Release No. 6558 (Nov. 21, 1984). Furthermore, an instrument that is described in section 3(a)(8) of the Securities Act has been held not to be a security subject to the antifraud provisions of the Securities Exchange Act of 1934. *See Otto* v. *Variable Annuity Life Ins. Co.*, [Current] Fed. Sec. L. Rep. (CCH) ¶ 93,012 (7th Cir. Dec. 8, 1986). In contrast, bank issued or guaranteed securities, while exempted from registration under the Securities Act and from the provisions of section 12(2) of that Act, have not been considered to be excluded from the provisions of section 17 of the Securities Act nor exempted or excluded from the provisions of the Securities Exchange Act of 1934.

[20] *American Municipal Bond Assurance Corp.* (June 18, 1972) (Division of Corporation Finance no-action letter).

[21] *Sentry Financial Services Co.* (Jan. 5, 1977) (Division of Corporation Finance no-action letter).

[22] *Securities and Exchange Commission* v. *Variable Annuity Life Ins. Co.*, 359 U.S. 65 (1959).

[23] *Securities and Exchange Commission* v. *United Benefit Life Ins. Co.*, 387 U.S. 202 (1967); *Peoria Common Stock Yards Co.* v. *Penn. Mutual Life Ins. Co.*, 698 F.2d 320 (7th Cir. 1983); *cf. Otto* v. *Variable Annuity Life Ins. Co.*, [Current] Fed. Sec. L. Rep. (CCH) ¶ 93,012 (investment risk assumed by insurer deemed sufficient for instrument to be considered an annuity contract for purposes of section 3(a)(8) of the Securities Act, and, hence, for the instrument not to be a security for purposes of the Securities Exchange Act of 1934).

[24] Securities Act Release No. 6645 (May 29, 1986).

[25] *Id.* The Court of Appeals for the Seventh Circuit has found Rule 151 "helpful" in determining the securities law status of an annuity contract that predated the Rule. *Otto* v. *Variable Annuity Life Ins. Co.*, [Current] Fed. Sec. Law R. (CCH) ¶ 93,012.

[26] Section 17(c) of the Securities Act.

[27] For example, municipal bonds generally are exempt under section 3(a)(2), and commercial paper generally is exempt under section 3(a)(3).

[28] H.R. Rep. No. 85, 73d Cong., 1st Sess. 14 (1933). In addition, the drafters of the legislation that became the Securities Act believed that it would be unnecessarily duplicative to require entities that filed information with bank regulators regarding the issuance of securities to file the same information with a second agency. *See* Hearings on H.R. 4314 before the House Committee on Interstate and Foreign Commerce, 73d Cong., 1st Sess. 29–30 (1933) (statement of Huston Thompson).

[29] *See, e.g.*, 12 CFR 208.8 (Board of Governors of the Federal Reserve System regulations requiring that standby letters of credit must not, when combined with other extensions of credit, exceed lending limits imposed by state law and limits on loans to affiliates under federal law); 12 CFR Part 32 (Office of the Comptroller of the Currency regulations).

[30] *See, e.g.*, 12 CFR 3.10 (Office of the Comptroller of the Currency regulations pertaining to national banks stating that "higher capital ratios may be appropriate for * * * [a] bank having a high proportion of off-balance sheet risks, especially standby letters of credit"); Agreed Proposals of the United States Federal Banking Supervisory Authorities and the Bank of England on Primary Capital and Adequacy Assessment, January 8, 1987 (proposed framework for capital requirements treating off-balance sheet items such as financial guarantees and equivalents, including standby letters of credit, as requiring greater levels of capital).

Standby letters of credit are not insured as deposits under the federal deposit insurance program. *Federal Deposit Ins. Corp.* v. *Philadelphia Gear Corp.*, 106 S. Ct. 245 (1986).

[31] As discussed above, the Commission in Securities Act Release No. 6661 interpreted the Section 3(a)(2) exemption as applying to branches or agencies of foreign banks located in the United States, provided that the nature and extent of federal and/or state regulation and supervision of the particular branch or agency is substantially equivalent to that applicable to federal or state chartered domestic banks doing business in the same jurisdiction. Thus, a standby letter of credit or other "guarantee" issued by a branch or agency of a foreign bank not subject to substantially equivalent regulation and supervision, and the security backed by such a letter of credit or guarantee, are not within the exemption in section 3(a)(2).

[32] *See e.g.*, Letter to Sen. Alfonso M. D'Amato from W. James Lopp, Chairman and President, Financial Security Assurance, dated February 14, 1986.

[33] 132 Cong. Rec. S 15797 (daily ed. Oct. 9, 1986) (statement of Sen. D'Amato).

[34] Freedman, *supra* note 1, at 16.

[35] *See, e.g.*, 51 FR 10602–01 (March 27, 1986) (advance notice of proposed rulemaking published by the Office of the Comptroller of the Currency regarding risk-based capital standards).

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banks' ability to compete with other guarantors.

The Commission requests that commentators address how any significant competitive disparity created by the exemption in section 3(a)(2) should be addressed. Vice President Bush's Task Group on Regulation of Financial Services, which included the heads of all the banks and other federal agencies that regulate financial services, recommended that the registration requirements of the Securities Act be made applicable to publicly offered securities of banks and thrifts (but not deposit instruments). A logical consequence of the Bush Task Group recommendation is that section 3(a)(2) of the Securities Act must be amended to delete the current exemption for securities guaranteed by a bank. Commentators are requested to address whether enactment of the Bush Task Group proposal is the appropriate means of eliminating any competitive disparity caused by the guarantee provision of section 3(a)(2).

Alternatively, commentators are asked to consider whether the Commission should revisit the position taken by the Commission's Division of Corporation Finance in no-action letters concerning securities backed by bank standby letters of credit. That is, should it reconsider whether a security backed by a bank standby letter of credit is a security "guaranteed" by a bank, within the meaning of section 3(a)(2) of the Securities Act?

As noted above, national banks generally lack the power to guarantee the debts of others, but the issuance of standby letters of credit has been determined to be a permissible activity. Commentators should address the extent to which state banks and domestic branches and agencies of foreign banks may guarantee the debts of others. If such entities do have that power, and the Commission reinterpreted the term "guarantee" to exclude standby letters of credit, securities guaranteed by those entities would not be required to be registered, while securities backed by national banks and insurance companies would be required to be registered.

C. Should Debt Securities Guaranteed by Insurance Policies Be Exempt From Registration Under the Securities Act?

In evaluating whether debt securities guaranteed by insurance policies should be exempt from registration under the Securities Act, the Commission requests information on the regulatory scheme governing financial guarantee insurance, the types of financial guarantee insurance available, the market for securities guaranteed by such insurance, the experience of those companies that have issued such guarantees, and the conditions, if any, that should form the bases for such an exemption from registration.

Regulation of the business of insurance is generally conducted within the parameters of state insurance regulation.[36] Under the leadership of the National Association of Insurance Commissioners (the "NAIC"), the states have passed laws to supervise and control the business of insurance, and, in particular, the financial solvency of insurance companies. Financial guarantee insurance, however, does not appear to be extensively regulated by the states.[37] The NAIC recently adopted a Model Act which may serve as a basis for state regulation of this type of insurance.[38] Several states, including New York and Virginia, plan to introduce legislation based substantially on the NAIC model. However, it is unclear whether these states and others will adopt the proposal in whole or in part, or reject it and develop their own scheme of regulation.

The Commission seeks comment on how states define financial guarantee insurance, whether and to what extent such insurance is subject to capital, surplus, and contingency reserve requirements, the nature of the risk assumed, how the product is priced,[39] the nature of any limitations and restrictions imposed on the product or the companies which offer it,[40] and whether financial guarantees are within the protection of state security funds. The Commission seeks comment not only on the nature of the state regulatory framework that governs financial guarantee insurance, but also on the adequacy of that regulatory framework. Does it provide sufficient safeguards to investors to dispense with the protections of the Securities Act?

Commentators also are requested to provide information on the different kinds of financial guarantee insurance currently being offered by insurance companies.[41] What are the purposes for which the guarantees are used, and what are the underwriting standards for the products? What are the features of such contracts and how do they operate? Are such policies non-cancellable? Are the premiums fixed at the time of purchase? Do investors in a debt obligation have any interest in payments made by an insurer in the event of nonpayment by the issuer of the debt obligation? Does the nature of that interest vary according to the type of insurance? How promptly must payment on the policy be made?

The Commission also seeks information on the size of the financial guarantee insurance market as it currently exists, as well as trends in that market. Commentators are requested to provide statistical information on the specific kinds and dollar volumes of financial guarantees currently being marketed by insurance companies. For example, what is the dollar volume of municipal bond insurance and corporate debt insurance? What are the current trends in this market, and how would an exemption from registration affect the volume of guaranteed securities issued?

The Commission also is interested in the experience of those insurance companies that have issued financial guarantees to date. What percentage of those companies that offer such insurance are experiencing financial difficulties by virtue of their participation in this business or otherwise? What percentage of failures or withdrawals from the business have occurred, and what was the cause of those failures or withdrawals? Have insurers been unable to fulfill, or sought to void, their commitments?

In considering the circumstances under which debt securities guaranteed by insurance policies should be exempt from registration, commentators should consider whether the guaranteed security, the insurance policy, or both should be subject to the antifraud provisions of the securities laws. Commentators also should consider the conditions, if any, that should form the basis for such an exemption. For example, it has been suggested that an exemption should be limited to guaranteed debt securities rated in the highest category by one or more nationally recognized statistical rating organizations.[42] How should a "nationally recognized statistical rating organization" be defined for purposes of such an exemption? [43] How do rating organizations evaluate guaranteed securities, and do such ratings, when coupled with state insurance regulation, provide a reasonable basis for dispensing with registration and disclosure requirements? Should security holders have recourse against a rating organization in the event it makes errors about the quality of a security? If such an exemption were enacted, should rating organizations be subject to some form of regulation?

Should an exemption be conditioned on the availability of public information about the insurer or the issuer of the guaranteed security? Should the insurer be responsible for the accuracy of any offering documents?

Commentators should also consider the types of guarantees that should form the bases for an exemption from registration. For example, should securities backed by GICs that are within section 3(a)(8) be exempted? Should securities that are insured only so long as they are held by a particular party be exempted?

Further, commentators are asked to address whether the Commission should have authority to exempt guaranteed securities by rule or by some other method. What limitations, if any, should be placed on the Commission's authority to exempt guaranteed securities?

[36] The McCarran-Ferguson Act, 15 U.S.C. 1011–1015, provides that no act of Congress shall be construed to invalidate, impair or supersede any law enacted by any state for the purpose of regulating the business of insurance, unless such act specifically relates to the business of insurance. The Act does not preclude the Commission, however, from administering the federal securities laws with respect to a security simply because the security is promoted or issued by an insurance company. *Securities and Exchange Commission v. National Securities, Inc.*, 393 U.S. 453 (1969).

[37] *What is Behind the Bittersweet Boom in Financial Guarantees*, Bus. Wk., Sept 17, 1984, at 116; Statement of James P. Corcoran, Superintendent of Insurance of the State of New York on Financial Guaranty Insurance, Before Assembly Committee on Insurance, October 1, 1986.

[38] The NAIC model restricts the writing of financial guarantee insurance to monoline companies and establishes new standards for contingency and loss reserves, and aggregate and single risk limits.

[39] The Commission requests that commentators address, among other things, how the evaluation of the risk assumed and the pricing of the product is similar to or different from traditional insurance products. Some trade articles, for example, have stated that financial guarantee insurance is priced for "no loss." *See, e.g.*, Brenner, *supra* note 6, at 17.

[40] For example, do any states require that such insurance be offered solely through monoline companies?

[41] The Commission requests that commentators submit copies of sample contracts.

IV. Conclusion

In conducting the study of the financial guarantee market mandated by Congress, the Commission is seeking comment on a number of specific matters concerning financial guarantees. In addition to those matters, the Commission requests that commentators address generally whether the merits of a security should be relevant to granting an exemption from the Securities Act's registration requirements. The arguments for exempting securities backed by financial guarantees is based, in large part, on the perceived safety and low credit risk of such securities. Given the policies of full and fair disclosure embodied in the Securities Act, should the merits of a security be relevant to a determination to exempt the security?

The Commission requests commentators to address the issues raised in this release and any other issues they believe are relevant to the study.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

Dated: February 6, 1987.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2940 Filed 2-11-87; 8:45 am]

BILLING CODE 8010-01-M

[42] *See* S. 1416, 99th Cong., 2d Sess. section 208.

[43] At the present time, the following organizations are considered "nationally recognized statistical rating organizations" for purposes of Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934: Duff and Phelps, Inc.; Fitch Investors Services, Inc.; Moody's Investors Services, Inc.; McCarthy, Crisanti & Maffei; and Standard & Poors Corporation. *See* Investment Company Act Release No. 15314 (Sept. 17, 1986) at n.32.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 203

[Docket No. R-87-1311; FR-2193]

Single Family Mortgage Insurance—Deficiency Judgments

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This rule would authorize the FHA Commissioner to require mortgagees to obtain a deficiency judgment in connection with the foreclosure of mortgages insured pursuant to firm commitments issued on or after its effective date. With respect to other insured mortgages, the Commissioner may request a mortgagee to obtain a deficiency judgment. This rule is being proposed as a part of the Department's overall effort to (1) strengthen its debt collection activities; (2) minimize losses to the FHA insurance funds; and (3) deter and prevent program fraud and abuse.

FOR FURTHER INFORMATION CONTACT: Fred W. Pfaender, Director, Single Family Servicing Division, Office of Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 755-6672 (This is not a toll-free number).

DATES: Comment due date: March 16, 1987.

SUPPLEMENTARY INFORMATION: In the past, the Department has had no policy which required, or even encouraged, mortgagees to seek deficiency judgments. Under the longstanding statutory authority governing FHA, it was not feasible to require mortgagees to seek deficiency judgments. With the recent publication of the regulation governing payment of insurance claims without the conveyance of title on January 13, 1987 (52 FR 1320), it has now become feasible to require or request mortgagees to seek deficiency judgments against defaulting mortgagors.

A mortgagee may obtain a deficiency judgment only when the debt owed by the mortgagor is greater than the proceeds of the foreclosure sales payable to the mortgagee. If the mortgagee becomes the successful bidder at the foreclosure sale by bidding the debt (which normally includes advances, interest and costs), then there is no deficiency. In the past, it was necessary in many cases for the mortgagee to bid the debt in order to preserve its rights under the mortgage insurance contract. Since the filing of a mortgage insurance claim with HUD required the conveyance to HUD of title to the property formerly covered by the insured mortgage, in most cases mortgagees would bid the debt in order to assure that they acquired title, or if outbid, were made whole by the proceeds of the foreclosure sale. Further, in the numerous states in which mortgagors and junior lienors have a statutory right to redeem for a specified period of time, it has been necessary for mortgagees to bid the debt in order that they can either convey title to HUD or be made whole by the payment from the redemptor.

Under the recently promulgated claims without conveyance procedure (cited above), mortgagees holding mortgages insured pursuant to firm commitments issued on or after November 30, 1983 are required to notify HUD of the foreclosure and, when the fair market value is less than the mortgage debt, the Department will instruct the mortgagee to bid the fair market value of the property, less adjustments determined by the Commissioner. A mortgagee which so bids and obtains title could be in a position to seek a deficiency judgment. Also, if the mortgagee bids as instructed and is outbid by a third party, a

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deficiency judgment may be obtainable if the high bid is less than the mortgage debt. The mortgagee, however, would be protected in that it is able to file a claim for mortgage insurance without conveying title. Under this proposed rule, HUD would be authorized in appropriate cases to require the mortgagee to pursue a judgment based on the deficiency between the high bid and the mortgage debt, and to assign that judgment to HUD.

It should also be noted that the claims without conveyance regulation added a new paragraph (o) to 24 CFR 203.402 providing that in any case in which the mortgagee seeks a deficiency judgment in response to the Secretary's demand or request, the Department will reimburse the mortgagee for the full additional costs of seeking the judgment.

As part of the overall program to strengthen debt collection efforts, and in order to help deter abuses of FHA single family programs by a small minority of mortgagors, the Department has determined that deficiency judgments should, and will, actively be sought under appropriate conditions. In determining whether a deficiency judgment should be sought in conjunction with a single family foreclosure, the Department will take the following factors into account:

1. Whether the mortgagor has defaulted on one or more other HUD insured mortgages or loans, resulting in the payment of insurance claims.

2. Whether the mortgagor treats its ownership as an investment and the mortgagor, or persons or entities with which it has been affiliated, have defaulted on one or more other FHA insured mortgages or loans, resulting in the payment of insurance claims.

3. Whether it is feasible under State law to seek a deficiency judgment.

4. The cost-effectiveness of seeking a deficiency judgment, considering, among other factors, the probable amount of the deficiency judgment obtainable, the additional costs attributable to seeking a deficiency judgment and the likelihood of successfully recovering on any judgment.

5. Such other factors as the Commissioner may deem appropriate.

With respect to foreclosures carried out in connection with mortgages insured pursuant to firm commitments issued on or after the effective date of this rule, the Commissioner would have the discretion to require a mortgagee diligently to pursue a deficiency judgment. Similarly, the Department could require compliance in the case of mortgages insured as a result of direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter on or after the effective date of the rule. In the case of mortgages not within the mandatory scope of the rule as described above, the rule simply affirms that the Commissioner may make a timely request that the mortgagee obtain a deficiency judgment in appropriate cases. In all cases in which the Department either directs or requests that the mortgagee pursue a deficiency judgment, the Commissioner will, under § 203.402(o) as proposed to be revised in this rule, fully reimburse the mortgagee for any additional costs incurred in seeking the judgment.

To carry out this new policy successfully, it will be necessary for the mortgagee to give timely notice to HUD of the foreclosure, or anticipated foreclosure, and for HUD to give timely notice to the mortgagee that a deficiency judgment should be pursued. State laws and procedures vary considerably with respect to deficiency judgments. For example, there are some States in which the decision to pursue a deficiency judgment must be communicated to the mortgagee before any foreclosure action is commenced, since it will have a significant effect on the nature of the action which is instituted by the mortgagee. Since current regulations contain no provision requiring the mortgagee to give HUD notice before commencement of the foreclosure, proposed new § 203.369 would provide that the Secretary, where a deficiency judgment is being sought and where necessary because of State law requirements, may require the mortgagee to provide HUD with notice a reasonable amount of time before the institution of the foreclosure proceeding.

In some States, a mortgagee pursuing a deficiency judgment can obtain it as part of the foreclosure proceeding. In other cases, however, this cannot be accomplished. For example, in many States in which the foreclosure procedure is nonjudicial, the pursuit of a deficiency judgment is accomplished by a judicial action instituted after the non-judicial foreclosure is completed. Also, in some judicial foreclosure States, the deficiency judgment action is an independent one which can be commenced only after the foreclosure action is completed. In order to permit the pursuit of deficiency judgments in States where they must be obtained subsequent to the foreclosure proceeding, this rule proposes to authorize the FHA Commissioner to extend the otherwise applicable period of time after foreclosure within which deficiency judgments (and other claims against the mortgagor) and related credit documents must be assigned to the Commissioner under §§ 203.360 (Notice of property transfer and application of insurance benefits), 203.367 (Contents of deed and supporting documents) and 203.368 (Claims without conveyance procedure).

Procedural Requirements

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President of February 17, 1981. Analysis of the proposed rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. In only a limited number of cases will deficiency judgments be pursued under the rule and those are likely to be cases where program abuse could be inferred.

This rule was listed as item H-6-86-[Sequence Number 811] under the Office of Housing in the Department's Semiannual Agenda of Regulations published on October 27, 1986 (51 FR 38424) under Executive Order 12291 and the Regulatory Flexibility Act.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address.

The mortgage insurance programs listed in the Catalog of Federal Domestic Assistance under the following numbers would be covered under this rule: 14.108, 14.117, 14.119, 14.120, 14.121, 14.122, 14.123, 14.132, 14.133 14.140, 14.152, 14.159, 14.161, 14.165, 14.166, 14.172, and 14.175.

Information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). The OMB control number assigned to the new § 203.369 is 2535-0093.

List of Subjects in 24 CFR Part 203

Mortgage insurance, Insurance of single family mortgages.

Accordingly, 24 CFR Part 203 is amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for 24 CFR Part 203 is proposed to continue to read as follows:

Authority: Secs. 203, 204 and 211, National Housing Act (12 U.S.C. 1709, 1710, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, Subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715(u)).

2. 24 CFR Part 203 is proposed to be amended by adding immediately after § 203.368 the following new § 203.369:

§ 203.369 Deficiency judgments.

(a) With respect to claims for insurance benefits filed in connection with mortgages insured pursuant to firm commitments issued on or after [Effective Date], or pursuant to direct endorsement processing under §§ 200.163–164a of this chapter where the credit worksheet was signed by the mortgagee's approved underwriter on or after [Effective Date], the Commissioner may, upon giving timely notice, require the mortgagee diligently to pursue a deficiency judgment in connection with the foreclosure and to assign the judgment to the Commissioner. In determining whether a deficiency judgment should be sought in connection with a single family foreclosure, the Commissioner will take the following factors into account:

(1) Whether the mortgagor has defaulted on one or more other HUD insured mortgages or loans, resulting in the payment of insurance claims;

(2) Whether the mortgagor treats its ownership as an investment and the mortgagor, or persons or entities with which it has been affiliated, have defaulted on one or more other FHA insured mortgages or loans, resulting in the payment of insurance claims;

(3) Whether it is feasible under State law to seek a deficiency judgment;

(4) The costeffectiveness of seeking a deficiency judgment, considering, among other factors, the probable amount of the deficiency judgment obtainable, the additional costs attributable to seeking a deficiency judgment and the likelihood of successfully recovering on any judgment; and

(5) Such other factors as the Commissioner may deem appropriate.

In cases where the "Commissioner requires the pursuit of a deficiency judgment and provides the mortgagee with its estimate of the fair market value of the property, less adjustments, in accordance with § 203.369(e), the mortgagee shall tender a bid at the foreclosure sale in that amount, and shall take all other appropriate steps in accordance with State law to obtain a deficiency judgment.

(b) With respect to claims for insurance benefits filed in connection with mortgages insured pursuant to firm commitments issued before [*Effective Date*], or pursuant to direct endorsement processing under §§ 200.163–164a of this chapter where the credit worksheet was signed by the mortgagee's approved underwriter before [Effective Date], the Commissioner may, in accordance with the criteria set forth in paragraph (a) of this section and upon giving timely notice, request that the mortgagee diligently pursue a deficiency judgment in connection with the foreclosure. Any judgment obtained shall be assigned to the Commissioner.

(c) In cases where a deficiency judgment is requested or required under this section, the Commissioner may, where the Commissioner determines it appropriate under State law requirements, extend the otherwise applicable period of time within which deficiency judgment (and other claims against the mortgagor) and related credit documents must be assigned to the Commissioner under § 203.360, § 203.367 or § 203.368 of this subpart.

(d) In addition to meeting the requirements of § 203.356, in cases where the Commissioner determines it necessary because of State law requirements, the Commissioner may also require (or request, as the Commissioner may determine) the mortgagee to provide the Commissioner with notice of the mortgagee's intent to institute foreclosure proceedings a reasonable amount of time before proceedings are instituted, in order that the Commissioner may be able effectively to require or request the mortgagee, in appropriate cases, to seek a deficiency judgment.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 2535–0093)

3. Section 203.402(o) is proposed to be revised to read as follows:

§ 203.402 Items included in payment—conveyed and non-conveyed properties.

* * * * *

(o) In any case in which the Commissioner, pursuant to § 203.369, requires or requests that the mortgagee seek a deficiency judgment, an amount necessary to reimburse the mortgagee for those additional costs incurred that exceed the costs of foreclosure. In those jurisdictions that require the initiation of a judicial foreclosure action in order to obtain a deficiency judgment, a mortgagee shall receive full reimbursement for the costs of the foreclosure action, where, but for the requested deficiency judgment, judicial foreclosure would not have been necessary.

Dated: January 23, 1987.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 87-3031 Filed 2-11-87; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[Notice No. 621; re Notice No. 609]

Commerce in Firearms and Ammunition

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) proposes to amend regulations in 27 CFR Part 178 to provide for a simplified recordkeeping procedure for sales or other dispositions of firearms by low-volume dealers. Paragraph (d) of § 178.125 in this notice was previously the subject of comment in Notice No. 609 (51 FR 39635), published in the **Federal Register** on October 29, 1986.

DATE: Written comments must be received by May 13, 1987.

ADDRESSES: Send written comments to: Chief, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 189, Washington, DC 20044–0189.

Copies of the written comments received in response to this notice will be available for public inspection during normal business hours at: ATF Reading Room, Room 4406, Ariel Rios Federal Building, 12th and Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Daniel Crowley, ATF Specialist, Firearms and Explosives Operation

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Branch, Bureau of Alcohol, Tobacco and Firearms, (202) 566–7591.

SUPPLEMENTARY INFORMATION: As provided by 18 U.S.C. 923(g), each licensed dealer must maintain such records of receipt, sale or other disposition of firearms as prescribed by regulations. Accordingly, current regulations require licensed dealers to maintain a record in bound form of each receipt and disposition of firearms. The record is required to show the date of receipt, the name and address or name and license number of the person from whom received, the name of the manufacturer and importer (if any), and specific information identifying the firearm received. When a disposition of a firearm is made, the bound record must show the name and address of the transferee or the Form 4473 serial number if the licensed dealer files such forms numerically. In connection with the disposition of a firearm to a nonlicensee, a licensed dealer must also record the transaction on Form 4473 showing, among other things, the identity of the firearm and the name and address of the transferee. Thus, in the case of firearms dispositions by licensed dealers to nonlicenseees, the dealer's bound record and Form 4473 contain some duplicative information, *i.e.*, information identifying the firearm transferred and the name and address of the transferee.

ATF believes that in the case of low-volume dealers the required records may be simplified and any burden in recording and maintaining duplicative information alleviated. Therefore, this notice proposes to add a new § 178.124a, Title 27, CFR, to allow those licensed dealers who dispose of 50 firearms or less during a 12-month period to maintain an alternate recordkeeping system in lieu of the current requirement to maintain both a bound record and Forms 4473, as required by §§ 178.124 and 178.125. These dealers would be permitted to record their acquisition and disposition of a firearm on a single form, Form 4473–LV.

ATF does not believe that allowing such low-volume dealers to maintain the proposed alternate system of records would significantly impair its ability to inspect the records of these dealers or to trace particular firearms through such records in aid of a criminal investigation.

Public Participation—Written Comments

Based on the above discussion, ATF is issuing this notice of proposed rulemaking to request comments concerning this proposed amendment of 27 CFR Part 178.

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of any person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 90 day comment period. The request should include reasons why the respondent believes a public hearing is necessary. The Director reserves the right to determine whether a public hearing should be held.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this proposal is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The maintenance of alternate records for firearms sales or other dispositions, proposed in this notice, has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35. Comments relating to ATF's compliance with 5 CFR Part 1320—Controlling Paperwork Burdens on the Public, should be submitted to: Office of Information and Regulatory Affairs, Attention: Desk Office for the Bureau of Alcohol, Tobacco and Firearms, Office of Management and Budget, Washington, DC 20503.

Drafting Information

The principal author of this document is James A. Hunt, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 178

Administrative practice and procedure, Arms and munitions, Authority delegation, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, Transportation.

Authority and Issuance

Paragraph 1. The authority citation for Part 178 continues to read as follows:

Authority: 18 U.S.C. 926.

Par. 2. In the table of contents, § 178.124a is added to read as follows:

Part 178—COMMERCE IN FIREARMS AND AMMUNITION

Subpart H—Records

Sec.

* * * * *

178.124a Firearms transaction record in lieu of record of receipt and disposition.

* * * * *

Par. 3. A new section 178.124a is added as follows:

§ 178.124a Firearms transaction record in lieu of record of receipt and disposition.

(a) A licensed dealer acquiring firearms after June 30, 1987, and contemplating the disposition of not more than 50 firearms within a succeeding 12-month period to licensees or nonlicensees may maintain a record of the acquisition and disposition of such firearms on a firearms transaction record, Form 4473–LV, Part I or II, in lieu of the records prescribed by § 178.125. Such 12-month period shall commence from the date the licensed dealer first records the purchase or other acquisition of a firearm on Form 4473–LV pursuant to this section. A licensed dealer who maintains records pursuant to this section, but whose firearms dispositions exceed 50 firearms within such 12-month period, shall make and maintain the acquisition and disposition records required by § 178.125 with respect to each firearm exceeding 50.

(b) Each licensed dealer maintaining firearms acquisition and disposition records pursuant to this section shall record the purchase or other acquisition of a firearm on Form 4473–LV, Part I or II, in accordance with the instructions on the form not later than the close of the next business day following the date of such purchase or acquisition. However, when disposition is made of a firearm not entered on Form 4473–LV under the provisions of this paragraph, the licensed dealer making such disposition shall enter all required acquisition information regarding the firearm on the Form 4473–LV at the time such transfer or disposition is made. The record on Form 4473–LV shall show the date of receipt, the name and address or the name and license number of the person from whom received, the name of the manufacturer and importer (if any), the model, serial number, type of action, and caliber or gauge of the firearm.

(c) Each licensed dealer maintaining firearms acquisition and disposition records pursuant to this section shall retain Form 4473–LV, Part I or II, reflecting firearms possessed by such business in chronological (by date of receipt) or numerical (by transaction serial number) order. Forms 4473–LV reflecting the licensee's sale or disposition of firearms shall be retained in alphabetical (by name of purchaser), chronological (by date of disposition) or numerical (by transaction serial number) order.

(d) A licensed dealer maintaining records pursuant to this section shall record the sale or other disposition of a firearm to another licensee by entering on the Form 4473–LV, Part I, associated with such firearm, the name and license number of the person to whom transferred and by signing and dating the form.

(e) A licensed dealer shall obtain the Form 4473–LV, Part I, associated with the firearm in lieu of a Form 4473 and comply with the requirements specified in § 178.124(c) prior to making an over-the-counter transfer of a firearm to a nonlicensee (1) who is a resident of the State in which the licensee's business premises is located, (2) who is not a resident of the State in which the licensee's business premises is located and the firearm is a shotgun or rifle and the transfer is under the provisions of § 178.96(c), or (3) who is not a resident of the State in which the licensee's business premises is located and who is acquiring the firearm by loan or rental for temporary use for lawful sporting purposes.

(f) A licensed dealer shall obtain the Form 4473–LV, Part II, associated with the firearm in lieu of a Form 4473 and comply with the requirements specified in § 178.124(f) prior to making a transfer of a firearm to a nonlicensee who is purchasing or otherwise acquiring a firearm by other than an over-the-counter transaction and who is a resident of the State in which the licensee's business premises is located. If the licensee's records of the acquisition of the firearm is, at the time of the transfer, being maintained on a Form 4473–LV, Part I, for over-the-counter transactions, the licensee shall record the information relative to the purchase or other acquisition, as required by paragraph (b) of this section, on Form 4473–LV, Part II, for use in the transfer of firearms in other than over-the-counter transactions.

Par. 4. Section 178.125 is amended by revising the first sentence of paragraph (e) to read as follows:

§ 178.125 Record of receipt and disposition.

* * * * *

(e) *Firearms receipt and disposition by dealers.* Except as provided in § 178.124a with respect to alternate records for the receipt and disposition of firearms by dealers, each licensed dealer shall enter into a record each receipt and disposition of firearms. * * *.

* * * * *

Para. 5. Section 178.129 is amended by revising paragraph (b) to read as follows:

§ 178.129 Record retention.

* * * * *

(b) *Firearms transaction record.* Licensees shall retain each Form 4473 or Form 4473–LV for a period of not less than 20 years after the date of sale or disposition.

* * * * *

Dated: January 8, 1987.

Stephen E. Higgins,

Director.

Approved: January 14, 1987.

Francis A. Keating, III,

Assistant Secretary, Enforcement.

[FR Doc. 87–2938 Filed 2–11–87; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Delaware Water Gap National Recreation Area; Pennsylvania and New Jersey

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This rulemaking pertains to a proposed special regulation concerning fishing within Delaware Water Gap National Recreation Area, Pennsylvania and New Jersey. The proposed special regulation would allow fishing methods which are authorized under applicable State law. National Park Service General Regulations, effective April 1984, prohibit fishing in fresh water in any manner other than by hook and line, with the rod or line being closely attended. That regulation is in conflict with Pennsylvania and New Jersey fishing regulations, which have been in effect since before Delaware Water Gap National Recreation Area was authorized in 1965. This proposed rule would serve to resolve that conflict.

DATE: Written comments will be accepted through March 16, 1987.

ADDRESS: Comments should be addressed to: Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324.

FOR FURTHER INFORMATION CONTACT: Karl Theune, River District Ranger, Delaware Water Gap National Recreation Area, Bushkill, Pennsylvania 18324, Telephone: 717/588–6637.

SUPPLEMENTARY INFORMATION:

Background

National Park Service General Regulations (36 CFR 2.3(d)(1)), which became effective on April 30, 1984, prohibit "Fishing in fresh water in any manner other than by hook and line, with the rod or line being closely attended." This regulation is in conflict with PA and NJ fishing regulations which have been in effect since Delaware Water Gap National Recreation Area was authorized in 1965 and for many years prior to its authorization.

Examples of conflicts include:

1. PA permits the use of spears or gigs to take carp, gar, suckers and eels. NJ regulations allow for the use of spears and long bows for the taking of shad, eels, carp, suckers, herring, and bullheads; suckers may be gigged.

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2. Both states permit the use of seines for getting bait, digging of lampreys, and five (5) tip-ups for ice fishing.

Congress's stated intent in the enabling legislation for Delaware Water Gap National Recreation Area was for the National Park Service to manage fishing in a manner consistent with State fishing laws, to the extent compatible with proper management of park resources. The National Park Service has determined that allowing recreational fishing at Delaware Water Gap National Recreation Area in accordance with methods permitted by the States of Pennsylvania and New Jersey would be advantageous both to visitor use, as well as to the management of the park resources. The species of fish to be taken under example 1 above consists of both exotics as well as native species that cannot be taken effectively by traditional rod and reel methods. The use of seines for bait collection, digging of lamprey eels, and the use of tip ups for ice fishing, in example 2 above, are all traditional uses by the Delaware River fishermen. In addition, the regulations of both the NJ Division of Fish, Game and Wildlife, and the PA Fish Commission allow these methods of capture. Many years of using these traditional fishing methods have not been detrimental to the area, and the National Park Service anticipates no detrimental effects from continuing these methods. If these methods should cause harm to the fishery or other resources in the future, they can be prohibited by designating areas closed to certain fishing methods.

Commercial fishing methods allowed under State laws will *not* be allowed. While authorized by State laws, the taking of other aquatic wildlife, defined as any species other than members of subclasses Agnatha, Chondrichthyes or Osteichthyes, will not be authorized by this proposed special regulation.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed regulation to the address noted at the beginning of this rulemaking.

Drafting Information

The Principal author of this rulemaking is Karl Theune, River District Ranger, Delaware Water Gap National Recreation Area.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this rulemaking is not a "major rule" within the meaning of E.O. 12291, and certifies that this document will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

This rule will contribute in some part to the local tourism of communities in the vicinity of the park by assuring the continued availability of the range of recreational activities that have been available to Park users in the past. An Environmental Assessment has been prepared with a finding of No Significant Impact for this rulemaking.

List of Subjects in 36 CFR Part 7

National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); § 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. By adding a new paragraph (g) to § 7.71 to read as follows:

§ 7.71 Delaware Water Gap National Recreation Area.

* * * * *

(g) *Fishing.* Unless otherwise designated, fishing in any manner authorized under applicable State law is allowed.

Dated: December 10, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–2930 Filed 2–11–87; 8:45 am]

BILLING CODE 4310–70–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 85

[FRL–3155–1]

Control of Air Pollution From Motor Vehicles and Motor Vehicle Engines; Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program; Notice of Public Hearing for Proposed Rulemaking

AGENCY: Environmental Protection Agency.

ACTION: Notice of public hearing.

SUMMARY: On January 9, 1987, EPA published a notice of proposed rulemaking (52 FR 924) to revise the section of the Code of Federal Regulations (40 CFR, Part 85, Subpart V) covering motor vehicle and motor vehicle engine performance warranty regulations and voluntary aftermarket part certification.

A public hearing is scheduled for March 3, 1987, to hear comments from interested parties regarding this proposed rulemaking (NPRM). Any party desiring to present oral testimony for the record at the public hearing, instead of, or in addition to, written comments, must notify EPA by February 17, 1987. Persons presenting information at the hearing are requested to provide EPA with a minimum of three copies of their information prior to their testimony. If no party informs EPA that it wishes to testify on the proposed rulemaking, no hearing will be held and EPA will develop a final rule based on consideration of written submissions to the docket.

DATES: EPA will hold a public hearing on March 3, 1987, beginning at 10:00 am, if any party notifies EPA by February 17 1987 that it wishes to present oral testimony regarding this NPRM. If necessary for completion, the hearing will continue on March 4, 1987, beginning at 9:00 am. Any party may submit written comments regarding this NPRM on or before April 9, 1987 to Docket No. EN–84–08. It is EPA policy to consider late comments if time permits.

ADDRESS: The public hearing will be held at the Motor Vehicle Emission Laboratory, 2565 Plymouth Rd., Ann Arbor, Michigan, 48105.

FOR FURTHER INFORMATION CONTACT: Christine Keller, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Rd., Ann Arbor, Michigan, 48105, (313) 668–4288.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 87–2976 Filed 2–11–87; 8:45 am]

BILLING CODE 6560–50–M

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Notices

Federal Register
Vol. 52, No. 29
Thursday, February 12, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Governmental Processes; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of a meeting of the Committee on Governmental Processes of the Administrative Conference of the United States, to be held at 2 p.m. on Monday, February 23, 1987, at the office of Covington and Burling, 1201 Pennsylvania Avenue, NW., Room 1214, Washington, DC.

The Committee will meet for further consideration of possible recommendations on federal agency use of private attorneys. This subject is currently under study for the Administrative Conference by Professor Ronald Rotunda of the University of Illinois College of Law and by Professor William V. Luneburg of the University of Pittsburgh School of Law.

For further information concerning this meeting, contact David Pritzker, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC. (Telephone: 202-254-7065).

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify Mr. Pritzker at least one day in advance. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Jeffrey S. Lubbers,
Research Director.
February 9, 1987.
[FR Doc. 87-3136 Filed 2-11-87; 8:45 am]
BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

National Forest System Lands; Seismic Exploration; Rental Fee Policy; Rocky Mountain Region

AGENCY: Forest Service, USDA.

ACTION: Adoption of fee policy for seismic exploration activities.

SUMMARY: This final notice establishes policy and procedures for determination of rental fees for seismic exploration permits authorizing temporary use and occupancy of National Forest System lands within the Rocky Mountain Region.

The Rocky Mountain Region is imposing a uniform fee for all types of seismic exploration on National Forest System lands administered by the Rocky Mountain Regional Forester. The fee of $200 per mile, or fraction of a mile, is based upon average rental values of Federal oil and gas leases within the Region and adjacent areas. The average lease rentals and bonus bids for Federal lands will be reviewed annually and the fee may be adjusted to reflect market changes in lease values. This seismic fee permit policy is based upon sound business management principles, and as far as practicable, is in accord with comparable commercial practices for establishing fair market rental fees.

EFFECTIVE DATE: February 1, 1987.

ADDRESS: Gary E. Cargill, Regional Forester (2820), Forest Service, USDA, P.O. Box 25127, Denver, CO 80225.

FOR FURTHER INFORMATION CONTACT: William M. Robinson, (303) 236-9477.

SUPPLEMENTARY INFORMATION: The proposed policy for determination of rental fees for geophysical exploration permit fees was published in the **Federal Register** on November 7, 1986 (51 FR 40470). Comments were invited for a period of 60 days during which period a total of 9 comments were received, with 7 coming from corporations and 2 from associations. All of the comments have been given careful consideration during the decisionmaking process on this final notice.

The comments were unanimous in their support of the proposed fee determination system and the resulting permit fee rate. One area of common concern raised a question about the term "geophysical exploration" used in the proposed policy notice. The commentators indicated that this term describes a general category of exploratory activities. The more specific terms "seismic exploration" was believed to be more correct and descriptive of the types of activities for which the proposed fee will be imposed. After review and discussion with knowledgeable persons, the Forest Service agrees with the comments. The type of activities to which the fee is intended to apply are those which commonly use explosives or machinery to generate energy shock waves through the earth's surface. In the most common usage these activities are referred to as seismic exploration. The more general term, geophysical exploration, includes these seismic techniques, but also incompasses activities such as magnetic gravity, chemical, and others which do not result in surface disturbance. It was not intended that the permit fee policy apply to these non-land disturbing activities. Therefore, the final form of the policy refers to seismic exploration fees rather than to geophysical exploration fees. The proposed policy is hereby adopted with this change and is set forth below.

Seismic Exploration Permit Fee Policy

A value ratio was developed using lease bonus values and seismic permit fees from industry transactions on private land. The fee for seismic exploration on National Forest System lands is based on the average value of Federal leases in three large geologic basins, as determined from historical records. The Forest Service seismic exploration permit fee is calculated by multiplying the average Federal lease value by a factor developed from the private industry values. The average Federal lease value in this study was $9.83. The private industry factor is derived by dividing the private permit fee by the private lease value. The median value is $500 per mile for private permit fees and $25 per acre for private lease values. The resulting factor is 20. The seismic exploration permit fee for National Forest System lands that results from the application of the formula is $196.60 per mile, which is rounded to $200 per mile. The fee of $200 per mile, or fraction of a mile, will be imposed to all types of seismic exploration in which temporary disturbance and occupancy of the land is authorized by a Forest Service permit.

The seismic permit fee does not include costs of reclamation, restoration, or compliance with applicable laws, such as identification and protection of cultural resources. Permittees will be responsible for necessary land reclamation and restoration and for complying with all requirements of applicable Federal and State laws.

The permit fee shall not be charged to a lessee, or authorized operator, for seismic operations conducted pursuant to a valid USDI lease.

The fee will be reevaluated annually and adjusted to reflect the current market value of Federal oil and gas leases. The new seismic exploration fee is effective on February 1, 1987.

S.H. Hanks,
Deputy Regional Forester.
[FR Doc. 87-2952 Filed 2-11-87; 8:45 am]
BILLING CODE 3410-11-M

Soil Conservation Service

Little Saluda River Watershed, South Carolina; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650), the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Little Saluda River Watershed, Saluda County, South Carolina.

FOR FURTHER INFORMATION, CONTACT: Billy Abercrombie, State Conservationist, Soil Conservation Service, 1835 Assembly Street, Room 950, Columbia, South Carolina 29201, Telephone (803) 765-5681.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicated that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Billy Abercrombie, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include accelerated technical and financial assistance to apply land treatment measures on 9,000 acres of cropland.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Billy Abercrombie.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Dated: February 4, 1987.

Byron Thompson,
Assistant State Conservationist.
[FR Doc. 87-3026 Filed 2-11-87; 8:45 am]
BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Presidential Board of Advisors on Private Sector Initiatives; Open Meeting

AGENCY: Office of the Secretary, Office of the General Counsel and Office of Business Liaison.

SUMMARY: The Presidential Board of Advisors on Private Sector Initiatives will hold a meeting on February 27, 1987. Committee meetings will also be held on this date. Public comment is welcome.

Time and Place

Presidential Board of Advisors on Private Sector Initiatives.

Friday, February 27, 1987, 10:45 a.m.-12:30 p.m., at the American Red Cross National Headquarters, Board of Governors Room, 17 & E Streets NW., Washington, DC 20006.

Committee Meetings

Friday, February 27, 1987, 9:15 a.m-10:30 a.m., at the American Red Cross, National Headquarters, Rooms to be Posted, 17 & E Streets NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: The Committee Control Officer, Mr. Robert H. Brumley, Deputy General Counsel, U.S. Department of Commerce, (202/377-4772) or the Alternate Control Officer, Nancy J. Olson, Director, Office of Business Liaison, U.S. Department of Commerce, (202/377-3942), Main Commerce Building, Washington, DC 20230.

Robert H. Brumley,
Deputy General Counsel.
February 9, 1987.
[FR Doc. 87-3191 Filed 2-11-87; 11:10 am]
BILLING CODE 3510-BP-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Secretarial Determination Required Under the Atlantic Striped Bass Conservation Act and Notice Regarding Federal Imposition of a Moratorium on Striped Bass Fishing

AGENCIES: National Marine Fisheries Service (NMPS), NOAA, Commerce and U.S. Fish and Wildlife Service (FWS), Interior.

ACTION: Notice of determination that the District of Columbia is not in compliance with the Interstate Fisheries Management Plan for the Striped Bass and notice of intent to impose a fishing moratorium for striped bass.

SUMMARY: The Departments of Commerce and the Interior announce that they have reached a joint determination in response to the notification by the Atlantic States Marine Fisheries Commission of its determination that the District of Columbia has not adopted and is not enforcing all regulatory measures necessary to fully implement the Commission's Interstate Fisheries Management Plan for the Striped Bass. In accordance with the Atlantic Striped Bass Conversation Act, the Departments have determined that the District of Columbia is not in compliance with the Plan. The District is given until April 1, 1987, to promulgate the regulations enclosed in its January 23, 1987, letter to the Departments of the Interior and Commerce. If at that time the regulations are not in place and being enforced, a moratorium will be imposed on fishing for striped bass within District waters, effective April 1, 1987.

FOR FURTHER INFORMATION CONTACT: Richard Roe, (202) 673-5263 or Gary Edwards, (202) 343-6394.

ADDRESSES: Richard B. Roe, NOAA/NMFS, 1825 Connecticut Avenue, NW., Washington, DC 20235 or Gary Edwards, FWS, 18th and E Streets, NW., Washington, DC 20204.

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SUPPLEMENTARY INFORMATION:

Background

The Atlantic Striped Bass Conservation Act (the Act) (16 U.S.C. 1851 Note, as amended by Pub. L. 99-432) was enacted in response to the depleted condition of Atlantic coastal migratory stocks of Atlantic striped bass. The purpose of the Act is to support and encourage the development, implementation, and enforcement of effective interstate action regarding the conservation and management of Atlantic striped bass.

Section 4(b) of the Act specifies that after notification by the Atlantic States Marine Fisheries Commission (the Commission) that a coastal State has not adopted and/or is not enforcing regulatory measures to fully implement its Interstate Fisheries Management Plan for the Striped Bass (the Plan) or is not enforcing such regulations, the Secretaries shall determine jointly, within thirty days, whether that coastal State is in compliance. (For purposes of the Act, the District is defined as a coastal State.) If the State is found not to be in compliance, the Secretaries shall declare, i.e. impose, jointly a moratorium on fishing for Atlantic striped bass within the coastal waters of that coastal State. In making such a determination, the Secretaries shall carefully consider and review the comments of the Commission and the coastal State in question.

Activities Pursuant to the Act

On January 7, 1987, the Secretaries received a letter from the Commission dated December 31, 1986, prepared pursuant to section 4(a) of the Act. Notice of receipt of this notification from the Commission was published in the **Federal Register** at 52 FR 1518, January 14, 1987.

The Commission's letter described the status of the District's efforts to meet the requirements of the Act. It indicated that the Stripped Bass Board, in a report adopted by the full Commission, had found in October 1986 that the District was not in compliance with the Plan and should be so reported unless significant positive changes were in place by mid-December. The letter also indicated that the District was attempting to institute regulations comparable to those of the Potomac River Fisheries Commission (reported by the Commission as being found acceptable), but the Commission was unable to report that such measures had been adopted. The letter also noted concerns about the District's enforcement capability.

To obtain and fully consider their views, officials of the Departments of Commerce and the Interior met with representatives of the Commission and the District of Columbia on January 9, 1987. At that meeting, the District presented information about its newly developed fisheries program, provided copies of proposed regulations to control striped bass fishing within the District, and described its efforts to develop enforcement authority.

The Commission requested that mitigating circumstances involved in the District's compliance with the Plan be considered. The Commission's representative emphasized that the District had been subject to the Act only since October 1986 and that it does not have a fully established fisheries program.

Determination Regarding Compliance by the District of Columbia

Based on relevant information and taking into account District and Commission comments, it has been jointly determined that the District of Columbia is not in compliance with the Plan. This determination is based on lack of any regulations restricting recreational striped bass fishing in District waters.

However, based on a review of the steps the District proposes to take by April 1, 1987, to come into compliance and on available information, it has been jointly determined that, if these are adopted, the District would be in compliance with the Plan.

Although it has been determined that the District is currently not in compliance with the Plan, considering the mitigating circumstances previously described, its efforts to date are commendable. The deadline for compliance established by the Act has not been met, but a full commitment to meeting the substantive requirements of the Act as soon as possible has been demonstrated. In consideration of these circumstances, the Departments of the Interior and Commerce are delaying the imposition of a moratorium until April 1, 1987.

Striped Bass Fishing Moratorium

When a coastal State is found not to be in compliance with the Plan, the Act requires that a moratorium on striped bass fishing be imposed in the coastal waters of that State. Accordingly, unless the proposed measures outlined in the District's January 23, 1987, letter to the Departments of the Interior and Commerce have been adopted by April 1, 1987, a moratorium will be imposed, effective that date, on fishing for striped bass in all waters under the jurisdiction of the District of Columbia.

Any imposition of a moratorium under the Act will be made through a letter to the Mayor of the District of Columbia and through issuance of another **Federal Register** notice. Such a moratorium will be terminated upon our receipt of notification from the Commission that the District has taken appropriate remedial actions to bring the District into compliance.

Dated: February 6, 1987.

Anthony J. Calio,

Under Secretary of Commerce for Oceans and Atmosphere.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

[FR Doc. 87-2933 Filed 2-11-87; 8:45 am]

BILLING CODE 4310-55-M

Secretarial Determination Required Under the Atlantic Striped Bass Conservation Act and Notice Regarding Federal Imposition of Moratorium on Striped Bass Fishing

AGENCIES: National Marine Fisheries Service (NMFS), NOAA, Commerce and U.S. Fish and Wildlife Service (FWS), Interior.

ACTION: Notice of determination that New Jersey is not in compliance with the Interstate Fisheries Management Plan for the Striped Bass and notice of intent to impose a fishing moratorium for striped bass.

SUMMARY: The Departments of Commerce and the Interior announce that they have reached a joint determination in response to the notification by the Atlantic States Marine Fisheries Commission of its determination that the State of New Jersey has not adopted all regulatory measures necessary to fully implement the Commission's Interstate Fisheries Management Plan for the Striped Bass. In accordance with the Atlantic Striped Bass Conservation Act, the Departments have determined that New Jersey is not in compliance with the Plan.

New Jersey is given until April 1, 1987, to enact legislation that is determined to be in compliance with the Plan. If, at that time, such legislation is not in force, a moratorium of stiped bass fishing in the State's coastal waters will be imposed, effective that date.

FOR FURTHER INFORMATION CONTACT: Richard Roe, (202) 673-5283 or Gary Edwards, (202) 343-6394.

ADDRESSES: Richard B. Roe, NOAA/NMFS, 1825 Connecticut Avenue, NW., Washington, DC 20235 or Gary Edwards, FWS, 18th and E Streets, NW., Washington, DC 20204.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic Striped Bass Conservation Act (the Act) (16 U.S.C. 1851 Note, as amended by Pub. L. 99-432) was enacted in response to the depleted condition of Atlantic coastal migratory stocks of Atlantic striped bass. The purpose of the Act is to support and encourage the development, implementation, and enforcement of effective interstate action regarding the conservation and management of Atlantic striped bass.

Section 4(b) of the Act specifies that after notification by the Atlantic States Marine Fisheries Commission (the Commission) that a coastal State has not adopted or is not enforcing regulatory measures to fully implement its Interstate Fisheries Management Plan for the Striped Bass (the Plan) or is not enforcing such regulations, the Secretaries shall determine jointly, within thirty days, whether that coastal State is in compliance. It the State is found not to be in compliance, the Secretaries shall declare, i.e., impose, jointly a moratorium on fishing for Atlantic striped bass within the coastal waters of that coastal State. In making such a determination, the Secretaries shall carefully consider and review the comments of the Commission and the coastal State in question.

Activities Pursuant to the Act

On January 7, 1987, the Secretaries received a letter from the Commission dated December 31, 1986, prepared pursuant to section 4(a) of the Act. Notice of receipt of this notification from the Commission was published in the **Federal Register** at 52 FR 1518, January 14, 1987.

The Commission's letter described the status of the New Jersey's efforts to meet the requirements of the Act. It indicated that the Striped Bass Board, in a report adopted by the full Commission, had found in October 1986 that New Jersey had not adopted fishery regulations for striped bass to implement Objective 1 of Amendment 3 to the Plan and that this should be so reported unless significant positive changes were in place by mid-December. Objective 1 of Amendment #3 provides, in part:

> That the states prevent fishing mortality on at least 95% of the 1982 year class of females, and females of all subsequent year classes of Chesapeake Bay stocks until 95% of the females of these year classes have an opportunity to reproduce at least once.

The October 27, 1986, letter from the Commission to New Jersey indicated:

> In order for New Jersey to be in compliance with the plan, it needs a minimum size of 30 inches in place by November; 31 inches by February, 1987 and a 33-inch size limit by August, 1987.

The Commission's December 31, 1986, letter also informed the Secretaries of bills that were in the New Jersey Assembly and Senate as of December 10, 1986.

To obtain New Jersey's comments regarding its compliance with the Plan, as required by the Act, officials of the Departments of the Interior and Commerce met with officials of the Commission and of the New Jersey Department of Environmental Protection on January 12, 1987. At that meeting, New Jersey representatives provided copies of bills pending before the State legislature and discussed the effect of these bills on striped bass restoration. Representatives of the State of New Jersey were requested to submit written comments by Janaury 21, 1987, confirming, and if possible, supplementing their comments presented at the meeting. A letter from New Jersey's Commissioner of Environmental Protection was received. That letter indicated agreement with the Atlantic Marine Fisheries Commission finding that New Jersey was not in compliance with Amendment #3 of the Plan and included information about two bills pending before the State legislature which it asked be considered.

Determination Regarding Compliance by the State of New Jersey

Based on relevant information and taking into account State and Commission comments, it has been jointly determined that the State of New Jersey is not in compliance with the Plan. This determination is made based on New Jersey's 24-inch minimum size restriction for striped bass (other than inland, for which there is a 33-inch restriction), while Amendment #3 requires a 31-inch restriction on February 1, 1987, and a 33-inch restriction on August 1, 1987, and because New Jersey has no other management measures to compensate for this difference and no data to demonstrate that a 24-inch restriction will meet the objective of Amendment #3.

Although it has been determined that the State of New Jersey is not in compliance with the Plan, it is recognized that efforts are being made to amend State statutes regulating striped bass fishing. In recognition of these efforts, the Departments of the Interior and Commerce are delaying the imposition of a moratorium until April 1, 1987.

Striped Bass Fishing Moratorium

When a coastal State is found not to be in compliance with the Plan, the Act requires that a moratorium on striped bass fishing be imposed in the coastal waters of that State. Accordingly, unless measures determined in consultation with the Commission to be in compliance with the Plan are adopted by April 1, 1987, effective that date the Departments of Commerce and Interior will jointly impose a moratorium on striped bass fishing in the coastal waters of New Jersey. The imposition will be made through a letter to the Governor of New Jersey and through issuance of another **Federal Register** notice. Such a moratorium will be terminated upon our receipt of notification from the Commission that the State has taken appropriate remedial actions to bring the State into compliance.

Dated: February 6, 1987.

Anthony J. Calio,

Under Secretary of Commerce for Oceans and Atmosphere.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

[FR Doc. 87-2934 Filed 2-11-87; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Technical Information Service

Intent to Grant Exclusive Patent License; Hoffmann-La Roche; Correction

In FR doc. 87-1432 which appeared on Friday, January 23, 1987, page 2574, in lines 9 to 11, delete— "5-Substituted-2', 3'- Dideoxycytidine Compounds with Anti-HTLV-III Activity"—and substitute the correct title of U.S. Patent Application 6-769,017,—"Inhibition of In-Vitro Infectivity and Cytopathic Effect of HTLV-III/LAV by 2', 3'-Dideoxycytidine"—.

Robert P. Auber,

Director, Office of Federal Potent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 87-3010 Filed 2-11-87; 8:45 am]

BILLING CODE 3510-04-M

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COMMODITY FUTURES TRADING COMMISSION

Coffee, Sugar & Cocoa Exchange; White Sugar Future and Inflation Rate Option

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of a proposed commodity futures contract and a proposed option contract.

SUMMARY: The Coffee, Sugar & Cocoa Exchange ("CSCE") has applied for designation as a contract market in white sugar futures. The CSCE also has applied for designation as a contract market in inflation rate options on a physical. The Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission"), acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before April 13, 1987, for the white sugar futures contract and on or before March 30, 1987, for the inflation rate option contract.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CSCE white sugar futures contract or to the inflation rate option contract.

FOR FURTHER INFORMATION CONTACT: For the white sugar futures contract, contact Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254–7303. For the inflation rate option contract, contact Richard Shilts at the same address and telephone number.

Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CSCE in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed contracts, or with respect to other materials submitted by the CSCE in support of their applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by April 13, 1987, for the white sugar futures contract and by March 30, 1987 for the inflation rate option contract.

Issued in Washington, DC on February 9, 1987.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 87–3004 Filed 2–11–87; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Military Traffic Management Command, Military Personal Property Claims Symposium; Open Meeting

Announcement is made of meeting of the Military Personal Property Claims Symposium. This meeting will be held on 19 February 1987 at the Stouffer Concourse Hotel, Crystal City, Arlington, Virginia, and will convene at 0830 hours and adjourn at approximately 1500 hours.

Proposed Agenda

The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to Personal Property Traffic Management Regulation (DOD 4500.34R), and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MT–PPM, at telephone number 756–1600, between 0800–1530 hours. Topics to be discussed should be received on or before 16 February 1987.

Joseph R. Marotta,

Colonel, GS, Director of Personal Property.

[FR Doc. 87–2953 Filed 2–11–87; 8:45 am]

BILLING CODE 3710–08–M

Military Traffic Management Command; International Carrier Evaluation and Reporting System (ICERS); Solicitation of Comments

The Military Traffic Management Command has proposed a comprehensive program entitled "The International Carrier Evaluation and Reporting System (ICERS)" which establishes standards for use by the local transportation officer in evaluating the performance of international through Government bill of lading (ITGBL) personal property program participants. It is proposed that all international personal property shipments picked up on or after 1 April 1987 by companies performing these services for the Department of Defense will be evaluated in accordance with the provisions of the International Carrier Evaluation and Reporting System. Interested parties may obtain copies of this document from: Commander, Military Traffic Management Command, Attn: MT–PPQ, 5611 Columbia Pike, Falls Church, Virginia 22041–5050.

Dated: February 3, 1987.

Joseph R. Marotta,

Colonel, GS, Director of Personal Property.

[FR Doc. 87–2954 Filed 2–11–87; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 2–3 March 1987.

Time of Meeting: 0800–1530 hours, 2 March 1987; 0800–1630 hours, 3 March 1987.

Place: Fort Detrick, MD.

Agenda: The Army Science Board's Ad Hoc Subgroup for the Army Biological Defense Program will meet to review in detail medical research and development programs in support of the Army's biological defense program. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C. specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87–2923 Filed 2–11–87; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

Intent To Prepare an Environmental Impact Statement (EIS); Remedial Action Alternatives for Explosive Ordnance on the Former Camp Elliott, San Diego County, CA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: An Environmental Impact Statement will be prepared to evaluate alternatives to address the unexploded ordnance and related debris caused by previous DOD activities on the former Camp Elliott, San Diego County, California.

1. *Alternatives.* Remedial alternatives to be evaluated will include, but not necessarily be limited to, the use of surface and subsurface sweeps, the use of controlled burning, the use of mechanized cutting for brush removal, restrictions on or controlling development, restricting access, re-purchase of property, and no action.

2. *Scoping Process.* A public meeting was held in May 1986 providing the community with the status and direction of the project, and to obtain input on community concerns. An additional meeting was held with the Tierrasanta Community Council on November 1986 which obtained additional comments from the community. Formal coordination with appropriate Federal, State, and local agencies has begun. A public workshop is scheduled for April 1987. Specific meeting date, time, and place will be published in local newspapers.

3. *Potentially Significant Issues.* Potentially significant issues so far identified include: safety, acceptability of controlled burning, biological resources, endangered species, archeological and cultural resources, and compatibility with local land use policies.

4. *Availability of EIS* The Draft Environmental Impact Statement is expected to be available to the public in September 1987.

e. *Address.* Comments and questions regarding the proposed action may be addressed to: U.S. Army Corps of Engineers, Los Angeles District, Attn: Ms. Karen Helbrecht, SPLPD–RP, P.O. Box 2711, Los Angeles, California 90053, (213) 894–0247.

Dated: February 5, 1987.

D. Fred Butler,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 87–3050 Filed 2–11–87; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; Switzerland

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended and the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/EU(SD)–63, for the transfer of 12 PWR fuel rods from Switzerland to Reaktor Brennelement Union, Hanau, the Federal Republic of Germany for insertion into new fuel assemblies for Gosgen-Daniken power reactor. The fuel rods contain 23,829 grams of uranium, enriched to 3.83 percent in the isotope uranium-235.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: February 5, 1987.

For the Department of Energy.

George J. Bradley, Jr.

Principle Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87–2921 Filed 2–11–87; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Changes To DOE Energy Information Reporting and Record-Keeping Requirements

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of changes to the inventory of energy information reporting and record-keeping requirements.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) hereby gives notice to respondents and other interested parties of changes to the inventory of current information collections as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511), for which EIA is responsible. DOE management and procurement assistance collections, which are the responsibility of the Office of Management and Administration, are no long included in these notices.

During the first quarter of fiscal year 1987 (October 1, 1987, through December 31, 1987), changes were made to the October 1, 1986 inventory of DOE information collections, which was published in the **Federal Register**, 51 FR 37958 (October 27, 1986). The first quarter changes are listed beow, and include new information collections approved by the Office of Management and Budget (OMB), collections extended, reinstated, discontinued or allowed to expire, and changes to continuing information collections. For each new requirement, requirement extension, or requirement reinstatement, the current DOE control or form number, the title, the OMB control number, and the OMB approval expiration date are listed by the DOE sponsoring office. For the list of discontinued requirements, the discontinued date is shown instead of the expiration date. If applicable, the appropriate Code of Federal Regulations citation is also listed. For revised information collections, a brief summary of the type of revision is noted. Information collections not utilizing structured forms are designated by an asterisk (*) placed to the right of the control or form number.

FOR FURTHER INFORMATION CONTACT: Etta Harris, EI–73, Energy Information Administration, Mail Stop 1H–023, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2165.

Information on the availability of single, blank information copies of those collections utilizing structured forms may be obtained by contacting the National Energy Information Center. EI–

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22, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, (202) 586–8800.

Authority: Sec. 5(a), 5(b), 13(b), and 52), Pub. L. 93–275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790(a).

Issued in Washington, DC, February 5, 1987.

Yvonne M. Bishop,

Director, Statistical Standards Energy Information Administration.

NEW DOE ENERGY INFORMATION COLLECTIONS APPROVED BY OMB

DOE No.	Title	OMB Control No.	Expiration Date	CFR Citation
	Energy Information Administration			
EIA-846(S)	Manufacturing Energy Consumption Survey (Part II, Fuel Switching Capability)	19050169	Mar. 31, 1989	

DOE ENERGY INFORMATION COLLECTIONS EXTENDED

DOE No.	Title	OMB Control No.	Expiration Date	CFR Citation
	Energy Information Administration			
EIA-1	Weekly Coal Monitoring Report—General Industries (Standby Form)	19050167	Mar. 31, 1988	
EIA-3	Quarterly Coal Consumption Report—Manufacturing Plants	19050167	...do	
EIA-4	Weekly Coal Monitoring Report—Coke Plants (Standby Form)	19050167	...do	
EIA-6	Coal Distribution Report	19050167	...do	
EIA-20	Weekly Coal Monitoring Report—Coal-Burning Electric Utilities (Standby Form)	19050167	...do	
EIA-28	Financial Reporting System	19050149	Dec. 31, 1987	
EIA-97	Boiler Order Report	19050167	Mar. 31, 1988	
EIA-141	National Survey of Fuel Purchases for Vehicles—Purchase Log and Supplementary Questionnaire	19050068	Feb. 28, 1987	
EIA-213	Typical Net Monthly Bills	19050129	Dec. 31, 1989	
EIA-429	National Survey of Fuel Purchases for Vehicles—Background Questionnaire	19050086	Feb. 28, 1987	
EIA-457A/H	Residential Energy Consumption Surveys	19050092	...do	
EIA-759	Monthly Power Plant Report	19050129	Dec. 31, 1989	
EIA-821	Annual Fuel Oil and Kerosene Sales Report	19050018	Apr. 30, 1987	
EIA-826	Electric Utility Company Monthly Statement	19050129	Dec. 31, 1989	
EIA-860	Annual Electric Generator Report	19050129	...do	
EIA-861	Annual Electric Utility Report	19050129	...do	
	Federal Energy Regulatory Commission			
FERC-80	Licensed Hydropower Development Recreation Report	19020106	Mar. 30, 1989	18 CFR 141.14, 8.11.
FERC-523*	Application For Authorization Of The Issuance Of Securities	19020043	Oct. 31, 1989	18 CFR 34
FERC-555*	Records Retention Requirements	19020098	...do	18 CFR 125, 158, 160.1, 276.108, 277.210, 225.356
FERC-557*	PURPA Section 133. Cost of Retail Electric Service	19020042	Sept. 30, 1989	18 CFR 290
FERC-568*	Well Category Determinations	19020112	Oct. 31, 1989	18 CFR 274
FERC-574*	Gas Pipeline Certificate.—Hinshaw Exemption	19020016	Dec. 31, 1989	18 CFR 152
FERC-579*	State Implementation of PURPA 210—Cogeneration and Small Power Production	19020133	Mar. 31, 1987	18 CFR 292.401
FERC-587*	Indexes of Essential Power Site Withdrawals	19020143	...do	18 CFR Part 25

*Does not utilize a structured form.

REINSTATED DOE ENERGY INFORMATION COLLECTIONS

DOE No.	Title	OMB Control No	Expiration Date	CFR Citation
	Energy Information Administration			
EIA-7A(SUPP)	Coal Production Report (Supplement)	19050167	Mar. 31, 1988	

DOE ENERGY INFORMATION COLLECTIONS DISCONTINUED OR ALLOWED TO EXPIRE

DOE No.	Title	OMB Control No	Discontinued Date	CFR Citation
	Energy Information Administration			
EIA-758A	Natural Gas Well Producer/Purchaser Contract Report	19050164	Oct. 31, 1986	
EIA-758B	Natural Gas Purchaser Contract Report	19050164	...do	
	Nuclear Energy			
NE-869	Greater Than Class C Low Level Radioactive Waste	19010290	Oct. 31, 1986	

DOE Numbers as Previously Listed	Changes
EIA-5	Some data items deleted and approval extended through Mar. 31, 1988.
EIA-7A	Change in the number of respondents and approval extended through Mar. 31, 1988.
EIA-412	Some data items deleted and approval extended through Dec. 31, 1989.
EIA-810	Some data items added.
EIA-820	Some data items deleted.
EIA-871A/F	Replaced form EIA-788 and approved through Sept. 30, 1989.
FERC-73	Modification to format and filing instructions.

[FR Doc. 87-2922 Filed 2-11-87; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

High Energy Physics Advisory Panel; Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act and in accordance with Title 41 of the Code of Federal Regulations, § 101–6.1015, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the High Energy Physics Advisory Panel (HEPAP) has been renewed for a 2-year period ending on January 27, 1989. The Panel will continue to provide advice to the Secretary of Energy, through the Director, Office of Energy Research, on long range planning and priorities in the national high energy physics program.

The renewal of the HEPAP has been determined essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Panel will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act, Pub. L. 95–91, and rules and regulations issued in implementation of those Acts.

Further information regarding this Panel may be obtained from Gloria Decker (202) 586–8990.

Issued in Washington, DC, on February 9, 1987.

Charles R. Tierney,

Advisory Committee Management Officer.

[FR Doc. 87-3052 Filed 2-11-87; 8:45 am]

BILLING CODE 6450-01-M

Magnetic Fusion Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Magentic Fusion Advisory Committee.

Date and Time: Tuesday, February 24, 1987, 8:30 am – 5:00 pm, Wednesday, February 25, 1987, 9:00 am – 12:30 pm.

Location: Georgia Institute of Technology, Space Science & Technology Building, Room #5, Atlanta, Georgia 30332.

Contact: Thomas G. Finn, Office of Fusion Energy, Office of Energy Research ER–50.2, U.S. Department of Energy, Mail Stop G–236, Washington, DC 20545, Phone: (301)-353–4941.

Purpose of the Committee: To provide advice to the Secretary of Energy on the Department's Magnetic Fusion Energy Program, including periodic reviews of elements of the program and recommendations of changes based on scientific and technological advances or other factors; advice on long-range plans, priorities, and strategies to demonstrate the scientific and engineering feasibility of fusion; advice on recommended appropriate levels of funding to develop those strategies and to help maintain appropriate balance between competing elements of the program.

Agenda Outline

Tuesday, February 24, 1987

1. 8:30 a.m. Welcome (½ hr)
2. Status of Fusion Program—J. Clarke (1 hr)
3. CIT—J. Schmidt, B. Montgomery (1½ hr)
4. Discussion of New Charge—F. Ribe (1 hr)
   (LUNCH)
5. Nuclear Technology—C. Baker, M. Abdou, J. Anderson (2 ¼ hr)
6. Georgia Tech. Fusion Program—W. Stacey (1 hr)
7. Public Comments (10 minute rule)
   (ADJOURN) (5:15 p.m.)

Wednesday, February 25, 1987

1. 9:00 a.m. Status of ATF—J. Scheffield (1½ hr)
2. Discussion of New Charge—F. Ribe (1 hr)
3. Public Comments (10 minute rule)
   (ADJOURN 12:30 pm.)

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Thomas G. Finn at the address or telephone number listed above. Requests must be received five days prior to the meeting and responable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: Available for public review and copying approximately 30 days following the meeting at the Public Reading Room, Room 1E190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 8:00 a.m.and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on February 6, 1987.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 87-3053 Filed 2-11-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER87–62–000 et al.]

Electric Rate and Corporate Regulation Filings; the Cincinnati Gas & Electric Co. et al.

February 5, 1987.

Take notice that the following filings have been made with the Commission:

1. The Cincinnati Gas & Electric

[Docket No. ER87–62–000]

Take notice that the Cincinnati Gas & Electric Company (CG&E) on October 30, 1986, tendered for filing a proposed change in its FERC Electric Tariff, First Revised Volume No. 1, Rider F, Fuel Cost Adjustment which would cancel and supersede the current rate schedule in said tariff. The proposed change would allow for the recovery of purchased power capacity charges through the Fuel Cost Adjustment Clause provided the energy purchased meets the criteria established by the FERC in Order No. 352.

The reason stated by CG&E for the change in rate schedule is:

To update the fuel cost adjustment clause in accordance with FERC Order No. 352 in Docket No. RM83–62–000.

On December 8, 1986 CG&E submitted for filing an amendment proposing to withdraw the revised Rider F, Fuel Cost Adjustment for the municipalities in the State of Ohio.

On January 20, 1987, CG&E amended its original filings by submitting for filing additional rate schedules and cost data pursuant to Order No. 352.

Copies of the filing were served upon the Villages of Bethel, Blanchester, Georgetown, Hamersville and Ripley, municipalities in the State of Ohio; and the Union Light, Heat and Power Company, a wholly owned subsidiary of CG&E, which ultimately serves retail consumers and one wholesale customer within the Commonwealth of Kentucky; and the West Harrison Gas and Electric Company, a wholly owned subsidiary of CG&E, which ultimately serves retail consumers within the State of Indiana; the Public Utilities Commission of Ohio; the Kentucky Public Service Commission and the Public Service Commission of Indiana.

Comment date: February 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Duke Power Company

[Docket No. ER86–674–002]

Take notice that on January 21, 1987, Duke Power Company (Duke) tendered for filing a compliance report pursuant to the Commission's order of October 23 1986, reflecting exclusion of EPRI Expenses and the Impact of the Tax Reform Act of 1986.

Comment date: February 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Oklahoma Gas and Electric Company

[Docket No. ER87–238–000]

Take notice that on January 29, 1987, Oklahoma Gas and Electric Company

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(OG&E) tendered for filing a new Agreement intended to supersede OG&E's Rate Schedule FERC No. 122. This Agreement is the contract between OG&E and the Southwestern Power Administration (SWPA). The new rate is identical to the old rate, and provides for the sale of Replacement Energy and Emergency Service by OG&E to SWPA.

OG&E requests an effective date of January 1, 1987, and therefore requests waiver of the Commission's notice requirements.

Comment date: February 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. UtiliCorp United Inc.

[Docket No. EC87-6-000]

Take notice that on January 28, 1987, UtiliCorp United Inc. (the Company) tendered for filing a Petition for Reincorporation that was included in the Application that was initially filed in the above referenced Docket No.

Comment date: February 19, 1987, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3033 Filed 2-11-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF87-219-000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Texas Energy Associates, Limited Partnership, et al.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Texas Energy Associates, Limited Partnership

[Docket No. QF87-219-000]

February 4, 1987.

On January 9, 1987, Texas Energy Associates, Limited Partnership (Applicant), of 87 Elm Street, Cohasset, Massachusetts 02025, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submitted constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Coahoma, Texas and will consist of two combustion turbine generators, two heat recovery steam generators, and a steam turbine generator. The thermal energy recovered from the facility in the form of steam will be utilized by the Texaco East Vealmoor gas plant for the petroleum refining process and space heating and cooling. The net electric power production capacity of the facility will be 300 MW. The primary sources of energy will be natural gas and synthetic gas. Construction of the facility will begin on July 1, 1988.

2. Cogentrix Michigan Leasing Corporation

[Docket No. QF87-225-000]

February 6, 1987.

On January 16, 1987, Cogentrix Michigan Leasing Corporation (Applicant), of 4828 Parkway Plaza Boulevard, Two Parkway Plaza, Suite 290, Charlottle, North Carolina 28210, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at The Mead Corporation Paperboard Products Division in Ostego, Michigan. The facility will consist of three stoker-fired steam generators and one extraction/condensing steam turbine gernerator.

Thermal energy recovered from the facility will be utilized in heating paper pulping reactors and paper dryers. The primary energy source will be coal. The net electric power production capacity of the facility will be 50.675 kW. Installation of the facility is scheduled to begin after January 1, 1989.

3. E.I. du Pont de Nemours and Company

[Docket No. QF87-222-000]

February 6, 1987.

On January 13, 1987, E.I. du Pont de Nemours and Company (Applicant), of 1007 Market Street, Wilmington, Delaware 19898, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Applicant's Sabine River Works Plant in Orange, Texas. The facility will consist of a generator driven by a natural gas powered expander. Low-pressure gas rejected from the expander will be recovered in the form of fuel gas used for the Applicant's Sabine River Works boilers. The primary energy source is natural gas. The electric power production capacity of the facility will be 2.32 MW. Installation of the facility began in October 1985.

4. Energy Ingenuity Company—New Castle Facility

[Docket No. QF87-53-000]

February 6, 1987.

On October 31, 1986, Energy Ingenuity Company (Applicant), of P.O. Box 3705, Littleton, Colorado 80161-3705, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. On January 5, 1987, Applicant filed an admendment to the application requesting that certification be granted to the facility as a qualifying small power production facility instead of as a qualifying cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located at the site of New Castle Energy Corporation's coal mine near New Castle, Colorado. The facility will consist of two fluidized bed combustion boilers, two steam turbine generators, and related auxiliary equipment. The net electric power production capacity of the facility will be 50 megawatts.

Applicant states that the primary energy source of the facility will be "waste" in the form of bituminous coal refuse.

5. Metropolitan Energy Management Organization, Inc.

[Docket No. QF87-232-000]

February 6, 1987.

On January 21, 1987, Metropolitan Energy Management Organization, Inc. (Applicant), of 615 West 173rd Street, New York, New York 10032, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located on the premises of the New Rochelle Nursing Home in New Rochelle, New York. The facility will consist of one diesel and one gas engine generator. Thermal energy recovered from engine's water jacket, oil coolant, and exhaust silencers will be used to provide high temperature hot water for use by the New Rochelle Nursing Home for space heating and domestic hot water. The primary energy source will be natural gas or diesel oil. The maximum electric power production capacity of the facility will be 200 kW. Installation of the facility will begin in February 1987.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3034 Filed 2-11-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA87-29-000]

Anadarko Petroleum Corp.; Petition for Adjustment

Issued: February 6, 1987.

On October 23, 1986, Anadarko Petroleum Corporation filed with the Federal Energy Regulatory Commission a petition for waiver pursuant to Commission Order No. 399-A,[1] section 502(c) of the Natural Gas Policy Act of 1978,[2] and Subpart K of the Commission's Rules of Practice and Procedure.[3] Anadarko seeks waiver of that portion of its Btu refund obligation attributable to certain royalties paid by it to the Minerals Management Service of the U.S. Department of the Interior (MMS). The royalties relate to sales of gas by Anadarko to Trunkline Gas Company from producing properties in the Federal Outer Continental Shelf, Offshore Louisiana and Texas, operated by Anadarko. Under Order No. 399, these refunds were due by November 5, 1986,[4] but this deadline has been postponed.[5]

Anadarko requests waiver on grounds that MMS has taken the position that refunds not filed for within the statute of limitations period under section 10 of the Outer Continental Shelf Land Act are barred.[6]

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3035 Filed 2-11-87; 8:45 am]

BILLING CODE 6717-01-M

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[1] Refunds Resulting from Btu Measurement Adjustments, 49 FR 46353 (November 26, 1984); FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,612.

[2] 15 U.S.C. 3412(c) (1982).

[3] 18 CFR 385.1101-385.1117 (1986).

[4] 49 FR 37735 at 37,740 (September 26, 1984), FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,597 at 31,150. In Order No. 399, the Commission established refund procedures for charges for natural gas that exceeded NGPA ceilings as a result of Btu measurements based on the water vapor content of the gas "as delivered," rather than on a water saturated basis. In so doing, the Commission was implementing the decision in Interstate Natural Gas Association of America v. Federal Energy Regulatory Commission, 716 F.2d 1 (D.C. Cir. 1983), *cert. denied*, 465 U.S. 1108 (1984).

[5] In Order No. 399-C, issued November 5, 1986, the Commission postponed the November 5, 1986 deadline for payment of Btu refunds attributable to royalty payments for any first seller that has a petition on file with the Commission seeking waiver of or postponement of the deadline to pay Btu refunds attributable to royalty payments.

[6] 43 U.S.C. 1339 (1982).

[Docket No. RP87-36-000]

Carnegie Natural Gas Co.; Petition for Authority To Institute Direct Billing Procedure for Retroactive Order No. 94 Payments and Petition for Authority To Institute Direct Refunds of Pipeline Purchase Refunds

February 5, 1987.

Take notice that on January 29, 1987, Carnegie Natural Gas Company (Carnegie) filed a petition with the Federal Energy Regulatory Commission (FERC) for authority to institute a special one-time procedure to directly bill its customers for production related cost allowance previously charged to it by its pipeline supplier, Texas Eastern Transmission Corporation (TETCO). Carnegie proposes to allocate the aforesaid costs to those of its customers who actually benefitted from the production related services by matching the incurrence of Order No. 94 costs to the customers' share of system purchases for the period in question. The relatively modest size of the costs to be billed preclude any necessity to bill in installments. The costs will therefore be billed as a lump sum payment.

Carnegie further petitions for authority to refund the appropriate share of certain refunds received from its pipeline supplier to its jurisdictional customers by direct refund, for waiver of need to use its PGA mechanism as provided in its FERC Tariff, General Terms and Conditions, and its FERC Rate Schedule LVWS; and for waiver of such accounting regulations as may be necessary to authorize the direct refund as proposed herein. Carnegie proposes to flow the appropriate share of the refund amount to each of its customers on the basis of a factor reflecting the ratio of total sales and transportation charges for each customer relating to TETCO to total sales and transportation charges to all customers relating to TETCO for the period in question.

Carnegie has served this filing on its customers, state commissions, and other parties normally served with its rate filings. Carnegie requests that the Commission grant any waivers of its regulations or Carnegie's FERC Gas Tariffs as may be required to make the direct billing procedure and the direct refund procedure effective as proposed.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of

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Practice and Procedure. All such motions or protests should be filed on or before February 12, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3036 Filed 2-11-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-63-000, 001]

Carnegie Natural Gas Co; Proposed Changes in FERC Gas Tariff

February 6, 1987.

Take notice that Carnegie Natural Gas Company ("Carnegie") on February 2, 1987, tendered for filing as a part of its FERC Gas Tariff, First Revised Volume No. 1, six copies each of the following revised tariff sheets:

Second Revised Sheet No. 47
Second Revised Sheet No. 48

The above revised tariff sheets are being issued to reflect purchased gas cost Carnegie has experienced from its pipeline supplier, Texas Eastern Transmission Corporation ("TETCO"), and from a modification of purchase pattern in its producer purchases. The effect of such cost reductions is to change its demand component from $10.2654/Dth to $10.0944/Dth and its commodity component from $2.6950 to $2.6444, the combined effect of which results in an overall reduction of its LVWS Rate. Carnegie's current interruptible rate of $3.0325/Dth is likewise reduced to $2.9763 for its LVIS Rate.

The proposed effective date of the above tariff sheets is March 1, 1987.

Carnegie respectfully requests waiver of any provisions of its tariff, and any Regulations that the Commission may deem necessary to accept the above tariff sheets to be effective March 1, 1987, so as to provide rate reduction as soon as possible and to have said reduction commence on the first day of a billing period.

Copies of the filing were served on Carnegie's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before February 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3037 Filed 2-11-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-223-000]

Cities Service Oil & Gas Corp.; Application

February 6, 1987.

Take notice that on January 9, 1987, Cities Service Oil and Gas Corporation ("Applicant"), 110 West 7th Street, Tulsa, Oklahoma 74119, filed an Application requesting that the Commission issue an order that grants Applicant the necessary authorizations for a five-year term (1) to make sales for resale in interstate commerce of uncommitted gas; and (2) to abandon (pregranted abandonment) any sale for such limited term. In that regard Applicant requests the authorizations described in said Application for a limited term beginning on the date authorization is granted and ending five years from date of authorization. Applicant further requests that the Commission handle the Application on an expedited basis consistent with the policies enunciated in Order No. 436 in Docket No. RM85-1-000.

Applicant states that the authorizations requested in its Application are necessary so that it can begin to make sales at market responsive prices.

Any person desiring to be heard or to make any protest with reference to said Application should on or before February 23, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3038 Filed 2-11-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-2-22-000, 001]

Consolidated Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 6, 1987.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on January 30, 1987, filed a revised tariff sheet pursuant to sections 12 (PGA Clause), 12A (Incremental Pricing Surcharges), and 13 (Research, Development and Demonstration Cost Adjustment) of the General Terms and Conditions of its tariff. The revisions, shown on Thirteenth Revised Sheet No. 31 to Original Volume No. 1 of Consolidated's tariff, are proposed to be effective March 1, 1987.

Consolidated has included in its filing:

(a) A rate decrease of approximately $39 million in the current cost of gas from pipeline and producer suppliers;

(b) A surcharge of 36.97 cents per dekatherm to recoup amounts accumulated in Account 191, Unrecovered Purchased Gas Costs; and,

(c) A refund credit of 18.38 cents per dekatherm to flow through supplier refunds.

Copies of the filing were served upon Consolidated's sales customers as well as interested state commissions.

The PGA surcharge includes an amount of 2.38 cents per dekatherm which is designed to collect over two years *Mid-Louisiana* amounts now collectible by virtue of the Commission's waiver granted on July 31, 1986, in Docket No. GP86-9.

Currently with these PGA changes, Consolidated also includes a separately stated rate surcharge to recover its funding of take-or-pay payments made by Tennessee Gas Pipeline Company under the procedures approved in the Commission's order issued on April 16, 1986, in *Columbia Gas Transmission Corporation v. Tennessee Gas Pipeline Company, et al.*, Docket Nos. PR83-8, *et al.* The take-or-pay surcharge is 0.32 cents per dekatherm.

Additionally, Consolidated tenders for filing Second Revised Sheet No. 33 to change the RD&D adjustment applicable to its firm transporation rate schedule, Rate Schedule TF, so as to reflect the recent change in the GRI surcharge. Consolidated asks for waiver of the regulations to permit Second Revised Sheet No. 33 to go into effect retroactively on January 1, 1987.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. (18 CFR 385.214 and 385.211). All motions or protests should be filed on or before February 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3039 Filed 2-11-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA87-36-000]

Energy Resource Associates, Inc.; Petition for Adjustment

Issued: February 6, 1987.

Take notice that on December 29, 1986, Energy Resources Associates, Inc., (ERA) filed with the Commission a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA). ERA seeks waiver of its obligation to refund to Transcontinental Gas Pipe Line Corporation (Transco), amounts paid by Transco to ERA in excess of the NGPA section 104 gas price for production from the Continental Land & Fur No. 5 well located in St. Paul Bayou Field, Terrebonne Parish, Louisiana, for the period of January 1, 1982, to January 1, 1986.

ERA states that it is a member of a limited partnership, Weaver 1979-II Drilling Program, that owns the No. 5 well. The limited partnership was formed September 14, 1979, by ERA, Weaver Exploration Company (Weaver), and 139 other limited partners. On January 24, 1985, ERA became the substitute general partner because the partnership manager, Weaver, encountered financial problems which subsequently led to bankruptcy. ERA claims that although it and the other limited partners own three-fourths of the limited partnership, Weaver, as general partner had sole authority to conduct, direct and exercise full control over all activities of the partnership and that the limited partners had no power over the conduct of the Partnership's affairs and were precluded from taking part in control of the business. ERA states that, as general partner, Weaver either neglected to file a section 102 application or the application has been lost by the jurisdictional agency for the subject well. Because there is no section 102 determination on file with the jurisdictional agency or the Commission, ERA argues that it and the remaining limited partners may now be obligated to refund to the purchaser of the natural gas the difference between the section 102 and section 104 gas price for a 48-month period.

ERA argues that it would be inequitable to assess liability against it because ERA lacked responsibility for or control over the obligation to timely file the well determination. Secondly, ERA states that if relief is denied it will be placed in a financial jeopardy which constitutes a special hardship. ERA also argues that because the party responsible for the resulting refund obligation is now in bankruptcy, denial of relief would impose on the limited partners and it an unfair distribution of the burden of making the refund to Transco.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions in Rule 214. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3040 Filed 2-11-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-3-34-002]

Florida Gas Transmission; Changes in FERC Gas Tariff

February 5, 1987.

Take notice that on February 3, 1987, Florida Gas Transmission Company (FGT), tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective February 1, 1987.

Substitute 13th Revised Sheet No. 8 First Revised Volume No. 1
Substitute 36th Revised Sheet No. 128 of Original Volume No. 2

On January 15, 1987 FGT filed with the Federal Energy Regulatory Commission (Commission) in Docket No TA87-3-34-000 revised tariff sheets to reflect an increase in its average cost of purchased gas from that level reflected in its last Semi-annual PGA filing effective October 1, 1986 in Docket No. TA87-1-34-000. Subsequent to the filing of January 15, 1987, and after further review by FGT and the FERC PGA Audit Staff, it was determined that certain prices were stated inaccurately. FGT is making the instant filing to amend the out-of-cycle PGA filing in Docket No. TA87-3-34-000 to reflect the appropriate prices. The result is a reduction of the cost of purchased gas previously requested in the January 15, 1987 filing.

In addition to the above referenced changes to the cost of purchased gas, FGT is incorporating in this filing the settlement base tariff rates recently approved by the Commission by order issued January 29, 1987 in Docket No. RP86-137-000. Such order approved FGT's Stipulation and Agreement and related tariff sheets in Docket No. RP86-137-000 resolving all issues in that proceeding. The effect of this filing on FGT's jurisdictional rates will be a reduction of 1.888¢/therm for Rate Schedule G, 2.055¢/therm for Rate Schedule I and 10.48¢/mcf for Rate Schedule T-3 as measured against the respective rates, previously filed by FGT January 15, 1987 to be effective February 1, 1987.

Copies of this filing were served on FGT's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 12, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

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Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3041 Filed 2-11-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-244-000]

Forest Oil Corp.; Application for Blanket Certificate of Public Convenience and Necessity, and for an Order Permitting and Approving Pre-Granted Abandonment, and Request for Expedited Consideration

February 6, 1987.

Take notice that on January 27, 1987, Forest Oil Corporation ("Applicant" or "Forest"), 1500 Colorado National Building, 950 Seventeenth Street, Denver, Colorado 80202, filed an application pursuant to sections 4 and 7(c) of the Natural Gas Act and 18 CFR 2.77 and 157.30 of the Commission's Regulations thereunder for (i) a blanket certificate authorization to make sales for resale in interstate commerce of gas produced from Eugene Island Area Block 99, Offshore Louisiana (the "Eugene Island Block"); (ii) blanket pre-granted authorization to abandon such sales and (iii) waiver of the regulations under Parts 154 and 271 of the Commission's Regulations as to the establishment and maintenance of rate schedules and filing requirements for collection of monthly adjustments and any Section 110 allowances, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Forest is a producer and seller of natural gas. Applicant seeks the authority to sell gas produced from the Eugene Island Block to any willing purchasers. Applicant states that, although it has entered into a contract with an end-user, it has received offers to purchase all or a portion of the gas on the spot market from one or more purchasers for resale. These purchasers include local distribution companies, marketing companies, and others. For this reason, Applicant seeks a blanket certificate authorizing sales of the gas for resale in interstate commerce, along with blanket pre-granted authorization to abandon such sales.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 23, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3042 Filed 2-11-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-245-000]

Forest Oil Corp.; Application for Blanket Certificate of Public Convenience and Necessity, and for an Order Permitting and Approving Pre-Granted Abandonment, and Request for Expedited Consideration

February 6, 1987.

Take notice that on January 27, 1987, Forest Oil Corporation ("Applicant" or "Forest"), 1500 Colorado National Building, 950 Seventeenth Street, Denver, Colorado 80202, filed an application pursuant to sections 4 and 7(c) of the Natural Gas Act and 18 CFR. 2.77 and 157.30 of the Commission's Regulations thereunder for (i) a blanket certificate authorization to make sales for resale in interstate commerce of gas produced from Eugene Island Area Blocks 287, 307, 314, and 315, and Vermilion Area Blocks 256, 267, and 268, Offshore Louisiana (the "Eugene Island and Vermilion Blocks"); (ii) blanket pre-granted authorization to abandon such sales and (iii) waiver of the regulations under Parts 154 and 271 of the Commission's Regulations as to the establishment and maintenance of rate schedules and filing requirements for collection of monthly adjustments and any section 110 allowances, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Forest is a producer and seller of natural gas. Applicant seeks the authority to sell gas produced from the Eugene Island and Vermilion Blocks to any willing purchasers. Applicant states that, although it has entered into a contract with an end-user, it has received offers to purchase all or a portion of the gas on the spot market from one or more purchasers for resale. These purchasers include local distribution companies, marketing companies, and others. For this reason, Applicant seeks a blanket certificate authorizing sales of the gas for resale in interstate commerce, along with blanket pre-granted authorization to abandon such sales.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 23, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3043 Filed 2-11-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-199-000 et al.]

Bradley H. Keyes; Applications for Limited-Term Abandonment With Pregranted Abandonment for Sales Under Small Producer Certificate

February 6, 1987.

Take notice that the Applicant listed herein has filed applications pursuant to section 7 of the Natural Gas Act for limited-term abandonment with pregranted abandonment for sales of such gas under its small producer certificate.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI87-199-000, B, Dec. 23, 1986[1]	Bradley H. Keyes, 103 N. Main, Aztec, New Mexico 87410.	El Paso Natural Gas Company, Aztec PC Field, San Juan County, New Mexico.	(2)	
CI87-203-000, B, Dec. 23, 1986[1]	do	do	(2)	
CI87-204-000, B, Dec. 23, 1986[1]	do	do	(2)	
CI87-205-000, B, Dec. 23, 1986[1]	do	El Paso Natural Gas Company, Pinon Fruitland Field, San Juan County, New Mexico.	(2)	
CI87-206-000, B, Dec. 23, 1986[1]	do	El Paso Natural Gas Company, Aztec PC Field, San Juan County, New Mexico.	(2)	
CI87-207-000, B, Dec. 23, 1986[1]	do	El Paso Natural Gas Company, West Kutz PC Field, San Juan County, New Mexico.	(2)	
CI87-208-000, B, Dec. 23, 1986[1]	do	El Paso Natural Gas Company, Aztec PC Field, San Juan County, New Mexico.	(2)	
CI87-209-000, B, Dec. 23, 1986[1]	do	El Paso Natural Gas Company, Aztec Fruitland Field, San Juan County, New Mexico.	(2)	
CI87-210-000, B, Dec. 23, 1986[1]	do	El Paso Natural Gas Company, Fulcher Kutz PC Field, San Juan County, New Mexico.	(2)	
CI87-211-000, B, Dec. 23, 1986[1]	do	El Paso Natural Gas Company, West Kutz PC Field, San Juan County, New Mexico.	(2)	
CI87-212-000, B, Dec. 23, 1986[1]	do	do	(2)	

[1] Additional information received January 21, 1987.

[2] Applicant requests authorization to abandon sales of gas to El Paso for an 18-month limited term. In addition, Applicant requests blanket pregranted abandonment authorization during the 18-month period for sales of such gas under its small producer certificate in Docket No. CS72-357.

In support of its applications, Applicant states that its wells are shut-in, combined deliverability is 231 Mcf/d and the gas is NGPA section 108 gas. Applicant is subject to substantially reduced takes without payment; it plans to sell the gas on the spot market.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 87-3044 Filed 2-11-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-2-25-000, 001]

Mississippi River Transmission Corp.; Rate Change Filing

February 6, 1987.

Take notice that on January 30, 1987 Mississippi River Transmission Corporation ("Mississippi") tendered for filing Nineteenth Revised Sheet No. 4 to its FERC Gas Tariff, Second Revised Volume No. 1. Mississippi proposes an effective date of March 1, 1987.

Nineteenth Revised Sheet No. 4 is being submitted pursuant to Mississippi's gas tariff to track pipeline and producer rate changes and to recover gas costs which have accumulated in Mississippi's Unrecovered Purchased Gas Cost Account. Mississippi states that the filing under Rate Schedule CD-1, reflects an increase of 81.6 cents per Mcf in Demand Charge D-1, a decrease of 4.89 cents per Mcf in the D-2 Demand Charge and a commodity rate decrease of 7.83 cent per Mcf. The single part rate under Rate Schedule SGS-1 reflects a decrease of 4.83 cents per Mcf. The overall cost impact of such rate changes when applied to annual jurisdictional billing determinants is an $8.2 million reduction.

Mississippi states that Sixth Revised Sheet No. 4A is not being submitted because of a permanent waiver from incremental pricing regulations dated December 23, 1986 in Docket No. SA86-24-000.

Mississippi states that copies of its filing have been served on all jurisdictional customers and interested state commission. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3045 Filed 2-11-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER86-687-003 and ER86-688-001]

New England Power Co.; Filing

February 4, 1987.

Take notice that on January 30, 1987, New England Power Company (NEP) filed with the Commission a motion for permission to withdraw its W-8(b) rate, filed August 29, 1986. NEP states that it is making its request conditionally upon the Commission granting NEP's request to waive § 35.17(a) of its regulations and allow NEP to make a rate filing seeking permission to place new rates in effect, after notice and suspension, any time beginning January 1, 1988. NEP requests that its motion to withdraw the W-8(b) rate be deemed withdrawn or denied in the event that the Commission declines to grant NEP's request to waive § 35.17(a).

Any person desiring to be heard or to protest this motion should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with section 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 17, 1987. Motions or protests should address both aspects of NEP's filing, the motion to withdraw and the request for waiver of § 35.17(a). Protests will be considered by the Commission in determining the

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appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party, and not already a party to the proceeding, must file a motion to intervene. Copies of this motion are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3051 Filed 2-11-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-59-005]

Northern Natural Gas Company, Division of Enron Corp.; Compliance Filing

February 6, 1987.

Take notice that on January 30, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing the following tariff sheets to its F.E.R.C. Gas Tariff to comply with Ordering Paragraph (A)(2) of the Commission's Order issued December 31, 1986 in Docket No. TA87-1-59-000, *et al.*

Third Revised Volume No. 1

Second Substitute Thirty-Ninth Revised Sheet No. 4b
Second Substitute Eighth Revised Sheet No. 4b.1

Original Volume No. 2

Second Substitute Forty-Seventh Revised Sheet No. 1c

The proposed effective date for such tariff sheets is January 1, 1987.

Northern states that the revised level of projected gas costs reflected in this filing eliminates the direct cost impact or Order No. 451. Northern further states that its projection of gas purchased costs does not reflect the level of purchased gas costs Northern actually experienced on January 1, 1987 nor currently being experienced and as a result, Northern does not intend to bill on January 1, 1987 the commodity rates established in this filing. Instead, Northern will continue to bill the commodity rates established in its flexible PGA filed in Docket No. TF87-3-59 effective January 1, 1987.

The PGA rate established in this filing is $2.0365 per MMBtu compared to $2.1939 per MMBtu originally filed in Docket No. TA87-1-59.

As a result of the revisions filed in TA87-1-59-000, *et al.*, Northern also tendered for filing the following tariff sheets which incorporate the above changes and supersede the corresponding tariff sheets, effective January 1, 1987, filed in Docket No. TF87-3-59 on December 31, 1986 and subsequently superseded on January 15, 1987.

Third Revised Volume No. 1

Second Substitute Fortieth Revised Sheet No. 4b
Second Substitute Ninth Revised Sheet No. 4b.1

Original Volume No. 2

Second Substitute Forty-Eight Revised Sheet No. 1c

Also, as a result of the changes filed in Docket No. TA87-1-59-000, *et al.*, Northern filed the following revised tariff sheets which will supersede the corresponding tariff sheets, effective January 17, 1987, filed in Docket No. RP85-206-010 on January 16, 1987.

Third Revised Volume No. 1

Substitute Forty-First Revised Sheet No. 4b

Original Volume No. 2

Substitute Forty-Ninth Revised Sheet No. 1c

Any person desiring to the heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3046 Filed 2-11-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-003]

Sabine Pipe Line Co.; Compliance Filing

February 5, 1987

Take notice that on January 20, 1987, Sabine Pile Line Company (Sabine) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 in compliance with the Commission's letter order dated January 13, 1987:

First Revised Sheet No. 1
Second Revised Sheet No. 2
First Revised Sheet No. 102
Second Revised Sheet No. 220
First Revised Sheet No. 311

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until January 28, 1987.

The proposed effective date for the sheets is December 1, 1986. Sabine has mailed copies of this filing to each affected service customer.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protect with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 12, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3047 Filed 2-11-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2245-001]

George D. Uhl; Filing of Application

February 5, 1987.

Take notice that on August 25, 1986, George D. Uhl, pursuant to section 305(b) of the Federal Power Act, submitted for filing a supplemental application for authority to hold the following position.

Vice President and Controller, The Connecticut Light and Power Company, Public Utility
Vice President and Controller, Western Massachusetts Electric Company, Public Utility
Vice President and Controller, Holyoke Water Power Company, Public Utility
Vice President and Controller, Holyoke Power & Electric Company, Public Utility
Vice President and Controller, Connecticut Yankee Atomic Power Company, Public Utility

Any person desiring to be heard or to protest this filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 19, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this petition are on file with the commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3048 Filed 2-11-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP86-83-001 and TF87-1-11-000]

United Gas Pipe Line Co.; Tariff Filing February 6, 1987.

Take notice that on February 3, 1987, United Gas Pipe Line Company (United) tendered for filing First Revised Sheet No. 74-F4 and Seventy-Sixth Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1. United states that the tariff sheets adjust United's rates after current adjustments to recognize the effect of a change in United's projected cost of gas from the projected cost of gas as contained in the filing in Docket No. TA87-1-11, effective January 1, 1987.

United's Revised Sheet No. 4 reflects United's best estimate of actual decreases in gas cost which will occur as a result of a settlement agreement which was reached with respect to United's contracts for the purchase of gas from Canada. The settlement provides for a reduced price effective February 1, 1987; however, permanent relief is contingent upon Commission approval of the settlement. Based upon the effective date of such interim reduction in gas cost, United requests a waiver of the two-day notice provision set forth in the Commission's June 30, 1986 order in Docket No. RP86-83 in order for United to provide its customers with price relief effective for the entire month of February 1987. United continues to pursue renegotation of gas purchase contracts and will continue to reflect these negotiations thru flex PGA filings as these pursuits are realized.

United states that its First Revised Sheet No. 74-F4 provides the acknowledgement discussed a page 6 of the Commission's June 30, order, i.e., that United "shall be required to support its deferred balances, including the three (3) percent margin, to the extent that it appears that the company did not use its adjustments to track the actual changes in gas cost." Further, in accordance with the discussion in that same order, United acknowledges that by exercising the flexible PGA authoirty granted by that order, it waives its guaranteed recovery rights under § 601.(c) of the NGPA for amounts in the excess of 103% of its estimated average gas cost. United further acknowledges that if it reflects undercollections in excess of three (3) percent, it shall not be permitted to include these amounts in its rates without prior Commission approval.

United has mailed copies of this filing to its jurisdictional sales customers, to interested state commissions and to the intervenors in Docket No. RP86-83.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary

[FR Doc. 87-3049 Filed 2-11-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3155-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the Federal Register a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Patricia Minami, (202) 382-2712 (FTS 382-2712) or Jackie Rivers, (202) 382-2740 (FTS 382-2740).

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Information Requirements for Construction Grant Delegation to States (EPA ICR # 0909). (This renews a currently cleared collection without change.)

Abstract: States provide EPA with information and schedules for assuming responsibility for State delegation of construction grants and provide data on innovative/alternative technology grants. EPA uses these data for fiscal accountability, management overview of States, and an annual report on innovative/alternative projects.

Respondents: State water pollution control agencies.

Agency PRA Clearance Requests Completed by OMB

EPA ICR # 0805, General Facility Operating Requirements, was approved 1/14/87 (OMB # 2050-0012; expires 1/30/90).

EPA ICR # 0947, RCRA Financial Requirements, was approved 12/27/86 (OMB # 2050-0036; expires 12/31/89).

Comments on the abstracts in this notice may be sent to:

Patricia Minami, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street SW., Washington, DC 20460

and

Rick Otis, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place NW., Washington, DC 20503.

Dated: February 6, 1987.

Daniel J. Fiorino,

Director, Information and Regulatory Systems.

[FR Doc. 87-2977 Filed 2-11-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3155-2]

Chesapeake Bay Executive Council; Renewal

The Chesapeake Bay Executive Council has been renewed for an additional two year period. The Agency has determined that the renewal of the Council is in the public interest in connection with the performance of duties imposed on EPA by law. The Council will operate in accordance with

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the provisions of the Federal Advisory Committee Act and the rules and regulations issued in implementation of the Act.

FOR FURTHER INFORMATION CONTACT: Mary Anne Beatty, EPA Committee Management Officer (PM–213), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–5036.

Dated: February 3, 1987.

C. Morgan Kinghorn,

Acting Assistant Administrator for Administration and Resources Management.

[FR Doc. 87–2979 Filed 2–11–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3155–6]

The Asbestos Hazard Emergency Response Act Negotiated Rulemaking Advisory Committee; Open Meeting

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), EPA is giving notice of an open meeting of the Advisory Committee negotiating proposed regulations under the Asbestos Hazard Emergency Response Act (AHERA) of 1986.

The meeting is scheduled on Wednesday, February 18, in the Crabtree Auditorium at the National Education Association 1201 16th Street NW., Washington, DC.

The meeting will begin at 9:00 a.m. and will run until completion.

At the February 6, 1987 Advisory Committee meeting, the Committee selected a location for the February 18, 1987 Advisory Committee meeting. For this reason, the notice of this meeting is being given less than 15 days prior to the meeting itself. The Agency is issuing this notice promptly now that the meeting location is confirmed. The Agency will inform all parties who have indicated an interest in this negotiation of the meeting location.

The purpose of this meeting is to continue working on the substantive issues the Committee has identified for resolution.

If interested in attending, or in receiving more information, please contact Kathy Tyson at (202) 382–5479.

Dated: February 4, 1987.

Milton Russell,

Assistant Administrator.

[FR Doc. 87–3030 Filed 2–11–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

February 5, 1987.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of these submissions may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, telephone (202) 857–3800. Persons wishing to comment on an information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395–4814. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632–7513.

OMB NO.: 3060–0099.

Title: Annual Report Form M.

Action: Extension.

Estimated Annual Burden: 60 Responses; 6,900 Hours.

Form M is an annual report of financial and operating data from telephone companies having annual operating revenues in excess of $100,000,000. The data are used in the regulation of the telephone industry.

OMB NO.: 3060–0105.

Title: Common Carrier and Satellite Radio Licensee Qualification Report.

Form No.: FCC 430.

Action: Extension.

Estimated Annual Burden: 2,100 Responses; 4,200 Hours.

The report is submitted by all new applicants, and by existing common carrier radio and satellite licensees and permittees annually if substantial changes occur in organizational structure. The data are used to evaluate legal qualifications.

Federal Communications Commission

William J. Tricarico,

Secretary

[FR Doc. 87–2988 Filed 2–11–87; 8:45 am]

BILLING CODE 6712–01–M

[FCC 87–35]

Privatization of Special Call Sign System For Amateur Stations; Pleading Cycle Established in PRB–3

February 3, 1987.

By letter of June 17, 1986, the American Radio Relay League, Inc. expressed an interest in finding a way by which requests for specific call signs for amateur stations can be honored through a system administered in the private sector. Callbook Magazine, Gordon Girton and Central Alabama VEC have also expressed an interest in such a system. The FCC favors the implementation of such a system if it can be accomplished with no additional cost or workload to the FCC. The purpose of this Public Notice is to solicit comments and proposals on this matter from interested persons so that a determination can be made as to whether to proceed with its implementation.

There is a large demand in the Amateur service for call signs of choice. Because of limited resources, the FCC cannot honor requests for specific call signs. The FCC assignment system is totally automated: call signs are assigned on the station license from alphabetized lists arranged according to mailing address and operator license class.

It appears that a practical approach would be for the actual station licensing function—including the assignment of a call sign—to be performed by the FCC before the private sector becomes involved. Then, upon the licensee's request, a Special Call Sign Coordinator (SCSC) in the private sector would assign one or more supplemental special call signs. The selection system for determining which licensees would be eligible for which call signs would be the prerogative of the SCSC. A special call sign could be used in lieu of the FCC-assigned call sign during the station identification procedure required by § 97.84. The assignment of a special call sign would be a service for the licensee, not a condition of FCC licensing nor a service replacing the FCC. The SCSC would maintain a data base of assigned special call signs for use in monitoring and compliance work. Special call sign assignments would not be incorporated into the FCC's license data base.

SCSC Selection Criteria:

1. Ability to assign call signs to amateur stations in an efficient and objective manner;

2. Ability to provide an accurate on-line access data base of assigned special call signs for monitoring and compliance work;

3. Ability to minimize the FCC resources required in the establishment of the special call sign system; and

4. Ability to minimize the cost to the licensee for administering the system.

Parties wishing to file formal comments on the issues raised herein, to raise additional or conflicting issues or to submit a proposal to be an SCSC should do so by filing an original and four copies with the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554, on or before April 23, 1987. Reply comments may be filed on or before May 22, 1987. Proposals must respond to the above selection criteria and must state the estimated annual burden of administering the system and maintaining the data base. All filings should refer to *PRB–3*

Copies of letters from ARRL, Central Alabama VEC, Callbook Magazine and any subsequently filed documents in this matter may be obtained from the FCC's contractor for public records duplication, International Transcription Services, Inc., 1270 Fairfield Road (Route 116 West), Gettysburg, PA 17325, (717) 337–1433 or Suite 140, 2100 M Street NW., Washington, DC 20037, (202) 857–3800. Any documents related to this matter will also be available for inspection and copying in the Private Radio Bureau Public Reference Room, 1270 Fairfield Road (Route 116 West), Gettysburg, PA 17325.

For further information contact the Personal Radio Branch at (202) 632–4964.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–2989 Filed 2–11–87; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–011062.

Title: Baltimore Terminal Agreement.

Parties:

Maryland Port Administration (Port)
Evergreen Marine Corporation (Taiwan) Ltd. (Evergreen)

Synopsis: The proposed agreement would permit the Port to lease a total of 20.2 acres of land at its Dundalk Marine Terminal to Evergreen for a three year period.

Agreement No.: 203–011063.

Title: U.S./Jamaica Discussion Agreement.

Parties:

Crowley Caribbean Transport, Inc.
R. B. Kirkconnell & Bro. Ltd.

Synopsis: The proposed agreement would permit the parties to meet, exchange information and agree upon rates, rules and charges in the trade between U.S. Atlantic and Gulf ports and ports in Jamaica and inland or coastal points via such ports. Adherence to any agreed upon rates, rules and charges would be voluntary. The parties have requested a shortened review period.

Dated: February 9, 1987.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87–2928 Filed 2–11–87; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 20 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in section § 560.7 of Title of 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 124–011061.

Title: Tacoma Terminal Agreement.

Parties:

Port of Tacoma (Port)
Murray Pacific Corporation (MPC)

Synopsis: The proposed agreement would permit the Port of lease 51.4 acres of land to MPC for a period of five years and would grant MPC preferential use of Berth B at the Port's Blair Terminal.

Filing Party: James J. Mason, Esquire, 902 South 10th Street, Tacoma, Washington 98405.

Dated: February 9, 1987.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87–2929 Filed 2–11–87; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–003695–002.

Title: Port Everglades Terminal Agreement.

Parties:

Port Everglades Authority
Sea-Land Service, Inc.

Synopsis: The proposed amendment would revise the agreement's wharfage and crane rental rates as well as tonnage levels, rental discount percentages and discount hours.

Agreement No.: 224–011064.

Title: Portland Terminal Agreement.

Parties:

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The Port of Portland (Port) Daiichi Chuo Kisen Kaisha (Carrier) Trade Ocean Line (Carrier)

Synopsis: The proposed amendment would permit the Port to make available to the Carriers dock and backup areas at its Terminal 4 as designated by the Port's Marine Director. The Carriers agree to designate the Port as their Columbia River port of all in exchange for discounts in the Port's service and facility charges. The agreement would remain in effect for a two year period.

Dated February 9, 1987.
By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-3015 Filed 2-11-87; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Aids Community Outreach Demonstration Project

AGENCY: National Institute on Drug Abuse, HHS.

ACTION: Issuance of special research grant announcement DA-87-13, "AIDS Community Outreach Demonstration Project".

SUMMARY: The National Institute on Drug Abuse announces a grant program that will provide support for AIDs outreach demonstration projects in American cities that have a high incidence of AIDS cases associated with intravenous drug use. The purpose of this program is to demonstrate the effectiveness of comprehensive community-based outreach and intervention strategies in reducing the spread of the acquired immunodeficiency syndrome (AIDS) among intravenous drug abusers and their sexual partners. It is estimated that five projects will be funded under this announcement during FY 1987. It is anticipated that support will be provided for a period of up to three years (renewable for subsequent periods) subject to continued availability of funds and progress achieved. Applicants will compete for approximately $5 million in FY 87 grant money made available for this project. Competition is restricted to 15 Standard Metropolitan Statistical Areas, as defined by the Bureau of the Census, in order to make sure that the outreach efforts are initiated in areas in which there is a high incidence of AIDS cases associated with intravenous drug use.

Receipt and Review Dates of Applications: Applications will be accepted and reviewed according to the usual Public Health Service Schedule and procedures. Applications must be received by April 1, 1987 for funding consideration in FY 1987.

FOR FURTHER INFORMATION CONTACT:

Grants Management Branch, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10A-25, Rockville, Maryland 20857, Telephone: (301) 443-6710

or

Chief, Community Research Branch, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10A-37, Rockville, Maryland 20857, Telephone: (301) 443-6720.

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 87-2924 Filed 2-11-87; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

Work Durations for Limiting Shoulder-Girdle Fatigue; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: March 6, 1987.
Time: 9 a.m. to 2 p.m.
Place: Room B-60, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Purpose: The purpose of this meeting is to review and discuss a project which seeks to establish ergonomic guidelines for elevated manual work performed by an operator who is seated. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Additional information may be obtained from: Vern Putz-Anderson, Ph.D., Division of Biomedical and Behavioral Science, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephones: FTS: 684-8291, Commercial: 513/533-8291.

Dated: February 6, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87-2919 Filed 2-11-87; 8:45 am]

BILLING CODE 4160-19-M

National Institutes of Health

Cardiology Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cardiology Advisory Committee, National Heart, Lung, and Blood Institute, March 23-24, 1987, Building 31C, Conference Room 8, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:00 a.m. on March 23 to adjournment on March 24. Attendance by the public will be limited to space available. Topics for discussion will include a review of the research programs relevant to the Cardiology area and consideration of future needs and opportunities.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Room 4A31, Building 31, National Institutes of Health, Bethesda, Maryland 20892, telephone (301) 496-4236, will provide a summary of the meeting and a roster of the Committee members.

Eugene R. Passamani, M.D., Acting Associate Director for Cardiology, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, Room 320, Federal Building, Bethesda, Maryland 20892, telephone (301) 496-5421, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: February 4, 1987.

Betty J. Beveridge,

Committee Management Officer.

[FR Doc. 87-3021 Filed 2-11-87; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Tetrachloroethylene

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of tetrachloroethylene.

Tetrachloroethylene is used primarily as a dry cleaning agent, an industrial solvent for fats, oils, tars, rubber, and gums, and a metal degreasing agent.

Studies of this chemical were conducted by inhalation exposure of groups of 50 male and 50 female F344/N rats and B6C3F$_1$ mice 6 hours per day, 5 days per week, for 103 weeks. The exposure concentrations used were 0, 200, or 400 ppm for rats and 0, 100, or 200 ppm for mice.

Under the conditions of these 2-year inhalation studies, there was clear evidence of carcinogenicity [1] of tetrachloroethylene for male F344/N rats as shown by an increased incidence of mononuclear cell leukemia and uncommon renal tubular cell neoplasms. There was some evidence of carcinogenicity of tetrachloroethylene for female F344/N rats as shown by increased incidences of mononuclear cell leukemia. There was clear evidence of carcinogenicity for B6C3F$_1$ mice as shown by increased incidences of both hepatocellular adenomas and carcinomas in males and of hepatocellular carcinomas in females.

Copies of *Toxicology and Carcinogenesis Studies of Tetrachloroethylene (Perchloroethylene) in F344/N Rats and B6C3F$_1$ Mice (Inhalation Studies)* (TR 311) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone: (919) 541-3991. FTS: 629-3991.

Dated: February 3, 1987.

David P. Rall,

Director.

[FR Doc. 87-3018 Filed 2-11-87; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Diglycidyl Resorcinol Ether

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of diglycidyl resorcinol ether (DGRE). DGRE is used as a liquid spray epoxy resin, as a diluent in the production of other epoxy resins used in electrical, tooling, adhesive, and laminating applications, and as a curing agent for polysulfide rubber.

These toxicology and carcinogenesis studies of technical grade diglycidyl resorcinol ether were conducted by administering the chemical in corn oil by gavage to groups of 50 male and 50 female F344/N rats at doses of 25 or 50 mg/kg and to groups of 50 male and 50 female B6C3F$_1$ mice at doses of 50 or 100 mg/kg. A supplemental study of similar design in male and female rats (0 or 12 mg/kg) was started approximately 12 months later because of high mortality in the 50 mg/kg dose groups. Doses were administered five times per week for 103 weeks. Groups of 50 rats and 50 mice of each sex received corn oil by gavage on the same dosing schedule and served as vehicle controls.

Under the conditions of these 2-year gavage studies, technical grade diglycidyl resorcinol ether caused hyperkeratosis and hyperplasia of the forestomach in rats and mice. DGRE was carcinogenic for male and female F344/N rats and for male and female B6C3F$_1$ mice, causing both benign and malignant neoplasms of the forestomach.

Copies of *Toxicology and Carcinogenesis Studies of Diglycidyl Resorcinol Ether (Technical Grade) in F344/N Rats and B63CF$_1$ Mice (Gavage Studies)* (TR 257) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone (919) 541-3991. FTS: 629-3991.

Dated: February 3, 1987.

David P. Rall,

Director.

[FR Doc. 87-3017 Filed 2-11-87; 8:45 am]

BILLING CODE 4160-17-M

[1] The NTP uses five categories of evidence of carcinogenicity to summarize the strength of the evidence observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-43-7122-10-D006]

Emergency Closure of Area and Vehicle Routes in the American Girl/Padre Madre Area of Imperial County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Closure notice for seven vehicle routes of travel on public lands in the American Girl/Padre Madre Mine Area of southeastern Imperial County, California.

SUMMARY: This closure notice affects vehicle routes A381, A386, A395, A396, A398, A399 and the "Padre-Madre Project Main Access" road under the administrative responsibility of the El Centro Resource Area, California Desert District. The affected routes are located approximately 3 miles southeast of Gold Rock Ranch and 2 miles east of Ogilby Road, in section 25, T. 15 S., R. 20 E. and sectiosn 17-20, T. 15 S., R. 21 E., SBM. The affected routes are closed to protect public land users from safety hazards that may result from mining operations along these routes.

Additionally, for the reasons noted above, the area described below is closed to all public vehicular access and camping: T. 15 S., R. 21 E., sections 17 (all) 18 (all); Section 19, N½, N½S½; section 20, N¼, N½SW¼, N½S½SW¼ (excluding MS 3147 and MS 3242).

This is an area that extends generally from the intersection of the 161 kV powerline and American Girl Mine road, easterly two miles, northerly 1.5 miles and southerly 0.25 miles.

The routes and areas affected by this notice are being closed under the authority of 43 CFR 8364.1. This closure order was effective on January 19, 1987, and shall remain in effect until one or all of the following actions occur:

1. Termination of the project and rinsing of the leach piles; and

2. Successful completion of a mining patent application at which time the land will become private and BLM management will be terminated.

Individual closed routes will be fenced and/or barricaded and signed closed. Vehicular access will be permitted beyond the points of closure only personnel operating under the authority of Plan of Operation CAMC 84648/84; personnel operating under auspices of the following rights of way: LA 077757, CA 2953-71, CA 8818; public service, law enforcement officials or Bureau employees while acting on official duty and other specifically authorized persons. Maps showing the exact location of routes affected by this closure notice are available from the El Centro Resource Area, 333 South Waterman Avenue, El Centro, California 92243.

Any person who knowingly and willfully violates this closure order may be subject to a fine of up to $1,000 or imprisonment of up to 12 months, or both under authority of 43 CFR 8364.2.

FOR FURTHER INFORMATION CONTACT: Gerald E. Hillier, District Manager, Bureau of Land Management, 1695 Spruce Street, Riverside, California 92507, (714) 351-6386.

Dated February 3, 1987.

H.W. Riecken,

Acting District Manager.

[FR Doc. 87-2925 Filed 2-11-87; 8:45 am]

BILLING CODE 4310-40-M

VOL 52 ISS 29 FE 12 1987 UMI

[CA-060-07-5101-09FB 15]

Intent for 1985 Amendment Review of the California Desert Plan

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Notice is hereby given that the Bureau of Land Management is initiating the 1987 Review of the California Desert Conservation Area Plan in accordance with the amendment procedures outlined in Chapter 7 of the Plan. The purpose of this review is to consider the need for possible amendments to the Plan based on requests from individuals, public and private organizations, and the Bureau's own observations.

DATE: Proposed amendments are being accepted from the public until March 31, 1987.

ADDRESS: For further information contact: Gerald E. Hillier, District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507.

SUPPLEMENTARY INFORMATION: Requests for amendments or changes in the California Desert Plan are now being accepted from public agencies, interested individuals, and organizations. Supporting rationale should be provided for each proposal change. Requests will be considered in light of the following criteria:

(1) Is the proposed amendment based on new data not considered when the Plan was developed?

(2) Does the information represent a change in legal or regulatory mandate?

(3) Is the supporting detail sufficient and the problem clearly stated so that the request can be considered?

(4) Does the information represent a formal change in State or local government or agency plan?

The California Desert District Advisory Council will review the suggested amendments at its public meeting on or about April 10–11, 1987 in Victorville, California. This meeting will serve as a scoping meeting for the environmental document to be prepared on the amendments.

Please send your comments and proposals to the following address: 1987 PLAN AMENDMENTS, Bureau of Land Management, California Desert District, 1695 Spruce Street, Riverside, CA 92507; (714) 351–6428.

Dated: February 4, 1987.

H.W. Riecken,

Acting District Manager.

[FR Doc. 87–2955 Filed 2–11–87; 8:45 am]

BILLING CODE 4310–40–M

[NV–060–4321–02]

Battle Mountain District Advisory Council; Meeting in Eureka, NV

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 and 43 CFR Part 1780 that a meeting of the Battle Mountain District Advisory Council will be held on Tuesday and Wednesday, March 18, 1987. The meeting will convene at 9:00 a.m. in the Eureka County Courthouse in Eureka, Nevada.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Election of Officers.

2. Discussion of 43 CFR Part 3809 Regulations (Surface Management).

3. Current Issues.

The meeting is open to the public. Interested persons may make oral statements between 1:00 and 1:30 p.m. on March 18, 1987. If you wish to make an oral statement, please contact Terry L. Plummer by 4:30 p.m., March 13, 1987.

FOR FURTHER INFORMATION CONTACT: Terry L. Plummer, District Manager, P.O. Box 1420, Battle Mountain, Nevada 89820 or phone (702) 635/5181.

Dated: February 4, 1987.

Terry L. Plummer,

District Manager, Battle Mountain, Nevada.

[FR Doc. 87–2956 Filed 2–11–87; 8:45 am]

BILLING CODE 4310–HC–M

Wyoming ; Casper District Office; Casper District Advisory Council; Meeting;

AGENCY: Bureau of Land Management, Interior.

ACTION: Casper District Advisory Council meeting.

SUMMARY: The Casper District Advisory Council will meet on Thursday March 5, 1987 in the conference room of the Casper District Office, 951 North Poplar, Casper, Wyoming. The meeting will begin at 10:00 am MST.

The meeting agenda will include election of officers for the council, an update on the public lands access issues, the latest mineral sales update, a briefing on rangeland monitoring, and comments from the public. Other topics may be considered as suggested by council members or the public.

Meetings are open to the public. Persons who desire to address the council are asked to contact Runore Wycoff at (307) 261–5101 in advance of the meeting.

Dated: February 2, 1987.

James W. Monroe,

District Manager.

[FR Doc. 87–2957 Filed 2–11–87; 8:45 am]

BILLING CODE 4310–22–M

[ID–050–07–4322–14]

Shoshone District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Shoshone District Grazing Advisory Board.

DATE: Wednesday, March 18, 1987, at 9:00 a.m.

ADDRESS: BLM District Office, 400 West F Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Jon Idso, DM, Shoshone District Office, P.O. Box 2B, Shoshone, Idaho 83352. Telephone (208) 886–2206 or FTS 554–6110.

SUPPLEMENTARY INFORMATION: The proposed agenda for the meeting includes the following items: (1) Review of range monitoring program, (2) Review of Board financial status, (3) Initial distribution of Board funds, and (4) Project maintenance/Bureau maintained project assessment costs.

Operation and administration of the Board will be in accord with the Federal Advisory Committee Act of 1972 (Pub. L. 92–463; 5 U.S.C. Appendix 1) and Department of Interior regulations, including 43 CFR Part 1984.

The meeting will be open to the public. Anyone may present an oral statement between 10:00 and 11:00 a.m. or may file a written statement regarding matters on the agenda. Oral statements will be limited to ten minutes. Anyone wishing to make an oral statement should notify the Shoshone District Manager by March 16, 1987. Records of the meeting will be available in the Shoshone District Office for public inspection or copying within 30 days after the meeting.

Jon H. Idso,

District Manager.

[FR Doc. 87–2958 Filed 2–11–87; 8:45 am]

BILLING CODE 4310–GG–M

[AZ–050–07–4830–02]

Arizona; Yuma District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Yuma (Arizona) District Advisory Council meeting.

SUMMARY: A meeting and field tour by the Yuma District Advisory Council will be held on Friday, March 13. Council members will tour Public Lands in the Bullhead City area and then hold a regular Advisory Council meeting in the afternoon.

DATE: March 13, 1987.

FOR FURTHER INFORMATION CONTACT: Douglas B. Stockdale, Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365, (602) 726–6300.

SUPPLEMENTARY INFORMATION: The Council will assemble in the lobby of the Riverside Hotel in Laughlin, Nevada, on Friday morning, March 13, 1987. The tour will begin at 8 a.m. The Council will then hold a regular meeting, beginning at 1 p.m., in the Bullhead City Council Chambers located in the Holiday Plaza Professional Center, 1355 Ramar Road. Discussions will center on the day's tour and other Council- initiated topics. The public is invited to attend the meeting and tour but must provide their own transportation and meal.

Written statements from the public may be filed for the Council's consideration. Statements must arrive at the District Office by March 6. Oral statements will also be accepted but, depending on the number of persons wishing to address the Council, a per-person time limit may be imposed.

Summary minutes of the District Advisory Council meeting will be maintained in the Yuma District Office and will be available for inspection and reproduction during regular business hours (7:45 a.m. through 4:30 p.m.) within 30 days of the meeting.

Dated: February 6, 1987.

J. Darwin Snell,

District Manager.

[FR Doc. 87–2959 Filed 2–11–87; 8:45 am]

BILLING CODE 4310–32–M

[CA–060–07–5101–09–XBCC = 1/3, CA–060–07–5101–09–XBCH = 1/3, and CA–060–07–5101–09–YBDB = 1/3]

Receipt of Pipeline Right of Way Applications; California, Arizona, New Mexico, Texas, Nevada, Utah, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Receipt of Right-of-Way Applications CA 17204, CA 17645, CA 17918, CA 18125, CA 19145.

SUMMARY: Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185) as amended by the Act of November 16, 1973 (87 Statute 576), applications for three new proposed natural gas pipelines and one upgrade of an existing natural gas pipeline have been filed for rights of way across Federal lands. The proposals include the Mojave Pipeline (a 24 to 36 inch diameter pipeline running from Topock, Arizona across southern California to Kern County, California), the El Dorado Pipeline (a 24 to 42 inch pipeline, also running from Topock, Arizona to Kern County, California along a route generally parallel to Mojave), the Kern River Pipeline (a 30 to 36 inch diameter pipeline running from Kemmerer, Wyoming through central Utah, southern Nevada, and southern California to Kern County, California), and an upgrade of Transwestern's existing pipeline (eleven segments would be looped with 30 inch pipe between West Texas and Kern County, California).

The pipelines would be located in the following states and counties:

Project	State	Counties
Mojave	Arizona	Mojave.
	California	San Bernardino.
		Kern.
El Dorado	Arizona	Mojave.
	California	San Bernardino.
		Kern.
Transwestern	Texas	Ward.
	New Mexico	Lea.
		Eddy.
		Lincoln.
		Socorro.
		Torrance.
		Cibola.
		McKinley.
	Arizona	Apache.
		Navajo.
		Coconino.
		Yavapai.
		Mojave.
Kern River	Wyoming	Lincoln.
		Uinta.
	Utah	Summit.
		Wasatch.
		Utah.
		Sanpete.
		Juab.
		Millard.
		Beaver.
		Iron.
		Washington.
	Nevada	Lincoln.
		Clark.
	California	San Bernardino.
		Kern.

ADDRESS: For further information contact: William S. Haigh, California Desert District, 1695 Spruce Street, Riverside, California 92507 (714–351–6428).

Dated: February 3, 1987.

J. Steven Griles,

Assistant Secretary.

[FR Doc. 87–2961 Filed 2–11–87; 8:45 am]

BILLING CODE 4310–40–M

[CA–06–07–4211–07–MLBG]

Receipt of Pipeline Right of Way Application, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Receipt of Right-of-Way Application.

SUMMARY: Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185) as amended by the Act of November 16, 1973 (87 Statute 576), the Four Corners Pipeline Company (a subsidiary of Atlantic Richfield Company) has filed an application for rights-of-way for the proposed Angeles Pipeline, a 30 inch diameter pipeline which would cross Federal lands. The project is a joint venture of Four Corners, Chevron, Texaco, and Shell, and would be a component of the Southern California Pipeline System. The Angeles pipeline would begin at Emidio, California and end in the Los Angeles basin. The Angeles pipeline would cross Kern and Los Angeles counties; California. About half a mile crosses land administered by the Bureau of Land Management, and about thirteen miles cross land administered by the Angeles National Forest. Since most land is within the National Forest, the Forest Service is preparing the project Environmental Impact Statement and the Forest Service and BLM are jointly considering the application.

ADDRESS: For further information on the application contact: William S. Haigh, California Desert District, Bureau of Land Management, 1695 Spruce Street, Riverside, California 92507 (714) 351–6428.

For further information on the Environmental Impact Statement contact: Richard Borden, Saugus Ranger District, Angeles National Forest, 30800 Bouquet Canyon Road, Saugus, California 91350 (805) 252–9710.

Dated: February 3, 1987.

J. Steven Griles,

Assistant Secretary.

[FR Doc. 87–2962 Filed 2–11–87; 8:45 am]

BILLING CODE 4310–40–M

[OR–27329; OR–943–07–4220–11: GP–07–098]

Realty Actions; Conveyance of Public Land; Order Providing for Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento

Principal Meridian, New Mexico, under Group 833

Walton Creek Campground

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SUMMARY: This action informs the public of the conveyance of 500 acres of public land out of Federal ownership. This action will also open 120 acres of reconveyed land to surface entry, mining and mineral leasings.

EFFECTIVE DATE: March 23, 1987.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (Telephone 503–231–6905).

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that in an exchange of land made pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 500 acres of land in Lake Country, Oregon, from Federal to private ownership.

2. In the exchange, the following described land has been reconveyed to the United States:

Willamette Meridian

T. 41 S., R. 23 E.,
Sec. 21, SE¼NE¼;
Sec. 22, S½NW¼.

The area described contains 120 acres in Lake County.

3. At 8:30 a.m., on March 23, 1987, the land described in paragraph 2 will be open to operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on March 23, 1987, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8:30 a.m., on March 23, 1987, the land described in paragraph 2 will be open to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. At 8:30 a.m., on March 23, 1987, the land described in paragraph 2 will be open to applications and offers under the mineral leasing laws.

Dated: February 6, 1987.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87–2960 Filed 2–11–87; 8:45 am]

BILLING CODE 4310-33-M

[CA-940–07–4520–12; Group 893]

Filing of Plat of Survey; California

February 4, 1987.

1. This plat of the following described land will be immediately placed in the open files in the California State Office, Sacramento, California, and will be available to the public as a matter of information. Copies of this plat and related field notes may be furnished to the public upon payment of the appropriate fee. Public notice, as provided in 43 CFR 1813.1–2 (BLM Manual, Section 2097–Opening Orders) is required. The date selected for the filing shall be at least 45 days after the date the **Federal Register** Notice is signed:

Mount Diablo Meridian, El Dorado County

T. 11 N., R. 18 E.

2. This plat representing the dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, and the completion survey of section 5, and the survey of the subdivision of sections 5, 8, and 17, Township 11 North, Range 18 East, Mount Diablo Meridian, California, under Group No. 893, California, was accepted January 23, 1987.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and will be available to the public for information only on March 23, 1987.

4. This plat was executed to meet certain administrative needs of the U.S. Forest Service, El Dorado National Forest.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 87–2963 Filed 2–11–87; 8:45 am]

BILLING CODE 4310-40-M

[CA-940–07–4520–12; Group 845]

Filing of Plat of Survey; California

February 4, 1987.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Lassen County

T. 16 N., R. 11 E.

2. This plat representing the dependent resurvey of a portion of the subdivisional lines, and the survey of the subdivision of certain sections, Township 34 North, Range 11 East, Mount Diablo Meridian, California, under Group No. 845, California, was accepted January 23, 1987.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the U.S. Forest Service, Lassen National Forest.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 87–2964 Filed 1–11–87; 8:45 am]

BILLING CODE 4310-40-M

[CA-940–07–4520–12; Group 676]

Filing of Plat of Survey; California

February 4, 1987.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Mendocino County

T. 16 N., R. 11 W.

2. This plat representing the dependent resurvey of the Third Standard Parallel North along a portion of the south boundary, a portion of the east and north boundaries, and a portion of the subdivisional lines of Township 16 North, Range 11 West, Mount Diablo Meridian, California, under Group No. 676, California, was accepted January 23, 1987.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 87–2965 Filed 2–11–87; 8:45 am]

BILLING CODE 4310-40-M

[CA-940–07–4520–12; Group 747]

Filing of Plat of Survey; California

February 4, 1987.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

San Bernardino Meridian, Imperial County

T. 15 S., R. 21 E.

2. This plat representing the retracement of a portion of the south boundary, and the dependent resurvey of a portion of the east boundary and subdivisional lines in Township 15 South, Range 21 East, San Bernardino, Meridian, California, under Group No. 747, California, was accepted January 21, 1987.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Indian Affairs, Phoenix Area Office, Phoenix Arizona.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief Records & Information Section.

[FR Doc. 87–2966 Filed 2–11–87; 8:45 am]

BILLING CODE 4310-40-M

Filing of Plat of Survey; New Mexico

February 5, 1987.

The Plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on February 5, 1987.

A survey representing the survey of the north and west boundaries and the subdivision lines of Township 23 North, Range 17 West; and the dependent resurvey of the east boundary and the survey of the west boundary and subdivisional lines of Township 24 North, Range 17 West, New Mexico Principal Meridian. New Mexico, under Group 833.

The survey was requested by the Bureau of Indian Affairs Navajo Area Office, Window Rock, Arizona.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payments of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 87–2967 Filed 2–11–87; 8:45 am]

BILLING CODE 4310-FB-M

[CO–940–07–4220–11; C–013628]

Colorado; Proposed Continuation of Withdrawal

February 5, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, proposes that the order which withdrew lands for an indefinite period of time for use as recreation areas, campgrounds, and an administrative site, be modified and the withdrawal be continued for 20 years insofar as it affects 70.00 acres of National Forest System land. The land will remain closed to surface entry and mining, but not to mineral leasing.

DATE: Comments should be received on or before May 13, 1987.

ADDRESS: Comments should be addressed to State Director, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 236–1768.

The Forest Service, U.S. Department of Agriculture, proposes that the existing withdrawal made by Public Land Order 1381, dated January 14, 1957, as amended, for an indefinite period of time, be modified to expire in 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, Insofar as it affects the following identified lands:

Sixth Principal Meridian

Routt National Forest Gore Pass Campground

T. 1 N., R. 82 W.,
Sec. 3, S½SE¼SE¼SE¼;
Sec. 10, NW¼NE¼NE¼NE¼ and SE¼NW¼NE½NE¼.

Toponas Creek Campground

T. 1 N., R. 83 W.,
Sec. 4, S½SE¼NW¼SE¼.

Walton Creek Campground

T. 5 N., R. 83 W.,
Sec. 23, N½NW¼SE¼NW¼, S½SE¼NW¼NW¼, and S½SW¼NE¼NW¼.

Walton Mountain Repeater Station

T. 5 N., R. 83 W.,
Sec. 34, S½NW¼NW¼NE¼.

Fish Creek Recreation Area

T. 6 N., R. 83 W.,
Sec. 10, S½SW¼SE¼SE¼;
Sec. 15, N½NW¼NE½NE¼.

Summit Lake Recreation Area

T. 7 N., R. 83 W.,
Sec. 26, S½SW¼NE¼SW¼, NW¼SE¼SW¼, and NE¼SE¼SW¼.

The areas described aggregate 70.00 acres in Grand, Jackson, and Routt Counties.

The purpose of this withdrawal is for the administration and protection of the Gore Pass, Toponas Creek, and Walton Creek Campgrounds, the Walton Mountain Repeater Station, and the Fish Creek and Summit Lake Recreation Areas. No change is proposed in the purpose or segregative effect of the withdrawal. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepaed for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. Notice of the final determination will be published in the **Federal Register**. The existing withdrawal will continue until such determinaiton is made.

Richard D. Tate,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87–2926 Filed 2–11–87; 8:45 am]

BILLING CODE 4310-JB-M

[NM–040–07–4212–11; OK NM 63444]

Recreation and Public Purposes Classification; Kiowa County, OK

AGENCY: Bureau of Land Management, Interior.

ACTION: Land classification.

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SUMMARY: The following described lands have been found suitable for recreation. They are hereby classified for sale under the provisions of the Recreation and Public Purposes Act of June 14, 1926 (44 Stat. 741; 43 U.S.C. 869), as amended, and the regulations thereunder Title 43 Code of Federal Regulations (CFR) Parts 2740 and 2912:

Tract

KW–1

Legal Description

T. 4 N., R. 20 W., I.M.
Sec. 12, E½NE¼ and E½NW¼NE¼.
Acres: 100.00.

The lands are needed by the Oklahoma Tourism and Recreation Department for enhancement of the recreation resource in the Devils Canyon area.

The classification of the identified lands will segregate them from all appropriation, except as to application under the mineral leasing laws and the Recreation and Public Purposes Act. Segregation will terminate upon issuance of a patent or eighteen months from the date of this Notice; or upon publication of a notice of termination, whichever occurs first.

Comments: For a period of 45 days after the date of publication of this Notice in the **Federal Register**, interested parties may submit comments in writing to the District Manager, Bureau of Land Management, 9522–H East 47th Place, Tulsa, Oklahoma, 74145. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT:
Hans Sallani, Oklahoma Resource Area Headquarters, telephone 405–231–5491.

Dated: February 3, 1987.

Jim Sims,
District Manager.

[FR Doc. 87–3024 Filed 2–11–87; 8:45 am]
BILLING CODE 4310–FB–M

[WY–920–07–4310–22]

Powder River Coal Region, Round Two Leasing etc.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice deferring the decision to resume the round two Federal coal leasing in the Powder River coal region and deleting Big Horn County, Wyoming from the Powder River Federal Coal Production Region.

SUMMARY: The Powder River Regional Coal Team (RCT) met in December 1986 to discuss the need for resuming the Powder River round two coal activity plan suspended by the Secretary of the Interior in 1984. The RCT concluded that the near-term need for additional Federal coal leasing does not warrant resumption of the round two coal activity plan at this time. Consequently, the resumption of the round two coal activity plan is delayed, pending further review in the fall of 1987. Additionally, Big Horn County, Wyoming is deleted from the Powder River Federal Coal Production Region, as recommended by the RCT.

FOR FURTHER INFORMATION CONTACT:
Don Brabson, Branch of Solid Minerals, Wyoming State Office, Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82001; telephone number (307) 772–2571 or (FTS) 328–2571.

SUPPLEMENTARY INFORMATION: On December 4, 1986, the Powder River RCT held a public meeting in Billings, Montana, to discuss resumption of the second round of Federal coal leasing in the Powder River Coal Region. This region involves the Federal coal in northeastern Wyoming and southcentral Montana.

The RCT unanimously adopted the following four-part recommendation that: (1) Defers a decision on the resumption of the second round of coal leasing until October 1, 1987, or thereabouts, (2) the lead State Director request a new call for expression of leasing interest by August 1, 1987, (3) regional data adequacy standards be finalized by June 1, 1987, and (4) the Bureau of Land Management's program staff begin updating the socioeconomic data base, land use data base, and other information for the region so that, if necessary, the Powder River Regional Coal Team can prepare an environmental impact statement (EIS) for a possible second round coal sale, the draft EIS to be available by June 1, 1988. The lead State Director may adjust this schedule, as appropriate.

The RCT's recommendation was based on (1) the long-range market analysis contained in the *Federal Coal Management Program, Final Environmental Impact Statement Supplemental*, October 1985, which indicates that production capacity exceeds production forecasts in the Powder River through the year 2000, (2) a *Powder River Coal Regional Market Analysis*, September 1986, which among other things suggested no present need for leasing based on the recent Powder River coal contracting rate and production needs, (3) written comments on the *Powder River Coal Regional Market Analysis*, (4) public input during the RCT meeting, and (5) the much diminished interest in coal leasing within the Powder River region. Deferral of the decision to resume the round two regional coal activity planning will allow the public and the RCT the opportunity to reconsider the need for leasing in late 1987. In the interim, the lead State Director will pursue completion of the regional data adequacy standards and update, as necessary, the region's baseline data. Emergency coal leasing will continue in accordance with 43 CFR 3425.1–4. Applications for emergency Federal coal leases will be processed upon receipt. Additionally, pending preference right coal lease applications may be processed independently from round two coal activity planning.

By **Federal Register** notice on November 9, 1979, the BLM established eight coal production regions or subregions having significant federally-owned coal deposits, including the Powder River Coal Production Region. Big Horn County, Wyoming is one of the 17 counties comprising the Powder River region. Since establishment of the Powder River region, however, there has been no Federal coal leasing interest in Big Horn County, Wyoming. Also, no direct or significant secondary impacts from Powder River coal development have occurred in this county. Consequently, the RCT (after reviewing the past leasing interest, the coal development potential for Big Horn County and public interest in the proposal to delete Big Horn County from the region) concluded that the region should be modified by deleting Big Horn County, Wyoming, from the region. Federal coal leasing in the county, if any, will be conducted using lease by application procedures pursuant to 43 CFR 3425.1–5.

The RCT's recommendations will improve the efficiency of Federal coal leasing in the Powder River region without foreclosing the Department's responsibility to satisfy industry's near and long-term need for Federal coal. Therefore, resumption of the round two coal activity plan for the Powder River region is deferred in accordance with the RCT's recommendation. Also, the boundary of the Powder River Federal Coal Production Region is modified to exclude Big Horn County, Wyoming.

Robert F. Burford,
Director, Bureau of Land Management.
February 9, 1987.

[FR Doc. 87–2991 Filed 2–11–87; 8:45 am]
BILLING CODE 4310–22–M

[ID–010–07–4322–14]

Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Boise District Office, Interior.

ACTION: Boise District, Idaho, Grazing Advisory Board Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 and Pub. L. 92–463 a public meeting of the Boise District Grazing Advisory Board will be held on Wednesday, March 11, 1987 from 9:00 a.m. to 4:30 p.m.

SUPPLEMENTARY INFORMATION: The meeting will begin at 9:00 a.m. in the lower conference room at the Bureau of Land Management, Boise District Office, at 3948 Development Avenue in Boise, Idaho. The meeting is open to the public, a public comment period is scheduled from 2:00 to 3:00 p.m. The agenda includes the following topics:

Review of Board Financial Status
Distribution of Board Funds
Update of Fire Rehabilitation Efforts, Cascade Resource Area.

FOR FURTHER INFORMATION CONTACT:
Further information is available from the Boise District, Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705, telephone number (208) 334–1582. Minutes of the meeting will be available for public inspection at the District Office.

J. David Brunner,
District Manager.

[FR Doc. 87–3023 Filed 2–11–87; 8:45 am]
BILLING CODE 4310–GG–M

[UT–040–07–4322–02]

Cedar City District Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Cedar City District Grazing Advisory Board will be held on Thursday, March 26, 1987. The meeting will begin at 9:30 a.m. in the Bureau of Land Management Cedar City District Office located at 176 East DL Sargent Drive, Cedar City, Utah.

The agenda is as follows: (1) Report from F&WS on animal damage control program; (2) Priority ranking of proposed range improvement projects; (3) Report on recent grazing transfers; (4) Rangeland Monitoring Studies; (5) Noxious Weed Control; (6) General Advisory Board Business.

Grazing Advisory Board meetings are open to the public. Interested persons may make oral statements or file written statements for the Board's consideration. Oral statements will be received at 9:30 a.m. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 176 East DL Sargent Drive, Cedar City, Utah 84720, phone 801–586–2401, by March 23, 1987. Depending on the number of persons wishing to make statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meetings will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: February 6, 1987.

Morgan S. Jensen,
District Manager.

[FR Doc. 87–3027 Filed 2–11–87; 8:45 am]
BILLING CODE 4310–DQ–M

[NM NM 64640]

New Mexico; Proposed Reinstatement of Termination Oil and Gas Lease

United States Department of the Interior, Bureau of Land Management, Santa Fe, New Mexico 87504. Under the provisions of 43 CFR 3108.2–3, Vista Energy Corporation, petitioned for reinstatement of oil and gas lease NM NM 64640 covering the following described lands located in Chaves County, New Mexico:

T. 14 S., R. 25 E., NMPM, New Mexico.
Sec. 15: SE¼;
Sec. 22: SW¼.
Containing 320.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, August 1, 1986.

Dated: February 3, 1987.

Delores L. Vigil,
Chief, Adjudication Section.

[FR Doc. 87–3029 Filed 2–11–87; 8:45 am]
BILLING CODE 4310–FB–M

[ES–030–07–4212–11; ES–00157–004]

Realty Action; Recreation and Public Purposes Classification; Correction

SUMMARY: The following described parcel of land in Cass County, Minnesota is deleted from the Notice of Realty Action as published in the **Federal Register**, August 8, 1983, Vol. 48, No. 153, p. 26005 which was corrected as published in the **Federal Register**, May 20, 1986, Vol. 51, No. 97, p. 18514. A potential ownership conflict is the reason for the deletion of this parcel.

	Acres	Serial No.
T.140N., R.29W., section 9, lot 9	3.00	ES–31836

The conveyance of the 3.86 acres in Todd County for fisheries management purposes remains in effect.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Management at the below address. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT:
Milwaukee District, Bureau of Land Management, Suite 225, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203.

Bert Rodgers,
District Manager.

[FR Doc. 87–3028 Filed 2–11–87; 8:45 am]
BILLING CODE 4310–PN–M

[CO–942–06–4520–12]

Colorado; Filing of Plats of Survey

February 3, 1987.

The plat of survey of the following described land, will be officially filed in the Colorado State Official, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., February 3, 1987.

The plat, representing the dependent resurvey of the New Mexico Principal Meridian, (west boundary), a portion of the Ninth Standard Parallel North (south boundary), the west one mile of the north boundary, a portion of the subdivisional lines, and the survey of the subdivision of certain sections, T. 37

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N., 1 E., New Mexico Principal Meridian, Colorado, Group 774, was accepted January 28, 1987.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 87-3025 Filed 2-11-87; 8:45 am]

BILLING CODE 4310-JB-M

Minerals Management Service

Outer Continental Shelf, Chevron U.S.A. Inc.; Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc., Unit Operator of the Main Pass Block 40 Federal Unit Agreement No. 14-08-001-3847, has submitted a DOCD describing that activities it proposes to conduct on the Main Pass Block 40 Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on January 28, 1987.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Steve Dessauer; Minerals Management Service; Gulf of Mexico OCS Region; Production and Development; Development and Unitization Section; Unitization Unit; Phone (504) 736-2860.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: February 4, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-2968 Filed 2-11-87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Diamond Shamrock

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Diamond Shamrock has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5286, Block 178, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Cameron and Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on January 30, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for Public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the Public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 4, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-3022 Filed 2-11-87; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

Indexing the Annual Operating Revenues of Railroads and Motor Carriers of Property

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

SUMMARY: The Interstate Commerce Commission has adopted a methodology for indexing gross annual operating revenues for railroads and motor carriers of property to eliminate the effects of inflation from the classification process. The Commission's price deflator formula will provide assurances that carriers are moved to a higher classification because of real business expansion and not from inflationary consequences.

The annual average Railroad Freight Price Index will be used as the railroad deflator. The annual average Producer Price Index for all commodities will be used as the motor carrier deflator. Each index is developed by the Bureau of Labor Statistics. The base years for railroads and motor carriers are 1978 and 1980, respectively. The deflators for 1984, 1985, and 1986 are:

	Railroads—railroad freight index			Motor carriers of property—producer prices index	
	Index	Deflator percent		Index	Deflator percent
1978	213.1		1980	252.4	
1984	372.2	57.25	1984	290.4	86.91
1985	374.8	56.86	1985	291.9	86.47
1986	377.4	56.47	1986	284.9	88.59

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Leonardo A. Rodriquez or William G. Norris, (202) 275-7510.

Noreta R. McGee,

Secretary.

[FR Doc. 87-2998 Filed 2-11-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on January 21, 1987, a proposed consent decree in *United States* v. *Ferro Corporation*, Civil Action No. 84-680-B, was lodged with the United States District Court for the Middle District of Louisiana. This consent decree settles a lawsuit filed June 28, 1984, pursuant to section 309 of the Clean Water Act ("the Act"), 33 U.S.C. 1319, for injunctive relief and for assessment of a civil penalty against Ferro Corporation ("Ferro"). The complaint alleged, among other things, that Ferro violated its National Pollutant Discharge Elimination System ("NPDES") permit by discharging pollutants from its chemical plant located in Baton Rouge, Louisiana, known as the Grant Chemical Division in excess of the limitations contained in its permit. The complaint alleged that Ferro's violations of its NPDES permit constituted violations of section 301 of the Act, 33 U.S.C. 1311, and entitled the United States pursuant to section 309 of the Act, 33 U.S.C. 1319, to obtain a permanent or temporary injunction and recover a civil penalty of not more than $10,000 per day of violation. The State of Louisiana intervened pursuant to section 505 of the Act, 33 U.S.C. 1365, and La. R.S. 30:1051, *et seq.* (the "Louisiana Environmental Quality Act").

Under the terms of the proposed consent decree, Ferro agrees to pay a civil penalty of $200,000 with respect to the claims asserted by the United States and the State of Louisiana in their complaint and intervention. Of the $200,000 civil penalty, $120,000 will be paid to the United States and $80,000 will be paid to the State of Louisiana. Ferro has attained compliance with the terms and conditions of its NPDES permit and the Act. Therefore, the proposed decree does not contain any corrective action program.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Ferro Corporation*, D.J. Ref. 90-5-1-1-2115.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region VI

Contact: Paul Wendel, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1201 Elm Street, Dallas, Texas 75270, (214) 767-6552.

United States Attorney's Office

Contact: Edward J. Gonzales, Assistant United States Attorney, Middle District of Louisiana, 352 Florida Street, Baton Rouge, Louisiana 70801, (504) 389-0443.

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-3020 Filed 2-11-87; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 22, 1987, a proposed Consent Decree in *United States* v. *L & S Lighting Company, Inc.*, CV 86-4271 SVW was lodged with the United States District Court for the Central District of California. The proposed Consent Decree concerns the prevention of the release of volatile organic compounds in violation of the Clean Air Act and the limits set forth in Local Rule 1107 of the South Coast Air Quality Management Division which is part of the California State Implementation Plan that has been approved by the United States Environmental Protection Agency. The proposed Consent Decree requires L & S Lighting Company, Inc. to make the necessary modifications to achieve compliance with Rule 1107 and to pay a civil penalty of $17,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *L & S Lighting Company, Inc.*, D.J. Ref. 90-5-2-1-969.

The proposed Consent Decree may be examined at the office of the United States Attorney, Central District of California, 312 N. Spring Street, Los Angeles, California 90012, and at the Region 9 Office of Environmental Protection Agency, 215 Fremont Street, San Francisco, California 90415. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please refer to the referenced case and enclose a check in the amount of $1.60 (10 cents per page reproduction cost) made payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-3019 Filed 2-11-87; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 86-81]

Allan Gersen Beck, M.D., Philadelphia, PA; Hearing

Notice is hereby given that on October 14, 1986, the Drug Enforcement Administration, Department of Justice, issued to Allan Gersen Beck, M.D., an Order To Show Cause as to why the Drug Enforcement Administration

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should not revoke his current DEA Certificate of Registration, AB8569189, and deny his pending application for renewal, executed on July 3, 1986, as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Tuesday, March 10, 1987, in Courtroom 10, Room 309, United States Claims Court, 717 Madison Place, NW., Washington, DC.

Dated: February 6, 1987

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-2981 Filed 2-11-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-39]

Leonardo V. Lopez, M.D.; Denial of Application

On March 24, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Leonardo V. Lopez, M.D. (Respondent) of 4460 W. Vernor, Detroit, Michigan 48209, proposing to deny his application, executed on January 2, 1985 (sic), for registration as a practitioner under 21 U.S.C. 823(f). The statutory basis for the proposed action was that the registration of Respondent would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f).

By letter dated May 4, 1986, Respondent requested a hearing on the issues raised in the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Francis L. Young. The hearing was held in Washington, DC on August 19, 1986.

On November 25, 1986, the Administrative Law Judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. Respondent filed exceptions to Judge Young's recommended ruling pursuant to 21 CFR 1316.66. On December 29, 1986, the Administrative Law Judge transmitted the record in these proceedings, including Respondent's exceptions, to the Administrator. The Administrator has considered this record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that Respondent came to the United States from the Philippines in 1957. In 1977, Respondent was practicing medicine in Detroit, Michigan, when the Michigan State Police—Diversion Investigation Unit conducted an investigation of Respondent's controlled substance prescribing practices. This investigation was initiated based on information received from a confidential informant that Respondent was selling prescriptions to "patients" who had no legitimate medical need for the controlled substances prescribed.

On four separate occasions between June 14, 1977 and August 9, 1977, a Michigan State Police detective went to Respondent's office in an undercover capacity. On three of these occasions, the detective was accompanied by a Michigan Department of Licensing and Regulation investigator, also acting in an undercover capacity. During each visit, Respondent wrote prescriptions for Tuinal, Valium, Quaalude or Desoxyn, all controlled substances, for the undercover officers. Respondent did not perform any sort of physical examination prior to issuing the prescriptions. In fact, of the fifteen prescriptions that Respondent wrote for the officers during the four visits, nine of these prescriptions were written for fictitious individuals. Respondent never asked the undercover officers any questions regarding these individuals before writing out the prescriptions in their names.

During these visits, there was no attempt by either Respondent or the undercover officers to characterize these prescriptions as being written for a legitimate medical need. That these were strictly business transactions is evidenced by the conversation that took place during one of the officers' second visit to the Respondent. As Respondent wrote the officer a prescription for Quaalude, he stated that he would have to be more careful because the state and Federal authorities were "after him." Respondent then stated that he had to raise the price per prescription because of the risk involved. On at least one occasion, one of the undercover officers told Respondent that he was selling the drugs that Respondent prescribed for him. During the course of their visits to Respondent's office, the undercover officers spoke with other individuals in the doctor's waiting room. These individuals made it clear to the officers that they had come to Respondent solely to "score" or buy prescriptions for drugs from the doctor.

As a result of the investigation, conducted by the Michigan State Police—Diversion Investigation Unit, Respondent was arrested on August 15, 1977. He was charged with two felony counts of delivery of Desoxyn in violation of the Michigan Controlled Substances Act. On September 22, 1977, Respondent entered a guilty plea in Recorder's Court for the City of Detroit to one of the counts of delivery of Desoxyn. Subsequently, Respondent was placed on probation for two years and fined five thousand dollars plus costs.

The Administrative Law Judge recommended that Respondent's application for registration be denied. He noted that the events which led to Respondent's conviction occurred almost ten years ago. However, Judge Young concluded that Respondent has not provided adequate assurances that such illegal activities will not occur again. Respondent has not demonstrated that he is adequately equipped to be entrusted with the responsibility that accompanies a DEA registration.

The Administrator adopts the recommended ruling and decision of the Administrative Law Judge in its entirety. Respondent's application for registration must be denied. Respondent states that he needs a DEA registration to maintain hospital privileges. 21 CFR 1301.76(a) provides that no registrant shall employ, as an employee or agent with access to controlled substances, any person who has had an application for registration denied. The Administrator might be willing to waive 21 CFR 1301.76(a) with respect to employment of the Respondent. Such waivers are granted to the employing registrant, not to the employee. Accordingly, if such a facility offers Respondent employment, the Administrator will review a request for a waiver.

Having concluded that there is a lawful basis for the denial of Respondent's application pursuant to 21 U.S.C. 823(f), and having further concluded that under the facts and circumstances presented in this case the application should be denied, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application, submitted by Leonardo V. Lopez, M.D. on January 2, 1985 (sic), for registration as a practitioner under the Controlled Substances Act, be, and it hereby is, denied. This order is effective February 12, 1987.

Dated: February 5, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-2980 Filed 2-11-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-69]

David E. Trawick, D.D.S., Shelby, NC; Hearing

Notice is hereby given that on August 11, 1986, the Drug Enforcement Administration, Department of Justice, issued to David E. Trawick, D.D.S., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AD2115877, and deny any pending applications for renewal, as a practitioner under Title 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Friday, February 27, 1987, in Courtroom 10, Room 309, United States Claims Court, 717 Madison Place, NW., Washington, DC.

Dated: February 6, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-2982 Filed 2-11-87; 8:45 am]

BILLING CODE 4410-09-M

NUCLEAR REGULATORY COMMISSION

Application for Licenses to Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application" please take notice that the Nuclear Regulatory Commission has received the following application for an export license. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, the Secretary, U.S. Nuclear Regulatory Commission, and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The information concerning this application follows.

NRC EXPORT APPLICATIONS

Name of applicant, date of application, date received, application No.	Material type	Material in kilograms		End use	Country of destination
		Total element	Total isotope		
Transnuclear, Inc. 01-28-87, 01-28-87, XSNM02315.	93.3% enriched uranium	25.07	23.39	Fuel for HFR Grenoble	France.

Dated this 6th day of February 1987 at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Marvin R. Peterson,

Assistant Director, Export/Import and International Safeguards, Office of International Programs.

[FR Doc. 87-3007 Filed 2-11-87; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.154, "Format and Content of Plant-Specific Pressurized Thermal Shock Safety Analysis Reports for Pressurized Water Reactors," describes a format and content acceptable to the NRC staff for plant-specific pressurized thermal shock (PTS) safety analyses. The guide also describes acceptance criteria that the NRC staff will use in evaluating licensee analyses and proposed corrective measures.

Issuance of this regulatory guide fulfills the NRC's obligation to provide "Commission Guidance and Acceptance Criteria" for the PTS analyses required by paragraph (b)(4) of the PTS rule, § 50.61 of 10 CFR Part 50. This rule requires that PTS analyses be submitted 3 years before exceeding the PTS screening criterion or 1 year after issuance of this regulatory guide, whichever is later.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 275-2060 or (202) 275-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 9th day of February 1987.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 87-3006 Filed 2-11-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-16055-SP, ASLBP No. 87-545-01-SP, BML No. 34-19089-01 EA 86-155]

Advanced Medical Systems, Inc.; Order Setting Prehearing Conference

In the matter of Advanced Medical Systems, Inc., One Factory Row, Geneva, Ohio 44041.
February 5, 1987.

The parties or their counsel are directed to appear at a prehearing conference on February 25, 1987 beginning at 10:00 A.M. at the Commission's Hearing Room, Fifth Floor, East West Towers, 4350 East West Highway, Bethesda, Maryland.

The parties shall be prepared to present their respective views on the legal and factual issues surviving for

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hearing given the Regional Administrator's recent action relaxing the October 10, 1986 Order Suspending License and Order to Show Cause (Effective Immediately). In particular the parties shall be prepared to specify the relief sought by each in the proceeding. The parties shall also attempt to arrive at a joint position as to the issues and, if possible, present their position in writing before or at the beginning of the prehearing conference.

Once the issues for hearing have been identified, the scope of discovery on the issues will be addressed. Pending discovery requests will be modified accordingly, and any surviving discovery disputes will be addressed and resolved if possible.

Counsel for the parties were notified of the time, place and general scope of the prehearing conference during a telephone conference of February 4, 1986.

It is so ordered.

Bethesda, Maryland, February 5, 1987.

Ivan W. Smith,

Administrative Law Judge.

[FR Doc. 87-3014 Filed 2-11-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-08027; License No. SUB-1010 EA 86-91]

Sequoyah Fuels Corp.; Order Imposing Civil Monetary Penalties

I

Sequoyah Fuels Corporation (the licensee) Sequoyah Fuels Facility, Gore, Oklahoma, is the holder of Source Material License No. SUB-1010 issued by the Nuclear Regulatory Commission (Commission/NRC) which authorizes the licensee to possess and use source material for the purpose of refining uranium from uranium our concentrates and conveting this uranium to uranium hexafluoride (UF_6) for use by enrichment facilities. The license was most recently renewed on September 20, 1985, and will expire on September 30, 1990.

II

A series of special inspections and assessments were conducted at the Sequoyah Fuels Facility, Gore, Oklahoma during the period January 4, through February 14, 1986. These efforts were undertaken as a followup to the January 4, 1986, accident in which a cylinder filled with uranium hexafluoride ruptured while being heated in a steam chest. These inspections and assessments included:

- NUREG-1179, Volumes 1 and 2, "Rupture of Model 48Y UF_6 Cylinder and Release of Uranium Hexafluoride."
- NUREG-1189, Volumes 1 and 2, "Assessment of the Public Health Impact from the Accidential Release of UF_6 at the Sequoyah Fuels Corporation Facility at Gore, Oklahoma."
- Inspection Reports 40-08027/86-01 and 40-08027/86-02.

The results of these inspection and assessments indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated October 14, 1986. The Notice states the nature of the violations, the provisions of the Commission's regulations that the licensee had violated, and the amount of the civil penalties proposed. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalties by Letter dated November 13, 1986.

III

After consideration of the licensee's response and the statements of fact, explanation, and arguments for remission or mitigation contained therein, and as set forth in the Appendix to this Order, the Director, Office of Inspection and Enforcement, has determined that the penalties proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96-295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay civil penalties in the amount of Three Hundred Ten Thousand Dollars ($310,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The licensee may 30 days of the date of this Order request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of the hearing request shall also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Regional Administrator, Region IV, 611 Ryan Plaza, Suite 1000, Arlington, Texas 76111.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings, and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalties referenced in Section II above, and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland, this 5th day of February 1987.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director Office of Inspection and Enforcement.

Appendix A—Evaluation and Conclusions For Civil Penalty Violations

On October 14, 1986, a Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was issued to Sequoyah Fuels Corporation (SFC) for violations identified as a followup to a January 4, 1986 accident. SFC responded to the Notice on November 13, 1986. In its response, SFC admitted that several of the violations occurred as stated, neither denied nor admitted one of the violations, and denied one of the voilations in part.

Provided below are (I) a restatement of each violation assessed civil penalties and contested by the licensee, the licensee's response, and the NRC's evaluation of the licensee's response, (II) a summary of the licensee's arguments protesting the civil penalties and in support of remission or mitigation of the proposed penalties and the NRC's evaluation of these arguments, and (III) the NRC's conclusion.

I.A. Restatement of Violation I.A.3

License Condition 9 requires the licensee to use licensed material in accordance with the statements, representations, and conditions contained in Chapters 1 through 8 of the license renewal application dated August 23, 1985.

Section 2.5, "Personnel Eduction and Experience Requirements," of the application states in part that the Shift Supervisors must have a thorough knowledge of approved operating procedures.

Contrary to the above, the acting Shift Supervisor of January 4, 1986 did not have a thorough knowledge of approved operating procedures in that he stated that he could not recall receiving a copy of or training on Operating Procedure N-280-1, Revision 6, dated January 23, 1985, and he approved the placing of an overfilled product cylinder into a steam chest, an act prohibited by the procedure.

Summary of Licensee's Response

The licensee states that it is unable to either admit or deny this alleged violation because it claims that it had no capacity to determine the state of mind of the acting Shift Supervisor.

NRC Evaluation of Licensee's Response

The NRC holds licensees responsible for the safe operation of their facilities. This responsibility includes ensuring that NRC requirements are satisfied and that responsible personnel have a thorough knowledge and understanding of all procedural requirements as well as the capability to perform their assigned functions. The action approved by the acting Shift Supervisor conflicted directly with the approved written procedure. This together with the stated fact that the individual could not recall having received a copy of or training on the referenced procedure demonstrates a lack of knowledge of the approved procedure. Therefore, the licensee has not provided an adequate basis for the withdrawal of this violation and the NRC staff finds that the violation occurred as stated in the Notice.

I.B. Restatement of Violation I.B.1

License Condition 9 requires the licensee to use licensed material in accordance with the statements, representations, and conditions contained in Chapters 1 through 8 of the license renewal application dated August 23, 1985.

Section 2.7, "Operating Procedurres," of the application states, in part, that procedures will be established, maintained, and adhered to for all radiation safety-related activities.

Contrary to the above, at the time of the inspection, several radiation safety-related activities (e.g., operation and calibration of the respiratory mask fit test booth, training and qualification requirements for radiation protection personnel, etc.) presently being conducted by the Sequoyah staff were not covered by written, approved procedures.

Summary of Licensee's Response

The licensee does not admit the violation; rather, the licensee states that the alleged violation may arise from its differing interpretation of the scope of Section 2.7. The licensee argues that Section 12.1.4 of the licensee application states that the licensee was to provide detailed instructions for 13 specific subject areas and that the statement in Section 2.7 was a general statement that procedures would be written to address these 13 topics. Furthermore, the licensee states that written, approved procedures had been developed to encompass 11 of these topics and were being prepared for the remaining two areas at the time of the inspection.

NRC Evaluation of Licensee's Response

Section 2.7 of the license application requires that procedures be established for all radiation safety-related activities, not just those specified in Section 12.1.4 of the license application. Furthermore, by the licensee's own admission, at the time of the inspection (January and February 1986) only 11 of the 13 "detailed Health Physics Instructions" that it had interpreted the license to require had been approved, despite the fact that Section 12.1.4 of the license application was proposed by the licensee on October 17, 1983, and that the commitments contained therein had been license requirements since September 20, 1985. The NRC staff considers the fact that all required procedures were not established as required by Section 2.7 to be significant. In addition, in its response, the licensee demonstrates that it has not previously placed a similar degree of significance on the importance of performing safety-related activities in accordance with approved procedures. Therefore, the licensee has not provided a sufficient basis for withdrawal of this violation, and the NRC staff concludes that this violation occurred as stated in the Notice.

II. Summary of Licensee's Request Protecting the Civil Penalties and in Support of Remission or Mitigation of the Civil Penalties

Licensee Assertions

The licensee presents a number of arguments protesting the civil penalties and in support of remission or mitigation of the civil penalties. The licensee first argues that the proposed penalties are inconsistent with the Commission's "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy). In support of this argument, the licensee states Violations I.A.1, I.A.2 and I.A.3 assessed penalties of $100,000 each were all "facets of the same underlying concern"; therefore, the cumulation of penalties at the maximum level is unfair. The licensee further asserts that the characterization of Violations I.A.1, I.A.2, and I.A.3 at a Severity Level I was not appropriate and is inconsistent with the Enforcement Policy, and these violations are more appropriately characterized at Severity Level III. The Licensee states that its extensive efforts of cooperation with the NRC staff and its prior good history are reasons why escalation of the penalties is improper and that the violations should not be characterized as flagrant or as reflecting a pervasive management problem.

The licensee also argues in accordance with the escalation and mitigation factors in the Enforcement Policy that mitigation is warranted in this case because of its prompt identification and reporting, extensive corrective action, prior good performance, and the fact that there was no prior notice of a similar event or multiple occurrences.

The licensee further claims that a major function of civil penalties, that of deterrence, has already been served by the costs incurred as a result of the accident. The licensee also argues that the unanimous vote of the Commission authorizing restart reflects the fact that the lessons from the accident have been learned and that, in these circumstances, the imposition of a substantial additional penalty is unwarranted.

NRC Evaluation

The findings of the inspections demonstrate that the (1) licensee's procedures were violated, (2) physical equipment and facilities used for filling and weighing UF_6 cylinders were inadequate for the safe use of the 14-ton cylinders, (3) management failed to ensure that these operating procedures important to safety were properly implemented, and (4) management failed to ensure that its personnel received adequate training to perform their duties. These violations demonstrate a major breakdown in the licensee's management control and oversight of licensed activities that was a contributing factor to an accident that resulted in the dealth of an individual. For this reason, these violations are considered by the NRC staff to be flagrant violations of NRC requirements that reflect a significant management problem. This breakdown emphasized the need for a major improvement in the licensee's control and implementation of its radiation safety program to ensure strict adherence to NRC requirements and the safe performance of licensed activities.

Further, notwithstanding the licensee's argument to the contrary, Violation I.A.3 is separate and distinct from Violations I.A.1 and I.A.2. Violation I.A.1 addresses procedures not being followed. Violation I.A.2 addresses lack of training of shift crews. Violation I.A.3 addresses knowledge of supervisors. While the failure to follow procedures and lack of training provides evidence to demonstrate lack of knowledge, the lack of knowledge of a supervisor is a separate regulatory concern and violation. Given the seriousness of these three violations and their impact, each violation was properly categorized at a Severity Level I and assessed a significant penalty.

In this case, basic requirements were not followed and management controls were clearly inadequate resulting in a death that should not have occurred. Under these types of circumstances, the Enforcement Policy allows discretion to be exercised to maximize a civil penalty. The NRC staff, in reaching the decision to exercise this discretion to maximize the penalty, recognized the corrective actions taken after the accident, the duration of the shutdown, the licensee's prior enforcement history, and that the Commission has approved restart now that corrective action has been taken. While the Enforcement Policy allows for mitigation of a civil penalty for such factors as prompt and extensive corrective actions, because of the seriousness of this matter, the mitigation factors allowed by the policy were not evaluated in this case. Civil penalties are not designed to obtain corrective action since immediate corrective action is always required. Rather, these civil penalties are designed to deter future violations.

In sum, the purpose of the NRC enforcement program is to promote and protect the radiological health and safety of the public by ensuring compliance with NRC requirements, obtaining prompt correction of violations, and deterring future violations by all licensees. To accomplish this purpose, application of the NRC's full enforcement authority in the form of substantial civil penalties is sometimes necessary. In this particular case, the amount of the civil penalties is considered necessary to send a strong message to this as well as all other licensees that the NRC expects effective and

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aggressive management systems to prevent such flagrant violations and their adverse consequences to employees and public health and safety.

III. NRC Conclusion

The NRC concludes that the alleged violations occurred as stated in the Notice of Violation and that no mitigation of the civil penalties is warranted. Therefore, civil penalties in the amount of $310,000 should be imposed.

Appendix B—Evaluation and Conclusions for Violations not Assessed Civil Penalties

Provided below are a restatement of the violation not assessed civil penalties contested by the licensee, the licensee's response, and NRC's evaluation of the licensee's response.

Restatement of Violation II.A

10 CFR 20.203(d)(1) defines airborne radioactivity area as "any room, enclosure, or operating area in which airborne radioactive materials composed wholly or partly of licensed material exist in concentrations in excess of the amounts specified in Appendix B, Table I, Column 1 of this part. . . ." and 10 CFR 20.203(d)(2) states "Each airborne radioactivity area shall be conspicuously posted with a sign or signs bearing the radiation caution symbol and the words: CAUTION-AIRBORNE RADIO ACTIVITY AREA."

Contrary to the above, on February 11, 1986 the licensee failed to post areas of the processing building during decontamination operations when the airborne radioactivity concentrations exceeded by approximately three times the values given in Appendix B, Table 1, Column 1 of 10 CFR Part 20 for natural uranium radioactivity.

Summary of Licensee's Response

The licensee admits that the processing building was not posted during decontamination operations on February 11, 1986. The licensee denies, however, that posting was required during decontamination operations because general airborne concentrations of uranium during the decontamination work averaged less than the concentration specified in 10 CFR 20, Appendix B, Table 1, Column 1. In support of this argument, the licensee submits data showing that the general airborne concentration was less than the concentration specified in 10 CFR 20, Appendix B, Table 1, Column 1. Based on the data, the licensee contends that even though maximum concentrations exceeded 10 CFR 20, Appendix B, Table 1, Column 1 limits, posting was not required since appropriate corrective action was taken. The licensee further argues that the work was performed under a hazardous work permit and that there was limited personnel access to the area.

NRC Evaluation of the Licensee's Response

The licensee's data shows that during the decontamination work performed February 8–14, 1986, airborne concentrations in individual area sample locations exceeded the Appendix B, Table 1, Column 1, concentration during three shifts, thus posting of these areas was required in accordance with 10 CFR 20.203(d)(1)(i). Appropriate corrective action was not taken since the elevated concentrations persisted during a three day period. Working under hazardous work permits and restricting access provides no exemption from the posting requirements of 10 CFR 20.203. Therefore, an adequate basis for withdrawal of this violation has not been provided, and the NRC staff has determined that the violation occurred as stated in the Notice.

[FR Doc. 87-3005 Filed 2-11-87; 8:45 am]
BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Hydropower Assessment Steering Committee; Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.
Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Hydropower Assessment Steering Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Options for protected areas schedules.
- Other.
- Public comment.

DATE: February 18, 1987, 1:00 p.m.

ADDRESS: The meeting will be held in the Council's central office, 850 SW. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, 503–222–5161.

Edward Sheets,
Executive Director.
[FR Doc. 87-2936 Filed 2-14-87; 8:45 am]
BILLING CODE 0000-00-M

POSTAL SERVICE

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Final notice of modification to existing systems of records.

SUMMARY: The purpose of this document is to publish final notice to expand the population of individuals covered by two Postal Service systems of records that appeared for public comment in the **Federal Register**.

EFFECTIVE DATE: February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Rubenia Carter (202) 268–4872.

SUPPLEMENTARY INFORMATION: On August 13, 1986, the Postal Service published in the **Federal Register** (51 FR 29028) an interim notice of a proposed change to expand the population to Postal Service systems USPS 050.020—Finance Records—Payroll System, and USPS 120.070—Personnel Records—General Personnel Folders (Official Personnel Folders and records related thereto). The purposes of these changes appeared in the proposal and will not be repeated here. Interested persons were invited to comment on the proposal. No comments regarding these systems modifications were received. Accordingly, after a review of the proposed text, the Postal Service has determined to give final notice of the following modifications to records systems descriptions USPS 050.020 and USPS 120.070, as follows:

USPS 050.020

Categories of Individuals Covered by the System

Change to read: "Current and former USPS employees; postmaster relief/replacement employees, and certain former spouses of current and former postal employees who qualify for Federal Employees Health Benefits coverage under Pub. L. 98–615."

USPS 120.070

Categories of Individuals Covered by the System

Change to read: "Present and former USPS employees; and certain former spouses of current and former employees who qualify and apply for Federal Employees Health Benefits coverage under Pub. L. 98–615."

A complete description of systems USPS 050.020 and USPS 120.070 last appeared on January 26, 1987, in 52 FR 2776 and on August 13, 1986, in 51 FR 29028, respectively.

Fred Eggleston,
Assistant General Counsel, Legislative Division.
[FR Doc. 87-2935 Filed 2-11-87; 8:45 am]
BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24065; File No. SR-Amex-86-30]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc., Relating to Proposed Amendments to the Exchange Constitution Regarding Classification of Exchange Floor Governors and Structure of the Nominating Committee

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 18, 1986, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to amend the Exchange Constitution relating to the classification of Exchange floor governors and the structure of the Exchange's Nominating Committee. The text of the proposed rule change is available at the Office of the Secretary, American Stock Exchange, Inc. and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange Constitution requires that two of the five floor governors on the Board of Governors must be specialists. Moreover, the Board is classified so that one third of the governors are elected each year, and the Constitution currently provides that two of the specified classes must include at least one specialist. As a result of such classification, in two out of every three years one of the governors elected must be a specialist even if two specialists are already serving on the Board.

The Exchange has a Nominating Committee which nominates candidates for the Board of Governors, and for the Nominating Committee. Under the Constitution the Nominating Committee consists of four public and four industry representatives, but the latter are not further categorized. Thus while it has been customary to divide the four industry members of the Nominating Committee equally between "upstairs" representatives and floor representatives, such division is not mandated by the Constitution.

In October of this year the Board received a membership petition proposing Constitutional amendments which would (a) eliminate the requirement that at least two of the five floor governors must be specialists, and (b) increase the Nominating Committee from eight to ten members, consisting of five public representatives and five industry representatives, specifically including one specialist, one marketmaker and one floor broker. This petition was sponsored by the Options Market Maker Association, and was prompted by a concern that floor members other than specialists were under-represented on the Board and in the nominating process.

At its October meeting the Board of Governors determined not to approve the amendments proposed in the petition, but instead authorized the appointment of a committee to review the Constitutional requirements with respect to the qualifications of floor governors and the composition of the Nominating Committee.

The Committee, consisting of six Exchange governors and chaired by Robert Carswell, a senior partner of Shearman & Sterling, met during October and November with numerous representatives of each major floor constituency, including the chairmen of the three floor associations and a number of incumbent and former governors, and also received several written submissions.

The Carswell Committee unanimously made certain recommendations, which have been endorsed by the Steering Committee of the Options Market Maker Association. The Exchange proposes to amend its Constitution to reflect the recommendations of the Carswell Committee.

The requirement that at least two specialists serve on the Board will not be rescinded. However, the Constitution will be amended to eliminate any provision that may, in effect, require that more than two specialists serve. This would avoid a situation in which the Nominating Committee is required to select an additional specialist even though there are two specialists already serving in other classes.

The Constitution currently requires that, in seeking nominees for industry governors, the Nominating Committee "shall give due consideration to the various phases of Exchange activity and the business of member organizations." The Constitution will be amended to mandate that the Nominating Committee, in filling vacancies on the Board from the floor sector, consider candidates from all Principal categories of floor activity.

The Nominating Committee will remain an eight member committee consisting of four public members, including one listed company executive and one incumbent public governor, and four industry members. However, the Constitution will be amended to require that, of the four industry members:

(a) Two must be members who spend a substantial part of their time on the floor of the Exchange; and

(b) Two must be "upstairs" executives of member organizations.

This will insure that the size of the Nominating Committee remains at a manageable level. Further, the requirement that the industry sector of the Nominating Committee be divided equally between "upstairs" executives of member firms and floor members merely institutionalizes a traditional practice, and insures that the Committee will have the necessary balance and expertise to select the most highly qualified candidates for the Board from each broad category.

The Constitution will further provide that the two floor members on the Nominating Committee shall not both be engaged in the same principal category of floor activity (e.g., specialist, option trader, floor broker). This would ensure that no single floor group holds both floor positions on the Nominating Committee.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(3) in particular in that they assure a fair representation of its members in the selection of its directors and administration of its affairs.

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B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–86–30 and should be submitted by March 5, 1987.

Dated: February 5, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–2942 Filed 2–11–87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–24047; File No. SR–MSE–86–9]

Self-Regulatory Organizations; Proposed Rule Change By Midwest Stock Exchange, Inc. Relating to Permanent Approval of Reduction of Order Exposure Time

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 3, 1986, the Midwest Stock Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Midwest Stock Exchange, Incorporated (MSE) proposes to permanently reduce the time frame between the time a market order is entered into MSE's Guaranteed Execution System (MAX) and the time it is automatically executed ("order exposure time") from 30 to 15 seconds. The 30 second time frame was established with the implementation of the MAX System (SR–MSE–82–5, SR–MSE–83–3). The 15 second time frame has been in effect on a pilot basis for approximately one year (SR–MSE–85–5).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

MSE's MAX System establishes the price at which a MAX market order will be executed at the time of order entry. Previously, the System would not automatically execute the order until 30 seconds had elapsed. This allowed the specialist time to expose the order to the market and obtain a better execution if available. Any changes to the best bid and offer during the order exposure time could cause the trade to print on the consolidated tape at a price outside the market. The reduction of the order exposure time to 15 seconds has lessened the chance for a trade to be reported outside the market, but still allows time for the specialist to expose the order to the market.

The change has been in effect on a pilot basis for one year. In reviewing the operation of the pilot, the MSE has determined that the reduction of the order exposure time has not diminished the opportunity for MAX orders to interact with interest on the MSE Floor. Permanent approval of the pilot program is requested.

The proposed rule change is consistent with section 6(b) of the Securities Exchange Act of 1934 in that it is designed to facilitate the prompt and accurate reporting of transactions on the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change: or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 5, 1987.

Dated: February 2, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz, Secretary.

[FR Doc. 87–2943 Filed 2–11–87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–24070; File No. SR–OCC–87–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Options Clearing Corp.

On January 16, 1987, the Options Clearing Corporation ("OCC") filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act"), setting forth a Credit and Security Agreement between OCC and Citibank, N.A. for Delivery vs. Payment ("DVP") settlements of exercises and assignments of options on the Australian dollar. In addition, the proposal eliminates certain Interpretations and Policies ("I&Ps") from OCC By-Laws concerning foreign currency options.

The proposed Credit and Security Agreement is similar to the agreement currently in place with Citibank, N.A. for settlement of exercises and assignments of Deutsche Mark options. Both agreements provide for overdraft protection by Citibank to ensure deliveries to Clearing Members notwithstanding the default of a Delivering or Paying Clearing Member or its agent bank. For Australian dollar overdrafts, credit is secured by the U.S. dollar settlement amounts held in OCC's accounts at Citibank branches in New York and Sydney. U.S. dollar overdrafts are secured by Australian dollars held in OCC's account at the Sydney branch of Citibank. Loans to OCC resulting from overdrafts also would be secured by OCC's right to apply a defaulting Clearing Member's margin or Clearing Fund deposits against the defaulting Clearing Member's outstanding obligations, as well as OCC's right to assess all Clearing Members' Clearing Fund deposits for related losses.

Additionally, the proposed rule change eliminates I&P .01 and .02 from Article XV Section 1 of OCC's By-Laws. Those I&P's had enumerated the way in which premiums are expressed and the unit of trade for each underlying currency. OCC has determined that, as the number of underlying currencies increases, it is cumbersome to continue this enumeration. Instead, the revised definition of "premium" in Section 1(h) refers Participants to the appropriate Exchange rules for this information.

OCC states in its filing that the proposed rule change is consistent with section 17A of the Act. OCC believes the proposal will promote the prompt and accurate settlement of Australian dollar option exercises and assignments by providing for DVP settlements and overdraft protection that will ensure delivery of currency or U.S. dollars to Clearing Members who meet their obligations to OCC.

The foregoing rule has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of the Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. section 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549.

Copies of the filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number in the caption above and should be submitted by March 5, 1987.

Dated: February 6, 1987.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–2947 Filed 2–11–87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–24045; File No. SR–Phlx–86–41]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Rules Governing the Allocation and Reallocation of Securities Listed on the Exchange

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act") 15 U.S.C. 78s(b)(1), notice is hereby given that on December 8, 1986, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. hereby proposes to amend its rules governing the allocation of securities on the Exchange. Rules 500 through 506, as presently in effect, are to be deleted and replaced by the following text.

Allocation, Evaluation and Securities Committee

Rule 500. The Allocation, Evaluation and Securities Committee shall administer Rules 500 through 599, and unless indicated otherwise, these rules shall apply to both option and equity specialist evaluations and allocations. For the purpose of Rules 500 through 599, the term "Committee" shall mean the Allocation, Evaluation and Securities Committee.

Specialist Appointment

Rule 501. (a) Upon application by a member organization, the Committee may appoint such organization as an approved specialist unit after consultation with the Floor Procedure

has made; and securities the applicant

proceedings instituted under sections (c)

same review methodology and

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Committee, in the case of equity specialist units, or the Options Committee, in the case of options specialist units. An application to act as a specialist must include, for ordinary and extraordinary circumstances, the identity of the individual who will act as head specialist as well as the individual(s) who will act as assistant specialist(s). The Committee may appoint one or more alternate specialist in a particular equity issue in accordance with Rule 201A governing such appointments.

(b) Applications to become a specialist shall be in a form prescribed by the Committee and shall include the following: (1) The identity of the unit's staff positions and who will occupy those positions; (2) the unit's clearing arrangements; (3) the unit's capital structure, including any lines of credit; and (4) the unit's plan to respond to extraordinary circumstances such as the temporary or permanent loss of the head or key assistant specialist or the sudden influx of order flow in assigned securities. Also, if the Committee has set out special requirements, applicant should address those.

(c) To be approved as a specialist unit and to retain the privilege of such status, each unit must consist of at least the following staff: (1) One head specialist; (2) one assistant specialist with respect to equity specialist units (who need not be associated with the specialist unit) and two assistant specialists with respect to options specialist units (of which at least one must be associated with the specialist unit); and (3) with respect to options specialist units, one specialist clerk. The Committee, in its discretion and after consultation with the Floor Procedure Committee (in the case of equity specialist units) or the Options Committee (in the case of options specialist units), may require a unit to obtain additional staff depending upon the number of assigned equity issues or options classes and associated order flow.

(d) Once an applicant is approved by the Committee as a specialist unit, the specialist unit is obligated promptly to notify the Exchange staff of any change in registration information and any material change in the application for any assigned issue. Any material change in the capital or staff of the unit or any move by a head or assistant specialist from one unit to another shall be reported promptly in writing to the Allocation, Evaluation and Securities Committees as well as the Floor Procedure Committee (in the case of equity specialist units) or the Options Committee (in the case of options specialist units), and in no circumstances shall be reported more than two business days after the change.

Allocation, Reallocation and Transfer of Issues

Rule 505. Upon allocation or transfer of an equity book or options class, the equity book or options class must be registered in either the name of the unit, the individual acting as specialist, or jointly in the name of the unit and the specialist ("Registrant"). In registering a security, the Registrant shall act as specialist for the security for at least one year.

Rule 506. (a) When an equity book or options class is to be allocated or reallocated by the Committee, the Committee will solicit applications from all eligible specialist units. If the Committee determines that special qualifications should be sought in the successful applicant, it shall indicate such desired qualifications in the notice.

(b) An allocation application shall be submitted in writing to the Department of Securities and shall include, at a minimum, the name and background of the head specialist and assistant specialist(s), the unit's experience and capitalization demonstrating an ability to trade the particular equity book or options class sought, and any other reasons why the unit believes it should be assigned or allocated the security. The Committee may re-solicit applications for any reason, including if it determines that its initial solicitation resulted in an insufficient number of applicants.

(c) At least five days before an allocation meeting, the Committee shall provide reasonable notice to all floor members of the security to be allocated and its applicants.

(d) The Committee shall hold allocation meetings as appropriate. The Department of Securities shall provide Committee members data on the securities to be allocated, copies of the applications, the most recent specialist performance evaluation ratings, and any other information that the Committee may deem to be relevant. Applicants may make and the Committee may request personal appearances.

(e) Allocation decisions shall be in writing and shall be distributed to all floor members.

Rule 508. Any proposal or agreement between or among specialists to transfer one or more equity books or options classes already allocated to a specified Registrant shall be identified to the Committee and either the Floor Procedure Committee (in the case of equity books) or the Options Committee (in the case of options classes) in writing no later than 12 business days before the proposed transfer. An agreement to transfer all of a Registrant's equity books or options classes shall be deemed sanctioned subject to performance review pursuant to Rule 511(d). An agreement to transfer less than all of a Registrant's equity books may not become effective until approved by the Allocation, Evaluation and Securities Committee. Failure to provide the Committee and either the Floor Procedure Committee (in the case of equity books) or the Options Committee (in the case of options classes) prior notice of a transfer in accordance with this Rule permits the Committee to recover the transferred securities and reallocate them pursuant to Rules 506 and 511.

Specialist Performance Evaluation

Rule 511. (a) The Specialist Performance Evaluation standards and procedures contained under this subsection of Rules shall govern Committee decisions on: (1) Allocating new equity books and options classes; (2) reallocating equity books and options classes for substandard performance; (3) determining whether a specialist that has been transferred an equity book or options class is performing adequately in order to retain the transferred security; and (4) determining whether a staff reorganization or material change with respect to a Registrant has affected the ability of the Registrant to continue to perform adequately in order to retain its securities.

(b) Allocations. The Committee shall allocate new equity books and options classes or reallocate existing equity books and options classes to applicants based on the results of the evaluations conducted pursuant to Rule 515 and such other factors as the Committee deems is appropriate. Among the factors that the Committee may consider in making such allocations or reallocations are: the number and type of securities in which applicants are currently registered; the personnel, capital and other resources of the applicant; recent allocation decisions; the desirability of encouraging the entry of new specialists into the Exchange's market; the overall best interests of the Exchange; and such policies as the Board instructs the Committee to follow in allocating or reallocating securities. Solely with respect to equity book allocations or reallocations, the Committee may consider the number of primary issues in which the applicant is currently registered; the number of securities the applicant currently has registered on PACE and the level of commitments he has made; and securities the applicant recently has applied to remove from PACE or in which the applicant has resigned as specialist. Recognition is given that evaluation results may not be available for new specialist units or recently reorganized Registrants. The Committee may establish separate or additional criteria for evaluating new or recently reorganized Registrants, particularly where evaluation results are unavailable or are only available for a limited period of time. All allocations shall initially be made on a temporary basis for a period of up to 60 days within which time the Committee may conduct a special review pursuant to Rule 515(b). The Committee is empowered to grant equity books or options classes for a limited period of time or subject to such other terms and conditions as it deems is appropriate.

(c) Reallocations. If the results of a routine quarterly review indicate that a Registrant has performed below minimum standards, the Committee shall inform the head specialist of such rating and give that person the opportunity to respond in writing to the rating. At the same time, the Committee shall inform the head specialist that a special performance review shall be conducted within the next 60 days and, should the Registrant's performance not improve overall or with respect to any problem securities or areas of evaluation, the Committee may institute proceedings to determine whether to remove and reallocate one or more securities. If the Registrant's performance falls below minimum standards in subsequent ratings periods, the Committee shall institute proceedings to determine whether to remove and reallocate one or more securities.

(d) Transfers and Material Changes. The Committee may conduct a special review pursuant to Rule 515 within 60 days after a transfer of one or more equity books or options classes has become effective or when there has been a material change in the specialist unit. In cases where a head specialist has departed the unit, the review shall also consider the background and ability of the successor head specialist. The Committee shall evaluate the performance of the Registrant with respect to the newly acquired equity books or options classes. If such performance is below minimum standards, the Committee may institute proceedings to remove and reallocate the transferred equity books or options classes.

(e) Hearing Procedures. Prior to a final determination with respect to any proceedings instituted under sections (c) and (d) above, the Committee shall notify the Registrant in writing of the Committee's preliminary evaluation and proposed action and inform the Registrant of its right to a hearing on this matter. If the Registrant elects to receive a hearing, the information supporting the Committee's evaluation of the Registrant's performance shall be presented. The Registrant shall have the opportunity to comment on the Committee's evaluation and present any information that it believes is relevant. The Registrant may question members of the Committee and Exchange staff with respect to the evaluation of its performance. Formal rules of evidence shall not apply. The Registrant and the Committee shall have the right to have present at the hearing one or more technical consultants for the purpose of answering questions about trading techniques and procedures and shall not otherwise participate in the Committee's final evaluation of the Registrant's performance. The Registrant may be represented by legal or other counsel. A transcript shall be kept of the hearing and copies will be furnished to the Registrant upon request and payment of the costs of reproduction. Based on the entire hearing record, the Committee shall prepare and deliver to the Registrant a written decision setting forth its conclusions regarding the Registrant's performance and the action, if any, to be taken with respect to removing and reallocating securities and the basis therefore. The decision also shall describe the Registrant's appeal rights. In the event of such appeal, the Committee's action shall be stayed pending the conclusion of the Registrant's appeal.

Rule 515. (a) Specialist evaluations. The Committee shall adopt a format to review each equity specialist's performance with respect to each book it trades, and a format to review each options specialist's performance with respect to each options class it trades. The review format may vary depending on whether the Registrant provides a primary or secondary market in the security. The Committee, in consultation with the Floor Procedure Committee and the Options Committee as appropriate, shall be responsible for continuously reviewing, critiquing and improving any specialist evaluation format adopted hereunder.

(b) Review Frequency and Weight of Evaluations. Routine reviews will be conducted quarterly. Special reviews shall occur as necessary covering such time periods as is deemed appropriate. Special reviews may incorporate the same review methodology and procedures as established for routine reviews, although special reviews may also examine such additional matters related to a Registrant's performance as the Committee deems necessary and appropriate. The Committee may seek input from members and Exchange staff and consider any other information the Committee deems relevant in making a final determination toc initiate a reallocation proceeding pursuant to Rule 511(c).

Supplementary Material

.01 Equity specialist evaluation. The performance evaluation survey for equity specialists is divided into four sections: PACE, ITS, General and Primary Issues. Each section contains one or more evaluation categories. Specialist units are ranked from worst to best in each of the ratings categories (for example, if there are twenty in each category) based on their performance in the category. Categories may each have different weightings in determining a firm's evaluation overall and on each section. Any specialist unit ranking in the bottom 15% in overall ratings for two consecutive quarters, or in the bottom 15% on the PACE, ITS or General sections of the survey for three consecutive quarters, will be deemed to have performed below minimum standards. Within the next 60 days, the Committee will conduct a special performance review.

If, based on that review, the specialist unit' s performance has not improved overall, or in the sections or with respect to the securities where substandard performance has been identified, the Committee may institute proceedings to determine whether to remove and reallocate one or more securities. Moreover, if a specialist unit deemed to have performed below minimum standards overall ranks in the bottom 15% in any one of the next four quarters, the Committee shall review the specialist's performance and may institute proceedings to determine whether to remove and reallocate one or more securities. If a specialist unit deemed to have performed below minimum standards in the ITS, PACE or General sections of the survey ranks in the bottom 15% in any two of the next four quarters, the Committee shall review the specialist's performance and may institute proceedings to determine whether to remove and reallocate one or more securities.

.02 Options Specialist Evaluation. Options specialists and specialist units are evaluated on the basis of questionnaires completed by floor

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brokers. To the extent possible, evaluations of options specialists and specialist units shall also include an objective performance evaluation survey. A registered individual specialist or specialist unit will be deemed to have performed below minimum standards if the specialist or specialist unit has received: (1) An overall quarterly grade below 5.00 for the preceding quarter; (2) a quarterly grade below 5.00 on three or more individual questions for the preceding quarter; or (3) a quarterly grade below 5.00 for the same question for three consecutive quarters. Within the next 60 days, the Committee will conduct a special performance review. If, based on that review, the specialist or specialist unit's performance has not improved overall, or with respect to the specific questions or options classes where substandard performance has been identified, the Committee may institute proceedings to determine whether to remove and reallocate one or more options classes. Moreover, if a specialist or specialist unit deemed to have performed below minimum standards receives: (1) An overall quarterly grade below 5.00 for any two of four preceding quarters; (2) a quarterly grade below 5.00 on three or more individual questions for any two of the four preceding quarters; or (3) a quarterly grade below 5.00 for the same question for four consecutive quarters, the Committee shall institute proceedings to determine whether to remove and reallocate one or more options classes. If such proceedings were commenced under this rule and thereafter concluded, any quarter of substandard performance in the following four quarters (*i.e.*, an overall quarterly grade below 5.00, a quarterly grade below 5.00 on three or more individual questions as to which a proceeding was previously commenced, or a quarterly grade below 5.00 on any one question as to which a proceeding was previously commenced) may again result in the commencement of such proceedings.

PACE Commitments

Rule 520. A Registrant that registers on PACE a security not previously on PACE shall continue to trade that security on PACE for a minimum of one year. A specialist unit that receives a PACE traded security by transfer or reallocation shall continue to trade that security on PACE for a minimum of one year, but need not commit to any special guarantees offered by the previous Registrant.

Rule 522. The Committee shall institute reallocation proceedings with respect to any security voluntarily removed from PACE by its Registrant. The original Registrant shall not be reallocated the security once another applicant commits to trading the security on PACE. Should no applicant commit to trading the security on PACE, the Committee shall allocate the security pursuant to Rules 506 and 511; provided, however, that if the original Registrant has applied to retain the security it shall be awarded the allocation.

Rule 523. The Committee shall institute reallocation proceedings with respect to any non-PACE traded security should any applicant commit to trading that security on PACE. The existing Registrant shall retain the security if it commits to trading the security on PACE; provided, however, that the Committee, in consultation with the Floor Procedure Committee, may from time to time determine that, for specified periods, the existing Registrant shall not retain the security in the event an applicant commits to trade the security on PACE.

Committee Authority

Rule 525. With respect to any provision in Rules 500 through 599, the Committee shall have the authority to grant any exemption or impose any condition on any applicant or Registrant that the Committee deems necessary or appropriate in the administration of these rules.

Rule 526. Where emergency or extenuating circumstances so require, the Committee Chairman or a Committee member designated by the Chairman may temporarily take any actions specified in the 500 Series rules on behalf of the Committee.

In addition, Article XI section 11–1 of the PHLX's By-Laws relating to appeals to the Board of Governors is being amended to establish procedures governing appeals from decisions of the Allocation, Evaluation and Securities Committee. The text of this proposed rule change is as follows.

Appeals When Allowed

Sec. 11–1(a). * * *

(b) * * *

(c) Notwithstanding the foregoing, any appeal from a decision of the Allocation, Evaluation and Securities Committee pursuant to Rule 511(e) of the Rules of the Board of Governors shall be heard by a special committee of the Board composed of three governors. The member requesting review shall be permitted to submit a written statement to and/or appear before this special committee. The Secretary of the Exchange shall certify the record of the Allocation, Evaluation and Securities Committee's hearing and its written decision and shall submit these documents to the special committee. The special committee's review of the Allocation, Evaluation and Securities Committee's action shall be based solely on the record, the written decision and any statement submitted by the member. The special committee shall prepare and deliver to the member a written decision and reasons therefore. If the special committee affirms the Allocation, Evaluation and Securities Committee's action, the action shall become effective 10 days from the date of the special committee's decision. There shall be no appeal to the Board of Governors from any decision of the special committee.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish permanent rules to govern the allocation and transfer of equity books and options classes to PHLX specialists. When approved, these rules will replace pilot rules whose effectiveness was last extended pursuant to PHLX rule change SR–PHLX 86–20. The proposed rules have several significant provisions. When approved, these rules will require material changes in a specialist unit to be reported to the Exchange, which include significant changes in a specialist unit's staffing and capital structure.

Floor members will be notified of the identity of applicants for new equity books and options classes so that they can submit written comments thereon to the Allocation, Evaluation and Securities Committee. Once allocated and registered to a particular specialist, securities may be transfered by their specialist to another specialist subject to review and rejection of such transfers by the Allocation, Evaluation and Securities Committee. Moreover, the Committee is empowered to review all specialists' performance with respect to trading of assigned securities and institute proceedings to determine whether to remove and reallocate securities if such performance falls below minimum standards.

The proposed rules establish objective criteria for evaluating specialist trading of equity books and utilize questionnaires completed by floor brokers to evaluate the performance of specialists trading options. The rules provide flexibility for the Exchange in the future to also use objective criteria in evaluating options specialists trading performance.

The proposed rule change also would make two collateral changes to Exchange rules. First, it would amend the Exchange By-Laws relating to appeals to the Board of Governors by establishing procedures for appeals from decisions of the Allocation, Evaluation and Securities Committee. Second, it will amend the Exchange's Option Floor Procedure Advice enacted pursuant to PHLX Rule 960.1—960.12 to provide a pre-set fine schedule for those floor brokers who fail to respond and sign the Exchange's evaluation questionnaires regarding options specialists performance. The fine for the first occurrence of this violation would be $25, the second occurrence would be $50, the third $100 and the sanction for the fourth and thereafter violations would be discretionary with the PHLX's Business Conduct Committee.

The proposed rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 (Act) in that the rules will promote just and equitable principles of trade, the facilitation of transactions in securities, the removal of impediments to and the perfection of the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not foresee that the rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed rule change is the culmination of extensive and exhaustive comments and review by numerous standing committees of the Board and special committees appointed thereunder.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PHLX consents, the Commission will: (A) By order approve such proposed rule change, or, (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to the file number in the caption above and should be submitted March 5, 1987.

Dated: February 2, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–2944 Filed 2–11–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24050; File No. SR–Phlx–86–47]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to a Proposal To Attract Additional Equity Specialist Interest to the Exchange

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") 15 U.S.C. 78s(b)(1), notice is hereby given that on December 10, 1986 the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. files as a proposed rule change a proposal to attract additional equity specialist interest to the Exchange. The thrust of the proposal is the assembly of a list of stocks available for allocation to new specialist units. The list would include: (i) Stocks listed on other exchanges for which the Phlx has yet to seek unlisted trading privileges; (ii) Phlx cabinet stocks; (iii) Phlx stocks currently allocated to equity specialists but not included on PACE; and (iv) PACE stocks that specialists would volunteer to make available to new specialists.

This list of eligible stocks would be circulated to specialists on the equity floor for a thirty day period.[1] During that time, current specialists would be permitted to put on PACE those non-PACE stocks already allocated to them so that they may retain these stocks.[2] This would encourage the expansion of the list of stocks eligible for automatic executions through PACE.[3] New listings will continue to be allocated to specialists pursuant to the Exchange's specialist allocation and evaluation rules. The proposed program is to be in effect for a six-month pilot period commencing upon approval of this rule change.

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[1] Under the proposed rule, if a specialist did not commit his stock to the PACE system within the thirty-day period, the stock would be reallocated. The Phlx has indicated that specialist units whose stocks are reallocated under the provision will have the right to appeal to the Board of Governors the reallocation of its stock under Phlx Rule 11–1(a).

[2] Currently, if a Phlx specialist does not list one of his stocks on PACE, another specialist can challenge his competitor and take away the stock if he is willing to place the stock onto the PACE system. However, the specialist to which the stock was originally allocated can escape such a loss if he agrees to put the stock onto the Pace system when the challenge occurs.

[3] The Commission is also soliciting comments on a proposed rule change submitted by the Phlx (SR–Phlx–86–41). File SR–Phlx–86–41 is a codification of the existing policy (*see* note 1, *supra*) that permits would-be specialists to challenge specialists with non-PACE committed stocks. The exchange has indicated that the proposed non-PACE reallocation procedures contained in SR–Phlx–86–41 may be subject to further amendments depending upon the outcome of its pilot program, proposed herein.

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II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed program is to attract additional equity specialist interest and capital to the Phlx. While the Phlx currently provides a strong viable marketplace for over 895 equity issues representing over 815 companies, the proposal reflects a concrete commitment to build upon that base through the infusion of additional capital and new equity specialist members.

The direct effect of this program is to facilitate a broader, deeper marketplace on the Phlx while creating increased opportunities for inter-market competition. Moreover, program-generated incentives for putting further stocks on the Phlx's PACE system should increase automatic execution services to retail brokerage firms with corresponding benefits to public investors. Accordingly, the proposal is consistent with section 6(b)(5) of the Act in that it fosters "facilitating transactions in securities . . . [removing] impediments to and [perfecting] the mechanism of a free and open market and a national market system." The proposal also is consistent with section 11A(a)(1)(C)(ii) of the Act in that it promotes "fair competition among brokers and dealers [and] among exchange markets."

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not foresee that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposal has been reviewed and endorsed by a number of standing committees of the PHLX Board of Governors.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) By order approve such proposed rule change, or, (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to the file number in the caption above and should be submitted by March 5, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 3, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-2945 Filed 2-11-87; 8:45 am]

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[Release No. 35-24311]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

February 5, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 2, 1987, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Power System, Inc. (70-6984)

Allegheny Power System, Inc. ("Allegheny"), 320 Park Avenue, New York, New York, 10022, a registered holding company, has filed a post-effective amendment to its application-declaration pursuant to sections 6(a), 6(b), 7, 9(a), 10, 11, 12(b), and 13(b) of the Act and Rules 43, 50, 86, 87, 90 and 91 promulgated thereunder.

Allegheny proposes that the authority it was granted by order dated November 14, 1984 (HCAR No. 23480), to acquire all of the capital stock of, and to make capital contributions to, one or more new subsidiary corporations ("Newcos") in an aggregate amount not to exceed $100 million, through December 31, 1986, be extended to December 31, 1988. The Newcos are limited to investing in and servicing qualifying congeneration and small power production facilities as defined by the Public Utility Regulatory Policies Act of 1978 ("PURPA Facilities"). Any such investment by a Newco will not exceed 50% equity interest in any PURPA Facility. The Newcos will secure funds up to an aggregate of $100 million from Allegheny through: (1) The issuance and sale of common stock and/or unsecured notes to Allegheny; (2) open account advances from Allegheny; and/or (3) notes issued to nonaffiliated third parties which notes are guaranteed by Allegheny. The Newcos may secure additional funds from nonaffiliated third parties. Any PURPA business entity in which a Newco may invest may itself engage in financing through project financing, short-term and long-term borrowings from third parties or the project owners or sponsors, capital contributions from the project owners or sponsors, or through other means and in such amounts as may be deemed appropriate the project Managers.

Short-term borrowings will not exceed 3 years and the interest rates thereon will not exceed 3% over the base or prime rate. Permanent financing may be for a term of from 3 to 20 years at a rate no greater than 300 basis points over the rate for U.S. Treasury securities of a comparable term. The Newcos will conduct their operations with a limited permanent staff and may, therefore, seek supplemental management, technical, financial and legal services and personnel from Allegheny Power Service Corporation, a service subsidiary of Allegheny, and thereafter from other Allegheny subsidiaries as needed.

Providence Energy Corporation (70-7322)

Providence Energy Corporation ("Providence Energy"), 100 Weybosset Street, Providence, Rhode Island 02901, has filed an application pursuant to section 9(a)(2) and 10 of the Act requesting an order of the Commission approving Providence Energy's acquisition of all of the outstanding capital stock of North Attleboro Gas Company ("North Attleboro"), a gas utility company. The application also requests an order of the Commission under section 3(a)(1) declaring Providence Energy exempt from all of the provisions of the Act except section 9(a)(2) following the proposed acquisition of North Attleboro.

Providence Energy, a Rhode Island corporation, is a holding company, as defined under section 2(a)(7)(A) of the Act, and is an affiliate of a public utility, as defined under section 2(a)(11)(A) of the Act, by virtue of its ownership of all of the outstanding voting securities of The Providence Gas Company ("Providence Gas"), a gas utility company that is also a Rhode Island corporation. Providence Energy is exempt from all of the provisions of the Act except section 9(a)(2) pursuant to section 3(a)(1) of the Act and Rule 2 thereunder.

North Attleboro, a Massachusetts corporation, is a natural gas distribution company serving approximately 2800 customers in the Towns of North Attleboro and Plainville, Massachusetts, and selling propane to approximately 300 customers in the same areas. North Attleboro is situated within 20 miles of Providence, Rhode Island, the location of the executive offices of both Providence Energy and Providence Gas. The company is subject to the regulatory jurisdiction of the Massachusetts Department of Public Utilities with respect to rates and charges, standards of service, accounting, and other matters. It purchases the majority of its natural gas from Algonquin Gas Transmission Company and the remainder from Bay State Gas Company. As of the 12 months ending September 30, 1986, North Attleboro's total assets of $1,240,796, gross operating revenues of $1,491,947, and net income of $109,360 were 1.0%, 1.1%, and 1.6%, respectively, of those of Providence Energy Corporation on a consolidated basis. North Attleboro does not have any direct or indirect interest in any other company.

Providence Gas is Providence Energy's most significant subsidiary and only public-utility subsidiary. Providence Gas is engaged in the distribution of natural gas, serving approximately 131,500 customers in Providence and Newport, Rhode Island, and in eighteen other cities and towns in Rhode Island. It is subject to the regulatory jurisdiction of the Rhode Island Utilities Commission and the Rhode Island Division of Public Utilities and Carriers with respect to rates and charges, standards of service, accounting, and other matters. Providence Gas purchases substantially all of its natural gas supplies (other than liquefied natural gas and propane) from Algonquin Gas Transmission Company, purchases liquefied natural gas from Distrigas Corporation, and makes spot purchases of gas in various forms and from various sources throughout the year.

Providence Energy proposes to purchase all of the outstanding capital stock of North Attleboro from its sole shareholder for $1,042,991, representing the net book value of North Attleboro as at September 30, 1986. The agreement provides that if for any reason other than the default of the seller the closing of the purchase takes place after December 29, 1986, the purchase price will be increased by $50,000. The carrying out of the agreement is specifically contingent upon the receipt of necessary federal regulatory approvals. Providence Energy's present plan is to operate North Attleboro as a wholly owned public-utility subsidiary.

Providence Energy also owns all of the common stock of Newport America Corporation, a nonutility company, which in turn has six wholly owned nonutility subsidiaries. As of the twelve months ending September 30, 1986, on a consolidated basis, Newport's total assets, gross operating revenues, and net income were 6.4%, 2.9%, and (4.5%), respectively, of those of Providence Energy Corporation on a consolidated basis. For the same period, as a percentage of the combined Providence Energy-North Attleboro system, Newport's total assets, gross operating revenues, and net income, were 6.3%, 2.8%, and (4.4%), respectively.

Providence Energy asserts that it should remain an exempt holding company under section 3(a)(1) of the Act after it acquires all of the outstanding North Attleboro capital stock and has requested an order in this regard. It has agreed to file with the Commission, on or before March 1 of each year, all of the information which would otherwise be called for under Rule 2.

New England Electric System (70-7338)

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582, a registered holding company, has filed an declaration pursuant to section 6(a), 7 and 12 of the Act, and Rule 50(a)(5) promulgated thereunder.

NEES proposes to issue an additional 5,000,000 of its authorized common shares ("Additional Common Shares"), for an aggregate of 10,693,536 shares, pursuant to its Dividend Reinvestment and Common Share Purchase Plan ("Plan") through December 31, 1990. The shares available under the Plan currently come from authorized, but unissued common shares, although the Plan provides that NEES may elect to purchase shares on the open market.

The proceeds from the sale of the Additional Common Shares will be added to the general funds of NEES and be used for any or all of the following purposes: (i) Investment in subsidiaries, through loans to such subsidiaries, purchases of additional shares of their capital stock, or capital contributions, (ii) payment of NEES' indebtedness, or (iii) general purposes of NEES.

NEES may amend the Plan to provide that the purchase of newly issued comon shares brought with reinvested dividends will be 100% of the market average rather than the present 95% of the market average. NEES may also amend the Plan to provide that if the shares purchased under the Plan are bought on the open market, the price shall be the actual cost thereof. NEES has requested an exception to the competitive bidding requirements of Rules 50 pursuant to subsection (a)(5)

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with respect to the issuance and sale of Additional Common Shares through the optional cash payments provisions of the plan.

New Orleans Public Service, Inc. (70–7350)

New Orleans Public Service, Inc. ("NOPSI"), 317 Baronne Street, New Orleans, Louisiana 70112, a subsidiary of Middle South Utilities, Inc. ("Middle South"), a registered holding company, has filed an application pursuant to Section 6(b) of the Act and Rule 50(a)(5) promulgated thereunder.

NOPSI proposes to issue up to $50 million principal amount of an initial series of General and Refunding Rate Recovery Bonds ("Initial Rate Recovery Bonds"), issued under a General and Refunding ("G&R") Mortgage, pursuant to an exception from the competitive bidding requirements of Rule 50 under Subsection (a)(5) thereunder. NOPSI proposes to effect a private placement with institutional investors and may proceed to negotiate the terms and conditions of the Initial Rate Recovery Bonds.

The Initial Rate Recovery Bonds will bear interest at a fixed rate per annum estimated to be in the range 10 to 12 percent and will mature in 1997. The Initial Rate Recovery Bonds will be issued from time-to-time under a G&R Mortgage that will constitute a second mortgage lien upon substantially all of the properties and assets of NOPSI. The proceeds from the issuance and sale of Rate Recovery Bonds, including the Initial Rate Recovery Bond series proposed herein, will be applied by NOPSI for the financing or refinancing of its deferred costs associated with Unit No. 1 of System Energy Resources, Inc.'s ("SERI") Grand Gulf Nuclear Station. SERI is a subsidiary of Middle South. NOPSI may amend its application to increase the principal amount of the Initial Rate Recovery Bonds series to up to $75 million in the event that such an increase is determining by NOPSI to be appropriate in light of prevailing market conditions and NOPSI's financing requirements.

Indiana & Michigan Electric Company (70–7352)

Indiana & Michigan Electric Company ("I&ME"), One Summit Square, Fort Wayne, Indiana 46801, a subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a declaration with this Commission pursuant to section 12(c) of the Act.

I&ME proposes to redeem and refund up to 1,440,000 outstanding shares of its preferred stock, $25 par. They are redeemable at a price of $27.72 per share. I&ME proposes to redeem the preferred stock initially with short-term borrowings, for which authority has been granted by the Commission (HCAR No. 24264, December 16, 1986) and subsequently, later in 1987 or 1988, to issue one or more new series of cumulative preferred stock to replace such short-term debt.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–2946 Filed 2–11–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24312]

Filing Under the Public Utility Holding Company Act of 1935 ("Act")

February 5, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 2, 1987, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New England Electric System (70–7337)

Notice of Amendment of Agreement and Declaration of Trust. Order Authorizing Proxy Solicitation.

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01581, a registered holding company, has filed a declaration subject to sections 6(a)(2), 7(e) and 12(e) of the Act and Rules 62 and 65 thereunder.

NEES is a Massachusetts voluntary association created by an Agreement and Declaration of Trust dated January 2, 1926, as amended ("Trust"). NEES proposes certain amendments to the Trust, and requests authority to solicit proxies for approval of the amendments.

The first amendment would increase the authorized number of common shares to 150,000,000. NEES presently has 75,000,000 authorized common shares, of which 54,393,371 are issued and outstanding. The second amendment would essentially provide that in a takeover situation, all common shareholders of NEES must receive a "fair price," as defined below, for their shares, unless a majority of the directors or a certain high percentage of shareholders approves the transaction. "Fair price" means a price that equals or exceeds the highest per share price paid by a beneficial owner of 10% or more of NEES' outstanding shares (excluding a NEES employee benefit plan or dividend reinvestment plan) in acquiring any of NEES' common shares within the previous 24 months and must be paid either in cash or in the same form of consideration used to acquire the largest number of such common shares previously acquired by such beneficial owner. The third proposed amendment would limit the liability of NEES' directors and broaden the indemnification of directors and officers, as permitted by Massachusetts law.

The first proposed amendment must be authorized by vote of a majority of the common shares present or represented at the annual meeting, and then adopted by a two-thirds vote of the board of directors. The second and third amendments must be authorized by vote of a majority of the outstanding common shares and approved by two-thirds of the board of directors. NEES proposes to solicit proxies for voting on the proposed amendments and certain other matters at the annual meeting to be held on April 28, 1987. NEES has filed its proxy solicitation material and requests that the effectiveness of its application-declaration with respect to the solicitation of proxies be accelerated as provided in Rule 62.

It appearing to the Commission that NEES' declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith, pursuant to Rule 62:

It is ordered, that the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith, pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–2949 Filed 2–11–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–15568; 812–6523]

North American Security Life Insurance Co. et al.; Applications for Exemption Under the Investment Company Act of 1940

February 5, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant(s): North American Security Life Insurance Company; NASL Variable Account and NASL Financial Services, Inc.

Relevant 1940 Act sections: Exemption requested *under* section 6(c) from sections 26(a) and 27(c)(2).

Summary of application: Applicants seek an order to permit them to issue variable annuity contracts which provide for the deduction of mortality and expense risk charges from net asset value.

Filing date: November 4, 1986.

Hearing or notification of hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 3, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant(s) with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. NASL Variable Account, NASL Financial Services, Incorporated, Wood Logan and North American Security Life Insurance Company at 129 South Street, Boston, Massachusetts 02111.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Denise M. Furey (202) 272–2067 or Special Counsel Lewis B. Reich (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. The North American Security Life Insurance Company ("Company") is a stock life insurance company organized under the laws of the State of Delaware. The Company is the sponsor-depositor for the NASL Variable Account (the "Account"). The Account is a segregated investment "separate account" of the Company established in 1984 in connection with the issuance of a series of flexible payment individual deferred variable annuity contracts. The Company now intends to offer a second series of variable annuity contracts ("Contracts") through the Account. The Account is registered under the Act as a unit investment trust. NASL Financial Services, Inc., a registered broker-dealer, is the principal underwriter of the Contracts. Wood Logan, a newly organized Connecticut corporation which will be registered as a broker-dealer, has signed an agreement to become the exclusive promotional agent for the Contracts.

2. Assets of the Account will be invested in shares of NASL Series Fund, Inc. (the "Fund"), a Maryland corporation registered under the Act as a diversified open-end management investment company. The Fund is a "series company" whose capital stock is currently divided into three separate classes consisting of an equity class, a bond class and a money market class. Shares of the Fund are held under an open account arrangement without the issuance of any stock certificates. Net payments made on the Contracts will be allocated to one or more of the Account subaccounts that invest solely in a particular class of Fund shares.

3. The Company assumes mortality and expense risks under the Contracts (including the risk that the withdrawal charges will be insufficient to cover distribution expenses). The Company assumes a mortality risk by virtue of annuity rates incorporated into the Contracts that cannot be changed. It assumes an expense risk in that the annual administration fees (a $30 per Contract charge and a 0.15% charge against Account assets), which are guaranteed for the life of the Contract, are designed to reimburse the Company for actual expenses, without profit, may be insufficient to cover actual expenses. To compensate for these risks, the Company will make a daily charge of 1.25% on an annual basis of the value of the Account's assets, which will be added to the Company's general funds. The charge is allocable 0.80% for mortality risks and 0.45% for expense risks.

4. The Company does not impose an initial sales charge on purchase payments. Certain partial and full withdrawals, however, are subject to a contingent deferred sales load as a means for the Company to recover its sales expenses. Applicants state that the charge, guaranteed for the life of the Contract, is five percent of amounts withdrawn in excess of the free withdrawal amount. Ten percent of the contract value may be withdrawn annually free of the withdrawal charge and to the extent that there remain purchase payments unliquidated by previous withdrawals. Withdrawals are allocated to purchase payments on a first-in-first-out basis and there is no charge with respect to withdrawals of investment earnings once all purchase payments have been liquidated. Applicants acknowledge that the withdrawal charge will be insufficient to cover all distribution expenses. Any deficiency will be met from the Company's general corporate funds, which may include amounts derived from the mortality and expense risk charge.

5. Applicants assert that the mortality and expense risk charge is reasonable in amount as determined by industry practice with respect to comparable annuity products. This representation is based upon an analysis made by the Company of publicly available information about selected similar industry products, taking into consideration such factors as the method used in charging sales loads, any contractual right to increase charges above current levels and the existence of charges against Account assets for other than mortality and expense risks.

6. The Company has concluded that there is a reasonable likelihood that the possible use of the mortality and expense risk charge for distribution expenses has a reasonable likelihood of benefitting the Account and the contractowners.

Applicant's Conditions

1. The Company will maintain at its principal office and make available to the Commission, a memorandum setting forth in detail the products analyzed, the methodology used and the results of the comparative survey made to determine

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that the mortality and expense risk charge is within industry range.

2. The Company will maintain at its principal office and make available to the Commission, a memorandum setting forth the basis for its conclusion that there is a reasonable likelihood that the possible use of the mortality and expense risk charge for distribution expenses has a reasonable likelihood of benefiting the Account and the contractowners.

3. The Account will invest only in open-end management investment companies that undertake to have a board of directors with a disinterested majority formulate and approve any plan under Rule 12b–1 of the Act to finance distribution expenses.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–2948 Filed 2–11–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 33–6689]

Fifth Annual Government-Business Forum on Small Business Capital Formation

AGENCY: Securities and Exchange Commission.

ACTION: Notice of Forum recommendations.

SUMMARY: The Commission is publishing for informational purposes the securities law recommendations of the Fifth Annual SEC Government-Business Forum on Small Business Capital Formation (the "Forum") which was held on September 25–27, 1986. The Forum is authorized by the Small Business Investment Incentive Act of 1980, which directs the Securities and Exchange Commission to host an annual conference on issues relating to small business capital formation. The final recommendations are endorsed by the Forum participants and included in a final report which is submitted to the U.S. Congress, interested instrumentalities and agencies of government and others for appropriate consideration and action. This year's Forum recommendations were in the areas of securities regulation, financial services, liability insurance and ERISA/payroll costs. Although the recommendations contained in this release are of interest to the Commission, it is taking no position with regard to any particular recommendation at this time, but is simply taking this opportunity to notify the public of the Forum's recommendations in the securities law area.

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff or Karen M. O'Brien, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549, (202) 272–2644.

SUPPLEMENTARY INFORMATION: Pursuant to section 503 of the Small Business Investment Incentive Act of 1980,[1] the Securities and Exchange Commission is directed to host an annual conference on issues relating to small business capital formation. The Fifth Annual SEC Government-Business Forum on Small Business Capital Formation was held this year on September 25–27 in Washington, DC. The Forum brought together more than 140 small businessmen, their representatives and officials of both the Federal and local governments to discuss ways of removing governmental impediments to the capital raising ability of the small business. This year the Forum was chaired by SEC Commissioner Edward H. Fleischman.

The Forum is governed by an Executive Committee consisting of representatives of government, small business organizations, the legal and accounting professions and organizations, as well as academia. The Forum's agenda is set by the Executive Committee. While planning for this year's Forum, the Executive Committee decided upon a different focus from that of past Forums. As such, the 1986 agenda keyed in on recommendations from the recent White House Conference on Small Business held last August, as well as past Forum recommendations which have not as yet been implemented. The resulting topic areas for discussion included securities regulation, financial services, liability insurance and ERISA/payroll costs. Final recommendations in each topic area were endorsed by the Forum and have been included in a final report to the U.S. Congress. The report will also be provided to interested instrumentalities and agencies of government for appropriate consideration and action.

In connection with past Forums, the Commission and its staff have considered the recommendations and published some in the course of rulemaking proceedings. Today the Commission is taking an additional step for the first time, by publishing for informational purposes all of the securities recommendations which were endorsed by the Forum. Since the Commission only hosts the Forum, this publication should not be considered an endorsement of any of the final recommendations.

The Commission recently published a number of proposed revisions to Regulation D, see Release No. 33–6683 (January 16, 1987) [52 FR 3015]. Several of the securities recommendations from the Forum, which have been marked below with an asterisk (*) are addressed in that rulemaking proceeding.

The following are the securities recommendations made at the Forum, presented in the order upon which they were ranked in importance by the participants.

*1. Recommendation: The following changes should be made to Regulation D:

1. The limitations on the number of purchasers (as defined in Regulation D) under Rules 505 and 506 should be increased to a minimum of 75.

2. Substantial good faith compliance with the requirements of Regulation D should constitute compliance with Regulation D, especially for filing requirements, the number of purchasers, the accredited investor tests and similar technical provisions.

*3. The dollar ceiling of Rule 504 should be increased from $500,000 to $1 million.

4. The filing of a Form D should be eliminated as a condition of the safe harbor.

5. A Regulation D offering should not be integrated with later private or public offering even though the later offering may still be integratable with the earlier offering.

*6. The definition of "accredited investor" should be expanded as follows:

*a. The category of institutional investors should include savings and loan associations, investment banks, broker/dealers, venture capital firms, credit unions, and any entity which controls, is controlled by or is under common control with an institutional investor.

b. The $1 million net worth test should be reduced to $500,000 and should apply to entities as well as natural persons.

*c. The $200,000 income test (Rule 501(a)(7)) should be reduced to $100,000, should apply to the joint income of spouses, and should apply to entities as well as natural persons.

d. The insider category (Rule 501(a)(4)) should be expanded to include key employees.

[1] 94 Stat. 2275.

*e. The $150,000 investment test (Rule 501(a)(5)) should be reduced to $100,000; and

f. If at least 90% of an entity is owned by accredited investors, then it should be deemed an accredited investor unless it was organized for the specific purpose of making the investment in question.

7. Failure to comply with the disclosure requirements of Regulation D should not constitute a violation of section 5. Recourse for such a failure should be limited to Federal and State anti-fraud laws (e.g., Rule 10b–5).

*2. Recommendation: To facilitate the removal of barriers to sellers reaching potential buyers in connection with the raising of capital for small businesses, we recommend that clear rules permit certain forms of general solicitation.

These rules should permit:

a. General solicitation of those reasonably believed to be accredited investors.

b. Generic advertising by financial intermediaries with the content specified by rule even if such an intermediary's business is of a limited scope.

c. General solicitation by issuers intending to raise a small amount of capital specified by rule (perhaps $500,000) with the content of the message limited by a rule similar to Rule 134 which would permit the naming of the issuer, the type and price of the security offered, an indication of the type of business of the issuer, the amount to be raised and other such information.

Although we realize that "c." above is a significant departure from current concepts, we believe for those trying to raise a small amount of capital the current system does not work.

3. Recommendation: Congress should adopt legislation which would preempt, in interstate public and private offerings of securities, State regulation of securities registrations and exemptions. Such legislation should allow for a continued State role by permitting States to require notifications of offerings (and attendant filing fees) so as to provide a basis for continued anti-fraud enforcement activities.

*4. Recommendation: Expand and simplify the ability of small business to raise capital through initial public offerings.

A. By increasing the maximum entitlement under Regulation A from $1.5 to $5 million as currently authorized under section 3(b) of the 1933 Act.

B. By increasing the availability and usefulness of Form S–18 through the following steps:

1. The amount should be increased to $10 million;

2. The disclosure requirements should be further streamlined;

3. The SEC should make clear that Form S–1 standards are not necessarily appropriate guidelines;

4. The SEC should provide guidance (possibly by amendment of Rule 176) that size of the offering is a factor to be considered as part of a liability analysis.

5. Recommendation: Reduce or eliminate 1934 Act reporting requirements by

1. creating a second tier of issuers which would be subject to less than the full reporting requirements; and

2. providing for reduced reporting or an exemption from reporting for issuers with trading volume in their securities below certain minimums.

*6. Recommendation: The SEC should adopt a rule that specifically exempts from Section 5 of the Securities Act of 1933 the issuance by a company of securities in an aggregate amount up to $5 million pursuant to one or more plans intended primarily to compensate or reward employees, advisors and consultants, including non-employee directors for services to the company. Such exemption to be available only to companies that are not eligible to use Form S–8; the amount to be determined by the amount of cash or other tangible consideration paid or, in the case of an option, to be paid by the employee; that securities issued pursuant to such exemption be eligible for subsequent inclusion in a Form S–8 registration statement filed by the company; and that Rule 144 be amended to provide that the holding period for securities issued pursuant to the exemption shall not be extended by reason of any installment payment arrangement.

7. Recommendation: For a non-reporting company, reference to any mandated form for disclosure requirements and the requirement for audited financials should be eliminated. In substitution therefore, a requirement to disclose such narrative and financial information as the issuer reasonably believes would, when considered in light of all facts and circumstances, enable the investor to assess the merits and risks of making the particular investment should be included.

As an alternative, we recommend the SEC develop a specific disclosure form for all offerings pursuant to Regulation D (similar to Form MD–2 for limited offering in the State of Maryland) that includes clear and simple definitions of concepts such as "materiality" to aid issuers in compliance.

8. Recommendation: We recommend that FASB adopt a method to account for compensatory stock options by charging to income the good faith estimate of the fair value of the option

1. at the date of grant;

2. with a minimum (arbitrary) amount;

3. and with a maximum of (not more) than one-half of the market or fair value of the stock at the date of grant.

By the Commission.

Jonathan G. Katz,

Secretary.

February 6, 1987.

[FR Doc. 87–2941 Filed 2–11–87; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1000]

Privacy Act of 1974; Systems of Records; Annual Publication

The Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) requires agencies to publish annually in the **Federal Register** a notice of the existence and character of their systems of records. The Department of State last published the full text of its system of records at 42 FR 49699, September 17, 1977.

A document published at 51 FR 11135, April 1, 1986, further updated the systems of records. Since that time the Department proposed and implemented the alteration of STATE–49 (Family Liaison Office Centralized Date Bank of Family Members Skills and Direct Communication Network Records), May 2, 1986 (51 FR 16415), and the creation of STATE–56 (Bureau of Economic and Business Affairs Data Bank of Economic Officers), August 21, 1986 (51 FR 30020). For the convenience of the public, these system descriptions are published below.

The full text of all Department of State systems of records is available in the Department's public reading room, Room 1239, 2201 "C" Street, NW, Washington, DC 20520.

Dated: January 27, 1987.

Donald J. Bouchard,

Assistant Secretary for Administrotion.

State—49

SYSTEM NAME:

Family Liaison Office Centralized Data Bank of Family Member Skills and Direct Communication Network Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Department of State, 2201 C Street, NW., Washington, DC 20520.

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Family members of employees of U.S. foreign affairs agencies covered by the Foreign Service Act of 1980 and their sponsors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Family member's name, Social Security Account Number, country of birth, citizenship, level and date of security clearance, GS/FS rating code, work preference code, current mailing address, location code of assignment, and other biographic data including educational background, language skills, specialized training, area of expertise, and work experience; sponsor's name, Social Security Account Number, transfer eligibility date, and foreign affairs agency name and code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C 2693 and 4026.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Family Liaison Office will use this record system to assist family members of employees of U.S. foreign affairs agencies in acquiring employment and other services. Information from this system will be made available to personnel offices of other Government agencies having employment opportunities. Information may also be disclosed to multinational corporations, international organizations, business firms, foundations, foreign governments, and families at overseas posts who are interested in hiring family members to perform a task commensurate with their work experience or to utilize their services in performing voluntary work.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy, computer media.

RETRIEVABILITY:

By individual name of family member or sponsors, as well as by each of the data items listed as a category in this description.

SAFEGUARDS:

All employees of the Department of State have undergone a background security investigation. Access to the Department of State and its annexes is controlled by security guards, and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel. All records containing personal information on a computerized data base are accessible only through computer media under Department of State jurisdiction and placed in restricted areas access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct responsibility of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular ad hoc monitoring of computer usage.

RETENTION AND DISPOSAL:

These records will be maintained in the system for as long as the individual is interested in participating in the employment services and/or the Direct Communication Network provided by the Family Liaison Office. More specific information may be obtained by writing to Director, Foreign Affairs Information Management Center, Room 1239, Department of State, 2201 C Street, NW., Washington, DC 20520.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Family Liaison Office, and Chief, Personnel Management, Operating Systems Division, Department of State, 2201 C Street, NW., Washington, DC 20520.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the FLO Centralized Data Bank of Family Member Skills and Direct Communication Network Records might contain records pertaining to them should write to the Information and Privacy Coordinator, Foreign Affairs Information Management Center, Room 1239, Department of State, 2201 C Street NW., Washington, DC 20520. The individual must specify that she/he wishes the records of the FLO Centralized Data Bank of Family Member Skills and Direct Communication Network to be checked At a minimum, the individual must include: date and place of birth; current mailing address and zip code; signature.

RECORD ACCESS PROCEDURE:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Information and Privacy Coordinator, Foreign Affairs Information Management Center (address above).

CONTESTING RECORD PROCEDURES:

(See above).

RECORD SOURCE CATEGORIES:

The individual family member for all data elements with the exception of the current mailing address, location code of assignment, and sponsors's transfer eligibility date, all of which will be transferred automatically from the sponsor's Official Personnel File.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

STATE—56

SYSTEM NAME:

Bureau of Economic and Business Affairs Data Bank of Economic Officers.

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Bureau of Economic and Business Affairs, Executive Office, Department of State, 2201 C Street NW., Washington, DC 20520.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Foreign Service and Civil Service employees of the Department of State and other U.S. Foreign Affairs Agencies who have economics as a primary or secondary skill code; all International Relations Officers General (IROGs).

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name; Social Security Account Number; current position, grade, organization functional skill, position pay class, transfer eligibility date, diplomatic title, tour type, arrival date; languages and competency levels; employment history; economic courses taken at the university level; and Bid List information including organization, location, position, position title, position pay class, language designation, officer preference, status of position in personnel status of position in the Bureau of Economic and Business Affairs, and comments submitted by employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Foreign Service Act of 1980, as amended (22 U.S.C. 3901) and Civil Service Reform Act of 1978 (5 U.S.C. 1101).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Bureau of Economic and Business Affairs will use this record system in the assignment, reassignment, transfer, detail, and training of those individuals with economics as a primary or secondary skill code. Information from this system will be made available to personnel offices of Government agencies having employment opportunities. Information may also be disclosed to multinational corporations, international organizations, business firms, foundations, and foreign governments who are interested in hiring an officer to perform a task commensurate with his/her work experience.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy, computer media.

RETRIEVABILITY:

By individual name or social security number, as well as by each of the data items listed as a category in this description.

SAFEGUARDS:

All employees of the Department of State have undergone a background security investigation. Access to the Department of State and its annexes is controlled by security guards, and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel. All records containing personal information on a computerized data base are accessible only through computer media under Department of State jurisdiction and placed in restricted areas access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct responsibility of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular ad hoc monitoring of computer usage.

RETENTION AND DISPOSAL:

Biographic data may be maintained in the system for as long as the individual is employed by a U.S. Foreign Affairs Agency. Information pertaining to particular assignments will be maintained for the duration of the current bid cycle. More specific information may be obtained by writing to Director, Foreign Affairs Information Management Center, Room 1239, Department of State, 2201 C Street NW., Washington, DC 20520.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Bureau of Economic and Business Affairs, Department of State, 2201 C Street, NW., Washington, DC 20520.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the EB Data Bank of Economic Officers might contain records pertaining to them should write to the Information and Privacy Coordinator, Foreign Affairs Information Management Center, Room 1239, Department of State, 2201 C Street, NW., Washington, DC 20520. The Individual must specify that she/he wishes the records of the EB Data Bank of Economic Officers to be checked. At a minimum, the individual must include: date and place of birth; current mailing address and zip code; signature.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Information and Privacy Coordinator, Foreign Affairs Information Management Center (address above).

CONTESTING RECORD PROCEDURES:

(See above).

RECORD SOURCE CATEGORIES:

The individual employee and the Department's central personnel database.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 87-3008 Filed 2-11-87; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Clackamas County, OR

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Clackamas County, Oregon. The project would reconstruct the interchange on Interstate 205 in the vicinity of Sunnyside Road.

FOR FURTHER INFORMATION CONTACT: Elton Chang, Environmental Coordinator and Safety Programs Engineer, Federal Highway Administration, Equitable Center, Suite 100, 530 Center NE, Salem, Oregon 97301, Telephone: (503) 399-5749.

SUPPLEMENTARY INFORMATION: The proposed project is needed to increase the capacity of the existing Sunnyside Road Interchange on I-205.

Possible alternatives include rebuilding and upgrading the existing Sunnyside Road Interchange, doing nothing, considering several different alignments, including alternates using Sunnybrook Road, and also improvements in mass transit. The proposed improvement would provide for the existing and projected traffic demands and a safe and efficient highway meeting modern design standards.

The proposed project was developed over a two-year period by a citizen/business advisory group. The project was also reviewed by an agency technical advisory committee. Both groups recommended the project to the Oregon Transportation Commission as part of the 6-year Highway Plan Update.

There will be no formal scoping meeting for the project; however, scoping will occur through a series of meetings with a citizen/business advisory group and agency technical advisory committee through the Winter and Spring of 1987.

Comments or questions concerning this proposed action, and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs" apply to this program.)

Issued on: January 29, 1987.

Elton H. Chang,

Environmental Coordinator/Safety Program Engineer, Oregon Division, Salem, Oregon.

[FR Doc. 87-2969 Filed 2-11-87; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Tarrant County, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Tarrant County, Texas.

FOR FURTHER INFORMATION CONTACT: W.L. Hall, Jr., P.E., District Engineer, Federal Highway Administration, Federal Office Building, Room 826, 300 East Eighth Street, Austin, Texas 78708, Telephone: (512) 482-5988.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas State Department of Highways and Public Transportation (DHT), intends to prepare an environmental impact statement (EIS) on a proposal to expand

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the IH 35W/IH 30 interchange in Tarrant County, Texas.

Previously, documentation efforts included the preparation and approval of a negative environmental declaration for a proposed project on IH 35W which encompassed this interchange and its approaches.

Preparation of the environmental impact statement responds to the decision made by the United States Court of Appeals for the Fifth Circuit in Citizen Advocates for Responsible Expansion, Inc. ("I–CARE"), et al. v. Elizabeth Dole, as Secretary of the United States Department of Transportation et al. which requires the preparation of an environmental impact statement for the proposed interchange modification and expansion project on IH 35W from Spur 280 to Hattie Street and on IH 30 from University Drive to Riverside Drive.

The environmental impact statement will assess a variety of alternatives for a multi-lane, multi-level, directional interchange with full control of access. The study will include the analysis of feasible alternatives to expansion of the existing elevated freeway structure on the west approach to the interchange. A no-build alternative will also be assessed.

The existing interchange connects two major interstate freeways, serving traffic with nationwide origins and destinations. Located in the City of Fort Worth (Inc.) (1980 pop. 385,164), the interchange also serves commuter traffic to the City of Dallas (Inc.) (1980 pop. 904,078) as well as to many other destinations within the Dallas-Fort Worth Consolidated Metropolitan Area (1980 pop. 2,930,530).

Traffic volumes have increased considerably, and the existing facility is inadequate to handle present and future traffic needs. Average annual daily traffic for 1985 along the approaches to the existing interchange ranges from 80,000 to 100,000 vehicles per day. Congestion causes a serious breakdown in all directions, requiring a reconstruction of this interchange and its approaches.

The proposed expansion will safely and efficiently provide for the transportation needs of the area. It will alleviate congestion and delays to better serve traffic, with the result that access to housing, businesses, employment, schools, and churches will be improved.

Because of the difficulty in predicting availability of funds, the DHT has not yet decided whether to use State or Federal funds to finance construction of this project.

Coordination with city planning groups will continue as needed. A public meeting was held on August 14, 1986, concerning possible alternatives, and additional public meetings will be held in 1987 within the vicinity of the project. A public hearing or hearings will follow at a later date. Adequate notice will be given through the news media concerning the times and locations of formal public involvement proceedings.

Prior to the onset of construction, the environmental impact statement and records of the associated public involvement process is subject to review by the Court. Construction of the proposed project is anticipated within the next ten years.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

W.L. Hall, Jr.,

District Engineer, Austin, Texas.

[FR Doc. 87–2970 Filed 2–11–87; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration

Hazardous Materials; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closes March 13, 1987.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Buildings, 400 7th Street SW., Washington, DC.

NEW EXEMPTIONS

Application No	Applicant	Regulation(s) affected	Nature of exemption thereof
9713–N	Acadia Industries, Inc., Crowley, LA	49 CFR 173.182, 173.217, 173.245b	To manufacture, mark and sell non-DOT specification flexible polypropylene bulk bags of approximately 2,000 pounds capacity for shipment of corrosive solids and oxidizers. (Modes 1, 2, 3.)
9714–N	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE	49 CFR 173.359	To authorize the shipment of "Bidrin" II insecticide, a poison B liquid, in DOT specification high density polyethylene plastic containers. (Modes 1, 2, 3.)
9715–N	Pennwalt Corp., Buffalo, NY	49 CFR 173.154(a)(12)	To authorize shipment of dicumyl peroxide, dry, and organic peroxide, solid, in quantities of up to 40 lbs inside polyethylene bags overpacked in a 12965 fiberboard box. (Modes 1, 3.)
9716–N	Corndyne I, Inc., West Liberty, OH	49 CFR 173.302(a)(1), 173.304(a), (d), 175.3	To manufacture, mark and sell non-DOT specification cylinders for the shipment of certain flammable and nonflammable gases. (Modes 1, 2, 3, 4, 5.)
9717–N	Mobay Corp., Kansas City, MO	49 CFR 173.119(b), 175.3	To authorize shipment of certain flammable liquids in containers up to 1 gallon capacity overpacked in a DOT Specification 21C fiber drum. (Modes 1, 4.)
9718–N	Bigmer Schmid-Laurent, Ivry Sur Seine, France	49 CFR 172.101, 173.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B	To authorize shipment of certain compressed gases classed as flammable and nonflammable in non-DOT specification portable tanks comparable to DOT Specification 51 portable tanks. (Mode 4.)
9719–N	Great Southern Airways, Orlando, FL	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), Part 107, Appendix B	To authorize carriage of various Class A, B and C explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment. (Mode 4.)

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on November 5, 1986.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 87–3001 Filed 2–11–87; 8:45 am]

BILLING CODE 4910-60-M

Hazardous Materials; Applications for Renewal or Modification of Exemptions or Applications To Become Party to an Exemption

AGENCY: Research and Special Program Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing a public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATE: Comment period closes February 27, 1987.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Buildings, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
2000–X	Union Carbide Corp., Danbury, CT	2000
2709–X	United Technologies Corp., San Jose, CA	2709
3109–X	HR Textron, Inc., Pacoima, CA	3109
3109–X	General Dynamics Corp., East Camden, AR	3109
3353–X	Kerr-McGee Chemical Corp., Oklahoma City, OK	3353
4338–X	Stauffer Chemical Co., Westport, CT	4338
4453–X	Pacco, Inc., Torrino, WA	4453
5022–X	United Technologies Corp., San Jose, CA	5022
5600–X	Genus, Inc., San Marcos, CA	5600
5600–X	Ozark-Mahoning Co., Tulsa, OK	5600
6126–X	Rhone-Poulenc Inc., Monmouth Junction, NJ	6126
6126–X	Acete Chemical Co., Inc., Flushing, NY	6126
6232–X	U.S. Department of Defense, Washington, DC	6232
6267–X	Berry Plastics, Inc., d.b.a. Imperial Plastics, Evansville, IN	6267
6614–X	Continental Chemical Co., Sacramento, CA	6614
6614–X	Esboo Chemical, Redwood City, CA	6614
7063–X	Twin Lake Chemical Co., Lockport, NY	7063
7413–X	Chilton Metal Products Division, Chilton, WI	7413
7451–X	Union Carbide Corp., Danbury, CT	7451
7476–X	Thompson Tank & Manufacturing Co., Inc., Long Beach, CA	7476
7505–X	Platte Chemical Co., Greeley, CO	7505
7721–X	Applied Companies, San Fernando, CA	7721
7879–X	Gearhart Industries, Inc., Fort Worth, TX	7879
8099–X	Union Carbide Corp., Danbury, CT	8099
8196–X	Allied-Signal Inc., Morristown, NJ	8196
8196–X	Eurotainer S.A., Paris, France	8196
8196–X	Societe Auxiliaire de Transports et d' Industries, Paris, France	8196
8220–X	Applied Companies, San Fernando, CA	8220
8221–X	Applied Companies, San Fernando, CA	8221
8230–X	G. Fredrick Smith Chemical Co., Columbus, OH (see footnote 1)	8230
8232–X	Eurotainer, S.A., Paris, France	8232
8232–X	Societe Auxiliaire de Transports et d' Industries	8232
8236–X	Manager, Advanced Project Mesa, AZ (see footnote 2)	8236
8308–X	Del-Med, Inc., So. Plainfield, NJ	8308
8451–X	Ethyl Corp., Baton Rouge, LA	8451
8510–X	Dow Chemical Co., Freeport, TX	8510
8539–X	Aero Taxi-Rockford, Inc., Rockford, IL	8539
8551–X	Streamline Manufacturing, Inc., dba Huber Mfg. Guilport, MS	8551
8569–X	U.S. Department of Defense, Falls Church, VA	8569
8569–X	General Dynamics Corp., Fort Worth, TX	8569
8723–X	Pacific Motor Transport, Inc., Tenino, WA (see footnote 3)	8723
8723–X	Pacific Powder Co., Tenino, WA (see footnote 4)	8723
8815–X	Atlas Powder Co., Dallas, TX	8815
8877–X	Mallinckrodt, Inc., Paris, KY	8877
8877–X	General Chemical Corp., Morristown, NJ	8877
8901–X	Hopkins Agricultural Chemical Co., Madison, WI	8901
8901–X	Douglas Chemical Co., Liberty, MO	8901
8901–X	Great Lakes Chemical Corp., El Dorado, AK	8901
8910–X	Canber Products, Ltd., Waterloo, Ontario, Canada	8910
8924–X	Kane Closures Inc., Westfield, NJ	8924
8965–X	Pressed Steel Tank Co., Inc., Milwaukee, WI	8965
8995–X	Worum Chemical Co., Saint Paul, MN	8995
9001–X	Chesterfield Cylinder Co., Inc., Huntingdon Valley, PA	9001
9001–X	T.I. Chesterfield, Ltd., Derbyshire, England	9001
9011–X	Van Leer Containers, Inc., Chicago, IL	9011
9064–X	Corning Glass Works (Corning, NY (see footnote 5))	9064
9095–X	Worthington Cylinder Corp., Columbus, OH (see footnote 6)	9095
9239–X	Kane Closures Inc., Westfield, NJ	9239
9265–X	Gann Flying Service, Houston, TX	9265
9281–X	Jet Research Center, Inc., Arlington, TX (see footnote 7)	9281
9338–X	Allied-Signal Inc., Morristown, NJ	9338
9348–X	Duracell, Inc., Bethel, CT	9348
9357–X	Dynatrans, Aktiebolag, Sweden	9357
9367–X	Stone Container Corp., Arlington Heights, IL	9367
9374–X	Poly Processing Co., Inc., Monroe, LA	9374
9374–X	Poly Cal Plastics, Inc., French Camp, CA	9374
9408–X	Ethyl Corp., Baton Rouge, LA	9408
9413–X	EM Science, Cincinnati, OH	9413
9430–X	Bondico, Inc., Jacksonville, FL	9430
9440–X	Hoover Group, Inc., Beatrice, NE (see footnote 8)	9440
9458–X	Conference of Radiation Control Program Directors, Frankfort, KY	9458
9679–X	Michlin Diazo Products Corp., Dearborn, MI	9679

[1] To authorize a 2,900 ml size teflon bottle for shipment of certain oxidizers.

[2] To authorize additional inflator configurations classed as flammable solid 6.

[3] To renew and to authorize an additional Fruehauf trailer for shipment of blasting agents.

[4] To renew and to authorize an additional Fruehauf trailer for shipment of blasting agents.

[5] To authorize various modification to composite type packaging configuration for the shipment of corrosive liquids, n.o.s.

[6] To reinstate exemption to authorize shipment of certain flammable gas, n.o.s. in DOT Specification 4BA, 4BW and 4E cylinders to be retested every 12 years rather than every 5 years.

[7] To authorize passenger carrying aircraft as additional mode of transportation.

[8] To authorize an optional design of a polyethylene portable tank in metal frame from shipment of certain corrosive and flammable liquids and an oxidizer.

Application No.	Applicant	Parties to exemption
5022–P	McDonnell Douglas Astronautics Co., Huntington Beach, CA	5022
6416–P	Tri-River Chemical Co., Inc.,	6416
8526–P	The Glidden Co., Atlanta, GA	8526
8526–P	Transheild Trucking, Inc., West Chicago, IL	8526
8554–P	J.H. Van Amburgh Explosives, Inc., Dallas, TX	8554
8582–P	Illinois Central Gulf Railroad Co., Chicago, IL	8582
8995–P	Industrial Polymer Corp., Orange, CA	8995
9262–P	NL McCullough/NL Industries, Inc., Houston, TX	9262
9426–P	General American Transportation Corp., Chicago, IL	9426
9672–P	Ethyl Corp., Baton Rouge, LA	9672

This notice of receipt of applications for renew of exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued at Washington, DC, on February 6, 1987.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 87–3002 Filed 2–11–87; 8:45 am]

BILLING CODE 4910-60-M

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Saint Lawrence Seaway Development Corporation

Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 2:00 p.m., March 19, 1987, at the Corporation's Administration Headquarters, Room 5424, 400 Seventh St. SW., Washington, DC. The agenda for this meeting will be as follows: Opening Remarks, Consideratin of Minutes of Past Meeting; Review of Programs; Business; Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than March 16, 1987, Joan C. Hall, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street SW., Washington, DC 20590; 202/366–0118.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on February 9, 1987.

Joan C. Hall,

Advisory Board Liaison.

[FR Doc. 87–3009 Filed 2–11–87; 8:45 am]

BILLING CODE 4910–61–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: February 5, 1987.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0175.
Form Number: IRS Form 4626 and 4626–W
Type of Review: Revision.
Title: Computation of Minimum Tax-Corporations (4626); and Estimated Alternative Minimuim Tax Worksheet-Corporations (4626–W).

OMB Number: 1545–0280.
Form Number: IRS Form RCMW 1–709.
Type of Review: Reinstatement.
Title: Congressional Consent Form.

Clearance Office: Garrick Shear (202) 566–6150, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Office of the Secretary

OMB Number: 1505–0075
Form Number: TFAC 1, 5, 23, and 27.
Type of Review: Reinstatement.
Title: Foreign, Cuban and Iranian Assets Control Regulations; Transaction Control Regulations; Foreign Funds Control Regulations.

Clearance Officer: Bruce H. Cameron (202) 376–0410, Office of Foreign Assets Control, Room 511, 1331 G Street NW., Washington, DC 20220.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Financial Management Service

OMB Number: 1510–0024.
Form Number: TFS 1503.
Type of Review: Reinstatement.
Title: Return Notice of Claim Against the United States for the Proceeds of a Government Check.

Clearance Officer: Douglas C. Lewis, Financial Management Service, Room 100, 3700 East West Highway, Hyattsville, MD 20782.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Bureau of Engraving and Printing

OMB Number: 1520–0001.
Form Number: BEP 5283.
Type of Review: Extension.
Title: Owner's Affidavit of Partial Destruction of Mutilated Currency.

OMB Number: 1520–0001.
Form Number: BEP 5287.
Type of Review: Extension.
Title: Claim for Amounts Due in Case of Deceased Owner of Mutilated Currency.

Clearance Officer: Louis Haltom (202) 447–0195, Bureau of Engraving and Printing, Room 320–05A, Engraving and Printing Annex, 14th and D Streets SW., Washington, DC 20228.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Office.

[FR Doc. 87–2951 Filed 2–11–87; 8:45 am]

BILLING CODE 4810–25–M

[Supplement to Department Circular—Public Debt Series—No. 2–87]

Treasury Notes, Series S–1990

February 4, 1987.

The Secretary announced on February 3, 1987, that the interest rate on the notes designated Series S–1990, described in Department Circular—Public Debt Series—No. 2–87 dated January 29, 1987, will be 6½ percent. Interest on the notes will be payable at the rate of 6½ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87–2927 Filed 2–11–87; 8:45 am]

BILLING CODE 4810–40–M

Internal Revenue Service

Commissioner's Advisory Group; Open Meeting

The first meeting of the 1987 Commissioner's Advisory Group will be held on March 9 & 10, 1987 at the IRS Austin Service Center. The Service Center is located at 3651 South Interregional Highway, Austin, Texas. The meeting will begin at 8:00 a.m. on Monday, March 9 and 8:00 a.m. on Tuesday, March 10. The agenda will include the following topics:

Monday, March 9, 1987

Discuss Commissioner Advisory Group (CAG) charter
Answer CAG Questions on IRS Organization
Overview of Service Center Operations and Tour of Facility ("Pipeline" and "Non-Pipeline" Operations)
Service Center Correspondence (Follow-Up from last Advisory Group Meeting)

Budget Presentation

Tuesday, March 10, 1987

Resume Tour of Facility (Compliance Operations)
Tax Reform Update
Advisory Group Feedback on Charter; General Question/Answer Discussion; Future Agenda Topics.

Due to the Service Center's security requirements and limited conference space, notification of intent to attend the meeting must be made with Robert Hilgen, Acting Executive Secretary, no later than March 2, 1987. Mr. Hilgen may be reached on (202) 566–4143 (not toll free).

If you would like to have the Advisory Group consider a written statement, please call or write Robert Hilgen, Acting Executive Secretary, Internal Revenue Service, 1111 Constitution Avenue NW., Room 3014, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Robert Hilgen, Acting Executive Secretary, (202) 566–4143 (not toll-free).

Lawrence B. Gibbs,

Commissioner.

[FR Doc. 87–2995 Filed 2–11–87; 8:45 am]

BILLING CODE 4830–01–M

Delegations of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegations of authority.

SUMMARY: The delegation orders listed below are revised to reflect the transfer of appropriate authorities, resulting from the abolishment of the Office of the Assistant Commissioner (Support and Services), to the Assistant Commissioners (Human Resources) and (Planning, Finance and Research). In addition, Delegation Order No. 156 is revised to delegate authority to special agents and Internal Security inspectors to disclose or authorize disclosure of return information pursuant to IRC 6103(i)(3)(B)(i) and to include instructions under IRC 6103(m)(5), which permits disclosures to the Department of Health and Human Services of individuals who have defaulted on student nursing loans.

Order No.	Title
5	Emergency Order of Succession and Delegation of Authority.
27	Authority to Administer Oaths Required by Law in Connection with Employment in the Federal Service.
39	Tours of Duty and Overtime.
46	Authority for Management and Disposal of Records.
47	Authority to Authorize or Approve Attendance at Meetings at Government Expense.
92	Delegation of Authority in Training and Development Matters.
100	Furnishing Special Statistical Studies, Compilations, Return and Return Information, Training and Training Aids.
102	Delegation of Authority in Labor-Management Relations Matters.
103	Premium Pay for Administratively Uncontrollable Overtime.
104	Absence, Leave and Carry-Over of Annual Leave.
105	Delegation of Procurement Authority.
156	Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents.
161	Authority to Affix the Seal of the Department of the Treasury.
164	Authority to Prescribe Identification Media.
208	Delegation of Authority in the Performance of Commercial Activities.

The delegation orders are on file and may be reviewed in the IRS Freedom of Information (FOI) Reading Room, located at 1111 Constitution Ave. NW., Washington, DC 20024, Room 1545; or interested parties may contact the Disclosure Officer at the appropriate IRS regional office.

EFFECTIVE DATE: January 28, 1987.

FOR FURTHER INFORMATION CONTACT: William E. Hamilton, OP:EX:D, 1111 Constitution Ave. NW., Room 1603, Washington, DC 20024, (202) 566–4263 (Not a Toll-Free Number).

Martha M. Seeman,

Chief, Information and Productivity Improvement Branch.

The following delegation orders and Exhibits are revised: 5, 27, 39, 46, 47, 92, 100, 102, 103, 104, 105, 156, 161, 164, and 208.

Dated: January 12, 1987.

Approved: James I. Owens.

James I. Owens,

Deputy Commissioner.

[FR Doc. 87–2994 Filed 2–11–87; 8:45 am]

BILLING CODE 4830–01–M

[Delegation Order No. 162 Rev. 4]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: This Order is revised to delegate authority to execute returns under 26 CFR 301.6020–1(b) to Collection Support function managers, GS–9 and above. The text of the delegation order appears below.

EFFECTIVE DATE: January 8, 1987.

FOR FURTHER INFORMATION CONTACT: Grant A. Newman, OP:C:O, Room 7539 1111 Constitution Avenue NW., Washington, DC 20224, (202) 566–4993.

Grant A. Newman,

Director, Office of Field Operations.

Order No. 162 (Rev. 4)

Effective date: 1–8–87

Authority to Execute Returns

The authority granted to the Commissioner of Internal Revenue, by 26 CFR 301.6020–1(b) and 26 CFR 301.7701–9 to execute returns required by any internal revenue law or regulation made thereunder when the person required to file such return fails to do so, is delegated to:

1. Revenue Agents;
2. Tax Auditors;
3. Revenue Officers, GS–9 and above;
4. Collection Supports function managers, GS–9 and above;
5. Automated Collection Branch managers, GS–9 and above; and
6. Service Center Collection Branch managers, GS–9 and above.

The authority delegated herein may not be redelegated.

To the extent that the authority previously exercised consistent with this Order may require ratification it is hereby affirmed and ratified.

Delegation Order No. 162 (Rev. 3), effective December 14, 1983 is superseded.

Dated: January 8, 1987.

Approved:

James I. Owens,

Deputy Commissioner.

[FR Doc. 87–2993 Filed 2–11–87; 8:45 am]

BILLING CODE 4830–01–M

BEST COPY AVAILABLE

Sunshine Act Meetings

VOL 52 ISS 29 FE 12 1987 UMI

Sunshine Act Meetings

Federal Register
Vol. 52, No. 29
Thursday, February 12, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:23 p.m. on Wednesday, February 4, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) accept the bid submitted by Union Boulevard National Bank, Wichita, Kansas, a newly-chartered national bank, for the purchase of certain assets of and the assumption of the liability to pay deposits made in Boulevard State Bank, Wichita, Kansas, which was expected to be closed by the State Bank Commissioner for the State of Kansas on Thursday, February 5, 1987, and (2) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(B)(1) accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for a purchase and assumption transaction, or (2) in the event no acceptable bid for a purchase and assumption transaction is submitted, accept the highest acceptable bid for an insured deposit transfer transaction which may be submitted, or (3) in the event no acceptable bid for either type transaction is submitted, make funds available for the payment of the insured deposits of the closed bank, with respect to each of the following: (a) Market National Bank, Denver, Colorado, which was expected to be closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, February 5, 1987; (b) Sunbelt National Bank, Dallas, Texas, which was expected to be closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, February 5, 1987; and (c) State Bank of Allison, Allison, Iowa, which was expected to be closed by the Superintendent of Banking for the State of Iowa on Thursday, February 5, 1987.

At that same meeting, the Board of Directors also considered the application of Sherman County Bank, Loup City, Nebraska, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in Dannebrog Credit Union, Dannebrog, Nebraska, a non-FDIC-insured institution, and for consent to establish the sole office of Dannebrog Credit Union as a branch of Sherman County Bank.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clark, (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 553b(c)(6), (c)(8), (c)(9)A)(ii), and (c)(9)(B)).

Dated: February 9, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-3087 Filed 2-10-87; 11:22 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, February 17, 1987, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to acquire certain assets and assume deposit liabilities:

Commercial Credit Bank, Baltimore, Maryland, an insured State nonmember bank, for consent to purchase certain assets of and assume the deposit liabilities of Commercial Credit Thrift, Inc., Edina, Minnesota; Commercial Credit Plan, Inc., Salt Lake City, Utah; Commercial Credit Industrial Bank, Denver, Colorado; Grand Junction Commercial Credit Industrial Bank, Grand Junction, Colorado; Pueblo Commercial Credit Industrial Bank, Pueblo Colorado; and Montrose Commercial Credit Industrial Bank, Montrose, Colorado, all non-federally insured institutions.

Application for consent to merge:

First National Bank in Walsenburg, Walsenburg, Colorado, for consent to merge, under its charter and title, with First Walsenburg Industrial Bank, Walsenburg, Colorado, a non-FDIC-insured institution.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,896-SR
Surety Bank and Trust Company, Wakefield, Massachusetts
Case No. 46,897-NR
San Francisco National Bank, San Francisco, California
Case No. 46,898-SR
The Farmers State Bank, Protection, Kansas
Case No. 46,899-SR
State Bank of Herndon, Kansas, Herndon, Kansas
Case No. 46,900-SR
Princeton State Bank, Princeton, Missouri
Case No. 46,901-SR
Citizens Bank, Tillar, Arkansas
Case No. 46,902-SR
Citizens State Bank of Fulda, Fulda, Minnesota
Case No. 46,903-SR
The Des Plaines Bank, Des Plaines, Illinois
Case No. 46,907-L
The First National Bank of Midland, Midland, Texas
Case No. 46,910-L
The First National Bank of Midland, Midland, Texas
Case No. 46,912-SR
Strong's Bank, Dodgeville, Wisconsin
Case No. 46,913-SR
Golden Pacific National Bank, New York City (Manhattan), New York

Memorandum regarding purchase agreements.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: February 10, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-3130 Filed 2-10-87; 3:18 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552), notice is hereby given that at 2:30 p.m. on Tuesday, February 17, 1987, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names of locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,891-L
Park Bank of Florida, St. Petersburg, Florida
Case No. 46,914-NR
Penn Square Bank, National Association, Oklahoma City, Oklahoma

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: February 10, 1987.

Federal Deposit Insurance Corporation

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-3131 Filed 2-10-87; 3:18 pm]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, February 18, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Matters relating to the Plans administered under the Federal Reserve System's employee benefits program.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications schedules for the meeting.

Dated: February 10, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-3126 Filed 2-10-87; 3:10 pm]

BILLING CODE 6210-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:00 a.m., Wednesday, February 18, 1987.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Pipeline Accident Report:* Texas Eastern Pipeline Ruptures and Fires on April 27, 1985, and on February 21, 1986, Beaumont and Lancaster, Kentucky.
2. *Aircraft Accident Report:* Simmons Airlines, Flight 1746, Alpena, Michigan, March 13, 1986.

FOR MORE INFORMATION CONTACT: Ray Smith (202) 382-6525.

Ray Smith,

Federal Register Liaison Officer.

February 10, 1987.

[FR Doc. 87-3088 Filed 2-10-87; 11:51 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Monday, February 23, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Monday, February 23

2:00 p.m.
Briefing on Consideration of Emergency Planning Rule Changes to Deal with Lack of Governmental Cooperation in Offsite Emergency Planning (Public Meeting)

ADDITIONAL INFORMATION: Briefing on Surry Incident (Public Meeting) scheduled for February 23 *moved* to February 24.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING) (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634-1410.

Robert B. McOsker,

Office of the Secretary.

February 9, 1987.

[FR Doc. 87-3032 Filed 2-9-87; 4:33 pm]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of February 16, 1987:

Open meetings will be held on Tuesday, February 17, 1987, at 9:30 a.m., and Wednesday, February 18, 1987, at 10:00 a.m., in Room 1C30. A closed meeting will be held on Wednesday,

February 18, 1987, following the 10:00

fund managers, foreign broker-dealer activity

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February 18, 1987, following the 10:00 a.m. open meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Peters, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, February 17, 1987, at 9:30 a.m., will be:

The Commission is hosting a roundtable concerning the growing internationalization of the securities markets. Due to the increasing movement towards global trading markets for certain securities and the significant flow of investments across national borders, the Commission believes that is appropriate to review these developments in the roundtable discussions. In the morning session, scheduled for 9:30 a.m. to 12:00 noon EST, the participants will include representatives from the securities industry and various securities markets, including the American, Amsterdam, London, New York, and Toronto Stock Exchange, the National Association of Securities Dealers, Inc., and the International Securities Clearance Corporation. The topics will include international secondary market trading mechanisms, the availability of market information, transnational surveillance sharing, international clearance and settlement systems, possible regulatory adaptations, and barriers to the entry of foreign markets.

In the afternoon session, scheduled for 2:00 p.m. to 4:30 p.m., the participants will be representatives of the securities bar, investment firms, and a money management firm. Topics will relate to primary offering of U.S. securities abroad, the nature of global investments from the perspective of an equity fund manager, foreign broker-dealer activity in the U.S., and adaptations of or effects of Rules 10b–6 and 10b–7 under the Securities Exchange Act of 1934. For further information, please contact William M. Harter, Jr. at (202) 272–2414 or Christine A. Sakach at (202) 272–2418.

The subject matter of the open meeting scheduled for Wednesday, February 18, 1987, at 10:00 a.m., will be:

1. Consideration of whether to issue an order with regard to System Energy Resources, Inc. ("SERI") a public utility subsidary of Middle South Utilities, Inc. a registered holding company under the Public Utility Holding Company Act of 1935: (1) Authorizing amendments proposed by SERI to its Articles of Incorporation to create a new class of preferred stock, to split its common stock, and to provide for a deviation from the Commission's earnings coverage standard; (2) authorizing SERI's proposed issuance and sale of up to $200 million of preferred stock by negotiated public offerings or private placements; (3) denying the Arkansas Public Service Commission's request for a hearing; (4) reserving jurisdiction over the fees and expenses and the terms and conditions associated with the issuance and sale of preferred stock and the basis for the common stock split; and (5) authorizing the Division of Investment Management to release jurisdiction over such fees, expenses, terms and conditions, and the basis for the common stock split under delegated authority. For further information, please contact John Brandenburg at (202) 272–7341.

2. Consideration of whether to issue a release proposing for comment Securities Exchange Act Rules 15Ca1–1 through 15Cc1–1 and revisions to Rules 15b2–2 and Form BD in order to implement the registration and notice requirements of the Securities Exchange Act of 1934 ("Act") as amended by the Government Securities Act of 1986. The Act requires government securities broker-dealers to register or file notice with the Commission of their government securities activities. The proposed rules prescribe the form and information government securities broker-dealers must file with the Commission in order to register or file notice. For further information, please contact Lynne G. Masters at (202) 272–2848.

The subject matter of the closed meeting scheduled for Wednesday, February 18, 1987, following the 10:00 a.m. open meeting, will be:

Settlement of administrative proceedings of an enforcement nature.

Institution of administrative proceedings of an enforcement nature.

Institution of injuctive action.

Opinion.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Potel at (202) 272–2014.

Jonathan G. Katz,

Secretary.

February 9, 1987.

[FR Doc. 87–3103 Filed 2–10–87; 12:44 pm]

BILLING CODE 8010–01–M

STATE JUSTICE INSTITUTE

TIME AND DATE: 9:00–4:00 p.m., February 21, 1987.

PLACE: State Justice Institute, 120 South Fairfax Street, Alexandria, VA 22314.

STATUS: The meeting will be closed from 9:00 a.m. until 2:00 p.m. to discuss matters exempted from public disclosure pursuant to 5 U.S.C. 552b(c).

MATTERS TO BE CONSIDERED:

Portions Open to the Public:

Discussion of program priorities, conditions and limitations on awards and applications and review procedures.

Portions Closed to the Public:

Discussion of personnel policies and practices of the agency.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, telephone 703–628–6100, Executive Director, State Justice Institute, 120 South Fairfax Street, Old Town Alexandria, Virginia 22314.

David I. Tevelin,

Executive Director.

[FR Doc. 87–3141 Filed 2–10–87; 3:50 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register

Vol. 52, No. 29

Thursday, February 12, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

NUCLEAR REGULATORY COMMISSION

State of Illinois; Staff Assessment of Proposed Agreement Between the NRC and the State of Illinois

Correction

In FR Doc. 86–29382 beginning on page 3503 in the issue of Wednesday, February 4, 1987, make the following correction:

On page 3514, the last four pages of the document were inadvertently omitted, beginning in the description of the qualifications of Tim Runyon. The omitted material, including the complete description of Mr. Runyon's qualifications, reads as follows:

Tim Runyon: Nuclear Safety Inspector. Assists the Chief, Waste & Transportation Management.

Training:

A.S.–Illinois Central College–Radiologic Technology

"Hazardous Materials Transportation Course," ISP, Illinois State Policy Academy, Springfield, Illinois (1985)

"Review of USDOT Regulations," US NRC, Hanford, Washington (1985)

"Evaluation and Control of Ionizing Radiation," OSHA, Argonne National Laboratory (1981)

"Emergency Response for Radiological Accidents," REECO, Las Vegas, Nevada (1981)

Experience:

1985–Present: Illinois Department of Nuclear Safety, Office of Environmental Safety

1979–1985: Illinois Department of Nuclear Safety, Office of Radiation Safety

Stephen B. Shafer: Nuclear Safety Inspector II. Performs inspections and health physics Surveys.

Training:

Graduate Classes (non-degree) University of Illinois (1984)

B.S.–Western Illinois University (1983)–Geophysics

Hazardous Materials Transportation Enforcement Course, Illinois State Police, Springfield, Illinois (1986)

Radiological Emergency Response Operations Course, FEMA, Nevada (1986)

Short Course: Uranium and Thorium: A Perspective on the Hazard (1986)

Experience:

1986–Present: Illinois Department of Nuclear Safety

1984–1984: Illinois Department of Nuclear Safety, Summer Intern

Eric Schwing: Attorney. Provides legal counsel to the Director and technical staff in low-level radioactive waste management.

Training:

Ph.D. Candidate (presently enrolled), Michigan State University, Resource Development/Environmental Toxicology

Doctor of Laws (1982), Thomas M. Cooley Law School

B.A.—Michigan State University (1976) —Chemistry

Experience:

1986–Present: Illinois Department of Nuclear Safety

1978–1986: Michigan Department of Public Health

1973–1978: Michigan State University

1971–1972: William Beaumont Geneal Hospital (U.S. Army)

Gregory P. Crouch: Chief, Division of Radioecology. Directs the Office's environmental surveillance program.

Training:

M.P.H.—University of Minnesota (1986) —Environmental Health

M.S.—Purdue University (1977) —Bionucleonics/Health Physics

B.S.—Purdue University (1975) —Biology

"Seminar on the Transportation of Nuclear Materials," US NRC, Springfield, Illinois (1983)

"Radiological Emergency Response Course," US DOE/FEMA, Nevada Test Site (1983)

"Inspection Procedures Course," US NRC, Atlanta, Georgia (1982)

Experience:

1986–Present: Illinois Department of Nuclear Safety

1981–1984: Illinois Department of Nuclear Safety

1977–1978: Indiana University Medical Center, Assistant Radiation Safety Officer

1976–1977: Purdue University, Radiological Services, Graduate Assistant

Gregory J. Shott: Nuclear Safety Supervisor. Supervises the Department's—Mobile Radiochemistry Laboratory.

Training:

M.S.—University of Michigan (1985), Fisheries

B.S.—University of New Hampshire (1981), Biology

Experience:

1986–Present: Illinois Department of Nuclear Safety

1985–1986: Environmental & Chemical Sciences, Inc.; Environmental Scientist

1984: Lawrence Livermore National Laboratory; Research Associate, Environmental Intern Program

1981–1984: University of Washington, Laboratory of Radiation Ecology, Research Assistant

David D. Ed: Assistant Manager, Office of Environmental Safety.

Training:

B.S.—University of Illinois, Urbana (1971)

—Chemistry

"Radon Training for State Personnel," US EPA (1986)

"Comprehensive Health Physics," Rockwell International (1985)

"Biological Effects of Ionizing Radiation," Harvard University, School of Public Health (1982)

"Dose Projection, Accident Assessment and Protective Action Decision Making for Radiological Emergency Response," US NRC, FEMA (1980)

"Environmental Radiation Surveillance," Georgia Institute of Technology (1977)

"Radiological Emergency Response Operations Training," US NRC, ERDA (1977)

"Environmental Source Term Modeling," University of Chicago, Argonne National Laboratory (1971)

Experience:

1980–Present: Illinois Department of Nuclear Safety

1973–1980: Illinois Department of Public Health

1972–1973: Illinois Environmental Protection Agency

Abdul Khalique: Nuclear Safety Scientist I. Plans, implements and participates in radioanalytical programs.

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Training:
Ph.D.—University of Birmingham, England (1976), Analytical Chemistry
M.S.—University of Karachi, Pakistan (1967), Chemistry
B.S.—University of Karachi, Pakistan (1964)
Quality Control Course, University of Business Administration, University of Karachi, Pakistan 1964)

Experience:
1986–Present Illinois Department of Nuclear Safety
1981–1986: Department of Pharmacology, Southern Illinois University School of Medicine
1975–1980: Glaxo Laboratories (Pakistan), Ltd.
1968–1970: Opal Laboratories, Ltd. (Pakistan)

Melanie A. Hamel: Health Physicist. Functions as a health physics specialist in the environmental monitoring division.

Training:
B.S.—University of Lowell, MA (1977), Health Physics
University of Lowell, MA (1977), Environmental Monitoring and Surveillance, Health Physics Certification Review, Medical Health Physics
"Environmental Law and the Citizen," Sangamon State University, Springfield, Illinois
"Post-Accident Radiation Assessment," Northwestern University, Illinois
"Radiation Protection Instrumentation," Harvard University, Boston, MA
"Radon Training Session for State Personnel," US EPA

Experience:
1982–Present: Illinois Department of Nuclear Safety
1977–1981: Yankee Atomic Electric Company
1975: University of Lowell, Research Reactor Facility, Health Physics Technician

Michael V. Madonia: Nuclear Safety Associate. Performs technical duties concerning nuclear facility monitoring and environmental radiation control.

Training:
B.S.—University of Illinois
—Nuclear Engineering, Radiation Protection and Shielding
"Air Sampling for Radioactive Materials," Oak Ridge Associated Universities; Oak Ridge, Tennessee (1986)
"Personal Computer Applications in Health Physics," TMS, Inc.; Boston, MA (1986)
Nuclear-General Employee Training (NGET), Commonwealth Edison, Chicago, Illinois (1985)
"Radiation Detection and Measurement—Advanced Course," Eberline Analytical, Albuquerque, New Mexico (1985)
"Fundamentals of Ground Water Contamination," Geraghty & Miller, Chicago, Illinois (1985)

Experience:
1985–Present: Illinois Department of Nuclear Safety
1983–1984 (Summers): Illinois Department of Nuclear Safety

Richard Walker: Nuclear Policy Analyst. Performs review and analysis of Federal and State regulations.

Training:
Ph.D—Purdue University (1976)
—Sociology (Research Methods and Statistics)
M.S.—Purdue University (1974)
—Sociology
B.S.—Marietta College (1972)
—Sociology
Environmental Radiation Surveillance, Harvard University, Massachusetts (1985)
"Fundamentals of Radiation Safety," Radiation Safety Associates (1985)

Experience:
1985–Present: Illinois Department of Nuclear Safety
1978–1984: Chairman, Department of Sociology, Blackburn College, Carlinville, Illinois
1976–1978: Department of Sociology Muhlenberg College, Allentown, Pennsylvania

Teresa A. Adams: Nuclear Policy Analyst. Performs staff functions coordinating and assisting with the direction of office programs.

Training:
B.A.—Wellesley College (1981)
—German
Massachusetts Institute of Technology, Department of Urban Studies and Planning (1982–1984)
University of Hanover, West Germany; Department of Planning and Architecture (1981–1982)
Additional coursework in decision analysis, fundamentals of radiation protection, hazardous waste minimization

Experience:
1985–Present: Illinois Department of Nuclear Safety
1984: Parliamentary Research Service; Bonn, West Germany
1982–1984: Worked on a variety of projects dealing with policy development and dispute resolution in environmental issues

Paul E. Seidler: Nuclear Policy Analyst. Responsible for implementing the Illinois public participation plan, also performs as liaison with local government groups.

Experience:
M.A.—University of Chicago (1986)
—Public Policy
B.A.—University of Illinois (1983)
—Political Science, Communications Studies
Urban & Regional Information Systems Association, 1986 Annual Conference (1986)

Experience:
1986–Present: Illinois Department of Nuclear Safety
1985–1986: University of Chicago, Office of the Comptroller
1985–1985: Illinois Bureau of the Budget
1984–1985: Compass Health Plans
1984–1984: U.S. Senator Paul Simon
1982–1982: Creative Research Associates

Reference: Illinois Program Statement, (Section II.C.1.a), "Low-Level Waste Management," (Section II.C.1.b) "Sheffield Low-Level Waste Disposal Facility," Section IV.B, "Low-Level Radioactive Waste Management Program," and Appendices 5 and 9.

21. *Conditions Applicable to Special Nuclear Material, Source Material, and Tritium.* Nothing in the State's regulatory program shall interfere with the duties imposed on the holder of the materials by the NRC, for example, the duty to report to the NRC, on NRC prescribed forms (1) transfers of special nuclear material, source material, and tritium; and (2) periodic inventory data.

The State's regulations do not prohibit or interfere with the duties imposed by the NRC on holders of special nuclear material owned by the U.S. Department of Energy or licensed by NRC, such as the responsibility of licensees to supply to the NRC reports of transfer and inventory.

Reference: 32 ILL. Adm. Code 310.10.

22. *Special Nuclear Material Defined.* The definition of special nuclear material in quantities not sufficient to form a critical mass, as contained in the Illinois regulations, is uniform with the definition in 10 CFR Part 150.

Reference: 32 ILL. Adm. Code 310.20, Definition of Special Nuclear Material in Quantities Not Sufficient to Form a Critical Mass.

Administration

23. *Fair and Impartial Administration.* The Illinois statute and regulations provide for administrative and judicial review of actions taken by the Department of Nuclear Safety.

Reference: 32 Ill. Adm. Code Parts 200, 310.90, 310.110, 330.500, Part 400.

24. *State Agency Designation.* The Illinois Department of Nuclear Safety has been designated as the State's radiation control agency.

References: Enabling statute for Illinois Department of Nuclear Safety, Ill. Rev. Stat. 1985, ch. 127, par. 63b17.

25. *Existing NRC Licenses and Pending Applications.* The Department has made provision to continue NRC licenses in effect temporarily after the transfer of jurisdiction. Such licenses will expire on the date of expiration specified in the NRC license.

With respect to the radioactive materials covered by the NRC license issued to Kerr-McGee Chemical Corporation for the West Chicago Rare Earth's Facility (Docket No. 40–2061–SC) the NRC staff has determined that the radioactive materials at the facility are most appropriately treated as thorium mill tailings, i.e., byproduct materials are defined in Section 11e.(2) of the Atomic Energy Act of 1954, as amended, whereas the thorium-bearing materials recovered from off-site residential properties and sewer treatment plant in West Chicago and stored at the Kerr-McGee facility are source material. The former material [11e(2) by product material] will not be subject to the Agreement and NRC will retain regulatory jurisdiction. The latter material will be regulated by IDNS when the Agreement becomes effective.

Radiologically contaminated materials in Kress Creek and in Reed-Keppler Park, West Chicago have also been determined by NRC staff to be source material. The former is the subject of an Atomic Safety and Licensing Board (ASLB) Proceeding [Docket 40–2061–SC (ASLBP No 84–502–01–SC)]. In the Kress Creek proceeding, in which Kerr-McGee and the People of the State of Illinois are parties, the ASLB found that the presence of this material in Kress Creek and the West Branch of the DuPage River probably resulted from the conduct of an NRC (and AEC) licensed activity at the West Chicago Rare Earths Facility. The ASLB, however, declined to require clean-up of the Creek and River based upon its analysis of the hazard posed by the radiologically contaminated material. The NRC staff has appealed that decision to the Atomic Safety and Licensing Appeal Board, but a decision on appeal has not yet been issued. Jurisdiction over source material in Kress Creek and the West Branch of the DuPage River will be relinquished to Illinois when the Agreement becomes effective. At that time, the NRC staff will request termination of the ASLB proceeding. Jurisdiction over the source material in Reed-Keppler Park will also be relinquished to Illinois when the Agreement becomes effective.

With respect to the Sheffield low-level radioactive waste disposal site, jurisdiction will be relinquished by the NRC to Illinois when the Agreement becomes effective. At that time, NRC staff will request termination of the ASLB proceeding [Docket 27–39–SC (ASLB No. 78–374–01–OT)].

Reference: 32 ILL. ADM. CODE 330.360.

26. *Relations With Federal Government and Other States.* There should be an interchange of Federal and State information and assistance in connection with the issuance of regulations and licenses or authorizations, inspection of licensees, reporting of incidents and violations, and training and education problems.

The proposed agreement declares that the State will use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that the State's program will continue to be compatible with the Commission's program for the regulation of like materials.

Reference: Proposed Agreement between the State of Illinois and the Nuclear Regulatory Commission, Article VI.

27. *Coverage, Amendments, Reciprocity.*

The proposed Illinois agreement provides for the assumption of regulatory authority over the following categories of materials within the State:

(a) Byproduct material, as defined by Section 11e(1) of the Atomic Energy Act, as amended.

(b) Source materials.

(c) Special nuclear materials in quantities not sufficient to form a critical mass.

(d) The land disposal of source, by-product and special nuclear material received from other persons.

Reference: Proposed Agreement, Article I.

Provision has been made by Illinois for the reciprocal recognition of licenses to permit activities within Illinois of persons licensed by other jurisdictions. This reciprocity is like that granted under 10 CFR Part 150.

Reference: 32 ILL. ADM. CODE 330.900.

28. *NRC and Department of Energy Contractors.*

The State's regulations provide that certain NRC and DOE contractors or subcontractors are exempt from the State's requirements for licensing and registration of sources of radiation which such persons receive, possess, use, transfer, or acquire.

Reference: 32 ILL. ADM. CODE 310.30.

III. Staff conclusion

Section 274d of the Atomic Energy Act of 1954, as amended, states;

The Commission shall enter into an agreement under subsection b of this section with any State if:

(1) The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

(2) The Commission finds that the State program is in accordance with the requirements of subsection o, and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed amendment.

The staff has concluded that the State of Illinois meets the requirements of Section 274 of the Act. The State's statutes, regulations, personnel, licensing, inspection and administrative procedures are compatible with those of the Commission and adequate to protect the public health and safety with respect to the materials covered by the proposed agreement. Since the State is not seeking authority over uranium milling activities, subsection o, is not applicable to the proposed Illinois agreement.

Dated at Bethesda, Maryland, this 24th day of December 1986.

For the U.S. Nuclear Regulatory Commission.

G. Wayne Kerr,

Director, Office of State Programs.

Appendix A—Proposed Agreement Between the United States Nuclear Regulatory Commission and the State of Illinois for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant To Section 274 of the Atomic Energy Act of 1954, as Amended

WHEREAS, the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7 and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1) and (2) of the Act, source materials and special nuclear materials in quantities not sufficient to form a critical mass; and,

WHEREAS, the Governor of the State

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of Illinois is authorized under Illinois Revised Statutes, 1985, ch. 111 ½, par. 216b and ch. 111 ½, par. 241–19 to enter into this Agreement with the Commission; and,

WHEREAS, the Governor of the State of Illinois certified on _____ that the State of Illinois (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and,

WHEREAS, the Commission found on _____ that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and,

WHEREAS, the State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

WHEREAS, the Commission and the State recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to this Agreement; and,

WHEREAS, this Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

NOW, THEREFORE, IT IS HEREBY AGREED between the Commission and the Governor of the State, acting in behalf of the State as follows:

Article I

Subject to the exceptions provided in Articles II, IV and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7 and 8, and Section 161 of the Act with respect to the following:

A. Byproduct material as defined in section 11e.(1) of the Act;

B. Source materials;

C. Special nuclear materials in quantities not sufficient to form a critical mass; and,

D. The land disposal of source, byproduct and special nuclear material received from other persons.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with rspect to regulation of:

A. The construction and operation of any production or utilization facility;

B. The export from or import into the United States of byproduct, source or special nuclear material, or of any production or utilization facility;

C. The disposal into the ocean or sea of byproduct, source or special nuclear waste materials as defined in regulations or orders of the Commission;

D. The disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission; and,

E. The extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material.

Article III

This Agreement may be amended, upon application by the State and approval by the Commission, to include the additional area specified in Article II, paragraph E, whereby the State can exert regulatory control over the materials stated therein.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under subsection 161 b. or i. of the Act to issue rules, regulations or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will use its best efforts to cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible. The State will use its best efforts to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of like materials. The State and the Commission will use their best efforts to keep each other informed of proposed changes in their respective rules and regulations and licensing, inspection and enforcement policies and criteria and to obtain the comments and assistance of the other party thereon.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any Agreement State. Accordingly, the Commission and the State agree to use their best efforts to develop appropriate rules, regulations and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act. The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act.

Article IX

This Agreement shall become effective on _____, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at _____, in triplicate, this _____ day of _____.

For the United States Nuclear Regulatory Commission.

Chairman

For the State of Illinois.

Governor

[FR Doc. 86–29382 Filed 12–30–86; 8:45 am]

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federal register

Thursday
February 12, 1987

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3280

Manufactured Home Construction and Safety Standards; Final Rule

24 CFR Chapter XX (Parts 3200 to 3299)—Department of Housing and Urban Development—Office of the Assistant Secretary

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3280

[Docket No. R-87-1274; FR-2137]

Manufactured Home Construction and Safety Standards

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: HUD is revising its Manufactured Home Construction and Safety Standards to incorporate current and more appropriate reference standards and to delete specific entrance location and placement requirements for water, drain, gas, and electric utility connections for manufactured homes.

EFFECTIVE DATE: August 11, 1987. The incorporation by reference of new publications listed in the supplementary information section is designated by a dagger (†). These publications are approved by the Director of the **Federal Register** as of August 11, 1987.

FOR FURTHER INFORMATION CONTACT: Mark W. Holman, Manufactured Housing and Construction Standards Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9156, Washington, DC 20410–8000. Telephone (202) 755–6590. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

The National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401–27 (Act), authorized the Secretary of Housing and Urban Development (Secretary) to establish and amend the Federal manufactured home construction and safety standards, 24 CFR Part 3280 (Standards). The stated purposes of the Act are "to reduce the number of personal injuries and deaths and the amount of insurance costs and property damage resulting from manufactured home accidents and to improve the quality and durability of manufactured homes." 42 U.S.C. 5401. Changes to the reference standards and to the utility entrance and drain location requirements are being adopted in accordance with these purposes. In accordance with the Act, these rules will take effect 180 days from the date of this publication. 42 U.S.C. 5403(c).

A. Advance Notice of Proposed Rule Making

The Department published an Advance Notice of Proposed Rule Making (ANPRM) on June 7, 1979, soliciting comment concerning revision of the Standards (44 FR 32711). Generally, the industry responded that cost effectiveness and clarity of objectives should be the Department's primary concerns in evaluating the need for change in the safety and durability areas cited in the ANPRM. Consumers and associated groups expressed the view that manufactured homes lacked the qualities necessary to make the home as durable and safe as they desire.

B. Proposed Rule

On August 16, 1983, the Department published a proposed rule revising all Subparts of the Standards (48 FR 37136). The comment period was held open until 30 days after a Cost Impact Analysis was made available for public inspection. On March 9, 1984, a Notice of the availability of the Cost Impact Analysis was published (49 FR 8948). Accordingly, the comment period closed on April 9, 1984. The Department received 258 comments, many of them extensive.

The Department expedited processing of the formaldehyde standard and certain portions of the standards relating to fire safety. A final rule with respect to those issues was published on August 9, 1984 (49 FR 31996). Comments concerning those issues were discussed in the preamble to the 1984 final rule.

The Department is now proceeding to final rulemaking on the referenced standards and utility entrance requirements. The comments relating to these issues are discussed below. The Department is continuing its review of the remaining comments and will take appropriate action on additional proposed standards when the analysis is complete.

C. The National Manufactured Home Advisory Council

The Act provides for a National Manufactured Home Advisory Council comprised of 24 members divided equally among the industry, government agencies, and consumer groups. The Act directs the Secretary to consult, to the extent feasible, with the Advisory Council before establishing, amending, or revoking any standard (42 U.S.C. 5404(b)).

In September 1983, the Council was convened to review the proposed revisions that had been published in August 1983. Subcommittees of the Council met in workshop sessions for three days and then presented reports that were voted upon by the full Council. Several changes were made to the rule based upon the Council's recommendations. (Copies of the Advisory Council subcommittee reports are part of the Department's rulemaking record and are available for public inspection.)

The Advisory Council supported updating the referenced standards and making the changes to the utility entrance requirements that are contained in this final rule.

II. The Final Rule

A. Referenced Standards

On December 18, 1975, the Department published a revised final rule establishing the Standards (40 FR 58752). The Standards, which are codified at 24 CFR Part 3280, first became effective on June 15, 1976. Since that time the referenced standards have not been updated.

In general, more recent editions of the referenced standards have been published by the various issuing organizations. Others are no longer in general use. In a few cases, the sponsorship of a particular referenced standard has been transferred to a different organization. As a result of these changes, the Department has concluded that it is appropriate to update the referenced standards. Public comments generally supported the use of the most recent and most commonly used referenced standards. Further, OMB Circular A–119 directs Federal agencies to use and participate in the development of voluntary Standards whenever appropriate. Negative comments will be addressed in the section of this preamble dealing with specific referenced standards changes.

The following is a table showing the referenced standards incorporated by this final rule. The standards are listed by organization, and the table indicates the section of the manufactured home construction and safety standard in which each standard is referenced. An asterisk to the left of a standard means that this final rule is incorporating a later edition than the one indicated in the proposed rule. A dagger (†) appears before each new IBR approved by the Director of the Federal Register on August 11, 1987.

24 CFR Chapter XX (Parts 3200 to 3299)—Department of Housing and Urban Development—Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Standards by Issuing Organization	*24 CFR Section*
Aluminum Association, 818 Connecticut Avenue, NW., Washington, DC 20006:	
*AA–1982, Aluminum Construction Manual, Sec. 1, Specifications for Aluminum Structures	3280.304(b)(1)
American Architectural Manufacturers Association, 2700 River Road, Suite 118, Des Plains, IL 60018:	
*†AAMA 1701.2–1985, Primary Window and Sliding Glass Door Voluntary Standard for Utilization in Manufactured Housing.	3280.403(b) 3280.403(e) 3280.403(e)(2) 3280.404(b)
*†AAMA 1702.2–1985, Swinging Exterior Passage Doors Voluntary Standard for Utilization in Manufactured—Housing.	3280.405(b) 3280.405(e) 3280.405(e)(2)
*†AAMA 1704–1985, Voluntary Standard Egress Window Systems for Utilization in Manufactured—Housing	3280.404(b) 3280.404(e)
American Institute of Steel Construction, 400 N. Michigan Avenue, Chicago, IL 60611:	
*†AISC S326–1978, Specification for the Design, Fabrication, and Erection of Structural Steel for Buildings	3280.304(b)(1) 3280.305(i)(1)
American Iron and Steel Institute, 1000 16th Street, NW., Washington, DC 20036	
*†AISI–1980, The New and the Old Specification for the Design of Cold-Formed Steel Structural Members	3280.304(b)(1) 3280.305(i)(1)
AISI–1974, Stainless Steel Cold-Formed Structural Design Manual	3280.304(b)(1)
AISI–1973, Manual for Structural Applications of Steel Cables for Buildings	3280.304(b)(1)
American National Standards Institute, 1430 Broadway, New York, N.Y. 10018:	
ANSI A58.1–1982, Building Code Requirements for Minimum Design Loads in Buildings and Other Structures	3280.304(b)(1)
ANSI A112.14.1–1975, Backflow Valves	3280.604(a)
*†ANSI A112.18.1M–1979, Finished and Rough Brass Plumbing Fixture Fittings	3280.604(a)
†ANSI A112.19.1M–1979, Enameled Cast Iron Plumbing Fixtures	3280.604(a)
†ANSI A112.19.2(M)–1982, Vitreous China Plumbing Fixtures	3280.604(a)
*†ANSI A112.19.3–1976, Stainless Steel Plumbing Fixtures	3280.604(a)
*†ANSI/ASME A112.19.4(M)–1984, Porcelain Enameled Formed Steel Plumbing Fixtures	3280.604(a)
*†ANSI A112.19.5–1979, Trim for Water Closet Bowls, Tanks, and Urinals	3280.304(b)(1)
*†ANSI/AHA A135.4–1982, Basic Hardboard	3280.304(b)(1)
*†ANSI/AHA A135.5–1982, Prefinished Hardboard Paneling	3280.304(b)(1)
*†ANSI/AHA A135.6–1984, Hardboard Siding	3280.304(b)(1)
*†ANSI/AITC A190.1–1983, Structural Glued Laminated Timber	3280.304(b)(1)
*†ANSI A208.1–1979, Mat-Formed Wood Particleboard	3280.604(a)
*†ANSI/ASME B1.20.1–1983, Pipe Threads, General Purpose (Inch), adopted 25 October 1984	3280.703 3280.705(e) 3280.706(d)
ANSI B16.3–1977, Malleable Iron Threaded Fittings	3280.604(a)
ANSI B16.4–1977, Cast Iron Threaded Fittings	3280.604(a)
ANSI B16.15–1978, Cast Bronze Threaded Fittings 125 and 250 Pound	3280.604(a)
*ANSI B16.18–1984, Cast Copper Alloy Solder-Joint Pressure Fittings	3280.604(a)
ANSI B16.22–1980, Wrought-Copper and Copper Alloy, Solder-Joint Pressure Fittings	3280.604(a)
*ANSI B16.23–1984, Cast Copper Alloy Solder-Joint Drainage Fittings, DWV	3280.604(a)
*ANSI B16.26–1983, Cast Copper Alloy Fittings for Flared Copper Tubes	3280.604(a)
ANSI B16.29–1980, Wrought Copper and Wrought Copper Alloy Solder-Joint Drainage Fittings—DWV	3280.604(a)
†ANSI B36.10–1979, Welded and Seamless Wrought Steel Pipe	3280.703 3280.705(b)(1) 3280.706(b)(1)
ANSI C72.1–1972, Household Automatic Electric Storage Type Water Heaters	3280.707(d)
ANSI C73.17–1972, Dimension of Caps, Plugs, and Receptacles, Grounding Type	3280.803(g)
*ANSI Z21.1–1982, Household Cooking Gas Appliances	3280.703
*†ANSI Z21.5.1–1982, Gas Clothes Dryers Vol. 1, Type 1 Clothes Dryers	3280.703
*ANSI Z21.10.1–1984, With Addendas ANSI Z21.10.1a–1985 and ANSI Z21.10.1b–1986, Gas Water Heaters Vol. 1, Storage Water Heaters with Input Ratings of 75,000 BIU per hour or Less.	3280.703 3280.707(d)(2)
*ANSI Z21.15–1979, With Addenda 15a–1981 and 15b–1984, Manually Operated Gas Valves	3280.703
*ANSI Z21.19–1983, Refrigerators Using Gas Fuel	3280.703
*ANSI Z21.20–1979, With Addenda 20a–1979 and 20b–1982, Automatic Gas Ignition Systems and Components	3280.703
*ANSI Z21.21–1974, With Addenda 21a–1977 and 21b–1981, Automatic Valves for Gas Appliances	3280.703
†ANSI Z21.22–1979, Relief Valves and Automatic Gas Shutoff Devices for Hot Water Supply Systems	3280.804(a) 3280.703
*ANSI Z21.23–1980, Gas Appliance Thermostats	3280.703
*ANSI Z21.24–1981, With Addenda 24a–1983 and 24b–1985, Metal Connectors for Gas Appliances	3280.702(a)(17) 3280.703
*ANSI Z21.40.1–1981, With Addenda 1a–1982, Gas-Fired Absorption Summer Air Conditioning Appliances	3280.703 3280.714(a)(2)
*ANSI Z21.47–1983, Gas-Fired Central Furnaces [Except Direct Vent and Separated Combustion System Central Furnaces].	3280.703
*†ANSI Z21.64–1978, Direct Vent Central Furnaces	3280.703

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24 CFR Chapter XX (Parts 3200 to 3299)—Department of Housing and Urban Development—Office of the Assistant Secretary for Housing—Federal Housing Commissioner—Continued

Standards by Issuing Organization	*24 CFR Section*
*†ANSI Z34.1–1982, For Certification—Third-Party Certification Program	3280.403(e)(1) 3280.405(e)(1)
*ANSI Z97.1–1984, Safety Performance Specifications and Methods of Test for Safety Glazing Materials Used in Buildings.	3280.114(b) 3280.304(b)(1) 3280.403(d)(1) 3280.604(a) 3280.607(b)(3)(iii)
*ANSI Z124.1–1980, Plastic Bathtub Units	3280.604(a)
*†ANSI Z124.2–1980, Plastic Shower Receptors and Shower Stalls	3280.604(a)
*†ANSI Z124.3–1980, Plastic Lavatories	3280.604(a)
*†ANSI Z124.4–1983, Plastic Water Closets, Bowls and Tanks	3280.604(a)
*ANSI Z223.1–1984, National Fuel Gas Code	3280.703
American Plywood Association, P.O. Box 11700, Tacoma, WA 98401:	
*APA–1985, APA Design/Construction Guide, Residential and Commercial	3280.304(b)(1)
*APA–1984, Design and Fabrication of All-Plywood Beams, Suppl. 5	3280.304(b)(1)
*†APA–1985, Plywood Design Specification	3280.304(b)(1)
*APA–1984, Design and Fabrication of Plywood Lumber Beams, Suppl. 2	3280.304(b)(1)
*APA–1985, Design and Fabrication of Plywood Curved Panels, Suppl. 1	3280.304(b)(1)
*APA–1982, Design and Fabrication of Plywood Sandwich Panels, Suppl. 4	3280.304(b)(1)
*APA–1984, Design and Fabrication of Plywood Stressed Skin Panels, Supp. 3	3280.304(b)(1)
Air Conditioning and Refrigeration Institute, 1815 Ft. Myer Dr., Arlington, VA 22209:	
*†Standard for Unitary Air Conditioning Equipment 210–81, With 84 Addendum	3280.511(b) 3280.703 3280.714(a)(1)
*†Standard for Air-Source Unitary Heat Pump Equipment, 240–81 With 1984 Addendum	3280.703 3280.714(a)(1)(ii) 3280.714(a)(1)(iii)
American Society of Heating, Refrigeration and Air Conditioning Engineers, 1791 Tullie Circle, NE, Atlanta, GA 30329:	
†ASHRAE, 1981, Handbook of Fundamentals	3280.508 3280.511
American Society of Mechanical Engineers, 345 E. 47th St., New York, NY 10017:	
ASME Boiler and Pressure Vessel Code, Section VIII, Division 1, "Rules for Construction of Pressure Vessels"—1974.	3280.704(b)(2)
American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103:	
*†ASTM A 53–83, Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless.	3280.604(a) 3280.703
*ASTM A 74–82, Standard Specification for Cast Iron Soil Pipe and Fittings	3280.604(a)
*ASTM A 120–83, Standard Specification for Pipe, Steel, Black and Hot Dipped Zinc-Coated (Galvanized) Welded and Seamless For Ordinary Uses.	3280.604(a) 3280.703
*ASTM A 539–83, Standard Specification for Electric-Resistance-Welded Coiled Steel Tubing for Gas and Fuel Oil Lines.	3280.703 3280.705(b)(4)
*ASTM B 42–84, Standard Specification for Seamless Copper Pipe, Standard Sizes	3280.604(a) 3280.703
*†ASTM B 43–84, Standard Specification for Seamless Red Brass Pipe, Standard Sizes	3280.604(a) 3280.705(b)(1)
*ASTM B 88–83a, Standard Specification for Seamless Copper Water Tube	3280.604(a) 3280.703 3280.705(b)(3) 3280.706(b)(3)
*ASTM B 251–84, Standard Specification for General Requirements for Wrought Seamless Copper and Copper-Alloy Tubes.	3280.604(a) 3280.703
*ASTM B 280–83, Standard Specification for Seamless Copper Tube for Air Conditioning and Refrigeration Field Service.	3280.703 3280.705(b)(3) 3280.706.(b)(3)
*ASTM B 306–83, Standard Specification for Copper Drainage Tube (DWV)	3280.604(a)
*ASTM C 36–84, Standard Specification for Gypsum Wallboard	3280.304(b)(1)
*ASTM C 564–70 (82), Standard Specification for Rubber Gaskets for Cast Iron Soil Pipe and Fittings	3280.604(a) 3280.611(d)(5)
*†ASTM D 781–68 (73), Standard Test Methods for Puncture and Stiffness of Paperboard, and Corrugated and Solid Fiberboard.	3280.304(b)(1) 3280.305(g)(4)
*†ASTM D 2016–74 (83), Standard Test Methods for Moisture Content of Wood	3280.304(b)(1)
*ASTM D 2235–81, Standard Specification for Solvent Cement for Acrylonitrile-Butadiene-Styrene (ABS) Plastic Pipe and Fittings.	3280.604(a)
*ASTM D 2564–80, Standard Specification for Solvent Cement for Poly (Vinyl Chloride) (PVC) Plastic Pipe and Fittings.	3280.604(a)
*†ASTM D 2661–84, Standard Specification for Acrylonitrile-Butadiene-Styrene (ABS) Plastic Drain, Waste and Vent Pipe an1 Fittings.	3280.604(a)
*ASTM D 2665–82, Standard Specification for Poly (Vinyl Chloride) (PVC) Plastic Drain, Waste, and Vent Pipe and Fittings.	3280.604(a)

24 CFR Chapter XX (Parts 3200 to 3299)—Department of Housing and Urban Development—Office of the Assistant Secretary for Housing—Federal Housing Commissioner—Continued

Standards by Issuing Organization	*24 CFR Section*
*ASTM D 2846–82, Standard Specification for Chlorinated Poly (Vinyl Chloride) (CPVC) Plastic Hot and Cold Water Distributicn Systems.	3280.604(a)
*ASTM D 3309–83, Standard Specification for Polybutylene (PB) Plastic Hot and Cold Water Distribution Systems	3280.604(a)
*†ASTM D 3311–82, Standard Specification for Drain, Waste, and Vent (DWV) Plastic Fitting Patterns	3280.604(a)
*ASTM E 84–84, Standard Test Method for Surface Burning. Characteristics of Building Materials	3280.203(a)
*ASTM E 162–83, Standard Test Method for Surface Flammability of Materials Using a Radiant Heat Energy Source.	3280.203(a)
*†ASTM E 773–83, Standard Test Method for Seal Durability of Sealed Insulating Glass Units	3280.403(d)(2)
*†ASTM E 774–84a, Standard Specification for Sealed Insulating Glass Units	3280.403(d)(2)
*†ASTM F 628–84, Standard Specification for Acrylonitrile-Butadiene-Styrene (ABS) Plastic Drain, Waste, and Vent Pipe Having a Foam Core.	3280.604(a)
Cast Iron Soil Pipe Institute, 1499 Chain Bridge Road, McLean, VA 22101:	
*†CISPI–301–85, Standard Specification for Hubless Cast Iron Soil Pipe and Fittings for Sanitary and Storm Drain, Waste, and Vent Piping Applications.	3280.604(a)
*†CISPI–310–85, Specification for Cast Iron Soil Pipe Institute's Approved Coupling for Use in Connection with Hubless Cast Iron Soil Pipe and Fittings for Sanitary and Storm Drain, Waste, and Vent Piping Applications.	3280.604(a)
*†CISPI–HSN–85, Specification for Neoprene Rubber Gaskets for Hub and Spigot Cast Iron Soil Pipe and Fittings	3280.604(a) 3280.611(d)(5)
Federal Specification, General Services Administration, Specifications Branch, Room 6039, GSA Building, 7th & D Sts., SW., Washington, DC 20407:	
*L–P–320–B–1973, With 1977 Amendment 1, Pipe and Fittings, Plastic (Polyvinyl Chloride (PVC), Drain, Waste and Vent (DWV).	3280.604(a)
*L–P–322B–1973 With 1977 Amendment 1, Pipe and Fittings Plastic (Acrylonitrile-Butadiene-Styrene) ABS Drain, Waste and Vent, DWV).	3280.604(a)
*FF–N–105B–1971 With 1977 Amendment 4, Nails, Brads, Staples and Spikes, Wire, Cut and Wrought	3280.304(b)(1)
*†QQ–S–781H–1974, With 1977 Amendment 2 and Notice I, Strapping, Steel, and Seals	3280.304(b)(1) 3280.306(g)(2)
*†WW–N–351–C–1976 With 1977 Interim Amendment 1, Nipples, Pipe, Threaded	3280.604(a)
*†WW–P–401E–1974, Pipe and Pipe Fittings, Cast-Iron, Soil	3280.604(a)
*†WW–P–541E/GEN–1980, Plumbing Fixtures (General Specifications)	3280.604(a)
*WW–V–54–D1973, With 1977 Interim Amendment 3, Valve, Gate, Bronze, (125, 150 and 200 Pound Threaded Ends, Flange Ends, Solder End and Bronze Ends, for Land Use).	3280.604(a)
*ZZ–R–765B–1970, With 1971 Amendment 1, Rubber, Silicone	3280.611(d)(5)
Gas Appliance Laboratory, 3138 E. Olympic Blvd., Los Angeles, CA 90023:	
Standard for Fireplace Stoves for Installation In Mobile Structures—1973	3280.703
Hardwood Plywood Manufacturers Association, P.O. Box 2789, Reston, VA 22090:	
*HPMA–HP–SG–84, Structural Design Guide for Hardwood Plywood Wall Panels	3280.304(b)(1)
*†ANSI/HPMA HP–1983, Hardwood and Decorative Plywood	3280.304(b)(1)
*†FTM 2–1983, Large Scale Test Method for Determining Formaldehyde Emissions From Wood Products	3280.406(b)
HUD-FHA Use of Materials Bulletin, Department of Housing and Urban Development, 451 7th St., SW., Washington, DC 20410–8000:	
HUD-FHA Use of Materials Bulletin–UM–25d–73, Application and Fastening Schedule: Power-Driven, Mechanically Driven and Manually Driven Fasteners.	3280.304(b)(1)
IIT Research Institute, 10 West 35th St., Chicago, IL 60616:	
*† J 6461, Development of Mobile Home Fire Test Methods to Judge the Fire-Safe Performance of Foam Plastic Sheathing and Cavity Insulation.	3280.207(a)(4)
International Association of Plumbing and Mechanical Officials, 5032 Alhambra Ave., Los Angeles, CA 90032:	
*IAPMO/PS–2–1983, Material and Property Standard for Cast Brass and Tubing P–Traps	3280.604(a)
*IAPMO/PS–4–1983, Material and Property Standard for Drains for Prefabricated and Precast Showers	3280.604(a)
*IAPMO/PS–5–1984, Material and Property Standard for Special Cast Iron Fittings	3280.604(a)
*IAPMO/PS–9–1984, Material and Property Standard for Diversion Tees and Twin Waste Elbow	3280.604(a)
*IAPMO/PS–14–1981, Material and Property Standard for Flexible Copper Water Connectors	3280.604(a)
*IAPMO/PS–23–1981, Material and Property Standard for Dishwasher Drain Airgaps (Air Breaks)	3280.604(a)
*†IAPMO/PS–31–1977, Material and Property Standard for Backflow Prevention Devices	3280.604(a)
*†IAPMO/TSC–9–1985, Standard for Gas Supply Connectors for Manufactured Mobile Homes	3280.703
*IAPMO/TSC–22–1985, Standard for Porcelain Enameled Formed Steel Plumbing Fixtures	3280.604(a)
Military Specifications, Naval Publications Information Center, 5801 Tabor Rd., Philadelphia, PA 19120:	
MIL–L–10547E–1975, Liners, Case, and Sheet, Overwrap; Water-Vapor Proof or Waterproof, Flexible	3280.611(d)(5)
National Fire Protection Association, Batterymarch Park, Quincy, MA 02269:	
*†NFPA 31–1983, Installation of Oil Burning Equipment	3280.703 3280.707(f)
*NFPA 54–1984, National Fuel Gas Code	3280.703
*NFPA 58–1983, Storage and Handling Liquefied Petroleum Gases	3280.703 3280.704(b)(5)(i)

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24 CFR Chapter XX (Parts 3200 to 3299)—Department of Housing and Urban Development—Office of the Assistant Secretary for Housing—Federal Housing Commissioner—Continued

Standards by Issuing Organization	*24 CFR Section*
*†NFPA 70–1984, National Electrical Code	3280.801 (a) and (b) 3280.803(k)(1) 3280.803(k)(3) 3280.805(a)(3)(iv) 3280.806(a)(2) 3280.808(a) 3280.808(m) 3280.811(b)
*NFPA-90B–1984, Warm Air Heating and Air Conditioning Systems	3280.703
National Forest Products Association, 1619 Massachusetts Ave., NW., Washington, DC 20036:	
*Span Tables for Joists and Rafters (PS 20–70) (N) FPA–1977	3280.304(b)(1)
*National Design Specifications for Wood Construction With 1982 Supplement and 1984 Amendment (N) FPA–1982	3280.304(b)(1)
*Wood Structural Design Data (N) FPA–1978	3280.304(b)(1)
*Design Values for Joists and Rafters (N) FPA–1981	3280.304(b)(1)
National Particleboard Association, 2306 Perkins Pl., Silver Spring, MD 20910:	
*†FTM–2–1983, Large Scale Test Method for Determining Formaldehyde Emissions From Wood Products, Large Chamber Method.	3280.406(b)
*NPA–1–82, Standard for Particleboard for Mobile Home Decking	3280.304(b)(1)
National Sanitation Foundation, P.O. Box 1468, Ann Arbor, MI 48105:	
*NSF–14–1984, Plastic Piping Components and Related Materials	3280.604(a)
*NSF–24–1979, Plumbing System Components for Mobile Homes and Recreational Vehicles	3280.604(a)
National Woodwork Manufacturers Association, 205 W. Toughy Ave., Park Ridge, IL 60068:	
*†ANSI/NWMA I.S.1–80, With 1983 Addendum, Wood Flush Doors	3280.304(b)(1) 3280.405(c)(2)
*ANSI/NWMA I.S. 2–80, With 1984 Addendum, Wood Window Units	3280.304(b)(1)
*NWMA I.S. 3–83, Wood Sliding Patio Doors	3280.304(b)(1)
*†NWMA I.S. 4–81, Water Repellent Preservative Treatment for Millwork	3280.304(b)(1) 3280.405(c)(2)
Standards are available from: National Bureau of Standards, Office of Engineering Standards, Room A–168, Technical Building, Washington, DC. 20234:	
PS–1–1983, Construction and Industrial Plywood	3280.304(b)(1)
Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, PA 15096:	
SAE–J533b, Flares for Tubing (1972)	3280.703 3280.705(f)(1) 3280.705(f)(2)
Steel Joist Institute, 1205 48 Avenue, N., Myrtle Beach, SC 29577:	
*SJI–1986, Standard Specifications Load Tables and Weight Tables for Steel Joists and Joist Girders	3280.304(b)(1)
Truss Plate Institute, 100 W. Church St., Frederick, MD 21701:	
*TPI–1985, Design Specifications for Metal Plate Connected Wood Trusses	3280.304(b)(1)
Underwriters' Laboratories, Inc., 333 Pfingsten Rd., Northbrook, IL 60062:	
*UL 94 Third Edition 1982 as amended through 1985, Tests for Flammability of Plastic Materials for Parts in Devices and Appliances.	3280.715(e)(1)
*UL 103—Sixth Edition—1983, as amended through 1985, Chimneys, Factory Built Residential Type and Building Heating Appliance.	3280.703
*UL 109—Fourth Edition—1978, Tube Fittings for Flammable and Combustible Fluids and Refrigeration Service, and Marine Use.	3280.703
*UL 127—Fifth Edition—1983, as amended through 1985, Factory-Built Fireplaces	3280.703
*†UL 174—Seventh Edition—1983, as amended through 1985, Household Electric Storage Tank Water Heaters	3280.703
*†UL 181—Sixth Edition—1984, Factory Made Air Ducts and Connectors	3280.703 3280.715(e)
*†UL 217—Third Edition—1985, as amended through October 8, 1985, Single and Multiple Station Smoke Detectors	3280.208(c)
*†UL 307A—Fifth Edition—1978, Liquid Fuel-Burning Heating Appliances for Mobile Homes and Recreational Vehicles.	3280.703 3280.707(f)
*UL 307(B)—First Edition—1982, as amended through April 12, 1982 Gas Burning Heating Appliances for Mobile Homes and Recreational Vehicles.	3280.703
*UL 311—Fifth Edition—1978, as amended through 1984, Roof Jacks for Mobile Homes and Recreational Vehicles	3280.703
*UL 441—Fifth Edition—1979, Gas Vents	3280.703
*UL 465—Seventh Edition—1984, Central Cooling Air Conditioners	3280.703
*UL 559—Fourth Edition—1985, as amended through Sept. 6, 1985, Heat Pumps	3280.703
*†UL 569—Fifth Edition—1980, as amended through 1985, Pigtails, and Flexible Hose Connectors for LP-Gas	3280.703 3280.705(1)(1)
*†UL 737—Fifth Edition—1982, as amended through Nov. 9, 1982, Fireplace Stoves	3280.703
*UL 1025—Second Edition—1982, as amended through 1985, Electric Air Heaters	3280.703
*UL 1042—Second Edition—1983, as amended through 1985, Electric Baseboard Heating Equipment	3280.703
*UL 1096—Third Edition—1981, as amended through 1984, Electric Central Air Heating Equipment	3280.703
*†UL 1482—Second Edition—1983, Room Heaters, Solid-Fuel Type	3280.703

B. Windows, Egress Windows and Devices, and Doors

The standards relating to windows and doors have been developed by the American Architectural Manufacturers Association (AAMA). The Department participated in the development process, and, as a result, the proposed standards were revised where appropriate. Revisions were made in response to public comments on the Department's proposed rule and to concerns raised at the Advisory Council meeting in October, 1984.

1. Standard for Windows and Sliding Glass Doors Used in Manufactured Homes

Section 3280.408(c) of the proposed rule would have required that all primary windows and sliding glass doors be installed in accordance with the window or door manufacturer's instructions. Several commenters pointed out that a window manufacturer's installation instructions may not be compatible with the construction practices of the manufactured home industry. Therefore, the final rule, at § 3280.403(c), has been revised to require that windows be installed to ensure proper operation and to provide protection from the weather.

Section 3280.403(i) of the present rule requires that manufacturers use only windows and sliding glass doors which have been certified by their producers in accordance with ANSI Z34.1–1947. Certification requires that the windows and sliding glass doors be tested by an independent quality assurance agency at preproduction and at least twice a year during production. The proposed rule, at § 3280.408(e), would have limited the testing requirements to at least once a year for the largest size window configuration for each design production. The comments revealed that there was some confusion about the certification requirements. The final rule, at § 3280.403(e), does not change the substantive requirements which were proposed; however, it has been written to more clearly state what the testing requirements are. Under the final rule, windows and sliding glass doors must be subjected to two in-plant production inspections per year and one production test per year by an independent quality assurance agency. Tests may be performed at the testing organization's facility or the window manufacturer's facility. Production tests are limited to the largest size window in production at the time of the inspection.

Finally, windows and sliding glass doors still must be certified in accordance with the ANSI standard. However, the referenced standard has been updated from ANSI Z34.1–1947 to ANSI Z34.1–1982.

2. Standard for Egress Windows for Use in Manufactured Homes

Section 3280.404(b)(3) of the present Standards requires that all egress windows shall have minimum clear dimensions of 22 inches by 22 inches. The proposed rule, at § 3280.108(b), would have required dimensions of 20 inches in width and 24 inches in height. The final rule, at § 3280.404(b), does not contain specific requirements for the dimensions of egress windows. Rather, it references AAMA 1704–1985, "Voluntary Standard Egress Windows for Utilization in Manufactured Housing," which specifies the dimensions set forth in the proposed rule.

Several commenters questioned the need for this revision. However, this change in dimensions will make installation of egress windows easier and, therefore, will reduce production costs. The Department does not have any information which indicates that this change will compromise the safety of the home occupants.

The present Standards have no performance requirements for installed egress windows or devices. Section 3280.409(c)(2) of the proposed rule would have required that each installed egress window or device pass an operational check at the manufactured home factory. Any window or device which failed the operational test would have had to be removed and a suitable replacement installed. Several commenters objected to having to replace defective windows if they could be repaired. The Department agrees that costs will be reduced by permitting repairs of defective windows, and therefore, the final rule permits window repair. Other commenters objected to the operational check requirement, arguing that the window itself has been tested. However, the window certification does not protect against faulty installation and, therefore, the final rule retains the operational check requirement.

3. Standard for Swinging Exterior Passage Doors for Use in Manufactured Homes

The present Standards do not specify certification requirements for swinging exterior passage doors. Section 3280.410(d) of the proposed rule would have required that these doors be listed as conforming with the standards. Several commenters objected to the listing requirement as an unnecessary expense. The Department agrees that self-certification would be adequate to assure that swinging exterior doors comply with the referenced standard. Therefore, the final rule, at § 3280.405(e), allows such self-certification. The doors must be certified in accordance with ANSI 34.1–1982, the same standard referenced for windows and sliding glass doors. The certification procedures are the same as those for windows and sliding glass doors. Exterior swinging doors must be subjected to preproduction testing in accordance with AAMA 1702.2–1985, two in-plant inspections per year and one production test per year. Tests must be performed by independent quality assurance agencies.

The present Standards have no flame spread requirements for doors. Section 3280.410(c) of the proposed rule would have added a requirement that the foam core of exterior doors have a flame spread of 75 or less. Several commenters objected to this requirement, claiming that it would provide minimal fire protection and increase material costs. The Department reevaluated this provision in light of these comments and decided to delete it.

Section 3280.405(d) of the present Standards contains the requirements relating to the materials used in and methods of construction of wood exterior doors. These requirements were retained in the proposed rule in 3280.410(c), with the only change being that the standards incorporated by reference were updated. Among these proposed referenced standards was AAMA 1702.2–1982, Swinging Exterior Passage Doors Voluntary Standard for Utilization in Manufactured Homes. (In the proposed rule this standard was mistakenly identified as AAMA 1702.3–1982, 48 FR 37168, August 16, 1983). One commenter suggested that since AAMA 1702.2–1982 requires compliance with many of the other standards referenced in this section, it is unnecessarily duplicative to list them in the Federal regulations. Accordingly, § 3280.405(c) has been revised to delete those referenced standards for design and construction of exterior doors which are already referenced in AAMA 1702.2–1985 in the final rule.

C. Electrical Service

Section 3280.801 of the present Standards, by reference to NFPA No. 70 Article 550, does not permit the installation of electrical service equipment on manufactured homes. To reduce the cost of providing electrical service to the homes by eliminating the need to contract for an adjacent service assembly, the proposed rule, at

§ 3280.804(c), would have allowed this situated in manufactured home parks this rule does not have a significant

AISC—American Institute of Steel Construction, 400 North Michigan Avenue

SJI—Steel Joist Institute, Suite A, 48 Avenue North, Myrtle Beach, South Carolina 29577

mirrored wardrobe doors (*i.e.*, mirrors not secured to a backing capable of

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§ 3280.804(c), would have allowed this equipment to be mounted on homes intended to be permanently sited. The proposed rule, however, did not permit the mounting of such equipment on homes with metallic siding.

Several commenters suggested that the Department need only reference Article 230 of NFPA No. 70 to incorporate this change to the standards. This industry standard, however, does not contain all the specific requirements which the Department believes are necessary to insure safe and proper installation and grounding of the electrical service equipment. Therefore, the final rule, at § 3280.803(k)(3), specifies how the equipment must be installed.

Several commenters objected to the prohibition on the installation of electrical service equipment on homes with metallic siding. The Department was originally concerned that the equipment could not be effectively grounded on these homes. At the Advisory Council meeting in 1984, however, the housing industry demonstrated to the Department's satisfaction that, based on their experience, electrical service equipment can be safely mounted on homes with metallic siding. The final rule, therefore, does not contain this prohibition.

The proposed rule, at § 3280.804(c)(4), would have required that exterior equipment be listed as rainproof or raintight. Several commenters requested that this provision be clarified. Therefore, in the final rule, at § 3280.803(k)(3)(ii), the Department specifies that exterior equipment, or the enclosure in which it is installed, must be weatherproof and installed in accordance with the provision in Article 373–2 of NFPA No. 70 and the conductors shall be suitable for use in wet locations.

D. Location of Utility Connections

The present Standards specify where utility connections must be located. (See 24 CFR 3280.609(b) (water), 3280.610(c) (drain), 3280.705(i) (gas) and 3280.803(i) (electrical).) The proposed rule removed these requirements. Several concerns were raised regarding these provisions in the public comments and by the Advisory Council. Most significantly, commenters said that the utility location requirements add substantially to the cost of permanently-sited manufactured homes when the requirements are incompatible with the service connection entrance points provided at the manufactured home site location. Given the range of home sizes now being produced and the increase in the number of homes being permanently situated in manufactured home parks and subdivisions, this problem is becoming more common. Therefore, the Department has deleted these utility connection location requirements from the final rule.

E. Electrical Systems

Subpart I of the present standards, Electrical Systems, incorporates the 1975 edition of the National Electrical Code (NEC). The proposed rule referenced the 1981 NEC. In response to public comments and the Advisory Council's recommendation, Subpart I of the final rule has been amended to incorporate the latest edition of the NEC, NFPA No. 70–1984. The 1984 code does not change the minimum requirements pertaining to manufactured housing; however, it does permit the use of improved technology in several areas. For example, the 1984 edition allows manufacturers to use listed splice devices for circuit junctions. This, and other changes, will result in significant cost savings to home manufacturers.

F. Modular Homes

Section 3280.7 of the present standards, the modular home exemption, has been deleted in the final rule. The modular home exemption remains in the Manufactured Home Procedural and Enforcement Regulations, 24 CFR 3282.12. The removal of the exemption from Part 3280 has no substantive effect.

III. Miscellaneous

The information collection requirements contained in Part 3280 have been approved by the OMB and the OMB approval numbers are displayed in the text of the existing regulations. The final rule contains no new or altered information collection requirements.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. The rule does not: (1) Have an annual effect on the economy of one hundred million dollars or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The Department has done a cost analysis which demonstrates that the economic impact is insignificant.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk at Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule was listed as item 872 in the Department's Semiannual Agenda of Regulations published at (51 FR 38424, 38453) on October 27, 1986, under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 3280

Fire prevention, Housing standards, Manufactured homes, Incorporation by reference.

PART 3280—[AMENDED]

Accordingly, 24 CFR Part 3280 is amended as follows:

1. The authority citation for 24 CFR Part 3280 continues to read as follows:

Authority: Secs. 604 and 625 of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5403 and 5424; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

2. Section 3280.4(b) is revised to read as follows:

§ 3280.4 Incorporation by reference.

* * * * *

(b) The abbreviations, and addresses of organizations issuing the referenced standards appear below. Reference standards which are not available from their producer organizations may be obtained from the Office of Manufactured Housing and Construction Standards, Manufactured Housing Standards Division, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

AA—Aluminum Association, 818 Connecticut Avenue, NW., Washington, DC 20006
AGA—American Gas Association, 1515 Wilson Boulevard, Arlington, Virginia 22209
AAMA—American Architectural Manufacturers Association, 2700 River Road, Suite 118, Des Plains, Illinois 60018

AISC—American Institute of Steel Construction, 400 North Michigan Avenue, Chicago, Illinois 60611
AISI—American Iron and Steel Institute, 1000 16th Street, NW., Washington, DC 20036
AITC—American Institute of Timber Construction, 333 W. Hampden Avenue, Englewood, Colorado 80110
ANSI—American National Standards Institute, 1430 Broadway, New York, New York 10018
APA—American Plywood Association, P.O. Box 11700, Tacoma, Washington 98411
ARI—Air Conditioning and Refrigeration Institute, 1815 North Ft. Myer Drive, Arlington, Virginia 22209
ASHRAE—American Society of Heating, Refrigeration and Air Conditioning Engineers, 1791 Tullie Circle, NE., Atlanta, Georgia 30329
ASME—American Society of Mechanical Engineers, 345 East 47th Street, New York, New York 10017
ASTM—American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103
CISPI—Cast Iron Soil Pipe Institute, 1499 Chain Bridge Road, McLean, Virginia 22101
FS—Federal Specifications, General Services Administration, Specifications Branch, Room 6039, GSA Building, 7th and D Streets, SW., Washington, DC 20407
GAL—Gas Appliance Laboratory, 3133 East Olympic Boulevard, Los Angeles, California 90023
HPMA—Hardwood Plywood Manufacturers Association, P.O. Box 2789, Reston, Virginia 22090
HUD–FHA—Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410
IAPMO—International Association of Plumbing and Mechanical Officials, 5032 Alhambra Avenue, Los Angeles, California 90032
IITRI—IIT Research Institute, 10 West 35th Street, Chicago, Illinois 60616
MIL—Military Specifications and Standards, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120
NFPA—National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269
(N)FPA—National Forest Products Association, 1619 Massachusetts Avenue, NW., Washington, DC 20036
NPA—National Particleboard Association, 2306 Perkins Place, Silver Spring, Maryland 20910
NSF—National Sanitation Foundation, P.O. Box 1468, Ann Arbor, Michigan 48105
NWMA—National Woodwork Manufacturers Association, 205 West Toughy Avenue, Park Ridge, Illinois 60068
PS—Product Standards, U.S. Government Printing Office, Washington, DC 20410
SAE—Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, Pennsylvania 15096
SJI—Steel Joist Institute, Suite A, 48 Avenue North, Myrtle Beach, South Carolina 29577
TPI—Truss Plate Institute, 700 West Church Street, Frederick, Maryland 21701
UL—Underwriters' Laboratories, Inc., 333 Pfingsten Road, Northbrook, Illinois 60062

* * * * *

3. Section 3280.7 is revised to read as follows:

§ 3280.7 Excluded structures.

Certain structures may be excluded from these Standards as modular homes under 24 CFR 3282.12.

4. Section 3280.8(c) is revised to read as follows:

§ 3280.8 Certification label.

* * * * *

(c) The label shall read as follows:

As evidenced by this label No. ABC 000001, the manufacturer certifies to the best of the manufacturer's knowledge and belief that this manufactured home has been inspected in accordance with the requirements of the Department of Housing and Urban Development and is constructed in conformance with the Federal manufactured home construction and safety standards in effect on the date of manufacture. See data plate.

However, labels containing the language specified in 24 CFR 3282.362 as issued on May 13, 1976, at 41 FR 19869, shall be used until inventories held by IPIA's as of December 31, 1976, are exhausted, except that all labels applied to manufactured homes on or after June 30, 1977, shall contain the language set out herein.

5. In section 3280.106, the section heading and paragraph (a) are revised to read as follows:

§ 3280.106 Exit facilities; egress windows and devices.

(a) Every room designed expressly for sleeping purposes, unless it has an exit door (*see* § 3280.105), shall have at least one outside window or approved exit device which meets the requirements of § 3280.404, the "Standard for Egress Windows and Devices for Use in Manufactured Homes."

* * * * *

6. Section 3280.114(b) is revised to read as follows:

§ 3280.114 Glass and glazed openings.

* * * * *

(b) *Safety glazing.* Glazing in all entrance or exit doors, sliding glass doors, units (fixed or moving sections), unframed glass doors, unbacked mirrored wardrobe doors (*i.e.*, mirrors not secured to a backing capable of being the door itself), shower and bathtub enclosures and surrounds to a height of 6 feet above the bathroom floor level, storm doors or combination doors, and in panels located within 12 inches on either side of exit or entrance doors shall be of a safety glazing material. Safety glazing material is considered to be any glazing material capable of passing the requirements of Safety Performance Specifications and Methods of Test for Safety Glazing Materials Used in Buildings, ANSI Z97.1–1984.

7. Section 3280.203(a) is revised to read as follows:

§ 3280.203 Flame spread limitations and fire protection requirements.

(a) *Establishment of flame spread rating.* The surface flame spread rating of interior finish material shall not exceed the values shown in § 3280.203(b) when tested by "Standard Test Method for Surface Burning Characteristics of Building Materials, ASTM E 84–84," except that the surface flame spread rating of interior finish materials required by § 3280.203(b) (5) and (6) may be determined by using the "Standard Test Method for Surface Flammability of Materials Using a Radiant Heat Energy Source, ASTM E 162–83." However, the following materials need not be tested to establish their flame spread rating unless a lower rating is required by these standards.

* * * * *

8. Section 3280.208(c) is revised to read as follows:

§ 3280.208 Fire detection equipment.

* * * * *

(c) *Labeling.* Smoke detectors shall be labeled as conforming with the requirements of Underwriters' Laboratories Standard No. 217—Third Edition 1985, as amended through October 8, 1985, for "Single and Multiple Station Smoke Detectors."

* * * * *

9. Section 3280.304(b)(1) is revised to read as follows:

§ 3280.304 Materials.

* * * * *

(b)(1) Standards for some of the generally used materials and methods of construction are listed in the following table.

Aluminum Construction Manual, Sec. 1, Specifications for Aluminum Structures	AA–1982
Steel:	
Specification for the Design, Fabrication, and Erection of Structural Steel for Buildings	AISC S326–1978

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The following parts of this reference standard are not applicable: 1.3.3, 1.3.4, 1.3.5, 1.3.6, 1.4.6, 1.5.1.5, 1.5.5, 1.6, 1.7, 1.8, 1.9, 1.10.4 through 1.10.7, 1.10.9, 1.11, 1.13, 1.14.5, 1.17.7 through 1.17.9, 1.19.1, 1.19.3, 1.20, 1.21, 1.23.7, 1.24, 1.25.1 through 1.25.5, 1.26.4, 2.3, 2.4, 2.8 through 2.10.	
The New and the Old Specification for the Design of Cold-Formed Steel Structural Members	AISI–1980
The following parts of this reference standard are not applicable: 3.1.2, 4.2.1, 4.2.4.	
Stainless Steel Cold-Formed Structural Design Manual, Part I, Structural Members: Specifications for the Design of Light Gage Cold-Formed Stainless Steel Structural Members, except 3.1.2.	AISI–1974
Standard Specifications Load Tables and Weight Tables for Steel Joists and Joist Girders, only sections 1–6 and the table for "H series only" are applicable.	SJI–1986
Manual for Structural Applications of Steel Cables for Buildings	AISI–1973
Strapping, Steel, and Seals, with Notice #1 and Amendment #2, only type 1, Finish B, Grade 1 of the plating/coating sections are applicable.	FS QQ–S–781H–1974 With 1977 Amendment 2 and Notice 1
Wood and Wood Products:	
Basic Hardboard	ANSI/AHA A135.4–1982
Prefinished Hardboard Paneling	ANSI/AHA A135.5–1982
Hardboard Siding	ANSI/AHA A135.6–1984
Hardwood and Decorative Plywood	ANSI/HPMA–HP–1983
Structural Design Guide for Hardwood Plywood Wall Panels	HPMA–HP–SG–1984
Structural Glued Laminated Timber	ANSI/AITC A190.1–1983
Construction and Industrial Plywood	PS–1–83
APA Design/Construction Guide, Residential and Commercial	APA–1985
Design and Fabrication of All-Plywood Beams, Suppl. 5	APA–1984
Plywood Design Specification	APA–1985
Design and Fabrication of Plywood Lumber Beams, Suppl. 2	APA–1984
Design and Fabrication of Plywood Curved Panels, Suppl. 1	APA–1985
Design and Fabrication of Plywood Sandwich Panels, Suppl. 4	APA–1982
Design and Fabrication of Plywood Stressed Skin Panels, Supp. 3	APA–1984
National Design Specification for Wood Construction	(N)FPA–1982 with 1982 Supplement and 1984 Amendment
Wood Structural Design Data	(N)FPA–1978
Span Tables for Joists and Rafters (PS 20–70)	(N)FPA–1977
Design Values for Joists and Rafters	(N)FPA–1981
Design Specifications for Metal Plate Connected Wood Trusses	TPI–1985
Standard for Particleboard for Mobile Home Decking	NPA–1–82
Mat-formed Wood Particleboard	ANSI A208.1–1979
Wood Flush Doors	ANSI/NWMA I.S.1–80, With 1983 Addendum
Wood Window Units	ANSI/NWMA I.S. 2–80, With 1984 Addendum
Wood Sliding Patio Doors	ANSI/NWMA I.S. 3–83
Water Repellant Preservative Treatment for Millwork	NWMA I.S. 4–81
Standard Test Methods for Puncture and Stiffness of Paperboard, and Corrugated and Solid Fiberboard. Exception, the puncture resistance inch-pound value provided in Section 3280.306 shall be used.	ASTM D 781–68(73)
Standard Test Methods for Moisture Content of Wood, only Test Method B is applicable	ASTM D 2016–74(83)
Other: Standard Specification for Gypsum Wallboard	ASTM C 36–84
Fasteners:	
Nails, Brads, Staples and Spikes, Wire, Cut and Wrought, except packing and shipping provisions	FS FF–N–105B–1971 With 1977 Amendment 4
Application and Fastening schedule: Power-Driven, Mechanically Driven and Manually Driven Fasteners	HUD–FHA Use of Materials Bulletin–UM–25d–73
Unclassified: Building Code Requirements for Minimum Design Loads in Buildings and Other Structures	ANSI A58.1–1982
Windows and Glazing: Safety Performance Specifications and Methods of Test for Safety Glazing Materials Used in Buildings.	ANSI Z97.1–1984

* * * * *

10. Sections 3280.305(g)(4) and 3280.305(i)(1)(i) are revised to read as follows:

§ 3280.305 Structural design requirements.

* * * * *

(g) * * *

(4) Bottom board material (with or without patches) shall meet or exceed the level of 48 inch-pounds of puncture resistance as tested by the Beach Puncture Test in accordance with Standard Test Methods for Puncture and Stiffness of Paperboard, and Corrugated and Solid Fiberboard, ASTM D–781–1968 (73). The material shall be suitable for patches and the patch life shall be equivalent to the material life. Patch installation instruction shall be included in the manufactured home manufacturer's instructions.

* * * * *

(i) * * *

(1) *Welded connections.* (i) All welds shall be made in accordance with the applicable provisions of the Specification For The Design, Fabrication, And Erection Of Structural Steel For Buildings, AISC–S326–1978, The New and the Old Specification for the Design of Cold-Formed Steel Structural Members, AISI–1980 and the Stainless Steel Cold-Formed Structural Design Manual, AISI–1974.

* * * * *

11. Section 3280.306(g)(2) is revised to read as follows:

§ 3280.306 Windstorm protection.

* * * * *

(g) * * *

(2) Type 1, Finish B, Grade 1 steel strapping, 1¼ inches wide and 0.035 inch thick, conforming with Federal Specification QQ–S–781H–1974, with 1977 Amendment 2 and Notice I, Strapping, Steel, and Seals, is judged to conform with the provisions of this section and paragraph (f) of this section.

12. Section 3280.403 is revised to read as follows:

§ 3280.403 Standard for windows and sliding glass doors used in manufactured homes.

(a) *Scope.* This section sets the requirements for prime windows and sliding glass doors except for windows used in entry doors. Windows so mounted are components of the door and thus are excluded from this standard.

(b) *Standard.* All primary windows and sliding glass doors shall comply with AAMA standard 1701.2–85, Primary Window and Sliding Glass Door Voluntary Standard for Utilization in Manufactured Housing.

(c) *Installation.* All primary windows and sliding glass doors shall be installed in a manner which allows proper operation and provides protection against the elements (*see* § 3280.307).

(d) *Glass.* (1) Safety glazing materials, where used, shall meet ANSI Z97.1–1984, "Safety Performance Specifications and Methods of Test for Safety Glazing Materials Used in Buildings."

(2) Sealed insulating glass, where used, shall meet all performance requirements for class C in accordance with ASTM E–774–84a, Standard Specification for Sealed Insulating Glass Units. The sealing system shall be qualified in accordance with ASTM E–773–83, Standard Test Method for Seal Durability of Sealed Insulating Glass Units. Each glass unit shall be permanently identified with the name of the insulating glass manufacturer.

(e) *Certification.* All primary windows and sliding glass doors to be installed in manufactured homes shall be certified as complying with AAMA Standard 1701.2–1985.

(1) All such windows and doors shall show evidence of certification by affixing a quality certification label to the product in accordance with ANSI Z34.1–1982, "For Certification-Third-Party Certification Program."

(2) In determining certifiability of the products, an independent quality assurance agency shall conduct preproduction specimen tests in accordance with AAMA 1701.2–1985. Further, such agency shall inspect the product manufacturer's facility at least twice per year. One of these inspections shall include production unit testing of the largest size of each design available at the time of the inspection. It is not necessary to perform such production unit tests at the product manufacturer's facility.

13. Section 3280.404 is revised to read as follows:

§ 3280.404 Standard for egress windows and devices for use in manufactured homes.

(a) *Scope and purpose.* The purpose of this section is to establish the requirements for the design, construction, and installation of windows and approved devices intended to be used as an emergency exit during conditions encountered in a fire or similar disaster.

(b) *Performance.* Egress windows including auxiliary frame and seals, if any, shall meet all requirements of AAMA 1701.2–1985, "Primary Window and Sliding Glass Door Voluntary Standard for Utilization in Manufactured Housing," and AAMA 1704–1985, "Voluntary Standard Egress Window Systems for Utilization in Manufactured—Housing."

(c) *Installation.* (1) The installation of egress windows or devices shall be installed in a manner which allows for proper operation and provides protection against the elements. (*See* § 3280.307.)

(2) An operational check of each installed egress window or device shall be made at the manufactured home factory. All egress windows and devices shall be openable to the minimum required dimension without binding or requiring the use of tools. Any window or device failing this check shall be repaired or replaced. A repaired window shall conform to its certification. Any repaired or replaced window or device shall pass the operational check.

(d) *Operating instructions.* Operating instructions shall be affixed to each egress window and device and carry the legend "Do Not Remove."

(e) *Certification of Egress Windows and Devices.* Egress windows and devices shall be listed in accordance with the procedures and requirements of AAMA 1704–1985.

14. Section 3280.405 is amended by revising paragraphs (b), (c), (d), and (e), to read as follows:

§ 3280.405 Standard for swinging exterior passage doors for use in manufactured homes.

* * * * *

(b) *Performance requirements.* The design and construction of exterior door units shall meet all requirements of AAMA 1702.2–1985, Swinging Exterior Passage Doors Voluntary Standard for Utilization in Manufactured—Housing.

(c) *Materials and methods.* Any material or method of construction shall conform to the performance requirements as outlined in paragraph (b) of this section. Wood materials or wood based materials shall also conform to the following:

(1) *Wood.* Doors shall conform to the type 1 requirements of "ANSI/NWMA I.S.1–80, With 1983 Addendum, Wood Flush Doors."

(2) *Plywood.* Plywood shall be exterior type and preservative treated in accordance with "NWMA I.S. 4–81, Water Repellent Preservative Treatment for Millwork."

(d) *Exterior doors.* All swinging exterior doors shall be installed in a manner which allows proper operation and provides protection against the elements (*see* § 3280.307).

(e) *Certification.* All swinging exterior doors to be installed in manufactured homes shall be certified as complying with AAMA Standard 1702.2–1985.

(1) All such doors shall show evidence of certification by affixing a quality certification label to the product in accordance with ANSI Z34.1–1982, "For Certification-Third-Party Certification Program."

(2) In determining certifiability of the products, an independent quality assurance agency shall conduct preproduction specimen tests in accordance with AAMA 1702.2–1985. Further, such agency shall inspect the product manufacturer's facility at least

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twice per year. One of these inspections shall include production unit testing of the largest size of each design available at the time of the inspection. It is not necessary to perform such production unit tests at the product manufacturer's facility.

15. Section 3280.508 is revised to read as follows:

§ 3280.508 Heat loss, heat gain and cooling load calculations.

Information, values and data necessary for heat loss and heat gain determinations shall be taken from the 1981 ASHRAE Handbook of Fundamentals, chapters 20, 21, 22, 23, 25, 26, and 35. The following portions of those chapters are not applicable:

20.14 Masonry Construction
20.14 Floor Systems
20.17 Underground Pipe Insulation
20.18 Temperatures Above Ambient, Temperatures Below Ambient
20.18 Tanks, Vessels and Equipment
20.20 Refrigerated Rooms and Buildings
20.24 Part VI Land Transport Vehicles
20.27 Part VII Environmental Spaces
22.1 Ventilation Requirements, Minimum Outdoor Air Supply Rates
22.11 Air Leakage Through Walls of Elevators and Stair Shafts
22.13 Swinging Door Entrances
22.19 References
25.4 Ground Temperature
25.4 Crawl Space Temperature
25.4 Calculation of Heat Loss From Crawl Spaces
25.6 Calculating Transmission of Heat Loss From Basement
25.6 Design Temperatures
25.8 Calculating Transmission Heat Loss From Floor Slabs
25.11 Consideration of Pick-up Load
26.37 Heat Gain by Conduction Through Interior Partitions, Ceilings and Floor

16. Section 3280.511 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 3280.511 Comfort cooling certificate and information.

(a) * * *

(1) *Alternative 1.* If a central air conditioning system is provided by the home manufacturer, the heat gain calculation necessary to properly size the air conditioning equipment shall be in accordance with procedures outlined in Chapter 22 of the 1981 ASHRAE Handbook of Fundamentals, with an assumed location and orientation. The following information shall be supplied in the Comfort Cooling Certificate:

"Air Conditioner Manufacturer ———
Air Conditioner Model ———
Certified Capacity ——— BTU/Hr. in accordance with the appropriate Air Conditioning and Refrigeration Institute Standards.

The temperature to be specified shall be 20 F or 30% of the design temperature difference, whichever is greater, added to the temperature specified as the heating system capacity certification temperature without storm windows or insulating glass for Zone I and with storm windows or insulating glass for Zones II and III. Design temperature difference is 70 minus the heating system capacity certification temperature in degrees Fahrenheit.

The central air conditioning system provided with this home has been sized, assuming an orientation of the front (hitch) end of the home facing ——— and is designed on the basis of a 75 F indoor temperature and an outdoor temperature of ——— F dry bulb and F wet bulb."

Example Alternate I

Comfort Cooling Certificate

Manufactured Home Mfg ———
Plant Location ———
Manufactured Home Model ———
Air Conditioner Manufacturer ———
Certified Capacity ——— BTU/Hr. in accordance with the appropriate Air Conditioning and Refrigeration Institute Standards.

The central air conditioning system provided with this home has been sized assuming an orientation of the front (hitch end) of the home facing ———. On this basis the system is designed to maintain an indoor temperature of 75 F when outdoor temperatures are ——— F dry tulb and F wet bulb.

The temperature to which this home can be cooled will change depending upon the amount of exposure of the windows of this home to the sun's radiant heat. Therefore, the home's heat gains will vary dependent upon its orientation to the sun and any permanent shading provided. Information concerning the calculation of cooling loads at various locations, window exposures and shadings are provided in Chapter 22 of the 1981 edition of the ASHRAE Handbook of Fundamentals."

* * * * *

(b) For each home designated as suitable for central air conditioning the manufacturer shall provide the maximum central manufactured home air conditioning capacity certified in accordance with the Standard for Unitary Air Conditioning Equipment ARI 210–1981 with 84 addendum and in accordance with § 3280.715(a)(3). If the capacity information provided is based on entrances to the air supply duct at other than the furnace plenum, the manufacturer shall indicate the correct supply air entrance and return air exit locations.

* * * * *

17. Section 3280.602(a), paragraphs (23), (24) and (43)–(50) are revised to read as follows:

§ 3280.602 Definitions.

(a) * * *

(23) "Flush tank" means that portion of a water closet that is designed to contain sufficient water to adequately flush the fixture.

(24) "Flush valve" means a device located at the bottom of a flush tank for flushing a water closet.

* * * * *

(43) "Trap" means a fitting or device designed and constructed to provide a liquid seal that will prevent the back passage of air without materially affecting the flow of liquid waste through it.

(44) "Trap Arm" means the portion of a fixture drain between a trap and its vent.

(45) "Trap seal" means the verticle depth of liquid that a trap will retain.

(46) "Vacuum breaker." See Backflow Preventer.

(47) "Vent cap" means the device or fitting which protects the vent pipe from foreign substance with an opening to the atmosphere equal to the area of the vent it serves.

(48) "Vent system" means that part of a piping installation which provides circulation of air within a drainage system.

(49) "Verticle pipe" means any pipe or fitting which makes an angle of not more than 45 degrees with the vertical.

(50) "Water closet drain" means that part of the drainage piping which receives the discharge from each individual water closet.

* * * * *

18. Section 3280.604(a) is amended by revising the table to read as follows:

§ 3280.604 Materials.

(a) * * *

Materials	ANSI	ASTM	FS	Other
Ferrous pipe and fittings:				
Cast Iron Threaded Fittings	B16.4–1977			
Malleable Iron Threaded Fittings	B16.3–1977			
Material and Property Standard for Special Cast Iron Fittings				IAPMO PS–5–1984
Welded and Seamless Wrought Steel Pipe	B36.10–1979			

Materials	ANSI	ASTM	FS	Other
Standard Specification for Pipe, Steel, Black and Hot Dipped Zinc-Coated (Galvanized) Welded and Seamless for Ordinary Uses.		A 120–83		
Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless.		A 53–83		
Pipe threads, General Purpose (Inch), adopted 25 October 1964.	B1.20.1–1983			
CISPI's Specification for Cast Iron Soil Pipe Institute's Approved Coupling for Use in Connection with Hubless Cast Iron Soil Pipe and Fittings for Sanitary and Storm Drain, Waste, and Vent Piping Applications.				CISPI–310–85
Standard Specification for Cast Iron Soil Pipe and Fittings.		A 74–82	WW–P–401E–1974	
Standard Specification for Hubless Cast Iron Soil Pipe and Fittings for Sanitary and Storm Drain, Waste, and Vent Piping Applications.				CISPI–301–85
Nonferrous pipe and fittings:				
Standard Specification for Seamless Copper Pipe, Standard Sizes.		B 42–84		
Standard Specification for General Requirements for Wrought Seamless Copper and Copper-Alloy Tubes.		B 251–84		
Standard Specification for Seamless Copper Water Tube.		B 88–83a		
Standard Specification for Copper Drainage Tube (DWV).		B 306–83		
Wrought-Copper and Copper Alloy, Solder-Joint Pressure Fittings.	B16.22–1980			
Wrought Copper and Wrought Copper Alloy Solder-Joint Drainage Fittings—DWV.	B16.29–1980			
Cast Copper Alloy Solder-Joint Pressure Fittings	B16.18–1984			
Cast Copper Alloy Solder-Joint Drainage Fittings—(DWV)	B16.23–1984			
Cast Copper Alloy Fittings for Flared Copper Tubes	B16.26–1983			
Standard Specification for Seamless Red Brass Pipe, Standard Sizes.		B 43–84		
Cast Bronze Threaded Fittings 125 and 250 pound	B16.15–1978			
Plastic pipe and fittings:				
Standard Specification for Acrylonitrile-Butadiene-Styrene (ABS) Plastic Drain, Waste and Vent Pipe and Fittings.		D 2661–84	L–P–322B–1973 With 1977 Amendment 1	NSF–14–1984
Standard Specification for Poly (Vinyl Chloride) (PVC) Plastic Drain, Waste, and Vent Pipe Fittings.		D 2665–82	L–P–320B–1973 With 1977 Amendment 1	NSF–14–1984
Standard Specification for Drain, Waste and Vent (DWV) Plastic Fitting Patterns.		D 3311–82		
Standard Specification for Acrylonitrile-Butadiene-Styrene (ABS) Plastic Drain, Waste, and Vent Pipe Having a Foam Core.		F 628–84		NSF–14–1984
Standard Specification for Chlorinated Poly (Vinyl Chloride) (CPVC) Plastic Hot and Cold Water Distribution Systems.		D 2846–82		NSF–14–1984
Standard Specification for Polybutylene (PB) Plastic Hot and Cold Water Distribution Systems.		D 3309–83		NSF–14–1984
Miscellaneous:				
Nipples, Pipe, Threaded			WW–N–351–C–1976 With 77 Interim Amendment 1	
Standard Specification for Rubber Gaskets for Cast Iron Soil Pipe and Fittings.		C 564–70 (82)		
Backflow Valves, Prevention Devices	A112.14.1–1975			IAPMO/PS–31–1977
Valve, Gate, Bronze, (125, 150 and 200 Pound Threaded Ends, Flange Ends, Solder End and Bronze Ends, for Land Use).				WW–V–54–D1973, With 1977 Interim Amendment 2
Plumbing Fixture Setting Compound			ITP 1536A–1975	
Material and Property Standard for Cast Brass and Tubing P–Traps.				IAPMO/PS–2–1985
Relief Valves and Automatic Gas Shut-off Devices for Hot Water Supply Systems.	Z21.22–1979			
Standard Specification for Solvent Cement for Acrylonitrile-Butadiene-Styrene (ABS) Plastic Pipe and Fittings.		D 2235–81		NSF–14–1985
Standard Specification for Solvent Cement for Poly (Vinyl Chloride) (PVC) Plastic Pipe and Fittings.		D 2564–80		NSF–4–1985
Specification for Neoprene Rubber Gaskets for Hub and Spigot Cast Iron Soil Pipe and Fittings.				CISPI–HSN–85
Plumbing System Components for Mobile Homes and Recreational Vehicles.				NSF–24–1979
Material and Property Standard for Diversion Tees and Twin Waste Elbow.				IAPMO/PS–9–1984
Material and Property Standard for Flexible Copper Water Connectors.				IAPMO/PS–14–1981
Material and Property Standard for Dishwasher Drain Airgaps (Air Breaks).				IAPMO/PS–23–1981
Plumbing fixtures:				
Plumbing Fixtures (General Specifications)			WW–P–541E/GEN–1980	
Vitreous China Plumbing Fixtures	A112.19.2(M)–1982			
Enameled Cast Iron Plumbing Fixtures	A112.19.1M–1979			IAPMO/TSC–2–1985
Porcelain Enameled Formed Steel Plumbing Fixtures	A112.19.4(M)–1984			
Plastic Bathtub Units	Z124.1–1980			
Plastic Shower Receptors and Shower Stalls	Z124.2–1980			NSF–24–1979
Stainless Steel Plumbing Fixtures—Residential Use	A112.19.3–1976			IAPMO/PS–4–1983 NSF–24–1979
Material and Property Standard for Drains for Prefabricated and Precast Showers.				
Plastic Lavatories	Z124.3–1980			
Safety Performance Specifications and Methods of Test for Safety Glazing Materials Used in Buildings.	Z97.1–1984			
Finished and Rough Brass Plumbing Fixture Fittings	A112.18.1M–1979			
Trim for Water Closet Bowls, Tanks, and Urinals	A112.19.5–1979			
Plastic Water Closets, Bowls and Tanks	Z124.4–1983			

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19. Section 3280.607(b)(3)(iii) is revised to read as follows:

§ 3280.607 Plumbing fixtures.

* * * * *

(b) * * *

(3) * * *

(iii) Shower doors and tub and shower enclosures shall be constructed so as to be waterproof and, if glazed, glazing shall comply with the standard for Safety Performance Specifications and Methods of Test for Safety Glazing Materials Used in Buildings, ANSI Z97.1–1984.

* * * * *

20. Section 3280.609(b)(1) is revised to read as follows:

§ 3280.609 Water distribution system.

* * * * *

(b) *Water outlets and supply connections.* (1) *Water connection.* Each manufactured home with a water distribution system shall be equipped with a ¾ inch threaded inlet connection. This connection shall be tagged or marked "Fresh Water Connection" (or marked "Fresh Water Fill"). A matching cap or plug shall be provided to seal the water inlet when it is not in use, and shall be permanently attached to the manufactured home or water supply piping. When a master cold water shutoff full flow valve is not installed on the main feeder line in an accessible location, the manufacturer's installation instructions shall indicate that such a valve is to be installed in the water supply line adjacent to the home. When a manufactured home includes expandable rooms or is composed of two or more units, fittings or connectors designed for such purpose shall be provided to connect any water piping. When not connected, the water piping shall be protected by means of matching threaded caps or plugs.

* * * * *

21. Section 3280.610(c)(1) is revised to read as follows:

§ 3280.610 Drainage systems.

* * * * *

(c) *Drain outlets.* (1) Each manufactured home shall have only one drain outlet.

* * * * *

22. Section 3280.611(d)(5) is revised to read as follows:

§ 3280.611 Vents and venting.

* * * * *

(d) * * *

(5) Materials for the anti-siphon trap vent shall be as follows: Cap and housing shall be listed acrylonitrile-butadiene-styrene, EWV grade; stem shall be DWV grade nylon or acetal; spring shall be stainless steel wire, type 302; sealing disc shall be neoprene, conforming to the Specification for Neoprene Rubber Gaskets for HUB and Spigot Cast Iron Soil Pipe and Fittings, CISPI–HSN–85 and ASTM C 564–70 (82), Standard Specification for Rubber Gaskets for Cast Iron Soil Pipe and Fittings or, silicone rubber, low and high temperature and tear resistant, conforming to Rubber, Silicone, FS ZZ–R–765B–1970, With 1971 Amendment 1; and Liners, Case, and Sheet, Overwrap; Water-Vapor Proof or Waterproof, Flexible, MIL–L–10547E–1975.

* * * * *

23. Section 3280.702(a)(17) is revised to read as follows:

§ 3280.702 Definitions.

(a) * * *

(17) "Connector-Gas appliance" means a flexible or semi-rigid connector listed as conforming to ANSI Standard Z21.24–1981, With Addenda 24a–1983 and 24b–1985; Metal Connectors for Gas Appliances, used to convey fuel gas, three feet or less in length (six feet or less for gas ranges), between a gas outlet and a gas appliance in the same room with the outlet.

* * * * *

24. Section 3280.703 is revised to read as follows:

§ 3280.703 Minimum standards.

Heating, cooling and fuel burning appliances and systems in manufactured homes shall be free of defects, and shall conform to applicable standards in the following table unless otherwise specified in this standard. (*See* § 3280.4)

Appliances	ANSI	UL	Other standards
Central Cooling Air Conditioners		465—Seventh Edition—1984	
Liquid Fuel-Burning Heating Appliances for Mobile Homes and Recreational Vehicles.		307A—Fifth Edition—1978	
Electric Air Heaters		1025—Second Edition—1982, as amended through 1985.	
Electric Baseboard Heating Equipment		1042—Second Edition—1983, as amended through 1985.	
Electric Central Air Heating Equipment		1096—Third Edition—1981, as amended through 1984.	
Gas Burning Heating Appliances for Mobile Homes and Recreational Vehicles.		307(B)—First Edition—1982, as amended through April 12, 1982.	
Gas Clothers Dryers, Vol. 1, Type 1 Clothes Dryers	Z21.5.1–1982		
Gas-Fired Absorption Summer Air Conditioning Appliances	Z21.40.1–1981, Z21.40.1a–1982		
Gas-Fired Central Furnaces (Except Direct Vent and Seperated Combustion System Central Furnaces).	Z21.47–1983		
Household Cooking Gas Appliances	Z21.1–1982		
Refrigerators Using Gas Fuel	Z21.19–1983		
Gas Water Heaters, Vol. 1, Storage Water Heaters with Input Ratings of 75,000 BTU per hour or Less.	Z21.10.1–1984, Z21.10.1a–1985, Z21.10.1b–1986.		
Heat Pumps		559—Fourth Edition—1985, as amended through Sept. 6, 1985.	
Household Electric Storage Tank Water Heaters		174—Seventh Edition—1983, as amended through 1985.	
Ferrous pipe and fittings:			
Standard Specification for Pipe, Steel, Black and Hot Dipped Zinc-Coated (Galvanized) Welded and Seamless For Ordinary Uses			ASTM A 120–83
Standard Specification for Electric-Resistance-Welded Coiled Steel Tubing for Gas and Fuel Oil Lines.			ASTM A 539–83
Pipe Threads, General Purpose (Inch), adopted 25 October 1964.	B1.20.1–1983		
Welded and Seamless Wrought Steel Pipes	B36.10–1979		
Nonferrous pipe, tubing and fittings.			
Standard Specification for Seamless Copper Water Tube			ASTM B 88–83a
Standard Specification for Seamless Copper Tube for Air Conditioning and Refrigeration Field Service			ASTM B 280–83
Metal Connectors for Gas Appliances	Z21.24–1981, Z21.24a–1983, Z21.24b–1985		
Manually Operated Gas Valves	Z21.15–1979, Z21.15a–1981, Z21.15b–1984		

Appliances	ANSI	UL	Other standards
Standard for Gas Supply Connectors for Manufactured Mobile Homes.			IAPMO/TSC–8–1985
Standard Specification for General Requirements for Wrought Seamless Copper and Copper-Alloy Tubes.			ASTM B 251–84
Standard Specification for Seamless Copper Pipe, Standard Sizes.			ASTM B 42–84
Direct Vent Central Furnaces	Z21.64–1978		
Miscellaneous:			
Factory Made Air Ducts and Connectors		181—Sixth Edition—1984	
Tube Fittings for Flammable and Combustible Fluids and Refrigeration Service, and Marine Use		109—Fourth Edition—1978	
Pigtails, and Flexible Hose Connectors for LP-Gas		569—Fifth Edition—1980, as amended through 1985	
Roof Jacks for Mobile Homes and Recreational Vehicles		311—Fifth Edition—1976, as amended through 1984.	
Relief Valves and Automatic Gas Shutoff Devices for Hot Water Supply Systems.	Z21.22–1979		
Automatic Gas Ignition Systems and Components	Z21.20–1979, Z21.20a–1979, Z21.20b–1982		
Automatic Valves for Gas Appliances	Z21.21–1974, Z21.21a–1977, Z21.21b–1981		
Gas Appliance Thermostats	Z21.23–1980		
Gas Vents		441—Fifth Edition—1979	
Installation of Oil Burning Equipment (the following sections only):			NFPA31–1983
1–1			
1–2			
1–3			
1–4 except 1–4.1			
1–5.1			
1–5.2			
1–5.4.2			
1–5.4.3			
1–5.5			
1–5.6			
1–6			
1–7.2 except 1–7.2.4			
1–8			
1–9			
1–10.1			
3–1.1			
3–1.3			
3–1.4			
3–1.5			
3–1.6			
3–10			
4–1.3			
4–1.4			
4–1.5			
4–2			
4–3 except 4–3.2			
4–4 except 4–4.2, 4–4.5.4, 4–4.6, 4–4.7, 4–4.9 and 4–4.10			
Appendices B, C and E			
National Fuel Gas Code	Z223.1–1984		NFPA 54–1984
Warm Air Heating and Air Conditioning Systems, except			NFPA–90B–1984
2–2.4			
2–3.6			
Table 3–1.3, section B			
4–1.6			
Storage and Handling Liquefied Petroleum Gases (Chapters 1, 2 and Articles 30 and 31 of Chapter 3).			NFPA 58–1983
Flares for Tubing			SAE J533b–1972
Standard for Unitary Air-Conditioning Equipment			ARI 210–81, With 84 Addendum
Standard for Air-Source Unitary Heat Pump Equipment			ARI 240–81, With 1984 Addendum
Chimneys, Factory Built Residential Type and Building Heating Appliance.		103—Sixth Edition—1983, as amended through 1985.	
Factory-Built Fireplaces		127—Fifth Edition—1983, as amended through 1985.	
Room Heaters, Solid-Fuel Type		1482—Second Edition—1983	
Fireplace Stoves		737—Fifth Edition—1982, as amended through Nov. 9, 1982.	
Standard for Fireplace Stoves for Installation in Mobile Structures.			GAL–1973

25. Section 3280.704(b)(5)(i) is revised to read as follows:

§ 3280.704 Fuel supply systems.

* * * * *

(b) * * *

(5) *LP-gas safety devices.* (i) DOT containers shall be provided with safety relief devices as required by the regulations of the U.S. Department of Transportation. ASME containers shall be provided with relief valves in accordance with subsection 221 of the Storage and Handling Liquefied Petroleum Gases, NFPA No. 58–1983. Safety relief valves shall have direct communication with the vapor space of the vessel.

* * * * *

26. Section 3280.705 is amended by revising paragraphs (b)(1), (b)(3), (b)(4), (e), (f), (j) and (l)(1) to read as follows:

§ 3280.705 Gas piping systems.

* * * * *

(b) * * *

(1) Steel or wrought-iron pipe shall comply with ANSI Standard B36.10–1979, Welded and Seamless Wrought Steel Pipe. Threaded brass pipe in iron pipe sizes may be used. Threaded brass pipe shall comply with Standard Specification for Seamless Red Brass Pipe, Standard Sizes (ASTM B 43–84).

* * * * *

(3) Copper tubing shall be annealed type, Grade K or L, conforming to the

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Standard Specification for Seamless Copper Water Tube (ASTM B 88–83a), or shall comply with the Standard Specification for Seamless Copper Tube for Air Conditioning and Refrigeration Field Service, ASTM B 280–83. When used on systems designed for natural gas, such tubing shall be internally tinned.

(4) Steel tubing shall have a minimum wall thickness of 0.032 inch for tubing of ⅛ inch diameter and smaller and 0.049 inch for diameters ⅛ inch and larger. Steel tubing shall be constructed in accordance with ASTM Standard Specification for Electric-Resistance-Welded Coiled Steel Tubing for Gas and Fuel Oil Lines, ASTM A 539–83, and shall be externally corrosion protected.

* * * * *

(e) *Joints for gas pipe.* All pipe joints in the piping system, unless welded or brazed, shall be threaded joints that comply with Pipe Threads, General Purpose (Inch), adopted 25 October 1984, ANSI/ASME B1.20.1–1983. Right and left nipples or couplings shall not be used. Unions, if used, shall be of ground joint type. The material used for welding or brazing pipe connections shall have a melting temperature in excess of 1,000 F.

(f) *Joints for tubing.* (1) Tubing joints shall be made with either a single or a double flare of 45 degrees in accordance with Flares For Tubing, SAE–J533b–1972 or with other listed vibration-resistant fittings, or joints may be brazed with material having a melting point exceeding 1,000 F. Metallic ball sleeve compression-type tubing fittings shall not be used.

(2) Steel tubing joints shall be made with a double-flare in accordance with Flares For Tubing, SAE–J533b–1972.

* * * * *

(j) *Gas supply connections.* When gas appliances are installed, at least one gas supply connection shall be provided on each home. The connection shall not be located beneath an exit door. Where more than one connection is provided, the piping system shall be sized to provide adequate capacity from each supply connection.

* * * * *

(l) *Gas supply connectors.* (1) LP-Gas. A listed LP-Gas flexible connection conforming to the UL Standard for Pigtails, and Flexible Hose Connectors for LP-Gas (UL 569-Fifth Edition-1980, as amended through 1985) or equal shall be supplied when the fuel gas piping system is designed for the use of LP-Gas and cylinder(s) and regulator(s) are supplied.

* * * * *

27. Sections 3280.706 (b)(1)–(3) and (d) are revised to read as follows:

§ 3280.706 Oil piping systems.

* * * * *

(b) * * *

(1) Steel or wrought-iron pipe shall comply with ANSI B 36.10–1979, Welded and Seamless Wrought Steel Pipe. Threaded copper or brass pipe in iron pipe sizes may be used.

(2) Fittings for oil piping shall be wrought-iron, malleable iron, steel, or brass (containing not more than 75 percent copper).

(3) Copper tubing shall be annealed type, Grade K or L conforming to the Standard Specification for Seamless Copper Water Tube (ASTM B 88–83a), or shall comply with the Standard Specification for Seamless Copper Tube for Air Conditioning and Refrigeration Field Service, ASTM B 280–83.

* * * * *

(d) *Joints for oil piping.* All pipe joints in the piping system, unless welded or brazed, shall be threaded joints which comply with ANSI/ASME B1.20.1–1983, Pipe Threads, General Purpose (Inch). The material used for brazing pipe connections shall have a melting temperature in excess of 1,000 F.

* * * * *

28. Section 3280.707 is amended by revising paragraphs (a)(2), (d), and (f) introductory text to read as follows:

§ 3280.707 Heat producing appliances.

(a) * * *

(2) Gas and oil burning comfort heating appliances shall have a flue loss of not more than 25 percent, and a thermal efficiency of not less than that specified in nationally recognized standards (*See* § 3280.703).

* * * * *

(d) *Performance efficiency.* (1) All automatic electric storage water heaters installed in manufactured homes shall have a standby loss not exceeding 43 watts/meter^2 (4 watts/ft^2) of tank surface area. The method of test for standby loss shall be as described in section 4.3.1 of Household Automatic Electric Storage Type Water Heaters, ANSI C72.1–1972.

(2) All gas and oil-fired automatic storage water heaters shall have a recovery efficiency, E, and a standby loss, S, as described below. The method of test of E and S shall be as described in Section 2.7 of Gas Water Heaters, Vol. I, Storage Water Heaters with Input/Ratings of 75,000 BTU per hour or less, ANSI Z21.10.1–1984, With Addendas ANSI Z21.10.1a–1985 and ANSI Z21.10.1b–1988, except that for oil-fired units. CF = 1.0, Q = total gallons of oil consumed and H = total heating value of oil in BTU/gallon.

* * * * *

(f) Oil-fired heating equipment. All oil-fired heating equipment shall conform to liquid fuel-burning heating appliances for UL 307A—Fifth Edition—1987, Liquid Fuel-Burning Heating Appliances for Mobile Homes and Recreational Vehicles, and be installed in accordance with Installation of Oil Burning Equipment, NFPA 31–1983. Regardless of the requirements of the above referenced standards, or any other referenced standards, the following are not required:

* * * * *

29. Section 3280.714(a) (1) and (2) is revised to read as follows:

§ 3280.714 Appliances, cooling.

(a) * * *

(1) Mechanical air conditioners shall be rated in accordance with the Standard for Unitary Air Conditioning Equipment (ARI Standard 210–81, With 84 Addendum) and certified by ARI or other nationally recognized testing agency capable of providing follow-up service.

(i) Electric motor-driven unitary cooling systems with rated capacity less than 65,000 BTU/Hr when rated at ARI Standard rating conditions in ARI Standard 210–81, With 84 Addendum, shall show energy efficiency ratio (EER) values not less than 7.2.

(ii) Heat pumps shall be certified to comply with all the requirements of the Standard for Air-Source Unitary Heat Pump Equipment, 240–81 With 84 Addendum. Electric motor-driven vapor compression heat pumps with supplemental electrical resistance heat shall be sized to provide by compression at least 60 percent of the calculated annual heating requirement for the manufactured home being served. A control shall be provided and set to prevent operation of supplemental electrical resistance heat at outdoor temperatures above 40 °F, except for defrost operation.

(iii) Electric motor-driven vapor compression heat pumps with supplemental electric resistance heat conforming to ARI Standard 240–81 With 84 Addendum shall show coefficient of performance ratios not less than shown below:

COP

Outdoor Air Temperature/COP

47 °F	17 °F	0°
2.5	1.7	1.0

(2) Gas-fired absorption air conditioners shall be listed or certified in accordance with ANSI Standard Z21.40.1–1981 "Gas-Fired Absorption Summer Air Conditioning Appliances" with addenda 1a–1982, and certified by AGA or another nationally recognized testing agency capable of providing follow-up service.

* * * * *

30. Sections 3280.715(e) introductory text and paragraph (e)(1) are revised to read as follows:

§ 3280.715 Circulating air system.

* * * * *

(e) *Registers or grilles.* Fittings connecting the registers or grilles to the duct system shall be constructed of metal or material which complies with the requirements of Class 1 or 2 ducts under UL 181—Sixth Edition—1984, Factory Made Air Ducts and Connectors. Air supply terminal devices (registers) when installed in kitchens, bedrooms, and bathrooms shall be equipped with adjustable closeable dampers. Registers or grilles shall be constructed of metal or conform with the following:

(1) Be made of a material classified 94V–0 or 94V–1 when tested as described in Underwriters' Laboratories, Inc., Tests for Flammability of Plastic Materials for Parts in Devices and Appliances, UL94—Third Edition—1982, as amended through 1985.

* * * * *

31. Section 3280.801 is amended by revising paragraphs (a) and (b) to read as follows:

§ 3280.801 Scope.

(a) Subpart I of this standard and Part A of Article 550 of the National Electrical Code (NFPA No. 70–1984) cover the electrical conductors and equipment installed within or on manufactured homes and the conductors that connect manufactured homes to a supply of electricity.

(b) In addition to the requirements of this standard and Article 550 of the National Electrical Code (NFPA No. 70–1984), the applicable portions of other Articles of the National Electrical Code shall be followed covering electrical installations in manufactured homes. Wherever the requirements of this standard differ from the National Electrical Code, this standard shall apply.

* * * * *

32. Section 3280.803 is amended by revising paragraphs (h) through (k) to read as follows:

§ 3280.803 Power supply.

* * * * *

(h) The power supply cord shall bear the following marking: "For use with manufactured homes—40 amperes" or "For use with manufactured homes—50 amperes."

(i) Where the cord passes through walls or floors, it shall be protected by means of conduit and bushings or equivalent. The cord may be installed within the manufactured home walls, provided a continuous raceway is installed from the branch-circuit panelboard to the underside of the manufactured home floor. The raceway may be rigid conduit, electrical metallic tubing or polyethylene (PE), polyvinylchloride (PVC) or acrylonitrile-butadiene-styrene (ABS) plastic tubing having a minimum wall thickness of ⅛ inch.

(j) Permanent provisions shall be made for the protection of the attachment-plug cap of the power supply cord and any connector cord assembly or receptacle against corrosion and mechanical damage if such devices are in an exterior location while the manufactured home is in transit.

(k) Where the calculated load exceeds 50 amperes or where a permanent feeder is used, the supply shall be by means of:

(1) One mast weatherhead installation installed in accordance with Article 230 of the National Electrical Code NFPA No. 70–1984 containing four continuous insulated, color-coded, feeder conductors, one of which shall be an equipment grounding conductor; or

(2) An approved raceway from the disconnecting means in the manufactured home to the underside of the manufactured home with provisions for the attachment of a suitable junction box or fitting to the raceway on the underside of the manufactured home. The manufacturer shall provide in his written installation instructions, the proper feeder conductor sizes for the raceway and the size of the junction box to be used; or

(3) Service equipment installed on the manufactured home in accordance with Article 230 of the National Electrical Code NFPA No. 70–1984; and

(i) The installation shall be completed by the manufacturer except for the service connections, the meter and the grounding electrode conductor;

(ii) Exterior equipment, or the enclosure in which it is installed shall be weatherproof and installed in accordance with Article 373–2 of the National Electrical Code NFA No. 70–1984. Conductors shall be suitable for use in wet locations;

(iii) The neutral conductor shall be connected to the system grounding conductor on the supply side of the main disconnect in accordance with Articles 250–23, 25, and 53 of NEPA No. 70–1984;

(iv) The manufacturer shall include in its written installation instructions one method of grounding the service equipment at the installation site;

(v) The minimum size grounding electrode conductor shall be specified in the instructions; and

(vi) A red "Warning" label shall be mounted on or adjacent to the service equipment. The label shall state: Warning—do not provide electrical power until the grounding electrode is installed and connected (see installation instructions).

* * * * *

33. Section 3280.804(d) is revised to read as follows:

§ 3280.804 Disconnecting means and branch-circuit protective equipment.

* * * * *

(d) The disconnecting equipment shall have a rating suitable for the connected load. The distribution equipment, either circuit breaker or fused type, shall be located a minimum of 24 inches from the bottom of such equipment to the floor level of the manufactured home.

* * * * *

34. Section 3280.805(a)(3)(iv) is revised to read as follows:

§ 3280.805 Branch circuits required.

(a) * * *

(3) * * *

(iv) The rating of range branch circuit shall be based on the range demand as specified for ranges in § 3280.811, Item B(5) of Method 1. For central air conditioning, see Article 440 of the National Electrical Code (NFPA No. 70–1984).

* * * * *

35. Section 3280.806(a)(2) is revised to read as follows:

§ 3280.806 Receptacle outlets.

(a) * * *

(2) Installed according to Section 210–7 of the National Electrical Code (NFPA No. 70–1984).

* * * * *

36. Sections 3280.808 (a) and (m) are revised to read as follows:

§ 3280.808 Wiring methods and materials.

(a) Except as specifically limited in this part, the wiring methods and materials specified in the National Electrical Code (NFPA No. 70–1984) shall be used in manufactured homes.

* * * * *

(m) Outlet boxes of dimensions less than those required in Table 370–6(a) of the National Electrical Code (NFPA No. 70–1984) shall be permitted provided the

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box has been tested and approved for the purpose.

* * * * *

37. Section 3280.811(b) is revised to read as follows:

§ 3280.811 Calculations.

* * * * *

(b) The following is an optional method of calculation for lighting and appliance loads for manufactured homes served by single 3-wire 115/230 volt set of feeder conductors with an ampacity of 100 or greater. The total load for determining the feeder ampacity may be computed in accordance with the following table instead of the method previously specified. Feeder conductors whose demand load is determined by this optional calculation shall be permitted to have the neutral load determined by section 220–22 of the National Electrical Code (NFPA No. 70–1984). The loads identified in the table as "other load" and as "Remainder of other load" shall include the following:

* * * * *

Dated: January 30, 1987.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 87–2788 Filed 2–11–87; 8:45 am]

BILLING CODE 4210–27–M

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Rules and Regulations

Federal Register
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Friday, February 13, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Doc. No. 4057S]

General Administrative Regulations—Suspension and Debarment

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends 7 CFR Part 400, General Administrative Regulations, by adding a new Subpart E, to be known as 7 CFR Part 400-Subpart E, Suspension and Debarment. The intended effect of this rule is to provide procedures for the suspension and debarment of individuals and firms from contracting with FCIC. Under the provisions of this rule, FCIC adopts, with limited reservations, the suspension and debarment regulations issued by the Department of Agriculture. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: February 13, 1987.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is November 1, 1991.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the authority contained in section 506(e) of the Federal Crop Insurance Act, as amended, FCIC may adopt, amend, and repeal bylaws, rules and regulations governing the manner in which its business may be conducted and the powers granted to it by law may be exercised and enjoyed. (7 U.S.C. 1506(e).)

In accordance with this authority, FCIC hereby issues a new Supart E, to 7 CFR Part 400, setting forth the procedures under which FCIC may suspend or debar individuals and firms from contracting with FCIC. In order to conform FCIC's suspension and debarment procedures with those of the U.S. Department of Agriculture, FCIC, for all procurement activities and programs adopts the Department's suspension and debarment regulations found at Subparts 9.4 and 409.4 of Title 48, Code of Federal Regulations. The regulations are adopted, as outlined herein, except that: (1) FCIC's suspension and debarment proceedings shall not be applicable to contracts for crop insurance entered into between the Corporation and individuals in their capacity as insured producers; and (2) the authority to suspend or debar is reserved to the Manager, FCIC, or the Manager's designee.

On Friday, November 21, 1986, FCIC published a notice of proposed rulemaking in the **Federal Register** at 51 FR 42108 to amend 7 CFR Part 400, General Administrative Regulations by adding a new Subpart E, to be known as 7 CFR 400, Subpart E—Suspension and Debarment Regulations. The public was given 60 days in which to submit written comments, data, and opinions on the proposed rule. One comment was received from the National Association of Crop Insurance Agents (NACIA). The NACIA comment made no recommendations as to the rule but indicated strong support for its adoption and urged vigorous enforcement of the procedures when adopted.

Another comment was received from the Office of Finance and Management (OFM) of the Department of Agriculture. In the comment, OFM pointed out that since the Department has not yet published regulations for non-procurement actions, FCIC had erred in the supplementary information section by indicating that the proposed rule would implement the Department's non-procurement suspension and debarment regulation, system, and authority.

Review of the proposed rule indicated that the scope of the rule needed clarification. The proposed rule referred only to subpart 409.4 of 48 CFR. Since Chapter 4 of Title 48 includes Chapter 1 by reference, it was determined that the final rule should refer to both Subparts 9.4 and 409.4 of 48 CFR.

It is the intention of FCIC to proceed with the adoption of this final rule in order to provide an immediate system allowing suspension and debarment in accordance with the Department's existing procedures. When the Department's regulations with respect to the non-procurement system are published, FCIC will revise and reissue these regulations to incorporate and implement the Department's regulations for the combined system. For this reason, FCIC removes from this final rule, any reference the FCIC's regulations and precedures are similar

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to those of the Department for non-procurement activities.

Inasmuch as FCIC has determined there exists an immediate need for these regulations in order to maintain the integrity of the program, good cause exists for making this rule effective in less than 30 days.

List of Subjects in 7 CFR Part 400

General Administrative Regulations; Crop insurance, Administrative practice and procedure, Government contracts, Penalties.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends 7 CFR Part 400, General Administrative Regulations, by adding a new Subpart E—Suspension and Debarment, to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

. . . . . .

Subpart E—Suspension and Debarment.

Sec.
400.40 Purpose.
400.41 Suspension and debarment.
400.42 Scope.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart E—Suspension and Debarment

§ 400.40 Purpose.

This part prescribes the terms and conditions under which persons or business entities may be suspended or debarred from contracting with the Federal Crop Insurance Corporation (FCIC).

§ 400.41 Suspension and debarment.

The provisions of 48 CFR Subparts 4.9 and 409.4 shall be applicable to all FCIC suspension and debarment proceedings, except that, the authority to suspend or debar is reserved to the Manager, FCIC, or the Manager's designee.

§ 400.42 Scope.

FCIC suspension and debarment proceedings shall not be applicable to a contract for crop insurance entered into between FCIC and individuals in their capacity as insured producers, or a contract for crop insurance entered into between a multi-peril insurance company and individuals in their capacity as insured producers, and reinsured by FCIC.

Done in Washington, DC on February 3, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87–3179 Filed 2–12–87; 8:45 am]

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7 CFR Part 454

[Doc. No. 0125A]

Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby issues new Part 454 in Chapter IV of Title 7 of the Code of Federal Regulations to be known as the Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 454), effective for the 1987 and succeeding crop years. The intended effect of this rule is to prescribe procedures for insuring fresh market tomatoes on the basis of production guarantee rather than an amount of insurance. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: February 13, 1987.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is November 1, 1991.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On October 9, 1986, the Board of Directors of the FCIC approved a program for insuring fresh market tomatoes in North Florida, Georgia, Pennsylvania, and South Carolina based on a production guarantee rather than an amount of insurance. It was determined that a standard production guarantee policy would be more effective in the new program areas because the wide price fluctuations found in South Florida do not exist in the areas.

Further, data needed to determine amounts of insurance and valuation of production is more difficult to obtain in some of the new program areas. Using the production guarantee plan will ease this problem, allow individualized production guarantees, and allow a greater choice of coverage and price levels for the producer.

On Thursday, December 18, 1986, FCIC published a notice of proposed rulemaking in the **Federal Register** at 51 FR 45333 to issue a new Part 454 in Chapter IV of Title 7 of the Code of Federal Regulations to be known as 7 CFR Part 454, Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations.

The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule but none were received. Upon review, however, FCIC, determined that a change in the claim for indemnity section was necessary. Fresh market tomatoes are harvested by hand and taken to a packing house where they are graded, sized, and packaged for shipment. The tomatoes are graded and sized according to the same marketing standards as those used in South

Florida. All culls and undersized tomatoes are discarded and dumped. Therefore, growers do not maintain records of culls and undersized tomatoes. Such tomatoes could not then, be included as harvested production. FCIC is revising § 9.e.(1) to reflect this clarification.

With the clarification in § 9.e.(1), and other minor changes in language and format, the proposed regulations, as published at 51 FR 45333, are adopted as final.

In order for the maximum number of producers to have access to this program, and in order to protect their investment, it is necessary that these provisions be made available as quickly as possible to give those producers sufficient time to consider another option in determining their farming operations before planting. For this reason, good cause is shown for making this rule effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 454

Crop insurance; Fresh Market Tomato (Guaranteed Production Plan).

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby issues a new Part 454 in Chapter IV of Title 7 of the Code of Federal Regulations to be known as the Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 454), effective for the 1987 and succeeding crop years. Part 454 is added to read as follows:

PART 454—FRESH MARKET TOMATO (GUARANTEED PRODUCTION PLAN) CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1987 and Succeeding Crop Years

Sec.
454.1 Availability of guaranteed plan of fresh market tomato crop insurance.
454.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
454.3 OMB control numbers.
454.4 Creditors.
454.5 Good faith reliance on misrepresentation.
454.6 The contract.
454.7 The application and policy

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1987 and Succeeding Crop Years

§ 454.1 Availability of fresh market tomato crop insurance

Insurance shall be offered under the provisions of this subpart on the insured crop in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended, (the Act). The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. The insurance is offered through two methods. First, the Corporation offers the contract contained in this part directly to the insured through Agents of the Corporation. Those contracts are specifically identified as being offered by the Federal Crop Insurance Corporation. Second, companies reinsured by the Corporation offer contracts containing substantially the same terms and conditions as the contract set out in this part. No person may have in force more than one contract on the same crop for the crop year, whether insured by the Corporation or insured by a company which is reinsured by the Corporation. If a person has more than one contract under the Act outstanding on the same crop for the same corp year, all such contracts will be voided for that crop year but the person will still be liable for the premium on all contracts unless the person can show to the satisfaction of the Corporation that the multiple contract insurance was inadvertent and without the fault of the insured. If the multiple contract insurance is shown to be inadvertent and without the fault of the insured, the contract with the earliest application will be valid and all other contracts on that crop for that crop year will be cancelled. No liability for indemnity or preminum will attach to the contracts so cancelled. The person must repay all amounts received in violation of this section with interest at the rate contained in the contract for delinquent premiums. An insured whose contract with the Corporation, or with a Company reinsured by the Corporation under the Act, has been terminated because of violation of the terms of the contract is not eligible to obtain multi-peril crop insurance under the Act with the Corporation or with a company reinsured by the Corporation unless the insured can show that the default in the prior contract was cured prior to the sales closing date of the contract applied for or unless the insured can show that the termination was improper and should not result in subsequent ineligiblity. All applicants for insurance under the Act must advise the agent, in writing, at the time of application, of any previous applications for a Contract under the Act and the present status of the other applications or contracts.

§ 454.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for fresh market tomatoes which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices set by the actuarial table for the crop year.

§ 454.3 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

§ 454.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 454.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the fresh market tomato insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation:

(1) Is indebted to the Corporation for additional premiums; or

(2) Has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000, finds that:

(1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice;

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(2) Said insured relied thereon in good faith; and

(3) To require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§454.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the fresh market tomato crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 454.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the fresh market tomato crop as landlord, owner-operator, or tenant if the person wishes to participate in the program. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1987 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a fresh market tomato contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1987 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Policy for the 1987 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Guaranteed Production Plan of Fresh Market—Tomato Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Wildlife;
(4) Earthquake;
(5) Volcanic eruption; or
(6) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or subsection 9.e.(5).

b. We will not insure against any loss of production due to:

(1) Damage that occurs or becomes evident after the tomatoes have been harvested;
(2) The neglect, mismanagement, or wrongdoing by you, any member of your household, your tenants, or employees;
(3) The failure to follow recognized good tomato irrigation practices;
(4) The failure or breakdown of irrigation equipment or facilities;
(5) The failure to follow recognized good tomato farming practices;
(6) The impoundment of water by any governmental, public, or private dam or reservoir project;
(7) Disease or insect infestation; or
(8) Any cause not specified in subsection 1.a. as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be transplanted tomatoes (excluding cherry-type tomatoes) planted for harvest as fresh market tomatoes, grown on insurable acreage, and for which a guarantee and premium rate are set by the actuarial table.

b. The acreage insured for each crop year will be tomatoes planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured tomatoes at the time of planting. However, only for the purpose of determining the amount of indemnity, your insured share will not exceed your share on the earlier of:

(1) The time of loss; or
(2) The beginning of harvest.

d. We do not insure any acreage of tomatoes grown by any person if the person had not previously:

(1) Grown fresh market tomatoes for commercial sales; or
(2) Participated in the management of a fresh market tomato farming operation, in at least one of the three previous years.

e. We do not insure any acreage:

(1) Of tomatoes grown for direct consumer marketing;
(2) If the farming practices carried out are not in accordance with farming practices for which premium rates have been established;
(3) Except in Pennsylvania, on which tomatoes, peppers, eggplants, or tobacco have been grown within the previous two years and the soil was not fumigated or nematicide was not applied before planting tomatoes;
(4) Which is destroyed, it is practical to replant to tomatoes, and such acreage is not replanted (the unavailability of plants is not a valid reason for failure to replant);
(5) Initially planted before or after the planting period set by the actuarial table;
(6) Of volunteer tomatoes;
(7) Planted to a type or variety of tomatoes not established as adapted to the area or excluded by the actuarial table;
(8) Planted for experimental purposes;
(9) Planted with another crop; or
(10) Of tomatoes not subject to an agreement between the producer and the packer to pack the production (excluding insureds with their own packing facilities). Such agreement must be executed before reporting acreage.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of tomatoes in the county in which you have a share;
b. The practice, including the row width; and
c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any tomato plantings in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the acreage reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The final stage production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. The production guarantees per acre are progressive by stages and increase, at specified intervals, to the final stage production guarantee. The stages and production guarantees are:

(1) First Stage is from planting until qualifying for stage 2, the production guarantee is 50% of the final stage production guarantee.

(2) Second Stage is from the earlier of stakes driven, one tie and pruning, or 30 days after planting until qualifying for stage 3, the production guarantee is 75% of the final stage production guarantee.

(3) Third Stage is from 60 days after planting until qualifying for stage 4, the production guarantee is 90% of the final stage production guarantee.

(4) Fourth Stage (Final Stage) is from the earlier of 75 days after planting or the beginning of harvest, the production guarantee is the final stage guarantee.

c. Any acreage of tomatoes damaged to the extent that growers in the area generally would not further care for the tomatoes will be deemed to have been destroyed even though the tomatoes continue to be cared for. The production guarantee for such acreage will be the guarantee for the stage in which such damage occurs.

d. Coverage level 2 will apply if you do not elect a coverage level.

e. You may change the coverage level and price election on or before the sales closing date set by the actuarial table for submitting applications for the crop year.

f. You must report production to us for the prior crop year before the sales closing date as established by the actuarial table. If you do not provide the required production report, we will assign a yield for the crop year for which the report is not furnished. The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the insured crop year. The yield assigned by us will not be more than 75 percent of the yield used by us to determine your guarantee for the prior crop year. If you have filed a claim for the prior crop year, the yield determined in adjusting your indemnity claim will be considered your production report.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the final stage production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-fourth percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Depatment of Agriculture or its agencies.

7. Insurance period.

Insurance (on a per acre basis) attaches when the tomatoes are planted and ends at the earliest of:

a. Total destruction of the tomatoes;
b. Discontinuance of harvest;
c. The date harvest should have started on any acreage which was not harvested;
d. 120 days after the date of transplanting or replanting;
e. Completion of harvest;
f. Final adjustment of a loss; or
g. September 20 of the crop year.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant tomatoes damaged due to any insured cause (see subsection 9.f.);

(b) During the period before harvest begins, the tomatoes on any unit are damaged and you decide not to further care for or harvest any part of them;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the tomatoes and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is determined within 15 days prior to or during harvest and you are going to claim an indemnity on any unit, you must give us notice not later than 72 hours after the earliest of:

(a) Total destruction of the tomatoes on the unit;
(b) Discontinuance of harvest of any acreage on the unit;
(c) The date harvest would normally start if any acreage on the unit is not to be harvested;
(d) 120 days after transplanting or replanting of the tomatoes; or
(e) September 20 of the crop year.

b. You may not destroy or replant any of the tomatoes on which a replanting payment will be claimed until we give written consent.

c. You must obtain written consent from us before you destroy any of the tomatoes which are not to be harvested.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the tomatoes on the unit;
(2) Discontinuance of harvesting on the unit; or
(3) The date harvest should have started on the unit on any acreage which will not be harvested.

b. We will not pay any indemnity unless you:

(1) Establish the total production of tomatoes on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee for the applicable stage;
(2) Subtracting therefrom the total production of tomatoes to be counted (see subsection 9.e.);
(3) Multiplying the remainder by the price election; and
(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of this policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (in 25-pound carton equivalents) to be counted for a unit will include all harvested and appraised production.

(1) All tomato production marketed, and any harvested unmarketed production meeting the standards for grading 85% or better U.S. No. 1 with classification size of 6 x 7 (2⅝₃₂ inch minimum diameter) or larger will be considered production to count.

(2) Appraised production to be counted will include:

(a) Unharvested production of mature green and ripe tomatoes with classification size of 6 x 7 (2⅝₃₂ inch minimum diameter) or larger remaining after the final harvest;

(b) Potential production on unharvested acreage and potential production on acreage when final harvest has not been completed;

(c) Potential production lost due to uninsured causes; and

(d) Not less than the guarantee for any acreage abandoned or put to another use without prior written consent or which is damaged solely by an uninsured cause.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of tomatoes becomes general in the county for the planting period and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(4) The amount of production of any unharvested tomatoes may be determined on the basis of field appraisals conducted after the end of the insurance period.

(5) If you elect to exclude hail and fire as insured causes of loss and the tomatoes are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire."

f. A replanting payment may be made on any insured tomatoes replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured acreage as determined on the final planting date. The acreage to be replanted must have sustained a loss in excess of 50 percent of the plant stand.

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(1) No replanting payment will be made on acreage on which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed 70 cartons multiplied by the price election, multiplied by your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

g. You must not abandon any acreage to us.

h. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

i. An indemnity will not be paid unless you comply with all policy provisions.

j. It is our policy to pay your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. However, we will pay simple interest on the net indemnity ultimately found to be due to you, if the reason for non-payment is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. Interest due will be paid from and including the 61st day after the date you sign, date, and submit to us the properly completed claim-for-indemnity form. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

k. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the tomatoes are planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

l. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will, at our option, belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for three years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all tomatoes produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

d. The cancellation and termination dates are:

State	Cancellation and termination dates
Florida, Georgia, and South Carolina	February 15.
Pennsylvania	April 15.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for three consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by November 30 preceding the cancellation date for counties with a February 15 cancellation date, and by December 31 preceding the cancellation date for counties with an April 15 cancellation date. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of tomato crop insurance:

a. "Acre" means 43,560 square feet of land on which row widths do not exceed 6 feet or if row widths exceed 6 feet, the land area on which at least 7,260 linear feet of rows are planted.

b. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding fresh market tomato insurance in the county.

c. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

d. "Crop year" means the period within which the tomatoes are normally grown and is designated by the calendar year in which the tomatoes are normally harvested.

e. "Harvest" means the picking of marketable tomatoes on the unit.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Mature green tomato" means a tomato which:

(1) Has heightened gloss because of the waxy skin that cannot be torn by scraping;

(2) Has well formed jelly-like substance in the locules;

(3) Has seeds that are sufficiently hard so they are pushed aside and not cut by a sharp knife in slicing; and

(4) Shows no red color.

i. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State.

j. "Planting" means transplanting the tomato plants into the field.

k. "Plant stand" means the number of live plants per acre before the plants were damaged due to insurable causes.

l. "Potential production" means the number of 25-pound cartons of mature green or ripe tomatoes with classification size of 6 x 7 (2⅝₃₂ inch minimum diameter) or larger which the tomato plants would produce or would have produced, per acre, by the end of the insurance period.

m. "Replanting" means performng the cultural practices necessary to replant insured acreage to tomatoes.

n. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

o. "Tenant" means a person who rents land from another person for a share of the tomatoes or a share of the proceeds therefrom.

p. "Tomatoes grown for direct consumer marketing" means tomatoes grown for the purpose of selling directly to the consumer.

q. "Unit" means all insurable acreage of tomatoes in the county on the date of planting for the crop year:

(1) In which you have 100 percent share; or

(2) Which is owned by one person and operated by another person on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the tomatoes on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with the Appeal Regulations (7 CFR Part 400—Subpart J).

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC on February 3, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-3180 Filed 2-12-87; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Parts 911 and 915

Limes and Avocados Grown in Florida; Amendments to Container and Pack Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adds a new size designation, "jumbo," to the container marking regulations for very large limes, (2) changes the dimensions specified for one lime and two avocado containers, and (3) removes five currently authorized avocado containers which are no longer used. Currently there is no provision for labeling containers for very large or "jumbo" size limes and the dimensions of some containers being supplied to shippers vary slightly from those listed in the regulation. The change in container marking requirements and container dimensions, and the removal of unused containers is designed to bring the regulatory requirements into conformity with the current needs of the Florida lime and avocado industries.

EFFECTIVE DATE: February 13, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

The production area of Marketing Order No. 911, Florida limes, consists of all of the State of Florida except the area west of the Suwanee River. Production for the 1985-86 season totaled about 64,000 tons or 2.3 million bushels, of which 39,000 tons or 1.4 million bushels went to fresh market. The remaining 25,000 tons were processed for juice. Total production value was $21 million. The production area of Marketing Order No. 915, Florida avocados, consists of the southern half of the State of Florida. Production for 1985-86 totaled 28,500 tons, with a production value of $16.4 million. It is estimated that 26 handlers of Florida limes and 34 handlers of avocados under the marketing orders for limes and avocados grown in Florida will be subject to regulation during the course of the current season. In addition, there are approximately 263 lime growers and 420 avocado growers in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The great majority of these firms may be classified as small entities.

Pursuant to the requirements set forth in the RFA, the Administrator of AMS has considered the economic impact on small entities. This action to add a new size designation for very large or "jumbo" size limes permits the shipment of such fruit and lessens the regulatory burden on handlers. The change in the dimensions of the lime and avocado containers recognizes that the equipment used to manufacture them changes slightly over time. Adjusting the container dimensions in the regulation is the most expedient method of dealing with this deviation. In the absence of regulation changes, handlers would have to request the manufacturers to reset their equipment. This would result in an unnecessary added expense which would be passed on to handlers. The change to eliminate avocado container sizes no longer in use merely brings the regulation into conformity with industry practice and will have no impact on

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handler costs. The net result of these changes is to lessen the regulatory burden upon lime and avocado handlers, the greater number of whom are classified as small business entities. These changes will not impose any additional costs on affected growers or handlers and will have no significant impact on a substantial number of small entities.

The proposed rule was published in the September 17, 1986, **Federal Register** (51 FR 32924) affording interested persons until October 17, 1986, to file written comments. None were received.

Marketing agreement and Order Nos. 911 and 915 regulate the handling of limes and avocados, respectively, grown in Florida. The programs are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Florida Lime Administrative Committee and Florida Avocado Administrative Committee established under the orders are responsible for their local administration.

The Lime Administrative Committee unanimously recommended adding a new size designation to Table 1 in § 911.311. The new size designation is "jumbo" with a count of fewer than 25 fruit per 10-pound sample. The addition of this size designation allows handlers to ship good quality larger sized limes and take advantage of the premium prices such fruit garners in the marketplace. This also could benefit producers' returns.

The committee also recommended changing slightly the dimensions of one of the lime containers in use from 11¼ inches by 7⅞ inches by 5⅞ inches to 11⅞ inches by 7½ inches by 6⅜ inches. The committee reports that the machinery used in the manufacture of cartons changes slightly over time, and that manufacturers are now supplying shippers with containers which differ in dimension slightly from those currently authorized. Changing the container dimensions specified in the regulation is designed to make the regulatory requirements conform with the containers currently used.

The Avocado Administrative Committee recommended changing the dimensions of the containers specified in paragraphs (a)(2) and (a)(9) of § 915.305. The container in paragraph (a)(2) is changed from 14½ x 11¼ and depth ranging from 3⅛ to 5 inches to 16⅛ x 13½ and depth varying from 3⅛ to 5 inches, while that of (a)(9) is changed from 11¼ x 16¾ x 3⅞ inches to 11¼ x 16¾ and depth varying from 3⅞ to 4½ inches. As in the case of the lime container, extended production runs over time have changed the dimensions of two avocado containers from those currently authorized. Because of the time and cost involved for manufacturers to shut down and reset the equipment, the committee believes changing the dimensions in the regulation to be the most expedient method of bringing industry practice and regulatory requirements into agreement.

The committee also recommended eliminating one of the four containers specified in paragraph (a)(1) of § 915.305, and eliminating the four containers specified in paragraphs (a)(3), (a)(5), (a)(6), and (a)(7) of § 915.305. These containers are no longer in use, and therefore no longer need to be included in the regulation. The regulation now authorizes the use of several other containers of similar dimensions, so that the industry will continue to have an adequate number of different containers to ship the avocado crop.

It is hereby found and determined that the amendment, as hereinafter set forth will tend to effectuate the declared policy of the Act. It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that the shipping season is underway and to maximize benefits to producers and handlers this rule should apply to as many shipments as possible.

List of Subjects in 7 CFR Parts 911 and 915

Marketing agreements and orders, Limes, Avocados, Florida.

PART 911—LIMES GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 911 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 911.311 is hereby amended by revising Table 1 in paragraph (a)(5) to read as follows:

§ 911.311 Lime Pack Regulation 9.

(a) * * *

(5) * * *

TABLE 1

Column 1 size designations	Column 2 size range
72	68 to 76
63	59 to 67
54	51 to 58
48	45 to 51
42	39 to 44
36	32 to 38
28	25 to 32
Jumbo	24 and larger

* * * * *

3. Section 911.329 is hereby amended by revising paragraph (a)(2)(vii) to read as follows:

§ 911.329 Lime Regulation 27.

* * * * *

(vii) Containers with inside dimensions of 11⅞ x 7½ x 6⅜ inches: *Provided,* * * *

* * * * *

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR Part 915 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 915.305 is hereby amended by revising paragraphs (a)(1), (a)(2), over to the proviso to read as follows; and by removing paragraphs (a)(3), (a)(5), (a)(6), and (a)(7); by redesignating paragraph (a)(4) as paragraph (a)(3), paragraphs (a)(8) through (a)(10) as paragraphs (a)(4) through (a)(12), respectively, and by revising redesignated paragraph (a)(5) to read as follows:

§ 915.305 Florida avocado container regulation 5.

(a) * * *

(1) Containers with inside dimensions of 11 x 16¾ x 10 or 13½ x 16½ x 9 or 12¾ x 15¼ x 10¾ inches: *Provided,* * * *

(2) Containers with inside dimensions of 16½ x 13⅛ and depth varying from 3¾ to 5 inches: *Provided,* * * *

* * * * *

(5) Containers with inside dimensions of 11¼ x 16¾ and depth varying from 3⅞ to 4½ inches.

* * * * *

Dated: February 6, 1987.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–2939 Filed 2–12–87; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 86–125]

Tuberculosis in Cattle; State Designations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the regulations concerning the interstate movement of cattle because of tuberculosis by raising the designation of Georgia and Missouri from modified accredited areas to accredited-free States. This action is necessary because Georgia and Missouri meet the criteria for designation as accredited-free States.

EFFECTIVE DATE: February 13, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph L. Hosker, Domestic Programs Support Staff, VS, APHIS, USDA, Room 815, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8438.

SUPPLEMENTARY INFORMATION:

Background

An interim rule published in the **Federal Register** on October 10, 1986 (51 FR 36383–36385), was effective on the date of publication in the **Federal Register**, and comments were solicited for 60 days ending December 9, 1986. No comments were received. The facts presented in the interim rule still provide a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based entreprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of the States of Georgia and Missouri will not cause a significant effect on marketing patterns and will not have a significant economic impact on those persons affected by this document.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 77

Animal diseases, Cattle, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS IN CATTLE

Accordingly, we are adopting as a final rule without change, the interim rule that amended 9 CFR Part 77 and that was published at 51 FR 36383–36385 on October 10, 1986.

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 10th day of February, 1987.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87–3090 Filed 2–12–87; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Part 78

[Docket No. 87–008]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations governing the interstate movement of cattle because of brucellosis by changing the classification of Missouri from Class B to Class A. This action is necessary because it has been determined that Missouri meets the standards for Class A status. The effect of this action is to relieve certain restrictions on the interstate movement of cattle from Missouri.

DATES: February 13, 1987. We will consider your comments if we receive them on or before April 14, 1987.

ADDRESSES: Send written comments to Steven R. Poore, Acting Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, Hyattsville, MD 20782. Please state that your comments refer to Docket Number Missouri. Comments received may be inspected in Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Jan Huber, Domestic Programs Support Staff, VS, APHIS, USDA, Room 812, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8389.

SUPPLEMENTARY INFORMATION:

Background

The brucellosis regulations (contained in 9 CFR Part 78 and referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of brucella infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas which do not meet the minimum standards for Class C are required to be placed under Federal quarantine. The State of Missouri is designated as a Class B status. This document amends the regulations to change the brucellosis program status of Missouri from Class B to Class A.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the period of 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of Brucellosis, with Class A and Class B in between. Restrictions on the movement of cattle are more stringent for movements from Class A States or areas compared to movements from Free States or areas, and are more stringent for movements from Class B States or areas compared to movements from Class A States or areas, and so on. The restrictions include testing for movement of certain cattle from other than Class Free States or areas.

The basic standards for the different classifications of States or areas concern maintenance of: (1) A cattle herd infection rate, based on the number of herds found to have brucellosis reactors, not to exceed a stated level during 12 consecutive months; (2) a rate of infection in the cattle population, based on the percentage of brucellosis reactors found in Market Cattle Identification (testing at stockyards and slaughtering establishments) not to exceed a stated level; (3) a surveillance system which requires testing of dairy herds, participation of all slaughtering establishments in the Market Cattle Identification program, identification and monitoring of herds at high risk of infection, including herds adjacent to

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infected herds and herds from which infected animals have been sold or received; and (4) minimum procedural standards for administering the program.

In order to attain and maintain Class Free status a State or area must (1) remain free from field strain *Brucella abortus* infection for 12 consecutive months or longer, (2) maintain a 12 consecutive months MCI reactor prevalence rate not to exceed one reactor per 2,000 cattle tested (0.050 percent), and (3) have an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd.

In order to attain and maintain Class A status a State or area must (1) not exceed a cattle herd infection rate, due to field strain *Brucella abortus* of 0.25 percent or 2.5 herds per 1,000, based on the number of reactors found within the State or area during any 12 consecutive months, except in States with 10,000 or fewer herds, (2) must maintain a 12 consecutive months MCI reactor prevalence rate not to exceed one reactor per 1,000 cattle tested (0.10 percent), and (3) must have an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd.

In order to attain and maintain Class B status a State or area must (1) not exceed a cattle herd infection rate due to field strain *Brucella abortus* of 1.5 percent or 15 herds per 1,000, based on the number of reactors found within the State or area during any 12 consecutive months except in States with 1,000 or fewer herds, (2) must maintain a 12 consecutive months MCI reactor prevalence rate not to exceed 3 reactors per 1,000 cattle tested (0.30 percent), and (3) must have an approved individual herd plan in effect within 45 days of notification of infection in the reactor herd.

A State or area with (1) 1,000 or more herds having 12 consecutive months herd infection rate, due to field strain *Brucella abortus* exceeding 1.5 percent or 15 herds or more per 1,000, based on the number of reactors found within the State or area during any 12 consecutive months, except in States with, 1,000 or fewer herds, and (2) an MCI reactor prevalence rate during 12 consecutive months exceeding three reactors per 1,000 cattle tested (0.30 percent) is a Class C State or area. States or areas designated as Class C must have an approved individual herd plan in effect within 45 days of locating the source herd or recipient herd.

Prior to the effective date of this document, Missouri was classified as a Class B State because of the herd infection rate and the MCI reactor prevalence rate. To attain and maintain Class A status, a State or area must, among other things, maintain an accumulated 12-month herd infection rate for brucellosis not to exceed 2.5 herds per 1,000 (0.25 percent) if the State has 10,000 or more herds, and an MCI reactor prevalence rate for such 12-month period must not exceed one reactor per 1,000 cattle tested (0.10 percent). A review of the brucellosis program establishes that Missouri should be changed to Class A, since it now meets the criteria for classification as Class A.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued on conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Missouri reduces certain testing and other requirements on the interstate movement of these cattle. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by the changes in status. Also, cattle from certified brucellosis-free herds moving interstate are not affected by these changes in status. It has been determined that the changes in brucellosis status made by this document will not affect market patterns and will not have a significant economic impact on those persons affected by this document.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to delete unnecessary restrictions on the interstate movement of certain cattle from Missouri.

Further, pursuant to administrative procedure provisions in 5 U.S.C. 533, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest, and good cause is found for making this interim rule effective less than 30 days after the publication of this document in the **FEDERAL REGISTER.** Comments are being solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, 9 CFR Part 78 is amended as follows:

1. The authority citation for Part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.41 [Amended]

2. Section 78.41, paragraph (b) is amended by adding "Missouri" immediately after "Kansas".

3. Section 78.41, paragraph (c) is amended by removing "Missouri".

Done in Washington, DC this 10th day of February, 1987

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87–3092 Filed 2–12–87; 8:45 am]

BILLING CODE 3410–34–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

Improved Personnel Dosimetry Processing

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to require all licensees to have personnel dosimetry devices that are utilized to comply with NRC regulations processed by processors that have been accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Bureau of Standards (NBS). This action was initiated because performance evaluations of personnel dosimetry processors indicated that a significant percentage of such processors were not performing with a reasonable degree of accuracy. These amendments will result in greater uniformity and accuracy in personnel dosimetry.

EFFECTIVE DATE: February 12, 1988.

FOR FURTHER INFORMATION CONTACT: Donald O. Nellis, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 443–7989. Inquiries regarding the accreditation program for personnel dosimeters at the National Bureau of Standards should be addressed to Robert L. Gladhill, National Voluntary Laboratory Accreditation Program (NVLAP), National Bureau of Standards, Administration A–531, Gaithersburg, MD 20899, telephone: (301) 921–3431.

SUPPLEMENTARY INFORMATION:

I. Background

Personnel dosimeters are devices worn by workers to monitor their exposure to radiation. NRC licensees are required to provide such monitoring devices to certain individuals as specified in 10 CFR 20.202(a) and other applicable provisions of 10 CFR Chapter I.

Among the types of monitoring equipment in use are dosimeters such as film badges, track-etch-type dosimeters, thermoluminescent dosimeters (TLD's), and direct and indirect reading pocket ionization chambers. All of these, with the exception of the pocket ionization chambers, require processing in order to determine the radiation dose by observing a particular radiation-induced effect in the dosimeter. These dosimeters must be processed accurately and consistently and interpreted correctly to ensure the accuracy and integrity of worker dose records, to ensure that the NRC regulatory dose limits of 10 CFR 20.101 are not exceeded, and to ensure that dosimetry is provided in accordance with 10 CFR 20.202(a). It is imperative, therefore, that the personnel dosimetry processing industry conform to performance standards that will ensure accuracy and uniformity of results.

Dosimetry Processor Performance Studies

Problems in the personnel dosimetry processing industry have been apparent for many years. The commercial processing business has always been highly competitive, with competent and conscientious processors competing with processors that are unable or unwilling to perform this work in a technically sound manner. Customers of commercial processors, however, have often lacked expertise in dosimetry processing and often contracted their processing needs to the lowest bidder, so that the more qualified processors may have had to reduce the quality of their services in order to remain competitive.

Some problems became apparent shortly after the Atomic Energy Act of 1954 authorized the commercial application of nuclear technology when the first intercomparison of film badge interpretations was conducted by NBS in 1955 under an Atomic Energy Commission (AEC) contract. In 1963, the AEC published a notice in the **Federal Register** (28 FR 9411) outlining the need for a Film Dosimetry Calibration Laboratory and provided some interim film dosimetry performance criteria. Subsequently, several studies attempted to evaluate processor performance, but no method of comparing actual performance with the interim performance criteria was ever established. Consequently, the AEC requested in 1967 that Battelle Northwest Laboratory, now called Pacific Northwest Laboratory, conduct a study to determine a basis for film dosimeter performance criteria.[1]

Although the study revealed that about 85% of the participating processors had excessive bias and variance, and although the study defined certain performance criteria, no definite standard was promulgated at that time. During the next few years, four separate standards were developed, and the NRC in 1976 contracted with Battelle to conduct a study to compare and evaluate dosimetry processors against the four existing standards.[2] Most dosimetry processors did not fare well against any of the standards. The study recommended adoption of the draft standard being developed by the Health Physics Society Standards Committee (HPSSC). (This standard was published as a draft in 1978.)

In 1976, at the urging of the Conference of Radiation Control Program Directors (CRCPD) (representing the States), the NRC, the Bureau of Radiological Health, and the Energy Research and Development Agency jointly conducted a public meeting to discuss personnel dosimetry problems. As a result of the recommendations made at this meeting, the NRC contracted with the University of Michigan to conduct two rounds (1977–1979) of proficiency testing of dosimetry processors against the draft HPSSC standard. Fifty-nine personnel dosimetry processors voluntarily participated in these tests. Results of the tests showed that the standard should be modified. (It was modified in June 1981 and was published as ANSI N13.11 in 1983.) The results also showed that a significant percentage of the processors were not performing to the degree of accuracy acceptable to the NRC, which indicated, in turn, that records and reports of worker whole body and skin dose could be considerably different from the actual dose received. It became apparent to the NRC that the performance and competency of dosimetry processors had to be evaluated on a periodic basis and that rulemaking was needed to ensure this periodic evaluation.

Coordination Effort

Cooperation and coordination with other interested organizations were initiated in 1977 with the formation of the Interagency Policy Committee on Personnel Dosimetry, which included the Department of Defense, the Department of Energy, the Environmental Protection Agency, the NBS, the Occupational Safety and Health Administration of the Department of Labor, the Center for Devices and Radiological Health of the Food and Drug Administration of the Department of Health and Human Services, the CRCPD, and the NRC. Cooperation and coordination with the dosimetry processing industry were also

[1] M. Unruh et al., "The Establishment and Utilization of Film Dosimeter Performance Criteria," BNWL–542(1967) Richland, Washington, 99352.

[2] L.L. Nichols, "A Test of the Performance of Personnel Dosimeters," BNWL–2159(1977) Battelle Northwest Laboratories, Richland, Washington, 99352.

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enhanced in 1977 with the formation of the Industry Overview Committee on Personnel Dosimetry to monitor the progress and development of the evaluation program and to ensure that any regulatory action taken would be appropriate and effective.

Advance Notice of Proposed Rulemaking

On March 28, 1980, the NRC took the initial step in the rulemaking process with the publication in the **Federal Register** of an Advance Notice of Proposed Rulemaking (ANPRM) (45 FR 20493). The ANPRM discussed the results of the proficiency testing against the HPSSC standard and the need for rulemaking to improve dosimetry processing. It presented four alternatives for the operation of a proficiency testing laboratory that would conduct performance testing against the HPSSC standard. The ANPRM specified that any proficiency testing laboratory established would be monitored for technical competency by the NBS and that licensees would be required to use dosimetry services that satisfied criteria established by NRC and administered by the proficiency testing laboratory. The four alternatives for proficiency testing laboratory operations as described in the ANPRM were:

1. Processors and licensees would establish one or more laboratories to administer proficiency testing against the HPSSC standard.
2. The proficiency testing laboratory would be a Federal Government facility managed and operated by the NRC.
3. The NRC would contract the services of a proficiency testing laboratory.
4. Another Federal agency experienced in laboratory testing would operate the proficiency testing laboratory.

Analysis of Comment Letters

Forty-six comment letters were received in response to the ANPRM. Twenty-one did not state a preference for which alternative should be used in establishing a proficiency testing laboratory and three felt no proficiency testing program was necessary. Of the remaining 22, 20 expressed a preference for laboratories controlled by the Federal government (alternatives 2, 3, or 4). Commenters also inquired and commented on control of the testing laboratory, on procedures to be used in the regulatory program, and on various other problems that could result from a processor failing to satisfy the established criteria. Several discussed the importance of defining and requiring minimum elements of a generic quality assurance program that should be established as part of the dosimetry processing performance criteria. The major technical questions raised were those concerning the selection of dose conversion factors within the standard. Several of the commenting dosimetry processors also requested a third round of performance testing to allow processors to be tested against the revised HPSSC standard before any rulemaking on dosimetery processing became effective.

National Voluntary Laboratory Accreditation Program (NVLAP) Alternative

During the comment period for the ANPRM, a fifth alternative for the operation of a proficiency testing laboratory that would utilize the NVLAP of the NBS was identified by the Interagency Policy Committee. NBS, in accordance with NVLAP procedures specified in 15 CFR Part 7, would contract the services of a proficiency testing laboratory to administer proficiency testing of dosimetry processors against a performance standard specified by the NRC (in this case ANSI N13.11).

The process of accreditation according to NVLAP procedures would require three separate actions: (1) Completion of a NVLAP questionnaire and other application materials that involve documentation of responsible personnel, equipment, facilities and quality control procedures; (2) successful performance in dosimetry proficiency testing in accordance with ANSI N13.11, "Criteria for Testing Personnel Dosimetry Performance"; and (3) onsite inspection by NVLAP assessors of the processor's routine dosimetry service with respect to processing protocols and associated minimum quality assurance criteria specified in NVLAP general and specific criteria and supplied to the processor upon application for the program. NVLAP would thus offer a system of third-party accreditation by a Federal Government agency, namely, the Department of Commerce (DOC) operating through the NBS. In addition, the pass-fail criterion for accreditation ensures that the mean of the reported doses will be within ±50% of the actual dose at the 95% confidence level, and that at least 90% of the individual reported doses will be within ±95% of the actual dose at the 95% confidence level.

In December 1980, the NRC asked the DOC to establish, in coordination with NRC staff, an accreditation program under NVLAP for personnel dosimetry processors. In accordance with NVLAP procedures and authority (15 CFR Part 7), the DOC published NRC's request (46 FR 9689) for development of such a Laboratory Accreditation Program (LAP) on January 29, 1981 and requested public comment. NRC sent a copy of the DOC Federal Register Notice and a description of the NVLAP to all known dosimetry processors and interested persons on February 6, 1981. All 19 letters of comment received were unanimous in their approval of the NVLAP alternative. Consequently the NVLAP dosimetry LAP was started in 1981 under an Interagency Agreement between NRC and NBS, and a proficiency testing laboratory was contracted by the NBS. Proficiency testing and NVLAP accreditation of processors began in January 1984.

Additional Performance Testing

Since the original HPSSC standard was significantly revised following the two pilot tests, the NRC staff sponsored a third round of performance testing against ANSI N13.11, which was completed in 1983.[3] Seventy personnel dosimetry processors voluntarily participated in this round. The standard provides a total of eight radiation categories involving high-energy and low-energy photons, beta particles, neutrons, and mixtures of these. The procedure was for a processor to send 15 dosimeters for each test category in which it wished to be tested to the testing laboratory. These dosimeters were then irradiated with doses known only to the testing laboratory and returned to the processor. NBS had the responsibility of verifying the accuracy of the irradiations performed by the testing laboratory. The processor then determined the dose for each dosimeter and reported the results back to the testing laboratory for evaluation against the standard. The testing laboratory evaluated the processor's performance in accordance with the performance criterion specified in ANSI N13.11. Of the category tests attempted, an average of 25% failed. This compares to failure rates of 52% for the first test and 38% for the second, as measured against the final standard.

Although the identity and individual results of the dosimeter test data were confidential to the proficiency testing laboratory, the contractor reported that the categories failed in this third round of testing were evenly distributed among large and small commercial and in-

[3] Plato, P. and J. Miklos, "Performance Testing of Personnel Dosimetry Services: Final Report of Test #3," NUREC/CR 2891, February 1983.

house processors. In light of the results from the three pilot tests, the NRC concluded that improvement on the part of most dosimetry processors was needed and the regulations should be amended not only to provide for periodic evaluation but also to include checks of a processor's quality assurance program to improve the quality of personnel dosimetry processing.

II. Proposed Rule

In view of the comments received in response to the ANPRM and the unanimous approval of the NVLAP alternative, the NRC published on January 10, 1984, a Notice of Proposed Rulemaking (NPRM) (49 FR 1205) that would require NRC licensees to use the services of dosimetry processors that have been accredited by the NVLAP of NBS. Five alternatives were considered in drafting the NPRM, and an analysis of each of these is included in the Regulatory Analysis, which is available for inspection and copying for a fee at the NRC Public Document Room located at 1717 H Street NW., Washington, DC.

III. Summary of Public Comments

The NRC received 96 comment letters on the proposed rule, some of which were duplicates, leaving a net of 93 letters, many of which contained more than one comment.

All of the public comments have been considered, and the staff responses to these comments are set forth in the Analysis of Comments document which is available for review and copying for a fee at the NRC Public Document Room located at 1717 H Street NW., Washington, DC.

Forty commenters approved of the proposed rule outright, 20 commenters approved of the rule but identified suggested changes or additions, and 6 commenters approved of that part of the rule requiring accreditation of processors but were opposed to requiring the licensee to retain NVLAP certification records. (This requirement has been deleted from the final rule.) Nineteen commenters were opposed to the proposed rule, primarily because of the cost, and another eight commenters provided miscellaneous comments on the rule.

A repeated comment in opposition to the rule from medical and hospital licensees appears to be the result of a misunderstanding. These commenters stated that the imposition of the accreditation requirement would force them, on the basis of cost, to terminate their in-house monitoring services, which now provide supplementary or redundant dosimeters to personnel that have their primary dosimeters processed by a commercial processor, and to terminate dosimetry services not required by 10 CFR 20.202(a). Other commenters stated that a differential fee structure is needed to provide relief to small processors, that the onsite assessment should be waived for small processors as a means of reducing costs, and that the proposed § 20.202(c)(2) should be clarified by issuance of a Regulatory Guide to assist licensees to determine in which radiation categories they should be accredited.

In regard to the suggestion that onsite assessment be waived for small processors, accreditation in the testing program under appropriate categories, as emphasized in the proposed new § 20.202(c)(2), does not in itself ensure that the processor applies the same care and attention to routine dosimetry processing as it does to test dosimeters. The onsite visits conducted by NVLAP assessors are not only a part of the mechanism for detecting sources of variability under the control of the processor, they also serve to check on the quality assurance program of the processor as it applies to routine dosimetry and ensure that equivalent care is given both to routine dosimetry processing and to test dosimetry processing. It is for these reasons that the onsite visits cannot be waived for the small or in-house processors.

Turning to the major comment from medical and hospital licensees, it is not the intent of the NRC to discourage voluntary dosimetry or redundant dosimetry that is provided in addition to the required dosimetry. The subject regulation will not require the services of an accredited personnel dosimetry processor for such voluntary or redundant dosimeters. It should be noted that there are also other methods of dose assessment such as surveys, time and motion studies, or use of pocket ionization chambers that do not require processing, all of which are outside the scope of this rule.

Licensees who do not make a determination as to which personnel require personnel monitoring to comply with 10 CFR 20.202(a) will be required to use an accredited personnel dosimetry processor for all dosimeters that need processing. Also, licensees who use dosimeters to determine whether dosimetry is routinely required under 10 CFR 20.202(a) or other relevant NRC regulations will be required to use the services of an accredited processor for those test dosimeters. Those licensees that have made a commitment in their license application to provide personnel dosimetry to personnel for whom it is not required (under 10 CFR 20.202(a) or other applicable regulations) may apply for a license amendment to delete this requirement from the license before the effective date of the rule. Nothing in this regulation precludes a licensee from providing voluntary dosimetry services whether such dosimetry utilizes accredited processing or not. The Commission, however, encourages the use of accredited processing for voluntary dosimetry in order to provide the desired accuracy and reliability for all dose records. After the effective date of the rule, dosimetry required by license conditions (which may reference commitments made in license applications) must be provided by an accredited dosimetry processor.

With respect to clarifications that would enable licensees to determine which radiation categories apply to their operations, it should be pointed out that it has always been the responsibility of the licensee to provide appropriate and properly calibrated personnel monitoring devices. The rule to require NVLAP accreditation does not alter this responsibility. In view of the comments received, however, the NRC plans to issue supplementary information to help licensees to determine appropriate testing categories for their specific operations.

It is recognized that even the minimum fees charged by NVLAP can seriously affect small dosimetry processors. NRC has no authority to impose a differential fee structure since NBS sets the NVLAP accreditation fees. These processors should be aware that grants may be available from the Small Business Administration to assist small businesses in paying these fees. Also, licensees who believe that they should be exempted from the requirements of this rule may apply for an exemption in accordance with 10 CFR 20.501.

A number of NRC licensees have expressed concern that, should their personnel dosimetry processor lose accreditation, they could be in non-compliance with the new regulation. The NRC believes, however, that few, if any, dosimetry processors will lose their accreditation and that accreditation loss would be a relatively lengthy process. NVLAP accreditation is given for a two-year period; a processor would have ample warning during the retesting and renewal process that accreditation criteria were not being met. It would be prudent for licensees to negotiate with their processors agreements which require current information regarding the reaccreditation process.

The NVLAP testing and accreditation program has been in operation for more than two years, and on the basis of this

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to directed revision or unless the FAA

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operating experience it has been found that a minimum of about six months is required for processors to receive accreditation. Since some processors fail the first round of testing, an additional three months may be necessary. On this basis, the Commission has determined that an effective date of one year after publication of this rule in effective form would be reasonable.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain any new or amended information collection requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150-0014.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final rule. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection and copying at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis may be obtained from Donald O. Nellis, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Mail Stop NL-007, Washington, DC 20555, Telephone: (301) 443-7989.

Regulatory Flexibility Analysis

The NRC has prepared a final regulatory flexibility analysis on the impact of this rule on small entities as required by Section 604 of the Regulatory Flexibility Act. The analysis indicates that although the final rule could have an economic impact of $7,000 initially, and from $3,000 to $8,400 annually on each personnel dosimetry processor, of which about 10 are small entities, the selected alternative is the least costly alternative that provides adequate dosimetry processing for licensees and workers. A copy of the final regulatory flexibility analysis is available for inspection and copying at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies may be obtained from Donald O. Nellis, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Mail Stop NL-007, Washington, DC 20555, Telephone (301) 443-7989.

Backfit Analysis

As required by 10 CFR 50.109 (50 FR 38097), the Commission has prepared a backfit analysis for the final rule. The Commission has determined, based on this analysis, that backfitting to comply with the requirements of this final rule is justified. A copy of the backfit analysis is available for inspection and copying at the NRC Public Document Room located at 1717 H Street NW., Washington, DC. Single copies may be obtained from Donald O. Nellis, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Mail Stop NL-007, Washington, DC 20555, Telephone (301) 443-7989.

List of Subjects in 10 CFR Part 20

Byproduct material, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, and Waste treatment and disposal.

For reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Part 20.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for Part 20 is revised to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 68 Stat. 930, 933, 935, 936, 937, 948, as amended (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 20.101, 20.102, 20.103(a), (b) and (f), 20.104(a) and (b), 20.105(b), 20.106(a), 20.201, 20.202(a), 20.205, 20.207, 20.301, 20.303, 20.304, and 20.305 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 20.102, 20.103(e), 20.401–20.407, 20.408(b), and 20.409 are issued under sec. 161(o), 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 20.3, a new definition is added as paragraph (a)(20) to read as follows:

§ 20.3 Definitions.

(a) As used in this part:

* * * * *

(20) "Dosimetry processor" means an individual or an organization that processes and evaluates personnel monitoring equipment in order to determine the radiation dose delivered to the equipment.

3. In § 20.202, a new paragraph (c) is added to read as follows:

§ 20.202 Personnel monitoring.

* * * * *

(c) All personnel dosimeters (except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to hands and forearms, feet and ankles) that require processing to determine the radiation dose and that are utilized by licensees to comply with paragraph (a) of this section, with other applicable provisions of 10 CFR Chapter I, or with conditions specified in a licensee's license must be processed and evaluated by a dosimetry processor:

(1) Holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Bureau of Standards, and

(2) Approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximate the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

Dated at Washington, DC, this 9th day of February, 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87-3139 Filed 2-12-87; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-CE-45-AD; Amdt. 39-5553]

Airworthiness Directives; Beech Models 1900 and 1900C Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Beech Models 1900 and 1900C airplanes equipped with optional "chip detect" annunciators. The AD requires that the Pilots Operating Handbook and FAA Approved Airplane Flight Manual (POH/AFM) be revised to remove language which could allow flights beyond the point of first intended landing following illumination of a "chip detect" annunciator, and to insert in its place a requirement that the cause of the illumination be determined and corrected prior to the next takeoff. This annunciator is intended to inform the flight crew of magnetic particle contamination in the engine reduction gear oil supply, a condition which could lead to in-flight engine failure, and continued illumination of a "chip detect" caution annunciator may reduce the attention-getting qualities of other required caution and warning lights with a resulting adverse effect upon safe operation.

DATES: *Effective Date:* March 23, 1987. Compliance As prescribed in the body of the AD.

ADDRESSES: Copies of the applicable POH/AFM revisions are available from Beech Aircraft Corporation, 9709 E. Central, P.O. Box 85, Wichita, Kansas 67201. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. L.D. Felix, ACE-160W, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4433.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring that the POH/AFM be revised to remove language which could allow flights beyond the point of first intended landing following illumination of a "chip detect" annunciator, and to insert in its place a requirement that the cause of the illumination be determined and corrected prior to the next takeoff, applicable to certain Beech Models 1900 and 1900C airplanes equipped with optional "chip detect" annunciators, was published in the **Federal Register** on October 17, 1986 (51 FR 37039). The proposal resulted from language introduced into the Beech Models 1900/1900C POH/AFM Part Number (P/N) 114-590021-3 by Revision A2 dated September 1985, which would authorize flights beyond the point of first intended landing following illumination of a "chip detect" caution annunciator without first determining the cause of the illumination. The FAA considers that for reasons of operating safety, any caution annunciation, once given, must be considered valid until its cause is found and corrected. The "chip detect" caution annunciator is intended to inform the flight crew of magnetic particle contamination in the engine reduction gear oil supply, a condition which may lead to in-flight engine failure A failure to determine and correct the cause of such annunciation at the point of first intended landing exposes the occupants of the airplane to possible undue hazard due to in-flight engine failure on any additional flights, including those which may be necessary to reach a point at which normal maintenance may be performed.

The warning, caution, and advisory annunciators installed in the Models 1900 and 1900C cockpits are presented in a format that is generally compatible with the requirements of the Federal Aviation Regulations. In this format, red (warning) annunciators are used to indicate hazards which may require immediate corrective action. Amber (caution) annunciators are used to indicate the possible need for future corrective action. Green annunciators are used to indicate safe operation, and annunciators of other colors may be used to indicate system status. The safety benefits of this format depend upon the attention-getting qualities of the individual annunciators. Where any warning (red) or caution (amber) annunciator operates continuously, the attention-getting qualities of the remaining annunciators may be compromised. This may result in the flight crew's failure to detect and take timely action with respect to failures in other installed systems, particularly if flight is extended beyond the point of first intended landing. Since flight operation beyond the point of first intended landing with a caution annunciator illuminated may lead to unsafe flight crew actions, the FAA has determined that an unsafe condition exists. This AD requires that pen-and-ink changes be made to the POH/AFM to delete a requirement that, following illumination of a chip detect annunciator, the cause of the malfunction should be determined and corrected at the next point where maintenance can be performed, and to insert in its place a requirement that the cause of the malfunction should be determined and corrected prior to the next takeoff.

Revision A3, dated February 1986, incorporates POH/AFM changes which are substantively the same as those directed by this proposed AD, and Beech has provided copies of Revision A3 to operators for each Model 1900 and 1900C airplane in service. Notwithstanding this, the unsafe procedure that is contained in the POH/AFM Revison A2 material is legally presumed to be safe unless it is subject to directed revision or unless the FAA approval is rescinded.

Since the condition described is likely to exist or develop in other Beech Models 1900/1900C airplanes of the same design, this AD requires that the Beech Models 1900/1900C POH/AFM P/N 114-590021-3 be revised to require pen-and-ink correction to material inserted by Revision A2 dated September 1985, or by incorporating Revision A3 dated February 1986.

No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change.

The FAA has determined there are approximately 58 airplanes affected by this AD. The cost of revising the POH/AFM of these airplanes as required by this AD is estimated to be negligible to the private sector. The cost of compliance with this AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action: (1) Is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) Revised, Pub. L. 97-449, (January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Beech: Applies to Models 1900 and 1900C (all serial numbers) airplanes equipped with optional "chip detect" annunciators, certificated in any category

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Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To preclude the reduction of the attention-getting qualities and enhance pilot awareness of the cockpit caution and warning annunciators, accomplish the following:

(a) Revise Beech Models 1900/1900C Pilot's Operating Handbook and FAA Approved Airplane Flight Manual (POH/AFM), Part Number (P/N) 114–590021–3, by incorporating Revision A3, dated February 1986.

(b) An alternate means of compliance with paragraph (a) of the AD is as follows:

(1) Using pen-and-ink or other permanent means, delete the words "at the next point where maintenance can be performed" from the procedure entitled ILLUMINATION OF "CHIP DETECT" ANNUNCIATOR on page 3A–6.

(2) In place of the words deleted in step (1), insert the words "prior to the next takeoff".

(c) The requirements of paragraph (a) or (b) of this AD may be accomplished by the holder of a pilot certificate issued under Part 61 of the Federal Aviation Regulations (FAR) on any airplane owned or operated by him. The person accomplishing these actions must make the appropriate aircraft maintenance record entry as prescribed by FAR 91.173.

(d) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946–4400.

All persons affected by this directive may obtain copies of the documents applicable to this AD upon request to Beech Aircraft Corporation, 9709 East Central, P.O. Box 85, Wichita, Kansas 67201; or the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective March 23, 1987.

Issued in Kansas City, Missouri, on February 4, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87–3074 Filed 2–12–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 86–NM–231–AD; Amdt. 39–5556]

Airworthiness Directive; CASA Model C–212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Construcciones Aeronauticas S.A. (CASA) Model C–212 series airplanes, which requires modification of the nose landing gear steering actuator attachment. This amendment is prompted by several reports of airplanes running off the runway, following severe vibration (shimmy) and loss of nose wheel steering. This condition, if not corrected, could result in failure of the nose landing gear and major damage to the airplane.

EFFECTIVE DATE: March 2, 1987.

ADDRESSES: The applicable service information may be obtained from Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Spanish Dirección General de Aviación Civil (DGAC) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition, which may exist or develop on certain CASA Model C–212 airplanes due to failures of torque link bolts in the nose landing gear, caused by excessive vibration. There have been two recent reports of CASA Model C–212 airplanes that ran off the runway, following severe nose wheel vibration during landing. Investigation revealed that the nose wheel steering actuator attachment bolts had sheared. Failures of the bolts can lead to failure of the nose landing gear and resultant severe damage to the airplane.

CASA issued Service Bulletin 212–32–21, Revision 1, dated June 4, 1986, which provides the instructions necessary to reinforce the unions between the steering actuator and landing gear attachment fitting, and to improve the safetying of all attaching components. The DGAC has classified this service bulletin as mandatory.

This airplane model is manufactured in Spain and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires modification of the nose landing gear in accordance with CASA Service Bulletin 212–32–21, Revision 1, dated June 4, 1986.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedures hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

PART 39—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the FAA amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Construcciones Aeronauticas S.A. (CASA): Applies to Model C–212 airplanes identified in CASA Service Bulletin 212–32–21, Revision 1, dated June 4, 1986, certificated in any category. Compliance is required within 45 days after the effective date of this AD.

To prevent loss of aircraft control on the runway caused by fractured nose landing gear components, accomplish the following, unless already accomplished:

A. Modify the nose landing gear in accordance with the accomplishment instructions of CASA Service Bulletin 212–32–21, Revision 1, dated June 4, 1986.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer, may obtain copies upon request to Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 2, 1987.

Issued in Seattle, Washington, on February 5, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–3075 Filed 2–12–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 86–ANE–27; Amdt. 39–5555]

Airworthiness Directives; Teledyne Continental Motors GTSIO–520, TSIO–520, IO–520 and IO–550 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Teledyne Continental Motors reciprocating engines by individual letters. The AD requires repetitive inspections, and replacement if necessary, of cylinder assemblies in service and a one time inspection of cylinders in stock. The AD is needed to prevent possible cylinder head to barrel separation which could result in engine failure and/or engine compartment fire.

DATES: Effective February 19, 1987, as to all persons except those persons to whom it was made immediately effective by priority letter AD No. 86–13–04 R2, issued December 24, 1986, which contained this amendment.

Compliance—As required in the body of the AD.

FOR FURTHER INFORMATION CONTACT: Jerry C. Robinette, Aerospace Engineer, Propulsion Branch, ACE–140A, Atlanta Aircraft Certification Office, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349, telephone (404) 991–3810.

SUPPLEMENTARY INFORMATION: On June 20, 1986, AD No. 86–13–04 was issued requiring repetitive inspections of cylinder assemblies in service and the one time inspection of cylinders in stock on certain Teledyne Continental Motors GTSIO–520, TSIO–520, IO–520, and IO–550 series engines. AD action was necessary to prevent possible cylinder head to barrel separation which could cause engine failure and/or engine compartment fire. Priority Letter AD No. 86–13–04 R1, issued September 5, 1986, allowed the replacement of suspect cylinder assemblies with approved cylinder assemblies in order to discontinue the repetitive inspections required, and amended the effective date of the AD. Priority Letter AD No. 86–13–04 R2, issued December 24, 1986, added certain chrome plated cylinder assembly part numbers to the list of suspect cylinder assemblies.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual letters as to all known U.S. owners and operators of certain Teledyne Continental Motors GTSIO–520, TSIO–520, IO–520, and IO–550 series engines. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Teledyne Continental Motors:

Applies to cylinder assemblies (part number stamped on flange of cylinder) with P/N's 643985, 646100, 646101, 646652, 646652CP, 646657, 646657CP, 649162, 649162CP, 649169, 649169CP including all these numbers with all A dash numbers as a suffix, manufactured on or after January 1, 1985, with 485 total hours or less installed on, but not limited to, the following Teledyne Continental Motors (TCM) Engines:

New engines	Serial Nos.
GTSIO–520–H	607068 thru 607070.
–K	605164
–L	608666 thru 608673.
–M	606676 thru 606687
–N	610450 thru 610462.
TSIO–520–BE	528133 thru 528242, 528244 thru 528248, 528252 thru 528256, 528259, 528260, 528263, 528270.
–CE	530045 thru 530127, 530131, 530132
–C	501603 thru 501610.
–EB	510802 thru 510809.
–G	507066
–H	506883 thru 506885.
–M	520742 thru 520824, 520829 thru 520835, 520837, 520838
TSIO–520–NB	521585 thru 521615.
–P	513908 thru 513910
–R	522586 thru 522602, 522604, 522605
–UB	527063 thru 527080.
–VB	529014 thru 529060.
–WB	518895 thru 518906
10–520–BB	578073, 578084 thru 578151, 578155, 578156, 578166
–CB	576237 thru 576272.
–D	575717, 575747 thru 575806.
–E	556594 thru 556603.
–F	574644 thru 574988.
–K	557516 thru 557518.
–L	577121 thru 577147, 577149 thru 577153.
–MB	575043 thru 575046
10–550–B	675125 thru 675237, 675239 thru 675244, 675246 thru 675256, 675258 thru 675266, 675273, 675274, 675277, 675278
–C	676156 thru 676231, 676233 thru 676248, 676250 thru 676271.

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Rebuilt Engines	Serial Nos.
GTSIO-520-C	155546 thru 155550.
-D	219429 thru 219435.
-H	235236 thru 235290, 235293 thru 235298, 267000 thru 267003.
-K	226106 thru 226110.
-L	245882 thru 245990, 245992 thru 246008, 246011 thru 246014, 246016 thru 246021, 246023, 246024.
-M	243217 thru 243364, 243366, 243367, 243369 thru 243381.
-N	241300, 265000 thru 265039, 265041.
TSIO-520-AF	245205.
-BB	236937 thru 236951
-B	176485 thru 178522.
-C	178289 thru 178297.
-EB	242984 thru 242999.
-E	183816 thru 183939, 183941 thru 183943, 183947.
-G	216022 thru 21605.
-H	217173 thru 217187.
-J	218907 thru 218924.
-K	224583, 224584.
-LB	237237 thru 237241, 237245, 237246.
TSIO-520-L	241883 thru 241900.
-M	230223, 230225, 248601 thru 248628, 248632 thru 248638, 248642.
-NB	244933 thru 244999, 266500, 266501, 266503 thru 266511, 266513 thru 266517, 266521, 266525.
-N	228481 thru 228505, 228509 thru 228516.
-P	236453 thru 236467.
-R	245645 thru 245696.
-T	239316 thru 239321
-UB	240981 thru 241000, 248851 thru 248854, 248858
-VB	248288 thru 248499, 266600 thru 266681, 266683 thru 266685, 266687, 266689, 266691, 266699 thru 266702.
-WB	248160 thru 248203, 248205 thru 248217.
10-520-A	112547 thru 112569.
-BA	241763 thru 241800, 249251 thru 249425, 249427 thru 249429, 249433 thru 249443, 249445, 249446, 249448 thru 249453, 249457
-BB	236000, 236789, 248500 thru 248568, 248572, 248573, 248575.
10-520-B	234758
-CB	244047, 244067 thru 244110, 244112 thru 244123, 244126, 244127, 244130, 244131
-C	243728, 243766 thru 243999, 267500, 267505 thru 267510, 267513 thru 267516, 267527.
-D	175381 thru 175531, 175534 thru 175536, 175540 thru 175556, 175559, 175560, 175563, 175565 thru 175567.
-E	215674 thru 215690.
-F	247574, 247577, 247807 thru 247727, 247731 thru 247742, 247744, 247746 thru 247750, 247752 thru 247756, 247762, 247766, 247767.
-J	216515
-K	224045, 224046.
-L	242834 thru 242896, 242899.
-MB	236383 thru 236400, 266000 thru 266017, 266019
-M	235728 thru 235787, 235789 thru 235793
10-550-B	249104 thru 249122.

These engines are used on, but are not limited to, installation on the following airplanes:

Aero Commander 200, 500, 685
AISI F, 20 Pegaso
Ambrosini MF-15
Beagles B206S
Beech 33 Series, 35 series, 36, A36, A36TC, 55 Series, 58, 58P, 58TC
Bellanca Viking 300
Cessna 185, 188 series, 206 series, 207 series, 210 series, 310, T310, 320, 335, 340, 401, 402, 404, 411, 414, 421
Fletcher FU-24A
Janox Javilon
Navion Model H
Omnipal Cmelak
Piper PA-46
Prinair DeHavilland Heron
Procaer F-150
Transavia Airtruck
Windecker Eagle
Yeoman Cropmaster 285.

Compliance required within the next 5 flight hours after the effective date of this AD, except as to those compliance requirements set forth in AD 86-13-04, dated June 20, 1986, and priority letter AD 86-13-04 R1, dated September 5, 1986, unless already accomplished.

To prevent possible cylinder head to barrel separation, engine failure and/or engine compartment fire, accomplish the following:

I. For the above cylinder assembly part numbers installed on engines including those serial numbered engines listed above:

(a) Determine the part number for each cylinder assembly (part number is stamped on flange of cylinder barrel) and the date of manufacture (month and year of manufacture are stamped underneath rocker cover in the face of the rocker shaft boss).

1. If the cylinder assembly part number and date of manufacture are as listed above, proceed with paragraph (b), (c), (d), (e), and (f).

2. If the cylinder assembly part number and date of manufacture are not as listed above, proceed to paragraph (f). No further inspections are required by this AD.

(b) Visually inspect all cylinders for oil stains or leakage between the first and second barrel fins from the bottom of the head casting. The area of concern on direct drive engines is at the 12 o'clock position on the 1-3-5 cylinder side and the 6 o'clock position on the 2-4-6 side. On the GTSIO series engine, the area of concern is at the 6 o'clock position on the 1-3-5 cylinder side and 12 o'clock position on the 2-4-6 cylinder side.

(c) Pressure check all cylinder assemblies using a differential compression tester. The piston should be as close to BDC (Bottom Dead Center) as possible to insure the piston and rings are below the inspection area specified in paragraph (b) but still keeping both values closed and maintaining pressure in the cylinder. With 80 PSIG (pounds per square inch guage) air pressure in the cylinder, check the area specified in paragraph (b) with a soap/water solution and inspect for any leakage.

(d) If any leakage is noted from the above inspection and/or pressure check, the cylinder assembly must be changed before further flight.

(e) This visual inspection and pressure check must be repeated at intervals not to exceed 50 flight hours until the last inspection and pressure check required by this AD has been accomplished. The last inspection and pressure check required by this AD must occur between 440 hours and 490 hours of cylinder operation. However, these repetitive inspections and pressure checks may be discontinued when suspect cylinder assemblies having been replaced with assemblies having a date of manufacture before January 1985 or by approved replacement cylinder assemblies have different part numbers.

(f) Make appropriate Engine Logbook entry.

II. For cylinder assemblies not installed on engines:

Confirm a manufacture date stamp of 1-85 (January 1985) or subsequent (month and year of manufacture are stamped underneath rocker cover in the face of the rocker shaft boss), then notify Teledyne Continental Motors for disposition and replacement.

Notes: (a) Teledyne Continental Motors Service Bulletin No. M86-7, Rev. 5, dated 15 November 1986, addressed this subject.

(b) The manufacturer recommends continuing repetitive inspections at 100 hour intervals or at annual inspection.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349 may adjust the compliance time specified in this AD.

This amendment becomes effective February 19, 1987, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD No. 86-13-04R2, issued December 24, 1986, which contained this amendment.

Issued in Burlington, Massachusetts, on February 5, 1987.

Clyde DeHart, Jr.,

Acting Director, New England Region.

[FR Doc. 87-3076 Filed 2-12-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-AWA-37]

Establishment of Airport Radar Service Area; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects a coordinate in the description of the Charleston AFB/International Airport, SC, Airport Radar Service Area as published in the **Federal Register** (FR Document 87-729) on January 13, 1987 (52 FR 1426). In the amendatory language of that document, "lat. 23°" is corrected to read "lat. 32°".

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Burns, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic

Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

(Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.)

Issued in Washington, DC, on February 9, 1987.

Harold H. Downey,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-3071 Filed 2-10-87; 12:01 pm]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 25187; Amdt. No. 1340]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on February 6, 1987.

John S. Kern,

Director of Flight Standards.

Adoption of the Amendment

PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

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§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective April 9, 1987

Decatur, AL—Pryor Field, VOR RWY 18, Amdt. 9
Decatur, AL—Pryor Field, VOR RWY 36, Amdt. 2
Huntsville, AL—Huntsville Airport North, VOR/DME-B, Amdt. 4
Huntsville, AL—Huntsville-Madison Co Arpt—Carl T Jones Field, VOR-A, Amdt. 11
Huntsville, AL—Huntsville-Madison Co Arpt—Carl T Jones Field, NDB RWY 18R, Amdt. 12
Huntsville, AL—Huntsville-Madison Co Arpt—Carl T Jones Field, ILS RWY 18L, Amdt. 1
Huntsville, AL—Huntsville-Madison Co Arpt—Carl T Jones Field, ILS RWY 18R, Amdt. 19
Huntsville, AL—Huntsville-Madison Co Arpt—Carl T Jones Field, ILS RWY 36L, Amdt. 6
Huntsville, AL—Huntsville-Madison Co Arpt—Carl T Jones Field, RADAR-1, Amdt. 6
Madison, CT—Griswold, VOR-A, Amdt. 4
Windsor Locks, CT—Bradley Intl, RADAR-1, Amdt. 6, CANCELLED
Kailua-Kona, HI—Keahole, LOC RWY 17, Amdt. 4
Kailua-Kona, HI—Keahole, LOC BC RWY 35, Amdt. 7
Kailua-Kona, HI—Keahole, ILS/DME RWY 17, Amdt. 8
Biddeford, ME—Biddeford Muni, VOR-A, Amdt. 5
Tupelo, MS—C. D. Lemons Muni, VOR-A, ORIG, CANCELLED
Cross Keys, NJ—Cross Keys, VOR RWY 9, Amdt. 3
Toms River, NJ—Robert J. Miller Air Park, LOC RWY 6, Amdt. 2
Spring Valley, NY—Ramapo Valley, VOR RWY 8, ORIG, CANCELLED
Ahoskie, NC—Tri-County, VOR/DME-A, Amdt. 4
Ahoskie, NC—Tri-County, NDB RWY 36, Amdt. 1
Asheville, NC—Asheville Regional, ILS RWY 34, Amdt. 22
Edenton, NC—Edenton Muni, NDB RWY 5, Amdt. 4
Edenton, NC—Edenton Muni, NDB RWY 19, Amdt. 5
Rocky Mount, NC—Rocky Mount-Wilson, LOC BC RWY 22, Amdt. 3
Rocky Mount, NC—Rocky Mount-Wilson, NDB RWY 4, Amdt. 6
Rocky Mount, NC—Rocky Mount-Wilson, ILS RWY 4, Amdt. 11
Williamston, NC—Martin County, NDB RWY 21, Amdt. 3
Wilson, NC—Wilson Muni, NDB RWY 3, Amdt. 5
Chillicothe, OH—Ross County, VOR RWY 22, Amdt. 1
Chillicothe, OH—Ross County, NDB RWY 22, Amdt. 5
Circleville, OH—Pickaway County Memorial, VOR RWY 19, Amdt. 1
Circleville, OH—Pickaway County Memorial, NDB RWY 19, Amdt. 4
Lancaster, OH—Fairfield County, RNAV RWY 10, Amdt. 6
Tillamook, OR—Tillamook, NDB-A, Amdt. 1
Conway, SC—Conway-Horry County, VOR/DME-B, Amdt. 2
Conway, SC—Conway-Horry County, NDB-A, Amdt. 2, CANCELLED
Conway, SC—Conway-Horry County, NDB RWY 4, ORIG
Blanding, UT—Blanding Muni, NDB RWY 35, Amdt. 5

. . . Effective March 12, 1987

Denver, CO—Stapleton Intl, LOC/DME RWY 18, ORIG
Menominee, MI—Menominee-Marinette Twin County, VOR-A, Amdt. 1
Menominee, MI—Menominee-Marinette Twin County, RNAV RWY 21, ORIG
Kansas City, MO—Kansas City Downtown, VOR RWY 3, Amdt. 15
Kansas City, MO—Kansas City Downtown, VOR RWY 19, Amdt. 18
Kansas City, MO—Kansas City Downtown, VOR RWY 21, Amdt. 12
Kansas City, MO—Kansas City Downtown, NDB RWY 19, Amdt. 16
Kansas City, MO—Kansas City Downtown, ILS RWY 19, Amdt. 19
St Louis, MO—Lambert/St Louis Intl, ILS RWY 12R, Amdt. 20
Nashville, TN—John C. Tune, LOC/DME RWY 19, ORIG

. . . Effective January 15, 1987

Butler, PA—Butler County, ILS RWY 8, Amdt. 3

[FR Doc. 87-3072 Filed 2-12-87; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 430, 436, and 455

[Docket No. 86N-0498]

Antibiotic Drugs; Aztreonam for Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new antibiotic drug, aztreonam for injection. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective February 13, 1987; comments, notice of participation, and request for hearing by March 16, 1987; data, information, and analyses to justify a hearing by April 14, 1987.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drugs and Biologics (HFN-815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new antibiotic drug, aztreonam for injection. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Parts 430, 436, and 455 (21 CFR Parts 430, 436, and 455) to provide for the inclusion of accepted standards for the product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this regulation is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. This regulation, therefore, is effective February 13, 1987. However, interested persons may on or before March 16, 1987, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file: (1) On or before March 16, 1987, a written notice of participation and request for hearing, and (2) on or before April 14, 1987, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 430

Administrative practice and procedure, Antibiotics.

21 CFR Part 436

Antibiotics.

21 CFR Part 455

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 430, 436, and 455 are amended as follows:

PART 430—ANTIBIOTIC DRUGS; GENERAL

1. The authority citation for 21 CFR Part 430 continues to read as follows:

Authority: Secs. 507, 701(a), 59 Stat. 463 as amended, 52 Stat. 1055 (21 U.S.C. 357, 371(a)); 21 CFR 5.10.

2. Section 430.4 is amended by adding new paragraph (a)(56) to read as follows:

§ 430.4 Definitions of antibiotic substances.

(a) * * *

(56) *Aztreonam.* [2*S*[2*alpha*,3*beta*(*Z*)]]-2-[[[1-(2-amino-4-thiazolyl)-2-[(2-methyl-4-oxo-1-sulfo-3-azetidinyl)amino]-2-oxoethylidene]amino]oxy]-2-methylpropanoic acid.

3. Section 430.5 is amended by adding new paragraphs (a)(89) and (b)(91) to read as follows:

§ 430.5 Definitions of master and working standards.

(a) * * *

(89) *Aztreonam.* The term "aztreonam master standard" means a specific lot of aztreonam that is designated by the Commissioner as the standard of comparison in determining the potency of the aztreonam working standard.

(b) * * *

(91) *Aztreonam.* The term "aztreonam working standard" means a specific lot of a homogeneous preparation of aztreonam.

4. Section 430.6 is amended by adding new paragraph (b)(91) to read as follows:

§ 430.6 Definitions of the terms "unit" and "microgram" as applied to antibiotic substances.

* * * * *

(b) * * *

(91) *Aztreonam.* The term "microgram" applied to aztreonam means the aztreonam activity (potency) contained in 1.05 micrograms of the aztreonam master standard.

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

5. The authority citation for 21 CFR Part 436 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

6. Section 436.20 is amended by adding new paragraph (d)(9) to read as follows:

§ 436.20 Sterility test methods and procedures.

* * * * *

(d) * * *

(9) *Diluting fluid I.* To each liter of diluting fluid A add 23.4 grams of sterile L-arginine base.

* * * * *

7. New § 436.361 is added to read as follows:

§ 436.361 High-performance liquid chromatographic assay for aztreonam.

(a) *Equipment.* A suitable high-performance liquid chromatograph equipped with:

(1) A suitable detection system specified in the monograph for the drug being tested;

(2) A suitable recording device of at least 25-centimeter deflection;

(3) A suitable chromatographic data managing system; and

(4) An analytical column, 3 to 30 centimeters long, packed with a material as defined in the monograph for the drug being tested; and if specified in that monograph, the inlet of this column may be connected to a guard column, 3 to 5 centimeters in length, packed with the same material of 40 to 60 micrometers particle size.

(b) *Procedure.* Perform the assay and calculate the drug content using the temperature, instrumental conditions, flow rate, and calculations specified in the monograph for the drug being tested. Use a detector sensitivity setting that gives a peak height for the working standard that is at least 50 percent of scale with typical chart speed of not less than 2.5 millimeters per minute. Use the equipment described in paragraph (a) of this section. Use the reagents, working standard solution, and sample solution described in the monograph for the drug being tested. Equilibrate and condition the column by passage of 10 to 15 void volumes of mobile phase followed by five replicate injections of the same volume (between 10 and 20 microliters) of the working standard solution. Allow an operating time sufficiently long to obtain satisfactory separation and elution of the expected components after each injection. Record the peak responses and calculate the prescribed system suitability requirements described for the system suitability test in paragraph (c) of this section.

(c) *System suitability test.* Select the system suitability requirements specified in the monograph for the drug being tested. Then, using the equipment and procedure described in this section, test the chromatographic system for assay as follows:

(1) *Tailing factor.* Calculate the tailing factor (*T*), from distances measured along the horizontal line at 5 percent of the peak height above the baseline, as follows:

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$$T = \frac{W_{0.05}}{2f}$$

where:

$W_{0.05}$ = Width of peak at 5 percent height; and

f = Horizontal distance from point of ascent to a point coincident with maximum peak height.

(2) *Efficiency of the column.* Calculate the number of theoretical plates (n) of the column as follows:

$$n = 5.545 \left[\frac{t_R}{w_h} \right]^2$$

where:

n = Efficiency, as number of theoretical plates for column;

t_R = Retention time of solute; and

w_h = Peak width at half-height.

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(3) Resolution. Calculate the resolution (R) as follows:

$$R = \frac{2(t_{Rj} - t_{Ri})}{w_i + w_j}$$

where:

t_{Rj} = Retention time of a solute eluting after i (t_{Rj} is larger than t_{Ri});

t_{Ri} = Retention time of any solute;

w_i = Width of peak at baseline of any solute; and

w_j = Width of peak at baseline of any solute eluting after i.

(4) Coefficient of variation (relative standard deviation). Calculate the coefficient of variation (S_R in percent) as follows:

$$S_R = \frac{100}{\bar{x}} \left[\frac{\sum_{i=1}^{N} (x_i - \bar{x})^2}{N-1} \right]^{\frac{1}{2}}$$

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where:

X is the mean of N individual measurements of X_i.

If the complete operating system meets the system suitability requirements of the monograph for the drug being tested, proceed as described in paragraph (b) of this section, except alternate injections of the working standard solution with injections of the sample solution.

PART 455—CERTAIN OTHER ANTIBIOTIC DRUGS

8. The authority citation for 21 CFR Part 455 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

9. New § 455.4a is added to read as follows:

§ 455.4a Sterile aztreonam.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Aztreonam is a practically odorless, white to slightly off-white fine powder. It is sparingly soluble in water of pH 2, and is very soluble at pH values above 4. Its solubility is slight to very slight in polar organic solvents such as methanol and ethanol and it is insoluble in non-polar solvents such as hexane and heptane. It is so purified and dried that:

(i) Its potency is not less than 900 micrograms of aztreonam per milligram on an "as is" basis.

(ii) It is sterile.

(iii) It is nonpyrogenic.

(iv) Its moisture content is not more than 2.0 percent.

(v) Its residue on ignition is not more than 0.1 percent.

(vi) Its heavy metals content is not more than 30 parts per million.

(vii) It passes the identity test.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requirements for certification: samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, sterility, pyrogens, moisture, residue on ignition, heavy metals, and identity.

(ii) Samples, if required by the Director, Center for Drugs and Biologics:

(*a*) For all tests except sterility: 10 packages, each containing approximately 500 milligrams.

(*b*) For sterility testing: 20 packages, each containing approximately 300 milligrams.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 436.361 of this chapter, except in lieu of the guard column described in paragraph (a)(4) of that section, use a 5- to 10-centimeter precolumn having an inside diameter of 2 millimeters and packed with octadecyl silane chemically bonded to silica gel of a controlled surface porosity that has been bonded to a solid spherical core (U.S.P. designation L–2) 30 micrograms to 50 micrograms in diameter; and use the resolution test solution to determine resolution in lieu of the working standard solution. Perform the assay at ambient temperature, using an ultraviolet detection system operating at a wavelength of 270 nanometers (or 254 nanometers fixed mercury source), a column packed with octadecyl silane chemically bonded to porous silica or ceramic microparticles (U.S.P. designation L–1) 5 micrograms to 10 micrograms in diameter or equivalent, a flow rate of 1.5 milliliters per minute, and a known injection volume of 20 microliters. Reagents, working standard solution, sample solution, resolution test solution, system suitability requirements, and calculations are as follows:

(i) *Reagents*—(*a*) *0.05M potassium phosphate buffer, pH 3.0.* Prepare a solution containing 6.8 grams of potassium phosphate monobasic per liter of distilled water. Adjust the solution to pH 3.0 with 1*M* phosphoric acid.

(*b*) *Mobile phase.* 0.05*M* potassium phosphate buffer, pH 3.0: methanol (4:1).

(ii) *Preparation of working standard, sample, and resolution test solutions*—(*a*) *Working standard solution.* Transfer approximately 25 milligrams of aztreonam working standard, accurately weighed, to a 25-milliliter volumetric flask. Dissolve and dilute to volume with mobile phase.

(*b*) *Sample solution.* Transfer approximately 25 milligrams of the sample, accurately weighed, to a 25-milliliter volumetric flask. Dissolve and dilute to volume with mobile phase.

(*c*) *Resolution test solution.* Dissolve 10 milligrams of [2*S*-[2*alpha*,3*beta*(*E*]]-2-[[[1-(2-amino-4-thiazolyl)-2-[(2-methyl-4-oxo-1-sulfo-3-azetidinyl]amino]-2-oxoethylidene] amino]oxy]-2-methylpropanoic acid (E isomer) in 10 milliliters of working standard solution and dilute to 50-milliliters with mobile phase.

(iii) *System suitability requirements*—(*a*) *Tailing factor.* The tailing factor (*T*) is satisfactory if it is not more than 2 at 5 percent of peak height.

(*b*) *Efficiency of the column.* The efficiency of the column (n) is satisfactory if it is greater than 1,000 theoretical plates.

(*c*) *Resolution.* The resolution (R) between the peak for aztreonam and the E isomer is satisfactory if it is not less than 2.0.

(*d*) *Coefficient of variation.* The coefficient of variation (S_R in percent) of 5 replicate injections is satisfactory if it is not more than 2.0 percent.

If the system suitability requirements have been met, then proceed as described in § 436.361(b) of this chapter. Alternate chromatographic conditions are acceptable provided reproducibility and resolution are comparable to the system. However, the sample preparation described in paragraph (b)(1)(ii)(*b*) of this section should not be changed.

(iv) *Calculation.* Calculate the micrograms of aztreonam per milligram as follows:

$$\text{Micrograms of aztreonam per milligram} = \frac{A_u \times P_s}{A_s \times C_u}$$

where:

A_u = Area of the aztreonam peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the aztreonam peak in the chromatogram of the aztreonam working standard;

P_s = Aztreonam activity in the aztreonam working standard solution in micrograms per milliliter; and

C_u = Milligrams of sample per milliliter of sample solution.

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section, except use diluting fluid I in lieu of diluting fluid A.

(3) *Pyrogens.* Proceed as directed in § 436.32(b) of this chapter, using a solution containing 50 milligrams of aztreonam and 39 milligrams of pyrogen-free L-arginine base per milliliter.

(4) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(5) *Residue on ignition.* Proceed as directed in § 436.207(a) of this chapter.

(6) *Heavy metals.* Proceed as directed in § 436.208 of this chapter.

(7) *Identity.* Proceed as directed in § 436.211 of this chapter, using the 0.5 percent potassium bromide disc prepared as described in paragraph (b)(1) of that section, except prepare a solution containing 3 milligrams of aztreonam per milliliter of methanol and use 0.5 milliliter of the solution as the sample.

10. New § 455.204 is added to read as follows:

§ 455.204 Aztreonam for injection.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Aztreonam for injection is a dry mixture of aztreonam and arginine. Its potency is satisfactory if each milligram of aztreonam for injection contains not less than 900 micrograms and not more than 1,050 micrograms of aztreonam when corrected for arginine content and moisture content. Its aztreonam immediate container fill (content) is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of aztreonam that it is represented to contain. It is sterile. It is nonpyrogenic. Its moisture content is not more than 2.0 percent. Its pH in an aqueous solution containing 100 milligrams of aztreonam per milliliter is not less than 4.5 and not more than 7.5. The aztreonam used conforms to the standards prescribed by § 455.4a(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The sterile aztreonam used in making the batch for potency, sterility, pyrogens, moisture, residue on ignition, heavy metals, and identity.

(*b*) The batch for aztreonam potency, aztreonam content, sterility, pyrogens, moisture, and pH.

(ii) Samples, if required by the Director, Center for Drugs and Biologics:

(*a*) The aztreonam used in making the batch: 10 packages, each containing approximately 500 milligrams.

(*b*) The batch:

(*1*) For all tests except sterility: A minimum of 10 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) *Potency and content.* Determine both micrograms of aztreonam per milligram of sample and milligrams of aztreonam per container. Proceed as directed in § 436.361 of this chapter, except in addition to the column described in paragraph (a)(4) of that section, use a 5- to 50-centimeter saturator column having an inside diameter of 2 to 4.6 millimeters and packed with approximately 37 micrometer silica; and use the resolution test solution to determine resolution in lieu of the working standard solution. Perform the assay at ambient temperature, using an ultraviolet detection system operating at a wavelength of 206 nanometers, and a column packed with Chromegabond Diol (dihydroypropane chemically bonded to porous silica), 5 to 10 micrometers or equivalent. Mobile phase, working standard solution, sample solution, resolution test solution, system suitability requirements, and calculations are as follows:

(i) *Mobile phase.* Acetonitrile:0.01*M* ammonium phosphate, pH 2.0. Transfer 1.15 grams of ammonium phosphate monobasic to a 1-liter volumetric flask. Add about 800 milliliters of distilled water and sonicate to aid dissolution. Adjust the solution to pH 2.0 with o-phosphoric acid, 85 percent. Dilute the solution to volume with distilled water and mix well. Transfer about 250 milliliters of this solution and 750 milliliters of acetonitrile to a suitably sized container and mix well.

(ii) *Preparation of working standard, sample, and resolution test solutions*—(*a*) *Working standard solution.* Transfer approximately 25 milligrams each of the aztreonam working standard and the arginine working standard, accurately weighed, to a 25-milliliter volumetric flask. Dissolve and dilute to volume with mobile phase (primary working standard solution). Further dilute with mobile phase to 0.2 milligram of aztreonam per milliliter (estimated).

(*b*) *Sample solutions.* Use separate containers for preparation of each sample solution as described in paragraph (b)(1)(ii)(*b*) (*1*) and (*2*) of this section.

(*1*) *Potency (micrograms of aztreonam per milligram).* Accurately weigh the container contents by difference and quantitatively transfer it to a 100-milliliter volumetric flask. Dissolve and dilute to volume with mobile phase. Further dilute in mobile phase to 0.2 milligram of aztreonam per milliliter (estimated).

(*2*) *Content (milligrams of aztreonam Per container).* If packaged in containers with capacities of less than 100 milliliters, reconstitute the sample as directed in the labeling, using distilled water in lieu of reconstituting fluid. If packaged in bottles with capacities of 100 milliliters or greater, reconstitute with 10 milliliters of distilled water. Withdraw the total contents of each container or bottle and dilute with mobile phase to a concentration of 0.2 milligram of aztreonam per milliliter (estimated).

(*c*) *Resolution test solution.* Dissolve 10 milligrams of open ring aztreonam, 2-[[(2-amino-4-thiazolyl)[(1carboxy-1-methylethoxy)imino]acetyl]amino1-3 -(sulfoamino)butanoic acid, in 10.0 milliliters of primary standard solution. Further dilute 5 milliliters of this solution to 25.0 milliliters with mobile phase.

(iii) *System suitability requirements*—(*a*) *Tailing factor.* The tailing factor (*T*) of the aztreonam peak is satisfactory if it is not more than 2 at 5 percent of peak height.

(*b*) *Efficiency of the column.* The efficiency of the column (n) is satisfactory if it is greater than 1,000 theoretical plates.

(*c*) *Resolution.* The resolution (R) between aztreonam peak and open ring aztreonam is satisfactory if it is not less than 2.0.

(*d*) *Coefficient of variation.* The coefficient of variation (S_R in percent) of 5 replicate injections is satisfactory if it is not more than 2.0 percent.

If the system suitability requirements have been met, then proceed as described in § 436.361(b) of this chapter. Alternate chromatographic conditions are acceptable provided reproducibility and resolution are comparable to the system. However, the sample preparation described in paragraph (b)(1)(ii)(*b*) of this section should not be changed.

(iv) *Calculations*—(*a*) *Potency (micrograms per milligram).* (*1*) Calculate the micrograms of aztreonam per milligram (uncorrected) as follows:

$$\text{Micrograms of aztreonam per milligram (uncorrected)} = \frac{A_u \times P_s}{A_s \times C_u}$$

where:

A_u = Area of the aztreonam peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the aztreonam peak in the chromatogram of the working standard;

P_s = Aztreonam activity in the working standard solution in micrograms per milliliter; and

C_u = Milligrams of sample per milliliter of sample solution.

(*2*) Calculate the micrograms of arginine per milligram as follows:

$$\text{Micrograms of arginine permilligram} = \frac{A_u \times P_s}{A_s \times C_u}$$

where:

A_u = Area of the arginine peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the arginine peak in the chromatogram of the working standard;

P_s = Arginine activity in the working standard solution in micrograms per milliliter; and

C_u = Milligrams of sample per milliliter of sample solution.

(*3*) Calculate the micrograms of aztreonam per milligram (corrected) as follows:

Authority: Sec. 507, 59 Stat. 463 as

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$$\text{Micrograms of aztreonam per milligram (corrected)} = \frac{\text{Micrograms of aztreonam per milligram (uncorrected)} \times 1{,}000}{1{,}000 \left[\left(\text{Micrograms of arginine per milligram} \times \frac{\text{percent}}{100}\right) + \text{moisture}\right]}$$

(*b*) *Content (milligrams of aztreonam per container).* Calculate the aztreonam content of the container as follows:

$$\text{Milligrams of aztreonam per container} = \frac{A_u \times P_s \times d}{A_s \times 1{,}000}$$

where:

A_u = Area of the aztreonam peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_s = Area of the aztreonam peak in the chromatogram of the working standard;

P_s = Aztreonam activity in the aztreonam working standard solution in micrograms per milliliter; and

d = Dilution factor of the sample.

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *Pyrogens.* Proceed as directed in § 436.32(b) of this chapter, using a solution containing 50 milligrams of aztreonam per milliliter.

(4) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(5) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 100 milligrams of aztreonam per milliliter.

Dated: February 6, 1987.

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 87-3079 Filed 2-12-87; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 436 and 449

[Docket No. 86N-0497]

Antibiotic Drugs; Nystatin Pastilles

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new dosage form of nystatin, nystatin pastilles. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective February 13, 1987; comments, notice of participation, and request for hearing by March 16, 1987; data information, and analyses to justify a hearing by April 14, 1987.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drugs and Biologics (HFN-815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new dosage form of nystatin, nystatin pastilles. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Parts 436 and 449 (21 CFR Parts 436 and 449) to provide for the inclusion of accepted standards for the product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. This final rule, therefore, is effective February 13, 1987. However, interested persons may, on or before March 16, 1987, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file: (1) On or before March 16, 1987, a written notice of participation and request for hearing, and (2) on or before April 14, 1987, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 436

Antibiotics.

21 CFR Part 449

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 436 and 449 are amended as follows:

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

1. The authority citation for 21 CFR Part 436 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

2. Section 436.105(b) is amended in the table by adding footnote "10" to the item "Nystatin" and at the end of the table to read as follows:

§ 436.105 Microbiological agar diffusion assay.

* * * * *

(b) * * *

Antibiotic	Working standard stock solutions: Drying conditions (method number as listed in § 436.200)	Working standard stock solutions: Initial solvent	Working standard stock solutions: Diluent (solution number as listed in § 436.101(a))	Working standard stock solutions: Final concentration units or milligrams per milliliter	Standard response line concentrations: Storage time under refrigeration	Standard response line concentrations: Diluent	Standard response line concentrations: Final concentrations, units or micrograms of antibiotic activity per milliliter
*	*	*	*	*	*	*	*
Nystatin[10]							
*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*

[10] For assay of nystatin pastilles, use 80 percent aqueous dimethylformamide as the initial solvent and as diluent for all dilutions where dimethylformamide is required.

* * * * * * *

3. Section 436.212 is amended by adding paragraph (e)(4) and by revising paragraph (f) to read as follows:

§ 436.212 Disintegration test.

* * * * *

(e) * * *

(4) *Pastilles.* Place one pastille into each of the six tubes of the basket, add a disk to each tube, and operate the apparatus, using distilled water as the immersion fluid. At the end of the time limit specified in the individual section for the particular antibiotic pastille being tested, lift the basket from the fluid and observe the pastilles.

(f) *Evaluation.* Complete disintegration is defined as that state in which any residue of the tablet or pastille (except fragments of the insoluble coating) remaining on the screen is a soft mass having no palpably firm core. The tablets or pastilles pass the disintegration test if all of the units tested disintegrate completely under the conditions and time specified in the individual section for the antibiotic tablet or pastille being tested. If one or two tablets or pastilles fail to disintegrate completely, repeat the test on 12 additional tablets or pastilles. The tablets or pastilles pass the disintegration test if not less than 16 of the total 18 tested disintegrate completely. Enteric coated tablets fail the disintegration test if they show any distinct evidence of dissolution or disintegration after 1 hour immersion in simulated gastric fluid.

PART 449—ANTIFUNGAL ANTIBIOTIC DRUGS

4. The authority citation for 21 CFR Part 449 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

5. Part 449 is amended by adding new § 449.150d to read as follows:

§ 449.150d Nystatin pastilles.

(a) *Requirements for certification—(1) Standards of identity, strength, quality, and purity.* Nystatin pastilles are composed of nystatin with suitable diluents, binders, buffers, colorings, and flavorings. Each pastille contains nystatin equivalent to 200,000 units of nystatin. Its potency is satisfactory if it contains not less than 90 percent and not more that 125 percent of the number of units of nystatin that it is represented to contain. The pH in an aqueous solution is not less than 5.0 and not more than 7.5. It disintegrates within 90 minutes. The nystatin used conforms to the standards prescribed by § 449.50(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The nystatin used in making the batch for potency, loss on driving, pH, and identity.

(*b*) The batch for potency, pH, and disintegration time.

(ii) Samples, if required by the Director, Center for Drugs and Biologics:

(*a*) The nystatin used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch: A minimum of 36 pastilles.

(b) *Tests and methods of assay—(1) Potency.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Place a representative number of pastilles into a high-speed glass blender jar containing 100 milliliters of sterile distilled water. Blend for 18 to 20 minutes. Add 400 milliliters of dimethylformamide and continue blending for an additional 10 minutes. Remove an aliquot and add sufficient 80 percent dimethylformamide so that upon final dilution with 10 percent potassium phosphate buffer, pH 6.0 (solution 6), to the reference concentration of 20 units of nystatin per milliliter, the concentration of dimethylformamide will be 4 percent.

(2) *pH.* Dissolve 1 pastille in 100 milliliters of distilled water at 37 °C, cool, and proceed as directed in § 436.202 of this chapter.

(3) *Disintegration time.* Proceed as directed in § 436.212 of this chapter, using the method described in paragraph (e)(4) of that section.

Dated: February 6, 1987.

Daniel L. Michels,

Director, Office of Compliance.

[FR Doc. 87-3078 Filed 2-12-87; 8:45 am]

BILLING CODE 4160-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

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SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning March 1, 1987. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The PBGC adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after March 1, 1987, and will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: March 1, 1987.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Corporate Policy and Regulations Department, Code 35400, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, 202–778–8850 (202–778–8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The PBGC's regulation on the valuation of plan benefits in single-employer plans (29 CFR Part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Although the amendments to Title IV effected by the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA") change significantly the rules for terminating single-employer plans, the valuation rules are much the same. (SEPPAA applies to all plan terminations initiated on or after January 1, 1986.) Under amended ERISA section 4041(c), all plans wishing to terminate in a distress termination (like all insufficient plans under prior law) must value guaranteed benefits and (new under SEPPAA) benefit commitments under the plan using the formulas set forth in Part 2619. Plans terminating in a standard termination may, for purposes of the notice given to the PBGC, use these formulas to value benefit commitments, although this is not required. (Such plans may value benefit commitments that are payable as annuities on the basis of a qualifying bid obtained from an insurer.)

Appendix B in Part 2619 sets forth the interest rates and factors that are to be used in formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since December 1, 1986 (51 FR 41298 (November 14, 1986)). Changes in the financial and annuity markets now require a decrease in those rates. Accordingly, this amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after March 1, 1987, which set reflects a decrease of ¼ percent in the immediate interest rate to 7¼ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after March 1, 1987, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employment benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for Part 2619 continues to read as follows:

Authority: Secs. 4002(b)(3), 4041 (b) and (c), 4044, 4062 (b) and (c), Pub. L. 93–406, 88 Stat. 1004, 1020, 1025, 1029, as amended by secs. 403(1), 403(d), 402(a)(7), Pub. L. 96–364, 94 Stat. 1302, 1301, 1299, and by secs. 11007–11009, 11011, Pub. L. 99–272, 100 Stat. 244, 248, 253 [29 U.S.C. 1302, 1341, 1344, 1362].

2. Rate Set 66 of Appendix B is revised and Rate Set 67 of Appendix B is added to read as follows. The introductory text is republished.

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quality "G" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1 and n_2, as defined in § 2619.45.

Rate set	For plans with a valuation date: On or after	For plans with a valuation date: Before	Immediate annuity rate (percent)	Deferred annuities: k_1	k_2	k_3	n_1	n_2
66	12–1–86	3–1–87	7.50	1.0675	1.0550	1.0400	7	8
67	3–1–87		7.25	1.0650	1.0525	1.0400	7	8

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87–3054 Filed 2–12–87; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR Part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of

interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of March 1987.

EFFECTIVE DATE: March 1, 1987.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Corporate Policy and Regulations Department (35400), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington DC 20006; 202–778–8850 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533(b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: Secs. 4002(b)(3), 4219(c)(1)(D), and 4281(b), Pub. L. 93–406, as amended by sections 403(1) and 104(2) (respectively), Pub. L. 96–364, 94 Stat. 1302, 1237–1238, and 1261 (1980) (29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1)).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest rates.*

For valuation dates occurring in the month—	The values of i are—															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_{16}
*	*			*			*			*			*		*	
March 1987	.0825	.08	.0775	.075	.0725	.07	.07	.07	.07	.07	.065	.065	.065	.065	.065	.5875

Issued at Washington, DC, on this 9th day of February 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87–3055 Filed 2–12–87; 8:45 am]

BILLING CODE 7708–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 66; FRL–3126–3]

Approval and Promulgation of State Implementation Plans; Revision to the Virgin Islands Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces that the Environmental Protection Agency (EPA) is approving a request from the United States Virgin Islands to revise its implementation plan. This revision will have the effect of allowing Martin Marietta Aluminum Properties, Inc. and Hess Oil Virgin Islands Corp., located on the Island of St. Croix, to continue using fuel oil with a maximum sulfur content of 1.5 percent, by weight. The current sulfur content limitation contained in the Virgin Islands' regulations is 0.50 percent, by weight. Under the provisions of the Virgin Islands' submittal, the use of the higher sulfur content fuel oil would continue to be permitted for a maximum period of one year from the date of EPA's final approval.

DATES: This action will be effective April 14, 1987 unless notice is received by March 16, 1987 that adverse or critical comments will be submitted.

ADDRESSES: All comments should be addressed to: Christopher J. Daggett, Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the submission are available for public inspection during normal business hours at:

Environmental Protection Agency, Air Programs Branch, Room 1005, Region II Office, 26 Federal Plaza, New York, New York 10278

Government of the Virgin Islands of the United States, Department of Conservation and Cultural Affairs, Charlotte Amalie, St. Thomas, Virgin Islands 00801

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278 (212) 264–2517.

SUPPLEMENTARY INFORMATION: On October 11, 1985 the Commissioner of the Virgin Islands Department of Conservation and Cultural Affairs (VIDCCA) submitted to the Environmental Protection Agency (EPA) a request to revise the Virgin Islands Implementation Plan for attaining and maintaining national ambient air quality standards. Additional information pertaining to the submittal was contained in correspondence of February 11, 1986. This revision deals with an administrative order which, if approved by EPA, would allow Martin Marietta Aluminum Properties, Inc. (MMAPI) and Hess Oil Virgin Islands Corp. (HOVIC) to continue using fuel oil with a sulfur content of 1.5 percent, by

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weight, at certain of their fuel burning sources.

Both MMAPI and HOVIC are located in the southern industrial complex on the Island of St. Croix. Sources in this location currently are required by regulation to burn fuel oil with a maximum sulfur content of 0.50 percent, by weight. However, the regulation provides for a variance to this limit if the applicant can demonstrate that the use of a higher sulfur content fuel oil will not interfere with attainment and maintenance of national ambient air quality standards. VIDCCA originally requested a variance allowing MMAPI and HOVIC to burn 1.5 percent sulfur content fuel in February 1980. This request was approved by EPA on May 2, 1980 (45 FR 29293). Since then, final approval of additional extensions of this variance have been granted on September 3, 1981 (46 FR 44198), March 4, 1983 (48 FR 9257) and on February 26, 1985 (50 FR 7769). The revision is intended to continue this variance.

The submittal by the Virgin Islands consists of a dispersion modeling analysis, recent ambient air quality data collected through September 1985, a letter indicating the Virgin Islands' approval of a request by MMAPI and HOVIC for a one-year extension of their existing variance and a notice of a Virgin Islands' public hearing held on November 27, 1985.

EPA has reviewed the technical material submitted by the Virgin Islands, and has determined that none of the national ambient air quality standards or Prevention of Significant Deterioration increments will be exceeded, if the Virgin Islands Implementation Plan revision is approved. The technical support material submitted has demonstrated that the dispersion modeling analysis did not rely on dispersion techniques prohibited under section 123 of the Clean Air Act.

EPA is publishing this action without prior proposal because the Agency views it as a noncontroversial action and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no comments are received, the public is advised that this action will be effective 60 days from today.

Under 5 U.S.C. Section 605(b), the Administrator has certified that implementation plan approvals do not have a significant economic impact on a substantial number of small entities (46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of publication. This action may not be challenged later in proceedings to enforce its requirements. (Sec. 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Sulfur oxides, Incorporation by reference.

Dated: November 18, 1986.

Lee M. Thomas,

Administrator, Environmental Protection Agency.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40, Chapter I, Subchapter C, Part 52, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart CCC—Virgin Islands

2. Section 52.2770 is amended by adding a new paragraph (c)(16) and (c) introductory text is republished to read as follows:

§ 52.2770 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(16) Revision submitted on February 11, 1986 by the Virgin Islands Department of Environmental Conservation and Cultural Affairs which grants a variance establishing, for one year from April 14, 1987, a maximum sulfur-in-fuel-oil limitation of 1.5 percent, by weight, for the Hess Oil Virgin Islands Corporation and the Martin Marietta Properties facilities located on the Island of St. Croix.

[FR Doc. 87-3122 Filed 2-12-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-10-FRL-3135-6]

Approval and Promulgation of State Implementation Plan; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rulemaking action approves an Oregon State Implementation Plan (SIP) revision pertaining to the carbon monoxide (CO) attainment plan for the Medford area. The SIP revision, which adds a mandatory vehicle inspection and maintenance (I/M) program to the existing plan, was submitted to EPA by the Oregon Department of Environmental Quality (ODEQ) on October 9, 1985, and was supplemented on February 13, 1986. EPA is also approving two other aspects of the Oregon plan: first, it is approving a modification to the Oregon I/M regulations for underhood inspections which eliminates existing tampering checks for 1974 and older model vehicles; second, it is removing a existing ban on the construction of major stationary sources of carbon monoxide in the Medford CO nonattainment area.

EFFECTIVE DATE: April 14, 1987.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Air Programs Branch, (10A-85-22), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

State of Oregon, Department of Environmental Quality, 522 SW. Fifth, Yeon Building, Portland, Oregon 97204.

FOR FURTHER INFORMATION CONTACT: Loren C. McPhillips, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442-4233, FTS: 399-4233.

SUPPLEMENTARY INFORMATION:

I. Background

In June, 1985, the Oregon Legislature passed HB 2845, which directed the Oregon Environmental Quality Commission (EQC) to designate the boundaries of areas needing I/M programs and to implement the programs in those areas if such a program has been designated in the SIP.

On October 9, 1985, the Oregon Department of Environmental Quality submitted to EPA a revised State Implementation Plan (SIP) revision for the Medford area which contained the commitment to implement the inspection and maintenance (I/M) program and to attain the carbon monoxide (CO) standard by December 31, 1987.

For a detailed summary of the background of the Medford, Oregon, I/M program, refer to the proposed rulemaking that was published on June 27, 1986 (51 FR 23435).

II. Response to Comments

On June 27, 1986, (51 FR 23435) EPA provided a 30-day public comment period on this proposed approval. No comments were received.

III. Final Rulemaking Action

Today, EPA is approving the Medford mandatory vehicle inspection and maintenance program as a revision to the existing SIP. In addition, EPA is approving a modification to the Oregon I/M regulation for underhood inspections which eliminates existing tampering checks for 1974 and older model vehicles. Since the state's submittal corrects SIP deficiencies in the Medford area, EPA is also removing of the section 110(a)(2)(I) construction moratorium (ban on the construction of major stationary CO sources in the Medford CO nonattainment area).

IV. Administrative Review

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 14, 1987. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and Recordkeeping requirements, incorporation by reference.

Note.—Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of **Federal Register** on July 1, 1982.

Dated: December 23, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

Subpart MM-Oregon

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642

2. Section 52.1970 is revised by adding paragraph (c)(75) as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(75) A revision to the Oregon State Implementation Plan was submitted by the Director of Department of Environmental Quality (DEQ) on October 9, 1985, and supplemented with technical appendices on February 13, 1986. This revision adds a mandatory vehicle Inspection and Maintenance (I/M) program to the existing Medford Carbon Monoxide plan, modifies the Oregon I/M regulations for underhood inspections by eliminating tampering checks of 1974 and older model vehicles and removes the existing section 110(a)(2)(I) construction moratorium.

(i) Incorporation by Reference.

(A) A letter dated October 9, 1985 from Department of Environmental Quality to EPA Region 10.

(B) A letter dated February 13, 1986 from Department of Environmental Quality to EPA Region 10.

(C) OAR 340–24–301 (Boundary Designations), OAR 340–24–320 (Light Duty Motor Vehicle Emission Control Test Criteria), and OAR 340–24–325 (Heavy Duty Motor Vehicle Emission Control Test Criteria), which were adopted by the Environmental Quality Commission on September 27, 1985.

(D) October 20, 1982 letter to EPA from the Department of Environmental Quality and section 4.9.3.2 (Emission Reduction Necessary for Attainment) of the Control Strategy for Medford-Ashland Air Quality Maintenance Area 1982 State Implementation Plan Revision for Carbon Monoxide as adopted by the Environmental Quality Commission on October 15, 1982.

(E) Section 4.9.5.1 (Reasonable Further Progress) of the Control Strategy for Medford-Ashland Air Quality Maintenance Area 1982 State Implementation Plan Revision for Carbon Monoxide as adopted by the Environmental Quality Commission on October 15, 1982.

(F) Section 4.9.5.5 (Conformity of Federal Actions) of the Control Strategy for Medford-Ashland Quality Maintenance Area 1982 State Implementation Plan Revision for Carbon Monoxide as adopted by the Enviromental Quality Commission on October 15, 1982.

(G) Section 4.9.4 (Control Strategy) of the Control Strategy for Medford-Ashland Air Quality Maintenance Area 1982 State Implementation Plan Revision for the Carbon Monoxide as adopted by the Environmental Quality Commission on October 15, 1982.

3. Section 52.1973 is amended by revising the table to read as follows:

§ 52.1973 Attainment dates for National Standards.

Air quality control region and nonattainment area	Pollutant						
	TSP		SO_2		NO_2	CO	O_3
	1st [1]	2nd [2]	1st [1]	2nd [2]			
Portland Interstate AQCR							
Interstate AQCR (Washington portion):							
1. Portland-Vancouver (Oregon portion)	a	f	a	b	b	h	b
2. Salem	a	b	a	b	b	e	b
3. Eugene-Springfield AQMA	a	i	a	b	b	h	b
4. Remainder of AQCR	c	c	a	b	b	d	c
Southwest Oregon Intrastate AQCR:							
1. Medford-Ashland AQMA	i	k	a	b	b	i	b
2. Remainder of AQCR	c	c	a	b	b	b	b
Northwest Oregon Intrastate AQCR	a	b	a	b	b	b	b
Central Oregon Intrastate AQCR	a	c	a	b	b	b	b
Eastern Oregon Intrastate AQCR	c	c	a	b	b	b	b

amendment, or repeal of a rule under

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[1] 1st—Primary.
[2] 2nd—Secondary.
a. Air designated as having air quality levels presently below the primary standards or area is unclassifiable. b. Area designated as having air quality levels presently below secondary standards or area is unclassifiable. c. May, 1975. d. May 31, 1976. e. Dec. 31, 1982. f. Dec. 31, 1986. g. Later than Dec. 31, 1982 but before Dec. 31, 1987. h. Dec. 31, 1985. i. Dec. 31, 1987. j. Dec. 31, 1984. k. Dec. 31, 2000.

§ 52.1983 [Removed and Reserved]

4. Section 52.1983 is removed and reserved.

[FR Doc. 87-1100 Filed 2-12-87; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 52

[A-8 FRL-3155-7]

Approval and Promulgation of State Implementation Plans; Colorado Prevention of Significant Deterioration Regulation

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: The purpose of this notice is to make corrections to final rulemaking published for the Colorado Prevention of Significant Deterioration (PSD) Regulation on September 2, 1986 (51 FR 31125). Some language in 40 CFR 52.343(a) now being revised inadvertantly disapproved the Colorado PSD Regulation for whole categories of sources when EPA intended to disapprove only for sources which would not otherwise be required to obtain a Colorado PSD permit. In addition, 40 CFR 52.343(b) is being revised to clarify that EPA's PSD regulations at 40 CFR 52.21 are incorporated into the Colorado State Implementation Plan only as to those sources for which the Colorado PSD regulation had previously been found to be inadequate, and sources on Indian Reservations (where State regulations do not apply).

FOR FURTHER INFORMATION CONTACT: Dale Wells, Air Programs Branch, Environmental Protection Agency, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202, (303) 293-1773.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, and Hydrocarbons, Incorporation by reference.

Dated: January 14, 1987.

Alexandra B. Smith,

Acting Regional Administrator.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart G—Colorado

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.343 is amended by revising paragraphs (a)(1) and (8) and (b) and adding (a)(9) to read as follows:

§ 52.343 Significant deterioration of air quality.

* * * * *

(a) * * *

(1) The following sources for which fugitive emissions are considered in calculating potential to emit under 40 CFR 52.21 unless the source is required to obtain a Colorado PSD permit pursuant to regulations identified in § 52.320(c) 36 and 37:

Kraft Pulp Mills
Primary Zinc Smelters
Primary Aluminum Ore Reduction Plants
Primary Copper Smelters
Municipal Incinerators (capable of charging more than 250 tons of refuse per day)
Hydrofluoric Sulfuric and Nitric Acid Plants
Phosphate Rock Processing Plants
Sulfur Recovery Plants
Carbon Black Plants (furnace process)
Primary Lead Smelters
Secondary Metal Production Plants
Chemical Process Plants
Taconite Ore Processing Plants
Glass Fiber Processing Plants
Charcoal Production Plants.

* * * * *

(8) Sources which were regulated under section 111 or 112 of the Clean Air Act as of August 7, 1980 with the exception of those sources for which fugitive emissions will be included in calculating potential to emit in the Colorado Regulation, and with the exception of sources which will be required to obtain a Colorado PSD permit pursuant to regulations identified in § 52.320(c) 36 and 37.

(9) Sources locating on Indian Reservations.

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 (b) through (w) are hereby incorporated and made a part of the applicable state plan for the State of Colorado for the sources identified in paragraph (a) as not meeting the requirements of sections 160-165 of the Clean Air Act.

[FR Doc. 87-3104 Filed 2-12-87; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 799

[OPTS-211021; FRL 3147-1]

Denial of Petition To Reconsider and Withdraw Test Rule for 1,2- and 1,4-Dichlorobenzene

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of denial of petition.

SUMMARY: The Chlorobenzene Producers Association (CPA) and the Chemical Manufacturers Association Chlorobenzenes Program Panel (CMA-CPP) petitioned EPA under section 21 of the Toxic Substances Control Act (TSCA) to reconsider and withdraw the final test rule for 1,2- and 1,4-dichlorobenzene (1,2- and 1,4-DCB; CAS Nos. 95-50-1 and 106-46-7, respectively). The test rule was issued under section 4 of TSCA and requires that 1,2- and 1,4-DCB be tested for reproductive effects. This notice announces the decision of EPA to deny the CPA and CMA-CPP petition.

ADDRESS: A copy of the petition and all related information, under docket number (OPTS-211021), is located at: Environmental Protection Agency, Rm. NE-G004, 401 M St. SW., Washington, DC 20460.

This material is available for viewing and copying from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St. SW., Washington, DC 20460, (202) 554-1404.

SUPPLEMENTARY INFORMATION: EPA is denying the CPA and CMA-CPP petition to reconsider and withdraw the testing requirements for 1,2- and 1,4-dichlorobenzene.

I. Introduction

Section 21 of TSCA (15 U.S.C. 2620) provides that any person may petition the Administrator of EPA to initiate a proceeding for the issuance,

amendment, or repeal of a rule under various sections of the Act. The Administrator may hold a public hearing or may conduct such investigation or proceeding as he deems appropriate in order to determine whether or not the petition should be granted. If the Administrator grants the petition, the Agency must promptly commence an appropriate proceeding. If the Administrator denies the petition, the reasons for denial must be published in the Federal Register. The petitioner may commence a civil action in a district court of the United States to compel the Administrator to initiate a proceeding as requested in the petition. Any such civil action must be filed within 60 days after the Administrator's denial of the petition or, if the Administrator fails to grant or deny the petition within 90 days after the petition is filed, within 60 days following expiration of the 90-day response period.

In the Federal Register of July 8, 1986 (51 FR 24657), EPA published a final test rule pursuant to TSCA section 4(a) requiring that manufacturers and processors of 1,2- and 1,4-DCB conduct reproductive effects testing. The Agency based these requirements on the findings that the manufacture, processing, use, and disposal of 1,2- and 1,4-DCB may present an unreasonable risk of adverse reproductive effects to humans, that there are insufficient data to reasonably determine or predict the effects of such activities on human health, and that testing is necessary to obtain these data. These findings were based on suggestive data on the reproductive effects of the structurally related monochlorinated benzene (MCB) and high occupational exposures to 1,2- and 1,4-DCB.

In the preamble to the final rule, EPA noted that a reproductive effects study for MCB was being conducted under the sponsorship of the chlorobenzene producers. The Agency stated that if the manufacturers believed that the results of the MCB study substantially altered the Agency's basis for requiring reproductive effects testing of 1,2- or 1,4-DCB, the manufacturers could petition EPA for reconsideration of the testing requirements.

On November 7, 1986, the CPA and CMA-CPP submitted a petition under TSCA section 21 to EPA requesting reconsideration and withdrawal of the July 8, 1986 test rule for 1,2- and 1,4-DCB (Ref. 1). The petitioners contended that (1) the reproductive effects study of MCB failed to demonstrate a biologically significant adverse reproductive effect; (2) other data demonstrate that trichlorobenzene poses no reproductive hazard; and (3) the dichlorobenzenes do not affect reproductive organs, as evidenced in CMA teratology studies and National Toxicology Program (NTP) subchronic studies on the dichlorobenzenes. The petitioners contended that there is no longer a basis to support the finding that 1,2- or 1,4-DCB may present an unreasonable risk of reproductive effects. The MCB reproductive effects study was received by the Agency on November 14, 1986.

The petitioners also requested that, pending a decision on their petition, EPA grant an interim extension of the deadline for submission of test data. The petitioners said that in order to meet the deadline for submission of the final reports, the producers would have to begin the studies before the expiration of the 90 days allowed the Agency under section 21 to respond to a petition. The petitioners suggested that the Agency delay the deadline date for submission of final reports until a date 29 months after a decision is reached on the petition, thereby preserving the original period between the effective date of the rule and the deadline for final reports.

On December 10, 1986, the Agency responded by letter to CPA and CMA-CPP's request for an interim extension of the reporting deadline for submission of test data (Refs. 2 and 3). The Agency denied the petitioners' request for a specific extension in the interim; however, the Agency agreed that it would be reasonable for the test sponsors to delay the start of the testing until the Agency decided on the petition. The Agency stated that if EPA decided to retain the rule, it would at that time consider the petitioners' request for an extension and decide how much additional time, if any, may be needed to conduct the testing and submit the test data. (See Unit III of this preamble.)

II. EPA's Decision

EPA is denying this petition filed under section 21 of TSCA for the following reasons:

1. EPA disagrees with the petitioners' contention that the reproductive effects study of MCB failed to demonstrate a biologically significant adverse reproductive effect. The results of the two-generation reproductive study showed an increased incidence of degeneration of the germinal epithelium of the testes among rats in the F_0 and F_1 generations. The lowest observed effect level was 150 parts per million (ppm), and the no-observed-effect level was 50 ppm.

The petitioners contended that the degeneration of the testicular germinal epithelium observed in this study is not biologically significant because (1) there were no statistically significant adverse effects on reproductive performance; (2) there was no increase in intensity and/or incidence of testicular lesions among the F_1 generation compared to the F_0 generation; and (3) the results from other studies failed to show any adverse effect on the testes.

EPA believes that the degeneration of the germinal epithelium of the testes observed in this study is a biologically significant adverse reproductive effect (Ref. 4). The presence of histopathological damage in excess of the level seen in control tissue of test animals provides sufficient evidence for considering an agent to be a potential human male reproductive toxicant. In general, histopathological evaluations are more sensitive indicators of adverse effects on the male reproductive organs than functional end points (e.g. fertility).

Fertility assessments are also limited by their insensitivity as measures of reproductive injury. For example, normal males of most test species produce sperm in numbers that greatly exceed the minimum requirements for fertility. That is, sperm production can be reduced by as much as 90 percent in some strains of mice and rats without compromising fertility. In humans, however, less severe reductions may have a dramatic effect on fertility, since humans produce numbers of sperm nearer to the threshold for the amount needed to ensure reproductive competence.

The biological significance of the effect is not mitigated by the fact that the toxicity did not increase in incidence or severity with succeeding generations. A review of the literature on multi-generation reproductive studies reported that only about half of the studies demonstrating effects exhibited an increasing toxicity with succeeding generations. The increased toxicity across generations was consistent for chemicals that bioaccumulate. Increasing vulnerability of subsequent generations is not always observed; effects may be static. This appears to be the case for MCB. This does not imply, however, that the findings are not of biological significance.

The results of other studies also do not negate the significance of the results of the MCB reproductive study. None of the chlorinated benzenes (MCB, 1,2-dichlorobenzene, and 1,4-dichlorobenzene) that were tested in 2-year bioassays and 13-week toxicity studies conducted by NTP reportedly produced adverse effects on the testes. However, histopathological evaluations at the end of the 2-year studies were

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consistent with those of an aging testes, and tubular degeneration was noted in 80 to 90 percent of the males across all groups for both MCB and 1,2-DCB. For MCB there was a significant trend towards a decrease in testis weight at the end of the 13-week study. Histopathological evaluation was not included in the reports on the 13-week studies available to the Agency. Similarly, testicular weights were unavailable on the 2-year studies. Several factors were different between the reproductive study and the NTP studies. The NTP studies used a Fischer 344 strain of rat, and the reproductive study used a Sprague-Dawley. Perhaps, a more critical difference is the route of exposure. The NTP studies were conducted via gavage, whereas the reproductive study was conducted via inhalation. This difference may account for differences in response.

In conclusion, the Agency believes that the findings of the MCB reproductive study are biologically significant and are sufficient to support a continuing concern regarding the potential of MCB and the DCBs to produce adverse reproductive effects in human males.

2. EPA disagrees with the petitioners that results from the CMA teratology studies and the NTP subchronic studies are sufficient to reasonably predict that the dichlorobenzenes do not affect reproductive organs. The CMA teratology studies are not sufficient to alleviate concern for the potential reproductive effects of the DCBs because they do not examine all the reproductive effects and end points of concern. As discussed in the preceding paragraph, although the DCBs reportedly did not produce adverse effects in the testes in the 2-year bioassays and the 13-week toxicity studies conducted by NTP, histopathological evaluations at the end of the 2-year study were consistent with an aging testes, and tubular degeneration was noted in 80 to 90 percent of the males across all groups for MCB and 1,2-DCB. Histopathological evaluation was not included in the reports on the 13-week studies available to the Agency. In addition, the NTP studies were conducted by gavage, whereas the reproductive study on MCB which produced biologically significant adverse reproductive effects was conducted via inhalation. This difference may affect response.

In conclusion, in light of the biologically significant adverse reproductive effects observed in the reproductive study on MCB and the insufficiency of other studies to reasonably predict the reproductive effects of the DCBs, EPA continues to find that there is concern for the potential reproductive effects of the DCBs. As stated in the July 1986 final rule for the DCBs, EPA believes that because the MCB data provide suggestive evidence on the reproductive effects of MCB which conflict with the suggestive negative data on TCB, testing of the DCBs is needed to address the potential of DCBs to cause adverse reproductive effects. EPA finds that the information provided by the petitioners does not alter the Agency's basis for requiring the reproductive effects testing of the dichlorobenzenes and is denying the petitioners' request to withdraw the final test rule for 1,2- and 1,4-dichlorobenzene.

III. Reporting Deadline

The Agency believes that there is sufficient time for conduct of the reproductive studies on the DCBs and submission of the final reports by the existing reporting deadline of January 21, 1989. The Agency is, therefore, not extending the reporting deadline for submission of test data for the reproductive effects studies on the DCBs at this time. The Agency is, however, waiving the requirement that the study plans must be submitted no later than 45 days before the start of the study in order to allow the test sponsors to begin the studies immediately. However, study plans must be submitted no later than the start of the studies. The Agency will issue an amendment to 40 CFR 799.1052(d) to incorporate this modification.

IV. Public Record

A. Supporting Documentation

EPA has established a record for its response to this petition under section 21 of TSCA (docket number OPTS-211021). The public record contains the basic information considered by the Agency in reaching this decision.

B. References

(1) Chlorobenzene Producers Association and Chemical Manufacturers Association Chlorobenzenes Program Panel. Petition for reconsideration and partial withdrawal of final test rule for 1,2- and 1,4-dichlorobenzene. (November 7, 1986).

(2) U.S. Environmental Protection Agency (EPA). Letter from Charles L. Elkins, Director, Office of Toxic Substances, Washington, DC 20460, to Geraldine Cox, Chemical Manufacturers Association Chlorobenzenes Program Panel, 2501 M St., NW., Washington, DC 20037. (December 10, 1986).

(3) U.S. EPA. Letter from Charles L. Elkins, Director, Office of Toxic Substances, Washington, D.C. 20460, to Alan Rautio, Chlorobenzene Producers Association, 1330 Connecticut Avenue, NW., Suite 300, Washington, DC 20036 (December 10, 1986).

(4) U.S. EPA. Internal memorandum from Elaine Z. Francis, Toxic Effects Branch, Health and Environmental Review Division, Office of Toxic Substances (OTS), to Nancy Merrifield, Test Rules Development Branch, Existing Chemical Assessment Division, OTS. (December 29, 1986).

The public record is available for inspection in the OTS Public Information Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Authority: 15 U.S.C. 2620.

Dated: February 5, 1987.

Lee M. Thomas,

Administrator.

[FR Doc. 87-3105 Filed 2-12-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 96

Block Grant Programs

AGENCY: Office of the Secretary, HHS.

ACTION: Interim final rules.

SUMMARY: This interim final rule makes two changes to the Department's regulations governing administration of the low-income home energy assistance program (LIHEAP). First, the rules provide procedures to exempt grantees from having to meet the statutorily imposed time limits for responding to requests for energy crisis intervention assistance. Secondly, the rules clarify grantee use of the Federal government's official poverty income guidelines in establishing income criteria for LIHEAP.

DATES:

Effective Date: These regulations are effective beginning February 13, 1987.

Comment Date: Before adopting final regulations, we will consider any comments we receive by April 14, 1987.

ADDRESS: Send comments to: Robert C. Raymond, Deputy Director, Program Systems, Office of the Secretary/Assistant Secretary for Planning and Evaluation, Room 447-D, Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

The comments received in response to this interim final rule may be inspected or reviewed at the same address, Monday through Friday, between 8:00 am and 4:30 pm.

FOR FURTHER INFORMATION CONTACT: Robert C. Raymond, (202) 245-7316.

SUPPLEMENTARY INFORMATION:

Wavier of Notice and Comment Procedures

Section 502(b) of Pub.L. 99-425 requires, within 60 days of enactment, that the Department issue rules implementing the statute's provisions on energy crisis intervention assistance. The President signed the Human Services Reauthorization Act of 1986 on September 30, 1986. Consequently, it is not feasible to provide for notice and comment on the rule. Furthermore, it is important that grantees have timely notice of the rules for operating their fiscal year 1987 programs consistent with the new statutory provisions.

The second regulatory provision of this interim final rule clarifies grantee use of the applicable income poverty guidelines. It is important that grantees have this clarification as early as possible in the current fiscal year in order to avoid uncertainty and disruption to their programs.

Accordingly, the Secretary has determined that it would be impracticable, unnecessary and contrary to the public interest to use notice and comment procedures to implement this rule.

Although this is an interim final rule, we are interested in comments and advice on the rule. We will review any comments which we receive by April 14, 1987, and will revise the rule, if appropriate.

Section-by-Section Analysis of Changes in the Regulations

§ 96.89 Time limits for providing energy crisis intervention assistance.

Section 502(a) of Pub. L. 99-425 amended the LIHEAP statute to require grantees to provide energy crisis intervention assistance within certain time limits. The statute requires grantees to provide assistance that will resolve the energy crisis within 48 hours of application by an eligible household for energy crisis benefits and within 18 hours if the crisis is life-threatening. The statute also provides that these limits do not apply in the case of a natural disaster designated by the Secretary or a major disaster or emergency designated by the President under the Disaster Relief Act of 1974, if the Secretary determines that the disaster or emergency makes impracticable the provision of the assistance within the limits.

Section 96.89 provides that the time limits will not apply where the provision of assistance within those time limits is made impracticable by either (1) a major disaster or emergency declared by the President, or (2) a natural disaster determined by the chief executive officer of a state, territory, or direct-grant Indian tribe or tribal organization. In either of these cases, the chief executive officer must provide findings of the impracticability of compliance with the statutory time limits.

The time limits apply until the Secretary approves the findings submitted by the chief executive officer. Therefore, in the event of a disaster or emergency, the state must continue to respond to applications for benefits within the statutory time limits until the Secretary or the Secretary's designee makes the determination that compliance is impracticable. The exemption from the time limit is in effect from the time of the determination until a future time specified by the Secretary or the Secretary's designee. The chief executive officer or the officer's designee must furnish information on the probable duration of the conditions that make impracticable the grantee's compliance with the time limits.

Requests for exemption from the time limits should be provided by the chief executive officer or the designee to the Director, Office of Community Services, 200 Independence Avenue SW., Washington, DC 20201, (202) 475-0373. The grantee is to provide information substantiating the existence of the disaster or emergency, the impracticability of meeting the time limits and the likely duration of the conditions that make compliance impracticable.

The information may be provided by telephone. If the oral information is adequate, the determination that the grantee is exempt from the time limits may also be provided by telephone. The Secretary or his designee will provide written confirmation of oral determinations. If the grantee's initial communication is by telephone, the required information must be provided in writing as soon thereafter as possible.

§ 96.89a Application of Poverty Income Guidelines.

Section 2605(b)(2) of the LIHEAP statute states that for fiscal year 1986 and thereafter grantees may not exclude a household from eligibility if the household has an income which is less than 110 percent of the official Federal poverty level for the state for the fiscal year in which assistance is provided. Poverty income guidelines for a given fiscal year typically are not available until February or March of that year. Some grantees have expressed concern that the statute could be interpreted as requiring them to change their eligibility criteria for households in the middle of the year. This could result in retroactive eligibility for households previously denied assistance on the basis of income.

To address this situation, § 96.89a of the rule states that, in complying with the minimum eligibility criteria of 110 percent of the poverty income guidelines, grantees are to use for the entire fiscal year the poverty income guidelines that are in effect on October 1 of that year. This provision clarifies that grantees do not need to adjust their income eligibility criteria until the following October 1, at which time they will do so based upon the guidelines in effect on that date.

Paperwork Reduction Act

This rule contains no paper information collection requirements as defined by the Paper Work Reduction Act of 1980.

Executive Order 12291

This rule implements specific legislative changes which are minor or technical in nature. None involves substantial costs or other criteria specified in Executive Order 12291. Therefore, this is not a major rule under Executive Order 12291.

Regulatory Flexibility Act

The Department of Health and Human Services certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule affects state, territorial and tribal administration of LIHEAP funds through minor reforms that modify eligibility criteria and timing of assistance in disasters.

List of Subjects in 45 CFR Part 96

Energy, Grant programs-energy.

PART 96—[AMENDED]

For the reasons set forth in the preamble, Part 96 of Title 45 of the Code of Federal Regulations is amended as follows:

1. The authority citation for 45 CFR Part 96 is revised to read as follows:

Authority: 42 U.S.C. 300w note; 42 U.S.C. 1304 note; 42 U.S.C. 1305; 42 U.S.C. 8621 note; 42 U.S.C. 9901 note.

2. By adding a new § 96.89 to subpart H to read as follows:

§ 96.89 Time limits for providing energy crisis assistance.

(a) The time limits set out in section 502(a) of Pub. L. 99-425 shall not apply to a program in a geographical area affected by:

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(1) A major disaster or emergency designated by the President under the Disaster Relief Act of 1974; or

(2) A natural disaster identified by the chief executive officer of a state, territory, or direct grant Indian tribe or tribal organization.

In either of these cases, the exemptions from the time limits apply only if the Secretary determines that the disaster or emergency makes compliance with the limits impracticable. The Secretary's determination will be made following communication by the chief executive officer (or from his or her designee) to the Secretary (or the Secretary's designee) of information substantiating the existence of a disaster or emergency and the impracticability of compliance with the time limits. The chief executive officer must also provide information on the expected duration of the conditions that make compliance impracticable. The initial communication by the chief executive officer may be oral or written. If oral, it must be followed as soon thereafter as possible by written communication.

(b) The exemption from the time limits shall apply from the moment of the Secretary's determination, only in the geographical area affected by the disaster or emergency and only for so long as the Secretary determines that the disaster or emergency makes compliance with time limits impracticable.

3. By adding a new § 96.89a to read as follows:

§ 96.89a Application of poverty income guidelines.

In implementing the minimum income eligibility criteria in section 2605(b)(2) of the LIHEAP statute, grantees shall use the Federal government's official poverty income guidelines that are in effect on October 1 of the fiscal year in which assistance is provided.

Dated: February 9, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-2996 Filed 2-12-87; 8:45 am]

BILLING CODE 4150-04-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. MC-59]

49 CFR Part 1050

Motor Carrier Operation in the State of Hawaii; Removal of Rules

AGENCY: Interstate Commerce Commission.

ACTION: Removal of rules.

SUMMARY: The Commission is repealing rules adopted in 1960, and modified in 1972, that exempt from regulation non-household goods transportation by motor carriers engaged in operation solely within Hawaii. Statutory provisions in The Bus Regulatory Reform Act of 1982 make the rules unnecessary.

EFFECTIVE DATE: February 13, 1987.

FOR FURTHER INFORMATION CONTACT: Ken Schwartz, 202-275-7956 or Mark Shaffer, 202-275-7805.

SUPPLEMENTARY INFORMATION: Under former section 204(a)(4a) of the Interstate Commerce Act [49 U.S.C. 304(a)(4a)], the Commission found that motor carrier transportation, in interstate or foreign commerce, performed solely within Hawaii was not of such nature, character, or quality as substantially to affect or impair uniform regulation of motor carrier transportation in effectuating the national transportation policy. *Motor Carrier Operation in the State of Hawaii,* 84 M.C.C. 5(1960). Therefore, the Commission adopted regulations at 49 CFR Part 1050 certifying that such transportation was exempt from our regulation. Later, the Commission determined that the exemption should be revoked to the extent it pertained to household goods transportation, and made an appropriate modification of the regulations. *Motor Carrier Operation in the State of Hawaii,* 115 M.C.C. 228 (1972), 37 FR 10506, May 24, 1972.

Section 204(a)(4a) was recodified at 49 U.S.C. 10525, without substantive change, under Pub. L. No. 95-473, October 17, 1978.

The Bus Regulatory Reform Act of 1982, Pub. L. No. 97-261, sec. 30, September 30, 1982, amended section 10525 by adding a new subsection (e). Subsection (e) codified our existing regulations at 49 CFR Part 1050. This moots the regulations. Accordingly, 49 CFR Part 1050 will be removed. Repeal of this part will have no effect on motor carrier operations within Hawaii or on the national transportation policy of 49 U.S.C. 10101. Moreover, as the rules have been codified, repeal of them will affect no one. Notice and comment, therefore, are unnecessary and are not required under the Administrative Procedure Act.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources. We are not required to make a regulatory flexibility analysis of this action because prior notice and comment are not mandated by 5 U.S.C. 553. However, this action will have no adverse effect on small entities because it merely removes a rule that has ceased to have purpose.

List of Subjects in 49 CFR Part 1050

Motor carriers.

For the reasons set out in the preamble, Title 49, Chapter X, Subchapter A of the Code of Federal Regulations, is amended as follows:

PART 1050—MOTOR CARRIER OPERATION IN THE STATE OF HAWAII

Part 1050 is removed.

Authority: 49 U.S.C. 10321 and 10525, 5 U.S.C. 553.

Decided: February 2, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-3093 Filed 2-12-87; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Parts 1162 and 1312

[Ex Parte No. MC-165 (Sub-No. 2)]

Exemption of Water Contract Carriers From Tariff Filing Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The commission is adopting final rules amending 49 CFR Part 1162 and 1312 to exempt water contract carriers from all tariff filing requirements. It concludes that an exemption will result in time- and cost-saving benefits for water contract carriers, leading to enhanced competition, improved operating economies and efficiencies, and more responsive transportation services at reduced rates, in a manner consistent with the public interest and the transportation policy of 49 U.S.C. 10101.

EFFECTIVE DATE: The rules are effective on March 16, 1987.

FOR FURTHER INFORMATION CONTACT: Marc A. Lerner, (202) 275-7150.

or

Louis E. Gitomer, (202) 275-7691

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's final decision. To purchase a copy of the decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll-free (800) 424-5403.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

The Commission certifies that the final rules will not have a significant economic impact on a substantial number of small entities. The filing exemption will reduce small carrier costs and lead to more responsive service and reduced rates for small shippers and communities.

List of Subjects

49 CFR Part 1162

Administrative practice and procedure, Maritime carriers, Motor carriers.

49 CFR Part 1312

Freight forwarders, Maritime carriers, Motor carriers, Railroads.

Decided: February 2, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1162—TEMPORARY AUTHORITY (TA) AND EMERGENCY TEMPORARY AUTHORITY (ETA) PROCEDURES UNDER 49 U.S.C. 10928

1. The authority citation for Part 1162 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10928; 5 U.S.C. 553.

§ 1162.3 [Amended]

2. Section 1162.3 is amended by revising the first sentence of paragraph (b) to read as follows:

* * * * *

(b) * * * A carrier (except a motor contract carrier of property or a water contract carrier) may not lawfully perform transportation under a grant of TA or ETA until compliance has been made with the rate and other requirements of 49 U.S.C. 10761 and 10762. * * *

* * * * *

§ 1162.5 [Amended]

3. Section 1162.5 is amended by revising the first sentence of paragraph (b)(1) to read as follows:

* * * * *

(b) * * * (1) Each application for ETA (except an application seeking authority as a motor contract carrier of property or a water contract carrier) shall be accompanied by a statement of the rates, fares, charges, and other tariff or schedule provisions to become effective if the application is granted. * * *

* * * * *

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS

4. The authority citation for Part 1312 is revised to read as follows:

Authority: 49 U.S.C. 10321, 10702, 10761 and 10762; 5 U.S.C. 553.

§ 1312.12 [Amended]

5. Section 1312.12 is amended by revising the first sentence of paragraph (e)(1) to read as follows:

* * * * *

(e) * * * (1) (this paragraph applies to motor passenger contract carriers.) * * *

* * * * *

§ 1312.14 [Amended]

6. Section 1312.14 is amended by revising the fifth sentence of paragraph (a)(1)

* * * * *

(a) * * * Tariffs of motor passenger contract carriers shall provide an explicit statement of the minimum rates, fares, or charges actually maintained. * * *

* * * * *

FR Doc. 87-2997 Filed 2-12-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 60600-6130]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) closes the commercial purse seine fishery for king mackerel from the Gulf of Mexico migratory group in the exclusive economic zone (EEZ). The Regional Director, Southeast Region, NMFS, has determined that the commercial allocation has been reached. This closure will ensure that the allocation for king mackerel from the Gulf migratory group is not further exceeded during the current fishing year.

EFFECTIVE DATE: Closure is effective at 0001 hours local time February 10, 1987, until 2400 hours local time June 30, 1987.

FOR FURTHER INFORMATION CONTACT: William N. Lindall, Jr., 813-893-3722.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP) was developed by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) under authority of the Magnuson Fishery Conservation and Management Act, and is implemented by regulations appearing at 50 CFR Part 642. Amendment 1 to the FMP, which went into effect on September 22, 1985 (50 FR 34840, August 28, 1985), established separate allocations for the Gulf and Atlantic migratory groups of king mackerel.

Tagging studies indicate that the Gulf migratory group extends from the U.S./Mexico border, across the Gulf, through the Keys, and up the east coast of Florida, migrating farther north in winter than in summer. For management purposes, its extent is defined as the latitude of the Collier/Monroe County, Florida, boundary (25°48' N.) from April 1 through October 31; and of the Volusia/Flagler County, Florida, boundary (29°25' N.) from November 1 through March 31.

The Councils set the catch limit for the Gulf migratory group for the fishing year (July 1, 1986, through June 30, 1987) at 2.9 million pounds. The recreational quota is 1.97 million pounds and the commercial quota is 0.93 million pounds. The commercial quota is further divided into quotas of 0.06 million pounds for purse seines; 0.6 million pounds for the eastern allocation zone; and 0.27 million pounds for the western allocation zone. When a quota is reached, that sector of the fishery will be closed for the remainder of the fishing year.

The eastern and western allocation zones were closed February 4, 1987 (52 FR 4019, February 9, 1987) because their quotas had been exceeded. Subsequent landings data show a significant overharvest by the commercial sector; therefore the purse seine fishery is closed at 0001 hours local time, February 10, 1987.

The closure will remain in effect until 2400 hours local time June 30, 1987, the end of the current fishing year for the Gulf migratory group of king mackerel.

During the period of the closure, the purchase, trade, barter, or sale of Gulf migratory group king mackerel taken from the EEZ is illegal. This prohibition does not apply to trade in king mackerel harvested, landed, bartered, traded, or

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sold prior to the closure and held in cold storage by dealers and processors.

This action is required by 50 CFR 642.22, and complies with Executive Order 12291.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 642

Fisheries, Fishing.

Dated: February 10, 1987.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 87-3174 Filed 2-10-87; 4:52 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 30
Friday, February 13, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Reg. Y; Docket No. R-0537]

Bank Holding Companies and Change in Bank Control; Requests for Comments on Proposal Regarding the Premissibility of Real Estate Investment Activities for Bank Holding Companies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Extension of comment period.

SUMMARY: On December 31, 1986, the Board requested public comment as part of a rulemaking proceeding under the Bank Holding Company Act to permit bank holding companies to engage in real estate investment activities under specific conditions that have been designed to ensure that the conduct of the activity does not result in unsafe or unsound banking practices, unfair competition, conflicts of interest, or other adverse effects (52 FR 543 (January 7, 1987)). Comments were due by February 23, 1987. In response to requests from the public, the Secretary to the Board, acting pursuant to delegated authority from the Board, has extended the comment period for this proposal until March 25, 1987.

DATE: Comments must be received by March 25, 1987.

FOR FURTHER INFORMATION CONTACT: J. Virgil Mattingly, Deputy General Counsel (202/452-3430), Scott G. Alvarez, Senior Counsel (202/452-3583), Legal Division; Roger Cole, Manager (202/452-2618), Margaret Spillenkothen, Supervisory Financial Analyst (202/452-2720), Division of Banking Supervision and Regulation; or Myron Kwast, Chief, Financial Studies Section, Division of Research and Statistics (202/452-2909), Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaird *only*, Telecommunications Service for the Deaf, Earnestine Hill or Dorothea Thompson, (202/452-3544).

By order of the Secretary of the Board, acting pursuant to delegated authority, 12 CFR 265.2(a)(6), February 6, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-3061 Filed 2-12-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AGL-1]

Proposed Alteration to Control Zone and Transition Area—Evansville, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Evansville, Indiana, control zone and transition area to accommodate existing Standard Instrument Approach Procedures (SIAPs) to Evansville Dress Regional Airport.

The intended effect of this action is to eliminate the extensions to the control zone; decrease the transition area radius; and, increase the width of the transition area extension.

DATE: Comments must be received on or before March 18, 1987.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 87-AGL-1, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: The present control zone and transition area are being altered to eliminate the extensions to the control zone; decrease the transition area radius; and, increase the width of the transition area extension. The modified control zone will consist of a 5-mile radius. The transition area modification will consist of a 8.5-mile radius, and a 2.75-mile increase in width to each side of the transition area extension. The modifications are necessary to coincide with present control zone and transition area criteria.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AGL-1. The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA

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personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to modify the designated control zone and transition area near Evansville, IN.

Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Evansville, IN [Amended]

Within a 5-mile radius of Evansville Dress Regional Airport (Lat. 38°02'17" N., Long. 87°31'50" W.).

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

Evansville, IN [Amended]

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Evansville Dress Regional Airport (Lat. 38°02'17" N., Long. 87°31'50" W.); and within 4.75-miles each side of the Evansville VORTAC 060 radial, extending from the 8.5-mile radius area to the VORTAC.

Issued in Des Plaines, Illinois, on January 29, 1987.

Peter H. Salmon,

Acting Manager, Air Traffic Division.

[FR Doc. 87–3073 Filed 2–12–87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 902

Consideration of Amendments to the Alaska Program Under the Surface Mining Control and Reclamation Act of 1977 (SMCRA); Reopening of Public Comment Period

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Reopening of public comment period.

SUMMARY: OSMRE is reopening the period for review and public comment on an amendment submitted by the State of Alaska to modify its permanent regulatory program. On August 28, 1955 (50 FR 34863), OSMRE announced a public comment period and procedures for requesting a public hearing on the proposed amendment to the Alaska permanent program which was approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed program amendment consists of proposed provisions to implement a blaster training, examination and certification program as required by 30 CFR Part 850. OSMRE is reopening the comment period to allow the public an opportunity to comment on additional material relating to the proposed amendment submitted by the State on November 24, 1986.

This notice sets forth the times and locations that the proposed amendment is available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and information pertinent to the public hearing.

DATES: Written comments, data or other relevant information must be received on or before 4:00 p.m. March 2, 1987, to be considered. Comments submitted after this date may not necessarily be considered.

ADDRESSES: Written comments should be directed to Mr. Jerry Ennis, Director, Casper Field Office, OSMRE, 100 East "B" Street, Casper, Wyoming 82601–1918.

Copies of supplemental material submitted by Alaska and other relevant documents are available for review at the Capser Field Office and the office of the State Regulatory Authority listed below, Monday through Friday, 8:00 to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one single copy of the Alaska amendment by contacting OSMRE's Casper Field Office listed above.

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5124, 1100 "L" Street, NW., Washington, DC 20240

Alaska Department of Natural Resources, Division of Mining, Pouch 7–016, Anchorage, Alaska 99510.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East "B" Street, Casper, Wyoming 82601–1918; telephone: (307) 261–5824.

SUPPLEMENTARY INFORMATION: The Alaska program was approved by the Secretary of the Interior on May 2, 1983 (48 FR 12274). On May 28, 1985, the State of Alaska submitted to OSMRE, for informal review, a draft blaster certification amendment to its approved permanent regulatory program. On August 1, 1985, Alaska notified OSMRE that the informal draft submission was to be considered Alaska's formal blaster certification program amendment submission. The proposed program amendment is intended to implement the provisions of 30 CFR Part 850 relating to blaster training, examination and certification. The proposed amendment consists of proposed regulations governing the standards for certification of blasters and material addressing proposed training and certification programs available for individuals

interested in becoming certified blasters. A discussion of each area of concern is provided in an outline which follows the Federal regulations at 30 CFR Parts 816, 817, (use of explosives) and 850 (blaster certification) as published in the March 4, 1983 **Federal Register** (48 FR 9486).

On November 24, 1986, Alaska submitted a signed agreement involving the University of Alaska and the Department of Natural Resources, Division of Mining, for a blasters certification program. Copies of this agreement are available at those locations listed under "ADDRESSES". OSMRE is reopening the comment period in order to allow the public an opportunity to review and comment on the additional material submitted to OSMRE by Alaska on November 24, 1986. Specifically, OSMRE is seeking comment on whether the material submitted by Alaska for the program amendment satisfies the criteria for approval of State program amendents at 30 CFR 732.15 and 732.17. If the proposed amendment is found by the Director to be in accordance with SMCRA and no less effective than the Federal regulations, the amendment will be approved by the Director and codified in 30 CFR Part 902 as part of the Alaska permanent program.

List of Subjects in 30 CFR Part 902

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: February 6, 1987.

Brent Walquist,

Assistant Director, Program Policy.

[FR Doc. 87–13121 Filed 2–12–87; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–5–FRL–3154–9]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rule; extension of the public comment period.

SUMMARY: On November 21, 1986 (51 FR 42111), USEPA proposed to disapprove a revision to the Illinois State Implementation Plan (SIP) for total suspended particulates (TSP). The revision pertains to a variance from Illinois Pollution Control Board Rule 203(d)(5)(J) until February 18, 1987, for hot scarfing operatings at LTV Steel Corporation's (LTV Steel) Chicago Works. The legal representative of LTV Steel has requested a 30-day extension of the public comment period to allow for the preparation of their public comments. Therefore, the public comment period is extended until February 18, 1987.

DATE: Comments must be received on or before February 18, 1987.

ADDRESS: Comments should be submitted to: Gary V. Gulezian, Chief, Regulatory Analysis Section (5AR–26), Air and Radiation Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, (312) 886–6036.

Dated: February 4, 1987.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 87–2975 Filed 2–12–87; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–6

Federal Advisory Committee Management

AGENCY: General Services Administration.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: This advance notice requests public participation in the formulation of a proposed General Services Administration (GSA) Federal Property Management Regulation (FPMR) on Federal advisory committee management pursuant to the Federal Advisory Committee Act (FACA), as amended (Pub. L. 92–463, 5 U.S.C., APP.). Current Federal advisory committee regulations are contained in GSA FPMR interim final rule located at 41 CFR Subpart 101–6.10.

Certain provisions of the interim rule, including those related to compensation of committee members, provision of quarterly membership reports by Federal agencies, and limitations on committee size, elicited significant responses from the Federal community and other interested parties. Other comments addressed issues such as the coverage and chartering of subcommittees under FACA and the need to streamline the consultation process administered by GSA under section 9(a)(2) of FACA.

The issues involved are substantive in nature and require modification of several provisions of the interim rule. Also, considerable time has elapsed since issuance of the interim rule, which was published in the Federal Register on April 28, 1983 (48 FR 19324). In light of these considerations, GSA, in consultation with the Office of Management and Budget (OMB), has determined that it is in the interest of all affected parties to issue a revised proposed rule on Federal advisory committee management, prior to issuance of a final rule.

This regulation will provide administrative and interpretive guidelines and management controls for Federal agencies concerning the implementation of the Federal Advisory Committee Act. It also fulfills GSA's responsibilities under Section 7(c) and (d) of FACA in accordance with Section 1 of Executive Order 12024, dated December 1, 1977.

DATES: Written comments must be received on or before March 16, 1987.

ADDRESSES: Comments should be submitted to the Committee Management Secretariat (mailing address: General Services Administration (CTM), Washington, DC 20405). Comments will be available for examination at the Committee Management Secretariat, Room 7030, GSA Central Office, 18th and F Streets, NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Charles F. Howton, Committee Management Secretariat at (202) 523–4884.

Dated: February 11, 1987.

Paul T. Weiss,

Associate Administrator for Administration.

[FR Doc. 87–3250 Filed 2–12–87; 8:45 am]

BILLING CODE 6820-34-M

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Notices

Federal Register
Vol. 52, No. 30
Friday, February 13, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Amendment and Revision of Forest Plans

AGENCY: Forest Service, USDA.

ACTION: Notice; reissuance of planning direction.

SUMMARY: The Forest Service is reissuing an interim directive to its field personnel to clarify the distinction between significant and nonsignificant changes to a forest land and resource management plan. The directive also clarifies the distinction between amendment of a plan and plan revision and assigns responsibility for approving revision schedules and significant amendments to forest land and resource management plans. This interim directive replaces Interim Directive Number 12 to Forest Service Manual 1920 which has expired.

EFFECTIVE DATE: Interim directive #13 was effective on January 20, 1987.

FOR FURTHER INFORMATION CONTACT: Everett Towle, Director, Land Management Planning Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20013–6090, (202) 447–6697.

SUPPLEMENTARY INFORMATION: The Forest and Rangeland Renewable Resources Planning Act of 1974 as amended by the National Forest Management Act of 1976 [16 U.S.C. 1604(f)(4), (5)] requires that forest land and resource management plans be amended and revised in response to changing conditions in the planning area. The regulations implementing the Act [36 CFR 219.10(f)] permit amendments that may result in either significant or nonsignificant changes to the forest land and resource management plan.

In the process of imeplementing the Act and regulations, it became apparent that Forest Service personnel required additional administrative guidance on the amendment process. The Forest Service provided that guidance through issuance of Interim Directive No. 12 to Chapter 1920 of the Forest Service Manual dated January 8, 1986. The notice of availability of the interim directive and request for comments was published in the **Federal Register** on January 13, 1986, at 51 FR 1476.

Under the Forest Service directive system, interim directives expire after one year; therefore, until the Agency completes development of continuing direction, it is necessary to reissue the interim directive.

The reissued interim directive is verbatim to that issued on January 8, 1986. It continues to reserve authority to the Chief to approve the schedule for revision of forest plans and requires the responsible Regional Forester to review and approve significant amendments to forest plans. It also clarifies the distinction between significant and nonsignificant amendments to a forest plan and clarifies the distinction between amendment and revision of forest plans.

Public comment received in response to the original request for comments is being used in development of final direction. The Forest Service will issue the final direction to its personnel as an amendment to Chapter 1920 of the Forest Service Manual.

Dated: February 6, 1987.

George M. Leonard,

Associate Chief.

[FR Doc. 87–3091 Filed 2–12–87; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[Case No. OEE–3–86]

Bollinger GmbH et al.; Order Renewing Temporary Denial of Export Privileges

In the Matter of: Bollinger GmbH, Roseggergasse 34, 1160 Vienna, Austria; Leopold Hrobsky, Donaufelderstrasse 38, Stg. 4, Apt. 4, 1210 Vienna, Austria; Dietmar Ulrichshofer, with addresses at Kirchenstrasse 1, 3061 Ollersbach, Austria; and c/o Bollinger GmbH, Roseggergasse 34, 1160 Vienna, Austria; and Vrablicz and Company, Steinergasse 11, 1170 Vienna, Austria, Respondents.

The Office of Export Enforcement, International Trade Administration, United States Department of Commerce (Department), pursuant to the provisions of § 388.19 of the Export Administration Regulations, 15 CFR Parts 368–399 (1986) (the Regulations), issued pursuant to the Export Administration Act of 1979, 50 U.S.C. app. 2401–2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985) (the Act), has asked the Deputy Assistant Secretary for Export Enforcement to renew an order temporarily denying all United States export privileges to Dietmar Ulrichshofer; Bollinger GmbH, which is owned by Dietmar Ulrichshofer; Loepold Hrobsky; and, Vrablicz and Company (hereinafter collectively referred to as respondents). Ulrichshofer, who is subject to an outstanding indictment in the U.S. District Court for the Central District of California for conspiracy to violate U.S. export controls and is a fugitive from U.S. justice, resides in Ollersbach, Austria; all of the other respondents reside in Vienna, Austria. The initial order was issued on August 12, 1986 (51 FR 29509, August 18, 1986) and renewed on October 11, 1986 (51 FR 37210, October 20, 1986) and December 10, 1986 (51 FR 44655, December 11, 1986).

In its renewal request dated January 16, 1986, the Department states that, as a result of an ongoing investigation, it has reason to believe that respondents have conspired and acted in concert to violate the Act and the Regulations. The Department has reason to believe that the purpose of the conspiracy is to obtain U.S.-origin goods from third countries for ultimate destination in proscribed countries, without obtaining the required authorization from the Department for such shipments. The Department has reason to believe that respondents have participated in the unauthorized reexport of U.S.-origin commodities, including computer equipment and peripherals, from Austria to proscribed destinations, without authorization from the Department. Indeed, the Department previously provided a statement by the U.S. Customs Attache in Austria that his aspect of the investigation has revealed that respondent Vrablicz, on August 5, 1986, reexported such commodities to

Czechoslovakia, which commodities were "owned" by respondent Bollinger. The Department further shows that a statement given by the Customs Attache indicates that respondents currently have in their possession and control in Vienna, Austria, additional U.S.-origin equipment which requires authorization from the Department to permit its reexport from Austria. The Department has shown that there is a presumption of denial for any request seeking authorization to reexport this U.S.-origin equipment to proscribed destinations and states that, in any event, no such authorization has been requested. Nevertheless, the Department has reason to believe that respondents may attempt to reexport these U.S.-origin goods to proscribed destinations.

The Department states that the investigation gives it reason to believe that the violations under investigation were deliberate and covert. The Department has shown that respondents Ulrichshofer and Hrobsky directed sales of commodities covered by the investigation to the Soviet Bloc. The Department has also shown that Ulrichshofer is involved with other parties in reexporting U.S.-origin commodities from Austria to proscribed destinations without authorization from the Department. Further, since the respondents currently have possession and controls of U.S-origin goods subject to the Act and the Regulations, the Department states that violations are likely to occur again. The Department submits that renewal of the temporary denial order naming respondents is necessary for the purpose of giving notice to companies in the United States and abroad to cease dealing with respondents in goods and technical data subject to the Act and the Regulations in order to reduce the likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations.

In a letter dated December 9, 1986, respondent Vrablicz belatedly filed with the Deputy Assistant Secretary a submission contesting the previous renewal of the order. Subsequently, in response to the current renewal request, Vrablicz filed with the Deputy Assistant Secretary a similar submission dated January 27, 1987, which is considered to be filed in a timely manner. The arguments contained in both submissions will be considered as opposition to the current renewal request and copies have been provided to the Department. The substance of the argument made by Vrablicz is that it has provided all requested information to the U.S. Government, except in one instance where the request for information required further clarification. Vrablicz contends that this cooperation, together with the company's alleged lack of knowledge as to the contents of the shipments under investigation, provide reason not to subject it to further renewal of the Order.

The Department's request for renewal directly contradicts the indication by Vrabicz that it has been fully cooperative. In particular, the Department has shown Vrablicz's refusal to provide a statement to the Austrian Finance Ministry concerning its knowledge of events covered by the ongoing investigation.[1] Given that the investigation is ongoing and there is doubt regarding Vrablicz's full cooperation, this renewal will include Vrablicz. However, if the Department should show that *it* is satisfied by any effort of cooperation on the part of Vrablicz (or any respondent) *and* that a temporary denial of export privileges is no longer necessary against Vrablicz, this Order could be accordingly modified.

In the case of respondent Hrobsky, a statement has been filed in a timely manner with the Deputy Assistant Secretary which is considered to constitute opposition to the renewal request. Hrobsky claims there is no documentary proof against him, but does not deny participation in the violations under investigation. He only questions the "extent" to which he is alleged to have carried out such activities. In previous submissions, the Department has shown that Hrobsky, together with Ulrichshofer, directed sales covered by the investigation to the Soviet Bloc. Given this direct clash, the ongoing nature of the investigation, and the lack of any showing of cooperation on the part of this respondent, this order is renewed against Hrobsky.

Fundamentally, both respondents base their opposition to the Department's request for renewal on the argument that the Department has not shown to their satisfaction that they have in fact committed an export control violation. They challenge the Department's evidence as being insufficient to establish culpability. Thus, their protestation misses the mark.

A temporary denial order is a preventive enforcement measure and not a punative instrument. It is not necessary for the Department to prove that a respondent is in fact guilty of diversion or illegal exportation or reexportation of U.S.-origin controlled goods or technology before a temporary denial order could be issued against him. While evidence of past unlawful export activities is relevant to the question of a respondent's inclination or vulnerability to further illegal export conduct, and thus pertinent to the ultimate issue of "imminent violation", whether the Department's evidence is sufficient to show past violation on the part of a respondent, or is likely to make such a showing ultimately, is not dispositive as to whether a temporary denial order is necessary to prevent an imminent violation.

In the instant case, the evidence provided by the Department and the respondents, *in toto*, is sufficient to give reason to believe there is threat of imminent violation. Therefore, based on the showing made by the Department, I find that renewal of the order temporarily denying export privileges to respondents is necessary in the public interest to prevent an imminent violation of the Act and the Regulations and to give notice to companies in the United States and abroad to cease dealing with respondents in goods and technical data subject to the Act and the Regulations in order to reduce the substantial likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations. It is noted that neither Ulrichshofer nor Bollinger filed an opposition to the Department's January 16, 1987 request for renewal of the temporary denial order.

Accordingly, it is hereby

Ordered:

I. All outstanding validated export licenses in which any respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation.

II. The respondents, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing

[1] As per the letter from Roger Urbanski, Customs Attache, to Dr. Ronald Rast, counsel for Vrablicz, dated December 19, 1986, which was submitted as Exhibit 3 to the renewal request.

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with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which any respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related party, or whereby any respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. In accordance with the provisions of § 388.19(e) of the Regulations, any respondent may, at any time, appeal this order by filing with the Office of the Administrative Law Judges, U.S. Department of Commerce, Room H-6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order is effective February 8, 1987, and shall remain in effect for 60 days.

VII. In accordance with the provisions of § 388.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Any respondent may oppose any request to renew this temporary denial order by filing a written submission with the Deputy Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order shall be served upon each respondent and published in the **Federal Register**.

Dated: February 8, 1987.

Theodore W. Wu,

Deputy Assistant Secretary for Export Enforcement.

[FR Doc. 87-3173 Filed 2-12-87; 8:45 am]

BILLING CODE 3510-DS-M

National Cancer Institute et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86-288. Applicant: National Cancer Institute, Frederick, MD 21701. Instrument: Electron Microscope (Side Entry with 35mm Camera), Model H-7000. Manufacturer: Hitachi Scientific Instrument, Japan. Intended use: See notice at 51 FR 29150. Instrument ordered: August 7, 1985.

Docket Number: 87-027. Applicant: The University of Michigan, Ann Arbor, MI 48109. Instrument: Electron Microscope, Model EM 902 with Imaging Spectrometer. Manufacturer: Carl Zeiss, West Germany. Intended use: See notice at 51 FR 42126. Application received by Commissioner of Customs: November 3, 1986.

Docket Number: 87-029. Applicant: Children's Hospital, Pittsburgh, PA 15213. Instrument: Electron Microscope, Model CM 10/35 with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: See notice at 51 FR 42890. Instrument ordered: August 1, 1986.

Docket Number: 87-031. Applicant: University of California, Los Angeles, CA 90024. Instrument: Electron Microscope, Model H-7000 with Accessories. Manufacturer: Hitachi, Japan. Intended use: See notice at 51 FR 42890. Instrument ordered: June 10, 1986.

Docket Number: 87:032. Applicant: University of Louisville, Louisville, KY 40292. Instrument: Electron Microscope, Model CM 12/S. Manufacturer: N.V. Philips, The Netherlands. Intended use: See notice at 51 FR 44651. Instrument ordered: May 1, 1986.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-3056 Filed 2-12-87; 8:45 am]

BILLING CODE 3510-DS-M

Texas A&M Research Foundation; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86-169. Applicant: Texas A&M Research Foundation, College Station, TX 77843-3578. Instrument: UV/Visible Spectrophotometer Unit, Model SU-40A Manufacturer: Hi-Tech Scientific Ltd., United Kingdom. Intended use: See notice 51 FR 15820.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer. The National Institutes of Health advises in its memorandum dated September 16, 1986 that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-3057 Filed 2-12-87; 8:45 am]

BILLING CODE 3510-DS-M

University of Florida et al.; Consolidated Decision on Applications for Duty-Free Entry of Spectrophotometers

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 87-038. Applicant: University of Florida, Gainesville, FL 32611. Intended use: See notice at 51 FR 44651.

Docket Number: 87-042. Applicant: National Institutes of Health, Bethesda, MD 20892. Intended use: See notice at 51 FR 44652.

Docket Number: 87-044. Applicant: Carnegie-Mellon University, Pittsburgh, PA 15213. Intended use: See notice at 51 FR 44652. Instrument: FTI Spectrophotometer, Model DA3.16. Manufacturer: Bomem Inc., Canada.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides an unapodized resolution of 0.02 cm^{-1} and a spectral range of 500-50,000 cm^{-1}. This capability is pertinent to each applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-3058 Filed 2-12-87; 8:45 am]

BILLING CODE 3510-DS-M

University of Kentucky et al.; Consolidated Decision on Applications for Duty-Free Entry of Accessories for Foreign Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 87-026. Applicant: University of Kentucky, Lexington, KY 40506-0055. Instrument: Second Harmonic Generator (Laser), Model Hyper-Trak 1000. Manufacturer: Lumonics Inc., Canada. Intended use: See notice at 51 FR 42126.

Docket Number: 85-119. Applicant: Auburn University, Auburn, AL 36849. Instrument: Turbomolecular Pumps. Manufacturer: Leybold Heraeus GmbH and Company, West Germany. Intended use: See notice 50 FR 15596.

Docket Number: 85-118. Applicant: Auburn University, Auburn, AL 36849. Instrument: Thermomolecular Pump, Model TMP 360. Manufacturer: Leybold Heraeus GmbH and Company, West Germany. Intended use: See notice 50 FR 13843.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States.

Reasons: These are compatible accessories for instruments previously imported for the use of the applicants. In each case, the instrument and accessory were made by the same manufacturer. The National Institutes of Health advises us that the accessories are pertinent to the intended uses and that it knows of no comparable domestic accessories.

We know of no domestic accessories which can be readily adapted to the previously imported instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-3059 Filed 2-12-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-605]

Malleable Cast Iron Pipe Fittings From Japan; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that certain malleable cast iron pipe fittings (pipe fittings) from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and have directed the U.S. Customs Service to suspend the liquidation of all entries of pipe fittings from Japan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margins as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make our final determination by April 21, 1987.

EFFECTIVE DATE: February 13, 1987.

FOR FURTHER INFORMATION CONTACT: Steven Lim or Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-5332 or 377-5288.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that pipe fittings from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act) (19 USC 1673b(b)). The weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

On August 29, 1986, we received a petition filed in proper form by the Cast Iron Pipe Fittings Committee on behalf of the domestic manufacturers of pipe fittings. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or threaten material injury to, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated such an investigation on September 16, 1986 (51 FR 34110, September 25, 1986), and notified the

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ITC of our action. On October 14, 1986, the ITC found that there is a reasonable indication that imports of pipe fittings from Japan are materially injuring a U.S. industry (USITC Pub. No. 1900).

On October 16, 1986, we presented an antidumping duty questionnaire to Hitachi Metals, Ltd. (Hitachi). We requested a response in 30 days. On October 30, 1986, respondent requested an extension of the due date for the questionnaire response. We granted the respondent a two-week extension. We received a response on December 8, 1986. On December 24, 1986, the Department requested supplemental information. A supplemental response was received on January 8, 1987.

Scope of Investigation

The products covered by this investigation are malleable cast iron pipe fittings, advanced in condition by operations or processes subsequent to the casting process other than with grooves, or not advanced, of cast iron other than alloy cast iron, as currently provided for in items 610.7000 and 610.7400 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Fair Value Comparisons

We investigated sales of pipe fittings to the United States during the period March 1 through August 31, 1986. Because Hitachi accounted for approximately 75 percent of all sales of this merchandise from Japan, we limited our investigation to it. Because a satisfactory explanation of difference in merchandise claims was received too late to allow us to consider it for this preliminary determination, we have based this determination on comparisons of identical merchandise.

If verified, we will use the difference in merchandise information in making our final determination.

To determine whether sales of the subject merchandise in the Unites States were made at less than fair value, we compared the United States price with the foreign market value for the company under investigation using data provided in the response.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price for certain sales since the merchandise was purchased by the unrelated U.S. customer directly from the foreign manufacturer prior to importation. As provided in section 772(c) of the Act, we used the exporter's sales price of the subject merchandise to represent the United States price for other sales, because the merchandise was sold to unrelated purchasers after importation into the United States.

We calculated purchase price based on the packed, c.i.f. delivered, duty paid, prices to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, ocean freight, marine insurance, brokerage, U.S. duty, and U.S. inland freight. We calculated exporter's sale price by deducting, where appropriate, foreign inland freight, ocean freight, marine insurance, Japanese brokerage, U.S. duty, U.S. brokerage, U.S. inland freight, discounts and commissions. We also made a deduction for credit expenses and other selling expenses.

Foreign Market Value

In accordance with section 773(a) of the Act, we used home market delivered prices of such or similar merchandise to determine foreign market value. Hitachi had made a small portion of sales to its related firm in Japan. We found the prices between Hitachi and its related purchaser to be "arms-length." Accordingly, we based our calculation of foreign market value on delivered, packed, prices to all purchasers. When comparing purchase price to foreign market value, we made deductions, where appropriate, for discounts, rebates, and inland freight. We made an adjustment for differences in circumstances of sales in accordance with § 353.15 of our regulations for differences in advertising and credit expenses between the two markets. Where sales involved unrelated party commissions, indirect selling expenses were granted as an offset for the cost of the U.S commission expenses in accordance with § 353.15(c) of the Commerce Regulations.

When comparing exporter's sales price to the home market price, we made deductions, where appropriate, for discounts, rebates, and inland freight. We also deducted advertising, credit expenses and indirect selling expenses from the home market price but limited the deduction for home market indirect selling expenses to the amount of the U.S. indirect selling expenses.

We have disallowed Hitachi's claim for warehousing expenses. The claimed adjustment included expenses such as rent, inventory checking and preparation of bills of lading, and fees for loading into and out of warehouse which we do not consider direct selling expenses. Since these expenses were not individually itemized, we could not separate them from the total claim and so have disallowed the total claims at this time.

We have also preliminarily disallowed Hitachi's liability insurance premium expense claim as a circumstance-of-sale adjustment, because we cannot determine at this time whether this expense is directly related to sales.

We deducted home market packing costs and added the packing costs incurred on sales to the United States.

Currency Conversion

For comparisons involving purchase price transactions, when calculating foreign market value, we made currency conversions from Japanese yen to U.S. dollars in accordance with § 353.56(a)(1) of our regulations, using the certified daily exchange rates furnished by the Federal Reserve Bank of New York. For comparisons involving exporter's sales price transactions, we used the official exchange rate for the date of purchase, pursuant to section 615 of the Tariff and Trade Act of 1984. We followed section 615 of the 1984 Act rather than § 353.56(a)(2) of our regulations, as it supersedes that section of the regulations.

Verification

We will verify all information used in making our final determination in accordance with section 776(a) of the Act. We will use standard verification procedures, including examination of relevant sales and financial records of the company under investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of pipe fittings from Japan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percentage
Hitachi	77.75
All others	77.75

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a United States industry, before the later of 120 days after our preliminary affirmative determination or 45 days after our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1:00 p.m. on March 18, 1987, at the U.S. Department of Commerce, Room 1414, 14th Street & Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by March 6, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

February 5, 1987.

[FR Doc. 87-3060 Filed 2-12-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-549-601]

Malleable Cast Iron Pipe Fittings From Thailand; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that certain malleable cast iron pipe fittings (pipe fittings) from Thailand are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend the liquidation of all entries of pipe fittings from Thailand that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margins as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make our final determination by April 21, 1987.

EFFECTIVE DATE: February 13, 1987.

FOR FURTHER INFORMATION CONTACT: James Riggs or Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-4929 or 377-5288.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that pipe fittings from Thailand are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(b)). The weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

On August 29, 1986, we received a petition filed in proper form from the Cast Iron Pipe Fittings Committee on behalf of the domestic manufacturers of pipe fittings. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Thailand are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or threaten material injury to, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated such an investigation on September 18, 1986 (51 FR 34111, September 25, 1986), and notified the ITC of our action. On October 14, 1986, the ITC determined that there is reasonable indication that imports of pipe fittings from Thailand are materially injuring a U.S. industry (US ITC Pub. No. 1900).

On October 15, 1986, we presented an antidumping duty questionnaire to counsel for Siam Fittings Co., Ltd. and requested a response in 30 days. On October 31, 1986, respondent requested an extension of the due date for the questionnaire response. We granted the respondent a two-week extension. We received a response on December 1, 1986. On December 22, 1986, the Department requested supplemental information. A supplemental response was received on January 2, 1987.

Scope of Investigation

The products covered by this investigation are malleable cast iron pipe fittings, advanced in condition by operations or processes subsequent to the casting process other than with grooves, or not advanced, of cast iron other than alloy cast iron, as currently provided for in items 610.7000 and 610.7400 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Fair Value Comparisons

We investigated sales of pipe fittings to the United States during the period March 1 through August 31, 1986. Because Siam Fittings Co., Ltd. accounted for approximately 70 percent of all sales of this merchandise from Thailand, we limited our investigation to this company.

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value for the company under investigation using data provided in the response.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent United States price since the merchandise was purchased by the unrelated U.S. customer directly from the foreign manufacturer prior to importation. We calculated purchase price based on the packed, f.o.b., c. & f., or c.i.f. prices to

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unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight and insurance, handling charges, ocean freight, and marine insurance. We made additions to purchase price for duty drawback (i.e., import duties which were rebated, or not collected, by reason of the exportation of the merchandise to the United States) pursuant to section 772(d)(1)(B), and for taxes rebated upon export, pursuant to section 772(d)(1)(C) of the Act. We also made a deduction for bank charges on U.S. sales.

Foreign Market Value

In accordance with section 773(a) of the Act, we used home market prices of such or similar merchandise to determine foreign market value. We based our calculations of foreign market value on delivered, packed prices to unrelated purchasers. We made deductions, where appropriate, for inland freight. We made an adjustment for differences in circumstances of sale in accordance with § 353.15 of our regulations for differences in credit terms between the two markets. We disallowed a claim for home market advertising expenses as these do not appear to be an assumption by Siam Fittings Co., Ltd. of a purchaser's advertising expenses.

We deducted home market packing costs and added the packing costs incurred on sales to the United States.

Where there was no identical product in the home market with which to compare a product sold in the United States, we made an adjustment to account for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act. These adjustments were based on differences in costs of materials, labor and directly related factory overhead.

Currency Conversion

We made currency conversions from Thai baht to U.S. dollars in accordance with § 353.56(a) of our regulations, using the certified quarterly exchange rates furnished by the Federal Reserve Bank of New York.

Verification

We will verify all information used in making our final determination in accordance with section 776(a) of the Act. We will use standard verification procedures, including examination of relevant sales and financial records of the companies under investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of pipe fittings from Thailand that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/Producer/Exporter	Margin percentage
Siam Fittings Co., Ltd.	2.75
All Others	2.75

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a United States industry, before the later of 120 days after our preliminary affirmative determination or 45 days after our final determination.

Public Comment

In accordance with section 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on March 19, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within 10 days of this notice's publication.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by March 6, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination, or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-3081 Filed 2-12-87; 8:45 am]

BILLING CODE 3510-DS-M

Management-Labor Textile Advisory Committee; Partially Closed Meeting

A meeting of the Management-Labor Textile Advisory Committee will held on Friday, February 27, 1987, at 1:30 p.m., Herbert C. Hoover Building, Room H6802, 14th Street and Constitution Avenue, NW., Washington, DC. [The Committee was established by the Secretary of Commerce on October 18, 1961 to advise Department officials on problems and conditions in the textile and apparel industry).

General Session: 1:30 p.m. Review of import trends, report on conditions in the domestic market, and other business.

Executive Session: 2:00 p.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR, 1982 Comp. p. 166) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with the limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room 6628, U.S. Department of Commerce, (202) 377-3031.

For further information or copies of the minutes contact Alfreda Clark Burton (202) 377-3737.

Dated: February 9, 1987.

Ronald I. Levin,

Acting Chairman, Management-Labor Textile Advisory Committee.

[FR Doc. 87-3063 Filed 2-12-87; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit: Nelio B. Barros and Daniel K. Odell (P38B)

On November 24, 1986, notice was published in the Federal Register (51 FR 42278) that an application had been filed by Mr. Nelio B. Barros and Dr. Daniel K. Odell to import one (1) Tucuxi (*Sotalia fluviotilis*) skull and stomach contents and one (1) southern bottlenose dolphin (*Tursiops truncatus*) skull from Brazil.

Notice is hereby given that on February 9, 1987, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805 Washington, DC; and Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: February 9, 1987.

Nancy Foster,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 87-3127 Filed 2-12-87; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Leonid Shturman

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Leonid Shturman, having a place of business at 11725 Montana Avenue, Los Angeles, CA 90049, an exclusive right in the United States to practice the invention embodied in the invention in U.S. Patent 4,403,985, "Jet Controlled Catheter." The Patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR Part 404. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted within the above specified 60-day period and should be addressed to Robert P. Auber, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Specialist, Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 87-3142 Filed 2-12-87; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Export Visa Arrangement and Exempt Certification for Certain Cotton, Wool, Man-Made, Vegetable Fiber, Other Than Cotton, and Silk Blend Textiles and Textile Products Produced or Manufactured in Japan

February 6, 1987.

The Chairman of the Committee for the Implementation of Textile Agreement (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 1, 1987. For further information contact Ross Arnold, International Trade Specialist (202) 377-4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 6, 1987, the Governments of the United States and the Republic of Japan have exchanged letters establishing a new export visa arrangement and an exempt certification system.

Effective on March 1, 1987, commercial shipments of cotton, wool, man-made fiber, vegetable fiber, other than cotton, and silk blend textiles and textile products in categories 300-369, 400-469, 600-670 and 800-899 exported on and after March 1, 1987 must be accompanied by a valid and correct visa or exempt certification as described in the enclosed letter to the Commissioner of Customs. Merchandise imported for the personal use of the importer and not for resale, and properly marked commercial sample shipments valued at U.S. $250 or less do not require a visa or exempt certification for entry and shall not be charged to restraints.

Lists of the issuing authorities and exempt "Japan items" and facsimiles of the visa and exempt certification stamps are published as enclosures to the letter to the Commissioner of Customs which follows this notice.

Interested persons are advised to take all necessary steps to ensure that cotton, wool, man-made fiber, vegetable fiber, other than cotton, and silk blend textiles and textile products, produced or manufactured in Japan and exported on and after March 1, 1987, which are to be entered or withdrawn from warehouse for consumption in the United States will meet the requirements set forth in this notice.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

February 6, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Agreement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 6, 1987, between the Governments of the United States and the Republic of Japan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, vegetable fiber, other than cotton, and silk blend textiles and textile products in Categories 300-369, 400-469, 600-670 and 800-899, produced or manufactured in Japan and exported on and after March 1, 1987 from Japan for which the Government of the Republic of Japan has not issued an appropriate visa or exempt certification fully described below.

A visa must accompany merchandise in Categories 300-369, 400-469, 600-670 and 800-899. A circular stamped marking in blue ink will appear on the front of the original commercial invoice. The original visa shall not be stamped on the duplicate copies of the invoice. The original of the invoice with the original visa stamp will be required to enter the shipment into the United States of America, and duplicates may not be used for this purpose. The visa shall include a number in standard 9 digit format, and the signature of an official from an authorized issuing authority, and the date on which the visa was issued. The visa number shall be nine digits and letters, beginning with one numerical digit for the last digit of the year of export, followed by the two character alpha country code specified by the International

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Organization for Standardization (ISO), and a six digit numerical serial number identifying the shipment; e.g. 7JP123456.

The visa must not be accepted and entry must not be permitted if the shipment does not have a visa, or if the visa number, date, or signature are missing, incorrect or illegible, or have been crossed out or altered in any way. If the visa is not acceptable then a new visa must be obtained and presented to the U.S. Customs Service before any portion of the shipment will be released. If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice.

For certain textiles and textile articles designated as "Japan items," which have been certified exempt from import restraints, a rectangular-shaped marking in blue ink will appear on the front of commercial invoice, and a visa shall not be required. The exempt certification must include the date of issuance, signature of an official from an authorized issuing authority, and the name of the specific item. The wording on the invoice should read: "JAPAN ITEMS"—"Name of the specific item(s)." The exempt certification must be issued prior to exportation of the shipment from Japan. If the certification is incorrect (i.e. the date of issuance, signature or basis for the exemption is missing, incorrect or illegible, or has been crossed out or altered in any way), then the exempt certification must not be accepted and entry shall not be permitted unless a visa is obtained. Japan items and visaed items may not both appear on the same invoice.

Facsimiles of the visa and exempt certification stamps, including the issuing authorities and authorized signatures, and a list of exempt "Japan items" are published as enclosures to this letter.

Properly marked commercial shipments valued at U.S. $250 or less, and merchandise imported for the personal use of the importer and not for resale will not require a visa or exempt certification. You are further directed to permit entry into the United States for consumption and withdrawal from warehouse for consumption of designated shipments of cotton, wool, man-made fiber, vegetable fiber, other than cotton, and silk blend textiles and textile products, produced or manufactured in Japan, notwithstanding the designated shipment or shipments do not fulfill the aforementioned visa requirements, whenever requested to do so in writing by the Chairman of the Committee for the Implementation of Textile Agreements.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Republic of Japan and with respect to imports of cotton, wool, man-made fiber, vegetable fiber, other than cotton, and silk textiles and textile products from Japan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register**.

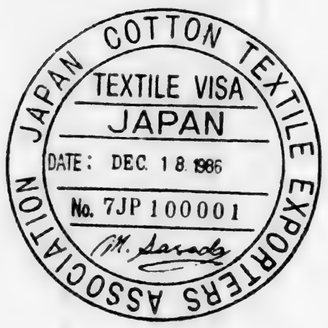
Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

BILLING CODE 3510-DR-M

VISA STAMP (With Issuer's Signature)



Masayasu Sasada



Shogo Asahina



Minoru Hyogo



Masao Yamaguchi

* The name below each stamp is correct name of the signer.

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Kyoichi Fujimura

THE JAPAN TEXTILE PRODUCTS EXPORTERS' ASSOCIATION
EXEMPT CERTIFICATE (JAPAN ITEM)
ITEM:
DATE: JAN. 22. 1987
M. Yamaguchi

Masao Yamaguchi

BILLING CODE 3510-DR-C

Annex—Japan Items

Clothing

Kimono: Traditional Japanese one-piece style garments of full length or longer, overlapped in front and fastened with Obi (not by buttons). Characterized by standarized shape, cut in linear ignoring the human body's curve. No differences in style between male and female, but varies according to materials, design, colors, weave, and length of sleeves.

Yukata: A type of long Kimono worn usually in summer. Made mainly of dyed plain-woven cotton lightweight fabrics.

Juban: Underwear worn under Kimono, often in light color such as white. The waist-length Juban is called Han-Juban and the full length Naga-Juban. Basically the same style as Kimono.

Haori: Short coat usually of knee-length worn over a Kimono fastened with a string in front. It is characterized by gusset sleeves and a folded strip of fabric which extends from one end of the opening to the other making the finished edge.

Wafuku-coat: Traditional Japanese style coat worn over Kimono or Happi for protection against rain or cold. Corresponds to the western raincoat, but the style is basically same as Kimono except for its front which is closed with buttons or hooks and not with Obi. Wafuku fabrics against rain are waterproofed.

Happi: Similar style with Haori, but often a little shorter, (sometimes fastened with Obi). Characterized by tight sleeves without gusset, and by design dyed with family name or crest, etc. Used as working or festival clothes or sometimes as demonstrative purpose.

Judogi and Karategi: Kimono style sportswear made of thick fabric for Judo or Karate, usually accompanied by approximately ¾ length trousers and an Obi. Upper wear is approximately mid-thigh to knee length in Haori-style.

Kendogi: Kimono style sportswear, usually accompanied by a long pleated skirt with two interior leg openings and a self-fabric belt and with an upper approximately mid-thigh to knee length in Haori-style. There is a stiffened extension in the back top portion above the waist several inches high and wide.

Kappogi: A kind of apron usually worn over Kimono by female covering chest and shoulders to protect against dirt on housework. Usually white colored, long sleeve edges tightened by rubber, and a little shorter than knee-length.

Monpe: A pair of baggy pants with fully elasticized waist and leg openings and no other openings. It may or may not have pockets, but not more than two pockets.

Clothing Accessories

Obi: Band or wide belt which is, unlike western belt, long enough to tie round the waist several times. Obi is used to fix Kimono to prevent disarry, and also for decorative purpose to achieve overall harmony. They are important accessories essential to the completion of Japanese style clothing, which should be regarded as integral parts of Kimono.

(1) Wide thick belts for female Kimono. Usually, a few inches wide or more made of fine, solid and strongly beaten fabrics designed with Japanese traditional patterns.

(2) Wide, thin belts for male's Kimono or Yukata.

(3) Judo or Karate belt, usually narrower than Obi, but longer than western style belt. Made of solid fabrics and without buckle.

Obijime: A belt for tying on the Obi to prevent it from loosening, braided with 4 or more strands. It may be round or flat in shape and not exceed 1 inch in width or 65 inches in length. Usually it is made of silk or rayon or rayon blends. If made of silk the braid will not contain a core, otherwise the braid will contain a core.

Tabi: Socks to be worn when one wears Kimono, made of woven fabrics, tightly in the form of the foot, having a separate division for the big toe. Reaches just above the ankle and is fastened at the back by means of an overlap having metal hook tabs (Koh-Aze).

Koshihimo: Narrow light weight tubular belt with closed ends and no buckle or other attachments, used to adjust the length of a Kimono to one's height.

Erisugata: Neck-round part of Kimono is called Eri, corresponding to western style collar. While Eri is united to Kimono, Erisugata is the Eri-shaped cloth (same or different design) to put on Eri to protect against dirt as well as for decorative purpose.

Sodeguchi: Extra broad sleeve worn to cover short sleeve of Juban, usually with the laced edge.

Homaekake: Men's woven working apron with one or more pockets extending the full width of the apron, with 4 inch or more extension of fabric below the pocket(s), to be tied around the waist with an attached fabric strip. Usually the apron is made of thick, heavy fabric printed with a family name in Japanese, or a crest.

Household Goods

Shikifuton: Japanese style mattress in approximately the following sizes (in inches): 30 by 74, 39 by 78, 60 by 80, and 72 by 84. It is stuffed with cotton, cotton/-man-made fiber blends, down, kapok, and similar natural materials, with a woven fabric cotton ticking, with spot-type quilting stitch going from front fabric to back fabric. The mattress is different from western style mattresses in that the stuffing material is much softer and the ticking fabric of lighter weight construction.

Koinobori: Artificial carp made of woven fabrics to fly on top of a long pole outdoors on the occasion of Boy's Festival (Children's Day) in the Japanese custom.

Noren: A piece of cloth, rectangular strip, with vertical cut in several parts to hang at the entrance of shops. It is also hung at the entrance of the general household as decoration.

[FR Doc. 87-3062 Filed 2-12-87; 8:45 am]

BILLING CODE 3510-DR-M

Adjusting Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

February 10, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 31, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 17, 1987. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

On August 18, 1986 a notice was published in the **Federal Register** (51 FR 29513) which establishes import restraint limits for certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported during the agreement year which began on July 1, 1986 and extends through June 30, 1987. Under the terms of the Bilateral Cotton and Man-Made Fiber Textile Agreement of October 18, 1985, as amended and extended, swing is being applied to the restraint limit previously established for cotton textile products in Category 339. The limit for Category 340/640 is being reduced to account for the amount of swing applied to Category 339. The limit for Category 339 has been filled.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the restraint limits previously established for Categories 339 and 340/640.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

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This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

February 10, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner:

This directive amends, but does not cancel, the directive issued to you on August 12, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported during the twelve-month period which began on July 1, 1986 and extends through June 30, 1987.

Effective on February 17, 1987, the directive of August 12, 1986 is further amended to include the following adjusted limits to the previously established restraint limits for cotton and man-made fiber textile products in Categories 339 and 340/640, as provided under the terms of the bilateral agreement of October 18, 1985, as amended and extended:[1]

Category	Adjusted 12-month limit[1]
339	492,200 dozen
340/640	440,340 dozen

[1] The limits have not been adjusted to account for any imports exported after June 30, 1986.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-3176 Filed 2-12-87; 8:45 am]

BILLING CODE 3510-DR-M

Amending the Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mauritius

February 6, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 13, 1987. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

A CITA directive establishing import limits for specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in Mauritius and exported during the twelve-month period which began on October 1, 1986, was published in the **Federal Register** on November 4, 1986 (51 FR 40061). Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 3 and 4, 1985, as amended, between the Governments of the United States and Mauritius, it was determined that deductions will be made for overshipments of cotton and man-made fiber textile products imported during the period April 1, 1986 through September 30, 1986 in Categories 341/641 and 347/348. These deductions will be made from the restraint limits established for the period beginning on October 1, 1986 and extending through September 30, 1987. The new restraint levels will be 102,308 dozen for Categories 341/641 and 422,730 dozen for Categories 347/348. With later data, further adjustments may be made. Also, charges for goods imported during the period October 1 through November 5, 1986 will be charged to the restraint limits for Categories 341/641 and 347/348 which began on October 1, 1986 and extends through September 30, 1987.

Accordingly, in the letter which follows this notice, the Chairman of CITA directs the Commissioner of Customs, to deduct 136,692 dozen and 3,270 dozen from the designated import restraint limits established for Categories 341/641 and 347/348, respectively, for overshipment of the restraint limits for the April 1 through September 30, 1986 period. The Commissioner is also directed to charge 15,136 dozen (Category 341/641) and 9,063 dozen (Category 347/348) to the designated import restraint limits, for goods imported from October 1 through November 4, 1986 that are subject to the current restraint limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55807), December 30, 1983, (48 FR 57584), April 4, 1984, (49 FR 13397), June 28, 1984, (49 FR 26622), July 16, 1984, (49 FR 28754), November 9, 1984, (49 FR 44782), July 14, 1986, (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

February 6, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner:

To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 3 and 4, 1985, as amended, between the Governments of the United States and Mauritius, I request that, effective on February 13, 1987 you charge the following amounts to the limits established in the directive of October 30, 1986 for cotton and man-made fiber textile products, produced or manufactured in Mauritius and exported October 1, 1986 and extends through September 30, 1987. The charges are for goods imported during the periods April 1, 1986 through September 30, 1986.

Category	Amount to be charged
341/641	15,136 dozen
347/348	9,063 dozen

Also effective on February 13, 1987, the directive of October 30, 1986 is hereby amended to adjust the previously established restraint limits for Categories 341/641 and 347/348 under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 3 and 4, 1985, as amended:[1]

Category	New Adjusted limit
341/641	102,308 dozen
347/348	422,730 dozen

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-3175 Filed 2-12-87; 8:45 am]

BILLING CODE 3510-DR-M

[1] The provisions of the bilateral agreement provide, in part, that: (1) Specific limits may be increased by 7 percent swing during an agreement period and (2) specific limits may be increased by carryover and carryforward up to 11 percent of the applicable category limit.

[1] The Agreement provides, in part, that overshipments which occur in an agreement period can be charged to the limit in the succeeding agreement period, or over a period of years as in the case of 341/641.

Requesting Public Comment on Bilateral Consultations With the Government of the People's Republic of China on Categories 835, 842, and 847

February 10, 1987.

FOR FURTHER INFORMATION CONTACT: Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, please call (202) 377-3715. For information on categories on which consultations have been requested call (202) 377-3740.

Background

On December 31, 1986, the United States Government, in accordance with section 204 of the Agricultural Adjustment Act of 1956, as amended, requested consultations with the Government of the People's Republic of China with respect to coats (Category 835), skirts (Category 842) and trousers, slacks and shorts (Category 847) of silk blends and vegetable fibers, other than cotton, produced or manufactured in China.

The purpose of this notice is to advise the public that the Committee for the Implementation of Textile Agreements may later establish limits for the entry or withdrawal from warehouse for consumption of textile products in Categories 835, 842, and 847, produced or manufactured in the People's Republic of China and exported to the United States during the twelve-month period which began on December 31, 1986 and extends through December 30, 1987, at levels of 49,357 dozen (Category 835), 33,636 dozen (Category 842) and 703,358 dozen (Category 847).

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on July 29, 1986 (51 FR 27068).

Summary market statements for these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 835, 842 and 847, or to comment on domestic production or availability of textile products included in these categories, is invited to submit such comments or information in ten copies to Mr. Ronald I. Levin, Acting Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230.

Because of the enact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC, and may be obtained upon request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-3177 Filed 2-12-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; New Blanket Routine Use Added to DoD Systems of Records

AGENCY: Office of the Secretary of Defense (OSD).

ACTION: Notice of a new Blanket Routine Use for DoD systems of records.

SUMMARY: The Office of the Secretary of Defense is publishing for public comment a notice of a proposed new Blanket Routine Use which will be applicable to all existing systems of records of the DoD Components subject to the Privacy Act of 1974.

DATE: This proposed action will be effective, without further notice, on or before March 16, 1987, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Aurelio Nepa, Jr., Defense Privacy Office, Room 205, 400 Army Navy Drive, Arlington, VA 22202. Telephone: 202-694-3027, Autovon: 224-3027.

FOR FURTHER INFORMATION CONTACT: Aurelio Nepa, Jr. at the above address and telephone number.

SUPPLEMENTARY INFORMATION: Certain blanket "routine uses", as defined under the Privacy Act of 1974 (5 U.S.C. 552a(a)(7)) have been established within the Department of Defense (DoD) and, unless specifically stated otherwise within a particular record system, these blanket routine uses are applicable to every record system maintained within the DoD. These blanket routine uses of the records are published only once at the beginning of each DoD Component's listing of record systems subject to the Privacy Act. They are used in the interest of simplicity, economy and to avoid redundancy by avoiding having to repeat them all in each individual record system. The DoD proposes to add a new blanket routine use. This added routine use amendment is not within the purview of the provisions of 5 U.S.C. 552a(o) which requires the submission of an altered system report to OMB and Congress.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 9, 1987.

The following new DoD Blanket Routine Use applicable to all DoD Components is added to the existing DOD blanket routine uses:

Routine Use-Counterintelligence Purposes

A record from a system of records maintained by this component may be disclosed as a routine use outside the DoD for the purpose of counterintelligence activities authorized by U.S. Law or Executive Order or for the purpose of enforcing laws which protect the national security of the United States.

[FR Doc. 87-3099 Filed 2-12-87; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Thursday, 5 March 1987.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 S. Crystal Drive, Suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of

assistance and providing available

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economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92-433, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 9, 1987.

[FR Doc. 87-3098 Filed 2-12-87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

February 6, 1987.

The USAF Scientific Advisory Board Arnold Engineering Development Center (AEDC) Advisory Group will meet on March 18, 1987, from 8:00 a.m. to 4:00 p.m. and March 19, 1987, from 8:00 a.m. to 12:00 noon at the AEDC Headquarters (A & E Conference Room), Arnold Air Force Station, TN.

The purpose of this meeting is to receive briefings on and to discuss selected ground test facilities, requirements, and programs which support Air Force weapon system development.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-3143 Filed 2-12-87; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

February 6, 1987.

The USAF Scientific Advisory Board Committee on Software Expertise & ADA will meet at the Pentagon, Washington, DC, Room 5D982 on 3 and 4 March 1987, from 8:00 a.m. to 5:00 p.m. each day.

The meeting will be open to the public.

The purpose of the meeting is to review, discuss and evaluate the effectiveness of software expertise being developed by the Air Force.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-3067 Filed 2-12-87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Consideration of Independent Environmental and Safety Assessments for Destruction, Unitary Chemical Stockpile in the Continental United States

AGENCY: Department of the Army, DOD.

ACTION: Notice of the Army possibly providing assistance to members of affected communities to make additional environmental and safety assessments regarding the destruction of the Unitary Chemical Stockpile stored within the continental United States.

1. The U.S. Army is considering several alternatives to demilitarize chemical munitions stored at the following sites within the continental United States:

a. Aberdeen Proving Ground, Maryland
b. Anniston Army Depot, Alabama
c. Lexington Blue Grass Army Depot, Kentucky
d. Pine Bluff Arsenal, Arkansas
e. Newport Army Ammunition Plant, Indiana
f. Pueblo Army Depot Activity, Colorado
g. Tooele Army Depot, Utah
h. Umatilla Army Depot Activity, Oregon.

2. A Draft Programmatic Environmental Impact Statement published 1 July 1988 indicated minimal environmental and safety risks. Nonetheless, the Army recognizes that some members of involved communities may desire to make additional assessments from available or independently developed data. If so, the Army will consider providing financial assistance and providing available information as needed for an independent assessment where it can be demonstrated that:

a. There is community concern over planned Army operations, and

b. The applicant group is representative of the total community and will have available to it the requisite expertise for an independent assessment.

3. A course selection has been made to perform an independent assessment at Lexington, Bluegrass Army Depot. This notice applies to the other seven locations.

4. interested groups should contact Mr. C.C. Solloway, U.S. AMCCOM, Procurement Directorate (Edgewood), AMSMC-PC (A), Aberdeen Proving Ground, MD 21010-5423, AC (301) 671-2554 by 28 February 1987. After that time, in view of the necessity to efficiently and timely proceed with planned operations, further applications will not be considered.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health OASA (I&L).

[FR Doc. 87-3120 Filed 2-12-87; 8:45 am]

BILLING CODE 3710-08-M

Assistant Secretary of the Army (Civil Works); Request for Nominations to the Inland Waterways Users Board

AGENCY: Department of the Army; DoD.

ACTION: Notice.

SUMMARY: Public Law 99-662 creates an eleven member Inland Waterways Users Board, make up of shippers and users of the U.S. inland waterways. Members will be appointed by the Secretary of the Army. This notice is to solicit nominations to this Users Board.

EFFECTIVE DATE: February 13, 1987.

ADDRESS: Department of the Army; Office of the Assistant Secretary (Civil Works); Washington, DC 20310-0103. Attn: Inland Waterways Users Board Nomination Committee.

FOR FURTHER INFORMATION CONTACT: Dr. Edward Dickey; 202-272-0126.

SUPPLEMENTARY INFORMATION: Section 302 of Pub. L. 99-662 establishes an Inland Waterways Users Board composed of eleven members selected by the Secretary of the Army. The law further specifies that the members shall be selected so as to represent various regions of the country and a spectrum of the primary users and shippers utilizing the inland and intra-coastal waterways for commercial purposes. Due consideration shall also be given to assure a balance among the members based on the ton-mile shipments of the various categories of commodities shipped on inland waterways. The users board is subject to the Federal Advisory Committee Act (86 Stat. 770; 5 U.S.C. App.). Members of the users board, while engaged in the performance of their duties away from their home or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistance, as authorized by section 5703 of Title 5, United States Code.

Duties of the board. The users board shall meet at least semi-annually to develop and make recommendations to the Secretary regarding construction and rehaiblitation priorities and spending levels on the commercial navigation features and components of the inland waterways and inland harbors of the United States. Any advice or recommendations made by the users board to the Secretary shall reflect the independent judgment of the users board. The users board shall, by December 31, 1987, and annually thereafter file such recommendations with the Secretary and with Congress.

Eligibility for membership. Pending issuance of regulations implementing the law, the Secretary proposes to use the following criteria for evaluating eligibility for membership.

(a) *Shipper or User.* A candidate being nominated for membership to the Inland Waterways Users Board should be a representative of an individual or firm which uses the inland waterways of the United States for commercial transportation either as a "shipper" or "user". A shipper is defined as an owner, person or firm for whose account transportation of cargo is provided or to whom delivery is to be made. The shipper should be closely tied to the modal decision making process. A user is a person or firm which operates towboats and/or barges on the inland waterways of the United States for commercial purposes, either in private carriage or for hire. All nominations must specify if the nominee is to represent a "shipper" or "user", and provide evidence in support of this contention. For purposes of this provision, a trade associaton is neither a shipper nor a user.

(b) *Commerce moved by region.* For purposes of meeting the requirements of the law concerning the make-up of the users board, nominations must include the following informaiton concerning the commercial operations of the shipper or user whom they are being asked to represent. In addition to the information concerning the candidate's personal experience which demonstrates as ability to perform the functions of a member of the board, commercial information of the shipper or user firm concerning ton-mile shipments should be provided by commodity and region transported. For purposes of users board membership, inland waterways shall be defined as those waterways subject to the Inland Waterways Fuel Tax and described in section 206 of Pub. L. 95-502, as amended by Pub. L. 99-662. For the purposes of establishing this users board, these 26 regions are aggregated into six, as follows: (1) Upper Mississippi (including the Upper Mississippi from Minneapolis, Minnesota to the mouth of the Ohio; the Missouri River; the Illinois and the Kaskaskia). (2) The Lower Mississippi (including the Lower Mississippi from the mouth of the Ohio River to Baton Rouge); the Arkansas and White Rivers; the Atchafalaya; the Ouchita-Black; and the Red Rivers). (3) The Ohio River (including the Ohio River; the Tennessee River; the Monongahela; the Allegheny River; the Cumberland; the Green-Barren; the Kentucky River; and the Kanawha). (4) The Gulf Intracoastal Waterway—West, from Brownsville, Texas to New Orleans. (5) The East Gulf & South Atlantic Waterway including the Gulf Intracoastal Waterway from New Orleans to St. Mark's, Florida; the Black Warrior-Tombigbee-Mobile; the Tennessee-Tombigbee Waterway; the Alabama-Coosa; the Apalachicola-Chattachoehee-Flint; the Pearl; and the Atlantic Intracoastal Waterway (from Miami, Florida to Norfolk, Virginia). (6) The Columbia River (Columbia-Snake Inland Waterways). Ton-miles of commerce transported on each of these six regions should be estimated for the 1984 calendar year. To the degree possible, commerce should be classified by two-digit commodity code as reported to the Waterborne Commerce Statistical Center, and published in the *Waterborne Commerce of the United States.*

Deadline for nominations. All nominations must be recieved at the address indicated above no later than March 10, 1987.

Dated: February 10, 1987.

Approved.

Robert K. Dawson,

Assistant Secretary of the Army (Civil Works).

[FR Doc. 87-3217 Filed 2-12-87; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Notice Inviting Applications for New Awards Under the Centers for Independent Living Program for Fiscal Year 1987 (CFCA No. 84.132)

Purpose: Provides grants to State vocational rehabilitation agencies, local public agencies, or private nonprofit organizations for the support of centers for independent living. This application notice supersedes the application notice published on September 30, 1986 at 51 FR 34681.

Deadline for transmittal of applications: April 30, 1987 for designated State units, and June 1, 1987 for local public agencies or private nonprofit organizations.

Deadline for intergovernmental review comments: August 3, 1987.

Applications available: February 27, 1987.

Available funds: $2,000,000.

Estimated range of awards: $150,000—$250,000.

Estimated average size of awards: $200,000.

Estimated number of awards: 10.

Project period: 36 months.

Applicable regulations: (a) Regulations governing the Centers for Independent Living Program (34 CFR Part 366); and (b) Education Department General Administrative Regulation (EDGAR) (34 CFR Parts 74, 75, 77, 78 and 79).

Priorities: In accordance with the Education Department General Administrative Regulations (EGAR) at 34 CFR 75.105(c)(1), the Secretary especially urges the submission of fiscal year 1987 applications for new projects that respond to one or both of the following invitational priorities: (1) To provide services which assist individuals with severe handicaps to make the transition from school or institution to work and community living; and (2) to serve a broad range of disability groups. However, an application submitted under this notice that meets an invitational priority will not be given preference over other applications. The principal eligible applicants under this program are designated State vocational rehabilitation units. Awards may also be made to local public agencies or private nonprofit organizations within a State, if the designated State unit has not submitted an application within three months after the Secretary begins accepting new applications in any fiscal year. In addition, pursuant to 29 U.S.C. 711(h) and 34 CFR 75.105(c)(2)(i), a competitive preference will be given to

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those applications that demonstrate that the proposed project will serve geographic areas which are currently not served or underserved by independent living centers. This competitive preference will be implemented by awarding to those applications that meet this priority in a particularly effective way, up to 20 additional points to those earned by the applicant under 34 CFR 366.31.

For applications or information contact: Judith Miller Tynes, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue SW., Room 3326 Mary E. Switzer Building, MS 2312, Washington, DC 20202. Telephone: (202) 732–1346.

Program Authority: 29 U.S.C. 796e.

Dated: February 9, 1987.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 87–3132 Filed 2–12–87; 8:45 am]

BILLING CODE 4000–01–M

Notice Inviting Applications for New Awards To Be Made In Fiscal Year 1987 (CFDA No 84.116D) Under the Comprehensive Program Final Year Dissemination Competition Conducted by the Fund for the Improvement of Postsecondary Education

Purpose: Provides grants to institutions of postsecondary education and other public and private institutions and agencies to improve postsecondary education by supporting the efforts of current grantees to disseminate project ideas and results. Applications under the Final Year Dissemination competitions are limited to grantees of FIPSE whose projects are in their final year of funding, except that a recipient of a single-year grant may apply for assistance under this Competition within one year following the termination of his or her project.

Deadline for transmittal of applications: March 31, 1987.

Applications available: February 13, 1987.

Available funds: $100,000.

Estimated size of awards: $8,000 maximum.

Project period: Not to exceed 12 months.

Applicable regulations: The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78 with the exceptions noted in 34 CFR 630.4(b).

For applications or information contact: Diana Hayman, 400 Maryland Avenue SW., (Room 3100, ROB–3), Washington DC 20202. Telephone number (202) 245–8091 or 245–8100.

Program authority: 20 U.S.C. 1135.

Dated: February 6, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87–3133 Filed 2–12–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Hydropower Licenses Expiring Between January 1, 1987 and December 31, 1999

February 11, 1987

The following information has been provided by the Federal Energy Regulatory Commission's Office of Hydropower Licensing concerning relicensing. Table 2, provides projects for which licenses will expire between January 1, 1987, and December 31, 1999, inclusive, that are subject to relicensing and takeover. Table 3 provides the licenses that will expire during the same period that are subject to relicense but not subject to takeover.

Kenneth F. Plumb,

Secretary.

TABLE 2.—PROJECTS FOR WHICH LICENSES WILL EXPIRE BETWEEN JANUARY 1, 1987, AND DECEMBER 31, 1999 INCLUSIVE, THAT ARE SUBJECT TO RELICENSING OR TAKEOVER [1]

License expiration date	Licensee	FERC project No.	State	County	River	Installation (kilowatts)	Facilities under license	Period of license (years)
12/31/87	Wisconsin Public Service corp	1906	WI	Portage	Wisconsin	17,240	Dam, powerhouse	50
12/31/87	Central Vermont Public Service corp.	2205	VT	Franklin Chittenden	Lamoille	16,880	4 Dams, 4 reservoirs, 4 powerhouses, transm lines.	50
12/31/87	Central Maine Power Co	2335	ME	Somerset	Kennebec	13,000	2 Dams, Powerhouse	50
12/31/87	Potomac Edison Co	2343	WV	Jefferson	Shenandoah	2,840	Dam, Powerhouse	50
12/31/87	Utah Power & Light Co	2381	ID	Fremont	Snake	6,300	2 Dams, 2 powerhouses	50
12/31/87	Public Service Co. of New Hampshire	2457	NH	Merrimack	Pemigewasset	64,000	Dam, Powerhouse	50
12/31/87	Elkem Metals Co	2512	WV	Fayette	New	107,450	2 Dams, 2 reservoirs, 2 powerhouses.	50
12/31/87	Great Northern Paper Co	2520	ME	Penobscot	Penobscot	19,200	Dam, reservoir, powerhouse, transm. lines.	50
12/31/87	Central Maine Power Co	2528	ME	York	Saco	6,650	4 Dams, reservoir, powerhouse	50
12/31/87	Central Maine Power Co	2531	ME	York	Saco	6,625	Dam, reservoir, 2 powerhouses	50
12/31/87	Beaver Falls Power Co	2593	NY	Lewis	Beaver	1,500	Dam, reservoir, powerhouse	50
12/31/87	Bangor Hydro Electric Co	2727	ME	Hancock	Union	8,400	2 Dams, 2 reservoirs, 2 powerhouses.	50
3/31/88	Holyoke Gas and Electric Co	2387	MA	Hampden	Holyoke Canal	800	Canal, powerhouse	33
6/30/88	Montana Power Co	1473	MT	Granite	Flint Creek	1,100	Dam, powerhouse, reservoir	50
8/31/88	Alaska Electric Light & Power Co	2307	AK	Juneau	Salmon and Annex Creek	9,100	2 Dams, 3 powerhouses, reservoir, transm. lines.	25
10/26/88	CWC Fisheries, Inc	1432	AK	Kodiak	Dry Spruce Bay	75	2 Reservoirs, powerhouse, dam	20
10/31/88	George A. Whiting	2352	WI	Winnebago	Fox	250	Dam, powerhouse	23
12/31/88	Upper Peninsula Power Co	1864	WI	Ontonagon	Ontonagon	12,000	4 Dams, reservoir, and powerhouse	35
12/31/88	Pacific Power & Light Co	2337	OR	Jackson	Rogue	7,200	Dam, powerhouse, transm. line	25
4/30/89	Pacific Gas & Electric Co	1333	CA	Tulare	Tule	4,800	2 Dams, powerhouse, transm. lines.	50
4/30/89	Pacific Gas & Electric Co	1354	CA	Madera, Fresno	San Joaquin	20,425	5 Dams, 5 powerhouses transm. lines.	50
12/31/89	Lake Superior District Power	2610	MI	Gogebic	Montreal	1,250	Dam, powerhouse	50
5/31/90	Holyoke Gas & Electric Co	2388	MA	Hampden	Holyoke Canal	450	do	25
6/30/90	Wisconsin Public Service Corp	1957	WI	Vilas	Wisconsin	1,000	do	15
6/30/90	Kimberly-Clark Corp	1967	WI	Portage	Wisconsin	600	do	15
12/31/90	Maine Public Service Co	2368	ME	Aroostook	Squa Pan Stream	1,500	do	25
12/31/90	Georgia-Pacific Corp	2392	NH	Coos	Connecticut	3,390	do	25
12/31/90	Bangor Hydro-Electric Co	2534	ME	Penobscot	Penobscot	6,400	do	20
2/28/91	Holyoke Gas & Electric	2386	MA	Hampden	Holyoke Canal	1,056	do	25
2/28/91	Lmweave, Inc	2497	MA	Hampden	Connecticut	400	Powerhouse	16
2/28/91	Hammermill Paper Co	2622	MA	Franklin	Connecticut	937	Dam, powerhouse	20
2/28/91	Lmweave, Inc	2758	MA	Hampden	Connecticut	280	Powerhouse	14
2/28/91	do	2766	MA	do	do	400	do	14
2/28/91	do	2768	MA	do	do	250	do	14
2/28/91	do	2770	MA	do	do	240	do	14
2/28/91	do	2771	MA	do	do	400	do	14
2/28/91	do	2772	MA	do	do	460	do	14
2/28/91	do	2775	MA	do	do	360	do	14
6/30/91	Consolidated Water Power Co	1953	WI	Portage	Wisconsin	7,200	Dam, powerhouse	30
6/30/91	Niagara Mohawk Power Corp	2424	NY	Monroe	Barge Canal	4,687	do	27
7/31/91	Pacific Gas and Electric Co	1403	CA	Yuba	Yuba	9,350	do	50
9/30/91	Four Rent	1746	NV	Esmeralda	Leidy Creek	200	do	25
2/11/92	Pinedale Power & Light Co	662	WY	Sublette	Pine Creek	75	do	50
6/30/92	Maine Public Service Co	2366	ME	Piscataquis	Millinocket	0	do	25
11/30/92	Lower Valley Power & Light Co	1651	WY	Lincoln	Swift Creek	1,550	do	50
3/31/93	Moon Lake Elec. Asso	1773	UT	Duchesne	Yellowstone Creek	900	do	50
3/31/93	Northern States Power Co	2711	WI	Washburn	Namekagon	1,200	do	16
6/30/93	Wisconsin Elec. Power co	2394	MI	Menominee	Menominee	7,800	do	28
6/30/93	Niagara of Wisc. Paper	2536	WI	Mannette	do	8,386	do	25
6/30/93	Consolidated Water Power Co	2590	WI	Portage	Wisconsin	1,800	do	16
7/31/93	Wis. Valley Impro. Co	2113	WI	Vilas	Deerskin	0	21 Dams, powerhouse	34
7/31/93	Weyerhaeuser Co	2212	WI	Marathon	Wisconsin	3,640	Dam, powerhouse	34
7/31/93	Tomahawk Power and Pulp Co	2239	WI	Lincoln	do	2,770	do	34
7/31/93	Nekoosa Papers Inc	2255	WI	Wood	do	3,200	do	34
7/31/93	Consolidated water Power Co	2256	WI	do	do	4,680	do	34
7/31/93	Nekoosa Papers Inc	2291	WI	do	do	3,593	do	31
7/31/93	Nekoosa Papers Inc	2292	WI	do	do	3,800	do	31
8/31/93	Empire District Elec. Co	2221	MO	Taney	White	16,000	do	31
12/31/93	Public Service Co. of Colo	2187	CO	Stanly, Davidson	Clear Creek	1,440	5 Dams, powerhouse	23
12/31/93	do	2275	CO	Chaffee	Arkansas	1,330	2 Dams, 2 powerhouses	29
12/31/93	Central Maine Power Co	2283	ME	Androscoggin	Androscoggin	29,240	2 Dams, 3 powerhouse	28
12/31/93	Public Service Co. of NH	2287	NH	Coos	do	15,000	Dam, powerhouse	31
12/31/93	do	2288	NH	do	do	2,150	do	31
12/31/93	Southern Cal. Edison Co	2290	CA	Kern	Kern	32,000	3 Dams, powerhouse	31
12/31/93	James River—NH	2300	NH	Coos	Androscoggin	3,720	Dam, powerhouse	39
12/31/93	Citizens Utilities	2306	VT	Orleans	Clyde	6,000	5 Dams, 5 powerhouses	30
12/31/93	James River—NH Elec. Inc	2311	NH	Coos	Androscoggin	3,720	Dam, powerhouse	30
12/31/93	South Carolina Elec. and Gas	2315	SC	Chester	Broad	5,200	do	30
12/31/93	Niagara Mohawk Power Corp	2318	NY	Saratoga	Sacandaga	20,000	do	30
12/31/93	do	2320	NY	St. Lawrence	Raquette	45,000	4 dams, 4 powerhouses	29
12/31/93	New England Power Co	2323	MA	Franklin, Windham	Deerfield	76,750	Dam, powerhouse	30
12/31/93	Central Maine Power Co	2325	ME	Somerset	Kennebec	12,000	do	29
12/31/93	James River—NH Elec. Inc	2326	NH	Coos	Androscoggin	3,220	do	29
12/31/93	James River—NY Elec. Inc	2327	NH	do	do	7,200	do	29
12/31/93	Central Maine Power Corp	2329	ME	Somerset	Kennebec	72,000	do	29
12/31/93	Niagara Mohawk Power Corp	2330	NY	St. Lawrence, Franklin	Raquette	11,500	4 Dams, powerhouse	29
12/31/93	Duke Power Co	2331	SC	Cherokee	Broad	18,000	Dam, powerhouse	29
12/31/93	do	2332	SC	do	do	9,140	3 Dams, powerhouse	29
12/31/93	Rumford Falls Power Co	2333	ME	Oxford	Androscoggin	34,770	2 Dams, 2 powerhouses	28
12/31/93	Western Mass Elec. Co	2334	MA	Franklin	Deerfield	3,580	Dam, powerhouse	28
12/31/93	Georgia Power Co	2336	GA	Butts	Ocmulgee	14,400	do	25
12/31/93	do	2341	GA	Troup	Chattahoochee	1,040	do	29
12/31/93	Pacific Power and light	2342	WA	Klickitat	White Salmon	9,600	do	25
12/31/93	Wisconsin Power and Light	2347	WI	Rock	Rock	500	do	29
12/31/93	do	2348	WI	do	do	380	do	29
12/31/93	Georgia Power Co	2350	GA	Harris	Chattahoochee	480	2 Dams, powerhouse	28
12/31/93	do	2354	GA	Habersham, Rabun	Tugalo	166,420	7 Dams, 6 powerhouses	29
12/31/93	Wisconsin Elec. Power Co	2357	MI	Menominee	Menominee	8,000	Dam, powerhouse	26
12/31/93	Minnesota Power and Light Co	2360	MN	Carlton, St. Louis	Beaver	83,350	9 Dams, 9 powerhouses	29
12/31/93	do	2361	MN	Itasca	Prairie	1,084	Dam, powerhouse	28
12/31/93	Blandin Paper Co	2362	MN	do	Mississippi	2,100	do	28
12/31/93	Potlatch Corp	2363	MN	Carlton	St. Louis	6,514	do	29
12/31/93	Maine Public Service Co	2367	ME	Aroostook	Aroostook	800	do	29
12/31/93	Penn Elec Co	2370	MD	Garrett	Deep Creek	19,200	do	29
12/31/93	South Beloit W.G. and E. Co	2373	IL	Winnebago	Rock	1,200	do	29
12/31/93	Appalachain Power	2376	VA	Bedford	James	12,500	do	29
12/31/93	Finch Pruyn and Co	2385	NY	Warren	Hudson	9,840	do	28
12/31/93	Edwards Mfg. Co. Augusta Deve. Corp.	2389	ME	Kennebec	Kennebec	3,500	do	29
12/31/93	Northern States Power Co	2390	WI	Rusk	Flambeau	7,780	do	28
12/31/93	Potomac Edison Co	2391	VA	Warren	Shenandoah	750	do	28
12/31/93	Flambeau Paper Corp	2395	WI	Price	North Fork Flambeau	960	do	24
12/31/93	Central Vermont PS Corp	2396	VT	Caledonia	Passumpsic	250	do	24
12/31/93	do	2397	VT	do	do	70	do	24
12/31/93	do	2399	VT	do	do	350	do	24
12/31/93	do	2400	VT	do	do	700	do	23
12/31/93	Upper Peninsula Power Co	2402	MI	Baraga	Sturgeon	1,760	Dam, powerhouse	25
12/31/93	Duke Power Co	2404	MI	Alpena	Upper Thunder Bay	6,800	5 Dams, 5 powerhouses	25
12/31/93	do	2406	SC	Greenville	Saluda	2,400	Dam, powerhouse	25
12/31/93	Alabama Power Co	2407	AL	Elmore	Tallapoosa	32,000	do	28
12/31/93	do	2408	AL	do	do	58,000	do	28
12/31/93	Dan River Inc	2411	VA	Pittsylvania	Dan	4,550	2 Dams, powerhouse	17
12/31/93	Northern States Power Co. (WI)	2417	WI	Sawyer	Namekagon	168	7 Dams, 6 powerhouses	26

TABLE 2.—PROJECTS FOR WHICH LICENSES WILL EXPIRE BETWEEN JANUARY 1, 1987, AND DECEMBER 31, 1999 INCLUSIVE, THAT ARE SUBJECT TO RELICENSING OR TAKEOVER [1]—Continued

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TABLE 2.—PROJECTS FOR WHICH LICENSES WILL EXPIRE BETWEEN JANUARY 1, 1987, AND DECEMBER 31, 1999 INCLUSIVE, THAT ARE SUBJECT TO RELICENSING OR TAKEOVER [1]—Continued

License expiration date	Licensee	FERC project No.	State	County	River	Installation (kilowatts)	Facilities under license	Period of license (years)
12/31/93	Alpena Power Co	2419	MI	Alpena	Thunder Bay	250	Dam, powerhouse	28
12/31/93	Utah Power and Light Co	2420	UT	Utah	Bear	30,000	....do	25
12/31/93	Flambeau Paper Corp	2421	WI	Price	Flambeau	1,200	....do	27
12/31/93	James River—NH Elec. Inc	2422	NH	Coos	Androscoggin	3,174	....do	28
12/31/93	....do	2423	NH	....do	....do	7,600	....do	28
12/31/93	Potomac Edison Co	2425	VA	Page	Shenandoah	3,000	....do	28
12/31/93	Wisconsin Elec. Power	2431	MI	Iron	Brule	5,335	....do	28
12/31/93	Wisconsin Pub. Serv. Corp	2433	MI	Menominee	Menominee	7,020	....do	27
12/31/93	Consumers Power Co	2436	MI	Alcona	Au Sable	9,000	....do	28
12/31/93	New York State Elec. and Gas Corp.	2438	NY	Seneca	Seneca Canal	9,920	....do	28
12/31/93	Northern States Power Co	2440	WI	Chippewa	Chippewa	21,600	....do	27
12/31/93	....do	2444	WI	Ashland	White	1,000	....do	28
12/31/93	Vermont Marble Co	2445	VT	Rutland	Otter Creek	275	....do	18
12/31/93	Commonwealth Edison Co	2446	IL	Lee	Rock	3,200	....do	25
12/31/93	Consumers Power Co	2447	MI	Alcona	Au Sable	8,000	....do	25
12/31/93	....do	2448	MI	Oscoda	....do	5,000	....do	25
12/31/93	....do	2449	MI	Alcona	....do	4,000	....do	25
12/31/93	....do	2450	MI	....do	....do	9,000	....do	25
12/31/93	....do	2451	MI	Mecosta	Muskegon	6,000	....do	25
12/31/93	....do	2452	MI	Newaygo	....do	30,000	....do	26
12/31/93	....do	2453	MI	Alcona	Au Sable	6,000	....do	25
12/31/93	....do	2454	MN	Morrison	Crow Wing	1,800	....do	25
12/31/93	Public Service Co. of NH	2456	NH	Grafton	Pemigewasset	8,400	....do	25
12/31/93	Great Northern Nekoosa Co	2458	ME	Penobscot	Penobscot	41,050	5 Dams, 5 powerhouses	25
12/31/93	West Penn Power Co	2459	WV	Preston	Cheat	51,200	Dam, powerhouse	25
12/31/93	Duke Power Co	2465	SC	Anderson	Saluda	3,500	....do	28
12/31/93	Appalachian Power Co	2466	VA	Bedford	Roanoke	2,400	....do	25
12/31/93	Consumers Power Co	2468	MI	Newaygo	Muskegon	8,849	....do	25
12/31/93	Wisconsin Elec. Power Co	2471	MI	Dickinson	Sturgeon	800	....do	27
12/31/93	Flambeau Paper Corp	2473	WI	Price	Flambeau	1,500	....do	24
12/31/93	Niagara Mohawk Power Corp	2474	NY	Oswego	Oswego	18,050	3 Dams, 3 powerhouses	25
12/31/93	Northern States Power Corp	2475	WI	Rusk	Flambeau	1,400	Dam, powerhouse	28
12/31/93	Wisconsin Public Service Corp	2476	WI	Lincoln	Tomahawk	512	....do	27
12/31/93	Niagara Mohawk Power Corp	2482	NY	Saratoga	Hudson	84,050	5 Dams, 5 powerhouses	25
12/31/93	Wisconsin Elec. Power Co	2486	WIK	Florence	Pine	3,600	Dam, powerhouse	25
12/31/93	Hydro-Power Inc	2487	NY	Rensselaer	Hoosic	1,050	....do	27
12/31/93	Central Vermont P S Corp	2489	VT	Windsor	Black	1,440	....do	24
12/31/93	....do	2490	VT	....do	Ottaquechee	500	....do	27
12/31/93	Puget Sound Power and Light Co	2493	WA	King	Snoqualmie	41,693	Dam, 2 powerhouses	18
12/31/93	Niagara Mohawk Power Corp	2500	NY	Saratoga	Hudson	4,500	Dam, Powerhouse	25
12/31/93	Escanaba Paper Co	2506	MI	Delta	Escanaba	2,500	3 Dams, 3 powerhouses	17
12/31/93	....do	2509	MI	Page	....do	4,740	Dam, powerhouse	27
12/31/93	Green Mountain Power Corp	2513	VA	Chittenden	New	7,200	....do	24
12/31/93	Appalachian Power Co	2514	WV	Carrollon	Potomac	30,100	2 Dams, 2 powerhouses	15
12/31/93	Potomac Edison	2515	WV	Jefferson	....do	600	Dam, powerhouse	27
12/31/93	Central Maine Power Co	2519	ME	Cumberland	Presumpscot	2,250	....do	25
12/31/93	Wisconsin Public Service Corp	2522	WI	Mannette	Peshtigo	3,520	....do	25
12/31/93	Wisconsin Elec. Power Co	2523	WI	Oconto	Oconto	1,320	....do	26
12/31/93	Wisconsin Public Service Corp	2525	WI	Mannette	Peshtigo	6,400	....do	24
12/31/93	Central Maine Power Co	2527	ME	York	Saco	16,800	....do	25
12/31/93	....do	2529	ME	....do	....do	7,200	....do	23
12/31/93	Minnesota Power and Light Co	2532	MN	Todd	Mississippi	3,770	Dam 2 powerhouses	24
12/31/93	Potlatch Corp	2533	MN	Grow Wing	....do	3,342	Dam, powerhouse	17
12/31/93	South Carolina Elec. and Gas Co	2535	GA	Columbia	Savannah	18,860	....do	23
12/31/93	Niagara Mohawk Power Corp	2536	NY	Jefferson	Black	8,000	....do	25
12/31/93	....do	2539	NY	Schenectady	Mohawk	38,800	Dam, powerhouses	25
12/31/93	Cascade Power Co	2541	NC	Transylvania	Little	825	Dam, powerhouse	25
12/31/93	Montana Power Co	2543	MT	Missoula	Clark	3,040	....do	28
12/31/93	Washington Water Power Co	2544	WA	Stevens	Colville	1,200	....do	23
12/31/93	Wisconsin Public Service Corp	2546	WI	Mannette	Peshtigo	3,840	....do	24
12/31/93	Wisconsin Water Power Co	2550	WI	Waupaca	Waupaca	400	....do	24
12/31/93	Indiana and Mich. Elec. Co	2551	MI	Berrien	St. Joseph	4,100	....do	18
12/31/93	Central Maine Power Co	2552	ME	Kennebec	Sebasticook	1,500	....do	25
12/31/93	Niagara Mohawk Power Corp	2554	NY	Warren	Hudson	6,000	Dam, 2 powerhouses	25
12/31/93	Central Maine Power Co	2555	ME	Kennebec	Messalonskee	1,500	Dam, powerhouse	25
12/31/93	....do	2556	ME	....do	....do	1,600	....do	24
12/31/93	....do	2557	ME	....do	....do	2,800	2 Dams, powerhouse	25
12/31/93	....do	2559	ME	....do	....do	1,380	Dam, powerhouse	25
12/31/93	Wisconsin Public Service Corp	2560	WI	Mannette	Peshtigo	1,380	....do	25
12/31/93	Sho Me Power Corp	2561	MO	Camden	Niangua	3,000	....do	25
12/31/93	Northern States Power Co	2564	WI	Bayfield	Iron	800	....do	16
12/31/93	Niagara Mohawk Power Corp	2569	NY	Jefferson	Black	29,600	5 Dams, 5 powerhouses	25
12/31/93	Great Northern Nekoosa Co	2572	ME	Piscataquis	Penobscot	37,530	Dam, powerhouse	16
12/31/93	Indiana and Mich Elec. Co	2579	IN	St. Joseph	St. Joseph	7,260	....do	16
12/31/93	Consumers Power Co	2580	MI	Manistee	Manistee	20,000	....do	25
12/31/93	Wisconsin Public Service Corp	2581	WI	Rinette	Peshtigo	581	....do	25
12/31/93	Rochester Gas and El. Corp	2582	NY	Monroe	Genesee	6,500	....do	26
12/31/93	....do	2583	NY	....do	....do	38,250	....do	26
12/31/93	....do	2584	NY	....do	....do	3,000	....do	26
12/31/93	Northern States Power Co	2587	WI	Gogenc	Montreal	1,320	....do	25
12/31/93	Wisconsin Public Service Corp	2595	WI	Mannette	Peshtigo	7,000	....do	17
12/31/93	Rochester Gas and El Corp	2596	NY	Livingston	Genesee	340	....do	15
12/31/93	Consumers Power Co	2599	MI	Manistee	Manistee	18,000	....do	17
12/31/93	Duke Power Co	2607	NC	Gaston	South Fork	640	....do	23
12/31/93	James River Paper	2608	MA	Hampden	Westfield	1,400	....do	25
12/31/93	Central Maine Power Co	2613	ME	Somerset	Moxie	0	....do	24
12/31/93	....do	2615	ME	....do	Moose	0	....do	16
12/31/93	Niagara Mohwk Power Corp	2616	NY	Rensselaer	Hoosic	17,920	2 Dams, 2 powerhouses	24

TABLE 2.—PROJECTS FOR WHICH LICENSES WILL EXPIRE BETWEEN JANUARY 1, 1987, AND DECEMBER 31, 1999 INCLUSIVE, THAT ARE SUBJECT TO RELICENSING OR TAKEOVER [1]—Continued

License expiration date	Licensee	FERC project No.	State	County	River	Installation (kilowatts)	Facilities under license	Period of license (years)
12/31/93	Flambeau Paper Corp	2640	WI	Price	Flambeau	900	Dam, powerhouse	17
12/31/93	Pacific Power and Light Co	2643	OR	Deschutes	Deschutes	1,110	....do	23
12/31/93	Niagara Mohawk Power Corp	2645	NY	Lewis	Beaver	44,560	....do	15
12/31/93	Kennebec Water Power Co	2671	ME	Piscataquis	Kennebec	0	Dam, powerhouse	17
12/31/93	Scott Paper Co	2689	WI	Oconto	Oconto	1,860	....do	20
12/31/93	Bangor Hydro-Elec. Co	2712	ME	Penobscot	Stillwater	1,950	....do	15
12/31/94	Arizona Public Service Co	2069	AZ	Coconino	Fossil Creek	7,000	2 Dams, 2 powerhouses	49
6/30/95	Wisconsin Public	1999	WI	Marathon	Wisconsin	5,400	Dam, powerhouse	20
12/31/95	Pacific Gas and Elec. Co	2687	CA	Shasta	Fall Creek	63,000	4 Dams, powerhouse	25
12/31/95	....do	2699	CA	Calaveras	Angels Creek	1,400	3 Dams, powerhouse	25
4/30/96	Southern Cal Edison Co	1930	CA	Kern	Kern	24,992	Dam, powehouse	46
4/30/96	....do	1932	CA	San Bernardino	Lytle Creek	400		50
4/30/96	....do	1933	CA	....do	Santa Ana	4,000	5 Dams, 2 powerhouses	49
4/30/96	....do	1934	CA	....do	Mill Creek	2,000	....do	50
6/29/96	Calif Pacific Util. Co	1986	OR	Baker	Rock Creek	800	Dam, powerhouse	45
11/05/96	Pacific Gas and Elec. Co	2019	CA	Calaveras	Stanislaus	3,600	8 Dams, powerhouse	50
1/29/97	Pacific Power and Light Co	1927	OR	Douglas	North Umpqua	199,250	19 Dams, 8 powerhouses	50
5/11/97	Minnesota Power and Light Co	2663	MN	Morrison	Crow Wing	1,520	Dam, powerhouse	50
8/31/97	Georgia Power Co	195	GA	Baldwin	Oconee	45,000	....do	49
12/23/97	Idaho Power Co	2061	ID	Twin Falls	Snake	80,000	....do	46
12/31/97	Central Maine Power Co	2612	ME	Somerset	Dead	0	....do	18
1/31/98	Wisconsin River Power Co	1984	WI	Adams	Wisconsin	35,000	2 Dams 2 powerhouses	48
2/28/98	Idaho Power Co	1975	ID	Gooding	Snake	69,000	Dam, powerhouse	50
2/28/98	Wisconsin Elec. Power Co	1980	MI	Dickinson	Menominee	22,700	2 Dams, 2 powerhouses	50
6/30/98	Northern States Power Co	1982	WI	Chippewa	Chippewa	34,000	Dam, 2 powerhouses	48
11/30/98	Montana Power Co	2188	MT	Cascade	Missouri	257,800	9 Dams, 9 powerhouses	42
2/28/99	Southern Cal Edison Co	2017	CA	Fresno	San Joaquin	84,000	Dam, powerhouses	50
3/31/99	Bangor Hydro-Elec. Co	2666	ME	Penobscot	Penobscot	3,440	....do	20
5/31/99	Green Mountain Power Corp	2674	VT	Addison	Otter Creek	2,400	....do	20
5/31/99/	Idaho Power Co	2777	ID	Twin Falls	Snake	34,500	2 Dams, 2 powerhouses	20
5/31/99	....do	2778	ID	Jerome	....do	12,400	Dam, powerhouse	20
5/31/99	....do	2778	ID	Jerome	....do	12,400	Dam, powerhouse	20
8/31/99	Holyoke Water Power Co	2004	MA	Hampden	Holyoke Canal	42,865	6 Dams, 2 powerhouses	50
9/30/99	Lower Valley Power and Light Co	2032	WY	Lincoln	Strawberry Creek	1,500	Dam, powerhouse	48
9/30/99	International Paper Co	2375	ME	Oxford	Androscoggin	19,415	3 Dams, 3 powerhouses	34
9/30/99	Aquamac Corp	2927	MA	Essex	Merrimack Canal	250	Dam, powerhouse	20
9/30/99	Otis Hydro-Electric Co	8277	ME	Chisolmo	Androscoggin	10,350	....do	15
10/01/99	S D Warren Co	2897	ME	Cumberland	Presumpscot	1,350	....do	20
11/30/99	Merrimac Paper Co. Inc	2928	MA	Essex	Merrimack Canal	1,088	....do	20

[1] Section 14 of the Federal Power Act (16 U.S.C 807) reserves the right of the United States to take over the project works upon expiration of the license at a price to be determined under that section, but may be waived pursuant to section 10(i). Section 14 is not applicable to any project owned by a state or municipality, pursuant to the Act of Aug. 15, 1953 (67 Stat. 587)

TABLE 3.—PROJECTS FOR WHICH LICENSES WILL EXPIRE BETWEEN JANUARY 1, 1987 AND DECEMBER 31, 1999 INCLUSIVE, THAT ARE SUBJECT TO RELICENSING BUT NOT SUBJECT TO TAKEOVER [1]

License expiration date	Licensee	FERC Project No.	State	County	River	Installation (kilowatts)	Facilities under license	Period of license (years)
6/30/87	Nebraska Public	1835	NE	Lincoln & Keith	North & South Platte	56,195	6 Dams, 2 reservoirs, powerhouse, trans. lines, canals	44
7/29/87	Central Nebraska Public Power	1417	NE	Keith, Lincoln, Dowson	Platte & North Platte	104,000	30 Dams, 3 powerhouses trans lines.	50
12/31/87	Village of Gresham	2484	WI	Shawano	Red	275	Dam, powerhouse	50
5/24/88	Brazos River Authority	1490	TX	Palo Pinto	Brazos River	33,750	Dam, powerhouse, reservoir	50
10/31/88	City of Kaukauna	2677	WI	Outagamie, Brown	Fox	8,000	Dam, 3 powerhouses, trans. line, Dam powerhouse reservoir	50
12/31/88	Grand River Dam Authority	1494	OK	Mayes	Grand	86,400	Dam, powerhouse, reservoir	50
3/31/89	City of Kaukauna	1510	WI	Outagamie	Fox	4,800	Canal, powerhouse	50
6/30/90	Monroe City Corp	1517	UT	Sevier	Shingle and Monroe Creek.	125	Water intake, powerhouse	50
6/22/91	City of Springville	1715	UT	Springville	Spring Creek	500	Powerhouse	50
7/30/93	Beaver City Corp	1858	UT	Piute	Beaver	625	Dams, 2 powerhouses	50
12/31/93	Tacoma, City of	1862	WA	Thurston	Nisqually	114,000	2 Dams, 2 powerhouses	50
12/31/93	Norwich, City of	2441	CT	New London	Shetuket	800	Dam, powerhouses	28
12/31/93	Watertown Mun. Elec. Dept	2442	NY	Jefferson	Black	540	Dam, powerhouse	26
12/31/93	Eugene, City of	2496	OR	Lane	Mckenzie	13,500	2 Dams, powerhouse	25
12/31/93	Norwich, City of	2508	CT	New London	Shetucket	1,400	Dam, powerhouses	28
12/31/93	Eugene, City of	2510	OR	Lane	Mckenzie	800	2 Dams, powerhouse	26
12/31/94	Seattle Dept. of Lighing	2705	WA	Whatcom	Newhalem Creek	1,750	Dam, powerhouse	24
4/30/95	Ketchikan City of	1922	AK	Ketchikan	Silvis Lake	7,700	3 Dams, 3 powerhouses	50
6/30/96	Maverick Co., WCID No. 1	1952	TX	Maverick	Rio Grande	0	Dam, powerhouses	38
3/31/98	Bonnera Ferry City of	1991	ID	Elmore	Moyie Stream	3,938	Dams, 2 powerhouses	48
6/30/98	Heber Light & Power Co	1994	UT	Wasatch	Snake Creek	750	Powerhouse	49

[1] Section 14 of the Federal Power Act (16 U.S.C. 807) reserves the right of the United States to take over the project works upon expiration of the license at a price to be determined under that section, but may be waived pursuant to section 10(i). Section 14 is not applicable to any project owned by a state or municipality, pursuant to the Act of Aug. 15, 1953 (67 Stat 587).

[FR Doc. 87-3144 Filed 2-12-87;8:45 am]
BILLING CODE 6717-01-M

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[Docket Nos. CP87-179-000, et al.]

Natural Gas Pipeline Company of America, et al.; Natural Gas Certificate Filings

February 6, 1987.

Take notice that the followings filings have been made with the Commission:

1. Natural Gas Pipeline Co. of America

[Docket No. CP87-179-000]

Take notice that on January 28, 1987, Natural gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP87-179-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205, for authorization to increase sales deliveries to Northern Illinois Gas Company (NI-Gas) at the Kings delivery point as well as to construct and operate minor facilities under the certificate issued in Docket No. CP82-402-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural proposes to increase sales deliveries to NI-Gas, a local distribution company, at the Kings delivery point (Kings) near the Village of Kings, Ogle County, Illinois. Natural states that this would result in an increase in peak flow from 100 million Btu equivalent of natural gas per day to 2,640 million Btu per day. Since Natural's Illinois lateral is at capacity, it is stated that a load shift on NI-Gas' system is required in order to implement the increase at Kings. Natural states that NI-Gas has indicated that it would reduce its winter load at the Rockford delivery point (Rockford), Winnebago County, Illinois, by 2,540 million Btu per day by agreeing to a shift of such volumes to Kings, which is located upstream of Rockford.

Natural indicates that during the grain drying season, NI-Gas may require up to 1,760 million Btu per day of natural gas at Kings to serve a new grain drying operation located nearby. Natural states that even though the majority of the load is not expected to continue into the winter when peak day entitlements utilize the entire capacity of the Illinois lateral, the load shift by NI-Gas would insure that sufficient gas would be available, if needed, at Kings during the winter. Natural states that it is not necessary for NI-Gas to increase its total entitlements or contract demand from Natural because of reduced takes by other customers on NI-Gas' system.

Natural also proposes to modify its existing metering facilities at the Kings delivery point by adding a 2-inch orifice meter in parallel arrangement to the existing meter, thereby permitting accurate measurement of the smaller loads during the summer and winter and the increased loads during the grain drying season. The cost of such facilities is estimated to be $20,600, which would be reimbursed by NI-Gas.

Comment date: March 23, 1987, in accordance with Standard Paragraph G at the end of this notice.

2. Northwest Central Pipeline Corp.

[Docket No. CP87-171-000]

Take notice that on January 23, 1987, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP87-171-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations (18 CFR 284.221) for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas for others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest Central states that, concurrent with the subject application, is has made a general section 4 rate filing in Docket No. RP87-33-000, which, among other things, sets out proposed Rate Schedules FTS and ITS, for firm and interruptible transportation service respectively, a set of general terms and conditions applicable to those rate schedules, and forms of service agreements. As part of its rate filing, Northwest Central has proposed rates which it states comply with the requirements of Order No. 436 and the Commission's Regulations, including § 284.7.

Northwest Central states that its Order No. 436 application is predicated on the proposals included in its rate filing in Docket No. RP87-33-000. Therefore Northwest Central requests waiver of any Commission Regulations necessary to permit issuance of the blanket certificate consistent with the terms and conditions of the rate schedules and tariff provisions proposed in Docket No. RP87-33-000. Northwest Central states that its acceptance of the blanket certificate is conditioned on the exclusion of Northwest Central's storage facilities and service from the non-discriminatory access conditions of Order Nos. 436, except to the extent storage facilities are utilized for firm and interruptible transportation service.

Northwest Central explains that it will soon be filing to institute a direct billing mechanism for the recovery of settlement payments related to the waiver or amendment of take-or-pay or other similar payment provisions in producer/supplier contracts, and, given the greatly increased need for such mechanism as a result of, among other things, the open access mode of operation proposed herein, Northwest Central asserts that its application herein is specifically conditioned on the Commission's satisfactory resolution of such direct billing filing.

Further, consistent with the provisions of Order No. 436 permitting pipelines to withdraw voluntarily from open-access on a nondiscriminatory basis, Northwest Central asserts that it reserves the right to cancel simultaneously all transportation service agreements entered into under the open-access provisions of Subpart B and G of Part 284 of the Federal Energy Regulatory Commission's Regulations promulgated in Order No. 436, following ninety days notice by Northwest Central to all such shippers that the Northwest Central desires to withdraw from open-access transportation.

Comment date: February 27, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Panhandle Eastern Pipe Line Co., and Trunkline Gas Co.

[Docket No. CP87-182-000]

Take notice that on January 29, 1987, Panhandle Eastern Pipe Line Company (Panhandle) and Truckline Gas Company (Trunkline), (Applicants), P.O. Box 1642, Houston, Texas, 77001, filed in Docket No. CP87-182-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon service previously provided pursuant to a certificate of public convenience and necessity which authorized the receipt, transportation and redelivery of natural gas on behalf of Mississippi River Transmission Corporation (MRT), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

By this application, Applicants specifically request Commission authorization to abandon service provided under Panhandle's Rate Schedule T-10 and Truckline's Rate Schedule T-13, and to cancel such Rate Schedules effective March 1, 1987, pursuant to a letter dated February 18, 1986, from MRT requesting such termination of service.

Comment date: February 27, 1987, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in any subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-3145 Filed 2-12-87; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59235A FRL-3156-3]

Certain Chemical Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-87-4. The test marketing conditions are described below.

EFFECTIVE DATE: February 3, 1987.

FOR FURTHER INFORMATION CONTACT: Dayton Eckerson, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-613C, 401 M St. SW., Washington, DC 20460 (202-475-8994).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-87-4. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. The import volume must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-87-4. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA.

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

4. The applicant must maintain records of any determination that gloves are impervious to the test market substance, as required below.

T 87-4.

Date of Receipt: November 26, 1986.

Notice of Receipt: December 9, 1986 (51 FR 44375).

Applicant: BASF Corp.

Chemical: (S) Phosphine oxide diphenyl (2,4,6-trimethylbenzoyl).

Use: (S) Catalyst for ultra-violet curable lacquers.

Import Volume: Confidential.

Number of Customers: Confidential.

Worker Exposure: Confidential.

Test Marketing Period: Three Years. *Commencing on:* February 3, 1987.

Risk Assessment: EPA identified a potential neurotoxicity concern for the test market substance based on health testing data on an analagous substance, triphenylphosphine oxide. However, EPA has determined that, under the conditions outlined above, and the restrictions outlined below, the estimated exposures to the test market substance will not be significant. Therefore, the test market substance will not present any unreasonable risk of injury to human health. The Agency did not identify potential adverse effects of the test market substance on aquatic organisms and no water releases of the substance are expected. Therefore, the test market substance will not present any unreasonable environmental risk.

Additional Restrictions: During processing of the test market substance at any site controlled by the Company, any person under the control of the Company, including employees and contractors, who may be exposed to the

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TME substance shall use the following protective equipment:

a. For dermal exposure. 1. Gloves determined by the Company to be impervious to the the PMN substance under the conditions of exposure, including the duration of exposure. The Company shall make this determination either by testing the gloves under the conditions of exposure or by evaluating the specifications provided by the manufacturer of the gloves. Testing or evaluation of specifications shall include consideration of permeability, penetration, and potential chemical and mechanical degradation by the PMN substance and associated chemical substances.

2. Clothing which covers any other exposed areas of the arms, legs, and torso.

3. Chemical safety goggles or equivalent eye protection.

b. For inhalation exposure. National Institute for Occupational Safety and Health approved, category 23C respirators, excluding single-use or disposable and air purifying respirators, in accordance with 30 CFR 11 Subpart L. The respirators shall be equipped with combination cartridges approved for paints, enamels, and lacquers, unless air-supplied respirators are selected. Use of the respirators shall be according to 29 CFR 1910.134 and 30 CFR 11. If full-face type respirators are selected and worn, the chemical safety goggles requirement in paragraph 3 is waived.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: February 3, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 87-3109 Filed 2-12-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51662; FRL-3156-6]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of forty-five such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87-519 and 87-520, April 28, 1987.

P 87-516, 87-517, 87-518, 87-521, 87-522, 87-523, 87-524, 87-525, 87-526, 87-528, 87-529, 87-530, and 87-531, April 29, 1987.

P 87-523, May 2, 1987.

P 87-533, 87-534, 87-535, 87-536, 87-537, 87-538, 87-539, 87-540, 87-541, 87-542, 87-543, 87-544, 87-545, 87-546, 87-547, 87-548, 87-549, 87-550, 87-551, 87-554, and 87-555, May 3, 1987.

P 87-552, May 4, 1987.

P 87-556, 87-557, 87-558, 87-559, 87-560, 87-561, and 87-562, May 5, 1987.

Written comments by:

P 87-519 and 87-520, March 29, 1987.

P 87-516, 87-517, 87-518, 87-521, 87-522, 87-523, 87-524, 87-525, 87-526, 87-528, 87-529, 87-530, and 87-531, March 30, 1987.

P 87-532, April 2, 1987.

P 87-533, 87-534, 87-535, 87-536, 87-537, 87-538, 87-539, 87-540, 87-541, 87-542, 87-543, 87-544, 87-545, 87-546, 87-547, 87-548, 87-549, 87-550, 87-551, 87-554, and 87-555, April 3, 1987.

P 87-552, April 4, 1987.

P 87-556, 87-557, 87-558, 87-559, 87-560, 87-561, and 87-562, April 5, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-51662]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Enviromental Protection Agency, Room L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: Effective with this notice, a nonsubstantive change in format is being initiated for information published under sections 5(d)(2) and 5(h)(6) of the Toxic Substances Control Act. Toxicity data will only appear in the notice when submitted with the PMN. Exposure and environmental release/disposal information will no longer be published in the notice. The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87-516

Manufacturer. Confidential.

Chemical. (G) Substituted benzothiazolesulfonic acid.

Use/Production. (G) Dye. Prod. range: Confidential.

Toxicity Data. Acute oral: 5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Irritant.

P 87-517

Manufacturer. Confidential.

Chemical. (G) Substituted benzothiazolesulfonic acid.

Use/Production. (G) Dye. Prod. range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Irritation: Skin—Non-irritant, Eye—Irritant.

P 87-518

Manufacturer. Confidential.

Chemical. (G) Substituted benzothiazolesulfonic acid.

Use/Production. (G) Site-limited intermediate. Prod. range: Confidential.

P 87-519

Manufacturer. The Dow Chemical Company.

Chemical. (G) Bromoalkylated cresol novolac.

Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

P 87-520

Manufacturer. The Dow Chemical Company.

Chemical. (G) Modified cresol epoxy novolac.

Use/Production. (G) Resins for electronic and electrical application. Prod. range: Confidential.

P 87-521

Importer. Confidential.

Chemical. (G) Docosanoic acid reaction product with tetra-alkyl amine acetates.

Use/Import. (G) Paper additive. Import range: Confidential.

P 87-522

Manufacturer. Confidential.

Chemical. (G) Substituted bis(phenyl)isobenzofuranone.

Use/Production. (S) Captive intermediate used in manufacturing a minor component for paper coatings. Prod. range: Confidential.

P 87-523

Manufacturer. Confidential.

Chemical. (G) Substituted diphenylamine.

Use/Production. (S) Captive intermediate used in the manufacture of a minor component for paper coatings. Prod. range: Confidential.

Toxicity Data. Acute oral: <5,000 mg/kg; Ames test: Non-mutagenic.

P 87-524

Manufacturer. Confidential.

Chemical. (G) Substituted benzoyl benzoic acid.

Use/Production. (S) Captive intermediate used in the manufacture of a minor component for paper coatings. Prod. range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Ames test: Non-mutagenic.

P 87-525

Manufacturer. Confidential.

Chemical. (G) Substituted acetanilide.

Use/Production. (S) Captive intermediate used in manufacture of a minor component for paper coatings. Prod. range: Confidential.

Toxicity Data. Acute oral: <5,000 mg/kg; Ames test: Non-mutagenic.

P 87-526

Manufacturer. Confidential.

Chemical. (G) Substituted aminophenol.

Use/Production. (S) Captive intermediate used in the manufacture of a minor component for paper coatings. Prod. range: Confidential.

Toxicity Data. Acute oral: <5,000 mg/kg; Ames test: Non-mutagenic.

P 87-528

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Aromatic polyester resin.

Use/Production. (G) Polymer for automotive parts. Prod. range: Confidential.

P 87-529

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Aromatic polyester resin.

Use/Production. (G) Polymer for automotive parts. Prod. range: Confidential.

P 87-530

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Aromatic polyester resin.

Use/Production. (G) Polymer for automotive parts. Prod. range: Confidential.

P 87-531

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Aromatic polyester resin.

Use/Production. (G) Polymer for automotive parts. Prod. range: Confidential.

P 87-532

Manufacturer. Confidential.

Chemical. (G) Alkyl oxyalkyl amine thiazole salt.

Use/Production. (G) Petroleum additive. Prod. range: Confidential.

P 87-533

Manufacturer. Confidential.

Chemical. (G) Thermosetting polyester.

Use/Production. (G) Resin for printing inks. Prod. range: Confidential.

P 87-534

Importer. American Hoechst Corporation.

Chemical. (G) Modified poly vinyl butyral resin.

Use/Import. (S) Site-limited binder for negative acting printing plate. Import range: Confidential.

Toxicity Data. Acute oral: >5,000 kg/yr; Irritation: Skin—Non-irritant, Eye—Irritant.

P 87-535

Importer. Confidential.

Chemical. (G) Vinyl silicone resin.

Use/Import. (S) Industrial controlled release additive for paper release coating and physical reinforcing agent for silicone rubber. Import range: Confidential.

P 87-536

Manufacturer. Confidential.

Chemical. (G) Ethoxylated sulfonated polycarboxylate.

Use/Production. (G) Scale deposit control in industrial water treatment. Prod. range: Confidential.

P 87-537

Manufacturer. Cardolite Corporation.

Chemical. (G) Cashew elastomer-formaldehyde resin.

Use/Production. (G) Open, non-dispersive use resins. Prod. range: Confidential.

P 87-538

Manufacturer. Cardolite Corporation.

Chemical. (G) Cashew elastomer-furfural resin.

Use/Production. (G) Open, non-dispersive use resins. Prod. range: Confidential.

P 87-539

Importer. DSM Resins U.S., Inc.

Chemical. (G) Modified hydrocarbon resin.

Use/Import. (S) Gravure inks. Import range: Confidential.

P 87-540

Manufacturer. Confidential.

Chemical. (G) Sulfonates of ethoxylated alcohols.

Use/Production. (G) Surfactant. Prod. range: Confidential.

P 87-541

Manufacturer. Confidential.

Chemical. (G) Sulfonates of ethoxylated alcohols.

Use/Production. (G) Surfactant. Prod. range: Confidential.

P 87-542

Manufacturer. Confidential.

Chemical. (G) Sulfonates of ethoxylated alcohols.

Use/Production. (G) Surfactant. Prod. range: Confidential.

P 87-543

Manufacturer. Confidential.

Chemical. (G) Sulfonates of ethoxylated alcohols.

Use/Production. (G) Surfactant. Prod. range: Confidential.

P 87-544

Manufacturer. Kenrich Petrochemicals, Inc.

Chemical. (S) Titanium IV bis octanolato, cyclo(dioctyl) pyrophosphato-0,0.

Use/Production. (S) Industrial coupling agent surfactant and catalyst. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Ames test: Non-mutagenic.

P 87-545

Manufacturer. Kenrich Petrochemicals, Inc.

Chemical. (S) Titanium IV bis (dioctyl)cyclo pyrophosphato-0,0.

Use/Production. (S) Industrial coupling agent, surfactant and catalyst. Prod. range: Confidential.

Toxicity Data. Acute oral: >1 g/kg; Ames test: Non-mutagenic.

P 87-546

Manufacturer. Confidential.

Chemical. (G) Alkyd resin.

Use/Production. (G) Resin is converted to paint. Prod. range: Confidential.

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P 87-547

Importer. Confidential.
Chemical. (G) Substituted naphthylazo substitued benzene.
Use/Import. (G) Dye stuff for fibers. Import range: Confidential.
Toxicity Data. Acute dermal: >2,000 mg/kg; Irritation: Skin—Minimal, Eye—Minimal.

P 87-548

Manufacturer. Piedmont Chemical Industries, Inc.
Chemical. (G) Modified alkyl aryl ether.
Use/Production. (G) Emulsifier and processing aid for use in textile finishing. Prod. range: Confidential.

P 87-549

Importer. Confidential.
Chemical. (G) Substituted naphthylazo substituted benzene.
Use/Production. (G) Dyestuff for fibers. Prod. range: Confidential.
Toxicity Data. Acute dermal: >2,000 mg/kg; Irritation: Skin—Minimal, Eye—Minimal.

P 87-550

Manufacturer. Confidential.
Chemical. (G) Substituted spirobenzoxantheneisobenzofuranone.
Use/Production. (G) Minor color-forming component in paper coatings and captive intermediate used in manufacturing a minor component for paper coatings. Prod. range: Confidential.

P 87-551

Manufacturer. Vista Chemical Company.
Chemical. (G) Calcium aluminate alcohol ethoxylate (dispersed).
Use/Production. (G) Catalyst. Prod. range: Confidential.

P 87-552

Manufacturer. Confidential.
Chemical. (G) Polyurea urethane acrylate.
Use/Production. (S) The new substance will be used in formulating an industrial specialty polymeric material having an open use. Prod. range: 70,000 to 140,000 kg/yr.

P 87-554

Manufacturer. Kenrich Petrochemicals, Inc.
Chemical. (S) Zirconium IV bis(dioctyl)cyclopyrophosphato-0,0.
Use/Production. (S) Industrial coupling agent, surfactant and catalyst. Prod. range: Confidential.
Toxicity Data. Acute oral: >5.0 g/kg; Ames test: Non-mutagenic.

P 87-555

Manufacturer. Kenrich Petrochemicals, Inc.
Chemical. (S) Zirconium IV bisoctanolato, cyclo(dioctyl)pyrophosphato-0,0.
Use/Production. (S) Industrial coupling agent, surfactant and catalyst. Prod. range: Confidential.
Toxicity Data. Acute oral: >5.0 g/kg; Ames test: Non-mutagenic.

P 87-556

Manufacturer. General Electric Company.
Chemical. (G) Oxytetra aryl acid.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 87-557

Manufacturer. General Electric Company.
Chemical. (G) Aryl oxydianhydride.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 87-558

Manufacturer. General Electric Company.
Chemical. (G) Aromatic-N-alkylimide ether.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 87-559

Manufacturer. General Electric Company.
Chemical. (G) Tetrapolymer of an oxydianhydride and aromatic diamines.
Use/Production. (S) Industrial, commercial and consumer transportation. Prod. range: Confidential.

P 87-560

Importer. Confidential.
Chemical. (G) Blocked polyisocyanate.
Use/Production. (S) Industrial co-reactant for industrial coatings. Prod. range: 3,000 to 30,000 kg/yr.

P 87-561

Importer. Confidential.
Chemical. (G) 2-Naphthalene carboxylic acid, [(substituted phenyl)azo]-3-hydroxy-, metal salt.
Manufacturer. General Electric Company.
Use/Import. (G) Colorant. Import range: Confidential.

P 87-562

Importer. Confidential.
Chemical. (G) Isoindoline derivative.
Use/Import. (G) Colorant for coatings. Import range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Slight; Ames test: Non-mutagenic.

Dated: February 6, 1987.

Denise Devoe,

Acting Division Director Information Management Division.

[FR Doc. 87-3110 Filed 2-12-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59805; FRL-3156-5]

Certain Chemical Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substance Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of six such polymer exemption submissions and provides a summary of each.

DATES: Close of Review Period:

Y 87-99, February 18, 1987.
Y 87-100 and 87-101, February 23, 1987.
Y 87-102, February 24, 1987.
Y 87-103 and 87-104, February 25, 1987.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substance, Environmental Protection Agency, Room E-611 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: Effective with this notice, a nonsubstantive change in format is being initiated for information published under sections 5(d)(2) and 5(h)(6) of the Toxic Substances Control Act. Toxicity data will only appear in the notice when submitted with the polymer exemption submission. Exposure and environmental release/disposal information will no longer be published in the notice. The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 84-99

Manufacturer. Emery Chemicals.
Chemical. (S) Adipic and sebacic acid polymers with propylene glycol.
Use/Production. (G) Plasticizer for polyvinyl chloride resin. Prod. range: 200,000 to 500,000 kg/yr.

Y 87-100

Manufacturer. Confidential.
Chemical. (G) Oil modified polyurethane alkyd resin.
Use/Production. (S) Industrial coating vehicle. Prod. range: 42,300 to 126,800 kg/yr.

Y 87-101

Importer. Confidential.
Chemical. (G) Polyester urethane.
Use/Import. (S) Industrial thermoplastic for injection molded articles. Import range: Confidential.

Y 87-102

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer with methacrylate and butyl acrylate.
Use/Production. (G) Industrial used coating having an open, non-dispersive use. Prod. range: 10,000 to 500,000 kg/yr.

Y 87-103

Importer. Confidential.
Chemical. (G) Polyurethane resin.
Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

Y 87-104

Manufacturer. Confidential.
Chemical. (G) Polyester.
Use/Production. (G) Adhesive, open, non-dispersive use. Prod. Confidential.

Dated: February 6, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87-3111 Filed 2-12-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3155-9]

Designation of an Ocean Disposal Site for Fish Cannery Wastes Off Pago Pago, American Samoa; Intent To Prepare an Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency (EPA), Region 9.

ACTION: Notice of intent to prepare an environmental impact statement (EIS) on the final designation of an ocean disposal site for cannery wastes off Pago Pago, American Samoa.

PURPOSE: The U.S. EPA, Region 9, in accordance with Section 102(2)(c) of the National Environmental Policy Act (NEPA) and in cooperation with Star-Kist Foods, Inc. and Ralston Purina Company, will prepare a Draft EIS on the designation of an ocean disposal site for cannery wastes of Pago Pago, American Samoa. The cannery wastes are produced at fish processing facilities owned and operated by Star-Kist Samoa, Inc. and Samoa Packing Company. An EIS is needed to provide the information necessary to designate an ocean disposal site for these wastes. This Notice of Intent is issued pursuant to section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, and 40 CFR Part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping).

For Further Information and To Be Placed on the Mailing List

Contact: Patrick Cotter, Oceans and Estuaries Section (W-5-3), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, California 94105, telephone number (415) 974-0257 or FTS 454-0257.

Summary: Site designation is needed to provide a suitable disposal site for cannery wastes which can only be disposed of after EPA Region 9 has determined that the wastes meet EPA's ocean disposal criteria (40 CFR Part 227), including a demonstration of need for ocean disposal. EPA Region 9 will issue a research permit under section 102 of MPRSA, to gather information related to the EIS.

The cannery wastes consist of dissolved air flotation (DAF) sludge, precooker water, press water, thaw water and grit. DAF sludge is produced when floatable solids and waste water from treatment processes are mixed with alum and coagulant polymers.

The center of the proposed disposal site is located 2.35 nautical miles off the island at coordinates 14°22'11" South latitude by 170°40'52" West longitude. The diameter of the site is 1.5 nautical miles and the average water depth is 1450 meters. The site would be designated for continued use.

Need for Action

Star-Kist Foods, Inc. and Ralston Purina Company applied for an ocean dumping permit off American Samoa on behalf of their subsidiary companies. An EIS is required to provide the necessary information to evaluate alternatives and designate the preferred site.

Alternatives

The EIS will characterize the oceanographic parameters of the disposal site and evaluate a reasonable range of alternatives. The alternatives include: (1) Proposed Site (Preferred Alternative), (2) Shallow Water Site, (3) Site Farther From Shore, (4) Land Disposal Options and (5) No Action.

Scoping

A scoping meeting is not contemplated. Scoping will be accomplished by correspondence with affected Federal, State and local agencies, interested parties, and by correspondence.

Estimated Date of Release

The draft EIS will be made available in June 1987.

Responsible Official

Judith F. Ayres, Regional Administrator, Region 9.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-3148 Filed 2-12-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3156-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 26, 1987 through January 30, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. DS-SCS-D38001-00: Rating: Alter. A=EC2, Alter. B, C, and D=EU2; Upper Chester River Watershed Flood Prevention Plan, Additional Information, MD and DE. **SUMMARY:** EPA evaluated the draft EIS and found that it does not adequately address either the environmental impacts or the economic consideration of the four possible alternatives; no specific alternative was presented for in-depth reivew. Three of those four alternatives would adversely

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impact from 996 to 1170 acres of wetlands and (up to) 240 miles of stream habitat, while exacerbating nutrient loadings to, and decreasing water quality in, the lower Chester River and to the Chesapeake Bay. Additionally, the mitigative measure proposed for water quality and wetlands impacts appear to be generally inadequate to compensate of the loss of biota or wetland functions. EPA has strongly recommended the selection of a new alternative, preferrably a restructuring of Alternative A, the "no action" alternative.

Final EISs

ERP No. F-AFS-J61067-CO, Wolf Creek Valley Ski Area Development, Special Use Permit, San Juan Nat'l Forest, CO. **SUMMARY:** The final EIS has adequately identified environmental issues associated with the proposed action and has responded to EPA concerns on the revised draft EIS. EPA will review and comment on the Wolf Creek Valley revised Section 404 permit application and Wetland Mitigation Plan.

ERP No. F-CDB-F89027-MI, Jefferson/Conner Industrial Revitalization Project, Relocation, Demolition and Acquisition, CDBG/USAG/Sect. 108 Loan, MI. **SUMMARY:** EPA's review concluded that adequate mechanisms have been developed to address continuing concerns related to air quality and the identification and disposal of hazardous materials. EPA requested that the Record of Decision discuss coordination agreements and contain a commitment to the noise mitigation proposed in the final EIS.

ERP No. F-FHW-C40082-NJ, NJ-147 Improvement, US 9 Middletownship to New Jersey Ave. and Spruce Ave. Intersection in North Wildwood, section 10 and 404 Permits, CGD Permit, NJ. **SUMMARY:** EPA objects to the FHWA conclusion that there is no significant wetland impact. However, because the applicant has agreed to provide adequate mitigation for all wetlands losses (pursuant to state permitting requirements), EPA does not object to the project.

ERP NO. F-FHW-H40135-1A, Greenhill Road Construction, IA-57/Dike Rd. in Cedar Falls to Hackett Rd. Bypass in Waterloo, 404 Permit, IA. **SUMMARY:** EPA has no further objections to the proposed action.

ERP No. FS-FHW-K40074-CA, I-8 and CA-125 Improvement, Fletcher Parkway to Amaya Drive, Revision Change, Right-of-Way Acquisition, CA. **SUMMARY:** EPA had no comments on the final supplemental EIS, but did request to be kept informed of FHWA's progress in carrying out the Record of Decision's mitigation measures.

Dated: February 10, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-3147 Filed 2-12-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3156-1]

Environmental Impact Statement; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed February 2, 1987 Through February 6, 1987 Pursuant to 40 CFR 1506.9.

EIS No. 870015, DSuppl, EPA, MS, MXG, Pascagoula Harbor Ocean Dredged Material Disposal Site, Continuation, Permanent Designation, Due: March 30, 1987, Contact: Reginald Rogers (404) 347-2156.

EIS No. 870041, Final, BLM, CA, San Joaquin Valley Pipeline and Ancillary Facilities Project, Weir Station to Martinez Oil Refinery, R-O-W Grant, Due: March 16, 1987, Contact: John Lien (916) 322-7805.

EIS No. 870042, Final, MMS, SEV, Mid 87-Mid 92 Outer Continental Shelf (OCS) Oil and Gas Lease Sales, Leasing, 5-Year Program Offshore the Atlantic, Pacific, Gulf of Mexico and Alaska Regions, Due: March 16, 1987, Contact: Daniel Henry (202) 343-6264.

EIS No. 870043, Final COE, CA, Arco Coal Oil Point, Oil and Gas Development, 404/10 Permits, Santa Barbara County, Due: March 16, 1987, Contact: David Castanon (213) 894-0245.

EIS No. 870044, Final, COE, TX, Stacy Reservoir Dam and Pump Station, Municipal and Industrial Water Supply Development, 10/404 Permits, Due: March 16, 1987, Contact: Joseph Paxton (817) 334-2095.

EIS No. 870045, Final, EPA, FL, AL, MS, Pensacola, FL, Mobile, AL, and Gulfport, MS Ocean Dredged Material Disposal Sites, Designation, Due: March 16, 1987, Contact: Sally Turner (404) 347-2126.

EIS No. 870046, Draft, FWS, MN, IA, WI, IL, Upper Mississippi River National Wildlife and Fish Refuge Master Plan, Due: May 15, 1987, Contact: Jim Lennartson (507) 452-4232.

EIS No. 870047, FSuppl, COE, NY, NJ, Newark Bay/Kill Van Kull Navigation Channel Improvements, Additional Information, Due: March 16, 1987, Contact: Joseph Debler (212) 264-4663.

EIS No. 870048, Final, COE, OH, William H. Zimmer Conversion Project, Nuclear Power Plant into Coal-Fired Electrical Generating Plant, 404/10 Permits, Clermont County, Due: March 16, 1987, Contact: Robert Oliver (502) 582-5601.

EIS No. 870049, Draft, AFS, CO, East Fork Ski Area Development, Special Use Permit, San Juan National Forest, Archuleta and Mineral Counties, Due: April 14, 1987, Contact: John Kirkpatrick (303) 247-4874.

EIS No. 870050, Draft, FHW, MN, US TH-169/Cross Range Expressway Improvement, US TH-2 in Grand Rapids to MN TH-65 in Pengilly, Itaska County, Due: March 30, 1987, Contact: Stan Graczyk (612) 349-5246.

EIS No. 870051, Draft, USN, CA, San Francisco Bay Battleship Battlegroup and Cruiser Destroyer Group Homeporting, Construction/Operation, San Francisco County, Due: March 30, 1987, Contact: Robert Forsyth (415) 877-7544.

Amended Notices

EIS No. 870028, Final, COE, CA, Pamo Dam and Reservoir Emergency Water Supply Project, Construction, San Diego County, Due: March 9, 1987, Published FR 01-30-87—Review period reestablished.

EIS No. 860494, Draft, UAF, MA, Westover Air Force Base, Air Force Reserve Mission Change, C-130 to C-5A Aircraft and Civil Aviation Operation Expansion thru 1995, Hampden and Hampshire Counties, Due: February 11, 1987, Published FR 12-5-86—Review period extended.

EIS No. 860496, Draft, COE, CA, OR, WA, Third 500kV AC Intertie Transmission Path, Tesla Substation, CA to Southern Oregon, Los Banos Substation to Gates Substation and Pacific Northwest Facility Reinforcements, C/O/M, Due: March 2, 1987, Published FR 12-5-86—Review period extended.

Dated: February 10, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-3146 Filed 2-12-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3155-8]

Science Advisory Board Environmental Engineering Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that the Environmental Engineering Committee of the Science Advisory Board will hold a two-day meeting on March 5-6, 1987 at the Environmental Protection Agency, Conference Room #1 North (on the Ground Floor, near the EPA Washington Information Center), Waterside Mall, 401 M Street SW., Washington, DC. The meeting will begin at 9:00 a.m. and last until 5:00 p.m. on March 5, and begin at 9:00 a.m. and last until 1:00 p.m. on March 6.

The purpose of the meeting is to introduce and discuss potential reviews for 1987. In addition to a general discussion of potential review topic that have been suggested by the Agency, the Committee will receive *introductory* briefings on several of these topics, including the Underground Storage Tank Failure Model, the Waste Minimization Research Plan, the Mining Waste Screening Phase Risk Assessment Methodology, the Toxicity Characteristic Leaching Procedure, and the Air Emissions Characteristic Test. Please note that these briefings will be only general introductions to the topics listed above. It the Committee decides to conduct reviews on any of these, there will be more detailed briefings and discussions at future meetings.

Public comment will be accepted at the meeting. Written comments will be accepted in any form, and there will be opportunity for *brief* oral statements. Anyone wishing to make oral or written comments must contact Mr. Eric Malès (202/382-2552) prior to February 27, 1987 in order to be placed on the agenda. Any member of the public wishing to attend should contact Mrs. Brenda Browne at 202/382-2552.

Dated: February 5, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 87-3106 Filed 2-12-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Joe Jagger; Acquisition of Shares of Banks or Bank Holding Companies; Change in Bank Control

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 27, 1987.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Joe Jagger,* Kenneth D. Wedel/Profit Sharing, Kermit G. Wedel/Profit Sharing, John O. & Marilyn Pruitt, all of Minneapolis, Kansas; Thomas D. McGavran, Ada, Kansas; Lee Roy Parks, Miltonvale, Kansas; and Robert M. Mortimer, Carl R. McGavran, William Anderson, Melvin Allison, Janice D. Chancy, Kristine M. Schrandt, Diana S. Klein, and Willard & Clara Irvine, all of Delphos, Kansas, to acquire 98.02 percent of the voting shares of Delphos, Inc., Delphos, Kansas, and thereby indirectly acquire The State Bank of Delphos, Delphos, Kansas.

Board of Governors of the Federal Reserve System, February 9, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-3083 Filed 2-12-87; 8:45 am]

BILLING CODE 6210-01-M

Capital One Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 3, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Capital One Corp.,* Brown Deer, Wisconsin; to engage *de novo* through its subsidiary, Capital One Finance Corp., Brown Deer, Wisconsin, in acquiring from its affiliate loans or other extensions of credit such as made by banking, commercial finance, mortgage and consumer finance companies for its own account or for the account of others pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. *Illini Community Bancorp, Inc.,* Springfield, Illinois; to engage *de novo* through its subsidiary, Illini & Associates, Inc., Springfield, Illinois, in providing management consulting advice, auditing, accounting and tax services to nonaffiliates and nonbank depository institutions pursuant to § 225.25 (b)(11) and (b)(21) of the Board's Regulation Y.

3. *Illini Community Bancorp, Inc.,* Springfield, Illinois; to engage *de novo* through its subsidiary, Illini Community Mortgage Co., Springfield, Illinois, in the origination of VA, FHA & conventional mortgage loans for resale to the secondary market; appraisal services; servicing of loans originated and sold; warehouse financing of mortgage loans; and other related services pursuant to § 225.25 (b)(1) and (b)(13) of the Board's Regulation Y.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *DBT Financial Corporation,* DeWitt, Arkansas; to engage *de novo* through its subsidiary, DeWitt Bank and Trust Insurance, Inc., DeWitt, Arkansas, in the sale, as agent, of numerous lines of insurance from an office in DeWitt, Arkansas, a town with a population of less than 5,000, pursuant to § 225.25(b)(8). This activity will be conducted in DeWitt, Arkansas.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

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1. *Broadway Bancshares, Inc.*, San Antonio, Texas; to engage *de novo* through its subsidiary, Broadway National Life Insurance Company, San Antonio, Texas, a *de novo* company, in the activity of underwriting as reinsurer of life insurance or home mortgage redemption insurance pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 9, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-3062 Filed 2-12-87; 8:45 am]

BILLING CODE 6210-01-M

Chemical New York Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 11, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Chemical New York Corporation*, New York, New York; to acquire 100 percent of the voting shares of Texas Commerce Bancshares, Inc., Houston, Texas, and thereby indirectly acquire Texas Commerce Bank-Amarillo, Amarillo, Texas; Texas Commerce Bank-Austin, N.A., Texas Commerce Bank-Barton Creek, N.A., and Texas Commerce Bank-Northcross, N.A., all in Austin, Texas; Texas Commerce Bank-Beaumont, N.A., Beaumont, Texas; Texas Commerce Bank-Brownsville, Brownsville, Texas; Texas Commerce Bank-Corpus Christi, N.A., Texas Commerce Bank-Gulfway, N.A., both in Corpus Christi, Texas; Texas Commerce Bank-Arlington, Arlington, Texas; Texas Commerce Bank-Brookhollow, N.A, Dallas, Texas; Texas Commerce Bank-Campbell Centre, N.A., Dallas, Texas; Texas Commerce Bank-Casa Linda, N.A., Dallas, Texas; Texas Commerce Bank-Dallas, N.A., Dallas, Texas; Texas Commerce Bank-Fort Worth, Fort Worth, Texas; Texas Commerce Bank-Garland, Garland, Texas; Texas Commerce Bank-Hillcrest, Dallas, Texas; Texas Commerce Bank-Hurst, N.A., Hurst, Texas; Texas Commerce Bank-Irving Boulevard, Irving, Texas; Texas Commerce Bank-Las Colinas, Irving, Texas; Texas Commerce Bank-Northwest, N.A., Dallas, Texas; Texas Commerce Bank-Park Central, N.A., Dallas, Texas; Texas Commerce Bank-Preston Royal, N.A., Dallas, Texas; Texas Commerce Bank-Quorum, N.A., Dallas, Texas; Texas Commerce Bank-Border City, Texas Commerce Bank-Chamizal, N.A., Texas Commerce Bank-East, N.A., Texas Commerce Bank-El Paso, N.A., Texas Commerce Bank-First State, Texas Commerce Bank-Northgate, N.A., Texas Commerce Bank-West, N.A., all in El Paso, Texas; Texas Commerce Bank-Airline, Texas Commerce Bank-Champions Park, N.A., Texas Commerce Bank-Chemical, Texas Commerce Bank-Clear Lake, N.A., all in Houston, Texas; Texas Commerce Bank-Conroe, N.A., Conroe, Texas; Texas Commerce Bank-Cyfair, N.A., Houston, Texas; Texas Commerce Bank-Cypress Station, N.A., Houston, Texas; Texas Commerce Bank-Del Oro, N.A., Houston, Texas; Texas Commerce Bank-Friendswood, Friendswood, Texas; Texas Commerce Bank-Greens Crossing, N.A., Houston, Texas; Texas Commerce Bank-Greenway Plaza, N.A., Houston, Texas; Texas Commerce Bank National Association, Houston, Texas; Texas Commerce Bank-Inwood, N.A., Houston, Texas; Texas Commerce Bank-Katy Freeway, N.A., Katy, Texas; Texas Commerce Bank-Kingwood, N.A., Kingwood, Texas; Texas Commerce Bank-Lakeside, Houston, Texas; Texas Commerce Bank-North Freeway, Houston, Texas; Texas Commerce Bank-Pasadena, Pasadena, Texas; Texas Commerce Bank-Reagan, Houston, Texas; Texas Commerce Bank-Richmond/Sage, Houston, Texas; Texas Commerce Bank-River Oaks, N.A., Houston, Texas; Texas Commerce Bank-South Belt, N.A., Houston, Texas; Texas Commerce Bank-Southeast, Houston, Texas; Texas Commerce Bank-Stafford, N.A., Houston, Texas; Texas Commerce Bank-Sugar Land, N.A., Sugar Land, Texas; Texas Commerce Bank-Tanglewood, Houston, Texas; Texas Commerce Bank-Westlake Park, N.A., Houston, Texas; Texas Commerce Bank-West Oaks, N.A., Houston, Texas; Texas Commerce Bank-Westwood, Houston, Texas; Texas Commerce Medical Bank, Houston, Texas; Texas Commerce Bank-Longview, N.A., Longview, Texas; Texas Commerce Bank National Association, Lubbock, Texas; Texas Commerce Bank-McAllen, N.A., McAllen, Texas; Texas Commerce Bank-Midland, N.A., Midland, Texas; Stone Fort National Bank of Nacogdoches, Nacogdoches, Texas; Texas Commerce Bank-New Braunfels, N.A., New Braunfels, Texas; Texas Commerce Bank-Odessa, Odessa, Texas; Texas Commerce Bank-San Angelo, N.A., San Angelo, Texas; Texas Commerce Bank-San Antonio, San Antonio, Texas; Texas Commerce Bank-San Antonio, Loop 410, San Antonio, Texas; Texas Commerce Bank-San Antonio, N.W., N.A., San Antonio, Texas; and Texas Commerce Banks (Delaware), Newark, Delaware.

In addition, Applicant will acquire indirectly Texas Commerce Bancshares, Inc.'s 9.5% interest in Lockwood National Bank, Houston, Texas. Applicant, through its subsidiary, CT Holdings, Inc., also will acquire Texas Commerce Bank-Richardson N.A., Richardson, Texas. In connection with this application, CT Holdings, Inc., has applied to become a bank holding company.

In connection with this application, Applicant proposes to acquire El Paso National Corporation, and thereby engage in leasing personal or real property pursuant to § 225.25(b)(5) of the Board's Regulation Y, and management consulting to depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y; Pyramid Agency, Inc., and thereby engage in the sale of single-interest insurance and public fund depository bonds pursuant to § 225.25(b)(8) of the Board's Regulation Y; Texas Commerce Bancshares Leasing Company, and thereby engage in leasing personal or real property pursuant to § 225.25(b)(5) of the Board's Regulation Y; Texas Commerce Corporate Finance, Inc., and thereby engage in making and servicing loans, investment or financial advice pursuant to §§ 225.25 (b)(1) and (b)(4) of the Board's Regulation Y; Texas Commerce Financial Services, Inc., and thereby engage in securities brokerage activities pursuant to § 225.25(b)(15) of the Board's Regulation Y; Texas Commerce Funding Company, and thereby engage in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y; Texas Commerce Information Systems, Inc., and thereby engage in data processing pursuant to § 225.25(b)(7) of the Board's Regulation Y; Texas Commerce Investment Management Company, and thereby engage in investment or financial advice pursuant to § 225.25(b)(4) of the Board's Regulation Y; Texas Commerce Leasing Company, and thereby engage in leasing personal or real property pursuant to § 225.25(b)(5) of the Board's Regulation Y; Texas Commerce Mortgage Company, and thereby engage in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y; Texas Commerce Securities, Inc., and thereby engage in investment or financial advice, underwriting and dealing in government obligations and money market instruments pursuant to §§ 225.25 (b)(4) and (b)(16) of the Board's Regulation Y; Texas Commerce Services Company, and thereby engage in trust company functions pursuant to section 225.25(b)(3) of the Board's Regulation Y; and Texas Commerce Trust Company of New York, and thereby engage in trust company functions pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 9, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-3084 Filed 2-12-87; 8:45 am]

BILLING CODE 6210-01-M

Lincoln Financial Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 5, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Lincoln Financial Corporation*, Fort Wayne, Indiana; to acquire Shipshewana Insurance Agency, Inc., LaGrange, Indiana, and thereby engage in acting as an insurance agent or broker with regard to insurance sold in connection with extensions of credit by the bank and bank holding company pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 9, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-3085 Filed 2-12-87; 8:45 am]

BILLING CODE 6210-01-M

Union Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 5, 1987.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Union Bancorp, Inc.*, Pottsville, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Union Bank and Trust Company, Pottsville, Pennsylvania.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Dominion Bankshares Corporation*, Roanoke, Virginia; to merge with First National Financial Corporation, Clarksville, Tennessee, and thereby indirectly acquire The First National Bank of Clarksville, Clarksville, Tennessee.

2. *Dominion Bankshares Corporation*, Roanoke, Virginia; to merge with Mid-Tennessee Bancorp, Inc., Ashland City, Tennessee, and thereby indirectly

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acquire Ashland City Bank and Trust Company, Ashland City, Tennessee.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *SunTrust Banks, Inc.*, Atlanta, Georgia, and Third National Corporation, Nashville, Tennessee; to merge with SWG Financial Enterprises, Inc., Morristown, Tennessee, and thereby indirectly acquire Hamilton Bank of Morristown, Morristown, Tennessee.

D. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Sentry Bancorp, Inc.*, Minneapolis, Minnesota; to become a bank holding company by acquiring 98.89 percent of the voting shares of Cannon Valley Bank, Dundas, Minnesota.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Alameda Bancorporation, Inc.*, Alameda, California; to acquire 100 percent of the voting shares of Community First National Bank, Pleasanton, California.

Board of Governors of the Federal Reserve System, February 9, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-3086 Filed 2-12-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on February 6, 1987.

Public Health Service (PHS)

(Call Reports Clearance Officer on 202-245-2100 for copies of Package.)

National Institutes of Health

Subject: Program Evaluation: Office of Cancer Communications Education Program—NEW.

Respondents: Individuals or households.

Food and Drug Administration

Subject: Application for Exemption From Pre-emption for Medical Devices—Extension—(0910-0129).

Respondents: State or local governments.

OMB Desk Officer: Shannah Koss.

National Security Administration (SSA)

(Call Reports Clearance Officer on 301-594-5706 for copies of package.)

Subject: Farm Arrangement Questionnaire—Extension—(0960-0064).

Respondents: Individuals or households.

Health Care Financing Administration (HCFA)

(Call Reports Clearance Officer on 301-594-8650 for copies of package).

Subject: Information Collection Requirements in BPO-47-FN, MMIS Requirements for Physician and Supplier Services—NEW.

Respondents: State or local governments.

Subject: Preclearance for: Evaluation of Medicare Retiree Group Demonstration—NEW.

Respondents: Individuals or households: Businesses or other for-profit.

Subject: Revisions to the Medicaid State Plan Preprint Standards for Provisions of Organ Transplants in State Programs—Revision—(0938-0193)-HCFA-179.

Respondents: State or local governments.

Subject: Information Collection Requirements in 405.2112, 405.2123, 405.2134, 405.2136, 405.2137, 405.2138, 405.2139, 405.2140 and 405.2171—Extension—(0938-0386)-HCFA-P-52.

Respondents: Businesses or other for-profit: Non-profit institutions: Small businesses or organizations.

Subject: Recordkeepinq Requirements Contained in Provider Reimbursement Manual Sections 2198 and 2746—NEW.

Respondents: Businesses or other for-profit; Small businesses or organizations.

Subject: Medicaid—Quarterly Medicaid Statement of Expenditures—Revisions—(0938-0067)-HCFA-64.

Respondents: State or local governments.

Subject: Health Insurance Claim Form Medicaid/Medicare—Revision—(0938-0008)-HCFA-1500.

Respondents: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.

OMB Desk Officer: Allison Herron.

Family Support Administration

(Call Reports Clearance Officer on 202-245-0652 for copies of package).

Subject: Office of Child Support Enforcement Quarterly Financial/Statistical Report—NEW.

Respondents: State or local governments.

OMB Desk Officer: Judy Egan.

As mentioned above, copies of the information collection clearance packaqes can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

SSA: 301-5-4-5706
HCFA: 301-594-8650
FSA: 202-245-0652
PHS: 202-245-2100

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the followinq address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, ATTN: (name of OMB Desk Officer).

Dated: February 6, 1987.

Barbara S. Wamsley,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 87-2971 Filed 2-12-87; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

Advisory Committees; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. March 2 and 3, 9 a.m., Auditorium, Lister Hill Center, 8600 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, March 2, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open public hearing, March 3, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m.; Joan C. Standaert, Center for Drugs and Biologics (HFN-110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4730.

General function of the committee. The committee reviews and evaluates available data on the study of anti-anginal and anti-arrhythmic drugs.

Agenda—Open public hearing. Interested persons who wish to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person.

Open committee discussion. The committee will discuss guidelines for study of anti-anginal and anti-arrhythmic drugs.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: February 5, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-3080 Filed 2-12-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-87-1648; FR-2271]

Notice Requesting a Private Organization to Develop and Maintain the Federal Manufactured Home Construction and Safety Standards

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice; second request for a private organization to develop and maintain model standards for incorporation by reference into HUD's Federal Manufactured Home Construction and Safety Standards (FMHCSS).

SUMMARY: HUD published a Notice in the **Federal Register** of July 7, 1982 (47 FR 29605) that announced HUD's interest in having a nationally recognized building code or standards organization develop, publish and maintain suitable model standards which could replace, by reference, all of the HUD standards now in the FMHCSS. HUD would retain the responsibility and authority to promulgate and enforce revisions to the FMHCSS, after formal notice and comment rulemaking. Model standards incorporated by reference in the FMHCSS would then become preemptive and be enforced as HUD standards.

The Department originally intended to select a private standards organization after proposed revisions to the FMHCSS were promulgated in a final rule. The Department received several proposals in response to the July 1982 Notice, but final consideration of the comprehensive revision of the FMHCSS under this process was delayed until now. Therefore, the Department is allowing previous respondents to withdraw, amend, or submit new proposals. Other private organizations which now are interested are also urged to advise the Department on their qualifications and experience in developing, publishing, and maintaining model standards.

DATE: Organizations wishing to submit responses must do so on or before April 14, 1987.

ADDRESS: Responses and public comments may be sent to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title.

FOR FURTHER INFORMATION CONTACT: William C. Sorrentino, Director, Manufactured Housing and Construction Standards Division, Room 9158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000, telephone (202) 755-5210. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Section 604 of the National Manufactured Construction and Safety Standards Act of 1974 (the Act), 42 U.S.C. 5403, requires the Secretary of HUD to establish preemptive FMHCSS for all manufactured (mobile) homes. FMHCSS were published as a final rule in the **Federal Register** of December 18, 1975 (40 FR 58752) at 24 CFR Part 3280. Many HUD standards in the FMHCSS were similar to model standards in 1975 which were published by a private organization.

Since the promulgation of the FMHCSS, the Department has conducted extensive research to provide answers to questions relating to the safety, durability, and thermal energy performance of manufactured homes. In

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addition, statistics and other information were collected from consumers and technical organizations relating to the adequacy of the FMHCSS. As a result of HUD's efforts from 1975–81, the Department in 1982 prepared for its first comprehensive revision of the FMHCSS.

OMB Circular A–119, published at 47 FR 49496 (November 1, 1982), however, established a Federal policy that whenever feasible standards developed by private organizations should be promulgated in Federal agency regulations. The Circular also encourages Federal agencies to contribute to the development of model standards by private organizations that will eliminate the necessity for separate Federal agency standards covering the same technical issues.

As a result of OMB Circular A–119 and supporting recommendations contained in the 1982 Report of the President's Commission on Housing and the National Institute of Building Sciences' *Recommendations for Change—Phase II* (August 15, 1981, page 35), the Department published a Notice at 47 FR 29605 (July 7, 1982) inviting a private standards organization to develop, published and maintain suitable model standards that could replace, by reference and after notice and comment rulemaking, the HUD standards now in the FMHCSS. The Department intended to select a suitable private standards organization after HUD's first comprehensive revision of the FMHCSS (proposed at 48 FR 37136 (August 16, 1983)) was completed. This approach should not present significant problems, since a large portion of the current FMHCSS was adopted from model standards originally developed by a private organization.

Most of the proposed FMHCSS revisions have been promulgated in a final rule (see 49 FR 31996, August 9, 1984). The Department no longer considers rulemaking on all portions of the 1983 proposed rule to be necessary before resuming its search for a qualified private standards body to develop, publish and maintain model standards for incorporation by reference into the FMHCSS. Because proposals submitted by respondents in 1982 might not represent their current position, the Department is issuing this second Notice to allow any private organization to withdraw, amend, or submit new proposals.

The Department emphasizes that it will not relinquish its responsibility and authority under the Act to establish and enforce FMHCSS relating to safety, quality and durability and will incorporate into the FMHCSS by reference only those model standards that are appropriate. The Department will retain the authority for reviewing and promulgating by reference any model standards developed by private standards organizations. Such standards will be promulgated by HUD in a final rule only after publication of a proposed rule for comment in the **Federal Register**, in accordance with the Administrative Procedure Act (5 U.S.C. 553).

After formal adoption of the model standards by the selected standards organization, HUD will publish a proposed rule in the **Federal Register**, which will propose to incorporate those standards by reference in 24 CFR Part 3280. Although the proposed standards will not be published in the **Federal Register**, the proposed FMHCSS revisions would be made available to the public: (1) On request for review at HUD Headquarters or at any HUD Field or Regional Office or (2) through purchase of the document at reasonable cost from the selected standards organization. (HUD intends to expand the traditional 60 day comment period to 90 days to accommodate the additional time that this procedure will involve for the transmittal of the model standards to HUD Field or Regional Offices and for the review of those standards.)

When promulgated in a final rule, the FMHCSS would incorporate by reference only those model standards (by the specific date of adoption) that were adopted by the selected standards organization and were cited in the proposed rule. Any future revisions to the FMCHSS adopted by the selected standards organization would be incorporated by reference in the FMHCSS only after formal notice and comment rulemaking by the Department in accordance with the Administrative Procedure Act. HUD reserves the authority to revise the FMHCSS through rulemaking to promulgate standards that would ensure the safety, quality, and durability of manufactured homes.

In publishing this notice, the Department's objectives are to:

1. Select a private organization which is qualified, interested and capable of developing and maintaining model standards that can replace by reference all standards in the FMHCSS and at no obligatory expense to HUD or other Federal agencies;

2. Rely on such standards that can meet the intent of the Act; and

3. Promulgate such standards by reference as the FMHCSS, either in whole or in part, and to enforce them in accordance with the requirements of the Act.

Respondents are required to describe in detail how they would accomplish the development and maintenance of model standards pertaining to the construction and safety of manufactured housing by:

1. Identifying the capabilities of staff and other entitites to be used for covering each of the following subjects: structural, fire safety, plumbing, heating-ventilating-cooling, electrical engineering, indoor air quality, and transportation;

2. Defining how the issues of safety, durability and quality would be treated in response to the requirements of the Act;

3. Identifying the methodology to be used in developing, updating, canceling or withdrawing model standards, and stating the frequency that such actions would occur;

4. Stating proposed procedures to be used to balance the views of divergent interest groups (manufacturers and suppliers, consumers, and State and local regulatory officials); and

5. Identifying the policies and procedures to be used for managing, coordinating, staffing for, voting on, processing, and publishing proposed changes in the Standards.

In reviewing the responses, the Department will consider the demonstrated knowledge, experience, and qualifications of each respondent in the following areas, particularly as related to the manufacturing of homes:

1. Building codes and standards, their function, development and scope;

2. Responsibility for the development, review, approval and publication of model standards with respect to building codes and standards;

3. Responsibility for organizing and coordinating efforts that develop structural, fire safety, mechanical and electrical model standards pertaining to residential building; and

4. Qualifications, time commitments and assignments of managerial and technical personnel.

Organizations interested in participating in the development and maintenance of the standards must provide the above information by April 14, 1987.

The information collection requirements contained in this Notice have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). All requirements have been approved and have been assigned OMB control number 2502–0360.

Authority: Sec. 604 of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5403.)

Dated: February 6, 1987.

Thomas T. Demery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 87–3134 Filed 2–12–87; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–020–07–4212–14; I–22256, I–22257, I–22258, I–22259, I–22260, I–22261, I–22262, I–22264, I–23355, I–23356, I–23357, I–23358, I–23359]

Notice of Action; Amendment of the Malad Management Framework Plan (MFP) and the Cassia Resource Management Plan (RMP)/Notice of Realty Action, Sale of Public Land in Power and Cassia Counties, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Action—Amendment of the Malad Management Framework Plan (MFP) and the Cassia Resource Management Plan (RMP)/Notice of Realty Action, Sale of Public Land in Power and Cassia, Counties, Idaho.

DATE AND ADDRESS: Notice is hereby given that the BLM has amended the Cassia RMP and the Malad MFP to allow for the disposal of certain public lands in Power and Cassia County, Idaho. The sale offering for group "A" parcels will be held on Wednesday, June 24, 1987 at the Burley District Office, 200 South Oakley Highway, Burley, Idaho. The sale offering for group "B" parcels will be held on Wednesday, August 26, 1987 at the Burley District Office. Unsold parcels will be offered every Wednesday through November 25, 1987, on which date this sale offering will be suspended.

SUMMARY: The following described lands have been examined and through the public-supported land use planning process have been determined to be suitable for sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976, at no less than fair market value as determined by an appraisal. The fair market value of each parcel may be obtained from the above office within 60 days of the sale date.

Group "A" Parcels

Legal description	Parcel No.	Acres
T. 9 S., R. 29 E., B.M.		
Section 21: SE¼NW¼NE¼.	I–22256	10
Section 32: SW¼NW¼.	I–22257	40
Section 32: SE¼SE¼	I–22258	40
Section 33: SE¼NW¼	I–22259	40
T. 9 S., R. 30 E., B.M.		
Section 34: NE¼NW¼	I–22260	40
T. 10 S., R. 30 E., B.M.		
Section 10: NE¼NW¼	I–22261	40

Group "B" Parcels

Legal description	Parcel No.	Acres
T. 10 S., R. 29 E., B.M.		
Section 4: SE¼SW¼	I–22264	80
Section 9: NE¼NW¼		
T. 9 S., R. 29 E., B.M.		
Section 13: NW¼NE¼, NE¼NW¼.	I–23355	80
Section 24: NW¼NE¼, E½NW¼, NE¼SW¼, N½SE¼.	I–23356	240
T. 9 S., R. 30 E., B.M.		
Section 19: SE¼NE¼	I–23357	40
Section 21: NE¼NW¼	I–23358	40
Section 21: E½SW¼	I–23359	80
T. 10 S., R. 30 E., B.M.		
Section 18: NE¼NE¼	I–22262	40

When patented, the lands will be subject to a reservation for ditches and canals and oil and gas rights, to the United States.

These lands are hereby segregated from appropriation under the public land laws including the mining laws for a period of 270 days or until patent is issued, whichever comes first.

Sale procedures: The previously mentioned sale parcels will be sold competitively with a preference right for adjoining landowners to meet the highest bid. *Adjoining landowners must submit a bid on the date of sale in order to exercise this preference.* Adjoining landowners will be allowed 30 days from the sale date to match the high bid. Failure to match the high bid within 30 days will void their preference and the next highest bidder will be awarded the sale. Where two or more adjoining landowners exercise their preference right, they will be given the opportunity to agree upon a division of the lands among themselves. In the absence of a written agreement, the adjoining landowners shall be allowed to continue bidding to determine the high bidder.

Bids must be submitted for at least the fair market value and will constitute an application to purchase that portion of the mineral estate of no known value. A thirty percent (30%) deposit must accompany each bid. An *additional* $50.00 non-returnable (for the successful bidder) mineral conveyance processing fee is required. The bid deposit and mineral processing fee must be paid by certified check, money order, bank draft or cashiers check. *Bids will be rejected if accompanied by a personal check.*

SUPPLEMENTARY INFORMATION: Detailed information concerning the conditions of the sale be obtained by contacting Karl Simonson, Realty Specialist, at (208) 678–5514 or Wes Duggan, Deep Creek Realty Specialist at (208) 766–4766.

Planning Protests

Any party that participated in the plan amendment and is adversely affected by the amendment may protest this action only as it affects issues submitted for the record during the planning process. The protests shall be in writing and filed with the Idaho State Director within 30 days of this notice.

Sale comments

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments, regarding the sale, to the District Manager, Bureau of Land Management, Route 3, Box 1, Burley, ID 83318. Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any planning protests or objections regarding the sale, this realty action will become the final determination of the Department of the Interior and the planning amendment will be effective.

Dated: February 3, 1987.

John S. Davis,

District Manager.

[FR Doc. 87–3069 Filed 2–12–87; 8:45 am]

BILLING CODE 4310–GG–M

[CO–030–07–4322–10–1784]

Montrose District CO, Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of Montrose District Grazing Advisory Board.

SUMMARY: Notice is hereby given that a meeting of the Montrose District Grazing Advisory Board will be held in Dolores, Colorado.

DATE: Thursday, March 19, 1987, at 10:00 a.m., the meeting will convene in the conference room at the Anasazi Heritage Center, 27501 Highway 184, Dolores, Colorado. Friday, March 20, 1987, at 8:00 a.m. a tour will begin from the same location.

SUPPLEMENTARY INFORMATION: The agenda for the meeting on March 19, 1987, will include:

1. Introductions.
2. Minutes of the previous meeting.
3. Public presentations and requests.
4. New or revised allotment management plan proposals.
5. Update on riparian demonstration area.
6. Discussion of zone engineering.

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7. Policy for cost sharing by new Advisory Board.
8. Status of current project work.
9. New Advisory Board project proposals.
10. Arrangements for the next meeting.

A tour of Spring Creek allotment will be held on March 20, 1987.

The meeting is open to the public. Those persons interested in attending the tour on March 20, 1987, should provide their own transportation. Four-wheel drive vehicles are advisable.

Interested persons may make oral statements to the Board between 10:00 a.m. and 11:00 a.m. on March 19, 1987, or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 2465 South Townsend, Montrose, Colorado 81401, by March 17, 1987. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the Board meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Further information on the meeting may be obtained at the above address or by calling (303) 249–7791.

Dated: February 6, 1987.

Paul W. Arrasmith,

District Manager.

[FR Doc. 87–3068 Filed 2–12–87; 8:45 am]

BILLING CODE 4310–JB–M

[ID–030–07–4212–13]

Realty Action; Idaho Falls District; Clark and Jefferson Counties

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action, Exchange of Public Lands in Clark and Jefferson Counties, Idaho.

SUMMARY: The following described public lands are suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

T. 9N., R. 36 E., B. M., Idaho,
Sec. 22: SE¼NW¼, NE¼SW¼;
Sec. 26: SE¼NW¼;
Sec. 27: W½;
Sec. 28: SE¼NE¼, E½SE¼, East of Railroad;
Sec. 34: N½NW¼, SE¼SE¼;
Sec. 35: SW¼SW¼.
T. 8 N., R. 36 E., B. M., Idaho,
Sec. 2: Lot 4, SW¼NW¼, W½SW¼;
Sec. 3: Lot 1, SE¼NE¼, E½SE¼;
Sec. 11: NW¼NW¼;
Sec. 12: W½SE¼.
T. 9 N., R. 37 E., B. M., Idaho,
Sec. 19: Lots 3 and 4;
Sec. 30: Lot 1.
T. 9 N., R. 34 E., B. M., Idaho,
Sec. 4: Lot 4;
Sec. 5: Lots 1, 2, 3 and 4.

Totalling 1,396.9 acres more or less.

In exchange for these lands, the Federal government will acquire non-Federal land in Clark and Jefferson counties from Blaine Larsen, described as follows:

T. 9 N., R. 36 E., B. M., Idaho,
Sec. 6: Lots 1 and 2, S½NE¼.
T. 9 N., R. 35 E., B. M., Idaho,
Sec. 1: Lots 1, 2, and 3, S½NE¼, SE¼NW¼, NE¼SW¼, NW¼SE¼;
Sec. 34: S½.
T. 8 N., R. 35 E., B. M., Idaho,
Sec. 22: E½NE¼, NW¼NE¼, N½NW¼;
Sec. 23: S½NW¼, NW¼SW¼.
T. 13 N., R. 39 E., B. M. Idaho,
Sec. 15: NE¼SE¼;
Sec. 16: W½NW¼NE¼, NW¼, SE¼SW¼;
Sec. 21: E½NW¼;
Sec. 22: W½SW¼, SE¼SW¼, SW¼SE¼.

Totalling 1620.16 acres more or less.

The purpose of this exchange is to acquire the non-Federal lands to enhance important public values and uses and to improve management efficiency. The exchange is consistent with the Bureau's planning for the lands involved and has been discussed with the Idaho Department of Fish and Game and Clark County. The public interest will be well served by making the exchange.

The value of the land has been determined by an appraisal and falls within the required twenty-five percent range. Acreage will be adjusted to equalize values or the exchange proponent will waive the difference in values.

The terms and conditions applicable to the exchange are:

A. Selected Lands.

1. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All rights and reservations of record at the time patent is issued.

3. Minerals—All minerals will be reserved by the United States on the following selected public lands:

T. 9 N., R. 34 E., B. M., Idaho,
Sec. 5: Lots 1, 2, 3, and 4.

B. Offered Lands—All minerals will be reserved by Larsen on the following offered private lands:

T. 13 N., R. 39 E., B. M., Idaho,
Sec. 16: SE¼SW¼;
Sec. 22: NW¼SW¼, SE¼SW¼, SW¼SE¼.

Unless otherwise noted, the mineral estates will be exchanged with the surface estates.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulation of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed, and shall be returned to the applicant.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange, including the environmental analysis and the record of public discussion, is available for review at the Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho 83401.

For a period of 45 days, interested parties may submit comments to the Idaho Falls District Office, at the address listed above.

Dated: February 6, 1987.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 87–3070 Filed 2–12–87; 8:45 am]

BILLING CODE 4310–GG–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–373 (Preliminary)]

Certain Copier Toner From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–373 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of electrically-resistive monocomponent toner and "black powder" preparations therefor of a kind used with electrostatic copying machines, currently provided for in item 408.44 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by March 20, 1987.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: February 3, 1987.

FOR FURTHER INFORMATION CONTACT: Ilene Hersher (202–523–4616), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on February 3, 1987, by Aunyx Corp., Hingham, MA.

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR § 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on February 25, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Ilene Hersher (202–523–4616) not later than February 23, 1987, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before February 27, 1987, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, Title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: February 10, 1987.

[FR Doc. 87–3119 Filed 2–12–87; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–167 (Sub-No. 1061X)]

Conrail Abandonment of the Sayreville Running Track in Middlesex County, NJ; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 1.8-mile line of railroad between milepost 0.0 near South Amboy and milepost 1.8 near Sayreville, in Middlesex County, NJ.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective March 16, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by February 23, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by March 5, 1987 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles E. Mechem, Senior General Attorney, Consolidated Rail Corporation, Room 1138, Six Penn Center Plaza, Philadelphia, PA 19103–2959.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Dated: February 6, 1987.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–3094 Filed 2–12–87; 8:45 am]

BILLING CODE 7035–01–M

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[Docket No. AB-167 (Sub-No. 1082X)]

Consolidated Rail Corp., Abandonment Exemption in Philadelphia, PA; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 0.7-mile line of railroad known as the Kensington and Tacony Branch between mileposts 0.9 and 1.6 in Philadelphia, PA.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective March 16, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by February 23, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by March 5, 1987 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles E. Mechem, Senior General Attorney, Consolidated Rail Corporation, Room 1138, Six Penn Central Plaza, Philadelphia, PA 19103-2959.

If the notice of exemption contains false or misleading information, use of the exemption is void ab initio.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Dated: February 9, 1987.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-3095 Filed 2-12-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub-No. 1082X)]

Consolidated Rail Corp., Abandonment Exemption in Cleveland, OH; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 0.72-mile line of railroad known as the Clark Branch between mileposts 9.28 and 10.0 in Cleveland, OH.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective March 16, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by February 23, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by March 5, 1987 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles E. Mechem, Senior General Attorney, Consolidated Rail Corporation, Room 1138, Six Penn Central Plaza, Philadelphia, PA 19103-2959.

If the notice of exemption contains false or misleading information, use of the exemption is void ab initio.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Dated: February 9, 1987.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-3096 Filed 2-12-87; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A.1. Parent corporation and address of principal office: Metal Masters Foodservice Equipment Co., Inc., 655 Glenwood Avenue, Smyrna, DE 19977.

2. Wholly-owned subsidiaries which will participate in the operations, and States(s) of incorporation: Crystal Tips, Inc., Junction of Highways 9 & 71, Spirit Lake, Iowa 51360. State of incorporation—Delaware.

B.1. Parent corporation and address of principal office: Marathon Electric Manufacturing Corporation, (a Wisconsin corporation), 100 East Randolph Street, Wausau, Wisconsin 54401.

2. Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation:

(i) Marathon Special Products Corporation (Ohio)
(ii) Lima Electric Co., Inc. (Delaware)

C.1. Parent corporation and address of principal office: Maytag Corporation, One Dependability Square, Newton, IA 50208.

2. The wholly owned subsidiaries which will participate in the operation and the states of their incorporation are:

(i) Maytag Company, Delaware
(ii) Jenn-Air Company—Division of Maytag Company
(iii) Jenn Industries, Inc., Delaware
(iv) Hardwick Stove Company—Division of Magic Chef, Inc.
(v) Magic Chef, Inc., Delaware
(vi) Magic Chef Air Conditioning—Division of Magic Chef, Inc.
(vii) Admiral—Division of Magic Chef, Inc.
(viii) Norge—Division of Magic Chef, Inc.
(ix) Heatube Company—Division of Magic Chef, Inc.
(x) Warwick Manufacturing Corporation—Virginia
(xi) Ardac, Inc.—Delaware
(xii) Dixie Norco, Inc.—West Virginia

D.1. Parent corporation and address of principal office: Ralston Purina Company, 835 South 8th Street, St. Louis, MO 63164.

2. Wholly owned subsidiaries which will participate in the operations, and state of incorporation.

(a) American Redemption Systems, Inc. (IL)
(b) Bremner, Inc. (DE)
(c) Continental Baking Company (DE)
(d) Eveready Battery Company, Inc. (DE)
(e) Fiber Sales & Development Corp. (DE)
(f) Keystone Resorts Management, Inc. (CO)
(g) Ralston Purina De Puerto Rico, Inc. (DE)
(h) Red & White, Inc. (DE)
(i) Samoa Packing Company (DE)
(j) Van Camp Seafood Company, Inc. (DE)
(k) Van Can Company (DE)
(l) Benco Petfood, Inc. (IL)

E.1. Parent Corporation and Address of Principal Office: Rocco Enterprises, Inc., One Kratzer Avenue, Harrisonburg, Virginia 22601.

2. Wholly-Owned Subsidiaries Which Will Participate in the Operations, and States of Incorporation:

(i) Rocco, Inc.—Virginia
(ii) Rocco Building Supplies, Inc.—Virginia
(iii) Rocco Construction, Inc.—Virginia
(iv) Rocco Disc, Inc.—Virginia
(v) Rocco Farm Foods, Inc.—Virginia
(vi) Rocco Farms, Inc.—Virginia
(vii) Rocco Feeds, Inc.—Virginia
(viii) Rocco FSC, Inc.—Guam
(ix) Rocco Further Processing, Inc.—Virginia
(x) Rocco Investments, Inc.—Delaware
(xi) Rocco Realty, Inc.—Virginia
(xii) Rocco Turkeys, Inc.—Virginia

F.1. Parent corporation, address of principal office and State of Incorporation:

Sara Lee Corporation, Three First National Plaza, Chicago, Illinois 60602 (Maryland)

2. Wholly owned subsidiaries which will participate in the operations, the address of their respective principal offices and their States of Incorporation:

Aris Isotoner Gloves, Inc., 417 Fifth Avenue, New York, New York 10016 (Delaware)
Bali Company, 3330 Healy Dr., Winston-Salem, North Carolina 27103 (Delaware)
Booth Fisheries Corporation, Two North Riverside Plaza, Chicago, Illinois 60606 (Delaware)
Bryan Foods, Inc., 1 Churchill Road, P.O. Box 1177, West Point, Mississippi 39773 (Mississippi)
Capitol Fish Company, Inc., d/b/a Capitol Foods, 6501 Fulton Industrial Blvd., Atlanta, Georgia 30336 (Georgia)
Chef Pierre, Inc., 2314 Sybrandt St., P.O. Box 1009, Traverse City, Michigan 49685 (Delaware)
Circle T Foods Company, Inc., 4560 Leston, Dallas, Texas 75247 (Texas)
Coach Leatherware Inc., 516 West 34th Street, New York, New York 10001 (Delaware)
Country Commons Inc., 500 Waukegan Road, Deerfield, Illinois 60015 (Delaware)
Douwe Egberts Coffee Service, Inc., 990 Supreme Drive, Bensenville, Illinois 60106 (Delaware)
Electrolux Corporation, 3003 Summer Street, Stamford, Connecticut 06905 (Delaware)
Emmber Brands, Incorporated, P.O. Box 2006, Milwaukee, Wisconsin 53201 (Wisconsin)
Epic Company, Inc., Jimmy Dean Avenue, Osceola, Iowa 50213 (Illinois)
Frigid Freeze Foods, Inc., 1025 Electric Road, Salem, Virginia 24153 (Virginia)
Frozen Farm Products, Inc., Burns Avenue at Canan Station, Altoona, Pennsylvania 16603 (Pennsylvania)
The Fuller Brush Company, 2800 Rockcreek Parkway, Suite 400, North Kansas City, Missouri 64117 (Connecticut)
Gibbon Packing Company, P.O. Box 2006, Milwaukee, Wisconsin 53201 (Nebraska)
Green Hill Incorporated, Rt. 11, Elliston, Virginia 24087 (Virginia)
Hanes Knitwear/Printables, Inc., 3334 Healy Drive., Winston Salem, North Carolina 27103 (Delaware)
Higdon Food Service, Inc., 1350 N. 10th St., Paducah, Kentucky 44002 (Kentucky)
Hollywood Brands, Inc., 100 S. Poplar, Centralia, Illinois 62801 (Delaware)
Illinois Fruit & Produce Corp., One Quality Lane, Streator, Illinois 61364 (Illinois)
The Jimmy Dean Meat Company, Inc., 1341 W. Mockingbird Lane, Dallas, Texas 75247 (Texas)
Kitchens of Sara Lee, Inc., 500 Waukegan Road, Deerfield, Illinois 60015 (Delaware)
Kiwi Brands Inc., Route 662 North, Douglassville, Pennsylvania 19518 (Delaware)
Landlock Seafood Company, Inc., 4119 Billy Mitchell Road, Addison, Texas 75001 (Texas)
L'eggs Brands, Inc., P.O. Box 2495, 5660 University Parkway, Winston-Salem, North Carolina 27105 (North Carolina)
Lipes Foods, Inc., Elliston, Virginia 24087 (Virginia)
Lily Packing, Inc., P.O. Box 2006, Milwaukee, Wisconsin 53201 (Michigan)
Lo-Temp Express, Inc., Burns Avenue at Canan Station, Altoona, Pennsylvania 16603 (Pennsylvania)
Lyon's Restaurants, Inc., 1165 Triton Drive, Foster City, California 94404 (Delaware)
Lyon's Restaurants in Oregon, Inc., 1165 Triton Drive, Foster City, California 94404 (Oregon)
Moo-Battue, Inc., P.O. Box 2006, Milwaukee, Wisconsin 53201 (Wisconsin)
Ozark Salad Company, Inc., 100 N. Youngman, Baxter Springs, Kansas 66713 (Delaware)
Peck Meat Packing Corporation, P.O. Box 2006, Milwaukee, Wisconsin 53201 (Wisconsin)
Premier Fish Company, 1300 W. Higgins, Park Ridge, Illinois 60068 (Washington)
Priddy's Quality Foods, Inc., 204 H N.E., Ardmore, Oklahoma 73401 (Oklahoma)
PYA/Monarch, Inc., 107 Frederick Street, P.O. Box 1328, Greenville, South Carolina 29602 (Delaware)
Schloss & Kahn, Inc., US Highway 80 & Newcomb Avenue, Montgomery, Alabama 36195 (Delaware)
Sirena, Inc., 10333 Vacco Street, P.O. Box 3307, South Elmonte, California (California)
Sky Bros., Inc., Burns Avenue at Canan Station, Altoona, Pennsylvania 16603 (Pennsylvania)
Sky Bros. of Lemoyne, Inc., 1135 North Plymouth St., Allentown, Pennsylvania 16103 (Pennsylvania)
Standard Meat Company, 3709 East First Street, Fort Worth, Texas 76111 (Texas)
Superior Coffee and Foods, Inc., 990 Supreme Drive, Bensenville, Illinois 60106 (Illinois)
Sweet Sue Kitchens, Inc., McArthur Drive, Athens, Alabama 35611 (Alabama)
Twin Rivers Transportation Company, 955 Hamilton Drive, University Park, Illinois 60466 (Illinois)
Wolferman's, Inc., One Muffin Lane, North Kansas City, Missouri 64116 (Delaware)

3. Wholly owned divisions which will participate in the operations and their addresses:

Buring Foods division of Sara Lee Corporation, 1837 Harbor Ave., Memphis, Tennessee 38113
Direct Marketing division of Sara Lee Corporation, 480 Hanes Mill Road, Winston-Salem, North Carolina 27105
Direct Sales division of Sara Lee Corporation, 470 Hanes Mill Road, Winston-Salem, North Carolina 27105
Direct Store Delivery division of Sara Lee Corporation, 5650 University Parkway, Winston-Salem, North Carolina 27106
Gallileo-Capri Salami division of Sara Lee Corporation, 2411 Baumann Ave., San Lorenzo, California 94580
Gallo Salame, division of Sara Lee Corporation, 250 Brannan St., San Francisco, California 94107
Gordon County Farm Company division of Rudy's Farm Company, P.O. Box 1267, Mauldin Road, Calhoun, Georgia 30701
Hanes Hosiery division of Sara Lee Corporation, 401 Hanes Mill Road, Winston Salem, North Carolina 27105
Hanes Knitwear division of Hanes Knitwear/Printables, Inc., 450 Hanes Mill Road, Winston-Salem, North Carolina 27105
Hanes Printables division of Hanes Knitwear/Printables, Inc., 3334 Healy Drive, Winston Salem, North Carolina 27103
Hi-Brand Foods division of Sara Lee Corporation, P.O. Box 2048, Peachtree City, Georgia 30269
Hillshire Farm Company division of Sara Lee Corporation, P.O. Box 227, Rte. No. 4, New London, Wisconsin 54961
Kahn's and Company division of Sara Lee Corporation, 3241 Spring Grove Ave., Cincinnati, Ohio 45225
L'eggs Products division of Sara Lee Corporation, P.O. Box 2495, 5660 University Parkway, Winston-Salem, North Carolina 27105
Porter Foods division of PYA/Monarch, Inc., P.O. Box 6160, Little Rock, Arkansas 72216
R.B. Rice Company division of Sara Lee Corporation, 1951 Rice Road, Lee's Summit, Missouri 64063
Rudy's Farm Company division of Sara Lee Corporation, 2424 Music Valley Drive, Nashville, Tennessee 37214
Superior Coffee and Foods division of Sara Lee Corporation, 990 Supreme Drive, Bensenville, Illinois 60106

G.1. Parent corporation and address of principal office: Savage Industries, Inc. located at 5250 South 300 West, Suite 200; Salt Lake City, Utah 84017, a Utah Corporation.

2. Wholly owned subsidiaries which will participate in the operations and state of incorporation, are as follows:

A. Ashworth Transfer, Inc., 961 Pioneer Road, Salt Lake City, UT 84104, A Utah Corporation

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B. Cornelius Development Corporation, 8 North Center, American Fork, UT 84003, A Utah Corporation
C. Ideal Concrete Corporation, 748 West 300 South, Salt Lake City, UT 84101, A Utah Corporation
D. Savage Coal Service Corporation, 5295 South 300 West, Suite 455, Salt Lake City, UT 84107, A Utah Corporation
E. Savage Energy Service Corporation, 5295 South 300 West, Suite 455, Salt Lake City, UT 84107, A Utah Corporation
F. Savage Manufacturing Corporation, 310 West 700 South, Pleasant Grove, UT 84602, A Utah Corporation
G. Three-S Corporation, 5250 South 300 West, Suite 200, Salt Lake City, UT 84107, A Utah Corporation
H. Western Coal Carrier Corporation, P.O. Box 790, Huntington, UT 84528, A Utah Corporation
I. Western Rock Products Corporation, 675 North Industrial Road #3, St. George, UT 84770, A Utah Corporation
J. Savage Brothers, Inc., A Utah Corporation.

H.1. Parent corporation and address of principal office: Valley Banana King, Inc., P.O.Box 999, Alamo, Texas 78516, Incorporation in Texas.

2. Wholly-owned subsidiary which will participate in the operations, and address of its respective principal office: Valley Banana Trucking, Inc., P.O.Box 999, Alamo, Texas 78516, Incorporation in Texas.

G.1. Parent corporation and address of principal office: West Point—Pepperell, Inc., 400 West Tenth Street, West Point, Georgia 31833, Georgia.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices and states of incorporation:

Alatex, Inc., 620 River Falls Street, Andalusia, AL 36420 (Delaware)
Arrow Inter-American, Inc., 433 River Street, Troy, NY 12180 (Delaware)
Cluett Peabody & Co., Inc., 400 West 10th Street, West Point, GA 31833 (Georgia)
Leroy, Inc., 9818 Reisterstown Road, Owings Mills, MD 21117 (Maryland)
Shoreham Classics, Inc., 530 5th Avenue, New York, NY 10036 (New York)
WestPoint Pepperell Trans. Co., 400 West 10th Street, West Point, GA 31833 (Georgia)
Annedeen Corporation, 661 Plaid Street, Burlington, NC 27215 (North Carolina)
Cluett Apparel Outlet, Inc., 3522 175 Business Spur, Sault Ste. Marie, MI 49873 (Michigan)
Hometown Mfg. Co., Inc., Industrial Boulevard, Greensboro, GA 30642 (New York)
Old Mission Textiles, Inc., 400 West 10th Street, West Point, Georgia 31833 (Georgia)
Stratton Industries, Inc.,779 South Erwin Street, Cartersville, Georgia 30120 (New York)

Noreta R. McGee,

Secretary.

[FR Doc. 87-3097 Filed 2-12-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Bell Communications Research, Inc.; et al.

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98-462 ("the Act"), Bell Communications Research, Inc. ("Bellcore") has filed a written notification on behalf of Bellcore and FUJITSU LIMITED and FUJITSU LABORATORIES LTD. (hereinafter collectively known as "FUJITSU"), simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties of the joint venture and (2) the nature and objectives of the joint venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 West Mount Pleasant Avenue, Livingston, New Jersey 07039.

FUJITSU is a Japanese corporation with its registered office at 1015, Kimikodanaka, Nakahara-ku, Kawasaki-shi, Kanagawa-ken 211, Japan.

Bellcore and FUJITSU entered into an agreement on November 13, 1986 to collaborate on research to gain further knowledge and understanding of technologies for new communication services and human interfaces, including:

(a) concepts of new communication services,

(b) case studies of new services based on the above concepts and studies of man-machine interfaces for assessing them, and

(c) studies of interfaces between terminals and communications systems.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87-3113 Filed 2-12-87; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; Bell Communications Research, Inc. et al.

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98-462 ("the Act"), Bell Communications Research, Inc. on behalf of Ameritech Services, Inc., Bell Atlantic Network Services, Inc., BellSouth Services Incorporated, NYNEX Service Company, Pacific Bell, Southwestern Bell Telephone Company, and U S WEST, INC. has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the IN/2 Venture. The notification was filed for the purpose of invoking the provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the IN/2 Venture and the areas of planned activities of the IN/2 Venture are given below:

I. Identification of the parties

The IN/2 Venture presently consists of the following parties:

1. Ameritech Services, Inc.
2. Bell Atlantic Network Services, Inc.
3. Bell Communications Research, Inc.
4. BellSouth Services Incorporated.
5. NYNEX Service Company.
6. Pacific Bell.
7. Southwestern Bell Telephone Company.
8. U S WEST, Inc.

II. Areas of Planned Activity

The objective of the IN/2 Venture is to validate a new network architecture that will establish a framework for the telecommunications network architecture of the 1990's by providing the capability to rapidly introduce a variety of new services. The IN/2 architecture will be comprised of a series of network interfaces and protocols for the creation or modification of exchange and exchange access telecommunications services. This project will be accomplished through analytic studies, laboratory testing and field experimentation, with appropriate consideration given at each stage to determine the technical and economic feasibility of going forward with the IN/2 Venture.

As the IN/2 Venture proceeds, participation is expected to be open to other interested parties. The progress of the IN/2 Venture and the results achieved will be disclosed to the public by means of industry symposia, press releases and publication of technical documents on a timely basis.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 87-3114 Filed 2-12-87; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to Section 6(b) of the National Cooperative Research Act of 1984; Corporation for Open Systems International

The National Cooperative Research Act of 1984—The Corporation for Open Systems International.

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub.L. No. 98-462 (the "Act"), the Corporation for Open Systems International ("COS") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on January 2, 1987 disclosing changes in the membership of COS. The additional written notification was filed for the purpose of extending the protections of Section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On May 14, 1986 COS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the Federal Register pursuant to section 6(b) of the Act on June 11, 1986. 51 F.R. 21260. On August 6, 1986 and September 30, 1986, COS filed additional written notifications. The Department published notices in the Federal Register in response to these additional notifications on September 4, 1986 (51 F.R. 31736) and on October 28, 1986 (51 F.R. 39434), respectively.

On October 30, 1986, International Computers Ltd. became a party to COS. On December 8, 1986, TECSIEL S.p.A. became a party to COS. Effective January 1, 1987, Sperry Corporation and Burroughs Corporation were no longer parties to COS, and Unisys Corporation, the successor corporation to Sperry Corporation and Burroughs Corporation, became a party to COS.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 87-3115 Filed 2-12-87; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; Semiconductor Research Corp.

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98-462 ("the Act"), the Semiconductor Research Corporation ("SRC") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in the membership of SRC. The changes consist of the substitution of Unisys for Burroughs Corporation and Sperry Corporation as a result of their recent merger, the addition of Applied Materials, Inc., the deletion of E/G Electrograph Inc., Flexible Manufacturing Systems, Inc., Isitec Corporation, Probe-Rite, Inc., Pure Aire Corporation, Semi-Gas Systems, Inc., and Universal Energy System, Inc. from the Semiconductor Equipment and Materials Institute, Inc. ("SEMI") Chapter of the SRC, and the addition of the following companies to the SEMI Chapter of the SRC:

ASYST Technologies, Inc.
FSI Corporation
Logical Solutions Technologies, Inc.
Optical Specialities, Inc.
PT Analytic, Incorporated
Solid State Equipment Corp.
Thermco Systems, Inc.

Furthermore, Amedyne is now known as Dynapert/Amedyne.

The SRC filed its notification of these membership changes for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties of SRC and SRC's general areas of planned activity are given below.

SRC is a joint venture which, with the deletion and addition of the previously identified companies to the SRC and the SEMI Chapter, comprises the following members:

Advanced Micro Devices, Incorporated
Applied Materials, Inc.
AT&T Technologies, Incorporated
Control Data Corporation
Digital Equipment Corporation
E.I. du Pont de Nemours & Company
Eastman Kodak Company
Eaton Corporation
E-Systems Inc.
GCA Corporation
General Electric Company
General Motors Corporation
Goodyear Aerospace Corporation
GTE Laboratories, Incorporated
Harris Corporation
Hewlett-Packard Company
Honeywell, Incorporated
IBM Corporation
Intel Corporation
LSI Logic Corporation
Monolithic Memories, Incorporated
Monsanto Company
Motorola, Incorporated
National Semiconductor Corporation
Perkin-Elmer Company
RCA Corporation
Rockwell International Corp.
SEMI Chapter, the members of which are the following:
  ASYST Technologies, Inc.
  Dynapert/Amedyne
  Eagle-Picher Ind. Inc.
  Emergent Technologies Corporation
  FEP Analytic (division of Verity Instruments, Inc.)
  FSI Corporation
  Genus, Inc.
  Gryphon Products
  Hercules Specialty Chemicals Company
  Ion Beam Technologies, Inc.
  Ion Implant Services
  Lehighton Electronics, Inc.
  Logical Solutions Technologies, Inc.
  Mac Dermid, Inc.
  Machine Intelligence Corp.
  Machine Technology, Inc.
  MG Industries/Scientific Gases
  Micrion Corporation
  Micromanipulator Company, Inc.
  Micronix Corporation
  Oneac Corporation
  Optical Specialities, Inc.
  Pacific Western Systems, Inc.
  Peak Systems, Inc.
  PT Analytic, Incorporated
  Sage Enterprises, Inc.
  The SEMI Group, Inc.
  Silsco, Inc.
  Solid State Equipment Corp.
  Thermco Systems, Inc.
  UTI Instruments Company
  VLSI Standards, Inc.
  XMR, Inc.
Silicon Systems, Incorporated
Texas Instruments, Incorporated
Union Carbide Corporation
Unisys
Varian Associates, Incorporated
Westinghouse Electric Corporation
Xerox Corporation

SRC's purpose is to plan, promote, coordinate, sponsor, and conduct research supportive of the semiconductor industry and directed toward:

1. Increasing knowledge of semiconductor materials and phenomena, and of related scientific and engineering subjects that are required for the useful application of semiconductors;

2. Developing new and more efficient designs and manufacturing technologies for semiconductor devices;

3. Identifying directions, limits, opportunities, and problems in generic semiconductor technologies;

4. Increasing the number of scientists and engineers proficient in research, development, and manufacture of semiconductor devices;

5. Increasing industry-university ties, establishing university semiconductor research centers with major long-term research thrusts, and developing university semiconductor research activities with more precisely defined, short-term objectives;

6. Developing more relevant graduate school education and a larger supply of graduate students in areas related to semiconductor technology;

7. Increasing the ability of universities to attract and retain competent faculty in the semiconductor field;

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8. Decreasing fragmentation and redundancy in United States semiconductor research;

9. Establishing advanced research efforts for critical semiconductor technology areas that are beyond the individual resources of many SRC members;

10. Promoting efficient communication of research results to SRC members and to the United States semiconductor community as a whole.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87-3116 Filed 2-12-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

All Items Consumer Price Index for All Urban Consumers; United States City Average

Pursuant to section 112 of the 1976 amendments to the Federal Election Campaign Act (Pub. L. 94-283, 2 U.S.C. 441a), the Secretary of Labor has certified to the Chairman of the Federal Election Commission and publishes this notice in the **Federal Register** that the United States City Average All Items Consumer Price Index for All Urban Consumers (1967=100) increased 122.3 percent from its 1974 annual average of 147.7 to its 1986 annual average of 328.4. Using 1974 as a base (1974=100), I certify that the United States City Average All Items Consumer Price Index for All Urban Consumers thus increased 122.3 percent form its 1974 annual average of 100 to its 1986 annual average of 222.3.

Signed at Washington, DC, on the 3rd day of February 1987.

William E. Brock,

Secretary of Labor.

[FR Doc. 87-3150 Filed 2-12-87; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

[TA-W-17,940]

Akron Metal Products Division, Goodyear Tire and Rubber Co., Akron, OH; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Akron Metal Products Division, Goodyear Tire & Rubber Company, Akron, Ohio. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-17,940; Akron Metal Products Division, Goodyear Tire and Rubber Company, Akron, Ohio (February 5, 1987).

Signed at Washington, DC, this 5th day of February 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-3155 Filed 2-12-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,224]

Carbon Coal, Gallup, NM; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Carbon Coal, Gallup, New Mexico. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-18,224; Carbon Coal, Gallup, New Mexico (February 3, 1987).

Signed at Washington, DC, this 5th day of February 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-3156 Filed 2-12-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,947]

Cardinal Drilling Co., Billings, MT; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 12, 1987 in response to a worker petition received on January 12, 1987; and filed by employees on behalf of workers at Cardinal Drilling Company, Billings, Montana.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA-W-18,866). Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 20th day of January 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-3151 Filed 2-12-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,507]

Damson Oil Corp. Denver District Office Denver, CO; Affirmative Determination Regarding Application for Reconsideration

By an application dated December 15, 1986, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of workers and former workers at Damson Oil Corporation, Denver District Office, Denver Colorado. The determination was published in the **Federal Register** on December 2, 1986 (51 FR 43483).

The petitioner claims that workers at the Denver facility were related by ownership and control to Damson Oil Corporation, Houston, Texas, the parent company, whose workers are certified for trade adjustment assistance. It is claimed that worker separations at Denver were caused by reduced demand for their services by their parent company.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 2nd day of February 1987.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 87-3154 Filed 2-12-87; 8:45am]

BILLING CODE 4510-30-M

[TA-W-18,486]

Franklin Supply Co., Denver and Brighton, CO; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Franklin Supply Company, Denver and Brighton, Colorado. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-18,486; Franklin Supply Company Denver and Brighton, Colorado (February 4, 1987).

Signed at Washington, DC this 5th day of February 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-3157 Filed 2-12-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,976]

Gaffney, Cline & Associates, Dallas, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 20, 1987 in response to a worker petition received on January 20, 1987; and filed by the company on behalf of workers at Gaffney, Cline & Associates, Dallas, Texas.

A negative determination applicable to the petitioning group of workers was issued on January 27, 1987 (TA-W-18,958). No new information is evident which would result in a reversal of the Department's previous determination. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 5th day of February 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-3152 Filed 2-12-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,682]

Great Bend Well Service, Inc., Great Bend, KS; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Great Bend Well Service, Inc., Great Bend, Kansas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-18,682; Great Bend Well Service, Incorporated, Great Bend, Kansas (February 4, 1987).

Signed at Washington, DC this 5th day of February 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-3158 Filed 2-12-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,551]

Molycorp, Inc., Washington, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Molycorp, Incorporated, Washington, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-18,551; Molycorp, Incorporated, Washington, Pennsylvania (February 4, 1987).

Signed at Washington, DC this 5th day of February 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-3159 Filed 2-12-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17, 780]

MRC Bearings Formerly TRW Bearings Division, Plainville, CT; Negative Determination Regarding Application for Reconsideration

By an application dated December 10, 1986, the United Auto Workers requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers at MRC Bearings, Plainville, Connecticut. The denial notice was published in the **Federal Register** on December 12, 1986 (51 FR 44845).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union states that the production volume was not sufficient for the Plainville plant to remain open after it ceased production of single row bearings; consequently, the remaining production would have to be transferred to another domestic company location.

Findings in the investigation did not substantiate that increased imports contributed importantly to worker separations. A Department of Labor survey revealed that customers of MRC Bearings did not purchase imported bearings in 1984 or 1985. The survey also showed that although some customers did import in the first half of 1986, their imported bearing purchases accounted for an unimportant portion of the survey group's decline in purchases from MRC in the first half of 1986 compared with the first half of 1985.

The union furnished statements by company officials which indicate that the import problem goes back 15 years. Worker separations prior to July 16, 1985, one year before the date of the petition are outside the scope of the Department's factfinding investigation. Section 223(b) (1) of the Act does not permit the certification of workers separated more than one year prior to the date of the petition which in this case is July 16, 1986.

Further, the transfer of the remaining production from Plainville (double row bearings) in the first quarter of 1987 to another domestic company plant also would not provide a basis for certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 2nd day of February, 1987.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 87-3172 Filed 2-12-87; 8:45 am]

BILLING CODE 4510-03-M

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[TA-W-18, 964]

W.B. Hinton Drilling Co., Mt. Pleasant, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 12, 1987 in response to a worker petition received on January 12, 1987; and filed by employees on behalf of workers at W.B. Hinton Drilling Company, Mt. Pleasant, Texas.

A negative determination applicable to the petitioning group of workers was issued on October 15, 1986 (TA-W-18,065). No new information is evident which would result in a reversal of the Department's previous determination. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 20th day of January 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-3153 Filed 2-12-87; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act (JTPA) Allotments; Wagner-Peyser Act Preliminary Planning Estimates; Program Year (PY) 1987

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces State Job Training Partnership Act (JTPA) allotments for Program Year (PY) 1987 (July 1, 1987—June 30, 1988) for JTPA Titles II–A and III, and for the summer youth program in Calendar Year (CY) 1987 for JTPA Title II–B; and preliminary planning estimates for public employment service activities under the Wagner-Peyser Act for PY 1987.

FOR FURTHER INFORMATION CONTACT: For JTPA allotments, contact Mr. Robert N. Colombo, Director, Office of Employment and Training Programs, Room N4703, 200 Constitution Avenue NW., Washington, DC 20210; Telephone: 202–535–0577. For Employment Service planning levels contact Mr. Robert A. Schaerfl, Director, U.S. Employment Service, Room N4470, 200 Constitution Avenue NW., Washington, DC 20210; Telephone: 202–535–0157.

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL) is announcing Job Training Partnership Act (JTPA) allotments for Program Year (PY) 1987 (July 1,1987—June 30, 1988) for JTPA Titles II–A and III, and for the summer youth program in Calendar Year (CY) 1987 for JTPA Title II–B; and, in accord with section 6(b)(5) of the Wagner-Peyser Act, preliminary planning estimates for public employment service activities under the Wagner-Peyser Act for PY 1987. The allotments and estimates are based on the appropriations to DOL for Fiscal Year (FY) 1986 and FY 1987. JTPA Titles II–A and III allotments are subject to change since rescissions have been requested under both titles. The Congress has 45 legislative days (beginning with the date the request is "enrolled" as having been received) in which to vote on rescission requests. Unless the request is approved by both Houses within that time period the rescissions do not go into effect. These requests were submitted to Congress on January 5, 1987. A negative supplemental appropriation request has also been submitted to the Congress for public employment service activities authorized under sections 7 (a) and (b) of the Wagner-Peyser Act. It is not subject to the 45-day requirement of a recission; however, if the Congress does not affirm the request by July 1, 1987, the full amount appropriated will be available for allocation.

Attached are a list of the allotments for PY 1987 (July 1, 1987 through June 30, 1988) for programs under JTPA Titles II–A and III, a list of the allotments for the 1987 summer youth program under Title II–B of JTPA, and a list of preliminary planning estimates for public employment service activities under the Wagner-Peyser Act. The JTPA allotments are based on the funds appropriated by Pub. L. 99–591 for FY 1987, the statutory formulas contained in JTPA and the latest data available to the Secretary. These JTPA allotments will not be updated for subsequent unemployment data. The Employment Service preliminary estimates will be redone as final estimates to reflect CY 1986 data, and published in the **Federal Register** at a later date.

JTPA Title II–A Allotments. Attachment No. I shows the PY 1987 JTPA Title II–A allotments by State based on a total appropriation of $1,840,000,000. The amount allocated is composed entirely of PY 1987 formula funds. For all States, Puerto Rico, and the District of Columbia, the following data were used in developing these allotments:

- Data for areas of substantial unemployment are averages for the 12-month period, July 1985 through June 1986.
- The number of excess unemployed individuals or the area of substantial unemployment excess (depending on which is higher) are averages for this same 12-month period, July 1985 through June 1986.
- The economically disadvantaged data are from the 1980 Census.

The allotments for the Insular Areas and Freely Associated States (FASs) are based on estimated 1985 unemployment. The estimated unemployment data were developed using 1980 Census unemployment as a base. The 1980 data were updated according to relative shifts in the population. A 90-percent relative share hold-harmless of the Title II–A allotments for these areas and a minimum allotment of $125,000 were also applied in determining the allotments. PY 1987 JTPA Title II–A funds are to be distributed among designated service delivery areas (SDAs) in accordance with the revised statutory formula for programs under JTPA Titles II–A and II–B as contained in section 5 of the JTPA Amendments of 1986.

JTPA Title II–B Allotments. Attachment No. II shows the CY 1987 JTPA Title II–B allotments by State based on a total FY 1986 available appropriation of $635,976,000. The data used for these allotments are the same data as were used for JTPA Title II–A allotments. The amount allotted is composed entirely of CY 1987 formula funds.

For Palau, the FASs, and the Insular Areas, the amount is based on the percentage of Title II–B funds each area received during the previous summer.

CY 1987 Title II–B summer youth funds are to be distributed among designated SDAs in accordance with the revised statutory formula for programs under JTPA Titles II–A and II–B contained in section 5 of the JTPA Amendments of 1986. For purposes of determining State hold-harmless levels, total allotments which included excess carryout were used. Likewise, for purposes of determining SDA hold-harmless levels, funds from supplemental JTPA Title II–B appropriations are to be included as are reallocated JTPA Title II–B funds.

JTPA Title III Allotments. Attachment No. III shows the PY 1987 JTPA Title III Dislocated Worker Program allotments. Column 3 shows the total appropriation of $200,000,000, which includes the base allotment of Federal funds totaling $150,000,000 and the national reserve of $50,000,000, to be distributed at a later date. The base funds are subject to the matching requirements contained in Section 304 of JTPA. Allotments for Guam, the Virgin Islands, American Samoa, the Republic of Palau/Trust Territories of the Pacific Islands (RP/TTPI), the Federated States of Micronesia, the Republic of the Marshall Islands (RMI), and the Commonwealth of the Northern Marianas are based on the proportion these jurisdictions received of JTPA Title II–A funds. Except for the above-listed Palau, FASs, and Insular Areas, the unemployment data used for determining these allotments, relative numbers of unemployed and relative numbers of excess unemployed, are averages for the September 1985 through August 1986 period. Long-term unemployed data used were for CY 1985.

Column 4 shows a total amount of $111,567,487. This represents the total amount States must provide in matching in accordance with section 304 of JTPA to be eligible for the Federal allotment listed in Column 3.

Column 5 shows a total amount of $311,567,487, the sum of Columns 3 and 4. This represents the total resources available for the JTPA Title III Dislocated Worker Program based on PY 1987 allotments.

Wagner-Peyser Act Employment Service Preliminary Planning Estimates. Attachment No. IV shows preliminary Employment Service planning estimates which have been produced using the legislatively-mandated formula. See Wagner-Peyser Act section 6(a) and (b). These estimates are based on preliminary data on each State's relative share of civilian labor force and unemployment for the 12-month period ending September 1986. The methodology for allocating the Secretary's 3-percent setaside is unchanged from that used in the prior year. See Wagner-Peyser Act section 6(b)(4); and 51 FR 8373 (March 11, 1986).

Final allotments will be issued on or before March 27, 1987, based on CY 1986 data, and published in the **Federal Register.** The amount appropriated for public employment service activities is $755,200,000; however, $14 million has been withheld from distribution to finance postage costs associated with the conduct of employment service business, leaving $741,200,000 to be distributed. Ten percent of the planning estimate may be reserved at the discretion of the Governor for activities described in section 7(b) of the Wagner-Peyser Act, as amended.

Signed at Washington, DC, this 9th day of February 1987.

Roger D. Semerad,

Assistant Secretary of Labor.

BILLING CODE 4510-30-M

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ATTACHMENT I

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION
OFFICE OF FINANCIAL AND ADMINISTRATIVE MANAGEMENT
PY 1987 JTPA TITLE II-A ALLOTMENTS TO STATES
01-05-1987

	ALLOTMENT
Alabama	41,040,863
Alaska	5,465,483
Arizona	21,039,533
Arkansas	21,789,115
California	187,764,063
Colorado	20,405,090
Connecticut	12,082,962
Delaware	4,587,806
District of Columbia	6,070,755
Florida	60,378,656
Georgia	37,852,067
Hawaii	5,926,047
Idaho	8,825,753
Illinois	105,554,229
Indiana	41,803,322
Iowa	21,867,732
Kansas	10,437,358
Kentucky	39,580,809
Louisiana	59,969,851
Maine	6,800,638
Maryland	19,407,568
Massachusetts	25,731,617
Michigan	89,100,308
Minnesota	23,754,897
Mississippi	31,642,309
Missouri	30,879,373
Montana	6,974,457
Nebraska	8,045,827
Nevada	7,175,103
New Hampshire	4,587,806
New Jersey	37,106,859
New Mexico	14,629,574
New York	120,132,026
North Carolina	35,015,949
North Dakota	4,587,806
Ohio	94,601,730
Oklahoma	25,304,663
Oregon	25,332,161
Pennsylvania	90,851,453
Puerto Rico	74,045,065
Rhode Island	5,550,257
South Carolina	23,828,804
South Dakota	4,587,806
Tennessee	40,579,932
Texas	133,423,215
Utah	8,538,745
Vermont	4,587,806
Virginia	29,879,327
Washington	35,734,733
West Virginia	23,007,402
Wisconsin	32,667,826
Wyoming	4,587,806
American Samoa	248,925
Guam	1,099,889
Marshall Islands	486,254
Micronesia	1,143,982
Northern Marianas	125,000
Palau	125,000
Virgin Islands	1,648,608
NATIONAL TOTAL	1,840,000,000

ATTACHMENT II

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION
OFFICE OF FINANCIAL AND ADMINISTRATIVE MANAGEMENT
PY 1986 JTPA TITLE II-B ALLOTMENTS TO STATES
01-05-1987

	ALLOTMENT
Alabama	13,001,196
Alaska	1,760,978
Arizona	6,936,781
Arkansas	7,142,914
California	61,652,849
Colorado	6,690,683
Connecticut	6,539,717
Delaware	1,558,379
District of Columbia	5,418,804
Florida	20,213,749
Georgia	12,541,377
Hawaii	1,974,003
Idaho	2,882,470
Illinois	34,163,401
Indiana	14,899,797
Iowa	7,116,479
Kansas	3,621,762
Kentucky	12,878,152
Louisiana	19,337,962
Maine	2,476,101
Maryland	9,251,822
Massachusetts	13,606,919
Michigan	28,821,465
Minnesota	7,822,582
Mississippi	10,316,156
Missouri	11,247,476
Montana	2,286,261
Nebraska	2,660,953
Nevada	2,326,779
New Hampshire	1,558,379
New Jersey	17,660,751
New Mexico	4,784,124
New York	40,357,817
North Carolina	11,922,068
North Dakota	1,558,379
Ohio	30,646,773
Oklahoma	8,261,133
Oregon	8,219,919
Pennsylvania	29,350,529
Puerto Rico	24,309,992
Rhode Island	2,384,192
South Carolina	7,857,749
South Dakota	1,558,379
Tennessee	13,286,694
Texas	43,439,896
Utah	2,642,430
Vermont	1,558,379
Virginia	10,338,190
Washington	11,175,356
West Virginia	7,108,409
Wisconsin	10,665,536
Wyoming	1,558,379
American Samoa	48,279
Guam	568,824
Marshall Islands	17,352
Micronesia	41,121
Northern Marianas	22,585
Palau	6,809
Virgin Islands	333,871
Native Americans	11,565,739
NATIONAL TOTAL	635,976,000

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ATTACHMENT III

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION
OFFICE OF FINANCIAL AND ADMINISTRATIVE MANAGEMENT
PY 1987 JTPA TITLE III
DISLOCATED WORKER PROGRAM
ALLOTMENTS AND MATCHING REQUIREMENTS
01-05-1987

	UNEMPL RATE	REDUCTION UNITS	ALLOTMENT	REQUIRED MATCH	TOTAL PROGRAM
Alabama	9.2	2	3,283,707	1,970,224	5,253,931
Alaska	10.3	4	496,511	99,302	595,813
Arizona	6.6	0	1,476,336	1,476,336	2,952,672
Arkansas	8.6	2	1,522,932	913,759	2,436,691
California	6.8	0	14,732,914	14,732,914	29,465,828
Colorado	6.6	0	1,663,981	1,663,981	3,327,962
Connecticut	4.1	0	842,508	842,508	1,685,016
Delaware	4.9	0	179,891	179,891	359,782
District of Columbia	7.6	1	450,418	360,334	810,752
Florida	5.8	0	4,146,136	4,146,136	8,292,272
Georgia	6.1	0	2,464,618	2,464,618	4,929,236
Hawaii	5.4	0	348,847	348,847	697,694
Idaho	8.3	2	683,329	409,997	1,093,326
Illinois	8.6	2	10,314,877	6,188,926	16,503,803
Indiana	7.1	0	3,695,646	3,695,646	7,391,292
Iowa	7.6	1	2,122,437	1,697,950	3,820,387
Kansas	5.3	0	887,794	887,794	1,775,588
Kentucky	9.6	3	3,397,644	1,359,058	4,756,702
Louisiana	12.5	6	5,476,114	0	5,476,114
Maine	5.3	0	420,499	420,499	840,998
Maryland	4.3	0	1,111,646	1,111,646	2,223,292
Massachusetts	3.9	0	1,335,950	1,335,950	2,671,900
Michigan	9.1	2	8,682,693	5,209,616	13,892,309
Minnesota	5.8	0	2,010,014	2,010,014	4,020,028
Mississippi	11.0	4	2,595,729	519,146	3,114,875
Missouri	6.1	0	2,532,902	2,532,902	5,065,804
Montana	7.7	1	577,133	461,706	1,038,839
Nebraska	5.4	0	647,787	647,787	1,295,574
Nevada	7.1	0	661,771	661,771	1,323,542
New Hampshire	3.4	0	173,748	173,748	347,496
New Jersey	5.4	0	3,046,177	3,046,177	6,092,354
New Mexico	9.0	2	1,166,760	700,056	1,866,816
New York	6.5	0	9,612,884	9,612,884	19,225,768
North Carolina	5.1	0	2,095,916	2,095,916	4,191,832
North Dakota	6.4	0	309,933	309,933	619,866
Ohio	8.5	2	9,616,914	5,770,148	15,387,062
Oklahoma	8.0	1	2,200,164	1,760,131	3,960,295
Oregon	8.8	2	2,410,083	1,446,050	3,856,133
Pennsylvania	7.4	1	7,932,033	6,345,626	14,277,659
Puerto Rico	19.9	13	4,425,517	0	4,425,517
Rhode Island	4.2	0	230,137	230,137	460,274
South Carolina	6.7	0	1,814,485	1,814,485	3,628,970
South Dakota	4.8	0	196,831	196,831	393,662
Tennessee	7.9	1	3,230,672	2,584,538	5,815,210
Texas	8.2	1	10,951,506	8,761,205	19,712,711
Utah	5.6	0	565,666	565,666	1,131,332
Vermont	4.4	0	138,102	138,102	276,204
Virginia	5.3	0	1,897,123	1,897,123	3,794,246
Washington	7.9	1	2,982,958	2,386,366	5,369,324
West Virginia	11.8	5	2,304,126	0	2,304,126
Wisconsin	7.0	0	3,150,967	3,150,967	6,301,934
Wyoming	8.8	2	386,900	232,140	619,040
American Samoa	0.0	0	20,293	0	20,293
Guam	0.0	0	89,665	0	89,665
Marshall Islands	0.0	0	39,640	0	39,640
Micronesia	0.0	0	93,259	0	93,259
Northern Marianas	0.0	0	10,190	0	10,190
Palau	0.0	0	10,190	0	10,190
Virgin Islands	0.0	0	134,397	0	134,397
National Reserve	0.0	0	50,000,000	0	50,000,000
NATIONAL TOTAL	7.2		200,000,000	111,567,487	311,567,487

ATTACHMENT IV

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION
OFFICE OF FINANCIAL AND ADMINISTRATIVE MANAGEMENT
PRELIMINARY PY 1987 WAGNER-PEYSER ALLOTMENTS TO STATES
01-05-1987

	BASIC FORMULA	3% DISTRIBUTION STEP 1*	3% DISTRIBUTION STEP 2**	3% DISTRIBUTION TOTAL	TOTAL ALLOTMENT***
Alabama	11,673,821	0	0	0	11,673,821
Alaska	7,033,403	1,023,796	0	1,023,796	8,057,199
Arizona	8,651,893	0	0	0	8,651,893
Arkansas	6,717,034	0	794,881	794,881	7,511,915
California	74,016,940	0	0	0	74,016,940
Colorado	9,568,064	0	0	0	9,568,064
Connecticut	8,494,432	0	0	0	8,494,432
Delaware	2,008,040	0	62,261	62,261	2,070,301
District of Columbia	4,997,693	0	591,417	591,417	5,589,110
Florida	29,388,812	0	0	0	29,388,812
Georgia	15,959,828	0	0	0	15,959,828
Hawaii	2,674,147	0	316,454	316,454	2,990,601
Idaho	5,860,075	853,004	0	853,004	6,713,079
Illinois	34,713,003	0	0	0	34,713,003
Indiana	15,683,169	0	0	0	15,683,169
Iowa	8,534,045	0	1,009,902	1,009,902	9,543,947
Kansas	6,485,029	0	0	0	6,485,029
Kentucky	10,740,034	0	0	0	10,740,034
Louisiana	14,224,118	0	0	0	14,224,118
Maine	3,484,931	507,274	0	507,274	3,992,205
Maryland	11,421,189	0	0	0	11,421,189
Massachusetts	14,892,748	0	0	0	14,892,748
Michigan	27,032,877	0	476,841	476,841	27,509,718
Minnesota	12,027,826	0	0	0	12,027,826
Mississippi	7,746,568	0	516,467	516,467	8,263,035
Missouri	13,725,243	0	0	0	13,725,243
Montana	4,788,894	697,090	0	697,090	5,485,984
Nebraska	5,755,297	837,752	0	837,752	6,593,049
Nevada	4,655,299	677,635	0	677,635	5,332,934
New Hampshire	2,619,208	0	0	0	2,619,208
New Jersey	20,411,583	0	0	0	20,411,583
New Mexico	5,373,969	782,246	0	782,246	6,156,215
New York	51,495,888	0	6,093,925	6,093,925	57,589,813
North Carolina	16,509,891	0	0	0	16,509,891
North Dakota	4,876,516	709,835	0	709,835	5,586,351
Ohio	31,520,673	0	0	0	31,520,673
Oklahoma	11,774,144	0	1,393,329	1,393,329	13,167,473
Oregon	8,275,002	0	939,497	939,497	9,214,499
Pennsylvania	32,268,615	0	0	0	32,268,615
Puerto Rico	8,913,915	0	36,565	36,565	8,950,480
Rhode Island	2,479,121	0	293,374	293,374	2,772,495
South Carolina	8,889,369	0	0	0	8,889,369
South Dakota	4,507,022	656,051	0	656,051	5,163,073
Tennessee	13,462,624	0	0	0	13,462,624
Texas	48,715,371	0	0	0	48,715,371
Utah	9,857,406	1,434,863	0	1,434,863	11,292,269
Vermont	2,111,348	307,332	0	307,332	2,418,680
Virginia	15,059,997	0	0	0	15,059,997
Washington	12,804,239	0	0	0	12,804,239
West Virginia	5,194,425	715,223	0	715,223	5,909,648
Wisconsin	13,585,678	0	0	0	13,585,678
Wyoming	3,496,766	508,996	0	508,996	4,005,762
FORMULA TOTAL	717,157,212	9,711,087	12,524,913	22,236,000	739,393,212
Guam	346,824	0	0	0	346,824
Virgin Islands	1,459,964	0	0	0	1,459,964
Indicia Postage	14,000,000	0	0	0	14,000,000
NATIONAL TOTAL	732,964,000	9,711,087	12,524,913	22,236,000	755,200,000

* - FUNDS ARE ALLOCATED TO THE 13 STATES WHOSE RELATIVE SHARE DECREASED FROM PY 1986 TO THE PY 1987 BASIC FORMULA AMOUNT AND WHICH HAVE A CIVILIAN LABOR FORCE (CLF) BELOW ONE MILLION AND ARE BELOW THE MEDIAN CLF DENSITY. THESE STATES ARE HELD HARMLESS AT 100% OF THEIR PY 1986 RELATIVE SHARE.

** - THE BALANCE OF THE 3% FUNDS ARE DISTRIBUTED TO THE REMAINING 12 STATES LOSING IN RELATIVE SHARE FROM PY 1986 TO THE PY 1987 BASIC FORMULA AMOUNT.

*** - HOLD HARMLESS PROVISIONS REQUIRED UNDER SECTION 6(B) OF THE WAGNER-PEYSER ACT, AS AMENDED, ARE MAINTAINED AT THE REVISED ALLOTMENT LEVEL.

[FR Doc. 87-3149 Filed 2-12-87; 8:45 am]
BILLING CODE 4510-30-C

VOL 52 ISS 30 FE 13 1987 UMI

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S–3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Alabama:
AL87–16 (Jan. 2, 1987) ..... p. 40.
District of Columbia:
DC87–1 (Jan. 2, 1987) ..... pp. 86,89.
Kentucky:
KY87–25 (Jan. 2, 1987) ..... pp. 350,353.
KY87–26 (Jan. 2, 1987) ..... pp. 356–359.
KY87–27 (Jan. 2, 1987) ..... pp. 362,365.
KY87–28 (Jan. 2, 1987) ..... pp. 368,370.
New York:
NY87–5 (Jan. 2, 1987) ..... pp. 721–724.
NY87–16 (Jan. 2, 1987) ..... pp. 816–819, pp. 821–824.
NY87–17 (Jan. 2, 1987) ..... p. 827.
Pennsylvania:
PA87–5 (Jan. 2, 1987) ..... pp. 885,895.
PA87–6 (Jan. 2, 1987) ..... p. 899, pp. 901–902.
PA87–7 (Jan. 2, 1987) ..... pp. 906–908, pp. 912 913.
PA87–8 (Jan. 2, 1987) ..... p. 917, pp. 921–922.
PA87–9 (Jan. 2, 1987) ..... pp. 926–928, pp. 930–931.
PA87–12 (Jan. 2, 1987) ..... pp. 942–944.
PA87–19 (Jan. 2, 1987) ..... p. 978, pp. 980–982.
PA87–21 (Jan. 2, 1987) ..... pp. 990–992.
PA87–23 (Jan. 2, 1987) ..... pp. 1007–1008.
PA87–24 (Jan. 2, 1987) ..... pp. 1012–1014.

Volume II

Illinois:
IL87–8 (Jan. 2, 1987) ..... p. 142.
Indiana:
IN87–2 (Jan. 2, 1987) ..... p. 253.
Michigan:
MI87–3 (Jan. 2, 1987) ..... p. 439.
Missouri:
MO87–3 (Jan. 2, 1987) ..... pp. 610–614.
New Mexico:
NM87–1 (Jan. 2, 1987) ..... p. 689.
NM87–2 (Jan. 2, 1987) ..... p. 707.
NM87–3 (Jan. 2, 1987) ..... p. 713.
Texas:
TX87–19 (Jan. 2, 1987) ..... p. 970.
TX87–45 (Jan. 2, 1987) ..... p. 1058.
Listing by location (index) ..... p. xxxv.

Volume III

Montana:
MT87–1 (Jan. 2, 1987) ..... pp. 176–178, p. 180.
MT87–2 (Jan. 2, 1987) ..... pp. 185–202.
Nevada:
NV87–1 (Jan. 2, 1987) ..... pp. 237–238.
NV87–2 (Jan. 2, 1987) ..... p. 258.
North Dakota:
ND87–1 (Jan. 2, 1987) ..... p. 218.
Washington:
WA87–1 (Jan. 2, 1987) ..... pp. 331–332, p. 339, pp. 347–348.
Listing by location (index) ..... p. xxi.
Listing by decision (index)p. xxxiii.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 6th day of February 1987.

James L. Valin,

Assistant Administrator.

[FR Doc. 87–2844 Filed 2–12–87; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

[Docket No. M–86–241–C]

Harlan-Wallins Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Harlan-Wallins Coal Company, Inc., P.O. Box 152, Coldiron, Kentucky 40819 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 15–14311) located in Harlan County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The typical mining height in the affected section ranges from 42 to 47 inches, with undulating roof and floor.

3. Petitioner states that the use of canopies on the mine's electric face equipment would result in a diminution of safety for the miners affected because the canopies could dislodge the roof bolts and restrict the equipment operator's visibility.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 16, 1987. Copies of the petition are available for inspection at that address.

Dated: February 5, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87–3164 Filed 2–12–87; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–86–250–C]

Kintzel Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Kintzel Coal Company, R.D. # 2, Box 592, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Lykens No. 6 Mine (I.D. No. 36–01886) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage of steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 16, 1987. Copies of the petition are available for inspection at that address.

Dated: February 4, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87–3165 Filed 2–12–87; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–86–226–C]

Mid-Continent Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Mid-Continent Resources, Inc., 1058 Road 100 P.O. Box 158, Carbondale, Colorado 81623 has filed a petition to modify the application of 30 CFR 75.1100–2(b) (quantity and location of firefighting equipment) to its Dutch Creek No. 1 Mine and its Rock Tunnels Project (I.D. No. 05–00301), and its Dutch Creek No. 2 Mine (I.D. No. 05–00469) all located in Pitkin County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that waterlines be installed parallel to the entire length of belt conveyors and be equipped with firehose outlets with valves at 300-foot intervals along each belt conveyor and at tailpieces. At least 500 feet of fire-hose with fittings suitable for connection with each belt conveyor waterline system shall be stored at strategic locations along the belt conveyor. Waterlines may be installed in entries adjacent to the conveyor entry belt as long as the outlets project into the belt conveyor.

2. As an alternate method, because of freezing and subfreezing conditions prevalent at the mine site the entire year, and the corrosive effect of standing water, petitioner proposes to establish, by designation, dry waterline systems with automatic and manual water-charging capabilities. In support of this request, petitioner states that:

(a) Dry power chemical systems will be installed for drives adjacent to a dry waterline, and two fire extinguishers will be installed adjacent to such drives;

(b) There will be a limit of five minutes elapsed time from actuation of the fire detection device to full water pressurization of such dry waterline, and it will meet flow and pressure requirements;

(c) An automatic fire detection device will be installed along each beltline companion to such a dry waterline, and when actuated will send an electrical signal to an actuator valve(s) which will thereby cause the valve(s) to

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automatically open and pressurize the dry waterline with water along its entire length. Manual valves will also be installed on each dry waterline to permit manual pressurization, and when necessary, manual draining of each dry waterline along its entire length;

(d) A gauge will be provided to indicate that a supply of water under pressure is available to each dry waterline, both automatic and manual valves;

(e) To prevent freezing, ice or slush accumulations, and corrosion which could block waterlines, each dry waterline will be drained or purged after it has been used, charged or tested, or it will be maintained with a low-pressure water flow sufficient to prevent it from freezing. Both automatic and manual valves will also be protected from freezing;

(f) Sufficient water will be available at all times to adequately charge and supply the needs of the dry waterlines;

(g) All persons regularly working in conveyor belt entries in which a dry waterline is installed will be trained in the automatic and manual operation of the dry waterline system; and

(h) Each dry waterline automatic fire detection and pressurization system will be visually inspected weekly and a test of the electrical and mechanical functions of the system will be conducted monthly. A dump-valve will be provided to facilitate such monthly tests without the necessity of pressurizing the entire dry waterline. A functional test of each dry waterline system, including its fire-detection system, its automatic water charging components, and its manual activation system, will be conducted annually.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 16, 1987. Copies of the petition are available for inspection at that address.

Dated: February 5, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-3166 Filed 2-12-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-246-C]

Arch of Kentucky, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Arch of Kentucky, Inc., P.O. Box 787, Lynch, Kentucky 30855 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 32 Mine (I.D. No. 15-02008), its Mine No. 33 (I.D. No. 15-02007), and its Mine A (I.D. No. 15-15711), all located in Harlan County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mines are in the High Splint and Winifrede coal seams, and range from 42 to 60 inches in height, with ascending and descending grades.

3. Petitioner states that the use of canopies on the mine's electric face equipment would result in a diminution of safety for the miners affected because the canopies could dislodge roof supports and entrap equipment. In addiition, the canopies decrease the operator's visibility and create discomfort to the operator, thus increasing the chances for an accident.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 16, 1987. Copies of the petition are available for inspection at that address.

Dated: February 5, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-3160 Filed 2-12-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-252-C]

Big Hill Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Big Hill Coal Company, Hatfield, Kentucky 41514 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 9 (I.D. No. 15-13300) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The height of the mine ranges from 38 to 50 inches, with dips and rolls. Petitioner states that the use of cabs or canopies on the mine's scoops causes both visibility and safety problems.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 16, 1987. Copies of the petition are available for inspection at that address.

Dated: February 5, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-3161 Filed 2-12-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-210-C]

Black Horse Coal Mining & Sales, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Black Horse Coal Mining & Sales, Inc., P.O. Box 125, Marianna, West Virginia 24859 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Carol Mine (I.D. No. 46-04813) located in Wyoming County, West Virginia. The petition if filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return air courses be examined in their entirety on a weekly basis.

2. Petitioner states that due to deteriorated roof conditions in the specified return air course, weekly examinations are too hazardous to be performed. In addition, rehabilitation of the affected area would expose miners to hazardous conditions.

3. As an alternate method, petitioner proposes to establish evaluation points at specific locations where gas and air measurements will be taken. The results of such examinations will be recorded.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 16, 1987. Copies of the petition are available for inspection at that address.

Dated: February 4, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-3162 Filed 2-12-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-243-C]

Black Horse Coal Mining & Sales, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Black Horse Coal Mining & Sales, Inc., P.O. Box 125, Marianna, West Virginia 24859 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Ace Mine (#64 Portal) (I.D. No. 46-04940) located in Wyoming County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return air courses be examined in their entirety on a weekly basis.

2. Petitioner states that due to deteriorated roof conditions in the specified return air course, weekly examinations are too hazardous to be performed. In addition, rehabilitation of the affected area would expose miners to hazardous conditions.

3. As an alternate method, petitioner proposes to establish evaluation points at specific locations where gas and air measurements will be taken. The results of such examinations will be recorded.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 16, 1987. Copies of the petition are available for inspection at that address.

Dated: February 4, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-3163 Filed 2-12-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-207-C]

Monterey Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Monterey Coal Company, P.O. Box 496, Carlinville, Illinois 62626-0496 has filed a petition to modify the application of 30 CFR 77.216-3(a) (water, sediment, or slurry impoundments and impounding structures; inspection requirements; correction of hazards; program requirements) to its No. 2 Mine (I.D. No. 11-02371) located in Clinton County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all water, sediment, or slurry impoundments be examined by a qualified person at intervals not exceeding seven days for appearances of structural weakness and other hazardous conditions, and that all instruments be monitored at intervals not exceeding seven days.

2. Petitioner seeks a modification of that portion of the standard which requires the operator to inspect impoundments at intervals not to exceed seven days and to monitor instruments at intervals not to exceed seven days.

3. As an alternate method, petitioner proposes to inspect the impoundments and monitor instruments on a monthly basis in lieu of every seven days. The monthly inspections would be supplemented by additional inspections if major precipitation or runoff occurs.

4. In support of this request, petitioner states that the Fresh Water Lake and the Recirculation Lake are engineered structures which were rigidly controlled during their construction. They have not changed in geometry since completion in 1976. The impounding embankments have an excellent vegetative cover and in addition have been riprapped above and below the water line. Weekly inspections over the past 10 years have shown no signs of erosion problems or other signs of instability. Neither miners nor the general public work or live within several miles downstream of these structures.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 16, 1987. Copies of the petition are available for inspection at that address.

Dated: February 5, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-3167 Filed 2-12-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-251-C]

Plateau Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Plateau Mining Company, P.O. Drawer PMC, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.1101-8 (water sprinkler systems; arrangement of sprinklers) to its Star Point No. 2 Mine (I.D. No. 42-00171) located in Carbon and Emery Counties, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the installation requirements of water sprinkler systems.

2. As an alternate method, petitioner proposes to use a single line of automatic sprinklers for fire protection systems at main and secondary belt

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conveyor drives. In support of this request, petitioner states that:

(a) Automatic sprinklers will be maintained at a distance of no more than 10 feet apart with actuation temperatures between 200 degrees F. and 230 degrees F.;

(b) Automatic sprinklers will be located so that the discharge of water will extend over the belt drive;

(c) During operation of the system, water pressure will not be less than 10 psi;

(d) The sprinkler line wil be a minimum length at the drive of 50. belt;

(e) A test to insure proper operation will be conducted during the installation of each new system and during subsequent repair or replacement of any critical part; and

(f) In areas where freezing conditions exist, the sprinkler system would be charged with a specific mixture of antifreeze (Ethylene-Glycol).

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 16, 1987. Copies of the petition are available for inspection at that address.

Dated: February 5, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-3168 Filed 2-12-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-245-C]

12 Vein Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

12 Vein Coal Company, R.D. 1, Box 369, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of the 30 CFR 75.301 (air quality, quantity, and velocity) to its 12 Vein Slope (I.D. No. 36-07773) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air in any coal mine reaching each working face shall be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine. Ignition, explosion, and mine fire history are nonexistent for the mine. There is no history of harmful quantities of carbon monoxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 16, 1987. Copies of the petition are available for inspection at that address.

Dated: February 4, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-3169 Filed 2-12-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-69-C]

Utah Power & Light Co.; Petition for Modification of Application of Mandatory Safety Standard

Utah Power & Light Company, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75-503 (permissible electric face equipment; maintenance) to its Little Dove Mine (I.D. No. 42-01393) located in Emery County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each mine use permissible electric face equipment and maintain such equipment in permissible condition.

2. As an alternate method, petitioner proposes to use No. 4 AWG, 3-conductor, Type G-GC, 2 KV flat trailing cables in excess of 600 feet and to permit the short-circuit protection setting for the 2/0 AWG trailing cable for the continuous miner in excess of 1500 amperes.

3. Petitioner states that the proposed increase of the short-circuit setting of the circuit breaker protecting the 2/0 trailing cable is necessary because of nuisance tripping during periods of heavy loading and machine start-up. The machine and trailing cable have been thoroughly examined to assure that they are in good repair and that they are operating properly. Nuisance tripping of this circuit breaker causes undue wear, electrical and mechanical stress, and general degradation which will result in premature failure and/or malfunction of the circuit breakers. The proposed setting will eliminate the nuisance tripping and yet provide the required electrical protection.

4. Petitioner states that increasing the length of the shuttle car cables will eliminate the need for backspooling and the addition of junction boxes. Backspooling causes undue wear and damage to the trailing cable which results in premature failure and/or breakdown of the cable. This cable damage creates a greater potential for fire hazards and shock hazards to occur. Elimination of junction boxes reduces required system maintenance and also eliminates another potential source of fire and shock hazards.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 16, 1987. Copies of the petition are available for inspection at that address.

Dated: February 5, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-3170 Filed 2-12-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-229-C]

Warrior Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Warrior Coal Corporation, P.O. Box 911, Madisonville, Kentucky 42431 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Cardinal Mine (I.D. No. 15-14335) located in Hopkins County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries.

2. Petitioner was previously granted a modification of 30 CFR 75.326 (M-84-99-C) to use the belt slope for return air and as a secondary escapeway until the mine workings crossed Pogue's Creek, at which time an airshaft would have to be installed into the mine workings.

3. Petitioner did drive a development to an existing airshaft into the Zeigler #9 workings and cut into the airshaft which allowed the slope belt to be put on neutral air and return air out of the airshaft. Since then, the mine workings have deteriorated.

Salt water subsurface drainage has broken into the mine, believed to be from an abandoned and uncharted oil well rendering the use of the return air to the Zeigler airshaft and escapeway ineffective. Petitioner desires to seal this affected area off.

4. As an alternate method, and in accordance with its original petition, petitioner proposes to develop an east entry to Pogue's Creek using a continuous miner. Petitioner believes that this will produce better conditions with a 4 entry system with 1 entry being on intake air, a belt entry on neutral and 2 entries on return air. Upon the successful development of the east entry, the petitioner proposes to put in an airshaft upon property which has been granted in the previous petition. Petitioner will then put in an airshaft and escapeway to ventilate the mine workings.

5. The slope is lined with Armco and has a concrete floor. The belt will be isolated from the mine workings by an airlock and some 10 feet of vertical distance at the point of entry from the mine belt to the slope. The length of the belt slope which will be used for a secondary escapeway is approximately 450 feet. A methane monitor is located at the point of entry of the return air in the belt slope. A carbon monoxide monitor is located at the portal to the slope.

6. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 16, 1987. Copies of the petition are available for inspection at that address.

Dated: February 5, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-3171 Filed 2-12-87; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Application No. D-6641 et al.]

Proposed Exemptions; The Blossman Companies, Inc. Employee Stock Ownership Plan and Trust (the Plan) et. al

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these

8. An exemption is requested to allow Plan. It also represents that it fully (c) the sale will enable the Plan and BID

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notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

The Blossman Companies, Inc. Employee Stock Ownership Plan and Trust (the Plan) Located in Ocean Springs, MI

[Application No. D-6641]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) the proposed sale by the Plan of certain improved real property (the Property) and of a lease (the Lease) with respect to the Property to Alpha Investment Corporation (Alpha), a party in interest with respect to the Plan; and (2) the assumption by Alpha, in connection with the proposed sale, of a first deed of trust obligation of the Plan (the Loan), provided the terms of the transactions are at least as favorable to the Plan as those obtainable in arm's length transactions with an unrelated party.

Summary of facts and Representations

1. Blossman, Inc. of Delaware (BID) is a Delaware corporation maintaining its principal place of business in Ocean Springs, Mississippi. BID is engaged in the retail sale of liquefied petroleum gas and related products. BID conducts its business through several corporations, all of which are subsidiaries or are under common control of BID's shareholders (the Related Corporations). The officers and directors of BID are Messrs. John Blossman, A.L. Allen, Jr. and Robert C. Mayer (Messrs. Blossman, Allen and Mayer).

In 1983, BID and the Related Corporations underwent a corporate reorganization. A holding company known as The Blossman Companies, Inc. (BCI) was established. BIC became the 100 percent owner of the outstanding stock of BID and the Related Corporations. Mr. Blossman is the owner of 37,890 shares of the outstanding voting stock and 101,502 shares of the outstanding non-voting stock of BCI. Mr. Blossman's ownership interest in BIC represents approximately 35 percent of the total voting shares and 26 percent of the total outstanding non-voting shares of this entity.

2. Alpha is a Louisiana corporation engaged in the business of holding real estate investment properties. Alpha maintains its offices in Ocean Springs, Mississippi. Alpha is presently owned exclusively by Mr. Blossman. Messrs. Blossman, Allen and Mayer also serve as the officers and directors of Alpha.

3. On November 29, 1974, BID and the Related Corporations adopted the Plan which is an employee stock ownership plan. On November 30, 1984, the Plan had 321 participants and total assets having a fair market value of $4,702,382. (As of that date, BCI stock held by the Plan had a fair market value of $3,959,734. Such stock constituted approximately 84 percent of the Plan's assets.) The trustee of the Plan (the Trustee) is Trustmark National Bank of Jackson, Mississippi. To a significant extent, the Trustee's investment actions are subject to the direction of a Plan committee comprised of Messrs. Blossman, Allen and Mayer. However, since the Trustee will serve as the independent fiduciary with respect to the proposed transactions, it will have complete discretion with respect to such transactions.

4. Among the Plan's assets is the Property located at 809 Washington Avenue, Ocean Springs, Mississippi. The Property was acquired from Mr. Chester McPherson (Mr. McPherson) and Mr. Robert Baker, unrelated parties, on November 9, 1982 for a purchase price of $145,600. The Property, which is adjacent to BID's headquarters, consists of a parcel of vacant land used as a parking facility and a brick office building. There is also a 12 foot easement for ingress and egress from the parking lot.

5. The Plan acquired the Property by making a $49,350 cash downpayment to the sellers. Then, the Plan assumed a first deed of trust previously executed between Ms. Katherine C. Harper, an unrelated party, and Mr. McPherson (the Harper Loan). As of November 1982, the Harper Loan had an outstanding principal balance of $32,500. At present, the Harper Loan has been paid in full.

In addition, the balance of the purchase price on the Property was obtained by the Plan through another loan provided by the First National Bank of Mobile (the Bank) located in Mobile, Alabama (the Bank Loan) which served as the Plan trustee at that time.[1] The Plan was required to repay the Bank Loan in 120 consecutive monthly installments of $354 plus accrued interest at the rate of one percent above the prime rate of Chemical Bank, N.A. of New York. The first installment under the Bank Loan was due on December 15, 1982. On December 15, 1992, the date of the final Bank Loan installment, a balloon payment of $21,249 plus any unpaid principal and/or interest will become due and payable. Since the making of the Bank Loan, all payments due thereunder have been timely made. As of February 28, 1986, the Bank Loan had an outstanding principal balance of $51,354.

6. The Plan commenced leasing the Property to BID under the terms of a ten year triple net lease. The Lease requires BID to pay all real estate taxes, insurance, utilities, the cost of repairs and other expenses relating to the operation and maintenance of the Property. In addition, it provides for a monthly rental of $2,300. The applicant acknowledges that the past and continued leasing of the Property by the Plan to BID has constituted a prohibited transaction. Accordingly, it represents that it will pay the Internal Revenue Service (the Service) all excise taxes that are applicable under section 4975(a) of the Code by reason of the Lease within 90 days of the publication in the **Federal Register** of the grant of this proposed exemption. In addition, the applicant represents that it will pay the Plan the amount, if any by which the fair market rental value of the Lease exceeds the actual rental payments together with interest on such excess for the period from November 9, 1982 until the date the Property is sold if and as such amounts are determined by the Trustee. The applicant further represents that if the Service determines that any portion of the rental payment must be considered an annual contibution to the Plan, the additional contribution will not cause BID's contribution for any plan year to exceed the annual limitation of section 415 of the Code.

7. Since the inception of the Lease, BID has made certain valuable improvements to the Property at its own expense. These improvements include the conversion of the Property from retail stores of office space; the remodeling of floors, walls and ceilings; and the construction of a special floor for the office computer.

[1] The Department is not, herein, proposing any exemptive relief for the Bank Loan.

8. An exemption is requested to allow the Plan to sell the Property and Lease to Alpha for a price reflecting their fair market values as determined by an independent appraiser. Alpha will make one cash payment for the Property and it will assume the outstanding balance of the Bank Loan. Alpha will also assume responsibility for all costs, real estate commissions and fees incurred by the Plan in connection with the proposed sale.

9. The fair market value of the Property and Lease was determined initially by Mr. E.W. Halstead, Jr. (Mr. Halstead), an independent fee appraiser from Ocean Springs, Mississippi. On November 27, 1984, Mr. Halstead placed the fair market value of the Property exclusive of the Lease at $150,000. In an appraisal report dated November 20, 1985, another independent appraiser, Mr. Jim Horne, M.A.I. (Mr. Horne), of Pascagoula, Mississippi also determined the Property had a fair market value of $150,000 free of the Lease. The date of Mr. Horne's valuation was November 11, 1985. In addition, Mr. Horne placed the fair market value of the Property subject to the Lease at $172,500 as of November 11, 1985.

Mr. Horne also states that he is of the opinion that the Lease rental payments are excessive. As such, he considers the fair market rental value of the Property to be approximately $646 per month less than the current contract rent and feels the excess rent being paid for the remaining Lease term has contributed additional value of the building. Because BID is a substantial tenant with an excellent credit rating, Mr. Horne believes it would be reasonable to assume the Lease will be honored. Therefore, he estimates a value of $22,500 for the rent.

Mr. Horne also indicates the Property has no special or unique value to Alpha by reason of its proximity to BID's headquarters. Accordingly, he does not believe Alpha should be required to pay a higher purchase price.

Thus, the purchase price to be paid by Alpha for the Property and the Lease will be based on the $172,500 valuation established by Mr. Horne.

10. As stated previously, the Trustee will serve as the independent fiduciary for the Plan with respect to the proposed transactions. According to the applicant, there are no interlocking officers and directors between the Trustee, BCI or the Related Corporations. In addition, neither BCI nor any of the Related Corporations has any bank accounts, loans or any other business activity with the Trustee. By letter dated March 10, 1986, the Trustee acknowledges that it will be the independent fiduciary for the Plan. It also represents that it fully understands its liabilities and responsibilities as a fiduciary under the Act and it states that it has consulted with legal counsel regarding those liabilities and responsibilities. The Trustee further states that it will act solely on behalf of the Plan and its participants with respect to the proposed transactions.

11. The Trustee represents that the terms of the proposed transactions are in the best interests of the Plan and its participants and beneficiaries because:

(a) The appraisal performed by Mr. Horne fairly and accurately reflects the fair market value of the Property considering the remaining period of the Lease. As such, the Trustee believes the proposed purchase price of $172,500 is reasonable, fair and in all likelihood, more than the Plan could realize in a sale to an unrelated party.

(b) The terms of the proposed sale will not result in any debt being owned by the Plan since Alpha will assume the current indebtedness owned by the Plan under the Bank Loan. Moreover, the Trustee states that the balance of the purchase price will be "all cash" to the Plan.

(c) The agreement by BCI to pay the Plan any deficient rent and interest that the Trustee may determine is due from the inception of the Lease to the date of the sale would not be available to the Plan in a sale transaction with an unrelated party.

(d) The proposed sale of the Property and the Lease will result in increased liquidity for the Plan, eliminate the fixed obligation of the Plan in connection with the Bank Loan, eliminate all management responsibilities of the Plan with respect to the Property and eliminate the prohibited transaction existing by reason of the Lease.

As the independent fiduciary, the Trustee represents that it will review any and all documentation required in connection with the sale and generally monitor the transactions. The Trustee will also perform all services required of it in connection therewith in a manner consistent with the best interests of the Plan and its participants.

12. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the purchase price for the Property and the Lease has been determined by independent appraisers; (c) the Plan will not be required to pay any real estate fees or commissions in connection with the proposed sale; (d) Alpha will assume the Plan's obligations under the Bank Loan; (e) the sale will enable the Plan and BID to terminate the Lease and thereby end an ongoing prohibited transaction; (f) the Trustee, which will monitor the proposed transactions on behalf of the Plan as the independent fiduciary, believes the proposed transactions are in the best interests of the Plan and its participants and beneficiaries; (g) BID will pay the Service all applicable excise taxes which may be due by reason of the past and continued leasing of the Property by the Plan to BID within 90 days of the publication in the **Federal Register** of the grant of the notice of proposed exemption; and (h) BID will pay the Plan the amount, if any, by which the fair market rental value of the Lease exceeds actual rental payments together with interest on such excess for the period from November 9, 1982 until the date the Property is sold, if and as such amounts are determined by the Trustee.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including section 401(a)(4), 404 and 415.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons by either mail or hand delivery within 30 days of the date of publication of the notice of pendency in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment on and/or to request a hearing with respect to the proposed exemption. Comments are due within 60 days of the date of publication of the proposed exemption in the **Federal Register**.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8196. (This is not a toll-free number).

Midwest Financial Group Employee Savings Plan and Trust (the Plan) Located in Kankakee, Illinois

[Application No. D-6664]

Proposed Exemption

The Department is considering granting an exemption under the

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authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975 (c)(1)(A) through (e) of the Code shall not apply to the proposed cash sale of a parcel of real property by the Plan to First Trust and Savings Bank of Kankakee (the Employer) for $99,000, provided that the terms of the transaction are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time the transaction is consummated.

Summary of Facts and Representations

1. Midwest Financial Group, Inc. (MFG) is an Illinois bank holding company. MFG is the parent company for several Illinois banks, including the Employer. The Midwest Financial Group Employee Savings Plan and Trust (MFG Plan) is qualified under section 401(a) of the Code. Effective January 1, 1985, certain profit sharing and money purchase pension plans maintained by MFG's wholly-owned subsidiaries were merged into the MFG Plan, including those of the Plan.

2. The estimated number of participants in the MFG Plan is 1627 and the MFG Plan had total assets of approximately $19,789,131 as of March 31, 1986. As of December 31, 1984 there were 119 participants in the Plan and the Plan had total assets of $5,247,000.

3. On June 15, 1973, the Plan acquired lots 13 and 16 located at the Northwest corner of East Station and South Dearborn Streets, Kankakee, Illinois (Dearborn Property) from the Block's Children's Trust (an unrelated party) for $70,000. On June 30, 1973, the Plan leased the Dearborn Property to the Employer for a 5 year period at an annual rental of $5,000 (Old Lease).[1] The Old Lease also provided the Employer with an option to extend the lease for an additional 5 year period, which option was exercised by the Employer.

4. On November 30, 1981, the Plan exchanged the Dearborn Property for an adjacent parcel of land owned by the Bergeron family (unrelated parties). The property owned by the Bergeron family, consisting of 32,915 square feet, was located in the 300 block of South Dearborn Avenue, Kankakee, Illinois (the Bergeron Property). When the exchange occurred, the Plan paid the Bergeron family $25,000 and assumed responsibility for a $4,000 real estate commission, making the Plan's total cost basis in the Bergeron Property $99,000.

5. On November 30, 1981, in order to allow the Plan to exchange the Dearborn Property for the Bergeron Property, the Plan agreed to release the Employer from the extension of the Old Lease in consideration of executing a new lease on the Bergeron Property, effective December 1, 1981. The lease on the Bergeron Property (New Lease) was a triple net lease in favor of the Plan for a 5 year period and provided for an annual rental of $14,850.

6. The applicant was informed by legal counsel that the New Lease could be considered to be a prohibited transaction and in order to toll the excise taxes accruing, the Plan has filed this exemption request to allow it to sell the Bergeron Property to the Employer.[2] The Plan proposes to sell the Bergeron Property to the Employer for $99,000 in cash (the Plan's cost basis) with all costs of sale being paid by the Employer. The Bergeron Property was appraised by William A. Lammen, S.R.A., an unrelated appraiser with the Kankakee Appraisal Company, Kankakee, Illinois, as having a fair market value of $84,000 as of March 14, 1986.

7. The Trustee of the Plan has reviewed the appraisal of the Bergeron Property, the marketability and appreciation potential of the Bergeron Property, and the needs of the Plan and has determined that the proposed sale transaction is in the best interests of the Plan, its participants and beneficiaries. The applicant represents that the proposed cash sale would provide the Plan with cash in order to pay benefits to its participants and allow the Plan to invest the proceeds of sale in assets which have better long term prospects for appreciation. Further, the sales price of the Bergeron Property to the Plan significantly exceeds its current appraised value.

8. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act because:

(a) It will be a one time transaction for cash;

(b) All costs of sale will be paid by the Employer;

(c) The Plan's trustee represents that the transaction is in the best interests of the Plan's participants; and

(d) The sale will terminate an existing prohibited transaction.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

For Further Information Contact: (Alan H. Levitas of the Department, telephone (202) 523–8194. (this is not a toll-free number.)

James S. Torchia, D.D.S. Profit Sharing Plan (the Profit Sharing Plan) and James S. Torchia, D.D.S. Inc. Pension Plan (the Pension Plan; collectively the Plans) Located in Tulsa, Oklahoma

[Application Nos. D–6759 and D–6760]

Proposed Exemption

The Department is considering granting and exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale of an undivided interest in a parcel of real property by the Plans to Dr. James S. Torchia (Dr. Torchia), a party in interest with respect to the Plans, provided that the terms of the transaction are not less favorable to the Plans than those obtainable in an arm's-length transaction with an unrelated person at the time the transaction is consummated.

Summary of Facts and Representations

1. The Plans are a Profit Sharing Plan with seven participants and a Pension Plan with six participants. The Profit Sharing Plan has net assets of approximately $370,878 as of February 28, 1986 and the Pension Plan $428,363 as of December 31, 1985. Dr. Torchia is the trustee and administrator of the Plans.

[1] The applicant represents that the Old Lease qualified for relief under the transitional rules provided under section 414 of the Act. In this proposed exemption the Department expresses no opinion as to the applicability of section 414 of the Act to the Old Lease.

[2] The applicant has agreed to pay any excise taxes which may be found to be due on the New Lease.

2. The Plans currently own an undivided interest in a parcel of improved real property located at 9405 South Yale, Tulsa, Oklahoma (the Property). The Property was originally acquired by James S. Torchia, D.D.S., Inc., the Plans' sponsor, for $43,000 in June of 1972. The Plans' sponsor subsequently sold the Pension Plan a 43% in the Property for $18,490 and a 35% interest in the Property to the Profit Sharing Plan for $15,050 in February 1973.*

3. The Property consists of a 4.998 acre tract of land and is improved by a small two bedroom house. The Property is currently leased to Mr. Bryan Tiger, an unrelated party for $250 per month. The tenancy is on a month to month basis, without a written lease agreement.

4. The Plans now propose to sell their interests in the Property to Dr. Torchia for the greater of the Property's current appraised value of $130,410 or the appraised value on the date of sale. The property was appraised by Mr. Ty Hogan of Ty Hogan Real Estate Company, Tulsa, Oklahoma, as having a fair market value of $130,410 as of July 31, 1986. The proceeds of sale will be paid in cash by Dr. Torchia and the will pay all costs relating to the transference of the Property.

5. The Plans desire to dispose of the Property because it is not currently appreciating in value. The current expenses on the Property exceed the rental income. Also, the Plans, will be able to dispose of an unproductive asset for cash, enabling them to diversify their investment portfolios and to reinvest the proceeds in higher yielding investments. Further, the applicant represents that the joint ownership of the Property may lead to problems because of the divergent interests of the parties.

6. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) It will be a one time transaction for cash;

(b) The Plans will be able to dispose of an unprofitable investiment for its current appraised value; and

(c) The terms of the transaction are no less favorable to the Plans than those obtainable in an arm's-length transaction with an unrelated person.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Boulder Orthopedics, P.C. Pension Plan and Boulder Orthopedics, P.C. Profit Sharing Plan (the Plans) Located in Boulder, Colorado

[Application Nos. D–6872 and D–6873]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of a parcel of undeveloped real property (the Property) from the individual accounts in the Plans of Rex C. Bosley, M.D. (Bosley) to Bosley, a party in interest with respect to the Plans, provided the Plans receive no less than fair market value for the property at the time of sale.

Summary of Facts and Representations

1. Boulder Orthopedics, P.C. (the Corporation) is a Colorado professional corporation which is engaged in the practice of medicine, specializing in orthopedic surgery. The Boulder Orthopedics, P.C. Pension Plan (the Pension Plan) is a money purchase pension plan with seven participants and total assets of $400,756 as of September 30, 1985. The Boulder Orthopedics, P.C. Profit Sharing Plan (the Profit Sharing Plan) had seven participants and total assets of $509,367 as of September 30, 1985. Both Plans contain individual, segregated accounts for each participant and provide that a participant may direct the investments of his or her account.

2. Bosley is the president and a 50 percent shareholder of the Corporation as well as a participant in the Plans. Bosley is also a trustee and administrator of the Plans. As of September 30, 1985, the assets in Bosley's account in the Pension Plan totaled $307,120 and the assets in Bosley's account in the Profit Sharing Plan equaled $376,737. In October 1985, the Plans purchased the Property on behalf of Bosley's individual accounts. The Property is a parcel of 3.02 acres of undeveloped real property located near Boulder, Colorado. The Property was bought for $115,000 in cash from a party unrelated to Bosley or to the Plans. The Pension Plan owns 44.9 percent and the Profit Sharing Plan owns 55.1 percent of the Property. The Property was purchased by the accounts for general investment purposes and has not been used by Bosley or any other party in interest since the time of acquisition.

3. An appraisal was made on the Property on August 26, 1986, by Lloyd L. Leabhard (Leabhard), a real estate appraiser located in Boulder, Colorado. The applicant represents that Leabhard is independent of Bosley and of the Plans. Leabhard states that the Property is a residential building site which is part of a nonurban planned unit development consisting of approximately 65 acres of open space. Placing emphasis on the comparable sales approach, Leabhard estimated that the fair market value of the Property was $115,000.

4. The Property was purchased because Bosley anticipated that it would appreciate in value. However, because of the weak real estate market in the Boulder area since the purchase, the expected appreciation has not occurred. Accordingly, the Plan trustees propose to sell the Property from Bosley's segregated accounts in the Plans to Bosley. Bosley will pay the greater of fair market value for the Property at the time of sale, based on an updated independent appraisal, or the total cost to the Plans of acquiring and holding the Property, including any acquisition expenses and property taxes. Bosley will pay cash for the Property and the Plans will pay no fees or commissions in connection with the sale. The Plans will invest the proceeds from the sale on behalf of Bosley's accounts in assets which are more liquid and produce income for the accounts.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) The sale of the Property will be entirely for cash and the Plans will pay no commissions or fees in connection with the sale; (2) Bosley will pay current fair market value for the Property or the total cost to the Plans of acquiring and holding the Property, whichever is higher; (3) the transaction will involve only Bosley's segregated accounts in the Plans and will not affect the assets of other Plan participants; and (4) the proceeds realized from the sale of the Property will be invested in assets which are more liquid and produce income for Bosley's accounts.

For Further Information Contract: Paul Kelty of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

* In this proposed exemption the Department is not expressing any opinion concerning whether the prior investment by the Plans and the Plans' sponsor was a prohibited transaction.

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General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 10th day of February, 1987.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87-3128 Filed 2-12-87; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 87-21; Exemption Application No. D-6453 et al.]

Grant of Individual Exemptions; Commercial Metals Company Profit Sharing (the Plan) et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statment of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following fidings;

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Commercial Metals Company Profit Sharing Plan (the Plan) Located in Dallas, Texas

[Prohibited Transaction Exemption 87-21; Exemption Application No. D-6453]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale of certain real and personal property by the Plan to Commercial Metals Company, provided that the terms of the transactions are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 5, 1986 at 51 FR 43992.

For Further Information Contact: Alan Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

BFS, Inc. Profit Sharing Plan and Style Center, Inc. Profit Sharing Plan (the Plans) Located in Honolulu, Hawaii

[Prohibited Transaction Exemption 87-22; Exemption Application Nos. D-6675 and D-6676]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Plans to BFS, Inc. of interests in the Captain Cook Lands Partnership, provided the Plans receive no less than fair market value for the interests at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 21, 1986 at 51 FR 42149.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523-8196. (This is not a toll-free number.)

Metalex Manufacturing, Inc. Employee Profit Plan and Trust (the Plan) Located in Cincinnati, Ohio

[Prohibited Transaction Exemption 87-23; Exemption Application No. D-6722]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale for cash by the Plan of certain real property (the Real Property) to Werner K. Kummerle, a party in interest with respect to the Plan, provided that the amount received is the greater of the fair market value of the Real Property as of the date of sale or the Plan's total outlay for the Real Property to the date of sale, including but not limited to, the price originally paid by the Plan for the Real Property, property taxes, interest and maintenance expenses.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 18, 1986 at 51 FR 41705.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 29th day of January, 1987.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87-3129 Filed 2-12-87; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Critical Engineering Systems Section; Meeting

Name: Advisory Committee for Critical Engineering Systems Section.

Date and Time:

March 2
9:00 a.m.—5:00 p.m.

March 3
9:00 a.m.—12:00 p.m.

Place: National Science Foundation, 1800 G Street, NW.—Room 540, Washington, DC 20550.

Type: Open.

Contact: Dr. Michael P. Gaus, Head, Critical Engineering, Systems Section/ECES, National Science Foundation, 1800 G Street NW.—Room 1130, Washington, DC 20550. Phone: 202-357-9545.

Minutes: "May be obtained from contact person listed above."

Purpose of Meeting: To provide advice and recommendations concerning fundamental research for critical engineering systems.

Agenda: Review of research content of the following research programs: Earthquake Hazard Mitigation, Natural & Manmade Mitigation, Environmental Engineering, Systems Engineering for Large Structures along with plans for the future.

M. Rebecca Winkler,

Committee Management Officer.

February 10, 1987.

[FR Doc. 87-3137 Filed 2-12-87; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Physics Subcommittee for Review of the NSF Theoretical Physics Program; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Physics: Subcommittee for the Review of the NSF Theoretical Physics Program.

Date and Time:

March 5, 1987
9:00 a.m. to 6:00 p.m.

March 6, 1987
9:00 a.m. to 4:00 p.m.

Place: Room 341, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Harvey B. Willard, Director, Division of Physics, Room 341, National Science Foundation, Washington, DC 20050, (202) 357-7985.

Purpose of Subcommittee: To provide oversight concerning NSF support and planning for research in theoretical physics.

Agenda: To review NSF Theoretical Physics Program documentation as part of the program oversight function.

Reason For Closing: The meeting will deal with a review of grants and declinations in which the Subcommittee will review materials containing the names of applicant institutions and principal investigators and privileged information from the files pertaining to the proposals. The meeting will also include a review of the peer documentation pertaining to applicants. These matters are within exemptions (4) and (5) U.S.C. 552b (c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10 (d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

February 10, 1987.

[FR Doc. 87-3138 Filed 2-12-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-320]

General Public Utilities Nuclear Corp. (Three Mile Island Nuclear Station Unit 2); Exemption

I

GPU Nuclear Corporation, Metropolitan Edison Company, Jersey Central Power and Light Company and Pennsylvania Electric Company (collectively, the licensee) are the

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holders of Facility Operating Licensing No. DPR-73, which had authorized operation of the Three Mile Island Nuclear Station, Unit 2 (TMI-2) at power levels up to 2772 megawatts thermal. The facility, which is located in Londonderry Township, Dauphin County, Pennsylvania, is a pressurized water reactor previously used for the commercial generation of electricity.

By Order of Modification of License, dated July 20, 1979, the licensee's authority to operate the facility was suspended and the licensee's authority was limited to maintenance of the facility in the present shutdown cooling mode (44 FR 45271). By further Order of the Director, Office of Nuclear Reactor Regulation, dated February 11, 1980, a new set of formal license requirements was imposed to reflect the post-accident condition of the facility and to assure the continued maintenance of the current safe, stable, long-term cooling condition of the facility (45 FR 11292). The license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II

By letter dated December 10, 1986, the licensee requested exemptions from the requirements of 10 CFR Part 50, Appendix A, General Design Criteria (GDC) 17 and 19, concerning electric power systems and control room habitability. Specifically, GDC 17 requires that an onsite electric power system and an offsite electric power system shall be provided to permit functioning of structures, systems and components important to safety. GDC 17 further requires that the safety function for each system (assuming the other system is not functioning) should be to provide sufficient capacity and capability to assure that (1) specified acceptable fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded as a result of anticipated operational occurrences and (2) the core is cooled and containment integrity and other vital functions are maintained in the event of postulated accidents. Additionally, GDC 17 specifies that both onsite and offsite electric power systems should have sufficient independence and redundancy to perform their safety functions assuming a single failure. As relevant to the licensee's request, GDC 19 requires that a control room shall be provided from which actions can be taken to operate the nuclear power unit safely under normal conditions and to maintain it in a safe condition under accident conditions, including loss-of-coolant accidents. GDC 19 further requires that adequate radiation protection shall be provided to permit access and occupancy of the control room under accident conditions without personnel receiving radiation exposures in excess of 5 rem whole body, or its equivalent to any part of the body, for the duration of the accident. Under the TMI-2 operating license, control room habitability during accident conditions has been assured through the operability of the control room emergency air cleanup system. In the unlikely event of an accident with concurrent loss of offsite power (LOOP), the diesel generators would provide onsite emergency backup power to assure the operability of the system.

III

The licensee has requested exemption from the indicated General Design Criteria in conjunction with license amendment requests submitted by letters dated June 16, 1985 and July 31, 1985, as modified by letters dated February 26, 1986 and May 20, 1986 and in additional discussions with the staff. The staff has reviewed the safety evaluations submitted in support of the proposed license amendments, which also provide the bases for the licensee's exemption requests. Specifically, the licensee proposes to delete all license requirements for availability and operability of the Class 1E diesel generators. As a result of previous amendments to the facility license to reflect the unique post-accident status of the TMI-2 facility, the control room emergency air cleanup system is the only remaining system requiring power from the onsite diesel generators. Consequently, the licensee also proposes to delete the license requirement for onsite emergency backup power to this system.

TMI-2 is currently in a long-term cold shutdown for accident recovery and defueling. Short-lived fission products which make up the preponderance of the source term in operating reactors have decayed to negligible levels. Decay heat is less than 10 kilowatts and forced cooling of the core has not been required or used since 1981. Core cooling and criticality control are provided by maintaining a sufficient volume of borated water in the RCS. Natural convective heat loss from the RCS directly to the reactor building atmosphere provides sufficient decay heat removal capability. In the unlikely event of the maximum credible TMI-2 loss of coolant accident, previously analyzed by the staff, sufficient borated water would be provided by passive, gravity feed from the borated water storage tank to keep the core covered for a minimum of 10 days. The standby reactor building sump recirculation system would be made operational during this time if needed to maintain core coverage for a longer period.

The types of accidents possible at TMI-2 during the cleanup phase (long-term cold shutdown) differ significantly from those possible in an operating reactor. The staff and the licensee have evaluated a broad spectrum of potential accident scenarios possible at TMI-2 during the cleanup phase. These included liquid spills, fires, canister drops, and loss of coolant accidents. The source terms from these accident scenarios are much smaller than those asaociated with postulated accidents at operating power reactors. Additionally, none of these accidents would be caused by a LOOP and thus are extremely unlikely to occur simultaneously with the unavailability of the control room emergency air cleanup system.

TMI-1, which is adjacent to TMI-2, is in a normal operating cycle for power reactors with periods of power operation periodically interrupted by variable length shutdowns for refueling, maintenance and repairs. A severe accident at TMI-1 while it is at power could generate a source term which could affect TMI-2 control room habitability. It is very improbable that this type of accident would occur and even more unlikely that it would be coincident with a loss of offsite power to TMI-2. If there were no coincident TMI-2 LOOP, the TMI-2 control room emergency air cleanup system would function normally.

The licensee has committed to terminate all recovery activities and place systems in a safe, stable configuration at TMI-2 during an emergency event at TMI-1. These activities include core alterations, RCS water processing, transfer of fuel bearing canisters and casks, and movement of heavy loads. While an accident at TMI-1 could affect habitability in TMI-2, it would not cause equipment failures and additional accidents to occur at TMI-2. No active components are required to maintain the current safe shutdown of TMI-2. With recovery activities terminated, periodic monitoring of TMI-2 is all that is required. No effect on plant safety would occur due to temporary inaccessibility of the TMI-2 control room. The staff has previously determined that offsite AC power can be restored within five hours. With the restoration of offsite power, the TMI-2 control room emergency air cleanup system would again become operable and personnel could again monitor activities from the control room. Although not required, short-term access to the TMI-2 control room could be provided by use of self-contained breathing apparatus.

The staff has evaluated the potential accident scenarios discussed above relative to the requirements for control room habitability specified in GDC 19. We conclude that it is highly probable that in the event of an accident at TMI-1 or TMI-2, the TMI-2 control room emergency air cleanup system will be operable without relying on onsite backup emergency power sources, and thus habitability of the TMI-2 control room will be ensured in accordance with GDC 19. However, in the extremely unlikely event that a severe accident at Unit 1 occurs coincident with loss of offsite power to Unit 2, the Unit 2 control room could, if necessary, be evacuated without affecting the licensee's ability to maintain the TMI-2 facility safety shutdown. Accordingly, a partial exemption from GDC 19 during a LOOP is justified since no action of personnel in the TMI-2 control room would be required to maintain the plant in a safe shutdown condition for the period of time necessary to restore power. Except for such occurrences, the licensee will continue to comply with the provisions of GDC 19.

Since TMI-2 can be maintained in a safe shutdown condition without the requirement for continuous manning of the control room, onsite backup emergency power service for the control room emergency air cleanup system is no longer needed to ensure the safety of the facility in its present condition. Consequently, an exemption from GDC 17 is also justified. This is based on the fact that the control room emergency air cleanup system is the only remaining load on the emergency diesel generators still required by the facility license; the emergency diesel generators (the onsite electric power system) are not needed to assure core cooling, containment integrity or other safety functions at TMI-2 in the current post-accident, cold shutdown condition.

IV

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12, these exemptions are authorized by law, will not present an undue risk to the pubic health and safety, and are consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemptions, namely, that application of the regulations in this particular circumstance is not necessary to achieve the underlying purpose of the rules: To maintain the nuclear power unit in a safe shutdown condition in the event of an accident. Specifically, as noted above, neither continuous control room manning nor operation of an onsite emergency backup power source is necessary to maintain the damaged TMI-2 reactor in a safe shutdown condition. Accordingly, the Commission hereby grants exemption from the requirements of 10 CFR Part 50, Appendix A, General Design Criterion 17 and, in part, from the requirements of General Design Criterion 19.

It is further determined that the exemptions do not authorize a change in effluent types or total amounts nor an increase in power level and will not result in any significant environmental impact. In light of this determination and as reflected in the Environmental Assessment and Notice of Finding of No Significant Environmental Impact prepared pursuant to 10 CFR 51.21 and 51.30 through 51.32 (February 9, 1987, 52 FR 4067), it is concluded that the instant action is insignificant from the standpoint of environmental impact and an environmental impact statement need not be prepared.

These exemptions are effective upon issuance of the corresponding changes to facility Technical Specifications, sections 3.7.4, 3.7.7, 3.7.10, 3.8.1, 3.8.2, 3.9.12.1, 3.9.12.2, 3/4.7.4, 3/4.7.7, 4.3, 4.7.4, 4.7.7, 4.8.1, 4.8.2, 4.9.12.1 and 4.9.12.2.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Director, Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.

Dated at Bethesda, Maryland this 9th day of February 1987.

[FR Doc. 87-3124 Filed 2-12-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-538]

Memphis State University; Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of Orders to authorize Memphis State University, (the licensee) to dispose of the component parts of the research reactor in their possession, in accordance with the licensee's application dated November 12, 1986, as supplemented, and terminating the Facility Operating License No. R-127.

The first of these Orders would be issued following the Commission's review and approval of the licensee's detailed plan for decontamination of the facility and disposal of the radioactive components, or some alternate disposition plan for the facility. This Order would authorize implementation of the approved plan. Following completion of the authorized activities and verification by the Commission that acceptable radioactive contamination levels have been achieved, the Commission would issue a second Order terminating the facility license and any further NRC jurisdiction over the facility. Prior to issuance of each Order, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

By March 9, 1987, the licensee may file a request for a hearing with respect to issuance of the subject Orders and any person whose interest may be affected by this proceeding who wishes to participate as a party in the proceeding must file a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in CFR Part 2. If a request for hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate Order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any Order which may be entered on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first

There are no new significant impacts

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prehearing conference scheduled in the proceeding but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the action under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the Order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow: (petitioner's name and telephone number); (date petition was mailed); Memphis State University; and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, and to the attorney for the licensee, Ms. Susan C. Short, General Counsel, State Board of Regents, 1161 Murfreesboro Road, Nashville, Tennessee 37217.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the licensee's application dated November 12, 1986, as supplemented, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC.

Dated at Bethesda, Maryland this 6th day of February 1987.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director Standardization and Special Projects Directorate, Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.

[FR Doc. 87–3125 Filed 2–12–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. STN 50–530]

Arizona Public Service Co., et al., Palo Verde Nuclear Generating Station, Unit 3; Environmental Assessment and Finding of No Significant Impact

The Nuclear Regulatory Commission (the Commission) is considering issuance of an extension to the latest construction completion date specified in Construction Permit CPPR–143. Constructing Permit CPPR–143 for the Palo Verde Nuclear Generating Station, Unit 3 was issued to Arizona Public Service Company (APS), et al.* on May 25, 1976, with the latest construction completion date as November 1, 1986. The Palo Verde Nuclear Generating Station (PVNGS) is located in Maricopa County, Arizona.

Environmental Assessment

Identification of Proposed Action

The proposed action would amend the construction permit by extending the latest construction completion date from November 1, 1986, to December 31, 1987. The proposed action is in response to the applicant's request dated September 8, 1986.

The Need for the Proposed Action

The proposed action is needed because Unit 3 will not be ready for fuel loading until the end of the first quarter of 1987. The delay in completion of Palo Verde Unit 3 beyond November 1, 1986, is due to the following factors:

1. PVNGS Units 1, 2, and 3 have been constructed on a sequential schedule with planned minimum and maximum spacings between units of one and two years, respectively. Acts beyond the control of the permit holder have resulted in delays in construction, testing and operations, to assure safety of Units 1 and 2. This has resulted in modifications and delays impacting the sequential schedule for completion of Unit 3.

2. Although construction of PVNGS Unit 3 is essentially complete with the pre-operational program currently in progress, additional time will be required for completion in a safe manner.

APS stated that extension of the latest date for completion of PVNGS Unit 3 to December 31, 1987, will preclude the need for requesting further amendments of CPPR–143 if there should be any slippage in the expected Unit 3 fuel load date due to unforseen circumstances.

Environmental Impacts of the Proposed Action

The environmental impacts associated with construction of the facility have been previously discussed and evaluated in the NRC staff's Final Environmental Statement (FES) issued in September 1975 (NUREG–75/0708) and in the Final Supplement to the FES (FES Supplement) issued in February, 1976 (NUREG–0036) for the PVNGS construction permit stage.

Since the proposed action involves extending the construction permit, radiological impacts are not affected by this action. The impacts that are involved are all non-radiological and are associated with continued construction. As a result of the review of the Final Safety Analysis Report to date and considering the nature of the delays, the NRC staff has identified no area of significant safety consideration in connection with the extension of the construction completion date for Palo Verde Nuclear Generating Station, Unit 3. The only change proposed by the applicant is an extension of the latest construction completion date to December 31, 1987. This extension of the construction and testing period would not change the activities already considered by previous Commission safety reviews of the facility, considered in the FES and FES Supplement and authorized by the construction permit, other than to extend the latest date by which construction must be completed.

* The other Construction Permit holders are the Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power, and Southern California Public Power Authority.

There are no new significant impacts associated with the extension.

Alternative Use of Resources

This action does not involve the use of resources not previouly considered in the FES or the FES Supplement for the PVNGS discussed above.

Agencies and Persons Contacted

The NRC staff reviewed the applicants' request and applicable documents referenced therein that support this extension. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for extension, dated September 8, 1986, which is available for public inspection at the Commission's Public Document Room 1717 H Street, N.W., Washington, DC and at the Local Public Document Room in the Phoenix Public Library, Business, Science, and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Bethesda, Maryland, this 9th day of February, 1987.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, PWR Project Directorate No. 7, Division of PWR Licensing-B.

[FR Doc. 87–3123 Filed 2–12–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–320]

Meeting of the Advisory Panel for the Decontamination of Three Mile Island, Unit 2 GPU Nuclear Corporation

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island Unit 2 (TMI–2) will be meeting on February 26, 1987, from 3:30 PM to 10:00 PM at the Lancaster Council Chambers, Public Safety Building, 201 N. Duke Street, Lancaster, PA 17603. The meeting will be open to the public.

The Panel will conduct a working session to review the recently issued supplement to the Programmatic Environmental Impact Statement (NUREG–0683, Supplement 2) dealing with the licensee's plans for the disposal of the accident-generated water. The Panel will also receive a status report on the progress of defueling from the licensee, General Public Utilities Nuclear Corporation. Members of the public will be given the opportunity to address the Panel.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, Three Mile Island Cleanup Project Directorate, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, telephone 301/492–7743.

Dated: February 9, 1987.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 87–3140 Filed 2–12–87; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

Presentation on Introduction to Postal Costing Concepts

February 10, 1987.

Notice is hereby given that members of the technical and legal advisory staffs of the Postal Rate Commission will present an introduction to the concepts of postal costing, as employed in ratemaking under the Postal Reorganization Act (39 U.S.C. 3621 *et seq.*).

The public is invited to the session which will be held on Thursday, February 26, 1987, at 1:30 p.m. in the Postal Rate Commission Hearing Room, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001.

The Commission received expressions of interest from persons in the private sector for an introductory presentation of certain cost analysis concepts used in postal ratemaking and their application. While much information on these ideas and techniques is contained in the Commission's published rate decisions, it may also be valuable to offer a more generalized introduction to them in a relatively informal, seminar-type setting. Accordingly, the staff has been instructed to prepare a suitable public presentation.

This session will be limited to a general discussion of relevant concepts, and it is not contemplated that specific financial questions or detailed mathematical demonstrations will be taken up.

For further information, contact David F. Stover, General Counsel, Postal Rate Commission, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001 ((202) 789–6820).

Charles L. Clapp,

Secretary.

[FR Doc. 87–3112 Filed 2–12–87; 8:45 am]

BILLING CODE 7715–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, DC 20549

Extension

File No. 270–158, Form 8
File No. 270–68, Regulation C
File No. 270–101 Form 11–K
File No. 270–102, Regulation B
File No. 270–118, Rule 236

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for an extension of clearance of the following forms, Form 8; Regulation C; Form 11–K; Regulation B; and Rule 236. The forms provide a basis for the Commission to fulfill its statutory responsibility to ensure that issuers of publicly-traded securities provide investors and the marketplace with adequate information and some forms grant certain limited exemptions from provisions of the Securities Act of 1933.

Submit comments to OMB Desk Officer, Mr. Robert Neal (202) 395–7340, Office of Information and Regulatory Affairs, Commerce & Lands Branch, Room 3228 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

February 9, 1987.

[FR Doc. 87–3102 Filed 2–12–87; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

February 9, 1987

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuan to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Emerald Homes, L.P.
Depositary Receipts, No Par Value (File No. 7–9672)

Sizeler Property Investors, Inc.
Common Stock, $.01 Par Value (File

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No. 7–9673)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 2, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–3700 Filed 2–12–87; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

February 9, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stock:

Owens-Corning Fiberglas Corporation (New)
Common Stock, $0.10 Par Value (File No. 7–9671)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 2, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–3101 Filed 2–12–87; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Anchorage International Airport, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the State of Alaska for Anchorage International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps in January 22, 1987.

FOR FURTHER INFORMATION CONTACT: James S. Perham, 907–271–5448.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Anchorage International Airport are in compliance with applicable requirements of Part 150, effective January 22, 1987.

Under section 103 of the Aviation Safety and Nosie Abatement Act of 1979, hereinafter referred to as "the Act," an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR), Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operators has taken or proposes for the reduction of exising noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the State of Alaska. The specific maps under consideration are identified as Parts 1 and 2 for 1986 and 1991 in the sponsor certification segment of the noise exposure maps submission. The FAA has determined that these maps for Anchorage International Airport are in compliance with applicable requirements. This determination is effective on January 22, 1987. The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If quesitons arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through the FAA's review of noise exposure maps. Therefore, the responsibility for detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Airports Division, 701 C Street, Box 14, Anchorage, Alaska 99513

Mr. Guy Ruaso, Director, Anchorage International Airport, P.O. Box 190204, Anchorage, Alaska 99519–0204.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Anchorage, Alaska, January 22, 1987.

Franklin L. Cunningham,

Director, Alaskan Region.

[FR Doc. 87–3077 Filed 2–12–87; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. EX87–1; Notice 1]

Aston Martin Lagonda Limited; Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

Aston Martin Lagonda, Ltd., of Newport Pagnell, England, has petitioned for a temporary exemption from the passive restraint requirements of Motor Vehicle Safety Standard No. 208 *Occupant Restraint Systems.* The basis of the petition is that compliance would cause substantial economic hardship.

Notice of receipt of the petition is published in accordance with the regulations of the National Highway Traffic Safety Administration on this subject (49 CFR Part 555) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Petitioner's total production in the 12-month period before filing its petition was 164 motor vehicles, of which 60 were sold in the United States between September 1, 1985, and September 1, 1986. It requests an exemption of three years from the passive restraint requirements of Motor Vehicle Safety Standard No. 208 which became effective September 1, 1986. The company has been endeavoring since November 1984 to develop a system meeting Standard No. 208 and responsive to the tastes of its customers. Its prototype belt and knee bolster system met the standard's requirements but in the petitioner's opinion could have caused injuries to passengers absent further development. Tests to confirm the efficacy of a redeveloped system (six high "g" sled tests and at least one 30 mph frontal barrier impact) are estimated to cost slightly more than $376,000. The petitioner's net income for fiscal 1986 was approximately only $600,000 (assuming a value of the pound sterling at $1.5175), thus the vehicles could not be immediately conformed without creating substantial economic hardship.

The petitioner is currently negotiating with Breed Corporation for an air bag system but has concluded that under the most favorable circumstances a conforming vehicle will not be available for sale until January 1989. Aston Martin Lagonda argues that an exemption would be in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act because it believes the purchasers of its luxury performance cars are more likely than other motorists to use their restraints, and that these restraints meet current injury criteria and have no in-use problems. A denial would mean closure of its United States importer, distributors, and dealers, and "the loss of the USA market could not be replenished by sales in our other world markets and our current other world sales could not show a sufficient return of funds to sustain our current workforce. . . ."

Interested persons are invited to submit comments on the petition of Aston Martin Lagonda Ltd. described above. Comments should refer to the docket number and be submitted to Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St. SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The petition and supporting materials, and all comments received, are available for examination in the docket both before and after the closing date. Comments received after the closing date will be considered to the extent practicable. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: March 16, 1987.

(Sec. 3, Pub. L. 92–548, 86 Stat. 1159 (15 U.S.C. 1410); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: February 9, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87–3117 Filed 2–12–87; 8:45 am]

BILLING CODE 4910–59–M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C Chapter 35). This document contains two extensions and lists the following information: (1) The department or staff office issuing the forms, (2) the title of the forms, (3) the agency form numbers, if applicable, (4) how often the forms must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses (7) an estimate of the total number of hours needed to fill out the forms, and (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Allison Herron, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: February 9, 1987.

By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Extensions

1. Department of Veterans Benefits.
2. Fiduciary Account Book and Accounting Form.
3. VA Forms 27–4706 and 27–4718.
4. On occasion.
5. Individuals or households; State or local governments; Federal agencies or employees; and Non-profit institutions.
6. 43,143 responses.
7. 85,692 hours.
8. Not applicable.

[FR Doc. 87–3065 Filed 2–12–87; 8:45 am]

BILLING CODE 8320–01–M

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Sunshine Act Meetings

Federal Register
Vol. 52, No. 30
Friday, February 13, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

PREVIOUS ANNOUNCEMENT: Federal Register Doc. No. 87-1831, January 29, 1987.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, February 5, 1987, 10:00 a.m.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA:

Recently Closed Enforcement Cases: MURS 2110 and 2260

* * * * *

DATE AND TIME: Wednesday, February 18, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular emloyee.

* * * * *

DATE AND TIME: Thursday, February 19, 1987, 2:00 p.m.

PLACE: 999 E Street, NW., Washington, DC, Ninth Floor.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Draft Advisory Opinion 1987-1—Timothy J. Newlin for Friends of Jim Dawson.
Draft Advisory Opinion 1987-2—David B. Applebaum on behalf of the Florio '88 Committee.
Draft Advisory Opinon 1986-43—Laurence A. Tuttle.
Proposed Revision of Title 26 Regulations.
Proposed Directive 24 (Internal Procedures Related to the Presidential Primary Matching Fund Program).
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.
[FR Doc. 87-3226 Filed 2-7-87; 3:21 pm]
BILLING CODE 6715-01-M

federal register

Friday
February 13, 1987

Part II

Department of the Interior

National Park Service

Significant Thermal Features Within Units of the National Park System; Notice of Proposed Listing

Such features are clearly identified in an
when determining whether to consent to
listed within this Notice, comprise the

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DEPARTMENT OF THE INTERIOR

National Park Service

Significant Thermal Features Within Units of the National Park System

AGENCY: National Park Service/U.S. Department of the Interior.

ACTION: Notice of proposed list of significant thermal features within units of the National Park System.

SUMMARY: In accordance with section 115 of the Department of the Interior and Related Agencies Appropriations Act for 1987, Pub. L. 99–591, the National Park Service (NPS) is publishing for public review and comment a proposed list of significant thermal features within twenty-two (22) units of the National Park System. This list may be revised after public comments are received in response to this Notice or as new information becomes available. A final list, including all public comments and rationale for additions to or deletions from the proposed list, will be sent to Congress in April 1987. No geothermal leases may be issued by the Secretary of the Interior until the final list is transmitted to Congress. Also, future geothermal leasing, pursuant to the Geothermal Steam Act of 1970, as amended, is dependent on determinations of whether or not proposals to explore for, develop, produce, or use geothermal resources surrounding the listed features are "likely to result in significant adverse effects" on the listed features.

The NPS welcomes a thorough review of the proposed listed features and the information serving as the bases for determining listed features as significant. The NPS seeks data or information that can assist in preparing a final list of significant thermal features within the specified units of the National Park System. NPS is also interested in receiving nominations for listing additional thermal features or recommendations for deleting thermal features, as proposed. All nominations for listing additional areas of significant thermal features and recommendations for deleting areas from the proposed list should be accompanied by background information on the thermal feature discussed and a supporting rationale for the recommended action.

After transmitting the final list of significant thermal features within units of the National Park System to the Congress, the NPS will publish the same list as sent to Congress in the **Federal Register** as a Final Notice. Copies of public comments received in response to this Notice will also be available for public review according to the specifications of the Final Notice.

DATES: Nominations, recommendations, and supporting comments must be received on or before March 16, 1987, to be assured of receiving consideration.

ADDRESS: Mail comments, recommendations, and nominations to Director, NPS, ATTN: Energy, Mining and Minerals Division (WASO 480, Room 3223, Main Interior Building), National Park Service, P.O. Box 37127, Washington, DC 20013–7127.

FOR FURTHER INFORMATION CONTACT: Ms. Pam Matthes, Energy, Mining and Minerals Division (Room 3223 Main Interior Building), National Park Service, P.O. Box 37127, Washington, DC 20013–7127, (202) 343–4639.

SUPPLEMENTARY INFORMATION: The Department of the Interior and Related Agencies Appropriations Act, Pub. L. 99–591, (hereinafter referred to as the Act) was passed by Congress and signed into law October 30, 1986.

Paragraph 2(a) of § 115 of the General Provisions for the Act, directs the Secretary to collect and publish in the **Federal Register**, within 120 days, a proposed list of significant thermal features in the following twenty-two (22) units of the National Park System:

Mount Rainier National Park, Washington;
Lassen Volcanic National Park, California;
Yellowstone National Park, Wyoming, Montana, and Idaho;
Bering Land Bridge National Preserve, Alaska;
Gates of the Arctic National Park and Preserve, Alaska;
Yukon-Charley Rivers National Preserve, Alaska;
Katmai National Park, Alaska;
Aniakchak National Monument and Preserve, Alaska;
Wrangell-St. Elias National Park and Preserve, Alaska;
Glacier Bay National Park and Preserve, Alaska;
Denali National Park and Preserve, Alaska;
Lake Clark National Park and Preserve, Alaska;
Hot Springs National Park, Arkansas;
Sequoia National Park, California;
Hawaii Volcanoes National Park, Hawaii;
Lake Mead National Recreation Area, Arizona and Nevada;
Big Bend National Park, Texas;
Olympic National Park, Washington;
Grand Teton National Park, Wyoming;
John D. Rockefeller, Jr. Memorial Parkway, Wyoming;
Haleakala National Park, Hawaii; and,
Crater Lake National Park, Oregon.

The NPS has been designated by the Department as the lead agency for preparation and publication of the list of significant thermal features. In making an overall determination of significance, the Act specifically requires four criteria to be applied to each thermal feature identified within the twenty-two (22) units of the National Park System. These four criteria are listed below, along with a brief discussion of the factors contributing to the determination of whether or not the identified feature(s) qualify as "significant" under each criterion:

(1) Size, extent, and uniqueness—NPS establishes neither lower nor upper limits on the size or extent of a feature. Each feature is identified according to its existing surface dimensions. However, for a feature to be considered significant under criterion #1, it is identified as unique to the unit, the Region, the Nation, or, in some cases, the World.

(2) Scientific and geologic significance—Under this criterion, a feature qualifies as "significant" when the feature has been identified as contributing to scientific or geologic data, to the understanding of thermal regimes, or to the history or origin of the feature within the unit, the Region, or the Nation.

(3) The extent to which such features remain in a natural, undisturbed condition—Under this criterion, NPS reports on the existing condition of identified features. Where applicable, NPS addresses whether disturbances or developments, if any, have affected the subsurface thermal regime.

(4) Significance of thermal features to the authorized purposes for which the National Park System unit was created—Features specifically identified within the enabling legislation for the unit or features used in a manner consistent with the stated purposes for which the unit was created are significant.

Thus, NPS has listed thermal features that were the basis for establishing the unit in the first instance (e.g., Yellowstone National Park) and thermal features that now significantly contribute to the statutory purposes for which the area was set aside by Congress (e.g., Lake Mead National Recreation Area).

In most every case, each feature listed as significant within this Notice has met all of the significance criteria, unequivocably. However, there are a few features proposed for listing where one or more of the significance criteria are met marginally or where the significance is not known at this time.

Such features are clearly identified in an introductory paragraph preceding the discussion of the significance criteria. Specific discussions for each of these features explain the rationale behind proposing these features as significant. NPS welcomes additional information that can assist in the final determinations for these features.

All thermal features initially determined to be or proposed as significant by the NPS under these criteria are listed within this Notice. The Act authorizes the Secretary to make additions to or deletions from the list based on public comments received in response to this Proposed Notice. Further, the Act requires that within 60 days of publishing the proposed list, the Secretary must transmit to Congress a final list together with copies of all public comments received. The transmittal to Congress will indicate any additions to or deleting from the proposed list, including a statement of the reasons for the action. Therefore, the NPS requests that any comments, recommendations for deletion from, or nominations for adding thermal features to the proposed list be supported by a rationale and specific information that addresses each of the above significance criteria.

The Act directs that the Secretary of the Interior shall not issue any geothermal leases under the Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001), until after the list of significant thermal features within units of the National Park System is transmitted to Congress.

Paragraph 2(b) of the Act directs the Secretary of the Interior to establish and maintain a monitoring program for each of the significant thermal features included on the final list transmitted to Congress. The existing data characterizing each listed thermal feature and any data collected as a result of the monitoring program will serve as baseline data upon which the potential effects of future geothermal leasing and development on the listed features will be assessed.

The Act requires that, "Upon receipt of an application for a geothermal lease the Secretary shall determine on the basis of scientific evidence if exploration, development, or utilization of the lands subject to the geothermal lease application is reasonably likely to result in a significant adverse effect on a significant thermal feature listed." All such determinations "shall be subject to notice and public comment", and will be published in the **Federal Register** for public review and comment. Also, the Secretary of Agriculture must consider the effects on the listed thermal features when determining whether to consent to geothermal leases on national forest lands or any other lands under the jurisdiction of the Department of Agriculture. No geothermal lease can be issued, if the Secretary determines that the exploration, development, or utilization of the land subject to the lease application is "reasonably likely to result in a *significant adverse effect* on a listed thermal feature" (emphasis added). In addition, the areas within such proposed lease appplications that are likely to result in significant adverse impacts to listed features must be withdrawn from leasing under the Geothermal Steam Act.

Future proposals to explore for, develop, produce, or use geothermal resources that are determined as "reasonably likely to *adversely affect* such significant features" (emphasis added) within units of the National Park System, may be considered for leasing. If leases are issued in such areas, the "Secretary shall include stipulations in leases necessary to protect significant thermal features." If, in these areas, the Secretary later "determines that ongoing exploration, development, or utilization activities are having a significant adverse effect on significant thermal features" listed, among other things, all activity on the lease must be suspended, "temporarily or permanently" until the significant adverse effect is eliminated.

As previously mentioned, the Act specifically requires the Secretary of the Interior and the Secretary of Agriculture to determine the effects of proposed geothermal leases and future operations on each of the listed significant thermal features in units of the National Park System. The Act further requires that such determinations on lands under the jurisdiction of the Department of the Interior and/or the Department of Agriculture must be made available for public review and comment on a case-by-case basis. In response to this requirement of the Act and to assist in clarifying where future geothermal leasing may be considered, the Department of the Interior proposes to identify the affected States in which geothermal leasing proposals will be evaluated on a case-by-case basis under the public review requirements of the Act. The purpose of this proposal also is to obtain public comment for the balance of Federal lands not contained within the list of affected States so that geothermal leasing can proceed under the requirements of the Geothermal Steam Act without imposing the case-by-case public review provisions of the Act.

The States containing the specified units of the National Park System, as listed within this Notice, comprise the list of affected States. In addition, the NPS proposes to list the State of Utah as an affected State because of its proximity to Lake Mead National Recreation Area, in which the NPS proposes to list thermal features as significant. Therefore, applications for geothermal leases in the following States will be evaluated under the provisions of the Geothermal Steam Act as well as under the explicit public review requirements of the Act: Alaska, Arizona, Arkansas, California, Hawaii, Idaho, Montana, Nevada, Oregon, Texas, Utah, Washington, and Wyoming.

The provisions of the Act are designed to protect significant thermal features within units of the National Park System from the potential adverse effects of exploration, development, or utilization of geothermal resources and will remain in effect until Congress specifically directs otherwise. Therefore, it is important that the following proposed list be given the benefit of a thorough review so that information to supplement, refine, or further delineate significant features presented in this Notice can be added to the data that is transmitted to Congress.

Summary Analysis of Thermal Features in Units of the National Park System

The twenty-two (22) units of the National Park System specified by Congress in the Act are located within five (5) NPS Regions. The following table summarizes the information collected by the NPS on thermal features within each of the specified park units:

SUMMARY TABLE

NPSRegion: park units evaluated	Number of features identified	Identified features qualify as significant under the Act
Pacific Northwest Region:		
Mount Rainier National Park (Washington).	1	Yes.
Crater Lake National Park (Oregon).	1	Yes.
Olympic National Park (Washington).	2	1=Yes/1=No.
Rocky Mountain Region:		
Yellowstone National Park (Wyoming, Idaho, and Montana).	1	Yes.
Grand Teton National Park (Wyoming).	5	No.
John D. Rockefeller, Jr. Memorial Parkway (Wyoming).	1	No
Alaska Region:		
Bering Land Bridge, National Preserve.	1	Yes.
Gates of the Arctic, National Park and Preserve.	1	Yes.
Yukon-Charley Rivers, National Preserve.	None	Not Applicable
Katmai National Park	1	Yes.
Aniakchak National Monument and Preserve.	1	Yes.
Wrangell-St. Elias, National Park and Preserve.	2	Yes.

SUMMARY TABLE—Continued

NPSRegion: park units evaluated	Number of features identified	Identified features qualify as significant under the Act
Big Bend National Park	1	Yes.
Lake Clark National Park and Preserve.	1	Yes.
Glacier Bay National Park and Preserve.	1	Yes.
Denali National Park and Preserve.	1	Yes.
Hot Springs National Park	1	Yes.
Lake Mead National Recreation Area.	1	Yes.
Sequoia National Park	1	Yes.
Hawaii Volcanoes National Park	1	Yes.
Haleakala National Park	1	Yes.
Lassen Volcanic National Park	1	Yes.

Because no thermal features are known to exist in the following units of the National Park System, they are not listed in the Summary Table:

Mount Rainier National Park

Mount Rainier National Park is located in the Cascade Mountains of Washington State. Mount Rainier is a dormant volcano with a summit elevation of 14,410 feet. Mount Rainier National Park was established in 1899 and contains 235,404 acres. Mount Rainier is the most glaciated peak in the United States outside Alaska. Forty-seven glaciers blanket the mountain. Mount Rainier National Park is also known for its wildflowers and old-growth forests.

Crater Lake National Park

Crater Lake National Park is located in the Cascade Mountains of Oregon. Crater Lake is the deepest lake in the United States and is famous for its deep blue color and exceptional clarity. The lake was formed by the collapse of Mount Mazama, a volcano that erupted violently about 6,900 years ago. Crater Lake National Park was established in 1902 and contains 160,290 acres.

Olympic National Park

Olympic National Park is located in the Olympic Mountains of Washington State. Olympic National Park was established in 1938 and contains 922,651 acres. Olympic National Park is known for its wilderness, wildlife, and temperate rain forests.

Grand Teton National Park

Grand Teton National Park is located in the Teton Mountains of Wyoming. Grand Teton National Park was established in 1929 and contains 310,520 acres. Grand Teton National Park is known for its spectacular mountain scenery.

John D. Rockefeller, Jr. Memorial Parkway

John D. Rockefeller, Jr. Memorial Parkway is located in Wyoming. The Parkway was established in 1972 and contains 23,777 acres. The Parkway is known for its spectacular mountain scenery.

Bering Land Bridge National Preserve

Bering Land Bridge National Preserve is located in northwestern Alaska. The Preserve was established in 1978 and contains 2,697,000 acres. The Preserve is known for its archeological resources.

Gates of the Arctic National Park and Preserve

Gates of the Arctic National Park and Preserve is located in northern Alaska. The Park and Preserve was established in 1978 and contains 7,523,898 acres. The Park and Preserve is known for its spectacular mountain scenery.

Yukon-Charley Rivers National Preserve

Yukon-Charley Rivers National Preserve is located in eastern Alaska. The Preserve was established in 1978 and contains 1,717,628 acres. The Preserve is known for its spectacular river scenery.

Katmai National Park

Katmai National Park is located in southwestern Alaska. The Park was established in 1918 and contains 1,710,346 acres. The Park is known for its spectacular volcanic scenery.

Aniakchak National Monument and Preserve

Aniakchak National Monument and Preserve is located in southwestern Alaska. The Monument and Preserve was established in 1978 and contains 588,888 acres. The Monument and Preserve is known for its spectacular volcanic scenery.

Wrangell-St. Elias National Park and Preserve

Wrangell-St. Elias National Park and Preserve is located in southeastern Alaska. The Park and Preserve was established in 1978 and contains 8,331,604 acres. The Park and Preserve is known for its spectacular mountain scenery.

Glacier Bay National Park and Preserve

Glacier Bay National Park and Preserve is located in southeastern Alaska. The Park and Preserve was established in 1978 and contains 3,225,284 acres. The Park and Preserve is known for its spectacular glacial scenery.

Denali National Park and Preserve

Denali National Park and Preserve is located in central Alaska. The Park and Preserve was established in 1917 and contains 4,740,911 acres. The Park and Preserve is known for its spectacular mountain scenery.

Lake Clark National Park and Preserve

Lake Clark National Park and Preserve is located in southwestern Alaska. The Park and Preserve was established in 1978 and contains 2,619,816 acres. The Park and Preserve is known for its spectacular mountain scenery.

Hot Springs National Park

Hot Springs National Park is located in Arkansas. The Park was established in 1921 and contains 5,550 acres. The Park is known for its hot springs.

Lake Mead National Recreation Area

Lake Mead National Recreation Area is located in Arizona and Nevada. The Recreation Area was established in 1964 and contains 1,495,552 acres. The Recreation Area is known for its spectacular desert scenery.

Sequoia National Park

Sequoia National Park is located in California. The Park was established in 1890 and contains 386,863 acres. The Park is known for its spectacular mountain scenery.

Hawaii Volcanoes National Park

Hawaii Volcanoes National Park is located in Hawaii. The Park was established in 1916 and contains 229,177 acres. The Park is known for its spectacular volcanic scenery.

Haleakala National Park

Haleakala National Park is located in Hawaii. The Park was established in 1916 and contains 28,655 acres. The Park is known for its spectacular volcanic scenery.

Lassen Volcanic National Park

Lassen Volcanic National Park is located in California. The Park was established in 1916 and contains 106,372 acres. The Park is known for its spectacular volcanic scenery.

Yellowstone National Park

Yellowstone National Park is located in Wyoming, Montana, and Idaho. The Park was established in 1872 and contains 2,219,823 acres. The Park is known for its spectacular geothermal features.

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SUMMARY TABLE—Continued

NPS Region: park units evaluated	Number of features identified	Identified features qualify as significant under the Act
Glacier Bay National Park and Preserve.	None	Not Applicable.
Denali National Park and Preserve.	None	Not Applicable.
Lake Clark National Park and Preserve.	2	Yes.
Southwest Region:		
Hot Springs National Park (Arkansas).	1	Yes.
Big Bend National Park (Texas).	3	Yes.
Western Region:		
Lassen Volcanic National Park (California).	1	Yes.
Sequoia National Park (California).	2	Yes.
Hawaii Volcanoes National Park (Hawaii)	10	Yes.
Haleakala National Park (Hawaii).	1	Yes.
Lake Mead National Recreation Area (Arizona and Nevada).	3	Yes.

Maps showing the location of identified thermal features (if any) within all units are available for public inspection in Washington, DC at the following address:

Energy, Mining and Minerals Division, National Park Service, Room 3223, Main Interior Building, 18th and C Streets NW., Washington, DC 20240

Maps of units showing the location of identified thermal features (if any) are available for public inspection at each of the NPS Regional Offices responsible for administering the unit of interest at the following addresses:

Pacific Northwest Regional Office, National Park Service, 83 South King Street, Library, Seattle, Washington 98104

Rocky Mountain Regional Office, National Park Service, (Attn: Cecil Lewis), 655 Parfet Street, Denver, Colorado 80225

Alaska Regional Office, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503

Southwest Regional Office, National Park Service, Public Affairs Office, 1100 Old Santa Fe Trail, Santa Fe, New Mexico 87504–0728

Western Regional Office, National Park Service, (Attn: Ray Murray), 450 Golden Gate Avenue, San Francisco, California 94102.

The NPS proposes to list features as significant within seventeen (17) units. The following subsection entitled "Proposed List of Significant Thermal Features in Units of the National Park System" describes each of the thermal features identified within each unit and provides information that addresses each of the four significance criteria identified by the Act.

Further, the NPS proposes to list no thermal features as "significant" within six (6) of the twenty-two (22) specified units. Features are not listed either because no thermal features are identified or because those features identified do not meet the significance criteria of the Act. The subsection entitled "Specified Units Within the National Park System With No Significant Thermal Features" explains the rationale for each of the six (6) units of the National Park System that are not proposed for inclusion on the list of significant thermal features to be transmitted to Congress.

Proposed List of Significant Thermal Features in Units of the National Park System

The thermal features identified in this Notice are named from terms describing the surface manifestations of subsurface thermal activity. Heat within the earth is manifested at the earth's surface as a result of different types of thermal activity. Any or all of the surface features described may be expressions of a thermal system or thermal feature.

Hydrothermal systems are the anomalous concentrations of high temperatures at shallow depths caused by the upward movement of water and/or steam. In addition to convective heat transfer by moving fluids, some hydrothermal systems also involve an anomalously shallow heat source caused either by a volcanic system that has moved magma to a shallow level or by high regional heat flow. Surface manifestations of hydrothermal systems are geysers, hot springs, warm springs, mud pots, fumaroles, and steaming ground.

Volcanic thermal activity may be expressed on the surface in the form of molten rock (magma or lava), ash, or thermal fluids such as water (steam), mud, and gas. Geysers, hot springs, warm springs, gas vents, and fumaroles result when water, steam, mud, and gases are heated by the molten rock below the earth's surface and then ejected at the surface. Volcanoes, craters, and calderas are formed on the surface from the eruption of molten rock and associated gases and ash. The conical shape of volcanoes is produced by the ejected material. Craters are a rimmed structure, similar to a basin, usually at the summit of a volcanic cone. A caldera is a large basin-shaped feature formed by one or more volcanic vents. Volcanoes, craters, and calderas, as surface manifestations of either active or dormant heat sources, are indications of active subsurface thermal activity.

The following features are proposed as "significant" thermal features to be forwarded to Congress in April 1987.

Mount Rainier National Park

Feature: Mount Rainier

Significance criteria: 1. Size—Approximately 176,000 acres.

Extent—Mountain area of volcanic origin.

Uniqueness—Mount Rainier is the largest Northern American stratovolcano south of Alaska that contains an active thermal system and is the largest and highest (14,410') volcano in the Cascade Range.

2. Scientific and geologic significance—This feature is an ideal example of a large stratovolcano and the thermal features at the summit and the upper slopes above 10,000 feet provide excellent study opportunities. Mount Rainier is part of what is commonly referred to as the Pacific Rim of Fire. Ohanapecosh and Longmire thermal springs exist on the flanks of Mount Rainier and their presence are indicators of subsurface thermal activity.

3. The extent to which the feature remains in a natural, undisturbed condition—The volcano itself is primarily undisturbed. Longmire and Ohanapecosh Springs are significantly altered by development that occurred prior to the establishment of the park. There are other disturbances to the flanks of the volcano from the construction of roads and visitor facilities; however, these developments do not alter the thermal feature.

4. Significance of the feature to the authorized purposes for which the unit was created—Mount Rainier, the volcano, is the central feature of the park and Mount Rainier National Park was established in 1899 to preserve this feature. (16 U.S.C. 91)

Crater Lake National Park

Feature: Crater Lake

Significance Criteria: 1. Size—48 square kilometers.

Extent—Hydrothermal vents are located on the south central floor of the basin of Crater Lake at approximately 1500 feet depth. 30–150 liters per second inflow of thermal water is estimated to enter Crater Lake.

Uniqueness—Crater Lake is among the highest, largest, and deepest caldera lakes in the world. It is known for its blue color, nearly pure optical properties, and extreme water clarity.

2. Scientific and geologic significance—Studies indicate that thermal springs feed the lake from the vents located on the floor of the basin. Bathymetric and temperature surveys are needed to characterize the contribution of these vents to the lake's water quality. Crater Lake resembles the primitive ocean. It is ideal for limnological studies and is a prime example of a caldera lake. It is an isolated system which approximates a closed system and provides a laboratory to investigate environmental disturbances from outside influences, such as atmospheric fallout.

3. The extent to which the feature remains in a natural, undisturbed condition—The feature is in a natural, undisturbed condition.

4. Significance of the feature to the authorized purposes for which the unit was created—Crater Lake National Park was established in 1902 to preserve the caldera lake and to assure the retention of the lake's superb water quality. (16 U.S.C. 121)

Olympic National Park

Feature: Sol Duc Hot Springs

NPS determines that this feature is marginally significant, mainly because of the lack of scientific interest or significance to the unit or to the Region.

However, these springs are extensively used by the public for recreational purposes as a spa. The NPS recognizes the recreational significance of this feature and has assisted in developments to accommodate increased visitor use. The value of its current recreational use is dependent upon the thermal flow of the springs. Recreational use is consistent with the authorized purpose for which the unit was created. Thus, NPS proposes to list this feature as a significant thermal feature within Olympic National Park.

Significance Criteria: 1. Size—Approximately one acre.

Extent—Sol Duc Springs are a series of seeps occurring next to the Soleduck River.

Uniqueness—The springs are unique in that hot springs are rarely found on the Olympic Peninsula and is one of two springs found within the unit. These hot springs indicates the presence of a thermal system within the confines of the Olympic Mountains.

2. Scientific and geologic significance—Sol Duc Hot Springs, located on the inactive Calawah fault zone, have not been identified as an area of scientific interest and is significant to the geology of the unit in that they serve as an indicator of a subsurface thermal regime.

3. The extent to which the feature remains in a natural, undisturbed condition—None of the seeps exist in a natural state as the springs have been extensively altered to accommodate commercial development, which is now a major concession offering all the facilities of a spa. The development of Sol Duc Hot Springs into a commercial spa is used extensively by the public for recreation and therapeutic purposes.

4. Significance of the feature to the authorized purposes for which the unit was created—In 1938, Congress established the Olympic National Park. The enabling legislation states that the lands within the unit were "set apart as a public park for the benefit and enjoyment of the people of the United States". Although not recognized within the enabling legislation, the Sol Duc Hot Springs existed as a commercial resort at the time the unit was considered for establishment by Congress. The resort has since been developed extensively to accommodate increased visitor use as a spa. The NPS recognizes the recreational significance of this feature and its thermal flow remains significant to the public's enjoyment of the springs. (16 U.S.C. 251)

Yellowstone National Park

Old Faithful and approximately 10,000 geysers and hot springs make Yellowstone National Park the world's greatest thermal area. NPS proposes to list the entire hydrothermal system within Yellowstone National Park as one significant thermal feature comprised of the identified one hundred fourteen (114) hot springs and seven (7) gas vents. Each of the features listed are part of and in total comprise the Yellowstone hydrothermal system within the boundaries of the park. The following significance criteria have been analyzed for each feature listed and have been found to be applicable to every feature within the Yellowstone thermal system.

Feature: Yellowstone National Park

Significance Criteria: 1. Size—Approximately 2,220,000 acres.

Extent—(a) 10 travertine hot springs in Mt. Holmes, Mammoth, Tower Junction, Abiathar, Madison Junction, Firehole Lake, and Huckleberry Mountain Quadrangles.

(b) 41 acid-sulfate hot springs in Obsidian Lake, Mt. Washburn, Amethyst Mountain, Madison Junction, Norris Junction, Solfatara Plateau, Canyon Village, Ponuntpa Springs, Pelican Cone, Juniper Creek, Beach Lake, Lake Junction, Steamboat Point, Buffalo Lake, Summit Lake, Shoshone Geyser Basin and Huckleberry Mountain Quandrangles.

(c) 18 neutral-chloride hot springs in Norris Junction, Ponuntpa Springs, Firehole Lake, Buffalo Lake, Warm River Butte, Old Faithful, Ragged Falls, and Lewis Lake West Quadrangles. This feature includes the Upper and Lower Geyser Basins.

(d) 1 neutral-dilute spring in Warm River Butte Quadrangle.

(e) 6 neutral-alkaline dilute springs in Lewis Lake West, Grassy Lake Reservoir, Huckleberry Mountain, and Mt. Hancock Quadrangles.

(f) 21 springs having a mixture of the above types in the following quadrangles: Obsidian Lake, Amethyst Mountain, Madison Junction, Norris Junction, Canyon Village, Pelican Cone, Firehole Lake, Juniper Creek, Steamboat Point, Old Faithful, West Thumb, Shoshone Geyser Basin, and Lewis Lake East.

(g) 1 Bicarbonate spring located in the Obsidian Lake Quadrangle.

(h) 16 springs of undetermined dominate chemistry located in Amethyst Mountain, Madison Junction, Norris Junction, Solfatara Plateau, Canyon Village, Ponuntpa Springs, Pelican Cone, Juniper Creek, Steamboat Point, and Lewis Lake West Quadrangles.

(i) 7 gas vents located in Amethyst Mountain, Abiathar Peak, Solfatara, Pelican Cone, and Eagle Peak (Brimstone Basin) Quadrangles.

Uniqueness—The Yellowstone thermal system is the world's greatest hydrothermal system and geyser area and is recognized as an outstanding natural feature of the world.

2. Scientific and geologic significance—Yellowstone contains thousands of thermal features and the park is widely known as the preeminent hydrothermal area of the world. The entire Yellowstone hydrothermal system provides numerous opportunities to study and characterize a large, undisturbed geyser system.

3. The extent to which the features remain in a natural, undisturbed condition—The feature is in a natural, undisturbed condition.

4. Significance of the features to the authorized purposes for which the unit was created—Yellowstone National Park was created in 1872 to preserve and protect all natural curiosities or wonders within the park and to retain each of the features in their natural condition. The thermal features of the park are one of the natural wonders of the park and comprise the preeminent hydrothermal area of the world. (16 U.S.C. 21)

Bering Land Bridge National Preserve

Feature: Serpentine Hot Springs

Significance Criteria: 1. Size—Approximately 0.5 square miles.

Extent—Serpentine Hot Springs is a group of hot springs providing the only

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indication of thermal regime within the unit.

Uniqueness—These springs are the warmest springs in the region and is the only indicator of thermal activity in the Preserve.

2. Scientific and geologic significance—As the warmest springs in the region, Serpentine Hot Springs are the only indicator of thermal activity in the Preserve.

3. The extent to which the feature remain in a natural, undisturbed condition—The main pool has undergone some disturbance. Bath and bunk houses have been moved to the site to facilitate public visits and water has been piped to the bathing pool. These surface disturbances have not altered the thermal regime of the feature.

4. Significance of the feature to the authorized purposes for which the unit was created—The Bering Land Bridge National Preserve was established to protect and interpret volcanic lava flows, ash explosions, coastal formations and other geologic processes. Also, the recreational significance of the Serpentine Hot Springs was recognized in the enabling legislation. (16 U.S.C. 410hh)

Gates of the Arctic National Park and Preserve

Feature: Reed River Hot Springs

Significance Criteria: 1. Size—Complex of springs approximately 0.25 miles in length.

Extent—0.25 mile section along the east side of Reed River.

Uniqueness—Reed River Hot Springs is the largest known thermal feature in the park and is one of the few large hot springs in the region.

2. Scientific and geologic significance—As one of the few large warm springs in the Brooks Range of Alaska, Reed River Hot Springs has been proposed for listing in the National Register of Natural Landmarks and for designation as a State Ecological Preserve.

3. The extent to which the feature remains in a natural, undisturbed condition—The feature is in a natural, undisturbed condition.

4. Significance of the feature to the authorized purposes for which the unit was created—The Alaska National Interest Lands Conservation Act of 1980 (ANILCA) established Gates of the Arctic National Park and Preserve as a new park unit within the National Park System. ANILCA states that the purpose of the unit is to "preserve unrivaled scenic and geologic values" with the mandate to manage the unit "to maintain the wild and undeveloped character of the area" and its "ecological integrity" (16 U.S.C. 410hh). The natural, undisturbed character of the one of the few warm springs in the Brooks Range, as found in the Reed River Hot Springs, is a significant thermal feature for this unit.

Katmai National Park and Preserve

Feature: Novarupta and vicinity

Significance Criteria: 1. Size—800 square miles.

Extent—Six volcanoes, all in the vicinity of Novarupta, are east of the Bruin Bay fault and between Mount Martin and coast of Kamishak Bay, north of Mount Douglas.

Uniqueness—The volcanoes, active since 1912, have only erupted once and, consequently, has a simple structure conducive to study. There is no other site in the world where an ash eruption of comparable size has occurred at a terrestrial, rather than marine, site and where the ejects are accessible.

2. Scientific and geologic significance—The structure beneath Novarupta, including the magma body, is of major scientific interest and significance. It is hypothesized that the proximity and relative locations of the six active volcanoes may have created heat so intense that the earth's rhyolitic crust, in addition to the mantle, was melted.

3. The extent to which the feature remains in a natural, undisturbed condition—The feature is in a natural, undisturbed condition.

4. Significance of the feature to the authorized purposes for which the unit was created—Katmai National Monument was established originally to protect the volcanism that created the identified thermal features. ANILCA further expanded the unit to protect, among other features, the existing geological features, which include the volcanoes within the unit. (16 U.S.C. 410hh–1)

Aniakchak National Monument and Preserve

Feature: Aniakchak Caldera

Significance Criteria: 1. Size—Approximately 28 square miles.

Extent—The caldera is a volcanically active, flat-floored, ash-filled bowl that is 2,500 feet deep.

Uniqueness—The Aniakchak caldera is one of the largest calderas in Alaska, exhibits recent volcanic activity, and is essentially dry-bottomed.

2. Scientific and geologic significance—The area is acclaimed as one of the largest and most accessible ice-free calderas on the Alaska Peninsula.

3. The extent to which the feature remains in a natural, undisturbed condition—The feature is in a natural, undisturbed condition.

4. Significance of the feature to the authorized purposes for which the unit was created—Aniakchak's enabling legislation states the unit must be managed to "maintain the caldera and its associated volcanic features and landscapes in their natural state." Therefore, the identified feature is a significant feature serving as the basis for the unit's creation. (16 U.S.C. 410)

Wrangell-St. Elias National Park and Preserve

Feature: Mineral Springs (mud volcanoes)

Significance Criteria: 1. Size—The three springs occupy approximately 310 acres.

Extent—This feature is comprised of three widely spaced thermal areas located on the flanks of Mt. Drum. One of the sites has no appreciable water flow and largely vegetated. Another site consists of a spring of approximately 10 acres. The third site is approximately 300 acres.

Uniqueness—The three identified springs are mineral springs, which is an unusual phenomenon in Alaska.

2. Scientific and geologic significance—The unique thermal activity associated with these springs provides opportunities for scientific investigations.

3. The extent to which the feature remains in a natural, undisturbed condition—The feature is in a natural, undisturbed condition.

4. Significance of the feature to the authorized purposes for which the unit was created—ANILCA identifies the general purpose for which various Alaska units were established as one "to preserve unrivaled scenic and geological values associated with natural landscapes." The mud volcanoes identified are unique and are of significant geologic value within the unit and to the geology of the region. (16 U.S.C. 410hh)

Feature: Wrangell Volcanoes

Significance Criteria: 1. Size—Mt. Wrangell 14,153 feet; Mt. Drum 12,010 feet; Mt. Sanford 16,237 feet; and Mt. Blackburn 16,390 feet.

Extent—The four volcanoes are central features of the park.

Uniqueness—The four active volcanoes are prominent within the park which includes the greatest assemblage of mountain peaks in any park in the Nation.

2. Scientific and geologic significance—The Wrangells are collectively referred to as a group of large shield and composite volcanoes. Geologically, they are relatively young and have had major eruptions as recently as 1,500 years ago. Their size, recent eruptions, and current activity provide significant opportunities for scientific investigations, including glaciological and volcanic studies. A long-term monitoring program of Mt. Wrangell has been ongoing for over 15 years. The Wrangells are one of the greatest assemblages of mountain peaks in the Nation, some of which are volcanoes, both active and inactive. The Wrangells are the origin for some of the longest glaciers on the North American continent.

3. The extent to which the feature remains in a natural, undisturbed condition—The foothills and lowlands that form the outer fringe of this mountain range have been the sites for a few small mining operations. The mining operations with developed access routes have created some disturbances to these areas; however, disturbances to the lower surrounding mountains is minimal.

4. Significance of the feature to the authorized purposes for which the unit was created—ANILCA identifies the general purpose for which various Alaska units were established as one of preserving unrivaled scenic and geological values associated with natural landscapes. The primary purposes of Wrangell-St. Elias National Park and Preserve are to maintain unimpaired the scenic beauty and quality of high mountain peaks, foothills, glacial system, lakes, and streams in their natural state and to provide reasonable access for mountain climbing, mountaineering, and other wilderness recreational activities. These high peaks are significant features serving as the basis for the creation of the unit. (16 U.S.C. 410hh)

Lake Clark National Park and Preserve

Feature: Redoubt Volcano

Significance Criteria: 1. Size—38,000 acres.

Extent—The small vents in the cone of Redoubt Volcano.

Uniqueness—Redoubt Volcano is the second highest of the 76 volcanoes of the Alaska Peninsula and Aleutian Islands and is an active, heavily glaciated stratovolcano.

2. Scientific and Geologic Significance—Redoubt Volcano is an excellent example of a classic stratovolcano which exhibits areas of steam venting and sulfur vents. The feature is marked by erosion from glaciers and other processes exposing cross-sections of the volcano. Exposures illustrate the relationships of various lava flows and pyroclastic rocks of which the stratovolcano is composed.

3. The extent to which the feature remains in a natural, undisturbed condition—The feature is in a natural, undisturbed condition.

4. Significance of the feature to the authorized purposes for which the unit was created—The enabling legislation for Lake Clark National Park and Preserve states that the purposes of the unit are, among others, to "maintain unimpaired the scenic beauty and quality of portions of the Alaska Range, including active volcanoes". (16 U.S.C. 410hh)

Feature: Iliamna Volcano

Significance Criteria: 1. Size—33,900 acres.

Extent—Thermal activity consists of two small sulphur vents located at about 9,000 feet near the summit on the eastern face of the volcano.

Uniqueness—Iliamna Volcano is a broad cone-shaped active volcano deeply dissected by erosional processes.

2. Scientific and geologic significance—The composition and appearance of the Iliamna Volcano offers opportunities to study its unique history.

3. The extent to which such features remain in a natural, undisturbed condition—The feature is in a natural, undisturbed condition.

4. Significance of the feature to the authorized purposes for which the unit was created—The enabling legislation for Lake Clark National Park and Preserve states that the purposes of the unit are, among others, to "maintain unimpaired the scenic beauty and quality of portions of the Alaska Range, including active volcanoes". (16 U.S.C. 410hh)

Hot Springs National Park

Feature: Hot Springs

Significance Criteria: 1. Size—0.3 mile long section of the southwest base of Hot Springs Mountain.

Extent—These springs are comprised of 47 individual springs along the southwest toe of Hot Springs Mountain.

Uniqueness—The average temperature of 143 °F of the spring waters are unique and the combined flow of 23 of the monitored springs is 600,000 gallons per day. These springs are credited with advancing the bathhouse health spa ethic in this region of the United States.

2. Scientific and geologic significance—The springs have been studied to differing levels of sophistication over the past 150 years. Monitoring equipment to be installed will provide base information to monitor temperatures and flow as a measure of adverse effects and hydrologic changes. Studies are being conducted to affirm the subsurface geology and the groundwater flow network.

3. The extent to which the feature remains in a natural, undisturbed condition—The natural environment of the springs has been extensively altered with the construction of bathhouses and the city's Central Avenue business district. The springs themselves have been walled in and capped to prevent surface-borne contamination. Twenty-three (23) of the springs have had plumbing installed to collect and distribute the waters to a central reservoir.

4. Significance of the feature to the authorized purposes for which the unit was created—The Act of April 20, 1832, initially set aside this area, including the Hot Springs, as a Federal reserve in the Territory of Arkansas. Since the initial Act, there have been over 50 additional Federal statutes specifically addressing the management of the Hot Springs. NPS recognizes the cultural significance of the evolution of the bathing regime into the elegant bathhouses and the thermal flows remain of primary significance to Hot Springs National Park. (16 U.S.C. 361)

Big Bend National Park

Feature: Spring No. 1

Significance Criteria: 1. Size and Extent—Small developed hot spring along the Rio Grande River.

Uniqueness—Approximately 7–9 gallons per minute are being pumped to supply water for the endangered fish species *Gambusia gaigei*.

2. Scientific and geologic significance—Spring No. 1 along the Rio Grande River is the water supply for an endangered fish species and is an important source for water samples to make temperature measurements for monitoring hydrologic changes.

3. The extent to which the feature remains in a natural, undisturbed condition—The spring has been enclosed and a pumphouse has been installed.

4. Significance of the feature to the authorized purposes for which the unit was created—Big Bend National Park was established in 1935 primarily "as a

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public park for the benefit and enjoyment of the people". Also, the enabling legislation provides for the administration and protection of the park to be exercised under the provisions of the Organic Act of the National Park Service of August 25, 1916. The Organic Act provides for the National Park Service to promote and regulate the use of Federal lands within the National Park System in a manner to conserve natural objects and wildlife therein (16 U.S.C. 1). Although this spring is not used for the purpose of public recreation, its primary use is for the maintenance of an endangered wildlife species. Thus, the purposes for establishing Big Bend National Park include preservation of endangered species. (16 U.S.C. 156)

Feature: Spring No. 4

Significance Criteria: 1. Size and Extent—Developed hot spring along the Rio Grande River.

Uniqueness—The spring has a flow of approximately 75 gallons per minute. The spring supplies potable water for Rio Grande Village and serves as a water source for the endangered species *Gambusia gaigei*.

2. Scientific and geologic significance—Spring No. 4 along the Rio Grande River serves as a water source for an endangered fish species and is an important source for water samples and to take temperature measurements for monitoring water temperature and flow as a measure of hydrologic changes.

3. The extent to which the feature remains in a natural, undisturbed condition—The spring has been enclosed and pumphouses installed. A 4 inch pipe is used to produce water flow that simulates natural flow for endangered species.

4. Significance of the feature to the authorized purposes for which the unit was created—As stated previously for Spring No. 1, this feature's use is primarily for maintaining an endangered wildlife species. The purposes for which Big Bend National Park was established include preservation of endangered species. (16 U.S.C. 156)

Feature: Hot Springs

Significance Criteria: 1. Size and Extent—Developed hot spring along the Rio Grande River.

Uniqueness—The spring supplies a bathhouse that is used by park visitors.

2. Scientific and geologic significance—The Hot Springs is a site contributing to Regional studies being conducted to monitor temperature and flow as a measure of hydrologic changes.

3. The extent to which the feature remains in a natural, undisturbed condition—The spring has been altered by development of a bathhouse built in 1910. The walls of the bathhouse still remain.

4. Significance of the feature to the authorized purposes for which the unit was created—Hot Springs, historically and currently, serves as a therapeutic hot spring. The spring is the focal point of Hot Springs National Register Historic District and is used by the public for recreational purposes. Thus, its use is of significance to the purposes for which the unit was created. (16 U.S.C. 156)

Lassen Volcanic National Park

There are six areas within Lassen National Volcanic Park that contain surface manifestations of a single thermal system. As all of these areas are connected to a single thermal system, NPS proposes to list the Lassen thermal system as one significant feature. The following significance criteria have been analyzed for each feature listed and have been found to be applicable to every feature within the Lassen thermal system.

Feature: Lassen thermal System

Significance Criteria: 1. Size—10 to 70 square kilometers.

Extent—Bumpass Hell, Little Hot Springs Valley, Sulphur Works, Devils Kitchen, Boiling Springs Lake—Drakesbad Hot Springs, and Terminal Geyser are the six features comprising the Lassen thermal system. The system is a two-phase, vapor dominated system approximately 500–600 meters thick. Surficial expression varies from superheated fumaroles at Bumpass Hall to acid-sulfate springs and mudpots at Sulfur Works and Devils Kitchen.

2. Scientific and geologic significance—The Lassen thermal system constitutes the only known extensive vapor-dominated thermal system in the Cascade Range. Only one other vapor-dominated system of equal thermal energy is known in the Western United States (the Geysers in California).

3. The extent to which the feature remains in a natural, undisturbed condition—Except for one well sited at Terminal Geyser, the system has not been tapped by deep drilling activity and there has been no depletion of thermal energy. Surface features at Bumpass Hell, Sulphur Works, and Devils Kitchen have been only slightly altered by the installation of trails and boardwalks for the safety of visitors.

4. Significance of the feature to the authorized purposes for which the unit was created—Lassen Volcanic National Park was established in 1916 as a "public park and pleasuring ground for the benefit of the people of the United States" and to be managed "for the preservation from injury or spoilation of all timber, mineral deposits, and natural curiosities or wonders within said park and their retention in a natural condition".

The thermal features in the park represents an outstanding example of Cascade volcanism and the thermal system and its surface manifestations are a significant part of the continuing volcanic activity in the area. (16 U.S.C. 201)

Sequoia National Park

Both of the identified thermal features within Sequoia National Park are determined as marginally significant, mainly because the scientific and geologic, significance of these features are unknown at this time. These springs represent surface manifestations of active subsurface thermal activity and both remain in a natural condition. One spring is located in a heavily used area and the other in a lightly used area of the backcountry within the unit. Combined visitation frequency is not known. These features are considered as natural curiosities within the unit and as such must be retained in their natural condition. In spite of their unknown geologic or scientific significance, these features are proposed by the NPS as significant thermal features within Sequoia National Park.

Feature: Kern Hot Springs

Significance Criteria: 1. Size and Extent—Kern Hot Springs is an extremely small spring approximately 2 meters in diameter.

Uniqueness—Kern Hot Springs is the only spring in the park with temperatures over 100° Fahrenheit and its presence serves as an indicator of active subsurface thermal activity.

2. Scientific and geologic significance—Unknown.

3. The extent to which the feature remains in a natural, undisturbed condition—Kern Hot Springs is in a heavily used area of the backcountry, and the spring itself appears to be in a natural condition.

4. Significance of the feature to the authorized purposes for which the unit was created—Sequoia National Park was established by an Act of Congress in 1890 and has as its purposes, among others, to preserve "from injury of all . . . natural curiosities or wonders within said park". Also, subsequent Acts of Congress that expand the boundaries of the park require the curiosities and wonders of the park to be retained in their natural condition. Although the scientific and geologic significance of this feature is unknown, Kern Hot Springs is considered a natural curiosity of the unit as it is the only spring in the park representing active subsurface thermal activity. (16 U.S.C. 41)

Feature: Whitney Warm Springs

Significance Criteria: 1. Size and Extent—This spring is approximately 10 meters in diameter.

Uniqueness—Whitney Warm Springs is the only spring in the park with temperature ranging in the mid-80° Fahrenheit and as such is an indicator of active subsurface thermal activity. It could have a biotic community dependent on the thermal characteristics of the feature that are different from other park waters.

2. Scientific and geologic significance—Unknown.

3. The extent to which the feature remains in a natural, undisturbed condition—Whitney Warm Springs is in a lightly used area of the backcountry and the spring itself appears to be in a natural condition. The only intrusion is an occasional wader and several rocks have been arranged around the shore of the springs.

4. Significance of the feature to the authorized purposes for which the unit was created—Sequoia National Park was created by an Act of Congress in 1890 and its purposes, among others, are to preserve "from injury of all . . . natural curiosities or wonders within said park". Also, subsequent Acts of Congress that expand the boundaries of the park require the curiosities or wonders of the park to be retained in their natural condition. Even though the scientific and geologic significance of this thermal feature is unknown, Whitney Warm Springs is considered a natural curiosity of the unit as it is the only spring in the park with temperatures in the mid-80° Fahrenheit range that could support biotic communities. Until more information is available on the significance of this feature, it is proposed for listing as a significant thermal feature within Sequoia National Park. (16 U.S.C. 41)

Hawaii Volcanoes National Park

The NPS proposes to list the following ten (10) thermal features as significant within the Hawaii Volcanoes National Park. Significance criteria #4 requires analysis of the significance of the feature to the authorized purposes for which the unit was created. Hawaii Volcanoes National Park was established as part of Hawaii National Park in 1916 and later redesignated as Hawaii Volcanoes National Park in 1961. The enabling legislation for this unit states that the purpose of the unit is to "provide for the preservation from injury of all . . . natural curiosities and wonders within said park, and their retention in their natural condition as nearly as possible". As the identified features within Hawaii Volcanoes National Park are unique natural thermal features of known scientific and geologic significance to the region, NPS has determined that each feature is a natural wonder of the unit. Many of the identified features are named as features for which the unit was created and as such are significant thermal features for this unit (16 U.S.C. 391). Criteria #4 is fully met and is applicable to each listed feature within the park.

Feature: Kilauea Caldera and Halemaumau

Significance Criteria: 1. Size and Extent—3 square miles (3 miles long by 1 mile wide).

Uniqueness—Kilauea Caldera and Halemaumau is the world's most active volcano.

2. Scientific and geologic significance—As the world's most active volcano, this feature offers extensive opportunites for scientific and geologic investigations of the active thermal activity manifested in steaming ground.

3. The extent to which the feature remains in a natural, undisturbed condition—The feature is in a natural, undisturbed condition.

Feature: Chain of Craters

Significance Criteria: 1. Size and Extent—Approximately 12 square miles (12 miles long by 1 mile wide).

Uniqueness—This chain of craters is a very active thermal zone.

2. Scientific and geologic significance—This feature is an active intrusive zone with many collapse caldera features or pit craters and steaming ground.

3. The extent to which the feature remains in a natural, undisturbed condition—The feature is in a natural, undisturbed condition.

Feature: East Rift Zone

Significance Criteria: 1. Size and Extent—Approximately 20 square miles (13 miles long by 1.5 miles wide).

Uniqueness—The East Rift Zone is the world's most active volcanic rift zone and exhibits steaming ground.

2. Scientific and geologic significance—This feature is the world's most active volcanic rift zone and as such offers opportunities for scientific and geologic investigation.

3. The extent to which the feature remains in a natural, undisturbed condition—The feature is in a natural, undisturbed condition.

Feature: Great Crack and Southwest Rift

Significance Criteria: 1. Size and Extent—Approximately 10 square miles (20 miles long by ½ mile wide).

Uniqueness—Major fault area of Kilauea is an artifact and indicator of active thermal activity.

2. Scientific and geologic significance—This feature is the major fault structural feature of Kilauea, which is an indicator of active thermal activity and offers opportunities for scientific and geologic investigation.

3. The extent to which the feature remains in a natural, undisturbed condition—The feature is in a natural, undisturbed condition.

Feature: Thurston Lava Tube

Significance Criteria: 1. Size and Extent—½ mile long by 100 yards wide.

Uniqueness—Volcanic lava tube which is an easily accessible artifact of volcanic activity.

2. Scientific and geologic significance—This feature is one of the few accessible lava tubes formed by a volcano and is the site of a popular visitor trail. This feature, because of its accessibility offers opportunities for investigation of its volcanic history.

3. The extent to which the feature remains in a natural, undisturbed condition—The area is the site of a developed visitor trail; however, these trails have not altered the integrity of the active thermal activity which characterizes the unit and the region.

Feature: Steaming Bluff and Sulphur Banks

Significance Criteria: 1. Size and Extent—Approximately 2 square miles (two miles long by one mile wide).

Uniqueness—Active steaming fumaroles.

2. Scientific and geologic significance—This feature is the site where the active steaming fumaroles may easily be viewed.

3. The extent to which the feature remains in a natural, undisturbed condition—The area is the site of developed visitor trails; however, these trails have not altered the integrity of the thermal feature.

Feature: Kilauea Iki Crater

Significance Criteria: 1. Size and Extent—1 mile long by ¼ mile wide.

Uniqueness—Cooling lava pond.

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2. Scientific and geologic significance—This feature is the site of current lava pond cooling rate studies.

3. The extent to which the feature remains in a natural, undisturbed condition—The feature is in a natural, undisturbed condition.

Feature: Puu Do

Significance Criteria: 1. Size and Extent—2 square miles (2 miles long by 1 mile wide).

Uniqueness—Continuously active volcanic vent.

2. Scientific and geologic significance—This area is under study for activity of a continuously active volcanic vent and its resultant magmatic activity.

3. The extent to which the feature remains in a natural, undisturbed condition—The feature is in a natural, undisturbed condition.

Feature: Mauna Ulu

Significance Criteria: 1. Size and Extent—4 square miles (two miles long by two miles wide). Uniqueness—Continuously active volcanic vent.

2. Scientific and geologic significance—Major active volcanic feature formed recently in the 1970's.

3. The extent to which the feature remains in a natural, undisturbed condition—The feature is in a natural, undisturbed condition.

Feature: Mokuaweoweo Caldera

Significance Criteria: 1. Size and Extent—4 square miles (4 miles long by 1 mile wide).

Uniqueness—This feature is the major caldera of Mauno Loa.

2. Scientific and geologic significance—This feature is the site of significant caldera studies.

3. The extent to which the feature remains in a natural, undisturbed condition—The feature is in a natural, undisturbed condition.

Haleakala National Park

Feature: Haleakala Crater

Significance Criteria: 1. Size—17,130 acres.

Extent—Haleakala Crater and adjacent outer slopes around the summit of the crater.

Uniqueness—Haleakala Crater is between 5,000 and 6,000 feet deep and is part of the Hawaiian "hotspot". The summit of the crater and a great many sites within are considered to be sacred by Native Hawaiians and contains many sites of archeological value, including royal burial sites.

2. Scientific and geologic significance—The entire Haleakala Crater (2½ miles by 7½ miles) is one large thermal feature containing many smaller thermal features. The crater is a huge erosional scar carved out of the heart of the volcano by water which has been subsequently refilled by half with new lava flows and topped off with numerous multi-colored cinder cones. The crater and its adjacent areas have been the site of volcanic and geologic studies.

3. The extent to which the feature remains in a natural, undisturbed condition—The feature is in a natural condition except for very few roads, trails, and buildings provided to serve the public. These developments have not altered the integrity of the thermal feature.

4. Significance of the feature to the authorized purposes for which the unit was created—The legislative history supporting the Act of August 10, 1916, which created the Haleakala National Park as an isolated extension of Hawaii Volcanoes National Park, emphasizes that the craters within the proposed boundaries are among the most remarkable of natural wonders and among the largest and most spectacular in the world. Scientifically and popularly, these volcanoes are a national rather than a local asset and Congress recognized that legislation was necessary to protect these and other curiosities that were being damaged at the time the legislation was being considered. The purposes of Haleakala National Park are, among others, to preserve the area's volcanoes and other wonders and curiosities for public enjoyment and scientific study. (16 U.S.C. 396b)

Lake Mead National Recreation Area

Feature: Black Canyon Hotsprings

Significance Criteria: 1. Size—Five (5) hotsprings have their source in a four-mile stretch of the river.

Extent—Three of the five springs flow from the Nevada side, the other two springs flow from the Arizona side of the river.

Uniqueness—The temperatures of the springs have been recorded as high as 124° Fahrenheit. Two of the five hot springs discharge a volume of water sufficient to maintain a flow on the surface for approximately ¼ mile. The area is unique in that these springs are the only ones that flow water at the surface at temperatures higher than 100° Fahrenheit within the unit. Their presence serve as indicators of active thermal activity. Also, waters from one of the springs is used to support a refugium for the endangered Devils Hole Pupfish.

2. Scientific and geologic significance—The waters from one of the springs serve as habitat for an endangered fish species. Much of the geology in this area is volcanic in origin from the bottom of side canyons to the Colorado River. Also, Black Canyon has been identified by the NPS in its General Management Plan for the unit as an outstanding natural feature for its geologic beauty and the existence of the unique hot springs.

3. The extent to which the feature remains in a natural, undisturbed condition—The areas surrounding the springs have minor alterations and impacts from recreational use; however, the springs themselves remain in a natural condition.

4. Significance of the feature to the authorized purposes for which the unit was created—Lake Mead National Recreation Area was established for the primary purpose of preserving and enhancing public recreation opportunities within the unit. These springs are used extensively by hikers and boaters on a regular basis for recreational and therapeutic purposes. Pools are created by stacking rocks and sand allowing visitors to immerse themselves in the pools. Public visits to the Black Canyon Hotsprings are estimated at 7,000 annually. Also, protection of endangered species is consistent with the authorized purposes for which the unit was established. (16 U.S.C. 460n)

The remaining two of the three identified features within Lake Mead National Recreation Area are connected to the same regional flow system, but otherwise their geologic significance are not known at this time. In spite of their unknown geologic significance, the NPS proposes to list the Blue Point Spring and the Rogers Spring as significant thermal features because of their value to the public for recreational purposes. The primary purpose of Lake Mead National Recreation Area is to provide for and enhance public recreational opportunities within its boundaries. As these springs are used extensively by the public as "spas" and as the value of their use is dependent on the thermal qualities of the springs, these features are proposed as significant thermal features within Lake Mead National Recreation Area.

Feature: Blue Point Spring

Significance Criteria: 1. Size—Approximately 0.3 mile long.

Extent—Small spring located in the Nevada portion of the NRA at the junction of two faults near Mississippian limestone.

Uniqueness—The discharge rate is approximately 400 gallons per minute with temperatures at the spring source measuring around 85° Fahrenheit. The presence of these warm springs are indicators of a subsurface thermal regime.

2. Scientific and Geologic Significance—This spring, at one time, was being considered as a refugium for the endangered *Moapa coriacez*. Upon investigation of the chemical properties of the waters, it was found that, although the Spring is in the same regional flow system as Moapa River headwaters springs (where the endangered species occur naturally), the ionic constituents of the waters of the spring make the area unsuitable as a refugium. The waters discharging at the spring are part of a regional flow system and represent a combination of deep and shallow water circulation in the recharge area where moisture availability is rated as intermediate. The bedrock is relatively permeable. Even though the area has been the site of scientific interest and study, the geologic significance of the area is unknown.

3. The extent to which the feature remains in a natural, undisturbed condition—The channels have been altered for commercial and recreational uses.

4. Significance of the feature to the authorized purposes for which the unit was created—Lake Mead, formed by Hoover Dam and Lake Mohave, and by Davis Dam on the Colorado River comprise this first national recreation area established by an Act of Congress in 1964. The enabling legislation states that the NRA "shall be administered . . . for general purposes of public recreation, benefit, and use, and in a manner that will preserve, develop, and enhance . . . the recreational potential, and in a manner that will preserve the scenic, historic, scientific, and other important features of the area". Blue Point Spring is a part of the regional flow system that serves as a major recreation facility used extensively by the public, with recorded visits to Blue Point Spring and Rogers Spring (listed below) estimated at 5,000 annually. As this feature is of major recreational value to the unit, the NPS proposes this feature as a significant thermal feature within the NRA. (16 U.S.C. 460n)

Feature: Rogers Spring

Significance Criteria: 1. Size—Approximately 0.75 miles long.

Extent—Rogers Spring is located in the Nevada portion of the NRA at the junction of two faults near Mississippian limestone at an elevation of 1580 feet and is in the same general vicinity as Blue Point Springs.

Uniqueness—The discharge rate is approximately three second feet and temperature at the source is measured at 87° Fahrenheit. The presence of the warm springs is an indicator of active subsurface thermal activity.

2. Scientific and geologic significance—Waters discharging at Rogers Spring are part of the same regional flow system as those of Blue Point Spring. The discharge goes directly into a man-made pond that is used by the recreating public as a swimming area. The geologic significance of the area is unknown.

3. The extent to which the feature remains in a natural, undisturbed condition—The channels of Rogers Spring have been altered over the years for either commercial purposes or recreational enhancement. Picknicking facilities have been developed adjacent to the spring for recreational use. Neither the discharge point nor underground system of the springs have been altered.

4. Significance of the feature to the authorized purposes for which the unit was created—As stated above for Blue Point Springs, Lake Mead National Recreation Area was established for the expressed purpose of preserving and enhancing public recreation opportunities within the unit. Public visits to both Rogers Spring and Blue Point Spring is estimated at 5,000 annually, with the heaviest public use centering around Rogers Spring. NPS recognizes the recreational significance of Rogers Spring and proposes its listing as a significant thermal features within the unit. (16 U.S.C. 460n)

Specified Units Within the National Park System With No Significant Thermal Features

The NPS has identified no known thermal features within the following three units of the National Park System located in Alaska:

Yukon-Charley Rivers National Preserve;

Glacier Bay National Park and Preserve; and,

Denali National Park and Preserve.

Thus, determinations of "significance" are not applicable and the three units listed above are not proposed for inclusion on the final list of significant thermal features to be forwarded to Congress in April 1987.

Thermal features were identified within the boundaries of the following three units of the National Park System; however, none of the features identified have been determined as "significant" by the NPS under the criteria of the Act. Thus, the features listed below are not proposed for inclusion on the final list of significant thermal features to be forwarded to Congress in April 1987.

Olympic National Park

Feature: Olympic Hot Springs

Significance Criteria: 1. Size—Approximately two (2) acres.

Extent—These springs consist of twenty-one (21) seeps along Boulder Creek.

Uniqueness—Olympic Hot Springs are unique because hot springs are rarely found on the Olympic Peninsula.

2. Scientific and geologic significance—Olympic Hot Springs has no apparent relationship with the area's volcanic history and has not been identified as significant in terms of the peninsula's geology. The mineral content of the waters varies little with that of surface waters and the scientific significance of the area is unknown.

3. The extent to which the feature remains in a natural, undisturbed condition—The Olympic Hot Springs have been extensively altered to accommodate commercial operations and many have been formed into pools that have been used for bathing. The impounded water frequently fails to meet water quality standards. The resort around these springs no longer exist. None of the seeps exist in a natural state.

4. Significance of the feature to the authorized purposes for which the unit was created—Olympic National Park was established in 1938 as a public park for the benefit and enjoyment of the people of the United States. The Olympic Hot Springs do not attract extensive visitor use and are not considered a major public recreational resource within the unit. Also, as these springs were not used as rationale for establishing the unit and are not used today by the public for recreation, these springs are not considered as a significant thermal feature within the unit. (16 U.S.C. 251)

John D. Rockefeller, Jr. Memorial Parkway

Feature: Huckleberry Hotsprings

Significance Criteria: 1. Size and Extent—This feature consists of several springs located one mile west of Flagg Ranch.

Uniqueness—This feature is not unique and is in fact relatively commonplace for the area.

2. Scientific and geologic Significance—The combined flow of this feature is estimated at 350,000 gallons per day with temperatures over 100

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°Fahrenheit. The waters from these springs are slightly radioactive and have not been identified as having any scientific or geologic significance.

3. The extent to which the feature remains in a natural, undisturbed condition—These springs have been highly altered and were developed into a public swimming pool facility in the early 1960's. The facility was abandoned in 1984. Extensive rehabilitation is planned for the area to restore it to more natural conditions. However, alterations to the thermal feature may not be reparable.

4. Significance of the feature to the authorized purposes for which the unit was created—This identified feature was not used as rationale for the establishment of the unit and is not recognized as a significant thermal feature within the unit.

Grand Teton National Park

Feature: Steamboat Mountain Fumarole

Significance Criteria: 1. Size and Extent—This fumarole is a small thermal vent near the summit of Steamboat Mountain.

Uniqueness—This feature is not unique because the activity of the fumarole has been declining for many years. Thermal characteristics are perceptable only in winter months.

2. Scientific and Geologic Significance—The Steamboat Mountain Fumarole has such little remaining activity that it can be considered essentially extinct and has little to no significance at this time.

3. The extent to which the feature remains in a natural, undisturbed condition—The feature is relatively unmodified but is almost extinct.

4. Significance of the feature to the authorized purposes for which the unit was created—Grand Teton National Park was established by Congress in 1929 with the expressed purpose of setting apart the lands within the boundaries "as a public park or pleasure ground for the benefit and enjoyment of the people of the United States". These springs have not been the site of recreation by the public and do not exhibit any unique characteristics related to the authorized purposes for which the unit was created. (16 U.S.C. 406d)

Feature: Jackson Lake Warmsprings

Significance Criteria: 1. Size and Extent—This feature is a series of springs along the northwest shoreline of Jackson Lake.

Uniqueness—Used to be completely inundated by Jackson Lake and not considered unique.

2. Scientific and geologic significance—This feature used to be completely submerged by the enlargement of Jackson Lake in 1910, but are now above water due to the temporary restriction of the lake level. This area has not been identified as an area of scientific or geologic interest; however, there is very little information available on these springs.

3. The extent to which the feature remains in a natural, undisturbed condition—This feature has been altered and is often under water.

4. Significance of the feature to the authorized purposes for which the unit was created—These springs have not been used nor are they currently being used by the public and do not exhibit any unique characteristics related to the purposes for which the unit was created. (16 U.S.C. 406d)

Feature: Kelly Warmsprings

Significance Criteria: 1. Size and Extent—This feature is a large spring located one mile north of Kelly, Wyoming.

Uniqueness—None.

2. Scientific and geologic significance—Kelly Springs has been highly modified to increase its flow for irrigation and stock watering. Its current flow is estimated between five and seven million gallons per day with temperatures measured at 75 °Fahrenheit. Both temperature and water chemistry data suggest this spring may be associated with the same geologic structures as Teton Valley Ranch Warmsprings and Abercrombie Warmsprings identified below. This spring contains dense populations of native and exotic fish but has not been identified as having scientific or geologic significance to the region.

3. The extent to which the feature remains in a natural, undisturbed condition—This thermal feature has been extensively modified for irrigation, stock watering, and public recreation.

4. Significance of the feature to the authorized purposes for which the unit was created—These springs have been highly modified for recreation and for domestic sources of water and were not used as rationale for establishing the unit. These springs do not exhibit any unique characteristics related to the purposes for which the unit was created. (16 U.S.C. 406d)

Feature: Teton Valley Ranch Warmsprings

Significance Criteria: 1. Size and Extent—This feature is a group of small springs located north of the Gros Ventre River, which is east of Kelly, Wyoming.

Uniqueness—Relatively small and commonplace.

2. Scientific and geologic significance—These springs create a marshy area on the floodplain which is heavily grazed by livestock. No flow or water quality data are available from these springs. These springs have not been identified as having any scientific or geologic significance.

3. The extent to which the feature remains in a natural, undisturbed condition—This feature may have been modified by past irrigation development.

4. Significance of the feature to the authorized purposes for which the unit was created—This feature is not used for recreation and was not used as rationale for the establishment of the unit. These springs do not exhibit any unique characteristics related to the purposes for which the unit was created. (16 U.S.C. 406d)

Feature: Abercrombie Warmsprings

Significance Criteria: 1. Size and Extent—This feature is a relatively small spring located near the south boundary of the unit.

Uniqueness—This feature is considered commonplace, rather than unique.

2. Scientific and geologic significance—This feature was developed as a swimming pool in the 1940's and has since been removed. The spring's flow is estimated at 60,000 gallons per day with temperatures measured at 75 °Fahrenheit. In 1986, the area has been partially rehabilitated. The area has no scientific or geologic significance to the region.

3. The extent to which the feature remains in a natural, undisturbed condition—The area has been highly modified with former development and subsequent partial rehabilitation.

4. Significance of the feature to the authorized purposes for which the unit was created—This feature is not used for public recreation and was not used as rationale for the establishment of the unit. (16 U.S.C. 406d).

Dated: February 9, 1987.

Signed:

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-3004 Filed 2-12-87; 8:45 am]

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federal register

Friday
February 13, 1987

Part III

Department of Agriculture

Cooperative State Research Service

7 CFR Part 3402

Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program; Administrative Provisions; Final Rule

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DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

7 CFR Part 3402

Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program; Administrative Provisions

AGENCY: Cooperative State Research Service, USDA.

ACTION: Final rule.

SUMMARY: This document establishes Part 3402 of Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations, for the purpose of administering the Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program conducted under the authority of section 1417(a)(3)(B) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152(a)(3)(B)). The issuance of this rule establishes the procedures to be followed annually in the solicitation of competitive graduate fellowships grant proposals, the evaluation of such proposals, and the award of graduate fellowships grants under this program.

EFFECTIVE DATE: February 13, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. K. Jane Coulter, (202) 447-7854.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) the collection of information requirements contained in this final rule have been reviewed and approved by the Office of Management and Budget and given the OMB Control No. 0524-0024.

Classification

This final rule has been reviewed under Executive Order 12291, and it has been determined that it is not a major rule because it does not involve a substantial or major impact on the Nation's economy or on large numbers of individuals or businesses. There will be no major increase in cost or prices for consumers, individual industries, Federal, state, or local governmental agencies, or geographical regions. It will not have a significant economic impact on competitive employment, investment, productivity, innovation, or on the ability of U.S. enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, it will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. No. 96-534 (5 U.S.C. 601).

Regulatory Analysis

Not required for this rulemaking.

Environmental Impact Statement

This regulation does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.210, Food and Agricultural Sciences National Needs Graduate Fellowships Grants. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, when the authority to administer this program resided in the Agricultural Research Service, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background and Purpose

This document adds a new Part 3402 to Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations, for the purpose of administering the Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program conducted under the authority of section 1417(a)(3)(B) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152(a)(3)(B)). The issuance of this rule establishes the procedures to be followed annually in the solicitation of competitive graduate fellowships grant proposals, the evaluation of such proposals, and the award of graduate fellowships grants under this program. In the past, a Notice was published in the **Federal Register** announcing the availability of funds for the Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program and soliciting proposals. In addition, the Notice set forth the procedures and conditions relating to the award of grants and administration of the program. This rule establishes and codifies such procedures, criteria, and conditions, and eliminates the need to republish them annually.

A Proposed Rule was published in the November 14, 1986, issue of the **Federal Register** (51 FR 41466) and provided interested persons a 30 day period for public comment. Comments were received raising the following major points: (1) The monetary value of the stipend; (2) the propriety of limiting support to newly recruited students; and (3) the maximum amount of program funds which an institution can receive in a given fiscal year. These points will be covered in that order.

The first comment was that the value of the stipend was set too high. This rule does not purport to set the value of the stipend; rather, that value will be determined for each solicitation based primarily upon the availability of Federal funds. 7 CFR 3402.5. A careful review of Federal fellowship and traineeship programs currently administered indicates that most Federal agencies pay a student stipend and a separate allocation to the institution for the purpose of covering full tuition and fees. In the USDA program, the student is responsible for his own tuition and fees. USDA firmly believes that this type of stipend arrangement leads to improved management efficiency in the program. When the cost of tuition and fees, as borne by the student, are deducted the remaining stipend available to the student is comparable to other programs.

With regard to the propriety of limiting eligibility for fellowships to newly recruited students, the appropriation history of the program denotes that the Congress initiated the program with the expressed intent of assisting institutions in increasing the enrollment of outstanding students in targeted food and agricultural sciences expertise shortage areas. The Department has determined that this can best be accomplished by requiring grant recipients to actively recruit and enroll new students recognized for their scholastic excellence. Therefore, fellowship eligibility is limited to new students.

The final issue raised was the need to set a maximum amount of program funds which could be awarded to a single institution in a given fiscal year. It was correctly pointed out that establishment of such a limit would encourage distribution of funds to a larger number of institutions. The Department concurs and has adjusted the final rule to reflect this comment.

No other significant differences exist between this document and the proposed rule published on November 14, 1986.

List of Subjects in 7 CFR Part 3402

Grant programs—agriculture, Agriculture Higher Education Programs (HEP) Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program.

Part 3402 is added to Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations as follows:

PART 3402—FOOD AND AGRICULTURAL SCIENCES NATIONAL NEEDS GRADUATE FELLOWSHIPS GRANTS PROGRAM

Subpart A—General Introduction

Sec.

3402.1 Applicability of regulations.
3402.2 Definitions.
3402.3 Institutional eligibility.

Subpart B—Program Description

3402.4 Food and agricultural sciences areas targeted for national needs graduate fellowships grant support.
3402.5 Overview of Graduate Fellowships Grants Program.
3402.6 Fellowship appointments.
3402.7 Fellowship activities.
3402.8 Financial provisions.

Subpart C—Preparation of a Proposal

3402.9 Program brochure and application kit.
3402.10 Proposal cover page.
3402.11 National need summary.
3402.12 National need narrative.
3402.13 Budget.
3402.14 Faculty vitae.
3402.15 Appendix.

Subpart D—Submission of a Proposal

3402.16 Where to submit proposals.
3402.17 Intent to submit a proposal.

Subpart E—Proposal Review and Evaluation

3402.18 Proposal review.
3402.19 Evaluation criteria.

Subpart F—Supplementary Information

3402.20 Terms and conditions of grant awards.
3402.21 Notice of grant awards.
3402.22 Other Federal statutes and regulations that apply.
3402.23 Confidential aspects of proposals and awards.
3402.24 Access to peer review information.
3402.25 Documentation of progress on funded projects.
3401.26 Evaluation of program.

Authority: Sec. 1470, National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3316).

Subpart A—General Introduction

§ 3402.1 Applicability of regulations.

(a) The regulations of this part apply to competitive grants awarded under the provisions of section 1417(a)(3)(B) of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152(a)(3)(B)). This statute designates the Department of Agriculture as the lead Federal agency for agricultural research, extension, and teaching in the food and agricultural sciences. It authorizes the Secretary of Agriculture, who has delegated the authority to the Cooperative State Research Service (CSRS), to make competitive grants to U.S. colleges and universities to administer and conduct graduate fellowship programs to help meet the Nation's needs for development of scientific and professional expertise in the food and agricultural sciences. The fellowships are intended to encourage outstanding students to pursue and complete graduate degrees in the areas of food and agricultural sciences designated by CSRS through its Higher Education Programs (HEP) as national needs.

(b) The regulations of this part do not apply to grants awarded by the Department of Agriculture under any other authority.

§ 3402.2 Definitions.

As used in this part:

"Citizen or national of the United States" means a citizen or native resident of any one of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, or the Virgin Islands of the United States. It does not refer to a citizen of another country who has applied for United States citizenship.

"College and university" means an educational institution in any State which (1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, (2) is legally authorized within such State to provide a program of education beyond secondary education, (3) provides an educational program for which a bachelor's degree or any other higher degree is awarded, (4) is a public or other nonprofit institution, and (5) is accredited by a nationally recognized accrediting agency or association.

"Food and agricultural sciences" denotes research, extension, and teaching activities concerned with the production, processing, marketing, distribution, conservation, consumption, research and development of food and agriculturally related products and services, inclusive of programs in agriculture, natural resources, forestry, veterinary medicine, home economics, and closely allied fields.

"Graduate degree" means a master's or doctoral degree.

"Teaching activities" specific to the food and agricultural sciences denote academic programs of study designed to train scientists and professionals in production, processing, marketing, distribution, conservation, consumption, research and development of food and agriculturally related products and services.

§ 3402.3 Institutional eligibility.

Proposals may be submitted by all U.S. colleges and universities that confer a graduate degree in at least one area of the food and agricultural sciences targeted for national needs fellowships, that have a significant ongoing commitment to the food and agricultural sciences generally, and that have a significant ongoing commitment to the specific subject area for which grant application is made. It is the objective to award grants to colleges and universities which have notable teaching and research competencies in the food and agricultural sciences. The grants are specifically intended to support fellowship programs that encourage outstanding students to pursue and complete a graduate degree at such institutions in an area of the food and agricultural sciences for which there is a national need for the development of scientific expertise. Therefore, institutions which currently have excellent programs of graduate study and research in the food and agricultural sciences dealing with targeted national needs are particularly encouraged to apply.

Subpart B—Program Description

§ 3402.4 Food and agricultural sciences areas targeted for national needs graduate fellowships grants support.

Areas of the food and agricultural sciences appropriate for fellowship grant applications are those in which developing shortages of expertise have been determined and targeted by CSRS-HEP for national needs fellowship grant support. When funds are available, the specific areas and funds per area will be identified in a **Federal Register** notice announcing the program and soliciting program applications.

§ 3402.5 Overview of Graduate Fellowships Grants Program.

Grants, providing funds for a limited number of fixed graduate student stipends and a fixed cost-of-education institution allowance, will be awarded competitively to selected U.S. institutions. Based on the amount of funds appropriated in any fiscal year, CSRS will determine the allowable stipend amount and cost-of-education allowance. In addition, it will establish the maximum number of national need areas for which a proposal may request funding, the minimum and maximum

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numbers of fellowships that an institution may apply for in a proposal, the minimum and maximum funds that may be awarded under a single grant, and the maximum total funds that may be awarded to an institution under the program in a given fiscal year. These determinations and the limits on the total number of proposals which can be submitted by an institution as well as the number of proposals submitted by an institution on behalf of the same college or equivalent administrative unit will be published as a part of the program announcement in the **Federal Register.**

§ 3402.6 Fellowship appointments.

(a) Fellowships must be awarded within 15 months of the effective date of a grant. Institutions failing to meet this deadline will be required to refund monies associated with any unawarded fellowship(s). Fellowship appointments may be held only by persons who enroll and pursue full-time study in a graduate degree program in an area of the food and agricultural sciences targeted for national needs fellowships. In addition, fellows must be newly recruited and may not have been enrolled previously in the academic program at the same degree level; must be citizens or nationals of the United States as determined in accordance with Federal law; and must have a strong interest, as judged by the institution, in pursuing a degree in a targeted national need area and in preparing for a career as a food or agricultural scientist or professional. It will be the responsibility of the grantee institution to award fellowships to students of superior academic ability. A doctoral fellow who maintains satisfactory progress in his or her course of study is eligible for support for a maximum of 36 months within a 45-month period. Master's level fellows, maintaining satisfactory progress, are eligible for support for a maximum of 24 months during a 33-month period. However, it is the intent of this program that fellows pursue full-time uninterrupted study. For fellows requiring additional time to complete a degree, it is expected that the institution will endeavor to continue supporting individuals originally appointed to fellowships through such other institutional means as teaching assistantships and research assistantships.

(b) Within the framework of these regulations, all decisions with respect to the appointment of fellows will be made by the institution. Throughout a fellow's tenure, the institution should satisfy itself that the fellow is making satisfactory academic progress, and carrying out, or plans to carry out, national needs related research. If an institution finds it necessary to terminate support of a fellow for insufficient academic progress or by decision on the part of the fellow, the fellow becomes ineligible for future assistance under the program. If a fellow finds it necessary to interrupt his or her program of study because of health, personal reasons, outside employment, or acceptance of an assistantship, the institution must reserve the funds for the purpose of allowing the fellow to resume funded study any time within a 9-month period. However, a fellow who finds it necessary to interrupt his or her program of study more than one time cannot exceed a total of 9 months cumulative leave status without forfeiting eligibility. For fellowships terminated because of insufficient academic progress, a decision on the part of the fellow, or reserved due to an interrupted program of study but not resumed within the required time period, unexpended monies must be refunded. Institutions may not use unexpended monies associated with a terminated fellowship to recruit and support a "replacement" fellow.

§ 3402.7 Fellowship activities.

A fellow must be enrolled at all times during tenure in a full-time program leading to a graduate degree in one of the targeted national needs areas. However, the normal requirement of formal registration during part of this tenure may be waived if permitted by the policy of the fellowship institution, provided that the fellow remains engaged in appropriate full-time fellowship activities. Fellows in academic institutions are not entitled to vacations as such. They are entitled to the short normal student holidays observed by the institution. The time between academic semesters or quarters is to be utilized as an active part of the training period. During the period of support, a fellow may not accept employment by the institution or any other agency. However, a grant supporting research costs of the fellow is acceptable, exclusive of salary or wages and fringe benefits for the fellow.

§ 3402.8 Financial provisions.

The basic fellowship stipend and cost-of-education institution allowance that may be paid from grant funds will be contingent on and determined by annual appropriations. The amount of both the stipend and the cost-of-education allowance will be cited in the program announcement in the **Federal Register.** An institution may elect to use the cost-of-education funds to apply to fellows' tuitions and fees; however, such is not required. The allowance may be used also by an institution to defray other program expenses (e.g., recruitment, travel, publications, or salaries of project personnel). Tuition and fees are the responsibility of a fellow unless an institution elects to use its cost-of-education allowance for this purpose or elects to pay such costs out of other non-USDA monies. No dependency allowances are provided for fellows. Monthly stipend payments will be made to fellows by the institution, according to standard institutional procedures.

Subpart C—Preparation of a Proposal

§ 3402.9 Program brochure and application kit.

An Application Kit will be made available to any potential grant applicant upon request. This Kit includes a program brochure with application instructions and forms. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this final rule have been reviewed and approved by the Office of Management and Budget and given the OMB Control No. 0524–0024. The Kit also includes regulatory provisions applicable to the program.

§ 3402.10 Proposal cover page.

The Proposal Cover Page, Form CSRS–701, can be found in the program brochure and must be completed in its entirety including all authorizing signatures. One copy of each grant application must contain the pen-and-ink signature(s) of the Project Director(s), as well as the Authorized Certifying Representative for the college and for the institution.

§ 3402.11 National need summary.

Using the National Need Summary, Form CSRS–702, summarize the proposed graduate program of study and the academic and research strengths of the institution in the national need area for which funding is requested. If support for both master's and doctoral fellowships is requested, prepare a summary for each degree level. The summary should not include any reference to the specific number of fellowships requested. The information on this summary page(s) will be used in assigning the most appropriate panelists to review a proposal. If a proposal is supported, this page may be used in program publications. The *National Need Summary* form is provided in the program brochure.

§ 3402.12 National need narrative.

A narrative for the national need area should be written in four sections and limited to no more than 20 pages. The four sections to be included are as follows:

Sec. 1. Present a detailed description of the proposed fellows' graduate plan of study. Identify courses and summarize content. Discuss any special features such as multidisciplinary aspects of the program of study, multiuniversity collaborative approaches, experiential learning opportunities such as a practicum or internship, or a unique disciplinary collateral specialization. Also discuss areas of research that fellows will be encouraged to engage in via a thesis or dissertation. In essence, this section must clearly establish that the proposed program of study will result in the development of outstanding scientific/professional expertise in the national need area for which funding is requested.
CAUTION: If a proposal requests support for both master's and doctoral fellowships, all information in this section should be provided specific to each degree level.

Sec. 2. Justify the institution's position that it presently provides a major, productive, recognized program of graduate study and research in the area of national need in which selected fellows would be engaged. Include evidence of the quality of existing attributes and resources of the institution such as teaching and research faculty, instructional and research instrumentation and facilities, library resources, computing resources, and so forth. Also, discuss the extent to which graduate students have access to such institution resources.

Sec. 3. Thoroughly document the institution's plans and procedures for managing fellowship appointments. Explain in-depth the plan for recruiting academically outstanding fellows and procedures for selecting fellows of superior quality who appear to be highly motivated to prepare for and pursue a career as a food or agricultural scientist or professional. In addition, cite specific plans for advising and guiding fellows through a program of study, as well as any special programs or activities that will be offered to enrich the fellows' graduate training.

Sec. 4. Include important supplementary summary data for your institution relevant to the national need area for which funding is requested. Examples of appropriate data are indices of student quality, enrollments and degrees awarded for recent years, placement of graduates, facilities, and faculty research support.

§ 3402.13 Budget.

Prepare the Proposal Budget, Form CSRS–703, identifying all costs associated with the proposal. Instructions for completing the *Proposal Budget* are provided on the form.

§ 3402.14 Faculty vitae.

This section should include summary vitae (emphasizing major accomplishments during the past 5 years) for faculty contributing significantly to institutional competence in the national need area addressed in the proposal. Arrange the vitae in alphabetical order, assign a number to each individual vita in the upper right hand corner, and refer to this number when appropriate within the context of the proposal.

§ 3402.15 Appendix.

Any additional supporting information deemed important for clarifying and/or strengthening the proposal should be included in an Appendix.

Subpart D—Submission of a Proposal

§ 3402.16 Where to submit proposals.

The annual program announcement published in the **Federal Register** will delineate the date for submission of proposals and the number of copies of a proposal required to apply for a grant. In addition, the program announcement will provide the address for mailing the proposal and the institution's latest graduate catalog.

§ 3402.17 Intent to submit a pr posal.

To assist CSRS–HEP in preparing for review of fellowship proposals, institutions planning to submit proposals for fellowships are requested to complete and return the *Intent to Submit Card* provided on the inside back cover of the program brochure. One card should be completed and returned for *each* proposal an institution anticipates submitting. Sending this card does not commit an institution to any course of action.

Subpart E—Proposal Review and Evaluation

§ 3402.18 Proposal review.

The proposal evaluation process includes both internal staff review and merit evaluation by panels of scientists, educators, industrialists, and Government officials who are highly qualified to render expert advice in the targeted areas. The goal of the process of selection and structuring of evaluation panels is to provide optimum expertise and objective judgment in the evaluation of proposals specific to a particular area of national need.

§ 3402.19 Evaluation criteria.

A proposal addressing a particular national need area will be evaluated in competition with other proposals addressing the same national need area at the same level of graduate study. Proposals addressing more than one level of graduate study will be rated for each degree level addressed. Therefore, funding may be awarded to a particular portion of a proposal addressing a degree level in lieu of funding a proposal in its entirety. Both internal staff and the panelists will evaluate proposals primarily on the basis of the following criteria:

Evaluation Criteria

	Weight
a. The degree to which the proposal clearly establishes that the proposed program of graduate training will result in the development of outstanding scientific/professional expertise related to the national need area and in a reasonable period of time.	25 points.
b. The degree to which the proposed program of study reflects special features such as multidisciplinary and/or multiuniversity collaborative approaches, experiential learning opportunities, or a unique disciplinary collateral specialization.	15 points.
c. The degree to which the proposal establishes that the institution's faculty, facilities and equipment, instructional support resources, and other attributes are excellent for providing outstanding graduate study and research at the forefront of science and technology related to the chosen area of national need.	20 points.
d. The degree to which the institution's plans and procedures for recruitment and selection of academically outstanding fellows and for monitoring and facilitating fellows' progress through a program of study reflect excellence as documented in the proposal.	20 points.
e. Supporting summary data.....	10 points.
f. The quality of the proposal as reflected by its substantive content, organization, clarity, and accuracy.	10 points.

Additional evaluation criteria may be cited in the annual program announcement published in the **Federal Register.**

Subpart F—Supplementary Information

§ 3402.20 Terms and conditions of grant awards.

Within the limit of funds available for such purpose, the awarding official shall make project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set

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forth in this part. The beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015).

§ 3402.21 Notice of grant awards.

(a) The grant award document shall include, at a minimum, the following:

(1) Legal name and address of performing organization.

(2) Title of project.

(3) Name(s) and address(es) of Project Director(s).

(4) Identifying grant number assigned by the Department.

(5) Project period, which specifies how long the Department intends to support the effort without requiring reapplication for funds.

(6) Total amount of Federal financial assistance approved during the project period.

(7) Legal authority(ies) under which the grant is awarded.

(8) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award.

(9) Other information or provisions deemed necessary by the Department to carry out its granting activities or to accomplish the purpose of this particular project grant.

(b) The notice of grant award, in the form of a letter, will provide pertinent instructions and information to the grantee which are not included in the grant award document described above.

§ 3402.22 Other Federal statutes and regulations that apply.

Several other Federal regulations or statutes apply to project grants awarded under this part. These include but are not limited to:

7 CFR Part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, as amended, implementing OMB directives (i.e., Circular Nos. A–110 and A–21), as well as general policy requirements applicable to recipients of Departmental financial assistance.

29 U.S.C. 794, Section 504—Rehabilitation Act of 1973, and CFR 7 Part 15b (USDA effectuation of statute), prohibiting discrimination based upon physical handicap in Federally assisted programs.

§ 3402.23 Confidential aspects of proposals and awards.

When a proposal results in a grant, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Agency and the grantee mutually agree to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

§ 3402.24 Access to peer review information.

After final decisions have been announced, CSRS–HEP will, upon request, inform the project director of the reasons for its decision on a proposal. Verbatim copies of reviews, not including the identity of the reviewer, will be made available to respective project directors upon specific request.

§ 3401.25 Documentation of progress on funded projects.

A *Fellowship Appointment Documentation* form is included in the program brochure. Upon request by CSRS–HEP, project directors awarded grants under the program will be required to complete and submit this form. Follow-up progress reports will focus on assessing continuing progress of fellows through their graduate programs of study and on institution adherence to program guidelines.

§ 3401.26 Evaluation of program.

Grantees should be aware that CSRS may, as a part of its own program evaluation activities, carry out in-depth evaluations of assisted activities through independent third parties. Thus, grantees should be prepared to cooperate with evaluators retained by CSRS to analyze both the institutional context and the impact of any supported project.

Done at Washington, DC, this 6th day of February 1987.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 87–2689 Filed 2–12–87; 8:45 am]

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federal register

Friday
February 13, 1987

Part IV

Office of Management and Budget

Budget Rescissions and Deferrals; Cumulative Report

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OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

February 1, 1987.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of February 1, 1987, of 56 deferrals contained in the four special messages of FY 1987. These messages were transmitted to the Congress on September 26, and December 15, 1986, and January 5 and 28, 1987.

Rescissions (Table A and Attachment A)

As of February 1, 1987, there were 73 rescission proposals totaling $5,835.8 million pending before the Congress.

Deferrals (Table B and Attachment B)

As of February 1, 1987, $10,011.7 million in 1987 budget authority was being deferred from obligation and $3.7 million in 1987 outlays was being deferred from expenditure. Attachment B shows the history and status of each deferral reported during FY 1987.

Information from Special Messages

The special message containing information on the deferrals covered by this cumulative report is printed in the Federal Register listed below:

Vol. 51, FR p. 35976, Tuesday, October 7, 1986
Vol. 51, FR p. 47356, Wednesday, December 31, 1986
Vol. 52, FR p. 964, Friday, January 9, 1987
Vol. 52, FR p. 3552, Wednesday, February 4, 1987.

James C. Miller III,
Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1987 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President	5,835.8
Accepted by the Congress	0
Rejected by the Congress	0
Pending before the Congress	5,835.8

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TABLE B

STATUS OF 1987 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President	11,313.2
Routine Executive releases through February 1, 1987 (OMB/Agency releases of $1,297.9 million and cumulative adjustments of $0 million)	-1,297.9
Overturned by the Congress	0
Currently before the Congress	10,015.4 a/

a/ This amount includes $3.7 million in outlays for a Department of the Treasury deferral (D87-21).

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1987

As of February 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF AGRICULTURE								
Agricultural Research Service								
Buildings and facilities	R87-1 R87-1A		28,000	1-5-87 1-28-87				
Agricultural Stabilization and Conservation Service								
Rural clean water program	R87-2		6,000	1-5-87				
Agricultural conservation program	R87-3		164,356	1-5-87				
Water bank program	R87-4		8,166	1-5-87				
Emergency conservation program	R87-5		10,000	1-5-87				
Farmers Home Administration								
Rural water and waste disposal grants	R87-6		79,500	1-5-87				
Rural community fire protection grants	R87-7		2,300	1-5-87				
Rural housing for domestic farm labor	R87-8		7,400	1-5-87				
Mutual and self-help housing	R87-9		8,000	1-5-87				
Very low income housing repair grants	R87-10		9,400	1-5-87				
Compensation for construction defects	R87-11		500	1-5-87				
Rural housing preservation grants	R87-12		14,400	1-5-87				
Soil Conservation Service								
Watershed and flood prevention operations	R87-13		96,000	1-5-87				
Great Plains conservation program	R87-14		8,000	1-5-87				
Resource conservation and development	R87-15		5,000	1-5-87				
Forest Service								
Land acquisition	R87-16		49,030	1-5-87				
DEPARTMENT OF COMMERCE								
Economic Development Administration								
Economic development assistance programs	R87-17 R87-17A		169,718 -50	1-5-87 1-28-87				
International Trade Administration								
Operations and administration	R87-18		11,400	1-5-87				
National Oceanic and Atmospheric Administration								
Operations, research, and facilities	R87-19		58,857	1-5-87				
National Telecommunications and Information Administration								
Public telecommunications facilities, planning and construction	R87-20		19,300	1-5-87				

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DEPARTMENT OF DEFENSE - MILITARY								
Procurement								
Procurement of weapons and tracked combat vehicles, Army	R87-21		15,000	1-5-87				
Other procurement, Navy	R87-22		116,000	1-5-87				
Military Construction								
Military construction, Air Force	R87-23		2,750	1-5-87				
DEPARTMENT OF DEFENSE - CIVIL								
Corps of Engineers - Civil								
Construction, general	R87-24		7,715	1-5-87				
DEPARTMENT OF EDUCATION								
Office of Elementary and Secondary Education								
Compensatory education for the disadvantaged	R87-25		7,500	1-5-87				
Impact aid	R87-26		17,500	1-5-87				
Special programs	R87-27		54,980	1-5-87				
Office of Bilingual Education and Minority Languages Affairs								
Bilingual education	R87-28		45,886	1-5-87				
Office of Special Education and Rehabilitative Services								
Education for the handicapped	R87-29		288,659	1-5-87				
Rehabilitation services and handicapped research	R87-30		127,455	1-5-87				
Office of Vocational and Adult Education								
Vocational and adult education	R87-31		432,319	1-5-87				
Office of Postsecondary Education								
Student financial assistance	R87-32		1,269,000	1-5-87				
Higher education	R87-33		203,050	1-5-87				
	R87-33A			1-28-87				
Office of Educational Research and Improvement								
Libraries	R87-34		34,500	1-5-87				

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DEPARTMENT OF ENERGY								
Energy Programs								
Energy supply, research and development activities	R87-35		81,800	1-5-87				
Fossil energy research and development	R87-36		44,464	1-5-87				
Energy conservation	R87-37		87,433	1-5-87				
	R87-37A		-3500	1-28-87				
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Food and Drug Administration								
Buildings and facilities	R87-38		500	1-5-87				
Health Resources and Services Administration								
Health resources and services	R87-39		161,210	1-5-87				
	R87-39A			1-28-87				
Indian health facilities	R87-40		57,100	1-5-87				
	R87-40A			1-28-87				
National Institutes of Health								
National Library of Medicine	R87-41		5,405	1-5-87				
Office of the Assistant Secretary of Health								
Public health service management	R87-42		5,000	1-5-87				
Departmental Management								
Policy research	R87-43		2,200	1-5-87				
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing	R87-44		473,313	1-5-87				
Housing counseling assistance	R87-45		3,500	1-5-87				
Community Planning and Development								
Community development grants	R87-46		375,200	1-5-87				
Urban development action grants	R87-47		237,500	1-5-87				
Management and Administration								
Salaries and expenses	R87-48		19,042	1-5-87				

Attachment A - Status of Rescissions - Fiscal Year 1987

As of February 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF THE INTERIOR								
Bureau of Land Management								
Management of lands and resources	R87-49		6,500	1-5-87				
Construction and access	R87-50		1,600	1-5-87				
Land acquisition	R87-51		2,700	1-5-87				
Bureau of Mines								
Mines and minerals	R87-52		16,594	1-5-87				
United States Fish and Wildlife Service								
Resource management	R87-53		20,500	1-5-87				
	R87-53A			1-28-87				
Construction	R87-54		23,200	1-5-87				
Land acquisition	R87-55		26,762	1-5-87				
National Park Service								
Operation of the national park system	R87-56		7,950	1-5-87				
Construction	R87-57		58,981	1-5-87				
Land acquisition	R87-58		97,638	1-5-87				
Historic preservation fund	R87-59		15,000	1-5-87				
Bureau of Indian Affairs								
Construction	R87-60		22,811	1-5-87				
Territorial and International Affairs								
Administration of territories	R87-61		2,500	1-5-87				
DEPARTMENT OF JUSTICE								
Immigration and Naturalization Service								
Salaries and expenses	R87-62		24,598	1-5-87				
DEPARTMENT OF LABOR								
Employment and Training Administration								
Training and employment services	R87-63		332,000	1-5-87				

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Attachment A - Status of Rescissions - Fiscal Year 1987

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DEPARTMENT OF THE TREASURY								
Federal Law Enforcement Training Center								
Salaries and expenses	R87-64		8,450	1-5-87				
Bureau of Alcohol, Tobacco, and Firearms								
Salaries and expenses	R87-65		15,000	1-5-87				
United States Customs Service								
Salaries and expenses	R87-66		38,945	1-5-87				
ENVIRONMENTAL PROTECTION AGENCY								
Abatement, control, and compliance	R87-67		47,500	1-5-87				
Buildings and facilities	R87-68		2,500	1-5-87				
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Research and development	R87-69		25,796	1-5-87				
VETERANS ADMINISTRATION								
Medical care	R87-70		75,000	1-5-87				
OTHER INDEPENDENT AGENCIES								
Appalachian Regional Commission								
Appalachian regional development programs	R87-71		31,059	1-5-87				
National Endowment for the Humanities								
National capital arts and cultural affairs	R87-72		4,000	1-5-87				
Selective Service System								
Salaries and expenses	R87-73		409	1-5-87				
Total, rescissions			5,835,751					

Attachment B - Status of Deferrals - Fiscal Year 1987

As of February 1, 1987 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 2-1-87
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Foreign military sales credit	D87-22	4,040,441		12-15-86	600,000				3,440,441
Economic support fund	D87-1	95,000		9-26-86					
	D87-1A		2,351,470	12-15-86	518,602				1,927,868
Military assistance	D87-23	847,000		12-15-86	38,000				809,000
International military education and training	D87-24	2,000		12-15-86					2,000
Agency for International Development									
Functional development assistance	D87-32	2,278		1-28-87					2,278
International disaster assistance	D87-25	57,000		12-15-86	38,837				18,163
Special Assistance for Central America									
Assistance for the Nicaraguan Democratic Resistance	D87-26	60,000		12-15-86	20,000				40,000
Promotion of stability and security in Central America	D87-27	1,000		12-15-86					1,000
DEPARTMENT OF AGRICULTURE									
Commodity Credit Corporation									
Temporary emergency food assistance	D87-33	28,559		1-28-87					28,559
Rural Electrification Administration									
Reimbursement to the Rural electrification and telephone and revolving fund for interest subsidies and losses	D87-34	20,000		1-28-87					20,000
Forest Service									
State and private forestry	D87-35	797		1-28-87					797
Land acquisition	D87-36	27,070		1-28-87					27,070
Expenses, brush disposal	D87-2	111,202		9-26-86					111,202
Timber roads, purchaser election	D87-37	11,900		1-28-87					11,900
Timber salvage sales	D87-3	29,731		9-26-86					29,731
Cooperative work	D87-4	526,938		9-26-86					526,938
Gifts, donations, and bequests for forest and rangeland research	D87-5	200		9-26-86					200

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DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, Defense.....	D87-6	2,350		9-26-86					
	D87-6A		1,316,152	12-15-86	12,514				1,305,988
Family Housing									
Family housing, Defense.....	D87-7	76,943		9-26-86					
	D87-7A		190,022	12-15-86	65,143				201,822
DEPARTMENT OF DEFENSE - CIVIL									
Soldiers' and Airmen's Home									
Capital outlays.....	D87-38	1,132		1-28-87					1,132
Wildlife Conservation, Military Reservations									
Wildlife conservation.....	D87-8	1,065		9-26-86					
	D87-8A		25	1-5-87	40				1,050
DEPARTMENT OF ENERGY									
Power Marketing Administration									
Alaska Power Administration, Operation and maintenance.....	D87-9	165		9-26-86					165
Southwestern Power Administration,									
Operation and maintenance.....	D87-10	7,554		9-26-86					
	D87-10A		6,106	1-5-87					13,660
Western Area Power Administration,									
Construction, rehabilitation, operation and maintenance.....	D87-29	4,485		1-5-87					4,485
Departmental Administration									
Departmental administration.....	D87-30	24,182		1-5-87					24,182

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DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Health Resources and Services Administration									
Indian catastrophic health emergency fund..	D87-28	10,000		12-15-86					10,000
Centers for Disease Control									
Disease control, research, and training....	D87-39	2,428		1-28-87					2,428
Alcohol, Drug Abuse, and Mental Health Administration									
Alcohol, drug abuse, and mental health...	D87-40	10,000		1-28-87					10,000
Office of Assistant Secretary for Health									
Scientific activities overseas (special foreign currency program).....	D87-11	2,900		9-26-86					2,900
Social Security Administration									
Limitation on administrative expenses (construction).....	D87-12	7,073		9-26-86					
	D87-12A		89	1-28-87					7,163
DEPARTMENT OF THE INTERIOR									
Bureau of Land Management									
Payments for proceeds, sale of Mineral Leasing Act of 1920, Section 40(d).....	D87-31	49		1-5-87					49
DEPARTMENT OF JUSTICE									
Office of Justice Programs									
Crime victims fund.....	D87-13	70,000		9-26-86					70,000
DEPARTMENT OF LABOR									
Employment Standards Administration									
Salaries and expenses.....	D87-41	9,659		1-28-87					9,659

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DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive.....	D87-14	6,100		9-26-86					20,100
	D87-14A		14,000	1-5-87					
Other									
Assistance for implementation of a Contadora agreement.....	D87-15	2,000		9-26-86	2,000				0
DEPARTMENT OF TRANSPORTATION									
Federal Railroad Administration									
Rail service assistance.....	D87-42	462		1-28-87					462
Railroad safety.....	D87-43	1,101		1-28-87					1,101
Conrail labor protection.....	D87-44	646		1-28-87					646
Northeast corridor improvement program.....	D87-45	16,962		1-28-87					16,962
Conrail commuter transition assistance.....	D87-46	10,000		1-28-87					10,000
Urban Mass Transportation Administration									
Research, training and human resources.....	D87-47	4,336		1-28-87					4,336
Interstate transfer grants - transit.....	D87-48	51,800		1-28-87					51,800
Federal Aviation Administration									
Operation and maintenance, Metropolitan Washington Airports.....	D87-49	12,214		1-28-87					12,214
Facilities and equipment (Airport and airway trust fund).....	D87-16	803,877		9-26-86					1,099,488
	D87-16A		295,611	12-15-86					
Coast Guard									
Research, development, test, and evaluation.....	D87-50	5,000		1-28-87					5,000
Offshore oil pollution compensation fund...	D87-51	2,154		1-28-87					2,154
Deepwater port liability fund.....	D87-52	5,176		1-28-87					5,176
Office of the Secretary									
Payments to air carriers.....	D87-53	10,748		1-28-87					10,748

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DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
Local government fiscal assistance trust fund	D87-17	74,149		9-26-86	23				74,126
Local government fiscal assistance trust fund	D87-21	5,981		9-26-86	2,284				3,697
ENVIRONMENTAL PROTECTION AGENCY									
Research and development	D87-54	11,000		1-28-87					11,000
Abatement, control, and compliance	D87-55	11,400		1-28-87					11,400
OTHER INDEPENDENT AGENCIES									
Commission on the Ukraine Famine Salaries and expenses	D87-18	100		9-26-86					100
Office of the Federal Inspector for the Alaska Natural Gas Transportation System, Salaries and expenses	D87-19	411		9-26-86	411				0
Pennsylvania Avenue Development Corporation Land acquisition and development fund	D87-20	11,873		9-26-86					11,873
United States Railway Association Administrative expenses	D87-56	1,155		1-28-87					1,155
TOTAL, DEFERRALS		7,139,747	4,173,475		1,297,854	0		0	10,015,369

Note: All of the above amounts represent budget authority except the Local Government Fiscal Assistance Trust Fund (D87-21) of outlays only.

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Part V

Department of the Interior

Minerals Management Service

30 CFR Parts 202 and 206
Gas Royalty Valuation; Proposed Rulemaking

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202 and 206

Revision of Gas Royalty Valuation Regulations and Related Topics

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rulemaking provides for the amendment and clarification of regulations governing valuation of gas for royalty computation purposes. The amended and clarified regulations govern the methods by which value is determined when computing gas royalties and net profit shares under Federal (onshore and Outer Continental Shelf) and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma).

DATES: Comments must be received on or before May 14, 1987. Hearings are scheduled as follows:

1. April 7 and 8, 1987, 8:30 A.M. to 4:00 P.M., Denver, Colorado.
2. April 21 and 22, 1987, 8:30 A.M. to 4:00 P.M., Houston, Texas.

ADDRESSES: Written comments may be mailed to Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 660, Denver, Colorado, 80225, Attention: Dennis C. Whitcomb.

The hearings will be held at the following locations:

1. Denver—Sheraton Denver Airport Hotel, 3535 Quebec Street, Denver, Colorado.
2. Houston—Houston Airport Hilton Inn, 500 North Belt East, Houston, Texas.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, (303) 231–3432, (FTS) 326–3432.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rulemaking are John L. Price, Scott L. Ellis, Thomas J. Blair, Stanley J. Brown, and William H. Feldmiller, of the Royalty Valuation and Standards Division of the Minerals Management Service; and Peter J. Schaumberg of the Office of the Solicitor, Washington, DC.

I. Introduction

On January 9 and 10, 1986, the first meeting of the Royalty Management Advisory Committee (RMAC) was held in Lakewood, Colorado. (See Notice of Meeting, 50 FR 52385, December 23, 1985). The RMAC, which is composed primarily of representatives from States, Indian Tribes and allottees, and the coal, oil, and gas industry, was charged with the responsibility of advising the Secretary of the Interior about the form and content of changes to Minerals Management Service (MMS) regulations governing the value, for royalty purposes, of coal, oil, and gas production from Federal and Indian leases.

At the first RMAC meeting, the Committee asked the Secretary to withhold promulgation of proposed valuation regulations until the Committee had an opportunity to review the issues and make its recommendations. The Secretary agreed to the request, and in response to the Committee's request, MMS made available to RMAC its latest drafts of regulations governing the valuation of coal, oil, and gas, and those governing transportation and processing allowances. At the same time, MMS made copies of those same draft regulations available to the public (51 FR 4507, Feb. 5, 1986, and 51 FR 7811, March 6, 1986). Public comment on the drafts was requested both in written form and at a public meeting held in Lakewood, Colorado, on March 18 and 19, 1986.

The RMAC formed three working panels to review the draft coal, oil, and gas rules, and the transportation and processing rules related to each product. Between January and October of 1986, the various working panels held several meetings to review the draft rules. The working panel meetings were published in the Federal Register and the meetings were open to members of the public, many of whom participated actively.

Each of the three working panels prepared a detailed set of recommendations to RMAC. These were reviewed at the RMAC meeting held July 28–30, 1986, and October 20–22, 1986. The RMAC was unable to approve the reports of both the oil and the gas panels for transmission to the Secretary, which, by the terms of RMAC's charter, required a two-thirds vote of the Committee membership. The RMAC did approve, for submission to the Secretary, a set of recommendations regarding certain of the provisions contained in the coal valuation regulations.

The MMS representatives were present at, and participated in, all meetings of RMAC and the working panels. As a consequence of the extensive discussion between members of the groups representing the States, Indians, and the industries, and the detailed written recommendations prepared by the working panels, MMS's task of drafting proposed valuation regulations was enhanced significantly. In preparing these proposed regulations, MMS carefully considered all of the discussions which occurred at the various meetings, regardless of whether or not they were adopted in any of the three working panel reports or by the full Committee. The MMS also has considered the written and oral comments from the public on the draft rules and the resolution presented to the Secretary by RMAC. The MMS appreciates the hard work and dedication of a large number of people who were willing to work toward the common goal of clarifying and improving the regulations governing the valuation, for royalty purposes, of coal, oil, and gas production from Federal and Indian leases.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed rule to the location identified in the **ADDRESSES** section of this preamble. Comments must be received on or before May 14, 1987. Two public hearings will be held on the dates and at the locations identified in the **DATES AND ADDRESSES** sections of this preamble.

II. Purpose and Background

The MMS is proposing to revise the current regulations regarding the valuation of gas to accomplish the following:

(1) Clarification and reorganization of the existing regulations at 30 CFR Parts 202 and 206.

(2) Creation of regulations consistent with the present organizational structure of the Department of the Interior.

(3) Placement of the gas royalty valuation regulations in a format compatible with the valuation regulations for all leasable minerals.

(4) Clarification that royalty is to be paid on all considerations received by lessees, less applicable allowances, for production removed or sold from the lease.

(5) Creation of regulations to guide the lessee in the determination of allowable transportation costs for gas to aid in the calculation of proper royalty due the lessor.

Several general provisions which relate to both oil and gas are proposed to be added to Part 202. These provisions are included in the Notice of Proposed Rulemaking to amend the oil valuation regulations recently published by the Department. (See 52 FR 1858, January 15, 1987.)

These proposed rules would be applied prospectively. They would supersede all existing gas royalty valuation directives contained in numerous Secretarial, MMS, and U.S. Geological Survey Conservation Division (now Bureau of Land Management, Onshore Operations Division) orders, directives, regulations and NTL's (Notice to Lessees) issued over past years. Specific guidelines governing the application of, the gas valuation regulations will be incorporated into the MMS Payor Handbook subsequent to the issuance of final rulemaking in the Federal Register.

MMS believes the proposed valuation methods would yield a reasonable and long-term maximum rate of return for both Federal and Indian leases. The basic premise underlying this methodology is that value is best determined by the interaction of competing market forces—the 7/8ths or 4/5ths owner is going to negotiate the best deal he/she can to further his/her own interests, advancing those of the royalty owner as well. This would add certainty to the marketplace and assure maximum, long-term revenues to all parties concerned. Comments are especially requested on this issue.

The proposed rules in § 206.150 would expressly recognize, however, that where the provisions of any Indian lease, or any statute or treaty affecting Indian leases, are inconsistent with the regulations, then the lease term, statute, or treaty would govern to the extent of the inconsistency. The same principle would apply to Federal leases.

A separate gas definitions section applicable to the royalty valuation of gas is included in this proposed rulemaking in Part 206. All definitions contained under each subpart of Part 206 shall be applicable to the regulations contained in Parts 202, 203, 207, 210, and 241.

III. Section-by-Section Analysis

The MMS is proposing to amend 30 CFR Part 202, Subpart B, Oil, Gas, and OCS Sulphur, General. The changes are included in the recently issued proposed changes to the oil valuation regulations. (See 52 FR 1858, January 15, 1987).

Proposed § 202.150, Royalty on gas, would set forth general policies regarding what gas is subject to royalty. Proposed § 202.150(a) states that royalty must be paid in value unless MMS requires payment in-kind. Proposed § 202.150(b) states that all gas is subject to royalty except gas lost which BLM or MMS, as appropriate, has determined was unavoidably lost, or gas that is used on, or for the benefit of, the lease. Accordingly, royalty would be due on gas avoidably lost or wasted, and gas for which compensatory royalty has been determined to be due as a result of drainage from the leased land, as determined by BLM for onshore oil and gas operations, or by MMS for offshore oil and gas operations. This is consistent with section 308 of the Federal Oil and Gas Management Act of 1982 (30 U.S.C. 1756). Gas used for the benefit of a lease, which is royalty free, includes gas used in lease equipment on communitized areas or unit areas when the lease is committed to a communitization agreement or unitization agreement, and gas used in lease equipment located at any other location when the BLM or MMS, as appropriate, has approved the use of that location prior to the point of royalty settlement. If the provisions of any lease are inconsistent with this section, the lease terms would govern. An example is a lease issued pursuant to section 6 of the OCS Lands Act which requires royalty to be paid on production used on the lease.

Proposed § 202.150(c) would cover those situations where a person other than the lessee of a Federal or Indian lease actually takes the allocated share of Federal or Indian lease production under a unitization or communitization agreement. These situations primarily involve production governed by a Federally approved unitization agreement or communitization agreement. The terms of these agreements require that all production covered by the agreement be allocated, for royalty purposes, to the individual leases comprising the agreement in accordance with the schedule approved by the BLM for onshore leases and by MMS for offshore leases. Many times, the lessee of a particular lease will not take the production attributable to its lease owing to the lack of a sales agreement or owing to the curtailment by the pipeline of deliveries under the existing sales agreement. In these instances, another working interest owner will often take the production attributable to a Federal or Indian lease and sell or dispose of it. As proposed, this section would require that the production attributable to the Federal and Indian lease would be subject to the royalty payment and reporting requirements of Title 30. The production would be valued as if the person actually taking the production were the Federal or Indian lessee. Therefore, as explained in more detail below, if the person actually taking the production attributable to the Federal or Indian lease sold that production under an arm's-length contract, then the value would be the gross proceeds accruing, or which could accrue, to that person under the applicable arm's-length contract. If the sale by that person was other than by an arm's-length contract, the value would be established by applying the criteria set forth in these proposed regulations. In applying those criteria, the information pertinent to the person actually taking the production would be used rather than information pertinent to the lessee of the Federal or Indian lease.

Proposed § 202.151, Royalty on processed gas, would require the payment of royalty on all residue gas and gas plant products resulting from processing gas. Proposed § 202.151(a) would provide that MMS would authorize a processing allowance for the reasonable, actual costs of processing the gas in determining the royalty payment due. The determination of processing allowances is covered by proposed Subpart D of Part 206. Proposed § 202.151(b) would provide for the royalty-free use of a reasonable amount of residue gas for operation of the processing plant, but would not provide for an allowance for boosting residue gas or other expenses incidental to marketing. Proposed § 202.151(c) would provide that royalty would not be due on residue gas or any gas plant product used in a manner to benefit the lease as provided previously for gas (see § 202.150(b)).

Proposed § 202.152, Standards for reporting and paying royalties on gas, would set forth the criteria for reporting the volumes of unprocessed gas, residue gas, and gas plant products on which royalty is due.

Proposed § 206.150, Purpose and scope, is an introductory section stating that Subpart C would be applicable to gas produced from all Federal and Indian leases, except leases on the Osage Indian Reservation. Paragraph (b) would incorporate the principle that if the specific provisions of any lease, statute, or treaty are inconsistent with the regulations, then the lease, statute, or treaty provisions would govern to the extent of the inconsistency. This principle would apply to existing leases as well as leases executed after the effective date of the regulations. Paragraph (d) would require all gas determined by BLM to have been avoidably lost or wasted from an onshore lease, all gas determined by BLM to have been drained from an onshore lease for which compensatory royalty is due, and all gas determined by MMS to have been avoidably lost from

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an offshore lease to be valued in accordance with Part 206.

Proposed § 206.151, Definitions, would set forth definitions applicable to the proposed gas valuation regulations. Most definitions applicable to gas are straightforward and self-explanatory. A few of the definitions, however, require further explanation:

"Arm's-length contract" would be defined as a contract or agreement between independent, nonaffiliated persons. The definition would further provide that two persons are affiliated if one person controls, is controlled by, or is under common control with another person, *or* if one person owns an interest (regardless of the amount), either directly or indirectly, in another person. This definition is important to the regulations because, as is explained below, MMS is proposing that the gross proceeds under an arm's-length contract would be accepted as value. Other valuation criteria would apply to non-arm's-length contracts.

The thrust of the proposed arm's-length contract definition is to include within its coverage only those contracts between persons who have no affiliation or interrelationship of any kind that would cause the contract terms to be suspect as to their arm's-length nature. The MMS recognizes that by excluding from the definition those contracts between persons where one party to the contract has any ownership interest in the other, it is narrowing the universe of contracts which would fall within the scope of the definition.

The MMS has proposed a definition for arm's-length contract that excludes references to such matters as "adverse economic interests" or "free and open markets" because the inclusion of such sometimes subjective concepts would make a lessee's determination that its contract was arm's-length subject to uncertainty. The advantage to the proposed definition is that it would be almost purely objective, and lessees and other payors would have assurance that if they pay royalties on the basis of gross proceeds from an arm's-length contract, the royalty valuation would not later be susceptible to redetermination.

MMS would like commenters to address whether a list of items could be developed which could serve to define an arm's-length contract. Specifically, is there a list of questions which a lessee could answer which would lead to an objective determination of whether the contract is arm's-length? Possible questions are: (1) Is there a common equity interest between the parties to the contract; (2) is there common control of the parties to the contract; (3) was there a consolidated tax filing by the parties to the contract. MMS would like commenters to address whether the development of such a list is possible and what questions should be part of the list.

The MMS is proposing a definition for the term "gas plant products." This term would include all products resulting from the processing of gas, including natural gas liquids, nitrogen, carbon dioxide, and sulfur, but excluding residue gas.

The term "gross proceeds" is another term which is important to the regulations because it would be a common royalty value determinant. Gross proceeds is proposed to be defined as the total money or other consideration paid to an oil and gas lessee, or money or other consideration to which such lessee is entitled, for the disposition of unprocessed gas, residue gas, or gas plant products. Gross proceeds would be defined to include payments to the lessee for certain services such as treating, measuring, and field gathering that the lessee is obligated to perform at no cost to the lessor. Gross proceeds also would be defined to include: payments or credits for advanced prepaid reserve payments, or advanced exploration or development costs, subject to recoupment through reduced prices in later sales; take-or-pay payments; and reimbursements where the purchaser reimburses the seller, or pays any costs on behalf of the seller, for such items as severance taxes.

The definition is intended to be expansive to ensure that it includes all the benefits flowing from the purchaser to, or on behalf of, the seller in anticipation of and/or for the disposition of the unprocessed gas, residue gas, or gas plant products.

"Lessee" would be defined as any person to whom the United States, an Indian Tribe, or an Indian allottee, issues a lease, and any person who has assumed an obligation to make royalty or other payments required by the lease. The MMS is proposing to expressly include in the definition all persons who may have to make royalty payments. This would include all persons who have an interest in a lease as well as an operator or other payor, including in some instances, the purchaser who has assumed a royalty payment responsibility by contract or other agreement with the persons who have the actual lease interests. By using this broad definition for the product valuation regulations, it would not be necessary to use multiple terms such as lessee/payor/operator throughout the rules. This definition is not intended to change any contractual obligations under the lease instrument between the lessor and the current or original lease holder, except as it pertains to royalty valuation.

"Like-quality lease products" would be defined as lease products that have similar chemical, physical, and legal characteristics. This definition is required in order to apply valuation standards at § 206.152 and § 206.153 in non-arm's-length or no-contract situations. In these sections, the use of criteria tied to like-quality lease products is required to determine value. The value of a sweet gas with a high Btu heating value cannot be compared favorably with the value of a sour gas with a low Btu heating value. The legal characteristics primarily refer to the category for which the gas qualifies in accordance with the NGPA of 1978. Also, natural gas liquids have been subject to price regulations. When determining value of gas, MMS would not mix NGPA categories.

"Marketable condition" would be defined as lease products that are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area. Federal and Indian leases typically require the lessee to pay royalties equal to a specified percentage of the amount or value of production saved, removed, or sold from the leased area. The regulations governing operations require that the lessee place in marketable condition, to the extent economically feasible, all oil, gas, etc., produced from the leased land. See 43 CFR 3162.7–1(a) and 30 CFR 250.42. See also § 206.152(i) and § 206.153(i) of the proposed rules. Court decisions have upheld the principle that the lease operator is obligated to perform necessary field gathering and treatment to develop a product that has been conditioned for market sale (*California Co.* v. *Udall,* 296 F.2d 384 (D.C. Cir. 1961)).

"Gas" is defined as any fluid, either combustible or noncombustible, hydrocarbon or nonhydrocarbon, which is extracted from a reservoir and which has neither independent shape nor form, but tends to expand indefinitely. It is a substance that exists in a gaseous or rarefied state under standard temperature and pressure conditions. The terms "gas" and " gas plant products," discussed above, and the term "residue gas," discussed below, are used either separately or together throughout the proposed gas valuation regulations. Existing valuation regulations were written to deal primarily with hydrocarbon gas streams. This was especially true when dealing

with processed gas. In the last decade, the existing regulations proved difficult to administer when handling gas mixtures of diverse content. Gas plants have been constructed to process gas mixtures where some gas plant products may not be a hydrocarbon. In order to accommodate processing plants that process and sell nonhydrocarbon production, the term "gas" will commonly apply to the total gas mixture as it enters the plant. The term "residue gas", will refer to gas consisting principally of methane resulting from processing gas. The term "gas plant products" will refer to natural gas liquids collectively (ethane, propane, butane, pentane, etc.) and other products also produced by a processing plant (carbon dioxide, sulfur, nitrogen, etc.).

Proposed § 206.152 and § 206.153 would set forth the standards by which MMS would establish values, for royalty purposes, for unprocessed gas and processed gas, respectively.

In both of these proposed sections, references are made to arm's-length contracts that contain a provision reserving to the lessee the right to process gas and arm's-length contracts which provide for the sale of gas prior to processing with the value determined later based upon a percentage of the purchaser's proceeds resulting from processing the gas (so-called percentage of proceeds contracts). The MMS recognizes these features of gas sales agreements and proposes to treat these arm's-length contracts as arm's-length contracts for the sale of residue gas and gas plant products (i.e. processed gas) rather than as unprocessed gas.

Proposed § 206.152, Valuation standards—unprocessed gas, would set forth the valuation standards for all gas from Federal and Indian leases that is not processed, such as so-called "dry gas." It also would apply to gas that is processed but is sold or otherwise disposed of by the lessee pursuant to an arm's-length contract prior to processing. However, if the price established under an arm's-length contract is based upon a percentage of the purchaser's proceeds from the residue gas and gas plant products resulting from the purchaser's processing of the gas (so-called percentage of proceeds contracts), this section would not apply. Therefore, if the gas from a lease is "wet gas" that is ultimately processed, and the lessee sells the gas pursuant to an arm's-length contract before processing at a fixed price per MMBtu, value would be determined based upon that sale and not upon a subsequent sale, or other disposition, at or beyond the tailgate of the processing plant. However, if under the same circumstances, the sale made is non-arm's-length, then value would be determined pursuant to § 206.153, discussed below.

Pursuant to proposed § 206.152, value would be determined differently depending upon whether or not the sales agreement is arm's-length. Subsection (a)(2) would state expressly that the value, for royalty purposes, of unprocessed gas production would be the value of the gas determined pursuant to § 206.152, less applicable allowances for transportation (§§ 206.156 and 206.157). However, as explained below, lessees would not be allowed to report a single net number for the royalty value (i.e. value less allowances), but would be required to report the allowances separately on the Report of Sales and Royalty Remittance, Form MMS–2014. Lessees would not be entitled to deduct transportation allowances in all situations (see discussion below).

In accordance with proposed § 206.152(b)(1), the value of unprocessed gas sold pursuant to an arm's-length contract would be the gross proceeds accruing, or which could accrue, to the lessee. Prior approval by MMS of this value would not be required, but it would be subject to monitoring, review and/or audit. MMS may direct a lessee to pay royalty at a different value if it determines that a lessee has applied the regulations improperly.

Paragraph (b)(2) would provide a specific exception to the arm's-length contract rule for gas sold pursuant to warranty contracts, even if those contracts are arm's-length. For such gas, MMS expressly reserves the right to establish the value, giving due consideration to all the valuation criteria in § 206.152.

If the disposition of unprocessed gas from a Federal or Indian lease is not pursuant to an arm's-length contract, specific criteria must be used to determine the proper royalty value. The valuation process contained in § 206.152(c) would be used when there is no arm's-length contract. In those situations, § 206.152(c) of the proposed regulations would require that the value be determined through application of criteria in a prescribed order. In other words, the second criterion would not be considered unless the first criterion could not reasonably be applied. Likewise, the third and fourth criteria would not be considered unless those preceeding it were inapplicable, etc.

The first criterion is for the lessee to use the gross proceeds accruing, or which could accrue, under its non-arm's-length contract (or other disposition other than by an arm's-length contract) provided that those gross proceeds are equivalent to the lessee's gross proceeds derived from, or paid under, comparable arm's-length contracts for purchases, sales, or other dispositions of like-quality gas in the same field or area. In evaluating the comparability of arm's-length contracts for the purpose of the proposed regulations, numerous factors must be considered. The pertinent factors are price, time of contract execution, duration of the contract, market or markets served, terms, quality of gas, volume, and any other factors which may be relevant. This method allows the lessee certainty in determining its own value without dependence upon MMS to establish the value. At the same time, it is indicative of the value in the field or area for like-quality gas. The MMS believes this method is preferable to the major portion analysis provided for in existing oil and gas regulations which proved difficult to administer. See existing 30 CFR 206.103.

If the first valuation criterion is inapplicable, the second criterion would apply. This second criterion would be the lessee's gross proceeds accruing, or which could accrue, under its non-arm's-length contract (or other disposition other than by an arm's-length contract) provided that those gross proceeds are equivalent to the gross proceeds under comparable arm's-length contracts between other persons for purchases or sales of like-quality gas in the same field or area. In evaluating the comparability of arm's-length contracts, the same factors would be used as under § 206.152(c)(1).

In the first and second benchmarks, MMS is proposing to accept the lessee's gross proceeds as value where the lessee can demonstrate that that is a reasonable value by comparing it to sales under other arm's-length contracts which otherwise are comparable. However, the proposed rules require that there be numerous factors considered before an arm's-length contract could be deemed comparable. The purpose of these factors is to prevent abuses through application of only a few factors such that contracts containing unusually low or high prices could be used. Thus, for a lessee selling a large volume of gas under a non-arm's-length contract, a large volume would be required to be purchased under an arm's-length contract before the arm's-length contract could be used in determining the acceptability of the lessee's gross proceeds under its non-arm's-length contract.

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In the event that there are no comparable arm's-length contracts applicable to the field or area within which the gas is produced, the third criterion would provide for the determination of a value after considering all relevant information including gross proceeds under arm's-length contracts for purchases or sales of like-quality gas in other fields or areas, posted prices for gas, prices received in spot sales of gas, and other information as to the particular lease operation or affecting the saleability of the gas.

If a value cannot be determined using any of the valuation procedures previously mentioned, a net-back procedure to value the gas could be used. This last benchmark also would authorize the use of any other reasonable method to determine value.

The MMS particularly solicits comments regarding the proposed ordering of valuation benchmarks.

When a valuation method other than gross proceeds is used for unprocessed gas sold pursuant to a non-arm's-length contract, such as spot prices, the lessee may not be entitled to a transportation allowance. By way of illustration, if the value of unprocessed gas is established under paragraph (c)(3) based upon spot prices in the field where the lease is located, the value would not be reduced by a transportation allowance even if the lessee actually sold the unprocessed gas on a delivered basis at a point remote from the lease and incurred transportation expenses. The allowance would be inapplicable because the spot prices in this example already reflect value of unprocessed gas at the lease. However, pursuant to § 206.152(h), the valuation of the lessee's unprocessed gas based on the spot prices could not be less than the lessee's gross proceeds reduced by the transportation allowance which would be determined considering the costs the lessee actually incurred. Therefore, regardless of the value determined pursuant to the benchmarks, under no circumstances can the value, for royalty purposes, be less than the gross proceeds accruing, or which could accrue, to the lessee, less applicable transportation allowances. This long-standing principle is set forth at § 206.152(h), and is discussed below.

Proposed § 206.152(d) would provide that if the maximum lawful price permitted by Federal law is less than the value determined pursuant to the valuation regulations in Part 206, then MMS would accept such maximum price as the value. This limitation would not be applicable to gas sold pursuant to a warranty contract. Also, gross proceeds still would be a minimum value.

Proposed § 206.152(e)(1) would provide that where the value is determined pursuant to the benchmarks, MMS approval would not be required. The lessee would be required to retain the necessary data to support its benchmark applications for monitoring, review, and/or audit. MMS could direct the lessee to use a different value if it determines that the lessee has improperly applied the regulations.

Proposed § 206.152(f) would expressly provide that if MMS determines that the lessee has not properly determined value, then the lessee would be entitled to a credit, or would be required to pay additional royalty, plus interest. This could occur after an MMS review and/or audit of a value which did not require prior approval.

Proposed § 206.152(g) would give the lessee the option to seek a valuation from the MMS, where such prior approval otherwise would not be required. The lessee would first propose to MMS what that methodology should be and provide all supporting documentation for that proposal. The MMS would then establish a value as soon as possible. The lessee could use its proposed value until MMS issues its determination at which time the lessee would be required to adjust its previous reports in accordance with paragraph (f).

Proposed § 206.152(h) restates the long-standing principle that under no circumstances can the value, for royalty purposes, be less than the gross proceeds accruing, or which could accrue, to the lessee, less applicable transportation allowances. The definition of gross proceeds was discussed earlier. It is worth noting again, however, that the gross proceeds accruing to the lessee includes all costs paid by the purchaser of the gas on behalf of the seller. This principle has been upheld in several cases: *Wheless Drilling Co.*, 80 I.D. 599, 13 IBLA 21 (1973); *Amoco Production Co.*, 29 IBLA 234, 236 (1977); *Hoover & Bracken Energies, Inc.*, 52 IBLA 27, 88 I.D. 7 (1981), *aff'd*, 723 F.2d 1388 (10th Cir. 1983). Thus, if the purchaser reimburses the seller, or pays any costs on behalf of the seller, for such items as severance taxes, gathering, compressing, or measuring, then the seller must include those reimbursed costs as part of the gross proceeds upon which the royalty value is determined.

The proposed rules in paragraph (i) would retain the existing requirement that gas operations such as gathering, treating, measuring, and compressing are costs incurred to place the gas in marketable condition and are to be borne exclusively by the lessee.

Proposed § 206.152(i) also would provide that, where value is based on gross proceeds, the value would be increased to the extent those gross proceeds were reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the gas in marketable condition. By way of illustration, compressing gas to meet pipeline pressure requirements is a cost of making gas marketable that must be borne by the lessee. If the lessee enters into a contract where the purchaser agrees to compress the gas and, hence, the contract price is reduced by 10 cents per mcf, MMS would add the 10 cents per mcf back to the gross proceeds to determine the value.

Proposed § 206.152(j) would expressly impose a diligence requirement on lessees. For example, if, pursuant to an arm's-length contract, a lessee could charge its purchaser a higher price as of a certain date, and if the lessee fails to take proper and timely action to collect that additional money, it would be liable for royalty on the higher value. However, if the purchaser refuses to pay and the lessee enforces its right, using reasonable, documented measures, it would not be required to pay the additional royalties until the lessee's efforts are successfully concluded. The MMS believes that this regulation reflects the lessee's obligation to operate the lease prudently for the mutual benefit of itself and the lessor.

Proposed § 206.152(j) would not operate to excuse a lessee from paying any royalty if, for example, gas were delivered under a contract and the purchaser failed to pay. In such an event, royalty still would be due on the value of the gas. This section is intended to apply only to the lessee's obligation to pursue price increases to which it may be entitled under its contract.

Proposed § 206.153, Valuation standards—processed gas, applies to all gas production to which the provisions of § 206.152 would not apply. For the most part, § 206.153 mirrors proposed § 206.152. The arm's-length philosophy and mechanism of establishing values are the same, except values are established for all commodities that result from processing gas; i.e., the residue gas and gas plant products. In view of this similarity, a section-by-section analysis will not be repeated. However, this proposed section would provide that the lessee is entitled to an allowance for the reasonable actual costs of processing the gas, as well as an allowance for the reasonable actual costs of transporting the gas to a plant remote from the lease and for

transporting residue gas and gas plant products to a sales point remote from the plant. Regulations governing the determination of allowances, and limitations on allowances, are discussed below.

Proposed § 206.154, Determination of quantities and qualities for computing royalties, paragraph (a)(1), would require that royalty be computed on the basis of the quantity and quality of unprocessed gas in marketable condition at the point of royalty settlement approved by MMS for offshore leases or by BLM for onshore leases. In those instances where the lessee sells unprocessed gas at conditions and/or at locations other than the point of royalty settlement condition and location approved by BLM or MMS, paragraph (a)(2) would require that the value of the unprocessed gas determined pursuant to § 206.152 be adjusted to reflect the quantity and quality of the unprocessed gas at the point of royalty settlement approved by BLM or MMS. Proposed § 206.154(b) would require that royalty be computed on the basis of the quantity and quality of the residue gas and gas plant products produced by a processing plant. Paragraph (b)(2) would require that the value of the residue gas and/or gas plant products be adjusted to reflect the quantity and/or quality of the residue gas and/or gas plant products attributable to a lease. Paragraph (c) would provide the requirements for determining the residue gas and gas plant products attributable to a lease. Paragraph (d) would provide that no credit against the volumes determined pursuant to paragraphs (a) through (c), or the value of those volumes, would be allowed.

Proposed § 206.155, Accounting for comparison, would provide in paragraph (a) that where a lessee, or a person to whom the lessee has transferred gas pursuant to a non-arm's-length contract or no-contract situation, processes the lessee's gas (including where the lessee's arm's-length contract includes a reservation of the right to process the gas), and if after processing the gas, the residue gas is not sold pursuant to an arm's-length contract, the value, for royalty purposes, shall be the greater of (1) the value of the residue gas and gas plant products that result from processing the gas determined pursuant to § 206.153 (as adjusted for any approved processing or transportation deductions), plus the value of any condensate recovered downstream of the point of royalty settlement without resorting to processing or (2) the value of the gas prior to processing at the point of royalty settlement, determined in accordance with § 206.152. By this proposal, MMS would be eliminating dual accounting in situations where the value of residue gas is determined by the market pursuant to an arm's-length contract. However, paragraph (b) would remind lessees, particularly lessees of Indian leases, that the comparison of these values is sometimes required by the lease terms and, as previously stated in § 206.150(b), those lease terms shall govern. The MMS particularly solicits comments on whether this proposal for dual accounting should be adopted or whether MMS should maintain the requirement that dual accounting be required whenever gas is processed.

Proposed § 206.156, Transportation allowances—general, would include the general requirements for the determination of transportation allowances for unprocessed gas, residue gas, and gas plant products. Paragraph (a) would provide that where the value of production has been determined pursuant to § 206.152 or § 206.153 at a point remote from the lease, MMS shall allow a deduction for reasonable, actual transportation costs. For both onshore and offshore leases, this would include the transportation costs from the lease to the sales point remote from the lease. It also would include transportation costs from the lease to a processing plant, and from the plant to the sales point remote from the plant.

Proposed § 206.156(b) would impose a limit on the transportation allowance. The allowance could not exceed 50 percent of the value of the unprocessed gas, residue gas, or gas plant product determined pursuant to § 206.152 or § 206.153, as appropriate. This is the same limitation which exists under current MMS onshore procedures. By way of illustration, a lessee sells unprocessed gas with a delivery point remote from the lease. The lessee's gross proceeds under an arm's-length sales contract is $2.00 per mcf, and the lessee pays a third party $1.25 per mcf to transport the gas. Proposed § 206.156(b) would limit the transportation allowance to $1.00 per mcf. Therefore, the lessee would be required to pay royalty based on a value of $1.00 per mcf.

Under the proposed rules, the Director of MMS could approve an allowance greater than the 50 percent limit for transportation costs if the lessee demonstrates that a higher allowance is in the best interests of the lessor. The lessee must provide data to support its request to the Director. Under no circumstances could the Director approve an allowance that would result in zero royalty payments during any given reporting period. As an alternative to approving allowances greater than the 50 percent limit for transportation costs, MMS solicits comments on whether it should allow lessees to roll forward to subsequent months any costs that cannot be deducted by the lessee as a result of the limitation on transportation allowances. MMS particularly solicits comments on what circumstances would justify rolling forward the costs in excess of 50 percent of the value of the product which is the proposed limitation on transportation allowances.

Proposed § 206.156(c) would require that transportation costs be allocated among all the products produced from a lease and transported. Specific regulations on this allocation, and the limitations on the allowance, are discussed in more detail in proposed § 206.157.

Proposed § 206.156(d) would provide that if, after a review and/or audit, MMS determines that the lessee improperly determined a transportation allowance, then the lessee would be required to pay any additional royalties, plus interest, or would be entitled to a credit without any interest.

Proposed § 206.157, Determination of transportation allowances, would provide the procedure for determining the transportation allowance. The allowance would be substantially different depending upon whether the lessee has an arm's-length contract with a third party to provide transportation services, or whether the lessee has a non-arm's-length contract or no contract, such as those situations where the lessee has an interest in the pipeline or other transportation system.

Paragraph (a) would apply to arm's-length transportation contract situations. It would provide that the transportation allowance will be the reasonable, actual costs for transportation incurred by the lessee under that contract. Prior MMS approval would not be required before the lessee could deduct the allowance in computing its royalty payments. However, the contract is subject to monitoring, review, and/or audit. MMS may direct a lessee to use a different allowance if it determines that the lessee has improperly applied the regulations. Before taking an allowance, the lessee would, unless MMS specified a different procedure, be required to submit to MMS a completed page one of Form MMS–4295 the same month the allowance first is reported on Form MMS–2014, Report of Sales and Royalty Remittance. This would be a one-time

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filing applicable to all months in the reporting period. The allowance would be denied for any production month for which a Form MMS–4295 is not received by the due date for the Form MMS–2014. Therefore, if a lessee begins incurring transportation costs for January gas production pursuant to an arm's-length contract, and if it did not submit a Form MMS–4295 until April 15, it would be entitled to an allowance only for March and subsequent months' production in the reporting period. No allowance would be permitted for January and February, and the lessee would be required to refund, with interest, any allowance which was taken.

Proposed section 206.157(a)(2) would provide that a transportation allowance determined pursuant to an arm's-length contract would remain effective for a reporting period of 12 months, or until the contract is modified or terminates, whichever is earlier. At that time, the lessee must submit a new page one of Form MMS–4295 in accordance with § 206.157(c).

An arm's-length transportation contract may include more than one gaseous product and may not allocate the costs among the gaseous products. In such an instance, § 206.157(a)(3) would require the lessee to allocate the costs to each gaseous product in the same proportion as the ratio of the volume of each gaseous product to the volume of all gaseous products. Proposed § 206.157(a)(3) would consider all gas transported in determining transportation costs. However, a transportation allowance would not be allowed for lease production which is not royalty-bearing.

Proposed § 206.157(a)(4) would cover those situations where both gaseous and liquid products are transported in the same transportation facility and the costs attributable to each cannot be determined from the arm's-length contract. This section would require that the lessee propose an allocation procedure to MMS. MMS approval of the cost allocation would be required because a volumetric-based allocation method may not be as appropriate as for transportation systems transporting only gaseous products. The lessee would use the gas transportation allowance determined in accordance with its proposed allocation procedure until MMS issues a determination on the transportation allowance. Proposed § 206.157(a)(4) also would provide for the submission of the lessee's proposed allocation within a prescribed time.

In some instances an arm's-length contract for transportation will not require a cash payment by the lessee. Instead, the transporter will be entitled, for example, to retain a percentage of the product. In such an event, § 206.157(a)(5) would require the lessee to determine the dollar value equivalent of those volumes to compute its allowance. Pursuant to § 206.157(a)(6), MMS could require lessees to submit copies of arm's-length transportation contracts and related documents within the time prescribed by MMS.

Proposed § 206.157(b)(1) provides that if the lessee does not have an arm's-length contract for transporting lease products, but has a non-arm's-length contract or no contract because it has an interest in the pipeline or the transportation facility, then the allowance would be based upon the lessee's reasonable, actual costs of transportation.

Paragraph (b)(2) proposes a procedure similar to that previously discussed for allowances for arm's-length situations. The allowance approval for non-arm's-length or no-contract situations is also a two-step process, consisting of a submittal of an estimated transportation allowance for the current 12-month period and a submittal of the actual transportation allowance within 90 days after the end of the 12-month period containing the actual costs incurred during the previous 12-month period. Prior MMS approval is not required before commencing transportation deductions for non-arm's-length or no-contract situations. However, unless MMS specifies differently, a completed page one of Form MMS–4295 with an estimated allowance must be received in the same month the lessee first reports its allowance on Form MMS–2014, Report of Sales and Royalty Remittance, or the allowance will be denied until Form MMS–4295 is filed. This filing would be effective for the entire reporting period. Within 90 days following the end of the 12-month period, the lessee would submit page one of Form MMS–4295 with its actual costs incurred during the previous 12-month period and its estimate for the succeeding reporting period.

Proposed § 206.157(b)(3) would expressly state that a lessee may deduct its transportation allowance without prior MMS approval, subject to monitoring, review, and/or audit by MMS. When necessary or appropriate, MMS could direct a lessee to modify its estimated or actual allowance deduction.

Proposed § 206.157(b)(4) provides that an estimated allowance may be used by lessees for facilities that are in a start-up period.

Proposed § 206.157(b)(5) would specify the types and nature of costs which MMS considers acceptable in determining a transportation allowance for non-arm's-length or no-contract situations. The categories of expenses are operating and maintenance expenses, overhead, depreciation, and a return on undepreciated capital investment or, alternately, a return on the initial capital investment with no allowance for depreciation (see discussion below). Paragraphs (b)(5) (i) and (ii) provide a list of operating and maintenance expense categories which MMS considers typical operating or maintenance expenses. Paragraph (b)(5)(iii) would provide for overhead to be included as a transportation cost, providing that the overhead is directly attributable or allocable to the operation or maintenance of the transportation system.

MMS is proposing two alternatives regarding return on capital investment. Under alternative 1, paragraph (b)(5)(iv) would provide for two financial depreciation methods: straight-line depreciation and unit of production depreciation. Accordingly, depreciation would be based on the useful life of the equipment or the life of the reserves the transportation facility services. Also, salvage value must be observed and equipment could not be depreciated below a reasonable salvage value.

The MMS is also proposing that the establishment of a transportation system depreciation schedule would not be altered because of a recapitalization or a change in ownership. A lessee would not be able to depreciate a transportation system using a schedule based on replacement costs or any other basis other than actual costs. Similarly, a change in ownership cannot be a basis for a change in the depreciation schedule for allowance purposes. If, for example, a transportation system has a depreciation schedule of 20 years and has been depreciated for 10 years by the first owner and then sold, the new second owner would be entitled to the remaining 10 years' depreciation based on the original capitalized cost. MMS specifically would like comments on whether or not this no-recapitalization provision should be adopted if alternative 1 is adopted.

As alternative 2, MMS is proposing in subsection (b)(5)(iv) to disallow any cost deduction for depreciation. Instead, each year MMS would allow an amount equal to the initial capital investment in the transportation system multiplied by a floating rate of return, as discussed below. Alternative 2, if adopted, would be supplemental to alternative 1 and is proposed to apply only to new transportation systems or newly acquired transportation systems. MMS would like commenters to address the feasibility of alternative 2.

Paragraph (b)(5)(v) would establish the rate of return to be applied to either the undepreciated capital investment under alternative 1, discussed above, or the initial capital investment under alternative 2, also discussed above. The rate of return is proposed to be determined by the Moody Aaa corporate bond rate as published by Moody's Investors Services, Inc. in *Moody's Bond Record* the first business day of the reporting period for which the allowance becomes applicable. At the beginning of each subsequent 12-month period that follows, the rate would be redetermined.

MMS would like commenters to address whether a specific rate of return for each lessee should be used and how such a rate of return would be calculated.

Proposed § 206.157(b)(6) would set forth the requirement that the lessee allocate the transportation costs to each of the lease products transported where more than one lease product is transported through the same pipeline or transportation system. In such instances, § 206.157(b)(6) would require the lessee to allocate the costs to each lease product in the gaseous phase in the same proportion as the ratio of the volume of each lease product in the gaseous phase to the volume of all lease products in the gaseous phase. All gas would be treated the same in determining transportation costs, but a transportation allowance would not be allowed for lease products that are not royalty-bearing.

Proposed § 206.157(b)(7) would cover those non-arm's-length and no-contract situations where both gaseous and liquid products are transported in the same transportation system. Proposed § 206.157(b)(7) would require that the lessee propose an allocation procedure to MMS. MMS approval of the cost allocation would be required because, again, a volumetric-based allocation may not be as appropriate as for transportation systems transporting only gaseous products. The lessee would use the transportation allowance determined in accordance with its proposed allocation procedure until MMS issues a determination on the transportation allowance. Proposed § 206.157(b)(7) also would provide for the submission of the lessee's proposal within a prescribed time.

Proposed § 206.157(b)(8) would authorize MMS to require supporting data for any transportation allowance reported on Form MMS–4295.

Paragraph (c) would set forth the reporting requirements subsequent to the initial reporting period. Paragraph (c)(1) would require page one of Form MMS–4295 to be submitted within 90 days after the end of the previous reporting period for arm's-length contracts, unless MMS approves a longer period. For non-arm's-length or no-contract situations, a completed page one of Form MMS–4295 would be required to be submitted within 90 days following the end of the reporting period, unless MMS approves a longer period. Regardless of whether or not transportation is conducted under arm's-length contract, non-arm's-length contract, or no-contract conditions, if Form MMS–4295 is not timely received, then the new allowance for the succeeding reporting period will not be effective until the first day of the month a proper Form MMS–4295 is received by MMS and will be applicable to any Form MMS–2014 received after that date.

Section 206.157(c)(2) would require that transportation allowances under either arm's-length, non-arm's-length, or no-contract situations be reported on a separate line on Form MMS–2014, Report of Sales and Royalty Remittance. Unless otherwise directed by MMS, lessees are not to report values that are net of transportation allowances.

Proposed § 206.157(c)(3) would authorize MMS to establish reporting requirements different from those specified in the rules. This may be necessary for workload allocation or other reasons.

If the actual costs are different from the estimated costs used to determine the allowance for transportation, proposed § 206.157(d) would set forth the procedure for reporting the adjustments to royalty payments to MMS. The procedure would be different for onshore than for offshore because of the refund procedures of Section 10 of the OCS Lands Act (43 U.S.C. 1801 et seq.). If actual allowances differ from estimated allowances, the lessee would be required to pay additional royalty, with interest, or would be entitled to a credit, without interest.

Proposed § 206.157(e) would provide that, notwithstanding any other provision, no costs that result from payments for actual or theoretical losses would be allowed for gas transportation. Thus, if an arm's-length transportation agreement requires the lessee to pay the transporter for actual or theoretical line losses (either in value or in volume), such costs would be disallowed by MMS. Similarly, even if a transporter's tariff includes a component for actual or theoretical losses, such costs would be disallowed. The valuation regulations for gas in this Part would disallow such actual or theoretical losses in determining royalty volumes and values. The MMS also would disallow any such costs in non-arm's-length contract or no-contract situations.

Paragraph (f) is proposed to allow application of the same administrative or computation procedures contained in § 206.157 to determine other transportation costs when valuing unprocessed gas, residue gas, or gas plant products under a net-back procedure or other valuation procedure contained in Subpart C of Part 206.

It is the intention of MMS to terminate all existing transportation allowances with the issuance of final rulemaking. This termination would require all lessees to follow the new reporting requirements to be eligible for the deduction of transportation costs for production months subsequent to the effective date of the final rules. Procedures for claiming actual allowances for periods prior to the effective date of the final rules will be provided at the time of final rulemaking.

Proposed § 206.158, Processing allowances—general, would include the general requirements for the determination of a processing allowance. Paragraph (a) would allow a deduction for the reasonable actual costs of processing gas where the value for gas is determined pursuant to § 206.153.

Proposed § 206.158(b) would require that processing costs be allocated among all gas plant products, and a processing allowance determined for each gas plant product. A separate allowance would be required to be determined for each gas plant product and processing plant relationship. This provision would not allow the costs of processing a portion of a gas stream in one plant to be deductible from the values of gas plant products not produced by that particular plant. Natural gas liquids (NGL) would be treated as one gas plant product.

Proposed § 206.158(c) would limit the processing allowance to 66⅔ percent of the value of each gas plant product determined pursuant to § 206.153, less any applicable transportation allowances determined pursuant to §§ 206.156 and 206.157. This provision would, in effect, provide for the application of the processing allowance against the value of each gas plant product at the tailgate of the plant. The MMS Director could approve a greater allowance if the lessee demonstrates that the greater allowance is in the best interests of the lessor. As an alternative to approving allowances greater than the 66⅔ percent limit for processing costs, MMS solicits comments on

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whether it should allow lessees to roll forward to subsequent months any costs that cannot be deducted by the lessee as a result of the limitation on processing allowances. MMS particularly solicits comments on what circumstances would justify rolling forward the costs in excess of 66⅔ percent of the value of the gas plant products which is the proposed limitation on processing allowances. This section would provide that the processing allowance could not be applied against the value of the residue gas. It further provides that, if there is no residue gas, the lessee would propose, for MMS's approval, a gas plant product against which no allowance could be taken.

Paragraph (d) would set forth the long-established principle that no processing cost deduction would be allowed for the costs of placing lease products in marketable condition. For example, if hydrogen sulfide is removed from a gas stream and flared, no processing cost deduction would be allowed. However, if hydrogen sulfide is removed from gas and then further processed to obtain sulfur which is then sold, royalty is due on the value of the sulfur, but an allowance for the processing costs would be allowed in determining the value of the sulfur.

Paragraph (e) would provide that if a lessee improperly determines a processing allowance, the lessee would be liable for any additional royalties, plus interest, or would be entitled to a credit, without interest.

Proposed § 206.159, Determination of processing allowances, would provide the procedure for determining the processing allowance, which is substantially different depending upon whether the lessee has an arm's length contract with a plant operator for its processing, or whether the lessee has a non-arm's-length contract or no-contract situation, such as those situations where the lessee has an interest in the gas plant.

Paragraph (a)(1) would apply to arm's-length situations. It would provide that the processing allowance would be the actual costs for processing incurred by the lessee under that contract. The MMS's approval would not be required before the lessee could deduct the allowance in computing its royalty payments. However, the contract is subject to later monitoring, review, and/or audit. MMS may direct a lessee to use a different allowance if it determines that the lessee has improperly applied the regulations. The proposed rule would further require that before any deduction could be taken, the lessee must submit to MMS a completed page one of Form MMS–4109 the same month the processing allowance first is reported on Form MMS–2014, Report of Sales and Remittance. The deduction would be denied for any production month for which a Form MMS–4109 is not received prior to, or at the same time as, the Form MMS–2014 for that month. Therefore, if a lessee begins incurring processing costs for January gas production pursuant to an arm's-length contract, and if it did not submit a Form MMS–4109 until April 15, it would be entitled to an allowance only for March and subsequent months production in the reporting period. No allowance would be permitted for January and February, and the lessee would be required to refund, with interest, any allowance that was taken.

Paragraph (a)(2) would provide that any allowances determined pursuant to an arm's-length contract would be effective for a reporting period beginning the month that the lessee first is authorized to deduct a processing allowance and would continue for 12 months, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier. At the end of the reporting period, the lessee must resubmit page one of Form MMS–4109.

An arm's-length processing contract may include more than one gas plant product and may allocate the costs among the gas plant products. In such an instance, § 206.159(a)(3) would accept the allocation of the costs to each gas plant product in accordance with the contract. A processing allowance for lease products which are not royalty-bearing would not be allowed.

Proposed § 206.159(a)(4) would cover those situations where more than one gas plant product is produced at a plant and the costs attributable to each cannot be determined from the arm's-length contract. This section would require that the lessee propose an allocation procedure to MMS. The lessee would use the processing allowance determined in accordance with its proposed allocation procedure until MMS issues a determination on the processing allowance. Proposed § 206.159(a)(4) also would provide for the submission of the lessee's proposal within a prescribed time. If the approved allowance differs from the proposal, the lessee must correct its reports. The lessee would be required to pay additional royalties, with interest, or would get a credit, without interest.

In some instances, an arm's-length contract for processing will not require a cash payment by the lessee. Instead, the processing plant owner will be entitled, for example, to retain a percentage of the gas plant products. In such an event, § 206.159(a)(5) would require the lessee to determine the dollar value equivalent of those volumes to compute its allowance. Pursuant to § 206.159(a)(6), MMS could require lessees to submit copies of arm's-length processing contracts and related documents within the time prescribed by MMS.

Proposed § 206.159(b)(1) would provide that if the lessee does not have an arm's-length contract for processing gas, but has a non-arm's-length contract or no-contract situation because it has an interest in the processing plant, then the allowance would be based upon the lessee's reasonable, actual costs of processing the gas. This paragraph also provides that allowances are subject to monitoring review, and/or audit, and that for non-arm's-length or no-contract situations, MMS approval is not required.

Paragraph (b)(2) proposes a procedure similar to that previously discussed for allowances for arm's-length situations. The allowance approval for non-arm's-length or no-contract situations is also a twostep process, consisting of a submittal of an estimated processing allowance for the current 12-month period and a submittal of the actual processing allowance within 90 days after the end of the 12-month period, containing the actual costs incurred during the previous 12-month period. The MMS approval is not required prior to commencing processing allowance deductions for non-arm's-length or no-contract situations. The MMS must receive a completed Form MMS–4109 with an estimated allowance in the same month the lessee first reports its allowance on Form MMS–2014, Report of Sales and Royalty Remittance, or the allowance will be denied until Form MMS–4109, completed in its entirety with accompanying schedules, is filed. This is a one-time filing effective for the entire reporting period. Within 90 days following the end of the 12-month period, the lessee would submit Form MMS–4109 with its actual costs incurred during the previous 12-month period and its estimate for the succeeding reporting period.

Proposed § 206.159(b)(3) would provide that an estimated allowance may be used by lessees for processing plants systems that are in a start-up period.

Proposed § 206.159(b)(4) would specify the types and nature of costs which MMS considers acceptable in determining a processing allowance for non-arm's-length or no contract situations. The categories of expenses are operating and maintenance expenses, overhead, depreciation, and a return on undepreciated capital investment or, alternatively, a return on the initial capital investment with no allowance for depreciation—see discussion below. Paragraph (b)(4) (i) and (ii) provide a list of operating and maintenance expense categories which MMS considers typical operating or maintenance expenses. Paragraphs (b)(4)(iii) would provide for overhead to be included as a processing cost, providing the overhead is directly attributable or allocable to the operation or maintenance of the processing plant.

MMS is proposing two alternatives regarding return on capital investment. Under alternative 1, paragraph (b)(4)(iv) would provide for two financial depreciation methods: Straight-line depreciation and unit of production depreciation. Accordingly, depreciation would be based on the useful life of the equipment or the life of the reserves the processing plant services. Also, salvage value must be observed and equipment could not be depreciated below a reasonable salvage value.

The MMS is also proposing that the establishment of a processing plant depreciation schedule would not be altered because of a recapitalization or a change in ownership. A lessee would not be able to depreciate a processing plant using a schedule based on replacement costs or any other basis other than actual costs. Similarly, a change in ownership cannot be a basis for a change in the depreciation schedule for allowance purposes. If, for example, a processing plant has a depreciation schedule of 20 years and has been depreciated for 10 years by the first owner and then sold, the new second owner would be entitled to the remaining 10 years' depreciation based on the original capitalized cost. MMS specifically would like comments on whether or not this no-recapitalization provision should be adopted if alternative 1 is adopted.

As alternative 2, MMS is proposing in subsection (b)(4)(iv) to disallow any cost deduction for depreciation. Instead, each year MMS would allow an amount equal to the initial capital investment in the processing plant multiplied by a floating rate of return, as discussed below. Alternative 2, if adopted, would be supplemental to alternative 1 and is proposed to apply prospectively only to new plants or newly acquired plants. MMS would like commenters to address the feasibility of alternative 2.

Paragraph (b)(4)(v) would establish the rate of return to be applied to either the undepreciated capital investment under alternative 1, discussed above, or the initial capital investment under alternative 2, also discussed above. The rate of return is proposed to be determined by the Moody Aaa corporate bond rate as published by Moody's Investors Services, Inc. in *Moody's Bond Record* the first business day of the reporting period for which the allowance becomes applicable. At the beginning of each subsequent 12-month period that follows, the rate would be redetermined.

MMS would like commenters to address whether or not a specific rate of return for each lessee should be used and how such a rate of return would be calculated.

Proposed § 206.159(b)(5) would set forth the requirement that the lessee allocate the processing costs to each gas plant product. In such instances, § 206.159(b)(5) would require the lessee to allocate the processing costs to each gas plant product based upon generally accepted oil and gas accounting principles.

Paragraph (c) would set forth the reporting requirements subsequent to the initial reporting period. Paragraph (c)(1) would require that page one of Form MMS–4109 be submitted within 90 days after the end of the previous reporting period for arm's-length contracts, unless MMS approves a longer period. For non-arm's-length or no-contract situations, a Form MMS–4109, completed in its entirety with accompanying schedules, would be required to be submitted within 90 days following the end of the reporting period, unless MMS approves a longer period. Regardless of whether gas processing is conducted under arm's-length contract, non-arm's-length contract, or no-contract conditions, if Form MMS–4109 is not timely received, then the new allowance for the succeeding reporting period will not be effective until the first day of the month a proper Form MMS–4109 is received by MMS and would be applicable to any Form MMS–2014 received after that date. The lessee would be required to refund, with interest, any unauthorized allowance that was taken.

Section 206.159(c)(2) would require that processing allowances under either arm's-length, non-arm's-length or no-contract situations be reported on a separate line on Form MMS–2014, Report of Sales and Royalty Remittance. Unless otherwise directed and approved by MMS, lessees are not to report values that are net of processing allowances.

Proposed § 206.159(c)(3) would authorize MMS to establish reporting requirements different from those specified in the rules. This may be necessary for workload allocation or other reasons.

If the actual costs are different from the estimated costs used to determine the processing allowance, proposed § 206.159(d) would set forth the procedure for reporting the adjustments to royalty payments to the MMS. The procedure would be different for onshore than for offshore because of the refund procedures of Section 10 of the OCS Lands Act (43 U.S.C. 1801 et seq.). If actual allowances differ from estimated allowances, the lessee would be required to pay additional royalty, with interest, or would be entitled to a credit, without interest.

Paragraph (e) would apply the same administrative or computation procedures contained in § 206.159 to determine other gas processing costs when valuing gas under a net-back procedure or other valuation procedure contained in Subpart C of Part 206.

As with transportation allowances, it is the intention of MMS to terminate all existing processing allowances with the issuance of final rulemaking. Again, lessees would be required to follow the new reporting requirements to be eligible to deduct processing costs for product months subsequent to the effective date of the final rulemaking.

The MMS is aware of the extraordinary costs inherent in some offshore operations and also of the extensive facilities needed to process the deep sour gas that is being produced from some leases today. MMS requests comment on whether or not the final regulations should provide that unusual or unconventional post-production costs be allowed as a deduction in determining royalty values regardless of whether those costs are incurred on or off the lease.

The proposed oil valuation regulations (52 FR 1858, January 15, 1987) include proposed revisions to 30 CFR Part 207, governing such matters as contract retention. These provisions would be applicable also to unprocessed gas, residue gas, and gas plant products.

IV. Procedural Matters

Executive Order 12291

The Department of the Interior (DOI) has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. This proposed rulemaking is to consolidate Federal and Indian gas royalty valuation regulations; to clarify DOI gas royalty valuation policy; and to provide for consistent royalty valuation policy among all leasable minerals.

Regulatory Flexibility Act

Because this rule primarily consolidates and streamlines existing regulations for consistent application,

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there are no significant additional requirements or burdens placed upon small business entities as a result of implementation of this proposed rule. Therefore, the DOI has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 610 et seq.).

Paperwork Reduction Act

The information collection and recordkeeping requirements located at §§ 206.157 and 206.159 of this rule has been submitted to the Office of Management and Budget (OMB) for approval under 44 U.S.C. 3501 et seq. The collection of this information will not be required until it has been approved by OMB.

Lessee reporting requirements will be reduced. All gas sales contracts, transportation agreements and gas processing contracts, as well as any other agreements affecting value, will be required to be retained by the lessee, but will only be required to be submitted upon request rather than routinely, as under the existing regulations.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

Public Comment Procedures

A. Written Comments

The public is invited to participate in this proceeding by submitting data, views, or arguments with respect to this notice. All comments should be submitted by 4:30 p.m., m.s.t., of the day specified in the "DATES" section to the appropriate address indicated in the "ADDRESSES" section of this preamble and should be identified on the outside envelope and on documents submitted with the designation "Revision of Gas Royalty Valuation Regulations and Related Topics." All comments received by the MMS will be available for public inspection in Room E104, Building 85, Denver Federal Center, Lakewood, Colorado, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

Any information or data submitted which is considered to be confidential must be so identified and submitted in writing, one copy only. The MMS reserves the right to determine the confidential status of the information or data and to treat it according to its independent determination.

B. Public Hearing

(1) *Procedure for requests to make oral presentations:* The time and place for the hearing are indicated in the "DATES" and "ADDRESSES" sections of the preamble.

Written requests for an opportunity to make an oral presentation should contain a business telephone number and also a telephone number where the presenter may be contacted during the day prior to the hearing. Those selected to be heard at the hearing will be notified. Presenters will be required to submit 50 copies of their statement to MMS at the address indicated in the "ADDRESS" section above.

(2) *Conduct of the hearing:* MMS reserves the right to select the persons to be heard at the hearing (in the event there are more requests to be heard than time allows), to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based upon the number of persons requesting to be heard.

A Department of the Interior official will be designated to preside at the hearing. This will not be a judicial-type hearing. Questions may be asked only by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Anyone wishing to ask a question at the hearing may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether time limitations permit it to be presented for answer at the hearing.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer at the opening of the hearing.

A transcript of the hearing will be made. The entire record of the hearing, including the transcript, will be retained by the MMS and made available for inspection in Room E104, Building 85, Denver Federal Center, Lakewood, Colorado, between the hours 8:00 a.m. and 4:00 p.m., Monday through Friday. A copy of the transcript may be purchased from the reporter.

List of Subjects

30 CFR Part 202

Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 206

Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Oil and gas exploration, Public lands-Mineral resources.

Dated: January 8, 1987.

J. Steven Griles,

Assistant Secretary, Land and Minerals Management.

SUBCHAPTER A—ROYALTY MANAGEMENT

For the reasons set out in the preamble, the following amendments are proposed to be made to 30 CFR Parts 202 and 206.

PART 202—[AMENDED]

30 CFR Part 202 is amended as follows:

1. The authority citation for Part 202 is revised to read as follows:

Authority: 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. The table of contents for Subpart D is revised to read as follows:

Subpart D—Federal and Indian Gas

Sec.
202.150 Royalty on gas.
202.151 Royalty on processed gas.
202.152 Standards for reporting and paying royalties on gas.

3. The heading for Subpart D is revised to read as follows:

Subpart D—Federal and Indian Gas

4. Sections 202.150 and 202.151 of Subpart D are revised to read as follows:

§ 202.150 Royalty on gas.

(a) The royalty on gas, except helium produced from Federal leases, shall be at the rate established by the terms of the lease. Royalty shall be paid in value unless MMS requires payment in-kind.

(b)(1) All gas (except gas unavoidably lost or used on, or for the benefit of, the lease, including that gas used off-lease for the benefit of the lease when such off-lease use is permitted by the appropriate agency) produced from a Federal or Indian lease subject to this Part is subject to royalty.

(2) For a lease which is part of a unitized or communitized area, the volume of royalty free gas used off-lease for the benefit of the lease shall be limited to the volume which is equal to the ratio of lease production to total unitized or communitized area production multiplied by the total volume of gas used off-lease for the benefit of the unitized or communitized area.

(3) Where the terms of any lease are inconsistent with this section, the lease terms shall govern to the extent of that inconsistency.

(c) In those instances where the lessee of any lease committed to a Federally approved unitization or communitization agreement does not actually take the proportionate share of the agreement production attributable to its lease in accordance with the terms of the agreement, that production is subject to the royalty payment and reporting requirements of this Title. The value for royalty purposes of that production will be determined in accordance with Part 206. In applying the requirements of Part 206, the circumstances involved in the actual disposition of the production shall be considered as controlling in arriving at the value for royalty purposes as if the person actually selling or disposing of the production were the lessee of the Federal or Indian lease.

§ 202.151 Royalty on processed gas.

(a) A royalty as provided in the lease shall be paid on the value of the residue gas and all gas plant products resulting from processing the gas produced from a lease subject to this Part. The MMS shall authorize a processing allowance for the reasonable, actual costs of processing the gas produced from Federal and Indian leases. Processing allowances shall be determined in accordance with Subpart D of Part 206 of this Title.

(b) A reasonable amount of residue gas shall be allowed royalty free for operation of the processing plant, but no allowance shall be made for boosting residue gas or other expenses incidental to marketing.

(c) No royalty is due on residue gas or any gas plant product resulting from processing gas which is reinjected into a reservoir within the same lease, unit area, or communitized area, when the reinjection is included in a plan of development or operations and the plan has received BLM or MMS approval for onshore or offshore operations, respectively, until such time as they are finally produced from the reservoir for sale or use off-lease.

5. Section 202.152 is revised to read as follows:

§ 202.152 Standards for reporting and paying royalties on gas.

(a)(1) Gas volumes and Btu heating values, if applicable, shall be determined under the same degree of water saturation. Gas volumes shall be reported in units of one thousand cubic feet (*mcf*), and Btu heating value shall be reported at a rate of Btu's per cubic foot, at a standard pressure base of 14.73 pounds per square inch absolute (psia) and a standard temperature base of 60 °F; provided, however, that for OCS leases in the Gulf of Mexico, gas volumes and Btu heating values shall be reported at a standard pressure base of 15.025 psia and a standard temperature base of 60 °F. Gas volumes and Btu heating values shall be reported, for royalty purposes, on the same water vapor saturated or unsaturated basis prescribed by Federal Energy Regulatory Commission (FERC) regulation, or on the basis prescribed in the lessee's gas sales contract if the sales are not subject to FERC regulation, or the prescribed basis does not result in a conflict with FERC regulation.

(2) The frequency and method of Btu measurement as set forth in the lessee's contract shall be used for reporting purposes. However, the Btu value shall be measured at least semiannually by recognized standard industry testing methods.

(b)(1) Residue gas and gas plant product volumes shall be reported as specified herein.

(2) Carbon dioxide (CO_2), nitrogen (N_2), helium (He), and residue gas shall be reported using the same standards specified in paragraph (a).

(3) Natural gas liquids (NGL) volumes shall be reported in standard U.S. gallons (231 cubic inches) at 60 °F.

(4) Sulfur (S) volumes shall be reported in long tons (2,240 pounds).

PART 206—[AMENDED]

30 CFR Part 206 is amended as follows:

1. The authority citation for Part 206 is revised to read as follows:

Authority: 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. The table of contents for Subpart D is revised to read as follows:

Subpart D—Federal and Indian Gas

Sec.
206.150 Purpose and scope.
206.151 Definitions.
206.152 Valuation standards—unprocessed gas.
206.153 Valuation standards—processed gas.
206.154 Determination of quantities and qualities for computing royalties.
206.155 Accounting for comparison.
206.156 Transportation allowances—general.
206.157 Determination of transportation allowances.
206.158 Processing allowances—general.
206.159 Determination of processing allowances.

3. The heading for Subpart D is revised to read as follows:

Subpart D—Federal and Indian Gas

4. Sections 206.150, 206.151, and 206.152 are revised to read as follows:

§ 206.150 Purpose and scope.

(a) This subpart is applicable to all gas produced from Federal and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation).

(b) If the specific provisions of any statute or treaty, or any oil and gas lease subject to the requirements of this part, are inconsistent with any regulation in this part, then the lease, statute, or treaty provision shall govern to the extent of that inconsistency.

(c) All royalty payments made to MMS are subject to later audit and adjustment.

(d) If BLM determines that gas was avoidably lost or wasted from an onshore lease, or gas was drained from an onshore lease upon which compensatory royalty is due, or MMS determines that gas was avoidably lost or wasted from an offshore lease, then the value of the gas shall be determined in accordance with this part.

(e) If a lessee receives compensation through insurance coverage or other arrangements for gas unavoidably lost, royalties at the rate specified in the lease are to be paid on the amount of compensation received.

§ 206.151 Definitions.

(a) *Alaska Native Corporation* means any of the twelve Alaska Native Regional Corporations formed pursuant to the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1606, and which, by virtue of the acquisition of land pursuant to ANCSA, as amended and supplemented, owns all or part of the lessor's interest in a lease or is entitled to distribution of a portion of the revenues derived from a lease.

(b) *Allowance* means an authorized or an MMS-accepted or -approved deduction in determining value for royalty purposes. "Processing allowance" means an allowance for the

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reasonable, actual costs incurred by the lessee for processing gas, or an MMS-accepted or -approved deduction for costs of such processing.

"Transportation allowance" means an allowance for the reasonable, actual costs incurred by the lessee for moving unprocessed gas, residue gas, or gas plant products to a point of sale or point of delivery remote from the lease, unit area, communitized area, or processing plant or an MMS-accepted or -approved deduction for costs of such transportation, determined pursuant to this subpart.

(c) *Area* means a geographic region at least as large as the defined limits of an oil and/or gas field, in which oil and/or gas lease products have similar quality and economic characteristics.

(d) *Arm's-length contract* means a contract or agreement between independent, nonaffiliated persons. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with another person, or if one person owns an interest (regardless of how small), either directly or indirectly, in another person.

(e) *Audit* means a review, conducted in accord with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal and Indian leases. The term audit includes, but is not limited to, audit activities related to Federal leases located within the boundaries of any State which has entered into a cooperative agreement with MMS under the provisions of sections 202 or 205 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1732 or 1735), audit activities related to leases located on Indian lands, and the review and resolution of exceptions processed by the official royalty and production accounting systems maintained by the MMS. Audits may also be conducted in response to irregularities identified by BLM or MMS, BIA, or a State or Indian Tribe in the performance of production verification.

(f) *BIA* means the Bureau of Indian Affairs of the Department of the Interior.

(g) *BLM* means the Bureau of Land Management of the Department of the Interior.

(h) *Compression* means the process of raising the pressure of gas.

(i) *Contract* means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

(j) *Field* means a geographic region situated over one or more subsurface gas and/or oil reservoirs encompassing at least the outermost boundaries of all gas and/or oil accumulations known to be within those reservoirs vertically projected to the land surface. Onshore fields are usually given names and their official boundaries are often designated by oil and gas regulatory agencies in the respective States in which the fields are located. Outer Continental Shelf (OCS) fields are named and their boundaries are designated by MMS.

(k) *Gas* means any fluid, either combustible or noncombustible, hydrocarbon or nonhydrocarbon, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely. It is a substance that exists in a gaseous or rarefied state under standard temperature and pressure conditions.

(l) *Gas plant products* means separate marketable elements, compounds or mixtures, whether in liquid, gaseous, or solid form, resulting from processing gas, excluding residue gas.

(m) *Gross proceeds* (for royalty payment purposes) means the total monies and other consideration paid to an oil and gas lessee, or monies and other consideration to which such lessee is entitled for the disposition of unprocessed gas, residue gas, or gas plant products. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as compression, dehydration, measurement, and/or field gathering to the extent that the lessee is obligated to perform them at no cost to the Federal Government or Indian lessor, and payments for gas processing rights. Gross proceeds, as applied to gas also includes: Payments or credits for advanced prepaid reserve payments subject to recoupment through reduced prices in later sales; advanced exploration or development costs that are subject to recoupment through reduced prices in later sales; take-or-pay payments; reimbursements for severance taxes; and other reimbursements. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Federal or Indian royalty interest may be exempt from taxation.

(n) *Indian allottee* means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation.

(o) *Indian Tribe* means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any land or interest in land is held by the United States in trust or which is subject to Federal restriction against alienation.

(p) *Lease* means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of lease products—or the land area covered by that authorization, whichever is required by the context.

(q) *Lease products* means any minerals attributable to, originating from, or allocated to Outer Continental Shelf or onshore Federal or Indian leases.

(r) *Lessee* means any person to whom the United States, an Indian Tribe, or an Indian allottee issues a lease, and any person who has assumed an obligation to make royalty or other payments required by the lease. This includes all persons who have an interest in a lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

(s) *Like-quality lease products* means lease products which have similar chemical, physical, and legal characteristics.

(t) *Marketable condition* means lease products which are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area.

(u) *Minimum royalty* means that minimum amount of annual royalty that the lessee must pay as specified in the lease or in applicable leasing regulations.

(v) *Net-back method* means a procedure for valuing unprocessed gas, residue gas, or gas products at the lease, unit area, communitized area, or processing plant when the first sale, transfer, or use has taken place downstream from the lease, unit area, communitized area, or processing plant. The procedure involves working back from the initial sales point, or first alternate point which can be used for value determination, to arrive at the value at the point of settlement for royalty purposes or the processing plant, as applicable.

(w) *Net output* means the quantity of residue gas and each gas plant product that a processing plant produces.

(x) *Net profit share* (for applicable Federal and Indian lessees) means the specified share of the net profit from production of oil and gas as provided in the agreement.

(y) *Outer Continental Shelf (OCS)* means all submerged lands lying

seaward and outside of the area of land beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

(z) *Person* means any individual, firm, corporation, association, partnership, consortium, or joint venture.

(aa) *Posted price* means the price in the field, net of all deductions, as specified in a publicly available posted price bulletin, that a buyer is willing to pay for quantities of unprocessed gas, residue gas, or gas plant products of marketable quality, free of contaminants not normally associated with such gas or gas plant products.

(bb) *Processing* means any process designed to remove elements or compounds (hydrocarbon and nonhydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes which normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression, are not considered processing. The changing of pressures and/or temperatures in a reservoir are not considered processing.

(cc) *Residue gas* means that hydrocarbon gas consisting principally of methane resulting from processing gas.

(dd) *Selling arrangement* means a unique level of subaccounting required by MMS's Auditing and Financial System (AFS).

(ee) *Spot sales agreement* means a contract wherein a seller agrees to sell to a buyer a specified amount of unprocessed gas, residue gas, or gas plant products at a specified price over a fixed period, usually of short duration, which does not require a cancellation notice to terminate, and which does not contain an obligation, nor imply an intent, to continue in subsequent periods.

(ff) *Take-or-pay payment* means any payment received by the lessee under a "take-or-pay" clause in its sales contracts. Such clauses normally require the purchaser to take or, failing to take, to pay for a minimum contracted volume or other measure of lease products. Under such a clause, the purchaser usually has the right to take lease products paid for (but undelivered) in succeeding years.

(gg) *Warranty contract* means a contract for the sale of gas wherein the producer agrees to sell a specific amount of gas and the gas delivered in satisfaction of this obligation may come from fields or sources outside of the designated fields. *Shell Oil Co.* v. *Federal Power Commission* 531 F.2d 1324 at note 6 (5th Cir. 1976).

§ 206.152 Valuation standards—unprocessed gas.

(a)(1) This section applies to the valuation of gas that is not processed and all gas that is processed but is sold or otherwise disposed of by the lessee pursuant to an arm's-length contract prior to processing. Where the lessee's contract includes a reservation of the right to process the gas and the lessee exercises that right, or where the lessee's contract for the sale of gas prior to processing provides for the value to be determined based upon a percentage of the purchaser's proceeds resulting from processing the gas, § 206.153 shall apply instead of this section.

(2) The value, for royalty purposes, of gas subject to this section shall be the value of gas determined pursuant to this section less applicable transportation allowances determined pursuant to this subpart.

(b)(1) The value of gas which is sold pursuant to an arm's-length contract shall be the gross proceeds accruing, or which could accrue, to the lessee. Prior MMS approval of this value is not required, although it is subject to monitoring, review, and/or audit. MMS may direct a lessee to pay royalty upon a different value if it determines that the lessee's reported value is inconsistent with the requirements of these regulations.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, the value of gas sold pursuant to a warranty contract shall be determined by MMS and due consideration will be given to all valuation criteria specified in this section.

(c) The value of gas subject to this section which is not sold pursuant to an arm's-length contract shall be the reasonable value determined in accordance with the first applicable of the following subsections:

(1) The gross proceeds accruing, or which could accrue, to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the lessee's gross proceeds derived from, or paid under, comparable arm's-length contracts for purchases, sales, or other dispositions of like-quality gas in the same field or area. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: Price, time of execution, duration, market or markets served, terms, quality of gas, volume, and such other factors as may be appropriate to reflect the value of the gas;

(2) The gross proceeds accruing, or which could accrue, to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract) provided that those gross proceeds are equivalent to the gross proceeds under comparable arm's-length contracts between other persons for purchases, sales, or other dispositions of like-quality gas in the same field or area. Comparability shall be determined using the same criteria as specified in paragraph (c)(1) of this section;

(3) A value determined by consideration of other information relevant in valuing like-quality gas, including gross proceeds under arm's-length contracts for like-quality gas in other fields or areas, posted prices for gas, prices received in spot sales of gas, other reliable public sources of price or market information, and other information as to the particular lease operation or affecting the saleability of the gas; or

(4) A net-back method or any other reasonable method to determine value.

(d) Notwithstanding any other provisions of this section, except paragraph (h) of this section, if the maximum price permitted by Federal law at which gas may be sold is less than the value determined pursuant to this section, then the MMS shall accept such maximum price as the value. This limitation shall not apply to gas sold pursuant to a warranty contract and valued pursuant to paragraph (b)(2) of this section.

(e)(1) Where the value is determined pursuant to paragraph (c) of this section, that value does not require prior approval by MMS. However, the lessee shall retain all available data to support its determination of value. Such data shall be subject to monitoring, review, and/or audit by MMS. MMS may direct a lessee to pay royalty at a different value if it determines, upon review or audit, that the reported value is inconsistent with the requirements of the regulations.

(e)(2) A lessee shall notify MMS if it has determined value pursuant to paragraph (c)(3) or (c)(4) of this section. The notification shall be by letter to the Associate Director for Royalty Management or his designee. The letter shall identify which valuation method is being used and contain a brief description of the procedure being used.

(f) If MMS determines that a lessee has not properly determined value, the lessee shall be liable for the difference, if any, between royalty payments made

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based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also be liable for interest computed pursuant to 30 CFR 218.54. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(g) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS what the value should be, and the lessee may use that value for royalty purposes until MMS issues a value determination. The lessee shall submit available data to support its proposal. The MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (f) of this section.

(h) Notwithstanding any other provision of this section, under no circumstances shall the value, for royalty purposes, be less than the gross proceeds accruing, or which could accrue, to the lessee for gas removed or sold from the lease, less applicable allowances determined pursuant to this subpart.

(i) The lessee is required to place gas in marketable condition at no cost to the Federal Government or Indian lessor. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the gas in marketable condition.

(j) Value shall be based on the highest price a prudent operator can receive under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract, and may be retroactive. If the lessee makes timely application for a price increase allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties until monies or consideration resulting from the price increase are received. This paragraph applies to price increments only and shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part, for a quantity of gas removed or sold from a lease.

(k) Certain information submitted to MMS to support valuation proposals, including transportation and/or processing allowances, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 522. Any data specified by the Act to be privileged, confidential, or otherwise exempt, will be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this part are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2.

5. Sections 206.153 through 206.159 are added to read as follows:

§ 206.153 Valuation standards—processed gas.

(a)(1) This section applies to the valuation of all gas that is processed by the lessee and any other gas not subject to the valuation provisions of § 206.152. This section applies where the lessee's contract includes a reservation of the right to process the gas and the lessee exercises that right, and where the lessee's contract for the sale of gas prior to processing provides for the value to be determined based upon a percentage of the purchaser's proceeds resulting from processing the gas.

(2) The value, for royalty purposes, of gas subject to this section shall be the combined value of the residue gas and all gas plant products determined pursuant to this section, less applicable transportation and processing allowances determined pursuant to this subpart.

(b)(1) The value of the residue gas or any gas plant product which is sold pursuant to an arm's-length contract shall be the gross proceeds accruing, or which could accrue, to the lessee. Prior MMS approval of this value is not required, although it is subject to monitoring, review, and/or audit. MMS may direct a lessee to pay royalty upon a different value if it determines that the lessee's reported value is inconsistent with the requirements of these regulations.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, the value of residue gas sold pursuant to a warranty contract shall be determined by MMS and due consideration will be given to all valuation criteria specified in this section.

(c) The value of residue gas or of any gas plant product which is not sold pursuant to an arm's-length contract shall be the reasonable value determined in accordance with the first applicable of the following subsections:

(1) The gross proceeds accruing, or which could accrue, to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the lessee's gross proceeds derived from, or paid under, comparable arm's-length contracts for purchases, sales, or other dispositions of like-quality residue gas or gas plant products from the same processing plant. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: price, time of execution, duration, market or markets served, terms, quality of residue gas or gas plant product, volume, and such other factors as may be appropriate to reflect the value of the residue gas or gas plant product;

(2) The gross proceeds accruing, or which could accrue, to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the gross proceeds under comparable arm's-length contracts between other persons for purchases, sales, or other dispositions of like-quality residue gas or gas plant products from the same processing plant. Comparability shall be determined using the same criteria as specified in paragraph (c)(1) of this section;

(3) A value determined by consideration of other information relevant in valuing like-quality residue gas or gas plant products, including gross proceeds under arm's-length contracts for like-quality residue gas or gas plant products from other nearby processing plants, posted prices for residue gas or gas plant products, prices received in spot sales of residue gas or gas plant products, other reliable public sources of price or market information, and other information as to the particular lease operation or affecting the saleability of such residue gas or gas plant products; or

(4) The use of a net-back method or any other reasonable method to determine value.

(d) Notwithstanding any other provisions of this section, if the maximum price permitted by Federal law at which any residue gas or gas plant products may be sold is less than the value determined pursuant to this section, then MMS shall accept such maximum price as the value. This limitation shall not apply to residue gas sold pursuant to a warranty contract and valued pursuant to paragraph (b)(2) of this section.

(e)(1) Where the value is determined pursuant to paragraph (c) of this section, that value does not require approval by MMS. However, the lessee shall retain all available data to support its determination of value. Such data shall be subject to review and/or audit by MMS. MMS may direct a lessee to pay royalty at a different value if it determines upon review or audit that the reported value is inconsistent with the requirements of these regulations.

(2) A lessee shall notify MMS if it has determined any value pursuant to paragraph (c)(3) or (c)(4) of this section. The notification shall be by letter to the Associate Director for Royalty Management or his designee. The letter shall identify which valuation method is being used and contain a brief description of the procedure being used.

(f) If MMS determines that a lessee has not properly determined value, the lessee shall be liable for the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also be liable for interest computed pursuant to 30 CFR 218.54. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(g) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS what the value should be, and the lessee may use that value for royalty purposes until MMS issues its determination. The lessee shall submit available data to support its proposal. The MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (f) of this section.

(h) Notwithstanding any other provision of this section, under no circumstances shall the value, for royalty purposes, be less than the gross proceeds accruing, or which could accrue, to the lessee for residue gas and/or any gas plant products, less applicable transportation and processing allowances determined pursuant to this subpart.

(i) The lessee is required to place residue gas and gas plant products in marketable condition at no cost to the Federal Government or Indian lessor. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the residue gas or gas plant product in marketable condition.

(j) Value shall be based on the highest price a prudent operator can receive under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract, and may be retroactive. If the lessee makes timely application for a price increase allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties until monies or consideration resulting from the price increase are received. This paragraph applies to price increments only and shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part, for a quantity of residue gas or gas plant product.

(k) Certain information submitted to MMS to support valuation proposals, including transportation and/or processing allowances, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 522. Any data specified by the Act to be privileged, confidential, or otherwise exempt, will be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this part are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2.

§ 206.154 Determination of quantities and qualities for computing royalties.

(a)(1) Royalties shall be computed on the basis of the quantity and quality of unprocessed gas in marketable condition at the point of royalty settlement approved by BLM or MMS for onshore and offshore leases, respectively.

(2) If the value of gas determined pursuant to § 206.152 is based upon a quantity and/or quality that is different from the quantity and/or quality at the point of royalty settlement, as approved by BLM or MMS, that value shall be adjusted for the differences in quantity and/or quality.

(b)(1) For residue gas and gas plant products, the quantity basis for computing royalties due is the monthly net output of the plant even though residue gas and/or gas plant products may be in temporary storage.

(2) If the value of residue gas and/or gas plant products determined pursuant to § 206.153 is based upon a quantity and/or quality of residue gas and/or gas plant products that is different from that which is attributable to a lease determined in accordance with this section, that value shall be adjusted for the differences in quantity and/or quality.

(c) The quantity of the residue gas and gas plant products attributable to a lease shall be determined according to the following procedure:

(1) When the net output of the processing plant is derived from gas obtained from only one lease, the quantity of the residue gas and gas plant products on which computations of royalty are based is net output of the plant.

(2) When the net output of a processing plant is derived from gas obtained from more than one lease, the quantity of residue gas and gas plant products allocable to each lease shall be determined by the lessee in accordance with a generally accepted lease allocation method.

(d)(1) No deductions may be made from the royalty volume or royalty value for actual or theoretical losses. Any actual loss of unprocessed gas that may be sustained prior to the point of royalty settlement approved by BLM or MMS will not be subject to royalty provided that such loss is determined to have been unavoidable by BLM or MMS, as appropriate.

(2) Royalties are due on 100 percent of the volume determined in accordance with paragraphs (a) through (c) of this section. There can be no reduction in that determined volume for actual losses after the quantity basis has been determined or for theoretical losses that are claimed to have taken place. Royalties are due on 100 percent of the value of the unprocessed gas, residue gas and/or gas plant products as provided in this Part, less applicable allowances. There can be no deduction from the value of the unprocessed gas, residue gas, and/or gas plant products to compensate for actual losses after the quantity basis has been determined or for theoretical losses that are claimed to have taken place.

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§ 206.155 Accounting for comparison.

(a) Where the lessee, or a person to whom the lessee has transferred gas pursuant to a non-arm's-length contract or no-contract situation, processes the lessee's gas [including where the lessee's arm's-length contract includes a reservation of the right to process the gas], and after processing the gas the residue gas is not sold pursuant to an arm's-length contract, the value, for royalty purposes, shall be the greater of—

(1) The value of the residue gas and gas plant products resulting from processing the gas determined pursuant to § 206.153 (adjusted for any approved processing and/or transportation allowances), plus the value of any condensate recovered downstream of the point of royalty settlement without resorting to processing, or

(2) The value of the gas prior to processing, determined pursuant to § 206.152.

(b) Notwithstanding the provisions of paragraph (a) of this section, the requirement for accounting for comparison contained in the terms of leases, particularly Indian leases, will govern as provided in § 206.150(b).

§ 206.156 Transportation allowances—general.

(a) Where the value of gas has been determined pursuant to § 206.152 or § 206.153 at a point remote from the lease, MMS shall allow a deduction for the reasonable actual costs incurred to transport unprocessed gas, residue gas, and gas plant products from a lease to a sales point remote from the lease including, if appropriate, transportation from the lease to a gas processing plant remote from the lease and from the plant to a sales point remote from the plant.

(b)(1) The transportation allowance shall not exceed 50 percent of the value of the unprocessed gas, residue gas, or gas plant product as determined pursuant to § 206.152 or § 206.153 and shall be determined on a selling arrangement basis.

(2) The MMS Director may approve an allowance in excess of the limitation contained in paragraph (b)(1) of this section if the lessee demonstrates that a higher allowance is in the best interests of the lessor. An application for exception shall contain all relevant and supporting data necessary for the Director to make a determination. Under no circumstances shall the Director allow the royalty payment under any selling arrangement to be reduced to zero.

(c) Transportation costs must be allocated among all lease products produced and transported. However, no transportation deduction shall be allowed for lease products that are not royalty-bearing.

(d) If after a review and/or audit it is determined a lessee has improperly determined a transportation allowance authorized by this subpart, then the lessee shall be liable for any additional royalties, plus interest, determined in accordance with 30 CFR § 218.54, or shall be entitled to a credit, without interest.

§ 206.157 Determination of transportation allowances.

(a)(1) Arm's-length contracts. For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting the unprocessed gas, residue gas and/or gas plant product under that contract, subject to monitoring, review, audit, and/or adjustment. Such allowances shall be subject to the provisions of paragraph (e) of this section. The MMS's approval is not required before a lessee may deduct costs incurred under an arm's-length contract. However, before any deduction may be taken, the lessee must submit a completed page one of the Form MMS–4295 the same month the transportation allowance first is reported on Form MMS–2014, Report of Sales and Royalty Remittance. This is a one-time filing effective for the entire annual reporting period. The allowance will be denied for any production month for which a Form MMS–4295 is not received prior to, or at the same time as, the Form MMS–2014 for that month.

(2) The transportation allowance determined pursuant to an arm's-length contract shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance pursuant to paragraph (a)(1) of this section and shall continue for 12 months, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier. At that time, the lessee must resubmit page one of Form MMS–4295 in accordance with paragraph (c) of this section.

(3) If an arm's-length transportation contract includes more than one lease product in a gaseous phase and the transportation costs attributable to each product cannot be determined from the contract, then the total transportation costs shall be allocated in a consistent and equitable manner to each of those transported lease products in the same proportion as the ratio of the volume of each product (including water vapor) to the volume of all lease products in the gaseous phase. The MMS will not give an allowance for transporting any lease product which is not royalty-bearing.

(4) If an arm's-length transportation contract includes lease products in both gaseous and liquid phases, and the transportation costs attributable to each cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. The lessee may use its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all available data to support its proposal. The initial proposal must be submitted by *[insert 60 days after effective date of final rule]* or within 60 days after the lessee begins the transportation, whichever is later (unless MMS approves a longer period). The MMS shall then determine the transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary. The lessee shall be required to adjust its royalty reports to the extent the approved allowance is different from the proposal. The lessee shall be required either to pay additional royalties, plus interest, or shall be entitled to a credit without interest.

(5) Where the lessee's payments for transportation under an arm's-length contract are not based on a dollar basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent.

(6) MMS may require that a lessee submit arm's-length transportation contracts and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(b)(1) Non-arm's-length contract or no contract. If a lessee has a non-arm's-length contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance will be based upon the lessee's reasonable, actual costs as determined by this subpart. All transportation allowances deducted under a non-arm's-length or no-contract situation are subject to future monitoring, review, and/or audit. For non-arm's-length contract or no-contract situations, prior MMS approval of transportation allowances is not required. The MMS will monitor, review, and/or audit the allowance deductions to ensure that deductions are reasonable and allowable. The MMS may direct a lessee to adjust its allowance when necessary or appropriate.

(2) A transportation allowance for unprocessed gas, residue gas, or gas plant products determined pursuant to a non-arm's-length contract or a no-contract situation shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a transportation allowance and shall continue for 12 months, or until the non-arm's-length contract terminates or the no-contract transportation terminates, whichever is earlier. The lessee shall submit a completed page one of Form MMS–4295 the same month the transportation allowance first is reported on Form MMS–2014, Report of Sales and Royalty Remittance. This is a one-time filing effective for the entire annual reporting period. The allowance will be denied for any production month for which a Form MMS–4295 is not received prior to, or at the same time as, the Form MMS–2014 for that month. As provided in § 206.157(c), at the end of the 12-month period, or after the non-arm's-length contract or no-contract transportation terminates, the lessee shall submit a completed page one of Form MMS–4295 containing the actual costs for the previous reporting period. If unprocessed gas, residue gas, or gas plant product transportation is continuing, the lessee shall include on page one of Form MMS–4295 its estimated costs for the next reporting period.

(3) For unprocessed gas, residue gas or gas plant product transportation allowances authorized by this paragraph, a lessee may deduct the transportation allowance that it has determined, subject to review and audit by MMS.

(4) For new transportation facilities, the lessee's initial page one of Form MMS–4295 shall include estimates of the allowable costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the transportation facility or, if such data are not available, the lessee shall use estimates based upon industry data for similar transportation systems.

(5) The transportation allowance for non-arm's-length or no-contract situations shall be based upon the lessee's actual costs for transportation, including operating and maintenance expenses, overhead, [depreciation], and a return on [undepreciated] capital investment. The transportation allowance shall be based upon actual costs incurred during the 12-month reporting period.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the transportation system; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

Alternative 1

(iv) To compute depreciation, the lessee may elect to use either a straight-line depreciation method or a unit of production method based on the life of equipment or the life of the reserves which the transportation system services. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership a transportation system shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

Alternative 2

(iv) MMS shall allow as a cost an amount equal to the initial capital investment in the transportation system multiplied by a rate of return determined pursuant to paragraph (b)(5)(v) of this section. No allowance shall be provided for depreciation.

(v) The rate of return on [undepreciated] capital investment shall be the Moody Aaa corporate bond rate as published by Moody's Investors Service, Inc. in *Moody's Bond Record* on the first business day of the reporting period for which the allowance is applicable. This rate will be effective during the entire reporting period. The rate shall be redetermined at the beginning of each subsequent reporting period.

(6) The deduction for transportation costs shall be determined based upon the lessee's cost of transporting each lease product through each transportation system. Where more than one lease product in a gaseous phase is transported, then the total transportation costs shall be allocated in a consistent and equitable manner to each of those lease products in the same proportion as the ratio of the volume of each product (including water vapor) to the volume of all lease products in the gaseous phase. The MMS will not give an allowance for transporting a lease product which is not royalty-bearing.

(7) Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to MMS. The lessee may use the transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all available data to support its proposal. The initial proposal must be submitted within *[insert 60 days after effective date of final rule]* or within 60 days after the lessee begins the transportation, whichever is later (unless MMS approves a longer period). The MMS shall then determine the transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary. If the allowance determined by MMS is different from the proposed allowance, the lessee shall be required to pay any additional royalty, plus interest, or shall be entitled to a credit, without interest.

(8) Upon request by MMS, the lessee shall submit all data used by the lessee to prepare its Form MMS–4295, including estimates and actuals. The data shall be provided within a reasonable period of time, as determined by MMS.

(c)(1) Reporting requirements. After the initial reporting period, for succeeding reporting periods, lessees shall submit page one of Form MMS–4295 on an annual basis. Form MMS–4295 must be received by MMS within 90 days after the end of the previous reporting period unless MMS approves a longer period. If page one of Form MMS–4295 is not received timely, then the allowance requested will not be effective until the first day of the month in which the Form MMS–4295 is received, and will be applicable only to any Form MMS–2014, Report of Sales and Royalty Remittance, received after that date. The lessee will be required to refund, with interest, any unauthorized allowance which it has taken.

(2) Each individual transportation allowance must be reported as a separate line on the Report of Sales and Royalty Remittance, Form MMS–2014.

(3) MMS may establish reporting dates for individual leases different from those specified in this subpart in order to provide more effective administration. Lessees will be notified of any change in their reporting period.

(d)(1) Adjustments. If the actual transportation allowance is less than the amount the lessee has estimated and

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taken during the reporting period, the lessee shall be required to pay additional royalties due plus interest computed pursuant to 30 CFR 218.54, retroactive to the first month the lessee is authorized to deduct a transportation allowance. If the actual transportation allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be entitled to a credit without interest.

(2) For lessees transporting production from onshore Federal and Indian leases, the lessee must submit a corrected Form MMS–2014, together with any payment, in accordance with instructions by MMS to reflect actual costs.

(3) For lessees transporting production from leases on the OCS, if the lessee's estimated costs were more than the actual costs, the lessee must submit a corrected Form MMS–2014, together with its payment, in accordance with instructions provided by MMS to reflect actual costs. If the lessee's estimated costs were less than its actual costs, the lessee must submit a written request for refund in accordance with section 10 of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. 1339(a).

(e) Notwithstanding any other provisions of this subpart, no cost shall be allowed for unprocessed gas, residue gas or gas plant product transportation which results from payments for actual or theoretical losses.

(f) Other transportation cost determinations. The provisions of this section shall apply to determine transportation costs when establishing value using a net back valuation procedure or any other procedure that requires deduction of transportation costs.

§ 206.158 Processing allowances—general.

(a) When the value of gas is determined pursuant to § 206.153, a deduction shall be allowed for the reasonable actual costs of processing.

(b) Processing costs must be allocated among the gas plant products. A separate processing allowance must be determined for each gas plant product and processing plant relationship. NGL's shall be considered as one product.

(c)(1) The processing allowance shall not exceed 66⅔ percent of the value of each of the gas plant products as determined pursuant to § 206.153, less any applicable transportation allowances determined pursuant to §§ 206.156 and 206.157. Where there are multiple selling arrangements for any individual gas plant product, the transportation allowance reduced values (values at the tailgate of the plant) for each selling arrangement shall be summed for the purposes of applying the 66⅔ percent processing allowance limitation. The processing allowance shall not be applied against the value of the residue gas. Where there is no residue gas, the lessee shall propose, for MMS approval, an appropriate gas plant product against which no allowance may be applied.

(2) The MMS Director may approve an allowance in excess of the limitation contained in paragraph (c)(1) of this section if the lessee demonstrates that a higher allowance is in the best interests of the lessor. An application for exception shall contain all relevant and supporting data necessary for the Director to make a determination. Under no circumstances shall the Director permit the processing allowance for any gas plant product to exceed the value of such product determined pursuant to § 206.153, less any applicable transportation allowance determined pursuant to §§ 206.156 and 206.157.

(d) No processing cost deduction shall be allowed for the costs of placing lease products in marketable condition, including dehydration, separation, compression, or storage, even if those functions are performed off the lease or at a processing plant. Where gas is processed for the removal of acid gases, commonly referred to as "sweetening," no processing cost deduction shall be allowed for such costs unless the acid gases removed are further processed into a gas plant product and ultimately sold. In such event, the lessee shall be eligible for a processing allowance as determined in accordance with this subpart.

(e) If MMS determines that a lessee has improperly determined a processing allowance authorized by this subpart, then the lessee shall be liable for any additional royalties, plus interest, determined in accordance with 30 CFR 218.54, or shall be entitled to a credit, without interest.

§ 206.159 Determination of processing allowances.

(a)(1) *Arm's-Length contracts.* For processing costs incurred by a lessee pursuant to an arm's-length contract, the processing allowance shall be the reasonable actual costs incurred by the lessee for processing the gas under that contract, subject to monitoring, review, and/or audit and adjustment. Prior MMS approval is not required before a lessee may deduct costs incurred under an arm's-length contract. However, before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4109 the same month the processing allowance first is reported on Form MMS–2014, Report of Sales and Royalty Remittance. This is a one-time filing effective for the entire reporting period. The allowance will be denied for any production month for which a form MMS–4109 is not received prior to, or at the same time as, the Form MMS–2014 for that month.

(2) The processing allowance determined pursuant to an arm's-length contract shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a processing allowance pursuant to paragraph (a)(1) of this section and shall continue for 12 months, or until the applicable contract terminates or is modified or amended, whichever is earlier. At that time, the lessee must resubmit page one of Form MMS–4109 in accordance with paragraph (c) of this section.

(3) If an arm's-length processing contract includes more than one gas plant product, and if the processing costs attributable to each product can be determined from the contract, then the processing costs for each gas plant product shall be determined in accordance with the contract. The MMS will not grant an allowance for processing lease products which are not royalty-bearing.

(4) If an arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. The lessee may use its proposed allocation procedure until MMS issues its determination. The lessee shall submit all available data to support its proposal. The initial proposal must be submitted by [*insert 60 days after effective date of final rule*] or within 60 days after the lessee begins the processing, whichever is later (unless MMS approves a longer period). The MMS shall then determine the processing allowance based upon the lessee's proposal and any additional information MMS deems necessary. The lessee shall be required to adjust its royalty reports to the extent the approved allowance differs from the proposal. The lessee shall be required to pay any additional royalties, plus interest, or shall be entitled to a refund, without interest.

(5) Where the lessee's payments for processing under an arm's-length contract are not based on a dollar basis, the lessee shall convert whatever consideration is received to a dollar value equivalent.

(6) MMS may require that a lessee submit arm's-length processing contracts and related documents. Documents shall be submitted within a reasonable time, as specified by MMS.

(b)(1) *Non-arm's-length or no contract.* If a lessee has a non-arm's- length contract or has no contract, including those situations where the lessee performs processing for itself, the processing allowance will be based upon the lessee's reasonable, actual costs. For all processing allowances deducted under non-arm's-length or no-contract situations, MMS approval of processing allowances is not required. All processing allowances deducted under a non-arm's-length or no-contract situation are subject to future review and audit. The MMS will review and/or audit the allowance deductions to ensure that deductions are reasonable and allowable. The MMS may direct a lessee to adjust its allowance when necessary or appropriate.

(2) A gas processing allowance determined pursuant to a non-arm's-length contract or a no-contract situation shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a processing allowance and shall continue for 12 months, or until the non-arm's-length contract or the no-contract processing terminates, whichever is earlier. The lessee shall submit a completed Form MMS–4109 the same month the processing allowance first is reported on Form MMS–2014. This is a one-time filing, effective for the entire reporting period. The allowance will be denied for any production month for which a Form MMS–4109 is not received prior to, or at the same time as, the Form MMS–2014 for that month. As provided in § 206.159(c), at the end of the 12-month period, or after the non-arm's-length contract or no-contract processing terminates, the lessee shall submit a Form MMS–4109 completed in its entirety with accompanying schedules containing the actual costs for the previous reporting period. If gas processing is continuing, the lessee shall include on Form MMS–4109 its estimated costs for the next reporting period.

(3) For new processing plants, the lessee's initial Form MMS–4109 shall include estimates of the allowable processing costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the processing plant, or if such data are not available, the lessee shall use estimates based upon industry data for similar processing plants.

(4) The processing allowance for non-arm's-length or no-contract situations shall be based upon the lessee's actual costs for processing, including operating and maintenance expenses, overhead, [depreciation], and a return on [undepreciated] capital investment. The processing allowance shall be based upon actual costs incurred during the 12-month reporting period.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the processing plant; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the processing plant is an allowable expense. State and Federal income taxes and severance taxes, including royalties, are not allowable expenses.

Alternative 1

(iv) To compute depreciation, the lessee may elect to use either a straight-line depreciation method or a unit of production method based on the life of equipment or the life of the reserves which the processing plant services. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a processing plant shall not alter the depreciation schedule established by the original processor/lessee for purposes of the allowance calculation. With or without a change in ownership, a processing plant shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

Alternative 2

(iv) MMS shall allow as a cost an amount equal to the initial capital investment in the processing plant multiplied by a rate of return determined pursuant to paragraph (b)(4)(v) of this section. No allowance shall be provided for depreciation.

(v) The rate of return on [undepreciated] capital investment shall be the Moody Aaa corporate bond rate as published by Moody's Investors Service, Inc. in *Moody's Bond Record* on the first business day of the reporting period for which the allowance is applicable. This rate shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent reporting period.

(5) The processing allowance for each gas plant product shall be determined based on the lessee's reasonable and actual cost of processing the gas. Allocation of costs to each gas plant product shall be based upon generally accepted accounting principles.

(c)(1) *Reporting requirements.* After the initial reporting period, for succeeding reporting periods, lessees shall submit Form MMS–4109 completed in its entirety with accompanying schedules (or page one of Form MMS–4109 for arm's-length contracts) on an annual basis. Form MMS–4109 must be received by MMS within 90 days after the end of the previous reporting period, unless MMS approves a longer period. If the Form MMS–4109 is not received timely, then the processing allowance requested will not be effective until the first day of the month in which the Form MMS–4109 is received, and will be applicable only to any Form MMS–2014 received after that date. The lessee will be required to refund, with interest, any unauthorized allowance which it has taken.

(2) Each individual processing allowance must be reported as a separate line on the Report of Sales and Royalty Remittance, Form MMS 2014.

(3) MMS may establish reporting dates for individual leases different from those specified in this subpart in order to provide more effective administration. Lessees will be notified of any change in their reporting period.

(d) *Adjustments.* (1) If the actual processing allowance is less than the amount the lessee has estimated and taken during the reporting period, the lessee shall be required to pay additional royalties due, plus interest, computed pursuant to 30 CFR 218.54, retroactive to the first month the lessee is authorized to deduct a processing allowance. If the actual processing allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be entitled to a credit without interest.

(2) For lessees processing production from onshore Federal and Indian leases, the lessee must submit a corrected Form MMS–2014, together with any payment, in accordance with instructions provided by MMS, to reflect actual costs.

(3) For lessees processing production from OCS leases, if the lessee's estimated costs were more than the actual costs, the lessee must submit a corrected Form MMS–2014, together

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with its payment, in accordance with instructions provided by MMS, to reflect actual costs. If the lessee's estimated costs were less than its actual costs, the lessee must submit a written request for refund in accordance with section 10 of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. 1339(a).

(e) *Other processing cost deductions.* The provision of this section shall apply to determine processing costs when establishing value using a net-back procedure or any other procedure that requires deduction of processing costs.

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Part VI

Department of Housing and Urban Development

Office of the Secretary

Intergovernmental Review of the Department of Housing and Urban Development Programs and Activities

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-87-1615; FR-2119]

Intergovernmental Review of the Department of Housing and Urban Development Programs and Activities

AGENCY: Department of Housing and Urban Development, Office of the Secretary.

ACTION: Notice identifying programs subject to 24 CFR Part 52, Intergovernmental Review of the Department of Housing and Urban Development Programs and Activities.

SUMMARY: This notice contains a list of all HUD programs by Catalog of Federal Domestic Assistance (CFDA) Number and indicates whether or not the program is subject to the intergovernmental review process under 24 CFR Part 52. It also indicates, for certain programs, the specific activities that are subject to the intergovernmental review process. This notice proposes one additional change in program coverage, namely, CFDA No. 14.852 Comprehensive Improvement Assistance Program (CIAP) is proposed to be partially excluded from coverage under Part 52.

DATE: *Comment due dates:* Comments concerning the proposed partial exclusion of CIAP are due: April 14, 1987. *Effective date:* February 13, 1987.

ADDRESS: Interested persons should submit comments to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for inspection and copying at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Dr. Drew Allbritten, Executive Assistant to the Deputy Under Secretary for Intergovernmental Relations, Room 10184, Department of Housing and Urban Development, Washington, DC 20410. Telephone (202) 755-6732. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On June 13, 1986, the Department published at 51 FR 21570, a notice of proposed changes in the list of programs subject to the Intergovernmental review procedures in 24 CFR Part 52. This notice was published in accordance with 24 CFR 52.3. It identified each HUD program where HUD proposed either a change in whether the program was covered by Part 52 or a change in the reason why the program was excluded from the Part 52 procedures. The notice sought public comment on these proposed changes.

A. Response to Public Comment

The Department received fourteen public comments in response to the June 13, 1986, notice. Each comment was from a State Single Point of Contact (SPOC). In general, the commenters approved of the proposed changes. Eleven of the comments expressly supported the proposed elimination of the unit thresholds that applied to the multifamily mortgage insurance programs and to the assisted housing programs. The following discusses specific concerns raised in the comments and the Department's response.

Applicants Under Covered Multifamily Mortgage Insurance and Assisted Housing Programs to Contact SPOCs Directly

The Department, in conjunction with removing the unit thresholds, and out of concern for the increased volume of applications under these programs that would be subject to review, proposed to have each applicant directly contact its respective SPOC and certify to HUD that it had so contacted the SPOC.

Five commenters expressly supported having the applicant contact the SPOC directly. Three of these commenters, however, were concerned about the adequacy of the applicant's certification to HUD that it had contacted the SPOC. They believed that HUD might begin the time period provided in § 52.8 for intergovernmental review even though the applicant did not make an adequate submission to the State. Two of these commenters recommended that HUD require the applicant to include a copy of the SPOC's acknowledgement of receipt of the submission when it transmits its application to HUD. One of these commenters noted that all it expects from an applicant was a properly completed standard form 424. This commenter indicated that on the day it received this form, it would send the applicant a postcard acknowledgement with a State Application Identifier.

The Department is aware of the legitimate concern of States that applications be properly submitted. On the other hand, the Department must also pay attention to the applicant's expectation of prompt handling of its application by HUD. This latter concern is best addressed, as provided in the June 13, 1986, notice, by permitting simultaneous submission to HUD and to the SPOC. The Department believes that the large majority of applicants will comply with applicable State intergovernmental submission requirements without HUD delaying an applicant's right to submit an application to HUD until it has received written acknowledgement from the SPOC. To reduce the risk of submission of inadequate information to the SPOC, the Department will require the applicant, in addition to certifying as to the date it contacted the SPOC, to include a copy of the Standard Form 424 that it sent to the SPOC when it submits its application to HUD.

Limitation on Substantial Rehabilitation Projects Covered by Part 52

The Department also proposed to make any application (under the covered multifamily mortgage insurance and assisted housing programs) that involves substantial rehabilitation subject to the Part 52 procedures only if the rehabilitation involves: (a) A change in the use of the land; (b) an increase in project density; or (c) a change from rental to cooperative or condominium housing.

Three commenters expressed concern with the proposed limitations on including projects involving substantial rehabilitation. One commenter asserted, without indicating a reason, that substantial rehabilitation projects falling outside the three criteria discussed above often can directly affect State and local governments. The Department disagrees with this assertion. The typical substantial rehabilitation that would fall outside of these criteria would be a restoration of a project to its original use and occupancy without changing unit density. Such an activity should not involve the types of infrastructure issues contemplated by the intergovernmental review process. Reoccupying a vacant building should have only local impacts, which can be considered by the locality through its procedures for issuing building permits. Another commenter recommended that decreases, as well as increases, in unit density should trigger the intergovernmental review process. The Department disagrees because decreases in unit density should not trigger the infrastructure issues that the intergovernmental review process is intended to address. The notice does not change the criteria for projects involving substantial rehabilitation.

Health-Related Programs

The June 13, 1986, notice justified the exclusion of those health-related

mortgage insurance programs that are subject to a certificate of need requirement on the ground that the certificate of need process includes consultation procedures that provide for State involvenemt. Four commenters argued that these programs should be included under intergovernmental review. They claimed that certificate of need review is limited to issues of medical need and cost and does not consider matters relating to land use, water supply, sewage disposal, traffic and parking, among other matters, that are considered under the intergovernmental review process. One commenter indicated that it knew of no State certificate of need process that was as comprehensive or as thorough as the intergovernmental review process with respect to infrastructure capacity. The Department believes that these comments are well taken and has included CFDA Nos. 14.128-Mortgage Insurance—Hospitals and 14.129—Mortgage Insurance—Nursing Homes, Intermediate Care Facilities and Board and Care Facilities as programs subject to the Part 52 intergovernmental review procedures. These programs are subject to the same substantial rehabilitation criteria as are the other multifamily mortgage insurance programs. Applicants also will notify the appropriate SPOC directly and will submit a certification that they have notified the SPOC Under CFDA No. 14.128—Mortgage Insurance—Hospitals, an application for mortgage insurance is only considered in connection with a hospital proposal that has been approved by the Secretary of Health and Human Services. (See 24 CFR § 242.3.) Applicants under CFDA No. 14.128—Mortgage Insurance—Hospitals will submit their certificates to the appropriate Health and Human Services Office with their hospital proposals.

Other Comments

One commenter asserted that the potential impact of the activity, and not the type of recipient, should determine whether an activity is included or excluded. Solely on the basis of this assertion, the commenter urged that the following programs should be included: Single-family programs—CFDA Nos. 14.117, 14.122, 14.133 and 14.165; health-related programs—CFDA Nos. 14.128 and 14.129; and six other programs-CFDA Nos. 14.141, 14.149, 14.164, 14.169, 14.230, and 14.550. This commenter did not attempt to explain how HUD's justification for not including any of these programs was in conflict with the commenter's assertion.

The Department in the June 13, 1986, notice has not justified any existing exclusion or proposed any new exclusion based on the type of recipient involved in the program. The original OMB criteria permitted excluding a program from the intergovernmental procedures if the Federal assistance was provided to nongovernmental entities. Type of recipient is one of the criteria that has been rescinded by OMB. It was this rescission of criteria for excluding programs from the intergovernmental review process which led HUD to review its program exlusions in view of the nine criteria for exclusion that remain in effect. (See the June 13, 1986, notice at 51 FR 21571.) Of the programs referred to by the commenter above, the Department in the June 13, 1986 notice proposed to exclude the single-family programs, CFDA Nos. 14.117, 14.122, 14.133, and 14.169 and CFDA Nos. 14.141, 14.149, and 14.169 not because they involve nongovernmental entities, but rather because they have no direct effect on State and local governments. The Department believes this conclusion is correct. These programs are excluded from intergovernmental review under this notice.

As noted above, the Department has reconsidered its position with respect to the health-related programs referred to by this commenter. CFDA Nos. 14.128 and 14.129 are made subject to the intergovernmental review process by this notice.

The two remaining programs referred to by this commenter, CFDA Nos. 14.230—Rental Rehabilitation Program and 14.550—Solar Energy and Energy Conservation Bank, are excluded from the intergovernmental review process under the OMB criterion that permits exclusion of programs involving financial transfers for which Federal agencies have no funding discretion or direct authority to approve specific sites of projects.

One commenter suggested that CFDA 14.141, Nonprofit Sponsor Assistance Program, should be included because intergovernmental review of these applications could disclose other sources of assistance that may be available to the sponsor through State or community agencies who participate in the review process. While disclosure of other sources of assistance may be a benefit to certain nonprofit sponsors, such an incidental benefit clearly does not control the question of whether the program should be subject to the intergovernmental review process. Whether a nonprofit sponsor of a project for the elderly or handicapped should receive Federal financial assistance to cover a portion of its expenses for planning a Section 202 project is an issue that does not directly affect State and local governments. This program, therefore, is properly excluded from the Part 52 procedures.

A commenter asked that HUD make sure that the latest list of covered programs are included in the Catalog of Federal Domestic Assistance, Appendix I, Programs Requiring Circular Coordination. The Department is revising its Catalog of Federal Domestic Assistance entries to conform to this notice.

Another commenter asked HUD to reconsider its decision to limit intergovernmental review for the Urban Development Action Grant (UDAG) Program to 30 days rather than the 60 days provided for most other HUD programs. (See 24 CFR 52.8.) This comment falls outside of the scope of the request for public comment in the June 13, 1986, notice, which dealt only with the question of which HUD programs should be subject to the intergovernmental review under 24 CFR Part 52. This comment is a request for rulemaking to revise § 52.8(a)(1), which provides a 30-day review period for UDAG and certain other programs, in order to provide a 60-day review period for UDAG. This issue was addressed by the Department in the preamble to the final rule that added 24 CFR Part 52, 48 FR 29206, at 29210 (June 24, 1983). The proposed rule would have provided a 45-day review period for all covered programs. In response to public comment, the Department in the final rule provided a 60-day intergovernmental review period for most programs and a 30-day period for specified programs, including UDAG, noting with respect to UDAG that there were eight funding rounds a year in UDAG and that the selection process cannot exceed 60 days. There are now six funding rounds a year in UDAG (see 24 CFR 570.460(a)). The selection process, however, still must be completed within 60 days. The Department, therefore, does not intend to propose any change to § 52.8.

The original list of HUD Programs Subject to 24 CFR Part 52, Intergovernmental Review of HUD Programs (48 FR 29222, June 24, 1983), through a typographical error, identified the Urban Development Action Grant Program (CFDA No. 14.221) as being subject to the Demonstration Cities and Metropolitan Development Grant Act of 1966. UDAG is not subject to this Act. This notice makes this correction.

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B. Proposed Limitation on Applications under the Comprehensive Improvement Assistance Program That Are Subject to Part 52

The Department is proposing one additional change in programs subject to Part 52 and is seeking public comment on this proposed change. CFDA No. 14.852, Comprehensive Improvement Assistance Program (CIAP), provides funds for Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) to undertake four different types of modernization programs, namely: (1) Comprehensive Modernization, which involves all required physical and management improvements for a project; (2) Homeownership Modernization, which involves limited physical improvements for a project under the Turnkey III Homeownership Opportunities Program or the Mutual-Help Homeownership Opportunities Program; (3) Emergency Modernization, which involves physical work, items of an emergency nature, affecting the life, health and safety of tenants or related fire safety; and (4) Special Purpose Modernization, which is limited to cost-effective energy conservation work items that will not be adversely affected by any subsequent Comprehensive Modernization.

Currently, CIAP is subject to the intergovernmental review procedures under Part 52 without any express limitations on coverage. Much of the work performed under the various modernization programs under CIAP clearly does not directly affect State and local governments. The Department believes that limiting the applicability of the Part 52 procedures on conditions similar to those that apply to the other assisted housing programs would provide for the more efficient administration of CIAP while ensuring that the CIAP applications that have a direct effect on State and local governments are subject to intergovernmental review. Accordingly, HUD proposes that a CIAP application be subject to the Part 52 procedures only if it involves substantial rehabilitation and involves: (1) A change in the use of land; (2) an increase in project density; or (3) a change from rental to homeownership.

C. Description of Tables of Programs

To aid the reader, this notice contains all HUD programs currently listed in the Catalog of Federal Domestic Assistance. Table I contains a list of all HUD programs that are subject, in whole or in part, to Part 52. Related programs are listed together and limitations on program coverage are identified. Table II contains a list of all HUD programs that are completely excluded from Part 52 intergovernmental procedures. The programs are listed by Catalog of Federal Domestic Assistance Number.

Please note that the fact that a program is listed in Table I does not necessarily mean that a particular State has selected the program to be covered by the State's intergovernmental review process. Interested parties should contact the appropriate State Point of Contact (SPOC) to determine whether a program listed in Table I has been selected by that State for intergovernmental review.

D. Finding

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Authority: Executive Order 12372 (July 14, 1982; 47 FR 30959); sec. 401(b), Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: February 6, 1987.

Samuel R. Pierce, Jr.,

Secretary.

Intergovernmental Review of HUD Program Under 24 CFR Part 52

TABLE I.—HUD PROGRAMS SUBJECT TO 24 CFR PART 52

[Programs marked with an asterisk (*) are subject to section 204 of the Demonstration Cities and Metropolitan Development Act of 1966. Any program, even though otherwise subject to 24 CFR Part 52, is excluded to the extent it involves a federally recognized Indian tribe.]

CFDA No.	24 CFR Part	Program name	Comments
Housing—Federal Housing Commissioner			
14.112	234	Mortgage Insurance—Construction or Substantial Rehabilitation of Condominium Projects.	1
14.115	213	Mortgage Insurance—Development of Sales Type Cooperative Projects.	1
14.116	244	Mortgage Insurance—Group Practice Facilities.	
14.123	207	Mortgage Insurance—Housing in Older, Declining Areas.	1, 3
14.124	213	Mortgage Insurance—Investor Sponsored Cooperative Housing.	1
14.125	205	Mortgage Insurance—Land Development.	
14.126	213	Mortgage Insurance—Management Type Cooperative Projects.	
14.127	207	Mortgage Insurance—Manufactured (Mobile) Home Parks.	1
14.128	242	Mortgage Insurance—Hospitals.	1
14.129	232	Mortgage Insurance—Nursing Homes, Intermediate Care Facilities and Board and Care Homes.	1
14.134	207	Mortgage Insurance—Rental Housing.	1
14.135	221	Mortgage Insurance—Rental Housing for Moderate Income Families.	1
14.137	221	Mortgage Insurance—Rental and Cooperative Housing for Low and Moderate Income Families, Market Interest Rate.	1
14.138	231	Mortgage Insurance—Rental Housing for the Elderly.	1
14.139	220	Mortgage Insurance—Rental Housing in Urban Renewal Areas.	1
14.151	241	Supplemental Loan Insurance—Multifamily Rental Housing.	1
14.156	880, 881, 883, 884, and 886.	Lower Income Housing Assistance Program.	2
14.157	885	Housing for the Elderly or Handicapped.	2
14.174	850	Housing Development Grants.	2
14.176	251	Mortgage Insurance—Section 221(d)(4) Coinsurance for the Construction or Substantial Rehabilitation of Multifamily Housing Projects.	1

1. An application under these multifamily mortgage insurance programs is subject to 24 CFR Part 52 if it involves insurance of advances: (A) For the construction of a project; or (B) substantial rehabilitation of a project, but only if the project being substantially rehabilitated involves: (i) a change in use of the land, (ii) an increase in project density, or (iii) a change from rental to cooperative or condominium housing.

2. An application under these assisted housing programs is subject to 24 CFR Part 52, if it involves construction or substantial rehabilitation, but only if the project being substantially rehabilitated involves: (a) A change in use of the land, (b) an increase in project density, or (c) a change from rental to cooperative or condominium housing. Applications under the Section 8 Certificate Program the Section 8 Moderate Rehabilitation Program, and the Section 8 Voucher Program, which are all included under CFDA No. 14.156 and 24 CFR Part 882, are not subject to 24 CFR Part 52.

3. A single family (one-to-four units) application under CFDA No. 14.123 is not subject to 24 CFR Part 52.

CFDA No.	24 CFR Part	Program name	Comments
Community Planning and Development			
14.218	570	Community Development Block Grants/Entitlement*.	4
14.221	570	Urban Development Action Grants.	

4. Only those portions of final statements under CFDA 14.218 that consist of planning or construction of a water or sewage facility in a metropolitan area are subject to Part 52 procedures. HUD may be unable to accommodate state process recommendations concerning particular activities since HUD has only limited authority to refuse to fund an eligible activity.

CFDA No.	24 CFR Part	Program name	Comments
Fair Housing and Equal Opportunity			
14.401	111	Fair Housing Assistance Plan.	5

5. An appliction under CFDA No. 14.401 is subject to Part 52 procedures if it is for type II—competitive funding.

CFDA No.	24 CFR Part	Program name	Comments
Policy Development and Research			
14.508		Mortgage Insurance—Experimental Projects Other Than Housing.	6
14.509	233	Mortgage Insurance—Experimental Rental Housing.	7

6. An application, under CFDA No. 14.508, that must meet the requirements for Title X, Land Development and New Communities (see CFDA No. 14.125) is subject to 24 CFR Part 52. An application that must meet requirements for Title XI Group Practice Facilities (see CFDA 14.116) is also subject to 24 CFR Part 52; except, such an application that involves substantial rehabilitation is subject to 24 CFR Part 52 only of it involves: (a) A change in use of the land; or (b) an increase in project density.

7. An application, under CDFA No. 14.509, that involves substantial rehabilitation is subject to 24 CFR Part 52 only if the project involves: (a) A change in use of the land; (b) an increase in project density; or (c) a change from rental to cooperative or condominium housing.

CFDA No.	24 CFR Part	Program name	Comments
Public and Indian Housing			
14.580	941	Public and Indian Housing	8, 9
14.851	904	Low Income Housing—Homeownership Opportunities for Low/Income Families.	8, 9
14.852	968	Public and Indian Housing—Comprehensive Improvement Assistance Program.	9

8. An application, under CFDA No. 14.850 or 851 is subject to 24 CFR Part 52, if it involves construction or substantial rehabilitation, but only if the project being substantially rehabilitated involves: (a) A change in use of land; (b) an increase in project density; or (c) a change from rental to homeownership.

9. An application, under these programs, that involves Indian housing is not subject to 24 CFR Part 52.

TABLE II.—HUD PROGRAMS NOT SUBJECT TO 24 CFR PART 52

CFDA No.	24 CFR Part	Program name
Housing—Federal Housing Commissioner		
14.103	236	Interest Reduction Payments—Rental and Cooperative Housing for Lower Income Families.
14.108	203	Rehabilitation Mortgage Insurance.
14.110	201	Manufactured (Mobile) Home Insurance—Financial Purchase of Manufactured Homes as Principal Residences of Borrowers.
14.117	203	Mortgage Insurance—Homes.
14.119	203	Mortgage Insurance—Homes for Disaster Victims.
14.120	221	Mortgage Insurance—Homes for Low and Moderate Income Families.
14.121	203	Mortgage Insurance—Homes in Outlaying Areas.
14.122	220	Mortgage Insurance—Homes in Urban Renewal Area.
14.130	240	Mortgage Insurance—Purchase by Homeowners of Fee Simple Title From Lessors.
143.132	213	Mortgage Insurance—Purchase of Sales-Type Cooperative Housing Units.
14.133	234	Mortgage Insurance—Purchase of Units in Condominiums.
14.140	237	Mortgage Insurance—Special Credit Risks.
14.141	271	Nonprofit Sponsor Assistance Program.
14.142	201	Property Improvement Loan Insurance for Improving All Existing Structures and Building of New Nonresidential Structures.
14.149	215	Rent Supplements—Housing and Lower Income Families.
24.155	207	Mortgage Insurance for the Purchase or Refinancing of Existing Multifamily Housing Projects.
14.159	203	Section 245 Graduated Payment Mortgage Program.
14.161	204	Single-Family Home Mortgage Coinsurance.
14.162	201	Mortgage Insurance—Combination and Manufactured (Mobile) Home Lot Loans.
14.163	203	Mortgage Insurance—Cooperative Financing.
14.164	219	Operating Assistance for Troubled Multifamily Housing Projects.
14.165	203	Mortgage Insurance—Homes—Military Impacted Areas.
14.166	222	Mortgage Insurance—Homes for Members of the Armed Services.
14.167	207	Mortgage Insurance—Two Year Operating Loss Loans. Section 223(d)
14.168	1700 to 1730	Land Sales—Parcels of Subdivided Land.
14.169		Housing Counseling Assistance Program.
14.170		Congregate Housing Services Program.
14.171	3280 to 3283	Manufactured Housing Construction and Safety Standards.
14.172	203	Mortgage Insurance—Growing Equity Mortgages.
14.173	255	Section 223(f)—Coinsurance for the Purchase or Refinancing of Existing Multifamily Projects.
Community Planning and Development		
14.219	570	Community Development Block Grants/Small Cities.
14.220	510	Section 312 Rehabilitation Loans.
14.222	590	Urban Homesteading.
14.223	571	Indian Community Development Grant Program.
14.225	570	Community Development Block Grants/Secretary's Discretionary Fund/Insular Areas.
14.227	570	Community Development Block Grants/Secretary's Discretionary Fund/Technical Assistance Program.
14.228	570	Community Development Block Grants/State Program.
14.230	511	Rental Rehabilitation.
Fair Housing and Equal Opportunity		
14.400	105	Equal Opportunity in Housing.
14.402		Nondiscrimination in Federally Assisted Programs (On the Basis of Age).
145.403	120	Community Housing Resource Program.
14.404	1	Nondiscrimination in Federally Assisted Programs (On the Basis of Handicap).
14.406	570	Nondiscrimination in the Community Planning and Development Block Grant Programs (On the Basis of Race, Color, National Origin, Sex, Handicap or Age).

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TABLE II.—HUD PROGRAMS NOT SUBJECT TO 24 CFR PART 52—Continued

CFDA No.	24 CFR Part	Program name
Policy Development and Research		
14.506		General Research and Technology Activity.
14.507	233	Mortgage Insurance—Experimental Homes.
Solar Energy and Energy Conservation Bank		
14.559	1600	Solar Energy in Energy Conservation Bank.

[FR Doc. 87-3135 Filed 2-12-87; 8:45 am]

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Friday
February 13, 1987

Part VII

Securities and Exchange Commission

Seemala Partners, L.P., Acceleration of Notice of Withdrawal From Registration as Broker-Dealer

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24089; File No. 8-35858]

Seemala Partners, L.P., Seeks Acceleration of Notice of Withdrawal From Registration as Broker-Dealer

The Commission today announces that Seemala Partners, L.P., ("Seemala") has filed a notice of withdrawal from registration as a broker-dealer on Form BDW. The notice will become effective on the 60th day after the filing unless the Commission accelerates the withdrawal date or institutes a proceeding to impose terms and conditions upon such withdrawal. Seemala has requested that the Commission permit it to withdraw from registration no later than March 12, 1987.

Immediately after the notice of its withdrawal of registration becomes effective, Seemala intends to repay its subordinated debt of $660 million plus accrued interest to the lender, Ivan F. Boesky & Company, L.P. ("Partnership") which in turn will cause certain noteholders to be repaid. This action will require the amendment of the subordinated loan agreements to authorize repayment within one year after the loans were made.[1]

More specifically, pursuant to a Payment Agreement, the Partnership will then repay at par $200 million of the $220 million in Senior Participating Notes and $440 million of Subordinated Participating Notes of Hudson Funding Corporation held by certain noteholders, plus interest at 9% per annum from January 1, 1987. Twenty million dollars in other Senior Participating Notes will be repaid in light of claims that may be asserted by the Partnership against that noteholder. In consideration of the repayment, the Noteholders have agreed to forgo claims for prepayment penalties and certain additional interest amounting to in excess of $100 million.

After the Noteholders are repaid, upon request of holders of a majority in amount of limited partnership interests in the Partnership, a Liquidating Partner will be appointed as designated by such majority. Boesky does not intend to manage Seemala's securities portfolio thereafter.

Consistent with the Payment Agreement, Seemala requests that its withdrawal of registration becomes effective on or prior to February 11, 1987, or, if the February 11 effective date is impracticable, that the Commission indicate by that date that it expects to be able to act on the application prior to March 12, 1987 (which is the outside date to which the Payment Agreement by its terms may be extended).[2] If broker-dealer withdrawal is permitted, Seemala will promptly amend the subordinated loan agreements and repay the Partnership in an amount sufficient to allow the Partnership to make the payments required by the Payment Agreement.

Rationale of Boesky Supporting Payment Agreement

Seemala states that the Payment Agreement benefits the participating Noteholders because they will receive repayment of the principal on their Notes. The Payment Agreement benefits the limited partners of the Partnership by protecting the remaining equity from the participating Noteholders' claims for accrued interest (approximately $20.8 million), penalty interest at 16% or 18% from the date of acceleration, and repayment premium (approximately $96 million).

Seemala further states that it is obviously impossible to predict what claims will ultimately be filed against the Partnership and Seemala, how those claims will ultimately be resolved, what defendants will be held liable, or what relative priority individual claimants may achieve.

Unless the Payment Agreement is implemented, Seemala says the Noteholders will press their collective claim for $96 million in default premium, $20.8 million in accrued interest, ordinary interest at the rate of $6.9 million per month, and default interest at the rate of approximately $2.3 million to $3.7 million per month, as well as any fraud, securities law, or other claims they may have against Seemala and the Partnership. Seemala asserts that, if successful, those contractual claims alone (exclusive of any fraud, securities law or other claims) threaten to exhaust the aggregate assets of Seemala and the Partnership before other claimants and potential claimants, if any, could establish their claims.[3]

Seemala asserts that implementation of the Payment Agreement, on the other hand, leaves a pool of approximately $278 million (plus interest on that amount) free of all the Noteholder claims to satisfy other claimants and potential claimants, if any, who are able to reduce their claims to judgment. That amount is in addition to the funds placed in escrow pursuant to court orders obtained by the Commission against Dennis Levine (approximately $11.4 million) and Boesky ($50 million), similar escrow funds that may be obtained as a result of future related enforcement actions, and whatever additional assets other defendants or potential defendants may have.

Thus, Seemala argues, potential judgment creditors could be injured by implementation of the Payment Agreement only to the extent that (1) they are able to reduce the judgment claims significantly in excess of $278 million, (2) they are unable to satisfy such claims from any source other than Seemala and the Partnership, and (3) they establish that such judgment claims are entitled to share at least equally with the fixed contractual claims of the Noteholders.

Seemala argues that the Commission has neither the facts nor the jurisdiction to determine what claims will ultimately be valid or in what relative priority. The Commission does, however, have the jurisdiction to make a determination—after such public notice as the Commission deems appropriate—that it is in the public interest to permit Seemala's withdrawal as a broker-dealer to enable the Noteholders (many of which are savings and loan institutions or insurance companies) and the other holders of interest in the Partnership to settle existing contractual claims against the Partnership in a manner that preserves significant Partnership assets.

* * * * *

The Commission has determined to act on the request to accelerate by March 12, 1987.

By the Commission.

Jonathan G. Katz,

Secretary.

February 12, 1987.

[FR Doc. 87-3305 Filed 2-12-87; 1:53 pm]

BILLING CODE 8010-01-M

[1] These subordinated loans were approved by the New York Stock Exchange Inc., in accordance with Appendix D to Net Capital Rule which required that the loans could not be prepaid within a period of less than one year.

[2] Counsel for a majority of the Noteholders also urge the Commission to accelerate withdrawal of Seemala's registration.

[3] Seemala states that the Partnership and Seemala have approximately $944 million in assets, which after full liquidation could safely earn interest at approximately 7% or $5.5 million per month. The Noteholders have present claims for $776 million plus interest at the rate of 16 or 18% or at least $9 million per month. Without compounding the interest or considering litigation expenses, the assets of Seemala and the Partnership would be exhausted by these Noteholder claims in three years.

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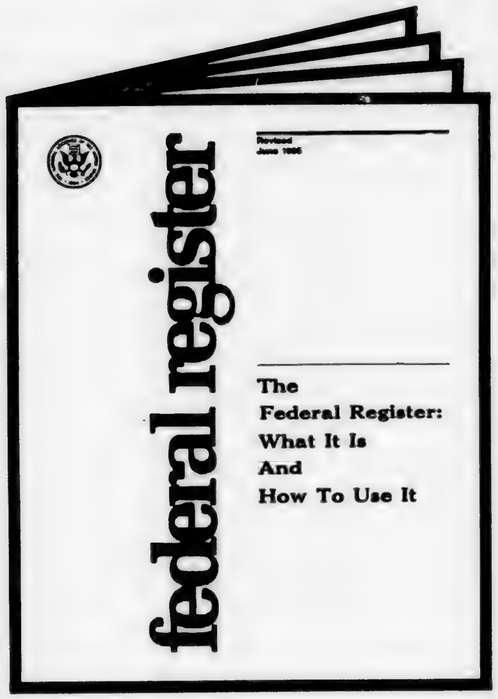
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H.J. Res. 131/Pub. L. 100–5

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WHEN: March 26; at 9 am.
WHERE: L.D. Strom Auditorium, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, GA.
RESERVATIONS: Call the Atlanta Federal Information Center, 404-331-2170.

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 647]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 647 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period February 13, 1987, through February 19, 1987. Such action is needed to balance the supply of fresh navel oranges with the demand for such period, due to the marketing situation confronting the orange industry.

DATE: Regulation 647 (§ 907.947) is effective for the period February 13, 1987, through February 19, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202–447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1986–87 adopted by the Navel Orange Administrative Committee. The committee met publicly on February 10, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended unanimously a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for navel oranges is slow.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, oranges (navel).

PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.947 Navel Orange Regulation 647 is added to read as follows:

§ 907.947 Navel orange regulation 647.

The quantities of navel oranges grown in California and Arizona which may be handled during the period February 13, 1987, through February 19, 1987, are established as follows:

(a) *District 1:* 1,255,635 cartons;
(b) *District 2:* Unlimited cartons;
(c) *District 3:* Unlimited cartons;
(d) *District 4:* Unlimited cartons;

Dated: February 11, 1987.

Thomas R. Clark,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–3293 Filed 2–12–87; 3:10 pm]
BILLING CODE 3410–02–M

7 CFR Part 910

(Lemon Reg. 548)

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 548 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 255,000 cartons during the period February 15–21, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 548 (§ 910.848) is effective for the period February 15–21, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that

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this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1986–87. The committee met publicly on February 10, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a vote of 12 to 1, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that demand is fairly steady.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, and Lemons.

PART 910—[AMENDED]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.848 is added to read as follows:

§ 910.848 Lemon Regulation 548.

The quantity of lemons grown in California and Arizona which may be handled during the period February 15 through February 21, 1987, is established at 255,000 cartons.

Dated: February 11, 1987.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87-3292 Filed 2-12-87; 3:10 pm]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-181-AD; Amdt. 39-5559]

Airworthiness Directives; McDonnell Douglas Model DC-9-81, -82, and -83 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive, applicable to McDonnell Douglas Model DC-9-81, -82, and -83 airplanes, equipped with certain Air Cruiser Company emergency evacuation slides, which requires modification of the tailcone emergency exit evacuation slide deployment strap clip. This amendment is prompted by reports of automatic slide deployment malfunctions and/or jamming, which, if not corrected, could jeopardize the safe evacuation of the airplane.

DATES: Effective March 25, 1987.

ADDRESSES: The applicable service information may be obtained from Air Cruiser Company, P.O. Box 180, Belmar, New Jersey 07719-0180. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Stacho, Aerospace Engineer, Systems & Equipment Branch, ANM-131L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6323.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires modification of the Air Cruiser tailcone emergency exit evacuation slide deployment strap clip, was published in the **Federal Register** on September 22, 1986 (51 FR 33629).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received; the commenter had no objection to the proposal.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 93 airplanes of U.S. registry would be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,440.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because of the minimal cost of compliance per airplane ($80). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

§ 39.13 [Amended]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-81, -82, and -83 series airplanes, certificated in any category, equipped with Air Cruiser Company emergency exit evacuation slide part numbers D29984-103 and -109 having serial numbers prior to 0093. Compliance required as indicated, unless previously accomplished.

To prevent jamming during deployment of the emergency evacuation slide, accomplish the following:

A. Within 6 months after the effective date of this AD, modify the emergency evacuation slide deployment strap clip in accordance with Air Cruiser Service Bulletin 304-25-3, dated January 21, 1986, or later revision approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Air Cruisers Company, P.O. Box 180, Belmar, New Jersey 07719-0180. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective March 25, 1987.

Issued in Seattle, Washington, on February 9, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-3184 Filed 2-13-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-177-AD; Amdt. 39-5560]

Airworthiness Directives; CASA Model C-212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain CASA Model C-212 series airplanes, that requires modification of the cabin attendant's seat to provide automatic retraction of the seat when unoccupied. This action is necessary to ensure adequate access to an emergency exit in the event the airplane must be evacuated.

DATE: Effective March 25, 1987.

ADDRESSES: The applicable service information specified in this AD may be obtained from Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires a modification to the cabin attendant's seat on CASA Model C-212 series airplanes, was published in the **Federal Register** on September 18, 1986 (51 FR 33065).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments which were received.

The two commenters, the manufacturer and one operator, both requested that the proposed compliance time of 120 days be extended, since the lead time necessary for ordering, delivery, and installation of the required part is 8 to 9 months. The FAA has considered this information, and has determined that safety will not be significantly affected if the compliance time is extended to 8 months after the effective date of the AD. The final rule has been revised accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously noted.

It is estimated that 32 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Modification parts are estimated at $16 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $6,912.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($216). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

§ 39.13 [Amended]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

CASA: Applies to the CASA Model C-212 series airplanes, serial numbers as listed in CASA Service Bulletin 212-25-32, dated October 23, 1985, certificated in any category. Compliance is required within 8 months after the effective date of this AD. To prevent obstruction of an evacuation path to an emergency exit, accomplish the following unless previously accomplished:

A. Modify the attendant's seat in accordance with CASA Service Bulletin 212-25-32, dated October 23, 1985.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 25, 1987.

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Issued in Seattle, Washington, on February 9, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-3183 Filed 2-13-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-176-AD; Amdt. 39-5561]

Airworthiness Directives; CASA Model C-212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain CASA Model C-212 series airplanes, that requires modification of the propeller feathering system. This action requires replacement of certain fasteners in the propeller feathering controls with fasteners incorporating double locking devices. This separation of a fastener, due to the failure of a single locking device, could result in loss of propeller control and, consequently, partial loss of controllability of the airplane.

DATE: Effective March 25, 1987.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires modification of the propeller feathering control system on certain CASA Model C-212 series airplanes, was published in the **Federal Register** on September 18, 1986 (51 FR 33063).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The manufacturer and one operator responded to the NPRM. Both stated that, due to the lead time of approximately 8 months required to receive parts, an extension of the proposed compliance time is necessary. The FAA has considered this information, and has revised the final rule to extend the compliance time from 6 months to 11 months, to provide for the estimated time for parts availability and installation. The FAA has determined that this change will not have a significant adverse effect on the safety of flight.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above.

It is estimated that 29 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Modification parts are estimated at $70 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $11,310.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($390). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends §39.13 of Part 39 of the Federal Aviation Regulations as follows:

§ 39.13 [Amended]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

CASA: Applies to CASA Model C-212 series airplanes listed in CASA Service Bulletin 212-76-04, dated October 23, 1985, certificated in any category. Compliance is required within 11 months after the effective date of this AD. To prevent the partial loss of controllability of the airplane due to an uncontrollable propeller, accomplish the following, unless previously accomplished:

A. Modify the propeller feathering control system in accordance with CASA Service Bulletin 212-76-04, dated October 23, 1985.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 25,1987.

Issued in Seattle, Washington, on February 9, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-3182 Filed 2-13-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-168-AD; Amdt. 39-5562]

Airworthiness Directives: CASA Model C-212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain CASA Model C-212 series airplanes, that requires replacement of the power quadrant cover to provide protection for the power control slots. The installation of the replacement power quadrant cover incorporates protection for the slots to prevent foreign objects from entering the interior of the pedestal. Foreign objects in the pedestal could jam or interfere with the power or trim control system, and cause partial loss of controllability of the airplane.

DATE: Effective March 25, 1987.

ADDRESSES: The applicable service information specified in this AD may be obtained from Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires replacement of the power quadrant cover on CASA Model C-212 airplanes, was published in the **Federal Register** on September 18, 1986 (51 FR 33061).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters, the manufacturer and one operator, both requested that the proposed compliance time of 180 days be extended because the lead time necessary for ordering, delivering, and installing the required parts is 8 to 9 months. The FAA has considered this information, and has determined that safety will not be significantly affected if the compliance time is extended to 8 months after the effective date of the AD. The final rule has been revised accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously mentioned.

It is estimated that 22 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Modification parts are estimated at $553 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $14,808.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($673). A final evaluation has been prepared for this regulation and has been placed in this docket.

List of Subjects 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

§ 39.13 [Amended]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

CASA: Applies to CASA Model C-212 series airplanes, serial numbers as listed in CASA Service Bulletin 212-76-05, dated October 23, 1985, certificated in any category. Compliance is required within 8 months after the effective date of this AD. To prevent the entry of foreign objects into the power and trim controls in the pedestal, accomplish the following, unless previously accomplished:

A. Replace the power quadrant cover with a cover incorporating slot protection in accordance with CASA Service Bulletin 212-76-05, dated October 23, 1985.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon requests to Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 25, 1987.

Issued in Seattle, Washington, on February 9, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-3181 Filed 2-13-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 64

[Order No. 1177-87]

Designating Officers and Employees of the United States for Coverage Under Section 1114 of Title 18 of the United States Code

AGENCY: Office of the Attorney General, Justice.

ACTION: Final rule.

SUMMARY: This rule designates categories of federal officers and employees who, in addition to those already designated by statute, warrant the protective coverage of Federal criminal law. This will assure federal jurisdiction to prosecute the killing, attempted killing, kidnaping, forcible assault, intimidation or interference with any of the federal officers or employees designated by this regulation while they are engaged in or on account of the performance of their official duties.

EFFECTIVE DATE: February 17, 1987.

FOR FURTHER INFORMATION CONTACT: Richard Edwards or Stanley Rothstein, Attorneys, General Litigation and Legal Advice Section, Criminal Division, U.S. Department of Justice, Box 887, Ben Franklin Station, Washington, DC 20044 (202/724-7144).

SUPPLEMENTARY INFORMATION: Part K of Chapter X of the Comprehensive Crime Control Act of 1984, Pub. L. 98-473, Title II, section 1012, 98 Stat. 1976, 2142 (1984), amended 18 U.S.C. 1114, which prohibits the killing of designated federal employees, to authorize the Attorney General to add by regulation other Federal personnel who will be protected by this section. The categories of Federal officers and employees covered by section 1114 are, by incorporation, also protected, while engaged in or on account of the performance of their official duties, from a conspiracy to kill, 18 U.S.C. 1117; kidnaping, 18 U.S.C. 1201(a)(5); and forcible assault, interference, or intimidation, 18 U.S.C. 111. Consistent with the legislative history and purpose of section 1114, this protective coverage is being extended to

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those Federal officers and employees whose jobs involve inspection, investigative or other law enforcement responsibilities or whose work involves a substantial degree of physical danger from the public that may not be adequately addressed by available state or local law enforcement resources.

A notice of proposed rulemaking was published on page 22829 of the **Federal Register** of June 23, 1986. The deadline for comments was incorrectly printed in that notice. The correct comment deadline of July 23, 1986 was printed in a correction published on page 24163 of the **Federal Register** of July 2, 1986. The Department of Justice received substantive written comments from eleven Federal agencies and one private association. The Department of Justice also received approximately 25 telephone calls, most of which were statements of support for the proposed rule and inquiries as to its effective date.

Many of the substantive comments requested changes in the definition of several categories of Federal employees listed in the proposed rule, either to clarify or to broaden the language of the rule. The other comments asked that additional categories of Federal employees be designated. After careful consideration, the Department of Justice adopted the changes suggested in these substantive comments.

Thus, the regulation extends the protection of section 1114 to the special police officers of the General Services Administration, military police officers and other personnel of the military services and of the Department of Defense who are involved with protecting persons or property, Department of Energy personnel authorized to carry firearms, air marshals, the security specialists of the National Labor Relations Board's Division of Administration, and the other designated employees of the military services, the Department of Defense, the Environmental Protection Agency, and the Nuclear Regulatory Commission who are assigned to perform or to assist in performing investigative, inspection, or law enforcement functions. The regulation also expressly recognizes the coverage of agents of the Bureau of Alcohol, Tobacco and Firearms by section 1114.

The regulation designates certain Inspector General personnel as well as certain employees of the Audit Staff of the Justice Management Division of the Department of Justice and auditors of the Division of Administration of the National Labor Relations Board because they perform investigative, inspection and audit functions. They are exposed to the same type of hazards as the law enforcement agents already covered by section 1114, as are the criminal investigators employed by a United States Attorney's office and the investigators employed by the Office of Personnel Management.

Employees of the Bureau of Prisons are directly involved with convicted criminals, a dangerous element of society, while Parole Commission personnel make parole decisions and supervise the parole of this dangerous element. They therefore merit the protection of section 1114.

The duties of several categories of Federal employees often place them in confrontational situations with hostile members of the public. Some of these employees have been the victims of threats and violence, and the rest may well become victims, due to the nature of their dealings with the public and their symbolic role as representatives of the Federal government. Therefore, the regulation extends the protection of section 1114 to employees of the General Services Administration who inspect property in the process of its acquisition by the United States; resettlement specialists and conciliators of the Community Relations Service of the Department of Justice; attorneys of the Department of Justice; Department of Agriculture employees involved with loan making, servicing and collecting; employees of the United States Attorney's office who collect debts; field workers of the Census Bureau; certain employees of the National Labor Relations Board who perform investigative and hearing functions; and judges and special trial judges of the United States Tax Court.

The Department of Justice has determined that this rule will not significantly burden the economy or individuals and therefore is not significant for the purposes of E.O. 12291 and that a regulatory analysis is not required for this rule making by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

List of Subjects in 28 CFR Part 64

Crime, Government employees, Law enforcement officers.

By virtue of the authority vested in me as Attorney General by 28 U.S.C. 509, 5 U.S.C. 301, and 18 U.S.C. 1114, a new Part 64 is hereby added to 28 CFR which reads as follows:

PART 64—DESIGNATION OF OFFICERS AND EMPLOYEES OF THE UNITED STATES FOR COVERAGE UNDER SECTION 1114 OF TITLE 18 OF THE UNITED STATES CODE

Sec.
64.1 Purpose.
64.2 Designated officers and employees.

Authority: 18 U.S.C. 1114, 28 U.S.C. 509, 5 U.S.C. 301.

§ 64.1 Purpose.

This regulation designates categories of federal officers and employees, in addition to those who are already designated by the statute, who will be within the protective coverage of 18 U.S.C. 1114, which prohibits the killing or attempted killing of such designated officers and employees. The categories of Federal officers and employees covered by section 1114 are, by incorporation, also protected, while they are engaged in or on account of the performance of their official duties, from a conspiracy to kill, 18 U.S.C. 1117; kidnaping, 18 U.S.C. 1201(a)(5); and forcible assault, intimidation, or interference, 18 U.S.C. 111. This protective coverage has been extended to those Federal officers and employees whose jobs involve inspection, investigative or law enforcement responsibilities, or whose work involves a substantial degree of physical danger from the public that may not be adequately addressed by available state or local law enforcement resources.

§ 64.2 Designated officers and employees.

The following categories of federal officers and employees are designated for coverage under section 1114 of Title 18 of the United States Code:

(a) Commissioners and employees of the United States Parole Commission;

(b) Resettlement specialists and conciliators of the Community Relations Service of the Department of Justice;

(c) Attorneys of the Department of Justice;

(d) Attorneys and employees assigned to perform or to assist in performing investigative, inspection and audit functions of the Office of Inspector General of an "establishment" as the term is defined by section 11 of the Inspector General Act of 1978, as amended, 5 U.S.C. app., and of the Offices of Inspector General of the following Federal agencies and departments:

(1) The Federal Emergency Management Agency;

(2) The United States Government Printing Office;

(3) The Department of Health and Human Services;

(4) The Department of Energy;

(5) The United States Information Agency; and

(6) The Department of the Treasury;

(e) Uniformed and nonuniformed special police of the General Services Administration;

(f) Employees of the Department of Agriculture at the State, district, or county level assigned to perform loan making, loan servicing or loan collecting functions;

(g) Employees of the Bureau of Census employed in field work conducting censuses and surveys;

(h) Criminal investigators employed by a United States Attorney's Office;

(i) Employees of a United States Attorney's Office assigned to perform debt collection functions;

(j) Employees and members of the United States military services and employees of the Department of Defense who are military police officers; or who have been assigned to guard and protect property of the United States, or persons, under the administration and control of a United States military service or the Department of Defense; or who have otherwise been assigned to perform investigative, correction, or other law enforcement functions;

(k) Officers and employees of the Bureau of Prisons;

(l) Officers and employees of the United States Environmental Protection Agency assigned to perform or to assist in performing investigative, inspection, or law enforcement functions;

(m) Officers and employees of the United States Nuclear Regulatory Commission assigned to perform or to assist in performing investigative, inspection, or law enforcement functions;

(n) Judges and special trial judges of the United States Tax Court;

(o) Officers and employees of the Department of Energy authorized to carry firearms in the performance of investigative, inspection, protective, or law enforcement functions;

(p) Federal air marshals of the Federal Aviation Administration;

(q) Employees of the regional, subregional, and resident offices of the National Labor Relations Board assigned to perform investigative and hearing functions or to supervise the performance of such functions, and auditors and Security Specialists of the Division of Administration of the National Labor Relations Board;

(r) Investigators employed by the United States Office of Personnel Management;

(s) Employees of the Audit Staff of the Justice Management Division of the Department of Justice assigned to perform audit functions;

(t) Officers and employees of the Bureau of Alcohol, Tobacco and Firearms assigned to perform or to assist in performing investigative, inspection, or law enforcement functions; and

(u) Officers and employees of the General Services Administration assigned to inspect property in the process of its acquisition by or on behalf of the United States Government.

Dated: February 4, 1987.

Edwin Meese II,

Attorney General

[FR Doc. 87-3222 Filed 2-13-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; USS CARL VINSON et al.

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy: (1) Has determined that certain naval aircraft carriers are vessels of the Navy which, due to their special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with their special function as naval aircraft carriers; (2) has determined that recently obtained measurement data regarding certain navigational lights on certain aircraft carrier vessels more accurately reflects the locations of those navigational lights than the measurement data found in the existing Part 706; (3) has directed that certain explanatory information in the text of the existing Part 706 be revised or deleted; and (4) has directed that certain naval ships or classes of ships be deleted from one of the Tables in the existing Part 706. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: January 22, 1987.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS CARL VINSON (CVN-70) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(a), pertaining to the location of the masthead lights over the fore and aft centerline of the ship; Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship; Annex I, section 2(g), pertaining to the distance of the sidelights above the hull; Rule 30(a), pertaining to the installation of an all-around white light in the fore part of the ship and an all-around white light at or near the stern; and Annex I, section 2(k), pertaining to the distance of the anchor lights above the hull, without interfering with its special function as a naval aircraft carrier. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided that the Secretary of the Navy has certified that USS LEXINGTON (AVT-16), USS MIDWAY (CV-41), USS CORAL SEA (CV-43), USS FORRESTAL (CV-59), USS SARATOGA (CV-60), USS RANGER (CV-61), USS INDEPENDENCE (CV-62), USS KITTY HAWK (CV-63), USS CONSTELLATION (CV-64) USS ENTERPRISE (CVN-65), USS NIMITZ (CVN-68), and USS DWIGHT D. EISENHOWER (CVN-69), are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light, the horizontal distance between the forward and after masthead lights and the location of the forward masthead light in the forward quarter of the ship, without interfering with their special functions as naval aircraft carriers. The Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided that the navigational light measurements pertaining to USS LEXINGTON (AVT-16), USS MIDWAY (CV-41), USS CORAL SEA (CV-43), USS FORRESTAL (CV-59), USS SARATOGA (CV-60), USS RANGER (CV-61), USS INDEPENDENCE (CV-62), USS KITTY HAWK (CV-63), USS

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CONSTELLATION (CV–64), USS ENTERPRISE (CVN–65), USS AMERICA (CV–66), USS JOHN F. KENNEDY (CV–67), USS NIMITZ (CVN–68), and USS DWIGHT D. EISENHOWER (CVN–69), found in the existing tables of 32 CFR 706.2 are being revised. The new measurements have been determined by the Secretary of the Navy to more accurately reflect the locations of certain navigational lights on the aforementioned vessels than the measurements in the existing tables of 32 CFR 706.2.

Notice is also provided that the Secretary of the Navy has determined that the text of paragraphs (a) and (b) of 32 CFR 706.1 no longer contains the correct source-document citation for 72 COLREGS, and no longer contains accurate information regarding the location of masthead lights and sidelights on aircraft carriers and the color of contour approach lights on replenishment-type ships. Accordingly, paragraph (a) of 32 CFR 706.1 is being revised by deleting in the first sentence the words and figures "(Senate Executive W. 93rd Cong., 1st Sess.)" and substituting therefor the words and figures "(33 U.S.C. foll. section 1602 (1982))." Paragraph (a) of 32 CFR 706.1 is being further revised by deleting in the third sentence the words "in most instances, on the island superstructure" and the words "and the sidelights are at the forward end of the axial flight deck." Paragraph (b) of 32 CFR 706.1 is being revised by adding, in the second sentence, the words "and blue" between the words "red" and "contour."

Notice is also provided that the Secretary of the Navy has determined that certain naval vessels and classes of vessels listed in the existing tables of 32 CFR 706.3 may be deleted from those tables since the exemptions from the 72 COLREGS listed in those tables for those vessels or classes of vessels have expired, and the current effective exemptions from the 72 COLREGS for those vessels or classes of vessels are now contained in the existing tables of 32 CFR 706.2. Specifically, the following vessels or classes of vessels are being deleted from Table One of 32 CFR 706.3: CV–41 Class; CV–59 Class; CV–63 Class; USS JOHN F KENNEDY (CV–67); USS ENTERPRISE (CVN–65); CVN–68 Class; and USS Lexington (CVT–16).

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on these vessels in a manner differently from that prescribed herein will adversely affect the ships' ability to perform their military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. In § 706.1, paragraphs (a) and (b) are revised to read as follows:

§ 706.1 Purpose of regulations.

(a) All ships are warned that, when U.S. naval vessels are met in international waters, certain navigational lights and sound-signalling appliances of some naval vessels may vary from the requirements of the International Regulations for Preventing Collisions at Sea, 1972 (33 U.S.C. foll. section 1602 (1982)), as to number, position, range, or arc of visibility of lights, as well as to the disposition and characteristics of sound-signalling appliances. Those differences are necessitated by reason of the special construction or purpose of the naval ships. An example is the aircraft carrier where the two masthead lights are considerably displaced from the center or keel line of the vessel when viewed from ahead. Certain other naval vessels cannot comply with the horizontal separation requirements for masthead lights, and the two masthead lights on even large naval vessels will thus appear to be crowded together when viewed from a distance. Naval vessels may also have unorthodox navigational light arrangements or characteristics when seen either underway or at anchor.

(b) Naval vessels may also be expected to display certain other lights. These lights include, but are not limited to, different colored rotating beacons, different colored fixed and rotary wing aircraft landing signal lights, red aircraft warning lights, and red or blue contour approach lights on replenishment-type ships. These lights may be shown in combination with the navigational lights.

* * * * *

§ 706.2 [Amended]

3. Table Two of § 706.2 is amended by revising the entries for USS LEXINGTON (AVT–16) through USS DWIGHT D. EISENHOWER (CVN–69) and adding USS CARL VINSON (CVN–70) to read as follows:

Vessel	Number	Masthead lights, distance to stbd of keel in meters, Rule 21(a)	Forward anchor light, distance below flight dk in meters, sec. 2(k), Annex I	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight dk in meters, Rule 21(e), Rule 30(a)(ii)	AFT anchor light, number of; Rule 30(a)(ii)	Side lights, distance below flight dk in meters, sec. 2(g), Annex I	Side lights, distance forward of forward masthead light in meters, sec. 3(b), Annex I	Side lights, distance inboard of ship's sides in meters, sec. 3(b), Annex I
USS LEXINGTON	AVT–16	12.2	0.7	2	7.9	2	1.4		
USS MIDWAY	CV–41	24.6	0.3	2	8.1	2	0.5		
USS CORAL SEA	CV–43	25.6	0.1	2	6.1	2	0.7		
USS FORRESTAL	CV–59	26.5		1		1	1.5		
USS SARATOGA	CV–60	26.5		1		1	0.5		
USS RANGER	CV–61	26.5	0.4	2	7.0	2	0.5		
USS INDEPENDENCE	CV–62	26.5	0.5	2	7.0	2	0.2		
USS KITTY HAWK	CV–63	27.8	0.6	2	6.9	2	0.2		
USS CONSTELLATION	CV–64	28.2	1.0	2	7.4	2	0.4		
USS ENTERPRISE	CVN–65	28.0	1.3	2	5.5	2	0.5		
USS AMERICA	CV–66	28.7		1	0.7	2	0.1		
USS JOHN F. KENNEDY	CV–67	27.5	1.0	2	9.0	2	0.5		
USS NIMITZ	CVN–68	31.00		1	9.2	2	0.7		
USS DWIGHT D. EISENHOWER	CVN–69	31.00	0.3	2	9.3	2	0.7		
USS CARL VINSON	CVN–70	29.9	0.3	2	9.4	2	0.5		

* * * * *

4. Table Five of § 706.2 is amended by adding the following vessels:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, section 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, section 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, section 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, section 2(a)(ii)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, section 2(b)	Forward masthead light not in forward quarter of ship. Annex I, section 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, section 3(a)	Percentage horizontal separation attained
USS LEXINGTON	AVT–16						X	X	14
USS MIDWAY	CV–41						X	X	50
USS CORAL SEA	CV–43						X	X	53
USS FORRESTAL	CV–59						X	X	66
USS SARATOGA	CV–60						X	X	69
USS RANGER	CV–61						X	X	65
USS INDEPENDENCE	CV–62						X	X	70
USS KITTY HAWK	CV–63						X		
USS CONSTELLATION	CV–64						X		
USS ENTERPRISE	CVN–65						X		
USS NIMITZ	CVN–68						X		
USS DWIGHT D. EISENHOWER	CVN–69						X		
USS CARL VINSON	CVN–70						X		

§ 706.3 [Amended]

5. Table One of § 706.3 is amended by removing the following Navy ships or classes of ships from the list of vessels therein to indicate action taken by the Secretary of the Navy:

CV–41 Class
CV–59 Class
CV–63 Class
USS JOHN F. KENNEDY (CV–67)
USS ENTERPRISE (CVN–65)
CVN–68 Class
USS LEXINGTON (CVT–16)

Dated: January 22, 1987.

John Lehman,

Secretary of the Navy.

[FR Doc. 87–2793 Filed 2–13–87; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 3

[CGD 86–056]

Changes to Marine Inspection Zones and Captain of the Port Zones, St. Louis, MO; Paducah, KY; Louisville, KY; Memphis, TN; and Nashville, TN

AGENCY: Coast Guard, DOT.

ACTION: Final rule; Correction.

SUMMARY: This document corrects the effective date of the rule which appeared in FR. Vol. 52, No. 16, page 2687, published on January 26, 1987. This rule deletes the Marine Inspection and Captain of the Port Zones for Nashville, Tennessee, and expands the zones for Louisville, Kentucky, and Paducah, Kentucky, to cover the area formerly covered by Nashville.

EFFECTIVE DATE: June 1, 1987.

FOR FURTHER INFORMATION CONTACT: Mrs. Janice C. Jackson, Project Manager, Office of Marine Safety, Security and Environmental Protection, telephone (202) 267–0389. Normal working hours are between 7:00 a.m. and 3:30 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The effective date of this rule has been corrected to June 1, 1987 due to an oversight in the initial document. This Rule which changes the Marine Inspection Zone and Captain of the Port Zones, St. Louis, MO; Paducah, KY; Louisville, KY; Memphis, TN; and Nashville, TN; is to become effective concurrent with the Operating Facility Change Order (OFCO) disestablishing Marine Safety Office (MSO) Nashville and establishing Marine Safety Detachment (MSD), Nashville, on or about June 1, 1987.

Dated: February 11, 1987.

M.J. Schiro,

Acting Chief of Marine Safety, Security and Environmental Protection.

[FR Doc. 87–3268 Filed 2–13–87; 8:45 am]

BILLING CODE 49105–14–M

33 CFR Part 117

[CGD8–87–01]

Drawbridge Operation Regulations; Mobile River and Chickasaw Creek, AL; Revocation

AGENCY: U.S. Coast Guard, DOT.

ACTION: Final rule—revocation.

SUMMARY: This amendment revokes the regulations for the special signals for the US90 drawbridge, mile 2.9 Mobile River, and the Seaboard System Railroad bridge, mile 0.0 Chickasaw Creek, both at Mobile, Alabama, because the US90 drawbridge has been removed and is being replaced by a fixed bridge. Notice and public procedure have been omitted from this action due to the removal of the US90 drawbridge, cancelling the need for special signals.

EFFECTIVE DATE: This rule becomes effective on February 17, 1987.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: This action has no economic consequences. It merely revokes regulations that are now meaningless because they pertain to a situation caused by a drawbridge that no longer exists. Consequently, this action is considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary. Because no notice of proposed rulemaking is required under 5 U.S.C. 553, this action is exempt from the Regulatory flexibility Act (5 U.S.C. 605(b)). However, this action will not have a significant effect on a substantial number of small entities.

Drafting Information

The drafters of this revocation are Mr. John Wachter, project officer, and Lieutenant Commander James Vallone, project attorney.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g)(3).

§ 117.111 [Removed]

2. Section 117.111 is hereby removed.

Dated: January 28, 1987.

Peter J. Rots,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 87–3240 Filed 2–13–87; 6:45 am]

BILLING CODE 4910–14–M

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL-3156-6; SC-015]

Approval and Promulgation of Implementation Plans; South Carolina: Emissions from Process Industries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is approving revisions in the South Carolina State Implementation Plan (SIP) submitted to EPA on March 20, 1986, along with additional information on July 8, 1986. South Carolina has revised its SIP to include regulations limiting emissions from sources by limiting visible emissions. The State's regulations are in conformance with the requirements of 40 CFR 51.212(b) (old § 51.19(c)).

EFFECTIVE DATE: This action will be effective on April 20, 1987, unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Copies of the materials submitted by South Carolina and a Technical Support Document (TSD) giving detailed information of EPA's review may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Air Programs Branch, Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365

South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT:
Beverly T. Hudson, EPA Region IV, Air Programs Branch, at the above address, telephone 404/347-2864 (FTS 257-2864).

SUPPLEMENTARY INFORMATION: The Clean Air Act (CAA) includes requirements that EPA establish national ambient air quality standards for various pollutants which may reasonably be anticipated to endanger public health and welfare. The CAA requires states to develop SIPs which include rules to control emissions of these air pollutants. The South Carolina SIP includes regulations limiting emissions from sources by limiting visible emissions. The visible emission limits are generally written to specify a maximum opacity a source is allowed to emit, as determined by trained observers. The limits have been developed in response to a requirement at 40 CFR 51.212(b) (old § 51.19(c)), which specifies the "establishment of a system for detecting violations of any rules and regulations through the enforcement of appropriate visible emission limitations and for investigating complaints."

On March 24 and July 8, 1986, the South Carolina Department of Health and Environmental Control (DHEC) submitted as State Implementation Plan revision changes in Regulation No. 62.5, Standard 4, entitled "Emission from Process Industries." The DHEC held a public hearing on December 30, 1985. Final approval by the DHEC Board was given on January 23, 1986.

Up until this time, South Carolina's only control on process industries has been through enforcement of mass emission limits, which usually require lengthy and costly sampling and testing for verification. Only a few specific sources have opacity limits as a part of their operating permits. The State is now adding visible emission limits to it regulations. Table I in the Technical Support Document shows the exact emission limits and visible opacity standards. The additional opacity limits will strengthen the State's enforcement capability and will also apply to smaller sources not now controlled by way of existing mass emission regulations.

The South Carolina SIP prescribes the test method to be used to determine compliance with opacity provisions. The State will use appropriate test methods in 40 CFR Part 60, Standards of Performance for New Stationary Sources. The only general visible emission observation test procedure in 40 CFR Part 60 is Method 9 of Appendix A.

Method 9 contains procedures for the training and certification of observers, field procedures for the determination of plume opacity, and a data reduction procedure. It provides a time-averaged data reduction technique whereby opacity levels are determined by averaging 24 consecutive opacity observations each taken at 15-second intervals, to arrive at an average opacity for a 6-minute period.

Final Action

EPA has reviewed the submittal and found it to be in conformance with the requirements of 40 CFR 51.212(b) (old § 51.19(c)). Therefore EPA is today approving these revisions in South Carolina's regulations.

EPA is publishing this action without prior proposal because the Agency views this as noncontroversial action and anticipates no adverse comments. This action will be effective 60 days from the date of the Federal Register notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective April 20, 1987.

Under section 307(b)(1) of the CAA, petitions for judical review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 20, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under 5 U.S.C. section 605(b), I certify that the SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Incorporation by reference.

Note.—Incorporation by reference of the South Carolina State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 11, 1987.

Lee M. Thomas,
Administator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

Subpart PP—South Carolina

2. Section 52.2120 is amended by adding paragraph (c)(29) as follows:

§ 52.2120 Identification of plan.

* * * * *

(c) * * *

(29) Process opacity monitoring requirements were submitted to EPA on March 24, 1986 and July 8, 1986.

(i) Incorporation by reference.

(A) Letter of March 24, 1986 to EPA from the South Carolina Department of Health and Environmental Control, and amendments to Air Pollution Control Regulation No. 62.5, Standard No. 4, which was effective on February 28, 1986.

(ii) Other material—none.

[FR Doc. 87-3219 Filed 2-13-87; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 60

[AD-FRL-3143-9]

Standards of Performance for New Stationary Sources; Opacity Monitoring for Lime Manufacturing Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Standards of performance for lime manufacturing plants were promulgated in the Federal Register on April 26, 1984 (40 FR 18060). The purpose of this promulgation is to revise §§ 60.343(b) and 60.344(c) of Subpart HH, the lime manufacturing plants new source performance standards, to be consistent with similar sections of Subparts F and AA. The revision would expand the use of Method 9 opacity observation in lieu of continuous opacity monitoring of emissions to include not only positive pressure fabric filters but also other control devices with multiple stack or roof monitors.

DATES: Effective date: February 17, 1987.

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before April 20, 1987. Under section 307(b)(2) of the Clean Air Act; the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Docket.* A docket, number A-86-09, containing information considered by EPA in development of the promulgated standards, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), West Tower Lobby, Gallery 1, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT:
Mr. Peter R. Westlin or Lori M. Tussey, Emission Measurement Branch (MD-19), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-2237.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

The standards of performance for lime manufacturing plants were published on April 28, 1984. The regulation includes a provision in § 60.343(b) to allow the use of Method 9 opacity observations in lieu of continuous opacity monitoring of the emissions from a positive pressure fabric filter device. This provision was intended to recognize the difficulties and impracticality of applying continuous opacity monitoring systems not only to positive pressure fabric filter devices, but also to control devices with multiple stack exhausts or roof monitors.

The Agency has recognized in other similar regulations (e.g., Subparts F and AA) that control devices other than positive pressure fabric filter devices have modular, multiple exhaust configurations. The continuous opacity monitoring alternative provisions were worded more generally for these regulations than for Subpart HH. The purpose of this action is to reword the monitoring requirements in Subpart HH, § 60.343(b), to clarify the original intent of the promulgation. The wording in § 60.344(c) is also being revised to be consistent with § 60.343(b).

II. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review [section 307(d)(7)(A)].

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to the requirements of a regulatory impact analysis. The Agency has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291. This regulation has been submitted to OMB for review under Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because these standards impose no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 U.S.C. 3501 *et seq.*

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the promulgated rule will not have a significant economic impact on a substantial number of small entities.

I find that notice and public procedure on this amendment are unnecessary, because it is minor and technical and consistent with the original intent of the regulation.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Lime manufacturing plants, Reporting and recordkeeping requirements, and Incorporation by reference.

Dated: February 11, 1987.

Lee M. Thomas,
Administrator.

PART 60—[AMENDED]

For the reasons set out in the preamble, Subpart HH of 40 CFR Part 60 is amended as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. Section 60.343 is amended by revising paragraph (b) to read as follows:

§ 60.343 Monitoring of emissions and operations.

* * * * *

(b) The owner or operator of any rotary lime kiln having a control device with a multiple stack exhaust or a roof monitor may, in lieu of the continuous opacity monitoring requirement of § 60.343(a), monitor visible emissions at least once per day of operation by using a certified visible emissions observer who, for each site where visible emissions are observed, will perform three Method 9 tests and record the results. Visible emission observations shall occur during normal operation of the rotary lime kiln at least once per day. For at least three 6-minute periods, the opacity shall be recorded for any point(s) where visible emissions are

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observed, and the corresponding feed rate of the kiln shall also be recorded. Records shall be maintained of any 6-minute average that is in excess of the emissions specified in § 60.342(a) of this subpart.

* * * * *

3. Section 60.344 is amended by revising paragraph (c) to read as follows:

§ 60.344 Test methods and procedures.

* * * * *

(c) Visible emission observations of a control device with a multiple stack exhaust or a roof monitor shall occur during normal operation of the rotary lime kiln, at least once per day of operation. For at least three 6-minute periods, the opacity shall be recorded for any point(s) where visible emissions are observed, and the corresponding feed rate of the kiln shall also be recorded. These observations shall be taken in accordance with Method 9. Records shall be maintained of any 6-minute average that is in excess of the emissions limit specified in § 60.342(a) of this subpart.

[FR Doc. 87-3218 Filed 2-13-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6638

[ID-943-07-4220-10; I-7322]

Public Land Order 6629; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This document will correct an error in the land description of Public Land Order 6629 of November 13, 1986.

EFFECTIVE DATE: February 17, 1987.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 American Terrace, Boise, Idaho 83706, 208-334-1735.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

The land description in Public Land Order 6629 of October 20, 1986, in FR Doc. 86-25653, published at page 41104 in November 13, 1986, is corrected as follows:

On page 41104, under T. 31 N., R. 3 W., the line reading "sec. 27, lots 4, 5, NW¼NW¼, SE¼SW¼," should read "sec. 27, lots 4, 5, NW¼NW¼, SW¼SW¼.

On pages 41104 and 41105, the lines reading "acres in Idaho County" should read, "acres in Idaho, Nez Perce and Lewis Counties."

February 3, 1987.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 87-3208 Filed 2-13-87; 8:45 am]

BILLING CODE 4310-GG-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 83-12; Notice 5]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment; Corrections

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; corrections.

SUMMARY: This notice corrects two errors occurring in the final rule published on November 26, 1984, amending the standard to bring certain of its requirements closer to those of the Economic Commission of Europe. Table I was inadvertently amended to specify four, instead of two, rear side marker lamps for wide vehicles. Table III contains a typographical error in the section on reflex reflectors.

EFFECTIVE DATE: The corrections are effective February 17, 1987.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, National Highway Traffic Safety Administration, Washington, DC 20590 (202-366-5263).

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* was amended on November 26, 1984, to bring certain of its requirements closer to those of the Economic Commission for Europe of the United Nations (ECE) (49 FR 46386). As part of this notice, Standard No. 108's Tables I and III as amended were republished in full. Heretofore Table I had required multipurpose passenger vehicles, trucks, and buses with an overall width of 80 or more inches to have "2 red; 2 amber" side marker lamps, but the Table as amended specified "4 red; 2 amber." It was not the agency's intent to change the number of rear side marker lamps on these vehicles, and Table I is being corrected to "2 red; 2 amber."

In the amendment to Table III that occurred at the same time, the reflex reflectors required for passenger cars, multipurpose passenger vheicles, trucks, and buses was stated as "4 reds; 2 amber," and the Table is being amended to read "4 red; 2 amber." In this regard NHTSA notes that its own publication "Federal Motor Vehicle Safety Standards and Regulations, With Amendments and Interpretations Issued Through December 1984" erroneously gives the number of reflex reflectors as "4 red; 4 amber." NHTSA advises owners of this publication to change the number of amber reflectors to two.

Because the amendments are corrective in nature and impose no additional burden upon any person, it is hereby found for good cause shown that an effective date earlier than 180 days after issuance of the rule is in the public interest, and the amendments are effective upon publication in the **Federal Register**.

In consideration of the foregoing Part 571 is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Corrected]

2. In Table I under the column headed "Multipurpose passenger vehicles, trucks, and buses" the number of side marker lamps is corrected to read "2 red; 2 amber."

3. In Table III under the column headed "Passenger cars, multipurpose passenger vehicles, trucks, and buses" the number of reflex reflectors is corrected to read "4 red; 2 amber."

Issued on: February 10, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87-3197 Filed 2-13-87; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 52, No. 31
Tuesday, February 17, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1102 and 1106

[Docket Nos. AO-237-A34 and AO-210-A45]

Milk in the Southwest Plains and Fort Smith, Arkansas, Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This final decision concludes that the Southwest Plains marketing area should be expanded to include 18 counties and the Fort Leonard Wood Military Reservation in southwest Missouri and 11 counties in northwest Arkansas. This added territory includes the current Fort Smith, Arkansas, marketing area. The expanded area would be included in three pricing zones to maintain the price levels currently existing in such areas under the Southwest Plains order. The decision also would provide lower delivery standards for regulated plants operated by cooperative associations. All other regulatory provisions of the current Southwest Plains order would be continued.

The changes are necessary to reflect structural changes in the market and to assure the orderly marketing of milk in the expanded Southwest Plains marketing area. The proposed changes, which were submitted and supported by cooperative associations that represent a substantial proportion of the procedures who supply the market, are based on the record of a public hearing held in Tulsa, Oklahoma, on November 6, 1985. Also, a reopened session of the hearing was held in Irving, Texas on March 4-7, 1986, to consider proposals to change the location adjustment provisions of seven orders to conform with the Class I differentials mandated by the Food Security Act of 1985 that were implemented on May 1, 1986. The location adjustment provisions of the Southwest Plains order were amended on the basis of evidence presented at the reopened hearing. Such amendments are incorporated in the order for the merged and expanded Southwest Plains marketing area.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small businesses. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

There are 21 regulated handlers that operate 28 plants under the orders that receive milk from approximately 3,700 dairy farmers. A substantial majority of the producers are members of four cooperative associations. Most of these entities would be small businesses under the standards specified in 13 CFR Part 121.

The merged and expanded marketing area reflects the sales area of currently regulated plants. Consequently, the marketing area issue does not involve economic impact considerations. Likewise, the changes to the location adjustment provisions are only conforming changes that are necessary to accommodate the marketing area expansion. No price changes will occur as a result of the location adjustment revisions contained herein. The reduction of the pooling standard for plants operated by cooperative associations will reduce the regulatory burden by not encouraging the cooperatives to make excessive, uneconomical shipments of milk to distributing plants.

Prior documents in this proceeding:

Notice of Hearing: Issued September 20, 1985; published September 26, 1985 (50 FR 39017).

Notice of Reopened Hearing: Issued February 14, 1986; Published February 21, 1986 (51 FR 6254).

Temporary Revision: Issued February 20, 1986; published February 26, 1986 (51 FR 6730).

Suspension Order: Issued February 24, 1986; published March 3, 1986 (51 FR 7245).

Tentative Decision: Issued July 9, 1986; published July 15, 1986 (51 FR 25539).

Interim Amendments: Issued August 5, 1986; published August 11, 1986 (51 FR 28687).

Final Decision: Issued October 30, 1986; published November 5, 1986 (51 FR 40176).

Recommended Decision: Issued December 4, 1986; published December 9, 1986 (51 FR 44299).

Order Amending Orders: Issued December 5, 1986; published December 11, 1986 (51 FR 44590).

Correction to Amending Orders: Published December 19, 1986 (51 FR 45575).

Correction to Amending Orders: Published December 24, 1986 (51 FR 46746).

Preliminary Statement

A public hearing was held on proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Southwest Plains and Fort Smith, Arkansas, marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Tulsa, Oklahoma, on November 6, 1985, pursuant to a notice of hearing issued September 20, 1985 (50 FR 39017) and reopened at Irvin, Texas, on March 4-7, 1986, pursuant to a notice of hearing issued February 14, 1986 (51 FR 6254).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Marketing Programs, on December 4, 1986, filed with the Hearing Clerk, United States Department of Agriculture, a recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and

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are set forth in full herein, subject to modification to the 25th paragraph under issue number one.

The material issues on the record of hearing relate to:

1. Expansion of the marketing area covered by the Southwest Plains order.
2. Location adjustments.
3. Delivery standards for plants operated by cooperative associations.
4. Miscellaneous and conforming changes.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Expansion of the Marketing Area Covered by the Southwest Plains Order

The marketing area covered by the Southwest Plains order (Order 106) should be expanded to include 18 counties and the Fort Leonard Wood Military Reservation in southwest Missouri and 11 counties in northwest Arkansas. The expanded area would include the present Fort Smith, Arkansas, marketing area, the Ozarks-portion of the former St. Louis-Ozarks marketing area and certain other nearby unregulated territory. Such area constitutes the major sales area of handlers who are regulated under either the Southwest Plains or Fort Smith, Arkansas orders. Since the Fort Smith marketing area would be merged with the expanded marketing area for Southwest Plains, the Fort Smith, Arkansas order (Order 102) would cease to exist when the merged order becomes effective. These changes are warranted to reflect the structural changes in regulation under the Southwest Plains order, which resulted when the St. Louis-Ozarks order was terminated effective April 1, 1985.

There is considerable record evidence to indicate that interstate commerce exists in the area that would be added to the marketing area covered by the Southwest Plains order. The principal competitors in the expanded area are the Southwest Plains order distributing plants of Foremost Dairies, Inc., and Hiland Dairy located at Springfield, Missouri, the College Club Dairy at Fayetteville, Arkansas, and the Fort Smith order distributing plant of Acee Dairy, Inc., at Fort Smith, Arkansas.[1]

The Springfield plants distribute fluid milk into Arkansas, Kansas and Oklahoma. The Fayetteville plant sells milk in Missouri and Oklahoma while the Fort Smith plant distributes fluid milk products in Oklahoma. Another Southwest Plains order distributing plant located in Oklahoma City sells fluid milk in the Arkansas portion of the expanded area. Similarly, one distributing plant regulated by the Southern Illinois order and located in Illinois sells fluid milk products in the Missouri portion of the expanded area.

The proposal to extend the Southwest Plains marketing area to include 19 counties in southwest Missouri and 11 counties in northwest Arkansas was made by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents about 50 percent of the dairy farmers who supply milk to the Southwest Plains market. The proposal was prompted by the termination of the nearby St. Louis-Ozarks order (Order 62). When that happened, considerable territory in southwest Missouri and northwest Arkansas that had been included in the St. Louis-Ozarks marketing area became unregulated. Two distributing plants located in the former St. Louis-Ozarks marketing area at Springfield, Missouri, became regulated under the Southwest Plains order. A third distributing plant located in the Arkansas portion of the Order 62 marketing area at Fayetteville initially became regulated under the Fort Smith order but later became regulated under the Southwest Plains order.

Mid-Am testified that the presently unregulated territory in southwest Missouri and northwest Arkansas constitutes a major sales area for the three distributing plants regulated under the former St. Louis-Ozarks order. Mid-Am contends that over the long term, the prevailing marketing situation could result in disorderly marketing under the Southwest Plains order. Mid-Am testified that the possibility of this happening is enhanced because the handlers involved are multiple-plant operators, which gives them the flexibility to shift sales between the plants.

For example, the Foremost plant at Springfield is owned and operated by the Knudsen Corporation, as is the Meyer Dairy, which is located in Kansas City and regulated under the Greater Kansas City order. To the extent that the sales could be shifted between such plants, a handler might be able to avoid fully regulated status for a plant or shift its regulation to another order to gain a competitive advantage. Mid-Am indicated that similar practices could be used by the plants of Hiland, College Club, and Acee, since all three are owned and operated as joint ventures by Mid-Am and Prairie Farms Dairy.

Mid-Am claims that if any one of the distributing plants were able to avoid full regulation, disorderly marketing conditions would exist. In such cases, any plant that avoided pool status would have a competitive advantage is competing for fluid milk sales in a common area of distribution over other plants that are similarly located and fully regulated under the Southwest Plains order.

The proposal by Mid-Am to extend the marketing area was supported by Associated Milk Producers, Inc. (AMPI), the other major cooperative that furnishes 100 percent of producer milk for the Fort Smith market and about 45 percent of the milk supply for the Southwest Plains market. AMPI urged that the marketing area covered by the Southwest Plains order be expanded to include the marketing area now covered by the Fort Smith, Arkansas order. AMPI further testified that all of the other provisions of the Southwest Plains order that are currently effective and not at issue in this proceeding should apply to handlers who will be regulated under the expanded order.

A handler who operates a fluid milk plant at Jefferson City, Missouri (Central Dairy), testified in opposition to the inclusion of Pulaski County, Missouri, in the Southwest Plains marketing area. Since a small proportion of the plant's total sales are made in Pulaski County, the handler testified that Central Dairy would be a partially regulated distributing plant under the order. As such, the handler would be subject to the order's reporting requirements to ascertain the plant's regulatory status, and its payment obligations, which are designed to provide a measure of price comparability among handlers who operate fully regulated plants and handlers who operate plants that have only a minor association with the market.

The handler's primary objection to the inclusion of Pulaski County in the marketing area is with the requirement that the plant's total monthly receipts and sales would have to be reported to the market administrator because of the plant's limited sales in the marketing area. The handler testified that the sales

[1] Official notice was taken in the recommended decision of the commercial marketing fact that plants operated by the Knudsen Corporation at Springfield (Foremost) and Kansas City (Meyer Dairy) have ceased operations since the hearing was held. As described later, the evidence presented at the hearing strongly supported a merger of the two orders and an expansion of the combined marketing area. Interested parties were invited to address in their exceptions the issue of whether the closing of the Knudsen Corporation plants had changed the marketing conditions to the extent that a decision on the proposed merger and marketing area expansion should not be made on the basis of this record. No such exceptions were filed.

in Pulaski County do not extend into the Fort Leonard Wood Military Reservation, which represents a substantial proportion of the county's total population and which was included in the marketing area of the former St. Louis-Ozarks order. The handler testified that since sales were not made into Fort Leonard Wood in the past, the handler has no prior experience in reporting sales of fluid milk products in a portion of a county. Consequently, the handler suggested that only the Fort Leonard Wood Military Reservation in Pulaski County be included in the expanded Southwest Plains marketing area and that the rest of Pulaski County be excluded. As a result, Central Dairy would not be subject to any of the reporting requirements of the expanded Southwest Plains order.

In its post-hearing brief, Central Dairy also contended that an expansion of the marketing area to include all of Pulaski County has the potential of placing Central Dairy at a competitive disadvantage with regulated plants located in Springfield, Missouri since minimum prices under the Southwest Plains order are 14 cents per hundredweight higher at Jefferson City than at Springfield. (Since the November 6 hearing was held, the location adjustment provisions of the Southwest Plains order have been amended so that the Class I price at Springfield is 27 cents higher than at Jefferson City.) The handler also contended that the inclusion of the entire county within the marketing area is not necessary to achieve orderly marketing conditions.

No other testimony in opposition to the proposed expansion of the Southwest Plains marketing area was presented by any interested party.

The objectives in defining a marketing area is to encompass that territory within which regulated handlers compete with each other for a major proportion of their sales of fluid milk products. Although it is not practical to include the entire sales area of all regulated plants, the bulk of the sales areas of regulated plants should be included. If a significant proportion of the major sales areas of regulated handlers is excluded from the marketing area definition, the possibility of one or more plants avoiding full regulation is enhanced. Any plant that avoided full regulation would have a significant advantage, in both the procurement of raw milk supplies and in the distribution of fluid milk products, in competition with other handlers who are subject to the classified pricing and pooling provisions of an order. The threat of such a possibility is not conducive to the maintenance of stable and orderly marketing conditions on a long term basis for either producers or handlers.

As previously stated, major structural changes occurred in the distribution sector as a result of the termination of the adjacent St. Louis-Ozarks order effective April 1, 1985. Two distributing plants located at Springfield, Missouri, became regulated under the Southwest Plains order on the basis of their sales in that marketing area. A third plant located at Fayetteville, Arkansas initially became regulated under the Fort Smith, Arkansas order for two months. Beginning in June, such plant became regulated under the Southwest Plains order.

Because of these structural changes, there are substantial overlaps in the sales areas among plants that are currently regulated under the Fort Smith and Southwest Plains orders. This is evident from a comparison of the market statistics for the Southwest Plains and Fort Smith orders before and after the termination of the St. Louis-Ozarks order.

During the first quarter of 1985, prior to the termination of the St. Louis-Ozarks order, pool plants regulated under the Southwest Plains order accounted for 77 percent of the fluid milk products distributed within the Southwest Plains marketing area. About 16 percent of the fluid milk sales within the marketing area were distributed by plants regulated under the St. Louis-Ozarks and Fort Smith orders. During the second and third quarters of 1985, sales by distributing plants regulated under the Southwest Plains order represented about 92 percent of the total sales of fluid milk products within the Southwest Plains marketing area. This significant increase in the proportion of sales by pool plants is attributable to the regulation of distributing plants under the Southwest Plains order that were formerly regulated under the St. Louis-Ozarks order.

During the first quarter of 1985, sales by the distributing plant regulated under the Fort Smith order represented about 45 percent of total fluid milk products distributed in the Fort Smith, Arkansas marketing area. During the same period, sales by distributing plants regulated under the St. Louis-Ozarks order represented about 35 percent of the fluid milk products distributed within the marketing area, while there were no sales in the Fort Smith marketing area by plants regulated under the Southwest Plains order. In the second quarter of 1985, the proportion of sales in the marketing area attributable to Fort Smith pool plants increased to 50 percent. This was a result of the regulation under the Fort Smith order of a plant that was formerly regulated under the St. Louis-Ozarks order. Also, in the second quarter, the proportion of sales in the Fort Smith marketing area attributable to Southwest Plains order pool plants increased to 33 percent as a result of the regulation under the Southwest Plains order of plants that were formerly regulated under the St. Louis-Ozarks order. By the third quarter of 1985, the proportion of sales in the Fort Smith marketing area attributable to Fort Smith order pool plants declined to 36 percent. This occurred because of a switch in regulation of a distributing plant from the Fort Smith order to the Southwest Plains orders. Also, as a result of such shift in regulation, the proportion of sales within the Fort Smith marketing area attributable to Southwest Plains order pool plants increased to over 41 percent, surpassing the proportion of sales within the marketing area accounted for by the single distributing plants regulated under the Fort Smith order.

As previouly indicated, the sales areas of the distributing plants that were formerly regulated under the St. Louis-Ozarks order overlap substantially with the sales areas of plants regulated under the Southwest Plains and Fort Smith orders. The regulation of these plants under the Southwest Plains order has resulted in a situation whereby plants regulated under such order now account for a greater proportion of the sales of fluid milk products in the Fort Smith marketing area than does the Fort Smith distributing plant. Although sales of Fort Smith distributing plants do not account for a large proportion of the total sales in the Southwest Plains marketing area, plants regulated under the Fort Smith order distribute a large percentage of their sales in the Southwest Plains marketing area. During the first, second, and third quarters of 1985, plants regulated under the Fort Smith order distributed 26 percent, 18 percent and 26 percent, respectively, of their fluid milk products within the Southwest Plains marketing area. In view of the degree to which the sales areas overlap, the Southwest Plains marketing area should be expanded to include the present Fort Smith, Arkansas marketing area. This will result in regulating the one remaining Fort Smith distributing plant under the Southwest Plains order with the same terms and provisions that are applicable to plants that have most of the sales in the Fort Smith marketing area.

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A large proportion of the sales areas of the distributing plants that were formerly regulated under the St. Louis-Ozarks order is outside the current boundaries of the Southwest Plains and Fort Smith marketing areas in unregulated territory. This is also evident from a comparison of the market statistics for the Southwest Plains and Fort Smith orders before and after the termination of the St. Louis-Ozarks order.

During the first quarter of 1985, pool plants that were regulated under the Southwest Plains order distributed almost 90 percent of their fluid milk products within the Southwest Plains marketing area and only one-tenth of one percent outside the marketing area into unregulated territory. With the regulation of additional distributing plants under the Southwest Plains order after termination of the St. Louis-Ozarks order, the pool plants regulated under the Southwest Plains order during the second quarter of 1985 distributed only 69 percent of their fluid milk products within the marketing area while proportion of their sales in unregulated areas increased to over 19 percent. By the third quarter, just under 68 percent of pool plant sales were within the marketing area while over 20 percent were distributed in unregulated areas.

During the first quarter of 1985, about 41 percent of the Fort Smith order distributing plant's sales were in the marketing area while over 33 percent were in unregulated territory. In the second quarter the proportion of sales in the marketing area declined to 30 percent while the proportion in unregulated territory increased to 51 percent. This change was a direct result of the regulation under the Fort Smith order of a plant formerly regulated under the St. Louis-Ozarks order. By the third quarter of 1985, when such plant became regulated under the Southwest Plains order, the proportion of the fluid milk sales of the remaining distributing plant in the marketing area increased to 38 percent while the proportion in unregulated territory decreased to 35 percent.

It is obvious from the foregoing that the Southwest Plains and Fort Smith, Arkansas marketing areas do not include a substantial proportion of the sales areas of distributing plants that were previously regulated under the St. Louis-Ozarks order. Consequently, the Southwest Plains marketing area should be expanded to include currently unregulated territory that constitutes the bulk of the sales areas of the former St. Louis-Ozarks plants to insure their continued regulation under the Southwest Plains order.

Most of the unregulated territory proposed to be included in an expanded Southwest Plains marketing area was included in the former St. Louis-Ozarks marketing area. Of the 30 counties (19 in southwest Missouri and 11 in northwest Arkansas) proposed to be included in the expanded marketing area, 16 counties (12 in southwest Missouri and four in northwest Arkansas) were formerly within the St. Louis-Ozarks marketing area. Also, part of Pulaski County, Missouri (The Fort Leonard Wood Military Reservation) was in the St. Louis-Ozarks marketing area. Of the remaining territory in Arkansas (seven counties) proposed to be included in the expanded marketing area, parts of three counties are presently included within the Fort Smith, Arkansas marketing area. Basically, the proposed expansion would include currently and formerly regulated territory with limited intervening and adjacent territory to form a contiguous and easily identifiable marketing area.

Plants that are currently regulated under the Southwest Plains and Fort Smith orders account for an overwhelming proportion of the total sales of fluid milk products in each of the counties proposed to be added to the Southwest Plains marketing area. It is estimated that handlers regulated under the Southwest Plains order account for 90 percent or more of the total sales of fluid milk products in each of the 19 counties in southwest Missouri proposed to be added to the marketing area. In each of the Arkansas counties, handlers regulated under the Fort Smith and Southwest Plains order account for 80 percent or more of the total sales of fluid milk products. In addition, sales within the 30-county area represent a substantial proportion of the total sales of the distributing plants involved. It is estimated that about 60 percent of the total sales of the three distributing plants that were formerly regulated under the St. Louis-Ozarks order are within the 30-county area and that one or more of such plants have sales in each of the 30 counties. Also, the Fort Smith regulated plant distributes in five of the Arkansas counties with such sales representing about 74 percent of the plant's total sales.

For reasons set forth hereafter, not all of Pulaski County, Missouri, should be included in the Southwest Plains marketing area. Only the Fort Leonard Wood Military Reservation, which was previously a part of the St. Louis-Ozarks marketing area, should be included in the expanded marketing area.

Mid-Am proposed that the entire county be included in the marketing area because regulated handlers account for about 98 percent of the total fluid milk sales in the county. It is estimated that a handler regulated under the Southern Illinois order and the handler who operates the unregulated plant at Jefferson City, Missouri each account for two percent of the sales in the county. Mid-Am contends that the unregulated handler (Central Dairy) has a potential advantage in competing for sales in the county with regulated handlers since such handler is not subject to the classified pricing and pooling provisions of a Federal order. In addition, Mid-Am contends that the inclusion of the entire county, rather than just a portion of the county, would simplify the recordkeeping and reporting requirements of regulated handlers. Mid-Am reiterated these positions in its exceptions to the recommended decision and again urged that all of Pulaski County be included in the marketing area. The exceptions, however, do not provide a basis for altering the following findings and conclusions with respect to this issue.

Central Dairy distributes fluid milk products in Pulaski County but not in the Fort Leonard Wood Military Reservation. The handler has no sales in any of the other territory proposed to be added to the Southwest Plains marketing area. As previously stated, Central Dairy opposed the inclusion of Pulaski County in its entirety primarily on the basis that a full accounting and reporting of the plant's receipts and sales would be required even though the plant has only a limited involvement with the marketing area.

Central Dairy, which processes fluid milk, ice cream, and cottage cheese, is supplied totally by Mid-Am and purchases a majority of its milk on the basis of the Federal order blend price applicable at St. Louis, Missouri. In addition, Mid-Am testified that Central Dairy is charged in excess of the blend price in a manner similar to the application of over-order charges applied to regulated handlers on a Class-use basis. Central Dairy testified that prices paid for its milk supply exceed the Southwest Plains order Class I price on a portion of its supply, which exceeds its sales in Pulaski County, that is obtained from a Mid-Am supply plant pooled under the Southwest Plains order. In its brief, Central Dairy further contended that it could be placed at a competitive disadvantage since the Southwest Plains order Class I price at Jefferson City is 14 cents per hundredweight higher than at Springfield.

The appropriate location value of milk at Jefferson City, relative to prices applicable at Springfield, was not a matter that was explored on the record of the November 6 hearing. In addition, the posture of the testimony concerning the pricing of milk to Central Dairy prevents a firm conclusion on whether there is a disparity of pricing between regulated and unregulated handlers. In addition, the price relationship between Jefferson City and Springfield has been reversed because of amendments to the location adjustment provisions of the Southwest Plains order that resulted from the record of the reopened hearing that was held to consider location adjustment changes necessary to conform with the mandated Class I differentials that were implemented on May 1, 1986. As a result of such amendments, the value of milk at Jefferson City is 27 cents less than at Springfield.

With respect to the recordkeeping and reporting issue, regulated handlers are already subject to these requirements as well as to the need to distinguish between sales that are made within the marketing area and sales that are made outside the marketing area. Even with a marketing area expansion to include all of Pulaski County, some sales by regulated handlers would be made outside the marketing area. Consequently, it would appear that the regulatory burden of an expansion to include all of Pulaski County would be relatively greater for Central Dairy than for handlers who are already subject to such recordkeeping and reporting requirements.

Pulaski County is a rural, fringe sales area with a substantial proportion of the total population represented by the Fort Leonard Wood Military Reservation. With a total population of about 42,000, sales in the county outside Fort Leonard Wood do not represent a significant proportion of the total fluid milk sales of regulated handlers. There is no evidence on the record of this proceeding that indicates that the small volume of sales outside Fort Leonard Wood requires the inclusion of all of Pulaski County in the marketing area to establish orderly marketing conditions. The primary objective of including the bulk of the sales areas of regulated plants in the marketing area to assure their continued regulation under the Southwest Plains order can be attained without including all of Pulaski County within the marketing area. At the same time, this will result in not subjecting to the regulatory provisions a plant that has a small proportion of its total sales in the proposed expansion area and thus has a minimal competitive association with plants that are currently regulated under the order. For this reason, only the Fort Leonard Wood Military Reservation portion of Pulaski County should be included in the Southwest Plains marketing area.

In addition to Central Dairy, one other handler who sells fluid milk products in the marketing area was identified on the record of the proceeding. It was estimated that Cotton Dairy, a producer-distributor at Paris, Arkansas, accounts for two percent of the fluid milk sales in Logan County, Arkansas. In the post-hearing brief filed by Mid-Am and AMPI, it is noted that the producer-distributor was incorrectly identified as Cotton Dairy and that the correct name is Rogerland Dairy. The brief also indicates that a second producer-distributor, Pride of the Country, Inc., at Siloam Springs, Arkansas, is still operating as a producer-distributor.

Generally, producer-distributors are persons who essentially sell milk produced on their own farms directly to consumers. The current provisions of the Southwest Plains order, which would be applicable to the merged and expanded marketing area, deal with such types of operations by providing for a "producer-handler" definition. A producer-handler is a person who provides proof satisfactory to the market administrator that the care and management of the dairy farm and other resources necessary for the own farm production of milk and the management and operation of the processing plant are the personal enterprise and risk of such person. Generally, such operations are not subject to the pricing and pooling provisions of the order so long as their sources of milk are limited to their own farm production and receipts of milk from pool plants and other order plants. Under the Southwest Plains order, there are no limits on the volume of receipts that a producer-handler may obtain from Southwest Plains order pool plants and plants that are fully subject to the pricing and pooling provisions of any other order issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended.

Producer-handlers are subject to certain recordkeeping and reporting requirements so that the market administrator is able to determine whether such operations meet, and continue to meet, the criteria for exemption from the pricing and pooling provisions of the order. Operations that do not meet the standards for producer-handler exemption, and sell fluid milk products in the marketing area, are subject to the provisions of the order in the same manner as other handlers who have sales in the marketing area.

The expansion of the Southwest Plains marketing area as herein adopted will result in regulating handlers that compete with each other for fluid milk sales in their primary sales areas under the same regulatory provisions. The new merged and expanded marketing area reflects to a much greater degree the sales areas of currently regulated plants and will assure the continued regulation under the order of distributing plants that were regulated under the former St. Louis-Ozarks and the current Fort Smith, Arkansas order.

The marketing area expansion proponents proposed and tesified that the current Southwest Plains order provisions should apply to the expanded marketing area and, except as hereinafter set forth, no other proposed amendments to the Southwest Plains order were contained in the notice of hearing or testified to at the hearing. Consequently, the regulatory provisions of the order for the merged and expanded Southwest Plains marketing area are those of the current Southwest Plains order, except as modified hereafter in the other material issues identified in the proceeding.

The merged order adopted herein continues the use of the part number for the present Southwest Plains order, Part 1106. The amended Part 1106, upon issuance, would supersede Part 1102, the Forth Smith, Arkansas order.

Although the present two orders would no longer exist upon effectuation of the merged and expanded Southwest Plains order, this action is not intended to preclude the completion of those procedures that would otherwise have existed under the separate orders with respect to milk handled to the effective date of the merger. Such procedures, which would need to be carried out after the merger date, include the announcement of certain class prices and butterfat differentials, submission of reports, computation of uniform prices, payment of obligations, and verification activities. The provisions of the merged order would apply only to that milk handled after the effective date of the merger.

2. Location Adjustments

The location adjustment provisions should be amended to reflect the expansion of the Southwest Plains marketing area set forth under issue number one. No substantive pricing changes were proposed and none are necessary. Only conforming changes are

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needed to incorporate within the marketing area the location adjustments that currently apply under the Southwest Plains order to the territory being added to the marketing area.

At the November 6, 1985 hearing, Mid-Am proposed that three pricing zones be established to cover the territory that was proposed to be added to the Southwest Plains marketing area. The location adjustments proposed for each zone would have maintained the level of pricing that existed in the new territory at that time.

Following the initial hearing, an additional hearing was held at Irving, Texas, on March 4–7, 1986, to consider proposed changes to the location adjustment provisions of the Texas and six other Federal milk orders to conform with the Class I differentials mandated by the Food Security Act of 1985 that were implemented on May 1, 1986. Such hearing, with respect to the location adjustment issue, was a reopening of the hearing record for the Southwest Plains and Fort Smith, Arkansas orders.

As a result of evidence presented at the reopened hearing session, the location adjustment provisions of the Southwest Plains order were amended effective September 1, 1986. No amendments were made to the Fort Smith, Arkansas order since the location adjustment provisions of such order were not applicable to any plant. The Southwest Plains order, which recognizes the mandated Class I differential value at Fort Smith, establishes the location value of milk throughout the territory to be added to the marketing area. Consequently, the location adjustments applicable in the expansion area under the current Southwest Plains order should be incoporated in the merged and expanded Southwest Plains marketing area.

The current Southwest Plains marketing area is divided into five pricing zones (groups of counties) to reflect the different location values of milk within the marketing area. The order also utilizes a zone pricing system to specify location adjustments for the value of milk for territory outside the marketing area. Thus, since the marketing area is being expanded, conforming changes are necessary to incorporate the location adjustments for the new portion of the marketing area that are currently specified for out-of-area locations. This can be accomplished by adding a portion of the new territory to Zone I (the base zone) and by creating two new pricing zones that will maintain the price levels currently existing in the new territory under the Southwest Plains order.

The Southwest Plains order provides for no location adjustments at Fort Smith and across the central portion of the State of Arkansas to recognize the mandated $2.77 Class I differential value of milk in such area. Consequently the five-county area around Fort Smith that is being added to the marketing area should be included in Zone I of the Southwest Plains marketing area. In northern Arkansas, the Southwest Plains order provides for a minus 22-cent location adjustment (a $2.56 Class I differential value). Thus, the six counties of northwest Arkansas that are being added to the marketing area should be included in a new Zone VI with a specified minus 22-cent location adjustment. The territory in southwest Missouri that is being added to the marketing area has a minus 58-cent location adjustment (a $2.19 Class I differential value) under the current Southwest Plains order. Thus, a new Zone VII should be established for this territory (18 counties and the Fort Leonard Wood Military Reservation) with a minus 58-cent location adjustment.

3. Delivery Standards for Plants Operated by Cooperative Associations

The percentage of milk marketed by a cooperative that must be delivered to and physically received at pool distributing plants during the month should be reduced by five percentage points, from 50 to 45 percent, for a cooperative association to qualify plants for pool status. A cooperative would have the option of meeting the delivery percentage on the basis of its milk marketings and deliveries during the current month or the immediately preceding 12-month period. These pooling standards apply to cooperative association plants that are located in the marketing area or in a county adjacent to the marketing area as is provided under the current Southwest Plains order. The expansion of marketing as previously set forth extends the area within which cooperative association plants may be located and qualify for pool status on the basis of the cooperative's marketwide performance in supplying distributing plants.

The lower performance standards for cooperative plants were proposed by Mid-Am and supported by AMPI. There was no opposition to the proposed pooling standards.

Mid-Am proposed that the delivery percentage be lowered because of significant changes in the supply/demand relationship of the Southwest Plains market that occurred as a direct result of the termination of the adjacent St. Louis-Ozarks order. In addition, Mid-Am proposed that a cooperative be permitted to meet the lower delivery percentage on the basis of the cooperative's deliveries to distributing plants either during the current month or the 12-month period immediately preceding the current month. Mid-Am contended that the use of a 12-month moving average would provide additional pooling assurances for plants operated by cooperatives and greater flexibility to meet unanticipated short-term changes in marketing conditions that could make it difficult to qualify a plant for pooling on a current-month basis.

When the St. Louis-Ozarks order was terminated, distributing plants and the reserve milk supplies associated with such plants became regulated under the Southwest Plains order, altering the supply/demand relationship of the market. From March to April 1985, Class I sales increased by 58 percent while producer receipts more than doubled. As a result, the Class I utilization of producer milk declined from 57 percent in March to 44 percent in April. In addition, plants operated by Mid-Am that ship supplemental milk supplies to distributing plants and that serve as outlets for reserve supplies, are located outside the territory within which plants must be located to be pooled on the basis of the cooperative's total performance in supplying the fluid market.

As a result, Mid-Am requested a suspension of the requirement that cooperative association plants be located in the marketing area or in a county adjacent to the marketing area. Also, Mid-Am requested that the pooling standard for such plants be lowered temporarily by 10 percentage points (from 50 to 40 percent) in recognition of the supply/demand relationship that resulted under the Southwest Plains order. The requests for these temporary actions were granted by the Department to permit the efficient marketing of the milk supplies that had become associated with the Southwest Plains market, and both actions, based on further requests by Mid-Am, were subsequently extended through February 1986. Mid-Am testified that an extension of the actions would be necessary in the event that amendatory action could not be completed by March 1, 1986. Mid-Am contended that, under current order pooling standards, costly and inefficient movements of milk would have to be made solely for the purpose of pooling the milk of dairy farmers who have historically supplied the fluid milk needs of distributing plants that became regulated under the

Southwest Plains order. Since amendatory action could not be completed by March 1, 1986, both of the actions requested by Mid-Am granted to facilitate the efficient disposition of milk supplies and are effective until such time as amendatory action can be completed on the basis of this record.

It is obvious from the foregoing that the current 50 percent pooling standard for plants operated by cooperative associations was adopted on the basis of marketing conditions that were significantly different than those that have resulted since the termination of the St. Louis-Ozarks order. For each of the months of April through September 1985, the Class I utilization of producer milk ranged from 8.9 to 10.8 percentage points below the Class I utilization for the same month of the previous year. For the combined April through September period, the 1985 Class I utilization was 46.4 percent, 8.6 percentage points below the 1984 Class I use during the same period. Consequently, a reduction of five percentage points in the pooling standard for cooperative association plants is reasonable in view of the supply/demand relationship that has resulted under the Southwest Plains order since the termination of the St. Louis-Ozarks order. A failure to recognize the change in the market's supply/demand relationship would result in costly and inefficient marketing practices as more milk than is needed for fluid use would have to be shipped to distributing plants to qualify cooperative association plants for pool status under the order.

In addition to lowering the pooling standard, the amended order provides that cooperatives have the opportunity to meet the pooling standard on the basis of their milk marketings and deliveries to distributing plants during the current month or the immediately preceding 12-month period. The use of a 12-month moving average will provide a reasonable alternative for a cooperative that has supplied the fluid milk needs of the market on a regular basis, but, for some unanticipated reason is unable to meet the minimum delivery percentage for the current month.

4. Miscellaneous and Conforming Changes

To accomplish the merger of the Southwest Plains and Fort Smith, Arkansas orders effectively and equitably, the reserves in the administrative expense funds that have been accumulated under the two separate orders should be combined. Similar procedures should be followed with respect to any marketing service fund reserves of the two individual orders. Any liabilities against such funds under the individual orders should be paid from the appropriate new combined fund for the merged order. Similarly, obligations that are due the separate funds under the individual orders should be paid to the appropriate combined fund under the merged order.

The money paid into the administrative expense fund is each handler's proportionate share of the cost of administering the order. It is anticipated that all handlers currently regulated under the two individual orders will continue to be regulated under the merged order. In view of this, it would be an unnecessary administrative and financial burden to allocate back to handlers the reserve funds under the two individual orders and then accumulate an adequate reserve for the merged order. It is more efficient to combine the administrative monies accumulated under the two separate orders and to pay any liabilities against such funds from the consolidated fund of the merged order.

Any money accumulated in the marketing service funds of the individual orders is that which has been paid by producers for whom the market administrator is performing services. The producers who have contributed to the marketing service fund of each order are expected to continue to supply milk for the expanded Southwest Plains market. The consolidation of the reserves in the individual marketing service funds is therefore appropriate in view of the continuation of the marketing service program for these producers under the merged and expanded order for Southwest Plains.

Since the Fort Smith order provides for individual handler pooling, there is no producer-settlement fund and no reserves to combine. Accordingly, the balance in the producer-settlement fund of the current Southwest Plains order would become the producer-settlement fund reserve for the merged and expanded order so that its operation may be continued without interruption.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by intereated parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and deteminations hereinafter set forth supplement those that were made when the Southwest Plains and Fort Smith, Arkansas, orders were first issued and when they amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein:

(a) The tentative marketing agreement and the order for the Southwest Plains marketing area, which amends and merges the Southwest Plains and Fort Smith, Arkansas, orders, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the expanded Southwest Plains marketing area, and the minimum prices specified in the tentative marketing agreement and the order for the expanded Southwest Plains marketing area are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreement and the order for the expanded Southwest Plains marketing area will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreements upon which a hearing has been held;

(d) All milk and milk products handled by handlers, as defined in the tentative marketing agreement and the order for the expanded Southwest Plains marketing area are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, six cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1106.65 of the tentative marketing agreement and the order for the expanded Southwest Plains marketing area.

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Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a marketing agreement regulating the handling of milk and an Order amending and merging the orders regulating the handling of milk in the Southwest Plains and Fort Smith, Arkansas marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision and the two documents annexed hereto, be published in the **Federal Register**. The regulatory provisions of the marketing agreement are identical with those contained in the orders as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

November 1986 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the attached order amending and merging the orders regulating the handling of milk in the Southwest Plains and Fort Smith, Arkansas marketing areas is approved or favored by producers, as defined under the terms of the Southwest Plains order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the expanded marketing area defined in the Southwest Plains order as proposed to be amended.

List of Subjects in 7 CFR Parts 1102 and 1106

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on: February 10, 1987.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

Order[1] amending and merging the orders, regulating the handling of milk in the Southwest Plains and Fort Smith, Arkansas marketing areas.

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders, and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings*

A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Southwest Plains and Fort Smith, Arkansas marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The Southwest Plains order, which amends and merges the aforesaid orders, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the expanded Southwest Plains marketing area, and the minimum prices specified in the Southwest Plains order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The Southwest Plains order regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the Southwest Plains order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, six cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1106.85 of the order for the expanded Southwest Plains marketing area.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof the handling of milk in the Southwest Plains and Fort Smith, Arkansas marketing areas (Parts 1106 and 1102) shall be amended and merged into one order. Part 1102 is thereby superseded and such vacated Part designation shall be reserved for future assignment. The handling of milk in the merged and expanded Southwest Plains marketing area (Part 1106) shall be in conformity to and in compliance with the terms and conditions of the Southwest Plains order, as amended, and as hereby amended as follows. The provisions of the tentative marketing agreement and order amending the orders, as contained in the recommended decision issued by the Deputy Administrator, Marketing Programs, on December 4, 1986 and published in the **Federal Register** on December 9, 1986 (51 FR 44299) shall be and are the terms and provisions of this order amending the orders.

The authority citation for 7 CFR Parts 1102 and 1106 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

PART 1102—MILK IN THE FORT SMITH, ARKANSAS MARKETING AREA

Note.—Upon issuance of the order amending the order regulating the handling of milk in the Southwest Plains marketing area, Part 1102 (which regulates the handling of milk in the Fort Smith, Arkansas marketing area) would be superseded and such vacated Part designation would be reserved for future assignment.

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. In § 1106.2, Zone I is revised and two new zones (Zones VI and VII) are added to read as follows:

§ 1106.2 Southwest Plains marketing area.

* * * * *

Zone I—In the State of Oklahoma

Caddo	Canadian
Cleveland	McClain
Coal	McIntosh
Garvin	Okfuskee
Grady	Oklahoma
Haskell	Pittsburg
Hughes	Pontotoc
Latimer	Pottawatomie
LeFlore	Seminole
Lincoln	Sequoyah

In the State of Arkansas

Crawford	Scott
Franklin	Sebastian
Logan	

* * * * *

Zone VI—In the State of Arkansas

Benton	Madison
Boone	Marion
Carroll	Washington

Zone VII—In the State of Missouri

Barry	Ozark
Cedar	Polk
Christian	Pulaski (For Leonard Wood Military Reservation, only)
Dade	Stone
Dallas	Taney
Douglas	Texas
Greene	Webster
Howell	Wright
Laclede	
Lawrence	
McDonald	

2. In § 1106.7, paragraph (c) introductory text is revised to read as follows:

§ 1106.7 Pool plant.

* * * * *

(c) Any plant located in the marketing area or in a county adjacent to the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested by the cooperative association and during the month, or the 12-month period ending with the immediately preceding month, 45 percent or more of the producer milk of members of the cooperative association (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products at plants specified in paragraph (a) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

* * * * *

3. In § 1106.52, in paragraph (a)(1), Zones VI and VII are added at the end of the table of location adjustments and paragraphs (a)(3)(i) and (a)(4) are revised to read as follows:

§ 1106.52 Plant location adjustments for handlers.

(a) * * *

(1) * * *

	Adjustment per hundredweight
* * * * *	
Zone VI	Minus 22 cents.
Zone VII	Minus 56 cents.
* * * * *	

(3) * * *

(i) *Minus 58 cents.* In the county of Butler, Carter, Crawford, Dent, Dunklin, Gasconade, Iron, Madison, Maries, Mississippi, New Madrid, Oregon, Pemiscot, Phelps, Pulaski (except Fort Leonard Wood Military Reservation), Reynolds, Ripley, Scott, Shannon, Stoddard, or Wayne.

* * * * *

(4) For a plant located in the State of Arkansas but outside the marketing area, the adjustment shall be the difference (plus or minus) between the applicable Class I price effective at such plant location under the Central Arkansas order (Part 1108) and the Class I price specified in § 1106.50(a).

* * * * *

Marketing Agreement Regulating the Handling of Milk in the Southwest Plains Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1106.1 to 1106.86, all inclusive, of the order regulating the handling of milk in the Southwest Plains marketing area (7 CFR Part 1106) which is annexed hereto; and

II. The following provisions:

§1106.87 Record of milk handled and authorization to correct typographical errors.

(a) *Record of milk handled.* The undersigned certifies that he handled during the month of November 1986, ——— hundredweight of milk covered by this marketing agreement.

(b) *Authorization to correct typographical errors.* The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§1106.88 *Effective date.*

This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Dated: February 10, 1987.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 87-3242 Filed 2-13-87; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1210

[WRPA Docket No. 1]

Watermelon Research and Promotion Act; Hearing on Proposed Plan; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed plan; correction.

SUMMARY: This document corrects the notice of hearing, published on February 4, 1987 (52 FR 3588), which notified the public of a hearing to be held to consider a proposed Watermelon Research and Promotion Plan. Inadvertently omitted from the notice's list of hearing purposes was the Department of Agriculture's intention to receive evidence on whether the proposed plan burdens, obstructs, or affects the handling of watermelon in interstate commerce. All other provisions in the February 4 notice of hearing are correct as published.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, Room 2523–S, AMS, USDA, Washington, DC. 20250; telephone: (202) 447–5698.

The following correction is made to FR Doc. 87–2346. The third paragraph of the third column of page 3588 is corrected by (1) changing the period at the end of subparagraph (d) to a semicolon and adding "and", and (2) adding subparagraph (e) which reads as follows:

(e) Receiving evidence on whether the handling of watermelons in interstate commerce will be burdened, obstructed, or affected by such a plan.

Authority: Pub. L. 99–198; 7 U.S.C. 4901–4916.

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[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

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Signed in Washington, DC on February 10, 1987.

J. Patrick Boyle,

Administrator.

[FR Doc. 87-3200 Filed 2-12-87; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Yellowstone National Park; Fishing Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service proposes to modify the fishing regulations in Yellowstone National Park. The proposed rule changes would allow fishing in streams and lakes in Yellowstone National Park as designated by the Superintendent pursuant to authority provided by National Park Service general regulations. The park's active monitoring program has identified preservation concerns. The proposed changes to the regulations address these concerns and will correct, on an annual basis, problems identified with the current regulations. With these proposed changes in place, the park staff will be able to more effectively manage the fishery resources. Effects of the proposed rules are expected to be minimal. This rulemaking will not alter to any degree the number of angler days presently occurring.

DATE: Written comments will be accepted through March 19, 1987.

ADDRESS: Comments should be addressed to: Mr. Robert D. Barbee, Superintendent, P.O. Box 168, Yellowstone National Park, Wyoming 82190.

FOR FURTHER INFORMATION CONTACT: Kenneth Czarnowski Resource Management Specialist, P.O. Box 168 Yellowstone National Park, Wyoming 82190, Telephone (307) 344-7381, ext. 2236.

SUPPLEMENTARY INFORMATION:

Background

The present Yellowstone National Park fishing regulations are codified in 36 CFR 7.13(e). They permit fishing in selected waters of the park with a variety of regulations covering specific lakes and streams.

Technical fishery assistance has been provided to Yellowstone National Park by the U.S. Fish and Wildlife Service and its predecessors for 96 years. The present objectives have evolved since the late 1930's to closely coincide with the park's primary purpose, which is to preserve natural environments and native plant and animal life, and to provide for the enjoyment of the same in ways that maintain natural conditions. Thus, the specific objectives of the park's fishery program are:

1 To manage the fishery as an integral part of the park's ecosystem;

2. To preserve and restore native species and aquatic habitats; and

3. To provide recreational fishing opportunities for the enjoyment of park visitors, consistent with the first two objectives.

Attainment of these objectives requires that angler harvests do not alter natural replenishment rates or age structure, or significantly reduce numbers, biomass, or sizes, from those occurring in unfished populations. This management policy necessitates both a philosophical and literal distinction between recreational angling and removing fish for consumption. Protective policies of the National Park Service that have prevented significant degradation of the aquatic habitat have also restricted the use of maintenance stocking in park waters. Given these constraints, special angling regulations have become the primary means to accomplish park fishery objectives.

Regulations used to protect fish and maintain angling quality have included manipulating season dates, bait and terminal gear restrictions, and the use of creel and size limits (including catch-and-release). Additionally, some seven waters have been closed to angling in order to protest public water supply facilities, threatened species, nesting birds, or provide scenic vistas with undisturbed wildlife and fish. Five other waters in the park previously closed are proposed to be opened under the new regulations. These waters were closed to protect spawning fish or declining fish populations but recent research has shown these protective measures are no longer necessary.

Of 120 lakes and streams which are annually utilized by park anglers, 30 incur most of the fishing pressure. The quality of at least six of these fisheries has gained national recognition.

Because of the extremely heavy fishing pressure on Yellowstone's waters, the park staff must be able to respond rapidly to changes that occur in a dynamic ecosystme resulting from human activities.

The park's fishing reguations are currently codified in 36 CFR 7.13. In order for even minor changes to be made in these regulations through normal rulemaking procedures, approximately eight months are required. This process involves extensive review at various government levels and includes a period set aside for public review and comment.

The proposed change in the development of the park's fishing regulations would allow the Superintendent the ability to make routine changes in the regulations locally, in a timely manner, using discretionary authority provided by National Park Service general regulations in 36 CFR 1.5. This procedure will afford greater protection to the park's fishery resources, be more responsive to public needs and allow park managers greater flexibility to respond to specific situations.

Public notice of restrictions established by the Superintendent will be provided through signs, maps, brochures, newspaper notices or other appropriate methods as required by 36 CFR 1.7. Detailed information pertaining to the nature and extent of fishing restrictions will be readily available to anglers in the park. Permanent or otherwise significant closures of park waters (such as the ones listed in paragraph (e)(3) of this rulemaking) are subject to the rulemaking requirements of 36 CFR 1.5(b) and will continue to be condified in 36 CFR 7.13.

The park's fishing regulations will be reviewed at least annually by park staff and the U.S. Fish and Wildlife Service, and recommendations for changes, if any, will be made to the Superintendent.

Public Participation

The policy of the National Park Service is, whenever, practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the begining of this rulemaking.

Drafting Information

The primary authors of these regulations are Dan Sholly, Chief Park Ranger, and Ken Czarnowski, Resource Management Specialist, both of Yellowstone National Park.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope. The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment, health, and safety because it is not expected to:

(a) Increase public angling to the extent of impacting the aquatic ecosystem;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

National parks; Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C 1, 3, 9a, 462(k); 7.96 also issued under D.C. Code 8-137 (1981) and D.C. Code 40-721 (1981).

2. By revising § 7.13(e) to read as follows:

§ 7.13 Yellowstone National Park.

* * * * *

(e) *Fishing.* (1) Fishing restrictions, based on management objectives described in the park's Resources Management Plan, are established annually by the superintendent.

(2) The superintendent may impose closures and establish conditions or restrictions, in accordance with the criteria and procedures of §§ 1.5 and 1.7 of this chapter, on an activity pertaining to fishing, including, but not limited to, seasons and hours during which fishing may take place, size, creel and possession limits, species of fish that may be taken and methods of taking.

(3) *Closed waters.* The following waters of the park are closed to fishing and are so designated by appropriate signs:

(i) Pelican Creek from its mouth to a point two miles upstream.

(ii) The Yellowstone River and its tributary streams from the Yellowstone Lake outlet to a point one mile downstream.

(iii) The Yellowstone River and its tributary streams from the confluence of Alum Creek with the Yellowstone River upstream to the Sulphur Caldron.

(iv) The Yellowstone River from the top of the Upper Falls downstream to a point directly below the overlook known as Inspiration Point.

(v) Bridge Bay Lagoon and Marina and Grant Village Lagoon and Marina and their connecting channels with Yellowstone Lake.

(vi) The shores of the southern extreme of the West Thumb thermal area along the shore of Yellowstone Lake to the mouth of Little Thumb Creek.

(vii) The Mammoth water supply reservoir.

(4) Fishing in closed waters or violating a condition or restriction established by the superintendent is prohibited.

* * * * *

Dated: January 26, 1987.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-3227 Filed 2-13-87; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-3157-1]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: On January 7, 1985, the Minnesota Pollution Control Agency (MPCA) submitted revised rules, including a Consolidated Permit Rule (CPR), as proposed revisions to the Minnesota State Implementation Plan (SIP). MPCA's submission is intended to satisfy the requirements of 40 CFR 51.160 through 51.164[1] for a general New Source Review (NSR) program, as well as the Federal requirements for a lead (Pb) NSR program. In addition, on October 28, 1985, the MPCA submitted to USEPA a Memorandum of Agreement (MOA) and on October 1, 1986 and January 14, 1987, it submitted a commitment concerning stack height requirements.

MPCA's submittals include: 6 MCAR section 4.0002 Parts A through C, which contain Definitions, Abbreviations, and Applicability of Standards; the CPR, which consists of subparts 6 MCAR section 4.4001 through section 4.4021, 6 MCAR section 4.4301 through section 4.4305, and 6 MCAR section 4.4311 through section 4.4321; and an MOA entitled Appendix A. USEPA has reviewed these submittals and is, with one exception, proposing to approve them as meeting the requirements of 40 CFR 51.160 through 51.164. The one exception involves certain small sources for which there are Standards of Performance in 40 CFR Part 60, but which are exempted from review under Minnesota's CPR. USEPA is proposing to disapprove this rule for these small sources.

Minnesota did not submit these regulations to meet the requirements of either section 111, Part C, or Part D of the Clean Air Act (Act), and USEPA is not rulemaking on them as such. USEPA is proposing to approve these submittals as satisfying the one remaining deficiency in the Minnesota Pb Plan by meeting the Pb NSR requirements. Therefore, USEPA is also proposing to approve Minnesota's Pb plan as meeting the requirements of section 110(a) of the Act.

The purpose of this notice is to present a discussion of the material submitted by the State to support the revisions, and to provide an opportunity for public comment on the revisions and on USEPA's proposed actions.

DATE: Comments on this revision and on USEPA's proposed action must be received by March 19, 1987.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Anne E. Tenner, at (312) 886-6034, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch

[1] On November 7, 1986 (51 FR 40655), USEPA rewrote and recodified 40 CFR Part 51 (1986), including the NSR requirements in § 51.18. The NSR requirements to which USEPA is comparing Minnesota's program are those which were codified at 40 CFR 51.18(a) through (h) and (l) and will be codified as 40 CFR 51.160 through 51.164. For purposes of clarity, these §§ 51.130 through 51.164, will be referred to as 40 CFR 51.160 through 51.164 in today's notice.

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(5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604

Minnesota Pollution Control Agency, Division of Air Quality, 520 Lafayette Road, St. Paul, Minnesota 55155.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner (312) 886–6034.

SUPPLEMENTARY INFORMATION: On January 7, 1985, the MPCA submitted to USEPA a proposed revision to the Minnesota SIP in order to satisfy the requirements of 40 CFR 51.160 through 51.164 for a general NSR program, as well as the Federal requirements for a Pb NSR program. The submission included a CPR rule, whose provisions are intended to replace the previously approved NSR rules in the Minnesota SIP. On October 28, 1985, the MPCA submitted to USEPA a MOA which satisfies certain deficiencies. On October 1, 1986 and January 14, 1987, Minnesota commited to use USEPA's July 8, 1985 (50 FR 27892), stack height regulations in all SIP matters, which would include reviewing its construction permits. This satisfies the requirements of 40 CFR 51.164.

The January 7, 1985, submittal contains the following rules:

1. 6 MCAR section 4.0002 Definitions, Abbreviations, Applicability of Standards (formerly APC 2).
2. 6 MCAR section 4.4001 through section 4.4021 Air Permit Rules (formerly APC 3).
3. 6 MCAR section 4.4301 through section 4.4305 Supplements to Air Permit Rules.
4. 6 MCAR section 4.4311 through section 4.4321 Indirect Source Air Permits (formerly APC 19).

The October 28, 1985, submittal contained Appendix A, which is the MOA between USEPA and the MPCA on implementing the NSR plan. This is an amended and signed version of the draft Appendix E MOA, submitted with the remainder of the plan on January 7, 1985.

In today's rulemaking action, USEPA is proposing to approve, with one exception, this revision to the Minnesota SIP, as requested by the State of Minnesota. Each rule and the exception are discussed in detail below. However, USEPA wishes to clarify that this proposed rulemaking action only pertains to the approvability of this SIP revision with respect to the general NSR requirements of 40 CFR 51.160 through 51.164, and the Pb NSR requirements.[2]

USEPA is not rulemaking on this submittal with respect to the requirements of Part D of the Act, which contains additional new source permitting requirements that apply in designated nonattainment areas. For this reason, the Section 110(a)(2)(i) growth prohibition for major sources that is currently in effect in areas designated as primary nonattainment areas at 40 CFR 81.324 will not be affected by this rulemaking action. Additionally, USEPA is not proposing rulemaking action with respect to those portions of Minnesota's submittal which relate to Prevention of Significant Deterioration (PSD) permitting requirements as required in Part C of the Act,[3] New Source Performance Standards (NSPS) as required by Section 111 of the Act,[4] and permit provisions applicable to other media (water, solid waste). Finally, USEPA is not at this time rulemaking on 6 MCAR section 4.0002 Part D, Opacity Standard Adjustment.

If the State of Minnesota submits a SIP revision to satisfy the permitting requirements in Part C and/or Part D of the Act, the definitions and exemptions approved here today must be re-evaluated for approvability under those parts. For example, the definition of "fugitive emissions" in Rule 6 MCAR section 4.0002 A.13 is less stringent than the Federal requirements for sources subject to Part C or D of the Act. Additionally, MPCA has not demonstrated that the exemptions provided for in Rule 6 MCAR 4.4303 P1 are in conformance with Parts C or D of the Act. Finally, the definition of "modification" has been changed from that which USEPA previously approved in Minnesota's NSPS definitions. The definition of "modification" is discussed further below.

I. Definitions, Abbreviations, Applicability of Standards

Rule 6 MCAR section 4.40002 (formerly APC 2) includes sections on Definitions, Abbreviations, Applicability of Standards, Opacity Standard Adjustment and Circumvention. USEPA will rulemake on Minnesota's provisions for setting alternative opacity limits (6 MCAR section 4.0002 Part D) in a future **Federal Register** notice.

A. Definitions

The revision contains new and/or revised definitions that differ from those in APC 2, the similar rule in the current SIP, which USEPA approved in the May 6, 1982, **Federal Register** (47 FR 19520). Minor changes were made to the definitions for "new facility," "owner or operator," and "reconstruction." These revised definitions are generally consistent with the definitions which USEPA has previously approved in APC 2. These revised definitions are also consistent with the requirements of 40 CFR 51.160 through 51.164. Therefore, USEPA proposes to approve them.

Minnesota has also revised and clarified the definition of "New Source Performance Standard" by directly referencing the Federal NSPS established under Section 111 of the Clean Air Act. USEPA finds this revised definition acceptable and proposes to approve it, but only as it relates to Minnesota's general NSR program. (As stated above, USEPA is not rulemaking on Minnesota's rules as they relate to the Section 111 NSPS program.) The definition of "modification" has been revised at section 4.40002 (A)(15) to read as follows:

> "Modification" means a physical change or a change in the operation of an emission facility that is not allowed under a permit, stipulation agreement, or an applicable air pollution control rule, and that results in an increase in the emission of an air pollutant.

This revision differs from the definition of "modification" found in APC 2(c)(5)(aa), which USEPA approved as part of the Minnesota NSPS SIP on May 6, 1982, in that it exempts from the definition of "modification" any physical or operational changes if they are provided for by stipulation agreement, an applicable air pollution control rule, or a permit. It thereby exempts such changes from the State's new source rule.

The current SIP definition of "modification," at APC 2(c)(5), however, only applies for Minnesota's purposes to NSPS sources listed in APC 2(c) and not to the NSR program for general sources covered by today's regulations. There presently is no other definition of "modification" in the Minnesota SIP to which the new definition can be compared. Moreover, there is no USEPA requirement for a SIP definition of "modification." USEPA is proposing to approve Minnesota's new definition for general sources, because (1) there is no other definition of "modification" in the SIP for general sources and (2) its approval will not jeopardize the attainment and maintenance of the NAAQS. That is because today's proposed approval of Minnesota's NSR program only applies to a limited range of sources. It does not apply to new major sources or major modifications of existing sources in nonattainment areas, new PSD sources or major modifications of PSD sources, or NSPS requirements for new sources or major modifications of existing sources. Further, USEPA notes that Appendix A, as discussed later, commits Minnesota to use the definition of "major modification," as defined at 40 CFR 51.18(j)(1)(v), in determining whether anticipated construction at a source requires notification of the public and opportunity for public comment.

It should be noted that USEPA's NSPS regulations do not exempt physical or operational changes from the definition of "modification," just because they are provided for by permits, agreements, or State rules. Therefore, USEPA cannot approve the revised definition for purposes of the State's regulations for implementing the Federal NSPS and is not rulemaking on it, nor on the remainder of the State's submittals, for this purpose. USEPA notes that Minnesota has been delegated the Federal NSPS program and is implementing USEPA's rules at 40 CFR Part 60. Therefore, Minnesota's definition of "modification" at section 4.40002 should have no effect on its implementation of 40 CFR Part 60. USEPA periodically reviews all delegated NSPS programs, including Minnesota's, and will at the time of Minnesota's review determine whether Minnesota is properly implementing its delegation.

The following new terms have been added to revised Rule 6 MCAR section 4.0002:

> 1. "Fugitive Emissions" mean pollutant discharges to the atmosphere that do not pass through a stack, chimney or other functionally equivalent opening, at which a measurement of the emissions can be made using a reference method other than Method 9.
> 2. "Reference Method" means the procedure for performance test in the Code of Federal Regulations, Title 40, Part 60, Appendix A (1982).
> 3. "Emission source" means a single source whereby an emission is caused to occur.
> 4. "Total emission facility" means an assemblage of all emission sources on adjacent property that are under common ownership or control and that exist for a common function.
> 5. "Potential emissions" means the emissions from an emission facility, after control equipment has been applied, when the facility is operating at maximum design capacity and maximum hours of operation or as limited by enforceable permit conditions, whichever results in fewer emissions.

USEPA finds these definitions acceptable.

USEPA has reviewed all the revised and new definitions discussed above, not only with respect to whether the definitions meet the Federal NSR requirements, but also with respect to their impact on the federally approved Total Suspended Particulates (TSP) and Sulfur Dioxide (SO_2) SIPs in Minnesota. These revisions are acceptable. Therefore, USEPA proposes to approve the definitions as set forth at 6 MCAR section 4.0002(A) for the purposes of Minnesota's general NSR program.

B. Abbreviations, Applicability of Standards, and Circumvention

USEPA has reviewed 6 MCAR section 4.0002(B), Abbreviations; 6 MCAR section 4.0002(C) Applicability of Standards of Performance; and 6 MCAR section 4.0002(E), Circumvention. Parts B and E contain requirements similar to those previously approved in APC 2 (b) and (f), respectively, and USEPA proposes to approve them. Part C has been changed and simplified from APC 2(c). USEPA finds it approvable and proposes to approve Part C as well.

C. Opacity Standard Adjustments

Part D of Rule 6 MCAR section 4.0002 allows an emission facility to apply for an alternative opacity limit. USEPA will rulemake on this provision in future **Federal Register** notices.

II. Consolidated Permit Rule and Air Emission Facility Permits

The Consolidated Permit Rule is comprised of the following: Rule 6 MCAR section 4.4001–21, Permit Rule; Rule 6 MCAR section 4.4301–05, Supplement to Permit Rule; and Rule 6 MCAR section 4.4311–21, Indirect Source Air Permits. In addition, the MPCA submitted an MOA to USEPA on October 28, 1985. The rules submitted by MPCA are intended to replace the previously approved rules, APC 2 and APC 3. The State took several provisions from APC 3 (the State's former general NSR rule for air pollution sources), which are common to all other environmental media permit programs, and included them in a new multi-media CPR Rule.

Rule 6 MCAR section 4.4001–21, Permit Rule

Rule 6 MCAR section 4.4001–21 establishes MPCA's standard permitting procedures. The review procedures will enable MPCA to determine whether a proposed new or modified source will cause a violation of a SIP control strategy or interfere with attainment or maintenance of the NAAQS. Rule 6 MCAR section 4.4015 requires each permit to contain conditions necessary to achieve compliance with all applicable State and Federal rules. Rule 6 MCAR section 4.4014 B authorizes MPCA to deny a permit if the proposed source will not comply with all applicable State or Federal rules administered by MPCA. All SIP emission rules and the NAAQS are considered by the State to be rules administered by the MPCA.

Rule 6 MCAR section 4.4301–05, Supplements to Air Permit Rules

USEPA reviewed the provisions of this CPR rule to assure that the appropriate sizes and types of air pollution sources will be subject to review by MPCA, as required by 40 CFR 51.160 through 51.164. Section 4.4303 requires all air emission facilities to obtain a permit except for certain small sources. Exempted sources are those that emit less than specified *de minimus* levels for all criteria pollutants. For instance, 6 MCAR sections 4.4303 B.1 and 2 exempt such sources with less than 25 tons per year of emissions (except for lead which is less than 0.5 ton per year), natural gas sources which are smaller than 50 million British Thermal Units (BTU) per hour, and wood sources which are smaller than 5 million BTUs per hour. These exemptions are approvable for all sources. However, 6 MCAR section 4.4303 B.3 exempts certain NSPS sources from applying for a permit which may require a NAAOS review under sections 110(a)(2)(D) and 110(a)(4) of the Act. For instance, the NSPS for Nonmetallic Mineral Processing Plants exempts fixed sand and gravel operations with capacities of less than 25 tons per hour (40 CFR 60.670(c)(1)), while the Minnesota regulation exempts operations that produce less than 150,000 tons of product per year. Thus, a 70 tons per hour facility operating 2080 hours per year would be exempted under Minnesota's regulation. The NSPS for Metal Coil Surface Coating does not exempt any facility constructed after January 5, 1981, regardless of size (40 CFR 60.460), while Minnesota's regulation exempts facilities that use

[2] On July 6, 1984 (49 FR 27507), USEPA approved all other elements of Minnesota's Pb plan. If USEPA ultimately approves Minnesota's NSR Pb plan, as is being proposed today, this will satisfy the one remaining element of Minnesota's Pb plan.

[3] On September 20, 1977, March 26, 1979, and October 15, 1980, USEPA delegated to Minnesota the PSD program. Minnesota is implementing this program using USEPA regulations found at 40 CFR 52.21.

[4] On March 29, 1984, USEPA delegated to Minnesota the NSPS program. Minnesota is implementing this program using USEPA regulations found at 40 CFR Part 60.

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less than 10,000 gallons of solvent-borne coatings per year. Because of the possibility in Minnesota's regulation that certain NSPS sources may not undergo a NAAQS review, USEPA is proposing to disapprove Minnesota's CPR rule for those sources to which an NSPS requirement applies (40 CFR Part 60), and which would otherwise be exempted from review under 6 MCAR section 4.4303 B.3. For these sources, APC 3, as approved in the September 22, 1972, **Federal Register** (37 FR 19810), will continue to apply. (None of the exemptions in 6 MCAR section 4.4303 B.3 apply to Pb sources. Therefore, USEPA's proposed, limited disapproval does not affect its proposed approval of Minnesota's NSR plan for Pb discussed below.) For all other sources, USEPA is proposing to approve Minnesota's CPR, including 6 MCAR section 4.4303.

Lead NSR Rules

USEPA's criteria for approving Pb NSR programs are found in two documents. One is an April 8, 1980, memorandum from Richard G. Rhoads, then Director, Control Programs Development Division, to the Directors of the Regional Air and Hazardous Materials Divisions. The other is section 4.5.3 of USEPA's Pb guidance document entitled "Updated Information on Approval and Promulgation of Pb Implementation Plan," dated July 1983.

Rule 6 MCAR section 4.4303 B.1.c exempts from review new or modified Pb sources that have the potential to emit less than 0.5 ton per year. This rule is consistent with USEPA's April 8, 1980, policy memorandum which requires review of all Pb point sources which have the potential to emit Pb in excess of 5 tons per year. This rule is also consistent with USEPA's policy on Pb plans which requires review of any modification to a source with actual emissions in excess of 5 tons/year of Pb, if the modification would result in a net increase of 0.6 or more tons of Pb per year of potential emissions. Since Rule 6 MCAR section 4.4303 of the permit rule subjects all Pb sources emitting 0.5 ton/year of Pb or more to State review, this rule is approvable as it pertains to new Pb sources and modifications to existing Pb sources.

The rules contain provisions which require all new or modified Pb sources above 0.5 ton/year to be reviewed against the ambient air quality standards. The NAAQS for Pb has been approved for Minnesota as part of the SIP. Furthermore, Rule 6 MCAR section 4.4014 B requires the Agency to deny a permit if the proposed source would not comply with this Federal requirement, which is administered by the State.

On July 6, 1984 (49 FR 27507), USEPA approved all other elements of Minnesota's Pb plan. If USEPA ultimately approves Minnesota's NSR Pb plan, as is being proposed today, this will satisfy the one remaining element needed in Minnesota's Pb plan. Therefore, USEPA is also proposing today to approve Minnesota's complete Pb plan as meeting all the requirements of the Act.

Rule 6 MCAR Section 4.4311–21, Indirect Source Air Permits

Although there are no current Federal requirements that a State submit an indirect source review program, the State of Minnesota did submit such a program. This will replace the previous indirect source review program in Minnesota (February 25, 1974, 39 FR 7282). USEPA has reviewed the indirect source rule and finds that it does not eliminate any requirement upon which the State depended to demonstrate attainment or maintenance of any NAAQS. USEPA is, therefore, proposing to approve this rule.

Memorandum of Agreement Between USEPA and MPCA

Appendix A, the MOA between Minnesota and USEPA, consists of an agreement signed by the USEPA on July 8, 1985, and by Minnesota on July 24, 1985. This MOA between the MPCA and USEPA satisfies certain remaining deficiencies for the NSR permitting requirements.

Section 4.4002 1. exempts many air emission sources from public notice and comment provisions. Such exemption violates the requirements of 40 CFR 51.161. To address this deficiency, the State and USEPA executed a MOA which requires the MPCA to give notice and provide for a public comment period in accordance with 40 CFR 51.161. Title 40 CFR 51.161 requires that public comment procedures apply to all sources, both major and minor, that affect the attainment and maintenance of the air quality standards. The MOA provides that the public notice and comment requirements of 40 CFR 51.161 will be met in cases with the following types of permits:

1. A permit for a "major stationary source" and for a "major modification" as defined and applied by 40 CFR 51.18(j)(1) (iv), (v), (vi), and (x).[*]

2. A permit for an emission facility with an actual Pb emission rate of 0.6 ton or more per year; or

3. A permit for a facility, building, structure or installation in accordance with 40 CFR 51.18(a) which must be reviewed to assure that the source will not potentially violate a control strategy or interfere with attainment or maintenance of a national ambient air quality standard.

The MOA provides an appropriate mechanism to satisfy the notice requirements for both a general source permitting program and a Pb NSR program. Therefore, USEPA is proposing to approve the MOA as part of the Minnesota SIP.

Stack Height Requirements

Section 123 of the Act limits credit in attainment demonstrations for stack height in excess of that which exceeds good engineering practice. On July 8, 1985, USEPA promulgated regulations implementing these provisions (50 FR 27892). These rules require that State and local agencies conform with section 123 when reviewing construction permits. See 40 CFR 51.164. In October 1, 1986 and January 14, 1987, letters, Minnesota committed to implement its SIP program using USEPA's July 8, 1985, implementation guidance rather than develop its own regulation. This meets the requirements of section 123, and USEPA proposes to approve it.

Conclusion

In conclusion, USEPA is proposing to approve 6 MCAR section 4.0002, except that it is not acting today on section 4.0002(D), Opacity Standard Adjustment. USEPA is also proposing to approve the MPCA's Consolidated Permit Rule as meeting the new source permitting requirements of 40 CFR 51.160 through 51.164, including the MOA between the MPCA and USEPA, except as they apply to sources to which an NSPS requirement applies and which is exempted from review by 6 MCAR section 4.4303 B.3. USEPA is proposing to disapprove the CPR for these sources, and for them SIP APC 3 will continue to apply. USEPA has determined that the submitted NSR rules will meet the Pb NSR requirements and satisfy the one remaining deficiency in the Minnesota Pb plan. USEPA is proposing to approve this one remaining element in Minnesota's Pb plan and approve Minnesota's Pb plan as meeting all the requirements of the Act. Finally, Minnesota did not submit these regulations to meet the requirements of either section 111, Part C, or Part D of the Act, and USEPA is not rulemaking on them as such.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709). I certify that USEPA's proposed disapproval of Minnesota's CPR, for those sources to which a USEPA Standard of Performance applies and which are exempted from review by 6 MCAR section 4.4303 B.3, will not have a significant economic impact on a substantial number of small entities because it will only apply to a few new sources and will not impose any new requirements upon these sources beyond those which currently are in the SIP.

Under Executive Order 12291, this action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

[*] 40 CFR 51.18(j)(1) (iv), (v), (vi), and (x) was recodified on November 7, 1986, to 40 CFR 52.166(a)(1) (iv), (v), (vi), and (x). See Footnote 1.

Authority: 42 U.S.C. 7401–7642.

Dated: December 12, 1986.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 87–3221 Filed 2–13–87; 8:45 am]

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40 CFR Part 52

[A–9–FRL–3156–9]

Approval and Promulgation of Implementation Plans: California State Ozone Plan Revision; Disapproval of a South Coast Air Quality Management District Volatile Organic Compound Control Measure for the Surface Coating of Miscellaneous Metal Parts and Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to disapprove a South Coast Air Quality Management District (AQMD) volatile organic compound (VOC) control regulation submitted by the State of California for inclusion into the State Implementation Plan (SIP). This rule was submitted by the State on July 10, 1984 and controls emissions from miscellaneous metal parts and products surface coating operations. This rule is not approvable because it is a relaxation from existing SIP requirements without a demonstration that the SIP will provide for attainment of the NAAQS as expeditiously as practicable. In any event, the relaxation has not been justified by technical data demonstrating the need for the relaxation. EPA requests that the South Coast Air Quality Management District revise the affected regulation to address EPA's concerns and submit the revised regulation for inclusion in the SIP.

DATES: Comments must be submitted before March 19, 1987 for consideration by EPA.

ADDRESSES: Comments should be addressed to: Regional Administrator, Attn: Air Management Division, State Implementation Plan Section (A–2–3), Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105.

A copy of the submitted regulation and EPA's evaluation are available at the above address for public inspection during normal business hours. A copy of the submitted regulation is also available for review at the following locations:

California Air Resources Board, 1102 "Q" Street, P.O. Box 2815, Sacramento, CA 95812

South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731

FOR FURTHER INFORMATION CONTACT: William E. Wruble, State Implementation Plan Section (A–2–3), Air Programs Branch, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–8066 (FTS) 454–8066.

SUPPLEMENTARY INFORMATION:

Background

The California Air Resources Board has submitted several regulations for the control of VOC emissions in the South Coast AQMD. EPA has reviewed these regulations for consistency with Clean Air Act (CAA) requirements, the Code of Federal Regulations, and EPA policy. This notice addresses a submitted regulation which was found to be deficient with respect to the above requirements. EPA is proposing to disapprove the deficient regulation in this notice. The revised regulation and EPA's evalution are described below.

Rule 1107 has been revised in the following ways: (a) The final VOC content limits have been deleted and replaced by a demonstration program, (2) the definition of metallic coatings (which are exempt from the rule) has been broadened, and (3) several exemptions have been added for specific coatings types.

EPA Evaluation

EPA has evaluated this rule revision and finds that it is not consistent with the Clean Air Act, 40 CFR Part 51 and EPA policy. Section 172 of the Clean Air Act requires states to adopt regulations which reflect Reasonably Available Control Technology (RACT) at a minimum. In addition, the Clean Air Act allows for control levels which may be beyond RACT as necessary to demonstrate attainment of the NAAQS. The state has not presented an adequate technical justification that sources are unable to comply with existing SIP limits. In addition, the State has failed to demonstrate that it is unreasonable to impose the existing SIP limits on the affected sources. For these reasons, EPA is proposing to disapprove this revision.

The revised rule also would detract from the ability of the SIP to satisfy the requirements of 40 CFR 51.10, which requires that nonattainment area plans provide for attainment of the NAAQS as expeditiously as practicable. The rule fails to provide for expeditious attainment, particularly since other nonattainment areas, as well as EPA, are enforcing rules which contain final limits equal to the rescinded final limits in the federally approved version of Rule 1107.

Copies of EPA's detailed evaluations including the policy memoranda, are available at the Region 9 address above.

EPA Proposed Action

EPA proposes to disapprove the rules listed above since they are inconsistent with the Clean Air Act, 40 CFR Part 51 and EPA policy.

Regulatory Process

EPA is not imposing any additional requirements on small entities through its action in this notice. Consequently, EPA believes this action will not have a significant economic impact on a substantial number of small entities. Therefore, under 5 U.S.C 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see FR 8709).

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: March 27, 1987.

John Wise,

Acting for Regional Administrator.

[FR Doc. 87–3220 Filed 2–13–87; 8:45 am]

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INTERSTATE COMMERCE COMMISSION

49 CFR Part 1135

[Ex Parte No. 290 (Sub-No. 2)]

Railroad Cost Recovery Procedures; Interpretation

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed interpretation of rule.

SUMMARY: We are seeking comments on methods of indexing the interest component of the "all inclusive" index of railroad costs which is used to compute the quarterly rail cost adjustment factor (RCAF). That aspect of final rules published at January 2, 1985, was appealed by shipper parties and the Commission has been granted a remand to reconsider the interest component. We suggest using the actual debt rates paid by the railroads. Comments on the present methodology and additional suggestions for indexing the interest component are also welcome.

DATES: Comments are due on March 19, 1987. Replies are due on April 3, 1987.

FOR FURTHER INFORMATION CONTACT:

Robert C. Hasek (202) 275–0938
or
William T. Bono (202) 275–7354.

SUPPLEMENTARY INFORMATION: On January 2, 1985, (50 FR 87) we issued amended rules for the calculation of the index of railroad input costs which is used in computing the quarterly RCAF. Those amended rules changed the methodology used in the calculation of a number of index components including interest. Until that time interest expense had been included in an "all other" category with several other index components and was indexed using the Producer Price Index of the Bureau of Labor Statistics. The amended rules adopted an interim methodology which removed the interest category from the weighting scheme and recalculated the weights of all the remaining index components assuming no interest expense.

Several aspects of the amended rules were appealed by shipper parties. We requested and were granted a remand to reconsider the interest component.

We have an additional proposal for indexing interest. Instead of the previously adopted methodology we propose to index interest rates. The methodology would calculate an average interest rate (total interest payments divided by total debt) for each time period. Changes in the average interest rate from period to period would be used to index the interest component.

Use of this interest rate is consistent with other index components which relate expenses to unit prices. For example, we use similar methodologies in calculating the hourly wage rate for the labor component and the price per gallon of diesel fuel for the fuel component of the index.

We believe that it would be preferable to calculate the interest component on a quarterly basis, if data were available that frequently. If this is not possible, we propose to use a yearly calculation, with the interest component held constant for a year.

We seek comments on all aspects of our new proposal, the current methodology and any other methodologies for indexing the interest component which may be suggested by the parities. Comments are due 30 days after publication in the **Federal Register**. Replies are due 15 days after receipt of comments.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources and will not have a significant adverse impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1135

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements.

Authority: 49 U.S.C. 10321, 10707a, 5 U.S.C. 553.

Decided: February 6, 1987.

By the Commission, Chairman Gradison, Vice Chairman Laboley, Commissioners Sterrett, Andre and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–3214 Filed 2–13–87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

Atlantic Surf Clam and Ocean Quahog Fishery; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council will hold public hearings to allow for input on Amendment 7 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fishery (FMP).

DATES: Written comments will be accepted until March 5, 1987. All hearings will begin at 7:00 p.m. and will be tape recorded; the tapes will be the official transcript of the hearing. The hearings are scheduled as follows:

1. February 23, 1987, Salisbury, Maryland;
2. February 24, 1987, Galilee, Rhode Island;
3. February 26, 1987, Cape May, New Jersey.

ADDRESSES: Send written comments to John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, DE 19901. The hearings will be held at the following locations:

1. Maryland—Holiday Inn, Rt. 13 North, Salisbury, MD;
2. Rhode Island—Dutch Inn, Great Island, Rd., Galilee, RI;
3. New Jersey—Cape May County Extension Office, Dennisville Rd., Cape May Court House, NJ.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, 302–674–2331.

SUPPLEMENTARY INFORMATION: The management unit is all surf clams (*Spisula solidissimo*) and all ocean quahogs (*Arctica islandica*) in the Atlantic exclusive economic zone (EEZ). The objectives of the FMP are (1) to rebuild the surf clam populations to allow an eventual harvest approaching 50 million pounds, which is the estimate of maximum sustainable yield (MSY) over the range of the resource, based on the average yearly catch from 1960 to 1978; (2) to minimize economic dislocation to the extent possible consistent with objective 1 and encourage efficiency in the fishery; (3) to prevent the harvest of ocean quahogs from exceeding MSY and direct the fishery toward achieving optimum yield; (4) to provide the greatest degrees of freedom and flexibility to all harvesters of these resources consistent with the attainment of the other objectives of this plan; (5) to optimize yield per recruit; and (6) to increase understanding of the conditions of the stocks and fishery.

Three management areas for surf clams are defined in the FMP and in 50 CFR 652.2: The Mid-Atlantic Area, the Nantucket Shoals Area, and the Georges Bank Area, with slightly different management measures determined under 50 CFR 652.21.

Amendment 7 to the FMP prepared by the Mid-Atlantic Fishery Management Council (Council), is intended (1) to change the quota from 10%, 40%, 40% and 10% to 25% of the annual allocation per quarter respectively for each quarter for the Georges Bank Area; (2) to remove the 5.000 bushel shortfall requirement for transfer of unharvested quota from one quarter to the next, for all Areas; (3) to add the provision that any unharvested quota be distributed proportionally among the remaining quarters in the year rather than being added totally to the next quarter, for the Nantucket Shoals and Georges Bank Areas; (4) to remove the limit on carryover of the unharvested quota from one year to the next to 10% of the annual quota, and provide that any such carryover be distributed proportionally to each quarter, for the Nantucket Shoals and Georges Bank Areas; (5) to provide for annual renewal of vessel permits; and (6) to make changes to the regulations to enhance enforcement and prosecution.

Dated February 11, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87–3244 Filed 2–13–87; 8:45 am]

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Notices

Federal Register
Vol. 52, No. 31
Tuesday, February 17, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Protein Certification

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Federal Grain Inspection Service (Service) will certify protein results on any specified moisture basis requested by applicants in addition to certifying results on a 12.0 percent moisture basis for the period May 1, 1987, through May 1, 1988.

DATE: Effective May 1, 1987 through May 1, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Staff, FGIS, USDA, Room 1661 South Building, 1400 Independence Avenue SW., Washington, DC 20250, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: A decision requiring that wheat protein be certified only on a 12.0 percent moisture basis was published in the August 28, 1986, **Federal Register** (51 FR 30323). The decision eliminated certifying protein on any other basis requested by the applicant for inspection. Since publishing the decision, the grain industry has requested that the Service report, for 1 year, protein on a specified moisture basis in addition to the required 12 percent moisture basis. This 1-year, phase-in period would provide the marketplace additional time to adjust to the new reporting requirements.

The Service considers this request valid and in the best interest of the grain market. Consequently, the Service will, upon request, report protein on a specified moisture basis in addition to certifying the protein results on a 12.0 percent moisture basis. This optional service will be available from May 1, 1987, through May 1, 1988.

Dated: February 10, 1987.

W. Kirk Miller,

Administrator.

[FR Doc. 87–3199 Filed 2–13–87; 8:45 am]

BILLING CODE 3410-EN-M

Rural Electrification Administration

Metlakatla Power and Light; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508), and REA Environmental Policy and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to the construction of a 3.3 MW diesel generation unit and associated facilities. The proposed facilities would be located south of the town of Metlakatla, Alaska, on Annette Island and would be constructed by Metlakatla Power and Light (Metlakatla).

FOR FURTHER INFORMATION CONTACT: REA's Environmental Assessment (EA) and FONSI and Metlakatla's Borrower's Environmental Report (BER) may be reviewed at the office of the Director, Northwest Area-Electric, Room 0205, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, Telephone No. (202) 382–1411, or at the office of Metlakatla Power and Light (Bill Kaltenekker, Manager), P.O. Box 346, Metlakatla, Alaska 99926–0346, Telephone No. (907) 886–6661, during regular business hours. Copies of the EA and FONSI can be obtained from either of the contacts listed above. Any comments or questions should be directed to the REA contact.

SUPPLEMENTARY INFORMATION: REA, in conjunction with a request for construction approval from Metlakatla, has reviewed the BER submitted by Metlakatla and has determined that it represents an accurate assessment of the environmental impacts of the proposed project. The project consists of constructing a 3.3 MW diesel generating unit and other associated facilities. Other facilities include the relocation of two I-beam 12 by 24 meter (40 by 80 feet) sheet metal buildings and four 189,250 liter (50,000 gallon) fuel storage tanks.

REA determined that the proposed project will have no effect on floodplains, wetlands, important farmland, prime rangelands or forest lands, threatened or endangered species or critical habitat, and any property listed or eligible for listing in the *National Register of Historic Places*. No matters of potential environmental concern were identified by REA.

Alternatives examined for the proposed project included no action, construction of a transmission intertie and alternative generating sites. REA determined that the construction of a 3.3 MW diesel generating unit is an envionmentally acceptable alternative for Metlakatla to maintain adequate and reliable service to its present customers and to serve future load growth on Annette Island.

Based Upon the BER, REA prepared an EA concerning the proposed project and its impacts. REA has independently evaluated the proposed project, and has concluded that project approval would not constitute a major Federal action significantly affecting the quality of the human environment. Consequently, the preparation of an environmental impact statement is not necessary.

In accordance with REA Environmental Policy and Procedures (7 CFR Part 1794), Metlakatla advertised and requested comments on the environmental aspects of the proposed project in the Ketchikan Daily News. There were no comments.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850-Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related notice to 7 CFR Part 3015 Subpart V., this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Dated: February 5, 1987.

Harold V. Hunter,

Administrator.

[FR Doc. 87–3243 Filed 2–13–87; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Finding of No Significant Impact; Little Yadkin River Watershed, Stokes, Forsyth, and Surry Counties, NC

Introduction

The Little Yadkin River Watershed is a federally assisted action authorized for construction under Pub. L. 83–566, The Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with the development of supplemental changes of the watershed plan. This assessment was conducted in consultation with local, state, and federal agencies, as well as interested organizations and individuals. Data developed during the assessment are available for public review at the following locations:

United States Department of Agriculture, Soil Conservation Service, 310 New Bern Avenue, Raleigh, North Carolina 27601.

Recommended Action

Proposed is the construction of about 22 small pond size floodwater retarding dams for the reduction of downstream floodwater damage. The proposed 22 small dams is the selected alternative to building one large floodwater retarding reservoir known as Structure No. 2 in the original watershed plan.

Effects of Recommended Action

The proposed action will reduce floodwater damage on the East Prong of the Little Yadkin River and the floodplain that is common with West Prong on the Little Yadkin River. The same benefits will be derived from these 22 small structures as was expected from Structure No. 2, with additional benefits accruing between the small structures and the location of the one structure.

Each structure will be designed to store the runoff from the 25 year–1 day storm below the crest of the emergency spillway. The runoff from the 100 year–1 day storm will be routed through the emergency spillway to establish top of the dam.

The proposed project will protect agricultural land in the floodplain by reducing the frequency, depth and duration of flooding of cropland. The 22 small dams will control drainage from 4,130 acres.

Water quality will be improved by a drastic decrease in sediment transport (up to 80 percent). Available water quality data indicate water quality in Little Yadkin River is poor. Aquatic habitat downstream from each small pond is expected to improve. North Carolina Division of Environmental Management is considering monitoring of stream biota in some of these areas.

Fishery resources will benefit from project implementation due to the ponds providing ideal habitat for bass, bluegill, catfish, and other game fishes. Presently the fishery resource is predominantly non-game species. The drainageways are intermittent in flow.

Coordination with U.S. Fish and Wildlife Service, indicate no adverse effects on threatened and/or endangered species from project implementation.

Field surveys by U.S. Corps of Engineers personnel indicate that no regulated wetlands are present at any of the 22 sites.

Wildlife Habitat and Resources

Concerns were expressed over project impacts to wildlife resources in the area by the destruction of about 45 acres of existing woodland which is planned to be converted to surface pool area in the 22 farm ponds. These areas have been identified as Category 3 habitat losses by the U.S. Fish and Wildlife Service.

Impacts

The subject 45 acres to be converted from woodland to permanent pool areas in the 22 ponds represent less than two tenths of 1 percent of the watersheds' woodland area. Riparian woodland (category 3) is those wooded areas along the stream and drainageways. Using standard farm pond designs, the length of riparian strips along the pond sites that will be converted to permanent water areas is estimated to be about 13,000 feet (length of strips along both sides of the stream section to be converted). Total length of riparian woolland strips in the watershed is about 300 miles. The 13,000 feet of riparian woodland lost as a result of conversion to farm ponds in wooded areas is about eight tenths of one percent of the 300 miles of this type habitat in the watershed.

Existing wildlife habitat in the watershed was rated as "fair." Species diversity included cottontail rabbit, grey squirrel, quail, dove, duck, raccon, and whitetail deer. The installation of 22 farm ponds and the planting of odd areas around each pond with VA–70 and/or Bicolor should help replace any lost habitat values and contribute hebitat diversity.

Alternatives

The planned action is the most practical and acceptable alternatives to reduce floodwater damages in the North Fork of Little Yadkin River. The 22 small dams alternative is in lieu of one major floodwater retarding structure and 31 milies of channel improvement.

Consultation

Consultation with "publics" on this project began prior to 1975 when a "Negative Declaration" was issued for the original project. This assessment addresses issues and concerns which surfaced from various agencies as the result of deleting a major flood impoundment structure and about 32 miles of channel improvement and replacing these with 22 farm pond type structure. A 404 permit has been applied for by the local sponsors, subjecting the data in this assessment to the prescribed public review process. Agencies, groups, and others who have been involved with the scoping of this project include:

U.S. Army Corps of Engineers
U.S. Fish and Wildlife Service
U.S. Environmental Protection Agency
U.S. Geological Survey
U.S. Department of Agriculture
N.C. Wildlife Resources Commission
N.C. Division of Health Services
N.C. Division of Environmental Management
N.C. Department of Agriculture
N.C. Agricultural Extension Service
N.C. Department of Natural Resources and Community Development
N.C. Department of Cultural Resources
N.C. Division of Forest Resources
N.C. Division of Soil and Water
Little Yadkin River Watershed Improvement Commission
Stokes Soil and Water Conservation District
Surry Soil and Water Conservation District
Forsyth Soil and Water Conservation District

In November 1986, the local sponsors applied for a 404 permit for this project as supplemented. No significant impacts to the environment were identified during the public review process.

Conclusion

The environmental assessment summarized above from the Little Yadkin River indicates that this federal action will have no significant adverse local, regional, or national impacts on the environment, and further documented action under NEPA guidelines are not needed.

Dated: January 22, 1987.

Bobbye J. Jones,

State Conservationist.

[FR Doc. 87–3201 Filed 2–13–87; 8:45 am]

BILLING CODE 3410-16-M

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DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis
Title: Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons—1986
Form Number: Agency—BE–20; OMB—NA
Type of Request: New collection
Burden: 7,000 respondents; 100,000 reporting hours
Needs and Uses: This survey will secure data from U.S. persons on their services transactions with unaffiliated foreign persons. The data will fill major data gaps in the balance of payments and gross national product accounts and will be used to develop U.S. international trade policy, and to support U.S. trade policy initiatives.
Affected Public: State or local governments, farms, businesses or other for-profit institutions, non-profit institutions, small businesses or organizations
Frequency: Approximately every 5 years
Respondent's Obligation: Mandatory
OMB Desk Officer: Don Arbuckle 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: February 10, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–3192 Filed 2–13–87; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[C-333-601, A-333-602]

Postponement of Final Countervailing and Antidumping Duty Determinations; Certain Fresh Cut Flowers From Peru

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the respondent in these investigations that the final antidumping duty determination be postponed an additional ten (10) days, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)); and that we have postponed our final antidumping and countervailing duty determinations until not later than February 27, 1987.

EFFECTIVE DATE: February 17, 1987.

FOR FURTHER INFORMATION CONTACT: William E. Perry (Antidumping Duty) or Karen Busler (Countervailing Duty), Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–0160 (Perry) or 377–5404 (Busler).

Case History

On May 21, 1986, we received antidumping and countervailing duty petitions filed by the Floral Trade Council of Davis, California on certain fresh cut flowers from Peru. In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the antidumping petition alleged that imports of certain fresh cut flowers from Peru are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act) and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate an antidumping duty investigation, and on June 10, 1986, we initiated such investigation (51 FR 21947, June 17, 1986). The preliminary affirmative determination in this antidumping investigation was made on October 28, 1986.

In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the countervailing duty petition alleged that manufacturers, producers, or exporters in Peru of certain fresh cut flowers directly or indirectly receive benefits which constitute bounties or grants within the meaning of section 303 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on June 10, 1986, we initiated such an investigation (51 FR 21959, June 17, 1986). On July 7, 1986, the ITC preliminarily determined that there is a reasonable indication that imports of certain fresh cut flowers cause material injury to a U.S. industry (USITC Pub. No. 1887). On October 20, 1986, we issued a preliminary affirmative determination in the countervailing duty investigation (51 FR 37948, October 27, 1986).

On November 4, 1986, petitioners filed a request for extension of the deadline date for the final determination in the countervailing duty investigation to correspond with the date of the final determination in the antidumping duty investigation.

Section 705(a)(1) the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984, provides that when a countervailing duty investigation is "initiated simultaneously with an [antidumping] investigation . . . which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination [in the countervailing duty investigation] . . . to the date of the final determination" in the antidumping investigation (19 U.S.C. 1671d(a)(1)). Pursuant to this provision, we granted an extension of the deadline date for the final determination in the countervailing duty investigation on certain fresh cut flowers from Peru to January 12, 1987, the deadline for the final determination in the antidumping duty investigation.

On November 12, 1986 counsel for respondent requested that the Department extend the period for the final determinations in the countervailing and antidumping duty investigations to 105 days from publication of our preliminary affirmative antidumping determination in accordance with section 735(a)(2)(A) of the Act.

Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it published a notice of an affirmative preliminary determination, if exporters who account for a significant portion of the merchandise which is the subject of the investigation request a postponement.

If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. We determined that the respondent was qualified to make such a request since it accounts for all exports of the merchandise under investigation, and we extended our final antidumping and countervailing duty determinations until February 17, 1987 (51 FR 46906, December 29, 1986).

On January 30, 1987, counsel for respondent requested that the final antidumping and countervailing duty determinations be extended an additional ten days, until February 27, 1987, which is still within the 60-day extension period allowed by the Act. Accordingly, the Department will issue final determinations in these cases not later than February 27, 1987.

To comply with the requirements of Article 5, paragraph 3 of the Subsidies Code, the Department will direct the U.S. Customs Service to terminate suspension of liquidation in the countervailing duty investigation on February 24, 1986, which is 120 days from the date of publication of the preliminary determination in this case. No cash deposits or bonds for potential countervailing duties will be required for merchandise which enters after February 24, 1986. The suspension of liquidation will not be resumed unless and until the ITC issues a final injury determination and the Department publishes a final countervailing duty order in this case. We will also direct the U.S. Customs Service to hold any entries suspended prior to February 24, 1986, until the conclusion of this investigation.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

February 10, 1987.

[FR Doc. 87–3256 Filed 2–13–87; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Review on Certain Steel Products; Request for Comments

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of requests for short supply determinations under Article 8 of the U.S.-EC Arrangement on Certain Steel Products with respect to certain rotogravure doctor blade steel strip, certain coater blade steel strip, certain T–4 feeler gauge steel, certain flat-rolled carbon spring steel, certain shock absorber valve steel strip, certain teflon-coated cold-rolled sheet, and certain galvanized steel wire rope.

DATE: Comments must be submitted on or before February 27, 1987.

ADDRESS: Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution, Avenue NW., Washington, DC 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, Room 3087B, (202) 377–0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement on Certain Steel Products provides that if the U.S. ". . . determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product. . . ."

We have received short supply requests for the following products:

1. Certain Rotogravure Doctor Blade Steel Strip: 1% carbon, cold-rolled, hardened, tempered, polished, coiled, in thicknesses ranging from 0.00315 to 0.010 inch and in widths ranging from two to seven inches.

2. Certain Coater Blade Steel Strip: 1% carbon, cold-rolled, hardened, tempered, polished, coiled, in thicknesses ranging from 0.012 to 0.050 inch and in widths ranging from 2.50 to 4.25 inches.

3. Certain Swedish T–4 Feeler Gauge Steel: general specification AISI 1095, hardened, tempered, bright polished, round polished edges, in widths of 0.250 inch and 0.505 inch, and in thicknesses ranging from 0.001 to 0.065 inch.

4. Certain Flat-Rolled Carbon Spring Steel: general specification AISI 1080, hardened, tempered, grinded, polished, in coils, in thicknesses ranging from 0.038 to 0.090 inch and widths ranging from 0.120 to 0.875 inch.

5. Certain Shock Absorber Valve Steel Strip: general specification AISI 1095, hardened, tempered, in thicknesses ranging from 0.004 to 0.020 inch and widths ranging from 0.79 to 3.25 inches.

6. Certain Cold-Rolled Teflon-Coated Carbon Steel Sheet and Strip: in thicknesses ranging from 0.18 to 0.28mm and widths ranging from 105 to 508mm, having one-sided chromed teflon coating of 23 to 26 microns.

7. Certain Galvanized Steel Wire Rope: 3 x 46, with twist not to exceed one degree per foot, as follows:

(a) ⅝ inch in diameter, with a minimum breaking strength of 40,300 PSI and an elastic limit of 30,225 PSI;

(b) ⅞ of an inch in diameter, with a minimum breaking strength of 87,000 PSI and an elastic limit of 66,000 PSI;

(c) One inch in diameter, with a minimum breaking strength of 113,000 PSI and an elastic limit of 85,000 PSI.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B–099 at the above address.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

February 9, 1987.

[FR Doc. 87–3257 Filed 2–13–87; 8:45 am]

BILLING CODE 3510-DS-M

Armed Forces Radiobiology Research Institute et al.; Consolidated Decisions on Applications for Duty-Free Entry of Scientific Articles

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Decision: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for each of the listed dockets.

Docket Number: 86–171. Applicant: Armed Forces Radiobiology Research

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Institute, Bethesda, MD 20814–5145. Instrument: Preparative Quench Flow Unit, Model PQ–43. Manufacturer: Hi-Tech Scientific Ltd., United Kingdom. Date of Denial Without Prejudice to Resubmission: October 9, 1986.

Docket Number: 87–017. Applicant: University of Cincinnati, Cincinnati, OH 45221. Instrument: VG PlasmaQuad ICP Mass Spectrometer. Manufacturer: VG Instruments, United Kingdom. Date of Denial Without Prejudice to Resubmission: October 31, 1986.

Docket Number: 86–257. Applicant: Albany Medical School, Albany, NY 12208. Instrument: Rapid Kinetics Accessories for Spectro-photometer/Spectrofluorometer, Model SFA–11. Manufacturer: Hi-Tech Scientific Ltd., United Kingdom. Date of Denial Without Prejudice to Resubmission: November 21, 1986.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc 87–3255 Filed 2–13–87; 8:45 am]

BILLING CODE 3510–DS–M

University of Illinois et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 85–125. Applicant: University of Illinois, Urbana-Champaign Campus, Urbana, IL 61801. Instrument: Electron Beam Microfabrication System, Model 6.5–AL10B. Manufacturer: Cambridge Instruments Inc., United Kingdom. Intended Use: See notice at 50 FR 13844. Reasons for this Decision: The foreign instrument is capable of (1) exposing structures smaller than 0.25 micrometers and (2) rapid, raster exposure of sparse patterns. Date of Order: November 11, 1984. Advice Submitted by: The National Bureau of Standards, November 26, 1986.

Docket Number: 85–112. Applicant: Massachusetts Institute of Technology, Cambridge, MA 02139. Instrument: Scanning Electron Microscope, Model Stereoscan 253–G60PL/250Mk3 with Accessories.

Manufacturer: Cambridge Instruments Inc., United Kingdom. Intended Use: See notice at 50 FR 13059. Reasons for This Decision: The foreign instrument provides (1) a very large specimen chamber (permitting movements of 100 x 100 x 30 millimeters), (2) a guaranteed resolution of 3.5 nanometers, and (3) a selected area electron channeling pattern (SAECP) capability. Date of Order: December 19, 1986. Advice Submitted By: The National Bureau of Standards, November 24, 1986.

Docket Number: 85–259R. Applicant: University of Oklahoma, Norman, OK 73019. Instrument: Mass Spectrometer, Model MS–25 with Accessories. Manufacturer: Kratos Analytical Instruments, United Kingdom. Intended Use: See original notice of this resubmitted application at 50 FR 34538. Reasons for This Decision: The foreign instrument provides: (1) Analysis of liquid chromatographic separations with soft ionization (thermospray), (2) scan speed down to 0.5 seconds per decade, and (3) a fast data system. Date of Order: April 15, 1985. Advice Submitted By: The National Institutes of Health, December 9, 1986.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, was being manufactured in the United States at the time each instrument was ordered. The National Bureau of Standards and the National Institutes of Health advise in the respectively cited memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to any of the foreign instruments for the applicant's intended use being manufactured at the time the foreign instrument was ordered.

We know of no other domestic instrument or apparatus of equivalent scientific value to any of the foreign instruments, for such purposes as each instrument is intended to be used, which was being manufactured at the time of order of each instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87–3254 Filed 2–13–87; 8:45 am]

BILLING CODE 3510–DS–M

Export Trade Certificate of Review; Application; Eximark Corp.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than March 9, 1987, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 87–00003."

Applicant: Company Name: Eximark Corporation.

Address: 155 West Street, Wilmington, MA 01887.

Contact: John F. Whelan, President. Telephone: 617/270–3704.

Application #: 87–00003.

Date Deemed Submitted: February 2, 1987.

Controlling Entity: None.

Members (in addition to applicant): None.

Summary of the Application

A. Export Trade

1. Products

All products. The export related activities of the Eximark Corporation ("Eximark") will focus primarily on high technology products related to data processing and telecommunications.

2. Services

Services for export include but are not limited to consulting, education, market research, advertizing, promotion, marketing, product research and design for export, transportation, trade documentation, communications, processing orders, handling, warehousing, complying with Export Administration Regulations or any other government controls, foreign exchange, financing, insuring, buying, selling, assembling for export, and appointing third party distribution channels or any other export activity.

3. Export Trade Facilitation Services

a. *Consultancy services:* Including but not limited to market research, and services to locate overseas distribution channels, create agreements for business partner relationships, provide assistance in compliance with Export Administration Regulations and documentation, advise on foreign business practices, regulatory environment and cultural differences.

b. *Operational services:* Such as export management, including but not limited to freight management, customs clearance, communicating overseas, export import documentation, acquiring necessary overseas regulatory approvals, consulting, education, market research, advertizing, promotion, marketing, product research and design for export, transportation, trade documentation, communications, processing orders, handling, warehousing, complying with Export Administration Regulations or any other government controls, foreign exchange, financing, insuring, buying, selling, assembling for export, and appointing third party distribution channels or any other export activity.

B. Export Markets

Worldwide.

C. Export Trade Activities and Methods of Operation

In connection with the export of Products and Services or with the provision of Export Trade Facilitation Services, Eximark seeks certification to:

1. Enter into exclusive or nonexclusive agreements with suppliers or with buyers for the Export Markets to act as a consultant, sales representative, agent, broker, or other provider of services.

2. In the event that Eximark and a supplier mutually agree to an exclusive agreement in any particular territory, Eximark shall be compensated if sales occur in that territory.

3. Enter into exclusive or nonexclusive agreements with persons for the Export Markets, including but not limited to end-user customers, distributors, sales agents or other distribution channels to sell suppliers' or Eximark's Products or Services or to appoint distribution channels for the sale of suppliers' or Eximark's Products or Services or to create joint ventures in the Export Markets.

4. For itself or on behalf of suppliers, Eximark intends to engage in the following additional activities:

a. Establish policies and prices at which suppliers Products or Services shall be sold in the Export Markets.

b. Establish quantities of Products or Services sold.

c. Allocate Products or Services sold to any party for the Export Markets.

d. Refuse to: (1) Quote or sell Products or Services to any party for the Export Markets in competition with suppliers, or if in Eximark's reasonable opinion doing business with any party for the Export Markets which could harm Eximark or its suppliers; (2) do business with any party who in Eximark's opinion will not conduct business or perform in a manner such that Eximark and its clients can perfect its obligations under U.S. Department of Commerce Export Administration Regulations or other laws of the United States of America.

e. Modify or cause to be modified Products or Services to conform with foreign country requirements of any kind to facilitate the sale of Products or Services in foreign countries.

5. Eximark may at its option act as the procuring agent with respect to the sale of suppliers Products and Services for the Export Markets.

Dated: February 11, 1987.

James V. Lacy,

Director, Office of Export Trading Company Affairs.

[FR Doc. 87–3252 Filed 2–13–87; 8:45 am]

BILLING CODE 3510–DR–M

[A–588–020]

Titanium Sponge From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On November 7, 1986, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on titanium sponge from Japan. The review covers two manufacturers and their exporters of this merchandise and the period November 15, 1984 through October 31, 1985.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received and the correction of certain clerical errors, we have changed the final results for certain firms from those presented in our preliminary results of review.

EFFECTIVE DATE: February 17, 1987.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1130/3601.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 40475) the preliminary results of its administrative review of the antidumping duty order on titanium sponge from Japan (49 FR 47053, November 30, 1984). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of unwrought titanium sponge, which is a porous, brittle metal which has a high strength-to-weight ratio and is highly ductile. It is an intermediate product used to produce titanium ingots, slabs, billets, plates, and sheets. Titanium sponge is currently classifiable under item 629.1420 of the Tariff Schedules of the United States Annotated. The review covers two manufacturers and their exporters of Japanese titanium sponge and the period November 15, 1984 through October 31, 1985.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from the petitioner, RMI Company ("RMI"), and two respondents, Osaka Titanium Co., Ltd. ("Osaka") and Toho Titanium Co., Ltd. ("Toho"). (We received additional comments from the respondents concerning mathematical or clerical errors. We have corrected such errors but have not addressed them specifically in this notice.)

Petitioner's Comments

Comment 1: The petitioner argues that Osaka's cost of purchased magnesium/kg. of sponge produced is too low when compared with the report loss rates of

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magnesium. The petitioner presents a similar argument about chlorine raw material costs.

Department's Position: Osaka introduces additional magnesium and chlorine into the production process in the form of magnesium chloride drawn from inventory and recycled through electrolysis. This reduces the amounts of magnesium and chlorine that Osaka must purchase. All costs of magnesium and chlorine used in the production process, including the costs of materials withdrawn from inventory, were reported and verified.

Comment 2: The petitioner contends that Osaka's argon costs are unreliable since no loss rate was given for argon.

Department's Position: Osaka reported, and we included in the cost of production ("COP"), the cost of all argon entered into the production process.

Comment 3: RMI claims that Osaka's stated labor costs for titanium sponge production are disproportionately low when compared to the labor costs in its Ministry of Finance ("MOF") reports, and that they should therefore be adjusted upwards.

Department's Position: Using the MOF report as a check for accuracy, we verified that the labor cost information as reported was complete.

Comment 4: The petitioner claims that Osaka understated its capital costs by ignoring the costs associated with capital equipment write-offs.

Department's Position: The extraordinary losses on the financial statement represent the write-off of the undepreciated value of titanium sponge production equipment which was considered obsolete. We do not view them as being extraordinary expenses since they do not occur infrequently nor are they unusual in the environment in which the company operates. This is evidenced by the extraordinary loss on Osaka's financial statements during the preceding period of investigation. A write-off of idle equipment should not serve as a means of avoiding its inclusion within COP. This equipment is directly related to the production of titanium sponge, its undepreciated value has never been charged against production of this merchandise, and it was expensed during the period of review. Therefore, we included it in this period's COP.

Comment 5: RMI claims the Department should have used Osaka's consolidated selling, general, and administrative expenses ("SG&A") in calculating SG&A costs to be allocated to product lines. Moreover, the Department erroneously used a consolidated cost of goods sold ("COGS") figure when allocating expenses incurred by the parent company.

Department's Position: Because the majority of the subsidiary's sales are made through the parent, the unconsolidated COGS is nearly identical to the consolidated COGS. The Department therefore agrees that the consolidated SG&A expenses should be allocated across all products sold during the period of review.

Comment 6: RMI argues that the Department should have allocated Osaka's consolidated G&A expenses over the cost of all goods produced during the review period, not over the cost of producing goods sold during the review period.

Department's Position: We allocated selling, general, and administrative expenses on the basis of COGS. Although general and administrative expenses are not related only to sales, sales are a better reflection of the total activity of a company than is the cost of goods produced.

Comment 7: RMI contends that the Department should have included the special bonuses to directors in Osaka's SG&A amounts.

Department's Position: We disagree. These special bonuses represent a distribution of retained earnings to directors. They are separate and distinct from regular bonus amounts paid to employees before taxes which are included within COP.

Comment 8: Since a company has the capability to shift financing costs within a consolidated corporate structure, RMI claims the Department understated the proper financing costs attributable to titanium sponge by Osaka by failing to use consolidated financing costs in its calculation.

Department's Position: We agree and have revised our calculations accordingly.

Comment 9: RMI argues that the Department understated the amount of Osaka's financing expenses associated with titanium sponge by not properly accounting for the costs of carrying inventory.

Department's Position: The Department based its determination of cost of production on the actual costs incurred by the company. Therefore, the carrying costs of the finished inventory have been effectively accounted for in the cost of manufacturing and the interest expense. The Department considers its method of allocation of interest expense among the products sold by the company to adequately reflect such expenses necessary for all activities related to production. Further, there is no basis to believe that additional actual financial expenses should be attributed to titanium sponge to reflect the carrying expense of its finished inventories, since titanium sponge inventories do not account for a significant portion of the total assets being financed by the company, nor are such finished inventories disproportionately greater than the finished inventories of the other products.

Comment 10: RMI notes that Toho reported no replacement costs for magnesium and proposes a method for calculating these costs in COP.

Department's Position: While Toho did not separately report magnesium loss rates in its initial submission, it provided total raw material costs which include costs for all magnesium consumed during production. We verified that Toho accurately reported the amount of magnesium consumed.

Comment 11: RMI claims that Toho's labor costs are significantly understated.

Department's Position: We verified that the reported labor costs, which were based on corporate-wide production department records, were complete and accurate.

Comment 12: The petitioner contends that Toho understated its depreciation costs by ignoring costs associated with idle facilities or facilities that were written off during the period.

Department's Position: Although not included within its own COP for titanium sponge, Toho submitted information regarding idle and written-off equipment. All expenses associated with titanium sponge equipment/production were verified and included in our COP calculation.

Comment 13: The petitioner contends that Toho and the Department understated SG&A expenses because we deducted freight and packing costs from SG&A when these amounts were already excluded from this total.

Department's Position: Freight expenses were separately itemized within SG&A, while packing and labor expenses were included within "salaries" and "supply" categories. Both were included in the SG&A total figure from which they were properly deducted.

Comment 14: The petitioner argues that Toho and the Department should allocate G&A costs on the basis of the cost of goods produced during the review period rather than the cost of goods sold.

Department's Position: For Toho, as well as for Osaka, we allocated SG&A expenses based on the relative cost of goods sold. We prefer to allocate current expenses on the basis of the cost of current sales. Acceptance of the petitioner's methods of allocating G&A costs could lead to the anomalous situation where, if all sales were made out of inventory, the cost of production for these sales would not include any G&A expenses.

Comment 15: RMI contends that Toho improperly omitted a special provision for supervisors' and directors' bonuses from its SG&A calculation.

Department's Position: We disagree. These amounts were not part of SG&A since they were distributed from after-tax profits.

Comment 16: The petitioner contends that the Department understated Toho's financing costs by allocating them over COGS, which is skewed due to understated manufacturing costs and which fails to account for Toho's rising inventory levels. The petitioner urges the Department to identify separately inventory carrying costs associated with titanium sponge. The corporate-wide pool of short-term expenses should be reduced by an equivalent amount.

Department's Position: Inventory costs are included in the allocation of financing expenses and manufacturing overhead. We adjusted the COGS figure to include all cost-of-manufacturing expenses. It is the Department's normal practice to consider short-term financing expenses to be borne by all products sold by the corporation. There is no basis upon which to attribute disporportionately short-term financing expense to titanium sponge because of its finished inventories. Since short-term interest expense is related to all current assets, the Department could not disportionately assign interest to a product because of an increase for any one of the numerous current assets involved in its production. Furthermore, the Department has determined that altering the allocation methodology from a COGS basis would not significantly change the financing expense figure.

Comment 17: RMI contends that non-operating income should not be used as an offset to production costs because there is no evidence in the record that such income is related to the production of titanium sponge.

Department's Position: We disagree. As is our policy, we offset the short-term interest expense with only that interest income shown to be related to the ordinary course of business. The excess of short-term interest income over short-term interest expense is not used to reduce production costs.

Comment 18: RMI argues that commission expenses in one market should be offset in the other market only when comparable costs are incurred in both markets.

Department's Position: We disagree. Under § 353.15(c) of the Commerce Regulations, reasonable allowance for actual selling expenses in one market will be made were commissions are paid in the other market. The allowance is limited to the lesser of the two amounts. The expenses in the two markets do not have to be comparble.

Toho's Comments

Comment 19: Toho argues that in calculating foreign market value ("FMV") the Department should use prices charged to the first unrelated customers in Japan rather than prices from Toho to related parties.

Department's Position: We agree. Since the vast majority of Toho's sales are made to related parties, we based FMV on the prices charged to the first unrelated customers in the home market, adjusted for the related party's titanium sponge selling expenses.

Comment 20: Toho claims it properly excluded from its COP certain extraordinary losses arising from the write-off of obsolete production facilities.

Department's Position: We disagree. See our position on Comment #4.

Comment 21: Toho claims an offset for interest income against interest expense because both the income and expense are claimed to be unrelated to titanium sponge production.

Department's Position: See our position on Comment #17.

Osaka's Comments

Comment 22: Osaka asserts that the Department should exclude from COP all non-operating expenses.

Department's Position: We disagree. We verified the Osaka's non-operating expenses were general and administrative in nature; therefore, we included them within COP.

Comment 23: Osaka argues that, assuming some non-operating expenses or extraordinary losses may be included in COP, we should exclude from COP the extraordinary loss suffered by Osaka for obsolete assets, as we did in the original fair value investigation.

Department's Position: We disagree. See our position on Comment #4.

Comment 24: Osaka claims that, assuming interest expense may be included in COP, the Department should follow its own precedent in the original fair value investigation and offset such expense by the amount of interest income earned.

Department's Position: See our position on Comment #17.

Comment 25: Osaka claims that in calculating FMV, in accordance with § 353.22(b) of the Commerce Regulations, the Department should use all sales to related parties because prices of such are comparable to prices to unrelated parties.

Department's Position: We agree and have included these sales in our FMV calculations.

Comment 26: Osaka argues that we should not include in the cost of U.S. credit an amount reflecting the interest cost incurred before the time the merchandise is shipped in the U.S. to the customer.

Department's Position: We disagree. In accordance with our policy in purchase price transactions, when the related U.S. importer acts merely as an agent, we calculate U.S. credit from the time of shipment from the exporter to the time of payment. Since it is a direct expense, we have included it in our adjustment for the differences in U.S. and home market terms.

Comment 27: In calculating COP Osaka claims that we should exclude expenses directly related to the production of silicon by Osaka's silicon-producing subsidiary.

Department's Position: Since the allocation of SG&A expenses was done on a consolidated basis, these G&A expenses are properly included in the pool of commonly-shared expenses.

Final Results of the Review

As a result of the comments received, we have revised our preliminary results and we determine that the following margins exist for the period November 15, 1984 through October 31, 1985:

Manufacturer/exporter	Margin (percent)
Toho Titanium/Mitsui	0
Osaka Titanium/Sumitomo	0

The Department will instruct the Customs Service not to assess antidumping duties on all appropriate entries. Further, as provided for in section 751(a) (1) of the Tariff Act, no cash deposit of estimated antidumping duties shall be required on entries of this merchandise from these firms, or on future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after October 31, 1985, and who is unrelated to any reviewed firm or any previously reviewed firm. For any shipments from the one known manufacturer and/or exporter not covered in this review, the cash deposit will continue to be at the rate published in the antidumping duty order for this firm (49 FR 47053, November 30, 1984). These deposit requirements are effective for all

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shipments of Japanese titanium sponge entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review and notice are in accordance with section 751(a) (1) of the Tariff Act (19 U.S.C. 1675(a) (1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: February 5, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-3253 Filed 2-13-87; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

[Docket No. 70117-7017]

National Voluntary Laboratory Accreditation Program; Directory Supplement Publication

AGENCY: National Bureau of Standards, Commerce.

ACTION: Publication of NVLAP directory supplement.

SUMMARY: The National Bureau of Standards (NBS) announces laboratory accreditation actions taken during the fourth quarter of 1986.

FOR FURTHER INFORMATION CONTACT: Harvey W. Berger, Manager, Laboratory Accreditation, ADMIN A531, National Bureau of Standards, Gaithersburg, MD 20899, (301) 975-4016.

SUPPLEMENTARY INFORMATION: This supplement to the 1985-86 NVLAP Directory of Accredited Laboratories (NBSIR 86-3315) is published pursuant to § 7.6(b) of the National Voluntary Laboratory Accreditation Program (NVLAP) Procedures (15 CFR 7.6(b)).

The following table summarizes NVLAP accreditation actions for the period October 1, 1986, through December 31, 1986.

	TIM	CON	CAR	STO	ACO	CPL	DOS	SEA	ECT	Totals
Initial accreditations							2			+2
Renewed accreditation		1								+1
Suspensions	1									-1
Terminations	1	3			1					-5
861231 balance	35	28	21	9	7	6	44	1	14	165

The laboratories awarded initial accreditations are:

Dosimetry:

Arizona State University, Tempe, AZ, G. William Klinger, 602-965-1065

Gulf Nuclear, Webster, TX, Joseph A. Pryber, 713-338-2652

The laboratory whose accreditation was renewed is:

Concrete: Gifford Hill, De Soto, TX, Stuart Pryor, 214-651-0066.

The laboratory whose accreditation was suspended is:

Insulation: Butler Manufacturing, Grandview, MO.

The laboratories whose accreditations were terminated are:

Insulation: Owens Corning Fiberglas, Barrington, NJ.

Concrete:

Contractors Supply Corporation, Wheeling, WV.

Kelso Industries, Galveston, TX.

Construction Technology, Skokie, IL.

Acoustics: Owens Corning Fiberglas, Granville, OH.

TIM—Insulation LAP
CON—Concrete LAP
CAR—Carpet LAP
ACO—Acoustical Testing Services LAP
STO—Stove LAP
CPL—Commercial Products LAP (Paint, Paper, Mattresses)
DOS—Dosimetry LAP
SEA—Seals and Sealants LAP
ECT—Electromagnetic Compatibility and Telecommunications

Dated: January 21, 1987.

Ernest Ambler,

Director.

[FR Doc. 87-3193 Filed 2-13-87; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings and Hearing

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's advisory bodies will convene working meetings, and the North Pacific Council will convene a public hearing during March. The public meetings and public hearing will be held at the Northwest and Alaska Fisheries Center, National Marine Fisheries Service, Room 2079, Building 4, 7600 Sand Point Way, NE., Seattle, WA.

Crab Management Committee—On March 3, 1987, at 9 a.m. and continuing on March 4, if necessary, will review progress of the plan team in drafting a new king and tanner crab fishery management plan (FMP).

Council—On March 4 at 1:30 p.m. will convene its annual public hearing on king and tanner crab management issues and State shellfish proposals for the 1987-88 fishery, if available.

Plan Teams for the Gulf of Alaska and Bering Sea/Aleutian Islands Groundfish FMPs—On March 5 at 9 a.m. and continuing on March 6, will jointly begin analyzing and developing amendment proposals for groundfish for the 1987 amendment cycle. The Council will review the proposals at the Council's March 18-20, 1987, meeting in Anchorage and, at that time, will determine which proposals will be sent for public review and further development. For more information contact Steve Davis, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK; telephone: (907) 274-4563.

Dated: February 5, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87-3189 Filed 2-13-87; 8:45 am]

BILLING CODE 3510-22-M

Listing Endangered and Threatened Species: Action on a Petition To List the Chinese River Dolphin

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of Determination on Petition and Request for Information.

SUMMARY: NMFS has received a petition to add the Chinese river dolphin (*Lipotes vexillfer*) to the U.S. List of Endangered and Threatened Wildlife. In accordance with section 4 of the Endangered Species Act of 1973 (ESA), the Assistant Administrator for Fisheries has determined that the petition presents substantial scientific information indicating that the action may be warranted. As required by the ESA, the Service will review the status of the Chinese river dolphin to determine if the petitioned action is warranted. To ensure that the review is comprehensive, the Service is soliciting information and data concerning the status of this species.

DATE: Comments and information should be received by 60 days after notice is published.

ADDRESS: Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Margaret Lorenz, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235 (202/673-5348).

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the ESA and 50 CFR Part 424 contain provisions allowing interested persons to petition the Secretary of the Interior or the Secretary of Commerce to add or remove a species from the List of Endangered and Threatened Wildlife. Within 90 days after receiving a petition, the Secretary must determine whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. If a petition is substantial, a status review is conducted to determine whether the species should be listed.

A species is determined to be endangered or threatened for any of the following reasons: (1) Present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Determinations concerning decisions on listings are made solely on the best scientific and commercial data available after a status review of the species is conducted and after taking into account any efforts being made by any State, or foreign nation, or its subdivision, to protect the species.

Petition Received

On December 3, 1986, NMFS received a petition from the Center for Environmental Education to list the Chinese river dolphin (*Lipotes vexillfer*) as an endangered species. According to the petition, this river dolphin is found primarily in the lower and middle sections of the Chang Jiang (Yangzte) River in the eastern, central region of mainland China.

The Assistant Administrator for Fisheries has determined that the petition presented substantial scientific information and is conducting a review of the status of the Chinese river dolphin to determine if the petitioned action is warranted.

Biological Information Solicited

To ensure that the review is complete and is based on the best available scientific and commercial data, NMFS is soliciting information and comments concerning the status of the Chinese River dolphin from any interested person. We request that data, information, and comments be accompanied by (1) supporting documentation such as maps, bibliographic reference, or reprints of pertinent publications and (2) the person's name, address, and any association, institution, or business that the person represents.

Dated: February 5, 1987.

William E. Evans,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-3190 Filed 2-13-87; 8:45 am]

BILLING CODE 3510-22-M

Sea Grant Review Panel Meeting

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice of Open Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting has several purposes. Panel members will hear and discuss results of their subcommittee studies on the role and responsibility of the Panel, site visits, priority objectives, programs and priorities for selected Sea Grant subjects, and planning for Panel activities for the coming year. Panel members will also hear from the Council of Sea Grant Directors, Sea Grant Association, on the reauthorization process, from the National Association of State Universities and Land Grant Colleges' (NASULGC) staff on activities of the Marine Division.

DATE: The announced meeting is scheduled for two days, March 2 and 3, 1987, as follows: March 2, 1987, 8:30 a.m. to 3:30 p.m.; and March 3, 1987, 8:30 a.m. to 3:00 p.m.

ADDRESS: The meetings will be held at: NASULGC Conference Room, One Dupont Circle, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Dr. David B. Duane, National Sea Grant College Program, R/SE1, 6010 Executive Boulevard, Rockville, Maryland 20852 (301) 443-8894.

SUPPLEMENTARY INFORMATION: The Panel, which consists of balanced representation from academia, industry, state government, and citizens groups, was established in 1976 by section 209 of the Sea Grant Improvement Act (Pub. L. 94-461, 33 U.S.C. 1128) and advises the Secretary of Commerce, Administrator of NOAA, and the Director of the National Sea Grant College Program with respect to operations under the act, and such other matters as the Secretary refers to the Panel for review and advice.

The agenda for the meeting is:

Monday, March 2, 1987

8:30—11:45 a.m.—
A. Reports of the National Office: office activities, reviews of estuarine program, fisheries program, and biotechnology program.

1:00 to 3:30 p.m.—
B. Presentation of subcommittee reports.

3:30 to 5:30 p.m.—
Adjournment to meet with Council of Sea Grant Directors.

Tuesday, March 3, 1987

8:30-11:30 a.m.—
C. Discussion of subcommittee reports.

1:00-3:00 p.m.—
D. Planning for future activities and next meeting.

The meeting will be open to the public.

Dated: February 6, 1987.

Joseph O. Fletcher,

Assistant Administrator, Oceanic and Atmospheric Research.

[FR Doc. 87-3198 Filed 2-13-87; 8:45 am]

BILLING CODE 3510-12-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Patent Licensing Specialist, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce

Department of Agriculture

SN 6-646,730 (4,629,079)

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Improved Transport Carriage
SN 6-638,815 (4,605,640)
Oil-Absorbent Cellulosic Derivatives
SN 6-775,949
Method and Apparatus for the Treatment of Ruminant Forage Material or Soil
SN 6-789,212 (4,629,470)
Process for Dyeing Smooth-Dry Cellulosic Fabric
SN 6-905,208
Process for Producing Smooth-Dry Fabric with Durable Softness and Dyeability Properties
SN 6-905,209
Enhancing Anthelmintic Uptake in Nematodes by Phagostimulants
SN 6-916,346
Instant Flan-type Pudding Using Cereal Flour

Department of Commerce

SN 6-680,114 (4,633,256)
Method and Apparatus for Four-Beam Radar
SN 6-909,433
Electrodeposition of Chromium from a Trivalent Electrolyte
SN 6-929,467
Method and Apparatus for Forming Mechanically Adjustable Break Junctions for Establishing an Electron Tunneling Current

Department of Health and Human Services

SN 6-619,325 (4,622,291)
Method and Device for Quantitative Endpoint Determination in Microfluorophotometry
SN 6-895,942
A Recombinant DNA Clone Containing A Genomic Fragment of PfHRP-II Gene from *Plasmodium Falciparum*
SN 6-905,253
Prokaryotic Expression in Eukaryotic Cells

Department of Interior

SN 6-702,201 (4,627,899)
Electrolytic Cell and Methods Combining Electrowinning and Electrochemical Reactions Employing a Membrane or Diaphragm

Department of the Air Force

SN 6-501,945 (4,611-915)
Absolute Distance Sensor
SN 6-538,872 (4,611,208)
Means for Aligning Elevation Beam Pattern Along an Isodop in Synthetic Aperture Mapping Radar
SN 6-610,142 (4,614,429)
Atmospheric Contrast Transmitance Monitor
SN 6-616,454 (4,614,466)
Damaged Radar Randome Repair Device
SN 6-620,211 (4,611,124)
Fly's Eye Sensor Nonlinear Signal Processing
SN 6-622,614 (4,611,210)
Turnaround Control for Mechanically Scanned Radar Antennas
SN 6-624,568 (4,613,862)
Adaptive Mutual Interference Suppression Method
SN 6-627,699 (4,614,919)
Magnetostatic Wave Frequency Analyzer Apparatus
SN 6-637,238 (4,604,936)
Arresting and Recovery System for Test Missiles
SN 6-640,636 (4,609,169)
Propellant Tank Resupply System
SN 6-659,484 (4,611,816)
Cargo Handling System
SN 6-664,197 (4,610,019)
Energizing Arrangement for Charge Coupled Device Control Electrodes
SN 6-667,194 (4,610,499)
Diffraction Diffusion Screen with Holographically Suppressed Zero-Order Beam
SN 6-672,237 (4,614,220)
Method for Continuously Casting Thin Sheet
SN 6-704,598 (4,612,687)
Harness Fasteners
SN 6-705,060 (4,609,843)
Temperature Compensated Berlinite for Surface Acoustic Wave Devices
SN 6-720,937 (4,612,733)
Very High Speed Lap with Positive Lift Effect
SN 6-743,853 (4,612,533)
Harmonic Distortion Reduction Technique for Data Acquisition
SN 6-758,929 (4,612,066)
Method for Refining Microstructures of Titanium Alloy Castings
SN 6-767,446 (4,614,921)
Low Pass II Section Digital Phase Shifter Apparatus
SN 6-834,092
Binary Phase-Only Optical Correlation System and Method of Fabrication Thereof
SN 6-861,465
Planar Three-Dimensional Constrained Lens for Wide-Angle Scanning
SN 6-876,585
Controllable Ejection Seat Catapult
SN 6-880,219
High Voltage Insulators for Long, Linear Switches
SN 6-888,608
Missile Azimuth Alignment System
SN 6-889,650
Container Latch
SN 6-893,831
Self-Generated Converter Filter
SN 6-896,042
Multiconcentric Coaxial Cable Pulse Forming Device
SN 6-900,055
Method of Bonding Protective Covers Onto Solar Cells
SN 6-905,596
Network Interface Module and Method
SN 6-907,345
Alignment Reference Device
SN 6-908,853
Chemical Inhibitor for Solid Propellants
SN 6-914,410
Flow Through Device for Determination of the Penetration Rate of Chemicals Across Biological Membranes in Vitro
SN 6-916,965
Multiple Yarn Insertion Device

Department of the Army

SN 6-880,476
Method and Composition for Inducing Low Levels of Methemoglobinemia for Protection Against Cyanide Poisoning
SN 6-884,691
Method for Detecting, Separating, or Purifying Inositol and Phosphatidylinositol Through Binding to Concanavalin A
SN 6-900,063
Isocyanates from Oxalyl Chloride and Amines
SN 6-911,689
Phospholipid Compositions and Their Effective Use as Anti-Tumor Agents
SN 6-920,650
A Facile, High Yield Synthesis of 2, 3-Diphenyl-1,3-Butadiene.

[FR Doc. 87-3206 Filed 2-13-87; 8:45 am]
BILLING CODE 3510-04-M

COMMODITY FUTURES TRADING COMMISSION

Evening Session at the Chicago Board of Trade

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for comment.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is seeking comments on rule amendments filed by the Chicago Board of Trade ("CBT" or "Exchange") pursuant to section 5a(12) of the Commodity Exchange Act ("Act") that would authorize an evening trading session at the Exchange. Specifically, the amendments would establish an additional session from 5:00 p.m. to 9:00 p.m. (Chicago time), Sunday through Thursday, in the following contracts: U.S. Treasury Bond ("T-Bond") futures, options on T-Bond futures, Long-Term U.S. Treasury Note ("T-Note") futures, and options on T-Note futures. The Commission believes that publication of the proposal will assist the Commission in considering the views of interested persons and is consistent with the purposes of the Act. Copies of the proposed rule amendments and accompanying correspondence are available from the Secretary of the Commission at the address and telephone number set forth below.

DATE: Comments must be submitted by March 13, 1987.

ADDRESS: Written comments must be submitted to and copies of the proposal may be obtained from: Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 (Attention: Jean A. Webb, Secretary) Telephone: (202) 254-6314.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Rosenzweig, Associate Director, or John C. Lawton, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: The CBT has submitted rule amendments which would provide for an evening trading session from 5:00 p.m. to 9:00 p.m. (Chicago time), Sunday through Thursday, in T-Bond futures, options on T-Bond futures, T-Note futures, and options on T-Note futures. Under the proposal, the evening session would be deemed to be the first part of the trading day—*i.e.*, the evening session and the subsequent calendar day's regular session would be deemed to be parts of a single trading day. Highlights of the proposal are outlined below. Certain additional matters are addressed in correspondence between the Commission staff and the exchange that is available from the Office of the Secretariat.

Under the proposal, additional time brackets would be created to accommodate the evening session. Daily price limits would be calculated on the basis of settlement prices established following the regular session and would apply to the entire trading day (evening session plus the ensuing regular session). Similarly, open interest would be calculated at the end of the regular session. Volume, however, would be calculated twice during the trading day, at the end of each session.

The Exchange does not foresee any problems being created by the evening session with respect to the Commission's large trader reporting requirements applicable to the Exchange and to futures commission merchants and members of the Exchange. Further, the Exchange does not expect to make any modifications to current procedures for delivery, or option exercise and assignment.

The Exchange anticipates that net capital and segregation requirements would continue to be computed at the end of each trading day at 2:00 p.m. Margin requirements would be based on a net calculation of positions created during the calendar day's regular session coupled with those created during the subsequent evening session. Thus, margin would continue to be collected each morning. The Exchange contemplates that trades will be continuously matched during the evening session through a continuous submission of trades to the clearing house.

The Commission believes that publication of the proposal will assist the Commission in considering the views of interested persons and is consistent with the purposes of the Act. Any person interested in submitting written data, views, or arguments on the CBT proposal should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

Issued in Washington, DC on February 12, 1987, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-3345 Filed 2-13-87; 8:45 am]
BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Thurs. and Fri., 4-5 March 1987.

Times of Meeting: 0900-1630 hours each day.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup for Army Analysis will meet for discussions with the Army leadership. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87-3205 Filed 2-13-87; 8:45 am]
BILLING CODE 3710-08-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Integrated Avionics for Advanced Aircraft and Aircraft Retrofit will meet on March 4-6, 1987. The meeting will be held at the U. S. Naval Station, Long Beach, California. The meeting will commence at 7:30 a.m. and terminate at 5:00 p.m. on March 4; and commence at 8:00 a.m. and terminate at 5:00 p.m. on March 5 and 6, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to define what is meant by integrated avionics, what new aircraft and avionics suites should be addressed, assess common service requirements, and determine if the magnitude of the problem necessitates the establishment of a separate joint program office. The agenda will include technical briefings and discussions addressing integrated avionics technologies of industry. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting contact: Commander T. C. Fritz, U. S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000. Telephone number (202) 696-4870.

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Dated: February 10, 1987.

Harold L. Stoller, Jr.,

Commander, JAGC, U. S. Navy, Federal Register Liaison Officer.

[FR Doc. 87-3195 Filed 2-13-87; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Vocational Education National Council; Meeting

AGENCY: National Council on Vocational Education, Department of Education.

ACTION: Notice of public meeting of the Council.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Council on Vocational Education, Project Catalyst Task Force. It also describes the functions of the Council. Notice of this meeting is required under section 10-(a)(2) of the Federal Advisory Committee Act, and is intended to notify the general public of its opportunity to attend.

DATE: March 9, 1987.

ADDRESS: 2000 L Street, NW., Suite 580, Washington, DC.

SUPPLEMENTARY INFORMATION: The National Council on Vocational Education is established under Sec. 431 of the Carl D. Perkins Vocational Education Act (20 U.S.C. 2431). The Council advises the President, Congress, and the Secretary of Education on:

(A) Effectiveness of the act in providing students with skills that meet needs of employers;

(B) Strategies for increasing cooperation between business and vocational education for training for new technologies;

(C) Practical approaches for retraining adult workers;

(D) Effective ways of providing access to information regarding market demand for skills;

(E) Vocational education needs of the handicapped and their level of participation in vocational programs;

(F) Implementation of the Jobs Training Partnership Act, and policies needed to build a coordinated capacity to train America's work force.

Agenda: The purpose of the meeting will be to consider proposals and develop possible strategies for the Council to implement.

Records are kept of the Council's proceedings, and are available for public inspection at the office of the National Council on Vocational Education from 8:30 am to 4:30 pm at 2000 L Street, NW., Suite 580, Washington, DC, 20036.

For further information contact: Joyce L. Winterton at above address. Telephone (202) 634-6110.

Signed at Washington, DC on February 9, 1987.

Dated: February 9, 1987.

Joyce L. Winterton,

Executive Director.

Project Catalyst Task Force Meeting March 9, 1987, National Council on Vocational Education

2000 L Street, NW., Suite 580 Washington, DC

10:00 a.m.-5:00 p.m.

Agenda

The purpose of the meeting will be to consider proposals and develop possible strategies for the Council to implement.

Meeting Attendees

J. Fernando Niebla, Chairman
National Council on Vocational Education
Michael Farley, Vice Chairman
National Council on Vocational Education
Ray Shamie, Chairman
Project Catalyst Task Force
Mary Pyle
Council Member
William Hayes
Council Member
Arthur Vadnais
Council Member
Pier Gherini, Jr.
Council Member
Joyce Winterton
Executive Director

[FR Doc. 87-3207 Filed 2-13-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TA87-1-1-002]

Alabama Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

February 11, 1987.

Take notice that on February 6, 1987, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet:

Substitute Twelfth Revised Sheet No. 4

This tariff sheet is proposed to become effective January 1, 1987. Alabama-Tennessee states that the purpose of this filing is to reflect a reduction in rates filed by Tennessee Gas Pipeline Company in accordance with the Commission's Order of December 29, 1986.

The tariff sheet submitted herewith provides for the following rates:

Rate schedule	Rates after current adjustment
G-1	
Demand	D_1 $7.41 D_2 08.26¢
Commodity	12.85¢
Gas	207.81¢
SG-1	
Commodity	21.41¢
Gas	253.38¢
I-1	
Commodity	16.71¢
Gas	228.31¢

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures (18 CRFR 385.214, 385.211). All such motions or protests should be filed on or before February 18, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3230 Filed 2-13-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP87-11-000]

ANR Pipeline Co. v. Conoco Inc.; Complaint To Reopen and Vacate Final Well Category Determination

February 9, 1987.

Take notice that on December 2, 1986, ANR Pipeline Company (ANR) filed with the Commission pursuant to § 385.206 of the Commission's regulations a complaint against Conoco Inc. (Conoco) requesting the Commission to reopen and vacate final well category determinations under section 102 of the Natural Gas Policy Act of 1978 (NGPA) for Conoco's G-6 and G-8 wells, located in South Marsh Island Block 108, offshore Louisiana. Alternatively, ANR requests that Conoco not be permitted to collect a section 102 rate for gas from these wells prospectively from the date Conoco knew, or should have known, that information provided to the jurisdictional agency, in this case the United States Department of Interior's Mineral Management Service (MMS) was inaccurate. Affirmative well determinations were rendered by MMS on May 1, 1979 and the determinations became final on June 28, 1979 pursuant to § 275.202(a) of the Commission's regulations.

In its complaint, ANR states that on June 24, 1985, Conoco filed a petition to reopen and vacate the final well determinations for the G-6 and G-8 wells based on data that showed the wells did not qualify under section 102 of the NGPA, but that on June 24, 1986, Conoco filed a notice of withdrawal of the petition to reopen. ANR asserts that Conoco by such action is seeking to position itself to recover monies it previously refunded to ANR and to increase its future collections from ANR. ANR claims that Conoco filed its withdrawal of the petition to reopen not because the facts set forth in the petition are incorrect, but rather because a recent Commission declaratory order in *Mobil Oil Exploration Producing Southeast Inc., et al.*, 34 FERC ¶ 60,211 (1986), led Conoco to conclude that the subject well determinations need not be reopened. In addition, ANR alleges that in 1979 Conoco had available certain geological and bottom hole pressure data demonstrating that the subject wells did not properly qualify under section 102. ANR argues that since this data was available to Conoco before or shortly after the subject determinations became final, this case is distinguished from the *Mobil* case relied upon by Conoco as the basis for withdrawing its petition to reopen.

Any person desiring to be heard or to protest this complaint should file an answer in accordance with Rules 213 of the Commission's rules of practice and procedure. All answers should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, not later than 30 days following publication of this notice in the Federal Register. Copies of ANR's complaint are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3230 Filed 2-13-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF87-226-000, et al.]

Encogen One Partners, Ltd., et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.;

February 11, 1987.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Encogen One Partners, Ltd.

[Docket No. QF87-226-000]

On January 20, 1987, Encogen One Partners, Ltd. (Applicant), of 10375 Richmond Avenue, 16th Floor, Houston, Texas 77042, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at 13200 Floyd Road, Dallas, Texas, within the Dallas Expressway electronics plant of Texas Instruments Incorporated. The facility will consist of two combustion turbine generators, two heat recovery steam generators, and one extraction/condensing turbine gnerator. Thermal energy recovered from the facility will be used in the electronics plant for hot water heating and absorption chiller systems. The primary energy source will be natural gas. The maximum net electric power production capacity of the facility will be 230 MW. Installation of the facility is scheduled to begin in the third quarter of 1987.

2. Ogden Martin Systems of Hudson, Inc.

[Docket No. QF87-226-000]

On January 29, 1987, Ogden Martin Systems of Hudson, Inc. (Applicant), of 140 East Ridgewood Avenue, P.O. Box 917, Paramus, New Jersey 07653, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Kearney, New Jersey. The facility consists of two (2) mass-burn steam generators and a single turbine-generator. The net electric power production capacity will be 37.5 megawatts. The primary energy source will be biomass in the form of municipal solid waste. Natural gas will be used for flame stabilization, start-up and shut-down purposes, however, such fossil fuel uses will not exceed 25 percent of the total energy input of the facility during any calendar year period. Construction of the facility will begin January 1, 1988.

3. Pensacola Christian School, Inc.

[Docket No. QF87-226-000]

On January 20, 1987, Pensacola Christian School, Inc. (Applicant), of 5415 Rawson Lane, Pensacola, Florida 32503, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Pensacola, Florida. The facility will consist of two (2) internal combustion engine generators, and two (2) heat recovery steam generators. Thermal energy recovered from the facility will be utilized by Pensacola Christian School for chilled water and hot water systems on campus. The electric power production capacity will be approximately 2.7 megawatts. The primary energy source will be natural gas. Installation of the facility is scheduled to begin in February 1987.

4. Valley View Energy Corp.

[Docket No. QF87-226-000]

On January 20, 1987, Valley View Energy Corporation (Applicant), of 4100 InterFirst One, Dallas, Texas 75202, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Moore County, Texas and will consist of two combustion turbine generators, two heat recovery steam generators equipped with two supplementary firing equipment and a steam turbine generator. Thermal energy recovered from the facility in the form of steam will be used by a meat packing plant for process purposes. The net electric power production capacity of the facility will be approximately 209 MW. The primary energy source will be natural gas. Construction of the facility will begin in 1988.

Standard Paragraphs

E. Any person desiring to be heard or to protect said filing should file a motion

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to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3234 Filed 2-13-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-137-004]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

February 10, 1987.

Take notice that on February 3, 1987 Florida Gas Transmission Company (FGT) tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective January 1, 1987.

Substitute 12th Revised Sheet No. 8 of First Revised Volume No. 1 and Substitute 35th Revised Sheet No. 128 of Original Volume No. 2

On December 24, 1986, FGT filed with the Federal Energy Regulatory Commission (Commission) a Stiplulation and Agreement and related tariff sheets in Docket No. RP86-137-000 to become effective January 1, 1987 resolving all issues in that proceeding. By letter order issued on January 29, 1987, the Commission approved FGT's settlement and related tariff sheets. Subsequent to the December 24, 1986 filing, FGT filed revised tariff sheets pursuant to § 15.10 of its tariff in Docket No. TF87-3-34-000 to reflect an increase in its cost of purchased gas. Such filing reflected the base tariff rates in FGT's "Motion to Make Suspended Rates Effective" filed with the Commission on December 15, 1986 in Docket No. RP86-137-000 since the settlement rates were not approved at that time. By order issued January 15, 1987, the Commission accepted such tariff sheets effective January 1, 1987.

The above-referenced tariff sheets reflect the settlement base tariff rates adjusted solely for the change in purchased gas cost previously approved by the Commission in Docket No. TF87-3-34-000 and made effective January 1, 1987. The effect of this filing will result in a reduction of .817¢/therm for Rate Schedule G, .984¢/therm for Rate Schedule I and 10.16¢/Mcf for Rate Schedule T-3 as measured against the respective rates previously approved by the Commission in Docket No. TF87-3-34-000.

Copies of this filing were served on FGT's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 18, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3232 Filed 2-13-87; 8:45am]

BILLING CODE 6717-01-M

[Docket Nos. RP87-38-000 and RP85-142-002]

Louisiana-Nevada Transit Co.; Tariff Filings

February 11, 1987.

Take notice that on February 3, 1987, Louisiana-Nevada Transit Company (LNT) tendered for filing the following tariff sheets to its FERC Gas Tariff, Revised Volume No. 1:

Thirteenth Revised Sheet No. 4
Original Sheet No. 4A
Original Sheet No. 6C
Original Sheet No. 6D
Original Sheet No. 6E
Original Sheet No. 6F
Original Sheet No. 6G
Original Sheet No. 6H
Original Sheet No. 23A
Original Sheet No. 23B
Original Sheet No. 23C
Original Sheet No. 23D
Original Sheet No. 23E
Original Sheet No. 23F
Original Sheet No. 23G
Original Sheet No. 23H
Original Sheet No. 23I
Original Sheet No. 23J
Original Sheet No. 27E
Original Sheet No. 27F
Original Sheet No. 27G
Original Sheet No. 27H
Original Sheet No. 27I
Original Sheet No. 27J
Original Sheet No. 27K
Original Sheet No. 27L
Original Sheet No. 27M
Original Sheet No. 27N

Thirteenth Revised Sheet No. 4 is submitted in compliance with the Commission's letter order dated August 22, 1985, in Docket No. RP85-142-000.

LNT states that all other tariff sheets filed herein relate to transportation services sought to be performed in connection with an "Abbreviated Application for Blanket Certificate of Public Convenience and Necessity" for authorization to transport gas for others, under the terms and conditions of Order No. 436 series, which blanket certificate application was filed concurrently with the tariff filing that is the subject of this notice. The tariff sheets listed above, with the exception of Thirteenth Revised Sheet No. 4, include: (1) New Rate Schedules FTS-1 and ITS-1 to establish firm and interruptible transportation rates for its proposed Order No. 436 transportation; (2) tariff sheets establishing the rates for services under Rate Schedules FTS-1 and ITS-1; (3) Forms of Service Agreements for Rate Schedules FTS-1 and ITS-1; and (4) additions to its General Terms and Conditions setting out reasonable operating conditions for its proposed Order No. 436 service.

On February 9, 1987, LNT filed corrected tariff sheets, Substitute Thirteenth Revised Sheet No. 4 and Substitute Original Sheet No. 4A, to its February 3, 1987 filing. LNT discovered that the February 3 filing should have reflected a 34 percent federal corporate tax rate instead of the 33 percent contained in that filing. The substitute tariff sheets result in a reduction of 0.64 cents per Mcf in the base tariff rate in LNT's Rate Schedules G-1, X-2, and T-1. The annual effect of this reduction is estimated to be $475.00 based upon the volume of gas sold to United Gas Pipe Line Company under Rate Schedule X-2 during the 12 months ended November 20, 1986. No gas is currently flowing under Red Schedules X-2 and T-1.

LNT requests waiver of the Commission's Rules and Regulations to the extent necessary for these tariff sheets to become effective March 5, 1987. LNT has served copies of the February 3rd and 9th filings on its jurisdictional customers, interested State commissions and parties in Docket No. RP85-142.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington,

DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 18, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3231 Filed 2-13-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER87-243-000 et al.]

Electric Rate and Corporate Regulation Filings; Mid-Continent Area Power Pool et al.

Take notice that the following filings have been made with the Commission:

1. Mid-Continent Area Power Pool

[Docket No. ER87-243-000]

February 9, 1987.

Take notice that on February 2, 1987, Mid-Continent Area Power Pool (MAPP) filed, on behalf of the parties listed therein to the MAPP Agreement, that Agreement consisting of the original agreement dated March 31, 1972, all supplemental agreements thereto and all schedule thereto currently in effect.

The purpose of this filing is to supersede the current rate schedule designations for the individual parties listed therein with a single rate schedule designation for the MAPP Agreement to become effective March 30, 1987. No changes in terms, rates or facilities are proposed in this filing.

Comment date: February 23, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Co.

[Docket Nos. ER86-667-002 and ER86-668-002]

February 9, 1987.

Take notice that on January 29, 1987, New England Power Company ("NEP") filed revised rates and cost of service reflecting the effect of the Tax Reform Act of 1986 on NEP's 1987 test year cost of service.

The filing is in compliance with paragraph (J) of the Commission's Order of October 31, 1986 in the above-captioned proceeding.

Comment date: February 23, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Co.

[Docket No. ER86-668-003]

February 9, 1987.

Take notice that on January 29, 1987, New England Power Co. ("NEP") filed an amended tariff page to the Service Agreement between NEP and The Narragansett, Electric Company ("Narragansett") reflecting the effect of the Tax Reform Act of 1986 on the Intergrated Facilities Agreement between NEP and Narragansett.

NEP states that the filing is in compliance with paragraph (J) of the Commission's order of October 31, 1986 in the above-captioned proceeding.

Comment date: February 23, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Orange and Rockland Utilities, Inc.

[Docket No. ER87-72-002 and ER87-73-002]

February 6, 1987.

Take notice that on January 30, 1987, Orange and Rockland Utilities, Inc. (Orange and Rockland) tendered for filing its costs of service formulas to reflect the deletion of Account No. 407 (Amortization of Property Losses), pursuant to the Commission's order of December 30, 1986, in Docket Nos. ER87-72-000 and ER87-73-000.

Comment date: February 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Southern California Edison Co.

[Docket No. ER87-241-000]

February 6, 1987.

Take notice that on January 30, 1987, Southern California Edison Company (Edison) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 168, Western System Coordinating Council Loop Flow Agreement (Agreement).

The Agreement was to remain in effect for 12 full consecutive months from the effective date of September 1, 1983, with an option to extend the Agreement for an additional 12-month period with the written agreement of each participant. The initial 12-month period expired on September 1, 1984, and the option for extension was not exercised, therefore, Edison respectfully requests waiver of prior notice requirements and asks the Commission to assign an effective date of September 1, 1984, to the cancellation of rate Schedule FERC No. 168.

Comment date: February 19, 1987, in accordance with Standard Paragraph E at the end of the notice.

5. Virginia Electric and Power Co.

[Docket No. ER87-242-000]

February 9, 1987.

Take notice that on February 2, 1987, Virginia Electric and Power Company (the Company) filed a Contract between the Department of Energy, Acting by and through the Southeastern Power Administration, and the Company and a Supplemental Agreement. The Contract would, in part, implement, the Final Power Marketing Policy, Kerr and Philpott System of Projects, 50 FR 30752 (1985). The Company does not propose to change the rates.

Copies of the executed Contract were served on the Southeastern Power Administration, the Virginia State Corporation Commission, the North Carolina Utilities Commission and each of the Company's wholesale customers.

Comment date: February 23, 1987, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3235 Filed 2-13-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA87-12-000]

Pickard Oil Co. and J.W. Kirk, Inc.; Petition for Adjustment

February 11, 1987.

Take notice that on November 3, 1986, Pickard Oil Company and J.W. Kirk, Inc. (Pickard and Kirk) filed with the Commission a petition for adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 and Part 385 (Subpart K) of the Commission's regulations. Pickard and Kirk seek waiver of their obligation under Commission Order Nos. 398, 399-A, and

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399–B requiring payment of Btu adjustment refunds by first sellers of natural gas.

Pickard and Kirk state that a partnership was set up specifically for the purpose of handling the Utley #1 well, Melrose-East field, Victory, Texas. According to Pickard and Kirk, the Utley #1 well was plugged and abandoned on August 13, 1982. At this time all assets were disposed of with only losses remaining in the company, and the partnership has been out of business since 1983. Furthermore, the partnership has filed for bankruptcy and Pickard and Kirk claim that payment of the refund obligation would represent a special hardship because they are unable to pay the refund obligation.

The procedures applicable to the conduct of this waiver proceeding are found in Subpart K of the Commission's rules of practice and procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of Rules 214 and 1106 of the Commission's rules of practice and procedure. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3237 Field 2–13–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP87–37–000]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Tariff Filing

February 10, 1987.

Take notice that on February 4, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) tendered for filing First Revised Sheet No. 108 to Second Revised Volume No. 1 of its FERC Gas Tariff to be effective March 6, 1987.

Tennessee states that this filing revises section 3.4 of Tennessee's Rate Schedule IT to provide that service thereunder is required to commence within sixty days after the later of (a) Shipper's service commencement date established pursuant to section 3.1(c) of this Rate Schedule, or (b) the date on which Shipper executes the Transportation Contract, or (c) the date on which Shipper is notified that any facilities necessary to render the requested service are ready for service. The previous time limit provided by section 3.4 was fifteen days. Tennessee states that the fifteen day time limit has proved to be overly restrictive and can cause administrative hardship to Tennessee.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Tennessee requests that the Commission grant any waivers of its regulations as it deems necessary to make this filing effective as proposed.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 18, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3239 Filed 2–13–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR87–39–000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

February 11, 1987.

Take notice that Williams Natural Gas Company (WNG), formerly Northwest Central Pipeline Corporation, on February 6, 1987,[1] tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Original Sheet No. 176
Original Sheet No. 177
Original Sheet No. 178

The proposed effective date for these tariff sheets is March 9, 1987.

WNG states that it is filing the above-listed tariff sheets in order to implement a direct billing mechanism for the recovery of: (1) Settlement Payments made by WNG to a first seller of natural gas under a contract for the first sale of natural gas, as defined by section (2)(21) of the Natural Gas Policy Act, as consideration for (a) settlement of take-or-pay claims asserted against the Company, under any supplier contract, when such payments, in the Company's reasonable judgment, will provide an overall reduction in the cost of service impact which would otherwise result from paying the full amount of the asserted claims, (b) eliminating or amending the take-or-pay or similar minimum payment provisions of gas purchase contracts, or (c) reserving gas supplies in gas purchase contracts; and, (2) similar payments made by the Company's pipeline suppliers and permitted to be billed directly to the Company by rule or order of the Commission, both categories of which are defined as Settlement Payments.

WNG states that it proposes to establish and maintain separate sub-accounts with Account 191 for each of the Company's sales customers or former customers served pursuant to the Company's GS, SGS, P, VM and KPL Rate Schedules. Each customer's allocated portion of Settlement Payments made by the Company will be debited to such appropriate sub-account in the month payment is actually made by the Company. Each customer's allocated share of Settlement Payments will be determined based on the ratio of each customer's contract demand for the period to which the Settlement Payments relate (Settlement Period) to the total of all customer's contract demands for such period.

WNG states that it will file concurrently with each regular semi-annual PGA filing a tariff sheet setting forth the monthly amount to be billed each sales customer for the six-month period beginning with the effective date of each PGA Adjustment Date. The monthly amount to be billed will be calculated by dividing the balance of the applicable Account 191 sub-account as of three months prior to the effective date by six. Each customer shall have the right to pay its allocated share of Settlement Payments in a lump sum rather than six monthly installments. Amounts collected from customers will be credited to the appropriate sub-accounts monthly and carrying charges will be computed on the balance in each sub-account in accordance with the Commission's Regulations.

WNG states that copies of the filing were served on its jurisdictional customers and interested parties and state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such

[1] Effective January 1, 1987, the Company changed its name from Northwest Central Pipeline Corporation to Williams Natural Gas Company. The Company filed on January 29, 1987 a petition in Docket Nos. C–141 *et al.* to effectuate such name change for all their existing Commission dockets.

motions or protests should be filed on or before February 19, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3233 Filed 2–13–87; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[PP 7G3480/T536; FRL–3156–4]

Monoammonium 2-Amino-4-(Hydroxymethylphosphinyl) Butanoate; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for the combined residues of monoammonium 2-amino-4-(hydroxymethylphosphinyl) butanoate and its metabolite in or on the raw agricultural commodity soybean seed. This temporary tolerance was requested by Ciba-Geigy Corp.

DATE: This temporary tolerance expires February 15, 1988.

FOR FURTHER INFORMATION CONTACT: By mail:

Richard Mountfort, Product Manager (PM) 23, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1830).

SUPPLEMENTARY INFORMATION: Ciba-Geigy Corporation, P.O. Box 18300, Greensboro, NC 27419, has requested in pesticide petition PP 7G3480 the establishment of a temporary tolerance for the combined residues of monoammonium 2-amino-4-(hydroxymethylphosphinyl) butanoate and its metabolite of 3-methylphosphinicopropionic acid in or on the raw agricultural commodity soybean seed at 0.05 part per million (ppm).

This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 100–EUP–88, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Ciba-Geigy Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires February 15, 1988. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 610–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: February 4, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87–3108 Filed 2–17–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0021.

Title: NFIP Claims Program.

Abstract: The forms are necessary for the continued proper performance of FEMA's functions related to identifying policyholder for flood damages to their properties.

Type of respondents: Individuals or households, State or local governments, farms, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations.

Number of respondents: 39,474.

Burden hours: 150,000.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 87–3196 Filed 2–13–87; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Mercersburg Financial Corporation et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for

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processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 6, 1987.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Mercersburg Financial Corporation,* Mercersburg, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of the First National Bank of Mercersburg, Mercersburg, Pennsylvania. Comments on this application must be received by March 9, 1987.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Century Bancshares, Inc.,* Washington, DC; to acquire 100 percent of the voting shares of Columbia National Bank, Washington, DC, a *de novo* bank.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Financial Services Bancorp, Inc.,* Miami, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Eagle Bank of Broward, N.A., Fort Lauderdale, Florida, a *de novo* bank.

D. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Chemical Financial Corporation,* Midland, Michigan; to acquire 100 percent of the voting shares of Chemical Bank Huron, Standish, Michigan, a de novo bank.

2. *Valley Banc Services Corp.,* Antioch, Illinois; to become a bank holding company by acquiring 80 percent of the voting shares of State Bank of Osco, Osco, Illinois.

Board of Governors of the Federal Reserve System, February 10, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-3180 Filed 2-13-87; 8:45 am]

BILLING CODE 6210-01-M

Fleet Financial Group, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a previous **Federal Register** notice.

1. (FR Doc. 87-1061), published at page 2154 of the issue for Tuesday, January 20, 1987.

Under the Federal Reserve Bank of Boston, the entry for Fleet Financial Group, Inc. is corrected to read as follows:

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President), 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Fleet Financial Group, Inc.,* Providence, Rhode Island; to acquire Alliance Mortgage Funding Company, Montvale, New Jersey, and thereby indirectly engage in the purchase, sale and servicing of loans secured by second mortgages on residential real estate pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Applicant proposes to effect this acquisition through formation of a joint venture with Cedar Capital Corporation, Montvale, New Jersey.

Comments on this application must be received by March 4, 1987.

Board of Governors of the Federal Reserve System, February 10, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-3187 Filed 2-13-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Meeting on Role of Antibody Testing in the Prevention and Control of AIDS; Change

ACTION: Change in previously announced meeting—Role of Antibody Testing in the Prevention and Control of AIDS.

Federal Register Citation of Previous Announcement: Volume 52 FR, page 3496, February 4, 1987.

Previously Announced Time and Date of the Meeting:

8:30 a.m.–5:45 p.m.—February 24, 1987.
8:30 a.m.–12:00 noon—February 25, 1987.

Changes in the Meeting:

Time and Date: 8:30 a.m.–10:30 p.m.—February 24, 1987; 8:30 a.m.–12:00 noon—February 25, 1987.

Place: Marriott Marquis Hotel, 265 Peachtree Center Avenue, Atlanta, Georgia (404/521-0000) and the Hyatt Regency Hotel, Peachtree Center, Atlanta, Georgia (404/577-1234).

As announced previously, this meeting is being convened to discuss issues related the implementation of antibody testing to prevent further spread of AIDS virus infection. The meeting will be open to the public, limited only by the space available. The meeting room has been changed to accommodate up to 900 people.

Registration materials for the meeting will be available at the Marriott Marquis Hotel from 5:00 p.m.–8:00 p.m. on Monday, February 23, and beginning at 7 a.m. on Tuesday, February 24. The opening plenary session is scheduled for 8:30 a.m. in the Imperial Ballroom, Salon B, Marriott Marquis Hotel. The opening plenary session will be followed on Tuesday afternoon and Wednesday morning by workshops with panels of experts to explore specific applications of antibody testing for prevention of infection. The workshops will be held both at the Marriott Marquis and the Hyatt Regency. A portion of each workshop will be set-aside to hear members of the public. The program has been expanded to add an open forum for presentation of a few papers and comments and discussions from the audience. The open forum will be from 8:30 p.m.–10:30 p.m. on Tuesday evening, February 24. The workshops will be summarized at the closing plenary session on February 25, and the meeting will adjourn about 12:00 noon.

CONTACT PERSON FOR MORE INFORMATION: Thomas A. Leonard, Senior Public Health Advisor, or James R. Allen, M.D., Assistant Director for Medical Science, AIDS Program, Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Telephones: FTS: 236-2407. Commercial: 404/329-2407.

Dated: February 10, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87-3185 Filed 2-13-87; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meeting:

Minneapolis District Office, chaired by John Feldman, District Director. The topics to be discussed are Proposed Regulation on Cholesterol Labeling, Safe Use of Prescription and Nonprescription Drugs, and Health Fraud.

DATE: Thursday, February 26, 1987, 1:30 p.m.

ADDRESS: Whitney Senior Center, 1125 Northway Dr., St. Cloud, MN 56301.

FOR FURTHER INFORMATION CONTACT: Don Aird, Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612-349-3900.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: February 9, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-3188 Filed 2-13-87; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Institute of Environmental Health Sciences; Superfund Hazardous Waste Worker Health and Safety Training Grants Program; Meeting Announcement

Application Receipt Date: May 1, 1987.

The National Institute of Environmental Health Sciences (NIEHS) announces a program of health and safety training and education grants directed toward workers engaged in hazardous waste removal, containment or emergency response activities. Recipients of these grants are to be nonprofit organizations with demonstrated experience with implementing and operating worker health and safety programs and with demonstrated ability to identify, describe and access target worker populations. Health and safety training will include both classroom instruction and hands-on training which simulates conditions at hazardous waste sites.

Copies of the Program Announcement can be obtained from the following address: Extramural Program, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, Telephone: 919-541-7723.

A meeting will be held at the National Institute of Environmental Health Sciences, Main Conference Facility, Building 101, Research Triangle Park, North Carolina on March 3, 1987. The meeting will begin at 9:00 a.m. and end at approximately 1:00 p.m. The purpose of this meeting is to assist potential grantees by answering administrative questions with regard to application procedures and completion of Form PHS 6025-1. Attendance at this meeting is not a necessary requirement for grant application.

Dated: February 9, 1987.

Dr. James B. Wyngaarden,

Director, NIH.

[FR Doc 87-3229 Filed 2-13-87; 8:45 am]

BILLING CODE 4140-01-M

INTERSTATE COMMERCE COMMISSION

[No. MC-F-17934]

Motor Carriers; Norfolk Southern Corp. and North American Van Lines, Inc.; Control Exemption; Tran-Star, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Norfolk Southern Corporation (NS), a non-carrier holding company, and its wholly-owned motor carrier subsidiary, North American Van Lines, Inc. (NAVL) (MC-107012), have filed a petition under 49 U.S.C. 11343(e) seeking an exemption from the requirement of prior regulatory approval for their acquisition of control of motor carrier Tran-Star, Inc. (Tran-Star) (MC-159972). NAVL and Tran-Star have entered an agreement by which NAVL would purchase 80.1 percent of Tran-Star's stock, and Tran-Star would become a subsidiary of NAVL, and thus indirectly of NS. NS also presently controls two rail carriers—Norfolk and Western Railway Company (NW) and Southern Railway Company (SR).

The Commission has previously authorized the control of NW and SR by NS, *Norfolk Southern Corp.—Control—Norfolk and W.Ry. Co.*, 366 I.C.C. 171 (1982). It has also authorized the control of NAVL by NS, *Norfolk Southern Corp.—Control NAVL*, 1 I.C.C. 2d 842 (1985). Although in *International Brotherhood of Teamsters* v. *Interstate Commerce Commission*, Nos. 85-1397 and 85-1404 (D.C. Cir., Sept 30, 1986), the Commission's decision approving such control was remanded, rehearing is being sought. Section 3403 of Pub. L. No. 99-570 (the Anti-Drug Abuse Act of 1986) was intended to authorize that control. In any event, petitioners here argue that the instant transaction meets the criteria of 49 U.S.C. 11343(e).

Tran-Star is presently wholly owned by Paul B. Watkins and Charles Richards. It is a small motor carrier holding nationwide general commodities common and contract authority. Tran-Star specializes in the transportation of refrigerated processed foods in the upper Midwest and Northeast. In 1984 and 1985, it had gross operating revenues of $9,600,000 and $12,846,247, respectively. In 1985 its average haul was 550 miles. Tran-Star operates a single terminal at Waupaca, WI. NAVL specializes in domestic residential, office, and industrial household goods relocations, as well as the transportation of exhibits, displays, commodities of unusual nature or value, and general freight, primarily in the Midwest. NW and SR transport mostly coal, chemicals, and similar large volume bulk commodities in the South and East.

Upon consummation of this transaction, noncarrier NS will indirectly control motor carrier Tran-Star in addition to its direct control of motor carrier NAVL and rail carriers NW and SR. However, acquisition of control of a carrier by a person that is not a carrier but that controls any number of carriers may be carried out only under Commission regulation or under an exemption from regulation. Further, motor carrier NAVL will acquire direct control of Tran-Star, a transaction also subject to prior Commission approval or exemption. Petitioners base their request for exemption on 49 U.S.C. 11343(a) (3) and (5) and 11343(e).

Section 3403 of Pub. L. No. 99-570 (the Anti-Drug Abuse Act of 1986) provides that:

> In any proceeding under section 11344 of title 49, United States Code, involving an application by a rail carrier (or a person controlled or affiliated with a rail carrier) to acquire a motor carrier, the Interstate Commerce Commission, and any Federal court reviewing action of the Commission, shall follow the standards set forth in the Commission decision in Ex Parte 438 if the applicant rail carrier, between July 20, 1984, September 30, 1986 (1) filed an application with the Commission to acquire a motor carrier, (2) entered into a contract or signed a letter of intent to acquire a motor carrier, or (3) made a public tender offer to acquire a motor carrier.

This new law raises a number of issues related to the transaction involved here. One interpretation of this limited exception is that Congress has implicity reaffirmed the "special circumstances doctrine" for all other

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rail/motor acquisitions, thereby undercutting our conclusions in Ex. Parte No. 438. Therefore, if this request for exemption falls outside the scope of this new provision, there is the question of whether Congress intends that the transaction, which is the subject of this petition, be judged by standards other than those set forth in Ex Parte No. 438. If so, would the petitioners be required to prove that "special circumstances" exist which are sufficient to support favorable Commission action on this transaction which involves the acquisition of a motor carrier by a rail carrier or a rail affiliated motor carrier?

Secondly, we note that the new law refers specifically to application proceedings under 49 U.S.C. 11344 but not to exemption proceedings under 49 U.S.C. 11343. In this regard, we believe it would be helpful if the parties submitting comments would, in addition to the issue noted above, also address the following questions:

(1) Is this petition for exemption included within the scope of section 3403?

(2) If the answer to question 1 is no, would the transaction, for which an exemption is sought, be covered by section 3403 if petitioners had filed an application under 49 U.S.C. 11344 in lieu of a petition for exemption?

(3) Must petitioners for exemptions under 49 U.S.C. 11343 and/or 49 U.S.C. 10505 prove they meet the requirements of "special circumstances doctrine"?

DATE: Comments must be received by March 19, 1987.

Send comments (an original plus 10 copies) referring to Docket No. MC–F–17934 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
and
(2) Petitioners' representatives: Robert J. Cooney, Norfolk Southern Corporation, 204 South Jefferson Street, Roanoke, VA 24042–0069
Greg E. Summy, North American Van Lines, Inc., P.O. Box 988, Fort Wayne, IN 46801.

FOR FURTHER INFORMATION CONTACT: Marc A. Lerner (202) 275–7150.

SUPPLEMENTARY INFORMATION: Petitioners seek an exemption under 49 U.S.C. 11343(e) and the Commission's regulations in *Procedures-Handling Exemptions Filed by Motor Carriers*, 367 I.C.C. 113 (1982).

A copy of the petition may be obtained from petitioners' representatives, or it may be inspected at the Washington, DC office of the Interstate Commerce Commission during normal business hours.

Decided: December 19, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Chairman Gradison, joined by Commissioner Andre, commented with a separate expression. Commissioner Lamboley dissented in part with a separate expression. Vice Chairman Simmons dissented with a separate expression.

Noreta R. McGee,

Secretary.

Chairman Gradison, joined by Commissioner Andre, commenting:

While I have no objection to soliciting the public's views on the impact of the Anti-Drug Abuse Act of 1986 on section 11343(e) exemption petitions, I believe it fair to point out that I am currently persuaded that Congress did not intend the new law to affect section 11343(e) proceedings. Section 3403 by its very terms applies only to applications under section 11344. Furthermore, the legislative history seems to support that view. See 132 Cong. Rec. S16560 (Oct. 15, 1986) and 132 Cong. Rec. S16917. (Oct. 17, 1986); *see* also 132 Cong. Rec. S16498 (Oct. 15, 1986). *Cf.* Docket No. MC–F–17030, *Burlington Northern, Inc. and Burlington Northern Motor Carriers, Inc.—Control Exemption—Stoops Express, Inc., et al.* (not printed), served July 28, 1986. Nonetheless, the Commission can always benefit from the public's participation.

Commissioner Lamboley, dissenting in part:

I would consider this exemption under section 10505. As I have stated many times previously, I do not believe that section 11343(e) was intended to apply and to impart antitrust immunity to intermodal transactions such as this.

Vice Chairman Simmons, dissenting:

I believe NS, as the parent of two railroads, should be required to file for the proposed exemption under 49 U.S.C. 10505.

[FR Doc. 87–3216 Filed 2–13–87; 8:45 am]

BILLING CODE 7035–01–M

[No. MC–F–18012]

Motor Carriers; Sun Chemical Corporation; Control; Cro-Marine Transport, Inc., Orange Coast Sightseeing Co., Airport Service Inc., and American Transit Corp, d.b.a. Huskie Line

ACTION: Notice of water, motor property and motor passenger carrier control application under 49 U.S.C. 11343.

SUMMARY: By application under 49 U.S.C. 11343, Sun Chemical Corporation (Sun), a noncarrier, seeks approval to acquire control of noncarrier Chromalloy American Corp. (Chromalloy) which, in turn, controls a water and motor property carrier and three motor passenger carriers. Applicant also requests Commission approval of Chromalloy's ownership and control of the four carriers.

DATE: Comments are due April 3, 1987.

ADDRESSES: Send comments to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
and
(2) Applicant's representative: Richard H. Streeter, Wheeler & Wheeler, 1729 H Street, NW., Washington, DC 20006.

Comments should refer to Docket No. MC–F–18012.

FOR FURTHER INFORMATION CONTACT: Warren Wood (202) 275–7977.

SUPPLEMENTARY INFORMATION: Applicant seeks approval to acquire control through stock ownership of Chromalloy which, in turn, controls through stock ownership water and motor property carrier Cro-Marine Transport, Inc. (Cro-Marine) (W–78, W–1371, and MC–172551), and bus companies American Transit Corp. dba Huskie Line (Huskie) (MC–168387), Airport Service Incorporate (Airport) (MC–167193), and, through Airport, Orange Coast Sightseeing Company (Orange Coast) (MC–167173). [1] Sun currently owns 41.4 percent of Chromalloy's voting stock indirectly through Casco Investors Corporation, a holding company subsidiary.[2] In addition to applicant's stock ownership of Chromalloy, four of the eight members of the Chromalloy board of directors are also Sun directors. These include Norman E. Alexander who is Chairman of the Board and Chief Executive Officer of Sun and Chromalloy as well as a principal stockholder (46.6 percent) of Sun, and Stuart Z. Krinsly, who is Senior Executive Vice President and General Counsel of Sun.

Cro-Marine holds common and contract water carrier authority pursuant to which it operates throughout the inland waterway system; it also holds two motor carrier permits authorizing nationwide general commodities service under contract with certain shippers. Orange Coast holds a motor carrier certificate authorizing the transportation of passengers, in charter and special operations, beginning and ending at points in Los Angeles and Orange Counties, CA, and extending to points in the United States (except Hawaii). Airport holds a motor carrier certificate authorizing the transportation of passengers, in charter and special operations, beginning and ending at points in Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura Counties, CA, and extending to points in the United States (except Hawaii). Huskie holds a motor carrier certificate authorizing the transportation of passengrs, in charter and special operations, beginning and ending at points in Illinois, and extending to points in the United States (except Hawaii).

Note.—By decision served February 5, 1987, applicant has been granted a waiver from compliance with filing requirements at 49 CFR 1182.1(c)(2), 1181.12(h) through (m), 1181.12(p), and 1181.13(a) and (e), and on Form OP–F–45 at Items A–1 to A–8 and B–4.

Noreta R. McGee,

Secretary.

[FR Doc. 87–3215 Filed 2–13–87; 8:45 am]

BILLING CODE 7035–01–M

[1] Chromalloy also controls J. Russell Flowers, Inc., a freight forwarder. However, on December 21, 1986, the Surface Freight Forwarder Deregulation Act of 1986 removed Commission jurisdiction over non-household goods freight forwarders.

[2] Applicant also has nine other noncarrier subsidiaries.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Air Act; Corry Jamestown Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 4, 1987, a proposed Consent Decree in *United States* v. *Corry Jamestown Corporation*, CV 86–4263 WJR was lodged with the United States District Court for the Central District of California. The proposed Consent Decree concerns the prevention of the release of volatile organic compounds in violation of the Clean Air Act and the limits set forth in Local Rule 1107 of the South Coast Air Quality Management Division which is part of the California State Implementation Plan that has been approved by the United States Environmental Protection Agency. The proposed Consent Decree requires Corry Jamestown Corporation to make the necessary modifications to achieve compliance with Rule 1107 and to pay a civil penalty of $30,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *Corry Jamestown Corporation*, D.J. Ref. 90–5–2–1–971.

The proposed Consent Decree may be examined at the office of the United States Attorney, Central District of California, 312 N. Spring Street, Los Angeles, California 90012, and at the Region 9 Office of Environmental Protection Agency, 215 Fremont Street, San Francisco, California 90415. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please refer to the referenced case and enclose a check in the amount of $1.60 (10 cents per page reproduction cost) made payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–3209 Filed 2–13–87; 8:45 am]

BILLING CODE 4410–01–M

Office of Justice Programs

The President's Child Safety Partnership; Extension of Awards Program Application Deadline

AGENCY: The President's Child Safety Partnership.

ACTION: Notice of extension of awards program application deadline.

SUMMARY: To recognize and encourage outstanding efforts to prevent and respond to the victimization of children, the President's Child Safety Partnership established an awards program. It was created to make awards to individuals, groups, organizations, agencies and businesses to honor contributions to the safety of children as well as to increase public awareness. Application forms must be submitted for review and approval. Establishment of the awards program was published in the Federal Register on December 12, 1986 (Vol. 51, No. 239, p. 44842). The deadline for submissions of applications has been extended from February 15 to March 13, 1987.

FOR FURTHER INFORMATION CONTACT: William Modzeleski, Chief, National Victims Initiatives, Office for Victims of Crime, Office of Justice Programs, Washington, DC 20531. (Tel.: 202–272–6500).

SUPPLEMENTARY INFORMATION: The President's Child Safety Partnership consists of twenty-five individuals, appointed by the President. It was created in response to the growing national problem of child victimization (including child abuse and neglect, sexual molestation and abuse, parental and stranger abduction, runaway youth, sexual exploitation, theft, assault, and drug abuse). Its priorities are to: (1) Increase public awareness of the child victimization problem, and collection and distribute accurate information on child safety; (2) Encourage private sector involvement in child safety programs; and (3) issue awards for outstanding child safety programs and activities. The Partnership's Charter expires on April 29, 1987, at which time the Partnership will present its final report and recommendations to the President.

Information Packet and Application Forms: Application forms, including additional information, may be obtained by calling or writing to: The President's Child Safety Partnership, Office for Vicims of Crime, Office of Justice Programs, U.S. Department of Justice, Washington, DC 20531. [Tel.: 202–272–6500).

Richard B. Abell,

Acting Assistant Attorney General, Office of Justice Programs.

[FR Doc. 87–3203 Filed 2–13–87; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Visual Arts/Media/Design/Literary Arts Section) to the National Council on the Arts will be held on March 5, 1987, from 9:00 a.m.–6:00 p.m. and on March 6, 1987, from 9:00 a.m.–5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 5, 1987, from 9:00 a.m.–10:30 a.m. and on March 6, 1987 from 3:30 p.m.–5:30 p.m. for a discussion of general program overview and policy issues.

The remaining sessions of this meeting on March 5, 1987, from 10:30 a.m.–6:00 p.m., and on March 6, 1987, from 9:00 a.m.–3:15 p.m. are for the

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purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne M. Sabine,

Acting Director, Office of Council and Panel Operations, National Endowment for the Arts.

February 9, 1987.

[FR Doc. 87–3210 Filed 2–13–87; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Davis-Besse Nuclear Power Station, Unit No. 1; Docket No. 50–346]

Toledo Edison Co. and the Cleveland Electric Illumination Co.; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part a request by the Toledo Edison Company for an amendment to Facility Operating License No. NPF–3, issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio. Notice of consideration of issuance of this amendment was published in the **Federal Register** on December 4, 1985 (50 FR 49793).

The proposed amendment, in part, would require verification that diesel generators can be synchronized (but not actually electrically connected) to offsite power during surveillance testing rather than the verification of diesel generator synchronization to offsite power and loading to at least 1000 kw and operation for at least 60 minutes. Toledo Edison Company did not present a substantial technical argument for this revision which does not meet the objective of the original testing to demonstrate the capability of the diesel to assume its designed load. Therefore, the Commission has determined that this TS revision should not be granted.

All other provisions of the amendment request have been approved by Amendment No. 97 dated February 10, 1987. Notice of Issuance of Amendment No. 97 will be published in the Commission's biweekly **Federal Register** notice.

Toledo Edison Company was notified of the Commission's denial of the proposed TS change by letter dated February 10, 1987.

By March 19, 1987, the licensees may demand a hearing with rspect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel/Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensees.

For further details with respect to this action, see (1) the application for amendment dated May 28, 1985, (2) the Commission's letter to Toledo Edison Company dated February 10, 1987, and (3) the Commission's Safety Evaluation issued with Amendment No. 97 to NPF–3 dated February 10, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing-B.

Dated at Bethesda, Maryland, this 10th day of February, 1987.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, PWR Project Directorate #6, Division of PWR Licensing-B.

[FR Doc. 87–3251 Filed 2–13–87; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review By Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549.

New, File No. 270–307, Rule 24f–3.

Revised, File No. 270–299 Form N–7.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearance proposed Rule 24f–3 to provide for the indefinite registration of securities by unit investment trusts and related amendments to Rules 24f–2, and 24e–2 together with revised Form N–7 under the Securities Act of 1933 and the Investment Company Act of 1940.

Submit comments to OMB Desk Officer: Mr. Robert Neal, (202) 395–7340, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

February 10, 1987.

[FR Doc. 87–3245 Filed 2–13–87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–15570; 812–6506]

Tax-Free Investment Trust: Allocation of Expenses and Voting Rights Among Separate Classes in the Same Portfolio

February 6, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Tax-Free Investment Trust (formerly, Tax-Free Cash Reserves, Inc.) ("Tax-Free"), Short-Term Investments Co. ("Short-Term"), Alex. Brown Cash Reserve Fund ("Reserve"), AIM Advisors, Inc. (the "Advisor") and Alex. Brown & Sons Incorporated ("Alex Brown").

Relevant 1940 Act sections: Exemption requested under section 6(c) from sections 18(f), 18(g) and 18(i).

Summary of application: Applicants seek an amendment of an existing order to permit certain additional investment

companies, which may be sponsored, advised, administered or distributed by the Adviser or Alex. Brown, to establish separate classes of securities of any such investment company or portfolio thereof; to allocate to each such class certain distribution and other expenses associated with that class; and to give shareholders thereof the right to vote as a class on certain matters affecting solely that class.

Filing date: The application was filed on October 17, 1986 and an amendment thereto on February 2, 1987.

Hearing or notification of hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on February 26, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, Washington, DC 20549. Tax-Free, Short-Term and Advisors, 11 Greenway Plaza, Suite 1919, Houston, Texas 77046. Reserve and Alex. Brown, 135 East Baltimore Street, Baltimore, Maryland 21202.

SUPPLEMENTAL INFORMATION: Following is a summary of the application for an amended order; the complete application is available for a fee, from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300)).

FOR FURTHER INFORMATION CONTACT: Sherry A. Hutchins, Staff Attorney (202) 272–2799 or Brion R. Thompson, Special Counsel (202) 272–3016, Division of Investment Management, Office of Investment Company Regulation.

Applicant's Representations

1. Each of Tax-Free, Short-Term and Reserve is a no-load, diversified, open-end, management investment company registered under the 1940 Act ("Funds"). In addition, each Fund is as a "money market" fund which maintains a constant net asset value per share of $1.00 and which complies with the quality, maturity and other limits of Rule 2a–7 under the 1940 Act.

2. In Investment Company Release No. 14695 (August 27, 1985) ("Existing Order"), the SEC issued an order which permits the Funds and similar funds and portfolios thereof, which may be sponsored, advised, administered or distributed in the future by the Advisor, Alex. Brown or their affiliates, to create separate classes of shares in the same investment portfolio that are identical in all respects except for its class designation and the allocation of certain expenses and voting rights (as described below). Among other things, the existing classes in a Fund or portfolio thereof are subject to the same investment objectives, policies and limitations, the same dividend policies and the same purchase and redemption policies. They differ, however, in that certain classes of shares are offered in connection with: (1) A 12b–1 plan adopted by the Fund involved pursuant to Rule 12b–1 under the Act; or (2) a Shareholder Services Plan adopted by the Fund involved pursuant to all the requirements of Rule 12b–1 except those relating to shareholder voting rights and automatic termination of the plan upon its assignment; or (3) no plan. (Said 12b–1 Plans and Shareholder Services Plans are sometimes referred to as "Plans").

3. In the Existing Order, Applicants' allocate all expenses attributable to the operations of each class (such as transfer agent expenses, printing costs for prospectuses and reports sent to the class' shareholders and registration fees) to that class. Expenses that are not directly attributable to the operations of a specific class are allocated between classes of a Fund or portfolio based upon the relative net assets of each class. Expenses allocated to a class are borne pro rata by the shareholders of the class in accordance with the number of shares owned by each shareholder. With respect to some classes, operating expenses include payments to institutions pursuant to Shareholder Services Plans for the support services provided by such institutions to their customers who are the beneficial owners of shares in those classes.

4. Tax-Free proposes to establish a new series which would invest in tax exempt instruments with face maturities exceeding one year and which would not maintain a constant net asset value or otherwise comply with the maturity, quality or other limits of Rule 2a–7. Applicants request that the exemptive relief extend to this non-money market series and all other similar investment companies or portfolios thereof that are or may in the future be sponsored, advised, administered and distributed by the Advisor or Alex. Brown, provided that each such fund or portfolio satisfies all the terms and conditions set forth in the Existing Order ("New Funds"). The New Funds would not be limited to money market funds and could, in fact, include any type of fund or portfolio as long as it could satisfy such terms and conditions.

5. As in the Existing Order, separate classes of any New Fund would be the same, except (1) each class would have a different class designation; (2) each class of shares offered in connection with a Plan would separately bear expenses of the Service Payments that were made under the Servicing Agreements (as defined in the Existing Order) that have been entered into with respect to such class; (3) each class would bear class expenses, as defined in the Existing Order and discussed more fully in the application and (4) only holders of the shares of the class or classes involved would be entitled to vote on matters pertaining to the 12b-1 Plan, and the Servicing Agreements, relating to such class or classes.

6. Classes of any New Fund that do not declare dividends daily will have different net asset values per share between dividend declaration dates because expenses would be accrued at different rates for those respective classes. Each Fund issuing shares of a series will allocate, accrue and pay expenses attributed to a particular class in the same manner as expenses are currently described in the amended application.

7. These class expenses would be allocated to a particular class where there is an identifiable benefit that is attributable to one class of shares or where a service is rendered to only one class. Expenses that cannot be attributed to a single class or to a series would be charged to the New Fund and allocated to each portfolio of the New Fund on the basis of their relative net assets.

8. No Plan will operate in such a manner as to cause payments under such Plan to subsidize the distribution of the shares of any other class of the same investment portfolio. In this regard Applicants note that the sale of shares of one class may directly benefit all of the shareholders of the portfolio, regardless of class, insofar as a larger portfolio leads to economies of scale that are enjoyed by all shareholders. Applicants also note that the application sets forth in detail how expenses are allocated among portfolio and classes.

9. All disclosure relating to fees, whether imposed as part of a Plan or as sales charges, will be prominent in all prospectuses and sales literature

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relating to or used in the sale of more than one class of any investment portfolio.

10. In addition, Applicants submit that the requested exemption is appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants assert that the proposed arrangement does not involve borrowings and does not affect Applicant's existing assets or reserves. Nor, it is asserted, will the proposed arrangement increase the speculative character of the shares in the same investment portfolio since all shares will participate pro rata in all of the portfolio income and all of its expenses (with the exception of the proposed Service Payments and any expenses allocable solely to a class).

11. Applicants and all similar investment companies and portfolios thereof will comply with the conditions set forth below, which are the same as the conditions to the existing exemptive order.

Applicant's Conditions

If the requested order is granted, each Applicant agrees to the following conditions:

1. The only differences between each class of shares representing interests in the same investment portfolio will relate solely to priorities with respect to: (a) The payment of dividends, and such priority will reflect only the impact of the Service Payments made by New Funds subject to the requested order under the Plans relating to particular classes of shares and class expenses, and (b) voting rights on matters which pertain to Plans (and Servicing Agreements and Service Payments thereunder) and any other matter affecting only that particular class. In addition, the designation of each class of shares in a portfolio would be different.

2. The Plans (including both 12b-1 Plans and Shareholder Services Plans), Servicing Agreements and Service Payments relating to shares will be approved and reviewed by the concerned New Fund's governing Boards of Directors or Trustees in accordance with the procedures set forth in Rule 12b-1 and, in addition, the 12b-1 Plans (and to the extent required, the Servicing Agreements and Service Payments thereunder) relating to shares will be approved by those shareholders of the New Funds which are affected in accordance with said Rule. In addition, each governing Board of Directors or Trustees, in approving and reviewing payments to an institution pursuant to any 12b-1 Plan or Shareholder Services Plan, will conclude in good faith based on information available to them that such expenditures are competitive with those offered in the industry.

3. Dividends paid by a New Fund with respect to each class of shares in an investment portfolio will be calculated in the same manner and will be in the same amount as dividends paid by the New Fund with respect to each other class of shares in the same portfolio except that the expenses of any Service Payments made by the New Fund under the Servicing Agreements relating to a class of shares and class expenses will be borne exclusively by that class.

4. Each prospectus relating to a class of shares that is offered in connection with a distribution Plan will: (a) Describe the services rendered by institutions under Servicing Agreements with respect to such shares and the fees payable by the New Fund involved for such services: and (b) state that the beneficial owners of such shares should read the prospectus in light of the terms governing their institutional accounts.

5. Each Servicing Agreement entered into by a New Fund will contain representatons by the institution involved that: (a) The institution will provide to its customers a schedule of any fees charged by it to the customers relating to the investment of their assets in the class of shares subject to the Servicing Agreement and (b) the Compensation paid to the institution under the Servicing Agreement, together with any other compensation the institution receives from its customers for services contemplated by the Servicing Agreement, will not be excessive or unreasonable under the laws and instruments governing the institution's relationships with its customers.

6. Applicants acknowledge that the grant of the exemptive order requested by this Application will not imply Commisson approval, authorization or acquiesence in a particular level of payments that may be made to institutions pursuant to distribution Plans in reliance on the requested amended order.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-3246 Filed 2-13-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2267]

Federated States of Micronesia; Declaration of Disaster Area

As a result of the President's major disaster declaration on February 2, 1987, I find that Ulithi Atoll and the Island of Fais in the Federated States of Micronesia constitute a disaster loan area because of Typhoon Orchid occurring on January 10–11, 1987. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on April 3, 1987, and for economic injury until the close of business on November 2, 1987, at:

Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, P.O. Box 13795, Sacramento, California 95853.

or other locally announced locations.

The interest rates are:

	Percent
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	7.500
Businesses Without Credit Available Elsewhere	4.000
Businesses (EIDL) Without Credit Available Elsewhere	4.000
Other (Non-Profit Organizations Including Charitable and Religious Organizations)	9.500

The number assigned to this disaster is 226706 for physical damage and for economic injury the number is 650500.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: February 10, 1987.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 87-3249 Filed 2-13-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending February 6, 1987

The following applications for certificates of public covenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 42477

Date Filed: February 4, 1987.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 4, 1987.
Description: Amendment #2 to the Application of Air Atonabee Limited d/b/a City Express pursuant to section 402 of the Act and Subpart Q requests authority to operate scheduled air services between Toronto and Detroit.

Docket No. 44670

Date Filed: February 6, 1987.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 6, 1987.
Description: Application of Challenge Air Cargo, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations requests amendment of its certificate of public convenience and necessity so as to authorize it to engage in foreign scheduled air transportation of property and mail between any points in any state of the United States, the District of Columbia, or any U.S. territory or possession, and a point or points in Panama and Colombia.

Docket No. 44672

Date Filed: February 6, 1987.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 6, 1987.
Description: Joint Application of Continental Airlines, Inc., and People Express Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations request amendment of a condition in the certificates for Routes 383 and 509.

Docket No. 44668

Parties: Air Traffic Conference of America.
Date Filed: February 6, 1987.
Subject: Application of Air Traffic Conference of America pursuant to section 412 and 414 of the Act requests approval of amendments to the Air Traffic Conference Resolutions, also requests the Department to grant any person affected by its order of approval an exemption from the antitrust laws to the extent necessary to enable such person to proceed with the transactions specifically approved.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87-3212 Filed 2-17-87; 8:45 am]

BILLING CODE 4910-62-M

Aviation Proceedings; Agreements Filed During the Week Ending February 6, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 44645

Parties: Members of International Air Transport Association.
Date Filed: February 3, 1987.
Subject: Revised N/C Pacific co-rates.
Proposed Effective Date: January 1, 1987.

Docket No. 44646

Parties: Members of International Air Transport Association.
Date Filed: February 3, 1987.
Subject: Revises Intrapacific co-rates.
Proposed Effective Date: January 1, 1987.

Docket No. 44647

Parties: Members of International Air Transport Association.
Date Filed: February 3, 1987.
Subject: Increase fares to/from Romania to offset tax.
Proposed Effective Date: April 1, 1987.

Docket No. 44648

Parties: Members of International Air Transport Association.
Date Filed: February 3, 1987.
Subject: Fares between Cairns and Singapore.
Proposed Effective Date: April 1, 1987.

Docket No. 44649

Parties: Members of International Air Transport Association.
Date Filed: February 3, 1987.
Subject: Revise Western Hemisphere co-rates.
Proposed Effective Date: January 1, 1987.

Docket No. 44650 R-1 & R-2

Parties: Members of International Air Transport Association.
Date Filed: February 3, 1987.
Subject: Adds Europe-China Rates to Structure.
Proposed Effective Date: February 15/ March 1, 1987.

Docket No. 44651

Parties: Members of International Air Transport Association.
Date Filed: February 3, 1987.
Subject: Amend Various Passenger Service Resolutions.
Proposed Effective Date: February 1, 1987.

Docket No. 44660

Parties: Members of International Air Transport Association.
Date Filed: February 4, 1987.
Subject: TC12 North Atlantic Specific.
Proposed Effective Date: January 1, 1987.

Docket No. 44665 R-1 & R-2

Parties: Members of International Air Transport Association.
Date Filed: February 6, 1987.
Subject: Reinstate fares to points in Scandinavia via AP routing.
Proposed Effective Date: April 1, 1987.

Docket No. 44666

Parties: Members of International Air Transport Association.
Date Filed: February 6, 1987.
Subject: Increase Rates from Yugoslavia.
Proposed Effective Date: April 1, 1987.

Docket No. 44667 R-1—R-3

Parties: Members of International Air Transport Association.
Date Filed: February 6, 1987.
Subject: South Pacific Expedited Resolutions.
Proposed Effective Date: February 1, 1987.

Docket No. 44669 R-1—R-27

Parties: Members of International Air Transport Association.
Date Filed: February 3, 1987.
Subject: South Pacific Fares.
Proposed Effective Date: February 15, 1987.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87-3211 Filed 2-13-87; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD-87-01]

Vessel Certificates and Exemptions Under the International Regulations for Preventing Collisions at Sea (72 COLREGS)

AGENCY: Coast Guard, DOT.

ACTION: Notice of granting of certificates of alternative compliance to vessels.

SUMMARY: This notice lists the commerical vessels granted a Certificate

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of Alternative Compliance. The vessel which, due to it's special construction and purpose, cannot comply fully with certain provisions of the International Regulations for Preventing Collisions at Sea (72 COLREGS) without interfering with the vessel's special functions. The intent of this notice is to allow the mariner to be aware of the listing of these commercial vessels that have been granted a Certificate of Alternative Compliance.

EFFECTIVE DATE: January 9, 1987.

FOR FURTHER INFORMATION CONTACT: LCDR Robert S. Varanko, Eleventh Coast Guard District Marine Safety Division, Union Bank Building Suite 709, 400 Oceangate, Long Beach, CA 90822. Telephone (213) 590-2301.

SUPPLEMENTARY INFORMATION: Under the provisions of subsection 1605(c) of Title 33 United States Code, the Coast Guard publishes, in the **Federal Register**, a listing of vessels granted Certificates of Alternative Compliance. Certificates of Alternative Compliance are based on a determination that a vessel cannot comply fully with International Rules of light(s), shape(s), and sound signal provisions without interference with the vessel's special functions. The alternative allowed results in the closest possible compliance with Annex I of the 72 COLREGS. These vessels are incapable of complying with the 72 COLREGS light provisions. The following commerical vessel is not in compliance with the 72 COLREGS and has been issued a Certificate of Alternative Compliance.

Vessel and Official Number

The following vessel's sidelights are foward of the masthead light:

M/V Pacific Escort—650276.

Dated: February 4, 1987.

Terry Lucas,

Captain, U.S. Coast Guard Commander, Eleventh Coast Guard District, Acting.

[FR Doc. 87-3241 Filed 2-13-87; 8:45 am]

BILLING CODE 491-014-M

National Highway Traffic Safety Administration

[Docket No. 87-01; Notice 1]

Preliminary Evaluation Report on Seat Back Locks; Federal Motor Vehicle Safety Standards; Seating Systems; Request for Comments

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice announces the publication by NHTSA of a preliminary Evaluation Report concerning Safety Standard No. 207, *Seating Systems*. This staff report evaluates safety effectiveness, benefits and costs of seat back locks for two-door passenger cars with folding front seatbacks. The report was developed in response to Executive Order 12291, which provides for Government-wide review of existing major Federal regulations. The agency seeks public review and comment on this evaluation. Comments received will be used to complete the review required by Executive Order 12291.

DATE: Comments must be received no later than May 18, 1987.

ADDRESSES: Interested persons may obtain a copy of the report free of charge by sending a self-addressed mailing label to Ms. Glorious Harris (NAD-51), National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC, 20590. All comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street SW., Washington, DC., 20590. [Docket hours, 8:00 a.m.-4:00 p.m., Monday through Friday.]

FOR FURTHER INFORMATION CONTACT: Mr. Frank G. Ephraim, Director, Office of Standards Evaluation, Plans and Policy, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street SW., Washington, DC, 20590 (202-366-1574).

SUPPLEMENTARY INFORMATION: Standard No. 207, *Seating Systems* (49 CFR 571.207) specifies strength requirements for automotive seats and their attachment assemblies, so as to minimize the possibility of their failure by forces acting on them as a result of vehicle impact. The standard includes a requirement that front seats with folding seatbacks be equipped with a locking device, designed to limit the forward motion of the seatback in a collision and to keep the seatback away from front seat occupants. Standard No. 207 took effect for passenger cars on January 1, 1968 and for multipurpose passenger vehicles, trucks and buses on January 1, 1972. Seat back locks were installed in domestic two-door passenger cars during 1967-68.

Pursuant to Executive Order 12291, NHTSA recently conducted an evaluation of seatback locks to determine the effectiveness of the technology selected by automobile manufacturers in preventing fatalities and injuries and to determine the benefits and costs of the technology to consumers. Under the Executive Order, agencies are to review existing regulations to determine whether the regulations are achieving the Order's policy goals, i.e., achieving legislative goals effectively and efficiently and without imposing any unnecessary burdens on those affected. This preliminary evaluation is an analysis of the effectiveness, benefits and costs of seat back locks for two-door passenger cars with folding front seatbacks.

The evaluation is based on statistical analyses of Washington, Texas, New York, Fatal Accident Reporting System and Multidisciplinary Accident Investigation data (with special emphasis on back seat occupants, frontal crashes, and crashes involving occupant ejection or vehicle fire), sled test analyses and a cost study of production lock assemblies.

It was found that the locks hold seatbacks in place in crashes when the back seat is unoccupied, but locks or other seat components often separate at moderate crash speeds when there are unrestrained back seat occupants. No statistically significant injury or fatality reductions were found for seat back locks in any of the accident data files or in the sled tests. The locks add about $14 (in 1985 dollars) to the lifetime cost of owning and operating a car.

This evaluation is called a "preliminary" one because, statistically speaking, it is difficult to prove definitively that a safety device is not effective. That is because the absence of statistically significant positive findings does not constitute proof that a safety device is completely ineffective. There might still be some narrowly defined crash types where the locks are, in fact, beneficial but there are simply not enough data of that type of crash for a statistically meaningful effectiveness analysis.

NHTSA welcomes public review of the evaluation report and invites the public to submit comments. NHTSA would be especially interested in learning of any test data, statistical analyses, or in-depth accident investigations which show some kind of significant effect for seat back locks.

It is requested but not required that 10 copies of comments be submitted.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: February 10, 1987.

Adele Spielberger,

Associate Administrator for Plans and Policy.

[FR Doc. 87-3202 Filed 2-13-87; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Secret Service

Privacy Act of 1974; Proposed New Routine Use for an Existing System of Records

AGENCY: Secret Service, Treasury.

ACTION: Notice of proposed new routine use for an existing system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, 5 U.S.C. 552(a)(c)(4), the Secret Service gives notice of a proposed new routine use for the United States Secret Service's Criminal Investigation Information System (Treasury/USSS 00.002) last published in the **Federal Register** on July 25, 1985 (50 FR 30391). The proposed routine use would permit the disclosure of digitized fingerprint computation information to the Northern Virginia Regional Identification System.

DATES: Any interested party may submit written comments regarding this proposal. To be considered, comments must be received within 30 days of the publication of this notice. Unless public comments are received which warrant modification of the proposed revision, it will become effective March 19, 1987.

ADDRESS: Written comments should be forwarded to John J. Kelleher, Office of Chief Counsel, United States Secret Service, 1800 G Street NW., Room 842, Washington, DC 20223. Comments which are received will be available for public inspection at the above address by appointment only. Appointments may be made by contacting Donna Boudreau at (202) 535-5771.

FOR FURTHER INFORMATION CONTACT: Arthur Rehkemper, Special Agent in Charge, Forensic Services Division, United States Secret Service, 1800 G Street NW., Room 929, Washington, DC 20223.

SUPPLEMENTARY INFORMATION: This proposed new routine use involves the disclosure of the digital computations of fingerprints to the Northern Virginia Regional Identification System (NOVARIS).

NOVARIS is a specialized computer system shared by a number of Northern Virginia police departments. This system utilizes a computer-based comparison technique that acts as a primary screening device for identifying similar fingerprints. Basically the system converts a normal fingerprint into digital information which is then used to compare prints by evaluating the similarities in the digitized data. This system is radically more efficient than the hand search method currently used by the Secret Service.

This proposed routine use will allow the Secret Service to utilize the NOVARIS system for storage and retrieval of fingerprints maintained by the Secret Service. No personal identifying information will be supplied to NOVARIS when the Secret Service fingerprint data is entered into the system. NOVARIS will have only the digital computation of the prints, with each computation receiving a code letter or number known to the Secret Service. The original fingerprint card with its identifying data will remain in the custody of the Secret Service Forensic Services Division. The Secret Service will supply a NOVARIS member with fingerprints and personal identification data only after the NOVARIS computer has chosen a Secret Service print as a possible match of an unidentified print discovered in a legitimate law enforcement investigation.

Dated: February 6, 1987.

John F.W. Rogers,

Assistant Secretary (Management).

For the reasons set out in the preamble, Treasury/USSS 00.002 is revised to read as follows:

Treasury/USSS 00.002

SYSTEM NAME:

Treasury/USSS-Criminal Investigation Information System.

SYSTEM LOCATION:

(a) United States Secret Service, 1800 G Street NW., Washington, DC 20223, (b) Components of this System are geographically dispersed throughout Secret Service field offices. (See below United States Secret Service Appendix A listing the addresses of Secret Service field offices).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Individuals who have been or are currently the subject of a criminal investigation by the U.S. Secret Service in connection with the performance by that agency of its authorized criminal investigative functions;

(b) Individuals who are payees, registered owners or endorsers of stolen or lost obligations and other securities of the United States;

(c) Individuals who are fugitives, released prisoners, correspondents, organized crime figures, and victims of crimes who have been identified by the Secret Service in the conduct of criminal investigations or by information supplied by other law enforcement agencies, government units, and the general public.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Records containing information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrest, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status;

(b) Records containing information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual;

(c) Records containing reports identifiable with an individual compiled at various stages of the process of enforcement of criminal laws from arrest or indictment through release from supervision;

(d) Records containing investigatory material compiled for law enforcement purposes, including but not limited to, handwriting exemplars; laboratory analyses of inks and papers; handwriting analyses; petitions for the remission of forfeitures; notice of non-receipt of Treasury drafts; affidavits of forged endorsements; opinions of the examiner of questioned documents; certificates by owners of U.S. registered securities concerning forged requests for payments or assignments; applications for relief on account of loss, theft, or destruction of U.S. Savings Bonds or checks; photographic reproductions of obligations and other securities of the United States; contraband items; claims against the United States for the proceeds of government checks and bonds; and reports necessary for the settlement of check and bond claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The criminal investigative authority of the U.S. Secret Service is contained in 18 U.S.C. 3056.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(a) Referral to Federal, State, and local governments, foreign and domestic, having prosecutive and civil law enforcement functions for use by attorneys, magistrates, and judges; and parole and probation authorities for the purpose of prosecuting, sentencing, and determining the parole and probation

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status of criminal offenders or suspected criminal offenders;

(b) Referral to personnel of other Federal, State and local law enforcement agencies, foreign and domestic, for the purpose of developing information on subjects involved in Secret Service criminal investigations and assisting other law enforcement agencies in the investigation and prosecution of violations of the criminal laws which those agencies are responsible for enforcing;

(c) Referral to personnel of Federal, State, and local governmental agencies, where such referral is considered reasonably necessary for the purpose of furthering Secret Service efforts to investigate the activities of and apprehend criminal offenders and suspected criminal offenders;

(d) Referral to personnel of Federal, State, and local governmental agencies, foreign and domestic, where there is a showing of reasonable necessity to obtain such information to accomplish a valid law enforcement purpose;

(e) Referral to employees and officials of financial and commercial business firms and to private individuals of identifying information pertaining to actual or suspected criminal offenders where such referral is considered reasonably necessary for the purpose of furthering Secret Service efforts to investigate the activities of and apprehend criminal offenders and suspected criminal offenders;

(f) Records maintained in this system indicating a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, may be referred to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order pursuant thereto;

(g) Disclosures in the course of presenting evidence to a court, magistrate or administrative tribunal and disclosures to opposing counsel in the course of prosecuting a violation or potential violation of law, whether civil, criminal or regulatory in nature and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto;

(h) Disclosures to Federal, State or local agencies maintaining civil, criminal or other relevant enforcement information or other pertinent information relevant to an agency decision concerning the hiring or retention of an employee, or the issuance of a license, grant or other benefit;

(i) Disclosure to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter;

(j) Disclosures of information relating to criminal and civil proceedings to the news media in accordance with the guidelines contained in 28 CFR 50.2;

(k) Disclosure in connection with the utilization by the Secret Service of the Northern Virginia Regional Identification System for the storage and retrieval of fingerprints maintained by the Service.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records comprising this System of the U.S. Secret Service are contained in file jackets. Portions of the indices and information contained in the records are programmed into a computer maintained at Headquarters, U.S. Secret Service, 1800 G Street NW., Washington, DC.

RETRIEVABILITY:

This System of the U.S. Secret Service is indexed alphabetically by name at Headquarters and, in the field master and magnetic media indices. Access to the physical files containing records is by case number obtained from the alphabetized name indices.

SAFEGUARDS:

(1) The field jackets and indices containing the records of this System are secured by alarms, and other internal security devices, in locked rooms with guards on duty on an around-the-clock basis. Access to the records is available only to employees responsible for records management and operational employees with a "a need to know," each of whom have top secret security clearances;

(2) The file jackets and the master field indices ocmprising this System in Secret Service Field Offices are located in locked filing cabinets and in locked rooms when Secret Service employees are not on duty. Access to the System is limited to employees of the Secret Service holding top secret security clearances.

RETENTION AND DISPOSAL:

The retention schedules for records comprising this System are as follows:

(1) All judicial cases, 20 years;

(2) Non-judicial criminal investigative cases (except non-judicial check and bond cases), 10 years;

(3) Non-judicial check claim and bond forgery cases, 5 years;

(4) Administrative files of an investigative nature, 5 years;

(5) All other files and records the disposition of which is not otherwise specified, 5 years;

(6) Investigations for other districts, 2 years;

(7) Receipts for counterfeits and contraband, 2 years;

(8) Investigation Control Forms, retention varies according to the specific type of case involved;

(9) Arrest History Forms, varies according to the specific type of case involved;

(10) Headquarters Criminal Investigative case files, 50 years;

(11) Disposal of records contained in this System is by burning, shredding, maceration, and pulping.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Office of Investigations, U.S. Secret Service, 1800 G Street NW., Washington, DC 20223.

NOTIFICATION PROCEDURE:

In accordance with the provisions of 5 U.S.C. 552a (j) and (k), the Director of the U.S. Secret Service has exempted this System from compliance with the provisions of 5 U.S.C. 552a(e)(4)(G).

RECORDS ACCESS PROCEDURES:

In accordance with the provisions of 5 U.S.C. 552a (j) and (k), the Director of the U.S. Secret Service has exempted this System from compliance with the provisions of 5 U.S.C. 552a(e)(4)(H).

CONTESTING RECORD PROCEDURES:

See access above.

RECORD SOURCE CATEGORIES:

In accordance with the provisions of 5 U.S.C. 552a (j) and (k), the Director of the U.S. Secret Service has exempted this System from compliance with the provisions of 5 U.S.C. 552a(e)(4)(I).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I), of the Privacy Act pursuant to 5 U.S.C. 552a (j) and (k).

[FR Doc. 87-3213 Filed 2-13-87; 8:45 am]

BILLING CODE 4810-42-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 31
Tuesday, February 17, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

Time and Date: Commission Meeting Thursday, February 19, 1987 10:00 a.m.

Location: Room 456, Westwood Towers 5401 Westbard Avenue Bethesda, Md.

Status: Closed to the Public.

Matters To Be Considered:
Compliance Status Report.

The staff will brief the Commission on various compliance matters.

For a recorded message containing the latest agenda information, call 301-492-5709.

Contact Person for Additional Information: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,
Deputy Secretary.
February 10, 1987.
[FR Doc. 87-3247 Filed 2-11-87; 4:23 pm]
BILLING CODE 6355-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Date and Time: 1:30 pm (Eastern Time) Monday, February 23, 1987.

Place: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 E Street, NW., Washington, DC 20507

Status: Part will be open to the public and part will be closed to public.

Matters To Be Considered:

Open

1. Announcement of Notation Vote(s).
2. A Report on Commission Operations (Optional).
3. Proposed Semi-Annual Regulatory Agenda.

Closed

Litigation Authorization; General Counsel Recommendations; Discussion of Certain Commissioner's Charge.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

Contact Person for More Information: Cynthia C. Matthews, Executive Officer at (202) 634-6748.

Dated and issued: February 11, 1987.

Cynthia C. Matthews,
Executive Officer, Executive Secretariat.
[FR Doc. 87-3271 Filed 2-12-87; 10:48 am]
BILLING CODE 6750-06-M

FARM CREDIT ADMINISTRATION

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board). The regular meeting of the Board originally scheduled for February 3, 1987 is rescheduled to Monday, February 23, 1987.

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on February 23, 1987, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Auberger, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703-883-4010).

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

1. Approval of Minutes of January Meeting.
2. Proposal to Prohibit Persons from Serving Concurrently as the Chief Executive Officer of a Farm Credit Bank and an Association.
3. Consideration of St. Paul District Incentive Compensation Program.
4. FCS Building Association Matters.
5. Examination and Enforcement Matters.[1]

Dated: February 11, 1987.

Kenneth J. Auberger,
Secretary, Farm Credit Administration.
[FR Doc. 87-3248 Filed 2-11-87; 4:55 pm]
BILLING CODE 6705-01-M

INTERSTATE COMMERCE COMMISSION

Time and Date: 10:00 a.m., Tuesday, February 24, 1987.

Place: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

Status: Open Special Conference.

Purpose: The purpose of the conference is for the Commission to discuss among themselves, and to vote on, the agenda item(s). Although the conference is open for public observation, no public participation is permitted.

Matter To Be Discussed: Docket No. 39117—*Lo Shippers Action Committee v. Aberdeen and Rockfish Railrood Company et al.*

Contact Person for More Information: Alvin H. Brown, Office of Legislative and Public Affairs, Telephone: (202) 275-7252.

Noreta R. McGee,
Secretary.
[FR Doc. 87-3302 Filed 2-12-87; 1:28 pm]
BILLING CODE 7035-01-M

[1] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (8) and (9).

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Corrections

Federal Register
Vol. 52, No. 31
Tuesday, February 17, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. 86N-0451]

United States Standards for Grades of Seed Potatoes

Correction

In rule document 87-2255 beginning on page 3399 in the issue of Wednesday, Fedruary 4, 1987, make the following corrections:

§ 51.3006 [Corrected]

On page 3402, in § 51.3006(c), in Table II, in the entry "Ingrown sprouts", an "x" should appear under "When removal. . . "; in the next line "Dx" should be removed; and in the entry for "All other. . .", an "x" should appear under "When removal. . .".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 421

[OW-FRL-3098-5]

Nonferrous Metals Manufacturing Point Source Category Effluent Limitations Guidelines; Pretreatment Standards and New Source Performance Standards

Correction

In proposed rule document 87-1326 beginning on page 2480 in the issue of Thursday, January 22, 1987, make the following correction:

On page 2481, in the second column, in the second complete paragraph, in the 11th line, the fourth word should read "uncommingled".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. 86N-0451]

Proposed Revocation of Regulation

Correction

In proposed rule document 86-28332 beginning on page 45346 in the issue of Thursday, December 18, 1986, make the following correction:

On page 45347, in the second column, in the paragraph under, "Environmental Impact", in the first line, "31" should read "21".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86C-0495]

The Proctor and Gamble Co.; Filing of Color Additive Petition

Correction

In the notice document beginning on page 3349 in the issue of Tuesday, February 3, 1987, make the following corrections:

1. On page 3349, in the third column, in the **SUMMARY**, in the 11th line, "fitness" should read "fineness";
2. On page 3350, in the first column, in the seventh line, "fitness" should read "fineness"; and
3. On page 3350, in the first column, in the file line, "FR Doc. 87-2021" should read "FR Doc. 87-2027".

BILLING CODE 1505-01-D&4734

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8113]

Withholding Upon Dispositions of U.S. Real Property Interests by Foreign Persons

Correction

In a correction to rule document 86-28511 appearing on page 3916 in the issue of Friday, February 6, 1987, make the following corrections:

§ 1.1445-1 [Corrected]

On page 3916, in the third column, in "§ 1.445-1", the section number should appear as set forth above. Also in items 3, 4, and 5, "§ 1.445-1" should read "§ 1.1445-1".

BILLING CODE 1505-01-D

federal register

Tuesday
February 17, 1987

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171 and 172

Hazardous Substances; Corrections

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 172

[Docket No. HM-145F, Amdt. Nos. 171-90, 172-108]

Hazardous Substances; Corrections

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Final rule; corrections.

SUMMARY: This document corrects errors in the regulatory text of a final rule issued under Docket HM-145F, Amendment Numbers 171-90 and 172-108, entitled *Hazardous Substances*, which was published in the **Federal Register** on Friday, November 21, 1986 [51 FR 42174]. This document also authorizes the use of "D" numbers to identify EPA unlisted hazardous wastes which exhibit "ICRE" characteristics.

FOR FURTHER INFORMATION CONTACT: Lee Jackson, (202) 366-4488 or George Cushmac, (202) 366-4545, Office of Hazardous Materials Transportation, RSPA, Washington, DC 20590. Questions about hazardous substance designations or reportable quantities should be directed to the EPA. Call the RCRA/Superfund hotline at (800) 424-9346, or, in Washington, DC, (202) 382-3000.

SUPPLEMENTARY INFORMATION: On November 21, 1986, RSPA amended the Hazardous Materials Regulations (HMR) by incorporating into the HMR, as hazardous materials, all substances designated as hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). This action was necessary to comply with the Superfund Amendments and Reauthorization Act of 1986. In the final rule, hazardous substances and their reportable quantities (RQs) were listed in an Appendix to § 172.101. In addition, the final rule contained amendments making the HMR applicable to these hazardous substances. The effective date of that final rule was January 1, 1987. However, RSPA published an amendment on December 24, 1986 (51 FR 46672) which extends that effective date to July 1, 1987, to afford shippers sufficient time to comply with the rule. This amendment corrects the errors which appear in the regulatory text of that rule.

Paragraph (d)(1)(i) of § 171.11 is revised to clearly indicate the correct format for adding additional descriptive information when the proper shipping name does not include the name of the hazardous substance.

Sections 171.12a(a)(3) and 172.102(e) are revised to reference applicable description requirements for hazardous substances in §§ 172.203(c) and 172.324. This corrects certain grammatical errors and clarifies the application of requirements. Editorially, paragraph (c) of § 172.101 is amended by removing the reference contained in this paragraph to paragraph (b)(4), since the symbol "E" no longer appears in Column 1 of the Hazardous Materials Table. Further, the spelling of the word "ignitibility" is changed everywhere it appears in the regulatory text so that the spelling of the word is consistent with EPA's spelling (i.e., ignitability).

In the Appendix to § 172.101 which begins on page 42177, paragraphs 2, 3 and 4 of the introductory text to the List of Hazardous Substances and Reportable Quantities are revised for clarity and to correct certain errors which appeared upon publication. The portion of paragraph 2 which appears on page 42178 is revised to include reference to "K numbers" since waste streams are referenced by both "F" and "K" numbers.

Several changes are made to the List of Hazardous Substances and Reportable Quantities. A few of the reportable quantities are changed (either raised or lowered) because of incorrect entries in the original list. Many of the broad generic categories of materials which appear on the list in upper case letters are removed from the list because there are no RQ's assigned to these categories. Also removed from each of these entries are the two asterisks (**) which reference a footnote that stated no RQ is being assigned to that particular generic or broad class. These entries and the footnote are removed because, by definition, a material must have a reportable quantity to be a hazardous substance. Several adjustments are made to certain entries on the list by revising, removing, or adding either the entire line entry or a portion of the entry. Some entries on the list are rearranged so they appear in correct alphabetical sequence.

The symbols "*" and "@" are deleted from certain entries which appear on the list because either the exact name of the hazardous substance does not appear in the § 172.101 Hazardous Materials Table or the name of the synonym for the hazardous substance which RSPA added is inappropriate. The footnote at the end of the list which is referenced by the symbol "***" is removed because it refers to EPA requirements. This symbol is also removed from the entries "RADIONUCLIDES", "Ferric dextran" and "Iron dextran". The symbol "#" which appears on the list after certain "F" and "K" numbered wastes and at the end of the list as a footnote is removed because it is inappropriate. The footnote represented by the symbol "¢" is revised to state explicitly that solid metals which are in pieces whose particle size is larger than 100 micrometers (0.004 inches) are not hazardous substances under the HMR. For convenience, the appendix to § 172.101 is reprinted in its entirety.

On page 42195, paragraph (c) of § 172.203 is revised to clarify when the name or names of hazardous substance constituents must appear in parentheses on the shipping paper in association with the basic description. On this same page, § 172.324 is revised for ease of understanding and to plainly state when the name or names of a hazardous substance constituent must be marked in parentheses on a package having a capacity of 110 gallons or less. Changing each of these paragraphs removes the limitation contained in the final rule that made the requirement for additional information apply only to mixtures or solutions. It now applies to shipments of pure materials as well.

The use of EPA waste numbers to identify waste streams ("F" and "K" numbers) was discussed in the preamble to the final rule (page 42175, column 2). For waste streams, the EPA waste number must be entered on shipping papers in association with the basic description (*not* . . . "in association with the proper shipping name." . . . as originally stated). The EPA waste number for the waste stream must also be marked on non-bulk packagings (those of 110 gallons or less) in association with the proper shipping name.

Since the final rule authorized the use of "F" and "K" numbers to identify waste streams, many people have inquired about the acceptability of using "D" numbers to identify EPA unlisted hazardous wastes which exhibit "ICRE" characteristics. Upon consideration of these comments, RSPA agrees that the use of "D" numbers should be an authorized alternative to showing the letters "EPA" and the applicable ICRE characteristic. Therefore, RSPA is revising the appropriate sections of the rules text to allow the use of the terms "EPA ignitability" or "EPA corrosivity" or "EPA reactivity" or "EPA EP toxicity", as appropriate *or* use of the corresponding "D" number, as appropriate, on shipping papers in association with the basic description and as marking on non-bulk packagings (those of 110 gallons or less) in association with the proper shipping name.

Administrative Notices

Because the amendments adopted herein were mandated by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499, October 17, 1986), it has been determined that notice and public procedure are contrary to the public interest. No determinations have been made under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

Under the terms of "DOT Regulatory Policies and Procedures" (44 FR 11034, February 26, 1979), since these amendments are part of an emergency rulemaking governed by a short-term statutory deadline, no determination has been made as to whether it is "significant".

I certify that these amendments do not require preparation of an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*).

Although the provisions of Pub. L. 99-499 provide insufficient time for RSPA to perform the required analyses and make required findings under the applicable statutory, regulatory, and executive authorities, the agency is aware that amendments of such broad applicability may produce significant impacts on industry segments, a substantial number of which may be small enterprises.

Because RSPA's role in regulating hazardous substances is directly tied to EPA's ongoing hazardous substances responsibility, primarily through the agency's determination of reportable quantities, amendments will be made to HMR as necessary to satisfy the intent of Congress expressed in Pub. L. 99-499.

In consideration of the foregoing, the following changes are made to Docket HM-145F [51 FR 42174, November 21, 1986], Amendment Numbers 171-90 and 172-108:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. In § 171.11, paragraph (d)(1)(i) found in column 1 on page 42177 is correctly revised to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

* * * * *

(d) * * *

(1) * * *

(i) One of the following additional descriptions shall be entered, in parentheses, in association with the basic description on shipping papers and in association with the proper shipping name required to be marked on packages:

(A) The name of the hazardous substance as shown in the appendix to § 172.101 of this subchapter, unless the proper shipping name required by the ICAO Technical Instructions already includes the name of the hazardous substance; or

(B) For waste streams, the waste stream number; or

(C) For wastes which exhibit an EPA characteristic of ignitability, corrosivity, reactivity, or EP toxicity, the letters "EPA" followed by the word "ignitability", or "corrosivity", or "reactivity", or "EP toxicity", as appropriate *or* the corresponding "D" number, as appropriate.

* * * * *

2. On page 42177, amendment number 4, "(a)(3)(i) is revised to read as follows" is corrected to read "(a)(3) is revised to read as follows" and the correct paragraph is set forth below:

§ 171.12a Canadian shipments and packagings.

(a) * * *

(3) When a hazardous material which is subject to the requirements of the TDG Regulations is also a hazardous substance as defined in this subchapter, the additional description requirements for hazardous substances in §§ 172.203(c) and 172.324 are applicable.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

3. The authority citation for 49 CFR Part 172 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, and 1808; Pub. L. 99-499; and 49 CFR Part 1, unless otherwise noted.

§ 172.101 [Amended]

4. In § 172.101, paragraph (c) is amended by removing the reference to paragraph (b)(4).

5. Beginning in the third column of page 42177, the appendix to § 172.101 is correctly added to read as follows:

Appendix to § 172.101—List of Hazardous Substances and Reportable Quantities

1. This appendix lists materials and their corresponding reportable quantities (RQs) which are listed or designated as "hazardous substances" under section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA; Pub. L. 96-510). A material in this list is regulated as a hazardous material and a hazardous substance under this subchapter if it meets the definition of a hazardous substance in § 171.8 of this subchapter.

2. Column 1 of the list, entitled "*Hazardous substances*", contains the names of hazardous substances. Elements and compunds are listed first in alphabetical sequence. Following the listing of elements and compounds is a listing of waste streams. These waste streams appear on the list in numerical sequence and are referenced by the appropriate "F" or "K" numbers. Column 2 of the list, entitled "*Synonyms*", contains the names of synonyms for certain elements and compounds listed in Column 1. No synonyms are listed for waste streams. Synonyms are useful in identifying hazardous substances and in identifying proper shipping names. Column 3 of the list, entitled "*Reportable quantity (RQ)*", contains the reportable quantity (RQ), in pounds and kilograms, for each hazardous substance listed in Column 1.

3. The procedure for selecting a proper shipping name for a hazardous substance is set forth in § 172.101(c)(9).

4. A series of notes is used throughout the list to provide additional information concerning certain hazardous substances. These notes are explained at the end of the list.

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
Acenaphthene		100 (45.4)
Acenaphthylene		5000 (2270)
Acetaldehyde *	Ethanal	1000 (454)
Acetaldehyde, chloro-	Chloroacetaldehyde	1000 (454)
Acetaldehyde, trichloro-	Chloral	1 (0.454)
Acetamide, N-(aminothioxomethyl)-	1-Acetyl-2-thiourea	1000 (454)
Acetamide, N-(4-ethoxyphenyl)-	Phenacetin	1 (0.454)
Acetamide, N-fluoren-2-yl-	2-Acetylaminofluorene	1 (0.454)
Acetamide, 2-fluoro-	Fluoroacetamide	100 (45.4)
Acetic acid *		5000 (2270)

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LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
Acetic acid, ethyl ester	Ethyl acetate	5000 (2270)
Acetic acid, fluoro-, sodium salt	Fluoroacetic acid, sodium salt	10 (4.54)
Acetic acid, lead salt	Lead acetate	5000 (2270)
Acetic acid, thallium(I) salt	Thallium(I) acetate	100 (45.4)
Acetic anhydride *		5000 (2270)
Acetimidic acid, N-[(methylcarbamoyl)oxy]thio-methyl ester	Methomyl	100 (45.4)
Acetone *	2-Propanone	5000 (2270)
Acetone cyanohydrin *	Propanenitrile, 2-hydroxy-2-methyl-	10 (4.54)
Acetonitrile *	2-Methylactonitrile	5000 (2270)
3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin and salts	Warfarin	100 (45.4)
Acetophenone	Ethanone, 1-phenyl-	5000 (2270)
2-Acetylaminofluorene	Acetamide, N-fluoren-2-yl-	1 (0.454)
Acetyl bromide *		5000 (2270)
Acetyl chloride *	Ethanoyl chloride	5000 (2270)
1-Acetyl-2-thiourea	Acetamide, N-(aminothioxomethyl)-	1000 (454)
Acrolein *	2-Propenal	1 (0.454)
Acrylamide	2-Propenamide	5000 (2270)
Acrylic acid *	2-Propenoic acid	5000 (2270)
Acrylonitrile *	2-Propenenitrile	100 (45.4)
Adipic acid		5000 (2270)
Alanine, 3-[p-bis(2-chloroethyl)amino]phenyl-, L-	Melphalan	1 (0.454)
Aldicarb	Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl]oxime	1 (0.454)
Aldrin *	1,2,3,4,10-10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4,5,8-endo,exo-dimethanonaphthalene	1 (0.454)
Allyl alcohol *	2-Propen-1-ol	100 (45.4)
Allyl chloride *		1000 (454)
Aluminum phosphide *		100 (45.4)
Aluminum sulfate *		5000 (2270)
2-Amino-1-methyl benzene	o-Toluidine	1 (0.454)
4-Amino-1-methyl benzene	p-Toluidine	1 (0.454)
5-(Aminomethyl)-3-isoxazoiol	3(2H)-Isoxazolone, 5-(aminomethyl)-	1000 (454)
4-Aminopyridine	4-Pyridinamine	1000 (454)
Amitrole	1H-1,2,4-Triazol-3-amine	1 (0.454)
Ammonia *		100 (45.4)
Ammonium acetate		5000 (2270)
Ammonium benzoate		5000 (2270)
Ammonium bicarbonate		5000 (2270)
Ammonium bichromate	Ammonium dichromate @	1000 (454)
Ammonium bifluoride *		100 (45.4)
Ammonium bisulfite *		5000 (2270)
Ammonium carbamate *		5000 (2270)
Ammonium carbonate *		5000 (2270)
Ammonium chloride		5000 (2270)
Ammonium chromate		1000 (454)
Ammonium citrate, dibasic		5000 (2270)
Ammonium dichromate @	Ammonium bichromate	1000 (454)
Ammonium fluoborate *		5000 (2270)
Ammonium fluoride *		100 (45.4)
Ammonium hydroxide *		1000 (454)
Ammonium oxalate *		5000 (2270)
Ammonium picrate *	Phenol, 2,4,6-trinitro-, ammonium salt	10 (4.54)
Ammonium silicofluoride *		1000 (454)
Ammonium sulfamate		5000 (2270)
Ammonium sulfide *		100 (45.4)
Ammonium sulfite		5000 (2270)
Ammonium tartrate		5000 (2270)
Ammonium thiocyanate		5000 (2270)
Ammonium thiosulfate		5000 (2270)
Ammonium vanadate	Vanadic acid, ammonium salt	1000 (454)
Amyl acetate *		5000 (2270)
iso-Amyl acetate		
sec-Amyl acetate		
tert-Amyl acetate		
Aniline *	Benzenamine	5000 (2270)
Anthracene		5000 (2270)
Antimony e		5000 (2270)
Antimony pentachloride *		1000 (454)
Antimony potassium tartrate *		100 (45.4)
Antimony tribromide *		1000 (454)
Antimony trichloride *		1000 (454)
Antimony trifluoride *		1000 (454)
Antimony trioxide		1000 (454)
Aroclor 1016	POLYCHLORINATED BIPHENYLS (PCBs)	10 (4.54)
Aroclor 1221	POLYCHLORINATED BIPHENYLS (PCBs)	10 (4.54)
Aroclor 1232	POLYCHLORINATED BIPHENYLS (PCBs)	10 (4.54)
Aroclor 1242	POLYCHLORINATED BIPHENYLS (PCBs)	10 (4.54)
Aroclor 1248	POLYCHLORINATED BIPHENYLS (PCBs)	10 (4.54)
Aroclor 1254	POLYCHLORINATED BIPHENYLS (PCBs)	10 (4.54)
Aroclor 1260	POLYCHLORINATED BIPHENYLS (PCBs)	10 (4.54)
Arsenic * e		1 (0.454)
Arsenic acid *		1 (0.454)
Arsenic disulfide *		5000 (2270)
Arsenic(III) oxide	Arsenic trioxide *	5000 (2270)
Arsenic(V) oxide	Arsenic pentoxide *	5000 (2270)
Arsenic pentoxide *	Arsenic(V) oxide	5000 (2270)
Arsenic trichloride *		5000 (2270)
Arsenic trioxide *	Arsenic(III) oxide	5000 (2270)
Arsenic trisulfide *		5000 (2270)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
Arsine, diethyl-	Diethylarsine	1 (0.454)
Asbestos * ¢¢		1 (0.454)
Auramine	Benzenamine, 4,4'-carbonimidoylbis (N,N-dimethyl-	1(0.454)
Azaserine	L-Serine, diazoacetate (ester)	1 (0.454)
Azinidine	Ethylenimine	1 (0.454)
Azinphos methyl @	Guthion *	1 (0.454)
Azirino(2',3':3,4)pyrrolo(1,2-a)indole-4,7-dione,6-amino-8-[((aminocarbonyl)oxy) methyl)-1,1a,2,8,8a, 8b-hexahydro-8a-methoxy-5-methyl-	Mitomycin C	1 (0.454)
Barium cyanide *		10 (4.54)
Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	3-Methylcholanthrene	1 (0.454)
Benz[c]acridine	3,4-Benzacridine	1 (0.454)
3,4-Benzacridine	Benz[c]acridine	1 (0.454)
Benzal chloride	Benzene, dichloromethyl-	5000 (2270)
Benz[a]anthracene	Benzo[a]anthracene	1 (0.454)
1,2-Benzanthracene	1,2-Benzanthracene	
	Benz[a]anthracene	1 (0.454)
	Benzo[a]anthracene	
1,2-Benzanthracene, 7,12-dimethyl-	7,12-Dimethylbenz[a]anthracene	1 (0.454)
Benzenamine	Aniline *	5000 (2270)
Benzenamine, 4,4'-carbonimidoylbis (N,N-dimethyl-	Auramine	1(0.454)
Benzenamine, 4-chloro-	p-Chloroaniline	1000 (454)
Benzenamine, 4-chloro-2-methyl-, hydrochloride	4-Chloro-o-toluidine, hydrochloride	1 (0.454)
Benzenamine, N,N-dimethyl-4-phenylazo-	Dimethylaminoazobenzene	1 (0.454)
Benzenamine, 4,4'-methylenebis(2-chloro-	4,4'-Methylenebis(2-chloroaniline)	1 (0.454)
Benzenamine, 2-methyl-, hydrochloride	o-Toluidine hydrochloride	1 (0.454)
Benzenamine, 2-methyl-5-nitro-	5-Nitro-o-toluidine	1 (0.454)
Benzenamine, 4-nitro-	p-Nitroaniline	5000 (2270)
Benzene *		1000 (454)
Benzene, 1-bromo-4-phenoxy-	4-Bromophenyl phenyl ether	100 (45.4)
Benzene, chloro-	Chlorobenzene *	100 (45.4)
Benzene, chloromethyl-	Benzyl chloride *	100 (45.4)
Benzene, 1,2-dichloro-	o-Dichlorobenzene *	100 (45.4)
	1,2-Dichlorobenzene	
Benzene, 1,3-dichloro-	m-Dichlorobenzene	100 (45.4)
	1,3-Dichlorobenzene	
Benzene, 1,4-dichloro-	p-Dichlorobenzene *	100 (45.4)
	1,4-Dichlorobenzene	
Benzene, dichloromethyl-	Benzal chloride	5000 (2270)
Benzene, 2,4-diisocyanatomethyl-	Toluene diisocyanate *	100 (45.4)
Benzene, dimethyl-	Xylene * (mixed)	1000 (454)
m-	m-	
o-	o-	
p-	p-	
Benzene, hexachloro-	Hexachlorobenzene	1 (0.454)
Benzene, hexahydro-	Cyclohexane *	1000 (454)
Benzene, hydroxy-	Phenol *	1000 (454)
Benzene, methyl-	Toluene *	1000 (454)
Benzene, 1-methyl-2,4-dinitro-	2,4-Dinitrotoluene	1000 (454)
Benzene, 1-methyl-2,6-dinitro-	2,6-Dinitrotoluene	1000 (454)
Benzene, 1,2-methylenedioxy-4-allyl-	Safrole	1 (0.454)
Benzene, 1,2-methylenedioxy-4-propenyl-	Isosafrole	1 (0.454)
Benzene, 1,2-methylenedioxy-4-propyl-	Dihydrosafrole	1 (0.454)
Benzene, 1-methylethyl-	Cumene	5000 (2270)
Benzene, nitro-	Nitrobenzene *	1000 (454)
Benzene, pentachloro-	Pentachlorobenzene	10 (4.54)
Benzene, pentachloronitro-	Pentachloronitrobenzene	1 (0.454)
Benzene, 1,2,4,5-tetrachloro-	1,2,4,5-Tetrachlorobenzene	5000 (2270)
Benzene, trichloromethyl-	Benzotrichloride	1 (0.454)
Benzene, 1,3,5-trinitro-	sym-Trinitrobenzene *	10 (4.54)
Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester	Ethyl 4,4'-dichlorobenzilate	1 (0.454)
1,2-Benzenedicarboxylic acid anhydride	Phthalic anhydride	5000 (2270)
1,2-Benzenedicarboxylic acid, [bis(2-ethylhexyl)] ester	Bis(2-ethylhexyl)phthalate	1 (0.454)
1,2-Benzenedicarboxylic acid, dibutyl ester	Di-n-butyl phthalate	10 (4.54)
	Dibutyl phthalate	
	n-Butyl phthalate	
1,2-Benzenedicarboxylic acid, diethyl ester	Diethyl phthalate	1000 (454)
1,2-Benzenedicarboxylic acid, dimethyl ester	Dimethyl phthalate	5000 (2270)
1,2-Benzenedicarboxylic acid, di-n-octyl ester	Di-n-octyl phthalate	5000 (2270)
1,3-Benzenediol	Resorcinol	5000 (2270)
1,2-Benzenediol,4-[1-hydroxy-2-(methylamino)ethyl]-	Epinephrine	1000 (454)
Benzenesulfonic acid chloride	Benzenesulfonyl chloride	100 (45.4)
Benzenesulfonyl chloride	Benzenesulfonic acid chloride	100 (45.4)
Benzenethiol	Phenyl mercaptan @	100 (45.4)
	Thiophenol	
Benzidine *	(1,1'-Biphenyl)-4,4'-diamine	1 (0.454)
1,2-Benzisothiazolin-3-one,1,1-dioxide, and salts	Saccharin and salts	1 (0.454)
Benzo[a]anthracene	Benz[a]anthracene	1 (0.454)
	1,2-Benzanthracene	
Benzo[b]fluoranthene		1 (0.454)
Benzo[k]fluoranthene		1 (0.454)
Benzo[j,k]fluorene	Fluoranthene	100 (45.4)
Benzoic acid		5000 (2270)
Benzonitrile *		5000 (2270)
Benzo[g,h,i]perylene		5000 (2270)
Benzo[a]pyrene	3,4-Benzopyrene	1 (0.454)
3,4-Benzopyrene	Benzo[a]pyrene	1 (0.454)
p-Benzoquinone	1,4-Cyclohexadienedione	10 (4.54)
Benzotrichloride	Benzene, trichloromethyl-	1 (0.454)
Benzoyl chloride *		1000 (454)
1,2-Benzphenanthrene	Chrysene	1 (0.454)

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LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
Benzyl chloride *	Benzene, chloromethyl-	100 (45.4)
Beryllium ¢	Beryllium dust ¢	1 (0.454)
Beryllium chloride *		5000 (2270)
Beryllium dust ¢	Beryllium ¢	1 (0.454)
Beryllium fluoride *		5000 (2270)
Beryllium nitrate *		5000 (2270)
alpha - BHC		1 (0.454)
beta - BHC		1 (0.454)
delta - BHC		1 (0.454)
gamma - BHC	Hexachlorocyclohexane (gamma isomer)	1 (0.454)
	Lindane *	1 (0.454)
2,2'-Bioxirane	1,2-3,4-Diepoxybutane	1 (0.454)
(1,1'-Biphenyl)-4,4'-diamine	Benzidine *	1 (0.454)
(1,1'-Biphenyl)-4,4'-diamine,3,3'-dichloro-	3,3'-Dichlorobenzidine	1 (0.454)
(1,1'-Biphenyl)-4,4'-diamine,3,3'-dimethoxy-	3,3'-Dimethoxybenzidine	1 (0.454)
(1,1'-Biphenyl)-4,4'-diamine,3,3'-dimethyl-	3,3'-Dimethylbenzidine	1 (0.454)
Bis(2-chloroethoxy) methane	Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-	1000 (454)
Bis(2-chloroethyl) ether	Dichloroethyl ether	1 (0.454)
Bis(2-chloroisopropyl) ether	Ethane, 1,1'-oxybis[2-chloro-	1000 (454)
Bis(chloromethyl) ether	Propane, 2,2'-oxybis[2-chloro-	1 (0.454)
Bis(dimethylthiocarbamoyl) disulfide	Methane, oxybis[chloro-	10 (4.54)
Bis(2-ethylhexyl)phthalate	Thiram	1 (0.454)
Bromine cyanide	1,2-Benzenedicarboxylic acid, [bis(2-ethylhexyl)]ester	1000 (454)
Bromoacetone *	Cyanogen bromide *	1000 (454)
Bromoform	2-Propanone, 1-bromo-	100 (45.4)
4-Bromophenyl phenyl ether	Methane, tribromo-	100 (45.4)
Brucine	Benzene, 1-bromo-4-phenoxy-	100 (45.4)
1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	Strychnidin-10-one, 2,3-dimethoxy-	1(0.454)
1-Butanamine, N-butyl-N-nitroso-	Hexachlorobutadiene *	1 (0.454)
Butanoic acid, 4-[bis(2-chloroethyl)amino]benzene-	N-Nitrosodi-n-butylamine	1 (0.454)
1-Butanol	Chlorambucil	5000 (2270)
2-Butanone	n-Butyl alcohol *	5000 (2270)
	Ethyl methyl ketone @	
2-Butanone peroxide	Methyl ethyl ketone *	10 (4.54)
2-Butenal	Methyl ethyl ketone peroxide *	100 (45.4)
2-Butene, 1,4-dichloro-	Crotonaldehyde *	1 (0.454)
Butyl acetate *	1,4-Dichloro-2-butene	5000 (2270)
iso-Butyl acetate		
sec-Butyl acetate		
tert-Butyl acetate		
n-Butyl alcohol *	1-Butanol	5000 (2270)
Butylamine *		1000 (454)
iso-Butylamine		
sec-Butylamine		
tert-Butylamine		
Butyl benzyl phthalate		100 (45.4)
n-Butyl phthalate	Di-n-butyl phthalate	10 (4.54)
	Dibutyl phthalate	
Butyric acid *	1,2-Benzenedicarboxylic acid, dibutyl ester	5000 (2270)
iso-Butyric acid		
Cacodylic acid	Hydroxydimethylarsine oxide	1 (0.454)
Cadmium ¢		1 (0.454)
Cadmium acetate		100 (45.4)
Cadmium bromide		100 (45.4)
Cadmium chloride		100 (45.4)
Calcium arsenate *		1000 (454)
Calcium arsenite *		1000 (454)
Calcium carbide *		10 (4.54)
Calcium chromate	Chromic acid, calcium salt	1000 (454)
Calcium cyanide *		10 (4.54)
Calcium dodecylbenzene sulfonate		1000 (454)
Calcium hypochlorite *		10 (4.54)
Camphene, octachloro-	Toxaphene *	1 (0.454)
Captan		10 (4.54)
Carbamic acid, ethyl ester	Ethyl carbamate (Urethan)	1 (0.454)
Carbamic acid, methylnitroso-, ethyl ester	N-Nitroso-N-methylurethane	1 (0.454)
Carbamide, N-ethyl-N-nitroso-	N-Nitroso-N-ethylurea	1 (0.454)
Carbamide, N-methyl-N-nitroso-	N-Nitroso-N-methylurea	1 (0.454)
Carbamide, thio-	Thiourea	1000 (454)
Carbamimidoselenoic acid	Selenourea	1 (0.454)
Carbamoyl chloride, dimethyl-	Dimethylcarbamoyl chloride	100 (45.4)
Carbaryl *		10 (4.54)
Carbofuran *		100 (45.4)
Carbon bisulfide *	Carbon disulfide *	100 (45.4)
Carbon disulfide *	Carbon bisulfide *	100(45.4)
Carbonic acid, dithallium (I) salt	Thallium(I) carbonate	1000 (454)
Carbonochloridic acid, methyl ester	Methyl chlorocarbonate *	
	Methyl chloroformate @	
Carbon oxyfluoride	Carbonyl fluoride *	1000 (454)
Carbon tetrachloride *	Methane, tetrachloro-	5000 (2270)
Carbonyl chloride	Phosgene *	10 (4.54)
Carbonyl fluoride	Carbon oxyfluoride *	1000 (454)
Chlordane	Acetaldehyde, trichloro-	1 (0.454)
Chlorambucil	Butanoic acid, 4-[bis(2-chloroethyl)amino]benzene-	1 (0.454)
Chlordane *	Chlordane, technical *	1 (0.454)
Chlordane, technical *	4,7-Methanoindan, 1,2,4,5,6,7,8,8-octachloro-3a,4,7,7a-tetrahydro-	1 (0.454)
	Chlordane *	
	4,7-Methanoindan, 1,2,4,5,6,7,8,8-octachloro-3a,4,7,7a-tetrahydro-	

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
Chlorine *		10 (4.54)
Chlorine cyanide	Cyanogen chloride *	10 (4.54)
Chlornaphazine	2-Naphthylamine, N,N-bis(2-chloroethyl)-	1 (0.454)
Chloroacetaldehyde	Acetaldehyde, chloro-	1000 (454)
p-Chloroaniline	Benzenamine, 4-chloro-	1000 (454)
Chlorobenzene *	Benzene, chloro-	100 (45.4)
4-Chloro-m-cresol	p-Chloro-m-cresol	5000 (2270)
p-Chloro-m-cresol	Phenol, 4-chloro-3-methyl-	5000 (2270)
	Phenol, 4-chloro-3-methyl-4-Chloro-m-cresol	
Chlorodibromomethane		100 (45.4)
1-Chloro-2,3-epoxypropane	Epichlorohydrin *	1000 (454)
	Oxirane, 2-(chloromethyl)-	
Chloroethane	Ethyl chloride @	100 (45.4)
2-Chloroethyl vinyl ether	Ethene, 2-chloroethoxy-	1000 (454)
Chloroform *	Methane, trichloro-	5000 (2270)
Chloromethane	Methane, chloro-	1 (0.454)
	Methyl chloride *	
Chloromethyl methyl ether	Methane, chloromethoxy-	1 (0.454)
	Methylchloromethyl ether @	
beta-Chloronaphthalene	Naphthalene, 2-chloro-	5000 (2270)
	2-Chloronaphthalene	
2-Chloronaphthalene	beta-Chloronaphthalene	5000 (2270)
	Naphthalene, 2-chloro-	
2-Chlorophenol	o-Chlorophenol	100 (45.4)
	Phenol, 2-chloro-	
o-Chlorophenol	Phenol, 2-chloro-	100 (45.4)
	2-Chlorophenol	
4-Chlorophenyl phenyl ether		5000 (2270)
1-(o-Chlorophenyl)thiourea	Thiourea, (2-chlorophenyl)-	100 (45.4)
3-Chloropropionitrile	Propanenitrile, 3-chloro-	1000 (454)
Chlorosulfonic acid *		1000 (454)
4-Chloro-o-toluidine, hydrochloride	Benzenamine, 4-chloro-2-methyl-, hydrochloride	1 (0.454)
Chlorpyrifos *		1 (0.454)
Chromic acetate		1000 (454)
Chromic acid *		1000 (454)
Chromic acid, calcium salt	Calcium chromate	1000 (454)
Chromic sulfate		1000 (454)
Chromium ¢		1 (0.454)
Chromous chloride		1000 (454)
Chrysene	1,2-Benzphenanthrene	1 (0.454)
Cobaltous bromide		1000 (454)
Cobaltous formate		1000 (454)
Cobaltous sulfamate		1000 (454)
Coke Oven Emissions		1 (0.454)
Copper ¢		5000 (2270)
Copper cyanide *		10 (4.54)
Coumaphos *		10 (4.54)
Cresols		1 (0.454)
Cresol *	Cresylic acid	1000 (454)
m-Cresols	m-Cresylic acid	
o-Cresols	o-Cresylic acid	
p-Cresols	p-Cresylic acid	
Cresylic acid	Cresols *	1000 (454)
m-Cresols	m-Cresylic acid	
o-Cresols	o-Cresylic acid	
p-Cresols	p-Cresylic acid	
Crotonaldehyde *	2-Butenal	100 (45.4)
Cumene	Benzene, 1-methylethyl-	5000 (2270)
Cupric acetate		100 (45.4)
Cupric acetoarsenite *		100 (45.4)
Cupric chloride *		10 (4.54)
Cupric nitrate *		100 (45.4)
Cupric oxalate		100 (45.4)
Cupric sulfate		10 (4.54)
Cupric sulfate ammoniated		100 (45.4)
Cupric tartrate		100 (45.4)
Cyanides (soluble cyanide salts), not elsewhere specified *		10 (4.54)
Cyanogen *		100 (45.4)
Cyanogen bromide *	Bromine cyanide	1000 (454)
Cyanogen chloride *	Chlorine cyanide	10 (4.54)
1,4-Cyclohexadienedione	p-Benzoquinone	10 (4.54)
Cyclohexane *	Benzene, hexahydro-	1000 (454)
Cyclohexanone		5000 (2270)
1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	Hexachlorocyclopentadiene *	1 (0.454)
Cyclophosphamide	2H-1,3,2-Oxazaphosphonne,2-[bis(2-chloroethyl)amino] tetrahydro-2-oxide	1 (0.454)
2,4-D Acid	2,4-D *, salts and esters	100 (45.4)
	2,4-Dichlorophenoxyacetic acid *, salts and esters	
2,4-D Esters		100 (45.4)
2,4-D *, salts and esters	2,4-D Acid	100 (45.4)
	2,4-Dichlorophenoxyacetic acid *, salts and esters	
Daunomycin	5,12-Naphthacenedione, (8S-cis)-8-acetyl-10-[3-amino-2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-	1 (0.454)
DDD	Dichlorodiphenyl dichloroethane	1(0.454)
	TDE *	
4,4'-DDD	4,4'-DDD	1(0.454)
	DDD	
	Dichlorodiphenyl dichloroethane	
	TDE *	
DDE	4,4'-DDE	1 (0.454)

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LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
4,4'-DDE	DDE	1 (0.454)
DDT *	Dichlorodiphenyl trichloroethane *	1 (0.454)
	4,4'-DDT	
4,4'-DDT	DDT *	1 (0.454)
	Dichlorodiphenyl trichloroethane *	
Decachlorooctahydro-1,3,4-metheno-2H-cyclobuta[c,d]-pentalen-2-one	Kepone *	1 (0.454)
Diallate	S-(2,3-Dichloroallyl) diisopropylthiocarbamate	1 (0.454)
Diamine	Hydrazine *	1 (0.454)
Diaminotoluene	Toluenediamine *	1 (0.454)
Diazinon *		1 (0.454)
Dibenz[a,h]anthracene	Dibenzo[a,h]anthracene	
	1,2:5,6-Dibenzanthracene	1 (0.454)
1,2:5,6-Dibenzanthracene	Dibenz[a,h]anthracene	
	Dibenzo[a,h]anthracene	1 (0.454)
Dibenzo[a,h]anthracene	Dibenz[a,h]anthracene	
	1,2:5,6-Dibenzanthracene	
1,2:7,8-Dibenzopyrene	Dibenz[a,i]pyrene	1 (0.454)
Dibenz[a,i]pyrene	1,2:7,8-Dibenzopyrene	1 (0.454)
1,2-Dibromo-3-chloropropane	Propane, 1,2-dibromo-3-chloro-	1(0.454)
Dibutyl phthalate	Di-n-butyl phthalate	10 (4.54)
	n-Butyl phthalate *	
Di-n-butyl phthalate	1,2-Benzenedicarboxylic acid, dibutyl ester	10 (4.54)
	Dibutyl phthalate	
	n-Butyl phthalate *	
	1,2-Benzenedicarboxylic acid, dibutyl ester	
Dicamba		1000 (454)
Dichlobenil		100 (45.4)
Dichlone		1 (0.454)
S-(2,3-Dichloroallyl) diisopropylthiocarbamate	Diallate	1 (0.454)
3,5-Dichloro-N-(1,1-dimethyl-2-propynyl)benzamide	Pronamide	5000 (2270)
Dichlorobenzene (mixed)		100 (45.4)
1,2-Dichlorobenzene	Benzene, 1,2-dichloro-	100 (45.4)
	o-Dichlorobenzene *	
1,3-Dichlorobenzene	Benzene, 1,3-dichloro-	100 (45.4)
	m-Dichlorobenzene	
1,4-Dichlorobenzene	Benzene, 1,4-dichloro-	100 (45.4)
	p-Dichlorobenzene *	
m-Dichlorobenzene	Benzene, 1,3-dichloro-	100 (45.4)
	1,3-Dichlorobenzene	
o-Dichlorobenzene *	Benzene, 1,2-dichloro-	100 (45.4)
	1,2-Dichlorobenzene	
p-Dichlorobenzene *	Benzene, 1,4-dichloro-	100 (45.4)
	1,4-Dichlorobenzene	
3,3'-Dichlorobenzidine	(1,1'-Biphenyl)-4,4'-diamine,3,3'-dichloro-	1 (0.454)
Dichlorobromomethane		5000 (2270)
1,4-Dichloro-2-butene	2-Butene, 1,4-dichloro-	1 (0.454)
Dichlorodifluoromethane *	Methane, dichlorodifluoro-	5000 (2270)
Dichlorodiphenyl dichloroethane	DDD	1(0.454)
	TDE *	
	4,4'-DDD	
Dichlorodiphenyl trichloroethane *	DDT *	1 (0.454)
	4,4'-DDT	
1,1-Dichloroethane	Ethane, 1,1-dichloro-	1000 (454)
	Ethylidene dichloride	
1,2-Dichloroethane	Ethane, 1,2-dichloro-	5000 (2270)
	Ethylene dichloride *	
1,1-Dichloroethylene	Ethene, 1,1-dichloro-	5000 (2270)
	Vinylidene chloride *	
1,2-trans-Dichloroethylene	Ethene, trans-1,2-dichloro-	1000 (454)
Dichloroethyl ether	Bis (2-chloroethyl) ether	1 (0.454)
	Ethane, 1,1'-oxybis(2-chloro-	
2,4-Dichlorophenol	Phenol, 2,4-dichloro-	100 (45.4)
2,6-Dichlorophenol	Phenol, 2,6-dichloro-	100 (45.4)
2,4-Dichlorophenoxyacetic acid *, salts and esters	2,4-D Acid	100 (45.4)
	2,4-D *, salts and esters	
Dichlorophenylarsine	Phenyl dichloroarsine *	1 (0.454)
Dichloropropane *		1000 (454)
1,1-Dichloropropane		
1,3-Dichloropropane		
1,2-Dichloropropene	Propylene dichloride *	1000 (454)
Dichloropropene - Dichloropropene (mixture)		100 (45.4)
Dichloropropene(s) *		100 (45.4)
2,3-Dichloropropene (isomer)		
1,3-Dichloropropene	Propene, 1,3-dichloro-	100 (45.4)
2,2-Dichloropropionic acid *		5000 (2270)
Dichlorvos *		10 (4.54)
Dieldrin *	1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,exo-1,4:5,8-dimethanonaphthalene.	1 (0.454)
1,2:3,4-Diepoxybutane	2,2'-Bioxirane	1 (0.454)
Diethylamine *		100 (45.4)
Diethylarsine	Arsine, diethyl-	1 (0.454)
1,4-Diethylene dioxide	1,4-Dioxane	1 (0.454)
O,O-Diethyl S-[2-(ethylthio)ethyl] phosphorodithioate	Disulfoton *	1 (0.454)
N,N'-Diethylhydrazine	Hydrazine, 1,2-diethyl-	1 (0.454)
O,O-Diethyl S-methyl dithiophosphate	Phosphorodithioic acid, O,O-diethyl S-methyl ester	5000 (2270)
Diethyl-p-nitrophenyl phosphate	Phosphoric acid, diethyl p-nitrophenyl ester	100 (45.4)
Diethyl phthalate	1,2-Benzenedicarboxylic acid, diethyl ester	1000 (454)
O,O-Diethyl O-pyrazinyl phosphorothioate	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester	100 (45.4)
Diethylstilbestrol	4,4'-Stilbenediol, alpha,alpha'-diethyl-	1 (0.454)
1,2-Dihydro-3,6-pyridazinedione	Maleic hydrazide	5000 (2270)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
Dihydrosafrole	Benzene, 1,2-methylenedioxy-4-propyl-	1 (0.454)
Diisopropyl fluorophosphate	Phosphorofluoridic acid, bis(1-methylethyl) ester	100 (45.4)
Dimethoate	Phosphorodithioic acid, O,O-dimethyl S-[2(methylamino)-2-oxoethyl] ester	10 (4.54)
3,3'-Dimethoxybenzidine	(1,1'-Biphenyl)-4,4'-diamine,3,3'-dimethoxy-	1 (0.454)
Dimethylamine *	Methanamine, N-methyl-	1000 (454)
Dimethylaminoazobenzene	Benzenamine, N,N-dimethyl-4-phenylazo-	1 (0.454)
7,12-Dimethylbenz[a]anthracene	1,2-Benzanthracene, 7,12-dimethyl-	1 (0.454)
3,3'-Dimethylbenzidine	(1,1'-Biphenyl)-4,4'-diamine,3,3'-dimethyl-	1 (0.454)
alpha,alpha-Dimethylbenzylhydroperoxide	Hydroperoxide, 1-methyl-1-phenylethyl-	10 (4.54)
3,3-Dimethyl-1-(methylthio)-2-butanone, O-[(methylamino)carbonyl] oxime	Thiofanox	100 (45.4)
Dimethylcarbamoyl chloride	Carbamoyl chloride, dimethyl-	1 (0.454)
Dimethylhydrazine, unsymmetrical @	1,1-Dimethylhydrazine	1 (0.454)
	Hydrazine, 1,1-dimethyl-	
1,1-Dimethylhydrazine	Dimethylhydrazine, unsymmetrical @	* (0.454)
	Hydrazine, 1,1-dimethyl-	
1,2-Dimethylhydrazine	Hydrazine, 1,2-dimethyl-	1 (0.454)
O,O-Dimethyl O-p-nitrophenyl phosphorothioate	Methyl parathion *	100 (45.4)
Dimethylnitrosamine	N-Nitrosodimethylamine	1 (0.454)
alpha,alpha-Dimethylphenethylamine	Ethanamine, 1,1-dimethyl-2-phenyl-	5000 (2270)
2,4-Dimethylphenol	Phenol, 2,4-dimethyl-	100 (45.4)
Dimethyl phthalate	1,2-Benzenedicarboxylic acid, dimethyl ester	5000 (2270)
Dimethyl sulfate *	Sulfuric acid, dimethyl ester	1 (0.454)
Dinitrobenzene * (mixed)		100 (45.4)
m-Dinitrobenzene		
o-Dinitrobenzene		
p-Dinitrobenzene		
4,6-Dinitro-o-cresol and salts	Phenol, 2,4-dinitro-6-methyl-, and salts	10 (4.54)
4,6-Dinitro-o-cyclohexylphenol	Phenol, 2-cyclohexyl-4,6-dinitro-	100 (45.4)
Dinitrophenol		10 (4.54)
2,5-Dinitrophenol		
2,6-Dinitrophenol		
2,4-Dinitrophenol	Phenol, 2,4-dinitro-	10 (4.54)
Dinitrotoluene		1000 (454)
3,4-Dinitrotoluene		
2,4-Dinitrotoluene	Benzene, 1-methyl-2,4-dinitro-	1000 (454)
2,6-Dinitrotoluene	Benzene, 1-methyl-2,6-dinitro-	1000 (454)
Dinoseb	Phenol, 2,4-dinitro-6-(1-methylpropyl)-	1000 (454)
Di-n-octyl phthalate	1,2-Benzenedicarboxylic acid, di-n-octyl ester	5000 (2270)
1,4-Dioxane	1,4-Diethylene dioxide	1 (0.454)
1,2-Diphenylhydrazine	Hydrazine, 1,2-diphenyl-	1 (0.454)
Diphosphoramide, octamethyl-	Octamethylpyrophosphoramide	100(45.4)
Dipropylamine	1-Propanamine, N-propyl-	5000 (2270)
Di-n-propylnitrosamine	N-Nitroso-n-propylamine	1 (0.454)
Diquat		1000 (454)
Disulfoton *	O,O-Diethyl S-[2-(ethylthio)ethyl] phosphorodithioate	1 (0.454)
2,4-Dithiobiuret	Thioimidodicarbonic diamide	100 (45.4)
Dithiopyrophosphoric acid, tetraethyl ester	Tetraethyldithiopyrophosphate	100 (45.4)
Diuron		100 (45.4)
Dodecylbenzenesulfonic acid *		1000 (454)
Endosulfan *	5-Norbornene-2,3-dimethanol,1,4,5,6,7,7-hexachloro,cyclic sulfite	1 (0.454)
alpha - Endosulfan		1 (0.454)
beta - Endosulfan		1 (0.454)
Endosulfan sulfate		1 (0.454)
Endothall	7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid	1000 (454)
Endrin *	1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,endo-1,4:5,8-dimethanonaphthalene.	* (0.454)
Endrin aldehyde		1 (0.454)
Epichlorohydrin *	1-Chloro-2,3-epoxypropane	1000 (454)
	Oxirane, 2-(chloromethyl)-	
Epinephrine	1,2-Benzenediol,4-[1-hydroxy-2-(methylamino)ethyl]	1000 (454)
Ethanal	Acetaldehyde *	1000 (454)
Ethanamine, 1,1-dimethyl-2-phenyl-	alpha,alpha-Dimethylphenethylamine	5000 (2270)
Ethanamine, N-ethyl-N-nitroso-	N-Nitrosodiethylamine	1 (0.454)
Ethane, 1,2-dibromo-	Ethylene dibromide *	1000 (454)
Ethane, 1,1-dichloro-	Ethylidene dichloride	1000 (454)
	1,1-Dichloroethane	
Ethane, 1,2-dichloro-	Ethylene dichloride *	5000 (2270)
	1,2-Dichloroethane	
Ethane, 1,1,1,2,2,2-hexachloro-	Hexachloroethane *	1 (0.454)
Ethane, 1,1'-[methylenebis(oxy)]bis(2-chloro-	Bis(2-chloroethoxy)methane	1000 (454)
Ethane, 1,1'-oxybis-	Ethyl ether *	100 (45.4)
Ethane, 1,1'-oxybis(2-chloro-	Bis (2-chloroethyl) ether	1 (0.454)
	Dichloroethyl ether	
Ethane, pentachloro-	Pentachloroethane	1 (0.454)
Ethane, 1,1,1,2-tetrachloro-	1,1,1,2-Tetrachloroethane	1 (0.454)
Ethane, 1,1,2,2-tetrachloro-	1,1,2,2-Tetrachloroethane	1 (0.454)
Ethane, 1,1,2-trichloro-	1,1,2-Trichloroethane	1 (0.454)
Ethane, 1,1,1-trichloro-2,2-bis(p-methoxyphenyl)-	Methoxychlor	1 (0.454)
1,2-Ethanediylbiscarbamodithioic acid	Ethylenebis(dithiocarbamic acid)	5000 (2270)
Ethanenitrile	Acetonitrile *	5000 (2270)
Ethanethioamide	Thioacetamide	1 (0.454)
Ethanol, 2,2'-(nitrosoimino)bis-	N-Nitrosodiethanolamine	1 (0.454)
Ethanone, 1-phenyl-	Acetophenone	5000 (2270)
Ethanoyl chloride	Acetyl chloride *	5000 (2270)
Ethenamine, N-methyl-N-nitroso-	N-Nitrosomethylvinylamine	1 (0.454)
Ethene, chloro-	Vinyl chloride *	1 (0.454)
Ethene, 2-chloroethoxy-	2-Chloroethyl vinyl ether	1000 (454)
Ethene, 1,1-dichloro-	Vinylidene chloride *	5000 (2270)
	1,1-Dichloroethylene	

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LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
Ethene, 1,1,2,2-tetrachloro-	Perchloroethylene	1 (0.454)
	Tetrachloroethene	
	Tetrachloroethylene	
Ethene, trans-1,2-dichloro-	1,2-trans-Dichloroethylene	1000 (454)
Ethion *		10 (4.54)
2-Ethoxyethanol	Ethylene glycol monoethyl ether *	1 (0.454)
Ethyl acetate	Acetic acid, ethyl ester	5000 (2270)
Ethyl acrylate *	2-Propenoic acid, ethyl ester	1000 (454)
Ethylbenzene *		1000 (454)
Ethyl carbamate (Urethan)	Carbamic acid, ethyl ester	1 (0.454)
Ethyl chloride @	Chloroethane	100 (45.4)
Ethyl cyanide	Propanenitrile	10 (4.54)
Ethyl 4,4'-dichlorobenzilate	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester	1 (0.454)
Ethylene dibromide *	Ethene, 1,2-dibromo-	1000 (454)
Ethylene dichloride *	1,2-Dichloroethane	5000 (2270)
	Ethane, 1,2-dichloro-	
Ethylene glycol monoethyl ether *	2-Ethoxyethanol	1 (0.454)
Ethylene oxide *	Oxirane	1 (0.454)
Ethylenebis(dithiocarbamic acid)	1,2-Ethanediylbiscarbamodithioicacid	5000 (2270)
Ethylenediamine *		5000 (2270)
Ethylenediamine tetraacetic acid (EDTA)		5000 (2270)
Ethylenethiourea	2-Imidazolidinethione	1 (0.454)
Ethylenimine	Aziridine	1 (0.454)
Ethyl ether *	Ethane, 1,1'-oxybis-	100 (45.4)
Ethylidene dichloride	Ethane, 1,1-dichloro-	1000 (454)
	1,1-Dichloroethane	
Ethyl methacrylate	2-Propenoic acid, 2-methyl-, ethyl ester	1000 (454)
Ethyl methanesulfonate	Methanesulfonic acid, ethyl ester	1 (0.454)
Ethyl methyl ketone @	2-Butanone	5000 (2270)
	Methyl ethyl ketone *	
Famphur	Phosphorothioic acid, O,O-dimethyl O-[p-[(dimethylamino)-sulfonyl] phenyl] ester	1000 (454)
Ferric ammonium citrate		1000 (454)
Ferric ammonium oxalate		1000 (454)
Ferric chloride		1000 (454)
Ferric dextran	Iron dextran	5000 (2270)
Ferric fluoride		100 (45.4)
Ferric nitrate *		1000 (454)
Ferric sulfate		1000 (454)
Ferrous ammonium sulfate		1000 (454)
Ferrous chloride *		100 (45.4)
Ferrous sulfate		1000 (454)
Fluoranthene	Benzo[j,k]fluorene	100 (45.4)
Fluorene		5000 (2270)
Fluorine *		10 (4.54)
Fluoroacetamide	Acetamide, 2-fluoro-	100 (45.4)
Fluoroacetic acid, sodium salt	Acetic acid, fluoro-, sodium salt	10 (4.54)
Formaldehyde *	Methylene oxide	1000 (454)
Formic acid *	Methanoic acid	5000 (2270)
Fulminac acid, mercury(II)salt	Mercury fulminate	10 (4.54)
Fumaric acid		5000 (2270)
Furan *	Furfuran	100 (45.4)
Furan, tetrahydro-	Tetrahydrofuran *	1000 (454)
2-Furancarboxaldehyde	Furfural *	5000 (2270)
2,5-Furandione	Maleic anhydride *	5000 (2270)
Furfural *	2-Furancarboxaldehyde	5000 (2270)
Furfuran	Furan *	100 (45.4)
D-Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-	Streptozotocin	1 (0.454)
Glycidylaldehyde	1-Propenal, 2,3-epoxy-	1 (0.454)
Guanidine, N-nitroso-N-methyl-N'-nitro-	N-Methyl-N'-nitro-N-nitrosoguanidine	1 (0.454)
Guthion *	Azinphos methyl @	1 (0.454)
Heptachlor	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	1 (0.454)
Heptachlor epoxide		1 (0.454)
Hexachlorobenzene	Benzene, hexachloro-	1 (0.454)
Hexachlorobutadiene *	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	1 (0.454)
Hexachlorocyclohexane (gamma isomer)	gamma - BHC	1 (0.454)
	Lindane *	
Hexachlorocyclopentadiene *	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	1 (0.454)
1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,endo-1,4:5,8-dimethanonaphthalene	Endrin *	1 (0.454)
1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,exo-1,4:5,8-dimethanonaphthalene	Dieldrin *	1 (0.454)
Hexachloroethane *	Ethane, 1,1,1,2,2,2-hexachloro-	1 (0.454)
Hexachlorohexahydro-endo,endo-dimethanonaphthalene	1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4,5,8-endo,endo-dimethanonaphthalene	1 (0.454)
1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo,endo-dimethanonaphthalene	Hexachlorohexahydro-endo,endo-dimethanonaphthalene	1 (0.454)
1,2,3,4,10-10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo,exo-dimethanonaphthalene	Aldrin *	1 (0.454)
Hexachlorophene	2,2'-Methylenebis(3,4,6-trichlorophenol)	100(45.4)
Hexachloropropene	1-Propene, 1,1,2,3,3,3-hexachloro-	1000 (454)
Hexaethyl tetraphosphate *	Tetraphosphonic acid, hexaethyl ester	100 (45.4)
Hydrazine *	Diamine	1 (0.454)
Hydrazine, 1,2-diethyl-	N,N'-Diethylhydrazine	1 (0.454)
Hydrazine, 1,1-dimethyl-	1,1-Dimethylhydrazine	1 (0.454)
	Dimethylhydrazine, unsymmetrical @	
Hydrazine, 1,2-dimethyl-	1,2-Dimethylhydrazine	1 (0.454)
Hydrazine, 1,2-diphenyl-	1,2-Diphenylhydrazine	1 (0.454)
Hydrazine, methyl-	Methyl hydrazine *	10 (4.54)
Hydrazinecarbothioamide	Thiosemicarbazide	100 (45.4)
Hydrochloric acid *		5000 (2270)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
Hydrocyanic acid *	Hydrogen cyanide	10 (4.54)
Hydrofluoric acid *	Hydrogen fluoride *	100 (45.4)
Hydrogen cyanide	Hydrocyanic acid *	10 (4.54)
Hydrogen fluoride *	Hydrofluoric acid *	100 (45.4)
Hydrogen phosphide	Phosphine *	100 (45.4)
Hydrogen sulfide *	Hydrosulfuric acid	100 (45.4)
	Sulfur hydride	
Hydroperoxide, 1-methyl-1-phenylethyl-	alpha,alpha-Dimethylbenzylhydroperoxide	10 (4.54)
Hydrosulfuric acid	Hydrogen sulfide *	100 (45.4)
	Sulfur hydride	
Hydroxydimethylarsine oxide	Cacodylic acid	1 (0.454)
2-Imidazolidinethione	Ethylenethiourea	1 (0.454)
Indeno(1,2,3-cd)pyrene	1,10-(1,2-Phenylene)pyrene	1 (0.454)
Iron dextran	Ferric dextran	5000 (2270)
Isobutyl alcohol	1-Propanol, 2-methyl-	5000 (2270)
Isocyanic acid, methyl ester	Methyl isocyanate *	1 (0.454)
Isophorone		5000 (2270)
Isoprene *		100 (45.4)
Isopropanolamine dodecylbenzene sulfonate		1000 (454)
Isosafrole	Benzene, 1,2-methylenedioxy-4-propenyl-	1 (0.454)
3(2H)-Isoxazolone, 5-(aminomethyl)-	5-(Aminomethyl)-3-isoxazolol	1000 (454)
Kelthane		10 (4.54)
Kepone	Decachlorooctahydro-1,3,4-metheno-2H-cyclobuta[c,d]-pentalen-2-one	1 (0.454)
Lasiocarpine		1 (0.454)
Lead &		1 (0.454)
Lead acetate	Acetic acid, lead salt	5000 (2270)
Lead arsenate *		5000 (2270)
Lead chloride *		100 (45.4)
Lead fluoborate *		100 (45.4)
Lead fluoride *		100 (45.4)
Lead iodide		100 (45.4)
Lead nitrate *		100 (45.4)
Lead phosphate	Phosphoric acid, lead salt	1 (0.454)
Lead stearate		5000 (2270)
Lead subacetate		1 (0.454)
Lead sulfate *		100 (45.4)
Lead sulfide		5000 (2270)
Lead thiocyanate		100 (45.4)
Lindane *	gamma - BHC	1 (0.454)
	Hexachlorocyclohexane (gamma isomer)	
Lithium chromate		1000 (454)
Malathion *		100 (45.4)
Maleic acid *		5000 (2270)
Maleic anhydride *	2,5-Furandione	5000 (2270)
Maleic hydrazide	1,2-Dihydro-3,6-pyridazinedione	5000 (2270)
Malononitrile	Propanedinitrile	1000 (454)
Melphalan	Alanine, 3-[p-bis(2-chloroethyl)amino]phenyl-, L-	1 (0.454)
Mercaptodimethur		10 (4.54)
Mercuric cyanide *		1 (0.454)
Mercuric nitrate *		10 (4.54)
Mercuric sulfate *		10 (4.54)
Mercuric thiocyanate		10 (4.54)
Mercurous nitrate *		10 (4.54)
Mercury *		1 (0.454)
Mercury fulminate	Fulminic acid, mercury(II)salt	10 (4.54)
Mercury, (acetato-O)phenyl-	Phenylmercuric acetate	100 (45.4)
Methacrylonitrile	2-Propenenitrile, 2-methyl-	1000 (454)
Methanamine, N-methyl-	Dimethylamine *	1000 (454)
Methane, bromo-	Methyl bromide *	1000 (454)
Methane, chloro-	Chloromethane	1 (0.454)
	Methyl chloride *	
Methane, chloromethoxy-	Chloromethyl methyl ether	1 (0.454)
	Methylchloromethyl ether @	
Methane, dibromo-	Methylene bromide	1000 (454)
Methane, dichloro-	Methylene chloride *	1000 (454)
Methane, dichlorodifluoro-	Dichlorodifluoromethane *	5000 (2270)
Methane, iodo-	Methyl iodide	1 (0.454)
Methane, oxybis(chloro-	Bis(chloromethyl) ether	1 (0.454)
Methane, tetrachloro-	Carbon tetrachloride *	5000 (2270)
Methane, tetranitro-	Tetranitromethane *	10 (4.54)
Methane, tribromo-	Bromoform	100 (45.4)
Methane, trichloro-	Chloroform *	5000 (2270)
Methane, trichlorofluoro-	Trichloromonofluoromethane	5000 (2270)
Methanesulfenyl chloride, trichloro-	Perchloromethyl mercaptan @	100 (45.4)
	Trichloromethanesulfenyl chloride	
Methanesulfonic acid, ethyl ester	Ethyl methanesulfonate	1 (0.454)
Methanethiol	Methyl mercaptan *	100 (45.4)
	Thiomethanol	
4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-a,4,7,7a-tetrahydro-	Heptachlor	1 (0.454)
Methanoic acid	Formic acid *	5000 (2270)
4,7-Methanoinden, 1,2,4,5,6,7,8,8-octachloro-3a,4,7,7a-tetrahydro-	Chlordane *	1 (0.454)
	Chlordane, technical *	
Methanol *	Methyl alcohol *	5000 (2270)
Methapyrilene	Pyridine, 2-[(2-(dimethylamino)ethyl)-2-thenylamino]-	5000 (2270)
Methomyl	Acetimidic acid, N-[(methylcarbamoyl)oxy]thio-, methyl ester	100 (45.4)
Methoxychlor	Ethene, 1,1,1-trichloro-2,2-bis(p-methoxyphenyl)-	1 (0.454)
Methyl alcohol *	Methanol *	5000 (2270)
Methylamine @	Monomethylamine	100 (45.4)
2-Methylaziridine	1,2-Propylenimine	1 (0.454)
Methyl bromide *	Methane, bromo-	1000 (454)

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LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
1-Methylbutadiene	1,3-Pentadiene	100 (45.4)
Methyl chloride *	Chloromethane	1 (0.454)
Methyl chlorocarbonate *	Methane, chloro- Carbonochloridic acid, methyl ester	1000 (454)
Methyl chloroform *	Methyl chloroformate @ 1,1,1-Trichloroethane *	1000 (454)
Methyl chloroformate @	Carbonochloridic acid, methyl ester Methyl chlorocarbonate *	1000 (454)
Methylchloromethyl ether @	Chloromethyl methyl ether Methane, chloromethoxy-	1 (0.454)
3-Methylcholanthrene	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	1 (0.454)
4,4'-Methylenebis(2-chloroaniline)	Benzenamine, 4,4'-methylenebis(2-chloro-	1 (0.454)
2,2'-Methylenebis(3,4,6-trichlorophenol)	Hexachlorophene	100(45.4)
Methylene bromide	Methane, dibromo-	1000 (454)
Methylene chloride *	Methane, dichloro-	1000 (454)
Methylene oxide	Formaldehyde *	1000 (454)
Methyl ethyl ketone *	2-Butanone Ethyl methyl ketone @	5000 (2270)
Methyl ethyl ketone peroxide *	2-Butanone peroxide	10 (4.54)
Methyl hydrazine *	Hydrazine, methyl-	10 (4.54)
Methyl iodide	Methane, iodo-	1 (0.454)
Methyl isobutyl ketone	4-Methyl-2-pentanone	5000 (2270)
Methyl isocyanate *	Isocyanic acid, methyl ester	1 (0.454)
2-Methyllactonitrile	Acetone cyanohydrin *	10 (4.54)
Methyl mercaptan *	Propanenitrile, 2-hydroxy-2-methyl- Methanethiol	100 (45.4)
Methyl methacrylate *	Thiomethanol 2-Propenoic acid, 2-methyl-, methyl ester	1000 (454)
N-Methyl-N'-nitro-N-nitrosoguanidine	Guanidine, N-nitroso-N-methyl-N'-nitro-	1 (0.454)
Methyl parathion *	O,O-Dimethyl O-p-nitrophenyl phosphorothioate	100 (45.4)
4-Methyl-2-pentanone	Methyl isobutyl ketone	5000 (2270)
Methylthiouracil	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	1 (0.454)
Mevinphos *		10 (4.54)
Mexacarbate *		1000 (454)
Mitomycin C	Azirino(2',3':3,4)pyrrolo(1,2-a)indole-4,7-dione,6-amino-8-[((aminocarbonyl)oxy) methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-	1 (0.454)
Monoethylamine *		100 (45.4)
Monomethylamine	Methylamine @	100 (45.4)
Naled		10 (4.54)
5,12-Naphthacenedione, (8S-cis)-8-acetyl-10-[(3-amino-2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl) oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-	Daunomycin	1 (0.454)
Naphthalene *		100 (45.4)
Naphthalene, 2-chloro-	beta-Chloronaphthalene 2-Chloronaphthalene	5000 (2270)
1,4-Naphthalenedione	1,4-Naphthoquinone	5000 (2270)
2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl-[1,1'-biphenyl]-4,4'-diyl)-bis(azo)]bis(5-amino-4-hydroxy)-tetrasodium salt.	Trypan blue	1 (0.454)
Naphthenic acid		100 (45.4)
1,4-Naphthoquinone	1,4-Naphthalenedione	5000 (2270)
alpha-Naphthylamine	1-Naphthylamine	1 (0.454)
beta-Naphthylamine	2-Naphthylamine	1 (0.454)
1-Naphthylamine	alpha-Naphthylamine	1 (0.454)
2-Naphthylamine	beta-Naphthylamine	1 (0.454)
2-Naphthylamine, N,N-bis(2-chloroethyl)-	Chlornaphazine	1 (0.454)
alpha-Naphthylthiourea	Thiourea, 1-naphthalenyl-	100 (45.4)
Nickel ¢		1 (0.454)
Nickel ammonium sulfate		5000 (2270)
Nickel carbonyl *	Nickel tetracarbonyl	1 (0.454)
Nickel chloride		5000 (2270)
Nickel cyanide *	Nickel(II) cyanide	1 (0.454)
Nickel(II) cyanide	Nickel cyanide *	1 (0.454)
Nickel hydroxide		1000 (454)
Nickel nitrate *		5000 (2270)
Nickel sulfate		5000 (2270)
Nickel tetracarbonyl	Nickel carbonyl *	1 (0.454)
Nicotine * and salts *	Pyridine, (S)-3-(1-methyl-2-pyrrolidinyl)-, and salts	100 (45.4)
Nitric acid *		1000 (454)
Nitric oxide *	Nitrogen(II) oxide	10 (4.54)
p-Nitroaniline *	Benzenamine, 4-nitro-	5000 (2270)
Nitrobenzene *	Benzene, nitro-	1000 (454)
Nitrogen dioxide *	Nitrogen(IV) oxide	10 (4.54)
Nitrogen(II) oxide	Nitric oxide *	10 (4.54)
Nitrogen(IV) oxide	Nitrogen dioxide *	10 (4.54)
Nitroglycerine *	1,2,3-Propanetriol, trinitrate-	10 (4.54)
Nitrophenol (mixed)		100 (45.4)
m-	2-Nitrophenol	
o-	4-Nitrophenol	
p-	Phenol, 4-nitro-	
o-Nitrophenol	2-Nitrophenol	100 (45.4)
p-Nitrophenol	Phenol, 4-nitro-	100 (45.4)
2-Nitrophenol	4-Nitrophenol	100 (45.4)
4-Nitrophenol	o-Nitrophenol p-Nitrophenol	100 (45.4)
2-Nitropropane	Phenol, 4-nitro- Propane, 2-nitro-	1 (0.454)
N-Nitrosodi-n-butylamine	1-Butanamine, N-butyl-N-nitroso-	1 (0.454)
N-Nitrosodiethanolamine	Ethanol, 2,2'-(nitrosoimino)bis-	1 (0.454)
N-Nitrosodiethylamine	Ethanamine, N-ethyl-N-nitroso-	1 (0.454)
N-Nitrosodimethylamine	Dimethylnitrosamine	1 (0.454)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
N-Nitrosodiphenylamine		100 (45.4)
N-Nitrosodi-n-propylamine	Di-n-propylnitrosamine	1 (0.454)
N-Nitroso-N-ethylurea	Carbamide, N-ethyl-N-nitroso-	1 (0.454)
N-Nitroso-N-methylurea	Carbamide, N-methyl-N-nitroso-	1 (0.454)
N-Nitroso-N-methylurethane	Carbamic acid, methylnitroso-, ethyl ester	1 (0.454)
N-Nitrosomethylvinylamine	Ethenamine, N-methyl-N-nitroso-	1 (0.454)
N-Nitrosopiperidine	Pyridine, hexahydro-N-nitroso-	1 (0.454)
N-Nitrosopyrrolidine	Pyrrole, tetrahydro-N-nitroso-	1 (0.454)
Nitrotoluene		1000 (454)
m-Nitrotoluene		
o-Nitrotoluene		
p-Nitrotoluene		
5-Nitro-o-toluidine	Benzenamine, 2-methyl-5-nitro-	1 (0.454)
5-Norbornene-2,3-dimethanol,1,4,5,6,7,7-hexachloro,cyclic sulfite	Endosulfan *	1 (0.454)
Octamethylpyrophosphoramide	Diphosphoramide, octamethyl-	100(45.4)
Osmium oxide	Osmium tetroxide	1000 (454)
Osmium tetroxide	Osmium oxide	1000 (454)
7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid	Endothall	1000 (454)
1,2-Oxathiolane, 2,2-dioxide	1,3-Propane sultone	1 (0.454)
2H-1,3,2-Oxazaphosphorine,2-[bis(2-chloroethyl) amino] tetrahydro-2-oxide	Cyclophosphamide	1 (0.454)
Oxirane	Ethylene oxide *	1 (0.454)
Oxirane, 2-(chloromethyl)-	Epichlorohydrin *	1000 (454)
	1-Chloro-2,3-epoxypropane	
Paraformaldehyde *		1000 (454)
Paraldehyde *	1,3,5-Trioxane, 2,4,6-trimethyl-	1000 (454)
Parathion *	Phosphorothioic acid, O,O-diethyl O-(p-nitrophenyl)ester	1 (0.454)
Pentachlorobenzene	Benzene, pentachloro-	10 (4.54)
Pentachloroethane	Ethane, pentachloro-	1 (0.454)
Pentachloronitrobenzene	Benzene, pentachloronitro-	1 (0.454)
Pentachlorophenol	Phenol, pentachloro-	10 (4.54)
1,3-Pentadiene	1-Methylbutadiene	100 (45.4)
Perchloroethylene *	Ethene, 1,1,2,2-tetrachloro- Tetrachloroethene Tetrachloroethylene *	1 (0.454)
Perchloromethyl mercaptan @	Methanesulfenyl chloride, trichloro- Trichloromethanesulfenyl chloride	100 (45.4)
Phenacetin	Acetamide, N-(4-ethoxyphenyl)-	1 (0.454)
Phenanthrene		5000 (2270)
Phenol *	Benzene, hydroxy-	1000 (454)
Phenol, 2-chloro-	o-Chlorophenol 2-Chlorophenol	100 (45.4)
Phenol, 4-chloro-3-methyl-	p-Chloro-m-cresol 4-Chloro-m-cresol	5000 (2270)
Phenol, 2-cyclohexyl-4,6-dinitro-	4,6-Dinitro-o-cyclohexylphenol	100 (45.4)
Phenol, 2,4-dichloro-	2,4-Dichlorophenol	100 (45.4)
Phenol, 2,6-dichloro-	2,6-Dichlorophenol	100 (45.4)
Phenol, 2,4-dimethyl-	2,4-Dimethylphenol	100 (45.4)
Phenol, 2,4-dinitro-	2,4-Dinitrophenol	10 (4.54)
Phenol, 2,4-dinitro-6-(1-methylpropyl)-	Dinoseb	1000 (454)
Phenol, 2,4-dinitro-6-methyl-, and salts	4,6-Dinitro-o-cresol and salts	10 (4.54)
Phenol, 4-nitro-	p-Nitrophenol * 4-Nitrophenol *	100 (45.4)
Phenol, pentachloro-	Pentachlorophenol	10 (4.54)
Phenol, 2,3,4,6-tetrachloro-	2,3,4,6-Tetrachlorophenol	10 (4.54)
Phenol, 2,4,5-trichloro-	2,4,5-Trichlorophenol	10 (4.54)
Phenol, 2,4,6-trichloro-	2,4,6-Trichlorophenol	10 (4.54)
Phenol, 2,4,6-trinitro-, ammonium salt	Ammonium picrate *	10 (4.54)
Phenyl dichloroarsine *	Dichlorophenylarsine	1 (0.454)
1,10-(1,2-Phenylene)pyrene	Indeno(1,2,3-cd)pyrene	1 (0.454)
Phenyl mercaptan @	Benzenethiol Thiophenol *	100 (45.4)
Phenylmercuric acetate	Mercury, (acetato-O)phenyl-	100 (45.4)
N-Phenylthiourea	Thiourea, phenyl-	100 (45.4)
Phorate	Phosphorodithioic acid, O,O-diethyl S-(ethylthio), methylester	10 (4.54)
Phosgene *	Carbonyl chloride	10 (4.54)
Phosphine *	Hydrogen phosphide	100 (45.4)
Phosphoric acid *		5000 (2270)
Phosphoric acid, diethyl p-nitrophenyl ester	Diethyl-p-nitrophenyl phosphate	100 (45.4)
Phosphoric acid, lead salt	Lead phosphate	1 (0.454)
Phosphorodithioic acid, O,O-diethyl S-(ethylthio), methyl ester	Phorate	10 (4.54)
Phosphorodithioic acid, O,O-diethyl S-methyl ester	O,O-Diethyl S-methyl dithiophosphate	5000 (2270)
Phosphorodithioic acid, O,O-dimethyl S-[2 (methylamino)-2-oxoethyl] ester	Dimethoate	10 (4.54)
Phosphorofluoridic acid, bis(1-methylethyl) ester	Diisopropyl fluorophosphate	100 (45.4)
Phosphorothioic acid, O,O-diethyl O-(p-nitrophenyl) ester	Parathion *	1 (0.454)
Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester	O,O-Diethyl O-pyrazinyl phosphorothioate	100 (45.4)
Phosphorothioic acid, O,O-dimethyl O-[p-[(dimethylamino)-sulfonyl] phenyl] ester	Famphur	1000 (454)
Phosphorus *		1 (0.454)
Phosphorus oxychloride *		1000 (454)
Phosphorus pentasulfide *	Phosphorus sulfide Sulfur phosphide	100 (45.4)
Phosphorus sulfide	Phosphorus pentasulfide * Sulfur phosphide	100 (45.4)
Phosphorus trichloride *		1000 (454)
Phthalic anhydride	1,2-Benzenedicarboxylic acid anhydride	5000 (2270)
2-Picoline	Pyridine, 2-methyl-	5000 (2270)
Plumbane, tetraethyl-	Tetraethyl lead *	10 (4.54)

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LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
POLYCHLORINATED BIPHENYLS (PCBs)	Aroclor 1016	10 (4.54)
	Aroclor 1221	
	Aroclor 1232	
	Aroclor 1242	
	Aroclor 1248	
	Aroclor 1254	
	Aroclor 1260	
Potassium arsenate *		1000 (454)
Potassium arsenite *		1000 (454)
Potassium bichromate	Potassium dichromate @	1000 (454)
Potassium chromate		1000 (454)
Potassium cyanide *		10 (4.54)
Potassium dichromate @	Potassium bichromate	1000 (454)
Potassium hydroxide *		1000 (454)
Potassium permanganate *		100 (45.4)
Potassium silver cyanide		1 (0.454)
Pronamide	3,5-Dichloro-N-,1,1-dimethyl-2-propynyl)benzamide	5000 (2270)
1-Propenal, 2,3-epoxy-	Glycidylaldehyde	1 (0.454)
Propanal, 2-methyl-2-(methylthio)-,O-[(methylamino)carbonyl]oxime	Aldicarb	1 (0.454)
1-Propanamine	n-Propylamine *	5000 (2270)
1-Propanamine, N-propyl-	Dipropylamine	5000 (2270)
Propane, 1,2-dibromo-3-chloro-	1,2-Dibromo-3-chloropropane	1(0.454)
Propane, 2-nitro-	2-Nitropropane	1 (0.454)
Propane, 2,2'-oxybis(2-chloro-	Bis(2-chloroisopropyl) ether	1000 (454)
1,3-Propane sultone	1,2-Oxathiolane, 2,2-dioxide	1 (0.454)
Propanedinitrile	Malononitrile	1000 (454)
Propanenitrile	Ethyl cyanide	10 (4.54)
Propanenitrile, 3-chloro-	3-Chloropropionitrile	1000 (454)
Propanenitrile, 2-hydroxy-2-methyl-	Acetone cyanohydrin *	10 (4.54)
	2-Methyllactonitrile	
1,2,3-Propanetriol, trinitrate-	Nitroglycerine *	10 (4.54)
1-Propanol, 2,3-dibromo-, phosphate (3:1)	Tris(2,3-dibromopropyl)phosphate	1 (0.454)
1-Propanol, 2-methyl-	Isobutyl alcohol	5000 (2270)
2-Propanone	Acetone *	5000 (2270)
2-Propanone, 1-bromo-	Bromoacetone *	1000 (454)
Propargite		10 (4.54)
Propargyl alcohol *	2-Propyn-1-ol	1000 (454)
2-Propenal	Acrolein *	1 (0.454)
2-Propenamide	Acrylamide	5000 (2270)
Propene, 1,3-dichloro-	1,3-Dichloropropene	100 (45.4)
1-Propene, 1,1,2,3,3,3-hexachloro-	Hexachloropropene	1000 (454)
2-Propenenitrile	Acrylonitrile *	100 (45.4)
2-Propenenitrile, 2-methyl-	Methacrylonitrile	1000 (454)
2-Propenoic acid	Acrylic acid *	5000 (2270)
2-Propenoic acid, ethyl ester	Ethyl acrylate *	1000 (454)
2-Propenoic acid, 2-methyl-, ethyl ester	Ethyl methacrylate	1000 (454)
2-Propenoic acid, 2-methyl-, methyl ester	Methyl methacrylate *	1000 (454)
2-Propen-1-ol	Allyl alcohol *	100 (45.4)
Propionic acid *		5000 (2270)
Propionic acid, 2-(2,4,5-trichlorophenoxy)-	Silvex	100 (45.4)
	2,4,5-TP @	
	2,4,5-TP acid	
Propionic anhydride		5000 (2270)
n-Propylamine *	1-Propanamine	5000 (2270)
Propylene dichloride *	1,2-Dichloropropane	1000 (454)
Propylene oxide *		100 (45.4)
1,2-Propylenimine *	2-Methylaziridine	1 (0.454)
2-Propyn-1-ol	Propargyl alcohol *	1000 (454)
Pyrene		5000 (2270)
Pyrethrins		1 (0.454)
4-Pyridinamine	4-Aminopyridine	1000 (454)
Pyridine *		1000 (454)
Pyridine, 2-[(2-(dimethylamino)ethyl)-2- thenylamino]-	Methapyrilene	5000 (2270)
Pyridine, hexahydro-N-nitroso-	N-Nitrosopiperidine	1 (0.454)
Pyridine, 2-methyl-	2-Picoline	5000 (2270)
Pyridine, (S)-3-(1-methyl-2-pyrrolidinyl)-, and salts	Nicotine * and salts *	100 (45.4)
4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	Methylthiouracil	1 (0.454)
Pyrophosphonic acid, tetraethyl ester	Tetraethyl pyrophosphate *	10 (4.54)
Pyrrole, tetrahydro-N-nitroso-	N-Nitrosopyrrolidine	1 (0.454)
Quinoline		5000 (2270)
RADIONUCLIDES		1 (0.454)
Reserpine	Yohimban-16-carboxylic acid,11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester	5000 (2270)
Resorcinol	1,3-Benzenediol	5000 (2270)
Saccharin and salts	1,2-Benzisothiazolin-3-one,1,1-dioxide, and salts	1 (0.454)
Salicin	Benzene, 1,2-methylenedioxy-4-allyl-	1 (0.454)
Selenious acid		10 (4.54)
Selenium ¢		100 (45.4)
Selenium dioxide	Selenium oxide *	10 (4.54)
Selenium disulfide	Sulfur selenide	1 (0.454)
Selenium oxide *	Selenium dioxide	10 (4.54)
Selenourea	Carbamimidoselenoic acid	1000 (454)
L-Serine, diazoacetate (ester)	Azaserine	1 (0.454)
Silver ¢		1000 (454)
Silver cyanide *		1 (0.454)
Silver nitrate *		1 (0.454)
Silvex	Propionic acid, 2-(2,4,5-trichlorophenoxy)-	100 (45.4)
	2,4,5-TP @	
	2,4,5-TP acid	
Sodium *		10 (4.54)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
Sodium arsenate *		1000 (454)
Sodium arsenite *		1000 (454)
Sodium azide *		1000 (454)
Sodium bichromate	Sodium dichromate @	1000 (454)
Sodium bifluoride *		100 (45.4)
Sodium bisulfite *		5000 (2270)
Sodium chromate		1000 (454)
Sodium cyanide *		10 (4.54)
Sodium dichromate @	Sodium bichromate	1000 (454)
Sodium dodecylbenzene sulfonate		1000 (454)
Sodium fluoride *		1000 (454)
Sodium hydrosulfide *		5000 (2270)
Sodium hydroxide *		1000 (454)
Sodium hypochlorite *		100 (45.4)
Sodium methylate *		1000 (454)
Sodium nitrite *		100 (45.4)
Sodium phosphate, dibasic		5000 (2270)
Sodium phosphate, tribasic		5000 (2270)
Sodium selenite *		100 (45.4)
4,4'-Stilbenediol, alpha,alpha'-diethyl-	Diethylstilbestrol	1 (0.454)
Streptozotocin	D-Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-	1 (0.454)
Strontium chromate		1000 (454)
Strontium sulfide		100 (45.4)
Strychnidin-10-one, and salts	Strychnine * and salts *	10 (4.54)
Strychnidin-10-one, 2,3-dimethoxy-	Brucine	100 (45.4)
Strychnine * and salts *	Strychnidin-10-one, and salts	10 (4.54)
Styrene		1000 (454)
Sulfur hydride	Hydrogen sulfide *	100 (45.4)
	Hydrosulfuric acid	
Sulfur monochloride		1000 (454)
Sulfur phosphide	Phosphorus pentasulfide *	100 (45.4)
	Phosphorus sulfide	
Sulfur selenide	Selenium disulfide	1 (0.454)
Sulfuric acid		1000 (454)
Sulfuric acid, dimethyl ester	Dimethyl sulfate *	1 (0.454)
Sulfuric acid, thallium(I) salt	Thallium(I) sulfate *	100 (45.4)
2,4,5-T *	2,4,5-T acid	1000 (454)
	2,4,5-Trichlorophenoxyacetic acid *	
2,4,5-T acid	2,4,5-T *	1000 (454)
	2,4,5-Trichlorophenoxyacetic acid *	
2,4,5-T amines		5000 (2270)
2,4,5-T esters		1000 (454)
2,4,5-T salts		1000 (454)
TDE *	DDD	1(0.454)
	Dichlorodiphenyl dichloroethane	
	4,4'-DDD	
1,2,4,5-Tetrachlorobenzene	Benzene, 1,2,4,5-tetrachloro-	5000 (2270)
2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)		1 (0.454)
1,1,1,2-Tetrachloroethane	Ethane, 1,1,1,2-tetrachloro-	1 (0.454)
1,1,2,2-Tetrachloroethane	Ethane, 1,1,2,2-tetrachloro-	1 (0.454)
Tetrachloroethene	Ethene, 1,1,2,2-tetrachloro-	1 (0.454)
	Perchloroethylene *	
	Tetrachloroethylene *	
Tetrachloroethylene *	Ethene, 1,1,2,2-tetrachloro-	1 (0.454)
	Perchloroethylene *	
	Tetrachloroethene	
2,3,4,6-Tetrachlorophenol	Phenol, 2,3,4,6-tetrachloro-	10 (4.54)
Tetraethyl lead *	Plumbane, tetraethyl-	10 (4.54)
Tetraethyl pyrophosphate *	Pyrophosphoric acid, tetraethyl ester	10 (4.54)
Tetraethyldithiopyrophosphate	Dithiopyrophosphonic acid, tetraethyl ester	100 (45.4)
Tetrahydrofuran *	Furan, tetrahydro-	1000 (454)
Tetranitromethane *	Methane, tetranitro-	10 (4.54)
Tetraphosphonic acid, hexaethyl ester	Hexaethyl tetraphosphate *	100 (45.4)
Thallic oxide	Thallium(III) oxide	100 (45.4)
Thallium ¢		1000 (454)
Thallium(I) acetate	Acetic acid, thallium(I) salt	100 (45.4)
Thallium(I) carbonate	Carbonic acid, dithallium (I) salt	100(45.4)
Thallium(I) chloride		100 (45.4)
Thallium(I) nitrate		100 (45.4)
Thallium(III) oxide	Thallic oxide	100 (45.4)
Thallium(I) selenide		1000 (454)
Thallium(I) sulfate *	Sulfuric acid, thallium(I) salt	100 (45.4)
Thioacetamide	Ethanethioamide	1 (0.454)
Thiofanox	3,3-Dimethyl-1-(methylthio)-2-butanone,O-[(methylamino)carbonyl] oxime	100 (45.4)
Thiomidodicarbonic diamide	2,4-Dithiobiuret	100 (45.4)
Thiomethanol	Methanethiol	100 (45.4)
	Methyl mercaptan *	
Thiophenol *	Benzenethiol	100 (45.4)
	Phenyl mercaptan @	
Thiosemicarbazide	Hydrazinecarbothioamide	100 (45.4)
Thiourea	Carbamide, thio-	1 (0.454)
Thiourea, (2-chlorophenyl)-	1-(o-Chlorophenyl)thiourea	100 (45.4)
Thiourea, 1-naphthalenyl-	alpha-Naphthylthiourea	100 (45.4)
Thiourea, phenyl-	N-Phenylthiourea	100 (45.4)
Thiram	Bis(dimethylthiocarbamoyl) disulfide	10 (4.54)
Toluene *	Benzene, methyl-	1000 (454)
Toluenediamine *	Diaminotoluene	1 (0.454)
Toluene diisocyanate *	Benzene, 2,4-diisocyanatomethyl-	100 (45.4)
o-Toluidine hydrochloride	Benzenamine, 2-methyl-, hydrochloride	1 (0.454)
o-Toluidine	2-Amino-1-methyl benzene	1 (0.454)

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LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
p-Toluidine	4-Amino-1-methyl benzene	1 (0.454)
Toxaphene *	Camphene, octachloro-	1 (0.454)
2,4,5-TP @	Propionic acid, 2-(2,4,5-trichlorophenoxy)-	100 (45.4)
	Silvex	
2,4,5-TP acid esters	2,4,5-TP acid	100 (45.4)
2,4,5-TP acid	Propionic acid, 2-(2,4,5-trichlorophenoxy)-	100 (45.4)
	Silvex	
	2,4,5-TP @	
1H-1,2,4-Triazol-3-amine	Amitrole	1 (0.454)
Trichlorfon		100 (45.4)
1,2,4-Trichlorobenzene		100 (45.4)
1,1,1-Trichloroethane *		1000 (454)
1,1,2-Trichloroethane	Methyl chloroform *	1 (0.454)
Trichloroethene	Ethane, 1,1,2-trichloro-	1000 (454)
Trichloroethylene *	Trichloroethylene *	1000 (454)
Trichloromethanesulfenyl chloride	Trichloroethene	100 (45.4)
	Methanesulfenyl chloride, trichloro-	
Trichloromonofluoromethane	Perchloromethyl mercaptan @	5000 (2270)
Trichlorophenol *	Methane, trichlorofluoro-	10 (4.54)
2,3,4-Trichlorophenol		
2,3,5-Trichlorophenol		
2,3,6-Trichlorophenol		
2,4,5-Trichlorophenol	Phenol, 2,4,5-trichloro-	
2,4,6-Trichlorophenol	Phenol, 2,4,6-trichloro-	
3,4,5-Trichlorophenol		
2,4,5-Trichlorophenol	Phenol, 2,4,5-trichloro-	10 (4.54)
2,4,6-Trichlorophenol	Phenol, 2,4,6-trichloro-	10 (4.54)
2,4,5-Trichlorophenoxyacetic acid *	2,4,5-T *	1000 (454)
	2,4,5-T acid	
Triethanolamine dodecylbenzene sulfonate		1000 (454)
Triethylamine		5000 (2270)
Trimethylamine *		100 (45.4)
sym-Trinitrobenzene *	Benzene, 1,3,5-trinitro-	10 (4.54)
1,3,5-Trioxane, 2,4,6-trimethyl-	Paraldehyde	1000 (454)
Tris(2,3-dibromopropyl) phosphate	1-Propanol, 2,3-dibromo-, phosphate (3:1)	1 (0.454)
Trypan blue	2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl-(1,1'-biphenyl)-4,4'-diyl)-bis(azo)]bis(5-amino-4-hydroxy)-tetrasodium salt.	1 (0.454)
		100(45.4)
Unlisted Hazardous Wastes Characteristic of Corrosivity D002		
Unlisted Hazardous Wastes Characteristic of EP Toxicity		1 (0.454)
Arsenic D004		1000 (454)
Barium D005		1 (0.454)
Cadmium D006		1 (0.454)
Chromium D007		1 (0.454)
Lead D008		1 (0.454)
Mercury D009		10 (4.54)
Selenium D010		1 (0.454)
Silver D011		1 (0.454)
Endrin D012		1 (0.454)
Lindane D013		1 (0.454)
Methoxychlor D014		1 (0.454)
Toxaphene D015		100 (45.4)
2,4-D D016		100 (45.4)
2,4,5-TP D017		100 (45.4)
Unlisted Hazardous Wastes Characteristic of Ignitability D001		100 (45.4)
Unlisted Hazardous Wastes Characteristic of Reactivity D003		1 (0.454)
Uracil, 5-[bis(2-chloroethyl)amino]-	Uracil mustard	1 (0.454)
Uracil mustard	Uracil, 5-[bis(2-chloroethyl)amino]-	100 (45.4)
Uranyl acetate *		100 (45.4)
Uranyl nitrate *		1000 (454)
Vanadic acid, ammonium salt	Ammonium vanadate	1000 (454)
Vanadium(V) oxide	Vanadium pentoxide	1000 (454)
Vanadium pentoxide	Vanadium(V) oxide	1000 (454)
Vanadyl sulfate		5000 (2270)
Vinyl acetate *		1 (0.454)
Vinyl chloride *	Ethene, chloro-	5000 (2270)
Vinylidene chloride *	Ethene, 1,1-dichloro-	
	1,1-Dichloroethylene	
Warfarin	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin and salts	100 (45.4)
Xylene * (mixed)	Benzene, dimethyl-	1000 (454)
m-	m-	
o-	o-	
p-	p-	
Xylenol *		1000 (454)
Yohimban-16-carboxylic acid,11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester.	Reserpine	5000 (2270)
Zinc &		1000 (454)
Zinc acetate		1000 (454)
Zinc ammonium chloride		1000 (454)
Zinc borate		1000 (454)
Zinc bromide		1000 (454)
Zinc carbonate		1000 (454)
Zinc chloride		1000 (454)
Zinc cyanide *		10 (4.54)
Zinc fluoride		1000 (454)
Zinc formate		1000 (454)
Zinc hydrosulfite *		1000 (454)
Zinc nitrate *		1000 (454)
Zinc phenolsulfonate		5000 (2270)
Zinc phosphide *		100 (45.4)

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
Zinc silicofluoride		5000 (2270)
Zinc sulfate		1000 (454)
Zirconium nitrate *		5000 (2270)
Zirconium potassium fluoride		1000 (454)
Zirconium sulfate *		5000 (2270)
Zirconium tetrachloride *		5000 (2270)
F001		1 (0.454)
The following spent halogenated solvents used in degreasing and sludges from the recovery of these solvents in degreasing operations:		
(a) Tetrachloroethylene		1 (0.454)
(b) Trichloroethylene		1000 (454)
(c) Methylene chloride		1000 (454)
(d) 1,1,1-Trichloroethane		1000 (454)
(e) Carbon tetrachloride		5000 (2270)
(f) Chlorinated fluorocarbons		5000 (2270)
F002		1 (0.454)
The following spent halogenated solvents and the still bottoms from the recovery of these solvents:		
(a) Tetrachloroethylene		1 (0.454)
(b) Methylene chloride		1000 (454)
(c) Trichloroethylene		1000 (454)
(d) 1,1,1-Trichloroethane		1000 (454)
(e) Chlorobenzene		100 (45.4)
(f) 1,1,2-Trichloro-1,2,2-trifluoroethane		5000 (2270)
(g) o-Dichlorobenzene		100 (45.4)
(h) Trichlorofluoromethane		5000 (2270)
F003		100 (45.4)
The following spent non-halogenated solvents and solvents:		
(a) Xylene		1000 (454)
(b) Acetone		5000 (2270)
(c) Ethyl acetate		5000 (2270)
(d) Ethylbenzene		1000 (454)
(e) Ethyl ether		100 (45.4)
(f) Methyl isobutyl ketone		5000 (2270)
(g) n-Butyl alcohol		5000 (2270)
(h) Cyclohexanone		5000 (2270)
(i) Methanol		5000 (2270)
F004		1000 (454)
The following spent non-halogenated solvents and the stillbottoms from the recovery of these solvents:		
(a) Cresols/Cresylic acid		1000 (454)
(b) Nitrobenzene		1000 (454)
F005		100 (45.4)
The following spent non-halogenated solvents and the stillbottoms from the recovery of these solvents:		
(a) Toluene		1000 (454)
(b) Methyl ethyl ketone		5000 (2270)
(c) Carbon disulfide		100 (45.4)
(d) Isobutanol		5000 (2270)
(e) Pyridine		1000 (454)
F006		1 (0.454)
Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum,(2) tin plating on carbon steel, (3) zinc plating (segregated basis) on carbonsteel, (4) aluminum or zinc-aluminum plating on carbon steel, (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel, and (6) chemical etching and milling of aluminum.		
F007		10 (4.54)
Spent cyanide plating bath solutions from electroplating operations		
F008		10 (4.54)
Plating bath sludges from the bottom of plating baths fromelectroplating operations where cyanides are used in the process (except for precious metals electroplating plating bath sludges).		
F009		10 (4.54)
Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process (except for precious metals electroplating spent stripping and cleaning bath solutions).		
F010		10 (4.54)
Quenching bath sludge from oil baths from metal heat treating operations where cyanides are used in the process (except for precious metals heat-treating quenching bath sludges).		
F011		10 (4.54)
Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations (except for precious metals heat treating spent cyanide solutions from salt bath pot cleaning).		
F012		10 (4.54)
Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process (except for precious metals heat treating quenching wastewater treatment sludges).		
F019		1 (0.454)
Wastewater treatment sludges from the chemical conversion coating of aluminum		1 (0.454)
F020		
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of hexachlorophene from highly purified 2,4,5-trichlorophenol.).		

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LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
F021		1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol, or of intermediates used to produce its derivatives.		
F022		1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions.		
F023		1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- and tetrachlorophenols. (This listing does not include wastes from equipment used only for the productionor use of hexachlorophene from highly purified 2,4,5-trichlorophenol.).		
F024		1 (0.454)
Wastes, including but not limited to distillation residues, heavy ends, tars, and reactor cleanout wastes, from the production of chlorinated aliphatic hydrocarbons, having carbon content from one to five, utilizing free radical catalyzed processes. (This listing does not include light ends, spent filters and filter aids, spent dessicants(sic), wastewater, wastewater treatment sludges, spent catalysts, and wastes listed in 40 CFR 261.32.).		
F026		1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzene under alkaline conditions.		
F027		1 (0.454)
Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derivedfrom these chlorophenols. (This listing does not include formulations containing hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component.).		
F028		1 (0.454)
Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.		
K001		1 (0.454)
Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.		
K002		1 (0.454)
Wastewater treatment sludge from the production of chrome yellow and orange pigments.		
K003		1 (0.454)
Wastewater treatment sludge from the production of molybdate orange pigments		
K004		1 (0.454)
Wastewater treatment sludge from the production of zinc yellow pigments		
K005		1 (0.454)
Wastewater treatment sludge from the production of chrome green pigments		
K006		1 (0.454)
Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).		
K007		1 (0.454)
Wastewater treatment sludge from the production of iron blue pigments		
K008		1 (0.454)
Oven residue from the production of chrome oxide green pigments		
K009		1 (0.454)
Distillation bottoms from the production of acetaldehyde from ethylene		
K010		1 (0.454)
Distillation side cuts from the production of acetaldehydefrom ethylene		
K011		1 (0.454)
Bottom stream from the wastewater stripper in the production of acrylonitrile		
K013		1 (0.454)
Bottom stream from the acetonitrile column in the production of acrylonitrile		
K014		5000 (2270)
Bottoms from the acetonitrile purification column in the production of acrylonitrile		
K015		1 (0.454)
Still bottoms from the distillation of benzyl chloride		
K016		1 (0.454)
Heavy ends or distillation residues from the production of carbon tetrachloride		
K017		1 (0.454)
Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.		
K018		1 (0.454)
Heavy ends from the fractionation column in ethyl chloride production		
K019		1 (0.454)
Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production.		
K020		1 (0.454)
Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.		
K021		1 (0.454)
Aqueous spent antimony catalyst waste from fluoromethanes production		
K022		1 (0.454)
Distillation bottom tars from the production of phenol/acetone from cumene		
K023		5000 (2270)
Distillation light ends from the production of phthalic anhydride from naphthalene		
K024		5000 (2270)
Distillation bottoms from the production of phthalic anhydride from naphthalene		

LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
K025		1 (0.454)
Distillation bottoms from the production of nitrobenzene by the nitration of benzene		
K026		1000 (454)
Stripping still tails from the production of methyl ethyl pyridines		
K027		1 (0.454)
Centrifuge and distillation residues from toluene diisocyanate production		
K028		1 (0.454)
Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.		
K029		1 (0.454)
Waste from the product steam stripper in the production of 1,1,1-trichloroethane		
K030		1 (0.454)
Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene.		
K031		1 (0.454)
By-product salts generated in the production of MSMA and cacodylic acid		
K032		1 (0.454)
Wastewater treatment sludge from the production of chlordane		
K033		1 (0.454)
Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane.		
K034		1 (0.454)
Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane.		
K035		1 (0.454)
Wastewater treatment sludges generated in the production of creosote		
K036		1 (0.454)
Still bottoms from toluene reclamation distillation in the production of disulfoton		
K037		1 (0.454)
Wastewater treatment sludges from the production of disulfoton		
K038		1 (0.454)
Wastewater from the washing and stripping of phorate production		
K039		10 (4.54)
Filter cake from the filtration of diethylphosphorodithoic acid in the production of phorate.		
K040		1 (0.454)
Wastewater treatment sludge from the production of phorate		
K041		1 (0.454)
Wastewater treatment sludge from the production of toxaphene		
K042		1 (0.454)
Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T.		
K043		1 (0.454)
2,6-dichlorophenol waste from the production of 2,4-D		
K044		10 (4.54)
Wastewater treatment sludges from the manufacturing and processing of explosives		
K045		10 (4.54)
Spent carbon from the treatment of wastewater containing explosives		
K046		100 (45.4)
Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds.		
K047		10 (4.54)
Pink/red water from TNT operations		
K048		1 (0.454)
Dissolved air flotation (DAF) float from the petroleum refining industry		
K049		1 (0.454)
Slop oil emulsion solids from the petroleum refining industry		
K050		1 (0.454)
Heat exchanger bundle cleaning sludge from the petroleum refining industry		
K051		1 (0.454)
API separator sludge from the petroleum refining industry		
K052		10 (4.54)
Tank bottoms (leaded) from the petroleum refining industry		
K060		1 (0.454)
Ammonia still lime sludge from coking operations		
K061		1 (0.454)
Emission control dust/sludge from the primary production of steel in electric furnaces.		
K062		1 (0.454)
Spent pickle liquor from steel finishing operations		
K069		1 (0.454)
Emission control dust/sludge from secondary lead smelting		
K071		1(0.454)
Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.		
K073		1 (0.454)
Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production.		
K083		100 (45.4)
Distillation bottoms from aniline extraction		
K084		1 (0.454)
Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.		
K085		1 (0.454)
Distillation or fractionation column bottoms from the production of chlorobenzenes		
K086		1 (0.454)
Solvent washes and sludges, caustic washes and sludges, orwater washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.		

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LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	Synonyms	Reportable Quantity(RQ) Pounds(Kilograms)
K087		100 (45.4)
Decanter tank tar sludge from coking operations		
K093		5000 (2270)
Distillation light ends from the production of phthalic anhydride from ortho-xylene		
K094		5000 (2270)
Distillation bottoms from the production of phthalic anhydride from ortho-xylene		
K095		1 (0.454)
Distillation bottoms from the production of 1,1,1-trichloroethane		
K096		1 (0.454)
Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane		
K097		1 (0.454)
Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane		
K098		1 (0.454)
Untreated process wastewater from the production of toxaphene		
K099		1 (0.454)
Untreated wastewater from the production of 2,4-D		
K100		1 (0.454)
Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting		
K101		1 (0.454)
Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceutcals from arsenic or organo-arsenic compounds		
K102		1 (0.454)
Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceutcals from arsenic or organo-arsenic compounds		
K103		100 (45.4)
Process residues from aniline extraction from the production of aniline		
K104		1 (0.454)
Combined wastewater streams generated from nitrobenzene/aniline chlorobenzenes		
K105		1 (0.454)
Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes		
K106		1 (0.454)
Wastewater treatment sludge from the mercury cell process in chlorine production		
K111		1 (0.454)
Product washwaters from the production of dinitrotoluene via nitration of toluene		
K112		1 (0.454)
Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene		
K113		1 (0.454)
Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene		
K114		1 (0.454)
Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene		
K115		1 (0.454)
Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene		
K116		1 (0.454)
Organic condensate from the solvent recovery column in theproduction of toluene desocyanate via phosgenation of toluenediamine		
K117		1 (0.454)
Wastewater from the reaction vent gas scrubber in the production of ethylene bromide via bromination of ethene		
K118		1 (0.454)
Spent absorbent solids from purification of ethylene dibromide in the production of ethylene dibromide		
K136		1 (0.454)
Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene		

Footnotes:
‡ - the RQ for these hazardous substances is limited to those pieces of the metal having a diameter smaller than 100 micrometers (0.004 inches)
‡‡ - the RQ for asbestos is limited to friable forms only
* - indicates that this material appears by name in the Hazardous Materials Table
@ - indicates that the name was added by RSPA because (1) the name is a synonym for a specific hazardous substance and (2) the name appears in the Hazardous Materials Table as a proper shipping name.

5. In the first column of page 42195, paragraph (e) of § 172.102 is correctly revised to read as follows:

§ 172.102 Purpose and use of Optional Hazardous Materials Table for international shipments.

* * * * *

(e) When an appropriate shipping name from the Optional Table is used to describe a hazardous material which is also a hazardous substance, the additional description requirements for hazardous substances in §§ 172.203(c) and 172.324 are applicable.

* * * * *

6. In § 172.203, paragraph (c) which begins in the first column of page 42195 is correctly revised to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(c) *Hazardous substances.* (1) If the proper shipping name for a material that is a hazardous substance does not identify the hazardous substance by name, one of the following descriptions shall be entered, in parentheses, in association with the basic description:

(i) The name of the hazardous substance as shown in the appendix to § 172.101; or

(ii) For waste streams, the waste stream number; or

(iii) For wastes which exhibit an EPA characteristic of ignitability, corrosivity, reactivity, or EP toxicity, the letters "EPA" followed by the word "ignitability", or "corrosivity", or "reactivity", or "EP toxicity", as appropriate *or* the corresponding "D" number, as appropriate.

(2) The letters "RQ" shall be entered on the shipping paper either before or after the basic description required by § 172.202 for each hazardous substance. For example: "RQ, Cresol, Corrosive material, UN 2076"; or "Hazardous substance, solid, n.o.s., ORM–E, NA9188, (Adipic acid), RQ".

* * * * *

7. Beginning in the second column of page 42195, § 172.324 is correctly revised to read as follows:

§ 172.324 Hazardous substances.

For each package with a capacity of 110 gallons or less that contains a hazardous substance—

(a) If the proper shipping name does not identify the hazardous substance by name, one of the following descriptions shall be marked on the package, in parentheses, in association with the proper shipping name:

(1) The name of the hazardous substance as shown in the appendix to § 172.101; or

(2) For waste streams, the waste stream number; or

(3) For wastes which exhibit an EPA characteristic of ignitability, corrosivity, reactivity, or EP toxicity, the letters "EPA" followed by the word "ignitability", or "corrosivity", or "reactivity", or "EP toxicity", as appropriate *or* the corresponding "D" number, as appropriate.

(b) The letters "RQ" shall be marked on the package in association with the proper shipping name.

Issued in Washington, DC, on January 30, 1987, under authority delegated in 49 CFR 1.53.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 87–2532 Filed 2–13–87; 8:45 am]

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 61

Delay of Compliance Date for Aeronautical Experience Requirements for Rotorcraft Category Rating; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. 24550; Amdt. 61-78]

Delay of Compliance Date for Aeronautical Experience Requirements for Rotorcraft Category Rating

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment delays the compliance date of the new aeronautical experience requirements for private and commercial pilot rotorcraft rating certification contained in the recent revisions to the Federal Aviation Regulations. This amendment is needed because public notification on the provisions of these new aeronautical experience requirements in some cases has not been adequate. It is intended to provide a reasonable time to implement the necessary administrative and operational actions on the part of the FAA and aviation schools and instructors.

EFFECTIVE DATE: February 16, 1987.

FOR FURTHER INFORMATION CONTACT: Donald E. Franklin or Thomas E. Stuckey, Manager, Project Development Branch (AFS-850), General Aviation and Commerical Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone: (202) 267-8150.

SUPPLEMENTARY INFORMATION:

Background

Sections 61.113 and 61.131 of the Federal Aviation Regulations prescribe aeronautical experience requirements for applicants for a rotorcraft category rating on private and commercial pilot certificates. On October 31, 1986, these sections were revised by Amendment 61-77, Rotorcraft Regulatory Review Program Amendment No. 5: Operations and Maintenance (51 FR 40692; November 7, 1986) to establish additional rotorcraft experience requirements for these ratings. The new requirements were given an effective date of January 6, 1987, 60 days after publication of the final rule in the **Federal Register**. It now appears that in some cases insufficient time was allowed for compliance with these new experience requirements.

On January 5, 1987, the Helicopter Association International (HAI) petitioned for a delay in the effective date for impleting those portions of the *Rotorcraft Regulatory Review Program Amendment No. 5* relating to §§ 61.113 and 61.131. Specifically, HAI stated that many rotorcraft training schools and operators, instructors, and designated pilot examiners do not have copies of these new rules. HAI further stated that it has been advised by Jeppeson and Sanderson, Inc., that copies of these new rules will not be available in the private sector until January 23, 1987. HAI stated that, in some cases, training and flight tests have had to be cancelled because instructors and designated pilot examiners are waiting to review the changes these new rules will have on the certification requirements for the private and commercial pilot. HAI stated that it has received complaints from students and pilots who have already invested substantial time and money in preparation for a rotorcraft category rating. These students are concerned that, because of the early effectiveness of these new programs, they will not be able to obtain a private or commercial pilot certificate without an additional expense of $4,000 to $5,000. In light of the unanticipated burden of these students, HAI requested that the FAA delay implementing the provisions of §§ 61.113 and 61.131 for at least 90 days to allow for completion of training programs already in progress when the final rule was issued. HAI stated that a 90-day delay would provide the public with sufficient advance notification of the new requirements and would also provide reasonable time for schools and instructors to perform the necessary administrative and operational actions.

Upon further consideration, and in light of the petition from HAI, the FAA has determined it would be unfair to implement the changes contained in the revised §§ 61.113 and 61.131 without first providing the public with adequate advance notification and allowing a reasonable period of time for current applicants to complete their qualification. This will not diminish the current level of safety in rotorcraft operations and will not significantly delay the upgrading of the certification standards for rotorcraft pilots.

The FAA has decided that, to provide a reasonable period of time, the compliance date of the new requirements should be delayed until May 1, 1987. This will allow completion of the necessary administrative and operational actions needed to implement these new aeronautical experience requirements.

Reason for No Notice and Immediate Adoption

In view of the fact that Amendment 61-77 has already become effective and immediate delay of the compliance date is needed to allow current students to complete their qualification under the previous requirements, notice and public procedure are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Conclusion

To the extent that this amendment will have an economic effect, it will only be a positive one. It will spare current applicants for rotorcraft ratings the expenses of having to obtain additional aeronautical experience. Therefore, the FAA has determined that this amendment is not major under Executive Order 12291 or significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Although this delay in compliance is of some benefit to instructors and schools who have not yet received notice of the content of the new requirements, the resulting economic benefit to small entities will be minimal. Therefore, it is certified that under the criteria of the Regulatory Flexibility Act this amendment will not have a significant economic impact, positive or negative, on a substantial number of entities. Because of the absence of any costs resulting from the proposal, the FAA has determined that the expected impact of these regulations is so minimal that they do not warrant a full regulatory evaluation.

List of Subjects in 14 CFR Part 61

Airmen, Aircraft pilots, Pilots, Transportation, Air safety, Safety, Aviation safety, Air transportation, Aircraft, Rotorcraft, Helicopters, Gyroplanes.

The Amendment

Accordingly, Part 61 of the Federal Aviation Regulations (14 CFR Part 61) is amended as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for Part 61 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427, 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

2. By amending § 61.113 by inserting the words "After April 30, 1987," at the beginning of paragraphs (a) and (b) and adding a sentence at the end of paragraph (c) and adding new paragraphs (d) and (e) to read as follows:

§ 61.113 Rotorcraft rating: Aeronautical experience.

* * * * *

(c) * * * This limitation is not placed on the certificate of an applicant who qualifies under paragraph (d) or (e) of this section.

(d) Until May 1, 1987, for a helicopter rating an applicant must have at least a total of 40 hours of flight instruction and solo flight time in aircraft with at least 15 hours of solo flight time in helicopters, which must include—

(1) A takeoff and landing at an airport that serves both airplanes and helicopters;

(2) A flight with a landing at a point other than an airport; and

(3) Three hours of cross-country flying, including one flight with landings at three or more points, each of which must be more than 25 nautical miles from each of the other two points.

(e) Until May 1, 1987, for a gyroplane rating an applicant must have at least a total of 40 hours of flight instruction and solo flight time in aircraft with at least 10 hours of solo flight time in a gyroplane, which must include—

(1) Flights with takeoffs and landings at paved and unpaved airports; and

(2) Three hours of cross-country flying, including a flight with landings at three or more points, each of which must be more than 25 nautical miles from each of the other two points.

3. By amending § 61.131 by inserting the words "After April 30, 1987," at the beginning of paragraphs (a) and (b) and adding new paragraphs (c) and (d) to read as follows:

§ 61.131 Rotorcraft rating: aeronautical experience.

* * * * *

(c) Until May 1, 1987, for a helicopter rating at least 150 hours of flight time as pilot, including at least—

(1) 100 hours in powered aircraft and at least 50 hours in helicopters;

(2) 100 hours of pilot in command time, including a cross-country flight with landings at three points, each of which is more than 50 nautical miles from each of the other points;

(3) 40 hours of flight instruction from an authorized flight instructor, including 15 hours in helicopters; and

(4) 10 hours as pilot in command in helicopters, including—

(i) Five takeoffs and landings at night;

(ii) Takeoffs and landings at three different airports that serve both airplanes and helicopters; and

(iii) Takeoffs and landings at three points other than airports.

(d) Until May 1, 1987, for a gyroplane rating at least 200 hours of flight time as pilot, including—

(1) 100 hours in powered aircraft;

(2) 100 hours as pilot in command, including a cross-country flight with landings at three points, each of which is more than 50 nautical miles from each of the other two points;

(3) 75 hours as pilot in command in gyroplanes, including—

(i) Flights with takeoffs and landings at three different paved airports and three unpaved airports; and

(ii) Three flights with takeoffs and landings at an airport with an operating control tower; and

(4) Twenty hours of flight instruction in gyroplanes, including 5 hours in preparation for the commercial pilot flight test.

Issued in Washington, DC on February 6, 1987.

Donald D. Engen,

Administrator.

[FR Doc. 87-3204 Filed 12-13-87; 8:45 am]

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Part IV

Department of Education

34 CFR Parts 270, 271, and 272
Elementary and Secondary Education; Desegregation of Public Education; Proposed Rule and Applications for New Awards; Desegregation Assistance Programs and State Educational Desegregation Program Fiscal Year 1987; Notices

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DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Parts 270, 271, and 272

Desegregation of Public Education

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the existing regulations implementing Title IV of the Civil Rights Act of 1964. These proposed regulations would change existing policy for the award of funds to State educational agencies (SEAs) and to desegregation assistance centers (DACs). Each SEA will submit one noncompetitive application describing all desegregation assistance it will provide. Each DAC will provide services for race, sex, and national origin desegregation assistance in its geographic region. DAC awards will be made on a competitive basis. In addition, these proposed regulations would consolidate existing provisions to reduce administrative burdens on recipients of awards and would eliminate certain existing unnecessary regulations.

DATES: Comments must be received on or before March 19, 1987.

ADDRESS: Comments should be addressed to Mr. Curtis Coates, Office of Elementary and Secondary Education, U.S. Department of Education, Mail Stop 6264, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone (202) 732–4345.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis Coates. Telephone 472–1904.

SUPPLEMENTARY INFORMATION:

Overview of the Program

The current regulations implementing Title IV of the Civil Rights Act of 1964 provide for financial assistance to assist personnel operating public schools who request assistance in eliminating discrimination on the basis of race, sex, and national origin. Section 403 of the Act authorizes the Secretary to make available to school districts, upon request, persons specially equipped to assist them in addressing problems related to eliminating discrimination in the public schools. Subparts B and C of the current regulations implement this section by authorizing the provision of this assistance by the SEAs and DACs. Section 404 authorizes the Secretary to arrange with institutions of higher education for the offering of special training institutes to improve the ability of elementary and secondary school personnel to deal with the educational problems occasioned by desegregation. Subpart D of the current regulations governs grants for race and sex desegregation training institutes. Finally, section 405 authorizes the Secretary to make grants to school boards to pay the costs of inservice training of school personnel and the employment of specialists to deal with problems incident to desegregation. Subparts E and F of the current regulations govern grants to school boards.

Summary of Major Provisions of the Proposed Regulations

These proposed regulations implement section 403 of the Act and incorporate the Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 78, and 79), except as otherwise noted. They reflect a thorough deregulation review, which was necessary to consolidate, revise, and update the format of, and to delete unnecessary requirements from, the current regulations. When effective as final regulations, these regulations will replace the current Title IV regulations at 34 CFR Part 270.

Regulations are not proposed to implement sections 404 and 405 of the Act. The Training Institutes and Grants to School Boards programs that are authorized by these sections of the Act have not been funded for several years, and no funds are expected to be available for them in fiscal year 1987. If funds were made available for them in future years, grants under these programs would be made pursuant to the applicable provisions of EDGAR and the authorizing provisions of the statute, or program-specific regulations would be issued at that time.

The following is a summary of the major provisions of the proposed regulations:

Part 270—General Provisions

A fuller description of the purpose of grants under Title IV has been given in proposed § 270.1.

The EDGAR regulations that do not apply to Title IV have been identified in proposed § 270.2. Specifically, 34 CFR 75.217 of EDGAR (relating to the rank ordering process in selecting applications) will not apply to SEA applications and 75.232 of EDGAR (relating to the cost analysis) will not apply to DAC awards.

Three new terms and definitions have been added in proposed § 270.3: "Desegregation Assistance", "Desegregation Assistance Centers" and "Desegregation Assistance Areas." Definitions for terms no longer used in the regulations have been eliminated. In addition, the definition of "National origin desegregation" has been changed to clarify the type of national origin desegregation assistance that is authorized under Title IV. A definition of "limited English proficiency" has been added, based on the definition used in the Bilingual Education Act.

The prescriptive limitations relating to stipends and travel allowances have been eliminated. Instead, proposed § 270.5 would permit the use of rates for these costs established by State policies, or in the absence of State policies, rates established by local policies. However, costs for stipends and reimbursements for substitute teachers during training activities would now be limited to 20 percent of the total grant under § 270.5. Stipends may be paid to personnel participating on less than a full-time basis.

The proposed regulations eliminate the sections of the current regulations listing authorized activities for race, sex, and national origin desegregation, except that the limitation prohibiting the use of Title IV race desegregation assistance funds for the purpose of supporting compensatory education and basic skills programs has been retained. School districts receive support for these latter purposes from Chapter 1 of the Education Consolidation and Improvement Act and other Federal programs.

Title IV funds are too limited to support these high cost activities and should be used for activities more directly related to coping with problems arising from the desegregated school setting. Proposed § 270.6 clarifies that Title IV funds for race desegregation assistance may not be used to develop or implement activities for direct instruction of students to improve their academic and vocational achievement levels, or to develop curriculum materials to be used in classroom instruction.

Part 271—State Educational Agency Programs

The proposed regulations make several changes in the administration of the SEA program. SEAs no longer would submit separate applications for providing assistance in the areas of sex, race, or national origin desegregation. Under proposed § 271.2, an SEA may only submit one application describing all of the desegregation assistance it will provide.

In addition, the proposed regulations eliminate weighted criteria used in evaluating applications and replace them with requirements that must be met by each SEA applicant. Proposed § 271.20 specifies the conditions an applicant must meet to obtain funding. These requirements address current State policies designed to support desegregation and the important aspects of the SEA's proposed program of assistance. Under proposed § 271.30, the Secretary would now make awards to all SEAs that demonstrate, either initially or after amending their applications, the capability to make substantial progress in solving desegregation problems. The new procedures thus eliminate application scoring. The Secretary would review an application to determine an SEA's capability to make substantial progress in assisting school districts in solving desegregation problems in its State; identify any deficiencies in the application that do not demonstrate this capability; and assist the SEA in amending, strengthening, and resubmitting its application.

Part 272—Desegregation Assistance Centers

These proposed regulations make important changes in the way services are to be provided. Under proposed § 272.10, each DAC must provide technical assistance in the areas of race, sex, and national origin desegregation for the geographic region it will serve.

Proposed § 272.12 establishes the geographic service regions for which the DACs will provide desegregation assistance. Under proposed § 272.40, each DAC must be physically located in the geographic region it will serve, must have a full-time project director, and must coordinate assistance with appropriate SEAs in the geographic region.

The proposed regulations also change the criteria that the Secretary uses to evaluate new DAC applications. The criteria in proposed § 272.30 emphasize knowledge of educational models and instructional practices, familiarity with the desegregation-related needs of the geographic region, clear objectives set by the DAC, and full descriptions of the services the DAC would provide.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. To the extent that these programs provide assistance to States and State agencies they do not affect small entities. States and State agencies are not considered small entities under the Regulatory Flexibility Act.

Small entities participating in these programs may also include small local educational agencies, small institutions of higher education, or small private, nonprofit organizations. These regulations will reduce burdens on small entities, but they will not have a significant economic impact on individual small entities participating in the programs.

Paperwork Reduction Act of 1980

Sections 271.20, 271.31, 272.30, and 272.31 contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, Washington, DC 20503; Attention: Joseph F. Lackey, Jr.

All other comments regarding these proposed regulations should be sent to the Department of Education at the address given at the beginning of this preamble.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 2063, Federal Office Building #6, 400 Maryland Avenue SW., Washington, DC between the hours of 8:30 and 4:00 p.m., Monday through Friday of each week, except Federal holidays. In order to assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Parts 270 and 272

Civil rights, Desegregation assistance, Education, Elementary and secondary education, Grant programs-education, Nonprofit organizations, Reporting and recordkeeping requirements.

34 CFR Part 271

Civil rights, Desegregation assistance, Education, Elementary and secondary education, Grant programs-education, Reporting and recordkeeping requirements.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance Number 84.004, Desegregation of Public Education)

Dated: February 9, 1987.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations as follows:

1. The Secretary proposes to revise Part 270 to read as follows:

PART 270—DESEGREGATION OF PUBLIC EDUCATION

Sec.

270.1 What are the Desegregation of Public Education Programs?
270.2 What regulations apply to these programs?
270.3 What definitions apply to these programs?
270.4 What types of projects are funded under these programs?
270.5 What stipends and related reimbursements are authorized under this program?
270.6 What limitation is imposed on providing race desegregation assistance under these programs?

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Authority: 42 U.S.C. 2000c–2000c–2, 2000–5, unless otherwise noted.

§ 270.1 What are the Desegregation of Public Education Programs?

The Desegregation of Public Education Programs provide grants to projects that help public school districts and personnel in the preparation, adoption, and implementation of plans for the desegregation of public schools and in the development of effective methods of coping with special educational problems occasioned by desegregation.

(Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5)

§ 270.2 What regulations apply to these programs?

The following regulations apply to these programs:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities), except that 34 CFR 75.200 through 75.217 (relating to the evaluation and competitive review of grants) do not apply to grants awarded under 34 CFR Part 271 and 34 CFR 75.232 (relating to the cost analysis) does not apply to grants under 34 CFR Part 272.

(b) The regulations in this part and in 34 CFR Parts 271 and 272.

(Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5)

§ 270.3 What definitions apply to these programs?

In addition to the definitions in 34 CFR 77.1, the following definitions apply to the regulations in this part:

"Desegregation assistance" means the provision of technical assistance (including training) in the areas of race, sex, and national origin desegregation of public elementary and secondary schools.

(Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5)

"Desegregation assistance areas" means the areas of race, sex, and national origin desegregation.

(Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5)

"Desegregation Assistance Center" means a regional desegregation technical assistance and training center funded under 34 CFR Part 272.

(Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5)

"Limited English proficiency" has the same meaning under this part as the same term defined in 34 CFR 500.4 of the General Provisions regulations for the Bilingual Education Program.

(Authority: 20 U.S.C. 3223(a)(1))

"National origin desegregation" means the assignment of students to public schools and within those schools without regard to their national origin, including providing students of limited English proficiency with a full opportunity for participation in all educational programs.

(Authority: 42 U.S.C. 2000c(b))

"Public school" means any elementary or secondary educational institution operated by a State, subdivision of a State, or governmental agency within a State, or operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from governmental sources.

(Authority: 42 U.S.C. 2000c(c))

"Public school personnel" means school board members and persons who are employed by or who work in the schools of a responsible governmental agency, as that term is defined in this section.

(Authority: 42 U.S.C. 2000c(c); 2000c–2000c–2, 2000c–5)

"Race desegregation" means the assignment of students to public schools and within those schools without regard to their race including providing students with a full opportunity for participation in all educational programs regardless of their race. "Race desegregation" does not mean the assignment of students to public schools to correct conditions of racial separation that are not the result of State or local law or official action.

(Authority: 42 U.S.C. 2000c(b))

"Responsible governmental agency" means any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools.

(Authority: 42 U.S.C. 2000c–2)

"School board" means any agency or agencies that administer a system of one or more public schools and any other agency that is responsible for the assignment of students to or within that system.

(Authority: 42 U.S.C. 2000c(d))

"Sex desegregation" means the assignment of students to public schools and within those schools without regard to their sex including providing students with a full opportunity for participation in all educational programs regardless of their sex.

(Authority: 42 U.S.C. 2000c(b))

§ 270.4 What types of projects are funded under these programs?

The Secretary may fund—

(a) State Educational Agency (SEAs) projects; and

(b) Desegregation Assistance Centers (DACs).

(Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5)

§ 270.5 What stipends and related reimbursements are authorized under this program?

(a) The recipient of an award under 34 CFR Parts 271 and 272 may pay—

(1) Stipends to public school personnel who participate in technical assistance or training activities funded under these parts for the period of their attendance, if the person to whom the stipend is paid receives no other compensation for that period; or

(2) Reimbursements to a responsible governmental agency that pays substitutes for public school personnel who—

(i) Participate in technical assistance or training activities funded under these parts; and

(ii) Are being compensated by that responsible governmental agency for the period of their attendance.

(b) A recipient may pay the stipends and reimbursements described in this section only if it demonstrates that the payment of these costs is necessary to the success of the technical assistance or training activity, and will not exceed 20 percent of the total award.

(c) If a recipient is authorized by the Secretary to pay stipends or reimbursements (or any combination of these payments), the recipient shall determine the conditions and rates for these payments in accordance with appropriate State policies, or in the absence of State policies, in accordance with local policies.

(d) A recipient of a grant under 34 CFR Parts 271 and 272 may pay a travel allowance described in these parts only to a person who participates in a technical assistance or training activity.

(e) If the participant does not complete the entire scheduled activity, the recipient may pay the participant's transportation to his or her residence or place of employment only if the participant left the training activity because of circumstances not reasonably within his or her control.

(Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5)

§ 270.6 What limitation is imposed on providing race desegregation assistance under these programs?

A recipient of a grant for race desegregation assistance under these programs may not use funds to develop or implement activities for direct instruction of students to improve their academic and vocational achievement levels or to develop curriculum materials to be used in classroom instruction.

(Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5)

2. The Secretary proposes to add a new Part 271 as follows:

PART 271—STATE EDUCATIONAL AGENCY DESEGREGATION PROGRAM

Subpart A—General

Sec.

271.1 What is the State Educational Agency Desegregation Program?
271.2 Who is eligible to apply for assistance under this program?
271.3 What regulations apply to this program?
271.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

271.10 What types of projects may be funded?
271.11 Who may receive desegregation assistance under this program?

Subpart C—How Does An SEA Apply for a Grant?

271.20 What conditions must an applicant meet to obtain funding?

Subpart D—How Does the Secretary Make a Grant?

271.30 How does the Secretary evaluate an application?
271.31 How does the Secretary determine the amount of the grant?

Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5, unless otherwise noted.

Subpart A—General

§ 271.1 What is the State Educational Agency Desegregation Program?

This program provides grants to State educational agencies (SEAs) to enable them to provide technical assistance (including training) at the request of school boards and other responsible governmental agencies in the preparation, adoption, and implementation of plans for the desegregation of public schools.

(Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5)

§ 271.2 Who is eligible to apply for assistance under this program?

An SEA is eligible to apply for a grant under this program. An SEA shall submit one application to provide technical assistance in one, two, or all three of the desegregation assistance areas, as defined in 34 CFR 270.8.

(Authority: 42 U.S.C. 2000c–2)

§ 271.3 What regulations apply to this program?

The following regulations apply to the SEA program:

(a) The regulations in 34 CFR Part 270.

(b) The regulations in this part.

(Authority: 42 U.S.C. 2000c–2)

§ 271.4 What definitions apply to this program?

The definitions in 34 CFR Part 270.3 apply to the SEA program.

(Authority: 42 U.S.C. 2000c–2)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 271.10 What types of projects may be funded?

The Secretary awards grants to SEAs for projects offering technical assistance (including training) to school boards and other responsible governmental agencies, at their request, for desegregation assistance in the preparation, adoption, and implementation of desegregation plans. Desegregation assistance may include, among other activities—

(a) Dissemination of information regarding effective methods of coping with special educational problems occasioned by desegregation;

(b) Assistance and advice in coping with these problems; and

(c) Training designed to improve the ability of teachers, supervisors, counselors, parents, community members, and other elementary or secondary school personnel to deal effectively with special educational problems occasioned by desegregation.

(Authority: 42 U.S.C. 2000c–2)

§ 271.11 Who may receive desegregation assistance under this program?

(a) A grantee may provide assistance only if the assistance is requested by a responsible governmental agency [other than the SEA) in its State.

(b) A grantee may provide assistance only to the following persons:

(1) Public school personnel.

(2) Students enrolled in public schools, parents of those students, and other community members.

(Authority: 42 U.S.C. 2000c–2)

Subpart C—How Does an SEA Apply for a Grant?

§ 271.20 What conditions must an applicant meet to obtain funding?

To obtain funding under this program—

(a) An applicant must demonstrate its leadership in facilitating desegregation (in each of the desegregation assistance areas for which it has applied) as indicated by policies and procedures adopted by the SEA to assist in the desegregation process;

(b) The applicant's project director must have access to the Chief State School Officer;

(c) The applicant must have a plan of the steps that it has taken or would take to inform the LEAs it will serve, public school personnel, students, and parents of the desegregation assistance available;

(d) The applicant must have familiarity with the desegregation-related needs and problems of the school boards and other responsible governmental agencies in its State;

(e) The assistance to be provided by the applicant must be designed to meet the desegregation needs (in each of the desegregation assistance areas for which it has applied) within its State;

(f) The applicant must identify specific desegregation problems that would be addressed by its proposed project;

(g) The applicant must have a plan for coordination with other related desegregation programs in its State, including the DAC that serves its State, that will prevent duplication of assistance when a responsible governmental agency requests assistance from both the SEA and the DAC or other program;

(h) The applicant must provide a plan of operation for the proposed project that includes—

(1) An effective plan of management that ensures proper and efficient administration of the project;

(2) A clear description of how the objectives of the project relate to the purposes of the program;

(3) The way the applicant plans to use its resources and personnel to achieve each objective; and

(4) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, national origin, color, sex, age, or handicapping condition.

(i) The applicant must have familiarity with materials used in providing technical assistance and training in each of the desegregation assistance areas for which it has applied;

(j) The key personnel the applicant plans to use on the project must be qualified, as determined by—

(1) The experience and training of the project director and other key personnel; and

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(2) The time that the project director and other key personnel will devote to the project to ensure its success;

(k) The applicant, as part of its nondiscriminatory employment practices, shall ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age or handicapping condition.

(l) The project must have an adequate budget to support the project activities, and costs must be reasonable in relation to the objectives of the project; and

(m) The applicant must have an evaluation plan that includes methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(Authority: 42 U.S.C. 2000c–2)

Subpart D—How Does the Secretary Make a Grant?

§ 271.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application submitted under this part on the basis of the requirements in § 271.20.

(b) The Secretary identifies those applications that satisfactorily address each of the factors included in § 271.20.

(c) The Secretary notifies an SEA whose application does not satisfactorily address each of the requirements in § 270.20 and permits the SEA to amend its application. If the amended application meets each of the requirements of § 270.20, the Secretary approves it for funding.

(Authority: 42 U.S.C. 2000c–2)

§ 271.31 How does the Secretary determine the amount of the grant?

The Secretary awards a grant to each SEA whose application meets the requirements of § 271.20. The Secretary determines the amount of a grant, pursuant to the cost analysis under 34 CFR 75.232, on the basis of—

(a) The amount of funds available for all grants under this part;

(b) The magnitude of the problems to be addressed by the project and the cost of implementing the technical assistance and training activities to help solve those problems; as compared with the magnitude of the expected needs for desegregation assistance, and the cost of providing it, in all States for which applications are approved for funding;

(c) The size and the racial or ethnic diversity of the student population of the State;

(d) The extent to which the applicant will effectively and efficiently use funds awarded to it, including, if relevant, consideration of its previous use of funds awarded under this program; and

(e) Any other information concerning desegregation problems and proposed activities that the Secretary finds relevant in the applicant's State.

(Authority: 42 U.S.C. 2000c–2)

3. The Secretary proposes to add a new Part 272 as follows:

PART 272—DESEGREGATION ASSISTANCE CENTER PROGRAM

Subpart A—General

Sec.

272.1 What is the Desegregation Assistance Center Program?
272.2 Who is eligible to receive a grant under this program?
272.3 What regulations apply to this program?
272.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Fund Under This Program?

272.10 What type of projects may be funded?
272.11 Who may receive desegregation assistance under this program?
272.12 What geographic regions do the DACs serve?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

272.30 What criteria does the Secretary use to make a grant?
272.31 How does the Secretary evaluate an application for a grant?
272.32 How does the Secretary determine the amount of a grant?

Subpart E—What Conditions Must Be Met by a Recipient of a Grant?

272.40 What conditions must be met by a recipient of a grant?

Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5, unless otherwise noted.

Subpart A—General

§ 272.1 What is the Desegregation Assistance Center Program?

This program provides financial assistance to operate regional Desegregation Assistance Centers (DACs), to enable them to provide technical assistance (including training) at the request of school boards and other responsible governmental agencies in the preparation, adoption, and implementation of plans for the desegregation of public schools.

(Authority 42 U.S.C. 2000c–2)

§ 272.2 Who is eligible to receive a grant under this program?

A public agency (other than a State educational agency or a school board) or private, nonprofit organization is eligible to receive a grant under this program.

(Authority: 42 U.S.C. 2000c–2)

§ 272.3 What regulations apply to this program?

The following regulations apply to the DAC program:

(a) The regulations in 34 CFR Part 270.

(b) The regulations in this part.

(Authority: 42 U.S.C. 2000c–2)

§ 272.4 What definitions apply to this program?

The definitions in 34 CFR 270.3 apply to the DAC program.

(Authority: 42 U.S.C. 2000c–2)

Subpart B—What Kinds of Activities Does the Secretary Fund Under This Program?

§ 272.10 What types of projects may be funded?

(a) The Secretary may award funds to DACs for projects offering technical assistance (including training) to school boards and other responsible governmental agencies, at their request, for assistance in the preparation, adoption, and implementation of desegregation plans.

(b) A project must provide technical assistance in all three of the desegregation assistance areas, as defined in 34 CFR 270.3.

(c) Desegregation assistance may include, among other activities—

(1) Dissemination of information regarding effective methods of coping with special educational problems occasioned by desegregation;

(2) Assistance and advice in coping with these problems; and

(3) Training designed to improve the ability of teachers, supervisors, counselors, parents, community members, and other elementary or secondary school personnel to deal effectively with special educational problems occasioned by desegregation.

(Authority: 42 U.S.C. 2000c–2)

§ 272.11 Who may receive desegregation assistance under this program?

(a) The recipient of a grant under this part may provide assistance only if requested by school boards and other responsible governmental agencies located in its geographical service area.

(b) The recipient may provide assistance only to the following persons:

(1) Public school personnel.

(2) Students enrolled in public schools, parents of those students, and other community members.

(Authority: 42 U.S.C. 2000c–2)

§ 272.12 What geographic regions do the DACs serve?

The Secretary awards a grant to provide race, sex, and national origin desegregation assistance under this program in each of the following geographic regions:

(a) Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

(b) New York, New Jersey, Puerto Rico, Virgin Islands.

(c) Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.

(d) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

(e) Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

(f) Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

(g) Iowa, Kansas, Missouri, Nebraska.

(h) Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

(i) Arizona, California, Nevada.

(j) Alaska, American Samoa, Guam, Hawaii, Idaho, Northern Mariana Islands, Oregon, Trust Territory of the Pacific Islands, Washington.

(Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 272.30 What criteria does the Secretary use to make a grant?

The Secretary uses the following criteria to evaluate applications for DAC grants.

(a) *Mission and strategy.* (30 Points) The Secretary reviews each application to determine the extent to which the applicant understands effective practices for addressing problems in each of the desegregation assistance areas, including the extent to which the applicant—

(1) Understands the mission of the proposed DAC;

(2) Is familiar with relevant research, theory, materials, and training models;

(3) Is familiar with the types of problems that arise in each of the desegregation assistance areas;

(4) Is familiar with relevant strategies for technical assistance and training; and

(5) Is familiar with the desegregation needs of responsible governmental agencies in its designated region.

(b) *Organizational capability.* (15 Points) The Secretary reviews each application to determine the ability of the applicant to sustain a long-term, high-quality, and coherent program of technical assistance and training, including the extent to which the applicant—

(1) Demonstrates the commitment to provide the services of appropriate faculty or staff members from its organization;

(2) Selects project staff with an appropriate mixture of scholarly and practitioner backgrounds; and

(3) Has had past successes in rendering technical assistance and training in the desegregation assistance areas, including collaborating with other individuals and organizations.

(c) *Plan of operation.* (25 Points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including the extent to which—

(1) The design of the project is of high quality;

(2) The plan of management ensures proper and efficient administration of the project;

(3) The applicant plans to use its resources and personnel effectively to achieve each objective; and

(4) The applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, sex, age, or handicapping condition.

(d) *Quality of key personnel.* (15 Points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel that the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications, under paragraphs (d)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 Points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (5 Points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(g) *Adequacy of resources.* (5 Points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(Authority: 42 U.S.C. 2000c–2)

§ 272.31 How does the Secretary evaluate an application for a grant?

(a) The Secretary evaluates the application on the basis of the criteria in § 272.30.

(b) The Secretary selects the highest ranking application for each geographical service area to receive a grant.

(Authority: 42 U.S.C. 2000c–2)

§ 272.32 How does the Secretary determine the amount of a grant?

The Secretary determines the amount of a grant on the basis of—

(a) The amount of funds available for all grants under this part;

(b) A cost analysis of the project (that shows whether the applicant will achieve the objectives of the project with reasonable efficiency and economy under the budget in the application), by which the Secretary—

(1) Verifies the cost data in the detailed budget for the project;

(2) Evaluates specific elements of costs; and

(3) Examines costs to determine if they are necessary, reasonable, and allowable under applicable statutes and regulations;

(c) The magnitude of the problems to be addressed by the project and the cost of implementing the technical assistance and training activities to help solve those problems, as compared with the magnitude of the expected needs for desegregation assistance, and the cost of providing it, in all geographic regions for which applications are approved for funding;

(d) The size and the racial or ethnic diversity of the student population of the geographic region for which the DAC will provide services; and

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(e) Any other information concerning desegregation problems and proposed activities that the Secretary finds relevant in the applicant's geographic region.

(Authority: 42 U.S.C. 2000c–2)

Subpart E—What Conditions Must Be Met by a Recipient of a Grant?

§ 272.40 What conditions must be met by a recipient of a grant?

A recipient of a grant under this part must—

(a) Operate a DAC in the geographic region to be served;

(b) Have a full-time project director; and

(c) Coordinate assistance in its geographic region with appropriate SEAs funded under 34 CFR Part 271. As part of this coordination, the recipient shall develop plans to prevent duplication of assistance when a responsible governmental agency requests assistance from both the DAC and the appropriate SEA.

(Authority: 42 U.S.C. 2000c–2)

[FR Doc. 87–3225 Filed 2–13–87; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.004D]

Notice Inviting Applications for New Awards Under Desegregation of Public Education: Desegregation Assistance Center Program for Fiscal Year 1987

Purpose

Provides grants to Desegregation Assistance Centers (DACs) to enable them to provide technical assistance (including training) at the request of school boards and other responsible governmental agencies, in the preparation, adoption, and implementation of plans for the desegregation of public schools.

Deadline for Transmittal of Applications: April 6, 1987.

Deadline for Intergovernmental Review Comments: June 5, 1987.

Applications Available: February 20, 1987.

Available Funds: From the fiscal year 1987 appropriation, $8,200,000 is earmarked for grants to DACs. Applicants should be aware that the President has proposed budget recissions to the Congress that may eliminate funds for this program. The deadline established in this notice will not be extended, and applicants should prepare and submit applications pending further notification.

Estimated Range of Awards: $500,000 to $900,000. However, the DAC that will serve the Chicago Public Schools may receive a higher award based on the provision of additional services to the school district, pursuant to the United States' obligation under a 1980 consent decree to assist Chicago with its desegregation plan.

Estimated Average Size of Awards: $820,000.

Estimated Number of Awards: 10.

Project Period: 36 months.

Applicable Regulations: (a) The regulations governing the Desegregation Assistance Center Program are proposed to be codified in 34 CFR Parts 270 and 272. (Applications are being accepted based on the notice of proposed rulemaking for the Desegregation of Public Education Programs which is published in this issue of the **Federal Register**. If any substantive changes are made in the final regulations for this program, applicants will be given an opportunity to revise or resubmit their applications.)

(b) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79, except that 34 CFR 75.232 (relating to the cost analysis) will not apply to grants under 34 CFR Part 272.

For Applications or Information Contact: Mr. Curtis Coates, U.S. Department of Education, 400 Maryland Avenue SW., Room 2065, Washington, DC 20202. Mail Stop 6264. Telephone: (202) 732–4345.

Program Authority: 42 U.S.C. 2000c–2000c–2; 2000c–5.

Dated: February 9, 1987.

Lawrence Davenport,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 87–3223 Filed 2–13–87; 8:45 am]
BILLING CODE 4000–01–M

[CFDA No. 84.004C]

Notice Inviting Applications for New Awards Under Desegregation of Public Education: State Educational Agency Desegregation Program for Fiscal Year 1987

Purpose

Provides grants to State Educational Agencies (SEAs) to enable them to provide technical assistance (including training) at the request of school boards and other responsible governmental agencies, in the preparation, adoption, and implementation of plans for the desegregation of public schools.

Deadline for Transmittal of Applications: April 6, 1987.

Deadline for Intergovernmental Review Comments: June 5, 1987.

Applications Available: February 20, 1987.

Available Funds: From the fiscal year 1987 appropriation, $15,800,000 is earmarked for grants to SEAs. Applicants should be aware that the President has proposed budget recissions to the Congress that may eliminate funds for this program. The deadline established in this notice will not be extended, and applicants should prepare and submit applications pending further notification.

Estimated Range of Awards: $150,000 to $400,000. However, the Illinois SEA may receive a higher award based on the provision of additional services to the Chicago Public Schools pursuant to the United States' obligation under a 1980 consent decree to assist Chicago with its desegregation plan.

Estimated Average Size of Awards: $304,000.

Estimated Number of Awards: 52.

Project Period: 12 months.

Applicable Regulations: (a) The regulations governing the State Educational Agency Desegregation Program are proposed to be codified in 34 CFR Parts 270 and 271. (Applications are being accepted based on the notice of proposed rulemaking for the Desegregation of Public Education Programs which is published in this issue of the **Federal Register**. If any substantive changes are made in the final regulations for this program, applicants will be given an opportunity to revise or resubmit their applications.)

(b) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79, except that 34 CFR 75.200 through 75.217 (relating to the evaluation and competitive review of grants) will not apply to grants under 34 CFR Part 271.

For Applications or Information Contact: Mr. Curtis Coates, U.S. Department of Education, 400 Maryland Avenue SW., Room 2065, Washington, DC 20202. Mail Stop 6264. Telephone: (202) 732–4345.

Program Authority: 42 U.S.C. 2000c–2000c–2; 2000c–5.

Dated: February 9, 1987.

Lawrence Davenport,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 87–3224 Filed 2–13–87; 8:45 am]
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Federal Register

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Part V

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 784 and 817

Permanent Program Performance Standards; Underground Activities; Subsidence Control; Final Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 784 and 817

Permanent Program Performance Standards; Underground Activities; Subsidence Control

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior (DOI) is issuing final subsidence control rules relating to the protection of surface structures and facilities. These final rules are promulgated pursuant to the District Court's order in *In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79–1144 (D.D.C.) (Memorandum Opinion filed Oct. 1, 1984).

Under the final rule, operator responsibility for material damage to structures or facilities resulting from subsidence will derive from applicable provisions of State law. Also, the final rule addresses whether subsidence control plans should include the results of a pre-subsidence survey of structures and a description of monitoring near structures. The monitoring requirement of § 784.20(d)(5) has been revised to make clear that monitoring may also be appropriate when planned subsidence mining methods are employed.

EFFECTIVE DATE: March 19, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. C.Y. Chen or Mr. Dermot Winters, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 343–1501 or (202) 343–1928 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background
II. Response to Comments and Rules Adopted
II. Procedural Matters

I. Background

On March 13, 1979, OSMRE promulgated permanent program rules (44 FR 14902) as required by section 501(b) of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.* In the 1979 rules, 30 CFR 817.121, 817.122, 817.124, and 817.126 established performance standards relating to subsidence control and reclamation at underground coal mines. The requirements for a pre-subsidence survey and monitoring and for a subsidence control plan as part of the permit application were established by 30 CFR 784.20.

Section 817.124 of the 1979 rule set forth requirements for the correction of subsidence-caused material damage to both structures and surface lands without reference to State law. The 1979 rule required that underground operators mitigate the subsidence-related material damage by restoring the land to its premining capabilities, and by restoring, rehabilitating, removing and replacing, or purchasing damaged structures or facilities or, alternatively, by compensating surface structure owners through the purchase of non-cancellable, premium-prepaid insurance policy or other means designed to cover the amount of diminution in value caused by subsidence. 44 FR 14902, 15440 (March 13, 1979).

Industry plaintiffs challenged the restoration requirement of former 30 CFR 817.124 in *In Re: Permanent Surface Regulation Litigation*, No. 79–1144 (D.D.C. 1980) *(In Re: Permanent (I))*, and based their attack on the argument that Congress intended the insurance requirement of section 507(f) of the Act as the exclusive means for setting operator responsibility for subsidence damage. The Court rejected that argument and held that the prior rules for remedying the effects of subsidence "find support in the Act. The restoration requirement is consonant with section 515(b)(2) of the Act." *In Re: Permanent (I), supra*, February 26, 1980. Opinion at 63–64. The Court also held that the compensation requirement of the 1979 rules, which extended to surface structures and facilities, was "an insurance mechanism authorized by section 507(f) of the Act." *Id.* at 64.

On April 16, 1982, OSMRE proposed permanent program rules (47 FR 16604) to amend 30 CFR 784.20, 817.121, 817.122, 817.124, and 817.126 pertaining to subsidence control. On June 1, 1983, OSMRE promulgated the final permanent rules on subsidence control. 30 CFR 784.20, 817.121, and 817.122 (48 FR 24638).

The June 1, 1983 rule at 30 CFR 817.121(c)(2) (48 FR 24652) made operators responsible for correcting material damage to any structures and facilities resulting from subsidence only to the extent required by State law. The rule at 30 CFR 817.121(c)(1) (48 FR 24652) required the operator to correct, to the extent technologically and economically feasible, all subsidence-caused material damage to surface lands without regard to State law. In essence, the 1983 rule retained the land restoration requirement of the 1979 rule, but modified the requirement to repair structures by specifying that material damage to structures shall be repaired or corrected in accordance with the requirements of State law. The 1983 rule was intended to remedy inequities created by the 1979 rules which imposed a restoration requirement for structures materially damaged by subsidence regardless of whether the operator purchased the structure overlying the underground workings or purchased or retained the right to cause subsidence under a structure. OSMRE deferred to State property rights regarding structures in part because Congress indicated in section 102(b) and other sections that the Act was not intended to create new property rights but to assure the protection of existing rights.

In the case of *In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79–1144 (D.D.C.), citizen and environmental groups, industry and States challenged a number of OSMRE rulemaking proceedings, including provisions of the June 1, 1983, subsidence control rules.

On October 1, 1984, the Court issued a memorandum opinion addressing the revised subsidence control rules. *In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79–1144 (D.D.C. 1984) (*In Re: Permanent (II)*, October Op.).

The Court held that the 1983 final rule, 30 CFR 817.121(c)(2) (48 FR 24652), requiring operators to redress subsidence-caused material damage to structures only to the extent required by State law, represented a "radical change" from both the earlier rule and the 1982 proposed rule, 30 CFR 817.121(c), 47 FR 16604, 16610 (April 16, 1982), which both required such redress irrespective of State law. October Op. at 10. Accordingly, the Court remanded 30 CFR 817.121(c)(2) to the Secretary for proper notice and comment. *Id.* at 10–11. The Court never reached the merits of the Secretary's rule on damage to structures.

The court also determined that the 1979 rule requiring the subsidence control plan to include the results of a pre-subsidence survey of structures, and a detailed description of any monitoring proposed to measure subsidence near structures, 30 CFR 784.20(d), 44 FR 14902, 15369 (March 13, 1979), which was deleted in the 1983 final rule, was "inextricably linked" to the issue of whether the operator must restore structures materially damaged by subsidence. Thus, it ordered the Secretary to request additional public comments on this deletion in conjunction with the comments on 30 CFR 817.121(c)(2). *In Re: Permanent (II)*, October Op. at 14.

On February 21, 1985, in accordance with the Court's ruling, OSMRE suspended the portion of 30 CFR 817.121(c)(2) limiting operator responsibility to State law. 50 FR 7274 (February 21, 1985). Subsequently, on July 8, 1985, OSMRE reproposed 30 CFR 817.121(c)(2) with a provision for deference to State law, with respect to damage to surface structures and facilities and solicited additional public comment on the deletion of former 30 CFR 784.20(d).

II. Response to Comments and Rules Adopted

A. General

Following publication of this rule as a proposed rule in the Federal Register on July 8, 1985, a public hearing was held in Ina, Illinois. That hearing, held on September 12, 1985, was in response to a request from interested citizens. The public comment period provided for in the proposed rule closed on September 16, 1985. However, as announced at the hearing, additional written comments were accepted through September 27, 1985 from persons who attended the public hearing. Through September 27, 1985, a total of forty commenters (including public hearing attendees) provided comments.

Most of the comments received were specifically directed at the rulemaking issues. However, many persons speaking at the public hearing made more broadly directed comments about damages and injuries they claimed to have suffered as a result of subsidence due to longwall mining. Such comments generally involved allegations of not receiving adequate, or any, compensation for damage to homes, barns, businesses, and farmland drainage systems (especially agricultural tiling). Others spoke of emotional trauma stemming from fears for the safety of their families and from being forced to move from subsidence damaged homes.

One commenter representing an interest group objected to not having been consulted earlier in the rulemaking process. In this instance, sufficient public participation occurred following publication of the proposed rule.

B. Subsidence Control Plan—Section 784.20 (Introductory Paragraph)

In addition to the revision to § 784.20(d) discussed at length below, OSMRE is taking this opportunity to correct an error inadvertently introduced into § 784.20 during the June 1, 1983 rulemaking. 48 FR 24638. Although the introductory paragraph to § 784.20 would have been eliminated by the April 16, 1982 proposed rule (47 FR 16604), OSMRE decided to retain that paragraph unchanged in the 1983 final rule. In the preamble at 48 FR 24639, OSMRE concluded:

> • • • OSM has decided to accept the comments suggesting that the previous position be retained and not to eliminate the introductory paragraph of previous § 784.20. • • • The language of the introductory paragraph of previous § 784.20 has been retained and is repeated in the final rule solely for convenience in understanding the other requirements adopted in the final rule.

Despite this preamble statement, the word "and" in the third sentence of the introductory paragraph was unintentionally changed to "or" in the text of the 1983 final rule.

Elimination of the error is accomplished by replacing the second "or" in the third sentence of the paragraph with an "and". This action conforms the paragraph with the preamble discussion of 48 FR 24639 and restores the former parallelism of language between the first and third sentences of the paragraph found in the previous (1979) rule. Thus, a subsidence control plan is to be submitted if the survey shows there are renewable resource lands *and* that subsidence could cause material damage or a diminution of value or the foreseeable use of the land.

C. Subsidence Control Plan—§ 784.20(d)

As explained above, the Court ordered OSMRE to request comments on the deletion of 30 CFR 784.20(d) (44 FR 14902, March 13, 1979), from the 1983 final rule. October Op. at 14. Former 30 CFR 784.20(d) required the subsidence control plan to contain:

> A detailed description of measures to be taken to determine the degree of material damage or diminution of value or foreseeable use of the surface, including such measures as—
>
> (1) The results of a pre-subsidence survey of all structures and surface features which might be materially damaged by subsidence.
>
> (2) Monitoring, if any, proposed to measure deformations near specified structures or features or otherwise as appropriate for the operation.

As explained in the preamble to the April 16, 1982 proposed rule (47 FR 16605) and the June 1, 1983 final rule (48 FR 24638), OSMRE deleted former 30 CFR 784.20(d) from the 1983 final rule to reduce the burden on the operator and to avoid unnecessary duplication. This final rule does not restore the language of § 784.20(d) found in the 1979 rule. Thus, a subsidence control plan is to be submitted if the survey shows there are renewable resource lands *and* that subsidence could cause material damage or a diminution of value or the foreseeable use of the land.

A number of commenters agreed with OSMRE that the 1979 rules should not be reinstated, asserting that the 1983 rules were adequate and that they provided the same degree of protection as the 1979 rules. One of the commenters added that the former 1979 rule was not only redundant but oppressive.

Other commenters disagreed, however, as a number of comments were also received asking for a return to the 1979 rule. OSMRE does not agree with these commenters.

A comment was received stating "the Secretary is correct that monitoring and pre-subsidence surveys must be performed, irrespective of State law and irrespective of the final disposition of the § 817.121(c)(2) rule respecting dependence of State law, in all cases where land or structures might be damaged by subsidence." Other commenters asserted that the previous § 784.20(d) rule was "extremely critical as a means of evaluating and assessing the degree of material damage and as a performance standard indicator," and that there can be no meaningful right under State law "unless there is a way to prove the damage."

Contrary to the commenter's assertion, the Secretary does not take the position that "monitoring and pre-subsidence surveys must be performed, irrespective of State law and irrespective of the final disposition of the § 817.121(c)(2) rule respecting dependence on State law, in all cases where land or structures might be damaged by subsidence." Although OSMRE agrees that surveys must always be performed pursuant to the introductory paragraph of § 784.20, requirements for monitoring are an optional part of the subsidence control plan. Furthermore, OSMRE does not agree that monitoring near structures is required to evaluate and assess the degree of material damage and as a performance standard indicator. Material damage to a structure can be determined by direct comparison not to its post-mining condition, but to its pre-mining condition, regardless of whether the precise extent of subsidence has been monitored. The final rule insures that adequate information will be available to "prove the damage" when, under State law, there is a requirement to repair or compensate.

When deleting the pre-subsidence survey requirements of § 784.20(d)(1) of the 1979 rule on June 1, 1983, OSMRE believed that this requirement was redundant. Several commenters on the 1985 reproposal asserted that the pre-subsidence survey requirement is not redundant since, in their view, the prior rules used that survey to "effect the protections of section 516(b) [of the Act] in a way the 1983 rule fails to do."

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OSMRE continues to believe that the requirement is redundant. Former § 784.20(d)(1) is duplicative of the requirement in the introductory paragraph of § 784.20 requiring a premining survey, "which shall show whether structures or renewable resource lands exist * * * and whether subsidence, if it occurred, could cause material damage or diminution of reasonably foreseeable use of such structures or renewable resource lands." Another commenter agreed with OSMRE that the 1979 pre-subsidence survey requirements are redundant stating "there is no distinction between the requirements for a survey showing structures and renewable resource lands and a pre-subsidence survey." Another commenter also favored OSMRE's position and asserted that the former rule was unnecessary because many operators voluntarily conduct pre-subsidence surveys for their own protection. Another commenter asserted that pre-subsidence surveys should be like blasting surveys and include specific descriptions of the conditions of the homes, buildings, etc. However, the language of former § 784.20(d)(1) would not assume such detail. Moreover, § 784.20(h) (formerly § 784.20(g)) provides the opportunity for the regulatory authority to require whatever additional information is deemed necessary including as much detail as required in a blasting survey.

A commenter contended that the preamble of the proposed rule did not clearly explain the pre-subsidence survey requirement issue. OSMRE rejects this comment. The issue is accurately described in the preamble to the proposed rule. If the commenter was unsure of the issue, it could have consulted the 1984 court opinion and the final 1983 rule and preamble, all of which are referenced in the proposed rule. Finally, OSMRE personnel were available for public meetings to discuss any issue relating to the proposal.

Three commenters stated that they opposed "the proposed new wording relating to pre-subsidence surveys and subsidence monitoring" because "the proposed wording of § 784.20 is too general and it could be interpreted to exempt longwall and other planned subsidence mining from doing the surveys." OSMRE disagrees. The introductory paragraph of § 784.20 clearly requires the permit application to include a survey regardless of the mining method employed.

Monitoring

In respone to the Court's linking of the monitoring requirement with the restoration standard for structures, OSMRE stated in the proposal its belief that the monitoring provision contained originally in § 784.20(b)(3)(v), and later in § 784.20(d)(5), was adequate, regardless of whether the obligation to repair structures was controlled by State law. In this regard, commenters were urged to consider whether a more specific requirement for monitoring subsidence near structures is required or whether the monitoring provision of 30 CFR 784.20(d)(5) is sufficient.

Having considered the comments, OSMRE, in this final rule revises the language of the 1983 rule (and 1985 proposed rule) to make clear that monitoring may be appropriate regardless of the mining method to be employed by the operator. OSMRE agrees with the commenter that the proposed wording of § 784.20 can be interpreted to exempt operators using planned subsidence mining methods from having to perform subsidence monitoring over the areas where controlled subsidence will occur. Proposed § 784.20(d)(5) required the subsidence control plan to contain "except for those areas where planned subsidence is projected to be used," a detailed description of "monitoring, if any, to determine the commencement and degree of subsidence so that other measures can be taken to prevent or reduce material damage." Consequently, as described above, OSMRE has revised the § 784.20 rule to make it clear that the discretionary monitoring requirement is applicable irrespective of whether the mining method calls for planned or unplanned subsidence. A further, more complete, discussion of the issue of monitoring follows.

This change is effected by deleting § 784.20(d)(5) of the 1983 rule and inserting a new § 784.20(d). Paragraphs 784.20(d) through 784.20(g) of the 1983 rule are redesignated accordingly as 784.20(e) through 784.20(h). New § 784.20(d) requires:

> A description of monitoring, if any, needed to determine the commencement and degree of subsidence so that, when appropriate, other measures can be taken to prevent, reduce, or correct material damage in accordance with § 817.121(c) of this chapter.

OSMRE continues to view the 1979 monitoring requirement as redundant with new § 784.20(d). Furthermore, as under the 1979, 1983, and the proposed 1985 rules, this final rule includes the qualifying phrase "if any" to provide discretion as to the extent of monitoring needed. Therefore, final § 784.20(d) does not mandate monitoring in all cases where material damage to structures of facilities will occur. However, regulatory authorities may refuse to approve permit applications containing subsidence control plans which do not include monitoring provisions when such provisions are essential to fulfilling the performance standards of § 817.121. If the regulatory authority is not satisfied that the operator will mitigate or remedy subsidence related material damage to structures or facilities as required by State law, the regulatory authority may deny the permit or direct that alternative measures be included in the subsidence control plan. Such measures may include a provision for monitoring, and may specify where and how such monitoring will take place. Such measures may also include direct measurement of material damage to the structure through a pre-mining and post-mining comparison. One key ingredient is to ensure that the pre-mining condition of the structure was recorded before the subsidence occurred. Essentially this provides the same coverage as provided by the 1979 rule, except that the performance standard which the monitoring provision assists in implementing is tied to State law. Thus, the owners of structures may have the monitoring data made available to them to exercise any rights arising under State law, irrespective of the method of underground mining employed.

A commenter asserted that it is uncertain whether monitoring is required when it has been determined that subsidence is likely.

Under this final rule monitoring will most likely be performed when the pre-subsidence survey indicates that subsidence and related material damage to structures and facilities are anticipated, and State tort, contract, or other law (either codified or enunciated through judicial decisions) requires repair or compensation.

Another commenter stated that the "weak" provisions for monitoring are inconsistent with the District Court's October 1, 1984 decision and congressional intent. OSMRE does not believe it is inconsistent. The court did not rule on the substance of the issue, but only ordered further comment in view of the rule's relation to the restoration standard.

For all the reasons discussed above, OSMRE believes that the pre-subsidence survey and monitoring requirements of this final rule provide the information required to assure the Act can be appropriately enforced.

D. Subsidence Control—Section 817.121(c)(2)

Section 817.121 provides performance standards for subsidence control.

Section 817.121(c) establishes the operator's responsibility for material damage caused by subsidence. The statutory authority for its provisions is sections 507(f), 515(b)(2), 515(b)(3), 516(b)(1), and 516(b)(10) of the Act. Liability for damage to surface and subsurface structures and facilities under section 507(f) of the Act is tied to liability under State law because the Act was not intended to create additional property rights. For this reason, under final § 817.121(c)(2) operator responsibility for material damage caused to structures or facilities is tied to liability under State law. Thus, material damage to structures and facilities must be remedied or monetary damages paid if the operator is liable under State law.

The 1979 subsidence control rules which imposed a restoration requirement for structures materially damaged by subsidence did not provide exceptions for situations where the operator has purchased a structure overlying the underground workings, where the operator has purchased the right to cause subsidence under a structure, or, as in Pennsylvania, where State legislation has established subsidence responsibilities for different classes of structures. The 1979 rules did not defer to State law and allow an operator not to repair damaged structures where the operator had no legal liability under State law. This final rule accommodates situations in which the operator is not liable for subsidence damage to surface structures under State law. Conditioning liability for restoration of materially damaged structures upon State law lessens the concern that the contract in which the operator may have obtained the right to subside the surface under a structure will be impaired. In States which have not enacted special subsidence legislation, State property rights, as established by contracts, deeds, and other agreements, and interpreted in judicial decisions, will determine whether the operator is liable to a surface owner. Liability of the operator where the owner of the surface facility may have conveyed the right to support or may have waived it will also be left to determination under State law.

This final rule is supported by both law and policy. As discussed below, the Surface Mining Act does not require operators to repair subsidence-caused material damage to structures irrespective of State law. As the district court found in 1980, the authority of OSMRE to require an operator to compensate an owner for material damage to structures or facilities resulting from subsidence or to repair such material damage derives from Section 507(f) of the Act. *In re: Permanent (I), supra.*, section 507(f) of the Act requires liability insurance for personal injury and property damage in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations who are entitled to compensation *under the applicable provisions of State law.* Although the 1979 rule did not limit the compensation requirement to situations where liability exists under State law, a more precise reading of section 507(f) supports the imposition of such a constraint in this final rule.

Sections 515 and 516 do not require subsidence damaged structures to be restored without regard to State law. Section 516(b)(1) of the Act requires underground mine operators to prevent subsidence-caused material damage to the "extent technologically and economically feasible" and to maintain the value and use of "surface lands." This provision does not itself require the restoration of structures damaged by subsidence. Although through section 516(b)(10) of the Act, the surface mining performance standards of section 515 may be made applicable to any surface impacts of underground mining not specified in section 516(b), the standards of section 515 do not apply to structures materially damaged by subsidence. Section 515(b)(2), the provision certain commenters suggest as support for the structure restoration requirement, requires the surface coal mining operator to "restore the land affected" to a condition capable of supporting premining uses. There is no similar explicit mandate from Congress to require restoration of structures materially damaged by subsidence. The word "land," as it is used in section 515(b)(2) is interpreted to refer to land in its unimproved or natural state (see 48 FR 24644). This interpretation of land as a natural resource is consistent with the use of that term in other provisions of the Surface Mining Act. For instance, in order to protect the "stability of the land," section 516(c) of the Act requires the suspension of underground coal mining under "buildings" if imminent danger exists. Also, when setting reclamation priorities for abandoned mine lands, Congress in section 403 distinguished between the "restoration of land and water resources * * * previously degraded by adverse effects of coal mining practices" and the repair of "facilities adversely affected by coal mining practices."

If Congress meant to include structures and facilities in section 515(b)(2), it certainly would have enumerated such. Nothing in the plain wording of that paragraph suggests that its application to structures as well as to land is mandated. To the contrary, as suggested by the Court in upholding the land restoration requirements of 30 CFR 817.121(c)(1), there is a sound basis for distinguishing between the restoration requirement for land and that for structures. See *In Re: Permanent II, supra*, October Op. at 5–6.[1]

In policy, as well as law, there is clear reason to distinguish the protection provided for land and structures. Where an underground mine operator purchases from the surface owner the right to subside the land, or in conveying surface property reserves the right to subside the surface, the individual's property rights are protected, but the long term public interest in the land is not protected. Thus, § 817.121(c)(1) functions to prevent this injury to the land by assuring that in all cases, irrespective of private contract, this valuable natural resource will be restored to its premining capabilities, to the extent technologically and economically feasible. On the other hand, no environmental or public interest exists in protecting a building or structure where its present or past owner has either conveyed or waived a right to subjacent support. For example, in some instances an operator may purchase the right to subside a structure owned by the surface owner. In such an instance, the parties have worked out a mutually agreeable solution to account for private damage. The operator should not have to recompensate the surface owner. This final rule leaves this

[1] Finding the Secretary's reading of the statute "reasonable," the Court upheld the land restoration requirements of 30 CFR 817.121(c)(1) against an industry challenge that the regulation infringes on State laws which provide for remedies in contract and tort for subsidence damage to land. October Op. at 6–7. This issue has been appealed to the U.S. Court of Appeals for the D.C. Circuit.

The District Court ruled that section 515(b)(2) applied to subsidence damaged *land*, through section 516(b)(10). The Court reasoned that while these State remedies may "redress injuries suffered by private parties" they do not redress injury to the "land itself." *Id.* at 6. As the Court cautioned, private parties should not be able to circumvent Congressional intent by forming contracts. The Court held that the Act was passed not only to protect individual property rights, but also to protect this Nation's land from the surface effects of underground mining for "generations yet unborn." *Id.* at 7. Therefore, the Court found that any State remedy inconsistent with the requirement of section 515(b)(2) to restore land materially damaged by subsidence would be preempted by the Act. *Id.* at 7 However, as explained above, the Court's rationale as to the public interest in protecting land does not extend to structures. Damage to structures are in the nature of injuries suffered by private parties that may be appropriately addressed by State remedies.

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determination of the relative rights and liabilities to State law.

While private parties may not be motivated to protect the environment, they have a great incentive to protect structures that they own. State law has traditionally provided remedies in contract and tort for those parties who own subsidence-damaged structures. Accordingly, it is inappropriate for OSMRE to step in and protect owners of these structures thereby creating an additional *private* property right which clearly was not intended by Congress.

In those instances where a public interest does exist in the protection of certain structures, the rules continue to provide such protection without regard to State law. For instance, 30 CFR 817.121(d) prohibits underground mining activities beneath or adjacent to public buildings and facilities, churches, schools and hospitals, and large bodies of water unless an operator can demonstrate before a permit is issued that subsidence will not cause material damage. If damage is caused to such facilities or features regulatory authorities are empowered to suspend mining until the operator ensures that no further material damage will occur (see 30 CFR 817.121(e)). Finally, if imminent danger from underground mining exists to inhabitants of urbanized areas, cities, towns or communities, such mining must be suspended. Taken together with the land restoration requirement of § 817.121(c)(1), OSMRE's rules will amply protect the public interests endangered by subsidence.

At least one State has a statute which specifically addresses subsidence under structures. Pennsylvania's Bituminous Mine Subsidence and Land Conservation Act of 1966, 52 Pa. Stat. Ann, sec. 1406 *et seq.* (Purdon's) establishes certain classes of protected structures. For instance, if a materially damaged occupied dwelling were in existence on the date of enactment of the Pennsylvania statute (April 27, 1966), the operator would have to repair the dwelling or compensate the owner for the diminution in value. This final rule allows a State, such as Pennsylvania, to choose to protect selected classes of structures (see 48 FR 24645). The constitutionality of this scheme is presently before the Supreme Court (*Keystone Bituminous Coal Ass'n* v. *Duncan*, No. 85–1092 (cert. granted March 24, 1986)).

A number of comments were received on the issue of limiting liability for repair of subsidence damaged structures in response to the original proposal of April 16, 1982 (47 FR 16604). The reader is referred to the discussions of those comments found in the preamble to the June 1, 1983 final rule (48 FR 24638) as they will not be repeated here.

During the comment period on the July 8, 1985 proposal, numerous comments were received on the issue of leaving the correction of subsidence-damaged structures up to the requirements of State law. Several commenters favoring the proposed rule agreed with OSMRE's conclusion that the rule is supported by both law and policy. Among the reasons given for this agreement were (1) the Act does not require repair or compensation for damaged structures; it only requires insurance coverage adequate to cover claims arising under State laws; (2) the 1979 rule requiring repair or compensation irrespective of State law is in violation of the Act; (3) the 1979 rule represents an unconstitutional "taking" of property without just compensation; and, (4) there is no support in the legislative history for the 1979 rule. Opposing this viewpoint were commenters who contended that (1) the proposed change is illegal since it violates congressional intent given in section 102(b) of the Act; (2) the old rule was upheld by the District Court; (3) the proposal is contrary to section 101 (d), (e), and (h) and 102(h) of the Act; and the proposed rule is unsupportable in view of the recent Appeals Court decision in *Keystone Bituminous Coal Ass'n* v. *Duncan*, 771 F.2d 707 (3d Cir. 1985) in affirming the constitutionality of the Pennsylvania Bituminous Mine Subsidence and Land Conservation Act and its implementing regulations.

OSMRE's views on the legality of implementing the proposed rule have been addressed above. OSMRE disagrees with the commenters who conclude that the rule change is illegal. Contrary to the commenter's assertion, section 102(b) of the Act supports this final rule. The intent expressed in section 102(b) is to preserve and protect the rights of persons with a legal interest in appurtenances to the land. This rule does just that. Where such a right exists under State law, it is expressly recognized and will continue to exist. The rule is also consistent with the other provisions cited, taken together with section 102(k) of the Act which was not cited by the commenters. Section 102(k) sets forth as one of the Act's purposes the need to "encourage the full utilization of coal resources through the development and application of underground extraction technologies; . . . " 30 U.S.C. 1202. Clearly this rule is intended, in part, to encourage full extraction technologies, such as longwall mining. Also, the contention that the decision of the appeals court in *Keystone* v. *Duncan* renders the proposed rule illegal is incorrect. The holding in that case that the Pennsylvania statute is legal does not affect the validity of OSMRE's final rule. To the contrary, this rule clearly recognizes existing State laws and property rights.

A number of other commenters expressed additional reasons for favoring adoption of the rule. One felt that the preamble discussion for the proposed rule provided accurate and ample justification for the rule. Two others think there is no conflict between section 102(b) of the Act and State common law on subjacent support. Another commenter expressed concern that the former rule entitles persons to compensation for damage to structures built on lands for which a coal company had the prior right to mine. That commenter made the further claim that this has actually occurred in Illinois. Also, a commenter expressed the opinion that the economics of the coal industry and the conservation of the mineral resource have both been adversely affected by the former rule.

OSMRE acknowledges the comments supporting its reasons for the rule change expressed in the preamble to the proposed rule, and agrees in principle with those stating the previous rule created an inequity by granting absolute protection, irrespective of State laws and contractual agreements, to owners of structures built on land for which the owners of the structures do not have the right of subjacent support.

Other comments were received opposing this final rule. Some stated that the changes proposed were arbitrary and unreasonable. Others felt that the rule should be made stronger than the former rule, not weaker, and that standards similar to those imposed for surface mines be imposed on underground mines. Some others expressed the opinion (presumably as a matter of equity) that coal companies should be responsible for making repairs to both structures and land, and that mitigation of damage to structures should be a national policy. Many of these commenters were Illinois property owners who believe the rule would upset an existing balance in that State between coal operators and property owners, creating the potential for inflicting hardship and economic loss on the property owners. The basis for this view rests on a provision in the Illinois surface mining law (several other states have similar provisions) that the State regulations can be "no more stringent than" the Federal regulations. Two commenters claimed that due to this requirement the State of Illinois would have to drop its protection for structures

in response to the rule change. Two others disagreed, asserting that Illinois is not absolutely bound to eliminate its current rules requiring repair or compensation for subsidence damage to structures.

One commenter asserted that OSMRE had not indicated why State law is adequate to protect structures from subsidence impacts. Another commenter felt that relying on State law to protect surface structures provides inadequate protection and believes it preferable to have national standards. In its view, national standards would cause consideration of potential subsidence damage at the time of mine planning and design and be coupled with provisions for protection or compensation, thereby avoiding costly litigation which may not result in proper settlement for any of the parties.

OSMRE has no obligation to demonstrate that State law is adequate to protect surface structures from subsidence impacts because the Act does not mandate that structures be protected, particularly in those instances where the right of subjacent support has been transferred or waived by the surface owner or his predecessor in title by valid legal contract.

Notwithstanding the absence of such an obligation, OSMRE has nevertheless analyzed the projected impacts of this rule in those States where most underground mining occurs. The six States chosen (Illinois, Kentucky, Pennsylvania, Utah, Virginia, and West Virginia) accounted for 87 percent of the Nation's underground coal production in 1983. In those States a total of between 107 and 528 dwellings are estimated to be at risk of subsidence annually. Under these final rules this estimated total would not change. However, the compensation received by owners would change. The former rules required operators to correct or compensate for damage to structures irrespective of the requirements of State law. This final rule, depending upon State law and the extent to which property owners have waived their rights, results in responsibility (1) continuing to rest with operators, (2) being shifted to subsidence insurance programs, or (3) being shifted to the property owner. In each of the States analyzed, except Kentucky, some form of compensation would be available under this final rule. Only in Kentucky would neither the law of subjacent support nor a subsidence insurance program offer protection from loss to property owners. Depending upon the extent to which dwellings damaged by subsidence are covered by subsidence insurance, and the extent to which property owners have not waived or conveyed the right to subjacent support in States that recognize the right, it is estimated that the maximum total annual amount of subsidence damage to dwellings (for which responsibility would shift from operators to insurance programs or to property owners under this rule) could range from approximately $2 million to about $10.5 million in the six States that account for 87 percent of the Nation's underground production of coal. A more detailed discussion of these effects is found in the environmental assessment prepared for this final rule.

The impacts are somewhat uncertain because whether a particular surface property owner is entitled to subjacent support depends not just on State law but provisions in deeds and contracts affecting the property. Whereas State law generally requires subjacent support, some States may interpret similar provision differently thus affecting the ultimate amount of the operator's liability. Thus, the State by State analysis somewhat overstates the effect of this rule because it disregards owner waivers that may exist.

Pertinent to the issue of whether the requirement to correct or compensate for damage to structures should be left up to State law is the position of the various States affected by the change, especially the States of West Virginia and Pennsylvania which have the majority of active underground coal mining operations. During the comment period for the 1982 proposed rules (which would have retained the absolute requirement of the 1979 rules), only Montana, Kentucky, Virginia, and Illinois submitted comments on the issue. Montana and Illinois favored leaving the requirement up to State law and Kentucky and Virginia approved the retention of the absolute requirement to correct or compensate. Of the four, only Kentucky, Virginia, and Illinois have significant numbers of active underground coal mining operations. Only the State of Illinois, reversing the position it had taken in 1982, commented during the 1985 comment period for this proposed rule. The failure of West Virginia and Pennsylvania, the States with the largest number of active underground coal mining operations, to submit comments on the 1985 proposed rules does not necessarily indicate their lack of interest. Despite the failure to comment, it appears that West Virginia favors the change since it immediately and voluntarily implemented the change promulgated in the 1983 final rule by amending its State program to eliminate the absolute requirement to restore imposed by the 1979 OSMRE rules. Thus, the State which OSMRE expects (based on the 1986 Environmental Assessment) to experience approximately one-half of all anticipated subsidence damage incidents prefers that the requirement to correct for such damage be left to State law and contractual arrangements. Pennsylvania also favors deference to State law since, following promulgation of the 1983 rule, Pennsylvania voluntarily amended its State program to institute a less stringent regulatory interpretation of its 1966 Statute (as amended in 1980), the Bituminous Mine Subsidence and Land Conservation Act. Thus, under its current law and regulations Pennsylvania provides less than the absolute requirement to correct or compensate for subsidence damage to structures and facilities found in the 1979 OSMRE rules. Consequently, it is apparent that the two States with the greatest number of underground mining operations—ones expected to experience approximately 70 percent of the incidents of subsidence damage to structures support the change leaving the restoration requirements to State law. In any event, because Pennsylvania and West Virginia already have programs which are consistent with this final rule, there will be no change required from the status quo.[2]

Although homeowners may suffer financial and other injury as a result of subsidence due to underground mining in Illinois, the agency does not intend to interfere with State laws on this issue. The Act is not intended to provide rights for the repair of structures to property owners who voluntarily relinquished such rights or whose predecessors in interest did so. Further, whether States, such as Illinois, make their surface mining regulations "no more stringent than" the Federal regulations is a matter for States to determine. States may modify their "no more stringent than" requirements, particularly in specific situations where the State determines that local public policy concerns outweigh the general principle of not regulating in a manner more stringent than OSMRE's national rules.

Moreover, impacts of this rule are lessened because consideration of potential subsidence damage continues to be required at the mine planning state. A subsidence control plan must be submitted as part of the permit

[2] If this final rule were not to recognize state law limits and imposed an absolute obligation to repair or restore materially damaged structures, then the affected State program would have to be amended to reflect such a rule.

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application if structures exist which potentially may be damaged (See 30 CFR 784.20). The plan must demonstrate that the operator will mine in a manner intended to prevent material damage resulting from subsidence.

One commenter claimed § 1817.124 of Illinois law (implementing the 1979 rule's repair or compensation requirement) is illegal and violates the approved Illinois permanent program.

The validity of the subsidence provisions of the Illinois State program is not at issue in this rulemaking. The Illinois State program was approved in 1982. Although a challenge to that program approval is currently in litigation, *Illinois South Project, et al. v. Hodel*, No. 82-2229 (C.D. 111), the validity of Illinois performance standards regarding subsidence is not an issue in this suit.

Another commenter criticized the practicality of the provision that compensation (pursuant to State law) may be accomplished by the purchase prior to mining of a non-cancellable premium-prepaid insurance policy, indicating such policies are not available and will not be available from the insurance industry. Although subsidence liability insurance may not be generally available, this option will be retained in the regulations because there may be some areas where such insurance will be obtainable. The purchase of an insurance policy is only one of several alternatives provided under § 817.121(c)(2). Repair or compensation for subsidence damage may be arranged in other ways.

Several commenters asserted that farmland drainage systems, including agricultural tiling and irrigation ditches, should be subject to the same national repair and restoration standards found under the former rules for structures. OSMRE believes that agricultural tiling and other farmland drainage structures are not part of the land and therefore are directly protected against damage only to the extent required by State law under the provisions of § 817.121(c)(2). However, agricultural tiling and other farmland drainage systems are indirectly protected by the requirements of § 817.121(c)(1) for "restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses which it was capable of supporting before subsidence". If necessary to meet the land restoration requirements of §817.121(c)(1) for farmland, regulatory authorities can require the restoration of agricultural drainage structures as a condition of permit approval.

Another commenter claimed that water supplies should be protected from subsidence damage and that there should be a national requirement to restore or replace water supplies damaged by subsidence. Water supplies are protected from subsidence damage by provisions of § 817.121(d)(3) if they serve as a "significant water source for any public water supply system." That section provides an advance showing that such water supplies will not be damaged. Private water supplies, such as individual wells, are not similarly protected by § 817.121. However, the hydrology requirements of the Act do provide some protection for all water supplies. Although the Act does not mandate replacement of water supplies in every event of damage or loss, it does require protection of water quantity and quality. In the permitting of underground mines, the regulatory authority must find, before the issuance of any permit, that the operation is designed to prevent material damage to the hydrologic balance outside the permit area (see 30 CFR 773.15(c)(5). In addition, each permit application must include a determination of the probable hydrologic consequences (PHC) of the proposed operation upon the quality and quantity of surface water and groundwater (see 30 CFR 784.14(e)(1)). The PHC determination must include findings on, *inter alia*, the impacts the proposed operation will have on "ground-water and surface-water availability" (30 CFR 784.14(e)(3)(iii)(D)). Thus, for every permit application, the regulatory authority will be provided information on the PHC of the proposed operation. Based upon the PHC determination, each permit application must contain a hydrologic reclamation plan that specifically addresses "any potentially adverse hydrologic consequences * * * and shall include preventive and remedial measures" (30 CFR 784.14(g)). If the protection of water quantity or quality cannot otherwise be assured, the regulatory authority may deny the permit or direct that alternative mitigation measures be included in the reclamation plan. Such measures may include, at the operator's discretion, the provision of alternative water supplies. Thus, the requirements of the Act do serve the unified purpose of protecting the environment, including the area's hydrology, from damage caused by subsidence due to underground mining.

Disagreeing, another commenter stated that the rule changes should be dropped rather than made more stringent. OSMRE believes that the rule change is neither arbitrary nor unreasonable and that the dichotomy of opinion expressed by the commenters suggests that this rule has struck a reasonable balance.

One commenter speculated that savings institutions would no longer issue construction loans for homes to be built on lands subject to subsidence if the rule should be adopted. The commenter's concern is unsupported and appears exaggerated. Certainly construction loans existed prior to imposition of the 1979 rule. Business enterprises will adjust to the current rule, just as they did when no absolute protection for structures existed. Moreover, under State law compensation may be required, or the contract itself may prohibit subsidence damage from occurring. Additional protection may be provided through subsidence insurance programs which are either in place or are now being started with the aid of monies from the Abandoned Mines Lands fund established by the Act.

Two commenters objected to the promulgation of the final rule at this time because OSMRE is preparing rulemakings on related issues, particularly the applicability of the prohibitions of Section 522(e) (4) and (5) of the Act to subsidence and underground mining. These commenters suggested that action be delayed on the proposed rule at least until the planned environmental impact statement (EIS) and regulatory impact analysis (RIA) for the Section 522(e) (4) and (5) rule are completed. OSMRE considered delaying the final rule in this rulemaking, but concluded that this rule had an independent basis and there were inadequate reasons for delaying this final rule for more than one year until the rulemaking is completed on the scope of Section 522(e) (4) and (5). However as described below, possible cumulative effects of the two rules were considered prior to finalization of this rule.

Two related comments contended that the analysis in OSMRE's 1983 supplemental EIS regarding subsidence damage to structures is inadequate and that a new EIS should be prepared. Another commenter recommended that such an EIS include an analysis of the effects of protections for structures under the various State laws. Although it previously concluded in the supplemental EIS that there would be no significant impacts due to the promulgation of this rule, OSMRE made the decision to reexamine those earlier conclusions and prepare an environmental assessment (EA) on this rulemaking. In the EA, OSMRE reviewed the protection provided to property owners by the approved State regulatory programs, existing and proposed State subsidence insurance programs, and the extent to which the common law of subjacent support is applicable in selected States. Also, in view of ongoing studies in support of the Section 522(e) (4) and (5) EIS and RIA, the EA analysis assumed as the limiting case, the alternative providing the least protection for structures, i.e., that the Section 522(e) (4) and (5) prohibitions do not apply to subsidence. By assuming the least protection for structures, the conclusion reached in the EA will not be altered in the direction of greater impacts on structures by the ultimate outcome of the Section 522(e) (4) and (5) rulemaking. The EA concluded that there were no significant impacts due to this rulemaking on the quality of the human environment. This supports the conclusions previously reached in the 1983 supplemental EIS. From an environmental standpoint, there is no need therefore, to delay going forward with this rulemaking because the environmental consequences will either remain the same as projected in the EA or be lessened as a consequence of the Section 522(e) (4) and (5) rulemaking.

Finally, three commenters asked for clarification in this final rule preamble that the State law referred to in § 817.121(c)(2) is not limited to State surface mining laws. OSMRE accedes to that request; the State law referred to in the final rule includes all State law whether codified or uncodified, and is not limited to the State surface mining law.

III. Procedural Matters

Federal Paperwork Reduction Act

The information collection requirements in final § 784.20 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned clearance number 1029-0039. OSMRE has codified the OMB approvals in § 784.10.

The information required will be used by the regulatory authority in permitting, monitoring, and inspecting underground mining activities to insure that they are conducted in a manner which preserves and enhances environmental and other values of the Act. The information required by these rules is mandatory.

Executive Order 12291

The DOI has examined this final rule according to the criteria of Executive Order 12291 (Februrary 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis.

Regulatory Flexibility Act

The DOI also has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this final rule will have a significant economic impact on a substantial number of small entities.

National Environmental Policy Act

Based on comments received on the proposed rule, OSMRE determined that this final rule required additional environmental analyses to evaluate the validity of the conclusions made by the existing environmental impact statement titled "Final Environmental Impact Statement, OSM-EIS-1: Supplement". Consequently an Environmental Assessment (EA) was done which has resulted in a finding of no significant impacts (FONSI) in agreement with OSM-EIS-1. Therefore, the preparation of any additional environmental documents under section 102(2)(C) is not required. The EA is available in the Administrative Record, Rm. 5315, 1100 L Street NW., Washington, DC.

Agency Approval

Section 516(a) of the Act requires that, with regard to rules directed toward the surface effects of underground mining, OSMRE must obtain written concurrence from the head of the department which administers the Federal Mine Safety and Health Act of 1977, the successor to the Federal Coal Mine Health and Safety Act of 1969. OSMRE has obtained the written concurrence of the Assistant Secretary for Mine Safety and Health, U.S. Department of Labor.

Author

The author of this regulation is Dermot Winters, Regulatory Development and Issues Management Group, Office of the Director, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington DC 20240, Telephone (202) 343-1928 (commercial or FTS).

List of Subjects

30 CFR Part 784

Coal mining, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 817

Coal mining, Environmental protection, Underground mining.

Accordingly, 30 CFR Part 784 and 817 are amended as set forth below.

Dated: January 5, 1987.

J. Steven Griles,

Assistant Secretary for Land and Minerals Management.

PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

1. The authority citation for Part 784 continues to read as follows:

Authority: Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*) and sec. 115, Pub. L. 98-146, 97 Stat. 936 (30 U.S.C. 1257), unless otherwise noted.

2. In § 784.20, the third sentence of the introductory paragraph is revised, paragraph (b) is revised, paragraphs (d), (e), (f) and (g) are redesignated as paragraphs (e), (f), (g) and (h) respectively, paragraph (d) is added, paragraphs (e)(3) and (e)(4) are revised, and paragraph (e)(5) is removed, to read as follows:

§ 784.20 Subsidence control plan.

* * * In the event the survey shows that such structures or renewable resource lands exist, and that subsidence could cause material damage or diminution of value or foreseeable use of the land, or if the regulatory authority determines that such damage or diminution could occur, the application shall include a subsidence control plan which shall contain the following information: * * *

* * * * *

(b) A map of underground workings which describes the location and extent of areas in which planned-subsidence mining methods will be used and which includes all areas where the measures described in paragraphs (d) and (e) of this section will be taken to prevent or minimize subsidence and subsidence related damage; and, where appropriate, to correct subsidence-related material damage.

* * * * *

(d) A description of monitoring, if any, needed to determine the commencement and degree of subsidence so that, when appropriate, other measures can be taken to prevent, reduce, or correct material damage in accordance with § 817.121(c) of this chapter.

(e) * * *

(3) Leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving the coal in place; and

(4) Taking measures on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface.

* * * * *

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PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

3. The authority citation for Part 817 continues to read as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*) and sec. 115, Pub. L. 98–146, 97 Stat. 938 (30 U.S.C. 1257), unless otherwise noted.

4. Paragraph (c)(2) of § 817.121 is revised to read as follows:

§ 817.121 Subsidence control.

* * * * *

(c) The operator shall—* * *

(2) To the extent required under applicable provisions of State law, either correct material damage resulting from subsidence caused to any structures or facilities by repairing the damage or compensate the owner of such structures or facilities in the full amount of the diminution in value resulting from the subsidence. Repair of damage includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase prior to mining of a non-cancellable premium-prepaid insurance policy.

* * * * *

[FR Doc. 87–3194 Filed 2–13–87; 8:45 am]

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federal register

Tuesday
February 17, 1987

Part VI

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 510, 511, 570, and 590

Lead-Based Paint Hazard Elimination in Community Development Block Grant, Urban Development Action Grant, Secretary's Fund, Section 312 Rehabilitation Loan, Rental Rehabilitation and Urban Homesteading Programs; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 510, 511, 570 and 590

[Docket No. R-87-1291, FR-2243]

Lead-Based Paint Hazard Elimination in Community Development Block Grant, Urban Development Action Grant, Secretary's Fund, Section 312 Rehabilitation Loan, Rental Rehabilitation and Urban Homesteading Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule amends regulations regarding the elimination of hazards due to lead-based paint in Community Development Block Grant, Urban Development Action Grant, Secretary's Fund, Section 312 Rehabilitation Loan, Rental Rehabilitation and Urban Homesteading programs. This rule amends 24 CFR Part 570, Community Development Block Grants; 24 CFR Part 510, section 312 Rehabilitation Loan Program; 24 CFR Part 511, Rental Rehabilitation Grant Program; and 24 CFR Part 590, Urban Homesteading Program. The main purpose of the rule is to update current regulations implementing section 302 of the Lead-Based Paint Poisoning Prevention Act in light of advances in knowledge regarding the causes of elevated blood-lead levels of children as well as hazard detection and abatement techniques. HUD has also reexamined its regulations in light of the decision in *Ashton v. Pierce*, 716 F.2d 56 (D.C. Cir. 1983), a case in which public housing tenants in the District of Columbia challenged the adequacy of HUD's lead-based paint regulations.

EFFECTIVE DATE: March 19, 1987.

FOR FURTHER INFORMATION CONTACT: For Community Development Block Grant programs contact Don Patch, Director, Office of Block Grant Assistance, (202) 755-6587, Room 7280; for the Urban Development Action Grant program contact Stanley Newman, Director, Office of Urban Development Action Grants, (202) 755-6290, Room 7262; for Secretary's Fund programs including Indian Community Development Block Grants, Insular Areas Community Development Block Grants and Special Projects contact Leroy Gonnella, Director, Secretary's Fund Division, Office of Program Policy Development, (202) 755-6092, Room 7134; for Section 312 Rehabilitation Loan, Rental Rehabilitation and Urban Homesteading programs contact Nancy Blauvelt, Office of Urban Rehabilitation, (202) 755-5970, Room 7164; Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

This rulemaking was initiated in response to the *Ashton* court order by publication of an Advance Notice of Proposed Rulemaking (ANPR) (49 FR 19210, May 4, 1984), which solicited public comment on issues relating to implementation of lead-based paint detection and hazard abatement procedures in the many distinct HUD programs to which the statute applies. In accordance with a subsequent order of the United States District Court for the District of Columbia, a proposed lead-based paint rule for Public and Indian Housing was published on February 14, 1986 (51 FR 5666), and the final rule was published on August 1, 1986 (51 FR 27774). A proposed lead-based paint rule for Housing programs was published on July 1, 1986 (51 FR 24112), and the final rule was published on January 15, 1987 (52 FR 1876). (In a recent *Ashton* related activity, plaintiffs requested that HUD be held in contempt based on alleged noncompliance of the Public and Indian Housing Final Rule of August 1, 1986 with the Court's order. This motion was denied by the Court on October 17, 1986.)

On August 1, 1986, HUD published this rule in proposed form. This rule, which addresses the hazards of lead-based paint in Community Development Block Grant (CDBG), Urban Development Action Grant (UDAG), Secretary's Fund (including Indian CDBG, Insular Areas CDBG and Special Projects), section 312 Rehabilitation Loan (section 312), Rental Rehabilitation and Urban Homesteading programs, is also being published pursuant to the order of the District Court. That order requires publication of this final rule not later than February 15, 1987.

The issue of what procedures may be "practicable" differs within the various HUD programs. For example, in the Public and Indian Housing programs and FHA Single Family Property Management and Disposition program, the cost of hazard abatement is a public cost. However, in the FHA Single Family and Multifamily Insurance and Coinsurance programs, the cost of hazard abatement required to qualify an existing property for FHA mortgage insurance or coinsurance is a private cost to be borne by the seller. In the Section 8 Existing Housing Certificate, Housing Voucher and Section 8 Moderate Rehabilitation programs, the cost of hazard abatement required to qualify the rental unit as one in which a very low-income tenant's rental payment will be subsidized must be borne by the private landlord. Similarly, the Rental Rehabilitation, CDBG, UDAG, Urban Homesteading, and Section 312 programs all deal with predominantly privately-owned real property—either owner-occupied or rental residential. Though program requirements differ from program to program and between agencies based upon their local program designs, the cost of hazard abatement frequently falls in whole or in part on the private owner.

For the Rental Rehabilitation program, for example, no more than 50 percent of the rehabilitation costs not to exceed $5,000 can be provided in the form of construction subsidies with the remainder of the funds coming from the owner. Many agencies also require some form of repayment of the subsidy. Under the CDBG program, owner-occupied and/or rental properties may be rehabilitated under grants or combination grant/loans. Some or all of the cost of hazard abatement can thus fall on the lower-income private owner. Under the section 312 program, owner-occupied properties are rehabilitated at below-market-interest rate (3 percent) loans and investor properties are rehabilitated with below-market-rate loans which may also be combined with CDRG loans or grants. The effect of hazard abatement requirements, thus, has a direct impact on lower-income homeowners as well as the owners and tenants (usually lower-income) or rental properties. The increased costs of abatement may cause the rehabilitation of rental properties to become infeasible given the income of the properties and the limitations on the subsidies that can be provided. It can also cause a considerable number of owner-occupied properties to fall outside the limits imposed by cities on their rehabilitation programs or cause otherwise feasible owner-occupied properties funded through local loan programs to exceed the amount lower-income homeowners can borrow. The impact of the inspection, testing and abatement costs on the availability of the programs to their intended participants is a relevant consideration in determining whether the requirements are "practicable".

This preamble is divided into five sections: (I) Background (discussion of statutory and regulatory requirements and the *Ashton* decision); (II) Rulemaking Comments; (III) Recent Studies of the Lead-Based Paint Problem; (IV) Program Requirements; and (V) Section-by-Section Review of Regulations.

A. Statutory and Regulatory Requirements

HUD's authority to issue this rule is based on the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821–4846, ("LPPPA"). Added in 1973, section 302 of LPPPA requries the Secretary of HUD to "establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary." The statute further prescribes that such procedures shall "as a minimum provide for . . . appropriate measures to eliminate as far as practicable immediate hazards due to the presence of paint which may contain lead and to which children may be exposed;" and, further, that the procedures must apply to housing constructed prior to 1950 and "may apply to housing constructed during or after 1950 if the Secretary determines, in his discretion, that such housing presents hazards of lead-based paint."

HUD implemented section 302 of LPPPA by promulgating regulations in 1976 which are found at 24 CFR Part 35 and by incorporating Part 35 in other program-specific regulations. Revision of Part 35 was recently implemented (51 FR 27788, August 1, 1986; 52 FR 1876, January 15, 1987); the latter amendment, *inter alia*, clarified the ability of the Secretary to waive any non-statutory requirements. HUD has considered applicability to programs enacted after section 302 of LPPPA. For instance, the Community Development Block Grant and Urban Development Action Grant programs were not authorized until 1974. HUD believes it likely that Congress intended to cover subsidies for housing rehabilitation and construction provided under predecessor programs, including the Model Cities program, of which Congress was specifically aware when considering lead-based paint legislation. See, generally, *Lead-Based Paint Poisoning Amendments of 1972: Hearings on S. 3080 Before the Subcommittee on Health, Senate Committee on Labor and Public Welfare*, 92d Cong., 2 Sess. (1972). Accordingly, HUD believes that the use of CDBG funds for housing rehabilitation is included within the scope of "housing assistance payments" as used in section 302. Amendments in both 51 FR 27788 and 52 FR 1876 should be consulted for an up-to-date version of 24 CFR Part 35 prior to the next published consolidation, anticipated to be as of April 1, 1987.

B. The Ashton Decision

HUD was required to reconsider its lead-based paint regulations by the United Court of Appeals for the District of Columbia Circuit. In *Ashton v. Pierce*, the Court held that the Department's Lead-Based Paint regulations (Part 35) were invalid because they were inconsistent with the LPPPA's mandate that the Secretary establish procedures for HUD-assisted housing "to eliminate as far as practicable immediate hazards due to the presence of paint which may contain lead and to which children may be exposed. . . . " 42 U.S.C. 4822.

Specifically, the Court held that the regulations are deficient in not treating any intact lead-based paint surfaces accessible to children as an "immediate hazard" under the Act. Those regulations defined "immediate hazard" as "paint . . . which is cracking, scaling, chipping, peeling or loose."

The definition did not require that the lead content in the paint be measured or identified, only that the condition of the paint be defective. The definition excluded intact or "tight" paint regardless of its lead content. The Court concluded that the Act's language and its legislative history demonstrate "that Congress intended the Department to eliminate at least lead-based paint that is accessible to, and chewable by, children." 716 F.2d 63.

The Court affirmed the district court's holding that the Department had failed to fulfill its statutory duty to establish procedures to eliminate the hazard of accessible intact paint "as far as practicable." The Court concluded that the administrative record of HUD's rulemaking showed that the Department erroneously placed too much emphasis on cost-effectiveness in determining the practicability of hazard elimination measures. The Court held that the "as far as practicable standard allows the Department to consider cost and technical considerations in developing its regulations and that the threshold of practicability is reached if there exist reasonably available techniques for eliminating the hazard." 716 F.2d 64. The Court, however, declined to affirm the district court's finding that the administrative record established that elimination of chewable intact paint is in fact practicable. The Court determined that in undertaking further rulemaking to bring the lead-based paint regulations into conformance with the Act's mandate regarding "immediate hazards", the Department should also consider the practicability issue. For further discussion of the practicability standard see Section IV.C. below.

II. Rulemaking Comments

HUD commenced rulemaking by publishing an Advance Notice of Proposed Rulemaking (ANPR) (49 FR 19210, May 4, 1984). The ANPR raised four major regulatory issues: (1) Hazard Determination; (2) Program Coverage; (3) Notification; and (4) Monitoring and Enforcement. Several questions were raised within each of the principal issues. Thirty-nine comments were received from commenters including public housing agencies, State, county and city health departments, cities, trade associations, public interest organizations, State housing authorities and individuals. Commenters submitted or referred to numerous articles and papers that addressed additional aspects of the problem. A proposed rule for Public and Indian Housing was published (51 FR 5666, February 14, 1986) discussing those public comments and requesting additional comments. After receipt of such comments, a final rule for Public and Indian Housing was published on August 1, 1986 (51 FR 27774) and became effective on September 23, 1986. A proposed rule for Housing programs was published on July 1, 1986 (51 FR 27112) discussing the ANPR public comments and requesting additional comments. A final rule for Housing was published on January 15, 1987 (52 FR 1876).

A proposed rule that addressed the hazards of lead-based paint in Community Development Block Grant, Urban Development Action Grant, Secretary's Fund, section 312 Rehabilitation Loan, Rental Rehabilitation and Urban Homesteading programs was published on August 1, 1986 (51 FR 27793), which would amend 24 CFR Part 35, Lead-Based Paint Poisoning Prevention in Certain Residential Structures; 24 CFR Part 570, Community Development Block Grants; 24 CFR Part 510, section 312 Rehabilitation Loan Program; 24 CFR Part 511, Rental Rehabilitation Grant Program; and 24 CFR Part 590, Urban Homesteading Program. 24 CFR Part 35 was amended on August 1, 1986 (51 FR 27774) and on January 15, 1987 (52 FR 1876) and no further amendment is made in this final rule.

The proposed rule discussed three principal elements: (1) Construction Cut-Off Dates; (2) Inspection, Testing and Abatement; and (3) Practicability

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Standard. The proposed rule also discussed each of the above-mentioned HUD programs. Specific questions regarding the three principal elements and the HUD programs were raised in the proposed rule. Public comments were received on most of the specific questions presented, as well as on a variety of other matters. Twenty-nine comments were received from the following organizations: Avalon Associates, Inc., a consulting firm; Montgomery County Development Corporation, a lending institution; Conservation Law Foundation of New England, Inc., an environmental law firm; Self-Help Enterprises, a non-profit corporation; the National Association of Counties; the American Academy of Pediatrics; Counsel for the *Ashton* Plaintiffs; and several state or municipal entities involved with housing or community development including the Redevelopment Commission of Greensboro, North Carolina, the City of Greensboro, the City of Syracuse, New York Department of Community Development, the Cook County, Illinois Bureau of Administration, the City of Bristol, Tennessee, the City of Harvey, Illinois, the City of Kingsport, Tennessee, the Tennessee Housing Development Agency, the City of Newton Massachusetts Health Department, the City of South Bend, Indiana Department of Economic Development, the City of Philadelphia Director of Housing, the Metropolitan Development and Housing Authority of Nashville, Tennessee, the County of Morris, New Jersey Department of Community Development, the Boston, Massachusetts Housing Authority, the City of Knoxville, Tennessee Housing Rehabilitation Department, the Chattanooga, Tennessee Housing Authority, the City of Memphis, Tennessee Division of Housing and Community Development, the Montgomery County, Maryland Government Divisions of Planning and, Code Enforcement and Home Improvement, the City of Boston Public Facilities Department, and the City of Murfreesboro, Tennessee Community Development Office.

This section discusses the comments received on the three principal elements and the HUD programs.

A. Construction Cut-Off Dates

In the proposed rule, HUD set forth two alternative provisions regarding defective paint abatement in programs to which the Secretary's discretion is applicable. Under one proposal (Alternative A), HUD proposed to limit the defective paint inspection and abatement requirements to housing constructed prior to 1978 because of the ban on the commercial sale of paint having a lead content by weight of over .06% which became effective in 1977. In Alternative B, HUD proposed to limit all defective paint inspection and abatement requirements to pre-1950 housing. It was noted in the proposed rule that:

> Considerations which would be relevant to the selection of such an alternative would be the extent of the presence of lead-based paint in different types of housing constructed in 1950 or later; the experience of CDBG and UDAG grantees, cities, states and local governments and agencies, redevelopment authorities, community development-related agencies, local health agencies, and others, including impacts on program participation and benefits; and recent evidence regarding the correlation of defective paint at different lead contents with elevated blood-lead levels in children or other serious adverse effects.

Nine commenters representing various concerns responded generally to these proposed alternative provisions regarding defective paint inspection and abatement. Three of these commenters indicated a general preference for Alternative B, in which HUD proposed to limit defective paint inspection and abatement requirements to pre-1950 housing. Five of these commenters, however, favored changing the cut-off date from 1950 to 1978. One of the five commenters indicated that this 1978 cut-off date should also be applied to intact, chewable lead-based paint. Another stated that the Secretary does not have the discretion to propose alternative cut-off dates for defective paint inspection and abatement only, and set at 1950 cut-off date for the testing and abatement of intact chewable paint; the commenter stated that distinguishing between defective and intact chewable paint in this way was an abuse of discretion. This commenter also stated that given a choice of cut-off dates for defective paint testing and abatement, 1978 is preferable, although HUD should not apply any cut-off date to the inspection and abatement procedure but, rather, should eliminate all immediate hazards. The final commenter of the nine commenters questioned whether it is necessary at all to inspect paint in structures built before 1950; it was suggested that HUD could save substantial costs, presumably to be spent on inspecting more recent housing, if it simply assumed that potentially hazardous amounts of lead will be found in all residential structures built prior to 1950.

For the reasons set forth in Section IV.A. below, the Department has established a 1973 cut-off date for the inspection and abatement of defective paint and for the testing and abatement of chewable paint.

B. Inspection, Testing and Abatement

HUD requested general comments on the availability and reliability of X-ray fluorescence analyzers (XRFs), other reasonably available techniques, and the 1.0 mg/cm² standard. Nine commenters responded to these general inquiries. Four of these commenters stated that XRFs are expensive, inaccurate, not readily available, and have frequent and lengthy periods of down time. Two of these commenters stated paint testing for lead content on site using a solution of 6–8% sodium sulfide is more consistent, accurate, and inexpensive. Three of these commenters provided their views concerning the 1.0 mg/cm² standard for the detection of lead-based paint. One of the three commenters indicated that the permissible limit for lead should be .7 mg/cm² of exposed surface, and not 1.0 mg/cm². Another commenter stated that the permissible limit should be .1 mg/cm². The final commenter expressed the view that the lead-detection standards currently in place in local housing codes should be adopted.

Given these comments regarding miscellaneous testing procedures, the testing and abatement standard will be 1.0 mg/cm² using an XRF. HUD has selected the 1.0 mg/cm² level for several reasons. The 1.0 mg/cm² level provides for an adequate margin of safety between abatement levels and levels that have been demonstrated to be dangerous because they are often associated with EBLs. Research by Gilbert, *et al.* (1979) found that median paint lead levels in the homes of children with EBLs were about 10 mg/cm² for interior surfaces and 16 to 20 mg/cm² for exterior surfaces. Control subjects, without EBLs, lived in houses in which paint lead was generally less than 1.0 mg/cm², except for some exterior surfaces. Research by Reece, *et al* (1972) found that children with EBLs lived in housing with lead content averaging between 4 mg/cm² and 8 mg/cm² on interior surfaces and between 10 mg/cm² and 17 mg/cm² on exterior surfaces. The 1.0 mg/cm² level is within the range of 0.7 mg/cm² to 2 mg/cm² typically used as abatement standards by local CLPPPs (Childhood Lead-Paint Poisoning Prevention Programs). One of the two available XRFs, the XK–3, was designed to a contract specification of 1.0 mg/cm². Tests by the National Bureau of Standards (NBS) (1978) showed that the XK–3 was sensitive to lead at that level, although the accuracy was not as good as specified in the contract. The NBS did not thoroughly test the XK–3 for sensitivity or accuracy at lead concentrations of 0.7 mg/cm². The manufacturer of the other available XRF, the Microlead I, has stated that the machine more than meets these requirements. Thus, the testing and abatement standards can be met adequately using either of the available detection instruments. Laboratory chemical analysis may be used if approved by HUD in cases where it is not practical to obtain XRF readings. The Department's rationale regarding the use of XRFs is found in Section IV.B. below.

HUD requested comments as to which localities use laboratory chemical analysis and the feasibility of relying on public and private concerns for the testing procedure. Three commenters responded with general views regarding laboratory chemical analysis, but did not address the above specific inquiries. Two of these commenters stated that laboratory chemical analysis is a viable alternative method of testing for lead, while one commenter indicated that it is prohibitively slow, as well as expensive.

As discussed in Section IV.B. below, the Department has determined that use of the XRF, rather than laboratory chemical analysis, is a preferable testing method; laboratory chemical analysis has proven to be expensive and time-consuming.

HUD also asked for commenters to discuss various methods of lead-based paint treatment. Five commenters provided their views as to abatement. One commenter indicated that the rule should state clearly that defective paint, including blistering or powdering paint should be removed from all interior and exterior exposed surfaces including floors, walls, and ceilings, regardless of height. This commenter also indicated that abatement should include the sealing process, to prevent the escape of lead particulates into the living space. Another commenter stated that paint scraping is not an acceptable method of paint removal. One commenter indicated that lead-based paint must be replaced to satisfactorily solve the problem of lead-based paint poisoning. The final two commenters expressed the view that there is no safe method to remove lead-based paint; all procedures disturb the paint and create the danger of airborne lead. It was noted that lead paint stripping with paint remover in particular creates toxic fumes and presents poisoning hazards. These commenters stated that it might be safer in occupied units to leave the lead-based paint alone.

For abatement, the Department has established standards based on CDC's "Preventing Lead Poisoning in Children," Atlanta, Georgia, 1985, with modification oriented towards specific programs. A description of these standards may be found in Section IV.B. below.

C. Practicability Standard

HUD invited general comments as to whether the forms of inspection, testing and abatement required in the proposed rule are practicable. Twenty commenters provided information and their opinions in this general area.

Nine of these commenters stated either that a lead-based paint poisoning problem does not exist in their particular area or that current inspection, testing and abatement procedures are adequately eliminating the problem. One commenter considered lead-based paint poisoning a non-problem in their community and asserted that the rule should only be applied to areas that have been demonstrated to have such a problem. Two commenters indicated that instances of lead-based paint poisoning among children under the age of seven are extremely rare in their community; as a consequence, the commenters argued that there is no justification for this rule. Two commenters stated that to their knowledge very few houses in their community currently have lead-based paint. Four commenters indicated that abatement procedures currently in place are sufficient to eliminate any lead-based paint poisoning problem. These abatement procedures included the scraping of chipped, flaking paint and subsequent repainting. One of these four commenters added that HUD is failing to consider the effects of lead from vehicle exhaust.

Two of the twenty commenters recognized that a lead-based paint poisoning problem exists, but considered the procedures set out in the rule to be seriously flawed in a number of areas. One commenter favored the removal of loose, flaking, peeling paint, but suggested that HUD remove from the rule all provisions concerning the removal of intact, chewable paint, XRF use, and the identification of households having an EBL child under the age of seven. The other commenter stated that it was unreasonable to expect the testing and removal of intact paint that is in good shape. This commenter was also opposed to any inspection, testing or abatement of exterior paint and of homes not having a child under the age of seven.

Sixteen of these commenters stated that the lead-based paint inspection, testing and abatement provisions would increase the cost of both administering the affected programs and participating in these programs and, as a consequence, would impact negatively on the operation of and participation in the programs. One commenter stated that there would be an anticipated 64% increase in administrative costs as a result of this rule. Four commenters agreed that the rule is burdensome and would have a substantial effect on project administering and processing time and costs. Two commenters stated that the rule would increase administrative workload and necessitate the hiring of personnel in the areas of residential inspection and administration. Four commenters added that the additional administrative cost would limit resources and reduce the number of units that will be rehabilitated. Seven of these commenters agreed that the rule would increase the cost of rehabilitation to be assumed by the program participant, but they provided various figures as to the extent of the increases. One of the seven commenters stated that a typical six-family house will need a minimum of $5,000 for lead paint abatement. Another commenter complained of an astronomical increase in the cost of rehabilitation in the neighborhood of $2,500 to $3,500 per unit for interior work and $1,500 to $2,500 per unit for exterior work. Another of the seven commenters stated that removing or covering intact lead-based paint will add 25% to 50% to the cost of rehabilitation. One commenter estimated the cost of testing a single house at between $1,000 and $2,000. Nine commenters added that the increased cost would render rehabilitation financially infeasible for many low- and moderate-income program participants; property owners will withdraw rather then inspect, test and abate. One commenter added that the lead-based paint rule will render the rehabilitation program a "stick", rather that a "carrot".

Five of the twenty commenters expressed the view that HUD should realign its priorities; the process of eliminating lead-based paint poisoning should not prevent low- and moderate-income families from obtaining suitable housing. One of these commenters stated that the elimination of other more obvious hazards in housing should take precedent over the covering or removal of lead-based paint.

Three of these commenters suggested that the rule will conflict with existing laws and create an unnecessary state of confusion. One of the commenters stated that the rule would conflict with the federal Historic Preservation Act which in essence preserves existing

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lead-based paint in particular structures. Another commenter indicated that the rule would create confusion as to appropriate compliance behavior if state or local lead-based paint laws are comparable to this rule, but provide slightly more lenient standards for compliance. An additional commenter stated that HUD should help insure compliance with state and local lead-based paint laws that are more stringent than the federal law. HUD should also make clear that federal funds can be used to bring housing up to a state or local standard or for voluntary deleading.

Seven of the twenty commenters agreed with the owner and tenant notification provisions of the rule. One commenter indicated that HUD should provide more material in the area of lead-based paint poisoning prevention. Another commenter suggested that this was a problem that each individual family should solve on its own. One commenter added that HUD should make clear that lead paint may still be present in housing after an abatement process.

Finally, four of these commenters indicated to varying degrees that HUD is not proposing to do enough to eliminate lead-based paint poisoning. One commenter stated that the rule is written as if lead poisoning prevention is less important than the correction of other housing deficiencies; according to this commenter, HUD should make lead abatement its main objective and should abate all painted surfaces and heavily leaded soils. This commenter added that HUD should not adopt a health approach and use the presence of an EBL child as a trigger mechanism for the testing and abatement procedures. The commenter stated that in addition to ignoring Congressional intent, the health approach is illogical because there is no correlation between present EBL children and lead content in housing to be occupied at a future date. Another commenter stated that HUD should test all units if the units being rehabilitated have more than one bedroom; such units will undoubtedly house children at some point and this time is ideal for the process of testing for lead-based paint. This commenter added that HUD would have to increase the amount of rehabilitation grants and loans to above $5,000. One of the commenters recommended a housing approach whereby all HUD-Associated Housing would be tested whether or not an EBL is present. According to this commenter, a health approach whereby lead-based paint testing is triggered by the presence of an EBL is not practicable because the presence of an EBL reflects prior exposure to lead and does not demonstrate the existence of lead in the HUD-Associated Housing to be occupied, and in effect uses children as canaries or guinea pigs to detect the presence of lead-based paint. This commenter also requested that HUD expand the protection of the rule to include handicapped persons of all ages. A final commenter found the proposed rule to be inadequate in a number of areas; the rule falls far short of the limits of practicability, according to this commenter. The commenter stated that the "as far as practicable" standard applies to the elimination of lead-based paint in HUD-Associated Housing, not to the detection of the lead-based paint. HUD can't wait until EBLs exist or test for lead-based paint randomly. HUD has the option of testing all HUD-Associated Housing for immediate hazards and then abating as far as practicable or, removing all defective and intact chewable paint in HUD-Associated Housing. According to this commenter, HUD has placed too much emphasis on cost considerations in the practicability analysis for HUD-Associated Housing and has misplaced the practicability analysis altogether in the area of HUD-Owned Housing.

Section IV.C. and subsequent portions of this Preamble dealing in the particular programs discuss extensively the practicability issues involved in inspection, testing and abatement for lead-based paint giving a rationale for the positions taken by the Department in this Rule. HUD believes these discussions are responsive to the various questions raised by the commenters.

D. Community Development Block Grant Program

HUD invited specific comments on the probable direct impact of the cost of new lead-based paint requirements on local CDBG-assisted rehabilitation programs as well as the probable indirect impact of these requirements on other CDBG-funded activities. Eight commenters provided their views concerning the matters addressed in these specific inquiries, as well as other matters relating to the CDBG program. Two of these eight commenters addressed their comments to the section 312 Rehabilitation Loan Program, in addition to the CDBG program.

Six of the eight commenters stated that the lead-based paint requirements would burden the CDBG program financially. One of these six commenters said that the rule would cause a 64% increase in administrative costs. Another commenter added that the laboratory testing process would cost approximately $500 to $700 per house. One commenter anticipated that the inspection and testing procedures would be prohibitively expensive, and would require the hiring of additional staff. This commenter also expressed concern regarding where children would be tested for lead in their blood. A final commenter added that public funds would be wasted inspecting for lead-based paint in houses that might never reach the rehabilitation state (plus the expense of repairing any damage done while inspecting or testing for lead-based paint in cases where the property owner decides not to abate and proceed with the rehabilitation work). HUD has acknowledged the expensive and time-consuming nature of inspection and testing in section I.B. above. Nonetheless, the requirements of the statute that lead-based paint hazards be eradicated, coupled with the real concern of HUD with the health of children residing in the units which HUD assists, necessitate the activities set forth in this rule.

Five of these commenters added that abating lead-based paint is impracticable and costly. One commenter stated that removal of the lead-based paint, although possibly not covering, would be cost prohibitive. This commenter added that abatement might conflict with Department of Interior standards for rehabilitating historic structures. Another commenter indicated that property owners would likely refuse to inspect or test for lead-based paint and would drop out of the CDBG program. Three of these commenters stated that the abatement process would raise project costs, having various negative consequences. Low- and moderate-income families will no longer be able to afford increased loan amounts. Cities will be forced to rehabilitate fewer homes having lead-based paint or will choose to rehabilitate homes without lead-based paint. Cities might also decide that the rehabilitation of homes is less cost effective than other activities. Three commenters added that the rule will cause a misdirection of resources whereby funds will be spent on lead-based paint abatement rather than on the elimination of more immediate hazards in housing and the providing of housing to needy recipients. While HUD appreciates the concerns expressed by these commenters regarding increasing expenditures and limiting availability of housing, HUD must give effect to the lead-based paint statute with its inevitable increase in public and private costs.

Three commenters added other comments on various aspects of the lead-based paint rule as it affects the CDBG program. One commenter stated that HUD should adopt local or state standards concerning the level of detectable lead in paint and the unacceptable height of chewable surfaces. 24 CFR 510.410(b)(10) establishes authority for HUD to adjust its requirements so as to be consistent with state or local law to the extent that these laws insure comparable levels of protection. Another commenter expressed support for a HUD effort to educate families regarding lead-based paint poisoning. Subpart A of Part 35 establishes a notice requirement for occupants of all pre-1978 housing regarding the hazards of lead-based paint. One of the commenters denied that a lead-based paint problem exists, and indicated support for the 1950 cut-off date. Extensive studies of lead-based paint problems are cited in this Preamble; as discussed above, a pre-1973 cut-off date for inspection, testing and abatement is being established.

E. Urban Development Action Grant Program.

HUD invited specific comments on the probable direct impact of the cost of new lead-based paint requirements on local UDAG-assisted rehabilitation programs. HUD did not receive any specific comments in this area.

F. Secretary's Fund Programs

HUD did not receive any specific comments in this area.

G. Section 312 Rehabilitation Loan Program

Comments received in this area are addressed in the Community Development Block Grant Program section.

H. Rental Rehabilitation Program

Seven commenters provided their views regarding the effect of the lead-based paint rule on the rental rehabilitation program; virtually all of these comments indicated that the rule would render participation in the program financially infeasible. One commenter stated specifically that the rule would cause owners to perform rehabilitation while losing money; rehabilitation, therefore, would be less frequent. Another commenter stated that the rule could cause landlords to refuse to rent to families with EBL children. This commenter suggested that testing should be at the option of the recipients of HUD funds. A final commenter stated that the inspection and testing procedures would be costly and would require additional staff. This commenter also inquired as to who would perform the testing of children for elevated blood levels of lead. The commenter also indicated that abatement would be costly (with the possible exception of covering) and also, might conflict with Department of the Interior standards concerning the preservation of historic properties. The high cost of abatement will serve to increase project cost, thereby preventing some rental rehabilitation participants from being able to afford loans and rendering cities unable to fund the same amount of rehabilitation projects containing lead-based paint. The commenter suggested that it was preferable to educate and protect many people from defective paint rather than protecting a few people from chewable, intact paint. HUD has acknowledged the expensive and time-consuming costs of testing and abatement. Nonetheless, the requirements of the statute that lead-based paint hazards be eradicated, coupled with the real concern of HUD with the health of children residing in the units which HUD assists, necessitate the activities set forth in this rule. Additionally, to the extent the $5,000 cap is not reached, Rental Rehabilitation Program grants to owners can assume up to 50 percent of the burden for increased costs. Grantees may also request project-specific high cost waivers under the provisions of 24 CFR 511.10(e) to raise the $5,000 limit in particular cases. Also, to a great degree, remedying of defective paint conditions has always been a part of rehabilitation and that it is primarily the abatement of intact paint which will cause project cost increases.

I. Urban Homesteading Program

HUD did not receive any specific comments in this area.

III. Recent Studies of the Lead-Poisoning Problem

Since publication of the ANPR, several new studies involving lead-based paint poisoning have been released. These studies include the CDC January 1985 Statement, the EPA Air Quality Criteria for Lead, and three HUD-financed housing studies.

A. Centers for Disease Control's January 1985 Statement

In January 1985, the Centers for Disease Control (CDC) issued a second revision to its statement entitled *Preventing Lead Poisoning in Young Children*. Based on new research findings on lead toxicity, CDC redefined lead poisoning at a lower blood lead level (from 30 to 25 micrograms of lead per deciliter of whole blood) and updated its recommendations on lead-based paint abatement.

B. EPA Air Quality Criteria for Lead

EPA's Air Quality Criteria for Lead evaluates and assesses scientific information on the health and welfare effects associated with exposure to various concentrations of lead in ambient air. The documentation considers all sources of lead including lead-based paint. Because of recent papers and scientific literature concerning the relationship between blood lead levels and blood pressure, EPA made available for public comment a draft addendum to the draft revised criteria document (February 11, 1986, 51 FR 5100). At the time of publication of this final rule, the criteria document and addendum are still under review.

C. Housing Studies

HUD completed a research study with Abt Associates providing an estimate of the incidence and condition of lead-based paint in public housing units and common areas and an estimate of the cost of abatement under different regulatory approaches. This research was part of a larger contract to determine modernization needs in public and Indian housing. A copy of the study is available by requesting the Regulatory Impact Analysis utilized for the Public and Indian Housing Rule and cited at 51 FR 27787 (August 1, 1986). HUD also contracted for two research studies of its final lead-based paint rules under a contract with the Urban Institute—"Economic Analysis of Lead Paint Regulations Governing HUD-Assisted and FHA-Insured Housing", January 1987, and "Economic Analysis of Lead Paint Regulations Governing CPD Housing Rehab Programs", January 1987. The first document serves as the Regulatory Impact Analysis for the Housing rule and is cited at 52 FR 1890; the second document constitutes the Regulatory Impact Analysis for this rule. All three documents are available from the Rules Docket Clerk, Room 10276, HUD, 451 Seventh Street, SW., Washington, DC 20410. (Identify which document is requested; a small service and reproduction fee may be required.)

IV. Proposed Program Requirements

After a general discussion of the construction cut-off dates, inspection, testing, and abatement and, the practicability standard, lead-based paint program requirements will be discussed for the CDBG, Urban Homesteading, section 312, and Rental Rehabilitation programs. The CDBG regulations at

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§ 570.608 (Subpart K) also apply to Entitlement Grants (Part 570, Subpart D), Secretary's Fund programs including the Insular areas and Special Projects Programs (Part 570, Subpart E), Small Cities program (Part 570, Subpart F), UDAG (Part 570, Subpart G), Loan Guarantees (Part 570, Subpart M) and Indian CDBG programs (Part 571). This rule applies only to properties approved for assistance after the effective date of the final rule. In this preamble the term grantee is used because it is a common term used in the CDBG, UDAG and Rental Rehabilitation programs; for purposes of this preamble, loan recipients and local agencies in the Section 312 program are considered grantees.

A. Construction Cut-Off Dates

As discussed in Section I.A. above, section 302 of LPPPA provides (with the exception of the sale of federally-owned property for residential habitation) that its requirements must be applied to housing constructed prior to 1950 and that they may be applied to housing constructed during or after 1950 "if the Secretary determines, in his discretion, that such housing present hazards of lead-based paint."

The Court of Appeals in the Ashton case concluded that the Secretary's decision regarding notice provisions was not reviewable. In the interest of expanded public disclosure of potential lead hazards, 24 CFR Part 35 has been amended to make clear that all HUD-associated housing constructed prior to 1978 is covered by the notice requirements. See Subpart A of Part 35 at 52 FR 1876.

Construction cut-off dates for hazard elimination requirements were posited in the proposed rule in the alternative—Alternative A—all HUD-associated housing constructed before 1978 and Alternative B—all HUD-associated housing constructed before 1950. The latter date was the statutory minimum imposed by Congress some twenty years after 1950; the former date was the year after the Consumer Product Safety Commission banned the commercial sale of paint having a lead content by weight of over .06%. The comments received by HUD concerning construction cut-off dates are discussed in Section II.A. above. Nine comments were received on these alternative cut-off dates; they were not uniform enough, though, to represent a consistent view. Extensive internal reviews of the question were held which concerned, among other matters, the issue of what was practicable for each individual program, as set forth in paragraph 4 under Background above. Following this extensive review and consultation a decision to select pre-1973 housing as the construction cut-off date was recommended to the Secretary and is adopted in this final rule. The 1973 date rests on two bases: Section 401 of LPPPA, as enacted in 1971 directed the Secretary of Health, Education, and Welfare to prohibit the use of lead-based paint in assisted construction or rehabilitation. The Secretary of HEW promulgated regulations in March of 1972 and, in August of 1972 complementing regulations were adopted by the Secretary of HUD. Further, HUD's Minimum Property Standards for Single Family and Multifamily have also prohibited the use of lead-based paint (percentages of lead-based paint have decreased from 1% to .06%) since 1973. For most of the ongoing HUD assistance programs, 1973 is the construction cut-off date for defective paint. For chewable surfaces, (*i.e.*, all chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, such as protruding corners, windowsills and frames, doors and frames, and other protruding woodwork), the Secretary, pursuant to statutory discretion conveyed in the Lead-Based Paint Poisoning Prevention Act, will also extend testing and abatement requirements to pre-1973 housing under prescribed circumstances and conditions.

B. Inspection, Testing and Abatement

The legislative history of the 1973 Amendment to LPPPA (see, *inter alia* 118 Cong. Rec. 20853 (1972)) indicates a strong Congressional expectation and intention that the new requirements would fit easily, without program disruption or substantial cost increase, into standard program administrative procedures. No departure from this expectation was indicated after the markup changes in 1973; in the brief floor discussion of the revised bill, it was described as "essentially the same measure unanimously approved by the Senate last June" (119 Cong. Rec. 1488, (1973) (Senator Kennedy)).

Inspection for defective paint conditions can be done easily by the appraiser or other customary inspector because no detection equipment beyond the naked eye is required. Testing for intact paint having a measured lead content is another matter, requiring equipping the appraiser or inspector with special equipment. This requirement presents the most problematic consideration in determining the practicability of intact paint testing and abatement requirements in program contexts. The comments received by HUD on testing and abatement procedures are discussed in Section II.B. above.

The state of the art of testing for lead content in paint is currently limited to laboratory chemical analysis or portable XRFs. Portable XRFs are recommended by the Centers for Disease Control (CDC), and are less costly than laboratory chemical analysis. Laboratory chemical analysis is discouraged because there is no direct equivalence between this type of analysis and the readings given by the XRFs. Lead paint analysis by laboratory chemical analysis also takes longer than by use of an XRF. The XRF provides immediate readings. In the laboratory chemical analysis approach, it is estimated that thirty to forty samples can be analyzed per day at a cost of $12 per sample in a public laboratory. Typically, six to eight samples are taken per room to test for lead paint using the laboratory chemical analysis method. The costs for this service at private laboratories is estimated at $25 per sample or $175 per room. The cost of using an XRF is estimated at $20 per room (taking twenty to twenty-five readings per room). Two companies are currently manufacturing XRFs. The cost is approximately $8,000 per machine, and the yearly maintenance is approximately $2,500.

The number of chemical testing laboratories available throughout the country capable of handling HUD's testing, if required, is limited at best. To HUD's knowledge, there are approximately 400 XRFs in existence throughout the United States to test not only housing in HUD programs but all other private housing. Most of the XRFs, which may or may not be available on a routine basis to test properties participating in HUD programs, are owned by municipalities or organizations affiliated with State or local governments. HUD is also aware that there is substantial downtime in repairing the XRFs.

In addition to their limited availability, HUD has other concerns regarding the XRF. HUD received sixteen comments on the XRF in response to the proposed lead-based paint rule for Public and Indian Housing. Four comments were received on this rule, substantially duplicating those previously received. A majority of commenters suggested readings produced by XRFs are highly inaccurate (*e.g.*, XRFs are reported to read the opposite sides of walls, and to be influenced by lead pipes and other leaded building materials within the walls). Several commenters indicated that XRFs are not accurate at levels

below 1.0 mg/cm². Other commenters suggested that XRF readings may be unreliable because of operational factors and suggested the need for a uniform training program, technical resource center and quality control guidelines. It was also suggested that an independent evaluation of the two currently available XRF instruments should be undertaken prior to initiation of a national program for intact paint hazard abatement dependent on the use of such detection equipment. Other commenters were concerned about the effects of cobalt radiation in using the XRF.

The Court of Appeals in *Ashton* agreed with the District Court, which stated that the "as far as practicable" standard allows the Department to "consider cost and technical consideration in developing its regulations" and that the threshold of practicability is reached if there exist "reasonably available techniques" for eliminating the hazard. 541 F. Supp. 641.

For purposes of this rule regarding testing for lead-based paint, HUD sets the standard for reliable detection of surface area to be XRF readings of greater than or equal to 1 mg/cm². Although a 0.7 mg/cm² standard is recommended in CDC's January 1985 statement, HUD establishes the 1.0 mg/cm² standard because of evaluations performed by the National Bureau of Standards (Evaluations of Lead Detectors, March 1977 and Evaluation of New Portable X-ray Fluorescent Lead Analyzers for Measuring Lead in Paint, May 1978) and because the vast majority of XRF's available today are designed to HUD's specifications (minimum precision of 1.0 ± 0.2 mg/cm²).

This regulation establishes testing in certain cases and relies on local or state public health, housing agencies or private concerns to test for lead-based paint. HUD is aware of approximately 50 active CLPPPs capable of testing lead-based paint, which have provided services in the past at nominal or no cost. Certain CLPPPs may be using only laboratory chemical analysis.

For abatement, HUD is not prescribing the particular method but is requiring that the paint either be thoroughly removed or covered. HUD establishes minimum abatement standards in the CDBG program but is not limiting the available techniques. HUD uses the treatment described in 24 CFR 35.24(b)(2)(ii) for the programs covered by this rule. Covering the hazard could include such methods as adding a layer of gypsum wallboard or a fiberglass cloth barrier to the wall surface. Depending on the wall condition, wallpaper (which is permanently attached and not easily strippable) may be used. Covering or replacing trim surfaces is also permitted. Paint removal could include such methods as scraping, heat treatment (infra-red or coil type heat guns) or chemicals. Machine sanding and use of propane torches are prohbited because of the additional hazards these methods create. Machine sanding produces the greatest deposit of lead in dust, with rates as high as 10 mg of lead/sq. ft/hour. Openflame methods cause the lead to vaporize. Washing and repainting without thorough removal or covering does not constitute hazard abatement.

The effect of lead-based paint abatement requirements has a direct impact on lower-income homeowners as well as the owners and tenants (usually lower-income) or rental properties. The increased costs of abatement may cause the rehabilitation of rental properties to become infeasible given the income of the properties and the limitations on the subsidies that can be provided. It can also cause a considerable number of owner-occupied properties to fall outside the limits imposed by cities on their rehabilitation programs or cause otherwise feasible owner-occupied properties funded through local loan programs to exceed the amount lower-income homeowners can borrow.

Many communities participating in the CDBG, UDAG, Rental Rehabilitation, Urban Homesteading, and section 312 Loan Programs also have relatively small programs. The costs of purchasing equipment for testing for lead content on applicable surfaces is infeasible for such communities particularly since UDAG for entitled cities, Rental Rehabilitation and section 312 programs provide no administrative dollars and all administrative costs related to those programs must be borne by the CDBG program or other sources of public funds. Such communities will probably have to rely on other, more individually expensive means of testing for lead content on applicable surfaces.

Again, HUD acknowledges the impact that lead-based paint inspection and testing will have on local programs and project owners. Such concerns must, however, be balanced against the requirements of the statute and the real concern for the health of children. HUD believes that, to a great extent, the abatement of defective paint has generally been included in rehabilitation work and that it is the abatement of intact paint that will prove the more costly and time consuming. Given that abatement of intact paint is limited to those instances where a child has evidence of EBL, HUD has limited testing and abatement of paint to the degree possible, thus reducing the burden of costs for families not affected.

C. Practicability Standard

The LPPPA requires HUD to establish procedures to eliminate "as far as practicable" the hazards of lead-based paint poisoning. The "practicability" standard applies to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments. The Department believes that the "practicability" standard applies to HUD's property management and disposition programs.

In *Ashton*, the courts held that HUD had applied an erroneous standard in determining whether it was "practicable" to eliminate the immediate hazard of intact lead paint. In the Court of Appeals' view, HUD had construed "as far as practicable" to mean "most practicable." The Court expressly rejected what it considered to be a "cost-benefit analysis" approach employed by the Department.

> In plain language Congress commanded that if it is "practicable" to eliminate an immediate hazard, that hazard must be eliminated. The statute admits of no exceptions to the required elimination procedures on the basis of the degree of practicability. Neither Congress' concern about the cost of the elimination program nor congressional silence in the face of the Department's interpretation of the statute can overcome the clear statutory directive. *Id.* at 64.

The Court of Appeals concluded, however, that the administrative record had not established that elimination of chewable intact paint is in fact practicable. *Id.* The Court of Appeals stated:

> It is peculiarly within the expertise of the Department to determine the practicability of a given elimination procedure. We agree with the district court that the "as far as practicable" standard allows the Department "to consider cost and technical considerations in developing its regulations", and that the threshold of practicability is reached if there exist "reasonably available techniques" for eliminating the hazard . . . . *Id.* at 64.

A practicability analysis will be presented for each program below, but common issues affect each program. For example, the availability of testing resources is scarce given the magnitude of the possible demand. (See Section IV.B. above.) There are only 400 XRFs presently available to perform testing. Notwithstanding any private demand for testing, if HUD imposed testing requirements on all of its programs, in the first year alone there could be a

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demand for testing of over four million units. It would take approximately 5½ years to test all of these units at a cost of over $480,000,000. The unavailability of testing equipment and competent operators could severely impact the effectiveness and availability of HUD program activities and may lead to redlining of certain older neighborhoods. Testing requirements may have the effect of driving users away from HUD programs. There is no guarantee that there will be a benefit to children. Without equipment, there will be severe program delays.

D. CDBG, UDAG, Secretary's Fund, Section 312 and Rental Rehabilitation

1. Scope

Sections 510.410, 511.11(f) and 570.608 of the rule establish procedures to eliminate as far as practicable the immediate hazards of lead-based paint poisoning with respect to any project constructed prior to 1973 which presents such hazards to children under seven years of age and which is rehabilitated with assistance under Parts 510, 511 and 570 respectively. This rule also applies to entitlement grants (Part 570, Subpart D), Secretary's Fund programs including the Insular areas and Special Projects program (Part 570, Subpart E), Small Cities program (Part 570 Subpart F), UDAG (Part 570, Subpart G), Loan Guarantees (Part 570, Subpart M) and the Indian CDBG program (Part 571) because these programs incorporate Subpart K which includes § 570.608. The section 312 and Rental Rehabilitation programs establish requirements similar to § 570.608. This rule would affect approximately 88,200 units each year.

2. Practicability Analysis

Separate practicability analysis are provided for each of the affected programs below.

(a) *CDBG program.* The CDBG program was not in existence at the time of enactment of section 302 of the LPPPA. CDBG funds are extended to localities to be utilize for activities selected by them, limited only by broadly defined activity eligibility requirements and the requirement that at least 51% of CDBG funds must be used for activities principally benefiting low- and moderate-income persons. A substantial portion of CDBG funds are expended for residential rehabilitation.

According to a Comptroller General report entitled "Rental Rehabilitation With Limited Federal Involvement: Who Is Doing It? At What Cost? Who Benefits?" (GAO/RCED–83–148, July 11, 1983), ninety-eight percent of the communities were financing rehabilitation of owner-occupied units with CDBG funds. In contrast, only 50 percent were financing investor-owned rental rehabilitation. According to the 1985 Consolidated Annual Report to Congress on Community Development Programs, (CDBG, UDAG, section 312, Urban Homesteading), the principal component of expenditures for housing in FY 198 was loans and grants to facilitate the rehabilitation of single family housing. Urban Counties concentrated a large majority of the CDBG funds they commit for housing, 73 percent of all such expenditures, in single-family rehabilitation. Metropolitan, Cities on the other hand, used their CDBG funds to undertake a broader range of activities such as the rehabilitation of multifamily (usually renter-occupied) housing, public housing modernization and the rehabilitation of other publicly-owned residential housing. Both types of grantees spent smaller amounts of CDBG funds in administering their housing programs and supporting code enforcement, general housing repair, housing development, or non-profit corporations of funding other sub-recipients to undertake similar activities. The differences in the mix of housing activities between cities and counties are consistent with general aggregate differences in their housing characteristics. Urban Counties, which are comprised of suburbs to a large extent, are characterized by single-family, owner-occupied housing. In contrast, Metropolitan Cities tend to have a greater proportion of multifamily rental housing and Federal public housing. Consequently, although single family rehabilitation still is by far the largest category of expenditure for cities, they spend a larger proportion of funds in other areas than do Urban Counties.

Residential units rehabilitated with CDBG funds are within the scope of "HUD-associated housing" as defined by HUD. Accordingly, HUD's regulations for the CDBG program have required compliance with the hazard elimination requirements in the rehabilitation of existing housing with CDBG assistance. The hazard elimination regulations themselves assign responsibility for inspection of units rehabilitated with CDBG funds to the unit of local government or agency thereof.

The vast majority of CDBG-assisted rehabilitation takes place in residential structures built prior to 1950, and it is these structures that probably have interior and/or exterior lead-based paint surfaces. Under the CDBG program, the use of program funds for residential rehabilitation is not limited solely to units occupied by low- and moderate-income persons, but, because of program emphasis, the majority of rehabilitated units are occupied by such persons. Because of the shared cost nature of many of these CDBG rehabilitation programs, some of the cost burden will inevitably fall on lower income families. There may also be instances where the added cost of lead-based paint abatement—particularly intact paint—may cause the cost of rehabilitation to exceed either local program dollar limitations or, in the case of loan programs, the lower-income family's ability to pay, thus excluding the unit from rehabilitation. HUD recognizes that the increased requirements for lead-based paint inspection and removal may have adverse program effects. It has concluded, however, that the requirements of the statute and the concern for the health of children are overriding considerations that make it necessary to increase the requirements as authorized below. By focusing the requirements on units with children who have evidence of EBL, HUD has reduced the burden of costs to the degree practicable. Local agencies also have the flexibility to raise their program limits and/or to provide additional grant funds for the express purpose of abating lead-based paint hazards. Emergency repair and other single purpose rehabilitation programs have also been exempted as described in Section 3—Requirements. The rule has also been revised in order to clarify that the costs of inspection, screening, and testing for lead-based paint hazards, as well as the costs of related equipment and supplies, are eligible expenditures.

(b) *UDAG Program.* UDAG funds are granted to localities to be used in support of private investments. The locality loans funds to private sector developers for economic development activities, and/or uses funds directly for such activities. These activities include commercial, industrial and neighborhood development. Residential rehabilitation is an eligible use of UDAG funds. Twenty-nine percent or 2,726 planned units in FY 1985 projects involved rehabilitation. Though not funded at levels approaching Action Grant support for industrial or commercial projects, UDAG assistance to housing development activities has been substantial. The types of projects that include housing, the occupancy and construction characteristics of housing units developed through the Action Grant Program vary according to the type of project development involved. Housing development in mixed-use

projects is characterized by the production or renovation of rental units. Rental housing comprises 66 percent of the units developed as part of mixed-use projects; mixed-use projects also involve more new construction than housing-only projects. Rental housing is consistent with the thrust of mixed-use projects in supporting downtown development activities. In contrast, and reflecting the dominant purpose of housing-only projects to stabilize neighborhoods, 66 percent of such units involve rehabilitation and fully 83 percent are intended to be owner-occupied.

Residential units rehabilitated with UDAG funds are within the scope of "HUD-associated housing" as defined by HUD. Accordingly, HUD's regulations for the UDAG program have required compliance with the hazard elimination requirements in the rehabilitation of existing housing with UDAG assistance. The hazard elimination regulations themselves assign responsibility for inspection of units rehabilitated with UDAG funds to the unit of local government or agency thereof.

The majority of UDAG assisted residential rehabilitation takes place in structures built prior to 1950, and it is these structures that are most likely to have interior and/or exterior lead-based paint surfaces. Under the UDAG program, the use of program funds for residential rehabilitation includes units occupied by low- and moderate-income persons.

HUD expects that extra costs imposed by these new requirements will cause UDAG project recipients to reduce the number of units rehabilitated and could discourage applications for residential rehabilitation. The requirements, however, are revised in order to clarify that the costs of inspection, screening, and testing for lead-based paint hazards, as well as the costs of related equipment and supplies, are eligible expenditures.

HUD recognizes that its requirements for lead-based paint may cause some adverse impact on programs. However, as stated previously, these concerns must be balanced against the requirements of the statute and the concern for children. Since most impact will come in units with affected children under the age of seven, HUD believes these regulations will have only a moderate adverse impact on the program.

(c) *Secretary's fund.*—(1) *Secretary's fund for CDBGs for Indian Tribes and Alaskan native villages (Part 571) and for insular areas (Part 570, Subpart E).* The same concerns noted under the CDBG program section (Section IV.D.2(a)) apply to the Indian and Insular Area programs. In addition, because of the small size of many of these applicants, their isolation from urban areas and the grant ceilings, which limit the size of grants, the testing requirements will be burdensome.

(2) *Secretary's fund for CDBG Special Projects Program (Part 570, Subpart E).* The same concerns noted under the CDBG program section (Section IV.D.2(a)) apply to the Special Projects program. In addition, rehabilitation has not been a significant activity under this program.

(d) *Section 312 Rehabilitation Loan Program.* The section 312 program is a long existing program of the Department which provides direct loans to owners, both single family and investor-owned properties, at below market interest rates in both CDBG areas and in communities participating in the Urban Homesteading program. The rehabilitation conducted in these program areas generally includes rehabilitation to bring the property up to local code standards and agencies have been instructed to comply with lead-based paint regulation requirements, although the requirements have not been formally published under the program's existing rules. Recently, the Department published a new Section 312 Handbook, 7375.01 REV–2 (December 1986) which refers to the lead-based paint requirement. The Handbook will be revised to reflect any change covered by this Regulation. Since the objective of the program is to provide assistance to owners of property in need of rehabilitation, in order to make the rehabilitation of the property economically feasible, the additional requirement to abate hazards posed by all intact lead-based paint on the property will affect this objective. For investor owned property, the investor generally will have to absorb the additional cost and pass it on to the tenants, thus pushing up the rents and making the rehabilitation infeasible in many cases. For the single family owner-occupied property (approximately 78 percent of the program), the cost for this single item will take up much of the loan assistance needed to correct other code deficiencies, which may require additional financing at a higher rate, thus making the rehabilitation infeasible for this class of owner. This, as in the case of the Rental Rehabilitation Program, may have a negative impact on the ability of the program to accomplish its objective which is to provide an affordable source of financing for rehabilitation in CDBG areas and to support Urban Homesteading areas. As in the CDBG and Rental Rehabilitation Programs, HUD recognizes the burden of the inceased costs to the program and the property owner. This must, however, be balanced against the concern for the health of children. As in the CDBG and Rental Rehabilitation Programs, however, it is believed that the predominant increase in costs will be for testing and the abatement of intact paint and this only needs to occur where an affected child is living in the unit.

When inspections are required, however, the costs of inspection will be covered by the locality in charge of the program. It has been an established practice in the Section 312 program that the locality fully inspect the property and notify the applicant as to the necessary repairs needed to qualify for the assistance. This is currently the practice for lead-based paint items, and the Department is concerned about imposing added costs on loan applicants under this program.

If a property is acquired by HUD because of a default of a section 312 loan, HUD will follow the procedures for lead-based paint for HUD-owned properties set forth in Subpart O, § 200.815 or § 200.825 as appropriate (52 FR 1876 *et seq.*).

(e) *Rental rehabilitation.* The Rental Rehabilitation program was designed by the Department to support its new Housing Voucher program by providing a sufficient supply of decent and affordable units for use by families receiving Housing Vouchers. The program provides construction grants to assist in the rehabilitation of privately-owned residential rental properties for up to 50 percent of the rehabilitation costs generally not to exceed $5,000 per unit. The remaining funds to support the rehabilitation generally must be provided by the owner. Individual grantees have a wide variety of subsidy mechanisms ranging from grants to repayable amortized loans. The program is designed to accomplish moderate rehabilitation of approximately $10,000 per unit. To the extent that lead-based paint abatement requirements cause the rehabilitation costs to exceed this average range, the owner will have to absorb the costs. Abatement of intact lead-based paint hazards could significantly impact the rehabilitation costs required to be provided by the owner and, given the modest level of rents for these units, could make many projects infeasible given project income. The primary housing stock being addressed by the program is, in fact, pre-1950 housing; it may be assumed that such units would be significantly

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impacted by any universal requirements to abate hazards imposed by intact paint and thus potentially make rehabilitation of these units infeasible because of the added costs. This would have a direct, negative impact on the ability of the program to accomplish its objective of providing decent, affordable housing for lower-income tenants receiving Section 8 rental assistance.

As previously discussed in this Preamble, HUD recognizes the impact of increased costs on property owners and on the feasibility of projects. Again, this must be balanced against the concern for the health of children. As discussed previously, the grantee may provide 50 percent of the total rehabilitation costs (to include the cost of abatement not to exceed $5,000. Grantees may also request a high-cost waiver of § 511.10(e) to increase the $5,000 limit as permitted under the program. HUD believes that the most significant cost impact will be in the testing and abatement of intact paint but this action needs only to occur if an affected child is living in the unit to be rehabilitated.

3. *Requirements.* The requirements of §§ 510.410, 511.11(f) and 570.608 include a prohibition against the use of lead-based paint, a notification of hazards of lead-based paint poisoning and the availability and advisability of blood lead level screening, and requirements for the elimination of lead-based paint hazards. These requirements primarily apply to existing housing which receives rehabilitation assistance. Under the CDBG program requirements, the following activities are excluded: (a) Emergency repairs (not including lead-based paint-related emergency repairs); (b) weatherization; (c) water or sewer hook-ups; (d) installation of security devices (*e.g.*, smoke detectors, locks, etc.); (e) facilitation of tax exempt bond issuances which provide funds for rehabilitation; (f) other similar types of single-purpose programs that do not include physical repairs or remodeling of applicable surfaces (as defined in § 570.608(c)(2)) of residential structures; and (g) any non-single purpose rehabilitation that does not involve applicable surfaces (as defined in § 570.608(c)(2)) that does not exceed $3,000 per unit. HUD has determined that these projects should not be covered by § 570.608 because they do not involve rehabilitation of applicable surfaces.

These exempt activities differ from maintenance and modernization programs assisted under HUD's Comprehensive Improvement Assistance Program because the housing is usually privately owned and these activities are generally limited to under $3,000 per unit. HUD is not administratively imposing the lead-based paint requirements on these small-scale, single-purpose activities, because these requirements would have a much greater impact on the cost of carrying out these activities. However, if these activities involve rehabilitation of applicable surfaces (as defined in proposed § 570.608(c)(2)), defective paint and chewable surfaces must be treated as provided in § 570.608(c).

Emergency repair programs are those local programs designed exclusively to correct a health or life-threatening situation and which do not include general repairs on the unit. Such situations may include but are not limited to a leaking roof, defective heating system which has failed or is about to fail, or plumbing or electrical problems which cause health or safety problems. HUD does not exclude lead-based paint-related emergency repairs. In weatherization programs, cities usually set-aside $500–600 per unit for weatherstripping, plastic window coverings and minimal insulation. CDBG funding is sometimes also used to facilitate tax exempt bond issuances which provide funds for rehabilitation. Such funds subsidize issuance of the bonds including administrative costs but are not usually used to pay principal. All of the above activities are single-purpose programs or non-single purpose rehabilitation under $3,000 per unit that do not include significant physical repairs or remodeling of the interior or exterior surfaces of residential structures.

The section concerning hazard elimination in the programs covered by this rule requires the grantee to inspect for defective paint surfaces in all units constructed prior to 1973 which are occupied by families with children under seven years of age and which are receiving rehabilitation assistance. Defective paint surfaces are defined as paint on applicable surfaces that is cracking, scaling, chipping, peeling or loose. Applicable surfaces include all exterior surfaces of a residential structure up to five feet from the floor or ground such as a wall, stairs, deck, porch, railing, window or doors, which are readily accessible to children under seven years of age, and all interior surfaces of a residential structure. The inspection is to occur at the same time the property is being inspected for rehabilitation. Defective paint surfaces are to be included in the work write-up for the remainder of the rehabilitation work.

The grantee is required to test the lead content of chewable surface (*i.e.*, all chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, *e.g.*, protruding corners, windowsills and frames, doors and frames, and other protruding woodwork) if the family residing in a unit, constructed prior to 1973 and receiving rehabilitation assistance, includes a child under seven years of age with an identified EBL condition. Lead content on chewable surfaces must be tested by using an XRF or other method approved by HUD. Test readings of 1 mg/cm² or higher using an XRF are considered positive for presence of lead-based paint.

Where inspections find defective paint surfaces in such units, the defective areas are to be treated. Where the testing finds leaded chewable surfaces, the affected interior or exterior chewable surfaces must be treated. Treatment for defective paint and leaded chewable paint is to be performed before final inspection and approval of the work. Where weather prohibits repainting exterior surfaces before final inspection, the grantee may permit the owner to abate the defective paint and any chewable lead-based paint and agree to repaint by a specified date. Abatement methods including various removal or covering techniques are acceptable.

Individual program requirements and local program design will deare in compliance with these regulations. The grantee is to keep a copy of the inspection reports for at least three years. The owner is required to protect tenants from hazards associated with abatement procedures.

HUD field office monitoring of rehabilitation programs will cover compliance with these requirements. In cases of noncompliance, HUD could impose conditions or sanctions on grantees.

If any other HUD assistance is provided to units covered by these regulations, the more stringent requirements shall prevail. If HUD determines that a state or local law, ordinance, code or regulation provides at least a comparable level of protection from the hazards of lead-based paint poisoning, HUD may modify or waive these requirements. Grantees are reminded to comply with Federal, State or loyal requirements in disposing of lead-based paint and defective paint debris.

E. Urban Homesteading

The Department has also reviewed the Urban Homesteading program and has decided that the minimum lead-based paint standards in 24 CFR Part 35 should apply. The Assistant Secretary for Community Planning and Development does not intend to supersede Subpart C of Part 35 for the Urban Homesteading program. The Urban Homesteading program transfers HUD, Veterans Administration (VA), and Farmers Home Administration (FmHA) owned properties at no cost to States or local government for use in a HUD-approved homesteading program. Unoccupied, unrepaired single family houses are then conditionally conveyed to homesteaders selected by the participating localities. Section 810 of the Housing and Community Development Act of 1974, as amended, requires that the locality give special consideration to the applicant's need for housing and ability to make the repairs or to pay for them to be made. Priority is given to applicants whose housing fails to meet local health and safety standards and who currrently pay over 30 percent of their income for shelter. No funds are authorized in the statute for rehabilitation. These repairs are often funded through the Section 312 program, CDBG, or by private lenders. Section 810 funds may only be used to reimburse the FHA, VA or FmHA portfolio account for the purchase of these properties. An amendment to the enabling legislation would be required if Section 810 funds were to be used for lead-based paint abatement or any other purpose.

Regulations, issued for the Urban Homesteading program on June 24, 1985 (50 FR 25941), included a provision to comply with lead-based paint procedures (§ 590.11(d)(6)). This rule revises the Urban Homesteading program at § 590.11(d)(6) to incorporate by reference 24 CFR Part 35.

V. Section by Section Review of Proposed Regulations

The regulations amend Parts 510, 511, 570 and 590. Each of these amendments are described below.

Part 510

Section 510.410 is added. This section is discussed in detail in Section IV.D.2.(d).

Part 511

Section 511.11(f) is amended. This section is discussed in detail in Section IV.D.2.(e).

Part 570

Sections 570.202, 570.303, 570.458, 570.461 and 570.608 are amended. These sections are discussed in detail in Section IV.D.2. and 3.

Part 590

Section 590.11 is amended to incorporate by reference the lead-based paint regulations in Part 35. This section is discussed above in detail in Section IV.E.

Other Matters

Regulatory Flexibility Act

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. HUD finds that the rule does not have anticompetitive discriminatory aspects with regard to small entities nor are there any unusual procedures with which small entities should comply.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with Part 50 of this title, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20510.

OMB Control Number

The information collection requirements contained in §§ 510.410(b), 510.410(c)(2)(ii), and 510.410(c)(8); 511.11(f)(3)(ii)(B), 511.11(f)(3)(vi) and 511.11(f)(3)(viii); and 570.608(c)(3)(ii), 570.608(c)(7) and 570.608(c)(9) of this rule have been approved by the Office of Management and Budget ("OMB") under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3502) and assigned approval number 2506–0086.

Regulatory Impact Analysis

This rule qualifies as a major rule as defined in Executive Order 12291. The Urban Institute under contract with HUD has reviewed the costs of various treatments necessary as set forth under this rule and has made tentative conclusions regarding costs per unit and aggregate costs per affected program. This cost analysis entitled "Economic Analysis of Lead Paint Regulations Governing CPD Housing Rehab Programs", January 1987, serves as the Regulatory Impact Analysis. This study is available from the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. A small service and reproduction charge may be required.

The procedures otherwise required under Executive Order 12291 were initiated by forwarding draft documents to OMB but were not completed as to this rule because of a deadline imposed by judicial order, as described above.

Semiannual Agenda of Regulations

This rule was listed as sequence number 770 under the Office of the Secretary in the Department's Semiannual Agenda of Regulations published on October 27, 1986 (51 FR 38424, 38434) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 510

Loan programs: Housing and community development, Housing, Relocation assistance, Home improvement, Rehabilitation, Urban renewal

24 CFR Part 511

Rental rehabilitation grants, Administrative practice and procedure, Grant programs: Housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 570

Community development block grants, Grant programs: Housing and community development, Loan programs: Housing and community development, Low and moderate income housing, Pockets of poverty, Small cities.

24 CFR Part 590

Government property, Homesteading, Housing, Intergovernmental relations, Loan programs: Housing and community development.

Accordingly, 24 CFR Parts 510, 511, 570 and 590 are amended as follows:

PART 510—SECTION 312 REHABILITATION LOAN PROGRAM

1. The citation of authority for Part 510 continues to read as follows:

Authority: Sec. 312, United States Housing Act of 1964 (42 U.S.C. 1452b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 510.410 is added to read as follows:

§ 510.410 Lead-based paint.

(a) *Prohibition against the use of lead-based paint.* Section 401(b) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831(b)) directs the Secretary to prohibit the use of lead-based paint in

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residential structures rehabilitated with Federal assistance. Such prohibitions are contained in 24 CFR Part 35, Subpart B, and are applicable to residential structures rehabilitated with assistance provided under this part.

(b) *Notification of hazards of lead-based paint poisoning.* (1) The Secretary has promulgated requirements regarding notification to purchasers and tenants of HUD-associated housing constructed prior to 1978 of the hazards of lead-based paint poisoning at 24 CFR Part 35, Subpart A. This paragraph is promulgated pursuant to the authorization granted in 24 CFR 35.5(c) and supersedes, with respect to all housing to which it applies, the notification requirements prescribed by Subpart A of 24 CFR Part 35.

(2) For properties constructed prior to 1978, owner-occupant applicants for rehabilitation assistance provided under this part shall be notified: (i) That the property may contain lead-based paint; (ii) of the hazards of lead-based paint; (iii) of the symptoms and treatment of lead-based paint poisoning; (iv) of the precautions to be taken to avoid lead-based poisoning (including maintenance and removal techniques for eliminating such hazards); (v) of the advisability and availability of blood lead level screening for children under seven years of age; and (vi) that in the event lead-based paint is found in the property, appropriate abatement procedures may be undertaken. Owners of investment properties receiving rehabilitation assistance under this part shall provide the same notification as described above to their tenants.

(c) *Elimination of lead-based paint hazards.* The purpose of this paragraph is to implement the provisions of Section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate as far as practicable the hazards due to the presence of paint which may contain lead and to which children under seven years of age may be exposed in existing housing which is rehabilitated with assistance provided under this part. The Secretary has promulgated requirements regarding the elimination of lead-based paint hazards in HUD-associated housing at 24 CFR Part 35, Subpart C. This paragraph is promulgated pursuant to the authorization granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements prescribed by Subpart C of 24 CFR Part 35. These requirements shall be implemented not later than September 21, 1987.

(1) *Definitions—Applicable surface.* All exterior surfaces of a residential structure, up to five feet from the floor or ground, such as a wall, stairs, deck, porch, railing, window or doors, which are readily accessible to children under seven years of age, and all interior surfaces of a residential structure.

Chewable surface. All chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, *e.g.*, protruding corners, windowsills and frames, doors and frames, and other protruding woodwork.

Defective paint surface. Paint on applicable surfaces that is cracking, scaling, chipping, peeling or loose.

Elevated blood lead level or EBL. Excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 ug/dl (micrograms of lead per deciliter of whole blood) or greater.

Lead-based paint surface. A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm^2.

(2) *Inspection and testing*—(i) *Defective paint surfaces.* The local agency shall inspect for defective paint surfaces in all units constructed prior to 1973 which are occupied by families with children under seven years of age and which are proposed for rehabilitation assistance. The inspection shall occur at the same time the property is being inspected for rehabilitation. Defective paint conditions will be included in the work write-up for the remainder of the rehabilitation work.

(ii) *Chewable surfaces.* The local agency shall be required to test the lead content of chewable surfaces if the family residing in a unit, constructed prior to 1973 and receiving rehabilitation assistance, includes a child under seven years of age with an identified EBL condition. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm^2 or higher using an XRF shall be considered positive for presence of lead-based paint.

(iii) *Abatement without testing.* In lieu of the procedures set forth in paragraph (c)(2)(ii) of this section, in the case of a residential structure constructed prior to 1973, the owner may forego testing and abate all interior and exterior surfaces covered by this rule in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii).

(3) *Abatement actions.* (i) For inspections performed under paragraph (c)(2)(i) of this section and where defective paint surfaces are found, treatment shall be provided to defective areas. Treatment shall be performed before final inspection and approval of the work.

(ii) For testing performed under paragraph (c)(2)(ii) of this section and where interior chewable surfaces are found to contain lead-based paint, all interior chewable surfaces in any affected room shall be treated. Where exterior chewable surfaces are found to contain lead-based paint, the entire exterior chewable surface shall be treated. Treatment shall be performed before final inspection and approval of the work.

(iii) When weather prohibits repainting exterior surfaces before final inspection, the local agency may permit the owner to abate the defective paint or chewable lead-based paint as required by this section and agree to repaint by a specified date. A separate inspection is required.

(4) *Abatement methods.* At a minimum, treatment of the defective areas and chewable lead-based paint surfaces shall consist of covering or removal of the painted surface as described in 24 CFR 35.24(b)(2)(ii).

(5) *Funding for inspection, testing and abatement.* Program requirements and local program design will determine whether the cost of inspection, testing or abatement is to be borne by the owner/occupant or investor owner, the local agency or a combination of the owner/occupant or investor owner and local agency.

(6) *Certifications.* The local agency shall be required to certify that inspections and tests for lead-based paint of housing units are in compliance with paragraph (c)(2) of this section.

(7) *Tenant protection.* The loan recipient shall take appropriate action to protect tenants from hazards associated with abatement procedures. Where necessary, these actions may include the temporary relocation of tenants during the abatement process.

(8) *Records.* The local agency shall keep a copy of each inspection and/or test report for at least three years.

(9) *Monitoring and enforcement.* HUD field office monitoring of rehabilitation programs covers compliance with applicable program requirements for lead-based paint. A CPD Field Monitoring Handbook implementing these monitoring and enforcement requirements will be issued or amended as appropriate. In cases of noncompliance, HUD may impose conditions or sanctions on grantees to encourage prompt compliance.

(10) *Compliance with other program requirements, Federal, State and local laws.*—(i) *Other program requirements.* To the extent that assistance from any of the programs covered by this section is used in conjunction with other HUD program assistance which have lead-based paint requirements which may have more or less stringent requirements, the more stringent requirements shall prevail.

(ii) *HUD responsibility.* If HUD determines that a State or local law, ordinance, code or regulation provides for lead-based paint testing or hazard abatement in a manner which provides a level of protection from the hazards of lead-based paint poisoning at least comparable to that provided by the requirements of this section and that adherence to the requirements of this subpart would be duplicative or otherwise cause inefficiencies, HUD may modify or waive the requirements of this section in such manner as may be appropriate to promote efficiency while ensuring such comparable level of protection.

(iii) Loan recipient/local agency responsibility. Nothing in this section is intended to relieve any loan recipient/local agency in the programs covered by this section of any responsibility for compliance with State or local laws, ordinances, codes or regulations governing lead-based paint testing or hazard abatement.

(iv) *Assisted properties acquired by HUD.* Disposition of properties acquired by HUD under the 312 program following default has been delegated to the Assistant Secretary for Housing—Federal Housing Commissioner (49 FR 1942, January 16, 1984). Lead-based paint activities related to disposition will follow the requirements for residential structures set forth in Subpart O, § 200.815 for single family disposition or Subpart O, § 200.825 for multifamily disposition, as the case may be.

(v) *Disposal of lead-based paint debris.* Lead-based paint and defective paint debris shall be disposed of in accordance with applicable Federal, State or local requirements. (See, *e.g.*, 40 CFR Parts 260 through 271.)

PART 511—RENTAL REHABILITATION GRANT PROGRAM

3. The citation of authority for Part 511 continues to read as follows:

Authority: Sec. 17 of the United States Housing Act of 1937 (42 U.S.C. 1437o); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. Section 511.11(f) is revised to read as follows:

§ 511.11 Other Federal requirements.

* * * * *

(f) *Lead-based Paint—(1) Prohibition against the use of lead-based paint.* Section 401(b) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831(b)) directs the Secretary to prohibit the use of lead-based paint in residential structures rehabilitated with Federal assistance. Such prohibitions are contained in 24 CFR Part 35, Subpart B, and are applicable to residential structures rehabilitated with assistance provided under this part.

(2) *Notification of hazards of lead-based paint poisoning.* (i) The Secretary has promulgated requirements regarding notification to purchasers and tenants of HUD-associated housing constructed prior to 1978 of the hazards of lead-based paint poisoning at 24 CFR Part 35, Subpart A. This paragraph is promulgated pursuant to the authorization granted in 24 CFR 35.5(c) and supersedes, with respect to all housing to which it applies, the notification requirements prescribed by Subpart A of 24 CFR Part 35.

(ii) For properties constructed prior to 1978, owner-occupant applicants for rehabilitation assistance provided under this part and tenants of properties rehabilitated with assistance provided under this part shall be notified: (A) That the property may contain lead-based paint; (B) of the hazards of lead-based paint; (C) of the symptoms and treatment of lead-based paint poisoning; (D) of the precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for eliminating such hazards); (E) of the advisability and availability of blood lead level screening for children under seven years of age; and (F) that in the event lead-based paint is found on the property, appropriate abatement procedures may be undertaken.

(3) *Elimination of lead-based paint hazards.* The purpose of this paragraph is to implement the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate as far as practicable the hazards due to the presence of paint which may contain lead and to which children under seven years of age may be exposed in existing housing which is rehabilitated with assistance provided under this part. The Secretary has promulgated requirements regarding the elimination of lead-based paint hazards in HUD-associated housing at 24 CFR Part 35, Subpart C. This paragraph is promulgated pursuant to the authorization granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements prescribed by Subpart C of 24 CFR Part 35. These requirements shall be implemented not later than September 21, 1987.

(i) *Definitions.—Applicable surface.* All exterior surfaces of a residential structure, up to five feet from the floor or ground, such as a wall, stairs, deck, porch, railing, window, or doors, which are readily accessible to children under seven years of age, and all interior surfaces of a residential structure.

Chewable surface. All chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, *e.g.*, protruding corners, windowsills and frames, doors and frames, and other protruding woodwork.

Defective paint surface. Paint on applicable surfaces that is cracking, scaling, chipping, peeling or loose.

Elevated blood lead level or EBL. Excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 ug/dl (micrograms of lead per deciliter of whole blood) or greater.

Grantee. The direct formula grantee or recipient of funds under the state program.

Lead-based paint surface. A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm^2.

(ii) *Inspection and Testing*—(A) *Defective paint surfaces.* The grantee shall inspect for defective paint surfaces in all units constructed prior to 1973 which are occupied by families with children under seven years of age and which are proposed for rehabilitation assistance. The inspection shall occur at the same time the property is being inspected for rehabilitation. Defective paint conditions will be included in the work write-up for the remainder of the rehabilitation work.

(B) *Chewable surfaces.* The grantee shall be required to test the lead content of chewable surfaces if the family residing in a unit, constructed prior to 1973 and receiving rehabilitation assistance, includes a child under seven years of age with an identified EBL condition. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm^2 or higher using an XRF shall be considered positive for presence of lead-based paint.

(C) *Abatement without testing.* In lieu of the procedures set forth in paragraph (f)(3)(ii)(B) of this section, in the case of a residential structure constructed prior to 1973, the grantee may forego testing and abate all interior and exterior surfaces covered by this rule in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii).

Subpart A. This paragraph is

similar types of single-purpose programs

1973, the grantee may forego testing and

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(iii) *Abatement actions.* (A) For inspections performed under § 511.11(f)(3)(ii)(A) and where defective paint surfaces are found, treatment shall be provided to defective areas. Treatment shall be performed before final inspection and approval of the work.

(B) For testing performed under § 511.11(f)(3)(ii)(B) and where interior chewable surfaces are found to contain leainspection and approval of the work.

(C) When weather prohibits repainting exterior surfaces before final inspection, the grantee, may permit the owner to abate the defective paint or chewable lead-based paint as required by this section and agree to repaint by a specified date. A separate inspection is required.

(iv) *Abatement methods.* At a minimum, treatment of the defective areas and chewable lead-based paint surfaces shall consist of covering or removal of the painted surface as described in 24 CFR 23.24(b)(2)(ii).

(v) *Funding for inspection, testing and abatement.* Program requirements and local program design will determine whether the cost of inspection, testing or abatement is to be borne by the owner/developer, the grantee or a combination of the owner/developer and the grantee.

(vi) *Certifications.* The grantee shall be required to certify that inspections and tests for lead-based paint of housing units are in compliance with § 511.11(f)(3)(ii).

(vii) *Tenant protection.* The owner shall take appropriate action to protect tenants from hazards associated with abatement procedures. Where necessary, these actions may include the temporary relocation of tenants during the abatement process.

(viii) *Records.* The grantee shall keep a copy of each inspection and/or test report for at least three years. The grantee shall provide to the local Public Housing Authority a copy of the inspection and/or test report if the housing unit is or will be occupied by a Section 8 assisted family.

(ix) *Monitoring and enforcement.* HUD field office monitoring of rehabilitation programs covers compliance with applicable program requirements for lead-based paint. A CPD Field Monitoring Handbook implementing these monitoring and enforcement requirements will be issued or amended as appropriate. In cases of noncompliance, HUD may impose conditions or sanctions on grantees to encourage prompt compliance.

(x) *Compliance With Other Program Requirements, Federal, State and Local Laws*—(A) *Other program requirements.* To the extent that assistance from any of the programs covered by this section is used in conjunction with other HUD program assistance which have lead-based paint requirements which may have more or less stringent requirements, the more stringent requirements shall prevail.

(B) *HUD responsibility.* If HUD determines that a state or local law, ordinance, code or regulation provides for lead-based paint testing or hazard abatement in a manner which provides a level of protection from the hazards of lead-based paint poisoning at least comparable to that provided by the requirements of this section and that adherence to the requirements of this subpart would be duplicative or otherwise cause inefficiences, HUD may modify or waive the requirements of this section in such manner as may be appropriate to promote efficiency while ensuring such comperable level of protection.

(C) *Grantee responsibility.* Nothing in this section is intended to relieve any grantee in the programs covered by this section of any responsibility for compliance with state or local laws, ordinances, codes or regulations governing lead-based paint testing or hazard abatement.

(D) *Disposal of lead-based paint debris.* Lead-based paint and defective paint debris shall be disposed of in accordance with applicable Federal, State or local requirements. (See, *e.g.*, 40 CFR Parts 260 through 271.)

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

Subpart G—Urban Development Action Grants

5. The citation of authority for Part 570 continues to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

6. Section 570.202(b)(7) is amended by adding paragraph (b)(7)(iv) to read as follows:

§ 570.202 Eligible rehabilitation and preservation activities.

* * * * *

(b) * * *

(7) * * *

(iv) Procedures concerning inspection and testing for and abatement of lead-based paint, pursuant to § 570.608.

7. Section 570.303 is amended by revising paragraph (g) and adding a new paragraph (h) to read as follows:

§ 570.303 Certifications.

* * * * *

(g) Its notification, inspection, testing and abatement procedures concerning lead-based paint will comply with § 570.608.

(h) It will comply with the other provisions of the Act and with other applicable laws.

8. Section 570.458 is amended by adding paragraph (c)(14)(ix)(N) to read as follows:

§ 570.458 Full applications.

* * * * *

(c) * * *

(14) * * *

(ix) * * *

(N) The lead-based paint regulations as set forth in 24 CFR Part 35 as modified by § 570.608 of Subpart K and certify that it will require the participating party obligated to carry out the rehabilitation activities to comply with the requirements in § 570.608 of Subpart K.

* * * * *

9. Section 570.461 is amended by adding paragraph (g) to read as follows:

§ 570.461 Post preliminary approval requirements.

* * * * *

(g) *Lead-based paint requirements.* The recipient may receive preliminary approval prior to the accomplishment of notification, inspection, testing, and abatement as described in § 570.608 of Subpart K, but no funds will be released until such actions are complete and evidence of compliance is submitted to HUD.

Subpart K—Other Program Requirements

10. Section 570.608 is revised to read as follows:

§ 570.608 Lead-based paint.

(a) *Prohibition against the use of lead-based paint.* Section 401(b) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831(b)) directs the Secretary to prohibit the use of lead-based paint in residential structures constructed or rehabilitated with Federal assistance. Such prohibitions are contained in 24 CFR Part 35, Subpart B, and are applicable to residential structures constructed or rehabilitated with assistance provided under this part.

(b) *Notification of hazards of lead-based paint poisoning.* (1) The Secretary has promulgated requirements regarding notification to purchasers and tenants of HUD-associated housing constructed prior to 1978 of the hazards of lead-based paint poisoning at 24 CFR Part 35, Subpart A. This paragraph is promulgated pursuant to the authorization granted in 24 CFR 35.5(c) and supersedes, with respect to all housing to which it applies, the notification requirements prescribed by Subpart A of 24 CFR Part 35.

(2) For properties constructed prior to 1978, applicants for rehabilitation assistance provided under this part and tenants or purchasers of properties owned by the grantee or its subrecipient and acquired or rehabilitated with assistance provided under this part shall be notified:

(i) That the property may contain lead-based paint; (ii) of the hazards of lead-based paint; (iii) of the symptoms and treatment of lead-based paint poisoning; (iv) of the precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for eliminating such hazards); (v) of the advisability and availability of blood lead level screening for children under seven years of age; and (vi) that in the event lead-based paint is found on the property, appropriate abatement procedures may be undertaken.

(c) *Elimination of lead-based paint hazards.* The purpose of this paragraph is to implement the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate as far as practicable the hazards due to the presence of paint which may contain lead and to which children under seven years of age may be exposed in existing housing which is rehabilitated with assistance provided under this part. The Secretary has promulgated requirements regarding the elimination of lead-based paint hazards in HUD-associated housing at 24 CFR Part 35, Subpart C. This paragraph is promulgated pursuant to the authorization granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements prescribed by Subpart C of 24 CFR Part 35. These requirements shall be implemented not later than September 21, 1987.

(1) *Applicability.* This paragraph applies to the rehabilitation of applicable surfaces in existing housing which is assisted under this part. The following activities assisted under the Community Development Block grant program are not covered by this paragraph:

(i) Emergency repairs (not including lead-based paint-related emergency repairs); (ii) weatherization; (iii) water or sewer hook-ups; (iv) installation of security devices; (v) facilitation of tax exempt bond issuances which provide funds for rehabilitation; (vi) other similar types of single-purpose programs that do not include physical repairs or remodeling of applicable surfaces (as defined in § 35.22) of residential structures; and (vii) any non-single purpose rehabilitation that does not involve applicable surfaces (as defined in 24 CFR Part 35.22) that does not exceed $3,000 per unit.

(2) *Definitions—Applicable surface.* All exterior surfaces of a residential structure, up to five feet from the floor or ground, such as a wall, stairs, deck, porch, railing, window, or doors, which are readily accessible to children under seven years of age, and all interior surfaces of a residential structure.

Chewable surface. All chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, *e.g.*, protruding corners, windowsills and frames, doors and frames, and other protruding woodwork.

Defective paint surface. Paint on applicable surfaces that is cracking, scaling, chipping, peeling or loose.

Elevated blood lead level or EBL. Excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 ug/dl (micrograms of lead per deciliter of whole blood) or greater.

Lead-based paint surface. A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm².

(3) *Inspection and Testing—(i) Defective paint surfaces.* The grantee shall inspect for defective paint surfaces in all units constructed prior to 1973 which are occupied by families with children under seven years of age and which are proposed for rehabilitation assistance. The inspection shall occur at the same time the property is being inspected for rehabilitation. Defective paint conditions will be included in the work write-up for the remainder of the rehabilitation work.

(ii) *Chewable surfaces.* The grantee shall be required to test the lead content of chewable surfaces if the family residing in a unit, constructed prior to 1973 and receiving rehabilitation assistance, includes a child under seven years of age with an identified EBL condition. Lead content shall be tested by using an X-ray fluorescence analyzer (XPF) or other method approved by HUD. Test readings of 1 mg/cm² or higher using an XRF shall be consider positive for presence of lead-based paint.

(iii) *Abatement without testing.* In lieu of the procedures set forth in paragraph (c)(3)(ii) of this section, in the case of a residential structure constructed prior to 1973, the grantee may forego testing and abate all interior and exterior surfaces covered by this rule in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii).

(4) *Abatement Actions*—(i) For inspections performed under § 570.608(c)(3)(i) and where defective paint surfaces are found, treatment shall be provided to defective areas. Treatment shall be performed before final inspection and approval of the work.

(ii) For testing performed under § 570.608(c)(3)(ii) and where interior chewable surfaces are found to contain lead-based paint, all interior chewable surfaces in any affected room shall be treated. Where exterior chewable surfaces are found to contain lead-based paint, the entire exterior chewable surface shall be treated. Treatment shall be performed before final inspection and approval of the work.

(iii) When weather prohibits repainting exterior surfaces before final inspection, the grantee, may permit the owner to abate the defective paint or chewable lead-based paint as required by this section and agree to repaint by a specified date. A separate inspection is required.

(5) *Abatement methods.* At a minimum, treatment of the defective areas and chewable lead-based paint surfaces shall consist of covering or removal of the painted surface as described in 24 CFR 35.24(b)(2)(ii).

(6) *Funding for Inspection, testing and abatement.* Program requirements and local program design will determine whether the cost of inspection, testing or abatement is to be borne by the owner/developer, the grantee or a combination of the owner/developer and the grantee.

(7) *Tenant protection.* The owner/developer shall take appropriate action to protect tenants from hazards associated with abatement procedures. Where necessary, these actions may include the temporary relocation of tenants during the abatement process. The owner/developer shall notify the grantee of all such actions taken.

(8) *Records.* The grantee shall keep a copy of each inspection and/or test report for at least three years.

(9) *Monitoring and enforcement.* HUD field office monitoring of rehabilitation programs includes reviews for compliance with applicable program requirements for lead-based paint. The CPD Field Monitoring Handbook which currently includes instructions for monitoring lead-based paint requirements will be amended as appropriate. In cases of noncompliance, HUD may impose conditions or

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sanctions on grantees to encourage prompt compliance.

(10) *Compliance With Other Program Requirements, Federal, State and Local Laws—(i) Other program requirements.* To the extent that assistance from any of the programs covered by this section is used in conjunction with other HUD program assistance which have lead-based paint requirements which may have more or less stringent requirements, the more stringent requirements shall prevail.

(ii) *HUD responsibility.* If HUD determines that a state or local law, ordinance, code or regulation provides for lead-based paint testing or hazard abatement in a manner which provides a level of protection from the hazards of lead-based paint poisoning at least comparable to that provided by the requirements of this section and that adherence to the requirements of this subpart would be duplicative or otherwise cause inefficiencies, HUD may modify or waive the requirements of this section in such manner as may be appropriate to promote efficiency while ensuring such comparable level of protection.

(iii) *Grantee responsibility.* Nothing in this section is intended to relieve any grantee in the programs covered by this section of any responsibility for compliance with state or local laws, ordinances, codes or regulations governing lead-based paint testing or hazard abatement.

(iv) *Disposal of lead-based paint debris.* Lead-based paint and defective paint debris shall be disposed of in accordance with applicable Federal, state or local requirements. (See, *e.g.*, 40 CFR Parts 260 through 271.)

PART 590—URBAN HOMESTEADING

11. The citation of authority for Part 590 continues to read as follows:

Authority: Sec. 810 of the Housing and Community Development Act of 1974 (12 U.S.C. 1706e); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

12. Section 590.11(d)(6) is revised to read as follows:

§ 590.11 Applications.

* * * * *

(d) * * *

(6) The applicant or its designated public agency will comply with the HUD lead-based paint procedures set forth in 24 CFR Part 35.

* * * * *

Dated: February 12, 1987.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 87-3280 Filed 2-12-87; 12:33 pm]

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500–599	13.00	Jan. 1, 1986
600–End	18.00	Jan. 1, 1986
13	13.00	Jan. 1, 1986
14 Parts:		
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60–139	17.00	Jan. 1, 1986
140–199	6.50	Jan. 1, 1986
200–1199	13.00	Jan. 1, 1986
1200–End	6.50	Jan. 1, 1986
15 Parts:		
0–299	12.00	Jan. 1, 1986
300–399	13.00	Jan. 1, 1986
400–End	18.00	Jan. 1, 1986
16 Parts:		
0–149	6.00	Jan. 1, 1986
150–999	12.00	Jan. 1, 1986
1000–End	13.00	Jan. 1, 1986
17 Parts:		
1–239	13.00	Apr. 1, 1986
240–End	18.00	Apr. 1, 1986
18 Parts:		
1–149	13.00	Apr. 1, 1986
150–399	13.00	Apr. 1, 1986
400–End	9.50	Apr. 1, 1986
19 Parts:		
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200–End	13.00	Apr. 1, 1986
20 Parts:		
1–399	13.00	Apr. 1, 1986
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500–End	18.00	Apr. 1, 1986
21 Parts:		
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170–199	14.00	Apr. 1, 1986
200–299	6.50	Apr. 1, 1986
300–499	18.00	Apr. 1, 1986
500–599	18.00	Apr. 1, 1986
600–799	9.50	Apr. 1, 1986
800–1299	14.00	Apr. 1, 1986
1300–End	6.50	Apr. 1, 1986
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24 Parts:		
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500–699	6.50	Apr. 1, 1986
700–1699	18.00	Apr. 1, 1986
1700–End	9.50	Apr. 1, 1986
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26 Parts:		
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50–299	13.00	Apr. 1, 1986
300–499	13.00	Apr. 1, 1986
500–599	6.50	Apr. 1, 1986
600–End	6.50	Apr. 1, 1986
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200–End	13.00	Apr. 1, 1986
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34 Parts:		
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3 (1985 Compilation and Parts 100 and 101)	14.00	[1] Jan. 1, 1986
4	11.00	Jan. 1, 1986
5 Parts:		
1–1199	18.00	Jan. 1, 1986
1200–End, 6 (6 Reserved)	6.50	Jan. 1, 1986
7 Parts:		
0–45	24.00	Jan. 1, 1986
46–51	16.00	Jan. 1, 1986
52	18.00	Jan. 1, 1986
53–209	14.00	Jan. 1, 1986
210–299	21.00	Jan. 1, 1986
300–399	11.00	Jan. 1, 1986
400–699	19.00	Jan. 1, 1986
700–899	17.00	Jan. 1, 1986
900–999	20.00	Jan. 1, 1986
1000–1059	12.00	Jan. 1, 1986
1060–1119	9.50	Jan. 1, 1986
1120–1199	8.50	Jan. 1, 1986
1200–1499	13.00	Jan. 1, 1986
1500–1899	7.00	Jan. 1, 1986
1900–1944	23.00	Jan. 1, 1986
1945–End	23.00	Jan. 1, 1986
8	7.00	Jan. 1, 1986
9 Parts:		
1–199	14.00	Jan. 1, 1986
200–End	14.00	Jan. 1, 1986
10 Parts:		
0–199	22.00	Jan. 1, 1986
200–399	13.00	Jan. 1, 1986
400–499	14.00	Jan. 1, 1986
500–End	23.00	Jan. 1, 1986
11	7.00	Jan. 1, 1986
12 Parts:		
1–199	8.50	Jan. 1, 1986
200–299	22.00	Jan. 1, 1986
300–499	13.00	Jan. 1, 1986
500–End	26.00	Jan. 1, 1986
13	19.00	Jan. 1, 1986
14 Parts:		
1–59	20.00	Jan. 1, 1986
60–139	19.00	Jan. 1, 1986
140–199	7.50	Jan. 1, 1986
200–1199	14.00	Jan. 1, 1986
1200–End	8.00	Jan. 1, 1986
15 Parts:		
0–299	7.00	Jan. 1, 1986
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1000–End	18.00	Jan. 1, 1986
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240–End	19.00	Apr. 1, 1986
18 Parts:		
1–149	15.00	Apr. 1, 1986
150–399	25.00	Apr. 1, 1986
400–End	6.50	Apr. 1, 1986
19	29.00	Apr. 1, 1986
20 Parts:		
1–399	10.00	Apr. 1, 1986
400–499	22.00	Apr. 1, 1986
500–End	23.00	Apr. 1, 1986
21 Parts:		
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170–199	16.00	Apr. 1, 1986
200–299	6.00	Apr. 1, 1986
300–499	25.00	Apr. 1, 1986
500–599	21.00	Apr. 1, 1986
600–799	7.50	Apr. 1, 1986
800–1299	13.00	Apr. 1, 1986
1300–End	6.50	Apr. 1, 1986
22	28.00	Apr. 1, 1986
23	17.00	Apr. 1, 1986
24 Parts:		
0–199	15.00	Apr. 1, 1986
200–499	24.00	Apr. 1, 1986
500–699	8.50	Apr. 1, 1986
700–1699	17.00	Apr. 1, 1986
1700–End	12.00	Apr. 1, 1986
25	24.00	Apr. 1, 1986
26 Parts:		
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§§ 1.851–1.1200	29.00	Apr. 1, 1986
§§ 1.1201–End	29.00	Apr. 1, 1986
2–29	19.00	Apr. 1, 1986
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200–699	8.50	July 1, 1986
700–End	17.00	July 1, 1986
31 Parts:		
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200–End	16.00	July 1, 1986

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34 Parts:		
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400–End	25.00	July 1, 1986
35	9.50	July 1, 1986
36 Parts:		
1–199	12.00	July 1, 1986
200–End	19.00	July 1, 1986
37	12.00	July 1, 1986
38 Parts:		
0–17	21.00	July 1, 1986
18–End	15.00	July 1, 1986
39	12.00	July 1, 1986
40 Parts:		
1–51	21.00	July 1, 1986
52	27.00	July 1, 1986
53–60	23.00	July 1, 1986
61–80	10.00	July 1, 1986
81–99	25.00	July 1, 1986
100–149	23.00	July 1, 1986
150–189	21.00	July 1, 1986
190–399	27.00	July 1, 1986
400–424	22.00	July 1, 1986
425–699	24.00	July 1, 1986
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41 Chapters:		
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1–100	9.50	July 1, 1986
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46 Parts:		
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200–499	19.00	Oct. 1, 1986
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[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1986. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1986. The CFR volume issued as of July 1, 1984, should be retained.

[4] No amendments to this volume were promulgated during the period July 1, 1985 to June 30, 1986. The CFR volume issued as of July 1, 1985 should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[7] No amendments to this volume were promulgated during the period Oct. 1, 1985 to Sept. 30, 1986. The CFR volume issued as of Oct. 1, 1985 should be retained.

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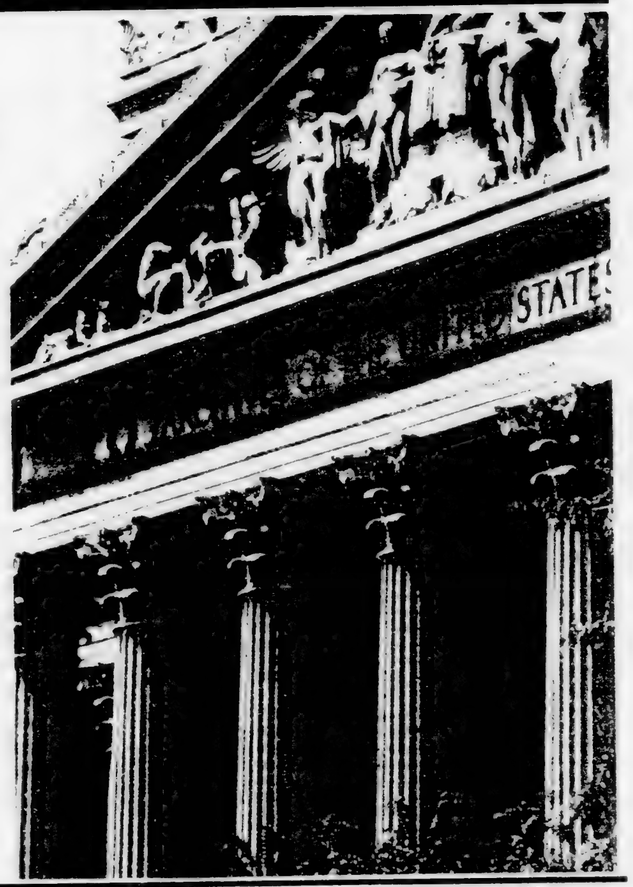
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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

HOUSTON, TX

WHEN: March 10; at 9 am.
WHERE: Room 4415, Federal Building, 515 Rusk Avenue, Houston, TX.
RESERVATIONS: Call the Houston Federal Information Center on the following local numbers:
Houston 713-229-2552
Austin 512-472-5495
San Antonio 512-224-4471
New Orleans 504-589-6696

ATLANTA, GA

WHEN: March 26; at 9 am.
WHERE: L.D. Strom Auditorium, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, GA.
RESERVATIONS: Call the Atlanta Federal Information Center, 404-331-2170.

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Title 3—

The President

Proclamation 5608 of February 12, 1987

National Year of Thanksgiving, 1987

By the President of the United States of America

A Proclamation

We, as a people, have been truly blessed, and for these blessings we should be everlastingly grateful to the God to Whose providence this Nation was committed from its very inception. President Washington issued a Thanksgiving Proclamation in 1789 "to recommend to the people of the United States a day of public thanksgiving and prayer to be observed by acknowledging with grateful heart the many signal favors of Almighty God, especially by affording them an opportunity peaceably to establish a form of government for their safety and happiness."

To remind us of our own rich heritage and the blessings of life in America, 1987 has been designated the National Year of Thanksgiving. It is no coincidence that this is the year in which we celebrate the 200th anniversary of our Constitution.

The early settlers of our country possessed a strength and a conviction based on their faith in God that helped them withstand the rigors and hardships of carving a nation out of wilderness. They laid a firm foundation built on the worth, dignity, and inalienable rights of the individual. For sustaining them and granting them success in bringing forth on this continent a new Nation, they praised the Almighty and His mercy.

Throughout our history our Presidents have summoned the Nation to continue this tradition of praise and thanksgiving. From George Washington kneeling in the snow at Valley Forge to Abraham Lincoln praying for the preservation of the Union to Franklin Roosevelt expressing confidence the prayers of mankind would bring us through to victory, we have turned with faith and trust to the One Who holds the whole wide world in His hands.

The national celebration of the Bicentennial of the Constitution also gives us an opportunity to remember and honor those who gathered in Philadelphia to forge a document that would provide a blueprint for this great Nation. Benjamin Franklin, the oldest member of the Assembly, reminded his fellow delegates that God had heard their prayers during their struggle for Independence. Should they not remember, he asked, that God governs in the affairs of men? "If a sparrow cannot fall without His notice," he urged them, "how can an empire rise without His aid?"

We look to the future of our Nation in this same spirit. Let us thank God for our constitutional form of government, for our precious freedoms of speech, assembly, religion, and the press, and for all those who sacrificed to preserve them in peace and in war for two centuries.

In recognition of the vital role that expressions of thanksgiving play in our national heritage, the Congress, by Public Law 99–265, has designated 1987 as a "National Year of Thanksgiving" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim 1987 as a National Year of Thanksgiving, and I urge all Americans during this year to celebrate and demonstrate our gratitude for God's blessings and to be grateful for our heritage and our future.

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IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of February, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-3424
Filed 2-13-87; 11:45 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 166

[Docket No. 86-059]

Swine Health Protection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning swine health protection to require the cancellation of the license held by the operator of a garbage treatment facility that for 4 consecutive months treats no garbage, and to provide a mechanism for a licensee to request cancellation of his or her license. These amendments are necessary to eliminate unnecessary visits by our inspectors to inactive facilities, and thereby save us unnecessary expenditure of workhours.

EFFECTIVE DATE: March 20, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. G.H. Frye, VS, APHIS, USDA, Room 839, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8711.

SUPPLEMENTARY INFORMATION:

Background

On March 20, 1986, we published a document in the **Federal Register** (51 FR 9682-9684), in which we proposed to amend the regulations in 9 CFR Part 166 (referred to below as the regulations), which contain provisions concerning swine health protection. Specifically, we proposed to require the cancellation of the license held by the operator of a garbage treatment facility that treats no garbage for 3 consecutive months, and also to provide a mechanism for a licensee to request cancellation of his or her license. These amendments are necessary to eliminate unnecessary visits by our inspectors to inactive facilities, and thereby save us an unnecessary expenditure of workhours.

We solicited comments concerning the proposal for a 60-day period ending May 19, 1986, and received eight comments. These comments were from private individuals, the American Farm Bureau Federation, and a State department of agriculture.

Several commenters favored the adoption of the proposed rule without change. One commenter favored the proposal on the condition that we streamline the process of reissuing a license after cancellation. Others suggested retention of the cancellation provision, but with certain changes to lengthen the period of inactivity prior to cancellation or to otherwise accommodate operators who cease treatment of garbage for a temporary and predictable period. One commenter was concerned that APHIS could not legally cancel a license that in some cases is issued by a State.

We have carefully considered all of the comments submitted in response to the proposal, and discuss below the issues raised by the comments.

Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal as a final rule with the changes discussed below.

Cancellation Provision

We proposed that the license of an operator licensed to cook garbage for feeding to swine be canceled when the operator treats no garbage for a minimum of 3 consecutive months. Several commenters expressed concern that an operator who ceases garbage treatment for more than 3 months due to the temporary cessation of a source of garbage would not be able to resume operations speedily once the source of garbage was renewed. Several commenters noted that this would particularly affect operators who obtain their garbage from schools, which close down for 3 months each year. Since such cessations occur on a predictable basis annually, the commenters believe that the cost and inconvenience to both the operator and the Department in cancelling and then reissuing the licenses would be unnecessary.

Commenters presented three options for circumventing this problem. These were: (1) Giving an operator the option of requesting inactive status for his or her license to accommodate a temporary cessation of treatment operations; (2) giving the Area Veterinarian in Charge the option of cancelling the license of an inactive operator, but not making it mandatory; and (3) extending the allowable period of inactivity before cancellation from 3 months to some longer period of time.

We have adopted the third option. Recognizing the legitimate concerns of operators who do temporarily cease garbage treatment, we are allowing a 4-month period of inactivity before cancelling a license. This provision will accommodate operators who annually lose their source of garbage during the school year's summer vacation.

We are rejecting the suggestion to allow for an inactive license. Such a provision would create unnecessary paperwork and administrative requirements for operators who do regularly shut down during summer vacation, compared to the alternative of extending the period of time before cancellation. The suggestion to give the Area Veterinarian in Charge the discretion to cancel or not cancel a license instead of requiring cancellation after a certain period of inactivity is rejected on the grounds that it could lead to frequent disputes between operators and APHIS over whether a license had been wrongfully canceled.

It is important to be aware that § 166.12(c) of the final rule provides, among other things, that a person whose license has been canceled, based upon the failure to treat garbage at the facility for a period of four consecutive months, may apply for a new license at any time by following the procedure for obtaining a license set forth in § 166.10.

Other Comments

As noted, one commenter supported the proposal to cancel a license after 3 months of inactivity, but only if we steamline the process of reissuing a license after cancellation. We are making no changes based on this comment. We believe that the adopted rule changes pertaining to a longer period of inactivity before cancellation will accommodate the majority of operators who temporarily cease garbage treatment operations.

One commenter expressed concern that we could not legally cancel a

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license issued by a State that has entered into a cooperative agreement with us under § 166.14(d) of the present regulations. We are making no changes based on this comment. A State that has entered into such an agreement is one that has agreed to cooperate with us in enforcing the regulations, and must cancel a license when the facts are such that a cancellation would be required under the regulations.

Area Veterinarian in Charge

In the document of March 20, 1986, we proposed changing the language throughout the regulations from "Area Veterinarian in Charge" to "Veterinarian in Charge." We are not making this proposed change, however, because it does not conform to the official title of the Area Veterinarian in Charge.

Miscellaneous

This document also makes certain nonsubstantive changes in the regulations for purposes of clarity.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The cancellation provisions in this document apply only to those facilities that have already become inactive, and any person who has a license canceled pursuant to this rule will be eligible to reapply for a license to operate the facility again after any such cancellation.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection provisions that are included in this rule have been approved by the Office of Management and Budget (OMB) and have been given the OMB control number 0579-0065.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 166

African swine fever, Animal diseases, Foot-and-mouth disease, Garbage, Hog cholera, Hogs, Swine vesicular disease, Vesicular exanthema of swine.

PART 166—SWINE HEALTH PROTECTION

Accordingly, 9 CFR Part 166 is amended as follows:

1. The authority citation for 9 CFR Part 166 continues to read as follows:

Authority: 7 U.S.C. 3802, 3803, 3804, 3808, 3809, 3811; 7 CFR 2.17, 2.51 and 371.2(d).

2. Section 166.1 is amended by removing the definitions for "Administrator", "Birds" and "Department".

3. Section 166.1 is amended by revising the definitions of the word "Inspector" and the terms "Animal and Plant Health Inspection Service (APHIS)", "Deputy Administrator" and "State Animal Health Official" to read as follows:

§ 166.1 Definitions in alphabetical order.

* * * * *

Animal and Plant Health Inspection Service. Animal and Plant Health Inspection Service, United States Department of Agriculture.

* * * * *

Deputy Administrator. The Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other official to whom authority is delegated to act for the Deputy Administrator.

* * * * *

Inspector. Any individual employed by the United States Department of Agriculture or by a State for the purposes of enforcing the Act and this part.

* * * * *

State animal health official. The individual employed by a State who is responsible for livestock and poultry disease control and eradication programs or any other official to whom authority is delegated to act for the State animal health official.

* * * * *

§ 166.2 [Amended]

4. In paragraph (b) of § 166.2, the reference to "of dissemination" is changed to "or dissemination".

5. In paragraph (c) of § 166.2, the word "Federal" is removed.

§ 166.4 [Amended]

6. In paragraph (b) of § 166.4, the reference to "§ 166.13" is changed to "§ 166.14".

§ 166.5 [Amended]

7. In paragraph (b) of § 166.5, the reference to "§ 166.13(b)" is changed to "§ 166.14(b) of this part".

§ 166.6 [Amended]

8. In § 166.6, the reference to "§ 166.13(b)" is changed to "§ 166.14(b) of this part".

§ 166.8 [Amended]

9. In § 166.8, the reference to "§ 166.13(c)" is changed to "§ 166.14(c) of this part".

§ 166.9 [Amended]

10. In paragraph (d) of § 166.9, the reference to "(one)" is removed.

§ 166.10 [Amended]

11. In paragraph (a) of § 166.10, the words "of this part" are inserted immediately after the reference to "§ 166.2(a)".

12. In paragraph (c)(1) of § 166.10, the word "his" is changed to "the" both times it appears.

13. In paragraph (c)(2) of § 166.10, the word "his" is changed to "the" and the term "authorized representative of the Secretary" is changed to "inspector".

14. In paragraph (d) of § 166.10, the word "Federal" and the reference to "(one)" is removed.

§ 166.11 [Amended]

15. In paragraph (b) of § 166.11, the word "Federal" is removed and the word "he" is changed to "the Deputy Administrator".

16. In paragraph (d) of § 166.11, the word "his" is changed to "such person's" both times it appears, the reference to "(one)" is removed, and the words "of this part" are inserted immediately after the reference to "§ 166.10".

§ 166.12 [Amended]

17. In paragraph (c) of § 166.12, the reference to "(thirty)" is removed.

18. In paragraph (d) of § 166.12, the reference to "authorized representative of the Department" is changed to "inspector".

§ 166.13 [Amended]

19. In paragraph (a) of § 166.13, the reference to "§§ 71.10(b) and 71.11 of Title 9, Code of Federal Regulations", is changed to "§§ 71.10(b) and 71.11 of this chapter".

20. In paragraph (b) of § 166.13, the words "as defined in Part 160 of this chapter" are inserted immediately after the words "accredited veterinarian", the reference to "§ 166.13(a)" is changed to "paragraph (a) of this section", and the reference to "State Animal Health Official" is changed to "State animal health official".

21. In paragraph (c) of § 166.13, the reference to "§ 166.13(a)" is changed to "paragraph (a) of this section".

22. In paragraph (d) of § 166.13, the reference to "Department of Agriculture" is changed to "United States Department of Agriculture".

§ 166.14 [Amended]

23. In paragraph (d) of § 166.14, the reference to "USDA" is changed to "United States Department of Agriculture".

24. In paragraph (e) of § 166.14, the reference to "the public" is changed to "The public", the reference to "U.S." is changed to "United States" each time it appears, and the references to "(APHIS)", "(USDA)", and "(usually the State Veterinarian)" are removed.

§§ 166.12, 166.13, and 166.14 [Redesignated as §§ 166.13, 166.14, and 166.15]

25. Present §§ 166.12, 166.13, and 166.14 are redesignated as §§ 166.13, 166.14 and 166.15 respectively and new § 166.12 is added to read as follows:

§ 166.12 Cancellation of licensee.

(a) The Area Veterinarian in Charge or, in States listed in § 166.15(d) of this part, the State animal health official shall cancel the license of a licensee when the Area Veterinarian in Charge or, in States listed in § 166.15(d) of this part, the State animal health official finds that no garbage has been treated for a period of 4 consecutive months at the facility operated by the licensee. Before such action is taken, the licensee of the facility will be informed in writing of the reasons for the proposed action and be given an opportunity to respond in writing. In those instances where there is a conflict as to the facts, the licensee shall, upon request, be afforded a hearing in accordance with rules of practice which shall be adopted for the proceeding.

(b) Any licensee may voluntarily have his or her license canceled by requesting such cancellation in writing and sending such request to the Area Veterinarian in Charge,[1] or, in States listed in § 166.15(d) of this part, to the State animal health official. The Area Veterinarian in Charge or, in States listed in § 166.15(d) of this part, the State animal health official shall cancel such license and shall notify the licensee of the cancellation in writing.

(c) Any person whose license is canceled in accordance with paragraph (a) or (b) of this section may apply for a new license at any time by following the procedure for obtaining a license set forth in § 166.10 of this part.

Done at Washington, DC, this 12th day of February 1987.

B.G. Johnson,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-3366 Filed 2-17-87; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 87-129]

Employment Contracts; Technical Amendment

Date: February 9, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; technical amendment.

SUMMARY: In order to implement changes to the Home Owners' Loan Act and the National Housing Act mandated by the Garn-St Germain Depository Institutions Act of 1982 ("Garn-St Germain Act"), Pub. L. No. 97-320, 96 Stat. 1469, the Federal Home Loan Bank Board ("Bank Board" or "Board") has adopted an amendment to its final regulations regarding employment contracts entered into by an insured institution with its officers, directors and other employees. The amendment conforms references in the regulation to the Home Owners' Loan Act of 1933 ("HOLA") and the National Housing Act ("NHA") with section redesignations within such acts that resulted from passage of the Garn-St Germain Act.

EFFECTIVE DATE: February 18, 1987.

FOR FURTHER INFORMATION CONTACT: Kathy Jones, Legal Assistant, (202) 377-7242, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On October 15, 1982, the Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97-320, 96 Stat. 1469, was signed into law. The Garn-St Germain Act amended section 5(d) of HOLA (12 U.S.C. 1464(d) (1982)) and section 407(g) of the NHA (12 U.S.C. 1730(g) (1982)), which in pertinent part, grant powers to the Bank Board for enforcement of the laws and regulations which concern the Bank Board, the Federal Home Loan Bank System, or the Federal Savings and Loan Insurance Corporation.

Section 563.39 of the Bank Board's regulations (12 CFR 563.39 (1986)) provides generally the requirements for contracts entered into by an insured institution with its officers and other employees. Specifically, § 563.39(b) (2) and (3) set forth provisions that are required in each employment contract. These sections cite applicable provisions of the HOLA and NHA.

By its action today, the Board amends § 563.39 of its regulations in order to conform the regulatory language with section 5(d) of HOLA and section 407(g) of the NHA, as amended by the Garn-St Germain Act, by changing the citations in the employment contracts regulation to the current statutory paragraph designations.

Because these amendments implement statutory directives, the Board finds that observance of the notice and comment procedure pursuant to 5 U.S.C. 552(b) and 12 CFR 508.11 and the 30-day delay of effective date pursuant to 5 U.S.C. 552(d) and 12 CFR 508.14 are unnecessary and contrary to the public interest due to the minor, technical, and conforming nature of this amendment.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby amends Part 563, Subchapter D, Chapter

[1] The name and address of the Area Veterinarian in Charge may be obtained from the Assistant Deputy Administrator, Animal Health Programs, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland, 20782.

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V, Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 202, 96 Stat. 1469; sec. 409, 94 Stat. 160; secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

2. Amend § 563.39 by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 563.39 Employment contracts.

* * * * *

(b) *Required provisions.* * * *

(2) If the officer or employee is suspended and/or temporarily prohibited from participating in the conduct of the institution's affairs by a notice served under section 5(d)(4)(D), or section 5(d)(5)(A) of the Home Owners' Loan Act (12 U.S.C. 1464(d)(4)(D) and (d)(5)(A)) or under section 407(g)(4) or section 407(h) of the National Housing Act (12 U.S.C. 1730 (g)(4) and (h)), the institution's obligations under the contract shall be suspended as of the date of service, unless stayed by appropriate proceedings. If the charges in the notice are dismissed, the institution may in its discretion (i) pay the officer or employee all or part of the compensation withheld while its contract obligations were suspended and (ii) reinstate (in whole or in part) any of its obligations which were suspended.

(3) If the officer or employee is removed and/or permanently prohibited from participating in the conduct of the institution's affairs by an order issued under section 5(d)(4)(E) or section 5(d)(5)(A) of the Home Owners' Loan Act (12 U.S.C. 1464(d)(4)(E) and (d)(5)(A)) or under section 407(g)(5) or section 407(h) of the National Housing Act (12 U.S.C. 1730 (g)(5) and (h)), all obligations of the institution under the contract shall terminate as of the effective date of the order, but vested rights of the contracting parties shall not be affected.

* * * * *

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Acting, Secretary.

[FR Doc. 87–3306 Filed 2–17–87; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–NM–196–AD; Amdt. 39–5563]

Airworthiness Directives: Avions Marcel Dassault-Breguet Aviation (AMD–BA) Mystere Falcon 200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to AMD–BA Mystere Falcon 200 series airplanes, which requires replacement of the fuel system booster crossfeed valve actuator on the fuel distributor block with a sealed actuator. This AD is prompted by reports of malfunctions of the fuel system booster crossfeed valve actuator in flight. This condition, if not corrected, could cause fuel starvation if it becomes necessary to supply fuel from a single fuel feed line.

DATE: Effective March 25, 1987.

ADDRESSES: The applicable service information specified in this AD may be obtained from Avions Marcel Dassault-Breguet Aviation (AMD–BA), 40 FJC, Teterboro Airport, Teterboro, New Jersey 07608. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires replacement of the fuel system booster crossfeed valve actuator with a sealed actuator, was published in the **Federal Register** on October 1, 1986 (51 FR 35001).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the NPRM.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 18 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 man-hours per airplane to accomplish the required actions, and that the average labor cost will be $40 per man-hour. The cost of parts is estimated to be $500 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $11,880.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($660). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Avions Marcel Dassault-Breguet Aviation (AMD–BA): Applies to Model Mystere Falcon 200 series airplanes, certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished. To prevent malfunction of the fuel system crossfeed valve actuator, accomplish the following:

A. Install a fuel system booster crossfeed valve actuator, AVIAC P/N 2778–1 (ZENITH P/N D97C00–215), in accordance with AMD–BA Service Bulletin No. AMD–BA F200–64, dated March 3, 1986.

B. Install a placard on the fuel distributor block in accordance with AMD–BA Service Bulletin No. AMD–BA F200–64, dated March 3, 1986.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive, who have not already received the appropriate service document from the manufacturer, may obtain copies upon request to Avions Marcel Dassault-Breguet Aviation, 40 JFC, Teterboro Airport, Teterboro, New Jersey 07608. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 25, 1987.

Issued in Seattle, Washington, on February 9, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–3258 Filed 2–17–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 86–AGL–20]

Alteration of Federal Airway V–493

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action realigns Federal Airway V–493 between the Appleton, OH (APE), very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) and the York, KY (YRK), VORTAC. This realignment will facilitate movement eastward of special use airspace and thereby enhance high density traffic volume which is north/south oriented on the western boundary of the special use airspace.

EFFECTIVE DATE: 0901 UTC, April 9, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9254.

SUPPLEMENTARY INFORMATION:

History

On November 28, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign VOR Federal Airway V–493 between Appleton, OH, VORTAC and York, KY, VORTAC (51 FR 43011). This realignment will allow eastward movement of R–5503 Wilmington, OH, and facilitate north/south air carrier traffic flow between Columbus and Cincinnati, OH. A separate docket action, 86–AGL–25, will subdivide and relocate R–5503. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Two commenters were concerned that the realigned V–493 would have economic impact on users by adding additional mileage between York, KY, and Appleton, OH, thereby adding to fuel cost. However, FAA believes this added fuel cost is insignificant and does not justify withdrawing V–493.

The commissioners of Ross County expressed a need for a full regulatory evaluation. Under FAA policy guidelines, this action is not a "major rule" under Executive Order 12291 and is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034). Therefore, it does not warrant preparation of a regulatory evaluation.

The manager of Miller Airfield, Baltimore, OH, was concerned the proposal would affect the VFR status of Miller Airfield. Miller Airfield at the present time underlies the lateral limits of V–493 and the current 700-foot transition area designated for the Newark, OH, airport. Neither of these conditions will change due to the realignment of V–493.

The Air Transport Association of America (ATA) endorsed the proposal. Therefore, based on our analysis of the comments we find no reason not to implement this alteration to V–493. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations realigns VOR Federal Airway V–493 between Appleton, OH, VORTAC and York, KY, VORTAC.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal Airways.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–493 [Amended]

By removing the words "York, KY; Appleton, OH;" and substituting the words "York, KY; INT York 030° and Appleton, OH, 183° radials; Appleton;"

Issued in Washington, DC, on February 9, 1987.

Harold H. Downey,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 87–3262 Filed 2–17–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 86–AWA–30]

Alteration of the Detroit, MI, Terminal Control Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters slightly one of the areas of the Detroit, MI, Terminal Control Area (TCA). To contain instrument approaches to Runways 21R and 27 within the TCA, Area B is expanded slightly to the east and northeast. This amendment also corrects an error relative to the correct charting of navigational aid magnetic radials which describe the TCA. These radials were incorrectly depicted on the October 1985 TCA chart. The correction applies to all four areas of the TCA.

EFFECTIVE DATE: 0901 UTC, May 7, 1987.

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic

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Rules Branch (ATO-230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9249.

SUPPLEMENTARY INFORMATION:

History

On August 13, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to modify Area B of the Detroit, MI, TCA to contain an instrument approach to Runway 21R and two instrument approaches to Runway 27 (51 FR 28956). In addition, the proposal corrected an error in the charting of the magnetic radials used to describe TCA boundaries. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Comments were received from the Detroit City Airport Department and the Air Line Pilots Association (ALPA). The Detroit City Airport Department posed no objection; ALPA supported the proposal as technically necessary. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.401(b) of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations modifies slightly Area B of the Detroit, MI, TCA to contain an instrument approach to Runway 21R and two instrument approaches to Runway 27. The lateral extension is 1 NM to the northeast and the widest point of extension is 2 NM to the east. In addition, on the October 1985 chart, the navigational aid radials used to describe and chart the TCA were not the original magnetic radials that should have appeared on the chart. Prior to charting, the magnetic radials were incorrectly interpreted to be true radials and then converted to magnetic radials for purposes of charting. This action corrects the error by ensuring that the original magnetic radials used to describe the boundaries are the radials used to chart the Detroit, MI, TCA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.401 [Amended]

2. Section 71.401(b) is amended as follows:

Detroit, MI [Amended]

In Area A, wherever "050° radial" appears substitute "047° radial".

Remove the present Area B and substitute the following:

Area B. That airspace from 2,500 feet MSL to and including 8,000 feet MSL within the lateral limits of the airspace beginning at the intersection of the I-DTW 7-mile DME arc and the Willow Run VOR 047° radial; thence northeast on the Willow Run VOR 047° radial until intercepting the I-DTW 8-mile DME arc; thence clockwise along the I-DTW 8-mile DME arc until intercepting the Willow Run VOR 091° radial, eastbound on the Willow Run VOR 091° radial until the United States shoreline, southbound along the United States shoreline until intercepting the Willow Run VOR 101° radial; thence on a 215° bearing from that intersection until intercepting the I-DTW 11-mile DME arc; thence clockwise along the I-DTW 11-mile DME arc until intercepting the Willow Run VOR 186° radial, thence northeast to the point where the I-DTH 7-mile DME arc intercepts the Detroit Willow Run Airport, MI, Control Zone; thence counterclockwise along the I-DTW 7-mile DME arc to the point of origin.

In Area C, wherever "200° radial" appears substitute "197° radial", wherever "226° radial" appears substitute "220° radial" and wherever "323° radial" appears substitute "317° radial".

In Area D, wherever "050° radial" appears substitute "047° radial", wherever "323° radial" appears substitute "317° radial", wherever "226° radial" appears substitute "220° radial" and wherever "200° radial" appears substitute "197° radial".

Issued in Washington, DC, on February 9, 1987.

Harold H. Downey,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 87-3261 Filed 2-17-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 87-AWP-1]

Alteration of Restricted Areas R-2304 and R-2305, Gila Bend, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes the times of use for Restricted Areas R-2304 and R-2305, located near Gila Bend, AZ, indicating more accurately when the areas are being utilized. This action will reduce the time the restricted areas are in effect.

EFFECTIVE DATE: 0901 UTC, April 9, 1987.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9245.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations changes the times of use for Restricted Areas R-2304 and R-2305 located near Gila Bend, AZ. Because this would amend the time of designation to reflect actual times of use and would reduce the time the restricted areas are in effect, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.23 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

PART 73—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.23 [Amended]

2. § 73.23 is amended as follows:

R-2304 Gila Bend, AZ [Amended]

By removing the present Time of designation and substituting the following:

Time of designation. 0700-2200 local time, other times by NOTAM at least 24 hours in advance.

By removing the present Time of designation and substituting the following:

Time of designation. 0700-2300 local time, other times by NOTAM at least 24 hours in advance.

Issued in Washington, DC, on February 10, 1987.

Harold H. Downey,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 87-3259 Filed 2-17-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 86-AWP-22]

Alteration of Restricted Area R-2519 Point Mugu, CA, and Revocation of Restricted Area R-2520, Point Mugu, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the lateral boundaries and the using agency of Restricted Area R-2519 and revokes Restricted Area R-2520 located at Point Mugu, CA. This action is necessary to ensure that all hazardous activity is contained within R-2519. This action would also revoke R-2520 since the usage of the airspace no longer justifies permanent designation.

EFFECTIVE DATE: 0901 UTC, April 9, 1987.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9245.

SUPPLEMENTARY INFORMATION:

History

On November 28, 1986, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to alter the lateral boundaries of Restricted Area R-2519 and revoke Restricted Area R-2520 located at Point Mugu, CA (51 FR 43012). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, and changing the using agency of R-2519 from "Commander, Pacific Missile Range, Point Mugu, CA" to "Commander, Pacific Missile Test Center, Point Mugu, CA" this amendment is the same as that proposed in the notice. Section 73.25 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations alters the lateral boundaries and the using agency of Restricted Area R-2519 and revokes Restricted Area R-2520 located at Point Mugu, CA. The lateral boundaries of R-2519 will be slightly expanded to ensure that all hazardous activity is contained within restricted airspace. R-2520 will be revoked since the useage of the airspace no longer justifies permanent designation.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.25 [Amended]

2. § 73.25 is amended as follows:

R-2520 Point Mugu, CA [Removed]

R-2519 Point Mugu, CA [Amended]

Remove the present boundaries and using agency and substitute the following:

Boundaries. Beginning at lat. 34°07'15"N., long. 119°07'40"W.; to lat. 34°06'55"N., long. 119°08'00"W.; to lat. 34°04'15"N., long. 119°03'40"W.; to lat. 34°02'15"N., long. 119°04'20"W.; thence 3 nautical miles from and parallel to the shoreline to lat. 34°05'30"N., long. 119°13'00"W.; to lat. 34°05'55"N., long. 119°11'15"W.; to lat. 34°07'08"N., long. 119°09'32"W.; to the point of beginning.

Using agency. Commander, Pacific Missile Test Center, Point Mugu, CA

Issued in Washington, DC, on February 9, 1987.

Harold H. Downey,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-3260 Filed 2-17-87; 8:45 am]

BILLING CODE 4910-13-M

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 908

[Docket No. 60734-6134]

Maintaining Records and Submitting Reports on Weather Modification Activities

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is revising its regulations which purport to require persons engaged in weather modification activities to maintain records for 5 years to conform to the 3 year limit on recordkeeping established by the Office of Management and Budget (OMB).

DATES: February 18, 1987.

FOR FURTHER INFORMATION CONTACT: Harold A. Corzine, National Oceanic and Atmospheric Administration, OAR/Program Development and Coordination Office, Room 925, 6010 Executive Boulevard, Rockville, Maryland 20852 (301-443-8971).

SUPPLEMENTARY INFORMATION: Title 15 CFR 908.9 and 908.11(a) purport to require persons engaged in certain weather modification activities to maintain appropriate records for at least five years. This retention period exceeds the three year limit set by OMB in its regulations implementing the Paperwork Reduction Act (5 CFR 1320.6(f)). A three year period probably ensures sufficient access to scientific information about past and ongoing activities to avoid duplication of effort. Accordingly, §§ 908.9 and 908.11(a) are being revised to reflect the limits established by OMB regulations.

Other Actions Associated With Rulemaking

(A) Classification Under Executive Order 12291

Under Executive Order 12291, the Department must judge whether a regulation is "major" within the meaning of section 1 of the Order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(B) Administrative Procedure Act and Regulatory Flexibility Act

The present five year retention requirements of §§ 908.9 and 908.11(a) have not been approved by OMB and have no force or effect (5 CFR 1320.5). Since the amendment simply conforms to existing law, NOAA has determined under section 553(b)(B) of the Administrative Procedure Act (APA) that it would be unnecessary and contrary to the public interest to follow the notice and comment procedures of the APA. Because this rule is not subject to the requirements of notice and comment of the APA, or any other law, the Regulatory Flexibility Act does not apply. Accordingly, a Regulatory Flexibility Analysis has not been prepared.

(C) Effective Date

For the reasons explained in the immediately preceding paragraph and because this amendment relieves a restriction, the 30-day delayed effectiveness requirement of the APA does not apply and the rule is being made effective on the date of publication in the Federal Register.

(D) Paperwork Reduction Act

The information requirements for the regulations at 15 CFR Part 908 have been reviewed and approved by the Office of Management and Budget. The control number is 0648-0025.

List of Subjects in 15 CFR Part 908

Weather; Reporting and recordkeeping requirements.

Dated: February 6, 1987.

Joseph O. Fletcher,

Assistant Administrator.

For the reason set out in the preamble, 15 CFR Part 908 is amended as set forth below.

PART 908—MAINTAINING RECORDS AND SUBMITTING REPORTS ON WEATHER MODIFICATION ACTIVITIES

1. The authority citation for Part 908 continues to read as follows:

Authority: Pub. L. 92-305, 85 Stat 735, December 18, 1971.

2. Section 908.9 is revised to read as follows:

§ 908.9 Retention of records.

Records required under § 908.8 shall be retained and available for inspection by the Administrator or his designated representatives for 3 years after completion of the activity to which they relate. Such records shall be required to be produced for inspection only at the place where normally kept. The Administrator shall have the right to make copies of such records, if he or she deems necessary.

3. Section 908.11(a) is revised to read as follows:

§ 908.11 Maintenance of records of related activities.

(a) Persons whose activities relate to weather modification activities, other than persons engaged in weather modification activities, shall maintain records concerning the identities of purchasers or users of weather modification apparatus or materials, the quantities or numbers of items purchased, and the times of such purchases. Such information shall be retained for at least 3 years.

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[FR Doc. 87-3315 Filed 2-17-87; 8:45 am]

BILLING CODE 3510-12-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM86-12-000]

Generic Determination of Rate of Return on Common Equity for Public Utilities; Correction

February 11, 1987.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Benchmark Rate of Return on Common Equity for Public Utilities; Correction.

SUMMARY: In the document beginning on page 2677 in the issue of Monday, January 26, 1987, make the following correction:

On page 2678, first column, line 19, change "1985" to "1986".

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3238 Filed 2-17-87; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject To Certification; Nitrofurazone Solution

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Squire Laboratories, Inc., providing for safe and effective topical use of a nitrofurazone solution as an antibacterial on dogs, cats, and horses. The regulations are further amended to correct an omission in the drug's indications for use.

EFFECTIVE DATE: February 18, 1987.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Squire Laboratories, Inc., 100 Mill St., Revere, MA 02151, filed NADA 138-455 providing for topical use of a 0.2 percent nitrofurazone solution as an antibacterial on dogs, cats, and horses (not intended for food use). The NADA is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

The regulations are further amended to correct a claim omission error in 21 CFR 524.1580d. The existing indication for use of the drug in dogs, cats, and horses (paragraph (d)(1)(i)) reads, "For the treatment of topical bacterial infections." However, the National Academy of Sciences/National Research Council (NAS/NRC) Drug Efficacy Study Group for nitrofurazone topical preparations for animal use found the subject drug effective for both prevention or treatment of surface bacterial infections. FDA concurred with the group's finding (see 44 FR 4014; January 19, 1979). The prevention claim was inadvertently omitted from the paragraph. Therefore, this document is amending § 524.1580d to add the prevention claim.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 524 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 524.1580d is amended by revising paragraphs (b) and (d)(1)(i) to read as follows:

§ 524.1580d Nitrofurazone solution.

• • • • •

(b) *Sponsor.* See 000857, 015562, 015579, and 051259 in § 510.600(c) of this chapter for use as in paragraphs (d)(1) and (2) of this section. See 017153 and 053617 in § 510.600(c) of this chapter for use as in paragraph (d)(1) of this section.

• • • • •

(d) *Conditions of use*—(1) *Dogs, cats, and horses*—(i) *Indications for use.* For prevention or treatment of topical bacterial infections.

• • • • •

Dated: February 10, 1987.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 87-3269 Filed 2-17-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 571

[Docket No. R-87-R-1200; FR-2000]

Community Development Block Grants for Indian Tribes and Alaskan Native Villages—Selection Process

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule adopts, with some changes, the proposed rule to revise the regulations governing the application ranking and selection process in the CDBG program for Indian Tribes and Alaskan Native Villages. Under this final rule, new policies and procedures are added to simplify rating and ranking. As part of the regulatory revision, the "need" and "benefit" measures are eliminated in favor of a 51 percent low- and moderate-income benefit threshold requirement. Additionally, Tribes are given more discretion and flexibility to pursue their objectives in the rehabilitation and economic development categories, and uniformity in measuring "Quality" factors is established.

EFFECTIVE DATE: March 19, 1987.

FOR FURTHER INFORMATION CONTACT: Leroy Gonnella, Office of Program Policy Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 755-6092. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Summary of This Rule

This final rule, which is substantially similar to the proposed rule published on August 1, 1985 (50 FR 31194), revises the policies and procedures for rating and ranking applications from Indian Tribes and Alaskan Native Villages for Community Development Block Grant assistance under section 107 of the Housing and Community Development Act of 1974 (42 U.S.C. 5307). This rule establishes a threshold requiring all applicants to show that, at a minimum, 51 percent of the beneficiaries of each project will be low- and moderate-income persons.

The rule prescribes four categories—Housing Rehabilitation, Community

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Facilities/Services, Economic Development, and Land to Support New Housing—into which all projects will be grouped. (These categories may be subdivided to accommodate regional differences or preferences.) The rule also fixes a 60/40 ratio for "Quality" factors and "Impact" factors, respectively. Points will be awarded to projects based on their compliance with Quality and Impact factors. Impact factors follow a hierarchical scale, and within each category several factors are delineated—from the most important (that is, those that will give a project maximum points) to those factors that give the fewest points.

Impact factors primarily measure the level of need for a proposed project in a community or reservation. Quality factors measure how well the job can be carried out, and how much can be accomplished for the level of Federal investment made. Because it is in the "Quality" area that the greatest differences among projects are expected, it has been assigned more weight.

This rule permits a Field Office to continue to establish Impact Factors. It provides for a more flexible approach than under the existing regulations, so that Tribes may focus on their primary objectives. However, the introduction of additional Impact factors as provided for in § 571.308(b) (formerly proposed § 571.302(c)(6)) must not result in the system's becoming too restrictive. The rule contemplates that new factors may be introduced without additional regulatory changes being required. Flexibility should allow the system to grow as projects become more complex and sophisticated, and should encourage and facilitate Tribal self-determination.

Provision is made in § 571.308(a) (formerly § 571.302(c)(5)) for waiver or modification of individual factors if their application would result in hardship or produce an unwanted result for the applicants in a particular Field Office.

Section 571.3 has been amended in this rule by removing the language "relative need among applicants." The amendment here promotes consistency between this rule's revised criteria for the selection process and the general description of the nature of the program in § 571.3.

Revisions to the Proposed Rule in This Final Rule

To promote greater ease of reference, section designations used in the proposed rule have been revised, and the proposed rule's single section on the selection process has been divided into a related series of five sections (§§ 571.302 through 571.306). Existing §§ 571.303 and 571.304 have been redesignated § 571.307 and § 571.308, respectively. In particular, proposed §§ 571.302 (c)(5), (c)(6), and (c)(7) have been combined under one section—§ 571.306—and are now designated §§ 571.306 (a), (b), and (c), respectively. A new paragraph (d) is added to clarify that the consultation process of § 571.6 is applicable to this rule.

In § 571.305(a)(1)(i) (formerly proposed § 571.302(c)(4)(i)(A)(*1*)(i)), the word "portion" has been changed to "percentage". The same substitution of words has been made in §§ 571.303(a)(1)(ii) and (iii) (formerly proposed paragraphs (ii) and (iii) of § 571.302(c)(4)(i)(A)(*1*)). This is a minor technical change.

The "Quality" factor "The project has the highest priority among the projects submitted by the Tribe" has been removed from proposed § 571.302(c)(4)(i)(A)(*2*)(i) and also from §§ 571.302(c)(4)(i)(B)(*2*)(i) and 571.302(c)(4)(iii)(B)(*1*). (See p. 9.) The remaining paragraphs have been renumbered and redesignated accordingly.

Section 571.303(a)(2)(iii) (formerly paragraph (iv) of proposed § 571.302(c)(4)(i)(A)(*2*)) has been revised by removing the first sentence from § 571.303(a)(2)(v) (formerly proposed paragraph (vi) of § 571.302(c)(4)(i)(A)(*2*)) ("The proposed rehabilitation program reduces the cost of rehabilitation activities") and including it as an element under paragraph (iii). The Department believes that this sentence more appropriately belongs under paragraph (iii) of § 571.303(a)(2).

In paragraphs (i) and (iii) of proposed § 571.302(c)(4)(iii)(A)(*1*) (now §§ 571.305(a)(1) (i) and (iii), respectively), the language "or a cost benefit ratio greater than one on publicly oriented projects" and "over its economic life the enterprise will have a cost benefit ratio greater than one and", respectively, has been deleted, for the reason set out below in the discussion of public comments. Also deleted is the word "legally" from proposed § 571.302(c)(4)(iii)(B)(*5*) (now § 571.305(b)(4)).

The second sentence of proposed paragraph (6) of § 571.302(c) (now designated § 571.306(b)) has been removed to avoid ambiguity, and a new clause has been added at the end of the paragraph that reads "or when new qualitative measures are identified after consultation with eligible applicants and subject to the approval of the Secretary." The addition here promotes flexibility in the choice of factors.

Public Comments

The proposed rule of August 1, 1985 invited public comment for a period of 60 days ending September 30, 1985. Six comments were received. These comments are summarized below, along with the Department's response.

Two commenters argued that the rule should retain "absolute need" as an Impact factor. According to these comments, the use of an "absolute need" factor resulted in a more favorable distribution of CDBG funds to large Tribes, while this rule would favor small Tribes. In elaboration, one of these commenters pointed out that the "absolute need" factor allowed CDBG funds to be used for infrastructure development which benefitted a larger percentage of the Tribal population than the 51 percent threshold adopted in this rule. The 51 percent test, it also was contended, rather than helping to alleviate the needs of Indian populations generally (the majority of whom are below the poverty level with a per capita income of $2,500) would benefit mostly moderate income Tribal members.

The data on which the "need" factor relied were in many cases an unreliable measure of the true needs of Tribes in the program. Further, contrary to the commenter's assertion, there is no evidence that the existing system is fairer. (The system is flawed in other respects detailed in the proposed rule preamble at 50 FR 31194.) Nor is there evidence that the system being revised has favored large Tribes. The Department wishes to explain, however, that although "absolute needs" is no longer an Impact Factor, distribution of funds will still be predicated on the needs of the Tribes. In other words, HUD will not approve a project for which there is no need among Tribal members.

The Department believes that the criticism of the 51 percent threshold is unfounded. First, application of the 51 percent test will not benefit moderate income persons only, but *low and* moderate income persons. A "low and moderate income person" is defined at 24 CFR 571.4(i) as

> a member of a family having family income [that does not exceed 80 percent of the median family income for the area. . . .].

Second, the 51 percent figure is only a floor—that is, if an applicant cannot show that *at least* 51 percent of the beneficiaries of each project would be low and moderate income persons, the project will not be approved. (See § 571.302(a)(3) "If . . . less than 51 percent of the intended beneficiaries of the proposed project are low and moderate income persons, the Field Office shall . . . reject the project.") This test is not as dependent as the "absolute needs" test on statistical accuracy of several variables, *e.g.*, number and percent of persons in poverty or unemployed and number and percent of low- and moderate-inoome persons served. As such, the 51 percent test is simpler, avoiding the statistical preciseness and dependency of the "absolute needs" test, but without sacrificing the goal of helping low- and moderate-income members—the largest group in a Tribe. Third, it should be noted that the statute itself (see section 101(b) of the Housing and Community Development Act of 1974) enunciates as one of the Congress' findings and purposes in establishing the CDBG program the "improve[ment of] the living environment of low- and moderate-income families."

Finally, there is nothing in this rule that would prevent Tribes from continuing to propose projects that would benefit all their members, or that would contribute to the development of a reservation's infrastructure.

Two commenters criticized the appropriateness of the "Quality" factors and the proposed rule's limiting them to six (now reduced to five in this final rule). It was argued that the rule should allow the Field Offices more discretion in developing "Quality" factors to evaluate a Tribe's application. By affording the Field Office more flexibility in applying the Quality factors (as under the old regulations), argued one comment, a Field Office would be better able to consider the peculiar needs of a Tribe seeking funding under the program.

The final rule limits the Quality factors to five (the Quality factor that appeared first in each section of the proposed rule has been removed) because, in the Department's experience, these five factors have proven most reliable in evaluating the soundness of a project. Field Offices will have, however, wide discretion in applying these factors in rating a project.

A commenter opined that the rule would "open several new avenues to interprogrammatic relationships between the CDBG program and the various Indian housing programs." This, the commenter said, would ultimately lead to a single block grant for both community development and housing. This rule will not have the result feared by the commenter. Moreover, this Department has no authority to combine for funding purposes (or for any other purpose) these separate legislative authorities (*i.e.*, the CDBG Indian program and Indian housing), as would be necessary to bear out the commenter's misgivings.

Another commenter, while expressing reservations about this rule's possible impact on funding for large Tribes, wondered whether the rule would "lead to a situation where only the top-ranked project would be eligible for funding."

As indicated above, this rule is neutral with respect to the relationship between allocation of CDBG funds and the size of an applicant Tribe. Funding levels will continue to be set by the grant ceilings established by the Field Office in consultation with the Tribes.

The Department agrees that there may be legitimate concern about the priority factor. Accordingly, this factor (*see, e.g.*, proposed § 571.302(c)(4)(i)(A)(*2*)(i)) has been removed as a "Quality" factor, since it is arguable that it may not always be an appropriate measure of the quality of the proposed project. However, Field Offices that wish to use the priority factor may seek approval for its use, in accordance with § 571.306(b).

Criticism was voiced by a Tribe of the proposed rule's use of a cost-benefit ratio among "Impact" factors (see proposed §§ 571.302(c)(4)(iii) (A)(*1*)(i) and (A)(*1*)(iii)), and use of the word "legally" in proposed § 571.302(c)(4)(iii)(B)(*5*). As the commenting Tribe saw it, the concept of a cost-benefit ratio is "difficult to define . . . within human services programs[,] is not appropriate for economic development and will cause confusion." The Department recognizes that there is merit in the Tribe's criticism, and has removed the reference in the above-cited clauses to a cost-benefit ratio. (These clauses are now designated §§ 571.305(a)(1) (i) and (iii), respectively.)

In its objection to the use of the term "legally", the Tribe pointed out that what is "legal" in the context of Tribal affairs depends on "Tribal, state, county, city, or Federal law." Further, "'legally' adds no substance to the factor and only confuses its intent," since HUD has no right to attempt to define the legality of a Tribal business mechanism. HUD agrees that use of the word "legally" in the affected paragraph could cause interpretive problems, and has removed it from § 571.302(c)(4)(iii)(B)(*5*) (now § 571.305(b)(4)). (As part of its overall comment, this Tribe supported the rule's requirement for project approval of a 51 percent benefit threshold, agreeing that the demographic data used to determine need under the existing regulations were "unreliable and of questionable benefit to smaller and larger Tribes.")

Support for the rule was also voiced by another commenter because it would allow Tribes "to pursue their individual needs and priorities" while satisfying a "real need" among Tribes "in the area of permanent, quality living structures and land acquisition." The commenter did seek clarification of proposed § 571.302(c)(7) (now § 571.306(c)), asking whether "points will be calculated on a Tribe by Tribe basis, within a particular region, etc." As in the past, points will continue to be calculated based on projects proposed within each separate Field Office.

The 60/40 ratio of Quality factors to Impact factors drew strong criticism. One commenter posited that the weighting system was "specifically designed for small tribes" because "small Tribes generally submit only one project, whereas the larger Tribes submit more than one." This commenter submitted a table showing the weight of Impact factors ranging from 61 percent to 80 percent over a four-year period. Another commenter argued that the weight for Impact factors in Region IX has been between 65 and 70 percent for the last two years. The commenter recommended that, since the weighting of Impact and Quality will be regulated, and not left to Field Office discretion, it should be split 60/40, Impact to Quality (reversing the proposed rule's weighting).

The Department fixed a 60/40 Quality to Impact weighting to encourage the development of first-rate projects. Impact establishes the basic minimum level that a project must meet. As a minimum level, Impact factors should account for a lesser weight than those factors (i.e., Quality factors) that will enhance the usefulness and acceptability of a project. In the Department's view, the need to emphasize (and thus give greater weight to) Quality factors is critical to ensure that an applicant has the capability of carrying out a project in a manner that will assure its successful completion and the realization of its intended benefits.

According to the last commenter, the information in the proposed rule is vague and confusing. It is difficult to rate a project, argued the commenter, when there are multiple factors with no indication of the number of points to be assigned each. Multiple Quality factors are set out in the rule to allow Field Offices the latitude to choose the most appropriate factor or factors to be used and to determine the number of points to be assigned to each. In HUD's view, this approach is consistent with the Department's avowed purpose of making the selection process more flexible.

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Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 CFR Part 50. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations issued on February 17, 1981. An analysis of the rule indicates that it does not (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule broadens the rating system by including more Impact factors and simplifies it by eliminating need and benefit factors and limiting the number of Quality factors. The new rating system will ensure a more uniform approach with more opportunities for Indian Tribes and Alaskan Native Villages to pursue their highest priority objectives without having a significant adverse economic impact on these entities.

This rule was listed as Sequence Number 922, RIN 2506–AA33 (CPD–11–84, FR–2000 in the Department's Semiannual Agenda of Regulations published on October 27, 1986 (51 FR 38460), under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance number is 14.223.

List of Subjects in 24 CFR Part 571

Community development block grants, Grant programs—Housing and Community development, Grant programs—Indians, Indians.

Accordingly, the Department amends 24 CFR Part 571 as follows:

PART 571—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKAN NATIVE VILLAGES

1. The authority citation for Part 571 continues to read as follows:

Authority: Title I of the Housing and Community Development Act of 1974, 42 U.S.C. 5301–5320; section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 571.3 is revised to read as follows:

§ 571.3 Nature of program.

The Indian CDBG Program is competitive in nature. The demand for funds far exceeds the amount of funds available. Therefore, selection of eligible applicants for funding will reflect consideration of the relative adequacy of applications in addressing locally determined need. Applicants for funding must have the administrative capacity to undertake the community development activities proposed, including the systems of internal control necessary to administer these activities effectively without fraud, waste, or mismanagement.

3. Section 571.302 is amended by adding a new paragraph (a)(3) and by revising paragraph (c) to read as follows:

§ 571.302 Selection process.

(a) * * *

(3) *Benefit.* The applicant's project indicates that at least 51 percent of the persons benefitting from the project are of low- and moderate-income. If available data, in the judgment of the Field Office, indicate that fewer than 51 percent of the intended beneficiaries of the proposed project are low- and moderate-income persons, the Field Office shall determine that the applicant has not met this threshold requirement and reject the project from further consideration. Before rejecting the project, however, the Field Office must first give the applicant an opportunity to examine the available data or to submit new data that, in the judgment of the Field Office, show that 51 percent of the beneficiaries are of low- and moderate-income. For purposes of this section, a project may be considered to benefit low- and moderate-income people if it meets the standards set forth in § 570.901(b)(1) of this chapter.

* * * * *

(c) *Application rating system.* (1) Applications that meet the threshold requirements established in paragraph (a) of this section will be rated competitively within each Field Office's jurisdiction. Field Offices may conduct separate competitions among applicants on the basis of size.

(2) All projects will be rated on the basis of their impact on the community development need identified and the quality of the proposed project. The specific measures, numbers, percentages, and definitions to be used for the "Impact" and "Quality" factors identified in this subpart are to be developed by each Field Office. If a Field Office finds it desirable, each of the categories may be subdivided into two or more subcategories in order better to deal with project ratings.

(3) The maximum value of the "Impact" factors and "Quality" factors described in this section will be 40 percent and 60 percent, respectively.

(4) In addition to meeting the requirements of this section, which apply to all projects, the Field Office will examine each project submitted to determine in which one of the four rating categories set out in § 571.303 through § 571.305 the project most appropriately belongs. The project will then be rated on the basis of the criteria identified in the rating category to which the project has been assigned.

4. In Part 571, § 571.303 and § 571.304 are redesignated § 571.307 and § 571.308, respectively, and new §§ 571.303 through 571.306 are added, to read as follows:

§ 571.303 Housing-related categories.

(a) *Housing rehabilitation projects*—(1) *Impact factors.* (i) Maximum points will be awarded to those projects that propose to use a larger percentage of the construction funds to rehabilitate homes to a standard condition, with the balance of the funds to be used for another housing-related purpose, or to projects that propose to implement a housing-assistance strategy that identifies how housing needs are to be addressed and how, over time, homes to be assisted will be brought up to standard condition or replaced. The evaluation of the effectiveness of a housing assistance strategy as an alternative to a project proposing to use most funds for rehabilitation of housing to a standard condition will be based on criteria established through the consultation process.

(ii) Fewer points will be awarded to those projects that propose to use a smaller percentage of the construction funds to rehabilitate homes to a standard condition, with the balance to be used for another housing-related purpose.

(iii) The fewest points will be awarded to those projects that propose to use the smallest percentage of the construction funds, as compared to the allocations under either paragraph (a)(1)(i) or (ii) of this section, to rehabilitate homes to a standard condition, with the balance to be used for another housing-related purpose.

(2) *Quality factors.* Points will be awarded for each of the following Quality factors that is met. Whether:

(i) Adopted policies are in place to guide the administration of the program.

(ii) Adopted housing standards exist with regard to which houses can be rehabilitated and what constitutes "standard condition".

(iii) The proposed rehabilitation program meets one or more of the following factors: (A) It reduces the cost of current rehabilitation activities; (B) it provides for energy conservation; (C) it provides for a Tribal contribution; or (D) it provides for a secondary benefit from the rehabilitation.

(iv) Extraordinary benefit to low- and moderate-income persons is provided by the project.

(v) The program establishes a maintenance policy to protect the investment made in the housing units assisted.

(b) *Land to support new housing*—(1) *Impact Factors.* (i) Maximum points will be awarded for land acquisition to those projects that have no land or no suitable land for the construction of housing along with housing amenities.

(ii) Fewer points will be awarded to those projects that have land that is suitable for the construction of housing along with housing amenities, but such land is officially dedicated to another purpose.

(iii) The fewest points will be awarded to those projects for the acquisition of additional land to construct only housing amenities for existing housing.

(2) *Quality factors.* Points will be awarded for each of the following Quality factors that is met. Whether:

(i) The land to be acquired is suitable for housing (*i.e.*, the land does not require extensive preparation).

(ii) The Housing Authority or Tribe, or both, have agreed to use the land to be acquired.

(iii) Housing resources have been committed to construct the housing, or will be committed by the Field Office or other organization, at the time of approval.

(iv) Support services are or will be made available and families are willing to relocate to the new location.

(v) Land can be taken into trust; or a provision has been made for taxes and fees.

§ 571.304 Community facilities/services category.

(a) *Impact factors.* (1) Maximum points will be awarded to those projects that propose to provide a facility or service that is not available from sources either within or outside the community or reservation, and no functioning facility or service currently exists.

(2) Fewer points will be awarded to those projects that propose to provide a facility or service that is not available from sources either within or outside the community or reservation, and the current facility or service no longer functions in a reliable manner.

(3) The fewest points will be awarded to those projects that propose to expand or improve an existing facility or service to enhance the provision of current or future services.

(b) *Quality factors.* Points will be awarded for each of the following Quality factors that is met. Whether:

(1) The facility or service will accomplish one or more of the following:

(i) Produce a secondary benefit from its construction or implementation;

(ii) Address a serious health and safety problem; or

(iii) Meet an essential community need.

(2) One or more of the following will be accomplished:

(i) The facility or service will be shared with other communities or Tribes;

(ii) Other funds will be contributed in support of the facility; or

(iii) The facility or service will serve multiple purposes.

(3) A maintenance plan has been prepared that includes an adequate fund for future replacements, and a funding source has been identified to assure that the facility will be properly maintained.

(4) The design, scale, and costs of the facility or service and the equipment proposed are appropriate to the need.

(5) Extraordinary benefit to low and moderate income persons is provided by the project.

§ 571.305 Economic development category.

(a) *Impact factors.* (1) Maximum points will be awarded to those projects that propose an enterprise that over its economic life will have a rate of return that is equal to or greater than that which has been fixed by the Field Office or over its economic life the enterprise will have a rate of return that is less than that which has been fixed by the Field Office in § 571.305(a)(1)(i), and

(i) Will result in the creation of a certain number of jobs (the number of jobs will be determined by the Field Office); or

(ii) Will provide a product, service, or resource not otherwise available, or provide it at a significantly lower cost.

(2) Fewer points will be awarded to those projects that propose an enterprise that, over its economic life, will have a rate of return fixed by the Field Office which will be less than the rate of return in paragraph (a)(1)(i) of this section.

(3) The fewest points will be awarded to those projects that propose an enterprise that, over its economic life, will have a rate of return that is less than the rate of return in paragraph (a)(2) of this section.

(4) No points will be awarded to a project that will have a rate of return below the minimum threshold established by the Field Office.

(b) *Quality factors.* Points will be awarded for each of the following Quality factors that is met. Whether:

(1) The cost per job is less than a dollar amount determined by the Field Office.

(2) The percentage of the grant leveraged by other resources is more than the appropriate percentage determined by the Field Office.

(3) The project meets the standards of quality for the type of project proposed.

(4) An accountable Tribal business management mechanism exists for completion and operation of the project.

(5) The project meets one or more of the following:

(i) It has an assured market;

(ii) It will utilize special skills of members; or

(iii) It will provide multiple benefits.

§ 571.306 Additional features of the selection process.

(a) *Waiver or modification of factors.* Individual factors may be waived or modified by the Secretary when the application of a particular factor or factors would result in a hardship for applicants to address, or would bring about a result that is not consistent with the needs of the applicants in a Field Office's jurisdiction.

(b) *Adding factors.* Additional Impact factors may be added in order to expand Tribal opportunities for dealing with problems or for meeting local needs. Quality factors also may be added or modified when new Impact factors are proposed, or when new qualitative measures are identified.

(c) *Point calculations.* The formula for calculating points for the above factors will be developed by the Field Office. In no case may these calculations change the overall percentage values of the Impact and Quality factors (40 and 60

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percent, respectively; of total points awarded) without the prior approval of the Secretary.

(d) The addition of factors or the development of a formula for calculating points may be done by a Field Office after consultation with eligible applicants, as provided in § 571.6, and subject to the approval of the Secretary.

Dated: February 6, 1987.

Alfred C. Moran,

Assistant Secretary for Community Planning and Development.

[FR Doc. 87-3228 Filed 2-17-87; 8:45 am]

BILLING CODE 4210-29-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Parts 1600, 1610, and 1691

Procedural Regulations; Delegations of Authority

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rules.

SUMMARY: The Equal Employment Opportunity Commission has restructured its Office of Legal Counsel. The organizational title of Associate Legal Counsel, Legal Services, no longer exists and a new organizational title, Deputy Legal Counsel, has been added. These regulatory changes effectuate delegations of authority to permit issuance of responses under the Freedom of Information Act by the Legal Counsel, Deputy Legal Counsel, or their designees.

EFFECTIVE DATE: February 18, 1987.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Assistant Legal Counsel or Kathleen Oram, Staff Attorney, at (202) 634-6690.

For the Commission.

Clarence Thomas,

Chairman.

PART 1600—[AMENDED]

1. The authority citation for 29 CFR Part 1600 continues to read as follows:

Authority. E.O. 11222, 30 FR 6469, 3 CFR Part 1965 Supp.; 5 CFR 735.101 et seq.

2. 29 CFR Part 1600 is amended by removing the words "Associate Legal Counsel, Legal Services" and inserting, in their place, "Deputy Legal Counsel" in §§ 1600.735-204 (d) and (f)(4), and 1600.735-402, and 1600.735-403.

PART 1610—[Amended]

1. The authority citation for 29 CFR Part 1610 continues to read as follows:

Authority. Sec. 713(a), 78 Stat. 265, 42 U.S.C. 2000e-12(a); 5 U.S.C. 552, as amended by Pub. L. 93-502; for section 1610.15, nonsearch or copy portions are issued under 31 U.S.C. 483a.

§ 1610.7 [Amended]

2. Section 1610.7, is amended by removing the words "Associate Legal Counsel, Legal Services" and inserting, in their place, "Deputy Legal Counsel".

§§ 1610.8, 1610.9, 1610.10, 1610.11, 1610.13 and 1610.14 [Amended]

3. Sections 1610.8, 1610.9, 1610.10, 1610.11, 1610.13 and 1610.14 are amended by removing the words "Associate Legal Counsel, Legal Services" and inserting, in their place, "Deputy Legal Counsel or designee".

§ 1610.11 [Amended]

4. Section 1610.11 (b), (c) and (e) are amended by inserting "or designee" after the words "Legal Counsel."

PART 1691—[AMENDED]

1. The authority citation for 29 CFR Part 1691 continues to read as follows:

Authority E.O. 12250, 45 FR 72995 (November 4, 1980) and E.O. 12067, 43 FR 28967 (June 30, 1978).

§ 1691.3 [Amended]

2. 29 CFR Part 1691 is amended by removing the words "Associate Legal Counsel for Legal Services, Office of Legal Counsel of EEOC" and inserting, in their place, "Deputy Legal Counsel, EEOC" in § 1691.3

[FR Doc. 87-3346 Filed 2-17-87; 8:45 am]

BILLING CODE 6570-06-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-3151-3]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: USEPA is approving certain emissions limitations and compliance techniques contained in operating permits for three coke oven batteries located at Citizens Gas and Coke Utility (Citizens Gas) in Indianapolis (Marion County), Indiana, but is disapproving two limits for Coke Battery Number One. Citizens Gas is located in Center Township which is designated by USEPA as a primary nonattainment area for total suspended particulate (TSP) (40 CFR 81.315). Indiana submitted these limits as a revision to the State Implementation Plan (SIP) for Marion County.

EFFECTIVE DATE: This final rulemaking becomes effective on March 20, 1987.

ADDRESSES: Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Steven D. Griffin, at (312) 353-3849, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Indiana Department of Environmental Management, Office of Air Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206-6015

Copies of this revision to the Indiana SIP are available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Steven D. Griffin, (312) 353-3849.

SUPPLEMENTARY INFORMATION:

I. Background

The requirements for an approvable SIP are described in a "General Preamble" for Part D rulemakings published at 44 FR 20372 (April 4, 1979), 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979). For a TSP SIP revision to be acceptable in meeting the applicable requirements of Part D of the Clean Air Act (Act), unless a completely approvable modeled attainment demonstration is submitted, all emission points at industrial sources must be governed by approvable Reasonably Available Control Technology (RACT) emission limitations, and all other applicable requirements of section 110 of the Act must be met; e.g., test methods, inspection procedures, compliance schedules. Additionally, present emission limits in these areas cannot be relaxed without an attainment demonstration.

Specifically, for the coke batteries at Citizens Gas, two of the three units are currently federally regulated by SIP regulations only. However, the third unit, Battery Number One, is additionally regulated by a construction permit issued by the State and the City of Indianapolis in 1978. The requirements in this construction permit are also federally enforceable.

On January 18, 1984, the State of Indiana submitted as a revision to the TSP SIP certain operating conditions and limits which were contained in Certificates of Operation (Numbers 06895, 06896 and 06897). These operating permits were applicable to the three coke oven batteries at Citizens Gas in Marion County, Indiana. The portion of the county in which these batteries are located is designated by USEPA as a primary TSP nonattainment area. The permits were issued by the City of Indianapolis Air Pollution Control Division on June 30, 1980, and on January 4, 1984, the Indiana Air Pollution Control Board adopted the special operating conditions and emission limits in these permits. The conditions and limits included limits on visible emissions from coke oven doors and coke pushing operations and a limit on the content of total dissolved solids (TDS) in makeup water for quenching operations.

On November 27, 1985 (50 FR 48796), USEPA proposed to approve emission limits and operating conditions for the three batteries with the exception of two conditions for Battery Number One which USEPA proposed to disapprove. However, prior to publication of this rulemaking action, the City of Indianapolis issued renewed Certificates of Operation (Numbers 08262, 08263 and 08264) for the three batteries. These permits were submitted to USEPA for informational purposes on March 27, 1985. The permit conditions were substantially the same as those for the expired permits with the addition of: (1) Sulfur dioxide emission limits for each battery's underfiring system; (2) a more stringent visible emissions limit for coke oven doors on Battery Number One; and (3) a lower allowable TDS content for the quench makeup water on Battery Number One. The new conditions for Battery Number One reflected the conditions specified in the State-issued 1978 construction permit for the battery with respect to coke oven door visible emissions and quench makeup water. This construction permit was issued pursuant to the regulatory requirements for Prevention of Significant Deterioration (PSD), as provided under Part C of the Act, and contained emission limits, as provided through the Lowest Achievable Emission Rate (LAER) requirements under Part D of the Act.

The following includes further discussion of the coke oven battery permit conditions, public comments on the November 27, 1985, proposed rulemaking action, and a full description of today's rulemaking action, including its affect on related state regulations.

II. Permit Conditions

Citizens Gas operates three coke oven batteries, designated E, H and Number One. As stated previously, all three batteries were granted permits to operate in June 1980 by the City of Indianapolis. On September 12, 1983, the City of Indianapolis attached special conditions to the 1980 permits and on January 4, 1984, the State approved these conditions as revisions to Indiana's SIP. The conditions as specified on each permit included the following:

(a) Coke Oven Doors

Visible emissions were not permitted from more than 10 percent of the total coke oven doors plus four doors for ovens in service on any given battery.

(b) Pushing Operations

Visible emissions from coke pushing operations were not permitted to exceed 20 percent opacity (a measure of smoke density) as observed from the battery surface. Compliance with this limit was determined by averaging the opacity averages of six readings per push over four consecutive pushes.

(c) Quench Makeup Water

Makeup water for coke quenching operations was limited to a TDS content of 1500 milligrams per liter (mg/l). To determine compliance, a sample of makeup water was collected at the point where no further additions to the makeup water could be made and analyzed according to methods accepted by USEPA. Collection and analysis was on a quarterly basis. This sampling procedure was contingent on the continued, exclusive use of city water for makeup purposes. If the content of the makeup water was changed, Citizens Gas would need to collect a makeup water sample every 24 hours. Samples could be analyzed daily and averaged over a week or a five-day composite sample could be analyzed weekly.

III. Prior Rulemaking and Public Comments

As previously noted, on November 27, 1985 (50 FR 48797), USEPA proposed to approve the above conditions as being consistent with RACT requirements with the exception of two conditions for Battery Number One. Battery Number One was subject to PSD requirements for new major sources under Part C of the Act and LAER requirements for sources in applicable nonattainment areas under Part D of the Act. The conditions concerning the visible emissions limit for coke oven doors and TDS content for quench makeup water were relaxations of the requirements stipulated in the battery's construction permit, issued to Citizens Gas by the State on February 10, 1978. The construction permit was consistent with Part C and Part D requirements. With respect to coke oven doors, the construction permit required a visible emission limit of 5 percent. Concerning quench makeup water, the permit included a limit of less than 1000 parts per million (or 1000 mg/l) of TDS.

Because the coke oven door visible emission limit and the limit on TDS content of quench makeup water for Battery Number One were less stringent in the operating permit than in the construction permit, USEPA proposed to disapprove the operating conditions as inconsistent with LAER requirements in the November 1985 notice. However, the notice recognized that the City of Indianapolis had issued revised permits to Citizens Gas for all three batteries on October 29, 1984. The revised Battery Number One permit essentially corrected the two deficient conditions from the previous permit on which USEPA was proposing rulemaking to disapprove. The notice acknowledged that the construction permit emission limits for Battery Number One, which were reflected in the revised operating permit, were approved limits and would be enforced by USEPA.

In conjunction with this notice, USEPA maintained a 60-day public comment period. During this period, the only written comments were submitted to USEPA on January 24, 1986, by legal counsel representing Citizens Gas. Citizens Gas contended that Battery Number One was producing "foundry" coke which should not be subject to the same visible emissions limit for doors as "furnace" coke. It was stated that the 5 percent LAER limit was based on furnace coke production. Citizens Gas maintained that foundry coke production requires a longer coking cycle and produces substantially less tar than furance coke production, thereby increasing the sealing time for doors on Battery Number One. The increase in sealing time results in a greater possibility of visible door emissions and less likelihood of source compliance with the 5 percent LAER limit, according to Citizens Gas. They requested that USEPA reconsider an 8.8 percent limit (or 13 doors as opposed to 7 doors allowable) based on a longer sealing time for foundary coke oven doors and an analysis relating the quantity of

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benzo-a-pyrene (BaP) coke oven emissions to the percentage of leaking doors. By comparing BaP emissions from foundry and furnace coke production, Citizens Gas claimed that the quantity of allowable emissions from the production of foundry coke with 8.8 percent leaking doors would be the same as the quantity of allowable emissions from furnace coke production with 5 percent leaking doors.

Citizens Gas had formerly proposed an 8.8 percent limit on coke oven doors in a variance request to the City of Indianapolis on August 20, 1985, which was an amended version of a variance request proposed by Citizens Gas on January 8, 1985. In the earlier proposal, Citizens Gas requested an exemption from the 5 percent limit for all ovens on Battery Number One which had been charged within two hours preceding the visible emissions inspection.

In a letter to the City of Indianapolis on December 11, 1985, USEPA questioned the validity of the technical assessments in these variance requests. USEPA contended that Citizens Gas had not adequately supported a relaxation of the 5 percent LAER limit, primarily because of a lack of technical evidence to substantiate the difference between foundry and furnace coking operations. USEPA had submitted similar comments to the City of Indianapolis on February 5, 1985, and on February 7, 1985.

USEPA maintains that Citizens Gas has failed to justify a relaxation of the 5 percent LAER limit for visible emissions from coke oven doors on Battery Number One. USEPA notes that the 5 percent limit was exceeded in fewer than 10 percent of nearly 300 door surveys of Battery Number One, as discussed in the February 7, 1985, response.

Concerning quenching makeup water for Battery Number One, which was the second item of disapproval in the November 27, 1985, notice, Citizens Gas had no disagreement with USEPA on the propriety of the construction permit TDS limit of 1000 mg/l, rather than the 1500 mg/l limit in the original operating permit.

IV. Today's Rulemaking and Its Affect on Marion County's Part D TSP SIP

USEPA is approving all but two of the operating permit conditions, as they appear on Certificate of Operation Numbers 06895, 06896 and 06897, for Batteries E, H and Number One. With the exception of the oven door visible emissions limit and the limit on TDS content in quench makeup water for Battery Number One, USEPA finds that all other operating conditions and limits for the three batteries and consistent with part C and Part D requirements for TSP control. USEPA is disapproving the two limits discussed above. However, it is important to note that this disapproval will have no affect on the operation of Battery Number One, because a revised operating permit has been issued for the battery (Number 08264) by the City of Indianapolis, which corrects the two deficient conditions and conforms to the Act's Part C PSD and Part D LAER requirements.[1] In addition, USEPA will continue to enforce the conditions of the 1978 construction permit for Battery Number One, which are reflected in the battery's revised operating permit. (The original construction permit is Federally enforceable as a requirement of the SIP pursuant to USEPA regulations.) It also does not affect the ultimate lifting of the section 110(a)(2)(I) construction ban in Marion County, because the emission limits in the construction permit are better than RACT, i.e., LAER. A further discussion of Marion County's construction ban follows in this notice.

As proposed in the November 1985 rulemaking notice, the provisions for the sampling methodology of coke quench makeup water for the three batteries is approved by USEPA with the understanding, expressed in a September 7, 1983, letter from the City of Indianapolis, that the one sample to be analyzed quarterly will be a five-day composite sample comprised of daily grab samples for five consecutive days and that the Indianapolis Air Pollution Control Division will in fact request that one such sample of the quench makeup water be analyzed quarterly.

Marion County's TSP SIP still has two remaining definciencies which must be resolved before USEPA can move forward to approve the TSP plan for the purposes of meeting Part D requirements. These deficiencies are discussed below.

On July 16, 1982 (47 FR 30972), USEPA conditionally approved Indiana's Part D TSP SIP for Marion County with the exception of regulations for coke batteries. USEPA's condition was that the State submit an industrial fugitive particulate regulation to USEPA by July 31, 1982. Such a regulation was submitted, however, USEPA proposed to disapprove the regulation on October 11, 1984 (49 FR 39889), due to the State's failure to require RACT level controls. On January 7, 1986, Indiana submitted a revised version of the regulation. USEPA will propose rulemaking on this revised regulation in a future Federal Register notice.

Secondly, Indiana's opacity plan does not meet Part D requirements. On November 16, 1984 (49 FR 45178), USEPA proposed to approve Indiana's revised opacity regulation for most combustion and noncombustion sources following a U.S. Court of Appeals Seventh Circuit decision in *Bethlehem Steel Corporation* v. *Gorsuch*, 742 F.2d 1028 (1984). However, USEPA noted that the regulation did not constitute RACT for process fugitive particulate sources in nonattainment areas, including process sources in Marion County.

Section 110(a)(2)(I) imposes a construction ban on [primary] nonattainment areas which do not have approved Part D SIPs. The only two counties in Indiana which continue to have primary TSP nonattainment areas are Lake and Marion Counties, which currently have the ban in effect. For Marion County, the plan is still deficient in that it does not have a RACT level industrial fugitive particulate plan and a RACT opacity plan. Today's rulemaking action, including the element of disapproval and USEPA's continued enforcement of the construction permit limits for Battery Number One, does not affect the current ban on construction in Marion County. However, this rulemaking does remove one barrier to the approval of Marion County's TSP plan.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 20, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by Reference, Particulate matter, Intergovernmental relations.

Note.—Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 30, 1987.

Lee M. Thomas,

Administrator.

[1] Even though USEPA is disapproving these two limits through the SIP/Federal rulemaking process, it is recognized that the State's issuance of a revised construction permit would be the proper means of modifying the State's original construction permit limits. Any modification of original limits would require a demonstration that the TSP NAAQS would be protected and that the modified permit would still conform to Parts C and D of the Act.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart P—Indiana

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.770 is amended by adding paragraph (c)(60) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(60) On January 18, 1984, Indiana submitted as a revision to the TSP SIP certain operating conditions and limits for three coke oven batteries at Citizens Gas and Coke Utility in Marion County. The operating permits included conditions and limits for Batteries E, H and Number One with respect to visible emissions from coke oven doors and pushing operations and allowable content of total dissolved solids in quench makeup water. EPA disapproves the limit on coke oven door visible emissions and total dissolved solids content for quench makeup water on Battery Number One, because the limits are inconsistent with that battery's Part C Prevention of Significant Deterioration requirements and Part D Lowest Achievable Emission Rate requirements. See subparagraphs (c)(34) and (c)(42) for further background on actions concerning coke oven batteries.

(i) Incorporation by reference.

(A) Certificates of Operation Numbers 06895, 06896, and 06897 for Citizens Gas and Coke Utility issued by the City of Indianapolis, dated June 30, 1980, with addition of operating conditions and emission limits, dated September 12, 1983, as adopted by the State on January 4, 1984, and transmitted on January 18, 1984.

(ii) Additional information.

(A) September 7, 1983, letter from the City of Indianapolis to the State concerning quarterly analysis of coke quenching makeup water.

3. Section 52.776 is amended by adding new paragraph (k) to read as follows:

§ 52.776 Control strategy: Particulate matter.

* * * * *

(k) On January 18, 1984, Indiana submitted a visible emission limit on coke oven battery doors and a limit on total dissolved solids content of coke quench makeup water for Battery Number One at Citizens Gas and Coke Utility in Marion County. These limits are disapproved because they are impermissible relaxations of requirements for new major stationary sources, as provided at § 52.21(j)[2] and section 173 of the Clean Air Act. See § 52.770(c)(60).

[FR Doc. 87–3317 Filed 2–17–87; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Part 180

[OPP–300135A; FRL–3157–6]

Mineral Oil; Pesticide Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule exempts mineral oil from the requirement of a tolerance when used as an inert ingredient diluent, carrier, and solvent in pesticide formulations. This regulation was requested by Malcolm Nicol and Co.

EFFECTIVE DATE: Effective on February 18, 1987.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Rosalind Gross, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–557–7700.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of July 17, 1985 (50 FR 28956), which announced that Malcolm Nicol and Co., Lyndhurst, NJ 07071, had requested that 40 CFR 180.1001(c) be amended by expanding the existing exemption from the requirement of a tolerance for mineral oil (U.S.P.) to provide for "Mineral oil, U.S.P., or conforming to 21 CFR 172.878 or 178.3620(a), (b)" and the additional use as a carrier in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

Inert ingredients are ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carageenan and modified cellulose; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The Witco Chemical Corp. commented on the proposal, objecting to the expansion of the current exemption from the requirement of a tolerance for mineral oil (U.S.P.) in 40 CFR 180.1001(c) to include technical mineral oil conforming to 21 CFR 178.3620(b). Witco noted that mineral oil, U.S.P. or conforming to 21 CFR 172.878 or 178.3620(a), is of the purest grade and as such is recognized as safe to the population and the environment. With regard to technical-grade mineral oil, Witco claims that this substance typically contains 3 to 5 percent unidentified aromatics, and could conceivably have higher concentrations of aromatics in the oil and be in conformity with 21 CFR 178.3620(b). Witco further noted that no direct food contact is permitted for technical mineral oils under 40 CFR 178.3620(b) and argued that the application of the technical mineral oil to crops could cause public health problems. In support of this conclusion, Witco referred to a Food and Drug Administration Federal Register Notice (48 FR 242; Dec. 15, 1983) which allowed the use of pure white mineral oil as a dust control agent for certain grains not to exceed 0.02 percent by weight of grain. In conclusion, Witco claimed that the use of technical-grade mineral oil for direct food contact on growing crops or raw agricultural commodities after harvest could pose a long-term health hazard to the population.

EPA agrees with the Witco comment that technical-grade mineral oil should not be permitted for direct food contact on growing crops or raw agricultural commodities after harvest. Therefore, this final rule for mineral oil will limit the exemption from the requirement of a tolerance for mineral oil (U.S.P.) to mineral oil (U.S.P.), conforming to 21 CFR 172.878 or 178.3620(a). Section 178.3620(a) is limited to white mineral oil meeting the specifications in 21 CFR 172.878. The final rule, as changed to exclude technical-grade mineral oil, will expand the entry in 40 CFR 180.1001(c) to read "Mineral oil, U.S.P., or

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conforming to 21 CFR 172.878 or 178.3620(a)" and the additional use as a carrier in pesticide formulation applied to growing crops or to raw agricultural commodities after harvest.

After the proposed rule was published, EPA initiated new review procedures for tolerance exemptions for inert ingredients. Under these procedures the Agency conducts a review of the data base supporting any prior clearances, the data available in the scientific literature, and any other relevant data. Based on a review of such data, the Agency has determined that no additional test data will be required to support these regulations.

Based on the above information and review of its use, it has been found that when used in accordance with good agricultural practices these ingredients are useful and do not pose a hazard to humans or the environment. In conclusion, the Agency has determined that the amendment to 40 CFR Part 180 will protect the public health. Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: February 9, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

PART 40—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1001(c) is amended by revising the entry "Mineral oil (U.S.P.)" to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

(c) * * *

Inert ingredients	Limits	Uses
* * *	* * *	* * *
Mineral oil, U.S.P., or conforming to 21 CFR 172.878 or 178.3620(a) (CAS Reg. No. 8012-95-1)	.....	Diluent, carrier, and solvent
* * *	* * *	* * *

[FR Doc. 87-3318 Filed 2-17-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 5E3242, 5E3282/R863; FRL-3155-5]

Pesticide Tolerances for Cyano(3-Phenoxyphenyl)-Methyl-4-Chloro-Alpha-(Methylethyl)Benzeneacetate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of insecticide cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(methylethyl)benzeneacetate in or on certain raw agricultural commodities. This regulation to establish maximum permissible levels for residues of the insecticide in or on the commodities was requested in petitions submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on February 18, 1987.

ADDRESS: Written objections, identified by the document control number, [PP 5E3242, 5E3282/R863], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716H, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA issued proposed rules, published in the **Federal Register** of December 3, 1986 (51 FR 43643), which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, submitted pesticide petitions (PP) as follows to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the named Agricultural Experiment Stations proposing the establishment of tolerances for residues of the insecticide cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(methylethyl)-benzeneacetate in or on certain raw agricultural commodities.

1. *PP 5E3242.* Petition submitted on behalf of the Agricultural Stations of Maine, Michigan, New Jersey, North Carolina, Oregon, and Washington for blueberries, caneberries, currants, elderberries, gooseberries, and huckleberries at 3.0 parts per million (ppm).

2. *PP 5E3282.* Petition submitted on behalf of the Agricultural Stations of Arkansas, Florida, and North Carolina for okra at 0.1 ppm. The petitioner later proposed that residues of the pesticide on okra be limited to Florida based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rules.

The data submitted and relevant information have been evaluated and discussed in the proposed rules. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address

given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 4, 1987.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.379 is amended by: (1) Designating the current paragraph and list of tolerances as paragraph (a); (2) adding and alphabetically inserting the following raw agricultural commodities to paragraph (a); and (3) adding a new paragraph (b) to read as follows:

§ 180.379 Cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(methylethyl)benzeneacetate; tolerances for residues.

(a) * * *

Commodities:	Parts per million
Blueberries	3.0
Caneberries	3.0
Currants	3.0
Elderberries	3.0
Gooseberries	3.0
Huckleberries	3.0

(b) Tolerances with regional registration are established for residues of the insecticide cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(methylethyl)benzeneacetate in or on the following raw agricultural commodities:

Commodities:	Parts per million
Okra	0.1

[FR Doc. 87-2974 Filed 2-17-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6639

[AK-960-07-4220-10; AA-6918]

Alaska; Partial Modification Public Land Order No. 5187

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order modifies a public land order (PLO) insofar as it affects 29.98 acres of public land withdrawn for classification purposes. This action will also classify the land as suitable for selection by the State of Alaska, if such land is otherwise available. The land will remain closed to all other forms of appropriation and disposition under the public land laws, including the mining and mineral leasing laws.

EFFECTIVE DATE: February 18, 1987.

FOR FURTHER INFORMATION CONTACT: Mary Jane Clawson, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907-271-5060.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and by subsection 17(d)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 708 and 709; 43 U.S.C. 1616(d)(1), it is ordered as follows:

1. Public Land Order No. 5187, dated March 15, 1972, which withdrew land for classification purposes, is hereby modified insofar as it affects the following described land:

Copper River Meridian

Lena Point, Alaska

T. 40 S., R. 64 E.,
Lot 1A of U.S. Survey No. 3808, Alaska, situated at Lena Point about seventeen miles northwesterly of Juneau, Alaska.

The area described contains approximately 29.98 acres.

2. Subject to valid existing rights, the land described above is hereby classified as suitable for and opened to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, et seq.; 48 U.S.C. prec. 21, or subsection 906(b) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 94 Stat. 2437-2438.

3. As provided by subsection 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the land described above for a period of ninety-one (91) days from the date of publication of this order, if the land is otherwise available. Any of the land described herein that is not selected by the State of Alaska will continue to be subject to the terms and conditions of PLO 5187 and other withdrawals of record.

J. Steven Griles,

Assistant Secretary of the Interior.

February 6, 1987.

[FR Doc. 87-3284 Filed 2-17-87; 8:45 am]

BILLING CODE 4310-JA-M

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Serianthes nelsonii Merr. (Hayun Lagu or Tronkon Guafi)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Serianthes nelsonii* (hayun lagu, tronkon guafi), to be an endangered species. This species is known from one mature tree located in the Territory of Guam and 64 known trees on the island of Rota, Commonwealth of the Northern Mariana Islands. The continued existence of this species is endangered by habitat degradation or destruction, typhoons and other natural or man-caused disasters, insect damage, and the cropping of seedlings by introduced deer and pigs. This determination that *Serianthes nelsonii* is an endangered species implements the protection provided by the Endangered Species Act of 1973, as amended.

DATES: The effective date of this rule is March 20, 1987.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

The earliest known collection of *Serianthes nelsonii* was that made on Guam by Alfred Marche, who botanically explored the Mariana Islands in the late 1880's. This material remained unstudied until 1947, when

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F.R. Fosberg and M.-H. Sachet reported on it (Fosberg and Sachet 1957). In early 1918, Peter Nelson, of the Guam Experimental Station, received the first grant awarded from the Charles Budd Robinson, Jr., Memorial Fund of the New York Botanical Garden. This grant of 50 dollars was to assist him in field work on Guam. As stipulated by the grant, the first set of his collections was submitted to Elmer Merrill, a botanist at the Bureau of Science, Manila, to be identified. Merrill recognized the plant as new to science and in 1919 described it, naming it in Nelson's honor. The tree subsequently was discovered on Rota by R. Kanehira in the 1930's. It is believed to be endemic to those two islands.

There are two common names for the tree. On Guam it is called hayun lagu, which translates as "north wood." On Rota it is known as tronkon guafi (sometimes spelled trongkon) which means "fire tree."

Serianthes nelsonii is a large tree reaching a height of 60 feet or more and a trunk diameter of nearly six feet. The younger parts of the tree, the inflorescence, and the fruits are covered with rusty-brown hairs. The leaves are about ten inches long, doubly pinnate, and with 20 to 30 pairs of small, dark-green leaflets on each pinna. The flowers are shaped like small brushes, the petals nearly an inch long, pale greenish-white; the filaments extend about twice that length beyond the petals, and are white at the base, pink to maroon for most of their length, and tipped with a yellow anther. The fruit is a hard, dry pod, about 5 inches long by 1 inch wide, densely covered with rusty-brown hair.

It is not known if the tree was ever very common; however, large portions of native habitat on Guam and Rota have been destroyed by human activities, such as the recent clearing of native vegetation adjacent to one of the populations of this species on Rota. On Guam, trees are thought to have been destroyed in the past during land clearing on Andersen Air Force Base. Today, 65 individuals are estimated to be extant in the wild, all but one from Rota. The Guam tree is on Andersen Air Force Base and the Rota trees are on private and local government lands.

On December 14, 1981, Paul M. Calvo, then Governor of Guam, petitioned the Service to list *Serianthes nelsonii* as an endangered species. Subsequently, on February 15, 1983, the Service published a "Notice of findings on certain petitions and review of status" in the **Federal Register** (48 FR 6752), which included this species.

On November 28, 1983 (48 FR 53640), the Service published a supplementary notice of plant species under review for listing as endangered or threatened. *S. nelsonii* was included in that notice as a category-1 candidate, indicating that the Service then had sufficient information to propose listing it. On October 13, 1983, and again on October 12, 1984, the Service found that listing of the species was warranted, but precluded by other pending proposals, in accord with section 4(b)(3)(B)(iii) of the Endangered Species Act of 1973, as amended (Act). On October 25, 1985, the Service published a proposed rule in the **Federal Register** (50 FR 43423) based on information summarized in a detailed status report prepared by the Service (Herbst 1984). The Service now determines *Serianthes nelsonii* to be an endangered species with the publication of this final rule.

Summary of Comments and Recommendations

In the October 25, 1985, proposed rule (50 FR 43423) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate Territorial and Commonwealth agencies and governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the *Pacific Daily News* on November 23, 1985, which invited general public comment. Eight letters of comment were received, including those from the Governor of the Commonwealth of the Northern Mariana Islands, the Director of the Guam Department of Agriculture, the Director of the Waimea Arboretum and Botanical Garden, three other Federal agencies, and two individuals. All comments received have been considered in formulating this final rule.

All letters of comment strongly supported the listing of *Serianthes nelsonii* as an endangered species. Many of the letters contained additional information updating the data presented in the proposed rule. When appropriate, this information has been incorporated into this final rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Serianthes nelsonii* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Serianthes nelsonii* Merr. (hayun lagu, tronkon guafi) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Large portions of native habitat on Guam and Rota have been degraded or destroyed as a result of human activities. It is not known if this species was ever common, but undoubtedly it existed in greater numbers than it does today. Some of the early Nelson specimens appear to have been collected in areas now on Andersen Air Force Base, since cleared for buildings and other facilities. Another tree is known to have been inadvertently destroyed during land clearing on the base. Recent clearing of land on Rota for agricultural purposes has destroyed the limestone forest vegetation adjacent to one of the *Serianthes* populations on that island. Some of the trees are visible from the agricultural land.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not known to be a problem. However, during Japanese occupation of the Northern Mariana Islands, many large trees were harvested. If *Serianthes* were present in the harvested areas, they probably were cut.

C. *Disease or predation.* Seedlings that have been transplanted from the wild into forest nursery plots have been very susceptible to mealy bug and scale insect damage. Although it is not known whether these insects affect plants in the wild, this may occur. Wild specimens are infested with an unidentified seed-boring insect, resulting in the destruction of much of their seed crop. A recent death of a tree on Guam is believed to have been at least partly due to termite infestation. At least three trees have produced seedlings, but, as no (Guam) or few (Rota) seedlings taller than 8 inches have been seen, it is believed that they are eaten by the introduced deer (Guam, Rota) and perhaps by wild pigs (Guam).

D. *The inadequacy of existing regulatory mechanisms. Serianthes nelsonii* was placed on the Guam Endangered Species List on September 24, 1981, and is thereby protected by the Endangered Species Act of Guam (Pub. L. 15–36), which prohibits trade in and import, export, and taking of listed species. Listing as endangered by the Federal Government under the Endangered Species Act of 1973, as amended, provides additional protection through section 7 (interagency cooperation) and section 9 (prohibitions). Such action also facilitates cooperative efforts by the Service with the Government of Guam to protect the species and enhance its recovery (under section 6). The Commonwealth recognizes *S. nelsonii* as endangered, but has no protective regulations that apply to endangered plants. Nevertheless, the Commonwealth Government has indicated, in a letter of comment, its intention of working towards this species' conservation. In the Commonwealth, the U.S. Endangered Species Act also applies; however, a cooperative agreement under section 6 of the Act has not been completed.

E. *Other natural or manmade factors affecting its continued existence.* Typhoons are common in Micronesia. At least two of the few remaining trees have been damaged by the high winds of typhoons. The extremely small number of extant individuals coupled with a lack of seedlings contributes to this species' vulnerability. A single event such as a fire, a storm, or a natural fluctuation in the number of individuals could cause the demise of a significant percentage of the remaining members of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Serianthes nelsonii* as endangered. Endangered status reflects the destruction of native habitat that has occurred, the real and potential threats faced by the species and the low number of individuals extant. See the following "Critical Habitat" section for a discussion of why critical habitat is not being designated at this time.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. Such a determination would result in no known benefit to the species. The remaining mature tree known from Guam is on Federal property, where no current or known future activity by the U.S. Air Force would adversely affect it. Should any potential adverse effects develop, the involved agencies could be informed by means other than a critical habitat determination. In addition, publication of detailed range information for such an easily identifiable species that occurs in such small numbers would expose it to potential vandalism. Therefore, it would not be prudent to determine critical habitat for *Serianthes nelsonii* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Territorial, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States (including territories and commonwealths) and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The extant plant of *Serianthes nelsonii* on Guam is on Andersen Air Force Base. As the species is now listed as endangered, the Air Force is required to enter into consultation with the Service before undertaking or permitting any action that may affect the plant.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export this species, transport it in interstate or foreign commerce in the course of a commercial activity, sell it or offer it for sale in interstate or foreign commerce, or remove it from an area under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and Territorial or Commonwealth conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. Requests for trade permits for scientific purposes and for enhancing the propagation of the species, allowed under § 17.62, may result if an artificial propagation plan is pursued. Otherwise it is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/234–1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Fosberg, F. R., and M.-H. Sachet. 1957. Plantes recoltées en Micronesie au XIXe siecle. Bulletin du Museum d' Histoire Naturelle, Paris, Series 2, 29(5):428–436.

Herbst, D. 1984. Unpublished status survey of *Serianthes nelsonii* Merr. U.S. Fish and Wildlife Service. 50 pp.

Author

The primary author of this final rule is Dr. Derral R. Herbst, Office of Environmental Services, U.S. Fish and Wildlife Service, Box 50167, Honolulu, Hawaii 96850 (808/546–7530).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

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Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Fabaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
FABACEAE—PEA FAMILY						
* * *	* * *	* * *	* * *	* * *	* * *	* * *
Serianthes nelsonii	Hayun Lagu (Guam) Tronkon guafi (Rota)	Western Pacific Ocean: U.S.A. (Guam, Rota).	257	NA	NA	
* * *	* * *	* * *	* * *	* * *	* * *	* * *

Dated: January 31, 1987.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-3312 Filed 2-17-87; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 61111-7018]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement amendment 2 (amendment) to the Pacific Coast Groundfish Fishery Management Plan (FMP) which governs domestic and foreign fishing for groundfish in the exclusive economic zone off the coasts of Washington, Oregon, and California. The amendment (1) eliminates the special quota for sablefish in Monterey Bay; (2) provides a process for changing gear requirements without amending the FMP; and (3) imposes consistent, coastwide marking requirements on fixed gear. The intended effect is to make management of the groundfish resource more responsive and efficient in achieving the objectives of the FMP.

EFFECTIVE DATES: 0001 hours local time, March 15, 1987, except for § 663.26 (c) and (g) which will be effective at 0001 hours local time on August 1, 1987.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, Washington 98115 (phone 206–526–6150); E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Steet, Terminal Island, California 90731 (phone 213–514–6196); or the Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, Oregon 97201 (phone 503–221–6352).

Copies of the amendment, combined with the environmental assessment and the regulatory impact review/regulatory flexibility analysis, are available from the Pacific Fishery Management Council.

SUPPLEMENTARY INFORMATION:

Regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP) were published October 5, 1982 (47 FR 43964), and were modified by regulations implementing amendment 1 to the FMP effective on July 29, 1984 (49 FR 27518). On December 1, 1986, proposed regulations were published in the **Federal Register** (51 FR 43219), with a request for public comment, to implement amendment 2 to the FMP as recommended by the Pacific Fishery Management Council (Council).

The regulations implementing amendment 2 to the FMP include: Deletion of the separate 2,500 metric ton optimum yield (OY) for sablefish caught in Monterey Bay, California; addition of a provision that would allow gear requirements to be changed, allowing full public involvement, without a time-consuming amendment to the FMP; and imposition of marking requirements for two types of fixed gear (set net and commercial vertical hook-and-line gear), consistent with Federal marking requirements for other types of fixed gear.

Comments

One comment was received during the 75-day public comment period of October 31, 1986, until January 10, 1987.

Comment. The U.S. Coast Guard disagreed that the framework provision for making gear changes (Issue 2) would not affect enforcement procedures or costs, and requested recognition in the amendment of the need for analyzing impacts on enforcement each time a gear change is proposed.

Response. The framework procedure in itself has no impact on enforcement. For actions taken under this procedure to change gear restrictions, the framework provision already is designed to incorporate public review and analysis of issues relevant to the proposed action, including enforcement. Currently, the Council considers implications for enforcement each time it reviews a management measure. A representative of the U.S. Coast Guard sits on the Council and a special enforcement advisory committee consisting of State and Federal enforcement agents also comments on all management actions, including those anticipated under this provision.

Clarification

In approving amendment 2, the Secretary wishes to clarify the operation of the framework provision for changing gear restrictions at § 663.25. Because the changes which are possible under amendment 2 cover a wide range, analyses of biological and socioeconomic impacts will be considered at the time a particular change is proposed under this framework provision. As a result, the time required to process a gear change under this provision will vary depending on the nature of the action, its impacts on the fishing industry, the resource, the environment, the attendant review of these impacts by interested parties. Satisfaction of the legal requirements of other applicable law (e.g. the Administrative Procedure Act, Regulatory Flexibility Act, Executive Order 12291, etc.) for changes to gear restrictions under this framework will require analysis and public comment before measures may be implemented by the Secretary. This appears to be consistent with the procedures proposed and the intent of the Council in its recommendation regarding the gear modification provision.

Phase-in of Gear Marking Requirements

In order to minimize the economic impact on the approximately 220 fishermen using set nets and commercial vertical hook-and-line gear in the Pacific coast groundfish fishery, the provisions at § 663.26 (c) and (g) requiring marking of these gears will not be effective until August 1, 1987.

Changes to Proposed Rule

Section 663.27(b)(3) was modified to describe the removal of the text referring to the geographic description of the Monterey subarea only so all of paragraph (b)(3) would not have to be republished again.

Classification

The Regional Director determined that the FMP amendment is necessary for the conservation and management of the Pacific coast groundfish fishery and that it is consistent with the Magnuson Fishery Conservation and Management Act and other applicable law.

The Council prepared an environmental assessment for this FMP amendment and concluded that there will be no significant impact on the environment as a result of this rule. A copy of the environmental assessment is available from the Council at the address given above.

The Administrator of NOAA determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The Council prepared a regulatory impact review for this amendment which explains the reason for this determination. A summary was published at 51 FR 43219. A copy of this review is available from the Council at the address listed above.

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. The regulatory flexibility analysis which was prepared in conjunction with the regulatory impact review states that the total impact of these proposed regulations is expected to be beneficial but minor. See the summary at 51 FR 43219.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Washington, Oregon, and California. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. The State agency of Oregon agreed with this determination. Washington and California did not comment; consequently their concurrence is presumed.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing.

Dated: February 11, 1987.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 663—[AMENDED]

For the reasons set out in the preamble, 50 CFR Part 663 is amended as follows:

1. The authority citation for 50 CFR Part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. The Table of Contents is amended by removing the title at § 663.25 "Season [Reserved]" and inserting a new title "Gear adjustments".

3. In § 663.23, paragraphs (a) and (b) are amended by adding the reference, "§ 663.25" after "663.22" where it occurs in the first sentence of both paragraphs.

§ 663.21 [Amended]

4. Section 663.21 is amended by removing paragraph (a)(2) in its entirety and redesignating paragraph (a)(3) as paragraph (a)(2).

5. A new § 663.25 is added to read as follows:

§ 663.25 Gear adjustments.

(a) *Changes to gear restrictions.* Except as otherwise provided by section 305(e) of the Magnuson Act, after receiving a recommendation and written report by the Pacific Fishery Management Council, the Secretary may publish one or more notices under § 663.23 at any time during the year to change domestic or foreign gear restrictions if it is determined that the change is consistent with the objectives of the FMP and would result in significant improvements in the groundfish fishery. Significant improvements may exist when:

(1) Sustainable landings are increased;

(2) The value of landings are increased;

(3) Gear conflicts are reduced;

(4) Fishing efficiency is increased; and

(5) Another condition exists which promotes achievement of the objectives of the FMP, which may be based on consideration of changes in catch composition, yield per recruit, cost to the fishing industry, impacts on other management measures and other fisheries, and any other relevent biological or socio-economic information.

(b) Changes to gear restrictions may include, but are not limited to, definitions of legal gear, mesh size specifications, codend specifications, marking requirements, and other gear specifications included in this part, 50 CFR 611.70, and the FMP.

(c) A public hearing will be held before any determination that a change to the gear restrictions is consistent with the objectives of the FMP and would result in significant improvements in the groundfish fishery, and before publishing any notice changing gear restrictions. Implementation of changes to the gear restrictions will be scheduled so as to minimize the costs to the fishing industry, insofar as this is consistent with achieving the goals of the change.

6. In § 663.26, paragraph (c) is revised and paragraph (g) is redesignated as paragraph (h), and a new paragraph (g) is added to read as follows:

§ 663.26 Gear restrictions.

* * * * *

(c) *Set nets.*

(1) Fishing for groundfish with set nets is prohibited in the fishery management area north of 38°00′ N. latitude.

(2) Set nets must be marked at the surface at each terminal end with a pole and flag, light, radar reflector, and a buoy displaying clear identification of the owner.

* * * * *

(g) *Commercial vertical hook-and-line (Portuguese longline).* Commercial vertical hook-and-line gear (Portuguese longline) must be marked at the surface with a pole and flag, light, radar reflector, and a buoy displaying clear identification of the owner.

* * * * *

§ 663.27 [Amended]

7. In § 663.27, paragraph (b)(3) is amended by removing the text from the first sentence that reads "for that portion of the Monterey subares between 37°00′ N. latitude and 36°30′ N. latitude, or for the fishery management area as a whole", which follows "of the OY will be reached"; by removing the

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text from the first sentence that reads "applicable to the relevant area", which follows "a notice in accordance with the § 663.23"; by removing the text from the second sentence that reads "in the area to which the trip limit applies (between 37°00' N. latitude and 36°30' N. latitude, or", which follows "all trawl landings containing sablefish"; by removing the text from the second sentence that reads "as a whole", which follows "the fishery management area"; by removing the text from the third sentence that reads "in the relevant area", which follows "trawl or fixed gear"; by removing from the third sentence the word "relevant" in the last four words that read "in the *relevant* area".

8. In § 663.27, paragraph (b)(3) is amended by adding to the second sentence the word "from" between the text that reads "all trawl landings containing sablefish" and "the fishery management area"; and by adding to the third sentence the phrase "fishery management" before the last word "area".

[FR Doc. 87-3353 Filed 2-12-87; 4:46 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 32
Wednesday, February 18, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1809, 1900, 1902, 1910, 1924, 1941, 1943, 1945, 1951, 1955, 1962, 1965, and 1980

General Revision of Farmer Program Regulations

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The current 30 day comment period on the proposed rule that appeared at pages 1706–1804 in Volume 52 of the **Federal Register** on January 15, 1987 (FR Doc. 87–582) expires on February 17, 1987. That proposed rule would amend Farmers Home Administration's regulations to: (1) Provide for the use of ratios and standards and a preapplication for determining the degree of potential loan risk on insured loans; (2) remove appraisal regulations from the Code of Federal Regulations; (3) require each State to publish unit prices for farm commodities each year; (4) authorize the State Director to overturn a favorable County Committee decision; (5) prohibit loans for advance payment of cash leases; (6) require crop insurance; (7) restrict use of balloon payments; (8) restrict new loans to previously FmHA foreclosed borrowers and previous borrowers whose FmHA debts have been debt settled unless certain conditions are met; (9) provide for FO loans on leasehold interest in Hawaii; (10) remove obsolete and unfunded loan program regulations; (11) add more guidance on what is a nonfarm enterprise; (12) clarify the EM disaster designation procedure; (13) require financial information from all members of an entity and delete the reference to principal members; (14) clarify calculations for an EM actual loss, and prevent duplication of benefits from other agencies; (15) protect historic sites and correct health or safety problems; (16) add provisions for farm debt restructure and conservation set aside conservation easements; (17) redefine a borrower; (18) clarify the use of the word character of the word character; (19) remove obsolete material and make other necessary clarifications and editorial changes; (20) further clarify the use of proceeds from the sale of chattel security and the release of chattel security. This document extends the comment period for that proposed rule for an additional 30 days to allow citizens ample time to comment on the proposed rule.

DATES: Comments on the proposed rule are being extended for a 30 day period from February 17, 1987, to March 19, 1987. Comments must be received on or before March 19, 1987 in order to be assured of consideration.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: William Krause, Director, Emergency Loan Division, Farmers Home Administration, USDA, Room 5420, Washington, DC 20250, Telephone: (202) 382–1632.

Dated: February 13, 1987.

Kathleen W. Lawrence,

Acting Under Secretary for Small Community and Rural Development.

[FR Doc. 87–3557 Filed 2–17–87; 9:24 am]

BILLING CODE 3410-07-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 207

Admission of Refugees

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Extension of comment period for notice of proposed rulemaking.

SUMMARY: The Service has extended from February 10, 1987, to March 3, 1987, the deadline for submitting comments in response to requests received from the public. The Amendments the Service proposed were published on December 12, 1986 at 51 FR 44795.

DATE: Comments are now due on or before March 3, 1987.

ADDRESS: Please submit written comments in duplicate to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, Room 2011, 425 I Street, NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Daniel Solis, Immigration Inspector, Office of Refugee, Asylum and Parole, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, DC 20536, Telephone: (202) 633–5463.

SUPPLEMENTARY INFORMATION: The Service has extended the deadline for submitting written comments from February 10, 1987, to March 3, 1987, to allow the public additional opportunity to comment on proposed amendments published on December 12, 1986, at FR 44795.

SUMMARY: The proposed rule would modify the procedure to be used in determining eligibility to be considered for refugee admission under section 207 of the Immigration and Nationality Act, as amended by the Refugee Act of 1980. The modification would require that applicants eligible for immigrant visas under the preference classes established in subsection 203(a) of the Act and for whom a visa number would be available within one year not be admitted as refugees unless it is in the public interest.

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Dated: February 10, 1987.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 87-3288 Filed 2-17-87; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-CE-09-AD]

Airworthiness Directives; Beech Models 1900 and 1900C Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to revise Airworthiness Directive (AD) 85-21-07, Amendment 39-5295, published in the Federal Register on May 2, 1986 (51 FR 16294), applicable to Beech Model 1900/1900C airplanes. The AD requires that in-service airplanes be operated in accordance with revised Pilot's Operating Handbook and FAA-Approved Airplane Flight Manual (POH/AFM) material which reflects the performance achieved by production airplanes. Subsequent to the issuance of AD 85-21-07, the manufacturer developed a kit that enables the in-service airplanes to achieve the performance as published in the original POH/AFM. The proposed revision to AD 85-21-07 would limit the applicability of AD 85-21-07 to those airplanes which have not been modified by the installation of the kit.

DATES: Comments must be received on or before April 6, 1987.

ADDRESSES: Beech Letter 52-85-1948 dated October 21, 1985, applicable to this AD may be obtained from Mr. Lou Gollin, Beech Aircraft Service Engineering, Department 52, P.O. Box 85, Wichita, Kansas 67201; or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86-CE-09-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Carlos Blacklock, ACE-160W, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4433.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86-CE-09-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

Airworthiness Directive 85-21-07, Amendment 39-5295, published in the **Federal Register** on May 2, 1986 (51 FR 16294), applicable to Beech Model 1900, requires a revision to the Pilot's Operating Handbook and FAA - Approved Airplane Flight Manual (POH/AFM) to permit the airplane to achieve the requirements of FAR 135 Appendix A, paragraph 6(B)(2). Subsequent to that publication, Beech has developed modifications which improve the one-engine inoperative climb performance of Models 1900 and 1900C airplanes. Those modifications are defined by Beech Kit Part Number (P/N) 114-4013-1 S. The FAA has determined that the improvement in one-engine-inoperative climb performance for airplanes fitted with Kit P/N 114-4013-1 S is adequate to ensure that production airplanes so modified can achieve the levels of performance set forth in the basic POH/AFM P/N 114-590021-3. Accordingly, the additional operating restrictions set forth in interim addendum to POH/AFM P/N 114-590021-03 dated October 21, 1985, and made mandatory by AD 85-21-07 are not warranted for those airplanes which have been modified by the installation of Kit P/N 114-4013-1 S.

Beginning with Beech Model 1900, Serial UA-4, and 1900C, Serials UB-61, UC-1 and UD-1, the basic design criteria was revised so that the components of Kit P/N 114-4013-1 S will be installed during the initial manufacturing process. For this reason, the provisions of this AD are revised to limit the applicability of airplanes to those manufactured prior to the above serials. Certain of the Beech Models 1900, Serials UA-1 through UA-3, and 1900C, Serials UB-1 through UB-60, will have Kit P/N 114-4013-1 S fitted during production. In addition, Beech has announced plans to retrofit in-service airplanes in the field. The revision therefore defines the AD as applicable only to specified serial-numbered airplanes, and identifies the Kit P/N 114-4013-1 S as an alternate means of compliance, and sets forth a procedure to be followed in recording compliance with this AD for those airplanes modified by Kit P/N 114-4013-1 S in the field. The kit relieves operators from applying the additional weight, altitude and temperature restrictions imposed by the interim addendum.

The FAA has determined there are approximately 63 airplanes affected by the proposed AD. Beech Aircraft Corporation is furnishing and installing the kits at no cost to the operators and owners; therefore, this action would not impose an adverse economic impact on the owners.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 85-21-07, Amendment 39-5295, as follows:

Revise the applicability statement to read as follows:

"Beech: Applies to Models 1900 (Serial Numbers UA-1 through UA-3) and 1900C (Serial Numbers UB-1 through UB-60) airplanes certificated in any category."

Revise paragraph (d) to read as follows:

"(d) The requirements of paragraphs (a), (b), and (c) do not apply to airplanes which have installed Beech Kit Part Number (P/N) 114-4013-1 S. Airplanes with this kit installed may operate in accordance with the limitations and procedures shown in Beech Model 1900/1900C Pilots's Operating Handbook and FAA-Approved Airplane Flight Manual (POH/AFM), P/N 114-590021-3."

Add paragraph (e):

"(e) An equivalent means of compliance with this AD, if used, must be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; Telephone (316) 946-4400.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Mr. Lou Gollin, Beech Aircraft Service Engineering, Department 52, P.O. Box 85, Wichita, Kansas 67201; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106."

Issued in Kansas City, Missouri, on February 5, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-3283 Filed 2-17-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-CE-03-AD]

Airworthiness Directives: Mitsubishi Heavy Industries, Ltd., Models MU-2B-25, MU-2B-26 and MU-2B-35 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain Mitsubishi Heavy Industries, Ltd., (MHI) Models MU-2B-25, -26, and -35 airplanes, which would require inspections, repairs as necessary and removal of shield jumper wires that together form a ground circuit that parallels the generator ground cable. This proposed action is prompted by the report of one shield jumper that burned from overcurrent. The actions proposed by this AD would preclude the possibility of an electrical fire.

DATES: Comments must be received on or before April 21, 1987.

ADDRESSES: MHI MU-2 Service Bulletin (S/B) No. 201 dated December 27, 1985, and Amendment dated April 25, 1986, applicable to this AD, may be obtained from Mitsubishi Heavy Industries, Ltd., 10, Oye-Cho, Minato-ku, Nagoya, Japan; or Beech Aircraft Corporation (Licensee to Mitsubishi Heavy Industries, Ltd.), 9709 East Central, P.O. Box 85, Wichita, Kansas 67201; or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of Regional Counsel, Attention: Rules Docket No. 87-CE-03-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8:00 a.m. and 4:00 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Herb Peters, Aerospace Engineer, Western Aircraft Certification Office, Systems & Equipment Section, ANM-173W, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007; Telephone (213) 297-1367.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 87-CE-03-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

Some Mitsubishi Models MU-2B-25, -26, and -35 airplanes, as defined in MU-2 S/B No. 201, have shield jumpers in series with generator shields forming an unwanted ground circuit paralleling the normal large gauge generator ground cable. The shield circuits use small gauge shield jumpers at each connector terminator and at each ground termination. On one aircraft, during a routine inspection, with no reported problem, shield jumper wire K56A20 connected to generator terminal "E" was found burned. The cause was determined to be false grounding to generator terminal "E". As a result, MHI has issued MU-2 S/B No. 201 dated December 27, 1985, with Amendment dated April 25, 1986, which indicates inspections, repairs and modification which will correct the problem circuit. The JCAB, who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Japan, has classified this MHI Service Bulletin, as amended, and the actions recommend therein by the manufacturer as mandatory to assure continued airworthiness of the affected airplanes. Mitsubishi Aircraft International (U.S. built) airplanes are not affected.

On airplanes operated under Japanese registration, this action has the same effect as an AD on airplanes certificated for operation in the United States. The FAA relies upon the certification of the JCAB combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this type design certificated for operation in the United States. The FAA has examined the available information related to the issuance of the aforementioned service bulletin and the mandatory classification by the JCAB. Based on the foregoing, the FAA believes that the condition addressed by MHI MU-2 S/B No. 201 dated December 27, 1985, with Amendment dated April 25, 1986, is an unsafe condition that may exist on other products of this type design, certificated for operation in the United States.

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Consequently, the proposed AD applicable to Models MU-2B-25, -26, and -35 airplanes would require accomplishment of the inspections, repairs and modifications to the wiring as described in the aforementioned S/B.

The FAA has determined there are approximately 123 airplanes affected by the proposed AD. The cost of inspecting, repairing, and modifying the wiring in accordance with the proposed AD is estimated to be $160 per airplane. The total cost is estimated to be $19,680 to the private sector.

The cost of compliance with the proposed AD is so small ($160 per airplane) that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES."**

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Mitsubishi Heavy Industries, Ltd. (MHI) Applies to MHI Models MU-2B-25, MU-2B-26, and MU-2B-35 (Serial Numbers 264 through 312, 314 through 320, 586 through 651 and 653) airplanes certificated in any category.

Compliance

Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent burning of generator shield jumper wires, accomplish the following:

(a) Inspect, repair (as necessary), and modify the generator circuit shield jumper wires in accordance with instructions contained in paragraphs 1. and 2. of the "Instructions" portion of MHI MU-2 Service Bulletin (S/B) No. 201 dated December 27, 1985, as amended April 25, 1986.

(b) Aircraft may be flown in accordance with FAR 21.197 to a location where the AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Western Aircraft Certification Office, ANM-17OW, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Mitsubishi Heavy Industries, Ltd., 10, Oye-Cho, Minato-ku, Nagoya, Japan; or Beech Aircraft Corporation, 9709 East Central, P.O. Box 85, Wichita, Kansas 67201; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 5, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-3264 Filed 2-17-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-ANM-28]

Proposed Alteration of Laramie, Wyoming, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to change the Laramie, Wyoming, Control Zone from full-time to part-time. A temporary reduction in personnel staffing of the Laramie Flight Service Station has resulted in weather observations not being available 24 hours a day.

DATES: Comments must be received on or before March 25, 1987.

ADDRESSES: Send comments on the proposal to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 86-ANM-28, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Office of Regional Counsel at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-534, Federal Aviation Administration, Docket No. 86-ANM-28, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2534.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-ANM-28". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & System Management Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to change the status of the Laramie, Wyoming, Control Zone from full-time to part-time. A temporary reduction in personnel staffing of the Laramie Flight Service Station has resulted in weather observations not being available 24 hours a day.

Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Laramie, Wyoming, Control Zone [Amended]

Add "The control zone shall be effective during the specified dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory."

Issued in Seattle, Washington, on February 5, 1987.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 87-3265 Filed 2-17-87; 8:45 am]

BILLING CODE 4910-13-M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2200

Rules of Procedure; Simplified Proceedings

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes several amendments to the procedural rules governing simplified adjudicative proceedings before the Occupational Safety and Health Review Commission and its Administrative Law Judges. The most significant changes would strengthen the role of the Commission when the parties cannot agree on whether to use simplified proceedings or conventional proceedings in trying a case. The Commission's experience under its existing procedural rules has revealed that simplified proceedings are underutilized, primarily because the present rules give any party a veto over the use of simplified proceedings. Under the proposed rules, the Commission would decide whether to use simplified proceedings or conventional proceedings when the parties cannot agree. The proposed rules would therefore result in greater use of simplified proceedings, while preserving the right of a party to invoke conventional proceedings when they are necessary to assure due process.

DATE: Comments must be submitted on or before March 20, 1987.

ADDRESS: Comments may be mailed to—

Earl R. Ohman, Jr., General Counsel, Occupational Safety and Health Review Commission, Room 402-A, 1825 K Street, NW., Washington, DC 20006

FOR FURTHER INFORMATION CONTACT: Earl R. Ohman, Jr., at 202-634-4015.

SUPPLEMENTARY INFORMATION:

Development of the Proposed Rules

Adjudications by the Occupational Safety and Health Review Commission and its Administrative Law Judges are governed by the regulations published at 29 CFR Part 2200—Rules of Procedure. Conventional proceedings are governed by Subparts A through G of Part 2200. Simplified proceedings are governed by Subpart M. The major differences between simplified proceedings and conventional proceedings are the following: (1) Pleadings generally are not required or permitted in simplified proceedings; (2) discovery is generally not permitted; (3) the Federal Rules of Evidence do not apply, as they do in conventional proceedings; and (4) interlocutory appeals are not permitted.

Appoximately two years ago, the Chairman of the Commission appointed a committee to study the Commission's rules and to recommend changes. The Commission, however, decided to consider separately the committee's recommendations for the rules governing simplified proceedings and those governing conventional proceedings. On June 25, 1986, the Commission published in the Federal Register a proposal to adopt a thorough revision of Subparts A through G of its Rules of Procedure. 51 FR 23184-23208. The Commission stated that it was not then proposing any changes in Subpart M but that it intended "to review Subpart M and to propose any needed changes shortly." 51 FR 23194. On September 8, 1986, the Commission completed its rulemaking procedures on Subparts A through G by adopting revised rules. 51 FR 32002-32030. The Commission then turned its attention to Subpart M.

Commencing Simplified Proceedings

The most significant changes proposed in this document relate to the procedures for commencing simplified proceedings. Under the present rules, any party may file a request for simplified proceedings within ten days of receiving notice that the case has been docketed. However, if any other party objects to the request, the case automatically continues under conventional proceedings. The objecting party is not required to state any reason for its objection.

The Rules Committee reported that, where the simplified procedures were used, they had worked well. The committee noted, however, that simplified proceedings were sparingly used, largely because of widespread use of the absolute veto the present rules accord any objecting party. The Rules Committee therefore recommended that Subpart M be changed to encourage greater use of simplified proceedings and to give the Commission and its Judges "the final word on whether the rules should be utilized in a particular case after an election is made by one of the parties."

The Decision to Order Simplified Proceedings or Conventional Proceedings Under the proposed rules, if the parties cannot agree on whether to use simplified proceedings or conventional proceedings, the Chief Administrative Law Judge or the Judge to whom the case is assigned would make this decision. Therefore, one of the

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key issues to be resolved in this rulemaking proceeding is the appropriate test for determining whether to commence or to discontinue simplified proceedings when the parties cannot agree. Proposed paragraphs (b)(3) and (d) of § 2200.203 and proposed paragraphs (a) and (b) of § 2200.204 state a single criterion for parties and judges to apply when a party objects to simplified proceedings: that simplified proceedings would, "under the particular circumstances of the case," deny due process. The repeated use of the phrase "under the particular circumstances of the case" is deliberate. It is intended to discourage generalized objections to simplified proceedings. That the simplified proceedings rules do not permit discovery as of right, dispense with pleadings, forbid interlocutory review, and make inapplicable the Federal Rules of Evidence, does not necessarily mean that due process will not be afforded. Pleadings are useful but they are not generally necessary to due process; the fair notice of an allegation required by due process can be given by means other than pleadings. Formal rules of admissibility for evidence are desirable, but due process is not violated by the mere admission of evidence; due process is violated when a finding is not supported by sustantial evidence, not when evidence that could be excluded is present in a record. Moreover, the duty imposed on agencies by section 7(c) of the Administrative Procedure Act, 5 U.S.C. 556(d), to exclude "irrelevant, immaterial, or unduly repetitious evidence" is met by proposed § 2200.207(c)(1), which would permit the exclusion of "irrelevant, unduly repetitious or unreliable evidence." The loss of an opportunity to seek interlocutory review places a party in the same position as one who has unsuccessfully sought interlocutory review: he must choose between complying with the interlocutory ruling and complaining later of prejudicial error, or violating the order and seeking reversal of any sanction on the ground that the order is invalid. Finally, discovery is not ordinarily necessary to due process. *Mister Discount Stockbrokers, Inc.* v. *S.E.C.*, 718 F.2d 875 (7th Cir. 1985). The proposed rules therefore contemplate that an objection to simplified proceedings will recite the specific facts peculiar to the case that show that simplified proceedings would deny due process.

Purpose of Subpart M

Paragraph (a) § 2200.200 states that the simplified proceedings rules have a dual purpose. The present rule defines these goals as (1) saving time and expense and (2) "preserving fundamental procedural fairness." Under the proposed rule, the second goal would be restated more specifically as "assuring due process and a hearing that meets the requirements of the Administrative Procedure Act, 5 U.S.C. 554."

Application of Subpart M

Section 2200.201 states the criteria for determining which cases are governed by Subpart M. Under the present rule, a case cannot be tried under simplified proceedings if any party objects to a request for simplified proceedings. Under the proposed rule, however, the Chief Administrative Law Judge or the Judge to whom the case has been assigned could overrule a party's objections and approve a contested request for simplified proceedings.

Eligibility for Simplified Proceedings

Section 2200.202 identifies certain cases that are ineligible for simplified proceedings, and therefore must be tried under conventional proceedings, because of the potential complexity of the legal issues that are presumed to be involved. Eligibility for simplified proceedings is determined according to the standard or statutory provision that the Secretary has cited in the contested citation. Under the proposed rule, the list of ineligible standards would be reorganized and updated (to reflect the Secretary's adoption of new occupational health standards in Subpart Z of Part 1910). More importantly, cases brought under section 5(a)(1), 29 U.S.C. 654(a)(1), the Act's "general duty clause," would be made eligible for simplified proceedings. Under the present rule, a case cannot be tried under simplified proceedings if a violation of section 5(a)(1) is alleged. However, the Commission believes that this categorical exclusion of all 5(a)(1) cases is unwarranted. While some 5(a)(1) cases are extremely complex and difficult to resolve, others are relatively simple and well suited to hearing under simplified proceedings.

Procedures for Commencing Simplified Proceedings

Section 2200.203 sets forth the procedures for commencing simplified proceedings. The Commission proposes several changes in this section.

Paragraph (a)(2) (When to request)—Under the present rule, a request for simplified proceedings must be filed within 10 days after the notice of docketing is received. Under the proposed rule, a later request could be considered upon a showing of good cause justifying the late filing. The present rule appears to be unnecessarily stringent. In particular, the Commission is concerned that it may act as a bar to pro se employers, who are probably unaware in many instances that they are required to file a request for simplified proceedings so soon after the case is docketed.

Paragraph (a)(3) (How to request)—Under the present rule, a "simple statement" that simplified proceedings are requested is sufficient. Under the proposed rule, this "simple statement" is still sufficient, but it must be in writing.

Present paragraphs (a)(4) and (c)(1); proposed paragraph (b)(4) (When simplified proceedings go into effect)—The present rules contain two provisions that appear to be in conflict. Paragraph (a)(4) provides that simplified proceedings "are in effect" when no party files a timely objection to a request for simplified proceedings. However, paragraph (c)(1) provides for notice by the Commission that simplified proceedings are in effect; this notice is to be issued after the period for objection has expired, but no objection has been filed. Under the proposed rules, the provision at present paragraph (a)(4) would be deleted. The provision at present paragraph (c)(1) would be retained, but renumbered as paragraph (b)(4).

Paragraph (b)(2) (When to object)—Under the present rule, an objection must be filed within 15 days after the request for simplified proceedings is served. Under the proposed rule, this time period would be reduced to 10 days.

Paragraph (b)(3) (How to object)—Under the present rule, the mere statement by a party that it objects to simplified proceedings is sufficient. The party need not even state the basis of its objection. The Commission proposes to replace this objection as of right with a limited right to object on the ground that, under the particular facts of the case, simplified proceedings would deny it due process. The objecting party would be required to state its objection and the grounds for it in writing. The Commission believes that simplified proceedings will accord due process in the large majority of cases. Therefore, the Commission proposes to place the burden on the objecting party to show why the proceedings should not be simplified.

Present paragraphs (b)(4) and (c)(2); proposed paragraph (d) (Effect of objection)—Under the present rule, the filing of a timely objection precludes the institution of simplified proceedings. The Commission automatically issues a

notice that the case will continue under conventional proceedings. Under the proposed rules, these two provisions, currently found at paragraphs (b)(4) and (c)(2), would be deleted. A new rule, proposed paragraph (d), would establish procedures for resolving disputes over the use of simplified proceedings. The objecting party would be required to show that, under the particular circumstances of the case, it would be denied due process under simplified proceedings. If the objecting party meets its burden, the Judge would order that the case be conducted under the conventional rules. Otherwise, the case would be conducted in accordance with Subpart M. All parties would be notified of the Judge's determination, which will not be subject to interlocutory review.

Proposed paragraph (c) (Statements of position)—This is also a new rule. Under this rule, if any party filed an objection to simplified proceedings, every other party would have the right to file a statement of its position in the dispute.

Present paragraph (d); proposed paragraph (e) (Filing deadlines)—No substantive change is proposed. However, the rule would be renumbered, and references to other renumbered rules would be updated.

Discontinuance of Simplified Proceedings

Section 2200.204 sets forth the procedures for discontinuing simplified proceedings after the Judge has ordered them implemented. The Commission proposes several changes in this section, which largely parallel the changes proposed in the rule on commencing simplified proceedings. The Commission proposes to place the same burden on parties seeking to discontinue simplified proceedings and parties objecting to simplified proceedings when they are first requested. The proposed rules would formalize the procedures for discontinuing simplified proceedings.

Under the present rule, a motion to discontinue may be made at any time before the commencement of the hearing. Under the proposed rule, this motion could not be made less than 30 days before the hearing.

Under the present rule, simplified proceedings can be discontinued only upon motion of a party. Under the proposed rule, a Judge would be able to discontinue simplified proceedings on his own motion.

Under the present rule, the motion to discontinue will be granted if (1) all parties agree to discontinuance or (2) "sufficient reason is shown" for applying the conventional rules. Under the proposed rule this second ground would be changed to conform to the test for denying a request for simplified proceedings. The motion to discontinue would be granted only if the party seeking discontinuance shows that application of the conventional rules is essential to assure due process.

Under the present rule, once a motion to discontinue is granted, the Judge determines whether it is necessary for the parties to file a complaint and answer; they are not required to do so unless ordered by the Judge. The Commission proposes to expand the Judge's discretionary authority in cases where simplified proceedings have been discontinued. Under the proposed rule, the Judge would be empowered to issue such orders as are necessary for the orderly continuation of the case under the Commission's conventional rules. This would include, but not be limited to, the present authority to order the filing of pleadings.

The Commission also proposes to provide that all other parties are given 5 days to respond to a motion to discontinue by stating their positions on the motion and their reasons.

Filing of Pleadings

No substantive change is proposed in § 2200.205. However, references in paragraph (a) to other renumbered rules would be updated.

Conference/Hearing

Various miscellaneous amendments are proposed in § 2200.207.

The Commission proposes to correct an error in paragraph (b). Present paragraph (b) refers to § 2200.205. However, the intended reference is to § 2200.206.

Present paragraph (c) provides that the hearing held during the course of simplified proceedings shall be in accordance with 5 U.S.C. 554 (section 5 of the Administrative Procedure Act). Under the proposed rule, the hearing would be in accordance with the Commission's conventional rules on hearings (Part 2200, Subpart E). However, proposed § 2200.212 would create two exceptions to the general applicability of Subpart E: §§ 2200.71 (Rules of Evidence) and 2200.73 (Interlocutory Review) would not be applicable to simplified proceedings.

Paragraph (c)(1) grants the Judge the authority to exclude certain evidence offered at the hearing. The Commission proposes to expand this authority. Under the proposed rule, the Judge would retain the authority he currently has to exclude "irrelevant" or "unduly repetitious" evidence. However, he would also be granted the authority to exclude "unreliable" evidence.

Paragraph (c)(2) requires a party to give notice that it wishes to present written arguments in a case using simplified proceedings. Under the present rule, this notice must be given to the Judge during the conference/hearing. Under the proposed rule, the requesting party would also be required to give this notice to all other parties during the conference/hearing.

Post-Hearing Procedures

No substantive change is proposed in § 2200.209. However, the Commission proposes a revision of paragraph (b) to clarify the present rule. The proposed rule states that any party may file a petition for review of the judge's decision under § 2200.91 and that Subpart F governs the posthearing procedures in cases tried under Subpart M.

Discovery

Section 2200.210 governs discovery in simplified proceedings. The present rule makes clear that the Judge determines whether discovery will be permitted, and if so, what type of discovery will be allowed. Under the proposed rule, the Judge would also have authority to establish the conditions and the time limits under which discovery would be permitted.

Applicability of the Commission's Conventional Rules

Section 2200.212 establishes which of the conventional rules in Subparts A through G are applicable to simplified proceedings. It includes a list of rules that are never applicable as well as a statement that other conventional rules may be inapplicable if they are inconsistent with the Subpart M rules. The Commission proposes several changes in the list of conventional rules that are inapplicable. These changes are necessary as a result of the Commission's recent revision of Subparts A through G.

Discovery rules—The Commission proposes to add the discovery rules in Subpart D to the list of inapplicable rules. Accordingly, discovery in simplified proceedings would be governed solely by §2200.210, which would place the matter fully within the discretionary power of the Judge. The only rule in Subpart D that would still apply to simplified proceedings would be § 2200.57, which governs the issuance of subpenas.

Pleadings rules—The Commission proposes to continue its policy of not applying the conventional pleading rules to simplified proceedings. However, the list of inapplicable rules would be

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revised to reflect the fact that there are now three rules (§§ 2200.34–2200.36) rather than only one (former §2200.33) governing the filing of complaints and answers in conventional proceedings.

Renumbered rules—The list of inapplicable rules in § 2200.212 would be revised to reflect the recent renumbering of certain conventional rules.

Rules of evidence—In adopting the revised rule at § 2200.71, the Commission made the Federal Rules of Evidence applicable to conventional proceedings. The Commission proposes to retain the provision in present § 2200.207(c)(1) that states that the Federal Rules of Evidence are not applicable to simplified proceedings. Therefore, § 2200.71 is added to the list of Commission rules that are inapplicable to simplified proceedings.

Rules deleted from the list—The Commission proposes to delete three rules from the present list of inapplicable rules. Thus, these conventional rules would be made applicable to simplified proceedings. The rules are found at § 2200.6 (notification of record address), § 2200.39 (filing of statement of position), and § 2200.41 (failure to obey rules). In the recent revision of Subparts A through G, § 2200.41 replaced former § 2200.38 (failure to file), which was inapplicable to simplified proceedings.

List of Subjects in 29 CFR Part 2200

Hearing and appeal procedures, Administrative practice and procedure.

PART 2200—[AMENDED]

It is proposed to amend Subpart M of Part 2200 of Chapter XX of Title 29 of the Code of Federal Regulations as follows:

1. The authority citation for Part 2200 continues to read as follows:

Authority: 29 U.S.C. 661(g), unless otherwise noted.

2. Section 2200.200 paragraph (a) is revised to read as follows:

§ 2200.200 Purpose.

(a) The purpose of this subpart is to provide simplified procedures for resolving contests under the Occupational Safety and Health Act of 1970, so the parties before the Commission may save time and expense while assuring due process and a hearing that meets the requirements of the Administrative Procedure Act, 5 U.S.C. 554. The rules shall be construed and applied to accomplish these ends.

* * * * *

3. Section 2200.201 is revised to read as follows:

§ 2200.201 Application.

The rules in this subpart shall govern proceedings before an Administrative Law Judge in a case eligible for simplified proceedings under § 2200.202 upon the request of a party and, if there is objection, the approval of the Chief Administrative Law Judge or such other judge to whom he has assigned the case.

4. Section 2200.202 is revised to read as follows:

§ 2200.202 Eligibility for simplified proceedings.

A case is eligible for simplified proceedings unless it concerns an alleged violation of a standard listed below:

§ 1910.94
§ 1910.95
§ 1910.96
§ 1910.97
§§ 1910.1000 through 1910.1200
§ 1926.52
§ 1926.53
§ 1926.54
§ 1926.55
§ 1926.57
§ 1926.800(c) and

Any occupational health standard that may be added to Subpart Z of Part 1910.

(All standards listed are found in title 29 of the Code of Federal Regulations)

5. Section 2200.203 is amended by revising paragraphs (a)(2), (a)(3), (b)(2), (b)(3), (b)(4), (c) and (d), by removing paragraph (a)(4), and by adding paragrah (e), as follows:

§ 2200.203 Commencing simplified proceedings.

(a) * * *

(2) *When to request.* After the Commission receives an employer's or employee's notice of contest or petition for modification of abatement, the Executive Secretary shall issue a notice indicating that the case has been docketed. Any request for simplified proceedings shall be filed within ten days after the notice of docketing is received, unless the notice of docketing states otherwise; a late-filed request may be considered only if good cause for the filing is shown.

(3) *How to request.* A simple statement is all that is necessary. For example, "I request simplified proceedings" will suffice. The request shall be in writing. The request shall be filed with the Executive Secretary and served on all of the following: (i) the employer, (ii) the Secretary of Labor, and (iii) any authorized employee representatives. The request also shall be posted for the benefit of any unrepresented affected employees. (To serve the Secretary of Labor, the request should be mailed to the Regional Solicitor named in the notice of docketing.)

(b) * * *

(2) *When to object.* An objection shall be filed within 10 days after the request for simplified proceedings is served.

(3) *How to object.* The objection must be stated in writing and explain why due process would not be afforded, under the particular circumstances of the case, by simplified proceedings. An objection shall be filed with the Executive Secretary and served in the manner prescribed for requests for simplified proceedings in paragraph (a)(3) of this section.

(4) *No objection filed.* When the period for objecting to simplified proceedings expires and no objection has been filed, the Commission shall notify all parties that simplified proceedings are in effect.

(c) *Statements of position.* Any party may, within 10 days after an objection to simplified proceedings is served, file with the Executive Secretary a statement of position on the objection.

(d) *Judge's ruling on objection.* If the objecting party shows that, under the particular circumstances of the case, simplified proceedings would deny due process to the objecting party, the Judge shall order that the case be conducted under conventional rules. Otherwise, the Judge shall order the use of simplified proceedings. The order granting or denying the request shall not be subject to interlocutory review.

(e) *Time for filing complaint or answer under § 2200.34.* The times for filing a complaint or answer shall not run if a request for simplified proceedings is filed. If the Commission later notifies the parties under § 2200.203(d) that the case is to continue under conventional procedures, the periods for filing a complaint or answer shall begin upon receipt of the notice.

6. Section 2200.204 is revised to read as follows:

§ 2200.204 Discontinuance of simplified proceedings.

(a) *Procedure.* At any time, but no later than thirty days before the hearing, on his own motion or that of a party, the Administrative Law Judge to whom the case has been assigned may discontinue simplified proceedings. A motion to discontinue must be in writing and explain why due process would not be afforded under the particular circumstances of the case by simplified proceedings. All other parties shall have five days from the date of the motion to state their position on the motion and the reasons therefor.

(b) *Ruling.* Simplified proceedings shall be discontinued if all parties consent or if the party seeking discontinuance shows that, under the particular circumstances of the case, due process would not be afforded by simplified proceedings. If simplified proceedings are terminated, the Judge may issue such orders as are necessary for an orderly continuation under conventional rules.

7. Section 2200.205 paragraph (a) is revised to read as follows:

§ 2200.205 Filing of pleadings.

(a) *Complaint and answer.* There shall be no complaint or answer in simplified proceedings. If the Secretary has filed a complaint under § 2200.35, a response to an employee contest under § 2200.38, or a response to a petition under § 2200.37, no response to these documents shall be required.

* * * * *

8. Section 2200.207 is amended by revising paragraph (b) and (c) as follows:

§ 2200.207 Conference/Hearing.

* * * * *

(b) *Conference.* At the beginning of the conference, the Judge shall enter into the record all agreements reached by the parties as well as defenses raised during the discussion set forth in § 2200.206. The parties and the Judge then shall atttempt to resolve or narrow the remaining issues. At the conclusion of the conference, the Judge shall enter into the record any further agreements reached by the parties.

(c) *Hearing.* The Judge shall hold a hearing on any issue that remains in dispute at the conclusion of the conference. The hearing shall be in accordance with Subpart E of these rules.

(1) *Evidence.* Oral, physical, or documentary evidence shall be received, but the Judge may exclude irrelevant, unduly repetitious or unreliable evidence. Testimony shall be given under oath or affirmation. The Federal Rules of Evidence shall not apply.

(2) *Oral and written argument.* Each party may present oral argument at the close of the hearing. At the conference/hearing, any party wishing to present written argument shall notify the judge and all other parties so that the Judge may set a reasonable period for the prompt filing of written argument.

9. Section 2200.209 paragraph (b) is revised to read as follows:

§ 2200.209 Decision of the Judge.

* * * * *

(b) Any party may petition for Commission review of the Judge's decision as provided in § 2200.91. After the issuance of the Judge's decision, the case shall proceed in the conventional manner prescribed in Subpart F.

10. Section 2200.210 is revised to read as follows:

§ 2200.210 Discovery.

Discovery, including requests for admissions, shall not be allowed except under the conditions and time limits set by the Judge.

11. Section 2200.212 is revised to read as follows:

§ 2200.212 Applicability of Subparts A through G.

The provisions of Subpart D (except for § 2200.57) and §§ 2200.34, 2200.35, 2200.36, 2200.37(d)(4), 2200.38, 2200.71 and 2200.73 shall not apply to simplified proceedings. All other rules contained in Subparts A through G of the Commission's rules of procedure shall apply when consistent with the rules in this subpart governing simplified proceedings.

Dated: February 12, 1987.
E. Ross Buckley,
Chairman.

Dated: February 12, 1987.
John R. Wall,
Commissioner.

[FR Doc. 87-3306 Filed 2-17-87; 8:45 am]
BILLING CODE 7600-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-3157-4]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rule; extension of the public comment period.

SUMMARY: On December 8, 1986 (51 FR 44081), USEPA proposed rulemaking to revise the sulfur dioxide designation for Pierce Township in Clermont County, Ohio from nonattainment to attainment of the National Ambient Air Quality Standards. At the time of the proposed rulemaking, a 30-day comment period was provided. The Natural Resources Defense Council requested an extension of the public comment period. USEPA is extending the public comment period 60 additional days to March 9, 1987, based upon this request.

DATE: Comments must be postmarked on or before March 9, 1987.

ADDRESSES: Comments should be submitted to: Gary V. Gulezian, Chief, Regulatory Analysis Section (5AR-26), Air and Radiation Branch, Region V, U.S. Environmental Protection Agency, 230 S. Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6088.

Authority: 42 U.S.C. 7401-7642.

Dated: February 6, 1987.
Valdas V. Adamkus,
Regional Administrator.

[FR Doc. 87-3319 Filed 2-17-87; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 52

[A-5-FRL-3157-7]

Approval and Promulgation of State Implementation Plans; Utah; Carbon Monoxide SIP Revision for Utah County

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA today is proposing to approve a revision to the Utah Carbon Monoxide (CO) State Implementation Plan (SIP). The revision affects the CO SIP for Utah County which was approved on December 21, 1983 (48 FR 56378) and which stated an attainment date of December 31, 1983. On July 11, 1984, 49 FR 28243, the attainment date was revised to February 1, 1986.

On December 12, 1985, the Governor of Utah submitted the above revision, regulations, and technical support document. The submittal defines several control strategies for CO in Utah County. The strategies are The Federal Motor Vehicle Control Program, Inspection/Maintenance with anti-tampering, and certain transportation Control Measures. The purpose of this revision is to attain the CO standard by December 31, 1987. The submittal is in response to a SIP Call dated December 19, 1984.

DATES: Comments are due March 20, 1987.

ADDRESSES: Written comments should be addressed to: Dean Gillam, Acting Chief, Air Programs Branch, Environmental Protection Agency, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202.

Copies of the state submittal are available for public inspection between

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8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices: Environmental Protection Agency, Region VIII, Air Programs Branch, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Lee Hanley, Air Programs Branch, Environmental Protection Agency, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202, (303) 293–1757.

SUPPLEMENTARY INFORMATION:

Background

The Utah CO SIP for Utah County (hereafter called the Provo CO SIP) was originally approved on December 21, 1983 (48 FR 56378), with a revision concerning the attainment date published in the July 11, 1984 **Federal Register** (49 FR 28243). The approval was based on CO monitored levels for the base year 1980–1981 of a 2nd high 8-hour average of 12.5 ppm (14.4 mg/m³). According to the SIP, a 25% reduction in CO emissions was required with an attainment date of Febrary 1, 1988. The SIP further stated that, based on Mobile 2 emission factors for typical winter conditions of 35° F and 25 mph for "all modes", a 40% reduction would be attained by 1987 under the Federal Motor Vehicle Emission Control Program. Transportation controls were expected to result in an additional 1% reduction.

Following approval of the SIP, EPA reviewed the monitoring data for calendar years 1982 and 1983. The analyses indicated increasing CO levels beyond that of the base year and that the existing control strategies were inadequate for attainment of standard. (See 50 FR 18245 for additional information.)

SIP Call

In a letter dated December 19, 1984, EPA advised the Governor of Utah of the inadequacies of the Provo CO SIP. This finding of inadequacy required Utah, pursuant to the provisions of section 110(a)(2)(H), to revise the SIP as necessary to assure timely attainment and maintenance of the CO NAAQS. The Governor of Utah responded, in a letter dated February 11, 1985, with a schedule for revision of the SIP for CO in Utah County. The schedule committee to a December 19, 1985 deadline for submittal of the required SIP revision.

Proposed SIP Revision

On December 12, 1985, the Governor of Utah submitted a revision to the Utah SIP containing the program strategies for CO attainment in Utah County.

The SIP revision contains a new section, Section 9.C.6, which describes the data history, emission inventory, control strategies, authority to implement an Inspection/Maintenance (I/M) program with anti-tampering and the Utah County Health Regulations. The SIP references the technical support document which contained the summarized analyses and conclusions underlying the control strategies listed in the SIP.

The inventory lists highway vehicles, point sources and space heating as the major emission categories of CO in the County. The SIP indicates that the winter weekdays are when high CO concentrations are typically observed. Monitoring data show these high concentrations to be in the urban areas; and, modeling, using meteorological data from high CO concentration days, indicated vehicle emissions as the major contributor. Point sources, which account for 14% in the overall county emission inventory, affect the high concentration areas by less than 1%. (The point sources are located in the outskirts of the city and the wind pattern from these point sources is away from the high concentration areas.) Space heating emissions are potentially greater during winter days but could not be easily monitored or "controlled" in the timeframe allowed for developing and implementing this SIP revision. Therefore, the reduction of CO emissions must come from vehicle emissions. Based on 1984 design value the SIP states a 40% reduction in vehicle CO emissions is necessary for attainment of the standard.

To obtain this reduction, the control strategies are: (1) Federal Motor Vehicle Control Program (FMVCP), (2) automobile I/M with anti-tampering, and (3) various transportation control measures (TCM).

The FMVCP requires vehicle manufacturers to certify that new vehicles meet federal vehicle emission standards. The replacement of older vehicles with newer models produces a reduction in CO emissions. This strategy is estimated to provide an 18% reduction in vehicle CO emissions.

The automobile I/M with anti-tampering program requires the inspection of model year 1968 and newer motor vehicles, prior to vehicle registration with the Utah State Tax Commission. The I/M portion of the program will test vehicle emissions with respect to the Utah County emission standards. (The emissions standards, known as cutpoints, are the percent carbon monoxide and parts/million hydrocarbon that a car or truck of a given model year must meet during the vehicle exhaust gas test.) The anti-tampering portion of the program requires inspection of the air pollution control devices and the lead Plumbtesmo test of vehicles for model years 1977 and newer. Passage of the anti-tampering inspection is required of the 1968–1976 model-year vehicles if they do not pass the emission inspection. (The lead Plumbtesmo test uses lead sensitive paper to determine lead contamination in the exhaust system. Lead contamination indicates an inoperative catalytic converter which would be required to be replaced.)

The vehicle owner will receive a "Certificate of Compliance" upon successful completion of the I/M and anti-tampering inspection tests. The certificate is necessary for annual vehicle registration or annual renewal registration in Utah County.

Given qualifying conditions, a "Certificate of Waiver" can be issued when a vehicle fails to pass the I/M test. Failure to pass the anti-tampering test can void the certificate of waiver requirements. The County is allowing a one-year grace period, July 1, 1986 to June 30, 1987, for vehicle model year 1968 to 1980, in which a "Certificate of Waiver" can be issued even if the vehicle fails the tampering inspection. After June 30, 1987, the vehicle owner must correct the deficiencies before another inspection is performed on that vehicles.

The SIP states that the I/M with anti-tampering program is expected to reduce CO emission by 23%. It is designed to have a stringency factor of 30% (i.e., it is expected that 30% of the vehicles will fail the test, indicating that the vehicles are not properly maintained).

The I/M program officially began on July 1, 1986. It will operate under the requirements stated in the City-County Health Department of Utah County Health Regulations, Vehicle Emission-Inspection Maintenance Program. The program requires station operators to be certified by the County, to operate these stations, and issue "Certificates of Compliance or Waiver" according to the County Rules and Regulations for I/M and anti-tampering program.

The TCMs are designed to reduce and improve traffic flow within Provo. The TCMs are (1) ridesharing, (2) traffic improvements, and (3) transit improvements. The ridesharing program is a transportation brokerage that will operate in Utah County to construct and operate park-and-ride lots, promote car and van pooling programs, and coordinate other transportation needs. The traffic improvement program would affect five major roads in Provo that

would increase the average vehicle speed two to five miles per hour. These improvements were calculated to reduce automobile CO emissions by 3%. The transit improvements are being coordinated with the Utah Transit Authority for a mass transit system in Utah County; this effort is expected to reduce automobile CO Emissions by 1%.

The above described strategies are designed to provide for attainment of the CO standard by December 31, 1987.

Utah County has embarked on an aggressive program to reach attainment of the standard by year-end 1987. This program has allowed the County only 18 months to implement an inspection/maintenance with anti-tampering program and, along with the other elements of the revised SIP, achieve the CO standard. Under the interpretation of the Clean Air Act that EPA announced on November 2, 1983 (48 FR 50686), those nonattainment areas whose EPA approved SIPs were later found inadequate, must demonstrate attainment as expeditiously as practicable. The State (through the Utah Bureau of Air Quality) and the Environmental Protection Agency (EPA) have worked with the County to determine the reasonably available measures (RAM) necessary to achieve the standard. Had the County and State not presented RAM in the regulations and SIP revision, the potential of an EPA disapproval was highly probable. The EPA then would take further action to impose a construction ban under section 173(4) and funding restrictions under section 176(b).

The County initiated a public awareness program immediately after adoption of the regulations. This program includes (a) radio and television public information spots, (b) displays at the County Health Fair, (c) distributing program brochures, (d) free voluntary inspections prior to I/M program start-up, and (e) discussions with local news reporters. With these efforts, the County's goal is to reduce the public's anxiety toward the upcoming requirements.

EPA has four concerns with the I/M and anti-tampering credits that the County has presumed. First, the County in its calculations assumed a start date of January 1986 for the I/M and anti-tampering programs. Since the I/M with anti-tampering program officially began on July 1, 1986, the calculations should use this date. Second, the full anti-tampering program only applies to 1977 and later vehicles; the County included 1974 and overestimated the credit for catalyst replacement; the County assumed credit for catalyst replacement on vehicles with tampered fuel inlet restrictors, when no such requirement exists in the program regulations. Finally, the County did not adjust the anti-tampering credits to reflect the one-year waivers for replacement of tampered equipment in the first year of the program; some of these waivers will postpone repairs beyond December 31, 1987 and thus provide no emission reductions toward attainment by then.

The County, however, did not take credit for other efforts that the EPA feels should be recognized. These efforts are: (1) The passage of anti-tampering inspection is required prior to waiver considerations for all 1968 and later vehicles and, (2) the I/M program includes heavy-duty vehicles (greater than 8500 lbs. gross vehicle weight rating (GVWR)) as well as all other vehicles (less than 8500 lbs. GVWR). (The County could not take credit for these efforts because EPA did not have quantifiable values of these effects on an anti-tampering or I/M program.)

EPA has conducted analyses of the CO emission reduction necessary for the 1984 design value utilized by Utah in this SIP, the 1982 design value utilized by EPA as the basis for the December 19, 1984 SIP Call, and the 1983 design value which requires the most emission reduction. As described in EPA's technical support document, EPA's analyses indicate that the Utah Plan will attain the CO standards as expeditiously as practicable.

On other issues of the State's submittal, EPA requested clarification to (1) parts of section 9.11, "Inspection Procedures", (2) programs reporting requirements to EPA and, (3) plan for maintenance of the standard once attainment is reached.

The State submitted additional information, dated May 8, 1986, in response to the EPA questions. Specifically, EPA was concerned with section 9.11.4, which allows waivers but does not specify under what conditions they will be granted. The State responded that the waiver option is to be used only in special circumstances, such as when an owner is unable to readily obtain a replacement part prior to registering his car. EPA understands the State will require ultimate compliance with the I/M requirements in such cases. On reporting requirements, EPA has been assured that the State will coordinate with the County to submit an annual status report to EPA.

EPA expressed concern that the legal mechanism for the I/M program, House Bill No. 21, automatically expires on attainment of the CO standard. EPA stressed to the State that ending the I/M program once the CO standard is achieved may not allow for maintenance of the standard as required by the Clean Air Act. On May 16, 1986, the State responded that the Utah Air Conservation Committee, the governing body of the Utah Bureau of Air Quality, intends to seek a change in the Utah legislation to allow for retention of the I/M program after attainment status has been achieved. Subsequently, the State affirmed its understanding that no area has attained the standard until EPA's criteria for redesignating the area to attainment have been met. EPA policy would not allow redesignation of an area to attainment if the effect of such a redesignation would be for the I/M program to be abandoned with the consequence that the CO standard would again be violated.

EPA Action

EPA is today proposing to approve a revision to the Utah CO SIP for attainment of the standard in Utah County. The SIP commits to reduction of vehicle emissions through implementation of a vehicle inspection/maintenance with an anti-tampering program and use of various transportation control measures. The SIP has stated an attainment date of December 31, 1987. EPA believes the Utah CO SIP for Utah County will achieve the standard as expeditiously as practicable. Because there is some question whether the I/M program will continue after the area attains the standard, EPA cannot now approve the Plan as it pertains to maintenance of the CO standard in Utah County.

Under 5 U.S.C. section 605(b), I certify that this SIP approval does not have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the plan revisions will be based on whether they meet the requirements of sections 110(a)(2) (A)–(K) and 110(a)(3) of the Clean Air Act, as amended.

Authority: 42 U.S.C. 7401–7642.

Dated: June 25, 1986.

John G. Welles,

Regional Administrator.

Note—This document was received at the office of the **Federal Register** on February 12, 1987.

[FR Doc. 87–3320 Filed 2–17–87; 8:45 am]

BILLING CODE 6560–50–M

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan amendment and request for comments.

SUMMARY: NOAA issues this notice that the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils) have submitted Amendment 2 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources (mackerels) (FMP) for review by the Secretary of Commerce. Comments are invited from the public on the amendment and any other documents made available.

DATE: Comments will be accepted until Saturday, April 11, 1987.

ADDRESSES: Comments should be sent to Craig R. O'Connor, Acting Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Copies of Amendment 2, the Environmental Assessment, and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis are available from the South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407–4699; and the Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: William N. Lindall (Regional Plan Coordinator), 813–893–3722.

SUPPLEMENTARY INFORMATION: Amendment 2 to the FMP was prepared under the Magnuson Fishery Conservation and Management Act.

This amendment proposes measures to minimize overfishing of the Spanish mackerel stock in the Gulf of Mexico and to rebuild and maintain the stock at a maximum sustainable yield level through flexible management procedures. On June 29, 1984 (49 FR 26809), the Environmental Protection Agency published a notice of availability of a draft environmental impact statement for the FMP.

Proposed regulations for this amendment will be published within 15 days.

(16 U.S.C. 1801 et seq.)

Dated: February 12, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87–3352 Filed 2–12–87; 4:33 pm]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 52, No. 32

Wednesday, February 18, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Wythoughan Park—Yellow River Bank Erosion Critical Area Treatment RC&D Measure, Indiana; Environmental Impact Statement

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Robert L Eddleman, State Conservationist, Indianapolis, Indiana, 40224, telephone 317–248–4350.

Notice: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500): and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture,gives notice that an environmental impact statement is not being prepared for the Wythoughan Park—Yellow River Bank Erosion Critical Area Treatment RC&D Measure, Starke County, Indiana.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Robert L. Eddleman, State Conservationist, has determined that the preparation of and review of an environmental impact statement are not needed for this project.

The project concerns a plan for Critical Area Treatment. The planned works of improvement include the straightening and shaping of approximately 455 linear feet of eroding Yellow River streambank.

The Notice of Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental evaluation is on file and may be reviewed by contacting Robert L. Eddleman, State Conservationist. The FNSI has been sent to various Federal, State and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single request at the above address.

No administrative action on Implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: February 9, 1987.

Robert L. Eddleman,

State Conservationist.

[FR Doc. 87–3289 Filed 2–17–87; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 6–84; Foreign-Trade Zone 53]

Proposed Subzone for Tubular Corporation of America, Inc., Muskogee, OK; Application Withdrawn

The City of Tulsa-Rogers County Port Authority, grantee of Foreign-Trade Zone 53, has requested the withdrawal of its application to the Foreign-Trade Zones Board for a subzone at the steel tube manufacturing plant of Tubular Corporation of America, Inc. (TCA) in Muskogee, Oklahoma. The application was filed March 2, 1984 (49 FR 9245, 3/12/84).

The withdrawal is being requested because of changed circumstances.

The request is approved, without prejudice, and FTZ Board Docket 6–84 is closed

Dated: February 11, 1987.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87–3372 Filed 2–17–87; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

President's Export Council; Open Meeting

A meeting of the President's Export Council will be held March 4, 1987, 9:30 a.m. to 12:05 p.m. and 2:00 p.m. to 3:30 p.m., in the Executive Chambers of the Madison Hotel, 15th and M Streets, NW., Washington, DC. The Council's purpose is to advise the President on matters relating to United States export trade.

Agenda: Opening remarks; subcommittee reports and panel discussions on LDC Debt, U.S. Competitiveness, Export Controls.

The delay in publication of this notice is due to difficulty in finding a location for the meeting.

For further information or copies of the minutes contact Sylvia Lino (202) 377–1125, Room 3213, U.S. Department of Commerce, Washington, DC 20230.

Dated: February 13, 1987.

Wendy H. Smith,

Director, President's Export Council.

[FR Doc. 87–3537 Filed 2–13–87; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Marine Mammals: Return of Modification Request

On April 15, 1986, notice was published in the **Federal Register** (51 FR 12726) that a request to modify Permit No. 292 had been filed by the Dolphins Plus, Inc., P.O. Box 2114, Key Largo, Florida 33037, to authorize open ocean work with four captive Atlantic bottlenose dolphins (*Tursiops truncatus*).

Notice is hereby given that pursuant to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), after having considered all pertinent information and facts, the National Marine Fisheries Service has determined that the request to modify Permit No. 292 submitted by Dolphins Plus, Inc., should be returned. The Applicant was notified on February 12, 1987.

Documents submitted in connection with the above application are available for review in the following offices:

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Office of Protected Species and Habitat Conservation, 1825 Connecticut Ave., NW., Suite 805, Washington, DC 20235; and

Director, Southwest Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: February 12, 1987.

Nancy Foster,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 87-3351 Filed 2-17-87; 8:45 am]

BILLING CODE 3510-22-M

[Docket No. 70221-7021]

National Fish and Seafood Promotional Council; Request for Nominations

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of request for Council nominations.

SUMMARY: The Fish and Seafood Promotion Act of 1986 creates a fifteen (15) member National Fish and Seafood Promotional Council. The National Council will develop annual plans and budgets for generic marketing and promotion of fisheries products, including consumer education, research, and other appropriate activities. Members of the Council are to be appointed by the Secretary of Commerce. Therefore, NOAA issues this notice for all interested parties to submit the names of nominees with biographical data.

EFFECTIVE DATE: Nominations and biographical information should be submitted to the NMFS Washington Office by March 20, 1987. For the address, see the Supplementary Information Section.

FOR FURTHER INFORMATION CONTACT: Phyllis S. Bentz, Office of Industry Services, National Marine Fisheries Service, Washington, DC 20235. Telephone: (202) 673-5497.

SUPPLEMENTARY INFORMATION: On November 14, 1986, Pub. L. 99-659 was enacted. Title II, the "Fish and Seafood Promotion Act of 1986," (FSPA) provides for the establishment of a National Fish and Seafood Promotional Council. The Council's objectives are to develop annual plans and budgets to generically market and promote fisheries products, including consumer education, research, and other activities of the Council, such as funding referenda to establish any product-specific councils formed under Section 210 of the Act, and coordinating their activities. Legislative authority for the National Council expires on October 1, 1990. Funding for the Council will come from the Fisheries Promotional Fund established in the U.S. Treasury. The Fund will be capitalized primarily through monies transferred from the Saltonstall-Kennedy Fund; $750,000 in fiscal year 1987, $3,000,000 each in fiscal years 1988 and 1989, and $2,000,000 in fiscal year 1990 were authorized in the FSPA.

Eligibility Requirements: The Council will consist of the Secretary of Commerce or his designee, who shall be a non-voting member, and fifteen voting members to be appointed by the Secretary for a term of four years. Those appointed will include three voting members from each of the Northeast, Southeast, Pacific, and Alaska regions. Of the three members from each region, one shall be a "harvester," one shall be a "processor" or a "receiver," and one shall be a "marketer." For the purpose of appointment eligibility, "harvester" means any individual with experience in the business of catching or growing fish for purposes of sale; a "processor" means any person with experience in the business of preparing or packaging fish or fish products (including fish of the processor's own harvesting) for sale; a "receiver" means any person with experience in owning fish processing vessels and any person with experience in the business of acquiring fish directly from harvesters; a "marketer" means any person with experience in the business of selling fish or fish products in the wholesale, retail, or restaurant trade, but whose primary business function is not nor has been the processing or packaging of fish or fish products in preparation for sale. To be eligible for appointment, nominees must also reside in or do substantial fishing industry business in one of the Northeast, Southeast, Pacific or Alaska regions. The States making up these regions follow:

Northeast Region (Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Pennsylvania, Maryland and Virginia).

Southeast Region (North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Commonwealth of Puerto Rico, and territory of the Virgin Islands).

Alaska Region (Alaska).

Pacific Region (Idaho, Washington, Oregon, California, Hawaii, territories of Guam and American Samoa, and the Commonwealth of the Northern Mariana Islands).

Also to be appointed are two members-at-large with demonstrated expertise in fresh-water and inland commercial fisheries, but who are not residents of the states of the Northeast, Southeast, Pacific, and Alaska regions. Finally, one member-at-large, who is either a person with current or previous professional experience in the dissemination of information pertaining to the nutritional benefits and preparation of fish and fish products, or a person who is or has been a member of an organized labor union and has expertise in the United States fisheries, will be appointed.

The members of the Council will receive no salary but will be reimbursed for reasonable travel costs and expenses incurred in performing their duties as Council members.

For more detailed information regarding the Council refer to Pub. L. 99-659, Title II.

Selection Criteria: In addition to the eligibility requirements defined above for the various memberships, appointments will be based upon: (1) Length, breadth, and recent experience in particular sector(s) or category(ies) for which membership is prescribed; (2) general knowledge of fisheries and the industry of the particular region(s); (3) overall knowledge of U.S. fisheries and the industry; and (4) other special qualifications, e.g., experience in and/or knowledge of market research and promotion, product development, public relations, and consumer education; positions of leadership in the fishing industry; relevant education, etc.

Submission of Nominations

Nominations for membership should be accompanied by biographical information relevant to the above considerations. Nomination of qualified women and minorities is encouraged. Security clearances will be required for all individuals appointed. This collection has been approved by OMB under the Paperwork Reduction Act, control number 0605-0003. Nominations should be submitted by March 20, 1987 to the following address: Director, Office of Industry Services, National Marine Fisheries Service, Washington, DC 20235.

Dated: February 12, 1987.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 87-3354 Filed 2-17-87; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Bio-Rad Laboratories

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Bio-Rad Laboratories having a place of business in Richmond, CA, an exclusive right in the United States to manufacture, use and sell products embodied in the invention entitled "Process for Site-Specific Mutagenesis without Phenotypic Selection," U.S. Patent Application Serial Number 6-623,923. The patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.9. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Specialist, Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 87-3290 Filed 2-17-87; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing a Seminar on Implementation of the Special Access Program Under the Caribbean Basin Initiative on February 27, 1987, in Miami, FL

February 13, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), announces that CITA will conduct a seminar on implementation of the Special Access Program under the Caribbean Basin Initiative on Friday, February 27, 1987 at 10 a.m. to 1 p.m. at the Radisson Mart Hotel, 711 North West 72 Avenue, Miami, Florida, 33126 (telephone 305-261-3600). The seminar is open to all persons interested in obtaining additional information regarding administration of the Program by each of the agencies concerned, the bilateral agreements negotiated under the Special Access Program, and Form ITA-370P. Represenatives of CITA and the U.S. Customs Service, responsible for implementation of the Special Access Program, will conduct the seminar. Representatives of the Caribbean Basin beneficiary nations with whom guaranteed access levels have been negotiated are being invited to attend.

Background

On February 20, 1986, the President announced a special program to guarantee access to the U.S. market for Caribbean-produced textile products assembled from fabric formed and cut in the United States. CITA was instructed to establish procedures to implement the program and to invite Caribbean governments to enter into bilateral agreements with the United States under which guaranteed levels of access would be permitted for exports of qualifying assembled textile products from participating countries.

On June 11, 1986, CITA published a **Federal Register** notice announcing the requirements for participation in the Special Access Program under the Caribbean Basin Initiative. *See* 51 *FR* 21208. That notice announced that firms participating in the Special Access Program must complete a Special Access Program CBI Export Declaration, Form ITA-370P, for each qualifying shipment.

Since that time, bilateral agreements establishing guaranteed access levels have been negotiated and implemented with the Governments of Jamaica, the Dominican Republic, Haiti, Trinidad and Tobago, and Barbados. In addition, the U.S. Customs Service has issued a Directive to its field offices establishing procedures for the presentation of Form ITA-370P to the Customs ports. *See* U.S. Customs Service Directive 3500-12, September 2, 1986.

In the interest of educating interested firms and ensuring the smooth implementation of the Program, CITA has decided to hold a half-day seminar. Miami, Florida was chosen as the seminar site because the vast majority of shipments under the Program have been through the Port of Miami.

There is a $10 contribution per person for the seminar. Persons interested in attending the seminar should reserve a seat by forwarding their $10 contribution to the FCBF Association (the Florida Customs Brokers and Forwarders Association), P.O. Box 522022, Miami, Florida 33152, telephone 305-871-7177.

For additional information: U.S. Department of Commerce, Office of Textiles and Apparel, Washington, DC 20230, (202) 377-3400.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-3538 Filed 2-13-87; 4:49 pm]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 17 March 1987.

Time of Meeting: 0830-1600 hours.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board panel on the Effectiveness Review of the Human Engineering Laboratory will meet at the Pentagon for the purpose of reviewing the draft report covering the review. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87-3287 Filed 2-17-87; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Supplement to the Final Environmental Impact Statement (FEIS) for the Confined Disposal of Polluted Sediments Dredged From the Cleveland Harbor Commercial Navigation Project at Cleveland, OH

AGENCY: U.S. Army Corps of Engineers, Buffalo District, DOD.

ACTION: Notice of Intent to prepare a Draft Supplement to the Final Environmental Impact Statement (FEIS).

SUMMARY: 1. *Description of Action:* The proposed action involves raising the dike of an existing Federal confined disposal facility (CDF) located east of the Cuyahoga River on the shoreline of Lake Erie at Gordon Park. The original FEIS for the project was completed in December 1975 and filed with the U.S. Environmental Protection Agency on 20 February 1976. In November 1986, a draft Letter Report was prepared to examine alternatives for continued

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confined disposal of heavily polluted sediment dredged from Cleveland, Ohio. The alternatives studied include the possibility of extending the life of the present CDF (Dike 14) by raising the dike. The purpose of the Draft Supplement to the FEIS is to address the environmental impacts associated with the project.

2. *Alternatives:* A wide range of alternatives were addressed in the original FEIS and project Letter Report. Potential alternatives to the proposed action consist of no-action, extending the life of the existing CDF, and constructing a new CDF at another location.

3. *Scoping Process:* An initial scoping meeting was held with the Cleveland Port Authority and concerned resource agencies on 29 March 1985. Additional coordination will be accomplished during preparation of the Draft Supplement to the FEIS. The participation of concerned Federal, State, and local agencies, and other interested private organizations and parties is invited. Significant issues to be analyzed in the Draft Supplement to the FEIS include sediment and water quality, fish and wildlife impacts, and commercial shipping.

4. *Scoping Meeting:* No additional scoping meeting is currently scheduled.

5. *Availability:* The Draft Supplement is scheduled to be available for review in April 1987.

ADDRESS: Questions about the proposed action and DEIS can be answered by William F. MacDonald, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207, telephone (716) 876–5454, extension 2175 or FTS 473–2175.

Dated: February 9, 1987.

Daniel R. Clark,

Colonel, Corps of Engineers, District Commander.

[FR Doc. 87–3307 Filed 2–17–87; 8:45 am]

BILLING CODE 3710-GP-M

DEPARTMENT OF EDUCATION

Office of Management

Federal Education Data Acquisition Council

AGENCY: Department of Education.

ACTION: Notice of availability of data acquisition activities approved prior to February 15, 1987.

SUMMARY: The Secretary publishes this notice to advise interested persons that they may obtain information regarding a list of approved education-related data acquisition activities that Federal agencies will use to collect data during school year 1987–88. The list includes all data acquisition activities approved before February 15, 1987.

DATE: The listing of approved data acquisition activities will be available February 15, 1987.

FOR FURTHER INFORMATION CONTACT: For information about the list or copies of the list, contact Mrs. Margaret B. Webster, U.S. Department of Education, Office of Management, Information Management and Compliance Division, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, DC 20202. Telephone: (202) 426–7304.

SUPPLEMENTARY INFORMATION: Under section 400A of the General Education Provisions Act, the Secretary of Education is responsible for reviewing and coordinating the collection of information and data acquisition activities of Federal Agencies—

(a) Whenever the respondents are primarily educational agencies or institutions; or

(b) Whenever the purpose of the activities is to request information needed for the management of, or the formulation of, policy related to Federal education programs or research or evaluation studies related to the implementation of Federal education programs.

Under section 400A the Secretary also informs the public of data acquisition activities that were approved by February 15, 1987. These data acquisition activities are considered information collection requests under the Paperwork Reduction Act of 1980. Under that Act and Office of Management and Budget (OMB) implementing regulations, proposed information collection requests must be published in the **Federal Register** on or before submission to OMB for final approval. Thus, the list announced by this notice includes each data acquisition activity for which the following requirements have been met prior to February 15, 1987: approval by the Secretary for use in the 1987–1988 school year; publication in the **Federal Register** as a proposed information collection request; and approval by OMB.

Interested persons may obtain a copy of the list of approved information collection requests, or information regarding that list from Mrs. Margaret B. Webster at the address and telephone number listed at the beginning of this notice.

Dated: February 12, 1987.

Mary M. Rose,

Deputy Under Secretary for Management.

[FR Doc. 87–3373 Filed 2–12–87; 10:24 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Challenge Under the Near Term Intertie Access Policy

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of comment period on proposed BPA response to challenges under BPA's near term intertie access policy (NTIAP).

SUMMARY: By letter of April 17, 1986, the National Marine Fisheries Service (NMFS) notified BPA that it was challenging the access of power from two Pacific Northwest hydroelectric projects to the BPA-owned portion of the Pacific Northwest/Pacific Southwest Intertie (Intertie) transmission lines. NMFS stated that injuries to anadromous fish were unacceptably high at the Portland General Electric Company's (PGE) Sullivan Plant at Oregon City, Oregon, and consequently power from the plant should be denied access to the BPA portion of the Intertie pursuant to the fish protection provisions of the NTIAP. Additionally, NMFS challenged the Sheep Creek hydroelectric projects near Joseph, Oregon, whose power is purchased by Pacific Power and Light (PP&L), claiming that these projects began operation after September 7, 1984, and therefore should be denied access to the BPA portion of the Intertie. The NTIAP prohibits access to the BPA Intertie for resources beginning operation after September 7, 1984. (Exceptions to this prohibition were made for two resources that BPA knew would be coming on line within the term of the NTIAP: Colstrip 4 and Valmy 2.)

Pursuant to the NTIAP, BPA notified project owners of the NMFS challenge and analyzed the NMFS claims. BPA's preliminary decision is that power generated from the challenged projects was not transmitted over the BPA-owned portion of the Intertie during the period analyzed, June 1985 to April 1986. Because BPA's Intertie was not used by these projects, provisions within the NTIAP are not applicable. BPA is seeking public comment on its proposed response.

DATE: Public comments will be accepted until close of business March 30, 1987.

ADDRESS: Written comments should be submitted to Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Mr. Roy B. Fox, Environmental Coordinator, at the address listed above, 503–230–4261. Or call BPA's Public Involvement office. Telephone numbers, voice/TTY, for the Public Involvement office are: 230–3478 in Portland; Oregon callers may call toll-free 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may call toll-free 800–547–6048. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Terry Esvelt, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Room 376, 550 West Fort Street, Boise, Idaho 83724, 208–334–9137.

SUPPLEMENTARY INFORMATION: The Intertie is the high-voltage transmission system that connects the Pacific Northwest with the Pacific Southwest. BPA owns most of the capacity of these lines in the Pacific Northwest. In the summer of 1983, BPA's Administrator began to explore the development of an Intertie Access Policy to enhance BPA's power marketing efforts and ability to recover revenues, and to provide certainty with respect to BPA's and others' firm and nonfirm transactions with Southwest utilities. An Interim IAP was implemented in September 1984. In June 1985, upon completing an Environmental Assessment and Finding of No Significant Impact, BPA implemented its NTIAP. This policy will continue in effect until superseded by a long-term policy or until June 30, 1987, whichever comes first.

Under the NTIAP, in subsection A.7., BPA defines existing Pacific Northwest resources as those Pacific Northwest utility resources that were operational on September 7, 1984, and in subsection C.2. prohibits access to non-federal resources that were not operational on that date. In subsection C.7., BPA presumes that existing Pacific Northwest resources scheduled for transmission over the BPA-owned portion of the Intertie are being operated consistent with applicable licenses, permits, and other State and Federal laws. Also, BPA presumes that operation of these resources is not adversely impacting the Administrator's obligation under the Pacific Northwest Electric Power Planning and Conservation Act to protect, mitigate, and enhance fish and wildlife.

However, subsection C.7. provides an opportunity for any person who wishes to challenge those presumptions. The NTIAP further provides that BPA will accept public comment before making a final determination as to whether fish and wildlife, for which the Administrator has responsibilities, are being adversely impacted by the operation of the challenged resource. If a resource is found to adversely affect the Administrator's fish and wildlife efforts, access will not be provided unless the operator of the resource agrees to: (1) modify operation so that further adverse impact does not occur, or (2) take actions consistent with the Northwest Power Planning Council's Fish and Wildlife Program to offset the adverse impact.

Pursuant to provisions in the NTIAP, NMFS notified BPA of its challenge of PGE's Sullivan Plant. NMFS stated that injuries to anadromous fish were unacceptably high at the Sullivan Plant at Oregon City, Oregon. NMFS also challenged the Sheep Creek hydroelectric projects near Joseph, Oregon, claiming that they began operating after September 7, 1984, the implementation date of the Interim IAP, and therefore do not qualify as existing Pacific Northwest resources eligible for access.

Analyses Conducted

To begin its analyses of the NMFS challenges, BPA first examined whether access to the BPA portion of the Intertie had been scheduled for PGE and PP&L from the time the NTIAP was implemented, June 1985, to the time of the NMFS challenge, April 1986. During that period of time, PGE scheduled an average of 65.6 megawatts (MW) monthly on BPA's portion of the Intertie, while PP&L had scheduled an average of 386.3 MW monthly. Given that both utilities were using the BPA-owned Intertie, BPA next examined whether power from PGE's Sullivan Plant was transmitted over the BPA-owned Intertie and the date operation of the Sheep Creek projects began. The results of the analyses follow.

A. Sullivan Plant (PGE)

Power from the Sullivan Plant enters the regional electrical grid and could be sold to the Pacific Southwest. However, economic and regulatory criteria established by the Oregon Public Utility Commissioner dictate that power from the Sullivan Plant should not serve load in the Southwest.

PGE operates the Sullivan Plant as a baseload power source because its variable costs (operation and maintenance costs) are essentially 0 mills/kilowatthour. The fixed costs of the plant also are very low given its age (the plant was built in the early 1900's). The Oregon Public Utility Commissioner requires that such economically efficient resources serve only local loads for the benefit of regional ratepayers. PGE's surplus sales to the Southwest are thereby supported with other, higher cost resources, such as the Centralia, Colstrip, and Boardman coal plants, and power purchases from British Columbia Hydro and Power Authority, BPA, and other Northwest utilities. Additionally, the first 700 MW of PGE's sales to the Southwest flow over its own portion of the Intertie. Use of BPA's Intertie by PGE occurs only when PGE's sales exceed its 700-MW line capacity.

Given that (1) the economics of the Sullivan Plant operation dictate regional consumption of its power and consequent operation of the resource regardless of any access to BPA's portion of the Intertie, and (2) PGE owns 700 MW of its own Intertie capacity, BPA hereby proposes to determine that the output of the plant is not being transmitted over the BPA-owned Intertie. Therefore, the provisions of the NTIAP relevant to fish and wildlife protection are not applicable to the power generated by the Sullivan Plant.

B. Sheep Creek Projects (PP&L)

The Sheep Creek projects, (FERC Nos. 5572, 5573, and 6621) began generating power in November 1984, after the effective date of the NTIAP (September 7, 1984). Subsection II.C.2. of the NTIAP prohibits access to non-federal resources that were not operational on the effective date of the NTIAP. The projects, therefore, do not meet the definition of "Existing Pacific Northwest Resources" as specified in the NTIAP.

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The Sheep Creek projects are located in a remote area of the Wallowa Mountains near Joseph in northeastern Oregon. Under Public Utilities Regulatory Policies Act regulations, PP&L purchases the projects' electrical output at one point of interconnection, and utilizes PP&L's distribution lines to serve its local loads.

The Sheep Creek projects are connected to PP&L's 20.8-kilovolt (kV) local feeder line which, with other 20.8-kV feeder lines, serves PP&L's local customers. Since the maximum generation of the Sheep Creek projects is only about one-half of PP&L's average load in the local area, it is unlikely that any power from these projects could be surplus to the local area. Output from the projects under normal conditions is absorbed by the 20.8-kV feeder in and around the Enterprise and Joseph area. During periods of peak generation from the projects and low loads in the local area, some power may flow into the 69-kV transmission line which serves other isolated areas near Enterprise. This 69-kV transmission line also connects with PP&L's 230-kV transmission line between Enterprise, Oregon, and Walla Walla, Washington. Remaining power, if any, would flow to Walla Walla where PP&L serves loads totaling approximately 140,000 kilowatts. PP&L's Walla Walla area system is remotely interconnected with the terminus of the Intertie. The projects' power therefore serves PP&L's local customers.

Given the use of the Sheep Creek projects power to serve PP&L's local load in the vicinity of the plant, BPA hereby proposes to determine that Sheep Creek power does not flow over the BPA-owned portion of the Intertie in violation of the NTIAP's restriction to resources existing on the effective date of the policy.

Issued in Portland, Oregon, on February 5, 1987.

Steven G. Hickok,

Acting Administrator.

[FR Doc. 87-3322 Filed 2-12-87; 3:30 pm]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Final Consent Order With Patton Oil Co.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final Action on Proposed Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) has determined that a proposed Consent Order between the Department of Energy (DOE) and Patton Oil Company (Patton) shall be made a final order of the DOE. The Consent Order resolves issues of compliance by Patton with the federal petroleum price and allocation regulations concerning the production and sale of crude oil for the period June 1979 through April 1980. Patton will pay to DOE the sum of $1,100,742.17, as prescribed in the Consent Order, and DOE will deposit these funds in a suitable account for appropriate disposition. The decision to make the Patton Consent Order final was made after a review of all written comments received.

FOR FURTHER INFORMATION CONTACT: Gregory Lattimer, Office of the Solicitor (RG-43), Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4803.

SUPPLEMENTARY INFORMATION:

I. Introduction.
II. Comments Received.
III. Decision.

I. Introduction

ERA previously issued a notice annoucing a proposed consent order between DOE and Patton which would resolve matters relating to compliance by the firm with the federal petroleum price and allocation regulations for the period June 1979 through April 1980. 51 FR 42,285 (November 24, 1986). The proposed consent order required Patton to pay $988,742.17 upon the effective date of the Consent Order, and $112,000, plus interest, within one (1) year of the Consent Order's effective date. The notice solicited written comments from the public relating to the terms and conditions of the settlement.

II. Comments Received

ERA received two comments, which addressed the question of the ultimate disposition of the funds to be paid by Patton pursuant to the settlement, but which did not question the basis of the settlement or the adequacy of the settlement amount. These comments were submitted by the Controller of the State of California, and the Attorneys General of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island and West Virginia. These comments, although formulated differently and differing in the nature and amount of supporting analysis, are devoted exclusively to establishing the dispositionary method for the monies received under the Patton Consent Order. The Attorneys General stated that the refunds received should be distributed in accordance with the Modified Statement of Restitutionary Policy, 51 FR 27899 (August 4, 1986). The Controller of California, while supportive of the use of the special refund procedures in Subpart V, takes the position that the refund monies should be distributed directly to the States and the Federal Government.

The Consent Order contains no substantive determination as to the disposition of the funds paid under the Consent Order, but does state that ERA will petition the Office of Hearings and Appeals to implement special refund procedures pursuant to 10 CFR Part 205, Subpart V to distribute the funds. This is consistent with the modified statement of Restitutionary Policy, *supra*. That statement was announced by DOE as a result of the Settlement Agreement in the Department of Energy Stripper Well Exemption Litigation, M.D.L. 378 (D. Kan.). Neither the Agreement nor the Policy Statement requires that the funds be made immediately available to the States and the Federal Government without administrative proceedings. In fact, the Agreement contemplates that funds obtained by ERA will be submitted to the OHA, paragraph IV.B.4., and that OHA will set a 20 percent reserve in order to allow that "amounts in excess of the reserve shall be distributed while awaiting the completion of the first stage refund proceedings." Paragraph IV.B.6. Accordingly, it appears that there is not only no prohibition on the use of the Subpart V process in the distribution of funds to the States and DOE, it may be required. In any event, DOE has determined that the administrative responsibilities for the distribution can be managed better through OHA and the use of Subpart V. Such a proceeding will identify the appropriate recipients of the Consent Order monies, and include a determination as to whether and to what extent particular persons have been injured by the alleged overcharges by Patton. Thus, the comments by the States concerning distribution of the funds to be paid by Patton are at best premature at this time.

For the foregoing reasons, and for the reasons set forth in the notice of the proposed Consent Order, ERA has decided to finalize the Consent Order with Patton.

III. Decision

By this Notice, and pursuant to 10 CFR 205.199J, the proposed Consent Order between Patton and DOE shall become a final order of the DOE. DOE will issue a notice to Patton of the agency's decision to make the Consent Order final, and the Consent Order shall become final upon delivery of that notice.

Issued in Washington, DC, on February 3, 1987.

Marshall Staunton,

Administrator, Economic Regulatory Administration.

[FR Doc. 87-3323 Filed 2-17-87; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 87-04-NG]

Home Oil Resources Ltd.; Application To Import Natural Gas From Canada

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on January 27, 1987, of an application from Home Oil Resources Ltd. (Home Oil) for blanket authorization to import Canadian natural gas for short-term and spot market sales to customers in the United States or to act as an agent for such sales. Authorization is requested to import up to 125 MMcf per day and a maximum of 73 Bcf over a two-year term beginning on the date of first delivery of the import. The applicant is a Delaware corporation that has its principal place of business in Calgary, Alberta, Canada. Home Oil proposes to purchase the volumes of natural gas from its Canadian parent company, Home Oil Company Ltd., and a variety of other Canadian suppliers. The gas would be sold to customers that are expected to include gas distribution companies, pipelines, and commercial and industrial end-users. The specific terms of each import and sale would be individually negotiated, including the price and volumes, and would be responsive to current market conditions. Home Oil intends to use existing pipeline facilities to transport the gas, and proposes to submit quarterly reports to the ERA, on a confidential basis, describing the import transactions.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than March 20, 1987.

FOR FURTHER INFORMATION CONTACT: P.J. Fleming, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9482.

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures: In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulation in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, Washington, DC. 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.s.t., March 20, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Home Oil's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC February 9, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-3324 Filed 2-17-87; 8:45am]

BILLING CODE 6450-01-M

[86-61-NG]

Natural Gas Imports; Minnegasco Inc., a Company of Diversified Energies, Inc.; Application To Import Natural Gas From Canada

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of Application to Import Natural Gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on November 17, 1986, of an application filed by Minnegasco Inc., a Company of Diversified Energies Inc. (Minnegasco) to import up to 160,000 Mcf of Canadian natural gas per day over a ten year period beginning November 1, 1987, or such later date as the necessary regulatory approvals and required facilities are made available to Minnegasco. 50,000 Mcf per day of the Canadian natural gas would be

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imported on a firm basis and 110,000 Mcf per day on an interruptible basis to the extent that such volumes are both needed and available for Minnegasco's South Dakota and Nebraska markets. The pricing formula for the gas would set the commodity rate at the border 7 percent below the equivalent rate charged by Northern Natural Gas Company, a Division of Enron Corporation (Northern Natural), while maintaining the demand charges at or below that of Northern Natural's for comparable service. The planned transportation route for the gas requires the construction of an intrastate connecting pipeline between Midwestern Gas Transmission Company's (Midwestern) interstate pipeline and Minnegasco's facilities.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., on March 20, 1987.

FOR FURTHER INFORMATION:

Stanley C. Vass, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9482.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: The applicant is a Minnesota corporation engaged in the local distribution of natural gas in the states of Minnesota, Nebraska, and South Dakota. Minnegasco currently gets most of its gas supplies from Northern Natural through Northern Natural's interstate pipeline, the only pipeline presently connected to Minnegasco's facilities. However, Minnegasco does purchase some gas from KN Energy, Inc. for its Nebraska market.

In its application, Minnegasco proposes to import up to 50,000 Mcf per day of Canadian natural gas on a firm contract basis and 110,000 Mcf per day on an interruptible basis pursuant to a Precedent Agreement executed on September 10, 1986, between Minnegasco and TransCanada Pipelines Ltd. by its marketing agent, Western Gas Marketing, Ltd. (TransCanada). Minnegasco also proposes to execute a gas purchase agreement with TransCanada setting forth the specific terms of the gas supply import arrangement. The gas would be imported via the point of interconnection between the pipelines of TransCanada and Midwestern near Emerson, Manitoba, and transported through Midwestern's pipeline and a new connecting pipeline to be built between Midwestern's facilities at Cambridge, Minnesota, and Minnegasco's facilities near Coon Rapids, Minnesota.

The proposed Minnegasco-TransCanada gas purchase contract contains a pricing formula which, according to the applicant, provides for an automatic price adjustment mechanism setting TransCanada's commodity charge at a level 7 percent below the equivalent Northern Natural rate and preventing the total demand charges which Minnegasco must pay to TransCanada and Midwestern from exceeding Northern Natural's demand charges for comparable service. The proposed contract would not obligate Minnegasco to take or pay for any gas but Minnegasco would have to pay a monthly demand charge consisting of the lesser of TransCanada's demand charge plus the demand charge of NOVA, an Alberta Corporation (currently, the total of these demand charges is $.406 per Mcf) and the amount by which 99 percent of Northern Natural's monthly demand charge exceeds that of Midwestern after Midwestern begins transporting the imported gas.

Minnegasco states that the commodity charge applicable to firm and interruptible gas will be adjusted monthly under a pricing formula which automatically tracks changes in the commodity charges by Northern Natural for firm service in the Minneapolis area and the variable costs associated with transportation through Midwestern's pipeline and the proposed intrastate connecting pipeline. Under the pricing formula, a base price of $2.65 per MMBtu would be adjusted monthly by multiplying it by a fraction, the numerator of which is the then-current Northern Natural commodity charge and the denominator of which is $2.85. The resulting adjusted base price is then reduced by an amount equal to the variable charges incurred by Minnegasco in transporting the gas through Midwestern's pipeline and the yet-to-be-built intrastate connecting pipeline. According to Minnegasco, if the gas were now flowing, the current monthly commodity charge would be $1.75 per MMBtu.

The proposed gas purchase contract also provides for negotiation at any time of reductions in the commodity charge (but not increases) to enable Minnegasco to purchase more gas. In addition, the proposed gas purchase contract provides for annual renegotiation of all the pricing terms upon written notice by either party to the contract in order to achieve a price that is competitive with the price of competing energy sources in Minnegasco's market area. Minnegasco states that the immediate and the annual renegotiation provisions of the gas purchase contract would provide two avenues of relief in the event that the automatic price adjustment mechanism fails to accurately reflect competition.

In support of its application, Minnegasco states that the additional firm volumes applied for will be needed to meet Minnegasco's firm demand on peak days after its contracted volumes with Northern Natural are reduced in a rate proceeding now before the Federal Energy Regulatory Commission. In addition, Minnegasco anticipates further reductions in its contract demand level with Northern Natural. Minnegasco urges that the flexibility provided by the automatic price adjustment mechanism and the price renegotiation provisions will permit the imported gas to be competitive and that the imported gas would represent a second, secure source of supply to compete in Minnegasco's primary markets.

The decision on the application to import natural gas will be made consistent with the DOE's import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment procedures

In response to the notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076–A, RG–23 Forrestal Building, 1000 Independence Avenue, SW. Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m., March 20, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Minnegasco's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday except Federal holidays.

Issued in Washington, DC., January 31, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–3325 Filed 2–17–87; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 86–62–NG]

Ocean State Power; Application To Import Natural Gas From Canada

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of application for Authorization to Import Natural Gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on November 19, 1986, of an application filed by Ocean State Power (Ocean State), for authorization to import up to 100,000 Mcf per day of Canadian natural gas over an approximate 20-year period beginning on the date of first delivery. The gas imported would be for use as fuel in Ocean State's combined cycle electrical generating plant to be constructed in Burrillville, Rhode Island.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m. on March 20, 1987.

FOR FURTHER INFORMATION CONTACT:

Norman Breckner, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–1657

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667

SUPPLEMENTARY INFORMATION: On November 19, 1986, Ocean State filed an application with the ERA to import up to 100,000 Mcf per day of Canadian natural gas over an approximate 20-year term beginning on the date of first delivery. Ocean State proposes to import the gas from ProGas Limited (ProGas) with which it entered into a precedent agreement on April 17, 1986. This agreement will be executed only after receipt and acceptance of all government authorizations. The agreement is subject to cancellation by either party if Ocean State has not started construction of its combined cycle electrical generating plant by September 30, 1988.

Ocean State asserts that the gas would be imported at a point near Niagara, Ontario. Transportation in the United States would be provided from the international border by Tennessee Gas Transmission Company (Tennessee). Tennessee has applied to the Federal Energy Regulatory Administration (FERC) for authority to transport the natural gas and to construct additional facilities necessary for such transportation.

The natural gas sale and purchase agreement between Ocean State and ProGas provides that the price of gas to Ocean State will be indexed in accordance with the New England Power Pool fossil fuel index (NEPOOL fossil fuel index). The negotiated border price of $3.35/Mcf at 100 percent load factor is based on the NEPOOL fossil fuel index for calendar year 1985. The negotiated price will be adjusted based on changes in the NEPOOL fossil fuel index to ensure that the price remains competitive through the life of the purchase contract. The purchase contract calls for a two-part demand/commodity charge for each MMBtu delivered, but does not impose any take-or-pay obligations. ProGas' sole remedy if minimum volumes are not taken is to seek a reduction in the daily contract quantity. Provisions for renegotiation and arbitration of any contract terms are a further assurance that the gas would remain competitive during the term of the import.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for

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any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. March 20, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to the decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Ocean State's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, (202) 586-9478, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except on Federal holidays.

Issued in Washington, DC, on February 9, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-3326 Filed 2-17-87; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-87-15; OFP Case No. 61065-9336-29-24]

Order Granting Oxy-Alkali Cogeneration Corporation; An Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order granting exemption.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. § 8301 *et seq.* ("FUA" or the "Act"), to Oxy-Alkali Cogeneration Corporation (Oxy-Alkali). The permanent cogeneration exemption permits the use of natural gas as the primary energy source, for the proposed cogeneration facility to be operated in LaPorte, Texas. The final exemption order and detailed information are provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The order shall take effect on April 20, 1987. The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Ellen Russell, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-093, Washington, DC 20585. Telephone (202) 586-9624

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building—Room 6A-113, 1000 Independence Avenue SW., Washington, DC 20585. Telephone (202) 586-6749

SUPPLEMENTARY INFORMATION: The facility for which Oxy-Alkali is requesting a permanent cogeneration exemption is a combined cycle facility consisting of two gas turbines and one heat recovery steam generator. The facility, located in LaPorte, Texas, will burn natural gas and will be capable of utilizing #2 oil as a back-up fuel.

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on December 19, 1986, (51 FR 45512), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by Section 701(f) of the Act. during the comment period, interested persons were afforded an opportunity to request a public hearing.

The comment period closed on February 2, 1987; no comments were received and no hearing was requested.

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that Oxy-Alkali has satisifed the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to Oxy-Alkali to permit the use of natural gas as the primary energy source for its cogeneration facility.

Pursuant to section 702(c) of the Act of 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day followed the publication of this order in the **Federal Register.**

Issued in Washington, DC on February 3, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-3328 Filed 2-17-87; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-87-16; OFP Case No. 61065-9337-20-24]

Order Granting Oxy-Alkali Cogeneration Corporation; An Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order granting exemption.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or the "Act"), to Oxy-Alkali Cogeneration Corporation (Oxy-Alkali). The permanent cogeneration exemption permits the use of natural gas as the primary energy source, for the proposed cogeneration facility to be operated in Deer Park, Texas. The final exemption order and detailed information are provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The order shall take effect on April 20, 1987. The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Ellen Russell, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-093, Washington, DC 20585. Telephone (202) 586-9624

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building-Room 6A-113, 1000 Independence Avenue SW., Washington, DC 20585. Telephone (202) 586-6749

SUPPLEMENTARY INFORMATION: The facility for which Oxy-Alkali is requesting a permanent cogeneration exemption is a combined cycle facility consisting of one gas turbine generator, one heat recovery steam generator, and three non-condensing steam turbines. The facility, located in Deer Park, Texas, will burn natural gas and will be capable of utilizing #2 oil as a back-up fuel.

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on December 19, 1986, (51 FR 45513), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing.

The comment period closed on February 2, 1987; no comments were received and no hearing was requested.

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that Oxy-Alkali has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to Oxy-Alkali to permit the use of natural gas as the primary energy source for its cogeneration facility.

Pursuant to section 702(c) of the Act of 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC, on February 3, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-3327 Filed 2-17-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. C186-425-000]

Application of Energy Marketing Exchange, Inc. To Amend Blanket Certificate of Public Convenience and Necessity and for an Order Approving Pre-Granted Abandonment

February 12, 1987.

Take notice that on February 12, 1987, Energy Marketing Exchange, Inc. ("EME") pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717-717z (1982) (NGA) and Part 157 of the regulations of the Federal Energy Regulatory Commission ("Commission"), 18 CFR Part 157 (1984), applied for a two (2) year extension (terminating March 31, 1988) of the limited-term sales and abandonment authority granted in this proceeding. EME states that such an extension is in the public interest as it will allow a smooth transition into the abandonment procedures established in Order No. 436.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protests with reference to said application should on or before February 20, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3306 Filed 2-17-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI78-57-001 and CI87-242-000]

Application for Limited-Term Abandonment and Limited-Term Blanket Certificate With Pre-Granted Abandonment; Mobil Oil Corp.

February 12, 1987.

Take notice that on Januray 27, 1987, as supplemented on February 6, 1987, Mobil Oil Corporation (Mobil), 9 Greenway Plaza, Suite 2700, Houston, Texas 77046, filed as application in Docket Nos. CI78-57-001 and CI87-242-000. In this application, Mobil requests a limited-term abandonment of the service obligation authorized in Docket No. CI78-57 and a blanket limited-term certificate of public convenience and necessity, with pre-granted abandonments, all for a term of three years. Mobil also requests a waiver of the Commission's Regulations concerning the establishment of rate schedules under Part 154 for sales under the blanket certificate authority requested, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Mobil is currently selling gas from the Tip Top and Hogsback Fields, Lincoln and Sublette Conties, Wyoming, to Northwest Pipeline Corporation (Northwest) under the authority granted in Docket CI78-57. Mobil proposes to

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abandon this sale for a period of three years in order to sell to new markets. By the terms of a Settlement Agreement dated October 1, 1986, a copy of which is on file with the Commission as a supplement to Mobil's FERC Gas Rate Schedule No. 540, Mobil and northwest resolved certain issues under the gas sales contract between Mobil and Northwest, including the settlement of take-or-pay issues. Northwest also agreed not to oppose an abandonment of this gas. Gas is currently being sold under the terms of the Settlement Agreement, but the contract may be terminated upon written notice by either party after March 31, 1987. It is currently contemplated that termination would be effective on April 1, 1987.

Upon abandonment, Mobil proposes to sell the gas to alternative markets, as yet unidentified, under a blanket certificate, with pre-granted abandonments, during the three year term. Estimated deliverability under the contract is 60MMcf/d, of which 50.5 MMcf/d is NGPA § 106(a) gas, 3.0 MMcf/d is § 104–Biennium, 3.0 MMcf/d is § 104–Post 1974, 3.5 MMcf/d is § 103 gas (not subject to this application) and a negligible amount is § 108 gas. Mobil states that without the authority requested it will be subject to substantially reduced takes without payment on and after April 1, 1987 since Northwest has only agreed to take gas on a best-efforts basis after March 31, 1987.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436–A, issued October 9, and December 12, 1985, respectively, in docket No. RM85–1–000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3359 Filed 2–17–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ST85–947–001 et al.]

Panhandle Gas Company et al.; Extension Reports

February 12, 1987.

The companies listed below have filed extension reports pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue sales of natural gas for an additional term of up to 2 years.[1]

The table below lists the name and addresses of each company selling pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A "D" indicates a sale by an intrastate pipeline extended under § 284.146.

Any person desiring to be heard or to make any protest with reference to said extension reports should on or before March 3, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[1] Notice of these extension reports does not constitute a determination that a continuation of service will be approved.

EXTENSION LIST

[January 1–15, 1987]

Docket No.	Transporter/ Seller	Recipient	Date filed	Part 284 subpart	Effective date	Expiration date [2]
ST85–947–001 [1]	Panhandle Gas Co. P.O. Box 1188 Houston, TX 77001.	Philadelphia Electric Co..	1–12–87	D	3–13–87	4–12–87
ST85–992–001 [1]	Panhandle Gas Co. P.O. Box 1188 Houston, TX 77001.	Baltimore Gas and Electric Co..	1–12–87	D	3–12–87	4–12–87
ST85–994–001 [1]	Panhandle Gas Co. P.O. Box 1188 Houston, TX 77001.	Transwestern Pipeline Co..	1–12–87	D	3–12–87	4–12–87
ST85–1146–001	Panhandle Gas Co. P.O. Box 1188 Houston, TX 77001.	Enron Industrial Natural Gas Co. (formerly HNG Industrial Natural Gas Co.).	1–12–87	D	4–22–87	.....

[1] This extension report was filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.

[2] The pipeline has sought Commission approval of the extension of this transaction. The 90-day Commission review period expires on the date indicated.

[FR Doc. 87–3360 Filed 2–17–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. SA87–32–000]

Petro-Lewis Funds, Inc.; Petition for Adjustment

February 11, 1987.

On December 3, 1986, Petro-Lewis Funds Inc. (Petitioner) filed with the Federal Energy Regulatory Commission a petition for waiver pursuant to Commission Order No. 399–A,[1] Section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[2] and Subpart K of the Commission's Rules of Practice and Procedure.[3] Petitioner seeks a waiver of that portion of its Btu refund obligation attributable to royalties paid to the State of Louisiana for sales of gas made to Southern Natural Gas Company (Southern) from certain state-owned leases. Under Order No. 399, these refunds were due by November 5, 1986.[4]

Petitioner bases its request for waiver on the grounds that the Louisiana State Mineral Board adopted a resolution in October 1985 which prohibited producers from recovering Btu refund amounts attributable to state royalty payments by deductions from current royalty payments. Petitioner alleges that it made a total refund payment to Southern in October 1984, which included amounts attributable to royalty payments made to the State of Louisiana. Petitioner states that it has sought to recoup those amounts from Southern and that while Southern has permitted Petitioner to recoup the interest attributable to the Louisiana royalty portion of the Btu refund, Southern declined payment of the principal in the absence of a Commission waiver of that portion of Petitioner's refund obligation.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3361 Filed 2–17–87; 8:45 am]

BILLING CODE 6717–01–M

[1] Refunds Resulting from Btu Measurement Adjustments, 49 FR 46,353 (Nov. 26, 1984). FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,612.

[2] 15 U.S.C. 3412(c) (1982).

[3] 18 CFR 385.1101–.1117 (1986).

[4] 49 FR 37,735 at 37,740 (Sept. 26, 1984). FERC Stats. & Regs [Regulations Preambles 1982–1985] ¶ 30,597 at 31,150. In order No. 399, the Commission established refund procedures for charges for natural gas that exceed NGPA ceilings as a result of Btu measurements based on the water vapor content of the gas "as delivered", rather than on a water saturated basis. In so doing, the Commission was implementing the decision in Interstate Natural Gas Association of America v. Federal Energy Regulatory Commission, 716 F.2d 1 (D.C. Cir. 1983), *cert. denied*, 465 U.S. 1108 (1984). In Order 399–C, issued on November 5, 1986, the Commission postponed the November 5, 1986 deadline for certain first sellers. 37 FERC ¶ 61,091 (1986).

[Docket No. SA87–28–000]

Samedan Oil Corp.; Petition for Adjustment

February 11, 1987.

On November 5, 1986, Samedan Oil Corporation filed with the Federal Energy Regulatory Commission a petition for waiver pursuant to Commission Order No. 399–A,[1] section 502(c) of the Natural Gas Policy Act of 1978,[2] and Subpart K of the Commission's Rules of Practice and Procedure.[3] Samedan seeks waiver of that portion of its Btu refund obligation attributable to certain royalties paid by it to federal and state royalty interest owners.[4] Under Order No. 399, these refunds were due by November 5, 1986,[5] but this deadline has been postponed.[6]

Samedan states that it has been unable to collect approximately $1.6 million by Btu refunds from federal and state royalty interest owners and that it should be granted waiver because attempts by it to collect such funds through its continuing contractual relationships with these royalty owners would jeopardize its present and future ability to hold federal and state leasehold interests. It further states that payment of the $1.6 million refund would constitute a financial hardship and an inequitable and harsh penalty.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3362 Filed 2–17–87; 8:45 am]

BILLING CODE 6717–01–M

[1] Refunds Resulting from Btu Measurement Adjustments, 49 FR 46353 (November 26, 1984); FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,612.

[2] 15 U.S.C. 3412(c) (1982).

[3] 18 CFR 385.1101–.1117 (1986).

[4] By a petition filed August 26, 1985, in Docket No. GP85–47–000, Samedan requested that the Commission determine by rulemaking that royalties paid to royalty interest owners for sales of natural gas are subject to the jurisdiction of the Commission, and direct that such royalty interest owners make refunds of Btu-related overcharges. In the alternative, Samedan asked the Commission to waive any Btu refunds that it and other similarly situated producers are unable to collect from royalty owners. Samedan designated its November 5, 1986 petition (the subject of this notice) as a Docket No. GP85–47–000 filing. However, the relief requested in this petition is an adjustment from Samedan's specific refund obligation under Order No. 399, while the relief sought in Docket No. GP85–47–000 is generic relief for all producers. Therefore, the November 5, 1986 petition has been assigned a new docket number, SA87–28–000.

[5] 49 FR 37735 at 37740 (September 26, 1984). FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,597 at 31,150. In Order No. 399, the Commission established refund procedures for charges for natural gas that exceeded NGPA ceilings as a result of Btu measurements based on the water vapor content of the gas "as delivered," rather than on a water saturated basis. In so doing, the Commission was implementing the decision in Interstate Natural Gas Association of America V. Federal Energy Regulatory Commission, 716 F.2d 1 (D.C. Cir. 1983). *Cert. denied*, 465 U.S. 1108 (1984).

[6] In Order No. 399–C, issued November 5, 1986, the Commission postponed the November 5, 1986 deadline for payment of Btu refunds attributable to royalty payments for any first seller that has a petition on file with the Commission seeking waiver of or postponement of the deadline to pay Btu refunds attributable to royalty payments.

[Docket No. CI86–19–004]

Amoco Production Co.; Application

February 11, 1986.

Take notice that on February 3, 1987, Amoco Production Company (Amoco), filed an application pursuant to section 7 of the Natural Gas Act (NGA), 15 U.S.C. 717f, and Parts 154 and 157 of the Federal Energy Regulatory Commission's Regulations thereunder (18 CFR Parts 154 and 157) for the Commission to modify Paragraph (A) of its Order Permitting and Approving Limited-Term Abandonments And Granting Certificates issued November 1, 1985 as amended March 28, 1986 by substituting March 31, 1988 for March 31, 1987 therein and by terminating the price floor conditions prescribed in subparagraphs (A)(1) and (A)(2) in Docket No. CI86–19–003.

Amoco submits that many of the circumstances that called forth Amoco's application filed on October 16, 1985 and supported issuance of the Commission's November 1, 1985 Order will continue to at least until March 31, 1988 past the March 31, 1987 termination date prescribed in Paragraph (A) of the November 1, 1985 Order as modified by the March 28, 1986 Order. If the limited-term abandonment and certificate authorized granted by the November 1, 1985 and March 28, 1986 Orders is extended past March 31, 1987, Amoco

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could make additional spot market sales.

Amoco states that in its Order Permitting And Approving Limited-Term Abandonment and Issuing Limited-Term Blanket Certificates With Pre-Granted abandonment issued January 21, 1987 in *ANR Pipeline Co. et al.*, Docket No. CI86–637–000, *et al.*, rather than continuing the price floor conditions prescribed in subparagraphs (A)(1) and (A)(2) of the November 1, 1985 Order here, the Commission allowed each involved pipeline and producer to determine which price vintages of gas are to be released for sale to third parties. Amoco considers the January 21, 1987 Order to be clear recognition that the price conditions imposed in subparagraphs (A)(1) and (A)(2) of the November 1, 1985 Order should not be continued.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 2, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3363 Filed 2–17–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ST87–648–000, et al.]

Arkla Energy Resources, et al.; Self-implementing Transactions

February 12, 1987.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's Regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's Regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to section 284.222 and a blanket certificate issued under Section 284.221 of the Commission's Regulations.

A "G–S" indicates transportation by an interstate pipeline company on behalf of any shipper pursuant to a § 284.223 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to a transaction reflected in this notice should on or before March 3, 1987, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 or 385.214).

All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's Regulations.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMB tu)
ST87-0648	Arkla Energy Resources	Arkansas Louisiana Gas Co	12-01-86	B		
ST87-0649	Arkla Energy Resources	Arkansas Louisiana Gas Co	12-01-86	B		
ST87-0650	Arkla Energy Resources	Arkansas Louisiana Gas Co	12-01-86	B		
ST87-0651	Arkla Energy Resources	Arkansas Louisiana Gas Co	12-01-86	B		
ST87-0652	Arkla Energy Resources	Arkansas Louisiana Gas Co	12-01-86	B		
ST87-0653	Natural Gas Pipeline Co. of America	Central Illinois Light Co	12-01-86	B		
ST87-0654	Natural Gas Pipeline Co. of America	Iowa-Illinois Gas & Electric Co	12-01-86	B		
ST87-0657	Natural Gas Pipeline Co. of America	NGC Intrastate Pipeline	12-01-86	B		
ST87-0658	Panhandle Eastern Pipe Line Co	Consumers Power Co	12-02-86	B		
ST87-0659	Panhandle Eastern Pipe Line Co	Consumers Power Co	12-02-86	B		
ST87-0660	Trunkline Gas Co	Consumers Power Co	12-02-86	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMB tu)
ST87-0661	United Gas Pipe Line Co	Consumers Power Co	12-02-86	B		
ST87-0662	United Gas Pipe Line Co	Lga Intrastate, Inc	12-02-86	B		
ST87-0663	United Gas Pipe Line Co	Clajon Industrial Gas, Inc	12-02-86	B		
ST87-0664	Louisiana Intrastate Gas Corp	Transcontinental Gas Pipe Line Corp	12-02-86	C	05-01-87	12.40
ST87-0665	Arkla Energy Resources	Arkansas Louisiana Gas Co	12-01-86	B		
ST87-0666	United Gas Pipe Line Co	City of Alexander	12-02-86	B		
ST87-0667	Transamerican Gas Transmission Corp	Transcontinental Gas Pipeline Corp	11-20-86	C		
ST87-0668	United Gas Pipe Line Co	KM Texas Pipeline Corp	12-03-86	B		
ST87-0669	Texas Eastern Transmission Corp	Texas Southeastern Gas Co	12-03-86	B		
ST87-0670	Texas Eastern Transmission Corp	Bayou Industrial Gas Corp	12-03-86	B		
ST87-0671	Texas Eastern Transmission Corp	East Ohio Gas Co	12-03-86	B		
ST87-0672	Texas Eastern Transmission Corp	Hope Gas, Inc	12-03-86	B		
ST87-0673	Texas Eastern Transmission Corp	Tennessee River Intrastate Gas, Co	12-03-86	B		
ST87-0674	ONG Transmission Co	Natural Gas Pipeline Co. of America	12-03-86	C	05-02-87	16.00
ST87-0675	United Gas Pipe Line Co	Victoria Gas Corp	12-04-86	B		
ST87-0676	United Gas Pipe Line Co	Endevoc Pipeline Co	12-04-86	B		
ST87-0677	United Gas Pipe Line Co	Shreveport Intrastate Gas Trans., Inc	12-04-86	B		
ST87-0678	Valero Transmission Co	Humble Gas Transmission Co	12-04-86	C		
ST87-0679	Northern Natural Gas Co	Houston Pipe Line Co	12-04-86	B		
ST87-0680	Northern Natural Gas Co	Power-Tex Joint Venture	12-04-86	B		
ST87-0681	Trunkline Gas Co	Consumers Power Co	12-04-86	B		
ST87-0682	El Paso Natural Gas Co	Humble Gas Transmission Co	12-04-86	B		
ST87-0683	Tarl Pipeline Co	Northern Natural Gas Co	12-04-86	C		
ST87-0684	United Texas Transmission Co	Humble Gas Transmission Co	12-05-86	C		
ST87-0685	Texas Gas Transmission Corp	Evangeline Gas Co	12-05-86	D		
ST87-0686	Northern Natural Gas Co	Bishop Pipeline Corp	12-05-86	B		
ST87-0687	Northern Natural Gas Co	Eastex Gas Transmission	12-05-86	B		
ST87-0688	Northern Natural Gas Co	Southern California Gas Co	12-05-86	B		
ST87-0689	Northern Natural Gas Co	Valero Transmission Co	12-05-86	B		
ST87-0690	Northern Natural Gas Co	Wisconsin Gas Co	12-05-86	B		
ST87-0691	Texas Gas Transmission Corp	LaFourche Gas Corp	12-05-86	B		
ST87-0692	Equitable Gas Co	Equitable Gas Co	12-01-86	B		
ST87-0693	Texas Gas Transmission Corp	Mountaineer Gas Co	12-08-86	B		
ST87-0694	Consolidated Gas Transmission Corp	East Ohio Gas Co	12-08-86	B		
ST87-0695	Consolidated Gas Transmission Corp	East Ohio Gas Co	12-08-86	B		
ST87-0696	Consolidated Gas Transmission Corp	East Ohio Gas Co	12-08-86	B		
ST87-0697	Consolidated Gas Transmission Corp	Hope Gas, Inc	12-08-86	B		
ST87-0698	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	12-08-86	B		
ST87-0699	Consolidated Gas Transmission Corp	Peoples Natural Gas Co	12-08-86	B		
ST87-0700	Texas Gas Transmission Corp	Memphis Light, Gas and Water Division	12-08-86	B		
ST87-0701	Texas Gas Transmission Corp	Switzerland County Natural Gas Co	12-08-86	B		
ST87-0702	Texas Gas Transmission Corp	Indiana Gas Co	12-08-86	B		
ST87-0703	Texas Gas Transmission Corp	City of Elizabethtown	12-08-86	B		
ST87-0704	Tennessee River Intrastate Gas Co	Alabama-Tennessee Natural Gas Co	12-08-86	C		
ST87-0705	Northern Natural Gas Co	Mountain Fuel Supply Co	12-08-86	B	05	
ST87-0706	Consolidated Gas Transmission Corp	North Penn Gas Co	12-08-86	B		
ST87-0707	Consolidated Gas Transmission Corp	East Ohio Gas Co	12-08-86	B		
ST87-0708	Consolidated Gas Transmission Corp	Corning Natural Gas Corp	12-08-86	B		
ST87-0709	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	12-08-86	B		
ST87-0710	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	12-08-86	B		
ST87-0711	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	12-08-86	B		
ST87-0712	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	12-08-86	B		
ST87-0713	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	12-08-86	B		
ST87-0714	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	12-08-86	B		
ST87-0715	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	12-08-86	B		
ST87-0716	Louisiana Intrastate Gas Corp	Texas Eastern Transmission Corp	12-08-86	C	05-07-87	27.40
ST87-0717	Oasis Pipe Line Co	Northern Illinois Gas Co	12-08-86	C		
ST87-0718	Houston Pipe Line Co	Northern Illinois Gas Co	12-08-86	C		
ST87-0719	Valero Transmission Co	El Paso Natural Gas Co	12-08-86	C		
ST87-0720	Transcontinental Gas Pipe Line Corp	South Carolina Electric and Gas Co	12-08-86	B		
ST87-0721	Transcontinental Gas Pipe Line Corp	Cincinnati Gas and Electric Co	12-08-86	B		
ST87-0722	Transcontinental Gas Pipe Line Corp	Philadelphia Electric Co	12-08-86	B		
ST87-0723	Transcontinental Gas Pipe Line Corp	Lynchburg Gas Co	12-08-86	B		
ST87-0724	Transcontinental Gas Pipe Line Corp	Mississippi Valley Gas Co	12-08-86	B		
ST87-0725	Consolidated Gas Transmission Corp	East Ohio Gas Co	12-08-86	B		
ST87-0726	Houston Pipe Line Co	Florida Gas Transmission Co	12-08-86	C		
ST87-0727	Panhandle Eastern Pipe Line Co	Yankee Pipeline Co	12-09-86	B		
ST87-0728	Mountain Fuel Resources, Inc	Illinois Power Co, et al	12-09-86	B		
ST87-0729	Mountain Fuel Resources, Inc	Illinois Power Co, et al	12-09-86	B		
ST87-0730	Panhandle Eastern Pipe Line Co	Indiana Gas Co	12-09-86	B		
ST87-0731	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	12-09-86	B		
ST87-0732	Lawrenceburg Gas Transmission Corp	Cincinnati Gas and Electric Co	12-09-86	B		
ST87-0733	Panhandle Eastern Pipe Line Co	Citizens Gas and Coke Utility	12-09-86	B		
ST87-0734	Panhandle Eastern Pipe Line Co	Citizens Gas and Coke Utility	12-10-86	B		
ST87-0735	Trunkline Gas Co	Consumers Power Co	12-10-86	B		
ST87-0736	Trunkline Gas Co	Consumers Power Co	12-10-86	B		
ST87-0737	Trunkline Gas Co	Consumers Power Co	12-10-86	B		
ST87-0738	Trunkline Gas Co	Consumers Power Co	12-10-86	B		
ST87-0739	PGC Pipeline	Arkansas Louisiana Gas Co	12-10-86	D	05-09-87	21.50
ST87-0740	Transcontinental Gas Pipe Line Corp	North Carolina Natural Gas Corp	12-10-86	B		
ST87-0741	Transcontinental Gas Pipe Line Corp	Lynchburg Gas Co	12-10-86	B		
ST87-0742	United Gas Pipe Line Co	Eastex Gas Transmission	12-10-86	B		
ST87-0743	United Gas Pipe Line Co	Clarke-Mobile Counties Gas District	12-10-86	B		
ST87-0744	United Gas Pipe Line Co	Llano, Inc	12-10-86	B		
ST87-0745	Panhandle Eastern Pipe Line Co	Illinois Power Co	12-10-86	B		
ST87-0746	Valero Transmission Co	El Paso Natural Gas Co	12-10-86	C		
ST87-0747	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	12-10-86	B		
ST87-0748	Natural Gas Pipeline Co of America	Llano, Inc	12-10-86	B		
ST87-0749	Northern Natural Gas Co	Lloyd V. Crum	12-10-86	B		
ST87-0750	Northern Natural Gas Co	Peoples Natural Gas Co	12-10-86	B		
ST87-0751	Transcontinental Gas Pipe Line Corp	Public Service Co of N. Carolina	12-10-86	B		
ST87-0752	Producer's Gas Co	Natural Gas Pipeline Co of America	12-10-86	C	05-09-87	25.20

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Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMB tu)
ST87-0753	Producer's Gas Co	El Paso Natural Gas Co	12-10-86	C	05-09-87	25.20
ST87-0754	Ohio River Pipeline Corp	Indiana Gas Co	12-11-86	II		
ST87-0755	Ohio River Pipeline Corp	Indiana Gas Co	12-11-86	B		
ST87-0756	Valero Transmission Co	El Paso Natural Gas Co	12-11-86	C		
ST87-0757	Valero Transmission Co	Transcontinental Gas Pipe Line Corp	12-11-86	C		
ST87-0758	Ohio River Pipeline Corp	Indiana Gas Co	12-11-86	B		
ST87-0759	Valero Transmission Co	Texas Eastern Transmission Corp	12-11-86	C		
ST87-0760	Lawrenceburg Gas Transmission Corp	Cincinnati Gas and Electric Co	12-12-86	B		
ST87-0761	Houston Pipe Line Co	Northern Illinois Gas Co	12-12-86	C		
ST87-0762	Panhandle Gas Co	Niagara Mohawk Power Corp	12-12-86	D		
ST87-0763	Arkla Energy Resources	Shreveport Intrastate Gas Trans., Inc	12-12-86	B		
ST87-0764	Natural Gas Pipeline Co of America	Northern Illinois Gas Co	12-12-86	B		
ST87-0765	Natural Gas Pipeline Co of America	Victoria Gas Corp	12-12-86	B		
ST87-0766	Arkla Energy Resources	Arkansas Louisiana Gas Co	12-12-86	B		
ST87-0767	Panhandle Eastern Pipe Line Co	Energy Pipeline, Inc	12-12-86	B		
ST87-0768	Panhandle Eastern Pipe Line Co	Dayton Power and Light Co	12-12-86	B		
ST87-0769	Trunkline Gas Co	Consumers Power Co	12-12-86	B		
ST87-0770	Trunkline Gas Co	Michigan Gas Utilities	12-12-86	B		
ST87-0771	Trunkline Gas Co	Consumers Power Co	12-12-86	B		
ST87-0772	Trunkline Gas Co	Consumers Power Co	12-12-86	B		
ST87-0773	Trunkline Gas Co	Consumers Power Co	12-12-86	B		
ST87-0774	Trunkline Gas Co	Consumers Power Co	12-12-86	B		
ST87-0775	Panhandle Eastern Pipe Line Co	Ohio Gas Co	12-12-86	B		
ST87-0776	Panhandle Eastern Pipe Line Co	Consumers Power Co	12-12-86	B		
ST87-0777	Panhandle Eastern Pipe Line Co	Consumers Power Co	12-12-86	B		
ST87-0778	Panhandle Eastern Pipe Line Co	Consumers Power Co	12-12-86	B		
ST87-0779	Panhandle Eastern Pipe Line Co	Indiana Gas Co	12-12-86	B		
ST87-0780	Panhandle Eastern Pipe Line Co	Consumers Power Co	12-12-86	B		
ST87-0781	Panhandle Eastern Pipe Line Co	Consumers Power Co	12-12-86	B		
ST87-0782	Panhandle Eastern Pipe Line Co	Battle Creek Gas Co	12-12-86	B		
ST87-0783	Panhandle Eastern Pipe Line Co	Michigan Power Co	12-12-86	B		
ST87-0784	Panhandle Eastern Pipe Line Co	Consumers Power Co	12-12-86	B		
ST87-0785	Arkla Energy Resources	Arkansas Louisiana Gas Co	12-12-86	B		
ST87-0786	El Paso Natural Gas Co	Pacific Gas and Electric Co	12-12-86	B		
ST87-0787	El Paso Natural Gas Co	Southern California Gas Co	12-12-86	B		
ST87-0788	Superior Offshore Pipeline Co	Enron Gas Marketing	12-12-86	G-EU		
ST87-0789	Natural Gas Pipeline Co of America	Northern Indiana Public Service Co	12-15-86	II		
ST87-0790	Columbia Gulf Transmission Co	Bishop Pipeline Corp	12-15-86	B		
ST87-0791	Columbia Gulf Transmission Co	Hadson Gas Systems, Inc	12-15-86	G-EU		
ST87-0792	United Gas Pipe Line Co	Gulf Eastern Gas Pipeline, Inc	12-16-86	B		
ST87-0793	Natural Gas Pipeline Co of America	Peoples Gas Light & Coke Co	12-16-86	B		
ST87-0794	Natural Gas Pipeline Co of America	Northern Illinois Gas Co	12-16-86	B		
ST87-0795	Transcontinental Gas Pipe Line Corp	Orange and Rockland Utilities, Inc	12-16-86	B		
ST87-0796	Transcontinental Gas Pipe Line Corp	City of Roanoke	12-16-86	B		
ST87-0797	Transcontinental Gas Pipe Line Corp	City of Wadley	12-16-86	B		
ST87-0798	Transcontinental Gas Pipe Line Corp	Baltimore Gas and Electric Co	12-16-86	B		
ST87-0799	Transcontinental Gas Pipe Line Corp	Dayton Power and Light Co	12-16-86	B		
ST87-0800	Transcontinental Gas Pipe Line Corp	Dayton Power and Light Co	12-16-86	B		
ST87-0801	Transcontinental Gas Pipe Line Corp	East Ohio Gas Co	12-16-86	B		
ST87-0802	Consolidated Gas Transmission Corp	River Gas Co	12-16-86	B		
ST87-0803	Consolidated Gas Transmission Corp	Hope Gas, Inc	12-16-86	B		
ST87-0804	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	12-16-86	B		
ST87-0805	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	12-16-86	B		
ST87-0806	Texas Eastern Transmission Corp	Baltimore Gas and Electric Co	12-17-86	B		
ST87-0807	Texas Eastern Transmission Corp	Public Service Electric and Gas Co	12-17-86	B		
ST87-0808	Texas Eastern Transmission Corp	Washington Gas and Light Co	12-17-86	B		
ST87-0809	Northern Natural Gas Co	Delhi Gas Pipeline Corp	12-17-86	B		
ST87-0810	Texas Gas Transmission Corp	Humboldt Utilities	12-18-86	B		
ST87-0811	Natural Gas Pipeline Co of America	Illinois Power Co	12-18-86	B		
ST87-0812	Natural Gas Pipeline Co of America	Wisconsin Southern Gas Co, Inc	12-18-86	B		
ST87-0813	Natural Gas Pipeline Co of America	Northern Illinois Gas Co	12-18-86	B		
ST87-0814	Trunkline Gas Co	Consumers Power Co	12-18-86	B		
ST87-0815	Trunkline Gas Co	Western Kentucky Gas Co	12-18-86	B		
ST87-0816	Trunkline Gas Co	Danex Pipeline Co	12-18-86	b		
ST87-0817	Trunkline Gas Co	Consumers Power Co	12-18-86	B		
ST87-0818	Northern Natural Gas Co	Houston Pipe Line Co	12-18-86	B		
ST87-0819	Texas Gas Transmission Corp	Michigan Consolidated Gas Co., et al	12-18-86	B		
ST87-0820	Texas Gas Transmission Corp	Indiana Gas Co	12-18-86	B		
ST87-0821	Texas Gas Transmission Corp	City of Hamilton	12-18-86	B		
ST87-0822	Texas Gas Transmission Corp	Town of Marmou	12-18-86	B		
ST87-0823	Texas Gas Transmission Corp	City of Brownsville—Utility Dept	12-18-86	B		
ST87-0824	Texas Gas Transmission Corp	Indiana Gas Co	12-18-86	B		
ST87-0825	El Paso Natural Gas Co	Los Alamos County	12-18-86	B		
ST87-0826	El Paso Natural Gas Co	Southern California Gas Co	12-18-86	B		
ST87-0827	Transwestern Pipeline Co	Southern California Gas Co	12-19-86	B		
ST87-0828	Transwestern Pipeline Co	Energas Co	12-19-86	B		
ST87-0829	Transwestern Pipeline Co	City of Long Beach	12-19-86	B		
ST87-0830	Transwestern Pipeline Co	Northern Illinois Gas Co	12-19-86	B		
ST87-0831	Louisiana Intrastate Gas Corp	Tennessee Gas Pipeline Co	12-19-86	C	05-18-87	22.40
ST87-0832	Columbia Gas Transmission Corp	Union Gas Co	12-19-86	B		
ST87-0833	Columbia Gas Transmission Corp	South Jersey Gas Co	12-19-86	B		
ST87-0834	Columbia Gas Transmission Corp	Racine Gas & Service Co	12-19-86	B		
ST87-0835	Columbia Gas Transmission Corp	Nashville Gas, Div. of Piedmont Nat. Gas	12-19-86	B		
ST87-0836	Columbia Gas Transmission Corp	Interstate Utilities Co	12-19-86	B		
ST87-0837	Columbia Gulf Transmission Co	Texas Gas Transmission Corp	12-19-86	G		
ST87-0838	Houston Pipe Line Co	Texas Eastern Transmission Corp	12-19-86	C		
ST87-0839	Texas Gas Transmission Corp	Boonville Natural Gas Corp	12-19-86	B		
ST87-0840	Texas Gas Transmission Corp	Chandler Natural Gas Corp	12-19-86	B		
ST87-0841	Northern Natural Gas Co	Westar Transmission Co	12-19-86	B		
ST87-0842	Northern Natural Gas Co	Midwest Gas Co	12-19-86	B		
ST87-0843	Louisiana Intrastate Gas Corp	Creole Gas Pipeline Corp	12-22-86	C	05-21-87	22.40
ST87-0844	Delhi Gas Pipeline Corp	ANR Pipeline Co	12-22-86	C	05-21-87	61.70

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMB tu)
ST87-0845	Panhandle Eastern Pipe Line Co	Citizens Gas and Coke Utility	12-22-86	B		
ST87-0846	Panhandle Eastern Pipe Line Co	Citizens Gas and Coke Utility	12-22-86	B		
ST87-0847	Panhandle Eastern Pipe Line Co	Citizens Gas and Coke Utility	12-22-86	B		
ST87-0848	Panhandle Eastern Pipe Line Co	Ohio Gas Co	12-22-86	B		
ST87-0849	Panhandle Eastern Pipe Line Co	Citizens Gas and Coke Utility	12-22-86	B		
ST87-0850	Panhandle Eastern Pipe Line Co	Citizens Gas and Coke Utility	12-22-86	B		
ST87-0851	Panhandle Eastern Pipe Line Co	Citizens Gas and Coke Utility	12-22-86	B		
ST87-0852	Trunkline Gas Co	Consumers Power Co	12-22-86	B		
ST87-0853	Trunkline Gas Co	Consumers Power Co	12-22-86	B		
ST87-0854	Trunkline Gas Co	Consumers Power Co	12-22-86	B		
ST87-0855	Panhandle Eastern Pipe Line Co	Consumers Power Co	12-22-86	B		
ST87-0856	Panhandle Eastern Pipe Line Co	Citizens Gas and Coke Utility	12-22-86	B		
ST87-0857	Panhandle Eastern Pipe Line Co	Delhi Gas Pipeline Corp	12-22-86	B		
ST87-0858	Panhandle Eastern Pipe Line Co	Northern Indiana Public Service Co	12-22-86	B		
ST87-0859	Trunkline Gas Co	Consumers Power Co	12-22-86	B		
ST87-0860	Trunkline Gas Co	Consumers Power Co	12-22-86	B		
ST87-0861	Trunkline Gas Co	Consumers Power Co	12-22-86	B		
ST87-0862	Panhandle Eastern Pipe Line Co	Citizens gas and Coke Utility	12-22-86	B		
ST87-0863	Panhandle Eastern Pipe Line Co	12-2Indiana Gas Co	12-22-86	B		
ST87-0864	Natural Gas Pipeline Co. of America	Illinois Power Co	12-22-86	B		
ST87-0865	Natural Gas Pipeline Co. of America	North Shore Gas Co	12-22-86	B		
ST87-0866	Northern Natural Gas Co	El Paso Hydrocarbons Co	12-22-86	B		
ST87-0867	Northern Natural Gas Co	Wisconsin Gas Co	12-22-86	B		
ST87-0868	Delhi Gas Pipeline Corp	Tennessee Gas Pipeline	12-22-86	C		
ST87-0869	Texas Gas Transmission Corp	Cincinnati Gas and Electric Co	12-22-86	B		
ST87-0870	Texas Gas Transmission Corp	Hoosier Gas Corp	12-22-86	B		
ST87-0871	Texas Gas Transmission Corp	Town of Jena	12-22-86	B		
ST87-0872	Texas Gas Transmission Corp	Lawrenceburg Gas Co	12-22-86	B		
ST87-0873	Texas Gas Transmission Corp	Western Kentucky Gas Co	12-22-86	B		
ST87-0874	Colorado Interstate Gas Co	Public Service Co of Colorado	12-23-86	B		
ST87-0875	Colorado Interstate Gas Co	Public Service Co of Colorado	12-23-86	B		
ST87-0876	Northern Natural Gas Co	Quivira Gas Co	12-23-86	B		
ST87-0877	Northern Natural Gas Co	Fremont Utilities	12-23-86	B		
ST87-0887	Transcontinental Gas Pipe Line Corp	South Jersey Gas Co	12-23-86	B		
ST87-0879	Transcontinental Gas Pipe Line Corp	Leon County Transmission Co	12-23-86	B		
ST87-0880	Transcontinental Gas Pipe Line Corp	Lynchburg Gas Co	12-23-86	B		
ST87-0881	Transcontinental Gas Pipe Line Corp	Public Service Co of N. Carolina	12-23-86	B		
ST87-0882	Transcontinental Gas Pipe Line Corp	Summit Pupeline & Producing Co	12-23-86	B		
ST87-0883	Transcontinental Gas Pipe Line Corp	Clinton Newberry Nat. Gas Authority	12-23-86	B		
ST87-0884	Transcontinental Gas Pipe Line Corp	Public Service Electric and Gas Co	12-23-86	B		
ST87-0885	Transcontinental Gas Pipe Line Corp	Lone Star Gas Co	12-23-86	B		
ST87-0886	Transcontinental Gas Pipe Line Corp	North Carolina Natural Gas Corp	12-23-86	B		
ST87-0887	Southern Gas Pipeline Co	Texas Eastern Transmission Corp	12-23-86	C	05-22-87	27.50
ST87-0888	El Paso Natural Gas Co	Bay State Gas Co, et al	12-24-86	B		
ST87-0889	Oasis Pipe Line Co	Northern Natural Gas Co	12-24-86	C		
ST87-0890	Houston Pipe Line Co	Northern Natural Gas Co	12-24-86	C		
ST87-0891	Natural Gas Pipeline Co of America	Rochester Gas & Electric Corp, et al	12-24-86	B		
ST87-0892	Pentex Pipeline Co., Inc	Columbia Gas Transmission Corp	12-24-86	C	05-23-87	2.50
ST87-0893	ANR Pipeline Co	Wisconsin Gas Co	12-24-86	B		
ST87-0894	ANR Pipeline Co	North Central Public Service Co	12-24-86	B		
ST87-0895	ANR Pipeline Co	North Central Public Service Co	12-24-86	B		
ST87-0896	ANR Pipeline Co	Illinois Power Co	12-24-86	B		
ST87-0897	Transok, Inc	Northern Illinois Gas Co	12-29-86	C	05-28-87	21.75
ST87-08	Texas Gas Transmission Corp	City of Brownsville—Utility Dept	12-29-86	B		
ST87-0899	Texas Gas Transmission Corp	City of Brownsville—Utilit Dept	12-29-86	B		
ST87-0900	Texas Gas Transmission Corp	Ohio Valley Gas Corp	12-29-86	B		
ST87-0901	Texas Gas Transmission Corp	Switzerland County Natural Gas Co	12-29-86	B		
ST87-0902	Texas Gas Transmission Corp	Dome Gas Co	12-29-86	B		
ST87-0903	Arkla Energy Resources	Shreveport Intrastate Gas Trans., Inc	12-29-86	B		
ST87-0904	Texas Gas Transmission Corp	City of Olive Branch	12-29-86	B		
ST87-0905	Natural Gas Pipeline Co of America	Peoples Gas Light & Coke Co	12-30-86	B		
ST87-0906	Natural Gas Pipeline Co of America	Peoples Gas Light & Coke Co	12-30-86	B		
ST87-0907	Northern Natural Gas Co	Watertown Municipal Utility	12-30-86	B		
ST87-0908	Northern Natural Gas Co	City of Rolfe	12-30-86	B		
ST87-0909	Northern Natural Gas Co	West Texas Gas, Inc	12-30-86	B		
ST87-0910	Northern Natural Gas Co	Iowa Public Service Co	12-30-86	B		
ST87-0911	El Paso Natural Gas Co	Power-Tex Joint Venture	12-30-86	B		
ST87-0912	Valero Transmission Co	Northern Natural Gas Co	12-31-86	C		
ST87-0913	Valero Transmission Co	Trunkline Gas Co	12-31-86	C		
ST87-0914	Valero Transmission Co	Texas Eastern Transmission Corp	12-31-86	C		
ST87-0915	Seagull Shoreline System	Northern Natural Gas Co	12-31-86	C	05-30-87	12.00
ST87-0916	Colorado Interstate Gas Co	Public Service Co of Colorado	12-31-86	II		
ST87-0917	Northern Natural Gas Co	Delhi Gas Pipeline Corp	12-31-86	B		
ST87-0918	Northern Natural Gas Co	Andrews Gas Co	12-31-86	B		
ST87-0919	Intrastate Gathering Corp	Consumers Power Co	12-31-86	C		
ST87-0920	El Paso Natural Gas Co	City of Safford	12-31-86	B		
ST87-0921	El Paso Natural Gas Co	City of McLean	12-31-86	B		
ST87-0922	El Paso Natural Gas Co	Midwest Gas Companies, et al	12-31-86	B		
ST87-0924	Northern Natural Gas Co	Iowa Public Service Co	12-31-86	II		

Below are six petitions for rate approval. They are noticed at this time to give interested parties the appropriate 150-day comment period.

ST86-2272	Taft Pipeline	Michigan Power Co	12-05-86	C	05-04-87	9.60
ST86-2273	Taft Pipeline	Northern States Power Co	12-05-86	C	05-04-87	9.60
ST86-2274	Taft Pipeline	Iowa Public Service Co	12-05-86	C	05-04-87	9.60
ST86-2275	Taft Pipeline	North Central Public Services Co	12-05-86	C	05-04-87	9.60
ST86-2276	Taft Pipeline	Iowa Public Co	12-05-86	C	05-04-87	9.60

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Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBtu)
ST86-2277	Taft Pipeline	Iowa Public Service Co	12-05-86	C	05-04-87	9.80

[1] Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/18/85)

[2] The Intrastate Pipeline has sought commission approval of its transportation rate pursuant to section 284.123(B)(2) of the commission's regulations (18 CFR 284.123(B)(2)). Such rates are deemed fair and equitable if the commission does not take action by the date indicated.

[FR Doc. 87-3355 Filed 2-17-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-56-001]

Citizens Energy Corporation et al; Application

February 11, 1987.

Take notice that on February 10, 1987, Citizens Energy Corporation, Citizens Resources Corporation, and Citizens Gas Supply Corporation (jointly, Citizens) filed to amend the application to amend in Docket No. CI86-56-001 for an extension of blanket abandonment and sales authority granted by the Commission on December 5, 1986 in Docket No. CI86-56-000. Citizens' amendment on February 10, 1987, requests that the term of its authority be extended through March 31, 1990 and that the authority apply to supplies priced at or below the Natural Gas Policy Act Section 109 price, and provides certain information concerning Citizens Gas Supply Corporation. Citizens states that its amendments are consistent with orders previously issued by the Commission.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protests with reference to said application should on or before February 19, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3364 Filed 2-17-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-173-000 et al.]

Columbia Gas Transmission Corporation et al.; Natural gas certificate filings

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corporation

[Docket No. CP87-173-000]

February 11, 1987.

Take notice that on January 23, 1987, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP87-173-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon certain facilities and points of delivery under authorization issued in Docket No. CP83-76-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia requests authorization for the abandonment of approximately 3.8 miles of pipeline ranging in size from 2-inch through 12-inch, 103 points of delivery (POD's) to existing wholesale customers and certain related facilities. It is said that the facilities and points of delivery proposed for abandonment are no longer used or useful in Columbia's operations and would not result in the loss of any gas supply or the termination of service to any existing wholesale customers. Columbia states that it has been advised by its wholesale customers that the proposed abandonments would not result in the termination of service to any existing retail consumers.

It is stated that in relationship to the abandonment of these POD's and facilities, Columbia would establish five POD's pursuant to § 157.212 due to changes in existing interconnections between Columbia's facilities and the distribution facilities of its existing wholesale customers. Columbia states that these additional POD's would not result in any additional deliveries or entitlements and that the additional interconnections are permitted under Columbia's existing tariff. It is further stated that Columbia would acquire 0.3 mile of 3-inch pipeline from Columbia Gas of Kentucky, Inc., pursuant to Section 157.208 of the Natural Gas Act.

Comment date: March 30, 1987, in accordance with Standard Paragraph G at the end of this notice.

2. Northwest Central Pipeline Corporation

[Docket No. CP87-168-000]

February 11, 1987.

Take notice that on January 20, 1987, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP87-168-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate two sales taps and other related jurisdictional facilities necessary to replace two town border settings for the City of Neodesha, Kansas, which obsolete facilities concurrently are proposed to be abandoned by reclaim under the certificate issued in Docket Nos. CP82-479-000 and CP82-479-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that Northwest Central proposes to replace the obsolete, oversized west main, and water and power plant #2 town border settings together with the related laterals which serve the City of Neodesha, all of which are located in Wilson County, Kansas. It is explained that the existing 4-inch meter settings would be replaced with 3-inch meter settings; 156 feet of 6-inch pipe would be replaced with 6-inch pipe capable of being operated at higher pressures; and 280 feet of 6-inch pipe would be replaced with 3-inch pipe. Northwest Central states that the volume of delivery through the replacement facilities is expected to remain constant at 42,573 Mcf per year and 117 Mcf on a peak day at the west main setting and 1,967 Mcf per year and 5 Mcf on a peak day at the water and power plant #2 setting. It is stated that Northwest Central and the City of Neodesha do not anticipate increased deliveries through the replacement facilities. It is further stated that even though the replacement facilities are smaller, they are more than adequate to serve the current load and allow for additional growth if needed. Northwest Central estimates that the cost of reclaiming the existing facilities would be $5,430 and the related salvage value would be $320. Further, Northwest Central estimates the total cost of constructing the new facilities would be $63,830. It is stated that such costs would be paid from treasury cash.

Comment date: March 30, 1987, in accordance with Standard Paragraph G at the end of this notice.

3. Arkla Energy Resources

[Docket No. CP87-43-000]

February 12, 1987.

Take notice that on October 28, 1986, Arkla Energy Resources (Applicant), P. O. Box 21734, Shreveport, Louisiana 71151 filed in Docket No. CP87-43-000 an application, as supplemented on January 27, 1987, pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Texas Eastern Transmission Corporation (Texas Eastern) and authorizing the operation of existing facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes the firm transportation of up to 300 billion Btu equivalent of natural gas per day. Applicant further proposes to transport excess volumes on an interruptible basis. On behalf of Texas Eastern, Applicant also proposes that Texas Eastern be authorized to track in its rates, on a current as-billed basis, the transportation charges incurred by Texas Eastern for the proposed transportation services.

Applicant states it would receive natural gas from Texas Eastern at points throughout Applicant's transmission and gathering systems and transport the gas on firm and interruptible bases to two existing interconnections between their pipeline systems near Bald Knob, Arkansas (Bald Knob), and at Texas Eastern's Monroe, Louisiana, compressor station (Monroe). Applicant indicates that at this time Texas Eastern has not identified any of the points where gas would be delivered to Applicant for transportation.

Applicant explains that the maximum firm transportation volume would initially be 50 billion Btu equivalent per day and that the maximum firm transportation quantity would be in accordance with the following schedule:

For the period commencing	Maximum contract quantity (billion btu equivalent per day)
Jan. 1, 1987	up to 125
Jan. 1, 1988	up to 175
Jan. 1, 1989	up to 250
Jan. 1, 1990	up to 300

and thereafter Applicant further explains that at least 3 months prior to the relevant period Texas Eastern would nominate a contract quantity, and that Applicant would thereafter advise Texas Eastern of the extent to which firm capacity is available. If sufficient capacity is not then available it is stated Applicant would either install additional firm service capacity or allow Texas Eastern, at its own cost and expense, to construct the firm service capacity. It is also stated that in the event Texas Eastern is unable to secure and maintain gas supplies at a level equal to the established contract quantity, Texas Eastern would be provided the opportunity to reduce the contract quantity. Applicant asserts that after the initial authorization any such increases or decreases in the contract quantity would not require further authorization from the Commission.

The transportation rates proposed by Applicant are as follows:

Gathering and Transmission:

Reservation charge...$2.4761/MMBtu of contract quantity
Commodity charge.....2609/MMBtu received
Interruptible charge.....3424/MMBtu received
Deficiency rate.....0815/MMBtu

Transmission Only:

Reservation charge...$2.0321/MMBtu of contract quantity
Commodity charge.....1883/MMBtu received
Interruptible charge.....2551/MMBtu received
Deficiency rate.....0668/MMBtu

Gathering Only:

Reservation charge...$0.8898/MMBtu of contract quantity
Commodity charge.....1450/MMBtu received
Interruptible charge.....1743/MMBtu received
Deficiency rate.....0293/MMBtu

It is stated that in order to compensate for operational considerations, variations from the contract quantity of five percent on a daily basis and 2 percent on a monthly basis would be permitted without further payment by Texas Eastern. If Texas Eastern is unable to balance its deliveries within these variances, Texas Eastern, it is stated, would be charged one of the following excess balancing rates:

Daily excess (percent)	Monthly excess (percent)	Rate/MMBtu equivalent
5.01—10.00	2.01—5.00	$.0736
10.01—20.00	5.01—10.00	.5000
above 20.00	above 10.00	10.0000

It is further stated that in the event Texas Eastern desires to tender to Applicant for receipt on Applicant's transmission system gas from sources that would preclude Texas Eastern's takes from remaining within the authorized variances, Texas Eastern may elect to receive and pay for optional transportation only service with respect to such service. It is stated that election of this optional service would enable Texas Eastern to increase the authorized daily and monthly variances to 30 percent and 10 percent, respectively. The charges applicable to such optional service, it is stated, are as follows:

Reservation charge...$2.3549/MMBtu of contract quantity
Commodity charge.....2513/MMBtu received
Interruptible charge.....3288/MMBtu received
Deficiency rate.....0775/MMBtu

Applicant states that when the receipt of volumes from Texas Eastern would require the construction of new transmission, gathering or receipt facilities, Applicant would undertake such construction if, in its opinion, the resulting cost in view of the increased throughput would not ultimately serve to increase Applicant's otherwise applicable rates for gathering and transmission service and such construction is otherwise economical. It is further stated that if Applicant elects not to construct such additional receipt facilities, Texas Eastern may do so at its own cost and expense.

Applicant asserts that as Texas Eastern adds and deletes different sources of gas, the receipt points would be changed from time to time, and that in order to accommodate the need for such changes, Applicant requests that the Commission grant it blanket authority to add and delete receipt points in accordance with its contract provisions, subject to whatever reasonable reporting requirements the Commission may deem appropriate.

Applicant proposes the use of facilities constructed pursuant to Section 311 of the Natural Gas Policy Act of 1978 for the proposed transportation. Applicant states that the

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facilities at Bald Knob were constructed pursuant to Section 311 and the interconnection at Monroe is currently being constructed pursuant to Section 311.

Applicant claims that this proposal would provide it with the opportunity to increase its system load factor and to decrease its unit service costs and would provide an incentive for exploration near its gathering and transmission systems.

Comment date: March 5, 1987, in accordance with Standard Paragraph F at the end of this notice.

4. Florida Gas Transmission Company

[Docket No. CP87-166-000]

February 12, 1987.

Take notice that on January 16, 1987, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251, filed in Docket No. CP87-166-000 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas, and construction and operation of certain facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

FGT proposes to transport up to 100 billion Btu equivalent of natural gas per day on an interruptible basis for Enron Industrial Natural Gas Company (Industrial). FGT states that it would receive natural gas for Industrial's account at an existing point of interconnection between FGT and Houston Pipe Line Company (HPL) in Orange County, Texas, and would redeliver such gas at a proposed point of interconnection between HPL and FGT near Texas City in Galveston County, Texas. The volumes redelivered would be reduced by an amount equal to Industrial's *pro rata* share of any gas vented and lost for any reason from that portion of FGT's facilities being used for Industrial at the time of such loss, it is explained.

FGT also proposes to install a tap and related facilities in Galveston County in order to make deliveries to HPL for the account of Industrial. FGT states that the estimated cost of these facilities is $45,000. The cost of these facilities would be borne by Industrial, it is explained.

FGT proposes to charge Industrial for this service a facility charge of 12.6 cents per MMBtu plus the GRI surcharge of 1.48 cents per MMBtu.

Comment date: March 5, 1987, in accordance with Standard Paragraph F at the end of this notice.

5. Louisiana-Nevada Transit Company

[Docket No. CP87-193-000]

February 12, 1987.

Take notice that on February 3, 1987, Louisiana-Nevada Transit Company (Applicant), P.O. Box 488, Hope, Arkansas 71801, filed in Docket No. CP87-193-000 an application pursuant to section 7(c) of the Natural Gas Act and §§ 284.211, *et seq.*, of the Commission's Regulations thereunder, for a blanket certificate authorizing transportation on behalf of others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it intends to become a transporter of natural gas pursuant to the Commission's Order No. 436 series issued in Docket No. RM85-1. Applicant advises that it would comply with the conditions in paragraph (c) of § 284.221 of the Commission"s Regulations, which paragraph references the conditons in Subpart A of Part 284 of such regulations. Applicant further advises that it would comply with the terms and conditons applicable to transportation on behalf of other interstate pipeline companies, as set forth in § 284.222 of the Commission's Regulations, and the terms and conditions applicable to transportation on behalf of shippers other than interstate pipelines, as set forth in § 284.223 of the Commission's Regulations.

Applicant also states that, pursuant to § 284.7(a) of the Commission's Regulations, it is concurrently filing herewith new Rate Schedules FTS-1 and ITS-1 to establish firm and interruptible rates for the proposed transportation services. Finally, Applicant advises that such transportation rates are based upon the rates approved by the Commission's letter order dated August 22, 1985, in settlement of the proceedings in Docket No. RP85-142-000 and are scheduled to become effective on March 5, 1987.

Comment date: March 30, 1987, in accordance with Standard Paragraph G at the end of this notice.

6. Mississippi River Transmission

[Docket No. CP87-191-000]

February 12, 1987.

Take notice that on February 2, 1987, Mississippi River Transmission Corporation (Applicant), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP87-191-000 an application pursuant to sections 7(b) and (c) of the Natural Gas Act for authorization to abandon existing jurisdictional gas sales service to the City of Altheimer, Arkansas (Altheimer), and for certificate authority to provide similar jurisdictional gas sales service to Arkansas Louisiana Gas Company (ALG) for service to the City of Altheimer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Akpplicant states that Altheimer and ALG have agreed to the sale and transfer of the natural gas distribution system from Altheimer to ALG, and that ALG has requested that Applicant continue to provide jurisdictional gas sales service to such location. Applicant presently serves ALG at numerous other small communities, and Applicant has therefore agreed to an amendment of ALG's existing service agreement to provide for the additional volumes, totaling 375 Mcf per day, required to serve the City of Altheimer. It is stated such amount is the same volume contained in Applicant's existing service agreement with Altheimer. Following the requested abandonment, Altheimer would no longer be a sales customer of Applicant, it is stated. Applicant states further that no changed or additional facilities would be required with respect to the proposed abandonment and related certificate authority. Applicant states that the Arkansas Public Service Commission is expected to grant ALG a certificate of convenience and necessity whereupon ALG wil commence service to Altheimer.

Comment date: March 5, 1986, in accordance with Standard Paragraph F at the end of this notice.

7. Northwest Central Pipeline Corporation

[Docket No. CP87-172-000]

February 12, 1987.

Take notice that on January 23, 1987, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP87-172-000 an application pursuant to section 7(c) and 7(b) of the Natural Gas Act for a certificate of public convenience and necessity and abandonment authorizing Northwest Central to revise its sales rate structure and related rate schedules and other tariff provisions so as to replace its traditional full requirements base/excess, volumetric F, C, I, LVS-2, IRG and E rate schedules with a new General Service (GS) rate schedule, with a demand-commodity rate design, and a new Small General Service (SGS) rate schedule, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest Central states that its application is conditional in nature. Northwest Central states that it does not believe the requested authorizations are required, but the subject application is nonetheless being filed solely to assure that the rate structure and tariff changes proposed in Northwest Central's general rate filing, also filed on January 23, 1987, in Docket No. RP87-33-000 can be placed in effect as requested so as to permit an Order No. 436 open access mode of operation on its system.

Comment date: March 5, 1987, in accordance with Standard Paragraph F at the end of this notice.

8. Sea Robin Pipeline Company

[Docket No. CP87-187-000]

February 12, 1987.

Take notice that on January 30, 1987, Sea Robin Pipeline Company (Sea Robin), P.O. Box 1478, Houston, Texas, 77251-1478 (Applicant), filed in Docket No. CP87-187-000 an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing transportation of natural gas for Texas Eastern Transmission Corporation (Texas Eastern) under the gas transportation agreement dated October 28, 1986, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Sea Robin indicates that the agreement provides for Texas Eastern to cause delivery of up to 7,000 Mcf of natural gas per day to Sea Robin at a subsea tap on Sea Robin's pipeline located in the South Marsh Island Area, Block 127, offshore Louisiana. Sea Robin states that from this point, Sea Robin would transport and redeliver such gas on a firm basis for Texas Eastern to the outlet side of Sea Robin's measuring station at or near the terminus of Sea Robin's offshore pipeline near Erath, Louisiana. Sea Robin states that it would redeliver gas at such point to United Gas Pipe Line Company for the account of Texas Eastern.

Sea Robin indicates that no new facilities need be constructed to implement the transportation service. Sea Robin proposes to provide the transportation service for a period of five years from the date Sea Robin accepts any certificate authorization issued in this docket and from year to year thereafter until cancelled by either party by at least six months' written notice.

Sea Robin proposes to charge Texas Eastern a monthly demand charge as well as a commodity charge for each Mcf of gas transported as provided for on Sheet No. 4-A of Sea Robin's FERC Gas Tariff, Original Volume No. 1. Sea Robin indicates that the currently effective demand charge is $3.90 per Mcf of contract demand and the currently effective commodity charge is 3.15 cents per Mcf of gas transported.

Comment date: March 5, 1987, in accordance with Standard Paragraph F at the end of this notice.

9. Shell Offshore, Inc., Petitioner—Black Marlin Pipeline Company, Respondent

[Docket No. CP87-189-000]

February 12, 1987.

Take notice that on January 27, 1987, Shell Offshore Inc. (SOI), One Shell Plaza, Room 4858, P.O. Box 2463, Houston, Texas 77252-2463, filed in Docket No. CP87-189-000 a petition for the institution of proceedings pursuant to Rule 207 of the Commission's rules of practice and procedure (18 CFR 385.207) and sections 5(e) and 5(f) of the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1334 (e) and (f)) to determine the appropriate proportionate amounts of natural gas produced from Blocks A-6, 135, 136, 160, 161 and 201 in the High Island Area (HI Blocks), offshore Texas, which should be transported on behalf of producers and their purchasers by Black Marlin Pipeline Company (Black Marlin),[1] all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

SOI states that it is presently selling natural gas out of its working interest in HI Blocks A-6 and 201 to Enron Industrial Gas Corporation (Industrial),[2] under a contract which has been amended to provide that on any day that Industrial takes less than 85 percent of the delivery capacity, SOI shall have the right to sell to another buyer, on such day, up to a volume of gas equal to the difference between the quantity of gas taken by Industrial and the 85 percent delivery capacity. The contract further provides that any gas so taken and sold by SOI shall apply to and be credited against Industrial's annual take-or-pay obligations.

SOI states that Black Marlin also transports gas produced by SOI from HI Blocks 135, 136, 160 and 161 for delivery to Union Carbide Corporation (Union Carbide) at its Texas City, Texas, petrochemical plant, which gas Union Carbide is willing to release for sale to another purchaser.

[1] Black Marlin is said to be a wholly-owned subsidiary of Houston Natural Gas Corporation (HNG) which is a subsidiary of Enron Corp. (Enron).

[2] Industrial is also said to be a wholly-owned subsidiary of HNG.

SOI states that Black Marlin has entered into a letter agreement with SOI under which Black Marlin has agreed to transport HI Block A-6 and 201 gas for SOI and/or a person purchasing gas from SOI upon request from SOI to Black Marlin. However, SOI alleges, it has made repeated requests to Black Marlin to secure the requisite authorization to transport the gas not taken by Industrial and Union Carbide to other purchasers but Black Marlin has failed to obtain such authorizations.

SOI adds that at the same time that Black Marlin is refusing to provide transportation services for SOI for gas produced from HI Blocks A-6, 135, 136, 160, 161 and 201, Black Marlin is seeking authorization in Docket Nos. CP84-354-003 and CP86-333-001 to transport and deliver to Industrial and Union Carbide, respectively, additional gas to be purchased from Pelto Oil Company, *et al.* (Pelto), Cities Service Oil and Gas Corporation (Cities) and/or Conoco from the same lease blocks and other blocks in the High Island Area. SOI asserts that such actions are a violation of sections 5(e) and 5(f) of the OCSLA and requests the Commission to institute proceedings to determine the reasonable proportionate amounts of natural gas produced from HI Blocks A-6, 135, 136, 160, 161 and 201 which should be transported by Black Marlin on behalf of SOI and its purchasers other than Union Carbide and Industrial.

Comment date: March 5, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

10. Southern Natural Gas Company

[Docket No. CP87-177-000]

February 12, 1987.

Take notice that on January 28, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama, 35202-2563, filed in Docket No. CP87-177-000 an application pursuant to section 7 of the Natural Gas Act and Part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing the construction, installation, and operation of approximately 50 miles of 20-inch loop pipeline, a meter station, the modification of a regulator station and certain piping changes to enable Southern to increase its ability to receive gas from its Bear Creek Storage Company (Bear Creek), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to construct, install and operate the following: approximately 50 miles of 20-inch

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pipeline that will loop its Logansport Line between the Bienville Compressor Station (Bienville) in Bienville Parish, Louisiana, and the Perryville Compressor Station, (Perryville) in Ouachita Parish, Louisiana; a meter station at Bienville consisting of two 10-inch meter runs; the reconstruction and enlargement of its existing regulator station near Perryville by the addition of two regulators; and a 24-inch meter run and certain piping modifications to permit certain gas back-flow operations at its Louisville Compressor Station (Louisville) in Winston County, Mississippi. Southern states the proposed construction and operation of these facilities are required to enable it to increase its ability to receive gas from its Bear Creek facility at an interconnection between Bear Creek and Southern in Bienville Parish, Louisiana. Southern estimates the construction of the above described facilities and modifications will cost an estimated $14,484,000, which includes filing fees.

Comment date: March 5, 1987, in accordance with Standard Paragraph F at the end of this notice.

11. Superior Offshore Pipeline Company

[Docket No. CP87-184-000]

February 12, 1987.

Take notice that on January 29, 1987, Superior Offshore Pipeline Company (SOPCO), 1250 Poydras Building, New Orleans, Louisiana 70113, filed in Docket No. CP87-184-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to transport natural gas on behalf of Mobil Exploration and Producing North America, Inc. (Mobil E&P), under the authorization issued in Docket No. CP86-357-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

SOPCO states that pursuant to a transportation agreement dated October 1, 1986, it proposes to transport natural gas on behalf of Mobil E&P with Mobil E&P acting on behalf of Consolidated Fuel Supply Company of Texas which in turn would act as a shipper on behalf of certain end users in Michigan. It is further stated that the term of the agreement runs from October 1, 1986 to September 30, 1988. SOPCO, it is indicated, would receive the gas into its offshore system for Mobil E&P's account in West Cameron Blocks 71 and 101 (and such receipt points as may be added from time to time) and would redeliver the gas to Mobil E&P at Mobil E&P's Lowry gas processing plant in Cameron Parish, Louisiana. SOPCO states that peak day volumes to be transported under this agreement would not exceed 18 billion Btu equivalent per day and 6,570 billion Btu equivalent Btu per year. It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provisions of Section 284.223(a)(1) of the Regulations. However, SOPCO notes that the 120-day self implemented service will terminate prior to any authorization which may result from the subject application.

Comment date: March 30, 1987, in accordance with Standard Paragraph G at the end of this notice.

12. Texas Eastern Transmission Corporation

[Docket No. CP87-169-000]

February 12, 1987.

Take notice that on January 20, 1987, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP87-169-000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity for authorization to transport natural gas on an interruptible basis for Columbia Gas Transmission Corporation (Columbia) up to a maximum daily quantity (MDQ) of 20,000 dt equivalent, and such additional daily quantities in excess of the MDQ as Applicant, in its sole judgement, determines it is able to transport, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to provide such transportation service for a primary period of 5 years and from year to year thereafter unless the underlying agreement is terminated by either party upon one year prior written notice to the other party.

Applicant proposes to transport Columbia's natural gas reserves attributable to Ship Shoal Blocks 247 and 248 from Eugene Island Block 278 to the Blue Water pipeline system in Ship Shoal Block 198, all offshore Louisiana. Applicant asserts that it was requested to provide this interruptible transportation service to enable Columbia to continue to receive its gas supplies located in Ship Shoal Blocks 247 and 248 which Applicant has transported for Columbia pursuant to Applicant's blanket transportation certificate in Docket No. CP80-156 and Subpart G of Part 284 of the Commission's Regulations. Applicant states that this grandfathered transportation service commenced on January 21, 1985 in Docket No. ST85-620-000 and terminated on January 20, 1987.

Applicant further states that Columbia would pay Applicant each month a charge equal to the product of Applicant's posted TS-3 rate in effect during such month times the quantity of gas delivered by Applicant during such month.

Comment date: March 5, 1987, in accordance with Standard Paragraph F at the end of this notice.

13. United Gas Pipe Line Company

[Docket No. CP87-180-000]

February 12, 1987.

Take notice that on January 28, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-180-000, an application for a certificate of public convenience and necessity authorizing transportation necessary to implement a direct interruptible sale of natural gas to Courtaulds North America Inc. (Courtaulds), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

United states that it was authorized under Docket No. G-13,142 to render direct service to Courtaulds on a firm basis. However, on September 10, 1986, United filed in Docket No. CP86-724-000 an application under the blanket certificate prior notice procedure to abandon firm sales service to certain direct industrial sales customers, one of which was Courtaulds. It is stated that such abandonment was effective on November 8, 1986. Now United is requesting Commission certification for interruptible service, at a reduced volumetric level, to Courtaulds. United would utilize existing facilities in serving Courtaulds, as further explained in the application.

Comment date: March 5, 1987, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with referenced to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3356 Filed 2-17-87; 8:45 am]

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[Docket No. CI87-237-000]

Diamond Shamrock Exploration Co.; Application for Order Permitting and Approving Abandonment of Service and Cancelling Rate Schedule

February 11, 1987.

Take notice that on January 20, 1987, Diamond Shamrock Exploration Company (referred to as "Diamond Shamrock") filed an Application pursuant to section 7 of the Natural Gas Act for authorization to abandon service, as described herein.

The circumstances presented in the application meet the criteria for consideration on an expedited basis pursuant to § 2.77 of the Commission's rules as promulgated by Order 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, as more fully described in the application which is on file with the Commission and open to public inspection.

Diamond Shamrock states that the two wells covered by the application have a combined daily deliverability of approximately 250 Mcf. Diamond Shamrock states that one of the wells is a Section 108 well (formerly Section 104-Post 1974) and the other is a Section 104-1973-74 Biennium well. It is further stated that upon receipt of abandonment authorization, Diamond Shamrock intends to use the gas internally for fuel. Diamond Shamrock finally states that the existing gas contract has been terminated by the purchaser effective January 31, 1987, and that upon such termination it will be subject to substantially reduced takes without payment.

Any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3357 Filed 2-17-87; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket No. ER87-97-001]

Pacific Gas and Electric Company; Filing

February 13, 1987.

Take notice that on February 13, 1987, Pacific Gas and Electric Company tendered for filing information requested by the Commission, after a finding that the proposed agreement for experimental rates in the Western Systems Power Pool was deficient with respect to the Commission's regulations.

Any person desiring to be heard or to protest said application should file a motion to intervene or protest with Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 214 and Rule 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before February 25, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of the application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3510 Filed 2-17-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Special Research Grant Program Notice 87-4

AGENCY: Department of Energy.

ACTION: Notice inviting grant application.

SUMMARY: The Office of Energy Research of the Department of Energy (DOE) announces its interest in receiving applications for Special Research Grants that will support fundamental research into the mechanisms of biological damage and repair from exposure to radon, radon daughters and other high LET radiation. Research must be directed toward providing broadly applicable principles which allow quantification of the risk to humans from indoor radon exposure. Research into the radiological and toxicological interactions of radon with other agents including tobacco smoke and other household contaminants will be emphasized. Additionally, fundamental research applications in understanding factors affecting radon entry, radon decay product behavior, and mitigation effectiveness are sought.

Specific areas of interest include: identification and study of bronchial epithelial cell transformations using

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modern biological techniques; identification of genetic loci associated with alpha particle induced cell transformation; epidemiological studies of residential radon exposure; dosimetry at the cellular and molecular level for radon daughter deposition and distribution; physical and chemical investigations of aerosol behavior, deposition and retention; and geophysical studies to quantify the mobilization and transport of radon in bedrock, soils and groundwater as well as in soil-vegetation.

DATE: To permit timely consideration for award in Fiscal Year 1988, applications submitted in response to this Notice should be received by the Division of Acquisition and Assistance Management by April 16, 1987.

ADDRESS: Applications should be forwarded to: U.S. Department of Energy, Office of Energy Research, Division of Acquisition and Assistance Management, Room G-236, Washington, DC 20545, ATTN: Program Notice 87-4.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Rose, Office of Health and Environmental Research, ER-73, Washington, DC 20545, (301) 353-5355.

SUPPLEMENTARY INFORMATION: A limited number of initial awards will be funded from approximately 4 million dollars expected to be available for this research during Fiscal Year 1988. Future funding will depend on availability of funds. Information about development and submission of applications, eligiblity, limitations, evaluation and selection processes, and other policies and procedures may be found at 10 CFR Part 605. Application kits and copies of 10 CFR Part 605 are available from the U.S. Department of Energy, Division of Acquisition and Assistance Management (see above for address). Telephone requests may be made by calling (301) 353-5544. Instructions for preparation of an application are included in the kit. The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC, on February 5, 1987.

Ira M. Adler,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 87-3329 Filed 2-17-87; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed; Week of November 28 Through December 5, 1986

During the Week of November 28 through December 5, 1986, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

February 9, 1987.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of November 28 through December 5, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Jul. 10, 1984	San Joaquin Oil Company, Washington, DC	KEZ-0050	Interlocutory. If granted: Any Economic Regulatory Administration or Office of General Counsel official who participated in the remedial order proceedings involving San Joaquin Oil Company or West Oil Company (Case Nos. HRO-0071 and HRO-0087) would be excused from participating in the San Joaquin Oil Co. exception proceeding (Case No. HEE-0097).
Jul. 10, 1984	West Coast Oil Company, Los Angeles, CA	KEZ-0051	Interlocutory. If granted: Any Economic Regulatory Administration or Office of General Counsel official who participated in the remedial order proceedings involving West Coast Oil Company or San Joaquin Oil Company (Case Nos. HRO-0087 and HRO-0071) would be excused from participating in the West Coast Oil Co. exception proceeding (Case No. HEE-0098).
Dec. 1, 1986	Horizon Petroleum Company, Washington, DC	KEF-0084	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R. Part 205, Subpart V, in connection with a May 23, 1986 Consent Order entered into by the Department of Energy and Horizon Petroleum Company.
Dec. 1, 1986	The Spokesman-Review, Spokane, WA	KFA-0065	Appeal of an Information Request Denial. If granted: The September 15, 1986 Freedom of Information Request Denial issued by the Office of Conservation of the Bonneville Power Administration would be rescinded and The Spokesman-Review would receive access to names and/or addresses of any persons whose residences were weatherized or monitored for radon.
Dec. 3, 1986	Colins, National Helium, Palo Pinto, Belridge, Perry Gas & Amoco/Connecticut, Hartford, CT	RM2-57, RM3-58, RM5-59, RM8-60, RM183-61, and RQ251-340	Request for Modification/Recission in the Colins, National Helium, Palo Pinto, Belridge, Perry Gas and Amoco Second Stage Refund Proceedings. If granted: The November 14, 1986 Decision and Order (Case Nos. RM2-39, RM3-40, RM5-41, RM8-42, RM183-43 and RQ251-329) issued to Connecticut would be modified regarding the state's application for refund submitted in the Colins, National Helium, Palo Pinto, Belridge, Perry Gas and Amoco second stage refund proceedings.
Dec. 3, 1986	Eastern Oil Company, Washington, DC	KEF-0085	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R. Part 205, Subpart V, in connection with a February 5, 1986 Consent Order which the Department of Energy entered into with Eastern Oil Company.

REFUND APPLICATIONS RECEIVED

[Week of November 28, through December 5, 1986]

Date	Name of refund proceeding/name or refund applicant	Case No.
Nov. 20, 1986	Conono/Vicksburg Petroleum Products, Inc.	RF220-461
Do	BTV Energy Corporation	RF208-13
Nov. 25, 1986	Amee's Gift Shop	RF276-1
Nov. 26, 1986	Neptune-Benson, Inc.	RF276-2
Do	A. Tamicone/Spano Fuel Company	RF155-5
Do	Jackson Walstad Oil Co.	RF40-3487
Do	Layland's L.P. Gas	RF40-3588
Do	Burtonsville Fuel Oil	RF40-3589
Nov. 28, 1986	Gibson Thermogas	RF108-26
Do	Anthony & Mafaldo Calin	RF276-3
Do	George W. Linnane	RF276-4
Do	Denny's Service Station	RF280-1
Do	Sno-King Red Barn	RF279-1
Nov. 28, 1986 to Dec. 3, 1986.	Surface Transporters Applications Received	RF270-863 thru RF270-1337
Do	Rail & Water Transporters Applications Received	RF271-108 thru RF271-141
Do	Crude Oil Overcharge Applications Received	RF272-49 thru RF272-102
Dec. 1, 1986	D & D Oil Company	RF225-10446 thru RF225-10449
Do	LaGloria/Park Oil Company	RF263-12
Do	Amoco/ West Virginia	RQ251-339
Do	Conoco/Potlatch Corporation	RF220-460
Dec. 5, 1986	Marathon Refund Applications Received	RF271-108 thru RF271-141
Dec. 2, 1986	Condolidated Rail Corporation	RF225-10471
Do	Frances Cunningham	RF276-5
Do	Consolidated Rail Corporation	RF213-216
Dec. 3, 1986	Chevron Inc./Gulf Oil Corp	RF264-14
Do	Savings Oil Company	RF263-13
Do	Martin Oil Marketing, Ltd	RF278-1
Dec. 4, 1986	Amoco/Alabama	RQ251-341
Do	Frank M. Capace	RF276-6
Do	Indiana Gas Company, Inc	RF263-14
Do	Dedham Oil Company	RF265-46
Do	Hill Top Skelly	RF265-45
Do	Bob's Skelly	RF265-44
Do	Dyersville	RF265-43
Do	Calfee Oil Company, Inc	RF40-3591
Do	Illinois Valley Supply Company	RF40-3592
Do	Hentz Gulf	RF40-3593
Do	Melton Gulf	RF40-3594
Do	Pappas Gulf	RF40-3595
Do	Pitre's Gulf	RF40-3596
Do	Compton's Gulf	RF40-3597
Apr. 29, 1986	T.K. Dismuke	RF225-10452
May 2, 1986	Farr Bros.	RF225-10453
Apr. 3, 1986	Jake O. David	RF225-10454
Jul. 31, 1986	Hirsch Fuels, Inc	RF225-10455
Jun. 29, 1986	Lathrop's Mobil	RF225-10456
Jul. 31, 1986	R.D. Rogers	RF225-10457
Do	R.D. Rogers	RF225-10458
Apr. 28, 1986	Braswell's Grocery	RF225-10459
May 2, 1986	Charles W. Agar, Inc	RF225-10460
Apr. 22, 1986	Hermitage Hills Mobil	RF225-10461
Do	Morelli's Mobil	RF225-10462
Do	Terru Service Station	RF225-10463
Feb. 18, 1986	Fernia's Winthrop Mobil	RF225-10464
Do	Landwhere Mobil	RF225-10465
Mar. 31, 1986	Avon Service Station	RF225-10466
Apr. 3, 1986	James Petrozello Co., Inc	RF225-10467
Apr. 7, 1986	Richard M. Burns Service	RF225-10468
Apr. 8, 1986	Ro Jo Company, Inc	RF225-10469
Mar. 31, 1986	Dois E. Wilkinson	RF225-10470

[FR Doc. 87-333 Filed 2-17-87; 8:45]

BILLING CODE 6450-01-M

Cases Filed; Week of December 12 Through December 19, 1986

During the Week of December 12 through December 19, 1986, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. A submission inadvertently omitted from an earlier list has also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

February 9, 1987.

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LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Dec. 12 through Dec. 19, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Nov. 13, 1986	National Helium, Webster & Vickers/Missouri Jefferson City, Missouri.	RM3-45, RM45-46 and RM1-47	Request for modification/rescission of a second stage refund application. If granted: The March 3, 1985, February 5, 1985 and January 16, 1985 Decision and Order (Case Nos. HQF-0501, HFX-0114 and HQF-0487) issued to Missouri would be modified regarding the state's application for refund submitted in the National Helium, Webster and Vicker's second stage refund proceedings.
Dec. 12, 1986	Echo Drilling Company, Columbus, Ohio	KEE-0105	Application for exception. If granted: Echo Drilling Company would receive an exception from 10 C.F.R. §§212.21, 212.93, 212.10 and 212.183 with respect to the prices charged for crude oil transported by Echo Drilling Company.
Dec. 15, 1986	Barbara Sue Dalton, Oak Ridge, Tennessee	KFA-0068	Appeal of an information request denial. If granted: The November 5, 1986 Freedom of Information Request Denial issued by the Office of Organization and Personnel would be rescinded, and Barbara Sue DeRon would receive access to information concerning the suspension of her security clearance.
Dec. 16, 1986	Mobil/Resources Extraction & Processing Company, Fairfax, Virginia.	RR228-1	Request for modification/rescission in the Mobil second stage refund proceeding. If granted: The November 26, 1986 Decision and Order (Case No. RF228-1) issued to Resources Extraction & Processing would be modified regarding the firm's application for refund submitted in the Mobil refund proceeding.
Dec. 18, 1986	Shell Oil Company, Washington, D.C.	KRS-0005	Request for stay. If granted: An enforcement proceeding involving Shell Oil Company (Case No. HRO-0271) would be stayed for 60 days to permit finalization of a consent order signed by Shell and the Economic Regulatory Administration.

REFUND APPLICATIONS RECEIVED

[Week of Dec. 12 to Dec. 19, 1986]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
12/15/86	Amoco/Wisconsin	RQ21-342
12/12/86 thru 12/19/86	Marathon Refund Applications	RF250-2653 thru RF250-2682
12/12/86 thru 12/19/86	Surface Transporters Applications.	RF270-2375 thru RF270-2455
12/12/86 thru 12/19/86	Crude Oil Overcharge Applications.	RF272-222 thru RF272-342
12/16/86	John M. Taylor	RF258-12
12/16/86	Cascade Gulf Service Station	RF40-3602
12/16/86	Wisconsin Barge Line, Inc.	RF40-3603
12/15/86	American Commercial Barge	RF225-10477
04/14/86	Peacock Oil Co.	RF225-10478
06/16/86	Blick Oil Co.	RF225-10479
06/16/86	North Stop, Inc.	RF225-10480
05/23/86	Donald Schultz Oil Co.	RF225-10481
10/08/86	Baker Oil Co.	RF225-10482
05/23/86	Reliable Oil Co.	RF225-10483
05/23/86	Bilger & Sons, Inc.	RF225-10484
05/23/86	Herkimer Petroleum Products	RF225-10485
05/07/86	Ivey Oil Co.	RF225-10486
05/07/86	Loch's Oil, Inc.	RF225-10487

REFUND APPLICATIONS RECEIVED—Continued

[Week of Dec. 12 to Dec. 19, 1986]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
05/07/86	Gelb Oil Co.	RF225-10488
05/07/86	Fisher Oil & Services, Inc.	RF225-10489
05/07/86	Rector Oil Company, Inc.	RF225-10490
12/15/86	The Celotex Corp.	RF225-10491
12/15/86	Reinauer Transportation Co.	RF271-223
12/15/86	Duntap Towing Co.	RF271-224
12/12/86	Galleon Oil Co., Inc.	RF262-1
12/12/86	Giant Oil Co. of Kentucky	RF263-16
12/12/86	Highway Oil, Inc.	RF263-17
12/15/86	Baker Oil Co.	RF263-18
12/12/86	Franko Oil Co.	RF259-16
12/11/86	SOS Truck Stop	RF281-1
12/11/86	Northbrook Getty	RF265-48
12/12/86	Voes Oil Co.	RF265-49
12/15/86	Bill's Auto Sales	RF280-2
12/15/86	Conrad Zeigler	RF261-12
12/15/86	Wynn-Fowler Trading Co., Inc.	RF108-27
12/15/86	Wynn-Fowler Trading Co., Inc.	RF108-28
12/15/86	Wynn-Fowler Trading Co., Inc.	RF108-29
12/15/86	Wynn-Fowler Trading Co., Inc.	RF108-30
12/15/86	J.J. Ferguson Ready Mix-Hot Co.	RF191-8
12/15/86	Ferguson Bros. Construction	RF191-9
12/15/86	J.J. Ferguson Sand & Gravel	RF191-10
12/15/86	Thumbeck Farms	RF283-1

[FR Doc. 87-3332 Filed 2-17-87; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of December 19 through December 26, 1986

During the Week of December 19 through December 26, 1986, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of December 19 through December 26, 1986]

Date	Name and Location of applicant	Case No.	Type of submission
Dec. 22, 1986	Hometown Oil Co., Inc. Baytown, Texas	KEE-0106	Exception to the reporting requirements. If granted: Hometown Oil Co., Inc. would not be required to file Form EIA-782B, "Reseller/Retailer Monthly Petroleum Products Sales Report."

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of December 19 through December 26, 1986]

Date	Name and Location of applicant	Case No.	Type of submission
Dec. 22, 1986	Natural Resources Defense Council, Washington, DC.	KFA-0069	Appeal of an information request denial. If granted: The November 18, 1986 Freedom of Information Request Denial issued by the Office of Clean Coal, Combustion and Conversion Systems would be rescinded, and the Natural Resources Defense Council would receive full access to the "Pre-Selection Programmatic Environmental Impact Analysis" & "Project-Specific Environmental Review."

REFUND APPLICATIONS RECEIVED

Date received	Name of firm	Case No.
12/12/86	Franko Oil Company	RF258-11
12/12/86	Arcadia Limestone Company	RF270-2456
12/15/86	L.K. Trucking Inc.	RF270-2464
12/18/86	Super Service Fuels, Inc.	RF7-167
12/18/86	Penn Central Transportation	RF213-217
12/18/86	Service Petroleum, Inc.	RF275-2
12/18/86	W.R. Grace & Company	RF271-226
12/18/86	L.R. Haase Oil Company	RF40-3604
12/18/86	Central Ohio Tranelt	RF40-3605
12/18/86	Eastern Fuels, Inc.	RF40-3606
12/18/86	Moore's Fuel Service	RF40-3607
12/19/86	Winston Oil Company	RF259-17
12/19/86	Allen Oil Company, Inc.	RF282-2
12/22/86	Al Bolser Tire Stores, Inc.	RF260-15
12/22/86	Al Bolser Tire Stores, Inc.	RF259-18
12/22/86	Bona's Garage, Inc.	RF280-13
12/22/86	Home Petroleum Corporation	RF253-11
12/22/86	Tolver Oil Products	RF263-19
12/22/86	Ray Marchand Oil Company, Inc.	RF264-1
12/22/86	Emory J. McEntyre	RF40-3608
12/22/86	Amoco/Georgia	RQ251-348
12/23/86	Wilder Oil Company, Inc.	RF263-20
12/23/86	Christian County Gas Company	RF273-3
12/23/86	Wadlegh's Inc.	RF264-15
12/23/86	Strand Aviation, Inc.	RF112-203
12/23/86	Fearless Farms Wholesale, Inc.	RF112-204
12/23/86	Merchants Oil, Inc.	RF112-205
12/23/86	Newcomer Service Company	RF112-206
12/23/86	Rouse Oil Company	RF112-207
12/23/86	Simons Petroleum	RF112-208
12/23/86	A&A Fuel Oil Company	RF220-464
12/23/86	Wallace Oil Company of Texas	RF265-55
12/23/86	A.C. Wagley, Inc.	RF40-3621
12/23/86	Independent Oil & Coal Co.	RF191-11
12/23/86	Stuckey Oil Company, Inc.	RF191-12

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of firm	Case No.
12/23/86	Internat'l Drilling & Energy	RF40-3609
12/23/86	D.L. Adams	RF40-3610
12/23/86	Braden's Flyng Service, Inc.	RF40-3611
12/23/86	Lenkard Aircraft Services, Inc.	RF40-3612
12/23/86	Crabtree Oil Company	RF40-3613
12/23/86	Dunkirk Aviation Sales & Serv.	RF40-3614
12/23/86	R. McAllister	RF40-3615
12/23/86	Mid Island Air Service, Inc.	RF40-3616
12/23/86	Jonathan BD	RF40-3617
12/23/86	Ronald H. Royer	RF40-3618
12/23/86	Statewood, Inc.	RF40-3619
12/23/86	Timbercreek Oil Company, Inc.	RF40-3620
12/23/86	E.R. Carathers	RF220-465
12/23/86	J.B. Dewar, Inc.	RF220-466
12/23/86	Ecno Oil Company	RF220-467
12/23/86	Grady Stone Aviation, Inc.	RF220-468
12/23/86	Gray Oil Company, Inc.	RF220-469
12/23/86	Pabe Oil, Inc.	RF220-470
12/23/86	Scott's L. P. Gas Inc.	RF220-471
12/23/86	Texas Propane Co., Inc.	RF220-472
12/23/86	Step-N-Fetcher, Inc.	RF83-159
12/23/86	Stockton Oil Company	RF83-160

[FR Doc. 87-3333 Filed 2-17-87; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed: Filed; Week of December 26 Through January 2, 1987

During the Week of December 26 through January 2, 1987, the applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. A submission inadvertently omitted from an earlier list has also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: February 9, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of December 26 through January 2, 1987]

Date	Name and Location of Applicant	Case No.	Type of Submission
Nov. 14, 1983	Conoco, Inc., Houston, TX	KFX-0027	Supplemental order. If granted: The Office of Hearings and Appeals would issue a supplemental order implementing special refund procedures pursuant to 10 C.F.R. Part 205, Subpart V, in connection with the July 2, 1982 Consent Order entered into with Conoco, Inc.

REFUND APPLICATIONS RECEIVED

Date Received	Name of Firm	Case Number
11/13/86	Vickers/Missouri	RQ1-349
12/29/86	Mt. Pulaski Products, Inc.	RF237-10
12/29/86	Tri County Oil Company	RF265-50
12/29/86	Tri County Oil Company	RF265-51
12/29/86	Hy-Grade Oil Company	RF265-52
12/29/86	Madaline Norton	RF276-8
12/29/86	John Pelli	RF276-9
12/29/86	John Kline Easley	RF260-16
12/29/86	Transamerica Airlines, Inc.	RF269-8
12/30/86	Thriftyman, Inc.	RF263-21
12/30/86	Thomas P. Reidy, Inc.	RF263-22
12/30/86	Pacer Oil Company	RF263-23
12/31/86	Gagnon's Market	RF265-53
12/31/86	New Park Ave. Service Station	RF265-54
01/02/87	N. Bernstein & Sons	RF284-2
01/02/87	Lake Fork Grain Company	RF237-11
01/02/87	Inland Energy, Inc.	RF263-24
01/02/87	Maxwell Oil Company, Inc.	RF259-19
01/02/87	Maxwell Oil Company, Inc.	RF260-17

[FR Doc. 87-3334 Filed 2-17-87; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of January 16, Through January 23, 1987

During the Week of January 16 through January 23, 1987, the applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: February 9, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

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LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 16 through January 23, 1987]

Date	Name and Location of Applicant	Case No.	Type of Submission
Jan. 16, 1987	Hy-Test Oil, Inc., Johnston, RI	KEE-0114	Exception to the reporting requirements. If Granted: Hy-Test Oil, Inc. would not be required to file Form EIA-782B, "Resellers'/Retailers' Monthly Petroleum Products Sales Report."

REFUND APPLICATIONS RECEIVED

[Week of January 16 through January 23, 1987]

Date	Name of Refund Proceeding/Name of Refund Applicant	Case No.
1/21/87	National Helium/Nevada	RQ3-356
1/16/87	Vic's Exterior Car Wash	RF265-228
1/16/87	Main Street Garage	RF265-229
1/20/87	Hadland & Osterud, Inc.	RF265-230
1/20/87	Hadland & Osterud, Inc.	RF265-231
1/20/87	H & J Auto Parts, Inc.	RF265-232
1/20/87	Ram Auto Supply	RF265-233
1/20/87	Cedar Service Station, Inc.	RF265-234
1/20/87	Security Oil Company	RF265-235
1/20/87	Jim & Carl's Automotive Service.	RF265-236
1/20/87	Dumont Cooperative Association.	RF265-237
1/20/87	Dumont Cooperative Association.	RF265-238
1/20/87	Acito Service Station	RF265-239
1/20/87	Carter-Birdey Gas & Appliances.	RF265-240
1/16/87	Earls Service Station	RF265-222
1/16/87	E.C. Ricker & Sons	RF265-223
1/16/87	Princeton Skelly Truck Stop	RF265-224
1/16/87	Princeton Skelly Truck Stop	RF265-225
1/16/87	Midway Truckstop	RF265-226

REFUND APPLICATIONS RECEIVED—Continued

[Week of January 16 through January 23, 1987]

Date	Name of Refund Proceeding/Name of Refund Applicant	Case No.
1/16/87	Midway Truckstop	RF265-227

[FR Doc. 87-3335 Filed 2-17-87; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of January 23 Through January 30, 1987

During the Week of January 23 through January 30, 1987, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington DC 20585.

Dated: February 9, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 23 through January 30, 1987]

Date	Name and Location of Applicant	Case No.	Type of Submission
Jan. 27, 1987	Natural Resources Defense Council, Washington, DC	KFA-0071	Appeal of an information request denial. If granted: The Information Request Denial issued by the DOE Office of Military Application would be rescinded and the Natural Resources Defense Council would receive access to a complete version of "A History of Nuclear Weapons Stockpile."
Jan. 26, 1987	Par-Mar Oil Company, Center, TX	KEE-0116	Exception to the reporting requirements. If granted: Par-Mar Oil Company would not be required to file Form EIA-782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Jan. 28, 1987	South Dakota, Pierre, SD	KEG-0004	Request for special redress. If granted: The Office of Hearings and Appeals would review the proposed expenditures for Stripper-Well funds which were disapproved by the Assistant Secretary for Conservation and Renewable Energy.
Jan. 28, 1987	Tex-Oil, Inc., Salem, IN	KEE-0115	Exception to the reporting requirements. If granted: Tex-Oil, Inc. would not be required to file Form EIA-782B, "Resellers'/Retailers' Monthly Petroleum Products Sales Report."
Jan. 30, 1987	Sweley Oil, Inc., Sidney, MT	KEE-0118	Exception to the reporting requirements. If granted: Sweley Oil, Inc. would not be required to file Form EIA-782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."

REFUND APPLICATIONS RECEIVED

[Week of January 23 through January 30, 1987]

Date	Name of Refund Proceeding/Name of Refund Applicant	Case No
1/21/87	Northwest Orient	RF269-22
1/21/87	Boing Commercial Airplane	RF269-23
1/21/87	Research Fuels, Inc.	RF250-2695
1/21/87	New England Telephone, Telegraph	RF270-2467
1/21/87	Fassetts Bakery, Inc.	RF272-354
1/21/87	Hank's Service Center, Inc.	RF40-3633
1/21/87	Eshenaurs Fuels, Inc.	RF40-3634
1/20/87	William Paverse	RF265-1
1/20/87	E.C. McMillan	RF265-2
1/20/87	Norman Kruchkow FCSI	RF265-3
1/20/87	Ethel Kruchkow	RF265-4
1/20/87	Paul Ogden	RF265-5
1/20/87	Martin Buck	RF265-6
1/20/87	Theodore R. Breunach	RF265-7
1/20/87	Joseph & Marie McDonald	RF265-8
1/23/87	Greer Blvd. Gulf	RF40-3635

REFUND APPLICATIONS RECEIVED—Continued

[Week of January 23 through January 30, 1987]

Date	Name of Refund Proceeding/Name of Refund Applicant	Case No.
1/23/87	John's Gulf	RF40-3636
1/23/87	Gaddus-Tate Oil Company Inc.	RF40-3637
1/23/87	Farmers Gas Company	RF40-3638
1/23/87	Shelton Butane	RF40-3639
1/23/87	Hugh Boyle's Gulf	RF40-3640
1/23/87	Roshong's Gulf	RF40-3641
1/27/87	Peter Covello	RF289-9
1/27/87	Malcolm Pitt	RF265-10
1/27/87	A-1 Oil Company	RF259-27
1/28/87	Onyx Oil Corporation	RF257-19
1/26/87	Municipality of Anchorage	RF272-354
1/22/87	Trimble Oil Company, Inc.	RF220-475
1/23/87	Carncut Service Station	RF220-476
1/23/87	Harry's Conoco	RF220-477
1/23/87	Harvey's Conoco	RF220-478
1/23/87	Peter's Conoco	RF220-479

REFUND APPLICATIONS RECEIVED—Continued

[Week of January 23 through January 30, 1987]

Date	Name of Refund Proceeding/Name of Refund Applicant	Case No
1/23/87	Oregon Trail Garage	RF220-480
1/27/87	V-1 Oil Company	RF204-12
1/27/87	Holmes Transportation, Inc.	RF270-2468
1/23/87	Smith Tank Lines	RF238-78
1/23/87	Kent Oil & Trading	RF233-44
1/21/87	Dulles Shell Service Center	RF267-1
1/28/87	Plato's Graymont Gulf Service.	RF40-3642
1/30/87	John Cirillo Gulf Service	RF40-3643
1/30/87	Sabine Towing, Inc.	RF40-3644
2/2/87	Anderson Standard	RF40-3645
1/27/87	Acme Tire Hardware	RF232-428
1/27/87	L. H. McCory Enterprises	RF242-23
1/27/87	Gordon Marathon	RF250-2696
1/28/87	Waco Service Station	RF250-2697
1/29/87	Merle E. Schoon & Son	RF250-2698
1/29/87	Merle E. Schoon & Son	RF250-2699

REFUND APPLICATIONS RECEIVED—Continued

[Week of January 23 through January 30, 1987]

Date	Name of Refund Proceeding/Name of Refund Applicant	Case No.
1/30/87	Chuck's Marathon Service	RF250-2760
1/26/87	Jasco Trucking Company, Inc.	RF270-2468
1/29/87	Dobbs Ferry Bus Company	RF272-355
2/2/87	City of West Allis	RF272-356
1/28/87	Vanguard Petroleum Company.	RF273-5
1/28/87	Whitehorse Mercantile	RF279-2
1/30/87	John H. Halpin	RF285-11
2/2/87	Catanzaro Oil & Heating	RF285-12
1/28/87	Jacques A. Roy	RF285-13
2/2/87	W.A. Krueger Company	RF270-2470
1/26/87	Maritime Overseas Corporation.	RF271-227
1/23/87 to 1/30/87	Getty Oil Refund Applications, Received.	RF265-241 thru RF265-296
1/23/87 to 1/30/87	Mobil Oil Refund Applications Received.	RF225-10559 thru RF225-10574

[FR Doc. 87-3336 Filed 2-17-87; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Appeals; Week of November 17 through November 21, 1986

During the week of November 17 through November 21, 1986, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Vincent J. Kiernan, 11/21/86; KFA-0062

Vincent J. Kiernan filed an Appeal from a denial by the Director of Classification and Technical Information of the Albuquerque Operations Office of the Department of Energy (DOE) of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that no documents existed which were responsive to Mr. Kiernan's request. Therefore, the Appeal was denied.

Remedial Orders

Edwin Milton Jones, Jr., Dennis Van Matthew, 11/20/86; HRO-0235

Edwin Milton Jones, Jr. and Dennis Van Matthew (Respondents) objected to a Proposed Remedial Order which the Economic Regulatory Administration issued to them jointly on April 24, 1984. In the PRO, the ERA found that during the period January 1, 1978 through February 29, 1980, the Respondents as major shareholders and acting as "central figures" of Southwest Petrochem, Inc., violated the layering regulation, 10 CFR 212.186. ERA also alleged that the Respondents' activities of applying markups in crude oil sales without providing any services or performing functions historically and traditionally performed by crude oil resellers violated the normal business practices and anticircumvention rules, 10 CFR 205.202, 210.62(c).

In considering the Respondents' Statements of Objections, the DOE rejected their arguments that the layering regulation was invalidly promulgated, was substantively ambiguous and lacked a rational basis, and that they actually performed traditional and historical reseller functions through Petrochem. Accordingly, the DOE found that the Respondents' reselling activities violated the layering regulation. The DOE also dismissed without prejudice ERA's findings of liability under §§ 205.202 and 210.62(c) for administrative efficiency. Finally, the DOE denied the Respondents' claim for attorney fees under the Equal Access to Justice Act on the ground, *inter alia*, that the Act does not apply to PRO proceedings. Accordingly, the Respondents were directed to remit $12,848,982.53 plus interest to the DOE to compensate for their violations. The DOE specified that the funds will be distributed pursuant to Subpart V and the DOE's Modified Restitutionary Policy.

Tootle Petroleum, Inc., Iron R. Tootle, 11/20/86; HRO-0232

Tootle Petroleum, Inc. and Iron R. Tootle objected to a Proposed Remedial Order which was issued to them jointly on May 11, 1984. In the PRO, the Economic Regulatory Administration alleged that Tootle's crude oil reselling activities had violated the layering rule, 10 CFR 212.186, which prohibited crude oil resellers from applying a markup in any crude oil sale in which they did not perform any service or function that was historically and traditionally performed by crude oil resellers.

The DOE found no merit to Tootle's arguments that the layering regulation was not validly promulgated and that DOE enforcement actions against crude oil resellers were discriminatory. In addition, the DOE found that the layering rule required crude oil resellers to provide some tangible service which facilitated the movement of crude oil from the producer to the refiner or which provided some other function of economic benefit to the crude oil market, and that Tootle had not provided such a service or function. Accordingly, the DOE found that Tootle's crude oil reselling activities had violated the layering regulation. The DOE further found, as alleged in the PRO, that Tootle Petroleum, Inc. and Iron R. Tootle are jointly and severally liable for the full amount of the overcharges arising from Tootle's layering violations. Based on the foregoing, the PRO was issued as a final Remedial Order of the DOE.

Request for Exception

Wondrack Distributing Inc., 11/18/86; KEE-0053

Wondrack Distributing Inc. filed an Application for Exception in which it sought relief from the requirement that it prepare and file Form EIA-782B with the DOE Energy Information Administration. According to the firm, its bookkeeping methods and limited staff make completion of the monthly EIA form costly and burdensome. In considering the request, the DOE found that the firm had failed to document the alleged costs involved in its completion of the form, and also that it had not demonstrated that it was unduly burdened as a result of the reporting requirement. Accordingly, the Application was denied.

Motion for Discovery

Southwestern States Marketing Corporation/ Economic Regulatory Administration, 11/21/86; KRD-0013; KRH-0013; KRZ-0046

The Trustee for the estate in bankruptcy of Southwestern States Marketing Corporation filed a Motion for Discovery and a Motion for Evidentiary Hearing in connection with the Proposed Remedial Order issued jointly to Southwestern and Kenneth Walker. The Economic Regulatory Administration (ERA) filed a request to amend the PRO in connection with the same proceeding. In considering these submissions, the DOE first determined that the Trustee's discovery motion should be granted in part. The DOE directed the ERA to provide the Trustee with all audit related workpapers that are not already in his possession and which evidence the computational underpinnings of the PRO. In addition, the DOE required the ERA to furnish the Trustee with those documents which were in Southwestern's possession at the time the DOE conducted its audit of the firm and upon which the ERA relied in formulating the PRO. The DOE specifically excepted from this directive any predecisional or deliberative memoranda or any notes that the ERA may have generated before, during or after Southwestern's audit. Next, the DOE decided that the Trustee could submit any additional evidence generated from discovery which might assist the DOE in reaching a final determination in this case. As for the Trustee's Motion for Evidentiary Hearing, the DOE determined that it failed to meet the regulatory requirements set forth in 10 CFR 205.199. Notwithstanding this determination, the DOE decided that the discovery process might reveal one or more genuine factual disputes, the effective resolution of which might be made through an evidentiary hearing. Accordingly, the DOE dismissed the Trustee's Motion for Evidentiary Hearing without prejudice to refiling. With regard to the ERA's request to amend the PRO, the DOE determined that the request should be granted in part. First, the DOE allowed the PRO to be amended to withdraw allegations of liability against Southwestern for the period prior to January 1, 1978, since no prejudice to the firm would result. Second, the DOE permitted the remedial provisions of the PRO to be amended so that interest on any principal violation amount for which Walker is found liable will accrue until such time as Walker makes full restitution for the overcharges adjudicated in the proceeding. Because of the overriding statutory prohibition against the accrual of interest after the initiation of a bankruptcy proceeding, however, the DOE denied the ERA's request to amend the PRO to provide for the accrual of interest until such time as Southwestern makes full

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payment of principal and interest to the DOE. As a final matter, the DOE modified the remedial provisions of the PRO *sua sponte* to provide that interest on any principal amount for which the debtor, Southwestern, is found liable will only accrue until October 8, 1982, the date on which an involuntary bankruptcy petition was filed against the firm.

Refund Applications

Crystal Oil Co./Jack Chancellor H & R Oil Co., 11/20/86; RF233–42; RF233–43

The DOE issued a Decision and Order concerning Applications for Refund filed in the Crystal Oil Co. special refund proceeding by two resellers of refined petroleum products. Both applicants presented evidence that they purchased refined petroleum products from Crystal during the consent order period, and both claims fell below the $5,000 small claims threshold for resellers. According to the methodology set forth in Crystal Oil Co., 13 DOE ¶ 85,381 (1986), each applicant is eligible for a refund from the Crystal consent order fund based on the volume of its purchases times the volumetric refund amount. The refunds approved in this Decision total $2,275.

Gulf Oil Corporation/Beckham Brothers, Distributors, et al., 11/19/86; RF40–3542, et al.

The DOE issued a Decision and Order revising *Gulf Oil Corp./Knight Oil Co.*, 15 DOE ¶ 85,017 (1986) (*Knight*) with respect to three of the 54 claimants. The Appendix to the *Knight* Decision listed incorrect interest amounts for Case Nos. RF40–1001, RF40–1002, and RF40–1003. To correct this error, the DOE will remit additional refunds totaling $513 to the three firms.

Gulf Oil Corporation/Preston's Gulf, et al., 11/17/86; RF40–3265, et al.

In accordance with the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), the DOE issued a Decision and Order concerning 17 Applications for Refund filed by retailers and end-users from the Gulf Oil Corporation escrow account. After examining the evidence and supporting documentation submitted by the 17 purchasers of Gulf refined petroleum products, the DOE determined that each of the applicants was entitled to a refund. The refunds granted total $47,668 ($38,260 in principal and $9,408 in interest).

Hicks Oil and Hicks Gas Co./W.E. Stoll Coal and Gas Co., 11/17/86; RF237–9

The DOE issued a Decision and Order concerning an Application for Refund filed in the Hicks Oil and Hicks Gas Co. special refund proceeding. The applicant, W. E. Stoll Coal and Gas Company, was a reseller of propane purchased from Rocket Supply Company, a subsidiary of Hicks. The firm applied for the threshold amount of $5,000 in lieu of making a detailed showing of injury. In its Decision, the DOE granted the application under the standards specified in *Hicks Oil and Hicks Gas Co.*, 13 DOE ¶ 85,400 (1986). The refund granted in this proceeding totals $6,760 ($5,000 in principal and $1,760 in interest).

Howell Oil Corp. and Quintana Refinery Co./Ashland Petroleum Co., 11/20/86; RF245–3

The DOE denied an Application for Refund filed by Ashland Petroleum Co. in connection with a fund obtained through a consent order that the DOE entered into with Howell Oil Corp. and Quintana Refinery Co. Ashland, a reseller of refined petroleum products, submitted data showing that it had a "negative" cost bank subsequent to the period in which it purchased product from Howell/Quintana. In view of this fact, the DOE determined that any overcharges Ashland may have experienced as a result of its purchases of Howell/Quintana product were passed through to the firm's customers. Accordingly, the DOE determined that Ashland was not eligible to receive a refund in the Howell/Quintana special refund proceeding.

Howell Oil Corp. and Quintana Refinery Co./Mrs. Karl Amelung Ultramar Petroleum, Inc., 11/20/86; RF245–1, RF245–9

The DOE issued a Decision concerning two Applications for Refund filed in connection with the fund obtained through a consent order that the DOE entered into with Howell Oil Corp. and Quintana Refinery Co. One application was filed by an end-user, Mrs. Karl Amelung. Amelung has documented all of her purchases of Howell/ Quintana heating oil. According to the procedures outlined in *Howell Oil Corp. and Quintana Refinery Co.*, 14 DOE ¶ 85,129 (1986) *(Howell/Quintana)*, an end-user is presumed to have been injured and need only document its volumes of purchased product. Accordingly, Amelung was granted a refund based upon her purchase volumes times the volumetric refund amount. The refund totals $15.

The second application concerns a reseller, Ultramar Petroleum, Inc. During the consent order period, Ultramar made only one purchase from Howell/Quintana. According to the procedures outlined in Howell/ Quintana, a spot purchaser is presumed not to have been injured by any Howell/ Quintana overcharges. Ultramar attempted to rebut this presumption by claiming that during the consent order period it maintained banks of unrecouped costs, and was unable to pass along any overcharge. The firm, however, failed to submit any evidence to substantiate this claim. Accordingly, the DOE determined that Ultramar had not rebutted the spot purchases presumption and was not eligible to receive a refund in the Howell/ Quintana special refund proceeding.

Inland U.S.A., Inc./Site Oil Company, Flash Oil Corporation, 11/20/86; RR176–2, RR176–3.

The DOE issued a Decision and Order concerning Motions for Reconsideration in response to a June 5, 1986 Decision and Order granting in part Applications for Refund filed by Site Oil Company and Flash Oil Corporation in the Inland U.S.A., Inc. special refund proceeding. Site had requested a refund of $41,440 plus interest, and Flash had requested a refund of $114,132 plus interest. In order to receive such a refund, each firm was obligated to show that it maintained banks of unrecouped increased product costs through the date of termination of the reseller banking regulations, and that market conditions would not allow the firm to pass the alleged overcharges through to customers. Upon consideration of the additional material submitted by the firms in connection with their Motions for Reconsideration, the DOE found that each firm had made an adequate showing of cost banks and that Site and Flash had suffered a competitive disadvantage on 16.1 percent and 21.9 percent of their Inland purchases, respectively. Accordingly, Site received an additional refund of $2,517 ($1,672 in principal and $845 in interest), and Flash received an additional refund of $30,104 ($19,995 in principal and $10,109 in interest).

Joc Oil, Inc./New England Power Company, 11/18/86; RF109–4

The DOE issued a Decision and Order granting a refund from the JOC Oil, Inc. escrow fund to New England Power Company, a regulated public utility. New England Power documented its purchase volume of JOC product, and certified that any refund it received would be passed through to its customers. Accordingly, New England Power was granted a refund of $87,509 ($64,434 in principal and $23,075 in interest).

MAPCO, Inc./Kennedy Lumber Company, Inc., 11/17/86; RF108–21

The DOE issued a Decision and Order concerning an Application for Refund filed by Kennedy Lumber Company, Inc., a retailer of MAPCO propane. Although the firm's purchase of propane from MAPCO during the consent order period exceeded the threshold refund level established in *Peoples Energy Corp.*, 12 DOE ¶ 85,129 (1984), Kennedy elected to file its refund application in accordance with procedures for filing small claims and based upon the presumption of injury outlined in the *Peoples* decision. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Kennedy should receive a refund of $7,516.36 ($5,000 in principal and $2,516.36 in accrued interest).

Marathon Petroleum Company/Schroeder's Marathon, 11/17/86; RF250–1492, RF250–1493

The DOE issued a Decision and Order concerning an Application for Refund filed by Schroeder's Marathon, an indirect purchaser of products covered by a consent order that the agency entered into with Marathon Petroleum Company. The applicant demonstrated the volume of its indirect Marathon purchases, and did not request a refund greater than the $5,000 small claims refund amount. The refund approved in this Decision is $680 ($643 in principal and $37 in interest).

Marathon Petroleum Company/Super-Go Marketers, et al., 11/17/86; RF250–1626, et al.

The DOE issued a Decision and Order concerning eight Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and each requested a refund of 35 percent of its allocable share.

The sum of the refunds approved in this Decision is $40,452 ($38,265 in principal and $2,187 in interest).

Marathon Petroleum Company/Villa Park Fuel Oil, C & C Oil Company Inc., 11/20/86; RF250–1277, RF250–1290

The DOE issued a Decision and Order concerning two Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and neither requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $2,354 ($2,222 in principal and $132 in interest).

Mobil Oil Corporation/A.C. Petersan Co., Inc., et al., 11/19/86; RF225–5969, et al.

The DOE granted 46 Applications for Refund from a fund obtained through a consent order which the DOE entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to their full allocable share based on the volumetric methodology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $8,147 ($6,781 in principal and $1,366 in interest).

Mobil Oil Corporation/Amsterdam Oil Heat Corp., et al., 11/18/86; RF225–8238, et al.

The DOE issued a Decision and Order granting 54 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totaling $47,316 ($39,464 in principal and $7,852 in interest).

Mobil Oil Corporation/Bernath's Service Center, et al., 11/20/86; RF225–3353, et al.

The DOE issued a Decision and Order granting 35 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers, resellers, and end-users of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totaling $41,730 ($34,731 in principal and $6,999 in interest).

Mobil Oil Corporation/Defense Logistics Agency, 11/20/86; RF225–2607

The DOE granted an Application for Refund filed by the Defense Logistics Agency (DLA) from a fund obtained through a consent order which the DOE entered into with Mobil Oil Corporation. The DLA was an end-user that purchased both directly and indirectly from Mobil. For its direct purchases, the DLA was eligible for a refund equivalent to its full allocable share based on the volumetric methodology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). For its indirect purchases, the DLA was eligible for a refund equivalent to 60 percent of the volumetric refund amount. *See Mobil.* The total amount of the refunds granted was $1,074,243.03 ($894,090.48 in principal and $180,152.55 in interest).

Mobil Oil Corporation/Snowdon Place Oil Co., 11/19/86; RF225–88, RF225–89

The DOE issued a Decision and Order denying an Application for Refund filed by Snowdon Place Oil Co. from the Mobil Oil Corporation escrow account. Snowdon Place had purchased the product from Pennzoil Company as the result of an exchange agreement between Pennzoil and Mobil. Because of this exchange agreement, the product was sold by Pennzoil, not Mobil; as a result, the volumetric presumption, which is based on the volume of product sold by Mobil, does not apply. Accordingly, the DOE concluded that the Application should be denied.

Navajo Refining Company/Roberts Oil Company, Plateau, Inc./Roberts Oil Company, 11/18/86; RF203–2, RF204–2

Roberts Oil Company, a reseller of refined petroleum products, filed Applications for Refund seeking portions of the funds remitted to the DOE by Navajo Refining Company and Plateau, Inc. Due to a fire in its warehouse, Roberts was unable to determine its total purchase volume with respect to either firm. Using partial records provided by the applicant, along with information contained in the Navajo and Plateau audit files, the DOE estimated Roberts' total purchases from each firm, and calculated a volumetric amount based on those figures. In each case, Roberts' volumetric share exceeded $5,000. However, because the firm did not have sufficient records to attempt an injury demonstration, the DOE found it appropriate to limit Roberts' refund in each case to the small claims threshold, plus appropriate interest. The total refund granted Roberts was $15,754 ($10,000 in principal and $5,754 in interest).

OKC Corporation/Jones Oil Company, 11/20/86; RF13–45

The DOE issued a Decision and Order concerning an Application for Refund filed by Jones Oil Company. Jones sought a portion of the settlement fund obtained by the DOE through a consent order entered into with OKC Corporation. Jones is a motor gasoline and diesel fuel reseller which purchased these products from OKC during the consent order period. The DOE granted Jones' refund application based upon standards established in *Office of Enforcement: In the Matter of OKC Corp.*, 9 DOE ¶ 82,51 (1982). The refund granted to Jones totals $17,246 ($10,092 in principal and $7,154 in interest).

Dismissals

The following submissions were dismissed:

Name	Case No	
Beaufier Oil Co.	RF225–422, RF225–8166	RF225–8165,
Frank Newman	RF225–225, RF225–7452	RF225–7451,
Kasch Oil Co.	RF225–232, RF225–8367 RF225–10164	RF225–8366, RF225–8368
Martin A. Cohen	RF225–9952	
Midwest Service Co.	RF225–9043	
Mears & Associates, Inc.	RF225–9369, RF225–9370	
Nicholas H. Carouba	RF225–10310	
Richard Hinkle	RF225–3594	
Schaper's Service Center	RF225–1592, RF225–1593	
Sierra Petroleum Co., Inc.	KEF–0074	
South Bend Public Transportation Corp.	RF270–269	
Texaco Inc.	RF6–66, RF6–67, RF6–68	
Union Texas Petroleum	RF189–13	
W.D. Oil Co.	RF250–1694, RF250–1278	
Ziegler Oil Co.	RF225–8487, RF225–8488	

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

February 2, 1987.

[FR Doc. 87–3337 Filed 2–17–87; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders; Week of December 22 Through December 26, 1986

During the week of December 22 through December 26, 1986, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of hearings and Appeals.

Appeal

S.D. Vanover, 12/24/86, KFA–0066

S.D. Vanover filed an Appeal from a denial by the Inspector General of the Department of Energy of a Request for Information that Vanover had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the requested document was not yet in existence and therefore the request was properly denied.

Remedial Order

Brazoria Energy, Inc., Gerald W. Collum, Carl L. Counts, 12/23/86, HRO–0259

Brazoria Energy, Inc. and Gerald W. Collum objected to a Proposed Remedial Order issued to them by the Economic Regulatory Administration on September 25, 1984. In the PRO, the ERA alleges that from September 1978 through December 1980 (the audit period), Brazioria engaged in "layered" transactions in violation of 10 CFR 212.186 by charging prices for crude oil in excess of its purchase price while performing no service or other function traditionally associated with

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crude oil reselling. In rejecting Brazoria's and Collum's objections to the PRO, the DOE found that they failed to show that Brazoria performed any economically valuable function in its transactions which would justify a markup. In addition, the DOE found that Collum can be held personally liable for Brazoria's overcharges since he was the animating force behind Brazoria and he personally benefitted from Brazoria's pricing practices. Carl L. Counts, who was also named a respondent to the PRO, did not file any objections to the PRO. Accordingly, the DOE determined that Brazoria, Collum, and Counts should remit $5,306,129.63 to the DOE. The DOE additionally determined that interest should accrue on the overcharge amount until payment is made and that the funds should be distributed according to the procedures set forth in 10 CFR Part 205, Subpart V.

Requests for Exception

Belcher Oil Company, 12/24/86, KEE–0065

Belcher Oil Company filed an Application for Exception from the filing requirements of Form EIA–782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." The firm sought relief from its obligation to complete and file the Form in order to adjust to the departure of its general manager. In considering the request, the DOE found that limited exception relief was necessary. Accordingly, the firm was granted an extension of time in which to file the Form. The important issue discussed in the Decision and Order is the effect of personnel difficulties upon a firm's requirement to file Form EIA–782B.

E.E. Tullos, 12/23/86, KEE–0073

On September 18, 1986, E.E. Tullos filed an Application for Exception from the requirement to submit Form EIA–782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm had not shown that it was more adversely affected by the reporting requirement than other similarly situated reporting firms. Accordingly, exception relief was denied.

Request for Modification and/or Recession

Kenneth Walker, 12/23/86, KRR–001, KRR–0012, KRZ–0047, KRZ–0048, KRZ–0052

Kenneth Walker filed the following motions and requests in connection with the Proposed Remedial Order (PRO) proceeding involving Mr. Walker and Southwestern States Marketing Corporation (Southwestern): (1) A Motion to Amend his Statement of Objections to plead two additional affirmative defenses: (2) a Motion to Adopt the Statement of Objections and attendant motions of Walker's co-respondent, Southwestern, and other PRO respondents in unrelated enforcement actions; (3) a Motion for Reconsideration of the Decision and Order that rejected Walker's defenses of laches and estoppel in the PRO proceeding; (4) a Motion for Reconsideration of the Decision and Order that disposed of Walker's Discovery and Evidentiary Hearing Motions; (5) a Motion to Compel the Economic Regulatory Administrative (ERA) to collect and preserve all evidence responsive to those discovery requests which the Office of Hearings and Appeals (OHA) has denied in the PRO proceeding. In considering Walker's first motion, OHA first found that the introduction to two legal defenses into the record of the proceeding would not create any factual disputes which might precipitate extensive briefing, possible hearings and additional fact-finding. OHS further determined that the burden on the ERA to respond to the amendments, while palpable, was not onerous. Morever, OHA attached particular significance to the fact that Walker's co-respondent was afforded eleven months more than Walker to formulate a Statement of Objections For all these reasons, OHA decided to grant Walker's Motion to Amend.

With respect to Walker's second motion, OHA found that it should be granted in part. OHA permitted Walker to adopt Southwestern's Statement of Objections and the firm's general Request or Production of Documents II only. OHA stated that its decision in this regard was based primarily on its recognition that the staggered nature of the PRO proceeding, caused principally by Southwestern's bankruptcy, had allowed one respondent to develop its case more fully than the other. As for Walker's request to selectively adopt pleadings filed by other PRO respondents in unrelated enforcement proceedings, OHA decided to deny the request. OHA explained that the burden on the ERA to respond to a plethora of new arguments at this stage of the proceeding would be substantial and that the ERA's litigation interests might be seriously prejudiced. In addition, OHA stated as a general proposition that if it were to grant the relief that Walker sought, the office might be encouraging carelessness in the preparation of submissions and facile circumvention of orders designed to promote efficiency in the litigation.

Next, OHA denied Walker's Motion for Reconsideration of the Decision which rejected his defenses of estoppel and laches. OHA found that Walker had failed to address all of the infirmities that OHA had previously noted with respect to those two defenses.

OHA then granted in part Walker's second Motion for Reconsideration. OHA decided that Walker should not be restricted to submitting documentation which addresses certain criteria set forth in the interlocutory order, *Kenneth Walker*, 13 DOE ¶ 84,040 (1985). Rather, Walker may submit any additional evidence to OHA which demonstrates that Southwestern facilitated the movement of crude oil from producers to refiners or provided some other tangible function of economic benefit to the crude oil market. In addition OHA determined that Walker could submit evidence concerning Southwestern's status as broker.

Finally, OHA determined that Walker's Motion to Compel should be denied because Walker had not convinced the office that any evidence in the ERA's possession is at risk for loss. Without some showing to this effect, explained OHA, it would not direct the ERA to undertake the onerous task of compiling and cataloguing documentary and testimonial evidence responsive to the discovery requests that OHA had denied in this scase.

Refund Applications

Marathon Petroleum Company/Central Michigan Petroleum, Inc., 12/23/86, RF250–1592

The DOE issued a Decision and Order concerning an Application for Refund filed by Central Michigan Petroleum, Inc., a purchaser and reseller of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Under the refund procedures established for Marathon applicants, Central Michigan's purchase volume corresponded to a volumetric share exceeding the $5,000 small claims threshold level. However, because the firm did not attempt to demonstrate that it absorbed the alleged Marathon overcharges, Central Michigan was eligible for refund of either $5,000 or 35% of its volumetric share. In this case, 35% of the firm's volumetric share was less than the small claims threshold. Accordingly, the DOE granted Central Michigan a refund of $5,000 in principal and $321 interest.

National Helium Corp./Illinois, Standard Oil Co. (Indiana)/Illinois, Standard Oil Co. (Indiana)/Illinois, Belridge Oil Co./Illinois, 12/22/1986, RQ–285, RQ21–286, RM21–18, RM8–19

The DOE issued a Decision granting partial approval to the second-stage refund applications and Motions for Modification submitted by the State of Illinois. Illinois will use $928,149 from the National Helium Corp. funds for ten programs. The approved projects assist the residential, transportation, commercial and agricultural sectors. DOE denied funding for the proposed Driver Energy Conservation Awareness Training program because the primary beneficiaries would have been high school students, who were not motorists during the period 1973–1981 and were therefore not injured by the oil overcharges. Illinois will use $100,000 from Standard Oil Co. (Indiana) (Amoco), as well as funds reallocated from a prior Amoco and Belridge Oil Co. Decision, for four programs. DOE approved three energy education programs and an agricultural conservation program but denied additional funding for energy emergency planning.

St. James Resources Corporation/Joseph Ingle and Sons, Inc., 12/23/86, RF180–29

The DOE issued a Decision and Order concerning an Application for Refund filed by Joseph Ingle and Sons, Inc. (Ingle), a purchaser of St. James Resources Corporation No. 2 heating oil. Ingle applied for a refund based on the procedures outlined in *St James Resources Corporation*, 13 DOE ¶ 85,112 (1985), governing the disbursement of settlement funds received from St. James pursuant to a March 20, 1980 Consent Order. According to those procedures, applicants claiming refunds greater than $5,000 are required to demonstrate that they were injured by St. James' alleged overcharges. Ingle's share of the St. James settlement totaled $8,590.07. However, the firm neither submitted evidence demonstrating its injury nor limited its claim to $5,000. Instead, Ingle stated that "the effects of overpricing by the said [St. James Resources Corporation] were recovered by Joseph Ingle and Sons in its sales to retail customers." Since Ingle was not injured, its Application for Refund was denied.

Vickers Energy Corp./Arizona, Coline Gasoline Corp./Arizona, National Helium Corp./Arizona, Palo Pinto Oil and Gas/Arizona, Belridge Oil co./Arizona, Standard Oil Co. (Indiana)/Arizona, Perry Gas Processors, Inc./Arizona, 12/22/86, RQ1–305, RQ2–306, RQ3–307, RQ5–308, RQ8–309, RQ21–310, RQ183–311,

The State of Arizona filed proposed second-stage refund plans with the Office of Hearings and Appeals (OHA) pursuant to Decisions and Order establishing procedures for the disbursement of funds obtained under consent orders with Vickers Energy Corp., Coline Gasoline Corp., National Helium Corp., Palo Pinto Oil and Gas, Belridge Oil Co., Standard Oil Co. (Indiana) and Perry Gas Processors, Inc. Arizona proposed to use the refunds to expand its existing rideshare program and the number of car care clinics it offers during October Car care Month. The state also proposed to enlarge its Driver Energy Conservation Awareness Training (DECAT) program. In a fourth program, Arizona proposed to update the State Energy Emergency Plan and, in a fifth plan, the state proposed to print 25,000 additional copies of a brochure designed to provide drivers with reliable information on reducing their energy consumption. In its sixth proposal, Arizona would provide additional fleet management assistance to public and private organization managers. The OHA partially approved Arizona's proposed refund plans. The ridesharing program car care clinic brochures and State Energy Emergency plans were approved. The DECAT and fleet management programs were not approved. The total amount of the second-stage refunds released to Arizona in this decision was $103,566.

Dismissals

The following submissions were dismissed:

Name	Case No.
A & B DIE CASTING	RF225–6981, FR225–6982
A.L. & W. Moore Trucking Co., Inc.	RF153–33
A.L. & W. Moore Trucking Company	RF154–33
A.O. Smith Corp	RF225–6973, RF225–6974, RF225–6896
Aamco Transmissions	RF6–31
American Petrofina, Inc	RF225–6866
B.F. Nelson Folding Carton, Inc	RF242–13
BELL AEROSPACE TEXTRON	RF225–6883
BROADERSON MFG. CORP.	RF225–6873
BROYHILL FURNITURE INDUSTRIES, INC	RF225–6892
Cauthen Oil, Inc	RF191–6
Champlin Petroleum Co	RF6–13
Champman Machine Co., Inc	RF225–6880
City of Los Angeles	RF6–37
Clark Equipment Company	RF154–29
Clark Equipment Company	RF153–36
Clark Oil & Refining Co	RF6–44
Cudd Enterprises	RF242–15
Culverhouse Station & Bait	RF153–31
Culverhouse Station & Bait	RF154–31
Dept. of Correctional Services	RF225–6887
Dorchester Gas Corp	RF6–50
Farr Company	RF225–6897
Fumio Ozaki	RF225–6874
General Electric Company	RF225–2722, RF225–2723
H&R Oil Company	RF154–32
H&R Oil Company	RF153–32
Hibbs Trucking Co	RF242–12
Howell Corp	RF6–47
Independent Refining Corp	RF6–14
Industrial Electronic Engineers, Inc	RF225–6890
Jim & Jack's Service	RF225–10140
Jim & Jack's Service	RF225–10260
Jim & Jack's Service	RF225–10261
Kerr-McGee Corp	RF6–45
Koch Industries, Inc	RF6–4
Lester Lines, Inc	RF225–6885
Lone Star Bldg. Centers, Inc	RF225–6871
McCarthy Well Co	RF225–6951, RF225–6952
McCoy Enterprises	RF242–14
Medlock Produce	RF154–27
Nestle Co., Inc	RF225–6881
North Little Rock Soft Water, Inc	RF153–34
North Little Rock Soft Water, Inc	RF154–34
Owens-Illinois	RF225–2249, RF225–2250
Parker Solvents Company	RF154–28
Parker Solvents Company	RF153–28
Powenne Oil Co	RF6–5
Pride Refining, Inc	RF6–41
Rockwell International Corp	RF225–6888
Scallop Petroleum Co	RF6–34
Seaview Petroleum Co	RF6–22
Shell Oil Co	KRS–0005
Shirley Gulf	RF40–3407
Sonoco Products Co	RF225–6903, RF225–6904
Standard Oil Co. (IN)	RF6–2
Tenneco Oil Company	RF6–48
Tension Envelope Corp	RF225–6870
The Okonite Co	RF225–6962, RF225–6963
Tosco Corp	RF6–42
U.S.A. Petroleum Corp	RF6–28
United Refining Co	RF6–40
Vibra Screw Inc	RF225–6889
Wehman, Inc	RF242–16
Wilkereson Diesel, Inc	RF153–30
Wilkereson Diesel, Inc	RF154–30
Witco Chemcal Corp	RF6–15

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

January 29, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 87–3338 Filed 2–17–87; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders; Week of December 29, 1986 Through January 2, 1987

During the week of December 29, 1986 through January 2, 1987, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

The Spokesman-Review, 12/29/86, KFA–0065

On December 1, 1986, The Spokesman Review/Spokane Chronicle (The Spokesman) filed a Freedom of Information Act (FOIA) Appeal from a determination issued by the Upper Columbia Area Manager (Manager) of the Bonneville Power Administration on November 14, 1986. The determination, which was issued in response to a Request for Information which the Spokesman had submitted under the FOIA, withheld certain documents pursuant to Exemptions 4 and 6. In considering the Appeal, the DOE found that the Manager's determinations to withhold pursuant to Exemption 6 the names of persons who received federal weatherization subsidies whose homes were subsequently monitored for the presence of radon had been made in full compliance with the FOIA and the DOE's implementing regulations. Specifically, release of the withheld material would constitute an unwarranted invasion of privacy not outweighed by any public interest in disclosure. Since the DOE determined that Exemption 6 was properly used to withhold the requested documents, the DOE did not consider the Manager's withholding under Exemption 4. Accordingly, the DOE denied the The Spokesman's Appeal.

Request for Exception

Kennedy & Mitchell, Inc., 12/31/86, KEE–0032

Kennedy & Mitchell, Inc. filed an Application for Exception seeking relief from its obligation to submit Form EIA–23, entitled "Annual Survey of Domestic Oil and Gas Reserves." In considering Kennedy & Mitchell's request, the DOE found that, though given the opportunity to do so, the firm failed to demonstrate that it was particularly adversely affected by the requirement that it file Form EIA–23. Accordingly, the firm was denied exception relief.

Interlocutory Order

Economic Regulatory Administration, 12/29/86 HRZ–0268

The Economic Regulatory Administration (ERA) filed a Motion to Join three individuals as respondents to two Proposed Remedial Orders (PROs) issued to Hal Musco d/b/a Clean Machine, Inc. In a prior Decision and Order, the Office of Hearings and Appeals (OHA) had granted a motion of the ERA to make the corporation Clean Machine, Inc. the sole respondent in the proceeding and to remove the corporation's sole shareholder during the ERA audit period, Hal Musco, as a party. In the present motion, the ERA claimed that there were significantly changed circumstances which justified rejoining Musco as a respondent and that there was also good cause to join two individuals who, according to Musco, had purchased the corporation. After considering the arguments presented, the OHA found that the factual basis underlying the previous Decision was not accurate and that the ERA had established a prima facie case that Musco

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would be personally liable for any regulatory violations that might be found in the enforcement proceeding. The OHA also determined that, in view of the uncertainty concerning the sale of the corporation, the two putative purchasers should not be joined. Accordingly, the ERA motion was granted in part and Musco was joined as a respondent to the PROs.

Refund Applications

Arapaho Petroleum, Inc./Warren Petroleum, Inc., 12/30/86, RF119–1

Warren Petroleum, Inc. filed an Application for Refund, seeking a portion of funds remitted by Arapaho Petroleum, Inc., pursuant to a consent order that Arapaho entered into with the DOE. Warren purchased 7,432,072 gallons of propane, butane and natural gasoline from Arapaho during the consent order period. The DOE found that Arapaho's prices exceeded market average prices for over 95 percent of the butane and natural gasoline, and approximately 53 percent of the propane that the firm sold to Warren. The DOE therefore granted Warren a refund of $68,510.61, which consisted of $58,822.02 calculated on a volumetric basis for butane and natural gasoline, and $11,688.59 for the Arapaho propane which was priced above market levels. Warren also received interest on the refund of $27,366.39.

Gulf Oil Corporation/Bourland Gulf Distributor, 12/30/86, RF40–2124

The DOE issued a Decision and Order concerning the Application for Refund filed by Bourland Gulf Distributor in the Gulf Oil Corporation refund proceeding. Bourland failed to demonstrate that it had been injured in its role as a consignee of Gulf motor gasoline, middle distillates, aviation fuel, or kerosene during the consent order period. Accordingly, its Application was denied.

Gulf Oil Corporation/George M. Trible, Jr., Inc., 12/29/86, RF40–2793

The DOE issued a Decision and Order concerning an Application for Refund filed by George M. Trible, Jr., Inc. in connection with the Gulf Oil Corporation special refund proceeding. In accordance with the procedures set forth in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), the applicant certified that it would not have been required to pass through to its customers a cost reduction equal to the refund amount claimed. Therefore, the DOE determined that Trible should receive a total refund of $2,805, consisting of $2,281 in principal and $524 in interest.

Gulf Oil Corporation/Hawkeye Oil Company, et al., 12/31/86, RF40–3032 et al.

The DOE issued a Decision and Order concerning the Applications for Refund filed by Hawkeye Oil Company and seven other firms. Each firm was a reseller of Gulf motor gasoline and/or middle distillates during the Gulf consent order period. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), each applicant demonstrated that it purchased and resold a certain amount of product from Gulf, and that it would not have been required to reduce its selling prices to pass through the amount of the refund claimed. The total amount of refunds approved in this Decision is $78,489 on principal and $18,013 in interest.

Gulf Oil Corporation/Hugh C. Davis, Jr., et al., 12/29/86, RF40–975 et al.

The DOE issued a Decision and Order concerning the Applications for Refund filed by Hugh C. Davis, Jr. and six other firms in connection with the Gulf Oil Corporation special refund proceeding. Each of the firms was both a purchaser and a consignee of Gulf product during the Gulf consent order period. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), each applicant demonstrated that it purchased and resold a certain amount of Gulf product, and that it would not have been required to reduce its selling prices to pass through the amount of the refund claimed. None of the applicants, however, was able to demonstrate that it had been injured in its role as a consignee of Gulf product. The total amount of refunds approved in this Decision is $14,980 in principal and $3,434 in interest.

Gulf Oil Corporation/J. W. Pritchard Company, et al., 12/30/86, RF40–995 et al.

The DOE issued a Decision and Order concerning the Applications for Refund filed by J. W. Pritchard Company and three other consignees in connection with the Gulf Oil Corporation refund proceeding. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), each applicant demonstrated that it had lost potential sales of motor gasoline and therefore had been injured as a result of Gulf's alleged pricing practices. None of the applicants, however, demonstrated injury with respect to consigned middle distillates. Accordingly, refunds totaling $10,872 in principal and $2,498 in interest were approved for consigned motor gasoline.

Gulf Oil Corporation/Reston Gulf Service Center et al., 12/31/86, RF225–3401, et al.

The DOE issued a Decision and Order concerning seven Applications for Refund filed by retailers of Gulf refined petroleum products. The claimants applied for a refund based on the procedures outlined in Gulf Oil Corp., 12 DOE ¶ 85,048 (1984). After examining the evidence and supporting documentation submitted by the applicants, the DOE concluded that the claimants should receive refunds totaling $13,092 ($10,648 principal plus $2,444 interest).

Gulf Oil Corporation/State of Delaware et al., 12/30/86, RF40–726 et al.

The DOE issued a Decision and Order concerning five Applications for Refund filed in the Gulf Oil Corporation special refund proceeding. All of the applicants were end-users of petroleum products purchased directly from Gulf. In its Decision, the DOE granted the applications under the standards specified in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). The refunds granted total $22,095, representing $17,970 in principal and $4,125 in interest.

Gulf Oil Corporation/Venta, Inc., 12/31/86, RF40–1668

The DOE issued a Decision and Order concerning an Application for Refund filed by Venta, Inc. in connection with the Gulf Oil Corporation special refund proceeding. Venta sold Gulf product at several retail stations. The firm attempted to make the showing required of Gulf applicants that they would not have had to reduce selling prices to pass through the amount of the refund claimed by submitting records of cost banks from two stations. The DOE determined that Venta's limited documentation was not sufficient to support allegations concerning the operation of the firm as a whole. However, the DOE found that Venta's records from the two stations did demonstrate that, with respect to the product marketed there, Venta would not have been required to pass through to its customers a cost reduction equal to the refund amount claimed. Accordingly, the DOE determined that Venta should receive a refund of $2,085, its volumetric share for the Gulf product it purchased to sell at the two stations, plus $474 in interest.

Gulf Oil Corporation/Wm. Johnson-Solomon Oil Co., 12/31/86, RF40–2756

The DOE issued a Decision and Order concerning the Application for Refund filed by Wm. Johnson-Solomon Oil Co. (WJS), a reseller of Gulf motor gasoline and middle distillates during the Gulf consent order period. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), WJS demonstrated that it purchased 1,663,023 gallons of covered product from Gulf, and that it would not have been required to reduce selling prices to pass through the amount of the refund claimed. The total amount of the refund approved in this Decision is $2,029 in principal and $466 in interest.

H.C. Lewis Oil Company/English Shell, et al., 12/29/86, RF288–10 et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed by purchasers of refined petroleum products sold by H.C. Lewis Oil Company. Each customer filed for a refund based upon the small claims procedures outlined in *H.C. Lewis Oil Company*, 14 DOE ¶ 85,326 (1986). After examining the applications, the DOE concluded that all six applicants should receive refunds based on the volumetric refund amount established in *H.C. Lewis*. The total amount of refunds granted was $4,025.

Howell Oil Corp. and Quintana Refinery Corp./Odessa L.P.G. Transport, 12/30/86, RF245–11

Odessa L.P.G. Transport filed an Application for Refund in which it sought a portion of the fund obtained by the DOE through a consent order entered into with Howell Oil Corp. and Quintana Refinery Co. The DOE found that Odessa paid above-market average costs for the natural gas liquids it purchased from Howell/Quintana (a butane/propane mix) and, using a three-step competitive disadvantage methodology, the DOE determined that Odessa should receive a refund of $68,413, representing $34,100 in principal and $34,313 in accrued interest.

Marathon Petroleum Company/B.B. Oil Co., et al., 1/2/87, RF250–2053, et al.

The DOE issued a Decision and Order concerning 43 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $47,334 in principal and $3,152 in interest.

Marathon Petroleum Company/Central Illinois Public Service Company et al., 12/30/86, RF250–1901, et al.

The DOE issued a Decision and Order concerning 23 Applications for Refund filed by end-users of products covered by a consent order that the agency entered into with Marathon Petroleum Company. The Applications were evaluated in accordance with the procedures set forth in *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986). The sum of the refunds approved in this Decision is $53,124, representing $49,803 in principal and $3,321 in interest.

Mobil Oil Corporation/A.B.C. Fuel Oil Co., Inc., et al., 12/31/86, RF225–10419, et al.

The DOE issued a Decision granting 72 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers, resellers and end-users of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totaling $83,838 ($69,345 principal plus $14,493 interest).

Standard Oil Co. (Indiana)/Alabama, 12/30/86, RQ251–341

The DOE issued a Decision and Order approving the second-stage refund application submitted by the State of Alabama for use of funds from the Standard Oil Co. (Indiana) escrow account. Alabama stated that it planned to use $525,947 plus accrued interest to upgrade traffic synchronization, help weatherize the homes of several hundred low income Indian families, and improve mass transportation throughout the state. The DOE found that Alabama's plan would make restitution to injured consumers of refined petroleum products. Accordingly, Alabama's refund application was granted.

Dismissals

The following submissions were dismissed:

Name	Case No.
Indiana Farm Bureau Coop	RF6–72.
Kent Oil & Trading Co	RF245–14.
Kern Oil & Refining Co	RF6–7.
Linnton Plywood Assn	RF225–7207 RF225–7208.
Marathon Petroleum Co	RF6–46.
Mobil Oil Corp	RF6–24.
National Cooperative Refinery	RF6–62.
Pappas Gulf, Inc	RF40–3595.
Phelps Petroleum Co	RF6–54.
South Hampton Refining Co	RF6–59.
Suburban Propane Gas Corp	RF6–56.
Union Oil Co. of Calif	RF6–57
Wyoming Refining Co	RF6–29 RF6–71.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

February 9, 1987.

[FR Doc. 87–3339 Filed 2–17–87; 8:45 am]

BILLING CODE 6450–01–M

Objection to Proposed Remedial Order Filed During Week of December 8 Through December 12, 1986

During the week of December 8 through December 12, 1986, the notice of objection to proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

February 5, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

McWhirter Distributing Company, Inc., San Francisco, California; KRO–0380

Gasoline

On December 8, 1986, McWhirter Distributing Co., Inc., 6622 Valjean Ave., Van Nuys, California 91406 filed a Notice of Objection to a Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to the firm on November 20, 1986. In the PRO, the ERA found that during April 1979 to September 1979, McWhirter's wholesale sales of motor gasoline were in excess of the company's lawful selling prices.

According to the PRO, pricing violations resulted in $191,072 of overcharges.

[FR Doc. 87–3342 Filed 2–17–87; 8:45 am]

BILLING CODE 6450–01–M

Objection to Proposed Remedial Order Filed During Period of December 15 Through December 26, 1986

During the Period of December 15 through December 26, 1986, the notice of objection to proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

January 29, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

La Jet Inc., Washington, D.C.; KRO–0390

On December 23, 1986, La Jet, Inc., 1601 Elm Street, Dallas, Texas 75201 (Ct. Corp. Systems, Registered Agent) filed a Notice of Objection to a Proposed Remedial Order which the Economic Regulatory

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Administration issued to the firm on October 9, 1986. In the PRO the ERA found that during the period May through November 1977, La Jet violated DOE regulations regarding the Entitlements Program.

According to the PRO, these actions resulted in a violation amount of $5,558,046.

[FR Doc. 87-3343 Filed 2-17-87; 8:45 am]

BILLING CODE 6450-01

Issuance of Proposed Decision and Order During Week of December 29, 1986 Through January 2, 1987

During the week of December 29, 1986 through January 2, 1987, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of pubication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

January 29, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

Dickerson Oil Co., Murphysboro, Illinois, Kee-0082

Wilson Oil Co. Harrisburg, Illinois, Kee-0088 Reporting Req'mts

Dickerson Oil Co. and Wilson Oil Co. filed Applications for Exception in which each firm sought relief from its obligation to submit Form EIA-782B, entitled "Resellers'/ Retailers' Monthly Petroleum Produce Sales Report." In considering both Applicants' requests, the DOE found that the firms failed to demonstrate that they were particularly adversely affected by the requirement that they file the Form. Accordingly, on December 31, 1986, the Department of energy issued a Proposed Decision and Order which tentatively determined that the exception requests be denied.

[FR Doc. 87-3340 Filed 2-7-87; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Order Filed During Period of December 29, 1986 Through January 9, 1987

During the period of December 29, 1986 through January 9, 1987, the notice of objection to proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

February 9, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

T.E. Reserve Corp./James G. Allison, Houston, Texas: KRO-0400, Crude oil.

On January 7, 1987, T.E. Reserve Corporation, 811 Dallas Avenue, Houston, Texas 77002, filed a Notice of Objection to a Proposed Remedial Order which the DOE Dallas District Office of Enforcement issued to the firm on December 10, 1986. In the PRO the ERA Dallas District found that during the period October 1, 1979 through January 28, 1981, the corporation violated the provisions of 10 CFR 212.86, the layering regulation.

According to the PRO the violation resulted in $111,529,820.17 of overcharges.

[FR Doc. 87-3344 Filed 2-17-87; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order During Week of January 5 Through January 9, 1987

During the week of January 5 through January 9, 1987, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director Office of Hearings and Appeals.

January 29, 1987.

Parish Oil Company, Inc., Montrose, CO., KEE-0098 Reporting Requirements

Parish Oil Company, Inc. (Parish) filed for relief from the requirement to submit Form EIA-782B, entitled "Reseller Retailers' Monthly Petroleum Product Sales Report." Parish asserts that it is experiencing serious computer installation problems, and is unable to retrieve the data needed to prepare Form

EIA-782B. The Office of Hearings and Appeals (OHA) found that requiring Parish to prepare the Form without use of its computer would impose a substantial hardship on the firm. Therefore, on January 8, 1987, the OHA issued a Proposed Decision and Order granting Parish temporary exception relief to allow Parish time to resolve its computer difficulties.

[FR Doc. 87-3341 Filed 2-17-87; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Intent To Prepare an Environmental Impact Statement; Charlie Creek-Belfield 345-KV Transmission Line Project, North Dakota

AGENCY: Department of Energy, Western Area Power Administration.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that, in accordance with the National Environmental Policy Act of 1969 (NEPA), the Western Area Power Administration (Western) intends to prepare an environmental impact statement (EIS) regarding a proposed action to construct, operate, and maintain a new high voltage 345-kilovolt (kV) electric transmission line from Basin Electric Power Cooperative's Charlie Creek Substation south to a new substation near Belfield, in the counties of Billings, McKenzie, and Stark, North Dakota. The project would consist of 30 to 40 miles of new transmission line and the new substation near Belfield.

The objectives of the subject EIS and related environmental activities will be to study and assess the potential of locating structures within floodplains or wetlands, impacting Federal or State listed or proposed threatened or endangered species or critical habitats, aesthetic impacts, crossing irrigated or irrigable land, effects on agriculture, and the possibility of causing adverse effects on historic or cultural properties that are included or eligible for historic or cultural properties that are included or eligible for inclusion on the National Register of Historic Places.

DATES: Initial public scoping meetings were held during January 1987. Landowners in the project area were contacted directly by letter informing them of the public scoping meetings, and appropriate notices were placed in local newspapers. Further public input will be solicited in at least two public planning workshops and a public hearing to be held during the course of the planning process. Landowners will again be contacted by letter, and notices published in the local news media at least 15 days in advance of the meetings. Federal, State, and local government agencies will be requested to provide their issues and concerns to Western which will be addressed in the EIS.

A draft EIS is tentatively scheduled to be released to the public for review and comment in January 1988. The final EIS is tentatively scheduled for release in November 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Harris, Assistant Area Manager for Engineering, Billings Area Office, Western Area Power Administration, P.O. Box EGY, Billings, MT 59101, (406) 657-6042.

Issued at Golden, Colorado, January 30, 1987.

William H. Clagett,

Administrator.

[FR Doc. 87-3330 Filed 2-17-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180717; FRL-3156-7]

New Jersey Department of Environmental Protection; Receipt of Applications for Emergency Exemptions To Use Pursuit™; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUBJECT: EPA has received requests for two emergency exemptions from the New Jersey Department of Environmental Conservation (hereafter referred to as the "Applicant") to use the active ingredient (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-l*H*-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid (Pursuit™) to control broadleaf weeds on 2,000 acres of lima beans and 10,000 acres of snap beans in New Jersey. Pursuit™ contains an unregistered active ingredient and, therefore, in accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant these exemptions.

DATE: Comments must be received on or before March 5, 1987.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180717" should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide

In person, bring comments to: Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in room 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

FOR FURTHER INFORMATION:

By mail: Libby Pemberton, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue two specific exemptions to permit the use of an unregistered herbicide, (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-l*H*-imidazol-2-yl)-5-ethyl-3-pyridinecarboxylic acid (CAS 81335-77-5), manufactured as Pursuit™, by American Cyanamid Company, on lima beans and snap beans in New Jersey. Information in accordance with 40 CFR Part 166 was submitted as part of these requests.

Late in 1986 all labeled uses of the herbicide dinoseb were suspended. According to the Applicant, dinoseb was used to control annual broadleaf weeds on almost all the acreages of lima beans and snap beans grown in New Jersey. The Applicant states that other products that are labeled either do not control a broad spectrum of broadleaf weeds consistently or cannot be used in New Jersey without causing crop injury.

The Applicant indicates that weeds in bean fields reduce yields by competing with the crop and cause additional problems. Weeds reduce harvest efficiency and result in field

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Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

abandonment when weed problems are severe. Weeds interfere with insecticide applications and may result in increased insect problems or additional insecticide applications.

The Applicant indicates that without adequate control a 25% value loss due to weeds will occur. This would amount to approximately $1.36 million. Losses in the past two years, with use of dinoseb have not exceeded 5%.

Pursuit™ will be applied preplant incorporated or preemergence to the crop at a rate of 0.03125 pounds active ingredient per acre. A single application will be made sometime between March 1 and July 31, 1987 to approximately 10,000 acres of snap beans and 2,000 acres of lima beans.

This notice does not constitute a decision by EPA on the applications themselves. The regulations governing section 18 require publication of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for the opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before March 5, 1987, and should bear the identifying notation "OPP-180717." All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the New Jersey Department of Environmental Protection.

Dated: February 5, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87-3107 Filed 2-17-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180719; FRL 3157-5]

Receipt of Applications for Specific Exemptions To Use Harmony; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Office of the Governor of Illinois, the Arkansas State Plant Board, and the Missouri Department of Agriculture and hereafter referred to individually by State or collectively as "Applicants") for use of the unregistered product Harmony to control wild garlic in wheat. Harmony, manufactured by E.I. duPont de Nemours and Company, contains the unregistered active ingredient methyl 3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amin]carbonyl]amino]sulfonyl]-2-thiophenecarboxylate. EPA is soliciting comment before making the decision whether or not to grant these specific exemption requests.

DATE: Comments must be received on or before March 5, 1987.

ADDRESS: Three copies of written comments, bearing the indentifying notation "OPP-180719," should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked willnot be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

FOR FURTHER INFORMATION:

By mail: Jack E. Housenger, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7889).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicants have requested the Administrator to issue specific exemptions to permit the use of the unregistered product, Harmony, to control wild garlic in wheat. Information in accordance with 40 CFR Part 166 was submitted as part of these requests.

The Applicants have requested a maximum of one postemergence application of Harmony. Applications will be made between the two-leaf and boot stage of wheat when wild garlic is 6 to 12 inches high. A maximum of 0.5 ounce of product is proposed to be applied per acre in Illinois and Arkansas and a maximum of 0.67 ounce of product is proposed to be applied per acre in Missouri. A maximum of 960,000 acres of wheat is proposed to be treated in Illinois, a maximum of 100,000 acres in Arkansas, and a maximum of 600,000 acres in Missouri. If all of the acreage were treated, a maximum of 30,000 pounds of product would be needed in Illinois, a maximum of 3,125 pounds of product would be needed in Arkansas, and a maximum of 18,750 pounds of product in Missouri.

Applications are proposed to be made using either aerial or ground equipment. All applications are proposed to be made by or under the direct supervision of certified applicators. Illinois and Arkansas have requested authorization to make treatments through April 1987 and Missouri has requested that the exemption be effective through January 1988.

The Applicants claim that emergency conditions exist due to the presence of wild garlic bulbets in harvested wheat. Grain sold with garlic bulbets present is docked generally on a per-bulblet basis. The Applicants claim that the new regulations under the U.S. Grain Standards Act which lower by two-thirds the amounts of wild garlic allowable in marketed wheat have contributed to the need for a better means of controlling garlic. If these new standards cannot be met, prices will be docked severely or the grain may be refused altogether. In any event, the economic consequences could be substantial if growers are unable to control wild garlic in wheat.

The Applicants claim that the registered alternatives currently available do not provide a sufficient level of control of wild garlic. The Applicants claim that wheat growers have traditionally used 2,4-D and dicamba to control this weed.

Specifically, the Applicants claim that these pesticides only provide 20 to 75 percent control of wild garlic.

This notice does not constitute a decision by EPA on the application itself. It is the Agency's policy to solicit public comment on applications involving unregistered active ingredients. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before March 5, 1987, and should bear the identifying notation "OPP-180719." All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the Office of the Governor of Illinois, the Arkansas State Plant Board, and the Missouri Department of Agriculture.

Dated: February 10, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87-3321 Filed 2-17-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-62006; FRL-3157-9]

Hearing Concerning Application To Modify the Final Suspension Order for Pesticide Products Containing Dinoseb

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Hearing Under Subpart D of 40 CFR Part 164.

SUMMARY: On January 20 and January 29, 1987, the Agency received evidentiary submissions from the American Dry Pea and Lentil Association (ADPLA) in support of its request that the final order suspending all use of pesticide products containing dinoseb be modified to permit use of dinoseb on dry peas, lentils, and chickpeas in the States of Washington and Idaho. Subsequently, on February 10, 1987, the Departments of Agriculture of the States of Washington and Idaho submitted applications for emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to permit use of pesticide products containing dinoseb on peas, lentils, and chickpeas. Under Subpart D of 40 CFR Part 164, these submissions and applications collectively constitute a petition to reconsider the final suspension order concerning dinoseb products. Such a petition may not be granted without a formal adjudicatory hearing. EPA has concluded that the submissions by ADPLA, if substantiated in a hearing, may provide a basis for modification of the order suspending dinoseb products. This Notice announces that EPA has decided to hold a hearing to reconsider that order as it applies to use of dinoseb on dry peas, lentils, and chickpeas in Washington and Idaho, specifies the issues of fact and law to be considered at that hearing, and establishes a schedule for the hearing.

DATE: Requests to participate in the hearing announced by this notice must be received by the Office of the Hearing Clerk at the address given below by February 24, 1987. A pre-hearing conference will be held and the evidentiary hearing will commence as soon thereafter as practicable.

ADDRESS: Requests for a hearing must be sumitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Information supporting the Administrator's decision to hold a hearing will be available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays in: Information Services Section, Management and Program Support Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Room 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT:

By mail:

Michael McDavit, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

Office location and telephone number: Rm. 1014A,Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-1787).

SUPPLEMENTARY INFORMATION:

I. Legal Authority

A. Standards for Maintaining a Registration

Before a pesticide product may be lawfully sold or distributed in either intrastate or interstate commerce, the product must be registered by the Environmental Protection Agency. FIFRA sections 3(a) and 12(a)(1). A registration is a license allowing a pesticide product to be sold and distributed for specified uses in accordance with specified use instructions, precautions, and other terms and conditions. A pesticide product may be registered or remain registered only if it performs its intended pesticidal function without causing "unreasonable adverse effects on the environment." FIFRA section 3(c)(5). "Unreasonable adverse effects on the environment" is defined as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use [the] pesticide." FIFRA section 2(bb). The burden to demonstrate that a pesticide product satisfies the critera for registration is on the proponents of initial or continued registration. *Industrial Union Dept. v. American Petroleum Institute*, 448 U.S. 607, 653 n.61 (1980); *Environmental Defense Fund v. Environmental Protection Agency*, 510 F.2d 1292, 1297, 1302 (D.C. Cir. 1975).

Under FIFRA section 6, the Agency may issue a notice of intent to cancel the registration of a pesticide product whenever it determines that the product no longer satisfies the statutory criteria for registration. The Agency may specify particular modifications in the terms and conditions of registration, such as deletion of particular uses or revisions of labeling, as an alternative to cancellation. If hearing is requested by an adversely affected person, the final order concerning cancellation of the product is not issued until after a formal administrative hearing.

B. Suspension of a Pesticide Product

The suspension provisions in FIFRA section 6(c) give the Administrator authority to take interim action until completion of the time-consuming procedures which may be required to reach a final cancellation decision. Under this section, the Administrator may suspend the registration of a product and prohibit its distribution, sale, or use during cancellation procedings upon a finding that the pesticide poses an "imminent hazard" to humans or the environment. "Imminent hazard" is defined by FIFRA section 2(*l*) as:

> A situation which exists when the continued use of a pesticide during the time required for cancellation proceedings would be likely to result in unreasonable adverse effects on the environment or will involve unreasonable hazard to the survival of a species declared endangered by the Secretary of the Interior under Pub. L. 91-135.

As noted above, "unreasonable adverse effects on the environment" means that the risks associated with use of a pesticide outweight the benefits of

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its use. Thus, in order to find an "imminent hazard," the Agency must determine that the risks associated with continue registration during the period likely to be necessary to complete a cancellation proceeding appear to outweigh the benefits. The Agency may not suspend the registration of a pesticide unless it has previously issued, or simultaneously issues, a notice of intent to cancel the registration or change the classfication of that pesticide.

Suspension is an interim remedy which enables the Agency to abate potential risks in advance of the full analysis of risks and benefits in a cancellation hearing. The function of suspension "is to make a preliminary assessment of evidence, and probabilities, not an ultimate resolution of difficult issues." *Environmental Defense Fund v. Environmental Protection Agency*, 465 F.2d 528, 537 (D.C. Cir. 1972). The courts have emphasized that suspension does not require a "crisis." Rather, "it is enough if there is *substantial likelihood* that serious harm will be experienced during the year or two required in any realistic projection of the administrative [cancellation] process." *Environmental Defense Fund Environmental Protection Agency*, 510 F.2d 1292, 1297 (D.C. Cir. 1975), quoting *Environmental Defense Fund v. Environmental Protection Agency*, 465 F.2d 528, 540 (D.C. Cir. 1972).

A notice of intent to suspend (unlike an emergency suspension order) does not take effect immediately. Registrants are notified and afforded 5 days from the date of receipt of the notification to request an expedited hearing on the question of imminent hazard. If no hearing is request for a product, or a hearing request is submitted but subsequently withdrawn, the suspension of that product becomes final and is not reviewable by any court. If a hearing is requested, the final order concerning suspension of the product is not issued until after the completion of an expedited hearing.

C. Emergency Suspension

If the Administrator determines that (1) a pesticide poses an imminent hazard, and (2) that "an emergency exists that does not permit him to hold a hearing before suspending," FIFRA section 6(c)(3) provides that he may issue an emergency order immediately suspending registration of the pesticide.

The term "emergency" is not defined by FIFRA. The Agency interprets FIFRA section 6(c)(3) to mean that, if the threat of harm to humans or the environment associated with continued sale, distribution, or use of a pesticide is sufficiently serious and immediate that the risks would be likely to outweigh the benefits during the time required for a suspension hearing, the registration of that pesticide may be suspended immediately. Thus, the determination whether an emergency exists is even more preliminary than the determination concerning the question of imminent hazard, and an emergency order is analogous to a temporary restraining order issued by a court while it is determining whether to issue a preliminary injunction. *Dow Chemical Company v. Blum*, 469 F.Supp. 892, 901 (E.D. Mich. 1979).

An emergency suspension order may be issued without prior notice to affected registrants and is effective immediately upon issuance. Registrants are notified that an emergency order has been issued and may request an expedited hearing by submitting a valid hearing request within five days from receipt of the notification. If a registrant does not request an expedited hearing concerning a particular product, but does request a hearing concerning cancellation of that product, the emergency order becomes a final suspension order with respect to that product and the suspension of the product remains in effect until the completion of the cancellation proceeding. If an expedited hearing is held concerning any product, the hearing is confined solely to the question of imminent hazard, and the emergency order remains in effect during the pendency of the expedited hearing. When an expedited hearing is held following issuance of an emergency order, only registrants and the Agency may actively participate. However, other adversely affected parties such as users may file briefs. Following the expedited hearing, the Administrator issues a final order which may either retain, modify, or rescind the suspension during subsequent cancellation hearings.

D. Subpart D Proceedings

When the Agency receives an application to permit use of a pesticide in a manner inconsistent with a prior final suspension or cancellation decision, that application constitutes a petition to the Administrator to reconsider the final suspension or cancellation order. Because of the opportunity for notice and a formal adjudicatory hearing which precedes entry of a final suspension or cancellation order concerning a pesticide product, EPA has determined that such an order should not be modified or rescinded without affording interested parties a similar notice and opportunity for hearing concerning such modification or rescission. The procedures governing all applications to modify or reverse a previous final suspension or cancellation order are set forth in Subpart D of 40 CFR Part 164. 40 CFR 164.130 through 164.133.

When all opportunities for hearing and review with respect to an Agency decision to suspend or cancel a pesticide product have either been exercised or waived, and a final suspension or cancellation order has been entered, the Agency is entitled to rely on the finality of the order and the validity of the evidentiary rationale supporting it. Applicants seeking reconsideration of a final order should not be afforded a new adjudicatory hearing concerning the same matters which were considered or could have been considered during a prior hearing. Thus, 40 CFR 164.131(a) provides that the Administrator will grant a hearing to reconsider a prior final suspension or cancellation order when he finds that:

(1) The applicant has presented substantial new evidence which may materially affect the prior cancellation or suspension order and which was not available to the Administrator at the time he made his final cancellation or suspension determination and (2) such evidence could not, through the exercise of due diligence, have been discovered by the parties to the cancellation or suspension proceeding prior to the issuance of the final order.

In deciding whether to initiate a hearing, the Administrator does not need to determine that the evidence submitted by the petitioner would in fact justify modification of the prior order. Rather, a decision to initiate a hearing means only that the Administrator has determined that the evidence submitted, if substantiated on the record in the hearing, may "materially affect" the evidentiary rationale upon which the prior order was based. On the other hand, if the evidence submitted, even if substantiated on the record, would be unlikely to provide a basis for modification of the prior order, then a hearing would serve no purpose.

If the Administrator determines that a petitioner has met the criteria for a Subpart D hearing, he then publishes a notice in the **Federal Register** setting forth his determination, the rationale for that determination, a description of the issues of fact and law to be adjudicated in the hearing, and a schedule for the hearing. The purpose of the hearing is to determine whether: (1) Substantial new evidence exists and (2) such substantial new evidence requires reversal or modification of the existing cancellation or suspension order. For purposes of any decision in the hearing, those portions of the substantive rationale for the existing order concerning which the petitioner did not submit substantial new evidence are assumed to be correct. Thus, the scope of any Subpart D hearing is intrinsically narrower than the proceeding which was held or could have been held concerning the order to be reconsidered.

In a Subpart D hearing, as in a suspension or cancellation hearing, the Administrative Law Judge transmits a recommended decision to the Administrator, who then issues a final decision retaining, modifying, or reversing the existing order.

II. Procedural History

On October 7, 1986, I issued a decision and emergency suspension order immediately prohibiting all further sale, distribution, and use of pesticide products containing dinoseb (2-sec-butyl-4,6-dinitrophenol) in the United States. (51 FR 36634, October 14, 1986). My decision to issue that order was based on my determination that applicators and other populations with substantial dinoseb exposure would otherwise be at significant risk for teratogenic and other adverse health effects. The information and analysis upon which that determination was based is set forth in detail in the text of my decision. As required by FIFRA section 6(c)(1), I issued on the same day a notice announcing the Agency's intent to cancel and deny all registrations for pesticide products containing dinoseb.

Four registrants subsequently submitted timely requests for an expedited suspension hearing on the question of whether or not sale, distribution, or use of dinoseb would pose an imminent hazard during the time required to conduct a cancellation hearing. These four registrants and two others also submitted timely requests for a cancellation hearing. All dinoseb products for which the registrants requested neither a suspension nor a cancellation hearing were subsequently cancelled by operation of law.

The expedited suspension hearing concerning dinoseb products commenced on October 20, 1986. On October 29, 1986, the FIFRA Science Advisory Panel met pursuant to FIFRA section 25(d) to consider the Agency's analysis of the impact of dinoseb use on health and the environment. On October 30, 1986, the four registrants who had requested an expedited hearing on the question of imminent hazard withdrew their hearing requests, resulting in the immediate entry pursuant to the terms of my October 7 decision of a final order suspending the registrations of their dinoseb products during the pendency of the cancellation hearing. On November 26, 1986, the Administrative Law Judge closed the docket in the expedited suspension hearing, thereby affirming that no valid requests for a hearing concerning the suspension of dinoseb products were still pending.

After the registrants withdrew their requests for a suspension hearing, the American Dry Pea and Lentil Association (ADPLA) wrote to the Agency seeking a decision which would permit continued use of dinoseb on dry peas, lentils, and chickpeas in the States of Washington and Idaho. Because any direct communication with me concerning the registrability of dinoseb, except on the record of the pending cancellation hearing, would be an *ex parte* communication prohibited by 5 U.S.C. 557(d), all communications from the ADPLA were directed to appropriate officials in the Office of Pesticides and Toxic Substances. The ADPLA and its representatives were informed that any decision to permit the requested uses of dinoseb would be contrary to the final suspension decision concerning dinoseb products and would require the Agency to hold an adjudicatory hearing under Subpart D. On January 20 and January 29, 1987, the Agency received evidentiary submissions from the ADPLA in support of its request that the Agency reconsider the suspension of dinoseb as applied to use on dry peas, lentils, and chickpeas in the States of Washington and Idaho. On February 10, 1987, the Departments of Agriculture of the States of Washington and Idaho submitted applications for emergency exemptions under FIFRA section 18 to permit use of dinoseb products on peas, lentils, and chickpeas. Taken together, these submissions and applications constitute a petition under Subpart D to reconsider the final suspension of dinoseb as it applies to use on dry peas, lentils, and chickpeas in the States of Washington and Idaho.[1]

Based on the information and applications submitted, Assistant Administrator for Pesticides and Toxic Substances John A. Moore decided to recommend to me that I issue this Notice initiating a Subpart D proceeding. In order to comply with the separation of functions requirements set forth in 5 U.S.C. 554(d), his recommendation and the information and record underlying that recommendation were filed in the cancellation hearing record and served on each party to that proceeding at the same time they were transmitted to me for decision. After considering the Assistant Administrator's recommendation and the information supporting it, I decided to issue this notice initiating a Subpart D hearing to reconsider the final suspension of dinoseb as it applies to use on dry peas, lentils, and chickpeas in Washington and Idaho.

[1] Although the emergency exemption application submitted by the State of Washington also requests that dinoseb be approved for use on green peas as well as dry peas, the application does not include substantial new evidence concerning the green pea use beyond that available to the Agency at the time of the final suspension decision.

III. Analysis of the ADPLA Submission

A. Risk Issues

The ADPLA has not submitted any new information which would affect the validity of the Agency's analysis of the toxicity of dinoseb or the methodology used by the Agency to estimate exposure to dinoseb. The ADPLA did submit information concerning use practices such as application rates, number of acres treated, equipment used, etc., and concerning additional use restrictions such as closed loading systems and enclosed cabs which its members would be willing to accept. When the exposure assessment methodology underlying the suspension decision is applied to this use information, the resultant margins-of-safety for teratogenic effects are greater than many of, but within the same range as, the margins-of-safety upon which the Agency based the emergency suspension order. For example, the margin-of-safety for a farmer applying dinoseb by ground boom to 100 acres at a rate of 1.5 pounds/acre, and utilizing a closed loading system and an enclosed cab, is 33. Accordingly, although information on prior dinoseb use practices for dry peas, lentils, and chickpeas and on the practicality of additional use restrictions will be helpful in making a decision whether to modify the suspension order for these uses, and will be considered in the hearing, the information on risk issues submitted by the ADPLA does not itself constitute substantial new evidence of the sort required to initiate a Subpart D proceeding.

B. Benefits Issues

The ADPLA submission includes information and evidence on the benefits of dinoseb use on dry peas, lentils, and chickpeas which was not available to or considered by the Agency prior to entry of a final suspension order. The benefits claimed by the ADPLA for these uses are much greater than indicated by the

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information available to the Agency at that time.

The ADPLA estimates that without dinoseb, growers will suffer yield losses of 31 percent for dry peas, 37 percent for lentils, and 50 percent for chickpeas. These estimates are based on data from weed control trials conducted at Washington State University. These test plot data indicated that dinoseb used at 1.5, 2.25, and 3 pounds active ingredient per acre provided yields substantially greater than unweeded control plots. The 3 pound rate provided the highest yields on an absolute basis. Data were not provided to demostrate that yield differences between application rates were statistically significant. These trials did not consider the relative efficacy of other registered pesticides or any other weed control practice as compared to dinoseb.

The ADPLA claims that alternative chemicals such as metribuzin are not effective on the weeds which are a problem on dry peas, lentils, and chickpeas in Washington and Idaho. According to the ADPLA, this is because application rates for the alternatives necessary to control problem weeds are also toxic to the crop. The ADPLA also claims that mechanical alternatives are not practical. Although no test data were provided to support any of these claims, the evidence available to the Agency at this time does not contradict these claims.

The ADPLA estimated that the total economic losses to all producers of dry peas, lentils, and chickpeas would be about $33 million, including losses of $15.1 million for dry peas, $16.5 million for lentils, and $1.4 for chickpeas. These aggregate economic impacts were calculated by reducing the value of 1986 production of the subject crops in direct proportion to estimated yield losses. While this method is straightforward, it does not consider a number of factors. Further analysis will be required to determine whether any of these factors are significant. For example, the estimated yield losses reflect an implicit assumption that no alternative to dinoseb would be used. The effects of reduced treatment costs, changes in land use, alternative cropping practices, and commodity price adjustments were neither discussed or evaluated. Some growers might shift into production of alternative lower income producing crops such as wheat rather than sustain losses as great as those indicated. Growers that choose to remain in production may receive at least some offsetting price increase attributable to a reduction in supplies.

While the total economic losses sustained by all dry pea, lentil, and chickpea growers as a result of the unavailability of dinoseb may not be as great as for some major crops, the impact on individual growers could be unusually severe. Individual dry pea and lentil producers were facing financial strain in the production of these crops even before the suspension actions on dinoseb. Growers were realizing net returns of up to $30 per acre. Yield losses as great as those claimed by the ADPLA would result in net losses of $20–$50 per acre. Losses in this range would likely force many growers out of production of these crops and might put some growers out of business.

If the economic impacts of the unavailability of dinoseb on individual dry pea, lentil, and chickpea growers are as great as the ADPLA claims, the effect on individual growers would be more severe than the losses which the Agency projected for the major uses of dinoseb (e.g. peanuts, soybeans, potatoes, and cotton) in the emergency suspension decision. Growers of these other crops appear to be able to produce profits even without dinoseb because they have either lower projected losses (on a per acre basis), have other chemical, non-chemical, or cultural weed and disease control methods available to replace dinoseb, or have higher per acre profitability. Although the ADPLA has not fully substantiated some of its key assertions, the information on the benefits of dinoseb use for dry pea, lentil, and chickpea growers in Washington and Idaho in the ADPLA submission appears to be substantial new evidence not avilable to the Agency at the time of the final suspension decision.

C. Subpart D Determination

Under 40 CFR 164.131(a), the Administrator is to provide a hearing to reconsider a prior final suspension decision only if he determines that certain criteria have been met. Having concluded that the ADPLA has presented substantial new evidence concerning the use of dinoseb on dry peas, lentils, and chickpeas in the States of Washington and Idaho which was not available to the Agency when the final suspension order went into effect, I must now determine whether that evidence "may materially affect" that order. I have concluded that, if the evidentiary record in a hearing substantiates the ADPLA assertions concerning the short-term benefits of dinoseb use on dry peas, lentils, and chickpeas and the practicality of additional use restrictions, I might consider modifying the suspension decision to permit use on these crops while the cancellation hearing is pending. Thus, the first criterion in 40 CFR 164.131(a) has been met.

On the face of the ADPLA submission, it is questionable whether the second criterion in 40 CFR 164.131(a), that the parties in the suspension proceeding could not have discovered the new evidence "through the exercise of due diligence," has been met. Arguably, ADPLA could have provided the evidence in question to the parties in the suspension hearing, or the parties could have otherwise discovered it, prior to the entry of the final suspension order. However, given the particular circumstances at hand, including the fact that the ADPLA had no right to actively participate in the expedited suspension hearing and the short period of time in which the information in question could have been presented to the parties prior to the withdrawal of the registrants from the hearing, I have concluded that the "due diligence" requirement is not apposite to these circumstances.

Based on the above analysis, I have decided to hold a hearing under Subpart D to reconsider the final suspension order for pesticide products containing dinoseb as it applies to use on dry peas, lentils, and chickpeas in the States of Washington and Idaho.

IV. Hearing Procedures

A. Issues to be Adjudicated

Pursuant to 40 CFR 164.131(c), I am specifying those issues of fact and law to be adjudicated in the hearing convened pursuant to this notice. Because the purpose of such a hearing is only to reconsider certain aspects of my prior suspension decision and because a prompt conclusion to the hearing is a requisite of meaningful relief for the petitioners, the evidentiary presentation in the hearing shall be strictly confined to the issues of fact and law which I have determined are presented by the ADPLA submission.

The issies of fact to be adjudicated are:

1. How efficacious are dinoseb products in controlling target pests in dry peas, lentils, and chickpeas in the States of Washington and Idaho, as compared to pesticidal or other alternative methods which are available or could be made available during the pendency of the dinoseb cancellation hearing?

2. What will the economic impacts on growers, processors, distributors, and consumers be if dinoseb products remain unavailable for use on dry peas, lentils, and chickpeas in the States of Washington and Idaho during the pendency of the dinoseb cancellation hearing?

3. What have been the prior use practices for application of dinoseb products to dry peans, lentils, and chickpeas in the States of Washington and Idaho, including factors such as application method, application rate, number of acres treated per day, and equipment used, and how practical would it be to impose additional use restrictions for these uses in these locations during the pendency of the dinoseb cancellation hearing?

4. Assuming the validity of the analysis of the toxicity of dinoseb and the methodology for analysis of exposure to dinoseb upon which the suspension of dinoseb was based, what quantitative effect would adoption of particular use practices or use retrictions during the pendency of the dinoseb cancellation hearing have on the margins-of-safety for developmental toxicity associated with use of dinoseb on dry peas, lentils, and chickpeas in the States of Washington and Idaho?

The issues of law to be adjudicated are:

1. Has substantial new evidence been presented pertaining to use of dinoseb on dry peas, lentils, and chickpeas in the States of Washington and Idaho during the pendency of the dinoseb cancellation hearing?

2. Assuming the validity of the analysis of the toxicity of dinoseb and the methodology for analysis of exposure to dinoseb upon which the suspension of dinoseb was based, does the evidence presented demonstrate that the benefits of use of dinoseb on dry peas, lentils, and chickpeas in the States of Washington and Idaho during the pendency of the dinoseb cancellation hearing are likely to outweigh the risks of such use? (*i.e.*, Based on the evidence presented, should the Agency revise its prior determination that such use would constitute an imminent hazard?)

The sole objective of this hearing is to determine whether or not the order suspending all sale, distribution, and use of pesticide products containing dinoseb should be modified to permit use, and sale and distribution for use, on dry peas, lentils, and chickpeas in Washington and Idaho while the concellation hearing is pending. The ultimate registrability of dinoseb products for these uses and in these locations will be determined exclusively in the cancellation hearing. Thus, this hearing will not consider evidence concerning long-term changes in the benefits of dinoseb use which may be associated with introduction of new alternatives or other factors. In addition, many generic risk issues which are beyond the scope of this proceeding will be subject to full examination on the record in the cancellation hearing.

B. Burden of Proof

As provided by 40 CFR 164.132, the burden of proof in this proceeding shall be on the proponent(s) of modification of the final suspension order and the petitioners shall proceed first. As in all formal adjudication, all testimony must be presented and documents sponsored by a witness competent to be cross-examined on the material. It is the petitioners rather than the Agency who must make an evidentiary record substantiating the assertions in the ADPLA submission. Of course, Agency counsel may also present testimony concerning the issues of fact and law to be adjudicated.

C. Hearing Requests

The petitioners ADPLA and the States of Washington and Idaho and the Agency shall automatically be parties in the hearing. Any other person or party who seeks to participate in the hearing must submit a written hearing request describing the interest of that person or party in the proceeding and the nature and purpose of the participation sought. All requests for a hearing must be received by the Office of the Hearing Clerk within 5 calendar days from the date of publication of this Notice in the **Federal Register.** Any request received after that time will be denied. Requests for a hearing must be submitted to: Hearing Clerk (A–110). Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

D. Scheduling

As required by 40 CFR 164.131(c), I am specifying a schedule for this hearing. Any relief which the Agency may determine that the petitioners should receive would only be meaningful if my final decision is entered before the 1987 spring planting season. In recognition of the need for a prompt decision and of the narrow scope of the proceeding, I am establishing the following expedited schedule.

The Chief Administrative Law Judge shall appoint an Administrative Law Judge to preside at this proceeding within 5 calendar days from date of publication of this Notice in the **Federal Register.** The hearing shall commence as soon thereafter as practicable but in no event later than 10 calender days from the date of publication of this Notice in the **Federal Register.** The presiding Administrative Law Judge shall transmit recommended findings of fact and conclusions of law and the hearing record to me within 30 calendar days from the date of publication of this Notice in the **Federal Register.** The parties shall submit any objections to the recommended findings of fact and conclusions of law to me within 3 business days after issuance, and I will enter a final order as soon thereafter as practicable.

I recognize that the Subpart D hearing initiated pursuant to this Notice could result in delays in, or divert resources from, the pending dinoseb cancellation hearing. *In re: Cedar Chemical Company, et al.*, FIFRA Docket Nos. 590, *et al.* Accordingly, I hereby authorize the Administrative Law Judge in that proceeding, in the exercise of her discretion, to extend the deadline for transmission of a recommended decision to me by up to 45 days.

E. Separation of Functions

EPA's Rules of Practice forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives (40 CFR 164.7).

Accordingly, the following EPA offices, and the staffs thereof, are designated as the judical staff to perform the judicial function of EPA in this proceeding: the Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate office of the Administrator, and Deputy Administrator. None of the persons designated as the judicial staff may have any *ex parte* communication with the trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeing, without fully complying with the applicable regulations.

Dated: February 11, 1987.

Lee M. Thomas,

Administrator.

[FR Doc. 87–3449 Filed 2–18–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL HOME LOAN BANK BOARD

[No. AC-553]

Final Action Approval of Conversion Application; Ameriana Savings Bank, New Castle, IN

Dated: February 10, 1987.

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Notice is hereby given that on January 13, 1987, the Office General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Ameriana Savings Bank, New Castle, Indiana for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Indianapolis, Post Office Box 60, Indianapolis, Indiana 46206-0060.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Acting Secretary.

[FR Doc. 87-3272 Filed 2-17-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-555]

Final Action Approval of Conversion Application; Bristol Federal Savings Bank, Bristol, CT

Dated: February 10, 1987.

Notice is hereby given that on January 27, 1987, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Bristol Federal Savings Bank, Bristol, Connecticut, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Boston, Post Office Box 9106, Boston, Massachusetts 02205.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Acting Secretary.

[FR Doc. 87-3273 Filed 2-17-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-554]

Final Action Approval of Conversion Application; Federated Financial Savings and Loan Association, Wauwatosa, WI

Dated: February 10, 1987.

Notice is hereby given that on December 11, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Federated Financial Savings and Loan Association, Wauwatosa, Wisconsin for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street NW., Washington, DC 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Chicago, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Acting Secretary.

[FR Doc. 87-3274 Filed 2-17-87; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Decoquinate for Use in Goats; Availability of Data

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of environmental information to be used in support of a new animal drug application (NADA) for use of decoquinate in the feed of goats. The information, contained in Public Master File (PMF) 5012, was compiled under Interregional Research Project No. 4 (IR-4), which is a national agriculture program for obtaining clearances for use of agricultural products for minor or special uses.

ADDRESS: Submit NADA's or supplemental NADA's to Document Control Section (HFV-16), Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: The use of decoquinate in feed for goats is a new animal drug use under section 201(w) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(w)). As a new animal drug it is subject to section 512 of the act (21 U.S.C. 360b) requiring that its uses be the subject of an approved NADA. Rutgers University, IR-4 Project, Cook College, New Brunswick, NJ 08903, has provided an environmental assessment to support the use of decoquinate in the feed of goats for the prevention of coccidiosis. The environmental assessment concerning possible impacts at the site of use of the animal drug product is contained in PMF 5012. Sponsors of NADA's or supplemental NADA's may reference without further authorization the PMF to support approval. An NADA or supplemental NADA should include, in addition to a reference to the PMF, drug labeling and other information needed for approval, such as data concerning target animal safety and effectiveness; human food safety; manufacturing methods, facilities, and controls; and information addressing the potential environmental impacts of the manufacturing process. Persons desiring more information concerning the PMF or requirements for approval of an NADA may contact Adriano R. Gabuten (address above).

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a copy of the environmental assessment concerning possible impacts at the site of use of the new animal drug product may be seen in PMF 5012 and in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Dated: February 10, 1987.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 87-3270 Filed 2-17-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87M-0010]

Paragon Optical, Inc.; Premarket Approval of PARAPERM E.W.® (Pasifocon C) Rigid Gas Permeable Contact Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Paragon Optical, Inc., Mesa, AZ, for premarket approval, under the Medical Device Amendments of 1976, of the spherical PARAPERM E.W.® (pasifocon C) Rigid Gas permeable Contact Lens (clear and tinted). After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by March 20, 1987.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On January 23, 1986, Paragon Optical, Inc., Mesa, AZ 85201, submitted to CDRH an application for premarket approval of the PARAPERM E.W.® (pasifocon C) Rigid Gas Permeable Contact Lens (clear and tinted). The spherical lens is indicated for daily wear and extended wear from 1 to 7 days between removals for cleaning and disinfection as recommended by the eye care practitioner. The lens is indicated for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic or hyperopic and for the correction of corneal astigmatism of 4.00 diopters (D) or less that does not interfere with visual acuity. The lenses range in powers from −20.00 D to +12.00 D and are to be disinfected using a chemical lens care system only. The tinted lens contains the color additive D&C Green No. 6 in accordance with the color additive listing provisions of 21 CFR 74.3206.

On July 18, 1986, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On December 31, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of the PARAPERM E.W.® (pasifocon C) Rigid Gas Permeable Contact Lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41-58), as amended. Accordingly, whenever CDRH publishes a notice in the **Federal Register** of approval of a new solution for use with an approved lens, each contact lens manufacturer or PMA holder shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 20, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 10, 1987.

James S. Benson,

Acting Director, Center for Devices and Radiological Health.

[FR Doc. 87-3311 Filed 2-17-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87M-0008]

Precision-Cosmet Co., Inc.; Premarket Approval of Kelman™ Omnifit II Anterior Chamber Intraocular Lens, Model 2100

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval, under the Medical Device Amendments of 1976, of the Kelman™ Omnifit II Anterior Chamber Intraocular Lens, Model 2100, sponsored by Precision-Cosmet Co., Inc., Minnetonka, MN. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by March 20, 1987.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy C. Brogdon, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION: On August 15, 1985, Precision-Cosmet Co., Inc., Minnetonka, MN 55345, submitted to CDRH an application for premarket approval of the Kelman™ Omnifit II Anterior Chamber Intraocular Lens, Model 2100. The device is indicated for patients 60 years of age and older where a cataractous lens has been removed by primary intracapsular cataract extraction; or primary extracapsular

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cataract extraction where there is a structural reason that the anterior chamber lens is the preferred one; or other primary extracapsular cataract extraction provided that this be performed only after the physician has compared the published results of the anterior chamber lens with posterior chamber lenses; or in a secondary implant procedure. The device is available in a range of powers from 11 diopters (D) through 24 D in 0.5 D increments.

On May 22, 1986, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On July 31, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Nancy C. Brogdon (HFZ–460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 20, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 10, 1987.

James S. Benson,

Acting Director, Center for Devices and Radiological Health.

[FR Doc. 87–3310 Filed 2–17–87; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Medicaid Program; Notice of Hearing: Reconsideration of Disapproval of a Missouri State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of Hearing.

SUMMARY: This notice announces an administrative hearing on March 18, 1987 in Kansas City, Missouri to reconsider our decision to disapprove Missouri State Plan Amendment 86–1.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk March 5, 1987.

FOR FURTHER INFORMATION, CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594–8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove a Missouri State Plan Amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Missouri SPA 86–1 violates Federal Regulations at 42 CFR 435.725(c), 435.733(c) and 435.832(c). Missouri SPA 86–1 contains a Medicaid post-eligibility policy for the treatment of court-ordered attorney fees, guardian commissions, and other related court costs. This policy would provide that these costs be deducted from an institutionalized Medicaid individual's income when calculating the individual's liability for the cost of the institutional care.

HCFA has determined that the proposed deduction violates regulations at 42 CFR 435.725(c), 435.733(c) and 435.832(c). These regulations provide only for certain specific categories of deductions when computing the individual's liability for the cost of his or her institutional care. Court-ordered attorney fees, guardian commissions, and other related court costs are not among the categories specified in the regulations.

The State submitted the proposed amendment because of a decision by the Missouri Court of Appeals in the case of *Missouri Division of Family Services* v. *Barclay* 705 S.W.2d 518 (Mo. App. 1985). In its decision, the court found that court-ordered attorney fees, guardianship fees and related court costs should be considered remedial care costs and, therefore, deducted from a recipient's income on that basis.

While remedial care costs are an existing deductible category in the regulations (42 CFR 435.725(c)(4), 435.733(c)(4), and 435.832(c)(4)), HCFA does not believe that court-ordered attorney fees, guardianship fees, and related court costs are remedial care costs under the regulations. These expenses do not benefit a recipient medically and are not health care expenses. They are not necessary for or a part of, an individual's remedial care.

The notice to Missouri announcing an administrative hearing to reconsider our disapproval of its State plan amendment reads as follows:

Michael V. Reagen, Ph.D.,
Director, Department of Social Services, P.O. Box 1527, Jefferson City, Missouri 65102–1527

Dear Dr. Reagen: This is to advise you that your request for reconsideration of the decision to disapprove Missouri State Plan Amendment (SPA) 86–1 was received on December 31, 1986.

Missouri SPA 86–1 contains a Medicaid post-eligibility policy for the treatment of court ordered attorney fees, guardian commissions, and other related court costs. This policy would provide that these costs be deducted from an institutionalized Medicaid individual's income when calculating the individual's liability for the cost of the institutional care.

You have requested a reconsideration of whether this plan amendment conforms to the requirements for approval under the Social Security Act and pertinent Federal regulations. The issue to be considered at the hearing is whether court-ordered attorney fees, guardianship fees and related court costs should be considered expenses for remedial care and, therefore, deducted under 42 CFR sections 435.725(c)(4), 435.733(c)(4), or 435.832(c)(4).

I am scheduling a hearing on your request to be held on March 18, 1987 at 10:00 a.m. in Room 215, Federal Office Building, 601 East 12th Street, Kansas City, Missouri. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594–8261.

Sincerely,

William L. Roper, M.D.,

Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: January 28, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 87–3298 Filed 2–17–87; 8:45 am]

BILLING CODE 4120–03–M

Privacy Act of 1974; Systems of records

AGENCY: Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

ACTION: Notice of systems of records.

SUMMARY: In accordance with the requirments of the Privacy Act of 1974, we are proposing to establish a system of records, "Health Care Financing Administration (HCFA) Correspondence Handling and Processing System," HHS/HCFA/OMB No. 09–70–3003. We have provided background information about the system in the "Supplementary Information" section below. HCFA invites public comments by March 20, 1987, with respect to routine uses of the system.

DATES: HCFA filed a new system report with the Speaker of the House, the President of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Executive Office of Management and Budget (EOMB), on February 11, 1987. The system of records, including routine uses, will become effective April 13, 1987, unless HCFA receives comments which would convince us to make a contrary determination.

ADDRESS: The public should address comments to Mr. Richard A. DeMeo, Privacy Act Office, Office of Management and Budget, Health Care Financing Administration, Room G–A–1, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Mr. Gilbert F. Webb, Division of Medicare Operations Support, Health Care Financing Administration, Room A–1, 1717 Equitable Building, 6325 Security Boulevard, Baltimore, Maryland 21207, telephone: 301–594–7210.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a system of tracking correspondence under authority of 42 CFR 401.101 to 401.148, "Confidentiality and Disclosure," and section 1106(a) of the Social Security Act, 42 U.S.C. 1306(a).

These regulations and directives establish under what conditions Medicare information shall be made available to the public as well as Freedom of Information Act rules that apply to such disclosure of information.

The Privacy Act permits us to disclose information without the consent of the individual for "routine uses"—that is, disclosure for purposes that are compatible with the purposes for which we collect the information. The proposed routine uses in the system meet the compatibility criteria since the information is collected for answering and tracking correspondence dealing with Medicare beneficiaries.

We anticipate that disclosure under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: February 10, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

09–70–3003

SYSTEM NAME:

Health Care Financing Administration (HCFA) Correspondence Handling and Processing System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Care Financing Administration
Office of Management and Budget
Office of Administrative Services
Division of Medicare Operations Support
Room A–1, 1717 Equitable Building
6325 Security Boulevard
Baltimore, Maryland 21207

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any beneficiary or group of beneficiaries who writes directly to HCFA, and also persons who write on behalf of beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

CHAPS (Correspondence Handling and Processing System)

MBCCS (Master Beneficiary Case Control System)

Information in the record includes the following:

1. Beneficiary Name
2. Beneficiary social security number or railroad retirement number
3. Branch to which case is assigned
4. Correspondence control number
5. Date of initial entry and any subsequent updating
6. Subject of request
7. Technician's identification number
8. Location of case
9. To whom or where case released
10. Date record accessed
11. Due date
12. Type(s) of information required
13. Cross reference

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 CFR 401.101 to 401.148.

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Section 1106(a) of the Social Security Act, 42 U.S.C. 1306(a).

PURPOSE OF THE SYSTEM:

This system is used to track, control, and respond to correspondence from the public, other government agencies, contractors, and members of the Congress.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosures may be made:

1. To a congressional office from the record of an individual in response to an inquiry from the congressional office at the request of that individual.

2. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

4. To the Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Act relating to railroad employment.

5. Third-party contracts (without the consent of the individual to whom the information pertains) in situations where the party to be contacted has, or is reasonably expected to have information relating to the individual's capability to manage his or her affairs or to his or her eligibility for an entitlement to benefits under the Medicare program when:

(a) The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exist: When there is a reasonable basis to conclude that the individual is of questionable mental capability, cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual.) or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's eligibility to benefits under the Medicare program; the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement of system activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in magnetic media (e.g., magnetic tape and computer discs) and in paper form.

RETRIEVABILITY:

The data in this system are retrieved by name, social security number, or correspondence control number.

SAFEGUARDS:

Safeguards for automated records have been established in accordance with the Department of HHS' Automated Data Processing Manual, "Part 6, ADP System Security." This includes maintaining the records in a secure enclosure.

Access to specific records is limited to those who have a need for them in the performance of their official duties.

Paper records are maintained in locked files or in buildings which are secured after normal business hours.

RETENTION AND DISPOSAL:

Records are maintained on-line in the system from the time of control until 3 months after the final response is released.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Medicare Operations Support, Office of Management and Budget, Health Care Financing Administration, Room A-1, 1717 Equitable Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the system manager at the address indicated above and specify name or SSN.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should reasonably specify the records content being sought. You may also request an accounting of disclosures that have been made of your records, if any. (These procedures are in accordance with Departmental Regulations (45 CFR 5b.5 (a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the system manager named above and reasonably identify the record and specify the information to be contested, and state the corrective action sought and your reasons for requesting the correction, along with information to show how the record is inaccurate, incomplete, untimely, or irrelevant. (These procedures are in accordance with Departmental Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORIES:

Incoming correspondence and responses to such correspondence.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 87-3376 Filed 2-17-87; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Addition of Certain Lands to the Nisqually Indian Reservation

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1. Notice is hereby given that under the authority of Section 7 of the Act of June 18, 1934 (25 U.S.C. 467; 48 Stat. 986), the hereinafter described land located in Thurston County was proclaimed a part of the Nisqually Indian Reservation effective January 26, 1987, for the exlcusive use of Indians entitled by enrollment or tribal membership to residence at such reservation.

Willamette Meridian Thurston County, Washington

Township 18 North, Range 1 East, Section 34: that portion of Government Lot 6, (outside the Indian Reservation) lying south of Secondary State Highway No. 5-1, and that portion of the northwest quarter of the southwest quarter lying south of Secondary Highway No. 5-1, EXCEPT from said northwest quarter of the southwest quarter the west 1000 feet as measured along the south line thereof.

Said land being subject to all valid rights, reservations, rights-of-way and easement of record.

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

[FR Doc. 87-3282 Filed 2-17-87; 8:45 am]

BILLING CODE 4310-02-M

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and explanatory material may be obtained by contacting the Bureau's Information Collection Clearance Officer at the phone number listed below. Comments on and suggestions for the requirements should be made directly to the Bureau's clearance officer and the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395-7340.

Title: 25 CFR Part 38, Subchapter E, Education Personnel (Volunteer Application Form for Bureau of Indian Affairs Schools).

Abstract: The information required of a volunteer applicant is needed to allow the school board and school supervisor to determine an applicant's eligibility, contact applicants, and interview, screen, and select applicants for appropriate volunteer assignments. The information collection will involve individuals and volunteer organizations.

Bureau form No.: BIA-62121.

Frequency: On occasion.

Description of respondents: Individuals and volunteer organizations.

Annual Responses: 218.

Annual burden hours: 145.3.

Bureau clearance officer: Cathie Martin (202) 343-3577.

Nancy C. Garrett,

Acting Deputy to the Assistant Secretary/Director—Indian Affairs (Indian Education Programs).

[FR Doc. 87-3283 Filed 2-17-87; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[Co-940-07-4220-11; C-027843]

Colorado; Proposed Continuation of Withdrawal of Lands for Use as an Area for Scientific Study and Observation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, proposes that the order which withdrew lands for an indefinite period of time for use as an area for scientific study and observation, be modified and the withdrawal be continued for 20 years insofar as it affects 2,896.73 acres of National Forest System land. The land will remain closed to surface entry and mining, but not to mineral leasing.

DATE: Comments should be received by May 19, 1987.

ADDRESS: Comments should be addressed to State Director, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office (303) 236-1768.

The Forest Service, U.S. Department of Agriculture, proposes that the existing withdrawal made by Public Land Order 1960, dated August 24, 1959, as amended, for an indefinite period of time, be modified to expire in 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. This order affects lands in T. 40 N., R. 16 W., and Tps. 39 and 40 N., R. 17 W., New Mexico Principal Meridian, Colorado. This area aggregates approximately 2,896.73 acres of land in the San Juan National Forest, Dolores County, Colorado.

The purpose of this withdrawal is for the administration and protection of the Narraguinnep Natural Area. No change is proposed in the purpose or segregative effect of the withdrawal. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. Notice of the final determination will be published in the **Federal Register**. The existing withdrawal will continue until such determination is made.

Richard D. Tate,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-3291 Filed 2-17-87; 8:45 am]

BILLING CODE 4310-JB-M

[CO-940-07-4220-11; C-024415]

Colorado; Notice of Proposed Continuation of Withdrawal of Lands for Use as Recreation Areas and Campgrounds

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, proposes that the order which withdrew lands for an indefinite period of time for use as recreation areas and campgrounds, be modified and the withdrawal be continued for 20 years insofar as it affects 90.00 acres of National Forest System land. The land will remain closed to surface entry and mining, but not to mineral leasing.

DATE: Comments should be received by May 19, 1987.

ADDRESS: Comments should be addressed to State Director, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 236-1768.

The Forest Service, U.S. Department of Agriculture, proposes that the existing withdrawal made by Public Land Order 1873, dated June 4, 1959, as amended, for an indefinite period of time, be modified to expire in 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following identified lands:

New Mexico Principal Meridian—San Juan National Forest

North Canyon Campground Site

T. 36 N., R. 6 W.,
Sec. 16, W½NE¼NW¼, E½NW¼NW¼, and SW¼NW¼;

Vallecito Dam Area

T. 36 N., R. 6 W.,
Sec. 20, NW¼SW¼NW¼.

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The areas described aggregate 90.00 acres in La Plata County.

The purpose of this withdrawal is for the administration and protection of the North Canyon Campground Site and the Vallecito Dam Area. No change is proposed in the purpose or segregative effect of the withdrawal. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. Notice of the final determination will be published in the Federal Register. The existing withdrawal will continue until such determination is made.

Richard D. Tate,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-3303 Filed 2-17-87; 8:45 am]

BILLING CODE 4310-JB-M

[CO-940-07-4220-11; C-023760]

Colorado; Proposed Continuation of Withdrawal of Lands for Use as an Administrative Site and Campground

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, proposes that the order which withdrew lands for an indefinite period of time for use as an administrative site and campground, be modified and the withdrawal be continued for 20 years insofar as it affects 32.50 acres of National Forest System land. The land will remain closed to surface entry and mining, but not to mineral leasing.

DATE: Comments should be received by May 19, 1987.

ADDRESS: Comments should be addressed to State Director, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office (303) 236-1768.

The Forest Service, U.S. Department of Agriculture, proposes that the existing withdrawal made by Public Land Order 2284, dated February 28, 1961, as amended, for an indefinite period of time, be modified to expire in 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following identified lands:

Sixth Principal Meridian

Gunnison National Forest, Dorchester Administrative Site

T. 12 S., R. 83 W.,
Sec. 28, NW¼SW¼SE¼SE¼.

White River National Forest, Osgood Campground

T. 10 S., R. 88 W.,
Sec. 9, S½NW¼SW¼ and NW¼SW¼ SW¼.

The areas described aggregate 32.50 acres in Gunnison and Pitkin Counties.

The purpose of this withdrawal is for the administration and protection of the Dorchester Administrative Site and the Osgood Campground. No change is proposed in the purpose or segregative effect of the withdrawal. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. Notice of the final determination will be published in the Federal Register. The existing withdrawal will continue until such determination is made.

Richard D. Tate,

Chief, Branch of Lands and Minerals Operations

[FR Doc. 87-3304 Filed 2-17-87; 8:45 am]

BILLING CODE 4310-JB-M

[OR-030-7-4322-02; GP7-116]

Vale District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management.

ACTION: Notice of meeting.

SUMMARY: The Vale District Grazing Advisory Board will meet Wednesday, March 11 in the Vale District Office. The meeting agenda will include discussion of remanded grazing decisions, the district policy regarding non-renewable use, the status of allotment evaluations, the Whitehorse Ranch allotment management plan, and an update on Oregon BLM's organization study.

DATES: The meeting will be held Wednesday, March 11 in the Vale District Office conference room.

ADDRESS: The Vale District Office is located at 100 East Oregon Street, Vale, Oregon, 97918.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Public Affairs Specialist, Vale District Office, 503-473-3144.

William C. Calkins,

District Manager.

[FR Doc. 87-3296 Filed 2-17-87; 8:45 am]

BILLING CODE 4310-33-M

[NM NM 30737]

New Mexico; Proposed Reinstatement of Termination Oil and Gas Lease

AGENCY: United States Department of the Interior, Bureau of Land Management, Santa Fe, New Mexico 87504. Under the provisions of 43 CFR 3108.2-3, John A. Yates, petitioned for reinstatement of oil and gas lease NM NM 30737 covering the following described lands located in Chaves County, New Mexico:

T. 5 S., R. 23 E., NMPM, New Mexico

Sec. 15, All;
Sec. 22, All;
Sec. 27, All;
Sec. 34, S½;
Sec. 35, N½.

Containing 2,560.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent.

Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, September 1, 1986.

Dated: January 29, 1987.

Tessie R. Anchondo,

Chief, Adjudication Section.

[FR Doc. 87-3294 Filed 2-17-87; 8:45 am]

BILLING CODE 4310-FB-M

[OK NM 46287]

New Mexico; Proposed Reinstatement of Termination Oil and Gas Lease

AGENCY: United States Department of the Interior, Bureau of Land Management, Santa Fe, New Mexico 87504. Under the provisions of Pub. L. 97-451, Ratliff Exploration Company and Mustang Production Company, petitioned for reinstatement of oil and gas lease OK NM 46287 covering the following described lands located in Major County, Oklahoma:

T. 21 N., R. 14 W., I.M., Oklahoma
Sec. 3, S½SW¼.

Containing 80.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $10.00 per acre per year and royalties shall be at the rate of 18⅔ percent, computed on a sliding scale 4 percentage points greater than the competitive royalty schedule attached to the lease. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, October 1, 1985.

Dated: January 29, 1987.

Tessie R. Anchondo,

Chief, Adjudication Section.

[FR Doc. 87-3295 Filed 2-17-87; 8:45 am]

BILLING CODE 4310-FB-M

Off-Road Vehicle Designation Decisions, Ridgecrest Resource Area; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Decision to update and revise off-road vehicle route designations which open, close, or limit vehicle use of routes of travel on public lands in the Ridgecrest Resource Area which are shown on the Jawbone-Dove Springs Desert Access Guide.

SUMMARY: Final decisions to update and revise off-road vehicle designations have been made for an area in eastern Kern County in order to protect the resources of the area, to promote safe use of the lands, and to minimize conflicts among users. The designations were prepared following the designation criteria defined in 43 CFR 8342.1 and with the authority of 43 CFR 8000.0-6, 8340, 8341, 8342 and 8354. Public comments concerning these off-road vehicle route designations in the Ridgecrest Resource Area were received during December 1985, and August 1986. The California Desert Conservation area has been mapped using a series of 21 maps called the Desert Access Guides. These guides show vehicle route of travel designations which were made in the California Desert Conservation Area Plan. The route designations are now being updated and revised as new information becomes available regarding needed changes to improve use opportunities or protect resource values.

This notice serves to inform the public that 22 decisions to revise route designations have been completed for the Jawbone-Dove Springs Desert Access Guide in the Ridgecrest Resource Area. The area of this guide encompasses approximately 500,000 acres of BLM administered public land in the desert portion of eastern Kern County and includes such locations as Kelso Valley, Jawbone Canyon, Dove Springs Canyon and Middle Knob.

DATE: This amendment is effective upon publication of this notice and will remain in effect until rescinded or modified by the authorized officer. Enforcement of these routes will be implemented as routes are signed or as maps are printed and become available to the public.

ADDRESSES: Send inquiries to District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507 or the Area Manager, Ridgecrest Resource Area, 112 East Dolphin Avenue, Ridgecrest, California 93555. Route decision records and maps showing vehicle designations are available for public review at the Ridgecrest Resource Area Office from 7:30 am to 4:00 pm on Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dave Mensing, District Outdoor Recreation Planner at (714) 351-6401, or Steve Smith, Ridgecrest Resource Area Chief of Resource Protection and Visitor Management at (619) 375-7125.

SUPPLEMENTARY INFORMATION: These vehicle route designations are enforceable under the authority provided in the Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.), the Endangered Species Act (16 U.S.C. 1701 et seq.), E.O. 11644 (Use Of Off-Road Vehicle On The Public Lands), and 3 CFR 74.332 as amended by E.O. 11989, 421 FR 26959 (May 27, 1977). Any person who violates or fails to comply with the vehicle route designations as governed by 43 CFR Part 8341 is subject to arrest, conviction and punishment pursuant to appropriate laws and regulations. Such punishment may be a fine of not more than $1,000.00 and/or imprisonment for not longer than twelve months.

Dated: February 3, 1987.

H.W. Riecken,

Acting District Manager.

[FR Doc. 87-3297 Filed 2-17-87; 8:45 am]

BILLING CODE 4310-40-M

[CA-010-07-4322-02]

Bakersfield District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Bakersfield District Advisory Council Meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 94-579 and 43 CFR Part 1780 that the Bakersfield District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet formally March 20 and 21, 1987 in Hollister, California. The Friday meeting will begin at 9 a.m. at the Hollister Women's Club, 1149 Powell Street, Hollister, California. The meeting on Saturday will consist of a field trip to the Clear Creek Management Area and to the site of the Silver Creek Land Acquisition Proposal, departing at 8 a.m. from the BLM Hollister Resource Area Office, 402 Parkhill, Hollister.

SUPPLEMENTARY INFORMATION: The District Advisory Council meeting agenda on Friday will include updates on the Walker Pass Coordinated Resource Management Plan and the Eastern Sierra Transmission Corridor Study, evaluation of the implementation of the Clear Creek Management Plan, and an overview of the Silver Creek Land Acquisition Proposal.

The public is invited to address the Council regarding any BLM land management issue on Friday, March 20, from 1 p.m. to 2 p.m.

Members of the public are welcome to attend any portion of the two-day meeting. Participants in the Saturday tour must meet at 8 a.m. at the BLM Hollister Resource Area Office, 402 Parkhill, and must provide their own meals and four-wheel-drive transportation.

Summary minutes of the meeting will be maintained in the Bakersfield District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Marta Witt, Public Affairs Officer,

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Bakersfield District Office, Bureau of Land Management, 800 Truxtun Avenue, Room 311, Bakersfield, California 93301; (805) 861–4191.

Nancy J. Cotner,

Associate District Manager.

February 12, 1987.

[FR Doc. 87–3450 Filed 2–17–87; 12:50 pm]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Notice of Receipt of Applications for Permits; Memphis Zoological Gardens

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–714961

Applicant: Memphis Zoological Gardens, Memphis, TN.

The applicant requests a permit to export one male lowland gorilla (*Gorilla gorilla gorilla*) to the Chapultepec Park Zoo, Mexico City, Mexico. The applicant contends that the gorilla is sterile, thus surplus to the U.S. breeding program, and that the recipient will use the animal for conservation education purposes. Mexico is not a party to the Convention on International Trade in Endangered Species (CITES).

PRT–714959

Applicant: Memphis Zoological Gardens, Memphis, TN.

The applicant requests a permit to export one pair of orangutans (*Pongo pygmaeus*) to the Chapultepeck Park Zoo, Mexico City, Mexico. The applicant contends that these orangutans are not desirable for use in the U.S. breeding program because they are subspecific hybrids, and that the recipient will use the animals for conservation education purposes. Mexico is not a party to the Convention on International Trade in Endangered Species (CITES).

PRT–715024

Applicant: Worldwide Primates, Inc., Miami, FL.

The applicant requests a permit to purchase in interstate commerce and export two male and two female ringtailed lemurs (*Lemur catta*) and two male and two female black lemurs (*Lemur macaco*) to Ichikawa Municipal Zoological and Botanical Gardens, Ichikawa, Japan for the purposes of propagation of the species and conservation education. The four ringtailed lemurs were born in captivity at, and would be purchased from, Lousiana Purchase Gardens, Monroe, LA; the four black lemurs were born in captivity at, and would be purchased from, Duke University Primate Center.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) in Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above addresss.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: February 9, 1987.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87–3299 Filed 2–17–87; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 7, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by March 5, 1987.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

Napa County

Pope Valley, *Aetna Springs Resort*, 1600 Aetna Springs Rd.

CONNECTICUT

Fairfield County

Redding (also in Wilton), *Georgetown Historic District*, Roughly bounded by US 7, Portland, CT 107, and Norwalk River

Harford County

Bristol, *Bristol Girls' Club*, 47 Upson St.
Burlington, *Hart's Corner Historic District*, 247 Monce Rd., 102, and 105 Stafford Rd.

KENTUCKY

Jefferson County

Louisville, *Merriwether House (Jefferson County MRA)*, 6421 Upper River Rd.
Louisville, *Nock, Samuel, House (Boundary Increase) (Jefferson County MRA)*, 1401 Elm Rd.
Louisville, *Stitzel, Arthur P., House (Jefferson County MRA)*, 9707 Shelbyville Rd.

MASSACHUSETTS

Barnstable County

Barnstable, *Baker, Benjamin Jr., House (Barnstable MRA)*, 1579 Hyannis Rd.

Bristol County

Fall River, *Sacred Heart School (Fall River MRA)*, 90 Linden St.

Hampden County

Springfield, *Etheli Apartment House*, 70 Patton St.
Springfield, *Laurel Hall*, 72–74 Patton St.

Worcester County

Westminster, *Wood, Abijah, House*, 174 Worcester Rd.
Westminister, *Wood, Nathan, House*, 164 Worcester Rd.

NEW JERSEY

Burlington County

Roebling vicinity, *Providence Presbyterian Church of Bustleton*, Jct. of Old York and Burlington-Bustleton Rds.

Hudson County

Hoboken, *Buildings at 1200–1206 Washington Street*, 1200–1206 Washington St.

Morris County

Morristown vicinity, *Glynallen*, Canfield Rd.

Somerset County

McDonald's-Kline's Mill

NORTH CAROLINA

Alamance County

Mebane vicinity, *Henderson Scott Farm Historic District*, Jct. of NC 119 and SR 2135

OREGON

Hood River County

Hood River, *Copple, Simpson, House*, 911 Montello Ave.

Josephine County

Grants Pass, *Lundburg, George H., House*, 404 NW A St.

Marion County

Salem, *Ladd and Bush Bank Architectural Cast Iron*, 302 State St.

Multnomah County

Portland, *Durham—Jacobs House*, 2138 SW Salmon St.
Portland, *Pipes, Martin Luther House*, 2675 SE Vista Ave.
Portland, *Portland Fire Station No. 17*, 824 NW 24th Ave.
Portland, *Town Club, The*, 2115 SW Salmon St.

Yamhill County

Dayton, *Avery House (Dayton MRA)*, 403 Church St.
Dayton, *Baptist Church (Dayton MRA)*, 301 Main St.

Dayton, *Baxter House (Dayton MRA)*, 407 Church St.
Dayton, *Brookside Cemetery (Dayton MRA)*, S end of Third St.
Dayton, *Cain House (Dayton MRA)*, 208 Alder St.
Dayton, *Carter—Goodrich House (Dayton MRA)*, 521 Church St.
Dayton, *Commercial Club—Stuckey, S.C., Building (Dayton MRA)*, 304 Ferry St.
Dayton, *Courthouse Square (Dayton MRA)*, Bounded by Third, Fourth, Ferry, and Main Sts.
Dayton, *Dayton Auto and Transfer Company Building (Dayton MRA)*, 411 Ferry St.
Dayton, *Dayton Common School (Dayton MRA)*, 504 Fourth St.
Dayton, *Dayton High School (Dayton MRA)*, 801 Ferry St.
Dayton, *Dayton Methodist Episcopal Church (Dayton MRA)*, 302 Fourth St.
Dayton, *Dayton Opera House (Dayton MRA)*, 318 Ferry St.
Dayton, *Diehl—Seitters House (Dayton MRA)*, 527 Church St.
Dayton, *Evangelical United Brethren Church (Dayton MRA)*, 302 Fifth St.
Dayton, *Fischer, Carl, Meats (Dayton MRA)*, 400 Ferry St.
Dayton, *Fletcher—Stretch House (Dayton MRA)*, 401 Oak St.
Dayton, *Foster Oil Company (Dayton MRA)*, 216 Ferry St.
Dayton, *Free Methodist Church (Dayton MRA)*, 411 Oak St.
Dayton, *Gabriel—Filer House (Dayton MRA)*, 525 Church St.
Dayton, *Gabriel—Will House (Dayton MRA)*, 401 Third St.
Dayton, *Harrington House (Dayton MRA)*, 212 Mill St.
Dayton, *Harris Building (Dayton MRA)*, 302 Ferry St.
Dayton, *Hibbert, W.S., House (Dayton MRA)*, 426 Fifth St.
Dayton, *Hole House (Dayton MRA)*, 623 Ferry St.
Dayton, *House at 700 Church Street (Dayton MRA)*, 700 Church St.
Dayton, *Jessen—Goodrich House (Dayton MRA)*, 324 Sixth St.
Dayton, *Kreitz House (Dayton MRA)*, 627 Church St.
Dayton, *Lewis—Shippy House (Dayton MRA)*, 421 Sixth St.
Dayton, *Londershausen House (Dayton MRA)*, 402 Main St.
Dayton, *Londershausen House (Dayton MRA)*, 309 Main St.
Dayton, *Mabee—Mayberry House (Dayton MRA)*, 309 Seventh St.
Dayton, *McNamar Building (Dayton MRA)*, 310–312 Ferry St.
Dayton, *McNish House (Dayton MRA)*, 1005 Ferry St.
Dayton, *Mellinger House (Dayton MRA)*, 414 Fifth St.
Dayton, *Mellinger—Ponnay House (Dayton MRA)*, 603 Palmer Lane
Dayton, *Methodist Episcopal Church (Dayton MRA)*, 202 Fourth St.
Dayton, *Monahan House (Dayton MRA)*, 120 Fifth St.
Dayton, *Morse House (Dayton MRA)*, 409 Oak St.
Dayton, *Morse House (Dayton MRA)*, 101 Fifth St.
Dayton, *Nichols House (Dayton MRA)*, 303 Main St.
Dayton, *Oregon Mutual Merchant Fire Insurance Association Office (Dayton MRA)*, 308 Ferry St.
Dayton, *Palmer House (Dayton MRA)*, 600 Ferry St.
Dayton, *Powell, Curtis W., House (Dayton MRA)*, 524 Ash St.
Dayton, *Rippey House (Dayton MRA)*, 533 Ash St.
Dayton, *Smith, Andrew, House No. 1 (Dayton MRA)*, 404 Main St.
Dayton, *Smith—Jones House (Dayton MRA)*, 306 Fifth St.
Dayton, *Stuart, Dr., House (Dayton MRA)*, 103 Ferry St.
Dayton, *Turner House (Dayton MRA)*, 521 Ferry St.

PENNSYLVANIA

Allegheny County

Wilmerding, *Westinghouse Air Brake Company General Office Building*, Marguerite and Bluff Sts.

Chester County

Phoenixville, *Phoenixville Historic District*, Roughly bounded by Penn St., RR tracks, Fourth Ave., and Wheatland St.

Erie County

Erie, *Modern Tool Company*, NE jct. of State and Fourth Sts.

SOUTH CAROLINA

Greenville County

Greer, *Greer Depot*, 311 Trade St.

Richland County

Columbia, *Claussen's Bakery (Columbia MRA: Supplement IX)*, 2001–2003 Green St.

York County

Fort Mill vicinity, *White, William Elliott, House*, North White St.

SOUTH DAKOTA

Brookings County

Brookings, *Fishback House (Boundary Increase)*, 501 Eighth St.

TENNESSEE

Davidson County

Nashville, *Lebanon Road Stone Arch Bridge (Omohundro Waterworks System TR)*, Over Brown's Creek at Lebanon Rd.
Nashville, *Omohundro Water Filtration Complex District (Omohundro Waterworks System TR)*, NE of Omohundro Dr.

Fentress County

Allardt, *Gernt, Bruno, House*, Base Line Rd.

Hamilton County

Chattanooga, *East Side Junior High School*, 2220 E. Main St.

Shelby County

Collierville vicinity, *Greenlevel*, 853 Collierville-Arlington Rd. S.
Memphis, *Union Avenue Methodist Episcopal Church, South*, 2117 Union Ave.

[FR Doc. 87–3286 Filed 2–17–87; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Research Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the A.I.D. Research Advisory Committee meeting on March 5 and 6, 1987 at the One Washington Circle Hotel, One Washington Circle NW., Washington, DC, Conference Center. The Committee will discuss research policy questions related to the Agriculture Program of the Science and Technology Bureau.

The meeting will begin at 9:00 a.m. and adjourn at 5:30 p.m. The meeting is open to the public. Any interested persons may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee and to the extent the time available for the meeting permits. Dr. Curtis Jackson, Director, Office of Research and University Relations, Bureau for Science and Technology, is designated as the A.I.D. representative at the meeting. It is suggested that those desiring more specific information contact Dr. Jackson, 1601 N. Kent Street, Arlington, Virginia 22209 or call area code (703) 235–8929.

Dated: February 9, 1987.

Curtis Jackson,

A.I.D. Representative, Research Advisory Committee.

[FR Doc. 87–3366 Filed 2–17–87; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30972]

Delaware and Hudson Railway Company; Lease and Trackage Rights Exemption; Springfield Terminal Railway Company; Exemption

Delaware and Hudson Railway Company (D&H) and Springfield Terminal Railway Company (ST) filed a notice of exemption for D&H to lease to ST the following lines of railroad in the vicinity of Fort Edward, NY:

(1) The Lake George Branch between a connection with the D&H Canadian Main Line at M.P. A–55.87 (Fort Edward) and M.P. A–62.91 (end of track), a distance of approximately 7.04 miles;

(2) The Coolidge Branch between a connection with the Lake George Branch

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at M.P. 59.57 and M.P. 61.86 (end of track), a distance of approximately 2.29 miles; and

(3) All yard, industry lead and side tracks in Fort Edward Yard on both sides of the D&H Canadian Main Line between M.P. A–53.78 and M.P. A–57.98.

In order to facilitate ST's operations on these lines, D&H will grant trackage rights to operate over its Canadian Main Line between Albany, NY, and Canada as follows:

(1) Track No. One, Track No. Two and Single Track between M.P. A–59 and M.P. A–53.78; and

(2) Between M.P. 53.78 (CPC 54) and M.P. 38.2 (CPC 38).

D&H and ST will interchange traffic at a mutually agreeable location. The purpose of these transactions is to enable ST to carry on operations now performed by D&H.

D&H and ST are wholly-owned subsidiaries of Guilford Transportation Industries, Inc. (GTI). GTI also owns the Maine Central Railroad Company and the Boston and Maine Corporation. As a result of the proposed transaction, it is anticipated that ST will provide a more responsive and efficient service to rail customers than D&H is now providing. D&H will improve its financial viability by eliminating operations which are costly to perform in relation to the revenues which are realized. With its lower cost structure, ST should be able to perform these operations on a profitable basis.

Since D&H and ST are members of the same corporate family, both the lease and the assignment of trackage rights fall within the class of transactions that are exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(3). The transactions will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. The assignment of trackage rights also falls within another category of exempt transactions. *See* 49 CFR 1180.2(d)(7).

Any employees affected by the lease transaction will be protected by the labor protective conditions set forth in *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978), and 360 I.C.C. 653 (1980).

Any employees affected by D&H's grant of trackage rights to ST will be protected by the conditions set forth in *Norfolk & Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast, supra*, 360 I.C.C. 653 (1980). These conditions satisfy the statutory requirements of 49 U.S.C. 10505(g)(2) for the respective transactions.

However, in connection with the lease transaction, the Railway Labor Executives' Association (RLEA), by petition filed January 29, 1987, requests the imposition of the labor protective conditions developed by the Commission in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979). Drawing an analogy to *Union Pacific—Control—Missouri Pacific; Western Pacific*, 366 I.C.C. 459 (1982), RLEA contends that the *New York Dock* conditions should also apply to this lease transaction because it is allegedly just another transaction to further the control benefits attributable to the original acquisition of D&H by GTI. The *New York Dock* conditions were also imposed in that acquisition. *See Guilford Transp. Industries, Inc.—Control—D&H Ry. Co.*, 366 I.C.C. 396, 425 (1982). A separate Commission decision will follow to consider which conditions should be imposed.[1]

Decided: February 5, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–3301 Filed 2–17–87; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30983]

Edward L. Addison; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts Edward L. Addison from the requirements of 49 U.S.C. 11322 to permit him: (a) To sit on the Boards of Directors of Phelps Dodge Corporation and Southwest Forest Industries, Inc.; and (b) also to hold the position of director of the CSX Corporation.

[1] RLEA requests that the consummation of this lease transaction be delayed until a decision is served establishing the appropriate level of labor protection. RLEA argues that prior consummation will irrevocably harm affected employees because they will be denied certain *New York Dock* benefits that may subsequently be found applicable (particularly the requirement that an implementing agreement must be reached before operations are changed). However, this argument does not by itself justify this requested relief. The parties may consummate the transaction at their own risk. However, if the parties do consummate the lease transaction on the basis of the *Mendocino* conditions and the Commission subsequently determines that the *New York Dock* conditions apply, the parties will then be in possible violation of those conditions, and affected employees could seek to enforce the conditions through the arbitration process.

DATES: This exemption is effective on February 12, 1987. Petitions to reopen must be filed by March 10, 1987.

ADDRESSES: Send pleadings referring to Finance Docket No. 30983 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) John D. McLanahan, Suite 1400, Candler Building, 127 Peachtree Street NE., Atlanta, GA 30043

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: February 10, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–3300 Filed 2–17–87; 8:45 am]

BILLING CODE 7035–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[87–14]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC).

DATE AND TIME: March 3, 1987, 9 a.m. to 5:30 p.m., and March 4, 1987, 8:30 a.m. to 3 p.m.

ADDRESS: National Aeronautics and Space Administration, Federal Building 6, Room 7002, 400 Maryland Avenue, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, Code LB, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–8335.

SUPPLEMENTARY INFORMATION: The NAC was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The Council is chaired by Mr. Daniel J. Fink and is composed of 25 members. Standing committees containing additional members report to the Council and provide advice in the substantive areas of aeronautics, life sciences, space applications, space and earth science, space systems and technology, and history, as they relate to NASA's activities.

This meeting will be closed to the public from 4:30 p.m. to 5:30 p.m. on March 3 for a discussion of the qualifications of candidates for membership. Such a discussion would invade the privacy of the candidates and other individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room, which is approximately 60 persons including Council members and other participants. Visitors will be requested to sign a visitor's register.

Type of meeting: Open—except for a closed session as noted in the agenda below.

AGENDA:

March 3, 1987

9 a.m.—Introductory Remarks.
9:15 a.m.—Review of FY 1988 President's Budget.
10:15 a.m.—Reports of NAC Committees and Task Forces.
1:15 p.m.—NASA Organization and Management Changes.
2 p.m.—NASA Strategic Planning.
2:45 p.m.—Recommendations of NAC Goals Task Force.
3:30 p.m.—Discussion of Planning, Goals, and Program Implications.
4:30 p.m.—Closed Session.
5:30 p.m.—Adjourn.

March 4, 1987

8:30 a.m.—Office of Aeronautics and Space Technology Automation and Robotics Program.
9:15 a.m.—Report of the NAC Space Systems and Technology Advisory Committee Automation and Robotics Task Force.
10 a.m.—Discussion of Automation and Robotics.
10:30 a.m.—Status of Space Transportation System Recovery and Launch Vehicle Planning.
11:30 a.m.—Recommendations of NAC Expendable Launch Vehicle Task Force.
12:15 p.m.—Discussion of Launch Vehicle Issues.
1:30 p.m.—Other Business.
2 p.m.—Council Report to NASA.
3 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

February 10, 1987.

[FR Doc. 87–3267 Filed 2–17–87; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Records Schedules; Availability

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules, request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least once monthly of agency requests for records disposition authority (records schedules) which include records being proposed for disposal or which will reduce the records retention period for records already authorized for disposal. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorize agencies to dispose of records that lack archival value. NARA invites public comment on proposed records disposals as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before April 16, 1987.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the title of the requesting agency. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records in the form of paper, film, magnetic tape, and other media. In order to control the accumulation of records, Federal agencies prepare records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the value of the records for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules. This public notice identifies the Federal agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records to be scheduled for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending Approval

1. Department of the Army, Army Records Management Operations Office (N1–AU–86–59). Records relating to health and hospitalization statistical data (Army-wide medical statistical data is permanent).

2. Administrative Office of the U.S. Courts, Legislative Affairs Office (N1–116–87–1). Records relating to legislation affecting the judicial system.

3. Department of Agriculture, National Agricultural Statistics Service (N1–355–86–1). Update of agency's comprehensive records schedule.

4. Environmental Protection Agency, Office of the Comptroller (NC1–412–85–1). Comprehensive schedule covering administrative records maintained by the Resources System Staff.

5. General Accounting Office, General Services and Controller, Records Management Staff (N1–217–87–1). Reduction in retention period of Division/Office numerical forms case files.

6. Department of Labor, Office of Pension and Welfare Benefit Programs (NC1–317–85–3). Records relating to private pension and welfare benefit plans.

7. National Archives and Records Administration, Office of Records Administration (N1–GRS–87–5). Revision of General Records Schedule 20, Machine-readable Records, retitled as Electronic Records.

8. National Mediation Board (NC1–13–81–3). Budget policy and budget estimates and justification files.

9. Tennessee Valley Authority, Maps and Survey Division (N1–142–87–5). The Set-Up, a monthly employee newsletter,

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published from July 1943 to November/December 1945.

Dated: February 9, 1987.

Frank G. Burke,

Acting Archivist for the United States.

[FR Doc. 87-3367 Filed 2-17-87; 8:45 am]

BILLING CODE 7517-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Design Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Challenge Section) to the National Council on the Arts will be held on March 4-5, 1987, from 9:00 a.m.-5:30 p.m. in room M-14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 5, 1987, from 4:30 p.m.-5:30 p.m. for a discussion of policy issues.

The remaining sessions of this meeting on March 4, 1987, from 9:00 a.m.-5:30 p.m., and on March 5, 1987, from 9:00 a.m.-4:30 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,

Acting Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87-3285 Filed 2-17-87; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Recording Section) to the National Council on the Arts will be held on March 4-5, 1987, from 9:00 a.m.-5:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 5, 1987, from 1:00 p.m.-3:00 a.m. for a discussion of guidelines and policy issues.

The remaining sessions of this meeting on March 4, 1987, from 9:00 a.m.-5:00 p.m., and on March 5, 1987, from 9:00 a.m.-12:00 p.m. and from 3:00 p.m.-5:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,

Acting Director, Office of Council and Panel Operations, National Endowment for the Arts.

February 10, 1987.

[FR Doc. 87-3286 Filed 2-17-87; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Meeting

ACTION: Notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given of a public meeting of the National Commission for Employment Policy at the Radisson Gunter Hotel, 205 E. Houston, San Antonio, Texas.

DATE: Thursday, March 12, 1987: 9:00 A.M to 5:00 P.M.

Status: The meeting is open to the public.

Matters To Be Discussed: The Commissions' research agenda, legislative matters, and progress reports on current staff activities.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Mahaffey, Public Affairs Officer, National Commission for Employment Policy, 1522 K. St. NW. Suite 300, Washington, DC 20005, 202-724-1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy is authorized by the Job Training Partnership Act (Pub. L. 97-300). The Act gives the Commission the broad responsibility of advising the President and the Congress. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. Copies of the minutes and materials prepared for the meeting will be available for public inspection at the Commission's offices, 1522 K St. NW, Suite 300, Washington, DC 20005.

Signed this 5th day of February, 1987.

Scott W. Gordon,

Director.

[FR Doc. 87-3276 Filed 2-17-87; 8:45 am]

BILLING CODE 4510-30-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or canceled since the last list of proposed meetings published January 21, 1987 (52 FR 2324). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 A.M. and Subcommittee meetings usually begin at 8:30 A.M. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, canceled, or rescheduled, or whether changes have been made in the agenda for the March 1987 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 202/634-3265, ATTN: Barbara Jo White) between 8:15 A.M. and 5:00 P.M. Eastern Time.

ACRS Subcommittee Meetings

Human Factors, February 18, 1987, Washington, DC. The Subcommittee will review the "Safety Conscience" concept at utilities.

Waste Management, February 19 and 20, 1987, Washington, DC. The Subcommittee will review the following nuclear waste management topics: (1) Rulemaking for the definition of high level wastes (HLW), (2) Implementation of the HLW Five Year Plan, (3) HLW Geologic repository performance allocation, (4) Assessing compliance with the EPA standard for a HLW Geologic Repository, (5) Hydrology of geologic repositories (domestic and international programs), (6) NRC's waste package corrosion research program, (7) Guidance documents for low level waste (LLW) Shallow Land Burial (Standard Review Plan, and Standard Format and Content Guide), and (8) Long range plans for LLW Program through 1993.

Regional and I&E Programs, March 12, 1987, Washington, DC. The Subcommittee will continue its review of the activities of the Office of Inspection and Enforcement.

Metal Components, April 2, 1987, Washington, DC. The Subcommittee will discuss: (1) Beaver Valley, Unit 2 Whipjet Program, first application of GDC 4 broad scope rules, (2) NUREG-0313, Revision 2 with public comments, (3) other related matters, e.g., presentation on double-ended-guillotine-break by Savannah River Lab.

Babcock & Wilcox Reactor Plants, April 8, 1987, Washington, DC. The Subcommittee will continue its review of the long-term safety review of B&W reactors. This effort was begun during the summer of 1986; initial Committee comments offered on July 16, 1986 in a letter to V. Stello, EDO.

Advanced Reactor Designs, Date to be determined (April), Washington, DC. The Subcommittee will review DOE advanced non-LWR designs regarding the treatment of severe accidents and source terms.

Advanced Reactor Designs, Date to be determined (April), Washington, DC. The Subcommittee will review DOE advanced non-LWR designs regarding the ontainment issue.

AC/DC Power Systems Reliability, Date to be determined (April), Washington, DC. The Subcommittee will review the proposed Station Blackout rule (USI A-44).

Severe Accidents, Date to be determined (April/May), Washington, DC. The Subcommittee will discuss the research plan intended to resolve the source term uncertainty areas and review the Expert Panels assessment of these programs.

Severe Accidents, Date to be determined (April/May), Washington, DC. The Subcommittee will continue the review of the proposed generic letter for Individual Plant Examinations (IPEs) as part of the NRR Implementation Plan for Severe Accident Policy Statement.

Thermal Hydraulic Phenomena, Date to be determined (2-day meeting, April/May), INEL, Idaho Falls, ID. The Subcommittee will review: (1) the Final ECCS Rule and assciated documentation, (2) uncertainty methodology to be applied to review the new BE ECCS code models, and (3) TIC activities at INEL.

Decay Heat Removal Systems (tentative), Date to be determined (April/May). Washington, DC. The Subcommittee will continue its review of the NRR Resolution Position for USI A-45.

Standardization of Nuclear Facilities, Date to be determined (May), Washington, DC. The Subcommittee will discuss requirements of the EPRI Advanced Light Water Reactors Program.

Regional and I&E Programs, Date to be determined (May), Region IV, Arlington, TX. The Subcommittee will continue its review of the activities under the control of the Region IV Office.

Regulatory Policies and Practices, Date to be determined, Washington, DC. The Subcommittee will continue its current review of the nuclear regulatory process, and will review the NRR policy for nuclear plant license renewal.

Joint Seabrook/Occupational and Environmental Protection Systems/ Severe Accidents, Date to be determined, Washington, DC. The Subcommittees will review Brookhaven National Laboratory's draft report of the Seabrook Emergency Planning Sensitivity Study.

Seabrook Unit 1, Date to be determined, Washington, DC. The Subcommittee will review the application for a full power operating license for Seabrook Unit 1.

ACRS Full Committee Meeting

March 5-7, 1987: Items are *tentatively* scheduled.

*A. *Quantitative Safety Goals (Open)*—Discuss proposed NRC plan for implementation of NRC quantitative safety goals.

*B. *Tennessee Valley Authority (Open)*—Discuss proposed TVA corporate nuclear performance plan.

*C. *Safety Responsibility at Nuclear Facilities (Open)*—Discuss proposed ACRS report to NRC regarding the responsibility for safety at nuclear power plants.

*D. *Fitness for Duty (Open)*—Briefing regarding application of NRC rule on fitness for duty of nuclear power plant operations personnel.

*E. *Nuclear Power Plant License Renewal (Open)*—Briefing regarding proposed NRC policy regarding extension of nuclear power plant licenses.

*F. *Radwaste Management and Disposal (Open)*—Discuss proposed ACRS participation in the NRC regulation of radioactive waste management and disposal.

*G. *Radwaste Risk (Open)*—Discuss proposed ACRS comments regarding comparison of the risks associated with radwaste management and disposal compared to other nuclear related risks.

*H. *Safety Features in Foreign Nuclear Power Plants (Open/Closed)*—Discuss safety features in foreign nuclear power plants which are different from those in facilities licensed by NRC.

*I. *Pressure Suppression Containments (Open)*—Discuss proposed NRC resolution of steam relief value discharge line failures in the airspace of Mark I and Mark II type containments and other methods of suppression pool by-passing.

*J. *GE Advanced Boiling Water Reactor (Open/Closed)*—Discuss proposed licensing basis agreement for the review of the standardized advanced boiling water reactor being proposed by the General Electric Company.

*K. *Improved Light-Water Reactors (Open)*—Discuss features proposed in the EPRI requirements for improved standardized LWRs compared to the ACRS report dated January 15, 1987 on Improved Safety for Future Light Water Reactor Design.

*L. *Future ACRS Activities (Open)*—Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

M. *New ACRS Members (Closed)*—Discuss qualifications of candidates proposed for consideration as nominees for appointment to the Committee (tentative).

April 9-11, 1987—Agenda to be announced.

May 7-9, 1987—Agenda to be announced.

Dated: February 11, 1987.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 87-3350 Filed 2-17-87; 8:45 am]

BILLING CODE 7590-01-M

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[Docket No. 40-8348]

Environmental Statements; Minerals Exploration Co.

In the matter of draft finding of no significant impact regarding termination of source material license SUA-1223 for the Minerals Exploration Company R&D in Situ Leach Facility located in Sweetwater County, WY.

AGENCY: United States Nuclear Regulatory Commission.

ACTION: Notice of draft finding of no significant impact.

(1) Proposed Action

The U.S. Nuclear Regulatory Commission (the Commission) is proposing to terminate Source Material License SUA-1223 for the Minerals Exploration Company's A-3 R&D in situ leach facility located in Sweetwater County, Wyoming.

(2) Reasons for the Draft Finding of No Significant Impact

The Commission's Uranium Recovery Field Office has reviewed the Minerals Exploration Company's final closure plan and decommissioning activities which were performed in accordance with the requirements of Source Material License SUA-1223. The plan for final closure was approved by the Commission on June 12, 1986. Based on a review of the decommissioning activities, the Commission has determined that no significant environmental impact has resulted.

The following statements support the finding of no significant impact and summarize the decommissioning activities:

(a) Two test patterns were utilized in the A-3 R&D in situ leach project. Test pattern A was operated for eight days beginning on August 2, 1976 using an ammonium bicarbonate lixiviant. After a ten day pump out, aqueous carbonic acid was used with hydrogen peroxide or oxygen as the oxidant. Injection/production terminated on Marh 23, 1978. Restoration of Test Pattern A was completed in September of 1978 using a group-water sweep. Post restoration stability monitoring continued through 1984. The Commission accepted the restoration on April 28, 1986.

Test Pattern B was operated from October 15, 1976, to March 23, 1978, utilizing aqueous carbonic acid. Restoration was completed in September of 1978 by performing a ground-water sweep. Post restoration stability monitoring continued through 1984. The Commission accepted the restoration on April 28, 1986.

(b) Well field abandonment was performed in accordance with the Wyoming State Engineer's Office permit requirements. Wells were filled with bentonite or drilling mud, and with dry dirt near the top. Each well casing was cut two feet below the ground surface and the tops were capped. The wellfield area was cleaned and later backfilled.

All process tanks, columns, pipes and associated equipment were removed and disposed of at a nearby licensed tailings impoundment. Area gamma surveys indicated contaminated soil which was subsequently removed and disposed of in the licensed tailings impoundment.

Soil samples were collected to a 15 centimeter depth and from 15 to 30 centimeters deep from each former well pattern site, the discharge channel, and the evaporation area. Radium-226 concentrations did not exeed the limits specified in 10 CFR Part 40.

Environmental monitoring for airborne radionuclides and for direct gamma radiation were performed during operation of the R&D facility. The monitoring results indicated that radionuclide concentrations were well below the respective maximum permissible concentrations for unrestricted areas, and the direct gamma exposure rates were within the range of normal background for the area.

(c) Final decontamination tasks were completed in July of 1986. No structures remain on site; all were removed prior to the performance by the licensee of final gamma exposure rate measurements and soil sampling. Independent verification of site cleanup was performed by the Commission on August 12, 1986. The Commission confirmed that the residual soil Radium-226 concentration did not exceed the limits specified in 10 CFR Part 40.

Accordingly, the Commission's Uranium Recovery Field Office has determined that the decommissioning activities did not have a significant effect on the quality of the human environment. This determination is based on the fact that decontamination to within regulatory limits has been achieved at the licensed site.

In accordance with 10 CFR Part 51.33(a), the Director, Uranium Recovery Field Office, made the determination to issue a Draft Finding of No Significant Impact and to accept comments on the draft finding for a period of 30 days after issuance in the Federal Register. Comments should be addressed to the U.S. Nuclear Regulatory Commission, Uranium Recovery Field Office, P.O. Box 25325, Denver, Colorado 8025.

This finding, together with the reports setting forth the basis for the finding, are available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 1717 H Street NW., Washington, DC.

Dated at Denver, Colorado, this 6th day of February, 1987.

For the Nuclear Regulatory Commission.

Harry J. Pettengill,

Chief, Licensing Branch 2, Uranium Recovery Field Office, Region IV.

[FR Doc. 87-3347 Filed 2-17-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-261]

Carolina Power & Light Co.; Denial of Amendment to Facility Operating License and Opportunity for a Hearing; Correction

On January 29, 1987, the Commission published in the **Federal Register** a Denial of Amendment of Facility Operating License and Opportunity for a Hearing to Carolina Power & Light Company for the H.B. Robinson Steam Electric Plant, Unit No. 2 (52 FR 2964). In the second paragraph, line 10, the date and citation should read "May 5, 1985 (50 FR 20972)" instead of "September 10, 1986 (51 FE 32265)."

Dated at Bethesda, Maryland, this 11th day of February, 1987.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, PWR Project Directorate No. 2, Division of PWR Licensing-A.

[FR Doc. 87-3345 Filed 2-17-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-335]

Florida Power and Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-67 for operation of the St. Lucie Plant, Unit No. 1, located in St. Lucie County, Florida.

The proposed amendment would increase the steam generator tube plugging limit from 40% of the nominal tube wall thickness to 54% for all regions except for locations at or above the top partial support plate for tube rows 117 through 120, inclusive, where the limit would be 50%. The tube plugging limit is

defined as the imperfection depth at or beyond which the tube shall be removed from service because it may become unservicable prior to the next inspection. The primary method of removing a tube from service is to plug it such that reactor coolant system water cannot flow through it.

The proposed amendment was submitted to the Commission by Florida Power and Light Company letter dated December 12, 1986.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By March 20, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hering or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Ashok C. Thadani: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Harold F. Reis, Esq., Newman and Holtzinger, 1615 L. Street, NW., Washington, D.C., 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 12, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Indian River Junior College Library, 3209 Virgina Avenue, Fort Pierce, Florida, 33450.

Dated at Bethesda, Maryland, this 9th day of February 1987.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, PWR Project Directorate No. 8, Division of PWR Licensing-B.

[FR Doc. 87-3349 Filed 2-7-87; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-15572; 812-6502]

Bankers Life Assurance Co. of Nebraska et al.; Application for Exemption

February 10, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Bankers Life Assurance Company of Nebraska ("Bankers"); Bankers Life Assurance Company of Nebraska Separate Account V ("Account"); and BLN Investment Corp. ("BLN").

Relevant 1940 Sections: Exemption requested *under* section 6(c) from sections 2(a)(32), 22(c), 26(a)(1), 27(c)(2) and 27(d), and Rules 6e-3(T)(b)(12), 6e-3(T)(b)(13) and 22c-1 thereunder.

Summary of Application: Applicants seek an order to permit a charge for state premium taxes incurred in connection with the premiums paid under certain flexible premium variable life insurance contracts and any successor contracts ("contracts") during the first contract year, to be deducted from the amount otherwise payable upon surrender or lapse of the contract prior to the eighth contract anniversary.

Filing Date: The application was filed on October 16, 1986, and amended on December 22, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 9, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for

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lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Bankers, Account, c/o Julian H. Hopkins, Esq., 5900 "O" Street, Lincoln, Nebraska 68510. BLN, Suite 200, Greentree Court, 210 Gateway, Lincoln, Nebraska 68505.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Margaret Warnken (202) 272–2058 or Special Counsel Lewis B. Reich (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application for a fee from within the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Bankers was incorporated under the laws of Nebraska on June 22, 1983, and is a wholly-owned subsidiary of Bankers Life Insurance Company of Nebraska ("Bankers Life Nebraska"). Bankers Life Nebraska is a mutual life insurance company domiciled in Nebraska since 1887.

(2) The Account is registered under the 1940 Act as a unit investment trust. There are currently 12 subaccounts of the Account, 8 of which invest only in a corresponding portfolio of the Variable Insurance Products Fund or the Zero Coupon Bond Fund.

3. BLN, a wholly-owned subsidiary of Bankers Life Nebraska and an affiliated company of Bankers, is the principal underwriter for the contracts. BLN is a registered broker-dealer and is a member of the national Association of Securities Dealers.

4. Applicants represent that if a contract is surrendered prior to the eighth anniversary, a cash surrender charge will be assessed upon percentages of premiums actually paid during the first contract year. A portion of the cash surrender charge includes a charge for state premium taxes of no greater than 2.5% of the premiums paid in the first contract year. There is no additional cash surrender charge attributable to any increase in the Specified Amount of the contract and no cash surrender charge assessed upon decreases in the Specified Amount of the contract or partial withdrawals of cash value.

5. Applicants submit that imposition of the contingent deferred charge for premium taxes is more favorable than a charge that is deducted entirely from premiums or from cash value in the first contract year. The amount of the contractowner's investment in the Account is not reduced as it is when this charge is taken in full in the first contract year. The total amount charged to any contractowner is no greater than if this charge is taken in the first contract year.

6. Bankers does not anticipate making a profit on the deferred premium tax charge. The amount of the charge is the same as if it was designed as a front-end or periodic charge. The charge does not take into account the time value of money (which would increase the charge to factor in the investment cost to Bankers of deferring the charge) or the obvious fact that not all contractowners will surrender or lapse their contracts in the first seven contract years (which would increase the charge for those surrendering or lapsing in those years to cover the costs attributable to contractowners who do not surrender or lapse in those years).

7. Accordingly, Applicants request an exemption from sections 2(a)(32), 22(c), 26(a)(2), 27(c)(1), 27(c)(2) and 27(d) of the 1940 Act and Rules 6e–3(T)(b)(12), 6e–3(T)(b)(13), and 22c–1 thereunder to the extent necessary to permit the charge for premium taxes to be deducted upon surrender or lapse. Applicants submit that the exemption requested is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicants' Conditions

Applicants represent in connection with the relief requested that, if Rule 6e–3(T) is amended, they either will comply with the rule as amended or seek additional appropriate exemptive relief.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–3279 Filed 2–17–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No.34–24084; File No. SR–MSTC–87–1]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Securities Trust Co.; 1987 Fee Schedules; Notice of Filing and Immediate Effectiveness

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 2, 1987, the Midwest Securities Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is the Midwest Securities Trust Company's Fee Schedule for 1987.

II. Self-Regulatory Organizations's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The MSTC Board of Directors annually reviews MSTC's fee schedules to insure that service fees fairly cover the cost of providing services. In order to keep a proper balance between fees and the costs of providing clearing and depository services, MSTC is proposing a revised fee schedule for 1987. Where MSTC has experienced increased costs associated with manual processing, such as physical movements or deposits, or call, redemption and maturity processing, service fees have been increased accordingly. When costs associated with automated services decreased on a unit or transaction basis, such as Depository Delivery Instructions and CNS Interactivity, fees have been reduced to reflect costs recouped through increased volume.

The proposed fee schedule is consistent with section 17A of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees and other charges among MSTC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Securities Trust Company does not believe that the proposed fee schedule will impose any burdens on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 11, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 10, 1987.

Jonathan G. Katz,

Secretary.

EXHIBIT A

[Schedule of fee changes for 1987]

	Old	New
	(Per month)	
1. Basic participant account maintenance fee	$160	$175
Corporate equity debt service	105	105
Municipal issues service (for those in muni bonds)	105	105
Total service charge	370	385

This fee covers the basic cost of computer facilities and staff support for a participant. The increase represents the overhead which is required to provide basic services including upgrades to computers, increases in the cost of support staff and general accounting and administrative costs. (For Participants not using municipal bond services the total monthly Service Charge will be $280 in 1987 versus $265 in 1986).

	Old	New
2. Settlement services (reduction): CNS interactivity fees, interactivity volume discounts	$0.88	$0.85

(Items per month)	(Per item)			
Range	Old discount	Old fee	New discount	New fee
1 to 1,500	0	$.88	0	$.85
1,501 to 2,000	$.17	.71	$.15	.70
2,001 to 3,000	.37	.51	.35	.50
3,001 to 4,000	.57	.31	.55	.30
over 4,000	.77	.11	.75	.10

Depository Delivery Instructions (DDI) (reduction):

	Old	New
Inter-participant delivery/receipt	$0.72/mvmt	$0.68/mvmt
Intra-participant delivery	.72/mvmt	.68/mvmt
Third party DDI	.72/mvmt	.68/mvmt
Pledge movement//release	.72/mvmt	.68/mvmt
Paper//manual input additional fee	.10/item	.15/item

The additional charge for manual or paper input reflects the cost of providing a data entry department to handle such transactions.

3. Depository Services (increase)

	Old	New
Deposits 'R' system		
7:30 am to 11:00 am CST	$ 1.10/item	$ 0.40/item
11:00 am to 11:30 am CST	10.00/item	12.00/item
11:30 am to 4:00 pm CST	$0/item	95/item
Deposit Reclamation Charge	6.00/item	7.50/item

The fee increase will cover the labor cost allocation required to cover deposit activities. Reclamations require special handling and the fee is intended to avoid penalizing participants who have few reclamations and therefore need not share in the cost of reclamation processing overhead.

Withdrawals	Old	New
Registered system		
Street Withdrawals	$ 6.00/req	$ 8.00/req
Demand Street Withdrawals	12.00/req	15.00/req
Manual Pull Withdrawals	27.00/req	30.00/req
Bearer system		
Withdrawals	6.00/req	7.50/req
	.04/$1,000/ value over $50,000	.05/$1,000/value over $50,000

Physical withdrawal of securities involves manual procedures and special processing which have steadily increased in cost. In order to provide a trained and efficient staff to provide this service the depository incurs extra cost. The normal organization and procedures are designed to provide safekeeping and withdrawal by transfer services which makes physical withdrawal increasingly an exception to normal procedures.

4. Safekeeping (increase):

	Old	New
Overnight safekeeping	$5.00/night 50/cert	$6.00/night 75/cert

Overnight Safekeeping fees will be increased to cover the cost of providing facilities and staff to accommodate this service.

Bearer Municipal Safekeeping:

	Old	New
Position fees:		
CUSIP with one participant	$0.065/day	$0.06833/day
CUSIP with two participants and three or more participants		No change

[FR Doc. 87–3278 Filed 2–17–87; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Region IV Advisory Council; Public Meeting

The Small Business Administration Region IV Advisory Council, located in the geographical area of Jacksonville, Florida, will hold a public meeting from 10:00 A.M. to 4:00 P.M., Friday, March 27, 1987, in the Holiday Inn South, 3233 Emerson Street, Jacksonville, Florida 32207, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending. For further information, contact Douglas E. McAllister, District Director, U.S. Small Business Administration, Box 35067, 400

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West Bay Street, Jacksonville, Florida 32202; telephone (904) 791–3103.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 11, 1987.

[FR Doc. 87–3314 Filed 2–17–87; 8:45 am]

BILLING CODE 8025–01–M

[License No. 09/09–0354]

Cogeneration Capital Fund; Surrender of License

Notice is hereby given that Cogeneration Capital Fund, 300 Tamal Plaza, Suite 190, Corte Madera, California 94925 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Cogeneration Capital Fund was licensed by the Small Business Administration on January 3, 1985.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on January 16, 1987, and accordingly, all rights, priveleges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.001. Small Business Investment Companies)

Dated: February 11, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87–3313 Filed 2–17–87; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of Commercial Space Transportation

[Notice No. 87–1]

Expendable Launch Vehicle Commercialization Agreement; Comments on Air Force Model Agreement Draft

AGENCY: Ofice of Commercial Space Transportation, DOT.

ACTION: Notice that Industry Advisory Committee comments on draft Air Force model agreement are available for public review.

SUMMARY: The Commercial Space Transportation Advisory Committee has provided to DOT's Office of Commercial Space Transportation its comments on the Air Force's draft Expendable Launch Vehicle Commercialization Agreement. This agreement sets out the terms and conditions governing the use by private launch firms of government launch property and services to support commercial launch activities. The agreement addresses activities that will be conducted at Federal launch ranges operated by the Air Force, in particular, Cape Canaveral Air Force Station and Vandenberg Air Force Base. The Office is making the report of the advisory committee available for public review. All statements made and views expressed in the report are those of the advisory committee members and do not necessary reflect the views of the Office of Commercial Space Transportation. Interested persons may review this document at the Documentary Services Division, room 4107, 400 Seventh Street, SW., Washington, DC 20590, Monday through Friday 9:00 a.m. to 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: Gerald Musarra, Office of the General Counsel, C–50, Office of the Secretary of Transportation, 400 Seventh Street, SW, Washington, DC 20590, telephone (202) 366–9305.

Dated: February 12, 1987.

Courtney A. Stadd,

Director, Office of Commercial Space Transportation.

[FR Doc. 87–3371 Filed 2–17–87; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: February 10, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB No.: 1515–0087
Form No.: CF 255
Type of Review: Revision
Title: Declaration for Unaccompanied Articles
Clearance Officer: Lynn Winingham (202) 566–2491, U.S. Customs Service, Room 6333, 1301 Constitution Avenue NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Internal Revenue Service

OMB No.: 1545–0199
Form No.: IRS Form 5306–SEP
Type of Review: Revision
Title: Application for Approval of Prototype Simplified Employee Pension—SEP

OMB No.: 1545–0806
Form No.: None
Type of Review: Extension
Title: EE–12–78 FINAL: Nonbank Trustees of Pension and Profit-Sharing Trusts Benefiting Owner-Employees

OMB No.: 1545–0814
Form No.: None
Type of Review: Extension
Title: EE–44–78 FINAL: Cooperative Hospital Service Organizations

OMB No.: 1545–0819
Form No.: None
Type of Review: Extension
Title: Instructions for Requesting Rulings and Determination Letters (26 CFR 601.201)

OMB No.: 1545–0820
Form No.: None
Type of Review: Extension
Title: LR–291–81 NPRM: Incentive Stock Options
Clearance Officer: Garrick Shear (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Office.

[FR Doc. 87–3275 Filed 2–17–87; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 32
Wednesday, February 18, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Volume 52, No. 31, Tuesday, February 17, 1987.

PREVIOUS ANNOUNCEMENT TIME AND DATE OF MEETING: 1:30 PM (Eastern Time) Monday, February 23, 1987.

CHANGE IN THE MEETING: The following item has been added to the open portion of the meeting:

"Policy Statement on Relationship of Title VII to the Immigration Reform and Control Act of 1986"

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, (202) 634–6748.

Date: February 13, 1987.

Cynthia C. Matthews,

Executive Officer.

This Notice Issued February 13, 1987.

[FR Doc. 87–3394 Filed 2–13–87; 8:45 am]

BILLING CODE 6750–06–M

FEDERAL COMMUNICATIONS COMMISSION

February 11, 1987.

The following items have been deleted from the list of agenda items scheduled for consideration at the February 12, 1987, Open Meeting, and previously listed in the Commission's Notice of February 5, 1987.

Agenda, Item No., and Subject

Common Carrier—1—Title: Implementation and Scope of the International Settlements Policy for Parallel International Communications Routes—Order on Reconsideration. CC Docket No. 85–204. Summary: The Commission will consider whether petitions for modification of certain aspects of its Report and Order on the International Settlements Policy should be granted. Specifically, the Commission will consider the policy's application to voice, indirect, and enhanced services, and the concomitant procedural requirements.

Common Carrier—2—Title: Reconsideration of RCA Global Communications Inc. vs. The Western Union Telegraph Company, File No. E–83–24. Summary: The Commission will consider two petitions for reconsideration, one from RCAGC regarding a Bureau order, and one from Western Union regarding a Commission order. The proceeding concerns the application of the international settlements policy to indirect traffic with various Central American administration.

Federal Communications Commission.

Willian J. Tricarico,

Secretary.

[FR Doc. 87–3406 Filed 2–13–87; 1:22 pm]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

February 10, 1987.

The Federal Communications Commission will consider an additional item on the subject listed below at the Open Meeting scheduled for 9:30 a.m., Thursday, February 12, 1987 at 1919 M Street, NW., Washington, DC

Agenda Item No. and Subject

Hearing—1—Title: Further action in the RKO General, Inc. proceedings (Docket Nos. 84–1212, et al.) Summary: The Commission will consider the Final Report on the outcome of settlement negotiations in the series of comparative renewal proceedings involving broadcast stations owned by RKO General, Inc.

The prompt and orderly conduct of Commission business requires that less than 7-days notice be given consideration of this additional item.

Action by the Commission February 10, 1987. Commissioners Fowler, Chairman; Quello, Dawson, Patrick and Dennis voting to consider this item.

Additional information concerning this item may be obtained from Sarah Lawrence, FCC Office of Congressional and Public Affairs, telephone number (202) 632–5050.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–3421 Filed 2–13–87; 1:11 pm]

BILLING CODE: 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

FCC Announces Decision to Close an Item Previously to be Considered in Open Meeting

The Federal Communications Commission previously announced on February 10, 1987 its intention to hold an Open Meeting on *Further action in the RKO General, Inc. proceedings (Docket Nos. 84–1212 et al.)*, on February 12, 1987 at 1919 M Street, NW., Washington, DC. This meeting was rescheduled as a Closed Meeting to be held following the Open Meeting.

The prompt and orderly conduct of Commission business requires this change and no earlier announcement of the change was possible.

This meeting was closed to the public because it concerned adjudication matters (See 47 CFR 0.603 (j)).

The following persons were in attendance:

Commissioners and members of their staffs;

Managing Director and members of his staff;

General Counsel and members of her staff;

Chief, Office of Congressional and Public Affairs.

Action by the Commission February 12, 1987. Commissioners Fowler, Chairman; Quello, Dawson, Patrick and Dennis voting to consider this matter in Closed Session.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Congressional and Public Affairs, telephone number (202) 632–5050.

William J. Tricarico,

Secretary, Federal Communicotions Commission.

[FR Doc. 87–3483 Filed 2–13–87; 3:22 pm]

BILLING CODE 6712–01–M

FEDERAL ENERGY REGULATORY COMMISSION

February 11, 1987.

TIME AND DATE: February 18, 1987, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Washington, DC 20424, Hearing Room A.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 651st meeting—February 18, 1987, Regular Meeting (10:00 a.m.)

CAP–1.

Project No. 9556–001, Kamargo Corporation

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Project No. 9557–001, Black River Hydro Corporation
Project No. 9564–001, Norwood Hydro Corporation
Project No. 9565–001, Raymondville Hydro Corporation
Project No. 9566–001, East Norfolk Hydro Corporation
Project No. 9553–001, School Street Hydro Corporation
Project No. 9563–001, Herrings Hydro Corporation
Project No. 9552–001, Deferiet Corporation
Project No. 9554–001, Colton Hydro Corporation
Project No. 9555–001, Higley Corporation
Project No. 9567–001, Hannawa Corporation
Project Nos. 2320–001, 2330–001, 2539–001 and 2569–001, Niagara Mohawk Power Corporation

CAP–2.
Project Nos. EL86–56–002, 003 and Project Nos. 4885–014 and 015, South Fork Resources, Inc.

CAP–3.
Project No. 9558–001, Carry Falls Corporation
Project No. 2080–000, Niagara Mohawk Power Corporation

CAP–4.
Project No. 4644–004, Stevens and Thompson Paper Company, Inc.

CAP–5.
Project No. 10202–001, Larry Lewis

CAP–6.
Project Nos. 77–016 and 017, Pacific Gas and Electric Company

CAP–7.
Project No. 3756–002, City of Bountiful, Utah

CAP–8.
Project No. 7518–001, Niagara Mohawk Power Corporation

CAP–9.
Project No. 10077–001, Iron Mountain Mines, Inc.

CAP–10.
Omitted

CAP–11.
Project No. 8493–000, Hydroelectric Development, Inc.

CAP–12.
Docket No. HB54–84–1–001, Pacific Power & Light Company

CAP–13.
Docket No. ER87–180–000, Cincinnati Gas & Electric Company

CAP–14.
Docket No. ER87–44–002, Wisconsin Public Service Corporation

CAP–15.
Docket No. ER87–67–002, Wisconsin Electric Power Company

CAP–16.
Docket Nos. ER86–69–002 and ER87–70–002, Southern California Edison Company

CAP–17.
Docket Nos. ER85–2011–007, 008, 009, EF85–2021–007, 008 and 009, United States Department of Energy—Bonneville Power Administration

CAP–18.
Docket No. EL86–27–000 and 001, Sacramento Municipal Utility District v. Pacific Gas and Electric Company

CAP–19.
Docket No. EL81–14–005 and 006, American Municipal Power-Ohio, Inc. and City of St. Marys, Ohio v. The Dayton Power and Light Company

CAP–20.
Docket No. EL86–23–000, Northern California Power Agency

CAP–21.
Docket No. ER78–417–008, Kentucky Utilities Company

CAP–22.
Docket No. ER86–626–002, Louisiana Power & Light Company

CAP–23.
Docket No. ER86–692–001, Cambridge Electric Light Company

CAP–24.
Docket No. QF86–964–001, First American Energy Company/Culmtech, Ltd.

CAP–25.
Docket No. 2548–010, Georgia-Pacific Corporation Project No. 4349–008, Long Lake Energy Corporation

Consent Miscellaneous Agenda

CAM–1.
Docket No. FA85–8–000, Public Service Company of New Hampshire

CAM–2.
Docket No. RM86–12–001, 002 and 003, Generic Determination of Rate of Return on Common Equity for Public Utilities

CAM–3.
Docket No. RM79–76–125 (Oklahoma–3), High-Cost Gas Produced from Tight Formations

CAM–4.
Docket No. GP86–48–000, Beartooth Oil & Gas Company, Section 102 Determination, Bureau of Land Management, Federal No. 5–15 Well, BLM Docket No. CD–0151–83, FERC No. JD85–29078

CAM–5.
Docket No. GP83–12–002, State of Kansas, Section 103 NGPA Determination, Continental Energy Company, Stanley No. 1 Well (Haskell Co.), FERC No. JD81–01760

CAM–6.
Docket No. GP86–57–000, Shell Western E&P Inc.

CAM–7.
Docket No. RO82–75–001, Argo Petroleum Corporation, *et al.*

CAM–8.
Docket No. RO86–21–000, Transco Trading Company, Refiners and Producers Marketing, Inc. and Billy Ray Jones

CAM–9.
Docket No. RO85–18–000, Otis Ainsworth

CAM–10.
Docket No. RO85–9–000, Placid Oil Company

CAM–11.
Docket No. RO85–6–004, Exxon Company, U.S.A.

Consent Gas Agenda

CAG1.
Docket Nos. RP86–165–002, 003, 004, RP86–166–001, 002 and 003, Kentucky West Virginia Gas Company

CAG2.
Docket Nos. RP87–12–001, 002 and 003, Northern Natural Gas Company, Division of Enron Corporation

CAG3.
Docket Nos. TA87–1–9–003 and 004, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

CAG–4.
Docket Nos. TA87–1–59–003 and 004, Northern Natural Gas Company, Division of Enron Corporation

CAG–5.
Docket Nos. TA87–1–11–004, 005, 006 and 007, United Gas Pipe Line Company

CAG–6.
Docket Nos. RP85–206–011 through 027, Northern Natural Gas Company

CAG–7.
Docket Nos. RP82–55–006 through 017, Transcontinental Gas Pipeline Corporation

CAG–8.
Docket Nos. RP87–16–001 and 002, El Paso Natural Gas Company

CAG–9.
Docket No. RP86–133–001, National Fuel Gas Supply Corporation

CAG–10.
Docket No. RP87–35–000, Texas Gas Pipe Line Corporation

CAG–11.
Docket No. T87–2–5–002 (PGA87–2a), Midwestern Gas Transmission Company

CAG–12.
Docket No. RP87–27–000, Northwest Pipeline Corporation

CAG–13.
Docket Nos. RP87–1–37–000, 004 and 009, Northwest Pipeline Corporation

CAG–14.
Docket Nos. RP85–178–013, RP82–10–014 and RP82–125–020, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

CAG–15.
Docket Nos. RP86–161–000, 002, CP86–596–000 and 001, Migc, Inc.

CAG–16.
Docket No. ST87–66–000, Exxon Gas System, Inc.

CAG–17.
Docket Nos. ST87–14–000, ST87–15–000, ST87–29–000, ST86–2681–000, ST86–2682–000, ST86–2684–000, ST86–2686–000, ST86–2693–000, ST86–2694–000, ST86–2695–0900, ST86–2696–000, ST86–2697–000, ST86–2700–000, ST86–2702–000, ST86–2703–000 and ST86–2704–000, Delhi Gas Pipeline Corporation

CAG–18.
Docket Nos. ST86–931–000, ST86–1013–000, ST86–1796–000, ST86–1915–000, ST86–1916–000 and ST86–2428–000, Producer's Gas Company

CAG–19.
Docket No. CI73–494–000, FERC Gas Rate Schedule No. 13, Columbia Gas Development Corporation

CAG–20.
Docket No. CI85–600–000, Exxon Corporation

CAG–21.
Docket No. CP86–707–001, Northwest Pipeline Corporation

CAG–22.
Docket Nos. CP85–608–009 and 010, National Fuel Gas Supply Corporation

CAG–23.
Docket No. CP86–435–001, Northern Natural Gas Company, Division of Enron Corporation

CAG–24.
Docket No. CP87–8–001, Tennessee Gas Pipeline Company, a division of Tenneco Inc.

CAG–25.
Docket No. CP86–135–006, Natural Gas Pipeline Company of America

CAG–26.
Docket Nos. CP84–654–019 and 020, Algonquin Gas Transmission Company

CAG–27.
Docket No. CP86–686–003, Southern Natural Gas Company

CAG–28.
Docket Nos. CP86–636–001 and 002, Pacific Gas Transmission Company

CAG–29.
Docket No. CP86–465–001, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

CAG–30.
Docket Nos. CP86–106–005, CP86–133–005, CP86–134–005, CP86–136–004 and CP86–137–004, Natural Gas Pipeline Company of America

CAG–31.
Docket No. CP86–210–002, Southern Natural Gas Company

CAG–32.
Docket No. CP86–701–000, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

CAG–33.
Docket Nos. CP86–643–000 and 001, K N Energy, Inc.

CAG–34.
Docket Nos. CP85–511–000 and 001, Northern Natural Gas Company, Division of Enron Corporation

CAG–35.
Docket No. CP86–734–000, Texas Eastern Transmission Corporation

CAG–36.
Docket No. CP86–499–000, Natural Gas Pipeline Company of America

CAG–37.
Docket No. CP86–349–002, Texas Gas Transmission Corporation

CAG–38.
Docket No. CP87–40–000, Granite State Gas Transmission, Inc.

I. Licensed Project Matters

P–1.
Project No. 4922–000, Arizona Power Authority and Colorado River Commission of Nevada. Application for a preliminary permit for unutilized capacity at a Bureau of Reclamation project.

P–2
Project No. 5903–001, Black Canyon Irrigation District, Gem Irrigation District and Ridgeview Irrigation District. Appeal of a dismissal of a preliminary permit application for unutilized capacity at a Bureau of Reclamation project.

P–3
Docket No. E–6454–007, City of Centralia, Washington Rehearing request of a Commission determination that a project is located on navigable waters of the U.S.

II. Electric Rate Matters

ER–1
Docket No. QF87–237–000, CMS Midland, Inc. Application for certification of a proposed 1300 MW cogeneration facility.

Miscellaneous Agenda

M–1
Reserved.

M–2
Reserved.

M–3
Docket No. Rm–83–41–000, Rules of Discovery for Trial-Type Proceedings. Final Rule

M–4
Docket No. PL87–3–000, Policy Statement on Recovery of Take-or-Pay Costs by Interstate Natural Gas Pipelines

I. Pipeline Rate Matters

RP–1.
(A) Docket Nos. TA85–3–29–000, TA86–1–29–002, CP85–190–000, TA85–1–29–000, TA86–1–29–000, TA86–5–29–002 and RP83–137–000, Transcontinental Gas Pipe Line Corporation. Order No. 436 rate settlement.
(B) Docket No. CP86–405–000, Transcontinental Gas Pipe Line Corporation. Order No. 436 blanket certificate application.
(C) Docket No. CI86–293–000, Transcontinental Gas Pipe Line Corporation. Docket No. CI86–297–000, Transco Gas Supply Company. Related limited-term abandonment.
(D) Docket Nos. CP87–37–000 and 001, Philadelphia Electric Company, Complainant v. Transcontinental Gas Pipe Line Corporation, Respondent and Columbia Gas Transmission Corporation, Complainant v. Transcontinental Gas Pipeline Corporation, Respondent. Order on Complaints.
(E) Docket Nos. TA85–3–29–010, 011, 012, TA86–1–29–007, 008, CP85–190–004, 005, TA85–1–29–007, 008, TA86–5–29–008, 009, RP83–137–026 and 027, Transcontinental Gas Pipe Line Corporation. Order on rehearing regarding severed issue.

RP–2.
Omitted

RP–3
Docket No. RP84–76–000, Alabama-Tennessee Natural Gas Company. Order on Initial Decision.

RP–4
Docket No. RP82–58–000, Panhandle Eastern Pipe Line Company Docket No. RP82–105–000, Central Illinois Light Company v. Panhandle Eastern Pipe Line Company. Order on Intial Decision.

II. Producer Matters

CI–1
Reserved.

III. Pipline Certificate Matters

CP–1.
Reserved.

Kenneth F. Plumb,
Secretary.
[FR Doc. 87–3370 Filed 2–12–87; 4:37 pm]
BILLING CODE 6717–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, February 19, 1987.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. White County Coal Corporation, LAKE 86–58–R, etc. (Issues include consideration of requirements for taking enforcement actions under section 104(d) of the Mine Act, 30 U.S.C. 814(d).)
2. Greenwich Collieries, PENN 85–188–R, etc. (Issues are same as above.)
3. NACCO Mining Company, LAKE 85–87–R, etc. (Issues are same as above.)
4. Emerald Mines Corporation, PENN 85–298–R. (Issues are same as above.)

It was determined by a unanimous vote of Commissioners that this meeting be closed.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629.

Jean H. Ellen,
Agenda Clerk.
[FR Doc. 87–3442 Filed 2–13–87; 12:43 pm]
BILLING CODE 6735–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 16, 23, March 2, and 9, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of February 16

Tuesday, February 17

2:00 p.m.—Briefing on Final Version of Draft NUREG–1150 (Source Term) (Public Meeting)

Wednesday, February 18

2:30 p.m.—Briefing on Status of EEO Program (Public Meeting)
4:00 p.m.—Affirmation/Discussion and Vote (Public Meeting): a. Final Rule 10 CFR 73.57, Implementing Requirements for Licensee Access to FBI Criminal History Data (Tentative)

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Week of February 23 (Tentative)

Monday, February 23

2:00 p.m.—Briefing on Consideration of Proposed Emergency Planning Rule Changes (Public Meeting) (Title Change)

Wednesday, February 25

10:00 a.m.—Briefing on Surry Incident (Public Meeting)
2:00 p.m.—Briefing on National Academy of Sciences Report, "Revitalizing Nuclear Safety Research" (Public Meeting)

Thursday, February 26

10:00 a.m.—Briefing on Status of and Possible Vote on Restricted Power Levels for Fort St. Vrain (Public Meeting)
3:00 p.m.—Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 2 (Tentative)

Wednesday, March 4

2:00 p.m.—Discussion of Management-Organization and Internal Personnel Matters [Closed—Ex. 2 & 6)

Thursday, March 5

3:30 p.m.—Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 9 (Tentative)

Thursday, March 12

10:00 a.m.—Discussion of Pending Investigations (Closed—Ex. 5 & 7)
2:00 p.m.—Discussion/Possible Vote on Full Power Operating License for Vogtle-1 (Public Meeting)
3:30 p.m.—Affirmation/Discussion and Vote (Public Meeting) (if needed)

To verify the status of meetings call (recording) (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634–1410.

Robert B. McOsker,
Office of the Secretary.
February 12, 1987.

[FR Doc. 87–3508 Filed 2–13–87; 3:55 pm]
BILLING CODE 7590-01-M

POSTAL SERVICE

Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, March 3, 1987, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. The meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, March 2, 1987, but it will consist entirely of briefings and is not open to the public.

Agenda

Tuesday Session, March 3, 1987—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, February 2–3, 1987.
2. Remarks of the Postmaster General.
3. Officer Compensation.
4. Consideration of Proposed Filing with the Postal Rate Commission for Mail Classification Change Extending C.O.D. Service to Express Mail.
5. Report on Law Department Programs.
6. Annual Testimony to Legislative Committees.
7. Capital Investment: Denver GMF/VMF Project.
8. Tentative Agenda for April 6–7, 1987, meeting in Dallas, Texas.

David F. Harris,
Secretary.

[FR Doc. 87–3514 Filed 2–13–87; 3:55 pm]
BILLING CODE 7710-12-M

TENNESSEE VALLEY AUTHORITY

(Meeting No. 1381)

TIME AND DATE: 9:00 a.m. (EST), Thursday, February 19, 1987.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on January 14, 1987.

Discussion Item

1. Bull Run Coal Supply Task Force. TVA staff will discuss the findings of a task force established by the Office of Power to make a comprehensive study of the TVA coal supply alternatives for the Bull Run Fossil Plant.

Action Items

B—Purchase Awards

B1. Amendment to Indefinite Quantity Term Contract No. 80P88–171173 With Chem-Nuclear Systems, Inc., for Radioactive Waste Disposal Services for Various Nuclear Plants.

B2. Amendment to Contract 72P–40–T18 With Falcon Coal Company, Inc.; Contract 77P–41–T10 With Brown Badgett Coal Company; and Contract TV–59790A With CSX Transportation, Inc.

*B3. Request for Proposal DA–200959—Basic Ordering Agreement for Natural Gas for Operation of the National Fertilizer Development Center at Muscle Shoals, Alabama.

C—Power Items

C1. Renewal Power Contract With Tuscumbia, Alabama.

C2. Supplement No. 4 to Contract No. TV–61135A With Gas-Cooled Reactor Associates to Provide for TVA's Continued Membership for a 1-Year Period to Support More Extensive High Temperature Gas-Cooled Reactor Developmental Efforts.

C3. Authorization to Provide Additional Funds Under Cooperative Agreement No. TV–65580A With Fluor Constructors, Inc., for Erection Services for 160–MW Atmospheric Fluidized Bed Combustion Demonstration Plant Project.

C4. Supplement No. 7 to Subagreement No. 1 Under the Technical Assistance Plan and Interagency Agreement (TV–68345A) Between TVA and U.S. Department of Energy for TVA Weld Quality Evaluation for Watts Bar Unit 1.

D—Personnel Items

D1. Implementation of the Decision of the Secretary of Labor in the Wage Dispute Between TVA and the International Brotherhood of Electrical Workers Resulting From the 50th Annual Wage Conference Held in 1985.

D2. Personal Services Contract With Tarica & Company, Certified Public Accountants, for Performance of Expanded Scope Audits Rquested by Office of the Inspector General.

D3. Personal Services Contract With O'Neal and Saul, P.A., for Performance of Expanded Scope Audits Requested by Office of the Inspector General.

D4. Supplement No. 3 to Personal Service Contract No. TV–69344A With Coopers & Lybrand, Knoxville, Tennessee, for Services of Qualified Personnel to Provide Assistance to TVA in the Design and Implementation of an Accounting Information System, Requested by the Comptroller.

D5. Supplement No. 4 to Personal Services Contract No. TV–67495A With Westec Services, Inc., Plymouth Meeting, Pennsylvania, Providing for Additional Services in Connection with the Environmental Qualification of TVA's Nuclear Plants, Requested by the Office of Nuclear Power.

*Items approved by individual Board members. This would give formal ratification to the Board's action.

D6. Supplement No. 2 to Personal Services Contract No. 67884A With Digital Engineering, Inc., Huntsville, Alabama, Providing for Additional Services in Connection With the Environmental Qualification Evaluation of Safety-Related Electrical Equipment at TVA Nuclear Plants, Requested by Office of Nuclear Power.

D7. Supplement No. 14 to Personal Services Contract No. 56071A With Wyle Laboratories, Huntsville, Alabama, Providing for Engineering and Testing Support as Needed for the Environmental Qualification Assessment of Safety-Related Equipment at TVA Nuclear Plants, Requested by Office of Nuclear Power.

D8. Supplement No. 2 to Personal Services Contract No. TV–68729A With EQE Incorporated, San Francisco, California, Covering Arrangements for Seismic Evaluations at Browns Ferry and Sequoyah Nuclear Plants, Requested by Office of Nuclear Power.

D9. Supplement No. 7 to Personal Services Contract No. TV–67404A With General Physics Corporation, Columbia, Maryland, for Engineering and Related Support Services at Browns Ferry Nuclear Plant, Requested by Office of Nuclear Power.

D10. Supplement No. 1 to Personal Services Contract No. TV–70551A With Energy Services, Inc., Williamsburg, Virginia, for Engineering Services at Browns Ferry Nuclear Plant.

D11. Supplement No. 1 to Personal Services Contract No. TV–71021A With DiBenedetto Associates, Inc., North Andover, Massachusetts, for Technical and Engineering Assistance at Sequoyah Nuclear Plant.

E—Real Property Transactions

E1. Filing of Condemnation Cases.

E2. Abandonment of Certain Easement Rights Affecting 0.2 Acre of Chatuge Reservoir Land in Clay County, North Carolina—Tract No. CHR–53F.

E3. Abandonment of Certain Rights Affecting 0.44 Acre of Chickamauga Reservoir Land in Hamilton County, Tennessee—Tract No. XCR–19.

F—Unclassified

F1. Subagreement No. 21 to Memorandum of Agreement (TV–23928A) Between TVA and U.S. Department of the Army, Corps of Engineers, for Engineering and Drafting Work for Updating As-Built Drawings for Chickamauga, Wheeler Main, Wheeler Auxiliary, Pickwick Auxiliary, Watts Bar, Wilson Main, and Wilson Auxiliary Locks.

F2. Supplement No. 2 to Subcontract No. TV–69097A With Battelle Memorial Institute, Columbus Division, for Research Activities Relating to Biological Effects of Plume Fly Ash.

F3. Supplement No. 4 to Agreement No. TV–64685A With Oak Ridge Operations, U.S. Department of Energy, Covering Arrangements for TVA to Analyze Macrobenthos Samples From East Fork Poplar Creek, White Oak Creek, Mitchell Creek, Bear Creek, and Several Control Streams Near Oak Ridge, Tennessee.

F4. Agreement No. TV–71263A With U.S. Department of the Army, Corps of Engineers, Memphis District, for Laboratory Analyses of Water and Sediment Samples.

F5. Organization Bulletin and Code for the Office of the Inspector General.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: February 12, 1987.

W. F. Willis,
General Manager.

[FR Doc. 87–3374 Filed 2–13–87; 9:39 am]
BILLING CODE 8120-01-M

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Corrections

Federal Register
Vol. 52, No. 32
Wednesday, February 18, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6F3316/R868; FRL-3153-4]

Pesticide Tolerances for Fenoxaprop-Ethyl

Correction

In rule document 87-2631 beginning on page 4292 in the issue of Wednesday, February 11, 1987, make the following correction:

On page 4293, in the second column, in the fourth line, the FR cite should read "24950".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86M-0473]

N&N Menicon, Inc.; Premarket Approval of N&N 1500 (Mafilcon) Soft Contact Lens

Correction

In notice document 86-28198 appearing on page 45182 in the issue of Wednesday, December 17, 1986, make the following corrections:

1. In the first column, under **ADDRESS**, in the last line, the zip code should read "20857".

2. In the third column, in the second complete paragraph, in the fourth line, "360(h)" should read "360j(h)".

BILLING CODE 1505-01

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 207 and 558

[Docket No. 77N-0078]

New Animal Drugs for Use in Animal Feeds; Definitions and General Considerations; Revised Procedures re Medicated Feed Applications; Editorial Amendments

Correction

In rule document 87-1409 beginning on page 2681 in the issue of Monday, January 26, 1987, make the following corrections:

1. On page 2682, in the first column, in the Supplementary Information, in the sixth line, "foods" should read "feed".

2. On the same page, in the third column, in amendatory instruction 7, in the second line "(b)" should read "(d)".

3. On page 2684, in the third column, in § 558.195(c), in the second line, "decoquinate" was misspelled.

BILLING CODE 1505-01-D

Wednesday
February 18, 1987

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources, Standards of Performance for New Sources, Residential Wood Heaters; Listing of Residential Wood Heaters for Development of New Source Performance Standards; Proposed Rules

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3138-7(b)]

Standards of Performance for New Stationary Sources; Standards of Performance for New Sources; Residential Wood Heaters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The proposed standards would limit particulate matter (PM) emissions from new residential wood heaters. The proposed standards were developed through the process of regulatory negotiation. They implement Section 111 of the Clean Air Act and are based upon the Administrator's determination that wood heaters cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The proposed standards would require wood heaters manufactured on or after July 1, 1988, be capable of reducing emissions to the level achievable by the best demonstrated system of continuous emission reduction, considering costs, nonair quality health and environmental impacts, and energy requirements.

If requested, a public hearing will be held to provide interested parties an opportunity for oral presentations of data, views, or arguments concerning the proposed standards.

DATES: *Comments.* Comments must be received on or before April 20, 1987.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by March 11, 1987, a public hearing will be held on April 6, 1987, beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Ann Eleanor at the phone number listed under For Further Information Contact to verify that a hearing will be held.

Request to Speak at Public Hearing. Persons wishing to present oral testimony must contact EPA by March 11, 1987.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE–131), Attention Docket Number A–84–49, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Ann Eleanor, Standards Development Branch (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, at the phone number listed under **FOR FURTHER INFORMATION CONTACT.**

Docket. Docket No. A–84–49, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For questions concerning regulatory aspects of the standards, please contact Rick Colyer, Standards Development Branch, telephone number (919) 541–5578. For questions concerning technical aspects of the standards, please contact Jeff Telander, Industrial Studies Branch, (919) 541–5595. For questions concerning test methods and laboratory accreditation, please contact George Walsh, Emission Measurement Branch, (919) 541–5543. The address for each is: Emission Standards and Engineering Division (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For questions concerning wood heater certification and enforcement, please contact Doreen Cantor, (202) 382–2874, at the following address: Stationary Source Compliance Division (EN–341), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Persons interested in attending the public hearing or persons wishing to present oral testimony must notify Ms. Ann Eleanor at (919) 541–5578.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. New Source Performance Standards—General

New Source Performance Standards (NSPS or "standards") implement Section 111 of the Clean Air Act. NSPS are issued for categories of sources which cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. They apply to new stationary sources of emissions, i.e., sources whose construction, reconstruction, or modification begins after the applicability date of the standard.

An NSPS requires these sources to control emissions to the level achievable by "best demonstrated technology," or "BDT," which is defined in item B.3 below.

B. Typical NSPS Decision Scheme

An NSPS is the product of a series of decisions related to certain key elements for the source category being considered for regulation. The elements identified in this "decision scheme" are generally the following:

1. Source category to be regulated—usually an entire industry but can be a process or group of processes within an industry.

2. Pollutant(s) to be regulated—the particular substance(s) emitted by the source that the standard will control.

3. Best demonstrated technology—the technology on which the Agency will base the standards, i.e.,

> • • • the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. [Section 111(a)(1)]

For convenience, this will be referred to as "best demonstrated technology" or "BDT."

4. Affected facility—the pieces or groups of equipment that comprise the sources to which the standards will apply.

5. Format for the standards—the form in which the standards are expressed, e.g., as a percent reduction in emissions, as a pollutant concentration, or as an equipment standard.

6. Actual standards—based on what BDT can achieve, the maximum permissible emissions. (Note.—In general, standards do not require that a specific technology be used to achieve them. The source owner/operator may select the method for achieving the pollution control required.)

7. Other considerations—In addition, NSPS often include: modification/reconstruction considerations, monitoring requirements, performance test methods, and reporting and recordkeeping requirements.

C. Overview of This Preamble This preamble will:

1. Discuss the aspects of this NSPS that set it apart from other NSPS.

2. Summarize the important features of this NSPS by discussing the conclusions reached with respect to the decision scheme.

3. Describe the environmental, energy, and economic impacts of this NSPS.

4. Describe the background to this standard.

5. Present a rationale for each of the decisions in the decision scheme and provisions of the standard.

6. Discuss administrative requirements relevant to this action.

D. Unique Aspects of This NSPS

Two factors make this NSPS unique. First, the source category to be regulated, residential wood-fired heaters, are mass-produced consumer items, rather than industrial processes typically regulated by an NSPS. Because wood heaters are mass-produced consumer items, a compliance scheme requiring that each facility be tested would be very costly. (The cost of a test series is several times the cost of a typical wood heater). Therefore, this standard permits the manufacturers of wood heaters to avoid having each unit tested by allowing, as an alternative, a certification program whereby representative wood heaters are tested. If the representative wood heater meets the applicable emission limits, EPA would certify the entire model line. Individual wood heaters within the model line would be subject to labeling and operational requirements. Manufacturers would then be required to conduct a quality assurance program to ensure that appliances produced within a model line conformed to the certified design, and met applicable emission limits. EPA also would conduct audits to ensure compliance.

The second unique aspect of this standard is the means by which it was developed. This NSPS was developed through the process of regulatory negotiation, an alternative process for developing regulations in which individuals and groups with negotiable interests directly affected by the standard work with EPA in a cooperative venture to develop a standard by committee agreement. The rule, as presented in this proposal, reflects a consensus of representatives of the wood heater industry, the environmental community, consumer groups, state air pollution control and energy agencies, and the EPA.

It is important to note, however, that the parties to the negotiation concurred with the regulation, when considered as a whole. Inevitably in any negotiation, this means that some parties may have made concessions in one area, in exchange for concessions from other parties in other areas. As a result, it is difficult to assess how changes in particular parts of the proposed rule would affect the consensus.

Members of the negotiation committee and their affiliation are as follows:

Negotiators/Affiliation

1. Robert Ajax, U.S. EPA
2. William Becker, STAPPA/ALAPCO
3. Larry Canaday, Woodcutters Mfg.
4. John Charles, Oregon Environmental Council
5. Donnis Corn, a-b Fabricators, Inc.
6. David Doniger, Natural Resources Defense Council, Inc.
7. Harold Garabedian, Vermont Air Pollution Control Program
8. Robert Geiter, Applied Ceramics
9. R.D. Gros Jean, Corning Glass Works
10. Brad Holloman, New York State Energy Research & Development Authority and New York State Energy Office
11. Jim King, Colorado Department of Health
12. John Kowalczyk, Oregon Department of Environmental Quality
13. Neil Martin, Brugger Exports, Ltd.
14. David Menotti, Wood Heating Alliance
15. Jay W. Shelton, Shelton Research, Inc.
16. David Swankin, Consumer Federation of America

Facilitator

Phil Harter, Esq., Consultant to EPA

Executive Secretary

Chris Kirtz, U.S. EPA

Observers

Wayne Leiss, Office of Management and Budget
George J. Lippert, U.S. Forest Service
Jean Vernet, U.S. Department of Energy

II. Summary of the NSPS

A. Source Category To Be Regulated

This NSPS would regulate new residential wood heaters.

B. Pollutant To Be Regulated

This NSPS would regulate particulate matter (PM).

C. Affected Facility

A "wood heater" would be defined as an enclosed, woodburning appliance used for space heating, domestic water heating, or indoor cooking that meets all of the following criteria:

1. An air-to-fuel ratio averaging less than 35-to-1,

2. Firebox volume less than 20 cubic feet,

3. Minimum burn rate less than 5 kg/hr, and

4. Maximum weight of less than 800 kg.

The regulation explicitly excludes furnaces, boilers, and open fireplaces.

D. Best Demonstrated Technology

Two technologies are BDT for this source category: Catalytic technology and low-emitting noncatalytic technology.

E. Format for the Standards

The emission limit would be expressed in grams of PM per hour (g/hr).

F. Emission Limits and Compliance Dates

The rule would have two phases: wood heaters manufactured on or after July 1, 1988, or sold at retail on or after July 1, 1990, would have to meet certain particulate matter emission standards (Phase I); wood heaters manufactured on or after July 1, 1990, or sold at retail on or after July 1, 1992, would have to meet more stringent particulate matter emission standards (Phase II). For each phase there would be separate emission limits for catalytic wood heaters and for noncatalytic wood heaters as specified in Table 1.

TABLE 1.—WOOD HEATER EMISSION LIMITS

	Phase I (July 1, 1988–June 30, 1990)	Phase II (beginning July 1, 1990)
Catalytic	5.5 grams/hour	4.1 grams/hour
Noncatalytic	8.5 grams/hour	7.5 grams/hour

The Phase I emission limits are about the same as the 1988 emission limits in Oregon. Because the emission weighting formula used in this standard is different from the weighting formula in the Oregon standard, the numerical expression of the standard is different. For perspective, the numerical value of the Phase II emission limits are about 15 and 25 percent lower than the 1988 Oregon standards for noncatalyst and catalyst wood heaters, respectively, and also limit allowable emissions at any burn rate (i.e., a cap).

The 1990 cap for catalyst wood heaters is a function of burn rate (dry basis) and is calculated by the following:

- For burn rates $\leq$2.82 kg/hr, Cap=3.55 g/kg$\times$(burn rate)+4.98 g/hr
- For burn rates$>$2.82 kg/hr, Cap=15 g/hr

The 1990 cap for noncatalyst wood heaters is 15 g/hr for burn rates less than or equal to 1.5 kg/hr and 18 g/hr for burn rates greater than 1.5 kg/hr.

G. Modification/Reconstruction Considerations

Modification or reconstruction, as defined in § 60.14 and § 60.15 of Subpart A, shall not, by itself, make a wood heater an affected facility under this subpart. A "modification" is a physical or operational change to an existing facility, in this case built before July 1, 1988, that would result in an increase in the emission rate. "Reconstruction" means the replacement of components

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of an existing facility to the extent that the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost needed to construct a comparable entirely new facility. Under the proposed rule, neither "modification" nor "reconstruction" of a unit built before July 1, 1988, would make that unit subject to the standards. On the other hand, a unit otherwise subject to them would remain subject, even if it were "modified" or "reconstructed."

H. Certification Testing

As an alternative to requiring that each wood heater be tested for compliance, a manufacturer may elect to have an entire model line certified. To obtain a certificate of compliance the manufacturer must submit for testing a wood heater which is representative of a model line to an EPA-accredited laboratory. If the representative wood heater meets the emission limits, the entire model line would be certified. Compliance with the emission limits would be demonstrated by meeting the composite or weighted average emission limit and by meeting, in addition, for Phase II, the individual caps at each of at least four burn rates. Applications for certification may be submitted at any time, but those received before July 1, 1988, may be considered under either the proposed or promulgated requirements, at the applicant's option. Additional and revised promulgated requirements would not apply retroactively.

I. Test Methods and Procedures

Procedures for loading the test fuel, for setting up the wood heater, for operating the wood heater, and for conducting the emissions and efficiency tests are specified in the regulation. Several equivalent methods for measuring PM would be permitted in the regulation. Efficiency testing would be optional.

J. Accreditation Procedures

Certification testing would be conducted by EPA-accredited laboratories and laboratories accredited by Oregon and exempted under this regulation's grandfather provisions. EPA would accredit laboratories based upon their demonstrated proficiency and upon specified criteria. Applications for accreditation may be submitted at any time, and those received before July 1, 1988, may be considered under either the proposed or promulgated requirements, at the applicant's option. Additional and revised promulgated requirements would not apply retroactively.

K. Compliance Scheme

Unless exempted, all model lines would have to be covered by a certificate of compliance, or each wood heater would have to be individually tested. All wood heaters affected by this standard would be labeled to indicate their compliance status and to provide comparative performance information for consumers. Enforcement would include: (1) Inspections at the retail level to ensure that all wood heaters are properly labeled, (2) parameter inspections to ensure that components of the manufactured units conform to the representative wood heater submitted for testing, and (3) emission audit testing to ensure that the model line meets the emission limits.

L. Labeling and Owner's Manual

All appliances subject to the standard and offered for sale would be required to display both a temporary label and a permanent label. In general, the temporary label would help the prospective purchaser select an appliance by providing information on relative pollution output, efficiency, and heat output. The permanent label would contain information relevant to compliance and applicability. Manufacturers would be required to provide operation and maintenance information necessary for good emissions control in the owner's manual that accompanies the appliance.

M. Catalyst Warranty Requirements

If the wood heater is equipped with a catalyst, the catalyst would have to be guaranteed in full for at least two years and, beginning July 1, 1990, for at least three years for thermal degradation of the substrate. Also, the catalyst would have to be easily accessible for inspection and replacement.

N. Manufacturer Quality Assurance

Manufacturers would be required to conduct a quality assurance (QA) program consisting of both parameter inspections and emissions testing.

O. Alternative Certification

EPA would allow an alternative certification procedure for manufacturers who may be unable to obtain certification in the event that EPA determines that the time for getting appliances tested at accredited laboratories and getting applications processed by EPA exceeds six months.

P. Recordkeeping and Reporting

Manufacturers would be required to maintain records of certification testing data, QA program results, production volumes, names and addresses of purchasers, and information needed to support a request for a waiver or exemption. Accredited laboratories would have to keep testing records and report periodically to EPA certain information required under alternative certification provisions. Retailers would have to maintain names and addresses of purchasers. All records would have to be retained for at least five years.

III. Impacts of this NSPS

EPA used a wood stove demand simulation model to estimate the anticipated nationwide impacts of this NSPS. This computer model assumes households will attempt to minimize the cost of wood heat over the lifetime of the heater. It also assumes that, independent of the impacts of this regulation, wood heater sales volume would continue at about the same rate as in 1985. Using a variety of inputs such as the price of firewood, the price of various types of wood heaters, and wood heater sales volumes, the model projects on a regional and household/income basis, changes in sales, emissions, wood use, and heating costs that will occur as a result of this regulation. From these data, nationwide impacts were developed on air pollution, energy and control costs, and various economic effects in the fifth year after the regulation takes effect and compared with the impacts that would have occurred in the absence of regulation.

A. Air

Particulate emissions from wood heaters are a function of the method of measurement. Emission estimates based on laboratory tests have been made for both uncontrolled and controlled wood heaters. Based on a total particulate catch using EPA's Modified Method 5 (MM5) discussed in the Sampling Methods section, a typical conventional wood heater emits about 60 to 70 g/hr of PM. Catalytic and noncatalytic wood heaters complying with the 1988 standards would emit at least 62 and 72 percent less, respectively. Although catalytic wood heaters achieve greater emission reductions initially, presumed deterioration of the catalysts over time are estimated to result in emissions from catalytic wood heaters over their useful lifetimes approximately equal to noncatalytic wood heaters. Catalytic and noncatalytic wood heaters complying with the 1990 standards would emit at least 86 and 75 percent less, respectively, than conventional wood heaters. The numerical emission limits in the regulation, however, are based on PM measurements using the Oregon Method 7, also described in the Sampling Methods section, which measures roughly half the emissions of MM5.

Assuming that: (1) The price increases resulting from the standard would be on the order of $120 to $200 per appliance, (2) manufacturers would offer a mix of catalytic and noncatalytic wood heaters, (3) the initial emissions control efficiency of a catalyst may deteriorate over time, and (4) some wood heaters will be exempted for a year, EPA projects that the nationwide PM emission reduction in the fifth year is 395 Gigagrams (Gg) per year (or 436,000 tons per year), as shown in Table 2. It is important to note that all of the fifth year impact data refer only to wood heaters manufactured on or after July 1, 1988, or sold on or after July 1, 1990. Wood heaters manufactured before July 1, 1988, and sold before July 1, 1990, would not be affected by this regulation.

Although no emission reduction estimates have been made for pollutants other than PM, the control techniques used to reduce PM emissions are known to reduce carbon monoxide (CO) and polycyclic organic matter (POM) emissions as well. POM is a class of compounds containing carcinogens.

B. Other Environmental Impacts

This NSPS is anticipated to have no impacts or only negligible impacts on water quality or quantity, waste disposal, radiation, or noise. The increased wood heater efficiencies are expected to result in reduced wood consumption thereby saving timber and preserving woodlands and vegetation for aesthetics, erosion control, and ecological needs.

C. Health and Welfare Impacts

Health effects associated with exposure to wood heater PM include both mortality and morbidity resulting from respiratory disease, cardiovascular disease, and some risk of carcinogenesis. Welfare effects of wood heater PM emissions include soiling and materials damage to residences. Depending on the dispersion characteristics of the PM emissions, soiling and materials damage may also occur to commercial, industrial, governmental, and institutional facilities. Wood heater PM emissions also adversely affect visibility. The State of Oregon's regulation on woodstove PM emissions was prompted, in part, by the degradation in regional visibility. Table 2 includes a rough estimate of the dollar value benefits of reducing the mortality, morbidity, and household soiling and materials damage associated with the PM emission reduction due to the regulation. In addition to the health benefits of reduced air pollution, this standard is expected to reduce creosote deposition. Creosote deposition is the principal contributor to chimney fires. In 1984, 126,000 residential fires were attributed to wood heat, claiming 140 lives. Thirty percent of these fires were thought to have started in the chimney.

D. Energy Impacts

The increased efficiency of wood heaters is estimated to reduce demand for firewood by about 700,000 cords in the fifth year.

E. Cost Impacts

Many consumers would purchase more technically advanced wood heaters than they would have in the absence of the NSPS, and would therefore pay up to 25 percent more than they would for a conventional wood heater. Catalytic and noncatalytic wood heaters are, on average, about $200 and $120 more expensive, respectively, than conventional wood heaters. However, on average, this additional expense will be more than offset by cost savings from the need for less firewood and for fewer chimney cleanings over the life of the heater. Nationally, in the fifth year, there is a projected net savings of $29 million because of these offsetting benefits.

F. Economic Effects

The regulation is projected to result in a 5 percent decrease in sales in the first year when the exemption for the smallest firms is in force. A 7 percent decrease compared to the no regulation case is projected for the second year. In the long run, the decrease is expected to be about 5 percent. This decrease is expected to result, in part, in some manufacturers ceasing wood heater production, and others reducing it. It is not possible at this time to quantify this impact. In the long run, the regulation is anticipated to have no appreciable effect on the price of catalytic and noncatalytic low emitting stoves. Two important but unquantified impacts of the regulation are a potential increase in the development of the lower emitting heater technology and an increase in the spread of consumer information concerning this new technology.

TABLE 2. FIFTH YEAR NATIONWIDE IMPACTS SUMMARY

	Costs (savings) ($10⁹)	Emissions (Gg/yr)	Number of wood heaters sold (10⁶)	Cords of wood (10⁶)	Health and welfare benefits ($10⁹)
No regulation (baseline)		549	800	10.1	
NSPS	(29)	154	757	9.4	1,500

IV. Background to Standard

As discussed elsewhere in today's **Federal Register**, EPA is listing residential wood heaters based on its determination that wood heaters cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.

During the past few years, several State and local governments have developed regulations controlling, and in some instances temporarily banning, wood heaters. On July 1, 1986, Oregon regulations went into effect prohibiting the sale of new wood heaters that are not state-certified. Similar regulations went into effect in Colorado on January 1, 1987. Several local ordinances have been passed, mostly in the Rocky Mountains, to control or ban woodburning. Several other States are awaiting the development of a Federal NSPS before deciding whether to regulate on their own.

The development of a Federal NSPS for wood heaters began in 1985 as a response to the growing concern that wood smoke contributes to ambient air quality related health problems. In response to a lawsuit filed by the State of New York and the Natural Resources Defense Council (NRDC), the Agency agreed to conduct a wood heater NSPS rulemaking with a schedule calling for final action by January 31, 1988. *New York* v. *Thomas*, Nos. 84–1472, etc. (D.C. Cir.) (Settlement Agreement of May 9, 1986).

After communicating with the various parties interested in the development of this standard—the wood heating industry, State governments, environmental and consumer groups—EPA established a negotiating committee under the Federal Advisory Committee Act to negotiate the provisions of the standard.

Beginning on March 19, 1986, the regulatory negotiation committee met six times on a monthly basis to discuss and reach agreements on a variety of technical and policy issues associated with the development of the standard. At the final meeting of the committee on

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August 21, 1986, the committee reached agreement in principle on all major provisions of the standard and, in December, the standard that is being proposed today was formally agreed to by all parties.

V. Rationale for Proposed Standards

The purpose of this section is to (1) explain briefly the issues negotiated by the committee, (2) describe the resolutions reached by the committee, (3) present the rationale for these resolutions. EPA cautions that its explanation of the reasons for particular committee decisions may not always reflect the reason why each individual committee member agreed to a particular provision of the regulation.

A. Selection of Source Category

As discussed in the listing notice contained elsewhere in today's Federal Register, the standard would cover wood heaters and not conventional fireplaces. Wood heaters exhibit greater air pollution emitting characteristics than do fireplaces. In addition, the different technical and operational characteristics of fireplaces do not easily lend themselves to the same types of controls that can be applied to wood heaters.

Fortunately, the conditions in a wood heater that characterize the pollution problem—poor air and fuel mixing, low air flows, relatively high concentrations of unburned material in the exhaust—are conditions that lend themselves to control using secondary or more complete combustion. This can be accomplished through modification of the firebox and air supply systems and/or through use of catalysts.

Secondary combustion controls are not necessarily applicable to and have not been demonstrated for fireplaces. The reason for this is that the higher air-to-fuel ratios and exhaust air flow rates, and the lower concentrations of unburned matter in the exhaust will not readily support secondary combustion. Use of catalysts may be applicable in certain cases, but, in general, small catalysts tend to restrict exhaust flow in the fireplace stack, and could cause smoke to back-puff into the room. Larger catalysts with less restriction would add greater mass and require more heat than is available to sustain combustion. These problems are not necessarily insurmountable and programs in Colorado are underway to assess fireplace controls. Thus, control systems that have been demonstrated for wood heaters are not necessarily applicable to fireplaces. The quantity of pollutant emissions from fireplaces justifies further investigation of possible control techniques, however, and EPA solicits comments on how such emissions may be effectively reduced.

Another reason for not regulating fireplaces under this standard is that many fireplaces are custom designed and site-built. The certification program and test protocols are designed to accommodate mass-produced units based on a single model line. A masonry fireplace permanently attached to a structure could not readily be tested in a laboratory.

B. Pollutant To Be Regulated

Wood heaters emit PM (which include condensible hydrocarbons and POM's) as well as large quantities of carbon monoxide. As indicated in the August 2, 1985 ANPR, EPA intends to regulate only PM under this standard. Committee members agreed with this decision to limit the scope of the regulation to PM.

EPA had several reasons for this decision. The first was that by limiting the pollutants covered to PM, a wood heater regulation could be developed in a shorter period of time. The second reason was that control techniques for reducing PM also reduce CO emissions, although the degree of CO reduction is not always proportional to the PM reductions. Some wood heater designs and control techniques result in proportionately greater CO emission reductions than others. Similarly, reductions in PM emissions are accompanied by similar reductions in POM emissions. Based upon limited test data, it appears that catalytic and noncatalytic control technology both reduce POM to approximately the same degree. Finally, at the local level, wood smoke is believed to create more problems with attainment of ambient air quality standards for PM than for CO. Therefore, EPA decided that priority should be given to PM controls.

C. Applicability

As mentioned above, this regulation is intended to regulate emissions from enclosed wood heaters and not conventional fireplaces. Because of the variety of residential wood-burning appliances, the distinction between air-tight wood heaters and fireplace inserts, on the one hand, and fireplaces, on the other, is not clear cut. A mass-produced freestanding woodburning appliance equipped with tight fitting doors and combustion air controls may be called a fireplace but may function and have emission characteristics of a wood heater.

It was necessary, therefore, to define clearly which appliances would be covered and which would be excluded by the standard. The committee agreed to define the facility affected by this NSPS as an enclosed, woodburning appliance capable of and intended for space heating, domestic water heating, or indoor cooking and that has an air-to-fuel ratio of less than 35-to-1 at the low burn cycle, has a usable firebox volume less than 20 cubic feet, weighs less than 800 kg, and has a minimum burn rate less than 5 kg/hr. Multi-fueled appliances (e.g., wood and coal) would be covered to ensure that the standard would not be circumvented by simply designating an appliance as coal-capable when in fact it could be used to burn cordwood.

The reference to "indoor cooking" is intended to exclude outside barbeque grills but to include indoor wood-fired cookstoves. To have excluded cookstoves would have created the possibility of circumvention because most space heating woodstoves can be judged to be capable of heating food. Additionally, no evidence was presented to indicate that a cookstove has different operating or emitting characteristics than a typical woodstove to warrant its exclusion.

Following the negotiation, one manufacturer of wood-fired cookstoves that contain ovens commented, through the Wood Heating Alliance (WHA), that control of emissions from these facilities with catalyst and noncatalyst technologies is not feasible. No data or other information were submitted to support these claims. Cookstoves with ovens are similar in most respects to woodstoves and EPA has no data showing that available controls are not applicable to these facilities with ovens. EPA is, therefore, not exempting such facilities in the proposed standard and is requesting comments and any data relevant to control of wood-fired cookstoves. Depending upon the information received, EPA may exempt cookstoves or may set an alternative standard or effective date for such facilities.

Air-to-Fuel Ratios

The air-to-fuel ratio and minimum burn rates are also a means of distinguishing airtight wood heaters from fireplaces. Fireplaces generally have much higher minimum air-to-fuel ratios (typically above 100-to-1) than do woodstoves or fireplace inserts. Lower air-to-fuel ratios are possible in fireplaces with tight-fitting glass doors. For example, data presented to the negotiating committee showed one test run on a small zero clearance fireplace with an air-to-fuel ratio of 23-to-1. However, this same unit consistently had burn rates above 8 kg per hour.

Based on consideration of these data, the committee established an air-to-fuel ratio criterion of 35-to-1 and a burn rate criterion of 5 kg per hour as a means for differentiating between facilities that are subject to and exempt from the standard. An affected facility that would be subject to the standard must operate below both of these criteria. Determination of air-to-fuel ratios and burn rates are made using procedures specified in Method 28A. EPA requests comments regarding this definition of wood heater as a means of separating fireplaces from air-starved appliances such as woodstoves and fireplace inserts.

Method 28A is proposed for determining applicability regarding the air-to-fuel ratio criterion. Specifications in Method 28A are intended to ensure that determinations of whether particular facilities are covered by the standard are made on the facility configurations that could reasonably be expected to be employed by the user. They are also intended to prevent circumvention of the standard through the addition of an air port that would often be blocked off in actual usage. These specifications are based on the assumption that consumers may remove such items as damper or other closure mechanism stops if this can be done readily with household tools; that consumers may block air inlet passages not visible during normal operation of the appliance using aluminum tape or parts generally available at retail stores; and that consumers may cap off any threaded or flanged air inlets. They also assume that air leakage around glass doors, sheet metal joints or through inlet grilles visible during normal operation of the appliance would not be further blocked or taped off by a consumer.

Method 28A is not intended to cause a facility that is clearly designed, intended, and, in most normal installations, used as a fireplace to be converted into a wood heater for purposes of applicability testing. Such a fireplace would be identifiable by such features as large or multiple glass doors or panels that are not gasketed, relatively unrestricted air inlets intended, in large part, to limit smoking and fogging of glass surfaces, and other aesthetic features not normally included in wood heaters.

Size Cutoffs and Accessories

The 20 cubic foot firebox volume cutoff ensures that large industrial and commercial wood-fired appliances would not unintentionally be brought under this regulation. Most residential wood-fired appliances are less than one-third this size.

The committee also established the size cutoff of 800 kg to exclude high mass, site-built masonry appliances. The largest conventional wood heater intended to be covered by the standards of which EPA is aware weighs less than 350 kg.

Simply adding accessories to an existing fireplace not originally equipped or designed for such accessories would not cause the fireplace to become an affected facility. In one instance, the committee was made aware of a specially designed fireplace grate that its manufacturer claimed would cause a fireplace technically to become an affected facility under the proposed definition. The standard would not apply to these accessories. However, facilities that are described as prefabricated fireplaces and that are designed to accommodate doors or other accessories that would create the air-starved operating conditions of wood heaters would be covered by the standard if they meet the criteria in the definition with these accessories in place.

Homemade Wood Heaters and Coal-Fired Heaters

One issue on which EPA specifically requests comment is how the certification requirements should apply to homemade wood heaters, many of which are built from commercially-available kits. The emission limits would apply to these units, since homeowners can only operate affected facilities that are certified or exempted. There are several kit manufacturers who distribute their products nationally. Typically, a kit includes a door, legs, flue pipe and collars, brackets, bolts and other hardware, and instructions for assembling the wood heater with ordinary tools. One manufacturer guarantees a lifetime of ten years and claims heat outputs well in excess of most conventional wood heaters. Although they lack aesthetic appeal, there appears to be a definite market for this type of wood heater. Survey data indicate that more than 5 percent of the wood heaters produced in this country are homemade.

EPA believes that kit manufacturers should have their designs (i.e., a wood heater constructed according to manufacturer's instructions) tested and certified. At least one of the kit manufacturers has voluntarily complied with the U.S. Consumer Product Safety Commission s regulations (16 CFR Part 1406) requiring safety labeling by having his design tested. This manufacturer includes as an option a safety label which can be applied to a kit stove as it is assembled.

The committee agreed that genuine coal-fired appliances, wood-fired furnaces and boilers should be excluded from this standard. The committee agreed to a definition of "coal-only heater" that defines the design of the appliance with such specificity as to exclude facilities that might be called coal heaters by the manufacturer but which could be expected to be used as wood-fired appliances. Also, to qualify as a coal-only heater, the model would have to be listed for burning coal only by a nationally recognized safety testing laboratory. The committee decided to require that coal-only heaters be labeled as such but that coal-only heaters be exempt from other requirements such as the emission limits.

Boilers and Furnaces

Due to the absence of emission test data comparable in quality to that used to set the emission limits for other wood heaters, the absence of a standardized test protocol, and the paucity of data on the feasibility of emission controls, the committee decided that boilers and furnaces should not be included in this standard at this time. In order to avoid circumvention, the committee agreed that boilers and furnaces should be tested and listed under accepted American or Canadian safety testing codes, in order to be exempt from the standards.

In addition to specifically excluding boilers, furnaces, and open masonry fireplaces from the standard, the committee decided to exempt wood heaters manufactured for export and wood heaters used exclusively for research and development (R&D) from all but the labeling requirements. Wood heaters operated in other countries would not be affected by this standard. To prevent a manufacturer from designating an unlimited number of wood heaters as "research stoves," the R&D exemption would be limited to 50 wood heaters per model line. Furthermore, wood heaters exempted under the R&D provision could not be sold.

Oregon-Certified Wood Heater Exemption

Finally, the committee agreed to two other exemptions. The first was that wood heaters which are certified by the Oregon DEQ should be exempted from being retested under the EPA certification program for the first 2-year phase of the standard (when the EPA and the Oregon emission limits are roughly equivalent). (Manufacturers of Oregon-certified wood heaters would, however, need to apply to EPA for

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certification and comply with other applicable EPA requirements.) The second was to provide a 1-year exemption from the standard for all models produced by manufacturers who produced fewer than 2,000 wood heaters in a base year.

The Oregon "grandfather" provision offers the following advantages:

(1) It would reduce the cost burden of certification testing on the industry;

(2) By avoiding duplicate and essentially redundant testing, it would reduce the total number of tests needed during the first 2 years under the standard and would thereby reduce delays, uncertainty, and other undesirable effects that would result from a testing "logjam;"

(3) Manufacturers who had already made investments to design, produce, and market clean-burning wood heaters would not be penalized; and

(4) The demand for testing would be reduced and spread out over time. At the time the negotiations were completed, Oregon had certified almost 50 models.

Small Manufacturer Exemption

The decision to grant a 1-year delay to small manufacturers (those who produce fewer than 2,000 wood heaters between July 1, 1987, and June 30, 1988) had two bases. The first was to provide an additional means of reducing a potential logjam problem by delaying for 1 year the compliance date for many manufacturers. The second was to provide additional time to small manufacturers for such purposes as conducting the research and development, obtaining financing, or purchasing complying designs, necessary to meet the standard. Small manufacturers would likely be the least able to meet the compliance deadlines, because, as a rule, they have less technical expertise, more limited investment funds, and less access to capital markets than large manufacturers. Results of an EPA survey of manufacturers indicated that approximately 70 percent of the manufacturers produce less than 2,000 wood heaters per year, but account for only about 10 percent of the production. Because relatively few firms account for a relatively large share of the wood heater production, it was reasoned that a 1-year delay would help alleviate adverse impacts for many manufacturers while causing a minimal environmental impact. The effect of this would be to preserve the current competitive situation and will not result in an increase in sales by firms covered by the exemption.

D. Compliance Date

Under section 111(a)(2) of the Clean Air Act, any source, the construction of which commences after proposal, is a "new source." However, EPA can set standards only for classes of wood heaters for which EPA has identified BDT. To be BDT, a technology must be available at a reasonable cost. For wood heaters, an important element of the cost of a technology is the cost of delaying production while models with that technology are designed and certified. Thus, BDT applies, and the standards apply, only to those classes of new sources that can meet the standards with a reasonable lead time, as discussed below.

The results of an EPA survey of manufacturers indicated that virtually all of the manufacturers would be able to design, certify, and market a new clean-burning model within 24 months. Manufacturers on the committee also provided varying estimates of the time required to get a new model on line ranging from 6 to 14 months. Based on information supplied by a large manufacturer present at one of the meetings it was estimated that it would take 22 months for that manufacturer (14 months for a single line) to develop and certify all of his model lines. This estimate included design, research and development, testing, field evaluation, and marketing. In addition, because of the Oregon and Colorado standards and the publicity given the EPA standards development, a number of manufacturers had already become well aware of the need to begin designing new clean-burning wood heaters. Finally, the environmental impacts of a longer delay were significant.

Several committee members noted that controls were needed as soon as possible to help states come into attainment with the proposed new "PM-10" ambient standards if EPA promulgates them. (As detailed in Federal Register Vol. 49, No. 55, published on March 20, 1984, EPA has proposed a new ambient standard for PM particles less than 10 microns in diameter.) Woodsmoke particles are smaller than 10 microns in size and might contribute to problems in complying with a PM_{10} standard in many parts of the country.

To accommodate the need to speed up the environmental benefits of the standard, and to prevent unreasonable economic hardship to the wood heater manufacturing industry, the committee agreed to a variety of measures. These include the small manufacturer exemption and the Oregon grandfather provision (both described in "Applicability"), a two-phased standard with the first phase beginning in July 1988 to be followed by a more stringent standard in July 1990, a provision in the standard allowing an alternative certification process to manufacturers who are unable to certify because of unreasonable delays in the certification process, and a provision for waiving certification testing of designs identical to previously certified designs.

Both the small manufacturer and Oregon exemptions are expected to reduce significantly the demand for certification testing and thus the possibility of undue delays or a "logjam" for certification in the period between proposal and the compliance date. The committee recognized that the time required to develop and certify a model was related to the stringency of meeting the standard. In part for this reason, the committee agreed to a July 1988 compliance date for application of emission limits that are roughly equivalent to Oregon's 1988 emission limits.

The Oregon standards, which were adopted in 1984, have represented the design target toward which most manufacturers in the northwest and other large manufacturers nationwide have directed their research and development efforts. In August 1986, when the committee was considering the scheduling and emission limits, some 50 models had achieved the Oregon 1988 standards. This accomplishment has required significant expenditures and effort by many small businesses and has resulted, for the first time, in significant technological advances in wood heater designs. Until this time, control technology had been essentially undemonstrated. The committee concluded, therefore, that a level of control comparable to the Oregon 1988 standard was appropriate and achievable in 1988. It was concluded that a more stringent level of control as early as 1988 would not necessarily be achievable by those models which otherwise would have met the Oregon 1988 standard. Such a standard would cause an unmanageable certification backlog, would present a moving target to those manufacturers who had done the research and development and spent funds for certification in Oregon, and would not be reasonable considering the small environmental gain, if any, that might result. A second phase of the standard, requiring more stringent emission controls, would go into effect 2 years later in July 1990.

If a logjam did occur, an alternative certification scheme would allow manufacturers to have their models

certified for up to 1 year based upon test data, from any test performed in accordance with the test methods specified in § 60.534. The alternative certification provision works as follows.

Beginning April 1, 1987, and continuing until July 1, 1990, EPA will calculate certification lead times from the estimated laboratory testing backlog and EPA's estimated application processing time. If the estimated laboratory testing backlog plus EPA's estimated application processing time exceeds 6 months, EPA must determine that an unreasonably long certification lead time, a "logjam", exists. Until EPA determines that a logjam no longer exists, manufacturers will be allowed to comply under the alternative certification process described below, as long as they have scheduled a wood heater for certification testing at an EPA-accredited laboratory. Under alternative certification, the manufacturer would submit to EPA a completed application including test data from any laboratory, without regard to EPA laboratory accreditation and including the manufacturer's own in-house laboratory. If EPA takes no action on the application, the model line will automatically be certified at the end of 30 days. (EPA could reject the application only if it were incomplete or clearly indicated noncompliance.)

The duration of the alternative certification for each affected line depends upon the certification test results from the EPA-accredited laboratory, and when EPA takes action on an application for "full" certification. If the preliminary test results from the accredited lab indicate that the appliance met the emission limits or failed by less than 50 percent over the composite emission limit, alternative certification will continue to the end of the manufacturer's production year during which EPA takes action on the application for "full" certification, or 12 months after that date, whichever comes earlier. A failure greater than 50 percent over the emission limit will trigger expiration of the alternative certification in 72 hours. Alternative certification also expires if the preliminary test results from the originally scheduled test at an EPA-accredited laboratory are reported to the manufacturer within 100 days of when the appliance was scheduled, and these results show that the appliance exceeds the applicable emission limits.

Preliminary test results are those reported by the laboratory within 10 days after testing is completed. They do not necessarily consist of the complete test report, but are test results that the laboratory will stand behind, to enable the manufacturer or EPA to determine whether a wood heater meets the applicable emission limits. The preliminary results must be signed by a responsible official of the laboratory.

Finally, the committee agreed that wood heater models which are similar in all material respects to previously-certified models (e.g., models produced using a design purchased from another manufacturer) could be waived from certification testing. To be eligible, the manufacturer seeking the waiver must submit a copy of the agreement permitting the applicant to produce wood heaters of that design. This provision would be to reduce testing demand and to reduce certification costs.

E. Selection of Emission Limit Format

Format refers to the units in which emission values are expressed. The committee considered three alternative formats for expressing wood heater emissions. These were: (1) Grams of particulate per hour (g/hr), (2) grams of particulate per kilogram of wood consumed (g/kg), and (3) grams of particulate per joule of heat delivered (g/J). The relative ranking of heaters can depend upon the emission limit format. The three formats do not necessarily rank heaters equally.

The committee agreed to express the emission limits in grams per hour. It is the least complex of the three formats, and it is consistent with current regulations in Colorado and Oregon. Further, it provides more accurate information than either of the other formats on actual rates of particulate loading into the ambient air.

The committee rejected the g/J format because its selection required heat output to be measured. Currently available heat output measurement methodologies are relatively imprecise as well as costly. The committee determined that the main benefit of g/kg format would be to reduce possible bias created by g/hr for low burn rates, but that this could be addressed in the selection of the emission limits and the weighting scheme, and by setting "caps" that may allow higher emissions at greater burn rates. (See discussion at "Selection of Level of the Standard").

F. Selection of Wood Load for Emission Testing

Fuel characteristics and loading arrangements affect PM emissions from wood heaters. To provide a common basis for comparing emission performance among wood heaters for certification testing purposes, a standardized wood loading procedure is needed. Two standardized wood loading procedures had been used for emission testing prior to the NSPS development. These are the Oregon procedure and the draft ASTM P-180 proposed procedure. Both procedures require the use of air-dried Douglas fir dimensional lumber (e.g., 2x4s, 4x4s) arranged and stacked in specific fashions. The major differences between the two procedures are test fuel size, spacing between fuel pieces, and the amount of fuel required.

The committee decided to adopt the Oregon loading procedures. The majority of available emissions data was collected using this procedure. Although no standardized wood load configuration and procedure is representative of individual consumer cordwood burning practices, the Oregon loading density falls within the range shown by the studies.

The committee's decision on the Oregon loading density was also supported by studies which had investigated actual consumer wood loading practices. The first, a study conducted between 1979 and 1985 on nine houses located in New York, Ohio, and Vermont, consisted of 569 loads with 141 night loads. The overall average load factor was 5.4 lb/ft³ of usable firebox volume. The average overnight load factor was 6.4 lb/ft³. The second study, performed in 1985–1986, consisted of houses in Oregon, Vermont, and New York. Four hundred seventy-five wood loads were documented and the average wood load density ranged from 1.1 to 6.7 lbs/ft³ (dry basis) depending upon the method of wood load density determination. The Oregon loading, which specifies 7 lb/ft³ (wet basis), is more consistent with these data than are alternative loadings considered by the committee. These alternatives resulted in higher densities, generally 50 to 100 percent greater.

G. Selection of Burn Rate for Emission Testing

The burn rate at which the appliance is operated also affects PM emissions from wood heaters. Burn rate is a measure of how much fuel is consumed in a given amount of time (kg/hr). The burn rate of a heater is regulated by the air inlet supply and affects the heat output rate of the heater.

Emission profiles showing emission rates as a function of burn rate (or heat output) for different heaters show that emission characteristics are heater-specific. The overall emission performance of a wood heater cannot be determined by performing emission tests at a single burn rate or heat output condition. Consistent with the current

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testing approaches in the Oregon and Colorado regulations, the committee agreed conceptually that multiple emission test runs spanning the operating range of a heater were needed to adequately characterize a heater's emission performance.

Two issues were addressed during the negotiations: (1) Which parameter, heat output (MJ/hr) or burn rate (g/kg), should be used to define operating conditions during wood heater emission tests, and (2) at what specific burn rate (heat output) categories or ranges should emission tests be conducted?

EPA presented emission profiles of heaters using both burn rate and heat output as the independent variable. Very little difference in composite emission values was seen when the two methods were compared.

Due to the fact that heaters of a similar control technology type generally have very similar efficiencies, and heat output rates and burn rates are directly related to the efficiency of the appliance, the committee agreed that burn rate is the better parameter for defining test conditions. Therefore, burn rate, rather than heat output, was selected as the basis for defining test conditions.

Both the Oregon and Colorado regulations define four specific heat output categories in which tests must be performed. These categories span the range from lowest heat output (or burn rate) to maximum heat output (or burn rate). There is, however, what could be regarded as a loophole in this approach. Wood heaters could comply with the emission limits by modifying the air introduction system to eliminate low burn rate, high emission conditions. This type of modification reduces substantially the sustainable burn time and is generally contrary to typical wood heater usage. For example, data on actual homeowner usage showed that approximately 50 percent of the time burn rates are less than 1.2 kg/hr. The several heaters that had been modified for Oregon certification were set up to not burn at rates below about 20,000 Btu/hr or about 1.6 kg/hr. Such appliances, although clean burning during certification tests, could easily be modified by the consumer either by removing damper stops or through use of a stack damper to achieve longer burn times, and thereby create high emissions. Consumers would be motivated to do this in order to extend burn times and to lower the heat output of the wood heater. Statements by several committee members indicated that such modifications were not uncommon.

The committee agreed at the outset that multiple test points were needed and that the burn rate loophole needed to be closed by specifying minimum burn rate criteria. The committee agreed that the burn rate categories be consistent with the current Oregon and Colorado regulations. The committee also concluded that the regulation should specify quantitatively a minimum burn rate that must be achieved during certification tests.

Test categories were determined by translating the Oregon categories into burn rates using an overall efficiency factor of 69 percent, and are shown in the following table. These categories were found to be reasonably consistent with homeowner usage and with the performance capabilities of the best demonstrated clean burning wood heaters.

TABLE 2.—BURN RATE CATEGORIES

[Average kg/hr, dry basis]

Category 1	Category 2	Category 3	Category 4
< 0.80	0.80–1.25	1.26–1.90	Maximum burn rate

A minimum burn rate less than 1.25 kg/hr must be achieved for the 1988 standard, while a burn rate less than 1.0 kg/hr must be achieved for the 1990 standard. If the required minimum burn rates are artifically created for purposes of the certification test, the manufacturer may exclude test runs less than 0.9 kg/hr from the weighted average.

H. Weighting Scheme

Weighting scheme refers to the method of compiling emission rate results from different burn rate conditions into a single value to be used for compliance determination.

The committee agreed that an appropriate weighting scheme is one that would place sufficient emphasis on low burn rates, and at the same time ensure clean burning across the entire operating range.

A weather weighting scheme was one approach considered. This approach has been used in the two state regulations. Weather weighting methods generally weight more heavily toward the low end of the heat output range—an operating condition that the committee agreed was prevalent, especially to sustain overnight burns. The primary disadvantage to a weather weighting approach is that the wide range of climates in the United States makes a national weather weighting scheme less objective. House size, design, extent of weatherization, and woodburning habits vary greatly on a national basis, making a weighting scheme based on heat demand less reasonable for a national standard than for a state standard. In addition, weather weighting methods are based on seasonal heat demand averages and do not account for seasonal and diurnal variations. One disadvantage to weather weighting approaches is that they require the measurement of heat output rates and that generally, such methods place virtually all weighting on a small segment of the heater's operating range. As demonstrated in the Oregon regulation, some manufacturers have designed heaters that are only clean burning at the operating condition that is weighted the heaviest.

A polygon weighting scheme that the committee considered is designed to spread weighting more equitably over the entire operating range. This method weights the single test run emission values according to the proportion of the appliance's operating range that is mathematically represented by that test run. However, since many heaters have the capability to operate at burn rates (heat outputs) well above the three lower categories specified in the Oregon regulation, in many instances application of the polygon weighting method results in the majority of weight placed on the highest burn rate (heat output) conditions.

Burn rate data collected during in-home studies in the states of Vermont, New York, and Oregon were compiled to develop a frequency distribution of burn rate patterns and were used as the basis for developing a weighting scheme for use in this NSPS. The burn rate frequency distribution demonstrated that approximately 50 percent of the measured burn rates were less than 1.2 kg/hr.

The committee agreed that the frequency distribution developed from the in-home studies reasonably represented the full range of actual consumer wood use. This distribution heavily weights the lower burn rates which are common when heaters are operated overnight and also spreads the weighting out over the a range that includes the higher burn rates that would be found in colder climates and on the coldest days. This distribution was felt to be more representative overall than other averaging schemes considered. For these reasons, the committee selected this as the appropriate weighting scheme.

I. Altitude Effects on Emission Test Results

Atmospheric pressure varies directly with altitude. Variations in atmospheric pressure also have the potential to affect the combustion process (i.e., lean/rich air and fuel mixing conditions) and have been shown to affect the level of emissions created by combustion. Both the Oregon and Colorado woodstove emission control programs allow testing laboratories to adjust the PM emission measurement results to account for differences in altitude above sea level.

The altitude adjustment factors used in the Oregon and Colorado programs are based upon tests conducted on the same wood heater models (using identical test procedures) at a laboratory located near 300 feet above sea level and another laboratory located at 6,900 feet above sea level. All of the wood heaters tested at the high altitude lab had higher emissions than those at the low altitude laboratory, although the variation in emission differences was large. At issue was whether the EPA certification program should allow test results to be corrected for altitude and, if so, by how much.

The committee agreed to allow the retention of the altitude adjustment factor for the Oregon grandfathered models, for the in-house quality assurance programs operated by the manufacturers, and for seeking alternative certification under the logjam provisions. This decision was based upon practical considerations. If altitude adjustment were not allowed for Oregon grandfathered wood heaters, this would cause a significant number to have to be retested at low altitude and would cause essentially all prospective Oregon tests to be performed at low altitude. This could significantly increase the potential for a testing logjam, would add costs for those manufacturers who have taken the lead in R&D work and have passed Oregon tests, and, on average, would not have an environmental impact. If altitude adjustment were not allowed for in-house quality assurance or for logjam certification this would essentially void these two important provisions and could have potentially resulted in a later compliance date. The adverse environmental impact of a later compliance date would be great.

However, for direct Federal certification, and for enforcement and compliance audit testing conducted pursuant to this NSPS, no altitude adjustment factor would be allowed. This decision could be changed through subsequent rulemaking if data become available showing that the altitude effect is predictable on a wood heater-by-wood heater basis.

The limited data that are available at this time indicate that the effect of altitude is different for different wood heaters and no one altitude adjustment factor is appropriate. Thus, as manufacturers gain more experience with heater design and the effect of altitude on emission rates the potential for gaming would be great. That is, use of a single altitude adjustment factor for each wood heater could motivate manufacturers to seek certification at the lab where their heaters perform the best. This would result in competitive disadvantages, continual disagreement over the appropriate adjustment factors, and increased emissions. While not allowing the altitude correction factor does not solve all these problems, this approach is fair and consistent for all manufacturers. However, the committee agreed to permit the use of pressurized testing at test labs to simulate pressure at lower altitudes (not to exceed sea level) and thereby offset the disadvantage that high altitude labs would incur in the absence of pressurized testing.

The committee discussed the idea of a two altitude standard under which heaters would need to be tested at high altitude in order to be sold at high altitude. Some parties felt that the need for such an approach was not sufficiently demonstrated at this time and that the administrative, technical, and enforcement problems that such an approach would create would offset any possible short term benefits. Other parties disagreed, but eventually agreement was reached not to adopt such an approach at this time. This approach could be considered at some later date but would depend on the finding that there are clear differences between the technologies that work best at high and low altitude.

EPA notes that high-altitude states would not be prohibited from adopting more stringent standards to offset possible higher emissions due to lower atmospheric pressures.

J. Emission Measurement Methods for Emissions Testing

Procedures for measuring particulate emissions from wood heaters involve measurement of exhaust gas flow rate and emission concentration. These measurements can be made either in the wood heater stack or in a dilution tunnel. A dilution tunnel is a device which captures wood heater stack emissions and introduces outside air for the purpose of maintaining constant, measurable gas velocities for sampling.

The exhaust gas flow rate from wood heaters is dependent on natural draft conditions, and, as a result, gas velocities in the stack are extremely low. Gas velocities are generally below the detectable limit of most commonly used velocity measurement methods, such as EPA Method 2. In addition, the exhaust gas velocities change with time, and the tester must be able to adjust sampling rates in accordance with velocity changes during the test.

A carbon-hydrogen-oxygen (CHO) mass balance procedure is one procedure used to measure exhaust gas flow rates from wood heater stacks. The CHO balance method is based on a stoichiometric analysis of mass flow rate using exhaust gas measurements of CO_2, CO, O_2, and measurements of fuel burn rate throughout the test period. The gaseous components are measured with gas analyzers after the associated sample collection and conditioning systems. A tracer gas supply and measurement system is also necessary to detect changes in stack velocities during the test.

The velocity and flow rate measurement method in the dilution tunnel is based on EPA Method 2. Method 2 is a pitot procedure that uses velocity pressure, stack temperature, and stack dimensional data to calculate gas velocity and flow rate. The equipment necessary to conduct velocity measurements in the dilution tunnel include a velocity pitot (type S), a manometer, and a temperature indicator. Measurements are made manually and are familiar to most emission testers.

The committee discussed two candidate methods for measuring pollutant emission concentrations in the wood heater exhaust stack. These are the EPA Modified Method 5 (MM5) or semivolatile organic sampling train (semi VOST) and the Oregon DEQ Method 7 (OM7) particulate sampling method. The MM5 sampling train is based on EPA Method 5. The EPA Method 5 sample collection train is modified with the addition of an XAD–2 sorbent resin module preceded by a condenser to cool the gas stream. The XAD–2 module is located downstream of the condenser which is placed immediately downstream of the heated filter (250°F) and upstream of the impingers. Analyses of the sample components include a gravimetric determination of mass collected in the sample probe and filter, the XAD–2 module extract, and the impinger extractions. Gas chromatographic analyses of aliquots of the extracted sample provide a measure of

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semivolatile organic matter, which is defined as the material that passes through the 250°F filter but is collected in the XAD–2 resin and in the impingers. The sum of the gravimetric and chromatographic analyses results is identified as a measurement of total condensible organic matter.

The method employed by the Oregon DEQ, called OM7, is similar to EPA Method 5. The sample probe and heated filter are followed by water-filled impingers and a final filter for collection of condensed material. Analysis of the sample collected in the probe, on the filters, and in the impinger solutions is gravimetric. The collection efficiency for organic materials in the impingers of the OM7 sampling train is not as great as that for the XAD–2 module in the MM5 sampling train. Therefore, the emission concentration measured with the OM7 method will be somewhat less than that measured with the MM5 procedure.

The EPA recently completed a series of emission measurement method comparison tests. As a part of the test series, the MM5 and OM7 procedures were run in the wood heater stack.

One finding of the test program is that the total particulate emissions measured by the OM7 procedure are about one-half the results from the MM5 procedure. This relationship is reasonably constant over the range of emissions encountered in the study.

There is a significant difference in the ease of operation and the cost associated with these two sampling methods. The MM5 sampling train is more expensive initially and requires more preparation time than the OM7 sampling train. Sample recovery from the XAD–2 module and the impingers requires about two days of laboratory time and special laboratory equipment. Analysis of the MM5 samples requires a gas chromatograph and the expertise to operate it.

The OM7 sampling train is essentially the same as the EPA Method 5 train. It has been applied to compliance testing for many years and is familiar to all emission testing firms that have performed State or Federal compliance tests. Preparation and sample recovery times are significantly less than for the MM5 train. Sample analysis is performed with standard laboratory equipment. EPA estimates that the cost to complete a wood heater certification test using OM7 is about 50 percent less than the cost of conducting an MM5 test.

There are three candidate sampling and analysis methods that can be used in the dilution tunnel for the measurement of wood heater emissions. These are the MM5 and OM7 sampling methods described earlier, and the draft American Society for Testing and Materials (ASTM) procedure.

The ASTM emission sampling procedure applied to wood stove testing is conducted only in conjunction with the dilution tunnel. The ASTM sampling train consists of a probe and two filters. The sampling train temperature is ambient (about 70°F) and analysis of the sample collected in the probe and on the filters is gravimetric. The ASTM sampling procedure was not designed for testing in the stack because a large percentage of the organics would be in the gaseous phase at stack temperatures.

The EPA method comparison test included the use of all three candidate methods in the dilution tunnel. One finding was that the relationship between measured emissions with the OM7 and MM5 procedures remained about the same as the relationship for the stack measurements; that is, results obtained using the OM7 train were about one-half the results using the MM5 procedure. Emission rate measurements from the dilution tunnel compared directly with results obtained in the stack; that is, MM5 and OM7 stack data agreed with MM5 and OM7 dilution tunnel data.

The concentrations measured with the ASTM method were about 40 percent of the results from the MM5 procedure. The relationship between ASTM and OM7 sampling methods results were similar to those described for the ASTM and MM5 results. The emission concentrations from the ASTM procedure were about 80 percent of the results from the OM7 sampling procedure.

The EPA requests comment on the improvement in precision when dual instead of single sampling trains are used, especially when filter sizes are less than the 100-millimeter filters specified in Method 5G (dilution tunnel sampling).

The ASTM sampling and analysis method is significantly less expensive and requires less time and effort than either the MM5 or OM7 procedure. ASTM sample train preparation and sample recovery is relatively simple. Sample analysis is similar to that performed for the OM7 procedure except that there is no impinger catch. It is estimated that a wood heater certification test using the ASTM procedure costs about 65 percent less than a test using the MM5 procedure.

The option to use the MM5 sampling method, either in the wood heater stack or in the dilution tunnel, was rejected by the committee because it was too costly and because the additional information it provided was unnecessary to distinguish between well controlled and poorly controlled wood heaters. Therefore, there were three method options for measuring exhaust gas flow and particulate concentration considered by the committee: Oregon Method 7 (OM7) in the stack, OM7 in a dilution tunnel, and the ASTM sampler in a dilution tunnel.

The committee agreed that each of the three test method options would be allowed for certification of wood heaters and that each would be considered a reference method. The committee also agreed that for purposes of audit testing, the same test procedure as used for original certification be used for audit testing.

Since the OM7 train and the ASTM sampler each collect different constituents, the committee agreed to develop a factor to adjust the measured ASTM emission value to an equivalent OM7 value for determining compliance. The equation was derived by averaging the OM7–ASTM relationships developed by three different test laboratories. The resulting equation is:

$$OM7 = 1.82\,(ASTM)^{0.83}$$

where:

OM7 = Emission rate measured by the Oregon Department of Environmental Quality procedure (OM7 in the stack), g/hr.

ASTM = Emission rate measured by ASTM procedure, g/hr.

This factor is based upon wood heater test data collected at three laboratories. Therefore, it was necessary to define a weighting scheme that would be used to establish the relationship that is included in the method. The committee considered weighting each test equally and weighting each lab equally before deciding on the latter. It is recognized, therefore, that the actual relationship may not be constant from lab to lab and may differ from the relationship in the method. It was concluded, however, that small differences would not significantly affect or bias the certification results and the advantages of allowing the use of both methods outweighed any small gain in consistency that might result from the selection of only one method. Unless a clear basis is found for revising the factor used in the method (e.g., error in the original data base or in the procedure used by one or more labs that generated this data base), EPA does not anticipate that it would be revised and any revision would not apply retroactively.

K. EPA Laboratory Accreditation

Committee members agreed at the outset that the success of a wood heater certification program depends upon high quality testing because a certification test on a single wood heater is used to certify the entire model line. To ensure quality test results, the States of Oregon and Colorado both require testing laboratories to demonstrate their technical capabilities in heater operation and testing. Due to the complexity of the test methods, and the necessity for high quality test results, the committee agreed that a national wood heater laboratory testing accreditation program should be implemented to help assure that laboratories are both qualified and competent. This would be the first NSPS regulation to require demonstration of testing proficiency in order to conduct compliance testing.

One option considered by the committee was to rely on accreditation by the National Bureau of Standards (NBS), through its National Voluntary Laboratory Accreditation Program (NVLAP). NVLAP currently administers a program for heater safety testing and could add the emission testing aspect to their existing wood heater program. Several laboratories are currently NVLAP accredited for safety testing. Extending the NVLAP program to emissions would add relatively small costs since inspections for both safety and emissions testing program could be potentially accomplished in the same visit. On the other hand, NVLAP has no in-house expertise in stack testing, wood heater emission testing, or air emission compliance testing. Some committee members felt that experience with these elements would be needed especially during the first several years of the wood heater program.

Committee members also agreed, however, that it was unnecessary for EPA to duplicate NVLAP's efforts in the administration of a national program. Therefore, they decided that laboratories must be accredited by NVLAP if a NVLAP wood heater lab accreditation program is in place, but must also meet additional EPA requirements before data would be accepted for certification purposes. The NVLAP accreditation would focus on basic laboratory capability, procedures and quality assurance—elements with which NVLAP has experience. EPA will assist NVLAP in developing procedures for wood heater test labs. Requirements in addition to NVLAP accreditation are that the laboratory: (1) Have no conflict of interest, (2) agree to perform one audit test for each five certification tests, (3) establish an escrow account (see discussion under Certification/Enforcement) for depositing funds to be used in the audit program, (4) be located in the continental United States, and (5) conduct initial proficiency testing and agree to participate in an annual round robin testing program.

In the event that the NVLAP program is not being implemented, EPA would assume the NVLAP functions. The committee agreed that EPA should be responsible for conducting the proficiency tests and for evaluating the results, and that EPA should retain the authority for revoking EPA laboratory accreditation. (EPA does not have authority to either provide or reject NVLAP accreditation. Therefore, revocation of EPA accreditation would not necessarily affect NVLAP accreditation.) Annual round robin testing will begin as soon as possible after the test methods are developed and a candidate wood heater is identified.

The EPA requests comments on the need for NVLAP accreditation as a precondition for EPA accreditation. If, based upon these comments, the Administrator determines there is no need for prior NVLAP accreditation, EPA will publish a notice of this determination.

Applications for EPA accreditation received before July 1, 1988, may be considered under either the proposed or promulgated requirements, at the applicant's option. Additional and revised promulgated requirements would not apply retroactively.

Laboratories accredited by the State of Oregon prior to January 1, 1988, may be accredited by EPA without having to be accredited by NVLAP nor having to undergo initial proficiency testing. The purpose of this provision, like the Oregon "grandfather" wood heater certification provision, is to reduce the potential delays in certification testing.

L. Selection of BDT

The basic control technique for wood heaters is to improve or enhance the combustion process. Emission control technology for wood heaters falls into two categories: Catalytic and noncatalytic.

Catalytic technology is the use of catalytic combustors in wood heaters. It emerged in the early 1980's primarily as a means to reduce creosote formation and improve combustion efficiency in woodstoves. Catalytic technology is currently being widely marketed for woodburning appliances. As of early 1986, over 60 heater manufacturers offered catalytic models, including retrofit designs. Heater manufacturers currently rely on catalyst manufacturers for supply of the catalytic combustors that are used in their heaters.

A catalyst is a substance that enhances the rate of a reaction at a given temperature, without being appreciably changed during the reaction. In a wood heater, the catalytic combustor promotes secondary combustion and is, in effect, a smoke afterburner. Hydrocarbons and carbon monoxide in the wood smoke are burned as they pass through the combustor.

The catalytic combustors used in wood heaters typically employ platinum and/or other noble metals, such as palladium, as catalysts. The catalytic material is generally deposited on a carrier or substrate. Two types of substrates, metal and ceramic, are used. Ceramic substrates are the more commonly used.

Wood heater design features that help promote catalytic combustion include catalyst placement, secondary air, and baffles or other features that enhance mixing of gases within the heater. Catalyst placement is critical for achieving and maintaining catalyst light-off temperatures. Combustor temperatures of approximately 400–500 °F are required to initiate catalytic activity. Combustors are typically placed above the primary combustion zone in areas of the firebox where high temperatures are maintained, but where flame impingement does not occur.

Secondary air is typically supplied upstream of the catalytic combustor to ensure sufficient combustion air and to promote mixing of the air and combustion gases at the face of the combustor. Mixing of the combustion gases is enhanced by introducing baffles in the path of the gas stream and the secondary air.

Residential wood heaters demonstrating emission control without the use of a catalytic combustor are defined as noncatalytic, combustion-modified heaters or noncatalytic low-emitting designs. Heaters using noncatalytic control technologies modify process features to promote more complete combustion thereby reducing emissions.

Unlike catalytic control technology, noncatalytic combustion-modified technology is much more difficult to differentiate from conventional wood heaters, since there is no single device or design that separates the two. Instead, achieving low emissions using noncatalytic technology is attributed to careful integration of several features into a heater design. The proper integration of these features allows increased firebox temperatures, increased turbulence (air and fuel mixing), and increased residence time of

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combustion gases in high temperature zones.

Features that are common among low-emitting designs include smaller fireboxes, baffles, low firebox heights, primary air inlets located high in the firebox, and preheated secondary air.

Both technologies result in higher priced wood heaters but lower operating costs due to reduced firewood consumption and reduced chimney cleanings. The decision to select either catalysts or noncatalysts or both as the basis for the standard took into account both their initial performance and estimates of the emission reduction effectiveness over the lifetime of a wood heater.

Comparative emission values from tests conducted on wood heaters meeting the Oregon DEQ standards indicate that catalytic wood heaters have lower initial emissions than do noncatalytic wood heaters. As of May 1986, when Oregon had certified 17 noncatalytic and 20 catalytic wood heaters, the average Oregon-weighted emissions rate of the noncatalytic wood heaters was 9.5 g/hr and the average Oregon-weighted emissions rate of catalytic wood heaters was 3.3 g/hr.

Long-Term Control Effectiveness

Most NSPS affect industrial processes and are expressed as levels that are not to be exceeded at any time. To ensure that standards are not exceeded, there is often a requirement for monitoring the emission controls and/or emission levels and for reporting these results to EPA. In addition, EPA or local enforcement officials make periodic compliance inspections and may require subsequent performance testing to assure that the facility continues to meet the NSPS emission limits. The owners and operators of the facility comply by maintaining and replacing, as necessary, control equipment.

Given that wood heaters are mass-produced items which will be owned and operated by millions of consumers in their homes, the committee recognized that the mechanisms which ensure lifetime emissions control effectiveness for other NSPS would not be practical for wood heaters. House-to-house inspections and enforcement would be logistically infeasible and unreasonably burdensome. The committee was concerned that the standard build in as much assurance as possible that wood heaters operated by the general public would be properly operated and maintained to ensure continued low emissions performance over the life of the wood heater. This concern centered around catalytic wood heaters although both technologies are subject to tampering, misuse, and mechanical or physical degradation.

Although there are considerable data on the initial performance of catalytic wood heaters, there are only limited studies which provide information on the long-term performance of catalysts. Automobile catalytic converters are known to deteriorate with use and to be subject to irreversible poisoning by misfueling. Some of the data that exist on wood heaters are inconclusive; other data such as that developed by Oregon DEQ show gradual deterioration in PM removal effectiveness with catalyst aging. Long-term studies of catalyst longevity, both in the field and in the laboratory, are currently underway. Initial findings from one study involving actual in-home use of catalytic wood heaters identified another problem associated with catalysts. It was found that several catalytic elements had suffered physical failure (i.e., crumbling of the ceramic substrate) during the first heating season. Analysis by the consultant conducting the study and by the catalyst manufacturer determined that the physical breakup of the substrate resulted from either thermal stress or physical injury primarily attributable to stove design and operation. After considering all the available information, the general conclusion of the committee was that catalyst technology is effective and that good performance should be expected for periods of 10,000 hours or more. Also, it was concluded that the physical failures were a "learning curve" problem that should no longer occur. However, the committee also felt that the long term effectiveness of catalysts depended upon catalyst warranties and consumer education.

If consumers operate their wood heaters according to manufacturer instructions and if they replace their catalysts when necessary, catalysts could potentially result in the greater long-term emissions reductions than noncatalytic technology. Well-informed consumers should be motivated to maintain and replace their catalysts because of the improved overall heating efficiencies and operating cost savings. However, not all consumers would be aware of the benefits of maintaining catalysts and even when informed many would not go to the effort or expense to replace their catalysts (replacement catalyst costs are estimated at about $50 to $75). Moreover, many consumers will not be aware of whether their catalysts have either degraded significantly or failed entirely. The committee considered a list of options ranging from a lifetime warranty of free catalyst replacements to catalyst longevity testing.

Separate Emission Limits

In the end, the committee decided to follow the pattern set in Oregon where a separate emission limit was established for catalytic and noncatalytic wood heaters. This decision was based on EPA's assumption that even though initial performance differed significantly, the lifetime emissions of the two technologies would be approximately equal. This assumption was not the result of any precise calculation because of the many uncertainties and the lack of data but was considered reasonable based on the various scenarios presented during the negotiations. For example, one survey by a catalyst manufacturer indicated that more than 90 percent of catalyst owners would replace their catalysts. However, it is unclear that these respondents were aware of the costs involved. Also this group had purchased catalytic units in spite of their higher cost at a time when they were not required to do so. It is questionable whether this group is representative of all wood heater purchasers. The committee, and EPA in particular, felt strongly that setting a separate emission limit for noncatalytic wood heaters was needed to encourage and to provide the opportunity for continued improvements in noncatalytic designs. It was felt that if a standard were set that could only be achieved by catalytic technology, noncatalytic designs would be discouraged and in the long term noncatalytic research and development would cease.

Catalyst Warranties and Temperature Monitors

With regard to the specific issue of how to address catalytic deterioration and failures, the committee agreed to require a catalyst warranty providing full coverage for two years (as Oregon requires) and that, in addition, after July 1, 1990, the catalysts would have to be warrantied in full for three years against physical degradation of the catalyst due to thermal shock. The words "in full" mean replacement on a nonproratable, multiple replacement basis. The warranty applies to each individual catalyst. However, if in-use data should show that significant numbers of certain categories of catalysts (e.g., brands, models, or lots) are failing to perform for the duration of the warranty periods, then EPA will take necessary steps to prevent further use of these in new wood heaters. Physical failure in significant numbers, unless attributable to wood heater design or improper operation, would be one basis for such action. Failure to perform at 70 percent emission reduction based upon bench testing would be another basis. This latter requirement is to assure that the physical failures described previously are, indeed, resolved.

Emissions from a wood heater depend as much upon how the owner operates it as upon its design. A catalyst temperature monitor would provide information to the operator necessary for him to work the heater in the best way possible. The regulation would require that wood heaters include a permanent provision for installing a temperature monitor.

The committee considered requiring that all new wood heaters be equipped with temperature monitors rather than merely being equipped to adopt these devices. A temperature monitor must withstand the very high temperatures (1800 °F) reached in the catalytic combustor and should last at least as long as the guaranteed life of the combustor. In general, the committee could not conclude that currently available monitors were sufficiently reliable or durable. Monitors now available may break or melt under high thermal stress and consequently would not perform over the life of the combustor.

If EPA determines that reasonably-priced monitors are adequately demonstrated, EPA may require them as a condition for certification. EPA needs both technological and economic data on temperature monitors expected to perform under high temperatures and last for several years. The Agency seeks comments on the feasibility of developing an adequate temperature monitor for catalytic combustors.

The manufacturer must provide instructions in the owner's manual on how the consumer can maintain good catalytic performance, how he can determine when replacement is necessary, what he must do to obtain a replacement catalyst (under warranty or otherwise), and how to physically replace the catalyst. Finally, the regulation would require that catalysts be easily accessible for inspection and replacement.

In summary, the committee decided that both catalytic and low-emitting noncatalytic technology would be BDT and that separate emission limits would be established reflecting the best performance levels of these two technologies.

M. Level of the Standard

After deciding that BDT should consist of both catalytic and noncatalytic technologies with different emission limits (as described in the previous section) and that the standard should include two phases (as described under "Compliance Date"), decisions were then made on the emission limits for each phase and technology.

Decisions on the emission limits were made through a two step process. First, emission limits reflecting BDT were identified on the same weighting basis used by Oregon. Then, these limits were converted to the NSPS weighting. The procedure that was followed for each of the four emission limits is described in the following paragraphs.

As described earlier under "Compliance Date," the decision had been made that the 1988 EPA standards should be comparable to the Oregon 1988 limits. Therefore, the Oregon limits of 4 g/hr for catalytic wood heaters and 9 g/hr for noncatalytic wood heaters were selected as the basis for EPA Phase I emission limits.

In establishing the Phase II limits, the first step was to determine the emission level that reflected Phase II BDT. This was done separately for catalyst and noncatalyst wood heaters but in both cases involved consideration of the emission profiles and the weighted averages of each heater that had been certified to the Oregon 1988 standard.

For catalyst heaters, the committee grouped the heaters based on similar performance characteristics. Two independent techniques were used to do this. The first involved a statistical evaluation to determine if significant differences were identifiable among wood heaters which met the Oregon 1988 standard. With only one exception, no distinguishable differences were identified among the emission performances of the catalytic heaters. After elimination of the identified outlier, the individual emission rates from each of the remaining wood heaters were compiled and the data treated as if measured on a single wood heater. The Oregon weighting scheme was then applied to these data. The resulting Oregon weighted composite was 3 g/hr.

Similar results were derived using a second independent approach where wood heaters were subjectively categorized according to the shape of their emission profiles, their range of operation, and the relative magnitude of their Oregon-weighted emission value. Using this approach, the various categories were used to develop a few "model" profiles which were then compared on the basis of the three criteria cited above. The model profile judged to be the most representative of the best Oregon wood heaters was selected. The resulting Oregon-composited value was also approximately 3 g/hr.

Given the variability in the profiles of noncatalytic wood heaters, the committee had more difficulty in selecting an emission limit. As was done with catalyst heaters, the weighted averages and the emission profiles were considered for each heater that had been certified to the Oregon 1988 standard. The categorization approach described in the preceding paragraph was also applied to the noncatalytic data. This approach showed that there are large heater-to-heater differences and, in particular, many of the earliest heaters to be certified exhibited profiles that were arguably not BDT. That is, although the weighted averages were below the emission limits, the emission profiles showed that emissions would be high at high or low burn rates (rates which would not be uncommon in home use). In contrast, several of the most recently-certified wood heaters showed profiles that reflected advances in technology and that operated with relatively low emissions across the burn rate range. These heaters were considered to be BDT. Using the Oregon weighting, a value of 7.5 g/hr was agreed to as reflecting this BDT. Although not critical to this decision, it was noted that this limit has a relationship to the catalyst standard that is not unreasonable taking into account the possible effect of catalyst deterioration, nonreplacement of catalysts by consumers, and catalyst failure. As noted previously, these effects cannot be predicted with certainty. However, it is not unreasonable to conclude that these effects could cause long term catalyst emissions to average 7.5 g/hr or more (over the lifetime of the wood heater).

After reaching consensus on the relative stringency of the emission limits using the more familiar Oregon-weighted averages, the committee discussed approaches to facilitate the conversion of Oregon values to EPA weighted averages. The two weighting schemes place emphasis on different portions of the emission profiles and, therefore, do not correspond directly. A relatively good correlation between the weighted emission limits exists for a group of heaters demonstrating very similar shaped emission profiles. However, those heaters that have very dissimilar emission profiles may be ranked very differently by the two weighting schemes.

Since most of the Oregon certified catalytic heaters demonstrate very similar emission profiles, the committee

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agreed that a conversion factor be developed based on the best fit correlation between the Oregon and EPA weighting schemes. The heaters used for establishing this correlation were those catalytic heaters meeting an Oregon-weighted composite of 3 g/hr. The conversion for catalyst wood heaters from the Oregon weighting to the EPA weighting yielded a limit for Phase I of 5.5 g/hr and for Phase II of 4.1 g/hr.

The conversion for noncatalytic wood heater was more difficult since noncatalytic heaters as a group generally have less similar emission profiles than do catalytics. Because the two weighting schemes place emphasis on different portions of the emission profile, a heater with a low composite average under one weighting scheme may have a high composite average when a different weighting scheme is applied. Therefore, there is no direct correlation between the two weighting methods for all noncatalytic wood heaters. The committee then examined the appropriate basis for converting the limits from Oregon weighting to the EPA weighting. This was more difficult for noncatalytic than catalyst heaters and involved consideration of not only the relationship for the heaters in the data base but also the effect that "caps" (described below) would have on the data. The conclusion, based on the data for BDT heaters, was that EPA limits of 8.5 g/hr and 7.5 g/hr reflect BDT for Phases I and II, respectively.

In addition to the composited emission limits, the committee agreed that the Phase II emission limits would also consist of a "cap." A cap is the maximum allowable emission limit for any given burn rate. The Phase II caps for individual runs are designed to assure that the emission control performance of wood heaters is relatively constant across the full range of operating conditions. For noncatalytic wood heaters, the cap will be 15 g/hr for burn rates equal to or less than 1.5 kg/hr and 18 g/hr for burn rates greater than 1.5 kg/hr. Both reflect the performance of the best demonstrated wood heaters.

The catalytic emission limit cap is a function of burn rate, defined by a line parallel to the best fit emission profile for catalytic heaters meeting an Oregon weighted average of 3.0 g/hr. This results in a more stringent cap at the lower burn rate ranges where catalyst performance is most effective and increases consistent with demonstrated performance. A catalytic cap at burn rates less than or equal to 2.82 kg/hr is defined by the following equation:

$$Cap = 3.55\ kg/hr \times BR + 4.98\ g/hr$$

where:

BR = burn rate in dry kg/hr.

At burn rates greater than 2.82 kg/hr the cap is 15 g/hr.

This limit is consistent with the noncatalyst cap and was considered to be a level that should not be exceeded. The committee recognized that this may result in the need to limit catalyst wood heater burn rates and felt that was reasonable as performance above 15 g/hr could not be considered as representative of BDT. As of late summer 1986, 11 catalytic and 5 noncatalytic wood heaters were capable of meeting the Phase II (1990) emission limits.

N. Certification and Enforcement

This NSPS is to be implemented by means of a certification program. Alternatively, an enforceable wood heater NSPS would have to require that each new wood heater be tested individually or the NSPS would have to be based on an equipment standard (e.g., each new wood heater must be equipped with a certain type of catalyst, specified firebox dimensions, etc.).

The first alternative, testing each appliance, would have been economically prohibitive as the cost of testing could exceed the price of the wood heater by almost an order of magnitude. The second alternative, an equipment standard would be very difficult or impossible to develop, would severely constrain the design of new wood heaters, and would have limited technology to one or two designs.

The issues concerning certification include the following:

(1) What are the terms and conditions of the certificate? How long is the certificate good for?

(2) What constitutes a representative wood heater for testing purposes and what changes can a manufacturer make to the certified model line without being required to recertify? Also, how can manufacturing quality be assured?

(3) What assurance do the EPA and the public have that the single certification test series is accurate and valid for an entire model line? and

(4) Under what conditions can the certificate be denied or withdrawn and what recourse does the manufacturer have to appeal this action?

Terms and Conditions of Certification

The issuance of a certificate would be based primarily upon whether a single representative wood heater meets the applicable emission limits as determined by a validly conducted test. The certification based upon this test would apply to the wood heater model line, provided that the units are similar in all material respects to the tested model. Although the primary basis for granting a certificate will be the certification test results, an application for certification must include several other items such as detailed engineering drawings and affirmations by the manufacturer regarding compliance with certain other provisions such as the in-house quality assurance program. In addition, there would be no premarket approval of other areas of compliance such as the content of owners manuals and labels.

The term of the 1988 certificate would expire July 1, 1990; the term of a certificate for a wood heater meeting 1990 emission limits would be 5 years. A model line could be recertified, at EPA's discretion, without retesting. Once every 2 years manufacturers of certified models would have to report to EPA to declare that no changes that would require recertification had been made in the model line.

Another provision agreed to by the committee was to allow certification to be granted, based on the proposed requirements, until July 1, 1988. In addition to providing manufacturers with a certain target and time to meet it, this would alleviate any potential logjam because manufacturers would not have to wait until promulgation (January 1988) to get model lines certified.

The certification approach raises a number of issues that are not normally found in the NSPS program. For example, what constitutes a representative wood heater, and how can the EPA be assured that manufacturers continue to produce assembly-line units that conform to the unit submitted for testing?

Concerns with these issues stemmed, in part, from problems that have arisen in the motor vehicle emissions certification program. In addition, the need to assure on-going production quality also related to the manufacturers' unwillingness to accept a program that included financial liability (e.g., recalls, penalties) for wood heaters or their certified model lines that were produced in good faith, and believed to be in compliance and were subsequently found to fail certification audit tests. The wood heater industry was not willing to accept such liability and stated that any program that would include the possibility for such penalties would cripple the industry. Therefore, the committee sought to identify a combination of provisions that would reasonably assure that assembly line heaters are indeed low emitters and are not different from the tested unit and at the same time would not place unacceptable costs or liability on the manufacturers. Several provisions were identified and agreed to that accomplish this.

Representativeness

The committee agreed that production line wood heaters would not have to be identical to the unit submitted for testing, but would have to be "similar in all material respects." This means, first, that not all components are of concern to EPA. For example, if a manufacturer decides to change the color of the trim on the outside of the firebox or to change the size of the handle of the door, this is not "material" to emissions and therefore is not subject to EPA review. The regulation specifies eight components that are presumed to affect emissions: Firebox volume and dimensions; the location, control method, and cross sectional area of restrictive air inlets; the location and dimensions of baffles; the dimensions and location of refractory/insulation materials; catalyst dimensions and location; catalyst bypass mechanism location and dimensions; flue gas exit dimensions and location; and finally, door and catalyst bypass gasket dimensions and fit. Changes to any of these eight components would require a new certification test unless EPA determines that the change is not likely to increase emissions. Furthermore, the manufacturer would not be allowed to change the materials used in the refractory/insulation and the door and catalyst bypass gaskets without EPA approval or recertification.

One minor exception to this pertains to the firebox material. Due to the relatively high costs of making molds, manufacturers of cast iron wood heaters argued that the standard should allow the results of initial certification tests performed on heaters with welded plate steel fireboxes to be used as a basis for certifying cast iron production heaters provided that the welded plate heater is similar in all other material respects to the production heaters. An exception was included that provides for this. However, it is also required that any model line that utilizes this exception must undergo an audit test using a production line cast stove heater 1,000 heaters are produced and report the audit test results to EPA within 45 days of the QA audit.

Changes in the make, model, or composition of catalysts would be approved by EPA based on test data and other information that demonstrate that the proposed substitute will perform at least as well, initially and over time, as the original catalyst in the wood heater. EPA will develop further guidance for catalyst manufacturers on demonstrating catalyst equivalency. Prior to July 1, 1990, however, EPA will allow for substitution, catalysts certified by the Oregon DEQ as equivalent for substitution, as long as the proposed substitute catalyst had been used in certifying a currently certified wood heater.

"Similar in all material respects" also means that all components can vary within specified tolerances. The committee recognized that with good faith efforts and under good manufacturing practices, mass-produced items such as wood heaters would have slight variations in dimensions. The manufacturer in his application for certification of a model line would specify his manufacturing tolerances for components presumed to affect emissions identified in the regulation. If no tolerances are specified, the tolerance automatically becomes plus or minus ¼ inch for any linear dimension and plus or minus 5 percent for areas related to air introduction systems. Tolerances submitted by the manufacturer that are different from these must be indicated in the application and the manufacturer must show that these tolerances would not reasonably be anticipated to increase emissions.

In order to avoid unnecessary testing and to prevent a barrier to improvements in wood heater design, the EPA Administrator could waive the recertification requirement for changes that exceed the specified tolerances if the manufacturer demonstrates that the change would not reasonably be anticipated to cause emissions to exceed the standard. For example, if a manufacturer wants to substitute a new type of refractory material which has been shown to reduce emissions in other models, the Administrator may elect to grant a waiver to the manufacturer from recertification testing. This demonstration could be made with any relevant data, including test data from the manufacturer's research and development laboratory.

Quality Assurance

As a means to ensure the continued production of wood heaters that comply with the emission limits and in place of "look back" penalties or recall provisions, the regulation would require that manufacturers conduct a quality assurance program and that EPA conduct enforcement audits, both consisting of parameter inspections and emission testing. A parameter inspection is a physical check of production wood heaters either in the plant or at retail outlets, to compare some or all of the emission-related features of the production unit with the features of the wood heater submitted for testing. To ensure that EPA can accurately compare the dimensions and other features of the wood heater which is inspected with the wood heater submitted for testing, the regulation would require that detailed engineering drawings and photographs be submitted with the certification application and that the tested unit be sealed and retained for as long as the model line is manufactured.

An emission test audit consists of testing a production wood heater using the same test procedure used in certification. The results of the audit test are then compared to the certification test results and the applicable emission limits. Both the manufacturer's "in-house" quality assurance program and the EPA enforcement audit programs are discussed briefly below.

The quality assurance program in the regulation would require manufacturers to (1) inspect at least one out of every 150 wood heaters (within a certified model line) to determine whether the unit is within the specified tolerances, and (2) conduct emission tests at a frequency that depends upon how close the certification test results were to the applicable emission limit and upon the manufacturer's production volume of the model line. If the certification emission test composite was within 30 percent of the applicable emission limit, the manufacturers of fewer than or equal to 2,500 wood heaters per year must test one out of every 5,000 wood heaters produced (within the model line). Manufacturers who produce greater than 2,500 wood heaters (within the model line) per year must test one out of every 5,000 or annually, whichever is more frequent. If the certification composite test results are 70 percent of the applicable emission limits or less, the testing frequency for manufacturers of fewer than or equal to 2,500 wood heaters per year is as directed by EPA, but not more than once for every 10,000 heaters. For manufacturers who produce greater than 2,500 wood heaters per year in the model line, the frequency is one for every 10,000 wood heaters or triennially, whichever is more frequent.

The manufacturer must provide written notice within one week prior to the quality assurance emissions test and maintain records of test results and all associated test documentation. He would not have to report the test results to EPA (except in the case of initial audit tests of cast iron wood heaters as described previously), nor does EPA

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intend to routinely observe these tests. As necessary, the manufacturer must take appropriate steps to resolve the cause of any exceedences of emission limits. The manufacturer has discretion as to how to resolve the problem but he must document all remedial measures as well as the effect of these measures. The failure to adhere to this quality assurance program or to undertake appropriate remedies to correct for exceedences would be taken into account in EPA's decision regarding possible future enforcement actions taken in response to a failure of an EPA audit. An adequate QA program containing and adhering to the requirements also would protect the manufacturer from penalties for possible non-complying wood heaters out of the manufacturer's hands.

The committee recognized that some manufacturers would consistently pass QA checks and, for such cases, provided a means by which the frequency of both the parameter inspections and the emission tests could be reduced. If two consecutive passing tests are conducted (for either the parameter inspection or the emissions test), the manufacturer may thereafter skip every other required test. If five consecutive passing tests are conducted under the skip-every-other-test frequency, the manufacturer may further reduce the audit frequency to skip three consecutive tests after each required test.

For example, suppose that a manufacturer is required to test one of every 5,000 wood heaters. He tests one of the first 5,000 and it passes. He tests another out of the second 5,000 and it, too, passes. He would then be allowed to skip his test for the third 5,000, but would have to test one of the fourth 5,000. He may continue skipping one test for every 5,000 wood heaters as long as each test passes. When five consecutive tests are passed, three sets of 5,000 may be skipped following every passing test. A test failure would require that the manufacturer revert to the original frequency, as well as to undertake appropriate remedial action as described above.

Enforcement Inspections and Audits

EPA will monitor compliance by conducting parameter inspections at retail outlets and at manufacturing facilities. In addition, EPA will use emissions audit tests to monitor compliance. EPA plans to conduct two types of emissions audit test programs. The Selective Enforcement Audit (SEA) program— in which EPA will test wood heaters from a certified model line using a neutral selection scheme criteria for selecting which model lines to test-could include tips or other information leading EPA to suspect that a model line may not be in compliance. EPA derives its authority to conduct SEA tests from section 114 of the Clean Air Act which provides that EPA may require source owners or operators to have their facilities tested to determine compliance. EPA will not conduct SEA testing before July 1, 1990, except on the basis of information that indicates that a model line may be exceeding applicable emission limits.

The random compliance audit (RCA) is a program for testing wood heater models certified to meet the 1990 emission limits. Models that are certified for the 1988 standards only are not subject to the RCA's. The RCA tests will not commence until July 1, 1990. The RCA is unlike other EPA enforcement testing or monitoring programs in that it would be funded by a surcharge on certification test fees levied by accredited laboratories on the manufacturers.

Many committee members believed that audit testing is essential to assure an effective program. There are several reasons why audit testing is important for these standards. Most NSPS affect industrial sources. These sources are each tested for compliance when they are new and are subject to additional compliance tests which are paid for by the source owner/operator at later dates. Many such source categories are also subject to continuous monitoring requirements for the purpose of determining compliance on an on-going basis. Wood heaters are different. As described previously, only one wood heater will be tested to obtain certification. Section 114 provides the authority for EPA to request manufacturers to perform additional tests. However, the costs of these tests, as explained above, are high (relative to the cost of the facility being tested) and there was concern that EPA would be reluctant to impose such costs on small manufacturers; or that such costs, when imposed on a limited number of manufacturers, would create inequities. The RCA program was, therefore, created as a means to provide with certainty follow-up compliance tests and to spread the costs equally among the product lines.

Under the RCA program, each accredited laboratory would levy a surcharge equal to 20 percent of the charge for those tests which lead to certification to the 1990 standards. The surcharge would be deposited by the laboratory into an escrow account to be used to fund RCA's at the Administrator's discretion. Whether the laboratory bears this cost or surcharges the manufacturer for all or part of it is not governed by the regulation but is a matter left to individual laboratories and manufacturers to work out for themselves in contracts. For example, if the laboratory's regular certification test fee is $5,000, not including any surcharge earmarked for the escrow account, the laboratory would deposit into the escrow account $1,000 if the tested wood heater becomes certified for the Phase II standard. After July 1, 1990, EPA would require the laboratory to use funds in its escrow account to conduct an emissions test audit of a wood heater selected by EPA. The selection of both the wood heater line and the wood heater within the line to be audited in the RCA program would be random. The RCA test would serve as an audit of the original certification test as well as a means of assuring that the manufacturer is producing wood heaters with the same emissions characteristics as the one submitted for certification. In short, the RCA program ensures that one in five of the models certified to the 1990 standards will undergo an audit test.

In developing the basis for the RCA and SEA testing, the committee also addressed the question of how test method precision should be taken into account. The decision was that, initially, the wood heater models selected by EPA for RCA's and SEA's would be tested by the same laboratory that conducted the initial certification test. This decision was based upon the conclusion that the intralab precision of the test method and procedure was taken into account in the establishment of the standards. That is, the RCA or SEA test results obtained at the same laboratory that conducted the initial certification tests would be compared directly, without any adjustment for precision, against the standard for the purposes of determining compliance. This provision suggests that manufacturers should provide a sufficient margin in their designs to account for intralab precision. This is reasonable because the test results from each of the wood heaters in the data base included the effect of imprecision. As such, the apparent heater-to-heater differences in the data base reflect not only true differences in performance, but also reflect test method precision. Although data are limited, data obtained by Oregon DEQ suggest that the interlab four-run weighted average precision at the level of the standards is not greater than ±1 g/hr.

In contrast, the data base upon which the standards are based does not include individual wood heaters tested

at more than one laboratory. Therefore, it was agreed that overall and interlaboratory component of precision should be determined before enforcement tests are performed at laboratories other than the laboratory that initially certified the wood heater. Further, it was agreed that if the overall four-run weighted average precision exceeds ±1 g/hr, then the interlab component of the precision will be added to the standard when RCA and SEA tests are conducted at other than the original certifying laboratory.

The EPA will, by July 1, 1990, either publish in the Federal Register a determination that the interlaboratory precision cannot be determined, or promulgate revisions reflecting what that precision has been found to be. After EPA has so determined, or amended the rule as necessary to reflect the degree of interlaboratory variation in test results, RCA's would be conducted by an accredited laboratory other than the one which conducted that certification test, but within an altitude of 500 feet.

Quality of Certification Testing

Another concern raised by committee members in the certification and enforcement area was the need to ensure the validity, accuracy, and representativeness of certification tests. To meet these concerns, several other provisions were added. One is a requirement that EPA be notified 30 days in advance of a certification test and that tests be performed within the continental United States. This permits EPA to send a representative to observe the certification test. Problems observed may be the basis for rejecting the certification application.

The regulation also requires that all test data, including outliers, and all documentation, such as the laboratory technician's notes obtained during all certification tests on the wood heater, be submitted with the application for certification. By having access to all the data and by requiring that specific measurements and parameters be recorded and submitted, EPA can evaluate the test results to determine the quality of the testing and therefore the validity of the test results.

The committee did, however, recognize that any given test run may be an anomaly and therefore provided for an objective means by which a manufacturer seeking EPA certification may retest and discard one out of three runs at a given burn rate. The committee recognized that this outlier rejection scheme does contain a slight negative bias. That is, using the lowest 2 out of 3 runs will always produce a result lower than the average. However, such a scheme was considered by the committee to be necessary as a means of completely rejecting the very high outliers that have been observed without excessively adding to test costs. It was felt that use of the two remaining data points would provide a sufficient indicator of true performance and that the RCA and SEA programs would be a deterrent against use of this outlier scheme as a possible means for obtaining certification of a marginal heater.

Certification Revocation or Denial

Another important issue in the certification/enforcement area dealt with the circumstances and procedures by which EPA could revoke or deny a certificate of compliance or laboratory accreditation, and the recourse a manufacturer or laboratory would have to appeal this action. This issue involves balancing (1) the need to stop the production and sale of wood heaters that do not meet the emission limits against (2) the concerns that a firm could be forced out of business by losing its certification or accreditation for a relatively minor infraction or on the basis of inaccurate information given to EPA. Because manufacturers are primarily small businesses, even a short-term revocation during the production season could cause closure or bankruptcy.

The proposed regulation would allow EPA to revoke a certificate or accreditation for noncompliance, such as RCA or SEA test failures or mislabeling. The procedures, therefore, are designed both to provide rebuttal opportunities to manufacturers and also to assure that certification is suspended quickly for the wood heaters with the highest pollution potential. Section 60.539 specifies procedures for notification, hearings, and appeals to protect manufacturers and laboratories. EPA judges these protections appropriate in that revocation could cause great economic harm to the manufacturer or laboratory.

The timing of suspension or revocation would also depend on the severity of the infraction based on emission audit test results. The proposed regulation would allow EPA to suspend a certification if the audit test results indicated that the wood heater emissions were equal to or greater than 50 percent higher than the applicable emission limits. The suspension would take effect within 72 hours of the manufacturer being notified that the suspension had been ordered. If the results are less than 50 percent over the limits, suspension would occur at the end of 60 days. In addition to the appeals process, a manufacturer could overcome the presumption of having failed an audit by having additional wood heaters, selected by EPA, tested.

Unlike other NSPS which are enforced and implemented primarily at the EPA Regional or State level, this certification program would be administered at the headquarters, with enforcement assistance provided by the Regions.

O. Labeling and Public Information

If this standard is to have lasting environmental benefits, consumers have to be educated on how to select the wood heater appropriate for their heating needs, and how to install, operate, and maintain their wood heater for optimal emissions and efficiency performance. Specific issues addressed by the committee were as follows:

(1) Should there be mandatory labels?

(2) Should EPA require that manufacturers present certain operation and maintenance instruction in the owner's manuals that accompany the wood heater from the point of purchase? and

(3) What information resulting from certification testing should be made available to the public and in what form?

With regard to the first question, the committee considered whether to require both permanent and temporary (i.e., hang tags) labels, and/or to require that manufacturers publish certain warnings and information in an owner's manual, as does the U.S. Consumer Product Safety Commission (e.g., mandatory safety-related information for many types of solid fuel-fired appliances). The committee concluded that all three—permanent labels, temporary labels, and owner's manuals—are necessary to minimize emissions.

The permanent label would contain information disclosing the compliance status of the wood heater (e.g., meets the 1988 but not the 1990 standard, for export only, etc.), the model name or number, the manufacturer's name, and the date of manufacture. In general, the permanent label would provide information necessary for EPA enforcement activities. The one exception is that for catalytic wood heaters the regulation also specifies a statement on the label that says the wood heater contains a catalytic combustor which needs periodic inspection and replacement and adds a warning that it is against the law to operate the wood heater with a deactivated or missing catalyst.

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The committee agreed that the temporary label should primarily contain information useful to prospective wood heater purchasers. This would include the wood heater's compliance status, comparative emission and efficiency performance data, and heat output rates.

Owner's Manuals

Finally, the committee agreed that information on proper installation, operation, and maintenance should be included in the owner's manual.

The contents of the owner's manuals are specified in Section 3 of Appendix I. Because much of the information is appliance-specific, the guidance in this appendix includes a checklist and illustrative language which shows the level of detail which the committee agreed was appropriate. The information required to be included in the owner's manuals includes the following: Wood heater description and compliance status; tamper warning; catalyst information and warranty (if catalyst equipped); fuel selection; achieving and maintaining catalyst light-off (if catalyst equipped); catalyst monitoring (if catalyst equipped); troubleshooting catalytic equipped heaters (if catalyst equipped); catalyst replacement (if catalyst equipped); wood heater operation and maintenance; and installation for achieving proper draft. Any manufacturer using the model language in Appendix I to satisfy any requirement of the regulation shall be in compliance with that requirement, provided that the particular model language is printed in full, with only such changes as are necessary to ensure accuracy for the particular model line. The regulation does not require premarket approval of owner's manuals.

Comparative Performance Data for Consumers

The third issue relating to labeling and public information was deciding what comparative performance data should be provided to the prospective purchasers on the temporary labels. Studies by the Federal Trade Commission indicate that consumers are best served by the simple presentation of comparative performance data on a few important attributes rather than either large quantities of technical data or a simple pass/fail indication. Comparative emissions information is necessary because it allows environmentally-conscious individuals to purchase wood heaters that go beyond simple attainment of the standards. Efficiency information is necessary because most consumers will want to be able to select the wood heaters that will provide the most heat for the least fuel. As wood heater manufacturers compete against each other to develop progressively more efficient products, the committee believes that the emissions performance of their appliances would continue to improve. The more efficient a wood heater is, the less it pollutes.

Finally, heat output information is important because it allows the consumer to purchase the right sized wood heater for his heating needs. This is important to the environment because either an undersized or an oversized wood heater results in less than optimal emissions performance. An oversized wood heater would likely be operated in a low heat output rate which, for most noncatalytic wood heaters, results in high emissions. On the other hand, an undersized wood heater may prompt its owners to overheat the appliance. If it is catalyst equipped, overheating could damage the catalytic combustor.

Several committee members wanted to require a labeling scheme similar to that required in the Oregon woodstove program, which requires the disclosure of specific emissions, efficiency, and heat output data gathered from the certification test.

Other committee members were opposed to this position. In particular, they opposed the requirement that efficiency data be provided because this would entail a more costly test procedure. Further, they argued that although consumers may want efficiency information, this is not necessary to carry out the mandates of the Clean Air Act in general or the NSPS program in particular. Several committee members wanted EPA to establish an efficiency test method and a standardized method of reporting efficiency even though it would entail additional costs. They argued that some manufacturers were advertising different measures of efficiency using different testing procedures and that this is misleading and deceptive to consumers. They believed that standardized efficiency tests could help reduce this problem.

Specificity of Data Reported

On the other hand, some committee members pointed out that, given the inherent variations in test results, providing comparative test results to the consumer could mislead consumers to make purchase judgments based upon small and, in reality, meaningless differences in numbers. Regarding emission test results, some committee members believed that because any wood heater which complied with the emission limits would be clean burning and efficient, there was no need for data which could mislead the consumer. Therefore, an alternative was to provide a pass/fail indication for emissions and to present only heat output data for wood heater sizing.

The approach that was selected represents a balance which responds to the various concerns. The temporary label provided by the regulation would require the disclosure of emissions, efficiency, and heat output data. However, to meet committee members' concerns regarding consumers being misled by specific numbers from a relatively imprecise test method, it was agreed that the data would be presented in a graphic form. As shown in Appendix I, the emissions and efficiency data are presented in the form of blunt ended arrows on a linear scale. In this way, the consumer can compare labels and discern relatively significant differences between the emissions and efficiency attributes, but small differences in emissions which are beyond the precision of the test method would be less obvious. The Wood Heating Alliance also has expressed interest in providing the EPA further advice on formatting the temporary labels after consulting with a graphic artist.

Default Efficiency Values

The committee was also concerned that mandatory efficiency measurements would increase testing costs. This was addressed by allowing the manufacturer to select either a measured efficiency value or a default efficiency value. The default, or estimated, efficiency value would be based upon measured efficiency data of similar wood heaters. To avoid a situation where a manufacturer would select a default value over his measured efficiency, because the former was higher, the committee decided that default values would be one standard deviation below the mean efficiency value for a population of similar wood heaters certified by Oregon as of the summer of 1986. Separate default values were established for catalyst and noncatalyst wood heaters. These default efficiencies are 72 percent for catalyst wood heaters and 63 percent for noncatalyst wood heaters. EPA derived these default efficiencies from currently available data from actual efficiency tests of clean-burning wood heaters. It is possible that over time wood heater efficiencies will increase above those levels indicated by currently available data. If these new data differ significantly from present data, EPA

may amend the regulation to require use of new estimated figures for those heaters not actually tested for efficiency.

The regulation also provides a means by which manufacturers can estimate their heat output in Btu per hour without measuring this parameter directly. This entails a conversion from burn rate data and assumes a standard heating value for the test fuel.

In addition to these comparative performance data the temporary label contains statements urging the consumer to consult his owner,s manual and to properly maintain and replace the catalyst as necessary.

P. Reporting and Recordkeeping

Section 60.537 of the regulation would provide several reporting and recordkeeping requirements which are necessary in order for EPA to enforce the standard or for manufacturers and laboratories to demonstrate eligibility for exemptions, certification, or accreditation. There were three reporting and recordkeeping requirements that involved some discussion among committee members.

The first was the requirement that all "commercial owners," which includes dealers and distributors as well as manufacturers, be required to maintain the names and addresses of those persons to whom they sold or transferred a wood heater or from whom they purchased a used wood heater. Keeping a list of customers would be important if critical operational or equipment replacement warnings needed to be communicated. Although this appears to be an additional burden, industry representatives stated that this was standard practice within the industry and that commercial vendors kept similar records. Keeping the names and addresses of persons from whom the retailers purchased used wood heaters is not universally practiced and would impose an additional requirement for those retailers who buy used wood heaters.

The second item was the requirement that all records be kept for 5 years rather than the 2-year retention requirements applicable to most other NSPS sources. The committee agreed that 5 years retention was necessary to meet the objectives of the program and was consistent with the length of time for which certifications and accreditations were good.

The final item of discussion was the requirement that the wood heater submitted for certification testing be "sealed" upon completion of testing. To seal a wood heater means that the accredited laboratory that performs the certification test will secure the wood heater in a manner that provides reasonable assurances against tampering. (For example, securing the door with steel strapping used for shipping. The EPA requests suggestions on other means of sealing a wood heater to prevent tampering.) Sealing is necessary to resolve any possible disputes regarding either the precise dimensions and tolerances of the tested unit or its actual emissions characteristics.

Q. Prohibitions

Any person who does not comply with the requirements of the standard would be violating section 114 or section 111 of the Clean Air Act and could be prosecuted in an enforcement action brought by EPA pursuant to section 113 of the Clean Air Act.

The standards would require persons to have wood heaters tested, certified, labeled, and supplied with certain documentation: 40 CFR 60.538 (a) through (e) and (i). These requirements would be adopted under section 114(a)(1) of the Act, which authorizes EPA to require owners of emission sources to establish records, make reports, sample emissions, and provide other information.

The standards would also impose requirements on the operation of wood heaters: 40 CFR 60.538 (f) through (h). These requirements are standards of performance under section 111 of the Act, including "requirement[s] relating to the operation or maintenance of a source to assure continuous emission reduction" [section 302(1)].

R. Miscellaneous

As discussed above, this NSPS is unique in a number of respects. As a result, a certification/enforcement scheme was created to address the question of how compliance was to be demonstrated, and special recordkeeping and reporting requirements were developed. These provisions are intended to supplant provisions on Subpart A of Part 60 which otherwise would apply. In particular, it is intended to supplant the following provisions in Subpart A:

Section 60.8 (a), (c), (d), (e), and (f) (pertaining to performance tests).

Section 60.7 (pertaining to notification and recordkeeping).

Section 60.15(d) (pertaining to notification to EPA of reconstruction of an existing facility).

The Agency intends to include specific language in the final regulation making the above provisions of Subpart A inapplicable. Comment is requested on whether any other provisions of Subpart A should be excluded.

VI. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standards in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA,s Central Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials [section 307(d)(7)(A)]).

C. Clean Air Act Procedural Requirements

1. *Administrator Listing—Section 111.* As prescribed by section 111 of the Clean Air Act, as amended, establishment of standards of performance for residential wood heaters was preceded by the Administrator's determination (see additional notice in today's **Federal Register**) that these sources contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

2. *Periodic review—Section 111.* This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

3. *External Participation—Section 117.* In developing this standard, EPA went well beyond the requirements of

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section 117 of the Act, which requires consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. As detailed in preceding sections, this standard was negotiated with representatives of all affected parties. The Administrator will welcome comments on all aspects of the proposed regulation, including economic and technological issues.

Any comments submitted to the Administrator on these issues should contain specific information and data pertinent to an evaluation of the magnitude and severity of its impact and suggested alternative courses of action that could avoid this impact.

4. *Economic Impact Assessment—Section 317.* Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under section 111(b) of the Act. An economic impact assessment was prepared for the proposed regulations. All aspects of the assessment were considered in the formulation of the proposed standards to ensure that the proposed standards would represent the best system of emission reduction considering costs.

D. Office of Management and Budget Reviews

1. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place, NW., Washington, DC 20503 marked "Attention: Desk Officer for EPA." Copies of these comments should also be submitted to Central Docket Section (LE–131), Attention: Docket Number A–84–49, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The final rule will respond to any OMB or public comments on the information collection requirements.

2. Executive Order 12291 Review

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposed regulation is considered a major rule because it could result in a significant increase in prices; or may have adverse effects on competition or employment. The proposed regulation is projected to cause a shift from the production and sale of conventional wood heaters to the production and sale of higher-quality heaters that may cost as much as 25 percent more than the conventional ones, and could cause some manufacturers, distributors, and retailers to leave the wood heater market. EPA has prepared and submitted to OMB "Regulatory Impact Analysis: Residential Wood Heater New Source Performance Standard," and has included it in the docket.

This regulation was submitted to the OMB for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA responses to those comments will be included in Docket A–84–49. This docket is available for public inspection at EPA's Central Docket Section, which is listed under the **ADDRESSES** section of this notice.

E. Regulatory Flexibility Act Compliance

This regulation, if promulgated, may have a significant economic impact on a substantial number of small business entities. Some production costs may increase by as much as 25 percent, and some manufacturers, distributors, and retailers may leave the wood heater market as a result of the rule. Almost all business entities associated with this industry are considered small. Pursuant to the provisions of 5 U.S.C. 603, a regulatory flexibility analysis has been completed and is in a separate document "Regulatory Impact Analysis: Residential Wood Heater New Source Performance Standard," contained in the docket.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Wood heaters.

Dated: January 31, 1987.

Lee M. Thomas,

Administrator.

It is proposed that 40 CFR Part 60 be amended as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7601).

2. By adding a new Subpart AAA consisting of § 60.530 through § 60.539 to read as follows:

Subpart AAA—Standards of Performance for Residential Wood Heaters

Sec.

60.530 Applicability and designation of affected facility.
60.531 Definitions.
60.532 Standards for particulate matter.
60.533 Compliance and certification.
60.534 Test methods and procedures.
60.535 Laboratory accreditation.
60.536 Permanent label, temporary label, and owner's manual.
60.537 Reporting and recordkeeping.
60.538 Prohibitions.
60.539 Hearing and appeal procedures.

Subpart AAA—Standards of Performance for Residential Wood Heaters

§ 60.530 Applicability and designation of affected facility.

(a) The affected facility to which the provisions of this subpart apply is each wood heater manufactured on or after July 1, 1988 or sold at retail on or after July 1, 1990. The provisions of this subpart do not apply to wood heaters constructed prior to July 1, 1988, that are or have been owned by a noncommercial owner for his personal use.

(b) Each affected facility shall comply with the applicable emission limits in § 60.532 unless exempted under paragraph (c), (d), (e), (f), or (g) of this section.

(c)(1) Within a model line, an affected facility manufactured prior to July 1, 1990 is exempt from the emission limits in § 60.532 and shall be certified by the Administrator if that model line has been issued a valid certificate of compliance by the Oregon Department of Environmental Quality prior to January 1, 1988, and meets the Oregon 1988 standards for particulate matter emissions, provided that

(i) The manufacturer requests the exemption in writing from the Administrator and certifies that the information used in obtaining Oregon certification satisfied applicable requirements of the Oregon law,

(ii) The certification test included at least one test run at a burn rate of less than 1.25 kg/hr; and

(iii) No changes in components that may affect emissions have been made to the model line that would require recertification under § 60.533(k).

(2) Affected facilities exempted under this paragraph may not be sold at retail on or after July 1, 1992.

(3) Any certificate issued under this paragraph shall be modified to reflect any modifications in Oregon certification approved by the Oregon Department of Environmental Quality prior to January 1, 1988. The manufacturer shall notify the Administrator of any such modifications within thirty days of their approval by the Oregon Department of Environmental Quality.

(4) Upon denying a certificate under this subsection the Administrator shall give written notice setting forth the basis for his determination to the manufacturer involved.

(d) An affected facility is exempt from the applicable emission limits of § 60.532, provided that—

(1) It was manufactured between July 1, 1988, and June 30, 1989;

(2) The manufacturer was a manufacturer of wood heaters as of January 1, 1987, and manufactured fewer than 2,000 wood heaters between July 1, 1987 and June 30, 1988;

(3) The manufacturer manufactures no more uncertified wood heaters between July 1, 1988 and June 30, 1989, than it manufactured between July 1, 1987 and June. 30, 1988; and

(4) The affected facility is sold at retail before July 1, 1991.

(e) Affected facilities manufactured in the U.S. for export are exempt from the applicable emission limits of § 60.532.

(f) A wood heater used for research and development purposes that is never offered for sale or sold is exempt from the applicable emission limits of § 60.532. No more than 50 wood heaters manufactured per model line may be exempted for this purpose.

(g) A coal-only heater is exempt from the applicable emission limits of § 60.532.

(h) The following are not affected facilities and are not subject to this subpart:

(1) Open masonry fireplaces constructed on site,

(2) Boilers, and

(3) Furnaces.

(i) Modification or reconstruction, as defined in § 60.14 and § 60.15 of Subpart A, shall not, by itself, make a wood heater an affected facility under this subpart.

§ 60.531 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act and Subpart A of this part.

"At retail" means the sale by a commercial owner of a wood heater to the ultimate purchaser.

"Boiler" means a solid fuel burning appliance used primarily for heating spaces other than the space where the appliance is located, by the distribution through pipes of a gas or fluid heated in the appliance. The appliance must be tested and listed as a boiler under accepted American or Canadian safety testing codes.

"Coal-only heater" means an enclosed, coal-burning appliance capable of and intended for space heating, domestic water heating, or indoor cooking, which has all of the following characteristics:

(a) An opening for loading coal which is located near the top or side of the appliance;

(b) An opening for emptying ash which is located near the bottom or the side of the appliance;

(c) A system which admits air primarily up and through the fuel bed;

(d) A grate or other similar device for shaking or disturbing the fuel bed;

(e) Installation instructions which state that the use of wood in the stove except for coal ignition purposes is prohibited by law; and

(f) The model is listed by a nationally recognized safety-testing laboratory for use of coal only, except for coal ignition purposes.

"Commercial owner" means any person who owns or controls a wood heater in the course of the manufacture, importation, distribution, or sale of the wood heater.

"Furnace" means a solid fuel burning appliance used primarily for heating spaces other than the space where the appliance is located, by the distribution through ducts of air heated in the appliance. The appliance must be tested and listed as a furnace under accepted American or Canadian safety testing codes.

"Manufactured" means completed and ready for shipment (whether or not packaged).

"Manufacturer" means any person who constructs or imports a wood heater.

"Model line" means all wood heaters offered for sale by a single manufacturer that are similar in all material respects.

"Representative affected facility" means an individual wood heater that is similar in all material respects to other wood heaters within the model line it represents.

"Sale" means the transfer of ownership or control, except that transfer of control shall not constitute a sale for purposes of § 60.530(f).

"Similar in all material respects" means that the construction materials, exhaust and inlet air system, and other design features are within the allowed tolerances for components identified in § 60.533(k).

"Wood heater" means an enclosed, woodburning appliance capable of and intended for space heating, domestic water heating, or indoor cooking, that meets all of the following criteria:

(a) An air-to-fuel ratio in the combustion chamber averaging less than 35-to-1 as determined by the test procedure prescribed in § 60.534;

(b) A usable firebox volume of less than 20 cubic feet;

(c) A minimum burn rate less than 5 kg/hr; and

(d) A maximum weight of 800 kg.

§ 60.532 Standards for particulate matter.

Unless exempted under § 60.530, each affected facility:

(a) Manufactured on or after July 1, 1988, or sold at retail on or after July 1, 1990, shall comply with the following particulate matter emission limits as determined by the test methods and procedures in § 60.534:

(1) An affected facility equipped with a catalytic combustor shall not discharge into the atmosphere any gases which contain particulate matter in excess of a weighted average of 5.5 g/hr.

(2) An affected facility not equipped with a catalytic combustor shall not discharge into the atmosphere any gases which contain particulate matter in excess of a weighted average of 8.5 g/hr.

(b) Manufactured on or after July 1, 1990, or sold at retail on or after July 1, 1992, shall comply with the following particulate matter emission limits as determined by the test methods and procedures in § 60.534:

(1) An affected facility equipped with a catalytic combustor shall not discharge into the atmosphere any gases which contain particulate matter in excess of a weighted average of 4.1 g/hr. Particulate emissions during any test run at any burn rate that is required to be used in the weighted average shall not exceed the value calculated for "C" (rounded to 2 significant figures) calculated using the following equation:

(i) At burn rates less than or equal to 2.82 kg/hr, $C = 3.55\ g/kg \times BR + 4.98\ g/hr$, where BR = burn rate in kg/hr

(ii) At burn rates greater than 2.82 kg/hr, C = 15 g/hr.

(2) An affected facility not equipped with a catalytic combustor shall not discharge into the atmosphere any gases which contain particulate matter in excess of a weighted average of 7.5 g/hr. Particulate emissions shall not exceed 15 g/hr during any test run at a burn rate less than or equal to 1.5 kg/hr that is required to be used in the weighted average, and particulate emissions shall not exceed 18 g/hr during any test run at a burn rate greater than 1.5 kg/hr that is required to be used in the weighted average.

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§ 60.533 Compliance and certification.

(a) For each model line, compliance with applicable emission limits may be determined based on testing of representative affected facilities within the model line.

(b) Any manufacturer of an affected facility may apply to the Administrator for a certificate of compliance for a model line. The application shall be in writing to: Stationary Source Compliance Division (EN–341), U.S. EPA, 401 M Street, SW., Washington, DC, 20460. Attention: Wood Heater Program. The application must be signed by the manufacturer, or an authorized representative, and shall contain the following:

(1) The model name and/or design number;

(2) A photograph of the tested unit;

(3)(i) Engineering drawings and specifications of components that may affect emissions (including specifications for each component listed in paragraph (k) of this section). Manufacturers shall identify tolerances of components of the tested unit listed in paragraph (k)(2) of this section that are different from those specified in that paragraph, and show that such tolerances may not reasonably be anticipated to cause wood heaters in the model line to exceed the applicable emission limits.

(ii) A statement whether the firebox, or any firebox component (other than one listed in paragraph (k)(3) of this section), will be composed of different material from the material used for the firebox or firebox component in the wood heater on which certification testing was performed and a description of any such differences.

(4) All documentation pertaining to a valid certification test, including the complete test report and raw data sheets, laboratory technician notes, calculations, and test results for all test runs.

(5) For catalytic wood heaters, a copy of the catalytic combustor warranty;

(6) A statement that the manufacturer will conduct a Quality Assurance Program for the model line which satisfies the requirements of paragraph (o) of this section;

(7) A statement that the tested unit was sealed by the laboratory after the completion of certification testing; and

(8) A statement that the manufacturer will notify the accredited laboratory if the application for certification is granted, within thirty days of receipt of notification from EPA.

(c) If the affected facility is a catalytic wood heater, the warranty for the catalytic combustor shall include the replacement of the combustor and any prior replacement combustor without charge to the consumer for:

(1) 2 years from the date the consumer purchased the heater for any defects in workmanship or materials that prevent the combustor from functioning when installed and operated properly in the wood heater, and

(2) 3 years from the date the consumer purchased the heater for thermal crumbling or disintegration of the substrate material for heaters manufactured after July 1, 1990.

(d) The manufacturer of an affected facility equipped with a catalytic combustor shall provide for a means to allow the owner to gain access readily to the catalyst for inspection or replacement purposes.

(e)(1) The Administrator shall issue a certificate of compliance for a model line if he determines, based on all information submitted by the applicant and any other relevant information available to him, that:

(i) A valid certification test has demonstrated that the wood heater representative of the model line complies with the applicable particulate emission limits in § 60.532,

(ii) Any tolerances for components listed in paragraph (k)(2) of this section that are different from those specified in that paragraph may not reasonably be anticipated to cause wood heaters in the model line to exceed the applicable emission limits; and

(iii) The requirements of paragraphs (b), (c), (d), and (m) of this section have been met.

(2) For the period between proposal of this subpart through June 30, 1988, an applicant may elect to have his application determined under the requirements of Subpart AAA proposed on February 18, 1987.

(3) Upon denying certification under this paragraph, the Administrator shall give written notice to the manufacturer setting forth the basis for his determination.

(f) To be valid, a certification test must be

(1) Announced to the Administrator at least 30 days prior to such testing, pursuant to § 60.534;

(2) Conducted by a testing laboratory accredited by the Administrator pursuant to § 60.535;

(3) Conducted on a wood heater similar in all material respects to other wood heaters of the model line which is to be certified; and

(4) Conducted in accordance with the test methods and procedures specified in § 60.534.

(g) [Reserved]

(h)(1)(i) The Administrator on a monthly basis between April 1, 1987 and July 1, 1990 shall determine whether an undue certification delay exists, pursuant to paragraph (h)(2) of this section. Such determinations shall be made on or about the 20th day of the month.

(ii) Any failure of the Administrator to make a required determination under paragraph (h)(1)(i) of this section by the 30th day of any month shall constitute a determination that an undue certification delay exists.

(iii) Any determination under paragraph (h)(1) (i) or (ii) of this section shall remain in effect until superseded by a subsequent determination; except that a determination under paragraph (h)(1)(ii) of this section shall remain in effect for at least thirty (30) days.

(iv) The Administrator shall mail notice of all determinations under paragraph (h)(1) (i) or (ii) of this section to all persons who have requested in writing to receive them.

(2) An undue certification delay exists when the sum of the average testing lead time and the certification lead time is greater than six months.

(i) The average testing lead time shall be determined from the information submitted by accredited laboratories pursuant to § 60.537(b). The average testing lead time is the simple average of lead times reported under § 60.537(b)(2) for the previous month.

(ii) The certification lead time shall be an estimate, as of the date of the determination, of the time likely to be required to determine whether to issue a certificate of compliance for a complete application received on that date. This estimate shall be based on factors such as past experience, the number of applications to be processed, and the resources available for processing.

(3)(i) While any determination under paragraph (h)(1) of this section that an undue certification delay exists is in effect, a manufacturer may submit an application for alternative certification.

(ii) An application for alternative certification shall be in writing to: Stationary Source Compliance Division (EN–341), U.S. EPA, 401 M Street, SW., Washington, DC 20460. Attention: Wood Heater Program. The application must be signed by the manufacturer, or an authorized representative, and contain the following:

(A) The documentation required under paragraphs (b) (1) through (6) of this section, except that, in applying paragraph (b)(4) of this section, paragraphs (f) (1) and (2) of this section shall not apply;

(B) Evidence of compliance with paragraphs (c), (d) and (m) of this section;

(C) A statement that a representative affected facility for the model line in question has been tested in accordance with § 60.534(a), and meets applicable emission limits in § 60.532. Such testing may be conducted in any laboratory of the manufacturer's choice;

(D) A statement identifying the month which will be the end of the manufacturer's production year for that model;

(E) Evidence that the manufacturer has scheduled with an accredited laboratory the testing required for full certification under this subpart at the earliest feasible date;

(F) Evidence that the manufacturer has notified the accredited laboratory that he intends to apply for alternative certification; and

(G) A commitment to report the results of all valid certification tests to the Administrator.

(iii) Test results not obtained under pressurized conditions may be adjusted for altitude according to the following formula:

$$E_A = \frac{E}{AAF_2}$$

where:

E_A = adjusted emissions in g/hr

E = measured emissions in g/hr at ALT_L

AAF = altitude adjustment factor

where:

$$AAF = \frac{ALT_L - 300}{6600} + 1.0$$

ALT_L = altitude above mean sea level of laboratory in feet

(4)(i) Submission of an application for alternative certification pursuant to paragraph (h)(3) of this section automatically renders a model line certified thirty days after receipt of the application for alternative certification by the Administrator, unless alternative certification is sooner denied, on the basis that the application is not complete, or that the test results do not show compliance with the applicable emission limits in § 60.532. Except as provided in paragraphs (h)(4)(ii) through (h)(4)(iv) of this section, alternative certification shall expire on the earlier of

(A) The completion of the manufacturer's production year during which the Administrator takes action under paragraph (e) of this section on an application for certification; or

(B) Twelve months after such action.

(ii) If, in any certification tests performed pursuant to the commitment in paragraph (h)(3)(ii)(E) of this section, emissions from the affected facility exceed the applicable emission limits in § 60.532 by greater than 50 percent, alternative certification pursuant to this paragraph shall expire 72 hours after the manufacturer receives notification from the laboratory of the test results, in accordance with paragraph (h)(4)(v) of this section.

(iii) If, in any certification test performed under paragraph (h)(3)(ii) of this section, emissions from the affected facility exceed the applicable emission limits in § 60.532, alternative certification pursuant to this paragraph shall expire 72 hours after the manufacturer receives notification satisfying paragraph (h)(4)(v) of this section from the laboratory of the test results, if such notification is received within 100 days of the date on which the manufacturer scheduled the certification test.

(iv) Alternative certification shall expire 72 hours after the manufacturer receives notification from the Administrator that the manufacturer has failed to meet a scheduled commitment for certification testing.

(v) Any notification under paragraph (h)(4)(ii) or (h)(4)(iii) of this section shall include a copy of a preliminary test report from the accredited laboratory. The accredited laboratory shall provide a preliminary test report to the manufacturer and to the Administrator within ten days of the completion of testing, if a wood heater exceeds the applicable emission limits in § 60.532 in certification testing.

(i) An applicant for certification may apply for a waiver of the requirement to submit the results of a certification test pursuant to paragraph (b)(4) of this section, if the wood heaters of the model line are similar in all material respects to another model line that has already been issued a certificate of compliance. A manufacturer that seeks a waiver of certification testing must identify the model line that has been certified, and must submit a copy of an agreement with the owner of the design permitting the applicant to produce wood heaters of that design.

(j)(1) Unless sooner revoked by the Administrator, a certificate of compliance shall be valid:

(i) Through June 30, 1990, for a model line certified as meeting emissions limits in § 60.532(a); and

(ii) For five years from the date of issuance, for a model line certified as meeting emission limits in § 60.532(b).

(2) Upon application for renewal of certification by the manufacturer, the Administrator may waive the requirement for certification testing upon determining that the model line continues to meet the requirements for certification in paragraph (e) of this section, or that a waiver of certification is otherwise appropriate.

(3) Upon waiving certification testing under this paragraph, the Administrator shall give written notice to the manufacturer setting forth the basis for his determination.

(k)(1) A model line must be recertified whenever any change is made in the design submitted pursuant to § 60.533(b)(3) that is presumed to affect the particulate emission rate for that model line. The Administrator may waive this requirement upon written request by the manufacturer, if he determines that the change may not reasonably be anticipated to cause wood heaters in the model line to exceed the applicable emission limits. The grant of such a waiver does not relieve the manufacturer of any compliance obligations under this subpart.

(2) Any change in the indicated characteristics of the following components is presumed to affect particulate emissions if that change exceeds a tolerance specified in the certified design or, if no tolerance is so specified, ± ¼ inch for any linear dimension and ±5 percent for dimensions relating to air introduction systems:

(i) *Firebox:* Dimensions;

(ii) *Air introduction systems:* Cross-sectional area of restrictive air inlets, outlets, and location and method of control;

(iii) *Baffles:* Dimensions and locations;

(iv) *Refractory/insulation:* Dimensions, and location;

(v) *Catalyst:* Dimensions, and location;

(vi) *Catalyst bypass mechanism:* Dimensions and location;

(vii) *Flue gas exit:* Location and dimensions; or

(viii) *Door and catalyst bypass gaskets:* Dimensions and fit.

(3) Any change in the materials used for the following components is presumed to affect emissions:

(i) Refractory/insulation or

(ii) Door and catalyst bypass gaskets.

(4) A change in the make, model, or composition of a catalyst is presumed to affect emissions, unless the change has been approved in advance by the Administrator, based on test data that demonstrate that the replacement catalyst is equivalent to or better than the original catalyst in terms of particulate emission reduction.

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(l)(1) The Administrator may revoke a certificate of compliance if he determines that the wood heaters being produced in that model line do not comply with the requirements of this section or § 60.532. Such a determination shall be based on all available evidence, including:

(i) Test data from a re-testing of the original unit on which the certification test was conducted;

(ii) A finding that the certification test was not valid;

(iii) A finding that the labeling of the wood heater does not comply with the requirements of § 60.536.

(iv) Failure by the manufacturer to comply with reporting and recordkeeping requirements under § 60.537;

(v) Physical examination showing that a significant percentage of production units inspected are not similar in all material respects to the representative affected facility submitted for testing; or

(vi) Failure of the manufacturer to conduct a quality assurance program in conformity with paragraph (o) of this section.

(2) Revocation of certification under this subsection shall not take effect until the manufacturer concerned has been given written notice by the Administrator setting forth the basis for the proposed determination and an opportunity to request a hearing under § 60.539.

(3) Determination to revoke certification based upon audit testing shall be made only in accordance with paragraph (p) of this section.

(m) A catalyst-equipped wood heater shall be equipped with a permanent provision to accommodate a commercially available temperature sensor which can monitor combustor gas stream temperatures within or immediately downstream (within 1 inch) of the combustor surface.

(n) Any manufacturer of an affected facility that is subject under § 60.530(b) to the applicable emission limits of this Subpart and does not belong to a model line certified under this section shall cause that facility to be tested in an accredited laboratory in accordance with paragraphs (f)(1), (f)(2), and (f)(4), of this section before it leaves the manufacturer's hands and shall report the results to the Administrator.

(o)(1) For each certified model line, the manufacturer shall conduct a quality assurance program satisfying the requirements of this paragraph.

(2) Except as provided in paragraph (o)(5) of this section, the manufacturer or his authorized representative shall inspect at least one out of every 150 units produced within a model line, to determine that the wood heater is within applicable tolerances for all components that affect emissions as listed in paragraph (k)(2) of this section.

(3)(i) Except as provided in paragraph (o)(3)(iii) or (o)(5) of this section, the manufacturer or his authorized representative shall conduct an emission test on a randomly chosen affected facility produced within a model line certified under § 60.533(e) or § 60.533(h), on the following schedule:

If weighted average certification test results were:	If yearly production per model is:	
	<2,500	>2,500
70% or less of std.	When directed by EPA, not to exceed once every 10,000 stoves.	Every 10,000 stoves or triennially (whichever is more frequent)
Within 30% of std.	Every 5,000 stoves.	Every 5,000 stoves or annually (whichever is more frequent)

(ii) Emission tests shall be conducted in conformity with § 60.534(a), using the same test method and procedure used to obtain certification. The manufacturer shall notify EPA by U.S. mail that an emissions test required pursuant to this paragraph will be conducted within one week of the mailing of the notification.

(iii) If the manufacturer stated under paragraph (b)(3) of this section that the firebox or any firebox component would be composed of a different material than the material used in the wood heater on which certification testing was performed, the first test shall be performed before 1,000 wood heaters are produced. The manufacturer shall submit a report of the results of this emission test to the Administrator within 45 days of the completion of testing.

(4) The manufacturer shall take remedial measures, as appropriate, when inspection or testing pursuant to this paragraph indicate that affected facilities within the model line are not within applicable tolerances or do not comply with applicable emission limits. Manufacturers shall record the problem identified, the extent of the problem, the remedial measures taken, and the effect of those measures as projected by the manufacturer or determined by any additional testing.

(5)(i) If two consecutive passing tests are conducted under either paragraph (o)(2) or (o)(3) of this section, the required frequency of testing under the applicable paragraph(s) shall be modified as follows: Skip every other required test.

(ii) If five consecutive passing tests are conducted under the modified schedule provided for in paragraph (o)(5)(i)(A) of this section the required frequency of testing under the applicable subsection shall be further modified as follows: Skip three consecutive required tests after each required test that is conducted.

(iii) Testing shall resume on the frequency specified in the paragraph (o)(2) or (o)(3) of this section, as applicable, if a test failure results in any test conducted under a modified schedule.

(6) If emissions tests under this paragraph are conducted at an altitude different from the altitude at which certification tests were conducted, and are not obtained under pressurized conditions, the results shall be adjusted for altitude in accordance with paragraph (h)(3)(iii) of this section.

(p)(1)(i) The Administrator shall after July 1, 1990 select for random compliance audit testing certified wood heater model lines that have not already been subject to a random compliance audit under this paragraph. The Administrator shall use a procedure that ensures that the selection process is random.

(ii) The Administrator may, by means of a neutral selection scheme, select model lines certified under § 60.533(e) or § 60.533(h) for selective enforcement audit testing under this paragraph. Prior to July 1, 1990, the Administrator shall only select a model line for a selective enforcement audit on the basis of information indicating that affected facilities within the model line may exceed the applicable emission limit in § 60.532.

(2) The Administrator shall randomly select for audit testing five production wood heaters from each model line selected under paragraph (p)(1) of this section. These wood heaters shall be selected from completed units ready for shipment from the manufacturer's facility (whether or not the units are in a package or container). The wood heaters shall be sealed upon selection and remain sealed until they are tested or until the audit is completed. The wood heaters shall be numbered in the order that they were selected.

(3)(i) The Administrator shall test the first of the five wood heaters selected under paragraph (p)(2) of this section in a laboratory accredited under § 60.535 that is selected pursuant to paragraph (p)(4) of this section.

(ii)(A) In the case of a random compliance audit, the expense of the test shall be paid from the escrow account established by the laboratory under § 60.535(b)(4), unless the funds in that account are insufficient, and the laboratory is not obligated pursuant to

§ 60.535(b)(4) to perform an audit test for the Administrator. The escrow agent shall pay for such a test from the laboratory's escrow account, on the instructions of the Administrator. The maximum amount that the laboratory may charge the Administrator for performance of an audit test shall be determined by the following formula:

$$A = \frac{B}{D/5 - PA}$$

where:
A = the maximum laboratory charge;
B = the balance in the laboratory's escrow account;
D = the total number of deposits into that account under § 60.535(b)(4); and
PA = the number of previous audits charged against that escrow account.

(B) The Administrator may direct the escrow agent to utilize funds in the escrow account of a laboratory, to pay for a random compliance audit at another accredited laboratory, only if the laboratory which established the escrow account is no longer accredited, or is no longer in the business of certification testing of wood heaters under this subpart. In such a case, the charge for the test shall be determined by the Administrator, taking into account the average charge for random compliance audit tests during the preceding year.

(iii) The test shall be conducted using the same test method and procedure used to obtain certification. If the test is performed in a pressure vessel, air pressure in the pressure vessel shall be maintained within 1 percent of the average of the barometric pressures recorded for each individual test run used to calculate the weighted average emission rate for the certification test. The Administrator shall notify the manufacturer at least one week prior to any test under this paragraph, and allow the manufacturer and/or his authorized representatives to observe the test.

(4)(i) Except as provided in this paragraph, the Administrator may select any accredited laboratory for random compliance audit testing.

(ii)(A) The Administrator shall select the accredited laboratory which performed the test used to obtain certification for audit testing, until the Administrator has amended this subpart, based upon a determination pursuant to paragraph (p)(4)(ii)(B) of this section, to allow testing at another laboratory. If another laboratory is selected pursuant to this subsection, and the overall precision of the test method and procedure is greater than plus or minus 1 gram per hour of the weighted average at laboratories below 1000 feet elevation (or equivalent), the interlaboratory component of the precision shall be added to the applicable emissions standard for the purposes of this paragraph.

(B) With respect to each test method and procedure set out in § 60.534(a), the Administrator shall, by July 1, 1990, publish a decision, after notice of an opportunity for comment, which either—

(1) Amends this subpart based on a determination of the overall precision of the method and procedure, and the interlaboratory component thereof; or

(2) Sets forth a determination that the available data are insufficient to determine the overall precision of the method and procedure, and the interlaboratory component thereof.

(iii) The Administrator shall not select an accredited laboratory that is located at an elevation more than 500 feet higher than the elevation of the laboratory which performed the test used to obtain certification, unless the audit test is performed in a pressure vessel.

(iv) The Administrator shall not select a laboratory which is not obligated pursuant to § 60.535(b)(3) to perform a random compliance audit for the Administrator unless there is no accredited laboratory which is so obligated.

(5)(i) If emissions from a wood heater tested under paragraph (p)(3) of this section exceed the applicable weighted average emission limit by more than 50 percent, the Administrator shall so notify the manufacturer that certification for that model line is suspended effective 72 hours from the receipt of the notice, unless the suspension notice is withdrawn by the Administrator. The suspension shall remain in effect until withdrawn by the Administrator, or 30 days from its effective date (if a revocation notice under paragraph (p)(5)(ii) of this section is not issued within that period), or the date of final agency action on revocation, whichever occurs earlier.

(ii)(A) If emissions from a wood heater tested under paragraph (p)(3) of this section exceed the applicable weighted average emission limit, the Administrator shall notify the manufacturer that certification is revoked for that model line.

(B) A revocation notice under paragraph (p)(5)(ii)(A) shall become final and effective sixty days after receipt by the manufacturer, unless it is withdrawn, a hearing is requested under § 60.539, or the deadline for requesting a hearing is extended.

(C) The Administrator may extend the deadline for requesting a hearing for up to 60 days, for good cause.

(D) A manufacturer may extend the deadline for requesting a hearing for up to six months, by agreeing to a voluntary suspension of certification.

(iii) Any notification under paragraphs (p)(5)(i) or (p)(5)(ii) shall include a copy of a preliminary test report from the accredited laboratory. The accredited laboratory shall provide a preliminary test report to the Administrator within ten days of the completion of testing, if a wood heater exceeds the applicable emission limit in § 60.532. The laboratory shall provide the Administrator and the manufacturer, within thirty days of the completion of testing, all documentation pertaining to the test, including the complete test report and raw data sheets, laboratory technician notes, and test results for all test runs.

(iv) Upon receiving notification of a test failure under paragraph (p)(5)(ii), the manufacturer may submit some or all of the remaining four wood heaters selected under paragraph (p)(2) for testing at his own expense, in the order they were selected by the Administrator, at the laboratory that performed the emissions test for the Administrator.

(v) Whether or not the manufacturer proceeds under paragraph (p)(5)(iv), the manufacturer may submit any relevant information to the Administrator, including any other test data generated pursuant to this subpart. The manufacturer shall pay the expense of any testing performed for him.

(vi) The Administrator shall withdraw any notice issued under paragraph (p)(5)(ii) if tests under paragraph (p)(5)(iv) show either

(A) That all four wood heaters tested for the manufacturer met the applicable weighted average emission limits; or

(B) That the second and third wood heaters selected met the applicable weighted average emission limits and the average of all three weighted averages (including the original audit test) was below the applicable weighted average emission limits.

(vii) The Administrator may withdraw any proposed revocation, if the Administrator finds that an audit test failure has been rebutted by information submitted by the manufacturer under paragraph (p)(5)(iv) and/or paragraph (p)(5)(v) or by any other relevant information available to him.

(viii) Any withdrawal of a proposed revocation shall be accompanied by a document setting forth its basis.

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§ 60.534 Test methods and procedures.

Test methods and procedures in Appendix A of this part, except as provided under § 60.8(b), shall be used to determine compliance with the standards and requirements for certification under § 60.532 and § 60.533 as follows:

(a) Method 28 shall be used to establish the certification test conditions and the particulate matter weighted emission values.

(b) Emission concentrations may be measured with either:

(1) Method 5G, if a dilution tunnel sampling location is used, or

(2) Method 5H, if a stack location is used.

(c) Method 28A shall be used to determine that a wood combustion unit qualifies under the definition of wood heater in § 60.531(a), if such determination is necessary.

(d) Appendix J is used as an optional procedure in establishing the overall thermal efficiency of wood heaters. (To be proposed separately.)

(e) The manufacturer of an affected facility shall provide the Administrator at least 30 days prior notice of any certification test to afford the Administrator the opportunity to have an observer present. Notification of schedule changes in certification testing may be made by telephone provided that such notification is documented in writing by the manufacturer. The Administrator shall accept notifications under this paragraph on and after October 16, 1986.

§ 60.535 Laboratory accreditation.

(a)(1) A laboratory may apply for accreditation by the Administrator to conduct wood heater certification tests pursuant to § 60.533. The application shall be in writing to: Emission Measurement Branch (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, (Attn: Wood Heater Laboratory Accreditation).

(2) For the period between proposal of this subpart through June 30, 1988, an applicant may elect to have his application determined under the requirements of Subpart AAA proposed on February 18, 1987.

(3) If accreditation is denied under this section, the Administrator shall give written notice to the laboratory setting forth the basis for his determination.

(b) In order for a test laboratory to qualify for accreditation the laboratory must:

(1) Be accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) for wood heater emissions testing, pursuant to 15 CFR Part 7;

(2) Have no conflict of interest or stand to gain any financial benefit from the outcome of certification testing conducted pursuant to § 60.533;

(3) Agree to perform one audit test at the Administrator's direction for each five tests performed by the laboratory on the basis of which model lines are certified under § 60.533(e) to meet the emission limits in § 60.532(b).

(4) Establish, prior to the effective date of accreditation, an interest-bearing escrow account at a federally insured financial institution in trust for the benefit of the Administrator. The laboratory shall agree that within 30 days after certification of a wood heater model line is granted under § 60.533(e) to meet the emission limits in § 60.532(b) on the basis of a test conducted at the laboratory, the laboratory will deposit into the escrow account an amount equal to 20 percent of the charge to the manufacturer for the certification test (calculated without regard to any amount surcharged to cover the escrow fund deposit).

(5) Demonstrate proficiency to achieve reproducible results with at least one test method and procedure in § 60.534(a), by:

(i) Performing a test consisting of at least eight test runs (two in each of the four burn rate categories) on a wood heater identified by the Administrator;

(ii) Providing the Administrator at least 30 days prior notice of the test to afford the Administrator the opportunity to have an observer present; and

(iii) Submitting to the Administrator all documentation pertaining to the test, including a complete test report and raw data sheets, laboratory technicial notes, and test results for all test runs;

(6) Be located in the continental United States; and

(7) Agree to participate annually in a proficiency testing program conducted by the Administrator.

(c) Laboratories accredited by the State of Oregon prior to January 1, 1988, may be accredited by the Administrator without regard to the requirements in paragraphs (b)(1) and (b)(5) of this section, provided that the laboratory requests the accreditation in writing and, in addition to other applicable requirements, certifies under penalty of law that the information used in obtaining Oregon accreditation satisfied applicable requirements of Oregon law.

(d) If, on or after January 31, 1987, NVLAP accreditation is unavailable, a laboratory may be accredited by the Administrator, without regard to the requirements of paragraph (b)(1) of this section, provided that the laboratory requests accreditation in writing, and establishes, in addition to other applicable requirements, that:

(1) Laboratory personnel have a total of one year of relevant experience in particulate measurement, including at least three months experience in measuring particulate emissions from wood heaters;

(2) The laboratory has the equipment necessary to perform testing in accordance with at least one test method and procedure in § 60.534(a); and

(3) Laboratory personnel have experience in test management and laboratory management.

(e)(1) The Administrator may revoke EPA laboratory accreditation if he determines that the laboratory

(i) No longer satisfies the requirements for accreditation in paragraph (b), (c) or (d);

(ii) Does not follow required procedures or practices, as shown in a laboratory audit;

(iii) Had falsified data or otherwise misrepresented emission data;

(iv) Failed to apply funds to an escrow account as required in paragraph (b)(4) of this section or used funds from that account for purposes other than audit testing directed by the Administrator; or

(v) Failed to participate in a proficiency testing program, in accordance with its commitment under paragraph (b) of this section.

(vi) Failed to seal the wood heater in accordance with paragraph (g).

(2) Revocation of accreditation under this paragraph shall not take effect until the laboratory concerned has been given written notice by the Administrator setting forth the basis for the proposed determination and an opportunity for a hearing under § 60.539.

(f) Unless sooner revoked, a certificate of accreditation granted by the Administrator shall be valid:

(1) For five years from the date of issuance, for certificates issued under paragraph (b) of this section;

(2) Until July 1, 1990, for certificates issued under paragraph (c) of this section;

(3) For one year from the date of issuance, for certificates issued under paragraph (d) of this section.

(g) A laboratory accredited by the Administrator shall seal any wood heater on which it performed certification tests, upon completion of certification testing.

§ 60.536 Permanent label, temporary label, and owner's manual.

(a)(1) Each affected facility manufactured on or after July 1, 1988 or offered for sale at retail on or after July 1, 1990 shall have a permanent label affixed to it that meets the requirements of this section.

(2) Except for units subject to § 60.530 (e), (f), or (g), the permanent label shall contain the following information:

(i) Month and year of manufacture,

(ii) Model name or number, and

(iii) Serial number.

(3) The permanent label shall:

(i) Be affixed in a readily visible or accessible location;

(ii) Be at least 3½ inches long and 2 inches wide;

(iii) Be made of a material expected to last the lifetime of the wood heater;

(iv) Present required information in a manner so that it is likely to remain legible for the lifetime of the wood heater; and

(v) Be affixed in such a manner that it cannot be removed from the appliance without damage to the label.

(4) The permanent label may be combined with any other label, as long as the required information is displayed, and the integrity of the permanent label is not compromised.

(b) If the wood heater belongs to a model line certified under § 60.533, and has not been found to exceed the applicable emission limits or tolerances through quality assurance testing, one of the following statements, as appropriate, shall appear on the permanent label:

"U.S. Environmental Protection Agency

Certified to comply with July, 1988, particulate emission standards. Not approved for sale after June 30, 1992."

or

"U.S. Environmental Protection Agency

Certified to comply with July, 1990, particulate emission standards."

(c)(1) If compliance is demonstrated under § 60.530(c), the following statement shall appear on the permanent label:

"U.S. Environmental Protection Agency

Certified under 40 CFR 60.530(c). Not approved for sale after June 30, 1992."

(2) If compliance is demonstrated under § 60.530(h), one of the following statements, as appropriate, shall appear on the permanent label:

"U.S. Environmental Protection Agency

Certified under 40 CFR 60.533(h) to comply with July, 1988 particulate emissions standards. Not approved for sale after June 30, 1992."

or

"U.S. Environmental Protection Agency

Certified under 40 CFR 60.533(h), to comply with July, 1990 particulate emissions standards."

(d) Any label statement under paragraph (b) or (c) constitutes a representation by the manufacturer as to any wood heater that bears it—

(1) That certification was in effect at the time the wood heater left the hands of the manufacturer,

(2) That the manufacturer was, at the time the label was affixed, conducting a quality assurance program in conformity with § 60.533(o),

(3) That as to any wood heater individually tested for emissions by the manufacturer under § 60.533(o)(3), that it met the applicable emissions limits, and

(4) That as to any wood heater individually inspected for tolerances under § 60.533(o)(2), that the wood heater is within applicable tolerances.

(e) If an affected facility is exempt from the emission limits in § 60.532 under the provisions of § 60.530(d), the following statement shall appear on the permanent label:

"U.S. Environmental Protection Agency

Not certified. Approved for sale until June 30, 1991."

(f)(1) If an affected facility is manufactured in the U.S. for export, the following statement shall appear on the permanent label:

"U.S. Environmental Protection Agency

Export stove. May not be operated within the United States."

(2) If an affected facility is manufactured for use for research and development purposes as provided in § 60.530(f), the following statement shall appear on the permanent label:

"U.S. Environmental Protection Agency

Not certified. Research Stove. Not approved for sale."

(3) If an affected facility is a coal-only heater, the following statement shall appear on the permanent label:

"U.S. Environmental Protection Agency

This heater is only for burning coal. Use of any other solid fuel except for coal ignition purposes is a violation of Federal law."

(g) Any affected facility that does not qualify for labeling under any of paragraphs (b) through (f) shall bear one of the following labels:

(1) If the test conducted under § 60.533(n) indicates that the facility does not meet applicable emissions limits:

"U.S. Environmental Protection Agency

Not certified. Does not meet EPA particulate emission standards. IT IS AGAINST THE LAW TO OPERATE THIS WOOD HEATER."

(2) If the test conducted under § 60.533(n) indicates that the facility does meet applicable emissions limits:

"U.S. Environmental Protection Agency

Not certified. Meets EPA particulate emission standards."

(3) If the facility has not been tested as required by § 60.533(n):

"U.S. Environmental Protection Agency

Not certified. Not tested. Not approved for sale. IT IS AGAINST THE LAW TO OPERATE THIS WOOD HEATER."

(h) For affected facilities equipped with catalytic combustors, the following statement shall appear on the permanent label:

"This wood heater contains a catalytic combustor, which needs periodic inspection and replacement for proper operation. Consult owners manual for further information. It is against the law to operate this wood heater in a manner inconsistent with operating instructions in the owner's manual, or if the catalytic element is deactivated or removed."

(i) The removable label of an affected facility permanently labeled under paragraph (b) or (c) of this section shall contain only the following information:

(1) A statement indicating the compliance status of the model. The statement shall be one of the statements provided in Appendix I, Section 2.2.1. Instructions on the statement to select are provided in Appendix I.

(2) A graphic presentation of the composite particulate matter emission rate as determined in the certification test. The method for presenting this information is provided in Appendix I, Section 2.2.2.

(3) A graphic presentation of the overall thermal efficiency of the model. The method for presenting this information is provided in Appendix I, Section 2.2.3. At the discretion of the manufacturer, either the actual measured efficiency of the model or its estimated efficiency may be used for purposes of this paragraph. The actual efficiency is the efficiency measured in tests conducted pursuant to § 60.534(d). The estimated efficiency shall be 72 percent if the model is catalyst equipped and 63 percent if the model is not catalyst equipped.

(4) A numerical expression of the heat output range of the unit, in British thermal units per hour (Btu/hr) rounded to the nearest 100 Btu/hr.

(j) If the manufacturer elects to report the overall efficiency of the model based on test results pursuant to paragraph (i)(3), he shall report the heat output range measured during the efficiency test. If an accessory device is used in the certification test to achieve any low burn rate criterion specified in this subpart, and if this accessory device is not sold as a part of the wood heater,

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the heat output range shall be determined using the formula paragraph (i)(4)(ii) based upon the lowest sustainable burn rate achieved without the accessory device.

(ii) If the manufacturer elects to use the estimated efficiency as provided in paragraph (i)(3) of this paragraph, he shall estimate the heat output of the model as follows:

$HO_E = (19{,}140) \times (\text{Estimated overall efficiency}/100) \times BR$

where

HO_E = Estimated Heat Output in Btu/hr

BR = Burn rate in dry kilograms of test fuel per hour

(5) Statements regarding the importance of operation and maintenance. Instructions on which statements must be used are provided in Appendix I, Section 2.

(6) The manufacturer and the identification of the model.

(j) The removable label of an affected facility permanently labeled under paragraph (e), (f)(3) or (9) of this section shall contain only the information provided for in Appendix I, Section 2.

(k) The removable label shall be affixed to a location on the wood heater that is readily seen and accessible when the wood heater is offered for sale to consumers by any commercial owner. This label may not be combined with any other label or information. The label shall be attached to the wood heater in such a way that it can be easily removed by the consumer upon purchase. The removable label shall be printed on 90 pound bond paper in black ink with a white background except that models that are not otherwise exempted which do not meet the applicable emission limits or have not been tested pursuant to this subpart, shall be on a red background as described in Appendix I, Section 2.5. The dimensions of the removable label shall be five inches by seven inches as described in Appendix I, Section 2.1. The arrangement of the wording, the requirements for presentation of the graphic data, and the specified typography for the removable label are presented in Appendix I.

(l)(1) An owners manual required to be provided under this subpart shall contain the information listed in paragraph (l)(2) (pertaining to installation), and paragraph (l)(3) (pertaining to operation and maintenance). Such information shall be adequate to enable consumers to achieve optimal emissions performance.

(2) Installation Information:

requirements for achieving proper draft.

(3) Operation and Maintenance Information:

(i) Wood loading procedures, recommendations on wood selection, and warnings on what fuels not to use, such as treated wood, colored paper, cardboard, solvents, trash and garbage;

(ii) Fire starting procedures;

(iii) Proper use of air controls;

(iv) Ash removal procedures;

(v) Instructions on gasket replacement;

(vi) For catalytic models, information on the following pertaining to the catalytic combustor: procedures for achieving and maintaining catalyst activity, maintenance procedures, procedures for determining deterioration or failure, procedures for replacement, and information on how to exercise warranty rights; and

(vii) For catalytic models, the following statement

"This wood heater contains a catalytic combustor, which needs periodic inspection and replacement for proper operation. It is against the law to operate this wood heater in a manner inconsistent with operating instructions in this manual, or if the catalytic element is deactivated or removed."

(4) Any manufacturer using EPA model language contained in Appendix I to satisfy any requirement of this paragraph shall be in compliance with that requirement, provided that the particular model language is printed in full, with only such changes as are necessary to insure accuracy for the particular model line.

§ 60.537 Reporting and recordkeeping.

(a)(1) Each manufacturer who holds a certificate of compliance under § 60.533(e) or § 60.533(h) for a model line shall maintain records containing the information required by this paragraph with respect to that model line.

(2)(i) All documentation pertaining to the certification test used to obtain certification, including the full test report and raw data sheets, laboratory technician notes, calculations, and the test results for all test runs.

(ii) Where a model line is certified under § 60.533(h) and later certified under § 60.533(e), all documentation pertaining to the certification test used to obtain certification in each instance shall be retained.

(3) For parameter inspections conducted pursuant to § 60.533(o)(2), information indicating the extent to which tolerances for components that affect emissions as listed in § 60.533(k)(2) were inspected, and at what frequency, the results of such inspections, remedial actions taken, if any, and any follow-up actions such as additional inspections.

(4) For emissions tests conducted pursuant to § 60.533(o)(3), all test reports, data sheets, laboratory technician notes, calculations, and test results for all test runs, the remedial actions taken, if any, and any follow-up actions such as additional testing.

(5) The number of affected facilities that are sold each year, and to whom they were sold.

(b)(1) Each accredited laboratory shall maintain records consisting of all documentation pertaining to each certification test, including the full test report and raw data sheets, technician notes, calculations, and the test results for all test runs.

(2) Each accredited laboratory shall report to the Administrator by the 8th day of each month between April 1, 1987 and July 1, 1990:

(i) The number and identification of wood heaters scheduled for testing;

(ii) The estimated date on which certification testing could commence for a wood heater, if such a test were requested on the first day of that month;

(iii) The identification of the wood heaters tested for purposes of certification during the previous month.

(3) Each accredited laboratory shall report to the Administrator within 24 hours whenever a manufacturer which has notified the laboratory that it intends to apply for alternative certification for a model line fails to submit on schedule a representative unit of that model line for certification testing.

(c) Any wood heater upon which certification tests were performed based upon which certification was granted under § 60.533(e) shall be retained (sealed and unaltered) for as long as the model line in question is manufactured. Any such wood heater shall be made available upon request to the Administrator for inspection and testing. The requirements of this paragraph may be satisfied by either the manufacturer or the testing laboratory.

(d) Each commercial owner of an affected facility shall maintain records of the name and address of each person to whom he sells or transfers an affected facility, the model of the affected facility, and for commercial owners who are not manufacturers, the identity of the manufacturer.

(e) Any manufacturer seeking exemption under § 60.530(d) shall:

(1) Report to the Administrator by September 1, 1988, the number of wood heaters manufactured between July 1, 1987 and July 1, 1988, and evidence that he was a manufacturer of wood heaters as of January 1, 1987;

(2) Report to the Administrator by September 1, 1989 the number of uncertified wood heaters manufactured

that were subject to § 60.530(d), between July 1, 1988 and July 1, 1989.

(3) Maintain wood heater production records covering the period July 1, 1987 to July 1, 1989.

(f) Each manufacturer of an affected facility certified under § 60.533 shall submit a report to the Administrator every 2 years following issuance of a certificate of compliance for each model line. This report shall certify that no changes in the design or manufacture of this model line have been made that require recertification under § 60.533(k).

(g) Each manufacturer shall maintain records of the model and number of wood heaters exempted under § 60.530(f).

(h) Each commercial owner of a wood heater previously owned by a noncommercial owner for his personal use shall maintain records of the name and address of the previous owner.

(i)(1) Unless otherwise specified, all records required under this section shall be maintained by the manufacturer or commercial owner of the affected facility for a period of no less than 5 years.

(2) Unless otherwise specified, all reports to the Administrator required under this subpart shall be made to: Stationary Source Compliance Division (EN-341), U.S. EPA, 401 M Street, SW., Washington, DC, 20460 Attention: Wood Heater Program.

(3) A report to the Administrator required under this subpart shall be deemed to have been made when it is properly addressed and mailed, or placed in the possession of a commercial courier service.

§ 60.536 Prohibitions.

(a) No person shall operate an affected facility that does not have affixed to it a permanent label pursuant to § 60.536 (b), (c), (e), (f)(2), (f)(3), or (g)(2).

(b) No manufacturer shall advertise for sale, offer for sale, or sell an affected facility that:

(1) Does not have affixed to it a permanent label pursuant to § 60.536, and

(2) Has not been tested when required by § 60.533(n).

(c) On or after July 1, 1990, no commercial owner shall advertise for sale, offer for sale, or sell an affected facility that does not have affixed to it a permanent label pursuant to § 60.536 (b), (c), (e), (f)(1), (f)(3), (g)(1) or (g)(2). No person shall advertise for sale, offer for sale, or sell an affected facility labeled under paragraph (f)(1) except for export.

(d)(1) No commercial owner shall offer for sale or sell an affected facility permanently labeled under § 60.536 (b) or (c) unless—

(i) The affected facility has affixed to it a removable label pursuant to § 60.536 of this subpart,

(ii) He provides any purchaser or transferee with an owners manual pursuant to § 60.536(l) of this subpart; and

(iii) He provides any purchaser or transferee with a copy of the catalytic combustor warranty (for affected facilities with catalytic combustors).

(2) No commercial owner shall offer for sale or sell an affected facility permanently labeled under § 60.536 (e), (f)(3), or (g), unless the affected facility has affixed to it a removable label pursuant to § 60.536 of this subpart.

(3) A commercial owner other than a manufacturer complies with the requirements of paragraph (d) of this section if he

(i) Receives the required documentation from the manufacturer or a previous commercial owner and

(ii) Passes that documentation on unaltered to any person to whom the wood heater that it covers is sold or transferred.

(e) In any case in which the Administrator revokes a certificate of compliance for the knowing submission of false or inaccurate information, or other fraudulent acts, he may give notice of that revocation and the grounds for it to all commercial owners. From and after the date of receipt of that notice no commercial owner may sell any wood heater covered by the revoked certificate (other than to the manufacturer) unless

(1) It has been tested as required by § 60.533(n) and labeled as required by § 60.536(g), or

(2) The model line has been recertified in accordance with this subpart.

(f) No person shall install or operate an affected facility except in a manner consistent with the instructions on its permanent label and in the owners manual pursuant to § 60.536(l) of this subpart.

(g) No person shall operate an affected facility which was originally equipped with a catalytic combustor if the catalytic element is deactivated or removed.

(h) No person shall operate an affected facility that has been physically altered to exceed the tolerance limits of its certificate of compliance.

(i) No person shall alter, deface, or remove any permanent label required to be affixed pursuant to § 60.536 of this subpart.

§ 60.539 Hearing and appeal procedures.

(a)(1) In any case where the Administrator

(i) Denies an application under § 60.530(c) or § 60.533(e);

(ii) Issues a notice of revocation of certification under § 60.533(l);

(iii) Denies an application for laboratory accreditation under § 60.535; or

(iv) Issues a notice of revocation of laboratory accreditation under § 60.535(e), the manufacturer or laboratory affected may request a hearing under this section within thirty days following receipt of the required notification of the action in question.

(2) In any case where the Administrator issues a notice of revocation under § 60.533(p), the manufacturer may request a hearing under this section with the time limits set out in § 60.533(p)(5).

(b) Any hearing request shall be in writing, shall be signed by an authorized representative of the petitioning manufacturer or laboratory, and shall include a statement setting forth with particularity the petitioner's objection to the Administrator's determination or proposed determination.

(c)(1) Upon receipt of a request for a hearing under paragraph (a) of this section, the Administrator shall request the Chief Administrative Law Judge to designate an Administrative Law Judge as Presiding Officer for the hearing. If the Chief Administrative Law Judge replies that no Administrative Law Judge is available to perform this function, the Administrator shall designate a Presiding Officer who has not had any prior responsibility for the matter under review, and who is not subject to the direct control or supervision of someone who has had such responsibility.

(2) The hearing shall commence as soon as practicable at a time and place fixed by the Presiding Officer.

(3)(i) A motion for leave to intervene in any proceeding conducted under this paragraph must set forth the grounds for the proposed intervention, the position and interest of the movant and the likely impact that intervention will have on the expeditious progress of the proceeding. Any person already a party to the proceeding may file an answer to a motion to intervene, making specific reference to the factors set forth in the foregoing sentence and paragraph (c)(3)(iii), of this section, within ten (10) days after service of the motion for leave to intervene.

(ii) A motion for leave to intervene in a proceeding must ordinarily be filed before the first prehearing conference or,

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in the absence of a prehearing conference, prior to the setting of a time and place for a hearing. Any motion filed after that time must include, in addition to the information set forth in paragraph (c)(3)(i), of this section, a statement of good cause for the failure to file in a timely manner. The intervenor shall be bound by any agreements, arrangements, and other matters previously made in the proceeding.

(iii) Leave to intervene may be granted only if the movant demonstrates that his presence in the proceeding would not unduly prolong or otherwise prejudice the adjudication of the rights of the original parties, and the movant may be adversely affected by a final order. The intervenor shall become a full party to the proceeding upon the granting of leave to intervene.

(iv) Persons not parties to the proceeding who wish to file amicus curiae briefs may so move. The motion shall identify the interest of the applicant and shall state the reasons why the proposed amicus brief is desirable. If the motion is granted, the Presiding Officer or Administrator shall issue an order setting the time for filing such brief. An amicus curiae is eligible to participate in any briefing after his motion is granted, and shall be served with all briefs, reply briefs, motions, and orders relating to issues to be briefed.

(4) In computing any period of time prescribed or allowed in this subpart, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday or legal holiday, the stated time period shall be extended to include the next business day.

(d)(1) Upon his appointment the Presiding Officer shall establish a hearing file. The file shall consist of the notice issued by the Administrator under § 60.530(c), § 60.533(e), § 60.533(l), § 60.533(p), § 60.535(a), or § 60.535(e), together with any accompanying material, the request for a hearing and the supporting data submitted therewith, and all documents relating to the request for certification or accreditation, or the proposed revocation of either.

(2) The hearing file shall be available for inspection by any party, to the extent authorized by law, at the office of the Presiding Officer, or other place designated by him.

(e) Any party may appear in person, or may be represented by counsel or by any other duly authorized representative.

(f)(1) The Presiding Officer upon the request of any party, or in his discretion, may order a prehearing conference at a time and place specified by him to consider the following:

(i) Simplification of the issues;

(ii) Stipulations, admissions of fact, and the introduction of documents;

(iii) Limitation of the number of expert witnesses;

(iv) Possibility of agreement disposing of all or any of the issues in dispute;

(v) Such other matters as may aid in the disposition of the hearing, including such additional tests as may be agreed upon by the parties.

(2) The results of the conference shall be reduced to writing by the Presiding Officer and made part of the record.

(g)(1) Hearings shall be conducted by the Presiding Officer in an informal but orderly and expeditious manner. The parties may offer oral or written evidence, subject to the exclusion by the Presiding Officer of irrelevant, immaterial, and repetitious evidence.

(2) Witnesses will not be required to testify under oath. However, the Presiding Officer shall call to the attention of witnesses that their statements may be subject to penalties under Title 18 U.S.C. 1001 for knowingly making false statements or representations or using false documents in any matter within the jurisdiction of any department or agency of the United States.

(3) Any witness may be examined or cross-examined by the Presiding Officer, the parties, or their representatives.

(4) Hearings shall be recorded verbatim. Copies of transcripts of proceedings may be purchased by the applicant from the reporter.

(5) All written statements, charts, tabulations, and similar data offered in evidence at the hearings shall, upon a showing satisfactory to the Presiding Officer of their authenticity, relevancy, and materiality, be received in evidence and shall constitute a part of the record.

(h)(1) The Presiding Officer shall make an initial decision which shall include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law, or discretion presented on the record. The findings, conclusions, and written decision shall be provided to the parties and made a part of the record. The initial decision shall become the decision of the Administrator without further proceedings unless there is an appeal to the Administrator or motion for review by the Administrator. Except as provided in paragraph (h)(3) of this section, any such appeal shall be taken within 20 days of the date the initial decision was filed.

(2) On appeal from or review of the initial decision the Administrator shall have all the powers which he would have in making the initial decision including the discretion to require or allow briefs, oral argument, the taking of additional evidence or the remanding to the Presiding Officer for additional proceedings. The decision by the Administrator shall include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law, or discretion presented on the appeal or considered in the review.

(3) In any hearing requested under paragraph (a)(2) of this section the Presiding Officer shall render his initial decision within 60 days of that request. Any appeal to the Administrator shall be taken within ten days of the initial decision, and the Administrator shall render his decision in that appeal within 30 days of the filing of the appeal.

3. By adding four new Reference Methods (Method 5G, 5H, 2B, and 28A) to Appendix A to read as follows:

Appendix A—Reference Methods

* * * * *

Method 5G—Determination of Particulate Emissions From Wood Heaters From a Dilution Tunnel Sampling Location

1. Applicability and Principle

1.1 *Applicability.* This method is applicable for the determination of particulate matter emissions from wood heaters.

1.2 *Principle.* Particulate matter is withdrawn proportionally at a single point from a total collection hood and sampling tunnel that combines the wood heater exhaust with ambient dilution air. The particulate matter is collected on two glass fiber filters in series. The filters are maintained at a temperature of no greater than 32 °C (90 °F). The particulate mass is determined gravimetrically after removal of uncombined water.

There are three sampling train approaches described in this method: (1) one dual-filter dry sampling train operated at about 0.015 m^3/min, (2) one dual-filter plus impingers sampling train operated at about 0.015 m^3/min, and (3) two dual-filter dry sampling trains operated simultaneously at any flow rate. Options (2) and (3) are referenced in Section 7 of this method. The dual-filter sampling train equipment and operation, option (1), are described in detail in this method.

2. Apparatus

2.1 *Sampling Train.* The sampling train configuration is shown in Figure 5G–1 and consists of the following components:

2.1.1 *Probe.* Stainless steel or glass about 95 mm (¾ in.) I.D., between 0.3 and 0.6 m (12 and 24 in.) in length. If made of stainless steel, the probe shall be constructed from seamless tubing.

2.1.2 *Pitot Tube.* Type S, as described in Section 2.1 of Method 2. The Type S pitot tube assembly shall have a known coefficient, determined as outlined in Method 2, Section 4.

Alternatively, a standard pitot may be used as described in Method 2, Section 2.1.

2.1.3 *Differential Pressure Gauge.* Inclined manometer or equivalent device, as described in Method 2, Section 2.2. One manometer shall be used for velocity head (Δp) readings and another (optional) for orifice differential pressure readings (ΔH).

2.1.4 *Filter Holders.* Two each made of borosilicate glass, stainless steel, or Teflon, with a glass frit or stainless steel filter support and a silicone rubber or Viton gasket. The holder design shall provide a positive seal against leakage from the outside or around the filters. The filter holders shall be placed in series with the backup filter holder located 25 to 100 mm (1 to 4 in.) downstream from the primary filter holder. The filter holder shall be capable of holding a filter with a 100-mm (4-in.) diameter, except as noted in Section 7.

Note: Mention of trade names or specific product does not constitute endorsement by the Environmental Protection Agency.

2.1.5 *Filter Temperature Monitoring System.* A temperature gauge capable of measuring temperature to within 1.0 percent of absolute temperature. The gauge shall be installed at the exit side of the front filter holder so that the sensing tip of the temperature gauge is in direct contact with the sample gas or in a thermowell as shown in Figure 5G–1. The temperature gauge shall comply with the calibration specifications in Method 2, Section 4.

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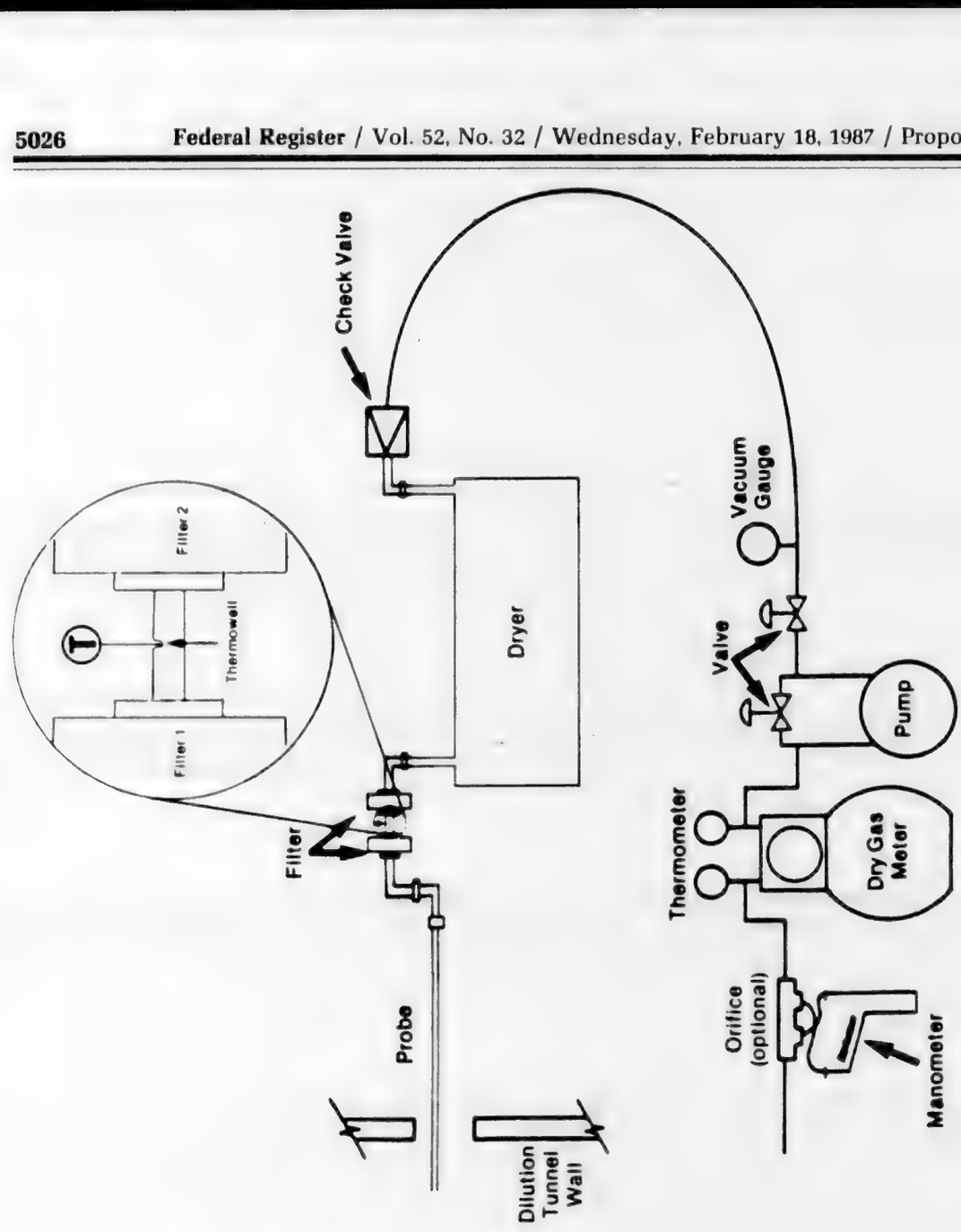


Figure 5G-1. Sampling train.

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2.1.6 *Dryer.* Any system capable of removing water from the sample gas to less than 1.5 percent moisture (volume percent) prior to the metering system.

2.1.7 *Metering System.* Same as Method 5, Section 2.1.8.

2.1.8 *Barometer.* Mercury, aneroid, or other barometer capable of measuring atmospheric pressure to within 2.5 mm Hg (0.1 in. Hg).

2.1.9 *Dilution Tunnel Gas Temperature Measurement.* Temperature sensor, as described in Method 2, Section 2.3.

2.2 *Dilution Tunnel.* The dilution tunnel apparatus is shown in Figure 5G–2 and consists of the following components:

2.2.1 *Hood.* Constructed of steel with a minimum diameter of 0.3 m (1 ft) on the large end and a standard 0.15 to 0.3 m (0.5 to 1 ft) coupling capable of connecting to standard 0.15 to 0.3 m (0.5 to 1 ft) stove pipe on the small end.

2.2.2 *90° Elbows.* Steel 90° elbows, 0.15 to 0.3 m (0.5 to 1 ft) in diameter for connecting mixing duct, straight duct and damper (optional) assembly. There shall be at least two 90° elbows upstream of the sampling section (see Figure 5G–2).

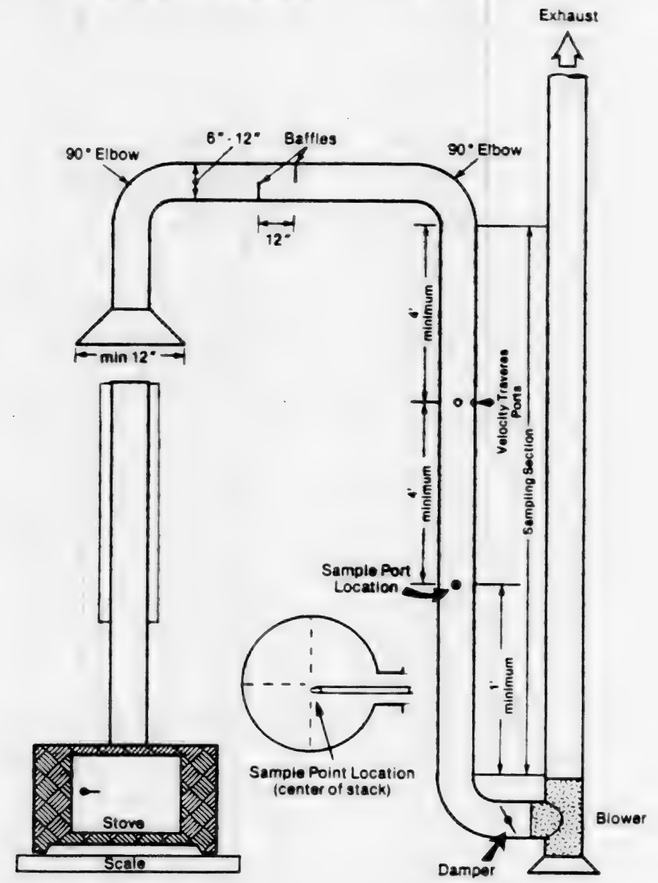


Figure 5G - 2. Suggested construction details of the dilution tunnel.

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2.2.3 *Straight Duct.* Steel, 0.15 to 0.3 m (0.5 to 1 ft) in diameter to provide the ducting for the dilution apparatus upstream of the sampling section. Steel duct, 0.15 m (0.5 ft) in diameter shall be used for the sampling section. In the sampling section, at least 1.2 m (4 ft) downstream of the elbow, shall be two holes (velocity traverse ports) at 90° to each other of sufficient size to allow entry of the pitot for traverse measurements. At least 1.2 m (4 ft) downstream of the velocity traverse ports, shall be one hole (sampling port) of sufficient size to allow entry of the sampling probe.Ducts of larger diameter may be used for the sampling section provided the specifications for minimum gas velocity and the dilution rate range shown in Section 4 are maintained. The length of duct from the hood inlet to the sampling ports shall not exceed 9.1 m (30 ft).

2.2.4 *Mixing Baffles.* Steel semicircles (two) attached at 90° to the duct axis on opposite sides of the duct midway between the two elbows upstream of sampling section. The space between the baffles shall be about 0.3 m (12 in.).

2.2.5 *Blower.* Squirrel cage or other fan capable of extracting gas from the dilution tunnel of sufficient flow to maintain the velocity and dilution rate specifications in Section 4 and exhausting the gas to the atmosphere.

2.3 *Sample Recovery.* Probe brushes, wash bottles, sample storage containers, petri dishes, and a funnel as described in Method 5, Section 2.2.1 through 2.2.4, and 2.2.8, respectively, are needed.

2.4 *Analysis.* Glass weighing dishes, desiccator, analytical balance, beakers (250 ml or smaller), hygrometer, and temperature gauge as described in Method 5, Sections 2.3.1 through 2.3.3 and 2.3.5 through 2.3.7, respectively, are needed.

3. Reagents

3.1 *Sampling.* The reagents used in sampling are as follows:

3.1.1 *Filters.* Glass fiber filters with a minimum diameter of 100 mm (4 in.), without organic binder, exhibiting at least 99.95 percent efficiency (<0.05 percent penetration) on 0.3-micron dioctyl phthalate smoke particles. Gelman A/E 61631 has been found acceptable for this purpose.

3.1.2 *Stopcock Grease.* Same as Method 5, Section 3.1.5.

3.2 *Sample Recovery.* Acetone-reagent grade, same as Method 5, Section 3.2.

3.3 *Analysis.* Two reagents are required for the analysis:

3.3.1 *Acetone.* As in Section 3.2.

3.3.2 *Desiccant.* Anhydrous calcium sulfate, calcium chloride, or silica gel, indicating type.

4. Procedure

4.1 *Dilution Tunnel.* A schematic of a dilution tunnel is shown in Figure 5G–2. The dilution tunnel dimensions and other features are described in Section 2.2. Assemble the dilution tunnel sealing joints and seams to prevent air leakage. Clean the dilution tunnel with an appropriately sized, wire chimney brush before each certification test.

4.1.1 *Draft Determination.* Prepare the wood heater as in Method 28, Section 6.2.1. Locate the dilution tunnel hood centrally over the wood heater stack exhaust. Operate the dilution tunnel blower at the flow rate to be used during the test run. Measure the draft imposed on the wood heater by the dilution tunnel (i.e., the difference in draft measured with and without the dilution tunnel operating) as described in Method 28, Section 6.2.3. Adjust the distance between the top of the wood heater stack exhaust and the dilution tunnel hood so that the dilution tunnel induced draft is less than 1.25 Pa (0.005 in. H_2O). Do not operate the wood heater during this adjustment.

4.1.2 *Smoke Capture.* During the pretest ignition period described in Method 28, Section 6.3, operate the dilution tunnel and visually monitor the wood heater stack exhaust. Determine that 100 percent of the exhaust gas is collected by the dilution tunnel hood. If less than 100 percent of the wood heater exhaust gas is collected, adjust the distance between the wood heater stack and the dilution tunnel hood until no visible exhaust gas is escaping. Stop the pretest ignition period, and repeat the draft determination procedure described in Section 4.1.1.

4.2 *Velocity Measurements.* During the pretest ignition period described in Method 28, Section 6.3, conduct a velocity traverse to identify the point of average velocity. This single point shall be used for measuring velocity during the test run.

4.2.1 *Velocity Traverse.* Measure the diameter of the duct at the velocity traverse port location through both ports. Calculate the duct area using the average of the two diameters. A pretest leak check of pitot lines as in Method 2, Section 3.1, is recommended. Place the calibrated pitot tube at the centroid of the stack in either of the velocity traverse ports. Adjust the damper or similar device on the blower inlet until the velocity indicated by the pitot is approximately 220 m/min (715 fpm). Continue to read the Δp and temperature until the velocity has remained constant (less than 5 percent change) for 1 minute. Once a constant velocity is obtained at the centroid of the duct, perform a velocity traverse as outlined in Method 2, Section 3 using four points per traverse as outlined in Method 1. Take two readings at each point and record the readings. Calculate the total gas flow rate using calculations contained in Method 2, Section 5. Verify that the flow rate is 4 ± 0.45 sm^3/min (140 ± 14 scfm); if not, readjust the damper, and repeat the velocity traverse. The moisture may be assumed to be 4 percent (100 percent relative humidity at 85°F). Direct moisture measurements such as outlined in EPA Method 4 are also permissible.

Note.—If burn rates exceed 3 kg/hr (6.6 lb/hr), dilution tunnel duct flow rates greater than 4 sm^3/min (140 scfm) and sampling section duct diameters larger than 150 mm (6 in.) are allowed. If larger ducts or flow rates are used, the sampling section velocity shall be at least 220 m/min (715 fpm). In order to assure measurable particulate mass catch, it is recommended that the ratio of the average mass flow rate in the dilution tunnel to the average fuel burn rate be less than 150:1 if larger duct sizes or flow rates are used.

4.2.2 *Testing Velocity Measurements.* After obtaining velocity traverse results that meet the flow rate requirements, choose a point of average velocity and place the pitot and thermocouple at that location in the duct. Alternatively, locate the pitot and thermocouple at the duct centroid and calculate a velocity correction factor for the centroidal position. Mount the pitot to ensure no movement during the test run and seal the port holes to prevent any air leakage. Align the pitot to be parallel with the duct axis, at the measurement point. Check that this condition is maintained during the test run (about 30-minute intervals). Monitor the temperature and velocity during the pretest ignition period to ensure the proper flow rate is maintained. Make adjustments to the dilution tunnel flow rate as necessary.

4.3 *Sampling.*

4.3.1 *Pretest Preparation.* It is suggested that sampling equipment be maintained and calibrated according to the procedure described in APTD–0576.

Check and desiccate filters as described in Method 5, Section 4.1.1.

4.3.2 *Preparation of Collection Train.* During preparation and assembly of the sampling train, keep all openings where contamination can occur covered until just prior to assembly or until sampling is about to begin.

Using a tweezer or clean disposable surgical gloves, place one labeled (identified) and weighed filter in each of the filter holders. Be sure that each of the filters is properly centered and the gasket properly placed so as to prevent the sample gas stream from circumventing the filter. Check each of the filters for tears after assembly is completed.

Mark the probe with heat resistant tape or by some other method to denote the proper distance into the stack or duct.

Set up the train as in Figure 5G–1.

4.3.3 *Leak-Check Procedures.*

4.3.3.1 *Pretest Leak-Check.* A pretest leak-check is recommended, but not required. If the tester opts to conduct the pretest leak-check, conduct the leak-check as described in Method 5, Section 4.1.4.1.

4.3.3.2 *Post-Test Leak-Check.* A leak-check is mandatory at the conclusion of each test run. The leak-check shall be done in accordance with the procedures described in Method 5, Section 4.1.4.1.

4.3.4 *Preliminary Determinations.* Determine the pressure, temperature and the average velocity of the tunnel gases as in Section 4.2. Moisture content of diluted tunnel gases is assumed to be 4 percent for making flow rate calculations; the moisture content may be measured directly as in Method 4.

4.3.5 *Sampling Train Operation.* Position the probe inlet at the stack centroid, and block off the openings around the probe and porthole to prevent unrepresentative dilution of the gas stream. Be careful not to bump the probe into the stack wall when removing or inserting the probe through the porthole; this minimizes the chance of extracting deposited material.

Begin sampling at the start of the test run as defined in Method 28, Section 6.4.1. During the test run, maintain a sample flow rate proportional to the dilution tunnel flow rate (within 10 percent of the initial proportionality ratio) and a filter holder temperature of no greater than 32 °C (90 °F). The initial sample flow rate shall be approximately 0.015 m^3/min (0.5 cfm).

For each test run, record the data required on a data sheet such as the one shown in Figure 5G–3. Be sure to record the initial dry gas meter reading. Record the dry gas meter readings at the beginning and end of each sampling time increment and when sampling is halted. Take other readings as indicated on Figure 5G–3 at least once each 10 minutes during the test run. Since the manometer level and zero may drift because of vibrations and temperature changes, make periodic checks during the test run.

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Stove _____
Test Method _____
Operator _____
Date _____
Run No. _____
Start Time _____
Stop Time _____
Sample Box No. _____
Meter Box No. _____
Meter $\Delta H_@$ (optional) _____

Pitot tube coefficient, Cp _____
Room temperature, °C, (°F) _____
Barometric pressure mb (in. Hg) _____
Measured or assumed moisture, % _____
Final leak rate, m³/min, (cfm) _____
Probe liner material _____
Draft or static pressure, mm H_2O (in. H_2O) _____
Filter Nos. _____

Clock time	Test run time (θ) min.	Vacuum mm Hg (in. Hg)	Tunnel temperature (T_s) °C (°F)	Velocity head (ΔP_s) mm (in.) H_2O	Sample flow rate indicator (orifice meter optional) mm H_2O (in. H_2O)	Gas meter volume m³ (ft³)	Gas sample temperature at dry gas meter (In) °C (°F)	Gas sample temperature at dry gas meter (Out) °C (°F)	Filter holder temperature °C (°F)	Temperature of gas leaving dryer or last impinger °C (°F)
Total							Avg	Avg		
Average							Avg			

Figure 5G-3. Particulate field data.

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During the test run, make periodic adjustments to keep the temperature between the filters at the proper level. Do not change sampling trains during the test run.

At the end of the test run (see Method 28, Section 6.4.6), turn off the coarse adjust valve, remove the probe from the stack, turn off the pump, record the final dry gas meter reading, and conduct a post-test leak-check, as outlined in Section 4.3.3. Also, leak-check the pitot lines as described in Method 2, Section 3.1; the lines must pass this leak-check in order to validate the velocity head data.

4.3.6 *Calculation of Proportional Sampling Rate.* Calculate percent proportionality (see Calculations, Section 6) to determine whether the run was valid or another test run should be made.

4.4 *Sample Recovery.* Begin recovery of the probe and filter samples as described in Method 5, Section 4.2, except that an acetone blank volume of about 50 ml may be used.

Treat the samples as follows:

Container No. 1. Carefully remove the filter from the primary filter holder and place it in its identified (labeled) petri dish container. Use a pair of tweezers and/or clean disposable surgical gloves to handle the filter. If it is necessary to fold the filter, do so such that the particulate cake is inside the fold. Carefully transfer to the petri dish any particulate matter and/or filter fibers which adhere to the filter holder gasket, by using a dry Nylon bristle brush and/or a sharp-edged blade. Seal the container.

Container No. 2. Remove filter from the second filter holder using the same procedures as described above.

Note: The two filters may be placed in the same container for desiccation and weighing. Use the sum of the filter tare weights to determine the sample mass collected.

Container No. 3. Taking care to see that dust on the outside of the probe or other exterior surfaces does not get into the sample, quantitatively recover particulate matter or any condensate from the probe and filter holders by washing and brushing these components with acetone and placing the wash in a labeled (No. 3) glass container. At least three cycles of brushing and rinsing are necessary.

Between sampling runs, keep brushes clean and protected from contamination.

After all acetone washings and particulate matter have been collected in the sample containers, tighten the lids on the sample containers so that the acetone will not leak out when transferred to the laboratory weighing area. Mark the height of the fluid levels to determine whether leakage occurs during transport. Label the containers clearly to identify contents. Requirements for capping and transport of sample containers are not applicable if sample recovery and analysis occur in the same room.

4.5 *Analysis.* Record the data required on a sheet such as the one shown in Figure 5G–4.

Stove ———
Date ———
Run No. ———
Filter Nos. ———
Liquid lost during transport, ml ———
Acetone blank volume, ml ———
Acetone wash volume, ml ———
Acetone blank concentration, mg/mg ———
Acetone wash blank, mg ———

Container No.	Weight of particulate collected, mg		
	Final weight	Tare weight	Weight gain
1			
2			
3			

Total ———
Less acetone blank ———
Weight of particulate matter ———

STACK MOISTURE MEASUREMENT DATA
(OPTIONAL)

	Volume of liquid water collected	
	Impinger volume, ml	Silica gel weight, g
Final		
Initial		
Liquid collected		
Total volume collected		g[1] ml

[1] Convert weight of water to volume by dividing total weight increase by density of water (1 g/ml)

$$\frac{\text{Increase, g}}{\text{(1 g/ml)}} = \text{Volume water, ml}$$

Figure 5G–4. Analysis data sheet.

Use the same analytical balance for determining tare weight and final sample weights. Handle each sample container as follows:

Container Nos. 1 and 2. Leave the contents in the sample containers or transfer the filters and loose particulate to tared glass weighing dishes. Desiccate for at least 24 hours but no more than 36 hours. Weigh to a constant weight, and report the results to the nearest 0.1 mg. For purposes of this section, the term "constant weight" means a difference of no more than 0.5 mg or 1 percent of total sample weight (less tare weight), whichever is greater, between two consecutive weighings, with no more than 2 hours and no less than 1 hour between weighings.

Container No. 3. Note the level of liquid in the container, and confirm on the analysis sheet whether leakage occurred during transport. If a noticeable amount of leakage has occurred, either void the sample or use methods, subject to the approval of the Administrator, to correct the final results. Determination of sample leakage is not applicable if sample recovery and analysis occur in the same room. Measure the liquid in this container either volumetrically to within 1 ml or gravimetrically to within 0.5 g. Transfer the contents to a tared 250–ml or smaller beaker and evaporate to dryness at ambient temperature and pressure. Desiccate for at least 24 hours but no more than 36 hours, and weigh to a constant weight. Report the results to the nearest 0.1 mg.

"Acetone Blank" Container. Measure acetone in this container either volumetrically or gravimetrically. Transfer the acetone to a tared 250-ml or smaller beaker and evaporate to dryness at ambient temperature and pressure. Desiccate for at least 24 hours but no more than 36 hours, and weigh to a constant weight. Report the results to the nearest 0.1 mg.

5. Calibration

Maintain a laboratory record of all calibrations.

5.1 *Pitot Tube.* The Type S pitot tube assembly shall be calibrated according to the procedure outlined in Method 2, Section 4, prior to the first certification test and checked semiannually, thereafter.

5.2 *Volume Metering System.*

5.2.1 *Initial and Periodic Calibration.* Before its initial use and at least semiannually thereafter, calibrate the volume metering system as described in Method 5, Section 3.1.1, except that the wet test meter with a capacity of 3.0 liters/rev (0.1 ft^3/rev) may be used. Other liquid displacement systems accurate to within 1 percent, may be used as calibration standards.

Procedures and equipment specified in Method 5, Section 7, for alternative calibration standards are allowed for calibrating the dry gas meter in the sampling train. A dry gas meter used as a calibration standard shall be recalibrated at least once annually.

5.2.2 *Calibration After Use.* After each certification or audit test (four or more test runs conducted on a wood heater at the four burn rates specified in Method 28), check calibration of the metering system by performing three calibration runs at a single, intermediate flow rate as described in Method 5, Section 5.3.2.

Procedures and equipment specified in Method 5, Section 7, for alternative calibration standards are allowed for the post-test dry gas meter calibration check.

5.2.3 *Acceptable Variation in Calibration.* If the dry gas meter coefficient values obtained before and after a certification test differ by more than 5 percent, the certification test shall either be voided and repeated, or calculations for the certification test shall be performed using whichever meter coefficient value (i.e., before or after) gives the lower value of total sample volume.

5.3 *Temperature Gauges.* Use the procedure in Method 2, Section 4.3, to calibrate temperature gauges before the first certification or audit test and at least semiannually, thereafter.

5.4 *Leak-Check of Metering System Shown in Figure 5G–1.* That portion of the sampling train from the pump to the orifice meter shall be leak-checked prior to initial use and after each certification or audit test. Leakage after the pump will result in less volume being recorded than is actually sampled. Use the procedure described in Method 5, Section 5.6.

Similar leak checks shall be conducted for other types of metering systems (i.e., without orifice meters).

5.5 *Barometer.* Calibrate against a mercury barometer before the first certification test and at least semiannually, thereafter.

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6. Calculations

Carry out calculations, retaining at least one extra decimal figure beyond that of the acquired data. Round off figures after the final calculation. Other forms of the equations may be used as long as they give equivalent results.

6.1 *Nomenclature.*

B_{ws} = Water vapor in the gas stream, proportion by volume (assumed to be 0.04).

c_s = Concentration of particulate matter in stack gas, dry basis, corrected to standard conditions, g/dsm³ (g/dscf).

E = Particulate emission rate, g/hr.

L_a = Maximum acceptable leakage rate for either a pretest or post-test leak-check, equal to 0.00057 m³/min (0.02 cfm) or 4 percent of the average sampling rate, whichever is less.

L_p = Leakage rate observed during the post-test leak-check, m³/min (cfm).

m_a = Mass of residue of acetone blank after evaporation, mg.

m_{aw} = Mass of residue from acetone wash after evaporation, mg.

m_n = Total amount of particulate matter collected, mg.

M_w = Molecular weight of water, 18.0 g/g-mole (18.0 lb/lb-mole).

P_{bar} = Barometric pressure at the sampling site, mm Hg (in. Hg).

PR = Percent of proportional sampling rate.

P_s = Absolute gas pressure in dilution tunnel, mm Hg (in. Hg).

P_{std} = Standard absolute pressure, 760 mm Hg (29.92 in. Hg).

Q_{sd} = Average gas flow rate in dilution tunnel, calculated as in Method 2, Equation 2–10, dsm³/hr (dscf/hr).

T_m = Absolute average dry gas meter temperature (see Figure 5G–3), °K (°R).

T_{mi} = Absolute average dry gas meter temperature during each 10-minute interval, i, of the test run, °K (°R).

T_s = Absolute average gas temperature in the dilution tunnel (see Figure 5G–3), °K (°R).

T_{si} = Absolute average gas temperature in the dilution tunnel during each 10 minute interval, i, of the test run, °K (°R).

T_{std} = Standard absolute temperature, 293 °K (528 °R).

V_a = Volume of acetone blank, ml.

V_{aw} = Volume of acetone used in wash, ml.

V_m = Volume of gas sample as measured by dry gas meter, dm³ (dcf).

V_{mi} = Volume of gas sample as measured by dry gas meter during each 10-minute intervals, i, of the test run, dm³ (dcf).

$V_{m(std)}$ = Volume of gas sample measured by the dry gas meter, corrected to standard conditions, dsm³ (dscf).

v_s = Average gas velocity in dilution tunnel, calculated by Method 2, Equation 2–9, m/sec (ft/sec).

v_{si} = Average gas velocity in dilution tunnel during each 10-minute interval, i, of the test run, calculated by Method 2, Equation 2–9, m/sec (ft/sec).

Y = Dry gas meter calibration factor.

ΔH = Average pressure differential across the orifice meter, if used (see Figure 5G–2), mm H_2O (in. H_2O).

θ = Total sampling time, min.

10 = 10 minutes, length of first sampling period.

13.6 = Specific gravity of mercury.

100 = Conversion to percent.

6.2 *Dry Gas Volume.* Correct the sample volume measured by the dry gas meter to standard conditions (20 °C, 760 mm Hg or 68 °F, 29.92 in. Hg) by using Equation 5G–1. (If no orifice meter is used in sampling train, assume $\Delta H = 0$ or measure static pressure at dry gas meter outlet.)

$$V_{m(std)} = V_m Y \left(\frac{T_{std}}{T_m}\right)\left(\frac{P_{bar} + \frac{\Delta H}{13.6}}{P_{std}}\right) = K_1 V_m Y \frac{\left(P_{bar} + (\Delta H/13.6)\right)}{T_m} \quad \text{Eq. 5G-1}$$

where:

K_1 = 0.3858 °K/mm. Hg for metric units.
= 17.64 °R/in. Hg for English units.

Note.—If L_p exceeds L_a, Equation 5G–1 must be modified as follows: Replace V_m in Equation 5G–1 with the expression: $[V_m - (L_p - L_a)\theta]$

6.3 *Solvent Wash Blank.*

$$m_{aw} = \frac{m_a V_{aw}}{V_a} \quad \text{Eq. 5G-2}$$

6.4 *Total Particulate Weight.* Determine the total particulate catch, m_n, from the sum of the weights obtained from containers 1, 2, and 3, less the acetone blank (see Figure 5G–5).

6.5 *Particulate Concentration.*

$c_s = (0.001\ g/mg)\ (m_n/V_{m(std)})$ Eq. 5G–3

6.6 *Particulate Emission Rate.*

$E = c_s Q_{sd}$ Eq. 5G–4

Note.—Particulate emission rate results produced using the sampling train described in Section 2 and shown in Figure 5G–1 shall be adjusted for reporting purposes by the following methods adjustment factor:

$E_{adj} = 1.82\ (E)^{0.88}$ Eq. 5G–5

6.7 *Proportional Rate Variation.* Calculate PR for each 10-minute interval, I, of the test run.

$$PR = \frac{\theta(V_{mi} v_s T_m T_{si})}{10\ (V_m v_{si} T_s T_{mi})} \times 100 \quad \text{Eq. 5G-6}$$

Alternate calculation procedures for proportional rate variation may be used if other sample flow rate data (e.g., orifice flow meters or rotameters) are monitored to maintain proportional sampling rates. The proportional rate variations shall be calculated for each 10-minute interval by comparing the stack to nozzle velocity ratio for each 10-minute interval to the average stack to nozzle velocity ratio for the test run.

6.8 *Acceptable Results.* If no more than 10 percent of the PR values for all the intervals exceed 90 percent ≤PR ≤110 percent, and if no PR value for any interval exceeds 80 percent ≤PR ≤120 percent, the results are acceptable. If the PR values for the test run are judged to be unacceptable, report the test run emission results, but do not include the results in calculating the weighted average emission rate, and repeat the test run.

7. Alternative Sampling and Analysis Procedure

7.1 *Method 5H Sampling Train.* The sampling and analysis train and procedures described in Method 5H, Sections 2.1, 3.1, 4.1, 4.2, and 4.4 may be used in lieu of similar sections in Method 5G. Operating of the Method 5H sampling train in the dilution tunnel is as described in Section 4.3.5. Filter temperatures and condenser conditions are as described in Method 5H. No methods adjustment factor as described in Equation 5G–5, Section 6.6, is to be applied to the particulate emission rate data produced by this alternative method.

7.2 *Dual Sampling Trains.* The tester may operate two sampling trains simultaneously at sample flow rates other than that specified in Section 4.3.5 provided the following specifications are met.

7.2.1 *Sampling Train.* The sampling train configuration shall be the same as specified in Section 2.1, except the probe, filter, and filter holder need not be the same sizes as specified in the applicable sections. Filter holders of plastic materials such as Nalgene or polycarbonate materials may be used (the Gelman 1119 filter holder has been found suitable for this purpose). With such materials, it is recommended not to use solvents in sample recovery. The filter face velocity shall not exceed 150 mm/sec (30 ft/min) during the test run. The dry gas meter shall be calibrated for the same flow rate range as encountered during the test runs. Two separate, complete sampling trains are required for each test run.

7.2.2 *Probe Location.* Locate the two probes in the dilution tunnel at the same level (see Section 2.2.3). Two sample ports are necessary. Locate the probe inlets within the 50-mm (2-in.) diameter centroidal area of the dilution tunnel no closer than 25 mm (1 in.) apart.

7.2.3 *Sampling Train Operation.* Operate the sampling trains as specified in Section 4.3.5, starting and stopping the two sampling trains simultaneously. The pitot values as described in Section 4.2.2 shall be used to adjust sampling rates in both sampling trains.

7.2.4 *Recovery and Analysis of Sample.* Recover and analyze the samples from the two sampling trains separately, as specified in Sections 4.4 and 4.5.

For this alternative procedure, the probe and filter holder assembly may be weighed without sample recovery (use no solvents) described above in order to determine the sample weight gains. For this approach, weigh the clean, dry probe and filter holder assembly upstream of the front filter (without filters) to the nearest 0.1 mg to establish the tare weights. The filter holder section between the front and second filter need not be weighed. At the end of the test run, carefully clean the outside of the probe, cap the ends, and identify the sample (label). Remove the filters from the filter holder assemblies as described for containers Nos. 1 and 2 above. Reassemble the filter holder assembly, cap the ends, identify the sample (label), and transfer all the samples to the laboratory weighing area for final weighing. Descriptions of capping and transport of samples are not applicable if sample recovery and analysis occur in the same room.

For this alternative procedure, filters may be weighed directly without a petri dish. If the probe and filter holder assembly are to be weighed to determine the sample weight, uncap the openings of the probe and the filter holder assembly. Desiccate for at least 24 hours but no more than 36 hours and weigh to a constant weight. Report the results to the nearest 0.1 mg.

7.2.5 *Calculations.* Calculate an emission rate (Section 6.6) for the sample from each sampling train separately and determine the average emission rate for the two values. The two emission rates shall not differ by more than 7.5 percent from the average emission rate, or 7.5 percent of the weighted average emission rate limit in the applicable standard, whichever is greater. If this specification is not met, the results are unacceptable. Report the results, but do not include the results in calculating the weighted average emission rate. Repeat the test run until acceptable results are achieved, report the average emission rate for the acceptable test run, and use the average in calculating the weighted average emission rate.

8. Bibliography

1. Same as for Method 5, citations 1 through 11, with the addition of the following:

2. Oregon Department of Environmental Quality Standard Method for Measuring the Emissions and Efficiencies of Woodstoves. June 8, 1984. Pursuant to Oregon Administrative Rules Chapter 340, Division 21.

3. American Society for Testing Materials. Proposed Test Methods for Heating Performance and Emissions of Residential Wood-fired Closed Combustion-Chamber Heating Appliances. E–6 Proposal P 180. August 1986.

Method 5H—Determination of Particulate Emissions From Wood Heaters From a Stack Location

1. Applicability and Principle

1.1 *Applicability.* This method is applicable for the determination of particulate matter and condensible emissions from wood heaters.

1.2 *Principle.* Particulate matter is withdrawn proportionally from the wood heater exhaust and is collected on two glass fiber filters separated by impingers immersed in an ice bath. The first filter is maintained at a temperature of 120±14 °C (248±25 °F). The second filter and the impinger system are cooled such that the exiting temperature of the gas is maintained at 20 °C (68 °F) or less. The particulate mass collected in the probe, on the filters, and in the impingers is determined gravimetrically after removal of uncombined water.

2. Apparatus

2.1 *Sampling Train.* The sampling train configuration is shown in Figure 5H–1. APTD–0576 is suggested for operating and maintenance procedures. The train consists of the following components:

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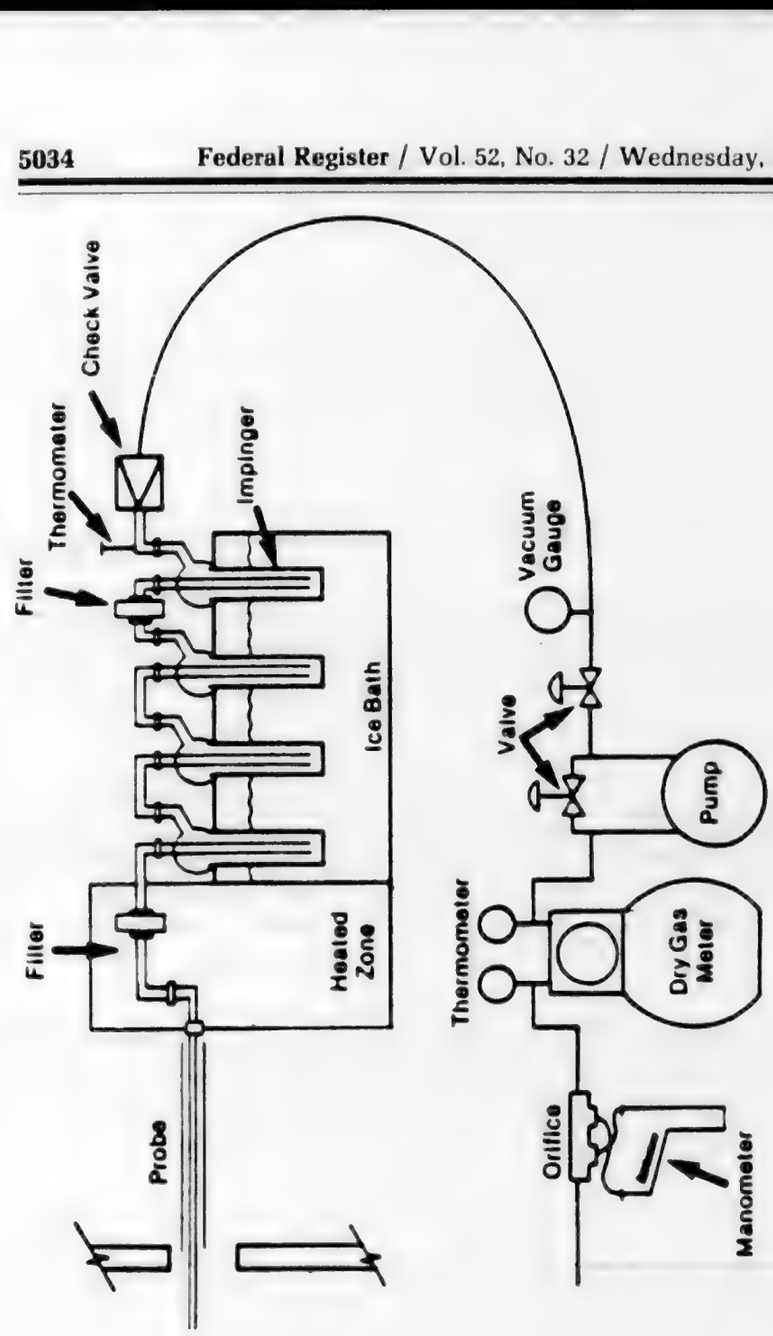


Figure 5H-1. Sampling train.

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2.1.1 *Probe Nozzle.* Same as Method 5, Section 2.1.1, except that calibration of the nozzle is not necessary.

2.1.2 *Probe Liner.* Same as Method 5, Section 2.1.2, except that the maximum length of the sample probe shall be 0.6 m (2 ft).

Note.—Mention of trade names or specific product does not constitute endorsement by the Environmental Protection Agency.

2.1.3 *Differential Pressure Gauge.* Same as Method 5, Section 2.1.4.

2.1.4 *Filter Holders.* Two each of borosilicate glass, with a glass frit or stainless steel filter support and a silicone rubber, Teflon, or Viton gasket. The holder design shall provide a positive seal against leakage from the outside or around the filter. The front filter holder shall be attached immediately at the outlet of the probe and prior to the first impinger. The second filter holder shall be attached on the outlet of the third impinger and prior to the inlet of the fourth (silica gel) impinger.

2.1.5 *Filter Heating System.* Same as Method 5, Section 2.1.6.

2.1.6 *Condenser.* Same as Method 5, Section 2.1.7, used to collect condensible materials and determine the stack gas moisture content.

2.1.7 *Metering System.* Same as Method 5, Section 2.1.8.

2.1.8 *Barometer.* Mercury, aneroid, or other barometer capable of measuring atmospheric pressure to within 2.5 mm Hg (0.1 in. Hg).

2.2 *Stack Flow Rate Measurement System.* A schematic of an example test system is shown in Figure 5H-2.

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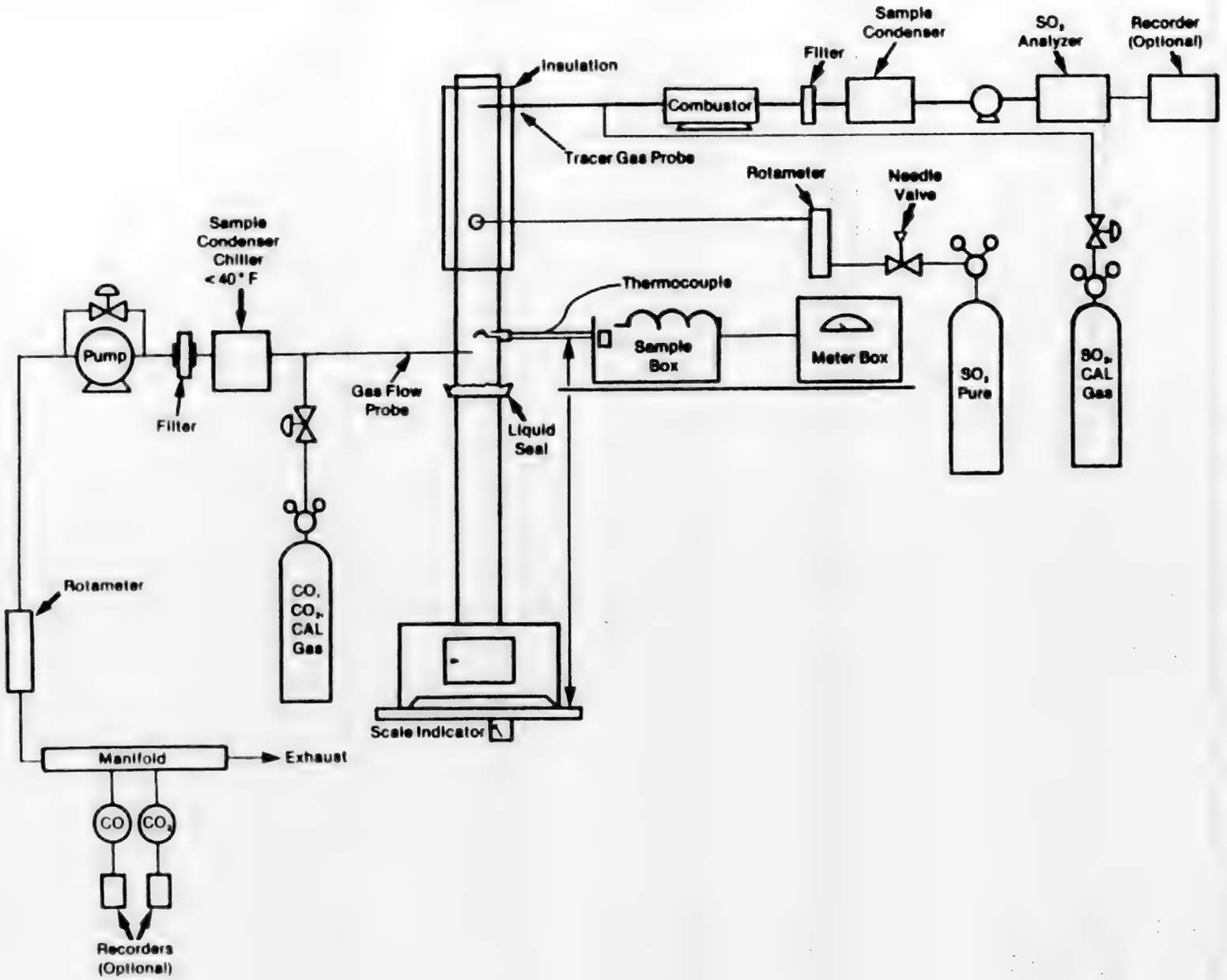


Figure 5H-2. Test system schematic for Method 5H.

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The flow rate measurement system consists of the following components:

2.2.1 *Sample Probe.* A glass or stainless steel sampling probe.

2.2.2 *Gas Conditioning System.* A high density filter to remove particulate matter and a condenser capable of lowering the dew point of the gas to less than 5 °C (40 °F).

2.2.3 *Pump.* An inert (i.e., Teflon or stainless steel heads) sampling pump capable of delivering more than the total amount of sample required in the manufacturer's instructions for the individual instruments.

2.2.4 *CO Analyzer.* Any analyzer capable of providing a measure of CO in the range of 0 to 10 percent by volume at least once every 10 minutes.

2.2.5 CO_2 Analyzer. Any analyzer capable of providing a measure of CO_2 in the range of 0 to 25 percent by volume at least once every 10 minutes.

Note.—Analyzers with ranges less than those specified above may be used provided actual concentrations do not exceed the range of the analyzer.

2.2.6 *Manifold.* A sampling tube capable of delivering the sample gas to two analyzers and handling an excess of the total amount used by the analyzers. The excess gas is exhausted through a separate port.

2.2.7 *Recorders (optional).* To provide a permanent record of the analyzer outputs.

2.3 *Proportional Gas Flow Rate System.* To monitor stack flow rate changes and provide a measurement that can be used to adjust and maintain particulate sampling flow rates proportional to the stack flow rate. A schematic of the proportional flow rate system is shown in Figure 5H–2 and consists of the following components.

2.3.1 *Tracer Gas Injection System.* To inject a known concentration of SO_2 into the flue. The tracer gas injection system consists of a cylinder of SO_2, a gas cylinder regulator, a stainless steel needle valve or flow controller, a nonreactive rotameter, and an injection loop to disperse the SO_2 evenly in the flue.

2.3.2 *Sample Probe.* A glass or stainless steel sampling probe.

2.3.3 *Gas Conditioning System.* A combustor as described in Method 16A, Sections 2.1.5 and 2.1.6, followed by a high density filter to remove particulate matter, and a condenser capable of lowering the dew point of the gas to less than 5 °C (40 °F).

2.3.4 *Pump.* As described in Section 2.2.3.

2.3.5 *SO_2 Analyzer.* Any analyzer capable of providing a measure of the SO_2 concentration in the range of 0 to 1000 ppm by volume (or other range necessary to measure the SO_2 concentration) at least once every 10 minutes.

2.3.6 *Recorder (optional).* To provide a permanent record of the analyzer outputs.

Note.—Other tracer gas systems, including a helium gas system, or use of a mass balance approach, are allowed for determining instantaneous proportional sampling rates.

2.4 *Sample Recovery.* Probe liner and probe nozzle brushes, wash bottles, sample storage containers, petri dishes, graduated cylinder or balance, plastic storage containers, funnel and rubber policeman, as described in Method 5, Sections 2.2.1 through 2.2.8, respectively, are needed.

2.5 *Analysis.* Weighing dishes, desiccator, analytical balance, beakers (250 ml or less), hygrometer or psychometer, and temperature gauge as described in Method 5, Sections 2.3.1 through 2.3.7, respectively, are needed. In addition, a separatory funnel, glass or teflon, 500 ml or greater, is needed.

3. Reagents

3.1 *Sampling.* The reagents used in sampling are as follows:

3.1.1 *Filters.* Glass fiber filters, without organic binder, exhibiting at least 99.95 percent efficiency (<0.05 percent penetration) on 0.3-micron dioctyl phthalate smoke particles. Gelman A/E 61631 filters have been found acceptable for this purpose.

3.1.2 *Silica Gel.* Same as Method 5, Section 3.1.2.

3.1.3 *Water.* Deionized distilled to conform to ASTM Specification D1193–77, Type 3 (incorporated by reference—see § 60.17). Run blanks prior to field use to eliminate a high blank on test samples.

3.1.4 *Crushed Ice.*

3.1.5 *Stopcock Grease.* Same as Method 5, Section 3.1.5.

3.2 *Sample Recovery.* Same as Method 5, Section 3.2.

3.3 *Cylinder Gases.* For the purposes of this procedure, span value is defined as the upper limit of the range specified for each analyzer as described in Section 2.2 or 2.3. If an analyzer with a range different than that specified in this method is used, the span value shall be equal to the upper limit of the range for the analyzer used (see **Note** in Section 2.2.6).

3.3.1 *Calibration Gases.* The calibration gases for the CO_2, CO and SO_2 analyzers shall be CO_2, CO, or SO_2, as appropriate, in N_2. CO_2 and CO calibration gases may be combined in a single cylinder. Four calibration gas levels are required as specified below:

3.3.1.1 *High-level Gas.* A gas concentration that is equivalent to 80 to 90 percent of the span value.

3.3.1.2 *Mid-level Gas.* A gas concentration that is equivalent to 45 to 55 percent of the span value.

3.3.1.3 *Low-level Gas.* A gas concentration that is equivalent to 20 to 30 percent of the span value.

3.3.1.4 *Zero Gas.* A gas concentration of less than 0.25 percent of the span value. Purified air may be used as zero gas for the CO_2, CO, and SO_2 analyzers.

3.3.2 *SO_2 Injection Gas.* A known concentration of SO_2 in N_2. The concentration must be at least 2 percent SO_2 with a maximum of 100 percent SO_2. The cylinder concentration shall be certified by the manufacturer to be within 2 percent of the specified concentration.

3.4 *Analysis.* Three reagents are required for the analysis:

3.4.1 *Acetone.* Same as 3.2.

3.4.2 *Dichloromethane (Methylene Chloride).* Reagent grade, <0.001 percent residue in glass bottles.

3.4.3 *Desiccant.* Anhydrous calcium sulfate, calcium chloride, or silica gel, indicating type.

4. Gas Measurement System Performance Specifications

4.1 *Response Time.* The amount of time required for the measurement system to display 95 percent of a step change in gas concentration. The response time for each analyzer and gas conditioning system shall be no more than 2 minutes.

4.2 *Zero Drift.* The zero drift for each analyzer shall be less than 5 percent of the span value over the period of the test run.

4.3 *Calibration Drift.* The calibration drift measured with the mid-level calibration gas for each analyzer shall be less than 5 percent of the span value over the period of the test run.

4.4 *Resolution.* The resolution of the output for each analyzer shall be 0.5 percent of span value or less.

4.5 *Calibration Error.* The linear calibration curve produced using the zero and mid-level calibration gases shall predict the actual response to the low-level and high-level calibration gases within 2 percent of the span value.

5. Procedure

5.1 *Pretest Preparation.*

5.1.1 *Filter and Desiccant.* Same as Method 5, Section 4.1.1.

5.1.2 *Sampling Probe and Nozzle.* The sampling location for the particulate sampling probe shall be 2.45±0.15 m (8±0.5 ft) above the sampling platform (i.e., the top of the scale).

Select a nozzle size based on the range of velocity heads, such that it is not necessary to change the nozzle size in order to maintain proportional sampling rates. During the run, do not change the nozzle size.

Select a suitable probe liner and probe length to effect minimum blockage.

5.1.3 *Preparation of Particulate Sampling Train.* During preparation and assembly of the particulate sampling train, keep all openings where contamination can occur covered until just prior to assembly or until sampling is about to begin.

Place 100 ml of water in each of the first two impingers, leave the third impinger empty, and transfer approximately 200 to 300 g of preweighed silica gel from its container to the fourth impinger. More silica gel may be used, but care should be taken to ensure that it is not entrained and carried out from the impinger during sampling. Place the container in a clean place for later use in the sample recovery. Alternatively, the weight of the silica gel plus impinger may be determined to the nearest 0.5 g and recorded.

Using a tweezer or clean surgical gloves, place one labeled (identified) and weighed filter in each of the filter holders. Be sure that each of the filters is properly centered and the gasket properly placed so as to prevent the sample gas stream from circumventing the filter. Check the filters for tears after assembly is completed.

When glass liners are used, install the selected nozzle using a Viton A O-ring. Other connecting systems using either 316 stainless steel or Teflon ferrules may be used. Mark the probe with heat resistant tape or by some other method to denote the proper distance into the stack or duct.

Set up the train as in Figure 5H–1, using (if necessary) a very light coat of silicone grease on all ground glass joints, greasing only the outer portion (see APTD–0576) to avoid possibility of contamination by the silicone grease.

Place crushed ice around the impingers.

5.1.4 *Leak-Check Procedures.*

5.1.4.1 *Pretest Leak-Check.* A pretest leak-check is recommended, but not required. If the tester opts to conduct the pretest leak-check, conduct the leak-check as described in Method 5, Section 4.1.4.1.

5.1.4.2 *Leak-Checks During Sample Run.* If, during the sampling run, a component (e.g., filter assembly or impinger) change becomes necessary, conduct a leak-check as described in Method 5, Section 4.1.4.2.

5.1.4.3 *Post-Test Leak-Check.* A leak-check is mandatory at the conclusion of each sampling run. The leak-check shall be done in accordance with the procedures described in Method 5, Section 4.1.4.1.

5.1.5 *Tracer Gas Procedure.* A schematic of the tracer gas injection and sampling systems is shown in Figure 5H–2.

5.1.5.1 *SO_2 Injection Probe.* Install the SO_2 injection probe and dispersion loop in the stack at a location 2.8±0.15 m (9.5±0.5 ft) above the sampling platform.

5.1.5.2 *SO_2 Sampling Probe.* Install the SO_2 sampling probe at the centroid of the stack at a location 4± 0.15 m (13.5±0.5 ft) above the sampling platform.

5.1.6 *Flow Rate Measurement System.* A schematic of the flow rate measurement system is shown in Figure 5H–2. Locate the flow rate measurement sampling probe at the centroid of the stack at a location 2±0.15 m (6.5±0.5 ft) above the sampling platform.

5.2 *Test Run Procedures.* The start of the test run is defined as in Method 28, Section 6.4.1.

5.2.1 *Tracer Gas Procedure.* Within 1 minute after closing the wood heater door at the start of the test run, meter a known concentration of SO_2 tracer gas at a constant flow rate into the wood heater stack. Monitor the SO_2 concentration in the stack, and record the SO_2 concentrations at 10-minute intervals or more often at the option of the tester. Adjust the particulate sampling flow rate proportionally to the SO_2 concentration changes using Equation 5H–6 (e.g., the SO_2 concentration at the first 10-minute reading is measured to be 100 ppm; the next 10 minute SO_2 concentration is measured to be 75 ppm, and no temperature change has occurred; the particulate sample flow rate is adjusted from the initial 0.5 cfm to 0.67 cfm). A check for proportional rate variation shall be made at the completion of the test run using Equation 5H–10.

5.2.2 *Volumetric Flow Rate Procedure.* Apply stoichiometric relationships to the wood combustion process in determining the exhaust gas flow rate as follows:

5.2.2.1 *Test Fuel Charge Weight.* Record the test fuel charge weight in kilograms as specified in Method 28, Section 6.4.2. The wood is assumed to have the following weight percent composition: 51 percent carbon, 7.3 percent hydrogen, 41 percent oxygen; alternatively, it may be measured for each test. Record the wood moisture for each wood charge as described in Method 28, Section 6.2.5. The ash is assumed to have negligible effect on associated C, H, O concentrations after the test burn.

5.2.2.2 *Measured Values.* Record the CO and CO_2 concentrations in the stack on a dry basis every 10 minutes during the test run or more often at the option of the tester. Average these values for the test run. Use as a mole fraction (e.g., 10 percent CO_2 is recorded as 0.10) in the calculations to express total flow Equation 5H–7.

5.2.3 *Particulate Train Operation.* For each run, record the data required on a data sheet such as the one shown in Figure 5H–3. Be sure to record the initial dry gas meter reading. Record the dry gas meter readings at the beginning and end of each sampling time increment, when changes in flow rates are made, before and after each leak-check, and when sampling is halted. Take other readings as indicated on Figure 5H–3 at least once each 10 minutes during the test run.

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Stove _____
Test Method _____
Operator _____
Date _____
Run No. _____
Start Time _____
Stop Time _____
Sample Box No. _____
Meter Box No. _____
Meter ΔH @ (optional) _____
C Factor _____

Pitot tube coefficient, Cp _____
Room temperature, °C, (°F) _____
Barometric pressure mb (in. Hg) _____
Measured or assumed moisture, % _____
Nozzle identification No. m) _____
Average calibrated nozzle diameter, mm (in.) _____
Final leak rate, m³/min, (cfm) _____
Probe liner material _____
Draft or static pressure, mm H_2O (in. H_2O) _____
Filter Nos. _____

Clock time	Sampling time (θ) min.	Vacuum mm Hg (in. Hg)	Flue temperature (T_s) °C (°F)	Flow in Flue m³/min (ft³/min)	Volume sampled in period m³ (ft³)	Gas sample volume m³ (ft³)	Gas sample temperature at dry gas meter		Front filter holder temperature °C (°F)	Temperature of gas leaving dryer or last impinger °C (°F)
							°C (°F)	°C (°F)		
Total							Avg	Avg		
Average							Avg			

Figure 5H-3. Data sheet.

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Remove the nozzle cap, verify that the filter and probe heating systems are up to temperature, and that the probe is properly positioned. Position the nozzle in the 50-mm (2-in.) centroidal area of the stack with the tip pointing directly into the gas stream.

Be careful not to bump the probe nozzle into the stack wall when removing or inserting the probe through the porthole; this minimizes the chance of extracting deposited material.

When the probe and nozzle are in position, block off the openings around the probe and porthole to prevent unrepresentative dilution of the gas stream.

Begin sampling at the start of the test run as defined in Method 28, Section 6.4.1, start the sample pump, and adjust the sample flow rate to about 0.015 m^3/min (0.5 cfm). Adjust the sample flow rate proportionally to the stack flow during the test run (Section 5.2.1), and maintain a proportional sampling rate (within 10 percent of the desired value) and a filter holder temperature of 120±14 °C (248±25 °F).

During the test run, make periodic adjustments to keep the temperature around the filter holder at the proper level. Add more ice to the impinger box and, if necessary, salt to maintain a temperature of less than 20 °C (68 °F) at the condenser/silica gel outlet.

If the pressure drop across the filter becomes too high, making sampling difficult to maintain, either filter may be replaced during a sample run. It is recommended that another complete filter assembly be used rather than attempting to change the filter itself. Before a new filter assembly is installed, conduct a leak-check (see Section 5.1.4.2). The total particulate weight shall include the summation of all filter assembly catches. The total time for changing sample train components shall not exceed 10 minutes. No more than one component change is allowed for any test run.

At the end of the test run, turn off the coarse adjust valve, remove the probe and nozzle from the stack, turn off the pump, record the final dry gas meter reading, and conduct a post-test leak-check, as outlined in Section 5.1.4.3.

5.3 *Sample Recovery.* Begin recovery of the probe and filter sample as described in Method 5, Section 4.2, except that an acetone blank volume of about 50 ml may be used. Treat the samples as follows:

Container No. 1. Carefully remove the filter from the front filter holder and place it in its identified petri dish container. Use a pair of tweezers and/or clean disposable surgical gloves to handle the filter. If it is necessary to fold the filter, do so such that the particulate cake is inside the fold. Carefully transfer to the petri dish any particulate matter and/or filter fibers which adhere to the filter holder gasket, by using a dry Nylon bristle brush and/or a sharp-edged blade. Seal and label the container.

Container No. 2. Remove filter from the back filter holder using the same procedures as described above.

Container No. 3. Same as Method 5, Section 4.2 for *Container No. 2*, except that descriptions of capping and sample transport are not applicable if sample recovery and analysis occur in the same room.

Container No. 4. Treat the impingers as follows: Measure the liquid which is in the first three impingers to within 1 ml by using a graduated cylinder or by weighing it to within 0.5 g by using a balance (if one is available). Record the volume or weight of liquid present. This information is required to calculate the moisture content of the effluent gas.

Transfer the water from the first, second and third impingers to a glass container. Tighten the lid on the sample container so that water will not leak out. Rinse impingers and graduated cylinder, if used, with acetone three times or more. Add these rinse solutions to sample Container No. 3.

Whenever possible, containers should be transferred in such a way that they remain upright at all times. Descriptions of capping and transport of samples are not applicable if sample recovery and analysis occur in the same room.

Container No. 5. Transfer the silica gel from the fourth impinger to its original container and seal. A funnel may make it easier to pour the silica gel without spilling. A rubber policeman may be used as an aid in removing the silica gel from the impinger. It is not necessary to remove the small amount of dust particles that may adhere to the impinger wall and are difficult to remove. Since the gain in weight is to be used for moisture calculations, do not use any water or other liquids to transfer the silica gel. If a balance is available, follow the procedure for Container No. 5 in Section 5.6.

5.6 *Analysis.* Record the data required on a sheet such as the one shown in Figure 5H-4.

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Stove _____
Date _____
Run No. _____
Filter Nos. _____
Amount liquid lost during transport (ml) _____
Acetone blank volume, ml _____
Acetone wash volume, ml _____
Acetone blank concentration, mg/ml _____
Acetone wash blank, mg _____

Dichloromethane blank volume, ml _____
Dichloromethane wash volume, ml _____
Dichloromethane blank concentration, mg/ml _____
Dichloromethane wash blank, mg _____
Water blank volume, ml _____
Water wash volume, ml _____
Water blank concentration, mg/ml _____
Water wash blank, mg _____

Container number	Weight of particulate collected, mg		
	Final weight	Tare weight	Weight gain
1 _____			
2 _____			
3 _____			
4 _____			
5 _____			
Total _____			
Less acetone blank _____			
Less dichloromethane blank _____			
Less water blank _____			
Weight of particulate matter _____			

	Volume of liquid water collected	
	Impinger volume, ml	Silica gel weight, g
Final _____		
Initial _____		
Liquid collected _____		
Total volume collected _____		g[1] ml

[1] Convert weight of water to volume by dividing total weight increase by density of water (1 g/ml).

$$\frac{\text{Increase, g}}{(1\ \text{g/ml})} = \text{Volume water, ml}$$

Figure 5H-4. Analysis data sheet.

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Handle each sample container as follows:

Containers No. 1 and 2. Leave the contents in the shipping container or transfer both of the filters and any loose particulate from the sample container to a tared glass weighing dish. Desiccate for at least 24 hours and no more than 36 hours in a desiccator. Weigh to a constant weight and report the results to the nearest 0.1 mg. For purposes of this Section, 5.6, the term "constant weight" means a difference of no more than 0.5 mg or 1 percent of total weight less tare weight, whichever is greater, between two consecutive weighings, with no more than 2 hours and no less than 1 hour between weighings.

Container No. 3. Note the level of liquid in the container and confirm on the analysis sheet whether leakage occurred during transport. If a noticeable amount of leakage has occurred, either void the sample or use methods, subject to the approval of the Administrator, to correct the final results. Determination of sample leakage is not applicable if sample recovery and analysis occur in the same room. Measure the liquid in this container either volumetrically to within 1 ml or gravimetrically to within 0.5 g. Transfer the contents to a tared 250-ml or smaller beaker, and evaporate to dryness at ambient temperature and pressure. Desiccate for at least 24 hours and no more than 36 hours, and weigh to a constant weight. Report the results to the nearest 0.1 mg.

Container No. 4. Note the level of liquid in the container and confirm on the analysis sheet whether leakage occurred during transport. If a noticeable amount of leakage has occurred, either void the sample or use methods, subject to the approval of the Administrator, to correct the final results. Determination of sample leakage is not applicable if sample recovery and analysis occur in the same room. Measure the liquid in this container either volumetrically to within 1 ml or gravimetrically to within 0.5 g. Transfer the contents to a 500-ml or larger separatory funnel. Rinse the container with water, and add to the separatory funnel. Add 25 ml of dichloromethane to the separatory funnel, stopper and vigorously shake 1 minute, let separate and transfer the dichloromethane (lower layer) into a tared beaker or evaporating dish. Repeat twice more. It is necessary to rinse the Container No. 4 with dichloromethane. This rinse is added to the impinger extract container. Transfer the remaining water from the separatory funnel to a tared beaker or evaporating dish and evaporate to dryness at 220 °F (105 °C). Desiccate for at least 24 hours and no more than 36 hours and weigh to a constant weight. Evaporate the combined impinger water extracts at ambient temperature and pressure. Desiccate for at least 24 hours and no more than 36 hours and weigh to a constant weight. Report both results to the nearest 0.1 mg.

Container No. 5. Weigh the spent silica gel (or silica gel plus impinger) to the nearest 0.5 g using a balance.

"Acetone Blank" Container. Measure acetone in this container either volumetrically or gravimetrically. Transfer the acetone to a tared 250-ml or smaller beaker, and evaporate to dryness at ambient temperature and pressure. Desiccate for at least 24 hours and no more than 36 hours, and weigh to a constant weight. Report the results to the nearest 0.1 mg.

"Dichloromethane" Container. Measure 75 ml of dichloromethane in this container and treat it the same as the "acetone blank."

"Water Blank" Container. Measure 200 ml water into this container either volumetrically or gravimetrically. Transfer the water to a tared 250-ml beaker and evaporate to dryness at 105 °C (221 °F). Desiccate for at least 24 hours and no more than 36 hours and weigh to a constant weight.

6. Calibration

Maintain a laboratory record of all calibrations.

6.1 *Volume Metering System.*

6.1.1 *Initial and Periodic Calibration.* Before the first certification or audit test and at least semiannually, thereafter, calibrate the volume metering system as described in Method 5G, Section 5.2.1.

6.1.2 *Calibration After Use.* Same as Method 5G, Section 5.2.2.

6.1.3 *Acceptable Variation in Calibration.* Same as Method 5G, Section 5.2.3.

6.2 *Probe Heater Calibration.* The probe heating system shall be calibrated before the first certification or audit test. Use the procedure described in Method 5, Section 5.4.

6.3 *Temperature Gauges.* Use the procedure in Method 2, Section 4.3, to calibrate in-stack temperature gauges before the first certification or audit test and semiannually, thereafter.

6.4 *Leak-Check of Metering System Shown in Figure 5H–1.* That portion of the sampling train from the pump to the orifice meter shall be leak-checked after each certification or audit test. Use the procedure described in Method 5, Section 5.6.

6.5 *Barometer.* Calibrate against a mercury barometer before the first certification test and semiannually, thereafter.

6.6 *SO_2 Injection Rotameter.* Calibrate the SO_2 injection rotameter system with a soap film flowmeter or similar direct volume measuring device with an accuracy of ±2 percent. Operate the rotameter at a single reading for at least three calibration runs for 10 minutes each. When three consecutive calibration flow rates agree within 5 percent, average the three flow rates, mark the rotameter at the calibrated setting, and use the calibration flow rate as the SO_2 injection flow rate during the test run. Repeat the rotameter calibration prior to each certification test.

6.7 *Analyzer Calibration Error Check.* Conduct the analyzer calibration error check prior to each certification test.

6.7.1 *Calibration Gas Injection.* After the flow rate measurement system and the tracer gas measurement system have been prepared for use (Sections 5.1.5.2 and 5.1.6), introduce zero gases and then the mid-level calibration gases for each analyzer. Set the analyzers output responses to the appropriate levels. Then introduce the low-level and high-level calibration gases, one at a time, for each analyzer. Record the analyzer responses.

6.7.2 *Acceptability Values.* If the linear curve for any analyzer determined from the zero and mid-level calibration gases responses does not predict the actual responses of the low-level and high-level gases within 2 percent of the span value, the calibration of that analyzer shall be considered invalid. Take corrective measures on the measurement system before repeating the calibration error check and proceeding with the test runs.

6.8 *Measurement System Response Time.* Introduce zero gas at the calibration gas valve into the flow rate measurement system and the tracer gas measurement system until all readings are stable. Then, quickly switch to introduce the mid-level calibration gas at the calibration value until a stable value is obtained. A stable value is equivalent to a change of less than 1 percent of span value for 30 seconds. Record the response time. Repeat the procedure three times. Conduct the response time check for each analyzer separately before its initial use and at least semiannually thereafter.

6.9 *Measurement System Drift Checks.* Immediately prior to the start of each test run (within 1 hour of the test run start), introduce zero and mid-level calibration gases, one at a time, to each analyzer through the calibration value. Record the output responses. Immediately following each test run (within 1 hour of the end of the test run), or if adjustments to the analyzers or measurement systems are required during the test run, reintroduce the zero and mid-level calibration gases and record the responses, as described above. Make no adjustments to the analyzers or the measurement system until after the drift checks are made. If the drift values, the differences between the initial and final responses exceed the specified limits (Section 4.3), the test run will be considered invalid and shall be repeated following corrections to the measurement system. Alternatively, recalibrate the measurement system and recalculate the measurement data. Report the test run results using both the initial and final calibration data.

7. Calculations

Carry out calculations, retaining at least one extra decimal figure beyond that of the acquired data. Round off figures after the final calculation. Other forms of the equations may be used as long as they give equivalent results.

7.1 *Nomenclature.*

n = Sample flow rate adjustment factor.

BR = Dry wood burn rate, Kg/hr (lb/hr), from Method 28, section 8.3.

B_{ws} = Water vapor in the gas stream, proportion by volume.

c_s = Concentration of particulate matter in stack gas, dry basis, corrected to standard conditions, g/dsm³ (g/dscf).

E = Particulate emission rate, g/hr.

ΔH = Average pressure differential across the orifice meter (see Figure 5H–1), mm H_2O (in. H_2O).

L_a = Maximum acceptable leakage rate for either a post-test leak-check or for a leak-check following a component change; equal to 0.00057 m³/min (0.02 cfm) or 4 percent of the average sampling rate, whichever is less.

L_i = Individual leakage rate observed during the leak-check conducted before a component change, m³/min (cfm).

L_p = Leakage rate observed during the post-test leak-check, m³/min (cfm).

m_n = Total amount of particulate matter collected, mg.

m_a = Mass of residue of solvent after evaporation, mg.

N_C = Gram atoms of carbon/gram of dry fuel (lb/lb) =

$$\frac{W_C}{12.011}$$

N_T = Total dry moles of exhaust gas/ Kg of dry wood burned, g-moles/kg (lb-moles/lb).

PR = Percent of proportional sampling rate.

P_{bar} = Barometric pressure at the sampling site, mm Hg (in. Hg).

P_{std} = Standard absolute pressure, 760 mm Hg (29.92 in. Hg).

Q_{sd} = Total gas flow rate, dsm³/hr (dscf/hr).

Q_T = Flow of tracer gas, liters/min.

S_i = Concentration measured at the SO_2 analyzer for the "i^{th}" 10-minute interval, ppm.

S_i = Concentration measured at the SO_2 analyzer for the first 10-minute interval, ppm.

T_a = Absolute average stack gas temperature for the first 10-minute interval, °K (°R).

T_i = Absolute average stack gas temperature at the "i^{th}" 10-minute interval, °K (°R).

T_m = Absolute average dry gas meter temperature (see Figure 5H–3), °K (°R).

T_{std} = Standard absolute temperature, 293 °K (528 °R).

V_a = Volume of solvent blank, ml.

V_{aw} = Volume of solvent used in wash, ml.

V_{lc} = Total volume of liquid collected in impingers and silica gel (see Figure 5H–4), ml.

V_m = Volume of gas sample as measured by dry gas meter, dm³ (dcf).

$V_{m(std)}$ = Volume of gas sample measured by the dry gas meter, corrected to standard conditions, dsm³ (dscf).

$V_{mi(std)}$ = Volume of gas sample measured by the dry gas meter during the first 10-minute interval, corrected to standard conditions, dsm³ (dscf).

$V_{mi(std)}$ = Volume of gas sample measured by the dry gas meter during the "i^{th}" 10-minute interval, dsm³ (dscf).

$V_{w(std)}$ = Volume of water vapor in the gas sample, corrected to standard conditions, sm³ (scf).

W_a = Weight of residue in solvent wash, mg.

W_C = Weight fraction of carbon in the wood (dry basis)—it can be assumed to be 0.51 or it can be measured by ASTM Method D3178.

Y = Dry gas meter calibration factor.

Y_{CO} = Measured mole fraction of CO (dry), average from section 5.2.2.2, g/g-mole (lb/lb-mole).

Y_{CO2} = Measured mole fraction of CO_2 (dry), average from section 5.2.2.2, g/g-mole (lb/lb-mole).

Y_{HC} = Assumed mole fraction of HC (dry), g/g-mole (lb/lb-mole);
= 0.0088 for catalytic wood heaters;
= 0.0132 for non-catalytic wood heaters.

10 = Length of first sampling period, minutes.

13.6 = Specific gravity of mercury.

100 = Conversion to percent.

θ = Total sampling time, min.

θ_i = Sampling time interval, from the beginning of a run until the first component change, min.

7.2 *Average dry gas meter temperature and average orifice pressure drop.* See data sheet (Figure 5H–3).

7.3 *Dry Gas Volume.* Correct the sample volume measured by the dry gas meter to standard conditions [20 °C, 760 mm Hg or 68 °F, 29.92 in. Hg) by using Equation 5H–1.

$$V_{m(std)} = V_m Y \left(\frac{T_{std}}{T_m}\right)\left(\frac{P_{bar} + \frac{\Delta H}{13.6}}{P_{std}}\right) = K_1 V_m Y \frac{\left(P_{bar} + (\Delta H/13.6)\right)}{T_m} \quad \text{Eq. 5H-1}$$

where:

K_1 = 0.3858 °K/mm. Hg for metric units.
= 17.64 °R./in. Hg for English units.

Note.—Equation 5H–1 can be used as written unless the leakage rate observed during any of the mandatory leak-checks (i.e., the post-test leak-check or leak-check conducted before a component change) exceeds L_a.

If L_p exceeds L_a, Equation 5H–1 must be modified as follows:

(a) *Case I.* No component changes made during sampling run. In this case, replace V_m in Equation 5H–1 with the expression:
$[V_m - (L_p - L_a)\theta]$

(b) *Case II.* One component change made during the sampling run. In this case, replace V_m in Equation 5H–1 by the expression:
$V_m - (L_1 - L_a)\theta_1$
and substitute only for those leakage rates (L_i or L_p) which exceed L_a.

7.4 *Volume of Water Vapor.*

$$V_{w(std)} = K_2 V_{lc} \quad \text{Eq. 5H-2}$$

where:

K_2 = 0.001333 m³/ml for metric units;
= 0.04707 ft³/ml for English units.

7.5 *Moisture Content.*

$$B_{ws} = \frac{V_{w(std)}}{V_{m(std)} + V_{w(std)}} \quad \text{Eq. 5H-3}$$

7.6 *Solvent Wash Blank.*

$$W_a = \frac{m_a V_{aw}}{V_a} \quad \text{Eq. 5H-4}$$

7.7 *Total Particulate Weight.* Determine the total particulate catch from the sum of the weights obtained from containers 1, 2, 3, and 4 less the appropriate solvent blanks (see Figure 5H–4).

Note.—Refer to Method 5, section 4.1.5 to assist in calculation of results involving two filter assemblies.

7.8 *Particulate Concentration.*

$$c_s = (0.001 \text{ g/mg})(m_n / V_{m(std)}) \quad \text{Eq. 5H-5}$$

7.9 *Sample Flow Rate Adjustment.*

$$n = \frac{S_i T_i}{S_i T_i} \quad \text{Eq. 5H-6}$$

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7.10 *Carbon Balance for Total Moles of Exhaust Gas (dry)/Kg of Wood Burned in the Exhaust Gas.*

$$N_T = \frac{K_3 N_C}{(Y_{CO_2} + Y_{CO} + Y_{HC})}$$

where:
K_3 = 1000 gr/kg for Metric units.
K_3 = 1.0 lb/lb for English units.

Note.—The NO_x/SO_x portion of the gas is assumed to be negligible.

7.11 *Total Stack Gas Flow Rate.*

$$Q_{sd} = K_4 N_T BR \qquad \text{Eq. 5H–8}$$

where:
K_4 = 0.02406 for metric units, dsm^3/kg-mole.
= 384.8 for English units, dscf/lb-mole.

7.12 *Particulate Emission Rate.*

$$E = c_s Q_{sd} \qquad \text{Eq. 5H–9}$$

7.13 *Proportional Rate Variation.* Calculate PR for each 10-minute interval, i, of the test run.

$$PR = \frac{\theta S_i T_i V_{m(std)}}{10\, S\, T_s V_{m(std)}} \times 100 \qquad \text{Eq. 5H–10}$$

where:
S = Average concentration of SO_2 for the test interval, ppm.
T_s = Average absolute stack gas temperature, °K (°R).

7.14 *Acceptable Results.* If no more than 10 percent of the PR values for all the intervals exceed 90 percent <PR <110 percent, and if no PR value for any interval exceeds 80 percent <PR <120 percent, the results are acceptable. If the PR values for the test runs are judged to be unacceptable, report the test run emission results, but do not include the test run results in calculating the weighted average emission rate, and repeat the test.

7. Bibliography

1. Same as for Method 5, citations 1 through 11, with the addition of the following:

2. Oregon Department of Environmental Quality Standard Method for Measuring the emissions and efficiencies of Woodstoves, July 8, 1984. Pursuant to Oregon Administrative Rules Chapter 340, Division 21.

3. American Society for Testing Materials. Proposed Test Methods for Heating Performance and Emissions of Residential Wood-fired Closed Combustion-Chamber Heating Appliances. E–6 Proposal P 180. August 1986.

Method 28—Certification and Auditing of Wood Heaters

1. Applicability and Principle

1.1 *Applicability.* This method is applicable for the certification and auditing of wood heaters. This method describes the test facility, test fuel charge, and wood heater operation as well as procedures for determining burn rates and particulate emission rates and for reducing data.

1.2 *Principle.* Particulate matter emissions are measured from a wood heater burning a prepared test fuel crib in a test facility maintained at a set of prescribed conditions.

2. Definitions

2.1 *Burn Rate.* The rate at which test fuel is consumed in a wood heater. Measured in kilograms of wood (dry basis) per hour (kg/hr).

2.2 *Certification or Audit Test.* A series of at least four test runs conducted for certification or audit purposes and which meets the burn rate specifications in Section 5.

2.3 *Firebox.* The chamber in the wood heater in which the test fuel charge is placed and combusted.

2.4 *Secondary Air Supply.* An air supply that introduces air to the wood heater such that the burn rate is not altered by more than 25 percent when the secondary air supply is adjusted during the test run. The wood heater manufacturer can document this through design drawings that show the secondary air is introduced only into a mixing chamber or secondary chamber outside of the firebox.

2.5 *Test Facility.* The area in which the wood heater is installed, operated, and sampled for emissions.

2.6 *Test Fuel Charge.* The collection of test fuel pieces placed in the wood heater at the start of the emission test run.

2.7 *Test Fuel Crib.* The arrangement of the test fuel charge with the proper spacing requirements between adjacent fuel pieces.

2.8 *Test Fuel Loading Density.* The weight of the as-fired test fuel charge per unit volume of usable firebox.

2.9 *Test Fuel Piece.* The 2 x 4 or 4 x 4 wood piece cut to the length required for the test fuel charge and used to construct the test fuel crib.

2.10 *Test Run.* An individual emission test which encompasses the time required to consume the mass of the test fuel charge.

2.11 *Usable Firebox Volume.* The volume of the firebox determined using the following definitions:

2.11.1 *Height.* The vertical distance extending above the loading door, if fuel could reasonably occupy that space, but not more than 2 inches above the top of the loading door, to the floor of the firebox (i.e., below a grate) if the grate allows a 1-inch diameter piece of wood to pass through the grate, or, if not, to the top of the grate. Firebox height is not necessarily uniform but must account for variations caused by internal baffles, air channels, or other permanent obstructions.

2.11.2 *Length.* The longest horizontal fire chamber dimension that is parallel to a wall of the chamber.

2.11.3 *Width.* The shortest horizontal fire chamber dimension that is parallel to a wall of the chamber.

2.12 *Wood Heater.* An enclosed, woodburning appliance capable of and intended for space heating, domestic water heating, or indoor cooking, as defined in the applicable regulation.

3. Apparatus

3.1 *Insulated Solid Pack Chimney.* For installation of wood heaters. Solid Pack Insulated chimneys shall have a minimum of 2.5-cm (1-in.) solid pack insulating material surrounding the entire flue and possess an Underwriters Laboratories (U.L.) listed label demonstrating conformance to U.L. 103.

3.2 *Platform Scale and Monitor.* For monitoring of fuel load weight change. The scale shall be capable of measuring weight to within 0.05 kg (0.1 lb) or 1 percent of the initial test fuel charge weight, whichever is greater.

3.3 *Wood Heater Temperature Monitors.* Seven, each capable of measuring temperature to within 1 percent of expected temperatures.

3.4 *Test Facility Temperature Monitor.* A thermocouple located centrally in a vertically oriented 150 mm (6 in.) long, 50 mm (2 in.) diameter pipe shield that is open at both ends, capable of measuring temperature to within 1 percent of expected temperatures.

3.5 *Balance (optional).* Balance capable of weighing the test fuel charge to within 0.05 kg (0.1 lb).

3.6 *Moisture Meter.* Calibrated electrical resistance meter for measuring test fuel moisture to within 1 percent moisture.

3.7 *Anemometer.* Hot wire or vane, for measuring air velocities near the test appliance.

3.8 *Barometer.* Mercury, aneroid or other barometer capable of measuring atmospheric pressure to within 2.5 mm Hg (0.1 in. Hg).

3.9 *Draft Gauge.* Electromanometer or other device capable of measuring flue draft or static pressure to within 1.25 Pa (0.005 in. H_2O).

3.10 *Humidity Gauge.* Psychrometer or hygrometer for measuring room humidity.

3.11 *Sampling Methods.* Use particulate emission measurement Method 5G or Method 5H to determine particulate concentrations, gas flow rates, and particulate emission rates.

4. Test Facility, Test Fuel Properties, and Test Fuel Charge Specifications

4.1 *Test Facility.*

4.1.1 *Wood Heater Flue.* Steel flue pipe extending to 2.6±0.15 m (8.5±0.5 ft) above the top of the platform scale, and above this level, insulated solid pack type chimney extending to 4.6±0.3 m (15±1 ft) above the platform scale. This applies to both freestanding and insert type wood heaters.

4.1.2 *Test Facility Conditions.* The test facility temperature shall be maintained between 18 and 32 °C (65 and 90 °F) during each test run.

Air velocities within 0.6 m (2 ft) of the test appliance and exhaust system shall be less than 0.25 m/sec (50 ft/min) without fire in the unit.

The flue shall discharge into the same space or into a space freely communicating with the test facility. Any hood or similar device used to vent combustion products shall not induce a draft greater than 1.25 Pa (0.005 in. H_2O) on the wood heater measured when the wood heater is not operating.

The barometric pressure in the test facility shall not exceed 1033 mb (30.5 in. Hg) during any test run.

4.2 *Test Fuel Properties.* The test fuel shall conform to the following requirements:

4.2.1 *Fuel Species.* Untreated, air-dried, Douglas fir lumber. Kiln-dried lumber is not permitted. The lumber shall be certified C grade (standard) or better Douglas Fir by a lumber grader at the mill of origin.

4.2.2 *Fuel Moisture.* The test fuel shall have a moisture content range between 16 to 20 percent on a wet basis (19 to 25 percent dry basis).

Addition of moisture to previously dried wood is not allowed. It is recommended that the test fuel be stored in a temperature and humidity-controlled room.

4.2.3 *Fuel Temperature.* The test fuel shall be at the test facility temperature (18 to 32 °C).

4.3 *Test Fuel Charge Specifications.*

4.3.1 *Fuel Dimensions.* The dimensions of each test fuel piece shall conform to the nominal measurements of 2 x 4 and 4 x 4 lumber. Each piece of test fuel (not including spacers) shall be of equal length and shall closely approximate ⅑ the dimensions of the width or length of the usable firebox, whichever is longer. The fuel piece dimensions shall be determined in relation to the appliance's firebox volume according to guidelines listed below:

4.3.1.1 If the usable firebox volume is less than or equal to 0.043 m^3 (1.5 ft^3), use 2 x 4 lumber.

4.3.1.2 If the usable firebox volume is greater than 0.043 m^3 (1.5 ft^3) and less than or equal to 0.085 m^3 (3.0 ft^3), use 2 x 4 and 4 x 4 lumber. About half the weight of the test fuel charge shall be 2 x 4 lumber, and the remainder shall be 4 x 4 lumber.

4.3.1.3 If the usable firebox volume is greater than 0.085 m^3 (3.0 ft^3), use 4 x 4 lumber.

4.3.2 *Test Fuel Spacers.* Air-dried, Douglas fir lumber meeting the fuel properties in Section 4.2. The spacers shall be 130 x 40 x 20 mm (5 x 1.5 x 0.75 in.).

4.3.3 *Test Fuel Charge Density.* The test fuel charge density shall be 112±11.2 kg/m^3 (7±0.7 lb/ft^3) of usable firebox volume on a wet basis.

4.4 *Wood Heater Thermal Equilibrium.* The average of the wood heater surface temperatures at the end of the test run shall agree with the average surface temperature at the start of the test run to within 70 °C (125 °F).

5. Burn Rate Criteria

5.1 *Burn Rate Categories.* One emission test run is required in each of the following burn rate categories:

BURN RATE CATEGORIES

[Average kg/hr, dry basis]

Category 1	Category 2	Category 3	Category 4
<0.80.....	0.80 to 1.25.	1.26 to 1.90.	Maximum burn rate.

5.1.1 *Maximum Burn Rate.* For Category 4, the wood heater shall be operated with the primary air supply inlet controls fully open (or, if thermostatically controlled, the thermostat shall be set at maximum heat output) during the entire test run, or the maximum burn rate setting specified by the manufacturer's written instructions.

5.1.2 *Other Burn Rate Categories.* For burn rates in Categories 1 through 3, the wood heater shall be operated with the primary air supply inlet control, or other mechanical control device, set at a predetermined position necessary to obtain the average burn rate required for the category.

5.2 *Alternative Burn Rates For Burn Rate Categories 1 and 2.* If a wood heater cannot be operated at a burn rate below 0.80 kg/hr, two test runs shall be conducted with burn rates within Category 2. If a wood heater cannot be operated at a burn rate below 1.25 kg/hr, the flue shall be dampered in order to achieve two test runs within Category 2.

Note.—After July 1, 1990, if a wood heater cannot be operated at a burn rate less than 0.80 kg/hr, at least one test run with an average burn rate of 1.00 kg/hr or less shall be conducted. Additionally, if flue dampering is used to achieve burn rates below 1.25 kg/hr (or 1.0 kg/hr), results from a test run conducted at burn rates below 0.90 kg/hr need not be reported or included in the test run average provided that such results are replaced with results from a test run meeting the criteria above.

6. Procedures

6.1 *Catalytic Combustor And Wood Heater Aging.* The catalyst-equipped wood heater or a wood heater of any type shall be aged before the certification test begins.

6.1.1 *Catalyst-equipped Wood Heater.* Operate the catalyst-equipped wood heater using fuel described in Section 4.2 or cordwood with a moisture content between 15 and 25 percent on a wet basis. Operate the wood heater at a medium burn rate (Category 2 or 3) with a new catalytic combustor in place and in operation for at least 50 hours. Record catalyst temperature data (Sections 6.2.2) and the hours of operation.

6.1.2 *Non-Catalyst Wood Heater.* Operate the wood heater using the fuel described in Section 6.1.1 at a medium burn rate for at least 10 hours. Record the hours of operation.

6.2 *Pretest Preparation.* Record the test fuel charge dimensions and weights, and wood heater and catalyst descriptions as shown in the example in Figure 28–3.

6.2.1 *Wood Heater Installation.* Assemble the wood heater appliance and parts in conformance with the manufacturer's written installation instructions. Place the wood heater centrally on the platform scale and connect the wood heater to the flue described in Section 4.1.1.

6.2.2 *Wood Heater Temperature Monitors.* For catalyst-equipped wood heaters, locate a temperature monitor (optional) about 25 mm (1 in.) upstream of the catalyst at the centroid of the catalyst face area, and locate a temperature monitor (mandatory) that will indicate the catalyst exhaust temperature. This temperature monitor is generally located within 25 mm (1 in.) downstream at the centroid of catalyst face area. Record these locations.

Locate wood heater surface temperature monitors at five locations on the wood heater firebox exterior surface. Position the temperature monitors centrally on the top surface, on two sidewall surfaces, and on the bottom and back surfaces. Position the monitor sensing tip on the firebox exterior surface inside of any heat shield, air circulation walls, etc. Surface temperature locations for unusual design shapes (e.g., spherical, etc.) shall be positioned to conform to the intent of the descriptions above.

6.2.3 *Test Facility Conditions.* Locate the test facility temperature monitor on the horizontal plane that includes the primary air intake opening for the wood heater. Locate the temperature monitor 1 to 2 m (3 to 6 ft) centrally from the front of the wood heater.

Use a hot wire or vane anemometer to measure the air velocity. Measure and record the room air velocity before the pretest ignition period (Section 6.3) and once immediately following the test run completion.

Measure and record the test facility's ambient relative humidity, barometric pressure, and temperature before and after each test run.

Measure and record the flue draft or static pressure in the flue at a location no greater than 0.3 m (1 ft) above the flue connector at the wood heater exhaust.

6.2.4 *Wood Heater Firebox Volume.* Determine the firebox volume using the definitions for height, width, and length in Section 2. Volume adjustments due to presence of firebrick and other permanent fixtures may be necessary. Adjust width and length dimensions to extend to the metal wall of the wood heater above the firebrick if the firebrick on the walls extends less than the one-third of the useable firebox height. Use the width or length dimensions inside the firebrick if the firebrick extends more than one-third of the usable firebox height. If a log retainer or grate is a permanent fixture and the manufacturer recommends that no fuel be placed outside of the retainer, the area outside of the retainer is excluded from the firebox volume calculations.

In general, exclude the area above the ash lip if that area is less than 10 percent of the usable firebox volume. Otherwise, take into account consumer loading practices. For instance, if fuel is to be loaded front-to-back, an ash lip may be considered usable firebox volume.

Include areas adjacent to and above a baffle (up to two inches above the fuel loading opening) if four inches or more horizontal space exists between the edge of

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the baffle and a vertical obstruction (e.g., sidewalls or air channels).

6.2.5 *Test Fuel Charge.* Prepare the test fuel pieces in accordance with the specifications in Section 4.3. Determine the test fuel moisture content with a calibrated electrical resistance meter or other equivalent performance meter. (To convert moisture meter readings from the dry basis to the wet basis: (100)(percent dry reading) ÷ (100 + percent dry reading) = percent moisture wet basis.) Determine fuel moisture for each fuel piece (not including spacers) by averaging at least three moisture meter readings, one from each of three sides, measured parallel to the wood grain. Average all the readings for all the fuel pieces in the test fuel charge. If an electrical resistance type meter is used, penetration of insulated electrodes shall be ¼ to ⅜ the thickness of the test fuel piece. Measure the moisture content within a 4-hour period prior to the test run. Determine the fuel temperature by measuring the temperature of the room where the wood has been stored for at least 24 hours prior to the moisture determination.

Attach the spacers to the test fuel pieces with uncoated, ungalvanized nails or staples as illustrated in Figure 28–1.

To avoid stacking difficulties, or when a whole number of test fuel pieces does not result, all piece lengths shall be adjusted uniformly to remain within the specified loading density. The shape of the test fuel crib shall be geometrically similar to the shape of the firebox volume.

6.2.6 *Sampling Method.* Prepare the sampling equipment as defined by the selected method. Collect one particulate emission sample for each test run.

6.2.7 *Secondary Air Adjustment Validation.* If design drawings do not show the introductions of secondary air into a chamber outside the firebox (Section 2.4), conduct a separate test of the wood heater's secondary air supply. Operate the wood heater at a burn rate in Category 1 (Section 5.1) with the secondary air supply operated following the manufacturer's written instructions. Adjust the secondary air supply as per the manufacturer's written instructions and record the burn rate for at least 20 minutes.

Repeat the procedure three times at equal intervals over the entire burn period as defined in Section 6.4. If the secondary air adjustment results in a burn rate change of more than an average of 25 percent between the 20-minute periods before and after the secondary adjustments, the secondary air supply shall be considered a primary air supply, and no adjustment to this air supply is allowed during the test run.

6.3 *Pretest Ignition.* Build a fire in the wood heater in accordance with the manufacturer's written instructions.

6.3.1 *Pretest Fuel Charge.* Crumpled newspaper loaded with kindling may be used to help ignite the pretest fuel. The pretest fuel, used to sustain the fire, shall meet the same fuel requirements prescribed in Section 4.2. The pretest fuel charge shall consist of whole 2 x 4 lumber pieces that are no less than ⅓ the length of the test fuel pieces.

6.3.2 *Wood Heater Operation and Adjustments.* Set the air inlet supply controls at any position that will maintain combustion of the pretest fuel load. At least one hour before the start of the test run, set the air supply controls at the approximate positions necessary to achieve the burn rate desired for the test run. Adjustment of the air supply controls, fuel addition or subtractions, and coalbed raking shall be kept to a minimum but are allowed up to 15 minutes prior to the start of the test run. Record all adjustments made to the air supply controls, adjustments to and additions or subtractions of fuel, and any other changes to wood heater operations that occur during pretest ignition period. During the 15-minute period prior to the start of the test run, the wood heater loading door shall not be open more than a total of 1 minute. Coalbed raking is the only adjustment allowed during this period.

Note.—One purpose of the pretest ignition period is to achieve uniform charcoalization of the test fuel bed prior to loading the test fuel charge. Uniform charcoalization is a general condition of the test fuel bed evidenced by an absence of large pieces of burning wood in the coal bed. Manipulations to the fuel bed prior to the start of the test run should be done to achieve uniform charcoalization while maintaining the desired burn rate. In addition, some wood heaters (e.g., high mass units) may require extended pretest burn time and fuel additions to reach an initial average surface temperature sufficient to meet the thermal equilibrium criteria in Section 4.4.

6.4 *Test Run.* Complete a test run in each burn rate category, as follows:

6.4.1 *Test Run Start.* When the kindling and pretest fuel have been consumed to leave a fuel weight between 20 and 25 percent of the weight of the test fuel charge, record the weight of the fuel remaining and start the test run. Record all wood heater surface temperatures, catalyst temperatures, any initial sampling method measurement values, and begin the particulate emission sampling. Within 1 minute following the start of the test run, open the wood heater door, load the test fuel charge, and record the test fuel charge weight.

The wood heater door may remain open up to five minutes after the start of the test run in order to make adjustments to the test fuel charge and air supply controls according to the manufacturer's written instructions and to assure ignition of the test fuel charge has occurred.

Position the fuel charge so that the spacers are parallel to the floor of the firebox, with the spacer edges abutting each other. If loading difficulties result, some fuel pieces may be placed on edge. If the usable firebox volume is between 0.043 and 0.085 m^3 (1.5 and 3.0 ft^3), alternate the piece sizes in vertical stacking layers to the extent possible. For example, place 2×4's on the bottom layer in direct contact with the coal bed and 4×4's on the next layer, etc. (See Figure 28–2).

Load the test fuel in appliances having unusual or unconventional firebox design maintaining air space intervals between the test fuel pieces and in conforming with the manufacturer's written instructions. For any appliance that will not accommodate the loading arrangement specified in the paragraph above, the test facility personnel shall contact the Administrator for an alternative loading arrangement.

No other adjustments to the air supply controls or the test fuel charge are allowed (except as specified in Sections 6.4.3 and 6.4.4) during the remainder of the test run.

6.4.2 *Data Recording.* Record fuel weight data, wood heater temperature measurements, other wood heater operational data, and sampling method data at 10-minute intervals (or more frequently at the option of the tester) as shown on example data sheet, Figure 28–4.

6.4.3 *Test Fuel Charge Adjustment.* The test fuel charge may be adjusted (i.e., re-positioned) once during a test run if more than 60 percent of the initial test fuel charge weight has been consumed and more than 10 minutes have elapsed without a measurable (<0.05 kg (0.1 lb)) weight change. The time used to make this adjustment shall be less than 15 seconds.

6.4.4 *Air Supply Adjustment.* Secondary air supply controls may be adjusted once during the test run following the manufacturer's written instructions. No other air supply adjustments are allowed during the test run.

6.4.5 *Auxiliary Wood Heater Equipment Operation.* Heat exchange blowers sold with the wood heater shall be operated during the test run following the manufacturer's written instructions. If no manufacturer's written instructions are available, operate the heat exchange blower in the "high" position. (Automatically operated blowers shall be operated as designed.) Shaker grates, by-pass controls, or other auxiliary equipment may be adjusted only one time during the test run following the manufacturer's written instructions.

Record all adjustments on a wood heater operational written record.

Note.—If the wood heater is sold with a heat exchange blower as an option, test the wood heater with the heat exchange blower operating as described in Sections 5 and 6 and report the results. As an alternative to repeating all test runs without the heat exchange blower operating, the tester may conduct one test run without the blower operating as described in Section 6.4.5 at a burn rate in Category 2 (Section 5.1). If the emission rate resulting from this test run without the blower operating is equal to or less than the emission rate plus 1.0 g/hr for the test run in burn rate Category 2 with the blower operating, the wood heater may be considered to have the same average emission rate with or without the blower operating. Additional test runs with the blower operating are unnecessary.

6.4.6 *Test Run Completion.* The test run is completed when the remaining weight of the test fuel charge is 0.00±0.05 kg (0.0±0.1 lb). Stop the particulate sampling and record the run time and all final measurement values.

6.5 *Consecutive Test Runs.* Test runs on a wood heater may be conducted consecutively provided that a minimum one-hour interval occurs between test runs.

6.6 *Additional Test Runs.* The testing laboratory may conduct more than one test run in each of the burn rate categories specified in Section 5.1. If more than one test run is conducted at a specified burn rate, the results from at least two-thirds of the test runs in that burn rate category shall be used in calculating the weighted average emission rate (see Section 8.1). The measurement data and results of all test runs shall be reported regardless of which values are used in calculating the weighted average emission rate (see **Note:** in Section 5.2).

7. Calibrations

7.1 *Platform Scale.* Perform a multipoint calibration (at least five points spanning the operational range) of the platform scale before its initial use. The scale manufacturer's calibration results are sufficient for this purpose. Before each certification test, audit the scale with the wood heater in place by weighing at least one calibration weight (Class F) that corresponds to 20 percent to 80 percent of the expected test fuel charge weight. If the scale does not reproduce the value of the calibration weight within 0.05 kg (0.1 lbs), recalibrate the scale before use with at least five calibration weights spanning the operational range of the scale.

7.2 *Balance (optional).* Calibrate as described in Section 7.1.

7.3 *Temperature Monitor.* Calibrate against a mercury-in-glass thermometer or other procedures as in Method 2 before the first certification test and semiannually, thereafter.

7.4 *Moisture Meter.* Calibrate as per the manufacturer's instructions before each certification test.

7.5 *Anemometer.* Calibrate the anemometer as specified in Method 14, Section 4.1.1 before the first certification test and semiannually, thereafter.

7.6 *Barometer.* Calibrate against a mercury barometer before the first certification test and semiannually, thereafter.

7.7 *Draft Gauge.* Calibrate as per the manufacturer's instructions; a liquid manometer does not require calibration.

7.8 *Humidity Gauge.* Calibrate as per the manufacturer's instructions before the first certification test and semiannually, thereafter.

8. Calculations and Reporting

Carry out calculations retaining at least one extra decimal figure beyond that of the acquired data. Round off figures after the final calculation.

8.1 Weighted Average Emission Rate.

$$E_w = \frac{\sum_{i=1}^{n} (K_i E_i)}{\sum_{i=1}^{n} K_i}$$

Eq. 28-1

where:

E_w = Weighted average emission rate, g/hr;

E_i = Emission rate for test run, i, from Method 5G or 5H, g/hr;

K_i = Test run weighting factor = $P_{i+1} - P_{i-1}$;

n = Total number of test runs.

P_i = Probability for burn rate during test run, i, obtained from Table 28–1.

Note: P_0 always equals 0, $P_{(n+1)}$ always equals 1, P_1 corresponds to the probability of the lowest recorded burn rate, P_2 corresponds to the probability of the next lowest burn rate, etc. An example calculation is shown on Figure 28–5.

8.2 *Average Wood Heater Surface Temperatures.* Calculate the average of the wood heater surface temperatures for the start of the test run (Section 6.3.1) and for the test run completion (Section 6.3.6). If the two average temperatures do not agree with 70 °C (125 °F), report the test run results, but do not include the test run results in the test average. Replace such test run results with results from another test run in the same burn rate category.

8.3 *Burn Rate.*

$$BR = \left[\frac{60 W_{wd}}{\theta}\right]\left[\frac{100 - \%M_w}{100}\right]$$

Eq. 28–2

where:

BR = Dry wood burn rate, kg/hr (lb/hr)

W_{wd} = Total mass of wood burned during the test run, kg (lb)

θ = Total time of test run, min.

$\%M_w$ = Average moisture in test fuel charge, wet basis, percent.

8.4 *Reporting Criteria.* Submit both raw and reduced test data for wood heater tests. Specific reporting requirements are as follows:

8.4.1 *Wood Heater Identification.* Report wood heater identification information. An example data form is shown on Figure 28–4.

8.4.2 *Test Facility Information.* Report test facility temperature, velocity, and humidity information. An example data form is shown on Figure 28–4.

8.4.3 *Test Equipment Calibration and Audit Information.* Report calibration and audit results for the platform scale, test fuel balance, test fuel moisture meter, and sampling equipment including volume metering systems and gaseous analyzers.

8.4.4 *Pretest Procedure Description.* Report all pretest procedures including pretest fuel weight and air supply settings. An example data form is shown on Figure 28–4.

8.4.5 *Particulate Emission Data.* Report a summary of test results for all test runs and the weighted average emission rate. Submit copies of all data sheets and other records collected during the testing. Submit examples of all calculations.

8.4.6 *Suggested Test Report Format.*

a. *Introduction.*

1. Purpose of test—certification, audit, efficiency, research and development.

2. Wood heater identification—manufacturer, model number, catalytic/noncatalytic, options.

3. Laboratory—name, location (altitude), participants.

4. Test information—date wood heater received, date of tests, sampling methods used, number of test runs.

b. Summary and Discussion of Results.

1. Table of results (in order of increasing burn rate)—test run number, burn rate, particulate emission rate, efficiency (if determined), averages (indicate which test runs are used).

2. Summary of other data—test facility conditions, surface temperature averages, catalyst temperature averages, pretest fuel weights, test fuel charge weights, run times.

3. Discussion—Burn rate categories achieved, test run result selection, specific test run problems and solutions.

c. Process Description.

1. Wood heater dimensions—volume, height, width, lengths (or other linear dimensions), weight, volume adjustments.

2. Firebox configuration—air supply locations and operation, air supply induction location, refractory location and dimensions, catalyst location, baffle and by-pass location and operation (include line drawings or photographs).

3. Process operation during test—air supply settings and adjustments, fuel bed adjustments, draft.

4. Test fuel—test fuel properties (moisture and temperature), test fuel crib description (include line drawing or photograph), test fuel charge density.

d. *Sampling Locations.*

Describe sampling location relative to wood heater. Include drawing or photograph.

e. *Sampling and Analytical Procedures.*

1. Sampling methods.

2. Analytical methods.

f. *Quality Control and Assurance Procedures and Results.*

1. Calibration procedures and results—certification procedures, sampling and analysis procedures.

2. Test method quality control procedures—leak checks, volume meter checks, stratification (velocity) checks, proportionality results.

Appendices

1. Results and Sample Calculations.
2. Raw Field Data.
3. Sampling and Analytical Procedures.
4. Analytical Data.
5. Participants.

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6. Sampling And Operation Records.
7. Additional Information.

9. Bibliography.

1. Oregon Department of Environmental Quality Standard Method for Measuring the Emissions and Efficiencies of Wood stoves, June 8, 1984. Pursuant to Oregon Administrative Rules Chapter 340, Division 21.

2. American Society for Testing Materials. Proposed Test Methods for Heating Performance and Emissions of Residential Wood-Fired Closed Combustion-Chamber Heating Appliances. E-6 Proposal P 180. August, 1986.

3. Radian Corporation, OMNI Environmental Services, Inc., Cumulative Probability for a Given Burn Rate Based on Data Generated in the CONEG and BPA Studies. Package of materials submitted to the Fifth Session of the Regulatory Negotiation Committee, July 16–17, 1986.

TABLE 28-1.—BURN RATE WEIGHTED PROBABILITIES FOR CALCULATING WEIGHTED AVERAGE EMISSION RATES

Burn rate (kg/hr-dry)	Cumulative probability (P)	Burn rate (kg/hr-dry)	Cumulative probability (P)	Burn rate (kg/hr-dry)	Cumulative probability (P)
0.00	0.000	2.00	0.912	4.00	0.994
0.05	0.002	2.05	0.920	4.05	0.995
0.10	0.007	2.10	0.925	4.10	0.995
0.15	0.012	2.15	0.932	4.15	0.995
0.20	0.016	2.20	0.936	4.20	0.995
0.25	0.021	2.25	0.940	4.25	0.995
0.30	0.028	2.30	0.945	4.30	0.996
0.35	0.033	2.35	0.951	4.35	0.996
0.40	0.041	2.40	0.956	4.40	0.996
0.45	0.054	2.45	0.959	4.45	0.996
0.50	0.065	2.50	0.964	4.50	0.996
0.55	0.086	2.55	0.968	4.55	0.996
0.60	0.100	2.60	0.972	4.60	0.996
0.65	0.121	2.65	0.975	4.65	0.996
0.70	0.150	2.70	0.977	4.70	0.996
0.75	0.185	2.75	0.979	4.75	0.997
0.80	0.220	2.80	0.980	4.80	0.997
0.85	0.254	2.85	0.981	4.85	0.997
0.90	0.300	2.90	0.982	4.90	0.997
0.95	0.328	2.95	0.984	4.95	0.997
1.00	0.360	3.00	0.984	>5.00	1.000
1.05	0.407	3.05	0.985		

TABLE 28-1.—BURN RATE WEIGHTED PROBABILITIES FOR CALCULATING WEIGHTED AVERAGE EMISSION RATES—Continued

Burn rate (kg/hr-dry)	Cumulative probability (P)	Burn rate (kg/hr-dry)	Cumulative probability (P)	Burn rate (kg/hr-dry)	Cumulative probability (P)
1.10	0.460	3.10	0.986		
1.15	0.490	3.15	0.987		
1.20	0.550	3.20	0.987		
1.25	0.572	3.25	0.988		
1.30	0.620	3.30	0.988		
1.35	0.654	3.35	0.989		
1.40	0.685	3.40	0.989		
1.45	0.722	3.45	0.989		
1.50	0.750	3.50	0.990		
1.55	0.779	3.55	0.991		
1.60	0.806	3.60	0.991		
1.65	0.825	3.65	0.992		
1.70	0.840	3.70	0.992		
1.75	0.857	3.75	0.992		
1.80	0.875	3.80	0.993		
1.85	0.882	3.85	0.994		
1.90	0.895	3.90	0.994		
1.95	0.906	3.95	0.994		

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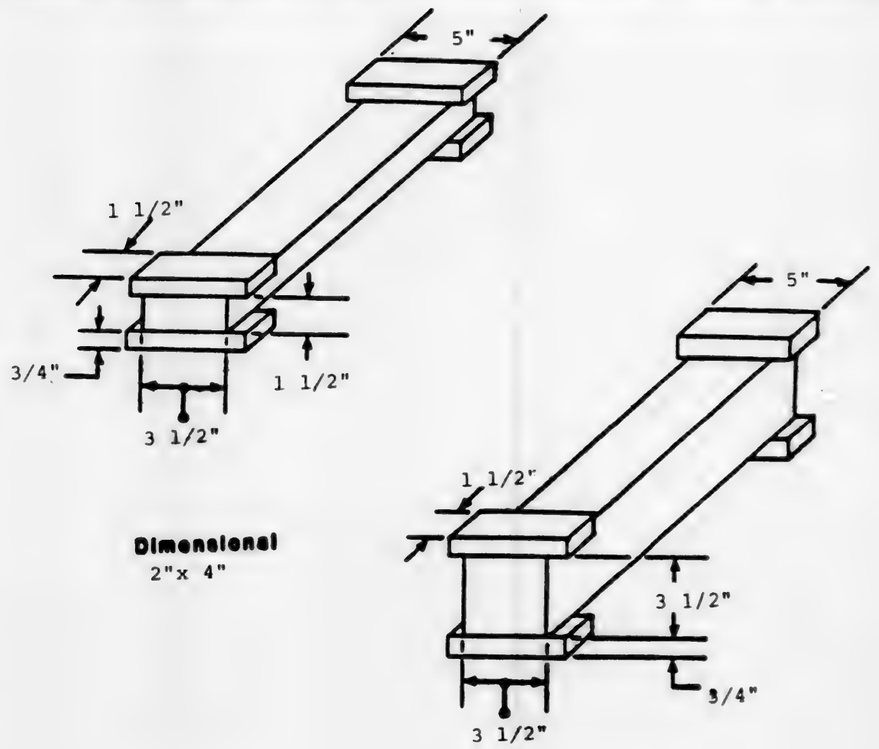


Figure 28-1. Test fuel spacer dimensions.

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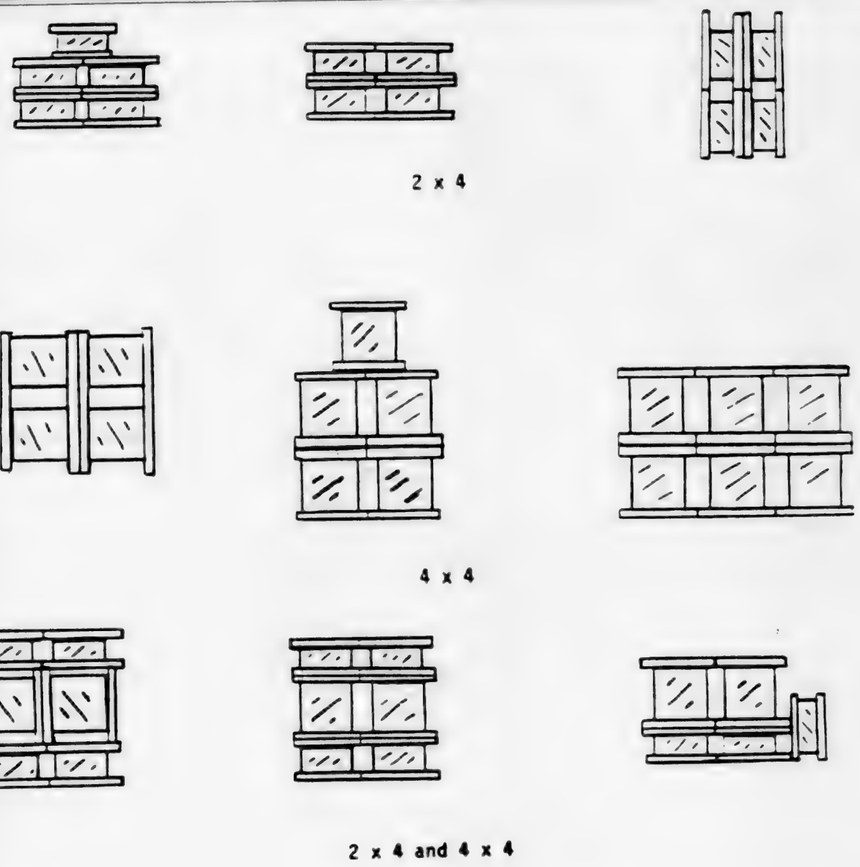


Figure 28-2. Test fuel crib arrangements.

Appliance Identification

Appliance Manufacturer _____

Address _____

Agent and phone number _____

Name and Model number _____

Weight _____

Serial number _____

Design: Catalytic _____ Noncatalytic _____

Insert _____ Freestanding _____

Woodheater Description: (Attach figure showing air supplies and firebox configuration)

Materials of construction: _____

Air Introduction System: _____

Combustion Control Mechanisms: _____

Internal Baffles: _____

Other Features: _____

Catalyst Specifications

Manufacturer _____

Serial Number _____

Age _____ (Hours)

Dimensions _____ (in.)

Firebox Dimensions:

Volume _____ (ft³)

Length _____ (in.)

Width _____ (in.)

Height _____ (in.)

Adjustments (Describe) _____ (in.)

Test Fuel Information
(For each Test Run)

Weight of Test Charge _____ (lb)

Number of 2 x 4's _____

Number of 4 x 4's _____

Length of test pieces _____ (in.)

Fuel Grade (Certification) _____

Fuel Moisture Content _____ (%)

Diagram or Photograph of Test Fuel Crib

Figure 28-3. Wood Heater and Test Fuel Information.

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Sheet _____ of _____

Date _____

Operator _____

Sampling Method _____

Wood Heater Information

Manufacturer_____

Model_____

Primary Air Setting _____

Secondary Air Setting _____

Thermostat Setting _____

Other Settings _____

Test Run Information

Test Run No. _____

Burn Rate_____

Flue Draft _____

Room Temperature before/after____/____

Barometric Pressure before/after____/____

Relative Humidity before/after____/____

Room Air Velocity before/after____/____

Surface Temp Average Pretest_____end_____

Test Run Time (minutes)	Test Fuel Scale Reading (lb)	Surface Temp	Catalyst Temperature	
			Inlet (°F)	Outlet (°F)
(Pretest period)				
(Test Run Start)				

Figure 28 - 4. Test run wood heater operation data sheet.

BILLING CODE 6560-50-C

FIGURE 28–5.—EXAMPLE CALCULATION OF WEIGHTED AVERAGE EMISSION RATE

Burn rate category	Test number	Burn rate (dry-kg/hr)	Emissions (g/hr)
1	1	0.65	5.0
[1]2	2	0.85	6.7
2	3	0.90	4.7
2	4	1.00	5.3
3	5	1.45	3.8
4	6	2.00	5.1

[1] As permitted in Section 6.3.8, this test run may be omitted from the calculation of the weighted average emission rate because three runs were conducted for this burn rate category.

Test number	Burn rate	P_i	E_i	K_i
1	0.65	0.121	5.0	0.300
2	0.90	0.300	4.7	0.259
3	1.00	0.380	5.3	0.422
4	1.45	0.722	3.8	0.532
5	2.00	0.912	5.1	0.278

$K_1 = P_2 - P_o = 0.300 - 0 = 0.300$
$K_2 = P_3 - P_1 = 0.380 - 0.121 = 0.259$
$K_3 = P_4 - P_2 = 0.722 - 0.300 = 0.422$
$K_4 = P_5 P_3 = 0.912 - 0.380 = 0.532$
$K_5 = P_6 - P_4 = 1 - 0.722 = 0.278$
$K_i = 0.300 + 0.259 + 0.422 + 0.532 + 0.278 = 1.791$

$$E_w = \frac{\sum_{i=1}^{n} (K_i E_i)}{\sum_{i=1}^{n} K_i}$$

$$E_w = \frac{(0.3)(5.0) + (0.259)(4.7) + (0.42\ 2)(5.3) + (0.532)(3.8) + (0.278)(5.1)}{1.751}$$

$E_w = 4.69$ g/hr.

Method 28A—Measurement of Air to Fuel Ratio for Wood-Fired Appliances

1. Applicability and Principle

1.1 *Applicability.* This method is applicable for the measurement of air to fuel ratios, for determining whether a wood-fired appliance is an affected facility, as specified in 40 CFR 60.530.

1.2 *Principle.* A gas sample is extracted from a location in the stack of a wood-fired appliance while the appliance is operating at a prescribed set of conditions. The gas sample is analyzed for percent carbon dioxide (CO_2), percent oxygen (O_2), and percent carbon monoxide (CO). These stack gas components are measured for determining dry molecular weight of exhaust gas. Total moles of exhaust gas are determined stoichiometrically. Air to fuel ratio is determined by relating the mass of dry combustion air to the mass of dry fuel consumed.

2. Definitions

2.1 *Burn Rate, Firebox, Secondary Air Supply, Test Facility, Test Fuel Charge, Test Fuel Crib, Test Fuel Loading Density, Test Fuel Piece, Test Run, Usable Firebox Volume, and Wood Heater.* Same as Method 28, Section 2.1 and 2.3 to 2.12.

2.2 *Air to Fuel Ratio.* Ratio of the mass of dry combustion air introduced into the firebox, to the mass of dry fuel consumed (grams of dry air per gram of dry wood burned).

3. Apparatus

3.1 *Test Facility.* Insulated Solid Pack Chimney, Platform Scale and Monitor, Wood Heater Temperature Monitors, Room Temperature Monitor, Balance, Moisture Meter, Anemometer, Barometer, Draft Gauge, and Humidity Gauge. Same as Method 28, Sections 3.1 to 3.10, respectively.

3.2 *Sampling System.* Probe, Condenser, Valve, Pump, Rate Meter, Flexible Bag, Pressure Gauge, and Vacuum Gauge. Same as Method 3, Sections 2.2.1 to 2.2.8, respectively. The sampling systems described in Method 3A, Section 5.1 and Method 10, Section 5.1 may be used.

3.3 *Analysis.* Orsat analyzer, same as Method 3, Section 2.3; or instrumental analyzers, same as Method 3A, Section 5.1.4, and Method 10, Section 5.3.1.

4. Test Preparation

4.1 *Test Facility, Wood Heater Appliance Installation, and Test Facility Conditions.* Same as Method 28, Sections 4.1.1 and 4.1.2, respectively, with the exception that barometric dampers or other devices designed to introduce dilution air downstream of the firebox shall be sealed.

4.2 *Wood Heater Air Supply Adjustments.* This section describes how dampers are to be set or adjusted and air inlet ports closed or sealed during Method 28A tests. The specifications in this section are intended to assure that affected facility determinations are made on the facility configurations that could reasonably be expected to be employed by the user. They are also intended to prevent circumvention of the standard through the addition of an air port that would often be blocked off in actual usage. These specifications are based on the assumption that consumers will remove such items as damper or other closure mechanism stops if this can be done readily with household tools; that consumers will block air inlet passages not visible during normal operation of the appliance using aluminum tape or parts generally available at retail stores; and that consumers will cap off any threaded or flanged air inlets. They also assume that air leakage around glass doors, sheet metal joints or through inlet grilles visible during normal operation of the appliance would not be further blocked or taped off by a consumer.

It is not the intention of this section to cause an appliance that is clearly designed, intended, and, in most normal installations, used as a fireplace to be converted into a wood heater for purposes of applicability testing. Such a fireplace would be identifiable by such features as large or multiple glass doors or panels that are not gasketed, relatively unrestricted air inlets intended, in large part, to limit smoking and fogging of glass surfaces, and other aesthetic features not normally included in wood heaters.

4.2.1 *Adjustable Air Supply Mechanisms.* Any damper, other adjustment mechanism or other air inlet port that is designed, intended or otherwise reasonably expected to be adjusted or closed by consumers, installers, or dealers and which could restrict air into the firebox shall be set so as to achieve

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minimum air into the firebox, i.e., closed off or set in the most closed position.

Dampers, mechanisms and air inlet ports which could reasonably be expected to be adjusted or closed would include:

(a) All internal or externally adjustable mechanisms (including adjustments that affect the tightness of door fittings) that are accessible either before and/or after installation.

(b) All mechanisms, other inlet ports, or inlet port stops that are identified in the owners manual or in any dealer literature as being adjustable or alterable. For example, an inlet port that could be used to provide access to an outside air duct but which is identified as being closable through use of additional materials whether or not supplied with the facility.

(c) Any combustion air inlet port or damper or mechanism stop, which would readily lend itself to closure by consumers that are handy with household tools by the removal of parts or the addition of parts generally available at retail stores (e.g., addition of a pipe cap or plug, addition of a small metal plate to an inlet hole on a nondecorative sheet metal surface, or removal of riveted or screwed damper stops).

(d) Any damper, other adjustment mechanisms or other air inlet ports that are found and documented in several (e.g., a number sufficient to reasonably conclude that the practice is not unique or uncommon) actual installations as having been adjusted to a more closed position, or closed by consumers, installers, or dealers.

4.2.2 *Air Supply Adjustments During Test.* The test shall be performed with all air inlets identified under this section in the closed or most closed position or in the configuration which otherwise achieves the lowest air inlet, (e.g., greatest blockage).

For the purposes of this section, air flow shall not be minimized beyond the point necessary to maintain combustion or beyond the point that forces smoke into the room.

Notwithstanding Section 4.2.1, any damper, adjustment mechanism or air inlet port (whether or not equipped with dampers or adjusting mechanisms) that is visible during normal operation of the appliance and which could not reasonably be closed further or blocked except through means that would significantly degrade the aesthetics of the facility (e.g., through use of duct tape) will not be closed further or blocked.

4.3 *Test Fuel Properties and Test Fuel Charge Specifications.* Same as Method 28, Sections 4.2 to 4.3, respectively.

4.4 *Sampling System.*

4.4.1 *Sampling Location.* Same as Method 5H, Section 5.1.2.

4.4.2 *Sampling System Set Up.* Set up the sampling equipment as described in Method 3, Section 3.2, or as in Method 3A, Section 7.

5. Procedures

5.1 *Pretest Preparation.* Same as Method 28, Section 6.2.

5.2 *Pretest Ignition.* Same as Method 28, Section 6.3. Set the wood heater air supply settings to achieve a burn rate in Category 1 or the lowest achievable burn rate (see Section 4.2).

5.3 *Test Run.* Same as Method 28, Section 6.4. Begin sample collection at the start of the test run as defined in Method 28, Section 6.4.1. If Method 3 is used, collect a minimum of two bag samples simultaneously at a proportional rate using the procedure described in Method 5H, Section 5.2.1, for the duration of the test run. A minimum sample volume of 30 l per bag is recommended. If Method 3A is used, sample at a constant rate (tracer gas system is not required) for the duration of the test run.

5.3.1 *Data Recording.* Record wood heater temperature and operational data, sample train flow rate, and fuel weight data at 10 minute intervals.

5.3.2 *Test Run Completion.* Same as Method 28, Section 6.4.6.

5.4 *Analysis Procedure.*

5.4.1 *Method 3 Integrated Bag Samples.* Within 4 hours after the sample collection, analyze each bag sample for percent CO_2, O_2, and CO using an Orsat analyzer as described in Method 3, Sections 4.2.5 through 4.2.7.

5.4.2 *Method 3A and Method 10 Analyzer Data.* Average the percent CO_2, CO, and O_2 values for the test run.

5.5 *Quality Control Procedures.*

5.5.1 *Data Validation.* The following quality control procedure is suggested to provide a check on the quality of the data.

5.5.1.1 Calculate a fuel factor, F_o, using the following equation:

$$F_o = \frac{20.9 - \%\ O_2}{\%\ CO_2} \qquad \text{Eq. 28a-4}$$

where:

$\%O_2$ = Percent O_2 by volume (dry basis).
$\%CO_2$ = Percent CO_2 by volume (dry basis).
20.9 = Percent O_2 by volume in ambient air.

If CO is present in quantities measurable by this method, adjust the O_2 and CO_2 values before performing the calculation for F_o as follows:

$\%CO_2\ (adj) = \%CO_2 + \%CO$
$\%O_2\ (adj) = \%O_2 - 0.5\ \%CO$

where:

%CO = Percent CO by volume (dry basis).

5.5.1.2 Compare the calculated F_o factor with the expected F_o range for wood (1.000–1.120). Calculated F_o values beyond this acceptable range should be investigated before accepting the test results. For example, the strength of the solutions in the gas analyzer and the analyzing technique should be checked by sampling and analyzing a known concentration, such as air; the fuel factor should be reviewed and verified.

5.5.1.3 *Method 3 Analyses.* Compare the results of the analyses of the two bag samples. If all the gas components (O_2, CO, and CO_2) values for the two analyses agree within 0.5 percent (e.g., 6.0 percent O_2 for bag 1 and 6.5 percent O_2 for bag 2, agree within 0.5 percent), the results of the bags analyses may be averaged for the calculations in Section 6. If the analyses results do not agree within 0.5 percent for each component, calculate the air-to-fuel ratio using both sets of analyses and report the results.

6. Calculations

Carry out calculations, retaining at least one extra decimal figure beyond that of the acquired data. Round off figure after the final calculation. Other forms of the equations may be used as long as they give equivalent results.

6.1 *Nomenclature.*

M_d = Dry molecular weight, g/g-mole.
$\%CO_2$ = Percent CO_2 by volume (dry basis).
$\%O_2$ = Percent O_2 by volume (dry basis).
%CO = Percent CO by volume (dry basis).
$\%N_2$ = Percent N_2 by volume (dry basis).
N_T = Total gram-moles of dry exhaust gas per kg of wood burned.
Y_{CO_2} = Measured mole fraction of CO_2 (e.g., 10 percent CO_2 = .10 mole fraction).
Y_{CO} = Measured mole fraction of CO (e.g., 1 percent CO = .01 mole fraction).
Y_{HC} = Assumed mole fraction of HC (dry as CH_4), assumed .0099 for catalytic stoves, assumed .0124 for noncatalytic stoves.
0.280 = Molecular weight of N_2 or CO, divided by 100.
0.320 = Molecular weight of O_2 divided by 100.
0.440 = Molecular weight of CO_2 divided by 100.
42.5 = Gram-moles of carbon in 1 kg of dry wood (assuming 51 percent carbon by weight dry basis)
510 = Grams of carbon in exhaust gas per kg of wood burned.
1000 = Grams in 1 kg.

6.2 *Dry Molecular Weight.* Use Equation 28a-1 to calculate the dry molecular weight of the stack gas.

$$M_d = 0.440(\%CO_2) + 0.320(\%O_2) + 0.280(\%N_2 + \%CO) \qquad \text{Eq. 28a-1}$$

Note.—The above equation does not consider argon in air (about 0.9 percent, molecular weight of 37.7). A negative error of about 0.4 percent is introduced. The tester may opt to include argon in the analysis using procedures subject to approval of the Administrator.

6.3 *Dry Moles of Exhaust Gas.* Use Equation 28a-2 to calculate the total moles of dry exhaust gas produced per kilogram of dry wood burned.

$$N_T = \frac{42.5}{(Y_{CO_2} + Y_{CO} + Y_{HC})} \qquad \text{Eq. 28a-2}$$

6.4 *Air to Fuel Ratio.* Use Equation 28a-3 to calculate the air to fuel ratio on a dry mass basis.

$$A/F = \frac{(N_T \times M_d) - (510)}{(1000)} \qquad \text{Eq. 28a-3}$$

6.5 *Burn Rate.* Calculate the fuel burn rate as in Method 28, Section 8.3.

7. Bibliography

Same as Method 3, Section 7, Method 3A, Section 10, and Method 10, Section 10.

4. By adding a new Appendix I as follows:

Appendix I—Removable Label and Owner's Manual

1. Introduction

The purpose of this appendix is to provide guidance to the manufacturer for compliance with the temporary labeling and owner's manual provisions of Subpart AAA. Section 2 provides guidance for the content and presentation of information on the temporary labels. Section 3 provides guidance for the contents of the owner's manual.

2. Temporary Labels

2.1 General

Temporary labels shall be printed on 90 pound bond paper and shall measure 5 inches wide by 7 inches long. All labels shall be printed in black ink on one side of the label only. Specific instructions for drafting labels are provided below depending upon the compliance status of the wood heater model.

2.2 Certified Wood Heaters

The design and content of certified wood heaters varies according to the following:

- Catalyst or noncatalyst,
- Measured or default thermal efficiency value, and
- Complies with 1988 or 1990 emission limit.

There are five parts of a label. These include:

- Identification and compliance status,
- Emission value,
- Efficiency value,
- Heat output value, and
- Caveats.

Instructions for drafting each of these five parts are discussed below in terms of the three variables listed above. Figures 1 and 2 illustrate the variations in label design. Figure 1 is a temporary label for a hypothetical catalyst wood heater that meets the 1990 standard, has a certification test emission composite value of 3.5 g/h, and has a default efficiency of 72 percent. Figure 2 is a hypothetical noncatalyst wood heater with a certification test emission composite value of 7.8 g/h and a measured efficiency of 68 percent. It meets the 1988 but not the 1990 standard. All labels for wood heaters which have been certified and tested should conform as much as possible to the general layout, the type font and type size illustrated in Figures 1 and 2.

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Manufactured by Acme Industries Model Cleanburner MX4

U.S. ENVIRONMENTAL PROTECTION AGENCY

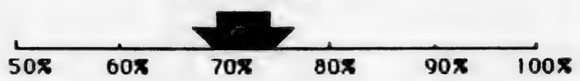
CATALYST EQUIPPED

Meets EPA particulate matter (smoke) control requirements for catalytic wood heaters built on or after July 1, 1990. See catalyst warranty. Illegal to operate when catalyst is not working. See owner's manual for operation and maintenance.

SMOKE



EFFICIENCY*



Wood heaters with higher efficiencies cost less to operate.

*Not tested for efficiency. The value indicated is for similar catalyst-equipped wood heaters.

HEAT OUTPUT

7,000 to 30,000 Btu/Hr

Use this to choose the right size appliance for your needs. ASK DEALER FOR HELP.

This wood heater will achieve low smoke output and high efficiency only if properly operated and maintained. See owner's manual.

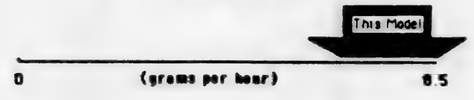
Figure 1. Temporary Label for Hypothetical Wood Heater: That is (1) Catalyst Equipped, (2) With Estimated Efficiency, and (3) That Meets 1990 Standard.
Emissions: 3.5 g/h
Efficiency: 72 percent

Manufactured by Acme Industries Model Cleanburner B-3

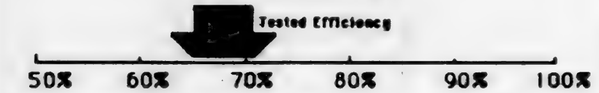
U.S. ENVIRONMENTAL PROTECTION AGENCY

Meets EPA particulate matter (smoke) control requirements for NONCATALYTIC wood heaters built on or after July 1, 1988 and before July 1, 1990.

SMOKE



EFFICIENCY



Wood heaters with higher efficiencies cost less to operate.

HEAT OUTPUT

9,000 to 40,000 Btu/Hr

Use this to choose the right size appliance for your needs. ASK DEALER FOR HELP.

This wood heater will achieve low smoke output and high efficiency only if properly operated and maintained. See owner's manual.

Figure 2. Hypothetical Wood Heater Temporary Label: That is (1) Noncatalytic, (2) With Measured Efficiency, and (3) That Meets 1988 Standard.
Emissions: 7.8 g/h
Efficiency: 68 percent

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2.2.1 Identification and Compliance Status

The top 1.5 inches of the label should contain the following items (and location on the label).

- Manufacturer name (upper left hand corner).
- Model name/number (upper left hand corner).
- The words "U.S. ENVIRONMENTAL PROTECTION AGENCY" (centered at top and enclosed in a box with rounded edges).
- For catalytic wood heaters, in large bold print the words "CATALYST EQUIPPED" (centered below the words "U.S. ENVIRONMENTAL PROTECTION AGENCY").
- Text indicating compliance status for catalytic wood heaters. For those catalytic wood heaters which comply with the 1988 emission limits, but not the 1990 emission limits, the words: "Meets EPA particulate matter (smoke) control requirements for catalytic wood heaters built on or after July 1, 1988, and before July 1, 1990." For those catalytic wood heaters which comply with the 1990 emission limits, the words: "Meets EPA particulate matter (smoke) control requirements for catalytic wood heaters built on or after July 1, 1990." Finally, for all catalytic wood heaters, the following text should be included: "See catalyst warranty. Illegal to operate when catalyst is not working. See owner's manual for operation and maintenance."
- Text indicating compliance status for noncatalytic wood heaters. For those noncatalytic wood heaters which comply with the 1988 emission limits but not the 1990 emission limits, the words: "Meets EPA particulate matter (smoke) control requirements for NONCATALYTIC wood heaters built on or after July 1, 1988 and before July 1, 1990." For those noncatalytic wood heaters which comply with 1990 emission limits, the words: "Meets EPA particulate matter (smoke) control requirements for NONCATALYTIC wood heaters built on or after July 1, 1990."

2.2.2 Emission Value

Between 1.5 and 3.0 inches down from the top of the label is the part that graphically illustrates the particulate matter, or smoke, emission value. This part consists of the word "SMOKE" in large bold print and a 3.0 inch line with words "(grams per hour)" centered beneath the line. A blunt end arrow with a base (blunt end) that spans 2 g/hr shall be centered over the point on the emissions line that represents the composite emission value for the model as measured in the certification test.

For catalyst equipped wood heaters the 3.0 inch line shall be labeled "0" on the left end of the line (centered below the end) and "5.5" on the right end (centered below the end). To find where to center the large blunt end arrow, measure 0.55 inches from the left end for each g/h of the composite emission value. Thus, a 4 g/h value would be 2.2 inches from the left end. The base of the blunt end should always be 1.1 inches wide (2 g/hr). The words "This Model" should be centered above or within the blunt end arrow.

For noncatalyst equipped wood heaters, the 3.0 inch line should be labeled "0" on the left end of the line (centered below the end) and "8.5" on the right end of the line (centered below the end). To find where to center the large blunt end arrow, measure 0.35 inches from the left end for each g/h of the composite emission value. Thus, a 4 g/h value would be 1.4 inches from the left end. The base of the blunt end should always be 0.7 inches wide (2 g/h). The words "This Model" should be centered above or within the blunt end arrow.

2.2.3 Efficiency Value

Between 3.0 and 4.75 inches down from the top of the label is the part that illustrates overall thermal efficiency value. The efficiency value may either be a measured value or a calculated or default value as provided in § 60.536(i)(3) of the regulation. Regardless of how the efficiency is derived, the words "EFFICIENCY" shall be centered above a 4 inch line. The 4 inch line should be divided into 5 equal lengths (each 0.8 inches) and labeled "50%," "60%," . . . "100%" as indicated in Figures 1 and 2. As with the smoke line in 2.2.2, a blunt end arrow shall be centered over the point on the line where the efficiency value would be located. The base of the blunt end arrow shall be 0.48 inches wide (6 percentage points). To find where to center the blunt end arrow, measure 0.08 inches for each percentage point to the right of the nearest labeled value. For example, a value of 82 percent would be 0.16 inches to the right of the "80%" mark.

For default efficiency values, an asterisk shall follow the word "EFFICIENCY" as in Figure 1. The asterisk refers to a note in parentheses that shall say "Not tested for efficiency. Value indicated is for similar catalyst equipped (or noncatalytic, as appropriate) wood heaters."

For measured efficiency values measured with the method in Appendix J, the words "Tested Efficiency" shall be centered above the blunt end arrow as in Figure 2.

The last item required for this part is a sentence that says "Wood heaters with higher efficiencies cost less to operate."

2.2.4 Heat Output Value

Between 4.75 and 6.0 inches down from the top of the label is the heat output part. The words "HEAT OUTPUT" in large bold print are centered above the Heat Output range numbers in Btu/hr, as derived from the certification test. The words "Use this to choose the right size appliance for your needs. ASK DEALER FOR HELP." should follow the heat output range numbers as in Figures 1 and 2. (Note that "ASK DEALER FOR HELP" is a single line, centered in the label.) The low end of the burn rate range indicated on the label should reflect the low end of the burn rate range achievable by the wood heater as sold and not as tested in the laboratory (see § 60.536(i)(4)).

2.2.5 Caveats

In the lower 0.75 inch of the label, the following text shall be presented:

"This wood heater will achieve low smoke output and high efficiency only if properly operated and maintained. See owner's manual."

2.3 Coal-Only Heaters

For those heaters which meet the definition of "coal only heater" in § 60.531, the temporary label should contain the identical material (same layout and print font and size) as that illustrated in Figure 3, except that the hypothetical manufacturer and model name should be replaced with the appropriate actual names.

Manufactured by Acme Industries Model Cherburner

U S ENVIRONMENTAL PROTECTION AGENCY

COAL-ONLY HEATER

This heater is only for burning coal. Use of any other solid fuel, except for coal ignition purposes is a violation of Federal law.

This heater complies with Federal regulation 40 CFR 60.

Figure 3. Temporary Label for Hypothetical Coal-Only Heater

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2.4 Small Manufacturer Exempted Wood Heaters

For those wood heaters exempted under § 60.530(d), the small manufacturer exemption, the temporary label should contain the identical material (same layout and print font and size) as that illustrated in Figure 4, except that the hypothetical manufacturer and model name should be replaced with the appropriate actual names.



Figure 4. Temporary Label for Hypothetical Wood Heater Exempted Under Small Manufacturer Provision

BILLING CODE 6560-50-C

2.5 Wood Heaters That Are Not Certified

For those wood heaters that do not meet applicable emission limits under § 60.532 and are not otherwise exempted, the temporary label should contain the identical material (same layout and print font and size) as those illustrated in Figures 5, 6, and 7, as appropriate.

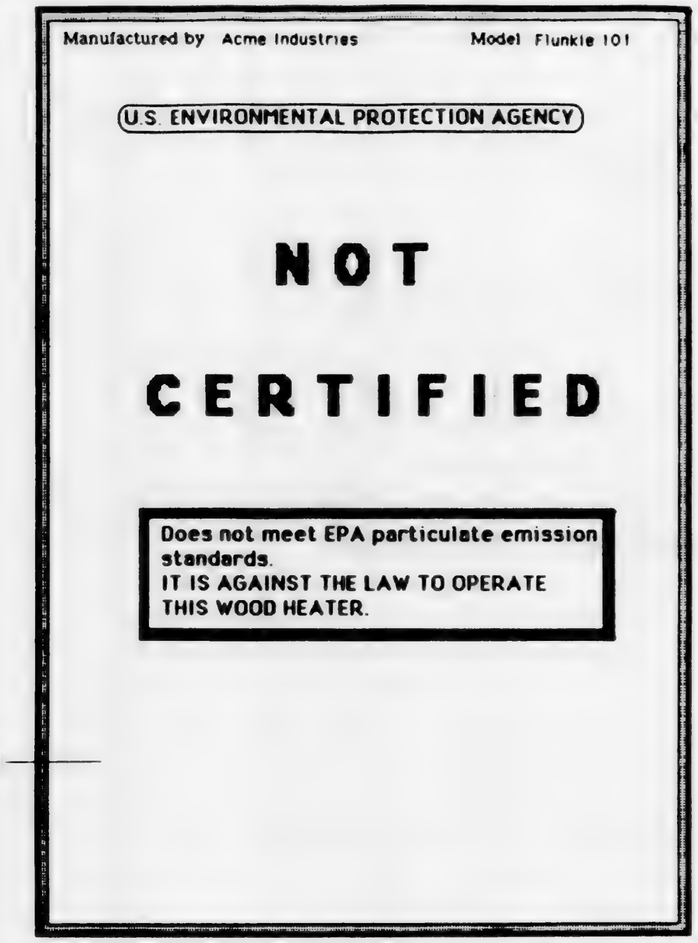


Figure 5. Temporary Label for a Hypothetical Wood Heater that Had Been Tested, Does Not Meet Applicable Standards, and Is Not Certified

BILLING CODE 6560-50-M

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Manufactured by Acme Industries Model: Custom 101

U.S. ENVIRONMENTAL PROTECTION AGENCY

NOT

CERTIFIED

Meets EPA particulate emission standards.

Figure 6. Temporary Label for a Hypothetical Wood Heater that Was Tested, Meets Applicable Standards, But Was Not Certified

Manufactured by Acme Industries Model: Bootleg 101

U.S. ENVIRONMENTAL PROTECTION AGENCY

NOT

CERTIFIED

Not certified. Not tested.
Not approved for sale.
IT IS AGAINST THE LAW TO OPERATE THIS WOOD HEATER.

Red Colored Label

Figure 7. Temporary Label for a Hypothetical Wood Heater that Was Not Tested, Not Certified, and Does Not Meet Applicable Standards

BILLING CODE 6560-50-C

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The hypothetical manufacturer and model names should be replaced with the appropriate actual names.

There are three kinds of wood heaters which fall into this category of "not certified." Each requires a separate label. If a wood heater is tested but fails to meet the applicable limits, the label in Figure 5 applies. Such a label should be printed on red rather than white paper. If a wood heater is tested and does meet the emission limit but is not subsequently certified, the label in Figure 6 applies. (An example would be a one-of-a-kind wood heater which is not part of a model line. Because of the costs of testing, this circumstance is not expected to arise often, if at all.) If a wood heater is not tested and is not certified, it should bear the label illustrated in Figure 7. As with Figure 5, this label should be printed on red paper.

3.0 Guidance for Preparation of Wood Heater Owner's Manuals

3.1 Introduction

Although the owner's manuals do not require premarket approval, EPA will monitor the contents to ensure that sufficient information is included to provide heater operation and maintenance information affecting emissions to consumers. The purpose of this section is to provide guidance to manufacturers in complying with the owner's manual provisions of § 60.536(1). A checklist of topics and illustrative language is provided as a guideline. Owner's manuals should be tailored to specific wood heater models, as appropriate.

3.2 Topics Required to be Addressed in Owner's Manual

- Wood Heater Description and Compliance Status
- Tamper Warning
- Catalyst Information and Warranty (if catalyst equipped)
- Fuel Selection
- Achieving and Maintaining Catalyst Light-Off (if catalyst equipped)
- Catalyst Monitoring (if catalyst equipped)
- Troubleshooting Catalytic Equipped Heaters (if catalyst equipped)
- Catalyst Replacement (if catalyst equipped)
- Wood Heater Operation and Maintenance
- Wood Heater Installation: Achieving Proper Draft

3.3 Sample Text/Descriptions

The following are example texts and/or further descriptions illustrating the topics identified above. Although the regulation requires manufacturers to address (where applicable) the nine topics identified above, the exact language is not specified. Manuals should be written specific to the model and design of the wood heater. The following guidance is composed of generic descriptions and texts. If manufacturers choose to use the language provided as example, the portion in italics should be revised as appropriate. Any manufacturer electing to use the EPA example language shall be in compliance with owner's manual requirements provided that the particular language is printed in full with only such changes as are necessary to ensure accuracy. Example language is not provided for certain topics, since these areas are generally heater specific. For these topics, manufacturers should develop text that is specific to the operation and maintenance of their particular products.

3.3.1 Wood Heater Description and Compliance Status

Owner's Manuals shall include:

A. Manufacturer and Model.

B. Compliance Status (exempt, 1988 std., 1990 std., etc.).

C. Heat output range (as indicated on temporary label).

Example Text covering A, B, and C above:

"This manual describes the installation and operation of the *Brand X, Model O catalytic equipped* wood heater. This heater meets the U.S. Environmental Protection Agency's emission limits for wood heaters sold *between July 1, 1990, and July 1, 1992.* Under specific test conditions this heater has been shown to deliver heat at rates ranging from *6,000* to *35,000* Btu/hr."

3.3.2 Tamper Warning

This consists of the following statement which must be included in the owner's manual for catalyst equipped units:

Example Text covering legal prohibition on tampering:

"This wood heater contains a catalytic combustor, which needs periodic inspection and replacement for proper operation. It is against the law to operate this wood heater in a manner inconsistent with operating instructions in this manual, or if the catalytic element is deactivated or removed."

3.3.3 Catalyst Information

Included with or supplied in the owner's and warranty manuals shall be the following information:

A. Catalyst manufacturer, model.

B. Catalyst warranty details.

C. Instructions for warranty claims.

Example Text covering A, B, and C:

"The combustor supplied with this heater is a *Brand Z, Long Life Combustor.* Consult the catalytic combustor warranty also supplied with this wood heater. Warranty claims should be addressed to:

Stove or Catalyst Manufacturer _____
Address _____
Phone _____

This section should also provide clear guidance on how to exercise the warranty (how to package for return shipment, etc.).

3.3.4 Fuel Selection

Owner's manuals shall include:

A. Instructions on acceptable fuels.

B. Warning against inappropriate fuels.

Example Text covering A and B:

"This heater is designed to burn natural wood only. Higher efficiencies and lower emissions generally result when burning air dried seasoned hardwoods, as compared to softwoods or to green or freshly cut hardwoods.

Do Not Burn:

- Treated Wood
- Coal
- Garbage
- Cardboard
- Solvents
- Colored Paper
- Trash

Burning treated wood, garbage, solvents, colored paper or trash may result in release of toxic fumes and may poison or render ineffective the catalytic combustor.

Burning coal, cardboard, or loose paper can produce soot, or large flakes of char or fly ash that can coat the combustor, causing smoke spillage into the room, and rendering the combustor ineffective."

3.3.5 Achieving and Maintaining Catalyst Light-Off

Owner's manuals shall describe in detail proper procedures for:

A. Operation of catalyst bypass (stove specific).

B. Achieving catalyst light off from a cold start.

C. Achieving catalyst light off when refueling.

No example text is supplied for describing operation of catalyst bypass mechanisms (Item A) since these are typically stove-specific. Manufacturers however must provide instructions specific to their model describing:

1. Bypass position during start-up.
2. Bypass position during normal operation.
3. Bypass position during reloading.

Example Text for item B:

"The temperature in the stove and the gases entering the combustor must be raised to between *500°* to *700* °F for catalytic activity to be initiated. During the start-up of a cold stove, a medium to high firing rate must be maintained for about *20* minutes. This ensures that the stove, catalyst, and fuel are all stabilized at proper operating temperatures. Even though it is possible to have gas temperatures reach *600* °F within two to three minutes after a fire is started, if the fire is allowed to die down immediately it may go out or the combustor may stop working. Once the combustor starts working, heat generated in it by burning the smoke will keep it working."

Example Text for item C:

Refueling:

"During the refueling and rekindling of a cool fire, or a fire that has burned down to the charcoal phase, operate the stove at a medium to high firing rate for about *10 minutes* to ensure that the catalyst reaches approximately *600* °F."

3.3.6 Catalyst Monitoring

Owner's manuals shall include:

A. Recommendation to visually inspect combustor at least three times during the heating season.

B. Discussion on expected combustor temperatures for monitor-equipped units.

C. Suggested monitoring and inspection techniques.

Example Text covering A, B, and C:

"It is important to periodically monitor the operation of the catalytic combustor to ensure that it is functioning properly and to determine when it needs to be replaced. A non-functioning combustor will result in a loss of heating efficiency, and an increase in creosote and emissions. Following is a list of items that should be checked on a periodic basis."

- "Combustors should be visually inspected at least three times during the heating season to determine if physical degradation has occurred. Actual removal of the combustor is not recommended unless more detailed inspection is warranted because of decreased performance. If any of these conditions exist, refer to Catalyst Troubleshooting section of this owner's manual.
- "This catalytic heater is equipped with a temperature probe to monitor catalyst operation. Properly functioning combustors typically maintain temperatures in excess of *500* °F, and often reach temperatures in excess of *1000* °F. If catalyst temperatures are not in excess of *500* °F, refer to Catalyst Troubleshooting section of this owner's manual.
- "You can get an indication of whether the catalyst is working by comparing the amount of smoke leaving the chimney when the smoke is going through the combustor and catalyst light-off has been achieved, to the amount of smoke leaving the chimney when the smoke is not routed through the combustor (bypass mode).

"Step 1—Light stove in accordance with instructions in *3.3 5.*

"Step 2—With smoke routed through the catalyst, go outside and observe the emissions leaving the chimney.

"Step 3—Engage the bypass mechanism and again observe the emissions leaving the chimney.

"Significantly more smoke should be seen when the exhaust is not routed through the combustor (bypass mode). Be careful not to confuse smoke with steam from wet wood."

3.3.7 Catalyst Troubleshooting

The owner's manual should provide clear descriptions of symptoms and remedies to common combustor problems. It is recommended that photographs of catalyst peeling, plugging, thermal cracking, mechanical cracking, and masking be included in the manual to aid the consumer in identifying problems and to provide direction for corrective action.

3.3.8 Catalyst Replacement

The owner's manual should provide clear step-by-step instructions on how to remove and replace the catalytic combustor. The section should include diagrams and/or photographs.

3.3.9 Wood Heater Operation and Maintenance

Owner's manual shall include:

A. Recommendations about building and maintaining a fire.

B. Instruction on proper use of air controls.

C. Ash removal and disposal.

D. Instruction on gasket replacement.

E. Warning against overfiring.

No example text is supplied for A, B, and D since these items are model specific. Manufacturers should provide detailed instructions on building and maintaining a fire including selection of fuel pieces, fuel quantity, and stacking arrangement. Manufacturers should also provide instruction on proper air settings (both primary and secondary) for attaining minimum and maximum heat outputs and any special instructions for operating thermostatic controls. Step-by-step instructions on inspection and replacement of gaskets should also be included. Manufacturers should provide diagrams and/or photographs to assist the consumer. Gasket type and size should be specified.

Example Text for Item C:

"Whenever ashes get *3 to 4 inches* deep in your firebox or ash pan, and when the fire has burned down and cooled, remove excess ashes. Leave an ash bed approximately *1 inch* deep on the firebox bottom to help maintain a hot charcoal bed."

"Ashes should be placed in a metal container with a tight fitting lid. The closed container of ashes should be placed on a noncombustible floor or on the ground, away from all combustible materials, pending final disposal. The ashes should be retained in the closed container until all cinders have thoroughly cooled."

Example Text covering item E: "Do Not Overfire This Heater".

"Attempts to achieve heat output rates that exceed heater design specifications can result in permanent damage to the heater and to the catalytic combustor if so equipped."

3.3.10 Wood Heater Installation: Achieving Proper Draft

Owner's manual shall include:

A. Importance of proper draft.

B. Conditions indicating inadequate draft.

C. Conditions indicating excessive draft.

Example Text for Item A:

"Draft is the force which moves air from the appliance up through the chimney. The amount of draft in your chimney depends on the length of the chimney, local geography, nearby obstructions, and other factors. Too much draft may cause excessive temperatures in the appliance *and may damage the catalytic combustor.* Inadequate draft may cause backpuffing into the room and "plugging" of the chimney *or the catalyst.*"

Example text for Item B:

"Inadequate draft will cause the appliance to leak smoke into the room through appliance and chimney connector joints."

Example text Item C:

"An uncontrollable burn or a glowing red stove part or chimney connector indicates excessive draft."

[FR Doc. 87-2540 Filed 2-17-87; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 60

[AD-FRL-3138-7(a)]

Standards of Performance for New Stationary Sources; Listing of Residential Wood Heaters for Development of New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Listing, notice of public hearing, and request for comments.

SUMMARY: This notice lists residential wood heaters as a new source category for regulation under section 111 of the Clean Air Act. This listing is based on the Administrator's determination that residential wood heaters cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health and welfare.

DATES: *Comments.* Comments must be received on or before April 20, 1987.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by March 11, 1987, a public hearing will be held on April 6, 1987, beginning at 10:00 a.m.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE–131), Attention: Docket Number A–84–49, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If a public hearing is held, it will be at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina.

Docket. Docket Number A–84–49 containing information used in this listing is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday at EPA's Central Docket Section (LE–131), West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Colyer, Standards Development Branch (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone (919) 541–5578.

Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Ann Eleanor, Standards Development Branch (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5578.

SUPPLEMENTARY INFORMATION: Section 111(b)(1)(A) of the Clean Air Act provides:

> The Administrator shall, within 90 days after December 31, 1970, publish (and from time to time thereafter shall revise) a list of categories of stationary sources. He shall include a category of sources in such list if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.

Section 111(b)(1)(B) requires the Administrator to promulgate "standards of performance for new sources within such category."

The Administrator hereby adds the source category "residential wood heaters" to the section 111(b)(1)(A) list because, as discussed below, in his judgment it contributes significantly to

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air pollution which may reasonably be anticipated to endanger public health and welfare.

In the Advance Notice of Proposed Rulemaking (50 FR 31504, August 2, 1985), EPA set out its rationale for considering regulation of residential wood combustion (RWC) devices. To summarize that notice, RWC particulate matter (PM) emissions are increasing; they include compounds which are carcinogens; they are released at low heights in residential areas (resulting in relatively high levels of exposure to human populations); and they are capable of being controlled by adequately demonstrated technology.

It is EPA's intention to regulate enclosed, combustion-controlled wood-fired appliances but not conventional open fireplaces. The primary difference between wood heaters and fireplaces is the extent to which combustion and excess air are controlled in the two types of sources. Fireplaces, including those with glass doors, allow relatively large quantities of air to enter the firebox or chamber. This air enters around the doors (if any), through leaks in sheet metal joints or sheet metal to masonry connections, through grilles, and around inlet dampers. Depending in part upon mixing conditions, the relatively large quantities of air that are available in the firebox typically result in high air-to-fuel ratios and/or high burn rates. Air-to-fuel ratios above 50 to 1 and/or burn rates above about 8 kg per hour are common. Generally, air-to-fuel ratios will be relatively higher when burn rates are relatively lower and vice-versa in fireplaces. In general, the large quantities of air entering fireplaces results in high gas volumes and velocities, and relatively low concentrations of unburned material.

In contrast, wood heaters can limit the quantity of air entering the firebox; and although sufficient air is available for combustion, the limited supply of air and poor mixing result in low air-to-fuel ratios (compared to fireplaces) and low burn rates. Air-to-fuel ratios of less than 10-to-1 and burn rates less than 1 kg per hour are common. The low burn rates allow wood heaters to operate for periods as long as overnight. These are characteristics that have contributed to their practicality and widespread use. However, the starved air condition produces high concentrations of incomplete combustion products (PM, carbon monoxide (CO), and other partially oxidized organic compounds) which are released to the atmosphere as air pollutants.

The EPA estimates that over 12 million wood heaters were in use in 1986, and that sales of new wood heaters in 1985 were approximately 800,000 units per year.

The national annual PM emission total from all wood heaters is estimated at 2.5 million Mg/yr (2.8 million tons/yr) and accounts for about 15 percent of the total from all particulate sources. The PM from wood heaters is primarily condensed organic materials as opposed to fly ash. A portion of the PM emitted from wood heaters is in the form of polycyclic organic matter (POM), a class of compounds containing carcinogens. Wood heaters account for most of the POM emitted by stationary sources. Wood heaters also emit large quantities of CO.

Wood heaters create significant air quality problems in localities where they are used in large numbers. Emissions from wood heaters are a growing problem throughout many areas of the country where wood supplies are abundant. In fact, several areas currently exceed the national ambient air quality standards for PM and CO due, in part, to residential wood heaters.

More than 80 percent of the PM emissions from wood heaters are smaller than 2.5 micrometers and almost all particles are less than 10 micrometers. The PM of this size can penetrate to the tracheo-bronchial and alveolar regions of the lung. Deposition in this region of the lung is of concern because the body may take years to remove the particles and repair the damage they cause. Exposure to these small particles can increase coughing and chest discomfort, aggravate cardiovascular diseases, and may increase the adverse health effects of gaseous air pollutants. (Air Quality Criteria for Particulate Matter and Sulfur Oxides (EPA–600/882–029aF, bF, and cF))

Standards of performance of this source category are proposed elsewhere in today's **Federal Register**. That proposal provides a public comment period and an opportunity for a public hearing. Comments and requests for a public hearing on the listing of this source category should be submitted as provided in the proposal for this source category.

Dated: January 31, 1987.

Lee M. Thomas,

Administrator.

[FR Doc. 87–2539 Filed 2–17–87; 8:45 am]

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federal register

Wednesday
February 18, 1987

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Extension of Proposed Rule To List the Flattened Musk Turtle as Threatened

Reader Aids

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Extension of Proposed Rule To List the Flattened Musk Turtle as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule: Panel Report Available and Comment Period Closure.

SUMMARY: The U.S. Fish and Wildlife Service (Service) convened a panel of scientists to review the information on the status of the flattened musk turtle. The panel presented its report to the Director of the Service, on February 2, 1987. The report is now available for public review. The comment period will now close on the date given below.

DATES: The comment period will close on March 20, 1987. The deadline for final action on the proposal is May 1, 1987.

ADDRESSES: Requests for the panel report and comments and other materials concerning the status of the flattened musk turtle should be sent to: Director, U.S. Fish and Wildlife Service (Attention: Mr. Ken Stansell), Main Interior Building, 18th and C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Stansell at the above address (202/343–6351 or FTS/343–6351).

SUPPLEMENTARY INFORMATION:

Background

On November 1, 1985 (50 FR 45638), the Service published a proposed rule to list the flattened musk turtle as a threatened species. Comments submitted on the proposed rule indicated the existence of disagreements concerning the interpretation of biological data on the turtle. The Service announced in the October 31, 1986 **Federal Register** (51 FR 39758) that there exists substantial scientific disagreement regarding the sufficiency and accuracy of the available data relevant to a decision on whether to list the turtle. The Service extended the deadline for making a final decision on the proposal until May 1, 1987, in accordance with section 4(b)(6)(B)(i) of the Endangered Species Act (Act).

The Service convened a panel, composed of scientists knowledgeable in herpetology (study of amphibians and reptiles), conservation biology, aquatic ecology, and/or population biology, to analyze biological data on the status of the flattened musk turtle. Following its review, the panel reported its findings to the Director of the Service on February 2, 1987. The report is now available to the public. So that the public may comment on the findings of the review panel, the public comment period on the proposal will continue to remain open for 30 additional days from the date of publication of this notice.

The Service will consider the findings of the panel and any further information submitted during the comment period in determining whether the flattened musk turtle should be listed or whether the proposal should be withdrawn in accordance with section 4(b)(6)(B)(ii) of the Act.

Author

The primary author of this notice is Mr. Kenneth B. Stansell, U.S. Fish and Wildlife Service, Main Interior Building, 18th and C Street, NW., Washington, DC 20240 (202/343–6351 or FTS 343–6351).

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, plants (agriculture).

Dated: February 13, 1987.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–3566 Filed 2–17–87; 9:54 am]

BILLING CODE 4310–55–M

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Rules and Regulations

Federal Register
Vol. 52, No. 33
Thursday, February 19, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Retirement; Food Service Employees of the House of Representatives

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing regulations on the continuation of civil service retirement coverage and benefits for career civilian employees of the United States permanently assigned to the food services operations of the House of Representatives after those operations have been transferred to a private contractor.

DATES: Interim regulations effective October 18, 1986. Comments must be received on or before April 20, 1987.

ADDRESS: Send written comments to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or deliver to OPM, Room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John A. Elliott, (202) 632–4682.

SUPPLEMENTARY INFORMATION: These regulations are required by section 111 of Pub. L. 99–500, enacted October 18, 1986, which made it possible for food service employees of the House of Representatives to retain their civil service retirement coverage and benefits following transfer of the food service operations to a private contractor. Regulations on retaining coverage under the Federal Employees' Retirement System will be issued separately. The Congressional employees who became food service employees of the contractor (Service America Corporation) on January 3, 1987, must have elected no later than January 2 to stay under the Civil Service Retirement System. Those who made this election have the same retirement coverage as if they were still Congressional employees.

Employee Deductions

As employees of the contractor, they are covered under Social Security. Therefore, their deductions for the Civil Service Retirement and Disability Fund are reduced so that their total contribution to the OASDI portion of Social Security and the Civil Service Retirement and Disability Fund does not exceed what they were contributing as Congressional employees. For calendar year 1987, the employee deduction rate is 1.8 percent of basic pay.

OPM and Contractor Responsibilities

OPM and the contractor will operate under a written agreement that spells out their respective responsibilities. Their responsibilities are the same as exists between OPM and any employing agency with respect to the retirement system. For the contractor, this includes withholding employee deductions and making the required 7½ percent employer contributions into the Civil Service Retirement and Disability Fund.

Waiver of Notice of Proposed Rulemaking and 30-day Delay of Effective Date

Under 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these amendments effective in less than 30 days because the food service operations of the House of Representatives were transferred to a private contractor on January 3, 1987. The regulations are effective retroactive to October 18, 1986, the effective date of the amendments of section 111 of Pub. L. 99–500.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that within the scope of the Regulatory Flexibility Act, these regulations will not have a significant economic impact on a substantial number of small entities because these regulations concern administrative practices and will affect only a small number of Federal employees and a single contractor.

List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.
James E. Colvard,
Deputy Director.

Accordingly, OPM is amending Part 831 of title 5 of the Code of Federal Regulations as follows:

PART 831—RETIREMENT

1. The authority citation for Subpart C of Part 831 reads as follows:

Authority: 5 U.S.C. 8347.

2. Subpart C is amended to add a new § 831.307 to read as follows:

Subpart C—Credit for Service

* * * * *

§ 831.307 Continuation of service credit for food service employees of the House of Representatives.

(a) Congressional employees who provide food service operations for the House of Representatives can elect to continue their retirement coverage under subchapter III of Chapter 83 of Title 5, United States Code, when such food service operations are transferred to a private contractor. These regulations also apply to any successor contractors.

(b) *Eligibility requirements.* To be eligible for continuation of retirement coverage, an employee must (1) be a Congressional employee (as defined in section 2107 of Title 5, United States Code), other than an employee of the Architect of the Capitol, engaged in providing food service operations for the House of Representatives under the administrative control of the Architect of the Capitol; (2) be subject to subchapter III of Chapter 83 of Title 5, United States Code; (3) elect to remain covered under civil service retirement provisions no later than the day before the date on which the food service operations transfer from the House of Representatives to a private contractor; and (4) become employed to provide food services under contract without a break in service. A "break in service"

means a separation from employment of at least three calendar days.

(c) *Employee deductions.* An employee who elects to continue coverage under Title 5 retirement provisions is deemed to consent to deductions from his or her basic pay for the Civil Service Retirement and Disability Fund in the amount determined in accordance with 5 U.S.C. 8334(k). The employer providing the food services under contract must, in accordance with procedures established by OPM, pay into the Civil Service Retirement and Disability Fund the amounts deducted from an employee's pay.

(d) *Employer contributions.* The employer providing food services under contract must, in accordance with procedures established by OPM, pay into the Civil Service Retirement and Disability Fund amounts equal to any agency contributions that would be required if the individual were a Congressional employee covered by the Civil Service Retirement System.

[FR Doc. 87-3375 Filed 2-18-87; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1007, 1006, 1011, 1012, 1013, 1046, 1093, 1094, 1096, 1098 and 1099

[Docket Nos. AO-366-A27 et al.]

Milk in the Georgia and Certain Other Marketing Areas; Order Amending Orders

7 CFR Parts	Marketing area	Docket Nos
1007	Georgia	AO-366-A27
1006	Upper Florida	AO-356-A25
1011	Tennessee Valley	AO-251-A30
1012	Tampa Bay	AO-347-A28
1013	Southeastern Florida	AO-286-A35
1046	Louisville-Lexington-Evansville	AO-123-A56
1093	Alabama-West Florida	AO-386-A6
1094	New Orleans-Mississippi	AO-103-A48
1096	Greater Louisiana	AO-257-A35
1098	Nashville, Tennessee	AO-184-A50
1099	Paducah, Kentucky	AO-183-A42

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action modifies the plant location adjustments to prices under 11 southeastern Federal milk marketing orders. The amendments change the location adjustment provisions in the 11 orders to conform with the Class I differentials mandated by the Food Security Act of 1985. This final rule is unchanged from the interim amendments to the orders that were made effective July 1, 1986. The changes are based on the record of a public hearing held in Atlanta, Georgia, on February 25–27, 1986. More than the necessary two-thirds of the producers supplying each of eleven markets have approved the amended orders.

EFFECTIVE DATE: April 1, 1987.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued February 7, 1986; published February 13, 1986 (51 FR 5363).

Extension of Time for Filing Briefs: Issued March 11, 1986.

Tentative Decision: Issued May 28, 1986; published June 5, 1986 (51 FR 20446).

Interim Amendment of Rules: Issued June 26, 1986; Market Administrators of affected orders notified handlers of July 1, 1986, effective date.

Interim Amendment of Rules: Issued July 17, 1986; published July 22, 1986 (51 FR 26224).

Correction to Tentative Decision: Issued July 17, 1986; published July 22, 1986 (51 FR 26254).

Final Decision: Issued December 10, 1986; published December 15, 1986 (51 FR 44913).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings upon basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–694), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the respective marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the orders as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

(b) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within each of the respective marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending each of the specified orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the respective orders; and

(3) The issuance of this order amending each of the specified orders is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the respective marketing areas.

List of Subjects in 7 CFR Parts 1006, 1007, 1011, 1012, 1013, 1046, 1093, 1094, 1096, 1098, and 1099

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

1. The authority citation for Parts 1007, 1006, 1011, 1012, 1013, 1046, 1093, 1094, 1096, 1098, and 1099 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

PART 1007—MILK IN THE GEORGIA MARKETING AREA

2. In § 1007.52, paragraphs (a) and (b) are revised to read as follows:

§ 1007.52 Plant location adjustments for handlers.

(a) The following zones are defined for the purpose of determining location adjustments:

(1) "Northern Zone" means all the territory in the following Georgia counties:

Bartow, Cherokee, Dawson, Floyd, Forsyth, Gilmer, Gordon Habersham, Hall, Lumpkin, Pickens, Towns, Union, and White.

(2) "North Cental Zone" means all the territory in the following Georgia counties:

Banks, Barrow, Butts, Carroll, Clarke, Clayton, Cobb, Coweta, DeKalb, Douglas, Elbert, Fayette, Franklin, Fulton, Greene, Gwinnett, Harolson, Hart, Heard, Henry, Jackson, Jasper, Lamar, Lincoln, Madison, Meriwether, Morgan, Newton, Oconee, Oglethorpe, Paulding, Pike, Polk, Putnam, Rockdale, Spalding, Stephens, Taliferro, Troup, Walton, and Wilkes.

(3) "South Central Zone" means all the territory in the following Georgia counties:

Baldwin, Bibb, Bleckley, Burke, Chattahoochee, Columbia, Crawford, Crisp, Dodge, Dooly, Emanuel, Glascock, Hancock, Harris, Houston, Jefferson, Jenkins, Johnson, Jones, Laurens, Macon, Marion, McDuffie, Monroe, Muscogee, Peach, Pulaski, Richmond, Schley, Stewart, Sumter, Talbot, Taylor, Treutlen, Twiggs, Upson, Warren, Washington, Webster, Wilcox, and Wilkinson.

(4) "Southern Zone" means all the territory within the marketing area not specified in paragraph (a) (1), (2), or (3) of this section.

(b) The Class I price for producer milk at a plant located outside the North Central Zone shall be adjusted as follows:

(1) For producer milk at a plant located in the "Northern Zone" the Class I price shall be reduced by 15 cents;

(2) For producer milk at a plant located in the "South Central Zone" the Class I price shall be increased by 10 cents;

(3) For producer milk at a plant located in the "Southern Zone" the Class I price shall be increased by 30 cents;

(4) For producer milk at a plant located in the State of North Carolina the Class I price shall be decreased by 11 cents;

(5) For producer milk at a plant located in the Tennessee Valley marketing area the Class I price shall be decreased by 31 cents;

(6) For producer milk at a plant located outside the marketing area and outside the Tennessee Valley marketing area and south of the southern boundary of the States of Tennessee and North Carolina the Class I price shall be the Class I price applicable at the nearer of the city halls in Augusta, Savannah, Lavonia, Waycross, Albany, Columbus, Atlanta, and Rome, Georgia; and

(7) For producer milk at a plant located ouside the areas specified in paragraphs (b) (1), (2), (3), (4), (5) or (6) of this section the Class I price shall be reduced 20 cents and an additional 2.5 cents for each 10 miles or fraction thereof in excess of 110 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) that such plant is from the city hall in Atlanta, Georgia.

* * * * *

3. In § 1007.61, paragraph (a)(3) is revised to read as follows:

§ 1007.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) * * *

(3) Add an amount equal to the total value of the minus adjustments and subtract an amount equal to the total value of the plus adjustments computed pursuant to § 1007.75;

* * * * *

4. Section 1007.73(a)(2) introductory text is revised to read as follows:

§ 1007.73 Payments to producers and to cooperative associations.

(a) * * *

(2) On or before the 15th day of the following month at not less than the applicable uniform price(s) for the quantities of milk or base milk and excess milk received from such producer during the month adjusted by the butterfat differential computed pursuant to § 1007.74 and by the location adjustment computed pursuant to § 1007.75 subject to the following:

* * * * *

5. In § 1007.75, paragraph (a) is revised to read as follows:

§ 1007.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price and the uniform price for base milk shall be adjusted according to the location of the plant at which the milk is physically received at the rates set forth in § 1007.52(b); and

* * * * *

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

1. In § 1006.52, the table contained in paragraph (a) is revised to read as follows:

§ 1006.52 Plant location adjustments for handlers.

(a) * * *

Location of plant	Rate per cwt.
Outside the State of Florida:	
In excess of 70 but not more than 85 miles.	Subtract 15 cents.
For each additional 10 miles or fraction thereof.	Subtract 2.0 cents.
Inside the State of Florida:	
South of a line forming the southern boundary of the counties of Alachua, Dixie, Gilchrist, Putnam and St. Johns, but outside the defined marketing area of Part 1013.	Add 30 cents.
In the defined marketing area of Part 1013.	Add 60 cents.
The remaining area within the State of Florida.	No adjustment.

* * * * *

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

1. In § 1011.52, paragraph (a) is revised to read as follows:

§ 1011.52 Plant location adjustments for handlers.

(a) For milk received from producers or from a handler described in § 1011.9 (c) or (d) at a plant and which is classified as Class I milk subject to the limitations pursuant to paragraph (b) of this section, the Class I price shall be adjusted as follows:

(1) For such milk which is physically received at a plant located within the State of North Carolina, or a plant located outside the Georgia counties in the marketing area and south of the southern boundary of the States of North Carolina and Tennessee and east of the Mississippi River, the Class I price shall be increased by 20 cents;

(2) No adjustment shall be applicable on such milk which is physically received at a plant located within the

marketing area except the Kentucky portion of the marketing area, or in the State of Virginia;

(3) For such milk which is physically received at a plant located within the Kentucky counties of Bell, Breathitt, Clay, Harlan, Knott, Knox, Laurel, Leslie, Letcher, McCreary, Perry, Pulaski, and Whitley, the Class I price shall be decreased by 32 cents; and

(4) For such milk which is physically received at a plant located more than 90 miles by the shortest hard-surfaced highway distance as determined by the market administrator from the nearest of the city halls of Bristol, Chattanooga, and Knoxville, Tennessee, and outside the areas specified in paragraphs (a) (1), (2), or (3) of this section, the Class I price applicable at the nearer of the city halls in Bristol, Chattanooga, or Knoxville, Tennessee shall be reduced by 2.5 cents for each 10 miles or fraction thereof that such plant is from the nearest of the city halls in Bristol, Chattanooga, and Knoxville, Tennessee.

* * * * *

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

1. In § 1012.52, the table contained in paragraph (a) is revised to read as follows:

§ 1012.52 Plant location adjustments for handlers.

(a) * * *

Location of plant	Rate per cwt.
Outside the State of Florida:	
For each 10 miles or fraction thereof from the city hall in Tampa, Fla.	Subtract 2.0 cents.
Inside the State of Florida:	
In the defined marketing area of Part 1013.	Add 30 cents.
South of a line forming the southern boundary of the counties of Alachua, Dixie, Gilchrist, Putnam and St. Johns, but outside the defined marketing area of Part 1013.	No adjustment.
The remaining area within the State of Florida.	Minus 30 cents.

* * * * *

PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

1. In § 1013.52, the table contained in paragraph (a) is revised to read as follows:

§ 1013.52 Plant location adjustments for handlers.

(a) * * *

Location of plant	Rate per cwt.
Outside the State of Florida:	
For each 10 miles or fraction thereof from the U.S. Post Office in West Palm Beach, Fla.	Subtract 2.0 cents.
Inside the State of Florida:	
South of a line forming the southern boundary of the counties of Alachua, Dixie, Gilchrist, Putnam and St. Johns, but outside the defined marketing area of this order.	Subtract 30 cents.
The remaining area within the State of Florida.	Subtract 60 cents.

* * * * *

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

1. In § 1046.52, paragraph (a) is revised to read as follows:

§ 1046.52 Plant location adjustments for handlers.

(a) For milk received from producers or from a handler described in § 1046.9(c) at a plant and which is classified as Class I milk subject to the limitations pursuant to paragraph (b) of this section, the Class I price shall be adjusted as follows:

(1) For such milk that is physically received at plants located in the Kentucky counties of Bell, Breathitt, Caldwell, Christian, Clay, Harlan, Hopkins, Knott, Knox, Laurel, Leslie, Letcher, Logan, Lyon, McCreary, Muhlenberg, Perry, Pulaski, Todd, Trigg and Whitley, the Class I price shall be increased by a location adjustment of 15 cents;

(2) For such milk that is physically received at plants located in the Kentucky counties of Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Livingston, Marshall and McCracken and the Missouri counties of Mississippi, New Madrid, Pemiscot and Scott, the Class I price shall be increased by a location adjustment of 28 cents;

(3) For such milk that is physically received at plants located east of the Mississippi River and south of the northern boundary of Tennessee or the northern boundary of North Carolina, the Class I price shall be increased by a location adjustment of 41 cents;

(4) For such milk that is physically received at plants located in the marketing area or the state of Kentucky and outside the areas specified in paragraphs (a)(1), (2), or (3) of this section, no location adjustment shall apply; and

(5) For such milk that is physically received at plants located outside the areas specified in paragraphs (a)(1), (2), (3), or (4) of this section, and 85 miles or more from the City Halls in Louisville and Lexington, Kentucky, and Evansville, Indiana, by the shortest hard-surfaced highway distance as determined by the market administrator, the Class I price shall be reduced by a location adjustment of 2.5 cents for each 10 miles or fraction thereof that such plant is from the City Hall in Louisville, Lexington, or Evansville, whichever is nearest.

* * * * *

PART 1093—MILK IN THE ALABAMA-WEST FLORIDA MARKETING AREA

1. In § 1093.52, the table contained in paragraph (a)(1) is revised to read as follows:

§ 1093.52 Plant location adjustments to handlers.

(a) * * *

(1) * * *

Zone	Adjustment per hundredweight
Zone 1	Minus 23 cents.
Zone 2	No adjustment.
Zone 3	Plus 27 cents.
Zone 4	Plus 57 cents.
Zone 4a	Plus 30 cents.

* * * * *

§ 1093.52 [Amended]

2. In § 1093.52(a)(2), the provision "20" is revised to read "31".

3. In § 1093.52(a)(3), the provision "45" is revised to read "56".

4. In § 1093.52(a)(4), the provision "20 cents. Such minus adjustment shall be increased 1.5" is revised to read "23 cents. Such minus adjustment shall be increased 2.5".

5. In § 1093.52(a)(6), the provision "55" is revised to read "50".

PART 1094—MILK IN THE NEW ORLEANS-MISSISSIPPI MARKETING AREA

1. In § 1094.2, Zone 2A, ZONE 3, ZONE 3A, and ZONE 4 are revised to read as follows:

§ 1094.2 New Orleans-Mississippi marketing area.

* * * * *

Zone 2A

Mississippi Counties

Amite, Covington, Forrest, Franklin, Greene, Jefferson Davis, Jones, Lamar, Lawrence, Lincoln, Marion, Perry, Pike, Walthal, Wayne, and Wilkinson.

Zone 3

Mississippi Counties

Adams, Claiborne, Clarke, Copiah, Hinds, Issaquena, Jasper, Jefferson, Kemper, Lauderdale, Leake, Madison, Neshoba, Newton, Rankin, Scott, Sharkey, Simpson, Smith, Warren, and Yazoo.

Zone 3A

Mississippi Counties

Attala, Holmes, Humphreys, Noxubee, Washington, and Winston.

Zone 4

Mississippi Counties

Bolivar, Carroll, Choctaw, Leflore, Lowndes, Montgomery, Oktibbeha, Sunflower, and Webster.

2. In § 1094.52(a)(1), the table is revised to read as follows:

§ 1094.52 Plant location adjustments for handlers.

(a) * * *

(1) * * *

Zone	Adjustment per cwt.
Zone 1	No adjustment.
Zone 2	Minus 20 cents.
Zone 2A	Minus 40 cents.
Zone 3	Minus 50 cents.
Zone 3A	Minus 65 cents.
Zone 4	Minus 75 cents.
Zone 5	Minus 80 cents.
Zone 6	Minus 95 cents.

§ 1094.52 [Amended]

3. In § 1094.52(a)(2)(i), the provision "No adjustment" is revised to read "Minus 7 cents";

4. In § 1094.52(a)(2)(ii), the provision "19" is revised to read "30";

5. In § 1094.52(a)(2)(iii), the provision "38" is revised to read "57";

6. In § 1094.52(a)(3), the provision "75" is revised to read "95".

7. In § 1094.52(a)(5), the provision "1.5" is revised to read "2.5".

PART 1096—MILK IN THE GREATER LOUISIANA MARKETING AREA

1. In § 1096.52, paragraph (a) is revised to read as follows:

§ 1096.52 Plant location adjustments to handlers.

(a) For milk received at a plant from producers or a handler described in § 1096.9(c) and which is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies, the price computed pursuant to § 1096.50(a) shall be adjusted by an amount determined pursuant to paragraphs (a)(1) through (5) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in § 1096.2, the adjustment shall be as follows:

	Adjustment per cwt.
Zone I	No adjustment.
Zone II	Plus 27 cents.
Zone III	Plus 50 cents.

(2) For a plant located in any of the following Louisiana parishes, the adjustment shall be as follows:

(i) Plus 57 cents.

Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, Terrebonne.

(ii) Plus 37 cents.

St. Tammany, Tangipahoa, Washington.

(3) For a plant located in any of the following Mississippi counties, the adjustment shall be as follows:

(i) Plus 37 cents.

George, Hancock, Harrison, Jackson, Pearl River, Stone.

(ii) Plus 17 cents.

Amite, Covington, Forrest, Franklin, Greene, Jefferson Davis, Jones, Lamar, Lawrence, Lincoln, Marion, Perry, Walthal, Wayne and Wilkinson.

(iii) Plus 7 cents.

Adams, Claiborne, Clarke, Copiah, Hinds, Issaquena, Jasper, Jefferson, Kemper, Lauderdale, Leake, Madison, Neshoba, Newton, Rankin, Scott, Sharkey, Simpson, Smith, Warren and Yazoo.

(4) For a plant located in any of the following Texas counties, the adjustment shall be as follows:

(i) Plus 54 cents.

Chambers, Hardin, Harris, Jefferson, Liberty, Orange.

(ii) Plus 37 cents.

Jasper, Newton, Polk, Tyler.

(iii) No adjustment.

Angelina, Cass, Harrison, Gregg, Marion, Nacogodoches, Panola, Rusk, Sabine, San Augustine, Shelby, Upshur.

(5) For a plant located outside of the areas described in paragraphs (a)(1) through (4) of this section and located more than 50 miles by the shortest hard-surfaced highway distance, as determined by the market administrator, from the nearer of the City Hall in Monroe or Shreveport, Louisiana, the adjustment shall be minus 2.2 cents per hundredweight for each 10 miles or fraction thereof.

PART 1098—MILK IN THE NASHVILLE, TENNESSEE, MARKETING AREA

1. In § 1098.52, paragraph (a) is revised to read as follows:

§ 1098.52 Plant location adjustments for handlers.

(a) For milk received from producers or from a handler described in § 1098.9(c) at a plant and which is classified as Class I milk subject to the limitations pursuant to paragraph (b) of this section, the Class I price shall be adjusted as follows:

(1) For such milk that is physically received at plants located in the Kentucky counties of Bell, Breathitt, Caldwell, Christian, Clay, Harlan, Hopkins, Knott, Knox, Laurel, Leslie, Letcher, Logan, Lyon, McCreary, Muhlenberg, Perry, Pulaski, Todd, Trigg, and Whitley, the Class I price shall be decreased by a location adjustment of 26 cents;

(2) For such milk that is physically received at plants located in the Kentucky counties of Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Livingstone, Marshall and McCracken and the Missouri counties of Mississippi, New Madrid, Pemiscot and Scot, the Class I price shall be decreased by a location adjustment of 13 cents;

(3) For such milk that is physically received at plants located outside the areas specified in paragraphs (1) or (2) of this section and north of the northern boundary of Tennessee or the northern boundary of North Carolina and more than 50 miles from the State Capitol in Nashville by the shortest hard-surfaced highway distance as determined by the market administrator, the Class I price shall be reduced by 17.5 cents plus 2.5 cents for each 10 miles or fraction thereof that such plant is more than 70 miles from the State Capitol; and

(4) For such milk that is physically received at plants located east of the Mississippi River and south of the northern boundary of Tennessee or the northern boundary of North Carolina, no adjustment shall be made under this paragraph.

* * * * *

PART 1099—MILK IN THE PADUCAH, KENTUCKY, MARKETING AREA

1. In § 1099.52, paragraph (a) is revised to read as follows:

§ 1099.52 Plant location adjustments for handlers.

(a) For milk received from producers at a plant located outside the State of Kentucky and north of an east-west line running through the southern boundary of the state of Kentucky and more than 40 miles by shortest highway distance as measured by the market administrator, from the nearest County Courthouse in any of the counties included in the marketing area and disposed of as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1099.50(a) shall be reduced by 12.5

cents, plus 2.5 cents for each 10 miles or fraction thereof that such distance exceeds 50 miles.

* * * * *

Effective date: April 1, 1987.

Signed at Washington, DC, on: February 11, 1987.

Karen K. Darling,

Deputy Assistant Secretary, Marketing & Inspection Services.

[FR Doc. 87-3369 Filed 2-18-87; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-04-AD; Amdt. 39-5558]

Airworthiness Directives; Piper Model PA-46-310P Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Piper Model PA-46-310P airplanes, which requires the installation of an Alternate Air Valve Modification Kit, if not already installed, to prevent a partially open alternate air door and repositioning of the control linkage on those kits already installed to prevent the linkage from going over-center and binding. There have been reports of partially open alternate air doors when the alternate air control (located inside the cockpit) is positioned in the "closed" or "primary air" position. Two reports indicate total engine power loss due to the inability to select alternate air when the primary air filter is clogged with ice. The installation of the modification kit will prevent the partial opening of the alternate air door, and the repositioning to the control linkage on those kits already installed will prevent binding and allow proper selection of alternate air, thus precluding possible total engine power loss.

DATES: Effective date: February 24, 1987.

Compliance: Required within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

ADDRESSES: Piper Service Letter 985 dated April 18, 1986, and Piper Service Bulletin No. 852, dated November 14, 1986, applicable to this AD may be obtained from Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960. This information may be examined in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Goodall, Aerospace Engineer, Propulsion Branch, ACE-140A, Atlanta Aircraft Certification Office, FAA, 1669 Phoenix Parkway, Suite 210, Atlanta, GA, 30349; Telephone (404) 991-3810.

SUPPLEMENTARY INFORMATION: Piper Service Letter 985 dated April 18, 1986, informed owners/operators of Piper Model PA-46-310P airplanes that there had been reports indicating partially open alternate air doors when the alternate air control (located inside the cockpit) is positioned in the "closed" or "primary air" position. This can result in premature turbocharger compressor impeller wear due to the possible injection of unfiltered contaminated air. This service letter further announced the availablility of an Alternate Air Valve Modification Kit which would provide a positive closure of the valve within the intake assemby. However, since the installation of those kits which were offered to the field by Piper Service Letter 985 and incorporated into production at the same time, there have been two (2) reports of total engine power loss attributed to the inability to select alternate air when the primary air filter is blocked by ice. Engineering tests and analysis indicate this subsequent condition is caused by the positioning of the alternate air door linkage 0.12 inch over-center. It has been determined that repositioning the linkage to 0.12 inch before center corrects the condition so that the door can be actuated even with the filter clogged with ice. Piper Service Bulletin 852, dated November 14, 1986, requires the repositioning of the control linkage on those airplanes that already have the alternate air intake assembly modification installed. The installation instructions provided in the kit listed in Piper Service Letter 985 have been corrected to show the proper positioning of the control linkage.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, this AD is being issued requiring the installation of the Alternate Air Valve Modification Kit on certain Piper PA-46-310P airplanes, if not already installed, and repositioning of the control linkage in accordance with instructions contained within the AD on those control linkages already installed, unless already accomplished in accordance with Piper Service Bulletin 852. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notices and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption **"ADDRESSES"** at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Piper: Applies to Model PA-46-310P (Serial Numbers 46-8408001 through 46-8608067, 4608001 through 4608018, 4608021, 4608023 and 4608025) airplanes certificated in any category.

Compliance: Required within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent engine power loss, accomplish the following:

(a) Remove the top and the lower left-hand engine cowl.

(b) Determine whether or not the alternate air valve linkage shown in Figure 1. has been installed on the left side of the engine air box.

(1) If the alternate air valve linkage shown in Figure 1. is not installed, install the Alternate Air Valve Modification Kit offered in Piper Service Letter 985 dated April 18, 1986, in accordance with the instructions contained within the kit, and verify proper operation in accordance with the instructions in paragraphs (b)(2)(i) through (b)(2)(vii) below.

(2) If the alternate air valve linkage shown in Figure 1. is installed, accomplish the following unless already accomplished in accordance with Piper Service Bulletin 852 dated November 14, 1986:

(i) Position the alternate air control (located inside the cockpit) approximately mid-way between the primary and the alternate position.

(ii) Refer to Figure 1. and bend the stop tab so that the linkage is stopped 0.12 inch +0.060-0.000 inch before center. This dimension is determined by measuring the perpendicular distance between a line through the centers of the cable lever and the valve lever hinge bolts and the center point of the center hinge bolt.

(iii) Position the alternate air control (located inside the cockpit) in the primary (up position). Insure that the control is in the gate that prevents it from springing downward.

(iv) Adjust the cable housing in the cable clamp so that the cable pushes the linkage against the stop tab.

(v) Resecure the cable clamp as necessary.

(vi) Operate the alternate air control (located inside the cockpit) between the primary and the alternate air positions.

(vii) Check for normal operation and that the linkage does not go over-center when the alternate air control (located inside the cockpit) is in the "primary position."

(c) Reinstall the lower left-hand and the top engine cowl.

(d) Aircraft may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An equivalent means of compliance with the requirements of this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 30960; or may examine the document(s) at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on February 24, 1987.

Issued in Kansas City, Missouri, on February 9, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

BILLING CODE 4910-13-M

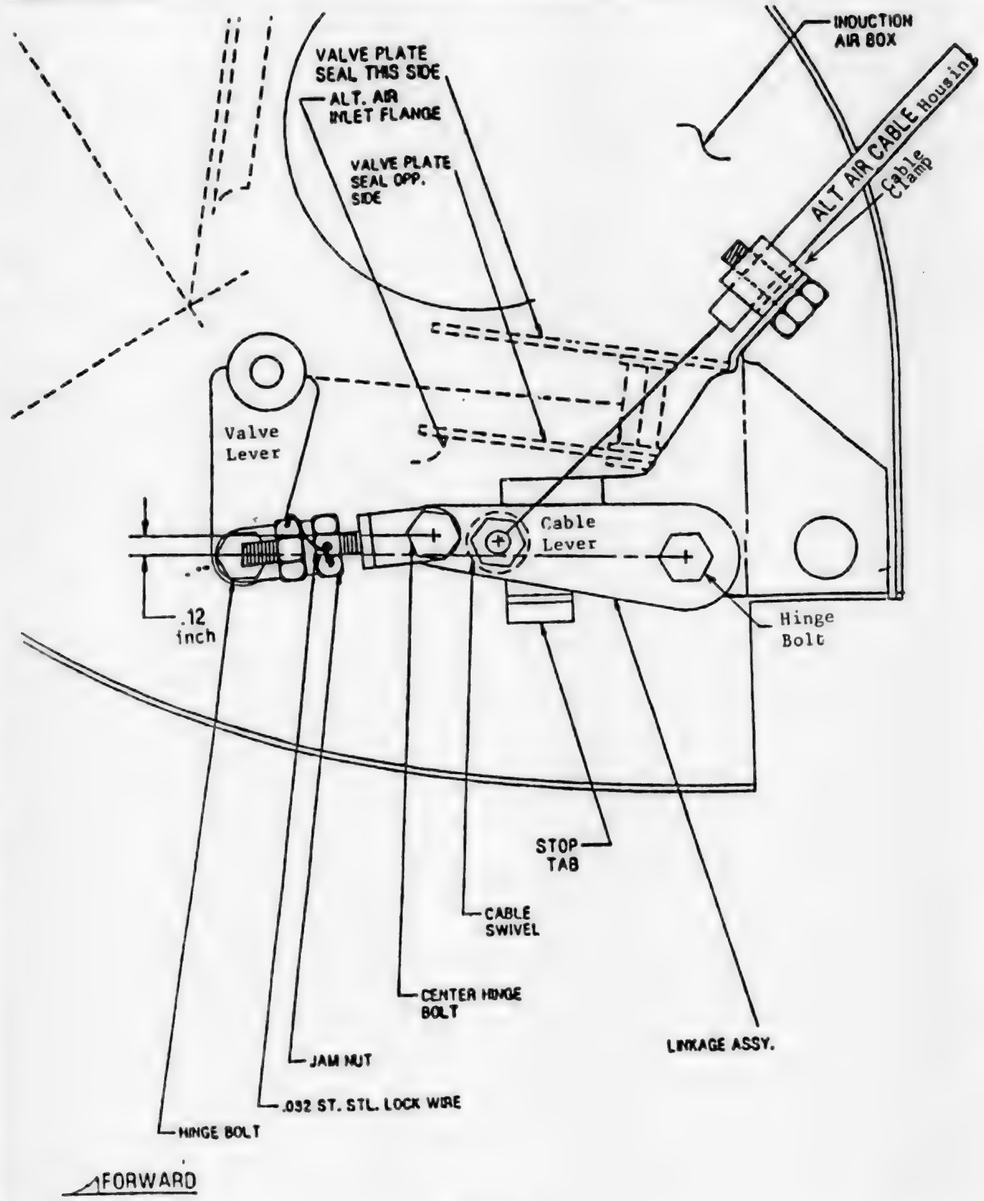


Figure 1.

[FR Doc. 87-3381 Filed 2-18-87; 8:45 am]
BILLING CODE 4910-13-C

14 CFR Parts 71 and 73

[Airspace Docket No. 86-AGL-25]

Relocation and Subdivison of Restricted Area R-5503 Wilmington, OH, Into R-5503A and R-5503B

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action relocates Restricted Area R-5503 Wilmington, OH, approximately 10 to 15 nautical miles to the east; and raises the floor of the restricted airspace from 4,000 feet above mean sea level (MSL) to 4,500 feet MSL. The relocated area is designated R-5503A and extends from 4,500 feet MSL to Flight Level (FL) 600. An additional area, R-5503B extending from FL 240 to FL 600, is established to the west of R-5503A. In addition, the action adjusts the Continental Control Area to reflect these changes. This action provides urgently needed airspace along that segment of Federal Airway V-5 between Cincinnati and Columbus, OH. A major expansion of flight operations by Delta Air Lines and Comair, Inc. at Greater Cincinnati Airport has generated a substantial increase in air traffic along this already crowded segment of V-5. The additional airspace is essential to the safe handling of this increased traffic flow.

EFFECTIVE DATE: 0901 UTC, April 9, 1987.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9246.

SUPPLEMENTARY INFORMATION:

History

On November 24, 1986, the FAA proposed to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to amend the altitudes, relocate and subdivide Restricted Area R-5503 Wilmington, OH, and to amend the Continental Control Area (51 FR 42256). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Comments were received from 20 interested parties including: Aircraft Owners and Pilots Association (AOPA), CAS Aviation, Inc., Ross County Court of Common Pleas, Phillips and Street Law Offices, Commissioners of Ross County, Ross County Airport Advisory Board, Ohio State University, Brookville Air-Park, T.R.M. Aviation, Inc., Ross County Community Improvement Corp., The Budd Co., City of Chillicothe, OH, Chillicothe Packaging Corp., Ohio Department of Transportation, and Messrs. John Hartmus II, Mike Hoffner, Richard L. Smith, and Roderick M. Stewart. All but one commenter objected to the proposed action.

Discussion of Comments

Several commenters offered alternatives to the eastward relocation of the restricted area. It was suggested that, in lieu of moving the boundary of R-5503 to the east, the southern boundary of the area should be moved south to the Ohio River.

The FAA considered relocating R-5503 to the south. This option was rejected, however, based on a survey comparing en route traffic along airways V-128 to the south of the area and V-493 to the east. The survey showed a daily average of 74 flights along V-128 and 12 flights along V-493. The eastward relocation was determined to have the least en route impact.

Commenters also suggested raising the floor of the restricted area to 6,000 feet MSL to improve traffic flow in the area, and that the northeast corner of R-5503 be deleted so as to omit the Ross County Airport from the area underlying R-5503. While the floor of the relocated restricted area is being raised from 4,000 feet MSL to 4,500 feet MSL, any further reduction in the size or altitude structure of R-5503 would place severe operational constraints on the military's use of the airspace. The military indicated that the present size of the restricted area is the minimum needed to conduct the activities for which the area was designated. Therefore, it was determined to be unfeasible to further reduce the size of the area due to the altitude and lateral distance requirements of the user.

The majority of the comments objecting to this action identified three main area of concern: en route effects, terminal effects and economic impact. These areas are discussed below:

En Route Effects

Issues: In conjunction with their comments pertaining to the action, several parties voiced objections to a related, but separate action (86-AGL-20), which proposed a minor realignment of Federal Airway V-493. The commenters stated that an increased distance and longer flight times would result along that segment of V-493 between the York, KY, VORTAC and the Appleton OH, VORTAC.

Discussion: The current distance between the two facilities is 92 nautical miles. The new distance as a result of realignment utilizing the York 032° radial (magnetic) and the Appleton 185° radial (magnetic) would be 94.42 nautical miles, as a distance of 2.42 miles. This change was not considered to be significant such as to preclude realignment of the airway segment.

Terminal Effects

Issues: Several commenters expressed concern that this action would adversely affect the Ross County, Pike County and Pickaway County Memorial Airports. It was stated that the action would interfere with airport traffic patterns; place undue restrictions upon and cause delays for corporate and general aviation aircraft in the area; cutoff all instrument flight rules (IFR) traffic and high altitude jet use of Ross County and Pickaway County Memorial Airports resulting in an end to commercial use of these airports. Further, several commenters stated that the relocation would create a safety hazard for air traffic in the area and indicated that military aircraft are violating the airspace at Ross County and Pickaway County Memorial Airports.

Discussion: The FAA does not believe that relocation of R-5503 will significantly affect IFR or VFR use of these airports. Statistics on actual instrument approaches for Fiscal Year 1985 (the latest data available) showed 36 IFR approaches at Ross County Airport and 57 IFR approaches at Pickaway County Memorial Airport. (Pike County Airport does not have a standard instrument approach procedure.) Indianapolis Air Route Traffic Control Center (ARTCC) has examined the traffic structure in relation to these airports and has determined that there will be no problem in handling present and future IFR traffic loads. No changes will be required in any published IFR procedures serving these airports as a result of the R-5503 relocation. The floor of the relocated area is 4,500 feet MSL which is well above the elevations of Ross County (elevation 725 feet MSL), Pickaway County Memorial (evaluation 685 feet MSL) and Pike County (elevation 660 feet MSL) Airports. By applying a recommended turbo jet traffic pattern altitude of 1,500 feet above ground level at Ross County, the highest of the three airports, the resulting traffic pattern altitude is 2,225 feet MSL which is well below the floor of the relocated area. Traffic patterns and ingress/egress for both IFR and VFR aircraft operations will not be adversely affected at any of

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the identified airports. Furthermore, Indianapolis ARTCC does not anticipate any excessive delays inherent to this action. The FAA believes that sufficient airspace exists to accommodate safe operations. The FAA is not aware of any specific instances of military aircraft violating airspace at any of these airports. The FAA believes that the 4,500-foot MSL floor of the restricted area will eliminate any inadvertent violation of the civil airport traffic patterns by military aircraft.

Economic Impact

Issues: A majority of the commenters responded that this action would have a significant economic impact on the region served by Ross County, Pickaway County Memorial and Pike County Airports. The following concerns were expressed: These airports are essential for the future growth of the region; this action will hamper access to the airports driving away current and potential future users; existing airport development plans will be reduced or curtailed; curbs on airport use and development will impose financial hardships on the region by stifling industrial and economic growth in the area.

Discussion: These economic concerns are based on the belief that relocating R–5503 will limit use of the three airports to an extent that will drive away corporate and other users. The FAA does not anticipate any significant effects upon or change in terminal operations at these airports. Therefore, the FAA does not agree that any of the potential impacts addressed in the comments will be realized. The FAA is committed to guaranteeing ingress/egress for these airports, thus the viability and utility of these facilities will be preserved.

Two final concerns were received on this action. First, a commenter was concerned that the Brush Creek Military Operations Area (MOA) would also be moved to the east causing a substantial impact on airport operations. The Brush Creek MOA is in fact not being moved or otherwise modified in any way. It will remain in the present location well clear of all three airports.

Finally, a commenter disputed the statement in the Notice of Proposed Rulemaking that this action does not constitute a "major rule" under Executive Order 12291, or a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034). Because there will be no significant impact on the operation and use of the Ross County, Pickaway County Memorial, and Pike County Airports, the FAA believes that the economic effects of this action will be minimal and certainly well below the criteria for determination as either a "major rule" or "significant rule." Except for editorial changes, these amendments are the same as those proposed in the notice. Sections 71.151 and 73.55 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The Rule

These amendments to Parts 71 and 73 of the Federal Aviation Regulations relocate, subdivide and amend the floor of Restricted Area R–5503 and alter the Continental Control Area, accordingly. These actions enhance safety by providing additional airspace essential to relieving the highly congested air traffic flow along Federal Airway V–5 between Cincinnati and Columbus, OH.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). For the reasons discussed above under "ECONOMIC IMPACT" the regulation does not warrant preparation of a further regulatory evaluation as the anticipated impact is so minimal. For the same reasons, and because this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental control area and restricted areas.

Adoption of the Amendments

PARTS 71 AND 73—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) are amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.151 is amended as follows:

R–5503 Wilmington, OH [Remove]
R–5503A Wilmington, OH [New]
R–5503B Wilmington, OH [New]

3. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

4. Section 73.55 is amended as follows:

R–5503 Wilmington, OH [Remove].
R–5503A Wilmington, OH [New].
Boundaries. Beginning at lat. 39°30'00" N., long. 82°55'45" W.; to lat. 39°23'00" N., long. 82°47'30" W.; to lat. 39°18'45" N., long. 82°48'00" W.; to lat. 38°52'40" N., long. 82°54'00" W.; to lat. 38°49'00" N., long. 83°02'00" W.; to lat. 38°54'40" N., long. 83°54'45" W.; to lat. 39°11'05" N., long. 83°54'45" W.; to lat. 39°30'00" N., long. 83°19'20" W.; to the point of beginning.
Designated altitudes. 4,500 feet MSL to FL 600.
Time of designation. 0809–2200 hours, local time, Monday–Saturday; other times by NOTAM.
Controlling agency. FAA, Indianapolis ARTCC.
Using agency. U.S. Air Force, 4950 Test Wing/DO, Wright-Patterson AFB, OH.
R–5503B Wilmington, OH [New].
Boundaries. Beginning at lat. 39°30'00" N., long. 83°19'20" W.; to lat. 39°11'05" N., long. 83°54'45" W.; to lat. 38°54'40" N., long. 83°54'45" W.; to lat. 38°59'00" N., long. 84°05'00" W.; to lat. 39°16'00" N., long. 84°05'00" W.; to lat. 39°26'00" N., long. 83°48'00" W.; to lat. 39°30'00" N., long. 83°39'00" W.; to the point of beginning.
Designated altitudes. FL 240 to FL 600.
Time of designation. By NOTAM.
Controlling agency. FAA, Indianapolis ARTCC.
Using agency. U.S. Air Force, 4950 Test Wing/DO, Wright-Patterson AFB, OH.

Issued in Washington, DC, on February 9, 1987.

Harold H. Downey,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87–3386 Filed 2–18–87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 86–AWP–1]

Realignment of Jet Route J–92, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule

SUMMARY: This amendment realigns Jet Route J–92 from Tucson, AZ, to the U.S./Mexican Border. This realignment provides more efficient use of airspace by providing a direct route between the Tucson, AZ, United States and Hermosillo, Mexico, very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) facilities.

EFFECTIVE DATE: 0901 UTC, April 9, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9254.

SUPPLEMENTARY INFORMATION:

History

On April 16, 1986, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to realign Jet Route J–92 between Tucson, AZ, and Hermosillo, Mexico (51 FR 12871). The realignment provides more efficient use of airspace by providing a direct route between those areas. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations realigns Jet Route J–92 from Tucson, AZ, to the U.S./Mexican Border. This realignment provides more efficient use of airspace by providing a direct route between the Tucson, AZ, United States and Hermosillo, Mexico, VORTAC facilities.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

PART 75—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as amended (51 FR 9 and 6103) is further amended, as follows:

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 75.100 is amended as follows:

J–92 [Amended]
By removing "179°" and substituting "182°"

Issued in Washington, DC, on February 9, 1987.

Harold H. Downey,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87–3384 Filed 2–18–87; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C–3206]

Solar Age Industries, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, an Albuquerque, N.M. manufacturer and seller of solar energy heaters from misrepresenting the efficacy and performance of its solar space heaters or any other kind of solar energy equipment, unless it can substantiate its claims. Additionally, respondent is prohibited from using the phrase "up to" in energy-related claims, unless the upper limit of potential savings indicated in the claim can be achieved by an appreciable number of consumers.

DATE: Complaint and Order issued Jan. 28, 1987*.

FOR FURTHER INFORMATION CONTACT: FTC/A–4002, Michael Dershowitz, Washington, DC 20580. (202) 326–3158.

SUPPLEMENTARY INFORMATION: On Friday, Nov. 7, 1986, there was published in the **Federal Register**, 51 FR 40443, a proposed consent agreement with analysis In the Matter of Solar Age Industries, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: Section 13.10 Advertising falsely or misleadingly; § 13.170 Qualities or properties of product or service; § 13.170–43 Heating; § 13.190 Results; § 13.205 Scientific or other relevant facts. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–20 Disclosures; § 13.533–45 Maintain records; § 13.533–45(a) Advertising substantiation. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1710 Qualities or properties; § 13.1730 Results; § 13.1740 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Solar space heaters, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 87–3425 Filed 2–18–87; 8:45 am]

BILLING CODE 6750-01-M

*Copies of the Complaint and the Decision and Order are available at the Commission's Public Reference Branch, H–130, 6th St. & Pa. Ave., NW., Washington, DC 20580.

CONSUMER PRODUCT SAFETY COMMISSON

16 CFR Ch. II

Rule Review Under Regulatory Flexibility Act

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of review of rules and availability of report.

SUMMARY: The Commission has completed its review of 17 rules that were issued under the Consumer Product Safety Act and were in existence on January 1, 1981. The purpose of this review was to determine whether rules issued before enactment of the Regulatory Flexibility Act, which have a significant economic impact on a substantial number of small businesses,

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should be continued without change, amended, or revoked.

After consideration of the rules, comments about them from the public, economic and other factors affecting firms subject to the rules, and other relevant information, the Commission has determined (1) that none of the rules reviewed has a significant economic impact on a substantial number of small businesses and (2) that no further action with respect to any of these rules is warranted under the Regulatory Flexibility Act. A report on this rule review, entitled "Regulatory Flexibility Act Review, Consumer Product Safety Act," is available on request.

ADDRESS: Requests for copies of the report should be addressed to Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Warren J. Prunella, Director, Division of Program Analysis, Directorate for Economic Analysis, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492–6962.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*) became effective on January 1, 1981, and generally requires Federal agencies to evaluate the economic impact of their rules on small entities, including small businesses. Under the RFA, the Commission must review all rules in existence on January 1, 1981 which have or will have a significant economic impact on a substantial number of small businesses. The purpose of this review is to determine whether the rules under consideration should be continued without change, amended, or revoked, consistent with the purposes of the statutes which they implement, to minimize any significant economic impact they may have on small businesses. The RFA specifies consideration of the following factors:

(1) The continued need for the rule;

(2) The nature of complaints or comments about the rule received from the public;

(3) The complexity of the rule;

(4) The extent to which the rule overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with state and local governmental rules; and

(5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

In October 1982 the Commission began its review of existing rules by publishing a notice listing the 17 rules issued under the Consumer Product Safety Act which were in existence on January 1, 1981 and which might have an economic impact on small businesses. 47 FR 46861 (Oct. 21, 1982). The rules listed in that notice were:

16 CFR part number	Title
1109	General Statements of Policy or Interpretation.
1019	Procedures for Export of Noncomplying Products.
1115	Substantial Product Hazard Reports.
1201	Safety Standards for Architectural Glazing Materials.
1202	Safety Standards for Matchbooks.
1205	Safety Standards for Walk-Behind Power Mowers.
1207	Safety Standards for Swimming Pool Slides.
1209	Safety Standards for Cellulose Insulation.
1212	Safety Standards Requiring Oxygen Depletion Safety Shutoff Systems (ODS) for Unvented Gas-Fired Space Heaters.
1301	Ban of Unstable Refuse Bins.
1302	Ban of Extremely Flammable Contact Adhesives.
1303	Ban of Lead-Containing Paint.
1304	Ban of Consumer Patching Compounds Containing Asbestos.
1305	Ban of Artificial Emberizing Materials Containing Asbestos.
1401	Self-Pressurized Consumer Products Containing Chlorofluorocarbons.
1402	CB Base Station Antennas, TV Antennas, and Supporting Structures.
1404	Cellulose Insulation Labeling Requirement.

The notice gave a brief description of each rule, the need for the rule, and its legal basis. It also invited public comment on the rules under consideration.

In response to the October 1982 notice, the Commission received five comments. The National LP–Gas Association urged the Commission to revoke the standard for unvented gas-fired space heaters; the National Solid Waste Management Association recommended continuation of the ban of unstable refuse bins; Falcon Safety Products, Inc. requested revocation of the labeling and reporting requirements in the rule applicable to self-pressurized products containing chlorofluorocarbons; the Toy Manufacturers of America, Inc. suggested modification of the export notification procedures and the ban on lead-containing paints; and the Washington Legal Foundation urged amendment of the export notification procedures.

After considering these comments, the provisions of the rules, an analysis of economic factors and other conditions affecting firms which are subject to the rules under review, and the RFA factors specified above, the Commission has concluded that none of the 17 rules under consideration has had a significant economic impact on a substantial number of small businesses. For this reason, the Commission has determined that no further action with regard to any of these rules is warranted under the RFA.

The Commission has published a report on this RFA rule review. It describes the purpose and requirements of each rule, summarizes the public comments received in response to the October 1982 notice, and addresses issues raised by those comments. With respect to rules which establish requirements for consumer products, the report discusses economic factors and other conditions affecting firms which are subject to the rule, as well as how the RFA factors apply to each rule.

This report, entitled "Regulatory Flexibility Act Review, Consumer Product Safety Act Rules," is available without charge by writing to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

Dated: February 13, 1987.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 87–3509 Filed 2–18–87; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

[T.D. 87–25]

Customs Regulations Amendment Relating To Use of Credit Cards for Payment of Duties, Taxes, and Other Charges

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide for the payment of duties, taxes and other charges, by authorized credit or charge cards, at designated Customs-serviced locations. Payment by this manner is limited to non-commercial entries and is subject to ultimate collection from the credit card company. This amendment is being adopted to provide the public with a convenient method of making payments to Customs and to facilitate the collection of such payments by Customs.

EFFECTIVE DATE: February 19, 1987.

FOR FURTHER INFORMATION CONTACT: Charles Pollaci, Accounting Programs Division (202–566–2494).

SUPPLEMENTARY INFORMATION:

Backgound

On September 29, 1986, Customs and Discover Card Services, Inc., a member of the Sears Financial Network, entered into an agreement whereby Customs authorized the use of the Discover Card for payment of duties, taxes, and other charges by travellers arriving at Customs-serviced airports and other designated locations. This agreement was reached after Customs contacted several major credit card companies to offer to contract with them to allow their customers to pay duties, taxes, and other Customs charges by credit card. Customs was unable to reach an agreement with most of these companies, however, because they charge the vendor (Customs) a transaction fee generally in the 5 percent range. Discover Card Services offered to provide the service at no cost to Customs.

The effective date for implementation of the program allowing the use of the Sears Discover Card by arriving travellers was November 1, 1986. A joint press release issued by Customs and Discover Card Services, which appeared in the Tuesday, September 30, 1986, issue of the *Washington Post*, announced the implementation of this program.

Section 24.1, Customs Regulations (19 CFR 24.1), sets forth the procedures for the collection of customs duties, taxes, and other charges, and the acceptable methods of payment of these charges. Currently, there is no provision for the payment of these charges by credit card.

To allow for the use of the Discover Card for payment of customs duties and other charges, § 24.1(a) is being amended. The amendment, however, will allow the use of any credit or charge cards which have been authorized by the Commissioner of Customs for use at designated Customs-serviced locations. At present, only the Discover Card has been authorized. However, it is anticipated that in the future other credit card companies will reach an agreement with Customs to provide this service.

The amendment will require that payments by credit card be limited to non-commercial entries and that the payments be subject to ultimate collection from the credit card company. Persons paying by charge or credit card will remain liable for all charges until paid.

The benefits to Customs to be derived from the amendment include a significant reduction in the operational costs that are incurred by processing cash payments and personal checks; a reduction in the number of uncollectible checks submitted for duty payments; and improved internal controls resulting from a reduction in the handling of cash.

The benefit to the public is the added convenience of using a credit card to pay duties, taxes, and other charges at designated Customs-serviced locations.

To facilitate the implementation of the credit card program at designated locations, Customs Headquarters has issued a directive to its field offices, which sets forth the procedures for processing credit card payments.

The preliminary procedures for determining the validity and acceptability of the credit card include a check of the signature on the card against the signature on the receipt; a check of the expiration date on the card; and verification of the identify of the cardholder from either a passport or another form of identification. Also, for charges exceeding $100, there will be a mandatory account verification whereby Customs will contact the credit card company for direct confirmation of the validity of the card. Other suspect charges may also be directly confirmed, at the discretion of Customs.

Inapplicability of Public Notice and Delayed Effective Date Provisions

Inasmuch as this amendment neither imposes a burden or obligation on the public nor takes away any rights or privileges, pursuant to 5 U.S.C. 553(b)B), notice and public procedure thereon are unnecessary, and pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Executive Order 12291

Because this document will not result in a "major rule" as defined by section 1(b) of E.O. 12291, the regulatory analysis and review prescribed by section 3 of the E.O. is not required.

Regulatory Flexibility Act

This document is not subject to the provisions of the Regulatory Flexibility Act. The Act does not apply to any regulation, such as this, for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 24

Customs duties and inspection, Accounting.

Amendment to the Regulations

Part 24, Customs Regulations (19 CFR Part 24), is amended as set forth below.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for Part 24 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202, (Gen Hdnote 11), 1624, 31 U.S.C. 9701;

Section 24.1 also issued under 19 U.S.C. 197, 198, 1648.

2. Section 24.1 is amended by adding a new paragraph (a)(7), to read as follows:

§ 24.1 Collection of Customs duties, taxes, and other charges.

(a) * * *

(7) Credit or charge cards, which have been authorized by the Commissioner of Customs, may be used for the payment of duties, taxes and/or other charges at designated Customs-serviced locations. Payment by this manner is limited to non-commercial entries and is subject to ultimate collection from the credit card company. Persons paying by charge or credit card will remain liable for all sch charges until paid. Information as to those credit card companies authorized by Customs may be obtained from Customs officers.

* * * * *

William von Raab,

Commissioner of Customs.

Approved: February 3, 1987.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 87–3497–Filed 2–18–87; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74, 81, and 82

[Docket No. 83C–0102]

Correction of Listing of D & C Orange No. 17 for Use In Externally Applied Drugs and Cosmetics

AGENCY: Food and Drug Administration.

ACTION: Final rule; clarification to preamble.

SUMMARY: The Food and Drug Administration (FDA) published the permanent listing of D & C Orange No. 17 as a color additive for use in externally applied drugs and cosmetics in the **Federal Register** of August 7, 1986 (51 FR 28331). FDA concluded, under the intended conditions of use by humans and the trivial carcinogenic risk posed by such use, that this color additive is safe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act and is safe within the meaning of

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that statute. In the Supplementary Information published with that permanent listing explaining FDA's rationale for this conclusion, FDA stated that D & C Orange No. 17 "induces" cancer in laboratory animals when given very high amounts up to the maximum tolerated dose of this substance. This statement reflected FDA's policy, as a matter of the scientific analysis undergirding its regulatory activity as defined by law, that any chemical shown to induce cancer even in only one strain, gender, and species, at one dose in one experiment, is an animal carcinogen. This statement did not represent a conclusion that this substance induces cancer in animals within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act. Rather, FDA concludes that D & C Orange No. 17 does not induce cancer in man or animal within the meaning of the Act and is safe for external use.

EFFECTIVE DATE: February 19, 1987.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION:

I. Introduction

On August 7, 1986, FDA published the permanent listing of D & C Orange No. 17 as a color additive for use in externally applied drugs and cosmetics (51 FR 28331, August 7, 1986). In the preamble to that Final Rule, FDA reviewed a range of scientific studies and arguments presented by several parties. FDA recounted the development of new sensitive analytical methodologies allowing scientists to determine that many substances present in the food supply are carcinogens and to detect known carcinogens in extremely small quantities. Pursuant to its responsibilities under the Federal Food, Drug, and Cosmetic Act to approve food, drug and color additives as safe, FDA is obliged to assure that its regulatory judgment is informed by the most up-to- date scientific methodologies and analytical techniques. Applying such methodologies to the proposed external uses of D & C Orange No. 17, especially quantitative risk assessment, FDA concluded that this substance, for these uses, poses no genuine risk of cancer, and therefore did not induce cancer *within the meaning of section 706(b)(5)(B) of the Act*, the Delaney Clause.

After summarizing the animal toxicity studies for this color additive as part of its explanation of this conclusion, FDA observed that the "data and information regarding the safety of D & C Orange No. 17 support FDA's conclusion that the substance induces cancer when tested in laboratory animals." (51 FR 28341, August 7, 1986). This clarification of the Final Rule is being published to make clear that FDA was not, by this observation, concluding that this additive induces cancer in animals within the meaning of the Delaney Clause. As explained in the permanent listing document (51 FR 28338-41, August 7, 1986), in calculating the risk to man presented by the expected use of D & C Orange No. 17, FDA concluded that absorption of the color additive through the human skin was essentially the same as oral exposure in the rat. By virtue of this essentially one-to-one correspondence in absorption between rodent and man, a conclusion for purposes of the Delaney Clause that a substance at a given level poses a *de minimis* risk to humans implicitly includes the conclusion that a *de minimis* level of risk at a comparable level of exposure is presented to animals. Accordingly, D & C Orange No. 17 can not be said to induce cancer in animals, as well as in man, within the meaning of the Delaney Clause. When a substance causes only a *de minimis* level of risk in animals, it cannot be said to induce cancer in animals within the meaning of the Delaney Clause.

II. The Regulatory Judgment of FDA

As explained in the preamble to the Final Rule (51 FR 28341-45, August 7, 1986), the Delaney Clause, at the very least, gives to the Secretary the same ability to exercise judgment in fulfilling his responsibilities under that statute as other regulatory statutes give to other administrative decision-makers. That is, the Secretary can exercise his expert judgment to conclude that an item has such a *de minimis* impact on public health or welfare as to not trigger the regulatory structures set out by Congress.

In more explicit Delaney Clause terms, this means that FDA can conclude that a particular food or color additive poses no more than a *de minimis* risk of cancer to man or animal and that such an additive is, consequently, safe both in fact and within the meaning of the law. The words "induce cancer in man or animal" as used in the Delaney Clause are terms of art intended to convey a regulatory judgment that is something more than a scientific observation that an additive is carcinogenic in laboratory animals. To limit this judgment to such a simple observation would be to arbitrarily exclude from FDA's consideration developing sophisticated testing and analytical methodologies, leaving FDA with only the most primitive techniques for its use in this important endeavor to protect public health. Certainly the language of the Delaney Clause itself cannot be read to mandate such a counterproductive limit on FDA's discharge of its responsibilities. Moreover, nothing in the legislative history indicates that Congress intended to impose such a scientifically anachronistic meaning on the words of the statute, stopping the technological clock and relegating FDA's expert regulatory judgment to outdated analytical tools.

The need for this clarification stems from the failure of the preamble to the Final Rule to rigorously and unambiguously reserve the expression "to induce cancer" to the meaning conveyed by the statutory term of art. In several places, notably the discussion of the carcinogenic effects of this additive in animals, the preamble says that FDA concluded that this additive "induces" cancer, meaning that it has been observed to cause cancer in test animals when subjected to enormous doses up to the maximum tolerated dose in the laboratory. The use of high doses is, however, the currently accepted method of amplifying exceedingly rare events. Thus, in the laboratory, whether a substance in any way causes cancer may in the first instance be unrelated to the real-world uses of that substance. It is a conclusion reached even if carcinogenic effects are observed "in only one strain, gender, and species, at one dose in one experiment." However, FDA concluded that this additive was safe for external use, that is, did not "induce" cancer within the meaning of the Delaney Clause, by using quantitative risk assessment to inform its judgment concerning the impact of this additive in real or every day use. This judgment was based on "(1) the amount of color additive applied to the skin and the frequency of application, (2) the concentration of carcinogenic agents in the color additive, (3) the potency of the carcinogenic agents, and (4) the fraction of the applied agents that penetrates the skin." (51 FR 28337, August 7, 1986).

The authority of FDA to approve additives having only a *de minimis* risk of harm is not only a function of the law, but of common, and scientific, sense. As described in the preamble to the Final Rule, "[w]ith the advent of sensitive chemical analytical methodologies, scientists have been able to find carcinogens throughout the food supply in extremely small quantities." (51 FR 28343, August 7, 1986). Consequently, even some human nutrients—such as selenium, chromium, and nickel—when isolated and administered to laboratory animals in the enormous quantities represented by the maximum tolerated dose, have been found to be carcinogenic. In short, without interposing an evaluation of genuine risk of causing cancer, a regulatory assumption that any chemical that has a carcinogenic effect of any kind is unsafe could require that a significant portion of the food supply be banned.

III. Effects of D & C Orange No. 17 on Animals

In the preamble to the Final Rule, FDA explained that D & C Orange No. 17, when used externally, poses a risk to human beings of 1 in 19 billion. At comparable levels of exposure in the rat, D & C Orange No. 17 poses the same level of risk. This level of risk is so remote that it cannot even be said to be a genuine risk at all. This conclusion was a result of a quantitative risk assessment based, in large part, on a number of animal toxicity studies involving the ingestion of, or exposure to, the additive in quantities so large that the test animals were severely "challenged" but not killed by the high doses (the maximum tolerated dose) of the substance. Such toxicity studies are used to establish whether a substance in fact has any carcinogenic effects, and, if so, the relative strength of the substance's carcinogenicity. Quantitative risk assessment builds on this determination of carcinogenic potency by evaluating the actual danger posed by the substance in the way a human being or animal would be exposed at actual use levels.

Clearly, though D & C Orange No. 17 is carcinogenic when administered in very high doses up to the maximum tolerated dose in animal toxicity studies, those same studies indicate that this additive is not a highly potent carcinogen. Moreover, when real life use is examined, the increased risk of cancer posed by this substance is so trivial as to be nearly meaningless. Similarly, it cannot be said that D & C Orange No. 17 poses anything more than a *de minimis* risk of cancer to animals. Accordingly, FDA has concluded, and ciarifies the preamble to the amendments of 21 CFR 74.1267, 81.1, 81.27 and 82.1267 published at 51 FR 28346 on August 7, 1986 to explicitly state, that D & C Orange No. 17 does not induce cancer in man or animal within the meaning of the Delaney Clause.

Public Citizen's objections to the permanent listing document of August 7, 1986 are hereby deemed to be applicable to that decision as clarified by this document.

Dated: February 12, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87-3377 Filed 2-18-87; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 74, 81, and 82

[Docket No. 83C-0129]

Correction of Listing of D & C Red No. 19 for Use in Externally Applied Drugs and Cosmetics

AGENCY: Food and Drug Administration.

ACTION: Final rule; clarification to preamble.

SUMMARY: The Food and Drug Administration (FDA) published the permanent listing of D & C Red No. 19 as a color additive for use in externally applied drugs and cosmetics in the **Federal Register** of August 7, 1986 (51 FR 28346). FDA concluded, under the intended conditions of use by humans and the trivial carcinogenic risk posed by such use, that this color additive is safe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act and is safe within the meaning of that statute. In the Supplementary Information published with that permanent listing explaining FDA's rationale for this conclusion, FDA stated that D & C Red No. 19 "induces" cancer in laboratory animals when given very high amounts up to the maximum tolerated dose of this substance. This statement reflected FDA's policy, as a matter of the scientific analysis undergirding its regulatory activity as defined by law, that any chemical shown to induce cancer even in only one strain, gender, and species, at one dose in one experiment, is an animal carcinogen. This statement did not represent a conclusion that this substance induces cancer in animals within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act. Rather, FDA concludes that D & C Red No. 19 does not induce cancer in man or animal within the meaning of the Act and is safe for external use.

EFFECTIVE DATE: February 19, 1987.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Adminstration, 200 C Street, SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION:

I. Introduction

On August 7, 1986, FDA published the permanent listing of D & C Red No. 19 as a color additive for use in externally applied drugs and cosmetics (51 FR 28346, August 7, 1986). In the preamble to that Final Rule, FDA reviewed a range of scientific studies and arguments presented by several parties. FDA recounted the development of new sensitive analytical methodologies allowing scientists to determine that many substances present in the food supply are carcinogens and to detect known carcinogens in extremely small quantities. Pursuant to its responsibilities under the Federal Food, Drug, and Cosmetic Act to approve food, drug and color additives as safe, FDA is obliged to assure that its regulatory judgment is informed by the most up-to-date scientific methodologies and analytical techniques. Applying such methodologies to the proposed external uses of D & C Red No. 19, especially quantitative risk assessment, FDA concluded that this substance, for these uses, poses no genuine risk of cancer, and therefore did not induce cancer *within the meaning of section 706(b)(5)(B) of the Act*, the Delaney Clause.

After summarizing the animal toxicity studies for this color additive as part of its explanation of this conclusion, FDA observed that the "data and information regarding the safety of D & C Red No. 19 support FDA's conclusion that the substance as a whole induces cancer when tested in laboratory animals." (51 FR 28357, August 7, 1986). This clarification is being published to make clear that FDA was not, by this observation, concluding that this additive induces cancer in animals within the meaning of the Delaney Clause. As explained in the permanent listing document (51 FR 28354-57, August 7, 1986), in calculating the risk to man presented by the expected use of D & C Red No. 19, FDA concluded that absorption of the color additive through the human skin was essentially the same as oral exposure in the rat. By virtue of this essentially one-to-one correspondence in absorption between rodent and man, a conclusion for purposes of the Delaney Clause that a substance at a given level poses a *de minimis* risk to humans implicitly includes the conclusion that a *de minimis* level of risk at a comparable level of exposure is presented to animals. Accordingly, D & C Red No. 19 cannot be said to induce cancer in animals, as well as in man, within the

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meaning of the Delaney Clause. When a substance causes only a *de minimis* level of risk in animals, it cannot be said to induce cancer in animals within the meaning of the Delaney Clause.

II. The Regulatory Judgment of FDA

As explained in the preamble to the Final Rule (51 FR 28359–62, August 7, 1986), the Delaney Clause, at the very least, gives to the Secretary the same ability to exercise judgment in fulfilling his responsibilities under that statute as other regulatory statutes give to other administrative decision-makers. That is, the Secretary can exercise his expert judgment to conclude that an item has such a *de minimis* impact on public health or welfare as to not trigger the regulatory strictures set out by Congress.

In more explicit Delaney Clause terms, this means that FDA can conclude that a particular food or color additive poses no more than a *de minimis* risk of cancer to man or animal and that such an additive is, consequently, safe both in fact and within the meaning of the law. The words "induce cancer in man or animal" as used in the Delaney Clause are terms of art intended to convey a regulatory judgment that is something different than a scientific observation that an additive is carcinogenic in laboratory animals. To limit this judgment to such a simple observation would be to arbitrarily exclude from FDA's consideration developing sophisticated testing and analytical methodologies, leaving FDA with only the most primitive techniques for its use in this important endeavor to protect public health. Certainly the language of the Delaney Clause itself cannot be read to mandate such a counterproductive limit on FDA's discharge of its responsibilities. Moreover, nothing in the legislative history indicates that Congress intended to impose such a scientifically anachronistic meaning on the words of the statute, stopping the technological clock and relegating FDA's expert regulatory judgment to outdated analytical tools.

The need for this clarification stems from the failure of the preamble to the Final Rule to rigorously and unambiguously reserve the expression "to induce cancer" to the meaning conveyed by the statutory term of art. In several places, notably the discussion of the carcinogenic effects of this additive in animals, the preamble says that FDA concluded that this additive "induces" cancer, meaning that it has been observed to cause cancer in test animals when subjected to enormous doses up to the maximum tolerated dose in the laboratory. The use of high doses is, however, the currently accepted method of amplifying exceedingly rare events. Thus, in the laboratory, whether a substance in any way causes cancer may in the first instance be unrelated to the real-world uses of that substance. It is a conclusion reached even if carcinogenic effects are observed "in only one strain, gender, and species, at one dose in one experiment." However, FDA concluded that this additive was safe for external use, that is, did not "induce" cancer within the meaning of the Delaney Clause, by using quantitative risk assessment to inform its judgment concerning the impact of this additive in real or everyday use. This judgment was based on "(1) the amount of color additive applied to the skin and the frequency of application, (2) the concentration of carcinogenic agents in the color additive, (3) the potency of the carcinogenic agents, and (4) the fraction of the applied agents that penetrates the skin." (51 FR 28352, August 7, 1986).

The authority of FDA to approve additives having only a *de minimis* risk of harm is not only a function of the law, but of common, and scientific, sense. As described in the preamble to the Final Rule, "[w]ith the advent of sensitive chemical analytical methodologies, scientists have been able to find carcinogens throughout the food supply in extremely small quantities." (51 FR 28360, August 7, 1986).

Consequently, even some human nutrients—such as selenium, chromium, and nickel—when isolated and administered to laboratory animals in the enormous quantities represented by the maximum tolerated dose, have been found to be carcinogenic. In short, without interposing an evaluation of genuine risk of causing cancer, a regulatory assumption that any chemical that has a carcinogenic effect of any kind is unsafe could require that a significant portion of the food supply be banned.

III. Effects of D & C Red No. 19 on Animals

In the preamble to the Final Rule, FDA explained that D & C Red No. 19, when used externally, poses a risk to human beings of 1 in 9 million. At comparable levels of exposure in the rat, D & C Red No. 19 poses the same level of risk. This level of risk is so remote that it cannot even be said to be a genuine risk at all. This conclusion was a result of a quantitative risk assessment based, in large part, on a number of animal toxicity studies involving the ingestion of, or exposure to, the additive in quantities so large that the test animals were severely "challenged" but not killed by the high doses (the maximum tolerated dose) of the substance. Such toxicity studies are used to establish whether a substance in fact has any carcinogenic effects, and, if so, the relative strength of the substance's carcinogenicity. Quantitative risk assessment builds on this determination of carcinogenic potency by evaluating the actual danger posed by the substance in the way a human being or animal would be exposed at actual use levels.

Clearly, though D & C Red No. 19 is carcinogenic when administered in very high doses up to the maximum tolerated dose in animal toxicity studies, those same studies indicate that this additive is not a potent carcinogen. Moreover, when real life use is examined, the increased risk of cancer posed by this substance is so trivial as to be nearly meaningless. Similarly, it cannot be said that D & C Red No. 19 poses anything more than a *de minimis* risk of cancer to animals. Accordingly, FDA has concluded, and clarifies the preamble to the amendments of 21 CFR 74.1267, 74.2267, 81.1, 81.27 and 82.1267 published at 51 FR 28346 on August 7, 1986 to explicitly state, that D & C Red No. 19 does not induce cancer in man or animal within the meaning of the Delaney Clause. Public Citizen's objections to the permanent listing document of August 7, 1986 are hereby deemed to be applicable to that decision as clarified by this document.

Dated: February 12, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87-3378 Filed 2-18-87; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8125]

Income Tax; Foreign Management and Foreign Economic Processes Requirements of a Foreign Sales Corporation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to foreign management and foreign economic processes requirements of a foreign sales corporation (FSC). These final regulations provide guidance to FSCs.

their shareholders, and Internal Revenue Service personnel with respect to qualifications for benefits under Title VIII of the Tax Reform Act of 1984 (Foreign Sales Corporations).

DATES: The regulations generally apply to taxable years beginning after December 31, 1984, and are effective after December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Carol P. Tello of the Office of Associate Chief Counsel (International), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:INTL–45–86). Telephone 202–566–3289, not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1984, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 924, 925, and 927 of the Internal Revenue Code of 1954 (49 FR 48321) by cross-reference to Temporary Income Tax Regulations (26 CFR Part 1) published on the same day (49 FR 48273). The amendments provide rules for determining whether a FSC will be treated as having foreign trading gross receipts through satisfaction of the requirements of section 924. In addition, the amendments provide rules for grouping transactions for purposes of the foreign economic processes tests.

Numerous written comments were received with respect to the proposed regulations. A public hearing was held on May 13, 1985. The significant points raised by the comments and changes made are discussed in the remainder of the preamble. After consideration of all comments regarding the proposed amendments, these amendments are adopted as modified by this Treasury decision.

Discussion of Major Comments and Revised Amendments

Section 1.924(c)–1 Requirement that a FSC be managed outside the United States

Paragraph (b) of § 1.924(c)–1 has been revised to clarify that the board of directors or shareholders may act, in accordance with the local law of the foreign country or possession of the United States in which the FSC was created or organized, by written consent without a meeting and that such action may be taken by the board of directors or shareholders while in the United States without violating the requirements of section 924(c)(1).

Many commentators criticized the linking together of the requirements of sections 924(c)(2) and 924(c)(3) to define the account that is to be regarded as the principal bank account of the FSC as the account from which the disbursements of dividends, legal and accounting fees, and salaries of officers and directors are made. This rule is derived from the legislative history in the Senate Finance Committee Report which is the most complete explanation of the FSC provisions.

Commentators also criticized the rule in paragraph (c)(1) of § 1.924(c)–1 which requires the account that is to be treated as the principal bank account of the FSC to be maintained in an eligible possession or country which meets the exchange of information requirements of section 927(e)(3). The requirement that the principal bank account and the account from which section 924(c)(3) disbursements are made be in a country qualified to host a FSC is necessary to ensure that such an account is in a country from which the Commissioner may obtain information regarding the account. Therefore, this rule is retained in the final regulations.

The proposed regulations did not address the question of whether a FSC may have more than one principal bank account. The final regulations permit a FSC to have more than one principal bank account. Such accounts must be designated on the annual return of the FSC.

Paragraph (d)(1) of § 1.924(c)–1 is revised. The rule requiring that all dividends, legal fees, accounting fees, salaries of officers of the FSC, and salaries or fees paid to members of the board of directors of the FSC that are disbursed during the taxable year be disbursed out of the principal bank account of the FSC is expanded to provide the circumstances under which the occasional inadvertent payment of such amounts out of another bank account will be disregarded. With respect to dividends, if an actual disbursement of dividends is made, such disbursement must be made from the principal bank account. Dividends, however, may be declared by establishing a payable to the Parent company acting as a related supplier. This payable may be netted against amounts owed to the FSC by the Parent company acting as a related supplier.

Many commentators suggested that a rule be provided stating the time by which reimbursements by the FSC must be made to a related person who pays legal or accounting fees, salaries of officers, and salaries or fees of directors, wholly or partially on behalf of the FSC. The final regulations provide that the related person must be reimbursed no later than the last date prescribed for filing the FSC's tax return (including extensions) for the taxable year to which the reimbursement relates.

A safe harbor rule is added which allows a FSC to rely upon a written statement or invoice furnished to it by a related person to determine the amounts paid on its behalf by the related person.

One commentator suggested that a rule be provided for the situation in which a determination is made by the Commissioner that all or a part of the legal or accounting fees, salaries of officers, and salaries or fees of directors of the FSC were paid by the related person without receiving reimbursement. The final regulations provide that the FSC may satisfy the requirements of section 924(c)(3) if the fees and salaries were paid by the related person in good faith, and the FSC reimburses the related person for the fees and salaries within 90 days after the determination.

Section 1.924(d)–1 Requirement that economic processes take place outside the United States.

A suggestion that the final regulations explicitly provide that the FSC is not required to identify itself to the customer as a separate entity in the performance of any of the activities comprising the economic processes is adopted.

A sentence is added to paragraph (c)(1) of § 1.924(d)–1 to provide that once the FSC has participated outside the United States in an activity that constitutes the solicitation, negotiation, or the making of the contract with respect to a transaction, any prior or subsequent activity by the FSC with respect to the transaction that would otherwise constitute the same sales activity will be disregarded for purposes of determining whether the FSC has met the requirements of section 924(d)(1)(A). This rule allows the FSC which has participated outside the United States in an activity that constitutes a sales activity to also participate within the United States in activities that constitute the same sales activity.

A suggestion that the regulations describe the amount of activity necessary to constitute solicitation by mail has been adopted. Accordingly, a sentence is added to paragraph (c)(2) of § 1.924(d)–1 to provide that communication by mail means depositing the communication in a mailbox.

Commentators suggested that the final regulations adopt a mutually exclusive election for solicitation and sales promotion similar to that proposed for solicitation and advertising. Since promotional meetings with a customer

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can constitute both solicitation and sales promotion, this suggestion has been adopted. To insure that the FSC performs distinct and separate activities with respect to solicitation and advertising or sales promotion where the same customer is involved, a sentence is added to paragraph (c)(2) of § 1.924(d)–1 to provide that the same or similar activities cannot be considered to be both solicitation and advertising, or both solicitation and sales promotion, with respect to the same customer.

A sentence is added at the end of paragraphs (c)(2), (c)(3), and (c)(4) of § 1.924(d)–1 to clarify that the sales activities tests may be met with respect to sales to related entities.

A new paragraph (c)(5) is added to § 1.924(d)–1 to clarify the application of the grouping rules to the sales activities since grouping by product or product line is permitted. The proposed rules in paragraph (c)(1) of § 1.924(d)–1 which addressed the grouping of sales transactions by customer and by contract are incorporated into paragraph (c)(5). With respect to the application of the product or product line grouping rules to sales activities for taxable years beginning after February 19, 1987, a quantitative standard based on the amount of gross receipts is adopted by the final regulations. Under this rule, the requirements of section 924(d)(1)(A) are met with respect to all transactions included in the product or product line grouping if the sales activities are performed outside the United States with respect to customers with sales representing at least 20 percent of foreign trading gross receipts included in the same product or product line grouping during the current year or to customers with sales representing 50 percent of the foreign trading gross receipts included in the same product or product line grouping in the prior year. Transitional rules for former DISCs, interest charge-DISCs and affiliated groups which have not had a FSC, DISC or interest charge-DISC as a member in the prior year are provided. For taxable years prior to the adoption of the final regulations, the sales activities tests with respect to product or product line grouping will be satisfied if one sales transaction is performed with respect to any member of the product or product line grouping.

Additionally, rules for contract grouping are revised. For long-term contracts between unrelated parties, the sales activities tests need be satisfied only once during the life of the contract. For requirements contracts and sales between related parties, the sales activities tests must be satisfied annually.

Examples are added in paragraph (c)(6) of § 1.924(d)–1 to illustrate the application of the rules governing the participation of the FSC outside the United States in the sales portion of the transaction.

Many commentators criticized the proposed rule in paragraph (d)(5) of § 1.924(d)–1 which limited the application of the 50-percent foreign direct cost test to instances in which the FSC incurred direct costs that were attributable to the activities described in each of at least three of the five paragraphs of section 924(e). Commentators were concerned that the rule created an artificial need to incur direct costs in a category or categories in order to use the 50-percent foreign direct cost test and was unsupported by the language of the Code or the legislative history. After further consideration, the rule is deleted in the final regulations.

A sentence has been added to paragraph (d)(6) of § 1.924(d)–1 to clarify that in the event that the Commissioner determines that the foreign direct costs attributable to activities described in one or both of the two paragraphs of section 924(e) specified on the FSC's return do not equal or exceed 85 percent of the total direct costs attributable to such activities, the 85-percent foreign direct cost test may, nonetheless, be satisfied by the FSC if the foreign direct costs attributable to each of two activities described in any other paragraphs of section 924(e) equal or exceed 85 percent of the total direct costs attributable to those two activities.

One commentator noted that the laws and regulations which govern foreign military sales do not specifically require that the sellers undertake any activity with respect to those sales within the United States, but only preclude sellers from contracting with foreign governments. Thus, only by implication must these activities take place within the United States. Therefore, the language in the proposed regulations with respect to statutory or regulatory requirements for foreign military sales is eliminated. The final regulations under paragraph (f)(1) of § 1.924(d)–1 provide a new rule which applies to all foreign military sales. Under the rule, the requirements of section 924(d)(1)(A) are deemed to be satisfied. The FSC, however, will nonetheless be required to satisfy either the 50-percent or the 85-percent foreign direct cost test with respect to the activities described in section 924(e).

Section 1.924(e)–1 Activities relating to the disposition of export property.

Advertising and sales promotion

Many commentators expressed concern that the term "customers" in paragraph (a)(1)(i) of proposed § 1.924(e)–1 would exclude from the definition of "advertising" advertising that is directed at parties other than the FSC's customers (or the related supplier's customers in the case of a commission FSC). Thus, advertising under a cooperative advertising arrangement would not be counted. Under these arrangements, exporters selling to distributors for resale agree to absorb all or a portion of either the distributor's cost of advertising directed at its potential foreign customers or the costs of end-market advertising directed at the ultimate foreign users. Many exporters advertise solely through such arrangements. For this reason, the final regulations add a new paragraph (a)(1)(i)(B) to § 1.924(e)–1 to allow end market advertising related to products sold to distributors to qualify as a direct cost if either the total cost of an advertisement is paid by the FSC, either directly or indirectly, or if 20 percent of the advertising costs are paid directly or indirectly by the FSC. No distinction will be made between related and unrelated parties. A definition of a distributor as other than a final consumer or end user is provided.

A suggestion that all direct costs of advertising be considered foreign direct costs of advertising if a specific threshold percentage of the advertising is conveyed outside the United States is adopted with respect to mass communications other than mass mailings. A sentence is added to paragraph (a)(1)(iii) of § 1.924(e)–1 to provide that if the distribution statistics show that 85 percent or more of the readership, radio listeners, or viewership are outside the United States, all direct costs of advertising are considered to be foreign direct costs of advertising.

An additional rule provides that advertising in foreign English editions of U.S. publications is a foreign expense and gives rise only to foreign direct costs. Furthermore, a presumption is made that costs related to U.S. editions of the same publication are not direct costs because they relate to U.S. sales. Costs related to foreign language editions are treated as foreign direct costs.

A new subsection is added which provides guidance with respect to the interrelationship between solicitation and advertising. The general rule

prohibits an activity from qualifying as both advertising and solicitation. An exception, however, for second mailings is provided. If, during one taxable year, two generically different items such as a price list and a description of the product itself are mailed, one mailing may be treated as solicitation and the other mailing may be treated as advertising for purposes of section 924. The exception would not apply to items that are not generically different such as an original price list and an amended price list.

Examples are added in paragraph (a)(1)(v) of § 1.924(e)–1 to illustrate the rules with respect to advertising activities.

Commentators suggested that the term "customer meeting" in paragraph (a)(2)(i) of § 1.924(e)–1 be defined. Some expressed concern that the term could be interpreted to mean that a meeting with a single customer in the United States would constitute domestic sales promotion. The final regulations provide that a customer meeting means a periodic meeting (*e.g.*, quarterly, semi-annual, or annual) in which 10 or more customers or potential customers are reasonably expected to attend. For prior taxable years, however, a customer meeting, at the option of the FSC, may mean any meeting with a customer or potential customer regardless of the frequency of the meetings or the number of customers or potential customers in attendance, thereby, permitting FSCs who had one or more meetings with fewer than 10 customers or potential customers to treat those meetings as customer meetings if it is to their benefit to do so.

The proposed regulations did not address the direct costs of sales promotion in the case of a customer meeting. A sentence is added to paragraph (a)(2)(ii) of § 1.924(e)–1 to provide that such direct costs include the costs of materials printed specifically for the meeting and the costs of travel, food, and lodging for both the direct sales personnel and customers or potential customers attending the meeting.

Examples are added in paragraph (a)(2)(iv) of § 1.924(e)–1 to illustrate the rules for the sales promotion activity.

Processing of customer orders and arranging for delivery of the export property

One commentator noted that while neither the Code nor the regulations limit the use of a FSC to situations in which there is a related supplier, proposed paragraph (b)(1)(i) of § 1.924(e)–1 defined the processing of customer orders only in the context of a related supplier. A sentence is added to the paragraph to address this oversight by providing that if the FSC does not have a related supplier, the processing of customer orders means communication with the customer by any method such as telephone, telegram, or mail to acknowledge receipt of the order and requirements for delivery.

The proposed regulations did not address the direct cost of processing of customer orders. A new paragraph (b)(1)(ii) is added to provide that direct costs of processing of customer orders include salaries of clerical personnel and costs of telephone, telegram, mail, or other communication media (including the costs of operating transmission equipment).

Examples are added in paragraph (b)(1)(iv) of § 1.924(e)–1 to illustrate the principles with respect to the processing of customer orders activity.

Paragraph (b)(2)(i) of § 1.924(e)–1 is modified to make the arranging for delivery activity test easier to satisfy, thus minimizing the potential disruption of established relationships between a related supplier's shipping department and its carrier or freight forwarder. Arranging for delivery includes communication by the FSC with the carrier or freight forwarder and also with the customer. The final regulations, however, provide that the carrier or freight forwarder may already have knowledge of the information communicated. In addition, only one communication with the carrier or freight forwarder and one communication with the customer will be taken into account in determining whether this test has been satisfied. Subsequent or prior communications will not be counted. A FSC, however, will not be able to qualify a product or product line grouping with numerous transactions by simply processing a customer's order and arranging for delivery with respect to one transaction in the grouping. For taxable years beginning after February 19, 1987, a quantitative standard is adopted as set forth in paragraph (b) of § 1.924(e)–1. Thus, a FSC may qualify a grouping of transactions only if it performs the activities of processing of customer orders and arranging for delivery of export property with respect to customers generating at least 20 percent of foreign trading gross receipts of the grouping elected by the FSC under § 1.924(d)–1(e) during the current year.

Examples are added in paragraph (b)(2)(iv) of § 1.924(e)–1 to illustrate the meaning of arranging for delivery.

Transportation

A number of commentators criticized the definition of transportation provided in the proposed regulations because it excluded ocean and sea transportation under such widely used arrangements as C.I.F. (Cost, Insurance, Freight) and C. & F. (Cost and Freight). To reflect the economic realities, the final regulations relax the definition of transportation by providing in paragraph (c)(1) of § 1.924(e)–1 that the FSC or, in the case of a commission FSC, the related supplier is treated as responsible for the property when it has title, bears the risk of loss, or insures the property during shipment. This permits C.I.F. contracts, but not C. & F. contracts, to qualify as transportation.

The rule for international carriers is extended to include freight forwarders if (i) the freight forwarder bears the risk of loss or is an insurer of the goods, and (ii) the property is shipped on a single bill of lading issued to the FSC or its agent as shipper.

Commentators suggested that the regulations provide a rule for buy-sell FSCs similar to the one proposed for commission FSCs in order that a buy-sell FSC and its related supplier can define by agreement the point at which the FSC assumes ownership or responsibility for the property. This suggestion was not adopted because while the legislative history supports the rule with respect to commission FSCs, no similar legislative history exists with respect to buy-sell FSCs.

Examples are added in paragraph (c)(4) of § 1.924(e)–1 to illustrate the rules with respect to the transportation activity.

Determination and Transmittal of a Final Invoice or Statement of Account and Receipt of Payment

A sentence and an example are added to paragraph (d)(1)(i) of § 1.924(e)–1 to clarify that a FSC need only assemble and forward either a final invoice or a statement of account and that the costs of assembling and forwarding the document not chosen for purposes of meeting the direct cost test are disregarded. For taxable years beginning after February 19, 1987, the final regulations provide that if a FSC assembles and forwards from outside the United States either a final invoice or a statement of account at least once during the taxable year to customers with sales representing 50 percent of the current year foreign trading gross receipts within a product or product line grouping or 50 percent of the foreign trading gross receipts of the prior year

within the same product or product line grouping, all domestic costs of sending invoices or statements of account (whichever is selected for purposes of the costs test) are disregarded. If the invoice or statement of account is not sent to customers representing 50 percent of the foreign trading gross receipts derived from current or prior year export sales, all costs related to the assembly and forwarding of invoices or statements of account (whichever is selected for purposes of the costs test) must be included in the determination of the direct cost test. Suggestions to provide a rule stating what information must be reflected on a final invoice or a statement of account are incorporated into the final regulations.

Numerous commentators addressed the need to provide a definition for the term "assembly." Thus, the final regulations provide that assembly means folding the documents, filling envelopes, and addressing envelopes (if window envelopes are not used).

The location of the determination and transmittal of a final invoice or statement of account is clarified in paragraph (d)(1)(iii) of § 1.924(e)–1 to provide that the location of this activity is the place where the final invoice or statement of account is both assembled and forwarded to the customer. Because the proposed rule refers to assembled "or" forwarded, the final regulations retain that rule for taxable years beginning before February 19, 1987.

Examples are added in paragraph (d)(1)(iv) of § 1.924(e)–1 to illustrate the principles of determination and transmittal of a final invoice or statement of account.

Commentators criticized the 5-day rule in proposed paragraph (d)(2)(iii). That rule provided that the FSC is considered to have received payment outside the United States if payment is made by the purchaser directly to the related supplier in the United States, and the related supplier transfers the funds to a bank account of the FSC outside the United States within 5 business days after receipt of good funds by the related supplier's bank. An example showing the operation of this rule in the context of a commission FSC appeared in proposed § 1.925(b)–1. It provided that the commission FSC may satisfy the receipt of payment requirement by receiving the commission from the related supplier in its bank account within 5 business days after the related supplier's bank receives good funds. The proposed regulations adopted the 5-day rule to conform to the language in the legislative history which states that initial payment may be received in the United States provided that the proceeds are transferred immediately to a bank account of the FSC outside the United States.

Commentators stated that the determination of a FSC's commission with respect to proceeds received from export sales is impossible to accomplish in 5 business days after receipt of good funds by the related supplier's bank. In addition, the rule provided by the proposed regulations did not apply to buy-sell FSCs. Finally, in order for the FSC to receive the benefit of the 5-day rule, the related supplier could not receive the payment under contract with or on behalf of the FSC.

To overcome the problems raised, the final regulations increase the number of days from 5 business days to 35 calendar days and extend the rule to situations in which either the FSC or the related supplier (without regard to whether it receives payment on behalf of the FSC) receives proceeds from the export sales in the United States and, within the period beginning with the receipt of payment and ending 35 days after the receipt of good funds, transfers at least 1.83 percent of the gross receipts (the "gross receipts amount") to the foreign bank account of the FSC.

Examples are added in paragraph (d)(2)(iv) of § 1.924(e)–1 to illustrate the rules with respect to the receipt of payment activity.

Assumption of Credit Risk

Paragraph (e) of § 1.924(e)–1, which addresses the assumption of credit risk, is revised. Paragraph (e)(1) of § 1.924(e)–1 is expanded to clarify that the FSC may elect to bear the economic risk of nonpayment with respect to its transactions in a taxable year by incurring costs in any one of five categories of costs. Once a category is elected, costs (or lack of them) in any other category are irrelevant for purposes of section 924(d).

In addition, paragraph (e)(4)(i) is clarified to provide that if the FSC bears the economic risk of nonpayment for a particular year by assuming the risk of a bad debt with respect to a transaction or grouping of transactions, the FSC must incur at least one bad debt with respect to any transaction within the grouping during a consecutive three year period. A rule is provided in the event that no actual loss is incurred in any of the three consecutive years.

For taxable years beginning after February 19, 1987, paragraph (e)(4)(ii) provides new grouping rules for credit risk activities other than assuming the risk of a bad debt. The grouping rules for factoring receivables require that at least 20 percent of the face amount of the receivables attributable to the foreign trading gross receipts of the grouping elected by the FSC under paragraph (e)(1) of § 1.924(d)–1 be factored to qualify all transactions within that grouping. For letters of credit or banker's acceptances, a fee must be incurred with respect to 20 percent of the foreign trading gross receipts attributable to sales in the grouping elected by the FSC to qualify all transactions within the grouping. For obtaining insurance from an unrelated party, 20 percent of face amount of receivables generated by foreign trading gross receipts within the grouping elected by the FSC must be insured to qualify all transactions. Finally, for investigation of credit by a foreign credit agency, 20 percent of customers or potential customers must be investigated to qualify all transactions within the group elected by the FSC. The term potential customer is defined as an unrelated person on whom an investigation is performed, but with whom no export sales contract is executed.

Regulatory Flexibility Act and Executive Order 12291

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities because few small entities will be affected. Accordingly, these final regulations are not subject to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. Chapter 6).

The Commissioner of Internal Revenue has determined that this regulation is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is therefore not required.

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of these regulations is Carol P. Tello of the Office of Associate Chief Counsel (International), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.861–1 through 1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, United States investment abroad.

26 CFR Part 602

Reporting and Recordkeeping Requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 and 26 CFR Part 602 are amended as follows:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Sections 1.924(c)–1, 1.924(d)–1, and 1.924(e)–1, also issued under 26 U.S.C. 924(d).

Par. 2. Sections 1.924(c)–1, 1.924(d)–1, and 924(e)–1 are added in the appropriate places to read as follows:

§ 1.924(c)–1 Requirement that a FSC be managed outside the United States.

(a) *In general.* Section 924(b)(1)(A) provides that a FSC shall be treated as having foreign trading gross receipts for the taxable year only if the management of the FSC during the year takes place outside the United States, as provided in section 924(c). Section 924(c) and this section set forth the management activities that must take place outside the United States in order to satisfy the requirement of section 924(b)(1)(A). Paragraph (b) of this section provides rules for determining whether the requirements of section 924(c)(1) have been met. Section 924(c)(1) requires that all meetings of the board of directors of the FSC during the taxable year and all meetings of the shareholders of the FSC during the taxable year take place outside the United States. Paragraph (c) of this section provides rules for maintaining the FSC's principal bank account outside the United States as provided in section 924(c)(2). Paragraph (d) of this section provides rules for disbursements required by section 924(c)(3) to be made from bank accounts of the FSC maintained outside the United States.

(b) *Meetings of board of directors and meetings of shareholders must be outside the United States.* All meetings of the board of directors of the FSC and all meetings of the shareholders of the FSC that take place during a taxable year must take place outside the United States to meet the requirements of section 924(c)(1). Only meetings that are formally convened as meetings of the board of directors or as shareholder meetings will be taken into account in determining whether those requirements have been met. In addition, all such meetings must comply with the local laws of the foreign country or possession of the United States in which the FSC was created or organized. The local laws determine whether a meeting must be held, when and where it must be held (if it is held at all), who must be present, quorum requirements, use of proxies, and so on. Where the local law permits action by the board of directors or shareholders to be taken by written consent without a meeting, use of such procedure will not constitute a meeting for purposes of section 924(c)(1). Section 924(c)(1) and this section impose no other requirements except the requirement that meetings that are actually held take place outside the United States. If the participants in a meeting are not all physically present in the same location, the location of the meeting is determined by the location of the persons exercising a majority of the voting power (including proxies) participating in the meeting. For example, a FSC has five directors, and is organized in country A. Country A's law requires that a majority of the directors of a corporation must participate in a meeting to constitute a quorum (and, thus, a meeting), but there is no requirement that the meeting be held in country A or that the directors must be physically present to participate. One director is in country A, another director is in country B, and a third director is in the United States.

These three directors convene a meeting by telephone that constitutes a meeting under the law of country A. The meeting occurs outside the United States because the persons exercising a majority of the voting power participating in the meeting are located outside the United States.

(c) *Maintenance of the principal bank account outside the United States*—(1) *In general.* For purposes of section 924(c), the bank account that shall be regarded as the principal bank account of a FSC is the bank account from which the disbursements described in paragraph (d) of this section are made. A FSC may have more than one principal bank account. The bank account that is regarded as the principal bank account must be maintained in a foreign country which meets the requirements of section 927(e)(3), or in any possession of the United States (as defined in section 927(d)(5)), and it must be so maintained at all times during the taxable year. For taxable years beginning on or after February 19, 1987, a principal bank account or accounts must be designated on the annual return of the FSC by providing the bank name(s) and account number(s).

(2) *Maintenance of the account in a bank.* The bank account that is regarded as the principal bank account must be maintained in an institution that is engaged in the conduct of a banking, financing, or similar business, as defined in § 1.954–2(d)(2)(ii) (without regard to whether it is a controlled foreign corporation). The institution may be a U.S. bank, provided that the account is maintained in a branch outside the United States.

(3) *Maintenance of an account outside the United States.* Maintenance of the principal bank account outside the United States means that the account regarded as the principal bank account must be an account maintained on the books of the banking institution at an office outside the United States, but does not require that access to the account may be made only outside the United States. Instructions providing for deposits into or disbursements from the account may originate in the United States without affecting the status of maintenance of the account outside the United States.

(4) *Maintenance of the account at all times during the taxable year.* The term "at all times during the taxable year" generally means for each day of the taxable year. In the case of a newly created or organized corporation, thirty days may elapse between the effective date of the corporation's election to be treated as a FSC and the date a bank account is opened without causing the FSC to fail the requirement that it maintain its principal bank account outside the United States at all times during the taxable year. For example, if a corporation is created or organized prior to January 1, 1985 and makes an election to be treated as a FSC within the first 90 days of 1985, the election is effective as of January 1, 1985. Thus, the FSC must open a bank account within 30 days of January 1, or as of January 31, 1985, to satisfy this requirement. Also, a FSC shall be treated as satisfying this requirement if the account that is regarded as its principal bank account is terminated during the taxable year, provided that (i) such termination is the result of circumstances beyond the FSC's control, and (ii) the FSC establishes a new principal bank account within thirty days after such termination. A FSC may close its principal bank account and replace it with another account that qualifies under this paragraph (c) as a principal

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bank account at any time provided that no lapse of time occurs between the closing of the principal bank account and the opening of the replacement account.

(5) *Other accounts.* The FSC may maintain other bank accounts in addition to its principal bank account. Such other accounts may be located anywhere, without limitation. The mere existence of such other accounts will not cause the FSC to fail to satisfy the requirements of section 924(c).

(d) *Disbursement of dividends, legal and accounting fees, and salaries of officers and directors out of the principal bank account of the FSC*—(1) *In general.* All dividends, legal fees, accounting fees, salaries of officers of the FSC, and salaries or fees paid to members of the board of directors of the FSC that are disbursed during the taxable year must be disbursed out of bank account(s) of the FSC maintained outside the United States. Such an account is treated as the principal bank account of the FSC for purposes of section 924(c). Dividends, however, may be netted against amounts owed to the FSC (*e.g.*, commissions) by a related supplier through book entries. If the FSC regularly disburses its legal or accounting fees, salaries of officers, and salaries or fees of directors out of its principal bank account, the occasional, inadvertent payment by mistake of fact or law of such amounts out of another bank account will not be considered a disbursement by the FSC if, upon determination that such payment was made from another account, reimbursement to such other account is made from the principal bank account of the FSC within a reasonable period from the date of the determination. Disbursement out of the principal bank account of the FSC may be made by transferring funds from the principal bank account to a U.S. account of the FSC provided that (i) the payment of the dividends, salaries or fees to the recipients is made within 12 months of the transfer, (ii) the purpose of the expenditures is designated and, (iii) the payment of the dividends, salaries or fees is actually made out of the same U.S. account that received the disbursement from the principal bank account.

(2) *Reimbursement.* Legal or accounting fees, salaries of officers, and salaries or fees of directors that are paid by a related person wholly or partially on behalf of a FSC must be reimbursed by the FSC. The amounts paid by the related person are not considered disbursed by the FSC until the related person is reimbursed by the FSC. The related person must be reimbursed no later than the last date prescribed for filing the FSC's tax return (including extensions) for the taxable year to which the reimbursement relates. Any reimbursement for amounts paid on behalf of the FSC must be disbursed out of the FSC's principal bank account (and not netted against any obligation owed by the related person to the FSC), as set forth in paragraph (c) of this section. To determine the amounts paid on behalf of the FSC, the FSC may rely upon a written statement or invoice furnished to it by the related person which shows the following:

(i) The actual fees charged for performing the legal or accounting services for the FSC or, if such fees cannot be ascertained by the related person, a good faith estimate thereof, and the actual salaries or fees paid for services as officers and directors of the FSC, and

(ii) The person who performed or provided the services.

(3) *Good Faith Exception.* If, after the FSC has filed its tax return, a determination is made by the Commissioner that all or a part of the legal or accounting fees, salaries of officers, and salaries or fees of directors of the FSC were paid by a related person without receiving reimbursement, the FSC may, nonetheless, satisfy the requirements of section 924(c)(3) if the fees and salaries were paid by the related person in good faith, and the FSC reimburses the related person for the fees and salaries paid within 90 days after the determination. The reimbursement shall be treated as made as of the end of the taxable year of the FSC for which the reimbursement is made.

(4) *Dividends*—(i) *Definition.* For purposes of section 924(c) and this section only, the term "dividends" refers solely to cash dividends (including a dividend paid in a foreign functional currency) actually paid pursuant to a declaration or authorization by the FSC. Accordingly, a "dividend" will not include a constructive dividend that is deemed to be paid (regardless of the source of such constructive dividend) or a distribution of property that is a dividend under section 316 other than a distribution of U.S. dollars or a foreign functional currency.

(ii) *Offset accounting entries.* Payment of dividends by the FSC to its related supplier may be in the form of an accounting entry offsetting an amount payable to the related supplier for the dividend against an existing debt owed to the FSC. The offset accounting entries must be clearly identified in the books of account of both the related supplier and the FSC.

(5) *Legal and accounting fees.* For purposes of this section, legal and accounting fees do not include salaries paid to legal and accounting employees of the FSC (or a related person). Legal and accounting fees are limited to fees paid to independent persons performing legal or accounting services for or with respect to the FSC.

(6) *Salaries of officers and directors.* For purposes of this section, salaries of officers and salaries or fees of directors are only those salaries or fees paid for services as officers or directors of the FSC. Salaries do not include reimbursed travel and entertainment expenses. If an individual officer, director, or employee of a related person is also an officer or director of a FSC and receives additional compensation for services performed for the FSC, the portion of the compensation paid to the individual which is for services performed for the FSC is required to be disbursed out of the FSC's principal bank account. For purposes of this section, the term "compensation" is defined as set forth in paragraphs (d) (1) and (2) of § 1.415–2.

§ 1.924(d)–1 Requirement that economic processes take place outside the United States.

(a) *In general.* Section 924(b)(1)(B) provides that a FSC has foreign trading gross receipts from any transaction only if economic processes with respect to such transaction take place outside the United States as provided in section 924(d). Section 924(d) and this section set forth the rules for determining whether a sufficient amount of the economic processes of a transaction take place outside the United States. Generally, a transaction will qualify if the FSC satisfies two different requirements: Participation outside the United States in the sales portion of the transaction, and satisfaction of either the 50-percent or the 85-percent foreign direct cost test. The activities comprising these economic processes may be performed by the FSC or by any other person acting under contract with the FSC. (All references to "FSC" in §§ 1.924(d)–1 and 1.924(e)–1 shall mean the FSC or, if applicable, the person performing the relevant activity under contract on behalf of the FSC). The FSC may act upon standing instructions from another person in the performance of any activity, whether a sales activity under paragraph (c) of this section or an activity relating to the disposition of export property under paragraph (d) of this section and § 1.924(e)–1. The identity of the FSC as a separate entity

is not required to be disclosed in the performance of any of the activities comprising the economic processes. Except as otherwise provided, the location of any activity is determined by the place where the activity is initiated by the FSC, and not by the location of any person transmitting instructions to the FSC.

(b) *Activities performed by another person*—(1) *In general.* Any person, whether domestic or foreign, and whether related or unrelated to the FSC, may perform any activity required to satisfy this section, provided that the activity is performed pursuant to a contract for the performance of that activity on behalf of the FSC. Such a contract may be any oral or written agreement which constitutes a contract at law. The person performing the activity is not required to enter into a contract directly with the FSC and, thus, may be a direct or indirect subcontractor of a person under contract with the FSC. For example, assume that a buy-sell FSC enters into an agreement with its related supplier in which the related supplier agrees to perform on behalf of the FSC all sales activities with respect to the FSC's transactions with its foreign customers. Through its existing agreements with a domestic unrelated person, the related supplier subcontracts the performance of these activities to the domestic unrelated person, who, in turn, subcontracts the performance of the sales activities to foreign sales agents. The sales activities performed by the foreign sales agents are considered to be performed on behalf of the FSC for purposes of meeting the requirements of section 924(d)(1)(A).

(2) *Proof of Compliance.* If the FSC does not perform the activity itself, it must maintain records adequate to establish, with respect to each transaction or group of transactions, that the activity was performed and that the performance of such activity took place outside the United States. If the person who performed the activity on behalf of the FSC is an independent contractor, the FSC may rely upon a written declaration from that person stating that the activities were performed by that person on behalf of the FSC, and were performed outside the United States. An invoice or a receipt for payment will be considered to be such a written declaration if it specifies that the activities were performed outside the United States or specifies a particular place outside the United States where the activities were performed. If the person performing the activities on behalf of the FSC is a related person, the FSC must maintain records adequate to establish that the activities were actually performed and where the activities were performed. Such records may be stored with the related person provided that the FSC makes such records available to the Commissioner upon request.

(c) *Participation outside the United States in the sales portion of the transaction*—(1) *In general.* The requirement of section 924(d)(1)(A) is met with respect to the gross receipts of a FSC derived from any transaction if the FSC has participated outside the United States in the solicitation, the negotiation, or the making of the contract relating to such transaction (hereinafter described as "sales activities"), as provided in this paragraph (c). A sale need not occur in order that the solicitation or negotiation tests be satisfied. Once the FSC has participated outside the United States in an activity that constitutes the solicitation, negotiation, or the making of the contract with respect to a transaction, any prior or subsequent activity by the FSC with respect to such transaction that would otherwise constitute the sales activity will be disregarded for purposes of determining whether the FSC has met the requirements of section 924(d)(1)(A). For example, if a FSC sells a product to a foreign customer by first meeting with the customer in New York to discuss the product and then by mailing to it from outside the United States a brochure describing the product, the prior meeting is disregarded and only the mailing is considered in determining whether there was solicitation outside the United States by the FSC with respect to the transaction which has occurred.

(2) *Solicitation (other than advertising).* For purposes of this paragraph (c), "solicitation" refers to any communication (by any method, including, but not limited to, telephone, telegraph, mail, or in person) by the FSC, at any time during the 12 month period (measured from the date the communication is mailed or transmitted) immediately preceding the execution of a contract relating to the transaction to a specific, targeted customer or potential customer, that specifically addresses the customer's attention to the product or service which is the subject of the transaction. For purposes of paragraph (c)(2) of this section, communication by mail means depositing the communication in a mailbox. Except as provided in § 1.924(e)–1(a)(1) with respect to second mailings, activities that would otherwise constitute advertising (such as sending sales literature to a customer or potential customer) will be considered solicitation if the activities are directed at a specific, targeted customer or potential customer, and the costs of the activity are not taken into account as advertising under the foreign direct cost tests. Activities that would otherwise constitute sales promotion (such as a promotional meeting in person with a customer) will be considered to be solicitation if the activities are directed at a specific, targeted customer or potential customer, and the costs of the activity are not taken into account as sales promotion under the foreign direct cost tests. Except as provided in § 1.924(e)–1(a)(1) with respect to second mailings, the same or similar activities cannot be considered both solicitation and advertising, or both solicitation and sales promotion, with respect to the same customer. Solicitation, however, may take place at the same time as, and in conjunction with, another sales activity. Additionally, it may take place with respect to any person, whether domestic or foreign, and whether or not related to the FSC.

(3) *Negotiation.* For purposes of this paragraph (c), "negotiation" refers to any communication by the FSC to a customer or potential customer aimed at an agreement on one or more of the terms of a transaction, including, but not limited to, price, credit terms, quantity, or time or manner of delivery. For purposes of this paragraph (c)(3), communication by mail has the same meaning as provided in paragraph (c)(2) of this section. Negotiation does not include the mere receipt of a communication from a customer (such as an order) that includes terms of a sale. Negotiation may take place at the same time as, and in conjunction with, another sales activity. Additionally, it may take place with respect to any person, whether domestic or foreign, and whether or not related to the FSC.

(4) *Making of a contract.* For purposes of this paragraph (c), "making of a contract" refers to performance by the FSC of any of the elements necessary to complete a sale, such as making an offer or accepting an offer. A requirements contract is considered an open offer to be accepted from time to time when the customer submits an order for a specified quantity. Thus, the acceptance of such an order will be considered the making of a contract. The written confirmation by the FSC to the customer of the acceptance of the open order will also be considered the making of a contract. Acceptance of an unsolicited bid or order is considered the "making of a contract" even if no solicitation or

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negotiation occurred with respect to the transaction. The written confirmation by the FSC to the customer of an oral or written agreement which confirms variable contract terms, such as price, credit terms, quantity, or time or manner of delivery, or specifies (directly or by cross-reference) additional contract terms will be considered the making of a contract. A written confirmation is any confirmation expressed in writing, including a telegram, telex, or other similar written communication. The making of a contract may take place at the same time as, and in conjunction with, another sales activity. Additionally, it may take place with respect to any person, whether domestic or foreign, and whether or not related to the FSC.

(5) *Grouping transactions.* Generally, the sales activities under this paragraph (c) are to be applied on a transaction-by-transaction basis. By annual election of the FSC, however, any of the sales activities may be applied on the basis of a group as set forth in this paragraph (c)(5). Any groupings used must be supported by adequate documentation of performance of activities relating to the groupings used. An election by the FSC to group transactions must be made on its annual income tax return. The FSC, however, may amend its tax return to group in a manner different from that elected on its original return before the expiration of the statute of limitations.

(i) *Standards of groups.* A determination by a FSC as to a grouping will be accepted by a district director if such determination conforms to any of the following standards:

(A) *Product or product line groupings.* A product or product line grouping may be based upon either a recognized trade or industry usage, or upon a two digit major group (or on any inferior classification or combination of inferior classifications within a major group) of the Standard Industrial Classification as prepared by the Statistical Policy Division of the Office of Management and Budget, Executive Office of the President. For taxable years beginning on or before February 19, 1987, any sales activity that is performed outside the United States with respect to any transaction covered by the product or product line grouping during the FSC's taxable year shall apply to all transactions covered by the product or product line. However, for taxable years beginning after February 19, 1987, the requirement of section 924(d)(1)(A) is met with respect to all transactions covered by the product or product line grouping only if the sales activities are performed outside the United States with respect to customers with sales representing either: (i) 20 percent or more of the foreign trading gross receipts of the product or product line grouping during the current year or (ii) 50 percent or more of the foreign trading gross receipts of the product or product line grouping for the prior year irrespective of whether any sales occurred within the current year to the prior year customers. If during the prior taxable year, the controlled group of which the FSC is a member had a DISC or interest charge DISC, the FSC may use the 50 percent rule with respect to the preceding DISC or interest charge DISC year, substituting qualified export receipts for foreign trading gross receipts. A corporation which has not been treated in the prior year as a FSC, interest charge DISC, or DISC does not have to meet either the 20 percent test or the 50 percent test for the first year in which it is treated as a FSC.

(B) *Customer groupings.* A customer grouping includes all transactions of the FSC with a particular customer during the FSC's taxable year. Thus, any sales activity that is performed outside the United States with respect to any transaction with the customer during the taxable year shall apply to all transactions within the customer grouping.

(C) *Contract groupings.* A contract grouping includes all transactions of the FSC under a particular contract for a taxable year. Thus, any sales activity that is performed outside the United States with respect to any transaction under the contract will apply to all transactions under the contract for such taxable year. For long-term contracts between unrelated parties, the sales activities tests need be satisfied only once for the life of the contract. With respect to requirements contracts and long-term contracts between related parties, the sales activities test must be satisfied annually.

(D) *Product or product line groupings within customer or contract groupings.* Groupings may be based upon product or product line groupings within customer or contract groupings. If, however, the primary grouping is a customer or contract grouping, the 20 percent test set forth in subdivision (A) of this paragraph relating to product or product line grouping will not be applicable.

(ii) *Transactions included in a grouping.* A choice by a FSC to group transactions shall generally apply to all transactions within the scope of that grouping. The choice of a grouping, however, applies only to transactions covered by the grouping and, for transactions not encompassed by the grouping, the determinations may be made on a transaction-by-transaction basis or other grouping basis. For example, a FSC may choose a product grouping with respect to one product and use the transaction-by-transaction method for another product within the same taxable year. In addition, if a FSC applies sales activity rules on the basis of other types of groupings, such as all sales to a particular customer, transactions included in those other groupings shall be excluded from product groupings.

(iii) Different groupings allowed for different purposes. A choice by the FSC to group transactions may be made separately for each of the sales activities under section 924(d)(1)(A). Groupings used for purposes of section 924(d)(1)(A) will have no relationship to groupings used for other purposes, such as satisfying the foreign direct cost tests. This paragraph (c)(5) does not apply for purposes of section 925.

(6) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples:

Example (1). In November, a calendar year FSC mailed from its foreign office its catalog to a potential foreign customer. The catalog displayed numerous products along with a brief description and the price of each. In February of the following year, the FSC sold to the customer a product displayed in the catalog. Since the FSC communicated with the customer during the 12-month period prior to the sale, although during the previous taxable year, the FSC participated outside the United States in the solicitation relating to the transaction.

Example (2). A FSC with a taxable year ending April 30, 1986, solicits customer X during that taxable year with respect to Product A. In the previous taxable year, the FSC sold product A to customers V, W, X, Y, Z, none of whom were customers in the taxable year ending April 30, 1986. The sales proceeds from sales to customer X represented 50 percent of the foreign trading gross receipts for the previous FSC year. The FSC meets the 50 percent test for product or product line grouping for the taxable year ending April 30, 1986. If the facts were changed so that there was not a FSC, DISC or interest charge DISC in the same controlled group in the previous taxable year, the single solicitation directed to any customer would qualify all transactions within the product group as meeting the solicitation requirement for that taxable year. For subsequent taxable years, the 50 percent test or the 20 percent test would be applicable.

Example (3). A FSC earns commissions on the sale of export property by its domestic related supplier to United States wholesalers for final sale to foreign customers. The related supplier receives an order from one of its United States wholesalers. The related supplier telephones the United States wholesaler to inform it of the new price and the probability of another price increase soon. The United States wholesaler orally agrees to the new price and the related supplier instructs the FSC to telex the wholesaler from its foreign office a confirmation that the product will be sold at the current new price. The written confirmation by the FSC of an oral agreement on a variable contract term constitutes the making of a contract. Thus, the requirements of section 924(d)(1)(A) are met with respect to the transaction relating to the product.

(d) *Satisfaction of either the 50-percent or the 85-percent foreign direct cost test—(1) In general.* Section 924(d)(1)(B) requires, in order for the gross receipts of a transaction to qualify as foreign trading gross receipts, that the foreign direct costs incurred by the FSC attributable to the transaction equal or exceed 50 percent of the total direct costs incurred by the FSC attributable to the transaction. The direct costs are those costs attributable to activities described in the five categories of section 924(e). Section 924(d)(2) provides that, instead of satisfying the 50-percent foreign direct cost test of section 924(d)(1)(B), the FSC may incur foreign direct costs attributable to activities described in each of two of those categories that equal or exceed 85 percent of the total direct costs incurred by the FSC attributable to the activity described in each of the two categories. If no direct costs are incurred by the FSC in a particular category, that category shall not be taken into account for purposes of determining satisfaction of either the 50-percent or the 85-percent foreign direct cost test. If any amount of direct costs is incurred in a particular category, that category shall be taken into account for purposes of the foreign direct costs tests.

(2) *Direct costs—(i) Definition of direct costs.* For purposes of section 924(d), direct costs are those costs which are incident to and necessary for the performance of any activity described in section 924(e). Direct costs include the cost of materials which are consumed in the performance of the activity, and the cost of labor which can be identified or associated directly with the performance of the activity (but only to the extent of wages, salaries, fees for professional services, and other amounts paid for personal services actually rendered, such as bonuses or compensation paid for services on the basis of a percentage of profits). Direct costs also include the allowable depreciation deduction for equipment or facilities (or the rental cost for use thereof) that can be specifically identified or associated with the activity, as well as the contract price of an activity performed on behalf of the FSC by a contractor. If costs of services or the use of facilities are only incidentally related to the performance of an activity described in section 924(e), only the incremental cost is considered to be identified directly with the activity. For example, supervisory, administrative, and general overhead expenses, such as telephone service, normally are not identified directly with particular activities described in section 924(e). The cost of a long distance telephone call made to arrange for delivery of export property, however, is identified directly with the activities described in section 924(e)(2). Direct costs for purposes of section 924(d) do not necessarily include all of the expenses taken into account for purposes of determining the taxable income of the FSC or the combined taxable income of the FSC and its related supplier.

(ii) *Allocation of direct costs.* For purposes of this section only, if costs are identified with more than one activity (whether or not all of the activities are described in section 924(e)), the portion of the costs attributable to each activity shall be determined by allocating the costs among the activities in any manner that is consistently applied and, if applicable, that reasonably reflects relative costs that would be incurred by performing each activity independently. If costs of an activity are attributable to more than one transaction or grouping of transactions, the portion of the costs attributable to each transaction or grouping shall be determined by allocating the costs among the transactions or groupings in any manner that is consistently applied and, if applicable, that reasonably reflects relative costs that would be incurred by performing the activity independently with respect to each transaction or grouping.

(3) *Total direct costs.* The term "total direct costs" means all of the direct costs of any transaction attributable to activities described in any paragraph of section 924(e). For purposes of the 50-percent foreign direct cost test of section 924(d)(1)(B), total direct costs are determined based on the direct costs of all activities described in all of the paragraphs of section 924(e). For purposes of the 85-percent foreign direct cost test of section 924(d)(2), however, the total direct costs are determined separately for each paragraph of section 924(e). If more than one activity is included within a paragraph of section 924(e), direct costs must be incurred with respect to at least one activity listed in the paragraph. If costs are incurred with respect to more than one activity, all direct costs must be considered for purposes of satisfying the direct costs test.

(4) *Foreign direct costs.* The term "foreign direct costs" means the portion of the total direct costs of any transaction which is attributable to activities performed outside the United States. For purposes of the 50-percent foreign direct cost test, foreign direct costs are determined based on the direct costs of all activities described in all of the paragraphs of section 924(e). For purposes of the 85-percent foreign direct cost test, however, foreign direct costs are determined separately for each paragraph of section 924(e).

(5) *Fifty percent foreign direct cost test.* To satisfy the requirement of section 924(d)(1)(B), the foreign direct costs incurred by the FSC attributable to the transaction must equal or exceed 50 percent of the total direct costs attributable to the transaction. This test looks to the cost of the activities described in section 924(e) on an aggregate basis; therefore, it is not necessary that the foreign direct costs of each activity, or of each paragraph of section 924(e), equal or exceed 50 percent of the total direct costs of that activity or paragraph.

(6) *Eighty-five percent foreign direct cost test—(i) General rule.* To satisfy the requirement of section 924(d)(2), the foreign direct costs of a transaction incurred by the FSC attributable to activities described in each of at least two paragraphs of section 924(e) must equal or exceed 85 percent of the total direct costs attributable to activities described in that paragraph. This test looks to costs of the activities on a paragraph-by-paragraph basis (but not on an activity-by-activity basis). As an example, the foreign direct costs of advertising and sales promotion are aggregated with each other for this purpose, but they are not aggregated with the foreign direct costs of transportation.

(ii) *Satisfaction of the 85-percent test.* If, after the FSC files its tax return indicating that it has satisfied the 85-percent foreign direct cost test with respect to each of at least two paragraphs of subsection 924(e) and a determination is made by the Commissioner that the foreign direct costs attributable to one or both of the two paragraphs of section 924(e) specified on the return did not equal or exceed 85 percent of the total direct costs attributable to such activities, the FSC may, nonetheless, satisfy the 85-percent foreign direct cost test if the foreign direct costs attributable to any two paragraphs of section 924 (e) equal or exceed 85 percent of the total direct

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costs attributable to those other paragraphs.

(e) *Grouping transactions.* Generally, the foreign direct cost tests under paragraph (d) of this section are to be applied on a transaction-by-transaction basis. By annual election of the FSC, however, the foreign direct cost tests may be applied on a customer, contract or product or product line grouping basis. Any groupings used must be supported by adequate documentation of performance of activities and costs of activities relating to the groupings used. An election by the FSC to group transactions must be made on its annual income tax return. The FSC may, however, amend its tax return before the expiration of the statute of limitations under section 6501 of the Code to group in a manner different from that elected on its original return.

(1) *Standards for groupings.* A determination by a FSC as to a grouping will be accepted by the district director if such determination conforms to any of the following standards:

(i) *Product or product line groupings.* A product or product line grouping may be based either on a recognized trade or industry usage, or on a two digit major grouping (or on any inferior classification or combination of inferior classifications within a major grouping) of the Standard Industrial Classification as prepared by the Statistical Policy Division of the Office of Management and Budget, Executive Office of the President.

(ii) *Customer groupings.* A customer grouping includes all transactions of the FSC with a particular customer during the FSC's taxable year.

(iii) *Contract groupings.* A contract grouping includes all transactions of the FSC under a particular contract, including a requirements contract. The tests will be applied to all transactions within a contract grouping during each taxable year of the FSC; however, by election of the FSC, all transactions under a contract that occur in the first or the last year of the contract may be included with, respectively, the next succeeding or the immediately preceding taxable year in applying these tests. For example, if with respect to transactions during the first calendar year of a 5-year contract, a calendar year FSC incurs direct costs attributable to the transactions of $100X for advertising, all of which are foreign direct costs, and $10X for processing of customers orders and for arranging for delivery, $9X (or 90 percent of the total direct costs) of which are foreign direct costs, the FSC has satisfied the 85-percent foreign direct cost test with respect to those transactions for the taxable year. If with respect to transactions during the second year of the contract, the FSC only incurs $18X of direct costs for processing of customer orders and arranging for delivery, $15X (83.3 percent of the total direct costs) of which are foreign direct costs, the FSC may include the transactions from the first year of the contract to meet the 85-percent foreign direct cost test in the second taxable year. Thus, with respect to the transactions in the second year, the FSC satisfies the foreign direct costs test for advertising (because the entire $100X of direct costs are foreign direct costs) and for processing of customer orders and arranging for delivery (because of the $28X of direct costs, $24X or 85.7 percent of the total direct costs are foreign direct costs). If, however, with respect to transactions in the third year, the FSC satisfies the foreign direct costs test, those transactions cannot be included with the transactions in the fourth year. The FSC may aggregate the direct costs in the fourth and fifth years in the same manner as for the first and second years as described above in order to satisfy the 85 percent foreign direct costs test.

(iv) *Product or product line groupings within customer or contract groupings.* Groupings may be based on product or product line groupings within customer or contract groupings.

(2) *Transactions included in a grouping.* An election by the FSC to group transactions shall generally apply to all transactions within the scope of that grouping. The election of a grouping, however, applies only to transactions covered by the grouping and, as to transactions not encompassed by the grouping, the determinations may be made on a transaction-by-transaction basis or other grouping basis. For example, the FSC may elect a product grouping with respect to one product and elect the transaction-by-transaction method for another product within the same taxable year. In addition, if a FSC is permitted to apply either the 50-percent or the 85-percent foreign direct cost test on the basis of other types of groupings, such as all transactions with respect to a particular customer, transactions included in those other groupings shall be excluded from product groupings.

(3) *Different groupings allowed for different purposes.* An election by the FSC to group transactions may be made separately for each of the activities relating to disposition of export property under section 924(d)(1)(B) or section 924(d)(2). Groupings used for purposes of section 924 will have no bearing on groupings for other purposes. This paragraph (e) does not apply for purposes of section 925.

(f) *Exception for foreign military property*—(1) *General rule.* The requirements of this section do not apply to any activities performed in connection with foreign military sales except those activities described in section 924(e). The FSC is deemed to have satisfied the requirements of section 924(d)(1)(A).

(2) *Example.* The principles of paragraph (f)(1) of this section may be illustrated by the following example:

Example. A FSC earns commissions on foreign military sales by its related supplier. All solicitation, negotiation, and contract making activities occur in the United States solely between the related supplier and the United States government. The property is delivered, title passes, and payment is made in the United States in accordance with standard United States government practices. The FSC incurs direct costs in the amount of $155X to process the government's orders and arrange for delivery of the goods, all of which are foreign direct costs. In addition, it incurs foreign direct costs in the amount of $250X for assembling and transmitting its final invoice to the government from outside the U.S. and foreign direct costs of $200X associated with receiving payment from the related supplier in accordance with the rules of § 1.924(e)–1(d)(2)(iii). No other activities occur with respect to the foreign military sales. The FSC has satisfied the 85-percent foreign direct cost test and thus has foreign trading gross receipts with respect to the foreign military sales. The fact that the FSC did not participate outside the United States in any of the sales activities has no bearing on the qualification of the receipts since the FSC is deemed to have met the requirements of § 924(d)(1)(A).

§ 1.924(e)–1 Activities relating to the disposition of export property.

(a) *Advertising and sales promotion.* For purposes of section 924(e), advertising and sales promotion are defined as follows.

(1) *Advertising*—(i) *Advertising defined*—(A) *General rule.* Advertising means the announcement or description of property or services described in section 924(a), in some medium of mass communication (such as radio, television, newspaper, trade journals, mass mailings, or billboards), in order to induce multiple customers or potential customers to buy or rent the property or services from the FSC or related supplier. Advertising is not required to be directed to the general public, but may be focused toward any group of export customers or potential export customers. Advertising except for the advertising described in § 1.924(e)–1(a)(1)(B) must describe one or more specific products or product lines (or services) and identify the product as a product offered by the FSC or related supplier. Advertising intended solely to build a favorable image of a company or group of companies is not included in this definition of advertising. Additionally, advertising primarily directed at customers or potential customers in the United States is not included in this definition of advertising, nor is advertising related to property or services not described in section 924(a).

(B) *Special rules for sales to distributors.* If the customer is a distributor (whether domestic or foreign, related or unrelated to the FSC), an expense that is incurred by the distributor and charged to the FSC or related supplier as a reduction in the purchase price or as a separate charge for an announcement or description described in paragraph (a)(1)(A) of this section to induce the distributor's customers, potential customers, or the ultimate users to buy or rent the property or services is advertising for these purposes (i) if the FSC incurs 20 percent or more of the total advertising costs of the distributor or (ii) if the FSC pays the total charge of an advertisement either directly or indirectly. For these purposes, a distributor is anyone other than an end user or a final consumer. A FSC may incur direct advertising costs to a foreign end consumer even though the FSC sells to a U.S. distributor.

(ii) *Direct costs of advertising.* Direct costs of advertising include costs of transmitting, displaying, or distributing the advertising to customers or potential customers and the costs of printing in the case of sales literature, but do not include fees paid to an independent advertising agency to develop the announcement or description, translation costs, or costs of preparing the announcement or description for potential use as advertising. Direct costs of sending sales literature to customers or potential customers may be taken into account as advertising costs as long as the activity is not taken into account for purposes of the sales activity requirements of § 1.924(d)–1(c).

(iii) *Location of advertising.*

(A) *General Rule.* The location of advertising activity is the place to which the advertising is transmitted, displayed, distributed, mailed, or otherwise conveyed to the customers or potential customers (or in the case of advertising described in paragraph (a)(i)(B) of this section, the distributor's customers, or the ultimate users). For example, a television advertisement that is broadcast to a foreign country constitutes advertising activity outside the United States even though the broadcast signal originates in the United States. Therefore, the cost of that advertising activity is a foreign cost. The FSC may rely upon the distribution statistics of the publisher of print media or the broadcaster of broadcast media through which the advertising is distributed. If the distribution statistics show that 85 percent or more of the readership, radio listeners, or viewership are outside the United States, all direct costs of advertising are considered foreign direct costs of advertising.

(B) *Foreign editions of journals, magazines, etc.* Costs related to advertising in foreign English editions of U.S. publications as well as advertising in any publication in a foreign language are foreign direct costs.

(C) *United States editions.* Costs related to advertising in United States publications are not treated as direct costs even if the publication also has a foreign edition in English.

(iv) *Second mailings.* In general, direct costs of sending sales literature to customers may be treated as solicitation or advertising, but not both. A distinction may be made, however, between a first and second mailing so that one may be treated as advertising and the other may be treated as solicitation. To qualify under this second mailing rule, the two mailings must be generically different items such as a price list and a description of the product itself. An amended price list would not be distinguishable from an original price list and would, therefore, not constitute a second mailing.

(v) *Examples.* The principles of paragraph (a)(1) of this section may be illustrated by the following examples:

Example (1). The related supplier, under contract with a buy-sell FSC to advertise export product D on the "FSC's" behalf to its foreign unrelated customers, engaged a French advertising agency to develop an advertising campaign to induce French customers to buy the product. As a part of the advertising campaign, the agency places a one-page advertisement in a relevant French trade journal. The advertisement constitutes advertising within the meaning of paragraph (a)(1) of this section.

Example (2). A United States weekly magazine publishes, in addition to its United States edition, a Canadian edition in English and a Mexican edition in Spanish. A FSC incurs costs of $200 X for a one-page display in each of the three editions for a total advertising cost of $600 X. The $200 X cost relating to the advertising in the United States edition is not a direct cost because it relates to United States sales. The total costs of $400 X relating to advertising in the English language Canadian edition and the Spanish language Mexican edition are foreign direct costs.

Example (3). A FSC earns commissions on the sale of export product E by its domestic related supplier to United States distributors for resale to Canadian retail customers. The related supplier, under contract with the FSC to advertise product E, pays an amount equal to 1 percent of its annual gross receipts with respect to product E under a cooperative advertising arrangement with the distributor. The amount, which represents 20 percent of the total advertising costs for product E, is reimbursed by the FSC. The 20-percent amount represents a significant portion of the total advertising costs and thus constitutes advertising within the meaning of paragraph (a)(1)(i) of this section.

Example (4). A FSC mails two items to each customer on its customer list within one taxable year. The first mailing consists of a price list which merely lists the various products by name and provides a price next to each product name. The second mailing consists of a brochure which fully describes and illustrates each product. The two mailings are generically different. Therefore, one mailing may be counted as advertising while the other mailing may be counted as solicitation.

(2) *Sales promotion*—(i) *Sales promotion defined.* Sales promotion means an appeal made in person to an export customer or potential export customer for the sale or rental of property or services described in section 924(a), made in the context of a trade show or customer meeting. A customer meeting means a periodic meeting (*e.g.*, quarterly, semi-annual, or annual) in which 10 or more customers or potential customers are reasonably expected to attend. However, for taxable years beginning before February 19, 1987, a customer meeting may, at the option of the taxpayer, mean any meeting with a customer or potential customer regardless of the frequency of the meetings or the number of customers or potential customers in attendance. A meeting, show or event in the United States that is primarily aimed at the export of goods or services described in section 924(a) constitutes sales promotion. Sales promotion does not include an appeal made in the context of any meeting, show or event primarily aimed at U.S. customers or an appeal for the sale or rental of property or services not described in section 924(a). Whether any meeting, show or event is primarily aimed at U.S. customers or at the export of goods or services described in section 924(a) shall be determined by all of the facts and circumstances including the announced objective of the meeting, show or event; the attendees; the location of the meeting, show or event; and the product or special feature of the product.

(ii) *Direct costs of sales promotion.* Direct costs of sales promotion include costs such as rental of space at trade shows, payments to organizers or other

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persons hired for the event, rental of display equipment and decorations for the event, and costs of maintaining a showroom. Direct costs of sales promotion also include costs for travel, meals, and lodging for direct sales people attending the event if these costs are paid by the FSC or related supplier. In the case of a customer meeting, direct costs of sales promotion include the costs of materials printed specifically for the meeting and the costs of travel, lodging, and food for both the direct sales people and customers or potential customers attending the meeting. Direct costs of sales promotion do not include the cost of salaries and commissions of direct sales people or the cost of discount coupons, samples of the product, or printed advertising materials that are used for general advertising as well as sales promotion.

(iii) *Location of sales promotion.* The location of sales promotion activity is the place where the trade show or customer meeting is held.

(iv) *Examples.* The principles of paragraph (a)(2)(i) of this section may be illustrated by the following examples:

Example (1). The related supplier sells various export products described in section 924(a) to its foreign customers. As a commission agent for the related supplier with respect to such sales, the FSC performs sales promotion. It contracts with the related supplier to serve as its agent for such purposes. To stimulate the sale of its export products, the related supplier conducts semi-annual meetings with the purchasing agents of its customers at its Kansas City headquarters. Ten or more purchasing agents are reasonably expected to attend each meeting. At such meetings, the purchasing agents see the related supplier's manufacturing facilities, visit with its executives, attend technical updates, and see new export products. These semi-annual customer meetings constitute sales promotion within the meaning of paragraph (a)(2)(i) of this section. Direct costs incurred with respect to the customer meetings are U.S. direct costs because the sales promotion activities occur within the United States.

Example (2). Assume the same facts as in *Example (1)*, except that the related supplier exhibits products that only operate on 220 volts at a trade show in the United States. According to the trade show sponsors, the purpose of the show is to increase sales abroad of United States-manufactured products. Since the products exhibited are designed for operation in foreign countries and the purpose of the trade show is to boost sales in those countries, the trade show held in the United States is primarily aimed at the export products described in section 924(a) and not at United States customers. Thus, the trade show constitutes sales promotion within the meaning of paragraph (a)(2)(i) of this section and the direct costs incurred in connection with the trade show are treated as United States direct costs.

(b) *Processing of customer orders and arranging for delivery of the export property.* For purposes of section 924(e), the processing of customer orders and the arranging for delivery of the export property are defined in paragraph (b)(1) and paragraph (b)(2), respectively, of this section. For taxable years beginning after February 19, 1987, if the FSC performs the activities of processing of customer orders and arranging for delivery of the export property and elects to group its transactions, it is considered to have performed the activities with respect to all transactions in the grouping elected by the FSC under § 1.924(d)–1(e) during the taxable year if it performs the activities of processing of customer orders and arranging for delivery of the export property with respect to customers generating 20 percent or more of foreign trading gross receipts within the elected grouping.

(1) *Processing of customer orders*—(i) *Processing of customer orders defined.* The processing of customer orders means notification by the FSC to the related supplier of the order and of the requirements for delivery. The related supplier may have independent knowledge of the order and requirements for delivery. If the FSC does not have a related supplier, the processing of customer orders means communication with the customer by any method such as telephone, telegram, or mail to acknowledge receipt of the order and requirements for delivery. Once the related supplier has been notified by the FSC, or the customer has received an acknowledgement from the FSC, of the order and requirements for delivery, subsequent or prior communications with respect to an order (such as changes in quantity or prospective delivery date) are not included in the definition of processing of customer orders.

(ii) *Direct costs of processing customer orders.* Direct costs of processing of customer orders include salaries of clerical personnel and costs of telephone, telegram, mail, or other communication media (including the costs of operating transmission equipment).

(iii) *Location of processing of customer orders.* The location of this activity is the place where the communication is initiated by the FSC.

(iv) *Examples.* The principles of paragraph (b)(1) of this section may be illustrated by the following examples:

Example (1). A domestic related supplier, using a FSC as its commission agent on the sale of export property to foreign customers, receives an order from one of its foreign customers. Information concerning the receipt of such order and its requirements for delivery are transmitted to the FSC. The FSC from its office outside the United States notifies the related supplier of the order and the requirements for delivery by telex. This notification by the FSC to the related supplier constitutes the processing of the customer's order within the meaning of paragraph (b)(1)(i) of this section. In addition, its direct costs of processing the customer's order are foreign direct costs because the communication is initiated by the FSC from outside the United States.

Example (2). A domestic unrelated supplier manufactures a product which it sells to a buy-sell FSC located in Germany for resale to the FSC's German customers. Upon receiving an order from one of its customers, the FSC telephones the customer from its German office to acknowledge receipt of the order and the requirements for delivery. The acknowledgement constitutes the processing of the customer's order within the meaning of paragraph (b)(1)(i) of this section and the direct costs attributable thereto are foreign direct costs.

(2) *Arranging for delivery*—(i) *Arranging for delivery defined.* The arranging for delivery of export property means the taking of necessary steps to have the export property delivered to the customer in accordance with the requirements of the order. Arranging for delivery does not include preparation of shipping documents (*e.g.*, bill of lading) or the property for shipment (*i.e.*, packaging or crating), or shipment of property (*i.e.*, transportation). Arranging for delivery does include communications with a carrier or freight forwarder to provide transportation (as defined in § 1.924(e)–1(c)(1), but without regard to when the commission relationship for purposes of transportation begins) for the export property from the FSC or related supplier to the place where the customer takes possession of the property. Arranging for delivery also includes communications with the customer to notify the customer of the time and place of delivery. The carrier or freight forwarder and the customer may already have knowledge of the information communicated. If the FSC has communicated with the carrier or freight forwarder, where applicable, and the customer to notify it of the time and place of delivery, prior or subsequent communications to either about delivery are not included in the definition of arranging for delivery.

(ii) *Direct costs of arranging for delivery.* The direct costs of arranging for delivery include salaries of clerical personnel and costs of telephone, telegraph, mail, and other communications media, but do not include any actual shipping costs.

(iii) *Location of arranging for delivery.* The location of arranging for delivery

activity is the place where the activity is initiated by the FSC.

(iv) *Examples.* The principles of paragraph (b)(2)(i) of this section may be illustrated by the following examples:

Example (1). A FSC earns commissions on the sale of export property by its domestic related supplier to foreign customers. The shipment term of all of the related supplier's sales is F.O.B. (Free on Board) its manufacturing plant in Gary, Indiana. Thus, there is no transportation as defined in § 1.924(e)–1(c)(1) with respect to its sales. From its shipping department at the plant, the related supplier telephones carriers to arrange for delivery. It also notifies the FSC by mail of the time and place of delivery of the customer's orders. The FSC from its office outside the United States transmits the received information to the customers. Because there is no transportation to be arranged, this communication alone by the FSC to the customers to notify them of the time and place of delivery constitutes arranging for delivery within the meaning of paragraph (b)(2)(i) of this section.

Example (2). Assume the same facts as in *Example (1)*, except that the shipment term of all of the related supplier's sales is C.I.F. (Cost, Insurance, Freight) and that the commission relationship for transportation begins after the export property leaves the United States customs territory. The related supplier telephones a trucking firm and an overseas carrier from its plant in Gary, Indiana to ascertain information on transporting its property by truck to the docks, and by overseas carrier from the docks to the place where the customer takes possession. Upon receiving the necessary information, the related supplier electronically transmits to the FSC the shipping information and the time and place of delivery to the customer. In addition, it instructs the FSC to communicate the necessary shipping information to the carriers to ensure shipment and to notify the customer of the time and place of delivery. The FSC does both from its office located outside of the United States. The communications by the FSC to the carriers and the customer constitute arranging for delivery within the meaning of paragraph (b)(2)(i) of this section.

(c) *Transportation*—(1) *Transportation defined.* For purposes of section 924(e), transportation means moving or shipping the export property during the period when the FSC owns or is responsible for the property, or, if the FSC is acting as a commission agent, during the period when the related supplier owns or is responsible for the property but after the commission relationship for purposes of transportation begins (even if the relationship begins after the property leaves the U.S. customs territory). The FSC or related supplier is treated as responsible for the property when it either has title, bears the risk of loss, or insures the property during shipment. Since a commission FSC will not generally have title or bear the risk of loss, it will, nevertheless, satisfy the transportation test if the related supplier has either title, bears the risk of loss, or insures the property during shipment. Examples of methods of shipping which would qualify as transportation include F.O.B. (Free on Board) destination, C.I.F. (Cost, Insurance, Freight), Ex Ship, and Ex Quay, but do not include C. & F. (Cost and Freight) or F.O.B. shipping point.

(2) *Direct costs of transportation.* The direct costs of transportation include the expenses of shipping, such as fees paid to carriers and freight forwarders, costs of freight insurance, and documentation fees. With respect to fungible commodities, direct costs include only those costs incurred after the goods have been identified to a contract. Transportation costs do not include any of the costs of arranging for delivery. The FSC is considered to engage in transportation activity whenever it pays the costs of shipping the export property and the property is shipped during the period when the FSC owns or is responsible for the property as provided in paragraph (c)(1) of this section. If the customer pays the shipping costs directly, the FSC is not considered to engage in transportation activity. If, however, the FSC pays the shipping costs, the ultimate transfer of those costs to the customer will not disqualify the FSC from engaging in transportation for purposes of section 924(e) regardless of whether the costs are included in the sale price of the export property or separately stated.

(3) *Location of transportation.* The location of transportation activity is the area over which the property is transported. Thus, the portion of total direct costs of transportation treated as foreign direct costs is the portion attributable to transportation outside the United States, determined on the basis of the ratio of mileage outside the U.S. customs territory to total mileage. For purposes of determining mileage outside U.S. customs territory, goods are treated as leaving U.S. customs territory when they have been tendered to an international carrier for shipment to a foreign location, as long as they are not removed from the custody of the carrier before they reach a point outside U.S. customs territory. The same rule for determining mileage outside the U.S. customs territory will apply to freight forwarders if (i) the forwarder has the risk of loss or is an insurer of the goods, and (ii) the property is shipped on a single bill of lading issued to the FSC or its agent as the shipper.

(4) *Examples.* The principles of paragraph (c) of this section may be illustrated by the following examples:

Example (1). A buy-sell FSC sells export property to a customer located in Canada. The contract between the FSC and the customer requires that the property be shipped F.O.B. its Canadian destination. Under this shipment term, the FSC holds title and bears the risk of loss until the property is tendered at its Canadian destination. Thus, it is responsible for the property during shipment. The FSC instructs its related supplier to ship the property from its manufacturing facilities in St. Louis. The related supplier negotiates two contracts, one for domestic transportation and the second for foreign transportation. A domestic trucking firm transports the property to the Canadian border where a Canadian trucking company is used to transport the property to its Canadian destination. The documentation fees and the fees for the two trucking firms are paid by the FSC. Because the FSC paid the costs of shipping and the property was shipped during the period when the FSC was responsible for the property, the FSC has engaged in transportation activity, the direct costs of which are the fees paid by the FSC. If 70 percent of the mileage from St. Louis to the Canadian destination is associated with the transportation from the Canadian border to the Canadian destination, 70 percent of the FSC's direct transportation costs are foreign direct costs. If, instead of using two trucking firms, the FSC had tendered the goods to a freight forwarder for shipment to a foreign location and the freight forwarder assumed the risk of loss for the goods and issued a single bill of lading, all of the fees paid by the FSC to the freight forwarder would be foreign direct costs.

Example (2). A related supplier sells export property to its foreign customer in Liverpool, England. The contract between the related supplier and the customer requires that the property be shipped C.I.F. Liverpool. The related supplier engages the FSC as its commission agent with respect to its sales to the customer, requiring the FSC to provide transportation to the customer. The FSC contracts with the related supplier to provide the transportation on behalf of the FSC. The commission agreement between the related supplier and the FSC provides that the FSC's responsibilities with respect to transportation of the export property begins after the property leaves the U.S. customs territory. The related supplier hires a domestic trucking firm to transport the shipment to a New York City port where it is loaded on a cargo ship destined for Liverpool at a total cost of $3,000X, $2,750X of which is allocable to mileage from the U.S. customs territory to Liverpool, England. Because the related supplier insures the property during shipment under C.I.F., the property is shipped during the period when the related supplier is treated as responsible for the property. Thus, the FSC, as the related supplier's commission agent, has satisfied the transportation test. In addition, because the FSC's responsibilities with respect to transportation begins when the property leaves U.S. customs territory, the FSC's payment of $2,750X is a foreign direct

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cost of transportation. The remaining $250X is not a direct cost of transportation to the FSC because the amount was expended before the commission relationship between the FSC and related supplier began.

Example (3). A FSC earns commissions on sales by the related supplier of export property, all of which falls within a single two-digit SIC group. The related supplier is under contract to the FSC to perform on the FSC's behalf all of the section 924(e) activities attributable to the sales. Of all of the sales made during the year, the FSC has no transportation costs with respect to the sales to customer R because the shipment term is F.O.B. the related supplier's Chicago plant. With respect to the sales to customer S, the FSC ships the property F.O.B. its destination and pays 100 percent of the transportation costs, all of which are foreign direct costs because the commission relationship for transportation begins outside the U.S. customs territory. For purposes of determining whether the FSC has satisfied the 85-percent foreign direct cost test for transportation, the FSC groups the sales by product. Because the transportation costs for sales to customer S are 100-percent foreign direct costs and because there are no transportation costs on sales to customer R, the FSC is considered to have met the 85-percent foreign direct cost test for transportation for all the sales in the single two-digit SIC group.

(d) *Determination and transmittal of a final invoice or statement of account and receipt of payment.* For purposes of section 924(e), the determination and transmittal of a final invoice or statement of account and the receipt of payment are defined as follows.

(1) *Determination and transmittal of a final invoice or statement of account—*(i) *Definitions—*(A) *In general.* The determination and transmittal of a final invoice or statement of account means the assembly of either a final invoice or statement of account and the forwarding of that document to the customer. A FSC may elect to send either final invoices or statements of account and disregard any costs of the alternative not elected. For taxable years beginning after February 19, 1987, a special grouping rule is provided. If the FSC assembles and forwards either a statement of account or a final invoice from outside the United States to customers with sales representing 50 percent of the current year foreign trading gross receipts within a product or product line grouping or to customers with sales representing 50 percent of the prior year foreign trading gross receipts within a product or product line grouping utilized for the current year, all other U.S. costs will be disregarded and the FSC will be deemed to have no U.S. costs with respect to the determination and transmittal of a final invoice or statement of account. If, during the prior taxable year, the controlled group of which the FSC is a member had a DISC or interest charge DISC, the FSC may apply the 50 percent rule by taking into account the customers and sales of the DISC or interest charge DISC for the preceding taxable year. If no foreign trading gross receipts (or qualified export receipts for DISC purposes) were received in the prior year either by the FSC or by a DISC or interest charge DISC within the controlled group of which the FSC is a member, the FSC must apply the 50 percent rule taking into account customers and foreign trading gross receipts for the current year. In the event that the 50 percent rule is not satisfied, all costs associated with assembly and forwarding of the selected documents (invoices or statements of account) must be included in the costs attributable to activities described in section 924(e)(4).

(B) *Final invoice defined.* A final invoice is an invoice upon which payment is made by the customer. A final invoice must contain the customer's name or identifying number and, with respect to the transaction or transactions, the date, product or service, quantity, price, and amount due. In the alternative, a document will be acceptable as a final invoice even though it does not include all of the above listed information if the FSC establishes that the document is considered to be a final invoice under normal commercial practices. An invoice forwarded to the customer after payment has been tendered or received pursuant to a letter of credit as a receipt for payment satisfies this definition.

(C) *Statement of account defined.* A statement of account is any summary statement forwarded to a customer to inform of, or confirm, the status of transactions occurring within an accounting period during a taxable year that is not less than one month. A statement of account must contain, at a minimum, the customer's name or identifying number, date of the statement of account as of the last day of the accounting period covered by the statement of account and the balance due (even if the balance due is zero). A single final invoice or statement of account can cover more than one transaction with one customer. In the alternative, a document will be accepted as a statement of account even though it does not include all of the above listed information if the FSC establishes that the document is considered a statement of account under normal commercial practice. For these purposes, a document will be considered to be a statement of account under normal commercial practices if it is sent to domestic as well as to export customers in order to inform the customers of the status of transactions during an accounting period. Additional information may be sent separately, such as summary statements forwarded to a related party for purposes of reconciling intercompany accounts for financial reporting requirements. If the information is sent separately, the direct costs associated with the assembly and forwarding of that information are not considered for purposes of section 924(d).

(D) *Assembly and forwarding defined.* Assembly means folding the documents (where applicable), filling envelopes, and addressing envelopes (if window envelopes are not used). Forwarding means mailing or delivery.

(ii) *Direct costs of determination and transmittal of final invoice or statement of account.* Direct costs of this activity include costs of office supplies, office equipment, clerical salaries and costs of mailing or other delivery services, if the costs can be identified or associated directly with the assembly and transmittal of a final invoice or statement of account. Costs of establishing a price, or of communicating prices or other billing information between the FSC and a related supplier are not direct costs of this activity. In addition, the costs of preparing and mailing the final invoices or statements of account to the FSC and the costs of accumulating and formatting data for invoicing or statements of account on computer discs, tapes, or some other storage media along with the costs of transmitting or transporting this data to the FSC are not direct costs of this activity.

(iii) *Location of determination and transmittal of a final invoice or statement of account.* For taxable years beginning before February 19, 1987, the location of this activity is the place where the final invoice or statement of account is assembled for forwarding to the customer or the place from which it is forwarded to the customer. Thus, the forwarding of the final invoice or statement of account from outside the United States is sufficient to source this activity outside the United States. For all other taxable years, the location of this activity is the place where the final invoice or statement of account is both assembled and forwarded to the customer.

(iv) *Examples.* The principles of paragraph (d)(1) of this section may be illustrated by the following examples, all of which apply to taxable years beginning on or after February 19, 1987.

Example (1). A related supplier sells export property to its foreign customers. The related supplier engages the FSC as its commission agent with respect to the sales, requiring the FSC to determine and transmit final invoices or statements of account to the customers with respect to the sales. Annually, the FSC assembles and forwards statements of account to customers representing 40 percent of current year export sales and 35 percent of prior year sales. The statements are sent from its office outside of the United States. The remaining statements of account are sent from the Albany, New York office of the related supplier. The statements are recognized in its industry as a statement of account. Although the statement does not contain all of the information described in § 1.924(e)–1(d)(1)(i), it is sent to both domestic and foreign customers of the related supplier to inform the customer of the status of its transactions with the related supplier. The document qualifies as a statement of account under § 1.924(e)–1(d)(1)(i); however, the 50 percent test set forth in § 1.924(e)–1(d)–1(d)(1)(i)(A) is not satisfied. Therefore, the FSC must take into account all domestic direct costs attributable to assembly and forwarding of statements of account from its domestic office in determining whether the FSC has satisfied the direct costs test with respect to section 924(e)(4) and § 924 (e)–1(d).

Example (2). Employees of a FSC, in the FSC's foreign office, fold and place in envelopes the sheet or sheets that constitute the final invoices provided by the related supplier. In addition, the employees address, affix postage to, and mail the envelopes. These activities constitute the determination and transmittal of the final invoices within the meaning of paragraph (d)(1)(i) of this section and, because the final invoices are assembled and forwarded to the customers from outside the United States, all the direct costs of the activities are foreign direct costs.

Example (3). The related supplier sends to the FSC's foreign office a computer tape to be used to prepare a statement of account. A management company, working under contract with the FSC, transcribes the data to a piece of paper which is a statement of account for purposes of § 1.924(d)(1)(i), folds the document, and fills, affixes postage to, and mails the envelopes. Only the costs performed by the management company under contract with the FSC that constitute the assembly and forwarding of a statement of account under § 1.924(e)–1(d)(1)(i)(D) are direct costs. Therefore, the costs attributable to transcribing the data to a piece of paper are not direct costs for purposes of section 924(e)(4).

(2) *Receipt of payment—*(i) *Receipt of payment defined.* Receipt of payment means the crediting of the FSC's bank account by an amount which is not less than 1.83 percent of the gross receipts ("gross receipts amount") associated with the transaction. The FSC's bank account is not credited unless the FSC has the authority to withdraw the amount deposited. Where sales proceeds are factored or where payments from related foreign subsidiaries are netted against amounts owed to these foreign subsidiaries in an intercompany account, crediting of the FSC's bank account with no less than the gross receipts amount of the factoring proceeds or the proceeds, net of offsets, respectively, qualifies as receipt of payment. In addition, where a FSC is precluded from receiving a portion of the proceeds of the export transaction, the FSC may satisfy receipt of payment by receiving no less than the gross receipts amount of the remaining portion of the proceeds in its bank account. In the case of advance or progress payments, each payment constitutes a payment for receipt of payment purposes.

(ii) *Direct costs of receipt of payment.* Direct costs of receiving payment include the expenses of maintaining a bank account of the FSC in which payment is deposited, any fees or service charges incurred for converting the payment into U.S. currency, and any transfer fees incurred with respect to the transfer of funds into and out of the FSC's bank account in accordance with the 35 calendar day rule in paragraph (d)(2)(iii) of this section. The transfer fees and the fees or service charges incurred for currency conversion are considered to be foreign direct costs of receiving payment; however, exchange losses are not costs of receiving payment.

(iii) *Location of receipt of payment.* The location of this activity is the office of the banking institution at which the account is maintained. If payment is made by the purchaser directly to the FSC or the related supplier in the United States, and the FSC or related supplier transfers the gross receipts amount associated with the transaction to a bank account of the FSC outside the United States after receipt of payment (i.e., cash, check, wire transfer, etc.), but no later than 35 calendar days after receipt of good funds (i.e., the clearance of the check) the FSC is considered to have received payment outside the United States. Therefore, all transfer fees and the costs of the foreign bank account are treated as foreign direct costs. The United States bank costs are disregarded. If, however, the related supplier does not transfer the gross receipts amount within 35 calendar days, United States bank costs are not disregarded and are domestic direct costs. In either case, the transfer costs, currency conversion charges, and foreign bank costs remain foreign direct costs. The preceding rules apply both to commission FSCs and buy-sell FSCs.

(iv) *Examples.* The principles of paragraph (d)(2) of this section may be illustrated by the following examples:

Example (1). A FSC earns commissions on sales of export property by its related supplier. The related supplier manufactures and sells its export property to its foreign subsidiaries for resale in their respective countries. From time to time, the foreign subsidiaries will return products to the related supplier for credit and, from time to time, the foreign subsidiaries purchase products in their respective countries and sell such products to the related supplier. These transactions result in various amounts being owed to the foreign subsidiaries. Each month the various inter-company obligations are reviewed. The result of such review of inter-company indebtedness is a netting out of the various intercompany liabilities on the books, to the extent possible, and a flow of funds for the net obligation. Due to the nature of these transactions, the amounts owed by the foreign subsidiaries exceed the amounts which the related supplier owes to the foreign subsidiaries. The gross receipts amount (*i.e.*, 1.83 percent of this net amount) is credited to the FSC's bank account. This constitutes receipt of payment for purposes of paragraph (d)(2)(i) of this section.

Example (2). In a leveraged lease transaction, a FSC-lessor obtains purchase financing from a lending institution. The lending institution retains a security interest in the proceeds and requires that a portion of each rental payment be paid by the lessee directly to the lending institution. Since the FSC is precluded from receiving a portion of the proceeds of the export transaction, the FSC may satisfy the receipt of payment requirement by receiving the gross receipts amount with respect to the remaining proceeds.

Example (3). A buy-sell FSC sells its export property to a foreign customer and is paid by means of a "draw-down" letter of credit. Over a substantial period of time prior to delivery of the export property, amounts are advanced to the FSC under the letter of credit. At delivery, the remaining amount available is paid. Each payment made to the FSC constitutes a payment for receipt of payment purposes and thus the gross receipts amount related to each payment must be credited to the FSC's bank account.

Example (4). An FSC earns commissions on sales of export property by its related supplier. The related supplier regularly collects payments from its foreign customers in a San Francisco bank account and, after the San Francisco bank has collected on the checks, transfers, within 35 calendar days, the gross receipts amounts from its New York bank account to the FSC's bank account located outside the United States. The FSC incurred transfer fees of $160X in addition to a fee of $35X for the maintenance of the FSC's bank account outside the United States during the 35 calendar day period. The maintenance fee relating to the United States bank account for the 35 calendar day period is $45X. The receipt of payment test is met because the gross receipts amounts are transferred after payment but within 35 calendar days to the FSC's bank account located outside the United States. The transfer fees of $160X and the maintenance fee of $35X relating to the FSC's foreign bank

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account are foreign direct costs. The $45X maintenance fee related to the United States bank account is not a direct cost. If the gross receipts amounts had not been transferred to the FSC's foreign bank account within 35 calendar days, the $45X maintenance fee related to the United States bank account would be considered a United States direct cost. The transfer fee of $160X and the maintenance fee of $35X relating to the FSC's foreign bank account, however, would, nonetheless, be considered as foreign direct costs. The same funds received in San Francisco need not be transferred to the FSC's foreign bank account because money is fungible. For the same reason, the gross receipts amounts need not be transferred from the same bank account in which the payments are received.

(e) *Assumption of credit risk*—(1) *Assumption of credit risk defined.* For purposes of section 924(e), the assumption of credit risk means bearing the economic risk of nonpayment with respect to a transaction. If the FSC is acting as a commission agent for the related supplier, this risk is borne by the FSC if the commission contract transfers the costs of the economic risk of nonpayment with respect to the transaction from the related supplier to the FSC. The FSC may elect on its annual return to bear the economic risk of nonpayment with respect to its transactions during a taxable year by either—

(i) Assuming the risk of a bad debt in accordance with the rules of paragraph (e)(4)(i) of this section,

(ii) Obtaining insurance to cover nonpayment,

(iii) Investigating credit of a customer or a potential customer,

(iv) Factoring trade receivables, or

(v) Selling by means of letters of credit or banker's acceptances.

Only the alternative elected to be performed by the FSC during a taxable year is relevant for purposes of section 924(d). For example, if a buy-sell FSC elects to bear the economic risk of nonpayment with respect to its transaction during a taxable year by assuming the risk of a bad debt in accordance with the rules of paragraph (e)(4)(i) of this section, and also factors the transaction's trade receivables, only the direct costs of assuming the risk of a bad debt are relevant for purposes of section 924(d). For purposes of this paragraph, a potential customer is an unrelated person who is engaged in the purchase or sale of export property on whom an investigation is performed, but with whom no export sales contract is executed.

(2) *Direct costs of assumption of credit risk.* (i) With respect to assuming the risk of a bad debt, the direct costs of the assumption of credit risk in the case of a buy-sell FSC include debts that become uncollectible and charges taken into account in determining additions to bad debt reserves of the FSC. In the case of a commission FSC, the direct costs of the assumption of credit risk include the assumption of the debts and charges of the related supplier attributable to export sales that are allowed as deductions under section 166.

(ii) With respect to insurance, the direct costs of the assumption of credit risk are the costs of obtaining insurance against the risk of nonpayment. Qualifying insurance must be obtained from an unrelated insurer and must cover the risk of nonpayment due to default and bankruptcy by the purchaser. Insurance obtained from a related insurer, or insurance that covers default and bankruptcy due to risks of war or political unrest without covering ordinary default or bankruptcy is not sufficient.

(iii) With respect to investigating credit, the direct costs of assumption of credit risk are the external costs of investigating credit for customers or potential customers, including costs of membership in a credit agency or association for that purpose (but not the costs of approving credit by an internal credit agency).

(iv) With respect to factoring trade receivables, the direct costs of assumption of credit risk are the costs of factoring trade receivables of related and unrelated customers (*e.g.* the amount of the discount and the fees relating to factoring).

(v) With respect to letters of credit or banker's acceptances, the direct costs of assumption of credit risk are the costs of letters of credit or banker's acceptances and the documentary collection costs.

(3) *Location of assumption of credit risk.* The location of the activity of assumption of credit risk is the location of the customer or obligor whose payment is at risk, except that the location of investigating credit is the location of the credit agency or association performing the investigation. A foreign branch of a United States corporation and a foreign office of the United States government are not foreign obligors for purposes of this test. A foreign branch of a United States credit investigation agency or association, however, is treated as located outside the United States.

(4) *Special rules*—(i) *Assuming the risk of a bad debt.* (A) *In general.* If a FSC chooses to bear the economic risk of nonpayment by assuming the risk of a bad debt with respect to a transaction or grouping of transactions and an actual bad debt loss on a foreign trading gross receipt is not incurred in any three consecutive years, the FSC will be deemed to have performed this activity during the first two years of the three year period. For the third year, the FSC will not be deemed to have performed this activity and must satisfy the 85 percent foreign direct costs test by satisfying any two paragraphs included within section 924(e) other than assumption of credit risk activity under section 924(e)(5). An actual bad debt loss will only satisfy the activity test with respect to a single three consecutive year period.

(B) *Example.* The principles of this paragraph may be illustrated by the following example:

Example. In year 1, a related supplier of a commission FSC incurs a bad debt with respect to foreign trading gross receipts owed by a foreign obligor. This expense is the only bad debt incurred with respect to foreign trading gross receipts in year 1. Therefore, the direct costs for the bearing of the economic risk of nonpayment for year 1 are all foreign direct costs and the 85-percent test is satisfied. In year 2, the FSC incurs a bad debt with respect to a U.S. broker/consolidator. The direct costs for year 2 are U.S. direct costs and, therefore, the 85-percent test is not satisfied. No bad debt is incurred in year 3. Because a bad debt with respect to a foreign obligor is incurred in year 1, the FSC is deemed to have satisfied the economic risk of nonpayment for each of years 1, 2 and 3.

(ii) *Grouping with respect to other risk activities.* For taxable years beginning after February 19, 1987, if a FSC elects to bear the economic risk of nonpayment by performing one of the activities described in paragraph (e) of this section and elects to group transactions, it is considered to have performed the elected activity with respect to all transactions within the group during the taxable year if it performs the activity in accordance with the following rules. If a FSC elects to factor trade receivables, at least 20 percent of the face amount of a group's receivables must be factored. If a FSC elects to sell by means of letters of credit or banker's acceptances, a fee must be incurred with respect to 20 percent of the foreign trading gross receipts attributable to sales within the group. If the FSC elects to obtain insurance to cover nonpayment, 20 percent of the face amount of receivables attributable to sales included in the § 1.924(d)–1(e) grouping elected by the FSC must be insured. If a FSC elects to investigate credit of customers or potential customers, 20 percent of new or potential customers for which a credit investigation is performed must be investigated.

Internal Revenue Practice Regulations

PART 602—[AMENDED]

Par. 3. The authority citation for Part 602 continues to read:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by inserting in the appropriate place in the table "1.924 .... 1545–0904".

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved:

J. Roger Mentz,

Assistant Secretary of the Treasury.

January 9, 1987.

[FR Doc. 87–3379 Filed 2–13–87; 10:39 am]

BILLING CODE 4830-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2616, 2617, and 2623

Terminating Single-Employer Plans Subject to Transition Rules in the Single-Employer Pension Plan Amendments Act of 1986; Distribution of Plan Assets

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final deadline for distribution.

SUMMARY: This notice advises plan administrators of plans covered by the transition rules in the Single-Employer Pension Plan Amendments Act of 1986 of the final deadline for distributing plan assets and filing a post-distribution certification with the Pension Benefit Guaranty Corporation ("PBGC"). The previous deadline for distributing plan assets was suspended by the PBGC in late December 1986, primarily because a significant number of plan administrators had advised the PBGC that they were unwilling to make the final distribution of plan assets since they had not yet received rulings from the Internal Revenue Service ("IRS") on their proposed terminations. After consulting with the IRS, the PBGC has ascertained that determination letter requests for most of the transition rule plans have been processed. Accordingly, the effect of this notice is to advise plan administrators of transition rule plans that the final deadline for distribution of plan assets is April 7, 1987 (or, if later, 90 days after PBGC's issuance of the Notice of Sufficiency) and the deadline for filing the post-distribution certification is 30 days thereafter.

FOR FURTHER INFORMATION CONTACT: Pension Benefit Guaranty Corporation, Case Operations and Assistance Division, Coverage and Inquiries Branch, IOD (Code 25420), 2020 K Street, N.W., Washington, DC 20006; or call 202–778–8800 or 202–778–8859 for TTY and TDD (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: Section 11019(b) of the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA") provides transition rules for completing the termination of single-employer plans for which a notice of intent to terminate was filed with the Pension Benefit Guaranty Corporation ("PBGC") on or after January 1, 1986 and before April 7, 1986. Among other things, the transition rules establish deadlines for completing the distribution of a terminating plan's assets: the deadline for plans that received a Notice of Sufficiency prior to SEPPAA's date of enactment (April 7, 1986) is 90 days after the date of enactment; the deadline for other transition rule plans is 90 days after issuance by the PBGC of a sufficiency notice. In addition, all terminating plans are required to file a post-distribution certification with the PBGC within 30 days after distribution. Failure to comply with the transition rules nullifies a proposed plan termination, and the plan is an ongoing plan for all purposes.

On December 9, 1986, the PBGC published a notice in the **Federal Register** (51 FR 44288) extending the distribution deadline for transition rule plans to the later of January 8, 1987 or the 135th day after issuance by the PBGC of a plan's Notice of Sufficiency. Subsequently, a number of plan administrators contacted the PBGC to say that they had not yet received determination letters from the Internal Revenue Service ("IRS") on their proposed terminations and were therefore unwilling to distribute plan assets. Concerned that this might be a problem for a significant number of plans, the PBGC decided in late December to suspend the distribution deadlines set forth in the December 9th notice and began so advising the public of this decision.

On the basis of several discussions with IRS staff concerning this matter, the PBGC understands that, at this time, there are a relatively small number of transition rule plans that have not received IRS determination letters despite filing timely requests for them. (Title IV's requirements for final distribution of plan assets upon termination are not conditioned on the receipt of a favorable IRS determination letter. Moreover, given SEPPAA's deadline for the distribution of assets by transition rule plans, which was explained in the PBGC's April 10, 1986 notice on the transition rules (51 FR 12489), the PBGC is of the view that administrators of transition rule plans who requested an IRS determination letter in late 1986 could not reasonably have expected to receive the letter before the deadline for complying with the transition rules.) Therefore, the PBGC hereby advises plan administrators of transition rule plans that the final deadline for distributing all plan assets is April 7, 1987 or, if later, the 90th day after issuance of the plan's Notice of Sufficiency. Post-distribution certifications must be filed with the PBGC no later than 30 days after the distribution deadline (*i.e.*, by May 7, 1987 or, if later, 30 days after the distribution). The PBGC emphasizes that these are the final deadlines; they will not be extended.

The PBGC is sending letters to all plan administrators of transition rule plans for which the PBGC has not received a post-distribution certification advising them of these deadlines. However, the PBGC stresses that non-receipt or late receipt of this letter does not relieve a plan administrator of the obligation to comply with these deadlines.

If a plan administrator fails to distribute all plan assets by the deadline set forth above, the plan will be an ongoing plan for all purposes. This means, among other things, that the crediting of service for all purposes under the plan continues from the proposed termination date forward, the plan continues to owe premiums to the PBGC, and the sponsoring employer's contribution obligation continues. In order to terminate the plan, the termination process would have to be started again, in accordance with ERISA section 4041, as amended by SEPPAA. Plans that distribute assets by the deadline but fail to file post-distribution certifications will be subject to audit by the PBGC.

For any plans covered by this notice that have applied for but not yet received an IRS determination letter, the PBGC recommends that the plan administrator advise the PBGC immediately of this fact, either by telephoning the number or writing to the address set forth under the heading "For Further Information Contact", at the beginning of this notice. Such notification to the PBGC must include the plan name, employer identification number, the IRS District to which the request was submitted and the date of the request. The PBGC will forward this information to the IRS, but, of course, neither the PBGC nor the IRS can

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guarantee that a determination letter will be issued before the distribution deadline.

Issued in Washington, D.C. this 12th day of February, 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87-3410 Filed 2-18-87; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS BRONSTEIN

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS BRONSTEIN (FF-1037) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval frigate. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: February, 6, 1987.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400. Telephone No.: (202) 352-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS BRONSTEIN (FF-1037) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 2(a)(i), regarding the height above the hull of the forward masthead light, without interfering with its special function as a naval frigate. The Secretary of the Navy has also certified that the aforementioned light is located in closets possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS BRONSTEIN (FF-1037) is a member of the FF-1037 class of vessels for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in existing tables of § 706.3, are equally applicable to this vessel.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's abilities to perform its military functions.

Lists of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table One of § 706.2 is amended by adding the following Navy Ship to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Meters [1]
USS BRONSTEIN	FF-1037	2.92

[1] Distance in meters of forward masthead light below minimum required height. Sec. 2(a)(i), Annex I.

Dated and Approved: February 6, 1987.

John Lehman,

Secretary of the Navy.

[FR Doc. 87-3520 Filed 2-18-87; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS REEVES

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS REEVES (CG-24) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS without interfering with its special function as a naval cruiser. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: February, 6, 1987.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone No.: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS REEVES (CG-24) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights, without interfering with its special function as a Navy ship. The Secretary of the Navy has also certified that the abovementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publicaton of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

Lists of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table Five of § 706.2 is amended by adding the following the Navy ship to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i).	Aft masthead light less than 4.5 meters above forward masthead light, Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a).	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
USS REEVES	CG-24						×	×	27

Dated and Approved: February 6, 1987.

John Lehman,

Secretary of the Navy.

[FR Doc. 87-3518 Filed 2-18-87; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS STUMP

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS STUMP (DD-978) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a Navy vessel. The Secretary of the Navy has also certified that the abovementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

EFFECTIVE DATE: February 6, 1987.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone No. (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS STUMP (DD-978) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the vessel, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a Navy vessel. The Secretary of the Navy has also certified that the abovementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table Five of § 706.2 is amended by adding the following Navy ship to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, Sec 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
USS STUMP	D-978						×	×	46

Dated and Approved: February 6, 1987.

John Lehman,

Secretary of the Navy.

[FR Doc. 87-3517 Filed 2-18-87; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea; USS TOWERS et al.

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS TOWERS (DDG-9) and USS COCHRANE (DDG-21) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain

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provisions of the 72 COLREGS without interfering with their special functions as naval guided missile destroyers. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: February 6, 1987.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone No. (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS TOWERS (DDG-9) and USS COCHRANE (DDG-21) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 2(a)(i), pertaining to the placement of the forward masthead light, without interfering with their special functions as naval guided missile destroyers. The Secretary of the Navy has also certified that the aforementioned light is located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS TOWERS (DDG-9) and USS COCHRANE (DDG-21) are members of the DDG-2 class of vessels for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to these two vessels.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on these vessels in a manner differently from that prescribed herein will adversely affect the vessel' ability to perform their military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table One of § 706.2 is amended by adding the following Navy ships to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Meters[1]
USS TOWERS	DDG-9	2.3
USS COCHRANE	DDG-21	1.5

[1] Distance in meters of forward masthead light below minimum required height. Annex I, § 2 (a) (i).

Dated and Approved: February 6, 1987.

John Lehman,

Secretary of the Navy.

[FR Doc. 87-3521 Filed 2-18-87; 8:45 am]

BILLING CODE 3810-AE-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3148-2]

Approval and Promulgation of Implementation Plans; Connecticut; Reasonably Available Control Technology for King Industries, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from King Industries, Inc. (King) in Norwalk, Connecticut. The required RACT control methods are add-on control equipment, process modifications, and recordkeeping. The intended effect of this action is to approve a source-specific RACT determination submitted by the State in accordance with commitments made in its Ozone Attainment Plan which EPA approved on March 21, 1984 (49 FR 10542). This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: March 23, 1987.

ADDRESSES: Copies of the submittal are available for public inspection at Room 2313, JFK Federal Building, Boston, MA 02203; Public Information Reference Unit, EPA Library, 401 M Street, SW., Washington, DC 20460; and Air Compliance Unit, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: David Conroy, (617) 565-3252; FTS 835-3252 or Lynne Naroian, (617) 565-3246; FTS 835-3246.

SUPPLEMENTARY INFORMATION: On July 11, 1986 (51 FR 25210), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Connecticut. The NPR proposed to approved State Order No. 944 as a revision to the Connecticut SIP. The provisions of the Connecticut Department of Environmental Protection's (DEP's) State Order define and impose RACT for King as required by section 22a-174-20, subsection (ee) of the Connecticut Ozone Attainment Plan.

A description of the revision and EPA's rationale for approving it were provided in the NPR and will not be restated here. However, EPA proposed approval with the understanding that King would submit additional emission reduction estimates and data as required by the DEP. The estimated percent of VOC emission reductions, from actual operating conditions of 1985, achieved by adding on control equipment and modifying processes are as follows:

- Install a condenser on Neutralization Reactors No. 1 and No. 3 ..... 79%
- Install scrubber on Sulfonation Reactors S101, S102, S120 ..... 60-65%
- Initiate certain modifications to Neutralization Reactor No. 2—addition of a condenser and discontinuation of the Lithium Carbonate Process 72-79%
- Install a continuous distillation process as a replacement of batch stills S-112 and S122 ..... 25%
- Initiate modifications to certain listed vessels and in process storage tanks—addition of condensers 58-96%

After extensive review of these estimated emission reductions by the State and EPA, EPA has determined that State Order No. 944 imposes RACT for the VOC emission points identified at King. EPA's analysis of these estimated reductions is provided in the technical support document prepared for this SIP revision. Copies of that document are available at the EPA Regional Office listed in the Addresses section of this notice. No public comments were received on the NPR.

Final Action: EPA is approving Connecticut State Order No. 944 as a revision to the Connecticut SIP. The Order was issued to King Industries, Inc. on April 18, 1986 by the Connecticut DEP and requires VOC RACT controls at the facility.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 20, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: January 27, 1987.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart H—Connecticut

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.370, is amended by adding paragraph (c)(37) as follows:

§ 52.370 Identification of plan.

* * * * * *

(c) * * *

(37) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on April 18, 1986 and February 3, 1987.

(i) Incorporation by Reference.

(A) State Order No. 944 for King Industries, Inc. dated April 18, 1986 which establishes and requires reasonably available control technology for the control of volatile organic compounds from this facility.

(B) A letter from the Connecticut Department of Environmental Protection dated February 3, 1987 which states that the effective date of State Order No. 944 is May 28, 1986.

[FR Doc. 87-1958 Filed 2-18-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 60

[AD-FRL-3141-4]

Standards of Performance for New Stationary Sources; Appendix A, Reference Methods; Miscellaneous Clarifications and Addition of Concentration Calculation Equations to Method 18

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Revisions and additions to Method 18 of Appendix A of 40 CFR Part 60 were proposed in the **Federal Register** on March 5, 1986 (51 FR 7585). This action promulgates the revisions and additions in order to clarify previous procedural and equipment requirements, and to include concentration calculation equations. The intended effect of these revisions and additions is to enhance the reliability of data produced by Method 18.

EFFECTIVE DATE: February 19, 1987.

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESS: *Docket.* A docket, number A-85-23, containing information considered by EPA in development of the promulgated standards, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. William Grimley or Mr. Roger T. Shigehara, Emission Measurement Branch, Emission Standards and Engineering Division (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-2237.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

This rulemaking provides revisions and additions to an existing test method in order to improve the reliability of data produced by the method. The rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard.

II. Public Participation

The proposed revisions and additions to Method 18 were published in the **Federal Register** on March 5, 1986 (51 FR 7585). Public comments were solicited at the time of proposal. To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed procedures, a public hearing was scheduled for April 9, 1986, beginning at 10:00 a.m. The hearing was not held because one requested to speak. The public comment period was from March 5, 1986, to May 19, 1986. One comment letter was received concerning issues related to the proposed revisions and additions. The comments therein have been carefully considered and, where determined to be appropriate by the Agency, changes have been made to the proposed rulemaking.

III. Comments and Changes to the Proposed Rulemaking

The only comment letter received on the proposed revisions and additions was from a chemical manufacturing facility. The comments therein are addressed directly in this preamble, and no separate document to summarize those comments and responses has been produced. The following summary of those comments and their respective responses serves as the basis for the changes which have been made to the rulemaking between proposal and promulgation.

The first comment dealt with Section 5.1.7 of Method 18. The commenter suggested that the number and sizes of the syringes not be limited to those specified.

The Agency believes that the sizes specified will cover all method requirements. However, the Agency agrees that other sizes may also be appropriate, and the section has been revised with wording to that effect.

The second comment dealt with Section 5.1.19. The commenter felt that the specification should be changed to also allow probe placement at any point not less than 1 meter from the stack walls.

The Agency agrees with the comment, and the section has been revised accordingly. Similar wording in Sections 5.3.1.1, 5.3.1.2, 7.1.1.2, 7.2.2, 7.3.2, and 7.4.2 has also been revised in consideration of this comment.

The third comment dealt with Section 5.2.4. The commenter suggested that in order to eliminate controversy, the term

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"Pure or nearly pure . . ." be replaced by the definitive "Pure (99.9%) . . .".

The Agency agrees that it may seem desirable to definitize the term "pure;" however, it does not believe that it is appropriate to restrict the calibration solutions to a purity of 99.9 percent, since such purity may not be reasonably available or necessary for every organic compound that could be measured by Method 18. The section has, therefore, been revised to specify "Pure (99.9%), or as pure as can reasonably be obtained, . . ."

The fourth comment dealt with Section 6.2. The commenter pointed out that "each organic compound" may not need to be measured, and so that qualification should be made.

Since Method 18 is not meant to identify and measure those organics that are present in trace amounts, this comment is correct, and Section 6.2 has been revised accordingly.

The fifth comment dealt with Section 6.2.1. The commenter presented two equations that the commenter thought would simplify the existing dilution calculation equations.

The Agency has considered the two equations presented by the commenter, and does not consider them to be a simplification of the existing equations. Therefore the existing equations have not been changed.

The sixth comment dealt with Section 6.2.2.1. The commenter felt that the chances for error in this standards preparation procedure were many, and suggested that this technique should only be used if none of the others were available.

The Agency believes that good results can be obtained with this procedure, if it is performed with proper care. Also, the Agency believes the quality assurance auditing procedures of Method 18 are sufficient to detect any serious errors that may arise from misuse of this procedure.

The seventh and final comment dealt with Section 6.2.1. The commenter said that there are commercial diluters available which are better than the methods described, and that their use should be allowed, and a list of the approved ones should be given.

The Agency agrees that commercial diluters are available, and that they have the potential to produce acceptably accurate standards. However, the Agency is not in a position to evaluate and approve specific devices, and instead will rely on the quality assurance procedures that are already incorporated in the method to qualify their use. Section 6.2.1 has, therefore, been revised to mention that commercially available diluters can also be used.

IV. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards, and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review [section 307(d)(7)(A)].

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to the requirements of a regulatory impact analysis. The Agency has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." The rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, but, instead, provides clarification of an existing test method in order to improve the reliability of data produced by the method. The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a regulatory flexibility analysis (RFA) in those instances where small business impacts are possible. Because these standards impose no adverse economic impacts, an RFA has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the promulgated rule will not have any significant economic impact on small entities, because no additonal testing costs will be incurred.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Synthetic organic chemicals manufacturing, Reporting and recordkeeping requirements.

Dated: February 11, 1987.

Lee M. Thomas,

Administrator.

PART 60—[AMENDED]

40 CFR Part 60, Appendix A, Method 18, is amended as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: Sections 101, 111, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

Appendix A, Method 18 [Amended]

2. By revising the first paragraph of Section 1.2 as follows:

The major organic components of a gas mixture are separated by gas chromatography (GC) and individually quantified by flame ionization, photoionization, electron capture, or other appropriate detection principles.

3. By revising the last sentence in the last paragraph of Section 4 as follows:

To adjust gaseous organic concentrations when water vapor is present in the sample, water vapor concentrations are determined for those samples, and a correction factor is applied.

4. By revising the first paragraph of Section 5 as follows:

Perform a presurvey for each source to be tested. Refer to Figure 18–1. Some of the information can be collected from literature surveys and source personnel. Collect gas samples that can be analyzed to confirm the identities and approximate concentrations of the organic emissions.

5. By adding a sentence after the heading of Section 5.1 as follows:

5.1 Apparatus. This apparatus list also applies to Sections 6 and 7.

6. By revising Section 5.1.4 as follows:

5.1.4 Flowmeters. To measure flow rates.

7. By revising Section 5.1.7 as follows:

5.1.7 Syringes. 0.5-ml, 1.0- and 10-microliter sizes, calibrated, maximum accuracy (gas tight), for preparing calibration standards. Other appropriate sizes can be used.

8. By adding Sections 5.1.19 and 5.1.20 as follows:

5.1.19 Sample Probes. Pyrex or stainless steel, of sufficient length to reach centroid of stack, or a point no closer to the walls than 1 m.

5.1.20 Barometer. To measure barometric pressure.

9. By revising Section 5.2.4 as follows:

5.2.4 Organic Compound Solutions. Pure (99.9 percent), or as pure as can reasonably be obtained, liquid samples of all the organic compounds needed to prepare calibration standards.

10. By revising the seventh sentence of Section 5.3.1.1 as follows:

Place the filter end of the probe at the centroid of the duct, or at a point no closer to the walls than 1 m, and purge the probe with the rubber suction bulb.

11. By revising the third sentence of Section 5.3.1.2 as follows:

Place the filter end of the probe at the centroid of the duct, or at a point no closer to the walls than 1 m, and apply suction with the bulb to completely purge the probe and flask.

12. By removing the first sentence of Section 6.

13. By revising the last paragraph of Section 6.1.1 as follows:

Plants with analytical laboratories may also be able to provide information on appropriate analytical procedures.

14. By revising Section 6.2, 6.3, 6.4, and 6.5 as follows:

6.2 Calibration Standards. Prepare or obtain enough calibration standards so that there are three different concentrations of each organic compound expected to be measured in the source sample. For each organic compound, select those concentrations that bracket the concentrations expected in the source samples. A calibration standard may contain more than one organic compound. If available, commercial cylinder gases may be used if their concentrations have been certified by direct analysis.

If samples are collected in adsorbent tubes (charcoal, XAD–2, Tenax, etc.), prepare or obtain standards in the same solvent used for the sample extraction procedure. Refer to Section 7.4.3.

Verify the stability of all standards for the time periods they are used. If gas standards are prepared in the laboratory, use one or more of the following procedures.

6.2.1 Preparation of Standards from High Concentration Cylinder Standards. Obtain enough high concentration cylinder standards to represent all the organic compounds expected in the source samples.

Use these high concentration standards to prepare lower concentration standards by dilution, as shown by Figures 18–5 and 18–6.

To prepare the diluted calibration samples, calibrated rotameters are normally used to meter both the high concentration calibration gas and the diluent gas. Other types of flowmeters and commercially available dilution systems can also be used.

Calibrate each flowmeter before use by placing it between the diluent gas supply and suitably sized bubble meter, spirometer, or wet test meter. Record all data shown on Figure 18–4. While it is desirable to calibrate the cylinder gas flowmeter with cylinder gas, the available quantity and cost may preclude it. The error introduced by using the diluent gas for calibration is insignificant for gas mixtures of up to 1,000 to 2,000 ppm of each organic component.

Once the flowmeters are calibrated, connect the flowmeters to the calibration and diluent gas supplies using 6-mm Teflon tubing. Connect the outlet side of the flowmeters through a connector to a leak-free Tedlar bag as shown in Figure 18–5. (See Section 7.1 for bag leak-check procedures.) Adjust the gas flow to provide the desired dilution, and fill the bag with sufficient gas for GC calibration. Be careful not to overfill and cause the bag to apply additional pressure on the dilution system. Record the flow rates of both flowmeters, and the laboratory temperature and atmospheric pressure. Calculate the concentration C_s in ppm of each organic in the diluted gas as follows:

$$C_s = \frac{10^6 (\bar{X} q_c)}{q_c + q_d} \qquad \text{Eq. 18-1}$$

where:

10^6 = Conversion to ppm.

X = Mole or volume fraction of the organic in the calibration gas to be diluted.

q_c = Flow rate of the calibration gas to be diluted.

q_d = Diluent gas flow rate.

Single-stage dilutions should be used to prepare calibration mixtures up to about 1:20 dilution factor.

For greater dilutions, a double dilution system is recommended, as shown in Figure 18–6. Fill the Tedlar bag with the dilute gas from the second stage. Record the laboratory temperature, barometric pressure, and static pressure readings. Correct the flow reading for temperature and pressure. Calculate the concentration C_s in ppm of the organic in the final gas mixture as follows:

$$C_s = 10^6 \bar{X} \left(\frac{q_{c1}}{q_{c1} + q_{d1}}\right)\left(\frac{q_{c2}}{q_{c2} + q_{d2}}\right) \qquad \text{Eq. 18-2}$$

Where:

10^6 = Conversion to ppm.

X = Mole or volume fraction of the organic in the calibration gas to be diluted.

q_{c1} = Flow rate of the calibration gas to be diluted in stage 1.

q_{c2} = Flow rate of the calibration gas to be diluted in stage 2.

q_{d1} = Flow rate of diluent gas in stage 1.

q_{d2} = Flow rate of diluent gas in stage 2.

Further details of the calibration methods for flowmeters and the dilution system can be found in Citation 21 in the Bibliography.

6.2.2 Preparation of Standards from Volatile Materials. Record all data shown on Figure 18–3.

6.2.2.1 Gas Injection Technique. This procedure is applicable to organic compounds that exist entirely as a gas at ambient conditions. Evacuate a 10-liter Tedlar bag that has passed a leak-check (see Section 7.1), and meter in 5.0 liters of air or nitrogen through a dry gas meter that has been calibrated in a manner consistent with the procedure described in Section 5.1.1 of Method 5. While the bag is filling use a 0.5-ml syringe to inject a known quantity of "pure" gas of the organic compound through the wall of the bag, or through a septum-capped tee at the bag inlet. Withdraw the syringe needle, and immediately cover the resulting hole with a piece of masking tape. In a like manner, prepare dilutions having other concentrations. Prepare a minimum of three concentrations. Place each bag on a smooth surface, and alternately depress opposite sides of the bag 50 times to mix the gases. Record the average meter temperature and pressure, the gas volume and the barometric pressure. Record the syringe temperature and pressure before injection.

Calculate each organic standard concentration C_s in ppm as follows:

$$C_s = \frac{G_v \times 10^6 \frac{293}{T_s} \frac{P_s}{760}}{V_m Y \frac{293}{T_m} \frac{P_m}{760} 1000}$$

$$= \frac{G_v \times 10^3 \frac{P_s}{T_s} \frac{T_m}{P_m}}{V_m Y} \qquad \text{Eq. 18-3}$$

where:

G_v = Gas volume or organic compound injected, ml.

10^6 = Conversion to ppm.

P_s = Absolute pressure of syringe before injection, mm Hg.

T_s = Absolute temperature of syringe before injection, °K.

V_m = Gas volume indicated by dry gas meter, liters.

Y = Dry gas meter calibration factor, dimensionless.

P_m = Absolute pressure of dry gas meter, mm Hg.

T_m = Absolute temperature of dry gas meter, °K.

1000 = Conversion factor, ml/liter.

6.2.2.2 Liquid Injection Technique. Use the equipment shown in Figure 18–6. Calibrate the dry gas meter as described in Section 6.2.2.1 with a wet test meter or a spirometer. Use a water manometer for the pressure gauge and glass, Teflon, brass, or stainless steel for all connections. Connect a valve to the inlet of the 50-liter Tedlar bag.

To prepare the standards, assemble the equipment as shown in Figure 18–6, and leak-check the system. Completely evacuate the bag. Fill the bag with hydrocarbon-free air, and evacuate the bag again. Close the inlet valve.

Turn on the hot plate, and allow the water to reach boiling. Connect the bag to the impinger outlet. Record the initial meter reading, open the bag inlet valve, and open the cylinder. Adjust the rate so that the bag

will be completely filled in approximately 15 minutes. Record meter pressure and temperature, and local barometric pressure.

Allow the liquid organic to equilibrate to room temperature. Fill the 1.0- or 10-microliter syringe to the desired liquid volume with the organic. Place the syringe needle into the impinger inlet using the septum provided, and inject the liquid into the flowing air stream. Use a needle of sufficient length to permit injection of the liquid below the air inlet branch of the tee. Remove the syringe.

When the bag is filled, stop the pump, and close the bag inlet valve. Record the final meter reading, temperature, and pressure.

Disconnect the bag from the impinger outlet, and either set it aside for at least 1 hour, or massage the bag to insure complete mixing.

Measure the solvent liquid density at room temperature by accurately weighing a known volume of the material on an analytical balance to the nearest 1.0 milligram. A ground-glass stoppered 25-ml volumetric flask or a glass-stoppered specific gravity bottle is suitable for weighing. Calculate the result in terms of g/ml. As an alternative, literature values of the density of the liquid at 20 °C may be used.

Calculate each organic standard concentration C_s in ppm as follows:

$$C_s = \frac{\frac{L_v \rho\ (24.055 \times 10^6)}{M}}{V_m Y \frac{293}{T_m} \frac{P_m}{760} 1000} = 6.24 \times 10^4 \frac{L_v \rho T_m}{M V_m Y P_m} \quad \text{Eq. 18-4}$$

Where:

L_v = Liquid volume of organic injected, µl.

µl = Liquid organic density as determined, g/ml.

M = Molecular weight of organic, g/g-mole.

24.055 = Ideal gas molar volume at 293 °K and 760 mm Hg, liters/g-mole.

10_6 = Conversion to ppm.

1000 = Conversion factor, µl/ml.

6.3 Preparation of Calibration Curves. Establish proper GC conditions, then flush the sampling loop for 30 seconds at a rate of 100 ml/min. Allow the sample loop pressure to equilibrate to atmospheric pressure, and activate the injection valve. Record the standard concentration, attenuator factor, injection time, chart speed, retention time, peak area, sample loop temperature, column temperature, and carrier gas flow rate. Repeat the standard injection until two consecutive injections give area counts within 5 percent of their average. The average value multipled by the attenuator factor is then the calibration area value for the concentration.

Repeat this procedure for each standard. Prepare a graphical plot of concentration (C_s) versus the calibration area values. Perform a regression analysis, and draw the least squares line.

6.4 Relative Response Factors. The calibration curve generated from the standards for a single organic can usually be related to each of the individual GC response curves that are developed in the laboratory for all the compounds in the source. In the field, standards for that single organic can then be used to "calibrate" the GC for all the organics present. This procedure should first be confirmed in the laboratory by preparing and analyzing calibration standards containing multiple organic compounds.

6.5 Quality Assurance for Laboratory Procedures. Immediately after the preparation of the calibration curves and prior to the presurvey sample analysis, the analysis audit described in 40 CFR Part 61, Appendix C, Procedure 2: "Procedure for Field Auditing GC Analysis," should be performed. The information required to document the analysis of the audit samples has been included on the example data sheets shown in Figures 18–3 and 18–7. The audit analyses should agree with the audit concentrations within 10 percent. When available, the tester may obtain audit cylinders by contacting: U.S. Environmental Protection Agency, Environmental Monitoring Systems Laboratory, Quality Assurance Division (MD–77), Research Triangle Park, North Carolina 27711. Audit cylinders obtained from a commercial gas manufacturer may be used provided that (a) the gas manufacturer certifies the audit cylinder in a manner similar to the procedure described in 40 CFR Part 61, Appendix B, Method 106, Section 5.2.3.1, and (b) the gas manufacturer obtains an independent analysis of the audit cylinders to verify this analysis. Independent analysis is defined as an analysis performed by an individual other than the individual who performs the gas manufacturer's analysis, while using calibration standards and analysis equipment different from those used for the gas manufacturer's analysis. Verification is complete and acceptable when the independent analysis concentration is within 5 percent of the gas manufacturer's concentration.

15. By revising the first paragraph of Section 7.1.1 as follows:

7.1.1 Evacuated Container Smapling Procedure. In this procedure, the bags are filled by evacuating the rigid air-tight containers that hold the bags. Use a field sample data sheet as shown in Figure 18–10. Collect triplicate sample from each sample location.

16. By revising the fourth sentence of Section 7.1.1.2 as follows:

Place the end of the probe at the centroid of the stack, or at a point no closer to the walls than 1 m, and start the pump with the needle valve adjusted to yield a flow of 0.5 liter/minute.

17. By changing the first word after the heading of Section 7.1.2 from "Flow" to "Follow."

18. By revising Section 7.1.5 and 7.1.6, and adding 7.1.7 and 7.1.8 as follows:

7.1.5 Analysis of Bag Samples.

7.1.5.1 Apparatus. Same as Section 5. A minimum of three gas standards are required.

7.1.5.2 Procedure. Establish proper GC operating conditions as described in Section 6.3, and record all data listed in Figure 18–7. Prepare the GC so that gas can be drawn through the sample valve. Flush the sample loop with gas from one of the three calibration mixtures, and activate the valve. Obtain at least two chromatograms for the mixture. The results are acceptable when the peak areas from two consecutive injections agree to within 5 percent of their average. If they do not, run additional analyses or correct the analytical techniques until this requirement is met. Then analyze the other two calibration mixtures in the same manner. Prepare a calibration curve as described in the same manner. Prepare a calibration curve as described in Section 6.3.

Analyze the source gas samples by connecting each bag to the sampling valve with a piece of Teflon tubing identified for that bag. Follow the specifications on replicate analyses specified for the calibration gases. Record the data listed in Figure 18–11. If certain items do not apply, use the notation "N.A." After all samples have been analyzed, repeat the analyses of the calibration gas mixtures, and generate a second calibration curve. Use an average of the two curves to determine the sample gas concentrations. If the two calibration curves differ by more than 5 percent from their mean value, then report the final results by comparison to both calibration curves.

7.1.6 Determination of Bag Water Vapor Content. Measure and record the ambient temperature and barometric pressure near the bag. From a water saturation vapor pressure table, determine and record the water vapor content as a decimal figure. (Assume the relative humidity to be 100 percent unless a lesser value is known.) If the bag has been maintained at an elevated temperature as described in Section 7.1.4, determine the stack gas water content by Method 4.

7.1.7 Quality Assurance. Immediately prior to the analysis of the stack gas samples, perform audit analyses as described in Section 6.5. The audit analyses must agree with the audit concentrations within 10 percent. If the results are acceptable, proceed with the analyses of the source samples. If they do not agree within 10 percent, then determine the reason for the discrepancy, and take corrective action before proceeding.

7.1.8 Emission Calculations. From the average calibration curve described in Section 7.1.5., select the value of C_s that corresponds to the peak area. Calculate the concentration C_c in ppm, dry basis, of each organic in the sample as follows:

$$C_C = \frac{C_s P_r T_i F_r}{P_i T_r (1 - B_{ws})} \quad \text{Eq. 18-5}$$

Where:

C_s = Concentration of the organic from the calibration curve, ppm.

P_r = Reference pressure, the barometric pressure or absolute sample loop pressure recorded during calibration, mm Hg.

T_i = Sample loop temperature at the time of sample analysis, °K.

F_r = Relative response factor (if applicable, see Section 6.4).

P_i = Barometric or absolute sample loop pressure at time of sample analysis, mm Hg.

T_r = Reference temperature, the termperature of the sample loop recorded during calibration, °K.

B_{ws} = Water vapor content of the bag sample or stack gas, proportion by volume.

19. By revising the ninth sentence of Section 7.2.2 as follows:

Place the inlet of the probe at the centroid of the duct, or at a point no closer to the walls than 1 m, and draw source gas into the probe, heated line, and sample loop.

20. By removing the last paragraph of Section 7.2.2.

21. By adding Sections 7.2.3, 7.2.4, and 7.2.5 as follows:

7.2.3 Determination of Stack Gas Moisture Content. Use Method 4 to measure the stack gas moisture content.

7.2.4 Quality Assurance. Same as Section 7.1.7. Introduce the audit gases in the sample line immediately following the probe.

7.2.5 Emission Calculations. Same as Section 7.1.8.

22. By revising the fourth sentence of Section 7.3.2 as follows:

Insert the probe and source thermocouple to the centroid of the duct, or to a point no closer to the walls than 1 m.

23. By adding Section 7.3.3, 7.3.4, and 7.3.5 as follows:

7.3.3 Determination of Stack Gas Moisture Content. Same as Section 7.2.3.

7.3.4 Quality Assurance. Same as Section 7.2.4.

7.3.5 Emission Calculations. Same as Section 7.2.5, with the dilution factor applied.

24. By revising the first sentence of the second paragraph of Section 7.4.2 as follows:

Use a sample probe. If required, to obtain the sample at the centroid of the duct, or at a point no closer to the walls than 1 m.

25. By revising Figure 18–3 to appear as follows:

BILLING CODE 6560-50-M

Preparation of Standards in Tedlar Bags
and Calibration Curve

Standards Preparation Data:	Standards Mixture #1	Standards Mixture #2	Standards Mixture #3
Organic: _____			
Bag number or identification			
Dry gas meter calibration factor			
Final meter reading (liters)			
Initial meter reading (liters)			
Metered volume (liters)			
Average meter temperature (°K)			
Average meter pressure, gauge (mm Hg)			
Average atmospheric pressure (mm Hg)			
Average meter pressure, absolute (mm Hg)			
Syringe temperature (°K) (Section 6.2.2.1)			
Syringe pressure, absolute (mm Hg) (Section 6.2.2.1)			
Volume of gas in syringe (ml) (Section 6.2.2.1)			
Density of liquid organic (g/ml) (Section 6.2.2.2)			
Volume of liquid in syringe (µl) (Section 6.2.2.2)			
GC Operating Conditions:			
Sample loop volume (ml)			
Sample loop temperature (°C)			
Carrier gas flow rate (ml/min)			
Column temperature			
Initial (°C)			
Rate change (°C/min)			
Final (°C)			
Organic Peak Identification and Calculated Concentrations:			
Injection time (24-hr clock)			
Distance to peak (cm)			
Chart speed (cm/min)			
Organic retention time (min)			
Attenuation factor			
Peak height (mm)			
Peak area (mm^2)			
Peak area x attenuation factor (mm^2)			
Calculated concentration (ppm) (Equation 18-3 or 18-4)			

Plot peak area x attenuation factor against calculated concentration to obtain calibration curve.

Figure 18-3. Standards prepared in Tedlar bags and calibration curve.

26. By revising Figure 18-4 to appear as follows:

Flowmeter Calibration

Flowmeter number or identification _____
Flowmeter type _____
Calibration device (x): Bubble meter___ Spirometer___ Wet test meter___
Readings at laboratory conditions:
Laboratory temperature (T_{lab}) _____ °K
Laboratory barometric pressure (P_{lab}) _____ mm Hg
Flow data:

Flowmeter reading (as marked)	Flowmeter temp. (°K)	Flowmeter pressure (absolute)	Calibration device Time (min)	Calibration device gas volume[a]	Calibration device flow rate[b]

a = Volume of gas measured by calibration device, corrected to standard conditions (liters).

b = Calibration device gas volume/time.

Plot flowmeter reading against flow rate (standard conditions), and draw a smooth curve. If the flowmeter being calibrated is a rotameter or other flow device that is viscosity dependent, it may be necessary to generate a "family" of calibration curves that cover the operating pressure and temperature ranges of the flowmeter.

While the following technique should be verified before application, it may be possible to calculate flow rate readings for rotameters at standard conditions Q_{std} as follows:

$$Q_{std} = Q_{lab}\left(\frac{760 \times T_{lab}}{P_{lab} \times 293}\right)^{1/2}$$

Flow rate (laboratory conditions)	Flow rate (standard conditions)

Figure 18-4. Flowmeter calibration.

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27. By revising Figure 18-7 to appear as follows:

Preparation of Standards by Dilution of Cylinder Standard

Cylinder standard: Organic _____ Certified concentration _____ ppm

Standards Preparation Data: Date _____

Stage 1	Mixture 1	Mixture 2	Mixture 3
Standard gas flowmeter reading			
Diluent gas flowmeter reading			
Laboratory temperature (°K)			
Barometric pressure (mm Hg)			
Flowmeter gage pressure (mm Hg)			
Flow rate cylinder gas at standard conditions (ml/min)			
Flow rate diluent gas at standard conditions (ml/min)			
Calculated concentration (ppm)			
Stage 2 (if used)			
Standard gas flowmeter reading			
Diluent gas flowmeter reading			
Flow rate stage 1 gas at standard conditions (ml/min)			
Flow rate diluent gas at standard conditions (ml/min)			
Calculated concentration (ppm)			
GC Operating Conditions:			
Sample loop volume (ml)			
Sample loop temperature (°C)			
Carrier gas flow rate (ml/min)			
Column temperature:			
Initial (°C)			
Program rate (°C/min)			
Final (°C)			
Organic Peak Identification and Calculated Concentrations:			
Injection time (24-hr clock)			
Distance to peak (cm)			
Chart speed (cm/min)			
Retention time (min)			
Attenuation factor			
Peak area (mm^2)			
Peak area x attenuation factor			

Plot peak area x attenuation factor against calculated concentration to obtain calibration curve.

Figure 18-7. Standards prepared by dilution of cylinder standard.

[FR Doc. 87-3316 Filed 2-18-87; 8:45 am]
BILLING CODE 6560-50-C

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 201

[FIRMR Temp. Reg. 10, Supp. 1]

Triennial Review of Agency Administration and Operation of Information Resources Management Activities

AGENCY: Information Resources Management Service, GSA.

ACTION: Temporary regulation supplement.

SUMMARY: This supplement extends Federal Information Resources Management Temporary Regulation 10 for 2 additional years and makes minor pen and ink changes and page substitutions in the attachment. Temporary Regulation 10 established the Federal Information Resources Management Review Program. This extension will permit additional program experience to be incorporated into the codification amendment. The comment period is accordingly extended to March 31, 1987.

DATES: Effective date: February 19, 1987.
Expiration date: December 31, 1988.
Comments are due: March 31, 1987.

ADDRESS: Comments should be addressed to: General Services Administration (KMPR), (Project 86.48T) Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Phillip R. Patton, Regulations Branch (KMPR), Information Resources Management Service, telephone (202) 566-0194 or FTS 566-0194.

SUPPLEMENTARY INFORMATION: (1) A notice of proposed rulemaking was published in the **Federal Register** (49 FR 33906, August 27, 1984) and the comments received were considered in the initial promulgation of this rule. All comments received during the temporary regulation comment period will be considered in the codification of the final amendment. Additional comments are welcome and may be submitted no later than March 31, 1987. It is intended to codify the policies and procedures added by this regulation in a new Part 201-19 to the FIRMR.

(2) The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This Governmentwide management regulation will have little or no cost effect on society. The temporary rule is therefore not likely to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 41 CFR Chapter 201

Government information resources activities, Government procurement, Information resources management reviews.

December 17, 1986

FIRMR Temporary Regulation 10

Supplement 1

To: Head of Federal Agencies
Subject: Information Resources Management Reviews

1. *Purpose.* This supplement makes pen and ink changes to FIRMR Temporary Regulation 10 and extends its expiration date for 2 additional years. Accordingly, the comment period is also extended to March 31, 1987. This extension will permit additional program experience to be incorporated into the codification amendment. Under this 2-year extension, the intent is to modify and codify this temporary regulation as a FIRMR amendment during calendar year 1988.

2. *Expiration date.* The expiration date of this temporary regulation is extended from December 31, 1986, to December 31, 1988.

3. *Explanation of changes.* The following pen and ink changes are made in FIRMR Temporary Regulation 10:

a. In paragraph 6b, change the lead statement from "IRM reviews have for principal objectives" to "The four principal objectives of the Federal IRM Program are:".

b. In the 9th line of paragraph 8, after "(OMB Circular A-76);" insert "IRM activity, privacy, and security reviews (OMB Circular A-130);".

c. In paragraph 9, change "bulletin" to "issuance".

d. In paragraph 9a(2), change "agency" to "agency-specific".

e. In paragraph 10a(2)(ii), change "agency" to "agency-specific".

f. In paragraph 12c, change "FPMR 101-11.11" to "FIRMR 201-45.6".

g. In paragraph 15, change June 24, 1985" to "March 31, 1987," to extend the comment period for this temporary regulation.

h. Replace Attachments A, B, C, and D with new Attachments A, B, C, and D.

T.C. Golden,

Administrator of General Services.

Attachment A—Agency IRM Review Plan Format Three Year Cycle: FY 8x – 8x Year 1

For Each Agency/Bureau IRM Review Program:
Agency:
Priority Review Areas: (As identified in GSA call or by agencies)
Triennial Objectives:
For Each Year 1 Review:
Title of Review:
Agency Review Number:
Scope of Review:
Brief Description:
Review Milestones and Schedules:
Agency Contact and Telephone Number:
For Each Year 2 & 3 Review:
Title of Review:
Agency Review Number:
Scope of Review:
Brief Description:

Note.—Agencies may add additional data elements to these formats (Attachments A thru D) as deemed necessary.

[This format shall only be used as a guide and will not be printed, reproduced or stocked]

Attachment B—Agency IRM Review Plan Format Three Year Cycle: FY 8x – 8x Year 2

For Each Agency/Bureau IRM Program:
Agency:
Priority Review Areas: (If different from Year 1)
Triennial Objectives: (If different from Year 1)
For Each Year 2 Review:
Title of Review:
Listed on Year 1 Plan: ___ Yes ___ No
Agency Review Number:
Scope of Review:
Brief Description:
Review Milestones and Schedules:
Agency Contact and Telephone Number:
For Each Year 3 Review:
Title of Review:
Listed on Year 1 Plan: ___ Yes ___ No
Agency Review Number:
Scope of Review:
Brief Description:

[This format shall only be used as a guide and will not be printed, reproduced or stocked]

Attachment C—Agency IRM Review Plan Format Three Year Cycle: FY 8x – 8x Year 3

For Each Agency/Bureau IRM Review Program:
Agency:
Priority Review Areas: (If different from Year 2)
Triennial Objectives: (If different from Year 2)
For Each Year 3 Review:
Title of Review:
Listed on Year 1 Plan: ___ Yes ___ No
Listed on Year 2 Plan: ___ Yes ___ No
Agency Review Number:
Scope of Review:
Brief Description:
Review Milestones and Schedules:
Agency Contact and Telephone Number:

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Attachment D—Agency Review Synopsis Three Year Cycle: FY 8x – 8x Year 1, 2, & 3

Agency:
Title of Review:
Agency Review Number:
Objectives of Review:
Synopsis of Review:
Primary Findings:
Recommendations:
Intitiatives and Actions:
Agency Contact and Telephone Number:

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[FR Doc. 87-3431 Filed 2-18-87; 8:45 am]

BILLING CODE 6820-25-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 6

Privacy Act of 1974: Exempt Systems of Records

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This notice of rulemaking exempts certain existing systems of records from certain requirements of the Privacy Act pursuant to 5 U.S.C. 552a(k).

DATE: Effective March 23, 1987.

FOR FURTHER INFORMATION CONTACT: Linda M. Keener, FOIA/Privacy Specialist, (202) 646-3840.

SUPPLEMENTARY INFORMATION: On Monday, January 5, 1987, 52 FR 304, FEMA published a notice of proposed rulemaking exempting certain existing FEMA systems of records from certain requirements of the Privacy Act pursuant to 5 U.S.C. 552a(k). FEMA did not receive any comments pursuant to that notice. Therefore, only three typographical changes are being made. Specifically, under § 6.87(b)(1), the reference to 5 U.S.C. 552a(9)(2) is being corrected to read 5 U.S.C. 552a(k)(2) and the identification number for Equal Employment Opportunity Complaints of Discrimination Files is being corrected from (FEMA/PAR-2) to (FEMA/PER-2). Under § 6.87(c)(2), in the next to the last sentence, "informaiton" is being corrected to read "information".

The publication of these new exemptions are made in accordance with the requirements of 5 U.S.C. 553 of the Administrative Procedure Act.

List of Subjects in 44 CFR Part 6

Privacy Act.

Accordingly, 44 CFR Part 6, Subpart G—Exempt Systems of Records, is amended as follows:

PART 6—[AMENDED]

1. The authority citation for Part 6 continues to read as follows:

Authority: 5 U.S.C. 552a; Reorganization Plan No. 3 of 1978; and E.O. 12127.

2. Section 6.87 is amended by revising paragraphs (a), (b)(1) and adding new paragraph (c) to read as follows:

§ 6.87 Specific exemptions.

(a) *Exempt under 5 U.S.C. 552a(k)(1).* The Director, Federal Emergency Management Agency has determined that certain systems of records may be exempt from the requirements of (c)(3) and (d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12356 or any subsequent Executive order and which are required to be kept secret in the interest of national defense or foreign policy. To the extent that this occurs, such records in the following systems would be exempt:

Claims (litigation) (FEMA/GC-1)—Limited Access
FEMA Enforcement (Compliance) (FEMA/GC-2)—Limited Access
General Investigative Files (FEMA/IG-1)—Limited Access
Security Management Information System (FEMA/SEC-1)—Limited Access

(b) * * *

(1) *Exempt systems.* The following systems of records, which contain information of the type described in 5 U.S.C. 552a(k)(2), shall be exempt from the provisions of 5 U.S.C. 552a(k)(2) listed in paragraph (b) of this section.

Claims (litigation) (FEMA/GC-1)—Limited Access
FEMA Enforcement (Compliance) (FEMA/GC-2)—Limited Access
General Investigative Files (FEMA/IG-1)—Limited Access
Equal Employment Opportunity Complaints of Discrimination Files (FEMA/PER-2)—Limited Access

* * * * *

(c) *Exempt under 5 U.S.C. 552a(k)(5).* The Director, Federal Emergency Management Agency has determined that certain systems of records are exempt from the requirements of (c)(3) and (d) of 5 U.S.C. 552a.

(1) *Exempt systems.* The following systems of records, which contain information of the type described in 5 U.S.C. 552a(k)(5), shall be exempted from the provisions of 5 U.S.C. 552a listed in paragraph (c) of this section.

Claims (litigation) (FEMA/GC-1)—Limited Access
FEMA Enforcement (Compliance) (FEMA/GC-2)—Limited Access
General Investigative Files (FEMA/IG-2)—Limited Access
Security Management Information Systems (FEMA/SEC-1)—Limited Access

(2) *Reasons for exemptions.* All information about individuals in these records that meet the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a (c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosure available to the subject and access to and amendment of records. These exemptions are claimed because the system of records entitled, FEMA/SEC-1, Security Management Information System, contains investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for access to classified information or classified Federal contracts, but only to the extent that the disclosure would reveal the identity of a source who furnished information to the Government under an express promise or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. During the litigation process and investigations, it is possible that certain records from the system of records entitled, FEMA/SEC-1, Security Management System may be necessary and relevant to the litigation or investigation and included in these systems of records. To the extent that this occurs, the Director, FEMA, has determined that the records would also be exempted from subsections (c)(3) and (d) pursuant to 5 U.S.C. 552a(k)(5) to protect such records. A determination will be made at the time of the request for a record concerning whether specific information would reveal the identity of a source. This exemption is required in order to protect the confidentiality of the sources of information compiled for the purpose of determining access to classified information. This confidentiality helps maintain the Government's continued access to information from persons who would otherwise refuse to give it.

Dated: February 11, 1987.

Julius W. Becton, Jr.,

Director.

[FR Doc. 87-3417 Filed 2-18-87; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-54; RM-5012, 5050]

Radio Broadcasting Services; Rancho Mirage, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 258A to Rancho Mirage, CA, as its first local FM service as requested by RWR Associates and denies a mutually exclusive proposal to allot the channel to LaQuinta, CA, as proposed by Kern Broadcasting Co. for lack of continuing interest. With this action, this proceeding is terminated.

DATES: Effective March 23, 1987; the window period for filing applications on Channel 258A at Rancho Mirage, California will open on March 24, 1987, and close on April 22, 1987.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-54, adopted December 5, 1986, and released February, 9, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of Allotments is amended by adding Rancho Mirage, Channel 258A, under California.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-3397 Filed 2-18-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 97

[PR Docket No. 86-161; RM-5022, RM-5023, RM-5024, RM-5025, RM-5038, RM-5251, RM-5281, RM-5282]

Amendment of the Amateur Radio Service Rules To Expand the Privileges Available to Novice Operators

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: The attached rule amendments authorize additional operating privileges for Amateur Novice operators. The rules are necessary in order to remove restrictions and to allow a further growth in the Amateur service. The effect of the amendments is to offer Novices a greater opportunity to participate in amateur radio by authorizing them additional frequencies and emissions modes

EFFECTIVE DATE: 0001 UTC March 21, 1987.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted January 28, 1987 and released February 10, 1987

1. The full text of this Commission decision including the rule changes is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC The complete text of this decision and the rule changes may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

2. The amended rules expand Novice class amateur radio operator privileges to include all emission modes for the 1.25 and 0.23 meter bands and emissions, A1A, F1B and J3E for the HF 10 meter band. Some restrictions on transmitter power were, however, adopted. Other actions include modifications to the written examination questions for Technician and General operators to conform them more closely with operator privileges. In the case of Technician operators, the new examination will contain questions about VHF and UHF privileges; for General operators, questions about MF and HF privileges will be emphasized. Because of the expanded Novice privileges, the Commission decided to require two volunteer examiners to administer such examinations. Finally, all present Novice and Technician operators will be authorized the new privileges without additional qualification requirements. Technician class operators licensed before the effective date of the rules will be given credit for having already passed the revised General class written examination if they choose to upgrade. The amended rules are set forth at the end of this document.

3. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, we submit that these rule amendments are expected to create a market for low-cost transmitters, receivers and transceivers to be used by the 21,000 persons each year that are expected to become Novices. Any significant economic impact of the rules on small entities will result in a benefit to such entities.

4. The rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain a modified form. Burden hours on the public will not increase or decrease. Implementation of the amended rules will be subject to the approval of the Office of Management and Budget.

5. This Report and Order and these rule amendments are issued under the authority of 47 U.S.C. 4(i) and 303(c) and (r). The authority citation for Part 97 continues to read as follows: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609, unless otherwise noted.

6. A copy of this Report and Order will be served on the Chief Counsel for Advocacy of the Small Business Administration.

7. It is ordered that Part 97 is amended as shown at the end of this document. It is further ordered that these rule amendments shall become effective 0001 UTC March 21, 1987. It is further ordered that this proceeding is terminated.

List of Subjects in 47 CFR Part 97

Amateur radio, Digital communications, Examinations, Frequencies.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Amended Rules

PART 97—[AMENDED]

Part 97 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609, unless otherwise noted.

2. Section 97.7 (a) is amended by revising the line entry for the 10-meter band and adding a megahertz listing for the 1.25 and 0.23-meter bands is amended following the kilohertz listing to read as follows:

§ 97.7 Frequency privileges.

* * * * *

(a) *Novice class.*

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Meter band	Terrestrial location of the amateur radio station			
	Limitations	ITU Region 1	ITU Region 2	ITU Region 3 (see para.(g))
kilohertz				
10	28100–28500	28100–28500	28100–28500	1
megahertz				
1.25		222.10–223.91		5
0.23	1270–1295	1270–1295	1270–1295	5,22

3. In § 97.7 (b), the line entry for the 10-meter band is revised to read:

(b) * * *

Meter band	Terrestrial location of the amateur radio station	Limitations		
		ITU Region 1	ITU Region 2	ITU Region 3 (see para.(g))
10	28100–28500	28100–28500	28100–28500	1

4. Section 97.7 (g)(1) is revised to read as follows:

(g) *Limitations:* (1) Control operators holding the Novice or Technician class operator license are limited to international Morse code when the station is transmitting emission A1A in the 80, 40, 15 and 10 meter bands.

5. In § 97.21, paragraphs (c) and (d) are revised to read as follows:

§ 97.21 Examination elements and standards.

(c) A written examination shall be such as to prove that a person possesses the operational and technical qualifications required to perform properly the duties of an amateur radio licensee. Each written examination shall be comprised of a question set, as follows:

(1) Element 2: At least 30 questions concerning the privileges of Novice class licensees;

(2) Element 3(A): At least 25 questions concerning the additional privileges of Technican class licensees;

(3) Element 3(B): At least 25 questions concerning the additional privileges of General class licensees;

(4) Element 4(A): At least 50 questions concerning the additional privileges of Advanced class licensees;

(5) Element 4(B): At least 40 questions concerning the additional privileges of Amateur Extra Class licensees;

(d) The topics and percentage of questions in each question set shall be that listed for the appropriate examination element:

Topics	Elements (percent)				
	2	3(A)	3(B)	4(A)	4(B)
(1) Federal Communications Commission's Rules for the Amateur radio service	35	20	16	12	20
(2) Amateur station operating procedures	5	12	12	2	10
(3) Radio wave propagation characteristics of amateur frequency bands	5	12	12	4	5
(4) Amateur radio practices	15	16	20	8	10
(5) Electrical principles as applied to amateur station equipment	15	8	8	20	15
(6) Amateur station equipment circuit components	5	8	4	12	10
(7) Practical circuits employed in amateur station equipment	5	4	4	20	10
(8) Signals and emissions transmitted by amateur stations	5	8	8	12	10
(9) Amateur station antennas and feed lines	10	12	16	10	10

6. Section 97.23 is revised to read as follows:

§ 97.23 Examination requirements.

Applicants for operator licenses will be required to pass the following examination elements.

(a) Amateur Extra: Elements 1(C), 2, 3(A), 3(B), 4(A) and 4(B);

(b) Advanced: Elements 1(B), 2, 3(A), 3(B) and 4(A);

(c) General: Elements 1(B), 2, 3(A) and 3(B);

(d) Technician: Elements 1(A), 2 and 3(A);

(e) Novice: Elements 1(A) and 2.

7. In § 97.25, paragraph (a) is revised and a new paragraph (e) is added to read as follows:

§ 97.25 Examination credit.

(a) An applicant for a higher class of amatuer operator license who holds a void amateur operator license issued by the Federal Communications Commission will be given credit, as follows:

(1) Novice: Elements 1(A), and 2;

(2) Technician: Elements 1(A), 2 and 3(A);

(3) General: Elements 1(B), 2, 3(Al) and 3(B);

(4) Advanced: Elements 1(B), 2, 3(A), 3(B) and 4(A).

(e) An applicant holding a Technician operator license issued before (effective date of these rules) will be given credit for Elements 1(A), 2, 3(A) and 3(B).

8. In § 97.28, paragraphs (a) and (b) are revised to read as follows:

§ 97.28 Examination administration.

(a) Unless otherwise prescribed by the Federal Communications Commission, each examination for an amateur radio operator license (except the Novice operator license) shall be administered by three accredited (see § 97.515) volunteer examiners. A volunteer examiner administering element 1(A) or element 2 (in conjunction with an examination other than a Novice operator examination), or element 3(A), must hold an Amateur Extra or Advanced radio operator license issued by the Federal Communications Commission. A volunteer examiner administering element 1(B), element 1(C), element 3(B), element 4(A), or element 4(B) must hold an Amateur Extra operator license issued by the Federal Communications Commission.

(b) Unless otherwise prescribed by the Federal Communications Commission, each examination for a Novice operator license shall be administered by two volunteer examiners. The volunteer examiners do not have to be accredited. The volunteer examiners must hold current General, Advanced or Amateur Extra operator licenses issued by the Federal Communications Commission.

9. Section 97.61(a) is amended by adding a new line entry before 28000–28300 kHz, by removing limitation 1 from the line entry for 28000–28300 kHz, by adding a new limitation 3 in the line entry for 28300–29500 kHz, by removing line entry 28300–29700 kHz and adding a line entry 29500–29700 kHz.

§ 97.61 Authorized emissions.

(a) *kilohertz:*

Frequency Band kHz	Emissions	Limitations (see para. (d))
28000–29700	A1A	

Frequency Band kHz	Emissions	Limitations (see para. (d))
29500–29700	A1A, A3E, F2A, F3E, G3E, A3C, F3C, A3F, F3F, H3E, J3E, R3E	

10. Section 97.61 is amended to add a new paragraph (d)(3), as follows:

§ 97.61 Authorized emissions.

(d) * * *

(3) A station with a Novice or Technician control operator is authorized to transmit only emissions A1A and J3E in this subband.

11. Section 97.67 is amended by revising paragraph (d)(6) and by adding new paragraphs (j) and (k) as follows:

§ 97.67 Maximum transmitting power.

(d) * * *

(6) 28100–28500 kHz when the control operator holds a Novice or Technician class operator license.

(j) The transmitter power of each amateur station at which the control operator holds a Novice class operator license shall not exceed 25 watts peaks envelope power when transmitting in the 1.25 meter band.

(k) The transmitter power of each amateur station at which the control operator holds a Novice class operator license shall not exceed 5 watts peak envelope power when transmitting in the 0.23 meter band.

12. Section 97.85 is amended by adding a new paragraph (i), as follows:

§ 97.85 Repeater operation.

(i) No amateur station at which the control operator or station licensee holds a Novice class operator license shall be in repeater operation.

13. Section 97.86 is amended by adding a new paragraph (e), as follows:

§ 97.86 Auxiliary operation.

(e) No amateur station at which the control operator or station licensee holds a Novice class operator license shall be in auxiliary operation.

14. Section 97.87 is amended by adding a new paragraph (f), as follows:

§ 97.87 Beacon operation.

(f) No amateur station at which the control operator or station licensee holds a Novice class operator license shall be in beacon operation.

[FR Doc. 87-3480 Filed 2-18-87; 8:45am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 60973-7008]

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule amending the implementing regulations for the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). This rule modifies the minimum mesh size requirement of 1 x 2 inches for fish traps deployed in th e exclusive economic zone (EEZ) to allow minimum meshes of 1.5 x 1.5 inches square and 1.5 inches hexagonal in addition to the 1 x 2 inches rectangular. The intent of the rule is to provide more flexibility to the industry in selecting the most advantageous of several commercially available mesh materials and to eliminate the incongruity in minimum mesh size requirements between two adjoining Council areas managed under separate fishery management plans.

EFFECTIVE DATE: February 18, 1987.

ADDRESS: Copies of the final supplemental regulatory impact review/regulatory flexibility analysis for this rule may be obtained from Donald W. Geagan, Southeast Regional Office, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813–893–3722.

SUPPLEMENTARY INFORMATION: The FMP is implemented by regulations appearing at 50 CFR Part 641. Section 641.24 requires a minimum mesh size of 1 x 2 inches and a minimum of two escape windows of 2 x 2 inches on each of two sizes of a trap (four in total) for all fish traps deployed in the EEZ of the Gulf of Mexico. A proposed rule to allow the use of alternative minimum mesh sizes was published October 14, 1986 (51 FR 36574). A discussion of the scientific basis and rationale for the alternative minimum mesh sizes was presented in the proposed rule and is not repeated here.

Comments on the proposed rule were invited through November 28, 1986. The U.S. Department of Interior, Fish and Wildlife Service, provided the only comment; it supported the change in minimum mesh size restrictions. NOAA concurs and believes that allowing the alternatives minimum mesh sizes for traps will provide greater flexibility to the fishing industry, increase escapement of smaller fish, and standardize trap restrictions between two adjacent Council areas (different mesh size requirements for the Gulf and South Atlantic trap fisheries has been a perplexing problem for fishermen in South Florida).

Changes from the proposed rule

Part 641. In Part 641 the terms "fishery conservation zone" and "FCZ" have been deleted wherever they appeared and the new terms "exclusive economic zone" and "EEZ" have been inserted.

Section 641.2. The definition for "Exclusive economic zone (EEZ)" has been added in alphabetical order and the definition for "Fishery conservation zone (FCZ)" has been deleted.

Section 641.24. The wording in § 641.24 has been modified slightly for purposes of clarification.

Classification

The Director, Southeast Region, NMFS, determined that the amendment is necessary for the conservation and management of the reef fish fishery and that it is consistent with the Magnuson Act and other applicable law.

The Gulf of Mexico Fishery Management Council prepared an environmental assessment for this amendment and concluded that there will be no significant impact on the environment as a result of this rule. You may obtain a copy of the environmental assessment from the address above.

The Administrator, NOAA, determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291.

The Assistant Administrator also determined that this is a substantive rule that relieves a restriction and therefore there is good cause to waive the 30-day period of delayed effectiveness required under the Administrative Procedure Act, 5 U.S.C. 553(d). The rule revises an existing limitation of mesh size and material, enabling fishermen to choose from three mesh sizes of traps instead of only one, and a wider variety of materials and styles as well.

The Council prepared a regulatory flexibility analysis which describes the effects this rule will have on small

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entities. You may obtain a copy of this analysis from the address above.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Council determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing.

Dated: February 13, 1987.

Joseph W. Angelovic,

Deputy Assistant Administrator For Science and Technology, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 641 is amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for Part 641 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*)

2. The words "fishery conservation zone" and the acronym "FCZ" are removed wherever they appear in Part 641 and are replaced by the words "exclusive economic zone" and the acronym "EEZ" respectively.

3. In § 641.2, the definition for "Fishery conservation zone" is removed and a new definition for "Exclusive economic zone (EEZ)" is added in alphabetical order to read as follows:

§ 641.2 Definitions.

* * * * *

Exclusive economic zone (EEZ) means the area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

* * * * *

4. In § 641.24, paragraph (b)(4) is revised to read as follows:

§ 641.24 Gear limitations.

* * * * *

(b) * * *

(4) Fish traps must meet all the following mesh size requirements (based on centerline measurements between opposite wires or netting strands):

(i) A minimum of 2 square inches of opening for each mesh;

(ii) One-inch minimum length for shortest side;

(iii) Minimum distance of 1 inch between parallel sides of rectangular openings, and 1.5 inches between parallel sides of square openings and of mesh openings with more than four sides;

(iv) One and nine-tenths (1.9) inches minimum distance for diagonal measures of mesh (Figure 3); and

(v) Each trap must have at least two escape windows on each of two sides (excluding the bottom) which are 2 x 2 inches or larger

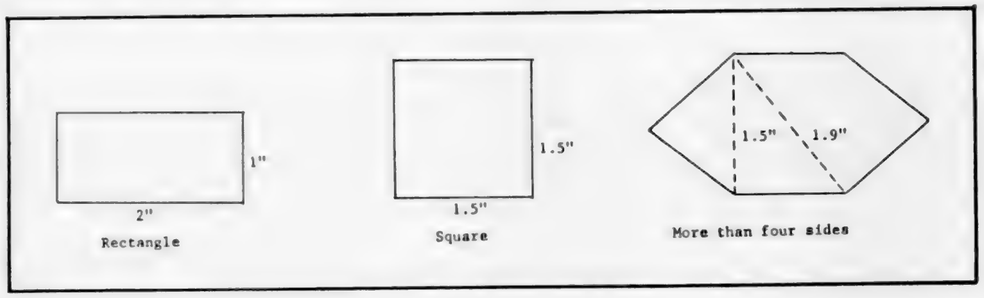


Figure 3. Examples of mesh sizes meeting the measurement criteria

[FR Doc. 87-3527 Filed 2-18-87; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 33
Thursday, February 19, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0567]

Capital Maintenance; Revision to Capital Adequacy Guidelines

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rulemaking.

SUMMARY: In April, 1985, the Board announced revised Guidelines for minimum and appropriate levels of capital for bank holding companies and state chartered banks that are members of the Federal Reserve System (50 FR 16057 (1985)). These revised Guidelines, contained in Appendix A to the Board's Regulation Y, 12 CFR Part 225, were designed to establish, in conjunction with other federal bank regulatory agencies, uniform capital standards for all federally regulated banking organizations regardless of size. These uniform capital standards were based on ratios of primary and total capital to total assets.

While these ratios of capital to total assets are a useful tool for assessing capital adequacy, the Board believes that there is a need for a measure that is more explicitly and systematically sensitive to the risk profiles of individual banking organizations. As a result, the Board proposed on January 24, 1986, to amend its Guidelines by adding a supplemental adjusted capital measure that the Board would consider in tandem with existing ratios of capital to total assets. Based in part on comments received by the Board on that earlier proposal and extensive discussions with other federal banking agencies and the Bank of England, the Board has revised its January 24, 1986 proposal in a number of respects. The Board is seeking comment on this revised proposal, which would amend the Board's Guidelines to include a risk-based capital measure (also known as a risk asset ratio) to be used in tandem with existing capital ratios, and would amend the definition of primary capital for purposes of computing existing capital-to-total assets ratios. This revised proposal represents an effort to establish uniform capital standards for all federally supervised banking organizations operating in the United States and to continue the process of coordinating with regulatory authorities of other countries to establish appropriate capital standards, in accordance with the International Lending Supervision Act of 1983 ("ILSA"), 12 U.S.C. 3901 *et seq.*

DATE: Comments must be received by May 13, 1987.

ADDRESS: All comments should refer to Docket No. [R-0567], and should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551, or should be delivered to the Office of the Secretary, Room 2223, Eccles Building, 20th and Constitution Avenue NW., between the hours of 9:00 a.m. and 5:00 p.m. weekdays. Comments may be inspected in Room 1119, Eccles Building, between 9:00 a.m. and 5:00 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Richard Spillenkothen, Deputy Associate Director (202/452-2594), Anthony G. Cornyn, Assistant Director (202/452-3354), Stephen M. Lovette, Manager (202/452-3622), or Rhoger Pugh, Manager (202/452-5883), Division of Banking Supervision and Regulation, Board of Governors; or James E. Scott, Senior Counsel (202/452-3513), or Conrad G. Bahlke, Attorney (202/452-3707), Legal Division, Board of Governors; or Andrew Spindler, Vice President (212/720-5846), Donald E. Schmid, Manager (212/720-6611), or Jeffrey Bardos, Financial Analyst (212/720-7962), Federal Reserve Bank of New York. For the hearing impaired *only*, Telecommunication Device for the Deaf, Earnestine Hill or Dorothea Thompson 202/452-3544.

SUPPLEMENTARY INFORMATION:

Background

The Purpose of the Proposed Adjusted Capital Measure

In announcing its revised Capital Adequacy Guidelines in April, 1985, 50 FR 16057, the Board expressed its continuing concern that the emphasis in the Guidelines on ratios based on the amount of total assets should not be interpreted to exclude considerations of risk. The Board proposed to deal with the issue of risk on a case-by-case basis, stating that: (1) It would assess the overall capital position of a banking organization by taking into account both the volume of the organization's risk assets and its off-balance sheet risks (although the latter were not explicitly included in the capital ratios); (2) the ratios stated in the Guidelines were minimums, and banking organizations with high levels of on- or off-balance sheet risk would be expected to operate above the minimum ratios; and (3) banking organizations would be expected to avoid the practice of attempting to meet the minimum ratios by decreasing the level of liquid assets relative to total assets. The Board also indicated that it would continue to review the need for more explicit procedures for factoring on- and off-balance sheet risks into the assessment of capital adequacy.

In response to comments received in connection with the 1985 revisions to the Capital Adequacy Guidelines, the Board acknowledged that, in addition to assessing capital adequacy on the basis of the total quantity of assets, there would be significant analytical value to a systematic evaluation of capital based upon the degree of risk associated with such assets.

In an effort to address the degree of risk associated with certain assets and off-balance sheet exposures, the Board issued for public comment on January 24, 1986, a proposal to add a supplemental adjusted capital measure to the Board's Capital Adequacy Guidelines for bank holding companies and state member banks.

In recent months, the Federal Reserve staff has worked with the staffs of the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC") and the Bank of England to devise a method for bringing the capital requirements of U.S. and U.K. banking organizations into closer alignment, and to facilitate further international convergence of capital requirements among other major industrialized nations, consistent with the terms of ILSA. Discussions between these U.S. banking agencies and the Bank of England have resulted in the proposed United States/United Kingdom Agreement ("U.S./U.K. Agreement")

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that is the basis for this revised proposal. The text of the proposed Agreement is attached to this **Federal Register** Notice. In light of the discussions resulting in the U.S./U.K. Agreement, and comments submitted in connection with the Board's January 1986 proposal, the Board continues to believe that there is a need to modify or supplement the Board's Guidelines to include greater sensitivity to certain types of risk exposures of individual banking organizations.

In its January 1986 proposal, the Board stated its belief that a supplemental adjusted capital measure, based upon an assessment of distinct but necessarily broad risk categories, could prove useful in assessing the financial strength and stability of individual organizations and the banking system as a whole. The Board believes that its revised risk-based capital proposal, based upon the U.S./U.K. Agreement, would provide the Board with an additional means of assessing whether the capital level of an individual bank or bank holding company is adequate to serve the key functions of capital, namely, providing a buffer to absorb losses in times of poor performance, promoting the safety of depositors' funds, maintaining public confidence in banking organizations, and supporting the reasonable growth of such organizations. This revised proposal attempts to achieve these purposes by requiring that an organization's capital base bear a reasonable relationship to the risk profile of that organization.

In addition to providing another tool for assessing capital adequacy, the Board's revised proposed capital measure will further the policy objectives of its January 1986 proposal by addressing the rapid expansion of off-balance sheet exposures, tempering the disincentives inherent in the existing Guidelines to hold low-risk, relatively liquid assets, and moving capital adequacy policies in the United States more closely in line with those of other major industrial countries so as to develop a framework for achieving greater international convergence in the supervision of capital positions of large international banking organizations. Finally, the proposed measure would provide more explicit guidance to bankers and examiners for relating capital to risk profiles.

The Board's revised proposal differs in several respects from its January 1986 proposal, primarily as a result of further discussions with the OCC and the FDIC, review of the public comments on the January 1986 proposal, and actions to coordinate the proposals of the three federal banking agencies with the views of the Bank of England. Some of the major differences between this revised proposal, which is based on the proposed U.S./U.K. Agreement, and the January 1986 proposal, are discussed below.

First, the January 1986 proposal did not address the definition of capital. However, the Board believes that a common understanding of what constitutes primary capital, as incorporated in the proposed U.S./U.K. Agreement, is an essential part of any effort to achieve greater convergence of capital requirements on an international basis. To that end, the Board's revised proposal includes a definition of primary capital that would revise the definition contained in the Board's current Guidelines. The revised definition of primary capital would be used in calculations of both a risk-based capital ratio and the primary and total capital-to-total assets ratios specified in the Board's current Guidelines. Thus, while the proposed risk-based measure would be used in tandem with existing measures, as was proposed in the Board's January 1986 proposal, the numerator of the existing primary and total capital-to-total assets ratios would be redefined. The revised proposal creates two categories of primary capital: base primary capital, which consists of certain primary capital funds that would be counted in full in the calculation of capital ratios; and limited primary capital, which would be included to a limited extent as primary capital in calculating capital ratios. The proposal also includes certain deductions from primary capital for purposes of calculating these capital ratios.

Second, as set forth in the proposed U.S./U.K. Agreement, the regulatory authorities intend to set a uniform minimum ratio of adjusted primary capital to weighted risk assets applicable to banking organizations in both the United States and the United Kingdom. Moreover, the proposal is intended to serve, in part, as a vehicle to seek broader convergence in the assessment of the capital adequacy of international banking organizations. In contrast, the Board's January 1986 proposal would have applied to only U.S. banking organizations. As the proposed U.S./U.K. Agreement points out, most institutions would be expected to operate with capital ratios above the minimum level. At this time, the Board is seeking comments on the terms and structure of the revised proposal, and has decided to defer proposing a numerical minimum risk-based capital ratio.

Third, the Board's revised proposal includes five categories of risk assets, to be weighted at 0, 10, 25, 50, or 100 percent, depending on the identity of the obligor and, where appropriate, on the maturity of the instrument. (See Table 1 on page 28). These categories represent a change from the Board's January 1986 proposal, which included four categories of risk assets: 0, 30, 60, and 100 percent. This change results in a somewhat lower risk weight for many of the assets originally assigned to the 30 and 60 percent risk asset categories and a somewhat higher weight for some items originally assigned to the 0 percent category. In addition, the list of assets that would be assigned to each category differs in some significant respects from the list proposed in the Board's January 1986 proposal.

Fourth, the Board's revised proposal does not distinguish between claims on foreign banks or governments based upon the identity of the foreign country. The revised proposal also places claims on U.S. banks in the same risk category as claims on foreign banks. The January 1986 proposal generally placed claims on foreign banks and governments of industrial countries in a lower risk category than claims on foreign banks and governments of nonindustrial countries, and generally placed short-term claims on U.S. banks in a lower risk category than similar claims on foreign banks.

Fifth, in the case of off-balance sheet items, risk weights are determined by a two-step process, rather than by a simple categorization of off-balance sheet items in one of the risk asset categories, as suggested in the January 1986 proposal. First, the face amount of each off-balance sheet item is multiplied by an appropriate "credit conversion factor," a ratio designed to translate the face amount of certain off-balance sheet exposures into rough on-balance sheet credit equivalents. (See Table 2 on page 29.) The resulting figure is then placed in one of the five risk asset categories and included in the asset component of the risk-based capital ratio. (See Table 3 on pages 30 and 31.) This revised treatment results in risk weights for some off-balance sheet items that are slightly lower than the weights originally proposed.

Sixth, the Board's revised proposal includes loan commitments to consumers as a form of credit commitment that requires some capital support. The January 1986 proposal did not define such loan commitments to include explicitly commitments to extend credit to consumers.

The general construction of most aspects of the Board's revised proposal remains similar to that of the Board's January 1986 proposal. First, an institution's risk-based capital ratio continues to be determined by dividing its primary capital base by the sum of its weighted risk assets. The weighted risk assets are determined by assigning all assets (as well as off-balance sheet items) to appropriate risk categories. An illustration of how the proposed ratio would be calculated is contained in Table 3 on pages 30 and 31.

Second, this revised proposal contemplates, as did the January 1986 proposal, that the calculation of a risk-based capital ratio is only one step in evaluating capital adequacy. Many other factors must be taken into account in connection with the examination and supervisory processes before an overall determination of capital adequacy can be made, including the quality and diversification of the loan portfolio, the quality, trend and variability of earnings, the dividend payout ratio and the level and trend of retained earnings, liquidity and the structure of liabilities, the effectiveness of loan and investment policies, and management's overall ability to monitor and control risks. Of these factors, asset quality is particularly critical. Thus, while not explicitly incorporated into the proposed risk-based ratio, the assessment of capital adequacy must take account of the composition of the loan portfolio, including foreign or domestic loan concentrations, and the level and severity of problem and classified assets. Adjustments based upon these factors made by examiners and supervisors mean that the final supervisory judgment of an organization's capital adequacy may differ significantly from conclusions that might be drawn solely from the absolute level of the organization's risk-based capital ratio.

Third, as in the January 1986 proposal, the revised risk-based capital framework contemplates that U.S. banking regulators would apply the minimum risk-based capital ratio to all banking organizations that they supervise. Thus, the Board would apply the proposed measure to all state member banks and to bank holding companies with consolidated assets of $150 million or more. Bank holding companies with less than $150 million in consolidated assets would generally be exempt from the calculation and analysis of risk-based capital ratios on a consolidated holding company basis under the same terms and conditions as provided in the current Guidelines.[1] The application of the risk-based capital framework to both large and small banking organizations will avoid the possible introduction of a dual standard based upon size.

Fourth, the revised proposal does not factor in all types of risk, and it contemplates, as did the January 1986 proposal, continued efforts to evaluate and refine the risk-based ratio. Under the proposed U.S./U.K. Agreement, the Board, the OCC, the FDIC and the Bank of England are committed to continue efforts to develop techniques for factoring counterparty credit risks on interest rate swaps and other interest rate and foreign exchange contracts into the risk-based capital ratio in the near future. In addition, the proposed U.S./U.K. Agreement indicates a commitment to introduce a capital requirement for exchange rate risk. Finally, the Agreement also reflects a commitment to factor a more direct measure of overall interest rate risk into the capital ratio. In the interim, the proposed U.S./U.K. Agreement addresses interest rate risk in a limited manner by assigning higher risk weights to long-term domestic national government debt.

The Proposed Definition of Capital

The proposed risk-based capital ratio would relate an institution's adjusted primary capital (the numerator of the ratio) to its weighted risk assets (the denominator). One of the principal qualities of primary capital is that it is freely available to absorb current losses while permitting an organization to continue to function as a going concern. Under the proposed U.S./U.K. Agreement, primary capital is defined for purposes of the risk-based ratio to consist of two classes of capital funds: "base primary capital," that is, capital funds treated as primary capital without limit, and "limited primary capital," that is, primary capital funds that are limited to a specified percentage of base primary capital. The types of capital that would be considered to be base primary capital and limited primary capital are discussed below. The proposed Agreement includes a listing of the components of the two categories of primary capital.

[1] The current Guidelines apply to bank holding companies with less than $150 million in consolidated assets on a bank-only basis unless (1) the holding company or any nonbank subsidiary is engaged directly or indirectly in any nonbank activity involving significant leverage or (2) the holding company or any nonbank subsidiary has outstanding debt held by the general public.

1. Base Primary Capital: Capital Funds That Are Treated as Primary Capital Without a Percentage Limitation

These capital funds include common stockholders' equity (common stock, surplus and retained earnings); general reserves for unidentified losses (including the allowance for losses on loans . and leases, but excluding reserves that, in effect, have been allocated for known losses such as the "allocated transfer risk reserve"); and minority interests in the equity accounts of consolidated subsidiaries.

Although the proposed U.S./U.K. Agreement includes general (valuation) reserves as base primary capital, U.S. and U.K. regulators agree that provisions made against identified losses should not be regarded as primary capital. Such provisions, having been set aside to absorb identified losses, cannot be viewed as being freely available to absorb estimated or anticipated, but unidentified, losses, a principal function of primary capital.

2. Limited Primary Capital: Capital Funds That Are Treated as Primary Capital Subject to a Percentage Limitation

Limited primary capital is considered to be primary capital to the extent that on a combined basis it does not exceed 50 percent of the amount that results from subtracting from base primary capital *all* intangible assets, including those intangible assets that are otherwise considered "grandfathered" intangible assets as discussed below. Existing limited primary capital instruments in excess of this limitation would be "grandfathered" and, therefore, included in primary capital, provided that such limited primary capital instruments were issued prior to the final adoption of the risk-based capital ratio and only to the extent that such limited primary capital instruments complied with the Board's then existing definition of primary capital and with the related limitations on the amounts of such instruments included in primary capital. However, if the grandfathering provision causes the aggregate amount of limited primary capital instruments to exceed the amount permitted under this proposal as based upon the U.S./U.K. Agreement, new limited primary capital instruments would not be included as primary capital until the new limited primary capital instruments, together with the grandfathered instruments, comply with the new proposed limitation on the amount of limited primary capital.

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Limited primary capital funds include: perpetual preferred stock[2] and limited-life preferred stock with an original maturity of at least 25 years[3]; debt that is subordinated to deposits (or, for bank holding companies, debt that is unsecured) and that meets the new criteria set forth in the proposed U.S./U.K. Agreement for inclusion in primary capital; and the amount of mandatory convertible securities that were issued before the final adoption of the risk-based ratio and that counted as primary capital under the Board's then existing guidelines.

Although the Board has established a policy that common stockholders' equity should remain the dominant form of capital, the Board believes that the inclusion of some long-term limited-life preferred stock as primary capital is appropriate. The Board believes it would be appropriate to adjust for the amount of limited-life preferred stock included in primary capital by discounting such limited-life preferred stock with an original maturity of 25 years or more as maturity approaches. This discounting process is necessary because as limited-life preferred stock approaches maturity it must either be redeemed or refunded, thereby becoming more like a current liability and less like a component of capital. The Board is seeking comment on the best method of discounting limited-life preferred stock for capital adequacy purposes as maturity approaches. One such discounting method would be to discount the original outstanding balance for capital assessment purposes by 20 percent each year during the instrument's last five years before maturity. The amount of outstanding limited-life preferred stock that is not included in primary capital as a result of this discounting process would be included in secondary capital, provided it meets the general criteria in the Guidelines for inclusion in secondary capital.

The proposed U.S./U.K. Agreement also establishes new criteria for including debt instruments in primary capital. These criteria are designed to ensure that such debt instruments (a) are permanent; (b) provide strength and loss absorption capacity and, when serious losses occur, permit the organization to continue to operate as a going concern; and (c) provide the issuer with the option, under certain conditions, to defer interest payments during periods of serious financial adversity.

The new criteria for state member banks and bank holding companies, which are essentially similar to those incorporated in the Board's existing definition of perpetual debt, are:

(i) The instruments must be subordinated to deposits or, if issued by bank holding companies, unsecured.

(ii) The instruments can only be converted into or redeemed with equity or equity equivalents. This means that (a) the instrument cannot provide the holder with any right to demand repayment of principal (even in the event of non-payment of interest), except in the event of bankruptcy, insolvency or reorganization; and (b) the issuer cannot voluntarily redeem the securities without the approval of the Federal Reserve, except that securities may be simultaneously replaced by a like amount of capital instruments that qualify as primary capital under the U.S./U.K. Agreement's new definition.

(iii) The instruments must be available to absorb losses when necessary to allow the organization to continue to operate as a going concern. Thus, the instrument must convert automatically to common or preferred stock that qualifies as primary capital in the event that the issuer's retained earnings and surplus accounts become negative.

(iv) The instruments must provide the option for the issuer to defer (they may also allow the issuer to reduce or eliminate) cash interest payments if the issuer does not report a profit in the preceding period (defined as combined profits for the most recent four quarters) and/or the issuer eliminates cash dividends on common and preferred stock. This provision is intended to provide the issuer with the option of mitigating the burden associated with interest payments during a period of severe financial stress.

Any debt instrument meeting these broad criteria, so long as the debt instrument does not contain other provisions inconsistent with safe and sound banking practices, would qualify as primary capital. Mandatory convertible securities, as presently defined by the Federal Reserve, would henceforth be included in primary capital only to the extent that such instruments also satisfy the proposed criteria set forth above. Thus, mandatory convertible instruments that provide for conversion to equity and deferment of interest in accordance with the criteria specified above would qualify as primary capital. Moreover, mandatory convertible securities issued before the date that the risk-based capital ratio is finally adopted by the Board and that comply with the then existing, but not the new, criteria for inclusion in primary capital would be "grandfathered" as limited primary capital. However, only the amount of such mandatory convertible securities that was included in primary capital under the previous limitations would be grandfathered.

3. Deductions From Primary Capital

The Board's revised proposal, and the U.S./U.K. Agreement on which the proposal is based, calculate adjusted primary capital by first adding base primary capital and limited primary capital, and then deducting all intangible assets (except "grandfathered" intangible assets as discussed below), equity investments in unconsolidated subsidiaries and associated companies, and investments in certain consolidated subsidiaries as discussed below.

All intangible assets, other than those previously approved or permitted by the Board under its current Guidelines, would be deducted from primary capital. Generally, the Board's current guidelines do not deduct any intangibles from bank holding company capital and include all intangibles, except goodwill, in the capital of state member banks. Thus, the specific intangibles that were acquired before the final adoption of the risk-based ratio and that were permitted to be included in bank holding company and state member bank capital under the Board's then existing Guidelines would not be deducted from primary capital. Rather, such intangible assets would be grandfathered for a limited, but as yet unspecified, period of time, such as the assets' useful lives or a shorter period. Intangible assets acquired after the date of final adoption of the risk-based ratio would be deducted from primary capital. It should be noted that specific intangible assets would be grandfathered; existing dollar amounts of intangibles would not be permanently grandfathered. Moreover, while goodwill, along with all other intangibles acquired after the ratio is adopted, would be deducted from primary capital for the purpose of assessing capital adequacy, the Board may on a case-by-case basis exempt from this deduction goodwill and other intangibles acquired in connection with

[2] Perpetual preferred stock is defined as preferred stock that does not have a stated maturity date and may not be redeemed at the option of the holder of the instrument.

[3] Limited-life preferred stock currently is considered to be an element of secondary capital; thus, the U.S./U.K. Agreement represents a change from the Board's current Capital Adequacy Guidelines. The maturity of limited-life preferred stock is defined as the stated maturity date or the earliest point in time at which the instrument can be redeemed at the option of the holder, if the latter comes first.

a supervisory merger with a failing institution.

Because the manner in which intangible assets are grandfathered may have a significant impact on an institution's capital ratios, the Board is seeking public comment on the most appropriate approach for grandfathering intangible assets, including the possible adoption of an approach that would grandfather intangible assets for the lesser of the useful lives of such intangible assets or some other specified period of time, such as ten years, shorter than the useful lives of such intangibles.

While U.S. regulators intend to grandfather existing intangible assets for the purpose of calculating capital ratios, the Federal Reserve will continue to monitor the level and quality of all intangible assets and, as it does now, to consider tangible as well as stated capital ratios in assessing an organization's overall capital adequacy. In this regard, the Board expects banking organizations experiencing substantial growth, internally or through acquisitions, to maintain strong capital positions substantially above minimum supervisory ratios without significant reliance on intangibles, particularly goodwill.

The revised risk-based proposal contemplates deducting equity investments in all unconsolidated subsidiaries and associated companies, including joint ventures,[4] from capital, the numerator, as well as from the denominator of both the proposed risk-based ratio and the existing capital-to-total-assets ratios. The Board believes that because the assets of unconsolidated subsidiaries and associated companies are not fully reflected in a banking organization's consolidated total assets, such assets are the equivalent of off-balance sheet assets. Although such assets are not explicitly taken into account in calculating a banking organization's capital ratio, they nonetheless expose the organization to risk. For this reason, the Board believes that it would be appropriate to view the equity capital invested in these entities as primarily supporting the risks inherent in these off-balance sheet assets, and not generally available to support risks elsewhere in the organization. Thus, the proposal provides for the deduction of the equity capital supporting these activities from an organization's consolidated primary capital. While this treatment suggests that the assets of unconsolidated subsidiaries and joint ventures would not be included in the calculation of an organization's consolidated risk-based capital ratio, the Federal Reserve would continue to evaluate the capital adequacy of these entities and their potential impact on the consolidated organization.

Under this revised proposal and the proposed U.S./U.K. Agreement, the Board will evaluate the activities of other consolidated subsidiaries in order to determine whether to deduct investments in such activities from primary capital and, if so, how such deductions should be made. Such determinations could be made through amendments to the Board's Capital Guidelines (or other regulations) for all subsidiaries engaged in certain activities, or could be made on a case-by-case basis in light of prudential considerations. For example, the Board has already proposed, in connection with its proposed rulemaking concerning bank holding company investments in real estate development activities, that investments in subsidiaries engaged in such real estate development activities would be deducted from capital in determining compliance with capital adequacy guidelines. As has been the case regarding real estate activities, 52 FR 543 (January 7, 1987), the Board would normally seek comment on any proposed regulatory amendment to deduct investments in certain other subsidiaries for the purpose of assessing capital adequacy.

Under the proposed Agreement, the Bank of England would continue its current practice of deducting from capital all interbank holdings of capital, that is, holdings of capital securities issued by other banks. U.S. regulatory agencies have agreed to monitor banking organizations' holdings of capital instruments issued by other commercial banking organizations and may, on a case-by-case basis, require the deduction from primary capital of holdings of primary capital instruments issued by other banking organizations. Such deductions would be made in the case of reciprocal or other formal or informal arrangements in which banking organizations swap primary capital instruments in order to raise their capital ratios without in reality raising new capital funds. Deductions would not be made in the case of legitimate interstate "stake out" investments that comply with the Board's Policy Statement on Nonvoting Equity Investments, 12 CFR 225.143. Moreover, holdings of capital instruments issued by other banking organizations but taken in satisfaction of debts previously contracted would also be exempt from any deduction from primary capital.

Proposed Weights for Assets and Off-Balance Sheet Activities

Although the January 1986 proposal did not contemplate any changes in the manner in which primary capital is defined for purposes of a risk-based ratio, both the January 1986 proposal and this revised proposal provide that primary capital, as determined, be compared with a banking organization's total assets weighted for risk considerations in order to determine a risk-based capital, or risk asset, ratio. Under this revised proposal, each of a banking organization's assets is assigned to one of five risk categories and weighted according to the relative risk of that category. The determination of asset groupings and the assignment of weights primarily reflect credit risk considerations, with some sensitivity to liquidity and interest rate risk.

This revised proposal and the proposed U.S./U.K. Agreement on which it is based contain some significant modifications to the January 1986 proposal, some of which have already been briefly mentioned above. First, a "credit equivalent" approach is used in weighting the risks of off-balance sheet activities. Under this approach, the face amount of an off-balance sheet item is multiplied by a credit conversion factor, and the resulting amount is assigned to the appropriate risk category depending upon the identity of the obligor and, in certain cases, the maturity of the instrument.

Second, the revised proposal explicitly includes commitments to extend credit to consumers within the category of commitments for which a capital requirement is being proposed. As discussed more fully below, such consumer credit lines would be multiplied by a credit conversion factor to reach a credit equivalent amount. That amount would then be included in a bank's asset figure in accordance with the risk categories discussed below. The explicit inclusion of consumer credit lines as commitments represents a change from the Board's January 1986 proposal.

Third, although the revised proposal does not explicitly recognize general forms of collateral or guarantees in calculating asset risk, the proposal recognizes collateral in the form of cash and U.S. Treasury, Government agency and Government-sponsored agency securities, and guarantees by the U.S. Government and Government agencies. (The definitions of Government agencies

[4] The definitions of unconsolidated subsidiaries, associated companies, and joint ventures are contained in the instructions to the Bank Report of Condition and the consolidated Bank Holding Company FR Y-9 Report.

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and Government-sponsored agencies are discussed below.) Thus, the proposal includes in the 25 percent risk category claims fully collateralized by cash on deposit in the lending institution or by U.S. Government or Government agency securities, and portions of claims guaranteed by the U.S. Government or U.S. Government agencies. Claims collateralized by U.S. Government-sponsored agency debt are assigned to the 50 percent weight category. The Board's proposal thus recognizes the risk-reducing effects of collateral in the form of U.S. Government securities and cash, but does not explicitly take account of any other form of collateral, guarantees or credit enhancements. However, all forms of collateral and guarantees are considered by examiners in evaluating asset quality and are taken into account in making an overall assessment of capital adequacy.

Fourth, this proposal does not explicitly incorporate transfer risk distinctions among foreign countries in assigning assets and off-balance sheet items to risk categories. The Board's January 1986 proposal placed short-term claims on U.S. banks in a lower risk category than similar claims on foreign banks. The Board's earlier proposal also further distinguished between claims on banks and governments in industrial versus non-industrial countries, based on the IMF and World Bank's list of industrial market economies. This revised proposal treats claims on all banks, foreign and domestic, in an equivalent fashion and places in the standard risk category claims on *all* foreign governments that involve transfer risk.

Although the proposed risk-based capital ratio thus does not take account of transfer risk distinctions among foreign countries, transfer risk will continue to be monitored closely in the examination process, and banks with large exposures to high-risk countries will be required to maintain capital positions above the minimum ratios. Evaluation of transfer risk on an individual basis is consistent with the requirements of section 904 of ILSA, 12 U.S.C. 3903 (a), (b), which provides that federal banking agencies shall establish examination and supervisory procedures to assure that such foreign country exposure and transfer risk are taken into account in evaluating the capital adequacy of banking institutions.

In incorporating explicit distinctions among foreign countries in its January 1986 proposal, the Board had hoped that the use of an appropriate list or simple, objective criteria to account for transfer risk would be more practical than country-by-country evaluations that would require frequent updating and publication. However, the Board removed explicit transfer risk distinctions among foreign countries for several reasons. The list of industrialized countries compiled by the IMF, while perhaps more acceptable than possible alternatives, is not based upon prudential criteria or transfer risk considerations. Moreover, it is difficult to develop simple, objective criteria that effectively distinguish countries with high and low degrees of transfer risk. Finally, the treatment of country risk contained in the Board's January 1986 proposal could be viewed as different from the typical approach used in the risk-based capital measures of other countries, which assign a low risk weight to claims on their own governments or groups of affiliated governments, while assigning claims on all other governments to the equivalent of a standard risk category. Thus, the January 1986 proposal might have conflicted with the Board's stated goal of converging United States capital policies with those of other industrial countries.

While the revised proposal does not incorporate explicit transfer risk distinctions among foreign countries, transfer risk considerations are not totally absent from the proposal. Thus, as described below, local currency claims on foreign central governments are placed in a relatively low (25 percent) risk category *to the extent* the bank has local currency liabilities booked in offices located in the foreign country. The reason for this is that such claims constitute national government obligations that do not involve transfer risk. All foreign government obligations that involve transfer risk (that is, all other claims on foreign governments) are assigned to the standard (100 percent) risk category.

The types of assets and off-balance sheet items in each category and the rationale for assigning certain items to a particular category are discussed below and in the proposed U.S./U.K. Agreement. Generally, unless otherwise specified, short-term assets are defined as claims with a remaining maturity of one year or less; long-term assets are defined as claims with a remaining maturity of more than one year. The following tables provide a summary of major risk-based asset and off-balance sheet items as they pertain to state member banks and bank holding companies, and an illustration of how the proposed risk-based capital ratio would be calculated.

Table 1

Summary of Risk Weights and Major Risk Categories for State Member Banks and Bank Holding Companies

0 percent

Cash—domestic and foreign
Claims on Federal Reserve Banks

10 percent

Short-term (one year or less) claims on U.S. Government and its Agencies

25 percent

Cash items in process of collection
Short-term claims on domestic depository institutions and foreign banks, including foreign central banks
Long-term claims on U.S. Government and its Agencies
Claims (including repurchase agreements) collateralized by cash or U.S. Government or Agency debt
Claims guaranteed by the U.S. Government or its Agencies
Local currency claims on foreign central governments to the extent that bank has local currency liabilities
Federal Reserve Bank stock

50 percent

Claims on U.S. Government-sponsored Agencies
Claims (including repurchase agreements) collateralized by U.S. Government-sponsored Agency debt
General obligation claims on states, counties and municipalities
Claims on multinational development institutions in which U.S. is a shareholder or contributing member

100 percent

All other assets not specified above, including:
Claims on private entities and individuals
Long-term claims on domestic and foreign banks
All other claims on foreign governments and private obligors

Table 2

Summary of Off-Balance Sheet Items and Conversion Factors for State Member Banks and Bank Holding Companies

Direct credit substitutes (financial guarantees and standby letters of credit serving the same purpose)—100 percent credit conversion factor.

Trade-related contingencies (commercial letters of credit, bid and performance bonds and performance standby letters of credit)—50 percent credit conversion factor.

Sale and repurchase agreements and asset sales with recourse, if not already included on the balance sheet—100 percent credit conversion factor.

Other commitments, including overdraft facilities, revolving underwriting facilities (RUFs/NIFs), underwriting commitments, commercial and consumer credit lines. The credit conversion factors are:

10 percent—one year and less original maturity[1]
25 percent—over one to five years original maturity
50 percent—over five years original maturity

Credit Conversion Factor To Be Determined

Interest rate swaps and other interest rate contracts.
Foreign exchange rate contracts.

Table 3

The following table illustrates the calculation of the risk-based capital ratio, as proposed in the U.S./U.K. Agreement. This example assumes a banking organization with $100,000 in total assets, $50,000 in certain off-balance sheet credit equivalent amounts, and $7,000 in adjusted primary capital as defined by the proposal.

Risk category	On-balance sheet and credit equivalent amounts		Risk weight		Weighted risk assets and off-balance sheet items
0 Percent	$5,000	×	0	=	0
10 Percent	10,000	×	0.10	=	$1,000
25 Percent	30,000	×	0.25	=	7,500
50 Percent	20,000	×	0.50	=	10,000
100 Percent	85,000	×	1.00	=	85,000
Total (including $100,000 in total assets and $50,000 in credit equivalent off-balance sheet items, as derived in the example below)	150,000				103,500
Adjusted primary capital	7,000				
Risk-based capital ratio (as proposed)	7,000	÷	103,500	=	6.8%

The following table illustrates the calculation of the "credit equivalent" value of selected off-balance sheet items by multiplying the principal amount by the appropriate "credit conversion factor." Each credit equivalent value would subsequently be assigned to one of the five risk categories (in the table above) depending on the identity of the obligor.

Off-balance sheet item	Principal amount		Credit conversion factor		On-balance sheet credit equivalent amount
Standby letter of credit (financial guarantee)	$40,000	×	1.00	=	$40,000
Commitment with original maturity of three years	20,000	×	0.25	=	5,000
Commercial letter of credit	10,000	×	0.50	=	5,000
Total	70,000				50,000

a. Category I: Zero Weight

For U.S. banking organizations, this category includes vault cash (domestic and foreign) and balances with and claims on Federal Reserve Banks, excluding Federal Reserve Bank stock.

b. Category II: 10 Percent

This category includes short-term claims on the U.S. Government and U.S. Government agencies, that is, federal agencies whose debt obligations are explicitly guaranteed by the full faith and credit of the U.S. Government. The placement of such claims in a 10 percent category is based on the view that although short-term claims on the U.S. Government bear no credit risk, such claims could involve some interest rate exposure. Moreover, such claims normally are highly liquid.

c. Category III: 25 Percent

This category includes short-term interbank claims and assets that normally have little or no risk of default and a significant degree of liquidity. The specific items included in this category are: Short-term claims (including demand deposits) on domestic depository institutions[5] and all foreign banks[6] (including foreign central banks);[7] cash items in the process of collection, both foreign and domestic; claims (including repurchase agreements) fully collateralized by cash on deposit in the lending institution or U.S. Government or U.S. Government agency debt; portions of loans guaranteed by the U.S. Government or U.S. Government agencies; local currency claims on foreign central governments[8] to the extent that a bank has local currency liabilities booked in that foreign country; and long-term claims on the U.S. Government and U.S. Government agencies.

Several elements of this category differ from those included in the Board's January 1986 proposal. As noted above, treatment of claims on foreign banks differs from the Board's original proposal in that foreign banks are assigned to the same risk category as U.S. banks, and no distinction is made among foreign banks based upon country of origin. The decision to include in this category short-term claims with maturities of one year or less on all banks reflects comments in response to the Board's January 1986 proposal that the inclusion in a low-risk category of only claims with maturities of three months or less would discourage intermediate-term lending and could have a negative impact on interbank funding markets.

The assignment of short-term claims on all banks, foreign and domestic, to the 25 percent category reflects a recognition of the importance of facilitating the smooth and efficient functioning of the interbank funding markets and a desire to avoid discouraging banks from holding liquid interbank claims. This treatment also reflects a recognition of the fact that national governments generally have established supervisory frameworks to promote the stability of their banking systems.

In general, as already indicated, the revised proposal does not explicitly recognize collateral or guarantees. However, the revised proposal includes

[1] Maturity is defined as the stated maturity date or the earliest possible time at which the bank may *unconditionally* cancel the commitment, if the latter comes first.

[5] Domestic (U.S.) depository institutions are defined to include both the U.S. and foreign branches of banks and depository institutions chartered and headquartered in the U.S. The term includes U.S. chartered banks and depository institutions owned by foreigners, but excludes U.S. branches and agencies of foreign banks. In addition to banks, domestic depository institutions include mutual or stock savings banks, savings or building and loan associations, cooperative banks, credit unions, and international banking facilities of domestic banks and depository institutions.

[6] Foreign banks are defined as organizations that are organized under laws of a foreign country; engage in the business of banking; are recognized as banks by the bank supervisory or monetary authorities of the country of their organization or principal banking operations; receive deposits to a substantial extent in the regular course of business; *and* have the power to accept demand deposits. Claims on foreign banks are defined to include claims on the U.S. branches and agencies of the foreign banks.

[7] Short-term claims are included in this category regardless of the form of the instrument, that is, this category includes federal funds sold, certificates of deposit, Eurocurrency placements, repurchase agreements, and bankers acceptances for which the account party is a domestic depository institution or a foreign bank.

[8] Foreign governments are defined to include the central government and its ministries, departments, and agencies; they do not include state, provincial or local governments in foreign countries or government-owned enterprises. In addition, claims on foreign governments do not include claims on non-governmental entities guaranteed by foreign governments.

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in Category III claims fully collateralized by cash on deposit in the lending institution or by U.S. Government or Government agency securities, and portions of claims guaranteed by the U.S. Government or U.S. Government agencies. As noted below, claims on U.S. Government-sponsored agencies (as defined below), and claims collateralized by U.S. Government-sponsored agency debt, are assigned to the 50 percent category. The Board's revised proposal thus recognizes the risk-reducing effects of collateral in the form of U.S. Government securities and cash.

The framework does not explicitly take account of any other form of collateral, guarantees or so-called credit enhancements. Thus, collateral in the form of foreign government debt, bank securities, or domestic local government debt, or guarantees issued by foreign or domestic local governments or banks, do not affect the assignment of claims to risk categories. In addition, the risk-based proposal does not explicitly recognize guarantees in the form of the sale of risk participations in bankers acceptances or standby letters of credit, or credit enhancements in the form of standby letters of credit backing outstanding loans or investments. This latter treatment differs to some degree from the Board's January 1986 proposal which recognized explicitly the sale of risk participations in bankers acceptances. The main reasons for this change were to bring the proposed treatment of these particular items into line with the proposal's general approach to guarantees and to coordinate the Federal Reserve's proposal with the views of the other regulatory authorities.

The regulatory authorities do not wish to discourage legitimate arrangements designed to reduce credit exposure. Thus, collateral and guarantees are currently and will continue to be considered by examiners in evaluating asset quality and are taken into account, along with other relevant factors, in making an overall assessment of capital adequacy. The presence of guarantees and collateral, if prudently administered and controlled, may mean that an organization can operate with lower levels of capital (although still at or above the minimums) than would otherwise be required if the organization had not taken steps to limit its credit exposure.

Nonetheless, there are several reasons for this very limited recognition of collateral and guarantees. First, recognition of collateral more broadly would significantly complicate the ratio and could greatly expand any reporting requirements established to monitor the risk-based measure. Second, the existence of collateral may not always preclude losses since legal or operational problems could arise affecting a bank's control over or access to underlying collateral. Third, guarantees are only as good as the strength of the guarantor; thus, explicit recognition of guarantees beyond what is contained in the proposal would suggest the need to make individual credit judgments on guarantors, judgments that would appear to be better left to the on-site examination. Finally, guarantees vary in content, and may contain clauses or conditions that could limit the protection provided to the lender under certain circumstances. All of these factors suggest that the effect of collateral and guarantees on bank exposure are more appropriately evaluated in the course of the on-site supervisory examination.

The Board's January 1986 proposal assigned trading account assets to the 30 percent risk category. The revised proposal does not incorporate this approach; rather, all assets, including trading account assets, are assigned directly to the appropriate risk category depending upon the identity of the obligor and, if applicable, the maturity of the instrument. Many of the assets currently in bank trading accounts, such as U.S. Government and agency securities, short-term obligations of banks, and general obligation municipal securities are assigned weights of 25 or 50 percent, well below the 100 percent weight that is implicit in the Board's existing capital-to-total assets guidelines. Nonetheless, the Board recognizes that as banking organizations become involved in trading a wider range of non-government securities, it may be desirable to recognize explicitly the different risks inherent in trading account assets that are readily marketable and marked to market on a frequent basis. Thus, the Board seeks comment on how the risks associated with trading account assets might be assessed and how such assets might be treated in a risk-based capital framework.

The inclusion in Category III of local currency claims on foreign central governments *to the extent* a bank has local currency liabilities booked in that foreign country recognizes that such claims are debt obligations of national governments that do not involve transfer risk. All other claims on foreign governments are assigned to the 100 percent category.

The proposed U.S./U.K. Agreement assigns short-term domestic central government securities to the 10 percent category and long-term central government securities to the 25 percent category. This maturity break is intended to recognize an element of interest rate risk in long-term government securities, as well as the liquidity inherent in short-term securities, pending the development of a more direct and comprehensive approach to assessing overall interest rate risk. Nonetheless, it has been argued that since domestic central government securities bear no credit risk, both short- and long-term securities should be assigned to the same risk category, perhaps the 0 or 10 percent category. While the risk-based capital ratio is intended to focus primarily on credit risk, the 0 percent category seems inappropriate in view of the fact that even a government securities portfolio involves some operational and interest rate risks. On the other hand, placing long-term Government securities in the 10 percent category could understate the potential for interest rate exposure. Thus, in the absence of a more comprehensive measure of interest rate risk, the Board is proposing to incorporate the maturity break for U.S. Government securities as set forth in the proposed U.S./U.K. Agreement. The Board recognizes the importance of a consistent approach to interest rate risk and seeks public comment on this issue.

d. Category IV: 50 Percent

This category includes assets that have more credit risk than the assets categorized above, but generally less credit risk than the standard commercial bank loan portfolio. This category includes claims on U.S. Government-sponsored agencies, that is, agencies originally established or chartered by the federal government to serve public purposes specified by the U.S. Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. Government. It also includes claims fully collateralized by U.S. Government-sponsored agency debt and direct claims on multinational development banks in which the U.S. government is a shareholder or contributing member. The latter would include, among other institutions, the World Bank and the Inter-American Development Bank. Category IV also includes general obligation claims on domestic state and local governments.

If a claim is secured by two forms of collateral that are recognized explicitly in the proposal but placed in different risk categories, such as U.S. Government debt and U.S. Government-sponsored agency debt, the claim would be assigned to the higher of the two risk categories, provided that the claim is fully collateralized. Any claim that is not fully secured, based upon current market value, would be placed in the risk category appropriate for an unsecured claim to the obligor.

e. Category V (Standard Risk): 100 Percent

All assets not included in the categories above are assigned to this category. If it appears that a claim could be assigned to more than one category, for example, a long-term claim on a bank (100 percent) secured by U.S. Government debt (25 percent), the claim should be assigned to the lower of the two risk categories.

The bulk of the assets typically found in a loan portfolio would be assigned to the 100 percent category. Such assets include: long-term claims on domestic depository institutions and foreign banks; all other claims on foreign central governments (including local currency claims on foreign central governments that exceed local currency liabilities in that foreign country), that is, claims on foreign governments that entail transfer risk; and all other assets including commercial and industrial loans and lease financing receivables, residential real estate and consumer loans, corporate securities and commercial paper, all other claims on foreign private obligors, and investments in fixed assets and premises. This category also includes loans to nondepository financial institutions, such as insurance companies, mortgage companies, and finance companies, as well as loans to depository and nondepository financial institution holding companies, including bank holding companies. This category also includes domestic tax-exempt state and local government revenue and industrial development bonds.

f. Off-Balance Sheet Items

As noted above, the Board's January 1986 proposal assigned both assets and certain off-balance sheet items directly to an appropriate risk category. By contrast, this proposal follows the treatment outlined in the proposed U.S./U.K. Agreement, that is, a two-step credit equivalent approach to determining off-balance sheet risk. The face amount of an off-balance sheet item is multiplied by a credit conversion factor (see Table 2 above) and the resulting amount is assigned to the appropriate risk category depending upon the identity of the obligor and, in certain cases, on the maturity of the instrument.[9] The Board believes that the proposed credit equivalent approach provides supervisors greater flexibility for factoring new off-balance sheet instruments into a risk-based capital calculation.

The proposed U.S./U.K. Agreement applies a 100 percent conversion factor to direct credit substitutes, defined to include financial guarantees and standby letters of credit backing outstanding financial claims of the account party. These direct credit substitutes would include standby letters of credit, or other equivalent irrevocable obligations or surety arrangements, that "back" or guarantee repayment of commercial paper, tax-exempt securities, or other commercial or individual loans or debt obligations. In addition, sale and repurchase agreements and asset sales with recourse (to the extent not already included on a financial institution's balance sheet) are converted at 100 percent of their face amount.[10]

Conversion of these items at the 100 percent level reflects the view that the credit risk associated with these items is broadly equivalent to the risks associated with on-balance sheet items. By issuing such instruments, a bank has the same credit risk with respect to a customer that it would have if it made a direct extension of credit to the customer. This treatment of standby letters of credit is also consistent with the fact that such exposures are generally covered by statutory limits on loans to a single borrower, warrant the same credit review and approval process as traditional loans, and are treated and analyzed like loans by bank examiners and supervisors.

The Agreement proposes that trade-related contingencies be converted at 50 percent. Such trade-related contingencies include commercial letters of credit and performance standby letters of credit. The latter includes obligations backing the performance of nonfinancial or commercial contracts or undertakings. To the extent permitted by law or regulation, performance standby letters of credit would include arrangements backing, among other things, subcontractors' and suppliers' performance, labor and materials contracts, and construction bids. The conversion of trade-related contingencies at the 50 percent level is based on the view that the counterparty involved in such contingencies has a strong incentive to meet its obligations if it wishes to continue to conduct its day-to-day commercial business. Moreover, such trade-related contingent obligations are often short-term, and banks have maintained that their loss record on these instruments is favorable.

The credit conversion factors proposed for other commitments, including overdraft facilities, revolving credit facilities, note issuance facilities, and commercial and consumer commitments, are tied to the *original* maturity of the commitment. Maturity in this regard is defined by the earliest possible point in time that the bank can, at its option, *unconditionally* cancel its commitment to a borrower. As is apparent from the above discussion, maturity is generally not a factor in assigning loans to risk categories because once a direct loan has been made the funds are disbursed to the borrower, the bank is fully exposed on the entire amount of the loan, and deterioration of a loan with a short stated maturity can, nonetheless, result in a long-term exposure for the lender. However, with respect to a loan commitment, the longer the term of the commitment the greater the risk since there is a greater likelihood the borrower's financial circumstances or condition may change during the period the commitment is outstanding. Thus, under the proposal, commitments with an original maturity of one year or less would be converted at 10 percent; those with an original maturity of over one year and up to and including five years would be converted at 25 percent; and those with an original maturity of more than five years would be converted at 50 percent.

The Board's January 1986 proposal aggregated commitments and assigned them directly to the 30 percent asset risk category. Thus, the U.S./U.K. proposal places a lower weight on short- and intermediate-term commitments and a higher weight on long-term commitments than incorporated in the Board's January 1986 proposal. In addition, the Board's January 1986 proposal did not explicitly include obligations in the form of credit card and consumer commitments, which include home equity lines and mortgage commitments, in the risk categories, as this proposal does. The Board is seeking comment on the proposed definition and treatment of commitments, particularly the inclusion of commitments to consumers in the form of credit card

[9] Credit equivalent amounts of off-balance items that are secured by recognized collateral (that is, cash or debt of the U.S. Government, Government agencies or Government-sponsored agencies) are assigned, as with on-balance sheet exposures, to the appropriate risk category based upon the nature of the collateral.

[10] A bank's purchases of risk participations in bankers acceptances are also included and converted at 100 percent and assigned to the appropriate category depending upon the identity of the account party.

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lines, home equity lines and mortgage commitments.

Commitments, for risk-based capital purposes, are defined as any arrangements that legally obligate a banking organization to purchase loans or securities, or extend credit in the form of loans or leases, participations in loans and leases, overdraft facilities, revolving credit or underwriting facilities, or similar transactions. Generally, commitments involve a written contract or agreement, or a commitment fee or some other form of consideration. For the purpose of calculating the risk asset ratio, the definition includes, as noted above, commitments that obligate the banking organization to extend credit to consumers or individuals in the form of retail credit cards, check credit and overdraft facilities, home equity and mortgage lines, and other similar arrangements.

Commitments are to be included in the risk asset ratio regardless of whether they contain "material adverse change" clauses or other provisions that are intended to relieve the bank of its funding obligation under certain conditions. However, lending arrangements that are unconditionally cancelable at any time at the option of the bank would not be deemed to be commitments for risk asset purposes, *provided that* the bank, in fact, makes a separate credit decision based upon the borrower's current financial condition before each drawing under the lending facility. Arrangements under which a banking organization agrees to extend credit for a specified period, even if unconditionally cancelable at any time, would constitute commitments for risk-based capital purposes if the bank does *not* make an individual decision based upon the borrower's financial condition at the time each extension of credit or drawing under the lending facility is made. As already noted, the proposed definition is intended to include the unused portion of credit card lines.

Commitments with material adverse change clauses are included because such commitments are nonetheless binding and may involve risk if a bank funds the commitment *before* the customer's condition deteriorates, or before the deterioration is recognized. Moreover, while the Board does not wish to discourage the use of material adverse change clauses, recent court decisions suggest that the presence of a material adverse change clause cannot necessarily be relied on in all cases to relieve a bank of its obligations pursuant to a commitment.

In the case of commitments structured as syndications, the risk asset framework includes only the banking organization's proportional share of such commitments. In addition, only the unused portion of commitments are treated as off-balance sheet items. Amounts that are already drawn and outstanding under a commitment appear on the balance sheet and such amounts, therefore, should not also be included as commitments for purposes of computing the risk asset ratio.

The definition of the maturity of commitments in connection with revolving credit facilities raises a number of questions. Such arrangements typically entail (i) a commitment period during which the borrower has access to a revolving credit facility, and (ii) conversion of the outstanding balance to a term loan at a specified future date. Thus, the maturity of such commitments could be defined in terms of the duration of the revolving credit facility only, or in terms of the combined period of the revolving credit facility and the term loan. The Board seeks public comment on the appropriate manner by which to define the maturity of these types of commitments, as well as on the broader issue of the definition of commitments incorporated in this proposal.

Administration of a Risk-Based Capital Measure

As the current Guidelines emphasize with respect to primary and total capital ratios, the proposed risk-based ratio would be used as a guideline in the assessment of capital adequacy. The Board wishes to emphasize that the introduction of a risk-based capital ratio would in no way lessen the need for supervisors and examiners to make judgments on capital adequacy—judgments which reflect a broad mix of qualitative and quantitative considerations.

The proposed U.S./U.K. Agreement upon which the Board's proposal is based provides that banking authorities will emphasize the risk-based capital ratio. However, the Agreement leaves each banking agency free to use other capital ratios in assessing capital adequacy. In this regard, the Board intends to use the risk-based capital ratio in tandem with current capital-to-total-assets ratios. This means that individual banking organizations would still be subject to an overall constraint on total leverage (although the revised definition of capital proposed in the risk-based capital measure would apply to the leverage ratios as well as to the risk-based capital ratio), with the proposed risk-based capital ratio used as an additional guideline designed to encourage banking organizations to make appropriate adjustments in either the risk composition of their portfolios or their overall level of primary capital.

Under the tandem operation of the risk-based capital and capital-to-total assets (leverage) ratios, banking organizations in strong financial condition and with risk-based capital ratios well above the risk-based minimum might be allowed to reduce their ratios of primary and total capital to total assets (that is, increase their leverage) closer to the existing 5.5 percent and 6.0 percent supervisory minimums. This would be permitted only to the extent that such banking organizations did not face significant risks, such as excessive loan concentrations or problem loans, significant interest rate exposure, or other financial, managerial or operational deficiencies, and only to the extent that reductions in ratios of capital to total assets were carried out in a manner consistent with sound banking practices. Normally, as long as the total leverage constraints are in place, banking organizations would not be permitted to reduce their capital-to-total assets ratios below the supervisory minimums.

The use of the risk-based capital ratio in tandem with existing supervisory guidelines would not result in inconsistent supervisory treatment since most banking organizations have capital-to-total assets ratios above the current supervisory minimums. Thus, the proposed risk-based capital ratio and current supervisory guidelines will complement each other by providing a framework for evaluating capital in relation to risk as well as overall leverage. As experience is gained in the application of the risk-based ratio, the Board may consider whether the existing capital-to-total assets ratios should be reduced, phased out or eliminated. In this regard, the Board seeks public comment on whether, in the long run, some form of total leverage constraint should be retained and what factors should be considered in making this determination.

As is the case under the Board's current Guidelines, this proposal envisions that risk-based capital ratios would be calculated for all state member banks and bank holding companies on a consolidated basis (bank holding companies with less than $150 million in consolidated assets would be exempt under the same terms and conditions as provided in the current Guidelines.) The risk asset framework would be employed to evaluate the capital of all banking organizations regardless of size since the rationale for relating capital needs to risk applies to both large and small institutions.

The proposed U.S./U.K. Agreement indicates the intention to establish a minimum ratio of adjusted primary capital to total assets weighted for risk for U.S. and U.K. banking organizations. However, as stated in the proposed Agreement, most banking institutions would generally be expected to operate above the minimum risk-based capital level. Supervisors would be able to establish risk-based capital ratios or guidelines above the minimum standard for individual banking institutions. In addition, the Board is requesting comment on whether it should adopt zones or benchmarks above the minimum acceptable risk-based capital ratio. Such zones or benchmarks would be used to designate risk-based capital ratios that would be considered adequate, barring other significant financial, managerial, supervisory or operating problems. If risk-based ratio zones were to be established, such zones would replace the zones in the Board's current Guidelines for total capital to total assets in order to avoid confusion and excessive complexity.

The proposed U.S./U.K. Agreement does not specify at this time the actual minimum risk-based ratio, nor is the Board proposing at this time any specific benchmarks or zones above the minimum. Instead, it would appear to be more appropriate to encourage respondents to focus on the underlying policy considerations and the proposed definitions and framework of this proposal, rather than on where the minimum risk-based capital level should be set.

Banking organizations will be able to comply with the risk-based capital measure in several ways, some of which do not require raising new external capital. For example, an organization can moderate its growth and/or increase its earnings retention. More importantly, however, within a risk-sensitive capital framework, an organization can raise its capital ratio by reducing its risk profile. This could be done by reducing off-balance sheet risk or by placing proportionately greater emphasis on those balance sheet activities that carry lower risk weights. If an individual banking organization is required to raise additional capital in order to comply with the risk-based capital guidelines, the organization would be asked to submit a plan, acceptable to the Federal Reserve, that includes a program for achieving compliance with the required ratios within a reasonable period of time.

Issues for Further Consideration

Since the issuance of the Board's supplemental adjusted capital proposal in January 1986, the Board has received public comment on the proposal and the concept of a risk-based capital measure in general. The Federal Reserve staff has worked with the staffs of the FDIC and OCC to maintain uniform capital standards for all federally supervised banking organizations in the United States. In addition, the staffs of the Federal Reserve, FDIC and OCC have coordinated with the staff of the Bank of England to develop the agreement that provides the basis for this revised proposal. Nevertheless, significant questions remain and the Board is seeking comments in the specific areas described below.

1. The proposed U.S./U.K. Agreement, upon which the Board's proposal is based, provides that banking authorities will emphasize the risk-based capital ratio. However, the Agreement leaves each banking agency free to use other capital ratios in assessing capital adequacy. In this regard, the Board intends to use the risk-based capital ratio in tandem with current capital ratios. The Board seeks comment on whether the risk-based capital ratio should eventually replace the existing capital-to-total assets ratios. Stated differently, should some form of total leverage constraint be retained? What factors should be considered in making this determination? In addition, should the proposed redefinition of primary capital apply, as is now proposed, to the Board's current capital Guidelines as well as to a risk-based capital measure, or should the proposed redefinition apply only to the proposed risk-based capital measure?

2. The proposed U.S./U.K. Agreement states that the regulatory authorities intend to establish a minimum level of primary capital to weighted risk assets, although most institutions will be expected to operate above the minimum. Should the Board supplement the proposed minimum risk-based capital ratio with the use of zones above the minimum acceptable ratio—similar to but replacing the zones currently incorporated in the Board's existing Capital Guidelines—for the purpose of measuring appropriate or adequate levels of risk-based capital?

3. While the proposed U.S./U.K. Agreement focuses on primary capital, it indicates that the regulatory authorities will consider other measures of capital adequacy. In addition to the Board's proposed ratio of primary capital to weighted risk assets, should the Board establish a minimum ratio of *total* capital (defined as primary capital plus secondary capital) to weighted risk assets for U.S. banking organizations?

4. The U.S./U.K. Agreement proposes capital requirements for commitments, including commitments to extend credit to consumers in the form of credit card lines, home equity lines, mortgage commitments, and overdraft facilities. How should commitments be defined for risk-based capital purposes? Should the Board consider commitments to consumers to be different, in terms of risk exposure, from commitments to commercial borrowers? What is the most appropriate way to treat commitments to consumers in light of the supervisory objective of relating capital to risks assumed by banks?

5. Adoption of the proposed U.S./U.K. Agreement would modify the criteria for including certain non-common equity instruments in primary capital. Are the criteria for defining limited forms of primary capital and the limitations that apply to these instruments reasonable? Are the criteria consistent with the concepts of loss absorption capacity and permanence, two major characteristics that determine the quality of capital instruments? How will such criteria affect the ability of organizations to raise primary capital in the form of preferred stock and perpetual debt? What is the most appropriate way to discount limited-life preferred stock with an original maturity of 25 years or more for prudential purposes as it approaches maturity?

6. The proposed U.S./U.K. Agreement defines primary capital to include general reserves for losses resulting from charges to earnings (that is, the valuation reserve for losses on loans and leases). The proposal also states, however, that specific reserves for identified losses should not be included in primary capital since such reserves are not generally available to absorb estimated, but unidentified, losses. Given the practical difficulty of distinguishing between specific and general reserves, the proposed Agreement provides that the banking agencies will seek comment on whether loan loss reserves should be phased out of primary capital.

Valuation reserves have historically been included in U.S. bank capital because they are deemed to be available to absorb estimated or anticipated (but not identified) losses inherent in the loan portfolio. However, it could be argued that such reserves should be excluded from primary capital to the extent that such reserves actually reflect known or identified losses, or to the extent that banks are reluctant to charge

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off loans because such action would reduce their primary capital ratios. This argument reflects the view that the capital base exists to absorb unidentified losses and should not be inflated by the presence of a high volume of known or identified problem loans.

7. The proposed Agreement provides that intangible assets be deducted from primary capital for the purposes of calculating the risk-based capital ratio, but proposes to grandfather intangibles acquired before the final adoption of the risk-based capital framework. Two approaches to grandfathering are possible: (1) Intangibles could be grandfathered for their useful lives; or (2) they could be grandfathered for a specific period, such as 10 years, if such a period is shorter than the useful life. By what method should the Board grandfather intangible assets for purposes of deducting intangible assets from capital in calculating supervisory capital ratios?

8. Should the Board revise the definition of adjusted primary capital for the purpose of calculating daylight overdraft limits to be consistent with the definition of capital proposed by the U.S./U.K. Agreement?

9. Should risk-based capital ratios be calculated from period-end or average data?

10. As discussed above, should the risks associated with trading account assets be incorporated explicitly into the risk-based capital ratio, and, if so, how might this be done? What would be the rationale in terms of risk exposure for assigning trading account assets a different weight than the weight assigned to the same assets held for investment purposes? If assets held in trading accounts are to be given a different weight than if they are held as investments, how should trading account assets be specifically defined and delimited to distinguish them from assets held for investment purposes?

11. The Board's proposal incorporates a maturity break for U.S. Government securities as a proxy for dealing with an element of interest rate exposure. However, the U.S./U.K. Agreement acknowledges that interest rate risk is best dealt with in a more comprehensive fashion. What alternatives exist for addressing interest rate risk in a more comprehensive manner within the risk asset framework?

Regulatory Flexibility Act Analysis

The Board does not believe that adoption of this proposal would have a significant economic impact on a substantial number of small business entities, in this case small bank holding companies and state member banks, within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). While all state member banks would presumably be required to revise their reporting procedures to permit supervisory monitoring of risk-based capital ratios, the major aspects of this proposal would generally apply only to bank holding companies with assets of $150 million or more.

In addition, this proposal is designed primarily to take account of those practices, such as the increased use of off-balance sheet risk and the decline in the holdings of low-risk, liquid assets, which have been engaged in primarily by certain larger banking organizations. Moreover, rather than requiring all banking organizations to raise additional capital, this proposal is directed at institutions whose capital positions are less than fully adequate in relation to their risk profiles. While some additional reporting requirements would be imposed by this proposal, the Board will attempt to minimize the additional requirements, to use existing forms and collected data where possible, and to eliminate or reduce existing reporting requirements to offset to the extent possible any additional reporting burden.

List of Subjects in 12 CFR Part 225

Banks, Banking, Capital adequacy, Federal Reserve System, Holding companies, Reporting requirements, State member banks.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for Part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1843(c)(8), 1844(b), 3106, 3108, 3907, 3909.

2. The Board proposes to revise Appendix A to 12 CFR Part 225 as follows:

Appendix A—Capital Adequacy Guidelines for Bank Holding Companies and State Member Banks

The Board of Governors of the Federal Reserve System has adopted minimum capital ratios and guidelines to provide a framework for assessing the adequacy of the capital of bank holding companies and state member banks (collectively "banking organizations"). The guidelines generally apply to all state member banks and bank holding companies regardless of size and are to be used in the examination and supervisory process as well as in the analysis of applications acted upon by the Federal Reserve. The Board of Governors will review the guidelines from time to time for possible adjustments commensurate with changes in the economy, financial markets, and banking practices.

The guidelines include a ratio that relates adjusted primary capital to assets and certain off-balance sheet items weighted for risk considerations (risk-based capital ratio) and ratios that relate adjusted primary capital and total capital to total assets. The definitions of adjusted primary capital and total capital and the procedures for calculating the risk-based capital ratio and the adjusted primary and total capital-to-total assets ratios (primary capital and total capital ratios) are set forth in the definitional sections of these guidelines.

I. Appropriate Capital Levels

The Board has established minimum levels of capital for bank holding companies and state member banks, including a minimum risk-based capital ratio of — percent, a minimum primary capital ratio of 5.5 percent and a minimum total capital ratio of 6.0 percent. Since no capital ratio takes account of all risk factors, banking organizations are generally expected to operate above these minimum capital levels and maintain capital positions that are consistent with the organizations' overall risk exposure.

In addition, the Board has established the following three zones for total capital for banking organizations of all sizes:

	Total capital ratio (percent)
Zone 1	Above 7.0
Zone 2	6.0 to 7.0
Zone 3	Below 6.0

The capital guidelines apply to both banks and bank holding companies on a consolidated basis.[1] Some banking organizations are engaged in significant nonbanking activities that typically require capital ratios higher than those of commercial banks alone. The Board believes that, as a matter of both safety and soundness and competitive equity, the degree of leverage common in banking should not automatically extend to nonbanking activities. Thus, nonbank subsidiaries of a banking organization should maintain levels of capital consistent with the levels that have been established by industry norms or standards, by Federal or state regulatory agencies for similar firms that are not affiliated with banking organizations, or that may be established by the Board after taking into account risk factors of a particular industry. The assessment of an organization's

[1] The guidelines will apply to bank holding companies with less than $150 million in consolidated assets on a bank-only basis unless (1) the holding company or any nonbank subsidiary is engaged directly or indirectly in any nonbank activity involving significant leverage or (2) the holding company or any nonbank subsidiary has outstanding significant debt held by the general public. Debt held by the general public is defined to mean debt held by parties other than financial institutions, officers, directors, and principal shareholders of the banking organization or their related interests.

consolidated capital adequacy must take into account the amount and nature of all nonbank activities, and an institution's consolidated capital position should at least equal the sum of the capital requirements of the organization's bank and nonbank subsidiaries as well as those of the parent company.

II. Supervisory Action

The nature and intensity of supervisory action will be determined by an organization's compliance with minimum supervisory ratios and its overall financial condition. Banks and bank holding companies with risk-based capital ratios below the — percent minimum or primary capital ratios below the 5.5 percent minimum will be considered undercapitalized unless they can demonstrate clear extenuating circumstances. Such banking organizations will be required to submit an acceptable plan for achieving compliance with the capital guidelines and will be subject to denial of applications and appropriate supervisory enforcement actions.

An organization's compliance with minimum risk-based and primary capital ratios and the zone in which the organization's total capital ratio falls will normally trigger the following supervisory responses, subject to qualitative analysis:

For institutions operating in Zone 1, the Federal Reserve will:

—Consider that capital is generally adequate if the risk-based and primary capital ratios are acceptable to the Federal Reserve and are above the supervisory minimums.

For institutions operating in Zone 2, the Federal Reserve will:

—Pay particular attention to the risk-based capital ratio and to financial factors, such as asset quality, asset concentrations, liquidity, and interest rate risk, as they relate to the adequacy of capital. If these areas are deficient and the Federal Reserve concludes capital is not fully adequate, the Federal Reserve will intensify its monitoring and take appropriate supervisory action.

For institutions operating in Zone 3, the Federal Reserve will:

—Consider that the institution is undercapitalized, absent clear extenuating circumstances;

—Require the institution to submit a comprehensive capital plan, acceptable to the Federal Reserve, that includes a program for achieving compliance with the required minimum ratios within a reasonable time period; and

—Institute appropriate supervisory and/or administrative enforcement action, which may include the issuance of a capital directive or denial of applications, unless a capital plan acceptable to the Federal Reserve has been adopted by the institution.

Institutions with risk-based capital ratios below the minimum supervisory ratio will also be subject to these Zone 3 enforcement actions, even though their primary and total capital ratios comply with supervisory minimums.

While the risk-based capital ratio establishes a general framework for assessing the capital of an individual banking organization in relation to risks, the ratio measures only certain types of risk in a general and relatively broad manner. The Board will make judgments on capital adequacy in individual cases, judgments which reflect a broad mix of qualitative and quantitative considerations that may not be contained in the ratio. The Board will consider, among other things, the quality, trend and variability of earnings; liquidity and the structure of liabilities; vulnerability to interest rate changes; the quality of management, internal systems and controls, and operating procedures; the effectiveness of loan and investment policies; and the quality of loans and investments. Asset quality considerations are especially critical in the assessment of capital adequacy. These include the risk composition and profile of the loan portfolio, credit and sovereign risk concentrations, and the level and severity of examiner classified and criticized assets. The Board will assess capital adequacy by (1) calculating and assessing the risk-based capital ratio, together with the primary and total capital ratios, (2) evaluating all other risk factors and, in particular, (3) taking into account the *level* and *severity* of classified assets.

The Board has determined that it will deduct all intangible assets from primary capital for the purpose of determining compliance with minimum supervisory capital guidelines, except that intangibles included in capital prior to the adoption of these risk-based guidelines will continue to be treated as primary capital to the degree and in the amount that the Board included such intangibles in primary capital previously under its guidelines. While the Board has "grandfathered" intangibles acquired prior to the adoption of these risk-based capital guidelines, the Federal Reserve will continue to monitor the level and quality of all intangible assets and may consider tangible as well as stated capital ratios in assessing an organization's capital adequacy. Banking organizations experiencing substantial growth, either internally or through acquisitions, should maintain strong capital positions above minimum supervisory ratios without significant reliance on intangibles, particularly goodwill.

III. Definition of capital to be used in determining capital adequacy of bank holding companies and State member banks

A. Primary Capital Components

Primary capital consists of two classes of capital funds: "Base primary capital," that is, capital funds treated as primary capital without limit, and "limited primary capital," that is, primary capital funds that are limited to a specified percentage of base primary capital. The types of capital that would be considered to be base primary capital and limited primary capital are discussed below.

1. *Base primary capital: Capital funds that are treated as primary capital without a percentage limitation.* The components of base primary capital are:

—Common stock,

—Surplus (relating to common stock),

—Undivided profits or retained earnings,

—Allowance for possible loan and lease losses (exclusive of reserves allocated for identified losses, such as transfer risk reserves), and

—Minority interest in the equity accounts of consolidated subsidiaries.

2. *Limited Primary Capital: Capital funds that are treated as primary capital subject to a percentage limitation (set forth below).* The components of limited primary capital are:

—Perpetual preferred stock[2] and limited-life preferred stock with an original maturity of at least 25 years,[3]

—Debt that is unsecured and subordinated (in the case of a bank) to deposits, that may only be converted into or redeemed by equity or equity equivalents, and that meets the additional criteria set forth below for inclusion in primary capital, and

—Mandatory convertible securities that were issued before the risk-based capital ratio was adopted by the Board and that meet the "grandfather" conditions set forth below.

Limited primary capital is considered to be primary capital to the extent that on a combined basis it does not exceed 50 percent of the amount that results from subtracting from base primary capital *all* intangible assets, including those intangible assets that are otherwise considered "grandfathered" intangible assets as discussed below. Existing limited primary capital instruments in excess of this limitation will be "grandfathered" and, therefore, included in primary capital, provided that such limited primary capital instruments were issued prior to the final adoption of the risk-based capital ratio and only to the extent that such limited primary capital instruments (1) complied with the Board's definition of primary capital prior to adoption of the risk-based capital ratio and (2) do not exceed the amounts eligible for treatment as primary capital prior to adoption of the risk-based capital ratio. If the grandfathering provision causes the aggregate amount of limited primary capital instruments to exceed the 50 percent limitation, new limited primary capital instruments will not be included as primary capital until the new limited primary capital, together with the grandfathered instruments comply with the limitation on limited primary capital.

3. *Restrictions on treatment of 25-year limited-life preferred stock as primary capital.* Limited-life preferred stock with an original maturity of 25 years or more is to be discounted for the purpose of calculating limited primary capital as it approaches maturity. This discounting process is necessary because as limited-life preferred stock approaches maturity it must either be redeemed or refunded, thereby becoming more like a current liability and less like a component of capital. For capital assessment purposes, the original outstanding balance is to be discounted by 20 percent each year

[2] Perpetual preferred stock is defined as preferred stock that does not have a stated maturity date and may not be redeemed at the option of the holder of the instrument.

[3] The maturity of limited-life preferred stock is defined as the stated maturity date or the earliest point in time at which the instrument can be redeemed at the option of the holder, if the latter comes first.

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during the instrument's last five years before maturity. The amount of outstanding limited-life preferred stock that is not included in limited primary capital as a result of this discounting process would be included in secondary capital, provided it meets the general criteria for inclusion in secondary capital.

4. *Criteria for including debt instruments in primary capital.* The Board has established criteria for including debt instruments in primary capital. These criteria are designed to ensure that such debt instruments (a) are permanent; (b) provide strength and loss absorption capacity and, when serious losses occur, permit the organization to continue to operate as a going concern; and (c) provide the issuer with the option, under certain conditions, to defer interest payments during periods of serious financial adversity.

The criteria for state member banks and bank holding companies are:

(i) The instruments must be subordinated to deposits or, if issued by bank holding companies, unsecured.

(ii) The instruments can only be converted into or redeemed with equity or equity equivalents. This means that (a) the instruments cannot provide the holder with any right to demand repayment of principal (even in the event of non-payment of interest), except in the event of bankruptcy, insolvency or reorganization; and (b) the issuer cannot voluntarily redeem the securities without the approval of the Federal Reserve, except that securities may be simultaneously replaced by a like amount of capital instruments that qualify as primary capital.

(iii) The instruments must be available to absorb losses when necessary to allow the organization to continue to operate as a going concern. Thus, the instruments must convert automatically to common or preferred stock that qualifies as primary capital in the event that the issuer's retained earnings and surplus accounts become negative.

(iv) The instruments must provide the option for the issuer to defer (they may also allow the issuer to reduce or eliminate) cash interest payments if the issuer does not report a profit in the preceding period (defined as combined profits for the most recent four quarters) and/or the issuer eliminates cash dividends on common and preferred stock. This provision is intended to provide the issuer with the option of mitigating the burden associated with interest payments during a period of severe financial stress.

Any debt instrument meeting these criteria, so long as the debt instrument does not contain other provisions inconsistent with safe and sound banking practices, would qualify as primary capital. Mandatory convertible securities, formerly defined as capital by the Federal Reserve, are not included in primary capital if issued after the date of adoption of the risk-based capital measure, unless such instruments also satisfy the criteria set forth above. Mandatory convertible instruments that provide for conversion to equity and deferment of interest in accordance with the criteria specified above qualify as primary capital. Moreover, mandatory convertible securities issued before the date that the risk-based capital ratio was adopted by the Board and that qualified for inclusion in primary capital would be "grandfathered" as limited primary capital under the risk-based capital guidelines. However, only the amount of such mandatory convertible securities that were included in primary capital under the previous limitations would be grandfathered.

B. Adjustments to Primary Capital

Adjusted primary capital is calculated by adding base primary capital and limited primary capital, and then deducting all intangible assets (except "grandfathered" intangible assets as discussed below), equity investments in unconsolidated subsidiaries and associated companies, and investments in certain consolidated subsidiaries as discussed below. Amounts deducted from primary capital are also to be excluded from total assets and weighted risk assets in the calculation of capital ratios.

1. *Intangible assets.* In considering the treatment of intangible assets for the purpose of assessing capital adequacy, the Federal Reserve recognizes that the determination of the future benefits and useful lives of intangible assets may involve a degree of uncertainty that is not normally associated with other banking assets. Supervisory concern over intangible assets derives from this uncertainty and from the possibility that, in the event an organization experiences financial difficulties, such assets may not provide the degree of support generally associated with other assets. For this reason, the Federal Reserve intends to deduct all intangible assets from primary capital for the purpose of assessing capital adequacy, except that intangibles acquired before the date of the adoption of the risk-based capital ratio will be "grandfathered" to the extent the intangibles were included in primary capital under previous supervisory guidelines.

Such intangible assets, generally including all intangibles for bank holding companies and intangibles excepting goodwill for state member banks, are grandfathered for a limited period of time, not to exceed the assets' useful lives. Intangible assets acquired after the date of final adoption of the risk-based ratio are to be deducted from primary capital. It should be noted that specific intangible assets are to be grandfathered; existing dollar amounts of intangibles are not grandfathered. Moreover, while goodwill, along with all other intangibles acquired after the ratio is adopted, would be deducted from primary capital for the purpose of assessing capital adequacy, the Board may on a case-by-case basis exempt from this deduction goodwill and other intangibles acquired in connection with a supervisory merger with a failing institution.

2. *Unconsolidated subsidiaries and joint ventures.* Equity investments in all unconsolidated subsidiaries and associated companies, including joint ventures,[4] are to be deducted from primary capital, the numerator, as well as from the denominator of the risk-based ratio and both of the capital-to-total assets ratios. The assets of unconsolidated subsidiaries and associated companies are not fully reflected in a banking organization's consolidated total assets, and such assets, therefore, are the equivalent of off-balance sheet assets. Although such assets are not explicitly taken into account in calculating a banking organization's capital ratio, they nonetheless expose the organization to risk. For this reason, it is appropriate to view the equity capital invested in these entities as primarily supporting the risks inherent in these off-balance sheet assets, and not generally available to support risks elsewhere in the organization. Thus, the equity capital supporting these activities is to be deducted from an organization's consolidated primary capital. The Federal Reserve, however, will continue to evaluate on a case-by-case basis the capital adequacy of these entities and their potential impact on the consolidated organization.

3. *Certain consolidated subsidiaries.* The Board will evaluate the activities of consolidated subsidiaries in order to determine whether such activities present such significant additional risk as to warrant the protection of additional capital or whether the Board should deduct investments in such activities from primary capital. The Board reserves the right to require additional capital protection through amendments to these Guidelines (or other regulations) for all subsidiaries engaged in certain activities, or on a case-by-case basis in light of prudential considerations. The Board may also deduct investments in other consolidated subsidiaries if such a step is warranted in light of the nature of the risks involved or the regulatory framework to which the subsidiaries are subjected. In general, if investments in certain consolidated subsidiaries are deducted from primary capital, their assets will also be excluded in the calculation of capital ratios.

4. *Capital instruments of other banking organizations.* The Federal Reserve will monitor banking organizations' holdings of capital instruments issued by other commercial banking organizations and may, as set forth below, require the deduction from primary capital of holdings of primary capital instruments issued by other banking organizations. Such deductions would generally be made in the case of reciprocal or other formal or informal arrangements in which banking organizations swap primary capital instruments in order to raise their capital ratios without in reality raising new capital funds. Deductions would not be made in the case of legitimate interstate "stake out" investments that comply with the Board's Policy Statement on Nonvoting Equity Investments, 12 CFR 225.143; nor would they be made in the case of capital instruments taken in satisfaction of debts previously contracted.

C. Secondary Capital Components

The components of secondary capital are:

[4] The definitions of unconsolidated subsidiaries, associated companies, and joint ventures are contained in the instructions to the Bank Report of Condition and the consolidated Bank Holding Company FR Y-9 Report.

—Limited-life preferred stock with an original maturity of at least seven years but less than 25 years (including related surplus),

—Portions of 25-year limited-life preferred stock that no longer count as primary capital as a result of the discounting process, and

—Limited primary capital instruments that do not qualify as primary capital because they exceed the percentage limitation (excepting those that are grandfathered),

—Bank subordinated notes and debentures and unsecured long-term debt of the parent company and its nonbank subsidiaries.

The secondary components must meet the following conditions to qualify as capital:

—The instrument must have an original weighted-average maturity of at least seven years.

—The instrument must be unsecured.

—The instrument must clearly state on its face that it is not a deposit and is not insured by a federal agency.

—Bank debt instruments must be subordinated to deposits.

—For banks only, the aggregate amount of secondary capital components qualifying as capital may not exceed 50 percent of the amount of the bank's adjusted primary capital.

As secondary capital components approach maturity, the banking organization must plan to redeem or replace the instruments while maintaining an adequate overall capital position. Thus, the remaining maturity of secondary capital components will be an important consideration in assessing the adequacy of total capital.

D. Restrictions Relating to Capital Components

To qualify as primary or secondary capital, a capital instrument should not contain or be covered by any covenants, terms, or restrictions that are inconsistent with safe and sound banking practices. Examples of such terms are those regarded as unduly interfering with the ability of the bank or holding company to conduct normal banking operations, those interfering with the bank holding company's ability to serve as a source of strength to its subsidiary banks, or those resulting in significantly higher dividends or interest payments in the event of a deterioration in the financial condition of the issuer.

IV. Capital Ratios

The risk-based capital ratio and the ratios of adjusted primary and total capital to total assets are computed as follows:

Risk-based capital ratio:

Adjusted Primary Capital
—divided by—
Risk-weighted assets and off-balance sheet items + Allowance for loan and lease losses (exclusive of reserves for identified losses, such as allocated transfer risk reserves)—Appropriate adjustments

Primary capital ratio:

Adjusted primary capital
—divided by—
Total assets + Allowance for loan and lease losses (exclusive of reserves for identified losses, such as allocated transfer risk reserves)—Appropriate adjustments

Total capital ratio:

Adjusted primary capital + Secondary capital
—divided by—
Total assets + Allowance for loan and lease losses (exclusive of reserves for identified losses, such as allocated transfer risk reserves)—Appropriate adjustments

Generally, average total assets will be used in calculating the ratios of adjusted primary capital and total capital to total assets. All other components of these ratios will be based upon period-end balances. The risk-based capital ratio will be calculated from period-end figures, although the Board is studying whether the ratio should be calculated on the basis of average data.

V. Method of Computing Risk-Weighted Assets and Off-Balance Sheet Items To Be Used In The Risk-Based Capital Ratio

The assets and off-balance sheet items of state member banks and bank holding companies are assigned to one of five categories broadly weighted according to risk. The aggregate dollar value of the assets in each category is multiplied by the weight assigned to that category. The resulting weighted values from each of the five risk categories are added together and this sum is the risk-weighted assets total that, as adjusted, comprises the denominator of the risk-based capital ratio.

Off-balance sheet risks are weighted by a "credit equivalent" approach. The face amount of each type of off-balance sheet item is multiplied by a specific credit conversion factor appropriate to convert the type of off-balance sheet item to an on-balance sheet risk equivalent. The converted value is then placed in the appropriate risk category, depending on the identity of the obligor and, in certain cases, the maturity of the instrument.

The Board has set forth in Table 1 a listing of the risk categories, a summary of the types of assets to be included in each category, and the weight assigned to each category, i.e., 0 percent, 10 percent, 25 percent, 50 percent and 100 percent. A brief explanation of the components of each category follows. Thereafter, in Table 2, the Board has set forth the conversion factors for various types of off-balance sheet items and a description of how various types of off-balance sheet items are converted.

Table 1—Summary of Risk Weights and Major Risk Categories for State Member Banks and Bank Holding Companies

0 percent

Cash—domestic and foreign.
Claims on Federal Reserve Banks.

10 percent

Short-term (one year or less) claims on U.S. Government and its Agencies.

25 percent

Cash items in process of collection.

Short-term claims on domestic depository institutions and foreign banks, including foreign central banks.

Long-term claims on U.S. Government and its Agencies.

Claims (including repurchase agreements) collateralized by cash or U.S. Government or Agency debt.

Claims guaranteed by the U.S. Government or its Agencies.

Local currency claims on foreign central governments to the extent that bank has local currency liabilities.

Federal Reserve Bank stock.

50 percent

Claims on U.S. Government-sponsored Agencies.

Claims (including repurchase agreements) collateralized by U.S. Government-sponsored Agency debt.

General obligation claims on states, counties and municipalities.

Claims on multinational development institutions in which U.S. is a shareholder or contributing member.

100 percent

All other assets not specified above, including:

Claims on private entities and individuals.

Long-term claims on domestic and foreign banks.

All other claims on foreign governments and private obligors.

a. Category I: Zero Weight

This category includes vault cash (domestic and foreign) and balances with and claims on Federal Reserve Banks, excluding Federal Reserve Bank stock.

b. Category II: 10 Percent

This category includes highly liquid claims that bear no credit risk but could involve some interest rate exposure, such as short-term claims (one year or less) on the U.S. Government and U.S. Government agencies, that is, federal agencies whose debt obligations are explicitly guaranteed by the full faith and credit of the U.S. Government.

c. Category III: 25 Percent

This category includes short-term interbank claims and assets that normally have little or no risk of default and a significant degree of liquidity. The specific items included in this category are: short-term claims (including demand deposits) on domestic depository institutions [5] and all

[5] Domestic [U.S.] depository institutions include both the U.S. and foreign branches of banks and depository institutions chartered and headquartered in the U.S. The term includes U.S. chartered banks and depository institutions owned by foreigners, but excludes U.S. branches and agencies of foreign banks. In addition to banks, domestic depository institutions include mutual or stock savings banks, savings or building and loan associations, cooperative banks, credit unions, and international banking facilities of domestic banks and depository institutions.

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foreign banks [8] (including foreign central banks),[7] cash items in the process of collection, both foreign and domestic; claims (including repurchase agreements) fully collateralized by cash or U.S. Government or U.S. Government agency debt; portions of loans guaranteed by the U.S. Government or U.S. Government agencies; local currency claims on foreign central governments [9] to the extent that a bank has local currency liabilities booked in that foreign country; and long-term claims (over one year) on the U.S. Government and U.S. Government agencies.

d. Category IV: 50 Percent

This category includes assets that have more credit risk than the assets categorized above, but generally less credit risk than the standard commercial bank loan portfolio. This category includes claims on U.S. Government-sponsored agencies, that is, agencies originally established or chartered by the federal government to serve public purposes specified by the U.S. Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. Government. It also includes claims fully collateralized by U.S. Government-sponsored agency debt and direct claims on multinational development banks in which the U.S. government is a shareholder or contributing member. Category IV also includes general obligation claims on domestic state and local governments.

If a claim is secured by two forms of collateral that are recognized explicitly in the proposal but placed in different risk categories, such as U.S. Government debt and U.S. Government-sponsored agency debt, the claim would be assigned to the higher of the two risk categories, provided that the claim is fully collateralized. Any claim that is not fully secured, based upon current market value, would be placed in the risk category appropriate for an unsecured claim to the obligor.

e. Category V (Standard Risk): 100 Percent

All assets not included in the categories above are assigned to this category. If a claim could be assigned to more than one category, for example, a long-term claim on a bank (100 percent) secured by U.S. Government debt (25 percent), the claim should be assigned to the lower of the two risk categories.

The bulk of the assets typically found in a loan portfolio would be assigned to the 100 percent category. Such assets include: Long-term claims (over one year) on domestic depository institutions and foreign banks; all other claims on foreign central governments (including local currency claims on foreign central governments that exceed local currency liabilities in that foreign country), that is, claims on foreign governments that entail some degree of transfer risk; and all other assets, including commercial and industrial loans and lease financing receivables, residential real estate and consumer loans, corporate securities and commercial paper, all other claims on foreign private obligors, and investments in fixed assets and premises. This category also includes loans to nondepository financial institutions, such as insurance companies, mortgage companies, and finance companies, as well as loans to depository and nondepository financial institution holding companies, including bank holding companies. This category also includes domestic tax-exempt state and local government revenue and industrial development bonds.

Table 2—Summary of Off-Balance Sheet Items and Conversion Factors for State Member Banks and Bank Holding Companies

Direct credit substitutes (standby letters of credit that guarantee commercial paper, tax-exempt obligations or any other debt obligation, financial guarantees, and any other equivalent arrangements, including purchases of risk participations)—100 percent credit conversion factor.

Sale and repurchase agreements and asset sales with recourse, if not already included on the balance sheet—100 percent credit conversion factor.

Trade-related contingencies (commercial letters of credit, bid and performance bonds and standby letters of credit that guarantee performance of a commercial contract)—50 percent credit conversion factor.

Other commitments, including overdraft facilities, revolving underwriting and note issuance facilities (RUFs/NIFs), underwriting commitments, and other binding commitments to extend funds to firms or individuals. The credit conversion factors are:

10 percent—one year and less original maturity[9]
25 percent—over one to five years original maturity
50 percent—over five years original maturity.

Off-balance sheet items whose conversion factors are not being established at this time:

Interest rate swaps and other interest rate contracts
Foreign exchange rate contracts.

The face amount of an off-balance sheet item is multiplied by a credit conversion factor (see Table 2 above) and the resulting amount is assigned to the appropriate risk category depending upon the identity of the obligor and, in certain cases, on the maturity of the instrument.[10]

A 100 percent conversion factor applies to direct credit substitutes, including financial guarantees and standby letters of credit backing outstanding financial claims of the account party. These direct credit substitutes would include standby letters of credit, or other equivalent irrevocable obligations or surety arrangements, that "back" or guarantee repayment of commercial paper, tax-exempt securities, or other commercial or individual loans or debt obligations. In addition, sale and repurchase agreements and asset sales with recourse (to the extent not already included on a financial institution's balance sheet) are converted at 100 percent of their face amount.[11]

Trade-related contingencies are to be converted at 50 percent. Such trade-related contingencies include commercial letters of credit and performance standby letters of credit. The latter includes obligations backing the performance of nonfinancial or commercial contracts or undertakings. To the extent permitted by law or regulation, performance standby letters of credit would include arrangements backing, among other things, subcontractors' and suppliers' performance, labor and materials contracts, and construction bids.

The credit conversion factors for other commitments, including overdraft facilities, revolving credit facilities, note issuance facilities, and commercial and consumer commitments, are tied to the *original* maturity of the commitment. Maturity in this regard is defined by the earliest possible point in time that the bank can, at its option, *unconditionally* cancel its commitment to a borrower. The longer the term of a loan commitment the greater the risk since there is a greater likelihood the borrower's financial circumstances or condition may change during the period the commitment is outstanding. Thus, under these guidelines, commitments with an original maturity of one year or less would be converted at 10 percent; those with an original maturity of more than one year and up to and including five years would be converted at 25 percent; and those with an original maturity of more than five years would be converted at 50 percent.

Commitments, for risk-based capital purposes, are defined as any arrangements that legally obligate a banking organization to purchase loans or securities, or extend credit in the form of loans or leases.

[8] Foreign banks are organizations that are organized under laws of a foreign country; engage in the business of banking; are recognized as banks by the bank supervisory or monetary authorities of the country of their organization or principal banking operations; received deposits to a substantial extent in the regular course of business; *and* have the power to accept demand deposits. Claims on foreign banks include claims on the U.S. branches and agencies of the foreign banks.

[7] Short-term claims are included in this category regardless of the form of the instrument, that is, this category includes federal funds sold, certificates of deposit, Eurocurrency placements, repurchase agreements, and bankers acceptances for which the account party is a domestic depository institutions or a foreign bank.

[9] Foreign governments include the central government and its ministries, departments, and agencies; they do not include state, provincial or local governments in foreign countries or government-owned enterprises. In addition, claims on foreign governments do not include claims on non-governmental entities guaranteed by foreign governments

[9] Maturity is defined as the stated maturity date or the earliest possible time at which the bank may unconditionally, at its option, cancel the commitment, if the latter comes first.

[10] Credit equivalent amounts of off-balance items that are secured by recognized collateral (that is, cash or debt of the U.S. Government, Government agencies or Government-sponsored agencies) are assigned, as with on-balance sheet exposures, to the appropriate risk category depending upon the nature of the collateral and, if appropriate, the maturity of the instrument.

[11] A bank's purchases of risk participations in bankers acceptances are also included and converted at 100 percent and assigned to the appropriate category depending upon the identity of the account party.

participations in loans and leases, overdraft facilities, revolving credit or underwriting facilities, or similar transactions. Generally, commitments involve a written contract or agreement, or a commitment fee or some other form of consideration. For the purpose of calculating the risk-based capital ratio, the definition includes commitments that obligate the banking organization to extend credit to consumers or individuals in the form of retail credit cards, check credit and overdraft facilities, home equity and mortgage lines, and other similar arrangements.

The existence of a "material adverse change" clause or similar provisions does not by itself suggest that a lending arrangement is not a commitment. However, lending arrangements that are unconditionally cancelable at any time at the option of the bank would not be deemed to be commitments for risk asset purposes, *provided that* the bank, in fact, makes a separate credit decision based upon the borrower's current financial condition before each drawing under the lending facility. Unused credit card lines are to be included in the definition of commitments.

In the case of commitments structured as syndications, the risk asset framework includes only the banking organization's proportional share of such commitments. In addition, only the unused portion of commitments are treated as off-balance sheet items. Amounts that are already drawn and outstanding under a commitment appear on the balance sheet and such amounts, therefore, should not also be included as commitments for purposes of computing the risk-based capital asset ratio.

Board of Governors of the Federal Reserve System, February 12, 1987.

William W. Wiles,

Secretary of the Board.

Attachment—Agreed Proposal of the United States Federal Banking Supervisory Authorities and the Bank of England on Primary Capital and Capital Adequacy Assessment

Note.—This attachment is not for publication in the Code of Federal Regulations.

This paper constitutes a system for the measurement of capital adequacy agreed by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation and the Bank of England. The principal objective of the paper is to promote the convergence of supervisory policies on capital adequacy assessments among countries with major banking centers. The proposal outlined below is intended to serve as a basis for consultation with the banking industry and others in the United States and the United Kingdom. The authorities concerned hope that the approach adopted by the United States and the United Kingdom will provide a basis which other countries can follow.

This paper explains the agreed proposal concerning:

(I) The components of the primary capital base of banking organizations;

(II) The deductions to be made from primary capital in computing the capital base for the calculation of a risk asset ratio;

(III) The weighting structure of risk assets and off-balance sheet activities; and

(IV) The use for supervisory purposes of a ratio of primary capital to weighted risk assets.

The paper should be read in conjunction with the attached tables which are appropriately cross-referenced.

I. Primary Capital

Primary capital represents the highest quality form of capital for banks and banking organizations (hereinafter a reference to banks should generally be taken to include banks, bank holding companies in the United States and banking groups in the United Kingdom). Within this category of capital, quality cannot be regarded as uniform and some components are undoubtedly of a higher quality than others. There are a number of elements that strengthen the balance sheets of banks to some extent, although clearly falling short of primary capital. Into this latter category may fall subordinated debt with a fixed maturity and the excess of market value over book value of some bank assets, notably bank premises and long-term investments. It is not the intention of the supervisors to ignore these items but rather to take some account of them after the basic primary capital to weighted risk asset ratio has been calculated. The supervisory authorities in both countries will therefore also take account of the ratio of total capital to weighted risk assets, as well as other qualitative factors, in their overall prudential assessment.

The components of the primary capital base represent resources which can be used to meet current losses while leaving banks able to continue operating on a going concern basis. The supervisors agree that this criterion is the most important determinant of the status of primary capital.

Common stock/equity (IA1), although repayable in strictly defined and limited circumstances, clearly meets the criterion as does any premium or surplus arising from the issue of common stock/equity. These, together with reserves in the form of *retained earnings* (IA2), represent the highest quality form of capital. *The minority interest in subsidiaries that are consolidated for supervisory purposes* (IA3) is also available to absorb losses.

There are no limits on the amounts of such capital that can be included in a bank's capital base for purposes of measuring capital adequacy. While it could be argued on grounds of uncertainty that it would be desirable to defer inclusion of *current year earnings* (IA2) until the end of the year in question, the U.S. and U.K. supervisory authorities have decided to include them. A realized profit arising out of the disposal of real property, for example, clearly fully meets the criterion for inclusion in primary capital. It is, however, possible that lending or trading profits for interim periods during the year may be eroded by later or unidentified losses.

General reserves/general provisions (IA4) for losses resulting from charges to earnings will be included for the present in primary capital. The U.S. and U.K. supervisory authorities are agreed that provisions made against identified losses cannot and should not be regarded as capital. General reserves/general provisions are made against unidentified or potential losses and can therefore be regarded as meeting the criterion. The U.S. and U.K. supervisory authorities have reservations about those general provisions that in reality are earmarked against specific assets or categories of assets and that do not therefore satisfy the criterion of general availability. However, it is not always possible to distinguish such provisions. Therefore, while for the present all general reserves/general provisions are included as primary capital, the supervisory authorities would like to seek comment from banks, the accounting profession and other interested parties on whether such reserves should be phased out of the primary capital base.

Hidden reserves (IA5), in the form of undisclosed retained earnings, do not exist in the United States and presently are permitted only to a limited number of banks in the United Kingdom. The issue has been addressed in the European Community's Bank Accounts Directive and, within its terms, member states have the option to allow banks in their country to maintain limited hidden reserves. This option will be reviewed five years after the Directive has been implemented. The position of hidden reserves in the United Kingdom will therefore next be considered when the Bank Accounts Directive is implemented. If it is then decided that U.K. banks should not be permitted to maintain hidden reserves, they will be available for transfer to disclosed reserves. Until this occurs, the Bank of

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England will continue to include them as primary capital.

In addition to the elements to be allowed without limit, the supervisory authorities propose to include in primary capital, but subject to a limit, certain items that give much greater strength to a bank than subordinated debt of a fixed maturity but that have certain drawbacks as compared with common stock and other unlimited components of the primary capital base.

Perpetual preferred shares (IB1a) and *instruments perpetual in nature and capable of meeting current losses* (IB2), together with *long-term dated (limited-life) preferred shares* (IB1b), will be included in the primary capital base subject to a limit of 50 percent of the unlimited elements after the deduction of intangible assets. (For example, if the unlimited items total US$100 million and there are intangibles of US$10 million, then there will be a limit of US$45 million applying to qualifying preferred shares and perpetual debt and their equivalents). Perpetual preferred shares and perpetual subordinated debt cannot be redeemed at the option of the holder and any repayment may occur only with the prior consent of the supervisory authorities. Included here are perpetual subordinated debt and certain instruments that can only be converted into primary capital instruments. The proceeds of such instruments effectively remain available to meet current losses and leave the bank able to continue operating. Long-term dated preferred shares (25 years or more initial maturity) also provide a cushion against current losses. Such shares must be amortized for the purpose of assessing capital adequacy over the last few years of their life.

Since changes are involved in the definition of the capital base, the respective supervisory authorities will continue to include (in the United States) existing mandatory convertible securities which do not meet the new criteria (in the attached tables at IB2 (a), (b), (c)) and (in the United Kingdom) existing revaluation reserves for bank premises.

II. Deductions From Primary Capital

The U.S. and U.K. supervisors have also agreed to propose that certain deductions should be made from the total of primary capital elements in order to derive the adjusted capital base for purposes of calculating the risk weighted capital ratio. In the United States, all future *intangible assets* will be deducted; existing allowed intangible assets will be "grandfathered." The Bank of England reaffirms its present policy of deducting all existing intangible assets (IIA).

Investments in unconsolidated subsidiaries and associated companies including, but not limited to, unconsolidated joint ventures, will also be deducted (IIB). For the United States, this could include certain consolidated subsidiaries as determined by U.S. regulatory authorities. The assets of such companies will not be brought into the calculation of the risk asset ratio.

The Bank of England already deducts *bank holdings of other banks' capital instruments* (IIC), except for limited concessions to allow some banks to play an active role in market-making in the primary (new issues) and/or secondary markets. This policy will be maintained. The U.S. authorities accept the principle underlying this policy and will monitor bank holdings of capital instruments issued by other banks and may, as appropriate, deduct these items on a case-by-case basis.

III. The Risk Asset Ratio

(a) General

The risk asset ratio is calculated by applying to each broad category of assets or off-balance sheet obligations a weight reflecting the relative riskiness inherent in each. The total of weighted risk assets is then measured in relation to the adjusted capital base to derive a ratio. The U.S. and U.K. authorities intend to concentrate on the primary capital to total weighted risk asset ratio.

This section describes and explains the simple structure of weights and indicates areas where further work is required to augment the present agreed approach.

It is recognized that it would be possible to establish more weights but this would introduce greater complexity, and more onerous statistical reporting obligations, without any assurance of a significantly more efficient or effective system. The calculation of the ratio represents only one element in the assessment of capital adequacy, although it is a most important one.

The agreed framework consists of broad categories of obligor and, to some extent, of maturity. With certain important exceptions, it reflects credit risk, that is, the risk of borrower or counterparty default. In addition the Bank of England includes the net open foreign exchange position in the risk asset ratio as defined in Foreign Currency Exposure, April 1981. The U.S. authorities are committed to introducing a capital requirement for exchange rate risk. All authorities are firmly committed to the development of an approach that will enable interest rate risk to be incorporated into the framework. Some other risks—for example, of operational failures—are important but cannot readily be captured in a risk asset ratio. The agreed weighting structure takes no account of country transfer risk. Nor is commercial lending differentiated with respect to credit quality or collateral, except for the strictly limited exception for exposures secured by government securities or cash. These factors will be considered, as now, through the examination/supervisory process.

Five risk weight categories are proposed—0 percent, 10 percent, 25 percent, 50 percent and 100 percent — and the weighting for particular items is discussed below. There are some special institutional features of the U.S. and U.K. markets which require differences in treatment between the two countries; these are indicated in the text which follows.

(b) On-balance Sheet

The weightings set out in what follows are based on relative degrees of risk starting from 100 percent for a claim on a non-bank obligor, which can for these purposes be regarded as a standard risk.

(i) Cash and All Claims on the Domestic Central Bank

Cash and all claims on the domestic central bank (III 1, 2) are regarded as bearing no significant banking risks and therefore are assigned a weight of 0 percent. The Bank of England will also continue to give a 0 percent weight to government-guaranteed export and ship-building loans (III 3). As indicated below, the U.S. supervisory agencies place comparable U.S. Government-guaranteed claims in the 25 percent risk category (III 12).

(ii) Short-term Claims on Domestic National Government

Short-term claims (remaining maturity of one year or less) on the domestic national government and on domestic national government agencies (III 4) are assigned a weight of 10 percent. (For the United States, national government agencies are defined as those agencies whose debt obligations are backed by the full faith and credit of the U.S. Government.) While short-term claims on the domestic national government bear no credit risk, such claims could involve a degree of interest rate exposure. Thus, as described below, until a more direct measure of interest rate risk is developed, such claims will be assigned to the 10 percent category.

(iii) U.K. Discount Houses, Gilt-edged Market Makers and Stock Exchange Money Brokers

The Bank of England proposes a weighting of 10 percent for short-term (remaining maturity of one year or less) claims on discount houses, gilt-edged market markers and Stock Exchange money brokers. These specialist institutions have an operational relationship with the Bank, including secured borrowing facilities, and are subject to close supervision. They trade predominantly in high quality liquid assets on which their borrowing is customarily secured. For these reasons, short-term claims on this group involve less risk than short-term claims on banks. This treatment effectively reflects the special institutional structure in the United Kingdom (III 5).

(iv) Short-term Claims on Domestic Depository Institutions and Foreign Banks (Including Foreign Central Banks)

The weighting for short-term claims (remaining maturity of one year or less) on domestic depository institutions and foreign banks and equivalent off-balance sheet exposures (III 6, 7, 11) reflects the lower risk generally of such claims as compared with claims on commercial obligors and longer-term claims on banks. For this reason, a weighting of 25 percent for this category has been proposed. It is acknowledged that short-term claims on some commercial borrowers may involve less risk than similar claims on some banks. It is considered, however, that since depository institutions are supervised and a particularly high quality is inherent in short-term inter-bank claims, the treatment proposed is broadly reasonable. Longer-term claims on depository institutions are regarded as bearing a higher risk that is generally closer in quality to claims on commercial obligors and these will be assigned a weight of 100 percent. The breakpoint at one year is admittedly arbitrary but captures most genuine short-term, inter-bank money market activity.

(v) Longer-term Claims on Own (Domestic) Governments and Analogous Claims

For U.S. banks, the weighting of long-term claims on the U.S. Government (Treasury), and for U.K. banks, the weighting of long-term claims on HM Government, does not reflect any credit risk but is designed, as a temporary measure, to be a proxy for the significant element of interest rate risk inherent in holdings of longer-term government securities. It is the intention of the U.S. authorities and the Bank of England to develop a more direct measure of interest rate risk. Pending this further work, it has been agreed that government securities with a remaining maturity of more than one year should be weighted at 25 percent (III 9).[1]

To be consistent with this approach, claims having an analogous nature are also to be weighted at 25 percent. Thus, for U.S. banks, all long-term claims on U.S. Government agencies (III 9), all claims collateralized by U.S. Government and U.S. Government agency debt or cash (III 10) and claims guaranteed by the U.S. Government or its agencies (III 12) will be assigned to the 25 percent category. For U.K. banks, claims collateralized by domestic national government debt or cash (III 10), most domestic national government guaranteed claims (III 12) and claims on U.K. public corporations and the rest of the public sector (III 9) will be weighted at 25 percent.

For U.S. banks, all claims on U.S. Government-*sponsored* agencies (that is, agencies that are chartered or established by the Federal Government to carry out a public purpose as specified by the U.S. Congress and whose debt obligations are not guaranteed by the full faith and credit of the U.S. Government) and all claims collateralized by U.S. Government-sponsored agency debt are assigned to the 50 percent category (III 14, 15).

Although the credit risk attaching to claims on U.K. local authorities is not the same as claims on HM Government, the Bank of England believes that they should be included in the 25 percent category rather than in the 50 percent category (III 8). The U.S. authorities propose placing general obligation claims on domestic state and local governments in the 50 percent category (III 16).

(vi) Local Currency Claims on Foreign Central Governments in Foreign Offices

The treatment of assets in overseas offices of banks raises difficult conceptual and practical questions. It has been agreed, however, that local currency claims on foreign *central* governments, to the extent funded by local currency liabilities in that country, do not involve any transfer risk. A 25 percent weight will therefore be applied to both short and long-term claims. (III 13)

(vii) Multinational Development Institutions

All direct claims of U.S. banks on multinational development institutions in which the U.S. Government has shareholder or contributing member status and, similarly, all direct claims of U.K. banks on such institutions in which HM Government has the same status will be given a weight of 50 percent. This reflects the generally high quality of claims on such institutions (III 17).

(viii) Other Assets

All assets not mentioned so far will carry a 100 percent weight (III 18, 19, 20, 21, 22). As discussed earlier, the Bank of England also already applies a weight of 100 percent to the net open foreign exchange position (III 23) and will maintain this. The U.S. authorities are committed to introducing a capital requirement for exchange rate risk.

(c) Off-Balance Sheet

(i) General

The U.S. and U.K. banking supervisory authorities believe that all off-balance sheet items giving rise to credit risk (and in addition, in time, foreign exchange and interest rate risks) should in principle be included in the risk asset ratio. The obligations should receive the risk asset weighting appropriate to the individual obligor. There is, however, an important and difficult question relating to the size of the exposure that should be weighted.

An approach to off-balance sheet items has been devised that endeavors to convert the credit risk of each instrument into a credit equivalent that can be incorporated into the risk asset framework outlined in this paper. It is recognized that the methodology employed will appear simple and approximate but it provides a logical

[1] The Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) disagreed with splitting such securities according to maturity, even as a temporary measure. Optimally, an adjusted capital standard should incorporate an assessment of a bank's exposure to interest rate risk. Specific assets, however, do not necessarily expose a bank to interest rate risk; rather, interest rate risk reflects the relationship within the portfolio between the interest rate structure of assets and liabilities. Isolating a single asset on a bank's balance sheet and making a maturity distinction in order to incorporate interest rate risk into the capital ratio is inappropriate because it fails to take account of the interest rate exposure arising from other loans and securities, off-balance sheet activities, and a bank's liability structure. In the light of this concern, the OCC and FDIC recommended that banks' exposures to interest rate risk be evaluated case by case during examinations, for purposes of assessing capital adequacy, and that all U.S. Treasury securities and agency securities bearing the full faith and credit of the U.S. Government be placed in the 10 percent risk category. The other supervisory authorities agree with the logic that interest rate risk should be addressed on a portfolio, rather than an individual asset, basis but believe that until such risk can be monitored and included in capital adequacy requirements in a more systematic fashion, the proposed maturity split represents a reasonable interim step.

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and consistent basis for the calculation of a ratio that encompasses both on- and off-balance sheet business.

Distinctions are made between contingencies, commitments and interest rate and foreign exchange rate contracts and these are discussed separately.

(ii) Contingencies/Contingent Items

Obligations in the form of financial guarantees and equivalents (for example, standby letters of credit having the character of guarantees and, in the United Kingdom, acceptances) effectively involve from the date of the assumption of the obligation the same degree of credit risk as outstanding loans (III 24). There is no action that the bank can take to avoid the full credit risk. The supervisory authorities, accordingly, believe that these obligations should be regarded as direct credit substitutes and be weighted for their full amount, that is, the credit conversion factor is 100 percent of the principal amount. The risk asset weighting is then determined by the category of the counterparty and, where appropriate, the maturity.

Some contingencies (III 25), notably commercial letters of credit, performance bonds and performance-related standby letters of credit, involve a lesser credit risk. The key elements in this judgment are that the counterparty has a strong incentive to meet its obligations if it wishes to remain in business (thus giving these claims a somewhat higher ranking in the counterparty's list of priorities than some other claims); the obligations are often (but not invariably) short-term in maturity; and banks assert that the loss record is favorable. To make allowance for these favorable factors, it is proposed to scale down the nominal exposure by a credit conversion factor of 50 percent, before the exposure is weighted according to the category of the obligor (and where relevant maturity)—for example, the deemed credit risk equivalent of a commercial letter of credit of US$10 million would be US$5 million which in turn would be weighted according to obligor and, some cases, maturity.

Contingencies such as indemnities for lost share certificates and bill endorsements will be excluded from the framework as they do not involve a significant credit risk.

(iii) Commitments

Whereas contingencies (as described above) involve the immediate assumption of a credit risk, commitments generally represent an undertaking to assume a credit risk in the future. It is recognized that this distinction is somewhat difficult to make at the margin and that it is the nature of the obligation which matters rather than the name given to the facility.

Some transactions, for example, sale and repurchase agreements and asset sales with recourse, may involve balance sheet entries and as such will attract a weighting for the full face value. Any other obligation or transaction effectively involving an immediate credit exposure will be treated as if it were on the balance sheet. Where an obligation or transaction clearly has the same effect as a financial guarantee (as, for example, certain asset sales with recourse) it will be treated as such (III 26).

For all other commitments (III 27), it is proposed to take account of maturity in determining the credit conversion factors. In so doing, maturity to some extent serves as a proxy for instrument-type. The category of exposure here giving rise to the greatest concern is the long-term contract that is equivalent in effect to an insurance arrangement in its underlying nature, most notably revolving underwriting facilities. Even if material adverse change clauses are included—and the supervisory authorities do not wish to take any action which will discourage their use—the reality is that the bank is assuming a long-term obligation to provide credit if other lenders are unwilling to do so. At the other end of the maturity spectrum, it is accepted that commitments reviewable—and unconditionally cancellable—at least annually involve less risk and that the credit conversion factor should be much lower. While a bank is at risk from an increase in credit exposures as a result of a higher than average utilization of undrawn lines, the low credit conversion factor reflects the historical stability of the undrawn amount of these lines.

The conversion factors to be applied to these commitments will, therefore, be set as follows in terms of their *original* maturity (for these purposes maturity is defined as the earliest possible time at which the bank may unconditionally cancel the commitment):

One year or less—10 percent

Over one year to five years—25 percent

Over five years—50 percent

For contingencies and commitments, the principal amount is multiplied by the conversion factor and the resulting exposure will carry the appropriate weight for the category of the counterparty (and the maturity).

(iv) Interest Rate and Foreign Exchange Rate Related Transactions

It is the firm intention of the U.S. supervisory authorities and the Bank of England to include the credit equivalent exposure on interest rate and foreign exchange rate related transactions in the risk asset ratio as soon as possible (III 28 and 29). The timing of this step is dependent on reaching final agreement on a method of calculating the credit exposure. As with other off-balance sheet transactions, this will involve estimating a deemed credit equivalent for these instruments that would be incorporated in the general framework on an obligor (and, where appropriate, maturity) basis.

IV. Primary Capital to Weighted Risk Asset Ratio

The U.S. and U.K. authorities intend to set and publish an agreed minimum level of this ratio to be applied to all banks supervised by them. In both countries most institutions will be expected to maintain their ratio at a higher level. The precise figure set for individual banks will remain confidential and will be determined in light of each institution's particular circumstances, for example, the quality and diversification of assets, liquidity, management, internal control systems and other relevant factors. These higher levels will be determined as part of the ongoing supervisory process.

I. Components of Primary Capital

A. Funds Included Without Limit

1. Common stock/equity and premium (United Kingdom), surplus (United States).

2. Retained earnings (including current year earnings).

3. Minority interest in consolidated subsidiaries.

4. General reserves for losses resulting from charges to earnings.

5. Hidden reserves (comprising undisclosed retained earnings)—not applicable in United States, to be phased out in United Kingdom.

B. Funds Included With Limits—Items Included in This Category Must Not Exceed 50 Percent of the Total Items Included in A Above Less Intangible Assets

1. Preferred shares that:

(a) Do not mature; or

(b) Mature on a fixed date *and* have an original maturity of at least 25 years. (Amount included in primary capital would be discounted for prudential purposes as the instrument approaches maturity.)

2. Subordinated debt that:

(a) Can only be converted into primary capital instruments;

(b) Is available at all times to absorb losses; and

(c) Provides that interest payments may be deferred if the issuer does not make a profit in the preceding period and/or pay dividends on common and perpetual preferred stock.

This is intended to include perpetual debt.

Note.—(a) Existing mandatory convertible securities which do not meet the criteria in IB2 (for U.S. banks) and existing property revaluation reserves (for U.K. banks) are to be "grandfathered."

(b) For bank holding companies in the United States, perpetual debt issued by the parent company need not be subordinated. It must, however, be unsecured.

II. Adjustments to Capital for Prudential Purposes

A. Deduction of all intangible assets. (Existing intangibles currently allowed by U.S. regulatory authorities will be "grandfathered.")

B. Deduction of investments in unconsolidated subsidiaries and associated companies including, but not limited to, unconsolidated joint ventures. For the United States, this could include certain consolidated subsidiaries as determined by U.S. regulatory authorities; for the United Kingdom this also includes related securities companies.

C. Deduction of bank holdings of capital instruments of other banking organizations. (In the United States these would be monitored and deducted on a case-by-case basis.)

Category of Risk

Weight Given

0 percent

1. Vault cash—domestic and foreign.

2. All balances with and claims on domestic central bank.

3. Domestic national government guaranteed export and ship-building loans (United Kingdom only).

10 percent

4. For the United States, short-term (remaining maturity of one year or less) claims on the U.S. Government (Treasury) and on U.S. Government agencies (for the United States, national government agencies are defined as those agencies whose debt obligations are backed by the full faith and credit of the U.S. Government). For the United Kingdom, short-term (one year or less) claims on the United Kingdom and Northern Ireland Governments.

5. Short-term (one year or less) claims on discount houses, gilt-edged market makers and Stock Exchange money brokers (United Kingdom only).

25 percent

6. Cash items in process of collection—foreign and domestic.

7. Short-term (one year or less) claims on domestic depository institutions and foreign banks.

8. All claims on domestic local authorities (United Kingdom only).

9. Long-term (over one year) claims on domestic national government (including, for the United Kingdom, Northern Ireland) and all long-term claims on domestic national government agencies. For the United Kingdom, this includes all claims on U.K. public corporations and on the rest of the public sector.

10. All claims (including repurchase agreements) fully collateralized by domestic national government debt and (for the United States) debt of U.S. Government agencies.

Also all claims collateralized by cash on deposit in the lending institution.

11. Federal Reserve Bank stock (United States only).

12. Portions of loans guaranteed by domestic national government or (for the United States) domestic national government agencies.

13. All local currency claims on foreign central governments to the extent funded by local currency liabilities in that foreign country.

50 percent

14. All claims on domestic national government-sponsored agencies (U.S. Government-sponsored agencies are defined as agencies whose debt obligations are not guaranteed by the full faith and credit of the U.S. Government).

15. All claims (including repurchase agreements) that are fully collateralized by domestic national government-sponsored agency debt (United States only).

16. All general obligation claims on domestic state and local governments (United States only).

17. Claims on multinational development institutions in which the domestic government is a shareholder or contributing member.

100 Percent

18. Long-term (over one year) claims on domestic depository institutions and foreign banks.

19. All claims on foreign governments other than local currency claims on foreign central governments funded by local currency liabilities in that foreign country.

20. The customer liability on acceptances outstanding involving standard risk obligors (United States only).

21. Domestic state and local government revenue bonds and industrial development bonds (United States only).

22. All other assets.

23. Net open position in foreign exchange (United Kingdom only).

Off Balance Sheet Items

The face amount of these items would be multiplied by the credit conversion factors shown below, and the resulting amount would be slotted in the appropriate risk category depending upon the identity of the obligor and the maturity of the instrument where appropriate.

24. "Direct credit substitutes" (financial guarantees and standby letters of credit serving the same purpose and, in the United Kingdom, acceptances outstanding)—100 percent credit conversion factor.

25. "Trading contingencies" (for example, commercial letters of credit, bid and performance bonds and performance standby letters of credit)—50 percent credit conversion factor.

26. Sale and repurchase agreements and asset sales with recourse, if not already included on the balance sheet—100 percent credit conversion factor.

27. Other commitments, for example, overdrafts, revolving underwriting facilities (for example, RUFs/NIFs), underwriting commitments, commercial and consumer credit lines. The credit conversion factors are:

10 percent—one year and less original maturity.

25 percent—over one to five years original maturity.

50 percent—over five years original maturity.

Credit Conversion Factor To Be Determined

28. Interest rate swaps and other interest rate contracts.

29. Foreign exchange rate contracts.

Note.—1. Maturity is defined as the earliest possible time at which the bank may unconditionally cancel the commitment.

2. Certain off-balance sheet obligations, for example, indemnities for lost share certificates and bill endorsements, or "holders in due course" obligations, would not be included in capital adequacy requirements.

[FR Doc. 87-3309 Filed 2-18-87; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-01-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which would require the modification of the autopilot flight control computers (FCC) and autopilot mode control panel (MCP). This action is prompted by reports of undetected airplane altitude changes caused by uncommanded changes in the altitude select window of the autopilot MCP. This condition, if not corrected, could result in the airplane flying at an unassigned altitude.

DATE: Comments must be received no later than April 13, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (ATTN: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-01-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124; and Sperry Corporation, Aerospace and Marine Group, P.O. Box 21111, Phoenix, Arizona 85036, Attn: Customer Services, Commercial Flight Systems Division. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Alvin Habbestad, Systems and Equipment Branch, ANM-130S, Seattle Aircraft Certification Office; telephone (206) 431-1942. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-01-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

There have been approximately 12 reports of uncommanded altitude changes in the autopilot MCP altitude select window on certain Boeing Model 737-200 series airplanes equipped with Sperry Model SP-177 autopilots. When commanding a −1000 foot change in the selected altitude, the altitude select window has been reported to display a +3000 foot change or a +5000 foot change. With the autopilot engaged, the airplane will attempt to fly to the new altitude. It is estimated that this event will occur approximately once in every 2,500 attempts to reset altitude in the altitude select window. This condition, if undetected, could result in the airplane flying to an unassigned altitude.

The FAA has reviewed and approved Boeing Service Bulletin 737-22-1076, dated November 6, 1986, and Sperry Service Bulletins 21-1141-151 and 21-1141-153 both dated September 18, 1986, which describe installing improved Sperry flight control computers (FCC) and mode control panel (MCP), or modifying the units by changing or adding certain components in each of those units. The modified units incorporate a monitor to detect unselected altitude changes in the altitude window. If such a change occurs, it sets the altitude in the altitude window to 50,000 feet, and activates the visual and aural warnings; the desired altitude in the altitude window can then be reset by using the altitude set knob.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require replacement or modification of the FCC and MCP, in accordance with the service bulletins previously mentioned.

It is estimated that 67 airplanes of U.S. registry would be affected by this AD; that it would take approximately 5 manhours per airplane to replace the units or 52 manhours per airplane to modify the affected components; and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $13,400 to replace the units, or $139,360 to modify the affected components.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Boeing Model 737-200 series airplanes, equipped with Sperry Model SP177 autopilot flight control computers (FCC) and mode control panels (MCP), as listed in Boeing Service Bulletin 737-22-1076, dated November 6, 1986, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent undetected changes in airplane altitude caused by uncommanded changes in the autopilot MCP altitude window, accomplish the following:

A. Within one year after the effective date of this AD:

1. Install improved FCC and MCP described in Boeing Service Bulletin 737-22-1076, dated November 6, 1986, or later FAA-approved revisions; or

2. Modify the FCC and MCP in accordance with Sperry Service Bulletins 21-1141-151 and 21-1141-153, both dated September 18, 1986.

B. An alternate means of compliance or adjustment of compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124; and the Sperry Corporation, Aerospace and Marine Group, P.O. Box 21111, Phoenix, Arizona 85036, Attn: Customer Services, Commercial Flight Systems Division. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on February 11, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-3382 Filed 2-18-87; 8:45 am]

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14 CFR Part 39

[Docket No. 86-NM-31-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9-81,-82, and -83 Airplanes, Fuselage Numbers 909 through 1208.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Amendment to notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice proposes to amend an earlier proposed airworthiness directive (AD) that would have required inspection and replacement, as necessary, of main landing gear retainer assemblies on certain McDonnell Douglas DC-9-80 (MD-80) series airplanes. This proposal would revise the applicability statement to include additional affected airplanes and ensure proper inspection of those airplanes.

DATES: Comments must be received no later than March 17, 1987.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-31-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). This information maybe be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Jerald R. Berube, Aviation Safety Inspector, Manufacturing Inspection Branch, ANM-180L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6343.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-31-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires inspection and replacement, if necessary, of the main landing gear retainer assemblies on McDonnell Douglas Models DC-9-81 (MD-81) and DC-9-82 (MD-82) series airplanes, was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on May 8, 1986 (51 FR 17054). The comment period closed on June 30, 1986.

Interested parties have been afforded an opportunity to comment on this proposal. Due consideration has been given to the comments received.

One commenter requested that the applicability of the proposed rule be revised to include all DC-9-83 (MD-83) series airplanes, since these airplanes are equipped with the same design of main landing gear retainer assemblies and would be subject to the same unsafe conditions addressed in the proposal. This commenter suggested that the proposed applicability statement be changed to apply to "all MD-9-80 series airplanes," fuselage numbers 909 through 1208. This commenter also stated that, since issuance of the NPRM, McDonnell Douglas has issued Revision 1 to Alert Service Bulletin A32-206, dated July 18, 1986, which expands the effectivity of the service bulletin to include all airplanes in the DC-9-81, -82, and -83 series.

The FAA has considered this information and has determined that, since the unsafe conditions addressed in the NPRM is likely to exist or develop on other airplanes of the same type design, the proposal must be amended to apply to all DC-9-80 (MD-80) series airplanes from fuselage number 909 through fuselage number 1208, and to reference the lastest revision to the service bulletin. Since this action would expand the scope of the proposed AD, the comment period has been reopened to provide adequate time for public comment.

This proposed revision to the original Notice would not affect any additional airplanes presently on the U.S. register. However, the AD requirements would be applicable to any MD-83 airplanes which may be imported to the U.S. at a future date.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not

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have a significant economic impact on a substantial number of small entities because few, if any, Model DC–9–80 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposed to amend § 39.13 of part 39 of the Federal Aviation Regulation as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By amending the applicability statement and paragraph A. of the Notice of Proposed Rulemaking, Docket No. 86–MN–31–AD, published in the **Federal Register** on May 8, 1986 (51 FR 17054), FR Doc. 86–10255, as follows:

"McDonnell Douglas: Applies to McDonnell Douglas Model DC–9–81, –82, and –83 series airplanes, fuselage numbers 909 through 1208, certificated in any category. Compliance required as indicated, unless previously accomplished.

To preclude the potential of main landing gear wheel assembly separation from the airplane, accomplish the following:

A. Within 6 months after the effective date of this airworthiness directive (AD), inspect and replace, as necessary, the main landing gear axle nut retainer in accordance with the accomplishment instructions of McDonnell Douglas Corporation Alert Service Bulletin A32–206, Revision 1, dated July 18, 1986, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region."

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–L65 (54–60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on February 11, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–3383 Filed 2–18–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF EDUCATION

34 CFR Parts 75, 76, 500, and 745

Direct Grant Programs, State-Administered Programs, and Bilingual Education; General Provisions

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Education Department General Administrative Regulations (EDGAR) to provide for greater flexibility and to eliminate obsolete and unnecessary regulations. Certain EDGAR provisions would also be transferred to the program regulations to which they apply.

DATE: Comments must be received on or before April 6, 1987.

ADDRESS: All comments concerning these proposed regulations should be addressed to Hazel Fiers, Special Advisor to the Deputy Under Secretary for Management, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3021, Federal Office Building No. 6), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Hazel Fiers. Telephone: (202) 472–5123.

SUPPLEMENTARY INFORMATION: In reviewing the current EDGAR regulations, the Secretary has identified several provisions that require immediate revision. In some cases, laws passed since EDGAR became effective have made the current regulations obsolete; some sections duplicate existing statutory or regulatory requirements; while still others are not required by statute. In addition, the Secretary believes that the proposed revisions will assist the Department in its efforts to reduce regulatory burden on the public and to streamline and promote more efficient operation of Departmental programs. The Secretary is open to further opportunities to deregulate EDGAR and is interested in public comment on other provisions that may not require immediate revision, but appear to be obsolete or burdensome.

These proposed changes do not include regulatory provisions related to the Office of Management and Budget Circular A–102. The Office of Management and Budget has initiated a separate effort to revise the Circular A–102 requirements.

The specific sections proposed for revisions are as follows:

Sections 75.1 and 76.1—These sections list the programs to which the respective parts apply. Because of changes in legislation, both lists are obsolete. As the Department undertakes new programs and as existing programs are phased out, these lists would require frequent revisions to ensure accuracy. Also, the program regulations for each program to which Part 75 or 76 apply currently list the parts in EDGAR that apply to the program. As a result, the lists in §§ 75.1 and 76.1 are redundant. Because these lists are confusing to the public and costly to the Federal Government, the Secretary proposes to revise both §§ 75.1 and 76.1 by removing the lists of affected programs. Other provisons of Parts 75 and 76 have been revised where necessary to remove references to the lists.

Sections 75.111(d) and 75.111(e)—Under a formula grant program, the Secretary must make an award to an applicant that meets basic eligibility requirements. These sections require an applicant under a formula grant program to submit information that is not relevant to selection under the direct formula grant programs administered by the Department. Under the Office of Management and Budget (OMB) regulations implementing the Paperwork Reduction Act of 1980, the Federal Government may not collect information that is unnecessary to the administration of a program, (5 CFR 1320.4(b)(2) and (d)). The information solicitation requirements in § 75.111(d) and (e) appear inconsistent with this requirement. The provisions are proposed for removal consistent with the requirements of 5 CFR Part 1320, which contain OMB's regulations on clearing information collection requirements, an the General Education Provisions Act (GEPA), section 400A, regarding paperwork control.

Section 75.124 and related sections—The Secretary proposes to remove EDGAR's joint funding simplification procedures because the Act upon which they are based expired on February 3, 1985. These procedures are in §§ 75.124, 75.125(b), 75.219(b), 75.221, 75.250(b), 75.254, and 75.721.

Sections 75.138 through 75.141—At the time EDGAR was drafted, these open meeting requirements applied to numerous programs under the Elementary and Secondary Education Act of 1965. However, as a result of the Education Consolidation and Improvement Act of 1981, these requirements were limited to certain programs. Therefore, the Secretary

proposes to remove these sections from EDGAR and include them in the regulations of the programs to which they apply. The Secretary also proposes to reduce burdens imposed in the regulations by no longer prescribing unnecessarily detailed procedures for local educational agencies to meet the open meeting requirements.

Sections 75.200 through 75.206—Sections 75.202 through 75.206 are deleted and §§ 75.200 and 75.201 are revised to reflect these deletions. When EDGAR was issued, these sections were intended to provide guidance to program managers in establishing criteria to evaluate applications. Experience has shown that while programs generally adhered to the criteria, because of the diversity among programs, some diversity in selection criteria from program to program was found to be essential. Future guidance to program managers on development of selection criteria for regulations, including appropriate language on nondiscriminatory selection of eligible project participants and nondiscriminatory employment practices, will be issued as a Departmental internal directive. Grantees remain subject to applicable statutes and regulations prohibiting discrimination. Those statutes and regulations are currently listed in EDGAR §§ 75.500 and 76.500, and would not be affected in any way by these proposed rules.

Section 75.210—This section establishes general selection criteria that apply to a discretionary grant program only if it does not yet have implementing regulations. Revised selection criteria from §§ 75.202–75.206, currently proposed for deletion, have been incorporated in § 75.210(b) to replace criteria removed from §§ 75.202–75.206. The Secretary intends for the revised criteria to be general in nature and to be flexible enough to meet Congressional intent with regard to different programs of the Department. Proposed § 75.210(b)(3)(v) and (b)(4)(i)(D) contain revised language clarifying the consideration to be given to an applicant's nondiscriminatory selection of participants and employment practices. The Secretary describes the purposes of a new program subject to § 75.210 through an application notice. As a result, the Secretary believes that the general criteria in § 75.210 (b)(1) and (2), under which applicants must respond to the statutory purpose described by the Secretary, should be sufficient to ensure that all eligible beneficiaries are covered under any new program.

Section 75.217—In an effort to be responsive to the various types of programs and clients that the Department serves, the Secretary proposes to revise the application review procedures for discretionary grants. The Secretary can achieve time and costs savings and improve service to grantees by using a review process which can be tailored to meet the needs of the various programs. In most instances, the Secretary would expect to use a group or groups of three or more expert reviewers to evaluate applications. These reviewers would be recognized experts in the program area and would include persons selected from outside the Federal Government. In other instances, the Secretary may use fewer reviewers or may use qualified Department staff to review the applications. Previously, the same review procedure has been used for every program, regardless of the nature or competitiveness of a specific program. For example, recipient eligibility for certain programs is established by legislation and 85–100% of the applicants are being funded. At the other end of the spectrum, certain highly competitive programs make awards to only 8–10% of the applicants. Previous EDGAR review procedures make no provisions for these distinctions. Technical amendments have also been proposed for Section 75.219(c) to reflect the changes proposed in Section 75.217. The Secretary also proposes to add language to clarify that the Secretary may consider information concerning the applicant's use of funds under a previous award under the same Federal program.

Section 75.733—This section establishes specific recordkeeping requirements related to State approval of applications. However, a State is not required by any Federal statute to maintain these records. Therefore, the Secretary has decided to remove this section to reduce burden on States. A State has discretion to establish its own recordkeeping requirements regarding State approval procedures.

Sections 76.101 and 76.301—The requirements in both of these sections, which had to be met on a once only basis, are statutory requirements found in GEPA. The Secretary believes that repeating these requirements is unnecessary and costly and proposes to revise these sections to substitute a cross-reference to the statutory requirement.

Executive Order 12291

The proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. None of the proposed changes will place undue burdens on small entities submitting applications. Many of the proposed changes are technical and will remove obsolete material form the regulations. Some of the proposed changes will reduce burdens imposed by existing regulations. These changes, while not economically significant for individual entities, will be beneficial for all applicants.

Paperwork Reduction Act of 1980

The proposed regulations do not contain any information collection requirements and are therefore not subject to the provisions of the Paperwork Reduction Act of 1980 (Pub.L. 96–511).

To assist the Department in complying with the specific requirements of Executive Order 12291 and its overall requirement of reducing regulatory burden, the Secretary invites comment on wehther there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Invitation to Comment

Interested persons are invited to submit comments and recommenations regarding the proposed regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period in Room 3021, Federal Office Building 6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Education Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 75

Education Department, Grant programs—education, Grant administration.

BEST COPY AVAILABLE

34 CFR Part 76

Education Department Grants programs—education, Grant administration, Intergovernmental relations, State-administered programs.

34 CFR Part 500

Adult education, Bilingual education, Education Department, Elementary and secondary education, Grant programs—education, Teachers.

34 CFR Part 745

Education, Government contracts, Grant programs—education, Sex discrimination

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance number does not apply)

Dated: September 29, 1986.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Parts 75, 76, 500, and 745 of Title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for Part 75 is revised to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1), unless otherwise noted.

2. In § 75.1, the tables following this section and the note following paragraph (a) are removed and paragraph (a) is revised to read as follows:

§ 75.1 Programs to which Part 75 applies.

(a) The regulations in Part 75 apply to each direct grant program of the Department of Education.

* * * * *

3. Section 75.50 is revised to read as follows:

§ 75.50 How to find out whether you are eligible.

Eligibility to apply for a grant under a program of the Department is governed by the authorizing statute and implementing regulations for that program.

(Authority: 20 U.S.C. 1221e–3(a)(1))

§75.111 [Amended]

4. In § 75.111, paragraphs (d) and (e) are removed.

§ 75.124 [Amended]

5. Section 75.124 and the heading "Joint Funding Simplification Procedures" preceding § 75.124 are removed.

§ 75.125 [Amended]

6. Section 75.125 is amended by removing paragraph (b) and amending paragraph (a) by removing the paragraph designation.

§§ 75.138, 75.139, 75.140, 75.141 [Removed]

7. Sections 75.138, 75.139, 75.140, and 75.141 and the heading "OPEN MEETING CERTIFICATION UNDER CERTAIN ESEA PROGRAMS" are removed.

8. Section 75.200 is amended by revising paragraphs (b)(3) and (c)(2) to read as follows:

§ 75.200 How applications for new grants are selected for funding.

* * * * *

(b) * * *

(3) If a program does not have regulations, the Secretary uses the selection criteria in §75.210 to select grantees under the program.

(c) * * *

(2) The Secretary applies the program statute and regulations to fund projects under a formula grant program.

(Authority: 20 U.S.C. 1221e–3(a)(1))

§ 75.201 [Amended]

9. Section 75.201 is amended by removing paragraph (b)(2) and redesignating paragraph (b)(1) as paragraph (b).

§§ 75.202 through 75.206 [Removed]

10. Sections 75.202 through 75.206 are removed.

11. Section 75.210 is revised to read as follows:

§ 75.210 Selection criteria for a discretionary grant program that does not have regulations.

(a) *How this section works.* (1) If a discretionary grant program does not have implementing regulations, the Secretary uses the criteria in this section to evaluate applications for new grants under the program.

(2) The maximum score for all of the criteria in this section is 100 points.

(3) Subject to paragraph (c) of this section, the maximum score for each criterion is indicated in parentheses with the criterion.

(b) *The criteria.*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purposes of the statute that authorizes the program, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i)(A) and (B) of this section will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without

regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i)(A) and (B) of this section, the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(c) *Weighing the criteria.* (15 points) The Secretary distributes an additional 15 points among the criteria listed in paragraph (b) of this section. The Secretary indicates in the application notice for the program how these 15 points are distributed.

(Authority: 20 U.S.C. 1221e–3(a)(1))

12. Section 75.217 is revised to read as follows:

§ 75.217 How the Secretary selects applications for new grants.

(a) The Secretary selects applications for new grants on the basis of the authorizing statute, the selection criteria, and any priorities or other requirements that have been published in the **Federal Register** and apply to the selection of those applications.

(b)(1) The Secretary may use experts to evaluate the applications submitted under a program.

(2) These experts may include persons who are not employees of the Federal Government.

(c) The Secretary prepares a rank order of the applications based solely on the evaluation of their quality according to the selection criteria.

(d) The Secretary then determines the order in which applications will be selected for grants. The Secretary considers the following in making these determinations:

(1) The information in each application.

(2) The rank ordering of the applications.

(3) Any other information relevant to a criterion, priority, or other requirement that applies to the selection of applications for new grants, including information concerning the applicant's use of funds under a previous award under the same Federal program.

(Authority: 20 U.S.C. 1221e–3(a)(1))

13. Section 75.219 is amended by removing paragraph (b), redesignating paragraph (c) as paragraph (b), and revising the redesignated paragraph (b) to read as follows:

§ 75.219 Exceptions to the procedures in § 75.217.

* * * * *

(b)(1) The application was evaluated under the preceding competition of the programs;

(2) The application rated high enough to deserve selection under § 75.217; and

(3) The application was not selected for funding because the application was mishandled by the Department.

(Authority: 20 U.S.C. 1221e–3(a)(1))

§ 75.221 [Removed]

14. Section 75.221 is removed.

§ 75.222 [Amended]

15. Section 75.222 is amended by changing "§ 75.219(c)" wherever it appears in the heading and section to "§ 75.219(b)".

§ 75.250 [Amended]

16. Section 75.250 is amended by removing paragraph (b) and amending paragraph (a) by removing the paragraph designation.

§ 75.254 [Removed]

17. Section 75.254 is removed.

18. In § 75.260, paragraph (a) is revised to read as follows:

§ 75.260 Allotments and reallotments.

(a) Under some of the programs covered by this part, the Secretary allots funds under a statutory or regulatory formula.

* * * * *

19. In § 75.708, paragraph (a) is revised to read as follows:

§ 75.708 Prohibition of subgrants.

(a) A grantee may not make a subgrant under a program covered by this part unless specifically authorized by statute.

* * * * *

§ 75.721 [Removed]

20. Section 75.721 is removed.

§ 75.733 [Removed]

21. Section 75.733 is removed.

PART 76—STATE-ADMINISTERED PROGRAMS

22. The authority citation for Part 76 is revised to read as follows:

(Authority: 20 U.S.C. 1221e–3(a)(1), unless otherwise noted.)

23. In § 76.1, the note following paragraph (a) and the tables following paragraph (b) are removed, and paragraph (a) is revised to read as follows:

§ 76.1 Programs to which Part 76 applies.

(a) The regulations in Part 76 apply to each State-administered program of the Department.

* * * * *

24. In § 76.50, the introductory text in paragraph (a) is revised to read as follows:

§ 76.50 Statutes determine eligibility and whether subgrants are made.

(a) Under a program covered by this part, the Secretary makes a grant—

* * * * *

25. Section 76.100 is revised to read as follows:

§ 76.100 Effect of this subpart.

This subpart establishes general requirements that a State must meet to apply for a grant under a program covered by this part. Additional requirements are in the authorizing statute and the implementing regulations for the program.

(Authority: 20 U.S.C. 1221e–3(a)(1))

26. Section 76.101 is revised to read as follows:

§ 76.101 The general State application.

States that make subgrants to local educational agencies under a program subject to this part shall have on file with the Secretary a general application that meets the requirements of Section 435 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232d.)

27. The cross-reference following § 76.102 is removed.

28. Section 76.301 is revised to read as follows:

§ 76.301 Local educational agency general application.

A local educational agency that applies for subgrants under a program subject to this part shall have on file

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with the State a general application that meets the requirements of Section 436 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232d.)

29. In § 76.401, the introductory text in paragraph (a) and paragraph (b) are revised to read as follows:

§ 76.401 Disapproval of an application—opportunity for a hearing.

(a) *State agency hearing before disapproval.* Under the following programs the State agency that administers the program shall provide an applicant with notice and an opportunity for a hearing before it may disapprove the application:

* * * * *

(b) *Other programs—hearings not required.* Under other programs covered by this part, a State agency—other than a State educational agency—is not required to provide an opportunity for a hearing regarding the agency's disapproval of an application.

* * * * *

§ 76.563 [Amended]

30. In § 76.563 introductory text, "listed in § 76.1" is removed.

31. The cross-reference following § 76.772 is removed.

PART 500—BILINGUAL EDUCATION: GENERAL PROVISIONS

32. The authority citation for Part 500 continues to read as follows:

(Authority: 20 U.S.C. 3221–3262, unless otherwise noted.)

33. A new center heading "OPEN MEETING CERTIFICATION" is added to Part 500 after the title for Subpart C.

34. A new § 500.15 is added after the new center heading to Subpart C, to read as follows:

§ 500.15 Open meeting certification.

(a) This section implements Section 1006 of the Elementary and Secondary Education Act of 1965, as amended.

(b) Section 1006 requires a local educational agency (LEA) that submits an application under a program subject to this subpart to certify that the LEA has held an open meeting regarding the contents of the application.

(c) An LEA that must comply with this section shall—

(1) Give reasonable notice of the general public's opportunity to testify or otherwise comment at an open meeting regarding the subject matter of the application;

(2) Hold the open meeting;

(3) Consider comments obtained at the meeting in developing the final application; and

(4) Certify in the application submitted to the Secretary that the LEA has held an open meeting regarding the application, as required by this section.

(Authority: 20 U.S.C. 887e.)

[FR Doc. 87-3512 Filed 2-18-87; 8:45 am]

BILLING CODE 4000-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-487, RM-5133]

Radio Broadcasting Services; Fernandina Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Northeast Florida Radio, Inc., which seeks the allotment of Channel 287A to Fernandina Beach, Florida, as a first FM service.

DATES: Comments must be filed on or before April 7, 1987, and reply comments on or before April 22, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Billy G. Hogan, President, Northeast Florida Radio, Inc., Post Office Box 496, Fernandina Beach, Florida 32034.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, (202) 634–6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–487, adopted December 16, 1986, and released February 6, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-3399 Filed 2-18-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-505, RM-5533]

Radio Broadcasting Service; Fort Walton Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Vacationland Broadcasting Company, Inc., licensee of Station WFTW-FM, Fort Walton Beach, Florida, which seeks to substitute Channel 258C2 for Channel 257A, and to modify its Class A license to the new channel. Petitioner also proposes to surrender for cancellation, the construction permit which it presently holds for Channel 243, if modified to Channel 258C2.

DATES: Comments must be filed on or before April 13, 1987, and reply comments on or before April 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Mr. J. Richard Carr, Dempsey and Koplovitz, 1401 New York Avenue NW., Suite 630, Washington, DC 20005 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, (202) 634–6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–505, adopted December 16, 1986, and released February 9, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch Policy and Rules Division Mass Media Bureau.

[FR Doc. 87-3400 Filed 2-18-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-506, RM-5524]

Radio Broadcasting Services; Washington, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Dennis Daily proposing the allotment of FM Channel 300A to Washington, Indiana, as that community's second FM channel.

DATES: Comments must be filed on or before April 13, 1987, and reply comments on or before April 28, 1987.

ADDRESSES: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Mr. Dennis Daily, 1600 North Pierce, Apartment 8, Arlington, Virginia 22209 (Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, (202) 634–6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–506, adopted December 24, 1986, and released February 9, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch Mass Media Bureau.

[FR Doc. 87-3398 Filed 2-18-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-508, RM-5593]

Radio Broadcasting Services; Liberal, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Thunderbird Broadcasting, Inc. proposing to allot FM Channel 286C2 to Liberal, Kansas, as the community's fourth FM broadcast channel.

DATES: Comments must be filed on or before April 13, 1987 and reply comments on or before April 28, 1987.

ADDRESSES: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Thunderbird Broadcasting, Inc., Box 1511, 21 West 21st Street, Liberal, Kansas 67901 (Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, (202) 634–6530, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–508, adopted December 24, 1986, and released February 9, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch Mass Media Bureau.

[FR Doc. 87-3401 Filed 2-18-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-485, RM-5355]

Radio Broadcasting Services; Midland, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Bakcor Broadcasting, Inc., proposing the substitution of Class C Channel 222 for Class C1 Channel 222 at Midland, Texas, in order to provide a wider area coverage station. A site restriction of 15.9 kilometers (9.9 miles) is required. The proposal also requires concurrence by the Mexican government.

DATES: Comments must be filed on or before April 7, 1987, and reply comments on or before April 22, 1987.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Rainer K. Kraus, Esquire, Koteen & Naftalin, 1150 Connecticut Avenue, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-485, adopted December 16, 1986, and released February 6, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rule governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-3395 Filed 2-18-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-488, RM-5537]

Radio Broadcasting Services; Paradise, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by JIBO Broadcasting Corp. proposing the substitution of Channel 278B1 for Channel 224A and modification of the license of Station KRIJ, at Paradise, California.

DATES: Comments must be filed on or before April 7, 1987, and reply comments on or before April 22, 1987.

ADDRESS: Federal Communications Commission, Washington DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: James J. McGillan, Esq., Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey, 1120 Connecticut Ave. NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-488, adopted December 16, 1986, and released February 6, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-3396 Filed 2-18-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-507, RM-5501]

Radio Broadcasting Service; Cape Coral, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Radio cape Coral, Inc., licensee of Station WRCC(FM), Cape Coral, Florida, which proposes to substitute Channel 279C2 for Channel 280A at Cape Coral, and to modify its Class A license to specify the new channel.

DATES: Comments must be filed on or before April 13, 1987, and reply comments on or before April 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: John T. Scott, III, Crowell and Moring, 1100 Connecticut Avenue NW., Washington, DC 20036 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose Tyree, (202) 634-6530.

Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-3398 Filed 2-18-87; 8:45 am]

BILLING CODE 6712-01-M

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making MM Docket No. 86-507, adopted December 24, 1986, and released February 9, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-3402 Filed 2-18-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 87-1; FCC 87-13]

Proposed Amendment of Part 90 to Review the Co-Channel Assignment Standards for Trunked SMR Systems in the Seattle, WA, Area

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a Notice of Proposed Rulemaking proposing to amend Part 90 of the rules to revise the co-channel assignment standards for trunked SMR systems in the Seattle, Washington area.

DATES: Comments are due by April 2, 1987 and replies by April 17, 1987.

ADDRESS: Federal Communications Commission, 1919 M Street, NW. Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Herb Zeiler, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, PR Docket No. 87-1, adopted January 5, 1987, and released February 9, 1987. The full text of this Commission notice is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's Copy Contractor, International Transcription Service, 2100 M Street NW., Washington, DC 20037, telephone (202) 857-3800.

Summary of Notice of Proposed Rulemaking

1. A memorandum from the FCC Seattle District Office has indicated that SMR licensees in the Seattle area are experiencing co-channel interference and suggests an amendment to Part 90 of the rules to increase the minimum 70-mile separation between co-channel systems.

2. The Notice proposes to increase the separation distance between new co-channel SMR systems in the Seattle area. The proposal would provide a 105-mile separation between co-channel mobile relay stations. Further, channels recovered from our take-back program will be offered, where possible, to existing SMR licensees to resolve the current interference problem.

3. This action is taken pursuant to sections 4(i), 303(r), and 331 of Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 332.

4. This is a non-restricted notice and comment rulemaking proceeding. *See* § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contracts.

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, an initial regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

6. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase or decrease burden hours imposed on the public.

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419, interested parties may file comments on or before April 2, 1987, and reply comments on or before April 17, 1987. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects in 47 CFR Part 90

Private land mobile radio.

Federal Communications Commission.

William J. Tricarico

Secretary.

Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303 unless otherwise noted.

§ 90.36 [Amended]

2. Section 90.362 is amended by adding a new paragraph (c)(3) to read as follows:

* * * * *

(c) * * *

(3) The separation between co-channel SMR trunked systems located in the State of Washington north of 46°45'00" north latitude, west of 121°15'00" west longitude, and east of 123°30'00" west longitude shall be 168 km. (105 mi).

3. Section 90.621 is amended by adding a new paragraph (b)(3) to read as follows:

§ 90.621 Selection and assignment of frequencies.

* * * * *

(b) * * *

(3) The separation between co-channel SMR trunked systems located in the State of Washington north of 46°45'00" north latitude, west of 121°15'00" west longitude, and east of 123°30'00" west longitude shall be 168 km. (105 mi).

[FR Doc. 87-3482 Filed 2-18-87; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered or Threatened Status for Three Granite Outcrop Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine two plants, *Isoetes melanospora* (black-spored quillwort) and *Isoetes tegetiformans* (mat-forming quillwort), to be endangered species under the authority contained in the Endangered Species Act (Act) of 1973, as amended. The Service proposes threatened status for one plant, *Amphianthus pusillus* (little amphianthus). These three species are restricted to granite outcrops in the Piedmont physiographic region in the Southeast and all have their center of distribution in Georgia. *Isoetes melanospora* is presently known from five sites in Georgia; *Isoetes tegetiformans* is extant at ten sites in Georgia; and *Amphianthus pusillus* occurs at 39 sites in Georgia, three sites in Alabama, and three sites in South Carolina. However, only one population of *Isoetes melanospora*, two populations of *Isoetes tegetiformans*, and six populations of *Amphianthus pusillus* are large and vigorous. These species are jeopardized by the continuing destruction of granite outcrops from quarry operations, and habitat modification from dumping, their inclusion in pasture, and heavy recreational use [especially off-road vehicle (ORV) use]. All three species have lost populations through such activities. This proposed rule, if made final, will extend the Act's protection to these three granite outcrop endemics. The Service seeks data and comments from the public on this proposed rule.

DATES: Comments from all interested parties must be received by April 20, 1987. Public hearing requests must be received by April 6, 1987.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Endangered Species Field Station, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis B. Jordan at the above address (601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

Amphianthus pusillus, *Isoetes melanospora*, and *Isoetes tegetiformans* are endemic to granite outcrops in the Piedmont physiographic region of the Southeastern U.S. *Amphianthus* is known from Alabama, Georgia, and South Carolina. *Isoetes melanospora* and *Isoetes tegetiformans* occur only in Georgia. These three taxa are the most restricted of the granite outcrop species (Bridges 1986a). Granite outcrops superficially resemble one another but may differ geologically as igneous, quartzitic, gneissic or porphyritic granite (Lester 1938, McVaugh 1943, Wharton 1978). Outcrop supporting populations of all three taxa occur as large isolated domes or as gently rolling "flatrocks." These communities are believed to have long served as active sites for speciation, as evidenced by a high degree of endemism. Speciation is accelerated on outcrops due to the scattered distribution of rock exposures and the harsh environmental conditions (high light intensities, extreme wet/dry periods) to which the species have become adapted (Murdy 1968).

Amphianthus pusillus, *Isoetes melanospora*, and *Isoetes tegetiformans* typically occur in shallow flat-bottomed pools found on the crest and flattened slopes of unquarried outcrops (Lester 1938, Garris 1980, Rury 1985, Rayner 1986). Such pools have been referred to as vernal pools (Kral 1983, Rayner 1986), weathering pits (Bake 1970), depression pits (Murdy 1968) and solution pits (Lester 1938, McVaugh 1943) and are rare in even the best localities. These pools range in size from 0.3 square meter to 10 square meters; the vast majority of these pools range from 0.5–1 meter square. These pools retain water for several weeks following heavy rains and completely dry out with summer droughts. They are usually several meters in diameter and are circular or irregularly-shaped due to the coalescene of adjacent pools (Lunsford 1938, McVaugh 1943). For species occur directly with these taxa due to the aquatic nature of the microhabitat (McVaugh 1943). *Amphianthus* is the most common associate of *Isoetes melanospora* and *Isoetes tegetiformans*. Other plants which may occur in and around the pools include lichens (*Cladonia* sp.), *Diamorpha smallii*, *Arenaria uniflora*, *Arenaria glabra*, *Polytrichum commune*, *Isoetes piedmontana*, *Juncus georgianus*, *Agrostis* sp., *Lindernia monticola*, *Cyperus granitophilus*, *Andropogon scoparius*, and *Selaginella tortipila* (Garris 1980, Kral 1983, Rayner 1986). Two Federal candidate plant species (*Sedum pusillum* and *Draba aprica*) occur with *Amphianthus* and *Isoetes tegetiformans* at several sites in eastern Georgia.

A discussion of the three species proposed for listing herein follows:

Amphianthus pusillus is a diminutive fibrous-rooted annual. It has both floating and submerged leaves. The submerged leaves are lanceolate, less than 1 centimeter (cm) (0.4 inch) in length and appear to be arranged in a basal rosette. The floating leaves are ovate, 4–8 millimeters (mm) (0.16–0.32 inch) long, 3–5 mm (0.12–0.20 inch) wide, oppositely arranged and are attached to the stem near the submerged leaves by long, delicate stems. Its flowers are white, 4–5 mm (0.16–0.20 inch) in length and are borne in the axils of both types of leaves. Floating flowers are chasmogamous (open) and submerged flowers are cleistogamous (closed) except when exposed to air (Jungsford 1938, Rayner 1986). *Amphianthus* usually flowers in March or April (depending upon environmental conditions) and produces a capsule, 2–3 mm (0.08–0.12 inch) broad and 1 mm (0.04 inch) long. *Amphianthus* is ephemeral, usually completing its life cycle in a 3-to-4 week period (Garris 1980; Kral 1983; Rayner 1986).

This species was first collected by M.C. Leavenworth in 1836 in Newton County, Georgia (present-day Rockdale County) and later described by John Torrey in 1839 (Pennell 1935). *Amphianthus pusillus* is thought to e a relict species, a monotypic genus of doubtful placement in the family Scrophulariaceae (Pennell 1935, McVaugh 1943, Murdy 1968). It is most similar in flower morphology to *Gratiola* and *Bacopa* but differs from all other southeastern Scrophulariacease by its dimophic leaves and flowers (Pennell 1935, Kral 1983).

Optimal habitat for *Amphianthus* has been consistently described as pools surrounded by a rock rim several centimeters in height and sandy-silty soils 2–5 cm (0.8–2.0 inches) in depth with a low organic matter content (Lunsford 1938, McVaugh 1943, Garris 1980, Miller 1985, Rayner 1986). Most populations occur in such typical pools; however, Garris (1980) and Rayner (1986) have reported several populations from atypical habitats. Most of these atypical pools lacked on intact rim, others were in ecotonal zones or seepage areas.

Amphianthus primarily occurs in Georgia with peripheral populations in Alabama and South Carolina. Status surveys have been conducted throughout its range by Miller (1985) in Alabama, Garris (1980) in Georgia, and Rayner (1981, 1986) in South Carolina. Extensive surveys of granite outcrops in the Piedmont have been conducted by J. Allison since the 1970's (University of Georgia, pers. comm. 1986).

The actual number of individual plants is difficult to determine since *Amphianthus* is an ephermeral annual whose population size and vigor is dependent upon weather conditions (sufficient moisture). This is further complicated by a seed bank of undertermined size and dormancy period (Rayner 1986).

Amphianthus was first reported from Alabama by Harper (1939) in Randolph County. However, this population has not been relocated in years and is believed extirpated. Currently, there are three extent populations in two counties of the State (Randolph and Chambers). All three areas contain limited populations of *Amphianthus*. Two of the sites have fewer than 50 plants confined to a single vernal pool, while the third population consists of several hundred plants in two to three pools (Miller 1985, Allison pers. comm. 1986).

Amphianthus is historically known from 50 sites in Georgia (McVaugh and Pyron 1937, Lunsford 1938, McVaugh 1943, Burbanck and Platt 1964); however 11 of these populations have been destroyed (Garris 1980; Allison pers. comm. 1986; Jones, University of Georgia pers. comm., 1986). Currently, 39 populations are thought extant; with 74% of these are "limited" populations (1–5 pools) and 45% of these contain *Amphianthus* in a single vernal pool; 13% are "moderate" populations (6–14 pools); and 13% are "extensive" population (15–25 pools). Even though *Amphianthus* is known from 17 counties, 12 of these counties (Rockdale, Walton, Douglas, Butts, Putnam, Oglethorpe, Harris, Meriwether, Henry, Pike, Newton, Gwinnett) support only a limited population of *Amphianthus* with eight of these county records confined to a single site. The remaining counties support one to two extensive populations of *Amphianthus* (De Kalb, Greene, Heard, Hancock, and Columbia). The number of individuals in the pools range from as few as a dozen to several thousand, with most pools containing several hundred plants when rainfall is adequate.

Amphianthus occurs at three sites in South Carolina, with seven pools in Lancaster County, one in Saluda County, and four in York County (Rayner 1981, 1986). According to Rayner (1986), during the 1983 or 1984 growing season, six pools supported extensive populations (>200 plants) and six had limited populations (<25 plants) of *Amphianthus*.

Isoetes melanospora was discovered by Canby (1869) on Stone Mountain in De Kalb County, Georgia, and later described by Englemann (1877). Distinguishing characters include a complete velum coverage, dark tuberculate megaspores and short [2–7 cm (0.8–2.8 inches long), spiraled leaves (Boom 1979, 1982). Immature plants of *Isoetes melanospora* may have distichous leaves (Boom 1979, Rury 1978). If frequently hybridizes with *Isoetes piedmontana*, a more common granite outcrop quillwort, which has an incomplete velum coverage, white megaspores and longer leaves [7–15 cm (2.5–5.9 inches long), in habitats which are ecologically intermediate between the two species' typical habitats. Hybrids are intermediate in the above characters (Matthews and Murdy 1969, Boom 1982). Rury (1978) proposed that *Isoetes melanospora* represented a arrested developmental stage of one polymorphic species encompassing *Isoetes melanospora* and *Isoetes piedmontana*. According to Boom (1978, 1982), such confusion regarding *Isoetes melanospora's* taxonomic status stems from the above mentioned hybridization of the two *Isoetes* species and subsequent introgression. C. Taylor and N. Luebke (Milwaukee Public Museum, pers. comm. 1986) maintain that *Isoetes melanospora* and *Isoetes piedmontana* are distinct species. Both species have maintained their morphological distinctiveness while growing in uniform conditions for the last six years, and preliminary electrophoretic data determined the two *Isoetes* to have distinct enzyme profiles. Research by Boom (1980) and Luebke (pers. comm. 1986) demonstrates that reproductive barriers are weak in *Isoetes* and interspecific hybrids are produced readily. *Isoetes melanospora* has been maintained as a distinct taxon in all monographic treatments of the genus (Pfeiffer 1922, Reed 1965, Boom 1979, 1982). Although Evans (1978) synonymized *Isoetes melanospora* in *The Flora of The Carolinas*, he now states that *Isoetes melanospora* will be maintained as a distinct taxon in his treatment of the pteridophytes for the upcoming "Vascular Flora of the Southeastern States" (Evans, University of Tennessee, pers. comm. 1986).

Isoetes melanospora is historically known from 12 sites in central Georgia and one site in South Carolina (Johnson 1938, KcVaugh 1943, Lammers 1958, Burbanck and Platt 1964, Matthews and Murdy 1969, Allison, pers. comm. 1986). Currently, it is thought extant at only five sites in Georgia (De Kalb, Rockdale, and Gwinnett Counties) due to a 54% loss of Georgia populations from habitat destruction. Its status at the South Carolina site is unknown since it has not been observed there since its collection in 1969 (Boom 1979, Rayner, pers. comm. 1986).

Isoetes melanospora occurs with *Amphianthus* at four of its six extant sites in typical habitat as described for *Amphianthus*. At the sixth site, *Isoetes melanospora* is located in several remnant quarry pools. The largest population of *Isoetes melanospora* comprises plants in an estimated 12 pools. Other Georgia populations are confined to one to five pools each.

Isoetes tegetiformans is perhaps the most distincitive species in this genus (Boom 1982). A detailed description of its morphology and anatomy is given by Rury (1978). Distinguishing characters include its distichous, mat-forming growth habit (plants are "rhizomatously" connected), non-dichotomizing roots, and formation of numberous, cauline, adventious buds (Rury 1978, Boom 1979, 1982). Individual plants are most similar to distichous plants of *Isoetes melanospora* with respect to plant size, leaf arrangement and reproductive features (Rury 1978).

Isoetes tegetiformans was described by Rury (1978) from material he collected at Heggie's Rock Preserve in Columbia County, Georgia, from a single vernal pool. Since then, searches of over 120 granite outcrops by J. Allison have resulted in only 10 additional locations (Rury 1985, Allison, pers. comm. 1986). Populations occur in four Georgia counties (Columbia, Hancock, Greene and Putnam) and are confined to porphyritic granite outcrops. Today, *Isoetes tegetiformans* is though extant at all but one site (Allison, pers. comm. 1986, Rury 1986). Seventy percent of the extant sites have only one or two pools with *Isoetes tegetiformans*. At the remaining sites, it has been observed in four to eight pools. Individual pools may contain very few genetic individuals since *Isoetes tegetiformans* is a colony-forming species (Bridges 1986a).

Many of the sites harboring populations of these three granite outcrop endemics have been destroyed or adversely impacted through quarrying, euthrophication from cattle, ORV's, trash dumping, and various forms of vandalism (Garris 1980, Miller 1985, Rayner 1986).

Most populations are on privately-owned lands, including one site

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managed by the Nature Conservancy. Four sites are located on public lands, including one owned by the State of Georgia and administered by the Stone Mountain Memorial Association, two owned by De Kalb Country, Georgia, and one by the State of South Carolina (South Carolina Wildlife and Marine Resources Department).

Federal actions involving these species began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report on the Smithsonian Institution as a petition within the context of section 4(c)(2), now section 4(b)(3)(A), of the Act and of its intention thereby to review the status of those plants. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. *Amphianthus pusillus* and *Isoetes melanospora* were included in the Smithsonian petition and the 1976 proposal. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired. On December 15, 1980, the Service published a revised notice of review for native plants in the **Federal Register** (45 FR 82480); *Isoetes melanospora* was included as a Category-2 species (species for which data in the Service's possession indicate listing is probably appropriate, but for which additional biological information is needed to support a proposed rule); *Isoetes tegetiformans* and *Amphianthus pusillus* were included as Category-1 species (species for which data in the Service's possession indicate listing is warranted). On November 28, 1983, the Service published in the **Federal Register** (48 FR 53640) a supplement to the 1980 notice or review. This supplement treated *Isoetes tegetiformans* as a Category-2 species. All three species were included in Category 2 in the September 27, 1985, revised notice of review of plants (50 FR 39526). Status survey reports compiled by Garris (1980), Miller (1985) and Rayner (1986), as well as extensive field searches by Allison (pers. comm. 1986), and pertinent literature (see "References Cited" below), now support all three species' being reelevated to Category 1 and listing as endangered or threatened. The date demonstrated low numbers of plants and contiuning threats to the species.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Isoetes melanospora* and *Amphianthus pusillus* because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1983, October 12, 1984, October 11, 1985, and October 10, 1986, the Service found that the petitioned listing of these species was warranted, but that listing this species was precluded due to other higher priority listing actions. Publication of the present proposal constitutes the next 1-year finding required on or before October 13, 1986, for these three species which are now among the highest priority species for listing.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Amphianthus pusillus* Torrey (little amphianthus), *Isoetes melanospora* Englemann (black-spored quillwort), and *Isoetes tegetiformans* Rury (mat-forming quillwort) are as follows:

A. The Present of Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.

Amphianthus pusillus, Isoetes tegetiformans, and *Isoetes melanospora* are restricted to granite outcrops in the Piedmont physiographic region (see "Background' section for specific distributions). The major threat to these species is the destruction and adverse modification of their habitat. Populations of all three taxa have been lost through quarrying (38% for *Isoetes melanospora, 17% for Amphianthus,* 9% for *Isoetes tegetiformans*) and the fate of several extent populations is tenuous since several areas are active quarry sites. Georgia is the world's largest granite producer (Wharton 1978), so the destruction of outcrops from quarrying is expected to continue. Quarrying companies owned 17.4% of those granite outcrops investigated for *Amphiantus* in Georgia (Garris 1980).

Granite outcrops are popular recreational sites and unfortunately such attention and overuse have resulted in damage to the geologic structures and vegetation (Garris 1980). Many of the pools supporting populations of these three taxa have been directly damaged by vehicular traffic. Vehicular traffic during these species' growing season posed a serious threat by uprooting/crushing live plants, hastening the erosion of the pools' rims and displacing soil from the pools (Bridges 1986a, Rayner 1986). ORV's have decreased the vigor of all the South Carolina *Amphianthus* populations (Rayner 1986) and destroyed one Alabama population (Miller 1985). Pools have been further impacted by such vandalistic activities as fire building and littering (Rayner 1986, Garris 1980). Rearrangement of stones in two pools has caused a decline in two populations of *Amphianthus* and *Isoetes melanospora.*

Granite outcrops are often enclosed in pasture. A concentration of grazing animals on these areas has caused damage to vernal pool vegetation through trampling and added nutrients to the water, which favors the growth of more competitive aquatics (Garris 1980, Bridges 1986b). Such eutrophication of vernal pools has eliminated *Amphianthus* from several pools at one site and caused the decline of *Amphianthus* and *Isoetes tegetiformans* at a second area.

Many of the smaller outcrops are used as local dumps or for storing equipment, and such adverse land use has destroyed two populations of *Amphianthus* and one population of *Isoetes melanospora* in Georgia (Garris 1980, Allison, pers. comm. 1986). Flatrocks in the Southeast are being examined as possible repositories for nuclear waste and this poses a potential threat to their habitat (Rayner 1986). Long term monitoring of all three taxa should be initiated in order to measure fluctuations in population size and vigor.

Such data would be helpful in determining the stability of populations are related to weather conditions and distrubance (Bridges 1986a, Rayner 1986).

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Taking for these purposes may pose a threat to these species, especially *Isoetes melanospora* and *Isoetes tegetiformans,* which are extremely restricted in range and low in numbers. Publicity surrounding the listing of these species could increase interest in all three of these unique species, and the sites are easily accessible.

C. Disease or Predation.

These taxa are not known to be threatened by disease or predation.

D. The Inadequacy of Existing Regulatory Mechanisms.

Amphiantus pusillus and *Isoetes melanospora* are officially listed as endangered by the Georgia Department of Natural Resources and are thereby afforded legal protection in the State under the Wildflower Preservation Act of 1973. *Isoetes tegetiformans* is not protected by Georgia law at the present time. Georgia legislation prohibits taking of plants from public lands (without a permit) and regulates the sale and transport of plants within the State. However, Georgia law does not provide protection against habitat destruction, the major threat to these species, and has been inadequate in preventing the further decline of *Isoetes melanospora* and *Amphiantus pusillus* populations at two publicly-owned sites in De Kalb County (Stone Mountain State Park and Mt. Arabia County Park).

Although these species are unofficially recognized as an endangered or threatened components of their flora, South Carolina and Alabama have no State laws protecting them. The Nature Conservancy owns and manages Heggie's Rock Preserve in Columbia County, Georgia, which supports a moderate population (ten pools) of *Amphiuanthus* and a limited population (on pool) of *Isoetes tegetiformans. Amphianthus pusillus* is also protected at Forty-Acre Rock Preserve in Lancaster County, South Carolina, which is owned by the South Carolina Wildlife and Marine Resources Department. Both preserves have regulations restricting collecting and motorized vehicles. However, these regulations are difficult to enforce and the areas are continuing to be disturbed. The Act would enhance the existing protection, provide Federal protection (see "Available Conservation Measures" below), and encourage active management for these species.

E. Other Natural or Manmade Factors Affecting its Continued Existence

These taxa are rare and vulnerable due to the limited amount of potential habitat and specialized microhabitat requirements. Many of the populations consist of small numbers of individuals confined to only one or two pools (see "Background" section), so local extinction through natural causes is possible. *Amphianthus pusillus, Isoetes melanospora,* and *Isoetes tegetiformans* are susceptible to inadvertent destruction because the pools in which they occur are exposed, and thus unprotected from vehicular traffic. These outcrop endemics are not vigorous competitors (Rayner 1986, Luebke, pers. comm. 1986) and could be eliminated by overcrowding and shading (Lammers 1958, Kral 1983). One population of *Amphiantus* and one of *Isoetes melanospora* have been lost through succession (Allison, pers. comm. 1986); however, natural succession is usually too slow to be a significant problem, and new habitat is constantly being created (Burbanck and Platt 1964). A more serious threat is from accelerated succession caused by excessive siltation from disturbance upslope or from eutrophication of the pools from cattle droppings (Bridges 1986b).

Amphianthus is vulnerable due to its requirements for special environmental conditions (moisture, light) for germination and growth and an unknown dormancy period for the seeds (Lunsford 1938, Garris 1980, Rayner 1986). One factor believed to contribute to the rarity of *Amphianthus* is the lack of adaptation for seed dispersal (Lunsford 1938). Preliminary research by Randall (1986) suggests that the principle mode of reproduction in *Amphianthus* is agamospermy (production of seeds by asexual process) and that this lack of genetic variation threatens its adaptive potential. The genetic integrity of *Isoetes melanospora* is threatened due to its frequent hybridization with *Isoetes piedmontana* and subsequent introgression. Hybrids may competitively displace *Isoetes melanospora,* which requires a more specialized type of microhabitat (Boom, pers. comm. 1986).

The Service has carefuly assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Isoetes tegetiformans* and *Isoetes melanospora* as endangered species and to list *Amphianthus pusillus* as a threatened species. *Isoetes melanospora* has been extirpated over most of its historic range (54% of populations destroyed). Furthermore, populations at four of the five remaining sites are confined to five or fewer pools and have significantly decreased in numbers and vigor at several of these areas. *Isoetes tegetiformans* is restricted to a particular type of outcrop (porphyritic granite) and presently receives no protection under Georgia's Wildflower Preservation Act of 1973. At most sites (80%), *Isoetes tegetiformans* occurs in only one or two pools and two of these areas are active quarry sites. These two plants are in danger of extinction throughout all or significant portions of their ranges and therefore qualify as endangered species under the Act.

Threatened status seems appropriate for *Amphianthus pusillus* which has a wider geographic range and two populations in designated Nature Preserves. However, 21% of the populations of *Amphianthus'* have been destroyed and 76% of the extant sites support only a limited population of this senus. Many of the populations face severe threats and *Amphianthus* could become endangered within the foreseeable future; thus it is a threatened species as defined by the Act. Critical habitat is not being designated for reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species at this time. Publication of critical habitat descriptions and maps would increase public interest and possibly lead to additional treats for these species from collecting and vandalism (see threat factor "B" above). Distinctiveness of the outcrops increases their vulnerability since they tower above the surrounding vegetation and most are easily accessible. No benefit can be identified through critical habitat designation that would outweigh these potential threats. All State agencies and counties will be notified of the general location of the sites and of the importance of protecting these species' habitat. Protection of these species' habitat will be addressed through the recovery process and

through the section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for these species at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and were recently revised at 51 FR 19926 (June 3, 1986). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. All presently known sites for these species are on private, State-owned, or county-owned land. Currently, no activities to be authorized, funded, or carried out by Federal agencies are known that would affect these species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 (for endangered), and 17.71 and 17.72 (for threatened) set forth a series of general trade prohibitions and exceptions that apply to all endangered or threatened plants. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered or threatened plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or to remove it from areas under Federal jurisdiction and reduce it to possession. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued, since these species are unknown in cultivation and are uncommon in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned government agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Final promulgation of the regulation on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Endangered Species Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Cary Norquist (see ADDRESSES section) (601/965–4900 or FTS 490–4900).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Isoetaceae—Quillwort family:						
Isoetes melanospora	Black-spored quillwort	U.S.A. (GA, SC)	E		NA	NA
Isoetes tegetiformans	Mat-forming quillwort	U.S.A. (GA)	E		NA	NA
Scrophulariaceae—Snapdragon family:						
Amphianthus pusillus	Little amphianthus	U.S.A. (AL, GA, SC)	T		NA	NA

Dated: January 28, 1987.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–3411 Filed 2–18–87; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Liatris helleri

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list *Liatris helleri* (Heller's blazing-star), a perennial herb limited to seven populations in North Carolina, as a threatened species under authority of the Endangered Species Act of 1973, as amended (Act). *Liatris helleri* is threatened by recreational development of the high mountain peaks where it grows and by trampling and habitat disturbance due to heavy use by hikers and climbers. This proposal, if made final, would implement Federal protection provided by the Act for *Liatris helleri*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by April 20, 1987. Public hearing requests must be received by April 6, 1987.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Endangered Species Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock at the above address (704/259–0321 or FTS 672–0321).

SUPPLEMENTARY INFORMATION:

Background

Liatris helleri, described by T. C. Porter (1891) from material collected in North Carolina in 1981, is a perennial herb with one or more erect or arching stems arising from a tuft of narrow, pale green basal leaves. The stems reach up to 4 decimeters in height and are topped by a showy spike of lavender flowers 7 to 20 centimeters long. Flowering occurs from July through September with fruits present from September through October (Kral 1983, Radford *et al.* 1964). Although the taxonomy of the genus *Liatris* is complex, *Liatris helleri* can be distinguished from other similar high altitude species of *Liatris* by its much shorter pappus, ciliate petioles, internally pilose corolla tubes, and lower, stockier habit (Gaiser 1946,

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Cronquist 1980). Additional work is underway on plants at two of the sites, which may result in their being described as a taxonomically separate entity (Sutter, in preparation). If this is done after *Liatris helleri* (inclusive of these two sites) is added to the List of Endangered and Threatened Plants, an editorial change to the List will be made to reflect this nomenclatural change.

Liatris helleri is a species endemic to a few scattered summits in the northern Blue Ridge Mountains of North Carolina. The species grows on high elevation ledges of granitic outcrops in shallow, acid soils where it is exposed to full sunlight. Nine populations of *Liatris helleri* have been reported historically; seven remain in existence. Four of these populations are in Avery County with one population each remaining in Caldwell, Ashe, and Burke Counties, North Carolina. Five of the remaining populations are located on privately owned lands, and two are located on public land administered by the U.S. Forest Service and the National Park Service. Two additonal populations were historically known for the species, but one site (Watauga County) has since undergone residential development, and the other (Mitchell County) has been subjected to intensive recreational use. *Liatris helleri* has not been relocated at either locality during recent searches. The continued existence of *Liatris helleri* is threatened by trampling and habitat disturbance due to heavy use of its habitat by hikers and other recreational users as well as development for commercial recreation facilities and residential purposes (Massey *et al.* 1980).

Construction of new trails, other recreational improvements, significant increases in intensity of recreational use, or intensive development at any of the sites could further jeopardize this plant. Most of the populations occupy a very small total area with fewer than 20 individual plants at two of the seven sites. Three of the privately owned sites have been developed as commercial recreation facilities; development of a fourth site as a ski slope is currently underway. The fifth privately owned site belongs to The Nature Conservancy and is protected. The two sites in public ownership are located in scenic areas which attract large numbers of visitors annually.

Federal government actions on this species began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designed as House Document No. 94–51, was presented to Congress on January 9, 1975. The Service published a notice in the July 1, 1975, Federal Register (40 FR 27832) of its acceptence of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) [now section 4(b)(3)] of the Act and of its intention thereby to review the status of the plant taxa named within. *Liatris helleri* was included in the July 1, 1975, Notice of Review. On December 15, 1980, the Service published a revised Notice of Review for Native of Review for Native Plants in the Federal Register (45 FR 82480); *Liatris helleri* was included in that notice as a Category-1 species. Category 1 species are those species for which the Service currently has on file substantial information on biological vulnerability and threats to support proposing to list them as endangered or threatened species. On November 28, 1983, the Service published a supplement to the Notice of Review for Native Plants in the Federal Register (48 FR 53640); the plant notice was again revised September 27, 1985 (50 FR 39526). *Liatris helleri* was included as a Category-2 species in the 1983 supplement and the 1985 revised notice. Category-2 species are those for which listing as endangered or threatened species may be warranted but for which substantial data on biological vulnerability and threats is not currently known or on file to support proposed rules. Subsequent to that notice the Service received a draft report on the status and taxomony of *Liatris helleri* (Sutter, in preparation). This report and other available information indicate that the addition of *Liatris helleri* to the Federal List of Endangered and Threatened Plant is warranted.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Liatris helleri* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, October 12, 1984, October 11, 1985, and October 10, 1986, the Service found that the petitioned listing of *Liatris helleri* was warranted but precluded by other listing actions of a higher priority and that additional data on vulnerability and threats was still being gathered. Publication of this proposal constitutes the next one-year finding that is required.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1513 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Liatris helleri* Porter (Heller's blazing star) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Seven populations of *Liatris helleri* are known to exist in Caldwell, Avery, Ashe, and Burke Counties, North Carolina. Two other historically known populations have apparently been extirpated due to residential development and heavy recreational use. Only three of the seven extant populations are afforded some protection from human-induced habitat alterations. The four other populations occur on lands which have been or are being developed for commercial recreation use. Of the three partially protected sites, only the one owned by The Nature Conservancy receives full protection from human disturbance. Those on lands administered by the U.S. Forest Service and the National Park Service are subject to heavy recreational use. The greatest damage to *Liatris helleri* in the past has probably come from the commercial development of the open mountain summits where it occurs. The construction of trails, parking lots, roads, buildings, observation platforms, suspension bridges, and other recreational, residential, and commercial facilities has taken its toll on the species either through the actual construction process or by trampling due to hikers and sightseers (Kral 1983). Currently, heavy trampling occurs at two of the locations where *Liatris helleri* is known to survive; however, the high-intensity use and potential impact from increased use and development pose serious threats to all of the small habitats occupied by this species, particularly if additional development occurs (Massey *et al.* 1980). With anticipated increased usage by sightseers, rock climbers, and hikers at six of the remaining seven localities where *Liatris helleri* occurs, significant impact on this species in the form of increased soil erosion, soil compaction, and trampling could occur if protection is not provided. Likewise, additional development at any of the locales (such as expansion of trails or sidewalks, construction of additional visitor facilities, or residential development) could further threaten the species if proper planning does not occur.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Liatris helleri is not currently a significant component of the commercial trade in native plants; however, other species of the genus are regularly sold in the commercial wild flower trade. *Liatris helleri*, with its attractive lavender flowers, has potential for horticultural use, and publicity could generate an increased demand.

C. Disease or Predation.

Not applicable to this species at this time.

D. The Inadequacy of Existing Regulatory Mechanisms

Liatris helleri is afforded legal protection in North Carolina by North Carolina General Statute, Chapter 106, Article 19–B 202.12–202.19, which prohibits intrastate trade and taking of plants without a State permit and written permission of the landowner. *Liatris helleri* is listed in North Carolina as threatened. State prohibitions against taking are difficult to enforce and do not cover adverse alterations of habitat or unintentional damage from recreational use. The Endangered Species Act will provide additional protection and encouragement of active management for *Liatris helleri*, particularly on Federal lands.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

As mentioned in the "Background" section of this proposed rule, many of the remaining populations are small in numbers of individual stems and in terms of area covered by the plants. Therefore, little genetic variability exists in this species making it more important to maintain as much habitat and as many of the remaining colonies as possible. *Liatris helleri* is an early pioneer species growing on rock ledges in full sun. Depending upon the elevation and suitability of the site for supporting woody vegetation, invasion by ericaceous shrubs and trees may occur, which could eliminate *Liatris helleri* by overcrowding and shading. Since this type of succession is a slow process, this is not considered an immediate threat to survival of the species. However, proper management planning for *Liatris helleri* is needed to address this aspect of the species' biology. Natural rock slides, severe storms or droughts, or other natural events may also eliminate populations of this plant.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Liatris helleri* as threatened. With two of the nine known populations having been extirpated and six of the remaining seven subject to some form of threat, this species warrants protection under the Act. Threatened status seems appropriate because the extirpation of most remaining populations is not imminent. Because the areas occupied by the plant are usually small, it is easily possible for a concerned landowner or developer to preserve the habitat needed for the plants survival. This has been done successfully in the cases of two of the commercial recreation areas where the plant occurs. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Liatris helleri* at this time. With its showy flowers, and with other members of the genus already in commercial trade, the species has high potential for horticultural use. Increased publicity and the provision of specific location information associated with critical habitat designation could result in taking pressures on the species. Although taking of threatened plants from lands under Federal jurisdiction and reduction to possession is prohibited by the Endangered Species Act, taking provisions are difficult to enforce. Publication of critical habitat descriptions would make *Liatris helleri* more vulnerable and would increase enforcement problems for the U.S. Forest Service and the National Park Service. Also, the populations on private lands would be more vulnerable to taking. Increased visits to population locations stimulated critical habitat designation could therefore adversely affect the species. The Federal and State agencies and landowners involved in managing the habitat of this species have been informed of the plant's locations and of the importance of protection. Therefore, it would not be prudent, and no additional benefit would result from the determination of critical habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 (see revision at 51 FR 19926, June 3, 1986). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The U.S. Forest Service and the National Park Service have jurisdiction over portions of this species' habitat. Federal activities that could impact *Liatris helleri* and its habitat in the future include, but are not limited to, the following: construction of recreational facilities (including trails, buildings, or maintenance of such facilities), use of aerially-applied retardants in fire fighting efforts, road construction, permits for mineral exploration, and any other activities that do not include planning for this species continued

existence. The Service will work with the involved agencies to secure protection and proper management of *Liatris helleri* while accommodating agency activities to the extent possible.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any threatened plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Seeds from cultivated specimens of thratened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. With respect to *Liatris helleri*, it is anticipated that few trade permits would ever be sought or issued since this species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Liatris helleri;*

(2) The location of any additional populations of *Liatris helleri* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Liatris helleri.*

Final promulgation of the regulation on *Liatris helleri* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Asheville Endangered Species Field Office (see the "**ADDRESSES**" section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 29244).

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Kral, R. 1983. A report on some rare, threatened, or endangered forest-related vascular plants of the south. Tech. publ. R8–TP–2. USDA—Forest Service. Pp. 1191–1194.

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Sutter, R. In preparation. Taxonomic analysis of *Liatris helleri,* a North Carolina endemic.

Author

The primary author of this proposed rule is Ms. Nora Murdock, Endangered Species Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704–259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Asteraceae, to the list of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
ASTERACEAE—ASTER FAMILY						
Liatris helleri	Heller's Blazing-star	U.S.A. (NC)	T		NA	NA

Dated: January 28, 1987.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–3413 Filed 2–18–87; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 26

Public Access, Use and Recreation; Back Bay National Wildlife Refuge, VA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) is revising special regulations concerning public access, use, and recreation on the Back Bay National Wildlife Refuge (NWR), which were published in the **Federal Register** on May 28, 1980 (45 FR 35823), January 13, 1983 (48 FR 1501), and September 1, 1983 (48 FR 39661). This proposed rule relaxes certain limitations on vehicular access through the Back Bay NWR by revising 50 CFR 26.34. It also incorporates the provisions of Pub. L. 98–107, enacted on October 1, 1983. This law amended Pub. L. 96–315 to allow access for "up to 15 additional" permittees, who met specific conditions for access. A notice concerning this law appeared in the **Federal Register** (48 FR 46862) on October 14, 1983.

Actual changes in access rules and other public use regulations which are incorporated into this proposed rule are listed in **Supplementary Information** under the heading "Actions Taken in This Rule."

DATE: Comments must be submitted on or before April 20, 1987.

ADDRESS: Comments may be addressed to Howard N. Larsen, Regional Director, Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158; Telephone (617) 965–5100, ext. 222.

FOR FURTHER INFORMATION CONTACT: Edward S. Moses, (617) 965–5100, ext. 222.

SUPPLEMENTARY INFORMATION: For many years, Back Bay NWR was open to the public for a number of purposes, and free access to the beach by vehicles was permitted. In 1961, less than 10,000 persons used the refuge for various purposes. During the late 1960's, the development of lands south of the refuge for recreational/residential purposes and the increase in availability and popularity of off-road recreational vehicles resulted in sharply accelerated use. By 1970, the number of persons using the refuge had increased to 235,000 and in 1971, to 348,000. All but a small fraction of this increase involved off-road vehicular use across the beach portion of the refuge. By 1969, it became evident that total public use had resulted in environmental degradation to the extent that a serious conflict existed with respect to the administration of the entire refuge for its intended purposes. Following careful analysis it was determined that certain controls of vehicular uses of the beach were required to reverse the trend of refuge habitat destruction.

On January 12, 1972, the Service provided notice in the **Federal Register** (37 FR 447) that the Back Bay NWR would be closed to use by unauthorized vehicles. An Environmental Impact Statement (EIS) assessing the impacts of this restriction was prepared (FES 72–33, 1973). A final rule was published in March 1973 that required authorized users to obtain permits for access. Recreational vehicle traffic was prohibited. Permits were issued property owners in the proposed False Cape State Park area, permanent full-time residents of the Outer Banks in North Carolina and their visitors, commercial fisherman, emergency service vehicles and school buses. Implementation of the rule was followed by legal action in a suit against the Service in the District Court for the Eastern District of Virginia (Coupland, et al. v. Morton, et al.). A final decision was handed down by Judge John Mackenzie on February 26, 1975 (Civil Action No. 145–73–N), fully upholding the authority of the Secretary of the Interior to control vehicular access across the Back Bay NWR. This order was ultimately upheld by the Fourth Circuit Court of Appeals in a decision issued on July 7, 1975.

The matter of regulating beach use at Back Bay NWR continued to be the subject of considerable discussion by the many persons denied vehicular access to recreational properties in North Carolina. On July 29, 1976, following the preparation of an Environmental Assessment (EA), a liberalized rule (41 FR 31537) was issued which provided limited access eligibility to all persons who as of October 6, 1975, owned improved property on the Outer Banks of Currituck County, North Carolina, from the Virginia State line south to and including the village of Corolla, North Carolina, and not just to permanent residents of the area as the previous rule had provided.

In order to mitigate the impact on the beach by these additional permittees, it was necessary to place more restrictions on, and limit the number of round trips per day for, permanent full-time residents living between the south boundary of the refuge and the village of Corolla, North Carolina. Based on the restricted access imposed on the permanent full-time residents by the 1976 regulations (41 FR 22361) and the permit program management experience gained from the 1976 and 1977 (42 FR 23151) regulations, the 1978 rule (43 FR 28413) continued to provide access to qualified permanent full-time and part-time residents. These special regulations provided notice that the refuge beach would be closed to vehicular traffic after December 31, 1979. Subsequently, in an effort to avoid undue hardship on permanent residents who had established residency prior to December 31, 1976, and interim rule was published on December 31, 1979 (44 FR 72161), which provided for access for those permanent residents only. Public comments on this interim rule were invited. All comments submitted by January 31, 1980, were given consideration.

The final rule on Back Bay NWR access, as published on May 28, 1980 (45 FR 35823), provided access for those permanent full-time residents who could provide adequate proof of continuous residency commencing prior to December 31, 1976, on the Outer Banks from the refuge boundary south to and including the village of Corolla, North Carolina. The May 28, 1980, rule also denied a petition for rulemaking received from the Outer Banks Civic League and Pacific Legal Foundation to allow access through Back Bay NWR for part-time residents of the Outer Banks and False Cape State Park.

On July 25, 1980, President Carter signed Pub. L. 96–315 which provided that any time regulations limiting access to the refuge are issued, the Secretary of the Interior shall issue to any "eligible applicant" a permit to enable the applicant to commute across the refuge. The term "eligible applicant" was defined to include "all full-time residents who can furnish . . . adequate proof of residency commencing prior to December 31, 1979, on the Outer Banks from the refuge boundary south to and including the village of Corolla, North Carolina. . . ." The south boundary was defined as a "straight east-west line extending from Currituck Sound to the Atlantic Ocean and passing through a point one thousand and six hundred feet due south of the Currituck Lighthouse." On August 7, 1980 (45 FR 53291), the Back Bay access regulations were modified to reflect the legislation.

On September 18, 1981, the Assistant Secretary for Fish and Wildlife and Parks published in the **Federal Register** (46 FR 46358) a Notice of a Petition for

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Rulemaking submitted by the Virginia Wildlife Federation and the Pacific Legal Foundation seeking the extension of access privileges through the refuge to part-time residents of the Outer Banks.

On January 13, 1983, the Service published in the **Federal Register** (48 FR 1501), an extension of the May 28, 1980, regulations governing access. The extension was necessary, until revised rules could be issued, so that orderly management of the Back Bay NWR would not be compromised.

On September 1, 1983, the Assistant Secretary published in the **Federal Register** (48 FR 39661), a proposed rule and denial of petition. The proposed rule included the same changes contained in the **Federal Register** notice of October 14, 1983, outlined below, with the exception of the provision dealing with access essential to maintaining a livelihood. As a result of the passage of Pub. L. 98–107 and the associated **Federal Register** notice (48 FR 46862), finalization of this proposed rule was unnecessary.

On October 14, 1983, the acting Director published in the **Federal Register** (48 FR 46862) a Notice of Rulemaking. This notice incorporated the provisions of Pub. L. 98–107 into the Back Bay NWR access regulations. Public Law 98–107, an amendment to Pub. L. 96–315, stipulates that additional access permits may be issued as follows: "Up to 15 additional permits shall be granted to those persons meeting any one of the following conditions:

(1) A resident as of July 1, 1982, who held a valid fish and Wildlife Service access permit for improved property owners of any time during the period from July 19, 1976, through December 31, 1979.

(2) Anyone in continuous residency since 1976 residing in the area bounded on the north by the refuge boundary and on the south by a straight line passing through a point on the east-west prolongation of the centerline of Albacore Street, Whaleshead Club Subdivision, Currituck County, North Carolina.

(3) Any permanent, full-time resident as of April 1, 1983, not otherwise eligible who can substantiate to the Scretary of the Interior that access is essential to their mantaining a livelihood."

Public comments were solicited on the proposed regulations (48 FR 39661), and 489 written comments were received. Of these, 488 supported additional access and one was opposed. Of the comments in support, 486 were of a form letter/petition type response.

The revisions enacted under this current proposed rule changes the date of "continuous and continuing residency commencing prior to December 31, 1979," to July 1, 1982, with the stipulation that the resident held a valid Fish and Wildlife Service access permit during the period from July 29, 1976, through December 31, 1979. Also, the "south boundary of the area of access consideration" now means a straight line passing thorugh a point on the east-west prolongation of the centerline of Albacore Street, Whaleshead Club Subdivision, Currituck County, North Carolina, and includes anyone in continuous residency since 1976.

A new condition is added which provides access to "permanent full-time residents as of April 1, 1983, not otherwise eligible who can substantiate to the Secretary of the Interior that access is essential to their maintaining a livelihood." Finally, several minor changes have been made to the existing regulations which further clarify eligibility and provide for the needed regulation of access permits.

This proposed rule supplements the general regulations that govern recreation of wildlife refuges as set forth in Title 50 Code of Federal Reguations. The Back Bay NWR, comprising approximately 4,600 acres, is delineated on a map available from either the refuge manager or the Regional Director.

Actions Taken in This Rule

Actual changes in access rules and other public use regulations which are incorporated into this proposed rule include the following:

(A) Access Regulations

(1) The qualification criteria are relaxed in accordance with Federal law, as outlined above.

(2) The section on routes of travel has been modified to incorporate the installation of a key-card operated gate.

(3) The hours of travel have been modified to allow 24 hour access from October 1 through April 30.

(4) Access for commercial service vehicles is reinstated. Verified commercial service needs by permittees will be permitted upon approval of the refuge manager.

(5) Access privileges for commerical fishermen are further defined. The hauling of trailers associated with commercial fishing or other businesses established prior to 1972 is now authorized. Employees of commercial fishermen and businesses are required to provide proof of employment.

(6) Access is authorized via medical access waivers.

(7) The appeals process is redefined.

(8) Permittees are now required to inform the refuge manager of changes which affect their access status in writing within 30 days of the occurrence of such changes.

(9) The towing of trailers by permittees is authorized.

(10) Travel for hire or real estate purposes is prohibited.

(B) General Rules

(1) Entry hours are modified.

(2) Surfing is prohibited.

(3) Swimming and sunbathing are limited to designated areas.

(4) All fires are prohibited.

(5) Dogs are allowed during the fall and winter months only.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act of 1966, as amended, (16 U.S.C. 668dd), authorizes the Secretary of the Interior to permit the use of any area of the refuge system for any purpose, including access, whenever he determines that such uses are compatible with the major purposes for which the area was established. The Back Bay NWR was established by Executive Order 7907, June 6, 1938, "as a refuge and breeding ground for migratory birds and other wildlife."

The limited use permitted by these regulations is compatible with the major purposes for which the Back Bay NWR was established. This determination is based upon consideration of among other things, the EIS (FES 72–33, 1973), the EA completed December 12, 1975, the Service's final EIS on the proposed State-Federal Land Exchange involving portions of False Cape State Park and Back Bay NWR, and the EA prepared on the proposed rulemaking (September 1, 1983).

Paperwork Reduction Act

Information collection is required for obtaining a vehicular access permit.

The information is necessary to determine eligibility of applicants, and failure to respond may result in permit denial. This information collection has been approved by the Office of Management and Budget (OMB) under number 1018–0014. This rule will not modify the information collection requirements authorized by OMB.

Environmental Effects

EAs have been prepared on previous rules and are available for public inspection at: Back Bay NWR, 4005 Sandpiper Road, P.O. Box 6286, Virginia Beach, Virginia 23456; and Virginia Beach Public Library, Operations Building, Room 300, Courthouse Complex, Virginia Beach, Virginia 23456.

Copies of EAs can also be obtained by addressing Howard N. Larsen, Regional Director, AWR, Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

Economic Effect

This rule involves local, private residents only. Small entities will not be significantly affected. Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

The policy of the Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, persons may submit written comments, suggestions, or objections regarding this proposed rule to the location identified in the **ADDRESSES** section of this preamble. All relevant comments will be considered by the Service prior to issuance of the final rule.

Edward S. Moses, Fish and Wildlife Service, Newton Corner, Massachusetts 02158; Telephone (617) 965–5100, ext. 222, is the primary author of this rule.

List of Subjects in 50 CFR Part 26

National Wildlife Refuge System, Recreation, Wildlife refuges.

PART 26—[AMENDED]

Accordingly, it is proposed to amend Part 26 of Chapter I of Title 50 of the *Code of Federal Regulations* as set forth below:

1. The authority citation for Part 26 is revised to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. The special regulations governing public access, use and recreation on Back Bay National Wildlife Refuge in § 26.34 are revised to read as follows:

§ 26.34 Special regulations concerning public access, use and recreation for individual National Wildlife Refuges.

Virginia

Back Bay National Wildlife Refuge.

Access

(a) Access qualifications.
(b) Routes of travel.
(c) Number of trips allowed.
(d) Hours of travel.
(e) Medical emergencies.
(f) Military, fire, or emergency vehicles.
(g) Public utility vehicles.
(h) Commercial service vehicles.
(i) False Cape State Park employees.
(j) Commerical fishermen, businesses and their employees.
(k) Suspension or waiver of rules.
(l) Violation of rules.
(m) Other access rules.

General Rules

(n) Entry on foot, bicycle, or motor vehicle.
(o) Beach-oriented uses.
(p) Parking.
(q) Fires.
(r) Pets.
(s) Other general rules.

Access

(a) *Access qualifications.* (1) Permanent full-time residents, who can furnish to the refuge manager, Back Bay National Wildlife Refuge, adequate proof of continuous and continuing residency, commencing prior to July 1, 1982, and who held a valid Fish and Wildlife Service access permit for improved property owners at any time during the period from July 29, 1976, through December 31, 1979, on the Outer Banks from the refuge boundary south to and including the village of Corolla, North Carolina, as long as they remain permanent, full-time residents; or, those persons in continuous residency since 1976, are authorized beach access. The "south boundary of the area for access consideration" means a straight line passing through a point on the east-west prolongation of the centerline of Albacore Street, Whaleshead Club Subdivision, Currituck Country, North Carolina. In addition, any permanent, full-time resident as of April 1, 1983, residing in the area outlined above and not otherwise eligible, who can substantiate to the Secretary of the Interior that access is essential to their maintaining a livelihood; so long as they maintain full-time continuous employment in the Norfolk, Virginia, area, may qualify for access. "Residence" means the place of general abode; a person's principal, actual dwelling place in fact, without regard to intent. A "dwelling" means a residential structure occupied on a year-round basis by the permit applicant and shall not included seasonal or part-time dwelling units such as beach houses, vacation cabins, or structures which are intermittently occupied. The burden of proof in showing that the prospective permittee meets these criteria shall be on the applicant by presentation of appropriate documentation.

(2) Only one permit will be issued per family. All permits issued will be terminated in the event that alternate access is provided during the permit period.

(3) Permits are issued for the purpose of providing ingress and egress across the refuge to the permittee's residence. Personal access is limited to permittees, their families, relatives and guests. "Personal access" means private, non-commercial use.

(4) All vehicle occupants must provide positive identification upon the request of any refuge official.

(b) *Routes of travel.* Access to, and travel along, the refuge beach by motorized vehicles may be allowed between the dune crossing at the key card operated gate near the refuge headquarters, and the south boundary of the refuge only after a permit has been issued or authorization provided by the refuge manager. Travel along the refuge beach by motorized vehicle shall be below the high tide line, within the intertidal zone, to the maximum extent practicable.

(c) *Number of trips allowed.* Permittees and members of their immediate families residing with them are limited to a total of two round trips per day per household.

(d) *Hours of travel.* Travel along the designated route is permitted 24 hours/day from October 1 through April 30. Travel is restricted to the hours of 5:00 am to 12:00 midnight from May 1 through September 30.

(e) *Medical emergencies.* Private vehicles used in a medical emergency will be granted access. A "medical emergency" means any condition that threatens human life or limb unless medical treatment is immediately obtained. The vehicle operator is required to provide the refuge office with a doctor's statement confirming the emergency within 36 hours after the access has occurred.

(f) *Military, fire, or emergency vehicles.* Military, fire, emergency or law enforcement vehicles used for emergency purposes may be granted access. Vehicles used by an employee/agent of the Federal, State or local government, in the course of official duty other than for emergency purposes, may be granted access upon advance request to the refuge manager.

(g) *Public utility vehicles.* Public utility vehicles used on official business will be granted access. A "public utility vehicle" means any vehicle owned or operated by a public utility company enfranchised to supply Outer Banks residents with electricity or telephone service.

(h) *Commercial service vehicles.* (1) Commercial service vehicles on business calls during the hours of 8 am—5 pm, Monday through Friday will be granted access, only upon prior

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approval of the refuge manager when responding to a request from a permittee. Such requests may be verbal or in writing. Weekend and emergency access by commercial service vehicles will be granted only after all other reasonable alternatives to access have been exhausted.

(2) "Commercial service" means any vehicle owned or operated by or on behalf of an individual, partnership, or corporation that is properly licensed to engage entirely in the business of furnishing emergency repair services, including but not limited to plumbing, electrical, and repairs to household appliances.

(i) *False Cape State Park employees.* False Cape State Park employees who are residents in the Park will be considered as permanent, full-time residents as defined in § 26.34(a)(1) with access privileges identical to those of other permittees.

(j) *Commercial fishermen, or other businesses and their employees.*(1) Commercial fishermen who have verified that their fishing operations on the Outer Banks of Virginia Beach, Virginia, or Currituck County, North Carolina, have been dependent since 1972 on ingress and egress to or across the refuge are granted permits for access. Travel through the refuge by commercial fishermen from Currituck County, North Carolina, will be permitted only when directly associated with commercial fishing operations. Drivers and passengers on trips through the refuge are limited to commercial fishing crew members. A "commercial fisherman" means one who harvests finfish by gill net or haul seine in the Atlantic Ocean, and who has owned and operated a commercial fishing business since 1972.

(2) Other businesses who have verified that their business operations on the Outer Banks of Currituck County, North Carolina, have been dependent since 1972 on ingress and egress to or across the refuge will be granted permits for access.

(3) Each commercial fisherman or other business may be granted a maximum of five designated employees to travel the refuge beach for commercial fishing or other business related purposes. Commercial fishing employees may carry only other commercial fishing employees as passengers. Other business employees may carry only other employees of that business. The hauling of trailers associated with the conduct of commercial fishing or other business activities is authorized.

(4) Employees of commercial fishermen and/or other businesses shall provide adequate documentation of their employment ot the refuge manager in order to be considered an employee for the purposese of this section of the regulations. The prospective permittee shall have the burden of proof of showing, be presentation of appropriate documentation to the satisfaction of the refuge manager, that these criteria have been met.

(k) *Suspension or waiver of rules.* (1) In an emergency, the refuge manager may suspend any or all of the foregoing restrictions on vehicular travel and announce each suspension by whatever means are available. In the event of adverse weather conditions, the refuge manager may close all or any portion of the refuge to vehicular traffic for such period as deemed advisable in the interest of public safety.

(2) The refuge manager may make exceptions to access restrictions if they are compatible with refuge purposes for qualified permittees who have demonstrated to the satisfaction of the refuge manager a need for additional access relating to health or livelihood.

(3) The refuge manager may grant one-time use authorization for vehicular access through the refuge to individuals, not otherwise qualified above, who have demonstrated to the satisfaction of the refuge manager that there is no feasible alternative to the access requested. Authorization for access under this provision will not be based on convenience to the applicant.

(4) The Regional Director may grant access to non-eligible permanent residents and improved property owners who can show proof that their physical health is such that life-threatening situations may result from more arduous travel conditions. The submission of substantiating medical records is required to be considered for a medical access waiver.

(l) *Violation of rules.* Violators of these special regulations pertaining to Back Bay National Wildlife Refuge are subject to legal action as prescribed by 50 CFR 25.43 and 50 CFR Part 28, including suspension or revocation of all permits issued to the violator or responsible permittee. The refuge manager may deny access permits to applicants, who during the two years immediately preceding the date of application, have been formally charged and successfully prosecuted for three or more violations of these or other regulations in effect at Back Bay National Wildlife Refuge. Individuals whose vehicle access privileges are suspended, revoked, or denied may within 30 days file a written appeal of the action to the Assistant Regional Director-Refuges and Wildlife, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158, in accordance with 50 CFR 25.44(c).

(m) *Other access rules.* (1) No permit will remain in effect beyond December 31 of the year in which it was issued. Permits may be renewed upon the submission of updated information of vehicle drivers and a signed, notarized statement that conditions of the previous permit have not changed. In the event of any changes under which the permit is granted, the permittee shall notify the refuge manager in writing within 30 days. Failure to report changes may result in suspension/revocation of the permit.

(2) Vehicles shall be operated on the refuge beach only by the permittee or other authorized drivers. Permit holders shall not tow vehicles owned by nonpermit holders through the refuge. Non-commercial permit holders may tow utility and boat trailers when being used for their personal use only. Any towed vehicle shall have advance approval from the refuge manager prior to being brought through the refuge. This access privilege is not to be used for any commercial purpose.

(3) The refuge manager may prescribe restrictions as to the types of vehicles to be permitted to ensure public safety and adherence to all applicable rules and regulations.

(4) A magnetic card will be issued to each authorized driver only for his or her operation of the computer controlled gate. Only one vehicle will be permitted to pass for each gate opening. Unauthorized use of the magnetic card may result in suspension of the permit. A fee of $20.00 will be charged to replace lost or misplaced cards. Malfunctioning cards will be replaced at no charge.

(5) Access is granted for the purpose of travel to and from the permittee's residence and/or place of business. Access is not authorized for the purposes of transporting individuals for hire, or for the transport of prospective real estate clients to or from the Outer Banks of North Carolina.

General Rules

(n) *Entry on foot, bicycle or motor vehicle.* Entry on foot, bicycle, or by motor vehicle on designated routes is permitted one-half hour before sunrise to one-half after sunset for the purposes of nature study, wildlife observation, photography, hiking, surf fishing, and bicycling.

(o) *Beach-oriented uses.* Access for swimming and sunbathing is permitted only on the northern one-quarter mile of refuge beach, in the area designated as

open by signs. Surfing is prohibited. No lifeguards are provided. Swimming will be at the visitor's own risk. Entry is by foot travel only via the city-owned ramp on the refuge's north boundary.

(p) *Parking.* Limited parking at the refuge office/contact station is permitted only in designated spaces. Parking is available on a first-come, first-serve basis for persons engaged in wildlife/wildlands oriented recreation including, but not limited to nature study, wildlife observation, photography, hiking, surf fishing and bicycling.

(q) *Fires.* All fires are prohibited.

(r) *Pets.* Dogs and other pets, on a hand-held leash not exceeding 10 feet in length, are permitted.

(s) *Other general rules.* (1) Pedestrians and vehicular traffic in the sand dunes are prohibited.

(2) Registered motor vehicles and motorized bicycles (mopeds) are permitted on the paved refuge access road and parking lot at refuge headquarters. All other motorized vehicular use is prohibited except as specifically authorized pursuant to this rule.

(3) The information collection requirement contained in this interim rule has been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* and has been assigned the clearance number 1018–0014. The information being collected is used to determine eligibility for issuing a vehicular access permit and a response is required to obtain a benefit.

Dated: January 21, 1987.

P. Daniel Smith,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–3412 Filed 2–18–87; 8:45 am]

BILLING CODE 4310–55–M

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Notices

Federal Register
Vol. 52, No. 33
Thursday, February 19, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committees on Adjudication, Administration, Regulation, and Special Committee on Financial Services; Public Meetings

Committee on Adjudication

Date: Friday, February 27, 1987.
Time: 9:30 a.m.
Location: Administrative Conference of the United States Library, 2120 L Street NW., Suite 500 Washington, DC.
Agenda: The Committee will meet to discuss ACUS consultant Eugene R. Fidell's study on federal whistleblower statutes that provide protection for private sector employees.
Contact: Deborah Ross, 200–254–7065.

Committee on Administration

Date: Wednesday, March 4, 1987.
Time: 1:30 p.m.
Location: Department of Commerce, 14th & Constitution Avenue NW., Room 5859, Washington, DC.
Agenda: (1) Professor Harold Bruff's study of constitutional issues in federal agency use of various alternative means of dispute resolution; (2) Professor Marianne Smythe's study of innovative dispute resolution processes at the CFTC; (3) Akin, Gump, Strauss, Hauer & Feld's project on agency use of settlement judges; and (4) Professor Martin White's study of agency implementation of the Debt Collection Act.
Contact: Charles Pou, Jr., 202–254–7065.

Committee on Regulation

Date: Friday, February 27, 1987.
Time: 2:00 p.m.
Location: Offices of Steptoe & Johnson, 1330 Connecticut Avenue NW. (4th Floor), Washington, DC.
Agenda: Discussion of (1) the Administrative Conference project on federal user fees (including draft reports and potential recommendations); and (2) the status of other Committee projects.
Contact: Michael W. Bowers, 202–254–7065.

Special Committee on Financial Services

Date: February 26, 1987.
Time: 2:00 p.m.
Location: 2120 L Street NW., Suite 500, Washington, DC 20037.
Agenda: This newly-established Special Committee will focus the efforts of the Administrative Conference to study selected procedural and other administrative aspects of the government's regulation of banks, savings institutions, securities brokers and underwriters, commodities futures traders, financial exchanges, and other financial services institutions or industries. The Committee has the following members: Kenneth J. Bialkin (Chairman), Judge Stanley Sporkin (Vice Chairman), Messrs. Warren Belmar, Michael Bradfield, C. Boyden Gray, Harvey Lloyd Pitt and Mark Sullivan III, and Judge John Walker, Jr. Administrative Conference Chairman Marshall J. Breger is also an *ex officio* member of this Committee. At its February 26th meeting, the committee will hear verbal reports from and give guidance to consultants who are studying the procedures used by the Board of Governors of the Federal Reserve System in administering the Bank Holding Company Act and related statutes, and the procedures used by the banking agencies in saving or taking over failing banks and savings institutions. The Special Committee will aslo consider what other projects it may wish to initiate.
Contact: Stephen L. Babcock, 202–254–7020.

Public Participation

Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The committee chairman may permit members of the public to present appropriate oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meetings will be available on request to the contact persons. The contact persons' mailing address is: Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037. These meetings are subject to the Federal Advisory Committee Act (Pub. L. 92–463).

Jeffrey S. Lubbers,
Research Director.
February 12, 1987.
[FR Doc. 87–3387 Filed 2–18–87; 8:45 am]
BILLING CODE 6110–01–M

ACTION

National Volunteer Advisory Council Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given of a meeting of the National Volunteer Advisory Council.

Date, time and place: March 4, 1987, 9:00 a.m., the Mayflower Hotel, 1127 Connecticut Avenue, NW., Washingon, D.C.

Purpose: To select nominees for the President's Volunteer Action Awards for 1987 and hold the regular Council meeting.

In accordance with the determination of the Director of ACTION, this meeting will be partially closed to the public from 9:30 a.m. until 1:00 p.m., pursuant to subsection (c)(9)(B) of section 552b of Title 5, United States Code. The determination of the Director of ACTION is available for public inspection at 806 Connecticut Avenue, NW., Washington, DC 20525, during regular working hours of 8:30 a.m. to 5:30 p.m.

Publication of notice less than fifteen days prior to the meeting is due to coordination and scheduling difficulties.

For further information contact: Loni Hagerup, Executive Secretariat, at (202) 634–9380.

Signed this 17th day of February, 1987, in Washington, D.C.

Donna M. Alvarado,
Director of ACTION.
[FR Doc. 87–3641 Filed 2–18–87; 8:45 am]
BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

February 13, 1987

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of P.L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404—W Admin. Bldg., Washington, D.C. 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Agricultural Marketing Service

7 CFR Part 56, Regulations for Grading of Shell Eggs and U.S. Standards, Grades, and Weight Classes for Shell Eggs PY–100, PY–157, and PY–206; On occasion; Monthly; Semi-annually; Annually; Daily; State or local governments; Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; 31,553 responses; 5,200 hours; not applicable under 3504(h); Merlin J. Nichols, Jr. (202) 447–3506.

New

- Food and Nutrition Service

Study of Use of Food Stamps by the Homeless to Purchase Low-Cost Prepared Meals; Twice: before and after the new provisions are implemented; Individuals or households; State or local governments; Federal agencies or employees; Non-profit institutions; 4,894 responses; 1,888 hours; not applicable under 3504(h); Linda Esrov (703) 756–3115.

Jane A. Benoit,
Departmental Clearance Officer.
[FR Doc. 87–3526 Filed 2–18–87; 8:45 am]
BILLING CODE 3410–01–M

Forest Service

Whiskeytown-Shasta-Trinity National Recreational Area; Shasta and Clair Engle-Lewiston Units, Shasta and Trinity Counties, CA; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an environmental impact statement for a review and revision of the operation and development plan for the two units of the Whiskeytown-Shasta-Trinity National Recreation Area (NRA) that lie within the Shasta-Trinity National Forests boundary and are managed by the Forest Service.

The Whiskeytown-Shasta-Trinity NRA was designated by Congress in 1968 (Pub. L. 89–336). Of the three units within the NRA, the Shasta and Clair Engle-Lewiston Units are managed by the Forest Service; the Whiskeytown Unit is managed by the Department of the Interior, National Park Service. An operation and development plan for the two units under Forest Service management was developed in 1976 in conjunction with an environmenal impact statement (EIS) that explored alternatives for all aspects of NRA management. A scheduled review of the plan in 1982 resulted in major adjustments that were categorically excluded from documentation under the National Environmental Policy Act. The Shasta-Trinity National Forests are now conducting a second scheduled review, and are considering potentially significant changes from the direction contained in the original plan and analyzed in its EIS.

A range of alternatives for NRA operation and development will be considered, including alternative allowable numbers of overnight vessels, vessel management systems and fee structures, degrees of management for safe boating, and degrees of additional commercial development. The alternative of continuing present management unchanged will be considered. The alternatives for changing management will respond to identified issues and concerns.

Federal, State, and local agencies; holders of special use authorizations within the NRA; and other organizations and individuals who may be affected by or interested in the decision have been invited to participate in the scoping process. This process includes:

1. Identification of potential issues.
2. Identification of significant issues to be examined in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

Public scoping for this proposal began in December, 1986, with the generation of a mailing list of affected and interested parties and the mailing of background material and a response form to parties on the mailing list. More than 1000 scoping packets have been distributed. A news release announcing the scoping process and inviting public involvement was widely distributed. As the decision to prepare an environmental impact statement (rather than an environmental assessment) has been made since the scoping process began, the original deadline for public responses has been extended to accommodate responses to this Notice of Intent.

Zane G. Smith, Regional Forester, Pacific Southwest Region, is the responsible official.

The analysis is expected to take about ten months. The draft environmental impact statement is scheduled to be available by January, 1988. The final environmental impact statement should be completed by May, 1988.

Written comments and suggestions concerning the analysis should be sent to: Robert R. Tyrrel, Forest Supervisor, Shasta-Trinity National Forests, 2400 Washington Avenue, Redding, California 96001. Comments must be postmarked by March 20, 1987.

Questions about the proposed action and environmental impact statement should be directed to Pam Gardiner, EIS Team Leader, Shasta Lake Ranger District, 6543 Holiday Road, Redding, California 96003, phone (916) 275–1587.

Dated: February 12, 1987.

Robert R. Tyrrel,
Forest Supervisor, Shasta-Trinity National Forests.
[FR Doc. 87–3414 Filed 2–18–87; 8:45 am]
BILLING CODE 3410–11–M

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DEPARTMENT OF COMMERCE

Minority Business Development Agency

Soliciting Competitive Applications Under the Minority Business Development Center (MBDC) Program; District of Columbia

February 11, 1987.

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $628,118 for the project performance of July 1, 1987 to June 30, 1988. The MBDC will operate in the Washington, DC., Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $533,900 in Federal Funds and a minimum of $94,218 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is March 20, 1987. Applications must be postmarked on or before March 20, 1987.

ADDRESS: Washington Regional Office, Minority Business Development Agency, U.S. Department of Commerce, Room 6711, Washington, DC 20230, 202/377-8280.

FOR FURTHER INFORMATION CONTACT: Willie J. Williams, Regional Director, Washington Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Willie J. Williams,

Regional Director

February 11, 1987

[FR Doc. 87-3524 Filed 2-18-87; 8:45 am]

BILLING CODE 3510-21-M

Solicitation of Competitive Applications Under the Minority Business Development Center (MBDC) Program; Virginia

February 11, 1987.

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118 for the project performance of July 1, 1987 to June 30, 1988. The MBDC will operate in the Richmond, VA, Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $165,000 in Federal Funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

CLOSING DATE: The closing date for applications is March 20, 1987. Applications must be postmarked on or before March 20, 1987.

ADDRESS: Washington Regional Office, Minority Business Development Agency, U.S. Department of Commerce, Room 6711, Washington, DC 20230, 202/377-8280.

FOR FURTHER INFORMATION CONTACT: Willie J. Williams, Regional Director, Washington Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Willie J. Williams,

Regional Director, Washington Regional Office.

February 11, 1987

[FR Doc. 87-3523 Filed 2-18-87; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Approval of Bristol Bay, AK, Coastal Management Program

ACTION: Bristol Bay, Alaska, Approval of Coastal Management Program.

The Office of Ocean and Coastal Resource Management (OCRM), pursuant to the provisions of the Coastal Zone Management Act (CZMA) 16 U.S.C. 1451 *et seq.*, approved the Bristol Bay Coastal Management Program as an amendment to the Alaska Coastal Management Program on February 6, 1987. The Federal consistency provisions of section 307 of the CZMA shall apply to the BBCMP on February 17, 1987, the date that the BBCMP is filed with the Lieutenant Governor of the State of Alaska. Copies of the Final Findings of Approvability for the BBCMP and response to comments on the environmental assessment of the BBCMP may be obtained by contacting: James Burgess, Office of Ocean and Coastal Resource Management, 1825 Connecticut Avenue, NW., Washington, DC 20235, (202) 673-5158.

Dated: February 13, 1987.

James P. Blizzard,

Acting Director, Office of Ocean and Coastal Resource Management.

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council's Shrimp Management Committee will convene a public meeting, February 24, 1987, at the New Orleans Aviation Board Room, New Orleans International Airport, Suite 316, Kenner, LA, to review proposed studies to evaluate the effect of the 1987 seasonal closure to shrimping off Texas.

For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228-2815.

Dated: February 12, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87-3485 Filed 2-18-87; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Pelagic Species Plan Monitoring Team will convene a public meeting, February 24, 1987, at 1 p.m., at the Western Pacific Council's Conference Room 1605 (address below). The Team will: (1) Review the annual report requirements of the Pelagic Species Fishery Management Plan (FMP), and allocate responsibilities for preparing the annual report; (2) review the criteria and mechanisms for triggering area closures to foreign longliners in the fishery conservation zone around Hawaii and Guam; (3) review recordkeeping requirements for foreign longline fishermen; (4) discuss research needed to improve the Pelagic Species FMP, as well as discuss other Team business.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: February 12, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87-3486 Filed 2-18-87; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

The Western Pacific Fishery Management Council's Bottomfish and Seamount Groundfish Plan Monitoring Team will convene a public meeting, February 19, 1987, at 1 p.m., at the Western Pacific Council's Conference Room 1605 (address below). The Team will: (1) Discuss annual reporting requirements: scheduling and division of labor; (2) discuss Amendment # 1 for bringing American Samoa and Guam within the fishery management plan framework for limited entry purposes, as well as extend the annual report date; (3) prioritize the top three projects in the bottomfish and seamount groundfish section of the Council's *1987 Narrative and Summary of Data and Research Needs;* (4) discuss the summary of the public record on the Council's limited entry proposal for the Northwestern Hawaiian Islands; (5) discuss issues for Council action and Plan Monitoring Team recommendations on the limited entry proposal, as well as discuss any other Team business.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 546-8923.

Dated: February 12, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87-3487 Filed 2-18-87; 8:45 am]

BILLING CODE 3510-22-M

National Oceanic and Atmospheric Administration

Receipt of Application for General Permit to Incidentally Take Marine Mammals

Notice is hereby given that the following application has been received to take marine mammals incidental to commercial fishing operations within the U.S. exclusive economic zone (EEZ) during 1987 as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the regulations thereunder.

Anavar Asociacion, Puerto Pesquero, VIGO, Spain has applied for a Category 1: "Towed or Dragged Gear" general permit to take up to eight (8) small cetaceans and up to eight (8) pinnipeds in the North Atlantic Ocean.

In 1985, Spanish vessels took 4 cetaceans in the U.S. EEZ under a general permit.

The application is available for review in the Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC 20235.

Dated: February 13, 1987.

Nancy Foster,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 87-3525 Filed 2-18-87; 8:45 am]

BILLING CODE 3510-22-M

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[Modification No. 1 to Permit No. 349]

Marine Mammal Permit Modification; Alaska Department of Fish and Game (P66E)

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 349 issued to the Alaska Department of Fish and Game, P.O. Box 3-2000, Juneau, Alaska 99802, on August 24, 1981 (46 FR 43461), is modified as follows:

Section B.7 is replaced by:

"7. This permit is valid with respect to the taking authorized herein until December 31, 1987."

The effective date of this modification is December 31, 1986.

Documents submitted in connection with the above modification and Permit are available for review in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC 20235; and

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802.

Dated: February 12, 1987.

Nancy Foster,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 87-3488 Filed 2-18-87; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit to National Marine Fisheries Service, National Marine Mammal Laboratory (P77#22)

On November 7, 1986, notice was published in the **Federal Register** (51 FR 40474) that an application had been filed by the National Marine Mammal Laboratory, Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115.

Notice is hereby given that on February 12, 1987 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220-222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, N.W., Room 805 Washington, DC; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;

Director, Alaska Region, National Marine Fisheries Service, 709 9th Street, Federal Building, Juneau, Alaska 99802.

Dated: February 12, 1987.

Nancy Foster,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 87-3489 Filed 2-18-87; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Egypt

February 12, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 31, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 19, 1987. For further information contact Kathy Davis, International Trade Specialist, Office of Textile and Apparel, U.S. Department of Commerce, Washington, DC, (202 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

The Bilateral Cotton Textile Agreement of December 7 and 28, 1977, as amended and extended, between the Governments of the United States and the Arab Republic of Egypt establishes specific limits for carded and combed yarn in Category 300/301, sheeting in Category 313, and twills and sateens in Category 317, produced or manufactured in Egypt and exported during the six-month period which began on January 1, 1987 and extends through June 30, 1987. Flexibility in the form of swing is available for application to these categories, except that there will be no swing between the sublimits of Categories 300/301, which are Categories 300 and 301. Charges in excess of the 1986 level of restraint for category 313 will fill the limit and embargo the category on the date the attached directive to Customs becomes effective.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

February 12, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (17 U.S.C. 1854), and the Agreement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton Textile Agreement of December 7 and 28, 1977, amended and extended, between the Governments of the United States and the Arab Republic of Egypt; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 19, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in the following categories, produced or manufactured in Egypt and exported during the period which began on January 1, 1987 and extends through June 30, 1987, in excess of the following levels of restraint:

Category	6-Mo. restraint limit
300/301	4,797,853 pounds of which not more than 4,126,153 pounds shall be in Category 300 and not more than 671,699 pounds shall be in Category 301.
313	7,549,685 square yards.
317	4,046,632 square yards.

The 1987 restraint limits are subject to adjustment in the future, as applicable, according to the provisions of the bilateral agreement of December 7 and 28, 1977, as amended and extended, between the Governments of the United States and the Arab Republic of Egypt which provide, in part, that: specific limits may be exceeded by designated percentages to account for swing, except that no swing will be available between the sublimits of Categories 300/301, which are Categories 300 and 301, provided that a corresponding reduction in equivalent square yards is made in another specific limit during the same agreement year. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

In carrying out this directive, entries of textile products in the foregoing categories, produced or manufactured in Egypt, which have been exported to the United States on and after January 1, 1986 and extending through December 31, 1986, shall, to the extent of any unfilled balances, be charged against the levels established for that twelve-month period. To the extent levels established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-3407 Filed 2-18-87; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Financial Products Advisory Committee Meeting

This is to give notice, purusant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, 10(a) and 41 CFR 101-6.1016(b), that the Commodity Futures Trading Commission's Financial Products Advisory Committee will conduct a public meeting on March 11, 1987, at the Harris Bank in Chicago, Illinois, the meeting will be held between 10:00 a.m. and 3:30 p.m., in the bank's Assembly Room, which is on the eighth floor of the east building, at 111 West Monroe Street. The agenda will consist of:

1. Discussion of the Committee's study of the hedging definition with emphasis on its applicability to financial futures and options.

2. Discussion of issues related to off-exchange trading in derivative instruments.

3. Discussion of issues related to equity index contracts.

4. Other Committee business:

a. Discussion of agenda items and scheduling for future Committee meetings; and

b. Any other business that may properly come before the Committee.

The purpose of this meeting is to solicit the views of the Committee on the above-listed agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on financial products issues. The purposes and objectives of the Advisory Committee are more fully set forth at 50 FR 21332 (May 23, 1985).

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Robert R. Davis, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the pubic who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Commodity Futures Trading Commission Financial Products Advisory Committee, c/o Maureen A. Donley-Hoopes, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, to be received prior to the date of the meeting. Members of the public who wish to make oral statements should also inform Ms. Donley-Hoopes in writing at the above address at least three days prior to the meeting. Provision will be made, if time permits, for an oral presentation of reasonable duration.

Issued in Washington, DC, the 12 day of February, 1987 by the Commission.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 87-3409 Filed 2-18-87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

February 9, 1987.

The USAF Scientific Advisory Board Operational Test and Evaluation Advisory Group will meet at the Air Force Operational Test and Evaluation Center, Kirtland Air Force Base, NM, March 10 and 11, 1987, from 8:00 A.M. to 4:30 P.M. each day.

The purpose of this meeting is to receive briefings on, to discuss, and to advise the Commander, Air Force Operational Test and Evaluation Center, on the Ground Wave Emergency Network operational testing program.

This meeting will involve discussions of classified defense matters listed in section 552b(c) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-3448 Filed 2-18-87; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Medical Research and Development Center (NMRDC) Review Team of the Naval Research Advisory Committee Panel on Laboratory Oversight will meet on March 5-6, 1987,

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at the Naval Medical Research and Development Command, Bethesda, Maryland. The meeting will commence at 8:00 A.M. and terminate at 6:00 P.M. on March 5–6, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to examine the scientific, technical and engineering health of NMRDC. The agenda for the meeting will consist of executive sessions during which the review team will begin to draft a report of their findings and recommendations. These discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classifed pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000 Telephone No. (202) 696–4870.

Dated: Feb. 11, 1987.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy Federal Register Liaison Officer.

[FR Doc. 87–3516 Filed 2–18–87; 8:45 am]

BILLING CODE 3810-AE-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, February 25, 1987 beginning at 1:30 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:30 a.m. at the same location.

The subjects of the hearing will be as follows:

Proposed Amendments to the Comprehensive Plan and Water Code of the Delaware River Basin. Notice was given in the January 16, 1987 **Federal Register**, Vol. 52, No. 11, pp. 1930–1932, that the Commission would hold a public hearing on February 25, 1987 to receive comments on two proposed amendments to its Comprehensive Plan and Water Code in relation to leak detection and repair and service metering. The proposed leak detection and repair amendment would require all purveyors in the Basin distributing water supplies in excess of 100,000 gallons per day (gpd) during any 30-day period to undertake leak detection and repair. The proposed service metering amendment, which would apply to the same group of purveyors, would expand current Commission policy on service metering to cover existing connections. The latter proposal calls for a grace period of ten years for retroactive installation of service meters at existing connections.

Current Expense and Capital Budgets. A revised proposed current expense budget for the fiscal year beginning July 1, 1987, in the aggregate amount of $2,261,000 and a capital budget for the same period in the amount of $1,173,400 in revenue and $737,100 in expenditures. Copies of the current expense and capital budget are available from the Commission on request. This hearing continues that of December 23, 1986.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Philadelphia Electric Company (PECO) D–69–210 CP Final: Revisions 5 and 6.* Applications to extend through December 31, 1987 the Delaware River Basin Commission (DRBC) temporary approvals granted by DRBC Dockets No. D–69–210 CP (FINAL) (Revision No. 5) and D–69–210 CP (FINAL) (Revision No. 6). Revision No. 5 provided for the substitution of dissolved oxygen limitations in place of the temperature restriction and allowed the transfer of existing authorized consumptive use from Cromby Unit 2 and Titus Units 1, 2 and 3, to the Limerick Unit 1 facility. Revision No. 6 provided temporary authorization for consumptive use at Limerick regardless of other constraints in original Docket No. D–69–210 CP (FINAL) whenever the consumptive use has been replaced in equal volume by water released from Still Creek and/or Owl Creek Reservoirs. The facilities and reservoirs are located in Montgomery and Schuylkill Counties, Pennsylvania.

2. *Tarkett, Inc. D–77–32 (Revised).* An application to modify an industrial waste treatment process at a previously approved treatment facility at the applicant's manufacturing plant in Whitehall Township, Lehigh County, Pennsylvania. The plant, which manufactures substrate for vinyl flooring, was previously owned by G.A.F. Corporation and has been purchased by the applicant. The manufacturing process has been modified to eliminate the use of asbestos and this has led to increased TSS and BOD_5 concentrations in the waste water. Effluent discharges to the Lehigh River.

3. *North Penn Water Authority D–80–71 CP (RENEWAL).* An application for the renewal of a ground water withdrawal project to supply up to 4.32 million gallons (mg)/30 days of water from Well No. NP 54. Commission approval on January 27, 1982 was limited to five years. Due to legal problems related to title clearance the well has not been used since it was approved in 1982. Now that title clearance has been resolved, the applicant requests renewed approval for the total withdrawal of 4.32 mg/30 days from Well No. NP 54. The project is located in Skippack Township, Montgomery County, in the Ground Water Protected Area of Southeastern Pennsylvania.

4. *Matamoras Municipal Authority D–81–78 CP (RENEWAL).* An application for the renewal of a ground water withdrawal project to supply up to 7.5 mg/30 days of water to the applicant's distribution system from Well No. 8. Commission approval on June 23, 1982 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells be increased from 7.5 mg/30 days to 9 mg/30 days. The project is located in Matamoras Borough, Pike County, Pennsylvania.

5. *Meter Services Company D–85–35 CP.* A ground water withdrawal project to supply the first phase of a proposed 972 unit housing development named "The Village of Buckingham Springs" in Buckingham Township, Bucks County, Pennsylvania. The combined withdrawal rate from Well No. 1 (standby) and No. 2 (primary source) will be 60,000 gallons per day (gpd). The wells are located south of Route 413 between the villages of Pineville and Buckingham and are in the Southeastern Pennsylvania Ground Water Protected Area.

6. *Delaware Valley Industrial Sewage Company, Inc. D–85–63.* A sewage treatment project to supplement existing treatment facilities, serving the Fort Washington Industrial Park and portions of Upper Dublin Township, operated by the Delaware Valley Industrial Sewage Company, Inc., in Upper Dublin Township, Montgomery County, Pennsylvania. Extended aeration, flow equalization, and chlorination equipment will be added to the existing plant to increase treatment capacity from 0.60 mgd to 0.85 mgd. This will enable the applicant to provide treatment for 0.25 mgd of sanitary sewage from Upper Dublin Township. Treated effluent will continue to discharge to Pine Run, a tributary to Wissahickon Creek.

7. *Tioga Leasing Company, Inc. (Mountain Village Mobile Home Park) D–85–71.* Approval is sought for an expansion of the Mountain Village Mobile Home Park sewage treatment facility located in Longswamp Township, Berks County, Pennsylvania. Existing plant design capacity is 28,000 gpd. The maximum flow rate currently is 41,000 gpd. The expanded plant is designed to treat 64,000 gpd. The applicant plans to expand the plant to treat 0.16 mgd in the near future. The treated effluent would continue to be discharged to an unnamed tributary of Perkiomen Creek.

8. *Evesham Municipal Utilities Authority D–86–36 CP.* An application for a sewage treatment plant expansion project. The applicant's existing 1.25 mgd facility requires an additional 0.25 mgd flow capacity to serve the projected future growth in the service area. The Woodstream Sewage Treatment Plant provides tertiary treatment for a portion of Evesham Township, Burlington County, New Jersey. The expanded plant is designed to serve residential and commercial users, amounting to an equivalent population of approximately 15,000 persons, through the year 2000. Treated effluent will continue to discharge to South Branch Pennsauken Creek at River Mile 105.4–3.4–10.2.

9. *Hercules Incorporated D–86–45.* An application for approval of an existing ground water withdrawal not previously approved by the DRBC and seven new ground water withdrawal wells. The increased withdrawal and additional wells are required as part of a ground water decontamination project. Related treatment plant modifications are included in this project. The former 0.072 mgd biological wastewater treatment plant is now designed to process an additional 0.288 mgd of contaminated ground water that will be pumped from beneath the Higgins Plant site. The treatment plant effluent will continue to be discharged to the Delaware River in Water Quality Zone 4 through outfall 001. The treatment plant also processes the sanitary waste from 50 employees. The project is located in Greenwich Township, Gloucester County, New Jersey.

10. *City of Philadelphia D–86–56 CP.* An application for approval of pier modification and dredging operations in order to modify the docking facilities to serve as the applicant's wastewater treatment plant sludge loading and receiving terminals. Both piers are located in Philadelphia, Pennsylvania. Sludge from the Northeast STP will be pumped to the proposed loading terminal (Pier 217N) where it will be loaded onto one of two proposed one million gallon barges. These barges will convey the sludge down the Delaware River and up the Schuylkill River to one of the two proposed receiving terminal piers. The sludge will be off-loaded and processed at the proposed sludge processing facility. The 44,000 cubic yards of dredgings will be disposed at an approved site.

11. *Hilltown Township Water and Sewer Authority D–86–60 CP.* An application for approval of a ground water withdrawal project to supply up to 4.05 mg/30 days of water to the applicant's public water system from new Well No. 2. The project is located in Hilltown Township, Bucks County, Pennsylvania and is in the Southeastern Pennsylvania Ground Water Protected Area.

12. *City of Coatesville D–86–63 CP.* An application for a wastewater treatment plant upgrade project to serve the City of Coatesville plus portions of Caln and Valley Townships in Chester County, Pennsylvania. The proposed modifications will improve nitrogen-ammonia treatment without expanding the 3.85 mgd (design average flow) plant. The high quality secondary treatment plant effluent will continue to be discharged to the West Branch Brandywine Creek through the existing outfall at River Mile 70.73–1.5–20.00–15.5.

13. *Historical Developers of Pennsylvania, Inc. D–86–73.* A revised application by the project developers to reduce the flood damage potential for the Union Mills condominium project which was rejected by the Commission on December 23, 1986. The applicant has revised the project plans which incorrectly identified the 100 year base flood elevation as 68.25 feet. The 100 year flood elevation established in the Flood Insurance Study for the Borough of New Hope, Pennsylvania is 67.0 feet (NVGD), making DRBC's flood protection elevation 68.0 feet (NGVD). The first floor of Building "A" is at elevation 67.0. The applicant proposed to flood-proof these five units in Building "A" to the 68.0 foot flood protection elevation and has raised the first floor level in all other residential buildings to elevation 69.0 feet (NGVD). The applicant also proposed to provide the condo owners with an upgraded facility to withdraw water from the Delaware River, and treat a daily average of 13,000 gallons for domestic water supply.

14. *AT&T Technology Systems D–86–79.* An application for approval of a ground water withdrawal project to supply up to 22.3 mg/30 days of water to the applicant's manufacturing facility from existing Well No. 1 not previously approved by the Commission. The project is located in Muhlenberg Township, Berks County, Pennsylvania.

15. *Lehman-Pike Development Corporation D–86–80.* An application for a sewage treatment plant modification at the Stoney Hollow and Saw Creek Village Treatment Facility in Lehman Township, Pike County, Pennsylvania. The 0.05 mgd two stage treatment plant can be operated as a single stage 0.1 mgd plant when necessary. The secondary treatment facility is designed to serve 2000 persons through the year 1990. Treatment plant effluent discharges to Saw Creek approximately one mile north of its confluence with Bush Kill.

16. *Willingboro Municipal Utilities Authority D–87–1.* An application for a rerating of the 4.2 mgd Willingboro Municipal Utilities Authority Wastewater Treatment Plant to a design flow of 4.812 mgd. The facility is located in the township of Willingboro, Burlington County, New Jersey. The plant will continue to provide secondary treatment of sewage for the Townships of Burlington, Edgewater Park, and a portion of Westampton. Treated wastewater will continue to discharge to Rancocas Creek at River Mile 111.06–4.4 in Zone 2 of the Delaware River Basin.

17. *Montgomery County Sewer Authority D–87–6 CP.* An application for the expansion of Oaks Wastewater Treatment Plant, located off Brower Road, in Upper Providence Township, Montgomery County, Pennsylvania. The existing 3.7 mgd modified activated sludge plant provides secondary treatment. The applicant proposes to expand the plant to treat a design average flow of 8.5 mgd. The project is designed to serve an equivalent population of over 75,700 persons through the year 2005. Treatment facilities will continue to serve all, or portions of Upper Providence, Lower Providence, Perkiomen, Skippack, Lower Frederick, Worcester, and Limerick Townships, plus Collegeville, Trappe, Royersford, and Schwenksville Boroughs, all within Montgomery County. After secondary treatment, the effluent will be discharged to the Schuykill River through the existing outfall.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are

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available in single copies upon request. Please contact David B. Everett concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: February 10, 1987.

Susan M. Weisman,

Secretary.

[FR Doc. 87-3436 Filed 2-18-87; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF EDUCATION

[CFDA 84-133A and 84.133D]

Extension of Closing Date for Applications for Research and Demonstration Projects and Knowledge Dissemination and Utilization Projects Under the National Institute on Disability and Rehabilitation Research (NIDRR) for Fiscal Year 1987

Purpose: On January 12, 1987, NIDRR (formerly the National Institute of Handicapped Research), published a notice in the **Federal Register** at 52 FR 1286 establishing March 13, 1987 as the closing date for the transmittal of applications for new awards under the Research and Demonstration and Knowledge Dissemination and Utilization Programs.

Because application packages were not readily available, NIDRR is extending the closing date to permit potential applicants more time to prepare their applications. Applications will be accepted only in response to the priorities which were published in that same issue of the **Federal Register** at 52 FR 1282-86. NIDRR intends to fund these projects through grants or cooperative agreements; the estimated funding levels in this notice are estimates for each year of the award.

Deadline for Transmittal of Applications: April 20, 1987.

Applications Available: January 20, 1987.

Available Funds: $2,875,000.

CFDA No.	Title of priority	Available funds	Est. average award	Est. of awards	Anticipated project period (months)
84.133A	Supported employ. in traumatic brain injury	$150,000	$75,000	2	36
84.133A	Supported employ. for chronically mentally ill	75,000	75,000	1	36
84.133A	Model projects for traumatic brain injury	1,200,000	300,000	4	60
84.133A	New rehab. strategies for traumatic brain injury	200,000	100,000	2	36
84.133A	Personal assistance services	200,000	100,000	2	36
84.133A	Traumatic brain injury in young children	100,000	100,000	1	36
84.133D	Public educ. in traumatic brain injury	150,000	150,000	1	24
84.133D	Least restrict. env./deaf students	150,000	150,000	1	36
84.133D	Demographic data analyses	200,000	200,000	1	36
84.133D	Database network/independent living centers	250,000	85,000	3	24
84.133D	International exchange/experts	200,000	200,000	1	36

Applicable Regulations: (a) Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78, (b) National Institute on Disability and Rehabilitation Research Regulations, 34 CFR Parts 350, 351, and 355, and (c) the final funding priorities for this program when they become effective.

For Applications or Information Contact: National Institute on Disability and Rehabilitation Research, U.S. Department of Education, 400 Maryland Avenue, SW., Switzer Building, Room 3070, Washington, DC 20202. Telephone: (202) 732-1207; deaf and hearing impaired individuals may call (202) 732-1198 for TTY services.

Program Authority: 29 U.S.C. 760-762.

Dated: February 13, 1987.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 87-3511 Filed 2-18-87; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No: 84.101 C]

Invitation for Applications for New Awards Under the Vocational Education Program for Hawaiian Natives for Fiscal Year 1987

Purpose: To provide assistance to any organization, recognized by the Governor of Hawaii, and primarily serving and representing Hawaiian natives to plan, conduct, and administer vocational educational projects or portions of projects benefiting Hawaiian natives.

Deadline for Transmittal of Applications: April 13, 1987.

Deadline for Intergovernmental Review Comments: June 12, 1987.

Applications Available: February 20, 1987.

Funds Available: $1,912,873.

Estimated Average Size of Award: $1,912,873.

Estimated Number of Awards: 1.

Project Period: 12 months.

Applicable Regulations: (a) The Vocational Education Indian and Hawaiian Natives Program Regulations, 34, CFR Part 410, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

Criteria for Evaluating Applications: The Secretary assigns the fifteen points, reserved in 34 CFR 410.30(b), to the Selection Criterion (b)—Plan of Operation—in 34 CFR 410.31(b) for a total of 35 points for the criterion.

For Applications or Information Contact: Ronald Castaldi, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue SW., Room 519, Reporters Building, Washington, DC 20202. Telephone: (202) 732-2359.

Program Authority: 20 U.S.C. 2313.

Dated: February 12, 1987.

John K. Wu,

Acting Assistant Secretary for Vocational and Adult Education.

[FR Doc. 87-3420 Filed 2-18-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Continued Assistance to State Legislatures in Their Consideration of Radioactive Waste Repository Siting Issues in the Implementation of the Nuclear Waste Policy Act of 1982

AGENCY: Department of Energy (DOE).

ACTION: Notice of restriction of eligibility for cooperative agreement award number DE-FC01-87RW00119 with National Conference of State Legislatures (NCSL).

SUMMARY: The United States Department of Energy (DOE), Office of Civilian Radioactive Waste Management, announces that pursuant to 10 CFR 600.7(b) it intends to award, on a restricted eligibility basis, a Cooperative Agreement to the NCSL to continue to provide guidance and assistance to state legislatures regarding DOE's implementation of the Nuclear Waste Policy Act of 1982. Under the proposed Cooperative Agreement NCSL would continue assistance to state legislatures in their consideration of high-level radioactive waste repository siting and related issues.

Eligibility—NCSL has a special and unique institutional relationship with its member state legislatures, which makes the NCSL the single appropriate entity with which to negotiate the proposed Cooperative Agreement.

The period of this Cooperative Agreement will be sixty months with an estimated cost of $1,443,072.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Calvin Lee, MA-453.2, 1000 Indepedence Avenue, SW., Washington, DC 20585.

Issued in Washington, DC, on February 12, 1987.

Arnold A. Gjerstad,

Acting Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 87-3453 Filed 2-18-87; 8:45 am]

BILLING CODE 6450-01-M

Publication of Finding of No Significant Impact, Remedial Action at the Tuba City Uranium Mill Tailings Site, Tuba City, AZ

AGENCY: Department of Energy.

ACTION: Finding of No Significant Impact.

SUMMARY: The Department of Energy (DOE) has prepared an environmental assessment (DOE/EA-0317) on the proposed remedial action at the inactive uranium milling site located in Tuba City, Arizona. Based on the analyses in the EA, the DOE has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.). Therefore, the preparation of an Environmental Impact Statement (EIS) is not required.

Background

On November 8, 1978, the Uranium Mill Tailings Radiation Control Act (UMTRCA), Pub. L.95-604, was enacted in order to address a Congressional finding that uranium mill tailings located at inactive processing sites may pose a potential health hazard to the public. On November 8, 1979, DOE designated 24 inactive processing sites for remedial action under Title I of the UMTRCA including the inactive mill tailings site at Tuba City, Arizona (44 FR 74892).

UMTRCA charges the Environmental Protection Agency (EPA) with the responsibility for promulgating remedial action standards for inactive mill sites. The purpose of these standards is to protect the public health and safety and the environment from radiological and nonradiological hazards associated with residual radioactive materials at the sites. The final standards (40 CFR Part 192) were published on January 5, 1983, and became effective on March 7, 1983. On September 3, 1985, the United States Tenth Circuit Court of Appeals set aside the EPA water protection standards 40 CFR Part 192.20(a) (2)-(3), and the EPA has not yet reissued modified standards.

Under UMTRCA, all remedial actions must be selected and performed with the concurrence of the Nuclear Regulatory Commission (NRC). The DOE has proposed to continue to apply the general standards, and NRC has concurred in this plan noting that its concurrence is conditioned on further review against EPA's final ground-water protection standards. When EPA issues revised standards, DOE will review its decision about ground-water restoration and will make every reasonable effort to ensure that water resources are adequately protected.

Also under UMTRCA, the DOE, the Navajo Nation, and the Hopi Tribe entered into a cooperative agreement, effective March 29, 1985, for remedial action at the Tuba City designated site. Under the agreement, the Navajo Nation and the Hopi Tribe must concur with the remedial action plan to be developed for the site. The DOE will provide 100 percent of the engineering and construction costs.

Project Description

The Tuba City mill tailings site is located in northeastern Arizona, in Coconino County. The closest town is Tuba City which includes Moencopi Village, six miles to the west. Flagstaff is about 86 miles southwest of the site.

The 105-acre Tuba City site, as designated by the DOE, is located in Sections 17 and 20, Township 32 North, Range 12 East, Gila and Salt River Meridian, at 36 degrees 8 minutes 30 seconds north latitude and 111 degrees 8 minutes 6 seconds west longitude.

The mill was built in 1956 by the Rare Metals Corporation of America, who operated the mill from 1956 to 1962. In 1962, the Rare Metals Corporation merged with the El Paso Natural Gas Company which operated the mill until 1966.

In 1968, the El Paso Natural Gas Company, in cooperation with the U.S. Bureau of Mines, applied a chemical stabilizer to the pile. By 1974, the chemical stabilization had disintegrated and was ineffective due to human and livestock intrusion onto the surface of the tailings pile.

The total designated site covers 105 acres. This includes the tailings pile (built in three segments), three former emergency spill ponds (approximately 35 acres), mill and office buildings, several concrete pads and foundations, and buried conduits including electrical and water lines.

The tailings pile covers 25 acres to an average depth of 17 feet. The eastern portion of the pile consists of acid tailings; alkaline tailings from the carbonate leach circuit are in the center and the western portions of the pile. The tailings site has been fenced with a hogwire type fence.

The mill building was dismantled and placed on the site by DOE during February, 1986. All of this material will be consolidated with the tailings as described below.

Proposed Action

The proposed action is to stabilize the Tuba City tailings pile at its present location. All contaminated materials from around the pile would be covered with compacted earth to inhibit radon emanation and water infiltration. A rock erosion barrier would be placed over the pile to inhibit wind and water erosion and discourage animal and human intrusion. These actions will result in compliance with the EPA standards.

The stabilized pile would be roughly triangular in shape. The tailings and contaminated materials would be covered with compacted earth and graded rock for erosion protection. The stabilized tailings pile would have maximum sideslopes of 20 percent and a topslope of two to three percent. The average height of the pile above the surrounding terrain would be approximately 33 feet.

The rock erosion barrier on top of the pile would tie into a layer of rock armoring on the south side of the pile and into rock-armored drainage channels on the north, east, and west sides of the pile. A drainage ditch would divert surface runoff around and away from the pile. Posts with warning signs would be placed around the pile.

The stabilized tailings pile would occupy an area of 48 acres situated entirely within the designated site boundary. The entire disposal area after remedial action would cover 60 acres. After remedial action, disturbed areas surrounding the stabilized tailings pile would be restored to a condition

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compatible with the surrounding terrain by recontouring to promote surface-water drainage and revegetating as required for erosion control. Approximately 45 acres of the present site would be released for any use consistent with local land use controls following the completion of remedial action.

Alternatives to the proposed action were analyzed in the EA. These included no action and disposal of the tailings at the Fivemile Wash alternate disposal site, located approximately 16 miles southwest of the site.

Finding

The DOE has considered the concerns expressed during public meetings and cooperating agency reviews about the environmental and health impacts from the purposed remedial action. In general, concerns relate to the impacts based on the design of the stabilized pile, impacts from radiation released during remedial action, impacts on the ground water, impacts from the contaminated ground water, and air quality impacts.

The EA discusses the environmental impacts resulting from the proposed remedial action and identifies mitigation measures that will be implemented to assure that these effects are insignificant. The Finding of No Significant Impact for stabilization-in-place at the Tuba City site is based on the following findings which are supported by the information and analyses in the EA:

• Radiation release—The increased exposure above background levels to the general population during the remedial action will be extremely low. The estimated excess health effects were projected to be 0.01 additional cancer deaths due to radiation from the tailings during a 12-month remedial action period. With no action, these projections would increase to 0.02 per year. The projected excess health effects for remedial action workers were 0.005 per year.

The DOE will closely monitor the release of radon and particulates during the remedial action. The release of radon and contaminated particulates will be reduced by dampening contaminated material with water or chemical dust suppressants, by limiting contaminated material-handling operations during adverse weather conditions, and by using trucks with tight-fitting tailgates and covers when the material is to be moved. Drainage controls and waste-water retention ponds will be constructed to prevent contaminated water from leaving the site.

Human exposure to residual radioactive material will be reduced further by restricting access, by providing worker training programs, and by the use of necessary monitoring and protective equipment by the remedial action workers.

The long-term total excess health effects after remedial action for stabilization-in-place and the no action alternatives are 0.0005 and 0.02 per year, respectively. The calculations for the no action alternative do not consider the dispersal of the tailings by natural erosion or by man; thus, the actual total excess health effects may be greater.

On this basis, it was determined that the radiation impacts from the proposed action are insignificant.

• Air Quality—Dispersion modeling indicated that combustion emissions from construction equipment will not exceed Federal primary or secondary standards for carbon monoxide, hydrocarbons, sulfur dioxide, and total suspended particulates (TSP). The nitrogen oxides emission would exceed the EPA significant level of 40 tons per year; however, Prevention of Significant Deterioration regulations are not applicable for temporary emission sources such as those from remedial action.

Fugitive dust emissions estimated through the use of a computer simulation model indicated that activities at the site and along the transportation route would exceed the Federal primary standards.

However, the modeling used is conservative and overpredicts potential impacts. The parameters that would tend to overpredict impacts are the assumption of light winds blowing persistently for six consecutive hours from the exact same direction, the assumption of stable meteorological conditions during the same six-hour period, and the assumption of maximum equipment emissions and average wind erosion emissions under the meteorological scenario assumed above. On this basis it was determined that the air quality impacts of the proposed action will be temporary and will not be significant.

• Surface-water quality—Impacts from surface runoff from the tailings pile during remedial action would be minimal because of water retention facilities and erosion control measures.

After remedial action, surface runoff created by excessive rainfall would be controlled by features incorporated into the remedial action design to prevent erosion of the stabilized pile. The sideslopes of the pile would be limited to five horizontal to one vertical (20 percent) and the top of the pile would be gently sloped (two to three percent) to promote drainage from the pile with non-erosion flow velocities. A combination of ditches and other hydraulic facilities would be constructed to direct surface runoff around and away from the pile. On this basis, it was determined that the impacts on surface-water resources would not be significant.

• Ground-water quality—The proposed remedial action would reduce the amount of precipitation which percolates through the pile. The stabilized pile would be covered with low-permeability materials which would present a barrier to infiltration. In addition, the pile would be sloped so that precipitation would run off instead of collecting in depressions. Therefore, stabilization-in-place would reduce the long-term amount of ground-water contamination produced by the pile.

There is presently no use of ground water that is contaminated and that may become contaminated as the contaminant plume migrates southeastward. The proposed action would have no effect on the existing water use and contaminant plume. The contaminants would continue to move down-gradient toward Moenkopi Wash.

There are no floodplains of prennial streams, wetlands, endangered or threatened species, or archaeological resources in the areas that would be affected by the remedial action.

Based on the above, it was determined that the impacts on groundwater resources would not be significant.

In summary, based on the analyses in the EA, the DOE has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.). Therefore, the preparation of an EIS is not required.

Single copies of the EA are available from: James R. Anderson, Project Manager, U.S. Department of Energy, UMTRA Project Office, 5301 Central Avenue, NE., Suite 1720, Albuquerque, New Mexico 87108, (505) 844–3941.

FOR FURTHER INFORMATION, CONTACT: Dr. Carolyn Osborne, Office of NEPA Project Assistance, Office of the Assistant Secretary for Environment, Safety and Health, Room 3G–092, Forrestal Building, Washington, DC 20585, (202) 586–4600.

Issued at Washington, DC, October 28, 1986.

Grover A. Smithwick,

Principal Deputy Assistant Secretary, Environment, Safety and Health.

[FR Doc. 87–3393 Filed 2–18–87; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Issuance of Proposed Remedial Order to LaJet, Inc., LaJet Petroleum Company and Texas NAPCO, Inc., and Opportunity for Objection

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of issuance of proposed remedial order.

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the U.S. Department of Energy ("DOE") hereby gives notice of a Proposed Remedial Order ("PRO") which was issued to the following firms on January 22, 1987:

LaJet, Inc., 14190 E. Evans Avenue, Aurora, Colorado 80014
LaJet Petroleum Company, 3130 Antilley Road, Abilene, Texas 79606
Texas Napco, Inc., 3130 Antilley Road, Abilene, Texas 79606

The PRO charges that the Refiners Monthly Reports filed on behalf of LaJet, Inc. ("LaJet") understated LaJet's crude oil receipts by erroneously reporting that certain crude oil was processed by LaJet for the account of another refiner. The PRO finds that the substance of the transactions shows that the crude oil was processed for the account of LaJet. As a result of LaJet's misreporting, in violation of the requirements of 10 CFR 211.66(h), the Entitlements Program suffered a loss in the amount of $5,558,048 before interest. The PRO further charges that LaJet's activities circumvented and contravened the DOE's entitlements regulations, 10 CFR 211.67, in violation of 10 CFR 205.202.

The violation period is May through September 1977. The impact of the violations was spread nationwide through the Entitlements Program. LaJet Petroleum Company, successor to LaJet's refining business, and Texas Napco, Inc., former parent of LaJet, are named in the PRO as jointly and severally liable along with LaJet.

A copy of the PRO may be obtained from the Freedom of Information Public Reading Room, U.S. Department of Energy, 1000 Independence Avenue, SW., Room IE–190, Washington, DC 20585.

Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Room 6F–055, 1000 Independence Avenue, SW., Washington, DC 20585, in accordance with 10 CFR 205.193. A person who fails to file a Notice of Objection shall be deemed to have admitted the findings of fact and conclusions of law stated in the PRO. If a Notice of Objection is not filed in accordance with Section 205.193, the PRO may be issued as a final Remedial Order by the Office of Hearings and Appeals.

Issued in Washington, DC on the 6th day of February 1987.

Marshall A. Staunton,

Administrator, Economic Regulatory Administration.

[FR Doc. 87–3389 Filed 2–18–87; 8:45 am]

BILLING CODE 6450–01–M

Proposed Remedial Order to McAlister Enterprises, Inc. (Formerly Questor Petroleum Corp.) and Kyle S. McAlister

AGENCY Economic Regulatory Administration. DOE.

ACTION Notice of proposed remedial order.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration ("EPA") of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to McAlister Enterprises, Inc. (Formerly Questor Petroleum Corp.) and Kyle S. McAlister of 1150 Highway 46 South, New Braunfels, Texas. This Proposed Remedial Order alleges violations in the amount of $42,539,059.30, plus interest resulting from violations of 10 CFR 212.186, 10 CFR 205.202 and 10 CFR 210.62(c) during the period July 1979 through November 1980. The effect of the alleged violations is nationwide.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: Office of Freedom of Information Reading Room, United States Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585.

Within fifteen (15) days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, United States Department of Energy, Forrestal Building, Room 6F–078, 1000 Independence Avenue, SW., Washington, DC 20585, in accordance with 10 CFR 205.193. The Notice shall be filed in duplicate, shall briefly describe how the person would be aggrieved by issuance of the Proposed Remedial Order as a final order and shall state the person's intention to file a Statement of Objections.

Pursuant to 10 CFR 205.193(c), a person who files a Notice of Objection shall on the same day serve a copy of the Notice upon:

Sandra K. Webb, Director, Economic Regulatory Administration, U.S. Department of Energy, One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002

and upon:

Marshall A. Staunton, Acting Solicitor, Economic Regulatory Administration, U.S. Department of Energy, Room 3H–017, RG–40, 1000 Independence Avenue, SW., Washington, DC 20585

Issued in Washington, DC on February 3, 1987.

Marshall A. Staunton,

Acting Solicitor, Economic Regulatory Administration.

[FR Doc. 87–3392 Filed 2–18–87; 8:45 am]

BILLING CODE 6450–01–M

Proposed Remedial Order Issued to: Murphy Oil Corp., Murphy Oil USA, Inc., Ocean Drilling and Exploration Co., and ODECO Oil and Gas Co.

AGENCY Economic Regulatory Administration, DOE.

ACTION Notice of proposed Remedial Order.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA), Department of Energy, hereby gives Notice of a Proposed Remedial Order which was issued on December 15, 1986 to Murphy Oil Corporation and Murphy Oil USA, Inc., 200 Peach Street, El Dorado, Arkansas 71730, and ODECO Oil & Gas Company (formerly known as ODECO One Thirteen, Inc. and Ocean Production Company) and Ocean Drilling & Exploration Company, 1600 Canal Street, New Orleans, Louisiana 70112, (collectively referred to as "the Companies"). The Proposed Remedial Order sets forth findings of fact and conclusions of law concerning the Companies' pricing, in excess of maximum lawful prices, of first sales of crude oil produced and sold in the United States. Such pricing was in violation of the Phase IV Petroleum Price Regulations, formerly at 6 CFR Part 150, and the Mandatory Petroleum Price Regulations as they appeared in 10 CFR Parts 210, 211, and 212. These regulations were in effect prior to January 28, 1981. The amount of overcharges by the Companies on properties the ERA audited, during the period September 1, 1973 through

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December 31, 1979, and interest thereon through October 31, 1986, totals not less than $37,888,769. The impact of the alleged violations is nationwide.

A copy of the Proposed Remedial Order may be obtained from: Office of Freedom of Information, Reading Room, Room 1E–190, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Within 15 days of publication of this Notice, any aggrieved person may file a Notice of Objection in accordance with 10 CFR 205.193. A person who fails to file a Notice of Objection shall be determined to have admitted the findings of fact and conclusions of law as stated in the Proposed Remedial Order. If a Notice of Objection is not filed as provided by 10 CFR 205.193, the Proposed Remedial Order may be issued as a final order. Such Notice of Objection shall briefly describe how the person would be aggrieved by issuance of the Proposed Remedial Order as a final order, shall state the person's intention to file a Statement of Objections, and shall be filed in duplicate with: Office of Hearings and Appeals, U.S. Department of Energy, Room 6F–078, 1000 Independence Avenue, SW., Washington, DC 20585.

Pursuant to 10 CFR 205.193, a person who files a Notice of Objection shall on the same day serve a copy of the Notice upon:

Edward W. Gass, Associate Solicitor, Office of the Solicitor, Economic Regulatory Administration, U.S. Department of Energy, RG–43, Room 3F–070, 1000 Independence Avenue, SW., Washington, DC 20585

and upon:

John G. Wesner, Computer Service and Litigation Support Group, Economic Regulatory Administration, U.S. Department of Energy, 1403 Slocum, Dallas, Texas 75207

Issued in Washington, DC, this 3rd day of February, 1987.

Marshall A. Staunton,

Acting Solicitor, Office of the Solicitor, Economic Regulatory Administration, U.S. Department of Energy.

[FR Doc. 87–3391 Filed 2–18–87; 8:45 am]

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Energy Information Administration

Annual Report on Natural and Supplemental Gas Supply and Disposition

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Energy Information Administration (EIA), as required by the Paperwork Reduction Act of 1980, conducts a consultation program to provide the general public with an opportunity to comment on proposed and continuing report forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assesed.

At this time, EIA solicits comments on the extension of its Natural Gas Program Package. The forms which cover natural gas supply and disposition are described in the Supplementary Information Section of this Notice. They are the "Annual Report of Natural and Supplemental Gas Supply and Disposition, "EIA–176; "Underground Gas Storage Report," EIA–191; "Annual Quantity and Value of Natural Gas Report," EIA–627; "Monthly Report of Natural Gas Purchases and Deliveries to Consumers," EIA–857; and "Survey of Surplus Natural Gas Supplies," IE–400. Interested persons are asked to review these forms and provide comments to the contact person described below.

DATE: Written comments must be submitted within 30 days of the publication of this notice.

ADDRESS: Comments should be sent to Mr. James W. McCarrick, EI–441, Reserves and Natural Gas Division, Office of Oil and Gas, Energy Information Administration, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone (202) 586–6198.

FOR FURTHER INFORMATION OR COPIES OF FORMS AND INSTRUCTIONS: To obtain additional information or copies of the proposed forms, contact James W. McCarrick at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In accordance with provisions of the Department of Energy Organization Act (Pub. L. 95–91), the Energy Information Administration (EIA) is responsible for carrying out comprehensive national energy data programs including the compilation and dissemination of economic and statistical information. EIA's Natural Gas Program Package forms are designed to provide information for use by the Congress, Federal and State agencies, industry, and other interested parties on the status of natural gas supply and disposition. In keeping with its responsibilities, EIA is planning to request a 3-year extension of the forms used to gather information for this program.

The Form EIA–176, "Annual Report of Natural and Supplemental Gas Supply and Disposition," is designed to collect data on natural, synthetic, and other supplemental gas supplies, disposition, and certain costs and revenues by State. Form EIA–191, "Underground Gas Storage Report," collects data on the location, ownership, capacity, and operations of all active underground storage facilities operated by intrastate companies. Form EIA–627, "Annual Quantity and Value of Natural Gas Report," collects information from the appropriate State agencies which collect data concerning natural gas production, the value of marketed natual gas and the number of producing gas wells, in order to provide an annual measure of these elements. Form EIA–857, "Monthly Report of Natural Gas Purchases and Deliveries to Consumers," collects information on the delivered cost of natural gas to distribution systems and the quantity and prices of natural gas consumed, by the market sector, on a current monthly basis by State and Region. Form IE–400, "Survey of Surplus Natural Gas Supplies," collects information from a group of gas companies (producers, pipelines and distribution companies) to enable the Department of Energy (DOE) to monitor the availability of surplus natural gas supplies.

II. Current Action

EIA proposes to make no major substantive changes to the EIA–627 and IE–400. Forms EIA–176, 191, and 857 will be updated to reduce respondent burden and to improve the quality of the data collections.

For the EIA–176, EIA is proposing to reduce respondent burden by eliminating Part VII, Supplemental Sheet (Receipts and/or deliveries of more than 1,000,000 Mcf from or to individual companies), in the absence of a convincing rationale for its continuation. EIA is also proposing a shortened version of the form for filing by certain distribution companies with limited activities as a means of reducing confusion and also reducing their respondent burden. The addition of one line item to provide for reporting of gas transported to commerical consumers is proposed. On the EIA–191, EIA is proposing to eliminate the mid-month filings for the months of December through March, and to extend the monthly filing deadlines by 5 days. This action is being taken in conjunction with an identical revision by the Federal Energy Regulatory Commission (FERC) to Form FERC–8, "Underground Gas Storage Report," which is filed by jurisdictional natural gas companies that operate underground gas storage facilities. Proposed changes to the EIA–857 include changing from reporting on an equity basis to reporting on a physical custody basis. The changes will require the addition of one line item to the form, to provide for reporting of gas transported to commerical customers and minor changes to reporting instructions.

III. Request for Comments

EIA invites the public to comment on these proposals within 30 days of the publication of this notice. The following general guidelines are provided to assist in the preparation of responses. When commenting, please indicate the form(s) to which your comments apply.

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. How many hours, including time for preparation and administrative review, would you require to complete and submit the required form(s)?

E. What is the estimated cost of completing the form(s), including the direct and indirect costs associated with the data collection? Direct cost should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form(s) be improved?

G. Do you know other Federal, State, or local agencies that collect similar data? If you do, specify the agency, the data elements, and the means of collection.

As a Potential Data User

A. Can you use data at the levels of detail indicated on the form(s)?

B. For what purposes would you use the data? Be specific.

C. How could the form(s) be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

EIA is also interested in receiving comments from persons regarding their views on the need for the collection of the information contained in these forms.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of these data surveys; they also will become a matter of public record.

Statutory Authority: Sections 5(a) and (b), 13(a) and (b), and 52 of Pub. L. 93–275, Federal Energy Administration Act of 1974, as amended (15 U.S.C. 764(a) and (b), 772(a) and (b), and 790(a).

Issued in Washington, DC on February 11, 1987.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 87–3390 Filed 2–18–87; 8:45 am]

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Federal Energy Regulatory Commission

[Project No. 4359–003 et al.]

Hydroelectric Applications (Gem Irrigation District et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Amendment of License.

b. Project No.: 4359–003.

c. Date Filed: September 3, 1986.

d. Applicant: Gem Irrigation District, et al.

e. Name of Project: Owyhee Tunnel No. 1.

f. Location: Owyhee River in Malheur County, Oregon.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Harry P. Hosey, Hosey & Associates Engineering Company, 2820 Northup Way, Suite 190, Bellevue, WA 98004, (206) 827–8661.

i. Comment Date: March 16, 1987.

j. Description of Project: The project as licensed consists of: (a) the 3.5-mile-long, 16.6-foot-diameter Tunnel No. 1 from the U.S. Bureau of Reclamation's 417-foot-high Owyhee Dam; (b) a 15-foot-diameter bifurcation at elevation 2,573 feet; (c) a 120-foot-long, 11-foot-diameter steel pipe; (d) a 120-foot-long, 7-foot-diameter bypass pipe; (e) a powerhouse containing one generating unit rated a 5 MW; (f) an 80-foot-long tailrace; (g) an energy dissipating structure; (h) the 4.16-kV generator leads and the 5.5–MVA, 4.16/69-kV, 3-phase, step-up transformer; and (i) a 500-foot-long, 69-kV transmission line.

As amended the project would consist of: (a) a bifurcation on the existing Tunnel No. 1; (b) a 12-foot-square, 95-foot-long reinforced concrete-lined penstock; (c) an underground powerhouse containing a generating unit rated at 8.0 MW under a design head of 64 feet and a design flow of 1,600 cfs; (d) a 16.6-foot-diameter by 110-foot-long horseshoe-shaped concrete-lined tailrace conduit connecting back into the existing Tunnel No. 1; (e) the 13.8-kV generator leads; (f) a 0.5-mile-long, 13.8 kV line; (g) a 13.8/69-kV, 7.5/10-MVA transformer; and (h) a 100-foot-long, 69-kV transmission line.

An energy dissipator would be installed at the Owyhee siphon of the north canal to return powerplant discharges to the Owyhee River during the non-irrigation season.

The applicant estimates the average energy generation to be 23.8 GWh. The estimated cost of the project is $20.3 million.

k. Purpose of Project: Project power would be used by the applicants.

l. This notice also consists of the following standard paragraphs: B, C and D1.

2 a. Type of Application: Transfer of License.

b. Project No.: 5376–004.

c. Date Filed: December 18, 1986.

d. Applicant: Boise Cascade Corporation and Horseshoe Bend Hydroelectric Company.

e. Name of Project: Horseshoe Bend.

f. Location: On the Payette River in Boise County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person:

Mr. J.R. Ayre, Boise Cascade Corp., One Jefferson Square, P.O. Box 50, Boise, ID 83728

Mr. Ralph G. Peinecke, Horseshoe Bend Hydroelectric Co., c/o Boise Cascade Corp., One Jefferson Square, P.O. Box 50, Boise, ID 83728

i. Comment Date: March 16, 1987.

j. Description of Project: On July 30, 1986, a major license was issued to Boise Cascade Corporation (licensee) for the construction, operation, and maintenance of the Horseshoe Bend Project No. 5376. It is proposed to transfer the license to Horseshoe Bend Hydroelectric Company (transferee). The purpose of this proposed transfer is to facilitate financing of the project.

The licensee certifies that it has fully complied with the terms and conditions of the license and that it will pay all annual charges accrued under the license at the date of transfer. The transferee accepts the terms and conditions of the license and agrees to

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be bound thereby to the same extent as though it was the original licensee.

k. This notice also consists of the following standard paragraph: B and C.

3 a. Type of Application: Preliminary Permit.

b. Project No.: P–10120–000.

c. Date Filed: October 20, 1986.

d. Applicant: Adirondack Hydro Development Corporation.

e. Name of Project: Independence River Project.

f. Location: On the Independence River in Lewis County, New York.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Darryl F. Caputo, Adirondack Hydro Development Corporation, SeaComm Plaza—Market Street, Potsdam, NY 13676, (315) 265–8090.

i. Comment Date: April 6, 1987.

j. Description of Project: The proposed project would consist of: (1) A proposed 350-foot-long, 16-foot-high masonry dam; (2) a reservoir having a surface area of 5 acres, with negligible storage, and a normal water surface elevation of 970 feet msl; (3) a proposed intake structure; (4) a proposed 10,000-foot-long, 7-foot-diameter steel penstock; (5) a proposed powerhouse containing two generating units with a total installed capacity of 3,420 kW; (6) a proposed 100-foot-long tailrace; (7) a proposed 7,000-foot-long, 115-kV transmission line; and (8) appurtenant facilities. The Applicant estimates that the average annual generation would be 15,000,000 kWh. The applicant intends to acquire all necessary property rights from the numerous property owners.

All project energy generated would be sold to the Niagara Mohawk Power Corporation. The Applicant estimates that the cost of the work to be performed under the preliminary permit would be $120,000.

k. This notice also consists of the following standard paragraph: A5, A7, A9, A10, B, C, D2.

4 a. Type of Application: Preliminary Permit.

b. Project No.: P–10121–000.

c. Date Filed: October 20, 1986.

d. Applicant: Balance One Inc.

e. Name of Project: Silk Mill and Circular Dam Project.

f. Location: On the Charles River, Middlesex and Norfolk Counties, Massachusetts.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. John Benjamin, Balance One Inc., 55 Rutland Square, Boston, MA 02118, (617) 266–7173.

i. Comment Date: April 6, 1987.

j. Description of Project: The proposed project would consist of the following two developments.

(A) Silk Mill Development:

(1) The existing 60-foot-long, 14-foot-high Silk Mill Dam;

(2) An impoundment having a surface area of 48 acres, with negligible storage, and a normal water surface elevation of 84.3 feet msl; (3) a proposed 200-foot-long reinforced concrete penstock; (4) a proposed powerhouse containing a generating unit having an installed capacity of 275 kW; (5) a proposed 50-foot-long tailrace; (6) a proposed 220-foot-long transmission line; and (7) appurtenant facilities. The Applicant estimates the average annual generation would be 106,000 kWh. The existing Silk Mill Dam is owned by the Metropolitan District Commission.

(B) Circular Dam Development:

(1) The existing 70-foot-long, 11-foot-high Circular Dam;

(2) An impoundment having a surface area of 5 acres, with negligible storage, and a normal water surface elevation of 70.4 feet msl; (3) a proposed intake structure; (4) a proposed 170-foot-long reinforced concrete penstock; (5) a proposed powerhouse containing a generating unit having an installed capacity of 275 kW; (6) a proposed 50-foot-long tailrace; (7) a proposed 100-foot-long transmission line; and (8) appurtenant facilities. The Applicant estimates the average annual generation would be 106,000 kWh. The existing Circular Dam is owned by the Metropolitan District Commission.

All project energy generated would be sold to the Boston Edison Company. The Applicant estimates that the cost of the work to be performed under the preliminary permit would be $100,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

5 a. Type of Application: Preliminary Permit.

b. Project No.: 10129–000.

c. Date Filed: October 22, 1986.

d. Applicant: Cranberry Creek Hydro, Inc.

e. Name of Project: East Fork Nookachamps Creek.

f. Location: On the East Fork Nookachamps Creek near the town of Big Lake, Skagit County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Larry L. Kitchel, President, Cranberry Creek Hydro, Inc., P.O. Box 95, Coupeville, WA 98239, (206) 675–0101.

Comment Date: April 6, 1987.

j. Description of Project: The proposed project would consist of: (1) A reinforced concrete diversion weir approximately 5 feet high and 65 feet long at an approximate elevation of 1,780 feet msl; (2) a steel penstock 7,200 feet long and 2 feet long and 2 feet in diameter leading to; (3) a reinforced concrete powerhouse containing two turbine/generator units having an installed total capacity of 3,000 kW operating at 1,300 feet of hydraulic head; and (4) a 2.7-mile-long, 15-kV transmission line. The applicant estimates that the average annual energy generation would be 12 GWh. The cost of the studies under the permit would be $25,000.

k. Purpose of project: The applicant intends to sell the power generator at the proposed facilities to Puget Power.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

6 a. Type of Application: Preliminary Permit.

b. Project No.: 10130–000.

c. Date Filed: October 24, 1986.

d. Applicant: East Calais Hydroelectric Company, Inc.

e. Name of Project: East Calais.

f. Location: On Kingsbury Branch Winooski River, near town of Calais, in Washington County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Houghton M. Cate, P.O. Box 33, East Calais, VT 05650, (802) 456–8833.

Comment Date: April 6, 1987.

j. Description of Project: The proposed project would consist of: (1) A new 6-foot-high diversion structure at the head of the existing cascade;' (2) a new 3-foot-diameter, 260-foot-long penstock; (3) a powerhouse containing a single generating unit with a rated capacity of 100 kW; and (4) 700-foot-long, 7.2-kV transmission line connecting to the existing Green Mountain Power Corporation line.

The estimated average annual energy production is 308,000 kWh. The project power would be sold to Green Mountain Power Corporation. The Applicant estimates that the cost of the work to be performed under the preliminary permit would be $5,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

7 a. Type of Application: Preliminary Permit.

b. Project No.: 10131–000.

c. Date Filed: October 24, 1986, and supplemented November 18, 1986.

d. Applicant: Shohola Associates.

e. Name of Project: Penn Hydro III Project.

f. Location: On Shohola Creek near Shohola, Pike County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Matthew Gillan, 61 Beechwood Road, Oradell, NJ 07649, (201) 670–3415.

Comment Date: April 6, 1987.

j Description of Project: The proposed project would consist of: (1) A new dam approximately 1,000 feet long and 60 feet high; (2) a proposed reservoir with a storage capacity of 20,188 acre-feet at maximum surface elevation of 660 feet msl; (3) a proposed 10-foot-diameter steel penstock approximately 100 feet long; (4) a new powerhouse housing one 1,170-kW generator and one 445-kW generator for a total installed capacity of 1,615 kW; (5) a new tailrace; (6) a proposed 12-kV transmission line approximately 250 feet long; and (7) appurtenant facilities. The applicant estimates that the average annual generation would be 3.4 GWh. All power generated would be sold to Pennsylvania Power and Light Company. There are no U.S. lands within the proposed project boundry.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8 a. Type of Application: Preliminary Permit.

b. Project No.: 10132–000.

c. Date Filed: October 24, 1986 and supplemented November 18, 1986.

d. Applicant: Bridge Associates.

e. Name of Project: Penn Hydro II Project.

f. Location: On Shohola Creek near Greeley, Pike County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Matthew Gillan, 61 Beechwood Road, Oradell, NJ 07649, (201) 670–3415.

i. Comment Date: April 6, 1987.

j. Description of Project: The proposed project would consist of: (1) A new dam approximately 500 feet long and 50 feet high; (2) a new reservoir with a storage capacity of 20,668 acre-feet at maximum surface elevation of 780 feet msl; (3) a new 10-foot-diameter steel penstock; (4) a concrete powerhouse housing one 3,150-kW generator and one 1,200-kW generator for a total installed capacity of 4,350 kW; (5) a new tailrace; (6) a new 7.2-kV transmission line approximately 150 feet long; and (7) appurtenant facilities. The Applicant estimates that the average annual generation would be 3.4 GWh. All power generated would be sold to Pennsylvania Power and Light Company. There are no U.S. lands within the proposed project boundary.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 10133–000.

c. Date Filed: October 28, 1986 and supplemented November 18, 1986.

d. Applicant: State Associates.

e. Name of Project: Penn Hydro I Project.

f. Location: On the Sholola Creek near Greeley, Pike County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)—825(r).

h. Contact Person: Mr. Matthew Gillan, 61 Beechwood Road, Oradell, NJ 07649, 201–670–3415.

i. Comment Date: April 6, 1987.

j. Description of Project: The proposed project would consist of: (1) An existing concrete dam approximately 34-foot-high and 800-foot-long; (2) a 1,137-acre reservoir with 19, 618 acre-feet storage capacity at a surface elevation of 1,154 feet msl; (3) a proposed 12-foot-wide, 24-foot-deep, and 30-foot-high intake structure; (4) a proposed one-mile-long steel pipe line leading to a 32-foot-high surge tank at elevation 1,120 feet msl; (5) a new one-half-mile-long steel penstock approximately 6 feet in diameter; (6) a new powerhouse housing one 3,150-kW generator and one 1,200-kW generator for a total installed capacity of 4,350 kW; (7) a new tailrace; (8) a proposed 7.2-kV transmission line approxiamtely 1,000 feet long; and (9) appurtenant facilities. The Applicant estimates the average annual generation would be 9.24 GWh. All power generated would be sold to Pennsylvania Power and Light Company. There are no U.S. lands within the proposed project boundary.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10 a. Type of Application: Preliminary Permit.

b. Project No.: P–10140–000.

c. Date Filed: October 27, 1986.

d. Applicant: Adirondack Hydro Development Corporation.

e. Name of Project: Emerson Mill Project.

f. Location: On the Schroon River in Warren County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Contact Person: Mr. Darryl Caputo, Adirondack Hydro Development Corporation, SeaComm Plaza—Market Street, Potsdam, NY 13676, (315) 265–8090.

i. Comment Date: April 6, 1987.

j. Description of Project: The proposed project would consist of: (1) A proposed 150-foot-long, 10-foot-high dam; (2) an impoundment having a surface area of 5 acres with negligible storage and a normal water surface elevation of 670 feet msl; (3) a proposed intake structure; (4) a proposed 40-foot-long, 20-food-wide reinforce concrete open flume; (5) a proposed powerhouse containing a generating unit with an installed capacity of 595 kW; (6) a proposed tailrace; (7) a proposed 100-foot-long, 13.2-kV transmission line; and (8) appurtenant facilities. The Applicant estimates the average annual generation would be 4,450,000 kWh. The Applicant intends to acquire all the necessary property rights from the various property owners. All project energy generated would be sold to the Niagara Mohawk Power Corporation. The Applicant estimates the cost of the work to be performed under the preliminary permit would be $70,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

11 a. Type of Application: Preliminary Permit.

b. Project No: 10153–000.

c. Date Filed: October 30, 1986.

d. Applicant: Stillaguamish River Hydro.

e. Name of Project: Jim Creek.

f. Location: On Jim Creek in the Snoqualmie-Mt. Baker National Forest in T31N, R7E, near Oso in Snohomish County, Washington.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. § 791(a)–825(r).

h. Contact Person: Mr. Lawrence J. McMurtrey, 12122—196th N.W., Redmond, WA 98052, (206) 885–3986.

i. Comment Date: April 6, 1987.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 36-inch-wide concrete inlet structure in the streambed at elevation 2,400 feet; (2) a 16,000-foot-long, 36-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capcity of 375 kW; and (4) a 1-mile-long transmission line. Applicant estimates the average annual energy production to be 19.75GWh. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $40,000.

l. Purpose of Project: The power produced is to be sold to the local power company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

12 a. Type of Application: License (Major).

b. Project No.: 8080–001.

c. Date Filed: June 13, 1986.

d. Applicant: High Rock Hydro Partners.

e. Name of Project: High Rock Hydroelectric Project.

f. Location: On West Branch Feather River near Stirling City, in Butte County,

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California, in Sections 28, 33, and 34, T25N, R4E; Sections 3, 4, 9, 16, 21, 28, 31, 32, and 33, T24N, R4E; and Sections 5, 6, 7, 8, 18 and 19, T23N, R4E, M.D.M.&B.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Contact Person: Mr. Jeffery E. Twitchell, Independent Hydro Developers, 1225 Eighth Street, Suite 465, Sacramento, CA 95814, (916) 447–6600.

i. Comment Date: April 2, 1987.

j. Description of Project: The proposed project would consist of: (1) an intake structure located at elevation 4,350 feet msl consisting of an excavated side channel to the main stream; (2) a 21,500-foot-long water conveyance system consisting of a 3,300-foot-long by 8-foot horseshoe tunnel, and an 18,200-foot-long, 60-inch-diameter pipelines; (3) an inverted siphon; (4) a powerhouse at elevation 3,320 feet msl containing an impulse type generating unit rate at 10.5 MW operated at a gross head of 1,030 feet and at a flow range between 15 cfs and 150 cfs with flows being returned to the West Branch Feather River; and (5) an 11.5-mile-long, 60-kV transmission line interconnecting the project to an existing Pacific Gas and Electric Company transmission line. Applicant estimates the project's annual generation at 28.6 GWh.

k. Purpose of Project: Project power will be sold to Pacific Gas and Electric Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

13 a. Type of Application: Minor License.

b. Project No.: 9920–000.

c. Date Filed: February 21, 1986.

d. Applicant: The Village of St. Johnsville.

e. Name of Project: Scudder Falls.

f. Location: On the Zimmerman Creek in Montgomery County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Persons:

Ms. Mae Warn, Village Clerk-Treasurer, The Village of St. Johnsville, 16 Washington Street, St. Johnsville, NY 13452, (518) 568–2221

Mr. Wilfred Y. Kraft, Mayor, The Village of St. Johnsville, 16 Washington Street, St. Johnsville, NY 13452, (518) 568–2221

Mr. Richard A. Armstrong, Morrell Vrooman Engineers, 21 Main Street, Gloversville, NY 12078, (518) 725–7111

i. Comment Date: April 1, 1987.

j. Description of Project: The proposed project would consist of: (1) A 1-foot-high diversion structure across ¾ of Zimmerman Creek, 30 feet from the edge of the top of a ledge rock falls; (2) a 300-foot-long, 30-inch-diameter steel penstock; (3) a 12-foot by 12-foot masonry powerhouse housing one semi-axial flow turbine with a 150 kW generator, and located 160 feet from the base of the falls; (4) the 0.48–kV generator leads; (5) the 0.48/13.2–kV transformer; (6) the 1,320-foot-long, 13.2–kV transmission line; and (7) appurtenant facilities. The applicant estimates that the average annual generation would be 600,000 kWh. The existing dam is owned by the applicant.

k. Purpose of Project: Project power would be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

14 a. Type of Application: Exemption (5MW or Less).

b. Project No.: 9996–000.

c. Date Filed: May 22, 1986.

d. Applicant: Northwest Discovery Joint Venture.

e. Name of Project: Rediscovery Lodge Hydroelectric Project.

f. Location: In the Tongass National Forest, on Bell Creek, Bell Island, Alaska. Township 68S and Range 90E.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 *as amended*.

h. Contact Person: Mr. Starkey A. Wilson, Thanksgiving Tower, Suite 990, 1601 Elm, Dallas, TX 75201–4713, (214) 880–0080.

i. Comment Date: March 12, 1987.

j. Description of Project: The proposed project would consist of: (1) An intake structure with an approximate inlet elevation of 180 feet msl; (2) a penstock 1,000 feet long and 18 inches in diameter leading to; (3) a powerhouse containing two turbine/generator units with a total installed capacity of 115 kW operating at 111 feet of hydraulic head; (4) a tailrace; and (5) a 2,500-foot-long transmission line. The applicant estimates the average annual energy production to be 200,000 kWh.

k. Purpose of Project: Applicant intends to sell the power generated at the proposed facility to the Hot Springs Resort.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, & D3a.

15 a. Type of Application: Preliminary Permit.

b. Project No.: 10057–000.

c. Date Filed: August 4, 1986.

d. Applicant: JDJ Energy Company.

e. Name of Project: Remmel Dam Unit 4.

f. Location: On the Ouachita River Near Jones Mill, Hot Spring and Garland Counties, Arkansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Doyle W. Jones, P.O. Box 225, Jones Mill, AR 72105, (501) 337–4904.

i. Comment Date: April 2, 1987.

j. Description of Project: The applicant proposes to develop the currently unutilized capacity of the Remmel Development of the Carpenter-Remmel Project, licensed as part of Project No. 271 to Arkansas Power and Light Company (AP&L). AP&L's license for the Remmel Development consists of: (1) The existing dam and reservoir; (2) an integral intake and powerhouse structure containing an installed capacity of 9,300 kW; and (3) appurtenant facilities.

The proposed Remmel Dam Unit 4 project would consist of: (1) Proposed trash racks; (2) proposed stop logs; (3) a proposed concrete structure, constructed adjacent to the north end of the existing powerhouse, about 60 feet wide and 140 feet long housing a 19,700-kW hydropower unit; (4) a proposed tailrace; (5) a proposed 34.5–kV transmission line about 600 feet long; and (6) appurtenant facilities. The applicant estimates that the average annual energy generation would be 22.5 GWh and that the cost of the work to be performed under the preliminary permit would be $20,000. The project energy is proposed to be sold to AP&L.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, D2.

16 a. Type of Application: 5MW Exemption.

b. Project No.: P–10167–000.

c. Date Filed: November 12, 1986.

d. Applicant: Stonybrook Hydroelectric Company.

e. Name of Project: Stonybrook.

f. Location: On the Stony Brook in Oxford County, Maine.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2709.

h. Contact Person: Mr. Vincent S. George, RD #1 Box 504, South Paris, ME 04281, (207) 743–6174.

i. Comment Date: March 13, 1987.

j. Description of Project: The proposed project would consist of: 1.) A proposed inlet with trash rack; 2.) an existing small pool at elevation 700 feet m.s.l. of negligible size and storage capacity; 3.) two proposed 12-inch-diameter and 600-foot-long penstocks; 4.) an existing concrete powerhouse to contain one turbine/ generator unit with an installed capacity of 35 kw; 5.) a new 240-volt transmission line 300 feet long; and 6.) appurtenant facilities. The estimated average annual energy produced by the project would be 180,000 kWh operating under a net hydraulic head of 56 feet. The proposed project facilities are owned by the applicant.

k. Purpose of Project: Project power will be sold to the Central Maine Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

17 a. Type of Application: Preliminary Permit.

b. Project No: 10175–000.

c. Date Filed: November 20, 1986.

d. Applicant: Adirondack Hydro Development Corporation.

e. Name of Project: Natural Bridge Hydro.

f. Location: On the Indian River in Jefferson County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Malcolm M. Preston, President, Wilbur W. Krueger, Executive Vice President, Darryl F. Caputo, Project Development Manager, Adirondack Hydro Development Corporation, SeaComm Plaza, Market Street, Potsdam, NY 13676, (315) 265–8090.

i. Comment Date: April 3, 1987.

j. Description of Project: The proposed project would consist of: (1) An existing 6-foot-high, approximately 40-foot-long, dam; (2) an existing ½-acre reservoir which will be increased to a ¾-acre reservoir by the proposed installation of 2-foot-high flashboards; (3) a proposed 300-foot-long, 6-foot-diameter penstock; (4) a proposed powerhouse to contain a 500-kW generating unit; (5) a 100-foot-long tailrace; (6) a proposed 50-foot-long, 4.16-kV transmission line; and (7) appurtenant facilities. The Applicant estimates the average annual energy generation to be 2,738 MWh.

k. Purpose of Project: The Applicant intends to sell the power produced at the site to the Niagara Mohawk Power Corporation. Applicant estimates the cost of the studies under the permit would be $70,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

18 a. Type of Application: Relicense (Over 5MW).

b. Project No: 2677–002.

c. Date Filed: August 29, 1986.

d. Applicant: City of Kaukauna, Wisconsin.

e. Name of Project: Badger-Rapide Croche Project.

f. Location: On the Fox River near Kaukauna, Outagamie County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ernest J. Mullen, General Manager, Kaukauna Electric and Water Department, 777 Island Street, Kaukauna, WI 54130, (414) 766–5721.

i. Comment date: March 23, 1987.

j. Description of Project: The existing run-of-river project utilizes two existing U.S. Corps of Engineers (Corps) dams, the U.S. Dam and the Rapide Croche Dam, and consists of three hydro plants—Old Badger, New Badger, and Repide Croche. The project works consist of: (1) A 2,100-foot-long, 100-foot-wide power canal conveying water to the Old Badger and New Badger plants from the Corps, U.S. Dam; (2) the Old Badger powerhouse containing two 1,000-kW generators for a total installed capacity of 2,000 kW; (3) the New Badger powerhouse containing two 1,800-kW generators for a total installed capacity of 3,600 kW; (4) the Rapide Croche powerhouse located on the south end of the Corps' Rapide Croche Dam approximately 4.5 miles downstream from the Badger plants, and containing four 600-kW generators for a total installed capacity of 2,400 kW; (5) a 12-kV transmission line approximately 6 miles long; and (6) appurtenant facilities. The Badger-Rapide Croche project has a combined generating capacity of 8,000 kW and a total average annual generation output of 48.7 GWh. Energy produced at the project is used in the applicant's distribution system. The project works are owned and operated by the applicant. There are no U.S. lands within the project boundary. Project No. 2677 would not be subject to federal takeover under sections 14 and 15 of the Federal Power Act.

k. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

19 a. Type of Application: Surrender of License.

b. Project No: 3036–004.

c. Date Filed: November 17, 1986.

d. Applicant: The Municipal Energy Agency of Mississippi.

e. Name of Project: North Mississippi Flood Control Water Power Project.

f. Location: (1) On Coldwater River near Arkabutla, Desoto County , Mississippi; (2) on Little Tallahatchie River near Sardis, Panola County, Mississippi; (3) on Yocona River near Enid, Yalobusha County, Mississippi; (4) on Yalobusha River near Grenada, Grenada County, Mississippi.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Richard M. Webster, Jr., Chairman, Municipal Energy Agency of Mississippi, P.O. Box 1408, Greenwood, MS 38930, (601) 624–9058.

i. Comment Date: March 23, 1987.

j. Description of Project: On April 15, 1983; a license was issued to the Municipal Energy Agency of Mississippi to construct, operate, and maintain the North Mississippi Flood Control Water Power Project No. 3036. The project would consist of:

(1) Arkabutla Development consistiang of: (1) 16-foot by 18.25-foot horseshoe shaped steel plate lined concrete penstock 448 feet in length; (2) a bifurcation and gate structure at the existing conduit outlet; (3) a 14.7-foot-diameter, 180-foot-long steel penstock; (4) a powerhouse located at the north side of the existing outlet works near the south dam abutment containing a single turbine-generator with a total rated capacity of 7.7 MW; (5) a 34.5-foot-wide, 29-foot-deep, 260-foot-long tailrace channel; (6) the 13.8-kV generator leads; (7) the one-mile length of 15-kV underground cable; (8) the 13.8/115-kv, 10 MVA, three-phase main step-up transformer; (9) the 12-mile, 115-kV, 1/0 ACSR single-circuit overhead transmisison line connecting this plant to the existing MP&L Walls-Tunice 115-kV transmission line; and (10) appurtenant facilities.

(2) Sardis Development consisting of: (1) A 16-foot by 18.25-foot horseshoe shaped steel plate lined concrete penstock 612 feet in length; (2) a bifurcation and gate structure at the existing conduit outlet; (3) a 21.0-foot-diameter, 140-foot-long steel penstock bifurcating into; (4) two 14.7-foot-diameter 70- and 80-foot-long steel penstocks; (5) a powerhouse located on the north side of the existing outlet works near the south dam abutment containing two turbine-generators with a total rated capacity of 16.0 MW; (6) a 79-foot-wide; 30-foot-high, 280-foot-long tailrace channel; (7) the 13.8-kv generator leads; (8) the 1.8 mile, 15-kV underground cable; (9) the 13.8/115-kV, 20 MVA, three-phase main step-up transformer; (10) the 7.5-mile 115-kV, 1/0 ACSR single-circuit overhead transmission line connecting this plant to the existing MP&L Sardis Substation; and (11) appurtenant facilities.

(3) Enid Development consisting of: (1) One of two 11-foot-diameter, 459-foot-long steel plate lined concrete penstocks; (2) a bifurcation and gate structure at the end of the existing conduit outlet; (3) a 14.7-foot-diameter,

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200-foot-long steel penstock; (4) a powerhouse located on the south side of the existing outlet works near the north dam abutment containing a single turbine-generator with a total rated capacity of 7.5 MW; (5) a 34.5-foot-wide, 19-foot-deep, 260-foot-long tailrace channel; (6) the 13.8-kV generator leads; (7) the 0.2-mile, 15-kV underground cable; (8) the 13.8/115-kV, 10 MVA, three-phase main step-up transformer; (9) the 0.9-mile, 115-kV, 1/0 ACSR single-circuit overhead transmission line connecting this plant to the existing MP&L Tillatoba-Enid 115-kV line; and and (10) appurtenant facilities.

(4) Grenada Development consisting of: (1) A 17-foot-diameter, 474-foot-long steel plate lined concrete penstock; (2) a bifurcated gate structure at the end of the existing conduit outlet; (3) a 21-foot-diameter, 140-foot-long steel penstock bifurcating into (4) two 14.7-foot-diameter steel penstocks 70 and 90 feet in length; (5) a powerhouse located on the north side of the outlet works, and near the south dam abutment, containing two turbine-generators with a total rated capacity of 13.2 MW; (6) a 79–foot-wide, 28-foot-deep, 300-foot-long tailrace channel; (7) the 13.8-kV generator leads; (8) the 0.2-mile, 15-kV underground cable; (9) the 13.8/115-kV, 15 MVA, three-phase main step-up transformer; (10) the six-mile long, 115-kV, 1/0 ACSR single-circuit overehead transmission line connecting this plant to the existing MP&L South Grenada Substation; and (11) appurtenant facilities.

Licensee states that, because of declines in forecasts of load growth, and because alternative energy price have stabilized and in some cases declined, the project is no longer economically feasible.

k. Anyone desiring to be heard or to make any protest about this action should file a motion to intervene or a protest with the Federal Energy Regulatory Commission in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 or 385.214 (1985). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 385.211 for protests. To become a party, or to participate in any hearing that might be held, a person must file a motion to intervene in accordance with the Commission's Rules. The Commission's address is: 825 North Capitol Street NE., Washington, DC 20426.

20 a. Type of Application: Minor License.

b. Project No.: 8632–001.

c. Date Filed: November 10, 1986.

d. Applicant: City of Kankakee, Illinois.

e. Name of Project: Kankakee Hydro Project.

f. Location: On the Kankakee River near Kankakee, Kankakee County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Richard A. Schultz, City Hall Building, 385 East Oak Street, Kankakee, IL 60901, 815–933–0440.

i. Comment Date: April 10, 1987.

j. Description of Project: The proposed project would consist of: (1) An existing 10-foot-high and 440-foot-long concrete dam with additional 12-inch-high flashboards installed during the summer season for recreational purposes; (2) an existing reservoir with a gross storage capacity of approximately 2,400 acre-feet at normal maximum water surface elevation of 595 feet msl; (3) a new powerhouse housing four 300-kW generators for a total installed capacity of 1,200 kW; (4) a new 12.5-kV transmission line approximately 110 feet long; and (5) appurtenant facilities. The Applicant estimates that the average annual generation would be 8,700 MWh. The existing project dam is owned by Illinois Department of Conservation. Project energy would be transmitted directly both to the Applicant's wastewater treatment center and to the Commonwealth Edison Company substation adjacent to the project site. The Applicant is the Permittee for Project No. 8632.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

21 a. Type of Application: Preliminary Permit.

b. Project No.: 10250–000.

c. Date Filed: January 15, 1987.

d. Applicant: F & T Services Corporation.

e. Name of Project: DeQueen Lake Dam.

f. Location: On Rolling Fork River near DeQueen, Sevier County, Arkansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Vincent A. Forte, F & T Services Corporation, P.O. Box 64844, Baton Rouge, LA 70896, (504) 927–9321.

i. Comment Date: April 13, 1987.

j. Description of Project: The proposed project would utilize the existing Corps of Engineers, DeQueen Lake Dam and reservoir and would consist of: (1) A proposed steel penstock six feet in diameter and 250 feet long; (2) a proposed powerhouse housing a 2,000-kW hydropower unit; (3) a proposed tailrace 15 feet wide, 6 feet deep, and 75 feet long; (4) a proposed 34.5-kV transmission line approximately three miles long; and (5) appurtenant facilities. The applicant estimates that the average annual energy generation would be 10.2 GWh, and that the cost of the studies to be performed under the permit would be $25,000. The project energy would be sold to SWEPCO or local municipalities.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, D2.

22 a. Type of Application: Preliminary Permit.

b. Project No.: 10251–000.

c. Date Filed: January 15, 1987.

d. Applicant: F & T Services Corporation.

e. Name of Project: Dierks Lake Dam.

f. Location: On the Saline River near Dierks, Howard and Sevier Counties, Arkansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Vincent A. Forte, F & T Services Corporation, P.O. Box 64844, Baton Rouge, LA 70896, (504) 927–9321.

i. Comment Date: April 13, 1987.

j. Description of Project: The proposed project would utilize the existing Corps of Engineers' Dierks Lake Dam and reservoir and would consist of: (1) A proposed steel penstock six feet in diameter and 250 feet long; (2) a proposed powerhouse housing a 2,000-kW hydropower unit; (3) a proposed tailrace 15 feet wide, 6 feet deep, and 75 feet long; (4) a proposed 34.5-kV transmission line 500 feet long; and (5) appurtenant facilities. The applicant estimates that the average annual energy generation would be 10.2 GWh, and that the cost of the studies to be performed under the permit would be $25,000. The project energy would be sold to SWEPCO or local municipalities.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

23 a. Type of Application: New Major License.

b. Project No.: 1394–004.

c. Date Filed: March 31, 1986.

d. Applicant: Southern California Edison Company.

e. Name of Project: Bishop Creek Water Power Project.

f. Location: On Bishop Creek, South and Middle Forks Bishop Creek, McGee Creek, and Birch Creek, near town of Bishop, within the Inyo National Forest, in Inyo County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John R. Bury, Vice President and General Counsel, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, CA 91770.

i. Comment Date: March 23, 1987.

j. Description of Project: the existing Bishop Creek Water Power Project with a total rated capacity of 26.27 MW consists of:

A. South Lake Dam comprising: (1) The South Lake Reservoir with a storage capacity of 12,883 acre/feet and a surface area of 173 acres at elevation 9,751 feet msl; (2) an 81.5-foot-high, 645-foot-long rockfill dam; (3) a 5-foot-wide, 7-foot-high, 1,900-foot-long unlined outlet tunnel; and (4) a 2-foot-diameter, 250-foot-long penstock.

B. Green Creek Diversion Dam comprising: (1) A 2-foot-high, 3-foot-long wooden head-gate; (2) a 9-foot-high, 51-foot-long rockfill dam; (3) a 1-foot-deep, 12.5-foot-wide spillway; and (4) a 16-foot-diameter steel intake.

C. South Fork diversion Dam comprising: (1) A 10-foot-high, 65-foot-long concrete dam; (2) a 6-foot-deep, 40-foot-wide spillway; (3) a 39-inch-diameter steel pipe intake; (4) a 38 inch-diameter, 4,057-foot-long steel pipeline to connect South Fork Diversion Dam to Intake No. 2 reservoir.

D. Sabrina Dam comprising: (1) The Sabrina Lake Reservoir with a storage capacity of 7,350 acre-feet and a surface area of 195 acres at elevation 9,132 feet; (2) a 70-foot-high, 900-foot-long rockfill dam; (3) a 6-foot-deep, 40-foot-long spillway; and (4) a 24-inch-diameter outlet piepline.

E. Intake No. 2 Dam comprising: (1) The Intake No. 2 reservoir with a storage capacity of 78 of acre-feet and a surface area of 12 acres at elevation 8,099 feet; (2) a 41-foot-high, 443-foot-long earthen dam; (3) a 40-foot-long, 5-foot-deep spillway; (4) a 48-inch-diameter steel pipe intake; (5) a 54-inch-diameter, 8,876-foot-long wooden pipeline; and (6) a 48-inch-diameter, 2,628-foot-long penstock.

F. Longley Dam comprising: (1) The McGee Lake Reservoir with a storage capacity of 178 acre-feet and a surface area of 11 acres at elevation 10,706 feet; (2) a 27-foot-high, 120-foot-long earthen dam; (3) an 8-inch-diameter steel pipeline outlet; and (4) a 4.5-foot-diameter, 3,335-foot-long penstock.

G. McGee Creek Diversion comprising: (1) A 6-foot-high, 22-foot-long concrete dam; (2) a 12-foot-long, 1-foot-deep spillway; (3) a 18-inch-diameter steel pipe outlet; (4) a 225-foot-long open ditch; (5) a 225-foot-long steel pipeline; and (6) a 2,774-foot-long, 18-inch-diameter tapering to 12-inch-diameter pipeline.

H. Birch Creek Diversion West comprising: (1) A 6-foot-high, 22-foot-long concrete dam; (2) a 3-foot-foot-long, 6-inch-deep spillway; (3) a 24-inch-diameter steel pipe intake; and (4) a 2-foot-diameter, 9,513-foot-long steel pipeline.

I. Birch Creek Diversion East comprising; (1) A 5-foot-high, 17-foot-long concrete dam; (2) a 12-inch-diameter intake pipeline; (3) a 1-foot-diameter, 2,770-foot-long pipeline; (4) a Powerhouse No. 2 with a total installed capacity of 7,320 kW; (5) a 55-kV, 6.9-mile-long transmission line; and (6) appurtenant facilities.

J. Intake No. 3 Dam comprising: (1) A 20-foot-high, 225-foot-long concrete dam; (2) a 40-foot-long, 3.5-foot-deep spillway; (3) a 5-foot-diameter steel pipe intake; (4) a 5-foot-diameter, 6,421-foot-long steel pipeline; (5) a 5-foot-diameter, 6,209-foot-long wooden pipeline; (6) a powerhouse No. 3 with a total installed capacity of 6,600 kW; (7) a 115-kV, 3.7-mile-long transmission line; and (8) appurtenant facilities.

K. Intake No. 4 Dam comprising: (1) A 28-foot-high, 323-foot-long concrete arch dam; (2) a 50-foot-long, 5-foot-deep spillway; (3) a 5-foot-diameter steel pipe intake; (4) a 5-foot-diameter, 6,242-foot-long steel pipeline; (5) a 2.5-foot-diameter, 5,314-foot-long steel penstock No. 1; (6) a 2.5-foot-diameter, 5,665-foot-long steel penstock No. 2; (7) a powerhouse No. 4 with a total installed capacity of 7,250 kW; (8) a 115-kV, 0.7-mile-long transmission line; and (9) appurtenant facilities.

L. Intake No. 5 Dam comprising: (1) A 20-foot-high, 275-foot-long concrete dam; (2) a 60-foot-long, 3-foot-deep spillway; (3) a 5-foot-diameter steel pipe intake; (4) a 5-foot-diameter, 2,933-foot-long wooden pipeline; (5) a 5-foot-diameter, 540-foot-long concrete pipeline; (6) two 3.5-foot-diameter, 4,800-foot-long penstocks; (7) a powerhouse No. 5 with a total installed capacity of 3,500 kW; (8) a 55-kV, 1,000-foot-long transmission line; and (9) appurtenant facilities.

M. Intake No. 6 Dam comprising: (1) A 26-foot-high, 320-foot-long concrete dam; (2) a 80-foot-long, 6-foot-deep spillway; (3) a 5-foot-diameter steel pipe intake; (4) a 5-foot-diameter, 3,000-foot-long steel pipeline; (5) a 4.5-foot-diameter, 4,360-foot-long steel penstock; (6) a powerhouse No. 6 with a total installed capacity of 1,600 kW; (7) a 55-kV, 1.3-mile-long transmission line; and (8) appurtenant facilities

The Applicant estimates the average annual generation of 164.2 GWh. The Applicant does not propose to construct any new project facilities. The Applicant proposes to provide some recreational facilities to the project. the Applicant would utilize the project energy to meet the load demands of its service area.

k. this notice also consists of of the following standard paragraphs: A3, A9, B and C.

24 a. Type of Application: Preliminary Permit.

b. Project No.:10201–000.

c. Date Filed: December 2, 1986.

d. Applicant: Margaret Jordan.

e. Name of Project: Wynantskill.

f. Locetion: On the Wynantskill Creek in Rensselaer County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Contact Person: Ms. Margaret Jordan, 432 Whiteview Road, Wynantskill, NY 12198,(518) 235–8610.

i. Comment Date: April 13, 1987.

j. Description of Project: The proposed project would consist of: (1) An existing 10-foot-high, 100-foot-long concrete gravity dam; (2) a reservoir with a surface area of 7 acres, a storage capacity of 50-acre-feet, and a normal water surface elevation of 177.0 feet m.s.l.; (3) a new concrete intake structure; (4) a new 42-inch-diameter, 2,800-foot-long steel penstock; (5) a new concrete powerhouse containing one generating unit with a capacity of 225 kW and one generating unit with a capacity of 475 kW for a total installed capacity of 700 kW; (6) a new transmission line, 150 feet long; and (7) appurtenant facilities. The applicant estimates the average annual generation would be 1,533,000 kWh. The existing dam is owned by the City of Troy, New York. The applicant estimates that the cost of the studies under permit would be $36,000.

k. Purpose of Project: Project power would be sold to Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due

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date for filing competing applications or notices of intent. In accordance with the commission's regulations, any competing development applications, must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (10) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specifiy the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) A preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rule of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal State, and local agencies that reeceive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: February 13, 1987.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3419 Filed 2–18–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. C187–266–000 et al.]

Exxon Corp., et al.; Applications for Certificates, Abandonments of Service and Petitions to Amend Certificates[1]

February 13, 1987.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be herd or to make any protest with reference to said applications should on or before March 2, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and Location	Price Per Mcf	Pressure base
C187–266–000(CI61–158), B, Feb. 3, 1987.	Exxon Corp., P.O. Box 2180, Houston, Tx 77252–2180.	Tennessee Gas Pipeline Co., North Magnolia City Field, Jim Wells, County, TX.	[2]	
C187–268–000 (CI69–888), B, Feb. 2, 1987.	....do	Transcontinental Gas Pipe Line Corp., Fire Island Field, Vermilion Parish, LA.	[2]	
C187–264–000 (CI81–48–000), B, Jan. 30, 1987.	Amoco Production, Co., P.O. Box 3092, Houston, TX 77253.	Florida Gas Transmission Co., Natural Gas Compressor Facility, Jefferson Davis Parish, LA.	[3]	
C187–269–000 (G–5664), B, Feb. 2, 1987.	....do	Tennessee Gas Pipeline Co., Lucky Field, Matagorda County, TX.	[4]	
C187–270–000 (CI71–446), B, Feb. 2, 1987.	....do	Transcontinental Gas Pipe Line Corp., Luby and Petronilla Fields, Nueces County, TX.	[5]	
C187–271–000 (G–4901), B, Feb. 2, 1987.	....do	....do	[6]	
C187–272–000 (CI63–1263), B,.	....do	Valley Gas Transmission, Inc., Luby and Petronilla Fields, Nueces County, TX.	[7]	
C187–273–000 (CI81–501–000), B, Feb. 3, 1987.	....do	Transcontinental Gas Pipe Line Corp., White Kitchen Field, LaSalle County, TX.	[8]	
C161–1429–008 D, Feb. 2, 1987.	Sun Exploration & Production Co., P.O. Box 2880, Dallas, TX 75221–2880.	El Paso Natural Gas Co., Jalmat Field, Lea County, NM.	[9]	
C162–1111–002, D, Nov. 21, 1986.	....do	ANR Pipeline Co., Mocane-Laverne Field, Harper County, OK.	[10]	
C162–1251–004, D, Feb. 2, 1987.	....do	Arkansas-Louisiana Gas Co., Red Oak Field, Latimer County, OK.	[11]	
C162–1251–005, D, Feb. 2, 1987.	....do	Arkla Energy Resources, Kinta Field, Haskell County, OK.	[12]	
C166–470–009, D, Feb. 2, 1987.	....do	Arkansa-Louisiana Gas Co., Red Oak Fiold, Le Flore County, OK.	[26]	

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

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Docket No. and date filed	Applicant	Purchaser and Location	Price Per Mcf	Pressure base
C187-256-000, B, Jan. 1, 1987.	Dallas McCasland, P.O. Box 206, Eunice, NM 88231.	El Paso Natural Gas Co., Scarborough Yates Field, Lea County, NM.	[10]	
C187-257-000, B, Jan. 28, 1987.	....do....	....do....	[10]	
C187-258-000, B, Jan. 28, 1987.	....do....	El Paso Natural Gas Co., Jalmat Field, Lea County, NM.	[10]	
C187-291-000, D, Jan. 27, 1987.	Chandler & Associates, Inc., 1400 Lincoln Tower Bldge., 1860 Lincoln Street, Denver, CO 80203.	Mountain Fuel Resources, Inc., Nitchie Gulch Field, Sweetwater County, WY.	[13]	
C187-246-000, F, Jan. 28, 1987.	Odeco Oil & Gas Co. (Succ. in Interest to Shell Offshore Inc.), P.O. Box 61780, New Orleans, LA 70161.	Truckline Gas Co., South Timbalier Block 86 Field, Gulf of Mexico, Offshore Louisiana.	[15]	
C187-253-000, B, Jan. 1, 1987.	Stanwood Corp., P.O. Box 301, Houma, LA 70361.	United Gas Pipe Line Co., Hollywood Field, Terrebonne Parish, LA.	[16]	
C187-255-000, F, Jan. 29, 1987.	Cities Service Oil and Gas Corp., Tulsa, OK 74102.	Transcontinental Gas Pipe Line Corp., Egan Field, Acadia Parish, LA.	[17]	
C187-267-000, (CI85-222) B, Feb. 3, 1987.	Oxy Cities Service NGL Inc., P.O. Box 300, Tulsa, OK 74102.	Bridgeline Gas Distribution Co., Maysville Plant Residue, Garvin County, OK.	[18]	
C187-262-000, B, Jan. 29, 1987.	Har-Ken Oil Co., P.O. Box 626, Owensboro, KY 42302.	Texas Gas Transmission Corp., Zeigler Coal & Coke Co. Well No. 5, Tract E, Muhlenberge County, KY.	[20]	
C187-263-000, B, Feb. 3, 1987.	....do....	Texas Gas Transmission Corp., Homer Thomas No. 1, Tract E, Muhlenberg County, KY.	[21]	
C187-G10179-000, D, Feb. 5, 1987.	ARCO Oil and Gas Co., Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, TX 75221.	Trunkline Gas Co., San Carlos and East Edinburg Fields, Hidalgo County, TX.	[22]	
C167-055-001, D, Jan. 29, 1987.	....do....	ANR Pipeline Co., Lovedale Field, Harper County, OK.	[23]	
C181-486-002, Jan. 20, 1987 D, 1987.	ODECO Oil & Gas Co., P.O. Box 61780 New Orleans, LA 70161.	ANR Pipeline Co., Eugene Island Block 26,Offshore Louisiana.	[24]	
C187-288-000 (CI63-461), B, Feb. 4, 1987.	Union Texas Petroleum Corp., P.O. Box 2120, Houston, TX 77252-2120.	Lone Star Gas Co., East Durant Field, Brayan county, OK.	[25]	
C187-74-000, D, Dec. 8, 1987.	ARCO Oil and Gas Co., Division of Atlantic Richfield Co..	Transco Gas Supply Co., Eugene Island Blocks 242 and 243, Offshore Louisiana.	[27]	

[1] The contract involved covered two leases: The M. A. Evetts Lease and the Nina Adams Estate Lease. The last well on the M.A. Evetts Lease was plugged and abandoned on 5-23-68 and the lease expired. Shallow rights in the Nina Adams Estate Lease were assigned to Houston Oil & Minerals on 1-1-73, and while the deep rights are held by shallow production, Exxon plans no further development of the area.
[2] The four wells committed to Gas Sales Contract dated 3-4-69 have been plugged and abandoned. The Exxon Fee Well Nos. 1, 2, and 3 were plugged and abandoned in 1974; the S. L. 6939 was plugged and abandoned in 1979.
[3] Amoco's warranty obligations to Florida Gas Transmission Company ended in December 1986, and gas is no longer being delivered to Florida Gas Transmission Company through the subject Compressor Facility.
[4] J. E. Thompson Lease sold effective 8-1-86 to RenRag, Inc., Nix, Reynolds, Thiltgen JVI and Energy Partners.
[5] J. T. Gillett "A" and "D", Robert LaPrelle, W. M. Spessard Leases and Luby Gasoline Plant sold effective 9-1-86 to Kamlok, Inc.
[6] J. T. Gillett "B" and "C" Leases sold effective 9-1-86, to Kamlok, Inc. Gas Sales Contract was cancelled by purchaser effective 10-1-85.
[7] Gillett 8.000' Unit, J. T. Gillett "A" and "D", Robert LaPrelle, G H. McCann, Katherine L. Shaffer/B/ and W. M. Spessard Leases Sold effective 9-1-86 to Kamlok, Inc.
[8] M. A. Beckman Lease sold effective 12-1-86 to Chilton Energy.
[9] Property No. 639814 sold effective 10-1-84 to Doyle Hartman.
[10] Property No. 546420 sold effective 10-2-84 to Champlin Petroleum Company.
[11] Property No. 539161 sold effective 9-1-86 to Amoco Production Company.
[12] Property No. 882348 sold effective 11-1-86 to Samson Resources Company.
[13] Uneconomical. By Agreement dated 10-12-73, Sohio farmed out its interest in Lot 4, T22N-R103W, Sweetwater County, Wyoming to Chandler & Associates, Inc. In order to sell the gas attributable to Lot 4 to Mountain Fuel pursuant to the Mountain Fuel Agreement, Chandler would have to lay approximately one mile of pipeline and install compression facilities at an approximate cost of $142,500. Alternatively, Chandler proposes to sell the gas attributable to Lot 4 to Stauffer Chemical Company of Wyoming pursuant to its Gas Sales Agreement dated 8-1-85.
[14] Not used.
[15] Shell Offshore Inc., assigned all of its right, title and interest in certain acreage to Odeco Oil & Gas Company, effective 8-26-86.
[16] Contract expired by its own terms on 8-16-86.
[17] Applicant is filing under Gas Purchase Contract dated 2-9-70.
[18] The subject rate schedule was terminated effective 12-31-86, pursuant to Partial Release Agreement dated 9-17-84, which provided for a term of the lesser of two years from the date of abandonment approval or the date underage of NGA gas is balanced. Gas sales for NGA gas were balanced during December 1986.
[19] Volume in excess of El Paso's market demand. Wells shut in since July 1986 due to lack of market demand.
[20] Applicant states the pipeline is purchasing the well to convert it into an observation well.
[21] Applicant states it was required to abandon the well due to coal mining stripping operations in the area.
[22] Partial Assignment dated 2-9-86 ARCO assigned its interest in certain acreage to Vernon E. Faulconer, Inc.
[23] Assignment effective 8-1-86 ARCO assigned its interest in certain acreage to Donald C. Slawson.
[24] Assigned the N/2 of the N/2 of the S/2 of Block 26 Eugene Island to Texaco USA Inc.
[25] Effective 8-1-85 Seller conveyed a portion of the acreage dedicated to Rate Schedule 72 to Combined Resources Corporation. Effective 9-1-86 Seller conveyed the remaining acreage dedicated to Rate Schedule 72 to Combined Resources Corporation.
[26] Property No. 873484 sold effective 9-1-86 to Amoco Production Company.
[27] A portion of ARCO's interest was assigned to Cities Service Oil and Gas Corporation effective 6-1-86.
Filing Code: A—Intial service, B—Abandonment, C—Amendment to add acreage, D—Amendment to delete acreage, E—Total succession, F—Partial succession.

[FR Doc. 87-3491 Filed 2-18-87 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ST86-2691 et al.]

Delhi Gas Pipeline Corp.; Notice of Staff Panel

February 12, 1987.

In the matter of Docket Nos. ST86-2691-000, ST86-2692-000, ST86-2698-000, ST86-2705-000, ST82-358-000 and ST82-359-000, and ST86-2685-000 and ST84-803-000.

Pursuant to the Commission's orders* in the above-captioned dockets, a Staff Panel (Panel) shall be convened to allow opportunity for written comments and for the oral presentation of views, data, and arguments regarding Delhi's facilities in Kansas and in east Oklahoma. The Panel will not be a judicial or evidentiary-type hearing and there will be no cross-examination of persons presenting statements. Members participating on the Panel before whom the presentations are made may ask questions. If time permits, Panel members may also ask such relevant questions as are submitted to them by participants. Other procedural rules relating to the Panel will be announced at the time the proceeding commences.

The Staff Panel will be held on Monday, February 23, 1987 at 10:30 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Any questions regarding these proceedings should be directed to J. Bradford Ramsay, Esquire at (202) 357-9158. All interested persons and staff may attend the proceeding.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-3492 Filed 2-18-87; 8:45 am]
BILLING CODE 6717-01-M

*See Delhi Gas Pipeline Corp., 38 FERC ¶ 61,121 (1987) and 38 FERC ¶ 61,117 (1987).

[Docket No. RP86-67-002]

Mountain Fuel Resources, Inc.; Tariff Filing

February 12, 1987.

Take notice that on February 9, 1987, Mountain Fuel Resources, Inc. (MFR) filed revised tariff sheets to its FERC Gas Tariff, Original Vlume No. 1-A, in compliance with the Commission's February 4, 1987 order in Docket No. RP86-67-000.

MFR states that the use-it-or-lose-it clause and the provision for delivery point flexibility have been deleted from Volume No. 1-A, as directed by the February 4th order. In addition, minor typographical errors have been corrected.

MFR requests that the Commission grant waiver of any Commission rules or regulations deemed necessary to allow the tendered tariff sheets to become effective February 4, 1987.

MFR states that copies of this filing have been served on all parties of record in Docket No. RP86-67-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-3493 Filed 2-18-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP86-136-003]

National Fuel Gas Supply Corp.; Proposed Tariff Changes

February 12, 1987.

Take notice that on February 5, 1987, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Substitute Seventh Revised Sheet No. 4 to become effective January 1, 1987, in compliance with a Commission order issued January 27, 1987 in this proceeding. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until February 6, 1987.

National states the purpose of Second Substitute Seventh Revised Sheet No. 4 is to correct demand and commodity purchase gas cost levels in the footnote.

National also filed Substitute First Revised Sheet No. 9 superseding First Revised Sheet No. 9 to correct a pagination error which originated in Docket No. CP86-351. In this regard, National requests Third Revised Sheet No. 9, which was tendered on December 31, 1986, be deemed withdrawn.

National states that copies of this filing were served upon the company's jurisdictional customers and the regulatory commissions of the states of New York, Ohio, Pennsylvania, Delaware, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before February 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 87-3494 Filed 2-18-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CI87-247-000 and CI87-248-000]

Texaco Inc. and Texaco Gas Marketing Co.; Applications for Permanent Abandonment and Limited-Term Abandonment and Limited-Term Certificates With Pregranted Abandonment

February 13, 1987.

Take notice that on January 29, 1987, Texaco Inc. and Texaco Gas Marketing Company (together Applicants) 1111 Rusk Street, Houston, Texas 77002, filed applications requesting: (1) Permanent abandonment in Docket No. CI87-248-000 of certain sales made to Texas Gas Transmission Corporation (Texas Gas) and (2) blanket certificates with pregranted abandonment in Docket No.

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CI87–247–000 for a period of three-years to make sales for resale in interstate commerce without market restrictions of the gas subject to the requested permanent abandonment. Applicants state that Texas Gas agreed to support the abandonment of sales made from the Tiger Shoal and Lighhouse Point Fields, Offshore Louisiana, covered under a contract dated December 15, 1980, on file as Texaco Inc. FERC Gas Rate Schedule No. 343, and from the South Marsh Island Area, Block 219 (reserves from well no. 75) and Vermilion Area, Block 31, Offshore Louisiana, covered under a contract dated December 12, 1978, and on file as Texaco Inc. FERC Gas Rate Schedule No. 582, as part of a comprehensive settlement agreement between Applicants and Texas Gas executed on November 10, 1986.

Under the settlement agreement, Applicants and their subsidiaries waived any and all past take-or-pay obligations of Texas Gas under all contracts between Texas Gas and Applicants' companies. Pending the receipt and acceptance by Applicants of abandonment authorization, and as part of the settlement agreement, Applicants are granting Texas Gas substantial relief from rice and take-or-pay provisions in the contracts constituting Texaco Inc. FERC Gas Rate Schedule Nos. 343 and 583. However, Applicants state they are not required by the settlement agreement to extend such relief beyond December 1, 1987, if abandonment authorization has not been granted by the Commission and accepted by Applicants. Applicants are not required to accept abandonment authorization which is other than complete and permanent or which contains any conditions unacceptable to Texaco.

Although the contracts that comprise Texaco Inc. FERC Gas Rate Schedule Nos. 343 and 582 will be terminated once the necessary abandonment authorization is received and accepted by Applicants, thirty-two other contracts between Applicants' companies and Texas Gas will remain in effect. As part of the settlement agreement, Applicants state they enrolled those contracts in Texas Gas' Least Cost Plan (LCP) for a term lasting at least until December 1, 1987. In effect, the LCP suspends the contract price terms and replaces them with a lower LCP target price which Texas Gas may adjust each quarter. The LCP also suspends take-or-pay provisions contained in the contracts.

The settlement agreement addressed Applicants' concern that they have a reliable and long-term means of transporting the abandoned gas to new markets they hope to find for that gas. Texas Gas agreed to apply for a certificate of public convenience and necessity to transport gas for Applicants, their subsidiaries and affiliates, on terms that were negotiated by Texas Gas and Applicants as part of the settlement agreement. Texas Gas filed its application on January 28, 1987, in Docket No. CP87–178–000.

Applicants state that the settlement agreement also resolved a dispute about the price of gas Applicants already have sold to Texas Gas under Texaco Inc. FERC Gas Rate Schedule No. 343. Applicants agreed to accept certain cash payments from Texas Gas in full satisfaction of amounts Applicants claimed to be due for the volumes delivered to Texas Gas through September 30, 1986. Texas Gas agreed to drop its appeal of Commission orders which had upheld Applicants' position in the dispute. Applicants further state that the settlement agreement serves the interests of Texas Gas and its customers. Because of the settlement, the gas in Texas Gas' system supply will be lower-priced, and the exposure of Texas Gas' customers to take-or-pay costs associated with Applicants' gas sales contracts will be greatly reduced. Therefore, Applicants state that pursuant to §§ 2.77(a)(2) of the Commission's Rules, review of its applications on an expedited basis is appropriate.

Texaco Inc. states that the following is an estimate of the current daily deliverability of certificated gas under each of the Gas Rate Schedules involved herein:

	NGPA category	Deliverability (MMcf)
Rate Schedule No. 343	109	143
Rate Schedule No. 582	102(d)	84.6
	109	37.7

Applicants request that the Commission waive Part 154 of its regulations as to the establishment and maintenance of rate schedules, and also request permission to automatically collect the appropriate monthly adjustments under the Commission's wellhead ceiling price regulations without the filing of blanket affidavits pursuant to §§ 154.94(h). In addition, to the extent Applicants may qualify for collection of any applicable allowances under section 110 of the NGPA and Subpart K, Park 271 of the Commission's Regulations, they request permission to collect such allowances without the filing of affidavits pursuant to § 154.94(k).

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436–A issued October 9, and December 12, 1985, respectively, in Docket No. RM85–1–000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3495 Filed 2–18–87; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and state	File No.	MM docket No.
A. Mary L. Smith d/b/a Radio Roswell, Roswell, NM	BPH–850712OW	38–12
B. Sheila Roe, Roswell, NM	BPH–850712OX	
C. Mid-America Gospel Radio Network, Inc. Roswell, NM.	BPH–850711NR	(Dismissed)

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986.

The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issued Heading and Applicant(s)

1. Air Hazard, A, B
2. Comparative, A, B
3. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–3403 Filed 2–18–87; 8:45 am]

BILLING CODE 6712–01–M

Information Collection Requirements Approval by Office of Management and Budget

February 9, 1987.

The following information collection requirement has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632–7513.

OMB No.: 3060–0065

Title: Application for New or Modified Radio Station Authorization Under Part 5 of FCC Rules—Experimental Radio Services (Other than Broadcast)

Form No.: FCC 442

A revised application form FCC 442 has been approved for use through 12/31/89. The March 1986 edition with an expiration date of 1/31/87 will remain in use until revised forms are available.

Federal Communication. Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–3404 Filed 2–18–87; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

February 9, 1987.

The February Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of this submission may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037, or telephone (202) 857–3815. Persons wishing to comment on an information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395–4814. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632–7513.

OMB No.: 3060–0062

Title: Application for Authorization to Construct New or Make Changes in an Instructional Television Fixed and/or Response Station(s), or to Assign or Transfer Such Station(s)

Form No.: FCC 330

Action: Revision

Estimated Annual Burden: 288 Responses; 1,967 Hours. Required when applying for authority to construct or make changes in ITFS, response, or low power relay station. The data are used to determine if applicant is qualified, meets basic statutory requirements, and whether the proposal will serve the public interest.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–3408 Filed 2–18–87; 8:45 am]

BILLING CODE 6712–10–M

[Report No. CF–4]

Application for Vacant FM Broadcast Allotment(s)

Released: February 6, 1987.

Notice is hereby given that applications for vacant FM broadcast allotment(s) listed below may be submitted for filing during the period beginning on the date of release of this public notice and ending March 10, 1987 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Channel—232 A
Fairmont, WV

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–3405 Filed 2–18–87; 8:45 am]

BILLING CODE 6712–01–M

[Report No. CF–5]

Filing of FM Broadcast Application; Tulia, TX

Released: February 11, 1987.

Notice is hereby given that applications for vacant FM broadcast allotment(s) listed below may be submitted for filing during the period beginning on the date of release of this public notice and ending March 13, 1987 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

CHANNEL— 285 A
TULIA, TX

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–3484 Filed 2–18–87; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

[Notice 1987–3]

Filing Dates for California Special Elections

AGENCY: Federal Election Commission.

ACTION: Notice for filing dated for California special elections.

SUMMARY: Committees required to file reports in connection with the special election to be held on April 7, 1987, must file a 12-day pre-election report by March 26, 1987, and if there is a majority winner, a 30-day postelection report by May 7, 1987. In the event no candidate achieves a majority vote in the special election, the 30-day post-election report would not be required. Rather, a second election would be held on June 2, 1987, and the committees required to file reports in connection with the special general election would be required to file a 12-day pre-election report due on May 12, 1987, and a 30-day post-election report due on July 2, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 999 E Street NW, Washington, DC 20463, Telephone (202) 376–3120, Toll free: (800) 424–9530.

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Notice of Filing Dates for Special Elections, 5th Congressional District, CA

All principal campaign committees of candidates in the special election and all other political committees not filing monthly, which support candidates in the special election shall file a 12-day pre-election report due on March 26, 1987, with coverage dates from last report filed through March 18, 1987. Political committees that have not previously filed a financial report should report all financial activity through March 18, 1987. If one candidate receives a majority of votes cast, a 30-day post-election report due on May 7, 1987, with coverage dates from March 19, 1987, through April 27, 1987, must be filed by the above committees.

In the event that no candidate achieves a majority vote in the special election, the 30-day post-election report would not be required. Rather a second special election would be held on June 2, 1987. Committees involved in this special election would be required to file a 12-day preelection report due on May 21, 1987, with coverage dates from March 19, 1987, through May 13, 1987 and a 30-day post-election report due on July 2, 1987, with coverage dates from May 14, 1987, through June 22, 1987.

Committees only involved in the first special election would be required to file only the report due on March 26, 1987.

All committee will be required to file the mid-year report due on July 31, 1987, and to resume filing on a semiannual basis.

Scott E. Thomas,

Chairman, Federal Election Commission.

Dated: February 13, 1987.

[FR Doc. 87-3506 Filed 2-18-87; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-768-DR]

Puerto Rico; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Puerto Rico (FEMA-768-DR), dated July 10, 1986, and related determinations.

DATED: February 11, 1987.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

NOTICE: The notice of a major disaster for the Commonwealth of Puerto Rico, dated July 10, 1986, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 10, 1986:

The Municipality of Santa Isabel for Public Assistance.

The Municipalities of Quebradillas and Isabela for Public Assistance limited to the Guajataca Dam and its discharge channel.

The Municipalities of Adjuntas and Toa Alta for Public Assistance limited to the Department of Transportation and Public Works.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support Federal Emergency Management Agency.

[FR Doc. 87-3416 Filed 2-18-87; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-003040-005.

Title: Oakland Terminal Agreement.

Parties: City of Oakland (Port), Kawasaki Kisen Kaisha, Ltd. (K-Line).

Synopsis: The proposed amendment would establish the prorated minimum compensation to be paid by K-Line to the Port for the portion of the final contract year of the agreement prior to July 15, 1986.

Agreement No.: 202-010977-003.

Title: Hispaniola Discussion Agreement.

Parties: United States Atlantic and Gulf/Hispaniola Steamship Freight Association, Zim-American Israeli Shipping Co., Inc., Overseas Transport International Corp., Seaboard Caribe Ltd.

Synopsis: The proposed amendment would add R.B. Kirkconnell & Bro. Ltd. as a party to the agreement. The parties have requested a shortened review period.

Agreement No.: 224-011065.

Title: Portland Terminal Agreement.

Parties: The Port of Portland (Port), Western Transporation Co. (Western).

Synopsis: The proposed agreement would establish the basis for the sharing of marine terminal revenues from dockage, wharfage and the service and facilities charges between the Port and Western.

Agreement No.: 217-011066.

Title: Shipping Corporation of New Zealand Limited/Hoegh Line (U.S.A.) Inc. Space Charter Agreement.

Parties: Shipping Corporation of New Zealand Limited, Hoegh Line (U.S.A.) Inc.

Synopsis: The proposed agreement would permit the parties to charter space on one another's vessels and to interchange containers and related equipment in the trade between Pacific Coast ports of North America and ports in Australia.

Dated: February 13, 1987.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-3451 Filed 2-18-87; 8:45 am]

BILLING CODE 6730-01-M

Charleston Terminal Agreement; Erratum

[Agreement No. 224-011060]

The **Federal Register** Notice of February 2, 1987, (Vol. 52, No. 21 Page 3169) incorrectly identified the above named agreement as Agreement No. 224-010990-001. The agreement should have been Noticed as Agreement No. 224-011060.

Dated: February 13, 1987.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-3452 Filed 2-18-87; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Report to Congress on the Costs of Operating Privately Owned Vehicles

The Travel Expense Amendments Act of 1975 (Pub. L. 94-22, May 19, 1975) requires the periodic investigation of the operating costs of privately owned vehicles (automobiles, motorcycles, and airplanes) to employees while engaged on official business. Further, the Act requires that the results of these investigations be reported to the Congress and published in the **Federal Register.**

The following is being published to comply with the requirements of the Act.

Dated: February 2, 1987.

T.C. Golden,

Administrator of General Services.

Report to Congress

The Travel Expense Amendments Act of 1975 (Pub. L. 94-22, May 19, 1975), 5 U.S.C. 5707(b)(1), requires that the Administrator of General Services, in consultation with the Comptroller General of the United States (GAO), the Secretaries of Defense and Transportation (DOD and DOT), and representatives of Government employee organizations, conduct periodic investigations of the cost of operating privately owned vehicles to Government employees while engaged on official business and report the results to the Congress at least once a year. The Act further requires that a determination of the average, actual cost per mile be made based on the results of the investigations.

The General Services Administration (GSA) conducted its 1985 cost investigations, prepared a draft of preliminary findings in November 1985, and subsequently consulted with representatives of employee organizations, GAO, DOD, and DOT.

The 1985 cost investigations revealed an average cost of 27 cents and 80 cents per mile for operating a privately owned motorcycle and a privately owned airplane, respectively. Although the costs of operation increased for both motorcycles and airplanes, the current regulatory allowances of 20 cents and 45 cents per mile, respectively, are already set at the statutory ceilings and cannot be increased administratively. While the statutory maximum rates are well below the operating costs estimated in the cost investigations, there have been no complaints of inadequacy.

With respect to the average cost per mile of operating privately owned automobiles, the preliminary findings of the November 1985 cost investigation indicated that the reimbursement rate should be increased from 20.5 cents to 21 cents per mile. This fact was reported to the representatives of employee organizations, GAO, DOD, and DOT. However, during the process of reporting the study results to the Congress and revising the Federal Travel Regulations, the Internal Revenue Service (IRS) advised GSA that due to rapidly declining gasoline and oil prices, it was possible that the standard mileage rate for 1986 tax purposes would be reduced from 21 cents to 20.5 cents. IRS was concerned that GSA's 1986 increase in the reimbursement rate for automobiles could coincide with IRS' decrease in the 1986 mileage rate applicable for income tax purposes, thus creating a burden on both agencies and individual employees. Agencies would be subject to IRS income reporting requirements for employees who received excess reimbursement and employees would be subject to taxation on the excess amount unless it could be offset by documented actual expenses.

To avoid the anticipated burden on both agencies and employees, GSA, through a second consultation, notified representatives of employee organizations, GAO, DOD, and DOT of its intent to make no immediate change in the regulatory reimbursement rate for automobiles until new data is received for the 1986 cost investigations. The consensus was that no action should be taken to increase the automobile mileage rate of 20.5 cents at that time.

GSA is currently conducting its 1986 investigations into the operating costs of privately owned vehicles. You will be advised of the results as soon as the final determinations are made.

[FR Doc. 87-3432 Filed 2-18-87; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Office of the Assistant Secretary for Health, National Center for Health Services Research and Health Care Technology Assessment; Reassessment of Adult Liver Transplantation

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating a reassessment of what is known of the safety and clinical effectiveness of liver transplantation as a treatment for end-stage liver disease in adults. OHTA previously coordinated a PHS assessment of liver transplantation (47 FR 20205; 48 FR 19938) resulting in a recommendation to the Health Care Financing Administration (HCFA) that the procedure be considered a therapeutic intervention when performed in pediatric patients suffering from extra-hepatic biliary atresia and other forms of end-stage liver disease. This reassessment intends to address the medical and surgical indications for the procedure when performed in adults with congenital or acquired liver disease.

For the purpose of this announcement, liver transplantation is defined as the surgical replacement of a patient's irreversibly diseased liver with one obtained from a cadaver. This assessment seeks to establish the specific indications for which liver transplantation should be considered a therapeutic intervention, and to identify those indications for which the procedure should be considered established or accepted medical practice. Questions to be answered by this assessment include: 1) In which patients, with which diagnoses and at what point in the course of their illness is liver transplantation appropriate? 2) For which diseases is liver transplantation the treatment of choice or an effective therapeutic alternative? 3) Are there sub-groups of patients with specific diseases for whom liver transplantation may be an appropriate therapeutic modality? Are there others for whom it is not? 4) What is known about scope of need, availability of donor grafts, morbidity, survival rates, quality of life, and cost of liver transplantation?

PHS assessments consist of a synthesis of information obtained from appropriate organizations in the private sector and from PHS and other agencies in the Federal Government. PHS assessment are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist HCFA in establishing coverage policy for Medicare. The information being south is a review and assessment of past, current, and planned research related to this technology, a bibliography of published, controlled clinical trials and other well-designed clinical studies. Information related to the characterization of the patient population most likely to benefit from it, as well as on the clinical acceptability, effectiveness of this technology and extent of use is also being sought. Any person or group wishing to provide

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OHTA with information relevant to this assessment should do so in writing no later than May 15, 1987 or within 90 days from the date of publication of this notice.

Written material should be submitted to: Enrique D. Carter, M.D., Director, Office of Health Technology Assessment, NCHSR&HCTA, 5600 Fishers Lane, Room 18A27, Rockville, MD 20857, (301) 443-4990.

Dated: February 4, 1987.

Enrique D. Carter,

Director, Office of Health Technology Assessment, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 87-3441-Filed 2-18-87; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Docket No. WY-060-07-4333-10]

Wyoming, Closure to Shooting of Certain Public Lands in Natrona County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure of public lands at the poison spider bentonite pit to shooting.

SUMMARY: Notice is hereby given of the closure to shooting of certain public lands management by the Bureau of Land Management. The lands in question are located near Emigrant Gap Ridge west of the city of Casper, Natrona County, Wyoming. The area is commonly known as the Poison Spider Bentonite Pit and lies west of the Zero County Road. A legal description of the area is as follows:

Sixth Principal Meridian, Wyoming
T. 33 N., R. 81 W.
Section 9, NE¼, NW¼SE¼.
Section 10, All lands west of the Zero County road in the W½NW¼.

DATES: This action is effective as of April 1, 1987.

ADDRESSES: Copies of the notice of closure are available at the following location: Bureau of Land Management, Platte River Resource Area, 111 South Wolcott, Room 111, Casper, WY 82601.

FOR FURTHER INFORMATION CONTACT: Jim Melton, Area Manager, Platte River Resources Area at the address given above; telephone 307/261-5860, (FTS) 328-5860.

SUPPLEMENTAL INFORMATION: The area was designated "open to all forms of off-road vehicle use" by the Platte River Resource Management Plan (RMP) in July 1985. The designation was made after numerous users with recreational, livestock grazing, and mineral interests, as well as local government officials were consulted. Agreement was reached that establishing the "open" ORV area was the best use of the land in question. Although the area had been used as both a shooting and ORV practice area for many years, those two uses occurring in a small area at the same time constituted an unacceptable safety hazard and have caused conflicts between shooters and ORV enthusiasts. The closure to shooting of the lands in question is a necessary step to eliminate the safety hazard and fully implement the ORV designation. The ORV area will be fenced during the summer of 1987 to clearly segregate it from surrounding lands.

Jim Melton,

Platte River Resource Area Manager.

[FR Doc. 87-3522 Filed 2-18-87; 8:45 am]

BILLING CODE 4310-22-M

[Serial No. I-7322; ID-060-07-4220-10]

Coeur d'Alene District; Proposed Withdrawal and Public Meetings

AGENCY: Bureau of Land Management.

ACTION: Notice of proposed withdrawal and public meetings (Serial No. I-7322).

SUMMARY: The Bureau of Land Management proposes to withdraw approximately 6,100 of public land and the reserved mineral interests in 3,600 acres of private land along a 52 mile segment of the Salmon River near Riggins, Idaho. The withdrawal would close the lands to surface entry and mining. The land would remain open to mineral leasing.

DATE: Comments should be received by May 22, 1987.

ADDRESS: Comments should be sent to: Coeur d'Alene District Manager, Bureau of Land Management, c/o Cottonwood Resource Area, Route 3, Box 181, Cottonwood, Idaho 83522.

FOR FURTHER INFORMATION CONTACT: Ron L. Grant, Cottonwood Resource Area, (208) 962-3245.

On September 23, 1973, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described lands, including all reserved mineral interests in private lands, from location and entry under the mining laws and from settlement, sale, location, and entry under the general public land laws, subject to valid existing rights:

Those lands within approximately ¼ mile of either bank of the salmon River, from the mouth of French Creek downstream to the mouth of Hammer Creek.

The area described involves a segment of lands adjoining the Salmon River and contains approximately 6,100 acres of public land and 3,600 acres of reserved mineral interests in private lands in Idaho County.

The purpose of the withdrawal is to protect the scenic, recreational and cultural values of the lands. The lands are and have been segregated from surface entry and mining since October 2, 1968, under the provisions of the Wild & Scenic Rivers Act (Pub. L. 90-542) and subsequently upon notation of the land office records of the withdrawal application filing (I-7322) on October 1, 1973, under the regulations then in effect (43 CFR 2351.3(a)). Under the provisions of section 204(g) of the Federal Land Policy and Management Act of October 21, 1976, the segregative effect of the application filing will terminate on October 21, 1991, unless the lands are withdrawn or the application is otherwise terminated before that date. The uses which have been and will continue to be allowed during the segregative period are all discretionary authorizations which conform with the current land use and management plans, including recreational uses. It is proposed that the lands be withdrawn from a period of 20 years, the maximum allowed by statute. The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 90 days from date of publication of this notice, all persons who wish to submit comments, suggestions or objections to the withdrawal proposal may present their views in writing to the Coeur d'Alene District Manager of the Bureau of Land Management.

Notice is hereby given that three public meetings will be held in connection with the proposed withdrawal. The first will be held in the Sagebrush—Ponderosa Room at the Bureau of Land Management, Idaho State Office, 3380 Americana Terrace, Boise, Idaho at 7:30 p.m. on March 16, 1987. A second meeting will be held in the IOOF Meeting Hall at Riggins, Idaho at 7:30 p.m. on March 18, 1987. The third meeting will be held at the Lewiston Community Center, 1424 Main Street, Lewiston, Idaho at 7:30 p.m. on March 19, 1987. The meetings will be open to attendance of opponents to the withdrawal who may state their views and to proponents of the withdrawal who may explain its purpose, intent and extent and to all interested persons who desire to be heard on the subject. Those who desire to be heard in person at the hearing should file notice thereof not later than March 12, 1987, with the Coeur d'Alene District Manager, Bureau of Land Management.

Dated: February 10, 1987.

Fritz U. Rennebaum,

District Manager.

[FR Doc. 87-3445 Filed 2-18-87; 8:45 am]

BILLING CODE 4310-GG-M

[UT-040-07-4830-12]

Cedar City District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 92-463, that a meeting of the Cedar City District Advisory Council will be held March 19, 1987.

The meeting will begin at 9:30 a.m. in the BLM office at 225 North Bluff, St. George, Utah. The agenda will include: a report on current studies and management programs in the Desert Tortoise area and a wide range of land issues as they impact the Dixie Resource Area Management Plan. The meeting will be held as a field tour. Those wishing to participate must provide their own transportation.

All Advisory Council meetings are open to the public. Interested persons may make oral statements at 9:45 a.m. or submit written comments for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, 176 East D. L. Sargent Drive, Cedar City, Utah 84720 by March 16, 1987. Depending on the number of persons wishing to make a statement, a per person limit may be established by the District Manager or Council Chairman.

Dated: February 10, 1987.

Dennis Curtis,

Acting District Manager.

[FR Doc. 87-3444-Filed 2-18-87; 8:45 am]

BILLING CODE 4310-DQ-M

[AZ-940-07-4212-12; A-20347-B]

Exchange of Public and State Lands in Arizona

February 10, 1987.

Notice is hereby given that pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, the following described lands were transferred out of Federal ownership in exchange for State-owned land. The lands transferred to the State of Arizona are described as follows:

Gila and Salt River Meridian, Arizona

T. 5 S., R. 15 E.,
Sec. 25, E½NE¼.
T. 6 S., R. 15 E.,
Sec. 25, lots 1 to 4, incl., W½E½, W½;
Sec. 31, lots 1 to 4, incl.
T. 6 S., R. 16 E.,
Sec. 17, W½NW¼;
Sec. 18, lots 1 to 4, incl., E½W½, E½;
Sec. 19, lots 1 to 4, incl., E½W½, E½;
Sec. 20, W½NW¼, SW¼;
Sec. 21, E½;
Sec. 25, E½;
Sec. 28, NE¼, N½NE¼SE¼;
Sec. 29, W½;
Sec. 30, lots 1 to 4, incl., E½W½, E½;
Sec. 31, lots 1 to 4, incl., E½W½, E½;
Sec. 35, NE¼SE¼, E½NW¼SE¼, E½SE¼SE¼;
Sec. 36, all. (surface only)
T. 7 S., R. 16 E.
Sec. 23, E½, N½NW¼, SE¼NW¼;
Sec. 24, all;
Sec. 25, all;
Sec. 26, N½NE¼, SE¼NE¼, NE¼SE¼.
T. 8 S., R. 16 E.,
Sec. 12, W½, W½SE¼;
Sec. 13, all;
Sec. 14, all;
Sec. 23, N½;
Sec. 24, W½NE¼, W½, SE¼.
T. 11 S., R. 16 E.,
Sec. 13, N½SW¼.
T. 6 S., R. 17 E.,
Sec. 31, lots 1 to 4, incl., E½W½, E½;
Sec. 33, all;
Sec. 34, NW¼SW¼.
T. 7 S., R. 17 E.,
Sec. 4, lots 2, 3, 4, S½NW¼, N½SW¼;
Sec. 5, lots 1 to 4, incl., S½N½, N½S½, SE¼/SW¼, S½SE¼;
Sec. 6, lot 1, SE¼NE¼, NE¼SE¼;
Sec. 19, lots 1 to 4, incl., E½W½, E½;
Sec. 20, all;
Sec. 21, all;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1 to 4, incl., E½W½, E½.
T. 8 S., R. 17 E.,
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 7, N½NE¼, E½NW¼;
Sec. 31, lots 15, 20, N½SE¼NE¼SW¼, N½N½NW¼SE¼, N½SE¼SW¼SE¼, SE¼NE¼SE¼, S½SW½NE¼SE¼, NW¼SE¼SE¼.
T. 9 S., R. 17 E.,
Sec. 3, lot 1, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 10, NE¼, NE¼NW¼, E½SE¼;
Sec. 11, all;
Sec. 12, all.
T. 12 S., R. 17 E.,
Sec. 1, lots 1, 2, S½NE¼, SE¼NW¼, S½;
Sec. 12, NW¼.
T. 8 S., R. 18 E.,
Sec. 25, W½SE¼.
T. 9 S., R. 18 E.,
Sec. 1, lots 1 to 4, incl., S½N½;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 6, lots 1 to 7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lots 1 to 4, incl., E½W½, E½;
Sec. 8, all;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, S½;
Sec. 13, all;
Sec. 14, all;
Sec. 15, all;
Sec. 17, E½, NW¼;
Sec. 20, lots 6, 7, N½SE¼;
Sec. 21, lots 1 to 4, incl., N½, N½S½;
Sec. 22, all;
Sec. 23, all;
Sec. 24, all;
Sec. 25, all;
Sec. 26, all;
Sec. 27, all;
Sec. 28, lots 1 to 4, incl., N½N½, S½;
Sec. 29, lots 1, 2, 7, 8, SE¼;
Sec. 33, all;
Sec. 34, all;
Sec. 35, all.
T. 10 S., R. 18 E.,
Sec. 22, NE¼, E½NW¼, NE¼SW¼, N½SE¼;
Sec. 24, lots 2, 3, 4, NE¼NE¼.
T. 12 S., R. 18 E.,
Sec. 4, lots 3, 4;
Sec. 5, lots 3, 4, S½NW¼, SW¼.
T. 7 S., R. 19 E.,
Sec. 13, SE¼SE¼.
T. 10 S., R. 19 E.,
Sec. 19, lot 3, E½SE¼, SE¼;
Sec. 20, W½ SW¼;
Sec. 21, all;
Sec. 22, S½.
T. 12 S., R. 19 E.,
Sec. 1, lots 1, 2, S½NE¼, SE¼;
Sec. 12, lots 1 to 4, incl., E½W½, E½;
Sec. 13, lots 1 to 4, incl., E½W½, E½;
Sec. 14, lots 1 to 7, incl., E½NE¼, S½SW¼, SE¼SE¼;
Sec. 20, S½NE¼, S½;
Sec. 21, S½NE¼, SE¼;
Sec. 23, lots 1 to 4, incl., S½N½, S½;
Sec. 24, all;
Sec. 25, all;
Sec. 28, E½, E½SW¼;
Sec. 29, N½, NE¼SW¼.
T. 13 S., R. 19 E.,
Sec. 25, SW¼SW¼.
T. 14 S., R. 19 E.,
Sec. 3, lots 3 to 6, incl., S½NW¼, SW¼;
Sec. 10, W½;
Sec. 13, lots 1 to 4, incl., W½E½, W½;
Sec. 24, lots 1 to 4, incl., W½E½, W½;
Sec. 25, lots 1 to 4, incl., W½E½, W½;
Sec. 29, NE¼NE¼, E½SE¼;
Sec. 30, N½NE¼;
Sec. 33, SW¼SE¼.
T. 15 S., R. 19 E.,
Sec. 21, SW¼SW¼;
Sec. 23, N½NE¼, W½;
Sec. 24, NW¼NE¼, N½NW¼;
Sec. 26, W½, W½SE¼;
Sec. 28, W½NW¼;
Sec. 33, SE¼SW¼, SW¼SE¼;
Sec. 35, W½NE¼, NW¼.
T. 6 S., R. 20 E.,
Sec. 5, lots 1, 2, 5, 6, SE¼NW¼;
Sec. 6, lots 1 to 8, incl. and lots 11, 12, SE¼NW¼;
Sec. 7, lots 1, 2, S½NE¼;
Sec. 29, lots 2, 3.
T. 7 S., R. 20 E.,
Sec. 3, lots 1 to 7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 6, lot 3;
Sec. 10, lots 1 to 7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;

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Sec. 11, lots 1 to 4, incl., E½, E½W½;
Sec. 12, all;
Sec. 13, lots 1 to 4, incl., N½, N½S½;
Sec. 14, lots 1 to 7, incl., NE¼, E½NW¼, NE¼SW¼, N½SE¼;
Sec. 15, lots 1 to 7, incl., NE¼NE¼, N½NW¼, E½SE¼;
Sec. 19, lots 1 to 4, incl., E½W½, SE¼;
Sec. 29, lots 1 to 7, incl., W½NW¼, SW¼SW¼, S½SE¼;
Sec. 30, lots 1 to 7, incl., NE¼, E½NW¼, SE¼SW¼, S½SE¼;
Sec. 31, lots 1 to 7, incl., NE¼, E½NW¼, NE¼SW¼, N½SE¼.
T. 12 S., R. 20 E.,
Sec. 5, S½SE¼;
Sec. 7, lots 1, 2;
Sec. 8, N½NE¼, W½;
Sec. 9, NW¼NW¼.
T. 13 S., R. 20 E.,
Sec. 3, SE¼SW¼;
Sec. 10, NW¼NW¼;
Sec. 11, SE¼NE¼;
Sec. 34, lots 1 to 4, incl., N½S½, N½;
Sec. 35, lots 1 to 4, incl.
T. 14 S., R. 20 E.,
Sec. 6, lot 8;
Sec. 7, NW¼NE¼;
Sec. 19, lots 1 to 4, incl., E½W½, E½;
Sec. 20, W½W½;
Sec. 30, lots 1 to 4, incl., E½W½, E½.
T. 15 S., R. 20 E.,
Sec. 22, E½NW¼.
T. 16 S., R. 20 E.,
Sec. 1, S½;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 5, SE¼;
Sec. 8, N½NE¼;
Sec. 9, NE¼, N½NW¼, SE¼NW¼, N½SE¼;
Sec. 11, all;
Sec. 12, all;
Sec. 13, all;
Sec. 14, all;
Sec. 15, N½, SE¼;
Sec. 22, NE¼;
Sec. 24, all;
Sec. 25, all;
Sec. 27, N½NE¼, SE¼NE¼;
Sec. 30, NE¼SW¼.
T. 15 S., R. 21 E.,
Sec. 21, SW¼NW¼, SW¼;
Sec. 28, NW¼.
T. 16 S., R. 21 E.,
Sec. 7, lots 1, 2, S½NE¼, SE¼;
Sec. 8, W½;
Sec. 12, N½NE¼, SE¼NE¼, NE¼NW¼, SW¼;
Sec. 17, all;
Sec. 18, lots 1, 2, S½NE¼, SE¼;
Sec. 19, SE¼;
Sec. 20, S½;
Sec. 21, S½;
Sec. 29, all;
Sec. 30, E½;
Sec. 31, lots 1, 2, NE¼, E½NW¼;
Sec. 33, N½.
T. 15 S., R. 22 E.,
Sec. 15, W½;
Sec. 30, SW¼;
Sec. 31, lots 3, 4, NW¼, N½SW¼.
T. 16 S., R. 22 E.,
Sec. 5, lot 4, SW¼NW¼, SW¼;
Sec. 6, lots 1, 2, S½NE¼, SE¼;
Sec. 7, lot 3.
T. 13 S., R. 23 E.,
Sec. 18, lots 3, 4, NW¼NE¼, NE¼NW¼, E½SE¼, SW¼SE¼.
T. 15 S., R. 23 E.,
Sec. 29, NE¼.

The above described lands comprise 70,956.17 acres in Cochise, Graham, Pima and Pinal Counties.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of public land and the acquisition of State land by the Federal Government.

In exchange for these lands, the United States acquired the following described land:

Gila and Salt River Meridian, Arizona

T. 7 S., R. 28 E.,
Sec. 15, S½SW¼, SE¼;
Sec. 36, SE¼SE¼.
T. 7 S., R. 29 E.,
Sec. 18, all;
Sec. 22, all;
Sec. 23, N½, N½S½, S½SW¼, SW¼SE¼;
Sec. 24, N½, N½S½, SE¼SW¼, S½SE¼;
Sec. 25, E½;
Sec. 26, SE¼;
Sec. 36, all.

The above-described lands comprise 3,880.00 acres in Graham County.

At 9:00 a.m. on March 6, 1987, the reconveyed land described above will be open to operation of the public land laws, generally subject to valid existing rights and requirements of applicable law.

At 9:00 a.m. on March 6, 1987, the reconveyed land described above will be open to applications under the general mining laws and mineral leasing laws, subject to existing State-issued leases and permits for the terms of said leases and permits. All applications and offers received prior to 9:00 a.m. on March 6, 1987 will be considered as simultaneously filed as of that time and date, and a drawing will be held in accordance with 43 CFR 1821.2–3, if necessary. Applications and offers received thereafter shall be considered in the order of filing.

The following described land, acquired by the United States in this exchange will remain closed to appropriation under the public land laws and general mining laws pending completion of an inventory and the planning process.

Gila and Salt River Meridian, Arizona

T. 5 S., R. 18 E.,
Sec. 23, SE¼, except that portion in San Carlos Indian Reservation (SCIR);
Sec. 24, all south of SCIR;
Sec. 25, all;
Sec. 26, all;
Sec. 27, all, except that portion in SCIR;
Sec. 28, all south of SCIR;
Sec. 32, all south of SCIR;
Sec. 33, all, except that portion in SCIR;
Sec. 34, all;
Sec. 35, all;
Sec. 36, all.
T. 5 S., R. 19 E.,
Sec. 32, lots 1 to 16, incl.
T. 6 S., R. 17 E.,
Sec. 1, S½;
Sec. 2, all south of SCIR;
Sec. 8, SE¼;
Sec. 9, SW¼, SE¼NW¼;
Sec. 10, all;
Sec. 11, all;
Sec. 12, lots 1 to 4, incl., W½E½, W½;
Sec. 14, lots 1 to 7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 20, N½NW¼, SE¼SW¼;
Sec. 21, all;
Sec. 22, all;
Sec. 23, lots 1 to 8, incl.;
Sec. 24, lots 1 to 8, incl.;
Sec. 25, lots 1, 2, 3, E½W½, E½;
Sec. 28, N½;
Sec. 36, E½NE¼, NW¼NE¼.
T. 6 S., R. 18 E.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 2, lots 1 to 4, incl., S½N½, S½;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 6, lots 1, 2, 5, 6, 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lots 1 to 4, incl., E½W½, NE¼;
Sec. 8, N½;
Sec. 9, E½, NW¼;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all;
Sec. 13, lots 1 to 4, incl., E½W½, E½;
Sec. 20, E½NE¼, W½NW¼, SW¼;
Sec. 21, all;
Sec. 22, all;
Sec. 23, SW¼NE¼, NW¼NW¼, S½NW¼, S½;
Sec. 26, all;
Sec. 27, all;
Sec. 28, all;
Sec. 29, W½, S½SE¼;
Sec. 30, lots 1 to 3, incl., E½, E½NW¼, NE¼SW¼;
Sec. 31, W½NE¼;
Sec. 32, N½NE¼, SE¼NE¼, NW¼SW¼, S½S½;
Sec. 33, N½, E½SW¼, SE¼;
Sec. 34, all;
Sec. 35, all;
Sec. 36, all.
T. 6 S., R. 19 E.,
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 6, lots 1 to 6, incl., S½NE¼, SE¼;
Sec. 7, lots 1 to 6, incl., NE¼, N½SE¼;
Sec. 8, lots 1 to 4, incl., NE¼, NE¼NW¼, S½NW¼, N½S½;
Sec. 9, lots 1 to 4, incl., N½, N½S½;
Sec. 10, lots 1 to 4, incl., N½, N½S½;
Sec. 15, all;
Sec. 16, lots 1 to 10, incl., W½NW¼, SE¼;
Sec. 17, all;
Sec. 18, lots 1 to 4, incl., E½;
Sec. 20, N½N½, S½S½;
Sec. 21, NW¼, SW¼SW¼;

Sec. 22, all;
Sec. 27, NE¼, N½NW¼, SE¼NW¼, N½SE¼;
Sec. 28, lots 2 to 10, incl., S½SW¼;
Sec. 29, lots 1 to 4, incl., S½N½, S½;
Sec. 31, lots 1 to 4, incl., E½;
Sec. 32, all;
Sec. 33, lots 1 to 4, incl., S½N½, S½;
Sec. 34, lots 1, 2, 3, 6, 7.
T. 7 S., R. 18 E.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 2, lots 1 to 4, incl., S½N½, S½;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 4, lot 1, S½N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 5, lots 1 to 4, incl., S½N½;
Sec. 6, lots 1, SE¼NE¼, SE¼SW¼;
Sec. 7, S½SE¼;
Sec. 8, N½NE¼;
Sec. 9, NE¼, E½NW¼, S½;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all;
Sec. 13, NW¼;
Sec. 14, E½, SW¼;
Sec. 15, SW¼;
Sec. 16, all;
Sec. 17, NE¼NE¼, S½NE¼, NW¼NW¼, SE¼NW¼;
Sec. 23, NE¼, E½NW¼, N½SE¼;
Sec. 24, all;
Sec. 25, NE¼, E½NW¼, S½;
Sec. 26, SE¼, N½SW¼;
Sec. 27, E½NE¼.
T. 7 S., R. 19 E.,
Sec. 3, lot 4;
Sec. 4, lots 1 to 4, incl.;
Sec. 5, lots 1 to 4, incl., S½NW¼, SW¼;
Sec. 6, lots 1 to 8, incl., S½NE¼, SE¼;
Sec. 7, lots 1 to 4, incl., W½E½, E½SE¼;
Sec. 18, SE¼NE¼.
T. 11 S., R. 20 E.,
Sec. 26, NW¼, S½;
Sec. 27, W½;
Sec. 28, E½, E½W½, W½SW¼;
Sec. 33, all;
Sec. 34, W½;
Sec. 36, all.
T. 12 S., R. 19 E.,
Sec. 36, all.
T. 12 S., R. 20 E.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 2, lots 1 to 4, incl., S½N½, S½;
Sec. 4, lots 1 to 4, incl., SW¼, S½N½;
Sec. 10, E½, SW¼;
Sec. 11, W½, N½NE¼;
Sec. 12, N½NW¼, E½E½;
Sec. 15, E½, E½W½, NW¼NW¼, W½SW¼;
Sec. 19, E½SE¼;
Sec. 20, N½, SW¼;
Sec. 21, N½, SE¼;
Sec. 22, SE¼, N½NE¼, SE¼NE¼, W½;
Sec. 23, all;
Sec. 24, all;
Sec. 25, N½N½, S½NE¼, SW¼SW¼, E½SE¼;
Sec. 26, S½NW¼, N½S½, S½SW¼;
Sec. 27, S½NE¼, S½;
Sec. 28, N½N½, S½S½;
Sec. 29, N½N½, S½;
Sec. 30, lots 3, 4, SE¼;
Sec. 31, lots 1 to 4, incl., E½;
Sec. 32, all;
Sec. 33, all;
Sec. 34, all;
Sec. 35, all;
Sec. 36, NW¼, S½.
T. 12 S., R. 21 E.,
Sec. 6, lots 1 to 7, incl., S½NE¼, SE¼NW¼, E½SW¼, E½SW¼, SE¼;
Sec. 7, lots 1 to 4, incl., E½W½, E½;
Sec. 8, SW¼NW¼, SW¼, NW¼SE¼, S½SE¼;
Sec. 17, all;
Sec. 18, lots 1 to 4, incl., E½W½, E½;
Sec. 19, E½;
Sec. 20, W½;
Sec. 29, N½NE¼, SE¼NE¼, SE¼SW¼, SE¼;
Sec. 30, lots 1 to 4, incl., E½W½, W½SE¼;
Sec. 31, lots 4, SE¼NW¼;
Sec. 32, NE¼, E½NW¼, NE¼SW¼, SE¼.
T. 13 S., R. 20 E.,
Sec. 2, lots 1 to 4, incl., S½N½, S½;
T. 13 S., R. 21 E.,
Sec. 6, lots 4 to 7, incl., SE¼NW¼, E½SW¼, SE¼;
Sec. 7, NE¼.

The above area comprises 72,624.37 acres in Graham, Pinal and Cochise Counties.

At 9:00 a.m. on March 6, 1987, the reconveyed land described above will be open to applications and offers under the mineral leasing laws, subject to existing State-issued leases and permits for the terms of said leases and permits. All applications and offers received prior to 9 a.m. on March 6, 1987 will be considered as simultaneously filed as of that time and date, and a drawing will be held in accordance with 43 CFR 1821.2–3, if necessary. Those applications and offers received thereafter shall be considered in the order of filing.

The following described land acquired by the United States in this exchange will remain closed to appropriation under the public land laws, including the mining and mineral leasing laws.

Gila and Salt River Meridian

T. 21 S., R. 18 E.,
Sec. 14, SE¼NE¼, NE¼SE¼, S½SE¼;
Sec. 15, SW¼;
Sec. 16, NE¼SW¼, SE¼;
Sec. 20, E½;
Sec. 21, all;
Sec. 22, lots 1, 2, 3, NW¼;
Sec. 23, NE¼.

comprising 1,902.44 acres in Santa Cruz County.

Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87–3427 Filed 2–18–87; 8:45 am]

BILLING CODE 4310-32-M

[UT-060-4322-12]

Intent for Plan Amendment

AGENCY: Bureau of Land Management, Moab.

ACTION: Notice of intent—plan amendment for the grand resource area resource management plan, Grand and San Juan Counties, Utah.

SUMMARY: This notice of intent is to advise the public that the Bureau of Land Management (BLM) intends to amend an existing planning document.

SUPPLEMENTARY INFORMATION: The BLM is proposing to amend the 1985 Grand Resource Area Resource Management Plan which involves portions of Grand and San Juan Counties, Utah. The purpose of the amendment would be to identify grazing allotments which could be converted from one kind of livestock use to another (from sheep to cattle or from cattle to sheep) in the "Cisco Desert" area.

The existing plan does not state whether livestock conversions would be allowed on certain allotments. This amendment would specify whether conversions would be allowed or not.

For 30 days from the date of publication of this notice the BLM will accept comments on this proposal. There will also be opportunity for public comment on the final planning decision.

Existing planning documents and information are available at the Grand Resource Area, P.O. Box M, Sand Flats Road, Moab, Utah 84532, phone: (801) 259–8193.

FOR FURTHER INFORMATION: Contact Colin P. Christensen, Grand Resource Area Manager.

Dated: February 10, 1987.

Kenneth V. Rhea,

Associate District Manager.

[FR Doc. 87–3447 Filed 2–18–87; 8:45 am]

BILLING CODE 4310-DQ-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4727, Block A–127, Galveston Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Galveston, Texas.

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DATE: The subject DOCD was deemed submitted on February 4, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 10, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-3438 Filed 2-8-87; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice.

SUMMARY: The Minerals Management Service (MMS) incorporates by reference into Outer Continental Shelf (OCS) Order No. 5 for all OCS Regions the 1985 Edition of the American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME), Safety Pollution Prevention Equipment (SPPE)-1, and the 1984 Editions of the American Petroleum Institute (API) Specifications (Spec) 14A and 14D. The incorporation by reference brings OCS Order No. 5 up to date with current industry recommended practices. The MMS also deletes from OCS Order No. 5 for all OCS Regions the current incorporation by reference of ANSI/ASME SPPE-2. The deletion eliminates requirements dealing with accreditation of testing facilities.

DATE: This notice becomes effective on March 23, 1987].

FOR FURTHER INFORMATION CONTACT: John Mirabella, telephone: (703) 648-7816 or (FTS) 959-7816.

SUPPLEMENTARY INFORMATION: In the **Federal Register** Notice of September 18, 1986 (51 FR 33146), MMS solicited comments on a proposed amendment to OCS Order No. 5 that incorporates by reference more recent editions of documents currently incorporated and that deletes the current incorporation by reference of a document concerning accreditation of testing facilities.

Proposed Incorporation by Reference

The MMS proposed to incorporate by reference into OCS Order No. 5 for all Regions the following documents:

1. The 1985 Edition of ANSI/ASME SPPE-1, "Quality Assurance and Certification and Safety and Pollution Equipment Used in Offshore Oil and Gas Operations," in Paragraph 2, *Quality Assurance and Performance and Safety and Pollution-Prevention Equipment*, in lieu of the 1977 Edition currently incorporated in the Atlantic, Gulf of Mexico, and Pacific OCS Regions and the 1982 Edition currently incorporated in the Alaska OCS Region;

2. The 1984 Edition of the API Spec 14A, "API Specification for Subsurface-Safety Valve Equipment," in Subparagraph 3.2 *Specification for Subsurface-Safety Valves*, in lieu of the 1979 Edition currently incorporated in the Atlantic, Gulf of Mexico, and Pacific OCS Regions and the 1981 Edition currently incorporated in the Alaska OCS Region; and

3. The 1984 Edition of the API Spec 14D, "API Specification for Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service," in Subparagraphs 4.2 (Alaska and Atlantic OCS Regions) and 4.3 (Gulf of Mexico and Pacific OCS Regions), *Specification for Wellhead Surface-Safety Valves*, in lieu of the 1977 Edition currently incorporated in the Atlantic, Gulf of Mexico, and Pacific OCS Regions and the 1982 Edition currently incorporated in the Alaska OCS Region.

The 1985 Edition of ANSI/ASME SPPE-1 reflects the latest advances in practice concerning quality assurance programs for safety pollution-prevention equipment, accreditation of manufacturers of safety and pollution-prevention equipment, and equipment malfunction/failure reporting by offshore operators of safety and pollution-prevention equipment.

The 1984 Edition of the API Spec 14A reflects the latest advances in technology, equipment, and practice concerning subsurface safety valves, safety locks, and safety valve landing nipples to be used on offshore wells.

The 1984 Edition of the API Spec 14A reflects the latest advances in technology, , equipment, and practice concerning wellhead surface safety valves with flanged or other industry-accepted nonthreaded end connections and heat-sensitive, lock-open devices to be used on offshore wells. Those advances in technology, equipment, and practice include requirements for underwater safety valves.

The MMS had concluded that these additional requirements increase safety in the operation of production safety systems and keep OCS Order No. 5 up to date with current industry recommended practices.

Therefore, MMS proposed to incorporate by reference the 1985 Edition of ANSI/ASME SPPE-1 and the 1984 Editions of the API Spec 14A and 14D into OCS Order No. 5.

The ANSI/ASME SPPE-1 without identification of the specific edition is also incorporated by reference, partially or in total, as applicable, in subparagraphs 3.11 and 5.6.1. The MMS proposed to revise paragraph 2 by incorporating by reference the 1985 Edition and by adding the words "hereinafter referred to as ANSI/ASME SPPE-1" immediately after the incorporation. This would cause all subsequent references to ANSI/ASME SPPE-1 in OCS Order No. 5 to apply to the 1985 Edition.

The MMS proposed to revise subparagraph 3.2 for the Atlantic, Gulf of Mexico, and Pacific OCS Regions by incorporating by reference the 1984 Edition of API Spec 14 A and by deleting the phrase "or subsequent revisions which the Deputy Chief, Conservation Division—Offshore Minerals Regulation, has approved for use at the time of installation."

The MMS also proposed to revise subparagraph 4.2 in the Alaska and Atlantic OCS Regions and subparagraph 4.3 in the Gulf of Mexico and Pacific OCS Regions by incorporating by reference the 1984 Edition of API Spec 14D and by deleting the phrase "or subsequent revisions which the Chief, Conservation Division, has approved for use at the time of installation."

The MMS revised the wording concerning the incorporation by reference of subsequent editions of references to clarify that new editions of documents incorporated by reference would replace editions previously incorporated only after going through rulemaking procedures.

Proposed Deletion of Incorporation by Reference

The MMS also proposed to delete from OCS Order No. 5 for all OCS Regions the ANSI/ASME SPPE-2, "Accreditation of Testing Laboratories for Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations," currently incorporated by reference in paragraph 2. The proposed deletion eliminated requirements dealing with accreditation of testing facilities. Requirements dealing with accreditation of testing facilities. Requirements for testing of safety and pollution-prevention equipment are contained in SPPE-1 and is references, and incorporation by reference of SPPE-2 directly into OCS Order No. 5 is not necessary.

Two comments endorsing the proposed changes were received. However, the commenters offered suggestions which are discussed below.

Discussion of Comments

Comment—The first commenter stated that it had reviewed the various documents proposed to be incorporated and endorsed the incorporation by reference. However, the commenter contended that the documents should be incorporated only as guidelines and not as enforceable rules. The commenter also contended that the proposed incorporation by reference did not comply with the requirements of section 553(b) of the Administrative Procedure Act which requires public scrutiny.

Discussion—The MMS disagrees with both of the commenter's contentions. The MMS believes that the requirements contained in documents incorporated by reference should be mandatory and, therefore, were proposed as mandatory. Moreover, the documents proposed to be incorporated by reference have been subjected to public review and are a valid subject to comment to a proposed rule which incorporates that document. Accordingly, commenters had the opportunity to review the documents and to provide comments in response to the **Federal Register** Notice of September 18, 1986. This process conforms to the requirements of the Administrative Procedure Act.

Comment—The second commenter noted that the proposed incorporation by reference of the documents should be consistent with the proposed rule consolidation of 30 CFR Parts 250 and 256 published in the **Federal Register** on March 18, 1986 (51 FR 9316), and that once the proposed consolidated rules became official existing OCS Order No. 5 would be rescinded. The March 18, 1986, proposed rule does not directly reference API Spec 14A or 14D.

Discussion—The proposed rule published in the **Federal Register** on March 18, 1986, would consolidate into one document not only OCS Order No. 5 but the multitiered rules of MMS's offshore program with all their pertinent incoporations by reference. Therefore, the proposed rule consolidation merited and has been submitted to an appropriated separate and more lengthy public comment period.

Moreover, the comments in response to the rule consolidation are undergong a more extensive and time-consuming review. The MMS contends that in the meantime OCS Order No. 5, which is the current regulation for production safety systems, should be brought up to date with current industry recommended practices. The comments pertaining to the March 18, 1986, proposed rule are not being addressed at this time.

Executive Order 12291: This amendment is not expected to cause an increase in cost to consumers, industry, or governmental entities. Based on this assessment, the Department of the Interior (DOI) has determined that this document does not constitute a major rule under Executive Order 12291; therefore, a Regulatory Impact Analysis is not required.

Regulatory Flexibility Act: The DOI has also determined that this document will not have significant economic effect on a substantial number of small entities since offshore activities are complex undertakings generally engaged in by enterprises that are not considered small entities.

Paperwork Reduction Act: The information collection requirements contained in OCS Order No. 5 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* There are no new information collection requirements in this notice.

Author: The principal author of this document is Mario Rivero, Offshore Rules and Operations Division, Minerals Management Service.

Dated: December 31, 1986.

William D. Bettenberg,

Director, Minerals Management Service.

For the reasons set forth above, OCS Order No. 5 for all OCS Regions is revised as follows:

1. Paragraph 2 for the Alaska and Atlantic OCS Regions is revised to read as follows:

2. *Quality Assurance and Performance of Safety and Pollution-Prevention Equipment.* Safety and Pollution Prevention Equipment (SPPE) shall conform to the American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME) SPPE-1-1985 standard, "Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations," hereinafter referred to as ANSI/ASME SPPE-1. The applicable SPPE components and the applicable SPPE specifications are identified in subparagraphs 3.2 and 4.2.

2. Paragraph 2 for the Gulf of Mexico and Pacific OCS Regions is revised to read as follows:

2. *Quality Assurance and Performance of Safety and Pollution-Prevention Equipment.* Safety and Pollution Prevention Equipment (SPPE) shall conform to the American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME) SPPE-1-1985 standard, "Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations," hereinafter referred to as ANSI/ASME SPPE-1. The applicable SPPE components and the applicable SPPE specifications are identified in subparagraphs 3.2 and 4.3.

3. In subparagraph 3.2 for the Alaska OCS Region, the phrase "API Spec 14A, Fifth Edition, April 1981, and Supplement 1, February 1982" is replaced with the phrase "API Spec 14A, Sixth Edition, April 30, 1984."

4. In subparagraph 3.2 for the Atlantic, Gulf of Mexico, and Pacific OCS Regions, the phrase "API Spec 14A, Fourth Edition, November 1979, or subsequent revisions which the Deputy Chief, Conservation Division—Offshore Minerals Regulation, has approved for use at the time of installation" is replaced with the phrase "API Spec 14A, Sixth Edition, April 30, 1984."

5. In subparagraph 4.2 for the Alaska OCS Region, the phrase "API Spec 14D, Fourth Edition, February 1982" is replaced with the phrase "API Spec 14D, Sixth Edition, April 30, 1984."

6. In subparagraph 4.2 for the Atlantic OCS Region and subparagraph 4.3 for the Gulf of Mexico and Pacific OCS Regions, the phrase "API Spec 14D, Second Edition, November 1977, as amended by Supplement 2, November 1978, or subsequent revisions which the Chief, Conservation Division, has approved for use at the time of installation" is replaced with the phrase "API Spec 14D, Sixth Edition, April 30, 1984."

(43 U.S.C. 1334)

[FR Doc. 87-3437 Filed 2-18-87; 8:45 am]

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National Park Service

Illinois and Michigan Canal National Heritage Corridor Commission; Meeting

February 6, 1987.

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Illinois and Michigan Canal National Heritage Corridor Commission will be held March 2, 1987, beginning at 10 a.m. at the Gaylord Building in Lockport, Illinois.

The Commission was originally established on August 24, 1984, pursuant to provisions of the Illinois and Michigan Canal National Heritage Corridor Act of 1984, 98 Stat. 1456, 16 U.S.C. sec. 461 note, to implement and support the conceptual plan.

Matters to be discussed at the meeting will include the boundary of the corridor, liability legislation, and the Economic Development Administration (EDA) grant.

The meeting will be open to the public. Interested persons may submit written statements to the official listed below prior to the meeting. Further information concerning the meeting may be obtained from Alan M. Hutchings, Chief, Division of External Affairs, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, telephone 402–221–3481 (FTS 864–3481). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 3 weeks after the meeting.

Dated: February 6, 1987.

Charles H. Odegaard,

Regional Director, Midwest Region.

[FR Doc. 87–3502 Filed 2–18–87; 8:45 am]

BILLING CODE 4310-70-M

Jefferson National Expansion Memorial Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Jefferson National Expansion Memorial Commission will be held March 27, 1987, at 9 a.m. The meeting will be held in the Exhibit Gallery at the Old Courthouse, Jefferson National Expansion Memorial National Historic Site, 11 North Fourth Street, St. Louis Missouri 63102.

The Commission was originally established on August 24, 1984, pursuant to provisions of the Jefferson National Expansion Memorial Amendments Act of 1984, 98 Stat. 1469, 16 U.S.C. 450jj-6, to implement and support the conceptual plan.

Matters to be discussed at the February 27 meeting will include development of strategies and recommendations for the protection of the adjacent 200 acres, review of the final development and management plan, review of the final draft museum report, and strategies for fundraising and commitment.

The meeting will be open to the public. Interested persons may submit written statements to the official listed below prior to the meeting. Further information concerning the meeting may be obtained from Alan M. Hutchings, Chief, Division of External Affairs, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, telephone 402–221–3481 (FTS 864–3481). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 3 weeks after the meeting.

Russell W. Berry, Jr.,

Acting Regional Director, Midwest Region.

[FR Doc. 87–3503 Filed 2–18–87; 8:45 am]

BILLING CODE 4310-70-M

United States World Heritage Nominations: 1987

AGENCY: National Park Service, Department of the Interior.

ACTION: Public notice.

SUMMARY: The Department of the Interior, through the National Park Service, announces the nomination of Pu'uhonua o Honaunau National Historical Park and the Thomas Jefferson Architectural Theme to the World Heritage List. The nominations are the result of Interior's annual World Heritage nomination process, which was initiated through an April 8, 1986, **Federal Register** notice (51 FR 11986). The Department earlier announced the identification of both sites as proposed United States World Heritage nominations (51 FR 37794). The nominations have been submitted to the Secretariat of the World Heritage Committee for consideration through a process that could lead to their inscription on the World Heritage List in fall 1987.

FOR FURTHER INFORMATION CONTACT: Mr. James Stewart, Acting Associate Director, Planning and Development, National Park Service, U.S. Department of the Interior, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Convention Concerning the Protection of the World Cultural and Natural Heritage, ratified by the United States and 91 other countries, has established a system of international cooperation through which cultural and natural properties of outstanding universal value to mankind may be recognized and protected. The Convention seeks to put into place an orderly approach for coordinated and consistent heritage resource protection and enhancement throughout the world. The Convention complements each participating nation's heritage conservation programs, and provides for:

(a) The establishment of a 21-member World Heritage Committee to further the goals of the Convention and to approve properties for inclusion on the World Heritage List;

(b) The development and maintenance of a World Heritage List to be comprised of natural and cultural properties of outstanding universal value;

(c) The preparation of a List of World Heritage in Danger;

(d) The establishment of a World Heritage Fund, with a primary function to assist participating countries in preserving and protecting endangered World Heritage properties;

(e) The provision of technical assistance to participating countries, upon request; and

(f) The promotion and enhancement of public knowledge and understanding of the vital importance of heritage conservation at the international level.

Participating nations identify and nominate their sites for inclusion on the World Heritage List, which currently includes 247 cultural and natural properties. The World Heritage Committee evaluates all nominations against established criteria. Under the Convention, each participating nation assumes responsibility for taking appropriate legal, scientific, technical, administrative, and financial measures necessary for the identification, protection, conservation, presentation, and rehabilitation of World Heritage properties situated within its borders.

The Federal Interagency Panel for World Heritage makes recommendations on proposed United States World Heritage nominations and related matters. The Panel includes representatives from the Office of the Assistant Secretary for Fish and Wildlife and Parks, the National Park Service, U.S. Fish and Wildlife Service and Bureau of Land Management within the Department of the Interior; the President's Council on Environmental Quality; the Smithsonian Institution; the Advisory Council on Historic Preservation; the Department of Commerce; the Department of Agriculture; the United States Information Agency; and the Department of State.

In the United States, the Department of the Interior is responsible for directing and coordinating U.S. participation in the World Heritage Convention. The Department implements its responsibilities under the Convention in accordance with the statutory mandate contained in Title IV of the National Historic Preservation Act Amendments of 1980 (Pub. L. 96–515; 16 U.S.C. 470a–1, a–2). On May 27, 1982, the Interior Department published in the **Federal Register** the final rules which are used to carry out this legislative mandate (47 FR 23392). The rules contain further information on the Convention and its implementation in the United States.

United States World Heritage Nominations: 1987

The Interior Department, in cooperation with the Federal Interagency Panel for world Heritage, has selected the following properties as United States nominations to the World Heritage Committee for inscription on the World Heritage List.

I. Cultural Properties

Architecture: Early United States
THE THOMAS JEFFERSON ARCHITECTURAL THEME
Monticello, Charlottesville, Virginia (38° 0'N; 78° 30'W)

Thomas Jefferson, the third American President, was a great architect who practiced the Classic Revival style. In Monticello, his mansion, he combined elements of Roman, Palladian, the 18th century French design with features expressing his extraordinary personal inventiveness. Criteria: (i) A unique artistic achievement, a masterpiece of the creative genius; and (ii) has exerted great influence, over a span of time and within a cultural area of the world, on development in architecture.

University of Virginia; Jefferson District
Charlottesville, Virginia (38° 0'N; 78° 30'W)

Includes original classrooms and professors' quarters housed in pavilions aligned on both sides of an elongated terraced court, as well as the domed Rotunda, a scaled-down version of the Pantheon. This building was the focal point of Thomas Jefferson's design. Jefferson envisioned a community of scholars living and studying in an architecturally unified complex of buildings. Criteria: (i) A unique artistic achievement, a masterpiece of the creative genius; and (ii) has exerted great influence, over a span of time and within a cultural area of the world, on developments in architecture.

Hawaiian
PU'UHONUA O HONAUNAU NATIONAL HISTORICAL PARK
Hawaii (19° 25'N; 155° 55'W)

This area (formerly known as City of Refuge National Historical Park) includes sacred ground, where vanquished Hawaiian warriors, noncombatants, and kapu breakers were granted refuge from secular authority. Prehistoric housesites, royal fishponds, and spectacular shore scenery are features of the park. Criteria: (iii) Bears a unique or exceptional testimony to a civilization which has disappeared; (iv) an outstanding example of a type of building or architectural ensemble which illustrates a significant stage in history; and (vi) directly or tangibly associated with ideas or beliefs of outstanding universal significance.

Dated: February 9, 1987.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Widlife and Parks.

[FR Doc. 87–3504 Filed 2–18–87; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–241]

Competitive Position of Canadian Live Cattle and Beef in U.S. Markets

AGENCY: International Trade Commission.

ACTION: Notice of time and place of public hearing.

EFFECTIVE DATE: January 21, 1987.

FOR FURTHER INFORMATION CONTACT: David E. Ludwick (202–724–1763), Office of Industries, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information of this matter by contacting the Commission's TDD terminal on 202–724–002.

SUPPLEMENTARY INFORMATION: On December 15, 1986, the Commission instituted the subject investigation and announced that a public hearing would be held at a time and place to be announced (51 FR 46942, Dec. 29, 1986). The public hearing is scheduled to begin at 9:30 a.m. April 16, 1987, and to be continued, if necessary, beginning at 9:30 a.m. April 17, at the Ramada Inn, 1223 Mulloway Lane, Billings, Montana. All persons shall have the right to appear in person or by counsel, to present information and to be heard. Persons wishing to appear at the public hearing should file requests to appear and should file prehearing briefs (original and 14 copies) with the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, not later than noon, March 23, 1987.

Issued: February 13, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–3547 Filed 2–18–87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–242]

Certain Dynamic Random Access Memories, Components Thereof, and Products Containing Same; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Matsushita Electric Industrial Co., Ltd. Matsushita Electronics Corporation and Matsushita Electric Corporation of America.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1637). Under the Commission's rules, the presiding officer's intial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on February 13, 1987.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impared individuals are advised that information on this matter can be obtained by contracting the Commission's TDD terminal on 202–724–0002.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination

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of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

Issued: February 13, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–3548 Filed 2–18–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–371 (Preliminary)]

Import Investigation; Fabric and Expanded Neoprene Laminate From Taiwan

Determination

On the bass of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Traiff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Taiwan of fabric and expanded neoprene laminate, provided for in items 355.81, 355.82, 359.50 and 359.60 of the Tariff Schedules of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).[3]

Background

On December 23, 1986, a petition was filed with the Commission and the Department of Commerce by Rubatex Corp., Bedford, VA, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of fabric and expanded neoprene laminate from Taiwan. Accordingly, effective December 23, 1986, the Commission instituted preliminary antidumping investigation No. 731–TA–371 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 5, 1987 (52 FR 365). The conference was held in Washington, DC, on January 12, 1987, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on February 6, 1987. The views of the Commission are contained in USITC Publication 1944 (February 1987), entitled "Fabric and Expanded Neoprene Laminate from Taiwan: Determination of the Commission in Investigation No. 731–TA–371 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: February 6, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–3549 Filed 2–18–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 701–TA–282 (Final)]

Import Investigation; Certain Forged Steel Crankshafts From Brazil

AGENCY: International Trade Commission.

ACTION: Institution of a final countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701–TA–282 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 167d(b)) to determine whether an industry in the United States is materially injured, or is threatened with materially retarded, by reason of imports from Brazil of certain forged steel crankshafts, provided for in items 660.67 and 660.71 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be subsidized by the Government of Brazil.

Pursuant to a request from petitioner under section 705(a)(1) of the Act (19 U.S.C. 1671d(a)(1)), Commerce has extended the date for its final determination in an ongoing antidumping investigation on certain forged steel crankshafts from Brazil. Accordingly, the Commission will not establish a schedule for the conduct of the countervailing duty investigation until Commerce makes a preliminary determination in the antidumping investigation (currently scheduled for March 18, 1987).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: January 8, 1987.

FOR FURTHER INFORMATION CONTACT: Lynn Featherstone (202–523–0242), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contracting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 701 of the act (19 U.S.C. 1671) are being provided to manufacturers, producers, or exporters in Brazil of certain forged steel crankshafts. The investigation was requested in a petition filed on October 9, 1986 by Wyman-Gordon Company, Worcester, MA. In response to that petition the Commission conducted a preliminary countervailing duty investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (51 FR 44537, December 10, 1986).

Participation in the investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: February 13, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–3550 Filed 2–18–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–375 (Preliminary)]

Import Investigation; Certain Line Pipes and Tubes From Canada

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–375 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of line pipes and tubes [1] which are alleged to be sold in the United States at less than fair value.

As provided in section 733(a), the Commission must complete preliminary antidumping investigation in 45 days, or in this case by March 30, 1987. For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subpart A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: February 11, 1987.

FOR FURTHER INFORMATION CONTACT: Brian Walters (202–523–0104), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contracting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on February 11, 1987, by counsel for Tex-Tube Division of Cyclops Corp., Houston, TX, and Maverick Tube Corp., Chesterfield, Mo.

Participation in the investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than (7) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on March 5, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Brian Walters (202–523–0104) not later than March 2, 1987, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to makes an oral presentation at the conference.

Written submissions

Any person may submit to the Commission on or before March 11, 1987, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any Business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submission must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: February 13, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–3551 Filed 2–18–87; 8:45 am]

BILLING CODE 7020–02–M

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairman Liebeler dissenting.

[3] Vice Chairman Brunsdale determines that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of the subject imports.

[1] For purposes of this investigation, the term "line pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, with walls not thinner than 0.065 inch, 0.375 inch or more but not over 16 inches in ourside diameter, conforming to API specifications for line pipe, provided for in items 610.3208 and 610.3209 of the Tariff Schedules of the United States Annotated (TSUSA) 1987.

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[Investigation No. 731-TA-372 (Preliminary)]

Import Investigation; 175 Watt Mercury Vapor Light Fixtures From Taiwan

AGENCY: International Trade Commission.

ACTION: Notice of withdrawal of petition in antidumping investigation.

SUMMARY: On February 12, 1987, counsel for the American Electric Division of FL Industries, Inc., Southaven, MS, the petitioner in the subject investigation, filed a letter with the U.S. Department of Commerce and the U.S. International Trade Commission withdrawing its petition concerning imports of 175 watt mercury vapor light fixtures from Taiwan. Commerce has not initiated an investigation as provided in section 732(c) of the Tariff Act of 1930. Accordingly, the Commission gives notice that the antidumping investigation, involving imports from Taiwan of 175 watt mercury vapor light fixtures, provided for in items 653.39 and 688.42 of the Tariff Schedules of the United States (investigation No. 731-TA-372 (Preliminary)), will be discontinued.

EFFECTIVE DATE: February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Lawrence Rausch (202-523-0300), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

This notice is published pursuant to § 207.40 of the Commission's rules (19 CFR 207.40).

Issued: February 13, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-3552 Filed 2-18-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-337 (Final)]

Certain Paint Filters and Strainers From Brazil

AGENCY: International Trade Commission.

ACTION: Schedule for the subject investigation.

FOR FURTHER INFORMATION CONTACT: Brian Walters (202-523-0104), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202-724-0002. Information may also be obtained via electronic mail by assessing the Office of Investigations' remote bulletin board system for personal computers at 202-523-0103.

SUPPLEMENTARY INFORMATION: Effective December 30, 1986, the Commission instituted the subject investigation and gave notice that a schedule for its conduct would be announced at a later date (52 FR 3502, Feb. 4, 1987). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from March 9, 1987, to May 15, 1987 (52 FR 3158, Feb. 2, 1987). The Commission, therefore, is establishing its schedule in the investigation to conform with Commerce's new schedule.

The Commission's schedule for the investigation is as follows: requests to appear at the hearing must be filed with the Secretary of the Commission not later than May 8, 1987; the prehearing conference will be held in room 117 of the U.S. International Trade Commission Building at 9:30 a.m. on May 11, 1987; the public version of the prehearing staff report will be placed on the public record on April 29, 1987; the deadline for filing prehearing briefs is May 13, 1987; the hearing will be held in room 331 of the U.S. International Trade Commission Building at 9:30 a.m. on May 19, 1987; the deadline for filing all other written submissions, including posthearing briefs, is May 27, 1987; and the Commission will make its final injury determination by June 29, 1987.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: February 13, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-3553 Filed 2-18-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-374 (Preliminary)]

Import Investigation; Potassium Chloride From Canada

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-374 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of potassium chloride, provided for in item 480.50 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by March 27, 1987.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: February 11, 1987.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202-523-1793), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202-724-0002. Information may also be obtained via electronic mail by assessing the Office of Investigations' remote bulletin board system for personal computers at 202-523-0103.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on February 10, 1987, by Lundberg Industries, Ltd., of Dallas, TX, and the New Mexico Potash Corp. of Memphis, TN, U.S. producers of potassium chloride.

Participation in the investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on March 3, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Jim McClure (202-523-1793) not later than February 26, 1987, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions

Any person may submit to the Commission on or before March 6, 1987, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary of the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: February 13, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-3554 Filed 2-18-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation Nos. 332-229, 230, 231, 232, 233, and 240]

Competitiveness Studies on Textile Mill Industry, Building-Block Petrochemicals, Steel Sheet and Strip, U.S. Auto Parts Industry, Optical Fibers, and Oilseed and Products Industry

AGENCY: International Trade Commission.

ACTION: Notice of change in time of public hearing.

EFFECTIVE DATE: February 9, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen Mills (202-523-0430), Office of the Secretary, U.S. International Trade Commission, Washington, DC 20436.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the time of the public hearing in connection with the investigations has been changed from 10:00 a.m. to 9:30 a.m. The hearing will be held in the Commission Hearing Room, 701 E Street NW., Washington, DC 20436, beginning at 9:30 a.m. on February 24, 1987. Notices of the institution of the investigations were published in the **Federal Register** of July 20, 1986 (51 FR 27265) and December 29, 1986 (51 FR 46947).

Issued: February 11, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-3555 Filed 2-18-87; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30981]

Boston and Maine Corporation; Exemption To Lease to Springfield Terminal Railway Co.

Boston and Maine Corporation (B&M), a wholly-owned subsidiary of Guilford Transportation Industries, Inc. (GTI), has filed a notice of exemption to lease to Springfield Terminal Railway Company (ST), also a wholly-owned subsidiary of GTI, the following lines and facilities of B&M in the area of Springfield, MA:

(a) The Connecticut River Main Line between M.P. S-0.00 (Springfield) and M.P. S-9.45 (Holyoke North); and

(b) All tracks in Springfield Yard. The purpose of this transaction is to enable ST to carry on operations presently performed by B&M.

Since B&M and ST are members of the same corporate family, the lease falls within the class of transactions that are exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(3). The transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Railroad employees affected by the transaction will be protected by the conditions in *Mendocino Coast Ry., Inc.—Lease and Operate*, (*Mendocino*), 354 I.C.C. 732 (1979), as modified at 360 I.C.C. 653 (1980). This will satisfy the statutory requirements of 49 U.S.C. 10505(g)(2).[1]

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of petitions to revoke will not stay the transaction.

Decided: February 12, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-3422 Filed 2-18-87; 8:45 am]

BILLING CODE 7035-01-M

[1] In three other proceedings under the notice of exemption procedures, Finance Docket No. 30965, involving a trackage rights and lease between Delaware and Hudson Railway Company (D&H) and the ST; Finance Docket No. 30967, involving a lease between The Maine Central Railroad Company and the ST; and Finance Docket No. 30972, involving a lease between D&H and ST; the Railway Labor Executives' Association (RLEA) petitioned for the imposition of the labor protective conditions developed by the Commission in *New York Dock Ry—Control—Brooklyn Eastern District*, 360 I.C.C. 60 (1979) in lieu of the *Mendocino* conditions. A Commission decision will follow to consider RLEA's petition.

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[Docket No. AB-55 (Sub-No. 195X)]

CSX Transportation, Inc; Abandonment Exemption in Hillsborough County, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by CSX Transportation, Inc. of 0.7 miles of track in Hillsborough County, FL, subject to standard labor protection conditions.

DATES: This exemption is effective on March 23, 1987. Petitions to stay must be filed by March 2, 1987, and petitions for reconsideration must be filed by March 11, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 195X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Lawrence H. Richmond, 100 North Charles Street, Baltimore, MD 21201

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, 20423, or call 289-4357 (DC Metropolitan area), or toll-free (800) 424-5403.

Decided: February 4, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-3423 Filed 2-18-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Pepper's Steel and Alloys, Inc.

In accordance with Department Policy, 28 CFR 50.7, 38 FR 19029, as well as section 122(i) of the Superfund Amendments and Reauthorization Act, notice is hereby given that a partial consent decree in *United States* v. *Pepper's Steel and Alloys, Inc.* was lodged with the United States District Court for the Southern District of Florida on February 11, 1987. This consent decree is being entered into between the United States, the State of Florida Department of Environmental Regulation, the Dade County Department of Environmental Resources Management, and the Florida Power and Light Co. The consent decree requires the Florida Power & Light Co. to implement a remedial action at the Pepper's Steel site and to reimburse the United States for certain costs incurred by the government at the site.

The Department of Justice will receive for thirty (30) days from the publication date of this notice, written comments relating to the decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and refer to *United States* v. *Pepper's Steel and Alloys, Inc.*, 90-11-2-62A. In addition, there will be a public hearing on the proposed decree on March 27 at 2:00 p.m. in Courtroom 7 of United States District Court in Miami (Honorable Eugene P. Spellman). At the public hearing the United States will respond, in a summary fashion, to comments received during the public comment period and, if appropriate, recommend final entry of the consent decree.

The consent decree can be examined at the office of the United States Attorney, 155 S. Miami Ave., Suite 500, Miami, Florida 33130, the Region IV Office of the Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia, and at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, (Room 1515), Ninth and Pennsylvania Avenue NW., Washington, DC 20530. Copies of the consent decree can be obtained in person or by mail from the Environmental Enforcement Section at the above address.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-3534 Filed 2-18-87; 8:45 am]

BILLING CODE 4410-01-M

Lodging of a Settlement Agreement Pursuant to the Clean Water Act; National Plating Co.

In accordance with Departmental Policy, 28 CFR 50.7, 38 F.R. 19029, notice is hereby given that a proposed Settlement Agreement in *United States* v. *National Plating Co.*, Civil Action No. 85-0395P, was lodged with the United States District Court for the District of Rhode Island on February 3, 1987. The Settlement Agreement concerns violations of the national categorical pretreatment standards applicable to electroplating sources, adopted under section 307 of the Clean Water Act, 33 U.S.C. 1317, and codified at 40 CFR Part 413 and the general pretreatment standards adopted under section 307, and codified at 40 CFR Part 403. Forty CFR Part 413 establishes discharge limitations application to indirect dischargers in the electroplating category for copper, nickle, zinc and cyanide. Forty CFR Part 403 establishes discharge limits for pH and reporting requirements applicable to all indirect discharges. In this action, the United States alleged that National Plating Company of 946 Eddy Street, Providence, R.I., failed to comply with the discharge limitations for copper, nickel, zinc, cyanide and pH, and failed to submit certain reports required under 40 CFR 403.12. The proposed Settlement Agreement requires the defendant to pay $50,000 in civil penalties, $25,000 to the United States and $25,000 to the State of Rhode Island, and to comply with the applicable pretreatment requirements in the future. It further requires National to undertake a monitoring program to confirm future compliance with the pretreatment standards for metals, cyanide and ph, and to pay stipulated penalties in the amount of $1,000 for each exceedance of the pretreatment standards detected through the monitoring program.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *National Plating Co.*, D.J. Ref. No. 90-5-1-1-2413.

The proposed Settlement Agreement may be examined at the Office of the United States Attorney, District of Rhode Island, 223 Federal Building & Courthouse, Kennedy Plaza, Providence, R.I. 02903; at the Region I office of the Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02203; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Settlement Agreement may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Please enclosed a certified check payable to "Treasurer, United States of America" for $2.00 (10 cents per page) to cover the costs of copying.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-3433 Filed 2-18-87; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Application for Registration as Manufacturer of Controlled Substances; Janssen, Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 19, 1986, Janssen, Inc., HC 02 Box 19250, Gurabo, Puerto Rico 00658-9629, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Alfentanil (9737)	II
Sufentanil (9740)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA **Federal Register** Representative (Room 1112), and must be filed no later than March 23, 1987.

Dated: February 12, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-3500 Filed 2-18-87; 8:45 am]

BILLING CODE 4410-09-M

Application for Registration as Manufacturer of Controlled Substances; Johnson Matthey, Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 18, 1986, Johnson Matthey, Inc., 1401 King Road, West Chester, Pennsylvania 19380, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Sufentanil (9740)	II
Fentanyl (9801)	II

In addition by letter dated December 30, 1986, the firm requested their application be modified to include authorization as a bulk manufacturer of the following basic class of controlled substances:

Drug	Schedule
Alfentanil (9737)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA **Federal Register** Representative (Room 1112), and must be filed no later than March 23, 1987.

Dated: February 2, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-3501 Filed 2-18-87; 8:45 am]

BILLING CODE 4410-09-M

Bureau of Justice Statistics

Automated Information Files Maintained by Local Prosecutors; Research Funds Availability

AGENCY: Bureau of Justice Statistics, Justice.

ACTION: Notice.

SUMMARY: This solicitation announces the availability of research funds (from $375,000 to $425,000) to continue the collection and analysis of automated information files maintained by local prosecutors. BJS will make one award in response to this solicitation.

DATES: Proposals must be postmarked no later than May 20, 1987.

ADDRESSES: Copies of this notice, supporting documentation and past publications are available upon request at the following location: National Criminal Justice Reference Service (NCJRS), Box 6000, Rockville, MD 20850, Telephone No. 301/251-5500 (local) or toll free 800-732-3277.

FOR FURTHER INFORMATION, CONTACT: Carla K. Gaskins of the Adjudication Unit, BJS, at 633 Indiana Avenue, NW., Washington, DC 20531; telephone 202/724-7774.

SUPPLEMENTARY INFORMATION:

I. Introduction

The prosecutor is a key figure in shaping and implementing criminal justice policy. Numerous studies of American prosecutors show the important role they play in the administration of justice.

For close to a decade, the Bureau of Justice Statistics (BJS) has sponsored a data collection activity designed to obtain information on how prosecutors handle persons arrested for felony crimes. Key to the collection of this data has been management information systems maintained by local prosecutors to track arrests from presentation through final court disposition and sentencing.

Data contained in these systems give prosecutors detailed information on how felony arrests proceed in their jurisdictions. In addition, these data provide BJS with statistical information vital to meeting its mandate to collect and analyze statistics on criminal prosecution. Data from prosecutor management information systems form the basis for a series of statistical reports sponsored by BJS. To date, BJS has published 4 (four) major reports:

A Cross-City Comparison of Felony Case Processing—NCJ-55171, 7/79

The Prosecution of Felony Arrests, 1979—NCJ-86482, 5/84

The Prosecution of Felony Arrests, 1980—NCJ-97684, 9/85

The Prosecution of Felony Arrests, 1981—NCJ-101380, 7/86

These reports covered such issues as:

- final disposition patterns.
- attrition rates.
- case processing times.
- percent of arrests declined for prosecution.
- percent of arrests resulting in guilty pleas.
- fraction of guilty pleas to top charge.
- frequency of jury trials.
- incarceration rates by crime type.

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II. Award History

The statistical series "The Prosecution of Felony Arrests" (hereafter PFA) has been continuously maintained by BJS through consecutive awards (both contract and cooperative agreement) made to private research firms. The following summarizes the history of these awards:

Year	Award No	Award type	Award recipient	Major activities
1976	J-LEAA-016-76	Contract	INSLAW, Inc	Data on felony arrests disposed in the first 6 months of 1977 were collected from 13 local jurisdictions. These data were analyzed and presented in the first publication cited above
1979	J-LEAA-020-79	Contract	INSLAW, Inc	A reformatted presentation of similar data on felony arrests disposed in 1979 from 14 local jurisdictions resulted in the publication PFA 1979.
1981	81-BJ-CX-K042	Cooperative agreement	INSLAW, Inc	Jurisdiction coverage increased from 14 to 26 participants. This was a transitional year used to work out new agreements and redefine data elements (no report).
1983	81-BJ-CX-K042 supplemental	Cooperative agreement	INSLAW, Inc	A report containing dispositional data on felony arrests processed in 1980 from 28 jurisdictions was produced: PFA 1980. Raw data files on arrests processed in 1981 were secured from participating jurisdictions.
1984	84-BJ-CX-K001	Cooperative agreement	INSLAW, Inc	A revised format of 1981 felony arrests data from 37 jurisdictions with detailed appendix tables measuring felony case attrition from three major points—arrest, filing, indictment—resulted in the publication of PFA 1981. Raw files and documentation containing 1982 data were collected.
1986	86-BJ-CX-K024	Cooperative agreement	Abt Associate	1982 data from 37 jurisdictions on crime types defined in accordance with BJS classifications are being analyzed. User-Friendly public-use datasets from 3 major jurisdictions will be submitted to BJS for public dissemination. PFA 1982 will be published. 1983 data are being collected and will be turned over to the recipient of the award made under this solicitation.

III. Description of Project Operations

The jurisdictions involved in this effort vary in their selection of informational items entered in data files, and their case records begin at different points in the adjudication process. The output from these management software packages, which are tailored to fit the needs and styles of participating jurisdictions, cannot be relied upon exclusively to meet the needs and requirements of the research community. Raw data files containing case history data are submitted via magnetic data tapes (or in some instances hard copy) with the information on arrests presented in a defined year up through the time the tape is submitted. Along with the tapes, prosecutors are asked to provide documentation for the data entries. These submissions are used to create master files which include all data elements for each felony case initiated in the base year and closed by the time the data transfer took place. Records in the master file include defendant variables, case variables, charge variables, sentencing variables, case management variables, and victim/witness variables. Master files are examined to determine which of the desired data elements are usable and the usable data are extracted into smaller files.

Charge codes extracted from the master files are used to develop crime category classifications that can be applied across jurisdictions. Using documentation provided by the jurisdictions and the crime classification codes, the extract files are processed into uniform analysis files in which all codes for qualitative data elements, such as reasons for rejections or dismissals, are the same across jurisdictions. Accurate documentation from participating jurisdictions is crucial to the development of uniform analysis files. Such documentation includes penal code citations, how and where they appear on the submitted tape; how jurisdictions define trials, how cases are pled, and who controls the process of taking a plea; and other variables along with record locations and lengths.

The analysis files may contain defendant variables such as the defendant's age, race and sex; case variables like screening date and outcome, type of defense attorney, status of release, final disposition, number of witnesses, etc.; charge variables by arrest, filing, indictment, and conviction; and sentencing variable such as place sentence is to be served, sentence length, suspensions, and related variables.

Within each of these general record descriptions, more specific detail is coded and entered for each case. For example, final dispositions are presented as a plea to the top charge, plea to other charge, guilty by jury to top charge, guilty by jury to other charge, guilty by court trial to top charge, guilty by court trial to other charge, not guilty by jury trial, not guilty by court trial, other not guilty, court dismissal, nolle prosequi, rejection or declination at screening, etc.

Additionally, information on the environment in which each prosecutor operates is collected. Data on the number of assistant district attorneys, screening policies, influence on sentencing, court organization, and jurisdiction are compiled. This information is collected through interviews with key prosecutor personnel and other criminal justice system personnel and supplemented by data from the U.S. Bureau of Census, the FBI, and other sources in order to provide an accurate understanding of each of the jurisdictions in which the prosecutors had to function.

IV. Scope of Desired Work

Geographical coverage of the series has expanded over the years from 13 jurisdictions in 1977 to 37 in 1982. Further expansion of the series is desired. In addition, BJS desires that the jurisdictions selected for participation in the series be representative of a meaningfully defined larger universe (such as the urban counties that account for most of the reported felony offenses in the Nation).

Previous datasets obtained under this project have largely been limited to information provided by one particular software package, "Prosecutors' Management Information Systems" or PROMIS as it is commonly known. Extensive field work was not used to gather data elements not recorded by the prosecutor but which impact the prosecutor's decisions concerning caseflow and charging priorities. To enhance the capability of the series for providing analysts with detailed and well documented data for cross-jurisdiction comparisons, supplementary field efforts may have to be undertaken. For example, in some jurisdictions, the automated case record begins at the point of indictment, and data on cases rejected or dismissed before indictment are not available from the prosecutor. In such instances, to obtain statistics on cases rejected before the initial screening, one would have to go directly to the police departments and/or the lower courts to determine how many felony arrests actually occurred, why they were not presented for prosecution, and why they never reached the felony court. Another area where more information might be obtained is in the stated reasons for rejections or dismissals of cases by crime type. Detailed information on the reasons for the deterioration of felony arrests would take us further along in our effort to identify the crime types and case types where greater resources need to be targeted.

Data on all felony arrests which reached final disposition in calendar year 1986 are desired. Variables should include, but not be limited to, the following:

1. Age, race, sex of the defendant
2. Age, race, sex of the victim
3. Victim/defendant relationship
4. Prefiling dispositions—
   - Rejections
   - Referrals for other prosecution
   - Other referrals
   - Other prefiling dispositions
5. Arrests filed by prosecutor by highest filed charge
6. Postfiling/pre-indictment dispositions by charge—
   - Nolle prosequi
   - Dropped or dismissed
   - Referral to diversion
   - Referral to other prosecution
   - Other
7. Cases indicted by highest indictment charge
8. Postindictment dispositions by charge—
   - Dropped or dismissed
   - Referral to diversion
   - Referral to other prosecution
   - Acquittals
   - Convictions (plea/jury/bench)
9. Sentencing—
   - Prison (term)
   - Jail (term)
   - Probation (term)
   - Other
10. Dates of all the above actions
11. Reasons for rejections, nolle prosequi decisions and dismissals

In summary, BJS will fund a project that will: (1) Collect and analyze representative felony arrest disposition statistics based on the variables in the above list for calendar year 1986 (including detailed reasons for the rejection and dismissal of certain felony case types); (2) prepare one short report on a special topic; (3) prepare a final report with extensive tabulations resulting from an analysis of the jurisdictions' specific data and the summary data from the combined jurisdictions (as exemplified by Appendix A of *The Prosecution of Felony Arrests, 1981*); (4) collect 1987 machine or hard-copy data with appropriate documentation from those jurisdictions able to provide it; and (5) prepare public-use data sets for 1986 data in accordance with BJS specifications. BJS expects applicants to expand on previous reports and provide additional information where appropriate.

V. How to Apply

Seven (7) copies of a full proposal should be sent to: Director, Bureau of Justice Statistics, U.S. Department of Justice, 633 Indiana Avenue NW., Washington, DC 20531, Attn: Ms. Carla Gaskins.

Proposals should address all of the following areas:

1. Project abstract.
2. Detailed statement of work including
   a. State-of-the-art on need and uses of felony case data.
   b. Statement of project goals and objectives.
   c. Task/timetable for the accomplishment of goals and objectives.
3. Research design and proposed methodology
   a. Detailed description of site and case selection operations.
   b. Procedures for obtaining and submitting to BJS machine-readable datasets which are in compliance with A Style Manual for Machine-Readable Data Filed and Their Documentation (available from the National Criminal Justice Reference Services).
   c. The efforts to be taken to ensure that datasets prepared under proposed effort will be compatible with existing BJS datasets.
4. Discussion of validity and reliability checks on data to be collected.
   a. Procedures for data collection and entry.
   b. Assessment of prosecutor operating systems.
   c. Comparison of analytical results of this effort to previous prosecution research and data collection findings.
5. Methodology and discussion of the features of the proposed approach to data collection and analysis; how it compares to previous efforts to compile such data. Demonstrated familiarly with past and ongoing efforts to collect transactional data on felony arrests.
6. A clear budget narrative.
7. An organization capability statement.
8. Project deliverables should include (at minimum):
   a. Machine-readable datasets which conform to BJS standards (see 3b) for the summary data from the representative sample and jurisdication-specific data.
   b. Final report with detailed jurisdiction-specific tabulations as well as summary tables for the combined jurisdictions.
   c. Special topic report suitable for use as a BJS special report or bulletin.
   d. Raw format 1987 data submitted by selected jurisdictions.
9. A completed and signed SF–424.

VI. Review and Selection Process

Interested research organizations are invited to submit applications to receive a cooperative agreement from BJS. The funding period for this effort will commence on or about July 1, 1987.

Any applicant selected in response to this solicitation will have the full cooperation of the current grantee in the transfer of data files, operations manuals, computer programs, and other related documents in order to effect a smooth transition of the project and to minimize any loss of continuity in project activities.

Major criteria to be used in reviewing proposals are:

1. Does the applicant present a sound and cost-effective approach to carrying out this project?

2. Does the applicant have the organizational capability to conduct large-scale, multisite data collection activities?

3. Does the applicant provide evidence of a staff or the ability to obtain a staff which possesses extensive knowledge and understanding of the criminal justice system and whose experience indicates an ability to obtain the cooperation and participation of public officials?

4. Will the applicant meet the needs of BJS data collection programs by providing machine readable datasets and documentation?

5. Will the applicant be able to complete this project within an 18-month period and for the proposed budgeted amount? (BJS will make an award of from $375,000 to $425,000 to the successful applicant.)

All applications will be competitively reviewed by a BJS selected panel consisting of five persons (one BJS staff member, two representatives from other DOJ agencies, and two reviewers from outside the Federal government). The panel will recommend for the award the single applicant with the best overall proposal. Final authority to award a cooperative agreement is reserved to the Director of the Bureau of Justice Statistics.

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VII. Who May Apply

Public or private, non-profit and profitmaking organizations (which are willing to waive their fee) may apply for this cooperative agreement.

Dated: February 6, 1987.

Steven R. Schlesinger,

Director, Bureau of Justice Statistics.

[FR Doc. 87-3435 Filed 2-28-87; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

The Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

DATE: Time and place: March 10, 1987, 9:30 a.m., Rm. S4215 A&B Frances Perkins, Department of Labor Building, 200 Constitution Avenue NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy. For further information, contact: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523-6565. Signed at Washington, DC this 12th day of February 1987.

Robert W. Searby,

Deputy Under Secretary, International Affairs.

[FR Doc. 87-3455 Filed 2-18-87; 8:45 am]

BILLING CODE 4510-28-M

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Mangement and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extension, or reinstatements. The Departmental Clearance Office will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Mangement, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, D.C. 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Employment and Training Administration
Title 29 CFR Part 29—Labor Standards for the Registration of Apprenticeship Programs
On Occasion
Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
192,040 respondents; 37,086 hours; 1 form
Needed by employers, apprentices, and State apprenticeship agencies to set forth labor standards to safeguard the welfare of apprentices and to extend the application of such standards by subscribing policies and procedures concerning the registration for certain Federal purposes of acceptable apprenticeship programs.

Revision

Employment and Training Administration
Title 29 CFR Part 30—Equal Employment Opportunity in Apprenticeship and Training
1205-0224
On Occasion
Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
5,000 hours; 7,316 hours
This information is required to promote and ensure equality of opportunity with sponsors of apprenticeship programs registered with recognized State Apprenticeship Agencies.

Extension

Bureau of Labor Statistics
Information for the Employment Cost Index
1220-38; BLS 3038A, 3038B, 3038C, 3038E/T, and 3038E/M
Quarterly
State or local governments; Businesses or other for-profit; non-profit institutions; small busineses or organizations
18,472 responses; 17,503 hours; 6 forms
The information collection covered by this request is needed to publish the ECI, which measures trends in employee compensation costs. The ECI is used to analyze the relationships between changes in productivity, employment, output prices, and compensation costs. The survey covers the private nonfarm economy and State and local governments.

Reinstatement

Occupational Safety and Health Administration
Post Inspection Employer Questionnaire
1218-0049; OSHA 164A; OSHA 164B
On occasion
Farms; Businesses or other for profit; Small businesses or organizations
7,000 responses, 1,050 hours
Employers and employees who have been inspected by OSHA are asked to give their impressions of the technical knowledge and professional conduct of the CSHO who visited them. This information is used to assess the impressions OSHA leaves and to change policies and devise appropriate training to correct problems.

Signed at Washington, DC, this twelfth day of February, 1987.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 87-3479 Filed 2-18-87; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administration

[TA-W-18,458]

Alpha Consulting, Inc., and Pintex Petroleum Corp., Boulder, CO; Affirmative Determination Regarding Application for Reconsideration

By an application dated November 14, 1986, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of former workers at the subject companies in Boulder, Colorado. The determination will soon be published in the **Federal Register.**

A petitioner claims and presents evidence that the subject companies are not service companies but produce an article—crude oil and gas. The oil and gas were sold to companies in Oklahoma and Kansas.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 18th day of December 1986.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 87-3457 Filed 2-18-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,765]

American Pipe and Steel Supply Co., Houston, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 22, 1986 in response to worker petition received on December 15, 1986 which was filed on behalf of workers at American Pipe and Steel Supply Company, Houston, Texas.

A negative determination applicable to the petitioning group of workers was issued on January 15, 1987 (TA-W-18,769). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 11th day of February 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-3458 Filed 2-18-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,054]

BJ-Titan Services, Hays, KS; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 2, 1987 in response to a worker petition received on January 12, 1987; and filed by the employees on behalf of the workers at BJ-Titan Services, Hays, Kansas.

A negative determination applicable to the petitioning group of workers was issued on November 20, 1986 (TA-W-18,484). No new information is evident which would result in a reversal of the Department's previous determination. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 9th day of February 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-3459 Filed 2-18-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,002 and TA-W-18,003]

Bunker Limited Partnership Crescent Silver Mine, Inc., and Kellogg, ID and Big Creek, ID; Negative Determination Regarding Application for Reconsideration

By an application dated December 5, 1986, a company official at the Crescent Mine, Inc., requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers of Bunker Limited Partnership, Crescent Silver Mine, Inc., Kellogg and Big Creek, Idaho. The denial notice was published in the **Federal Register** on November 18, 1986 (51 FR 41681).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The company official claims that the lower domestic price of silver during the first five months of 1986 was caused by increased silver imports during the same period. It is also claimed that the Department certified workers at the Hecla Mining Company's Lucky Friday silver-lead mine and the Sunshine Mining Company's silver mine located adjacent to the Crescent Mine. The company official also claimed, by phone, that the conditions which warranted the Department to revise its earlier determination for workers at the Hecla's Star Mine in Wallace, Idaho are similar to those at Crescent Mine.

Findings in the investigation showed that the Crescent Mine produced silver ore, which was processed into silver concentrate. During the recent periods, all the silver concentrate produced by the Crescent Mine was exported to customers located outside the United States. Reduced export sales are not a basis for certification under the terms of the Trade Act of 1974.

Increased imports because of lower prices is not sufficient to certify workers as eligible to apply for adjustment assistance within the meaning of the Trade Act. The Act states that increased imports must "contribute importantly" to a decline in sales or production and to worker separations. All of the group criteria for certification were met for workers at Hecla Mining Company's Lucky Friday Mine in Mullen, Idaho (TA-W-17,506) and Sunshine Mining Company's silver mine in Kellogg, Idaho (TA-W-17,522) including the "contributed importantly" test. The

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contributed importantly test is generally demonstrated through a survey of the subject firm's customers. The Department's surveys of customers showed that the major customers of both mines increased their import purchases of silver in 1985 compared to 1984 while reducing their purchases from the subject firms.

The issue in the Department's revised determination for workers of Hecla's Star Mine in Wallace, Idaho (TA–W–13,506) is not the same as that posed in the instant case. For instance, none of the products were exported by the Star Mine. In the instant case the entire production of silver concentrate was exported. Secondly, the products produced were different. The Star Mine produced primarily zinc concentrates with lesser amounts of lead and silver concentrates whereas the Crescent Mine produced exclusively silver ore and concentrates. Lastly, the Department findings show that the Star Mine was jointly owned by the Bunker Hill Company and the Hecla Mining Company, the only customers of the Star Mine. The Department certified the workers at the Bunker Hill Company's zinc smelter after workers at the Star Mine were denied certification. Because one of the owners and the major customer of the Star Mine had workers certified eligible for adjustment assistance, the Department's notice of negative determination was reconsidered and workers at Hecla's Star Mine were certified eligible to apply for adjustment assistance. The Department sees no similarity in the two cases.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 24th day of December 1986.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87–3460 Filed 2–18–87; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–19,023]

Joy Manufacturing Co., Richmond, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 29, 1987 in response to a worker petition which was filed on behalf of workers at Joy Manufacturing Company, Richmond.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA–W–18,996). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 10th day of February, 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87–3461 Filed 2–18–87; 8:45 am]

BILLING CODE 4510–30–M

McInnes Steel Co., Corry, PA et al; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period January 26, 1987–January 30, 1987 and February 2, 1987–February 6, 1987.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–18,722; McInnes Steel Company, Corry, PA

TA–W–18,425; NL Industries, Baroid Div., Potosi, MO

TA–W–18,430; Harshaw/Filtrol Partnership, Filtrol Div., Salt Lake City, UT

TA–W–18,870; Marvin E. Boyer Oil Co., Iola, KS

TA–W–18,660; Blackstone Corp., Jamestown Malleable Iron Div., Jamestown, NY

TA–W–18,580; Springfield Foundry Co., Inc., Indian Orchard, MA

TA–W–18,275; Western Gear Machinery Corp., Everett, WA

TA–W–18,559; Marion-Heil Bronze Co., Marion, OH

TA–W–18,821; Charles E. Mayfied Co., Princeton, LA

TA–W–18,701; Metal Specialties, Inc., Odessa, TX

TA–W–18,515; Williams Hand Tools, Inc., Buffalo, NY

TA–W–18,650; S & G Sporting Goods, Inc., Taunton, MA

TA–W–18,449; Monsanto Chemical Co., Nitro, WV

TA–W–18,450; Todd Pacific Shipyards Corp., Seattle Div., Seattle, WA

TA–W–18,607; Brown & Root Marine, Harbor Island Fabrication Yard, Aransas Pass, TX

TA–W–18,514; Connie Blouse Co., Inc., Roseto, PA

TA–W–18,537; Beverly Blouse Co., Inc., Nazereth, PA

TA–W–18,027; Mobil Oil Corp., Ventura, CA

TA–W–18,028; Mobil Oil Corp., Kern (Bakersfield), CA

TA–W–18,029; Mobil Oil Corp., San Ardo, CA

TA–W–18,166; Confer Smith & Co., Hamburg, PA

TA–W–18,817; Bethlehem Rebar Industries, Channelview, TX

TA–W–18,644; Butler Refractories Co., Pittsburgh, PA

TA–W–18,012; Standard Oil Production Company, Anchorage, AK

TA–W–18,013; Standard Oil Production Company, Houston, TX, Executive Offices

TA–W–18,014; Standard Oil Production Company, Houston, TX, Gulf Coast Div.

TA–W–18,015; Standard Oil Production Company, Dallas, TX, Continental Div.

TA–W–18,016; Standard Oil Production Company, Dallas, Tx, Technology Center

TA–W–18,017; Standard Oil Production Company, Midland, TX

TA–W–18,018; Standard Oil Production Company, Oklahoma City, OK

TA–W–18,019; Standard Oil Production Company, Cleveland, OH, Headquarters

TA–W–18,020; Standard Oil Production Company, Warrensville Lab, Cleveland, OH

TA–W–18,021; Standard Oil Production Company, Casper, WY

TA–W–18,565; Mol Marshall, Inc., Miami, FL

TA–W–18,455; Lockheed Maune, Seattle, WA

TA–W–18,385; Mid West Transformer Co., Grayslake, IL

TA–W–18,369; Reading Industries, Inc., Reading Tube Div. Reading, PA

TA–W–18,593; Saxon Oil Co., Dallas, TX

TA–W–18,593A; Saxon Oil Co., Big Lake, TX

TA–W–18,593B; Saxon Oil Co., Midland, TX

TA–W–18,642, E.I. DuPont De Nemours & Co., Inc., Charleston, SC

TA–W–18,368; Cooper Energy Service, Superior Div., Springfield, OH

TA–W–18,865; I-F Manufacturing Co., New Philadelphia, OH

TA–W–18,555; Ridge Tool Co., Elyria, OH

TA–W–18,283; Rheem Manufacturing Co., Houston, TX

TA–W–18,427; Mitel Caribe, Inc., Bayamon, PR

TA–W–18,516; Lehigh Portland Cement Co., Waco, TX

TA–W–18,704; Abex Corp., Railroad Product Group, Superior, WI

TA–W–18,637; U.S. Metals Refining Co., Div., of Amax, Carteret, NJ

TA–W–18,533; Ensign Bickford Co., Louviers, CO

TA–W–18,556; Superior Drawn Steel Co., Monaca, PA

TA–W–18,431; Ideal Basic Industries, Florence, CO

TA–W–18,361; Dumore Corp., Racine, WI

TA–W–18,568; Ideal Basic Industries, Colorado Div., Superior, NE

TA–W–18,461; Micro Component Technology, St. Paul, MN

TA–W–18,962; Emerald Service, Inc., Titusville, PA

TA–W–18,737; Kaiser Aluminum & Chemical Corp., Mead Works, Mead, WA

TA–W–18,738; Kaiser Alumimum & Chemical Corp., Trentwood Rolling Mill, Trentwood, WA

TA–W–18,328; AT&T Technologies, Inc., AT&T Network Systems, Atlanta, GA

TA–W–18,403; Lawsilk Ribbon Corp., Allentown, PA

TA–W–18,404; Lawsilk Ribbon Corp., Bethlehem, PA

TA–W–18,643; Advanced Specialty & Platers & Coaters, Inc., Lansdowne, PA

TA–W–18,435; AT&T Information Systems, Service Center, Milwaukee, WI

TA–W–18,587; Ithaca Gun Co., Ithaca, NY

TA–W–18,588; Lthaca Gun Co., Cameron, MO

TA–W–18,459; L.E. Jones Co., Menominee, MI

The following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–19,021; Olan Mills, Inc., Odessa, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,984; FIP, Inc., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,991; DJ Inspection Service, Odessa, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–19,000; JICO Fishing Tools, Odessa, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–19,001; Panther Drilling, Inc., Dickinson, ND

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–19,002; CGG American Service, Inc., Houston TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–19,005; Machen Well Service, Midland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–19,012; Fitz Equipment Co., Odessa, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,816; Consolidated Cigar Co., McAdoo, PA

The investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of cigars did not increase as required for certification.

TA–W–19,009; Cecil I. Walker Machinery Co., Belle, WV

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,888; Levi Strauss & Company, Blackstone, VA

Separations at the subject firm were due to a domestic transfer of operations.

TA–W–18,716; Eimco Mining Machinery International, Salt Lake City, UT

Criterion (3) has not been met. The subject firm predominently exported its production.

TA–W–18,956; Rose & Sons, Inc., Midland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,718; Salem Technical Services, Beloit, WI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,707; Fausett International, Osburn, ID

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,720; Stedor Enterprises, Ltd, Taylor, S.C.

The investigation revealed that employment declines during the relevant period was the result of normal business fluctuations.

TA–W–18,871; Leamco Service, Inc., Midland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,717; Rockwell International Corp., Highway Brake & Trailer Axles Div., Ashtabula, OH

The declines have been attributable to reduced exports.

TA–W–18,407; Appleton Electric Co., Foundry Div., South Milwaukee, WI

The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

TA–W–18,227; Chevron USA, Inc., Cleves Refinery, Cleves, OH

Aggregate U.S. imports of gasoline and diesel fuel did not increase as required for certification.

TA–W–18,591; Arl-La-Tex Oil and Gas, Inc., Witchita Falls, TX

Aggregate U.S. imports of crude oil did not increase as required for certification.

TA–W–17,739; Levi Strauss & Co., Tyler, TX

The investigation revealed that criterion (3) has not been met due to a domestic transfer of production.

TA–W–18,479; Hockensmith Corp., Penn, PA

Aggregate U.S. imports of ingot molds are negligible.

TA–W–18,829; Wisco Casing, Inc., Dickinson, ND

Aggregate U.S. imports of oilfield pumps are negligible.

TA–W–18,563; Mid-Continent Resources, Inc., Carbondale, CO

Aggregate U.S. imports of coal are negligible.

TA–W–18,603; Bedcor, Inc., Comfort, WV

Aggregate U.S. imports of coal are negligible.

TA–W–18,583; Trans American Natural Gas Corp., Laredo, TX

Aggregate U.S. imports of natural gas did not increase as required for certification.

TA–W–18,335; Christy Park Industries, Inc., McKeesport, PA

U.S. imports of pressure containers were less than nine percent in relation to domestic shipment in 1985.

TA–W–18,645; Valley Camp of Utah, Inc., Helper, UT

Aggregate U.S. imports of coal are negligible.

TA–W–18,008; Beth Energy Mines, Ebensburg, PA

U.S. imports of coal are negligible.

TA–W–18,566; Homestake Mining Co., Mineral Exploration Div., Reno, NV

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,567; Homestake Mining Co., Mineral Exploration Div., Golden, CO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,672; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,673; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,674; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,488; Fansteel Pasco Gear, Phoenix, AZ

TA–W–18,488; Fansteel Pasco Gear, Phoenix, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,675; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,676; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,677; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,678; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,679; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,680; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,681; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,682; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,683; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,684; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,685; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,686; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,687; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,688; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,689; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,690; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,691; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,692; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,693; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,694; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,695; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,696; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,697; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,698; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,699; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,700; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,701; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,702; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,703; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,704; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,705; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,706; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,707; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,708; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,709; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,710; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,711; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,712; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,713; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,714; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,715; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,716; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,717; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,718; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,719; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,720; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,721; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,722; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,723; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,724; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,725; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,726; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,727; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,728; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,729; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,730; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,731; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,732; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,733; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,734; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,735; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,736; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,737; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,738; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,739; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,740; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,741; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,742; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,743; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,744; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,745; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,746; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,747; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,748; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,749; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,750; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,751; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,752; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,753; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,754; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,755; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,756; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,757; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,758; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,759; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,760; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,761; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,762; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,763; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,764; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,765; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,766; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,767; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,768; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,769; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,770; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,771; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,772; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,773; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,774; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,775; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,776; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,777; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,778; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,779; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,780; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,781; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,782; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,783; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,784; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,785; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,786; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,787; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,788; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,789; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,790; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,791; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,792; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,793; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,794; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,795; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,796; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,797; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,798; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,799; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,800; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,801; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,802; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,803; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,804; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,805; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,806; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,807; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,808; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,809; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,810; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,811; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,812; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,813; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,814; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,815; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,816; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,817; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,818; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,819; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,820; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,821; Duval Corporation, Tucson, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,822; Duval Corporation, Sierrita Property, Sahuarita, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

TA–W–18,823; Duval Corporation, Mineral Park Property, Kingman, AZ

Aggregate U.S. imports of copper and molybdenum did not increase as required for certification.

*TA–W–18,824;

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Aggregate U.S. imports of steel gears did not contribute importantly to the declines at the subject firm.

TA-W-18,648; Weyerhaeuser Co., Twin Harbor Region, Raymond Peell Woods Div. Raymond, WA

Aggregate U.S. imports of logs are negligible.

TA-W-18,575; LTV Steel Co., Campbell Works Seamless Div., Youngstown, OH

Aggregate U.S. imports of seamless steel pipe did not increase as required for certification.

TA-W-18,176; Schweizer Dipple, Inc., Cleveland, OH

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,370; Blue Streod Industries, Inc., Pearlington, MS

Aggregate U.S. imports of offshore barges are negligible.

TA-W-18,371; Blue Streak Marine, Inc., Belle Chasse, LA

Aggregare U.S. imports of offshore barges are negligible.

TA-W-18,768; American Pipe and Steel Supply, Inc., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,517; Utex Industries, Inc., Weimer, TX

Aggregate U.S. imports of seals and gaskets did not contribute importantly to the subject firm's sales or employment declines.

TA-W-18,512; North American Philips Lighting Corp., Bloomfield, NJ

Separations from the subject firm resulted from a transfer of production to another domestic facility.

TA-W-18,193; Portec, Inc., Railway Maintenance Products Div. Troy, NY

Aggregate U.S. imports of railroad joint bars did not increase as required for certification.

TA-W-18,962; National Mine Service Co., Greenup, KY

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-18,374; Mobil Exploration and Producing Service, Inc., Dallas, TX

Aggregate U.S. imports of refined petroleum products did not increase as required for certifications.

TA-W-18,375; Mobil Oil Corp., Mobil Producing Texas and New Mexico, Inc., Houston TX

Aggregate U.S. imports or refined petroleum products did not increase as required for certification.

TA-W-18,679; General Motors Corp., CPC Hamilton-Fairfield, Hamilton, OH

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-18,745; Pratt Mining Co., Campbell Creek, WV

Aggregate U.S. imports of coal are negligible.

TA-W-18,336; Westran Corp., Muskegan, MI

Separations from the subject firm resulted from a transfer of production to another domestic facility.

TA-W-18,373; Thomas Steel Strip Corp., Warren, OH

Aggregate U.S. imports of metallic coated sheets did not increase as required for certification.

TA-W-18,621; U.S. Steel Mining Co., Gary #51 (Shawnee) Mine, Pineville, WV

Aggregate U.S. imports of coal are negligible.

TA-W-18,627; U.S. Steel Mining Co., Gary #50 Mine, Pineville, WV

Aggregate U.S. imports of coal are negligible.

TA-W-18,281; Pittsburgh Tube Co., Monaco & Darlington Div., Pittsburgh, PA

Aggregate U.S. imports of mechanical tubing did not increase as required for certification.

TA-W-18,420; Gemini Engine Co., Corpus Christi, TX

Aggregate U.S. imports of oilfield equipment and pumps are negligible.

TA-W-18,629; Umetco Minerals Corp., Hot Springs, AR

Aggregate U.S. imports of ferrovandium did not increase as required for certification.

TA-W-18,392; Skar-Ore Steamship Corp., Cleveland, OH

The workers' firm does not produce an article as required for certification under section 222 of the Trade Ace of 1974.

TA-W-18,417; Caterpillar, Inc., Decatur, IL

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-18,448; Dana Corp., Spicer Axle Div., New Castle, IN

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-18,884; C.B.I. Service, Inc., Salt Lake City, UT

Aggregate U.S. imports of oil storage tanks are negligible.

TA-W-18,897; USX Corp., US Steel Supply Div., Seattle, WA

Increased imports did not contribute importantly to the employment decline at the subject firm.

TA-W-18,960; Natco, Electra, TX

Aggregate U.S. imports of oil storage tanks are negligible.

TA-W-18,638; Ohio River Pipe Line Co., Pump Station and Tank Farm, East Sparta, OH

U.S. imports of oil did not contribute importantly to employment declines at the subject firm.

TA-W-18,684; Ashland Petroleum Co., Field Office & Garage, East Canton, OH

U.S. imports of oil did not contribute importantly to employment declines at the subject firm.

Affirmative Determinations

TA-W-18,349; Transamerica Delaval, Pumptron Div., Gettysburg, OH

A certification was issued covering all workers of the firm separated on or after October 2, 1985.

TA-W-18,703; Bohn Aluminum & Brass Adrian, MI

A certification was issued covering all workers of the firm separated on or after November 18, 1985.

TA-W-18,469; Worcester Controls Corp., West Boylston, MA

A certification was issued covering all workers of the firm separated on or after October 9, 1985.

TA-W-18,997; Tenneco Oil Co., Exploration and Production Div., San Antonio, TX

A certification was issued covering all workers of the firm separated on or after January 9, 1985.

TA-W-18,798; Cleveland Cliffs Iron Co., Tilden Mining Co., National Mine, MI

A certification was issued covering all workers of the firm separated on or after December 10, 1985.

TA-W-18,725; Harmony Mills, Cumberland, RI

A certification was issued covering all workers of the firm separated on or after November 21, 1985 and before April 30, 1986.

TA-W-18,753; Medical Products Co., Racine, WI

A certification was issued covering all workers of the firm separated on or after June 1, 1986.

TA-W-18,585; Damson Oil Corp., Drilling Department, Houston, TX

A certification was issued covering all workers of the firm separated on or after October 21, 1985.

TA-W-18,297; Exxon Co., USA, Production Department South Texas Div., Exploration Dept., Gulf Coast Div., Corpus Christi, TX

A certification was issued covering all workers of the firm separated on or after August 16, 1985.

TA-W-18,743; Exxon Co., USA, Exploration Department, Central Exploration Div., Midland, TX

A certification was issued covering all workers of the firm separated on or after November 24, 1985.

TA-W-18,744; Exxon Co., USA, Production Department, Southwestern Div., Midland, TX

A certification was issued covering all workers of the firm separated on or after November 24, 1985.

TA-W-17,930; Laconia Shoe Co., Inc., Laconia, NH

A certification was issued covering all workers of the firm separated on or after August 21, 1985.

TA-W-18,319; U.S. Shoe Corp., Womens Footwear Division, Cincinnati, OH

A certification was issued covering all workers of the firm separated on or after September 29, 1985.

TA-W-18,774; Marathon Oil Co., Midland, TX

A certification was issued covering all workers of the firm separated on or after December 3, 1985.

TA-W-16,530; Cowden Manufacturing Co., Lancaster, KY

A certification was issued covering all workers of the firm separated on or after January 1, 1986.

TA-W-18,713; Lamar Manufacturing Co., Millport, AL

A certification was issued covering all workers of the firm separated on or after November 19, 1985.

TA-W-18,610; RCA Consumer Electronic IHVT ROSE Dept., Indianapolis, IN

A certification was issued covering all workers of the TV transformer department of the firm separated on or after October 17, 1985 and before February 15, 1987.

TA-W-18,698; Pressed Steel Tank Co., Milwaukee, WI

A certification was issued covering all workers of the firm separated on or after November 13, 1985.

TA-W-18,313; BHP Petroleum (Americas), Inc., Midland, TX

A certification was issued covering all workers of the firm separated on or after September 22, 1985.

TA-W-18,180; Nylon Net Co., Inc., Memphis, TN

A certification was issued covering all workers of the firm separated on or after September 4, 1985.

TA-W-18,765; Canterra Petroleum, Inc., Denver, CO

A certification was issued covering all workers of the firm separated on or after November 3, 1985.

TA-W-18,437; Donlin Sportswear, Inc., New Tazewell, TN

A certification was issued covering all workers of the firm separated on or after October 7, 1985.

TA-W-18,651; Reynolds Metals Co., Eagle Pass, TX

A certification was issued covering all workers of the firm separated on or after October 30, 1985.

TA-W-18,324; Canton Drop Forge, Canton, OH

A certification was issued covering all workers of the firm separated on or after September 29, 1985.

TA-W-18,665; Moench Tanning Co., Gowanda, NY

A certification was issued covering all workers of the firm separated on or after November 5, 1985.

TA-W-18,573; Alcoa Conductor Products, Vancouver, WA

A certification was issued covering all workers of the firm separated on or after April 1, 1986.

TA-W-18,611; Illua Saronno, Edison, NJ

A certification was issued covering all workers of the firm separated on or after August 25, 1985.

TA-W-17,810; Corsicana, Co., Corsicana, TX

A certification was issued covering all workers of the firm separated on or after July 21, 1985 and before October 3, 1985.

TA-W-18,596; Singer Furniture Co., Bryson City, NC

A certification was issued covering all workers of the firm separated on or after October 24, 1985 and before February 2, 1987.

TA-W-17,761; Mindy Leather Fashions, Inc., New York, NY

A certification was issued covering all workers of the firm separated on or after July 7, 1985.

TA-W-18,207; Blumenthal Manufacturing Co., Inc., Los Angeles, CA

A certification was issued covering all workers of the firm separated on or after August 22, 1985 and before July 31, 1986.

TA-W-18,597; Brown Disc Manufacturing, Inc., A Subsidiary of the Phone Poulenc S.A., Colorado Springs, CO

A certification was issued covering all workers of the firm separated on or after October 24, 1985.

TA-W-17,680; Empire Robe Manufacturing Co., Long Island City, NY

A certification was issued covering all workers of the firm separated on or after May 15, 1985 and before May 1, 1986.

TA-W-18,168; Ridgway Color Co., Ridgway, PA

A certification was issued covering all workers of the firm separated on or after September 11, 1985.

TA-W-18,541; Fina Oil and Chemical Co., Denver, Colorado Exploration & Production District

A certification was issued covering all workers of the firm separated on or after October 15, 1985.

TA-W-18,528; Utex Oil Company and Utex Drilling Co., Salt Lake City, UT And All Other Nationwide Locations

A certification was issued covering all workers of the firm separated on or after October 16, 1985.

TA-W-18,574; LTV Steel Co., Inc., Nemacolin (Buckeye) Mine, Nemacolin, PA

A certification was issued covering all workers of the firm separated on or after October 23, 1985.

TA-W-18,242; Belco Industries, Inc., Famco Machine Div., Kenosha, WI

A certification was issued covering all workers of the firm separated on or after September 15, 1985.

TA-W-18,519; Calnap Tanning Co., Napa, CA

A certification was issued covering all workers of the firm separated on or after July 1, 1986.

TA-W-18,641; Baldt, Inc., Chester, PA

A certification was issued covering all workers of the firm separated on or after October 16, 1986.

TA-W-18,278; A.I.E. Magnetics, Nashville, TN

A certification was issued covering all workers of the firm separated on or after September 23, 1985.

TA-W-18,164; Arrow Pants, Garfield, NJ

A certification was issued covering all workers of the firm separated on or after August 25, 1985 and before May 4, 1986.

TA-W-17,909; Champlin Petroleum Co., Houston, TX

A certification was issued covering all workers of the firm separated on or after August 15, 1985.

TA-W-17,710; Champlin Petroleum Co., Corpus Christi, TX

A certification was issued covering all workers of the firm separated on or after August 15, 1985.

TA-W-18,260; Diversified Products Corp., Opelika, AL

A certification was issued covering all workers of the firm separated on or after September 16, 1985.

TA-W-18,341; Enduro Stainless, Inc., Massillon, OH

A certification was issued covering all workers of the firm separated on or after September 25, 1985.

TA-W-18,531; Foyscott, Dexter, ME

A certification was issued covering all workers of the firm separated on or after October 15, 1985.

TA-W-18,184; Pennsylvania Steel Foundry and Machine Co., Hamburg, PA

A certification was issued covering all workers of the firm separated on or after September 11, 1985.

TA-W-18,529; Sprague Electric Co., Lansing, NC

A certification was issued covering all workers of the firm separated on or after October 16, 1985.

TA-W-18,189; HKH Industries, Inc., Jacksonville, FL

A certification was issued covering all workers of the firm separated on or after September 4, 1985 and before January 5, 1987.

TA-W-18,191; Birdsboro Corp., Birdsboro, PA

A certification was issued covering all workers of the firm separated on or after September 10, 1985.

TA-W-18,192; Birdsboro Corp., Reading, PA

A certification was issued covering all workers of the firm separated on or after September 10, 1985.

TA-W-18,550; Eaton Corp., Forge Div., Marion, OH

A certification was issued covering all workers of the firm separated on or after October 13, 1985.

TA-W-18,763; Weyerhaeuser Co., Southwest Oregon Div., North Band Logging Operation, North Bend, OR

A certification was issued covering all workers of the firm separated on or after December 2, 1985.

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TA-W-18,557; Diamond Match Co., Springfield, MA

A certification was issued covering all workers of the firm separated on or after October 24, 1985.

TA-W-18,584; Honeywell, Inc., Arlington Heights, IL

A certification was issued covering all workers of the firm separated on or after October 27, 1985.

TA-W-17,950; Acme Boot Co., Inc., Waverly, TN

A certification was issued covering all workers of the firm separated on or after August 20, 1985.

TA-W-18,564; Stetson Hat Co., St. Joseph, MO

A certification was issued covering all workers of the firm separated on or after October 20, 1985.

TA-W-18,689; Evenflo Juvenile Furniture Co., Piqua, OH, A Div. of Spaulding & Evenflo, Inc.

A certification was issued covering all workers of the firm separated on or after October 29, 1985.

TA-W-18,470; Weyenberg Shoe Manufacturing Co., Spring Street Plant, Beaver Dam, WI

A certification was issued covering all workers of the firm separated on or after October 14, 1985.

TA-W-18,207; Blumenthal Manufacturing Co., Inc., Los Angeles, CA

A certification was issued covering all workers of the firm separated on or after August 22, 1985 and before July 31, 1986.

TA-W-18,754; Conoco, Inc., Production Dept., Great Bend, KS

A certification was issued covering all workers of the firm separated on or after November 9, 1985.

TA-W-18,700; Elkay Industries, Inc. (Formerly Pioneer Ltd.), Sumter, SC

A certification was issued covering all workers of the firm separated on or after November 12, 1985.

TA-W-18,685; Freeman Shoe Co., Inc., Div. of U.S. Shoe Corp., Emmitsburg, MD

A certification was issued covering all workers of the firm separated on or after October 31, 1985.

TA-W-18,661; Freeman Shoe Co., Inc., Div. of U.S. Shoe Corp., Hanover, PA

A certification was issued covering all workers of the firm separated on or after July 15, 1986.

TA-W-18,795; James E. Russell Petroleum, Inc., Kansas Div., Oilfield Research Laboratories, Chanute, KS

A certification was issued covering all workers of the firm separated on or after November 19, 1985.

TA-W-18,666; LTV Steel Corp., Clyde Mine, Fredericktown, PA

A certification was issued covering all workers of the firm separated on or after November 6, 1985.

TA-W-18,641; Baldt, Inc., Chester, PA

A certification was issued covering all workers of the firm separated on or after October 16, 1986.

I hereby certify that the aforementioned determinations were issued during the period January 26, 1987–January 30, 1987 and February 2, 1987–February 6, 1987. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: February 10, 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-3462 Filed 2-18-87; 8:45 am]

BILLING CODE 4510-30-M

Mitchell Energy and Development Corp., and Southwestern Gas Pipeline, Inc. and Subsidiaries; Termination of Investigation

TA-W-#	Firm	Plant location
18,918	Ferguson Crossing Pipeline Co.	Lyons, TX
18,919	Ferguson Crossing Pipeline Co.	San Antonio, TX
18,920	South Cen-Tex Gas Co.	San Antonio, TX
18,921	Southwestern Gas Pipeline, Inc.	Mineral Wells, TX
18,922	Southwestern Gas Pipeline, Inc.	San Antonio, TX
18,923	Winnie Pipeline Co.	Winnie, TX

Pursuant to section 221 of the Trade Act of 1974, investigations were initiated on January 12, 1987 in repsonse to worker petitions received on January 12, 1987 which were filed December 29, 1986 on behalf of workers at the above firms.

The petition has requested that the petitions be withdrawn. Consequently, further investigation in these cases would serve no purpose; and the investigations have been terminated.

Signed at Washington, DC this 10th day of February 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-3463 Filed 2-18-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17,321]

National Glove, Inc., Chestnut Street Plant, Mount Sterling, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 27, 1986 applicable to all workers of the Chestnut Street Plant of National Glove, Inc., Mount Sterling, Ohio. The Certification notice was published in the **Federal Register** on November 18, 1986 (51 FR 41682).

The intent of the certification is to cover only workers of National Glove, Inc., in Mount Sterling, Ohio who were adversely affected because of increased import competition of industrial work gloves.

Based on information subsequently furnished by the company on production activities at the Chestnut Street plant which involved sewing car mats, the certification is being amended to show that workers engaged in the production of car mats are not included. Car mats are not impacted by increased import competition.

The amended notice applicable to TA-W-17,321 is hereby issued as follows:

All workers of the Chestnut Street plant of National Glove, Incorporated, Mount Sterling, Ohio, except those engaged in employment related to the production of car mats, who became totally or partially separated from employment on or after October 15, 1985 and before May 13, 1986 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 12th, day of December 1986.

Carolyn M. Golding,

Director, Office of Unemployment Insurance Services.

[FR Doc. 87-3464 Filed 2-18-87; 8:45 am]

BILLING CODE 4510-30-M

Red Snapper Rentals et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 1, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 1, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 9th day of February 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Red Snapper Rentals (Workers)	Midland, TX	2/2/87	1/21/87	TA-W 18,065	Oil drilling tools.
AT&T Technologies (CWOA)	Kent, WA	2/2/87	1/21/87	TA-W 19,066	Repair of telephones.
Hamilton Brothers Oil (Workers)	Denver, CO	2/2/87	1/8/87	TA-W 19,067	Oil and natural gas.
BB Robinson, Jr. (Workers)	Wichita Falls, KS	2/2/87	1/20/87	TA-W 19,068	Seismic exploration on oil wells.
Leclaw Smokeless Coal (UMWOA)	Rupert, WV	2/2/87	1/21/87	TA-W 19,069	Mid volatile metallurgical coal.
Ranger Fuel Corp., Beckly #4 Mine (UMWOA)	Beckley, WV	2/2/87	1/21/87	TA-W 19,070	Low volatile metallurgical coal
Gulf Marine Fabricators (Workers)	Ingleside, TX	2/2/87	1/22/87	TA-W 19,071	Jackets & decks for offshore drilling rigs.
IS&S, Inc. (Workers)	Odessa, TX	2/2/87	1/15/87	TA-W 19,072	Resale of oilfield merchandise.
Oil Field Rental Serv. (Workers)	Van Vleck, TX	2/2/87	1/20/87	TA-W 19,073	Oilfield drilling equipment.
Shrewsbury Coal Co (Workers)	Shrewsbury, WV	2/2/87	1/19/87	TA-W 19,074	Bituminous coal.
The New River Co (UMWOA)	Mt. Hope, WV	2/2/87	1/21/87	TA-W 19,075	Low volatile metallurgical coal.
Bndon-American Corp. (Workers)	Wilkes Barre, PA	2/2/87	1/23/87	TA-W 19,076	Wire rope.
Terex Corp (UAW)	Hudson, OH	2/2/87	1/21/87	TA-W 19,077	Earth moving equipment.
Aluminum Co. of America (Company)	Massena, NY	2/2/87	1/14/87	TA-W 19,078	Pig metal, extruded metal.
Wooley Tool Mfg., Inc. (Workers)	Odessa, TX	2/2/87	1/15/87	TA-W 19,079	Tongs, elevators & latches for oil rigs.
Mipark (Workers)	Midland, TX	2/2/87	1/7/87	TA-W 19,080	Drilling fluids.
Ocean Drilling & Exploration (Company)	New Orleans, LA	2/2/87	1/13/87	TA-W 19,081	Oil and natural gas.
Target Sportswear, Jaquar Mfg. (ACTWU)	Smethport, PA	2/2/87	1/22/87	TA-W 19,082	Men's clothing.
Convergence Corp. (Company)	El Paso, TX	2/2/87	1/19/87	TA-W 19,083	Video tape editing equip.
Jackson Products Co. (SMWIA)	Tampa, FL	2/2/87	1/21/87	TA-W 19,084	Commercial dishwasher.
Adelphia Button Co. (Workers)	Philadelphia, PA	2/2/87	2/2/87	TA-W 19,085	Buttons.
Cadet Manufacturing Co. (Workers)	Vancouver, WA	2/2/87	1/2/87	TA-W 19,086	Electric heaters.
Johnson Industries (Workers)	Odessa, TX	2/2/87	1/20/87	TA-W 19,087	Oilfield equipment.
Cowden's Mfg. Co. (Workers)	Springfield, KY	2/2/87	12/31/86	TA-W 19,088	Jeans.
Jan Electric (Workers)	Monahans, TX	2/2/87	1/14/87	TA-W 19,089	Oil field machinery.
General Electric (Workers)	Syracuse, NY	2/2/87	1/14/87	TA-W 19,090	CRT's.
Sprague Electric (Workers)	Visalia, CA	2/2/87	1/19/87	TA-W 19,091	Transformers.
XTEK (Company)	Cincinnati, OH	2/2/87	1/19/87	TA-W 19,092	Ditch gear.
Thermo Teck (Workers)	Houston, TX	2/2/87	1/19/87	TA-W 19,093	Insulation service.
Beechcraft (Workers)	Selma, AL	2/9/87	1/9/87	TA-W 19,094	Aircraft.
Arvin North American Automotive (Workers)	Franklin, IN	2/9/87	1/26/87	TA-W 19,095	Manifolds, catalytic converters & exhaust systems.
American Brass Co. (UBCJOA)	Kenosha, WI	2/9/87	1/27/87	TA-W 19,096	Brass mill products.
Health Tex, Inc (ACTWU)	Danville, VA	2/9/87	1/30/87	TA-W 19,097	Children's wear.
Health Tex, Inc. (ACTWU)	Cowpens, SC	2/9/87	1/30/87	TA-W 19,098	Knitting goods.
Health Tex, Inc. (Company)	Brunswick, ME	2/9/87	1/29/87	TA-W 19,099	Children's shirts.
Health Tex, Inc. (Company)	Portland, ME	2/9/87	1/29/87	TA-W 19,100	Children's shirts.
Health Tex, Inc. (Company)	Gardiner, ME	2/9/87	1/29/87	TA-W 19,101	Children's shirts.
Health Tex, Inc., Div./Imperial Reading (ACTWU)	Christianburg, VA	2/9/87	1/30/87	TA-W 19,102	Children's wear.
Health Tex, Inc., Div./Imperial Reading (ACTWU)	Petersburg, VA	2/9/87	1/30/87	TA-W 19,103	Children's wear.
Lakeview Mfg. Co. (Workers)	Lakeview, OH	2/9/87	12/30/86	TA-W 19,104	Cartridges for word processors.
Regal-Lite (Workers)	Rumford, RI	2/9/87	1/9/87	TA-W 19,105	Outdoor brass lighting fixtures.
Lee Company (Workers)	El Paso, TX	2/9/87	1/20/87	TA-W 19,106	Sewing shop for pants.
Pyramid Geophysical Co. (Workers)	Tyler, TX	2/9/87	1/22/87	TA-W 19,107	Oil exploration.
Hallmark-Parker, Div./Nutone (Workers)	Harrodsburg, KY	2/9/87	1/17/87	TA-W 19,108	Bathroom accessories.
Garlin, Inc. (Company)	Lynchburg, VA	2/9/87	1/25/87	TA-W 19,109	Dresses, blouses, etc.
M.I. Drilling Fluids Co. (Workers)	Lafayette, LA	2/9/87	1/28/87	TA-W 19,110	Oil drilling chemicals.
Lone Star Industries, Marymeal Plant (USWA)	Sweetwater, TX	2/9/87	1/27/87	TA-W 19,111	Cement.
Northern Lights, Hydro Line, Inc. (Workers)	Dickinson, ND	2/9/87	1/27/87	TA-W 19,112	Clear oil wells of paraffin.
Avondale Industries, Inc. (USSA)	Chicago, IL	2/9/87	1/30/87	TA-W 19,113	Presses & automation equipment.
Bike Athletic Company (ACTWU)	Knoxville, TN	2/9/87	1/28/87	TA-W 19,114	Athletic equipment and apparel.
Consolidated Coal Co. (UMWA)	Bishop, VA	2/9/87	1/30/87	TA-W 19,115	Metallurgical coal.
Bay State Abrasives (Workers)	Westboro, MA	2/9/87	1/29/87	TA-W 19,116	Grinding wheels.
Angus Mining, Inc. (UMWA)	Caretta, WV	2/9/87	1/30/87	TA-W 19,117	Coal mining.
La Belle Producing Co. (UMWA)	Labelle, PA	2/9/87	1/30/87	TA-W 19,118	Processing of coal.
Joy Manufacturing Co. (Workers)	Kilgore, TX	2/9/87	2/2/87	TA-W 19,119	Oil field equipment.
ASARCO, Inc. (USWA)	Corpus Christi, TX	2/9/87	2/3/87	TA-W 19,120	Zinc.

[FR Doc. 87-3465 Filed 2-18-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-18,006]

Suttle Apparatus Corp., Lawrenceville, IL; Notice of Affirmed Determination Regarding Application for Reconsiderating

By an application postmarked January 14, 1987, the International Association of Machinists and Aerospace Workers requested administrative reconsideration of the Department of Labor's Notice of negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of former workers at Suttle Apparatus Corporation, Lawrenceville, Illinois. The determination was published in the **Federal Register** on January 9, 1987 (52 FR 872).

The union claimed, among other things, that the Lawrenceville facility met the decreased production and sales criterion in 1985 compared to 1984.

Conclusion

After careful review of the

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application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 9th day of February 1987.

Carolyn M. Golding,

Director, Office of Unemployment Insurance Services.

[FR Doc. 87-3466 Filed 2-18-87; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-86-22-M]

ASARCO Inc.; Petition for Modification of Application of Mandatory Safety Standard

ASARCO Incorporated, Box 868, Troy, Montana 59935 has filed a petition to modify the application of 30 CFR 57.16015 (work or travel on overhead crane bridges) to its Troy Mine (I.D. No. 24-01467) located in Lincoln County, Montana. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that no person shall work from or travel on the bridge of an overhead crane unless the bridge is provided with substantial footwalks with toeboards and railings the length of the bridge.

2. Petitioner seeks a modification of the standard to allow servicing of the overhead crane without installing a footwalk on the bridge.

3. Petitioner states that any welding required to provide a footwalk may alter the structural and strength characteristics of the bridge because a footwalk was not included in the original design.

4. The crane is provided access with ladders and work decks on the rear of the crane. To lubricate the front bearings, the operator must tram the trolley to the stop blocks near the wall of the shop, and then the controls are locked out. The employee is also required to wear a safety belt.

5. Petitioner states that the positioning of the trollery, required lock-out procedures, and the use of a safety belt provide the necessary safety and access to service the overhead crane.

6. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 23, 1987. Copies of the petition are available for inspection at that address.

Dated: February 12, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-3467 Filed 2-18-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-17-M]

Harrod Concrete and Stone Co.; Petition for Modification of Application of Mandatory Safety Standard

Harrod Concrete and Stone Company, P.O. Box 794, Frankfort, Kentucky 40602 has filed a petition to modify the application of 30 CFR 57.15002 (hard hats) to its Glenn's Creek Mill and Mine (I.D. No. 15-00020) located in Franklin County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all persons wear suitable hard hats when in or around a mine or plant where falling objects may create a hazard.

2. Petitioner seeks a modification of the standard to allow employees to park and retrieve company vehicles underground during cold weather without wearing hard hats.

3. In support of this request, petitioner states that the drivers are not exposed to hazardous conditions in the mine. They ride in, usually in a pick-up in the morning, start their trucks and exit the mine. In the evening they return to the mine to park their trucks in the mine and ride back out. The areas where they park are bolted and well maintained.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments.

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 23, 1987. Copies of the petition are available for inspection at that address.

Dated: February 11, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-3468 Filed 2-18-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-18-M]

Harrod Concrete and Stone Co.; Petition for Modification of Application of Mandatory Safety Standard

Harrod Concrete and Stone Company, P.O. Box 794, Frankfort, Kentucky 40602 has filed a petition to modify the application of 30 CFR 57.15030 (provisions and maintenance of self-rescue devices) to its Glenn's Creek Mill and Mine (I.D. No. 15-00020) located in Franklin County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a one-hour self-rescue device approved by the MSHA be made available by the operator to all personnel underground, and that each operator maintain self-rescue devices in good condition.

2. Petitioner seeks a modification of the standard to allow employees to park and retrieve company vehicles underground during cold weather without having self-rescue devices.

3. In support of this request, petitioner states:

(a) The room and pillar limestone mine has no properties of combustible gases;

(b) There is always an attended vehicle accompanying the drivers to transport any employees out of the mine if the possibility of a dangerous situation should arise;

(c) The drivers are only in the mine a very short period of time; and

(d) The trucks are only parked underground during cold weather and parking the vehicles underground in a warmer atmosphere reduces the instances of exposure to the hazard associated with jump starting trucks and using starting fluid.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 23, 1987. Copies of the petition are available for inspection at that address.

Dated: February 11, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-3469 Filed 2-18-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-19-M]

Harrod Concrete and Stone Co.; Petition for Modification of Application of Mandatory Safety Standard

Harrod Concrete and Stone Company, P.O. Box 794, Frankfort, Kentucky 40602 has filed a petition to modify the application of 30 CFR 57.17010 (electric lamps) to its Glenn's Creek Mill and Mine (I.D. No. 15-00020) located in Franklin County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that individual lamps be carried for illumination by all persons underground.

2. Petition seeks a modification of the standard to allow employees to park and retrieve company vehicles underground during cold weather without having to carry individual electric lamps.

3. In support of this request, petitioner states that the main haul roads have sufficient light and the overhead lights provide additional light. The overhead lights were experimentally turned off and the escort truck lights were adequate enough to provide safe lighting. The escort vehicle also carries a flashlight in case the overhead and escort vehicle lights both go out simultaneously.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 23, 1987. Copies of the petition are available for inspection at that address.

Dated: February 11, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-3470 Filed 2-18-87; 8:45 am]

BILLING CODE 4510-43-M

Mine Safety and Health Administration

[Docket No. M-86-20-M]

Kennecott-Utah Copper Division; Petition for Modification of Application of Mandatory Safety Standard

Kennecott-Utah Copper Divison, P.O. Box 31838, Salt Lake City, Utah 84131-0838 has filed a petition to modify the application of 30 CFR 56.9022 (berms or guards) to its UCD Concentrator (I.D. No. 42-00717) located in Salt Lake County, Utah. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that berms or guards be provided on the outerbank of elevated roadways.

2. Petitioner states that providing berms or guards on all the roads of the UCD concentrator tailing pond would result in a diminution of safety for the miners affected because it would increase hazards to personnel traveling on dike roads, increase water penetration into the sand dike, will unnecessarily cause weather related roadway hazards, and will increase erosion on dike roads and embankments.

3. As an alternate method, petitioner proposes that:

(a) Permanent service roads located adjacent to canals or embankments steeper than 5:1 (horizontal or vertical) will continue to be bermed. Inclined ramp roads will be bermed along the outside edge. Berms will be extended approximately 50 feet from the ramp intersection with the uppermost pipeway;

(b) Signs limiting speed on the upper pipeway to 20 miles per hour (MPH) will be clearly posted. The peripheral pipeline is located continuously along the inside edge of the top dike road (pipeway) and provides for excellent visual demarcation;

(c) The dike, peripheral pipeline and access roads will be inspected continuously by the tailing pond operator. When erosion is noted in the edge of the dike roadways, warning markers will be immediately placed on either approach to the eroded area until repairs are completed;

(d) All active road surfaces will be maintained in a safe condition and roads will be graded regularly to maintain a relatively smooth surface. Areas affected by erosion will be filled and repaired in a timely manner and snow graded off to prevent hazardous accumulations and buildup of ice and mud;

(e) Permanent roads to accommodate vehicles larger than pickup trucks, and for use in traveling to specific areas around the tailing pond, will be maintained at lower levels on the embankment, and provided with berms;

(f) Two-way travel on the pipeway will be restricted. Travel on the uppermost access road will be generally limited to the tailing pond operator and maintenance crew, and will be limited to pickup trucks traveling at slow speeds to allow inspection of the peripheral pipe system, dike and pipeway. Other personnel will be required to travel to various locations on the tailing pond via the lower permanent roads. Sufficient ramp intersections will be provided to serve as turnouts;

(g) Traffic signs which warn of curves in the dike road will be posted;

(h) The slope angle of the tailing pond embankment will be minimized by maintaining horizontal to vertical slope ratios of 5:1 or greater; and

(i) Vehicles traveling on tailing pond roads will be equipped with a two-way radio monitored daily by the plant security department.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 23, 1987. Copies of the petition are available for inspection at that address.

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Dated: February 12, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-3471 Filed 2-18-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-242-C]

Old Ben Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Old Ben Coal Company, 333 West Vine Street, Lexington, Kentucky 40507 has filed a petition to modify the application of 30 CFR 77.900 (low- and medium-voltage circuits serving portable or mobile three-phase alternating current equipment; circuit breakers) to its Old Ben No. 1 Mine (I.D. No. 12-00330), and its Old Ben No. 2 Mine (I.D. No. 12-00329) located in Pitkin County, Indiana. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirements that low- and medium-voltage circuits supplying power to portable or mobile three-phase alternating current equipment be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained and equipped with devices to provide protection against undervoltage, grounded phase, short circuit, and over-current.

2. Petitioner states that to require manual reset of circuit breakers for dewatering pumps which trip on loss of power would result in a diminution of safety to the miners affected due to pit flooding which occurs if the pump power is not promptly restored after a power outage.

3. As an alternate method, petitioner proposes to dewater the mining pits using pontoon-mounted pumps, fed electrically from mobile substations transforming the pit distribution voltage to 480 volts, 3 phase. These pumps will be installed with specific equipment and conditions as outlined in the petition.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 23, 1987. Copies of the petition are available for inspection at that address.

Dated: February 12, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-3472 Filed 2-18-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-10-C]

Old Ben Coal Co; Petition for Modification of Application of Mandatory Safety Standard

Old Ben Coal Company, 333 West Vine Street, Lexington, Kentucky 40507 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Mine No. 21 (I.D. No. 11-00588) located in Franklin County, Illinois. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires, trolley feeder wires, high-voltage cables and transformers not be located in by the last open crosscut and be kept at least 150 feet from pillar workings.

2. As an alternate method, petitioner proposes to locate a longwall mining unit, with cables and equipment designed to conduct 2400 volts a.c., in by the last open crosscut and within 150 feet of pillar workings. Petitioner proposes to use shielded cables in the 2400 volt circuitry such that each power conductor is surrounded by a grounded metal shield within a protective cover that is protected by a ground fault monitoring system as specified in the petition.

3. A methane monitoring system will be built into the system on working sections so that all cables and equipment on the longwall face will be de-energized at the controller when methane is found in excess of 2% at the longwall face.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 23, 1987. Copies of the petition are available for inspection at that address.

Dated: February 11, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-3473 Filed 2-18-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-16-M]

Sunnyside Gold Corp; Petition for Modification of Application of Mandatory Safety Standard

Sunnyside Gold Corporation, P.O. Box 177, Silverton, Colorado 81433 has filed a petition to modify the application of 30 CFR 57.11059 (respirable atmosphere for hoist operators underground) to its Sunnyside Mine (I.D. No. 05-00417) located in San Juan County, Colorado. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the standard which requires an approved and properly maintained self-contained breathing apparatus system which shall consist of a mask connected to compressed air stored in containers adjacent to the hoist controls. The self-contained breathing system shall provide a minimum of 24 hours of respirable atmosphere to the hoist operator. In addition, the self-contained breathing system shall be capable of a quick connect with the approved 2-hour self-contained breathing apparatus above.

2. The mine has two underground hoists, located 1.8 miles from the portal; one is located on the main level (American Tunnel) and the other is approximately 900 feet in elevation above on "F" level.

3. Dreager BG 174A's have been provided to the hoist operators to meet the approved apparatus requirement. However, in making the modifications for the Dreager to accept the quick connect coupling, the approval will be voided.

4. As an alternate method, petitioner proposes that a separate and independent exhalation valve assembly will be installed into the exhalation tube of the Dreager breathing hose and a positive automatic shutoff quick connect coupler will be installed to the

installation hose of the Dreager breathing tubes. In further, support of this request, petitioner states that at the first indication of a mine fire, the hoist operator would:

(a) Immediately take the Dreager mask and breathing tubes from storage;

(b) Connect the quick connect coupling to the compressed air units;

(c) Turn on the first cylinder; and

(d) Put on the face piece allowing the exhalation hose to hang free.

5. The compressed air system is a bank of compressed air cylinders connected in series with a regulator, a low pressure warning device and a length or air hose sufficient to allow the hoist operator to perform his or her duties while attached to the breathing mask. As each cylinder is depleted, the valve on the next cylinder in succession is opened until all employees have been lowered to the proper level. Upon completion, the hoist operator would strap on the Dreager 174A, attach the exhalation hose, turn on the Dreager oxygen supply, disconnect the quick connect from the compressed air, and connect the quick connect to the Dreager inhalation tube. The hoist operator is then free to exit the mine under apparatus.

6. To assure proper functioning and readiness, the hoist operator breathing apparatus will be bench tested monthly by a competent person, and hoist operators will be thoroughly trained on the use of the BG 174A, and receive refresher training at three month intervals.

7. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 23, 1987. Copies of the petition are available for inspection at that address.

Dated: February 11, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-3474 Filed 2-18-87; 8:45 am]

BILLING CODE 4510-43-M

Wage and Hour Division

[Administrative Order No. 659]

Special Industry Committee for All Industry in American Samoa; Notice of Appointment, Convention, and Hearing

1. Pursuant to section 5 and 6(a) (3) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 205, 206(a) (3)), and Reorganization Plan No. 6 of 1950 (3 CFR, 1949-53 Comp., p. 1004) and 29 CFR Part 511, I hereby appoint special Industry Committee No. 18 for American Samoa.

2. Pursuant to section 6(a) (3) and section 8 of the Acts, as amended (29 U.S.C. 206(a) (3), 208), Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and 29 CFR Part 511, I hereby:

(a) Convene the above-appointed industry committee.

(b) Refer to the industry committee the question of the minimum rate or rates for all industry in American Samoa to be paid under section 6(a) (3) of the Act, as amended.

(c) Give notice of the hearing to be held by the committee at the time and place indicated.

The industry committee shall investigate condictions in such industry, and the committee, or any authorized subcommitee thereof, shall hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under the Act.

The committee shall meet in executive session to commence its investigation at 9 a.m. and begin its public hearing at 11 a.m. on June 8, 1987, in the Senate Chambers, Fono Building, Pago Pago, American Samoa.

3. The rate or rates recommended by the committee shall not exceed the rates prescribed by section 6(a) and 6(b) of the Act, as amended by the Fair Labor Standards Amendments of 1977, currently $3.35 an hour.

The committee shall recommend to the Administrator of the Wage and Hour Division of the Department of Labor the highest minimum rate or rates of wages for such industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in such industry, and will not give any industry in American Samoa a competitive advantage over any industry in the United States outside of Puerto Rico, the Virgin Islands, and American Samoa.

4. Where the committee finds that a higher minimum wage may be determined for employees engaged in certain activities or in the manufacture of certain products in such industry than may be determined for other employees in such industry, the committee shall recommend such reasonable classifications within such industry as it determines to be necessary for the purpose of fixing for each classification the highest minimum wage rate that can be determined for it under the principles set forth herein and in 29 CFR Part 511.10, which will not substantially curtail employment in such classification and will not give a competitive advantage to any group in the industry. No classification shall be made, however, and no minimum wage rate shall be fixed solely on a regional basis or on the basis of age or sex. In determining whether there should be classifications within an industry, in making such classifications, and in determining the minimum wage rates for such classifications, the committee shall consider, among other relevant factors, the following: (a) Competitive conditions as affected by transportation, living, and production costs; (b) wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and (c) wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry.

5. Prior to the hearing, the Administrator of the Wage and Hour Division, U.S. Department of Labor, shall prepare an economic report containing the information which has been assembled pertinent to the matters referred to the committee. Copies of this report may be obtained at the Office of the Governor, Pago Pago, American Samoa, and the National Office of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210, as soon as it is completed. Upon request, the Wage and Hour Division will mail copies to interested persons. To facilitate mailing, such persons should make advance, written request to the Wage and Hour Division. The committee will take official notice of the facts stated in this report. Parties, however, shall be afforded an opportunity to refute such facts by evidence received at the hearing.

6. The procedure of this industry committee will be governed by the provisions of Title 29, Code of Federal Regulations, Part 511. Copies of this part of the regulations will be available at the Office of the Governor, Pago Pago, American Samoa, and at the National Office of the Wage and Hour Division. The proceedings will be conducted in

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English but in the event a witness should wish to testify in Samoan, an interpreter will be provided. As a prerequisite to participation as a party, interested persons shall file six copies of a prehearing statement at the aforementioned Office of the Governor of American Samoa and six copies at the National Office of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. Each prehearing statement shall contain the data specified in 29 CFR 511.8 of the regulations and shall be filed not later than May 29, 1987. If such statement are sent by airmail between American Samoa and the mainland, such filing shall be deemed timely if postmarked within the time provided.

Signed at Washington, DC, this 12th day of February 1987.

William E. Brook,

Secretary of Labor.

[FR Doc. 87-2475 Filed 2-18-87; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities..

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to advise the Chairman of the National Endowment for the Humanities on the state of humanities education in the public elementary and secondary schools in the United States. These meetings will be open to the public.

1. Dates: March 2, April 10, and May 22, 1987.
   Time: 9:00 a.m. to 3:00 p.m.
   Room: M-14
   Program: A group of teachers and scholars will assemble to discuss humanities education with respect to history and literature in the nation's elementary and secondary schools.
2. Date: March 23, 1987.
   Time: 9:00 a.m. to 3:00 p.m.
   Room: 714
   Program: A group of teachers and scholars will assemble to discuss humanities education with respect to foreign languages in the nation's elementary and secondary schools.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 87-3542 Filed 2-18-87; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-155]

Consumers Power Co.; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part a request by Consumers Power Company (the licensee) for an amendment to Facility Operating License No. DPR-6, issued to Consumers Power Company for operation of the Big Rock Point Plant, located in Charlevoix County, Michigan.

The amendment, as proposed by the licensee in the application dated December 5, 1986, would revise portions of sections 5.1 and 5.2 of the Big Rock Point Technical Specifications. The proposed change to section 5.1 reflects the planned use of new hybrid control rods in the core. These hybrid control rods are manufactured by NUCOM, Incorporated. The proposed change to section 5.2 modifies two tables on reactor operating parameters to support the use of Reload I-2 fuel which would be installed during the 1987 refueling outage for Cycle 22. Notice of consideration of issuance of this amendment was published in the Federal Register on January 14, 1987 (52 FR 1551). The proposed change to Section 5.1 concerning the planned use of hybrid control rods in the core is being handled as a separate licensing action. The proposed change to section 5.2 concerning modification of two tables of reactor operating parameters to support the use of Reload I-2 fuel was denied.

At present, Table 1 of section 5.2.1(b) provides reactor operating parameters for all previous fuel reloads through Reload I-1 fuel. The request proposes to revise this table to support Reload I-2 fuel. After review of the reactor operating parameters contained in this table, the Commission found this request unacceptable. This request was found unacceptable because additional information, provided at the request of the staff, indicates that operation at the existing Technical Specification limit could result in violation of the safety limit for the most limiting transients.

The licensee was notified of the Commission's denial of this portion of its request by letter dated February 12, 1987.

By March 23, 1987, the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, attorney for the license.

For further details with respect to this action, see (1) The application for amendment dated December 5, 1986, and (2) the Commission's letter and Safety Evaluation dated February 12, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the North Central Michigan College Library, 1515 Howard Street, Petoskey, Michigan 49770. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commissoin, Washington, DC 20555, Attention: Director, Division of BWR Licensing.

Dated at Bethesda, Maryland, this 12th day of February 1987.

For the Nuclear Regulatory Commission.

Rajender Auluck,

Acting Director, BWR Project Directorate No. 1, Division of BWR Licensing.

[FR Doc. 87-3544 Filed 2-18-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-327 and 50-328]

Tennessee Valley Authority; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from 10 CFR Part 50, Appendix J, General Design Criteria 55—Reactor

Coolant Pump Seal Injection Lines to the Tennessee Valley Authority, (the licensee) for the Sequoyah Nuclear Plant, Units 1 and 2, located at the licensee's site in Hamilton County, Tennessee. The exemption was requested by the licensee by letter dated January 23, 1986.

Environmental Assessment

Identificotion of Proposed Action

The exemption will permit the reactor coolant pressure boundary isolation on the reactor collant pump seal injection lines to be provided by in-containment check valves and out-of -containment manual isolation valves. General Design Criteria (GDC) 55 requires that each line that is part of the reactor coolant pressure boundary and that penetrates primary reactor containment shall be provided with containment isolation valves. The combination of valves, automatic or locked closed, inside and outside containment is specified in GDC 55 unless it can be demonstrated that the containment isolation provisions for a specific loss of lines are acceptable on some other defined basis.

The reactor coolant pump seal injection was designed to provide continued seal water during operation and following certain transients and accidents. The seal injection line was not designed, therefore, to be automatically isolated by an isolation signal. GDC 55 also requires that valves outside containment be located close to the containment and other appropriate requirements be provided to minimize the probability or consequences of an accidental rupture of the lines.

In support of the exemption, the licensee has proposed that redundant containment isolation is provided by the check valves inside containment, and by redesigned local manual valves outside containment. The seal injection is a closed system and the charging pumps provide a water seal to prevent the release of containment atmosphere to the environment. Any leaks are into leak collection systems which are designed to handle leaks and contaminated fluids greater than expected from the seal injection system.

The Need for the Proposed Action

The proposed exemption is needed to permit the licensee to operate the plant without being in violation of the Commission's requirements.

Environmental Impact of the Proposed Action

The proposed exemption is from the specified combination of valves in GDC 55. The need for automatic isolation is to insure that the containment atmosphere is not released to the environment following an accident. For the seal injection line, however, continued operation following certain transients and accidents does not require automatic isolation on a containment isolation signal. The seal injection system is a closed system outside containment and was designed and is operated to prevent offsite releases in normal operation or following accidents. However, should the seal injection be discontinued and the check valve inside containment leak, it would be into a closed system which is not open to the environment. The licensee has procedures if the need arises which would further prevent any containment atmosphere release possibility.

For a line rupture or valve leak outside containment, the seal injection line is located in controlled areas where leakage is collected in the Tritiated Drain Collection Tank. The drains are sized to accommodate a maximum leak rate of 50 gpm that would be expected from a Residual Heat Removal pump shaft seal. The consequences of a leak this size have been evaluated and the analysis was previously found acceptable. A leak from the seal injection line which would release containment atmosphere in this area is within the 50 gpm analysis already found acceptable. Because of this, there would be a neglible effect on the overall risk from plant operation. In addition, since any leak would be into a closed system, there would not be any leakage, either radioactive or non-radioactive, to the environment. Therefore, in consideration of all of the above, the exemption does not involve a significant environmental impact.

Alternative to the Proposed Action

Because the staff has concluded that there is no significant impact associated with the proposed exemption, any alternative to the exemption will have either no environmental impact or greater environmental impact. In further support of this, the licensee investigated the alternative of installing automatic isolation valves and improving the leak detection capabilities in the seal injection lines and areas respectively. The engineering costs would be $1,500,000 minimum with valves and supplies form stock or warehoused, and the exposure to installation crews during an outage is estimated to be about 47 man-rem. This alternative may reduce the effects of a line rupture or valve leak somewhat but would result in increased radiation exposure and cost.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the"Final Environmental Statement Related to the Operation of Sequoyah Nuclear Plant, Units 1 and 2," dated July 1974.

Agencies and Persons Consulted

The NRG staff reviewed the licensee's request that supports the proposed exemption.

The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for exemption dated January 23, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

Dated at Bethesda, Maryland, this 12th day of February 1987.

For the Nuclear Regulatory Commission.

B. J. Youngblood,

Director, PWR Project Directorate No. 4, Division of PWR Licensing-A, Office of Nuclear Reactor Regulation.

[FR Doc. 87-3543 Filed 2-18-87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

OSHA "Hazard Communication" Standard; Open Public Meeting

AGENCY: Office of Management and Budget.

ACTION: Notice of public meeting.

SUMMARY: The Office of Management and Budget (OMB) will solicit comments on the existing recordkeeping, notification and other peperwork requirements of the Occupational Safety and Health Administration (OSHA) standard, "Hazard Communication" (29 CFR 1910.1200) at a public meeting. Members of the public are invited to provide comments and suggestions concerning these requirements and the associated paperwork. This meeting will be conducted under the authority of the

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Paperwork Reduction Act of 1980 (Public Law 96–511).

DATE: April 2, 1987, beginning at 9:00 a.m.

ADDRESS: The meeting will be held at the New Executive Office Building, Room 2010, 726 Jackson Place NW., Washington, DC, (use 17th Street entrance). To obtain entrance into the building, please call (202) 395–6880 with your full name and birthdate by March 31 and request that your name be placed on the access list. Attendees who notify OMB in writing, as requested below, do not need to call to be cleared into the building.

FOR FURTHER INFORMATION CONTACT: Scott H. Jacobs, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC, 20503, (202) 395–6880.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act requires OMB to provide interested persons early and meaningful opportunity to comment on information requirements imposed by Federal agencies (44 U.S.C. 3517). Public participation in review of such requirements is appropriate in assisting OMB and other Federal agencies to carry out the goals of the Act. Under the Act and implementing regulations at 5 CFR 1320.4(b), agencies must ensure that collections of information have practical utility, are the least burdensome necessary to achieve program objectives, and are not duplicative of information otherwise available.

OSHA's "Hazard Communication" standard, which became fully effective in May 1986, is intended to require the transmittal of complete chemical hazard information to employees and downstream employers in order to reduce the incidence of chemical source illnesses and injuries in the manufacturing sector. A detailed explanation of the evidence in the public record and policy considerations upon which OSHA based the information collection and paperwork requirements of the standard can be found at 48 FR 53280 (November 25, 1983).

The purpose of this public meeting is to solicit comments from a wide range of individuals and organizations on the information collection requirements of the standard, which include chemical hazard evaluation, written hazard communication programs, labeling, development and provision of Material Safety Data Sheets (MSDS), and the paperwork and notification aspects of access to trade secrets.

Commenters are urged to present their views with as much data as possible so that the merits of their cases can be evaluated. Comments are welcome on all aspects of the paperwork requirements of the standard; however, the audience will be particularly encouraged to comment on the following issues:

Burden Estimates

• What is the paperwork burden required for compliance with the standard? How many hours are required to comply with the paperwork requirements? What are the costs of compliance associated with these requirements?

Transmittal of Hazard Information

• Does each recordkeeping, notification and paperwork component of the "Hazard Communication" standard contribute to the efficient, effective transmittal of hazard information? Can these components be made more efficient or effective?

Non-mandatory MSDS

• How has issuance of OSHA's nonmandatory MSDS form affected the compliance burden on the public? Should OHSA continue to provide a nonmandatory form? Should it be modified?

Persons who wish to speak at the public meeting should notify OMB in writing at the above address by March 25, and should include the full names and birthdates of all attendees, as well as an estimate of the time needed. Oral presentations will be limited to 15 minutes for each individual or organization, except under special circumstances. An agenda of the meeting and a list of attendees will be available on March 31. Persons who are unable to attend but who wish to provide comment may do so in writing. Comments, particularly recommendations for alternatives, should be as detailed and specific as possible, and should include supporting data. All written comments should be submitted on or before April 30, 1987, to the following address: Office of Management and Budget; OIRA Docket Library; Room 3201; Washington, DC 20503, Attn: Scott Jacobs.

Joseph R. Wright, Jr.,

Deputy Director.

[FR Doc. 87–3434 Filed 2–18–87; 8:45 am]

BILLING CODE 3110–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) Collection title: Appeal from Determinations Under Railroad Unemployment Insurance Act.

(2) Form(s) submitted: HA–4.

(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(4) Frequency of use: On occasion.

(5) Respondents: Individuals or households.

(6) Annual responses: 50.

(7) Annual reporting hours: 17.

(8) Collection description: Under Section 5 of the Railroad Unemployment Insurance Act, an employee aggrieved by an initial determination or review of his or her claim for benefits has a right to two levels of administrative appeal. The form will obtain the information needed to initiate either level of appeal.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy Egan (202–395–6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 87–3446 Filed 2–18–87; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–24092; File No. SR–NSCC–87–1]

Self-Regulatory Organizations; Proposed Rule Change by National Securities Clearing Corp., Relating to an Amendment to National Securities Clearing Corporation's ("NSCC") Rules and Fee Structure Regarding the Release of Clearing Data; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 1, 1987, NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amend NSCC's SCC Division Rules and Procedures by revising the Fee Structure as follows:

National Securities Clearing Corporation Fee Structure

* * * * *

V. Pass-Through and Other Fees

A. Participant Fees—represents the monthly fee for each number assigned to a Member, Municipal Comparison Only Member or Fund/Serv Member for participation by each Member, Municipal Comparison Only Member or Fund/Serv Member under such number in one or more of the specified services provided by NSCC. The [seven] *eight* services and their related base fees are:

* * * * *

8. Trade input either..... $500 per month
a) as a Service Bureau
or
b) by an affiliated Service Bureau

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In File No. NSCC–86–17, a Statement of policy was adopted to allow Service Bureaus to submit two-sided trade data to NSCC. The purpose of this filing is to establish a fee for the service. This fee is identical to the fee established for Qualified Special Representatives, which submit identical types of data. NSCC imposes a fee on Qualified Special Representatives, and proposes to impose a fee on Service Bureaus, to accept two-sided trade data in order to recover both the initial and continuing costs of ensuring that Qualified Special Representatives and Service Bureaus have appropriate authority to submit trade data on behalf of members, to reject trades inputted without proper authority, and to provide the necessary notifications if trades are rejected. These costs are unique to the inputting of two-sided trades by Qualified Special Representatives and Service Bureaus.

The proposed rule change to NSCC's Fee Structure is consistent with the requirement of the Securities Exchange Act of 1934 ("34 Act"), as amended, and the rules and regulations thereunder applicable to a self-regulatory organization in that it allows for the equitable allocation of fees among NSCC Participants. Inasmuch as the proposed rule change relates only to NSCC's Fee Structure, it does not affect the safeguarding of securities and funds in NSCC's custody or control or for which it is responsible.

B. Self-Regualtory Organization's Statement on Burden on Competition

NSCC does not perceive that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No comments on the proposed rule change have been solicited or received. NSCC will notify the Securities and Exchange Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withhold from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 12, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 12, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–3533 Filed 2–18–87; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing by Philadelphia Stock Exchange, Inc.

February 12, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Chesapeake Corporation Common Stock, $1.00 Par Value (File No. 7–9684)

Consolidated Stores Corporation Common Stock, $0.01 Par Value (File No. 7–9685)

Glenfed, Inc. Common Stock, $0.01 Par Value (File No. 7–9686)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 6, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the

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Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-3531 Filed, 2-18-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

Trading in the Securities of Hughes Capital Corp.; Order of Trading Suspension

February 12, 1987.

It appears to the Securities and Exchange Commission that there is a lack of current adequate and accurate public information concerning Hughes Capital Corporation's business operations and recent unusual market activity in the company's stock.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that all trading in the securities of Hughes Capital Corporation is suspended for a single ten-day period from 9:30 A.M. (EST) on February 13, 1987 through 11:59 P.M. (EST) on February 22, 1987.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-3530 Filed 2-18-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15576; 812-6531]

NZI Corporation Limited, NZI Capital Corporation; Notice of Application

February 12, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: NZI Corporation Limited ("NZI"), and NZI Capital Corporation ("Capital") (NZI and Capital, together, "Applicants").

Relevant 1940 Act Section: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicants seek an order exempting them from all provisions of the 1940 Act in connection with the offer and sale of debt securities of NZI, or debt securities of Capital guaranteed unconditionally by NZI.

Filing Date: the application was filed on November 12, 1986, and amended on February 5, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 5, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, Washington, DC 20549. Applicants, c/o Frederic C. Rich, Esq., Sullivan & Cromwell, 125 Broad Street, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Carson G. Frailey (202) 272-3037, or Special Counsel, Karen L. Skidmore, (202) 272-3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. NZI is the parent of a group of companies providing financial services, principally insurance, in New Zealand, Australia and 20 other countries, mainly in Asia (NZI and its consolidated subsidiaries being referred to herein as the "NZI Group"). The NZI Group includes the largest private sector insurance company in New Zealand, one of the largest private sector insurance companies in Australia and the largest finance company in New Zealand, one of the largest private sector insurance companies in Australia and the largest finance company in New Zealand.

2. For the fiscal year ended March 31, 1986, the NZI Group had net earnings of NZ $85 million on revenues of NZ $1,305 million. The NZI Group's General Insurance division contributed approximately 53% of this revenue and 58% of these earnings; its Banking Service division contributed 21% and 22%, respectively.

3. At May 31, 1986, NZI had outstanding 567,237,908 ordinary shares held by over 38,110 persons. Its ordinary shares are listed for trading on the London, New Zealand, and Australian Associated Stock Exchanges and stock exchange listing in Tokyo is being sought. NZI currently ranks fourth in terms of market capitalization among all New Zealand companies.

4. Capital was incorporated on December 5, 1986, under the laws of the State of Delaware and is a wholly-owned subsidiary of NZI, and NZI (or a company controlled by NZI) will continue to own all of Capital's capital stock. Capital's sole business will be the issuance of debt obligations and the provision of the proceeds thereof to NZI (or companies controlled by NZI) will continue to own all of Capital's capital stock. Capital's sole business will be the issuance of debt obligations and the provision of the proceeds thereof to NZI (or companies controlled by NZI).

5. NZI is subject to regulation by New Zealand and Australian insurance authorities by virtue of its activities in those countries.

6. NZI wishes to offer and sell its debt securities in the United States, either directly, or through Capital. such offers and sales may be accomplished either through underwritten public offerings registered under the Securities Act of 1933, as amended (the "1933 Act"), or made pursuant to an exemption from the registration requirements of the 1933 Act.

7. Exempting Applicants from all provisions of the 1940 Act in connection with the issuance and sale in the United States of debt securities of NZI, or debt securities of Capital guaranteed by NZI, is necessary or appropriate in the public interest; is consistent with the protection of investors; and is consistent with the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. Substantially all (in no event less than 85%) of the proceeds of the sale of any debt securities issued by Capital will be provided as soon as practicable (but in no event more than six months after receipt) to NZI (or companies controlled by NZI) on terms that will allow Capital to make timely payment on such debt securities. In any period prior to providing such proceeds, or with any portion not so provided, Capital will not invest in, reinvest in, own, hold, or trade in securities other than U.S. Government securities, securities of NZI (or a company controlled by NZI) or debt securities exempted from the 1933 Act by section 3(a)(3) thereof.

2. Any debt securities of Capital issued to or held by the public will be unconditionally guaranteed by NZI as to the payment of principal, interest and premium, if any.

3. NZI's guarantee will provide that, in the event of a default in payment of principal, interest, premium, or payments made under a sinking fund on any debt securities issued by Capital, the holders of those securities may institute legal proceedings directly against NZI to enforce the guarantee without first proceeding against Capital.

4. In any offering of their debt securities made pursuant to a registration statement under the 1933 Act, Applicants will not sell such securities until the registration statement is declared effective by the Commission and the related indenture is qualified under the Trust Indenture Act of 1939, and Applicants will furnish a prospectus to such persons and in such manner as may be required by the 1933 Act and the rules and regulations thereunder. Any offering of debt securities by Applicants in the United States not registered under the 1933 Act will be made on the basis of disclosure documents which are at least as comprehensive as is customary in the United States for such an offering, and which will include NZI's most recently available audited fiscal year-end balance sheet and profit and loss statement together with a description of any material differences between the accounting principles applied in the preparation of such financial statements and generally accepted accounting principles in the United States, and such disclosure documents will be updated promptly to reflect material changes in the financial condition of NZI.

5. In connection with any offering in the United States of debt securities by Applicants, NZI will appoint a United States person as agent to accept any process which may be served in any action based on any such debt securities of NZI, or NZI's guarantee of debt securities of Capital, and instituted in any State or Federal court by the holder of such debt securities. NZI will expressly accept the jurisdiction of any State or Federal court in the City and State of New York in respect of any such action. Such appointment of an agent to accept service of process and such consent to jurisdiction will be irrevocable so long as such debt securities remain outstanding and until all amounts due and to become due in respect of such debt securities have been paid. Applicants will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of such debt securities, or otherwise in connection with such debt securities.

6. Any future offering in the United States of debt securities by Applicants will only be made if such securities have been registered under the 1933 Act, or if NZI has received an opinion from its United States legal counsel to the effect that, under the circumstances of the proposed offering, the securities are not required to be registered under the 1933 Act because of an exemption therefrom. NZI does not request Commission review or approval of any such opinion of NZI's United States legal counsel.

7. Any future offering in the United States of debt securities by Applicants not registered under the 1933 Act shall have received prior to issuance one of the three highest investment grades from at least one nationally-recognized statistical rating organization, and Applicants' United States counsel shall have certified that such rating has been received.

8. With regard to public offerings of debt securities (not either registered under the 1933 Act, or exempt from registration by virtue of section 3(a)(3) or section 4(2) thereof), that are not issued in the United States or sold to U.S. persons (but where there is a reasonable likelihood of offers or sales of such debt securities being made in the United States or to U.S. persons), Applicants will adopt agreements and procedures reasonably designed to prevent such debt securities from being offered or sold in the United States or to U.S. persons (except as U.S. counsel may then advise is permissible).

9. All of Capital's securities, other than debt securities or non-voting preferred stock meeting the applicable requirements of paragraphs (a)(1) through (a)(3) of Rule 3a-5 under the 1940 Act, or directors' qualifying shares, will continue to be owned directly by NZI (or a company controlled by NZI).

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-3532 Filed 2-18-87; 8:45am]

BILLING CODE 8010-01-M

[Rel. No. 34-24090; File No. SR-CSE-86-6]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Cincinnati Stock Exchange Relating to an Affiliation With the Chicago Board Options Exchange

I. Introduction and Background

The Cincinnati Stock Exchange, Inc. ("CSE") submitted, on November 18, 1986, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), and Rule 19b-4 thereunder, to amend certain provisions of the CSE By-Laws and Rules to reflect the existence of a recently consummated affiliation agreement ("Agreement") between the CSE and the Chicago Board Options Exchange ("CBOE").[1] The affiliation gives CBOE members who meet CSE membership requirements the ability to become CSE proprietary members without having to purchase certificates of proprietary membership.

The intention of the proposal is to define the rights of the various parties to the Agreement for the course of the affiliation. To this end, the CSE proposes to modify certain procedures for amending its By-Laws and Rules and to change its By-Laws which address Board structure, certificates of proprietary membership, voting rights, committee powers, and governance issues.

Notice of the proposed rule change, together with the terms of substance of the proposal, was given by the issuance of a Commission release (Securities Exchange Act Release No. 23868, December 9, 1986) and by publication in the **Federal Register** (51 FR 44958, December 15, 1986). No comments were received regarding the proposal.

II. Description of the Agreement and Proposal

A. CBOE Ownership Interest in the CSE

The primary intent of the Agreement is to provide the CBOE with a proprietary interest in the CSE. In order to accomplish this, under the Agreement the CSE is obligated to transfer to the CBOE ninety-eight certificates of proprietary membership, free of any liens or encumbrances.[2] In exchange, the CBOE will pay to the CSE $1.186 million, and has promised not to resell any certificates to non-CBOE members, for a period of two years, without the

[1] A copy of the agreement was submitted by the CSE as part of the public record.

[2] *See* Article V, Section 5.2(b). This section limits the maximum number of authorized certificates of proprietary membership to 275.

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prior consent of a majority of CSE proprietary members as of September 12, 1986, who still own more than one certificate at the time that consent is requested. In addition, the CBOE will grant to each CSE propietary member who was a Designated Dealer on September 12, 1986,[3] the right to sell fifty percent of his certificates, minus one, to the CBOE, provided the CSE member continues to maintain his Designated Dealer function in 80% of the number of stocks in which he was a Designated Dealer on September 12, 1986.

Unlike any other applicant for CSE membership, CBOE members are also entitled to become proprietary members of the CSE without owning certificates, provided such members meet the eligibility requirements of the CSE. Such a membership would terminate automatically when the owner ceases to be a CBOE member.[4] The CSE proposes certain amendments to Article II of its By-Laws to define the interests of both members with and without certificates. Amendments to Section 9.1 provide that proprietary members without certificates may not sell or encumber their membership of any interest therein. Revisions to Section 9.4 provide that a national securities exchange may purchase, hold, or resell certificates pursuant to Board of Trustee approval, but may not become a members of the CSE.[5]

B. Exchange Governance and Board Structure

In order to reflect the participation of the CBOE in the activities of the Exchange, the CSE proposes to amend Articles V and VI of its By-Laws concerning the size and composition of the CSE Board of Trustees and certain CSE Committees. Primarily, the CSE proposes to raise the number of Trustees from nine to thirteen. The thirteen members will consist of the CSE President,[6] two proprietary members with certificates who are Designated Dealers in the National Securities Trading System ("Designated Dealer Trustees"), one proprietary member that conducts a non-member public customer business on the Exchange ("At-Large Trustee") (collectively, the "CSE Trustees"), the Chairman of the CBOE, the President of the CBOE, four CBOE members or executive officers of CBOE member organizations (collectively, the "CBOE Trustees"), and three representatives of issuers and investors ("Public Trustees"). The terms of office for the Public Trustees and the CSE Trustees, except the CSE President, are set at three years.[7] The term of office for CBOE Trustees is one year.

Modifications to Article V, Section 2.2(a) provide amended Trustee election procedures. Under the new procedures, members with certificates would elect the Designated Dealer and At-Large Trustees while the CBOE Board of Directors would select the four CBOE Trustees. Proposed Section 2.2(c) provides a new selection process for the Public Trustees. A six-member Special Nominating Committee, comprised of the At-Large Trustee, the Designated Dealer Trustees, and three of the six CBOE Trustees, must approve a candidate for Public Trustee.[8] After this approval, the candidates are submitted to the full Board of Trustees for its approval or disapproval.

Amendments to Article VI, Section 3 would change the composition of the Securities Committee, to provide that one proprietary member with a certificate and one Public Trustee must be on that committee. Under new Section 3.1, the Securities Committee also would be provided the authority to adopt procedures related to the Exchange's interface with the Intermarket Trading System.

C. Modifications to Exchange by-Law and Rule Amendment Procedures

To reflect the interests of the parties to the Agreement, the CSE proposes to add a new Article to its By-Laws (Article XII) that institutes limitations on amendments to certain CSE By-Laws and Rules. In particular, paragraph (a) provides that, for two years following the effective date of the provision, no change to any of the delineated sections may become effective without the unanimous consent of the Designated Dealer and At-Large Trustees.[9] Paragraph (b) provides that in years two through ten following enactment of the provision, no change to Article V, Section 1 or Article XII can be effected without two-thirds approval from proprietary members with certificates and proprietary members without certificates, voting separately as a class.[10] Paragraph (c) provides that, after ten years, no change may be made to Article V, Section 1 or Article XII without a two-thirds votes of all proprietary members voting as one class. These changes may be effectuated without following the standard Board approval procedures required under Article IX.[11]

III. Discussion

The Commission has reviewed carefully the CSE proposal in light of the standards set forth under section 6(b) of the Act. We believe that the technical

[3] *See* CSE Rules 11.9(a)(3), which defines Designated Dealer as a "proprietary member who maintains a minumum net capital of at least $500,000 computed pursuant to the provisions of Commission Rule 15c3–1 and who has been approved by the Securities Committee to perform market making functions by entering bids and offers for Designated Issues into the [National Securities Trading] System."

[4] *See* proposed amendments to Article II, Section 9.1. Further, the proposed amendments to Article II, Section 1 divide members into three classes: proprietary members with certificates, proprietary members without certificates, and access participants. Access participants are limited members of the Exchange whose rights have not been altered by the Agreement.

[5] This provision is designed to enable the CBOE to hold certificates [the original ninety-eight as well as any purchased from CSE Designated Dealers pursuant to Section 2.2 of the Agreement] during the course of the affiliation. Pursuant to Section 2.3 of the Agreement, however, the CBOE is prohibited, for a two year period, from reselling any of the original ninety-eight certificates to non-CBOE members, unless the sale is approved by a majority of the proprietary members (that owned more than one certificate on September 12, 1986, who are still proprietary members on the date consent is requested.

[6] According to Article VII, Section 2 of the By-Laws, the CSE President, as with all CSE officers, is an appointee of the Board of Trustees. The CSE does not propose to change this provision. As noted below, the CSE President must be a full-time employee of the CSE.

[7] *See* Article VII, Section 2. The term of the CSE President remains at one year.

[8] Proposed amendments to Article VI, Section 1.1 provide for the creation of the Special Nominating Committee. Unlike all other committees, the Special Nominating Committee would not be subject to the control and supervision of the Board.

[9] The affected sections are listed in the proposed amendment to Article I, Section 1(m). The new section reads: "The term 'Protected Provisions' shall mean the provisions contained in Articles I [Definitions], II [Exchange Membership], V [Exchange Organization and Administration], VI [Committees], VII [Officers and Employees], VIII [Indemnification of Trustees, Officers and Employees], IX [Amendments to By-Laws], X [Adoption of and Amendments to Exchange Rules], XII [Special Limitations on Changes to Certain By-Laws and Rules] and XIII [Off-Exchange Transactions] of these By-Laws and Rules 11.9 [National Securities Trading System] and 11.10 [National Securities Trading System Fees] of the Exchange Rules in effect on this effective date of this provision of these By-Laws." Paragraph (a), however, does not require unanimous consent of the Designated Dealer and At-Large Trustees to amend Rule 11.9 to accommodate changes made pursuant to Commission approval of side-by-side trading of options and their underlying securities.

[10] As noted above, Article V, Section 1 pertains to the composition of the Board of Trustees, while Article XII concerns the limitations on amendments to the By-Laws discussed herein.

[11] Under the procedures detailed in Article IX, any member of the Board of Trustees, by resolution, or one-third of the proprietary members of the Exchange, by petition, may propose an amendment to the By-Laws. The Board of Trustees may, at its discretion, then submit the proposed amendment to the proprietary membership. At that point, if a majority of the members approve the proposal, it is submitted to the Commission for approval pursuant to Section 19(b) of the Act.

provisions that implement the proposed affiliation are consistent with the purposes of the Act.[12] As discussed above, however, to effectuate the affiliation, the CSE also has proposed several significant changes to its governance provisions. Accordingly, in reviewing the proposal and underlying Agreement, the Commission has focused its review on the amendments to the Exchange governance provisions to ensure that they conform to sections 6(b)(1), 6(b)(3), and 6(b)(5) of the Act.[13]

Section 6(b)(3) requires that "the rules of the exchange assure a fair representation of its members in the selection of its directors and administration of its affairs. . . ."[14] Section 6(b)(1) requires a national securities exchange to be organized so as to have the ability to carry out the purposes of the Act, the rules and regulations thereunder, and the rules of the exchange, and to compel its members to do the same. Section 6(b)(5) generally requires that the rules of an exchange be designed to protect investors and the public interest. Accordingly, the Commission has evaluated whether the amendments to the provision concerning the composition of the Board of Trustees gives the CBOE constituency a numerical domination on the Board inconsistent with any of those three sections.

After careful review, the Commission has concluded that the proposed CSE governance provisions meet the fair representation requirements of Section 6(b)(3) in addition to the standards set forth in Sections 6(b)(1) and (5). First, we believe that the Board structure proposed in Articles V and VI provides for the fair representation of each segment of the CSE's membership. The structure does not provide CBOE interests a dominant position on the Board that could adversely effect the other constituents of the CSE, the CSE as a whole or the Board's duty to act in its fiduciary capacity as representatives of the broader public interest. Although the CBOE will control six of the thirteen Board seats, four other Trustee positions will represent existing CSE interests,[15] while the remaining three Trustees must first be selected by a committee composed equally of CSE and CBOE trustees.[16] The Commission also notes that the remaining three "Public Trustees" are not allowed to be associated with any member of the CSE, CBOE or any other self-regulatory organization, other than as a public trustee or public director, to ensure that these Trustees are true public representatives on the Board. The Commission believes that this proportionate representation fairly reflects the substantial investment in CSE made by CBOE as well as the anticipated development of substantial numbers of joint CBOE-CSE members.

The provisions of Article XII also prevent, during the initial 2 years of affiliation, undue CBOE domination by providing the CSE representatives on the Board veto power over significant proposed changes to the By-Laws, thereby preventing the broader interests of the CSE from being frustrated.[17] This provision substantially decreases the possibility that CBOE's influence on the Board will be overrepresented during the time prior to CBOE's investment reaching its peak.[18]

The provisions of Article XII provide other assurances that, in the event of changed circumstances, the interests of the respective parties will be represented on the Board of Trustees. For example, paragraph (b) of Article XII alters the authority to amend the control provisions of Article V, Section 1 and Article XII for years two through ten of the Agreement, making approval contingent on the affirmative vote of two-thirds of both certificate holders and non-certificate members, voting separately as a class, instead of the traditional membership-wide majority voting requirement. This provision ensures that, during these years, the Board will be unable to effect a change of control that is unrepresentative of the make-up of the members of the exchange. In particular, the provision protects the interest of current proprietary members with certificates (present CSE members) in that they will still have input concerning amendments to exchange governance By-Laws even if present CBOE members purchase a simple majority of certificates. Further, separate class voting requirements ensure that a proliferation of non-certificate holders could not force a change in governance structure without separate approval of certificate holders. Article XII, Section (c) addresses any concern that the CBOE Trustees could maintain a substantial presence on the Board even though a significant number of memberships are no longer held, or in control of, CBOE or its members. If this were to occur, under the provision a restructuring of the Board could be effectuated through a two-thirds vote of all proprietary members and without the Board approval regularly required by Article IX.

[12] *See, e.g.*, Article II, Sections 2, 3, and 4 (instituting identical duties, obligations, and eligibility requirements on proprietary members with certificates and proprietary members without certificates); Article II, Section 10 (generally providing equal voting rights for proprietary members with and without certificates).

[13] 15 U.S.C. 78f(b)(1), (3), (5).

[14] 15 U.S.C. 78f(b)(3). On at least three recent occasions, the Commission has evaluated exchange proposals in light of the requirements of Section 6(b)(3). *See, e.g.*, Securities Exchange Act Release Nos. 22959 (February 19, 1986), 51 FR 8060 (File No. SR–NYSE–85–47); 22729 (December 19, 1985), 50 FR 53051 (File No. SR–Phlx–85–23); 21439 (October 31, 1984), 49 FR 44577 (File Nos. SR–CBOE–85–14, SR–CBOE–85–15).

[15] Although the CSE President is not elected by proprietary members with certificates, but instead is appointed by the Board, the Commission notes that the CSE President is required to be a full-time employee of the exchange, to the exclusion of any other interests.

[16] As noted above, the Special Nominating Committee for selecting Public Trustees is comprised of three CBOE Trustees and the Three CSE Trustees, other than the President.

[17] The only Articles not subject to this veto power are Article III (pertaining to dues, assessment, and other charges), Article IV (relating to listings, delistings, and unlisted trading privileges) and Article XI (concerning commissions).

[18] As noted above, it is unclear how many memberships with certificates will be bought by CBOE directly from CSE members pursuant to the contract terms and how many memberships without certificates will be issued to CBOE members.

IV. Conclusion

Based on the above, we believe that the proposed Board composition, coupled with the limitations imposed by Article XII, adequately balance the interests of the respective parties and ensure that the Board will continue to be reflective of its membership and constituency consisent with Sections 6(b)(1), (3) and (5) of the Act. In particular, we note that Article XII provides a time period in which the CBOE can be assured of some control over its substantial investment, while also providing a mechanism whereby a change in the make-up of the membership of the Exchange or a loss of interest in the affiliation by the CBOE can be reflected in the composition of the Board.

The Commission, therefore, finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6(b)(1), 6(b)(3), and 6(b)(5) and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes be, and hereby are, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

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Dated: February 12, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-3528 Filed 2-18-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-24088; File No. SR-NSCC-86-05]

Self-Regulatory Organizations; Order Approving Proposed Rule Change of the National Securities Clearing Corporation

On April 3, 1986, the National Securities Clearing Corporation ("NSCC") filed a proposed rule change under Section 19(b) of the Securities Exchange Act of 1934 ("Act") that, among other things, would establish the Mutual Fund Settlement, Entry and Registration Verification Service ("Fund/Serv"). Notice of the proposal was published in Securities Exchange Act Release No. 23133 (April 16, 1986), 51 FR 17424 (May 12, 1986). No comments were received. On June 30, 1986, NSCC filed an amendment that sets forth a timetable to expand the number of participants over a 12 month period and to continue Fund/Serv as a one-year pilot. On August 12, 1986, NSCC further amended its proposed Operational Capability Standards to delete reference to Commission or self-regulatory organization inspections as a condition to approval of certain applicants. As discussed below, the Commission has determined to approve the proposed rule change.

I. Introduction

On December 31, 1985, NSCC filed a proposed rule change that established, among other things, Fund/Serv as a one-year pilot.[1] During the pilot period, NSCC proposed to limit participation to no more than four broker-dealer members and five Fund/Serv members. Because of substantial interest in Fund/Serv by the investment company community, NSCC seeks to expand the number of participants.

NSCC's proposal, as amended, seeks authority to admit new Fund/Serv members, under a specific timetable, to meet investment company demand for access to the Fund/Serv system. The proposal also revises NSCC's applicant and continuing membership standards for Fund/Serv members.

II. Description

NSCC proposal amends NSCC's rules and procedures to: (1) Continue Fund/Serv as a one-year pilot; (2) remove the pre-set limitations on participant expansion and replace it with a proposed timetable for participant expansion; (3) impose new operational and financial qualifications on Fund/Serv members; (4) require applicants to submit questionnaire forms and members to submit quarterly reports concerning certain financial and operational information; and (5) revise the fee structure for Fund/Serv.

A. The Fund/Serv System

New NSCC Rule 52 establishes Fund/Serv as a one-year pilot that will enable NSCC settling members to submit mutual fund purchase and redemption orders to NSCC. Each day, NSCC will collect mutual fund purchase and redemption orders from broker-dealer members for delivery to mutual fund processors.[2]

Mutual fund processors that receive orders from members outside NSCC's system may originate orders ("Fund Originated Orders") for confirmation and settlement within the Fund/Serv System. The broker-dealer member who receives such an order can accept, reject or correct the Fund Originated Order. If corrected, NSCC will settle the order based upon the correction unless subsequently rejected by the mutual fund processor. If the corrected order is rejected, NSCC will delete the order from the Fund/Serv Service.

Members also may submit trade corrections (denoted "As of" orders) up to six months after trade date ("T"). A trade not submitted on trade date or a trade previously submitted but rejected from the system may be submitted as an "As of" trade. The mutual fund processor can either accept or reject "As of" orders but cannot make any changes to the submitted information.

Payment obligations related to mutual fund orders also can be settled through NSCC. Each day, NSCC will summarize member payment obligations or credits on the member's settlement statement and the member will be obligated to pay or receive funds accordingly. Orders settled through Fund/Serv, however, are not guaranteed by NSCC. Accordingly, to the extent one side of a Fund/Serv transaction fails to pay, the contra side would be required to return to NSCC any funds received from NSCC.

Mutual fund purchases will settle automatically on five days after trade date (*i.e.*, "T+5"). For mutual fund liquidations, the scheduled settlement date will vary from T+5 to T+15, depending on whether the securities are registered in street name [3] or the customer's name. If the securities are registered in street name, settlement will be scheduled for T+5. For securities registered in the customer's name, the system will delay settlement until the mutual fund processor releases the transaction for settlement. The mutual fund processor will have until T+14 to submit that release.[4] Settlement will occur on the next business day following receipt by NSCC of a release for settlement. Any liquidations remaining in a "delayed" status on T+15 will be deleted from the system.

Fund/Serv also will enable a member to submit registration instructions to a mutual fund processor to the extent that the order was confirmed and settled through Fund/Serv. NSCC will accept registration instructions from T+5 through T+15. All settled orders pending registration instructions on T+15 will be deleted from NSCC's system on T+16.[5]

B. Qualification for Use of the Fund/Serv System

In order for mutual funds to utilize Fund/Serv, NSCC, in new Rule 51, creates a new category of membership, called a Fund/Serv Member. Under new

[1] *See* File No. SR-NSCC-85-09, Securities Exchange Act Release No. 22928 (February 20, 1986), 51 FR 6954 (February 27, 1986).

[2] A mutual fund processor can be either a settling member or a Fund/Serv Member. Mutual fund processors receive fund purchase and redemption orders from NSCC on behalf of eligible mutual funds. Twice a day, at approximately 7 p.m. and 11 p.m., NSCC will transmit to mutual fund processors purchase and redemption orders and other transaction data NSCC previously received from broker-dealer members.

[3] A security held by a registered clearing agency in its nominee name for its member (*i.e.*, broker-dealers and banks) or a security held by a member of a clearing agency in its nominee name for its customers is considered registered in "street name." The clearing agency or the clearing agency member is listed as owner on the books of the corporation; however, the members' customers are the beneficial owners. Holding securities in street name expedites the settlement of mutual fund liquidations.

[4] While most mutual fund securities are uncertificated or registered in street name, most mutual funds allow customers to obtain certificates. In those cases, settlement can not occur until the customer returns the certificates to the broker-dealer who, in turn, forwards the certificates to the mutual fund processor. Because of the uncertainty of when the certificates will be available for liquidation, NSCC will hold those transactions in a "delayed status" until the mutual fund processors releases the transaction for settlement but no later than T+15.

Irrespective of these time frames for settlement of liquidations, mutual fund processors must comply with Section 22(e) of the Investment Company Act of 1940. In addition, Fund/Serv does not affect a broker-dealer's obligations under the Act. (*see, e.g.*, 15 U.S.C. § 78g, k(d) and 12 CFR 220).

[5] NSCC intends, in the near future, to permit broker-dealers and mutual fund processors to pass "money-only" charges through the system. When this enhancement is available, members will be able to make money adjustments for dividend and commission payments as part of the money settlement process.

Rule 51, Fund/Serv Member must be "principal underwriters" as defined in section 2(a)(29) of the Investment Company Act of 1940 and must be either a registered broker-dealer or an organization that has demonstrated to NSCC's Board of Directors that it could materially benefit from access to Fund/Serv. The rule also requires that the Fund/Serv Member enter into an Agreement with NSCC setting forth the rights and obligations of the Fund/Serv Member.

1. Entrance Requirements

The proposal requires a Fund/Serv applicant to have a previous, relevant business history, capable personnel and sufficient financial ability to meet its obligations to NSCC. The standards include a "net worth" test and an "assets-under-management" test. An applicant for Fund/Serv membership must have a net worth of at least one million dollars and have at least $100 million of assets under management.[6]

The standards also require an applicant to have at least three years of relevant business history or, for businesses with less than three years business experience, employ personnel with sufficient operational experience to perform its obligations as a Fund/Serv Member.[7]

The rules also require Fund/Serv applicants to complete a questionnaire. The questionnaire is designed to provide NSCC with certain information needed to ensure that an applicant meets the standards of operational experience and sufficient financial ability to meet obligations to NSCC.[8] Furthermore, NSCC will require the investment adviser to the mutual funds to have an established business history.

2. Obligations and Rights of Fund/Serv Members

To ensure continued compliance with NSCC's requirements, NSCC will require Fund/Serv members to submit quarterly reports regarding changes in operational capability, financial conditions and personnel and updated regulatory history and insurance information. The proposal requires all broker-dealer members to file with NSCC, in a timely manner, a copy of Form X-17-A-5 (Financial and Operational Combined Uniform Single ("FOCUS") Report). In addition, the proposal would apply to Fund/Serv members NSCC's existing authority to examine its members' books and records. Furthermore, the proposal requires Fund/Serv members to provide certain background, operational and financial information regarding the investment companies and investment advisors for the funds.

Another tool to alert NSCC to certain changes in a Fund/Serv member's financial condition is the surveillance status category. NSCC may place a Fund/Serv member on surveillance status when there is a significant drop in fund assets, a significant increase in net redemptions or other financial or operational changes that could potentially increase NSCC's financial exposure.[9] A Fund/Serv member placed on surveillance status will be required to report weekly certain information, as prescribed by NSCC, including the member's average weekly net redemptions.

While the proposal will provide NSCC the authority to require Fund/Serv members to contribute to NSCC's clearing fund, NSCC has determined not to exercise that authority at this time. Instead, NSCC will modify its settlement cycle by requiring Fund/Serv members to make payment of net debit balances sufficiently earlier in the day to allow NSCC, in the event of non-payment of such debit balance, to prevent crediting broker-dealer participants in the afternoon settlement cycle for monies not received from Fund/Serv members.

C. Fund/Serv System Fees

NSCC also is amending Rule 24, Charges For Services Rendered. NSCC originally amended its rules to charge a fee of $0.35 per side per confirmed order. NSCC, however, has decided that the fee should be based upon settled orders.

III. NSCC's Rationale

NSCC seeks to expand the number of mutual funds by approximately 25 and broker-dealer participants by approximately 49 over the one-year pilot period. NSCC believes that expanding the number of participants over the one-year pilot will enable these participants to more efficiently process mutual fund transactions, especially in light of one significant recent growth in mutual fund transactions and the manually-intensive methods for processing mutual fund transactions outside of NSCC.

NSCC proposes to decrease the "assets under management" requirements from $500 million to $100 million. NSCC, however, has added a "net worth" requirement, an applicant questionnaire requirement, and certain continuing membership requirements, including filing of periodic reports and an early warning surveillance program. NSCC believes that a Fund/Serv applicant having $100 million assets under management and a "net worth" of at least one million dollars and meeting the other proposed membership requirements probably will be able to meet its routine settlement obligations to NSCC.

NSCC believes that the proposal is consistent with the Act because it facilitates the prompt and accurate clearance and settlement of mutual fund transactions. Specifically, the expanded pilot would be a significant step toward bringing the clearance and settlement of mutual fund transactions into a centralized, efficient and automated clearance environment. At the conclusion of the pilot, NSCC expects to offer Fund/Serv to all members and qualifying mutual funds.

IV. Statutory Standards

Under section 19(b) of the Act, the Commission must approve NSCC's proposed rule change if it finds NSCC's proposal is consistent with the Act and Commission rules applicable to registered clearing agencies. The Commission may not approve the proposal if it is unable to make such a finding.

Section 17A sets forth general objectives with respect to the regulation of registered clearing agencies. Congress directed the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions. Section 17A(b)(3) provides, among other things, that a clearing agency shall not be registered by the Commission unless the Commission determines that the rules of the clearing agency are designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system.

Section 17A(b)(3)(F) provides that the clearing agency's rules must be designed to promote the prompt and accurate

[6] NSCC indicates that most applicants that might benefit from Fund/Serv Services can meet this standard.

[7] NSCC plans to develop appropriate standards and would file those standards for review under Section 19(b) of the Act.

[8] For example, the questionnaire solicits information concerning an applicant's financial background, including financial statements, net worth, potential habilities and the dollar amount of assets under management. Other areas covered in the questionnaire include an applicant's operational background, regulatory background, insurance coverage and pending investigations or litigations.

[9] For example, Fund/Serv members would be placed on surveillance status if the net assets under its management decreased by 15% over the previous month, 25% over the previous two-month period or 30% over the previous three-month period. A member placed on surveillance status must report weekly to NSCC the member's average weekly net redemptions and any other assurances of its financial responsibility as NSCC may determine.

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clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. In addition, section 17A(b)(3)(I) provides that the rules of a clearing agency must not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Furthermore, in section 17A(a)(2), Congress directed the Commission, in using its authority under the Act, to have due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers, dealers, clearing agencies and transfer agents.

V. Discussion

The Commission believes that NSCC's proposal is consistent with the Act and will promote the prompt, accurate and safe clearance and settlement of securities transactions. Moreover, as discussed below, continuation of the pilot program and phased expansion of participant users appear well-designed to relieve current operational stress for mutual fund securities processors.

The proposal is the first centralized automated processing system for mutual fund purchases and redemptions available to National Clearance and Settlement System ("NCSS") clearing agency participants. Centralized, automated securities processing has long been the hallmark of the NCSS, whose clearing agencies safekeep in excess of $2 trillion of corporate and municipal securities[10] and clear and settle member transactions valued in excess of $1.9 trillion annually.[11]

Although mutual fund transactions processing is similar in some respects to corporate and municipal securities processing, mutual fund processing is unique in several important respects. Mutual fund shares generally are issued in book-entry form and, although many mutual fund shares are sold by brokers, only a very small percentage of those shares are traded in the secondary market. Historically, these differences led the mutual fund industry to develop order processing systems outside the context of NCSS clearing agencies.

In contrast to that history, the Fund/Serv System provides broker-dealers and fund processors a centralized, automated mechanism for transmitting purchase and redemption orders and for settling those transactions. Currently, broker-dealers handling customer orders for securities processed by more than one fund agent must establish communication and settlement arrangements with each such agent and, similarly, each fund agent must establish arrangements with brokers handling orders for the agent's funds. The absence of centralized, efficient facilities and uniform standards for processing mutual fund transactions increases brokers' risks of failed deliveries, inadequate transaction records, operational errors and, ultimately, financial insolvency. Moreover, the recent sharp increase in trade volume has contributed to processing stress.[12]

A centeralized, automated mutual fund transaction processing system will create significiant efficiences for broker-dealers and mutual funds and enhance regulatory oversight of mutual fund transaction processing. Accordingly, the proposed system represents an important step toward the goals embodied in section 17A: Efficient, effective and safe securities processing through centralized, automated facilities. Indeed, the proposed system eventually will permit broker-dealers and fund processors to process all their transactions in corporate, municipal and investment company securities through one clearing corporation and one securities depository.[13] Moreover, to ensure that mutual fund agents do not process transactions through the Fund/Serv System in ways inconsistent with regulatory requirements, NSCC's proposal would clarify that agents warrant to NSCC that all transactions submitted for processing comply with the Investment Company Act and the Investment Company Act rules thereunder.[14] The proposed centralized automated system, coupled with NSCC's oversight experience with clearing agency operations, should enhance significantly the oversight of Fund/Serve members and member activities. Centralized, automated facilities should result in better audit trails and transaction recordkeeping, as well as stronger internal accounting controls.

The Commission also believes that NSCC's proposed standards for Fund/Serv members are consistent with the Act. NSCC will require Fund/Serv applicants to have a net worth of $1 million and an establishd business history (or personnel with business experience) of three years. NSCC also will require these applicants to complete a questionnaire discussing the applicants' financial and operational experience. These standards seem reasonably designed to enable NSCC to assess the financial and operational capability of applicants. These standards are similar in character to other NSCC membership standards, which NSCC uses effectivlely for its settling members.

To supplement that application process, NSCC will require Fund/Serv members to file quarterly reports and will require all registered broker-dealers participating in Fund/Serv to file FOCUS reports. In addition, NSCC has developed an early warning surveillance status to monitor certain members that experience certain financial and operational changes. A continuous reporting and monitoring program is critical to responsible clearing agency oversight of Fund/Serv users.

While NSCC has proposed operational and financial standards to minimize financial exposure to NSCC and to its members, there is always the risk that a member will default on its payment obligation. Accordingly, NSCC requires settling members, among other things, to contribute to NSCC's clearing funds to secure their payment obligations and protect NSCC against financial losses related to NSCC's clearance and settlement activities. At this time, however, Fund/Serv members (who are not otherwise settling members) would not be required to contribute to NSCC's Clearing Funds, primarily because their use of NSCC services would be limited to Fund/Serv and payments in that service are not guaranteed by NSCC. Nevertheless, to protect against Fund/Serv member default, NSCC's proposal would require Fund/Serv members to make payment of net debit balances sufficiently early in the day to allow NSCC to prevent the crediting of broker/dealer participants for monies not received from Fund/Serv members. This modification to NSCC's settlement cycle is a prudent response to the potential financial risks.

NSCC's decision to continue the pilot program and phased, scheduled expansion is appropriate for several reasons. Phased expansion should reduce the risks of operational difficulties and processing errors among new broker and fund agent system users.[15] In addition, phased expansion may help assure compliance with Investment Company Act transaction processing requirements during the conversion process and facilitate Commission oversight of fund agent conversions to the Fund/Serv System. Finally, phased expansion permits NSCC to gain additional experience operating the Fund/Serv system and to adjust Fund/Serv procedures where necessary to accommodate user needs without risking widespread order processing delays, errors or confusion.

VI. Conclusion

The Commission agrees with NSCC that the proposed expanded pilot is consistent with section 17A of the Act. The proposal will enable NSCC to meet the growing demand for an automated and centralized order entry, confirmation, registration and settlement services for mutual fund transactions. During the pilot, NSCC will monitor the expansion of Fund/Serv to ensure the safe and efficient processing of mutual fund transactions and will make changes necessary to provide such service to all NSCC members and qualifying mutual funds. NSCC will keep the Commission informed of the progress of the pilot and, before expiration of the pilot period, NSCC expects to submit a proposed rule change to establish a permanent system. The Commission therefore finds that the proposal is consistent with the Act and, in particular, with section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–NSCC–86–05) be, and it hereby is, approved through January 31, 1988.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: February 10, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–3529 Filed 2–18–87; 8:45 am]

BILLING CODE 8010–01–M

[10] *See* The Depository Trust Company, Annual Report (1985) at 2.

[11] In 1985, NSCC processed an average of almost 290,000 transactions each day, valued at $7.6 billion. *See* NSCC, Annual Report (1985) at 10.

[12] Mutual funds, marketed through broker-dealers, have experienced a 220% increase in assets, under management from 1984 to 1985. In 1985, investors; mutual fund purchases and redemptions arranged through broker-dealers represented 75% of the industry's overall volume, or $85.3 billion of the $114.3 billion in mutual fund (not including money market) shares purchased and redeemed during the year.

[13] Section 17A directs the Commission to use its authority under the Act to facilitate the establishment of a NCSS for the prompt and accurate clearance and settlement of transactions in securities, including investment company securities. Section 17A also authorizes the Commission to establish standards in that regard for clearing agencies and transfer agents, including persons performing transfer agent functions with respect to investment company securities. *See* § 17A(d). Section 17A also contemplates investment company participation in registered clearing agencies. *See* section 17A(b)(3)(B)(iii).

[14] Notwithstanding Fund/Serv's operational time frames, fund processors must process transactions in compliance with, among other things, Commission rules under Section 17A of the Act and Section 22 of the Investment Company Act of 1940. See, *e.g.*, note 4, *supra*. In promulgating rules under those Acts, however, the Commission has sought to establish requirements that harmonize the objective of both statutes. *See, e.g.*, Securities Exchange Act Release No. 19660 (June 10, 1983), 48 FR 28231.

[15] The Commission recognizes that new Fund/Serv users could encounter significant operational difficulties in converting to a centralized, automated transaction processing system. Personnel must be trained to follow new procedures, internal systems must be adjusted and, in some cases internal accounting controls must be revised. It appears, however, that NSCC is taking appropriate action to reduce the risk of operational difficulties to new Fund/Serv users. For example, new users are trained in system procedures and transactions are processed through Fund/Serv and existing systems until NSCC and the new users are comfortable with exclusive Fund/Serv processing.

SELECTIVE SERVICE SYSTEM

Privacy Act of 1974; Proposed Revision of Systems of Records

AGENCY: Selective Service System.

ACTION: Proposed revision of systems of records.

SUMMARY: The Selective Service System proposes to revise the routine uses in its systems of records SSS–4, SSS–5, and SSS–10.

Comment Date: Comments on these proposed revisions of the systems of records should be submitted in writing or before March 23, 1987, to the General Counsel, Selective Service System, Washington, DC 20435, Phone (202) 724–1167.

EFFECTIVE DATE: The revisions of these systems of records will become effective on March 23, 1987 unless the Selective Service System publishes notice to the contrary.

Congress Notice

Notice of these proposed revisions of these systems of records has been filed with the Speaker of the House, the President of the Senate and the Office of Management and Budget, as required by 4 U.S.C. 552a(o).

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Selective Service System, Washington, DC 20435, Phone (202) 724–1167.

SUPPLEMENTARY INFORMATION: The systems of records, SSS–4, SSS–5, and SSS–10 appear at 52 FR 2635, January 23, 1987.

February 10, 1987.

Wilfred L. Ebel,

Acting Director of Selective Service.

Routine uses are revised to read:

SSS–4

. . . . . .

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Department of Defense—exchange of information concerning registration classification, enlistment, examination and induction of individuals, and for recruiting (prior to April 1, 1982 only on request of the registrant).

Alternative service employers—for exchange of information with employers regarding a registrant who is a conscientious objector for the purpose of placement in and supervision of performance of alternative service in lieu of induction into military service.

Department of Justice—for review and processing of suspected violations of the Military Selective Service Act, or for perjury, and for defense of a civil action arising from administrative processing under such Act.

Federal Bureau of Investigation—for location of an individual when suspected of violation of the Military Selective Service Act.

Immigration and Naturalization Service—to provide information for use in determining an individual's eligibility for re-entry into the United States and United States citizenship.

Department of State—for determination of an alien's eligibilty for possible entry into the United States and United States citizenship.

Office of Veterans' Reemployment Rights, United States Department of Labor—to assist veterans in need of information concerning reemployment rights.

Department of Health and Human Services—for locations of parents pursuant to the Child Support Enforcement Act (42 U.S.C. 651 et seq.) and for determining the individual's proper Social Security Account Number when there appears to be a discrepancy.

State and local government agencies—to provide information which may constitute evidence of a violation of State or local law, for law enforcement purposes.

General Public—Registrant's Name, Selective Service Number, Date of Birth and Classification.

. . . . . .

SSS–5

. . . . . .

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Department of Defense—for exchange of information concerning registration, classification, enlistment, examination and induction of individuals.

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Alternative service employers—for exchange of information with employers regarding a registrant who is a conscientious objector for the purpose of placement in and supervision of performance of alternative service in lieu of induction into military service.

Department of Justice—for review and processing of suspected violation of the Military Selective Service Act or for perjury and for defense of a civil action arising from administrative processing under such Act.

Federal Bureau of Investigation—for location of an individual when suspected of violation of Military Selective Service Act.

Immigration and Naturalization Service—to provide information for use in determining an individual's eligibility for re-entry into the United States.

Department of State—for determination of an alien's eligibility for possible entry into the United States and United States citizenship.

Office of Veteran's Reemployment Rights, United States Department of Labor—to assist veterans in need of information concerning reemployment rights.

Department of Health and Human Services—for locations of parents pursuant to the Child Support Enforcement Act (42 U.S.C. 651 et seq.) and for determining the individual's proper Social Security Account Number when there appears to be a discrepancy.

State and local government agencies—to provide information which may constitute evidence of a violation of State or local law, for law enforcement purposes.

General Public—Registrant's Name, Selective Service Number, Date of Birth and Classification.

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SSS–10

• • • • •

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Department of Defense—for exchange of information concerning registration, classification, enlistment, examination and induction of individuals and identification of individuals, availability of Standby Reservists, and identification of prospects for recruiting.

Department of Justice—for review and processing of suspected violations of the Military Selective Service Act, or for perjury, and for defense of civil action arising from administrative processing under such Act.

Federal Bureau of Investigation—for location of an individual when suspected of a violation of the Military Selective Service Act.

Immigration and Naturalization Service—to provide information for use in determining an individual's eligibility for re-entry into the United States.

Department of State—for determination of an alien's eligibility for possible entry into the United States and United States citizenship.

Office of Veteran's Reemployment Rights, United States Department of Labor—to assist veterans in need of information concerning reemployment rights.

Department of Health and Human Services—for locations of parents pursuant to the Child Support Enforcement Act (42 U.S.C. 651 et seq.) and for determining the individual's proper Social Security Account Number when there appears to be a discrepancy.

State and local government agencies—to provide information which may constitute evidence of a violation of State or local law, for law enforcement purposes.

Alternative service employers—for exchange of information with employers regarding a registrant who is a conscientious objector for the purpose of placement in and supervision of performance of alternative service in lieu of induction into military service.

General Public—Registrant's Name, Selective Service Number, Date of Birth and Classification.

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[FR Doc. 87–3439 Filed 2–18–87; 8:45 am]

BILLING CODE 8015–01–M

Matching Program To Identify Registration Violators

AGENCY: Selective Service System.

ACTION: Notice.

SUMMARY: Pursuant to OMB Memorandum dated May 11, 1982, "Revised Supplemental Guidance for Conducting Matching Programs", the Selective Service System publishes the following information concerning the Selective Service System Registration Compliance Program for computerized matching of individual records maintained by the Selective Service System against records of other federal and non-federal sources.

This report covers all computerized matching of individual records maintained by the Selective Service System against records of other federal and non-federal sources. It is a revision of the report published in 49 FR 7687 (March 1, 1984) and 50 FR 51325 (December 16, 1985) and incorporates additional sources of records of registration age men.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Johnsen, Associate Director, Information Management, Selective Service System, P.O. Box 4638, North Suburban, IL. 60197–9938, Phone (312) 688–2202.

Dated: February 10, 1987.

Wilfred L. Ebel,

Acting Director of Selective Service.

Report Concerning SSS Matching Program To Identify Registration Violators

Pursuant to OMB Memorandum dated May 11, 1982, concerning "Revised Supplemental Guidance for Conducting Matching Programs", the Selective Service System submits the following information concerning its revision to the Selective Service System Registration Compliance Program for computerized matching of individual records maintained by the Selective Service System against the records of various Federal, State and local government agencies and other public and private sources.

Authority

The authority under which the program is conducted are sections 10(b)(5) and 12(e) of the Military Selective Service Act (50 U.S.C. App. 451 et seq.); and Presidential Proclamation 4771, 45 FR 45247 (July 3, 1980).

Purpose

This matching program is a continuing program to identify those persons who are in violation of the registration requirements of section 3 of the Military Selective Service Act (50 U.S.C. App. 453).

Procedure

The matching procedure for the program includes the following steps:

(1) Various Federal, State and local government agencies, and other public and private sources provide the Selective Service System the following information as available; the name, social security account number, date of birth, and address of each male born in the year of birth of the age groups which are required to register.

(2) The data received from the various record sources is compared to the Selective Service Registrant Registration Record System (SSS–10) to eliminate those men who have registered. Pending further matching and confirmation, the names on the lists that are not matched with the Selective Service record of

registrants constitute the Selective Service Suspected Violator Inventory System (SSS–8) containing the names of suspected violators.

(3) The Selective Service Suspected Violator Inventory System (SSS–8) is then compared to the record systems of the Defense Logistics Agency and the U.S. Coast Guard containing the names of personnel on active duty with the armed forces. The names of persons who are on active duty with the armed forces are removed from the Suspected Violator Inventory System.

(4) Letters and registration forms are mailed to individuals in the Selective Service Violator Inventory System. Records not containing addresses may then be matched by Internal Revenue Service to their Individual Master File (IRS–24.030) to determine the most current addresses. (**Authority:** 26 U.S.C. 6103(i)(2)). The Internal Revenue Service then mails letters and registration forms to the individuals.

(5) Those who respond by registering are entered into the Selective Service Registrant Record System (SSS–10). Those who fail to respond or refuse to register are reported to the Department of Justice for further investigation and possible prosecution. Those who respond but are determined to be exempt from registration pursuant to sections 3(a) and 6(a)(1) and (2) of the Military Selective Service Act (50 U.S.C. App. 453, 456) are so identified.

Record Systems

The record systems that are matched against the SSS–8 are:

(1) Selective Service System Record System No. SSS–10 "Registrant Registration Records (post–1979) SSS" published in 45 FR 30587 (May 8, 1980);

(2) Social Security Administration Record System No. 09–60–0058 "Master Files of Social Security Number Holders HHS SSA OEER" published in 46 FR 53784 (October 30, 1981);

(3) Internal Revenue Service Record System No. IRS 24.030 "Individual Master File (IMF)" published in 46 FR 16463 (March 12, 1981);

(4) U.S. Coast Guard, Record System No. DOT/CG 624 "Personnel Management Information System (PMIS)" published in 46 FR 59741 (December 7, 1981);

(5) U.S. Coast Guard, Record System No. DOT/CG 678 "Reserve Personnel Management Information System (Automated)" published in 46 FR 59741 (December 7, 1981);

(6) Defense Logistics Agency Record System No. S 322.10 DLA-LZ "Defense Manpower Data Center Data Base" published in 46 FR 40556 (August 10, 1981);

(7) Department of Education Record System No. 18–40–0014 "Pell Grant Applicant File" and No. 18–40–0015 "Pell Grant Student Eligibility Report Subsystem," published in 46 FR 29633 (June 21, 1981);

(8) Federal Aviation Administration Record System No. DOT/FAA 802 "Airmen Certification System", published in 46 FR 59782 (December 7, 1981);

(9) Department of Health and Human Services, Record System No. 09–15–0044, "Health Education Assistance Loan Program (HEAL) Loan Control Master File, HHS/HRSA/BHPR," published in 51 FR 16220 (May 1, 1986);

(10) Immigration and Naturalization Service Record System No. 001 "Immigration and Naturalization Service Index System" published in 42 FR 54337 (October 5, 1977);

(11) Veterans Administration Record System No. 45VA23 "Veterans Assistance Discharge System (VADS)-VA" published in 47 FR 370 (January 5, 1982);

(12) State and local government records; and

(13) Lists acquired from other public and private sources.

Start and End Dates

The matching program began June 1, 1982. The program will continue indefinitely unless registration under the Military Selective Service Act is terminated by the President or by statute.

Safeguards

Safeguards afforded the records involved are:

(1) Records are available to authorized Selective Service personnel only. Authorized personnel include the Director, Deputy Director, Associate Director for Operations, Associate Director for Information Management, the General Counsel, computer operators involved in processing the information, and other personnel specifically authorized to have access to the information by the Director, the Deputy Director, the Associate Directors or the General Counsel.

(2) Computer files are maintained at the Joint Computer Center at Great Lakes, Illinois.

(3) Building is secured and patrolled after normal business hours.

(4) Security guards for the building allow access to authorized personnel only.

(5) Computer room is secured with cypher locks.

(6) Terminal access to the computer system is restricted to those with valid user ID and password.

(7) A Customer Information Control System requires an additional password for interactive access to data base information.

(8) A software security package protects access to data in the system.

Disposition of Records

At the completion of the program for each year group, source records are returned to source agencies by registration year group, if requested; or destroyed pursuant to any prior agreement between the Selective Service System and any respective source agency; or disposed of pursuant to Chapters 21 and 33 of the Federal Records Act of 1950 (44 U.S.C. 2101 et seq.).

Congressional Notice

Copies of this report are sent concurrently with publication to the Congress, addressed to the President of the Senate and the Speaker of the House of Representatives.

[FR Doc. 87–3440 Filed 2–18–87; 8:45 am]

BILLING CODE 8015–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 06/06–0170]

Red River Ventures, Inc.; Filing of Application for Transfer of Ownership and Control

Notice is hereby given that an application has been filed with the Small Business Administration (SBA), pursuant to § 107.601 of the Regulations governing small business investment companies (13 CFR 107.601 (1987)) for transfer of ownership and control of Red River Ventures, Inc., 777 East 15th Street, Plano, Texas 75074, a Federal Licensee under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*). The proposed transfer of ownership and control of Red River Ventures, Inc. which was licensed February 21, 1974, is subject to the prior written approval of SBA.

The transfer of ownership and control relates to a proposed issuance of 218,750 shares of additional stock of a holding company, Red River Investors, Inc., which holds all of the capital stock of Red River Capital Corporation, which is the parent company of Red River Ventures, Inc.

Presently, the sole shareholder of Red River Investors, Inc. is Delwin W. Morton.

The proposed ownership and control of Red River Investors, Inc. would be as follows:

Name and address	No. of shares	Percent of ownership
Delwin W. Morton, 777 East 15th Street, Plano, Texas 75074	125,000	36.4
Charles J. Wilson, 16660 Dallas Parkway, Suite 2000, Dallas, Texas 75248	125,000	36.4
Six Other Investors (less than 10 percent for each investor)	93,750	27.2
Total	343,750	100.0

There will be no changes in the officers and directors of Red River Ventures, Inc.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed new management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is hereby given that any person may, no later than 30 days of the date of publication of this Notice, submit written comments on the proposed transfer of ownership and control to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416. A copy of this Notice will be published in a newspaper of general circulation in Plano, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 9, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87-3388 Filed 2-18-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[CM-8/1048]

Integrated Services Digital Network (ISDN); Joint Working Party and Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the ISDN Joint Working Party and Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on March 11, 1987 in Room 1205, Department of State, 2201 C Street, NW., Washington, DC. The meeting will begin at 9:30 a.m.

The agenda for the meeting is as follows:

1. Report on CCITT Study Group XI/6 Meeting, Kyoto, January 26-February 3, 1987.
2. Report on CCITT Study Group XVIII Meeting, Brasilia, February 2-13, 1987.
3. Consideration of contributions to the Study Group XI Working Parties Meeting, Phoenix, March 23-April 10, 1987.
4. Consideration of other relevant contributions.
5. Other business.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202) 647-5832. All attendees must use the C Street entrance to the building.

Dated: February 5, 1987.

Earl S. Barbely,

Director, Office of Technical Standards and Development; Chairman, U.S. CCITT National Committee.

[FR Doc. 87-3430 Filed 2-18-87; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1047]

Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International Telephone and Telephone Consultative Committee (CCITT) will meet on March 18, 1987 at 9:30 a.m. in Room 1105, Department of State, 2201 C Street NW., Washington, DC.

The purpose of the meeting is to discuss the status of the work on CCITT restructure in CCITT Special Study Group S to begin to establish U.S. positions for the final international meeting on the subject in November, 1987. This is the first of a series of meetings to culminate in July, 1987 on this matter.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl S. Barbely, State Department, Washington, DC (202) 647-5823 at least 24 hours in advance of the meeting. All attendees must use the C Street entrance to the building.

Dated: February 9, 1987.

Earl S. Barbely,

Director, Office of Technical Standards and Development; Chairman, U.S. CCITT National Committee.

[FR Doc. 87-3429 Filed 2-18-87; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1049]

Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on March 17, 1987 at 9:30 a.m. in Room 1207, Department of State, 2201 C Street, NW., Washington DC.

Study Group A deals with international telecommunications policy and services.

The proposed agenda will cover the following activities:

1. Develop contributions for Working Parties of CCITT Study Group III (April).
2. Develop contributions for two Working Parties CCITT Study Group I (April/May).
3. Develop contributions for CCITT Study Group VIII.

Members of the general public may attend the meeting and join the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202) 647-5832. All attendees must use the C Street entrance to the building.

Dated: February 9, 1987.

Earl S. Barbely,

Director, Office of Technical Standards and Development; Chairman, U.S. CCITT National Committee.

[FR Doc. 87-3428 Filed 2-18-87; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 160—406 MHz Emergency Locator Transmitters (ELT); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 160 on 406 MHz Emergency Locator Transmitters (ELT) to be held on March 17-19, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Introductory Remarks; (2) Approval of the Minutes of the Second Meeting; (3) Review and Discuss EUROCAE WG-29 Activities; (4) Report on Potential Problems of Frequency Interference in the 406 MHz Band; (5) Review NOAA Data Base Procedures; (6) Review of Draft Sections Including Those From Task Assignments; (7) Task Assignments; (8) Other Business; and (9) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 11, 1987.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 87-3385 Filed 2-18-87; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Onandaga County, NY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Onandaga County, New York.

FOR FURTHER INFORMATION CONTACT:

Roger H. Edwards, Director, Facilities Design Division, New York State Department of Transportation, State Campus, 1220 Washington Avenue, Albany, New York 12232, Telephone: (518) 457-6452.

or

Victor E. Taylor, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 472-3616.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration, in cooperation with the New York State Department of Transportation will prepare an Environmental Impact Statement (EIS) on a proposal to construct Relocated Route 290 in Onandaga County, New York. The proposed improvement would involve the construction of an alternate access to the urban arterial system in order to relieve traffic congestion and reduce accidents on existing facilities. At its western terminus, Relocated Route 290 would connect to existing ramps in the I-481/I-690 Butternut Interchange. The new highway would extend easterly approximately three (3) miles to its eastern terminus with Route 257/290 near Manlius Center. Construction of this facility is considered necessary to provide for existing and projected traffic demand. Also included in this proposal is the relocation of a portion of Butternut Drive and provision of signalized, at grade intersections with Fisher Road, Bowman Road, and North Burdick Street.

Alternatives under consideration include taking no action and construction of a four-lane limited highway on new location. Incorporated into and studied with the build alternative will be various design alternates with variations of grade and alignment. In addition, consideration will be given to stage construction of the new facility.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. A scoping with cognizant Federal, State and local agencies was held in Syracuse on July 26, 1985. Public information sessions were conducted on November 26, 1985 and January 28, 1986. In addition, a Public Hearing will be held. Public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment. No further scoping type meetings are planned at this time.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the New York State Department of Transportaton or Federal Highway Administration at the adresses provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulation implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Dated: February 9, 1987.

Victor E. Taylor,

Division Administration Federal Highway Administrator, Albany, New York.

[FR Doc. 87-3443 Filed 2-18-87 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. IP-86-09; Notice 1]

Ford Motor Company; Receipt of Petition for Determination of Inconsequential Noncompliance

Ford Motor Company, of Detroit, Michigan has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncomplicance with 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment,* on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

Ford Motor Company produced approximately 27,300, 1986 Ford Tempo and 9,000 1986 Mercury Topaz 4-door vehicles through July 21, 1986, equipped

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with optional deck lid luggage racks which obstruct the 5 degree down sight lines, resulting in noncompliance with FMVSS No. 108. Minimum design and photometric requirements for center high mounted stop lamps are found in Figure 10 of Standard No. 108. Following the discovery of this noncompliance, Ford began production of a revised shortened stanchion luggage rack which does not prevent the center-mounted stop lamp from complying with the photometric requirements of FMVSS No. 108.

Based on its investigation, testing and analyses, Ford argued,

". . . we believe that the high mount stoplamps installed on 1986 Tempo and Topaz 4-door vehicles equipped with deck lid luggage racks more than amply perform their intended function as recited by NHTSA in the preambles to rulemaking applicable to these devices. Further, we believe that the high-mount stoplamps in question perform their intended function equally well as such stop lamps installed on similar vehicles not equipped with deck lid luggage rack and which comply with applicable visibility requirements. Additionally, as we would fully expect, we are aware of no complaints, accidents or injuries related to obscuration of high mount stoplamps on these vehicles by their decklid luggage racks."

Ford Motor Company believes this failure to meet the 5 degree down test visibility requirements of FMVSS No. 108, is inconsequential as it relates to motor vehicle safety because the stop lamps still radiate light of sufficient intensity in the required rearward directions to intercept the eyes of the drivers of the following vehicles.

The following table provides a comparative analysis of photometric output measurements in candela between Ford Tempo and Mercury Topaz cars manufactured without a luggage rack, equipped with a tall deck lid luggage rack, and equipped with a short deck lid luggage rack.

TABLE 1.—PHOTOMETRIC OUTPUT (IN CANDELA)

5 degree down test points	No luggage rack	Original tall rack	New short rack	Minimum photometric requirements of FMVSS 108
5D-10L	43.47	10.48	43.47	16.00
5L	57.02	15.00	57.02	25.00
V	83.74	17.51	83.74	25.00
5R	62.67	17.41	62.67	25.00
10R	48.37	10.98	48.37	16.00

Interested persons are invited to submit written data, views and arguments on the petition of Ford Motor Company, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considerd to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: March 23, 1987.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on February 13, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87-3499 Filed 2-18-87 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Committee on Coinage, Medal and Currency Design

The Department of the Treasury has decided not to proceed with the establishment of the Advisory Committee on Coinage, Medal and Currency Design, which notice was published in the **Federal Register** January 8, 1987, Volume 52 No. 5. Instead, the Department will rely to a greater extent on the advice and counsel of the Commission of Fine Arts to guarantee the quality of future designs.

Dated: February 12, 1987.

John F. W. Rogers,

Assistant Secretary of the Treasury (Management).

[FR Doc. 87-3540 Filed 2-18-87; 8:45 am]

BILLING CODE 4810-25-M

Office of the Comptroller of the Currency

Privacy Act of 1974; Proposed New System of Records

AGENCY: Office of the Comptroller of the Currency; Treasury.

ACTION: Notice of proposed new system of records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974, the Office of the Comptroller of the Currency (OCC) gives notice of a new system of records entitled the Litigation Information System (LIS)—Treasury/Comptroller .016. The LIS is being established for records generated by the OCC in connection with civil and administrative proceedings in which it participates. Information contained in LIS will be used to enhance the OCC's ability to litigate judicial and administrative claims.

DATES: Comments must be received no later than March 23, 1987. The new system of records will become effective April 20, 1987.

ADDRESSES: Comments should be sent to Communications Division, Office of the Comptroller of the Currency, Washington, D.C. 20219, Attn: Lynnette Carter, (202) 447-1800.

FOR FURTHER INFORMATION CONTACT: Rosa M. Koppel, Attorney, Litigation Division, (202) 447-1893, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW, Washington, D.C. 20219.

SUPPLEMENTARY INFORMATION:

Establishment of New System of Records

The LIS is being established to cover records generated in connection with civil and administrative proceedings brought by or against the OCC and/or officials or employees of the OCC in their capacity as such, or in which the OCC participates as a nonparty. The LIS contains the names of individuals who are parties to such litigation as well as other individuals, including actual or potential witnesses, involved in the litigation.

Purpose(s)

The purpose of the system is to maintain a system of records containing the names of individuals who are involved in litigation with the OCC. This information will be used to enhance the OCC's ability to litigate administrative and judicial claims brought by or against it and to effectively participate in litigation to which it is not a party.

Treasury/Comptroller .016

System name:

Litigation Information Sytem (LIS)—Treasury/Comptroller

System location:

Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, D.C. 20219

Categories of individuals covered by the system:

LIS will cover: (a) Individuals who file administrative or judicial claims against the OCC and/or officials or employees of the OCC in their capacity as such, against whom the OCC files claims, or who are parties to claims in which the OCC participates but is not a party. (b) All other individuals, including actual or potential witnesses, involved in litigation brought by or against the OCC or in which the OCC participates as a nonparty.

Categories of records in the system:

All records generated in connection with the litigation including evidentiary material, transcripts of testimony, documents prepared for administrative or judicial proceedings, correspondence, and staff memoranda.

Authority for maintenance of the system:

12 U.S.C. 1 and 481; 15 U.S.C. 78c(a)(34), 781(i), 78o-4.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The information contained in these records may be used: (a) To provide the Department of Justice with pleadings, memoranda, correspondence, litigation reports, and other documents that will assist it in the preparation of litigation involving the OCC. (b) To disclose information to the news media in accordance with guidelines contained in 28 CFR 50.2, which covers the release of information relating to civil and criminal proceedings. (c) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosure to opposing counsel or potential or actual witnesses in the course of discovery, in litigation or settlement negotiations, or in response to a subpoena, where relevent or potentially relevant to the proceeding. (d) To provide information or records to any other appropriate domestic or foreign government agency or self-regulatory organization charged with the responsibility of administering law or investigating or prosecuting violations of law or charged with enforcing or implementing statutes, rules, regulations or orders or pursuant thereto. (e) To disclose information to bank and consumer groups. (f) To disclose information to any person with whom the OCC contracts to reproduce,by typing, photocopy or other means, any record within the system of records for use by the OCC and its staff in connection with their offical duties or to any person who is utilized by the OCC to perform clerical or stenographic functions relating to the official business of the OCC.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records comprising this system are maintained in file folders kept in lockable file cabinets.

Retrievability:

Access to the records is by name of the individual litigant(s).

Safeguards:

Records are accessible only to authorized personnel.

Retention and disposal:

Records are updated periodically to reflect changes and are maintained as long as needed.

System manager(s) and address:

Director, Litigation Division, Law Department, Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washinton, D.C. 20219

Notification procedure:

Individuals wishing to be notified if they are named in the system or to gain access to records maintained in the system must submit a request containing the following elements: (1) Identity of the record system; (2) identity of the category and type of records sought; (3) the location of the Comptroller of the Currency office where the record might be stored; and (4) at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information).

Record access procedures:

Submit requests to Director, Public Affairs, 490 L'Enfant Plaza, East, SW, Washington, D.C. 20219

Contesting record procedures:

Submit comments to Director, Public Affairs, 490 L'Enfant Plaza East, SW., Washington, D.C. 20219.

Record source categorieis:

Individuals who file claims against or otherwise are involved in legal proceedings with the OCC and/or an official or employee thereof in his or her capacity as such; communications and documents generated or received by the OCC, its officials or employees in the course of the legal proceedings; applications and other filings made with the OCC pursuant to law.

Systems exempted from certain provisions of the act:

None.

Dated: February 12, 1987.

John F.W. Rogers,

Assistant Secretary of the Treasury (Management).

[FR Doc. 87-3541 Filed 2-18-87; 8:45 am]

BILLING CODE 4810-31-M

Customs Service

Public Meeting on Harbor Maintenance Fee

AGENCY: Customs Service, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces that a public meeting will be held at the Department of Commerce Auditorium in Washington, DC, on March 11, 1987, at 10:00 a.m., to discuss collection by the Customs Service of a harbor maintenance fee mandated by the Water Resources Development Act of 1986. The purpose of this meeting is to provide information and answer questions so the collection of the fee can be done in an orderly and efficient manner with minimal burdens or problems for affected parties. Persons planning to attend are requested to notify Customs in advance so that background materials can be provided.

DATE: March 11, 1987, at 10:00 a.m.

ADDRESS: The meeting will be held at the Department of Commerce Auditorium, 14th Street between Constitution Avenue and E Street, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Fred Boyett, Director, User Fee Task Force, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229, Room 2216 (202-566-5868).

SUPPLEMENTARY INFORMATION:

Background

Presently, there are no Federal fees assessed on port use, and there is no special trust fund relating to the Federal financing of ports and harbors. Federal expenditures for harbors and port development and maintenance have been financed from general revenues.

The Water Resources Development Act of 1986 (Pub. L. 99-662) imposes a fee for harbor maintenance effective on April 1, 1987. This fee will apply to port use associated with imported, exported, and domestic waterborne commercial cargo, and will be 0.04 percent of the value of the cargo involved. The money collected will be put in a special trust fund made available to the U.S. Army

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Corps of Engineers for the improvement and maintenance of ports and harbors in the United States.

Because the Customs Service already has a strong presence at ports of entry, and is experienced with the appraisement and valuation of imported merchandise, and the collection of Customs duties and other fees, Customs will assess and collect this new fee. It is anticipated that interim regulations detailing procedures for collection of the fee will be published in the **Federal Register** in early March 1987. The interim regulations will provide for a 60-day comment period from the date of publication.

In the meantime, Customs is scheduling a meeting for March 11, 1987, at 10:00 a.m. at the Department of Commerce Auditorium in Washington, DC, to provide information to the public regarding collection of the new fee. Persons planning to attend are requested to notify Mr. Fred Boyett of Customs Service Headquarters at 202-566-5868 in advance so that background materials can be provided. At the meeting, questions will be accepted and written comments may be submitted. Customs will consider written comments submitted at the meeting together with the comments submitted in response to publication of the interim regulations.

All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)) between 9:00 a.m. and 4:30 p.m. on normal business days, at the Regulations Control Branch, Room 2426, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Dated: February 11, 1987.

Gerald J. McManus,

Assistant Commissioner Commercial Operations.

[FR Doc. 87-3498 Filed 2-18-87; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

Performance Review Board; Notice of Members

AGENCY: Internal Revenue Service.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

DATE: Performance Review Board effective February 1, 1987.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, PM:HR:H:E, Room 3515, 1111 Constitution Avenue, NW, Washington, DC 20224, Telephone No. (202) 566-4633 (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for senior executives other than Assistant Commissioners, Regional Commissioners and executives in Inspection are as follows:

James I. Owens, Deputy Commissioner, Chairman
John L. Wedick, Jr., Assistant Commissioner (Planning, Finance & Research)
James D. Hallman, Regional Commissioner, Central Region
Percy P. Woodard, Jr., Assistant Commissioner (International)
Thomas P. Coleman, Regional Commissioner, Western Region
Michael P. Dolan, Assistant Commissioner (Human Resources Management and Support), Alternate
Michael J. Murphy, Regional Commissioner, Mid-Atlantic Region, Alternate

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the Federal Register for Wednesday, November 8, 1978 (43FR52122).

Lawrence B. Gibbs,

Commissioner.

[FR Doc. 87-3380 Filed 2-18-87; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 33
Thursday, February 19, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, February 24, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participating in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, February 26, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor).

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Draft Advisory Opinion 1987-3—Harry O'Connor and O'Connor Creative Services.
1987 Legislative Recommendations.
Proposed Rulemaking for Delegate Selection of Regulations (11 C.F.R. § 110.14).
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 87-3897 Filed 2-17-87; 3:18 pm]

BILLING CODE 6715-01-M

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 2:00 p.m., Friday, February 27, 1987.

PLACE: In the Board Room 6th Floor, 1700 G St., NW., Washington, DC.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202-377-6679).

MATTERS TO BE CONSIDERED:

Regulation of direct investment by insured institutions

John F. Ghizzoni,

Assistant Secretary.

No. 1, February 17, 1987.

[FR Doc. 87-3637 Filed 2-17-87; 1:52 pm]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Monday, February 23, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Consideration of required forms on government securities broker/dealer status of financial institutions.
2. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: February 13, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-3535 Filed 2-13-87; 4:33 pm]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 10:30 a.m., Monday, February 23, 1987, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 13, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-3536 Filed 2-13-87; 4:33 am]

BILLING CODE 6210-01-M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Friday, February 27, 1987 at 2:30 p.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. 303-TA-18, 701-TA-275, 277, and 278, 731-TA-327/331, 333, and 334 (Certain Fresh Cut Flowers from Canada, Chile, Colombia, Costa Rica, Ecuador, Israel, Mexico Netherlands, and Peru)—briefing and vote.
6. Any items left over from pervious agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

Kenneth R. Mason,

Secretary.

February 12, 1987.

[FR Doc. 87-3545 Filed 2-17-87; 8:52 am]

BILLING CODE 7020-02-M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Friday, March 6, 1987 at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   Certain office filing cabinets (Docket Number 1376).
5. Inv. 731–TA–320(F) (Certain unfinished mirrors from Belgium)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Kenneth R. Mason,

Secretary.

February 12, 1987.

[FR Doc. 87–3546 Filed 2–17–87; 8:52 am]

BILLING CODE 7020–02–M

Corrections

Federal Register
Vol. 52, No. 33
Thursday, February 19, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300119A; FRL 3131–9]

Revocation of DDT and TDE Tolerances

Correction

In rule document 86–28744 beginning on page 46658 in the issue of Wednesday, December 24, 1986, make the following corrections:

On page 46661, in Table 1, in the entry for "Milk", the information in the "TDE" column under "Tolerances . . ." should have appeared under the "Recommended action . . ." column; and in the entry for "Peaches", in the "DDT" column under "Tolerances . . .", "05" should read "0.5".

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300121A; FRL–3131–8]

Revocation of Aldrin and Dieldrin Tolerances

Correction

In rule document 86–28745 beginning on page 46662 in the issue of Wednesday, December 24, 1986, make the following correction:

On page 46664, in Table 1, in the entry for "Peanuts", in the "Recommended action . . ." column, "0.5" should read "0.05".

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–010–07–4212–12; I–12640]

Realty Action, Exchange of Public and State Lands in Owyhee County, ID

Correction

In notice document 87–1478 beginning on page 3060, in the issue of Friday, January 30, 1987, make the following corrections:

1. On page 3060, in the third column, in T.13 S., R. 3 E., in Sec. 26, "S1/2N1/2" should read "N1/2N1/2."
2. On the same page, in the third column, in T.13 S., R. 3 E., in Sec. 28, "N1/2N1/2" should read "S1/2N1/2."
3. On the same page, in the third column, in T.13 S., R. 3 E., in Sec. 29, "N1/2,SE1/4" should read "N1/2SE1/4."

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Bell Communications Research, Inc. et al.

Correction

In notice document 87–3114 appearing on page 4670 in the issue of Friday, February 13, 1987, make the following correction:

In the third column, the 11th line should read "of the parties to the IN/2 Venture, and (2) the nature and objectives of the IN/2 Venture. The".

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

[Program Announcement No. OCS–87–1]

Availability of Funds and Requests for Applications Under the Office of Community Services Discretionary Authority

Correction

In notice document 87–2648 beginning on page 4090 in the issue of Monday, February 9, 1987, make the following correction:

After the Assurance of Compliance form that appears on page 4114, the following form should have appeared:

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ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES REGULATION UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

_____ (hereinafter called the "Applicant")
Name of Applicant (type or print)

HEREBY AGREES THAT it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 80) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this Assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this Assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this Assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance, and that the United States shall have the right to seek judicial enforcement of this Assurance. This Assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the Applicant.

Date _____ _____
Applicant (type or print)

By _____
Signature and Title of Authorized Official

_____
_____
Applicant's mailing address

NOTE: If this form is not returned with the application for financial assistance, return it to DHHS, Office for Civil Rights, 330 Independence Ave., S.W., Washington, D.C. 20201

HHS-441 (Rev. 12/82)
BILLING CODE 1505-01-C

federal register

Thursday
February 19, 1987

Part II

Department of Labor

Employment and Training Administration

Reexamination of the Purpose and Role of the Employment Service; Summary of Public Comments; Notice

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DEPARTMENT OF LABOR

Employment and Training Administration

Reexamination of the Purpose and Role of the Employment Service; Summary of Public Comments

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice, summary of public comments.

SUMMARY: The Employment and Training Administration is publishing for public information a summary of the public comments received at four public hearings on the purpose and role of the Employment Service; and of written comments received. The comments deal with five key issues identified by the Employment and Training Administration and other related issues raised by the commenters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Schaerfl, Director, United States Employment Service, Employment and Training Administration, United States Department of Labor, Room N4470, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–535–0157.

SUPPLEMENTARY INFORMATION: On September 15, 1986, the Employment and Training Administration (ETA) of the Department of Labor (DOL) published a notice in the **Federal Register** announcing that it would hold four public hearings around the United States for the purpose of reexamining the purpose and role of the Employment Service (ES) system, 51 FR 32772 (September 15, 1986).

The hearings were held as follows:

- San Francisco—Region IX (October 15, 1986).
- Denver—Region VIII (October 17, 1986).
- Atlanta—Region IV (October 21, 1986).
- Washington, DC—Region III (October 23, 1986).

The notice requested the public to provide written statements as well. Over 1,900 direct invitations to attend the hearings and submit written statements were sent to key groups/individuals by the national and regional offices. Over 31,000 copies of the **Federal Register** notice were distributed through a general mailing.

The notice invited the public to respond to a series of issues concerning the purpose and role of the Employment Service in the future given the labor market trends projected for the Year 2000. Comments made by respondents were analyzed according to the five key issues presented in the notice.

Question #1: Does the labor market of the future require a public labor exchange?

Question #2: What public labor exchange services would be most effective in addressing the future needs of the labor market?

Question #3: Which groups in the workforce should receive public labor exchange services or should the workforce as a whole receive such services?

Question #4: What roles should be played by the Federal, State, and local governments, and the private sector in the administration of public labor exchange activities?

Question #5: What should be the nature of the relationship between the public labor exchange system, the Unemployment Insurance system, the Job Training Partnership Act system, and other State economic development and human resource programs.

Public Response

Four hundred and fifty-three (453) people attended the hearings, including 138 speakers. In addition, 562 respondents who did not speak at the hearings submitted written comments. A total of 700 respondents offered their views. The following illustrates the number of respondents who provided comments in response to the notice—speakers by public hearing, and those who submitted written comments only.

Respondents	Number
Speakers	138
—San Francisco	(30)
—Denver	(33)
—Atlanta	(28)
—District of Columbia	(47)
Written (only)	562
Total all	700

Research and Analysis Methodology

The **Federal Register** notice invited the public to respond to the issues listed above concerning the purpose and role of the Employment Service in the context of future labor market trends. Respondents and their comments were tracked/analyzed according to Federal region/State (State of origin), institutional group, and responses to the issues raised by the Federal Register. Those responding addressed these issues in a variety of ways.

Issue area categories were developed to track comments in order to obtain a relative understanding of what respondents envision as the labor exchange of the Year 2000.

Given that most respondents addressed the issues in very broad terms—some addressed them directly, others did not—considerable interpretation was necessary in order to analyze and categorize responses.

Comments provided by some respondents did not address directly or indirectly any of the issues posed (25 respondents of 700). A summary of their concerns is provided, however. Most involve technical issues, such as the alien certification program administered by the ETA.

Respondents by Federal Region and State

The following four Federal regions accounted for 62.9% of all respondents. The States listed are those with the largest representation. Each number reflects a percentage of total respondents (700).

Region VI (27.0%)
—Texas (22.7%)
Region V (13.0%)
—Illinois (5.1%)
—Michigan (3.4%)
Region X (11.6%)
—Oregon (10.6%)
Region IX (11.3%)
—California (9.9%)

Texas and Oregon accounted for the largest response rates from States. Note that:

- A well organized write-in campaign resulted in 97 employers and 36 private individuals accounting for 83.6% of all comments from Texas.
- Oregon employers accounted for 68 of Oregon's 74 respondents. This represents 91.9% of all respondents from Oregon.

Respondents by Institutional Group

Institutional groups that accounted for the largest shares of total respondents are listed below, including subgroups of significant size. Each number reflects a percentage of total respondents (700).

- Business/Industry (52.4%)—Employers, including those representing an Employer Advisory Group, for example Job Service Employer Committees (JSEC) (49.7%).
- Target Population/Service Advocacy Group (12.1%)—Veterans (10.0%).
- Private Citizen (10.9%).
- State Government (9.1%).
- Job Training Partnership Act (JTPA) Training Institution (5.1%).

Over 50% of all respondents were from *Business/Industry*, with about 40% coming from the other four major groups listed above. The remaining 10% is composed of respondents in the *Academia/Consultant, Federal Government, Labor, Local Government,* and *Private Employment Agency* groups.

Observations about these five primary groups follow.

- Employers accounted for almost all of the *Business/Industry* group. Most were from four States—Texas, Oregon, California, and Illinois. National business and industry associations providing comments included the U.S. Chamber of Commerce, National Alliance of Business, and National Association of Manufacturers.
- Most respondents categorized as *Target Population/Service Advocacy Group* were Veterans. National veterans' groups which provided their views include the Veterans of Foreign Wars of the United States, American Legion, Disabled American Veterans, Vietnam Veterans of America, and American Veterans Committee.
- Most of the *Private Citizen* group is composed of individuals from Texas, Michigan, and California. Most of these respondents are current or former ES employees. Note that most showed considerable knowledge and expertise about the employment and training system. Only a few represented the views of the jobseeker/client of the public labor exchange.
- *State Government* includes officials from 44 States, the District of Columbia, and Puerto Rico: 17 Governors and one Lieutenant Governor; 24 State Employment Security Agencies (SESAs); 15 Labor Cabinet Directors; 3 State Legislators; and 4 Other State Government agencies. (Note: included within the SESA subgroup are respondents from the Interstate Conference of State Employment Security Agencies (ICESA)—2; International Association of Personnel in Employment Security (IAPES)—1. The National Governors' Association (NGA) is part of the Other State Government subgroup).
- Although the *State Government* group accounted for only 9.1% of total respondents, the number of States wherein a government official provided comments represents 88% of all States (44 of 50).
- The *JTPA/Training Institution* group includes several Private Industry Council (PIC) and Service Delivery Area (SDA) representatives, and a few State Job Training Coordinating Council (SJTCC) spokespersons. Others represented various training institutions.

Under the category of *Labor* not many responses were received. The few that did respond were primarily from the AFL–CIO or American Federation of State, County, and Municipal Employees (AFSCME) State/local chapters.

National-level representation came from the AFL–CIO and the Teamsters.

Analysis of Comments to Issues Raised by Federal Register Notice

Response rates are used to analyze the trends in comments on the five questions. Not all respondents addressed every question. The number of respondents who answered a particular question was used as the base for calculating a percentage response rate. Percentages provided herein should be interpreted carefully because they reflect only the relative frequency of each item mentioned. Failure to mention an item does not necessarily mean that the respondent considered the item (function, role, service, etc.) insignificant to the future of the public labor exchange. A summary of findings is provided below. The number of respondents addressing a given question is provided in parentheses.

Question #1: Does the labor market of the future require a public labor exchange? (667)

Of the 667 respondents answering this question, 97.6% agreed that a public labor exchange will be needed in the future. Many respondents recognized the problems associated with the many and varied current responsibilities of ES. They advocated streamlining the current system, or providing additional resources. A clearer mission and better defined functions were frequently mentioned as needed. As such, most respondents support DOL's effort to reexamine the ES system.

Question #2: What public labor exchange services would be most effective in addressing the future needs of the labor market? (447)

Many respondents to this issue referenced the need to streamline the ES system and return to providing basic public labor exchange activities. Definitions of what services are or should be included in the basic labor exchange varied, however.

Based on 447 respondents, the top seven response rates to services listed in the **Federal Register** notice, in addition to others that were mentioned, are provided below in rank order (highest to lowest). After these top seven services, the percentage response drops off significantly. Categories are not mutually exclusive as respondents could indicate one or any number of the services listed. In addition, there is some overlap in response with regard to intake/assessment/referral, screening, and testing services.

- Intake, general assessment, and referral to jobs, training or retraining opportunities, and/or support services, for example, day care (57.7%).
- Community labor market and occupational information (40.0%).
- Preliminary screening of applicants for employer job orders (37.1%).
- Basic skill/aptitude testing (31.3%).
- Direct placement of applicants into jobs (29.5%).
- Job search training, including tips on interviewing and/or career counseling (26.6%).
- Specialized recruitment for employers such as assisting new firms with large staffing requirements or maintaining ongoing relationships with specific employers to assist them in addressing their workforce needs (25.1%).

A review of these services suggests that the two basic functions respondents value most are:

- assessment (general and through use of specific tests); and
- information (labor market and career-related assistance).

Direct placement's fifth place ranking should be interpreted carefully as respondents generally did not clarify what they meant by the word "placement"—direct placement in, vs. referral to, jobs. This percentage may be somewhat low due to interpretation problems.

Question #3: Which groups in the workforce should receive public labor exchange services or should the workforce as a whole receive such services? (211)

A total of 211 respondents addressed this question. The top five responses ranked in order of highest to lowest percentage of response follow.

- All applicants/employers (52.6%).
- All applicants/employers with veterans' preference (14.7%).
- All applicants/employers with veterans' preference, and emphasis focused on the unemployed and/or those with barriers to employment (11.4%).
- Other, which includes different, assorted combinations of the categories used for analysis (7.6%).
- All applicants/employers with emphasis focused on the unemployed and/or those with barriers to employment (5.7%).

A synthesis of the responses suggests the following consensus view:

- provide public labor exchange services to all applicants/employers, devoting more resources to those with barriers to employment; and
- maintain veterans' preference (note that respondents other than veterans mentioned this as well).

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Question #4: What roles should be played by the Federal, State, and local governments, and the private sector in the administration of public labor exchange activities? (260)

Although a total of 260 respondents answered some aspect of this question, they tended to address the sub-part most important to their concerns. For example, States seemed most concerned about Federal/State roles; private employment agencies seemed most concerned about cooperation with local ES offices. Percentages are therefore based on the number of respondents addressing a given sub-part: *Federal Government; State Government; Local Government;* and *Private Sector.* Categories used are not mutually exclusive and reflect only the relative frequency of each item mentioned. For each sub-part, one category in particular resulted in the most significant response as follows.

Federal Government (198)

• Maintain role as is, for example, set broad national priorities, provide "general" policy guidance to States, enforce Federal mandates (63.6%).

State Government (161)

• Maintain role as is, for example, plan, operate, and evaluate programs within broad Federal guidelines; establish goals, priorities, and objectives to address varied State/local needs (73.9%).

Local Government (108)

• Maintain role as is, for example, continue service delivery at the local level, including advising/providing feedback to the State (77.8%).

Private Sector (147)

• Maintain role as is, for example, maintain current level of employer advice and input and/or current relationship with private employment agencies (51.0%).

Respondents are thus generally satisfied with the current rules played by each level of government and the private sector. The Federal/State partnership outlined by the Wagner-Peyser Act, as amended, gained favorable comments, for the most part. In addition to the Federal government maintaining veterans' preference, relatively significant support was given for the following:

• The Federal Government should be active in ensuring uniformity in interstate matters (30.3%).

• The system needs increased employer input (26.5%).

• The ES could use private employment agency services in a cooperative manner, where feasible (22.4%).

• Local government control over the ES system should be increased (20.4%).

• The Federal Government should engage in research and development activities useful for State/local program planning, operation, and evaluation, for example, assessment tools, labor market information analysis techniques, management information systems; and facilitate the sharing thereof (19.2%).

The above suggests that while most are content with the current intergovernmental and private sector relationships, many see the need for improvements with regard to how these roles are operationalized.

Question #5: What should be the nature of the relationship between the public labor exchange system, the Unemployment Insurance system, the Job Training Partnership Act system, and other State economic development and human resource programs? (196)

Of the 196 respondents addressing this issue, the two primary views provided include:

• Cooperation/coordination must be enhanced to eliminate overlaps, gaps, and inconsistencies, especially between and among ES, Unemployment Insurance (UI), and JTPA, and the various agencies that administer support services (83.3%).

• Cooperation/coordination must be enhanced . . . through the development of institutionalized functional integration of related services, for example, organizational rearrangements and/or formal technological linkages—"one-stop-shop" (24.5%).

By far, the most prevalent response indicates that there is a need to enhance/encourage greater cooperation/coordination among related programs/agencies/services. The few specific strategies suggested for accomplishing this goal were varied. Significant trends did not emerge. However, many stated that a delineation of primary responsibilities of related programs would be useful in eliminating duplication. A review of those comments suggests the following primary roles:

• ES—placement.

• JTPA—training.

• UI—"policing."

In general, those suggesting integration maintained that it should be initiated by State and local governments with Federal support. Such support could include, for example, technical assistance and revising administrative, planning, eligibility, or cost-accounting procedures or requirements that impede State and local progress toward achieving greater program integration.

In addition, many commented that ES could become a central intake, assessment, and referral arm of the entire employment and training system (for some, this central function could encompass the entire human resource delivery system). Also, those advocating greater coordination or integration often mentioned the use of joint planning as an effective tool for accomplishing these goals.

Analysis by Institutional Group of Comments to Issues Raised in the Federal Register Notice

This analysis yielded some significant differences in opinion with regard to the following issues:

• Only 16 respondents (10 individual *Employers,* 2 *Private Citizens,* 2 representatives of *Private Employment Agencies,* and 2 from the *Other* category) advocated that a public labor exchange will not be needed in the future.

• *Private Employment Agencies* differed significantly from all other groups in their views toward who should receive public labor exchange services. They represent the only group which showed strong support for limiting services to those who need them most. For them, only those who are unemployed and/or have barriers to employment should receive services, with emphasis on those receiving UI payments. All other groups, for the most part, supported the availability of services to all employers/applicants, with priority given to veterans, and emphasis on those with barriers to employment.

• *Veterans,* of course, showed much more concern than other groups over assurances that veterans receive priority service.

• All groups showed relative satisfaction with the current Federal/State/Local/Private Sector roles. The *JTPA/Training Institution* respondents expressed strong support for reducing Federal and State authority, and increasing local government control over the ES system. This includes strong support for much greater involvement by the private sector. *Labor,* on the other hand, expressed strong support for a greater Federal role, stating that the system needs to be more Federalized in order to meet the needs of the Year 2000.

• All groups wanted coordination/cooperation enhanced through use of various techniques such as joint planning or the application of the functional integration concept. Only the *Veterans* expressed strong concern over one possible mechanism for overcoming duplication consolidation of ES and JTPA.

Analysis of Specific Recommendations Made by Respondents

The vast majority of respondents indicated that a nationwide, public labor exchange system should be maintained. Most of these respondents suggested that ES needs to be improved, rather than eliminated or radically changed. In addition to general trends in thinking, specific recommendations for improving ES were tracked.

Two hundred and sixty-eight (268) respondents, accounting for 38.3% of all[1] respondents (700), submitted one or several specific recommendations for improving the public labor exchange system. Of the 268 respondents, three institutional groups provided most of the recommendations.

• Business/Industry (45.5%).

• State Government (17.5%).

• Target Population/Service Advocacy Group, mostly Veterans (11.6%).

The six recommendations receiving the most support are discussed below in order of frequency mentioned. The total number of respondents who provided the suggestion is indicated in parentheses.

Improve ES public image and promote the increased use of ES services (95).

Fifty-two (52) *Business/Industry* representatives and 17 *State Government* officials constituted the majority of respondents suggesting this need.

They noted that ES has a poor image among employers, for example, as a result of its close ties to the UI system and its mandate to serve a multitude of target populations. Many of these respondents noted that ES is funded by employer taxes and stated that services, therefore, should be geared to meet a variety of employer needs. Respondents also noted that many employers are not aware of the services that ES provides. In addition, several stated that ES should be more aggressive in soliciting employer job contacts and job listings.

This recommendation, combined with the fact that 26.5% advocated increased employer input, suggests that ES may want to consider ways in which the employer community can become more involved with the public labor exchange—as service users as well as information providers.

Respondents also remarked that the general public is not sufficiently aware of the job-finding and information services available through ES. In general, they noted that at the community level, people frequently link UI and ES as both concerned with unemployment benefits. In this context, the public's perception of ES has little to do with employment possibilities. In general, these respondents would like to see ES promote its image more effectively in the future.

Increase the use of automation/Technology (77).

Respondents representing a wide variety of institutional groups suggested that more automation/technology should be used by ES. Groups showing the strongest support follow:

• Business/Industry (28).

• State Government (24).

• Target Population/Service Advocacy Group (11).—Veterans (10).

These respondents advocated strongly the need for increased use of automation to provide linkages among States and localities, and between related programs in the human resource system. In particular, respondents cited how automated information systems could assist in:

• matching jobseekers with job openings (job banks); and

• providing timely and more accurate labor market information that could be integrated with economic development data to obtain better labor force projections.

Revise Federal Unemployment Tax Act (FUTA) Tax System (70)

Of the respondents advocating the revision of the FUTA tax system, 55 *Business/Industry* representatives and 10 *State Government* officials constituted the majority.

In general, the various proposals were viewed by these respondents as mechanisms to:

• establish a stable source of funding for States;

• remove the system from the Federal budget process; and/or

• shift the responsibility for collection and disbursement of the FUTA tax to the States.

The most often suggested mechanism was an Equity Act legislative proposal strongly advocated by forty-seven (47) *Business/Industry* representatives, mostly *Employers* from Oregon, and two (2) *State Government* officials. This proposal would shift responsibility for collection of the FUTA tax and administrative funding for basic employment security programs to the States.

Develop Better ES Performance Standards and Incentive Systems (34)

State Government officials accounted for 13 of the 34 respondents in favor of developing better standards to evaluate ES performance. Seven (7) *Business/Industry* representatives also voiced support, with the remaining respondents representing a variety of groups. They noted that current measures of ES performance are needed that:

• distinguish between placements in short-term vs. longer-term jobs;

• consider variations in local economic conditions; and

• evaluate ES activities other than placement.

In addition, several discussed the need for the development of performance incentive systems to promote competition and better performance among local offices.

Increase ES Staff Levels (22)

Twenty-two (22) respondents representing a variety of institutional groups urged that staff levels be increased. *Labor* (6) and *Business/Industry* (5) together accounted for one-half of these respondents. They remarked that the addition of special programs and emphases to the ES role over the years, combined with declining funds and staff, have resulted in an overburdened ES system. Either ES activities must be cut or more staff resources provided to meet the needs.

Enhance ES Data Collection and Reporting Systems (22)

Twenty-two (22) respondents representing several institutional groups expressed support for the need to enhance data collection and reporting systems. *Business/Industry* (6) combined with *Labor* (5) accounted for the largest share of support for this proposal. They maintained that the quality of data used in ES program planning, operation, and evaluation needs improvement. In addition, efforts to improve the collection of labor market information are needed in order to build a better baseline of information for forecasting labor market trends.

Other suggested improvements include the following:

• Provide More Training of ES Staff (20).

• Develop Better Job Skills Assessment Tools (18).

• Increase ES Efforts to Provide Improved Labor Market Information (16)

• Develop A Voucher System That Can Be Used by Applicants to Purchase Services Directly (12).

• Increase Federal Support for State-level Program Integration Efforts (11).

• Develop Alternative Funding Sources to Finance ES Operations (8).

Other Key Issues of Concern to Respondents

Twenty-five (25) of the total number of respondents (700) discussed some concerns that did not relate to the questions as posed in the Notice. The primary other issue raised consistently

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at all four public hearings and in written statements concerns the alien certification process.

Representatives of the American Immigration Lawyers Association; the American Council on International Personnel, Inc.; private practice lawyers; and a university professor provided comments on this issue (10 respondents in all).

In light of anticipated labor market trends concerning immigrants becoming an increasing part of our workforce/and our growing need as a nation to use alien labor, these respondents suggested that the following are some of the key problems that need to be addressed:

- unnecessarily complex rigid, and inconsistent administrative policies;
- lack of clear precedents needed to provide uniformity and clarity with regard to current conflicting interpretations of labor certification standards and practices;
- need to modify schedules pertaining to the certification of various types of alien labor to allow for a more streamlined and efficient process; and
- need to build into the schedules additional general-shortage labor categories (for example, college and university professors, among others).

Alternatives To be Considered

These data, along with the Department of Labor's consideration of the research, studies, and data, will provide the basis for developing proposals to be considered by the Department in refocusing the Employment Service to address current and emerging labor force trends, particularly those that will emerge in the Year 2000. Alternatives may include the submission of a legislative proposal and/or regulations to either implement any new legislation that may emerge or to achieve, administratively, the new direction. As any such legislative proposal or regulatory reform is developed and considered, the Department of Labor is committed to providing appropriate consultation with interested parties, particularly the States and Congressional representatives.

Signed at Washington, DC on February 9, 1987.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 87-3277 Filed 2-18-87; 8:45 am]

BILLING CODE 4510-30-M

federal register

Thursday
February 19, 1987

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Section 8 Housing Vouchers; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-87-1665; FR-2297]

Section 8 Housing Vouchers

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability.

SUMMARY: This Notice announces the availability of fiscal year 1987 funding authority for HUD's Housing Voucher Program authorized by section 8(o) of the United States Housing Act of 1937. The Notice also describes requirements for all of the different components of the Housing Voucher Program. The Department announces that fiscal year 1987 Housing Voucher funding will be available for the following purposes: (1) Housing vouchers distributed by formula allocation; (2) For families living in public housing units that are being demolished or disposed of with HUD approval; (3) For families living in Section 8 New Construction or Substantial Rehabilitation projects where the owner has sole discretion to "opt-out" of an additional term of assistance under the Section 8 Housing Assistance Payments Program and does so; (4) For families living in Section 8 Loan Management Set-Aside projects where the owner and HUD do not agree to renew the contract of assistance for an additional term; and (5) For families affected by the Rental Rehabilitation Program. Additional funding will not be available for the Freestanding (large PHA) Housing Voucher Demonstration Program, authorized in fiscal year 1984, or the Small PHA/Rural Area Housing Voucher Demonstration Program, authorized in fiscal year 1985.

EFFECTIVE DATE: February 19, 1987.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Director, Housing Voucher Division, Room 6122, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-6477. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

Housing Voucher Program

I. Background
A. Housing Voucher Funding
B. Uses for Housing Vouchers Previously Allocated
C. Housing Voucher Rulemaking
II. This Document
A. Housing Voucher Funding Appropriated for Fiscal Year 1987
B. Changes in the Housing Voucher Program Requirements and Request for Public Comment
C. Applicability of Part III of this NOFA
III. Housing Voucher Program Requirements
A. Definitions
B. Applicability and Purpose
C. Equal Opportunity Requirements
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I. Background

A. Housing Voucher Funding

In 1983, Congress authorized a demonstration Housing Voucher Program under section 8(o) of the United States Housing Act of 1937 (the 1937 Act) (see section 207 of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181 (the 1983 Act)). In addition to the demonstration program authorized in fiscal years 1984 and 1985, section 8(o) mandated that substantially all of the housing vouchers be used in connection with the Rental Rehabilitation Program. In fiscal years 1986 and 1987 Congress again authorized housing vouchers for a variety of uses, but waived the requirements that substantially all of the housing vouchers be used in connection with the Rental Rehabilitation Program and that a demonstration program be conducted.

Since the initial 1983 authorization, HUD has published five Notices of Funding Availability. (*See* the **Federal Register** issues of July 12, 1984, 49 FR 28458; February 28, 1985, 50 FR 8196; May 8, 1985, 50 FR 19475; March 31, 1986, 51 FR 10932; and December 30, 1986, 51 FR 47064.)

Each of these preceding Notices has provided requirements for different uses of housing voucher assistance. The Department believes that housing voucher assistance is as functional as, and more flexible than, Section 8 certificate assistance. Housing vouchers provide participating families with a greater choice of units in a local housing market and allow the Department to assist families in a more cost-effective manner. The different uses of housing voucher assistance authorized under the Department's previous NOFAs should demonstrate clearly that the Housing Voucher Program is an effective means of delivering housing assistance.

B. Uses for Housing Vouchers Previously Allocated

Uses of housing vouchers previously allocated include: (1) A Freestanding Demonstration component designed to study the feasibility of a Housing Voucher Program administered by a large public housing agency (fiscal year 1984); (2) A Small PHA/Rural Area Demonstration component, designed to study the feasibility of a Housing Voucher Program administered by a small public housing agency or in a rural area (fiscal year 1985); (3) A Rental Rehabilitation component, authorizing housing vouchers in connection with the Department's Rental Rehabilitation Program (fiscal years 1984, 1985 and 1986); (4) Housing vouchers for families residing in public housing projects being demolished or disposed of with HUD approval (fiscal years 1985 and 1986); (5) Housing vouchers for families living in units in projects assisted under the Section 8 New Construction (Part 880) or Substantial Rehabilitation (Part 881) Housing Assistance Payments Program, in cases where the owner has the sole option whether to renew the housing assistance payments contract for an additional term, and exercises the option not to renew (fiscal years 1985 and 1986); (6) Housing vouchers for families residing in Section 8 Loan Management Set-Aside projects (Part 886, Subpart A) where the owner and HUD do not agree to renew the contract of assistance for an additional term (fiscal year 1986); and (7) A formula allocation of Housing Vouchers to the HUD Regional Offices (fiscal years 1985 and 1986).

C. Housing Voucher Rulemaking

The Department supports housing voucher assistance as the principal vehicle for providing housing assistance under Section 8 of the 1937 Act.

Housing voucher procedures have been published for public notice and comment in successive Notices in the **Federal Register**, but have not been incorporated into the Code of Federal Regulations (CFR). The Department has decided to codify the housing voucher procedures as a separate Part 887 in Title 24 of the CFR. This will eliminate the annual publication of a Notice of Funding Availability containing all of the applicable program requirements. In addition, once Part 887 is published, changes will be promulgated just as other amendments to HUD's rules are promulgated. The Department intends to use the substance of this NOFA (including the program requirements in Part III of this notice and the proposed changes described in section II.B. of this Notice) as the basis for a proposed rule. To this end, the Department will publish shortly a notice of proposed rulemaking seeking public comment on the Housing Voucher Program as reflected in this Notice of Funding Availability. The notice of proposed rulemaking will provide a 30-day comment period beginning from the date of its publication.

Several changes in this year's Notice are in response to public comments received on previous Notices of Funding Availability. There will be a complete discussion of all comments received, on the proposed rule and previous NOFAs, in the final rule.

II. This Document

The document presents general information and program requirements for the Department's Housing Voucher Program. Part I contains background information for the reader and Part III is a statement of program requirements. Part II, which follows immediately, summarizes and highlights features of the Housing Voucher Program.

Part II.A. provides summaries of the different uses for housing vouchers allocated in fiscal year 1987. Part II.B. highlights changes in the program—II.B.1. discusses changes in effect *this* year (and reflected in Part III of the Notice) and II.B.2. discusses *proposed* changes to the Housing Voucher Program which may be incorporated into the forthcoming program regulations. Part II.C. discusses the applicability of this year's requirements to past funding allocations.

A. Housing Voucher Funding Appropriated for Fiscal Year 1987

This Notice of Funding Availability (NOFA or Notice) announces the availability of the fiscal year 1987 appropriation of contract and budget authority for housing vouchers provided by section 101(g) of Pub. L. 99-500 (approved October 18, 1986), making appropriations as provided for in H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H.R. Rep. No. 977, 99th Cong., 2d Sess. (1986). The Department intends to use its FY 1987 housing voucher funding authority for the following purposes:

1. Headquarters Reserve

The Secretary is retaining a number of housing vouchers in a Headquarters' reserve, and, subject to the availability of sufficient contract and budget authority, the housing vouchers will be used for emergencies and for the following specific uses:

(a) A set-aside to assist public housing desegregation, when other methods have failed. (See a more detailed discussion in sections II.B.1. and III.D.(f) of this Notice.)

(b) A set-aside to facilitate reallocation of rental rehabilitation grants to provide housing vouchers to State or other multi-jurisdictional housing voucher programs, when offsetting procedures will not cover recaptures and reallocations of Rental Rehabilitation grant funds. (See a more detailed discussion in section III.X. of this Notice.)

(c) A set-aside to assist families in public housing projects being demolished or disposed of with HUD approval.

Part 970 of the Department's regulations sets out the procedures a PHA must follow to receive HUD approval of the demolition of buildings or disposition of real property owned by the PHA which contains public housing dwelling units (demolition/disposition). When the Department has granted approval for demolition or disposition of public housing units, there may be families living in the units who qualify for continued assistance using the Housing Voucher Program.

(d) A set-aside to assist families living in one of the following types of "opt-out" projects:

(1) For families living in Section 8 New Construction or Substantial Rehabilitation projects, where the owner has sole discretion to "opt-out" of an additional term of assistance under the Section 8 Housing Assistance Payments Contract and does so; or

(2) For families living in Section 8 Loan Management Set-Aside projects, where the owner and HUD do not agree to renew the Section 8 Housing Assistance Payments Contract for an additional term.

In each of these situations, there is need for continuing assistance to be provided to the families living in the projects. The Department recently authorized a portion of the fiscal year 1987 allocation of housing voucher funding authority for the situations described above—where the owner withdraws from the Housing Assistance Payments Program. (See the December 30, 1986 **Federal Register**, 51 FR 47064.)

2. Housing Vouchers Distributed by Formula Allocation

(a) *Allocation.* The Department will allocate a portion of the FY 1987 housing voucher funding authority to its Regional Offices, using an allocation procedure patterned on the procedures in 24 CFR Part 791.

(b) *Selection Criteria.* The Field Office also will be required to give a preference to applications from PHAs that demonstrate a level of locally generated housing assistance (see a more detailed discussion in section II.B.1. of this preamble). This preference is mandatory and will take precedence over the current two discretionary Field Office preferences—for applications from PHAs (1) whose Section 8 certificate or housing voucher needs previously have been underfunded in relation to the needs of other localities within the allocation area, or (2) that provide families with the broadest geographical choice of housing, including inter-jurisdictional and interstate housing choice.

3. Housing Vouchers in Connection with the Department's Rental Rehabilitation Program

Since 1984, housing vouchers have been made available for use in connection with the Rental Rehabilitation Program. (Certificates also were made available in fiscal year 1984.) Rental Rehabilitation Program requirements are contained in 24 CFR Part 511. Authorized by section 17 of the 1937 Act, the program's purpose is to help provide affordable standard rental housing for lower income families, and to increase the availability of housing units for holders of Section 8 housing vouchers or certificates.

The program makes grants to State and local governments to help support the rehabilitation of privately owned

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real property to be used for primarily residential purposes. Grants are made on a formula basis to cities with populations of 50,000 or more, and to urban counties, States, and qualifying consortia of geographically proximate units of general local government within the same State.

Housing voucher funding allocated this fiscal year for use in connection with the Rental Rehabilitation Program is to be used to minimize the displacement of families residing in projects to be rehabilitated with rental rehabilitation grants. To meet this goal, and subject to the availability of sufficient contract and budget authority, as determined by HUD, the Department will allocate authority for up to one housing voucher for each $7,500 of rental rehabilitation grant amounts received by the grantee.

All of the program requirements for the use of housing vouchers in connection with the Rental Rehabilitation Program are contained in Part III of this Notice. Changes in the use of housing vouchers allocated in connection with the Rental Rehabilitation Program are discussed in detail in section II.B.1. of this preamble.

B. Changes in The Housing Voucher Program Requirements

Part III of this Notice contains the program requirements that apply to the Housing Voucher Program, including housing vouchers authorized in earlier years. This year's Notice includes changes the Department is making in some program requirements. The following section II.B.1., "Changes in Housing Vouchers Program Requirements Effective This Year", highlights changes contained in the Part III requirements. This discussion parallels the organization of the Part III requirements, with the particular section of Part III designated in parentheses at the beginning of the discussion.

In addition, the Department is considering other changes in Housing Voucher Program requirements that would be contained in its forthcoming housing voucher regulation. The Department will seek public comment on these proposed changes. (See section I.C., "Housing Voucher Rulemaking".) These proposed changes are discussed in section II.B.2., "Anticipated Changes in the Housing Voucher Program".

1. Changes in Housing Vouchers Program Requirements Effective This Year Definitions. (III.A.)

In the definitions section of this Notice, several terms have been added or revised to improve the clarity of the Notice. Examples of added definitions include that of "participant" and "housing assistance payment"—modeled on the existing Section 8 certificate regulations.

Equal Opportunity Requirements. (III.C.)

The Department has removed the requirement that PHAs comply with section 3 of the Housing and Urban Development act of 1968 and related rules, since the Housing Voucher Program does not involve assistance to projects.

Allocations of Funding and Invitations for Applications. (III.D.)

Paragraph (e) of section III.D. contains a new provision, stating that the invitation for applications will include the statement that the Department considers 50 units to be the minimum feasible program size. Accordingly, for first-time allocations of funding, the Department will provide funding authority for a minimum of 50 housing vouchers, unless the PHA's application specifically requests fewer. This minimum does not apply once the minimum initially has been met for the PHA's whole Housing Voucher Program, nor does it apply to housing vouchers issued from HUD Headquarters, which includes such allocations as those for demolition/disposition, rental rehabilitation, desegregation, opt outs, emergencies etc. Every effort will be made to provide sufficiently large allocations of housing vouchers to individual PHAs to facilitate program administration and economies of scale.

Paragraph (e) of section III.D. contains another new provision, identifying under what circumstances HUD may provide housing vouchers to a PHA to aid in the desegregation of public housing. These housing vouchers will be made available only when HUD determines that the following criteria have been met:

- That the PHA has been found to be in preliminary noncompliance with Title VI of the Civil Rights Act of 1964 because of discriminatory practices or policies that resulted in segregated public housing projects, and, consistent with that finding—

The PHA has entered into a compliance agreement and has carried out its obligations under the agreement but, because of circumstances beyond the PHA's control, has not succeeded in desegregating its projects; and

It is determined during the course of compliance agreement negotiations, that the PHA could not develop and implement a meaningful plan to desegregate its projects without housing vouchers; and

- The racial characteristics of the PHA's public housing project occupants and the length and racial composition of the public housing waiting list is such that providing housing vouchers to a limited number of public housing tenants or applicants would facilitate the desegregation of public housing projects. (The tenant or applicant may not use the housing voucher in the PHA's public housing projects but is free to use the assistance for a unit located anywhere in the PHA's jurisdiction in accordance with the finders keepers policy of the Section 8 program.)

This provision allows the PHA to target housing voucher assistance to public housing applicants currently on the PHA's public housing waiting list or to families residing in public housing. This targeting is designed to help desegregate public housing where it has been determined that segregation exists and other methods used to end it have not succeeded. Both the Fair Housing and Equal Opportunity Office and Housing Office staffs will participate in the decision concerning which PHAs are eligible for housing vouchers, and whether such an allocation is appropriate in the specific circumstances.

Submissions of Applications. (III.E.)

In paragraph (a) of section III.E., this year's NOFA requires all applicants to state in the application of the bedroom mix and family type. In previous notices, this requirement generally did not apply to the Rental Rehabilitation Program component, but now it does.

Processing of Housing Voucher Applications. (III.F.)

In paragraph (b) of section III.F., the Department introduces a preference on which we sought public comment in the 1986 Notice. Implemented this year, this preference will be applied to applications from PHAs that identify locally initiated efforts in support of their Section 8 Certificate and Housing Voucher Programs. The evaluation of the locality's contribution will be measured competitively, *i.e.*, by the extent to which a locality is able to provide services or cash contributions, as compared to other localities of like program size. Among PHAs with Section 8 programs of comparable size, an absolute funding preference will be given to those localities that provide some non-Federal contribution in support of their Section 8 Certificate and Housing Voucher Programs. The language in the preference, "in support of", is intended to admit of a variety of types of local contributions—whether

cash or in-kind, which enhance the locality's Section 8 Certificate and Housing Voucher Programs. The intent of "locally initiated efforts" is to emphasize both that the Department is seeking non-Federal participation and that it considers plans for programs to be implemented, as well as those already underway, as appropriate. This preference takes precedence over the current discretionary preferences; local HUD offices will be instructed to fund applications identifying local contributions before other applications are funded.

Procedures in Connection With the Rental Rehabilitation Program. (III.H.)

Section III.H. has been revised this year to reflect consolidated requirements related to all housing vouchers allocated in this and previous years in connection with rental rehabilitation grant funds. In addition, these procedures reflect limited phase-in of the Department's two-year plan to "decouple" (separate) rental rehabilitation grant funds and housing voucher funding authority.

This year, housing vouchers allocated in connection with rental rehabilitation projects are being allocated at a ratio of up to one housing voucher per $7,500 of rental rehabilitation grant funds. (Previous years' allocations were up to one per $5,000.) Also, as discussed earlier, there will be a Headquarters reserve of housing vouchers to facilitate the reallocation of rental rehabilitation grant funds. (See section III.X. of this Notice for additional information on offsetting.) This Headquarters reserve will be used to provide additional housing vouchers to States or similar multi-jurisdictional programs where offsetting procedures cannot cover recaptures and reallocations of rental rehabilitation program funds. Grantees receiving reallocated rental rehabilitation grant funds under these procedures and needing additional housing vouchers should contact their Field Office CPD Division which will, in turn, notify Headquarters CPD of the request and the circumstances involved. Headquarters CPD will coordinate with Housing to allocate the housing vouchers to the appropriate PHAs. This special allocation will be used on a first-come, first-served basis.

A second feature of decoupling, which the Department has made applicable to all housing vouchers allocated in connection with rental rehabilitation, is the provision that a PHA may use these housing vouchers for general program purposes *before* they are used for rental rehabilitation projects.

The PHA may use the housing vouchers for families on its Section 8 waiting list, if the PHA determines that it will have an adequate number of housing vouchers or Section 8 certificates available when needed in connection with a rental rehabilitation project. The PHA must develop a written plan to assure this availability. In determining whether this immediate use is feasible, the PHA must consult with the rental rehabilitation grantee. The PHA must include a statement in its cover letter returning the ACC to HUD for execution that the PHA has consulted with the rental rehabilitation grantee. A copy of the written plan must be provided to the rental rehabilitation grantee for its information.

The Department recognizes that immediate use is not always possible, nor is it appropriate in all cases. Such factors as program size, housing voucher and certificate bedroom distribution, turnover rates and the completion date for the rental rehabilitation projects must be considered by the PHA before it determines that immediate use is appropriate.

A third feature of decoupling is that, for housing vouchers allocated in fiscal year 1987 in connection with rental rehabilitation, the PHA may not target housing vouchers to applicants on its waiting list who agree to move initially into a rental rehabilitation project. However, the ability of the PHA to target to the PHA's waiting list is preserved for the number of housing vouchers allocated in previous fiscal years' funding in connection with rental rehabilitation.

And, finally, the fourth new feature requires the PHA to include information about local rental rehabilitation projects as a possible source of housing in the PHA's briefing packet for housing voucher and certificate applicants. Features for complete decoupling in fiscal year 1988 are described in section II.B.2. below.

Selecting Families and Issuing Housing Vouchers. (III.I.)

In paragraph (b) of section III.I., the Department describes the Section 8 assistance limitation imposed by section 16 of the United States Housing Act of 1937 for families with income above 50 percent of area median income. Section 16 restricts to five percent nationally the number of units in Section 8 and public housing that may be occupied by lower income families with incomes above 50 percent of median income. Paragraph (b) outlines specific circumstances in which families over 50 percent of median income may be assisted. These categories have been established by the Department after HUD determined that specific categories of applicants could receive housing vouchers or certificates without prior HUD approval, without threatening compliance with the five percent cap. In each case, however, the PHA is required to report to HUD the number of housing vouchers used for these categories. The change in the fiscal year 1987 NOFA includes the additional category of a housing voucher participant who wishes to move to another unit with housing voucher assistance. The PHA must report each case to HUD, so that HUD can track compliance with the national limit under section 16, but the PHA need not request prior HUD approval.

Paragraphs (d), (e), and (f) of section III.I. have been reorganized to reflect the new, consolidated approach to the treatment of housing vouchers allocated in connection with rental rehabilitation and to authorize targeting of housing vouchers that may be made available to facilitate the desegregation of public housing.

Housing Voucher Payments. (III.J.)

This year's section III.J. relfects a redesign of the housing voucher payment system—a single payment standard system replaces a three payment standard system previously used. The new system is designed to simplify the administration and financial management of the Housing Voucher Program and provides that a PHA will run its Housing Voucher Program using a single payment standard for each bedroom size.

A new payment standard must be adopted by all PHAs that administer a Housing Voucher Program. The new payment standard may be adopted at any time after the publication of this Notice, but no later than May 19, 1987. Any PHA that receives its first allocation of housing voucher funding this year or any PHA that had its first increment of funding reserved in a previous year, but does not yet have an executed ACC, must establish its payment standard at the Fair Market Rent published for effect or HUD-approved community-wide exception rent at the time the Annual Contributions Contract is executed by HUD.

A PHA that already is administering a Housing Voucher Program (whether or not the PHA receives an additional housing voucher allocation this year) may adopt a payment standard that is anywhere between its initial payment standard and the currently effective Fair Market Rent or HUD-approved community-wide exception rent. A

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payment standard may never exceed the applicable Fair Market Rent published for effect or HUD-approved community-wide exception rent. If applicable, a current participant in the PHA's program would be held harmless (protected) from a reduced payment standard.

The affordability adjustment system also has been modified this year. The PHA may adopt two affordability adjustments for each unit size in each FMR area in any five-year period. The PHA is free to adopt an affordability adjustment for one or more unit sizes at one time. However, the PHA must tract to ensure no unit size receives more than two adjustments in five years. (Previously adopted new family/mover schedules were not considered affordability adjustments and should not be counted as such.) Allowing two affordability adjustments in each FMR area is intended to address a concern raised by multi-jurisdictional PHAs (such as States). Since there may be reason for an adjustment in one area of the State and not in another, the limitation of any affordability adjustment counting as one of the two-in-five allowed State-wide appears unnecessarily restrictive. Hence, the new provision. As previously required, the PHA must consult with the unit of general local government and the public before adopting an affordability adjustment. Since HUD will not provide additional funds to maintain the number of families assisted in the PHA's program, consultations with the unit of general local government and the public will provide a needed dialogue on the effect affordability adjustments could have on the ability to assist more families.

The Department recognizes that there may be jurisdictions that have been participating in the Housing Voucher Program since 1984 and that may have adopted already new family/mover schedules or adjustment standard schedules. Families receiving housing assistance payments under a previous payment standard schedule will not have their housing assistance payments reduced as a result of the new payment standard design. Families will be held harmless, and their housing assistance payments will be based on their currently applicable payment standard until the family's applicable payment standard falls within the PHA's new unified payment standard system.

Portability of Housing Vouchers. (III.L.)

Although this section remains substantially the same, one change should be noted. In paragraph (d)(5) of section III.L., Responsibilities of the Initial PHA, the provision regarding the initial PHA's discretion to deny a family's request to move has been revised to provide that the PHA may deny the request to move if the number of families moving under these portability procedures would be more than *15 percent* of the units under lease in the initial PHA's Housing Voucher Program. This reduction in the percentage has been made to assist PHAs in planning and anticipating fiscal responsibilities, without sacrificing any element of the portability feature. Data on portability received to date has indicated that a fifteen percent cap more than adequately assures the ability of any family to move under these portability procedures.

Eligible and Ineligible Housing. (III.M.)

Paragraph (a) of section III.M. lists types of housing that are not eligible for participation in the Housing Voucher Program. Paragraph (a)(4) indicates that owner-occupied housing is not eligible, with one exception. This exception was established by the 1937 Act to allow the PHA to use up to 5 percent of its housing voucher authority to provide assistance with respect to cooperative or mutual housing, if this type of housing has a resale structure that maintains affordability for low-income families and if the PHA determines that such assistance will help in maintaining affordability of the housing for lower income families. This year's NOFA eliminates the requirements that a PHA obtain prior HUD approval before using any of its housing voucher assistance for this purpose. It replaces that provision with the requirements that the PHA obtain prior HUD approval if the PHA wishes to exceed 5 percent of its housing voucher authority for use in cooperatives or mutual housing.

This year's Notice adds a category of ineligible housing, which is housing that is used as transitional housing in the Department's Transitional Housing Demonstration Program.

Maintenance, Operation and Inspections; Security Deposits. (III.O.)

This year's NOFA simplifies the security deposit provision to provide that the maximum allowable security deposit may not exceed the greater of $50 or 30 percent of the family's monthly adjusted income.

Administrative Fees Paid to the PHA. (III.U.)

Section III.U is new to Part III of the Notice of Funding Availability, but it is consistent with current practice. The principal fees provided to the PHA include the preliminary fee, the ongoing administrative fee, and the hard-to-house fee.

The ongoing administrative fee remains at 6.5 percent of the current Section 8 existing housing Fair Market Rent published in the **Federal Register** for a 2-bedroom unit. This year's Notice makes it clear that both the initial and receiving PHAs may be eligible for a preliminary fee when a family moves under the portability procedures for housing vouchers. The hard-to-house fee also is authorized for both the initial and receiving PHAs under portability, if applicable.

Deobligation of Rental Rehabilitation Grants and Effects on Housing Voucher Contract and Budget Authority Provided in Connection With the Rental Rehabilitation Grants. (III.X.)

Section III.X. generally describes the Department's procedures for reallocating rental rehabilitation grant amounts and for offsetting the amount of contract and budget authority reserved for certificates or housing vouchers for use in connection with the grantee's Rental Rehabilitation Program. The 1987 NOFA adds a new provision relating to a Headquarters reserve to be used to provide additional housing vouchers to States or similar multijurisdictional programs where offsetting procedures cannot cover recaptures and reallocations of rental rehabilitation program funds. This new paragraph (c) makes clear that grantees affected by this reallocation who need additional housing vouchers should contact their Field Office CPD division. The Field Office will work with Headquarters to determine the allocation of housing vouchers to the appropriate PHAs. These special allocations will be made on a first come, first served basis.

2. Anticipated Changes in the Housing Voucher Program

(a) *The decoupling of housing vouchers and rental rehabilitation project funds.* Changes in fiscal year 1988 anticipate the completion of the decoupling of housing vouchers and rental rehabilitation grant funds. Decoupling is designed to increase the PHA's flexibility in managing its Housing Voucher Program, because it will not have to track specific allocations in support of the Rental Rehabilitation Program. On the other hand, rental rehabilitation grantees should be assured that they will have access to certificates or housing vouchers from the PHA when the rental rehabilitation use arises.

Decoupling will be completed in fiscal year 1988 by eliminating any necessary link between housing voucher allocations and rental rehabilitation grant funds and replacing it with two PHA obligations:

—The PHA must give a "preference" in making housing vouchers available to rental rehabilitation displaces; and
—The PHA must refer certificate and housing voucher holders to rental rehabilitation projects.

The PHA will be required to give a preference to families *living in* the rental rehabilitation projects. Referral consists of providing information in the Section 8 applicant's information packet on possible rental rehabilitation project units available for occupancy by housing voucher or certificate holders. Applicants have the freedom to choose a rental rehabilitation unit or any other qualifying unit.

(b) *Shared housing.* Section 211 of the Housing and Urban-Rural Recovery Act of 1983 requires the Department to permit assistance in shared housing arrangements in the Section 8 Existing Housing and Moderate Rehabilitation Programs for eligible elderly families. Section 211 also directs HUD to enact minimum habitability standards to ensure that shared housing is decent, safe and sanitary, taking into account special circumstances of this type of housing. HUD already has published a final rule implementing shared housing provisions for the Section 8 Existing Housing Certificate Program. Shared housing is designed to provide additional choices in living arrangements for assisted families. A PHA has discretion to determine whether to include shared housing in its existing housing program and to design the shared housing component to meet local needs and circumstances. It is the intention of the Department to implement shared housing for the Housing Voucher Program in its forthcoming rulemaking. Shared housing for housing vouchers will be analogous to the provisions published in final form for the Section 8 Certificate Program.

The Department believes that the Housing Voucher Program may provide increased opportunities for different types of shared housing arrangements, compared to the Section 8 Existing Housing Certificate Program. For example, it may be possible for housing voucher families to enter into a joint lease with the owner and have the PHA enter into a joint housing voucher contract for the participants, since in housing vouchers the Department does not establish a ceiling that a housing voucher holder may pay for rent. Accordingly, if one family leaves, the other family does not necessarily have to leave the dwelling unit. In addition, since assistance payments are fixed amounts that do not vary with the rent, there would be no increased financial liability for the PHA, since housing assistance payments for the departing family would stop. The assistance payments for the remaining family would continue at the same amount and the remaining family would be responsible for the entire amount under the lease if another family does not move into the unit.

Another feature of shared housing for housing vouchers, which may differ from the Certificate Program, is how the amount of assistance for a family is determined, since housing voucher assistance is a fixed amount based on the payment standard for the number of bedrooms indicated on the housing voucher. (In addition, housing vouchers would require a minimum rent computation based on the prorating of the bedroom units on the housing voucher by the space occupied by the housing voucher participant.)

(c) *Interchangeability of housing vouchers and certificates.* The Department continues to support the use of housing vouchers as the principal means of providing housing assistance to families. Consistent with this policy, the Department is considering allowing families the opportunity voluntarily to trade in a Section 8 certificate for a Section 8 housing voucher, if available. The Department does not anticipate allowing the corollary provision—allowing Section 8 housing voucher holders to trade a housing voucher for a certificate—since it is inconsistent with its goal of promoting housing vouchers as the principal means of housing assistance.

(d) *Security deposits.* The current housing voucher requirements relating to security deposits provide for a maximum security deposit of the greater of $50 or 30 percent of the family's monthly adjusted income. The Section 8 Certificate Program allows a maximum security deposit of the greater of $50 or the "total tenant payment". The Department is considering revising the security deposit provisions for both programs. The Department considers the formulation of the security deposit provision to be appropriately a function of the rent for the unit, rather than a function of the family's income or a fixed dollar amount which cannot reflect shifts in price levels. Accordingly, the Department is considering developing a formula system for authorizing minimum security deposits based on the rent for the unit selected by the family.

(e) *Changes to the administrative plan.* The Department plans to redesign the administrative plan requirements. HUD recognizes that, over the years, the administrative plan has grown in size with the addition of new program features. Currently, the administrative plan is designed to be the guide for the planning and administration of the PHA's Section 8 Program, and it must articulate three things: (1) The PHA's objectives in administering its Section 8 Program; (2) the policies and procedures to achieve these objectives; and (3) the staffing necessary to perform all program functions.

The PHA's policies and procedures for the administration of its Section 8 Program supplement the statutory requirements of the 1937 Act and applicable Federal Section 8 regulations. The Department is considering revising the administrative plan to require that it specify policy and procedures only in those cases in which the PHA has discretion to establish local policy for the treatment of applicants or participants. Required elements would include:

(1) Procedures for maintaining its waiting list, including procedures for determining the method whereby acceptance of applications for housing assistance is suspended and later resumed.

(2) Policies and procedures for facilitating voluntary interjurisdictional mobility for certificate and housing voucher holders, if applicable.

(3) Policies and procedures for implementing portability for housing voucher holders.

(4) Policies and procedures for issuing certificates or housing vouchers to applicants consistent with its occupancy standards (procedures to determine consistently the number of bedrooms to enter on a housing voucher or certificate) and consistent with any preference or priority criteria. This could include applicable policies and procedures on administering the housing vouchers allocated in connection with rental rehabilitation.

(5) If applicable, policies and procedures for providing for shared housing, including eligible family types and scope of program.

(6) Procedures for acting on a request for an extension of a certificate or housing voucher.

(7) Procedures to implement grounds for denying issuance of a certificate or housing voucher to an applicant or a participant under § 882.210.

(8) Procedures for collecting amounts owed by an applicant or participant to the PHA or to another PHA.

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(9) Procedures for informal reviews and informal hearings, when required by applicable regulations.

(10) Policies and procedures for recertification when the recertification would result in a reduction of housing assistance to the family.

(11) Policies and procedures for PHA direction of Section 8 Program activities in support of local or area-wide housing and community development initiatives, policies or programs, if applicable.

Provisions that the PHA must comply with, but which are required already by Federal law or regulation, would be eliminated from the administrative plan. However, the plan would include procedures to carry out the Federal requirements.

(f) *The payment standard for single room occupancy units.* Currently the payment standard for SRO units in the Housing Voucher Program is proposed by the PHA to HUD for approval. The request may be anywhere in the range of 75 percent to 100 percent of the published 0-bedroom Fair Market Rent or the HUD-approved community-wide exception rent for a 0-bedroom unit. Generally, the amount must be based on the presence or absence of food preparation or sanitary facilities.

In contrast to the Housing Voucher Program, the Section 8 Certificate and Moderate Rehabilitation Programs fix the Fair Market Rent for SRO units at 75 percent of the 0-bedroom FMR or the HUD-approved community-wide exception rent for a 0-bedroom unit.

The Department believes that it does not have adequate grounds for maintaining disparate provisions for the two principal Section 8 Finders-Keepers programs. The Department intends to conform the housing voucher SRO payment standard provision to the certificate provision, but seeks comment on the issue.

(g) *Ineligible housing.* Section III.M. of this Notice states that "a unit that is owned by the PHA administering the ACC under this Notice" is an *ineligible* type of housing. This provision will be amended to clarify that the ownership prohibition extends to any unit substantially controlled by the PHA, even if there is a nominally separate ownership entity. An example of this is a unit owned by the PHA controlled, nonprofit corporation.

(h) *Anticipated uses for housing vouchers.* The Department anticipates that future funding authority for housing vouchers will include all uses previously authorized for Section 8 Existing Certificates. Since the Department intends housing vouchers to be the principal vehicle for providing tenant-based rental housing assistance, it intends to use housing vouchers in appropriate circumstances for which budget authority is approved. Examples of planned future uses for housing vouchers include:

(1) For eligible families living in projects subsidized under section 221(d)(3) or section 236 of the National Housing Act where the owner may, and does, prepay the mortgage without Secretarial approval.

(2) For eligible families living in a HUD-owned multi-family project, if the Department sells the project or vacates the units.

(3) For eligible families living in a multi-family project with a HUD-held mortgage when HUD forecloses and a party other than HUD acquires the project.

(4) For eligible families living in projects selected for the Department's Transitional Housing Demonstration, who now seek eligible permanent housing under the Housing Voucher Program. This list is not intended to be inclusive, but, rather, to show the range of intended future uses for housing vouchers.

(i) *Changes to other portions of the Department's regulations.* The Department also plans to amend portions of Parts 812, 813, 511, 791 and 882 to conform provisions inconsistent with the housing voucher provisions as finally adopted in HUD's forthcoming rulemaking. Examples include amending § 813.105(d) to provide for additional categorical exclusions to the section 16 (1937 Act) requirements, and amending § 882.101(b)(2) to clarify that ineligible housing which is owned by the PHA includes units which are substantially controlled by the PHA—such as ownership by a nonprofit corporation that is controlled by the PHA. Future plans also may include rulemaking to provide the same organization and content of the housing voucher and certificate regulations, to the extent allowed by program characteristics.

C. Applicability of Part III of This Notice

The administration of all housing vouchers is governed by Part III of this Notice. In some cases, different procedures apply to different components of the Housing Voucher Program. The differing requirements that have limited applicability are noted clearly. There are other cases where a change is being implemented, but the change applies *across the board*, prospectively. (An example is the new method for computing the security deposit. Nothing is changed for families who have paid a security deposit in accordance with requirements in previous Notices. However, new security deposits collected by owners after the publication of today's notice must comply with Part III of this Notice.) Changes of this kind have been highlighted in Part II.B. of this preamble.

The Department announced the Freestanding Housing Voucher Demonstration in the July 12, 1984 NOFA. The Freestanding Demonstration component of the Housing Voucher Program is designed to compare the Housing Voucher Program with the Certificate Program to determine the effect of housing vouchers on families and PHAs, concentrating on PHAs administering Certificate Programs with at least 1,000 units. The issues to be evaluated include the rates at which families receiving housing vouchers are successful in finding units; the impact of the program on rent burdens of participating families; the percentages of participants who move and who rent in-place; the rate of turnover among participants; the cost of administering the program; and the quality of housing selected by participants. The demonstration also will compare these factors with similar information on the Section 8 Certificate Program.

The special requirements concerning start-up of the Freestanding Demonstration were contained in Part IV of the July 12, 1984 NOFA and remain unchanged (see 49 FR 28463–28464).

The Department announced the Small PHA/Rural Area Housing Voucher Demonstration in the May 5, 1985 NOFA. The Small PHA/Rural Area Housing Voucher Demonstration is complementary to the Freestanding Demonstration and is designed to test the feasibility of the Housing Voucher Program as administered by a small PHA or in a rural area. The issues to be evaluated are analogous to those described in the previous Freestanding Demonstration component discussion.

Special requirements concerning start-up of the Small/Rural Demonstration were contained in Part II of the May 5, 1985 NOFA and remain unchanged (see 50 FR 19476–19477).

None of the FY 1987 housing voucher funding authority will be used in support of the Freestanding Housing Voucher Demonstration or the Small PHA/Rural Area Housing Voucher Demonstration. However, the administration of these demonstrations must comply with the procedures contained in Part III of this Notice.

III. Housing Voucher Program Requirements

A. Definitions

For purposes of the Housing Voucher Program, the following definitions apply.

Act (1937 Act). The United States Housing Act of 1937.

Annual Contributions Contract (ACC). A written agreement between HUD and a PHA to provide annual contributions to the PHA for housing assistance payments and administrative fees.

Annual Income. See 24 CFR 813.106.

Congregate Housing. See section III.M.(b) of this Notice.

Decent, Safe, and Sanitary Housing. Housing that meets the housing quality standards of § 882.109.

Demolition/Disposition. The demolition of public housing buildings or disposition of public housing units. The PHA must obtain HUD approval for demolition or disposition under 24 CFR Part 970.

Eligible Family (Family). A family as defined in 24 CFR Part 812 that, at the time it initially receives assistance under the Housing Voucher Program, (1) qualifies as a very low-income family or as a lower income family displaced by rental rehabilitation program activity under 24 CFR Part 511 (see section III.I. of this Notice); or (2) has been continuously assisted under the 1937 Act.

Housing Assistance Payment. The monthly payment by the PHA to an owner on behalf of a family participating in the Housing Voucher Program. Generally, the amount of the housing assistance payment is determined by subtracting 30 percent of a family's monthly adjusted income from the payment standard that applies to the family. For additional details see section III.J. of this NOFA.

Housing Voucher. A document issued by a PHA declaring a family to be eligible for participation in the Housing Voucher Program and stating the terms and conditions for the family's participation.

Housing Voucher Contract (Contract). A written contract between a PHA and an owner, in the form prescribed by HUD for the Housing Voucher Program, in which the PHA agrees to make housing assistance payments to the owner on behalf of an eligible family.

HUD. The Department of Housing and Urban Development or its designee.

Independent Group Residence (IGR). See section III.M.(b) of this Notice.

Initial PHA. A PHA administering a Housing Voucher Program with a housing voucher holder or housing voucher participant who desires to move or who has moved to another area under the portability procedures in section III.L.(d).

Lease. A written agreement between an owner and a family for the leasing of a dwelling unit by the owner to the family with assistance payments under a housing voucher contract between the owner and the PHA.

Lower Income Family. A family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 80 percent of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

Occupancy Standards. Standards established by the PHA for determining the appropriate number of bedrooms for families of different sizes and compositions.

Opt Out. (1) A Section 8 New Construction (Part 880) or Substantial Rehabilitation (Part 881) project where the owner has the sole option to renew for an additional term of assistance under the Section 8 Housing Assistance Payments Program, but elects not to renew; or (2) A Section 8 Loan Management Set-Aside project (Part 886, Subpart A) where the owner and HUD do not agree to renew the Section 8 housing assistance payment contract for an additional term.

Owner. Any person or entity having the legal right to lease or sublease decent, safe, and sanitary housing.

Participant. A family becomes a participant in the PHA's Housing Voucher Program when the PHA executes a housing voucher contract with an owner for housing assistance payments on behalf of the family.

Payment Standard. (See section III.J. of this Notice).

PHA Jurisdiction. The area in which the PHA is not legally barred from entering into housing voucher contracts.

Public Housing Agency (PHA). Any State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) that is authorized to engage in or assist in the development or operation of lower income housing.

Receiving PHA. A PHA administering a Section 8 Certificate or Housing Voucher Program that accepts a housing voucher holder or housing voucher participant from another PHA under the portability procedures of section III.L.(d) of this Notice.

Rent to Owner. The sum of the amount that will be paid by the PHA to the owner on behalf of a family under the housing voucher contract and the amount that will be paid by the family to the owner to cover the balance of the rent payable to the owner under the lease.

Single Room Occupancy (SRO) Housing. A unit which contains no sanitary facilities or food preparation facilities, or which contains one but not both types of facilities (as those facilities are defined in 24 CFR 882.109 (a) and (b)), and which is suitable for occupancy by a single eligible individual capable of independent living. (See also section III.M.(c) of this Notice.)

Targeted Housing Voucher. Term used to describe circumstances in which HUD provides housing voucher funding specifically for families living in certain types of projects. These types of projects include: demolition/disposition projects, opt out projects, rental rehabilitation projects, and public housing units for desegregation purposes.

Unit Size. The number of bedrooms in a dwelling unit.

Utility Allowance. An amount that applies when the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the rent to owner and is instead the responsibility of the family. The allowance is an amount equaling the estimate made or approved by the PHA of the monthly costs of a reasonable consumption of these utilities and other services for the unit by an energy-conservative household of modest circumstances, consistent with the requirements of a safe, sanitary and healthful living environment.

Utility Reimbursement. Concept applies when the rent to the owner does not include some or all of the utilities and the family is responsible for them. The utility reimbursement is the excess of the housing assistance payment over the amount payable to the owner by the PHA.

Very Low-Income Family. A lower income family whose annual income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller or larger families. HUD may establish income limits higher or lower than 50 percent of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes.

Voucher. See Housing Voucher.

Voucher Contract (Contract). See Housing Voucher Contract.

B. Applicability and Purpose

(a) *Applicability.* The provisions of this Part III apply to the use of contract

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and budget authority for all housing voucher assistance authorized by Section 8(o) of the 1937 Act. Requirements that apply to some, but not all, Housing Voucher Program components also are contained in Part III, but are distinguished from the generally applicable requirements. By cross reference, provisions of the regulations for the Section 8 Existing Housing (Certificate) Program (24 CFR Parts 812, 813 and 882, Subparts A and B) are incorporated in this Notice and also apply to the Housing Voucher Program Unless otherwise specified, references to particular section numbers (e.g., § 882.110) are to regulations in Title 24 of the Code of Federal Regulations. Provisions that apply only to a limited number of components of the Housing Voucher Program are noted within the generally applicable provisions.

(b) *Purpose.* The purpose of the Housing Voucher Program is to assist eligible families in affording rents for decent, safe, and sanitary housing.

C. Equal Opportunity Requirements

Participation in the Housing Voucher Program requires compliance with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and all related rules, regulations and other requirements. In addition, failure to comply with these equal opportunity requirements will result in the imposition of sanctions under applicable civil rights law.

D. Allocations of Funding and Invitations for Applications

(a) *Invitations for Applications for Housing Voucher Assistance in Connection with the Rental Rehabilitation Program.* (1) In fiscal year 1987, HUD will allocate funds for up to one housing voucher for every $7,500 of the rental rehabilitation grant funds. After HUD has determined the amount of contract and budget authority to allocate for housing vouchers in connection with a particular grantee's Rental Rehabilitation Program, it will invite one or more PHAs to submit applications. HUD will invite the PHA administering the Certificate or Housing Voucher Program in the grantee's jurisdiction ("local PHA"), unless the grantee has indicated that it wants one or more other PHAs to administer the housing voucher assistance. Where the grantee has so indicated, the grantee, the local PHA, and HUD will discuss the matter. If the local PHA wants to administer the assistance in connection with the grantee's Rental Rehabilitation Program, HUD will decide which PHA or PHAs to notify, based on HUD's determination of which can provide the most efficient and effective program administration. If the local PHA does not want to administer the assistance, HUD may notify the other PHA or PHAs indicated by the grantee, or one or more other PHAs, based on HUD's determination of which can provide the most efficient and effective program administration.

(2) An invitation for an application will state:

(i) The HUD has allocated housing voucher authority in connection with the Rental Rehabilitation Program as provided in this Notice;

(ii) The amount of authority available and the estimated number of units (based on all units having two bedrooms) that the authority will support;

(iii) The name of the rental rehabilitation grantee, with a statement that before the annual contributions contract is executed (A) the PHA and grantee (or the State recipient as defined in 24 CFR 511.2 where a State is distributing the grant to units of local government) must enter into a memorandum of understanding (see section III.F.(c)); and (B) the PHA must certify in the transmittal letter returning the ACC to HUD for execution that the PHA has consulted with the grantee concerning use of the housing vouchers for the PHA's general program purposes until needed for the rental rehabilitation project;

(iv) That the PHA's application for housing voucher assistance must be submitted at the same time as the grantee submits its program description, or at such other time as HUD designates;

(v) That relevant information and forms are included with the invitation and that the PHA may obtain additional information from the HUD Field Office; and

(vi) Any additional information or documentation the PHA must submit.

(b) *Procedures for State Rental Rehabilitation Programs.* Where a State is the grantee under the Rental Rehabilitation Program, and the identity of the PHAs that will administer the Housing Voucher Programs within the State is not known, or the applications for the PHAs that will administer the Housing Voucher Programs in connection with the State program have not been approved, HUD will reserve the contract and budget authority for use in connection with the State's program at the time HUD provides the State with written notification of grant approval under 24 CFR Part 511, or as soon as possible thereafter. When the identity of the PHAs becomes known, HUD will invite them to apply in accordance with this Notice, and the authority reserved will be transferred when HUD approves a PHA's application. For fiscal year 1987 housing voucher allocations, States will have until September 30, 1988 to transfer the authority reserved for them to specific local PHAs. If a State does not identify specific local PHAs by September 30, 1988, HUD will make these funds available for use in other non-formula allocation communities within the same State.

(c) *Invitations for Applications for Formula Allocation Housing Vouchers—Allocation of Funding.* The Department will allocate a portion of the current year's housing voucher funding to its Regional Offices or Field Offices, using a formula allocation that is patterned after 24 CFR Part 791. If allocated to the Regional Offices, each Regional Office may determine the amounts of housing voucher funding to be used for individual PHAs or its may delegate these decisions to its Field Offices.

(d) *Invitations for Applications for Formula Allocation Housing Vouchers—Contents of Invitation.* (1) Upon receipt of its funding allocation, the Regional or Field Offices will invite PHAs to submit applications to the appropriate Field Office.

(2) The Department generally considers 50 housing vouchers to be the minimum program size for cost-effective administration of a Housing Voucher Program. For this reason, HUD will not approve an initial application for fewer than 50 housing vouchers unless a PHA specifically requests fewer housing vouchers. (This initial minimum need only be net once and does not apply to additional allocations. This minimum does not apply to any of the special use allocations made by Headquarters.) Every effort will be made to provide sufficiently large allocations of housing vouchers to individual PHAs to facilitate program administration and economies of scale.

(e) *Allocations for Desegregation of Public Housing.* HUD may provide housing voucher funding to a PHA for desegregation of public housing projects. The funding must be used, in accordance with the PHA's HUD-approved administrative plan, modified to reflect revisions required by HUD to provide housing vouchers for families living in public housing projects or applicants on the PHA's public housing waiting list. The funding may be

provided if HUD determines the following criteria have been met:

(1) The PHA has been found in preliminary noncompliance with Title VI of the Civil Rights Act of 1964 because of discriminatory practices or policies that resulted in segregated public housing projects, and, consistent with that finding—

(i) The PHA has entered into a compliance agreement and has carried out its obligations under the agreement but, because of circumstances beyond the PHA's control, has not succeeded in desegregating its projects; or

(ii) It is determined during the course of compliance agreement negotiations that the PHA could not develop and implement a meaningful plan to desegregate its project(s) without housing vouchers; and

(2) The racial characteristics of the PHA's public housing project occupants and the length and racial composition of the public housing waiting list is such that providing housing vouchers to a limited number of public housing tenants or applicants would facilitate the desegregation of public housing projects.

E. Submission of Applications

(a) The PHA must submit its application for the Housing Voucher Program in accordance with § 882.204, with the following exceptions:

(1) *Equal Opportunity Housing Plan.* Each PHA Must submit an equal opportunity housing plan as required under § 882.204(b)(1), except that it must be a combined plan covering the PHA's entire Certificate Program and Housing Voucher Program. The plan must include any special rules for use of housing vouchers in connection with any program component identified in this Notice.

(2) *Administrative Plan.* Each PHA Must submit an administrative plan as required under §882.204(b)(3), except it must be a combined plan covering the PHA's Certificate Program and Housing Voucher Program. Applicable special functions related to housing vouchers, such as special procedures for selection of families in connection with the Rental Rehabilitation Program, targeted, freestanding, or small/rural components, must be covered. (Some functions, such as computation of the family rent in accordance with section 3(a) of the U.S. Housing Act of 1937, and contract rent adjustments, do not apply to the Housing Voucher Program.)

(b) For all components of the Housing Voucher Program, the application must include estimates of gross family income of families to be assisted.

(c) For targeted housing vouchers only, the application must include the identification of the size and the composition of families to be assisted.

(d) If applicable, the PHA must describe its local housing initiatives in support of its Section 8 Certificate and Housing Voucher Programs. The application should specify the size of its combined Section 8 Existing Certificate and Housing Voucher Programs and what local services, facilities or funding are provided in support of the program. If the PHA operates a Section 8 Program that currently does not receive local support but there are plans for locally generated support in fiscal year 1987 (and beyond), the PHA should describe these plans, including a schedule for implementation.

F. Processing of Housing Voucher Applications

(a) *Processing of Applications.* (1) HUD will send applications for more than 12 units to the appropriate chief executive officer of the unit of general local government for review and comment. This submission will be in accordance with 24 CFR Part 791, as required by section 213 of the Housing and Community Development Act of 1974.

(2) HUD will evaluate each application on the basis of the requirements of this Notice and other program requirements, and will consider any comments received from the unit of general local government. HUD also will take into account the PHA's ability to administer the Housing Voucher Program, as evidenced, in part, by its performance in operating the Certificate Program, where applicable.

(b) *Application Preferences.* (1) Preference will be given to an application from a PHA that demonstrates locally initiated efforts in support of its Section 8 Certificate and Housing Voucher Programs. This preference takes precedence over the other two preferences listed, and Field Offices will attempt to fund applications which demonstrate these locally-generated efforts before evaluating applications indicating eligibility only for the other preferences. Evaluation of a locality's contribution will be measured competitively—that is, by the extent to which a locality is able to provide services or cash contributions or demonstrate its intention to provide this kind of support in the future, as compared to services or contributions provided by other localities of like program size.

(2) Preference may be given to applications from PHAs that provide families with the broadest geographical choice of housing, including interjurisdictional and interstate housing choice.

(3) Preference may be given to applications from PHAs whose needs previously have been underfunded in relation to the needs of other localities within the allocation area.

(c) *Approval or Disapproval of Applications.* HUD will notify the PHA and, if applicable, the Rental Rehabilitation Program grantee, whether HUD has approved or disapproved the PHA's application. Where HUD has disapproved an application, HUD will include a statement of the reasons and, where applicable, the changes required to make the application approvable. HUD will not approve a PHA's application for housing vouchers in connection with the Rental Rehabilitation Program where HUD disapproves the related program description submitted by a Rental Rehabilitation Program grantee.

(d) *Processing of Applications: Procedures (Memorandum of Understanding) for the Rental Rehabilitation Program.* In processing applications for housing vouchers, HUD requires that the PHA and the grantee under the rental Rehabilitation Program execute a memorandum of understanding setting forth the responsibilities of each party and the procedures to be followed in coordinating the use of authority for housing vouchers allocated for use with rental rehabilitation grant amounts. Where a State is distributing the Rental Rehabilitation grant amounts to units of general local government (State recipients), the PHA and the State recipient must execute the memorandum of understanding. Before HUD and the PHA execute an ACC for the housing vouchers, the memorandum must be executed by both parties and the PHA must submit a certification to HUD that both parties have executed the memorandum and it is consistent with the PHA's HUD-approved administrative and equal opportunity plans. If there is any inconsistency between the PHA's administrative plan and the memorandum of understanding, the administrative plan prevails.

G. Annual Contributions Contract

(a) *ACC Execution.* HUD will execute the ACC with the PHA, in a form prescribed by HUD, in accordance with § 882.206, after HUD approves the application for housing voucher assistance. In addition, in the case of the rental rehabilitation component, HUD will not execute the ACC unless HUD also has received the PHA certification

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that the PHA has consulted with the grantee (if applicable) and immediate use of the housing vouchers for the PHA's Housing Voucher Program until needed by families living in the rental rehabilitation project, and has received the PHA certification that the PHA and the grantee under the Rental Rehabilitation Program have executed a memorandum of understanding as required under section III.F.(d) of this Notice.

(b) *Term of ACC.* The ACC term for each funding increment under the ACC is five years.

(c) *Single ACC.* HUD and the PHA will execute one ACC covering all of the authority for the PHA's Housing Voucher Program. However, where (as in the case of some statewide PHAs) the area for which the PHA may execute housing voucher contracts is within the jurisdiction of more than one HUD Field Office, HUD may require one ACC for each Office.

(d) *Amount of Annual Contributions.* (1) The total amount of annual contributions contracted for the ACC for the five-year ACC term for each funding increment will be five times the total of (i) the average HUD-estimated annual PHA administrative fee plus (ii) 115 percent of the amount that HUD estimates would be required in the first year of the ACC for housing assistance payments to owners, assuming a full year of occupancy.

(2) The PHA must plan administration of its Housing Voucher Program in a manner that will ensure its operation within the amounts originally contracted for under the ACC, taking into account (i) the amounts available from reserving 15 percent more than the estimated housing assistance payments for the first year and (ii) the number of families that may be assisted (including consideration of the effect of a revised payment standard under section III.J., to assure continued affordability, changes in family income and composition, and portability of housing vouchers). HUD does not intend to make any ACC amendments to provide additional funding for the purpose of maintaining a particular number of assisted families.

H. Procedures in Connection With the Rental Rehabilitation Program

(a) Housing vouchers are a scarce resource, to be used to the fullest extent possible. Accordingly, the Department authorizes the following procedures designed to maximize the use of housing vouchers and certificates allocated in connection with the Rental Rehabilitation Program. By means of a two-year plan, the Department will "decouple" housing vouchers and rental rehabilitation grant funds. These steps are taken to enhance the PHA's flexibility in administering its Housing Voucher Program, while providing rental rehabilitation grantees assurance that housing voucher assistance will be available to avoid displacement of families residing in rental rehabilitation projects.

(b) The Department is simplifying the procedures applicable to housing vouchers allocated in connection with rental rehabilitation. The new procedures are as follows:

(1) The PHA must determine how many housing vouchers it has received in connection with rental rehabilitation. Allocations in previous years were up to one housing voucher for every $5,000 rental rehabilitation grant funds and allocations in fiscal year 1987 are up to one housing voucher for every $7,500 of rental rehabilitation grant funds. The PHA must determine the total number of housing vouchers it has been allocated and also must note how many housing vouchers are allocated for fiscal year 1987. For example, if a PHA has received the equivalent of 20 housing vouchers in fiscal year 1985 and is receiving an additional 25 housing vouchers in fiscal year 1987, it must note that it has received a total of 45 housing vouchers, 25 of which are fiscal year 1987.

(2) The PHA is free to use all (in our example, 45) of its housing vouchers (and certificates, if it received any) immediately for its ongoing Housing Voucher Program, if it meets the following:

(i) The PHA assesses its program and determines that there is need for immediate use of some or all of the housing vouchers and that using these housing vouchers will not jeopardize the availability of the housing vouchers or certificates for rental rehabilitation purposes.

(ii) The PHS consults with the rental rehabilitation grantee (or State recipient) to determine the grantee's rehabilitation schedule and the timing of the PHA's issuance of certificate and housing vouchers in connection with the rental rehabilitation project.

(iii) The PHA develops a plan to ensure that housing vouchers or certificates will be available when the rental rehabilitation need arises.

(iv) The PHA certifies in its cover letter transmitting its ACC to HUD for HUD execution that it has consulted with the rental rehabilitation grantee.

(3) HUD will not amend the PHA's ACC to provide any additional authority for housing vouchers or certificates because the PHA has assessed incorrectly the future availability of housing vouchers or certificates. If no housing voucher or certificate is available when the rental rehabilitation need arises, the PHA may not issue replacement housing vouchers or certificates until funding becomes available.

(4) In issuing the housing vouchers or certificates for rental rehabilitation purposes:

(i) The PHA may issue a housing voucher or certificate to an eligible family living in a rental rehabilitation building prior to rehabilitation that would be displaced by the rental rehabilitation activities.

(ii) The PHA may issue a certificate to a lower income family living in a rental rehabilitation if the family would pay over 30 percent of its income for rent as the result of the rehabilitation.

(iii) The PHA may target assistance to families on its waiting list who agree to move initially into a rental rehabilitation project. The PHA only may target the equivalent of its total number of housing vouchers and certificates allocated in connection with rental rehabilitation *minus* the number of housing vouchers allocated to the PHA in connection with rental rehabilitation in fiscal year 1987. (In our example, the PHA is free to target 20 (45–25) housing vouchers or certificates to families on its waiting list.)

(iv) The PHA must include as part of its briefing packet to all housing voucher and certificate applicants information concerning the availability of rental rehabilitation projects for housing voucher and certificate holders.

I. Selecting Families and Issuing Housing Vouchers

(a) *Eligible Families.* (1) A family is eligible for assistance under the Housing Voucher Program if, at the time it initially receives assistance under the program, the family:

(i) Qualifies as a very low-income family;

(ii) Qualified as a lower income family (other than very low-income) and is displaced by rental rehabilitation activity under 24 CFR Part 511; or

(iii) Has been continuously assisted under the U.S. Housing Act of 1937.

(2) A lower income family in a rental rehabilitation project that is forced to vacate a unit because of physical construction, housing overcrowding, or a change in use of the unit, is considered "displaced". A lower income family that lives in a project undergoing rental rehabilitation activities whose post-rehabilitation rent would not be affordable is not considered "displaced" for this reason alone, for purposes of determining housing voucher eligibility. (Such a targeted family may be issued a certificate to assist in paying the higher rent or in finding another unit; unlike housing vouchers, certificates are not subject to the statutory requirement for actual displacement as a condition of eligibility for a lower income family, but not very low-income family.) However, certificates are subject to section 16 restrictions discussed in § 813.105.

(3) Although the family may qualify under this paragraph (a), the PHA may be unable to issue a housing voucher to an applicant, or to a participant who wants to move to a new unit, because of the limitations described in paragraph (b) of this section.

(b) *Compliance with Section 16 of the U.S. Housing Act of 1937.* (1) *Five Percent Cap.* A PHA may issue a housing voucher to an eligible family with an income above 50 percent of area median income as provided in paragraph (a) of this section, subject to the requirements of section 16 of the 1937 Act. Section 16 restricts to five percent nationally the number of lower income families with incomes above 50 percent of median income that may be assisted under the 1937 Act (both Section 8 and public housing).

(2) *Rental Rehabilitation Displacee.* The Technical Amendments Act of 1984 (Pub. L. 98–479, 97 Stat 2218), approved October 17, 1984, extended housing voucher eligibility to families determined to be lower income families at the time they initially receive assistance and that are displaced by Rental Rehabilitation Program activities. However, because of the requirements of section 16 of the 1937 Act, HUD must authorize the issuance of housing vouchers for families under this paragraph (b)(2). The PHA must report each case to HUD.

(3) *Eligible Family with Income Greater than 50 percent of Median Income that has been Continuously Assisted under the 1937 Act.* The PHA may issue a housing voucher to a family with an income greater than 50 percent of median income that has been continuously assisted under the 1937 Act only in the following circumstances:

(i) The PHA may, without requesting prior HUD approval, issue a housing voucher to a family living in a public housing unit that is being demolished or disposed of with HUD approval. The PHA must report each case to HUD.

(ii) The PHA may, without requesting prior HUD approval, issue a housing voucher to a family residing in a unit that was assisted under a project-based Section 8 housing assistance payments contract that is being terminated. The PHA must report such initial issuance to HUD, unless the family uses the housing voucher assistance to remain in the same unit. If the family initially used its housing voucher assistance to remain in the same unit, but the family later requests a housing voucher to move to a new unit and its income at that time is greater than 50 percent of area median, the PHA must report each case to HUD.

(iii) The PHA may, without requesting prior HUD approval, issue a housing voucher to a family, if the family is a current housing voucher participant who wishes to move to another unit with housing voucher assistance and its income is greater than 50 percent of area median income. The PHA must report each case to HUD.

(iv) In all other cases, the PHA must request prior HUD approval before issuing a housing voucher to a family, if the family is assisted under another program under the 1937 Act and requests to transfer to the Housing Voucher Program (for example, issuance of a housing voucher to a family living in a public housing project).

(c) *Activities to Encourage Participation by Owners and Others.* The PHA must encourage participation by owners and others in the Housing Voucher Program as required under § 882.208 for the Section 8 Certificate Program.

(d) *Selecting Families; Issuing Housing Vouchers: Generally Applicable Procedures.* (1) The PHA must select eligible families for participation in accordance with § 882.209(a), except for the provisions in § 882.209(a)(4)(ii), which are specifically modified by paragraphs (e) and (f) of this section.

(2) The PHA must verify the sources of income and other information concerning the family necessary to determine eligibility and the amount of the housing assistance payment.

(3) The PHA must issue housing vouchers in accordance with its occupancy standards established under § 882.209(b) and this Notice; however, if a family rents a unit with a larger or smaller number of bedrooms than stated on the housing voucher, section III.N.(c) of this Notice applies. The PHA must issue a housing voucher for a particular number of bedrooms consistent with its occupancy standards and consistently for all families of like composition.

(4)(i) If an applicant on the PHA's Section 8 waiting list is offered a housing voucher (except the offer of assistance in paragraphs (4)(ii) or (4)(iii) of this section) the family will not lose its place for refusing the housing voucher if it desires to wait for a certificate. Conversely, the family will not lose its place on the waiting list if the family refuses a certificate if it desires to wait for a housing voucher. However, if the family then refuses the second form of assistance when it is offered, the family must be taken off the waiting list. If the family so requests, it will be reinstated on the waiting list, but only in conformance with the PHA's HUD-approved administrative plan and equal opportunity housing plan.

(ii) In selecting applicants for participation in the Freestanding Demonstration, the PHA must offer an available certificate and housing voucher to a pair of families on the waiting list that qualify for the same size unit under the PHA's occupancy policy.

(iii) In selecting applicants for participation in the Small/Rural Demonstration, the PHA must offer an available housing voucher to the next family on the waiting list that qualifies for the unit size of the available housing voucher under the PHA's occupancy standards.

(iv) If an applicant is offered a housing voucher on the condition that the applicant initially must use the housing voucher in a Part 511 rental rehabilitation project, the refusal of the applicant to accept the housing voucher will not be counted as refusal of one form of assistance under paragraph (d)(4)(i) of this section.

(e) *Selecting families—Targeting Assistance to Applicant Living in Certain Projects.* (1) As a general rule, the PHA may not establish a selection preference based on the identity or location of the housing which is occupied by the applicant. However, if the Assistant Secretary for Housing provides housing vouchers funding for families living in any of the following types of projects, the PHA must use the funding initially to assist families living in the projects.

(i) Public housing units that are being demolished or disposed of with HUD approval;

(ii) Section 8 New Construction (Part 880) or Substantial Rehabilitation (Part 881) projects where the owner has sole discretion to opt-out of an additional term of assistance under the Section 8 Housing Assistance Payment Program and does so;

(iii) Section 8 Loan Management Set-Aside projects (Part 886, Subpart A) where the owner and HUD do not agree to renew the contract of assistance for an additional term;

(iv) Public housing units, where HUD has made a determination under section III.D.(f) of this Notice that housing voucher funding is necessary for the desegregation of the PHA's public housing (but, see also paragraph (f)(1) of

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this section, which describes a concurrent use authorized for these housing vouchers); and

(v) Part 511 Rental Rehabilitation projects (but see also section III.H. of this Notice and paragraph (f) of this section). After the grantee approves a rental rehabilitation project, the PHA must issue any needed housing vouchers to families living in the project to be rehabilitated sufficiently in advance of the time assistance will begin to give families time to decide whether to move (where they are not required to move) or to give them time to locate another unit (where they are required to move or choose to move).

(2) If the PHA issues a housing voucher to a family living in any of the projects identified in paragraphs (e)(1)(i) through (e)(1)(v) of this section, the family may use the assistance for an eligible unit located anywhere in the PHA's jurisdiction, consistent with the "finders-keepers" policy described in section III.K. of this Notice.

(f) *Selecting Families—Targeting Assistance to Families on the PHA's Waiting List.* The following rules also apply to the PHA in selecting families to assist.

(1) If HUD has provided housing voucher assistance based on a determination under section III.D.(e) of this Notice, to assist in the desegregation of the PHA's public housing, the PHA must issue housing vouchers to eligible families on the PHA's *public housing* waiting list (or to families living in public housing in accordance with paragraph (e)(1)(iv) of this section). The family may use the assistance for an eligible unit located anywhere in the PHA's jurisdiction, consistent with the "finders-keepers" policy described in section III.K. of this Notice.

(2) If HUD has provided housing voucher assistance in connection with Part 511 Rental Rehabilitation projects, and the grantee so requests, the PHA may choose families from its Section 8 waiting list who agree to move initially into a rehabilitated project. The following rules apply:

(i) A family who accepts a housing voucher under this paragraph (f)(2) must first use the housing voucher to occupy a dwelling unit rehabilitated under the Part 511 Rental Rehabilitation Program and specifically identified by the PHA when the housing voucher was offered.

(ii) Any housing vouchers issued under this paragraph must be issued to the families selected from the PHA's waiting list approximately 60 days before the estimated completion date for the rehabilitation work.

(iii) In using the housing vouchers for the families selected from the PHA's waiting list, the PHA is limited to the total number of housing vouchers allocated in connection with rental rehabilitation minus any housing vouchers allocated in fiscal year 1987 in connection with rental rehabilitation. (For example, if the PHA received 15 housing vouchers in connection with a fiscal year 1984 rental rehabilitation project; 50 in connection with a fiscal year 1986 rental rehabilitation project; and 20 housing vouchers in connection with a fiscal year 1987 rental rehabilitation project, the PHA may target 65 to families on its waiting list (sum of all years (85) minus fiscal year 1987 (20)=65).

(g) *PHA Briefing of Families.* The PHA must brief each family in accordance with § 882.209(c), and must include information on the range of neighborhoods in which the family may find units meeting program requirements and information on possibilities for participating in available portability programs as described in section III.L. of this Notice. Section 882.209(c)(7) does not apply. Instead, the PHA must brief the family on the function of the payment standard, determination of the housing assistance payment, the incentive for selecting a unit renting for less than the payment standard, and the minimum rent the family must pay. In jurisdictions in which the PHA is administering both a Section 8 Certificate Program and a Housing Voucher Program, the PHA also must explain how the principal features of the Housing Voucher Program differ from the Section 8 Existing Certificate Program.

(h) *Housing Voucher Packet.* The PHA must give each family a housing voucher packet in accordance with § 882.209(b)(4), except that instead of information on the Total Tenant Payment and the Tenant Rent, the PHA must give the family information on how the PHA computes the housing assistance payments. The PHA also must provide to the family as complete information as possible about available rental rehabilitation projects as possible places for the family to find housing.

(i) *Term of Housing Voucher.* Section 882.209(d), Expiration and Extension of Certificate, applies to housing vouchers issued in the Housing Voucher Program.

J. Housing Voucher Payments

(a) *Overview.* The determination of the amount of assistance provided a family in the Housing Voucher Program is based on the concept of the payment standard. Each PHA adopts a schedule of payment standard amounts, broken down by unit size and Fair Market Rent area. The amount of housing assistance paid on behalf of a family is determined by subtracting 30 percent of a family's monthly adjusted income (as determined under Part 813) from the payment standard amount applicable to the family (and subject to the minimum rent calculation in paragraph (d)(3) of this section). To assure affordability, the PHA may revise its payment standard amounts twice in any five-year period. The family's housing assistance payment also may change if the family's income or composition changes. This section J. explains how the housing assistance payments system works.

(b) *Definition.* (1) *General.* A payment standard is an amount used to calculate the housing assistance a family will receive in the PHA's Housing Voucher Program. The PHA must establish a schedule of payment standard amounts by unit size (single room occupancy, zero-bedroom, one-bedroom, etc.) and Fair Market Rent area. There is only one payment standard schedule in effect at any given time.

(2) *Single Room Occupancy Payment Standard.* Any PHA that wishes to utilize SRO housing must propose for HUD approval an SRO payment standard for the PHA's jurisdiction. The PHA may propose a payment standard amount that is within the range of 75 to 100 percent of the applicable published 0-bedroom Fair Market Rent or the HUD-approved, community-wide exception rent. Within this range, the proposed payment standard must reflect the presence of sanitary facilities or food preparation facilities, or the absence of both and what must be paid to obtain privately owned, existing, decent, safe and sanitary rental SRO housing of modest (non-luxury) nature with suitable amenities.

(3) *Independent Group Residence Payment Standard.* The payment standard for a participant in an IGR is determined by dividing the dollar amount of the payment standard for the entire residence (for example, the 4-bedroom payment standard for a 4-bedroom residence) by the total number of potential occupants (assisted or unassisted), excluding a resident assistant (if any) occupying no more than one bedroom.

(c) *Adoption of Payment Standard.* Each PHA administering a Housing Voucher Program must adopt a schedule of payment standard amounts no later than May 19, 1987. The following apply:

(1) For a PHA that receives its first increment of funding in fiscal year 1987, or a PHA that had its first increment of funding reserved in a previous year, but does not yet have an executed ACC, the payment standard schedule amounts must be the same as the Fair Market Rents published for effect or the HUD-approved community-wide exception rents at the time the ACC is executed by HUD.

(2) For a PHA that has received a previous increment of funding (for which the ACC was executed before February 19, 1987, the payment standard schedule amounts may be anywhere between (i) its initial payment standard (*i.e.*, the Fair Market Rents in effect when the ACC was executed for the first funding increment) and (ii) the Fair Market Rents published for effect or the HUD-approved community wide exception rents at the time of adoption of the payment standard schedule.

(3) A payment standard may never exceed the applicable Fair Market Rent published for effect or the HUD-approved community-wide exception rent.

(d) *How to Use the Payment Standard.* (1) The PHA uses the payment standard schedule to determine what payment standard amount applies to a particular family's circumstances. The appropriate amount is determined by the family size and composition and the PHA's occupancy standards. Once the payment standard amount is determined from the schedule, the PHA subtracts 30 percent of the family's monthly adjusted income (as computed under Part 813) to arrive at the amount of assistance the PHA will provide to the owner on behalf of the family. (For example, if a family qualified for a four-bedroom housing voucher and has a monthly adjusted income of $500, and the payment standard for a four-bedroom housing voucher is $600, the housing assistance payment for the family is the payment standard ($600) minus 30 percent of the family's monthly adjusted income ($150) or $450.) Before entering into a housing voucher contract with the owner for this amount, the PHA must complete the "minimum rent" calculation in paragraph (d) (3) of this section to ensure that the family is paying at least the minimum amount required by law.

(2) If a unit rents for more than the payment standard, the housing assistance payment is not increased, nor is the family told it must find another unit, as in the Certificate Program. Instead, the family may pay the entire difference between the rent to the owner and the housing voucher assistance. If the unit rents for less than the payment standard, the family benefits by paying less than 30 percent of its monthly adjusted income toward rent, subject to the minimum rent calculation.

(3) The family must contribute at least 10 percent of its monthly gross income for rent. The PHA must ensure that the housing assistance is not greater than the difference between the rent to owner plus any applicable utility allowance and 10 percent of the family's monthly gross income, determined in accordance with Part 813. (This is the only time that actual rent for a unit is used to make a housing assistance payment calculation).

(4) The payment standard schedule adopted by May 19, 1987 by a PHA already administering the Housing Voucher Program is the payment standard schedule the PHA use to determine all houing assistance payments for all families in the PHA's Housing Voucher Program, until the payment standard schedule is amended by an affordability adjustment under the procedures of paragraph (e) of this section.

(e) *Changing the payment standard: affordability adjustments.* (1) *General.* To assure continued affordability, the PHA may, in its discretion, adopt up to two affordability adjustments for each unit size and each FMR area in any five-year period. The PHA must examine when the two previous affordability adjustments were adopted to ensure that no more than two are adopted within any five-year period.

(2) *Previously adopted affordability adjustments.* Affordability adjustments may be adopted for a single unit size. Any previous adjustment standard schedules that adjusted the payment standard amounts for particular unit sizes are counted only as affordability adjustments for the particular unit size(s) for which the payment standard amount was increased, but not as an affordability adjustment for the PHA's entire Housing Voucher Program. (Previoulsy adopted new family/mover schedules were not considered affordability adjustments and should not be counted as such.)

(3) *Affordability cap.* An affordability adjustment may not cause the payment standard amount for the unit size to exceed the dollar amounts of the published FMRs or the HUD-approved community-wide exception rent for the unit size in effect at the time of the adjustment.

(4) *Required consultation.* Before adopting an affordability adjustment, the PHA must consult with the public and the unit of general local government in the PHA's jurisdiction concerning the impact of the adjustment on the number of families that can be assisted.

(f) *Changing the payment standard schedule: lower FMRs.* When FMRs are published for effect in the Federal Register and the FMRs are lower than the amounts in the PHA's payment standard schedule (as amended by any affordability adjustments), the PHA must adopt new payment standards, using the lower, effective FMRs or the HUD-approved, community-wide exception rents. Since this revision of the payment standard schedule is required by HUD because of lower FMRs, it is not subject to the two-in-five-year limitation on the PHA's discretionary authority to adopt adjustments in order to assure continued affordability.

(g) *When a family's payment standard may change.* The only times the payment standard that is applied to a family may change are:

(1) At regular reexamination (see rules for regular reexamination in paragraph (h) of this section); or

(2) At the time a family moves to another unit (see paragraph (i) of this section for additional details).

(h) *Rules at regular reexamination.* (1) The payment standard that applied to a family at the time of initial lease approval for the unit or at its most recent regular reexamination continues to be used to determine the amount of housing assistance to be paid on behalf of the family unless one of the following circumstances applies:

(i) The PHA has adopted an affordability adjustment revising the payment standard applicable to the family;

(ii) The PHA has adopted new occupancy standards. In this case, the payment standard for the appropriate unit size under the PHA's new occupancy standards is used;

(iii) The family' size or composition has changed. In this case, the payment standard for the appropriate unit size is used.

(2) Unless there has been a change in family size or composition or a change in the PHA's occupancy standards, the payment standard for a particular family at the time of reexamination may not be determined to be less than the payment standard previoulsy used for the family.

(i) *Rule when a family moves.* The payment standard that applied to a family at the time of initial lease approval for the unit or at its most recent regular reexamination continues to be used to determine the amount of housing assistance to be paid on behalf of the family, unless one of the following circumstances applies:

(i) The PHA had adopted a new payment standard or an affordability adjustment revising the payment standard applicable to the family;

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(ii) The PHA has adopted new occupancy standards. In this case, the payment standard for the appropriate size under the PHA's new occupancy standards is used;

(iii) The family's size or composition has changed. In this case, the payment standard for the appropriate unit sizes is used.

(j) *Request for interim reexamination.* A family may request an interim reexamination of income, as provided for in section III.Q. of this Notice, which may result in a change in family income or adjusted income, but not in the payment standard applicable to the family.

(k) *Prohibition Against Double Subsidy.* In no event may any family receive the benefit of housing voucher assistance while receiving one of the following: other section 8 or section 23 housing assistance; section 101 rent supplements; section 236 rental assistance payments; or other duplicative Federal, State or local housing subsidy, as determined by HUD. In the case of section 236 units having only interest reduction subsidy (insured or noninsured) the duplicative subsidy must be prevented by the owner's setting the unit rent to owner for a housing voucher participant at the lesser of the market rent for the unit, as approved by HUD, or the payment standard, but not less than basic rent.

(l) *No Payments for Vacancies.* If a family moves from the unit, the owner must notify the PHA promptly, and the PHA may not make any additional housing assistance payments to the owner for any month after the month during which the family moves. The owner may retain the housing assistance payment for the month during which the family moves.

(m) *Utility Reimbursement.* (1) Where the rent to the owner does not include some or all utilities and the family pays the utility company directly, occasionally the housing assistance payment will exceed the rent to the owner for the unit. In such a case, the PHA must pay to the family as a utility reimbursement the excess of the housing assistance payment over the rent payable to the owner. (Without this reimbursement, the family's housing assistance payment would be less than the amount for which the family is eligible under the subsidy formula.) For example, if the payment standard amount is $500, and $120 is 30 percent of a family's monthly adjusted income, the housing assistance payment would be $380. If the rent to owner is $350, and the utility allowance is $150, the PHA pays $350 to the owner and the remaining $30 of the housing voucher payment to the family as a utility reimbursement.

(2) If the family and the utility company consent, the PHA may pay the utility reimbursement jointly to the family and the utility company or directly to the utility company.

(n) *Assisting More Families.* If a PHA determines that some or all of the available annual contributions under its ACC are not needed for participating families, including future adjustments of housing assistance payments and portability moves, it may assist more families.

K. Finders-Keepers Policy

Except as described in paragraph K.(c) below, this section sets forth the same policy that applies to the Certificate Program.

(a) A Family with a housing voucher is responsible for finding a housing unit suitable to the family's needs and desires in any area where the PHA (including the receiving PHA when the family is participating under the portability procedures in section III.L. of this Notice) determines that it is not legally barred from entering into contracts. A family may select the dwelling unit that it already occupies, if the unit is approvable. Upon request, the PHA must assist a family in finding a unit in circumstances where, because of age, handicap, large family size or other reasons, the family is unable to locate an approvable unit. The PHA also must provide assistance where the family alleges that illegal discrimination on grounds of race, color, religion, sex, national origin, age or handicap is preventing it from finding a suitable unit, and in appropriate cases must provide the family with a copy of a Form HUD–903 for use in filing a housing discrimination complaint. This assistance must be in accordance with the PHA's approved equal opportunity housing plan.

(b) Neither in assisting a family in finding a unit nor by any other action may the PHA directly or indirectly reduce the family's opportunity to choose among the available units in the housing market.

(c) This section III.K. applies to any family to which a housing voucher is issued by a PHA. The finders-keepers policy does not apply to the first occupancy by a family on the PHA's waiting list that is issued a Housing Voucher because the family agrees to move initially into a project rehabilitated under the Rental Rehabilitation Program, when applicable (see section III.I.(f)(2) of this Notice). However, after initial use of the housing voucher in the rehabilitated project, the family is free to move to any other approvable unit in the PHA's jurisdiction, consistent with the Finders-Keepers policy, or to move to another PHA's jurisdiction under section III.L. of this Notice.

L. Portability of Housing Vouchers

(a) *General Introduction.* (1) This section III.L. describes portability procedures for families participating in the Housing Voucher Program. Housing voucher portability procedures are not intended to supplant current voluntary mobility programs for the Section 8 Certificate Program that PHAs may determine to extend to housing voucher participants.

(2) If a PHA is administering a Housing Voucher Program in the location to which a family (housing voucher holder or participant) wishes to move, the PHA must accept the family and provide services to the family as if the family were a participant in its Housing Voucher Program. Where a PHA is not administering a Housing Voucher Program, the PHA is encouraged to administer the housing voucher assistance on behalf of the family or to issue the family one of the receiving PHA's available Section 8 certificates. The details of the housing voucher portability program are discussed in paragraph (d) of this section.

(b) *Mobility Under Current Section 8 Procedures.* Current § 882.103(c) of the regulations for the Section 8 Certificate Program encourages PHAs to promote greater choice of housing opportunities for eligible families by:

(1) Seeking participation of owners within the PHA's jurisdiction;

(2) Advising families of their opportunities to lease housing throughout the PHA's jurisdiction;

(3) Cooperating with other PHAs by issuing certificates to families already receiving the benefit of Section 8 housing assistance payments who wish to move from the operating area of one PHA to another; and

(4) Entering into administrative arrangements with other PHAs in order to permit certificate holders to seek housing in the broadest range of areas.

(c) *Applicability of Current Mobility Procedures.* Current procedures for the Section 8 Existing Housing Certificate Program designed to facilitate mobility of assisted families, discussed in paragraph (b) of this section, apply to the Housing Voucher Program, wherever feasible to increase the opportunities of families participating in the Housing Voucher Program. If the family desires to move and can move with the

opportunity for continued housing voucher or certificate assistance under a voluntary mobility program described in paragraph (b) of this section, the PHA is not required to use the portability procedures described in paragraph (d) of this section.

(d) *Portability Under the Housing Voucher Program.* (1) *Scope.* The procedures in this paragraph (d) are to be used only for the Housing Voucher Program.

(2) *General.* The purpose of this paragraph (d) is to establish procedures to be used in the Housing Voucher Program when a family desires to stay in the program, but wishes to move outside its current PHA's jurisdiction.

(i) Portability will provide an opportunity to a housing voucher holder or participant to move to any other housing voucher jurisdiction, by requiring the receiving PHA to accept the family, subject to the limitations identified in this paragraph (d). The receiving PHA may choose to bill the initial PHA for assistance payments made on behalf of the family, or it may decide to provide housing voucher assistance to the family under its own ACC.

(ii) This portability feature also promotes moves of housing voucher holders or participants to non-housing voucher jurisdictions by encouraging PHAs with certificate programs to participate on a voluntary basis. If the family chooses to move to an area without a Housing Voucher Program, the receiving PHA is not required to accept the family. The receiving PHA may administer the housing voucher and bill the initial PHA, or it may issue the family one of its certificates.

(3) *Eligibility for portability.* A family is eligible for portability if it lives in the initial PHA's jurisdiction and holds a current housing voucher, or if the family is a current participant (see § 882.209(a)) in the initial PHA's Housing Voucher Program.

(4) *Determination to deny or terminate assistance.* Either the initial PHA or the receiving PHA may make a determination to deny or terminate assistance to the family in accordance with § 882.210, as modified by section III.S. of this Notice.

(5) *Responsibilities of the Initial PHA.* (i) The initial PHA must manage its Housing Voucher Program in a manner that will assure that it has the financial ability to provide continued housing voucher assistance in accordance with these portability procedures.

(ii) The initial PHA may deny the request to move if the number of families assisted under these portability procedures would constitute more than 15 percent of units under lease in the initial PHA's Housing Voucher Program.

(iii) If a Family eligible for portability notifies the initial PHA that it wants to move under these procedures and informs the PHA concerning the area to which the family wants to move, the initial PHA must determine whether the PHA in the new area administers a Housing Voucher Program and, if it does not, but operates a Certificate Program, whether the receiving PHA is willing to accept the family under paragraph (d)(ii) of this section III.L.

(iv) If the family is going to move under the portability provisions above, the initial PHA must notify the receiving PHA to expect the family. The initial PHA must verify to the receiving PHA that the family met income-eligibility requirements for admission to the program, and that the initial PHA issued the family a housing voucher consistent with section III.I. of this Notice, and must state the date (as determined in accordance with § 882.209(d)) by which the family must submit a request for lease approval in the jurisdiction of the receiving PHA.

(v) When the family moves out of the initial PHA's jurisdiction, the initial PHA retains funding for the housing voucher under its ACC.

(vi) The initial PHA must reimburse the receiving PHA for the full amount of the housing assistance payments made by the receiving PHA on behalf of the family. The amount of housing assistance is based on the payment standard in effect at the receiving PHA. If the receiving PHA elects to provide assistance to the family utilizing funding under the ACC for its own Certificate or Housing Voucher Program, the initial PHA is not required to reimburse the receiving PHA.

(vii) The initial PHA must reimburse the receiving PHA in the amount of 80 percent of the initial PHA's ongoing administrative fee for each unit month that the family under a housing voucher contract is receiving housing assistance in the receiving PHA's jurisdiction.

(viii) The initial PHA also may receive the preliminary fee for any new unit (limited by cost-justified expenses submitted up to the maximum amount allowed for this purpose), if the portable housing voucher qualified for the preliminary fee and a hard-to-house fee, if the family housed with the portable housing voucher qualified for the hard-to-house fee.

(ix) If the portability family leaves the Housing Voucher Program, or if the receiving PHA elects to provide assistance to the family utilizing funding under the ACC for its own Housing Voucher or Certificate Program, the initial PHA may use for other families the funding previously needed to support payment of subsidy for the portable housing voucher.

(6) *Responsibility of the Receiving PHA.* (i) A receiving PHA that administers a Housing Voucher Program must issue a housing voucher to a family moving from the Housing Voucher Program of another PHA. (But see paragraphs (c) and (d)(4) of this section L.) A receiving PHA that administers a Housing Voucher Program may not limit the number of housing vouchers issued to such families. The receiving PHA may either bill the initial PHA for the housing assistance payments on behalf of the family or may provide assistance to the family utilizing funding under the ACC for its own Housing Voucher or Certificate Program.

(ii) A receiving PHA that does not administer a Housing Voucher Progam, but does administer a Certificate Program may:

(A) Refer the initial PHA to a Statewide or other multi-jurisdictional PHA that administers a Housing Voucher Program in its jurisdiction;

(B) Administer the housing voucher assistance on behalf of the family and bill the initial PHA for amounts authorized in this paragraph (d); or

(C) Issue a certificate to the family, utilizing funding under the ACC for its own Certificate Program.

(iii) The receiving PHA must recertify the family's income initially and at least annually thereafter for purposes of determining the housing assistance payments. The receiving PHA may not deny the family a housing voucher on the ground that the family's income exceeds the income limits for housing voucher eligibility in the receiving PHA's jurisdiction.

(iv) The receiving PHA promptly must notify the initial PHA if a family fails to submit a request for lease approval by the date specified by the initial PHA.

(v) The amount of housing assistance payments to be made on behalf of the family is determined in accordance with section III.J. of this Notice. A non-housing voucher PHA must adopt a payment standard based on the appropriate Fair Market Rent or HUD-approved community-wide exception rent in effect in the receiving PHA's jurisdiction at the time of the family's initial lease approval, and must use all other applicable procedures in section III.J. of this Notice in determining assistance payments.

(vi) The receiving PHA must perform all of the functions normally associated with providing assistance to a family in a Housing Voucher Program, including

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lease approval, annual recertification of income and annual inspection of the unit.

(vii) The receiving PHA may bill the initial PHA for an amount equal to 80 percent of the initial PHA's administrative fee, unless it elects to provide assistance to the family utilizing funding under the ACC for its own Certificate or Housing Voucher Program. The receiving PHA also may bill the initial PHA for up to the preliminary fee for housing vouchers for cost-justified expenses and for the hard-to-house fee.

(viii) The receiving PHA is responsible for making payments on behalf of the family to the owner. If the receiving PHA does not elect to provide assistance to the family utilizing funding under the ACC for its own Housing Voucher or Certificate Program, the receiving PHA bills the initial PHA for the amount of the housing assistance payments. The receiving PHA should notify the HUD Headquarters' Office of Elderly and Assisted Housing if the initial PHA neglects to respond to timely billing by the receiving PHA.

(ix) The receiving PHA must notify the initial PHA promptly if the family ceases to be a current participant in the initial PHA's Housing Voucher Program.

(7) *Subsequent moves.* (i) A family may move more than once using the portability procedures in this paragraph (d), although the initial PHA may limit family moves to not more than once in any twelve-month period.

(ii) When the family wishes to move from an area in which the receiving PHA has been billing the initial PHA, the PHA in the new jurisdiction to which the family moves becomes the receiving PHA. It then has all of the choices and obligations of a receiving PHA as described in this section. The first receiving PHA is no longer involved, because the initial PHA retains funding authority for the housing voucher.

(iii) When a family wishes to move from an area in which the receiving PHA has elected to provide assistance to the family utilizing funding under the ACC for its own Housing Voucher Program, this receiving PHA becomes the new initial PHA. It has all of the choices and obligations of an initial PHA as described in this section. The PHA in the new jurisdiction to which the family moves becomes the receiving PHA and has all of the choices and obligations of a receiving PHA as described in this section. In this situation, the initial PHA that originally selected the family is no longer involved.

M. Eligible and Ineligible Housing

(a) Housing that is eligible for use in the Housing Voucher Program is any existing dwelling unit determined by the PHA to be decent, safe, and sanitary (meeting the housing quality standards in § 882.109, except § 882.109(q)), except for the following types of housing:

(1) A unit that is owned by the PHA administering the ACC under this Notice, including both the receiving PHA and initial PHA under the portability provisions of section III.L. of this Notice;

(2) A unit that is receiving other assistance under the 1937 Act, other than assistance under section 17;

(3) Nursing homes, units within the grounds of penal, reformatory, medical, mental and similar public or private institutions, or facilities that provide continual psychiatric, medical or nursing services; and

(4) A housing unit that is occupied by its owner (including the owner of a manufactured home leasing a manufactured home space). However, the 1937 Act provides that a PHA may use up to five percent of housing voucher authority to provide assistance with respect to cooperative or mutual housing that has a resale structure that maintains affordability for lower income families, if the PHA determines that such assistance will assist in maintaining affordability of such housing for lower income families. The PHA must obtain prior HUD Headquarters approval if the PHA wishes to exceed five percent of its housing voucher funding authority for this purpose.

(5) A housing unit used as transitional housing in the Department's Transitional Housing Demonstration Program.

(b) Elderly, handicapped, disabled, or displaced families and individuals may use congregate housing. Eligible elderly, handicapped or disabled families and individuals who require a planned program of continual supportive services may use independent group residences. The definitions of and relating to congregate housing and independent group residences in § 882.102 and the housing quality standards for independent group residences and congregate housing under § 882.109 apply to the Housing Voucher Program.

(c) SRO housing may be used only if: (1) The property is located in an area in which there is a significant demand for SRO units, as determined by the HUD Field Office; (2) the PHA and the unit of general local government in which the property is located approve the use of SRO units for such purpose; and (3) the unit of general local government and the local PHA certify to HUD that the property meets applicable local health and safety standards for SRO housing. Specific housing quality standards for SRO housing are in § 882.109, and they apply to the Housing Voucher Program.

(d) The 40 percent limitation under § 882.110(c) on the number of certain subsidized units in specified types of federally assisted housing shall apply. The PHA must count housing voucher units in determining compliance with the 40 percent limitation.

N. Approving Units and Executing Leases and Housing Voucher Contracts

(a) *Information to Owners and Requests to PHA for Lease Approval.* (1) The PHA must respond to inquiries from owners who have been approached by housing voucher holders by explaining the major program procedures, including lease provisions, lease approval procedures, housing quality inspections, contract provisions and payment procedures, and by furnishing copies of pertinent forms.

(2) When a family has found a unit it wants and the owner is willing to lease, the family must submit to the PHA a request for lease approval signed by the owner of the unit and the family. At the same time, the family must submit a copy of the proposed lease for the unit, which must include the lease provisions prescribed by HUD for the Housing Voucher Program. At the time of submission of the lease, it must be complete except for execution.

(b) *Decent, Safe, and Sanitary Condition of the Unit.* In accordance with § 882.209(h), the PHA must inspect a unit to determine whether the unit meets the housing quality standards before the housing voucher contract is executed.

(c) *Unit Sizes That Vary from Housing Voucher.* (1) Regardless of the number of bedrooms stated on a housing voucher, the PHA may not prohibit a family from renting an otherwise acceptable unit on the ground that it is too large for the family.

(2) The PHA may not prevent a family from renting a unit with fewer bedrooms than stated on the housing voucher. However, the unit must meet the space requirements of the housing quality standards under § 882.109(c), or such variation as HUD may have approved.

(3) If the PHA determines that the assisted unit occupied by a participant family does not meet the space requirements of the housing quality standards under § 882.109(c) because of an increase in family size or a change in family composition, the PHA must issue the participant family a new housing voucher, and the family and the PHA must try to find an acceptable unit as soon as possible.

(4) The policies stated in paragraphs (c)(1)–(3) of this section are similar to policies applied in the Certificate Program (see §§ 882.209(i) and 882.213). References to compliance with maximum rent restrictions are not included, since there are no maximum rents in the Housing Voucher Program.

(d) *Lease Requirements.* (1) *General.* (i) The lease between the owner and the family must be in accordance with section III.P. of this Notice and any applicable HUD requirements. The lease must include all provisions required by HUD and may not contain any provisions prohibited by HUD.

(ii) In addition to the requirements identified in this paragraph (d), a lease for an independent group residence must comply with § 882.209(j)(2).

(2) *Term of Lease.* (i) The term of the lease begins on a date stated in the lease and continues until:

(A) A termination of the lease by the owner in accordance with section III.P. of this Notice.

(B) A termination of the lease by the family in accordance with the lease or by mutual agreement during the term of the lease. The lease must permit a termination of the lease by the family without cause, at any time after the first year of the term of the lease, on not more than 60 days' written notice by the family to the owner (with a copy to the PHA); or

(C) A termination of the housing voucher contract by the PHA.

(ii) The term of the lease must begin at least one year before the end of the term of the last funding increment under the ACC. The contract and the lease shall end if the PHA determines, in accordance with procedures prescribed by HUD, that funding under the ACC is insufficient to support continued assistance.

(iii) The owner may offer the family a new lease for execution by the family after approval by the PHA for a term beginning at any time after the first year of the term of the lease. The owner must give the tenant written notice of the offer, with a copy to the PHA, at least 60 days before the proposed beginning date of the new lease term. The offer may specify a reasonable time limit for acceptance by the family.

(e) *Approval and Disapproval of Leases and Execution of Housing Voucher Contracts and Related Documents.* The PHA must approve or disapprove leases and provide for execution of HUD-prescribed forms of housing voucher contracts and related documents in accordance with §§ 882.209(k) and (l) and § 882.215(b). References to approving the amount of rent payable to the owner and the rent reasonableness certification under § 882.106(b) do not apply, since there is no maximum rent payable to the owner under the Housing Voucher Program.

O. Maintenance, Operation and Inspections; Security Deposits

(a) *Maintenance, Operation and Inspections.* The requirements of § 882.211 concerning maintenance, operation and inspections of units apply. In addition, the PHA may not make any housing assistance payments for a unit that fails to meet the housing quality standards, unless the owner promptly corrects the defect and the PHA verifies the correction.

(b) *Security Deposits and Utility Deposits.* (1) If at the time of the initial execution of the lease the owner wishes to collect a security deposit, the amount shall be the greater of $50 or 30 percent of the family's monthly adjusted income. The amount of the security deposit also is limited by any applicable limitation under State or local law. If a housing voucher family rents its pre-program unit, a security deposit collected in excess of the maximum amount that was collected before PHA approval of a lease under the Housing Voucher Program does not have to be refunded until the family vacates the unit subject to the lease terms. The family is expected to pay security deposits and utility deposits from its own resources or from other public or private sources.

(2) Subject to State and local law, the owner may use the security deposit, including any interest on the deposit, in accordance with the housing voucher lease, as reimbursement for any unpaid rent payable by the family or for other amounts the family owes under the lease. The owner must give the family a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must refund promptly the full amount of the unused balance to the family.

(3) If the family moves from the unit, the owner may claim reimbursement from the PHA for the amount the family owes under the lease (but not more than one month's rent to the owner), minus the greater of

(i) The security deposit actually collected or,

(ii) The maximum security deposit the Owner could have collected at initial lease execution in accordance with paragraph (b)(1) of this section.

(4) Any reimbursement under this section must be applied, first, toward any unpaid rent due under the lease, and then to any other amounts owed. No reimbursement may be claimed from the PHA for unpaid rent for the period after the family vacates the unit.

P. Termination of Tenancy by Owners

(a) The owner may not terminate the tenancy except for:

(1) Serious or repeated violation of the terms and conditions of the lease;

(2) Violation of Federal, State, or local law which imposes obligations on a tenant in connection with the occupancy or use of the dwelling unit and surrounding premises; or

(3) Other good cause. However, during the first year of the term of the lease, the owner may not terminate the tenancy for "other good cause", unless the termination is based on malfeasance or nonfeasance by the family.

(b) The following are some examples of "other good cause" for termination of tenancy by the owner:

(1) Failure by the family to accept the offer of a new lease in accordance with section III.N.(d)(iii) of this Notice;

(2) A family history of disturbance of neighbors or destruction of property, or of living or housekeeping habits resulting in damage to the unit or property;

(3) Criminal activity by family members involving crimes of physical violence to persons or property;

(4) The owner's desire to utilize the unit for personal or family use or for a purpose other than use as a residential rental unit; or

(5) A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to rent the unit at a higher rental).

(c) The list of examples in paragraph (b) of this section is intended as a non-exclusive statement of some situations included in "other good cause", but may in no way be construed as a limitation on the application of "other good cause" to situations not included in the list. The owner may not terminate tenancy during the first year of the term of the lease for "other good cause" (see paragraph (a)(3) of this section for the grounds stated in paragraph (b)(1), (b)(4), or (b)(5) of this section).

(d) Any notice required under this section III.P. or section III.N.(d) of this Notice may run concurrently with any notice required under State or local law.

Q. Reexamination of Family Income and Composition

(a) The PHA must reexamine family income and famiy size and composition at least annually, and in accordance with 24 CFR Part 813.

(b) After reexamination, the PHA must adjust the amount of the housing assistance to reflect any changes in

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family monthly adjusted income or monthly income, using the payment standard provisions in section III.J. of this Notice.

(c) If one year has elapsed since the date of the last housing assistance payment in accordance with section III.J. of this Notice, the housing assistance payments contract will terminate automatically.

(d) At any time, a family may request a redetermination of the housing assistance payment on the basis of a change in family income or adjusted income.

R. Family Obligations

(a) A family must:

(1) Supply any certification, release, information or documentation that the PHA or HUD determines to be necessary in the administration of the program, including information required for use by the PHA in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements;

(2) Allow the PHA to inspect the dwelling unit at reasonable times and after reasonable notice;

(3) Notify the PHA before vacating the dwelling unit; and

(4) Use the dwelling unit solely for residence by the family, and as the family's principal place of residence.

(b) A family may not:

(1) Sublease or assign the lease or transfer the unit;

(2) Own or have any interest in the dwelling unit, except as provided in section III.M.(a)(4) of this Notice;

(3) Commit any fraud in connection with the Housing Voucher Program; or

(4) Receive duplicative assistance under the Housing Voucher Program while occupying, or receiving assistance for occupancy of, any other unit assisted under any other Federal, State, or local housing assistance program (including any Section 8 program).

S. Grounds for Denial or Termination of Assistance

Section 882.210 applies to the Housing Voucher Program. However, the applicable family obligations are covered in section III.R. of this Notice, not in § 882.118.

T. Informal Review or Hearing

(a) The informal review or hearing requirements of § 882.216 apply to applicants and participating families. References to a participant's right to an informal hearing in cases involving the amount of the total tenant payment or tenant rent under § 882.216(b)(i) should be considerd to be references to computation of the amount of housing assistance payment for the family. Section 882.216(b)(1)(iii), concerning hearings where the PHA determines a family is residing in a unit with a larger number of bedrooms than appropriate, does not apply.

(b) If the housing voucher holder or participant wants to move with continued assistance under the Housing Voucher Program using the portability procedures in section III.L.(d) of this Notice, the family must be given the opportunity for an informal hearing in accordance with § 882.216(b) if the initial PHA or the receiving PHA decides to deny or terminate such continuing assistance. However, a receiving PHA that does not administer a Housing Voucher Program is not required to give the opportunity for an informal hearing on the PHA's election not to administer housing voucher assistance on behalf of the family.

U. Administrative Fees Paid to the PHA

(a) *General.* The ACC authorizes three types of fees to be paid to the PHA for HUD-approved costs associated with administering the Housing Voucher Program. The three types of fees are discussed below.

(b) *Preliminary fee: use.* HUD pays the PHA a preliminary fee for cost-certified tasks involved in taking families into the program to lease the number of units that can be supported with a new increment of housing voucher funding authority. This fee is intended to cover expenses incurred in helping families who inquire about or apply for the program (but never receive housing assistance for whatever reason), as well as all of the intake functions associated with achieving utilization of newly authorized funds. Examples of eligible costs include the following:

(1) The PHA's cost of preparing its Section 8 Housing Voucher Program application;

(2) The PHA's administrative overhead during initial lease-up, including rent, staff salaries, equipment and supplies;

(3) Publicizing the program;

(4) Briefing applicants and landlords;

(5) Reviewing applicants for assistance;

(6) Determining eligibility, including initial determination and verification of income;

(7) Conducting initial unit inspections;

(8) Reviewing leases; and

(9) Preparing housing voucher contracts.

(c) *Preliminary fee: amount:* For each funding increment, a PHA will receive a preliminary fee to cover actual expenses incurred before the housing voucher contract is executed. The preliminary fee equals the lesser of actual expenses approved by HUD or $215 for each housing voucher that results in an initial lease or housing voucher contract.

(d) *Preliminary fee: portable housing vouchers.* HUD will pay the initial PHA an additional preliminary fee when the initial PHA is billed for such a fee by a receiving PHA for one of the initial PHA's portable housing vouchers. All requirements of paragraphs (b) and (c) of this section apply. (For procedures on portable housing vouchers, see section III.L. of this Notice.)

(e) *Ongoing administrative fee: use.* The PHA earns the ongoing fee based on the number of units under housing voucher contracts on the first day of each month. The ongoing administrative fee is designed to cover the PHA's cost of administering assistance on behalf of the program participants. Examples of tasks include the following:

(1) Making housing assistance payments to owners;

(2) Reexamining family income;

(3) Conducting annual and special unit inspections;

(4) Maintaining continued occupancy after initial lease-up; and

(5) The PHA's administrative overhead after initial lease-up.

(f) *Ongoing administrative fee: amount.* The ongoing administrative fee equals 6.5 percent per month of the current Section 8 Existing Housing Fair Market Rent for the PHA's two-bedroom unit, published in the **Federal Register** in accordance with § 888.115 of this chapter.

(g) *Hard-to-house fee: use.* A hard-to-house fee is provided to cover the cost of special assistance given to a family with three or more minors to enable the family to find suitable housing. Special assistance includes the following:

(1) Maintaining up-to-date lists of owners with large units;

(2) Increasing outreach efforts to owners, real estate organizations and property management firms;

(3) Taking applications at home; and

(4) Following up weekly with housing voucher holders.

(h) *Hard-to-house fee: amount.* The PHA will receive a hard-to-house fee of $45 for special assistance provided to each family with three or more minors that results in a unit coming under lease in the Section 8 Housing Voucher Program. A family that rents in place does not qualify the PHA to receive a hard-to-house fee. The PHA qualifies for a hard-to-house fee each time an eligible family moves and a new housing voucher contract is signed for a different unit.

(i) *Hard-to-house fee: portable housing vouchers.* HUD will pay the initial PHA an additional hard-to-house fee when the initial PHA is billed for such a fee by a receiving PHA for one of the initial PHA's portable housing vouchers. All requirements of paragraphs (g) and (h) of this section apply. (For procedures on portable housing vouchers, see section III.L. of this Notice.)

V. Reporting Requirements for the Freestanding Component and the Small/Rural Component

In addition to the reporting required for all components of the Housing Voucher Program, a PHA administering the freestanding or small/rural component of the Housing Voucher Program must collect complete and accurate records, as required by HUD, on certificates and housing vouchers issued under the component. The PHA must send copies of required forms to HUD or its designee, as HUD may specify for each certificate or housing voucher.

W. Subsequent Use of Housing Voucher Authority Targeted for Specific Uses

If HUD provides housing voucher funding for families living in particular kinds of projects (see section III.I.(e) of this Notice for a complete list), for desegregation of pubic housing projects (see section III.D.(e) of this Notice), or for use in connection with rental rehabilitation, the PHA must use the funding initially for the specified purpose. A housing voucher is considered as intitially used for the purpose provided where the PHA has approved a lease and executed a housing voucher contract for that purpose. Once this initial use is achieved, the PHA may use the authority for any purpose in furtherance of its approved Housing Voucher Program.

X. Deobligation of Rental Rehabilitation Grants and Effect on Housing Voucher Contract and Budget Authority Provided in Connection With the Rental Rehabilitation Grants

(a) If HUD deobligates rental rehabilitation grant amounts in accordance with 24 CFR 511.33, there also may be an effect on the amount of contract and budget authority available to the Department to fully allocate housing vouchers in connection with new rental rehabilitation grantees. To the extent fiscal year 1984, 1985 or 1986 Rental Rehabilitation *grant* funds have been deobligated and reallocated, HUD may offset previous housing voucher allocations to these areas with increases or decreases of FY 1987 housing voucher funds reflecting grant reallocations. This offsetting will attempt to maintain consistency with the level of allocations in fiscal years 1984, 1985 and 1986.

(b) Funds to support a reserve of housing vouchers will be held in Headquarters to provide additional housing voucher funding authority to States or similar multijurisdictional programs where offsetting cannot cover recaptures and reallocations of Rental Rehabilitation Program funds. Grantees that reallocate funds under these circumstances and, therefore, need additional housing voucher funding authority should contact their Field Office Community Planning and Development Division who will, in turn, notify Headquarters CPD of the request and the circumstances involved.

Y. Waivers

Upon determination of good cause, the Assistant Secretary for Housing-Federal Housing Commissioner may, subject to statutory limitations, waive any provision of this Notice. Each such waiver will be in writing and will be supported by documentation of the pertinent facts and grounds.

VI. Other Matters

An environmental finding under the National Environmental Policy Act (42 U.S.C. 4321–4347) is unnecessary since the Certificate Program and the Housing Voucher Program are part of the Section 8 Existing Housing Program, which is categorically excluded under HUD regulations at 24 CFR 50.20(d).

The information collection requirements contained in this Notice have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. Currently approved requirements have been assigned the following OMB Control Numbers: 2502–0123; 2502–0154; 2502–0161; 2502–0185; 2502–0348; 2502–0350; 2577–0067 and 2577–0083.

Authority: Section 8(o) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(o)); section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d).

Dated: February 11, 1987.

Thomas T. Demery,

Assistant Secretary for Housing-Federal Housing Commissioner.

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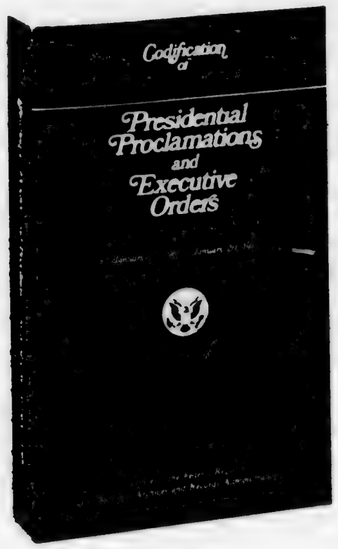
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RESERVATIONS: Call the Atlanta Federal Information Center, 404-331-2170.

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Title 3—

The President

Proclamation 5609 of February 17, 1987

American Red Cross Month, 1987

By the President of the United States of America

A Proclamation

Few events humble men more than natural disasters. Last year in the United States alone, hurricanes, floods, and tornadoes killed 290 people and destroyed property valued at $15 billion. Working to mitigate the human toll of that devastation were nearly 90,000 American Red Cross disaster relief workers—95 percent of whom were volunteers—helping the victims first to survive, and then to rebuild their lives.

Disaster assistance speaks to the deepest and purest ideals of the Red Cross movement. It is the reason the Red Cross was formed more than a century ago, and it remains the truest example of its continuing commitment to service.

The American Red Cross has responded to recent disasters swiftly and magnanimously, as it always has. Since September, nearly a dozen major disasters—including eight large-scale floods in the South and Midwest—have pressed the American Red Cross into action. But disaster is not the only spur. Social services, health and safety programs, blood and tissue efforts, and international activities all galvanize our Red Cross into service.

The organization continues to lead the way in making the Nation's blood supply as safe as possible. It recently introduced testing to reduce post-transfusion non A, non B hepatitis, following up its 1985 implementation of HTLV–III testing for AIDS. It also launched its Look Back initiative, a program that notifies people who have been transfused with blood or blood components from donors who later tested positive for the AIDS antibody. Finally, the American Red Cross undertook a massive AIDS public education effort to spread the facts about the disease.

The American Red Cross continues to train millions of students in first aid, cardiopulmonary resuscitation, water safety, and small craft operation. It maintains vital communication services to the Nation's military through a network of Red Cross posts at 277 domestic and overseas military installations. Every 11 seconds, the Red Cross helps someone in our Armed Forces or a member of a service family. Last summer, the Red Cross formed the National Bone Marrow Donor Registry, giving new hope to thousands of patients with life-threatening blood diseases. Finally, the American Red Cross continues to aid foreign disaster victims. Its response to the October 1986 earthquake in San Salvador included cash, goods, and staff services valued at more than half a million dollars. Work still goes on in the aftermath of the terrible September 1985 earthquake in Mexico City, where Red Cross workers from around the world are helping the victims to rebuild.

No one can predict when the next river will flood or the next storm will hit. No one can foresee the next threat to the Nation's health. What *is* predictable is that we will face such threats and emergencies, and that the American Red Cross will be there to offer help and hope.

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NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America and Honorary Chairman of the American National Red Cross, do hereby proclaim the month of March 1987 as American Red Cross Month. I urge all Americans to continue to give blood, to volunteer their time whenever possible to assist in this great service, and to give generous support to the work of the American Red Cross and its local chapters.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of February, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-3698
Filed 2-18-87; 10:55 am]
Billing code 3195-01-M

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 648]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 648 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period February 20, 1987, through February 26, 1987. Such action is needed to balance the supply of fresh navel oranges with the demand for such period, due to the marketing situation confronting the orange industry.

DATE: Regulation 648 (§ 907.948) is effective for the period February 20, 1987, through February 26, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202-447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1986-87 adopted by the Navel Orange Administrative Committee. The committee met publicly on February 17, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by a 9 to 1 vote (with Simmons wanting open movement) a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for navel oranges is improving.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Agricultural marketing service, Marketing agreements and orders, California, Arizona, Oranges (Navel).

PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 907.948 Navel Orange Regulation 648 is added to read as follows:

§ 907.948 Navel Orange Regulation 648.

The quantities of navel oranges grown in California and Arizona which may be handled during the period February 20, 1987, through February 26, 1987, are established as follows:

(a) District 1: 1,505,985 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

Dated: February 18, 1987.

William J. Doyle,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87-3771 Filed 2-19-87; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Regulation 549]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 549 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 270,000 cartons during the period February 22-28, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 549 (§ 910.849) is effective for the period February 22-28, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 has

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been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1986–87. The committee met publicly on February 17, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that demand is fairly steady.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.849 is added to read as follows:

§ 910.849 Lemon Regulation 549.

The quantity of lemons grown in California and Arizona which may be handled during the period February 22 through February 28, 1987, is established at 270,000 cartons.

Dated: February 18, 1987.

William J. Doyle,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–3770 Filed 2–19–87; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 371, 374, and 386

[Docket No. 70223–7023]

General Licenses for Exports to Cooperating Governments and Certified End-Users

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: On June 23, 1986, Export Administration published a proposal for a general license G–CEU that would authorize exports to Certified End-Users. Export Administration has decided to defer consideration of that proposal and promulgate a new regulation that differs from the proposed rule in several respects. As compared to the June 23, 1986, proposal, our new regulation removes the exclusion on certain high technology products and drops the requirement that exporters must obtain telephonic clearance from the Office of Export Licensing prior to shipment. Moreover, this new rule differs from the proposal in that only enterprises controlled by COCOM governments will be eligible for Certified End-User status.

Following consultation with other COCOM member governments, Export Administration will publish a list of Certified End-Users in the Export Administration Regulations. Although G–CEU is initially limited to COCOM participants, at a later date Export Administration may make controlled enterprises of other countries eligible for Certified End-User status.

This rule also recognizes the special status of national government agencies of cooperating governments by establishing a new General License GCG. This new general license will permit unrestricted exports of virtually all commodities to those agencies wherever they are located within the cooperating countries and to their diplomatic and conular missions throughout the free world.

In addition, new procedures are being developed that will reduce the U.S. licensing requirements on exports to and reexports by private sector enterprises in these countries.

If Export Administration decides to pursue its proposal of June 23, 1986, it will at that time consider all comments submitted in connection therewith.

EFFECTIVE DATE: February 20, 1987.

FOR FURTHER INFORMATION CONTACT: John Black, Regulations Branch, Export Administration, Telephone: (202) 377–2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule mentions collection of information requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by OMB under Control Numbers 0625–0001 and 0625–0156.

3. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

4. Because of notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

Therefore, this regulation is issued in final form. Although there is not formal comment period, pubic comments on this regulation are welcome on a continuing basis. Comments should be submitted to John Black, Office of Technology and Policy Analysis, Export Administration, International Trade Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 371, 374, and 386

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 371, 374, and 386 Export Administration Regulations are amended as follows:

1. The authority citation for 15 CFR Part 371 and 386 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–40 (October 2, 1986); E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

2. The authority citation for 15 CFR Part 374 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.* as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

PART 371—[AMENDED]

3. A new § 371.14 is added to read as follows:

§ 371.14 General license GCG; shipments to agencies of cooperating governments.

(a) Scope. A general license designated GCG is established subject to the provisions of § 371.14, authorizing exports to any destination as follows:

(1) Commodities for official use within national territory. Any commodity consigned to and for the official use of any agency of a cooperating government within the territory of any cooperating government.

(2) Diplomatic and consular missions. Any commodity consigned to and for the official use of a diplomatic or consular mission of a cooperating government located in any country in Country Groups T and V.

(b) Definition of Cooperating Government Agency. The term "agency of a cooperating government" includes all civilian and military departments, branches, missions, and other governmental agencies of a cooperating national government. Cooperating Governments are the governments participating in COCOM (see § 370.2) and such others as may be designated.

(c) Petroleum Exports. The provisions of this § 371.14 do not apply to the products listed in Supplement No. 3 to Part 377 unless, in addition to meeting the other requirements of § 371.13, the exporter, prior to exporting such products, has assembled the documentary evidence described in § 371.16 establishing that the product was not derived from a Naval Petroleum Reserve. Crude petroleum may be exported only under a validated license issued pursuant to § 371.6(d)(1).

(d) Exclusions. (1) No export prohibited by § 371.2(c) may be made under this general license.

(2) No supercomputers may be exported under this general license.

4. A new § 371.20 is added to read as follows:

§ 371.20 General license G–CEU: certified end-users.

A general license designated G–CEU is established, authorizing exports to Certified End-Users of any eligible commodity that will be used by the Certified End-User (CEU).

(a) *Eligible end-users.* Commodities may be exported under General License G–CEU only to cooperating national government controlled enterprises included in Supplement 1 to Part 371. Cooperating governments are those participating in COCOM (see § 370.2) and such other governments as may be designated. For the purposes of this general license, a controlled enterprise is any entity that is "controlled in fact" by a cooperating member government that performs commercial or utility, not governmental, functions.

(1) "Control in fact" consists of the authority or ability of a government to establish the general policies or to control the day-to-day operations of the entity.

(2) An entity will be presumed to be controlled in fact by a government, subject to rebuttal by competent evidence, when such government:

(i) Owns or controls more than 50 per cent of the outstanding voting stock of the corporation;

(ii) Has the authority and the ability to name or control the votes of a majority of the members of the board of directors of the corporation;

(iii) Has control or other powers to name the management of the corporation; or

(iv) Has powers similar to those listed in paragraph (a)(2) (i), (ii), or (iii) of this section with regard to unincorporated entities.

(b) *Eligible countries.* Exports may be made to any CEU located in the national territory of any cooperating government, provided the commodities will be consigned to and for use by the CEU at a destination within such territory.

(c) *Commodity restrictions.* General License G–CEU may be used for export of any commodity on the Commodity Control List except supercomputers.

(d) *End-use restriction.* This procedure only authorizes a Certified End-User (1) to use the commodities obtained under General License G–CEU at its own facilities located in an eligible country, or (2) to dispose of the commodities to other Certified End-Users, subject to all G–CEU restrictions, except that a Certified End-User may incorporate U.S. parts, components, or materials received under General License G–CEU into foreign made end products for purposes of resale or reexport to eligible countries.

5. A new Supplement 1 is added to Part 371 to read as follows:

Supplement 1 to Part 371—Certified End-Users

The following enterprises have been designated as Certified End-Users and are eligible to receive U.S. origin commodities under the provisions of General License G–CEU.

(No Certified End-Users have been identified at this time.)

PART 374—[AMENDED]

§ 374.2 [Amended]

6. In § 374.2, paragraph (a)(1) is amended by inserting "G–CEU, GCG," between "G–COM," and "G–NNR.".

PART 386—[AMENDED]

§ 386.6 [Amended]

7. In § 386.6, paragraph (a)(1)(ii) is amended by revising "or G–COM" to read "G–COM, or G–CEU".

Dated: February 17, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87–3656 Filed 2–19–87; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 292 and 375

[Docket No. RM87-8-000]

Hydroelectric Applicants Seeking Benefits Under Section 210 of the Public Utility Regulatory Policies Act of 1978 for Projects Located at a New Dam or Diversion

Issued: February 13, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Interim rule.

SUMMARY: Pursuant to the Electric Consumers Protection Act of 1986, the Federal Energy Regulatory Commission is issuing an interim rule amending its regulations governing hydroelectric applicants seeking benefits under section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) for projects to be located at a new dam or diversion. The interim rule adds three new requirements for PURPA benefits, to apply after a moratorium on PURPA benefits for these projects ends, and creates four exceptions from the moratorium and from one or more of the new requirements.

DATES: Interim rule effective March 23, 1987; comments must be received on or before April 6, 1987.

ADDRESSES: Comments may be mailed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, or delivered to Room 3000, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, between 8:30 a.m. and 4:30 p.m. Comments received may be inspected at the Division of Public Information, Room 1000, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael A. Stosser, Margaret E. Estes, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-5597.

SUPPLEMENTARY INFORMATION:

Issued February 13, 1987.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Interim Rule

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations governing applicants for hydroelectric licenses and exemptions that seek benefits under section 210 of the Public Utility Regulatory Policies Act (PURPA), 16 U.S.C. 824a-3 (1982), for projects to be located at a new dam or diversion. In so doing, the Commission is implementing the provisions of the newly enacted Electric Consumers Protection Act of 1986 (ECPA), Pub. L. No. 99-495 (Oct. 16, 1986). Section 8(a) of ECPA amended section 210 of PURPA to create a new section 210(j) which imposes three new environmental requirements before applicants for licenses or exemptions can obtain PURPA benefits for small hydroelectric facilities utilizing new dams or diversions.[1] Section 8(e) of ECPA also imposes a moratorium of approximately two years on the grant of PURPA benefits to projects at new dams or diversions while Congress, with the assistance of the Commission, studies the matter. Section 8(b) of ECPA, however, provides for four categories of exceptions from the new requirements and the moratorium. Three of these are self-implementing. The fourth, covering an applicant that filed an application for a license or exemption after the date of enactment of ECPA, operates if that applicant successfully petitions the Commission for a finding that before the enactment of ECPA it committed substantial monetary resources toward the development of the project and the completion of all filing requirements of the Commission.

Section 8(b)(4)(A) of ECPA requires the Commission to issue a rule by February 13, 1987 implementing this fourth exception. Accordingly, this interim rule implements the new environmental conditions imposed by section 8(a) of ECPA, and implements the exception provision of section 8(b) of that statute. In a separate notice of proposed rulemaking, the Commission will propose to implement other provisions of section 8 of ECPA affecting the availability of PURPA benefits to hydroelectric projects located at a new dam or diversion.[2]

II. Background

Section 210 of PURPA requires electric utilities to sell electricity to, and purchase electricity from, qualifying small power production facilities. The Federal Power Act (FPA) defines "small power production facility" to include facilities with a power production capacity of 80 megawatts or less that produce electric energy solely by the use of renewable resources.[3] The Commission has interpreted "renewable resources" to include water used at hydroelectric projects located at either an existing or a new dam or diversion.[4]

On October 16, 1986, Congress enacted ECPA. In section 8(e) of ECPA, Congress imposed a moratorium of approximately two years on the availability of PURPA benefits to hydroelectric projects located at a new dam or diversion. The purpose of the moratorium is to allow Congress time to evaluate whether PURPA benefits should continue to be extended to small hydroelectric projects that create new dams or diversions of water.[5]

Section 8 of ECPA also amends section 210 of PURPA to add a new section 210(j) which imposes three environmental conditions that license and exemption applicants for hydroelectric projects located at a new dam or diversion will have to meet to qualify for PURPA benefits. The three new conditions of section 8(a) are:

(1) At the time of issuance of the license or exemption for the project, the Commission must find that the project will not have substantial adverse effects on the environment, including recreation and water quality ("adverse environmental effects requirement");

(2) At the time the application for a license or exemption for the project is accepted by the Commission, such project cannot be located on any segment of a natural watercourse which:

(A) Is included in, or designated for potential inclusion in, a State or national wild and scenic river system, or

(B) The State has determined, in accordance with applicable State law, to possess unique natural, recreational, cultural, or scenic attributes which would be adversely affected by hydroelectric development

("protected rivers requirement");

[1] Section 8 of ECPA defines a "new dam or diversion" as a dam or diversion that requires, for purposes of installing any hydroelectric power project, construction or enlargement of any impoundment or diversion structure (other than repairs or reconstruction or the addition of flashboards or other similar devices).

[2] The notice will propose procedures for the filing and processing of a second petition that alleges that a project meets the requirement against substantial adverse environmental effects added by section 8 of ECPA.

[3] 16 U.S.C. 795(17)(A) (1982).

[4] Small Power Production and Cogeneration Facilities—Qualifying Status, 45 FR 17959 at 17966 (Mar. 20, 1980).

[5] In order to develop a factual record concerning the impact of extending PURPA benefits to hydroelectric projects located at a new dam or diversion, section 8(d) of ECPA requires the Commission to conduct a study to be submitted to Congress to determine whether PURPA benefits should be available to these projects. The moratorium will end at the expiration of the first full session of Congress following the session during which the Commission reports to Congress on the results of the study.

(3) The project must meet the terms and conditions set by fish and wildlife agencies under the same procedures as provided for under section 30(c) of the FPA [6] ("fish and wildlife agency conditions requirement").

Congress recognized the potential hardship these new requirements could impose on developers that were well on the way to obtaining regulatory approval of their projects at the time ECPA was enacted. As a result, section 8 of ECPA excepts four classes of projects from one or more of the new requirements for PURPA benefits in order to alleviate potential hardship to developers that, relying on existing law, had expended substantial funds and effort in preparing license or exemption applications for projects located at a new dam or diversion with the expectation that these projects would receive PURPA benefits. Any applicant excepted from one or more of the new requirements for PURPA benefits also will be excepted from the moratorium. These exceptions are as follows:

(1) None of the three requirements applies if the project is located at a Government dam at which non-Federal hydroelectric development is permissible.

(2) None of the three requirements applies if the application was filed and accepted for filing by the Commission before October 16, 1986.

(3) Only the protected rivers requirement applies if the application was filed before October 16, 1986, and accepted for filing by the Commission between October 16, 1986 and October 16, 1989.

(4) The fish and wildlife agency conditions requirement will not apply to an applicant whose application was filed on or after October 16, 1986 if the Commission finds that, before October 16, 1986, the applicant committed substantial monetary resources to the development of the project and to the diligent and timely completion of all filing requirements of the Commission.

The first three exceptions are self-implementing, while the fourth is only available if the Commission affirmatively grants the exception upon application, in the form of a petition. The statute requires that a petition seeking an exception from the fish and wildlife agency condition requirement (because the applicant had already committed substantial resources) must be filed within 18 months after the enactment of ECPA (that is, by April 16, 1988).[7]

[6] 16 U.S.C. 823a(c) (1982). Section 30(c) of the FPA, as amended by section 7 of ECPA, requires that, before issuing an exemption from licensing,

. . . the Commission shall consult with the United States Fish and Wildlife Service, National Marine Fisheries Service, and the State agency exercising administration over the fish and wildlife resources of the State in which the facility is or will be located, in the manner provided by the Fish and Wildlife Coordination Act (16 U.S.C. 661, et seq.), and shall include in any such exemption—

(1) Such terms and conditions as the Fish and Wildlife Service, National Marine Fisheries Service, and the State agency each determine are appropriate to prevent loss of, or damage to, such resources and to otherwise carry out the purposes of such Act, and

(2) Such terms and conditions as the Commission deems appropriate to insure that such facility continues to comply with the provisions of this section and terms and conditions included in any such exemption.

[7] If a license applicant's commitment of resources petition is granted, new section 10(j) of the FPA, added by section 3(b) of ECPA, would apply instead of section 30(c). Section 10(j) reads as follows:

(1) That in order to adequately and equitably protect, mitigate damages to, and enhance, fish and wildlife (including related spawning grounds and habitat) affected by the development, operation, and management of the project, each license issued under this Part shall include conditions for such protection, mitigation, and enhancement. Subject to paragraph (2), such conditions shall be based on recommendations received pursuant to the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) from the National Marine Fisheries Service, the United States Fish and Wildlife Service, and State fish and wildlife agencies.

(2) Whenever the Commission believes that any recommendation referred to in paragraph (1) may be inconsistent with the purposes and requirements of this Part or other applicable law, the Commission and the agencies referred to in paragraph (1) shall attempt to resolve any such inconsistency, giving due weight to the recommendations, expertise, and statutory responsibilities of such agencies. If, after such attempt, the Commission does not adopt in whole or in part a recommendation of any such agency, the Commission shall publish each of the following findings (together with a statement of the basis for each of the findings):

(A) A finding that adoption of such recommendation is inconsistent with the purposes and requirements of this Part or with other applicable provisions of law.

(B) A finding that the conditions selected by the Commission comply with the requirements of paragraph (1).

* * * * *

Thus the United States Fish and Wildlife Service, the National Marine Fisheries Service, and State fish and wildlife agencies could make recommendations regarding a license for which a commitment of resources petition is granted, but they could not impose mandatory conditions, as they are authorized to do when section 30(c) applies.

Although section 8 of ECPA speaks of excepting both license and exemption applicants from the fish and wildlife terms and conditions requirement if their petitions are granted, it stipulates elsewhere that nothing in ECPA will affect the application of section 30(c) of the FPA to any exemption issued after the enactment of ECPA. Accordingly, section 30(c) would continue to apply to an exemption for which a commitment of resources petition is granted, since section 405(d) of PURPA, 16 U.S.C. 2705(d) (1982), specifies that exempted projects of under 5 megawatts installed capacity are subject to section 30(c) of the FPA. Both applicants for license and exemption, however, will obtain the other benefits of a favorable ruling on this petition: they will be excepted from the moratorium and, if they have filed an adverse environmental effects petition (proposed regulations setting out the form in which this petition will be filed and processed will be issued separately in a notice of proposed rulemaking), the Commission will rule on that second petition instead of dismissing it.

Section 8(b)(4)(C) of ECPA provides that an applicant for license or exemption that files a commitment of resources petition may, prior to the time the license or exemption is issued, file a second petition requesting an initial determination from the Commission on whether the project satisfies the requirement against adverse environmental effects. If an applicant's commitment of resources petition is granted, the Commission will make an initial determination on the adverse environmental effects petition.[8] Section 8 further provides that, if the Commission initially determines that the project as proposed would not satisfy the adverse environmental effects requirement, then the applicant will be provided a reasonable opportunity to propose measures to mitigate the adverse environmental effects found before the Commission finally acts on the license or exemption application and makes a final determination on whether the adverse environmental effects requirement has been met.

III. Discussion

A. New Requirements for Projects Located at a New Dam or Diversion to Qualify for PURPA Benefits

Currently, pursuant to 18 CFR 292.203(a) (1986), all small power production facilities can qualify for PURPA benefits if they meet certain requirements.[9] ECPA added three additional requirements for hydroelectric small power production facilities to be located at new dams or diversions to qualify for PURPA benefits. This interim rule amends the Commission's regulations to implement these new requirements. These projects will not qualify for PURPA benefits while the moratorium imposed by section 8(e) of ECPA is in effect.

[8] If the Commission denies the commitment of resources petition, the project cannot obtain PURPA benefits during the moratorium period, and, after that period, all of the new conditions must be satisfied without exception. ECPA, section 8(b)(4)(D).

[9] These requirements are:

(1) The power production capacity of the facility, together with the capacity of any other facilities which use the same energy resource, are owned by the same person, and are located at the same site, may not exceed 80 megawatts. 18 CFR 292.204(a) (1986).

(2) The primary energy source of the facility must be biomass, waste, renewable resources, or any combination thereof, and 75 percent or more of the total energy input must be from these sources. 18 CFR 292.204(b) (1986).

(3) The facility must not be owned by a person primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities). 18 CFR 292.206(a) (1986).

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However, projects excepted from the moratorium may qualify for PURPA benefits if they meet or are excepted from each of the three new environmental requirements.

B. Exceptions from New Requirements for Projects Located at a New Dam or Diversion to Qualify for PURPA Benefits

In this rule, the Commission is implementing all four statutory exceptions from the moratorium and from the new environmental requirements for qualification for PURPA benefits.

The regulatory text of the first three exceptions merely tracks the terms of Section 8 of ECPA. The Commission is excepting from the moratorium and from all three new requirements any project located at a Government dam where non-Federal hydroelectric development is permitted, and any project for which an application for license or exemption was filed and accepted before October 16, 1986. The Commission is also excepting from the moratorium, the adverse environmental effects requirement, and the fish and wildlife conditions requirement—but not from the protected rivers requirement—any project for which an application for license or exemption was filed before October 16, 1986, and is accepted by the Commission before October 16, 1989.

The fourth exception applies to a project for which an applicant demonstrates, in a petition filed with the Commission, that a substantial commitment of monetary resources was made prior to the enactment of ECPA. The project will be excepted from the moratorium and from the fish and wildlife agency conditions requirement,[10] but not from the adverse environmental effects requirement or the protected rivers requirement. The regulations provide standards and procedures governing petitions claiming a substantial monetary commitment.

1. *Definition of commitment of substantial monetary resources.* The Commission finds that an applicant will have shown the substantial commitment of monetary resources required by Congress to except it from the fish and wildlife agency conditions requirement if the applicant demonstrates that, before October 16, 1986, it expended or committed to expend at least 50 percent of the total cost of preparing an application that is accepted for filing by the Commission pursuant to 18 CFR 4.32(e). The total cost includes (but is not limited to) the cost of agency consultation, environmental studies, and engineering studies conducted pursuant to 18 CFR 4.38, and the Commission's requirements for filing a license or exemption application.

The Commission recognizes that the term "substantial" is a relative one and could be interpreted to mean different amounts. There is little legislative guidance on the term as used in section 8 of ECPA. The Commission is adopting a 50 percent standard because it believes that this standard reflects the intent of Congress to limit the benefits of this exception to applicants that had committed substantial funds to the development of the project and to the completion of the Commission's filing requirements. Congress did not require an applicant to show that it had completed all pre-filing consultation before the enactment of ECPA. Generally, a potential developer that has completed all pre-filing consultation on a project will file a development application for that project expeditiously—usually within a month. Thus, most development applications for which all § 4.38 consultation was completed by the October 16, 1986 enactment of ECPA probably were filed with the Commission by the end of 1986. Because Congress made the petitioning procedure available up to as much as 18 months after the enactment of ECPA, the Commission believes that Congress intended that the expenditure of, or commitment to expend, by October 16, 1986, a significant portion of the total cost of filing an acceptable application could constitute a "commitment of substantial monetary resources" by that date. Indeed, the House Committee Report states that *[c]ompletion* of environmental consultations prior to enactment is not to be considered the benchmark for the interpretation of the term "substantial" (emphasis added).[11]

The 50 percent standard is also supported by the fact that the 18-month period for filing a commitment of resources petition is half the standard 36-month term for preliminary permits, during which potential license or exemption applicants typically complete feasibility studies and consultation. Accordingly, the Commission is requiring that the commitment of resources petition must demonstrate that at least 50 percent of the total cost of producing an application that is accepted for filing by the Commission pursuant to § 4.32(c) had been expended or committed to be expended before October 16, 1986.

2. *Filing and processing of commitment of resources petition.*

Section 8 of ECPA requires only that the commitment of resources petition be filed before April 16, 1988, and that the petition apply to an application for license or exemption filed on or after October 16, 1986. The Commission is requiring that an applicant for license or exemption must either file its application and the commitment of resources petition together or submit with its application a request for an extension of time, not to exceed 90 days, or April 16, 1988, whichever occurs first, in which to file the petition.

The Commission will not accept a commitment of resources petition before a license or exemption application is filed. Until an application is filed, a developer will not be in a position to provide the information about the cost of the application upon which the Commission intends to base its decision as to whether the developer qualifies for this exception. In addition, only when a license or exemption application is filed does it become clear that a developer will in fact proceed with its project. Thus, this limitation will save the Commission from expending resources to rule on exception petitions for projects which do not ripen into development applications. Finally, as a practical matter, if a developer is unable to file a license or exemption application within the 18 month period Congress provided for the filing of a commitment of resources petition, there is a strong likelihood that the developer's project was not far enough along in the process of obtaining regulatory approval to fall within the group Congress intended would qualify for this particular exception.

The Commission recognizes that some applications for projects that will qualify for this exception will have been filed between the effective date of ECPA and the effective date of this rule. The Commission is therefore allowing those who filed an application for license or exemption on or after October 16, 1986, but before the effective date of this rule, 90 days after the effective date of this rule to file the commitment of resources petition.

While the moratorium imposed by section 8(e) of ECPA is in effect, filing a commitment of resources petition is the only means to seek PURPA benefits for projects located at a new dam or diversion for which applications were filed on or after October 16, 1986. Because the Commission staff will process applications for a license or exemption for these projects differently if PURPA benefits are sought, the Commission needs the commitment of resources petition as soon as possible after an application is filed. The Commission recognizes, however, that the filing date of a project application has significant value to an applicant, since when two or more applicants are competing for a project site, the first-filed application may be favored.[12] The Commission believes that both of these factors can be accommodated by a rule providing that the commitment of resources petition may be filed up to 90 days after an application is filed (but not beyond April 16, 1988) as long as an extension request is submitted with the application. First, the applicant will be allowed up to 90 days after it files its application to file the petition. Second, whether the petition itself or an extension request is submitted with the application, the Commission will know at the time the application is filed whether PURPA benefits are sought for the project.

Section 8(b)(4)(A) of ECPA requires an applicant to provide written notice of the filing of a commitment of resources petition to affected Federal and State agencies. The Commission is therefore requiring that the commitment of resources petition must show that the applicant has served the petition on the appropriate Federal and State agencies. The petition must also show any preliminary permits issued for the project. This information is necessary for the Commission staff to determine whether the petition makes the required showing. If an applicant has already submitted any of the required information in its project application, instead of resubmitting that information, the applicant may indicate in the petition on what pages of the application the information can be found.

As proof of a monetary commitment of 50 percent before October 16, 1986, the petition must include an itemized statement of the total costs that were expended on the application for license or exemption, and a schedule of the costs that were expended or committed to be expended on the application before October 16, 1986. In order to prove that all of these expenses are directly related to the development of the project and to the diligent and timely completion of all requirements of the Commission for filing an acceptable application for license or exemption, the applicant must submit whatever correspondence or other documentation may be available.

Section 8(b)(4)(B) of ECPA establishes a rebuttable presumption that the applicant has made the required showing of monetary commitment if it held a preliminary permit for the project and had completed all of the environmental consultations required by the Commission's regulations before October 16, 1986. The Commission is therefore providing that an applicant that held a preliminary permit for a project and had completed the consultation required under § 4.38 may submit the permit's project number instead of submitting cost information.

Because an application is not accepted for filing until any deficiencies under § 4.32(d) are corrected, the cost of correcting deficiencies will be included in the total cost of submitting an acceptable application. Accordingly, the Commission is requiring any applicant that has filed a commitment of resources exception petition to include in submissions correcting application deficiencies a statement of the costs expended in making the corrections.

As required by section 8(b)(4)(A) of ECPA, when the exception petition is filed, the Commission will issue a notice of the petition in the Federal Register, § will make the petition publicly available, and will provide interested persons 45 days to comment on any aspect of the petition. The petition will be available for public inspection at the Division of Public Information, Room 1000, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The Commission is providing the petitioner with fifteen days to file any response to the comments after the public comment period expires.

The Commission is delegating to the Director of the Office of Hydropower Licensing (Director) the authority to act on this petition. At the time the license or exemption application is accepted for filing pursuant to § 4.32(e), the Director will be able to compare the total cost of submitting an acceptable application with the cost the applicant demonstrates it had expended or committed to expend by October 16, 1986, to determine whether the 50 percent threshold has been met.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act[13] requires that a final rule issued by a regulatory agency following a period of notice and comment must contain an analysis of the impact of the rulemaking on small entities.[14] Because this interim rule is being issued without notice and comment, the Commission believes that the provisions of the Regulatory Flexibility Act do not apply to this rulemaking.

In preparing this rule, however, the Commission has considered the impact of the rulemaking on small entities. The Commission believes that the interim rule will not have a substantial impact on a significant number of small entities, but instead, will benefit many small entities. The rule established several categories of projects which are either automatically excepted from the provisions of the rule or which, through a petitioning procedure, can be expected from some of the provision of the rule.

V. Notice and Comment

Notice and comment procedures are not required under the Administrative Procedure Act when the agency for good cause finds that notice and comment is impracticable, unnecessary, or contrary to the public interest.[15] The legislative history of the Administrative Procedure Act indicates that notice and comment is impracticable "when the due and required execution of the agency functions would be unavoidably prevented by its undertaking public rule-making proceedings."[16]

The Commission finds that in this instance providing for notice and comment before the issuance of this final rule is impractical or unnecessary. Congress required the Commission to issue a rule prescribing the form of the commitment of resources exception petition within 120 days following enactment of ECPA. As to that part of these regulations, the Commission did not have enough time to allow for notice and comment and the Commission is therefore publishing these regulations on an interim basis. As for the other aspects of these rules, the Commission has merely tracked the requirements of the statute, so that notice and comment is unnecessary.

The Commission invites all interested persons to submit written data, views, or other information on the matters in this interim rule. The Commission will consider these comments before issuing final regulations.

All comments in response to this interim rule should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should

[10] *See* footnote 7, *supra.*

[11] H.R. Rep. No. 99-934, 99th Cong., 2nd Sess., at 32 (Sept. 30, 1986).

[12] In a competitive proceeding, if the plans of the applicants are equally well adapted to develop, conserve, and utilize in the public interest the water resources of the region, and either none of or all of the applicants are municipalities or states, the Commission will favor the applicant first to file. 18 CFR § 4.37(b) (1986).

[13] 5 U.S.C. 601-612 (1982).

[14] 5 U.S.C. 604 (1982).

[15] 5 U.S.C. 553(b)(B) (1982).

[16] Senate Rep. No. 752, 79th Cong., 1st Sess., at 16 (1945).

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refer to Docket No. RM87–8–000. An original and fourteen copies should be filed. All comments received prior to 4:30 p.m. EST on April 6, 1987, will be considered by the Commission in any future revisions to this rulemaking. Written submissions will be placed in the public file established in this docket and will be available for public inspection during regular business in the Division of Public Information, Room 1000, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

VI. Paperwork Reduction Act

The information collection provisions in this interim rule have been submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act[17] and OMB's regulations.[18] If OMB has not approved this interim rule by its effective date, that effective date will be suspended pending approval. Interested persons may obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Ellen Brown, (202) 357–8272). Comments on the information collection provisions should be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

Effective Date

The amendments of this interim rule will be effective March 23, 1987.

List of Subjects

18 CFR Part 292

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

In consideration of the foregoing, the Commission amends Parts 292 and 375, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 292—[AMENDED]

1. The authority citation for Part 292 is revised to read as follows:

[17] 44 U.S.C. 3501–3520 (1982).

[18] 5 CFR 1320.12 (1986).

Authority: Electric Consumers Protection Act of 1986, Pub. L. No. 99–495; Department of Energy Organization Act, 42 U.S.C. §§ 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982), as amended, unless otherwise noted.

2. Section 292.203 is amended by revising paragraph (a) introductory text and adding a new paragraph (c) to read as follows:

§ 292.203 General requirements for qualification.

(a) *Small power production facilities.* Except as provided in paragraph (c) of this section, a small power production facility is a qualifying facility if it: * * *

* * * * *

(c) *Hydroelectric small power production facilities located at a new dam or diversion.* (1) *General rule.* Except as provided in paragraph (c)(2) of this section and § 292.208 of this part, a hydroelectric small power production facility that impounds or diverts the water of a natural watercourse by means of a new dam or diversion is a qualifying facility if:

(i) It meets the requirements in paragraph (a) of this section;

(ii) The Commission finds that the project will not have substantial adverse effects on the environment, including recreation and water quality, when it issues the license or exemption for the project;

(iii) The Commission finds, when it accepts the application for license or exemption for the project for filing under § 4.32(e) of this chapter, that the project is not located on any segment of a natural watercourse that:

(A) Is included in (or designated for potential inclusion in) a State or National Wild and Scenic River System, or

(B) The State has determined, in accordance with applicable State law, to possess unique natural, recreational, cultural or scenic attributes which would be adversely affected by hydroelectric development; and

(iv) The project meets the terms and conditions set by the appropriate fish and wildlife agencies under the same procedures as provided for under section 30(c) of the Federal Power Act.

(2) *Exception.* A hydroelectric small power production facility that impounds or diverts the water of a natural watercourse by means of a new dam or diversion is not a qualifying facility if the moratorium described in section 8(e) of the Electric Consumers Protection Act of 1986 (ECPA), Pub. L. No. 99–495, is in effect. The moratorium applies to a license or an exemption issued on or after October 16, 1986. The moratorium will end at the expiration of the first full session of Congress following the session during which the Commission reports to Congress on the results of the study required under section 8(d) of ECPA.

3. New §§ 292.208 and 292.209 are added to Subpart B to read as follows:

§ 292.208 Exceptions from requirements for hydroelectric small power production facilities located at a new dam or diversion.

(a) The requirements of § 292.203(c)(1) (ii) through (iv) of this part do not apply if:

(1) An application for license or exemption is filed for a project located at a Government dam, as defined in section 3(10) of the Federal Power Act, at which non-Federal hydroelectric development is permissible; or

(2) An application for license or exemption was filed and accepted before October 16, 1986.

(b) The requirements of § 292.203(c)(1)(ii) and (iv) of this part do not apply if an application for license or exemption was filed before October 16, 1986 and is accepted for filing by the Commission before October 16, 1989.

(c) The requirements of § 292.203(c)(1)(iv) of this part do not apply to an applicant for license or exemption that filed a petition pursuant to § 292.209 of this part, if that petition is granted.

(d) Any application covered by paragraph (a), (b), or (c) of this section is excepted from the moratorium imposed by section 8(e) of the Electric Consumers Protection Act of 1986, Pub. L. No. 99–495.

§ 292.209 Petition alleging commitment of substantial monetary resources before October 16, 1986.

(a) An applicant covered by § 292.203(c) of this part whose application for license or exemption was filed on or after October 16, 1986, but before April 16, 1988, may file a petition for exception from §§ 292.203(c)(1)(iv) and 292.203(c)(2) of this part. The petition must show a commitment of substantial monetary resources, as defined in paragraph (b) of this section, on the project before October 16, 1986. Subject to rebuttal, a showing of the commitment of substantial monetary resources will be presumed if the applicant held a preliminary permit for the project and had completed environmental consultations pursuant to § 4.38 of this chapter before October 16, 1986.

(b) "Commitment of substantial monetary resources" means the expenditure of, or commitment to expend, at least 50 percent of the total cost of preparing an application for license or exemption for a hydroelectric project that is accepted for filing by the Commission pursuant to § 4.32(e) of this chapter. The total cost includes (but is not limited to) the cost of agency consultation, environmental studies, and engineering studies conducted pursuant to § 4.38 of this chapter, and the Commission's requirements for filing an application for license or exemption.

(c) *Time of filing petition.* (1) *General rule.* Except as provided in paragraph (c)(2) of this section, the applicant must:

(i) File the petition with the application for license or exemption; or

(ii) Submit with the application for license or exemption a request for an extension of time, not to exceed 90 days or April 16, 1988, whichever occurs first, in which to file the petition.

(2) *Exception.* If the application for license or exemption was filed on or after October 16, 1986, but before March 23, 1987, the petition must be filed by June 22, 1987.

(d) *Filing requirements.* A petition filed under this section must include the following information or refer to the pages in the application for license or exemption where it can be found:

(1) A certificate of service, conforming to the requirements set out in § 385.2010(h) of this chapter, certifying that the applicant has served the petition on the Federal and State agencies required to be consulted by the applicant pursuant to § 4.38 of this chapter;

(2) Documentation of any issued preliminary permits for the project;

(3) An itemized statement of the total costs expended on the application;

(4) An itemized schedule of costs the applicant expended or committed to be expended, before October 16, 1986, on the application, accompanied by supporting documentation including but not limited to:

(i) Dated invoices for maps, surveys, supplies, geophysical and geotechnical services, engineering services, legal services, document reproduction, and other items related to the preparation of the application, and

(ii) Written contracts and other written documentation demonstrating a commitment made before October 16, 1986, to expend monetary resources on the preparation of the application, together with evidence that those monetary resources were actually expended; and

(5) Correspondence or other documentation to support the items listed in paragraphs (d)(3) and (d)(4) of this section to show that the expenses presented were directly related to the preparation of the application.

(6) The applicant must include in its total costs statement and in its schedule of the costs expended or committed to be expended before October 16, 1986, the value of services that were performed by the applicant itself instead of contracted out.

(7) If the applicant held a preliminary permit for the project and had completed pre-filing consultation pursuant to § 4.38 of this chapter before October 16, 1986, instead of submitting the information listed in paragraphs (d)(3), (d)(4), and (d)(5) of this section, the applicant may submit a statement identifying the preliminary permit by project number.

(8) If the application is deficient pursuant to § 4.32(d) of this chapter, the applicant must include with the information correcting those deficiencies a statement of the costs expended to make the corrections.

(e) *Processing of petition.* (1) The Commission will issue a notice of the petition filed under this section and publish the notice in the **Federal Register.** The petition will be available for inspection and copying during regular business hours in the public reference room maintained by the Division of Public Information.

(2) *Comments on the petition.* The Commission will provide the public within 45 days from the date the notice is issued to submit comments. The applicant for license or exemption may answer any comments filed during that period no later than 15 days after the expiration of the public comment period.

(3) *Commission action on petition.* The Director of the Office of Hydropower Licensing will determine whether or not the applicant for license or exemption has made the showing required under this section.

PART 375—[AMENDED]

1. The authority citation for Part 375 is revised to read as follows:

Authority: Electric Consumers Protection Act of 1986, Pub. L. No. 99–495; Department of Energy Organization Act, 42 U.S.C. 7101–7532, Exec. Order No. 12,009, 3 CFR 1977 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 553; Federal Power Act, 16 U.S.C. 791–828c, as amended; Natural Gas Act, 15 U.S.C. 717–717w, as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301 *et seq.*; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 *et seq.*, as amended.

2. A new paragraph (hh) is added to § 375.314 to read as follows:

§ 375.314 Delegations to the Director of the Office of Hydropower Licensing.

* * * * *

(hh) Pass upon petitions filed under § 292.209 of this chapter.

[FR Doc. 87–3490 Filed 2–19–87; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

31 CFR Part 16

Revocation of Regulations; Loan Prepayments by Federal Financing Bank and Guaranteed by Rural Electrification Administration

AGENCY: Department of the Treasury.

ACTION: Final rule; revocation of regulations.

SUMMARY: The Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) amended the Urgent Supplemental Appropriations Act of 1986 (Pub. L. 99–349) by striking out the undesignated paragraph relating to the prepayment of loans by Rural Electrification and Telephone Systems (FFB Prepayment Provision). Public Law 99–509, Title I, section 1011. The FFB Prepayment Provision allowed prepayment of certain loans made by the Federal Financing Bank (FFB) and guaranteed by the Rural Electrification Administration. Public Law 99–349, Title I, Chapter I; 7 U.S.C. 936 note. To implement the FFB Prepayment Provision, the Department of the Treasury promulgated interim regulations governing the prepayments. By revoking the ability for prepayment of those loans, Pub. L. 99–509 effectively repealed those interim regulations. Accordingly, this document revokes the "Interim Regulations Governing Prepayment of Loans Made by the Federal Financing Bank and Guaranteed by the Rural Electrification Administration" published in the **Federal Register**, Vol. 51, No. 155, August 12, 1986, and removes those regulations from the Code of Federal Regulations since they no longer apply.

EFFECTIVE DATE: February 20, 1987.

FOR FURTHER INFORMATION CONTACT: John Bowman, Acting Deputy Assistant General Counsel, Office of the General Counsel, Room 2026, Department of the Treasury, Main Treasury Building, Washington, DC 20220 (202) 566–8737.

Procedural Requirements

Because Congress has repealed the statute under which the regulations revoked herein became necessary, a notice and public comment period is impractical, unnecessary, and contrary to the public interest pursuant to 5 U.S.C. 553 (b)(B). Similarly, for good cause it is found that a delayed effective

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date is unnecessary pursuant to 5 U.S.C. 553 (d)(3).

PART 16—[REMOVED]

Subtitle A of Title 31, Code of Federal Regulations, is amended by removing Part 16.

Authority: Title I, Section 1011 of Pub. L. 99–509.

Dated: February 9, 1987.

Charles O. Sethness,

Assistant Secretary of the Treasury (Domestic Finance).

[FR Doc. 87–3539 Filed 2–19–87; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that Large Harbor Tugs YTB–752 and YTB–758 are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special function as naval vessels. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: February 6, 1987.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that Large Harbor Tugs YTB–752 and YTB–758 are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(b), pertaining to the placement of the sidelights; Rule 21(c), pertaining to the location of the sternlight; Rule 24(c), pertaining to the towing lights displayed by power driven vessels when pushing ahead or towing alongside; Rule 27(b)(i), pertaining to the lights displayed by vessels restricted in their ability to maneuver; and Annex I, section 2(a)(i), pertaining to the height above the hull of the masthead light, without interfering with their special functions as naval vessels. YTB–752 and YTB–758 are tugs of special construction and functions. They perform towing services for naval vessels. The masts of these tugs are hinged and are lowered when towing alongside or pushing ships having radically flared bows or sponsoned sides and sterns. When the mast is in the lowered position, the masthead lights, and task lights mounted on this mast, cannot be displayed. During such operation, only the pilot house top-mounted auxiliary masthead light, sidelights, and sternlight will be exhibited. The Secretary of the Navy has further certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary and contrary to public interest since it is based on technical findings that the placement of lights on these vessels in a manner differently from that prescribed herein will adversely affect the ships' ability to perform their military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Three of § 706.2 is amended by adding the following Navy ships to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Masthead lights, arc of visibility; Rule 21(a)	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility; Rule 21(c)	Side lights, distance inboard of ship sides in meters, sec. 3(b), Annex I	Stern light distance forward of stern in meters, Rule 21(c)	Forward anchor light, height above hull in meters; sec. 2(k) Annex I	Anchor lights relationship of aft light to forward light in meters; sec. 2(k), Annex I
YTB–752	YTB–752				2.69	13.71		
YTB–758	YTB–758				2.66	15.97		

3. Table Four of § 706.2 is amended by adding the following numbered note which reflects navigational light certifications issued by the Secretary of the Navy:

* * * * *

23. The following harbor tugs are equipped with a hinged mast. When the mast is in the lowered position as during a towing alongside or pushing operation, the two masthead lights required by Rule 24(c), and the all around lights required by Rule 27(b)(i) will not be shown; however, an auxiliary masthead light not meeting with Annex I, section 2(a)(i) height requirement will be exhibited.

Vessel No.	Distance in meters of aux masthead light below minimum required height, Annex I, sec. 2(a)(i)
YTB–752	3.97
YTB–758	3.97

Dated: February 6, 1987.

Approved: February 6, 1987.

John Lehman,

Secretary of the Navy.

[FR Doc. 87–3519 Filed 2–19–87; 8:45 am]

BILLING CODE 3810-AE-M

POSTAL SERVICE

39 CFR Part 111

Solicitations in the Guise of Bills, Invoices, or Statements of Account

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the regulation implementing statutory provisions on the mailing of solicitations in the guise of bills, invoices, or statements of account. It clarifies an existing regulation by removing possible ambiguity and makes more specific and prominent a required warning regarding the true nature of solicitations which resemble bills.

EFFECTIVE DATE: March 21, 1987.

FOR FURTHER INFORMATION CONTACT: George C. Davis, (202) 268–3076.

SUPPLEMENTARY INFORMATION: On December 22, 1986, the Postal Service published for comment in the **Federal Register** (51 FR 45782) proposed changes to the Domestic Mail Manual which would amend the regulation on the mailing of solicitations in the guise of bills, invoices, or statements of account. Interested persons were invited to submit comments on the proposed changes by January 21, 1987.

Three commenters responded to our invitation, two in writing, one orally, all favorably. In view of this favorable response, the Postal Service hereby adopts the proposal without change, and makes the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 407, 408, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Revise 123.4 to read as follows:

123.4 Nonmailable Written, Printed or Graphic Matter Generally

.41 Solicitations in the Guise of Bills, Invoices, or Statements of Account (39 U.S.C. 3001(d); 39 U.S.C. 3005). Any otherwise mailable matter which reasonably could be considered a bill, invoice, or statement of account due, but is in fact a solicitation for an order, is nonmailable unless it conforms to .41a through .41f below. A nonconforming solicitation constitutes prima facie evidence of violation of 39 U.S.C. 3005. However, compliance with this section will not avoid violation of Section 3005 if any portion of the solicitation or any accompanying information misrepresents a material fact to the addressee. For example, misleading the addressee as to the identity of the sender of the solicitation or as to the nature or extent of the goods or services offered may constitute a violation of section 3005.

a. The solicitation must bear on its face the disclaimer prescribed by 39 U.S.C. 3001(d)(2)(A) or, alternatively, the notice: THIS IS NOT A BILL. THIS IS A SOLICITATION, YOU ARE UNDER NO OBLIGATION TO PAY THE AMOUNT STATED ABOVE UNLESS YOU ACCEPT THIS OFFER. The statutory disclaimer or the alternative notice must be displayed in conspicuous boldface capital letters or a color prominently contrasting (see .41e below) with the background against which it appears, including all other print on the face of the solicitation, and that are at least as large, bold and conspicuous as any other print on the face of the solicitation but not smaller than 30-point type.

b. The notice or disclaimer required by this section must be displayed conspicuously apart from other print on the page immediately below each portion of the solicitation which reasonably could be construed to specify a monetary amount due and payable by the recipient. It must not be preceded, followed, or surrounded by words, symbols, or other matter that reduces its conspicuousness or that introduces, modifies, qualifies, or explains the prescribed text, such as "Legal notice required by law." See example following paragraph f.

c. The notice or disclaimer must not, by folding or any other device, be rendered unintelligible or less prominent than any other information on the face of the solicitation.

d. If a solicitation consists of more than one page or if any page is designed to be separated into portions (e.g., by tearing along a perforated line), the notice or disclaimer required by this section must be displayed in its entirety on the face of each page or portion of a page that might reasonably be considered a bill, invoice, or statement of account due as required by paragraphs .41a and .41b, *supra*.

e. For purposes of this section, the phrase "color prominently contrasting" excludes any color, or any intensity of an otherwise included color, which does not permit legible reproduction by ordinary office photocopying equipment used under normal operating conditions, and which is not at least as vivid as any other color on the face of the solicitation. For the purposes of this section the term "color" includes black.

f. Any solicitation which states that it has been approved by the Postal Service or by the Postmaster General or that it conforms to any postal law or regulation is nonmailable.

Example

SOLITATIONS INCORPORATED
RETAIL STORES

CAR-RT-SORT ** CR 43
RETAIL STORE
1515 MAIN STREET
ANYWHERE, USA

___ CHECK ENCLOSED
___ BILL ME LATER

X _____
SIGNATURE

IMPORTANT: THIS FORM MUST BE RETURNED TO ENSURE YOUR CORRECT DIRECTORY LISTING. Please correct listing and ZIP Code if necessary.

FOLD HERE

MAKE CHECK PAYABLE TO: Solicitations Incorporated, P.O. Box 10000, City, State, ZIP Code

BUSINESS LISTINGS TO APPEAR IN THE 1987 SOLICITATIONS INCORPORATED DIRECTORY

AMOUNT: $50.00 FOR EACH LISTING.

THIS IS NOT A BILL.
THIS IS A SOLICITATION.
YOU ARE UNDER NO OBLIGATION
TO PAY THE AMOUNT STATED ABOVE
UNLESS YOU ACCEPT THIS OFFER.

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A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided in 39 CFR 111.3.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87-3513 Filed 2-19-87; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1780

[Circular No. 2589; WO-150-06-4380-11]

Advisory Committees; Appointment and Reappointment to District Advisory Councils, etc.; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking; correction.

SUMMARY: The Department of the Interior is correcting errors in the October 29, 1986 (51 FR 39528) final rulemaking on Advisory Committees to clarify two provisions that were confusing and susceptible of misinterpretation.

EFFECTIVE DATE: February 20, 1987.

ADDRESS: Inquiries or suggestions should be sent to: Director (150), Bureau of Land Management, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: David S. Johnson, (202) 343-2054.

SUPPLEMENTARY INFORMATION: This document corrects 2 provisions of the final rulemaking on Advisory Committees in Part 1780 published in the **Federal Register** on October 29, 1986 (51 FR 39528). These corrections clarify the final rulemaking to reflect the intention of the Department of the Interior in that final rulemaking.

1. Section 1784.3(b)(4), page 39530, first column, is corrected by removing the unnecessary phrase, "if 3 years had elapsed since the completion of that person's last 3-year term before being appointed to the vacancy," which, in the context of paragraph (b)(4), could be misinterpreted to imply that, under some unstated circumstances, a person could be appointed to a council to fill a vacancy sooner than 3 years after completion of 2 consecutive 3-year terms. The phrase is rendered unnecessary by the prohibition in paragraph (b)(5) that a person cannot be subsequently appointed sooner than 3 years after the completion of 2 consecutive 3-year terms.

2. Section 1784.3(b)(5), page 39530, first column, is corrected to avoid the possible misinterpretation that it applies only to immediate reappointments to extend or continue a term on a council, and not to subsequent appointments. The phrase "may be reappointed" and the word "reappoint" are removed, and the phrase "may be subsequently appointed" and the word "appoint" are inserted in their places.

Dated: February 13, 1987.

James E. Cason,

Acting Assistant Secretary of the Interior.

The following corrections are made in the final rulemaking on 43 CFR Part 1780, Advisory Committees; Appointment and Reappointment to District Advisory Councils, etc., published in the **Federal Register** on October 29, 1986 (51 FR 39528).

§ 1784.3 [Corrected]

1. Section 1784.3, paragraph (b)(4) is corrected to read as follows:

* * * * *

(4) A person who has served an appointed term of less than 3 years on a council to fill a vacancy occurring for reasons described in paragraph (b)(2) of this section may, at the discretion of the Secretary, be reappointed to two consecutive 3-year terms;

2. Section 1784.3, paragraph (b)(5) is corrected to read as follows:

(5) A person who has served 2 consecutive 3-year terms on a council may be subsequently appointed no earlier than 3 years after his or her last date of membership on that council. However, the Secretary may waive this 3-year waiting period and appoint that person to a 1-year term, upon determining that the member's continued or renewed service on the council is in the public interest and critical to the effective functioning of the council, and the responsible district manager has certified that these conditions have been met.

[FR Doc. 87-3575 Filed 2-19-87; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 10

Environmental Considerations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Environmental Impact Statements and environmental assessments will no longer be required for those community-wide exceptions for floodproofed residential basements which meet certain technical standards.

EFFECTIVE DATE: March 1, 1987.

FOR FURTHER INFORMATION CONTACT: John Scheibel, Associate General Counsel, FEMA, 500 C Street, SW., Washington, DC 20472. Telephone: (202) 646-4100.

SUPPLEMENTARY INFORMATION: Pursuant to 44 CFR 10.8(d), on September 5, 1986, in the **Federal Register**, the Federal Emergency Management Agency (FEMA) published a proposed rule to amend its regulations to expand the list of categorical exclusions, actions which are not subject to the application of 44 CFR Part 10 of FEMA's regulations. That part implements the National Environmental Policy Act of 1969 and the regulations of the Council on Environmental Quality (40 CFR Parts 1500 through 1508).

No comments were received, consequently FEMA is publishing this notice of a final rule. This relates to the final rule published in the **Federal Register** by FEMA on August 25, 1986, which included supplemental information on "Exceptions for Floodproofed Residential Basements." FEMA determined, after reviewing exception requests and conducting a study, that such exceptions will continue to be granted but under a simplified procedure.

The simplified procedure would be based solely on a technical review by FEMA of flooding characteristics in the community to determine if the community met criteria in § 60.6(c) of the final rule published in the **Federal Register** on August 25, 1986. If a community met the criteria, no finding would be required that there would be severe hardship or gross inequity if the exception were denied and no special environmental clearance (environmental assessment or Environmental Impact Statement) would be prepared.

This regulation is not a major rule within the meaning of the term in Executive Order 12291 nor will it have a significant economic impact on a substantial number of small entities. Hence, no regulatory impact statements have been prepared. Also there are no information collection requirements needing clearance under 3504(h) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 10

Environmental impact statements.

Accordingly, FEMA will amend § 10.8(c)(2) of Part 10, Chapter 1, Subchapter A of Title A as follows:

PART 10—ENVIRONMENTAL CONSIDERATIONS

1. The authority citation for Part 10 continues to read as follows:

Authority: 42 U.S.C. 4321 *et seq.* E.O. 11514 as amended by E.O. 11991; Reorganization Plan No. 3 of 1978, E.O. 12127, E.O. 12148.

§ 10.8 [Amended]

2. Section 10.8(c)(2) as amended by adding paragraph (c)(2)(ix) to read as follows:

* * * * *

(c) * * *

(2) * * *

(ix) Community-wide exceptions for floodproofed residential basements meeting the requirements of 44 CFR 60.6 (c) under the National Flood Insurance Program.

* * * * *

Dated: February 11, 1987.

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 87-3418 Filed 2-19-87; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 2, 21, 22, 23, 25, 62, 73, and 74

[General Docket No. 86-285; FCC 86-562]

Establishment of a Fee Collection Program To Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: This action creates new rules and procedures for implementing the Schedule of Charges and other provisions established by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. Number 99-272). The decisions made in the Report and Order include: (1) Adoption of the fees exactly as mandated by Congress; (2) retention of fees by the government regardless of the Commission's disposition of an application or filing; (3) new locations for the filing of fees and applications; (4) a policy whereby fees will be due in full upon submission of an application or filing to the Commission; (5) payment of fees by check, bank draft, or money order; (6) penalties for late or failed payments; (7) a procedure for modifying the fees based upon changes in the Consumer Price Index; (8) fee exemptions for certain radio services or users; (9) a procedure for waivers or deferrals of fees; and (10) an analysis of each fee including its calculation and connection to current processing rules.

EFFECTIVE DATE: April 1, 1987.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Brent Weingardt, Office of the Managing Director, (202) 632-3906, or Marilyn McDermett, (202) 632-5316.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in General Docket 86-285, FCC 86-562, Adopted December 23, 1986 and Released February 17, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. The Report and Order amends the Commission's rules in order to implement those provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("Budget Act") that prescribe charges for certain regulatory actions provided to the public (sections 5002(e) and 5002(f) of Pub. L. Number 99-272, 47 U.S.C. 158). The Budget Act establishes a Schedule of Charges for various communications services under the Commission's regulatory jurisdiction; creates procedures for modifications to the Schedule of Charges; delineates charges and other penalties for late payments; exempts specific radio services and entities from charges; and provides for Commission-approved waivers and deferrals. The Budget Act also directs the Commission to prescribe appropriate rules and regulations to carry out the provisions of this legislation.

2. On June 25, 1986 the Commission adopted a Notice of Proposed Rule Making to consider new rules and procedures for fee collection (General Docket Number 86-285, FCC 86-301, 51 FR 25792 (July 16, 1986)). This document detailed proposed new collection procedures and discussed the intended calculation of each fee in the Schedule of Charges. The Commission received and reviewed 54 public comments and 13 reply comments. The Commission's consideration of its proposed rules and the public comments in response to them was guided by three distinct principles: (1) The fee collection process should not have an adverse impact on the Commission's application processing and equipment authorization programs; (2) fees should be collected and deposited in the most cost effective manner possible; and (3) fees should impose little or no additional paperwork burden on the public.

Amount of Charges

3. The Commission adopts the statutory Schedule of Charges into its rules exactly as approved by the Congress. The Commission determines that the fees may not be changed, except to reflect increases or decreases in the Consumer Price Index, without future legislation.

Retention and Refund of Charges

4. The Commission decides that fees will be retained by the government irrespective of the Commission's ultimate disposition of the underlying application or filing. Fees will be returned in certain limited instances. These include: applications or filings with an insufficient fee; fees submitted with applications or filings not requiring a fee; unnecessary filings requiring no staff action; submissions from an applicant who cannot meet a prescribed age requirement; instances when a waiver request is granted; overpayments of $8 or more; and instances when the Commission adopts new rules that nullify applications already accepted for processing.

5. In response to comments suggesting partial or full refunds for applications rejected on substantive grounds, the Commission notes that it incurs a cost regardless of the final result to the applicant and that it proposed to Congress that these fixed processing costs be recovered in equal amounts from each applicant. According to the Commission, neither the Budget Act nor its legislative history would require the apportioning of fees according to the actual work done on any particular application.

Role of FCC FORMS

6. The Commission decides that a new fee form need not accompany the required fees. For the present, the public will be expected to submit fees with the current OMB-approved application forms or in approved filing formats. However, applicants are urged to attach a cover letter to the application or filing that details the number and type of fees

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encompassed by the submission. The Commission rejects the use of fee receipts, as it does not believe they would serve any useful purpose justifying their costs. Applicants will receive receipts through their cancelled checks or "receipt copies" of the application provided to the Commission.

Payment Locations

7. The Commission concludes that certain changes in the filing locations for feeable applications are necessary in order to comply with the cash management directives of the Deficit Reduction Act of 1984 and Department of Treasury regulations. As of April 1, 1987 the public must submit feeable private radio applications to the Treasury lockbox bank located in Pittsburgh, Pennsylvania. The Public will be able to mail or hand carry its applications to the lockbox bank. (Mailing addresses and delivery times for all feeable FCC submissions will be provided in a later Order.) The Commission will not accept feeable applications sent to Gettysburg. Feeable applications mailed or delivered to this location will be returned to the sender without processing.

8. The Commission will continue to receive mass media and common carrier applications at its headquarters building in Washington, DC. Equipment authorization applications, now filed with the Commission's laboratory near Columbia, Maryland, will be filed at the headquarters building as of April 1, 1987. The Commission indicates that equipment authorization applications will be processed in order of their receipt at the Washington, DC location. This change in filing location should not impact overall speed of processing.

9. The public should continue to submit applications directly to the appropriate frequency coordinator for those applications in the private radio land mobile radio services that are subject to the mandatory frequency coordination procedures established in Private Radio Docket 83–737. Statutory fees will not be due from the applicant at the time it submits an application to a frequency coordinator. However, the applicant may attach the statutory fee to the application in the form of a check or money order made payable to the Federal Communications Commission. In the absence of an agency relationship between the coordinator and the applicant for the coordinator to serve as a fee filing agent, a payment instrument that commingles the statutory fee and the coordinator's fee will be returned to the applicant. The coordinator will mail or otherwise deliver the application and attached fee to the Treasury lockbox bank within three days of the completion of coordination. The applicant may also choose to submit the statutory fee to the frequency coordinator after it receives notice from the coordinator that its application is ready for submission to the Commission. The coordinator will have three days from its receipt of the fee from the applicant to forward the fee and application to the Treasury lockbox bank. It is the coordinator's responsibility not to forward applications requiring a fee to the Treasury lockbox bank without such fees.

Timing of Payments

10. Unless an applicant is granted a deferral of fees under the authority of section 8(d)(2) of the Communications Act, all fees will be due in full upon submission of an application or filing to the Commission. Partial payments or installment payments will not be permitted. Therefore, no submission will be deemed sufficient for processing by the appropriate bureau or office unless the full fee is attached. The Commission indicates that for it to allow partial payments, an extensive billing and collection program would be necessary. Any such billing program adds significantly to the cost of a cash management system, delay's Treasury's receipt of funds, and ultimately decreases the amount of regulatory costs recovered by the government. Should an applicant believe it has filed an incorrect fee and wish to correct this error, it should resubmit the application or filing with the *entire* fee attached.

Method of Payment

11. The public may pay its fees by check, bank draft, or money order made payable to the Federal Communications Commission and drawn upon funds deposited in a bank in the United States. In most instances, one payment instrument must accompany each application or filing. A single payment instrument will be permitted for multiple applications if these applications are filed simultaneously on behalf of the same legal applicant, request the same Commission action in the same radio service on the same FCC Forms. If the single payment is insufficient, all of the applications encompassed by the payment will be returned to the applicant.

12. The Commission rejects alternative payment methods, such as deposit/drawing accounts and credit cards, because they would either place additional administrative burden on the processing staff, intertwine the agency with private fee decisions, or delay payments to the Treasury. The conditions imposed on the payment of multiple applications through one payment instrument are necessary to avoid the commingling of separate legal applicants and to aid the staff in processing, auditing and accounting for fees.

Penalties for Late or Failed Payments

13. The Commission will dismiss as unacceptable for processing any application or filing that is not accompanied by a sufficient fee. When the Commission permits an untimely paid application to enter the processing system, that is, one not accompanied by a sufficient fee, it will bill the applicant for the amount due plus a 25 percent penalty on the amount owed. Untimely payments, resulting in a bill to the applicant, will be permitted only when a deferral request is granted or when the staff does not detect the insufficient fee payment in 30 calendar days or less from the receipt of the application. Prior to this date, the application will be dismissed if an insufficient payment is discovered. If an applicant is billed and does not pay by the date indicated, its application will be dismissed or its authorization rescinded.

14. While the Commission believes that section 8(c)(2) of the Communications Act gives it the authority to dismiss an application whenever the fee underpayment is discovered, such a policy would upset the ongoing activities of applicants and licensees who relied on the first fee review by the staff. The 30 calendar day rule provides a clear demarcation point as to the consequences of a fee underpayment. This time frame is consistent with the amount of time needed by the bureaus to complete a second review of the fee and report mistakes to the fee staff. This second review will significantly decrease the errors in fee collection that could otherwise result in an expensive accounts receivable program and lost revenues to the government.

15. The Commission also decides that all instruments of authorization will be conditioned upon final payment of the applicable fee. Therefore, if the Commission receives word that a payment instrument has failed for insufficient funds, the authorization will be automatically rescinded and the grantee notified to cease operations. If the application is still pending, it will be dismissed. In response to the comments, the Commission notes that it is not concerned with determining fault for failed payments, as payment remains the ultimate responsibility of the applicant. However, the Commission will instruct its depositary banks to present all instruments to the drawee's bank twice before returning the instrument to the Commission as an uncollectible item. This should allow the applicant to correct inadvertent errors. Finally, the Commission notes that it has the authority to condition its grants upon payment of the fee and need not hold a revocation hearing under section 312 of the Communications Act. The Supreme Court has stated that the hearing requirement cannot be interpreted as withdrawing from the Commission the rulemaking authority necessary to conduct its business, particularly when Congress has specifically authorized limitations against licensing that the Commission must implement. *See, U.S.* v. *Storer Broadcasting Company*, 351 U.S. 192, 202–203 (1956).

Modifications to the Schedule of Charges

16. In line with the statutory formula contained in new section 8(b)(1) of the Communications Act, the Commission will review the Schedule of Charges every two years after the date of enactment and adjust these charges to reflect changes in the Consumer Price Index for all Urban Consumers (CPI-U). Adjustments to fee under $100 will not occur until the change equals at least five dollars, or in the case of $100 or more, until the CPI-U has changed by five percent. All fees requiring adjustment will be rounded up or down to the next five dollar increment.

Radio Services and Entities Exempt From Charges

17. New section 8(d)(1) of the Communications Act and the Budget Act's legislative history create specific exemptions from the fee requirement. The Commission concludes that these exemptions will constitute all of the radio services and entities exempt from the Schedule of Charges. Unlike the former fee program, which was implemented under the authority of the Independent Offices Appropriation Act of 1952 and allowed the Commission to consider "public policy and interest served" in creating fees, the Budget Act establishes discrete fees and specific exemptions to them. The Commission believes it is without authority to create additional exemptions beyond those approved by Congress.

18. All applicants and licensees in the Public Safety and Special Emergency Radio services are exempt from fees. This exemption includes all of the specific radio services encompassed within these categories (*See* 47 CFR 90.15 and 90.33 for a delineation of these radio services).

19. Applicants, permittees, on licensees of noncommercial educational broadcast stations in the FM and TV services, as well as AM applicants, permittees or licensees who certify that the station will operate or does operate in conformance with § 73.503 of the rules, are exempt from fees associated with these services. The exemption also applies to stations operated on a nocommercial educational basis on unreserved channels. Applications by these stations for any other mass media, private radio, or common carrier authorization will also be exempt from fees if the radio service is used in conjunction with the noncommercial educational broadcast station on a noncommercial educational basis. (*See* 47 U.S.C. 397(14)).

20. Fees will not be required for applications or filings made by interconnection organizations—such as the Public Broadcasting Service or National Public Radio—funded directly or indirectly through the Corporation for Public Broadcasting if the mass media, private radio or common carrier service is used in conjunction with the interconnection organization on a noncommercial education basis (*See* 47 U.S.C. 397(14)).

21. Governmental entities are exempt from any fee in the Schedule of Charges. These entities are defined at new § 1.1112(f) of the Commission's rules. The Commission rejects the proposed modifications to the rules as unnecessary and complicating. In addition, the Commission rejects the suggestion to permit a non-governmental license holder to assert the exemption on behalf of a governmental user who is the sole user of the facility. Such an assertion would clearly violate section 8(d)(1) of the Communications Act, which limits the exemption to "governmental entities *licensed* in other services" (emphasis added).

Waivers and Deferrals

22. The Commission decides to consider waivers and deferrals on a case by case basis for specific applicants who file requesting such action on their own behalf. It rejects the comments seeking categorical waivers of deferrals as inconsistent with the narrow authority by the Congress to consider specific requests. In accordance with 8(d)(2) of the Communications Act, the waiver of deferral will be granted for good cause shown when such action will promote the public interest. Those requesting a waiver of deferral will have the burden of demonstrating that, for each request, a waiver or deferral would override the public interest, as determined by Congress, that the government should be reimbursed for the specific regulatory action of the FCC. These requests will be acted upon by the Managing Director, with the concurrence of the General Counsel, and must accompany the underlying application or filing.

Chargeable Radio Services and Authorizations

23. The Commission makes several decisions interpreting the new Schedule of Charges and its accompanying legislative history as they relate to the radio services and authorization functions subject to fees. These interpretations are incorporated into the rules.

Effective Date of Schedule of Charges

24. The Commission decides that fee collection will begin on April 1, 1987. Applications or filings received at the Commission or the Treasury lockbox bank on or after this date will require a fee. The postmark date will not determine whether a fee is required. There will be no grace period for improperly filed application or insufficient fees. Applications on file with the Commission prior to April 1, 1987 will not require a fee. However, applications on file prior to this date that are designated for hearing on or after April 1, 1987 will be subject to the hearing charge. The hearing fee is justified because it represents a charge for a prospective action of the Commission in which the applicant may choose not to participate.

Procedural Matters

25. Final Regulatory Flexibility Analysis. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

26. The rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements, and will not increase or decrease burden hours imposed on the public.

27. Accordingly, it is hereby ordered, that, pursuant to authority contained in section 5002(e) of Pub. L. Number 99–272, the Consolidated Omnibus Budget Reconciliation Act of 1985, and in sections 4(i), 4(j), 8(f) and 303(r) of the Communications Act of 1934, as

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amended, 47 U.S.C. 154(i), 154(j), 158(f) and 303(r), Parts 0, 1, 2, 21, 22, 23, 25, 62, 73, and 74 if the Commission's rules are amended as set forth below. These rules and regulations are effective 30 days after publishing in the **Federal Register**.

List of Subjects

47 CFR Part 0

Organization and functions.

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 2

Communications equipment.

47 CFR Part 21

Communications common carriers.

47 CFR Part 22

Communications common carriers.

47 CFR Part 23

Communications common carriers.

47 CFR Part 25

Communications common carriers.

47 CFR Part 62

Communications common carriers.

47 CFR Part 73

Radio and television broadcasting.

47 CFR Part 74

Radio and television broadcasting.

Rule Amendments

47 CFR Parts, 0, 1, 2, 21, 22, 23, 25, 62, 73, and 74 are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read:

Authority: Sec. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303 unless otherwise noted. Implement 5 U.S.C. 552, unless otherwise noted.

2. 47 CFR 0.231 is amended by revising paragraph (c); redesignating existing paragraph (i) as paragraph (h); and by removing existing paragraph (h) as follows:

§ 0.231 Authority delegated.

* * * * *

(c) The Managing Director, or his designee, upon securing concurrence of the General Counsel, is delegated authority to act upon requests for waiver or deferral of fees established under Subpart G, Part 1 of this chapter.

* * * * *

§ 0.284 [Amended]

3. 47 CFR 0.284 is amended by removing existing paragraph (a)(3) and redesignating paragraphs (a)(4) through (a)(11) as paragraphs (a)(3) through (a)(10).

§ 0.332 [Amended]

4. 47 CFR 0.332 is amended by removing existing paragraph (c) and redesignating paragraphs (d) through (j) as paragraphs (c) through (i).

5. 47 CFR 0.406 is amended by revising paragraph (b)(2) to read as follows:

§ 0.406 The rules and regulations.

* * * * *

(b) * * *

(2) Part 1, practice and procedure. Subpart A of Part 1 contains the general rules of practice and procedure. Except as expressly provided to the contrary, these rules are applicable in all Commission proceedings and should be of interest to all persons having business with the Commission. Part 1 also contains certain other miscellaneous provisions. Subpart B contains the procedures applicable in formal hearing proceedings (see § 1.201). Subpart C contains the procedures followed in making or revising the rules or regulations. Subpart D contains rules applicable to applications for licenses in the Broadcast Radio Services, including the forms to be used, the filing requirements, the procedures for processing and acting on such applications, and certain other matters. Subpart E contains general rules and procedures applicable to common carriers. Additional procedures applicable to certain common carriers by radio are set forth in Part 21. Subpart F contains rules applicable to applications for licenses in the Private Radio Services, including the forms to be used, the filing requirements, the procedures for processing and acting on such applications, and certain other matters. Subpart G contains rules pertaining to the application processing fees established by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. Number 99–272). Subpart H, concerning ex parte presentations, sets forth standards governing communications with Commission personnel in hearing proceedings and contested application proceedings. Subparts G and H will be of interest to all applicants, and Subpart H will, in addition, be of interest to all persons involved in hearing proceedings.

PART 1—PRACTICE AND PROCEDURE

6. The authority citation for Part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Implement, 5 U.S.C. 552, unless otherwise noted.

7. 47 CFR 1.80 is amended by revising paragraph (h) to read as follows:

§ 1.80 Forfeiture proceedings.

* * * * *

(h) Payment. The forfeiture should be paid by check or money order drawn to the order of the Federal Communications Commission. The Commission does not accept responsibility for cash payments sent through the mails. The check or money order should be mailed to the Forfeiture Unit, Financial Services Branch, FCC, Box 19209, Washington, DC 20036, or delivered to the Forfeiture Unit, Financial Services Branch, Room 452, 1919 M St., NW., Washington, DC 20554.

* * * * *

8. 47 CFR 1.221 is amended by adding new paragraphs (f), (g), and Note to read as follows:

§ 1.221 Notice of hearing; appearances.

* * * * *

(f) A processing fee must accompany each written appearance filed with the Secretary in certain cases designated for hearing on or after the date fee collection is implemented by the Commission. *See* Subpart G, Part 1 for amount due. The hearing fee is required of each applicant designated for hearing in a case involving the comparative review of applicants for a new commercial television, radio, or Direct Satellite Broadcasting (DBS) construction permit, a major/minor change construction permit for a previously authorized commercial television, radio, or DBS facility, or a comparative renewal license proceeding for these facilities. The fee must accompany each written appearance at the time of its filing and must be in a form of payment prescribed by § 1.1108 of the Commission's rules.

(g) A written appearance that does not contain the proper fee, or is not accompanied by a waiver or deferral request as per § 1.1115 of the Commission's rules, shall be dismissed and returned to the applicant by the fee processing staff. The presiding judge will be notified of this action and may dismiss the applicant with prejudice for failure to prosecute if the written appearance is not resubmitted with the correct fee within the original 20 day filing period.

Note.—If the parties wish to file a settlement agreement with the Administrative Law Judge, the hearing fee need not accompany the Notice of Appearance. In filing the Notice of Appearance, the applicant should clearly indicate that a settlement agreement has been filed. (The fact that there are ongoing negotiations that may lead to a settlement does not affect the requirement to pay the hearing fee.) If the settlement agreement is not effectuated, the hearing fee must be paid immediately.

9. 47 CFR 1.742 is revised to read as follows:

§ 1.742 Place of filing, fees, and number of copies.

All applications shall be tendered for filing at the Commission's main office in Washington, DC. Hand-delivered applications will be dated by the Secretary upon receipt (mailed applications will be dated by the Mail Branch) and then forwarded to the Common Carrier Bureau. The number of copies required for each application and the nonrefundable processing fees (see Subpart G) which must accompany each application in order to qualify it for acceptance for filing and consideration are set forth in the rules in this chapter relating to various types of applications. However, if any application is not of the types covered by this chapter, an original and two copies of each such application shall be submitted.

10. 47 CFR 1.762 is revised to read as follows:

§ 1.762 Interlocking directorates.

Applications under section 212 of the Communications Act for authority to hold the position of officer or director of more than one carrier subject to the act or for a finding that two or more carriers are commonly owned shall be made in the form and manner, with the number of copies set forth in Part 62 of this chapter. The Commission shall be informed of any change in status of any person authorized to hold the position of officer or director of more than one carrier, as required by Part 62 of this chapter.

11. 47 CFR 1.764 is amended by revising paragraph (a) to read as follows:

§ 1.764 Discontinuance, reduction, or impairment of service.

(a) Applications under section 214 of the Communications Act for the authority to discontinue, reduce, or impair service to a community or part of a community or for the temporary, emergency, or partial discontinuance, reduction, or impairment of service shall be made in the form and manner, with the number of copies specified in Part 63 of this chapter (see also Subpart G, Part 1 of this chapter). Posted and public notice shall be given the public as required by Part 63 of this chapter.

* * * * *

12. 47 CFR 1.766 is amended by revising paragraph (a) to read as follows:

§ 1.766 Consolidation of domestic telegraph carriers.

(a) Applications under section 22 of the Communications Act by two or more domestic telegraph carriers for authorization to effect a consolidation or merger or by any domestic telegraph carrier to acquire all or any part of the domestic telegraph properties, domestic telegraph facilities, or domestic telegraph operations of any carrier shall contain such information as is necessary for the Commission to act upon such application under the provisions of section 222 of the Act.

* * * * *

13. 47 CFR 1.767 is amended by revising paragraph (a) to read as follows:

§ 1.767 Cable landing licenses.

(a) Applications for cable landing licenses under 47 U.S.C. 34–39 and Executive Order No. 10530, dated May 10, 1954, should be filed in duplicate and in accordance with the provisions of that Executive Order. These applications should contain the name and address of the applicant; the corporate structure and citizenship of officers if a corporation; a description of the submarine cable, including the type and number of channels and the capacity thereof; the location of points on the shore of the United States and in foreign countries where cable will land (including a map); the proposed use, need, and desirability of the cable; and such other information that as may be necessary to enable the Commission to act thereon. A separate application shall be filed with respect to each individual cable system for which a license is requested, or for which modification or amendment of a previous license is requested.

* * * * *

14. 47 CFR 1.772 is revised to read as follows:

§ 1.772 Application for special tariff permission.

Applications under section 203 of the Communications Act for special tariff permission shall be made in the form and manner, with the number of copies set out in Part 61 of this chapter.

15. Part 1, Subpart G consisting of § 1.1101 through 1.1116 is revised in its entirety to read as follows:

Subpart G—Schedule of Statutory Charges and Procedures for Payment

Sec.

1.1101 Authority.
1.1102 Schedule of charges for private radio services.
1.1103 Schedule of charges for equipment approval services.
1.1104 Schedule of charges for mass media services.
1.1105 Schedule of charges for common carrier services.
1.1106 Attachment of charges.
1.1107 Payment of charges.
1.1108 Form of payment.
1.1109 Filing locations.
1.1110 Conditionality of Commission or staff authorizations.
1.1111 Return or refund of charges.
1.1112 General exemptions to charges.
1.1113 Adjustments to charges.
1.1114 Penalties for late or insufficient payments.
1.1115 Waivers or deferrals.
1.1116 Error claims.

Subpart G—Schedule of Statutory Charges and Procedures for Payment

Authority: Sec. 5002 (e) and (f), Pub. L. No. 99–272, 100 Stat. 82, 118–121, 47 U.S.C. 158.

§ 1.1101 Authority.

Authority for this Subpart is contained in Title V, section 5002 (e) and (f) of the Consolidated Omnibus Reconciliation Act of 1985 (47 U.S.C. 158), which directs the Commission to prescribe charges for the regulatory services it provides to many of the communications entities within its jurisdiction. This law adds a new section 8 to the Communications Act of 1934, as amended, which includes a Schedule of Charges as well as procedures for modifying and collecting these charges.

§ 1.1102 Schedule of charges for private radio services.

Except as provided elsewhere in this subpart, the charges prescribed below are required for all requests for private radio authorizations submitted to the Commission.

Private Radio Service

Marine Coast Stations:[1]	
New Authorizations	[2] $60
Modifications and Assignments	[3] $60
Renewals	[4] $60
Operational Fixed Microwave Stations:	
New Authorizations	[5] $135
Modifications and Assignments	[6] $135
Renewals	[7] $135
Aviation (Ground Stations)[8]	
New Authorizations	[9] $60
Modifications and Assignments	[10] $60
Renewals	[11] $60
Land Mobile Radio Licenses:[12]	
New Authorizations	[13] $30
Modifications and Assignments	[14] $30

Renewals	[18] $30

[1] Includes applications for public coast stations, limited (private) coast stations, marine-utility stations, maritime radio location stations, maritime radionavigation stations, manner-receiver test stations, shore radiolocation test stations, shore radar test stations, shore radiolocation training stations, operational fixed stations, Alaska-public fixed stations and Alaska-private fixed stations.

[2] An additional fee of $60 is required for each station requested. No fee is required for special temporary authority or duplicate licenses.

[3] An additional fee of $60 is required for each station requested. No fee is required to inform the FCC of changes in licensee name or address, vessel name, or that station is no longer in service when done through FCC Form 405 or letter. A fee of $60 per call sign also applies for applications for assignments of licensee.

[4] An additional fee of $60 is required for each station requested. Concurrent modifications and renewals on FCC Form 503 require a fee of $60 per station.

[5] An additional fee of $135 is required for each station requested. No fee is required for special temporary authority or duplicate licenses.

[6] An additional fee of $135 is required for each station modified. No fee is required when the FCC is informed of a change of licensee name or address, or that the station is no longer in service, when done by FCC Form 405–A or letter. A fee of $60 per call sign applies to requests for assignment of a station.

[7] An additional fee of $135 is required for each station renewed. Concurrent modifications and renewals on FCC Form 402 require a fee of $135 per station.

[8] Fee applies to all radio stations licensed under Part 87 of our rules, except Civil Air Patrol stations. An additional fee of $60 is required for each station requested.

[9] No fee is required for special temporary authority or duplicate licenses.

[10] No fee is required when the FCC is informed of a change in licensee name or address, or that a station is no longer in service, when done by FCC Form 405–A or letter. Requests for assignment of a station are treated as modifications and require a fee of $60 per call sign.

[11] Requests for a concurrent modification and renewal made on FCC Form 406 require a fee of $60.

[12] Land mobile radio includes all radio services regulated under Part 90 of our rules as well as the general mobile radio services (GMRS) regulated under Part 95 of the rules.

[13] Each request consisting of not more than six (6) specific fixed stations will require a fee of $30. An additional fee of $30 is required for each increment of six fixed stations. Example: Thirteen (13) fixed stations requires a fee of $90. No fee is required for special temporary authority or duplicate licenses.

[14] An additional fee of $30 is required for each increment of six (6) fixed stations. No fee is required to inform the FCC of a change in licensee name or address, a change in the number or locations of station control points, a change in the number or location of control stations meeting the requirements of § 90.119(a)(2)(ii), a change in the number of mobile units operated by radiolocation service licensees, or that the station is no longer in service when done by FCC Form 405–A or letter. Requests to assign a station are considered modifications and require a fee of $30 for each increment of six (6) fixed stations.

[15] An additional fee is required for each station license renewed. Concurrent modifications and renewals made on FCC Form 574 require a fee of $30 per station license.

§ 1.1103 Schedule of charges for equipment approval services.

Except as provided elsewhere in this subpart, the charges prescribed below are required for all requests for equipment approvals submitted to the Commission.

Equipment Approval Service

Certification:[16]	
Receivers (Except TV & FM Receivers)	$250
All Other Devices	$650
Type Acceptance:	
Approval of Subscription TV Systems	[17] $2,000
All Other	[18] $325
Type Approval:	
All Devices (With Testing)	[19] $1,300
All Devices (Without Testing)	[20] $150
Notifications	$100

[16] Certification fees are also required under the abbreviated procedures for private label equipment and non-permissive changes.

[17] Modifications that require a new application for advance approval will require an additional fee of $2000.

[18] Fee applies for non-permissive changes. Ship radio radiotelegraph automatic alarm systems and ship and lifeboat radiotelegraph transmitters are subject to $325 type acceptance fee.

[19] Fee also applies to major modifications that require testing.

[20] Fee applies to previously tested and approved equipment resubmitted for approval under new identification or for minor modification without FCC testing.

§ 1.1104 Schedule of charges for mass media services.

Except as provided elsewhere in this subpart, the charges prescribed below are required for all requests for mass media authorizations submitted to the Commission.

Mass Media Service

Commercial TV Stations[21]	
New and Major Change Constructions Permits Application Fees	[22] $2,250
Minor Changes Application Fee	$500
Hearing Charge	[23] $6,000
License Fee	[24] $150
Station Assignment and Transfer Fees.[25]	
Application Fee (Forms 314/315	$500
Application Fee (Form 316)	$70
Renewals	[26] $30
Commercial Radio Stations[27]	
New and Major Change Construction Permits[28]	
Application Fee AM Station	$2,000
Application Fee FM Station	$1,800
Minor Changes Application Fee[29]	
AM	$500
FM	$500
Hearing Charge	[30] $6,000
License Fee:	
AM	[31] $325
FM	[32] $100
Station Assignment and Transfer Fees:	
Application Fee (Forms 314/315)	$500
Application Fee (Form 316)	$70
Renewals	$30
Directional Antenna License Fee (AM only)	[33] $375
FM Translators:	
New & Major Change Construction Permits Application Fee	$375
License Fee	$75
Station Assignment and Transfer Fee	[34] $75
Renewals	[35] $30
TV Translators and LPTV Stations:	
New & Major change Construction Permits Application Fee	[36] $375
License Fee	[37] $75
Station Assignment and Transfer Fee	[38] $75
Renewals	$30
Auxiliary Services Major Actions[39]	
Application Fee	[40] $75
Renewals	[41] $30
Cable Television Service:	
Cable Television Relay Service:	
Construction Permits	[42] $135
Assignments & Transfers	[43] $135
Renewals	[44] $135
Modifications	$135
Cable Special Relief Petitions—Filing Fee	[45] $700
Direct Broadcast Satellite New & Major Change Construction Permits:	
Application for Authorization to Construct a Direct Broadcast Satellite	[46] $1,800
Issuance of Construction Permits & Launch Authority	$17,500
License to Operate Satellite	$500
Hearing Charge	[47] $6,000

[21] These fees apply to television stations other than those classified by the FCC as noncommercial educational stations.

[22] Fee is required for each application for a construction permit or a major change to an authorized facility.

[23] Fee required for each application designated for hearing in a new and major/minor change construction permit comparative proceeding and for applications designated in a comparative renewal license proceeding. Fee is due in accordance with procedures set out at § 1.221 of the rules.

[24] No fee is required to request a modified station license to reflect changes that do not require prior authorization from the FCC.

[25] An additional fee is required for each station license requested for assignment or transfer on FCC Forms 314, 315, or 316.

[26] An additional fee is required for each license submitted for renewal.

[27] Fees do not apply to stations that operate as noncommercial educational stations. *See* § 1.1112 of the rules.

[28] A separate fee is required for each application submitted.

[29] An additional fee is required for each application for a construction permit to make minor changes in a previously authorized facility. No fee is required for requests for special temporary authority, requests for extension of time and/or replacement of construction permits, requests for remote control operation, or modifications that may be made without prior authorization from the Commission.

[30] Fee is required for each application designated for hearing in a new or major/minor change construction permit comparative proceeding and applications designated in comparative license renewal proceedings. Fee must accompany the Notice of Appearance filed under § 1.221 of the rules.

[31] An additional fee is required for each application for a license to cover a construction permit. No fee is required for requests to determine power by the direct method or license modifications that may be made without prior authorization from the FCC.

[32] Fee not applicable to any license modification that may be made without prior authorization from the FCC.

[33] Fee is required for each application for a directional antenna license. This fee is in addition to the $325 fee for an AM station license.

[34] An additional fee of $75 is required for each station license or construction permit requested for assignment or transfer regardless of the number of forms used. These fees are in addition to the fees for the full service stations that may be simultaneously assigned or transferred.

[35] An additional fee of $30 is required for each application requesting a station renewal.

[36] An additional fee is required for each application.

[37] No fee is required to obtain a modified station license to reflect either a change in the type of TV transmitter antenna or a change in the output power of TV aural or visual transmitters to accommodate a change in the antenna type or transmission line.

[38] An additional fee is required for each license or construction permit requested to be assigned or transferred.

[39] Auxiliary services include Remote Pickup stations, TV Auxiliary Broadcast stations, Aural Broadcast STL and Intercity Relay stations, and Low Power Auxiliary stations.

[40] The fee will be required for applications for changes in frequency, antenna system, power, and number of mobiles; relocation of stations; addition of a base station; and replacement of equipment.

[41] Renewal charge not required for each auxiliary license held by a broadcast licensee.

[42] An additional fee of $135 is required for each application for a CARS station. This request also includes the resulting license to cover the construction permit.

[43] An additional fee of $135 is required for each license requested to be assigned or transferred.

[44] Each application for license renewal requires a fee of $135.

[45] This fee applies to those petitioning under § 76.7 of the rules seeking an exemption from the rules or the imposition of special requirements beyond those provided in the rules.

[46] This fee also applies to requests to make a major change in the authorization to construct. A major change is considered any modification involving a significant additional use of the orbit/spectrum resource.

[47] This hearing fee is required for each application designated for hearing in a new or major/minor change comparative construction permit proceeding as well as comparative license renewal proceedings.

§1.1105 Schedule of charges for common carrier service requests.

Except as provided elsewhere in this subpart, the charges prescribed below are required for all requests for common carrier authorizations submitted to the Commission.

COMMON CARRIER SERVICE [48]	
Domestic Public Land Mobile Stations (Base Dispatch, Control & Repeater Stations):	
New or Additional Facility Authorizations (Per transmitter)	[49] $200
Assignments & Transfers (Per call sign)	[50] $200
Renewals (per station)	[51] $20
Minor Modifications (Per station)	[52] $20
Air-Ground individual License:[53]	
Initial License	$20
Renewal of License	$20
Modification of License	$20
Cellular Systems:	
Initial Construction Permits & Major Modification Applications (Per cellular system)	$200
Assignments & Transfers (Per call sign)	[54] $200
Initial covenng license (Per cellular system)	
Wireline carrier	$525
Nonwireline carrier	$50
Renewals	[55] $20
Minor modifications	[56] $50
Additional licenses	[57] $50
Rural Radio (Central Office, Interoffice or Relay Facilities);	
Initial Construction Permit (Per transmitter)	$90
Assignments & Transfers (Per call sign	$90
Renewals (Per station)	$20
Modifications (Per station)	$20
Offshore Radio Service:[58]	
Initial Construction Permit (Per transmitter)	$90
Assigments & Transfers (Per transmitter)	$90
Renewals (Per station)	$20
Modifications (Per station)	$20
Local Television or Point to Point Microwave Radio Service:	
Construction Permits	[59] $135
Modifications of Construction Permits	[60] $135
Initial License for New Frequency (per station)	[61] $135
Renewals of Licenses (per station)	$135
Assignments & Transfers of Control (per station)	$45
International Fixed Public Radio (Public & Control Stations):	
Initial Construction Permits	[62] $450
Assignments & Transfers	[63] $450
Renewals	[64] $325
Modifications	[65] $325
Satellite Services:	
Transmit Earth Stations:	
Initial Station Authorization (per earth station)	[66] $1,350
All Other 214 Applications	[67] $540
Assignments & Transfers of Station Authorization (per earth station)	$450
All Other Applications (per earth station)	[67] $90
Small Transmit/Receive Earth Stations (2 meters or less) [68]	
Lead Authorization (per application)	[69] $3,000
Routine Authorization (per earth station	[70] $30
All other Applications	[71] $90
Receive Only Earth Stations [72]	
Initial Station Authorization	$200
All other Applications	[73] $90
Space Stations:	
Applications for Authority to Construct a Space Station	[74] $1,800
Applications for Authority to Launch & Operate a Space Station	[75] $18,000
Satellite System Applications:[76]	
Initial Station Authorization (per system)	[77] $5,000
Assignments & Transfers of Systems	[78] $1,333
All Other Applications (per request)	$90
Multipoint Distribution Service:	
Construction Permits	[79] $135
Modifications of Construction Permits	[80] $135
Initial License (Per channel)	[81] $400
Renewals of Licenses	[82] $135
Assignments & Transfers of Control (Per station)	$45
Section 214 Applications:[83]	
Applications for Overseas Cable Construction	$8,100
Applications for Domestic Cable Construction	$540
Tariff Filings:[85]	
Filing Fee	$250
Special Permission Filings	$200
Telephone Equipment Registration	$135
Digital Electronic Message Service:	
Construction Permits	$135
Modifications of Construction Permits	$135
Initial License (First License or License Adding a New Frequency)	[86] $135
Renewals of License	[87] $135
Assignments & Transfers of Control (Per station)	$45

[48] These requests require an additional fee of $20 per station.

[49] Each request for the assignment of a construction permit or license or request to transfer control of a corporation a construction permit or license will require an additional fee of $200 per call sign.

[50] An additional fee of $20 is required for each cellular system requested for renewal.

[51] Fee is required per each cellular system.

[52] An additional fee of $50 is required per each cellular system.

[53] Should the Commission permit the expansion of this service into coastal waters other than the Gulf of Mexico by rule or waiver, the fees established for offshore radio would be required.

[54] An additional fee of $135 is required for each application for a construction permit or modification thereto. No fee is required for requests for special temporary authority or for waiver of construction permit requirements.

[55] No Fee is required for permissive changes that do not require a modified construction permit.

[56] This fee is required in addition to that for a construction permit although a license and construction permit may be requested simultaneously.

[57] An additional fee of $450 is required for each station requested.

[58] An additional fee of $450 is required for each application for assignment or transfer.

[59] An additional fee of $325 is required for each license renewed.

[60] An additional fee of $325 is required for each station modified.

[61] An additional fee of $1,350 is required for each application for an initial authorization to construct and/or operate a domestic or international transmitting earth station for private or common carrier service or for telemetry, tracking, and command functions.

[62] These requests include applications for regular or temporary authorization, renewal or modification of station authorizations, or waivers.

[63] These earth stations operate in the 4 GHz frequency band.

[64] A lead authorization is the first earth station authorization in a network of user earth stations. The lead authorization establishes the terms and conditions under which routine authorizations may be granted.

[65] An additional fee of $20 is required for each earth station requested under the terms and conditions of the lead authorization. Each routine authorization must identify the lead authorization to which it is associated.

[66] An additional fee of $90 is required for each earth station. These requests include, but are not limited to, applications for regular or temporary authorization, modification or renewal of station authorizations, requests for waivers, transfers and assignments, and requests for developmental authority.

[67] These requests involve the authorization or assignment of a frequency to a regular commercial receive-only earth station for which protection from interference is being requested.

[68] *See* note 71.

[69] This fee also applies to requests to construct an in-orbit or on-ground spare. Fee is required for domestic and international space stations.

[70] This fee is also required to request authority to launch and or operate an in-orbit spare. Only one fee of $18,000 will be required to request the launch of the in-orbit spare and later request to operate.

[71] These systems consists of technically identical small earth station antennas that operate in bands where frequency coordination is not required, such as the 12/14 GHz bands, and interconnect through a hub station. Fees apply to fixed-satellite systems, the radiodetermination satellite service and the mobile satellite service.

[72] Each hub station will require an additional fee of $5000.

[73] This fee is charged per satellite system.

[74] Each construction permit request requires an additional fee of $135. No fee is required for requests for special temporary authority or a waiver of the construction permit requirements.

[75] An additional fee of $135 is required for each application for modification to an existing construction permit. Permissive changes do not require a fee.

[76] Commission rules designate frequencies that correspond to each channel in the MDS service. Each time an applicant requests a license to operate on an MDS frequency, and additional fee of $400 is required.

[77] An additional fee of $135 is required for each station requested to be renewed.

[78] Each 214 request to install or acquire communications channels, regardless of the number of communications channels requested, will require only one multiple of the applicable fee.

[79] Requests for reduction or discontinuance of service, or 214 applications that are submitted purely for notification purposes, do not require a fee.

[80] The $250 Filing fee is required for each Tariff Publication, which is accompanied by a Letter of Transmittal, the $200 Special Permission Fee is required for each Special Permission filing.

[81] An additional fee of $135 will be required for each new or additional frequency (channel) requested.

[82] Fee required for each station requested for renewal.

§ 1.1106 Attachment of charges.

The charges required to accompany a request for the Commission regulatory services listed in §§ 1.1102 through 1.1105 of this subpart will not be refundable to the applicant irrespective of the Commission's disposition of that request. Return or refund of charges will

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be made in certain limited instances as set out at § 1.1111 of this subpart.

§ 1.1107 Payment of charges.

(a) Each application or other filing submitted to the Commission on or after April 1, 1987 for which a fee is prescribed by §§ 1.1102 through 1.1105 of this subpart must be accompanied by a remittance in the full amount of the fee due.

(b) Filings for which no remittance is received or for which an insufficient remittance is received shall be dismissed and the application returned to the applicant or his designated agent without processing.

(c) Unless otherwise stated in this subpart, no application or other filing will be deemed sufficient for processing unless the correct fee is attached. The Commission reserves the right to discontinue processing and dismiss any application or filing if, at any time, bureau or office staff discover upon further examination that an insufficient fee has been submitted.

(d) Application returned to applicants for additional information or corrections will not require an additional fee when resubmitted, unless the additional information results in an increase of the original fee amount. The additional fee will then be required with the resubmission. The entire fee will be forfeited if the application is not resubmitted to the Commission by the appropriate resubmission deadline. Applicants should attach a copy of the Commission request for additional or corrected information, or a stamped copy of the original submission, to their resubmission.

(e) Should the staff change the status of an application, resulting in an increase in the fee due, the applicant will be billed for the remainder under the conditions established by § 1.110(b) of the rules.

Note.—Due to the statutory requirements applicable to tariff filings, the procedures for handling tariff filings may vary from the procedures set out in the rules.

§ 1.1108 Form of payment.

(a) Fee payments should be in the form of a check, bank draft or money order denominated in U.S. dollars and deposited in a United States financial institution. These payment instruments must be made payable to the Federal Communications Commission. The Commission discourages applicants from sending cash and will not be responsible for cash sent through the mails.

(b) Applicants are required to submit one check, bank draft or money order with each application. Multiple checks, bank drafts or money orders for a single application or filing are not permitted.

(i) One check, bank draft or money order may be submitted for multiple applications in those instances where:

(A) Applications are received simultaneously as one package; and

(B) Are from the same legal applicant; and

(C) Request the same Commission authorization (*e.g.*, renewal, assignment), in the same radio service; and

(D) All applications represented by the single payment instrument are the same numbered FCC Form or prescribed filing.

(ii) In those instances where a single check, bank draft or money order is remitted for multiple applications, the applicant should attach to the remittance an accounting sheet or notice stating what fees are covered by the check or money order. Otherwise, fee processing staff will be required to match the remitted funds to the accompanying applications to determine whether sufficient funds have been submitted.

(iii) If the single remittance is found to be insufficient, all applications associated with the remittance will be dismissed and returned to the applicant. Applications will not be forwarded for staff processing on a *pro rata* basis.

(c) All fees collected will be paid into the general fund of the United States Treasury in accordance with Pub. L. 99–272.

Note.—Receipts will not be furnished. Information on receipt of payments will be provided through cancelled checks, rejection letters issued by the fee processing staff, or return copies provided by the applicant with a stamped, self-addressed envelope.

§ 1.1109 Filing locations.

Applications or other filings and their attached fees must be submitted to the locations and addresses listed in § 0.401 of the Commission's rules. These materials must be submitted as one package. The Commission cannot take responsibility for matching forms, fees, or applications submitted at different times or locations.

§ 1.1110 Conditionality of Commission or staff authorizations.

(a) Any instrument of authorization granted by the Commission, or by its staff under delegated authority, will be conditioned upon final payment of the applicable fee, as prescribed by Pub. L. 99–272 and this subpart. As applied to checks and money orders, final payment shall mean receipt by the Treasury of funds cleared by the financial institution on which the check or money order is drawn.

(1) If, prior to a grant of an instrument of authorization, the Commission is notified that final payment has not been made, the application or filing will be:

(i) Dismissed and returned to the applicant;

(ii) Shall lose its place in the processing line;

(iii) And will not be accorded *nunc pro tunc* treatment if resubmitted after the relevant filing deadline.

(2) If, subsequent to a grant of an instrument of authorization, the Commission is notified that final payment has not been made, the Commission will:

(i) Automatically rescind that instrument of authorization for failure to meet the condition imposed by this subsection; and

(ii) Notify the grantee of this action; and

(iii) Not permit *nunc pro tunc* treatment for the resubmission of the application or filing if the relevant deadline has expired.

(3) Upon receipt of a notification of rescision of the authorization, the grantee will immediately cease operations initiated pursuant to the authorization.

(b) In those instances where the Commission has granted a request for deferred payment of the fee or issued a bill for an insufficient payment under this subpart until a future established date, further processing or grant or authorization shall be conditioned upon final payment of the fee, plus other required charges for late payments, by the date prescribed by the terms of the deferral decision or bill. Failure to comply with the terms of the deferral decision or bill shall result in the automatic dismissal of the application or rescision of the authorization for failure to meet the condition imposed by this subpart. Payments received by the Commission after the date established in the deferral decision or bill will be returned to the remitter. The Commission shall:

(1) Notify the grantee that the authorization has been rescinded;

(i) Upon such notification, the grantee will immediately cease operations initiated pursuant to the authorization.

(2) Not permit *nunc pro tunc* treatment to applicants who attempt to refile after the original deadline for the underlying submission.

§ 1.1111 Return or refund of charges.

(a) The full amount of any fee submitted will be returned or refunded,

as appropriate, in the following circumstances:

(1) When no fee is required for the application or other filing.

(2) When the fee processing staff or bureau/office determines that an insufficient fee has been submitted within 30 calendar days of receipt of the application or filing and the application or filing is dismissed.

(3) When the application is filed by an applicant who cannot fulfill a prescribed age requirement.

(4) When the Commission adopts new rules that nullify applications already accepted for filing, or new law or treaty would render useless a grant or other positive disposition of the application.

(5) When a waiver is granted in accordance with this subpart.

Note.—Payments in excess of an application fee will be refunded only if the overpayment is $8 or more.

§ 1.1112 General exemptions to charges.

No fee established in §§ 1.1102 through 1.1105 of this subpart, unless otherwise qualified herein, shall be required for:

(a) Applications filed for the sole purpose of amending or modifying a pending application (if a fee is otherwise required) so as to comply with new or additional requirements of the Commission's rules or the rules of another Federal Government agency affecting the pending authorization. However, if the applicant also requests an additional modification or the renewal of its authorization, the appropriate fee must accompany the application. Fee exemptions arising out of this exception will be announced to the public in the orders amending the rules or in other appropriate Commission notices.

(b) Applicants in the Special Emergency Radio and Public Safety Radio services.

(c) Applicants, permittees or licensees of noncommercial educational broadcast stations in the FM or TV services, as well as AM applicants, permittees or licensees who certify that the station will operate or does operate in accordance with § 73.503 of the rules.

(d) Applicants, permittees, or licensees qualifying under § 1.1112(c) requesting Commission authorization in any other mass media radio service, private radio service, or common carrier radio communications service otherwise requiring a fee if the radio service is used in conjunction with the noncommercial educational broadcast station on a noncommercial educational basis.

(e) Applicants, permittees, or licensees not qualified under § 1.1112(c) if such organization is one that, like the Public Broadcasting Service or National Public Radio, receives funding directly or indirectly through the Public Broadcasting Fund, 47 U.S.C. 396(k), distributed by the Corporation for Public Broadcasting. Requests for Commission authorization in any mass media radio service, private radio service, or common carrier radio communications service otherwise requiring a fee will not require the fee if the radio service is used in conjunction with these organizations on a noncommercial educational basis.

(f) Applicants, permittees or licensees who qualify as governmental entities. For purposes of this exemption a governmental entity is defined as any state, possession, city, county, town, village, municipal corporation or similar political organization or subpart thereof controlled by publicly elected or duly appointed public officials exercising sovereign direction and control over their respective communities or programs.

Note.—Applicants claiming exemptions under the terms of this subpart must certify as to their eligibility for the exemption through a cover letter accompanying the application or filing. This certification is not required if the applicable FCC Form requests the information justifying the exemption.

§ 1.1113 Adjustments to charges.

(a) The schedule of fees established by §§ 1.1102 through 1.1105 of this subpart shall be adjusted by the Commission every two (2) years, beginning two years after the date of enactment of the authorizing legislation, April 7, 1986.

(1) The fees will be adjusted by the Commission to reflect the percentage change in the Consumer Price Index for all Urban Consumers (CPI–U) from the date of enactment of the authorizing legislation to the date of adjustment, and every two years thereafter, to reflect the percentage change in the CPI–U in the period between the adjustment date and the enactment date.

(2) Adjustments based on the percentage CPI–U change will be applied against the base fees as enacted or amended by Congress. Adjustments will not be calculated based upon the previously modified fee.

(b) Increases or decreases in charges will apply to all categories of fees covered by this subpart. Individual fees will not be adjusted until the increase or decrease, as determined by the net change in the CPI–U since the date of enactment of the authorizing legislation, amounts to at least $5 in the case of fees under $100, or 5% or more in the case of fees of $100 or greater. All fees will be adjusted upward to the next $5 increment.

(c) Adjustments to fees made pursuant to these procedures will not be subject to notice and comment rulemakings, nor will these decisions be subject to petitions for reconsideration under § 1.429 of the rules. Requests for modifications will be limited to correction of arithmetical errors made during an adjustment cycle.

§ 1.1114 Penalty for late or insufficient payments.

(a) Applications or filings accompanied by insufficient fees or no fees will be dismissed and returned to the applicant by the fee processing staff if discovered in 30 calendar days or less from receipt of the application or filing at the Commission.

(b) Applications or filings accompanied by insufficient fees or no fees which are inadvertently forwarded to Commission staff for substantive review will be billed for the amount due if the discrepancy is not discovered until after 30 calendar days from the receipt of the application or filing at the Commission. A penalty charge of 25 percent of the amount due will be added to each bill. Any Commission actions taken prior to timely payment of this bill are contingent and subject to rescission.

(c) Applicants to whom a deferral of payment is granted under the terms of this subsection will be billed for the amount due plus a charge equalling 25 percent of the amount due. Any Commission actions taken prior to timely payment of these charges are contingent and subject to rescission.

§ 1.1115 Waivers or deferrals.

(a) The fees established by this subpart may be waived or deferred in specific instances where good cause is shown and where waiver or deferral of the fee would promote the public interest.

(b) Requests for waivers or deferrals will only be considered when received from applicants acting in respect to their own applications. Requests for waivers or deferrals of entire classes of services will not be considered.

(c) Requests for waivers or deferrals will be acted upon by the Managing Director with the concurrence of the General Counsel.

(1) Applicants seeking waivers should submit the request for waiver with the application or filing as well as the required fee. Submitted fees will be returned if a waiver is granted.

(2) Applicants who are not granted a waiver, and have not attached the fee due pending approval of a waiver, will

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have their applications returned in accordance with § 1.1107. They will not be permitted to resubmit their applications if initial filing deadlines have expired. The Commission will not be responsible for delays in acting upon these requests.

(d) Deferrals of fees will be granted for an established period of time not to exceed six months.

§ 1.1116 Error claims.

Applicants who wish to challenge a staff determination of an insufficient fee may do so in writing. These claims should be addressed to the same location as the original submission marked "Attention Fee Supervisor".

Appendix B—[Removed]

16. Appendix B of Part 1, Interpretations of Fee Rules, is removed.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

17. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

18. 47 CFR 2.909 is amended by adding a new paragraph (f) to read as follows:

§ 2.909 Written application required.

* * * * *

(f) Each application shall be accompanied by the processing fee prescribed in Subpart G of Part 1 of this chapter.

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

19. The authority citation for Part 21 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

§ 21.20 [Amended]

20. 47 CFR 21.20 is amended by removing existing paragraph (b)(2) and redesignating paragraphs (b)(3) through (b)(9) as paragraphs (b)(2) through (b)(8)

PART 22—PUBLIC MOBILE SERVICE

21. The authority citation for Part 22 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154,303), sec. 553 of the Administrative Procedure Act (5 U.S.C. 553), unless otherwise noted.

§ 22.20 [Amended]

22. 47 CFR 22.20 is amended by removing existing paragraph (b)(2) and redesignating paragraphs (b)(3) through (b)(9) as paragraphs (b)(2) through (b)(8).

PART 23—INTERNATIONAL FIXED PUBLIC RADIOCOMMUNICATION SERVICES

23. The authority citation for Part 23 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303. Interpret or apply sec. 301, 48 Stat. 1081; 47 U.S.C. 301.

24. 47 CFR 23.50 is amended by revising paragraph (d) to read as follows:

§ 23.50 Place of filing application; fees and number of copies.

* * * * *

(d) Each application shall be accompanied by a fee prescribed in Subpart G of Part 1 of this chapter.

PART 25—SATELLITE COMMUNICATIONS

25. The authority citation for Part 25, Subpart H, continues to read as follows:

Authority: Secs. 101–104, 76 Stat. 419–427; 47 U.S.C. 701–744.

§ 25.523 [Amended]

26. 47 CFR 25.523 is amended by removing paragraph (c).

PART 62—APPLICATIONS TO HOLD INTERLOCKING DIRECTORATES

27. The authority citation for Part 62 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 212, 48 Stat. 1974, as amended; 47 U.S.C. 212.

28. 47 CFR 62.22 is revised to read as follows:

§ 62.22 Form of application; number of copies; size of paper; etc.

The original application and two copies thereof shall be filed with the Commission. Each copy shall bear the dates and signatures that appear on the original and shall be complete in itself, but the signatures on the copies may be stamped or typed. The application shall be submitted in typewritten or printed form, on paper not more than 8 and ½ inches wide and not more than 11 inches long, with a left-hand margin of approximately 1 and ½ inches, and if typewritten, the impression must be on only one side of the paper and must be doubled spaced.

PART 73—RADIO BROADCAST SERVICES

29. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082 as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory or executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

30. 47 CFR 73.943 is amended by revising paragraph (a) to read as follows:

§ 73.943 Individual construction of encoders and decoders.

(a) A station licensee who constructs decoders and/or encoders for use at his station and not for sale must submit the fees required for certification and type acceptance applications. Requests for waiver or deferral of fees will be considered on a case by case basis. *See* Subpart G, Part 1 of this section for fees due and waiver procedures.

* * * * *

31. 47 CFR 73.1010 is amended by revising paragraph (a)(5) to read as follows:

§ 73.1010 Cross references to rules in other parts.

(a) * * *

(5) Subpart G "Schedule of Statutory Charges and Procedures for Payment"

* * * * *

32. 47 CFR 73.3517 is amended by revising paragraph (a) to read as follows:

§ 73.3517 Contingent applications.

* * * * *

(a) Upon filing of an application for the assignment of a license or construction permit, or for a transfer of control of a license or permittee, the proposed assignee or transferee may, upon payment of the processing fee prescribed in Subpart G Part 11 of this chapter, file applications in its own name for authorization to make changes in the facilities to be assigned or transferred contingent upon approval and consumation of the of the assignment or transfer. Any application filed pursuant to this paragraph must be accompanied by a written statement from the existing licensee which specifically grants permission to the assignee or permittee to file such application. The processing fee will not be refundable should the assignment or transfer not be approved. The existing licensee or permittee may also file a contingent application in its own name, but fees in such cases also not refundable.

* * * * *

33. 47 CFR 73.3550 is amended by revising paragraph (a) to read as follows:

§ 73.3550 Requests for new or modified call sign assignments.

(a) Requests for new or modified call sign assignments for broadcast stations shall be made by letter to the Secretary, FCC, Washington, DC 20554. An original and one copy of the letter shall be submitted. Incomplete or otherwise defective filings will be returned by the FCC. As many as five call sign choices, listed in decending order of preference, may be included in a single request. A call sign may not be reserved.

* * * * *

PART 74—EXPERIMENTAL AUXILIARY AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

34. The authority citation for Part 74 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083 as amended; 47 U.S.C. 301, 303, 307, unless otherwise noted.

35. 47 CFR 74.5 is amended by revising paragraph (a)(4) to read as follows:

§ 74.5 Cross reference to rules in other parts.

(a) * * *

(4) Subpart G "Schedule of Statutory Charges and Procedures for Payment".

* * * * *

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc 87–3496 Filed 2–19–87; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notropis simus pecosensis (Pecos Bluntnose Shiner)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a fish, *Notropis simus pecosensis* (Pecos bluntnose shiner), to be a threatened species and designates critical habitat for it under the authority contained in the Endangered Species Act of 1973, as amended. A special rule is established to allow take of this subspecies in accordance with applicable State laws and regulations. *Notropis simus* historically occurred in the Rio Grande in New Mexico from El Paso, Texas north to near Abiquiu Reservoir on the Chama River, and in the Pecos River in New Mexico from the upper reaches of Avalon Reservoir north to 1 mile (mi.) (1.6 kilometers) (km.) above Santa Rosa. The Pecos River subspecies, *Notropis simus pecosensis*, is still extant in much of the Pecos River, but has severely declined in numbers. A 1982 study by the New Mexico Department of Game and Fish reported this fish in the Pecos River only from Fort Sumner to Artesia 175 mi. (282 km.). The largest collections were made from 22 mi. (35 km.) south of Fort Sumner to Roswell. Population estimates were not made, but the abundance of this species appeared to be substantially lower than in previous years. No specimens were found in the northern and southern regions of the historic range. The most important factor in the species' decline is reduced flow in the main channel of the river due to water storage, irrigation, and water diversion. Some stretches of the Pecos River are frequently dry downstream from impoundments. This rule will implement Federal protection provided by the Endangered Species Act of 1973, as amended, for *Notropis simus pecosensis*.

EFFECTIVE DATE: The effective date of this rule is March 23, 1987.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Regional Office of Endangered Species, U.S. Fish and Wildlife Service, 500 Gold Avenue, SW., Room 4000, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Burton, Endangered Species Biologist, U.S. Fish and Wildlife Service, Albuquerque, New Mexico (505/766–3972 or FTS 474–3972).

SUPPLEMENTARY INFORMATION:

Background

Notropis simus was first collected in 1874 in the Rio Grande near San Ildefonso, New Mexico, and was first described by Cope in 1875 (Cope and Yarrow 1875). It was originally thought that *Notropis simus* was a single species whose range extended throughout the entire Rio Grande to its mouth, and that there was an undescribed species of *Notropis* which occupied the Pecos River. However, in 1982, Chernoff *et al.* did extensive taxonomic analyses of the species and determined that *Notropis simus* actually consists of two subspecies. The first of these, *Notropis simus simus*, was historically found in the Rio Grande drainage from the Chama River, north of Santa Fe, New Mexico, downstream in the Rio Grande to El Paso, Texas. The other subspecies, *Notropis simus pecosensis*, was historically found in the Pecos River from just north of the town of Santa Rosa, New Mexico, downstream to the town of Carlsbad, New Mexico. A third form, which was originally thought to be *Notropis simus*, was determined to be a related species, *Notropis orca* (phantom shiner), whose range historically overlapped with that of *Notropis simus* from near Isleta, New Mexico, downstream to El Paso. Additionally, *Notropis orca* occupied the remainder of the Rio Grande from El Paso downstream to its mouth. However, *Notropis orca* has been collected only once in the past 30 years, when a single specimen was taken in 1975 from the lower Rio Grande, and the species may now be extinct.

Because of various alterations to the Rio Grande and Pecos River systems, primarily the diversion of water from the streams and the construction of impoundments, both subspecies of *Notropis simus* have undergone significant decline. *Notropis simus simus*, which was common in the mainstream Rio Grande throughout the 1930's and 1940's and was sufficiently common in the 1940's to be used as a bait fish (Koster 1957), has not been collected since 1964. *Notropis simus pecosensis* is still extant throughout a large portion of its range, and is now known to occupy the mainstream Pecos River from near the town of Fort Sumner, New Mexico, downstream to the town of Artesia, New Mexico, a distance of 175 mi. (282 km.). However, habitat for the species in this stretch is spotty and often marginal, and the present numbers of *Notropis simus pecosensis* are much reduced. A 1982 survey done by the New Mexico Department of Game and Fish in the Pecos River found only 76 specimens of this subspecies in their single largest collection. This is in contrast to single collections of 1,482 specimens in 1939 and 818 specimens in 1944.

Lands along the Pecos River are primarily privately owned, with small areas of Bureau of Land Management (BLM) lands scattered along the Pecos River between Fort Sumner and Roswell, New Mexico. A small portion of the Pecos River flows through the Bitter Lakes National Wildlife Refuge. The water of the Pecos River is administered by the States of New Mexico and Texas through the Pecos River Compact. The U.S. Bureau of Reclamation (BR) and the Army Corps of Engineers (COE) operate dams on the river in accordance with the Compact.

Notropis simus pecosensis is a moderately large-sized shiner (adults reach lengths of up to 3.5 in. (9 cm.) of

the family Cyprinidae. It has a deep, spindle-shaped, silvery body, and a fairly large mouth which is overhung by a bluntly rounded snout (Koster 1957). In 1982, *Notropis simus pecosensis* was collected most frequently in the main stream channel, over a sandy substrate with low velocity flow, and at depths between 7 in. and 16 in. (17 and 41 cm.). Backwaters, riffles, and pools were also used by younger individuals. Natural springs, such as those in the Santa Rosa and Lake McMillan areas, also serve as habitat for *Notropis simus pecosensis*, and are sources of continuous water flow (New Mexico Department of Game and Fish 1982).

Threats to the continued survival and recovery of *Notropis simus pecosensis* include restricted flow from reservoirs, water diversions for irrigation, siltation, and pollution from agricultural activities along the river. These habitat modifications have been detrimental to all fish species in the Pecos River, including *Notropis simus pecosensis*.

The Rio Grande Fishes Recovery Team (RGFRT), whose responsibilities include *Notropis simus*, has been concerned about its status since 1978. The team believed at that time that *Notropis simus* was found only in the Rio Grande and that its range extended from near Santa Fe, New Mexico, to Brownsville, Texas. Since the last collection of *Notropis simus* known at the time was from 1964 near Santa Fe, New Mexico, it was feared that the species was likely already extinct. Efforts to list *Notropis simus* were then dropped until recent work determined that the species still existed. It has been determined recently that a previously unnamed form in the Pecos River is in fact a valid subspecies of *Notropis simus* (Chernoff *et al.* 1982), and that it is still extant in the Pecos River (New Mexico Department of Game and Fish 1982). Therefore, the RGFRT feels that sufficient information was available, and in November 1980 recommended listing of *Notropis simus pecosensis*.

A 1982 status report by the New Mexico Department of Game and Fish (NMGF) also provided new biological and distribution data on the Pecos subspecies, recommended listing *Notropis simus pecosensis* as a threatened species, and recommended areas of critical habitat in the Pecos River, if such habitat was to be designated.

Notropis simus pecosensis is presently listed by the State of New Mexico as an endangered species, Group 2 (N.M. State Game Commission, Reg. No. 624). It was included (as *Notropis simus*) in the Service's December 30, 1982, Vertebrate Notice of Review (47 FR 58454) in category 1. Category 1 indicates that the Service has substantial information on hand to support listing the species as endangered or threatened. The Service was petitioned on April 12, 1983, by the Desert Fishes Council to list *Notropis simus pecosensis*. Evaluation of this petition by the Service revealed that substantial information was presented indicating that the petitioned action might be warranted. A notice of this finding was published in the **Federal Register** on June 14, 1983 (48 FR 27273). Subsequently, finding that the petitioned action was warranted, the Service published a proposed rule to list this subspecies on May 11, 1984 (49 FR 20031).

Summary of Comments and Recommendations

In the May 11, 1984, proposed rule (49 FR 20031) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the *De Baca County News* in Fort Sumner, New Mexico, on June 7, 1984, and in the *Daily Record* in Roswell, New Mexico, on June 6, 1984, which invited general public comment. Thirteen comments were received and are discussed below. Five requests for a public hearing were received from local water development and irrigation groups and from the State of New Mexico. Public meetings were held in Artesia and Albuquerque, New Mexico, on August 7 and 20, 1984, respectively. Interested parties were contacted and notified of those meetings, and notices of the meetings were published in the *Daily Press* in Artesia, New Mexico, the *Daily Record* in Roswell, New Mexico, and the *Current Argus* in Carlsbad, New Mexico on July 19, 23, and 24, 1984, respectively, and in the **Federal Register** on August 3, 1984. A press release for the Artesia meeting was sent out on July 19, 1984.

Six letters were received in support of the proposal. One letter was received in opposition to the proposal. Two letters were received in opposition to acquisition of water rights for the proposed species by any manner other than purchase, and four letters expressed neither support nor opposition. Summaries of the comments and questions in these letters and the Service's response to those comments follow:

Support for the proposal was received from the American Society of Ichthyologists and Herpetologists, the Desert Fishes Council, and the International Union for Conservation of Nature and Natural Resources. The Texas Parks and Wildlife Department stated that it has no additional information on *Notropis simus* and that it presumes the species to be extirpated from Texas. Dr. Carter Gilbert of The Florida State Museum supported the proposal, and commented that propagating *Notropis simus pecosensis* in captivity has been unsuccessful, making it more vital that the subspecies natural habitat be preserved, and that the special rule will reduce onerous permit burdens. Dr. Clark Hubbs, of the University of Texas at Austin and a member of the Rio Grande Fishes Recovery Team, supported the proposal, and pointed out that the statement in the proposal, that the bluntnose shiner was "sufficiently common to be used as a bait fish (Koster 1957)," is misleading, since the decline of the species occurred earlier than 1957.

The COE submitted the following comments (C=Comment, R=Service response): *C.* The COE responsibility on the Pecos River is strictly limited to flood control. All other flow is administered by the State of New Mexico in accordance to the Pecos River Compact. *R.* The Service did not mean to imply that the Corps had control over the water rights in the Pecos River. The statement in question was intended to indicate that the flow of the Pecos River was controlled by dams and other structures, such structures having been built and maintained by the Corps and the BR. The rule has been changed to more accurately state the administration of the water of the Pecos River. *C.* The Corps pointed out that its 1982 search for the Rio Grande subspecies also included a verification of the identification of over 27,000 fish specimens that were collected in 1977 from the Rio Grande between Cochiti Lake and Bosque del Apache National Wildlife Refuge. Thus the 1982 survey covered a much larger area than was indicated in the rule. *R.* Mention of this survey has been removed from the rule since it is irrelevant to the listing of the Pecos subspecies. *C.* The Corps noted that it supports the Endangered Species Act in planning and construction responsibilities, as well as on lands and waters administered by it. *R.* This was noted in the rule. *C.* The Corps did not foresee any significant consequences of the proposal on its activities, and feels that any future flood control measures they might undertake in the Pecos

drainage could benefit *Notropis simus pecosensis*. *C.* The State of New Mexico is attempting to acquire water rights to establish a permanent pool at Santa Rosa Lake, upstream from the proposed critical habitat. This could be affected by the listing of the Pecos bluntnose shiner. *R.* This has been added to the rule.

The BR submitted the following comments: *C.* The information on the Brantley Dam project is outdated, construction having commenced in 1983. In addition, the references to the possible adverse effects of Brantley Dam on the Pecos bluntnose shiner are erroneous since no bluntnose shiner are found in the Brantley Dam area. The Major Johnson Springs population of bluntnose shiner, which the rule indicates will be affected by the dam, was not found in the 1982 New Mexico Department of Game and Fish study. In addition, information should be included on BR's plans to maintain a minimum flow below the dam and construct a channel which will simulate preferred habitat for *Notropis simus pecosensis*. *R.* The rule has been changed to remove references to adverse effects from Brantley Dam, and to the apparently now extirpated Major Johnson Springs population of bluntnose shiner. The plans for minimum flow and habitat simulation below the dam have been added. *C.* The waters of the Pecos River are not controlled by the BR, but by the States of New Mexico and Texas through the Pecos River Compact. *R.* The Service's response to this is the same as to the Corps' similar comment—see response to COE. *C.* The Bureau objected to the statement in the rule that natural springs serve as good habitat for *Notropis simus pecosensis*. *R.* Although the 1982 New Mexico Department of Game and Fish study did not confirm that such springs are good habitat for this fish, the study did indicate that past surveys have found such springs occupied by the bluntnose shiner. It is reasonable to assume that since the flows in the Pecos River become very low to nonexistent, the continuous spring flow is used by the bluntnose shiner to survive through periods of no flow in the river. *C.* BR requested that the final rule outline specifically how present water deliveries and diversions, as well as ground and river water pumping, will be affected by critical habitat designation. *R.* This information has been briefly outlined in the final rule. Further information is found in the economic analysis of this critical habitat designation. *C.* The authorized Pecos River Water Salvage Project and the McMillan Delta Project should be mentioned in the final rule. *R.* These projects have been included in the final rule. *C.* BR suggested that the location of Brantley Dam be included in the critical habitat map. *R.* Brantley Dam is located about 15 mi. (24 km.) below the lower critical habitat boundary and does not affect the designated critical habitat. Therefore, it was not included on the critical habitat map. *C.* BR requested that the critical habitat southernmost boundary be moved 0.8 mi. (1.25 km.) upstream to the U.S. Highway 82 bridge. *R.* The Service agrees that this would make a more easily definable boundary and has made this change in the final rule.

The BLM stated that it can mitigate the impacts resulting from oil and gas development along the river, and that although this critical habitat designation will affect BLM planning and resource activities in the area it will continue to cooperate in the protection of listed species. It provided maps showing BLM lands in the area and also noted that there are significant areas of private lands with Federal subsurface mineral estate located in the critical habitat area.

The U.S. Soil Conservation Service (SCS) requested the deletion of the 50 ft. (15 m.) riparian zone from the proposed critical habitat designation. This zone contains ranching and farming lands on which the SCS has involvement. The Service has reconsidered the critical habitat designation in light of this request and other biological information received during the comment period. Consideration of several biological factors resulted in the removal of the 50 ft. (15 m.) riparian zone from the proposed critical habitat for the bluntnose shiner. Stream banks of the Pecos River have been highly modified by human activities and native riparian vegetation is virtually nonexistent along most of the critical habitat. In some areas croplands reach to the river's edge. Erosion has eliminated other areas of riparian vegetation resulting in denuded and eroded stream banks. While there is close correlation between quality of riparian vegetation and quality of fish habitat in cold clear water streams, this does not appear to be the case for warm water streams in the arid southwestern U.S. Although many activities along the stream banks of the Pecos River may have adverse impacts on the bluntnose shiner, the Service did not think that riparian areas as a whole were critical to the survival of the species. Therefore the Service has deleted the 50 feet (15 m.) riparian zone from the final critical habitat designation for biological reasons.

The NMGF supported the proposal and submitted the following comments: *C.* Brantley Dam is not proposed, it is now under construction. In addition, the statements as to the possible adverse effects to the Pecos bluntnose shiner from Brantley Dam are incorrect. *R.* See reponse to BR. *C. Notropis simus pecosensis* is not presently known to occur in Major Johnson Springs. *R.* See reponse to BR. *C.* There is no evidence that feedlot operations are a contributing adverse factor to the portion of the Pecos River containing *Notropis simus pecosensis*. *R.* Statements of adverse effects to this species from feedlots were removed from the final rule. *C.* The 1982 NMGF report did not recommend designating critical habitat in the Pecos River as the proposal states. Instead, that report identified portions of the river as "essential" to the Pecos bluntnose shiner. *R.* The 1982 report identified "essential" portions of the river and recommended those as appropriate for critical habitat designation if such designation were to be made. These portions were used as the critical habitat designation; however, the NMGF recommendation was made clear in the final rule. *C.* The State listing for *Notropis simus pecosensis* is as Group 2, not as Group 1 as was stated in the proposal. *R.* This was corrected in the final rule. *C.* Reduced flooding has not been shown to have detrimental effects on *Notropis simus pecosensis* spawning, as was stated in the proposed rule. *R.* The Service agrees that such detrimental effects on spawning are strictly conjectural and the statement in question has been removed. *C.* Two fish species mentioned as exotic predators in the proposed rule are probably native to the Pecos River and the 1982 NMGF report showed no association between the black bullhead and the Pecos bluntnose shiner. The black bullhead was mentioned in the proposed rule as a possible exotic predator on the bluntnose shiner. *R.* The portion of the rule pertaining to the threat of predation was revised to reflect this information. *C.* The New Mexico Habitat Protection Act (17–6–1 through 17–6–11) gives the State a mechanism for limited habitat protection, Statute 30–8–2 makes pollution of water illegal, and Statute 17–4–14 makes it illegal to dewater areas used by game fish. *R.* The final rule has been changed to reflect the fact that the State has certain limited habitat protection powers. *C.* The proposed rule does not mention the proposed recreation pool at Santa Rosa Reservoir

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or the possible changes in irrigation practices being considered by the Ft. Sumner Irrigation District and their possible effects on the Pecos bluntnose shiner. *R.* These projects have been included in the final rule. *C.* The NMGF is concerned about the possibility of inadvertent taking of *Notropis simus pecosensis* by bait seiners in the portions of the Pecos River open for bait taking. It feels that a program for the education of the people of the Pecos Valley, and for the reasonable prosecution of violations needs to be worked out. *R.* The Service agrees that these actions will be needed, and will work closely with the State to develop such programs. However, these actions cannot occur until *Notropis simus pecosensis* is legally recognized as a federally threatened species. *C.* NMGF also outlined what it sees as various possibilities for the protection and enhancement of Pecos bluntnose shiner habitat in the Pecos River through work with the existing water rights and/or changes in those existing rights.

The law firm of McCormick and Forbes submitted comments for the Carlsbad Irrigation District. The firm suggested that proper administration of existing Pecos River water rights would alleviate some of the threats to the Pecos bluntnose shiner, and recommended that any waters of the Pecos River determined to be necessary to augment or maintain critical habitat for the Pecos bluntnose shiner be purchased under New Mexico law, and that funds be appropriated to pay for any required water releases and monitoring.

A Pecos Valley farm submitted comments in opposition to the acquisition of water rights in the area, by any manner except purchase from willing sellers, for the purpose of maintaining minimum flow as outlined in the proposal for the Brantley Dam project.

The public hearing held in Artesia, New Mexico was attended by 25 people, including representatives of the Carlsbad Irrigation District (CID), the New Mexico Interstate Stream Commission (NMISC), the Pecos River Pumpers Association (PRPA), the BR, the NMGF, and several local bait businesses. Nine people made oral statements and three written statements were submitted.

Many of the comments submitted at the hearing repeated those presented as written comments and are discussed above. Many comments represented the concern by local bait dealers that the proposed action would affect their livelihood. They were also concerned about the existing pollution and dewatering of the Pecos River and the resultant depletion of the bait fishes. The Service responded that the listing of the Pecos bluntnose shiner and ensuing action to assure its recovery may result in better habitat conditions in the river for all minnows. The NMISC noted that the Brantley Dam is now under construction, and the population of *Notropis simus pecosensis* at Major Johnson Springs apparently no longer exists which were both discussed above. NMISC hopes that the Service does not intend to require maintenance of minimum flows in the Pecos River. *R.* The Service does not address the maintenance and recovery needs of a species during the listing process. These needs will be addressed in the recovery plan which will be written for this species following listing. The Service feels that the problems of water allocation in the Pecos River can be worked out to meet existing agricultural, municipal and industrial needs as well as the needs of the Pecos bluntnose shiner. *C.* The proposal failed to mention the possible creation of a permanent recreation pool at Santa Rosa Reservoir and its effects on the proposed critical habitat. *R.* This has been addressed in the COE comments and reponse above. *C.* Water flow in the river channel below Fort Sumner could be changed substantially by changes being considered in irrigation practices from gravity (flood) to sprinklers. *R.* This was noted in the final rule. *C.* NMISC feels the Service should reconsider its determination that no Environmental Assessment is needed for this action. *R.* The Service's position on this is given in this rule in the National Environmental Policy Act section. An economic analysis has been prepared to address the economic issues of the critical habitat designation. *C.* The area proposed as critical habitat from Hagerman to Artesia is often dry according to records from gauges located near Hagerman and Artesia. NMSIC is concerned that the Service will require draconian measures to maintain a flow in this section via releases from reservoir storage. *R.* While the gauges located at Hagerman and Artesia often record no flow in the river, the U.S. Geological Survey (USGS) records cumulative groundwater seepage in this stretch of river averaging 50 cubic feet per second (cfs.) (1.4 cubic meters per second) (cms.) (Welder 1973). *C.* The Service may wish to consider propagating the Pecos bluntnose shiner at Dexter National Fish Hatchery in Dexter, New Mexico for use in restocking ephemeral reaches of the critical habitat, the river and perhaps other stream systems. *R.* The Service has attempted to propagate this species at the Dexter hatchery, but has been unsuccessful so far. Successful propagation may be possible with new techniques, and further attempts may be made. Such stock will be used in recovery of this species within its historic range.

The public hearing held at Albuquerque, New Mexico was attended by one person, a representative of the U.S. Soil Conservation Service. The comments made were essentially the same as those submitted by letter and are addressed above.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Notropis simus pecosensis* should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Notropis simus pecosensis* (bluntnose shiner) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Water diversion and impoundment, primarily for irrigation purposes, have resulted in drastic modification and destruction of *Notropis simus pecosensis* habitat in the Pecos River, and in a resulting decline in the range and abundance of this species. *Notropis simus pecosensis* was recently collected only in the middle portion of its historic range and its presence in recent collections is notably less than in previous years. Irrigational use of water determines the volume and timing of the Pecos River flow between April and October, and releases of water from Lake Sumner fluctuate greatly during this time. In addition, flow downstream of the lake is also decreased by diversion from the main channel and by pumping of ground and river water. Average monthly flows between April and October may fluctuate from 814 cfs. to 15 cfs. (23.0 to 0.42 cms.). Within any given month, daily flows may fluctuate from 1505 cfs. to 5 cfs. (42.5 to 0.14 cms.) or less. In contrast, flows from November to March are consistently low, with the average monthly flow between 80 cfs. and 10 cfs. (2.26 and 0.28 cms).

Another factor detrimental to *Notropis simus pecosensis* is the contribution of pollutants to the river by agricultural operations along the Pecos River. Runoff from cultivated fields and livestock operations, and irrigation water returns have adverse effects on the water quality in the river.

Several water projects and changes in irrigational practices being considered in the Pecos Valley may potentially affect *Notropis simus pecosensis* and its habitat. The New Mexico Parks and Recreation Commission has recently been granted a permit to establish and maintain a permanent recreation pool in Santa Rosa Reservoir. The granting of this permit is presently under appeal. Establishment of this permanent pool would reduce flow in the Pecos River below Alamogordo Reservoir by approximately 1,500 acre-feet per year. This reduction would further deplete the water available to sustain *Notropis simus pecosensis.*

The Fort Sumner Irrigation District is considering changes in its current irrigation practices, involving conversion from flood irrigation to sprinkler irrigation. This would result in changes in the flow in the river downstream and may impact the Pecos bluntnose shiner. The BR's Pecos River Basin Water Salvage Project is a continuing program to reduce the consumptive use of water in the Pecos River basin by removal of phreatophytic vegetation. Activity on this project began in 1967 and continued until 1971, resulting in the clearing of about 53,000 acres (21,458 hectares) (ha.), including stretches of the Pecos River flood plain from Lake Sumner to about 14 mi. (23 km.) downstream, between Acme and Artesia, and downstream from Lake McMillan. A 50 ft. (15 m.) wide riparian zone was left on either side of the river and such activity probably has only minor effect on bluntnose shiner and its habitat.

In connection with the BR's construction of Brantley Dam, three projects are planned in the Pecos River nearby *Notropis simus pecosensis* habitat. One of these is the transfer of approximately 2,200 acres (890 ha.) of land and water rights near Artesia to the NMDGF for development into a waterfowl management area as mitigation for losses associated with the Brantley Dam project. This area is downstream from the designated critical habitat for the Pecos bluntnose shiner, and should have little or no effect on that species.

The second project is the McMillan Delta project which originally included a water salvage channel and floodway extending from about 3.5 mi. (5.8 km.) upstream of the U.S. Highway 82 bridge downstream to Lake McMillan. The scope of this project has changed with the construction of Brantley Dam and plans for breaching McMillian Dam. The Delta Project is not likely to involve any work upstream from the U.S. Highway 82 bridge, and therefore, will not affect the critical habitat area.

The third project includes plans to maintain a minimum flow of 20 cfs. (.56 cms.) below Brantley Dam, and to construct a special channel below the dam to simulate previously existing conditions at Major Johnson Springs, thereby providing habitat for several species of fish including, potentially, *Notropis simus pecosensis.* This project may provide significant potential for improvement of the status of this species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no evidence to suggest overutilization of this fish for any of these purposes.

C. *Disease or predation.* Although it is unlikely that predation is a major factor in the decline of *Notropis simus pecosensis,* it has probably played a minor role with increasing importance as the populations have come under greater stress from other factors. The presence of some exotic predators in the same collections as *Notropis simus pecosensis* would indicate that at least some predation is occurring. Predation, particularly by exotic fishes, has been shown to be a factor in the decline of other native fishes of the American Southwest.

D. *The inadequacy of existing regulatory mechanisms. Notropis simus pecosensis* is listed by the State of New Mexico as an endangered species, Group 2. Group 2 includes those species ". . . whose prospects of survival or recruitment in New Mexico are likely to be in jeopardy within the foreseeable future." This provides the protection of the New Mexico Wildlife Conservation Act (Section 17–2–37 through 17–2–46 NMSA 1978), and prohibits taking of any State listed species except under the issuance of a scientific collecting permit. The State also has a limited ability to protect the habitat of this species through the Habitat Protection Act (Section 17–6–1 through 17–6–11), through water pollution legislation, and tangentially through a provision which makes it illegal to dewater areas used by game fish (Section 17–4–14). U.S. COE and BR regulations protect species that are listed as threatened or endangered under the Act on lands and waters administered by them and in their planning and construction activities. The Endangered Species Act offers needed protection for this species and its habitat through section 7 (interagency cooperation) and section 9 (prohibited acts) requirements.

There are presently no provisions in New Mexico's water law for the acquisition and protection of instream water rights for the preservation of fish and wildlife and their habitat. This deficiency has been a major factor in the decline of many native fishes, and has made it difficult to protect such species as *Notropis simus pecosensis* against the habitat losses caused by water diversions and impoundments.

E. *Other natural or manmade factors affecting its continued existence.* The reduced numbers of populations and individuals make this species more susceptible to extinction due to fluctuations in the populations caused by continued habitat modification.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. Based on this evaluation, the preferred action is to list *Notropis simus pecosensis* as threatened. Threatened status seems appropriate because of the severely reduced range of the species, and because of the continually increasing threats to the species' habitat. Not to propose this species could reasonably be expected to cause it to become endangered within the foreseeable future. *Notropis simus pecosensis* is known to be extant over a fairly large area, although with severely reduced numbers. In addition, there are no major imminent threats to its existence; therefore, the species does not appear to be in danger of extinction. Thus, endangered status is not appropriate.

Critical Habitat

Critical habitat, as defined by section 3 of the Act means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical

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habitat is being designated for *Notropis simus pecosensis* to include two sections of the Pecos River in New Mexico. The first section begins approximately 10 mi. (16 km.) south of Fort Sumner, De Baca County, and extends approximately 64 mi. (103 km.) downstream into Chaves County. The second area is approximately 37 mi. (60 km) long, between Hagerman and Artesia in Chaves and Eddy Counties.

These areas were chosen for critical habitat designation because they presently support relatively abundant, self-perpetuating populations of *Notropis simus pecosensis*. Both sections contain permanent flow sustained by substantial local groundwater seepage, and thus are not dependent on irrigation and dam water releases. Although *Notropis simus pecosensis* is also present outside these areas, habitat there is marginal and it is thought that only inside these areas is reproduction occurring. The areas chosen for critical habitat designation provide all the ecological, behavioral, and physiological requirements necessary for the survival of *Notropis simus pecosensis*, and no smaller or alternative area would allow for the species' long term survival and recovery.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public and private) which may adversely modify such habitat or may be affected by such designation. All of the water in the Pecos River is legally allocated and is used for municipal and irrigational uses. Irrigational uses greatly affect the volume of the river, with the heaviest demand from April to October. The volume of water released from storage areas varies greatly and, at times, can result in little or no downstream flow. Water is also removed by diversion from the main channel and by ground and river water pumping (New Mexico Department of Game and Fish 1982). The sporadic water supply is the greatest threat to *Notropis simus pecosensis* and its habitat. The section of the river between Acme and Dexter has been affected greatly by the lack of water; no flows have been recorded for 10 percent of each year (New Mexico Department of Game and Fish 1982). Other threats to the critical habitat include water pollution from municipal sewage, agriculture areas, and fish toxicants.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service has considered the critical habitat designation in light of relevant additional information obtained during the public comment period and public hearing.

The boundaries of the proposed critical habitat have been adjusted to remove the riparian zone and to relocate the extreme southern boundary of critical habitat about .75 mi. (1.25 km.) upstream to the U.S. Highway 82 crossing. These changes were based on new biological information concerning the critical habitat and to facilitate identification of the critical habitat area (see Summary of Comments and Recommendations).

The estimated lengths of the proposed critical habitat have also been recalculated using more accurate measurement techniques. The recalculated lengths are stream lengths that reflect the meandering character of the river and provide a more exact estimate of the actual stream miles (kilometers) proposed as critical habitat. The legal description of the upper boundary of the southern section of critical habitat has also been corrected. The Pecos River enters on the west boundary of section 7 in Chaves County, New Mexico, not on the north boundary as incorrectly stated in the proposed rule. These recalculations and the boundary correction do not change the actual area originally proposed as critical habitat.

The critical habitat designation in the final rule consists of about 64 mi. (103 km.) from a point about 10 mi. (16 km.) south of Fort Sumner in De Baca County. The second section consists of about 36 mi. (60 km.) from a point near the town of Hagerman in Chaves County downstream to near the town of Artesia in Eddy County. The areas fronting the Pecos River critical habitat consists of about 101 mi. (163 km.) of land, Federal 14.5 mi. (23.5 km.), State 8 mi. (13.0 km.), and private 78.5 (126.5 km.).

The Service has prepared an economic analysis of this critical habitat designation. No significant economic or other impacts are expected from the critical habitat designation for the Pecos bluntnose shiner. This conclusion is based on current management of grazing and oil and gas leasing in the vicinity of the proposed critical habitat; the absence of ongoing or planned SCS or COE projects within or in the vicinity of critical habitat; BR's current management objectives, water projects, and operational procedures within or near the proposed critical habitat areas; Federal Highway Administration (FHwA) erosion control and other policies for road and bridge construction; current uses and management of the water in the Pecos River basin by the Forest Service, National Park Service (NPS), Environmental Protection Agency (EPA), BR, COE, USGS, Office of Water Research and Technology (OWRT), Postal Service, and the Service; NMDGF's management of the BR acquisition area that fronts the critical habitat; and the unquantifiable benefits that may result from the designation. In addition, no State or private activities involving Federal funds or permits are expected to affect or be affected by the proposed critical habitat designation.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by other Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 (see revision at 51 FR 19926, June 3, 1986). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The water of the Pecos River is administered by the States of New Mexico and Texas through the Pecos River Compact. However, the COE and the BR operate dams on the river in accordance with the Compact, and regulation of the flow in the river is through these dams. Most of the lands along the river are privately owned,

with small portions of land under BLM and Fish and Wildlife Service administration. In addition, other activities along the Pecos River involving Federal funds or permits include administration of National Pollution Discharge Elimination System (NPDES) permits by the EPA, maintenance of phreatophytic vegetation clearing by the BR, road and bridge construction and maintenance by the FHwA, grazing and mineral (oil and gas) leasing by BLM, approval of Section 404 permits for oil, gas, and water pipelines by COE, and provision of technical assistance by the SCS. Currently, Federal involvement in these activities is apparently compatible with the critical habitat designation. Therefore, no economic or other impacts are expected to result from the critical habitat designation.

The Act and its implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that had been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

The above discussion generally applies to threatened species of fish and wildlife. However, the Secretary has discretion under section 4(d) of the Act to issue such special regulations as are necessary and advisable for the conservation of threatened species. The Pecos bluntnose shiner is threatened primarily by habitat disturbance or alteration, not by intentional, direct taking of the species or by commercialization. Given this fact and the fact that the State regulates direct taking of the species through the requirement of State collecting permits, the Service has concluded that the State's collection permit system is more than adequate to protect the species from excessive taking, so long as such takes are limited to: Educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Endangered Species Act. Therefore, the special rule allows takes to occur for the above-stated purposes without the need for a Federal permit if a State collection permit is obtained and all other State wildlife conservation laws and regulations are satisfied. It should be recognized that any activities involving the taking of this species not otherwise enumerated in the special rule are prohibited. Without this special rule all of the prohibitions under 50 CFR 17.31 would apply. The Service believes that this special rule will allow for more efficient management of the species, thereby facilitating its conservation. For these reasons, the Service has concluded that this regulatory proposal is necessary and advisable for the conservation of *Notropis simus pecosensis*.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major action under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The critical habitat of the Pecos bluntnose shiner is administered by the States of New Mexico and Texas. Approximately 101 mi. (163 km.) of Federal (14.5 mi.—23.5 km.), State (8 mi.—13.0 km.), and private (78 mi.—126.5 km.) land front the portions of the Pecos River proposed as critical habitat. Currently, Federal involvement in activities along the Pecos River is apparently compatible with the designation of critical habitat. Therefore, no significant economic impacts are expected to result from the critical habitat designation. In addition, no direct costs, enforcement costs, or information collection or recordkeeping requirements are imposed on small entities by the designation. These determinations are based on a Determination of Effects of Rules that is available at the Region 2 Office of Endangered Species, U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 4000, Albuquerque, New Mexico 87103.

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Author

This rule was prepared by S.E. Stefferud, Endangered Species staff, Region 2, Albuquerque, New Mexico (505/766–3972 or FTS 474–3974).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following, in alphabetical order under "FISHES," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species								
Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules	
Fishes:								
Shiner, Pecos bluntnose	*Notropis simus pecosensis*	U.S.A. (NM).	Entire	T	258	17.95(e)	17.44(r)	

3. Add the following as a special rule to § 17.44(r):

§ 17.44 Special rules—fishes.

* * * * *

Pecos bluntnose shiner, *Notropis simus pecosensis.*

(1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances:

(i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act; or,

(ii) Incidental to State permitted recreational fishing activities, provided that the individual fish taken is immediately returned to its habitat.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever any such species taken in violation of these regulations or in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (1) through (3) above.

* * * * *

4. Amend § 17.95(e) by adding critical habitat of the Pecos bluntnose shiner in the same sequence as the species appears in the list at § 17.11 as follows:

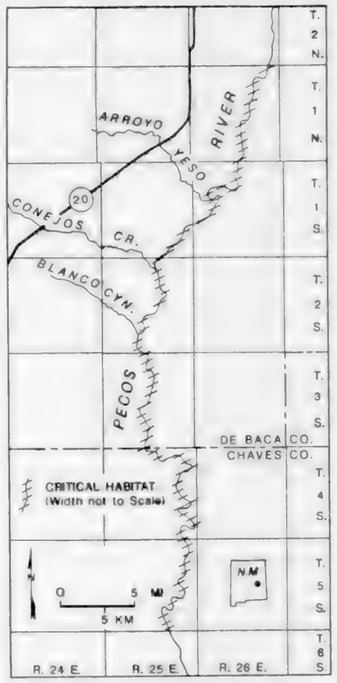
§ 17.95 Critical habitat—fish and wildlife.

(e) * * *

* * * * *

Pecos bluntnose shiner (*Notropis simus pecosensis*).

1. New Mexico: De Baca and Chaves Counties. Pecos River from point at the north boundary of NE ¼ Sec. 2; T1N; R26E (approximately 10 mi. (16 km.) south of Fort Sumner) extending downstream approximately 64 mi. (103 km.) to a point at the south boundary SW ¼ Sec. 35; T5S; R25E.



2. New Mexico. Chaves and Eddy Counties. Pecos River from the west boundary NW ¼ Sec. 7; T14S; R27E, extending downstream approximately 37 mi. (60 km.) to the NW ¼ Sec. 18; T17S; R27E (to the U.S. highway 82 bridge near Artesia).

Constituent elements include clean, permanent water; a main river channel habitat with sandy substrate; and a low velocity flow.

Dated: November 28, 1986.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–3507 Filed 2–19–87; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 33

Refuge-Specific Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) is amending certain regulations in 50 CFR Part 33 that pertain to fishing on individual national wildlife refuges (NWR). Refuge fishing programs are reviewed annually to determine whether the regulations governing fishing on individual refuges should be modified. Changing environmental conditions, State and Federal regulations and other factors affecting fish populations and habitats may warrant such amendments. The modifications will ensure the continued compatibility of fishing with the purposes for which the individual refuges involved were established and, to the extent practicable, make refuge fishing programs consistent with State regulations.

EFFECTIVE DATE: March 23, 1987.

FOR FURTHER INFORMATION CONTACT: Nancy A. Marx, Division of Refuges, Fish and Wildlife Service, 18th and C Streets, NW., Washington, DC 20240; Telephone 202–343–3922.

SUPPLEMENTARY INFORMATION: 50 CFR Part 33 contains the provisions that govern fishing on NWRs. Fishing is regulated on refuges to (1) ensure compatibility with refuge purposes, (2) properly manage the fishery resource and (3) protect other refuge values. On many refuges, the Service policy of adopting State fishing regulations is an adequate way of meeting these objectives. On other refuges it is necessary to supplement State regulations with refuge-specific fishing regulations which will ensure that the Service meets its management responsibilities, as outlined under the section entitled "Conformance with Statutory and Regulatory Authorities." Refuge-specific fishing regulations are issued only after the final publication of the opening of a wildlife refuge to fishing. These regulations may list the seasons, methods of taking fish, descriptions of open areas and other provisions. The Service previously issued refuge-specific fishing regulations in 50 CFR Part 33.

This final rule is amending and supplementing certain refuge-specific regulations in 50 CFR Part 33, §§ 33.5 through 33.55, which pertain to fishing on individual refuges in their respective alphabetically listed States.

This rulemaking is also updating § 33.2, Office of Management and Budget information collection approval numbers which have become obsolete.

The policy of the Department of the Interior (Department) is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, the October 31 proposed rule had a 30-day comment period. No public comments were received. Therefore, the proposed refuge-specific fishing regulations will be published, with minor technical corrections, as final in this rulemaking.

Conformance With Statutory Authorities

The National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and the public use of NWRs. Specifically, Section 4(d)(1)(A) of the Refuge System Administration Act authorizes the Secretary of the Interior (Secretary) under such regulations as he may prescribe, to permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations and access when he determines that such uses are compatible with the major purposes for which such areas were established.

The Refuge Recreation Act authorizes the Secretary to administer the refuge areas within the National Wildlife Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. The Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act.

Fishing plans are developed for each fishing program on a refuge prior to the opening of the refuge to fishing. In some cases refuge-specific fishing regulations are included as a part of the fishing plans to ensure the compatibility of the fishing programs with the purposes for which the refuge was established. Compliance with the Refuge Administration and Refuge Recreation Acts is ensured when the fishing plans are developed and the determinations required by these Acts are made prior to the addition of the refuge to the list of areas open to fishing in 50 CFR. Continued compliance is ensured by annual review of fishing programs and regulations. It has been determined that, with respect to each of the refuges listed in these regulations, fishing is compatible with the purposes for which those refuges were established, and is an appropriate incidental or secondary use.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in cost of prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include

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small businesses, organizations or governmental jurisdictions.

These amendments to the codified refuge-specific fishing regulations will make relatively minor adjustments to existing fishing programs. The regulations are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions. The benefits accruing to the public are expected to exceed the costs of administering this rule. Accordingly, the Department has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The Service has received approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements are presently approved by OMB as cited below:

Type of information collection	OMB approval No.
Economic and public use permits	1018–0014

These regulations impose no new reporting or recordkeeping requirements that must be cleared by OMB.

Environmental Considerations

Compliance with section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4332(2)(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) is ensured when fishing plans are developed and the determinations required by these Acts are made prior to the addition of refuges to the list of areas open to sport fishing in 50 CFR. Refuge-specific fishing regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a NWR. The changes in this rulemaking will not significantly alter the existing uses of the refuges involved.

Information regarding the conditions that apply to individual refuge fishing programs, any restrictions related to public use on the refuge and a map of the refuge are available at refuge headquarters. This information can also be obtained from the Regional Offices of the Service at the addresses listed below.

Region 1—California, Hawaii, Idaho, Nevada, Oregon and Washington:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 Multnomah Street, Portland, Oregon 97232; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–2324.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725–3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Puerto Rico, Tennessee and the Virgin Islands:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303; Telephone (404) 221–3538.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158, Telephone (617) 965–9222.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80255; Telephone (303) 236–4608.

Region 7—Alaska:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3542.

Nancy A. Marx, Division of Refuges, Fish and Wildlife Service, Washington, DC, is primary author of this final rulemaking document.

List of Subjects in 50 CFR Part 33

Fishing, National Wildlife Refuge System, Wildlife refuges.

PART 33—[AMENDED]

Accordingly Part 33 of Chapter I of Title 50 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 33 is revised to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, 715i.

2. Section 33.2(e) is amended by changing the number "33.54" to "33.55."

3. Section 33.2 is amended by revising the table to read as follows:

§ 33.2 General regulations and information collection requirements.

* * * * *

Type of information collection	OMB approval No.
Economic and public use permit	1018–0014

* * * * *

§ 33.3 [Amended]

4. Section 33.3(e) is amended by changing the number "33.54" to "33.55."

§ 33.4 [Amended]

5. Section 33.4 is amended by changing the number "33.54" to "33.55" in the introductory text.

6. Section 33.5 is amended by revising paragraph (d) to read as follows:

§ 33.5 Alabama.

* * * * *

(d) *Wheeler National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Bank fishing is not permitted around the shoreline of the refuge headquarters.

(2) All other refuge waters are open to fishing year-round unless otherwise posted.

7. Section 33.8 is amended by adding paragraphs (a) (4) and (5) to read as follows:

§ 33.8 Arkansas.

(a) *Big Lake National Wildlife Refuge.* * * *

(4) Boats may be launched only in designated areas.

(5) ATVs and airboats are prohibited.

* * * * *

8. Section 33.9 is amended by revising paragraph (g) as follows:

§ 33.9 California.

* * * * *

(9) *Modoc National Wildlife Refuge.* Fishing is permitted only on Dorris Reservoir subject to the following conditions:

(1) Fishing is not permitted during the migratory waterfowl hunting season.

(2) Fishing is permitted during daylight hours only.

* * * * *

9. Section 33.12 is added to read as follows:

§ 33.12 Delaware.

(a) *Prime Hook National Wildlife Refuge.* Fishing and crabbing are permitted on designated areas of the refuge subject to the following conditions:

(1) Boats used on Fleetwood or Turkle ponds must be propelled manually or by electric motors.

(2) Those portions of Fleetwood and Turkle ponds having wood duck nesting boxes are closed to public entry from March 1 through June 30.

(3) Boats may be launched from designated access points or public roads.

(4) Bank fishing and crabbing is permitted only at designated access points and public right-of-ways.

10. Section 33.13 is amended by revising paragraphs (f) and (h)(2); and adding (h) (4) and (5) to read as follows:

§ 33.13 Florida.

* * * * *

(f) *Lower Suwannee National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Bank fishing is permitted in interior refuge creeks, borrow pits and canals from March 15 to September 30 during daylight hours only.

(2) Fishing from a boat is permitted in all navigable tidal and freshwater creeks year-round.

* * * * *

(h) *Merritt Island National Wildlife Refuge.* * * *

(2) The daily limit is 20 fish for the Kennedy Athletic Recreational Site (K.A.R.S.) Marina in the Banana River, the Eddy Creek "trout hole" in Mosquito Lagoon and the Patillo Creek in the Indian River during the period from November 15 through March 31.

* * * * *

(4) Vehicle access north and south of Haulover Canal is limited to designated and/or posted access points and launch areas.

(5) Boat launching or mooring between sunset and sunrise is permitted only at Beacon 42 Fish Camp and Bairs Cove.

* * * * *

11. Section 33.14 is amended by redesignating paragraphs (a) through (h) as (b) through (i); adding new paragraph (a); and revising paragraph (g)(1) to read as follows:

§ 33.14 Georgia.

(a) *Banks Lake National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted year-round during daylight hours.

(2) Night fishing is permitted from March 1 through October 31.

(3) Only the use of pole and line or rod and reel is permitted.

* * * * *

(g) *Savannah National Wildlife Refuge.* * * *

(1) Fishing is permitted on refuge impoundments from March 15 through October 25.

* * * * *

12. Section 33.17 is amended by revising paragraphs (b) (1) through (3) to read as follows:

§ 33.17 Illinois.

* * * * *

(b) *Crab Orchard National Wildlife Refuge.* * * *

(1) Crab Orchard Lake—West of Wolf Creek Road—fishing from boats is permitted all year. Trotlines/jugs must be removed from sunrise until sunset, from Memorial Day through Labor Day; east of Wolf Creek Road—fishing from boats is permitted March 15 through September 30. Fishing from the bank is permitted all year only at the Wolf Creek and Route 148 causeways; on the entire lake—trotlines/jugs must be checked daily and must be removed on the last day they are used. It is illegal to use stakes to anchor any trotlines; they must be anchored only with portable weights and must be removed on the last day they are used. All noncommercial fishing methods are permitted, except underwater apparatus is prohibited.

(2) A–41, Bluegill, Blue Heron, Manngers, Honkers and Visitors Ponds. Fishing is permitted only from sunrise to sunset March 15 through September 30. No boats or flotation devices are allowed.

(3) Little Grassy and Devils Kitchen Lakes. Fishing is permitted all year from a boat or the bank. Trotlines/jugs are prohibited. Use of boat motors of more than 10 horsepower is prohibited.

* * * * *

13. Section 33.22 is amended by revising paragraphs (b)(2), (e)(2), (f)(1) through (f)(5); and adding paragraphs (b)(6), and (f)(6) through (f)(9) to read as follows:

§ 33.22 Louisiana.

* * * * *

(b) *Catahoula National Wildlife Refuge.* * * *

(2) Fishing is permitted in the Duck Lake impoundment and discharge waters from March 1 through October 31 during daylight hours only.

* * * * *

(6) Boats may not be left on the refuge overnight.

* * * * *

(e) *Lacassine National Wildlife Refuge.* * * *

(2) Fishing is permitted from one hour before sunrise until one hour after sunset during the period of March 1 through October 15.

* * * * *

(f) *Sabine National Wildlife Refuge.* * * *

(1) Fishing, crabbing, crayfishing and shrimping are permitted from one hour before sunrise to one hour after sunset.

(2) Fishing, crabbing, crayfishing and shrimping are permitted from the State Highway 27 Canal Road and Weir sites year-round.

(3) Fishing, crabbing, crayfishing and shrimping are permitted year-round on the East Cove Unit except during the State duck hunting season.

(4) All other refuge waters are open to fishing, crabbing, crayfishing and shrimping from March 1 through October 15 only.

(5) Boats with 25 horsepower or less are permitted in refuge impoundments. The use of boat motors is prohibited in open marsh or marsh ponds. Boat access to refuge marshes, ponds and impoundments is restricted to designated routes.

(6) Shrimp may be taken by cast nets only; crabs and crayfish may be taken by hand lines and/or ring nets of 30 inches in diameter or less.

(7) Daily shrimp (heads on) take and/or possession limit is 25 pounds or 24 quarts per vehicle during the State inside water shrimp season; and 10 pounds take and/or possession limit per vehicle during the rest of the year.

(8) Daily crab and/or crayfish take and/or possession limit is 100 pounds or 96 quarts per vehicle.

(9) The use or possession of commercial fishing equipment as prescribed by State law is prohibited on the refuge, except during the open inside water shrimp season and within legal hours. Commercial shrimpers may use the parking area and ramps at Hog Island Gulley, Headquarters and West Cove as access points directly to and from Calcasieu Lake and be in possession of commercial fishing equipment and/or catches.

* * * * *

14. Section 33.23 is amended by adding paragraph (b) to read as follows:

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§ 33.23 Maine.

* * * * *

(b) *Pond Island National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following condition: Fishing is permitted from August 16 through the last day of February.

15. Section 33.25 would be amended by redesignating paragraph (c) as (d) and adding a new paragraph (c) to read as follows:

§ 33.25 Massachusetts.

* * * * *

(c) *Nantucket National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted on the ocean beach only.

(2) A permit is required for the use of over-the-sand surf fishing vehicles.

* * * * *

16. Section 33.32 is amended by revising paragraphs (a)(3) and (b)(2) to read as follows:

§ 33.32 Nevada.

(a) *Pahranagat National Wildlife Refuge.* * * *

(3) The use of boats, rubber rafts or other floating devices is not permitted on North Marsh.

(b) *Ruby Lake National Wildlife Refuge.* * * *

(2) Only dike fishing is permitted in the areas north of Brown Dike and east of the Collection Ditch with the exception that fishing by wading and from personal flotation devices is permitted in Unit 21 and portions of Unit 10.

* * * * *

17. Section 33.34 is amended by revising paragraph (a)(3) to read as follows:

§ 33.34 New Jersey.

(a) *Edwin B. Forsythe National Wildlife Refuge.* * * *

(3) South Dike anglers may park at the headquarters and South Tower parking areas only.

18. Section 33.37 is amended by revising paragraph (b)(4) to read as follows:

§ 33.37 North Carolina.

* * * * *

(b) *Mattamuskeet National Wildlife Refuge.* * * *

(4) All fish lines and crabbing equipment must be attended.

* * * * *

19. Section 33.39 is added to read as follows:

§ 33.39 Ohio.

(a) *Cedar Point National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is allowed from June 1 through August 31 during daylight hours only.

(2) Boats or flotation devices are not permitted.

(b) *Ottawa National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is allowed from June 1 through August 31 during daylight hours only.

(2) Boats or flotation devices are not permitted.

(3) Fishing is restricted to persons 16 years or younger or 65 years or older.

20. Section 33.41 is amended by revising paragraph (e)(2) to read as follows:

§ 33.41 Oregon.

* * * * *

(e) *Malheur National Wildlife Refuge.* * * *

(2) Boats are not permitted, except nonmotorized boats and boats with electric motors are permitted on Krumbo Reservoir.

* * * * *

21. Section 33.44 is amended by revising paragraph (b)(2) to read as follows:

§ 33.44 South Carolina.

* * * * *

(b) *Carolina Sandhills National Wildlife Refuge.* * * *

(2) Fishing is permitted from one-half hour before sunrise to one-half hour after sunset.

* * * * *

22. Section 33.46 is amended by adding paragraph (a)(6) to read as follows:

§ 33.46 Tennessee.

(a) *Cross Creeks National Wildlife Refuge.* * * *

(6) North Cross Creek, Lee Creek and Commissary Creek areas and boat ramps to these areas are closed to fishing during the refuge waterfowl hunt.

* * * * *

23. Section 33.51 is amended by revising paragraphs (a) (1) and (2), and (b) (1) and (2) to read as follows:

§ 33.51 Washington.

(a) *Columbia National Wildlife Refuge.* * * *

(1) Only nonmotorized boats are permitted on the chain of lakes extending from Soda Lake through Upper Hampton and on Crab Creek and its impoundments below Marsh Unit I.

(2) Motorized boats are permitted on all other refuge waters open to fishing except in Marsh Unit I.

(b) *McNary National Wildlife Refuge.* * * *

(1) Fishing is permitted on the Hanford Islands and Strawberry Island Divisions from July 1 through September 30.

(2) Fishing is permitted on the NcNary Division from March 1 through September 30

* * * * *

24. A new § 33.55 is added to read as follows:

§ 33.55 Pacific Islands Territory.

(a) *Johnston Atoll National Wildlife Refuge.* Fishing, lobstering and shell and coral collecting are permitted on designated areas of the refuge subject to the following conditions:

(1) Lobsters of one pound or more may be taken from the Lagoon area from September 1 through May 31, but not by spearing; no female lobsters bearing eggs may be taken at any time.

(2) The use of nets, except throw-nets of one and one-half inches diagonal measure minimum, is prohibited in the lagoon.

Dated: January 21, 1987.

Daniel Smith,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-3415 Filed 2-19-87; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 52, No. 34
Friday, February 20, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 982 and 999

Filberts/Hazelnuts Grown in Oregon and Washington, Filbert Imports; Withdrawal of Proposed Amendment of Grade Requirements for Domestic and Imported Shelled Filberts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposed rule to amend the grade (quality) requirements under Marketing Order No. 982 for shipments of shelled filberts grown in Oregon and Washington, by reducing from 2.0 percent to 1.0 percent the tolerance for mold, rancidity, decay, or insect injury. This document also withdraws a proposal to make the same changes in the grade requiremens for imported shelled filberts under § 999.400. After review of the comments received on the proposals, it has been determined that there is insufficient evidence to support a reduction in the tolerance.

EFFECTIVE DATE: February 20, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC, 20250, (202) 447-5697.

SUPPLEMENTARY INFORMATION: On March 10, 1986, notice was published in the **Federal Register** (51 FR 8201) to amend Subpart—Grade and Size Regulation (7 CFR 982.101), by amending § 982.101, Exhibit A. This subpart is issued under the marketing agreement, as amended, and Order No. 982, as amended (7 CFR 982, 51 FR 29545), regulating the handling of filberts grown in Oregon and Washington. The marketing agreement and order are collectively referred to in this document as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act".

For domestically produced filberts, the March 10, 1986, notice contained a proposal based on a recommendation submitted by the Filbert/Hazelnut Marketing Board to amend the grade (quality) requirements for shelled filberts by reducing the cumulative tolerance from 2.0 percent to 1.5 percent for four defects—mold, rancidity, decay, or insect injury, with no more that 1.0 percent, cumulatively, for mold, rancidity, or insect injury (as is currently provided). The proposed rule further specified that the 1.5 percent tolerance would be reduced to 1.0 percent after a period of one year.

Notice was also given in the same document of a proposal to amend the grade requirements for imported shelled filberts in § 999.400 (Exhibit A) by making the same changes as proposed for domestic filberts. That section is issued pursuant to section 8e (7 U.S.C. 608e-1) of the Act. Section 8e provides, in part, that whenever a marketing order issued by the Secretary of Agriculture, pursuant to the Act contains any terms and conditions regulating the grade, size, quality, or maturity of filberts produced in the United States, the importation of filberts into the United States be prohibited unless the commodity with the grade, size, quality, and maturity provisions of the order or comparable restrictions promulgated under section 8e.

The notice of proposed rulemaking also solicited comments with respect to any other possible quality standard for domestic and imported filberts.

The Department received a request filed on behalf of the Association of Food Industries, Inc. to extend the comment periods provided in the notice to allow more time for interested parties to analyze the proposal and submit written comments thereon. Subsequently, the April 8, 1986, **Federal Register** (51 FR 11932), announced that the comment period had been extended by 60 days to June 9, 1986, to ensure that all such parties were provided adequate time to submit written comments.

A total of 290 comments were received on the proposal. Two hundred sixty-nine comments supporting the proposed 1.0 percent tolerance for four defects were received from domestic filbert growers, the Association of Oregon Hazelnut Industries (AOHI) representing domestic growers, and several members of Congress.

The record shows that domestic filbert production is increasing. The U.S. produced a record 24,600 tons (9840 kernelweight tons) in 1985 and crops of about 29,000 tons (11,600 kernelweight tons) are expected by 1990. Experience shows that there has been little, if any, growth in demand for U.S. inshell filberts. Thus, the domestic industry anticipates that the likely area for market growth to occur is primarily with shelled filberts. In 1985, shipments, of U.S. shelled filberts totaled 4,843 kernelweight tons, substantially exceeding the average shipment level for the previous four years of 2,144 tons.

The principle argument advanced in support of the proposed 1.0 percent tolerance is that such a reduced tolerance is necessary to enable the domestic filbert industry to develop new markets for the increasing supplies of domestically produced filberts. Commenters supporting the change asserted that the domestic markets for filberts will not grow to meet anticipated increases in supply unless domestic users can be assured that there are "reliable" sources of high quality filberts available.

Commenters in favor of reduced tolerances argue that, under the current 2.0 percent tolerance for the four defects, the necessary level of quality assurance is not present, and thus, U.S. users lack the confidence necessary to develop new products and otherwise develop new markets for filberts. The AOHI cities statement from four Oregon trade organizations involved in the marketing of filberts, which report that some domestic users will not increase their purchases unless they are assured of uniformly better quality. However, it also is true that domestic filbert handlers already voluntarily pack to a 1.0 percent standard for the four defects. Thus, the proposed reduced tolerance would have little or no effect on the quality of domestically packed filberts.

Proponents of the domestic pack, handlers have had limited success in expanding domestic markets because of the presence of lower quality imported filberts competing with domestically produced filberts. However, a survey of imports during the period August 1984 through July 1986, indicates that 94.2 percent of all lots offered for importation passed the current 2.0

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percent requirements. In addition, 87.5 percent of the lots which passed the current requirements would have passed at the 1.5 percent tolerance level, and 67.3 percent of those lots would have passed at the 1.0 percent tolerance level. Further, a survey by handlers revealed that the majority of the imports that would not have passed the lower standards were imported by a small number of users, primarily for processing into bakery products. These importers contend that because of the higher oil content of imported filberts, that such filberts are superior to U.S. filberts for processing into bakery products. Thus, the record shows that while a significant percentage of imported filberts fall between the current and proposed 1.0 percent quality level, these nuts are not generally in competition with the domestic nuts for use in whole shelled products. Accordingly, the proponents failed to demonstrate that low quality imports are, in fact, retarding market growth.

The AOHI further maintains that the tightening of domestic and imported quality standards in 1982 increased U.S. consumption of filberts by 39 percent (50 percent for shelled filberts) for the period 1979–1984. The AOHI presentation, however, overstates the increase in U.S. consumption of filberts by comparing two years (1979 and 1984) of unseasonally low and high levels of filbert shipments, respectively. A more objective analysis shows that the estimated U.S. consumption of shell filberts has increased since the imposition of grade requirements for shelled filberts in 1978, although somewhat more modestly than asserted by the AOHI. The estimated consumption since 1978 (with the percentage increase over the previous four-year period) is as follows: 1978–81 (1.0 percent tolerance for mold, rancidity, or insect injury—no specific requirement for decay), 5,134 tons (a 12 percent increase); and, 1982–1985 (2.0 percent tolerance for mold, rancidity, decay or insect injury with not more than 1.0 percent for mold, rancidity, or insect injury) 6,434 tons (a 25 percent increase). However, the AOHI presentation does not fully examine other factors which are likely to have contributed to this growth, such as increased supplies of U.S. filberts as prices competitive with imported filberts of the same quality, and the recent increased domestic consumption of tree nuts generally. Furthermore, the AOHI does not take into account that the actual quality level of domestically packed filberts is below the stated tolerance level already. Thus, proponents failed to established that the proposed change is likely to achieve the goal of increasing U.S. markets for filberts.

Twenty-one comments were received from importers and users of Turkish filberts, consumer groups, the Embassies of Turkey and Italy, and the Association of Food Industries (AFI), in opposition to any reduction in the current 2.0 percent tolerance for four defects for domestic and imported filberts. These commenters, as articulated by the AFI, argue that any reduction in the minimum grade tolerance would be unnecessarily restrictive involve substantial costs to American consumers, and discriminate mainly against shelled filberts from the primary foreign supplier (Turkey), where filberts may sometimes have a higher incidence of decay than do U.S. filberts because of different cultural practices and longer transit times to U.S. markets. Moreover, the Turkish Embassy and others said that Turkish exporters would be less willing to ship filberts to the U.S. if more restrictive regulations were in effect, because the exporters bear the risk for transportation costs when shipments are rejected, and in fact suggested that there might be a total cessation of Turkish exports in the rejection rate for filberts not meeting the import standard were to exceed the current 5–10 percent level.

The AFI and a number of U.S. users of Turkish filberts stated that domestic users of imported filberts (U.S. nut salters and confectionary manufacturers) favor Turkish filberts because of such filberts' higher oil content, and are satisfied with current quality levels. The AFI and others claimed that such users might be unwilling to pay the expected increased prices for imported filberts which could meet a more restrictive tolerance. They argue that prices would increase because of a smaller supply of imported filberts. In fact, no U.S. users of either domestic or imported filberts filed comments in favor of the proposal.

The Department's review of the comments and the available data does not support a reduction of the four defect tolerances to 1.5 percent and, subsequently to 1.0 percent as was proposed, because there was insufficient evidence presented to show that U.S. consumption of filberts will continue to increase if quality tolerances are reduced further, especially in view of possible price increases to consumers. Moreover, the evidence was inconclusive that reduced tolerances are necessary to promote greater purchases of shelled filberts. Furthermore, consumers and commercial users could be adversely impacted by possible supply shortages and abnormal price increases, and the record indicates that such reduced tolerances would not be in the public interest.

Therefore, it is hereby found that the current grade requirements for domestic and imported shelled filberts, §§ 982.101 and 999.400, respectively, tend to effectuate the declared policy of the Act and shall remain in effect. The proposed amendments published in the Federal Register on March 10, 1986, (51 FR 8201) are hereby withdrawn.

List of Subjects

7 CFR Parts 982

Marketing agreements and orders, Filberts, Hazelnuts, Oregon, Washington.

7 CFR Part 982

Food grades and standards, Imports, Dates, Walnuts, Prunes, Raisins, Filberts.

Dated: February 17, 1987.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 87–3660 Filed 2–19–87; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Parts 160 and 161

[Docket No. 87–007]

Requirements and Standards for Accredited Veterinarians

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extension of comment period for proposed rule.

SUMMARY: This document extends the comment period by 30 days, until March 25, 1987, for a proposed rule entitled "Requirements and Standards for Accredited Veterinarians." This action will provide interested persons with additional time to prepare comments on the proposed rule.

DATE: Written comments must be received on or before March 25, 1987.

ADDRESS: Send written comments to Steven R. Poore, Acting Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 86–048. Comments received may be inspected in Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. William E. Ketter, Chief Staff Veterinarian, Regulatory Communications and Compliance Policy Staff, VS, APHIS, USDA, Room 826, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8565.

SUPPLEMENTARY INFORMATION: On December 24, 1986, the Animal and Plant Health Inspection Service published in the Federal Register (51 FR 46685–46687) a proposal which would amend the "Standards for Accredited Veterinarians" regulations (9 CFR Parts 160 and 161) by prohibiting an accredited veterinarian from performing official duties associated with livestock in which the accredited veterinarian or any member of the accredited veterinarian's immediate family has a financial interest.

The proposed rule provided that written comments would be accepted for 60 days until February 23, 1987. We have received a request from a veterinary medical association that we extend the comment period for 30 days to provide interested persons with adequate time to prepare comments.

We believe it is in the public interest to extend the comment period. Accordingly, we are extending this comment period for 30 days, until March 25, 1987.

Done in Washington, DC, this 13th day of February, 1987.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87–3609 Filed 2–19–87; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR–87–2]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and be received on or before April 20, 1987.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–204), Room 916, FAA Headquarters Building (FOB–10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on February 13, 1987.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Description of the petition
25162	Regional Airline Association.	Description of the Petition: Petitioner proposes to add a new paragraph to § 43.3(h) which would permit foreign original equipment manufacturers to maintain equipment they manufacture. Petitioner proposes to amend §§ 135.435(a) and 135.443(b) to provide an exception to the certificated airman requirements for work performed by foreign original equipment manufacturers. Regulations Affected: 14 CFR 43.3(h), 135.435(a), and 135.443(b). Petitioner's Reason for Rule: Petitioner states that its members are heavily dependent upon the use of foreign aircraft because of the dearth of U.S.-manufactured aircraft in the size range from 19 seats to 100 seats. Petitioner states the appropriate method of alleviating this problem is to amend the rules to enable carriers operating foreign aircraft to have those aircraft and their components repaired and overhauled by the foreign original equipment manufacturer.
25154	Air Transport Association of America.	Description of Petition: To delete the requirement for burn ointment in first-aid kits. Regulations Affected: 14 CFR Part 121, Appendix A. Petitioner's Reason for Rule: The petitioner states, on behalf of its member airlines and other Part 121 air carriers, that the use of burn ointment is obsolete for emergency treatment of minor burns. Petitioner states the preferred treatment is simply the application of ice or cold water. Petitioner further states that most, if not all, burn ointments have expiration dates which create unnecessary recordkeeping, inspections, and replacement.

PETITIONS FOR RULEMAKING: WITHDRAWN OR DENIED

Docket No.	Petitioner	Description and disposition of the rule requested
24897	Mr. Stephen B. Jordan	Description of Petition: To establish Flight Level intervals between FL290 and FL420 as follows: Westbound: FL300, FL330, FL360, FL390, FL420. Eastbound: FL290, 315, 345, 375, 405. Regulations Affected: 14 CFR 91.121. Denied: December 19, 1986.

[FR Doc. 87–3565 Filed 2–19–87; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

29 CFR Part 90

Certification of Eligibility To Apply for Worker Adjustment Assistance

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Department of Labor proposes to revise the regulations on certifications of eligibility to apply for worker adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974 (Pub. L. 93–618), as amended. The proposed rule is intended to reduce the time required for completing factfinding investigations and issuing determinations on petitions by reassigning the responsibility for certifying worker groups for adjustment assistance, and to make other changes that will facilitate administrative efficiency and flexibility.

DATE: Written comments on these proposed regulations must be received by the Department of Labor on or before March 23, 1987.

ADDRESS: Send comments on this proposed rule to the Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

All comments received will be available for public inspection during normal business hours in Room 6434, at the above address.

FOR FURTHER INFORMATION CONTACT: Glenn M. Zech, Deputy Director, Office of Trade Adjustment Assistance, Employment and Training Administration, 601 D Street, NW., Washington, DC 20213; telephone (202) 376–2646 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The trade adjustment assistance (TAA) for workers program provides trade readjustment allowance (TRA) payments and reemployment services including training, job search allowances, and relocation allowances to workers whose separation from employment is linked to import competition. To qualify for TAA, workers must file a petition with the Department of Labor. A factfinding investigation is conducted to substantiate whether increased imports of articles like or directly competitive with those produced by the workers' firm have contributed importantly to decreased company sales and/or production and to worker separations.

Regulations at 29 CFR Part 90 establish the procedures and processes for filing petitions, conducting factfinding investigations, issuing determinations on petitions, requesting administrative reconsideration or judicial review of negative determinations, and other pertinent information.

The changes proposed in this document are:

1. The last sentence of § 90.1 has been deleted since the delegation of authority cited has been superseded. A reference to the appropriate delegation of authority is not necessary because the delegation of authority is noted in the proposed amended authority citation.

2. The definition of "Act," § 90.2 is changed by adding "as amended" before the period in the definition and by amending the U.S.C. citation to read 19 U.S.C. 2271–2321, 2395. Using "as amended" is appropriate since the Trade Act of 1974 has been amended several times since 1974. The U.S.C. citation is amended because section 284 of the Act, 19 U.S.C. 2395, has been enacted regarding judicial review.

3. The definition of "Certifying officer," § 90.2, is changed to include the Director, Office of Trade Adjustment Assistance, to eliminate responsibilities of certifying officers to conduct public hearings under section 221(b) of the Act and to issue subpenas, and to change the organizational location of certifying officers from the Bureau of International Labor Affairs to the Employment and Training Administration.

4. A definition for "Deputy Director," § 90.2 is added since this officer is assigned new responsibilities for conducting public hearings under section 221(b) of the Act and for issuing subpenas.

5. The definition of "Director," § 90.2 is changed to reflect the change in organizational location of the Director from the Bureau of International Labor Affairs to the Employment and Training Administration, and to eliminate responsibility for recommending to certifying officers whether or not to issue certifications of eligibility because the Director will be a certifying officer.

6. The definition of "Increased imports," § 90.2, is changed by deleting reference to trade agreement concessions proclaimed by the President beginning in 1968 and by identifying in general terms the representative base period for determining whether imports increased consistent with the Department's practice that has been upheld by the courts.

The present reference in the definition to the Kennedy Round trade concessions which began to take effect in 1968 is outdated. Further, in practice the Department has focused on relatively recent year-to-year changes in determining whether imports have increased consistent with the Act's provision which limits certification coverage to workers whose separation from employment occurred no earlier than one year prior to the date of the petition.

7. Because of organizational changes by the Department, references to the Bureau of International Labor Affairs in the following additional sections are changed to the Employment and Training Administration: § 90.2 *Date of filing;* §90.11(c) *Contents:* §90.18(a) *Determinations subject to reconsideration; time for filing;* and §90.31(a) *Where to file, date of filing.*

8. Section 90.12, *Investigation,* is changed by adding verification of petition as a condition for initiating an investigation and by deleting the sentence concerning the investigation report and recommendation since it reflects internal operating procedures and its deletion will provide additional administrative flexibility.

9. Responsibility for conducting and presiding over public hearings is changed from the certifying officer to the Director and Deputy Director, Office of Trade Adjustment Assistance, in § 90.13(a)(2) and (d). Because these two officials are involved in the day-to-day operation and management of the adjustment assistance certification program, they can more quickly respond to requests for and schedule public hearings.

10. Responsibility for issuing subpenas requiring the attendance and testimony of witnesses and the production of evidence is changed from the Secretary or certifying officer to the Director and Deputy Director, Office of Trade Adjustment Assistance, in § 90.14.

11. Section 90.15, *Recommendation,* is deleted since it reflects internal operating procedures and its deletion will provide greater administrative efficiency and flexibility.

12. Section 90.16(a), *General,* is revised by deleting the words "Not later than 15 days after receipt of the recommendations forwarded pursuant to § 90.15," since it concerns internal operating procedures and its deletion will provide greater administrative efficiency and flexibility.

Paragraph (a) also is revised to incorporate the statutory 60-day time limit for issuing certifications. Section 223 of the Act provides that the Secretary shall make a determination on a petition within 60 days of the date of filing of a petition. The Department believes that this statutory limitation is not jurisdictional, but directory. This position has been upheld by the courts in *Usery* v. *Whitin Mach. Works, Inc.,* 554 F.2nd 498 (1st Cir. 1977) and *Katunich* v. *Donovan,* 594 F. Supp. 744 (Ct. Int'l Trade 1984); also, see *Brock* v. *Pierce County,*—U.S.—, 106 S.Ct 1834 (1986). Therefore, § 90.16(a) is revised to state the general rule that the certifying officer shall make a determination within 60 days of the date of filing of a petition. But if, for any reason, the certifying officer has not made a determination within 60 days of the date of filing of a petition, the certifying officer shall make such determination as soon thereafter as is reasonably possible.

13. Section 90.16(b), *Requirements for determinations,* is revised by deleting the words "After reviewing the material submitted under § 90.15, including any supplemental material which may be required in reaching a detemination" since § 90.15 is being deleted. New language on determination requirements is added.

14. Section 90.17(c) *Recommendation,* is deleted since it reflects internal operating procedures and its deletion will provide greater administrative efficiency and flexibility. The first sentence of paragraph (d) of § 90.17 is also amended by deleting the reference to the report recommending termination in order to make the provision consistent with the deletion of paragraph (c) of this section.

15. Since section 250 of the Trade Act of 1974, which provided for judicial review of a negative determination was repealed by section 612 of Pub. L. 96–417, "Custom Courts Act of 1980," and section 614(a) of such Act provides for judicial review in the United States Court of International Trade of determinations on a petition for certification by enacting section 284 of the Trade Act of 1974, as amended, 19 U.S.C. 2395, the last sentence of each of paragraphs (e), (h) and (i) of § 90.18 is revised to reflect these statutory changes.

16. Section 90.19, *Judicial review of determinations,* has been amended to reflect the statutory change regarding judicial review, as discussed above in paragraph 15.

17. Paragraph (a) of § 90.32 has been changed to reflect the deletions of §§ 90.15 and 90.17(c), as discussed above in paragraphs 11 and 14, respectively.

Classification—Executive Order 12291

The proposed rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Department believes that this proposed rule will have no "significant economic impact on a substantial number of small entities" within the meaning of 6 U.S.C. 605(b), as provided in the Regulatory Flexibility Act. This rule will affect only the procedures of the Labor Department in processing petitions for trade adjustment assistance for workers. The Secretary of Labor has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Catalogue of Federal Domestic Assistance Number

This program is listed in the *Catalogue of Federal Domestic Assistance* as No. 17.245, "Trade Adjustment Assistance—Workers."

List of Subjects in 29 CFR Part 90

Administrative practice and procedure, Employment, Foreign trade, Labor, Trade adjustment assistance, Unemployment.

Words of Issuance

For the reasons set out in the preamble, Part 90 of Title 29 of the Code of Federal Regulations is amended as follows:

1. The authority for Part 90 is revised to read as follows:

Authority: 19 U.S.C. 2320; Secretary's Order No. 3–81, 46 FR 31117.

2. Section 90.1 is revised to read as follows:

§ 90.1 Purpose.

The purpose of this Part 90 is to set forth regulations relating to the responsibilities vested in the Secretary of Labor by the Trade Act of 1974, (Pub. L. 93–618) concerning petitions and determinations of eligibility to apply for worker adjustment assistance. Section 248 of the Act directs the Secretary of Labor to prescribe regulations which will implement the provisions relating to adjustment assistance for workers. This part will provide for the prompt and effective disposition of workers' petitions for certification of eligibility to apply for adjustment assistance.

3. Section 90.2 is amended by revising the definitions for "Act," "Certifying officer," "Date of filing," "Director," and "Increased imports" and by adding the definition for "Deputy Director" to read as follows:

§ 90.2 Definitions.

* * * * *

"Act" means the Trade Act of 1974, Pub. L. 93–618, 88 Stat. 1978, 2011–2030 (19 U.S.C. 2271–2321, 2395), as amended.

* * * * *

"Certifying officer" means an official, including the Director, Office of Trade Adjustment Assistance, in the Employment and Training Administration, United States Department of Labor, who has been delegated responsibility to make determinations and issue certifications of eligibility to apply for adjustment assistance, and to perform such further duties as may be required by the Secretary or by this Part 90.

* * * * *

"Date of filing" means the date on which petitions and other documents are received by the Office of Trade Adjustment Assistance, Employment and Training Administration, United States Department of Labor, Washington, D.C. 20213.

* * * * *

"Deputy Director" means the Deputy Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, United States Department of Labor, Washington, DC.

"Director" means the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, United States Department of Labor, Washington, DC.

* * * * *

"Increased imports" means that imports have increased either absolutely or relative to domestic production compared to a representative base period. The representative base period shall be one year consisting of the four quarters immediately preceding the date which is twelve months prior to the date of the petition.

* * * * *

4. The first two sentences of paragraph (c) of § 90.11 are revised to read as follows:

§ 90.11 Petitions.

* * * * *

(c) *Contents.* Petitions may be filed on a U.S. Department of Labor form. Copies of the form may be obtained at a local office of a State Employment Security Agency or by writing to the Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213. * * *

5. Section 90.12 is revised to read as follows:

§ 90.12 Investigation.

Upon receipt of a petition, properly filed and verified, the Director of the Office of Trade Adjustment Assistance shall promptly publish notice in the **Federal Register** that the petition has been received. The Director shall initiate, or order to be initiated, such investigation as he determines to be necessary and appropriate. The investigation may include one or more field visits to confirm information furnished by the petitioner(s) and to elicit other relevant information. In the course of any investigation, representatives of the Department shall be authorized to contact and meet with responsible officials of firms, union officials, employees, and any other persons, or organizations, both private and public, as may be necessary to marshall all relevant facts to make a determination on the petition.

* * * * * *

6. The first sentence of paragraph (a)(2) and paragraph (d) of § 90.13 are revised to read as follows:

§ 90.13 Public hearings.

(a) * * *

(2) Any other person found by the Director or Deputy Director to have a substantial interest in the proceedings. * * *

* * * * *

(d) *Presiding officer.* The Director or Deputy Director shall conduct and preside over public hearings.

* * * * *

7. Paragraphs (a), (b) and (d) of § 90.14 are revised to read as follows:

§ 90.14 Subpena power.

(a) The Director or Deputy Director may require, by subpena, in connection with any investigation or hearing, the attendance and testimony of witnesses and the production of evidence the issuing official in his or her discretion deems necessary to make a determination.

(b) If a person refuses to obey a subpena issued under paragraph (a) of this section, the Director or Deputy Director may petition the United States District Court within the jurisdiction of which the proceeding is being conducted requesting an order requiring compliance with such subpena.

* * * * *

(d) Subpenas issued under paragraph (a) of this section shall be signed by the Director or Deputy Director and shall be served either in person by an authorized representative of the Department of Labor or by certified mail, return receipt requested. The date for compliance shall be not earlier than seven (7) calendar days following service of the subpena.

§ 90.15 [Removed]

8. Section 90.15 is removed and reserved.

9. § 90.16 paragraph (a) and the introductory, text of paragraph (b) are revised to read as follows:

§ 90.16 Determinations and certifications of eligibility to apply for adjustment assistance.

(a) *General.* Within 60 days after the date of filing of a petition, a certifying officer shall make a determination on the petition. If, however, for any reason, a certifying officer has not made a determination in 60 days after the date of filing of the petition, the certifying officer shall make the determination as soon thereafter as possible. If the determination is affirmative, the certifying officer shall issue a certification of eligibility as provided in paragraphs (b), (c), (d) and (g) of this section. If the detemination is negative, the certifying officer shall issue a notice of negative determination as provided in paragraphs (b) and (f) of this section.

(b) After reviewing the relevant information necessary to make a determination, the certifying officer shall make findings of fact concerning whether: * * *

* * * * * *

10. Section 90.17 is amended by removing and reserving paragraph (c) of such section, and by revising the first sentence of paragraph (d) of such section as follows:

§ 90.17 Termination of certification of eligibility.

* * * * *

(d) *Notice of termination.* A certifying officer shall determine whether or not such certification shall be terminated. * * *

* * * * * *

11. Paragraphs (a), (e), (h) and (i) of § 90.18 are revised to read as follows:

§ 90.18 Reconsideration of determinations.

(a) *Determinations subject to reconsideration; time for filing.* Any worker, group of workers, certified or recognized union, or authorized representative of such worker or group, aggrieved by a determination issued pursuant to the Act and § 90.16(c), 90.16(f), 90.16(g), or 90.17(d) may file an application for reconsideration of the determination with the Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213. All applications must be in writing and must be filed no later than thirty (30) days after the notice of the determination has been published in the **Federal Register.**

* * * * * *

(e) *Notice of negative determination regarding application for reconsideration.* Upon reaching a determination that an application for reconsideration does not meet the requirements of paragraph (c) of this section, the certifying officer shall issue a negative determination regarding the application and shall promptly publish in the **Federal Register** a summary of the determination, including the reasons therefor. Such summary shall constitute a Notice of Negative Determination Regarding Application for Reconsideration. A determination issued pursuant to this paragraph shall constitute a final determination for purposes of judicial review pursuant to section 284 of the Act, 19 U.S.C. 2395, and 90.19(a).

* * * * * *

(h) *Notice of revised certification of eligibility and notice of revised determination.* Upon reaching a determination on reconsideration that a group of workers has met all the requirements set forth in section 222 of the Act and paragraph (b) of § 90.16, the certifying officer shall issue a revised determination concerning certification of eligibility to apply for adjustment assistance and shall promptly publish in the **Federal Register** a summary of the revised determination together with the reasons for making such revised determination (with the exception of information which the certifying officer determines to be confidential). Such summary shall include a certification of eligibility in accordance with paragraph

(d) of § 90.16. The summary shall constitute a Notice of Revised Certification of Eligibility when the determination under reconsideration was a certification of eligibility. The summary shall constitute a Notice of Revised Determination when the determination under reconsideration was a negative determination or a certification containing a negative determination. A determination issued pursuant to this paragraph shall constitute a final determination for purposes of judicial review pursuant to section 284 of the Act, 19 U.S.C. 2395, and § 90.19(a).

(i) *Notice of negative determination on reconsideration.* Upon reaching a determination on reconsideration that a group of workers has not met all the requirements set forth in section 222 of the Act and paragraph (b) of the § 90.16, the certifying officer shall issue a negative determination on reconsideration and shall promptly publish in the **Federal Register** a summary of the determination together with the reasons for making such determination (with the exception of information which the certifying officer determines to be confidential). Such summary shall constitute a Notice of Negative Determination on Reconsideration. A determination issued pursuant to this paragraph shall constitute a final determination for purposes of judicial review pursuant to section 284 of the Act, 19 U.S.C. 2395, and § 90.19(a).

12. Section 90.19 is revised to read as follows:

§ 90.19 Judicial review of determinations.

(a) *General.* Pursuant to section 284 of the Act, 19 U.S.C. 2395, any worker, group of workers, certified or recognized union, or authorized representative of such worker or group, aggrieved by a final determination issued pursuant to the Act and §§ 90.16(c), 90.16(f), 90.16(g), 90.17(d), 90.18(e), 90.18(h) or 90.18(i) may commence a civil action for review of such determination with the United States Court of International Trade. The party seeking judicial review must file for review in the Court of International Trade within sixty (60) days after the notice of determination has been published in the **Federal Register.**

(b) *Certified record of the Secretary.* Upon receiving a copy of the summons and complaint from the clerk of the Court of International Trade, the certifying officer shall promptly certify and file in such court the record on which the determination was based. The record shall include transcripts of any public hearings, the findings of fact made pursuant to § 90.16(b), 90.18(e), 90.18(h) or 90.18(i), and other documents on which the determination was based.

(c) *Further proceedings.* If a case is remanded to the Secretary by the Court of International Trade for the taking of further evidence, the Director or Deputy Director shall direct that further proceedings be conducted in accordance with the provisions of Subpart B of this part, including the taking of further evidence. A certifying officer, after the conduct of such further proceedings, may make new or modified findings of fact and may modify or affirm the previous determination. Upon the completion of such further proceedings, the certifying officer shall certify and file in the Court of International Trade the record of such further proceedings.

(d) *Substantial evidence.* The findings of fact by the certifying officer shall be conclusive if the Court of International Trade determines that such findings of fact are supported by substantial evidence.

13. Paragraph (a) of § 90.31 is revised to read as follows:

§ 90.31 Filing of documents.

(a) *Where to file, date of filing.* Petitions and all other documents shall be filed at the Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213. If properly filed, such documents shall be deemed filed on the date on which they are actually received in the Office of Trade Adjustment Assistance.

* * * * * *

14. Paragraph (a) of § 90.32 is revised to read as follows:

§ 90.32 Availability of information.

(a) *Information available to the public.* Upon request to the Director of the Office of Trade Adjustment Assistance, members of the public may inspect petitions and other documents filed with Director under the provisions of this Part 90, transcripts of testimony taken and exhibits submitted at public hearings held under the provisions of this Part 90, public notices concerning worker assistance under the Act and other reports and documents issued for general distribution.

* * * * * *

Signed at Washington, DC, on February 13, 1987.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 87-3456 Filed 2-19-87; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Birthing Centers

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule defines "birthing center," establishes birthing centers as a category of institutional health care provider and prescribes the criteria for assessing a birthing center's application for authorized status. This action is necessary to expand CHAMPUS beneficiary options for safe maternity care through recognition of the changes in the way services for a normal pregnancy and childbirth are currently delivered and priced in the civilian community.

DATES: Written comments must be received on or before March 23, 1987.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services, (OCHAMPUS), Policy Branch, Aurora, CO 80045-6900.

FOR FURTHER INFORMATION CONTACT: Joseph W. Baker, Policy Branch, OCHAMPUS, telephone (303) 361-4019.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. DoD Regulation 6010.8-R was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

The emergence of birthing centers and outpatient hospital birthing rooms as providers of low-risk maternity care reflects the trend of increased availability of traditional inpatient hospital services as ambulatory care. Currently, hospitals are the only class of institutional provider eligible for reimbursement for maternity care of CHAMPUS beneficiaries. Since the last OCHAMPUS review of the birthing center approach to maternity care, there has been considerable development of quality assurance standards and oversight capability. At least 26 states specifically regulate birthing centers and accreditation is available through the Commission for the Accreditation of Freestanding Birth Centers as well as through the Accreditation Association

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for Ambulatory Health Care. The medical literature does not establish any extraordinary risk associated with a healthy mother giving birth out-of-hospital when assisted by either a physician or certified nurse-midwife.

Currently, the cost of certain childbirth services, including related maternity care, may be shared between the CHAMPUS and the beneficiary when provided by a hospital, physician, or certified nurse-midwife. Hospital-based birthing room services will continue to be reimbursed as other hospital services. The status of physicians and certified nurse-midwives as CHAMPUS individual professional providers is not affected by this proposed rule.

Each CHAMPUS beneficiary has a specific financial responsibility, established by statute (10 U.S.C. 1079(b) and 1086), for a portion of the cost of health care services and supplies received from civilian sources. Accordingly, this proposed rule preserves the active duty dependent's limited cost-share responsibility for maternity care (generally $25) and has no effect upon the current maternity care cost responsibility for other categories of beneficiaries (25 percent of the birthing center all-inclusive rate). Active duty dependents are the predominate users of the CHAMPUS maternity care benefit. Inasmuch as childbirth services (and associated maternity care) are widely classified as surgical procedures, birthing center services and outpatient hospital-based birthing room services (because they are similar to the childbirth services portion of the birthing center program) will be classified, through administrative action currently authorized by § 199.6(f)(2)(iv), as ambulatory surgery for purposes of beneficiary cost-share determination.

This proposed rule will enhance the scope of the CHAMPUS maternity care benefit, yet the CHAMPUS cost for all-inclusive maternity care provided by a birthing center is expected to average 35 percent less than current CHAMPUS costs for conventional two-provider (individual professional and hospital) normal maternity care. Specific advantages to the CHAMPUS beneficiary include the availability of another type of provider of maternity care and natural childbirth services at a low beneficiary cost comparable to inpatient childbirth services and an outpatient alternative to conventional inpatient childbirth services which require a Nonavailability Statement (NAS). (A NAS, issued by a Uniformed Services Medical Treatment Facility (USMTF) if the facility is unable to provide required inpatient medical services, is a prerequisite for CHAMPUS consideration of a claim for non-emergency inpatient care from any beneficiary who resides within a USMTF catchment area. The DoD requires that CHAMPUS beneficiaries living within a USMTF catchment area first seek non-emergency inpatient care from the USMTF before seeking care in the civilian community. Non-emergency inpatient hospital services received in conjunction with birthing center or hospital-based outpatient birthing room services will require a NAS before CHAMPUS can consider the claim for services).

OCHAMPUS recognizes that quality of care relies upon the professional skill and personal integrity of individual care givers, upon local regulation of health care services delivery, and upon the activities of independent professional accreditation bodies. OCHAMPUS will reinforce existing professional and local governmental oversight by requiring licensure and accreditation, provider agreements, utilization review, and by establishing certain basic operational standards. Written agreements will also be required to ensure qualified physician oversight and immediate transfer for emergency care to an acute care hospital.

Reimbursement for services furnished by an authorized birthing center will be limited to the lower of the CHAMPUS established all-inclusive rate or the center's most favored all-inclusive rate to any other individual or third party payer. The CHAMPUS birthing center all-inclusive rate is the sum of the CHAMPUS allowable professional charge for all-inclusive obstetrical care plus the average CHAMPUS allowable charge for supplies, laboratory, and delivery room associated with a normal inpatient delivery. The rate will be established annually for each state; reimbursement for an incomplete course of care will be prorated.

We have determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is not, therefore, a "major rule" under Executive Order 12291. Accordingly, we certify that this proposed rule, if promulgated as a final rule, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This proposed rule is being published in the **Federal Register** at the same time that it is being coordinated within the Department of Defense, and with other interested agencies, to expedite the receipt of comments.

List of Subjects in CFR Part 199

Claims, Handicapped, Health insurance, Military Personnel.

Accordingly, it is proposed to amend 32 CFR, Part 199 to read as follows:

PART 199—CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS)

1. The authority citation for Part 199 continues to read as follows:

Authority: (10 U.S.C 1079, 1086, 5 U.S.C. 301).

2. Section 199.2(b) is amended by revising the definitions of "admission" and "certified nurse-midwife" and by adding definitions for "birthing center," "birthing room," "freestanding," "high-risk pregnancy," "institution-affiliated," "institution-based," "low-risk pregnancy," "most-favored rate," and "natural childbirth" in alphabetical order as follows:

§ 199.2 Definitions.

* * * * *

(b) Specific definitions.

Admission. The formal acceptance by an OCHAMPUS authorized institutional provider of a CHAMPUS beneficiary for the purpose of diagnosis and treatment of illness, injury, pregnancy, or mental disorder.

Birthing center. A health care provider which meets the requirements established by § 199.6(b)(4)(xi) of this Part.

Birthing room. A room and environment designed and equipped to provide care, to accommodate support persons, and within which a woman with a low-risk, normal, full-term pregnancy can labor, deliver and recover with her infant.

Certified nurse-midwife. An individual who meets the requirements established by § 199.6(c)(3)(D) of this Part.

Freestanding. Not "institution-affiliated" or "institution-based."

High-risk pregnancy. A pregnancy is high-risk when the presence of a currently active or previously treated medical, anatomical, physiological illness or condition may create or increase the likelihood of a detrimental effect on the mother, fetus, or newborn and presents a reasonable possibility of the development of complications during labor or delivery.

Institution-affiliated. Related to an OCHAMPUS authorized institutional provider through a shared governing body but operating under a separate and distinct license or accreditation.

Institution-based. Related to an OCHAMPUS authorized institutional provider through a shared governing body and operating under a common license and shared accreditation.

Low risk pregnancy. A pregnancy is low-risk when the basis for the ongoing clinical expectation of a normal uncomplicated birth, as defined by reasonable and generally accepted criteria of maternal and fetal health, is documented throughout a generally accepted course of prenatal care.

Most-favored rate. The lowest usual charge to any individual or third-party payer in effect on the date of the admission of a CHAMPUS beneficiary.

Natural childbirth. Childbirth without the use of chemical induction or augmentation of labor or surgical procedures other than episiotomy or perineal repair.

3. Section 199.4 is amended by revising paragraph (b)(1), removing paragraphs (c)(3)(xi) and (c)(3)(xii), redesignating paragraphs (c)(3)(xiii) and (c)(3)(xiv) as (c)(3)(xi) and (c)(3)(xii) and adding paragraph (e)(16) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(b) *Institutional benfits.* (1) *General.* Services and supplies provided by an institutional provider authorized as set forth in § 199.6 of this Part may be cost-shared only when such services or supplies:

(i) Are otherwise authorized by this Part;

(ii) Are medically necessary;

(iii) Are ordered, directed, prescribed, or delivered by an OCHAMPUS authorized individual professional provider as set forth in § 199.6 of this Part or by an employee of the authorized institutional provider who is otherwise eligible to be a CHAMPUS authorized individual professional provider;

(iv) Are delivered in accordance with generally accepted norms for clinical practice in the United States;

(v) Meet established quality standards and

(vi) Comply with applicable definitions, conditions, limitations, exceptions, or exclusions as otherwise set forth in this part.

* * * * *

(e) * * *

(16) *Maternity care.*

(i) The CHAMPUS basic program may share the cost of medically necessary services and supplies associated with maternity care which are not otherwise excluded by this Part. However, failure by a beneficiary to secure a required Nonavailability Statement (DD Form 1251) as set forth in paragraph (a)(9) of this section will waive that beneficiary's right to CHAMPUS cost-share of certain maternity care services and supplies.

(ii) Notwithstanding any other provisions of this Part all otherwise covered services and supplies related to maternity care shall be cost-shared on the basis of the beneficiary's express intention to deliver in a hospital inpatient childbirth unit or a hospital outpatient childbirth unit or a birthing center or at home.

(iii) A valid Nonavailability Statement (NAS) applies to all related maternity care received from a civilian source while the beneficiary resided within the military catchment area responsible for issuance of the Nonavailability Statement.

(iv) Otherwise covered medical services and supplies directly related to "Complications of pregnancy," as defined in § 199.2, will be cost-shared on the same basis as the related maternity care for a period not to exceed 42 days following termination of the pregnancy and thereafter cost-shared on the basis of the inpatient or outpatient status of the beneficiary when medically necessary services and supplies are received.

4. Section 199.6 is amended by adding new paragraph (b)(4)(xi), redesignating the existing paragraphs (e)(4) and (e)(5) as (e)(5) and (e)(6), and adding new paragraph (e)(4) to read as follows:

§ 199.6 Authorized providers.

* * * * *

(b) * * *

(4) * * *

(xi) *Birthing centers.* A birthing center is a freestanding or institution-affiliated outpatient maternity care program which principally provides a planned course of outpatient prenatal care and outpatient childbirth service limited to low-risk pregnancies; excludes care for high-risk pregnancies; limits childbirth to the use of natural childbirth procedures; and provides immediate newborn care.

(A) *Certification requirements.* A birthing center which meets the following criteria may be designated as an authorized CHAMPUS institutional provider:

(*1*) The predominant type of service and level of care rendered by the center is otherwise authorized by this Part.

(*2*) The center is licensed to operate as an institutional ambulatory health care provider and meets all licensing or certification requirements that are extant in the state, county, municipality, or other political jurisdiction in which the center is located.

(*3*) The center is accredited by a nationally recognized accreditation organization whose standards and procedures have been determined to be acceptable by the Director, OCHAMPUS.

(*4*) The center complies with the OCHAMPUS birthing center standards provision of this Part.

(*5*) The center has entered into a participation agreement with OCHAMPUS in which the center agrees, in part, to:

(*i*) Accept payment for maternity services based upon the reimbursement methodology for birthing centers;

(*ii*) Collect from the CHAMPUS beneficiary only those amounts that represent the beneficiary's liability and amounts for services and supplies that are not a benefit of the CHAMPUS;

(*iii*) Make all reasonable efforts acceptable to the Director, OCHAMPUS, to collect those amounts which represent the beneficiary's liability;

(*iv*) Permit access by the Director, OCHAMPUS, or a designee, to the clinical record of any CHAMPUS beneficiary, to the financial and organizational records of the center, and to reports of evaluations and inspections conducted by state or private agencies or organizations;

(*v*) Submit claims first to all health benefit and insurance plans primary to the CHAMPUS to which the beneficiary is entitled and to comply with the double coverage provisions of this Part;

(*vi*) Notify OCHAMPUS in writing within seven days of the emergency transport of any CHAMPUS beneficiary from the center to an acute care hospital or of the death of any CHAMPUS beneficiary in the center.

(*6*) A birthing center shall not be a CHAMPUS-authorized institutional provider and CHAMPUS benefits shall not be paid for any service provided by a birthing center before the date the participation agreement is signed by the Director, OCHAMPUS, or a designee.

(B) *CHAMPUS birthing center standards.*

(*1*) *Environment:* The center has a safe and sanitary environment, properly constructed, equipped, and maintained to protect health and safety and meets the applicable provisions of the "Life Safety Code" of the National Fire Protection Association.

(*2*) *Policies and procedures:* The center has written policies and procedures which are consistent with the recommendations and guidelines for ambulatory care obstetrics in the most recent edition of "Standards for Obstetric-Gynecologic Services," (or a successor publication) published by the

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American College of Obstetricians and Gynecologists, or in the most recent edition of the "Standards for Nurse-midwifery Practice" (or a successor publication) published by the American College of Nurse-midwives.

(3) *Beneficiary care:* Each woman admitted to the center will be cared for by or under the direct supervision of a specific licensed physician or a specific certified nurse-midwife who is otherwise eligible as a CHAMPUS individual professional provider.

(4) *Medical direction:* The center has a written memorandum of understanding (MOU) for routine consultation and emergency care with an obstetrician-gynecologist who is certified or is eligible for certification by the American Board of Obstetrics and Gynecology or the American Osteopathic Board of Obstetrics and Gynecology and with a pediatrician who is certified or eligible for certification by the American Board of Pediatrics or by the American Osteopathic Board of Pediatrics, each of whom have admitting privileges to at least one of the back-up acute-care hospitals with which the birthing center has a transfer agreement. The memorandum of understanding must be renewed annually. In lieu of either MOU, the center may employ a physician with the required qualifications.

(5) *Admission and emergency care criteria and procedures.* The center has written clinical criteria and administrative procedures, which are reviewed and approved annually by a physician related to the center as required by paragraph, (b)(4)(xi)(B)(4) of this section for the exclusion of a woman with a high-risk pregnancy from center care and for management of maternal and neonatal emergencies.

(6) *Back-up hospital:* The center has a written memorandum of understanding (MOU) with at least one acute-care hospital which documents that the hospital will accept and treat any woman or newborn transferred from the center who is in need of emergency obstetrical or neonatal medical care. The MOU must be renewed annually.

(7) *Emergency medical transportation.* The center has a written memorandum of understanding (MOU) with at least one ambulance service which documents that the ambulance service is routinely staffed by qualified personnel who are capable of the management of critical maternal and neonatal patients during transport and which specifies the estimated transport time to each backup acute-care hospital with which the center has a transfer agreement. The MOU must be renewed annually.

(8) *Professional staff:* The center's professional staff is legally and professionally qualified for the performance of their professional responsibilities.

(9) *Medical records:* The center maintains full and complete written documentation of the services rendered to each woman admitted and each newborn delivered.

(10) *Quality assurance:* The center has an organized program for quality assurance which includes, but is not limited to, written procedures for regularly scheduled evaluation of each type of service provided, of each mother or newborn transferred to a hospital, and of each death within the facility.

(11) *Governance and administration:* The center has a governing body legally responsible for overall operation and maintenance of the center and a full-time employee who has authority and responsibility for the day-to-day operation of the center.

* * * * *

(e) * * *

(4) *Reimbursement of birthing centers.*

(i) Reimbursement for maternity care and childbirth services furnished by an authorized birthing center shall be limited to the lower of the CHAMPUS established all-inclusive rate or the center's most-favored rate.

(ii) The all-inclusive rate shall include the following to the extent that they are usually associated with a normal pregnancy and childbirth: laboratory studies, prenatal management, labor management, delivery, post-partum management, newborn laboratory studies, newborn care, birth assistant, certified nurse-midwife professional services, physician professional services, and the use of the facility.

(iii) The CHAMPUS established all-inclusive rate will be calculated annually from the sum of the CHAMPUS allowable professional charge for total obstetrical care for a normal pregnancy and delivery and an amount equal to the sum of the statewide average CHAMPUS allowable institutional charge for supplies, laboratory, and delivery room for a normal hospital delivery for each state.

(iv) Otherwise authorized services designated in guidelines issued by the Director, OCHAMPUS, or a designee, shall be reimbursed at the lesser of the billed charge or the CHAMPUS allowable charge.

(v) Reimbursement for an incomplete course of care will be prorated based upon the all-inclusive rate in effect at the time of admission.

* * * * *

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 12, 1987.

[FR Doc. 87-3426 Filed 2-19-87; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-3158-1]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing rulemaking on a revison to the Illinois State Implementation Plan (SIP) for Total Suspended Particulates (TSP). The revision pertains to the incorporation of revised coke oven pushing and charging rules into the SIP. It also pertains to the recodification of some rules now in the SIP. USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of section 110 and Part D of the Clean Air Act (Act).

DATE: Comments on this revision and on the proposed USEPA action must be received by March 23, 1987.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Randolph O. Cano, at (312) 886-6036, before visiting the Region V office.)

U.S. Environmental Protecton Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6036.

SUPPLEMENTARY INFORMATION: Under Section 107 of the Act, USEPA has designated certain areas in each State as not attaining the National Ambient Air Quality Standards (NAAQS) for particulate matter (total suspended particulates—(TSP)), sulfur dioxide (SO_2), carbon monoxide (CO), ozone, and nitrogen dioxide (NO_2). See 43 FR 8962 (March 3, 1978), and 40 CFR Part 81. For these areas, Part D of the Act requires that the State revise its SIP to provide for attaining the primary NAAQS by December 31, 1982 (in certain cases, by December 31, 1987, for ozone and/or CO). These SIP revisions must also provide for attaining the secondary NAAQS as soon as practicable. The requirements for an approvable SIP are described in a "General Preamble" for Part D rulemakings published at 44 FR 20372 (April 4, 1979), 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979).

Background

On September 3, 1981 (46 FR 44172), USEPA disapproved Illinois Rule 203(d)(5)(B)(ii) for coke oven charging and Rule 203(d)(5)(B)(iii) of coke oven pushing. The charging rule was disapproved because the procedure for determining compliance was vague and because the State did not demonstrate that its charging limit of 170 seconds of visible emissions for five charges was reasonably available control technology (RACT). The pushing rule was disapproved because of the following deficiencies;

(1) The regulation is ambiguous about whether the 0.03 or 0.06 gr/dscf limitation applies to traveling hood stationary gas control systems;

(2) The term "stationary hood system" applies to coke side sheds and an emission limitation of 0.03 gr/dscf is excessively lenient because of unique shed dilution effects;

(3) The regulation lacks testing definitions; and

(4) The 90 percent design efficiency provision is not a quantifiable emission limitation and the rule lacks opacity standards for pushing.

The Illinois Environmental Protection Agency (IEPA) agreed to correct the first, third, and fourth deficiencies in source operating permits and to submit these permits to USEPA. (The second deficiency became moot because there are no coke side sheds in Illinois.) On November 24, 1982 (47 FR 53057), USEPA proposed to approve Rule 203(d)(5)(B)(iii) with the understanding that the State was to ensure the application of RACT by including test methods and pushing opacity limits in source operating permits. The State was also to apply the 0.03 gr/dscf emission limit to traveling hood stationary gas cleaning control systems and submit the revised operation permits to USEPA.

On August 9, 1983, the State provided USEPA operating permits for coke batteries at Interlake, Incorporated, and Granite City Steel. These permits did not contain the provisions that the State had agreed to include in them.

USEPA proposed to disapprove Rule 203(d)(5)(B)(iii) on March 27, 1985 (50 FR 12943), because the State had not implemented the terms of the agreement reached with USEPA which have provided RACT-level controls. USEPA disapproved Rule 203(d)(5)(B)(iii) on January 16, 1986 (51 FR 2399).

IEPA developed amended Rules 212.443(b) for charging and 212.443(c) for pushing to correct deficiencies in Illinois' TSP SIP. Amended Rules 212.443 (b) and (c) were submitted to the Illinois Pollution Control Board (Board) by IEPA, Citizens for a Better Environment (CBE), and affected steel companies as a joint proposal on January 3, 1986.[1]

The Board finally adopted these coke oven pushing and charging rules in a September 25, 1986, Final Order for docket R85-33. This Final Order was submitted to USEPA as a proposed revision to the Illinois SIP On October 30, 1986.

It should be noted that Illinois has recodified its environmental regulations. These regulations are now part of Title 35 of the Illinois Administrative Code (35 IAC), more specifically subtitle B: Air Pollution, Chapter 1: Pollution Control Board. The revised designation of these rules reflects the new codification system. See the *Recodification* discussion below.

Recodification and Description and Analysis of Revisions

USEPA's detailed evaluation of this proposed SIP revision is contained in a March 17, 1986, technical support document and a December 5, 1986, addendum to that document. Both of these documents are available for inspection at the Region V Office listed above.

The charging rule 212.443(b) provides for a visual emission limit of 125 seconds over 5 charges with an exemption of 1 in 20 charges. The pushing rule 212.443(c) provides for a visual emission limit of 20 percent opacity averaged over four consecutive pushes considering the highest average of six consecutive readings in each pushing operation. The rule also imposes both a visual emission limit and mass emission limitation on control equipment devices. The visual emission limit requires a 20 percent opacity limit averaged over 6 minutes. The mass emission limit sets a limit of 0.040 pounds of TSP per ton of coke pushed. USEPA believes that Rules 212.443 (b) and (c) represent RACT and that they will correct the present deficiencies related to coke oven pushing and charging in the Illinois TSP SIP because they are enforceable.

In addition to providing revised coke oven pushing and charging regulations, this September 25, 1986, Final Order recodifies the remaining coke oven rules. The following table summarizes this recodification.

RECODIFICATION TABLE

	Old number	Recodified number
general	203(d)(5)(B)(i)	212.443(a)
doors	203(d)(5)(B)(iv)(aa) & (bb)	212.443(d) (1) & (2)
lids	203(d)(5)(B)(v)	212.443(e)
offtake piping	203(d)(5)(B)(vi)	212.443(f)
combustion stack	203(d)(5)(B)(vii)	212.443(g)
quenching	203(d)(5)(B)(viii)	212.443(h)
work rules	203(d)(5)(B)(ix)	212.443(i)

USEPA Analysis of the Recodification

Rule 203(d)(5)(B)(i) provides that Rule 202 (the general visible emission limitation) shall not apply to by-product coke plants and was approved on September 3, 1981 (46 FR 44172).

Rule 212.443(a) provides that Subpart B of Part 212 (recodified general visual emission limitation) shall not apply to by-product coke plants. Rule 212.443(a) is approvable but Subpart B (of Part 212) is not part of the Illinois SIP. This rule was vacated and remanded by the Illinois Appellate Court on September 22, 1978 and is therefore no longer enforceable as part of the Illinois SIP (see *Commonwealth Edison* v. *Pollution Control Board* 25 Ill. App. 3d 271, 323 NE 2d 84).

Rules 203(d)(5)(B)(iv)(bb) and 203(d)(5)(b)(vii) were approved by USEPA on September 3, 1981. The recodifications of these rules, 212.443(d)(2) and 212.443(g) are approvable.

Rule 203(d)(5)(B)(ix) was approved by USEPA on October 4, 1983 (48 FR 45245), and the recodification of this rule is approvable.

Rules 203(d)(5)(B)(iv)(aa), 203(d)(5)(B)(v), 203(d)(5)(B)(vi), and

[1] This joint proposal is an outgrowth of a suit filed by CBE in the U.S. District Court for the Northern District of Illinois. *CBE* v. *EPA* (No. 80-C-003 N.D. Ill.).

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203(d)(5)(B)(viii) were conditionally approved by USEPA on September 3, 1981 (46 FR 44172). The conditions have not been satisfied. The recodifications of these rules can be incorporated into the SIP as conditionally approved rules.

Proposed Rulemaking Action

USEPA proposes to approve the incorporation of the Illinois Coke Oven Pushing and Charging Rules 35 IAC 212.443 (b) and (c), into the Illinois TSP SIP. USEPA also proposes to approve the incorporation of the related recodified rules into the TSP SIP; 35 IAC 212.443(a), 212.443(d) (1) and (2), 212.443(e), 212.443(f), 212.443(g), 212.443(h) and 212.443(i). USEPA cautions that because 35 IAC 212.443(d)(1), 212.443(e), 212.443(f) and 212.443(h) were conditionally approved on September 3, 1981 (46 FR 44172), the recodified rules are also proposed for incorporation as conditionally approved.

Public comment is solicited on the proposed SIP revision and on USEPA's approval of it. Public comments should be submitted to the Region V address listed above. Public comments received by March 23, 1987 will be considered in the development of USEPA's final rulemaking action.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401–7642.

Dated: December 31, 1986.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 87–3648 Filed 2–19–87; 8:45 am]

BILLING CODE 6560–50

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 63 and 68

[CC Docket No. 86–494]

Regulatory Policies and International Telecommunications

AGENCY: Federal Communications Commission (FCC).

ACTION: Notice of inquiry and proposed rulemaking.

SUMMARY: This Notice initiates an inquiry and proposed rulemaking concerning the interrelationship of the FCC's regulatory policies with the telecommunications policies of foreign governments. This proceeding was initiated to determine the actual and potential effects of foreign regulations and practices on the FCC's ability to ensure the efficiency, equity and national security goals of the Communications Act. The proceeding will seek to determine what actions the Commission can, and should, consider to promote liberalization in international telecommunications.

DATES: Comments are due on or before April 17, 1987, and reply comments are due on or before May 22, 1987.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William Kirsch or John Copes at 202–632–4047.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Inquiry and Proposed Rulemaking* in CC Docket 84–494, Adopted December 23, 1986, and Released January 30, 1987.

The full text of this Commission action is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of the Notice of Inquiry and Proposed Rulemaking

1. With this *Notice of Inquiry and Proposed Rulemaking* NOI–PRM, this Commission institutes a proceeding to determine whether the public interest requires that the telecommunications policies of foreign governments be considered in the formulation of Commission regulatory policies concerning the provision of telecommunications goods and services within the United States and the provision of telecommunications services between the United States and foreign countries.

2. In the Inquiry portion of the Notice we focus on the development of an "international model" that would represent an "ideal" to be sought in international telecommunications and a benchmark against which national and international policies and practices may be compared. Specifically, the Inquiry seeks to develop criteria that could be used to develop the international model based on four objectives: (1) Open entry; (2) nondiscrimination; (3) technological innovation; and (4) international comity.

3. We describe the regulatory policies that this Commission has adopted to promote these four objectives. We begin by pointing out that the principal limitation on the exercise of monopoly power in a market economy is the possibility of competitive entry, and we detail the opening of U.S. telecommunications markets to competitive supply. We also express concern, however, that certain foreign practices may serve to limit the entry of U.S. common carriers, enhanced service providers, and telecommunications equipment manufacturers. Therefore, we request that parties address the question of establishing model criteria for open entry for U.S. telecommunications service providers and equipment manufacturers in international telecommunications.

4. We also describe the measures that we have taken to ensure nondiscriminatory treatment of competing firms in the provision of telecommunications goods and services within the United States and between the United States and foreign points. We point out that we have traditionally been concerned in international telecommunications, however, with the possibility that foreign administrations, which often have a monopoly in their home markets, would be able to obtain unduly favorable terms and conditions from U.S. firms by setting these firms against one another in a process referred to as "whipsawing." We request that parties address whether there are more effective mechanisms than those we currently employ to ensure nondiscriminatory treatment of U.S. international service providers and to promote meaningful competition in international telecommunications. To address the specific question of "whipsawing" through the allocation of return traffic, for example, we request that parties comment on three alternative approaches: (1) Customer choice of the carrier; (2) "sender keep all"; and (3) proportional return allocation. We also recognize, however, that there may be a variety of other ways in which U.S. international carriers, enhanced service providers, or equipment manufacturers may be subject to discriminatory treatment and we invite comment on how other questions of nondiscriminatory treatment of American firms in international telecommunications can be addressed.

5. We begin our discussion of technological innovation by pointing out that section 7 of the Communications Act explicitly states that it is the policy of the United States to encourage the provision of new technologies and services to the public. We explain that we have promoted technological and market innovation in telecommunications through policies that provide for open entry and ensure the absence of unjust or unreasonable discrimination by carriers against competing suppliers. We continue by making it clear that our preference for marketplace forces extends to the development of technical standards for the provision of telecommunications goods and services and, as a result, we have limited technical standards to those that directly achieve statutory purposes. We point out that we have repeatedly stated our belief that international standardization should be flexible and should accommodate a variety of national telecommunications polices, but that our strong domestic preference has been for voluntary standardization by the private sector, not the government. As a result, we express concern that the prescription by foreign governments of mandatory standards that are arrived at without the participation of U.S. firms may directly and adversely affect the competitiveness of U.S. telecommunications firms and their ability to participate in foreign markets. We encourage parties to comment on the criteria that could be used to address the adoption of international standards that are both openly developed and no more detailed or restrictive than necessary.

6. We discuss the final objective of international comity, by which we mean the mutual recognition and accommodation by nations of their differing philosophies, policies and laws, by discussing the commonly recognized principle of reciprocal treatment among nations. We point out that our pro-competitive policies have opened up U.S. terminal equipment, core equipment, common carrier services and enhanced services markets to competitive supply by both domestic and foreign suppliers of telecommunications goods and services. We also discuss the U.S. commitment to international comity through work with other countries in the North Atlantic Consultative Process, the International Telecommunication Union, INTELSAT, INMARSAT, and the General Agreement on Tariffs and Trade. We invite parties to comment on whether the criteria used to develop the objective of international comity should include existing or proposed provisions promulgated under any generally accepted international arrangement.

7. To ensure that we are fully discharging our mandate under the Communications Act, we seek comment in the second portion of our inquiry on the actions that we might consider to encourage the closer approximation in international telecommunications of the ideal represented by the model. We point out that our primary interest in this proceeding is the effect of foreign regulations or practices on the price, variety, quality or technological sophistication of telecommunications goods and services provided to U.S. consumers. Specifically, we wish to determine the implications of foreign regulations and practices on the U.S. telecommunications industry and the U.S. consumer, and to determine what measures, if any, we can and should consider to promote greater access for U.S. telecommunications service providers and equipment manufacturers abroad. Towards that end, we invite parties to comment on the specific question of our authority to take regulatory action based on the effect that foreign policies and practices have, or may have, on the price, variety, quality, and technological sophistication of telecommunications goods and services provided to U.S. consumers. We also encourage parties to comment on our authority to take actions based on more general concerns, such as the telecommunications trade or employment implications of foreign policies and practices, that have, or may have, a negative aspect on our ability to ensure that the efficiency, equity and national security goals provided for in the Communications Act are met.

8. We recognize that any actions taken by this Commission that would serve to limit foreign access to the U.S. market could have significant trade, commercial, foreign policy, antitrust, labor and national security implications. Therefore, we invite parties to comment on the manner in which market access determinations should be made, including whether we should rely primarily, although not exclusively, upon the executive branch's determining that specific foreign markets are closed to U.S. telecommunications service providers and equipment manufacturers. We encourage parties to comment on whether the specific criteria developed in the context of our international model could be used by either the executive branch agencies or this Commission to determine the "openness" of specific foreign markets.

9. We also recognize that there may be some, perhaps an inevitable degree of, ambiguity in any method of determining whether an entity is "foreign-owned" as well as determining whether a given foreign market is considered "open" or "closed." Therefore, we encourage parties to comment on the question of defining firms as foreign-owned and the questions of ownership by entities from two or more foreign countries, some of which may be "open" to U.S. firms, while others may be "closed." We also recognize that this is a dynamic field and that the regulatory approaches to telecommunications in many foreign countries are undergoing constructive changes. Therefore, we ask parties to comment on the implementation issues associated with any measures we might propose or adopt in this proceeding.

10. We state that while the focus of our analysis of our authority to take actions discussed in the Notice is the Communications Act, we are aware that we should also consider whether other statutes might limit our ability to incorporate reciprocity standards into our regulations. Therefore, parties are invited to comment on any other provisions of law that may be relevant to the proposals discussed in our inquiry.

11. We seek initial comment on what actions we should consider, such as conditioning the grant of section 214 certificates, to address the treatment of U.S. carriers in the home jurisdiction of the foreign-owned carrier. Specifically, we seek comment on what types of foreign practices could be taken into consideration in the grant or revocation of Section 214 certificates for foreign-owned carriers. We also make it clear that we wish to consider the further liberalization of our regulations for carriers from countries with "open" markets. For example, we seek initial comment on whether we can and should consider the adoption of a general policy favoring grants of microwave licenses to foreign-owned companies whose governments have "opened" their telecommunications markets to U.S. service providers. Moreover, we seek initial comments on actions that we might consider, such as our classifying foreign-owned carriers as nondominant for the provision to U.S. consumers of telecommunications services between the United States and foreign points, should that carrier's "home" country allow U.S. carriers to provide common carrier services to its consumers. We also encourage parties to address the actions that we might consider, including the possibility of allowing a more flexible pricing policy for the conveyance of capital interests in overseas facilities between U.S. carriers and foreign PTTs, should a PTT's home

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country allow one or more U.S. firms to land a cable. We encourage parties to provide specific proposals concerning the implementation of any such actions they believe appropriate, including the question of when such regulatory actions should be considered.

12. We also seek initial comment on whether we can and should exercise our ancillary jurisdiction under Title I of the Act to consider actions that might include requiring foreign-owned enhanced services providers to obtain a certificate before offering enhanced services within the United States or between the United States and foreign points. We encourage parties to comment on possible alternatives to a Title I certificate, including whether we should consider recommending that the Department of State establish mandatory procedures for the grant of Recognized Private Operating Agency status to foreign-owned enhanced service providers conditioned on the treatment of U.S. enhanced service providers in the corresponding foreign market.

13. Similarly, we seek initial comment on whether we can, and should, consider applying reciprocity criteria our regulatory program for terminal equipment, including whether we should consider the denial of certification under Part 68 for terminal equipment produced by manufacturers from countries that are not "open" to U.S. suppliers. We also encourage parties to comment on our ability to enforce this or any other requirement concerning the supply of terminal equipment by foreign-owned firms in the United States.

14. We continue by making it clear that we wish to identify those regulatory measures that we can and should consider that might encourage foreign countries that are closed to U.S. core equipment manufacturers to open their markets. We request that parties specifically address our authority to consider measures under section 214 or other provisions of Title I or II of the Act that would limit the introduction into the U.S. network of telecommunications equipment from certain foreign-owned telecommunications entities. We also encourage parties to address the question of any discriminatory treatment or continuing barriers to entry that remain for foreign-owned core equipment providers from countries that have "opened" their markets to U.S. firms.

15. The rulemaking portion of the Notice states that our rules currently do not require the filing of detailed information concerning the nature and extent of the activities of foreign-owned equipment manufacturers, enhanced service providers, and carriers in the domestic U.S. market. As a result, we have insufficient information before us to determine the extent to which telecommunications entities from countries that engage in restrictive practices towards U.S. telecommunications entities have benefited from the liberalization of the U.S. market. We tentatively conclude that a determination by this Commission whether we should propose actions that limit or further liberalize foreign access to the U.S. market will require further information concerning the present nature and extent of foreign participation in the U.S. market. Therefore, we propose the adoption of the following rule changes that would provide us with information on the following four telecommunications and related market sectors: (1) Common carrier services; (2) enhanced services; (3) terminal equipment; and (4) core equipment.

16. First, we seek comment on the desirability of reinstituting a section 214 authorization requirement for foreign-owned carriers as well as requiring these carriers to provide us with information concerning their ownership, as well as the nature and extent of their common carrier operations in the United States. Second, we request comment on the desirability of proposing the adoption by the Department of State of a mandatory RPOA certification policy. We also encourage parties to comment on whether a mandatory RPOA certification procedure might be useful in identifying foreign-owned enhanced service providers within the United States. Third, we seek comment on whether we should require the filing of annual reports of sales within the United States of all terminal equipment registered under our Part 68 program. Finally, we invite parties to comment on a proposed requirement that carriers file Annual Procurement Reports detailing the nature and extent of their purchases of telecommunications code equipment from foreign-owned telecommunications entities during the preceding year, as well as their planned purchases of such equipment for the coming year.

17. We believe that we possess authority under the Communications Act to require the information filings we propose. We invite parties to comment, however, on our legal authority under Titles I and II to require such filings. We also encourage parties to comment on the specific nature and extent of each of our proposed information filing requirements, including the need for, or desirability of, confidential treatment of this information. Finally, we invite parties to comment on the legal and policy issues associated with applying these information gathering requirements to all firms offering telecommunications goods and services within the United States or only to foreign-owned firms.

19. The collection of information requirements contained in these proposed rules have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons wishing to comment on these collection of information requirements should direct their comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Federal Communications Commission.

Ordering Clauses

20. Accordingly, it is ordered, pursuant to 47 U.S.C. 151, 154(i), 154(j), 201–205, 214, 218, 219, 220, 221, 222, 301, 302, 303, 308, 310, 314, and 403, and 5 U.S.C. 553, that Notice is given that an inquiry and rulemaking proceeding into the above-captioned matters is hereby instituted.

Proposed Rule Changes

21. The proposed rule changes would affect Parts 63 and 68 of the Commission's rules. For brevity, the text of the proposed rules is not set out here.

List of Subjects

47 CFR Part 63

Communication common carriers, Reporting and recordkeeping requirements.

47 CFR Part 68

Communications common carriers, Communications equipment, Telephones.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–3481 Filed 2–19–87; 8:45 am]
BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 387 (Sub-No. 960)]

Railroad Transportation Contacts—Exemption—Department of Defense

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking and exemption.

SUMMARY: The Commission is instituting a proceeding under 49 U.S.C. 10505(b) to exempt all Department of Defense (DOD) contracts (other than agricultural commodity contracts) from 49 U.S.C. 10713. DOD seeks the exemption to prevent public release of information about sensitive DOD shipments. The proposed rule is set forth below.

DATES: Comments are due March 23, 1987.

ADDRESS: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7246.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC metropolitan area) or toll free (800) 424–5403.

The Commission certifies that the proposed rule, if adopted, will not have a significant impact on a substantial number of small entities because the proposed rule affects movements for the government, which ships on its own behalf. However, comments on this issue are invited.

This decision will not significantly affect either the quality of the human environment or energy conservation.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Railroads.

Accordingly, Title 49 is amended as follows:

1. The authority citation for 49 CFR Part 1039 is proposed to be revised to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10706, 10713, 10762, and 11105; and 5 U.S.C. 553.

2. A new § 1039.22 is proposed to be added as follows:

§ 1039.22 Exemption from filing rail contracts.

Railroad transportation contracts (other than agricultural commodity contracts) made by the U.S. Government, Department of Defense, are exempt from the requirements of 49 U.S.C. 10713.

Decided Date: February 9, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–3629 Filed 2–19–87; 8:45 am]
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Notices

Federal Register
Vol. 52, No. 34
Friday, February 20, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-405-069]

Kraft Condenser Paper From Finland; Final Results of Antidumping Duty; Administrative Review and Revocation of Antidumping Duty Finding.

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Finding.

SUMMARY: On December 9, 1986, the Department of Commerce published the preliminary results of its administrative review and intent to revoke the antidumping finding on kraft condenser paper from Finland.The review covers the one known exporter of this merchandise to the United States and the period September 1, 1982 through June 23, 1983.

We gave interested parties an opportunity to comment on the preliminary results and intent to revoke. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results, and we revoke the antidumping duty finding on kraft condenser paper from Finland.

EFFECTIVE DATE: February 20, 1987.

FOR FURTHER INFORMATION CONTACT: Elena Gonzalez or Robert Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington DC 20230; telephone: (202) 377-1130/5255.

SUPPLEMENTARY INFORMATION:

Background

On December 9, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 44323) the preliminary results of its administrative review and intent to revoke the antidumping finding on kraft condenser paper from Finland (44 FR 54696, September 21, 1979). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of kraft condenser paper from Finland, currently classifiable under items 252.4000, 252.4200, and 256.3080 of the Tariff Schedules of the United States Annotated.

The review covers the one known exporter of Finnish kraft condenser paper to the United States, Tervakoski Osakeyhtio, and the period September 1, 1982 through June 23, 1983.

Final Results of the Review and Revocation

We gave interested parties and opportunity to comment on the preliminary results and intent to revoke. We received no comments or request for a hearing. Based on our analysis, the final results of our review are the preliminary results.

For the reasons set forth in the preliminary results, we are satisfied that there is no likelihood of resumption of sales at less than fair value by Tervakoski Osakeyhtio. Accordingly, we revoke the antidumping duty finding on kraft condenser paper from Finland. This revocation applies to all unliquidated entries of this merchandise entered, or withdrawn from warehouse for consumption, on or after June 23, 1983.

This administrative review, revocation and notice are in accordance with section 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1)(c)), and section 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a and 353.54).

Dated: February 12, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-3622 Filed 2-19-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-429-601]

Postponement of Final Antidumping Duty Determination; Urea From the German Democratic Republic

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On January 23, 1987, we received a request from the only respondent in the antidumping duty investigation of urea from the German Democratic Republic (GDR) that the final determination be postponed as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). Pursuant to this request, we are postponing our final antidumping duty determination as to whether sales of urea from the GDR have been made at less than fair value until not later than May 18, 1987.

EFFECTIVE DATE: February 20, 1987.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe, Office of Investigations, Import Administration, Internal Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4087.

SUPPLEMENTARY INFORMATION: On August 12, 1986, we published a notice in the **Federal Register** that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of urea from the GDR are being, or are likely to be sold at less than fair value (51 FR 28854). We issued our preliminary affirmative determination on December 23, 1986 (52 FR 121, January 2, 1987). This notice stated that we would issued a final determination on or before March 9, 1987. On January 23, 1987, the single respondent requested that we extend the period for the final determination until not later than the 135th day after the date of publication of our preliminary determination in accordance with section 735(a)(2)(A) of the Act. This respondent accounts for a significant proportion of exports of the subject merchandise to the United States, and thus is qualified to make this request. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, we grant the request and postpone our final determination until not later than May 18, 1987.

The public hearing is also being postponed until 1:00 p.m. on April 29, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Accordingly, prehearing briefs must be submitted in at least ten (10) copies to the Deputy Assistant Secretary by April 22, 1987.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

February 12, 1987.

[FR Doc. 87-3623 Filed 2-19-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-485-601]

Postponement of Final Antidumping Duty Determination; Urea From the Socialist Republic of Romania

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On January 20, 1987, we received a request from the respondents in the antidumping duty investigation of urea from the Socialist Republic of Romania (Romania) that the final determination be postponed as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). Pursuant to this request, we are postponing our final antidumping duty determination as to whether sales of urea from Romania have been made at less than fair value until not later than May 18, 1987.

EFFECTIVE DATE: February 20, 1987.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4087.

SUPPLEMENTARY INFORMATION: On August 12, 1986, we published a notice in the **Federal Register** that we were inititating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), and antidumping duty investigation to determine whether imports of urea from Romania are being, or are likely to be sold at less than fair value (51 FR 28857). We issued our preliminary affirmative determination on December 23, 1986 (52 124, January 2, 1987). This notice stated that we would issue a final determination on or before March 9, 1987. On January 20, 1987, the respondents requested that we extend the period for the final determination until not later than the 135th day after the date of publication of our preliminary determination in accordance with section 735(a)(2)(A) of the Act. These respondents account for a significant proportion of exports of the subject merchandise to the United States, and thus are qualified to make this request. If qualified exporters properly request an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, we grant the request and postpone our final determination until not later than May 18, 1987.

The public hearing is also being postponed until 1:00 p.m. on April 30, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Accordingly, prehearing briefs must be submitted in at least ten (10) copies to the Deputy Assistant Secretary by April 23, 1987.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

February 12, 1987.

[FR Doc. 87-3624 Filed 2-19-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-461-601]

Postponement of Final Antidumping Duty Determination; Urea From the Union of Soviet Socialist Republics

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On January 30, 1987, we received a request from a respondent in the antidumping duty investigation of urea from the Union of Soviet Socialist Republics (USSR) that the final determination be postponed as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). Pursuant to this request, we are postponing our final antidumping duty determination as to whether sales of urea from the USSR have been made at less than fair value until not later than May 18, 1987.

EFFECTIVE DATE: February 20, 1987.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4087.

SUPPLEMENTARY INFORMATION: On August 12, 1986, we published a notice in the **Federal Register** that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of urea from the USSR are being or are likely to be sold at less than fair value (51 FR 28857). We issued our preliminary affirmative determination on December 23, 1986 (52 FR 124, January 2, 1987). This notice stated that we would issue a final determination on or before March 9, 1987. On January 30, 1987, a respondent requested that we extend the period for the final determination until not later than the 135th day after the date of publication of our preliminary determination in accordance with section 735(a)(2)(A) of the Act. This respondent accounts for a significant proportion of exports of the subject merchandise to the United States, and thus is qualified to make this request. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, we grant the request and postpone our final determination until not later than May 28, 1987.

The public hearing is also being postponed until 1:00 p.m. on April 28, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Accordingly, prehearing briefs must be submitted in at least ten (10) copies to the Deputy Assistant Secretary by April 21, 1987.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

February 12, 1987.

[FR Doc. 87-3625 Filed 2-19-87; 8:45 am]

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[C-423-603 and C-508-605]

Extension of the Deadline Date for the Final Countervailing Duty Determinations and Rescheduling of the Public Hearings; Industrial Phosphoric Acid From Belgium and Israel

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioners, the FMC Corporation and the Monsanto Company, we are extending the deadline date for the final determinations in the countervailing duty investigations of industrial phosphoric acid from Belgium and Israel to correspond to the date of the final determinations in the antidumping investigations of the same product pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98-573). In accordance with Article 5¶3 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code), the Department will terminate the suspension of liquidation in the countervailing duty investigations 120 days after the date of publication of the preliminary determinations in these cases. In addition, we are rescheduling the public hearings.

EFFECTIVE DATE: February 20, 1987.

FOR FURTHER INFORMATION CONTACT: Alain Letort or Mark Linscott (Belgium), David Levine (Israel), or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202/377-0186 (Letort), 202/377-1174 (Linscott), 202/377-1673 (Levine), or 202/377-0161 (Taverman).

SUPPLEMENTARY INFORMATION:

Case History

On November 5, 1986, we received antidumping and countervailing duty petitions filed by the FMC Corporation and the Monsanto Company against industrial phosphoric acid from Belgium and Israel.

In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the antidumping petitions alleged that imports of industrial phosphoric acid from Belgium and Israel are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petitions contained sufficient grounds on which to initiate antidumping duty investigations, and on November 25, 1986, we initiated such investigations (51 FR 43648-43651, December 3, 1986). The preliminary determinations in these antidumping investigations will be made on or before April 14, 1987.

In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the countervailing duty petitions alleged that manufacturers, producers, or exporters in Belgium and Israel of industrial phosphoric acid directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petitions contained sufficient grounds on which to initiate countervailing duty investigations, and on November 25, 1986, we initiated such investigations (51 FR 43761-43762, December 4, 1986). On January 29, 1987, we issued preliminary affirmative determinations in the countervailing duty investigations (52 FR 3681/3684, February 5, 1987).

On February 5, 1987, petitioners filed requests for extension of the deadline date for the final determinations in the countervailing duty investigations to correspond with the date of the final determinations in the antidumping investigations.

Section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984, provides that when a countervailing duty investigation is "initiated simultaneously with an [antidumping] investigation . . . which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination [in the countervailing duty investigation] to the date of the final determination" in the antidumping investigation [19 U.S.C. 1671d(a)(1)]. Pursuant to this provision, we are granting an extension of the deadline date for the final determinations in the countervailing duty investigations of industrial phosphoric acid from Belgium and Israel to June 29, 1987, the current deadline for the final determinations in the antidumping investigations.

Article 5¶3 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code) provides that provisional measures (*i.e.*, suspension of liquidation) may not be imposed on another signatory to the Subsidies Code for a period longer than four months. To comply with the requirement of article 5¶3 of the Subsidies Code, the Department will direct the U.S. Customs Service to terminate the suspension of liquidation in the countervailing duty investigations on June 5, 1987, which is 120 days from the date of publication of the preliminary determinations in these cases. No cash deposits or bonds for potential countervailing duties will be required for any such merchandise entered, or withdrawn from warehouse, for consumption, after June 5, 1987. The suspension of liquidation will not be resumed unless and until the Department publishes countervailing duty orders in these cases. The Department will also direct the U.S. Customs Service to hold any entries suspended prior to June 5, 1987, until the conclusion of these investigations.

In addition, due to the extension of the final determinations in the countervailing duty investigations, we are rescheduling the date of the public hearings, originally set for March 3, 1987 (Belgium) and March 12, 1987 (Israel). If requested, these hearings will now be held at 10:00 a.m. (Belgium) and 2:00 p.m. (Israel) on May 13, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearings must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of the pre-hearing briefs must be submitted to the Deputy Assistant Secretary by May 7, 1987. Oral presentations will be limited to issues raised in the briefs.

In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, all written views will be considered if received not less than 30 days before the final determinations are due, or, if hearings are held, within 10 days after the hearing transcripts are available.

This notice is published pursuant to section 705(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

February 12, 1987.

[FR Doc. 87-3626 Filed 2-19-87; 8:45 am]

BILLING CODE 3510-DS-M

Importers and Retailers' Textile Advisory Committee; Partially Closed Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee will be held on Wednesday, March 4, 1987, at 10:30 a.m., Herbert C. Hoover Building, Room H6802, 14th Street and Constitution Avenue, NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets of cotton, wool, and man-made fiber textile and apparel agreements.)

General Session: 10:30 a.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 11:00 a.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR, 1982 Comp. p. 166) and listed in 5 U.S.C. 552b(c)(1).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room 6628, U.S. Department of Commerce, (202) 377-3031.

For further information or copies of the minutes contact Alfreda Burton, (202) 377-3737.

Dated: February 11, 1987.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-3649 Filed 2-19-87; 8:45 am]

BILLING CODE 3510-DR-M

Telecommunications Equipment, Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held March 10, 1987, 9:30 a.m. Herbert C. Hoover Building, Room B-841, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment or technology.

Agenda:

1. Introduction of attendees and opening remarks by the Chairman.
2. Review and approval of the minutes of February 4, 1986.
3. Presentation of papers or comments by the public.
4. Summary review of responses to **Federal Register** notice of December 5, 1986, requesting comments on the annual review of the Commodity Control List.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377-4217. For further information or copies of the minutes, call Betty Ferrell at (202) 377-4959.

Dated: February 12, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 87-3556 Filed 2-19-87; 8:45 am]

BILLING CODE 3510-DT-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 301.5(a)(3) and (4) of the regulations and be filed within 30 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 85-200R. Applicant: University of Minnesota, Mineral Resources Research Center, 56 East River Road, Minneapolis, MN 55455. Instrument: Scanning Electron Microscope, Model QS-1. Manufacturer: CSIRO, Australia. Intended Use: The instrument is intended to be used for studies of mineral products to determine the conditions in which the maximum amount of the ore is recovered while minimizing the amount of waste material in the concentrate and what degree of grinding of the ore and gangue is needed to achieve this goal. Another investigation will involve identification of rocks by mineralogy and determination of the abundance and association of valuable minerals in the rocks. Original notice of this resubmitted application was published in the **Federal Register** of June 26, 1985.

Docket Number: 87-085. Applicant: LDS Hospital, Division of IHC Hospitals Inc., 8th Avenue and "C" Street, Salt Lake City, UT 84143. Instrument: Kidney Lithotripter. Manufacturer: Dornier System GmbH, West Germany. Intended Use: The instrument is intended to be used for the study of etiology, behavior, possible treatments (including an intense focus on the advantages of lithotripsy as opposed to alternative forms of treatment) and prevention of urinary tract calculi (Kidney stones). In addition, the instrument will be used to provide training in extracorporeal shock wave lithotripsy. Application received by Commissioner of Customs: January 9, 1987.

Docket number: 87-086. Applicant: The Pennsylvania State University, University Park, PA 16802. Instrument: Gas Isotope Ratio Mass Spectrometer, Model 251 EM with Accessories.

BEST COPY AVAILABLE

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Manufacturer: Finnigan MAT, West Germany. Intended Use: The instrument will be used for studies of the $^{13}C/^{12}C$, $^{18}2O/^{16}O$, and $^{34}S/^{32}S$ ratios of a large variety of earth materials in order to quantify geochemical processes. The instrument will also be used to teach students isotope ratio measurement techniques in the course G&M 597 Special Topics in Isotope Mass Spectrometry. Application Received by Commissioner of Customs: January 13, 1987.

Docket number: 87–087. Applicant: The Pennsylvania State University, Intercollege Research Programs, 201 Materials Research Laboratory, University Park, PA 16802. Instrument: Materials Preparation System for Top Seeded Flux Growth, Model MCGS3. Manufacturer: Crystalox Ltd., United Kingdom. Intended Use. The instrument is intended to be used to provide a unique state of the art top seeded flux growth facility for the growth of large, defect-free, crack-free, flux-free single crystals. Major emphasis will be placed on the growth of single crystals of wide band gap insulating transparent materials. The facility will be used in the following areas of research:

(1) Synthesis of acentric materials,

(2) Theoretical and experimental investigation in materials that exhibit martensitic transformation,

(3) Studies of cement, concrete, clays, and soils and

(4) Research in ferroelectric, dielectric and composite materials.

Application Received by Commissioner of Customs: January 27, 1987.

Docket Number: 87–088. Applicant: Pennsylvania State University, College of Earth and Mineral Science, 503 Walker Building, University Park, PA 16802. Instrument: Ultrasonic Anemometer-Thermometer, Model DAT–300 Manufacturer: Kaijo Denki Company Ltd., Japan. Intended Use: The instrument is intended to be used to study atmospheric turbulence over the ocean during experiments to establish the relationship between atmospheric fluxes and high frequency variance spectra of velocity and temperature. Application received by Commissioner of Customs: January 27, 1987.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87–3627 Filed 2–19–87; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

[P6J]

Marine Mammals; Application for Permit; National Zoological Park Smithsonian Institution

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217 through 222).

1. Applicant: National Zoological Park, Smithsonian Institution, Washington, DC 20008.

2. Type of Permit: Scientific Research.

3. Summary of Activity: Up to 60 adult female Hawaiian monk seals (*Monachus schauinslandi*)and 180 suckling pups will be bleach, dye or paint marked at French Frigate Shoals, Hawaii over a 3 year period. An additional take by accidental harassment of 200 animals may occur during movement by boat and behavioral observations.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: February 2, 1987.

Nancy Foster,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 87–3610 Filed 2–19–87; 8:45 am]

BILLING CODE 3510-22-M

[P146A]

Marine Mammals; Application for Permit; Drs. Steven L. Swartz and Randall S. Wells

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. Applicant:

Dr. Steven L. Swartz, Cetacean Research Associates, P.O. Box 7990, San Diego, California 92107

and

Dr. Randall S. Wells, Institute of Marine Sciences, Long Marine Laboratory, University of California, 100 Shaffer Road, Santa Cruz, California 95060

2. Type of Permit: Scientific Research.

3. Summary of Activity: A total of 10 whales from the following species: humpback (*Megaptera novaeangliae*), blue (*Balaenoptera musculus*) and fin (*Balaenoptera physalus*), will be radio tagged annually over a 5-year period in Monterey Bay and along the Central California coast.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: February 12, 1987.

Nancy Foster,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 87–3611 Filed 2–19–87; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF ENERGY

Energy Information Administration

Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95–621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate costs of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective March 1, 1987. These prices are based on the prices of alternative fuels.

For further information contact: Leroy Brown, Jr., Department of Energy, Energy Information Administration, 1000 Independence Avenue, SW., Room BE–034, Washington, DC 20585, Telephone: (202) 586–6077.

Section I

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule on April 2, 1981, in Docket No. RM79–21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

	Per million BTU's
State:	
Alabama	$2.17
Arizona [1]	1.82
Arkansas [1]	2.01
California	1.75
Colorado [2]	1.87
Connecticut [1]	2.30
Delaware [1]	2.44
Florida	2.26
Georgia [1]	2.41
Idaho [2]	1.87
Illinois	1.43
Indiana [1]	1.91
Iowa [1]	2.02
Kansas [1]	2.02
Kentucky [1]	1.91
Louisiana [1]	2.01
Maine [1]	2.30
Maryland [1]	2.44
Massachusetts	2.19
Michigan [1]	1.91
Minnesota [1]	2.02
Mississippi	2.41
Missouri	1.88
Montana [2]	1.87
Nebraska [1]	2.02
Nevada [1]	1.82
New Hampshire	2.28
New Jersey [1]	2.44
New Mexico [1]	2.01
New York	2.43
North Carolina [1]	2.41
North Dakota [1]	2.02
Ohio	1.84
Oklahoma [1]	2.01
Oregon [1]	1.82
Pennsylvania	2.40
Rhode Island [1]	2.30
South Carolina [1]	2.41
South Dakota [1]	2.02
Tennessee	2.28
Texas	2.01
Utah [2]	1.87
Vermont [1]	2.30
Virginia	2.37
Washington [1]	1.82
West Virginia [1]	1.91
Wisconsin [1]	1.91
Wyoming [2]	1.87

[1] Region based price as required by FERC Interim Rule, issued on April 2, 1981, in Docket No. RM–79–21.

[2] Region based price computed as the weighted average price of Regions E, F, G, and H.

Section II. Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during December 1986 was $18.08 per barrel. The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which the incremental pricing threshold becomes effective. The prices found in *Platt's Oilgram Price Report* are given for each trading day in the form of high and low prices for No. 2 fuel oil in Metropolitan New York and Northern New Jersey. A lag adjustment factor was calculated using the average of the low posted price for these two areas for the ten trading days ending February 13, 1987, and dividing that price by the corresponding average price computed from prices published by Platt's for the month of December 1986. This lag adjustment factor was applied to the December price yielding $20.63 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective March 1, 1987, is $4.62 per million BTU's.

Section III. Method Used To Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79–21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81–27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on November 6, 1981, in Docket No. RM81–28, established that price ceilings should be published for only the 48 contiguous States on a permanent basis.

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A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industrial users in the months of October 1986, November 1986, and December 1986.[3] All reports of volume sold and price were identified by the State into which the oil was sold.

B. Method Used To Determine Alternative Price Ceilings

(1) Calculation of Volume-Weighted Average Price

The prices which will become effective March 1, 1987, (shown in Section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, October 1986, November 1986, and December 1986. Reported prices for sales in October 1986 were adjusted by the percent change in the nationwide volume-weighted average price from October 1986 to December 1986. Prices for November 1986 were similarly adjusted by the percent change in the nationwide volume-weighted average price from November 1986 to December 1986. The volume-weighted 3-month average of the adjusted October 1986 and November 1986, and the reported December 1986 prices were then computed for each State.

(2) Adjustment for Price Variation

States were grouped into the regions identified by the FERC (see Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) Calculation of Ceiling Price

The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B.(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

There were insufficient sales reported in Region G for the months of October 1986, November 1986, and December 1986. The alternative fuel price ceiling for the States in Region G were determined by calculating the volume-weighted average price ceilings for Region E, Region F, Region G, and Region H.

(4) Lag Adjustment

The EIA implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* are given for each trading day in the form of high and low prices for No. 6 residual oil in 20 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending February 13, 1987, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of December 1986. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B.(3).

Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Region B

Delaware, Maryland, New Jersey, New York, Pennsylvania

Region C

Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Virginia

Region D

Illinois, Indiana, Kentucky, Michigan, Ohio, West Virginia, Wisconsin

Region E

Iowa, Kansas, Missouri, Minnesota, Nebraska, North Dakota, South Dakota

Region F

Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Region G

Colorado, Idaho, Montana, Utah, Wyoming

Region H

Arizona, California, Nevada, Oregon, Washington

Issued in Washington, DC, February 18, 1987.

L.A. Pettis,

Deputy Administrator, Energy Information Administration.

[FR Doc. 87-3778 Filed 2-19-87; 8:45 am]

BILLING CODE 6450-01-M

[3] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State, or Local), and the military are excluded.

Federal Energy Regulatory Commission

[Docket Nos. ER87-183-000 et al.]

Electric Rate and Corporate Regulation Filings; Boston Edison Co. et al.

February 12, 1987.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Co.

[Docket No. ER87-183-000]

Take notice that on January 30, 1987, Boston Edison Company (BECO) submitted additional data as part of its filing in this docket. The data is part of an answer, including an attachment, submitted by BECO in response to separate motions to intervene in the proceeding by the Town of Belmont, Masscahusetts, and Cambridge Electric Light Company. The Director of the Division of Electric Power Application Review, acting pursuant to a delegation of authority in § 375.308(c) of the Commission's regulations, notified BECO by a deficiency letter dated February 11, 1987, that its original filing was deficient insofar as it lacked the data later supplied to the Commission as an attachment to BECO's response. The Director's letter further stated that the data provided in the attachment to BECO's response would be treated as a proper response to the deficiency letter, so that BECO's filing in Docket No. ER87-183-000 would be assigned a filing date of January 30, 1987.

BECO certified that it served copies of its response upon each person designated on the official service list.

Comment date: February 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. City of Holyoke Gas and Electric Department, City of Westfield Gas and Electric Light Department, Marblehead Municipal Light Department, Middleborough Municipal Gas and Electric Department, North Attleboro Electric Department, Peabody Municipal Light Plant, Shrewsbury Electric Light Department, Templeton Municipal Light Plant, Town of Boylston Municipal Light Department, Town of Hudson Light and Power Department, Town of Littleton Municipal Light and Water Department, Town of Wakefield Municipal Light Department, and West Boylston Municipal Lighting Plant v. Boston Edison Co.

[Docket No. EL87-13-000]

Take notice that on February 3, 1987, the City of Holyoke Gas and Electric Department and the other above-named entities (Complainants) filed a complaint and motion for summary judgment against Boston Edison Company (BECO) concerning an alleged violation of filed rate schedules. The Complainants further allege that since January 1, 1983 or thereabouts, BECO has violated the terms of 13 filed rate schedules by charging the Complainants certain costs that are not permitted to be charged under those rate schedules. The Complainants also seek summary disposition of the matter and an order directing BECO to refund with interest the charges already collected. The Complainants seek consolidation of the proceeding with the proceeding in Docket No. ER86-645-000.

The Complainants certify that a copy of their complaint has been served on BECO.

Comment date: March 16, 1987, in accordance with Standard Paragraph E at the end of this document.

3. Idaho Power Co.

[Docket No. ER87-248-000]

Take notice that on February 6, 1987, the Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No 1 (Supersedes Original Volume No 1) during December, 1986, along with cost justification for the rate charged. This filing includes the following supplements:

Utah Power & Light Co.....	Supplement No. 61.
Sierra Pacific Power Co....	Supplement No. 58.
Washington Water Power Co.	Supplement No. 45.
Puget Sound Power & Light.	Supplement No. 26.
Portland General Electric Co.	Supplement No. 51.
Montana Power Co.	Supplement No. 45.
Southern California Edison.	Supplement No. 40.
Pacific Gas & Electric.....	Supplement No. 20.

Comment date: February 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Co.

Docket No. ER85-596-004

Take notice that on February 6, 1987, New England Power Company (NEP) filed a Compliance Refund Report and supporting documentation that effectuates the terms of a Partial Settlement Agreement between NEP and the Massachusetts Municipal Wholesale Electric Company.

NEP states that appropriate refunds under the above referenced settlement rates were made on January 22, 1987.

Comment date: February 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. North Carolina Municipal Power Agency

[Docket No. EL87-11-000]

Take notice that on January 29, 1987, North Carolina Municipal Power Agency (Power Agency) tendered for filing a complaint against Duke Power Company and motion for summary judgment concerning an alleged violation of the filed rate schedule.

Comment date: March 16, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Pacific Gas and Electric Co.

[Docket No. ER87-153-000]

Take Notice that on February 9, 1987, Pacific Gas and Electric Company (PGandE) submitted for filing an amendment consisting of supplementary information on the Firm System Sales Agreements between itself and each of the Southern California Cities of Anaheim, Azusa, Banning, Colton and Riverside (Cities) which was noticed by the Commission on December 17, 1986.

Copies of the amendment have been served upon each of the Cities.

Comment date: February 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. City of Vernon, California v. Southern California Edison Co.

[Docket No. EL87-14-000]

Take notice that on February 4, 1987, the City of Vernon, California (Vernon) tendered for filing a complaint and petition for declaratory order against Southern California Edison Company (SCE). Vernon states in its filing that it requests a declaratory order to resolve a controversy that exists between Vernon and SCE in connection with SCE's obligation to furnish certain transmission and related services under an SCE rate schedule on file with the Commission. Vernon also states that it is filing a complaint against SCE, alleging that SCE is in violation of its rate schedule and contractual obligation to transport certain energy that Vernon has contracted to purchase from the California Department of Water Resources. Vernon states that it is seeking a Commission order directing SCE to provide such services.

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Vernon states that it has served copies of its complaint and petition for declaratory order on attorneys for SCE and upon a corporate employee of SCE.

Comment date: March 16, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Public Service Corp.

[Docket No. EC87-9-000]

Take notice that Wisconsin Public Service Corporation, a public utility incorporated under the laws of the State of Wisconsin (Applicant), on February 9, 1987, tendered for filing an application pursuant to section 203 of the Federal Power Act for authority to sell certain facilities to Sturgeon Bay Utilities, an electrical utility operated by the City of Sturgeon Bay, a Wisconsin municipal corporation.

Applicant indicates that the purchase price of the facilities being sold which are subject to the jurisdiction of the Federal Energy Regulatory Commission is $257,821.92.

The facilities subject to the jurisdiction of FERC which are to be sold consist of certain portions of Applicant's Transmission Lines I-87 and K-89 and Applicant's 69kV OCB switch located at Applicant's Sawyer switching station and associated facilities, located in Door Counties, Wisconsin.

Comment date: February 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Public Service Corp.

[Docket No. ER87-246-000]

Take notice that Wisconsin Public Service Corporation, a public utility incorporated under the laws of the State of Wisconsin (Applicant), on February 9, 1987, tendered for filing an application pursuant to section 203 of the Federal Power Act for authority to sell certain facilities to Sturgeon Bay Utilities, an electrical utility operated by the City of Sturgeon Bay, a Wisconsin municipal corporation.

Applicant indicates that the purchase price of the facilities being sold which are subject to the jurisdiction of the Federal Energy Regulatory Commission is $257,821.92.

The facilities subject to the jurisdiction of FERC which are to be sold consist of certain portions of Applicant's Transmission Lines I-87 and K-89 and Applicant's 69kV OCB switch located at Applicant's Sawyer switching station and associated facilities, located in Door Counties, Wisconsin.

Comment date: February 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3598 Filed 2-19-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-17-000]

East Tennessee Natural Gas Co.; Application To Withdraw Suspended Rate Change Filing

February 13, 1987.

Take notice that on January 30, 1987, East Tennessee Natural Gas Company (East Tennessee) applied to the Federal Energy Regulatory Commission for permission to withdraw its rate change filing in this proceeding and that such proceeding be terminated.

East Tennessee states that at the time of its filing, it reasonably expected the new facilities certificated in Docket No. CP85-875 to be in service prior to April 30, 1987, the end of the test period. However, East Tennessee has recently determined that such facilities cannot be placed in service within the test period, except by incurring substantial additional construction costs. More specifically, due principally to unexpected winter construction delays, East Tennessee will not be able to place the facilities in service within the test period without expending an additional $1.5 million in construction costs. Accordingly, East Tennessee intends to extend its construction schedule for the subject facilties in order to avoid such additional expenditures. In the interest of avoiding the expenditure of time and resources by East Tennessee and the other parties to this proceeding, as well as by the Commission and its Staff, East Tennessee applies for permission to withdraw its October 31, 1986 rate filing.

East Tennessee has served copies of this filing upon each person on the official service list in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before February 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3650 Filed 2-19-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-15-006]

Trunkline Gas Co.; Compliance Filing

February 13, 1987.

Take notice that on February 2, 1987, Trunkline Gas Company (Trunkline) tendered for filing revised tariff sheets to its Original Volume Nos. 1 and 2, and a compliance cost and revenue study pursuant to the Commission's November 28, 1986 order in this proceeding.

Trunkline states that this filing is without prejudice to its application for rehearing dated December 18, 1986 and is being made under protest. It is Trunkline's position that by requiring these items to be filed, the Commission was exceeding its authority and that the November 28, 1986 order misinterprets the Commission's regulations. Trunkline further states that these materials are being provided under compulsion of the Commission's order which the Commission has refused to stay even pending resolution of the matters raised in Trunkline's application for rehearing.

Copies of this filing were served upon Trunkline's customers, applicable state regulatory agencies, and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or

before February 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3651 Filed 2-19-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3158-4]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed February 9, 1987 Through February 13, 1987 Pursuant to 40 CFR 1506.9.

EIS No. 870052, Draft, FHW, ME, Fore River Bridge (Million Dollar Bridge)/ME-77 Rehabilitation or Replacement, Broadway to York Street, Fore River, Cumberland County, Due: April 6, 1987, Contact: William Richardson (207) 622-8487

EIS No. 870053, Final, BLM, ID, Egin-Hamer Road Construction, Right-of-Way Application, Medicine Lodge Resource Area, Due: March 23, 1987, Contact: Lloyd Ferguson (208) 529-1020

EIS No. 870054, Final, COE, CA, Coyote Creek Flood Control Project, Facilities Construction, Section 10 and 404 Permits, Santa Clara County, Due: March 23, 1987, Contact: Richard Stratford (415) 974-0445

EIS No. 870055, Final, SCS, IA, MO, Upper Locust Creek Watershed, Protection and Flood Prevention, Due: March 23, 1987, Contact: Paul Larson (314) 875-5214

EIS No. 870056, Final, FRC, AR, OK, Lee Creek Hydroelectric and Water Supply Project, Construction and Operation, License, Due: March 23, 1987, Contact: Dianne Rodman (202) 376-9045

EIS No. 870057, DSuppl, UMT, FHW, NC, US 74/Independence Boulevard Corridor Improvements, Mechlenburg County to Uptown Charlotte, Additional Altrnatives, Mecklenburg County, Due: April 6, 1987, Contact: John Caruolo (215) 597-4179

EIS No. 870058, Final, BLM, CA, North Central California Wilderness Study Areas, Timbered Crater and Lava Wilderness Study Areas, Wilderness Recommendations, Due: March 23, 1987, Contact: Richard Drehobl (916) 233-4666

EIS No. 870059, Final, BLM, CA, Central California Study Area, Wilderness Recommendations, Caliente, Folsom and Hollister Resource Areas, Due: March 23, 1987, Contact: Bob Rheiner (805) 861-4191

EIS No. 870060, Final, BLM, CA, Alturas Resource Area, Pit River Canyon and Tule Mountain Wilderness Study Areas, Wilderness Recommendation, Lassen and Modoc Counties, Due: March 23, 1987, Contact: Rex Cleary (916) 257-5361

EIS No. 870061, Draft, FHW, AK, Eagle River Loop Road Connection to Hiland Drive/Glenn Highway Interchange, Anchorage, Due: April 15, 1987, Contact: Tom Neunaber (907) 586-7428.

Amended Notice

EIS No. 870024, Draft, BLM, ID, Pocatello Resource Area, Resource Management Plan, Published FR 1-30-87—Filing date reestablished.

Dated: February 17, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-3667 Filed 2-19-87; 8:45am]

BILLING CODE 6560-50-M

[ER-FRL-3158-5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 2, 1987 through February 6, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. D-AFS-K65096-CA, Rating EC2, Mendocino Nat'l Forest, Land Resource Mgmt. Plan, CA. SUMMARY: EPA expressed concerns regarding the maintenance of the Forest's water quality and the protection of beneficial uses from multiple-use activities.

ERP No. D-COE-H36098-MO, Rating LO, Coldwater Creek Watershed Flood Damage Reduction and Related Improvement Plan, MO. SUMMARY: EPA had no objections to the project. The Corps of Engineers was asked to consider the presence of hazardous waste sites in the project area.

ERP No. D-FHW-E40698-NC, Rating EC2, Silas Creek Parkway Completion, Silas Creek Parkway to N. Point Blvd., 404 Permit, NC. SUMMARY: EPA requests that the final EIS provide additional information regarding air quality, water quality, and noise impacts. Noise mitigation for substantial impacts should also be reconsidered.

ERP No. D-FHW-E40699-NC, Rating EC2, US 311 Bypass Improvement, US 311 North of High Point to US 311 South of Archdale, High Point Eastbelt, Possible 404 Permit, NC. SUMMARY: EPA's primary concern is the potential contamination of primary and secondary raw drinking water supply sources attributable to the proposed action. EPA requested that the final EIS commit to implementing protective measures and structures. EPA is also concerned about projected wetland losses and noise impacts and requests their mitigation.

ERP No. D-SCS-E36159-MS, Rating EC2, South Delta Watershed Protection and Flood Prevention Plan, Possible 404 Permit, MS. SUMMARY: EPA is pleased with the overall design of the structural proposals with the overall design of the structural proposals noted in this document. The draft EIS largely reflects the input provided by the EPA during the technical scoping meeting and on-site inspection, as well as subsequent consultation and compromise measures worked out via telephone. However, EPA is still concerned that watershed projects involving flood control and/or drainage elements have the potential for water quality degradation and wetland habitat loss.

ERP No. D-VAD-K99022-CA, Rating LO, Northern California Veteran Administration Nat'l Cemetery Development, CA. SUMMARY: EPA expressed its lack of objections to the proposal, but requested additional information on water quality impacts from increased sedimentation and use of pesticides and herbicides. EPA also requested a discussion of water quality mitigation measures.

Final EISs

ERP No. FS-COE-K32022-CA, Sacramento River Deep Water Ship Channel, Widening/Deepening, Environmental Impact Description Update, CA. SUMMARY: EPA noted that the final supplemental (FS) EIS addressed concerns expressed over the draft supplemental EIS, but requested that the Record of Decision include

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commitments made in the FS EIS to monitor and mitigate for water quality impacts from salinity and dredge disposal leachate. EPA also asked to be kept informed of water quality impacts and associated mitigation efforts.

Regulation

ERP No. R-FAA-A51917-00, 14 CFR Part 150, Expansion of Applicability of 150 to Heliports (Docket No. 25117; Notice No. 86-17) (51 FR 40037). SUMMARY: EPA has no objection to the proposed regulation revision.

Dated: February 17, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-3868 Filed 2-19-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-00076; FRL 3159-8]

Biotechnology Science Advisory Committee; Subcommittee on Premanufacture Notification Review; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1-day meeting of the Biotechnology Science Advisory Committee's Subcommittee on Premanufacture Notification Review. This subcommittee will advise EPA on three premanufacture notifications (PMNs) submitted to EPA by BioTechnica, International, Inc. (BTI), in compliance with the Toxic Substances Control Act (TSCA). These PMNs concern BTI's development of three genetically engineered strains of a microorganism. The PMNs also concern BTI's plans to conduct a small-scale field test to determine the ability of two strains to fix nitrogen to increase crop yields. The meeting will be closed in part to the public but will be open for most of its sessions.

DATES: The meeting will be held on Monday, March 23, 1987, from 8:30 a.m. to 6 p.m. It will be closed to the public from 10 a.m. to 11 a.m., and closed again from 4 p.m. to 4:30 p.m. It will be open to the public at all other times.

Requests to speak at the subcommittee meeting, and written comments for consideration by the subcommittee should be submitted by March 12, 1987.

ADDRESS: The meeting will be held at: Environmental Protection Agency, Rm. 1112, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written comments for consideration by the subcommittee and requests to speak at the subcommittee meeting should be identified with the docket control number "[OPTS-00076]" and should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M St., SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554-1404.

SUPPLEMENTARY INFORMATION: This is a notice in accordance with the Federal Advisory Committee Act (FACA) [5 U.S.C. App. I (1982)] which requires that timely notice of each meeting of an advisory committee be published in the **Federal Register**. This notice announces that the EPA will convene a 1-day meeting of the Biotechnology Science Advisory Committee (BASC) Subcommittee on Premanufacture of Notification Review on March 23, 1987.

I. Announcement of the Receipt of Premanufacture Notifications

Elsewhere in this issue of the **Federal Register** a notice announcing the receipt of three PMNs designated as P-87-568, P-87-569, and P-87-570 appears as part of the weekly notice of PMNs received. These PMNs are the subject of this meeting of the Subcommittee on Premanufacture Notification Review of the BSAC. Please consult that notice for specific information on the PMNs to be discussed. Copies of the PMNs from which confidential business information has been deleted are available in the public file identified with the docket control number OPTS-51663, and copies are available on request from the TSCA Assistance Office by calling (202) 554-1404.

II. Purpose of the Meeting

The Subcommittee on Premanufacture Notification Review of the BSAC will meet to advise EPA in its review of three PMNs under the authority of section 5 of TSCA. EPA has decided that such expert assistance is necessary for these reviews because risk assessment of genetically modified microorganisms released to the environment is a new area in which the Agency is just beginning to develop its expertise. EPA plans to consult with experts outside the Agency during its review of certain Microorganisms until the Agency develops additional expertise and experience in this specialized area.

Members of the BSAC Subcommittee on Premanufacture Notification Review will advise EPA on the risks that may be associated with the microorganisms. They will assist in assessing data available on the potential hazards and likely exposures to the microorganisms, and will review any comments provided by the public in writing in advance of the meeting. Members of the Subcommittee will also assist in identifying additional information that may be necessary to determine whether the environmental release of the microorganisms may present an unreasonable risk to human health or the environment.

After the meeting of the BSAC Subcommittee, EPA may request additional information from BTI. EPA will develop a risk assessment, estimate the benefits associated with the new substances, and reach a regulatory decision. EPA will develop a risk assessment based on the advice of the BSAC Subcommittee, the information submitted in the PMNs, and other available information. It will estimate the benefits associated with the commercial use of the new microorganisms, and will use this estimate to evaluate whether any risk associated with the new microorganisms may be unreasonable. After considering these evaluations, the Agency has authority to allow manufacture and use, to prohibit release of the microorganisms, or to impose restrictions on their manufacture and use. EPA has 90 days to review the PMNs. The review period may be extended by agreement between BTI and EPA, or unilaterally by EPA under section 5(c) of TSCA. As discussed above, EPA maintains a public file for each PMN. EPA has also established a file, OPTS-00076, that specifically concerns this meeting of the Subcommittee on Premanufacture Notification Review.

III. Open Session of the Meeting

Part of the meeting will be open to the public. During this period members of the BSAC Subcommittee will have the opportunity to hear the comments of individuals who have requested the opportunity to speak. EPA will also describe in more detail its approach to risk assessment for the microorganisms, but confidential business information will not be discussed.

IV. Reasons for Closing Certain Sessions of the Meeting

Section 10(d) of FACA provides that an advisory committee meeting may be closed to the public "in accordance with subsection (c) of section 552b of Title 5." Portions of the meeting of the Subcommittee on March 23, 1987 are being closed because some of the material to be considered at the meeting

has been claimed to be trade secrets and commercial or financial information pursuant to section 14(a) of TSCA and EPA's confidentiality regulations in 40 CFR Part 2. A written determination that the meeting shall be closed was made by the FACA because the submission from BTI contains information claimed to be confidential business information which is prohibited from unauthorized disclosure under section 14 of TSCA.

V. Subject of the Meeting

The microorganisms being reviewed by EPA in the three PMNs are three strains of *Rhizobium meliloti* that have been genetically engineered; two of them have enhanced ability to provide nitrogen to certain plants, and the third is a strain used as a comparison to evaluate the first two. BTI has claimed certain information concerning the genetic engineering of these microorganisms as confidential business information under section 14 of TSCA. EPA has briefly summarized the non-confidential data the Agency has received on the identity, use, production volume, toxicity, exposure, and environmental release of these microorganisms in the notice cited above. BTI has also submitted information concerning the genetic engineering techniques used to enhance nitrogen fixation, human health considerations, the location of the proposed field test, design and supervision of the test, methods of application, monitoring and control procedures, environmental fate and effects, and greenhouse efficacy data.

BTI submitted the PMNs on February 6, 1987, and has voluntarily cooperated with EPA by submitting the PMNs for these substances while they are still the focus of research and development (R&D) activities. The company took this action in compliance with the "Statement of Policy; Microbial Products the **Federal Register** of June 26, 1986 (51 FR 23313). In that notice, EPA stated that microbial products were subject to TSCA, and requested commercial researchers intending to release new, living microorganisms into the environment to report their activities to the Agency, rather than to conduct such activities under the exemption for R&D provided by section 5(h)(3) of TSCA. The microorganisms being developed by BTI are subject to PMN, because they contain genetic material from more than one taxonomic genus, and are therefore new microorganisms, as defined by the Statement of Policy.

BTI has previously conducted research on these microorganisms in contained facilities such as laboratories and greenhouses. BTI now wishes to continue its R&D activities by conducting a field test of the microorganisms in a small plot of alfalfa on its Chippewa Agricultural Station in Arkansaw, Pepin County, Wisconsin. The purpose of the test in the environment is to determine if the engineered strains enhance alfalfa yield under natural field conditions. BTI will use the test results to determine subsequent research and development activities to enhance nitrogen fixation in legumes, and to determine plans for future commercialization.

Dated: February 13, 1987.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 87-3701 Filed 2-19-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51663; FRL-3159-7]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of eighty such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87-563, 87-564, 87-565, 87-566, 87-567, 87-568, 87-569, 87-570, 87-571, and 87-572—May 6, 1987

P 87-573, 87-574, 87-575, 87-576, 87-577, 87-578, 87-579, 87-580, 87-581, 87-582, 87-583, and 87-584—May 9, 1987

P 87-585, 87-586, 87-587, 87-588, 87-589, 87-590, 87-591, 87-592, 87-593, 87-594, 87-595, 87-596, 87-597, 87-598, 87-599, 87-600, 87-601, 87-602, 87-603, 87-620, 87-621, 87-622, and 87-623—May 10, 1987

P 87-604, 87-605, 87-606, and 87-607—May 11, 1987

P 87-608, 87-609, 87-610, 87-611, 87-612, 87-613, 87-614, 87-615, 87-616, 87-617, 87-618, 87-619, 87-624, 87-625, 87-626, 87-627, 87-628, 87-629, 87-630, 87-631, 87-632, 87-633, 87-634, 87-635, 87-636, 87-637, 87-638, 87-639, 87-640, 87-641, and 87-642—May 12, 1987.

Written comments by:

P 87-563, 87-564, 87-565, 87-566, 87-567, 87-568, 87-569, 87-570, 87-571, and 87-572—April 6, 1987

P 87-573, 87-574, 87-575, 87-576, 87-577, 87-578, 87-579, 87-580, 87-581, 87-582, 87-583, and 87-584—April 9, 1987.

P 87-585, 87-586, 87-587, 87-588, 87-589, 87-590, 87-591, 87-592, 87-593, 87-594, 87-595, 87-596, 87-597, 87-598, 87-599, 87-600, 87-601, 87-602, 87-603, 87-620, 87-621, 87-622, and 87-623—April 10, 1987

P 87-604, 87-605, 87-606, and 87-607—May 11, 1987

P 87-608, 87-609, 87-610, 87-611, 87-612, 87-613, 87-614, 87-615, 87-616, 87-617, 87-618, 87-619, 87-624, 87-625, 87-626, 87-627, 87-628, 87-629, 87-630, 87-631, 87-632, 87-633, 87-634, 87-635, 87-636, 87-637, 87-638, 87-639, 87-640, 87-641, and 87-642—May 12, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-51663]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87-563

Manufacturer. Confidential.
Chemical. (G) Substituted acetanilide.
Use/Production. (G) Captive intermediate used in manufacturing a minor component for paper coatings.
Prod. range: Confidential.

P 87-564

Manufacturer. Confidential.
Chemical. (G) Substituted acetanilide.
Use/Production. (G) Captive intermediate for use in the manufacture of a minor component in paper coatings.
Prod. range: Confidential.

P 87-565

Importer. Nuodex, Incorporated.
Chemical. (S) Copper(II) hydroxide phosphate.

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Use/Import. (S) Industrial smoke retardant additive for polyvinyl chloride. Import range: 5,000 to 12,000 kg/yr.

Toxicity Data. Acute oral: >10,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.

P 87-566

Importer. Confidential.

Chemical. (S) Aluminum hydroxy (octadecanoato-o)(tetradecanoato-O).

Use/Import. (G) Gelling agent for hydrocarbons. Import range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Irritation: Skin—Moderate.

P 87-567

Manufacturer. Confidential.

Chemical. (G) Urethane modified acid functional saturated aliphatic polyester.

Use/Production. (G) Industrially used coating having a dispersive use. Prod. range: 30,000 to 300,000 kg/yr.

P 87-568

Manufacturer. BioTechnica International, Inc.

Substance. (G) Genetically engineered strain of *Rhizobium meliloti*, containing a recombinant plasmid.

Use/Production. (G) Small-scale field trial to test ability of the strain to promote alfalfa yield increases. Prod. range: 2×10^{13} cells/yr (0.004 kg/yr).

Toxicity data. No detrimental effects on alfalfa, peas, tendergreen beans, soybeans, clover, corn, or ryegrass; No nodules formed on peas, tendergreen beans, soybeans, or clover.

Exposure. Human. Production (maximum): 5 workers, 10 hrs/day, 30 days/yr; Transport (maximum): 2 workers, 10 hrs/day, 5 days/yr; Field application (maximum): 5 workers, 12 hrs/day, 14 days/yr.

Environmental. Plasmid retention in *R. meliloti* strains in soil: greenhouse tests show that 32% of surviving bacteria of this strain contained the plasmid in test-site soil after 8 wks while 60% of survivors contained the plasmid in potting mix after 6 wks; Plasmid transmissibility to other bacteria: Laboratory experiments (some with test-site soil) show no transfer of the plasmid to three other bacteria.

Environmental release. Production and processing: Cultures sterilized before disposal. Media release: air and water. Small-scale field trail: 2×10^{12} cells (in an aqueous suspension) applied to soil in a single application immediately after planting alfalfa seeds in a plot (less than 5 acres) in a 75-acre field of the BioTechnica Chippewa Agricultural Station near Arkansaw, Pepin County, Wisconsin, in May 1987. Disposal by Publicly Owned Treatment Works (POTW), and soil and possible groundwater release at field site.

P 87-569

Manufacturer. BioTechnica International, Inc.

Substance. (G) Genetically engineered strain of *Rhizobium meliloti* containing *R. meliloti nif* genetic material carried on a plasmid.

Use/Production. (G) Small-scale field trial to test ability of the strain to promote alfalfa yield increases. Prod. range: 2×10^{13} cells/yr (0.004 kg/yr).

Toxicity data. No detrimental effects on alfalfa, peas, tendergreen beans, soybeans, clover, corn, or ryegrass; No nodules formed on peas, tendergreen beans, soybeans, or clover.

Exposure. Human. Production (maximum): 5 workers, 10 hrs/day, 30 days/yr; Transport (maximum): 2 workers, 10 hrs/day, 5 days/yr; Field application (maximum): 5 workers, 12 hrs/day, 14 days/yr;

Environmental. Persistence and survival of *R. meliloti* strain in soil: greenhouse experiments show less than 1% survival after 8 weeks in test-site soil and potting mix; Plasmid retention in *R. meliloti* strains in soil: greenhouse tests show that 24% of surviving bacteria of this strain contained the plasmid in test-site soil after 8 wks while 55% of survivors contained the plasmid in potting mix after 6 wks; Plasmid transmissibility to other bacteria: Laboratory experiments (some with test-site soil) show no transfer of the plasmid to three other bacteria.

Environmental release. Production and processing: Cultures sterilized before disposal. Media release: air and water. Small-scale fields trial: 2×10^{12} cells (in an aqueous suspension) applied to soil in a single application immediately after planting alfalfa seeds in a plot (less than 5 acres) in a 75-acre field of the BioTechnica Chippewa Agricultural Station near Arkansaw, Pepin County, Wisconsin, in May 1987. Method of Disposal: POTW, and soil and possible groundwater release at field site.

P 87-570

Manufacturer. BioTechnica International, Inc.

Substance. (G) Genetically engineered strain of *Rhizobium meliloti*, containing *R. meliloti nif* genetic material carried on a plasmid.

Use/Production. (G) Small-scale field trial to test ability of the strain to promote alfalfa yield increases. Prod. range: 2×10^{13} cells/yr (0.004 kg/yr).

Toxicity data. No detrimental effects on alfalfa, peas, tendergreen beans, soybeans, clover, corn or ryegrass; No nodules formed on peas, tendergreen beans, soybeans, or clover.

Exposure. Human. Production (maximum): 5 workers, 10 hrs/day, 30 days/yr; Transport (maximum): 2 workers, 10 hrs/day, 5 days/yr; Field application (maximum): 5 workers, 12 hrs/day, 14 days/yr;

Environmental. Persistence and survival of *R. meliloti* strain in soil: greenhouse experiments show less than 1% survival after 8 weeks in test-site soil and potting mix; Plasmid retention in *R. meliloti* strains in soil: greenhouse tests show that 39% of surviving bacteria of this strain contained the plasmid in test-site soil after 8 wks while 58% of survivors contained the plasmid in potting mix after 6 wks; plasmid transmissibility to other bacteria: Laboratory experiments (some with test-site soil) show no transfer of the plasmid to three other bacteria.

Environmental release. Production and processing: Cultures sterilized before disposal. Media release: air and water. Small-scale fields trial: 2×10^{12} cells (in an aqueous suspension) applied to soil in a single application immediately after planting alfalfa seeds in a plot (less than 5 acres) in a 75-acre filed of the BioTechnica Chippewa Agricultural Station near Arkansaw, Pepin County, Wisconsin, in May 1987. Method of Disposal: POTW, and soil and possible groundwater release at field site.

P 87-571

Manufacturer. Confidential.

Chemical. (G) Cycloalkenyl substituted alkenone.

Use/Production. (G) Soaps and detergents, functional products and fine fragrance additives. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg., Acute dermal: >2.0 g/kg; Irritation: Skin—Slight, Eye—Irritant; Ames test: Non-mutagenic; Skin sensitization: Non-sensitizer.

P 87-572

Manufacturer. IOVITE, Incorporated.

Chemical. (S) Polymer of linseed oil; rosin; mono pentaerythritol; isophthalic acid; and maleic acid.

Use/Production. (S) Site-limited will furnish the primary plasticizing and pigment wetting function in the printing ink varnishes IOVITE manufactures. Prod. range: 25,000 to 50,000 kg/yr.

P 87-573

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Unsaturated polyester resin.

Use/Production. (S) Industrial fabrication of pipes and tanks. Prod. range: Confidential.

P 87-574

Importer. Shin-Etsu Silicones of America, Inc.

Chemical. (G) Polyether modified organopolysiloxane.

Use/Import (S) Surfactant for polyurethane foam, release agent for molding of rubber compounds, and textile finishing agent for fiber. Import range: 5,000 to 10,000 kg/yr.

P 87-575

Importer. Shin-Etsu Silicones of America, Inc.

Chemical. (S) 2,4,6-trimethyl-2,4,6-tris(3,3,3-trifluoropropyl) cyclotrisiloxane hexamethyl cyclotrisiloxane, 2,4,6-triethenyl-2,4,6-trimethyl cyclotrisiloxane, ethenyldimethyl silanol.

Use/Import. (S) Industrial ingredient for silicone rubber compound. Import range: 1,000 to 3,000 kg/yr.

P 87-576

Manufacturer. Confidential.

Chemical. (G) Carbocyanine dye.

Use/Production. (G) Dye stuff destructive use. Prod. range: Confidential.

P 87-577

Manufacturer. Confidential.

Chemical. (G) Alkylindolenium bromide.

Use/Production. (G) A dye stuff intermediate for destructive use. Prod. range: Confidential.

P 87-578

Manufacturer. Confidential.

Chemical. (G) Carbocyanine dye.

Use/Production. (G) Dye stuff for destructive use. Prod. range: Confidential.

P 87-579

Manufacturer. Confidential.

Chemical. (G) Alkylindolenium bromide.

Use/Production. (G) A dye stuff intermediate for destructive use. Prod. range: Confidential.

P 87-580

Manufacturer. Confidential.

Chemical. (G) Magnesium organoborate.

Use/Production. (G) Organoboron intermediate for destructive use. Prod. range: Confidential.

P 87-581

Manufacturer. Confidential.

Chemical. (G) Tetraalkylammonium organoborate.

Use/Production. (G) Ammonium borate salt for destructive use. Prod. range: Confidential.

P 87-582

Manufacturer. Confidential.

Chemical. (G) Dicarbocyanine borate dye.

Use/Production. (G) Polymerization promoter for non-dispersive use. Prod. range: Confidential.

Toxicity data. Acute oral: 5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Minimal irritant; Ames test: Non-mutagenic.

P 87-583

Manufacturer. Confidential.

Chemical. (G) Carbocyanine borate dye.

Use/Production. (G) Polymerization initiator for open, non-dispersive use. Prod. range: Confidential.

Toxicity data. Acute oral: 1.4 g/kg; Irritation: Skin—Mild, Eye—Irritant; Ames test: Non-mutagenic; Skin Sensitization: Non-sensitizer.

P 87-584

Manufacturer. Confidential.

Chemical. (G) N,N-dialkylarylamine.

Use/Production. (G) Radical polymerization accelerator. Prod. range: Confidential.

Toxicity data. Acute oral: 5.0 g/kg; Irritation: Skin—Moderate, Eye—Minimal; Ames test: Non-mutagenic, Skin Sensitization: Non-sensitizer.

P 87-585

Manufacturer. Confidential.

Chemical. (G) Polyetherpolyol polymer with 1,3-diisocyanate methylbenzene, isocyanate terminated.

Use/Production. (S) Industrial component for manufacturing of high resiliency flexible polyurethane foam parts. Prod. range: Confidential.

P 87-586

Importer. Confidential.

Chemical. (G) Diarylaroylphosphine oxide.

Use/Import. (G) Polymerization catalyst for unsaturated polyester resin systems. Import range: Confidential.

P 87-587

Manufacturer. Alcolac Inc.

Chemical. (S) Poly(oxy-1,2-ethanediyl), alpha-(2-methyl-1-oxo-2-propenyl)-omega-(sulfooxy)-,ammonium salt.

Use/Production. (G) Polymer modifiers. Prod. range: Confidential.

P 87-588

Importer. Confidential.

Chemical. (G) Acrylate copolymer.

Use/Import. (G) Destructive use. Import range: Confidential.

P 87-589

Manufacturer. Confidential.

Chemical. (G) Acid functional saturated aliphatic polyester.

Use/Production. (G) Industrially used coating having a dispersive use. Prod. range: 30,000 to 300,000 kg/yr.

P 87-590

Manufacturer. Confidential.

Chemical. (G) Epoxy functional aliphatic alicyclic polyester urethane.

Use/Production. (G) Dispersively used coating. Prod. range: 60,000 to 251,000 kg/yr.

P 87-591

Manufacturer. Confidential.

Chemical. (G) Vinyl acrylate.

Use/Production. (G) Resin. Prod. range: Confidential.

P 87-592

Manufacturer. Confidential.

Chemical. (G) Vinyl acrylic copolymer.

Use/Production. (G) Label adhesive. Prod. range: Confidential.

P 87-593

Manufacturer. PMC Specialties Group.

Chemical. (G) Substituted triazole.

Use/Production. (S) Corrosion inhibitors. Prod. range: Confidential.

P 87-594

Manufacturer. PMC Specialties Group.

Chemical. (G) N alkylated benzotriazole.

Use/Production. (G) Corrosion inhibitor. Prod. range: Confidential.

P 87-595

Manufacturer. The Dow Chemical Company.

Chemical. (G) Cycloaliphatic urethane prepolymer.

Use/Production. (S) Industrial raw material for polyurethane elastomers. Prod. range: Confidential.

P 87-596

Manufacturer. The Dow Chemical Company.

Chemical. (G) Cycloaliphatic urethane prepolymer.

Use/Production. (S) Industrial manufacture of polyurethane elastomers. Prod. range: Confidential.

P 87-597

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

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Chemical. (G) Macrycyclic cobalt complex.
Use/Production. (G) Contained use. Prod. range: Confidential

P 87–598

Manufacturer. E. I. du Pont de Nemours and Company, Inc.
Chemical. (G) Macrocyclic cobalt compound.
Use/Production. (G) Contained use. Prod. range: Confidential.

P 87–599

Importer. Confidential.
Chemical. (G) Copolymer of fluoroolefin and vinyl ether.
Use/Import. (G) Coating ingredient. Import range: Confidential.

P 87–600

Manufacturer. Confidential.
Chemical. (S) 3-hydroxy-2-(hydroxymethyl)-2-methyl-propanoic acid hexanedoic acid, 2,2-dimethyl-1,3-propanediol, 1,3-benzenedicarboxylic acid, 2-ethyl-2-(hydroxymethyl)-1,3-propane diol.
Use/Production. (S) Industrial polymer used to manufacture coatings for metal and plastic substrates. Prod. range: Confidential.

P 87–601

Manufacturer. Confidential.
Chemical. (S) Phthalic anhydride, propylene glycol, isooctyl alcohol.
Use/Production. (S) Industrial plasticizer. Prod. range: Confidential.

P 87–602

Importer. The Nippon Synthetic Chemical Industry Company, Ltd.
Chemical. (G) Copolymer of styrene, acrylate and methacrylate.
Use/Import. (S) Commercial toner for electrophotography. Import range: 30,000 to 100,000 kg/yr.

P 87–603

Importer. American Hoechst Corporation.
Chemical. (S) N-stearyl (N',N'' N'''-polyethoxy) ammonium lactate.
Use/Import. (S) Shampoo additive. Import range: 100,000 to 150,000 kg/yr.
Toxicity data. Acute oral: 5,000 mg/kg; Acute dermal: 0.5 ml; Irritation: Skin—Non-irritant, Eye—Severe; LC_{50}: 96 hr (Bracydaniorerio): 1 mg/l.

P 87–604

Manufacturer. Resinall Corporation.
Chemical. (G) Tall oil fractions unsaturated hydrocarbon resin, substituted alkylbenzene, paraform dieneophile-modified polymer with pentaerythritol.
Use/Production. (G) Resin binder for printing inks. Prod. range: 3,000,000 to 6,000,000 kg/yr.

P 87–605

Manufacturer. E. I. du Pont de Nemours and Company Inc.
Chemical. Not available at this time.
Use/Production. (G) Open, non-dispersive use. Prod range: Confidential.

P 87–606

Manufacturer. E. I. du Pont de Nemours and Company Inc.
Chemical. (G) Amino hydroxy ester.
Use/Production. (G) Open, non-dispersive use. Prod range: Confidential.

P 87–607

Manufacturer. E. I. du Pont de Nemours and Company Inc.
Chemical. (G) Amino hydroxy ester.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87–608

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Polyester resin of aryl dicarboxylic acids, alkane diol and dimeric fatty acids.
Use/Import. (G) Hot melt adhesive. Import range: 20,000 to 100,000 kg/yr.

P 87–609

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Branched saturated polyester resin containing hydroxyl groups.
Use/Import. (S) Metal decorating laquers and enamels. Import range: 180,000 to 450,000

P 87–610

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Polyester resin of an aryl ester, alkyl dicarboxylic acid and alkyl diol.
Use/Import. (S) Industrial hot melt adhesive for bonding vinyl film to rigid substrates and in solution cured with an isocyanate for bonding vinyl film to rigid substrates. Import range: 30,000 to 50,000 kg/yr.

P 87–611

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Polyester resin of aryl dicarboxylic acids, alkane diols and ester.
Use/Import. (S) Industrial base for coil-coating paint for outdoor exposure. Import range: 135,000 to 450,000 kg/yr.

P 87–612

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Polyester resin an aryl dicarboxylic acid and an alkane diol.
Use/Import. (S) Industrial metal coating. Import range: Confidential.

P 87–613

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Branched saturated polyester resin coating hydroxyl groups.
Use/Import. (S) Industrial metal primers and topcoats in the building and automobile industries. Import range: 180,000 to 450,000 kg/yr.

P 87–614

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Polyester resin of aryl dicarboxylic acids, alkane diols and dimeric fatty acids.
Use/Import. (S) Resin for industrial maintenance paints. Import range: Confidential.

P 87–615

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Polyester resin of aryl dicarboxylic acids and alkane diols.
Use/Import. (G) Resin for coil coating paint. Import range: 30,000 to 100,000 kg/yr.

P 87–616

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Linear saturated polyester resin containing hydroxyl groups.
Use/Import. (S) Protective/decorative coatings for appliances, office furniture and decorative coating for exterior of can, caps and closure. Import range: 180,000 to 450,000 kg/yr.

P 87–617

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Saturated polyester resin of an aryl ester, aryl dicarboxylic acid, alkyl dicarboxylic acid and alkyl diol.
Use/Import. (S) Industrial sealant for side seams of cans. Import range: 9,000 to 45,000 kg/yr.

P 87–618

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Polyester resin of aryl dicarboxylic acids plus alkane diols.
Use/Import. (S) Metal decorating and protecting laquers and enamels. Import range: 180,000 to 450,000 kg/yr.

P 87–619

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Linear saturated polyester resin containing hydroxyl groups.
Use/Production. (S) Industrial laminating adhesive mainly for the furniture and automobile industries. Prod. range: 180,000 to 450,000 kg/yr.

P 87–620

Manufacturer. Confidential.

Chemical. (G) Phosphoric acid, mono and di esters, compounds with morpholine.
Use/Production. (G) Petro chemical and refinery process additive. Prod. range: 44,500 to 213,500 kg/yr.

P 87–621

Manufacturer. Confidential.
Chemical. (G) Phosphoric acid, mono and di esters, compounds with fatty diamine.
Use/Production. (G) Petro chemical and refinery process additive. Prod. range: 1,700 to 8,200 kg/yr.

P 87–622

Manufacturer. Confidential.
Chemical. (G) Phosphoric acid, mono and esters, mixed salt with fatty diamines and morpholine.
Use/Production. (G) Petro chemical and refinery process additive. Prod. range: 29,000 to 139,000 kg/yr.

P 87–623

Manufacturer. Confidential.
Chemical. (G) Phosphoric acid, mono and di esters compounds with alkyl amines.
Use/Production. (G) Petro chemical and refinery process additive. Prod. range: 34,000 to 163,000 kg/yr.

P 87–624

Manufacturer. E. I. du Pont de Nemours and Company, Inc.
Chemical. (G) Ethylene interpolymer.
Use/Production. (G) Molded parts. Prod. range: Confidential.

P 87–625

Manufacturer. Confidential.
Chemical. (G) Polyamide resin.
Use/Production. (G) Paint additive. Prod. range: Confidential.

P 87–626

Manufacturer. Confidential.
Chemical. (G) Polyamide resin.
Use/Production. (G) Paint additive. Prod. range: Confidential.

P 87–627

Manufacturer. Confidential.
Chemical. (G) Polyamine phosphonate, sodium salt.
Use/Production. (G) Dispersive use. Prod. range: Confidential.

P 87–628

Manufacturer. Confidential.
Chemical. (G) Polyamine phosphonate, potassium salt.
Use/Production. (G) Dispersive use. Prod. range: Confidential.

P 87–629

Manufacturer. Confidential.
Chemical. (G) Polyamine phosphonate, ammonium salt.
Use/Production. (G) Dispersive use. Prod. range: Confidential.

P 87–630

Manufacturer. Confidential.
Chemical. (G) Phosphonomethylated polyamine.
Use/Production. (G) Destructive use. Prod. range: Confidential.

P 87–631

Manufacturer. Confidential.
Chemical. (G) Dithiophosphate polyamine salt.
Use/Production. (S) Consumptive use. Prod. range: Confidential.

P 87–632

Manufacturer. Confidential.
Chemical. (G) Dithiophosphate heterocyclic amine salt.
Use/Production. (G) Consumptive use. Prod. range: Confidential.

P 87–633

Manufacturer. The Dow Chemical Company.
Chemical. (G) Amine based chelating agent.
Use/Production. (S) Site-limited and industrial gas conditioning solvent. Prod. range: Confidential.

P 87–634

Manufacturer. The Dow Chemical Company.
Chemical. (G) Amine based chelating agent.
Use/Production. (S) Site-limited intermediate and industrial gas conditioning solvent. Prod. range: Confidential.

P 87–635

Manufacturer. The Dow Chemical Company.
Chemical. (G) Metal salt of amminated chelating agent.
Use/Production. (S) Industrial gas conditioning solvent. Prod. range: Confidential.

P 87–636

Manufacturer. The Dow Chemical Company.
Chemical. (G) Metal salt of amminated chelating agent.
Use/Production. (S) Industrial gas conditioning solvent. Prod. range: Confidential.

P 87–637

Manufacturer. The Dow Chemical Company.
Chemical. (G) Metal salt of amminated chelating agent.
Use/Production. (S) Industrial gas conditioning solvent. Prod. range: Confidential.

P 87–638

Manufacturer. The Dow Chemical Company.
Chemical. (G) Metal salt of amminated chelating agent.
Use/Production. (S) Industrial gas conditioning solvent. Prod. range: Confidential.

P 87–639

Manufacturer. Nuodex Inc.
Chemical. (G) Metal alkonates.
Use/Production. (G) Coating edditive. Prod. range: Confidential.

P 87–640

Importer. The Dow Chemical Company.
Chemical. (G) Epoxy acrylate.
Use/Import. (S) A binding agent for printing inks curable by means of ultraviolet radiation or electron beam energy; and clear or pigmented varnishes curable by means of ultraviolet radiation or electron beam energy. Import range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Nonirritant, Eye—Non-irritant; Inhalation: Non-sensitizer.

P 87–641

Importer. The Dow Chemical Company.
Chemical. (G) Epoxy acrylate.
Use/Import. (S) A binding agent for printing inks curable by means of ultraviolet radiation or electron beam energy; and clear or pigmented varnishes curable by means of ultraviolet radiation or electron beam energy. Import range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Nonirritant, Eye—Non-irritant; Inhalation: Non-sensitizer.

P 87–642

Importer. The Dow Chemical Company.
Chemical. (G) Epoxy acrylate.
Use/Import. (S) A binding agent for printing inks curable by means of ultraviolet radiation or electron beam energy; and clear or pigmented varnishes curable by means of ultraviolet radiation or electron beam energy. Import range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Nonirritant, Eye—Non-irritant; Inhalation: Non-sensitizer.

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Dated: February 17, 1987.
Linda Smith,
Acting Division Director, Information Management Division.
[FR Doc. 87-3702 Filed 2-19-87; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

Appointment of Receiver; Universal Savings Association, F.A., Chickasha, OK

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Universal Savings Association, F.A., Chickasha, Oklahoma, on February 13, 1986.

Dated: February 17, 1987.
By the Federal Home Loan Bank Board
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 87-3628 Filed 2-19-87; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010807-002.
Title: Long Beach Terminal Agreement.
Parties:
City of Long Beach
Moller Steamship Company, Inc.
Synopsis: The proposed amendment would revise the means of handling an adjustment to compensation set forth in the original agreement between the parties.

Agreement No.: 224-011067.
Title: Long Beach Terminal Agreement.
Parties:
City of Long Beach (Port)
Long Beach Container Terminal, Inc. (LBC)
Synopsis: The proposed agreement would permit the Port to preferentially assign cranes for LBC's use at the Port's Pier A, Berths 6 through 10.

Dated: February 17, 1987.
By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 87-3642 Filed 2-19-87; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Citizens Bancshares, Inc., et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 12, 1987.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Citizens Bancshares, Incorporated*, Salineville, Ohio; to engage *de novo* through its subsidiary, Freedom Financial Life Insurance Company, Phoenix, Arizona, in acting as an underwriter and a reinsurer of credit life and credit accident and health insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y which is directly related to extensions of credit by other subsidiaries of Citizens Bancshares, Incorporated.

2. *Trustcorp, Inc.*, Toledo, Ohio; to engaged *de novo* either through itself or through a subsidiary in conducting tax planning and preparation activities and services pursuant to § 225.25(b)(21) of the Board's Regulation Y. Comments on this application must be received by March 11, 1987.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Shawsville Bancorp, Inc.*, Shawsville, Virginia; to engage *de novo* in providing data processing services to local small businesses and individuals pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in the Commonwealth of Virginia. Comments on this application must be received by March 11, 1987.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Barnett Banks of Florida, Inc.*, Jacksonville, Florida; to engage *de novo* through its subsidiary, Verifications, Inc., Jacksonville, Florida, in operating a credit bureau pursuant to § 225.25(b)(24) of the Board's Regulation Y. Comments on this application must be received by March 9, 1987.

D. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Alliance Financial Corporation*, Dearborn, Michigan; to engage *de novo* through its subsidiary, Alliance Mortgage Incorporated of Michigan Dearborn, Michigan, in providing mortgage loans pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y. These activities will be conducted in the State of Michigan.

Comments on this application must be received by March 6, 1987.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Clearwater Home State Bancshares, Inc.*, Clearwater, Kansas; to engage *de novo* through its subsidiary Home Financial Corporation, Wichita, Kansas, in acting as agent or principal for credit related life, accident and health insurance (including home mortgage redemption insurance) pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y; acting as agent for property insurance directly related to extensions of credit by finance company subsidiaries pursuant to § 225.25(b)(8)(ii) of the Board's Regulation Y; and providing securities brokerage and incidental services where brokerage services are limited to buying and selling on customer orders pursuant to § 225.25(b)(15) of the Board's Regulation Y. Comments on this application must be received by March 6, 1987.

2. *Perry Bancshares, Inc.*, Perry, Oklahoma; to engage *de novo* in the activity of community development pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 13, 1987.
William W. Wiles,
Secretary of the Board.
[FR Doc. 87-3578 Filed 2-19-87; 8:45 am]
BILLING CODE 6210-01-M

Decatur County Back Employee Stock Ownership Plan; Acquisitions of Shares of Banks or Bank Holding Companies

The notifications listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 6, 1987.

A. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Decatur County Bank Employee Stock Ownership Plan*, Greensburg, Indiana; to acquire 2.6 percent of the voting shares of Decatur Bancshares, Inc., Greensburg, Indiana.

2. *Dale DeVries* and Carl Keltner, both of Pearl City, Illinois, and I. Ronald Lawfer, Stockton, Illinois; to acquire 60 percent of the voting shares of Kent Bancshare, Inc., Kent, Illinois.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Michael N. Fleming*, Dixon, Illinois; to acquire 20 percent of the voting shares of Mancos Bancorporation, Inc., Mancos, Colorado, and thereby indirectly acquire Mancos Valley Bank, Mancos, Colorado.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *W. Clarke Swanson, Jr.*, Naples, Florida; to acquire up to 45 percent of the voting shares of Napa National Bancorp, Napa, California, and thereby indirectly acquire Napa National Bank, Napa, California.

Board of Governors of the Federal Reserve System, February 13, 1987.
William W. Wiles,
Secretary of the Board.
[FR Doc. 87-3576 Filed 2-19-87; 8:45 am]
BILLING CODE 6210-01-M

First State Bancorporation, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 9, 1987.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First State Bancorporation Inc.*, Elkins, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank Elkins, Inc., Elkins, West Virginia, a *de novo* bank.

2. *Montgomery Bancorp, Inc.*, Bethesda, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of Montgomery National Bank, Bethesda, Maryland, a *de novo* bank.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Totalbank Corporation of Florida*, Miami, Florida; to acquire 95 percent of the voting shares of Trade National Bank, Miami, Florida.

C. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Milledgeville Bancorp, Inc.*, Milledgeville, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Milledgeville State Bank, Milledgeville, Illinois. Comments on this application must be received by March 6, 1987.

2. *Success Financial Group, Inc.*, Lincolnshire, Illinois; to become a bank holding company by acquiring 25 percent of the voting shares of Lincolnshire Bancshares, Inc., Lincolnshire, Illinois, and thereby indirectly acquire First National Bank of Lincolnshire, Lincolnshire, Illinois; Bellwood Bancorporation, Inc., Bellwood, Illinois, and thereby indirectly acquire Bank of Bellwood, Bellwood, Illinois; First National Bank of Wheaton, Wheaton, Illinois, and Peterson Bank, Chicago, Illinois. Comments on this application must be received by March 10, 1987.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *CNB Bancshares, Inc.*, Evansville, Indiana; to acquire 100 percent of the voting shares of The Farmers National Bank of Princeton, Princeton, Indiana.

E. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

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1. *Draper Holding Company, Inc.*, Draper, South Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of Draper State Bank, Draper, South Dakota. Comments on this application must be received by March 11, 1987.

2. *First National Bank of Sauk Centre Profit Sharing Trust No. 1*, Sauk Centre, Minnesota; to become a bank holding company by acquiring 25.51 percent of the voting shares of Sauk Centre Financial Services, Inc., Sauk Centre, Minnesota, and thereby indirectly acquire First National Bank of Sauk Centre, Sauk Centre, Minnesota. Comments on this application must be received by March 10, 1987.

2. *McLeod Bancshares, Inc.*, Hutchinson, Minnesota; to acquire 49 percent of the voting shares of Exchange State Bank, St. Paul, Minnesota. Comments on this applicatin must be received by March 11, 1987.

3. *Merchants and Miners Bancshares, Inc.*, Hibbing, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Merchants and Miners State Bank of Hibbing, Hibbing, Minnesota. Comments on this application must be received by March 12, 1987.

4. *Sauk Centre Financial Services, Inc.*, Sauk Centre, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Sauk Centre, Sauk Centre, Minnesota.

F. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Bonner Springs Bancshares, Inc.*, Bonner Springs, Kansas; to acquire 80 percent of the voting shares of First State Bank of Lansing, Lansing, Kansas. Bank engages in the sale of credit related life, accident and health insurance.

2. *LJT, Inc.*, Holdrege, Nebraska; to acquire an additional 0.96 percent of the voting shares of First National Bank of Holdrege, Holdrege, Nebraska.

3. *Lincoln Banking Company*, Steamboat Springs, Colorado; to acquire 100 percent of the voting shares of United Bank of Steamboat Springs, Steamboat Springs, Colorado. Comments on this application must be received by March 10, 1987.

Board of Governors of the Federal Reserve System, February 13, 1987.

William W. Wiles,

Secretary of the Board.

[FR. Doc. 87-3577 Filed 2-9-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Annual Update of the Poverty Income Guidelines

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice provides an update of the poverty income guidelines to account for last year's increase in the Consumer Price Index.

DATE: Effective upon publication.

ADDRESS: Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT:

For information about the poverty income guidelines in general, contact Joan Turek-Brezina (telephone: (202) 245-8141).

Questions about applying these guidelines to a particular program should be referred to the Federal office which is responsible for that program.

For information about the Hill-Burton Uncompensated Services Program (no-fee or reduced-fee hospital care at certain hospitals for certain persons unable to pay for such care), contact the Office of the Director, Division of Facilities Compliance (telephone: (301) 443-6512). (The effective date of these guidelines for facilities obligated under the Hill-Burton Uncompensated Services Program is 60 days from the date of this publication.)

This notice provides the 1987 update of the poverty income guidelines required by sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). As required by the statute, this update reflects last year's change in the Consumer Price Index; it was accomplished using the same methodology used in previous years.

These poverty income guidelines are used as an eligibility criterion by a number of Federal programs. The guidelines are a simplified version of the poverty thresholds used by the Bureau of the Census to prepare its statistical estimates of the number of persons and families in poverty. The *poverty income guidelines* issued by the Department of Health and Human Services (formerly by the Community Services Administration) are used for administrative purposes—for instance, for determining whether a person or family is financially eligible for assistance or services under a particular Federal program. The *poverty thresholds* are used primarily for statistical purposes.

In certain cases, as noted in the relevant authorizing legislation or program regulations, a program uses the poverty income guidelines as only one of several eligibility criteria, or uses a modification of the guidelines (for example, 130 percent or 185 percent of the guidelines). Some other programs, while not using the guidelines as a criterion of individual eligibility, use them for the purpose of targeting assistance or services. In some cases, these poverty income guidelines may not become effective for a particular program until a regulation or notice specifically applying to the program in question has been issued.

The poverty guidelines given below are applicable to both farm and nonfarm families.

The following definitions (derived for the most part from language used in U.S. Bureau of the Census, Current Population Reports, Series P-60, No. 152 and earlier reports in the same series) are made avialable for use in connection with the poverty income guidelines. Programs may use somewhat different definitions.

(a) *Family.* A family is a group of two or more persons related by birth, marriage, or adoption who reside together; all such related persons are considered as members of one family. (If a household includes more than one family and/or more than one unrelated individual, the poverty guidelines are applied separately to each family and/or unrelated individual, and not to the household as a whole.)

(b) *Family unit of size one.* In conjunction with the poverty income guidelines, a family unit of size one is an unrelated individual (as defined by the Census Bureau)—that is, a person 15 years old or over (other than an inmate of an institution) who is not living with any relatives. An unrelated individual may be the sole occupant of a housing unit, or may be residing in a housing unit (or in group quarters such as a rooming house) in which one or more persons also reside who are not related to the individual in question by birth, marriage, or adoption. (Examples of unrelated individuals residing with others include a lodger, a foster child, a ward, or an employee.)

(c) *Income.* Refers to total annual cash receipts before taxes from all sources. (Income data for a part of a year may be annualized in order to determine eligibility—for instance, by multiplying by four the amount of income received during the most recent three months.) Income includes money wages and salaries before any deductions, but does not include food or rent received in lieu of wages. Income also includes net receipts from nonfarm or farm self-employment (receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses). Income includes regular payments from social security, railroad retirement, unemployment compensation, workers' compensation, strike benefits from union funds, veterans' benefits, public assistance (including Aid to Families with Dependent Children, Supplemental Security Income, and General Assistance money payments), training stipends, alimony, child support, and military family allotments or other regular support from an absent family member or someone not living in the household; private pensions, government employee pensions, and regular insurance or annuity payments; and income from dividends, interest, rents, royalties or periodic receipts from estates or trusts. For eligibility purposes, income does not include the following types of money received: capital gains; any assets drawn down as withdrawals from a bank, the sale of property, a house, or a car; tax refunds, gifts, lump-sum inheritances, one-time insurance payments, or compensation for injury. Also excluded are noncash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or rent received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, and such Federal noncash benefit programs as Medicare, Medicaid, Food Stamps, school lunches, and housing assistance.

1987 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	$5,500
2	7,400
3	9,300
4	11,200
5	13,100
6	15,000
7	16,900
8	18,800

For family units with more than 8 members, add $1,900 for each additional member.

POVERTY INCOME GUIDELINES FOR ALASKA

Size of family unit	Poverty guideline
1	$6,860
2	9,240
3	11,620
4	14,000
5	16,380
6	16,760
7	21,140
8	23,520

For family units with more than 8 members, add $2,380 for each additional member.

POVERTY INCOME GUIDELINES FOR HAWAII

Size of family unit	Poverty guideline
1	$6,310
2	8,500
3	10,690
4	12,880
5	15,070
6	17,260
7	19,450
8	21,640

For family units with more than 8 members, add $2,190 for each additional member.

Dated: February 13, 1987.

Otis R. Bowen, M.D.,

Secretary of Health and Human Services.

[FR Doc. 87-3655 Filed 2-19-87; 8:45 am]

BILLING CODE 4150-04-M

Alcohol, Drug Abuse, and Mental Health Administration

Board of Scientific Counselor; Meeting

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Board of Scientific Counselors, NIMH. The committee meeting will be open for a report on administrative developments. The remainder of the sessions will be devoted to a review and evaluation of intramural projects and performance of individual staff scientists and will not be open to the public in accordance with the determination by the Administrator, ADAMHA, pursuant to the provisions of section 552b(c)(6) and 5 U.S.C. app. 210(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: Board of Scientific Counselors, NIMH.

Date and Time: March 19-21; 9:00 a.m.

Place: National Institutes of Health, 9000 Rockville Pike, Building 36, Conference Room 1B-07, Rockville, Maryland 20892.

Status of Meeting: OPEN—March 19: 9:00-9:15 a.m., CLOSED—Otherwise.

Contact: Frederick K. Goodwin, National Institute of Mental Health, 9000 Rockville Pike, Building 10, Room 4N-224, Rockville, Maryland 20892, (301) 496-3501.

Purpose: The Board of Scientific Counselors provides expert advice to the Director, NIMH, on the mental health intramural research program through periodic visits to the laboratories for assessment of the research in progress and evaluation of productivity and performance of staff scientists.

* * * * *

Summaries of the meetings and rosters of committee members may be obtained from Ms. Joanna Kieffer, Committee Management Officer, NIMH, Room 9-95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4333.

Dated: February 13, 1987.

Brenda L. Williamson,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 87-3567 Filed 2-19-87; 8:45 am]

BILLING CODE 4160-20-M

Biological and Neurosciences Subcommittee of the Mental Health Research Education Review Committee; Meeting

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meetings of the agency's initial review committees. These committees will be open for discussion of administrative announcements and program developments. The committees will be performing initial review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. App. 2 10(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: Biological and Neurosciences Subcommittee of the Mental Health Research Education Review Committee, NIMH.

Date and Time: March 4-5: 9:00 a.m.

Place: Holiday Inn, Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Status of Meeting: Open—March 4: 9:00-10:00 a.m. Closed—Otherwise.

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Contact: Shirley Maltz, Room 9C26, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3936.

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research training activities in the area of biological sciences related to mental health, with recommendations to the National Advisory Mental Council for final review.

* * * * *

Committee Name: Mental Health Small Grant Review Committee, NIMH.

Date and Time: March 5–6: 1:30 p.m.

Place: The Canterbury Hotel, 1733 N Street, NW., Washington, DC 20036.

Status of Meeting: Oen—March 5: 1:30–3:30 p.m. Closed—Otherwise.

Contact: Betty Russell, Room 9C05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4843.

Purpose: The committee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences.

* * * * *

Committee Name: Epidemiology Subcommittee of the Epidemiologic and Services Research Review Committee, NIMH.

Date and Time: March 9–10: 9:00 a.m.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, Virginia 22209.

Status of Meeting: Open—March 9: 9:00–10:00 a.m. Closed—Otherwise.

Contact: Gloria Yockelson, Room 9C14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1367.

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

* * * * *

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of committee members may be obtained from Ms. Joanna Kieffer, Committee Management Officer, NIMH, Room 9–95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Dated: February 13, 1987.

Brenda L. Williamson,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 87–3568 Filed 2–19–87; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

Aryl Amine Adducts in Blood as Indicators of Exposure; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: March 19, 1987.

Time: 9 a.m. to 3 p.m.

Place: Auditorium, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Purpose: The purpose of this meeting is to review and discuss the utility of measuring blood hemoglobin or deoxyribonucleic acid (DNA) adducts as an indicator of aromatic amine exposure. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Additional information may be obtained from: Kenneth L. Cheever, Division of Biomedical and Behavioral Science, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephones: FTS: 684–8193, Commercial: 513/533–8193.

Dated: February 12, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87–3560 Filed 2–19–87; 8:45 am]

BILLING CODE 4160–19–M

Center for Environmental Health; Open Meeting

ACTION: Notice of meeting.

The following meeting will be convened by the Center for Environmental Health (CEH), Centers for Disease Control (CDC), and will be open to the public for observation, limited only by the space available.

Time and Date: 9:00 a.m., Tuesday, March 10, 1987.

Place: Presidential Hotel, 4001 Presidential Parkway, Atlanta, Georgia 30340–3708.

Status: Open.

Matters To Be Considered: Discussion with leaders of communities in which lethal chemical warfare agents storage depots are located concerning the communities' ability to respond to an accidental agent release.

Contact Person for More Information: Ginny Jones, Program Specialist, CEH, CDC, 1600 Clifton Road, NE., Atlanta, GA 30333, Telephones: FTS: 236–4595, Commercial: 404/454–4595.

Dated: February 10, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87–3559 Filed 2–19–87; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

Advisory Committee; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Dermatologic Drugs Advisory Committee

Date, time, and place. March 16, 8:30 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4:30 p.m.; Thomas E. Nightingale, Center for Drugs and Biologics (HFN–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in dermatologic disorders.

Agenda—Open public hearing. Interested persons who wish to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss the safety and efficacy of minoxidil (Upjohn) in male pattern baldness. The committee will also discuss requirements for proof of effectiveness of broad-spectrum sunscreens. The committee's discussions and conclusions regarding requirements for testing of UVA sunscreens may be considered by the agency in its preparation of a tentative final monograph on over-the-counter (OTC) sunscreen drug products. Such a monograph is being developed as part of the OTC drug review. The advance notice of proposed rulemaking for these products was published in the **Federal Register** of August 25, 1978 (43 FR 38206).

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: February 13, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–3569 Filed 2–19–87; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 86F–0509]

U.S. Department of Agriculture, Food Safety and Inspection Service; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the U.S. Department of Agriculture (USDA), Food Safety and Inspection Service has filed a petition proposing that the food additive regulations be amended to provide for the safe use of sources of ionizing radiation for reduction of food-borne pathogens in poultry products.

FOR FURTHER INFORMATION CONTACT: Clyde A. Takeguchi, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7M3974) has been filed by USDA's Food Safety and Inspection Service, Washington, DC 20250, proposing that § 179.26 *Ionizing radiation for the treatment of food* (21 CFR 179.26) be amended to provide for the use of sources of ionizing radiation (gamma radiation, electron radiation, and X-radiation) to control food-borne pathogens by reducing the amount of microorganisms, such as *Salmonella*, *Yersinia*, and *Campylobacter* in poultry products.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: February 9, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87–3573 Filed 2–19–87; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Cancer Institute; Board of Scientific Counselors, Division of Cancer Etiology; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Etiology on March 5–6, 1987, Building 31, C Wing, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 1 p.m. to recess on March 5 and from 9 a.m. to adjournment on March 6 for discussion and review of the Division budget and review of concepts for grants and contracts. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 9 a.m. to approximately 12 p.m. on March 5 for the review, discussion and evaluation of individual programs and projects conducted by the Division of Cancer Etiology. These programs, projects, and discussions could reveal personal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

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Dr. David McB. Howell, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Etiology, National Cancer Institute, Building 31, Room 11A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-6927) will furnish substantive program information.

Dated: February 11, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-3602 Filed 2-19-87; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Cancer Clinical Investigations Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Clinical Investigations Review Committee, National Cancer Institute, March 30-31, 1987, at the Omni Georgetown Hotel, 2121 P Street, Northwest, Washington, DC 20037.

This meeting will be open to the public on March 30 from 8 a.m. to 8:30 a.m. for reports by the Executive Secretary and Chairman of the Cancer Clinical Investigations Review Committee. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the the meeting will be closed to the public on March 30 from approximately 8:30 a.m. until recess and on March 31 from 8 a.m. to adjournment for the review, discussion and evaluation of individual grant applications or cooperative agreements. These applications or cooperative agreements and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Mary Ann Sestili, Executive Secretary, Cancer Clinical Investigation Review Committee, National Cancer Institute, Westwood Building, Room 836, National Institutes of Health, Bethesda, Maryland 20892, (301/496-7481) will provide substantive program information upon request.

Dated: February 11, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-3600 Filed 2-19-87; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Cancer Preclinical Program Project Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Preclinical Program Project Review Committee, National Cancer Institute, April 2-3, 1987, National Institutes of Health, Building 31, Conference Room 9, Bethesda, Maryland 20892.

This meeting will be open to the public on April 2 from 8:30 a.m. to 9:15 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on April 2 from 9:15 a.m. to recess and on April 3 from approximately 9:15 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Edwin M. Bartos, Executive Secretary, National Cancer Institute, 5333 Westbard Avenue, Room 826, Bethesda, Maryland 20892 (301/496-7565) will furnish substantive program information.

Dated: February 11, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-3601 Filed 2-19-87; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Cancer Therapeutics Program Project Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Therapeutics Program Project Review Committee, National Cancer Institute, National Institutes of Health, April 16-17, 1987, Holiday Inn-Crowne Plaza, 1750 Rockville Pike, Bethesda, Maryland 20852.

This meeting will be open to the public on April 16 from 8 a.m. to 8:30 a.m., to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on April 16 from 8:30 a.m. to 5 p.m. and on April 17 from 8 a.m. to adjournment for the review, discussion and evaluation of individual program project grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will furnish summaries of the meeting and roster of committee members upon request.

Dr. Suzanne E. Fisher, Executive Secretary, 5333 Westbard Avenue, Room 820, Bethesda, Maryland 20892 (301/496-2330) will provide other information pertaining to the meeting.

Dated: February 11, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-3603 Filed 2-19-87; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; President's Cancer Panel; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the President's Cancer Panel, National Cancer Institute, March 16, 1987, at the UCLA School of Medicine, School of Nursing Auditorium, Louis Factor Building, A-660, Tiverton Drive, Los Angeles, California 90024.

This meeting will be open to the public on March 16 from 8:30 a.m. to adjournment. Agenda items include reports by the Chairman, President's Cancer Panel and the Director, National Cancer Institute; and reports and discussions from experts to obtain information regarding research

programs supported by the National Cancer Institute. Attendance by the public will be limited to space available. Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 11A23, National Institutes of Health, Bethesda, Maryland 20892 (301/496-1148) will provide an agenda for the meeting, a roster of the Panel members, and substantive program information upon request.

Dated: February 11, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-3604 Filed 2-19-87; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Neurological and Communicative Disorders and Stroke; Board of Scientific Counselors

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Neurological and Communicative Disorders and Stroke, Intramural Research Program, on March 25-27, 1987, Conference Room 1B-07, Building 36, Bethesda, Maryland.

This meeting will be open to the public from 9 a.m. to 5 p.m. on March 26 to discuss program planning and program accomplishments. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 8 p.m. to 10 p.m. on March 25 and from 9 a.m. until adjournment on March 27 for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performances, the competence of individual investigators and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Freedom of Information Coordinator, Mr. Edward M. Donohue, Federal Building, Room 1004, 7550 Wisconsin Avenue, Bethesda, Maryland 20892, telephone (301) 496-9231, will furnish a summary of the meeting and a roster of committee members upon request. The Executive Secretary from whom substantive program information may be obtained is Dr. Irwin J. Kopin, Director, Intramural Research Program, NINCDS, Building 10, Room 5N214, NIH, Bethesda, Maryland 20892, telephone (301) 496-4297.

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research).

Dated: February 11, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-3608 Filed 2-19-87; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Dental Research; Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Dental Research (NIDR), on April 22-24, 1987, in Conference Room 117, Building 30, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public from 9 a.m. to recess on April 22 and from 9 a.m. to 12 Noon on April 23, to discuss program policies and issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 1 p.m. to recess on April 23 and from 9 a.m. to adjournment on April 24 for the review, discussion, and evaluation of individual programs and projects conducted by the NIDR, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Abner Notkins, Director of Intramural Research, NIDR, NIH, Building 30, Room 132, Bethesda, MD 20892 (telephone 301-496-1483) will provide a summary of the meeting, roster of committee members and substantive program information.

Dated: February 11, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-3607 Filed 2-19-87; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Transplantation Biology and Immunology Subcommittee of the Alergy, Immunology, and Transplantation Research Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Transplantion Biology and Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee, National Institute of Allergy and Infectious Diseases, on March 5-6, 1987, in Conference Room 4, Building 31C, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 a.m. to 8:45 a.m. on March 5, and from 8:30 a.m. to 10:15 a.m. on March 6 to discuss administrative details relating to committee business and for progam review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting of the Transplantion Biology and Immunology Subcommittee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 8:45 a.m. until recess on March 5, and from 10:15 a.m. until adjourment on March 6. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Nirmal K. Das, Executive Secretary, Alergy, Immunology and Transplantation Research Committee, NIAID, NIH, Westwood Building, Room 706, Bethesda, Maryland 20892, telephone (301-496-7966), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: February 11, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-3606 Filed 2-19-87; 8:45 am]

BILLING CODE 4140-01-M

Heart, Lung, and Blood Research Review Committee A; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee A, National Heart, Lung, and

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Blood Institute, National Institutes of Health, on March 26–27, 1987, in Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on March 26 from 8:30 a.m. to approximately 10 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on March 26 from approximately 10 a.m. until adjournment of March 27 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Peter M. Spooner, Executive Secretary, Heart, Lung, and Blood Research Review Committee A, Westwood Building, Room 554, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–7265, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; National Institutes of Health)

Dated: February 11, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–3605 Filed 2–19–87; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK 964–07–4213–15; F–21901–60[1]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to Doyon, Limited for approximately 172,408.65 acres. The lands are within the following townships:

Fairbanks Meridian, Alaska

T. 16 N., R. 21 W.

Kateel River Meridian, Alaska

T. 6 N., R. 18 E.
T. 6 N., R. 19 E.
T. 7 S., R. 19 E.
T. 6 S., R. 20 E.
T. 7 S., R. 20 E.
T. 5 S., R. 23 E.
T. 5 S., R. 24 E.
T. 6 S., R. 24 E.
T. 4 S., R. 25 E.
T. 5 S., R. 25 E.
T. 4 S., R. 26 E.
T. 5 S., R. 26 E.
T. 5 S., R. 29 E.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the FAIRBANKS DAILY NEWS-MINER. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until March 23, 1987 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Stan Bronczyk,

Chief, Branch of Doyon, Adjudication.

[FR Doc. 87–3558 Filed 2–19–87; 8:45 am]

BILLING CODE 4310–JA–M

[1] F–21901–61, F–21901–63, F–21902–01, F–21902–02, F–21903–77, F–21903–78, F–21903–79, F–21903–80, F–21903–81, F–21903–82, F–21903–83, F–21903–84, F–21903–85, F–21903–86, F–21905–52, F–21905–53, F21905–55, F–21906–42

[CA–930–07–4332–13; FES 87–3]

Availability of Final Environmental Impact Statement; Alturas Resource Area Wilderness Susanville District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of final Environmental Impact Statement (EIS) for the Alturas Resource Area Wilderness Proposals.

SUMMARY: This EIS assesses the environmental consequences of managing the Pit River Canyon and Tule Mountain Wilderness Study Areas (WSAs) as wilderness or non-wilderness. The alternatives assessed in this EIS include: (1) A "no wilderness/no action" alternative for each WSA, (2) an "all wilderness" alternative for each WSA, and (3) a "partial wilderness" alternative for the Pit River Canyon WSA.

The WSAs analyzed in the EIS, their total acreage, and the proposed actions for each are as follows:

Pit River Canyon WSA—11,575 acres; 6,640 acres suitable, 4,935 acres nonsuitable.

Tule Mountain WSA—16,950 acres; 16,950 acres nonsuitable.

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and from the President to Congress. The final decision on wilderness designation rests with Congress.

In any case, no final decision on these proposals can be made by the Secretary during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10b(2).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the Area Manager, Alturas Resource Area, 120 South Main Street, Alturas, CA 96101. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th and "C" Streets, NW., Washington, DC 20240

or

Bureau of Land Management, California State Office, 2800 Cottage Way, Room 2841, Sacramento, CA 95825

or

Bureau of Land Management, Susanville District Office, 805 Hall Street, Susanville, CA 96130

FOR FURTHER INFORMATION CONTACT: Richard J. Drehobl, Area Manager, Alturas Resource Area Office, Bureau of Land Management, 120 South Main Street, Alturas, CA 96101, (916) 233–4666.

Dated: February 11, 1987.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 87–3476 Filed 2–19–87; 8:45 am]

BILLING CODE 4310–40–M

[CA–930–4332–13]

Availability of Final Environmental Impact Statement; Caliente, Folsom, and Hollister Resource Areas Wilderness, Bakersfield District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of final Environmental Impact Statement (EIS) for the Central California Study Areas Wilderness Proposals.

SUMMARY: This EIS assesses the environmental consequences of managing seven Wilderness Study Areas (WSAs) as wilderness or non-wilderness. The alternatives assessed in this EIS include: (1) A "no wilderness/no action" alternative for each WSA, (2) an "all wilderness" alternative for each WSA, and (3) three "partial wilderness" alternatives for three of the WSAs.

The names of the seven WSAs analyzed in the EIS, their total acreage, and the proposed actions for each are as follows:

Merced River—12,835 acres: 12,835 acres nonsuitable.

Panoche Hills North—6,677 acres; 6,677 nonsuitable.

Panoche Hills South—11,267 acres; 11,267 acres nonsuitable.

Pinnacles Wilderness Contiguous—5,838 acres; 2,200 acres suitable, 3,638 acres nonsuitable.

Caliente Mountains—19,018 acres; 19,018 acres nonsuitable.

Piute Cypress—5,527 acres; 5,527 acres nonsuitable.

Owens Peak—22,560 acres; 14,960 acres suitable, 7,600 acres nonsuitable

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and from the President to Congress. The final decision on wilderness designation rests with Congress.

In any case, no final decision on these proposals can be made by the Secretary during the 30 days following the filling of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10b(2).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the Area Managers, Caliente Resource Area, 520 Butte Street, Bakersfield, CA 93305, Folsom Resource Area, 63 Natomas Street, Folsom, CA 95630, and Hollister Resource Area, P.O. Box 365, Hollister, CA 95024–0365. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th and "C" Streets, NW., Washington, DC 20420.

or

Bureau of Land Management, California State Office, 2800 Cottage Way, Room 2841, Sacramento, CA 95825

or

Bureau of Land Management, Bakersfield District Office, Federal Building, Room 302, 800 Truxtun Avenue, Bakersfield, CA 93301

FOR FURTHER INFORMATION CONTACT: Jim Jennings, Outdoor Recreation Planner, Bakersfield District Office, Federal Building, Room 302, 800 Truxtun Avenue, Bakersfield, CA 93301, (805) 861–4287.

Dated: February 11, 1987.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 87–3477 Filed 2–19–87; 8:45 am]

BILLING CODE 4310–40–M

[CA–930–07–4332–13; FES 87–6]

Availability of Final Environmental Impact Statement; North Central California Wilderness

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of final Environmental Impact Statement (EIS) on the Wilderness Recommendations for the North Central California Study Areas.

SUMMARY: This EIS assesses the environmental consequences of managing two Wilderness Study Areas (WSAs) as wilderness or non-wilderness. The alternative assessed included: (1) A "no wilderness/no action" alternative for each WSA, (2) an "all wilderness" alternative for each WSA, and (3) a "partial wilderness" alternative for the Timbered Crater WSA.

The names of the two WSAs analyzed in the EIS, their toal acreage, and the proposed actions for each are as follows:

Timbered Crater—18,690 acres; 0 acres suitable, 18,690 acres nonsuitable.

Lava—11,632 acres; 0 acres suitable, 11,632 acres nonsuitable.

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and from the President to Congress. The final decision on wilderness designation rests with Congress.

In any case, no final decision on these proposals can be made by the Secretary during the 30 days following the filing of mthis EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10b.(2).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the Area Managers, Alturas Resource Area, P.O. Box 771, Alturas, CA 96101. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 16th & C Street, NW., Washington, DC 20240

or

Bureau of Land Management, California State Office, 2800 Cottage Way, Room 2841, Sacramento, CA 95825

or

Bureau of Land Management, Susanville District Office, 705 Hall Street, Susanville, GA 96130.

FOR FURTHER INFORMATION CONTACT: Richard Drehobl, Area Manager, Alturas Resource Area, Post Office Box 771, Alturas, CA 96101, (916) 233–4666.

Dated: February 12, 1987.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 87–3478 Filed 2–19–87; 8:45 am]

BILLING CODE 4310–40–M

[UT–060–07–4331–13]

Availability of Draft Environmental Assessment

February 13, 1987.

AGENCY: Bureau of Land Management, Moab, Interior.

ACTION: Notice of availability of Draft Environmental Assessment.

SUMMARY: The Bureau of Land Management proposes to conduct stabilization of one historic cultural property in the Desolation Canyon Wilderness Study Area. The purpose of this action is to maintain the structural integrity of the site thereby protecting the scientific value while at the same time allowing for continued public (recreational) use.

Anyone who wishes to comment on the proposed action can obtain a copy of

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the draft environmental assessment from the Grand Resource Area Office, P.O. Box M, Moab, Utah 84532, phone (801) 259–8193. Comments should be received by April 30, 1987.

Kenneth V. Rhea,

Associate District Manager.

[FR Doc. 87–3583 Filed 2–19–87; 8:45 am]

BILLING CODE 4310-DQ-M

[NM-030-07-4322-14]

Las Cruces District Grazing Advisory Board; Meeting

AGENCY: Nureau of Land Management (BLM), Las Cruces District, New Mexico, Interior.

ACTION: Notice of meeting.

SUMMARY: The agenda topics for the meeting are an update on FY–87 range improvement projects; a discussion of FY–88 range improvement projects; and consideration of the White Sands Resource Area Range Management Program Summary.

DATE: The meeting will be held March 26, 1987, beginning at 10:00 a.m. It is anticipated that the meeting will adjourn by 3:30 p.m., but may run until 4:30 p.m., depending on the amount of discussion generated. Public comments will be heard by the Board at 1:15 p.m.

ADDRESS: The meeting will be held in the Conference Room of the BLM Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico.

FOR FURTHER INFORMATION CONTACT: H. James Fox, District Manager, Las Cruces District, Bureau of Land Management, 1800 Marquess, Las Cruces, New Mexico 88005, Phone: (505) 525–8228.

Robert Calkins,

Associate District Manager.

[FR Doc. 87–3591 Filed 2–19–87; 8:45 am]

BILLING CODE 4310-FB-M

Medford District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Bureau of Land Management, Medford District Advisory Council will be held March 17, 1987.

On March 17, the meeting will begin at 9:00 a.m., in the Oregon Room of the Bureau of Land Management Office at 3040 Biddle Road, Medford, Oregon. The agenda for the meeting will include:

A report from the Council's Protest & Appeal Study Committee, a Resource Management Plan staff presentation, the status of State/District organization study and a report on the District's progress in controlling competing vegetation as it relates to reforestation efforts.

The meeting of the Advisory Council is open to the public. Interested persons may make oral statements to the Council following conclusion of its other agenda items on March 17, or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504, by March 16, 1987. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

Summary minutes of the Council meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: February 11, 1987.

David A. Jones,

District Manager.

[FR Doc. 87–3597 Filed 2–19–87; 8:45 am]

BILLING CODE 4310-33-M

[CA-020-07-4332-02; CA-020-07-4321-02]

Susanville District Advisory Council; Meeting

In accordance with sec. 309 of Pub. L. 94–579 (Federal Land Policy and Management Act as amended), the Susanville District Advisory Council will meet at 10:00 a.m. on March 4, 1987 and at 8:00 a.m. on March 5, 1987 in the conference room of the Susanville District Office, 705 Hall Street, Susanville, California.

The meeting agenda will include such topics as a Statewide wilderness update, High Rock Canyon ACEC/Recreation Plan, Malacha Hydroelectric Power Project, range condition update, Lassen County/Nevada interstate water issues, Hog Ranch gold mine, wild horse experiment, gifts catalog, and the California Department of Fish and Game Cooperative Program, among others.

A public comment period is scheduled for 4:45 p.m. on March 4, 1987. All those individuals wishing to offer their input to the Council may do so at that time.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction within 30 days following the meeting.

Robert J. Sherve,

Acting District Manager.

[FR Doc. 87–3617 Filed 2–19–87 8:45 am]

BILLING CODE 4310-40-M

[OR-020-07-4333-10; GP7-123]

Oregon; Off-Highway Vehicle Designation

AGENCY: Bureau of Land Management, Interior.

ACTION: Burns District Office: Notice given relating to off-highway motorized vehicle use on public lands.

SUMMARY: Notice is hereby given relating to the use of off-highway vehicles on public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR Part 8340.

The following lands under the administration of the Bureau of Land Management are designated as closed, limited, under Interim Management Policy and Guidelines for Lands under Wilderness Review, or open to off-highway motor vehicle use.

The area affected by the designations is the Burns District, which includes 3,544,612 acres of public lands in the Three-Rivers and Andrews Resource Areas located in Grant and Harney Counties, Oregon.

These designations are a result of resource management decisions made in existing Management Framework Plans and analyzed in several grazing Environmental Impact Statements. These designations are published as final until such time that changes in resource management warrant modifications.

A. Closed Designations

Areas which are closed to off-highway motor vehicle use comprise 9,930 acres. One area, South Narrows (160 acres), has been designated closed prior to this Notice. The following areas are designated closed to motorized vehicle use to protect resource and scenic values:

	Acres
Malheur River—Blue Bucket Creek	2,080
Squaw Lake	6,500
Hat Butte	30
Windy Point	280
Devine Canyon	1,040

B. Limited Designations

1. Wilderness Study Areas (WSAs)

Wilderness Study Areas, (WSAs) comprising 829,995 acres will be managed in accordance with the nonimpairment criteria of Wilderness Interim Management Policy which allows off-highway vehicle use to continue in the manner and degree on ways and trails where such use was occurring on October 21, 1976. The only exception to this would be the designation of future cross-country travel in specific sand dune, play and snow areas providing that such use does not impair wilderness character.

The limited vehicle use designation will remain in effect until Congressional release of WSAs, or if actual or unforeseeable use levels cause the nonimpairment criteria to be violated, in which case more restrictive designations may be made.

The following Wilderness Study Areas are designated as limited to off-highway motorized vehicle use under Wilderness Interim Management Policy:

WSA Unit No.	WSA Name	Acres in Burns District
2-14	Malheur River/Blue Bucket Creek.	[1] 3,480
2-23L	Stonehouse	[2] 14,825
2-23M	Lower Stonehouse	8,090
2-72C	Sheepshead Mountains.	23,790
2-72D	Wildcat Canyon	8,730
2-72F	Heath Lake	20,520
2-72I	Table Mountain	40,592
2-72J	West Peak	8,535
2-73A	East Alvord	22,240
2-73H	Winter Range	15,440
2-74	Alvord Desert	97,165
2-77	Mahogany Ridge	27,940
2-78	Red Mountain	16,215
2-81	Pueblo Mountains	72,090
2-82	Rincon	100,445
2-83	Alvord Peak	16,825
2-84	Basque Hills	70,600
2-85F	High Steens	[3] 69,740
2-85G	South Fork Donner und Blitzen River.	[3] 37,555
2-85H	Home Creek	[3] 26,590
2-86E	Blitzen River	[3] 54,280
2-86F	Little Blitzen Gorge	[3] 9,400
2-87	Bridge Creek	[3] 14,545
2-98A	Pine Creek (Strawberry Mtns).	200
2-98C	Sheep Gulch (Strawberry Mtns).	720
2-98D	Indian Creek (Straw. Mtns).	208
2-103	Aldrich Mountain	9,395
1-146	Hawk Mountain	25,380
3-152	Willow Creek	2,140
3-153	Disaster Peak	3,740

[1] *WSA 2-14:* Additional 2,080 acres closed by prior management decision.

[2] *WSA 2-23L:* Additional 6,500 acres closed by prior management decision.

[3] The following WSAs have acreages within the established boundaries of the Steens Mountain vehicle management designation of September, 1980, which is consistent with Wilderness IMP: 2–85F, 57,650 acres; 2–85 G, 19,005 acres; 2–85H, 22 acres: 2–86E, ALL; 2–86F, ALL; 2–87, 8,585 acres.

2. Lands Other than Wilderness Study Areas (WSAs)

Lands other than WSAs which have some type of limited designation comprise 148,843 acres. These areas are limited, in most cases, to use of motorized vehicles on designated, existing roads and trails. However, other limitations may be imposed, such as use during certain time periods, certain types of vehicles, or certain off-highway vehicle activities.

One area, Steens Mountain Recreation Lands, including a parcel of land adjacent to the west boundary for a total of 164,912 acres, was previously designated in September, 1980, and limits use of motorized vehicles to designated, existing roads and trails. This area is not included in this Notice.

The following areas are designated limited to motorized vehicle use on designated, existing roads and trails:

	Acres
Steens Mountain Recreation Lands additional acreage from land exchanges	12,362
Little Blitzen Research Natural Area (RNA)/Area of Critical Environmental Concern (ACEC)	[1] 2,539
Little Wildhorse RNA/ACEC	[1] 240
South Fork Willow Creek RNA/ACEC	[1] 228
Rooster Comb RNA-ACEC	[1] 720
East Kiger Plateau RNA/ACEC	[1] 1,240
Silver Creek RNA/ACEC	640
Pueblo Foothills RNA/ACEC	2,520
Tum Tum Lake RNA/ACEC	1,522
Long Draw RNA/ACEC	440
Mickey Basin RNA/ACEC	560
Alvord Desert ACEC	16,700
Borax Lake ACEC	520
Alvord Peak ACEC	14,700
Picket Rim ACEC	4,000
South Steens ACEC	[2] 50,500
Diamond Craters Outstanding Natural Area/ACEC	16,656
Warm Springs Reservoir	23,811
Oregon Dept. of Fish & Wildlife hunting areas	49,652

[1] All acres are within boundaries of Steens Mountain Recreation Lands vehicle management designation of September 30, 1980.

[2] 45,740 acres are within the boundaries of Steens Mountain Recreation Lands vehicle management designation of September 30, 1980.

C. Open Designations

Areas which are designated open to off-highway motor vehicle use comprise 2,390,772 acres. Much of the district's land topography naturally limits off-highway motor vehicle use. Open designation was determined to be appropriate as off-highway use of motorized vehicles is essential to conduct the management and authorized utilization of resource values.

These designations become effective upon publication in the **Federal Register** and will remain in effect until rescinded or modified by the Burns District Manager. Information and maps of areas with open, closed and limited designations are available at the Bureau of Land Management, Burns District Office, 74 South Alvord, Burns, Oregon 97720, Telephone (503) 573–5241.

Dated: February 12, 1987.

Joshua L. Warburton,

District Manager.

[FR Doc. 87–3593 Filed 2–9–87; 8:45 am]

BILLING CODE 4310-33-M

[A-22531]

Receipt of Conveyance; Mineral Interest Application; Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of receipt of conveyance of mineral interest application.

SUMMARY: Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, James and Jane Sasser have applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 1 N., R. 7 E.,

Sec. 3, Lots 3 and 4, S½NW¼, SW¼.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register,** the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, December 24, 1986, whichever occurs first.

Dated: February 12, 1987.

Henri R. Bisson,

Acting District Manager.

[FR Doc. 87–3592 Filed 2–19–87; 8:45 am]

BILLING CODE 4310-32-M

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[CO-940-07-4220-10; C-34653]

Colorado; Proposed Withdrawal and Opportunity for Public Hearing

February 12, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior has filed application for withdrawal of 357.8 acres of public land to protect archeological ruins. This notice will segregate these sites for 2 years pending final determination on this application. These lands have been and will continue to be open to mineral leasing.

DATE: Comments or requests for hearing should be received on or before May 21, 1987.

ADDRESS: Correspondence should be addressed to the State Director, Colorado State Office, 2820 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 236-1768.

SUPPLEMENTARY INFORMATION: On February 6, 1987, a petition was approved allowing the Department of the Interior to make application for a protective withdrawal to allow for preservation and development of archeological values on the following described lands.

Sixth Principal Meridian

T. 2 N., R. 76 W.,
sec. 17, SE¼SE¼;
sec. 20, N½NE¼ and SW¼NE¼.
T. 2 N., R. 77 W.,
sec. 23, lot 8;
sec. 24, lot 4;
sec. 25, lots 1 and 2;
sec. 26, lot 1.

The areas described aggregate approximately 357.8 acres of public land in Grand County.

Effective on date of publication, these lands will be segregated from all forms of appropriation under the public laws, including the mining laws. The lands will remain open to mineral leasing, grazing, and such general uses as will not destroy archeological values. A right-of-way or a cooperative agreement will not provide adequate protection for the archeological values. Any mining, even casual use, could destroy these values. There are no suitable alternative sites as this is a unique site and protection must be afforded to these archeological ruins where they are located. Water will not be needed for this withdrawal. The segregative effect of this application will terminate 2 years from the date of publication unless final action is taken or the application is terminated prior to that date.

For a period of 90 days from the date of publication of this notice, persons who desire to make comments in connection with this action or persons who desire to be heard at a hearing on this matter should submit their comments or requests in writing to the Colorado State Director. An opportunity for public hearing is afforded in connection with this action pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976. If it is determined that a hearing should be held, notice of the time and place of such hearing will be published in the **Federal Register** at least 30 days prior to the hearing and would be scheduled and conducted in accordance with Bureau of Land Management Manual section 2351.16B.

The Department of the Interior's regulations provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demands for the land and its resources, assure that the area sought is the minimum essential to meet the needs of the applicant and provide for maximum concurrent utilization of the land and its resources. A report will be prepared for consideration by the Secretary of the Interior who will determine whether or not the land will be withdrawn and reserved as requested. The determination of the Secretary on this application will be published in the **Federal Register.**

Richard D. Tate,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-3584 Filed 2-19-87; 8:45 am]

BILLING CODE 4310-JB-M

[NM-940-07-4220-11; NM NM 12479]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture proposes that a 134.70-acre withdrawal for the Canon Administrative Site continue for an additional 20 years. The land would remain closed to location and entry under the mining laws but has been and would remain open to leasing under the mineral leasing laws.

DATE: Comments should be received by May 21, 1987.

ADDRESS: Comments should be sent to: New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504-1449.

FOR FURTHER INFORMATION CONTACT: Kay Thomas, BLM, New Mexcio State Office, 505-988-6589.

The Forest Service, U.S. Department of Agriculture proposes that the existing land withdrawal made by Public Land Order No. 5485 of February 5, 1975, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Carson National Forest

Canon Administrative Site

T. 25 N., R. 13 E.,
sec. 15, W½W½ of lot 5, W½W½S W¼SW¼;
sec. 16, lots 4, 5, 7 and 8.

The area described contains 134.70 acres in Taos County.

The purpose of the withdrawal is to protect the Canon Administrative Site within the Carson National Forest, Taos Ranger District. The site consists of extensive permanent facilities and improvements. The withdrawal segregates the land from location and entry under the mining laws, but not from leasing under the mineral leasing laws. No change in the segregative effect or use of the land is proposed by this action. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: February 11, 1987.

Sarah E. Wisely,

Acting State Director.

[FR Doc. 87-3580 Filed 2-19-87; 8:45 am]

BILLING CODE 4310-FB-M

[NM-940-07-4220-11; NM NM 039510]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture proposes that a 40.00-acre withdrawal for the Coal Mine Canyon Picnic Ground continue for an additional 18 years. The land would remain closed to location and entry under the mining laws but would be opened to surface entry, and has been and would remain open to leasing under the mineral leasing laws.

DATE: Comments should be received by May 21, 1987.

ADDRESS: Comments should be sent to: New Mexico State Director, P. O. Box 1449, Santa Fe, NM 87504-1449.

FOR FURTHER INFORMATION CONTACT: Kay Thomas, BLM, New Mexico State Office, 505-988-6589.

The Forest Service, U.S. Department of Agriculture proposes that the existing land withdrawal made by Public Land Order No. 1890 of June 26, 1959, be continued for a period of 18 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Cibola National Forest

Coal Mine Canyon Picnic Ground

T. 12 N., R. 8 W.,
Sec. 29, SW¼SE¼.

The area described contains 40.00 acres in Cibola County.

The purpose of the withdrawal is to protect the Coal Mine Canyon Picnic Ground within the Cibola National Forest, Mount Taylor Ranger District. The area has been developed for public recreational use and is heavily utilized for this purpose. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal, except to open the land to such forms of disposition that may by law be made of National Forest lands other than under the mining laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: February 9, 1987.

Sarah Wisely,

Acting State Director.

[FR Doc. 87-3581 Filed 2-19-87; 8:45 am]

BILLING CODE 4310-FB-M

[NM-940-07-4220-11; NM NM 46840]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture proposes that a 153.53-acre withdrawal for the Sandia Ranger Station Administrative Site continue for an additional 20 years. The land would remain closed to location and entry under the mining laws but would be opened to surface entry and has been and would remain open to leasing under the mineral leasing laws.

DATE: Comments should be received by May 21, 1987.

ADDRESS: Comments should be sent to: New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504-1449.

FOR FURTHER INFORMATION CONTACT: Kay Thomas, BLM, New Mexico State Office, 505-988-6589.

The Forest Service, U.S. Department of Agriculture proposes that the existing land withdrawal made by Secretarial Order of September 30, 1908, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Cibola National Forest

Sandia Ranger Station Administrative Site (formerly Cedro Administrative Site)

T. 10 N., R. 5 E.,
Sec. 22, lot 25;
Sec. 23, lot 18, S½ lot 19;
Sec. 26, lots 3, 4.

The area described contains 153.53 acres in Bernalillo County.

The purpose of the withdrawal is to protect the Sandia Ranger Station Administrative Site within the Cibola National Forest, Sandia Ranger District. The site consists of extensive permanent facilities and improvements. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal, except to open the land to such forms of disposition that may by law be made of National Forest lands other than under the mining laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: February 9, 1987.

Sarah E. Wisley,

Acting State Director.

[FR Doc. 87-3582 Filed 2-19-87; 8:45 am]

BILLING CODE 4310-FB-M

Bureau of Reclamation

Cancellation of Meetings of the Colorado River Floodway Task Force

SUMMARY: This notice cancels the scheduled open meetings of the Colorado River Floodway Task Force which were published as follows in 52 FR 4391. The meetings will be rescheduled and published in the **Federal Register** at a later date.

Open meetings were to be held as described below:

Date: February 26 and 27, 1987.
Time: 10 a.m.
Address: Holiday Inn, 245 London Bridge Road, Lake Havasu City, Arizona 86403 (602) 855-4071.

FOR FURTHER INFORMATION CONTACT: Robert Brose, Bureau of Reclamation, Nevada Highway and Park Street, P.O.

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Box 427, Boulder City, Nevada 89005 (702) 293–8520.

Dated: February 18, 1987.

C. Dale Duvall,

Commissioner.

[FR Doc. 87–3787 Filed 2–19–87; 9:40 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On August 4, 1986, a notice was published in the **Federal Register** (Vol. 51, FR No. 149) that an application had been filed with the Fish and Wildlife Service by Robert Brownell, USFWS, San Simeon, CA, (PRT 672624) to inject a miniature transponder under the skin of 450 California sea otters previously authorized for capture under other research permits, thus providing a permanent means of identifying the animals.

Notice is hereby given that on September 17, 1986, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Endangered Species Act of 1972 (16 U.S.C. 1539), the Fish and Wildlife Service issued a permit subject to certain conditions set forth therein.

The permit is available for public inspection during normal business hours at the Fish and Wildlife Service's Office in Room 601 Glebe Road, Arlington, Virginia 22201.

Note—Due to an oversight, this notice was not published within 10 days of issuance of the permit as required by 50 CFR 18.33(c).

Dated: February 11, 1987.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87–3661 Filed 2–19–87; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Outer Continental Shelf Advisory Board; Gulf of Mexico Regional Technical Working Group; Meeting

Notice of this meeting is issued in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463).

Name: Gulf of Mexico Regional Technical Working Group
Date: March 23–25, 1987
Place: Gulf of Mexico OCS Regional Office, Rooms 111–115, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123
Time: 8:30 a.m. to 5:00 p.m.

The Regional Technical Working Group (RTWG) membership consists of representatives from Federal Agencies, the coastal States of Alabama, Florida, Louisiana, Mississippi, and Texas, the petroleum industry, and other private interests. The Gulf of Mexico RTWG is one of six such Committees that advises the Director of the Minerals Management Service on technical matters of regional concern regarding offshore prelease and postlease sale activities.

The agenda of the meeting is as follows:

March 23—Gulf of Mexico Spring Ternary Studies Meeting
March 24–25—Regional Technical Working Group Business Meeting

Agenda items will include the following subjects: State Co-chair Elections, Current Regional Activities, Coastal Protection Task Force, Rigs to Reef, Platform Removal, Draft FY 89 Studies Plan, Data Management, and Public Comment.

This meeting is open to the public. Individuals wishing to make oral presentations to the Committee concerning agenda items should contact Eileen P. Angelico of the Gulf of Mexico OCS Regional Office at (504) 736–2959 by March 6, 1987. Written statements should be submitted by the same date to the Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123. A taped cassette transcript and complete summary minutes of the Business Meeting will be available for public inspection in the Office of the Regional Director at the above address not later than 60 days after the meeting.

Dated: February 11, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region, Minerals Management Service.

[FR Doc. 87–3595 Filed 2–19–87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Corpus Christi Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Corpus Christi Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 8407, Block 315, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on February 6, 1987. Comments must be received on or before March 9, 1987, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resource Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Services makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 11, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–3589 Filed 2–19–87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Corpus Christi Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Corpus Christi Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 8406, Block 314, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on February 6, 1987. Comments must be received on or before March 9, 1987, or 15 days after the Coastal Managment Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionaly, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Managment Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties become effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 11, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–3594 Filed 2–19–87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; ODECO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil & Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 8461, Block 59, Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on February 11, 1987. Comments must be received on or before March 9, 1987, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Mondy through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 13, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–3590 Filed 2–19–87; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30975]

Colorado Springs and Eastern Railroad Co.—Acquisition and Operation—Colorado and Eastern Railroad Co.; Exemption

Colorado Springs & Eastern Railroad Company has filed a notice of exemption to acquire and operate certain properties of the Colorado and Eastern Railroad Company. The properties consist of: the line and terminal railroad property of the former

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Chicago, Rock Island and Pacific Railroad Company at Colorado Springs, CO (3.5 miles; milepost 599.4 to milepost 602.7). Any comments must be filed with the Commission and served on Alan P. Sherbrooke; Garvey, Schubert & Barer, Tenth Floor, 1011 Western Avenue, Seattle, WA, telephone (206) 464–3939.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: February 10, 1987.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–3630 Filed 2–19–87; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30973]

Denver Terminal Railroad Co.; Acquisition and Operation; Colorado and Eastern Railroad Co.; Exemption

Denver Terminal Railroad Company has filed a notice of exemption to acquire and operate certain properties of the Colorado and Eastern Railroad Company. The properties consist of: the former Denver Union Stockyards terminal railroad property at Denver, CO (3.3 miles) (milepost 0.0 to milepost 0.8); and the line and terminal railroad propety of the former Chicago, Rock Island and Pacific Railroad Company at Denver (8.0 miles) (milepost 0.72 to milespost 3.95). Any comments must be filed with the Commission and served on Alan P. Sherbrooke; Garvey, Schubert & Barer, Tenth Floor, 1011 Western Avenue, Seattle, WA 98104, telephone (206) 464–3939.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: February 10, 1987.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–3631 Filed 2–9–87; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30979]

Great Northern Transportation Co.; Acquisition Exemption—Nonconnecting Railroads; Exemption

Great Northern Transportation Company (GNTC) has filed a notice of exemption under 49 CFR 1180.4(g) to acquire control of nonconnecting railroads under the provisions of 49 CFR 1180.2(d).

GNTC has entered into an agreement with Colorado and Eastern Railroad Company (C&E), which (a) is controlled through stock ownership by G.W. Flanders, and (b) owns various rail properties in Colorado, Iowa, and Oklahoma. Flanders, in turn, owns 100 percent of the capital stock of Fore River Railway (Fore). Fore leases approximately three miles of railroad line in Quincy, MA, from Fore River Railroad Company, a subsidiary of General Dynamics Corporation.

The agreement between GNTC and G&E provides that: (1) Mr. Flanders will exchange all of his shares of C&E's stock for shares of GNTC's stock; (2) C&E's railroad properties will be conveyed to five newly-created railroads[1] in exchange for all shares of stock of each of these railroads; and (3) C&E then will transfer the stock of these five railroads to GNTC, in the form of a dividend. In addition, Flanders will exchange all of his shares of Fore's stock for additional shares of GNTC's stock. Accordingly, C&E, Fore, and the five new railroads will be wholly-owned subsidiaries of GNTC. All of the railroads will operate independently, as separate corporate entities. Under this structuring, GNTC expects the railroads to achieve greater operating efficiencies than were afforded under the single ownership of the involved rail properties by C&E.

GNTC indicates that: (1) The lines of the involved railroads do not connect; (2) its acquisition of control (a) of C&E; (b) of the five new railroads, and (c) of Fore is not part of a series of anticipated transactions that could lead to a connection with each other or any other railroad in the same corporate family; and (3) the acquisition does not involve a Class I carrier. Therefore, this transaction involves the acquisition of nonconnecting carriers, and is exempt from the prior review requirements of 49 U.S.C. 11343. *See* CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979). This will satisfy the requirements of 49 U.S.C. 10505(g)(2).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: February 10, 1987.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc 87–3632 Filed 2–19–87; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30976]

Iowa Southern Railroad Co.; Acquisition and Operation—Colorado and Eastern Railroad Co.; Exemption

Iowa Southern Railroad Company has filed a notice of exemption to acquire and operate certain properties of the Colorado and Eastern Railroad Company. The properties consist of: (a) The terminal railroad property of the former Chicago, Milwaukee, St. Paul and Pacific Railroad Company at Council Bluffs, IA (22 Miles; milepost 0.0 to milepost 3.0); and (b) the line and yards of the former Norfolk and Western Terminal Railroad between Council Bluffs and Blanchard, IA (72 miles; milepost 344.71 to milepost 410.86). Any comments must be filed with the Commission and served on Alan P. Sherbrooke; Garvey, Schubert & Barer, Tenth Floor, 1011 Western Avenue, Seattle, WA 98104, telephone (206) 464–3939.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: February 10, 1987.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–3633 Filed 2–19–87; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30987]

Minnesota Commercial Railway Co.; Acquisition and Operation Exemption—Minnesota Transfer Railway Co.; Exemption

Minnesota Commercial Railway Company (MCR) has filed a notice of exemption to acquire by long-term lease and operate all the lines of the Minnesota Transfer Railway Company (MTR)[1] as follows:

From a connection with the Soo Line Railroad Company's (Soo), St. Paul-Minneapolis main line at Merriam Park (milepost 0) in St. Paul, MN, northerly to a junction between Long Lake and Rush Lake, MN, at which point the main track turns northwesterly and the Twin Cities Arsenal spur turns northeasterly. The main track continues northwesterly, terminating just east of University Avenue NE (Minnesota Hwy. 47) (milepost 13–F), and the Arsenal spur continues northeasterly terminating on the Arsenal grounds a short distance from the intersection (milepost 13N) of Highways I–35W, U.S. 8, and U.S. 10. A total of 13 miles of main running track and approximately 50 miles of auxiliary yard and industrial side tracks are being acquired by MCR.[2]

This transaction will also involve the issuance of securities by MCR, which will be a Class III carrier. The issuance of these securities is an exempt transaction under 49 CFR 1175.1.

Any comments must be filed with the Commission and served on Robert H. Wheeler, Isham, Lincoln & Beale, Three First National Plaza, Suite 5200, Chicago, IL 60602.[3]

[1] On December 11, 1986, MTR changed its corporate name to MT Properties, Inc., but has continued rail operations as MTR.

[2] Under 49 U.S.C. 10907(b)(1), the acquisition of "spur, industrial, team, switching, or side track . . . located entirely in one State" is exempted from the Commission's prior approval authority. The exempt trackage is part of a unified transaction and is properly included within this notice of exemption.

[3] The Railway Labor Executives' Association (RLEA), joined by the United Transportation Union, filed an unsupported request for labor protection claiming that this transaction is subject to the mandatory labor protection provisions of 49 U.S.C. 11347. Since this transaction involves an exemption from 49 U.S.C. 10901, RLEA's request is rejected. *See Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901*, I.C.C. 2d 810 (1985).

The Brotherhood of Maintenance of Way Employees (BMWE) also filed an unsupported protest alleging that the transaction constitutes an abandonment and a sale of a rail line between two carriers. Under the class exemption procedures of 49 CFR 1150.31 allegations of false or misleading information may only be raised in petitions to revoke the exemption. Therefore BMWE's pleading will be treated as a petition for revocation and considered, along with any other petitions for revocation that may be filed, in a separate decision.

void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: February 10, 1987.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–3634 Filed 2–19–87; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30978]

Oklahoma Central Railroad Co.; Acquisition and Operation—Colorado and Eastern Railroad Company

Oklahoma Central Railroad Company has filed a notice of exemption to acquire and operate certain properties of the Colorado and Eastern Railroad Company. The properties consist of: the yards and facilities of the former Chicago, Rock Island and Pacific Railroad Company at El Reno, OK (6.0 miles, milepost 0.0 to milepost 0.8). Any comments must be filed with the Commission and served on Alan P. Sherbrooke; Garvey, Schubert & Barer, Tenth Floor, 1011 Western Avenue, Seattle, WA 98104, telephone (206) 464–3939.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: February 13, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–3635 Filed 2–19–87; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30977]

Ottumwa Terminal Railroad Co.; Acquisition and Operation—Colorado and Eastern Railroad Co.; Exemption

Ottumwa Terminal Railroad Company has filed a notice of exemption to acquire and operate certain properties of the Colorado and Eastern Railroad Company. The properties consist of: (a) The "city track" and railroad property of the former Chicago, Milwaukee, St. Paul and Pacific Railroad Company at Ottumwa, IA (4.3 miles; milepost 0.0 to milepost 2.3); and (b) the property of the former Norfolk & Western Terminal Railroad at Ottumwa, IA (3.4 miles; milepost 276.92 to milepost 278.81). Any comments must be filed with the Commission and served on Alan P. Sherbrooke; Garvey, Schubert & Barer, Tenth Floor, 1011 Western Avenue, Seattle, WA 98104, telephone (206) 464–3939.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: February 10, 1987.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–3636 Filed 2–19–87; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; International Paper Co., Inc.

In accordance with the policy of the Department of Justice, 28 CFR 50.,7, notice is hereby given that on January 27, 1987, a proposed consent decree in *United States v. International Paper Company, Inc.*, Civil Action No. CV87–0176, was lodged with the United States District Court for the Western District of Louisiana. This consent decree settles a lawsuit filed January 27, 1987, pursuant to section 309 of the Clean Water Act ("the Act"), 33 U.S.C. 1319, for injunctive relief and for assessment of a civil penalty against International Paper Company, Inc. ("International Paper"). The complaint alleged, among other things, that International Paper made unauthorized discharges of pollutants to navigable waters from a leaking pipeline at its paper plant in Bastrop, Louisiana. The complaint alleged that these

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unauthorized discharges constituted violations of section 301 of the Act, 33 U.S.C. 1311.

Under the terms of the proposed consent decree, International Paper will construct a new pipeline to replace the pipeline that leaked. The construction is to be completed by January 10, 1987. The decree directs International Paper to minimize unpermitted discharges from the existing pipeline during construction and imposes effluent limits that shall apply if International Paper must bypass the existing pipeline during tie-in of the new pipeline. The proposed consent decree also calls for stipulated penalties against the International Paper for failure to meet any of the deadlines set by the decree or failure to meet any of the effluent limitations set by the decree. Also, the proposed decree calls for International Paper to pay a civil penalty of $170,000 with respect to the violations of the Clean Water Act alleged in the complaint.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States v. International Paper Company, Inc.*, D.J. Ref. 90-5-1-1-2810.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region VI

Contact: Paul Wendel, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1201 Elm Street, Dallas, Texas 75270, (211) 767-6552

United States Attorney's Office

Contact: John P. Lydick, Assistant United States Attorney, Western District of Louisiana, Room 3B12, Federal Building, Shreveport, Louisiana 71101, (318) 226-5277.

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check for copying costs in the amount of $1.20 payable to Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-3618 Filed 2-19-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-18,458]

Alpha Consulting, Inc.; Pintex Petroleum Corp.; Boulder, CO; Revised Determination on Reconsideration

On December 18, 1986, the Department issued an Affirmative Determination Regarding Application for Reconsideration for former workers of Alpha Consulting, Inc., and Pintex Petroleum Corporation, Boulder, Colorado.

The petitioner's application for administrative reconsideration states that Alpha Consulting and Pintex Petroleum produced crude oil which was directly affected by increased imports of crude oil.

Findings and reconsideration show that Pintex Petroleum produced crude oil and natural gas and marketed these products to other firms. Production and sales of crude oil and natural gas ceased by March 31, 1986 when both companies closed and all employees were laid off. The major share of Alpha Consulting, Inc., business was with Pintex Petroleum Corporation. Both companies had a common ownership.

U.S. imports of crude oil increased absolutely and relative to domestic shipments in the first half of 1986 compared with the same period in 1985. The ratio of imports to domestic crude oil shipments was approximately forty percent in the first half of 1986. Imports of natural gas liquids and liquefied refinery gases increased relative to domestic shipments in the first half of 1986 compared with the same period in 1985.

A Department of Labor survey revealed that the major customer of Pintex Petroleum increased purchases of imported crude oil in 1986 compared to the same period in 1985 while reducing purchases from Pintex Petroleum.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of crude oil produced at Alpha Consulting, Inc., and Pintex Petroleum, Corporation, Boulder, Colorado, contributed importantly to the decline in production and sales and to the total or partial separation of former workers at Alpha Consulting, Inc., and Pintex Petroleum Corporation, Boulder Colorado. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

"All workers of Alpha Consulting, Inc., and Pintex Petroleum Corporation, Boulder, Colorado engaged in employment related to the production of crude oil and natural gas who became totally or partially separated from employment on or after January 1, 1986 and before June 1, 1986, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC. this 11th day of February 1987.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-3669 Filed 2-19-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17,552]

Carr-Lowrey Glass Co.; a Division of Anchor Hocking Corp. Baltimore, MD; Negative Determination Regarding Application for Reconsideration

By an application dated January 13, 1987, the American Flint Glass Workers Union (AFGWU) requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers of Carr-Lowrey Glass Company, Division of Anchor Hocking Corporation, Baltimore, Maryland. The denial notice was published in the **Federal Register** on January 9, 1987 (52 FR 872).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union states that there was no stabilization or increase in employment at Carr-Lowrey in Baltimore from January through September 1986 as stated in the Department's denial notice.

In order for a worker group to be certified eligible to apply for adjustment assistance, all three of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. The Department reviewed its findings in the investigative case file for the January through September 1986 period mentioned in the union's application. Those findings show that the company not only had increased average employment and hours but had increased sales and production in the first nine months of 1986 compared to the same period in 1985. Further, company sales and production did not decrease for the full year of 1986 compared to 1985. Company officials reported that potential sales and production have been hurt because of a shift to plastic packaging and a decline in the toiletries market.

The ratio of U.S. imports of glass containers to domestic shipments has been around the 2 percent level since 1983. U.S. domestic shipments of glass containers increased in every year since 1983.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 11th day of February 1987.

Stephen A. Wander,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-3670 Filed 2-19-87; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and, Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and

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fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determination, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Maryland:
MD87-2 (Jan. 2, 1987) ..... p. 418.
MD87-15 (Jan. 2, 1987) ..... p. 450.
Pennsylvania:
PA87-1 (Jan. 2, 1987) ..... pp. 844-846.
PA87-4 (Jan. 2, 1987) ..... pp. 874-882.

Volume II

Illinois:
IL87-1 (Jan. 2, 1987) ..... p. 69.
IL87-2 (Jan. 2, 1987) ..... p. 96, pp. 101, 111.
Indiana:
IN87-5 (Jan. 2, 1987) ..... p. 292.
IN87-6 (Jan. 2, 1987) ..... pp. 302-318.
Kansas:
KS87-9 (Jan. 2, 1987) ..... p. 364.
Missouri:
MO87-1 (Jan. 2, 1987) ..... pp. 580-584, pp. 586-591, pp. 593-595.
Ohio:
OH87-29 (Jan. 2, 1987) ..... pp. 817-819, pp. 821-822, pp. 828-829, pp. 833-846, pp. 848-851.
Oklahoma:
OK87-13 (Jan. 2, 1987) ..... p. 893.
OK87-14 (Jan. 2, 1987) ..... p. 903

Volume III

Alaska:
AK87-1 (Jan. 2, 1987) ..... pp. 3, 7-8.
Hawaii:
HI87-1 (Jan. 2, 1987) ..... p. 130.
Idaho:
ID87-3 (Jan. 2, 1987) ..... p. 158
Utah:
UT87-3 (Jan. 2, 1987) ..... p. 325.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 13th day of February 1987.

Gordon L. Claucherty

Acting Assistant Administrator.

[FR Doc. 87-3515 Filed 2-19-87; 8:45 am]

BILLING CODE 4510-27-M

Occupational Safety and Health Administration

Washington State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of State standards that are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letter dated September 26, 1986, from G. David Hutchins, Assistant Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard amendment comparable to the Federal standard amendment to 29 CFR 1910.1029, Coke Oven Emissions, as published in the **Federal Register** (50 FR 37352) on September 31, 1985. The Federal amendment deleted certain terms from the standard to conform to a United States Court of Appeals decision regarding the development of new technology and the requirements for quantitative fit testing of certain respirators. The State standards amendment adopts the Federal deletions and renumbers two subsections using the State's codification system. The State standards amendment is contained in WAC 296-62-20009 and WAC 296-62-20011. It was adopted on July 25, 1986, and became effective on August 25, 1986, pursuant to RCW 34.04.040(2), 49.17.040, 49.17.050, Public Meetings Act RCW 42.30, Administrative Procedures Act RCW 34.04, and the State Register Act RCW 34.08 as ordered and transmitted under Washington Administrative Order No. 86-28.

2. *Decision.* The above State standard amendment has been reviewed and compared with the relevant Federal standard amendment and OSHA has determined that the State standard amendment is at least as effective as the comparable Federal standard amendment, as required by section 18(c)(2) of the Act. OSHA has also determined that the differences between the State and Federal standards amendments are minimal and that the standards are thus substantially identical. OSHA therefore approves this amended standard; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Department of Labor and Industries, General Administration Building, Olympia, Washington 98501; and the Office of State Programs, Room N-3476, 200 Constitution Avenue NW., Washington DC 20210.

4. *Public participation.* Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are substantially identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective February 20, 1987.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Seattle, Washington this 1st day of December, 1986.

James W. Lake,

Regional Administrator.

[FR Doc. 87-3671 Filed 2-19-87; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment on the Arts; Dance Advisory Panel Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Challenge Section) to the National Council on the Arts will be held on March 9, 1987, from 9:00 a.m.-5:30 p.m. in room MO-7 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National

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Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

February 13, 1987.

[FR Doc. 87–3585 Filed 2–19–87; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Dance Advisory Panel Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Overview Meeting) to the National Council on the Arts will be held on March 10–11, 1987, from 9:00 a.m.–5:30 p.m. in room MO–7 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 10, 1987, from 9:00 a.m.–5:30 p.m. and on March 11, 1987, from 10:00 a.m.–5:30 p.m. on a space available basis. The topics for discussion will include policy issues.

The remaining sessions of this meeting on March 11, 1987, from 9:00–10:00 a.m., are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

February 13, 1987.

[FR Doc. 87–3586 Filed 2–19–87; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Inter-Arts Advisory Panel Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Artists Colonies/Services Section) to the National Council on the Arts will be held on March 11–12, 1987, from 9:00 a.m.—6:00 p.m., and March 13, 1987, from 9:00 a.m.—3:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 13, 1987, from 9:00 a.m.—12:00 noon on a space available basis for a discussion of policy issues.

The remaining sessions of this meeting on March 11–12, 1987, from 9:00 a.m.—6:00 p.m., and on March 13, 1987, from 1:00 p.m.—3:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 110 Pennsylvania Avenue, NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

John H. Clark,

Director, Office of Council and Panel Operations National Endowment for the Arts.

February 13, 1987.

[FR Doc. 87–3587 Filed 2–19–87; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Inter-Arts Advisory Panel Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Folk Art Section) to the National Council on the Arts will be held on March 11, 1987, from 9:00 a.m.—6:30 p.m., and March 12, 1987, from 9:00 a.m.—10:30 p.m., and March 13, 1987, from 9:00 a.m.—6:00 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 13, 1987, from 1:30 a.m.—3:00 p.m. on a space available basis. The topics for discussion will include policy issues.

The remaining sessions of this meeting on March 11, 1987, from 9:00 a.m.—6:30 p.m., on March 12, 1987, from 9:00 a.m.—10:30 p.m., and on March 13, 1987, from 9:00 a.m.—12:30 p.m. and 3:00—6:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

John H. Clark,

Director, Office of Council and Panel Operations National Endowment for the Arts.

February 13, 1987.

[FR Doc. 87–3588–Filed 2–19–87; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–245]

Northeast Nuclear Energy Co., Millstone Nuclear Power Station, Unit No. 1; Issuance of Facility Operating License No. DPR–21

The U.S. Nuclear Regulatory Commission (the Commission) has issued Facility Operating License No. DPR–21 to Northeast Nuclear Energy Company, acting for itself and as agent for the Connecticut Light and Power Company and Western Massachusetts Electric Company, authorizing operation of the Millstone Nuclear Power Station, Unit 1 (Millstone Unit 1) at steady-state reactor core power levels not in excess of 2011 megawatts (thermal), in accordance with the provisions of the license and the technical specifications.

Millstone Unit 1 is a boiling water reactor located in Waterford, Connecticut. The Millstone Unit 1 reactor has operated since October 7, 1970, under Provisional Operating License No. DPR–21. Facility Operating License No. DPR–21 supersedes Provisional Operating License No. DPR–21 in its entirety.

Notice of Consideration of Conversion of Provisional Operating License to Full-Term Operating License and Opportunity for Hearing was published in the **Federal Register** on November 28, 1972 (37 FR 25187). The full-term operating license was not issued previously pending completion of the reviews under the Systematic Evaluation Program (NUREG–0824, February 1983), and by the Advisory Committee on Reactor Safeguards. The Final Environmental Statement (FES) connected with the conversion to a full-term operating license was issued in June 1973. A Notice of Availability of the FES was published in the **Federal Register** on June 4, 1973 (38 FR 14699). Because the FES was issued a number of years ago, the staff performed an environmental assessment to determine if a FES supplement was necessary. This assessment dated December 17, 1984, concluded that a FES supplement was not necessary. This conclusion was noticed in the **Federal Register** on December 26, 1984 (49 FR 50131).

The application for the full-term operating license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR Chapter I, as set forth in the license.

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement, since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

Facility Operating License DPR–21 is effective as of its date of issuance and shall expire May 19, 2006.

For further information concerning this action see: (1) The licensee's application for a full-term operating license dated September 1, 1972, (2) the Final Environmental Statement (June 1973), (3) the Commission's Environmental Assessment, dated December 17, 1984, (4) Facility Operating License No. DPR–21 with Appendix A, Technical Specifications, and (5) the Safety Evaluation Report (NUREG–1143) dated October 1985, and Supplement 1 to this report, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

A copy of Facility Operating License DPR–21 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report (NUREG–1143) and Supplement 1 to this report may be purchased through the U.S. Government Printing Office by calling (202) 275–2060, or by writing to the U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. A copy is available for inspection and/or copying for a fee in the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Dated at Bethesda, Maryland this 31st day of October 1986.

Frank J. Miraglia,

Director, Division of PWR Licensing—B.

[FR Doc. 87–3638 Filed 2–19–87; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD ACCOUNTING PRINCIPLES BOARD

Establishment of Cost Accounting Principles for Rail Carriers

AGENCY: Railroad Accounting Principles Board.

ACTION: Request for comments on proposed principles and recommendations, and other matters discussed in exposure draft.

SUMMARY: The Railroad Accounting Principles Board (RAPB) is soliciting comments on an exposure draft containing proposed principles and recommendations to the Interstate Commerce Commission (ICC). The proposed principles and recommendations address railroad accounting and cost information issues relevant to regulatory proceedings in which cost determinations are used in ICC decisions. The RAPB developed the exposure draft as part of its continuing effort to obtain public input into the principles and recommendations the RAPB should issue. By this notice, the RAPB invites interested parties to participate in this process by commenting on the principles, recommendations, and other matters presented in the exposure draft.

DATE: Written comments must be received on or before April 20, 1987.

ADDRESS: Comments should be sent to: Railroad Accounting Principles Board, P.O. Box 50608, Washington, DC 20004.

To receive this exposure draft and for further information contact: Charles R. Yager, Executive Director, (202) 275–1635.

SUPPLEMENTARY INFORMATION: The Railroad Accounting Principles Board has the statutory responsibility to establish, for rail carriers providing transportation subject to the jurisdiction of the Interstate Commerce Commission, principles governing the determination of economically accurate railroad costs associated with the movements of goods. In developing these principles, the Board must take into account, among other things, the specific regulatory purposes for which railroad costs are required, the degree of accuracy of the required cost information, the benefits and costs of requiring the data, and the means of maintaining confidentiality, of railroad information.

The RAPB will establish principles and report to Congress in 1987. After the principles are established, the Interstate Commerce Commission is responsible for promulgating the rules necessary to implement and enforce the principles. For a more detailed explanation of the history, status, and responsibilities of the RAPB, see 50 FR 7153 (Feb. 20, 1985).

The RAPB prepared the exposure draft to solicit public comment on proposed principles, recommendations to the ICC, and other matters relevant to cost determinations made in regulatory proceedings. The exposure draft is comprised of two volumes. Volume 1 contains an executive summary, introduction, and chapters on the principles, the effects of the principles on specific regulatory applications and general-purpose costing systems, and the effects of the principles on existing ICC practices. Volume 2 is a detailed report with a separate chapter on each of the eight proposed principles and six specific regulatory applications which will be most affected by the principles. Volume 2 also contains four chapters on various matters relating to general-purpose costing systems. The chapters in Volume 2, contain detailed discussions of the proposed principles, their application to specific regulatory determinations, alternatives the RAPB considered, and the rationale for the principles and recommendations proposed in the exposure draft.

By notices in the **Federal Register**, the RAPB invited interested parties to suggest the issues the RAPB should address (50 FR 7153, Feb. 20, 1985) and to comment on a discussion memorandum presenting issues and questions relevant to regulatory measurement and costing principles, among other things (51 FR 4051, Jan. 31, 1986). The exposure draft is being mailed directly to parties who responded to either notice or are otherwise known to the RAPB to be

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interested in commenting on the exposure draft. This notice invites other interested parties to submit written comments on the exposure draft. Further instructions are contained in the exposure draft.

Dated: February 13, 1987.

Charles A. Bowsher,

Chairman, Railroad Accounting Principles Board.

[FR Doc. 87-3652 Filed 2-19-87; 8:45 am]

BILLING CODE 1610-01-M

Establishment of Cost Accounting Principles for Rail Carriers

AGENCY: Railroad Accounting Principles Board.

ACTION: Public Hearing.

SUMMARY: The Railroad Accounting Principles Board (RAPB) will conduct a public hearing on April 30, 1987. The subject of the hearing will be the proposed principles and recommendations and other matters contained in the exposure draft which the RAPB will make available to the public for comment on February 20, 1987.

DATE: Interested parties who wish to testify at the hearing shall notify the RAPB by March 20, 1987. A brief summary not to exceed five pages of the testimony to be given shall be provided to the RAPB by April 15, 1987.

ADDRESS: Interested parties shall send a summary of their testimony to: Railroad Accounting Principles Board, P.O. Box 50608, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Charles R. Yager, Executive Director, (202) 275-1635.

SUPPLEMENTARY INFORMATION: The RAPB has invited interested parties to submit written comments on the proposed principles, recommendations to the Interstate Commerce commission (ICC), and other matters discussed in an exposure draft. The proposed principles and recommendations address railroad accounting and cost information issues relevant to regulatory proceedings in which cost determinations are used in ICC decisions. Additional information on the exposure draft is provided by notice this date in the **Federal Register** in the RAPB's "Request for comments on proposed principles and recommendations, and other matters discussed in exposure draft."

Interested parties who wish to testify at the hearing shall notify the RAPB by March 20, 1987. Notification may be by mail or by telephone. Those notifying the RAPB of their intention to testify will be mailed information on where and at what time the hearing will convene. The hearing will be open to the public. Other parties wishing to attend may obtain the hearing time and location by calling the RAPB on (202) 275-1635 after March 20, 1987.

Any written comments parties submit on the exposure draft will be included in the record of the RAPB's deliberations. Therefore, parties testifying at the hearing need not submit a detailed statement for the hearing record although they are free to do so. A summary not to exceed five pages of the testimony to be given at the hearing shall be provided to the RAPB by April 15, 1987. Because hearing time is limited, the RAPB will notify those testifying of the time allotted to them. The RAPB reserves the right to hold a second day of hearings on May 1, 1987, and to schedule parties for that date if needed to accommodate the number of people testifying.

Dated: February 13, 1987.

Charles A. Bowsher,

Chairman, Railroad Accounting Principles Board.

[FR Doc. 87-3653 Filed 2-19-87; 8:45 am]

BILLING CODE 1610-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24085; File No. SR-Amex-86-31]

Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 22, 1986, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The Amex proposes to amend Article IX of the Exchange Constitution to increase the amount of the Gratuity Fund death benefit from $75,000 to $100,000. The Exchange's Gratuity Fund provides a lump sum amount to the family of a regular member upon the member's death. Each member of the Exchange contributes a fixed amount upon becoming a member and is assessed a similar amount each time a member dies. Member assessments to the fund are currently $115. Under the proposal that assessment would be increased to $152.

The Amex states that the proposed rule change is consistent with section 6(b) of the Act in that it is intended to provide financial assistance to the families of deceased Exchange members.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) and subparagraph (e) of Rule 19b-4 under the Act because it establishes or changes a due, fee or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. Copies of the submission, all subsequent amendments, all written communication relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR-Amex-86-31 and should be submitted by March 13, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 20, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-3615 Filed 2-19-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

February 12, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

British Airways PLC
Interim American Depositary Shares will represent ten presently outstanding Ordinary Shares of 25p (File No. 7-9674)
Asarco Inc.
$2.25 Cumulative Convertible Exchangeable Preferred
$9.00 Par Value (File No. 7-9675)
Southland Corporation
$4.00 Cumulative Convertible Exchangeable Preferred A Stock, $2.00 Par Value (File No. 7-9676)
Sun Distributors L.P.
1 Class A Limited Partnership Interest and 1 Class B Limited Partnership Interest, No Par Value (File No. 7-9677)
Musicland and Group, Inc.
Common Stock, $.10 Par Value (File No. 7-9678)
Porta Systems, Corporation
Common Stock, $.01 Par Value (File No. 7-9679)
Spectra-Physics (Delaware), Inc.
Capital Stock, $.20 Par Value (File No. 7-9680)
Enterra Corporation (Delaware)
Common Stock, $1.00 Par Value (File No. 7-9681)
Lukens, Inc. (Delaware)
Common Capital Stock, No Par Value (File No. 7-9682)
Crystal Oil Company
Common Stock, $.01 Par Value (File No. 7-9683)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 6, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-3614 Filed 2-14-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24100; File No. SR-MSE-87-2]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange Relating to MSE Rules to Accommodate the Trading on the MSE of NASDAQ/NMS Securities Pursuant to Being Listed on the Exchange or the Granting of Unlisted Trading Privileges Under Section 12(f) of the Securities Exchange Act of 1934

Pursuant to section 19(b)(1), of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 10, 1987, the Midwest Stock Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A are proposed changes to the MSE Rules to accommodate the trading on the MSE of NASDAQ/NMS Securities pursuant to being listed on the Exchange or the granting of unlisted trading privileges under section 12(f) of the Securities Exchange Act of 1934 ("Act") as amended. This filing is being made in connection with the submission by the MSE and the NASD of a joint reporting plan governing the collection, consolidation and dissemination of quotation and transaction information for NASDAQ/NMS Securities traded on the MSE ("Plan").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule changes is to adapt the MSE Rules to accommodate the trading of NASDAQ/NMS Securities on the MSE on a listed or unlisted trading privilege basis. The majority of the proposed rule changes result from modifications necessitated by providing telephonic access between NASD market makers and Exchange specialists to accommodate trading between them in NASDAQ/NMS Securities, and conforming MSE rules to accommodate MSE's participation in the above referenced Plan.

The following is a listing of the substantive rule changes along with a statement of the purpose in respect thereto:

1. Article XX, Rule 3. "Hours of Dealing" The purpose of this change is to make it clear that orders transmitted from the Exchange Floor in NASDAQ/NMS Securities are subject to the presently existing prescribed time parameters.

2. Article XX, Rule 3. "Interpretations and Policies" The Purpose of this rule change is to provide, where appropriate, the ability to effect transactions at times other than those prescribed in Article XX, Rule 3 as presently exists in respect to Dual Trading System issues.

3. Article XX, Rule 5. "Security Transaction" "Interpretations and Policies .01." The purpose of this rule change is to clearly indicate that transactions in NASDAQ/NMS issues effected with NASDAQ System market makers are not subject to the limitations specified in Article XX, Rule 5 which prohibit transactions on the Floor with non-members.

4. Article XX, Rule 8. "Recognized Quotations" The purpose of this rule change is to indicate that quotes from other market centers displayed on the Exchange Floor, have no standing in the trading crowd. This exception currently exists in respect to quotations displayed from other market centers in the Intermarket Trading System.

5. Article XX, Rule 8. "Interpretations and Policies" .01 The purpose of this rule change is to specifically exempt MSE specialists from being required to input their quote to the quotation system in situations where the processor has imposed a quotation halt in respect to NASDAQ/NMS Securities.

6. Article XX, Rule 31. "Acting for or on Behalf of Another" "Interpretations and Policies" The purpose of this rule change is to exempt telephone orders received on the Floor from NASDAQ market makers from the requirement of having to be in writing.

7. Article XX, Rule 33. "Authority of Committee on Floor Procedure". The purpose of this rule change is to indicate that the Committee's authority shall extend to cover the oversite and

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supervision of transactions made on the Exchange Floor between MSE members and NASDAQ System market makers.

8. Article XX, Rule 34 "Guaranteed Execution System" The purpose of the proposed changes to this rule is to extend in certain circumstances, the guarantees currently afforded Dual Trading System Issues to include NASDAQ/NMS Securities.

A. Paragraphs 1, 2, and 3—The purpose of the proposed changes is to clearly indicate that agency market orders in NASDAQ/NMS Securities will be guaranteed similar fills as Dual Trading System issues but that limit order protection vis-a-vis other markets, will not be provided until such time as greater experience is gained in the trading of NASDAQ/NMS Securities.

B. Paragraph 4. The purpose of this change is to specify that pre-opening orders and orders on re-openings (in trading halt situations) will be filled at the Exchange opening and re-opening price respectively.

C. "Interpretation and Policies". The purpose of this change is to distinguish between all automated agency market orders up to 1099 shares in NASDAQ/NMS Securities placed with a specialist, which are entitled to receive a guarantee at the best bid or offer, from manually placed agency market orders placed with a specialist by a Floor member, which are not entitled to receive a guarantee, other than the first one placed, at any given price. This change is designed to decrease the likelihood of professional orders receiving the same guarantees afforded to customer orders.

9. Article XX, Rule 40, "Trading in NASDAQ/NMS Securities". The purpose of this rule change is to implement the trading of NASDAQ/NMS Securities pursuant to the requirements set forth in Securities Exchange Act Release Nos. 34–22412 and 34–22413 (September 16, 1985) and the joint reporting Plan submitted pursuant thereto between the MSE and the NASD which requires telephonic access be provided between NASDAQ System market makers and Exchange specialists in the same issues.

10. Article XXX, Rule, "Interpretations and Policies" .01 I(6)(c) Mandatory Posting" The purpose of this change is to exclude from this rule, specialists registered in NASDAQ/NMS Securities until such time as greater experience is gained in evaluating specialist performance in these issues.

11. Article XXXI, Rule 5, "Interpretations and Policies" The purpose of this change is to specify that the specialist will also function as the Odd-Lot Dealer. This conforms the MSE rules to current over-the-counter practice.

12. Section C (1)(a) of the Blue Book Rules (Rules and Practices for Trading on the Midwest Trading Floor). The purpose of this change is to indicate that transactions in NASDAQ/NMS Securities will be treated as local issues with the exception that under certain circumstances where unusual variations exist, as frequently occurs today in the over-the-counter market, the transaction may be completed without having first received approval from a member of the Committee on Floor Procedure.

13. The purposes of the remainder of the rule changes are general in nature and are needed to facilitate the trading of NASDAQ/NMS Securities pursuant to Article XX, Rule 40.

The proposed rule changes are consistent with section 6(b)(5) in that they are designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and removing impediments to and perfecting the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were solicited and received from a sub-committee made up of floor brokers and specialists of the Floor Procedure Committee, which included the co-specialists who will be trading NASDAQ/NMS Securities.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 13, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 13, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–3658 Filed 2–19–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24093; File No. SR–MSRB–86–16]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

The Municipal Securities Rulemaking Board ("MSRB"), Suite 800, 1818 N Street, NW., Washington, DC 20036–2491, submitted on December 31, 1986, copies of a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend MSRB rule G–12(1) on interest payment claim procedures.

The proposed rule change adds to the interest payment claim procedures described in MSRB Rule G–12(1). Specifically, the proposal adds procedures for inter-dealer claims on securities that are delivered by book-entry movement. The proposed procedures enable a dealer to make an interest payment claim against another dealer based on a transaction with a contractual settlement date before, and settlement by book-entry on or after, the interest payment date of the security. A dealer receiving such an interest payment claim would be required under Rule G–12(1) to respond within ten business days (20 business days if the claim relates to an interest payment scheduled to be made more than 60 days prior to the date of the claim).

Notice of the proposed rule change was given in Securities Exchange Act Release No. 23953 (52 FR 889, January 9, 1987). No comments were received regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and, in particular, the requirements of section 15B and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 12, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–3616 Filed 2–19–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24102; File No. SR–PCC–86–10]

Self-Regulatory Organization; Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Clearing Corporation Amending Its Securities Collection Division Agreement

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 2, 1987, the Pacific Clearing Corporation ("PCC") filed with the Commission the proposed rule change described below. The Commission is publishing this notice to solicit comments on the proposed rule change.

PCC's proposed rule change amends its current Securities Collection Division ("SCD") Agreement. The amended Agreement includes a change in terminology from SCD "Participant" to SCD "User". PCC states that "User" would be a more appropriate term as not all SCD users are necessarily PCC members (participants).

PCC's proposed rule change also adds two new sections to the Agreement. One section provides for the delivery and acknowledgment of a copy of the SCD User Procedures. The other additional section provides PCC with protection against liabilities for the collection and delivery industry practice currently characteristic only in New York.

Furthermore, PCC states that the proposed rule change is consistent with section 17A(b)(3)(F) of the Act in that the proposal promotes the prompt and accurate clearance and settlement of securities transactions, assures the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the change if it appears to the Commission that it is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth St., NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth St., NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of PCC. All submissions should refer to File No. SR–PCC–86–10 and should be submitted by March 13, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 13, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–3659 Filed 2–19–87; 8:45 am]

BILLING CODE 8010–01–M

[File No. 22–16374]

Application and Opportunity for Hearing; Associates Corporation of North America

February 12, 1987.

Notice is hereby given that Associates Corporation of North America (the "Company") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (hereinafter sometimes referred to as the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Harris Trust and Savings Bank (the "Bank") under indentures dated as of January 1, 1980 (the "1980 Indenture"), as supplmented as of November 15, 1981 (the "1981 Supplement") and June 15, 1981 (the "1981 Indenture") between the Company and Bank which were heretofore qualified under the Act, and the trusteeship of the Bank as successor trustee under an indenture dated as of June 15, 1982 (as supplemented as of December 1, 1986) between the Company and The First National Bank of Chicago, ("First Chicago"), as trustee (the "1982 Indenture"), which was heretofore qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as successor trustee under the 1982 Indenture.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicing interest, either eliminate such conflicting interest or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Company alleges

(1) Pursuant to the 1980 Indenture, the Company has outstanding approximately (i) $97,500,000 aggregate principal amount of its 12⅛ percent Senior Debentures Due February 1, 2000 (the "12⅛ percent Senior Debentures"), and (ii) $100,000,000 aggregate principal amount of 14½ percent Senior Notes Due February 1, 1990, issued under the 1980 Indenture as supplemented by the 1981 Supplement (the "14½ percent Senior Notes"). The 12⅛ percent Senior Debentures and 14½ percent Senior

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Notes were registered under the Securities Act of 1933 (the "1933 Act"), and the 1980 Indenture was qualified under the Act. The Bank is currently acting as trustee under the 1980 Indenture and 1981 Supplement thereto.

(2) Pursuant to the 1981 Indenture, the Company has outstanding approximately $150,000,000 aggregate principal amount of its 6 percent Senior Debentures Due June 15, 2001 (the "6 percent Senior Debentures"). The 6 percent Senior Debentures were registered under the 1933 Act, and the 1981 Indenture was qualified under the Act. The Bank is also trustee under the 1981 Indenture.

(3) Pursuant to the 1982 Indenture, the Company has outstanding approximately (i) $8,490,000 aggregate principal amount of its One-Year Extendible Senior Notes Due August 1, 1987 (the "one-Year Extendible Senior Notes"), (ii) $125,000,000 aggregate principal amount of its 12⅜ percent Senior Notes Due November 1, 1989 (the "12⅜ percent Senior Notes"), (iii) $100,000,000 aggregate principal amount of its 12.55 percent Senior Notes Due by May 15, 1988 (the "12.55 percent Senior Notes"), (iv) $100,000,000 aggregate principal amount of its 11.85 percent Senior Notes Due February 1, 1989 (the "11.85 percent Senior Notes"), (v) $100,000,000 aggregate principal amount of its 11¾ percent Senior Notes Due August 15, 1988 (the "11¾ percent Senior Notes"), and (vi) $50,000,000 aggregate principal amount its 11.45 percent Senior Notes Due November 15, 1992 (the "11.45 percent Senior Notes"). The 1982 Indenture was qualified under the Act.

(4) After receipt of written notice to the Company by First Chicago of its intention to resign as trustee under the 1982 Indenture, the Company requested that the Bank accept appointment as successor trustee under the 1982 Indenture. The Bank has accepted the appointment effective as of December 29, 1986, subject to the lapse of 90 days from December 29, 1986 without a favorable determination by the Commission as requested in this Application or the earlier issuance of an unfavorable determination by the Commission in this matter.

(5) The Company's obligations with respect to the 12⅛ percent Senior Debentures, the 14½ percent Senior Notes, the 6 percent Senior Debentures, the One-year Extendible Senior Notes, the 12⅜ percent Senior Notes, the 12.55 percent Senior Notes, the 11.85 percent Senior Notes, the 11¾ percent Senior Notes, and the 11.45 percent Senior Notes are in each case wholly unsecured and rank *pari passu* with each other.

(6) There is no default under the 1980 Indenture, the 1980 Indenture as supplemented by the 1981 Supplement, the 1981 Indenture or the 1982 Indenture.

(7) Such differences as exist among the Indentures referred to herein and the respective obligations of the Company as principal obligor under the 1980 Indenture, the 1980 Indenture as supplemented by the 1981 Supplement, the 1981 Indenture and the 1982 Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as successor trustee under the 1982 Indenture.

The Company has waived notice of hearing, hearing on the issues raised by this application, and all rights to specify procedures under the Rules of Practice of the Commission with respect to this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to the application on file in the Offices of the Commission's Public Reference Section, File Number 22–16374, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person may, not later than March 9, 1987, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission. For the Commission, by the Divison of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–3612 Filed 2–19–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24317]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

February 12, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 9, 1987, to the Secretary, Securities and Exchange commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Mississippi Power Company (70–7204)

Mississippi Power Company ("Mississippi"), a subsidiary of The Southern Company, a registered holding company, has filed a post-effective amendment to its declaration pursuant to sections 6(a), 7 and 12(d) of the Act and Rules 42 and 50 thereunder.

By order dated May 21, 1986 (HCAR No. 24100), Mississippi was authorized to issue $35 million of first mortgage bonds and jurisdiction was reserved with regard to the issuance and sale of up to $40 million of first mortgage bonds and $10 million of preferred stock pending completion of the record. Mississippi now requests that such authorization with regard to the issuance and sale of perferred stock be increased by an additional $10 million, which additional amount would increase the remaining authority on preferred stock to up to $20 million.

Columbia Gas System, Inc., et al. (70–7339)

The Columbia Gas System, Inc., ("Columbia"), a registered holding company, and its wholly owned subsidiaries, Columbia Gas System Service Corporation, Columbia Hydrocarbon Corporation, Columbia Coal Gasification Corporation and The Inland Gas Company, Inc., all of 20 Montchanin Road, Wilmington, Delaware 19807, Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, Columbia Gas of Kentucky, Inc., Columbia Gas of Maryland, Inc., Columbia Gas of Ohio, Inc., Columbia Gas of Pennsylvania, Inc., Columbia Gas of Virginia, Inc., all of 200 Civic Center Drive, Columbus, Ohio 43215, Columbia Gulf Transmission Company, 3805 West Alabama Avenue, Houston, Texas 77027, Columbia Gas Development of Canada, Ltd., 639 5th Avenue, SW., Calgary, Alberta, Canada TSP OM9, Columbia Gas Development Corporation, Commonwealth Gas Pipeline Corporation and Commonwealth Gas Services, Inc., all of 800 Moorefield Park Drive, Richmond, Virginia 23236 (collectively "Subsidiaries"), have filed a joint application-declaration pursuant to section 6(b), 9, 10 and 12(f) and Rule 43 thereunder.

Columbia proposes, during the years 1987 and 1988, to refund certain of the Subsidiaries' installment promissory notes, up to an aggregate principal amount of $334,979,486, with interest rates from 10.2% to 15.6%, for a like principal amount of lower cost, unsecured installment promissory notes to be issued by the Subsidiaries to Columbia at an interest rate to approximate that of the corresponding Columbia debenture issue.

Columbus and Southern Ohio Electric Company (70–7351)

Columbus and Southern Ohio Electric Company ("C&SOE"), 215 North Front Street, Columbus, Ohio 43215, a subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a declaration pursuant to sections 6(a) and 7 of the Act and Rule 50 thereunder.

C&SOE proposes to issue and sell, in one or more transactions from time-to-time through December 31, 1987, up to $100 million aggregate principal amount of its (i) first mortgage bonds ("Bonds"), in one or more series, each with a maturity of not less than 5 years and not more than 30 years, through a competitive bid basis, unless C&SOE later seeks and receives authorization for an exception from competitive bidding and/or (ii) unsecured notes ("Notes") pursuant to a proposed term loan agreement ("Agreement"), such Notes to mature in not less than 2 years nor more than 10 years and to bear interest at a rate not grater than 13 percent per annum. If C&SOE determines to issue the Bonds in more than one series, it may seek to sell one or more series on a competitive basis and one or more series on a negotiated basis. Any Notes issued pursuant to the Agreement would be issued in lieu of a portion of the Bonds.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–3613 Filed 2–19–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 33–6690, File No. S7–3–87]

Securities Uniformity; Annual Conference on Uniformity of Securities Laws

AGENCY: Securities and Exchange Commission.

ACTION: Publication of release announcing issues to be considered at conference concerning uniformity of securities laws, announcing a hearing and requesting written comments.

SUMMARY: In conjunction with a Conference to be held on April 7–8, 1987, the Commission and the North American Securities Administrators Association, Inc. today announced public hearings and published a request for comments on the proposed agenda for the Conference. This inquiry is intended to carry out the policies and purposes of section 19(c) of the Securities Act of 1933, adopted as part of the Small Business Investment Incentive Act of 1980, to increase uniformity in matters concerning state and federal regulation of securities, maximize the effectiveness of securities regulations in promoting investor protection, and reduce burdens on capital formation through increased cooperation between the Commission and the state securities regulatory authorities.

DATES: The Conference will be held on April 7–8, 1987. A public hearing will be held on March 16, 1987 commencing at 10:00 a.m. All witnesses are requested to submit 15 copies of their prepared statements no later than March 4, 1987. Written comments not prepared in connection with an oral presentation must be received on or before March 20, 1987 in order to be considered by the conference participants.

ADDRESSES: The public hearing will be held at the headquarters of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549, Room 1C–40, on March 16, 1987. All witnesses should notify Richard K. Wulff or John D. Reynolds in writing of their desire to testify as soon as possible and submit 15 copies of their prepared statements by March 4, 1987. Written submissions not prepared in connection with an oral presentation should be submitted in triplicate by March 20, 1987 to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments should refer to File No. S7–3–87. All written submissions, including the written texts submitted in connection with oral presentations and the transcripts of such oral presentations, will be available for public inspection at the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff or John D. Reynolds, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC. 20549, (202) 272–2644.

SUPPLEMENTARY INFORMATION:

I. Discussion

A dual system of federal-state securities regulation has existed since the adoption of a federal regulatory structure in the Securities Act of 1933 (the "Securities Act").[1] Issuers attempting to raise capital through securities offerings, as well as participants in the secondary trading markets, are responsible for complying with federal securities laws as well as all applicable state regulations. In recent years it has been recognized that there is a need to increase uniformity between federal and state regulatory systems and to improve cooperation among those regulatory bodies so that capital formation can be made easier while investor protections are retained.

The importance of facilitating greater uniformity in securities regulation was endorsed by Congress with the enactment of section 19(c) of the Securities Act in the Small Business Investment Incentive Act of 1980 (the "Investment Incentive Act").[2] Section 19(c) authorizes the Commission to cooperate with any association of state securities regulators which can assist in carrying out the declared policy and purpose of section 19(c). The declared policy of the section is that there should be greater federal and state cooperation in securities matters, including: (1) Maximum effectiveness of regulation; (2) maximum uniformity in federal and state standards; (3) minimum

[1] 15 U.S.C. 77a et seq.

[2] Pub. L. 96–77 (October 21, 1980).

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interference with the business of capital formation; and (4) a substantial reduction in costs and paperwork to diminish the burdens of raising investment capital, particularly by small business, and to diminish the costs of the administration of the government programs involved. In order to establish methods to accomplish these goals, the Commission is required to conduct an annual conference. The first such conference was held in September 1983, the second in February 1985 and the third in March 1986.

II. 1987 Conference

The Commission and the North American Securities Administrators Association, Inc. ("NASAA") [3] are planning the 1987 Conference on Federal-State Securities Regulation (the "Conference") to be held April 7–8, 1987 in Baltimore, Maryland. At the Conference, representatives from the Commission and NASAA will meet to discuss methods of enhancing cooperation in securities matters in order to improve the efficiency and effectiveness of both federal and state securities regulation. Attendance will be limited to representatives from the Commission and NASAA in an effort to maximize the ability of Commission and state representatives to engage in frank and uninhibited discussion.

Representatives from the Commission and NASAA currently are in the process of formulating an agenda for the Conference. As part of that process, the public, securities associations, self-regulatory organizations, agencies, and private organizations are invited to participate through the submission of written comments or by making oral presentations to a panel of Commission and NASAA representatives at a public hearing on March 16, 1987 which will later be considered by the Conference attendees, on the issues set forth below. In addition, comment is requested on other appropriate subjects that commentators wish to be included in the Conference agenda.

III. Tentative Agenda and Request for Comments

The tentative agenda for the Conference consists of the following topics in the areas of corporation finance, investment management, market regulation and oversight and enforcement.

(1) Corporation Finance Issues

a. Uniform Limited Offering Exemption

Congress specifically acknowledged the need for a uniform limited offering exemption in enacting section 19(c) of the Securities Act and authorized the Commission to cooperate with NASAA in its development. Working with the states, the Commission developed Regulation D, the federal regulation governing exempt limited offerings. Regulation D was adopted by the Commission in March 1982. On September 21, 1983 NASAA endorsed a revised form of the Uniform Limited Offering Exemption ("ULOE") that is intended to coordinate with Regulation D.

ULOE provides a uniform exemption from state registration for certain issuers. An issuer raising capital in a state which has adopted ULOE may take advantage of both a state registration exemption and a federal exemption under Regulation D. To date, more than half of the states have adopted some form of ULOE; both the Commission and NASAA continue to make a concerted effort toward the universal adoption of ULOE. During 1986, the Commission, with the cooperation of NASAA, adopted several changes to Form D, the notice used to report offerings pursuant to Regulation D.[4] At its 1987 annual Spring meeting, NASAA plans to consider adoption of Form D revisions as part of ULOE. Recently, the Commission also proposed for comment several additional revisions to Regulation D.[5] Again, the cooperation of representatives of NASAA in connection with these proposals is acknowledged.

The Commission and NASAA hope to achieve the goal of uniformity envisioned by the statute. Comment is requested on approaches to achieve this goal and on other issues relating to uniformity of exemptions.

b. Disclosure Policy and Standards

The Commission has an ongoing program of considering, reviewing and revising its policies with regard to the most appropriate methods of ensuring the disclosure of material information to the public. Coordination with the states has been beneficial. For example, such cooperation was helpful in the development of guidelines for real estate offerings.

Pursuant to this program, the Commission in 1986 amended several rules to increase the total assets threshold for registration and reporting under the Securities Exchange Act of 1934 (the "Exchange Act") to $5 million.[6] As a result, issuers are now required to register classes of their equity securities pursuant to section 12(g) of the Exchange Act only when such securities are held of record by at least 500 security holders and the issuer has at least $5 million in total assets. At the time these rule amendments were adopted, the Commission also issued a separate release seeking information and suggestions as to other appropriate criteria for entry into and exit from the Exchange Act reporting system which would complement or substitute for the present size criteria of 500 shareholders and $5 million total assets.[7] Since certain states exempt offerings by issuers which are in the Exchange Act reporting system, comment is specifically requested on whether changes in the present criteria should be adopted, and if so, which approaches would further both federal and state regulatory objectives.

Commentators are invited to discuss other areas where federal-state cooperation could be of particular significance as well as any ways in which such federal-state coordination could be improved.

c. Takeover Regulations

The continuing high level of corporate tender offers and takeover techniques makes discussion of state and federal issues relating to takeovers appropriate at the Conference. A federal response, if any, to the various anti-takeover devices currently in use requires an evaluation and balancing of competing federal and state interests. For example, among the various anti-takeover measures now in use are recapitalization plans which provide for the authorization and issuance of a second class of common stock, typically with enhanced voting rights and reduced rights to receive dividends. In many instances, the effect of these recapitalization proposals is to assure the voting control of a principal shareholder or group of shareholders. This topic is presently before the Commission in the context of the New York Stock Exchange's proposal to amend its rules to permit the listing of common stock with unequal voting rights under certain circumstances.[8]

[3] NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico, the Canadian provinces and territories, and Mexico.

[4] Release No. 33-6663 (October 2, 1986) [51 FR 36385].

[5] Release No. 33-6683 (January 16, 1987) [51 FR 3015].

[6] Release No. 33-6652 34-23406, 39-2022 (July 8, 1986) [51 FR 25360].

[7] Release No. 34-23407 (July 9, 1986) [51 FR 25369].

[8] Release No. 34-23724 (October 17, 1986) [51 FR 37529].

Under section 19(b) of the Exchange Act, the Commission must approve or disapprove any proposed rule change made by a national securities exchange. The Commission's decision on this issue requires evaluation and consideration of the states' interests and federal-state comity.

The public is invited to comment on the appropriate role of state and federal regulators in the context of these and other corporate takeover topics.

d. Multinational Securities Offerings

In light of the increasing internationalization of securities markets the Commission published a release in 1985 soliciting comments on methods of harmonizing disclosure and distribution practices for multinational offerings by non-governmental issuers.[9] The comments received on that release will be discussed, particularly those relating to the impact on U.S. firms if a reciprocal approach to foreign offerings is adopted and whether there should be minimum standards with such reciprocal approach and if so, what they should be.

Each of the fifty states has securities statutes which must be considered when attempting to institute multinational offerings. Comment is specifically requested on ways of assuring input from the states regarding multinational offerings. Comments generally about the dual federal/state regulation of foreign securities offerings are also requested.

e. Other Rulemaking Initiatives

Participants at the Conference will also consider rulemaking proposals of the Commission initiated over the past year, including proposed revisions to Rule 174 [10] and proposed Rule 430A.[11]

(2) Investment Management Issues

a. Investment Companies

In 1984 and 1985 NASAA adopted resolutions supporting more uniform federal and state regulation of mutual funds and unit investment trusts. The resolutions encourage states to eliminate expense limitations and adopt uniform, streamlined approaches to investment company registration and renewal procedures. Since the resolutions were adopted, state expense limitations have been substantially eliminated and significant progress toward uniformity of registration and renewal procedures has been made. The conferees will consider what additional efforts should be made to encourage state to implement the NASAA resolutions and whether federal and state substantive investment company regulation also can be made more uniform. Commentators are invited to address these matters and any other issues that should be addressed by NASAA and the Commission in the next year with respect to regulation of open and closed-end management investment companies and unit investment trusts.

b. Investment Advisers

(i) *Possible Federal Registration Exemptions.* In March, 1986 the Commission authorized its staff to seek NASAA's views on possible rulemaking to exempt certain smaller investment advisers from most federal regulation, other than antifraud prohibitions, if the advisers were registered in all states in which they do business. The purpose of the exemptions would be to place primary regulatory responsibility for certain smaller advisers with states that actively regulate advisers. Although it authorized the staff to discuss specific drafts of possible exemptive rules, the Commission has reached no conclusions about the desirability or feasibility, or appropriate conditions, of any such rules.

The drafts under discussion would determine eligibility for the exemption by reference to the size of the adviser's business, whether the adviser has custody of clients' funds or securities, and whether the adviser is registered as an adviser in all states in which it does business. The staff has given NASAA data from Form ADV, the uniform federal and state adviser registration form, on the estimated number of registrants that might be exempted from federal registration under the draft rules. The conferees will continue their discussions of such possible exemptions. It is anticipated that this spring NASAA will provide its views on the exemptions to the Commission.

(ii) *Central Registration Depository.* In October, 1985, NASAA and the Commission adopted a uniform adviser registration form for advisers registering with the Commission and those states that register advisers.

At that time NASAA and the Commission indicated that a clearing house procedure, such as the Central Registration Depository ("CRD") developed by NASAA and the National Association of Securities Dealers, Inc. ("NASD"), would be considered to process adviser registration filings. The CRD is a computerized system used to register securities industry personnel with the NASD and the states. The conferees will discuss how a central registration system for advisers can be developed, whether it should be developed in connection with the CRD or the Commission's Edgar system, and what cost-savings for advisers and regulatory benefits would result from a central registration processing system. In addition, conferees will discuss whether cost-effective means can be developed for Commission participation in any central processing system using CRD. As discussed below, participants in the sessions on Market Regulation issues also will discuss the use of CRD in connection with broker-dealer registrations and other related matters.

(iii) *Inspections.* The conferees also expect to discuss ongoing efforts of the Commission and the states to increase the level of routine surveillance over the advisory industry through encouragement of state initiatives to inspect advisers and greater cooperation and coordination between the states and the Commission's regional offices in identifying advisers for inspection and sharing inspection findings. A joint Commission-state inspection and training program was instituted in 1984 to coordinate and share information, increase inspection coverage and reduce duplication. To date this program has provided training to more than 50 inspectors from 20 states.

(iv) *Investment Adviser Self-regulatory Organizations.* In other areas for which the Commission has responsibility, self-regulatory organizations (e.g. the NASD and securities exchanges) have been delegated regulatory functions. It has been suggested that in the investment advisory and financial planning fields, one or more self-regulatory organizations ("SROs") would be useful. These organizations might assume responsibility for establishing and administering proficiency standards, conducting routine inspections and disciplining members. In March, 1986 NASAA adopted a resolution supporting the establishment of one or more investment adviser SROs provided any SRO was responsive and accountable to the states and adequately funded. Conferees will continue to explore the concept of self-regulatory organizations for investment advisers and financial planners.

(v) *Financial Planner Study.* The Commission is conducting a study of investment advisers and financial planners at the request of the House of Representatives Subcommittee on Telecommunications, Consumer Protection and Finance. The subcommittee requested that the study (i) address client demographics and

[9] Release No. 33-6568 (February 28, 1985) [50 FR 9281].

[10] Release No. 33-6682 (December 18, 1986) [51 FR 46874].

[11] Release No. 33-6672 (October 27, 1986) [51 FR 37868].

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planner-adviser characteristics including compensation arrangements, (ii) address the extent to which advisers adn planners are subject to regulatory oversight, (iii) address the nature, frequency and findings of regulatory inspections, and (iv) evaluate the pilot program of the NASD to become a self-regulatory organization for the investment advisory activities of its members and their associated persons.

As part of the study, the Commission's staff is conducting a series of special examinations of financial planners. The examinations focus on whether the systems of regulaton provided by the securities laws are effective in addressing conflicts of interest faced by planners that sell products to clients and provide for adequate supervision over the activities of financial planners that also are registered representatives of broker-dealers. the Commission staff intends to seek NASAA's views on matters relating to the study and to invite state securities personnel to participate in any special examinations conducted in their states. The conferees will discuss how federal-state cooperation can assist the Commission in conducting the study.

(3) Market Regulation and Oversight Issues

a. Government Securities Regulation

In October, 1986, Congress passed the Government Securities Act of 1986. This Act, adopted in response to the failure of a number of unregistered government securities dealers in recent years that resulted in substantial losses to investors, is intended to create a limited regulatory structure for government securities broker-dealers. currently unregistered government securities broker-dealers will be required to register with the Commission; registered broker-dealers and financial institutions, such as banks and savings and loan associations, that act as government securities brokers or dealers will be required to file notice of their activities with their existing regulators. In addition, the Secretary of the Treasury has been given reulemaking authority regarding dealers in the areas such as financial responsibility, recordkeeping, and reporting. The Commission is preparing rules governing the registration of unregistered government securities dealers; in addition, the Commission and NASAA are preparing revisions of Form BD to provide for the registration of these dealers and the provision of notice of government securities activities by currently-registered broker-dealers on Form BD. Commentators are asked to address the appropriate means of implementing the Government Securities Act and any additional actions that should be taken on the national and state level as to ensure the integrity of the government securities markets.

b. Central Registration Depository ("CRD")

The NASD and NASAA have jointly developed the CRD, a computerized filing system for securities industry registration. The NASD, forty-nine states, the District of Columbia, Puerto Rico and the New York Stock Exchange presently approve or register broker-dealer agents by means of the CRD. Persons filing applications for agent registration file a Form U-4 and any required fees with the CRD, which disseminates the information contained on the forms and fees electronically to the appropriate jurisdictions. This agent phase of CRD, known as Phase I, similarly provides for the filing of U-4 amendments and for the transfer of agent registration under certain circumstances. Work is proceeding on the implementation of the final stage of Phase II, which, completed, will enable the CRD to effect the initial registration of a broker-dealer upon the filing of a Form BD with CRD and to update the information on the Form BD when the broker-dealer files a Form BD amendment.

During the sessions, participants will focus on the present efficacy of the CRD, future uses of the CRD by the states and the relationship of the Commission to the CRD (including the possible processing of broker-dealer registrations with the Commission through the system).

Commentators are requested to address the effectiveness and efficiency of the CRD (including any suggestions for improving the system) as well as the future direction of the system.

c. National Market System Exemption from registration

Most state securities laws currently provide an exemption from their securities registration requirements to issuers that list on the New York ("NYSE") or American ("Amex") Stock Exchanges, or, in some cases, certain regional stock exchanges. Recently, some states have extended these exemptions to include over-the-counter ("OTC") securities designated as National Market System ("NMS") securities, while other states and legislatures have rejected such proposals. The Commission recently has proposed to designate as NMS securities all listed and OTC equity securities for which real time last sale reporting is required by a transaction reporting plan, and the NASD has proposed to add corporate governance standards to its transaction reporting plan. The effect of these amendments would be to designate as NMS securities all NYSE and Amex listed equity securities and all equity securities listed on regional exchanges that meet Amex's listing standards. In addition, all current OTC NMS securities would continue to be designated as NMS securities, if they satisfy the proposed corporate governance standards. The Amex, NYSE and NASD have proposed to waive their corporate governance standards for certain foreign issuers and the NYSE has proposed to relax its one share, one vote requirements. Commentators are asked to address whether the states generally should continue to exempt from registration securities, particularly in light of possible changes to company listing standards with respect to corporate governance and foreign issuers. Also, commentetors are requested to address whether NASSA should develop objective exemptive standards to replace the "status" exemptions in light of increasing competition between NASDAQ and the exchanges and the Commission's proposed amendments to its NMS Designation Rule and the NASD's proposed corporate governance standards.

d. Forms Revision

During 1986 the Commission and NASAA proposed changes to Form BDW, the form used to withdraw from broker-dealer registration. These changes were intended to simplify the form and to conform to changes made in 1985 to Form BD, the broker-dealer registration form. In 1987, the Commission and NASAA expect to adopt revisions to Form BDW. They also will work on revisions to Form BD to implement aspects of the Government Securities Act of 1986. Commentators are encouraged to address any aspect of the forms revisions that have been adopted or are contemplated.

e. Internationalization of the Securities Markets

The world's securities markets are increasingly becoming international in orientation, with securities being issued simultaneously in different countries, and with securities trading concurrently in the securities markets of more than one country. In view of these developments, the Commission has sought comment on the direction of the internationalization of the trading markets. Commentators are asked to address steps that would be useful on the national and state levels to facilitate international markets while protecting investors and maintaining fair and orderly markets in the United States.

f. Immobilization

The Commission has identified as a major goal the increased immobilization, and where appropriate, elimination of securities certificates. NASAA has established a committee to pursue initiatives that will advance the use of book-entry recordkeeping systems and will accelerate the immobilization of securities certificates in securities depositories. At the conference, Commission staff members will meet with the Committee to continue the discussions begun last year concerning goals to be achieved, book-entry initiatives that are being pursued by various banking and securities industry groups, and immobilization issues that may be of particular interest or concern to state securities law administrators. During the sessions, staff of the Commission and members of the Committee also will review efforts to secure needed changes in state laws and regulations to ensure greater use of safe and efficient book-entry ownership systems. The sessions also will review ways the Committee can increase public investor awareness of the characteristics of book-entry ownership systems (including transfer agent-operated investor ownership registration systems).

Comment is requested on initiatives the NASAA Committee can pursue to promote expanded use of safe and efficient book-entry ownership registration and transfer systems.

(4) Enforcement Issues

In addition to the above stated topics, the state and federal regulators will discuss various enforcement related issues which are of mutual interest.

(5) Edgar

The Commission currently is operating a Pilot electronic disclosure system, Edgar. The Commission has worked with NASAA to explore the possibility of a single filing in Edgar constituting the required filing with the states. This one-stop filing would reduce costs and increase efficiency for filers, as well as possibly reducing the time it takes to access the capital markets. Three states, California, Georgia and Wisconsin, were designated by NASAA to participate in the Edgar pilot, and they began receiving access to public Edgar filings in their offices in February 1985.

The Commission is proceeding to develop the operational Edgar system in which most filings with the Commission will be made electronically. The conferees will discuss the relationship of NASAA to this system and the goal of one-stop filing. Since participation of the states is essential to one-stop filing, the conferees will explore the particular needs of the states and discuss methods to accommodate such needs. Commentators are invited to address approaches to achieving this goal.

(6) General

There are a number of matters which are applicable to all or a number of the disciplines noted above. These include the coordination of Commission rulemaking procedures with the states, the training and educating of staff examiners and analysts, the sharing of information, and prospectus delivery.

The Commission and NASAA request specific public comments and recommendations on the above-mentioned topics. Commentators should focus on the agenda but may also discuss or comment on other areas in which the existing scheme of state and federal regulation can be made more uniform while high standards of investor protection are maintained.

By the Commission.

Jonathan G. Katz,

Secretary.

February 13, 1987.

[FR Doc. 87-3657 Filed 2-19-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Meeting

The National Small Business Development Center Advisory Board will hold a public meeting on Tuesday and Wednesday, March 10th and 11th, from 9:00 a.m. to 5:00 p.m. (Tuesday) and 9:00 a.m. to 1:00 p.m. (Wednesday). The meeting will be held in the Office of General Counsel's conference room at the U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416. The purpose of the meeting is to discuss such matters as may be presented by Advisory Board Members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Hardy Patten, SBA, Room 317, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416; telephone number: (202) 653-6315.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 87-3639 Filed 2-19-87; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-5176]

United Business Ventures, Inc.; Application for Change in Ownership and Control

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.601 of the Regulations governing small business investment companies (13 CFR 107.601 (1987)) for change in ownership and control of United Business Ventures, Inc., 711 Van Ness Avenue, Fifth Floor, San Francisco, California 94102, a Federal Licensee under the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*). The proposed change in control of United Business Ventures, Inc., which was licensed November 1, 1974, is subject to the prior written approval of SBA.

United Business Ventures, Inc., is a wholly owned subsidiary of First California Business and Industrial Development Corporation (First Cal Bidco). United Savings Bank F.S.B., which owned a majority interest in First Cal Bidco, was the subject of a Federally assisted acquisition. On March 28, 1986, the Federal Home Loan Bank appointed the Federal Savings and Loan Insurance Corporation as receiver of United Bank, F.S.B. Concurrent with this action, the new mutual association was sold to Hibernia Bancshares Corporation, the holdings company of Hibernia Bank.

United Savings Bank, F.S.B. operates independently of Hibernia Bank, United Business Ventures, Inc. will continue to operate under a management contract with First Cal Bidco. The management of First Cal Bidco is being provided by United Savings Bank, F.S.B. which follows through to United Business Ventures, Inc.

Officers, Directors and Shareholder are as follows:

James Ng, Chairman of the Board
Paul H. Quinn, President and Director
Gary L. Roberts, Chief Executive Officer and Director
Percy Duran, Secretary and Director
George Sycip, Chief Financial Officer and Director
Sau Wing Lam, Director
May Ngai, Director

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Cleet Snyder, Director
Ninh Lawhon, Director
First Cal Bidco, 100 percent.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in San Francisco, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 11, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87-3640 Filed 2-19-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1003]

Agency Forms Submitted for OMB Review

AGENCY: Department of State.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980, the Department has submitted a proposed collection of information to the Office of Management and Budget for review.

SUMMARY: The following summarizes the information collection proposal submitted to OMB:

Title of information collection—Medical History and Examination for Foreign Service.

Form numbers—OF-264 & DS-1622.

Originating office—Office of Medical Services.

Type of request—Existing collection.

Frequency—On occasion.

Respondents—Applicants for employment in the Foreign Service and their dependents.

Estimated number of responses—3,677.

Estimated number of hours needed to respond—919.

Section 3504(h) of Pub. L. 96-511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed form and supporting documents may be obtained from Gail J. Cook (202) 647-4086. Comments and questions should be directed to (OMB) Francine Picoult (202) 395-7340.

Dated: February 11, 1987.

John R. Burke,

Acting Assistant Secretary for Administration.

[FR Doc. 87-3619 Filed 2-19-87; 8:45 am]

BILLING CODE 4710-10-M

[Public Notice 1002]

Determination Under the Foreign Missions Act Concerning the Acquisition of Goods and Services by Soviet Diplomatic and Consular Missions in the United States

I. Authorities

Pursuant to the Foreign Missions Act of 1982, as amended [22 U.S.C. 4301 *et seq.*] ("the Act"), the Secretary of State, or his delegate, is authorized to require a foreign mission: (A) To obtain benefits from or through the Director of the Office of Foreign Missions on such terms and conditions as the Secretary may approve; or (B) to forgo the acceptance, use or relation of any benefit or to comply with such terms and conditions as the Secretary may determine as condition to the execution or performance in the United States of any contract or other agreement, the acquisition, retention, or use of real property, or application for or acceptance of any benefit (including any benefit from or authorized by any Federal, State or municipal governmental authority, or any entity providing public services). 22 U.S.C. 4304(b). Among the terms and conditions that the Secretary may impose are the requirement to pay the Director of the Office of Foreign Missions a surcharge or fee. 22 U.S.C. 4304(c).

The Act defines the term "benefit" to include the acquisition of: public services, including services relating to customs, importation, and utilities, and the processing of applications or requests relating to public services; supplies, maintenance, and transportation; locally engaged staff on a temporary or regular basis; travel and related services; and such other benefits as the Secretary may designate. Section 4302(a)(1).

Department of State Delegation of Authority No. 147, dated September 13, 1982, delegates to the Under Secretary of State for Management certain authorities under the Act, including authority to make the above-described determinations and designations of benefits.

The Act makes it unlawful for any person to make available for benefits to a foreign mission contrary to the provisions of the Act. 22 U.S.C. 4311(a). Foreign mission includes the personnel of such mission. 22 U.S.C. 4302(a)(4).

Pursuant to the above authorities, I hereby make the following designations of benefits and determinations applicable to the diplomatic and consular missions of the Soviet Union in the United States, and to the personnel of such missions. For purpose of this Determination, personnel of the Soviet diplomatic and consular missions includes members of such missions and members of the family forming part of the household of such individuals. A member of the diplomatic mission means the head of the mission (in this case the Embassy) and members of the staff of the mission (Vienna Convention on Diplomatic Relations, Article 1(b), 21 U.S.T. 3227). A member of a consular mission means consular officers and employees of the consular establishment (Consular Convention and Protocol Between the United States and the Union of Soviet Socialist Republics, signed at Moscow June 1, 1964, Article 1, 19 U.S.T. 5018).

II. Designation of Benefits

In addition to the benefits specifically enumerated in the Act, I hereby designate as "benefits" for the purposes of the Act the acquisition within the United States by the diplomatic and consular missions of the Union of Soviet Socialist Republics, and the personnel of such missions, from any person of entity subject to the jurisdiction of the United States (other than a member of such missions) of the following services and goods:

Services

(1) Public utilities and services, including public recreational facilities and sanitation services; and

(2) Personal services of individuals engaged within the United States for whatever purpose, whether on a temporary or regular basis. Such personal services include:

(a) Services relating to public relations, information, publishing, printing, advertising, distribution of literature, or mailing;

(b) Plumbing, electrical, construction, maintenance, engineering, architectural or related services;

(c) Recreational, entertainment, party catering, or like services, including the provision of facilities;

(d) Automotive maintenace and repair services;

(e) Packing, shipping, cartage and related services, including provision of packing materials;

(f) Educational services, including classes or coursework of any type and without regard to the character of the institution furnishing the same; and

(g) Financial services.

Goods

(a) Motor vehicles;

(b) Construction equipment and materials;

(c) Equipment and materials for the maintenance of the mission;

(d) Computers and automated data processing equipment; and

(e) Furnishings for offices and residences.

III. Determination

I hereby determine it to be reasonably necessary to accomplish the purposes set forth in section 4304(b) of the Act to require the diplomatic and consular missions of the Union of Soviet Socialist Republics (not including the Soviet Mission to the United Nations), and members thereof, to acquire any of the following benefits as may hereafter be specified by the Director of the Office of Foreign Mission either solely and exclusively from or through the Director of the Office of Foreign Missions, or upon such terms and conditions as the Director of the Office of Foreign Missions may direct.

(A) Services

The acquisition of services available from commercial, governmental or other sources within the United States (other than personnel of the mission), to include:

(1) Public utilities and services, including public recreational facilities and sanitation services; and

(2) Personal services of individuals engaged within the United States for whatever purpose, whether on a temporary or regular basis.

Such personal services to include:

(a) Services relating to public relations, information, publishing, printing, advertising, distribution of literature, or mailing;

(b) Plumbling, electrical, construction, maintenance, engineering, architectural or related services;

(c) Recreational, entertainment, party, catering, or like services, including the provision of facilities;

(d) Automotive maintenance and repair services;

(e) Packing, shipping, cartage and related services, including provision of packing materials;

(f) Educational services, including classes or coursework of any type and without regard to the character of the institution furnishing the same; and

(g) Financial services.

Provided that nothing in the Determination shall prevent diplomatic and consular missions of the Union of Soviet Socialist Republics and their personnel from obtaining medical services.

(B) Goods

Acquisition of the following categories of goods within the United States, irrespective of the source or manner of acquisition:

(a) Motor vehicles;

(b) Construction equipment and materials;

(c) Equipment and materials for the maintenance of the mission;

(d) Computers and automated data processing equipment; and

(e) Furnishings for offices and residences.

IV. Administrative Provisions

A. It is unlawful for any person subject to the jurisdiction of the United States directly to supply, or contract to supply the aforementioned goods and services to the aforementioned foreign missions, or any member thereof, other than in accordance with section 4311(a) of the Act, this Determination and any determination issued hereunder.

B. *Date of Effect:* A determination issued by the Director of the Office of Foreign Missions shall be effective at such time as the Director may prescribe.

C. Persons wishing clarification as to the applicability of this Determination or information on subsequent Determinations may contact the Office of Foreign Missions, US Department of State, Washington, DC 20520; or by telephone: (202) 647-3416.

George P. Shultz,

Secretary of State.

[FR Doc. 87-3620 Filed 2-19-87; 8:45 am]

BILLING CODE 4710-35-M

[Public Notice 1001]

Foreign Missions Act Determination; Amtorg Trading Corp.

Pursuant to the authority vested in me by the Foreign Missions Act, 22 U.S.C. 4301 et seq. (the "Act"), including section 202(b) of the Act (22 U.S.C. 4302(b)), and the Department of State Delegation of Authority No. 147 of September 13, 1982, I hereby determine:

1. That Amtorg Trading Corporation, with offices at 750 Third Avenue, New York, New York, (hereinafter referred to as "Amtorg") is a "foreign mission" within the meaning of section 202(a))(4) of the Act (22 U.S.C. 4302(a)(4)), as amended by Pub. L. 99-569;

That section 205 of the Act (22 U.S.C. 4305) is applicable to the acquisition of real property by Amtorg and its employees who are nationals of the Soviet Union.

Dated: January 7, 1987.

Ronald I. Spiers,

Under Secretary for Management.

[FR Doc. 87-3621 Filed 2-19-87; 8:45 am]

BILLING CODE 4710-35-M

Shipping Coordinating Committee, Sub-Committee on Safety of Navigation; Open Meeting

The Working Group on Safety of Navigation of the Sub-Committee on Safety of Life at Sea (SOLAS) will hold an open meeting at 9:30 a.m. on Thursday, March 12, 19987, in Room 4234 of Department of Transportation Headquarters, 400 7th Street, SW., Washington, DC.

The purpose of the meeting will be to report on developments relating to the below listed agenda items considered at the 33rd session of the Sub-Committee on Safety of Navigation of the International Maritime Organization held in London, January 15-16, 1987, and to begin preparations for the 34th session.

Decisions of other IMO bodies.

Routing of Ships.

Problems related to deep-draft vessels.

Matters concerning search and rescue.

Amendment of regulations V/2(a) and V/3(b) of SOLAS.

Removal of disused offshore platforms.

Infringement of safety zones around offshore structures.

Method of supplying heading information at the emergency steering position.

World-wide navigation system.

Electronic chart display systems.

Navigational aids and related equipment.

Work program.

Any other business.

Members of the general public may attend up to the seating capacity of the room.

For further information contact Mr. Edward J. LaRue, Jr., U.S. Coast Guard

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(C–NSS), Washington, DC 20593–0001, telephone: (202) 267–0416.

Dated: February 12, 1987.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 87–3596 Filed 2–19–87; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: Matching Program—Federal Aviation Administration General Air Transportation Records on Individuals/Federal Bureau of Investigation Identification Records

AGENCY: Department of Transportation.

ACTION: Notification of Matching Program—Federal Aviation Administration General Air Transportation Records on Individuals/Federal Bureau of Investigation Identification Records.

SUMMARY: The Department of Transportation is providing notice that the Office of Inspector General intends to conduct a match of Federal Aviation Administration General Air Transportation Records on Individuals, more specifically the Automated Medical Certification Data Base, with Federal Bureau of Investigation Identification Records. A matching report is set forth below.

DATE: The match will begin in February 1987.

FOR FURTHER INFORMATION CONTACT: John W. Lainhart IV, Director, Office of ADP Audits and Technical Support, Office of Inspector General, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, or call (202) 366–1496.

SUPPLEMENTARY INFORMATION: The Office of Inspector General has initiated a project to assist the Federal Aviation Administration in identifying pilots who have failed to declare their drug- or alcohol-related convictions, if any, on medical certification applications. Set forth below is the information required by paragraph 5.f(1) of the Revised Supplemental Guidance for Conducting Matching Programs issued by the Office of Management and Budget, 47 FR 21656 (May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Dated: February 17, 1987.

Jon H. Seymour,

Assistant Secretary for Administration.

United States Department of Transportation, Office of Inspector General, Computer Matching Program

Report of Matching Program: Federal Aviation Administration, General Air Transportation Records on Individuals/ Federal Bureau of Investigation Identification Records

Authority: The legal authority under which this match is being conducted is the Inspector General Act of 1978 (Pub. L. 95–452).

Position Description and Purpose: The Office of Inspector General plans to conduct a one-time match of Federal Aviation Administration General Air Transportation Records on Individuals, more specifically the Automated Medical Certification Data Base, against Federal Bureau of Investigation Identification Division records of criminal history information to determine whether pilots with alcohol- of drug-related criminal convictions have falsified Federal Aviation Administration Form 8500–8, Application for Airman Medical Certificate, which all pilots complete in connection with medical certification. Physically, a tape of information from the above FAA records will be provided to the FBI, which will match this tape with the FBI's Identification Division records. Criminal history records resulting from this match will be reviewed and verified as necessary with Federal, state, and local law enforcement agencies. The purpose is to assist the Federal Aviation Administration in identifying pilots who have failed to declare their drug- or alcohol-related convictions, if any, on medical certification applications.

Records to be Matched: Airmen medical certification records from the Federal Aviation Administration General Air Transportation Records on Individuals System (DOT/FAA 847), 49 FR 15412 (April 18, 1984) against the Federal Bureau of Investigation Identification Division Records System (Justice/FBI–009), 46 FR 7508 (January 23, 1981).

Disclosure of Records: The record subjects have not consented to this match. However, item 9 of the Departmental Privacy Act General Routine Uses states that the Department may make available to another agency or instrumentality of any governmental jurisdiction, including state and local governments, listings of names from any system of records in the Department for use in law enforcement activities, either civil or criminal, or to expose fraudulent claims, regardless of the stated purpose for the collection of the information in the system of records.

Follow-up Procedures: After it has been verified that material omissions or false statements, if any, have been made by individual pilots on the Federal Aviation Administration Form 8500–8, the facts regarding these individuals will be furnished to the Federal Aviation Administration for administrative disposition and to the Justice Department for possible criminal action. These cases may also be referred within the Department of Transportation for possible administrative action.

Period of Match: This match is projected to begin in February 1987 and be completed within 9 months.

Safeguards: Records used in this match will be maintained under strict security. Access to the computer files and printed information is restricted to only those persons associated with the matching program on a "need-to-know" basis. The records will be kept in secure areas and under the control of the Office of Inspector General. The FBI will return the Department's computer source tape after the match. All computer files relating to the match will be protected by security systems to prohibit unauthorized access.

Retention and Disposition of Records: Records on individuals produced in the match will only be maintained where the information meets predetermined criteria indicating a failure to declare drug- or alcohol-related convictions, if any, on medical certification applications. All records not required for administrative actions or criminal prosecution will be destroyed.

[FR Doc. 87–3663 Filed 2–19–87; 8:45 am]

BILLING CODE 4910-62-M

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB on February 13, 1987

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on February 13, 1987, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–4735, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395–7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on February 13, 1987.

DOT No: 2857
OMB No: 2125–0534
Administration: Federal Highway Administration
Title: Application for Bridges on Dams Projects
Need for Information: To meet the FHWA requirements contained in 23 CFR 630 subpart H
Proposed Use of Information: For FHWA to ensure that bridges across Federal dams are built in conformance with current highway and safety standards, and that the construction employs the most economical construction alternative.
Frequency: On occasion
Burden Estimate: 50 hours
Respondents: State and local governments
Form(s): N/A.

DOT No: 2859
OMB No: 2115–0038
Administration: United States Coast Guard
Title: Application for Class I Private Aids to Navigation on Artificial Islands and Fixed Structures
Need for Information: This application is essential for safe navigation. Such vital information as the private aid's position, signal characteristics, and structure description is then disseminated to the public via the media, light list and nautical charts.
Proposed Use of Information: The Coast Guard reviews the application and ensures that the private aid is adequately marked for navigational purposes.
Frequency: On occasion
Burden Estimate: 250 hours
Respondents: Petroleum related companies
Form(s): CG–4143.

DOT No: 2860
OMB No: 2115–0105
Administration: United States Coast Guard
Title: Evidence of Competency; Person-In-Charge
Need for Information: Waterfront facilities handling "dangerous cargoes" must supply documentary evidence to the competence of persons-in-charge. This is needed to control accidents due to inexperience or lack of knowledge.
Proposed Use of Information: Coast Guard captain of the port (COTP) uses this information to assure that persons-in-charge of bulk liquid dangerous cargo transfer operations are properly qualified.
Frequency: On occasion
Burden Estimate: 160 Hours
Respondents: Operators of waterfront facilities which transfer dangerous cargo to or from vessels
Form(s): None.

DOT No: 2861
OMB No: 2115–0120
Administration: United States Coast Guard
Title: Oil Transfer Procedures
Need for Information: This information collection requirement is needed to ensure that a means of preventing accidental discharge or spillage of oil is in place for all vessels with a capacity to carry 250 or more barrels of oil.
Proposed Use of Information: The requirement is used to ensure that vessel personnel are aware of procedures to transfer oil to or from the vessel and from tank to tank within the vessel. The procedures reduce the likelihood of oil spills during the transfer operations.
Frequency: Recordkeeping
Burden Estimate: 62.5 hours
Respondents: Vessel owners/operators
Form(s): None.

DOT No: 2862
OMB No: 2115–0108
Administration: U.S. Coast Guard
Title: Plan Approval and Records for Access Openings (Watertight Doors)
Need for Information: This information is needed to enable the Coast Guard to review plans for watertight doors in watertight bulkheads of passenger vessels.
Proposed Use of Information: Coast Guard uses this information to determine if the access openings meet the standards mandated by the Convention and promulgated in the regulations.
Frequency: On occasion
Burden Estimate: 32 hours
Respondents: Shipbuilders and door manufacturers
Form(s): N/A.

DOT No: 2863
OMB No: 2115–0113
By: United States Coast Guard
Title: Self-Propelled Liquefied Gas Vessels
Need for Information: This information collection is needed to evaluate the hazards associated with the carriage of liquid bulk dangerous cargoes.
Proposed Use of Information: Coast Guard uses this information in three ways: (1) as a means to indicate compliance with standards, (2) as a vehicle for transmitting specific information on special designs not covered by regulations and (3) to obtain information necessary to schedule a Certificate of Compliance examination.
Frequency: On occasion
Burden Estimate: 4,369 hours
Respondents: Builders, owners/operators of flag liquefied gas vessels
Form(s): N/A.

DOT No: 2864
OMB No: 2115–0541
By: United States Coast Guard
Title: Barges Carrying Bulk Hazardous Materials
Need for Information: This information collection is needed to determine that a barge carrying bulk hazardous materials meets prescribed safety standards and to ensure that

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barges' crew members have the information necessary to operate the barges safely.

Proposed Use of Information: This information is used by: (1) Coast Guard technical offices to evaluate barge design; (2) Coast Guard port safety and main inspection personnel to enforce safety regulations; (3) crew members for safe operations relative to the cargoes; and, (4) other people boarding the barges to avoid danger from cargo operations.

Frequency: On occasion
Burden Estimate: 22,685 hours
Respondents: Barge operators
Form(s): N/A.

DOT No: 2865
OMB No: 2125–0522
Administration: Federal Highway Administration
Title: Utility Use and Occupancy Agreements

Need for Information: For FHWA to fulfill its statutory obligation regarding controls or use of right-of-way of Federal and highway projects.

Proposed Use of Information: Serves to document the arrangement made between the State highway agency and a utility to allow the utility to use public right-of-way under the control of the highway agency.

Frequency: Recordkeeping
Burden Estimate: 552,000 hours
Respondents: Utility companies and State highway agencies
Form(s): None.

DOT No: 2866
OMB No: 2115–0080
Administration: United States Coast Guard
Title: Application for Formal Admeasurement and Subapplications

Need for Information: Formal admeasurement is required for all commercial vessels over 79.0" in length, and those less than 79.0" engaged in the foreign trade. Owners of pleasure or commercial vessels (under 79.0" in length in domestic trade) may request formal admeasurement as an option.

Proposed Use of Information: Application is made for formal admeasurement when new vessels are built so that the register tonnages, gross and net, and a legal description of the vessels may be determined as a prerequisite to documentation.

Frequency: One-time
Burden Estimate: 4,845 hours
Respondents: Owners, builders or their agents
Form(s): None.

DOT No: 2867
OMB No: 2120–0500
Administration: Federal Aviation Administration
Title: Supplemental Qualification Statement/Aviation Safety Inspector GS–1825–0

Need for Information: This information is needed to determine if the applicant is qualified for the aviation safety inspector position for which he/she is applying.

Proposed Use of Information: The information will be used to rate and rank applicant on registers.

Frequency: On occasion
Burden Estimate: 10,000 hours
Respondents: Individuals applying for positions as safety inspectors
Form(s): FAA Form 3330–47.

DOT No: 2868
OMB No: 2138–0013
Administration: Research and Special Programs Administration
Title: Report of Financial and Operating Statistics for Certificated Air Carriers

Need for Information: To provide basic financial and traffic data which are used extensively by DOT in its ongoing programs, i.e., international negotiations, fitness, safety, airport planning, etc.

Proposed Use of Information: Information is placed into data banks to be used by program personnel in performance of their assigned tasks.

Frequency: Monthly, quarterly, semiannually and annually
Burden Estimate: 35,539 hours
Respondents: Large certificated air carriers
Form(s): RSPA Form 41.

Issued in Washington, DC, on February 13, 1987.

John E. Turner,

Director of Information Resource Management.

[FR Doc. 87–3664 Filed 2–19–87; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

[Summary Notice No. PE–87–1]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviaition Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: March 11, 1987.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Petition Docket No. , 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraph (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on February 13, 1987.

John H. Cavanagh,

Assistant Chief Counsel, Regulations and Enforcement Division.

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No	Petitioner	Regulations affected	Description of relief sought disposition
25153	Pan American World Airways, Inc.	14 CFR 121.371(a) and 121.378	To allow Pan American World Airways, Inc., to permit maintenance or repair of its leased CF6 engines and components at the MTU Maintenance GmbH Facility in Langenhagen, Germany.
25188	Project Orbis Inc.	14 CFR 91.303	To allow petitioner to operate Stage 1 four engine turbojet aircraft for four operations in order to get a major aircraft maintenance inspection and restock medical supplies and medical equipment.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
23653	University of North Dakota	14 CFR Part 141, Appendix A	To allow the students of the University of North Dakota, who are enrolled in the Center for Aerospace Sciences private pilot airplane certification course conducted under Exemption No. 3825, to be exempt from the FAA Private Pilot Airplane Written Test.
25155	SNECMA	14 CFR 145.71 and 145.73	To allow SNECMA and its divisions and their original equipment manufacturers to repair CFM 56 engines and their components for U.S. carriers operating in the United States and overseas.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
18881	Experimental Aircraft Association	14 CFR 91.22(a)(1)	Extension of Exemption No. 2689 to allow members of the International Aerobatic Club to participate in aerobatic competitions sanctioned by the International Aerobatic Club, a division of Experimental Aircraft Association, without being required to meet the fuel requirement for flight under visual flight rules. *GRANTED, December 22, 1986.*
25043	United Executive Jet, Inc	14 CFR 91.191(a)(4) and 135.165(b)	To allow petitioner to operate its Learjet Model 35 aircraft with only one high frequency communications receiver and one Global/VLF Omega Long Range Navigation Receiver. *GRANTED, December 17, 1986.*
18114	Flying Tiger Line, Inc.	14 CFR 91.191(a)(4) and 135.165(b)	Extension of Exemption No. 2600 to allow petitioner to carry a journalist, reporter or photographer on board its cargo aircraft. *GRANTED, December 12, 1986.*
25079	Mortex Drilling Company	14 CFR 61.58(c)	To allow petitioner's pilots to complete the requirement for 24-month pilot-in-command check for the BA–111 in an FAA-approved simulator. *GRANTED, December 8, 1986.*
24440	American Flyers	14 CFR 141.91(a)	Amendment of Exemption No. 4419 to allow petitioner to operate a pilot ground school in Farmers Branch, Texas, 26 nautical miles from its home base of operations. *GRANTED, January 6, 1987.*
24973	Florida West Airlines, Inc	14 CFR 121.6	To allow petitioner to operate on demand or on short notice flight without complying with the requirements. Petitioner also further requests, in the event the grant of exemption is not possible, that it be permitted to operate short notice flights on request with FLW supplying required information to the local inspector within 3 days. *DENIED, December 22, 1986.*
16955	American Airlines	14 CFR 61.58(c)	To allow students of American Airlines to complete the entire 24-month pilot-in-command check in an FAA-approved simulator. *GRANTED, December 30, 1986.*
25064	America West Airlines, Inc.	14 CFR 121.371(a) and 121.378	To allow petitioner to install on its four Boeing 727 leased aircraft certain components provided by Orion Airways, Ltd., of the United Kingdom. *GRANTED, January 7, 1987.*
24819	United Airlines	14 CFR 121, Appendix H	To allow it to conduct Phase II training and checking in a Phase I L–1011–500 simulator under an approved Phase IIA program, and to extend the termination date of United's Interim Simulator Upgrade Plan to July 1, 1988. *GRANTED, December 29, 1986.*
24795	Spectrum Aircraft Corporation	14 CFR 21.19(b)(1)	To allow petitioner to apply for supplemental type certification of a design change from two engines to one engine on the Cessna 337G Skymaster airplane. *DENIED, December 17, 1986.*
23752	Mall Airways	14 CFR 135.225(e)(1)	To allow its pilots to take off under IFR at any Canadian civil airport listed in its operations specifications when the visibility minimum of any airport listed is less than 1 statute mile but not less than the minimums prescribed by Transport Canada. *GRANTED, January 8, 1987.*
20583	Tenneco, Inc.	14 CFR 61.58(c)	Extension of exemption No. 3106 to allow pilots of petitioner to complete a 24-month pilot-in-command check in an FAA-approved flight simulator. *GRANTED, December 19, 1986.*
24998	Aeron International Airlines, Inc.	14 CFR 121.371(a) and 121.378	To allow petitioner to contract with MTU, Munich, Germany; Alfa Romeo, Naples, Italy; British Aerospace PLC, Hatfield, England; Airscrew Howden, Weybridge, England; Aircraft Engineering and Maintenance, Ltd., London, England; Jadepoint Engineering, Southend, England, and to employ original equipment manufacturers to perform maintenance, preventive maintenance, and alterations outside of the United States on CL–44 aircraft listed in the operations specifications of the petitioner or on the engines or components of such aircraft. *GRANTED, January 5, 1987.*
24658	Midstate Airlines	14 CFR 135.293(b) and 135.297	To allow petitioner to substitute a LOFT program for the pilot competency and instrument proficiency checks prescribed by those actions. *GRANTED, December 12, 1986.*
25095	Baron Aviation, Inc	14 CFR 45.29	To permit the operation of its 1977 Cessna 172 aircraft displaying 3-inch high nationality and registration marks (N-numbers) in place of the 12-inch high N-numbers required by the regulations. *DENIED, December 15, 1986*

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DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
23883	Florida Express	14 CFR 91.307	To amend Exemption No. 3902 to add 3 aircraft. The present exemption allows operation in the United States, under a service to small communities exemption, of specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988.
23419	Continental Airlines	14 CFR 91.307	To amend Exemption No. 3650b to add 7 aircraft. The present exemption allows operation in the United States, under a service to small communities exemption, of specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988. 25-DC-9 *GRANTED 12/31/86.*
20549	Boeing Commercial Airline Company	14 CFR 25.130(a), 14 CFR 25.1303(b), 14 CFR 21.601, 14 CFR 37.120(a).	To amend exemption No. 3035B to remove the operating limitation that restricts operation of Model 747 airplanes configures as described to certain operators retaining only the limitation requiring crews to be trained in a specific configuration. *PARTIAL GRANT, January 23, 1987.*

[FR Doc. 87-3561 Filed 2-19-87; 8:45 am]
BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 161—Minimum Aviation System Performance Standard for Radio Determination Satellite System; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of RTCA Special Committee 161 on Minimum Aviation System Performance Standard for Radio Determination Satellite System to be held on March 5-6, 1987, in the TRCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the First Meeting Held December 9, 1986; (3) Report on Radio Technical Commission for marine Services SC-108 Activities; (4) Briefing on Geostar Submission to Federal Communications Commission; (5) Briefing and Discussion of Geostar Accuracy Analysis; (6) Briefing and Discussion of Geostar Communications Structure; (7) Briefing by Other Potential Providers of RDSS; (8) Discussion on Content of Minimum Aviation System Performance Standards; (9) Assignment of Tasks; and (10) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 13, 1987.

Wendie F. Chapman,
Designated Officer.
[FR Doc. 87-3562 Filed 2-19-87; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 87-27]

Recordation of Trade Name; "Alaskan Seafood Company"

AGENCY: Customs Service, Treasury.

ACTION: Denial of Recordation.

SUMMARY: On November 26, 1986, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "ALASKAN SEAFOOD COMPANY" was published in the **Federal Register** (51 FR 42966).

The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received not later than January 26, 1987. Numerous responses were received in opposition to the notice.

Upon consideration of the views of the opposition, the Customs Service has decided not to record the trade name "ALASKAN SEAFOOD COMPANY" for the following reasons:

(1) There is a likelihood of confusion on the part of U.S. purchasers of seafood if the words "Alaska or Alaskan" were included as part of a recorded trade name for fresh-frozen seafood produced in Mexico, other countries and other States.

(2) The recordation of the trade name "ALASKAN SEAFOOD COMPANY" by an Arizona company would mislead the public to believe that the products or the company are of Alaskan origin or affiliation, and would thus unfairly compete with genuine Alaskan products or companies.

(3) The recordation by the Customs Service of the trade name "ALASKAN SEAFOOD COMPANY" may have the result of depriving other firms located in Alaska of the right to import merchandise bearing designations accurately identifying their Alaska origin or affiliation.

For the foregoing reasons the Customs Service has determined that the recordation of the subject trade name by the applicant is contrary to the public interest, and accordingly, the application is denied.

DATE: February 20, 1987.

FOR FURTHER INFORMATION CONTACT: Beatrice E. Moore, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC. 20229 (202-566-5765).

Dated: February 13, 1987.

Steven Pinter,
Chief, Entry, Licensing and Restricted Merchandise Branch.
[FR Doc. 87-3654 Filed 2-19-87; 8:45 am]
BILLING CODE 4320-02-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 34
Friday, February 20, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 4458.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 11:00 a.m., February 18, 1987.

CHANGE IN THE MEETING: The meeting of the Enforcement quarterly goals will be held on February 24, 1987 at 11:45 a.m.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87-3695 Filed 2-18-87; 10:39 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 3524.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., February 19, 1987.

CHANGE IN THE MEETING: The oral arguments in Grabarnick v. NFA and Sansom v. Drexel have been postponed.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87-3696 Filed 2-18-87; 10:39 am]
BILLING CODE 6351-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time) Monday, March 2, 1987.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 E Street, NW., Washington, DC 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Proposed § 615.11 of Volume II of the EEOC Compliance Manual, Age Harassment

Closed

Litigation Authorization; General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634-6748.

Dated and issued: February 18, 1987.

Johnnie L. Johnson, Jr.,
Attorney-Advisor, Executive Secretariat.
[FR Doc. 87-3739 Filed 2-18-87; 2:58 pm]
BILLING CODE 6750-06-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., February 25, 1987.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion open to the public:

1. Docket No. 86-27—Attorney's Fees in Reparation Proceedings—Consideration of Comments on Proposed Rule.

Portion closed to the public:

1. Controlled Carrier Status of Various Carriers.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary (202) 523-5725.

Joseph C. Polking,
Secretary.
[FR Doc. 87-3699 Filed 2-18-87; 10:58 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, February 25, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 17, 1987.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 87-3662 Filed 2-17-87; 4:17 am]
BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (52 FR 4237 February 10, 1987).

STATUS: Closed meetings.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Thursday, February 5, 1987.

CHANGE IN THE MEETINGS: Additional items.

The following items were considered at a closed meeting on Tuesday, February 10, 1987, at 1:00 p.m.

Settlement of administrative proceeding of an enforcement nature.

Regulatory matter bearing enforcement implications.

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The following item was considered at a closed meeting on Thursday, February 12, 1987, at 10:30 a.m.

Regulatory matter bearing enforcement implications.

Commissioner Fleischman, as duty officer, determined that Commission business required the above changes.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Judith Axe at (202) 272-2092.

Jonathan G. Katz,

Secretary.

February 12, 1987.

[FR Doc. 87-3768 Filed 2-18-87; 3:57 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 52, No. 34
Friday, February 20, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-030-07-4212-14]

Realty Action; Idaho Falls District; Bonneville County

Correction

In notice document 87-778 appearing on page 1534 in the issue of Wednesday, January 14, 1987, make the following correction:

On page 1534, in the table, in the second column, the fifth line should read "Sec. 17: E½W½SW¼SE¼SE¼,E½SW¼SE¼SE¼".

BILLING CODE 1505-01-D

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Information on Imports During First 10 Months of 1986 and Invitation of Comments

Correction

In notice document 87-2485 beginning on page 3897 in the issue of Friday, February 6, 1987, make the following correction:

On page 3897, in the second column, in the second complete paragraph, in the 16th line, "1974" should read "1984".

BILLING CODE 1505-01-D

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federal register

Friday
February 20, 1987

Part II

Department of the Interior

Bureau of Land Management

43 CFR Part 3160

Onshore Oil and Gas Operations; Amendment Revising the Regulations Implementing the Federal Oil and Gas Royalty Management Act and the Mineral Leasing Acts; Final Rule

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[AA-630-07-4111-02; Circular No. 2592]

Onshore Oil and Gas Operations; Amendment Revising the Regulations Implementing the Federal Oil and Gas Royalty Management Act and the Mineral Leasing Acts

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking revises the existing regulations on site security; noncompliance with the Federal Oil and Gas Royalty Management Act, any mineral leasing law, any regulation, order or notice issued thereunder, or the terms of any lease or permit issued thereunder; the assessments and penalties for such noncompliance or nonabatement; and the procedures for notice, review or relief. The final rulemaking also makes technical corrections to the regulations in Part 3160.

EFFECTIVE DATE: April 21, 1987.

ADDRESS: Inquiries or suggestions should be sent to: Director (630), Bureau of Land Management, Room 5647, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT:
Frank A. Salwerowicz, (303) 236-1750
or
Stephen Spector, (202) 653-2147
or
Robert C. Bruce, (202) 343-8735

SUPPLEMENTARY INFORMATION: The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.), was designed to assure proper and timely revenue accountability for production from onshore Federal and Indian oil and gas leases, to address Outer Continental Shelf matters, to address lease reinstatement, to prescribe onshore field operations requirements for inspections and enforcement actions, to establish the basis for cooperation with States and Indian tribes for onshore Federal leases, and to establish duties of lessees, operators and others involved in the production, storage, measurement and transportation or sale of oil and gas from Federal onshore and Indian leases.

A final rulemaking implementing the site security provisions of the Federal Oil and Gas Royalty Management Act was published in the **Federal Register** on July 11, 1983 (48 FR 31978), with an effective date of September 9, 1983. A final rulemaking implementing the penalty and other provisions of the Act as they related to onshore operations on Federal and Indian leases was published in the **Federal Register** on September 21, 1984 (49 FR 37356), with an effective date of October 22, 1984. On January 4, 1985, the Director, Bureau of Land Management, by the issuance of a policy directive, instituted a cap on assessments provided by the final rulemaking on onshore operations.

As a result of the numerous concerns expressed by Department of the Interior and Bureau of Land Management officials and representatives of the oil and gas industry, the Bureau held a series of public meetings during January and February 1985, to allow the interested public an opportunity to identify the specific issues which they felt needed review. Approximately 145 members of the public, mostly representatives of the oil and gas industry, appeared at the eight public meetings and gave their comments on the impacts of the final rulemaking implementing the penalty provisions of the Federal Oil and Gas Royalty Management Act.

The comments received on the final rulemaking on penalties resulted in the Bureau of Land Management establishing certain interim procedures for carrying out the purposes of the regulations and the Federal Oil and Gas Royalty Management Act which was noted in a **Federal Register** publication on March 22, 1985 (50 FR 11717). This publication also included a Notice of Intent to Propose Rulemaking. The Notice requested comments regarding the extent to which the existing regulations needed to more clearly define operational requirements of the Federal Oil and Gas Royalty Management Act and other oil and gas leasing laws, as well as comments on the development of a list of potential violations. A total of 68 comments were received in response to the Notice of Intent, including transcripts of the views presented at the public meetings.

A proposed rulemaking that would revise the existing oil and gas operating regulations was published in the **Federal Register** on January 30, 1986 (51 FR 3882), with a 60-day comment period. During the original comment period, the Bureau of Land Management held seven public meetings for the purpose of obtaining public comments on the proposed rulemaking. On March 3, 1986, the Bureau extended the comment period for an additional 15 days and scheduled four additional public meetings. The comment period resulted in written comments from 109 sources, while 45 individuals presented comments at the 11 public meetings. Fifty-three of the written comments were a form letter. Most of the comments presented at the public meetings were reflected in the written comments received by the Bureau. All comments, both those presented at the public meetings and the written comments, were given careful consideration as part of the decisionmaking process on the issuance of this final rulemaking. In discussing the comments, the preamble discusses all of the applicable comments and the action taken on them. Those comments that raised related issues are grouped for discussion in this preamble and are not individually discussed. Those comments that raised issues not directly related to the proposed rulemaking will be referred to the appropriate Bureau office for review and appropriate action.

Comments

Definitions

The vast majority of the comments and a significant number of the speakers at the public meetings recommended revisions of the definitions in the existing regulations as well as those contained in the proposed rulemaking. The comments, in most instances, offered specific language for amending the definitions with the aim of meeting the stated objectives without the perceived adverse consequences.

The term "authorized officer" was the subject of several comments, with many recommending that the term be broadened to include specific organizational levels below which actions could not be delegated. Some of the comments suggested that the term be replaced in the regulations with specific organizational titles. These comments have not been adopted by the final rulemaking. The term "authorized officer" is a generic term that is used throughout Title 43 of the Code of Federal Regulations as that Title relates to the Bureau of Land Management. The definition of this term for Groups 3000 and 3100 is set forth in § 3000.0-5. In its use of the term "authorized officer," the Bureau delegates actions required by the regulations to its officials at various organizational levels. As an example, an action delegated to an official at an area office might, in another State, be delegated to an official at the State office. The delegations for each State office are available for the public's information.

Several comments argued that the definition of the term "knowingly or willfully" used in the proposed

rulemaking does not follow the intent of Congress as set forth in section 109 of the Federal Oil and Gas Royalty Management Act and is inconsistent with the views of the Associate Solicitor, Energy and Resources, in a memorandum dated April 29, 1985, which discussed the interpretations of that phrase. The phrase "disregard or indifference" was the focus of some specific comments which recommended that this phrase should be qualified by the use of the term "reckless." Comments also argued either that "repeated" violations should not be the sole basis for establishing that conduct is "knowingly or willfully" performed, or, in the alternative, that a consistent scheme must be shown. The comments further stated that the provision in the proposed rulemaking that specific intent is not required for a finding of "knowingly and willfully" is without basis in law and that the phrase "not negated or mitigated by a belief that the behavior is reasonable or legal" should be removed by the final rulemaking. After careful review of the comments, the Federal Oil and Gas Royalty Management Act and its legislative history, and the views of the Office of the Solicitor, the final rulemaking has revised this term.

The final rulemaking revises the first sentence of the proposed rulemaking to clarify how violations are committed "knowingly or willfully." The first requirement for having "knowingly or willfully" committed a violation is notice of the standard of behavior required by law. The duties and prohibited acts are set out in section 109 of the Federal Oil and Gas Royalty Management Act and in § 3163.2 of the final rulemaking. The issuance of this final rulemaking constitutes the third notice to lessees and operators of these duties and prohibited acts, with the enactment of the Federal Oil and Gas Royalty Management Act being the first notice and the publication of the final rulemaking on September 21, 1984, being the second notice. Lessees should be well aware of their duties and of what is prohibited.

The key issue then becomes the establishment of appropriate standards for determining whether conduct is done "knowingly or willfully." Although several of the comments refer to Congressional intent, the legislative history of the Federal Oil and Gas Royalty Management Act does not indicate that Congress intended any different standards than those applicable under other civil penalty provisions. These standards are set out in various judicial decisions interpreting "knowingly or willfully," many of which were analyzed by the Associate Solicitor in the memorandum of April 29, 1985. The memorandum identified "the mere act or failure to act, honest mistake, mere inadvertance, intentional act, knowledge that actions are contrary, plainly indifferent, intentional disregard, consistent pattern, premeditation, manipulative scheme, and bad intent or evil motive" as indicia to establish "intent." The memorandum concluded that the lower range—mere act, honest mistake and mere inadvertance—will not support a finding of "knowingly or willfully." The memorandum went on to conclude that the upper range, from "premeditation" to "evil motive," is used for assessing criminal penalties and is not required in a civil case. The standards of "knowingly or willfully" are conduct that fall within the middle range identified in the memorandum. In a recent decision, a Department of the Interior administrative law judge interpreted "knowingly or willfully" as used in section 109 of the Federal Oil and Gas Royalty Management Act for a royalty civil penalties case (*Marathon Oil Co.* v. *MMS*, No. MMS-5-1-P (April 23, 1986)). The administrative law judge conducted an analysis of case law similar to the one by the Associate Solicitor in the memorandum and reached similar conclusions.

Based on these analyses and the comments, the final rulemaking revises the proposed rulemaking to clarify what type of conduct constitutes conduct done "knowingly or willfully." First, the reference to "belief that action is reasonable or legal" is being revised to clarify that this concept only applies once the "knowing or willful" nature of the conduct is otherwise established. While this concept was not discussed by the Associate Solicitor, Energy and Resources, in the memorandum of April 29, 1986, it was recognized in the *Marathon* decision and is clearly established by judicial precedent (*United States* v. *McIntyre*, 582 F. 2d 1221 (9th Cir. 1978)). Second, the fact that a showing of "specific" intent is not required by the proposed rulemaking has been retained in the final rulemaking. This concept is clearly supported by the case law as not necessary for cases involving civil penalties. The suggestion in one of the comments that the decision of the Supreme Court in *Morissette* v. *United States* (342 U.S. 246 (1952)), controls this issue is misdirected. The *Morissette* case involved a criminal statute and penalty, not, as here, a civil statute and penalty. The Supreme Court clearly recognized this difference in decisions involving civil penalties (*United States* v. *Illinois Central Railroad Co.* (303 U.S. 239 (1938)). Third, the final rulemaking has amended the proposed rulemaking to qualify both "indifference" and "disregard" in order to reflect common judicial use of these standards. Finally, as one comment suggested, the final rulemaking has amended "repeated violation" to be a "consistent pattern" instead, again in in order to reflect more accurately judicial use of this standard.

Twenty comments expressed the view that the definition of the term "major violation" used in the proposed rulemaking was too broad and that this term was critical to the regulations as well as to the Onshore Oil and Gas Orders that are currently being developed. Of particular concern to those making comments was the inclusion of the word "potential" when describing resultant consequences. The comments also recommended inclusion of some qualifier to indicate that a major violation is one where the impact will be more than slight and that such impact must be adverse. The final rulemaking amends the proposed rulemaking by replacing the phrase "has the immediate potential to affect" with the phrase "causes or threatens immediate, substantial and adverse impact." As used in the final rulemaking, this phrase will apply to all types of impacts.

A few of the comments suggested simplifying the definition of the term "minor violations" that appears in the proposed rulemaking and to have it relate more closely to the term "major violations." The final rulemaking has adopted this suggestion.

Three of the comments addressed the term "new or resumed production" as it is used in the proposed rulemaking, with one finding it appropriate as it appears in the proposed rulemaking, another recommending a slight modification of the definition and the third finding the definition totally inappropriate. This definition was developed in response to specific comments made to the Notice of Intent to Propose Rulemaking published on March 22, 1985. The critical comments have raised no new issues. Therefore, the final rulemaking retains this definition as proposed.

The review of the existing regulations revealed an inconsistency between the definition of the term "onshore oil and gas order" as it is used in the definition section and § 3164.1(a). The final rulemaking has adopted a technical amendment to the definition section to remove the inconsistency.

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Jurisdiction

Several comments on this section suggested that the effect of these regulations should not be extended to cover operations conducted on private or fee lands within units and communitized areas. These comments suggested that a Federal or Indian interest of less than 10 percent of a unit or participating area be the basis for exempting those operations from Federal regulation. The proposed rulemaking contains language requiring that, unless specifically modified in any agreement, the regulations relating to site security, measurement, reporting of production and operations, and assessments of penalties for noncompliance with such requirements are applicable to all wells or facilities on State or privately-held mineral lands which affect Federal or Indian interests through agreements. The fact that Federal or Indian lands are committed to agreements for the purpose of drilling and development of those lands in the most benefical manner is all that is needed to establish the responsibility of the Bureau of Land Management to ensure that the intent of the Federal Oil and Gas Royalty Management Act and other mineral leasing laws as to royalty accountability is carried out on those lands. Therefore, the suggestions in the comments have not been accepted and the final rulemaking has adopted the language of the proposed rulemaking without change.

Well and Facility Identification

Several of the comments suggested that the final rulemaking adopt a grandfather clause for this section that provides for the utilization of existing signs, even if required information such as communitization and agreement numbers is not included on the sign, until such time as there is a need for replacement. The final rulemaking adopted these suggested changes to the proposed rulemaking by adding language to § 3162.6(b) that allows the information to be included upon future replacement of the sign, unless the authorized officer specifically requires its addition. Other comments on this section of the proposed rulemaking suggested that there should not be a requirement for the placement of signs on abandoned wells. The final rulemaking has adopted this change and requires a sign for each well, other than those wells that have been permanently abandoned. Finally, the final rulemaking makes a change in the title of § 3162.6 for clarification.

Measurement of Oil

While none of the comments on § 3162.7–2 of the proposed rulemaking suggested changes in this section, four comments recommended that the final rulemaking add specific authority for approval of off-lease activities. While approval of off-lease activity is currently granted under the general provisions of subpart 3161, the final rulemaking has adopted this suggested change to clarify the issue of approval of off-lease activity for oil and gas.

Site Security

Approximately 25 written comments were received on § 3162.7–4 of the proposed rulemaking and its requirements for minimum standards, site security plans, site facility diagrams, as well as other provisions. The final rulemaking has amended § 3162.7–4(a) by revising the terms "effectively sealed" and "seal" to make it clear that seals will be required on appropriate valves as opposed to fittings such as bullplugs. The final rulemaking also amends the definition of the term "production phase" to make it clear that this phase includes all operations not included in the term "sales phase."

The final rulemaking amends § 3162.7–4(b) to clarify that equipment, other than seals, used to effectively seal necessary valves must be on the site. The words "or connections" are being removed by the final rulemaking to make the section conform to the other portions of the section that seals on valves are only to assure the integrity of tanks used to store oil; i.e., any production removed through these valves requires the breaking of a seal. Additional discussion and clarification of the Bureau of Land Management's site security requirements, including the term "appropriate valves," will be contained in the applicable Onshore Oil and Gas Orders.

Section 3162.7–4(b)(2) of the proposed rulemaking is amended by the final rulemaking to remove the term "Automatic Custody Transfer" and replace it with the term "Lease Automatic Custody Transfer," since the term "Automatic Custody Transfer" commonly refers to pipeline and loading systems and not lease measurement systems.

The final rulemaking amends § 3162.7–4(b)(4) of the proposed rulemaking by removing the first sentence of the section because it serves no useful purpose and imposed a restriction on the operator as to when sales must be made from the lease. The second sentence of the section also has been modified by the final rulemaking to remove the phrase "including sales and equalizer lines" since the term "appropriate valves" already includes valves located on equalizer lines.

The final rulemaking deletes § 3162.7–4(b)(6) of the proposed rulemaking since oil in pits is covered by § 3162.7–1, Disposition of production. As a result of the deletion made by the final rulemaking, the remaining paragraphs of the section have been renumbered.

The final rulemaking has not adopted the suggestions of a few of the comments on § 3162.7–4(b)(9) of the proposed rulemaking, renumbered as § 3162.7–4(b)(8) by the final rulemaking, that theft or mishandling of oil need not be reported until "reasonably verified." The intent of this provision is for the authorized officer to receive initial notification of such suspected incidents as soon as discovered. Operators may submit amended, supplemental, or final reports as soon as their internal verification of the incident has been completed.

The final rulemaking adopts the comments made on § 3162.7–4(c) and makes a change to the proposed rulemaking to clarify that site security plans are required only for those leases which produce oil or condensate. Leases which produce only dry gas are not required to have a site security plan because they have no storage facilities.

The suggested comments on § 3162.7–4(d) of the proposed rulemaking concerning time frames for development of site security plans have not been adopted by the final rulemaking. The section requires site security plans within 60 days after completion of construction or first production, whichever occurs first. Any situations requiring variances of the minimum standards can be adequately handled by § 3162.7–4(b)(9) of the final rulemaking.

The final rulemaking, as recommended in a comment on § 3162.7–4(d) of the proposed rulemaking, amends the section to make it clear that facility diagrams do not have to be drawn to scale.

Assessments

Section 3163.3 of the proposed rulemaking, which has been retitled and renumbered by the final rulemaking, was the focus of several comments which questioned the authority of the Bureau of Land Management to establish assessments other than the civil penalties authorized in the Federal Oil and Gas Royalty Management Act. The comments raised serious concerns about the automatic nature of some of the assessments, arguing that notice and an opportunity to correct the noncompliance must be provided before an assessment can be made. The comments noted that the Linowes Commission indicated that the Bureau had no meaningful civil enforcement authority and questioned why Congress considered the Federal Oil and Gas Royalty Management Act civil penalty provisions necessary if the Bureau possesses independent authority. A few of the comments questioned the Bureau's use of the decision in *Forbes* v. *United States* (125 F. 2d 404 (9th Cir. 1942)), as recognition of assessment authority. Finally, one comment on this section of the proposed rulemaking stated that the Bureau has "repeatedly declined to define the statutory source" of its assessment authority.

The Bureau of Land Management appreciates the thoughtful concern exhibited in the comments on this point. However, the Bureau is of the view that it has strong support for the assessments, as well as a historical basis for their use. This support has been repeatedly referenced in the preambles to the proposed and final rulemakings published in the **Federal Register** on October 27, 1982 (46 FR 47758), on September 16, 1983 (48 FR 41739), on September 21, 1984 (49 FR 37356), and on January 30, 1986 (51 FR 3882).

The provisions of the regulations providing assessments have been promulgated under the Secretary of the Interior's general authority set out in section 32 of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 189), and under the various other mineral leasing laws. Specific authority for the assessments is found in section 31(a) of the Mineral Leasing Act (30 U.S.C. 188(a)), which states in part "... the lease may provide for resort to appropriate methods for the settlement of disputes or for remedies for breach of specified conditions thereof." All Federal onshore and Indian oil and gas lessees must, by the specific terms of their leases, which incorporate the regulations by reference, comply with all applicable laws and regulations.

Failure of the lessee to comply with the law and applicable regulations is a breach of the lease, and such failure may also be a breach of other specific lease terms and conditions. Under section 31(a) of the Act and the terms of its leases, the Bureau may seek cancellation of the lease in these circumstances. However, since at least 1942, the Bureau (and formerly the Conservation Division, U.S. Geological Survey), has recognized that lease cancellation is too drastic a remedy except in extreme cases. Therefore, a system of liquidated damages was established to set lesser remedies in lieu of lease cancellation. None of the comments challenged the authority of the Secretary under section 31(a) of the Act to make such assessments.

The Bureau of Land Management recognizes that liquidated damages cannot be punitive, but are a reasonable effort to compensate as fully as possible the offended party, in this case the lessor, for the damage resulting from a breach where a precise financial loss would be difficult to establish. This situation occurs when a lessee fails to comply with the operating and reporting requirements. The rules therefore establish uniform estimates for the damages sustained, depending on the nature of the breach.

As noted above, the concept of liquidated damages was established as early as 1942 for breach of the operating regulations. In November 1981, a proposed rulemaking, that, among other things, would have increased the amount of the various liquidated damages assessments and would have provided a penalty of up to $1,000 per day for serious violations was published in the **Federal Register** (46 FR 56564). That proposed rulemaking also would have changed the label from "liquidated damages" to "assessments," although the discussion in the preamble made it clear that the purpose had not changed. In January 1982, the Linowes Commission recommended that Congress give the Department of the Interior civil penalty authority of up to $10,000 per day per violation. In November 1982, the increased assessments and the regulations incorporating them became effective. In January 1983, the Federal Oil and Gas Royalty Management Act was enacted. Neither the Linowes Commission nor the Congress recognized, or commented on, the proposed or final rulemakings, although the Linowes Commission noted that the then-existing liquidated damages regulations were "very small." The Commission did provide a draft of their report during the comment period and asked that it be considered in preparing the final rulemaking. Similarly, none of the comments on the 1981 proposed rulemaking challenged the authority of the Secretary of the Interior to issue such regulations. Thus, at the time of enactment of the Federal Oil and Gas Royalty Management Act there was no Congressional intent to supersede or supplant the Secretary's existing authority, as implemented in the final rulemaking of October 1982. Congress generally indicated its intention not to affect any existing authorities in section 304(a) of the Federal Oil and Gas Royalty Management Act. The Bureau, therefore, retained the Mineral Leasing Act assessments and penalty provisions of the then existing regulations when it issued final regulations for the Federal Oil and Gas Royalty Management Act in September 1984. In this proposed rulemaking, the penalty provisions of the Mineral Leasing Act would have been changed to an assessment when a lessee or operator fails to abate a major violation in a timely manner. The Bureau must continue to provide some remedy for the breach of the terms and conditions of a lease. The final rulemaking has retained the assessment process provided in the proposed rulemaking as a more equitable remedy than lease cancellation for initial enforcement efforts.

The comments specifically criticized the provision of the proposed rulemaking that would permit the assessment of damages without notice. Lessees and operators, of course, are expected to know the obligations and requirements of a Federal or Indian oil and gas lease. In essence, the comments complain that the proposed rulemaking fails to provide provisions for notifying them that they are failing to comply with requirements which are contained in their lease or the regulations that control their operations. The inconsistency of this argument is clear because the only violations assessed without notice and an opportunity to abate are set out in paragraph (b) of this section and cover only a failure to install blowout preventers, a failure to obtain approval prior to drilling, and a failure to obtain approval for well abandonment. These three enumerated requirements for Federal and Indian lease operations could not be clearer or more widely known. The Bureau finds that additional notice prior to the assessment is not warranted due to the serious nature and potential consequences of a breach of these requirements. With regard to the comments on the "automatic" assessment for multiple major violations contained in the proposed rulemaking, the Bureau agrees that each violation should be handled on its own merits and that the imposition of an automatic assessment, other than for those specific violations discussed above, is not appropriate. Accordingly, the final rulemaking has deleted this provision of the proposed rulemaking.

Those comments that criticized the use of the decision in *Forbes* v. *United States* as support for Mineral Leasing Act assessments are correct that this case does not involve liquidated

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damages. However, the Bureau of Land Management correctly used this decision as general support for the Secretary of the Interior's authority under the Mineral Leasing Act to collect damages for failure to comply with the orders of the authorized officer.

Finally, one comment expressed the view that the Bureau of Land Mangement has declined to explain its authority for Mineral Leasing Act assessments. While the preambles to the 1981, 1982, and 1983 rulemakings did not explain this authority beyond a reference to the Mineral Leasing Act, the preamble to the final rulemaking of September 1984, provides references to the appropriate sections of the Mineral Leasing Act. More importantly, the preamble to this proposed rulemaking provided a complete explanation of the Secretary of the Interior's authority. The explanation has been expanded in this preamble to provide better understanding as to the Bureau's position on this point. Although no comments were received regarding the Secretary's authority to impose assessments for violations occurring on Indian leases, this authority was recently upheld in the decision of the Interior Board of Land Appeals in *William Perlman* (93 I.D. 159, 91 IBLA 208 (1986)).

A number of the comments were concerned with the Bureau of Land Management's intention to enforce other agency safety and environmental requirements under both the assessment and penalty provisions of the proposed rulemaking. Although the final rulemaking makes changes in these provisions of the proposed rulemaking, it is intended that these provisions apply to violations of the regulations in 43 CFR Part 3160 or for violation of any notice, order or instruction or terms of a permit issued by the Bureau under the regulations in Part 3160.

Several of the comments suggested that the final rulemaking should modify § 3163.3(a)(2) of the proposed rulemaking, drilling without approval, to make it apply only to actual drilling operations, not to preliminary actions. The suggested change has not been adopted by the final rulemaking because the Bureau of Land Management considers the prior approval requirements for both the actual drilling and associated surface disturbance as being very clear and the prior approval of these operations is critical to proper multiple use management of the public lands. One of the comments suggested that the final rulemaking provide relief for stripper wells. This suggested change was not adopted by the final rulemaking because the administrative review procedures in § 3165.3 provide that the effect of the assessment on the continued operation of the well and potential for damage can be considered upon review.

Section 3163.3(b)(1) of the proposed rulemaking has been modified by the final rulemaking to clarify that assessments apply only when a site specific notice, order, or instruction is not abated within the time allowed. Violation of the requirements contained in a Notice to Lessees, Onshore Oil and Gas Order, or general conditions of approval on a drilling permit are not considered a failure to comply with the written orders of the authorized officer for the purposes of an assessment under this section.

Four comments on the January 30, 1986, proposed rulemaking recommended that the final rulemaking provide that the failure to submit the Monthly Report of Operations, Form 3160–6, be a minor violation. Because an automatic assessment seems inappropriate for failure to submit the Monthly Report of Operations, the final rulemaking has amended the proposed rulemaking to provide that where reports are not submitted within the time allowed by specific notice from the authorized officer, the provisions for nonabatement of a minor violation would be applicable.

Several comments on the proposed rulemaking suggested that the final rulemaking provide clarification of the authority of the State Director to reduce assessments. The final rulemaking has adopted this suggestion and has added a new paragraph (e) to § 3163.1 to provide the requested clarification.

Finally, the Bureau of Land Management's enforcement actions or remedies for noncompliance are located in three separate sections of the existing regulations and the proposed rulemaking: Sections 3163.1, 3163.2, and 3163.3. For clarification and simplification, the final rulemaking combines these three sections into a single section, § 3163.1. However, this change is not intended to modify the enforcement authority currently in effect, except as identified earlier in this preamble.

Penalties

The final rulemaking has renumbered § 3163.4 of the proposed rulemaking, as § 3163.2.

Many of the comments on this section of the proposed rulemaking object to provisions which were taken directly from the Federal Oil and Gas Royalty Management Act. Since the section restates provisions of the statute, the final rulemaking has not made changes in this section.

Several of the comments on this section of the proposed rulemaking expressed concern over possible duplication of penalties being used for a single instance of noncompliance. As discussed earlier in this preamble in connection with § 3163.1, the rulemaking is not intended to provide for duplicate enforcement.

Several of the comments suggested that this section of the proposed rulemaking be amended by the final rulemaking to remove the word "maximum" and replacing it with the phrase "up to" to allow local Bureau of Land Management offices to exercise judgment in establishing penalties for noncompliance. This suggested change has not been adopted by the final rulemaking. While the Bureau supports the exercise of local judgment and discretion, consistency of initial application of penalties is also important. Accordingly, rather than have over 100 local offices deciding on the amount of penalties, discretion to reduce assessments and penalties upon review is delegated to the State Directors.

Notice, Review and Appeal

Approximately 19 comments were received on the Notice provisions of the proposed rulemaking and 28 comments were received on the provisions on review and appeal.

Those comments on the Notice generally were of the view that the provisions in the proposed rulemaking were inadequate to assure that operators timely received notice so that necessary corrective action could be taken. The comments made the point that the presumption that notice is received within five days of mailing is not accurate considering the many small, isolated communities where some Bureau of Land Management offices are located. The final rulemaking finds merit in this view and has adopted a change that extends the time to seven days.

The comments also suggested that in order to assure prompt correction of major violations, a good faith effort should be made to telephone the operator's representative. The final rulemaking has adopted this suggested change since it aids the Bureau of Land Management's objective of prompt correction of violations.

The comments suggested that the final rulemaking provide for multiple "designated representatives" and "alternatives" for notification purposes. The final rulemaking has not adopted this suggestion. As discussed earlier in this preamble, it is reasonable to contact such designated representative concerning the correction of violations. Rather than require the Bureau of Land Management field employees to attempt to contact multiple parties, it should be the responsibility of the operator to assure that internal procedures are in place so that appropriate company personnel know to whom to refer such matters.

The comments on § 3165.3 (b) and (c) of the proposed rulemaking were of the view that the time allowed for filing of a Request for Administrative Review was too short in light of the fact that an appeal or hearing on the record is precluded unless such review is requested. It was agreed that the 10-day period from the receipt of a notice of violations for the filing of a Request for Administrative Review by the State Director was too short. Since the intent of this provision of the proposed rulemaking was to provide an operator with an opportunity for quick review but not to cut off any rights, the final rulemaking achieves this objective by extending this period to 20 days and by clarifying that further extension can be granted when justified. The phrase "oral argument" has been replaced with "oral presentation" to reflect more closely the desire to avoid overly formal procedures.

Many comments wanted the authority for "stopping-the-clock" clarified. Although some of the comments requested an automatic suspension of assessments and penalties upon the filing of a Request for Administrative Review, most of the comments recognized that automatic tolling of assessments or penalties during review could result in nearly all notices of noncompliance being taken to review. The final rulemaking has modified this section of the proposed rulemaking to provide that, upon request and a showing of good cause, the State Director may suspend the accumulation of assessments or penalties during the period of administrative review. This authority will be exercised only in those instances where the operator provides reasonable grounds in the request for such tolling.

Several comments suggested that the proposed rulemaking misinterpreted the Federal Oil and Gas Royalty Management Act by providing that the right of review by a District Court may be lost by not first requesting a hearing on the record. Section 109(j) of the Federal Oil and Gas Royalty Management Act expressly precludes judicial review unless the aggrieved party has requested a hearing on the record.

The comments on § 3165.3(d) of the proposed rulemaking stated that the accumulation of assessments or penalties should be automatically suspended during hearing on the record regarding a proposed penalty or during any appeal to the Interior Board of Land Appeals. Due to the length of time involved in the hearing and appeal process, it is agreed that the clock should be stopped on the accumulation either of penalties during a hearing on the record or of assessments or penalties during the period the lessee exercises the right to appeal the decision to the Interior Board of Land Appeals. The final rulemaking has adopted the recommended changes subject to a determination by the Director, Bureau of Land Management, to reinstate the daily accumulation of penalties in the case of those major violations that are considered serious. This procedure differs from that provided in the proposed rulemaking and followed by the Minerals Management Service in cases related to royalty. In those royalty cases where there is no harm to the lessor, the lessee may, if permitted by the Service, post a bond for the disputed amount in lieu of immediate payment and thereby satisfy the order to abate the violation.

Generally, a similar interim compliance procedure is not available for violations of the Bureau's operations procedures. Because of the difference in the way the Service and the Bureau handle the abatement of violations, this final rulemaking will provide for a continuation of the suspension of the daily accumulation of penalties and assessments unless the Director specifically decides to reinstate them. The effectiveness of the decision requiring that a violation be corrected will not, however, be suspended during the hearing or appeal. Sections 3165.3 and 3165.4 have been revised to consolidate the appeals provisions in one section.

Comments were also received on several issues which were raised in the preamble to the proposed rulemaking and are discussed below.

Phased Implementation

Two written comments were received on the issue of phased implementation. One of the comments expressed the view that there should be a period after publication of this final rulemaking, but prior to its effective date, where the affected public could recommend changes. This recommendation has not been adopted by the final rulemaking. Because of the impacts of the provisions of this final rulemaking, the final rulemaking allows a 60-day period, instead of the usual 30-day period, from the date of publication to the effective date to give the using public an opportunity to become familiar with the provisions of the rulemaking and make any needed changes in their operations. If the affected public raises substantive questions about the provisions of the final rulemaking, the Bureau of Land Management will review the issues raised to determine what changes, if any, should be adopted. If a determination is made that the provisions of the final rulemaking need to be changed, a proposed rulemaking will be issued making those changes. The other comment noted it was difficult to visualize a reasonable approach for phasing in of this final rulemaking, but that it would be appropriate to phase in the onshore operating orders that will be issued later. The Bureau of Land Management has delayed the publication of the proposed orders until after this final rulemaking has been published.

Operator's Self Compliance

There were three comments on the request in the preamble of the proposed rulemaking for suggestions for self compliance, including allowing an operator certain benefits or incentives. The comments supported the concept, with one of the comments adding that no "penalties or assessments be made" or that no accumulation of such penalties or assessments be considered. One of the comments recommended the creation of a formal recognition program for those operators who practice effective self compliance.

Even though the final rulemaking has not adopted any changes based on these comments, the Bureau of Land Management continues to encourage operator self compliance. This final rulemaking should provide enough of an opportunity for reasonable abatement times and consideration of various factors in the administrative review process for field personnel to take such a factor into consideration. If, at a later date, there is a need to provide additional encouragement for self compliance, steps will be taken to provide that encouragement.

Priority for Development of Onshore Oil and Gas Orders

Six comments were received in response to the request for public views on the development of Onshore Oil and Gas Orders which recommended that the Orders be phased in only after this final rulemaking has become effective.

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The comments also recommended a priority for issuance of the Orders, recommending the order in which they should be published. While the final rulemaking makes no changes in response to these comments, the Bureau of Land Management will not publish any of the Orders until after publication of this final rulemaking and the suggested priority for the publication of the Orders will be followed, with the Orders being phased in over time.

Sealing of Thief Hatches

Four comments were received in response to the request in the preamble to the proposed rulemaking on whether additional access points, such as thief hatches, should require sealing. The comments suggested that the sealing of thief hatches was unnecessary and unworkable because of the need for frequent access. Based on these suggestions, the final rulemaking has not made any change in the provisions of the proposed rulemaking relating to the sealing of additional access points.

Editorial and grammatical corrections as needed have been made.

The principal authors of this final rulemaking are Frank Salwerowicz, Deputy State Director for Minerals for the Colorado State Office, Tom Leshendok, Deputy State Director for Minerals for the Nevada State Office, and Gene Daniel, retired Deputy State Director for Minerals for the Montana State Office, all of the Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management and the staff of the Office of the Solicitor, Department of the Interior.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The cost or economic effect of the final rulemaking will be minimal or nonexistent so long as operators comply with the requirements or take corrective action in a timely manner.

There are no additional information collection requirements contained in this final rulemaking requiring the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 3160

Government contracts, Indian lands—mineral resources, Mineral royalties, Oil and gas production, Public lands—mineral resources, Reporting and recordkeeping requirements.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102 et seq.), Part 3160, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

J. Steven Griles,

Assistant Secretary of the Interior.

January 13, 1987.

PART 3160—[AMENDED]

1. The authority citation for part 3160 is revised to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for acquired Lands, as amended (30 U.S.C. 351–359), the Act of May 21, 1930, (30 U.S.C. 301–306), the Act of March 3,1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.); the National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321 et seq.); the Act of December 12, 1980 (42 U.S.C. 6508); the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78); the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.); and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102).

2. Note 1, *Operating Forms*, is amended as follows:

A. In the first column, the number "9–330" is removed and replaced with the number "3160–4", the number "9–329/329A" is removed and replaced with the number "3160–6" and the number "9–331C" is removed and replaced with the number "3160–3";

B. In the middle column, in the second paragraph, the word "production" is removed and replaced with the word "operation" and in the fourth paragraph the word "Due' is removed and replaced with the word "Filed"; and

C. In the third column, the number "1010–0004" is removed and replaced with the number "1004–0137", the number "1010–0005" is removed and replaced with the number "1004–0138" and the number is "1010–0003" is removed and replaced with the number "1004–0136".

3. Note 1, *Other Operating Requirements*, is amended by removing from where it appears the phrase "Clearance Number 1010–0001" and replacing it with the phrase "Clearance Number 1004–0134".

§ 3160.0–5 [Amended]

4. Section 3160.0–5 is amended by:

A. Amending the term "*avoidably lost*" by removing from where it appears the word "Supervisor" and replacing it with the phrase "authorized officer";

B. Amending the term "*notice to lessees and operators (NTL)*" by removing from where it appears the word "DMM" and replacing it with the phrase "authorized officer" and by removing from where it appears the phrase "Region or portion thereof" and replacing it with the phrase "State, District or Area";

C. Amending the term "*waste of oil or gas*" by removing it from where it appears the word "Supervisor" and replacing it with the phrase "authorized officer";

D. Adding the following terms to read:

"*Knowingly or willfully.* A violation is "knowingly or willfully" committed if it constitutes the voluntary or conscious performance of an act which is prohibited or the voluntary or conscious failure to perform an act or duty with is required. It does not include performances or failures to perform which are honest mistakes or which are merely inadvertent. It includes, but does not require, performances or failures to perform which result from a criminal or evil intent or from a specific intent to violate the law. The knowing or willful nature of conduct may be established by plain indifference to or reckless disregard of the requirements of law, regulations, orders, or terms of the lease. A consistent pattern of performance of failure to perform may also be sufficient to establish the knowing or willful nature of the conduct, where such consistent pattern is neither the result of honest mistake or mere inadvertency. Conduct which is otherwise regarded as being knowing or willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal.";

"*Major violation.* Noncompliance which causes or threatens immediate, substantial and adverse impacts on public health and safety, the environment, production accountability, or royalty income.";

"*Minor violation.* Noncompliance which does not rise to the level of a "major violation.'";

"*New or resumed production under section 102(b)(3) of the Federal Oil and Gas Royalty Management Act.* The date on which a well commences production, or resumes produciton after having been off production for more than 90 days, is to be construed as follows:

(a) For an oil well, the date on which liquid hydrocarbons are first sold or shipped from a temporary storage facility, such as a test tank, or the date on which liquid hydrocarbons are first produced into a permanent storage facility, whichever first occurs;

(b) For a gas well, the date on which gas is first measured through sales metering facilities or the date on which associated liquid hydrocarbons are first sold or shipped from a temporary storage facility, whichever first occurs. For purposes of this provision, a gas well shall not be considered to have been off of production unless it is incapable of production."; and

E. Amending the term "Onshore Oil and Gas Order" by removing from where it appears the word "implements" and replacing it with the phrase "implements and supplements".

5. Section 3161.1 is revised to read:

§ 3161.1 Jurisdiction.

(a) All operations conducted on a Federal or Indian oil and gas lease by, or on behalf of, the lessee are subject to the regulations in this part.

(b) Regulations in this part relating to site security, measurement, reporting of production and operations, and assessments or penalties for noncompliance with such requirements are applicable to all wells and facilities on State or privately-owned mineral lands committed to a unit or communitization agreement which affects Federal or Indian interests, notwithstanding any provision of a unit or communitization agreement to the contrary.

6. Section 3161.2 is amended by removing from where it appears the phrase "to assess monetary penalties or liquidated damages;" and replacing it with the phrase "to impose monetary assessments or penalties;", and by removing from where it appears the phrase "technical and procedural reviews" and replacing it with the phrase "administrative reviews".

§ 3161.3 [Amended]

7. Section 3161.3(b) is revised to read:

. . . . .

(b) in accomplishing the inspections, the authorized officer may utilize Bureau personnel, may enter into cooperative agreements with States or Indian Tribes, may delegate the inspection authority to any State, or may contract with any non-Federal Government entities. Any cooperative agreement, delegation or contractual arrangement shall not be effective without concurrence of the Secretary and shall include applicable provisions of the Federal Oil and Gas Royalty Management Act.

§ 3162.3 [Amended]

8. Section 3162.3(b) is amended by removing the last two sentences.

§ 3162.3–1 [Amended]

9. Section 3162.3–1(d) is amended by removing from where it appears the phrase "Form 9–331c" and replacing it with the phrase "Form 3160–3."

§ 3162.3–2 [Amended]

10. Section 3162.3–2 is amended by removing from where it appears in paragraphs (a) and (b) the phrase "Form 9–331" and replacing it with the phrase "Form 3160–5" and further amending paragraph (a) by removing the phrase "shut off conversion" and replacing it with the phrase "shut off, commingling production between intervals and/or conversion".

§ 3162.3–3 [Amended]

11. Section 3162.3–3 is amended by removing from where it appears the phrase "Form 9–331" and replacing it with the phrase "Form 3160–5".

§ 3162.4–1 [Amended]

12. Section 3162.4–1(b) is amended by removing from where it appears the phrase "Form 9–330" and replacing it with the phrase "Form 3160–4".

§ 3162.4–3 [Amended]

13. Section 3162.4–3 is amended by:

A. Amending the title by removing from where it appears the phrase "(Form 9–329 Public; Form 9–329A Indian)" and replacing it with the phrase "(Form 3160–6)"; and

B. Amending the initial paragraph of the section by removing from where it appears the phrase "Form 9–329" and replacing it with the phrase "Form 3160–6", by removing from where it appears the phrase "in duplicate" and by removing from where it appears the phrase "production month" and replacing it with the phrase "operation month".

14. Section 3162.6 is revised to read:

§ 3162.6 Well and facility identification.

(a) Every well within a Federal or Indian lease or supervised agreement shall have a well indentification sign. All signs shall be maintained in a legible condition.

(b) For wells located on Federal and Indian lands, lessees shall properly identify, by a sign in a conspicuous place, each well, other than those permanently abandoned. The well sign shall include the well number, the name of the operator, the lease serial number, the surveyed location (the quarter-quarter section, section, township and range or other authorized survey designation acceptable to the authorized officer; such as metes and bounds). When approved by the authorized officer, individual well signs may display only a unique well name and number. When specifically requested by the authorized officer, the sign shall include the unit or communitization name or number. The authorized officer may also require the sign to include the name of the Indian allottee lessor(s) preceding the lease serial number. In all cases, individual well signs in place on the effective date of this rulemaking which do not have the unit or communitization agreement number or do not have quarter-quarter identification will satisfy these requirements until such time as the sign is replaced. All new signs shall have identification as above, including quarter-quarter section.

(c) All facilities at which Federal or Indian oil is stored shall be clearly identified with a sign that contains the name of the operator, the lease serial number or communitization or unit agreement identification number, as appropriate, and in public land states, the quarter-quarter section, township, and range. On Indian leases, the sign also shall include the name of the appropriate Tribe and whether the lease is tribal or allotted. For situations of 1 tank battery servicing 1 well in the same location, the requirements of this paragraph and paragraph (b) of this section may be met by 1 sign as long as it includes the information required by both paragraphs. In addition, each storage tank shall be clearly identified by a unique number. All identification shall be maintained in legible condition and shall be clearly apparent to any person at or approaching the sales or transportation point. With regard to the quarter-quarter designation and the unique tank number, any such designation established by state law or regulation shall satisfy this requirement.

(d) All abandoned wells shall be marked with a permanent monument containing the information in paragraph (b) of this section. The requirement for a

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permanent monument may be waived in writing by the authorized officer.

§§ 3162.7-2 and 3162.7-3 [Amended]

15. Section 3162.7-2 is amended by removing from where it appears the phrase "measured by" and replacing it with the phrase "measured on the lease by", and by adding at the end of the section the sentence, "Off-lease storage or measurement, or commingling with production from other sources prior to measurement, may be approved by the authorized officer." and § 3162.7-3 is amended by adding at the end of the section the sentence, "Off-lease measurement or commingling with production from other sources prior to measurement may be approved by the authorized officer."

§ 3162.7-4 [Amended]

16. Section 3162.7-4 is amended by:

A. Amending paragraph (a) by removing in their entirety from where they appear the terms "closed system" and "open system" and the term "appropriate valves" is revised to read *"Appropriate valves.* Those valves in a particular piping system, i.e., fill lines, equalizer or overflow lines, sales lines, circulating lines, and drain lines that shall be sealed during a given operation.", and the term "effectively sealed" is revised to read *"Effectively sealed.* The placement of a seal in such a manner that the position of the sealed valve may not be altered without the seal being destroyed.", by amending the term "seal" by removing from where it appears the word "fitting" and replacing it with the word "valve", and by amending the term "production phase" by removing the period at the end thereof and adding the phrase "and includes all operations at the facility other than those defined by the sales phase."; and

B. Revising paragraphs (b) through (d) to read:

* * * * *

(b) *Minimum Standards.* Each operator of a Federal or Indian lease shall comply with the following minimum standards to assist in providing accountability of oil or gas production:

(1) All lines entering or leaving oil storage tanks shall have valves capable of being effectively sealed during the production and sales operations unless otherwise modified by other subparagraphs of this paragraph, and any equipment needed for effective sealing, excluding the seals, shall be located at the site. For a minimum of 6 years the operator shall maintain a record of seal numbers used and shall document on which valves or connections they were used as well as when they were installed and removed. The site facility diagram(s) shall show which valves will be sealed in which position during both the production and sales phases of operation.

(2) Each Lease Automatic Custody Transfer (LACT) system shall employ meters that have non-resettable totalizers. There shall be no by-pass piping around the LACT. All components of the LACT that are used for volume or quality determinations of the oil shall be effectively sealed. For systems where production may only be removed through the LACT, no sales or equalizer valves need be sealed. However, any valves which may allow access for removal of oil before measurement through the LACT shall be effectively sealed.

(3) There shall be no by-pass piping around gas meters. Equipment which permits changing the orifice plate without bleeding the pressure off the gas meter run is not considered a by-pass.

(4) For oil measured and sold by hand gauging, all appropriate valves shall be sealed during the production or sales phase, as applicable.

(5) Circulating lines having valves which may allow access to remove oil from storage and sales facilities to any other source except through the treating equipment back to storage shall be effectively sealed as near the storage tank as possible.

(6) The operator, with reasonable frequency, shall inspect all leases to determine production volumes and that the minimum site security standards are being met. The operator shall retain records of such inspections and measurements for 6 years from generation. Such records and measurements shall be available to any authorized officer or authorized representative upon request.

(7) Any person removing oil from a facility by motor vehicle shall possess the identification documentation required by appicable NTL's or onshore Orders while the oil is removed and transported.

(8) Theft or mishandling of oil from a Federal or Indian lease shall be reported to the authorized officer as soon as discovered, but not later than the next business day. Said report shall include an estimate of the volume of oil involved. Operators also are expected to report such thefts promptly to local law enforcement agencies and internal company security.

(9) Any operator may request the authorized officer to approve a variance from any of the minimum standards prescribed by this section. The variance request shall be submitted in writing to the authorized officer who may consider such factors as regional oil field facility characteristics and fenced, guarded sites. The authorized officer may approve a variance if the proposed alternative will ensure measures equal to or in excess of the minimum standards provided in paragraph (b) of this section wil be put in place to detect or prevent internal and external theft, and will result in proper production accountability.

(c) *Site security plans.* (1) Site security plans, which include the operator's plan for complying with the minimum standards enumerated in paragraph (b) of this section for ensuring accountability of oil/condensate production are required for all facilities and such facilities shall be maintained in compliance with the plan. For new facilities, notice shall be given that it is subject to a specific existing plan, or a notice of a new plan shall be submitted, no later than 60 days after completion of construction or first production or following the inclusion of a well on committed non-Federal lands into a federally supervised unit or communitization agreement, whichever occurs first, and on that date the facilities shall be in compliance with the plan. At the operator's option, a single plan may include all of the operator's leases, unit and communitized areas, within a single BLM district, provided the plan clearly identifies each lease, unit, or communitized area included within the scope of the plan and the extent to which the plan is applicable to each lease, unit, or communitized area so identified.

(2) The operator shall retain the plan but shall notify the authorized officer of its completion and which leases, unit and communitized areas are involved. Such notification is due at the time the plan is completed as required by paragraph (c)(1) of this section, Such notification shall include the location and normal business hours of the office where the plan will be maintained. Upon request, all plans shall be made available to the authorized officer.

(3) The plan shall include the frequency and method of the operator's inspection and production volume recordation. The authorized officer may, upon examination, require adjustment of the method or frequency of inspection.

(d) *Site facility diagrams.* (1) Facility diagrams are required for all facilities which are used in storing oil/condensate produced from, or allocated to, Federal or Indian lands. Facility diagrams shall be filed within 60 days after new measurement facilities are installed or existing facilities are modified or

following the inclusion of the facility into a federally supervised unit or communitization agreement.

(2) No format is prescribed for facility diagrams. They are to be prepared on 8½" × 11" paper, if possible, and be legible and comprehensible to a person with ordinary working knowledge of oil field operations and equipment. The diagram need not be drawn to scale.

(3) A site facility diagram shall accurately reflect the actual conditions at the site and shall, commencing with the header if applicable, clearly identify the vessels, piping, metering system, and pits, if any, which apply to the handling and disposal of oil, gas and water. The diagram shall indicate which valves shall be sealed and in what position during the production or sales phase. The diagram shall clearly identify the lease on which the facility is located and the site security plan to which it is subject, along with the location of the plan.

§ 3163.1 [Amended]

17. Section 3163.1 is revised to read:

§ 3163.1 Remedies for acts of noncompliance.

(a) Whenever a lessee fails or refuses to comply with the regulations in this part, the terms of any lease or Permit, or the requirements of any notice or order, the authorized officer shall notify the lessee in writing of the violation or default. Such notice shall also set forth a reasonable abatement period:

(1) If the violation or default is not corrected within the time allowed, the authorized officer may subject the lessee to an assessment of not more than $500 per day for each day nonabatement continues where the violation or default is deemed a major violation;

(2) Where noncompliance involves a minor violation, the authorized officer may subject the lessee to an assessment of $250 for failure to abate the violation or correct the default within the time allowed;

(3) When necessary for compliance, or where operations have been commenced without approval, or where continued operations could result in immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income, the authorized officer may shut down operations. Immediate shut-in action may be taken where operations are initiated and conducted without prior approval, or where continued operations could result in immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income. Shut-in actions or other situations may be taken only after due notice, in writing, has been given;

(4) When necessary for compliance, the authorized officer may enter upon a lease and perform, or have performed, at the sole risk and expense of the lessee, operations that the lessee fails to perform when directed in writing by the authorized officer. Appropriate charges shall include the actual cost of performance, plus an additional 25 percent of such amount to compensate the United States for administrative costs. The lessee shall be provided with a reasonable period of time either to take corrective action or to show why the lease should not be entered;

(5) Continued noncompliance may subject the lessee to lease cancellation and forfeiture under the bond. The lessee shall be provided with a reasonable period of time either to take corrective action or to show why the lease should not be recommended for cancellation and forfeiture declared under the surety bond;

(6) Where actual loss or damage has occurred as a result of the lessee's noncompliance, the actual amount of such loss or damage shall be charged to the lessee.

(b) Certain instances of noncompliance are violations of such a serious nature as to warrant the imposition of immediate assessments upon discovery. Upon discovery the following violations shall result in immediate assessments, which may be retroactive, in the following specified amounts per violation:

(1) For failure to install blowout preventer or other equivalent well control equipment, as required by the approved drilling plan, $500 per day for each day that the violation existed, including days the violation existed prior to discovery, not to exceed $5,000;

(2) For drilling without approval or for causing surface disturbance on Federal or Indian surface preliminary to drilling without approval, $500 per day for each day that the violation existed, including days the violation existed prior to discovery, not to exceed $5,000;

(3) For failure to obtain approval of a plan for well abandonment prior to commencement of such operations, $500.

(c) Assessments under paragraph (a)(1) of this section shall not exceed $1,000 per day, per operator, per lease. Assessments under paragraph (a)(2) of this section shall not exceed a total of $500 per operator, per lease, per inspection.

(d) Continued noncompliance shall subject the lessee to penalties described in § 3163.2 of this title.

(e) On a case-by-case basis, the State Director may compromise or reduce assessments under this section. In compromising or reducing the amount of the assessment, the State Director shall state in the record the reasons for such determination.

§§ 3163.2 and 3163.3 [Removed]

18. Sections 3163.2 and 3163.3 are removed in their entirety.

19. Section 3163.4-1 is redesignated as § 3163.2 and is revised to read:

§ 3163.2 Civil penalties.

(a) Whenever a lessee fails or refuses to comply with any applicable requirements of the Federal Oil and Gas Royalty Management Act, any mineral leasing law, any regulation thereunder, or the terms of any issue or permit issued thereunder, the authorized officer shall notify the lessee in writing of the violation, unless the violation was discovered and reported to the authorized officer by the liable person or the notice was previously issued under § 3163.1 of this title. If the violation is not corrected within 20 days of such notice or report, or such longer time as the authorized officer may agree to in writing, the lessee shall be liable for a civil penalty of up to $500 per violation for each day such violation continues, dating from the date of such notice or report. Any amount imposed and paid as assessments under the provisions of § 3163.1(a)(1) of this title shall be deducted from penalties under this section.

(b) If the violation specified in paragraph (a) of this section is not corrected within 40 days of such notice or report, or a longer period as the authorized officer may agree to in writing, the lessee shall be liable for a civil penalty of up to $5,000 per violation for each day the violation continues, not to exceed a maximum of 60 days, dating from the date of such notice or report. Any amount imposed and paid as assessments under the provisions of § 3163.1(a)(1) of this title shall be deducted from penalties under this section.

(c) In the event the authorized officer agrees to an abatement period of more than 20 days, the date of notice shall be deemed to be 20 days prior to the end of such longer abatement period for the purpose of civil penalty calculation.

(d) Whenever a transporter fails to permit inspection for proper documentation by any authorized representative, as provided in § 3162.7-1(c) of this title, the transporter shall be liable for a civil penalty of up to $500 per day for the violation, not to exceed a maximum of 20 days, dating from the date of notice of the failure to permit

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inspection and continuing until the proper documentation is provided.

(e) Any person shall be liable for a civil penalty of up to $10,000 per violation for each day such violation continues, not to exceed a maximum of 20 days if he/she:

(1) Fails or refuses to permit lawful entry or inspection authorized by § 3162.1(b) of this title; or

(2) Knowingly or willfully fails to notify the authorized officer by letter or Sundry Notice, Form 3160–5 or orally to be followed by a letter or Sundry Notice, not later than the 5th business day after any well begins production on which royalty is due, or resumes production in the case of a well which has been off of production for more than 90 days, from a well located on a lease site, or allocated to a lease site, of the date on which such production began or resumed.

(f) Any person shall be liable for a civil penalty of up to $25,000 per violation for each day such violation continues, not to exceed a maximum of 20 days if he/she:

(1) Knowingly or willfully prepares, maintains or submits false, inaccurate or misleading reports, notices, affidavits, records, data or other written information required by this part; or

(2) Knowingly or willfully takes or removes, transports, uses or diverts any oil or gas from any Federal or Indian lease site without having valid legal authority to do so; or

(3) Purchases, accepts, sells, transports or conveys to another any oil or gas knowing or having reason to know that such oil or gas was stolen or unlawfully removed or diverted from a Federal or Indian lease site.

(g) Determinations of Penalty Amounts for this section are as follows:

(1) For major violations, all initial proposed penalties shall be at the maximum rate provided in paragraphs (a), (b), and (d) through (f) of this section, i.e., in paragraph (a) of this section, the initial proposed penalty for a major violation shall be at the rate of $500 per day through the 40th day of a noncompliance beginning after service of notice, and in paragraph (b) of this section, $5,000 per day for each day the violation remains uncorrected after the date of notice or report of the violation. Such penalties shall not exceed a rate of $1,000 per day, per operator, per lease under paragraph (a) of this section or $10,000 per day, per operator, per lease under paragraph (b) of this section. For paragraphs (d) through (f) of this section, the rate shall be $500, $10,000, and $25,000, respectively.

(2) For minor violations, no penalty under paragraph (a) of this section shall be assessed unless:

(i) The lessee has been notified of the violation in writing and did not correct the violation within the time allowed; and

(ii) The lessee has been assessed $250 under § 3163.1 of this title and a second notice has been issued giving an abatement period of not less than 20 days; and

(iii) The noncompliance was not abated within the time allowed by the second notice. The initial proposed penalty for a minor violation under paragraph (a) of this section shall be at the rate of $50 per day beginning with the date of the second notice. Under paragraph (b) of this section, the penalty shall be at a daily rate of $500. Such penalties shall not exceed a rate of $100 per day, per operator, per lease under paragraph (a) of this section, of $1,000 per day, per operator, per lease under paragraph (b) of this section.

(h) On a case-by-case basis, the Secretary may compromise or reduce civil penalties under this section. In compromising or reducing the amount of a civil penalty, the Secretary shall state on the record the reasons for such determination.

(i) Civil penalties provided by this section shall be supplemental to, and not in derogation of, any other penalties or assessments for noncompliance in any other provision of law, except as provided in paragraphs (a) and (b) of this section.

(j) If the violation continues beyond the 60-day maximum specified in paragraph (b) of this section or beyond the 20 day maximum specific in paragraphs (e) and (f) of this section, lease cancellation proceedings shall be initiated under either Title 43 or Title 25 of the Code of Federal Regulations.

(k) If the violation continues beyond the 20-day maximum specified in paragraph (d) of this section, the authorized officer shall revoke the transporter's authority to remove crude oil or other liquid hydrocarbons from any Federal or Indian lease under the authority of that authorized officer or to remove any crude oil or liquid hydrocarbons allocation to such lease site. This revocation of the transporter's authority shall continue until compliance is achieved and related penalty paid.

20. Section 3163.4–2 is redesignated as § 3163.3.

21. A new § 3163.4 is added to read:

§ 3163.4 Failure to pay.

If any person fails to pay an assessment or a civil penalty under § 3163.1 or § 3163.2 of this title after the order making the assessment or penalty becomes a final order, and if such person does not file a petition for judicial review in accordance with this subpart, or, after a court in an action brought under this subpart has entered a final judgment in favor of the Secretary, the court shall have jurisdiction to award the amount assessed plus interest from the date of the expiration of the 90-day period provided by § 3165.3(d)(2) of this title. The Federal Oil and Gas Royalty Management Act requires that any judgment by the court shall include an order to pay.

§ 3163.5 [Amended]

22. Section 3163.5 is amended by removing from where it appears in paragraph (b) the citation "3163.4–1" and replacing it with the citation "3163.2" and by removing from where it appears in paragraph (c) the citation "3163.4–1(b)" and replacing it with the citation "3163.2".

23. Section 3165.3 is revised to read:

§ 3165.3 Notice State Director review and hearing on the record.

(a) *Notice.* Whenever a lessee fails to comply with any provisions of the lease, the regulations in this part, applicable orders or notices, or any other appropriate orders of the authorized officer, written notice shall be given the lessee to remedy any defaults or violations. Written orders or a notice of violation, assessment, or proposed plenalty shall be issued and served by personal service by an authorized officer or by certified mail. Service shall be deemed to occur when received or 7 business days after the date it is mailed, whichever is earlier. Any person may designate a representative to receive any notice of violation, assessment, or proposed penalty on his/her behalf. In the case of a major violation, the authorized officer shall make a good faith effort to contact such designated representative by telephone to be followed by a written notice. Receipt of notice shall be deemed to occur at the time of such verbal communication, and the time of notice and the name of the receiving party shall be confirmed in the file. If the good faith effort to contact the designated representative is unsuccessful, notice of the major violation may be given to any person authorized by the lessee to conduct or supervise operations subject to the regulations in this part. In the case of a minor violation, written notice shall be provided as described above. A copy of all orders, notices, or instructions served on any contractor or field employee shall also be mailed to the lessee or the lessee's designated representative as described above. Any notice involving a

civil penalty shall be mailed to the lessee of record.

(b) *State Director review.* Any adversely affected party that contests a notice of violation or assessment or an instruction, order, or decision of the authorized officer issued under the regulations in this part, may request an administrative review, before the State Director, either with or without oral presentation. Such request, including all supporting documentation, shall be filed in writing with the appropriate State Director within 20 business days of the date such notice of violation or assessment or instruction, order, or decision was received or considered to have been received and shall be filed with the appropriate State Director. Upon request and showing of good cause, an extension for submitting supporting date may be granted by the State Director. Such review shall include all factors or circumstances relevant to the particular case. Any party who is adversely affected by the State Director's decision may appeal that decision to the Interior Board of Land Appeals as provided in § 3165.4 of this part.

(c) *Review of proposed penalties.* Any adversely affected party wishing to contest a notice of proposed penalty shall request an administrative review before the State Director under the procedures set out in paragraph (b) of this section. However, no civil penalty shall be assessed under this part until the party charged with the violation has been given the opportunity for a hearing on the record in accordance with section 109(e) of the Federal Oil and Gas Royalty Management Act. Therefore, any party adversely affected by the State Director's decision on the proposed penalty, may request a hearing on the record before an Administrative Law Judge or, in lieu of a hearing, may appeal that decision directly to the Interior Board of Land Appeals as provided in § 3165.4(b)(2) of this part. If such party elects to request a hearing on the record, such request shall be filed in the office of the State Director having jurisdiction over the lands covered by the lease within 30 days of receipt of the State Director's decision on the notice of proposed penalty. Where a hearing on the record is requested, the State Director shall refer the complete case file to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge in accordance with part 4 of this title. A decision shall be issued following completion of the hearing and shall be served on the parties. Any party, including the United States, adversely affected by the decision of the Administrative Law Judge may appeal to the Interior Board of Land Appeals as provided in § 3163.4 of this title.

(d) *Action on request for State Director review. Action on request for administrative review.* The State Director shall issue a final decision within 10 business days of the receipt of a complete request for administrative review or, where oral presentation has been made, within 10 business days therefrom. Such decision shall represent the final Bureau decision from which further review may be obtained as provided in paragraph (c) of this section for proposed penalties, and in § 3165.4 of this title for all decisions.

(e) *Effect of request for State Director review or for hearing on the record.*

(1) Any request for review by the State Director under this section shall not result in a suspension of the requirement for compliance with the notice of violation or proposed penalty, or stop the daily accumulation of assessments or penalties, unless the State Director to whom the request is made so determines.

(2) Any request for a hearing on the record before an administrative law judge under this section shall not result in a suspension of the requirement for compliance with the decision, unless the administrative law judge so determines. Any request for hearing on the record shall stop the accumulation of additional daily penalties until such time as a final decision is rendered, except that within 10 days of receipt of a request for a hearing on the record, the State Director may, after review of such request, recommend that the Director reinstate the accumulation of daily civil penalties until the violation is abated. Within 45 days of the filing of the request for a hearing on the record, the Director may reinstate the accumulation of civil penalties if he/she determines that the public interest requires a reinstatement of the accumulation and that the violation is causing or threating immediate, substantial and adverse impacts on public health and safety, the environment, production accountability, or royalty income. If the Director does not reinstate the daily accumulation within 45 days of the filing of the request for a hearing on the record, the suspension shall continue.

24. Section 3165.4 is revised to read:

§ 3165.4 Appeals.

(a) *Appeal of decision of State Director.* Any party adversely affected by the decision of the State Director after State Director review, under § 3165.3(b) of this title, of a notice of violation or assessment or of an instruction, order, or decision may appeal that decision to the Interior Board of Land Appeals pursuant to the regulations set out in Part 4 of this title.

(b) *Appeal from decision on a proposed penalty after a hearing on the record.* (1) Any party adversely affected by the decision of an Administrative Law Judge on a proposed penalty after a hearing on the record under § 3165.3(c) of this title may appeal that decision to the Interior Board of Land Appeals pursuant to the regulations in Part 4 of this title.

(2) In lieu of a hearing on the record under § 3165.3(c) of this title, any party adversely affected by the decision of the State Director on a proposed penalty may waive the opportunity for such a hearing on the record by appealing directly to the Interior Board of Land Appeals under Part 4 of this title. However, if the right to a hearing on the record is waived, further appeal to the District Court under section 109(j) of the Federal Oil and Gas Royalty Management Act is precluded.

(c) *Effect of appeal on compliance requirements.* Except as provided in paragraph (d) of this section, an appeal shall not result in a suspension of the requirement for compliance with the order or decision from which the appeal is taken unless the Interior Board of Land Appeals determines that suspension of the requirements of the order or decision will not be detrimental to the interests of the lessor or upon submission and acceptance of a bond deemed adequate to indemnify the lessor from loss or damage.

(d) *Effect of appeal on assessments and penalties.* (1) Except as provided in subparagraph (3) of this paragraph, an appeal filed pursuant to paragraph (a) of this section shall suspend the accumulation of additional daily assessments. However, the pendency of an appeal shall not bar the authorized officer from assessing civil penalties under § 3163.3 of this title in the event the lessee has failed to abate the violation which resulted in the assessment. The Board of Land Appeals may issue appropriate orders to coordinate the pending appeal and the pending civil penalty proceeding.

(2) Except as provided in subparagraph (3) of this paragraph, an appeal filed pursuant to paragraph (b) of this section shall suspend the accumulation of additional daily civil penalties.

(3) When an appeal is filed under paragraph (a) or (b) of this section, the State Director may, within 10 days of receipt of the notice of appeal, recommend that the Director reinstate

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the accumulation of assessments and daily civil penalties until such time as a final decision is rendered or until the violation is abated. The Director may, if he/she determines that the public interest requires it, reinstate such accumulation(s) upon a finding that the violation is causing or threatening immediate substantial and adverse impacts on public health and safety, the environment, production accountability, or royalty income. If the Director does not act on the recommendation to reinstate the accumulation(s) within 45 days of the filing of the notice of appeal, the suspension shall continue.

(e) *Judicial Review.* Any person who is aggrieved by a final order of the Secretary under this section may seek review of such order in the United States District Court for the judicial district in which the alleged violation occurred. Because section 109 of the Federal Oil and Gas Royalty Management Act provides for judicial review of civil penalty determinations only where a person has requested a hearing on the record, a waiver of such hearing precludes further review by the district court. Review by the district court shall be on the administrative record only and not de novo. Such an action shall be barred unless filed within 90 days after issuance of final decision as provided in § 4.21 of this title.

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Friday
February 20, 1987

Part III

Department of the Interior

Bureau of Land Management

43 CFR Part 3430

Noncompetitive Leases; Amendment Providing Detailed Procedures for Processing Preference Right Lease Applications for Coal; Proposed Rulemaking

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3430

[AA-650-07-4121]

Noncompetitive Leases; Amendment Providing Detailed Procedures for Processing Preference Right Lease Applications for Coal

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would provide detailed procedures for use in processing preference right lease applications for coal. The procedures contained in this proposed rulemaking would allow full public participation throughout the administrative process and would comply with the court order in *Natural Resources Defense Council (NRDC)* v. *Berklund*, 458 F. Supp. 925 (D.D.C. 1978), aff'd 609 F. 2d 553 (D.C. Cir. 1979).

DATE: Comments should be submitted by March 23, 1987. Comments received or postmarked after this date may not be considered as part of the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Carole Smith, (202) 343-6821.

SUPPLEMENTARY INFORMATION: The Mineral Leasing Act of February 25, 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), established a prospecting permit—noncompetitive leasing system for the disposition of certain minerals, including coal, in certain Federally-owned lands. Under the provisions of the Mineral Leasing Act, any citizen could obtain a prospecting permit to explore for coal on the public lands and, if the exploration resulted in the discovery of an economic deposit of that coal, the prospector could file an application for a lease without competition. These noncompetitive leases became known as "preference right" leases. The term used in the Mineral Leasing Act to describe the type of discovery of coal that would entitle the prospector to a lease is coal in "commercial quantities."

The Federal Coal Leasing Amendments Act of 1976 (90 Stat. 1083) eliminated the prospecting permit—noncompetitive lease system for Federally owned coal by requiring that all Federal coal be leased competitively. However, the Act permitted the processing of the preference right lease applications existing on the date of its enactment.

The Litigation

Two environmental organizations brought suit against the Bureau of Land Management in 1975 in *Natural Resource Defense Council et al.* v. *Berklund*, claiming that the Secretary of the Interior had the discretionary authority to reject preference right leases for coal, even if the applicants for those leases had demonstrated discoveries of commercial quantities of coal. The two organizations also contended that the Department of the Interior's processing procedures did not comply with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

In June 1978, the court issued an order that ruled that the Secretary of the Interior did not have discretionary authority to reject a preference right lease to an applicant who had demonstrated commercial quantities of coal. At the same time, the court ruled that, in the process leading to the leasing decision, the Department of the Interior must comply with the provisions of section 102(2)(C) of the National Environmental Policy Act.

In an opinion accompanying the order, the court described specific standards by which to judge whether the environmental impacts of issuing a preference right lease had been adequately considered. These standards required that the environmental impact statements or environmental analyses include a discussion and analysis of all alternatives to issuing a preference right lease for coal, a set of recommended and alternative mitigating measures, and cost estimates of compliance with the recommended measures for mitigating environmental impacts.

The Negotiations

In February 1983, the plaintiffs in the suit and several other environmental organizations expressed concern that the documents prepared by the Bureau of Land Management pursuant to the National Environmental Policy Act did not adequately address key elements of the 1978 court order and opinion. The Department of the Interior maintained that it was adequately complying with the court order and opinion. The interpretation of the requirements of the order and opinion by the Department differed substantially from the interpretation given to them by the environmental groups. In an effort to resolve these differences, the Department negotiated for 3 years with the environmental groups. This proposed rulemaking is the result of the negotiations.

After the first period of negotiation between the environmental groups and the Bureau of Land Management, the Bureau issued directives to the four relevant State Directors that environmental impact statements would be prepared for all pending preference right lease applications except certain limited ones (Memorandum dated June 28, 1983, to Wyoming, Colorado, Montana and Utah State Directors). After the second period of negotiations, the Bureau issued an instruction memorandum supplementing and refining the procedures and standards governing applicants' "final showings" and commercial quantities determinations (IM 83-822 dated September 9, 1983). While the environmental groups regarded these directives as substantial improvements over prior practice and field instruction, they still maintained that they were incomplete and inadequate. One point emphasized by the environmental groups was the failure of these directives to comply literally with the language in the 1978 court opinion that the Secretary of the Interior, in deciding "to set lease terms, . . . should have before him a comprehensive EIS which includes a careful examination of possible lease standards, alternative methods for meeting those standards, and estimated costs of compliance." (485 F. Supp. at 938). Another point raised by the environmental groups was the failure of these directives to list specifically and in sufficient detail those matters (resource conflicts, permitting costs and mitigation measures) requiring "costing" in the adjudication itself.

In a third phase of the negotiations, the environmental groups agreed to compromise that "costing" did not have to be detailed in a comprehensive environmental impact statement as long as the costing process was "public" in the sense of public notice and comment. Also, a listing of "costs" was drafted and refined. At this time, agreement was reached that the results of the negotiations would be best implemented in a court order amending the 1978 order which expresses the procedures, concessions, and waivers of claims in a format binding on each side. These negotiations left some issues unresolved—chiefly other legal and

policy disputes the environmental groups have had about preference right lease applications and the processing of those applications that were not litigated in *Berklund*. The tentative concessions and waivers made by both sides were formalized and ultimately were incorporated into this proposed rulemaking and related settlement documents.

It became necessary at this point to focus on specific preference right lease applications or groups of preference right lease applications that the Bureau did not believe required the preparation of an environmental impact statement, or on which the environmental statement work completed by the Bureau was felt to be adequate. This phase of the negotiation process resulted in the exclusion of certain preference right lease applications from the proposed environmental impact statement procedures as provided in § 3430.3-2(c) of this proposed rulemaking, although the environmental groups are free to challenge the environmental analysis supporting these preference right lease applications, if they so choose.

The Department of Justice recommended that the results of these negotiations be implemented through a proposed rulemaking promulgated by the Bureau of Land Management which contains the procedures agreed to in the negotiations. Use of a proposed rulemaking to implement the results of the negotiations has the benefit of: (1) Nullifying any assertion that the settlement has divested any of the Secretary of the Interior's ultimate discretion with respect to the structure and detail of the procedures and standards for preference right lease application adjudication as a result of a court determination; and (2) providing the public, and especially the lease applicants, an opportunity under the Administrative Practices Act to comment on the proposed rulemaking implementing the agreements reached in the negotiations.

The completed settlement reached in the negotiations includes the following documents and is intended to be effected as follows: (1) The Department of the Interior and the environmental groups have signed an agreement (Settlement Agreement) that no preference right leases for coal will be issued until 30 days after publication in the **Federal Register** of the final rulemaking entered into pursuant to the Settlement Agreement; (2) after review of the public comments, the Department will publish the final rulemaking which incorporates all necessary or appropriate changes resulting from the review of the comments, including the comments of any preference right lease applicants; and (3) if that final rulemaking is satisfactory to the environmental groups, the environmental groups and the Department will jointly file a motion to amend the order entered in the case on June 30, 1978, by substituting the Proposed Amended Order incorporated by reference in the Settlement Agreement. The third step will require a motion to reopen the case (as the case is closed on the court's docket) as well as a motion to allow intervention of the environmental groups that were party to the Settlement Agreement but not to the original case on June 30, 1978. The Proposed Amended Order provides, among other things, that the conservation groups are bound not to challenge adjudications of preference right lease applications made pursuant to the final rulemaking on any National Environmental Policy Act or public participation grounds as reflected in the Settlement Agreement.

Proposed Rulemaking

The proposed rulemaking would supplement and clarify the procedures in 43 CFR Subpart 3430 for processing preference right lease applications for coal. It would not change these existing basic processing steps: (1) Submission of the preference right lease application by the applicant and acceptance of the application by the Bureau of Land Management; (2) submission of "initial showing" data by the applicant and determination by the Bureau either that the applicant has found a workable deposit of coal or that the application should be rejected; (3) environmental analysis by the Bureau of the applicant's proposal; (4) preparation by the Bureau of a proposed lease containing stipulations and mitigation measures; (5) submission by the applicant of the "final showing" of financial data demonstrating that the coal deposit can be mined at a profit; and (6) determination by the Bureau either that the applicant has discovered commercial quantities of coal, in which case a preference right lease is issued, or that the applicant has failed to demonstrate the presence of commercial quantities of coal, in which case the preference right lease application is rejected.

This proposed rulemaking would address procedures involved in steps 3 through 6 of the process. It identifies specific opportunities for public review and comment on the Bureau of Land Management's processing actions and spells out what would be required to be included in the environmental documents prepared to support the decision either to issue a preference right lease or to reject a preference right lease application for failure of the applicant to demonstrate commercial quantities of coal.

The proposed rulemaking would require in step 3 that the Bureau of Land Management must discuss and analyze the following in all environmental impact statements prepared on preference right lease applications: "no action"; the proposed action, that is, the applicant's proposal; the Bureau's proposed action, if that action is different from the applicant's (which will usually arise from treatment of any additional mitigation measures or alterations in the proposed mine that may arise from the environmental analysis or the environmental impact statement; and exchange, which examines any reasonable opportunities for exchange; and withdrawal/compensation, in which the Secretary of the Interior would, under appropriate circumstances, withdraw the lands encumbered by the preference right lease application and would recommend that Congress compensate the applicant for the lease cancellation.

The existing regulations describing the final showing would be refined by the proposed rulemaking to require that the Bureau of Land Management document its decisions on mitigation measures before incorporating them as site-specific, special stipulations in the proposed lease to be sent to the applicant. This document would not be the record of decision required by the National Environmental Policy Act, but would provide documentation for the special stipulations to be included in the lease. The proposed rulemaking would then require the applicant to provide an explanation of the means that would be used in complying with the proposed special stipulations.

The only new procedures provided by the proposed rulemaking are those relating to the procedures for processing preference right lease applications in step 5, when the Bureau of Land Management analyzes the applicant's final showing data. The procedures set forth in the proposed rulemaking would provide an opportunity for public review and comment on the costs of complying with all environmental stipulations in the lease and on the costs that the Bureau proposes to use in the determination of commercial quantities. This Bureau documentation would be published in the **Federal Register** with a 60-day comment period. Any comments received would be addressed and,

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where appropriate, incorporated in the record of decision on whether a preference right lease should be issued or the preference right lease application rejected. The record of decision would include the Bureau's final estimates on the costs of complying with environmental stipulations and a justification for the decision.

Although the proposed rulemaking does not address the subject, as a matter of practice, preference right lease applicants would be asked by the Bureau of Land Management if they consented to the release of the cost estimates they submitted for public review. If the applicant did not consent to the release of the cost estimate, then that data would be protected as proprietary, and the Bureau would release its own cost estimates for public review. This procedure is in accordance with the provisions of 43 CFR Part 2.

Finally, the proposed rulemaking would list a number of the relevant cost categories which must be considered in the commercial quantities determination. Examples for each category are also provided.

The proposed rulemaking also clarifies three other provisions currently in the existing regulations. First, the proposed rulemaking would explain the process for rejecting those preference right lease applications for coal that show no likelihood of passing the commercial quantities test. Under the procedures in the existing regulations, the Bureau of Land Management may evaluate the available resource and mining data and, without developing or analyzing the detailed environmental costing, reject the preference right lease application because the applicant has no reasonable prospect of discovering coal in commercial quantities. If, after the preliminary analysis, the Bureau determines that the applicant was not likely to demonstrate the discovery of coal in commercial quantities, the proposed rulemaking would require the applicant be sent a notice of intent to reject the preference right lease application. The applicant would be invited to submit additional information showing that the Bureau's preliminary analysis was incorrect. If the additional data submitted by the applicant was sufficient to change the Bureau's preliminary analysis, the Bureau would adjudicate the preference right lease application through the process set forth in this proposed rulemaking. If the additional data submitted by the applicant was not sufficient to change the Bureau's preliminary analysis, the Bureau would reject the preference right lease application. The rejection would be subject to appeal by the applicant.

Second, this proposed rulemaking would amend Subpart 3430 to eliminate the language of the existing regulations in § 3430.3–1(a), which states that, as a matter of policy, the Department of the Interior is committed to completing the processing of all remaining preference right lease applications by December 1, 1984. When the existing regulations were adopted in 1979, the Department did not foresee the planning and other delays that would affect preference right lease application processing, even apart from the lengthy negotiations with the environmental groups described in this preamble. Further, the provision is obsolete.

Third, this proposed rulemaking would correct an incorrect reference in § 3430.5–1(a)(2) of the existing regulations. As it now reads, that section refers to a time period specified in § 3430.2–3 of the existing regulations, except there is no § 3430.2–3. The proposed rulemaking would change the reference to § 3430.2–2, where it currently appears.

The principal author of this proposed rulemaking is Carole Smith, Division of Solid Mineral Leasing, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

The environmental impacts of this proposed rulemaking were analyzed and addressed in the *Federal Coal Management Program Final Environmental Impact Statement Supplement* (October 1985), and indirectly in the environmental assessment prepared for the regulatory changes made in 1985 in response to the Linowes Commission report, and which resulted in a finding of no significant impact for these and other changes considered for the leasing component of the Federal coal management program. Since this proposed rulemaking falls within the scope of the program actions studied in the environmental impact supplement, that analysis as well as the 1979 environmental impact statement and more recent environmental analyses are incorporated by reference. Furthermore, the proposed rulemaking contemplates additional environmental analysis of the pending preference right lease applications which will be subject to this rulemaking. Thus, no action will be taken without an adequate environmental analysis under the provisions of the National Environmental Policy Act.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

The processing procedures that would be provided by the proposed rulemaking would not affect small entities to any greater extent than it would affect other entities engaged in the mining industry. The greater opportunities for public comment on the costing process for environmental stipulations would not interfere with any preference right lease applicant's ability or opportunity to consult with the Bureau of Land Management or to provide comments on the Bureau's estimated compliance costs, when the Bureau's cost estimates are released for public review.

The proposed rulemaking contains no new information collection requirements requiring the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects 43 CFR Part 3430

Administrative practice and procedure, Coal, Environmental protection, Intergovernmental relations, Mines, Public lands—mineral resources.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Multiple Mineral Development Act (30 U.S.C. 521–531), the Federal Coal Leasing Amendments Act of 1976, as supplemented (90 Stat. 1083–1092), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), it is proposed to amend Part 3430, Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 3430—[AMENDED]

1. The authority citation for Part 3430 continues to read:

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 521–531; 30 U.S.C. 351–359; 30 U.S.C. 1201 *et seq.*; 42 U.S.C. 7101 *et seq.*; and 43 U.S.C. 1701 *et seq.*

§ 3430.3–1 [Amended]

2. Section 3430.3–1(a) is amended by removing from where it appears at the end thereof the phrase "by December 1, 1984".

3. Section 3430.3–2 is amended by adding new paragraph (c) to read:

§ 3430.3–2 Environmental analysis.

* * * * *

(c) Except for the coal preference right lease applications analyzed in the *San Juan Regional Coal Environmental Impact Statement* (March 1984), the *Savery Coal EIS* (July 1983), and the *Final Decision Record and Environmental Assessment of Coal PRLAs (Beans Spring, Table, and Black Butte Creek Projects)* (September 1982), or covered by serial numbers C–0127832, C–0123475, C–0126669, C–8424, C–8425, W–234111, C–0127834, U–1362, NM–3099, F–014996, F–029746, F–033619, and C–0120075, the authorized officer shall prepare environmental impact statements for all preference right lease applications for coal for which he/she proposes to issue a lease, in accordance with the following procedures:

(1) The authorized officer shall prepare adequate environmental impact statements and other National Environmental Policy Act documentation, prior to the determination that commercial quantities of coal have been discovered on the lands subject to a preference right lease application, in order to assure, *inter alia*, that the full cost of environmental impact mitigation, including site-specific lease stipulations, is included in the commercial quantities determination for that preference right lease application.

(2) The authorized officer shall prepare and evaluate alternatives that will explore various means to eliminate or mitigate the adverse impacts of the proposed action. The impact analysis shall address each numbered subject area set forth in § 3430.4–4 of this title, except that the impact analysis need not specifically address the subject areas of Mine Planning or of Bonding. At a minimum, each environmental impact statement shall include:

(i) A "no action" alternative that examines the impacts of the projected development without the issuance of leases for the preference right lease applications;

(ii) An alternative setting forth the applicant's proposed action. This alternative shall examine the applicant's proposal, based on information submitted in the applicant's initial showing and standard lease stipulations;

(iii) An alternative setting forth the authorized officer's own proposed action. This alternative shall examine:

(A) The impacts of mining on those areas encompassed by the applicant's proposal that are found suitable for mining after the unsuitability review provided for by Subpart 3461 of this title; and

(B) The impacts of mining subject to appropriate special stipulations designed to mitigate or eliminate impacts for which standard lease stipulations may be inadequate. With respect to mitigation of significant adverse impacts, alternative lease stipulations shall be developed and preferred lease stipulations shall be identified and justified. The authorized officer shall state a preference between standard lease stipulations and special stipulations (performance standards or design criteria).

(iv) An exchange alternative, examining any reasonable alternative for exchange that the Secretary would consider were the applicant to show commercial quantities, and, in cases where, if the lands were to be leased, there is a finding that the development of the coal resources is not in the public interest.

(v) An alternative exploring the options of withdrawal and just compensation and examining the possibility of Secretarial withdrawal of lands covered by a preference right lease application (assuming commercial quantities will be shown) while the Secretary seeks congressional authorization for purchase or condemnation of the applicant's property, lease or other rights.

(3) The authorized officer shall prepare a cumulative impact analysis in accordance with 40 CFR 1508.7 and 1508.25 that examines the impacts of the proposed action and the alternatives when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or nonfederal) or person undertakes such other actions.

(i) The cumulative impact analysis shall include an analysis of the combined impacts of the proposed preference right leasing with the mining of currently leased coal and other reasonably foreseeable future coal development, as well as other preference right leasing in the area under examination.

(ii) The cumulative impact analysis shall also examine the impacts of the proposed preference right leasing in conjunction with impacts from non-coal activities, such as mining for other minerals, other projects requiring substantial quantities of water, and other sources of air pollution.

(4) When information is inadequate to estimate impacts reasonably, an analysis shall be performed as provided by 40 CFR 1502.22(b).

(5) Each environmental impact statement shall be prepared in accordance with the Council of Environmental Quality's National Environmental Policy Act regulations, 40 CFR Part 1500.

§ 3430.4–1 [Amended]

3. Section 3430.4–1 is revised by:

(a) Renumbering paragraphs (c), (d) and (e) as paragraphs (d), (e) and (f), respectively;

(b) Adding a new paragraph (c) to read:

(c) The authorized officer shall process all preference right lease applications, except for those preference right lease applications numbered F–029746, F–033619, and C–0120075, in accordance with the following standards and procedures:

(1) The authorized officer shall transmit a request for final showing to each applicant for each preference right lease application for which it proposes to issue a lease.

(2) Copies of each such request shall be sent to all interested parties.

(3) The request shall contain proposed lease terms and special stipulations;

(c) Amending the renumbered paragraph (d)(2), formerly paragraph (c)(2), by removing from where it appears at the beginning of the paragraph the word "The" and replacing it with the phrase "The proposed means of meeting the proposed lease terms and special conditions and the".

4. A new § 3430.4–3 is added to read:

§ 3430.4–3 Costing document and public review.

(a) The authorized officer shall prepare a document that estimates the cost of compliance with all laws, regulations, lease terms, and special stipulations intended to protect the environment and mitigate the adverse environmental impacts of mining.

(1) The costs shall be calculated for each of the various numbered subject areas contained in § 3430.4–4 of this title.

(2) The authorized officer's estimated costs of compliance may be stated in ranges based on the best available information. If a range is used, he/she shall identify the number from each range that the authorized officer proposes to use in making the determination whether a particular applicant has identified coal in commercial quantities.

(b) The authorized officer shall provide for public review of the costs of environmental protection associated with the proposed mining on the preference right lease application area.

(1) The authorized officer shall publish in the **Federal Register** notice of the availability of the Bureau's cost estimation document.

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(2) The authorized officer also shall send the cost estimation document to all interested parties, including all agencies, organizations, and individuals that participated in the environmental impact statement or the scoping process.

(3) Copies of the cost estimation document shall be submitted to the Environmental Protection Agency.

(4) The public shall be given 60 days from the date of the publication of the notice in the **Federal Register** to comment on the Bureau's cost estimates.

(c) The cost estimate document and all substantive comments received (or summaries thereof if the response is voluminous) shall be part of the Record of Decision for the preference right lease application(s) (See 40 CFR 1505.2 or successor regulations).

(1) The authorized officer shall respond to each substantive comment in the Record of Decision by modifying or supplementing his/her cost estimates, or explaining why they were not modified or supplemented in response to the comments.

(2) The authorized officer shall submit a copy of the Record of Decision with the public comments and the Bureau's response to the Environmental Protection Agency.

(3) The authorized officer shall publish a notice of the availability of each Record of Decision in the **Federal Register.**

(4) No preference right lease shall be issued sooner than 30 days following publication of the notice of availability required by paragraph (c)(3) of this section.

5. A new § 3430.4–4 is added to read:

§ 3430.4–4 Environmental costs.

Prior to determining that a preference right lease applicant has discovered coal in commercial quantities, the authorized officer shall include the following listed and any other relevant environmental costs in the adjudication of commercial quantities (parenthetical examples are illustrative and not necessarily inclusive):

(a) Permitting.

(1) Surface water—costs of monitoring water quality and discharges (collection and analysis of samples, construction and maintenance of monitoring facilities, purchases of any equipment needed for surface water monitoring and preparation of baseline impact reports).

(2) Groundwater—costs of monitoring all domestic or test wells and other water sources (drilling and maintenance of test wells, collection and evaluation of samples, purchases of well casing, screens, monitoring equipment, and preparation of baseline and impact reports).

(3) Air quality—costs of monitoring climatology and air quality (collection and evaluation of air quality data, purchases of air samplers, evaporation pans, rain gauges, recorders, wind speed and direction indicators, and preparation of baseline and impact reports).

(4) Vegetation—costs of monitoring indigenous vegetation and vegetation in reclaimed areas (collection and evaluation of samples for productivity analysis, and preparation of baseline and impact reports).

(5) Wildlife—costs of monitoring wildlife (collection and evaluation of wildlife and specimens and data, purchases of traps, nets, and preparation of baseline and impact reports).

(6) Soils—costs of monitoring soils (collection and evaluation of soil samples, through physical and chemical means, and preparation of baseline and impact reports).

(7) Noise—costs of monitoring noise (collection and analysis of noise data, purchases of necessary equipment, and preparation of baseline and impact reports).

(8) Socio-economics—costs of socio-economic studies (collection and evaluation of social and economic data, and preparation of baseline and impact reports).

(9) Archaeology, history and other cultural—costs of archaeological, historical and other cultural studies (conducting historical and archaeological surveys, excavations, and preparation of baseline and impact reports).

(10) Paleontology—costs of paleontological studies (conducting surveys and excavations and preparation of baseline and impact reports).

(11) Geology—costs of monitoring the geology (drilling overburden cores, physical and chemical analysis, and preparation of baseline and impact reports).

(12) Subsidence—costs of monitoring subsidence for underground mines (setting and monitoring monuments to measure subsidence).

(13) Mine planning—costs of developing all mining plans for obtaining and renewing mining permits (development of operating, blasting, air and water pollution control, fish and wildlife, and reclamation plans, preparation of maps).

(b) Environmental mitigation required by law or proposed to be imposed by the authorized officer.

(1) Surface water protection—costs of mitigating impacts to quantity (replacement water purchase and transportation costs) and quality (construction of sedimentation ponds, neutralization facilities, and diversion ditches).

(2) Groundwater protection—costs of mitigating impacts to quantity and quality of groundwater (replacement of diminished supply or of water rendered unfit for its prior use(s), compensation for damage to water rights, treatment of pumped mine water, sealing sedimentation ponds).

(3) Air pollution control—costs of air pollution control, including compliance with National Ambient Air Quality Standard and Protection from Significant Deterioration requirements, for areas affected by mining and associated activities (water and chemical sprays for dust control, installation and operation of dust collectors).

(4) Noise abatement—costs of installing and maintaining noise mufflers on equipment and around mine site.

(5) Wildlife—costs of mitigating impacts to wildlife species identified as reasonably likely to occur and subject to proposed lease stipulations, and including costs of compliance with the Endangered Species Act and other laws, regulations, and treaties concerning wildlife protection.

(6) Socio-economics—costs of implementing any mitigation measure the Bureau or any other government agency has imposed; and of mitigating impacts on surface owners and occupants, including relocation costs and costs of compensation for improvements, crops, or grazing values.

(7) Archaeology, history, and other cultural—costs of monitoring and inspection during mining to identify archaeological, historical, and other cultural resources, and costs of mitigating impacts to these resources identified as reasonably likely to occur and subject to proposed lease stipulations.

(8) Paleontological—costs of monitoring and inspection during mining to identify paleontological resources and costs of mitigating impacts to these resources identified as reasonably likely to occur and subject to proposed lease stipulations.

(9) Subsidence—costs of mitigating the impacts of subsidence identified as reasonably likely to occur and subject to proposed lease stipulations.

(c) Reclamation.

(1) Topsoil removal and replacement (stockpiling or continuous method)—costs of removing (and stockpiling, if applicable) and replacing topsoil (protecting the stockpile, if applicable, from erosion and compaction).

(2) Subsoil removal and replacement (stockpiling or continuous method)—costs of removing (and stockpiling, if applicable) and replacing topsoil (protecting the stockpile, if applicable, from erosion and compaction).

(3) Grading—costs of grading soil banks to their approximate original contour prior to replacing topsoil, subsoil (if applicable), and revegetating the affected area.

(4) Revegetation—costs of restoring vegetative cover to the affected area after grading and replacement of topsoil and subsoil, if applicable (liming, planting, irrigating, fertilizing, cultivating, and reworking, if first efforts are unsuccessful).

(5) Bonds—costs of bonds required by Federal, State, and local governments.

§ 3430.5–1 [Amended]

5. Section 3430.5–1 is amended by:

(a) Amending paragraph (a)(2) by removing from where it appears therein the citation "§ 3430.2–3" and replacing it with the citation "§ 3430.3–2"; and

(b) Adding a new paragraph (c) to read:

(c) The authorized officer may reject any preference right lease application that clearly cannot satisfy the commercial quantities test without preparing additional National Environmental Policy Act documentation and/or a cost estimate document as described in §§ 3430.3–2, 3430.4–3 and 3430.4–4 of this title. The following procedures apply to rejecting these preference right lease applications.

(1) When an applicant clearly fails to meet the commercial quantities test as provided in this part, the authorized officer may notify the applicant:

(i) That its preference right lease application will be rejected;

(ii) Of the reasons for the proposed rejection;

(iii) That the applicant has 60 days to provide additional information as to why its preference right lease application should not be rejected; and

(iv) Of the type, quantity, and quality of additional information needed for reconsideration.

(2) If, after the expiration of the 60-day period, the authorized officer has no basis on which to change his/her decision, the authorized officer shall reject the preference right lease application.

(3) If the authorized officer reconsiders and changes the decision to reject the preference right lease application, he/she shall continue to adjudicate the preference right lease application in accordance with §§ 3430.3–2, 3430.4–3, and 3430.4–4 of this title.

J. Steven Griles,

Assistant Secretary of the Interior.

January 12, 1987.

[FR Doc. 87–3572 Filed 2–19–87; 8:45 am]

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February 20, 1987

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 357

Benign Prostatic Hypertrophy Drug Products for Over-the-Counter Human Use; Proposed Rulemaking

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 357

[Docket No. 82N-0168]

Benign Prostatic Hypertrophy Drug Products for Over-the-Counter Human Use; Proposed Rulemaking

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking in the form of a tentative final monograph that would establish conditions under which over-the-counter (OTC) benign prostatic hypertrophy drug products (drug products used to relieve the symptoms of enlarged prostate gland) are generally recognized as safe and effective and not misbranded. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products and public comments on an advance notice of proposed rulemaking that was based on those recommendations. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by April 21, 1987. New data by February 22, 1988. Comments on the new data by April 20, 1988. These dates are consistent with the time periods specified in the agency's revised procedural regulations for reviewing and classifying OTC drugs (21 CFR 330.10). Written comments on the agency's economic impact determination by June 22, 1987.

ADDRESS: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 1, 1982 (47 FR 43566), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking that would classify OTC drug products to treat the symptoms of benign prostatic hypertrophy as not generally recognized as safe and effective and as being misbranded and would declare these products to be new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)). The notice was based upon the recommendations of the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (Miscellaneous Internal Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by December 30, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by January 31, 1983.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration (address above), after deletion of a small amount of trade secret information.

In response to the advance notice of proposed rulemaking, 3 manufacturers, 16 congressmen, and 112 individuals submitted comments. In addition, hundreds of individuals sent form letters requesting that these drug products not be removed from the OTC market. Copies of the comments and letters received are on public display in the Dockets Management Branch.

In order to conform to terminology used in the OTC drug review regulations (21 CFR 330.10), the present document is designated as a "tentative final monograph." Its legal status, however, is that of a proposed rule. In this tentative final monograph (proposed rule) to establish Subpart L of Part 357 (21 CFR Part 357), FDA states for the first time its position on the establishment of a monograph for OTC benign prostatic hypertrophy drug products. Final agency action on this matter will occur with the publication at a future date of a final rule for OTC benign prostatic hypertrophy drug products.

This proposal constitutes FDA's tentative conclusions and recommendations on OTC benign prostatic hypertrophy drug products, based on the comments received and the agency's independent evaluation of the Panel's report.

The OTC procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA will no longer use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but will use instead the terms "nonmonograph conditions" (old Category I) and "monograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II, and III at the tentative final monograph stage.

The agency advises that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication of the final monograph in the **Federal Register**. On or after that date, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In the advance notice of proposed rulemaking, the agency stated that if it proposed to adopt the Panel's recommendations it would propose that benign prostatic hypertrophy drug products be eliminated from the OTC market effective 6 months after the date of publication of a final rule in the **Federal Register**. However, in this document the agency is proposing a monograph that would establish conditions under which OTC benign prostatic hypertrophy drug products would be generally recognized as safe and effective and not misbranded. Experience has shown that relabeling of products covered by the monograph is necessary in order for manufacturers to comply with the monograph. New labels containing the monograph labeling have to be written, ordered, received, and incorporated into the manufacturing process. The agency has determined that it is impractical to expect new labeling to be in effect before 12 months after the date of publication of the final monograph. Experience has shown also that if the deadline for relabeling is too short, the agency is burdened with extension requests and related paperwork.

In addition, some products will have to be reformulated to comply with the monograph. Reformulation often involves the need to do stability testing on the new product. An accelerated aging process may be used to test a new formulation; however, if the stability testing is not successful, and if further reformulation is required, there could be a further delay in having a new product available for manufacture.

The agency wishes to establish a reasonable period of time for relabeling and reformulation in order to avoid an unnecessary disruption of the marketplace that could not only result in economic loss, but also interfere with consumers' access to safe and effective drug products. Therefore, the agency is proposing that the final monograph be effective 12 months after the date of its publication in the **Federal Register**. The agency believes that within 12 months after the date of publication most manufacturers can order new labeling and reformulate their products and have them in compliance in the marketplace.

If the agency determines that any labeling for a condition included in the final monograph should be implemented sooner than the 12-month effective date, a shorter deadline may be established. Similarly, if a safety problem is identified for a particular nonmonograph condition, a shorter deadline may be set for removal of that condition from OTC drug products.

I. The Agency's Tentative Conclusions on the Comments

1. One comment maintained that the review of benign prostatic hypertrophy drug products was improperly conducted because the firms marketing these products were not given adequate notification that the products were going to be reviewed. The comment stated that drug products to treat the symptoms of benign prostatic hypertrophy were not included in the call-for-data notices, which were published in the **Federal Register** on November 16, 1973 (38 FR 31696) and August 27, 1975 (40 FR 38179). Therefore, the comment argued that appropriate notification was not given to those concerned. The comment also contended that the evaluation of these products by the Miscellaneous Internal Panel was much too hasty and suggested that another panel be convened to conduct a proper review.

Although the comment is correct that the November 16, 1973 and August 27, 1975 call-for-data notices did not specifically mention benign prostatic hypertrophy drug products, those notices did advise that monographs resulting from the OTC drug review would be applicable to every OTC drug, regardless of whether a submission was made for a particular product. The purpose of the two notices was to invite submissions of data and information on any OTC drug product that was not previously part of the OTC drug review. In addition, a notice appearing in the **Federal Register** of July 21, 1981 (46 FR 37564) announced that the Miscellaneous Internal Panel invited comments on benign prostatic hypertrophy drug products, as well as other drug products, and stated that the agency would use these comments to develop proposed rulemakings for the drug categories listed. The notice also announced that the Panel might be discussing benign prostatic hypertrophy drug products, among others, at its meeting on August 21, 22, and 23, 1981. Time was provided at that meeting for interested persons to present data and information to the Panel on any of the drug categories listed in the notice.

Subsequent to publication of the advance notice of proposed rulemaking on benign prostatic hypertrophy drug products in the **Federal Register**, interested persons had an opportunity to submit comments on the Panel's recommendations. Additional opportunities continue to exist for interested persons to express their opinions and submit additional data. For example, time will be provided following publication of this proposed rule for submissions to comments, objections, new data, or requests for oral hearing.

No submissions on benign prostatic hypertrophy drug products were made to the agency in response to either of the call-for-data notices mentioned above, nor did anyone express interest in appearing before the Panel at its meeting on August 21, 22, and 23, 1981. Based on the limited amount of data available to the Panel, the agency does not believe the Panel's review was unduly hasty. FDA does not believe it is necessary to convene another panel to review these drug products because ample opportunity has existed and continues to exist for interested persons to express their views or submit data to the agency on benign prostatic hypertrophy drug products.

2. One comment objected to including benign prostatic hypertrophy drug products in the OTC drug review. The comment stated that a judicial proceeding, previously invoked by FDA, found that these products were safe and effective in providing relief of certain symptoms of prostate disorder. (See *United States* v. *Metabolic Products Corp. and Edward Y. Domina*, 1964 Food Drug Cosm. L. Rep. (CCH) ¶ 80,079, at 80,202 (D. Mass. Jan. 25, 1962).) The comment stated that expert witnesses for both the defendant and the government testified that patients with certain symptoms related to prostate disorders obtain relief from use of these products. Therefore, the comment contended that it was improper for the agency to invite a contrary finding in this rulemaking.

This court case was brought by the government to seek a permanent injunction against the introduction into interstate commerce of three particular benign prostatic hypertrophy drug products. The drug products were found to be in violation of the misbranding provisions of the 1938 act (section 502 (a) and (f)) because the labeling indicated these products to be a substitute for prostate surgery. The decision in the case was limited to granting a permanent injunction against the products as labeled.

The case was decided prior to the 1962 amendments to the act, which for the first time required drugs to be shown prior to marketing not only to be safe, but also to be effective for their intended uses. One of the purposes of the OTC drug review is to determine those ingredients that are generally recognized as both safe and effective for OTC use. Although the court found that many doctors had observed that the drug products provide relief from certain symptoms of prostate disorder, the court did not determine whether the drug products might be generally recognized as safe and effective if labeled differently. The requirements for establishing general recognition of safety and effectiveness are set forth in § 330.10(a)(4) of the OTC drug review procedural regulations.

Based on the discussion above, the agency concludes that the prior judicial proceeding does not preclude the inclusion in the OTC drug review of particular drug products that were the subject of the litigation. Nor does that litigation in any way preclude a rulemaking proceeding on OTC benign prostatic hypertrophy drug products.

3. Two comments objected to benign prostatic hypertrophy ingredients being placed in Category II based on the Panel's determination that the condition being treated is not self-diagnosable.

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The comments stated that many OTC drug products treat symptoms of conditions that are not self-diagnosable. The comments pointed out that the labeling of the benign prostatic hypertrophy drug products reviewed by the Panel specifies that before using the product the user should confirm by medical diagnosis that his symptoms are due to benign prostatic hypertrophy. The comments contended that in view of this labeling the Panel's concern that a prostatic malignancy may go undiagnosed was irrelevant.

The agency recognizes that a number of OTC drug products are used to treat symptoms of conditions that are not self-diagnosable, e.g., bronchodilators for asthma and pancreatic enzymes for pancreatic enzyme deficiency. Although consumers must be able to recognize the symptoms they intend to relieve with an OTC drug product, self-diagnosis of the condition causing the symptoms is not a necessary prerequisite to the OTC availability of drug products. Under section 503(b)(1)(B) of the act (21 U.S.C. 353(b)(1)(B)), a drug may be dispensed only upon prescription when "because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, [it] is not safe for use except under the supervision of a practitioner licensed by law to administer such drug."

As the Panel stated in its report, there is no evidence of any potential harm from ingestion of the combination of the three ingredients contained in benign prostatic hypertrophy drug products (glycine, alanine, and glutamic acid) (47 FR 43568). Benign prostatic hypertrophy is a fairly common condition, occurring in about 50 percent of all men over the age of 50. The agency believes that once the prostatic condition is diagnosed as benign, there is no reason why the symptoms of the condition, i.e., urinary urgency and frequency, excessive urinating at night, and delayed urination, could not be self-treated provided the products are effective. (See comment 4 below for effectiveness discussion.)

However, because the Panel's concern regarding the potential for a prostatic malignancy going undiagnosed is a valid one, the agency believes that the following warnings should appear in the labeling of OTC benign prostatic hypertrophy drug products: (1) "Do not take this product unless a diagnosis of benign prostatic hypertrophy (enlarged prostate) has been made by a doctor" and (2) "Because this drug relieves only the symptoms of enlarged prostate without affecting the disease itself, periodic reexamination by a doctor is strongly recommended."

4. Two comments submitted a total of nine published studies (Refs. 1 through 9) as evidence of the safety and effectiveness of benign prostatic hypertrophy drug products. The comments contended that these studies existed in the scientific literature during the Panel's deliberations and should have been considered by the Panel in its review of these products. The comments argued that these studies as well as the market experience with benign prostatic hypertrophy drug products and the thousands of testimonials received from satisfied consumers over the years provide sufficient evidence to generally recognize these drug products as safe and effective for OTC use. In addition, close to 1,000 comments and letters were submitted to the agency by concerned consumers in testimony that these drug products are safe and effective.

The agency has reviewed the submitted studies (not available to the Panel) and tentatively concludes that the evidence remains insufficient to support the general recognition of safety and effectiveness of amino acid therapy, specifically the combination of glycine, alanine, and glutamic acid, for OTC use in relieving the symptoms of benign prostatic hypertrophy.

Details about study design, conduct, and analysis of the studies are lacking and, therefore, the available data and information cannot be used to establish effectiveness. For example, the study by Feinblatt and Gant (Ref. 1) lacks information regarding evaluation of the effectiveness parameters so that the question of bias cannot be eliminated. In addition, the blindness of this study is compromised by assigning different treatment times for the drug group (3 months) and the placebo group (2 months). In the Damrau study (Ref. 2), no placebo group was employed; the results of this study were compared to the placebo results from the Feinblatt and Gant study. Valid conclusions cannot be drawn by comparing the results of the effectiveness parameters monitored with observations made by different investigators in different patient populations. The seven studies reported in the Japanese medical literature (Refs. 3 through 9), likewise, do not provide sufficient details to make a proper evaluation.

The Panel had stated that it was not aware of any definitive clinical trials with appropriate controls to support effectiveness (47 FR 43568). In view of the studies submitted, the agency has classified the mixture of amino acids in Category III. The agency has determined that additional data are necessary before the combination of glycine, alanine, and glutamic acid can be generally recognized as safe and effective for OTC use in relieving the symptoms of benign prostatic hypertrophy.

References

(1) Feinblatt, H.M., and J.C. Gant, "Palliative Treatment of Benign Prostatic Hypertrophy. Value of Glycine-Alanine-Glutamic Acid Combination," *The Journal of the Maine Medical Association*, 49:99–102, 1958.

(2) Damrau, F., "Benign Prostatic Hypertrophy: Amino Acid Therapy for Symptomatic Relief," *Journal of the American Geriatrics Society*, 10:426–430, 1962.

(3) Aito, K., and E. Iwatsubo, "The Conservative Treatment of Prostatic Hypertrophy with Paraprost," *Acta Urologica Japonica*, 18:41–44, 1972

(4) Shiga, K., E. Kumaki, and A. Imamura, "Amino Acids Therapy for Hypertrophy of the Prostate," *Acta Urologica Japonica*, 14:625–630, 1968.

(5) Shimaya, M., and H. Sugiura, "Double Blind Test of PPC for Prostatic Hyperplasia," *Acta Urologica Japonica*, 16:231–238, 1970.

(6) Ishigami, J., and K. Kuroda, "Clinical Effect of PPC for the Palliative Treatment of Benign Prostatic Hypertrophy," *Acta Urologica Japonica*, 15:68–75, 1969.

(7) Sugiura, H., and M. Shimaya, "Clinical Application of 'PPC' to Prostatic Hypertrophy and Others," *Acta Urologica Japonica*, 15:450–453, 1969.

(8) Nishimura, Y., "Clinical Application of PPC for Prostatic Hypertrophy and Female Cystopathy," *Acta Urologica Japonica*, 15:127–134, 1969.

(9) Yamauchi, S., M. Hirakida, and H. Tsuji, "Experimental Application of P.P.C. for Prostatic Disease," *Acta Urologica Japonica*, 14:633–637, 1968.

5. One comment argued that products containing the combination of the amino acids glycine, alanine, and glutamic acid should not be part of the OTC drug review because such products are grandfathered under provisions of the 1962 Kefauver-Harris amendments to the act. The firm submitting the comment stated that it had a letter from FDA in its files stating that the products in question are "not new drugs."

On May 28, 1968, FDA revoked all previous opinions stating that any product was "not a new drug" or "no longer a new drug" (33 FR 7758). This revocation of letters, such as the one referred to by the commenting firm, has been codified in 21 CFR 310.100. Consequently, the letter referred to by the comment has no legal significance.

Under the 1962 grandfather clause of the act, a drug product which on October 9, 1962, (1) was commercially used or sold in the United States, (2) was not a "new drug" as defined in the 1938 act, and (3) was not covered by an approved new drug application (NDA) under the 1938 act, would not be subject to the added requirement of effectiveness "when intended solely for use under conditions prescribed, recommended, or suggested in the labeling with respect to such drugs." Pub. L. 87–781, section 701(c)(4), 76 Stat. 788, note following 21 U.S.C. 321.

The person seeking to show that a drug comes within a grandfather exemption must prove every essential fact necessary for invocation of the exemption . See *United States* v. *An Article of Drug . . . "Bentex Ulcerine,"* 469 F.2d 875, 878 (5th Cir. 1972), *cert. denied*, 412 U.S. 938 (1973). Furthermore, the grandfather clause will be strictly construed against one who invokes it. See id.; *United States* v. *Allan Drug Corp.*, 357 F.2d 713, 718 (10th Cir.), *cert. denied*, 385 U.S. 899 (1966).

A change in composition or labeling precludes the applicability of the grandfather exemption. (See *USV Pharmaceutical Corp.* v. *Weinberger*, 412 U.S. 655, 663 (1973).) Evidence was not provided by the firm to demonstrate that no changes had occurred in the composition or labeling of the products from October 9, 1962, until the present.

Furthermore, it should be noted also that the grandfather clause applies only to the new drug provisions of the act and not to the adulteration and misbranding provisions. The OTC drug review was designed to implement both the misbranding and the new drug provisions of the act. (See 21 CFR 330.10; 37 FR 9466 (May 11, 1972).) The grandfather clause does not preclude the agency from reviewing any currently marketed OTC drug, regardless of whether it has grandfather protection from the new drug provisions, in order to ensure that the drug is not misbranded. The agency concludes that the products referred to by the comment are subject to this proposed rulemaking.

II. The Agency's Tentative Conclusions on OTC Benign Prostatic Hypertrophy Drug Products

A. Summary of Ingredient Categories and Testing of Category II and Category III Conditions

1. Summary of ingredient categories

FDA has considered the comments and other relevant data and information available at this time and concludes that data are insufficient to determine that the combination of glycine, alanine, and glutamic acid can be generally recognized as safe and effective for OTC use to relieve the symptoms of benign prostatic hypertrophy.

2. Testing of Category II and Category III conditions

Interested persons may communicate with the agency about the submission of data and information to demonstrate the safety or effectiveness of any benign prostatic hypertrophy ingredient or condition included in the review by following the procedures outlined in the agency's policy statement published in the **Federal Register** of September 29, 1981 (46 FR 47740) and clarified April 1, 1983 (48 FR 14050). That policy statement included procedures for the submission and review of proposed protocols, agency meetings with industry or other interested persons, and agency communications on submitted test data and other information.

B. Summary of the Agency's Changes in the Panel's Recommendations

1. Based on new data previously unavailable to the Panel, the agency is classifying the combination of glycine, alanine, and glutamic acid in Category III. (See comment 4 above.)

2. The agency has proposed labeling in the tentative final monograph in the event that new data are submitted to establish "monograph conditions" for OTC benign prostatic hypertrophy drug products. (See comment 3 above.)

In the event that no new data are submitted to the agency during the allotted 12-month new data period or if submitted data are not sufficient to establish "monograph conditions" for OTC benign prostatic hypertrophy drug products, the final rule will declare these products to be new drugs under section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act), for which applications approved under section 505 of the act and 21 CFR Part 314 are required for marketing. Such rule will also declare that in the absence of an approved application, these products would be misbranded under section 502 of the act. The rule will then be incorporated into 21 CFR Part 310, Subpart E—Requirements for Specific New Drugs or Devices, instead of into an OTC drug monograph in Part 357.

In the **Federal Register** of May 1, 1986 (51 FR 16258), the agency published a final rule changing its labeling policy for stating the indications for use of OTC drug products. Under the final rule, the label and labeling of OTC drug products are required to contain in a prominent and conspicuous location, either (1) the specific wording on indications for use established under an OTC drug monograph, which may appear within a boxed area designated "APPROVED USES"; (2) other wording describing such indications for use that meets the statutory prohibitions against false or misleading labeling, which shall neither appear within a boxed area nor be designated "APPROVED USES"; or (3) the approved monograph language on indications, which may appear within a boxed area designated "APPROVED USES," plus alternative language describing indications for use that is not false or misleading, which shall appear elsewhere in the labeling. All required OTC drug labeling other than indications for use (e.g., statement of identity, warnings, and directions) must appear in the specific wording established under an OTC drug monograph. The proposed rule in this document is subject to the final rule revising the labeling policy.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that not one of these rules, including this proposed rule for OTC benign prostatic hypertrophy drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. The analysis identified the possibilities of reducing burdens on small firms through the use of relaxed safety and efficacy standards or labels acknowledging unproven safety or efficacy. However, the analysis concluded that there is no legal basis for any preferential waiver, exemption, or tiering strategy for small firms compatible with the public health requirements of the Federal Food, Drug, and Cosmetic Act.

The agency invited public comment in the advance notice of proposed rulemaking regarding any substantial or significant economic impact that this rulemaking would have on OTC benign prostatic hypertrophy drug products. One comment stated that if these products were removed from the OTC

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market, the result would be financial disaster to the firm. As stated above, there is no legal basis for any preferential waiver or exemption from the requirements of the act.

Any comments on the agency's initial determination of the economic consequences of this proposed rulemaking should be submitted by June 22, 1987. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined that under 21 CFR 25.24(c)(6) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before April 21, 1987, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments, objections, or requests for oral hearing before the Commissioner. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before June 22, 1987. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register**.

Interested persons, on or before February 22, 1988, may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before April 20, 1988. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA–305) (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final rule, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on April 20, 1988. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final rule is published in the **Federal Register** unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects in 21 CFR Part 357

Labeling, Over-the-counter drugs, Benign prostatic hypertrophy drug products.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended in Part 357 to read as follows:

1. The authority citation for Part 357 continues to read as follows:

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

2. Subpart L is added to Part 357 to read as follows:

PART 357—MISCELLANEOUS INTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart L—Benign Prostatic Hypertrophy Drug Products

Sec.

357.1001 Scope.
357.1003 Definition.
357.1010 Benign prostatic hypertrophy active ingredients. [Reserved]
357.1050 Labeling of benign prostatic hypertrophy drug products.

Subpart L—Benign Prostatic Hypertrophy Drug Products

§ 357.1001 Scope.

(a) An over-the-counter drug product to relieve the symptoms of benign prostatic hypertrophy in a form suitable for oral administration is generally recognized as safe and effective and is not misbranded if it meets each of the conditions in this subpart and each of the general conditions established in § 330.1.

(b) References in this subpart to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 357.1003 Definition.

As used in this subpart:

Benign prostatic hypertrophy. A benign (not malignant) enlargement of the prostate gland.

§ 357.1010 Benign prostatic hypertrophy active ingredients. [Reserved]

§ 357.1050 Labeling of benign prostatic hypertrophy drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an enlarged prostate symptom reliever."

(b) *Indications.* The labeling of the product states, under the heading "Indications," the following: "for relief of urinary urgency and frequency, excessive urinating at night, and delayed urination associated with benign prostatic hypertrophy (enlarged prostate)." Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in this paragraph (b), may also be used, as provided in § 330.1(c)(2), subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) "Do not take this product unless a diagnosis of benign prostatic hypertrophy (enlarged prostate) has been made by a doctor."

(2) "Because this drug relieves only the symptoms of enlarged prostate without affecting the disease itself, periodic reexamination by a doctor is strongly recommended."

(d) *Directions.* [Reserved]

(e) The word "physician" may be substituted for the word "doctor" in any of the labeling statements in this section.

Dated: December 6, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87–3570 Filed 2–19–87; 8:45 am]
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federal register

Friday
February 20, 1987

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 358

Corn and Callus Remover Drug Products for Over-the-Counter Human Use; Tentative Final Monograph; Notice of Proposed Rulemaking

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 358

[Docket No. 81N-0122]

Corn and Callus Remover Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking in the form of a tentative final monograph that would establish conditions under which over-the-counter (OTC) corn and callus remover drug products are generally recognized as safe and effective and not misbranded. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products and public comments on an advance notice of proposed rulemaking that was based on those recommendations. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by April 21, 1987. New data by February 20, 1988. Comments on the new data by April 20, 1988. These dates are consistent with the time periods specified in the agency's revised procedural regulations for reviewing and classifying OTC drugs (21 CFR 330.10). Written comments on the agency's economic impact determination by June 22, 1987.

ADDRESS: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 5, 1982 (47 FR 522), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC corn and callus remover drug products, together with the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products, which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by April 5, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by May 5, 1982.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration (address above), after deletion of a small amount of trade secret information.

In response to the advance notice of proposed rulemaking, one manufacturer submitted comments. Copies of the comments received are on public display in the Dockets Management Branch.

In order to conform to terminology used in the OTC drug review regulations (21 CFR 330.10), the present document is designated as a "tentative final monograph." Its legal status, however, is that of a proposed rule. In this tentative final monograph (proposed rule) to establish Subpart F of Part 358 (21 CFR Part 358, Subpart F), FDA states for the first time its position on the establishment of a monograph for OTC corn and callus remover drug products. Final agency action on this matter will occur with the publication at a future date of a final monograph, which will be a final rule establishing a monograph for OTC corn and callus remover drug products.

This proposal constitutes FDA's tentative adoption of the Panel's conclusions and recommendations on OTC corn and callus remover drug products as modified on the basis of the comment received and the agency's independent evaluation of the Panel's report. Modifications have been made for clarity and regulatory accuracy and to reflect new information. Such new information has been placed on file in the Dockets Management Branch (address above). These modifications are reflected in the following summary of the comments and FDA's responses to them.

The OTC procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA will no longer use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but will use instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II, and III at the tentative final monograph stage.

The agency advises that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication of the final monograph in the **Federal Register**. On or after that date, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In the advance notice of proposed rulemaking for OTC corn and callus remover drug products (published in the **Federal Register** of January 5, 1982; 47 FR 522), the agency suggested that the conditions included in the monograph (Category I) be effective 6 months after the date of publication of the final monograph in the **Federal Register**. Experience has shown that relabeling of products covered by the monograph is necessary in order for manufacturers to comply with the monograph. New labels containing the monograph labeling have to be written, ordered, received, and incorporated into the manufacturing process. The agency has determined that it is impractical to expect new labeling to be in effect 6 months after the date of publication of the final monograph. Experience has shown also that if the deadline for relabeling is too short, the agency is burdened with extension requests and related paperwork.

In addition, some products will have to be reformulated to comply with the

monograph. Reformulation often involves the need to do stability testing on the new product. An accelerated aging process may be used to test a new formulation; however, if the stability testing is not successful, and if further reformulation is required, there could be a further delay in having a new product available for manufacture.

The agency wishes to establish a reasonable period of time for relabeling and reformulation in order to avoid an unnecessary disruption of the marketplace that could not only result in economic loss, but also interfere with consumers' access to safe and effective drug products. Therefore, the agency is proposing that the final monograph be effective 12 months after the date of its publication in the **Federal Register**. The agency believes that within 12 months after the date of publication most manufacturers can order new labeling and reformulate their products and have them in compliance in the marketplace.

If the agency determines that any labeling for a condition included in the final monograph should be implemented sooner than the 12-month effective date, a shorter deadline may be established. Similarly, if a safety problem is identified for a particular nonmonograph condition, a shorter deadline may be set for removal of that condition from OTC drug products.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notices published in the **Federal Register** of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179) or to additional information that has come to the agency's attention since publication of the advance notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

I. The Agency's Tentative Conclusions on the Comments

A. Comments on Ingredients

1. In response to the Panel's statement at 47 FR 527 that it could not recommend a concentration of salicylic acid which would be safe and effective for removal of soft corns because of insufficient data on both safety and effectiveness, one comment submitted several studies to support the safety and effectiveness of salicylic acid for the removal of soft corns (Refs. 1, 2, and 3). The comment stated that the results of these clinical studies convincingly demonstrate that salicylic acid provides clinically and statistically significant improvement in the removal of soft corns. The comment requested that salicylic acid for the removal of soft corns be included in the monograph.

The agency has evaluated these studies and concludes that they are sufficient to support the safe and effective use of salicylic acid for the removal of soft corns. In a double-blind, placebo-controlled dose range study, adhesive disks impregnated with salicylic acid at concentrations of 12, 20, 30, and 40 percent were compared with a placebo (Ref. 2). Over a 10-day study period with a 2-day post treatment evaluation, four applications of the appropriate concentrations were made to subjects at 48-hour intervals (72 hours, if an application occurred on a Friday). One soft corn per subject was treated. Results of the study indicated that all four concentrations of salicylic acid were statistically superior to the placebo in removing the soft corns, but not statistically significantly different from each other in efficacy. All active treatment groups required 8 days of treatment (three applications) to obtain maximum response. No clinically significant adverse reactions were reported during the study. The safety of treatments was measured by the incidence of erythema before and after attempted removal of the corn. Analysis of the data indicated that the different concentrations of salicylic acid and placebo had no direct effect on erythema. The erythema reported in the study was primarily a function of physical response to the corn removal and was not accompanied by discomfort.

In another double-blind, placebo-controlled study (Ref. 1), 12 percent salicylic acid impregnated in a disk plaster was evaluated for the removal of soft corns and subsequent relief of pain. Sixteen subjects provided 20 cases of soft corns. Ten cases were treated with 12 percent salicylic acid and 10 cases were treated with placebo. A maximum of three 48-hour applications was made to each subject. Statistical analysis of the salicylic acid data showed a significant difference between pretest and post test values for the parameters studied, i.e., lesion size, hyperkeratosis, and pain. No significant difference between pretest and post test values for the parameters analyzed was shown for placebo. No adverse reactions were noted in any of the subjects during the study.

A third double-blind, placebo-controlled study (Ref. 3) was designed to evaluate the safety and efficacy of adhesive disks impregnated with 20 percent salicylic acid and to evaluate the effect of soaking the corn (after treatment and prior to attempted removal) as a means of increasing efficacy. Treatment consisted of four 48-hour applications over a 10-day period with a 2-day post-treatment evaluation. Sixty-three subjects using either drug or placebo were divided into three groups with Group I soaking the corn for 5 minutes; group II soaking for 15 minutes; and group III soaking for 5 minutes, after which a soft bristle brush was used in an attempt to loosen the corn. The groups soaked the corns after each 48-hour treatment (72 hours, if an application occurred on a Friday). Efficacy was assessed on the bases of rate of corn removal, clinical grade, and size of corn. Sixty patients, 20 in each of the three groups, completed the study. Results of the study indicated that 19 out of 30 (63.3 percent) using the 20-percent salicylic acid had their corns completely eliminated by the end of the treatment period, regardless of the soaking technique. Of the patients on the placebo, one (3.3 percent) obtained complete removal. No consistently significant soaking effects were found for any efficacy parameter assessed. No clinically significant adverse reactions were reported during the study. The degree of erythema was assessed before and after attempted removal as a measure of irritation or safety of the treatment. Although erythema was greater for the 20-percent salicylic acid group than for the placebo group, it appears that the erythema is a result of the removal of the corn and exposure of underlying tissue rather than due to the reaction to salicylic acid. Based on the results of the studies cited above, the agency concludes that salicylic acid is safe and effective for the removal of soft corns. Thus, the warning recommended by the Panel in § 358.550(c)(1)(v) against use of salicylic acid on soft corns is being deleted.

The agency notes that hard and soft corns differ only in their anatomical location. The etiology, pathology, and physiology for hard corns and soft corns are basically the same (Ref. 4). Thus, the agency can find no rationale for distinguishing between hard and soft corns with respect to drug treatment and labeling based solely on their anatomical location. In addition, based on the new data reviewed by the agency establishing the safety and effectiveness of salicylic acid for the removal of soft corns, the Panel's recommended limitation to "hard" corns in the definition of a corn and callus remover drug product (§ 358.503(a)) and in the labeling indications (§ 358.550(b)) is not being included in this tentative final monograph. Accordingly, the definition of a corn and callus remover drug

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product has been revised to read, "A topical agent used for the removal of corns and calluses," and the indication for use for these products has been revised to read, "For the removal of corns and calluses."

Based on the studies discussed above, the agency is proposing that salicylic acid 12 to 40 percent in medicated plaster vehicles and salicylic acid 12 to 17.6 percent in a collodion-like vehicle be generally recognized as safe and effective for the removal of corns and calluses. It should be noted that the agency is proposing to revise the descriptive terms for the vehicles of administration. Because medicated disks, pads, and plasters are similar in nature, the agency does not see a need to have separate definitions in the monograph. Thus, the agency is combining these definitions into a single definition that includes all three dosage forms and is proposing in this tentative final monograph to use the term "plaster" to include "disk" and "pad."

The agency notes that the Panel designated collodion as the vehicle for liquid formulations of salicylic acid. Collodion is an official article in the United States Pharmacopeia (U.S.P.) (Ref. 5). In reviewing the labeling of marketed corn/callus remover drug products, the agency has determined that some formulations (Refs. 6, 7, and 8) contain flexible collodion, which is also an official U.S.P. article, and which contains camphor and castor oil in collodion (Ref. 5). In addition, the agency has determined that some formulations contain other inactive ingredients or varying amounts of solvent (e.g., ether, alcohol, acetone, castor oil) which provide for increased spreadability and increased pliability of the product after it dries on the skin (Refs. 6, 9, 10, and 11). Therefore, the agency is proposing to use the term "collodion-like" instead of "collodion" in specifying the vehicle for liquid formulations and is defining "collodion-like vehicle" as follows: "A solution containing pyroxylin (nitrocellulose) in an appropriate nonaqueous solvent that leaves a transparent cohesive film when applied to the skin in a thin layer."

References

(1) Karas, A. A., "A Pilot Study on the Safety and Effectiveness of a Formulation for the Removal of Soft Corns and Subsequent Relief of Pain," (IBT No. 636–03794), draft of unpublished study, Comment No. C00001, Docket No. 81N–0122, Dockets Management Branch.

(2) Reed, M. L., "Evaluation of Safety and Efficacy of Salicylic Acid for the Removal of Soft Corns," (Scholl Study No. S–82–6), draft of unpublished study, Comment No. LET, Docket No. 81N–0122, Dockets Management Branch.

(3) Goodman, J. J., and L. Farris, "Evaluation of Safety and Efficacy of 20% Salicylic Acid for the Removal of Soft Corns," (Scholl Study No. S–82–47), draft of unpublished study, Comment No. LET, Docket No. 81N–0122, Docket Management Branch.

(4) Popovich, N., "Foot Care Products," *in* "Handbook of Nonprescription Drugs," 7th Ed., American Pharmaceutical Association, Washington, p. 616, 1982.

(5) "United States Pharmacopeia XXI—National Formulary XVI," United States Pharmacopeial Convention, Inc., Rockville, MD, p. 248, 1985.

(6) OTC Volume 160097.

(7) "Handbook of Nonprescription Drugs," 7th Ed., American Pharmaceutical Association, Washington, p. 640, 1982.

(8) "American Drug Index," 30th Ed., J. B. Lippincott Co., Philadelphia, p. 267, 1986.

(9) OTC Volume 160003.

(10) OTC Volume 160133.

(11) OTC Volume 160283.

B. Comments on Labeling

2. One comment suggested the following as examples of other appropriate labeling indications for corn and callus remover drug products: (1) "For treatment of hard corns and calluses," and (2) "For relief of pain associated with hard corns and calluses." With respect to the second suggested indication, the comment stated that it seems appropriate to inform consumers that if the corn is removed, the pain associated with the corn will also be relieved. The comment added that many corn and callus remover drug products are sold with a variety of nonmedicated pads that are used to cushion the area surrounding the corn. The comment contended that these pads, which are actually medical devices, also help to relieve pain by a mechanism unrelated to the actual removal of the corn.

With respect to the first suggested indication, the agency recognizes that the intended result from use of the product is the "removal" of the affected skin rather than the "treatment" or cure of the condition; thus, the word "treatment" does not clearly convey to the consumer the intended action of the product. In comment 1 above, the agency is proposing to remove the Panel's recommended restrictions on using these products only on hard corns. Therefore, the agency believes that the indication "For removal of corns and calluses" is more clear in describing the intended action of corn and callus remover drug products than is the wording proposed by the comment.

With regard to the second suggested indication, "For relief of pain associated with hard corns and calluses," the agency is unaware of any data to demonstrate that, when applied externally, these products act to relieve pain by exerting an analgesic or anesthetic effect. However, the agency acknowledges that pain is a symptom of the condition and may be indirectly relieved when corns and calluses are removed (see comment 1, Ref. 1). Therefore, the agency is proposing that the secondary indication "Relieves pain by removing corns and calluses" be permitted only in conjunction with the primary indication "For removal of corns and calluses" discussed above. Because OTC drug monograph labeling covers only the drug use of the active ingredient in the product, the indication included in the monograph does not apply to the use of nonmedicated pads included with the product because nonmedicated pads are regulated as devices under the Federal Food, Drug, and Cosmetic Act.

3. One comment contended that although the Panel's recommended indication "For the removal of hard corns and calluses'" in § 358.550(b) is an accurate description of the proper use of salicylic acid, there are other equally meaningful ways to state the indications. The comment suggested that the introductory wording in § 358.550(b) be changed from the restrictive statement ". . . limited to the following phrase . . ." to read, "Indications. The labeling of the product contains a statement of the indications under the heading 'indications' *such as:* 'For the removal of hard corns and calluses.'"

In the **Federal Register** of May 1, 1986 (51 FR 16258), the agency published a final rule changing its labeling policy for stating the indications for use of OTC drug products. Under the final rule, the label and labeling of OTC drug products are required to contain in a prominent and conspicuous location, either (1) the specific wording on indications for use established under an OTC drug monograph, which may appear within a boxed area designated "APPROVED USES"; (2) other wording describing such indications for use that meets the statutory prohibitions against false or misleading labeling, which shall neither appear within a boxed area nor be designated "APPROVED USES"; or (3) the approved monograph language on indications, which may appear within a boxed area designated "APPROVED USES," plus alternative language describing indications for use that is not false or misleading, which shall appear elsewhere in the labeling. The proposed rule in this document is subject to the final rule revising the labeling policy. Accordingly, the restrictive statement

". . . limited to the following phrase . . ." is not included in this proposal.

4. One comment contended that the Panel erroneously expanded the scope of Category II by inappropriately including statements describing product performance rather than "conditions" that would result in the drug not being generally recognized as safe and effective or would result in misbranding. The comment contended that such statements as "You are about to make your feet more comfortable," and "Make walking more pleasurable for you," are merely describing desired results of use of the product and are not Category II conditions. The comment also pointed out that several corn/callus products are sold as a combination kit containing a drug (the medicated disks) and a medical device (the unmedicated pads, cushions, etc.). The comment contended that the statement "Other uses for . . . corn pads, chafing, tender spots on sole of foot, instep ridges" is a proper statement for the additional "intended uses" of the medical device and, therefore, is not a Category II condition. Regarding the statement "Sure to stay in place," the comment maintained that this statement relates to the physical attributes of the adhesive used to secure the pads, and is not a condition for which the product should be judged safe or effective.

The OTC drug review program establishes conditions under which OTC drugs are generally recognized as safe and effective and not misbranded. Two principal conditions examined during the review are allowable ingredients and allowable labeling. FDA has determined that it is not practical—in terms of time, resources, and other considerations—to set standards for all labeling found in OTC drug products. Accordingly, OTC drug monographs regulate only labeling related in a significant way to the safe and effective use of covered products by lay persons. OTC drug monographs establish allowable labeling for the following items: product statement of identity; names of active ingredients; indications for use; directions for use; warnings against unsafe use, side effects, and adverse reactions; and claims concerning mechanism of drug action.

The agency agrees that the statements referred to by the comment do not relate in a significant way to the drug's safe and effective use and are outside the scope of the OTC drug review. Such statements will be evaluated by the agency on a product-by-product basis, under the provisions of section 502 of the act (21 U.S.C. 352) relating to labeling that is false or misleading. Moreover, any statement that is outside the scope of the monograph, even though it is truthful and not misleading, may not appear in any portion of the labeling required by the monograph and may not detract from such required information. However, statements and terms outside the scope of the monograph may be included elsewhere in the labeling, provided they are not false or misleading.

5. One comment suggested that the recommended warnings for products containing collodion, in § 358.550(c)(2)(i), "Highly flammable, keep away from fire or flame," and (ii), "Store at room temperature away from heat," could be easily combined. The comment also suggested that, even though 16 CFR 1500.81(a) specifically exempts drugs from hazardous substances labeling, an appropriate "signal word" similar to those in 16 CFR 1500.3(b)(10) (extremely flammable, flammable, or combustible) should be used depending on the actual flashpoint of the product. The comment recommended that the combined warning read as follows: "'signal word,' keep away from fire, or excessive heat."

FDA believes that the warning statements are intended to convey two distinct messages, i.e., (1) the proper use of the product because of its flammable nature and (2) the proper storage conditions because of the volatile nature of the product. For these reasons and because the comment does not provide sufficient reason for combining the warnings, FDA believes that the warning statements on flammability and on storage at room temperature should be stated separately. FDA does agree, however, with the comment that labeling similar to the hazardous substances labeling (16 CFR Part 1500) is appropriate for OTC corn and callus remover drug products formulated in a flammable vehicle.

Even though the regulations in 16 CFR 1500.81(a) provide an exemption for drugs, FDR concurs with the definitions of "signal words," i.e., extremely flammable, flammable, and combustible, based on the flashpoint of the product as defined in 16 CFR 1500.3(b)(10). Therefore, the agency is proposing that the labeling of OTC corn and callus remover drug products formulated in a flammable vehicle contain an appropriate flammability warning consistent with the requirements of 16 CFR Part 1500 and that an appropriate "signal word" based on the flashpoint of the product as defined in 16 CFR 1500.3(b)(10) be used. In addition, the agency is proposing that the warning section of the labeling also include the statement "Keep away from fire or flame."

6. One comment suggested that the warnings recommended by the Panel in § 358.550(c) could be combined to avoid duplicative phrases and to give more prominence to their substance by eliminating excess replication of common phrases. The comment requested that § 358.550(c) be reworded to be similar to the warnings language recommended in the advance notice of proposed rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products (42 FR 35493) which states that "the labeling of the product contains the appropriate warnings under the heading 'Warnings' which may be combined to eliminate duplicative words or phrases so the resulting warning is clear and understandable as follows: . . . ."

The agency has reviewed the Panel's recommendations in § 358.550(c) and is proposing to combine, revise, or delete a number of the warnings (see comments 1 above and 7 and 8 below). In addition, the agency is proposing to combine the warnings on storage and capping (§ 358.550(c)(2)(ii) and (iii)) to read "Cap bottle tightly and store at room temperature away from heat." The agency is also proposing to shorten the warning in § 358.550(c)(2)(v) from "If product gets into the eye, flush with water to remove film and continue to flush with water 15 more minutes" to read, "If product gets into the eye, flush with water for 15 minutes." The agency believes that in light of these proposed revisions in the warning section, it is unnecessary to include the statement on allowing warnings to be combined to eliminate duplicative words or phrases, as requested by the comment.

7. One comment suggested that the recommended warning in § 358.550(c)(1)(iii), which advises consumers to consult a doctor if discomfort persists, be modified to read, "If discomfort persists, see your doctor or podiatrist." The comment contended that because corns and calluses are often treated by podiatrists as well as by physicians, it seems reasonable and appropriate to direct the consumer to either if problems occur.

The agency agrees with the comment that it would be appropriate to include "podiatrist" in the warnings for corn and callus remover drug products because a podiatrist is a medical specialist who treats problems of the feet. Therefore, the agency is proposing to revise the labeling in this tentative final monograph to include the term "podiatrist" together with the term "doctor." This approach is similar to

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including the term "dentist" in addition to the term "doctor" in the labeling of products intended primarily for dental use.

8. Agreeing in substance that the recommended warning in § 358.550(c)(1)(i), i.e., "Do not use this product if you are a diabetic or have poor blood circulation because serious complications may result," is appropriate, one comment suggested that the words "because serious complications may result," be deleted. The comment contended that the latter part of the warning did not add anything and was unnecessary because it did not specify what complications may result. The comment asserted that any warning, if ignored, would result in serious complications.

The agency agrees with the comment that the phrase "because serious complications may result" is unnecessary. Further, the agency believes that the special health needs of people with diabetes or poor blood circulation can best be evaluated by trained health professionals. Therefore, the agency is proposing to revise the warning in § 358.550(c)(1)(i) to read as follows: "Do not use this product if you are a diabetic or have poor blood circulation except under the advice and supervision of a doctor or podiatrist." (See also comment 7 above.)

9. One comment stated that the Panel's recommended directions in § 358.550(d) (1) and (2) are generally acceptable for these products, but in some respects do not reflect the findings of recent data and are not representative of actual product use. For example, the comment stated that although soaking may enhance the efficacy of salicylic acid in removing corns, study results indicated that the efficacy of salicylic acid is not dependent on soaking. Therefore, there is no need for extended soaking periods before or after treatment. Likewise, recent data show that there is no need when using a collodion-like salicylic acid product to encircle the corn or callus with petrolatum because salicylic acid does not harm normal skin (Refs. 1, 2, and 3). The comment added that the petrolatum ring would add a messy (and perhaps unnecessary) step that would reduce patient compliance and suggested instead that the directions be modified to instruct the consumer to immediately wipe off any excess product which may spread to the tissue surrounding the corn/callus. Additionally, the comment stated that the once-a-day, 14-day treatment regimen for collodion-like products should be changed to twice-a-day treatment for no more than 4 days. The comment referred to a study discussed in the Panel's report at 47 FR 527, as well as the marketing experience of a product, in support of this request.

After review and evaluation of the comment's suggestions, along with the submitted data, the agency agrees that the directions for use should be revised. The directions for use in this tentative final monograph will not include recommendations for soaking. The results of a double-blind placebo-controlled study, in which the effect of soaking as a means of increasing efficacy of salicylic acid was evaluated, demonstrated no clinically or statistically significant differences between the soaking and the nonsoaking groups (Ref. 4). (See also comment 1 above.)

The Panel's recommended directions requiring the corn or callus to be encircled with petrolatum are also not being included in this tentative final monograph. Recent studies on the effect of salicylic acid on normal skin have demonstrated that salicylic acid primarily reduces the intercellular cohesiveness of the horny cells and has no effect on the mitotic activity of the normal epidermis (Refs. 2 and 3). Thus, the Panel's recommended warning in § 358.550(c)(1)(iv) regarding avoiding contact with surrounding skin is not being included in this tentative final monograph. In addition, the vehicles of corn/callus remover drug products are designed to deliver the drug to the affected site. Therefore, the agency believes it is sufficient to instruct consumers to apply the product to the affected site and, based on the data discussed above, does not believe that a statement regarding wiping off excess from tissue surrounding the corn/callus is necessary for collodion-like products, as the comment suggested. Additionally, because corn and callus remover drug products may be used on areas other than the feet, e.g., calluses that occur on the hands, the directions for use are being modified to delete specific reference to the feet.

After a review of submitted data and marketed products, the agency has revised the dosage regimen for salicylic acid in collodion-like drug products from once-a-day for no more than 14 days to once or twice a day as needed for no more than 14 days. Although the comment suggested a much shorter time, no data were submitted to support the request. The agency notes that the study referred to by the comment and cited at 47 FR 527 in support of the twice-a-day, 4-day regimen, was actually a twice-a-day, 14-day study, with efficacy assessed at the end of 14 days, not at 4 days.

Based on the discussion above, the directions proposed in this tentative final monograph are as follows:

(1) *For products containing salicylic acid formulated in a plaster vehicle.* "Wash affected area and dry thoroughly." (If appropriate: "Cut plaster to fit corn/callus.") "Apply medicated plaster. Repeat this procedure every 48 hours as needed (until corn/callus is removed) for up to 14 days."

(2) *For products containing salicylic acid formulated in a collodion-like vehicle.* "Wash affected area and dry thoroughly. Apply one drop at a time to sufficiently cover each corn or callus. Let dry. Repeat this procedure once or twice daily as needed (until corn/callus is removed) for up to 14 days."

References

(1) Davies, M., and R. Marks, "Studies on the Effect of Salicylic Acid on Normal Skin," *British Journal of Dermatology*, 95:187–192, 1976.

(2) Huber, C., and E. Christophers, "'Keratolytic' Effect of Salicylic Acid," *Archives for Dermatological Research*, 257:293–297, 1977.

(3) Roberts, D. L., R. Marshall, and R. Marks, "Detection of the Action of Salicylic on the Normal Stratum Corneum" *British Journal of Dermatology*, 103:191–196, 1980.

(4) Goodman, J. J., and L. Farris, "Evaluation of Safety and Efficacy of 20% Salicylic Acid for the Removal of Soft Corns," (Scholl Study No. S–82–47), draft of unpublished study, Comment No. LET, Docket No. 81N–0122, Dockets Management Branch.

II. The Agency's Tentative Adoption of the Panel's Report

A. Summary of Ingredient Categories and Testing of Category II and Category III Conditions

1. *Summary of ingredient categories.* The agency has reviewed all claimed active ingredients submitted to the Panel, as well as other data and information available at this time, and has made no changes in the categorization of corn and callus remover active ingredients recommended by the Panel. As a convenience to the reader, the following list is included as a summary of the categorization of corn and callus remover active ingredients recommended by the Panel and the proposed categorization by the agency.

Corn and callus remover active ingredients	Panel	Agency
Acetic acid, glacial	II	III
Allantoin (5-ureidohydantoin)	II	III
Ascorbic acid	II	III
Belladonna (extract) (alkaloids of belladonna)	II	III

Corn and callus remover active ingredients	Panel	Agency
Chlorbutanol	III	III
Dyperodon hydrochloride	III	III
Ichthammol (ichthyol)	III	III
Iodine	III	III
Methylbenzethonium chloride	III	III
Methyl salicylate	III	III
Parithenol	III	III
Phenoxyacetic acid	III	III
Phenyl salicylate (salol)	III	III
Salicylic acid	I	I
Vitamin A	III	III
Zinc chloride	III	III

2. *Testing of Category II and Category III conditions.* Interested persons may communicate with the agency about the submission of data and information to demonstrate the safety or effectiveness of any corn and callus remover ingredient or condition included in the review by following the procedures outlined in the agency's policy statement published in the **Federal Register** of September 29, 1981 (46 FR 47740) and clarified April 1, 1983 (48 FR 14050). That policy statement includes procedures for the submission and review of proposed protocols, agency meetings with industry or other interested persons, and agency communications on submitted test data and other information.

B. Summary of the Agency's Changes in the Panel's Recommendations

FDA has considered the comments and other relevant information and concludes that it will tentatively adopt the Panel's report and recommended monograph with the changes described in FDA's responses to the comments above and with other changes described in the summary below. A summary of the changes made by the agency follows.

1. Based on data submitted in support of the safety and effectiveness of salicylic acid for the removal of soft corns, the agency is proposing that products covered by the monograph not be limited to the removal of hard corns and calluses. (See comment 1 above.)

2. Because medicated disks, pads, and plasters are similar in nature, the agency is proposing to use the term "plaster" to include "disk" and "pad." In addition, the agency is proposing to use the term "collodion-like" in place of "collodion" because marketed liquid formulations contain ingredients other than those included in the U.S.P. article. Thus, the agency is proposing a number of revised definitions in this tentative final monograph. (See comment 1 above and § 358.503 below.)

3. The agency is proposing to allow use of the secondary indication "For relief of pain associated with corns and calluses" but only in conjunction with the primary indication "For removal of corns and calluses." (See comment 2 above.)

4. The agency is proposing that the labeling of corn and callus remover drug products formulated in a flammable vehicle, such as collodion, contain an appropriate flammability warning consistent with the requirements of 16 CFR Part 1500. (See comment 5 above.)

5. The agency is proposing to shorten and clarify the warnings for these products by combining, revising, or deleting a number of the Panel's recommended warnings. (See comments 1 and 6 through 8 above.) In addition, the agency is adding the statement "For external use only" to the warnings section. Use of this statement is consistent with a number of other OTC drug monographs for topical drug products. (See, for example, the tentative final monograph for OTC external analgesic drug products (February 8, 1983; 48 FR 5852); the tentative final monograph for OTC skin protectant drug products (February 15, 1983; 48 FR 6820); and the final monograph for OTC topical otic drug products (August 8, 1986; 51 FR 28656).)

6. The agency is proposing to revise the directions for use to delete references to using the product on the feet, soaking before treatment with the product, and encircling the corn or callus with petrolatum, and to revise the dosage regimen for products formulated in a collodion-like vehicle from once a day for no more than 14 days to once or twice daily as needed for up to 14 days. (See comment 9 above.)

7. In an effort to simplify OTC drug labeling, the agency proposed in a number of tentative final monographs to substitute the word "doctor" for "physician" in OTC drug monographs on the basis that the word "doctor" is more commonly used and better understood by consumers. Based on comments received to these proposals, the agency has determined that final monographs and any applicable OTC drug regulation will give manufacturers the option of using either the word "physician" or the word "doctor." This tentative final monograph proposes that option. In addition, the agency is proposing to include the term "podiatrist" together with the term "doctor" throughout the labeling. (See comment 7 above.)

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC corn and callus remover drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act Pub. L. 96–354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC corn and callus remover drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invited public comment in the advance notice of proposed rulemaking regarding any impact that this rulemaking would have on OTC corn and callus remover drug products No comments on economic impacts were received. Any comments on the agency's initial determination of the economic consequences of this proposed rulemaking should be submitted by June 22, 1987. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined that under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assesament nor an environmental impact statement is required.

Interested persons may, on or before April 21, 1987, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on

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the agency's economic impact determination may be submitted on or before June 22, 1987.

Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register**.

Interested persons, on or before February 20, 1988, may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before April 20, 1988. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA–305) (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on April 20, 1988. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the **Federal Register**, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects in 21 CFR Part 358

Labeling, Over-the-counter drugs, Corn and callus remover drug products.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended by adding Part 358, consisting of Subpart F, to read as follows:

PART 358—MISCELLANEOUS EXTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart F—Corn and Callus Remover Drug Products

Sec.

358.501 Scope.
358.503 Definitions.
358.510 Corn and callus remover active ingredients.
358.550 Labeling of corn and callus remover drug products.

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

Subpart F—Corn and Callus Remover Drug Products

§ 358.501 Scope

(a) An over-the-counter corn and callus remover drug product in a form suitable for topical application is generally recognized as safe and effective and is not misbranded if it meets each of the conditions in this subpart and each of the general conditions established in § 330.1.

(b) References in this subpart to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§358.503 Definitions.

As used in this subpart:

(a) *Corn and callus remover drug product.* A topical agent used for the removal of corns and calluses.

(b) *Collodion-like vehicle.* A solution containing pyroxylin (nitrocellulose) in an appropriate nonaqueous solvent that leaves a transparent cohesive film when applied to the skin in a thin layer.

(c) *Plaster vehicle.* A fabric, plastic, or other suitable backing material in which medication is usually incorporated for topical application to the skin.

§358.510 Corn and callus remover active ingredients.

The active ingredient of the product consists of any of the following when used within the specified concentration and in dosage form established for each ingredient:

(a) Salicylic acid 12 to 40 percent in a plaster vehicle.

(b) Salicylic acid 12 to 17.6 percent in a collodion-like vehicle.

§ 358.550 Labeling of corn and callus remover drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as a "corn and callus remover."

(b) *Indications.* The labeling of the product states, under the heading "indications," any of the phrases listed in this paragraph, as appropriate. Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in this paragraph (b), may also be used, as povided in § 330.1(c)(2), subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) "For the removal of corns and calluses."

(2) "Relieves pain by removing corns and calluses." This indication is permitted only in conjunction with the indication identified in paragraph (b)(1) of this section.

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For products containing any ingredient identified in § 358.510.* (i) "For external use only."

(ii) "Do not use this product if you are a diabetic or have poor blood circulation, except under the advice and supervision of a doctor or podiatrist."

(iii) "Do not use on irritated skin or on any area that is infected or reddened."

(iv) "If discomfort persists, see your doctor or podiatrist."

(2) *For any product formulated in a flammable vehicle.* (i) The labeling should contain an appropriate flammability signal word, e.g., "extremely flammable," "flammable," "combustible," conisistent with 16 CFR 1500.3(b)(10).

(ii) "Keep away from fire or flame."

(3) *For any product formulated in a volatile vehicle.* "Cap bottle tightly and store at room temperature away from heat."

(4) *For any product formulated in a collodion-like vehicle.* (i) "If product gets into the eye, flush with water for 15 minutes."

(ii) "Avoid inhaling vapors."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions":

(1) *For products containing salicylic acid identified in § 358.510(a).* "Wash affected area and dry thoroughly." (If appropriate: "Cut plaster to fit corn/callus.") "Apply medicated plaster. Repeat this procedure every 48 hours as needed (until corn/callus is removed) for up to 14 days."

(2) *For products containing salicylic acid identified in § 358.510(b).* "Wash affected area and dry thoroughly. Apply one drop at a time to sufficiently cover each corn or callus. Let dry. Repeat this procedure once or twice daily as needed (until corn/callus is removed) for up to 14 days."

(e) The word "physician" may be substituted for the word "doctor" in any of the labeling statements in this section.

Dated: December 6, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87–3574 Filed 2–19–87; 8:45 am]

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Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25 and 121

Improved Flammability Standards for Materials Used in the Interiors of Transport Category Airplane Cabins and Petition of Air Transport Association (ATA) and Aerospace Industries Association (AIA); Final Rule and Petition for Rulemaking

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25 and 121

[Docket No. 24594, Amendments 25-61 and 121-189]

Improved Flammability Standards for Materials Used in the Interiors of Transport Category Airplane Cabins

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; Request for additional comments; reopening of comment period.

SUMMARY: This notice announces the reopening of the comment period for Amendments 25-61 and 121-189 to the Federal Aviation Regulations (FAR). These amendments, which were adopted on July 21, 1986 (51 FR 26206), upgrade the fire safety standards for cabin interior materials in transport category airplanes. The final rule adopting these amendments included a request for public comments and provided a 6-month comment period. This action extends that comment period for an additional 90 days.

This reopening is necessary to afford all interested parties an opportunity to present their views on the recently adopted rulemaking.

DATE: Comments must be received on or before April 21, 1987.

ADDRESS: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 24594, 800 Independence Avenue SW., Washington, DC 20591; or delivered in duplicate to: Room 915G, 800 Independence Avenue SW., Washington, DC 20591. All comments must be marked: Docket No. 24594. Comments may be inspected in Room 915G weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Regional Counsel (ANM-7), FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments in the information docket may be inspected in the Office of the Regional Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gary L. Killion, Manager, Regulations Branch, Transport Standards Staff, ANM-110, Aircraft Certification Division, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2112.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such additional written data, views, or arguments concerning Amendments 25-61 and 121-189 as they may desire. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or amendment number and submit comments, in duplicate, to the Rules Docket address above. All comments received on or before the closing date will be considered by the Administrator before determining whether further action on this rulemaking is warranted. All comments will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. Commenters wishing the FAA to acknowledge receipt of their comments must submit with these comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24594." The postcard will be date/time stamped and returned to the commenter.

Availability of Amendments

Any person may obtain a copy of Amendments 25-61 and 121-189 by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center (APA-230), 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267-3484. Communications must identify Amendments 25-61 and 121-189.

Background

On July 21, 1986, the FAA adopted Amendments 25-61 and 121-189 (51 FR 26206; July 21, 1986), to upgrade the fire safety standards for cabin interior materials in transport category airplanes by: (1) Establishing new fire test criteria for type certification; (2) requiring that the cabin interiors of airplanes manufactured after a specified date and used in air carrier service comply with these new criteria; and (3) requiring that the cabin interiors of all other airplanes type certificated after January 1, 1958, and used in air carrier service comply with these new criteria upon the first replacement of the cabin interior. These amendments are based on Notice of Proposed Rulemaking (NPRM) No. 85-10 (50 FR 15038; April 16, 1985).

As discussed in the preamble to Amendments 25-61 and 121-189, some of the commenters responding to Notice 85-10 stated that the FAA was moving too rapidly in the rulemaking. Nevertheless, the FAA did not consider the comments received by that time to warrant abandoning the rulemaking or delaying it further, considering the increases in fire safety that would be achieved. Amendments 25-61 and 121-189 were adopted accordingly; however, the FAA did request further comments on both the test procedure and the appropriateness of the performance criteria. The closing date for the further comments was January 21, 1987. The FAA stated that a document discussing all comments received, presenting FAA responses and proposing any necessary further revisions to the new standards of Amendments 25-61 and 121-189, would be published in the Federal Register by July 21, 1987.

Following issuance of the final rule, the Aerospace Industries Association of America (AIA) and Air Transport Association of America (ATA) jointly petitioned for further rulemaking that would substitute different test procedures and acceptance criteria. This petition was published in the Federal Register on July 21, 1986 (51 FR 26166).

As also discussed in the preamble to Amendments 25-61 and 121-189, some commenters expressed concerns regarding the repeatability of test results using the FAA OSU test apparatus and procedures. The commenters note that, in addition to the initial type certification testing, succeeding material lots would have to be tested from a production standpoint to ensure that their heat release characteristics are not degraded from those of the material lot originally tested for type certification. Variations in test results would, therefore, necessitate the use of materials that nominally exceed the new standards of Amendments 25-61 and 121-189 to ensure that the results of individual tests are satisfactory. Such variations in test results could also create a situation in which a given material is found acceptable in the testing conducted by one manufacturer while the material is found unacceptable by another manufacturer. As a result of these concerns, the FAA conducted a third series of round-robin tests to determine whether certain refinements in the apparatus and procedures would improve the repeatability of test results. These tests were conducted at the FAA Technical Center, the facilities of two airplane manufacturers, and Ohio State University using common test specimens. Based on the results of these tests, the FAA Technical Center has recommended certain adjustments in the test apparatus and procedures as follows:

(1) The thermopile should be constructed of five 24-gauge thermocouples instead of three 32-gauge thermocouples.

(2) The thermal inertia compensator should no longer be used.

(3) The use of a "blank" sample burn correction should be deleted.

(4) The flow rate of methane during calibration should be 1 liter/minute baseline and flow rates of 4, 6, 8, 6, 4 liters/minute. The time at a given flow rate should be reduced from 4 minutes to 2 minutes.

5. Collection speed of data should be at least one data point per second, instead of continuous which would allow for digital data acquisition.

These recommendations are contained in a memorandum developed by the Fire Safety Branch, FAA Technical Center, dated January 9, 1987, entitled Memorandum: Recommended Modifications to Part 25, Appendix F, Part IV. A copy of this memorandum has been placed in the Rules Docket for public inspection and comment. Comments on these recommendations are specifically requested. Following receipt and analysis of comments, the FAA may determine that the recommended revisions are appropriate. If so, the final rule will be revised accordingly.

Reopening of Comment Period

In consideration of the need for public participation in determining future action regarding this rulemaking and requests for such reopening contained in letters from the AIA and ATA, both dated November 12, 1986, and the Suppliers of Advanced Composite Materials Association (SACMA) dated December 29, 1986, the FAA concludes that the comment period should be reopened.

Accordingly, the comment period for Amendment 25-61 and 121-189 is reopened until April 21, 1987.

In their letters, the AIA and ATA also request that the comment period for their joint petition for further rulemaking be granted a corresponding extension. This request is being granted through separate notice.

Conclusion: This document reopens the comment period on a final rule to afford the public and industry additional time in which to review and respond. The FAA has determined that this document involves rulemaking which is considered to be significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). This document is not major as defined in Executive Order 12291. The FAA certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

List of Subjects

14 CFR Part 25

Aviation safety, Aircraft, Air transportation, Safety, Tires.

14 CFR Part 121

Aviation safety, Safety, Air transportation, Aircraft, Airplanes, Cargo, Flammable materials, Hazardous materials, Transportation Common carriers.

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1357, 1401, 1421, 1423, 1424, 1425, 1428, 1429, 1430, 1485, 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Issued in Seattle, Washington, on February 4, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-3564 Filed 2-19-87; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25 and 121

[Docket No. 25003; Petition Notice PR-86-12B]

Petition of Air Transport Association (ATA) and Aerospace Industries Association (AIA)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Petition for rulemaking; reopening of comment period.

SUMMARY: This notice announces the second reopening of the comment period for Petition Notice PR-86-12 (51 FR 26166; July 21, 1986) which invited comments relative to a joint petition of ATA and AIA to amend §§ 25.853 and 121.312 of the FAR to require different test procedures from those proposed in Notice of Proposed Rulemaking (NPRM) 85-10 (50 FR 15038; April 16, 1985) relative to acceptance criteria for materials used in the interiors of transport category airplane cabins. This reopening is necessary to afford all interested parties an opportunity to present their views on the petition for rulemaking.

DATE: Comments must be received on or before April 21, 1987.

ADDRESSES: Send comments on Petition Notice PR-86-12 in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-204), 800 Independence Avenue SW., Washington, DC 20591, or deliver in triplicate to Room 915G, 800 Independence Avenue SW., Washington, DC. Comments must be marked: Docket No. 25003. Comments may be inspected in Room 915G weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Regional Counsel (ANM-7), FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. Comments in the information docket may be inspected in the Office of the Regional Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gary L. Killion, Regulations Branch (ANM-112), Transport Standards Staff, Aircraft Certification Division, FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168, telephone (206) 431-1912.

SUPPLEMENTARY INFORMATION

Discussion

The ATA and the AIA petition was published in the **Federal Register** on July 21, 1986, (51 FR 26166) with a 4-month comment period (which closed on November 19, 1986). Amendment 25-61 (which resulted from NPRM 85-10) was also published in the **Federal Register** on July 21, 1986, (51 FR 26206). This amendment, as adopted, provided a 6-month comment period on the final flammability criteria for the purpose of possibly refining either the test procedures or acceptance criteria. The comment period closed on January 21, 1987. Because of the interrelationship between the subject petition and Amendment 25-61, the FAA determined that reopening the comment period on the petition to be consistent with the closing date for comments on Amendment 25-61 was in the public interest. Therefore, the comment period on Petition Notice PR-86-12 was reopened until January 21, 1987, as well (51 FR 42583; November 25, 1986). Since that time the FAA has received further requests to extend the comment period on Amendment 25-61 to allow more time in which to review results of additional testing conducted by the FAA which were recently released. By separate notice, the comment period on Amendment 25-61 is being reopened until April 21, 1987. The FAA has determined that it would be in the public interest to further reopen the comment period on Petition Notice PR-86-12 until April 21, 1987. This will allow the public an equal amount of time to comment on these interrelated regulatory activities. The agency's final decision on the petition will, of course, be consistent with any action taken with respect to Amendment 25-61.

Issued in Washington, DC, on February 13, 1987.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 87-3563 Filed 2-19-87; 8:45 am]

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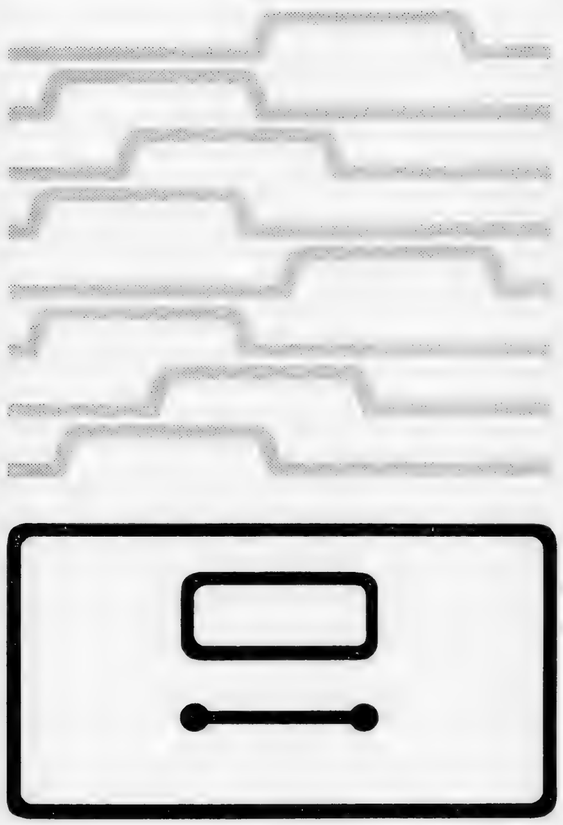
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Title 3—

The President

Proclamation 5610 of February 19, 1987

Restoration of the Application of Column 1 Rates of Duty of the Tariff Schedules of the United States to the Products of Poland

By the President of the United States of America

A Proclamation

1. On October 27, 1982, by Proclamation No. 4991, I suspended the application of column 1 rates of duty of the Tariff Schedules of the United States (TSUS) to the products of Poland. This followed from my determination that the Government of the Polish People's Republic had failed to meet certain import commitments under its Protocol of Accession to the General Agreement on Tariffs and Trade (19 UST 4331), and that the Polish martial law government had increased its repression of the Polish people, leaving the United States without any reason to continue withholding action on its trade complaints against Poland.

2. Since issuance of that Proclamation, the Polish Government has taken steps that lead me to believe that Poland should be given a renewed opportunity to address its trade obligations with the benefit of most-favored-nation tariff treatment.

3. The President may, pursuant to his constitutional and statutory authority, including Section 125(b) of the Trade Act of 1974, as amended, terminate in whole or in part Proclamation No. 4991.

4. I have determined in this case that the national interest requires expeditious action.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by the authority vested in me by the Constitution and the statutes of the United States, including, but not limited to, the Trade Expansion Act of 1962, as amended, and the Trade Act of 1974, as amended, do hereby proclaim as follows:

1. Proclamation No. 4991 of October 27, 1982, is hereby revoked.

2. General Headnote 3(d) of the TSUS is modified:

(a) by deleting "or pursuant to Presidential Proclamation No. 4991, dated October 27, 1982" and

(b) by deleting "Polish People's Republic" from the list of countries therein.

3. This Proclamation shall take effect with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date of publication of this Proclamation in the **Federal Register**.

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IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of February, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-3896
Filed 2-19-87; 4:21 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12583 of February 19, 1987

Food for Progress

By the authority vested in me as President by the laws of the United States of America, including the Food for Progress Act of 1985 (section 1110 of the Food Security Act of 1985, Public Law 99-198; 7 U.S.C. 1736o) ("the Act") and section 301 of Title 3 of the United States Code, and in order to provide for the delegation of certain functions under the Act, it is hereby ordered as follows:

Section 1. (a) The function vested in the President by section 1110(b) of the Act of entering into agreements with developing countries is delegated to the Director of the United States International Development Cooperation Agency, and this function may be redelegated to the head of any other agency. This function shall be exercised in accordance with section 112b of Title I of the United States Code and applicable regulations and procedures of the Department of State.

(b) The Director of the United States International Development Cooperation Agency shall, in accordance with Section 3 of this Order, transmit to the Congress all reports required by the Act concerning such agreements.

Sec. 2. The functions vested in the President by section 1110(f)(2) of the Act of waiving any minimum tonnage requirements are delegated to the Secretary of Agriculture, who shall exercise this function in accordance with policy guidance provided by the Food Aid Subcommittee of the Development Coordination Committee.

Sec. 3. In order to ensure that the furnishing of commodities under the Act is coordinated with and complements other United States foreign assistance, the exercise of all functions delegated by this Order shall be coordinated through the Food Aid Subcommittee of the Development Coordination Committee.

Ronald Reagan

THE WHITE HOUSE,
February 19, 1987.

[FR Doc. 87-3853
Filed 2-19-87; 2:30 pm]
Billing code 3195-01-M

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Presidential Documents

Executive Order 12584 of February 19, 1987

President's Special Review Board

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), and in order to extend the time within which the President's Special Review Board may submit its findings and recommendations, it is hereby ordered that Section 2(b) of Executive Order No. 12575, as amended, is further amended by deleting the phrase "February 19, 1987" and inserting in lieu thereof "February 26, 1987."

Ronald Reagan

THE WHITE HOUSE,
February 19, 1987.

[FR Doc. 87-3929
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Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 315

Career and Career Conditional Employment; National Guard Technicians

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is amending its regulations to implement Pub. L. 99–586, enacted October 29, 1986. The law authorizes the non-competitive appointment of National Guard technicians under certain conditions.

EFFECTIVE DATE: February 23, 1987.

FOR FURTHER INFORMATION CONTACT: Raleigh Neville, (202) 632–6817.

SUPPLEMENTARY INFORMATION: Pub. L. 99–586 amended 5 U.S.C. 3304 to authorize the noncompetitive appointment of National Guard technicians who are separated involuntarily from the Guard (other than by removal for cause on charges of misconduct or delinquency), provided they have 3 years of service, are appointed within 1 year of their separation, and meet appropriate OPM qualification standards. This regulation implements that law.

Pursuant to sections 553(b)(3)(B) and 553(d)(3) of title 5, United States Code, I find that good cause exists to waive the general notice of proposed rulemaking and to make this amendment a final rule, effective upon publication to implement the statutory mandate to benefit eligible Guard technicians. The criteria for eligibility specified by the law and reflected in the final rule are complete and unambiguous. Therefore, the comment period apropriate to a proposed regulation or an interim rule would serve no useful purpose. More important, since the law requires that an appointment be made within 1 year of involuntary separation, any delay in publicizing the authority could adversely affect the very individuals the law was designed to help.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulations.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions because it will only affect National Guard technicians and Federal agencies.

List of Subjects in 5 CFR Part 315

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 5 CFR Part 315 as follows:

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

1. The authority citation for Part 315 is revised to read as set forth below and the authority citations throughout Part 315 are removed:

Authority: 5 U.S.C. 1302, 3301, and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp. p. 218 §§ 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652; §§ 315.602 and 315.604 also issued under 5 U.S.C. 1104; Pub. L. 95–454, sec. 3(5); § 315.605 also issued under E.O. 12034, 43 FR 1917, Jan. 13, 1978; § 315.606 also issued under E.O. 11219, 3 CFR 1964–1965 Comp., p. 303; § 315.607 also issued under 22 U.S.C. 2506, 93 Stat. 371, E.O. 12137; 22 U.S.C. 2506, 94 Stat. 2158; § 315.608 also issued under E.O. 12362, 47 FR 21231; § 315.610 also issued under 5 U.S.C. 3304(d), Pub. L. 99–586, Subpart I also issued under 5 U.S.C. 3321, E.O. 12107.

2. A new Section 315.610 is added to Subpart F of Part 315 to read as follows:

Subpart F—Career or Career-Conditional Appointment Under Special Authorities

• • • • •

§ 315.610 Noncompetitive appointment of certain National Guard technicians.

(a) An agency may appoint noncompetitively a National Guard technician who—

(1) Was involuntarily separated (other than by removal for cause on charges of misconduct or delinquency);

(2) Has served at least 3 years as a technician;

(3) Meets the qualifications requirements of the job: and

(4) Is appointed within 1 year after separating from service as a Guard Technician.

(b) The noncompetitive appointing authority also applies to National Guard technicians separated before October 29, 1986, provided they are appointed within a year of the date of separation.

[FR Doc. 87–3764 Filed 2–20–87; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 841

Federal Employees Retirement System—General Administration; State Income Tax Withholding

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim rules and requesting comment on the rules to provide for withholding of State income taxes from benefits payable under the Federal Employees Retirement System (FERS) Act of 1986. These rules provide the procedures that OPM will follow in entering into agreements with States to withhold State income taxes and in withholding those taxes from FERS benefits.

DATES: Interim rules effective March 25, 1987; comments must be received on or before April 24, 1987.

ADDRESSES: Send comments to Frank D. Titus; Director, FERS Implementation Task Force; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 884; Washington, DC 20044; or deliver to OPM, Room 3311, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202)–632–5560.

SUPPLEMENTARY INFORMATION: The FERS Act of 1986, Pub. L. 99–335, created

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a new retirement system for some Federal employees. Section 8469 of title 5, U.S.C., as added by the FERS Act of 1986, requires, under certain circumstances, that OPM withhold State income taxes from FERS benefits. These rules provide the procedures that OPM will follow in entering into agreements with States to withhold State income taxes and in withholding those taxes from FERS benefits.

A single agreement between a State and OPM that OPM will withhold State income taxes should apply to benefits under both FERS and the Civil Service Retirement System (CSRS). OPM will not require States that already have agreements to withhold State income taxes from benefits under CSRS to enter new agreements to have taxes withheld from FERS benefits as well. These rules will permit a single agreement to cover benefits under both retirement systems (by applying the same rules to FERS as are currently applied to CSRS under Subpart S of Part 831, of Title 5, Code of Federal Regulations).

Under section 553(b)(3)(B) of Title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. These rules were developed with full opportunity for public participation as applied to other benefits administered by OPM. Further opportunity for public participation before these rules are effective would be unnecessary. In addition, the need to establish procedures as soon as possible after the statutory effective date of FERS (January 1, 1987) to provide for proper functioning of the new retirement system makes the general notice of proposed rulemaking impracticable.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect State Governments, Federal agencies, and retirement payments to retired Government employees.

List of Subjects in 5 CFR Part 841

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental regulations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM is amending 5 CFR Part 841 to add Subpart J to read as follows:

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

* * * * *

Subpart J—State Income Tax Withholding

Sec.

841.1001 Purpose.
841.1002 Definitions.
841.1003 Federal-State agreements.
841.1004 OPM responsibilities.
841.1005 State responsibilities.
841.1006 Additional provisions.
841.1007 Agreement modification and termination.
841.1008 Authority to use the Federal Personnel Manual System.

Subpart J—State Income Tax Withholding

Authority: 5 U.S.C. 8461 and 8469.

§ 841.1001 Purpose.

This subpart regulates state income tax withholding from payments of basic benefits under the Federal Employees Retirement System (FERS).

§ 841.1002 Definitions.

For the purpose of this subchapter:

"Agreement" means the Federal-State agreement contained in this subpart.

"Annuitant" means an employee or Member retired, or a spouse, widow, or widower receiving survivor benefits, under Chapter 84 of Title 5, United States Code.

"Effective date" means, with respect to a request or revocation, that the request or revocation will be reflected in payments authorized after that date, and before the next request or revocation is implemented.

"Fund" means the Civil Service Retirement and Disability Fund as established and described in section 8348 of Title 5, United States Code.

"Income tax" and "State income tax" mean any form of tax for which, under a State statute, (a) collection is provided, either in imposing on employers generally the duty of withholding sums from the compensation of employees and making returns of such sums to the State or by granting to employers generally the authority to withhold sums from the compensation of employees, if any employee voluntarily elects to have such sums withheld; and (b) the duty to withhold generally is imposed, or the authority to withhold generally is granted, with respect to the compensation of employees who are residents of the State.

"Net recurring payment" means the amount of annuity or survivors benefits (not recurring interim payments made while a claim is pending adjudication) payable to the annuitant on a monthly basis less the amounts currently being deducted for health benefits, Medicare, life insurance, Federal income tax, overpayment of annuity, indebtedness to the Government, voluntary allotments, waivers, or being paid to a third party or a court officer in compliance with a court order or decree.

"Net withholding" means the amount of State income tax deductions withheld during the previous calendar quarter as a result of requests which designated the State as payee, less similar deductions taken from prior payments which are cancelled in the previous calendar quarter.

"Proper State Official" means a State officer authorized to bind the State contractually in matters relating to tax administration.

"Received" means, in respect to the magnetic tape containing requests and revocations, received at the special mailing address established by OPM for income tax requests, or, for those items not so received, received at the OPM data processing center charged with processing requests.

"Requests" means, in regard to a request for tax withholdings, a change in the amount withheld, or revocation of a prior request, a written submission from an annuitant in a format acceptable to the State which provides the annuitant's name, FERS claim number, Social Security identification number, address, the amount to be withheld and the State to which payment is to be made, which is signed by the annuitant or, in the case of incompetence, his or her representative payee.

"State" means a State, the District of Columbia, or any territory or possession of the United States.

§ 841.1003 Federal-State agreements.

OPM will enter into an agreement with any State within 120 days of an application for agreement from the proper State official. The terms of the standard agreement will be § 841.1004 through 841.1007 of this subpart. OPM and the State may agree to additional terms and provisions, insofar as those additional terms and provisions do not contradict or otherwise limit the terms of the standard agreement.

§ 841.1004 OPM responsibilities.

OPM will, in performance of this agreement:

(a) Process the magnetic tape containing State tax transactions against the annuity roll once a month at the time monthly recurring payments are prepared for the United States Treasury Department. Errors that are identified will not be processed into the file, and will be identified and returned to the State for resolution via the monthly error report. Collections of State income tax will continue in effect until the State requesting the initial action supplies either a valid revocation or change. The magnetic tape must be received 35 days prior to the date of the check in which the transactions are to be effective. For example, withholding transactions for the July 1 check must be received 5 days prior to June 1. If the magnetic tape submitted by the State cannot be read, OPM will notify the State of this fact, and if a satisfactory replacement can be supplied in time for monthly processing, it will be processed.

(b) Deduct from the regular, recurring annuity payments of an annuitant the amount he or she has so requested to be withheld, provided that:

(1) The amount of the request is an even dollar amount, not less than Five Dollars nor more than the net recurring amount. The State may set any even dollar amount above Five Dollars as a minimum withholding amount.

(2) The annuitant has not designated more than one other State for withholding purposes within the calendar year. The State can set any limit on the number of changes an annuitant may make in the amount to be withheld.

(c) Retain the amounts withheld in the Fund until payment is due.

(d) Pay the net withholding to the State on the last day of the first month following each calendar quarter.

(e) Make the following reports:

(1) A monthly report which will include all the State tax withholdings, cancellations and adjustments for the month, and also each request OPM was not able to process, with an explanation, in coded format, of the reason for rejection.

(2) A quarterly report which will include State, State address, quarterly withholdings, quarterly cancellations and adjustments, quarterly net withholdings and year-to-date amounts. Where cancelled or adjusted payments were made in a previous year, OPM shall append a listing of the cancelled or adjusted payments which shows the date and amount of each cancelled or adjusted tax withholding, and the name and Social Security identification number of the annuitant from whom it was withheld. If either party terminates the agreement and the amount of cancelled or adjusted deductions exceeds the amount withheld for the final quarter, then the quarterly report shall show the amount to be refunded to OPM and the address to which payment should be made.

(3) An annual summary report which contains the name, Social Security identification number, and total amount withheld from non-cancelled payments during the previous calendar year, for each annuitant who requested tax withholding payable to the State. In the event the annuitant had State income tax withholding in effect for more than one State in that calendar year, the report will show only the amount withheld for the State receiving the report.

(4) An annual report to each annuitant for whom State income taxes were withheld giving the amount of withholding paid to the State during the calendar year.

§ 841.1005 State responsibilities.

The State will, in performance of this agreement:

(a) Accept requests and revocations from annuitants who have designated that State income tax deductions will go to the State.

(b) Convert these requests on a monthly basis to a machine-readable magnetic tape using specifications received from OPM, and forward that tape to OPM for processing.

(c) Inform annuitants whose tax requests are rejected by OPM that the request was so rejected and of the reason why it was so rejected.

(d) Recognize that, to the extent not prohibited by State laws, records maintained by the State relating to this program are considered jointly maintained by OPM and are subject to the Privacy Act of 1974 (5 U.S.C. 552a). Accordingly, the States will maintain such records in accordance with that statute and OPM's implementing regulations at 5 CFR Part 297.

(e) Respond to requests of annuitants for information and advice in regard to State income tax withholding.

(f) Credit the amounts withheld from FERS annuities to the State tax liability of the respective annuitants, and, subject to applicable provisions of State law to the contrary, refund any balance over and above that liability to the annuitant, unless he or she should request otherwise.

(g) Surrender all tax withholding requests to OPM when this agreement is terminated or when the documents are not otherwise needed for this State tax withholding program.

(h) Allow OPM, the Comptroller General or any of their duly authorized representatives access to, and the right to examine, all records, books, papers or documents related to the processing of requests for State income tax withholding from FERS annuities.

§ 841.1006 Additional provisions.

These additional provisions are also binding on the State and OPM:

(a) A request or revocation is effective when processed by OPM. OPM will process each request by the first day of the second month following the month in which it is received, but incurs no liability or indebtedness by its failure to do so.

(b) Any amount deducted from an annuity payment and paid to the State as a result of a request is deemed properly paid, unless the annuity payment itself is cancelled.

(c) OPM will provide the State with the information necessary to properly process a request for State income tax withholding.

(d) If the State is paid withholding which is contrary to the terms of the annuitant's request, the State is liable to the annuitant for the amount improperly withheld, and subject to account verification from OPM, agrees to pay that amount to the annuitant on demand.

(e) In the case of a dispute amount in any of the reports described and authorized by this agreement, the Associate Director will issue an accounting. If the State finds this accounting unacceptable, it may then and only then pursue such remedies as are otherwise available.

(f) If a State received an overpayment of monies properly belonging to the Fund, OPM will offset the overpayment from a future payment due the State. If there are no further payments due the State, OPM will inform the State in writing of the amount due. Within 60 days of the date of receipt of that communication that State will make payment of the amount due.

§ 841.1007 Agreement modification and termination.

This agreement may be modified or terminated in the following manner:

(a) Either party may suggest a modification of non-regulatory provisions of the agreement in writing to the other party. The other party must accept or reject the modification within 60 calendar days of the date of the suggestion.

(b) The agreement may be terminated by either party on 60 calendar days written notice.

(c) OPM may modify this agreement unilaterally through the rule making

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process described in sections 553, 1103, and 1105 of Title 5, United States Code.

§ 841.1008 Authority to use the Federal Personnel Manual System.

OPM may provide such further rules, procedural instructions, and operational guidance as may be necessary and proper under this Subpart and not inconsistent therewith, in the Federal Personnel Manual System.

[FR Doc. 87-3767 Filed 2-20-87; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. No. 285]

Food Stamp Program; Excess Shelter Expense Deductions and Treatment of Low Income Home Energy Assistance Act Payments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Human Services Reauthorization Act of 1986 (Pub. L. 99-425, September 30, 1986) includes a provision which affects the treatment of Low Income Home Energy Assistance Act (LIHEAA) payments in the Food Stamp Program's calculation of an excess shelter expense deduction. In accordance with section 504(e) of this Act, LIHEAA payments must be treated consistently in food stamp calculations regardless of how the LIHEAA payment is distributed to the household. In order to implement this provision, this final rulemaking amends current regulations to: (1) Allow energy expenses covered by LIHEAA payments made to the energy supplier on behalf of the household (i.e., indirect payments) as deductible shelter expenses; (2) consider all households receiving payments under LIHEAA eligible to claim a standard utility allowance for use in the computation of the excess shelter expense deduction; and (3) eliminate the State agency's option to use a separate standard utility allowance for those households which receive an Indirect LIHEAA payment. This rulemaking establishes consistent national standards for the treatment of LIHEAA payments in food stamp eligibility and coupon allotment determinations.

DATES: The provisions in this rulemaking are effective retroactive to October 1, 1986, and must be implemented immediately.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour, Supervisor, Certification Rulemaking Section, Eligibility and Monitoring Branch, Program Development Division, Food and Nutrition Service, USDA, Alexandria, Virginia, 22302, (703) 756-3429.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Department has reviewed this final rule under Executive Order 12291 and Secretary's Memorandum No. 1512-1. It has been determined that the action will not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individuals industries, Federal, State, or local government agencies, or geographic regions. Additionally, this action will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore this action has been classified as "not major."

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has also been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. The requirements will affect the food stamp recipients and the State and local agencies which administer the program.

Paperwork Reduction Act

This rulemaking does not contain recordkeeping or reporting requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Public Participation and Effective Date

This final rulemaking is being finalized without prior notice of proposed rulemaking or an opportunity for public comment. This rulemaking merely implements the amendments made by section 504(e) of the Human Services Reauthorization Act of 1986 and is an interpretative rule. Furthermore, the rule relieves a restriction which has previously prevented deductions of vendor payments made under LIHEAA. For these reasons, the Department has determined in accordance with 5 U.S.C. 553(b) that prior notice of proposed rulemaking or the opportunity for public comment and publication not less than 30 days prior to the effective date are not required.

Background

Treatment of Indirect Payments Provided Under the Low Income Home Energy Assistance Act

When determining a household's food stamp eligibility and coupon allotment, certain deductions are subtracted from a household's gross income level. One such deduction is for excess shelter expenses. Allowable shelter expenses are defined in the current rules at 7 CFR 273.9(d)(5) and include, in part, such items as the cost of heating, electricity, water, and garbage and trash collection. Disallowed shelter expenses are specified in the current rules at 7 CFR 273.10(d)(1).

Some low-income households receive energy assistance benefits under the Low Income Home Energy Assistance Act (LIHEAA) of 1981 (42 U.S.C. 8621 *et. seq.*). Depending on the State agency's management of LIHEAA payments, a food stamp household may either: (1) Receive LIHEAA payments directly (in which case the household would be responsible for paying its energy provider); or (2) have its LIHEAA payments transferred directly to the energy provider by the State agency. For food stamp purposes, the latter procedure is referred to as either an "indirect payment" or a "vendor payment." Under current Food Stamp Program rules, households which receive their LIHEAA payments directly are allowed to include the expense covered by the LIHEAA payment in the computation of the excess shelter expense deduction. However, in accordance with section 5(e) of the Food Stamp Act (7 U.S.C. 2014(e)) and 7 CFR 273.10(d)(1)(i), households currently may not deduct the portion of their utility bill which is transferred to the energy provider through a vendor payment. This distinction has generated several lawsuits revolving around apparently conflicting legislative intent of amendments to both LIHEAA and the

Food Stamp Act. *See, Schmeige* v. *USDA*, 693 F.2d 55 (8th Cir. 1982); *Idaho* v. *USDA*, 784 F.2d 895 (9th Cir. 1986); and *Segan* v. *USDA*, 626 F. Supp. 545 (Indiana 1985).

The Human Services Reauthorization Act of 1986 (Pub. L. 99-425), enacted on September 30, 1986, reauthorizes the Low Income Home Energy Assistance Program of 1981. Public Law 99-425 also contains an amendment which affects the treatment of LIHEAA payments when determining any excess shelter expense deduction in the food stamp program. Specifically, section 504(e)(2) of Pub. L. 99-425 states:

". . . for purposes of determining any excess shelter expense deduction under section 5(e) of the Food Stamp Act of 1977 (7 U.S.C. 2014(e))—

(A) The full amount of such payments or allowances shall be deemed to be expended by such household for heating or cooling expenses, without regard to whether such payments or allowances are provided directly to, or indirectly for the benefit of, such household; and

(B) No distinction may be made among households on the basis of whether such payments or allowances are provided directly to, or indirectly for the benefit of, any such households;".

As a result of this legislation, all energy expenses covered by LIHEAA payments will be allowable expenses for food stamp purposes and must be included in the calculation of the excess shelter expense deduction. This change alters the treatment of indirect LIHEAA payments but will not affect current policy with respect to other State or local energy assistance payments or other expenses paid to a third party on behalf of households.

Accordingly, 7 CFR 273.10(d)(1)(i) is amended to allow energy expenses covered by vender payments made under the Low Income Home Energy Assistance Act of 1981, as amended, to count as expenses toward the household's excess shelter expense deduction.

Treatment of Indirect LIHEAA Payments and the Standard Utility Allowance

Current rules at 7 CFR 273.9(d)(6)(i) allow State agencies to offer households incurring a heating or cooling expense a standard utility allowance (SUA). The single SUA includes a heating and/or cooling component and is used in lieu of actual costs in the determination of the excess shelter expense deduction. In order to equitably determine the household's eligibility to receive this SUA, the Food Security Act of 1985, Pub. L. 99-198, required that the households receiving indirect LIHEA payments have these payments prorated over the season the payments were intended to cover. After such proration, households which still incur out-of-pocket heating or cooling expenses over and above their indirect LIHEAA or similar indirect energy assistance payment would be eligible to receive the SUA. Finally, section 1511 of Pub. L. 99-198 provided that States choosing to offer an SUA could: (1) Offer on SUA to all households incurring heating or cooling costs; or (2) develop two separate SUAs for households incurring heating or cooling costs—one for households receiving indirect energy assistance payments and the other for households not receiving indirect energy assistance payments. The Department published regulations implementing these provisions from Pub. L. 99-198 in a final rulemaking (51 FR 18744) on May 21, 1986.

However, as previously noted, section 504(e)(2) of Pub. L. 99-425 requires that the *full* amount of LIHEAA payments must be considered expended by the household for heating and cooling expenses regardless of the State's method of distributing the payment. Furthermore, section 504(e)(2) specifies that no distinction may be made with regard to how the LIHEAA payment is provided in determining the food stamp excess shelter expense deduction. These provisions supercede the current regulations which require that, in order for a household receiving indirect energy assistance payments to be eligible for the SUA, the household must incur out-of-pocket expenses over and above the indirect payment. Thus, for food stamp purposes, an energy expense covered by a LIHEAA payment—whether provided directly or indirectly—will be considered an out-of-pocket expense for the purpose of determining the household's eligibility to use the SUA. Because an energy expense covered by any LIHEAA payment will be considered an out-of-pocket expense, it is no longer necessary to prorate an indirect LIHEAA payment over the season the payment is intended to cover.

Accordingly, § 273.9(d)(6)(ii) is amended in this rulemaking to specify that the amount of an energy expense covered by a LIHEAA payment is an out-of-pocket expense for the purpose of determining the household's eligibility to receive an SUA. Section 273.10(d)(6) is amended to specify that LIHEAA payments must not be prorated for the purpose of determining a household's eligibility to receive an SUA.

Moreover, State agencies which elect to develop a separate SUA for those households receiving indirect energy assistance payments may not use the separate SUA for households receiving indirect LIHEAA payments. Rather, States may only apply a separate SUA to other indirect energy assistance payments as provided for at 7 CFR 273.9(d)(6).

Accordingly, §§ 273.9(d)(6)(ii) and 273.9(d)(6)(v)(B) are amended to specify that the State agency's option to use a separate SUA only applies to those households receiving indirect energy assistance other than assistance provided under the Low Income Home Energy Assistance Act of 1981.

Implementation

In accordance with section 1001(a) of Pub. L. 99-425, the provisions in this rulemaking are effective retroactive to October 1, 1986 and must be implemented for all eligibility and benefit calculations made on or after the date of publication. Whenever the household requests a review or the State agency becomes aware that the household may have been denied benefits, the State agencies shall review the case to determine if the household would have been eligible, or would have been eligible for a higher allotment, if the provisions in this rulemaking had been appropriately applied in the food stamp eligibility and benefit calculations as of October 1, 1986. If it is determined that any new applicant household was denied benefits, restored benefits must be provided back to the date of application or October 1, 1986, whichever is later. Currently participating households must receive benefits back to October 1, 1986 or the first month in which application of this rule would have affected the household's benefits, whichever is later.

For quality control (QC) purposes only, for the period between October 1, 1986 and the first of the month following 30 days after publication of this rule, QC must not identify variances resulting solely from a State agency's implementation or non-implementation of this rule.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reports and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

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Accordingly, Parts 272 and 273 are amended as follows:

1. The authority citation of Parts 272 and 273 continues to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2029).

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(84) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation* * * *

(84) Amendment No. 285. (i) The provisions of Amendment No. 285 at §§ 273.9(d)(6)(i), 273.9(d)(6)(ii), 273.9(d)(6)(v)(B), 273.10(d)(1)(i) and 273.10(d)(6) are retroactively effective to October 1, 1986. The State agency shall implement the provisions immediately upon publication and any eligible determination made on or after that date shall be made in accordance with this rule. The State agency shall review a case to determine if the household was denied benefits under these amendments whenever the household requests a review or the State agency becomes aware that such a denial may have occurred. Any household that was denied benefits as a result of an eligibility or benefit calculation (e.g., processed change report) made on or after October 1, 1986 is entitled to restored benefits. Restored benefits for these households shall be made available, if appropriate, in accordance with § 273.17 back to: (A) October 1, 1986 or the date of application whichever is later for new applications; or (B) October 1, 1986 or the first month in which the application of these amendments would have affected the household's benefits, whichever is later, for certified households.

(ii) For quality control (QC) purposes only, a variance resulting solely from either the implementation or non-implementation of this rule shall not be identified between October 1, 1986 and April 1, 1987.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.9:

a. The third sentence in paragraph (d)(6)(i) is revised.

b. The first and second sentences in paragraph (d)(6)(ii) are revised.

c. The second sentence in paragraph (d)(6)(v)(B) is amended by adding the phrase, "as provided for in paragraph (d)(6)(i) of this section," after the phrase, "which receive indirect energy assistance payments".

The additions and revisions read as follows:

§ 273.9 Income and deductions.

* * * * *

(d) *Income deduction.* * * *

(6) *Standard utility allowance.* (i) * * * If the State agency chooses to develop two standard utility allowances for households which incur heating or cooling expenses, one standard shall only be used for those households which receive indirect energy assistance payments other than payments under the Low Income Home Energy Assistance Act of 1981, and the second standard shall be used for all other households. * * *

(ii) The standard utility allowance which includes a heating or cooling component shall be made available only to households which incur heating and cooling costs separately and apart from their rent or mortgage. These households include:

(A) Residents of rental housing who are billed on a monthly basis by their landlords for actual usage as determined through individual metering;

(B) Recipients of energy assistance payments made under the Low Income Home Energy Assistance Act of 1981; or

(C) Recipients of indirect energy assistance payments, made under a program other than the Low Income Home Energy Assistance Act of 1981, who continue to incur out-of-pocket heating or cooling expenses in accordance with § 273.10(d)(6) during any month covered by the certification period.

* * * * *

4. In § 273.10:

a. The first sentence in paragraph (d)(1)(i) is revised.

b. Paragraph (d)(6) is revised.

The revisions read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(d) *Determining deductions.* * * *

(1) *Disallowed expenses.* (i) An expense covered by an excluded reimbursement or vendor payment, except an energy assistance vendor payment made under the Low Income Home Energy Assistance Act (LIHEAA), shall not be deductible. * * *

* * * * *

(6) *Energy Assistance Payments.* Except for payments made under the Low Income Energy Assistance Act of 1981, the State agency shall prorate energy assistance payments as provided for in § 273.9(d) over the entire heating or cooling season the payment is intended to cover.

* * * * *

Dated: February 13, 1987.

Robert E. Leard,

Administrator.

[FR Doc. 87-3724 Filed 2-20-87; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 70-CE-01-AD; Amendment 39-5564]

Airworthiness Directive; Cessna Models T310P, T310Q, 320D, 320E and 320F Airplanes With Teledyne Continental TSIO-520B Engines and Models 401, 401A, 401B, 402, 402A, and 402B Airplanes With Teledyne Continental TSIO-520E Engines.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Amendment adopts a revision to Airworthiness Directive (AD) 70-03-04, Amendment 39-933, which limits the required repetitive inspection of the turbosupercharger turbine housing of those airplanes equipped with the stainless steel turbine heat shields in place of the insulating turbine blanket. This action is being taken because a review has revealed no problems on those airplanes having turbosuperchargers equipped with the stainless heat shields. This revision limits the required repetitive inspections to those turbosuperchargers equipped with the turbosupercharger turbine blanket.

EFFECTIVE DATE: March 28, 1987.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Cessna Multi-engine Service Letters Nos. ME70-3, dated January 9, 1970, ME70-3 Supplement 1, dated February 9, 1970, and ME72-4, dated March 24, 1972, applicable to this AD may be obtained from the Cessna Aircraft Company, Customer Services, P.O. Box 1521, Wichita, Kansas 67201; or may be examined at the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Charles D. Riddle, Wichita Aircraft Certification Office, Federal Aviation Administration, ACE-140W, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209, Telephone (316) 946-4427.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to revise AD 70-03-04, Amendment 39-933, applicable to Cessna Models T310P, T310Q, 320D, 320E and 320F Series airplanes with the Continental Model TSIO-520B engines installed and Models 401, 401A, 401B, 402, 402A, and 402B Series airplanes with the Continental Model TSIO-520E engines installed, was published in the Federal Register on December 22, 1986 (51 FR 45779). The proposal resulted from a review of AD 70-03-04 which revealed no problems on those airplanes having turbosuperchargers equipped with the stainless heat shields. AD 70-03-04, Amendment 39-933, was published on January 31, 1970 (35 FR 1279) in the Federal Register. This AD calls for inspection to detect incipient failure of the turbosupercharger housing installed in the above-listed airplanes. This inspection is conducted within 25 hours time-in-service (TIS) after the effective date of the AD on airplanes with turbosupercharger turbine housings having 400 hours or more TIS, at or before 425 hours TIS and thereafter at intervals not to exceed 100 hours TIS, unless already accomplished. The inspection consists basically of removing the engine top cowling and the turbosupercharger turbine insulation blanket and visually inspecting the surface of the turbine housing for cracks, bulging and burned areas. Subsequent to the issuance of AD 70-03-04, the FAA determined that relief from the repetitive inspection requirements of AD 70-03-04 was in order for those airplanes equipped with stainless steel turbine heat shields.

Prior to 1972 the affected aircraft were manufactured with an insulating blanket covering the turbine housing of the turbosupercharger. Beginning with the 1972 models, the insulation blanket was replaced with stainless steel heat shields. These shields improved the heat dissipation of the turbosupercharger thereby increasing the turbine housing life. Cessna Multi-engine Service Letter ME72-4, dated March 24, 1972, announced the availability of stainless steel heat shields and also recommended that they be installed whenever field replacement of components was required.

A review of service difficulty reports was made pertaining to the turbosupercharger turbine housing. This review did not reveal any problems on those airplanes having turbosuperchargers equipped with the stainless steel heat shields.

In light of the foregoing, the FAA proposed to revise AD 70-03-04 by: (1) Specifying the serial numbered airplanes that had the insulating turbine blanket as original equipment; (2) eliminating any reporting requirements; and (3) deleting repetitive inspections once stainless steel heat shields are installed as field replacements.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Therefore, the proposal is adopted without change except for some minor editorial clarifications. Because the potential cost reduction made available by the proposal is small, and the limited number of affected airplanes is distributed among a small number of owners, few if any small entities are expected to experience a significant economic impact as the result of this proposal.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Rev., Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising and reissuing AD 70-03-04 as follows:

Cessna: Applies to the following serial numbered Models T310P, T310Q, 320D, 320E and 320F airplanes equipped with Teledyne Continental Model TSIO-520B engines, and to the following serial numbered Models 401, 401A, 401B, 402, 402A and 402B airplanes equipped with Teledyne Continental Model TSIO-520E engines:

Model	Serial No.
T310P	T310P0001 thru T310P0240.
T310Q	T310Q0001 thru T310Q0291.
320D	320D0001 thru 320D0130.
320E	320E0001 thru 320E0110.
320F	320F0001 thru 320F0045.
401	4010001 thru 4010322.
401A	401A0001 thru 401A0132.
401B	401B0001 thru 401B0121.
402	4020001 thru 4020322.
402A	402A0001 thru 402A0129.
402B	402B0001 thru 402B0122.

Compliance: Within 25 hours time-in-service (TIS) after the effective date of this AD on airplanes with turbosupercharger turbine housings having 400 hours or more TIS, or at or before 425 hours TIS on turbosupercharger turbine housings having less than 400 hours TIS and thereafter at intervals not to exceed 100 hours TIS, unless already accomplished.

To detect incipient failure of turbosupercharger turbine housings installed in the above airplanes, accomplish the following:

(a) Remove the engine top cowling and the turbosupercharger turbine insulation blanket and visually inspect the complete surface of the turbine housing of the TCM turbosupercharger assembly P/N 632726 (AID P/N 408610) for cracks, bulges and burnt areas. Remove and reinstall the turbosupercharger insulation blanket in accordance with applicable Cessna Service Manuals.

(b) If cracks, bulges or burnt areas are found during the inspection required by paragraph (a) of this AD, prior to further flight, replace the defective part with an airworthy part.

(c) Replacement of the turbosupercharger turbine insulation blanket with stainless steel heat shields in accordance with Cessna Multi-engine Service Letter ME72-4, dated March 24, 1972, will terminate further time interval repetitive inspections required by this AD. However, the inspection cited in paragraph (a) above and any necessary corrective action in paragraph (b) above must be completed at the time of the heat shield installation.

(d) Any equivalent method of compliance with this AD, if used, must be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Cessna Aircraft Company, Customer Services, P.O. Box 1521, Wichita, Kansas 67201; or may examine the document(s) referred to herein at the FAA, Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Note 1: Cessna Multi-engine Service Letter No. ME70-3, dated January 9, 1970, ME70-3 Supplement 1, dated February 9, 1970, and ME72-4, dated March 24, 1972, relate to this subject.

Note 2: Time-in-service on turbosupercharger turbine housings may be

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determined from the engine maintenance records.

This amendment revises AD 70-03-04, Amendment 39-933.

This amendment becomes effective March 28, 1987.

Issued in Kansas City, Missouri, on February 11, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-3687 Filed 2-20-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-ANE-47; Amdt. 39-5565]

Airworthiness Directives; Pioneer Parachute Company K-XX, K-XXII, and 26 Foot Conical Canopies

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all U.S. users of certain Pioneer Parachute Company K-XX, K-XXII, and 26 foot conical canopies by priority letters sent to all certificated parachute lofts and certificated parachute riggers. The AD requires removal or obliteration of the Technical Standard Order (TSO) C-23b markings. The AD is needed to prevent use of affected canopies as FAA approved canopies due to understrength fabric.

DATES: Effective February 23, 1987, as to all persons except those to whom it was made immediately effective by individual letters dated November 21, 1986, and January 13, 1987, which contained this amendment.

Compliance required prior to next use after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable Safety Notice referred to in Note 1 may be obtained from Pioneer Parachute Company, Incorporated, Pioneer Industrial Park, Hale Road, Manchester, Connecticut 06040.

A copy of the Safety Notice is contained in the Rules Docket, Docket Number 86-ANE-47, Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Boston Aircraft Certification Office, Aircraft Certification Division, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7103.

SUPPLEMENTARY INFORMATION: On November 21, 1986, Priority Letter AD No. 86-24-03 was issued and made effective immediately as to all U.S. users of certain Pioneer Parachute Company K-XX canopies. The Priority Letter AD required removal or obliteration of the TSO C-23b markings. AD action was necessary on these canopies because understrength fabric was found on panels of several canopies of this type.

After issuance of Priority Letter AD 86-24-03, it was determined that an amendment was needed to add certain canopies to the applicability list. Consequently, on January 13, 1987, Priority Letter AD No. 86-24-03R1 was issued and made effective as to all users of certain Pioneer Parachute K-XX, K-XXII, and 26 foot conical canopies.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual Priority Letters as to all known certificated parachute lofts and parachute riggers. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Aviation safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends § 39.13 of Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Pioneer Parachute Company: Applies to Model K-XX, K-XXII, and 26 foot conical canopies with the following serial numbers: K-XX, P/N 5375-1.

Color Patterns: Light Blue Upper Panels and Royal Blue Lower Panels or Yellow Upper Panels and Tan Lower Panels.

598162	598961	599006
598318	598965	599008
598865	598966	599009
598866	598967	599042
598923	598968	599043
598924	598969	599048
598925	598970	599049
598926	598971	599050
598927	598972	599051
598928	598995	599087
598929	599000	599165
598930	599001	599166
598937	599004	
598960	599005	

Color Patterns: Light Blue Upper Panels and Tan Lower Panels or Yellow Upper Panels and Tan Lower Panels.

598307	598351	598530
598317	598363	598531
598320	598364	598532
598340	598366	598533
598341	598367	598535
598342	598521	598536
598343	598522	598537
598344	598523	598545
598345	598524	598571
598346	598525	598572
598347	598526	598592
598348	598527	598863
598349	598528	
598350	598529	

Color Pattern: White Panels.

598539	598579	599007
598540	598842	599164
598541	598843	599561
598542	598844	599562
598546	598845	599563
598547	598858	599613
598548	598864	599614
598549	598862	599640
598550	598996	599701
598552	598997	599702
598553	598998	599703
598554	598999	599711
598555	599002	
598556	599003	

K-XXII, P/N 5418-1

598557	598584	598651
598558	598585	599044
598559	598586	599076
598560	598587	599441
598561	598588	599638
598562	598589	599639
598563	598650	

26 foot conical, P/N 2412-501

Color Pattern: All White.

599093

To prevent use of affected canopies as FAA approved canopies due to understrength material, remove or obliterate TSO C-23b marking prior to next use after receipt of this AD, unless already accomplished.

Notes.—(1) Pioneer Parachute Company Safety Notice, dated December 22, 1986, applies to this AD.

(2) Investigation is continuing and this AD may be amended in light of the results of the investigation.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Boston Aircraft Certification Office, Aircraft Certification Division, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7103.

This amendment becomes effective March 20, 1987, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD No. 86-24-03, issued November 21, 1986, and Priority Letter AD No. 86-24-03R1, issued January 13, 1987, which contained this amendment.

Issued in Burlington, Massachusetts, on February 12, 1987.

Clyde DeHart, Jr.,

Acting Director, New England Region.

[FR Doc. 87-3685 Filed 2-20-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AWP-30]

Revision to the Santa Rosa, CA Transition Area and Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Santa Rosa, California, transition area and provides controlled airspace for aircraft executing a new instrument approach procedure to the Sonoma County Airport. This action also revises the Santa Rosa control zone and deletes any reference to the Santa Rosa Coddington Airport which no longer exists.

EFFECTIVE DATE: 0901 UTC, June 4, 1987.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90260; telephone (213) 297-1648.

SUPPLEMENTARY INFORMATION:

History

On December 22, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Santa Rosa transition area and control zone (51 FR 45780). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the Santa Rosa transition area and control zone. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 25, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. § 71.171 is amended as follows:

Santa Rosa, CA—[Revised]

Within a 5-mile radius of Sonoma County Airport (lat. 38°30'33"N., long 122°48'42" W.). This control zone shall be effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

§ 71.181 [Amended]

3. § 71.181 is amended as follows:

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 38°54'45" N., long. 122°52'33" W.; to lat. 38°27'00" N., long. 122°39'05" W., to lat. 38°22'45" N.; long. 122°52'22" W.; to lat. 38°49'30" N., long. 123°06'28" W.; thence to the point of beginning.

Issued in Los Angeles, California, on February 11, 1987.

Wayne C. Newcomb,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 87-3686 Filed 2-20-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AGL-34]

Establishment of Transition Area—Mobridge, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to establish the Mobridge, South Dakota, transition area to accommodate a new NDB Runway 12 Standard Instrument Approach Procedure (SIAP) to Mobridge Municipal Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 UTC, June 4, 1987.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, December 31, 1986, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the Mobridge, South Dakota, transition area (51 FR 47253).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in

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Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes the Mobridge, South Dakota, transition area to accommodate aircraft utilizing an NDB Runway 12 SIAP.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Mobridge, South Dakota [New]

That airspace extending upward from 700 feet above the surface within a 5 mile radius of Mobridge Municipal Airport (Lat. 45°33'00"N., Long. 100°24'00"W.); and within 3 miles either side of the 297° bearing from the Mobridge NDB extending from the 5 mile radius to 8 miles northwest of the Mobridge NDB; and, that airspace extending upward from 1,200 feet above the surface within 9.5 miles southwest of, and 4.5 miles northeast of the 297° bearing from the Mobridge NDB, extending from the Mobridge NDB to 18.5 miles northwest excluding the portions within Federal Airway V71.

Issued in Des Plaines, Illinois, on February 11, 1987.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 87-3868 Filed 2-20-87; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Parts 211, 272 and 302

[OST Docket 42721; Amdt. No. 211-18; 272-1; 302-72]

Applications for Permits to Foreign Air Carriers; Essential Air Transportation to the Freely Associated States; Rules of Practice in Proceedings

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department adopts a rule to implement the provisions of the aviation economic agreement supplementing the Compact Of Free Association between the United States, the Federated States of Micronesia, the Marshall Islands and Palau. The rule will: (1) Establish procedures for the grant of a special class of foreign air carrier permit to "Freely Associated State Air Carriers"; (2) allow these carriers to apply for authority to engage in overseas (and interstate) air transportation between Guam, the Commonwealth of the Northern Mariana Islands, and Honolulu, Hawaii; (3) make provision for the guarantee of essential air transportation to certain Freely Associated State points, with subsidy if necessary; and (4) permit Freely Associated State Air Carriers to be eligible to provide such subsidized essential air transportation under certain conditions.

EFFECTIVE DATE: February 23, 1987.

FOR FURTHER INFORMATION CONTACT: Peter B. Schwarzkopf, Office of the Assistant General Counsel for International Law, C-20, (202) 366-5621, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking, (Docket 42721), published December 24, 1984 (50 FR 95, January 2, 1985), the Civil Aeronautics Board proposed adoption of rules to implement the provisions of the aviation economic agreement supplementing the Compact of Free Association between the United States, the Federated States of Micronesia and the Marshall Islands.

With the statutory termination of the Civil Aeronautics Board on January 1, 1985 under the Airline Deregulation Act of 1978 and the Civil Aeronautics Board Sunset Act of 1984, the Department of Transportation is now responsible for the disposition of this rule.

By Supplementary Rulemaking Notice (No. 85-6, Docket 42721, 50 FR 11182, March 3, 1985), the Department granted a request by the Federated States of Micronesia for extension of time to comment to April 4, 1985, with reply comments due April 25, 1985.

No comments have been filed in this proceeding. Accordingly, except to the extent modified to extend the applicability of these rules to Palau, we adopt this final rule, as proposed.

The Compact of Free Association between the United States, on the one hand, and the Federated States of Micronesia and the Marshall Islands, on the other (hereafter referred to as the "Freely Associated States"), creates a new independent status, in association with the United States, for these island governments in the Trust Territory of the Pacific Islands. A Joint Resolution adopting the Compact was passed by both Houses of Congress and was signed by the President on January 14, 1986 (Pub. L. 99-239).

By Proclamation issued on November 3, 1986, the President of the United States announced the effectiveness of the Compact for the Marshall Islands on October 21, 1986, and for the Federated States of Micronesia on November 3, 1986, in accordance with the terms of the Compact and agreements with those Governments.

A Compact of Free Association has also been concluded between the United States and the Republic of Palau. For purposes of provisions relating to aviation, that Compact is identical to the Compacts in effect with the Marshall Islands and the Federated States of Micronesia. On October 16, 1986, the U.S. Congress approved the Compact with Palau, which was signed by the President on November 14, 1986 (Pub. L. 99-658). However, the Compact approval process in the Republic of Palau has not yet been completed. The Compact will become effective for Palau on a date to be agreed following completion of the Palauan approval process. We are revising the rule to be applicable to Palau in anticipation of effectiveness of the Compact for Palau. Nevertheless, Palau would not be considered to be a Freely Associated State, within the meaning of the rule, until the Compact becomes effective for Palau. Similarly, the rule's subsidy provisions (Part 272) would not be applicable to Palau until effectiveness of the Compact for Palau, although the subsidy provisions in section 419 of the

Federal Aviation Act (49 U.S.C. 1389) would remain applicable until that time.

Supplementary to the Compact is the Federal Programs and Services Agreement. Article IX of that Agreement deals with Civil Aviation Economic Services (hereafter referred to as the "Aviation Agreement"). Subject to the special provisions of the Aviation Agreement, these Micronesian islands are treated as foreign points, and carriers owned and controlled by their citizens as foreign air carriers, for purposes of application of the Federal Aviation Act (49 U.S.C. 1301, *et. seq.*).

Paragraph 5 of Article IX provides that the Department of Transportation (as successor to the Civil Aeronautics Board) will guarantee essential air transportation, with subsidy if necessary, between the United States and certain points in the Federated States of Micronesia, the Marshall Islands, and Palau. In addition, paragraph 5 provides that Freely Associated State Air Carriers, which are air carriers owned and controlled by citizens of the Federated States of Micronesia, the Marshall Islands, Palau and/or the United States, may be authorized by the Department to engage in local air transportation between Guam, the Commonwealth of the Northern Mariana Islands (and within the Commonwealth of the Northern Mariana Islands) and Honolulu, Hawaii (interstate and overseas air transportation). Freely Associated State Air Carriers could be selected to perform subsidized essential air transportation to these Micronesian points only if no U.S. air carrier were available to perform such transportation, or the subsidy cost would be substantially less than for an available U.S. air carrier.

Section 221(a)(5) of the Compact provides that the Department of Transportation, as successor to the Civil Aeronautics Board, has "the authority to implement the provisions of paragraph 5 of Article IX of such separate agreements, the language of which is incorporated into this Compact." As noted, the Compact has been adopted by both Houses of Congress as Public Laws (Pub. L. 99-239, January 14, 1986; Pub. L. 99-658, November 14, 1986). Therefore, the Department has, through the Compact, been granted specific statutory authority to implement the provisions of paragraph 5 of the Aviation Agreement.

Subparagraph 5(h) of the Aviation Agreement provides:

(h) The Civil Aeronautics Board shall adopt such rules to implement the provisions of this paragraph as the Board, in its discretion deems appropriate.

This rule implements the provisions of paragraph 5 of the Aviation Agreement.

A summary of the final rule, follows:

Essential Air Service

As noted, section 5(a) of the Compact provides for the guarantee of essential air service, with subsidy if necessary, to various points in the Federated States of Micronesia, the Marshall Islands, and Palau. This rule specifies the procedures for implementation of these subsidy provisions. The authority for the essential air service provisions is derived from the provision of the Compact that grants the statutory authority to implement paragraph 5 of the Aviation Agreement, and not from section 419 of the Federal Aviation Act, *Small Community Air Service, Guaranteed Essential Air Transportation.* This rule, therefore, differs in several respects from the provisions of section 419.

Most significantly, the rule contemplates that there may be service by carriers in addition to those carriers providing the essential air transportation, although, all service, including connecting, multi-stop, or service via foreign points, whether provided by U.S., Freely Associated State or foreign air carriers, will be considered in determining if essential air transportation is being provided. Among the criteria for determination of the level of essential air transportation will be the demonstrated demand for service, as well as any subsidy costs involved. There is no specified minimum level of service. The essential air service provisions will be effective until October 28, 1988, and may be extended by Congress. Again, however, action by Congress on the Compact subsidy program would not necessarily be tied to, or be the same as action by Congress on the U.S. domestic subsidy program under section 419 of the Federal Aviation Act.

The Department has the authority to require that existing essential air transportation be maintained by U.S. or Freely Associated State air carriers, pending the selection of a carrier to provide essential air transportation, with a 90 day notice for termination of service below the level of essential air transportation. The Department will determine the level of essential air transportation for the eligible Freely Associated State points within nine (9) months after the effective date of the Compact of Free Association for the Freely Associated State concerned. The views of the Governments of the Freely Associated States will be carefully considered in making these determinations.

The Department will determine the compensation necessary to maintain the essential air transportation level, although payments will be made from appropriations to the Department of Interior. Such compensation will be provided only so long as is necessary to maintain a level of essential air transportation. The Department is authorized to impose conditions with respect to service, fares or rates on the operations of carriers serving a subsidized market as may be necessary or desirable to minimize the required subsidy compensation, provided such conditions do not unduly impair the services provided in the market (§ 272.10).

The Presidents of the Freely Associated States concerned must be served with all documents concerning subsidy or licensing proceedings.

Applications for Freely Associated State Foreign Air Carrier Permits

Paragraph 5(b) of the Aviation Agreement provides that the Department will establish a distinct classification of foreign air carriers known as Freely Associated State Air Carriers. The Department now adds a new subpart D to Part 211, which sets forth the procedures and requirements for such applications. Section 211.31 requires that the applicant clearly establish substantial ownership and effective control of the carrier, and that citizens of other countries do not have interests in the carrier sufficient to permit them to substantially influence its actions. The applicant must also establish that the Administrator of the FAA has determined that carrier complies with required safety standards.

Service of Documents

Paragraph 6 of the Aviation Agreement requires that the United States promptly notify the Government of the Marshall Islands, the Federated States of Micronesia or Palau of the filing with the Department of Transportation (as successor to the Civil Aeronautics Board) of any application by a United States air carrier for authority under the laws of the United States to operate air services to, through, beyond, within and between the territories of those governments. We are amending § 302.8 *Service of Documents,* § 302.9 *Parties;* and Part 302, Subpart Q *Expedited Procedures for Processing Licensing Cases,* § 302.1705 *Service of Documents,* to implement this provision.

The amendments require that all applications "directly involving" service to the Federated States of Micronesia.

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the Marshall Islands or Palau, and all other documents in the proceeding, be served on the President and designated authorities of the Freely Associated State(s) concerned. The concerned Freely Associated State Government will be made a party to the proceeding.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed under Executive Order 12291, and it has been determined that it is not a major rule. It will not result in annual effect on the economy of $100 million or more. This regulation is significant under the Department's Regulatory Policies and Procedures because it involves important Departmental policies. Its economic impact will be so minimal that a full regulatory evaluation is not necessary.

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96-354, the Department certifies that the rule will not have a significant economic impact on a substantial number of small entities. There are only a few small U.S. air taxi operators in this area. The rule will not be detrimental to their operations. They will be eligible, under the rule, to receive subsidy for necessary essential air service operations.

Immediate Effectiveness

No comments were received in response to the Notice of Proposed rulemaking. The Compact has recently become effective for the Federated States of Micronesia and the Marshall Islands. This rule implements important provisions of the Compact. It therefore extends benefits already provided for in the Compact, without adding any new restrictions for any person or carrier. In order to insure that the Compact's provisions may be available immediately to interested parties, without confusion as to the procedures for their implementation, the Department finds, in accordance with 5 U.S.C. 553(d), that good cause exists for making this rule immediately effective.

List of Subjects

14 CFR Part 211

Air carriers, Air transportation-foreign, Freely Associated State Air Carriers.

14 CFR Part 272

Air carrier, Essential air service, Freely Associated States.

14 CFR Part 302

Administrative practice and procedure, Air rates and fares, Authority delegations, Postal service, Freely Associated States.

Final Rule

Accordingly, for the reasons set out in the preamble, the Department adds a new 14 CFR Part 272, Essential Air Transportation to the Freely Associated States, and amends 14 CFR Part 211, Applications for Permits to Foreign Air Carriers, and 14 CFR Part 302, Rules of Practice in Proceedings, as follows:

PART 211—APPLICATIONS FOR PERMITS TO FOREIGN AIR CARRIERS

1. The authority citation for Part 211 is revised to read as follows:

Authority: 49 U.S.C. 1324, 1372, 1386, 1481, 1482, 1502. Section 221(a)(5) of the Compact of Free Association, and Paragraph 5 of Article IX of the Federal Programs and Services in implementation of that Compact (Pub. L. 99-239; Pub. L. 99-658).

2. A new Subpart D consisting of §§ 211.30 through 211.35 is added to read as follows:

Subpart D—Freely Associated State Air Carriers

Sec.
211.30 Eligibility.
211.31 Application.
211.32 Issuance of permit.
211.33 Interstate and overseas authority.
211.34 Other permits.
211.35 Termination of eligibility.

Subpart D—Freely Associated State Air Carriers

§ 211.30 Eligibility.

Foreign carriers owned and controlled by citizens of the Federated States of Micronesia, the Marshall Islands, Palau and/or the United States may, in accordance with the provisions of paragraph 5(b) of Article IX of the Federal Programs and Services Agreement, implementing section 221(a)(5) of the Compact of Free Association between the United States and those governments, apply for authority as "Freely Associated State Air Carriers." The permit application for such authority shall be labeled on the front page, "Application for Freely Associated State Foreign Air Carrier Permit."

§ 211.31 Application.

The application shall include, in addition to other requirements of this part, documentation clearly establishing:

(a) That the carrier is organized under the laws of the Federated States of Micronesia, the Marshall Islands, Palau or the United States;

(b) That substantial ownership and effective control of the carrier are held by citizens of the Federated States of Micronesia, the Marshall Islands, Palau and/or the United States;

(c) That citizens of other countries do not have interests in the carrier sufficient to permit them substantially to influence its actions, or that substantial justification exists for a temporary waiver of this requirement;

(d) That the Administrator of the Federal Aviation Administration has determined that the carrier complies with such safety standards as the Administrator considers to be required.

(e) That the government or governments of the Freely Associated States concerned have consented to the carrier's operation as a "Freely Associated State Air Carrier."

§ 211.32 Issuance of permit.

If the Department is satisfied that the applicant meets the requirements of paragraphs (a) through (e) of § 211.31, and that grant of all or part of the requested authority would otherwise be in the public interest, the Department may, subject to Presidential review under section 801(a) of the Federal Aviation Act, issue a "Freely Associated State Foreign Air Carrier Permit" to the applicant, including such terms, conditions or limitations as the Department may find to be in the public interest.

§ 211.33 Interstate and overseas authority.

(a) An application under this subpart may include a request, in addition to other foreign air transportation, for authority to engage in overseas air transportation between Guam, the Commonwealth of the Northern Mariana Islands and Honolulu, Hawaii, and interstate air transportation within the Commonwealth of the Northern Mariana Islands. A request for all or part of such limited overseas and interstate air transportation authority shall be supported by documentation establishing:

(1) The impact of such overseas and interstate air transportation services on the economic projections of the carrier's proposed operations;

(2) The need for such proposed overseas and interstate air transportation by the affected U.S. points;

(3) The economic impact of such overseas and interstate air transportation on services provided by other carriers providing essential air transportation services to eligible Freely Associated State points within the scope of Part 272 of this chapter.

(b) The Department may grant a Freely Associated State Air Carrier authority to engage in all or part of the overseas and interstate air transportation requested in paragraph (a) of this section provided that the Department finds:

(1) That grant of such overseas and interstate air transportation authority would be in furtherance of the objectives of the Compact of Free Association and related agreements between the United States and the Freely Associated States, and would otherwise be in the public interest; and

(2) That grant of such overseas and interstate air transportation authority would not significantly impair the economic viability of existing services providing essential air transportation to any eligible Freely Associated State point within the scope of Part 272 of this Chapter, or significantly increase compensation that may be required to maintain any such essential air transportation.

(c) The Department may, at any time, subject to Presidential review under section 801(a), suspend, modify, or revoke such overseas or interstate authority if it concludes that the requirements specified in paragraph (b) of this section are not then being met.

§ 211.34 Other permits.

Nothing in this section shall be construed as limiting the authority of the Department to issue a foreign air carrier permit, other than a Freely Associated State Foreign Air Carrier Permit, to a carrier owned or controlled, in whole or in part, by citizens of the Federated States of Micronesia, the Marshall Islands or Palau, that does not meet the requirements of this section.

§ 211.35 Termination of eligibility.

The eligibility of a carrier owned or controlled, in whole or in part, by citizens of the Federated States of Micronesia, the Marshall Islands or Palau, respectively, for issuance of a Freely Associated State Foreign Air Carrier Permit under this subpart shall exist only for such period as subparagraphs (a), (d), and (e) (eligibility for Freely Associated State essential air transportation subsidy compensation), or subparagraph (c) (limited overseas and interstate air transportation authority), of paragraph (5) of the Agreement on Civil Aviation Economic Services and Related Programs (Article IX of the Federal Programs and Services Agreement) remain in effect between the Government of those States and the Government of the United States, insofar as authority is conferred by such permits for purposes specified in those subparagraphs.

1. A new Part 272, *Essential Air Transportation to the Freely Associated States*, is added to read as follows:

PART 272—ESSENTIAL AIR TRANSPORTATION TO THE FREELY ASSOCIATED STATES

Sec.
272.1 Purpose.
272.2 Applicability.
272.3 Points eligible for guaranteed essential air transportation.
272.4 Applicability of procedures and policies under section 419 of the Federal Aviation Act.
272.5 Determination of essential air transportation.
272.6 Considerations in the determination of essential air transportation.
272.7 Notice of discontinuance of service.
272.8 Obligation to continue service.
272.9 Selection of a carrier to provide essential air transportation and payment of compensation.
272.10 Conditions applicable to carriers serving a subsidized market.
272.11 Effective date of provisions.
272.12 Termination.

Authority: 49 U.S.C. 1302, 1324, 1502; Sec. 221(a)(5) of the Compact of Free Association, and Paragraph 5 of Article IX of the Federal Programs and Services Agreement in implementation of that Compact (Pub. L. 99-239; Pub. L. 99-658).

§ 272.1 Purpose.

Paragraph 5 of Article IX of the Federal Programs and Services Agreement implementing section 221(a)(5) of the Compact of Free Association between the United States and the Governments of the Federated States of Micronesia, the Marshall Islands and Palau (the Freely Associated States) provides, among other things, for the Department of Transportation (Department), as successor to the Civil Aeronautics Board (Board), to guarantee essential air transportation, with compensation if necessary, to certain points in these islands. Subparagraph 5(h) of the Agreement provides that the Department shall adopt rules to implement the provisions of paragraph 5 as it in its discretion deems appropriate. Section 221(a)(5) of the Compact, which was adopted by Congress as public laws (Pub. L. 99-239, January 14, 1986; Pub. L. 99-658, November 14, 1986), provides that the Department (as successor to the Board) has the authority to implement the provisions of paragraph 5 of the Agreement. This part implements these provisions of paragraph 5.

§ 272.2 Applicability.

This part establishes the provisions applicable to the Department's guarantee of Essential Air Transportation to points in the Federated States of Micronesia, the Marshall Islands and Palau, and the payment of compensation for such services. The rule applies to U.S. air carriers and Freely Associated State Air Carriers providing essential air transportation to these points.

§ 272.3 Points eligible for guaranteed essential air transportation.

(a) Subject to the provisions of this part, and paragraph 5 of Article IX of the Federal Programs and Services Agreement, the Department will make provision for the operation of essential air transportation, with compensation if necessary, to the following points in the Freely Associated States:

In the *Federated States of Micronesia:* Ponape, Truk and Yap.
In the *Marshall Islands:* Majuro and Kwajalein.
In *Palau:* Koror.

(b) The points specified herein in the Federated States of Micronesia, the Marshall Islands or Palau, respectively, shall cease to be eligible points under this part if any of those Governments withdraw from the subsidy provisions of Article IX of the Federal Programs and Services Agreement in accordance with paragraph 8 of Article IX or Article XII of that Agreement.

§ 272.4 Applicability of procedures and policies under section 419 of the Federal Aviation Act.

Since the authority of the Department to guarantee essential air transportation is derived from the Federal Programs and Services Agreement and the Compact of Free Association, the provisions and procedures utilized by the Department in implementation of section 419 of the Federal Aviation Act will be followed only to the extent determined by the Department to be consistent with the obligations assumed by the United States in the Agreement and Compact, and the provisions of this part.

§ 272.5 Determination of essential air transportation.

(a) The Department shall determine the level of essential air transportation for the eligible points set forth in § 272.3 within nine (9) months from the effective date of the Compact of Free Association for the Freely Associated State concerned.

(b) Procedures for the determination of essential air transportation under this section, and review of that determination, shall, except to the extent otherwise directed by the Department, be governed by § 325.4 (except the application of section 419(f)

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in § 325.4(b)); § 325.6(a); § 325.7 (except §§ 325.7(a)(2) and 325.7(b)(9)); §§ 325.8–325.11; § 325.12 (provided that all documents shall be served on the President and the designated authorities of the Freely Associated State concerned); and §§ 325.13 and 325.14 of this chapter.

§ 272.6 Considerations in the determination of essential air transportation.

(a) In the determination of essential air transportation to an eligible Freely Associated State point, the Department shall consider, among other factors, the following:

(1) The demonstrated level of traffic demand;

(2) The amount of compensation necessary to maintain a level of service sufficient to meet that demand;

(3) The extent to which the demand may be accommodated by connecting or other services of U.S., Freely Associated State, or foreign carriers by air—through U.S., Freely Associated State, or foreign points—that provide access to the U.S. air transportation system;

(4) Alternative modes of transportation that may be available; and

(5) The peculiar needs of the Freely Associated States for air transportation services.

(b) The Guidelines for Individual Determinations of Essential Air Transportation set forth in Part 398 of this chapter shall be applied only to the extent the Department concludes that they are applicable to the special circumstances affecting transportation to the Freely Associated States and reflective of the provisions of this part.

(c) Nothing in this part shall be construed as providing for a level of essential air transportation that would exceed the level of service justified by the considerations set forth in paragraph (a) of this section.

§ 272.7 Notice of discontinuance of service.

(a) An air carrier or Freely Associated State Air Carrier shall not terminate, suspend, or reduce air service to any eligible Freely Associated State point, unless it has given notice as specified in this section, if as a result of the reduction of such service the aggregate of the remaining air service provided to such point would be below:

(1) If the Department has not made a determination of essential air transportation for such point, the level of service specified in Order 80–9–63; and

(2) If the Department has made a determination of essential air transportation for such point, that level of essential air transportation.

(b) An air carrier or Freely Associated State Air Carrier wishing to terminate, suspend or reduce air service under paragraph (a) shall file a notice of such proposed reduction in service at least 90 days prior to such service reduction, in accordance with the procedures specified in §§ 323.4, 323.6, and 323.7 of this chapter.

(c) The notice shall be served on the President and the designated Authorities of the Freely Associated State concerned, in addition to the persons specified in § 323.7.

(d) The procedures specified in §§ 323.9–323.18, to the extent applicable to 90-day notices filed by certificated air carriers, shall also be applicable to notices of terminations, suspensions or reductions in service filed under this section.

§ 272.8 Obligation to continue service.

(a) If the Department finds that a proposed termination, suspension, or reduction in service by an air carrier or Freely Associated State Air Carrier will, or may, reduce service to an eligible Freely Associated State point below the level of essential air transportation to such point, whether or not the Department has previously determined the level of essential air transportation to such point, the Department may direct the air carrier or Freely Associated State Air Carrier concerned to maintain service to such point at a level the Department determines will ensure essential air transportation to such point, pending the commencement of alternative service as required to maintain the level of essential air service previously, or thereafter, determined by the Department.

(b) During any period the Department requires an air carrier or Freely Associated State Air Carrier to maintain a level of service proposed to be terminated, suspended or reduced, following the filing of a 90 day notice in accordance with § 272.7, the Department will provide for the payment of compensation to such carrier for any losses incurred by that carrier as a result of such required continuation of service in accordance with the procedures set forth in Part 324 of this chapter. If the carrier is already receiving compensation pursuant to § 272.9 of this part, the Department will continue to direct payment of such compensation during any period the carrier is required to maintain service. Such payments shall be made by the Department of Interior from funds appropriated for this purpose.

(c) The Department will review its order from time to time and will revise the level of required service as necessary to maintain only the level of essential air transportation determined by the Department for that point, considering all other service to such point in accordance with § 272.6(a)(3).

(d) During the period any such air carrier or Freely Associated State Air Carrier is required to maintain service under this section, the Department will make every effort to obtain alternative service, with compensation if necessary, as required to maintain essential air transportation to such point.

§ 272.9 Selection of a carrier to provide essential air transportation and payment of compensation.

(a) If the Department finds that essential air transportation will not be maintained to an eligible Freely Associated State point, the Department shall invite applications to provide the service required to maintain essential air transportation to such point.

(b) If the Department determines that essential air transportation will not be provided to such point in the absence of the payment of subsidy compensation to a carrier or carriers, the Department shall determine the compensation necessary, considering all other service to such point in accordance with § 272.6(a)(3), to maintain the level of essential air transportation determined by the Department under § 272.5, and the times and manner of the payment of such compensation.

(c) The compensation determined by the Department to be necessary to maintain essential air transportation to such point shall be paid by the Department of Interior out of funds appropriated for that purpose, to the carrier or carriers selected by the Department.

(d) The Department shall continue to specify compensation to be paid to a carrier or carriers under this section only as long as the Department determines that essential air transportation will not be provided to the Freely Associated State in the absence of the payment of such compensation.

(e) Except as permitted in paragraph (f) of this section, the Department shall select a U.S. air carrier or carriers to provide essential air transportation for compensation.

(f) The Department may select a Freely Associated State Air Carrier, holding a foreign air carrier permit issued in accordance with Subpart D of Part 211 of this chapter, to provide essential air transportation for compensation, only if—

(1) No U.S. air carrier is available to provide the required essential air transportation; or

(2) The compensation necessary for the provision of the required essential air transportation would be substantially less than the compensation necessary if such essential air transportation were to be provided by a U.S. air carrier.

(g) Any order of the Department selecting a Freely Associated State Air Carrier to provide such essential air transportation shall be submitted to the President of the United States not less than 10 days prior to its effective date and shall be subject to stay or disapproval by the President.

(h) Among the criteria that will be considered by the Department in its determination of the carrier or carriers to be selected to perform the required essential air transportation are:

(1) The desirability of developing an integrated linear system of air transportation whenever such a system most adequately meets the air transportation needs of the Freely Associated States concerned;

(2) The experience of the applicant in providing scheduled air service in the vicinity of the Freely Associated States for which essential air transportation is proposed to be provided;

(3) The amount of compensation that will be required to provide the proposed essential air transportation;

(4) The impact of the proposed service on service provided to other Freely Associated State points; and

(5) The views of the Governments of the Freely Associated States concerned.

(i) The Department may from time to time, on its own motion, or upon application of any carrier or government, review and change its selection of a carrier to provide essential air transportation, or its determination as to the compensation necessary to provide such essential air transportation.

(j) All applications or other documents filed or issued in proceedings under this section shall be served upon the President of the Freely Associated State concerned and the Authorities designated by that Government(s) in accordance with Article II, paragraph 10, of the Federal Programs and Services Agreement supplemental to the Compact of Free Association, and such Government shall be a party to any such proceeding. In reaching its determination, the Department will carefully consider any views of such Government that have been submitted.

§ 272.10 Conditions applicable to carriers serving a subsidized market.

(a) The Department may, after providing an opportunity for comment by the carrier or carriers affected, impose service, fare or rate conditions on any U.S., Freely Associated State, foreign air carrier, or foreign carrier by air as a precondition to the payment of compensation necessary to maintain essential air transportation, whether or not the affected carrier is itself receiving subsidy compensation in the market, if it finds that:

(1) Essential air transportation in a Freely Associated State market or markets will not be provided in the absence of the payment of compensation;

(2) Specified service, rate or fare conditions are or will be necessary or desirable to minimize the required subsidy compensation; and

(3) The imposition of such conditions will not unduly impair the service provided in the market.

(b) To the extent the carrier or carriers upon whom the conditions are imposed pursuant to paragraph (a) of this section do not hold a certificate, permit, or other authority from the Department that may be amended to effectively implement the specified conditions, the Department may notify the Government(s) of the Freely Associated States concerned that the imposition of such conditions on those carriers by those Governments shall be a precondition to the payment of the subsidy compensation required to maintain essential air transportation in the market in question.

(c) The Department may withhold or suspend its provision for the payment of subsidy compensation required to maintain essential air transportation unless and until the Freely Associated State(s) concerned take the necessary action to impose the specified conditions on the carriers referred to in paragraph (b) of this section, and those carriers have complied with the specified conditions.

(d) Any order of the Department imposing conditions, or requiring the imposition of conditions, pursuant to this paragraph shall be submitted to the President for review not less than 10 days prior to its effective date, and shall be subject to stay or disapproval by the President.

§ 272.11 Effective date of provisions.

The provisions of this part shall not become effective for Palau until the Compact of Free Association and Article IX of the Federal Programs and Services Agreement become effective for Palau.

§ 272.12 Termination.

These provisions shall terminate on October 24, 1988, unless the program for the guarantee of essential air transportation to the Federated States of Micronesia, the Marshall Islands and Palau is specifically extended by Congress.

PART 302—RULES OF PRACTICE IN PROCEEDINGS

1. The authority citation in Part 302 continues to read as follows:

Authority: 49 U.S.C. 1301, 1323, 1324, 1371, 1372, 1373, 1374, 1376, 1382, 1471, 1481, 1482, 1485; Reorganization Plan No. 3, 75 Stat. 837, 26 FR 5989; E.O. 11514, Pub. L. 91–90 (42 U.S.C. 4321); 84 Stat. 772, 39 U.S.C. 5402. The Compact of Free Association and paragraph 5 of Article IX of the Federal Programs and Services Agreement, adopted for the United States by Pub. L. 99–239; Pub. L. 99–658.)

2. A new paragraph (9) is added to § 302.8, *Service of documents*, to read:

§ 302.8 Service of documents.

* * * * *

(g) *Freely Associated State Proceedings.* In any proceeding directly involving air transportation to the Federated States of Micronesia, the Marshall Islands, or Palau, the Department and any party or participant in the proceeding shall serve all documents on the President and the designated Authorities of the Government(s) involved. This requirement shall apply to all proceedings where service is otherwise required, and shall be in addition to any other service required by this chapter.

3. Section § 302.9, *Parties*, is revised to read as follows:

§ 302.9 Parties.

The term "party" wherever used in this part shall include any individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and any trustee, receiver, assignee or legal successor thereof, and shall include the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings. In any proceeding directly involving air transportation to the Federated States of Micronesia, the Marshall Islands or Palau, these Governments or their designated Authorities shall be a party.

4. Section § 302.1705(c) is revised to read as follows:

§ 302.1705 Service of documents.

* * * * *

(c) *Additional service.* The Department may, in its discretion, order additional service upon such persons as the facts of the situation warrant. Where

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only notices are required, parties are encouraged to serve copies of their actual pleadings where feasible. In any proceeding directly involving air transportation to the Federated States of Micronesia, the Marshall Islands or Palau, the Department and any party or participant in the proceeding shall serve all documents on the President and the designated Authorities of the Government(s) involved.

By the Department of Transportation: February 13, 1987.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 87-3666 Filed 2-20-87; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 4

[Docket No. RM85-6-000; Order No. 464]

Waiver of the Water Quality Certification Requirements of Section 401(a)(1) of the Clean Water Act

Issued: February 11, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending Part 4 of its regulations to define when the certification requirements of section 401(a)(1) of the Clean Water Act (CWA) [1] have been waived as a result of the failure of the state or other authorized certifying agency to act on a request for certification filed by an applicant for a Commission hydroelectric license. The Commission is allowing certifying agencies one year after the certifying agency's receipt of a request for section 401 water quality certification to grant or deny the license applicant's request for certification. Additionally, this rule revises § 4.38 of the Commission's Rules and Regulations [2] governing the pre-filing consultation procedures an applicant for a Commission hydroelectric license must follow. The revision will ensure that certifying agencies are incorporated early in the Commission's pre-filing consultation procedures, which will facilitate the information-gathering needed for a certification determination.

[1] 33 U.S.C. 1341(a)(1) (1982).

[2] 18 CFR 4.38 (1986).

EFFECTIVE DATE: The effective date of this final rule is May 11, 1987.

FOR FURTHER INFORMATION CONTACT: Kristina Nygaard, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending Part 4 of its regulations to define when the certification requirements of section 401(a)(1) of the Clean Water Act (CWA) [1] have been waived as a result of the failure of the state or other authorized certifying agency to act on a request for certification filed by an applicant for a Commission hydroelectric license. The Commission is allowing certifying agencies one year after the certifying agency's receipt of a request for section 401 water quality certification to grant or deny the license applicant's request for certification. Additionally, this rule revises § 4.38 of the Commission's Rules and Regulations [2] governing the pre-filing consultation procedures an applicant for a Commission hydroelectric license must follow. The revision will ensure that certifying agencies are incorporated early in the Commission's pre-filing consultation procedures, which will facilitate the information-gathering needed for a certification determination.

II. Background

Section 401(a)(1) of the CWA prohibits Federal agencies from authorizing the construction or operation of facilities which may result in any discharge of water pollutants into the navigable waters of the United States, unless the applicant for such authorization obtains certification from the state in which the discharge will originate or, if appropriate, from the interstate water pollution control agency having jurisdiction over the point where the discharge will originate [3] that any discharge will comply with the water quality standards of the CWA. If section 401 water quality certification is denied by the certifying agency, no Federal agency may authorize any action that may result in a discharge. However, the statute explicitly permits authorization, such as a Commission hydroelectric license under the Federal Power Act (FPA),[4] without section 401 certification, if the certifying agency has failed to act on the applicant's request for section 401 certification within a reasonable period of time, not to exceed one year, from the date the certifying agency received the request for certification.[5] In other words, the CWA section 401 certification is in that event deemed waived.

On August 6, 1985, the Commission issued a Notice of Proposed Rulemaking (NOPR) in this docket to reexamine its procedures for determining when a CWA section 401 certification is deemed waived by the certifying agency.[6] The Commission's practice has been to deem the one-year waiver period to commence when the certifying agency finds the request acceptable for processing. *See Washington County Hydro Development Associates*, 28 FERC ¶ 61,341 (1984). The current reassessment was undertaken in light of the Commission's concern that, under this practice, states could delay indefinitely their acceptance of a certification request, in contravention of the Congress' intent, through the waiver provision, to prevent unreasonable delays (*i.e.*, of more than one year).

The Commission proposed to start the waiver period as of the date the certifying agency receives the certification request, and to allow a certifying agency 90 days from the date the Commission issues a public notice of the acceptance of a hydroelectric license application, or one year after the certifying agency receives an applicant's request for section 401 certification, whichever occurs first, to grant or deny the request. If the certifying agency does not grant or deny the request in that time period, certification would be deemed waived, and the Commission would proceed with the applicant's request for a hydroelectric license. The Commission proposed to retain the requirement in its existing regulations that a license applicant submit a copy of its section 401 certification or a copy of its request to the certifying agency for

[3] For the purposes of this preamble, the term "certifying agency" will encompass state certifying agencies, interstate water pollution control agencies, and the Administrator of the Environmental Protection Agency, as appropriate.

[4] 16 U.S.C. 797(e) (1982), as amended by the Electric Consumers Protection Act of 1986, Pub. L. No. 99-495 (Oct. 16, 1986).

[5] Section 401(a)(1) provides in pertinent part: If the State, interstate agency, or Administrator [of the Environmental Protection Agency], as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application.

[6] 50 F.R. 32229 (Aug. 9, 1985).

certification. The Commission also proposed to require proof of the date the certifying agency receives the applicant's certification request.

The Commission received comments from 29 entities, comprising hydroelectric developers, environmental groups, electric utilities, and state and Federal agencies.[7] The hydroelectric developers and electric utilities generally support the proposed rule, arguing that a predictable commencement date of the waiver period will result in more timely and efficient consideration of section 401 certification requests and will enhance an applicant's ability to estimate when a hydroelectric project can be brought on line. These commenters also point out that the rule should not impose additional burdens on certifying agencies, since the Commission's pre-filing consultation requirements [8] should provide the certifying agencies with the information they need to process a certification request in a timely manner.

A number of environmental groups and state agencies oppose the proposal. Their comments focus on three basic matters: whether the Commission is correctly interpreting the start of the waiver period as the date the certifying agency receives the certification request; whether the Commission has the authority to define the term "reasonable period of time" in the CWA as less than one year; and whether the notice-plus-90-day time period is adequate to allow completion of certification procedures and to ensure adequate applicant compliance with a certifying agency's regulations governing certification.

III. Discussion

A. Waiver Provision

Commenters opposing the proposed rule generally argue that the Commission's holding in *Washington County* more accurately reflects the Congressional intent that states have the primary role in administering the CWA. As the Commission stated in the NOPR, however, the approach taken in *Washington County* fails to enforce the clear text of the waiver provision of the CWA and subjects a license applicant to the possibility that a section 401 certification proceeding may be protracted beyond one year, in contravention of the statutory objective of preventing such delay. The Commission is therefore in this rule revising its interpretation of the CWA to hold that the waiver period for certification of a hydroelectric project commences on the date the certifying agency receives the certification request.

The NOPR proposed to deem certification waived if no action is taken on a certification request by 90 days after the public notice of the acceptance of the license application or one year from the date the certifying agency receives the certification request, whichever comes first. The NOPR proposed the notice plus-ninety-day waiver period to assure, where possible, that the information-gathering processes of the certifying agency and the Commission would operate in tandem, to both agencies' benefit. The NOPR pointed out that, in light of the Commission's pre-filing consultation requirements and the delay in noticing a license application until deficiencies are cured, in most cases a certifying agency will have significantly longer than 90 days in which to act on a certification request. The commenters in support of the Commission's NOPR generally echoed the NOPR's rationale for the proposed waiver period.

A number of commenters opposed the proposed waiver period as beyond the Commission's authority to impose and as inadequate for the certifying agencies' needs. After carefully reviewing the comments both supporting and opposing the proposed waiver period, the Commission has decided to retain the full one-year waiver period. This decision is based on the Commission's conclusion that giving the certifying agencies the maximum period allowed by the CWA will not unduly delay Commission processing of license applications and that a major objective of the rule—obtaining early certainty as to when certification would be deemed waived and avoiding open-ended certification deadlines—has been achieved by revising the date from which the waiver period is calculated.

The Commission believes that a one-year waiver period, calculated from the date of receipt of a certification request, should in all but the most unusual cases provide certifying agencies with sufficient time to complete the certification proceeding. The Commission believes that its pre-filing consultation requirements for hydroelectric license applicants can be of significant assistance in providing certifying agencies with adequate information to analyze certification requests, where the certification request has not been filed too far in advance of the license application. Section 4.38 of the Commission's regulations, 18 CFR 4.38 (1986), requires a license applicant to consult with each appropriate Federal and state agency before submitting its application to the Commission. In practice and, pursuant to this rule, by regulation, certifying agencies are included within the group of agencies to be consulted.

Applicants are required to follow a three-stage consultation process. In the initial stage, an applicant must contact all appropriate agencies and provide them with detailed information regarding the proposed project, including detailed maps containing descriptions of the project area and location of proposed project facilities, engineering designs of the proposed project, identification of the environment to be affected, any environmental protection, mitigation and enhancement plans, and stream flow and water regime information.[9] During this initial phase, the certifying agencies will be receiving much, if not most, of the information required for their section 401 certificiation procedures.

During the second stage of the consultation process, applicants must perform all reasonable studies requested by the consulted agencies.[10] This includes not only studies related to the economic and technical feasibility of the project, but also studies of the project's adverse impacts on natural resources and studies of how to minimize such impacts to significant resources. Again during this second stage, applicants are required to provide the agencies with copies of the draft application, the results of all studies, and written requests for the agencies' review and comment thereon.[11] The Commission's regulations provide that these agencies will have either 30 or 60 days, depending on the type of hydroelectric application involved, to respond with their comments before the applications are filed with the Commission.[12] The second stage of consultation thus provides certifying agencies the opportunity to request and obtain from applicants additional water quality information beyond that provided to them during the initial stage of consultation, and to analyze and comment on that information.

During the third stage of the pre-filing consultation process, a license applicant for a project of less than 5 MW must serve copies of its application on the consulted agencies when it files the

[7] A list of the commenters is in Appendix A.

[8] 18 CFR 4.38 (1986).

[9] See 18 CFR 4.38(b)(1) (1986).

[10] See 18 CFR 4.38(b)(2) (1986) and Davenport-Rock Island Associates, 34 FERC ¶ 61,332 (1986).

[11] See 18 CFR 4.38(b)(2)(iii) (1986).

[12] See 18 CFR 4.38(b)(2)(iv) (1986).

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application with the Commission. A license applicant for a project of 5 MW or more must serve copies of its application on the consulted agencies after receiving notification from the Commission that the application has been accepted for Commission processing.[13] Also, the third-stage regulations require applicants to serve on all consulted agencies copies of revisions, supplements, and amendments to their applications, together with any responses to Commission requests to correct deficiencies in their application.[14]

As a result of the Commission's pre-filing consultation procedures, therefore, by the time an applicant files its hydroelectric application the certifying agency will have had numerous opportunities to obtain relevant water quality information from the applicant. If, despite these consultation procedures, or because the certification request was filed too far in advance of these procedures and its own procedures were not timely completed the certifying agency after a year needs more time or information to act on the merits of a certification request, it has the authority to deny an application on that basis, and thus prevent waiver of the certification requirement. Consequently, a certification applicant should not be able to obtain an unwarranted waiver merely through the use of dilatory tactics.

C. Miscellaneous Issues

1. Codification of § 4.38 pre-filing consultation procedures

The Commission is revising § 4.38 of its regulations [15] to specifically include appropriate certifying agencies within the group of agencies to be consulted at each stage of the pre-filing consultation process. This codifies current practice.

2. Application of the Rule

This rule will be applied to all hydroelectric license applications filed after the effective date of the rule. With regard to pending license applications which do not yet have section 401 certification, the Director, Office of Hydropower Licensing, will notify the appropriate certifying agencies that the Commission will deem certification to be waived one year after the date the certifying agency received the certification request.[16]

3. Project modification

Several certifying agencies suggest that the waiver period should begin to run anew upon the filing of any material amendment to a license application. When a license applicant files a material amendment to its application, as defined by § 4.35(b), 18 CFR 4.35(b) (1986), the Commission will consider it as requiring a new request for certification, and a new waiver period will commence upon the certifying agency's receipt of an amended certification request.

4. Multiple project proposals

The Iowa Department of Water, Air and Waste Management argues that, when multiple projects are proposed within river or lake systems, the one-year deadline should be waived in order to accommodate the evaluation of their cumulative impacts. However, the CWA does not provide for an extension of the one-year maximum waiver period for a certification request for any reason, including that multiple project proposals are simultaneously pending before the Commission or the certifying agency.

5. Application to exemption applications

A number of commenters assert that the rule should also be applied to applications for exemption from licensing. The Commission has held that exemption applications are not required to obtain water quality certification but is considering whether to change this practice. However, this subject is beyond the scope of this particular rulemaking.[17] Therefore, the Commission intends to issue a notice of proposed rulemaking on the matter, in the near future, in order to give the public notice and opportunity to comment. This rule will therefore not address the issue.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [18] generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities.[19] Specifically, if an agency promulgates a final rule under the Administrative Procedure Act,[20] a final RFA analysis may be appropriate. A final RFA analysis must contain: (1) A statement of the need for the objective of the rule; (2) a summary of the issues raised by the public comments in response to any initial regulatory flexibility analysis, and the agency responses to those comments; and (3) a description of significant alternatives to the rule consistent with the stated objectives of the applicable statute that the agency considered and ultimately rejected. An agency is not required to make an RFA analysis, however, if it certifies that a rule will not have "a significant economic impact on a substantial number of small entities." [21]

The Commission receives hydroelectric applications from a wide variety of entities. These entities vary greatly in their composition. The Commission believes that a large percentage of the entities that file license, permit, and exemption applications may be small entities, and that therefore a substantial number of small entities would be affected by this rule. However, to the extent that the rule has any impact upon license applicants that may be small entities, the rule should reduce the uncertainties and potential delays involved in seeking a water quality certification, thereby having a positive impact on the small entities subject to the rule.

Since the impact on the small entities regulated by this rule is expected to be beneficial, the Commission does not believe that the economic impact will be "significant" within the meaning of the RFA. Pursuant to section 605(b) of the RFA, the Commission accordingly certifies that the final rule will not have a "significant economic impact on a substantial number of small entities."

V. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) [22] and the Office of Management and Budget's (OMB) regulations [23]

[13] See 18 CFR 4.38(b)(3) (1986)

[14] Id.

[15] 18 CFR 4.38 (1986).

[16] Because the appropriate commencement date of the waiver period for certification requests for hydroelectric projects has been an unsettled question, the Commission will instruct the Director, Office of Hydropower Licensing, to notify the appropriate certifying agencies that, in the event of certification requests that under this rule are deemed to have already been waived or to be waived within 30 days of the effective date of this rule, the certifying agency is invited to submit to the Commission, within 30 days of the effective date of this order, its comments and recommendations on the license application with regard to water quality. The Commission will not act on such license application until after this 30-day comment period, and will consider inclusion in the license of any water quality conditions recommended by the certifying agency.

[17] Exemption from All or Part of Part I of the Federal Power Act of Small Hydroelectric Power Projects with an Installed Capacity of 5 Megawatts or Less, 45 F.R. 76115 (Nov. 18, 1980) [Reg. Preambles 1977–1981], FERC Stat. & Reg. ¶ 30,204 at 31,358 and 31,386 (1980) [Order No. 106].

[18] 5 U.S.C. 601–612 (1982).

[19] *Id.* 604(a).

[20] *Id.* 553.

[21] *Id.* 605(b).

[22] 44 U.S.C. 3501–3520 (1982).

[23] 5 CFR 1320.13 (1985).

require that OMB approve certain information collection requirements imposed by agency rule. The information collection provisions in this final rule are being submitted to the Office of Management and Budget (OMB) for its approval. Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (attention: Ellen Brown, (202) 357–8272). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VI. Effective Date

The amendments of this final rule will be effective May 11, 1987. If OMB's approval and control number have not been received by this effective date, the Commission will issue a notice temporarily suspending the effective date.

List of Subjects in 18 CFR Part 4

Licenses, Permits, Exemptions and determination of project costs, Electric power, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 4, Chapter I, Title 18, of the Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 4—[AMENDED]

1. The authority citation for Part 4 is revised to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r, as amended by the Electric Consumers Protection Act of 1986, Pub. L. No. 99–495; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1982); Department of Energy Organization Act, 42 U.S.C. §§ 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR Part 142 (1978), unless otherwise noted.

2. In § 4.38, paragraphs (a), (c), and (e) are revised to read as follows:

§ 4.38 Pre-filing consultation requirements.

(a) An applicant for a license or exemption from licensing must consult with each appropriate Federal and state agency before submitting its application to the Commission. The agencies to be consulted must include the appropriate certifying agency under section 401 of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 1341, and the Federal agency administering any United States lands utilized or occupied by the project as well as other appropriate resource agencies. To assist applicants, the Director of the Office of Hydropower Licensing or the Regional Engineer responsible for the area will, upon request, provide a list of known appropriate Federal and state agencies.

* * * * *

(c) An applicant must document to the Commission in Exhibit E of its application that the requirements of all three stages of the consultation process have been fully satisfied and must include:

(1) Any agency letters containing comments, recommendations, and proposed terms and conditions; and

(2) With regard to certification requirements for license applicants under section 401 of the Federal Water Pollution Control Act (Clean Water Act), the following:

(i) A copy of the water quality certification, or

(ii) A copy of the request for certification, including proof of the date that the certifying agency received the request in accordance with applicable law governing filings with that agency.

* * * * *

(e)(1) If all the appropriate agencies waive compliance with any requirement of this section, or are deemed by the Commission to have waived compliance under this section, the applicant may omit compliance with that requirement. Except for waiver of water quality certification under paragraph (e)(2) of this section, the applicant must describe in Exhibit E of its application the circumstances of any waiver under this section.

(2) A certifying agency is deemed to have waived the certification requirements of section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act) if the certifying agency has not denied or granted certification by one year after the date the certifying agency received the request for certification.

(3) Any material amendment to plans of development proposed in an application for license, as defined under § 4.35(b), must be considered to require a new request for certification for the purposes of paragraph (2).

* * * * *

§ 4.41 [Amended]

3. In § 4.41, paragraph (f)(2)(vii) is removed.

§ 4.51 [Amended]

4. In § 4.51, paragraph (f)(2)(vi) is removed.

§ 4.61 [Amended]

5. In § 4.61, paragraph (a)(1) is removed, and paragraphs (a)(2), (a)(3), and (a)(4) are redesignated as paragraph (a)(1), (a)(2), and (a)(3), respectively.

Appendix A—List of Commenters

1. Colorado Department of Health.
2. Virginia Commission of Game and Inland Fisheries.
3. Washington Department of Ecology.
4. Alabama Department of Environmental Management.
5. Maine Audubon Society.
6. Virginia State Water Control Board joined by Council on the Environment, State Department of Health, Department of Conservation and Historic Resources.
7. Iowa Department of Water, Air and Waste Management.
8. New York Department of Environmental Conservation.
9. California State Water Resources Control Board.
10. Maine Department of Environmental Protection.
11. Vermont Agency of Environmental Conservation.
12. South Carolina Department of Health and Environmental Control.
13. National Wildlife Federation with Oregon Wildlife Federation.
14. Wisconsin Department of Natural Resources.
15. Ohio Environmental Protection Agency.
16. California Regional Water Quality Control Board—Lahontan Region.
17. Maryland Department of Natural Resources.
18. Northeast Utilities on behalf of Connecticut Light and Power Company, Holyoke Water Power Company, Western Massachusetts Electric Company.
19. Minnesota Power.
20. Montana Power Company.
21. Henwood Associates, Inc.
22. Mega Renewables.
23. Edison Electric Institute.
24. Niagara Mohawk Power Corporation.
25. United States Environmental Protection Agency.
26. Oglethorpe Power Corporation.
27. Keating Associates.
28. Central Vermont Public Service Commission.
29. Friends of the Earth.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket Nos. 81N-0004 and 84F-0230]

Irradiation in the Production, Processing, and Handling of Food

AGENCY: Food and Drug Administration.

ACTION: Final rule; denial of request for stay of effective date.

SUMMARY: The Food and Drug Administration (FDA) is (1) denying a request to stay the effect of the amendment to the food additive regulations that provides for the use of gamma radiation treatment to control *Trichinella spiralis* in pork and (2) denying a request to stay the effect of the amendment to the food additive regulations that permits certain new uses of ionizing radiation treatment of food. The agency has concluded that the public interest does not require a stay of these amendments while the agency analyzes the objections and makes a decision whether to grant a hearing.

DATE: This document confirms July 22, 1985, as the effective date of the regulation authorizing the use of gamma radiation treatment of pork to control *Trichinella spiralis;* and April 18, 1986, as the effective date of the regulation authorizing the use of sources of ionizing radiation to treat food.

FOR FURTHER INFORMATION CONTACT: Clyde A. Takeguchi, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION:

1. Background

Under the Federal Food, Drug, and Cosmetic Act (the act), food that has been irradiated is adulterated unless the use of radiation on that food was in conformity with a regulation or exemption issued under the provisions of the Food Additives Amendment to the act. The agency may issue such a regulation only if it finds to a reasonable certainty that no harm will result from the consumption of food treated with radiation.

In the **Federal Register** of March 27, 1981 (46 FR 18992), FDA issued an advance notice of proposed rulemaking that, among other things, announced the availability of a report prepared in 1980 by the Irradiated Food Committee (BFIFC) that had been formed by the agency's Bureau of Foods (now the Center for Food Safety and Applied Nutrition). This report (Ref. 1) recommended, based on chemical principles, that irradiation of food at doses below 1 kiloGray (kGy) (100 kilorad (krad)) be considered safe, and that toxicological testing of such foods should not be required. FDA invited public comment on this request.

In the **Federal Register** of February 14, 1984 (49 FR 5714), FDA issued a proposal that addressed the comments that it received in response to the advance notice of proposed rulemaking. The agency proposed: (1) To establish general provisions for food irradiation; (2) to permit the use of food irradiation at doses not exceeding 1 kGy (100 krad) for inhibiting the growth and maturation of fruits and vegetables and for insect disinfestation of food; (3) to allow irradiation for microbial disinfection of certain dry spices and dry vegetable seasonings at a dose not to exceed 30 kGy (3 Mrad); (4) to eliminate the current irradiation labeling requirements for retail labeling; and (5) to replace the current regulations with more comprehensive regulations. The agency stated that it would consider other uses of food irradiation at a dose below 1 kGy (100 krad) if a comment or petition presented evidence that a specific technical effect could be accomplished at that level of irradiation, and that an appropriate food additive regulation could be enforced through records inspection (49 FR 5720).

In a notice published in the **Federal Register** of July 23, 1984 (49 FR 29682), FDA announced that Radiation Technology, Inc., had filed a petition (FAP 4M3789) requesting that the agency amend the food additive regulations to provide for the safe use of a cobalt 60 or cesium 137 source of gamma radiation to control trichinae and other helminths in pork.

In the **Federal Register** of July 22, 1985 (50 FR 29658), in response to this petition, FDA published a final rule permitting the use of cobalt 60 or cesium 137 to irradiate pork carcasses and fresh nonheat processed cuts of pork carcasses, at a dose between 0.3 kGy (30 krads) and 1 kGy (100 krads), to control *Trichinella spiralis.* FDA based its decision on data in the petition showing that irradiation accomplishes the intended technical effect at these doses, on the conclusion in the report of the BFIFC that food irradiated at doses not exceeding 1 kGy (100 krad) is wholesome and safe for human consumption, and on the absence of any data that would refute the conclusions in the BFIFC report. Persons adversely affected by the regulations were given the opportunity to file objections by August 21, 1985.

FDA received 59 objections on or before August 21, 1985. Twenty of these objections requested a hearing. One objection requested a stay of the regulation until the safety issues raised by the objection were resolved. This document addresses that request for a stay.

In the **Federal Register** of April 18, 1986 (51 FR 13376), FDA issued final regulations that: (1) Permit manufacturers to use irradiation at doses not to exceed 1 kGy (100 krad) to inhibit the growth and maturation of fresh foods and to disinfest food of arthropod pests; (2) permit manufacturers to use irradiation at doses not to exceed 30 kGy (3 Mrad) to disinfect dry or dehydrated aromatic vegetable substances (such as spices and herbs) of microorganisms; (3) require that foods that are irradiated be labeled to show this fact both at the wholesale and at the retail levels; and (4) require that manufacturers maintain process records of irradiation for a specified period and make such records available for FDA inspection. That final rule provides a full discussion of comments that FDA received on the February 14, 1984, proposal. Many of these comments are similar or identical to the objections that FDA received on its decision to permit irradiation of pork. Consequently, FDA is incorporating by reference the preamble to the April 18, 1986, final rule.

FDA received 245 objections to the April 18, 1986, final rule during the 30-day objection period, which ended on May 19, 1986. Twelve of these objections requested a hearing. One objection requested a stay of the regulation until the safety issues raised by the objection were resolved. A second objection that requested a stay of the regulation was not submitted to FDA until after the close of the objection period. Although only the former request is appropriately before the agency, this document will address relevant issues raised in both requests for a stay.

II. Standard for Granting a Discretionary Stay

Under section 409(e) of the act (21 U.S.C. 348(e)), a food additive regulation is effective upon publication. However, FDA has discretion to grant a stay of the effective date of the regulation if a hearing is requested. FDA regulations provide that the agency may grant a stay in those situations in which the stay is in the public interest (21 CFR 10.35(d)(1)).

Promulgation of both the regulation approving the use of a source of radiation to treat pork and the April 18, 1986, final rule was preceded by a determination by the agency, based on all available evidence, that these uses of irradiation are safe. To justify a stay, the objections would have to make a substantial showing to the contrary (40 FR 40682, 40687; September 3, 1975). Thus, in reviewing the requests for a stay, the agency has tried to determine whether the objections have created such a significant doubt as to the soundness of FDA's findings of safety that the public interest requires that reliance on those findings be held in abeyance pending resolution of the objections.

III. Safety Issues Raised in Objections and Request for a Stay

A. Pork Regulations

Public Citizen Health Research Group (HRG) requested that the agency stay the effective date of the amendment on the irradiation of pork until the safety issues that it raised in its objection have been resolved. The agency has considered each of these issues to determine whether they create a level of concern that would justify a stay.

1. HRG claimed that FDA did not rely on valid scientific evidence in finding that irradiation of pork to control *Trichinella spiralis* is safe. HRG stated that a primary basis for FDA's conclusion was the BFIFC report, which concluded that food irradiated at doses not exceeding 1 kGy (100 krad) is safe for human consumption. HRG stated that "this conclusion was reached without regard to any scientific studies conducted on food irradiation. The Committee instead relied upon a calculation that led to the finding that there would not be enough significant changes, or creation of enough unique radiolytic products in the food to warrant concern. However, the assertion rests on the assumption that there is a safe level of exposure to a carcinogen, an assumption that FDA has consistently rejected."

HRG is incorrect in its assertion that the BFIFC report was not based on scientific studies. BFIFC reviewed numerous studies on the chemistry of food irradiation to determine effects that are likely to occur in food during the irradiation process. The Committee's conclusion that animal feeding studies with food irradiated at a dose below 1 kGy (100 krad) were not capable of showing an effect and should not be required was based on these chemistry studies and on knowledge concerning the sensitivity of animal feeding tests.

Furthermore, BFIFC's conclusion that foods irradiated at doses below 1 kGy (100 krad) are safe was not based on a determination that there is a safe level of exposure to a carcinogen. BFIFC conducted a detailed analysis of volatile compounds identified in raw beef irradiated at 50 kGy (5 Mrad). These volatiles consisted of a nearly homologous series of 65 compounds derived primarily from the radiolysis of triglycerides from the beef lipid fraction (Ref. 2). Of the 65 volatiles, 23 were also identified in a control sample of beef that had been thermally sterilized. Of the 42 compounds specifically identified in irradiated beef but not in the control, only 6 could not be identified as being present in the volatile fractions of other types of nonirradiated foods (Ref. 1). BFIFC assumed that this subset of radiolytic products (6 of 65 or about 10 percent) is unique radiolytic products. The structures of these six compounds, none of which are known or suspected to be carcinogenic, are similar to those of naturally occurring food constituents. BFIFC concluded that in any event their physiologic effects in humans are likely to be similar to those of natural food constituents and that they may be natural components of food. Therefore, there is no evidence, or any reason to believe, that the toxicity or carcinogenicity of any unique radiolytic products is different from that of other food components (Refs. 3 and 4).

The agency discussed the safety issue in its April 18, 1986, final rule (51 FR 13377). The agency reviewed 409 toxicity studies on irradiated foods (Ref. 5). (The agency has previously stated, incorrectly, that it reviewed 441 studies. In fact, FDA reviewers performed 441 reviews, but some of these reviews were inadvertent repetitions.) Forty-five of these studies dealt with subacute toxicity, 58 with subchronic toxicity, 126 with reproductive toxicity, 14 with teratology, 110 with chronic toxicity, and 102 with genetic toxicity of irradiated foods. Some studies considered more than one type of toxicity.

Although most of the studies were inadequate by present day standards and could not stand alone to support safety, many contained individual components that, when examined either in isolation or collectively, support the conclusion that consumption of foods treated with low levels of irradiation does not cause adverse toxicological effects. Further, the agency finds that many of the studies are useful in resolving questions about the effects of irradiation. For example, if a potent toxic material were present at a level of toxicological significance in the irradiated foods ingested by test animals, some consistent toxicological signs would have been manifest in the studies reviewed. However, agency scientists did not see any consistent pattern or trend of adverse effects that might be attributable to exposure to a toxic material in animals fed food that was irradiated at low dose levels.

FDA reviewers did find that 5 of the 409 studies they reviewed were properly conducted, fully adequate by 1980 toxicological standards, and able to stand alone in support of safety. Of these five studies, three were chronic feeding studies (Refs. 6, 7, and 8), one was a reproduction study (Ref. 9), and one was a combined chronic, reproduction, and teratology study (Refs. 10, 11, and 12). The reports on these five studies did not reveal any adverse effects from the irradiated foods fed to test animals.

The agency, therefore, finds that HRG's contention does not provide grounds for a stay of the effect of the pork regulations. As the foregoing discussion makes clear, the scientific evidence in the record is adequate to provide assurance that the use of irradiation on pork will be safe while the issues raised by the objections are addressed.

2. HRG's objection, as well as several other objections, noted that FDA rescinded a regulation permitting radiation sterilization of bacon in 1968 because of safety concerns. According to the objections, FDA must address these concerns before any irradiated pork product may be considered safe.

FDA originally issued a regulation to permit radiation sterilization of bacon based on summaries of feeding studies submitted in a petition (28 FR 1465; February 15, 1963). However, following evaluation of the complete reports of these studies, FDA concluded that the sponsor had not met its burden for demonstrating safety (33 FR 12055; August 24, 1968) and rescinded the bacon regulations (33 FR 15416; October 17, 1968). The agency stated that further research on the wholesomeness of radiation-sterilized bacon was necessary to establish the conditions of safe use.

The agency believes that this previous action concerning radiation sterilization of bacon is not relevant to the recent regulation to permit low dose irradiation of pork for two reasons. First, 2 years before receiving the petition for low dose irradiation of pork, an FDA Task Group reexamined the original studies on radiation-sterilized bacon. The Task Group found that the adverse effects discussed by FDA in the 1968 notice (33 FR 12055) could not be substantiated because the original studies were of such poor quality that the reviewers were unable to draw any useful

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conclusions from them. The Task Group also stated that the number of animals examined in these studies was too small to have any statistical significance concerning tumors or longevity, and that the data were presented so poorly that it could not verify the conditions and results of the studies (Ref. 5). In the April 18, 1986, final rule (51 FR 13384), the agency reconsidered its 1968 action and concluded that the data in the earlier radiation-sterilized bacon studies were inadequate to demonstrate either safety or adverse effects.

Second, the regulation rescinded in 1968 permitted irradiation at a dose between 45 and 56 kGy (4.5 to 5.6 Mrads) as compared to the current regulation which permits a dose from 0.3 to 1.0 kGy (30 to 100 krads). The earlier regulation thus required a minimum dose 150 times higher than the minimum dose and 45 times higher than the maximum dose under the current regulation and permitted a maximum dose 56 times higher than that permitted under the current regulation. Because of the different processing conditions, use of irradiation under the earlier regulation would produce a significantly different pork product than the *Trichinella spiralis*-controlled fresh pork carcasses produced under the current regulation.

Therefore, FDA finds that the evidence that it relied on in 1968 is not relevant to the uses permitted under the new amendment and thus does not provide the basis for a stay. Nonetheless, FDA still holds its position that the safety of radiation-sterilized bacon has not yet been established.

3. HRG stated that scientific studies have demonstrated that food irradiation may pose a risk to human health. Because other objections made similar claims, FDA has reviewed these other objections in evaluating HRG's request for a stay.

a. *Carcinogenicity.* Some objections referenced a U.S. Department of Agriculture (USDA) sponsored study in which mice fed radiation-sterilized chicken had a slightly increased incidence of testicular tumors (Ref. 13).

The agency considered this study before issuing its final rule. Additionally, the National Toxicology Program's Board of Scientific Counselors conducted a peer review of the study (50 FR 29658). Based upon the conclusions of the peer review (Ref. 14) and upon its own evaluation of the data (Ref. 15), the agency found that there was insufficient evidence that irradiation had a treatment-related effect that was either biologically or statistically significant (51 FR 13386).

b. *Kidney damage.* Some objections stated that kidney damage was a direct consequence of feeding animals irradiated food and referenced a Russian study (Ref. 16) in which rats were fed laboratory chow irradiated at various doses and the USDA study in which mice were fed radiation-sterilized chicken meat (Ref. 13).

Although there are two published reports (Refs. 16 and 17) on the Russian study, both lack critical details on the experimental design and the experimental results of this study. These details are necessary to support a claim that adverse effects were observed in this study. For example, the reproductions of photomicrographs in the reports on this study are unusable, and the numerical data are incomplete across dosage groups. Moreover, these reports do not contain any information on the survival rates of rats to the end of the experiment. The total number of rats actually examined histopathologically is not stated, nor is the scope of such observations set forth. The reports do not state the incidence of the effects allegedly observed.

The qualitative description of the kidney changes that was included in the reports on the Russian study is consistent with kidney disease commonly seen in aged laboratory rats (51 FR 13386). The features of chronic progressive nephrosis (Ref. 18) common to aged rats are identical to the microscopic changes in the rat kidneys described by the Russian authors. Without information on the comparative incidence and severity of the kidney lesions in all groups in this study, however, the agency cannot determine the actual nature of the reported changes.

FDA reviewed the kidney data in 11 chronic studies (Refs. 7, 8, and 19 through 27) in which rats were fed various diets consisting of food or feed irradiated at various doses under a variety of conditions to see if effects similar to those found by the Russian authors were found in any of those studies. No such treatment-related kidney effects have been reported in any of these studies as an effect of injestion of irradiated food.

In the USDA mouse study (Ref. 13), all mice fed chicken meat diets (both nonirradiated frozen chicken meat control diets and irradiated chicken meat diets) showed signs of kidney damage (extensive mineralization and glomerulonephropathy) and decreased survival compared to mice fed chow control diets. After careful examination of the study and comparison of data between the mice fed chicken meat control diets and the mice fed chow control diets, the agency concluded that the effects were caused by the high protein content of the chicken diets rather than by the effects of irradiation of the food (51 FR 13386).

Therefore, the agency finds that HRG's claim that consumption of irradiated food will cause kidney damage does not provide grounds for a stay. The scientific evidence in the record is adequate to provide assurance that at least while the issues raised by the objections are resolved, the consumption of irradiated pork will not cause significant harm to the kidneys.

c. *Chromosome damage.* HRG cited several dominant lethal studies that, it contended, showed a possible response when an irradiated food was tested (Refs. 28, 29, and 30). (The dominant lethal test detects germinally transmitted genetic effects which are usually thought to be caused by mutations at the chromosome level.) In one test (Ref. 28), the authors reported an increase in embryonic deaths before the embryos were implanted in the uterus when mice were fed animal chow irradiated at a dose of 5 Mrad. There was no increase in postimplantation deaths of embryos in the groups fed the irradiated food. In addition, the authors did not confirm their observation on preimplantation deaths by cytological analysis. The agency concluded that the preimplantation deaths were not biologically significant because postimplantation losses are a much more sensitive indicator of dominant lethal effects, and because comparable studies did not show the same effect (see comment 35 of the April 18, 1986, rule (51 FR 13387)).

In the other two tests (Refs. 29 and 30), male rats and mice were fed irradiated wheat for 12 weeks and mated with different groups of females over the next 4 weeks. An increase in intrauterine deaths was reported in the females mated during the third and fourth weeks but not in those mated during the first 2 weeks. Considering the test design, the agency believes an effect should have been seen during all 4 weeks if dominant lethal mutations had occurred.

The objection provided no new information in addition to that considered by FDA before it reached its safety decision. Also, the objection provided no evidence showing why irradiated animal chow and wheat are relevant models for evaluating the safety of irradiated pork. Thus, FDA sees no reason to stay its previous decision which it reached after careful consideration of all relevant evidence.

B. General Regulation

Two groups, the Coalition for Alternatives in Nutrition and Healthcare, Inc. (CANAH), and the National Coalition to Stop Food Irradiation (NCSFI) and its affiliates, requested that the agency stay the effective date of the April 18, 1986, final rule on irradiation of food until the safety and labeling issues raised in their objections are resolved. The objection from NCSFI and its affiliates was submitted after the 30-day objection period, and FDA was under no obligation to consider it. However, the agency did review each of the issues in the NCSFI submission before deciding that a stay is not appropriate.

These groups disagreed with FDA's conclusions and responses to comments, but they presented no new data or novel interpretations of data previously considered by FDA. Therefore, the agency finds that these objectors failed to provide any basis on which to conclude that the public interest would be served by a stay of the regulation. Nonetheless, the agency has summarized these general objections and has discussed them below.

1. CANAH disagreed with FDA's safety conclusion and claimed that BFIFC's safety conclusion was based on radiation chemistry and not on accepted scientific animal studies. CANAH refers to a review article by Dr. J. Barna (Ref. 31) who compiled data from toxicological studies performed on irradiated food between 1925 and 1979. This review article summarized benefits and adverse health effects reported in those studies, both for animals fed irradiated foods and for those fed unirradiated foods.

FDA used the bibliography from the 1979 review article as part of an initial list of studies for review. The review article itself states: "[T]he evaluation of the summarized published bioassay data on the wholesomeness of irradiated foods leads to the conclusion that, at present, neither beneficial nor adverse effects of irradiated food consumption are consistent, unambiguous, and reproducible. Neither of them can be traced back to a given food or a group of foods or level of radiation dose." Thus, CANAH has not presented any information that the agency had not considered in reaching its decision on the safety of the use of irradiation or that would warrant a stay of the regulations.

FDA believes that the scientific evidence in the record is adequate to provide assurance that the use of irradiation on food will not compromise the public health while the issues raised by the objections are resolved.

2. Both CANAH and NCSFI disagreed with BFIFC's conclusions and recommendations that the use of irradiation at 1 kGy (100 krad) is safe. NCSFI states that FDA has not established the safety of any pure radiolytic product, or that the chemical differences between foods irradiated at the subject doses and nonirradiated foods are too small to affect the safety of the foods. CANAH and NCSFI argued that free radicals produced during radiation produce toxic radiolytic products. Also, they argued that free radicals destroy the nutritional content of irradiated foods, and that FDA has not assessed the nutritional adequacy of irradiated foods.

The objections have not provided any data that were not already considered by FDA or that would raise a significant concern. These objections raise the same issues that were submitted as comments to FDA's proposal of February 14, 1984, and that the agency considered before reaching its decision on the final rule. At that time, FDA noted that the issue is not whether free radicals hypothetically can form toxic substances, but whether the formation of a toxic substance is sufficiently probable to raise questions about the safety of irradiated food. After reviewing all available data, the agency concluded that any chemical differences between foods irradiated at doses allowed by the regulation and nonirradiated foods are too small to cause concern about safety (see 51 FR 13379). Neither objection has presented any new evidence to the contrary.

Further, in issuing its proposal, the agency cited evidence supporting its conclusion that food irradiated up to 1 kGy (100 krad) would have the same nutritional value as comparable food that has not been irradiated (see 49 FR 5717). Thus, the objections are wrong in asserting that FDA has not considered this issue.

3. NCSFI claimed that FDA failed to establish effective labeling and inspection requirements for foods treated with irradiation. CANAH argued that the labeling statement required by the regulation for 2 years, "treated with radiation" or "treated by irradiation," should be permanent, and that the logo and label statement should be required both on first and second generation irradiated foods.

The agency established the labeling and inspection requirements in the final rule after considering all comments in the context of FDA's current food labeling policy and current inspection guidelines for food facilities. The agency also considered its experience in inspection of radiation facilities that treat medical and hospital supplies. The retail labeling requirements were issued to inform consumers that a food has been so processed and are not necessary for safe use of the foods. The objections have provided no information that would indicate a reasonable possibility that harm would result from the current labeling requirement. Nor have any data been presented that would indicate that irradiation facilities cannot be properly inspected. Thus, these objections do not warrant a stay during the time necessary for further consideration.

4. NCSFI objected claiming that FDA had not established that the balance between microbial spoilage organisms and pathogenic organisms is not adversely affected by radiation doses below 1 kGy.

FDA has seen no evidence in the scientific literature on the effects of radiation on microorganisms that would indicate that all spoilage organisms can be eliminated at a dose below 1 kGy. Thus, such foods would undergo the same pattern of microbial spoilage although over a different time period as a food that has not been irradiated. This fact was noted in FDA's proposal (see 49 FR 5717).

NCSFI has provided no information that such irradiated food would not spoil normally and, indeed, did not assert that it would address the issue of microbial spoilage organisms if the hearing that it requested is granted. Thus, this objection does not warrant a stay.

IV. Evaluation of the Objections and Request for Stay

After careful review of the specific safety issues raised in the objections to the two regulations, the agency has concluded that the objections have not provided evidence of the types of immediate problems that would be necessary to justify a stay of the effect of these regulations. The agency believes that the objections do not raise either new issues or novel interpretations of issues previously considered by FDA. The agency believes that no harm will result from consuming food that is irradiated under these regulations during the time necessary to resolve the issues raised in the objections. Accordingly, the request for a stay is denied. The effective date of the pork regulation was July 22, 1985. The effective date of the general regulation was April 18, 1986.

The agency is continuing to review the objections and the requests for a hearing

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on the irradiated pork final rule along with the objections and requests for a hearing submitted in response to its April 18, 1986, rule to determine whether a hearing is appropriate. Because many of the objections and requests for a hearing received in response to the April 18, 1986, final rule are related to objections and requests for a hearing received on the irradiated pork final rule, the agency will consider these requests together in deciding whether to grant a hearing. The Commissioner will publish the agency's decision on the hearing requests in a future issue of the **Federal Register**.

V. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be reviewed in that office between 9 a.m. and 4 p.m., Monday through Friday.

1. Brunetti, A.P., et al., "Recommendations for Evaluating the Safety of Irradiated Foods," final report prepared for the Director, Bureau of Foods, FDA, July 1980.

2. Chinn, H.I., "Evaluation of Health Aspects of Certain Compounds Found in Irradiated Beef," Federation of American Societies for Experimental Biology (FASEB), Bethesda, MD, 1977.

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4. Chinn, H.I., "Supplement II. Possible Radiolytic Compounds," FASEB, Bethesda, MD, 1979.

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8. Renner, H.W., and D. Reichelt, "Zur Frage der Gesundheitlichen Unbedenklicheit Hohen Kozentrationen von Freien Radikalen in Bestrahlten Lebensmittelen," *Zentralbatt fur Veterinarmedizin*, Reihe B, 20–648–660, 1973.

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10. Coquet, B., et al., "Etude chez la souris concernant la toxicite, l'influence sur la reproduction, la mutagenicite et le pouvoir teratogene du riz irradie incorpore dans la Nourriture," final report IFIP–R–40, 1976.

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13. Ralston Purina Co., "Final Report: A Chronic Toxicity, Oncogenicity, and Multigeneration Reproductive Study Using CD–1 Mice to Evaluate Frozen, Thermally Sterilized, Cobalt–60 Irradiated, and 10 MeV Electron Irradiated Chicken Meat," Report to U.S. Department of Agriculture, Agricultural Research Service, June 1983.

14. National Toxicology Program Board of Scientific Counselors, Final Summary Minutes for the "Peer Review of the Data from the Raltech Lifetime Feeding Study with Irradiated Chicken Meat in CD–1 Mice by the Technical Reports Review Subcommittee and Panel of Experts," held at Research Triangle Park, NC, March 26, 1985.

15. Cancer Assessment Committee, Center for Food Safety and Applied Nutrition, Memorandum of Conference, October 1, 1984, and January 4, 1985.

16. Levine, A.L., and A.E. Ivanov, "Pathomorphology of the Kidneys in Rats after Prolonged Ingestion of Irradiated Foods," *Bulletin of Experimental Biology and Medicine*, 85:236–238, 1978.

17. Ivanov, A.E., and A.I. Levina, "Pathomorphological Changes in the Testes of Rats Fed on Products Irradiated with Gamma Rays," *Bulletin of Experimental Biology and Medicine*, 91:232–234, 1981.

18. Gray, J.E., "Chronic Progressive Nephrosis in the Albino Rat," *CRC Critical Reviews in Toxicology*, September, pp. 115–144, 1977.

19. Aravindakshan, M., et al., "Multigeneration Feeding Studies with an Irradiated Whole Diet," International Symposium on Food Preservation by Irradiation, IAEA–SM–221–69, 1977.

20. Anukarahanonta, T., et al., "Wholesomeness Study of Irradiated Salted and Dried Mackerel in Rats," Summarized Technical Report IAEA Contract 1609/RB and 1609/RI/RB.

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Dated: February 13, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–3733 Filed 2–20–87; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Address

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor address for Coopers Animal Health, Inc.

EFFECTIVE DATE: February 23, 1987.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6243.

SUPPLEMENTARY INFORMATION: Coopers Animal Health, Inc., Kansas City, KS 66103–1438, the sponsor of several NADA's, has advised FDA to change its address from "Kansas City, MO 64108" to "Kansas City, KS 66103–1438." The agency is amending the address entry in 21 CFR 510.600(c)(1) for "Coopers Animal Health, Inc.," and the entry for "017220" in 21 CFR 510.600(c)(2) to reflect this change of address for Coopers Animal Health, Inc.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a), 52 Stat. 1055, 62 Stat. 343–351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) in the entry for "Coopers Animal Health, Inc." and in paragraph (c)(2) in the entry for "017220" by revising the sponsor address to read "Kansas City, KS 66103–1438."

Dated: February 17, 1987.

Marvin A. Norcross,

Associate Director for New Animal Drug Evaluation.

[FR Doc. 87–3732 Filed 2–20–87; 8:45 am]

BILLING CODE 4160–01–M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2204

Rules Implementing the Equal Access to Justice Act

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Final rule with request for comments.

SUMMARY: The Occupational Safety and Health Review Commission has established rules of procedures implementing the Equal Access to Justice Act ("EAJ Act"). The Commission now amends its rules to reflect recent changes in the EAJ Act. The Commission also invites public comments on these amended rules.

EFFECTIVE DATE: February 23, 1987.

ADDRESS: Comments may be mailed to: Earl R. Ohman, Jr., General Counsel, Occupational Safety and Health Review Commission, Room 402–A, 1825 K Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Earl R. Ohman, Jr., at (202) 634–4015.

SUPPLEMENTARY INFORMATION: Pub. L. 99–80, enacted August 5, 1985, reauthorized the Equal Access to Justice Act, which had expired on September 20, 1984. It also made several amendments. Four of those amendments are of particular importance to EAJ Act proceedings instituted before the Commission:

1. Net worth ceilings for eligible parties have been raised to $2,000,000 for individuals and $7,000,000 for partnerships, corporations, and other entities;

2. Units of local government may now be eligible for fee awards;

3. The position of the government that has to be substantially justified has been specifically defined to include the underlying governmental action or failure to act that the proceeding is based on, as well as the government's position in litigation; and

4. The government is generally restricted in its ability to introduce during the fee proceeding additional evidence of substantial justification.

The Administrative Conference of the United States ("ACUS") is charged with coordination of the procedural rules adopted by various agencies to implement the EAJ Act. To carry out this responsibility, ACUS issued revised model rules implementing the amendments to the EAJ Act (51 FR 16659 (May 6, 1986)), after receiving public comment on draft model rules (50 FR 46250 (November 6, 1985)). Since the preamble to the draft model rules explained their formulation and the preamble to the final model rules summarized and responded to the public comments submitted concerning the amendments, the Commission will not repeat the rationale of those amendments when the Commission's revised rules follow the ACUS amendments. Where the Commission has departed from the ACUS model rules, the reasons for the departure will be explained. Accordingly, the Commission amends its rules as follows:

1. Sections 2204.101 and 2204.102(c) are simplified by citing the EAJ Act only to the United States Code.

2. The Commission has completely revised the effective dates in § 2204.103, entitled "When the EAJ Act applies," to generally conform to the corresponding ACUS model rule § 315.102. This revision is necessary to reflect the effective dates of the amended EAJ Act. The Commission's amended rule, however, does not contain an express provision applying the EAJ Act to adversary adjudications "pending on or commenced on or after October 1, 1981, in which an application for fees and other expenses was timely filed and was dismissed for lack of jurisdiction." No Commission cases have been in that position, and such language would be merely superfluous.

3. The Commission will apply its old rules to those EAJ Act cases pending before it on August 5, 1985, and still on its docket. Given the extremely small number of cases in that posture, however, the Commission will follow the ACUS recommendation and inform the parties directly when the old rules apply rather than include a special provision in its rules. 51 FR 16659, 16660 (May 6, 1986).

4. Sections 2204.105(b) (1), (4), and (5) and 2204.201(b) are revised to reflect the new employment and financial criteria for eligibility under the amended EAJ Act. Also, § 2204.105(b)(4) is amended to specify that a unit of local government with a net worth of not more than $7 million and no more than 500 employees is eligible to proceed under the EAJ Act. Although the OSH Act does not apply to any political subdivision of a state (section 3(5), 29 U.S.C. 652(5)), citations have been issued to employers that have claimed to be a political subdivision of a state. The Commission therefore revises its rules to provide that political subdivisions of a state erroneously cited by OSHA may be eligible to apply for fees under the EAJ Act.

5. The Commission amends § 2204.106(a) to clarify that when deciding whether the Secretary has established that his position was substantially justified, the Commission will consider both the underlying action or failure to act by the Secretary upon which the adjudication is based, as well as his litigation position. The rule also clarifies that substantial justification is the only issue on which the Secretary has the burden of persuasion. The former rule could have been interpreted to require the Secretary to show that the employer failed to meet the qualifying criteria (e.g., financial) for reimbursment under the EAJ Act. Finally, language that defines a "substantially justified" position as one that is "reasonable in law and fact" has been eliminated. The Commission has decided to follow the view of the ACUS that the current uncertainty in the law requires that determinations of "substantial justification" be made on a case-by-case basis. See 51 FR 16659, 16661 (May 6, 1986).

6. The amendment to § 2204.203 clarifies that the Commission may require the applicant to furnish substantiation for any "fees or expenses claimed." The old rule requires the substantiation of expenses but does not expressly cover fees.

7. The Commission amends § 2204.307 by revising paragraphs (a)(1) and (a)(2) and adding a new paragraph (a)(3) to reflect the restrictions on additional proceedings contained in the amended EAJ Act. Unlike the ACUS model rules, however, the Commission would not completely prohibit the Secretary from seeking additional proceedings to enable him to establish that his position was substantially justified. Rather, the

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Commission, in accordance with the intent of Congress reflected in the EAJ Act's legislative history, would give the Secretary an opportunity to supplement the record with affidavits or other documentary evidence when disposition of the underlying case occurred before the Secretary had a fair opportunity to adduce evidence that his position was "substantially justified." A literal reading of section 504(a)(1) of the amended EAJ Act could appear to prohibit the Secretary from ever going beyond the administrative record made during the adversary adjudication to establish that his position was substantially justified. The legislative history of that section, however, indicates that the prohibition was intended to apply only when the case has been fully litigated. Congress intended that when "the case is conceded on the merits, dropped by the agency, or otherwise settled . . . before any of the merits are heard," the substantial justification for the government's position would be determined by looking to the "pleadings, affidavits and other supporting documents filed by the parties in both the fee [proceeding] and the case on the merits." H.R. Rep. No. 120, Part 1, 99th Cong., 1st Sess. 13, *reprinted in* 1985 U.S. Code Cong. & Ad. News 132, 141. This view is underscored by the Commission's own experience. In *K.D.K. Upset Forging, Inc.*, 86 OSAHRC ____, 12 BNA OSHC 1856, 1986 CCH OSHD ¶ 27,612 (No. 81–1932, 1986), the Secretary withdrew the citation before hearing and before a record of any substance was established. As a result, there was nothing in the record to support the Secretary's assertion that his decision to issue the citation was substantially justified. In finding that the employer was entitled to an award under the EAJ Act, the Commission noted that the Secretary could have gone far to meet his burden of establishing "substantial justification" simply by having filed supporting affidavits. It would seem that to adopt a rule prohibiting the Secretary from ever supplementing the record compiled before the EAJ Act proceeding would unduly discourage the Secretary from the early withdrawals of citations, except perhaps after some discovery. Internal reviews by the Secretary of cases that should be settled or withdrawn are critical to the timely resolution of the large number of contested cases on the Commission's dockets.

Public Comment

The document revises agency rules of procedure and practice. The Administrative Procedure Act, 5 U.S.C. 553(b)(A), authorizes agencies to revise such regulations on internal procedures without prior notice or public comment. Because it wishes to put these revised procedures into effect as soon as possible to avoid unnecessary expense, the Commission adopts these revised regulations as its final rule. Nevertheless, the Commission values any comments that the public may have on these matters. Public comment is accordingly invited. Comments may be mailed to the General Counsel at the address previously stated.

List of Subjects in 29 CFR Part 2204

Administrative practice and procedure, Equal access to justice.

For the reasons set out in the preamble and under authority granted by 5 U.S.C. 504(c)(1) and 29 U.S.C. 661(f), the Occupational Safety and Health Review Commission amends 29 CFR Part 2204 as follows:

PART 2204—[AMENDED]

1. The authority citation for Part 2204 is revised to read as follows:

Authority: Sec. 203(a)(1), Pub. L. 96–481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)); Pub. L. 99–80, 99 Stat. 183.

2. The first sentence of § 2204.101 is revised to read as follows:

§ 2204.101 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504, provides for the award of attorney or agent fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before the Occupational Safety and Health Review Commission. * * *

3. Section 2204.102 is amended by revising paragraph (c) to read as follows:

§ 2204.102 Definitions.

* * * * *

(c) The term "EAJ Act" means the Equal Access to Justice Act, 5 U.S.C. 504.

* * * * *

4. Section 2204.103 is revised to read as follows:

§ 2204.103 When the EAJ Act applies.

The EAJ Act applies to adversary adjudications before the Commission pending or commenced on or after August 5, 1985. The EAJ Act also applies to adversary adjudications commenced on or before October 1, 1984, and finally disposed of before August 5, 1985, if an application for an award of fees and expenses, as described in Subpart B of these rules, has been filed with the Commission within 30 days after August 5, 1985.

5. Section 2204.105 is amended by revising paragraphs (b)(1), (b)(4), and (b)(5) to read as follows:

§ 2204.105 Eligibility of applicants.

* * * * *

(b) The types of eligible applicants are as follows:

(1) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interest, and employs not more than 500 employees;

* * * * *

(4) Any other partnership, corporation, association, unit of local government, or public or private organization that has a net worth of not more than $7 million and employs not more than 500 employees; and

(5) An individual with a net worth of not more than $2 million.

* * * * *

6. Section 2204.106 is amended by revising paragraph (a) to read as follows:

§ 2204.106 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses in connection with a proceeding, or in a discrete substantive portion of the proceedings, unless the position of the Secretary was substantially justified. The position of the Secretary includes, in addition to the position taken by the Secretary in the adversary adjudication, the action or failure to act by the Secretary upon which the adversary adjudication is based. The burden of persuasion that an award should not be made to an eligible prevailing applicant because the Secretary's position was substantially justified is on the Secretary.

* * * * *

7. Section 2204.201 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 2204.201 Contents of application.

* * * * *

(b) The application also shall include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants). * * *

* * * * *

8. Section 2204.203 is amended by revising the last sentence to read as follows:

§ 2204.203 Documentation of fees and expenses.

* * * The Commission may require the applicant to provide vouchers, receipts, or other substantiation for any fees or expenses claimed.

9. Section 2204.307 is amended by revising paragraphs (a)(1) and (a)(2) and adding a new paragraph (a)(3) to read as follows:

§ 2204.307 Further proceedings.

(a)(1) The determination of an award shall be made on the basis of the record made during the proceeding for which fees and expenses are sought, except as provided in paragraphs (a)(2) and (a)(3) of this section.

(2) On the motion of a party or on the judge's own initiative, the judge may order further proceedings, including discovery and an evidentiary hearing, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses).

(3) If the proceeding for which fees and expenses are sought ended before the Secretary had an opportunity to introduce evidence supporting the citation or notification of proposed penalty (for example, a citation was withdrawn or settled before an evidentiary hearing was held), the Secretary may supplement the record with affidavits or other documentary evidence of substantial justification.

* * * * *

Dated: February 17, 1987.

E. Ross Buckley,

Chairman.

Dated: February 18, 1987.

John R. Wall,

Commissioner.

[FR Doc. 87–3723 Filed 2–20–87; 8:45 am]

BILLING CODE 7600–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 218

Fishermen's Contingency Fund

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending 30 CFR Part 218 to combine the provisions of two sections (§§ 218.152 and 218.153), both entitled "Fishermen's Contingency Fund," into a single section. These regulations provide for assessments to lease, permit, easement, or right-of-way holders in the Outer Continental Shelf (OCS), for the purpose of the establishment and maintenance of a Fishermen's Contingency Fund. The two sections are combined to avoid confusion and simplify MMS regulations governing the Royalty Management Program.

EFFECTIVE DATE: February 23, 1987.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231–3432 or FTS 326–3432 in Lakewood, Colorado.

SUPPLEMENTARY INFORMATION:

I. Background

The Outer Continental Shelf Lands Act (OCSLA) Amendments of 1978 (43 U.S.C. 1801 et seq.), established a Fishermen's Contingency Fund (43 U.S.C. 1841) to allow for compensation payments to fishermen for damages to commercial fishing vessels and gear resulting from activities involving oil and gas exploration, development, and production in the OCS. Prior to the assumption of royalty management responsibilities by MMS, pursuant to Secretarial Order No. 3087 of December 3, 1982, the Conservation Division of the U.S. Geological Survey (USGS) had royalty management responsibility, including the assessment and collection of amounts for the establishment and maintenance of a Fishermen's Contingency Fund. Two regulations covering the Fishermen's Contingency Fund were issued by USGS: 30 CFR 250.56 (44 FR 61903, October 26, 1979) and 30 CFR 251.5–5 (45 FR 6347, January 25, 1980).

Section 250.56 was issued by the USGS to provide for assessments to any holder of a lease issued or maintained under the OCSLA. This regulation also applied to any holder of an exploration permit or of an easement or right-of-way for the construction of a pipeline in an area covered by an account under the Fishermen's Contingency Fund. Similarly, § 251.5–5 was issued by the USGS to provide for assessments to the holder of a permit for geological or geophysical exploration activities for mineral resources in an area covered by an account under the Fishermen's Contingency Fund.

After assuming royalty management responsibilities, the MMS issued a **Federal Register** Notice (48 FR 35639, August 5, 1983) to redesignate and identify regulations in 30 CFR that it would retain and administer. Former USGS regulations, 30 CFR 250.56 and 30 CFR 251.5–5, were redesignated as MMS regulations at §§ 218.152 and 218.153, under Title 30, Part 218, Subpart D (Oil, Gas and Sulfur, Offshore).

Because the two former USGS regulations are under MMS regulations in the same part and subpart, MMS is amending 30 CFR 218 to combine the provisions to avoid confusion and simplify its royalty management regulations.

II. Procedural Matters

Administrative Procedure Act

The changes included in this rulemaking are technical corrections only and not substantive changes. Accordingly, pursuant to 5 U.S.C. 553(b), it has been determined that it is unnecessary to issue proposed regulations before the issuance of this final regulation. For the same reason, it has been determined that in accordance with 5 U.S.C. 553(d), there is good cause to make this regulation effective upon publication in the **Federal Register**.

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Paperwork Reduction Act of 1980

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

National Environmental Policy Act of 1969

The Department of the Interior has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969 [42 U.S.C. 4332 (2)(C)].

List of Subjects in 30 CFR Part 218

Coal, Continental shelf, Electronic fund transfers, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Oil and gas exploration, Public lands-mineral resources.

Dated: January 30, 1987.

J. Steven Griles,

Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR 218 is amended as set forth below:

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SUBCHAPTER A—ROYALTY MANAGEMENT

PART 218—[AMENDED]

1. The authority citation for Part 218 is revised to read as follows:

Authority: 25 U.S.C. 396, et seq.; 25 U.S.C. 396a, et seq.; 25 U.S.C. 2101, et seq.; 30 U.S.C. 181, et seq.; 30 U.S.C. 351, et seq.; 30 U.S.C. 1001, et seq., 30 U.S.C. 1701, et seq.; 43 U.S.C. 1301, et seq.; 43 U.S.C. 1331, et seq.; and 43 U.S.C. 1801, et seq.

2. Section 218.152 is revised to read as follows:

§ 218.152 Fishermen's Contingency Fund.

Upon the establishment of the Fishermen's Contingency Fund, any holder of a lease issued or maintained under the Outer Continental Shelf Lands Act and any holder of an exploration permit or of an easement or right-of-way for the construction of a pipeline, shall pay an amount specified by the Director, MMS, who shall assess and collect the specified amount from each holder and deposit it into the Fund. With respect to prelease exploratory drilling permits, the amount will be collected at the time of issuance of the permit.

§ 218.153 [Removed and Reserved]

3. Section 218.153 is removed and reserved.

[FR Doc. 87-3684 Filed 2-20-87; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

36 CFR Part 62

National Natural Landmarks Program; National Significance Criteria

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This revision to the National Natural Landmarks Program national significance criteria is to clarify the language and sharpen the definition of national significance. The revised criteria will better enable the National Park Service to evaluate additions to the National Registry of Natural Landmarks and better communicate the concept of national significance to the public. Since many persons and organizations seek natural landmark recognition for sites they own or administer, a better understanding of our definition of the concept will help them recognize why few sites qualify, and also assist our contractors in providing us with information we need to make good judgments.

EFFECTIVE DATE: March 25, 1987.

FOR FURTHER INFORMATION CONTACT: Hardy L. Pearce, Interagency Resources Division, National Park Service, Department of the Interior, P.O. Box 37127, Washington, DC 20013-7127, (202) 343-9500.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of the Interior established the National Landmarks Program in 1962 as a natural areas survey to identify and encourage the preservation of features that best illustrate the ecological and geological character of the United States, to enhance the educational and scientific value of sites thus identified, to strengthen public appreciation of natural history, and to foster wider support for conservation of the Nation's natural heritage.

Potential National Natural Landmarks are identified primarily through inventory studies conducted for the National Park Service, and through recommendations received from Federal agencies, State natural heritage programs, and other sources. Recommended areas are surveyed in the field and evaluated with respect to selection criteria by expert natural scientists. If an area is judged nationally significant, it is proposed to the Secretary of the Interior for designation as a National Natural Landmark. Areas so designated are listed on the National Registry of Natural Landmarks, which now includes 573 sites in 48 States, 3 territories, and the Commonwealth of Puerto Rico. Additions to the Registry are published annually in the **Federal Register**.

Natural landmark designation is not a land withdrawal and affects neither the ownership of a site nor its use. Rather, it is a means of public recognition employed by the Secretary to encourage the preservation, well-informed management, and consideration in public and private planning efforts of nationally significant natural areas without acquisition by the Federal Government.

Public Participation

A proposed rule was published in the **Federal Register** on May 2, 1986 (51 FR 16349). Two comments were received, and although they were minor and largely of an editorial nature, they were incorporated. A 30-day public comment period opened on May 2, 1986 and was extended on June 2, 1986 for an additional 60 days.

Drafting Information

Drafting of this regulation was done by National Natural Landmarks Program staff, in consultation with other National Park Service employees, outside scientists, representatives of national conservation organizations, and others.

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and that this document will not have a significant economic effect on a substantial number of small entities as per the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This conclusion is based on the finding that no costs should result for any small entity.

The rule does not contain any information collection or recordkeeping requirements as defined by the Paperwork Reduction Act of 1980.

List of Subjects in 36 CFR Part 62

Natural resources.

PART 62—NATIONAL NATURAL LANDMARKS PROGRAM

For the reasons set out in the preamble, 36 CFR Part 62 is amended as follows:

1. The authority citation for Part 62 continues to read as follows:

Authority: Sec. 1, Pub. L. 74-292, 49 Stat. 666 (16 U.S.C. 461 *et seq.*); Sec. 2 of Reorganization Plan No. 3 of 1950 (34 Stat. 1262).

2. Section 62.2 is amended by revising the definition "National Significance" to read as follows:

62.2 Definitions.

* * * * *

"National Significance" denotes a site which exemplifies one of a natural region's characteristic biotic or geologic features which has been evaluated, using Department of Interior standards, as one of the best examples of that feature known.

* * * * *

3. Section 62.5 is revised to read as follows:

62.5 National natural landmark criteria.

(a) *Introduction.* "National Significance" denotes a site which exemplifies one of a natural region's characteristic biotic or geologic features which has been evaluated, using Department of Interior standards, as one of the best examples of that feature known. Such features include terrestrial and aquatic ecosystems, geologic structures, exposures, and landforms that record active geologic processes or portions of earth history; and fossil evidence for biological evolution. Because the general character of natural diversity is regionally distinct according to broad patterns of physiography, many types of natural features lie wholly within one of the 33 physiographic provinces of the Nation, as defined by Fenneman (1928) and modified by the National Park Service. For that reason, and because no uniform, nationally applicable classification schemes for biotic communities or geologic features have gained wide acceptance and use in lieu of other classification schemes by the majority of organizations involved in natural area inventory activities, individual classification systems are developed for each inventory study of a physiographic province to identify the types of regionally characteristic natural features sought for representation on the National Registry of Natural Landmarks. Most types represent the scale of distinct biotic communities or individual geologic, paleontologic or physiographic festures, most of which are mappable at the Earth's surface at scales on the order of 1:24,000 or are traceable in the subsurface. Nearly two-thirds of all National Natural Landmarks range in size between about 30 and 2,000 hectares (about 12 and 5,000 acres), but larger and smaller sites also occur owing to the wide variety of natural features recognized by the National Natural Landmarks Program.

(b) *Criteria.* (1) The following criteria form the guidelines used to evaluate the relative quality of sites as examples of regionally characteristic natural features. Primary criteria relating to a specific type of natural feature form the principal basis for selection and must be met for a site to be considered for National Natural Landmark designation. Secondary criteria relating to significant features or qualities in addition to the principal feature are provided for additional consideration when two or more sites are found to meet the primary criteria.

(2) Primary Criteria.

(i) Illustrative Character. A site exhibits a combination of well-developed component features that are recognized in the appropriate scientific literature as characteristic of a particular type of natural feature. What is sought is not necessarily the statistically representative, but rather the unusually illustrative.

Example: An alpine glacier, which exhibits classic shape, an unusual number of glaciologic structures like crevasses, and well-developed bordering moraine sequences.

(ii) Present Condition. A site has received less human disturbance than other examples.

Example: A large beech-maple forest, only a small portion of which has been disturbed by logging.

(3) Secondary Criteria.

(i) Diversity. A site, in addition to its primary natural feature, contains high quality examples of other ecological and/or geological features.

Example: A composite volcano, which also illustrates geothermal phenomena.

(ii) Rarity. A site, in addition to its primary natural feature, contains a rare geological or paleontological feature or biotic community, or provides high quality habitat for one or more rare, threatened, or endangered species.

Example: Badlands, which also are composed of strata containing rare fossils.

(iii) Value for Science and Education. A site is associated with a significant scientific discovery or concept, possesses an exceptionally extensive and long-term record of onsite research, or offers unusual opportunities for public interpretation of the natural history of the United States.

Example: A dunes landscape, which was the subject of pioneering studies that first recognized the process of ecological succession.

Dated: November 6, 1986.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-3505 Filed 2-20-87; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[OW-4-FRL-3159-4]

Ocean Dumping; Site Designation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates a new dredged material disposal site in the Atlantic Ocean offshore Fernandina Beach, Amelia Island, Florida ("the Fernandina site"), as an EPA-approved ocean dumping site for the dumping of dredged material. This action is necessary to provide an acceptable ocean dumping site for projects in the area which require ocean disposal of dredged material. This final designation is for an indefinite period of time but is subject to continued monitoring to ensure that unacceptable adverse environmental impacts do not occur. The interim designation previously given to another site in the area near Fernandina Harbor is being cancelled.

DATE: This designation shall become effective on March 25, 1987.

ADDRESSES: Send comments to:

Sally Turner, Chief, Marine Protection Section, Water Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, GA 30365.

The file supporting this site designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street, SW., Washington, DC 20460.

EPA Region IV, 345 Courtland Street, NE., Atlanta, GA 30365.

FOR FURTHER INFORMATION CONTACT: Reginald G. Rogers, 404/347-2126.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This designation of the Fernandina site, Florida is within Region IV and is being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under the Act (40 CFR Chapter I, Subchapter H, section 228.4) state that ocean dumping sites will be designated by promulgation in this Part 228. This site designation is being published as final rulemaking in accordance with § 228.4(e) of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites for dredged material.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

The object of NEPA is to build into Agency decision-making processes careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's

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in connection with ocean dumping site designations such as this [See 39 FR 16186 (May 7, 1974)].

The Corps of Engineers and EPA have prepared a draft and final EIS titled, *Supplement to the Jacksonville Harbor Ocean Dredged Material Disposal Site—Final Environmental Impact Statement for Designation of a New Fernandina Harbor, Florida Ocean Dredged Material Disposal Site.*

This Supplemental EIS (SEIS) discusses the final EPA designation of an ocean dredged material disposal site for continuing use near Fernandina Beach, FL. The purpose of the EPA's action is to provide an environmentally acceptable ocean location for disposal of dredged materials if an ocean disposal site is needed for such materials. The need for ocean disposals is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

Of Friday July 25, 1986, a notice of availability of the draft SEIS for public review and comment was published in the **Federal Register** [51 FR 26748 July 25, 1986]. Seven comment letters were received on the draft SEIS and were addressed in the final SEIS. On Friday November 14, 1986, the notice of availability of the final SEIS was published in the **Federal Register** [51 FR 41415 November 14, 1986]. Three comment letters were received on the final SEIS. The comments on the final SEIS were addressed in the proposed rulemaking published for this site designation at 52 FR 438 (January 6, 1987).

C. Site Designation

The proposed site is located approximately six nautical miles offshore Amelia Island, Florida and occupies an area of about 4 square nautical miles. Water depths within the area average 16 meters. The coordinates of the site are as follows:

30°33'00" N.; 81°16'52" W.
30°31'00" N.; 81°16'52" W.
30°31'00" N., 81°19'08" W.
30°33'00" N., 81°19'08" W.

On January 6, 1987, EPA proposed a rule change designating this site for the disposal of dredged materials [52 FR 38 (January 6, 1987)]. The preamble to this proposed rule presented the characteristics of the site in terms of the eleven specific factors identified in § 228.5 of the Ocean Dumping Regulations which, taken together, constitute an assessment of the site's suitability as a repository for dredged material. That assessment concludes that this site is appropriate for final designation. The State of Florida, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service have concurred with this site designation.

Two letters of comment were received on the proposed rule, neither of which opposed the designation of the Fernandina site. The first, from the U.S. Coast Guard Port Safety and Security Division, indicated that a memorandum of understanding between the Coast Guard and the Corps of Engineers requires the Corps of Engineers to provide surveillance over federally contracted activities which are associated with federal navigation projects which entail dredged material disposal operations in ocean waters. In supplementary information accompanying the proposed rule, EPA had referred to the Coast Guard's monitoring role and we acknowledge this memorandum of understanding and its provisions for federal navigation projects. The second letter of comment was received from the Department of Interior's Minerals Management Service, Offshore Minerals Management Office, and Office of Strategic and International Minerals. The comments indicated that EPA neglected to mention the potential for offshore minerals other than oil and gas deposits, and that the Service would like to be kept informed of the results of monitoring at the site. EPA acknowledges that mineral deposits other than oil and gas may exist in the area. However, EPA believes that this site designation will not affect the future exploration or extraction of minerals in the vicinity. EPA will keep the Service informed of the availability of results of monitoring studies conducted at the site.

D. Action

The designation of the Fernandina site as an EPA-approved ocean dumping site is today being published as a final rulemaking. Management of this site will be the responsibility of the EPA Region IV.

A site designation does not give approval for actual disposal of materials at the site. Before ocean dumping of dredged material from a specific project may commence at the designated site, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria (40 CFR, Part 227). If a Federal project is involved, the Corps of Engineers must also evaluate the proposed ocean disposal in accordance with the same criteria. In either case, EPA has the authority to disapprove the actual dumping if it determines that environmental concerns under the Act have not been met. Upon the effective date of this rule change, the nearby Fernandina Harbor site, previously designated for dredged materials on an interim basis, will no longer be needed. Therefore, the interim designation is being cancelled. The interim site was incorrectly cited in the proposed rule change. The citation given in the paragraph included in order to cancel the interim site was "paragraph (a)(1)(ii)(C)" of § 228.12 of the Ocean Dumping Regulations. This citation should have read § 228.12 paragraph (a)(3)" of the Ocean Dumping Regulations. This final rule corrects the amending paragraph in order to effect removal of the interim Fernandina site from the list of sites in § 228.12(a)(3).

E. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this proposal does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this final rule does not necessitate preparation of a Regulatory Impact Analysis.

This final rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

This final rulemaking notice represents the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: February 13, 1987.

Approved by:

Jack E. Ravan,

Regional Administrator for Region IV.

PART 228—[AMENDED]

In consideration of the foregoing, Subchapter H of Chapter I of Title 409 is amended as set forth below.

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C Sections 1412 and 1418.

2. Part 228 is amended by removing from § 228.12(a)(3) the words and coordinates "Fernandina Harbor—30°42'00" N., 81°19'05" W.; 30°42'00" N., 81°17'55" W.; 30°41'00" N., 81°17'55" W.; 30°41'00" N., 81°19'05" W." and by adding paragraph (b)(3) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(30) Fernandina Beach, Florida Dredged Material Disposal Site—Region IV.

Location:
30°33'00" N.; 81°16'52" W.
30°31'00" N.; 81°16'52" W.
30°31'00" N.; 81°19'08" W.
30°33'00" N.; 81°19'08" W.
Size: 4 square nautical miles
Depth: Average 16 meters
Primary use: Dredged Material
Period of Use: Continuing use
Restrictions: Disposal shall be limited to dredged material which meets the criteria given in the Ocean Dumping Regulations, Part 227.

[FR Doc. 87-3717 Filed 2-20-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 86-207; FCC 87-34; RM-5208]

Amateur Radio Service Rules To Permit Emission F8E on Frequencies 902 MHz and Above

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The attached rule amendment authorizes amateur stations to transmit emission F8E on frequencies 902 MHz and above. The rule amendment is necessary to allow amateur operators to experiment with an additional emission mode. The effect of the amendment is to allow amateur operators to advance their knowledge of amateur radio technology.

EFFECTIVE DATE: April 6, 1987.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted January 28, 1987 and released February 12, 1987.

1. The full text of this Commission decision including the rule change is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision and the rule change may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

2. The amended rules authorize amateur stations to transmit emission F8E on frequencies 902 MHz and above. Authorization of emission F8E allows for experimentation by amateur operators, thereby creating favorable conditions for the advancement of amateur radio technology.

3. In transmitting emission F8E, amateur operators are encouraged to follow voluntary band plans that are in effect in order to avoid interference.

4. The amended rule is set forth at the end of this document.

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities because these entities may not use the Amateur service for business radio communications. Also, because transmitting emission F8E on Amateur radio service frequencies is optional rather than mandatory, there would be no significant impact on the manufacturers of amateur radio equipment.

6. The amended rule has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure or record retention requirements; and will not increase or decrease burden hours on the public.

7. This Report and Order and this rule amendment is issued under the authority of 47 U.S.C. 154(i) and 303 (g) and (r).

8. A copy of this Report and Order will be served on the Chief Counsel for Advocacy of the Small Business Administration.

9. It is ordered that Part 97 is amended as shown at the end of this document.

10. It is further ordered that this rule amendment shall become effective April 6, 1987.

11. It is further ordered that this proceeding is terminated.

List of Subjects in 47 CFR Part 97

Amateur radio, Emissions, Frequencies, Radio.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Amended Rules

PART 97—[AMENDED]

Part 97 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

Authority: The authority citation for Part 97 continues to read as follows: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609, unless otherwise noted.

2. Section 97.61(c) is revised to read as follows:

§ 97.61 Authorized emissions.

* * * * *

(c) *Above 144.1 HMz:* Amateur stations are authorized to transmit the following emissions on amateur frequencies above 144.1 MHz: NON, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F2A, F3E, G3E, F3C, F3F, H3E, J3E and R3E. PON emission (the emission letters "K, L, M, Q, V, W, and X" may also be used in place of the letter "P" for pulsed radars) may be transmitted on all amateur frequencies above 902 MHz, except in the 1240-1300 MHz and 10.0-10.5 GHz bands. Emission F8E may be transmitted on all amateur frequencies 0.35 meters and above.

* * * * *

[FR Doc. 87-3725 Filed 2-20-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 61109-7026]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final 1987 fishing quotas.

SUMMARY: NOAA issues a notice of final quotas for the surf clam and ocean quahog fisheries for 1987. These quotas were selected from a range defined as optimum yield (OY) for each fishery, as adjusted to reflect fishing activity at the end of 1986. The intended effect of this action is to establish allowable harvests of surf clams and ocean quahogs from the exclusive economic zone in 1987.

EFFECTIVE DATE: February 20, 1987.

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FOR FURTHER INFORMATION CONTACT: Bruce Nicholls (Plan Coordinator), 617–281–3600, ext. 263.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) directs the Secretary of Commerce (Secretary), in consultation with the Mid-Atlantic Fishery Management Council, to specify quotas for surf clams and ocean quahogs on an annual basis from within ranges which have been identified as OY for each fishery.

In specifying the quota values, the Director, Northeast Region, NMFS, considered stock assessments, catch records, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected effort and catches, and areas likely to be reopened to fishing. Proposed quotas were published on November 28, 1986 (51 FR 43055). No public comments were received on the proposed quotas during the comment period.

The proposed quotas were adjusted under § 652.21(a), (b), and (c) to reflect the amount of shortfall or overharvest in each designated fishery during 1986. The 1986 quotas for the Mid-Atlantic and Nantucket Shoals Area fisheries were exceeded by small amounts requiring deductions from the 1987 quotas. The Georges Bank fishery fell short of its quota, requiring an increase in the 1987 value.

The following quotas are established for the surf clam and ocean quahog fisheries for 1987:

Fishery area	1987 quota (in bushels)
Mid-Atlantic surf clam	2,600,000
Georges Bank surf clam	330,000
Nantucket Shoals surf clam	190,000
Ocean quahog	6,000,000

Other Matters

This action is taken under § 652.21 and is in compliance with Executive Order 12291. The action is covered by the certification for Amendment 3 to the FMP (47 FR 4268, January 29, 1982), and under the Regulatory Flexibility Act, that the authorizing regulations do not have a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 652

Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 18, 1987.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 87–3740 Filed 2–20–87; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 52, No. 35
Monday, February 23, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 432

Reduction in Grade and Removal Based on Unacceptable Performance

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) is proposing changes to its regulations on reduction in grade and removal based on unacceptable performance in an effort to improve employee and agency understanding and use of the authorities provided by the Civil Service Reform Act of 1978. These regulations reflect the provisions of OPM's final regulations on performance appraisal for General Schedule and prevailing rate employees (5 CFR 430.201) as well as for employees under the Performance Management and Recognition System (5 CFR 430.401). They amend the coverage provisions and reflect a decision of the U.S. Court of Appeals for the Federal Circuit. They clarify procedural requirements, agency responsibilities, and employee rights. The regulations provide for agencies to extend the notice period required prior to reduction in grade or removal for a period beyond 60 days under certain criteria. In addition, portions of the regulations are restructured and obsolete material is removed.

DATE: Comments must be received on or before April 24, 1987.

ADDRESS: Written comments may be sent or delivered to the Chief, Appellate Policies Division; Room 7635; Office of Employee, Labor, and Agency Relations; Office of Personnel Management; 1900 E Street; NW, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Ken Bates, (202) 653–8551.

SUPPLEMENTARY INFORMATION: Because of numerous questions from employees and agencies on the procedures of 5 CFR Part 432, the issuance of final regulations on Performance Management at 5 CFR Part 430, and several related appellate decisions, OPM has become aware of the need to clarify the requirements of law and regulation affecting the resolution of employee performance problems. Accordingly, OPM is proposing a number of changes in Part 432 to improve employee and agency understanding of the procedures involved in resolving such problems.

OPM proposes to amend the current 5 CFR 432.101, *Principal statutory requirements*, by not reprinting the text of the law (5 U.S.C. 4303) in the regulations. While explicit reference to the statutory requirements would be retained, those requirements would be discussed within the context of various sections of Part 432, rather than being listed separately at the beginning of the regulations. For example, the several procedural requirements of 5 U.S.C. 4303(b) would be referenced in some detail under the revised 5 CFR 432.105, titled "Procedures" (see discussion below). Such a change will make both the legal and regulatory requirements of Part 432 easier to use and understand. As a result, it would no longer be necessary to divide Part 432 into two subparts; yet all of the substantive requirements of the current Subpart A would be discussed or referenced elsewhere in the regulations.

OPM proposes to amend the current 5 CFR 432.201, *Coverage*, by reorganizing and expanding the material under this heading, to make it easier to use. In addition, OPM proposes to change several of the items listed. In *Wilfred R. Phipps* v. *Department of Health and Human Services*, 767 F.2d 895 (1985), the Federal Circuit Court of Appeals held that if agencies had informed employees in advance that a promotion would be temporary, they were not required to follow adverse action procedures when terminating a temporary promotion, regardless of whether it extended past 2 years. To reflect this holding, OPM proposes to amend the regulatory coverage to exclude both temporary and term promotions from coverage no matter how long they extend. OPM also proposes to show as excluded two types of actions that the drafters of the statute clearly did not envision as being covered under Chapter 43 of title 5 of U.S. Code: reductions in grade based either on minimally satisfactory performamce or on unacceptable performance of a noncritical element. Finally, the proposed regulations would reflect recent changes in title 38 of the U.S. Code pertaining to certain employees in the Department of Medicine and Surgery, Veterans Administration, who would otherwise be excluded from coverage of Part 432.

To clarify and enhance understanding, the current definitions in 5 CFR 432.202 would be revised so that they are consistent with definitions used in Part 430—Performance Management, and also to reflect more completely the meaning of terms used in statute and in Part 432. They would include a definition of "current continuous employment," which is not currently defined in regulation even though it is discussed in FPM chapter 752. OPM proposes to tie the regulatory definition of this term to the central language of the law in 5 U.S.C. 4303(f), and not to the methods by which service is credited for completion of the probationary period.

The definition of "opportunity to demonstrate acceptable performance" would be amended to reflect the different standard of performance required of employees covered by the Performance Management and Recognition System. A definition of "same or similar positions" is proposed to clarify the meaning of this term. Finally, OPM proposes to spell out the statutory definition of "unacceptable performance," rather than merely referencing the law as is done in the current regulations.

The current section 432.203 is proposed to be retitled as "Opportunity to demonstrate acceptable performance," and amended to describe more clearly the key elements of the opportunity period leading to the decision about whether to propose removal or reduction in grade. The proposed changes in this section reflect the requirements of 5 U.S.C. 4302a and Part 430 OPM's regulations regarding employees covered under the Performance Management and Recognition System. In addition, paragraph (d) of the revised 5 CFR 432.104 would clarify the procedures under which an employee may ask the agency to consider a medical condition that may contribute to his or her performance problems.

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OPM proposes to amend the current 5 CFR 430.204 to list in some detail the various procedural requirements for taking a performance-based action. In addition, the amendments would make it clear (1) that an agency must give the employee at least 30 days' notice of the proposed reduction in grade or removal; and (2) that the notice period may be extended another 30 days by the agency for any reason, and for a further period still beyond the second 30 days if certain criteria are met.

The regulations would delete the current 5 CFR 432.205, *Interim procedures*, which covered actions taken under this part pending OPM's approval of the agency's performance appraisal system, since all agencies have been required to have OPM approved appraisal systems since October 1, 1981.

In addition, appeal rights to the Merit System Protection Board would be stated explicitly as applying only to competitive service employees and preference eligibles in the excepted service. Chapter 43 of title 5 of the U.S. Code procedural rights to nonpreference eligibles in the excepted service without a corresponding appeal right. This has been a source of confusion to agencies and employees.

Finally, the regulations dealing with agency records would be deleted. Such material is unnecessary because an agency's obligation to maintain relevant records to support any action taken under this part, as well as an employee's right to review such records, is already provided for within the context of existing appeal and grievance rights.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal employees.

List of Subjects in 5 CFR Part 432

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM proposes to revise 5 CFR Part 432 to read as follows:

PART 432—REDUCTION IN GRADE AND REMOVAL BASED ON UNACCEPTABLE PERFORMANCE

Sec.

432.101 Statutory authority.
432.102 Coverage.
432.103 Definitions.
432.104 Opportunity to demonstrate acceptable performance.
432.105 Procedures.
432.106 Appeal and grievance rights.

Authority: 5 U.S.C. 4305.

§ 432.101 Statutory authority.

Section 4303(a) of title 5 of the United States Code authorizes agencies to reduce in grade or remove an employee for unacceptable performance. This part contains regulations that the Office of Personnel Management (OPM) has prescribed to implement and supplement this authority.

§432.102 Coverage.

(a) *Actions covered.* This part covers reduction in grade and removal of an employee based solely on unacceptable performance.

(b) *Actions excluded.* This part does not apply to the following:

(1) The reduction to the grade previously held of a supervisor or manager who has not completed the probationary period under 5 U.S.C. 3321(a)(2);

(2) The reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less;

(3) The reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continous employment in the same or similar positions;

(4) The reduction in grade or removal for minimally acceptable performance of a critical element;

(5) The reduction in grade or removal based on performance of a noncritical element;

(6) An action taken by the Special Counsel of the Merit Systems Protection Board under the authority of 5 U.S.C. 1206;

(7) An action taken under 5 U.S.C. 7521 against an administrative law judge;

(8) An action taken under 5 U.S.C. 7532 in the interest of national security;

(9) An action taken under a provision of statute, other than one codified in title 5 of the U.S. Code, which excepts the action from the provisions of title 5 of the U.S. Code;

(10) A removal from the Senior Executive Service to a civil service position outside the Senior Executive Service under Part 359 of this chapter;

(11) A reduction-in-force governed by Part 351 of this chapter;

(12) A voluntary action initiated by the employee;

(13) A performance-based action taken under Part 752 of this chapter;

(14) An action that terminates a temporary or term promotion and returns the employee to the position form which temporarily promoted, or to a different position of equivalent grade and pay, in accordance with Part 335 of this chapter;

(15) An involuntary retirement because of disability under Part 831 of this chapter; and

(16) A termination in accordance with terms specified as conditions of employment at the time the appointment was made.

(c) *Agencies covered.* This part applies to agencies covered by 5 U.S.C. 4301(1) which are as follows:

(1) The executive department listed at 5 U.S.C. 101;

(2) The military departments listed at 5 U.S.C. 102;

(3) The Government Printing Office;

(4) The Administrative Office of the U.S. Courts; and

(5) Independent establishments that are establishment in the executive branch, except for a government corporation, the U.S. Postal Service, or the Postal Rate Commission.

(d) *Agencies excluded.* This part does not apply to the agencies excluded by 5 U.S.C. 4301(1), which are as follows:

(1) The U.S. Postal Service;

(2) The Postal Rate Commission;

(3) The Central Intelligence Agency;

(4) The Defense Intelligence Agency;

(5) The National Security Agency;

(6) The General Accounting Office;

(7) Any government corporation; and

(8) Any agency having the principal function of conducting foreign intelligence or counterintelligence activities.

(e) *Employee coverage.* This part applies to all individuals employed in or under an agency but does not apply the following employees:

(1) An employee in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less;

(2) An employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions;

(3) An employee outside the United States who is paid in accordance with local native prevailing wage rates for the area in which employed;

(4) An individual in the Foreign Service of the United States;

(5) A physician, dentist, nurse, or other employee in the Department of Medicine and Surgery, Veterans Administration, whose pay is fixed under Chapter 73 of title 38, U.S. Code, except persons appointed under 38 U.S.C. 4104(3);

(6) An administrative law judge appointed under 5 U.S.C. 3105;

(7) An individual in the Senior Executive Service;

(8) An individual appointed by the President;

(9) An employee occupying a position in Schedule C as authorized under Part 213 of this chapter;

(10) A reemployed annuitant;

(11) A National Guard technician;

(12) An individual occupying a position in the excepted service for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12-month period; and

(13) An individual occupying a position filled by Noncareer Executive Assignment under Part 305 of this chapter.

§ 432.103 Definitions.

In this part—(a) *"Critical element"* means a component of a position consisting of one or more duties and responsibilities that contributes toward accomplishing organizational goals and objectives and that is of such importance that unacceptable performance on the element would result in unacceptable performance in the position.

(b) *"Current continuous employment"* means a period of service or employment immediately preceding an action under this part in the same or similar positions without a break of a workday.

(c) *"Opportunity to demonstrate acceptable performance"* means, except for employees covered by the Performance Management and Recognition System, the period of time required by 5 U.S.C. 4302(b)(6) during which the employee is given the opportunity to demonstrate acceptable performance prior to the agency's decision as to whether to propose reduction in grade or removal. For employees covered under the Performance Management and Recognition System, it means the period of time required by 5 U.S.C. 4302a(b)(6) during which the employee is given the opportunity to raise his or her level of performance to the fully successful level or higher.

(d) *"Reduction in grade"* means the involuntary assignment of an employee to a position at a lower classification or job grading level.

(e) *"Removal"* means the involuntary separation of an employee from employment with an agency.

(f) *"Same or similar positions"* means positions in which the duties performed require the same qualifications and would demonstrate the same degree of difficulty and responsibility as an individual's current position.

(g) *"Unacceptable performance"* means performance of an employee that fails to meet established performance standards in one or more critical elements of such employee's position.

§ 432.104 Opportunity to demonstrate acceptable performance.

(a) *Initiation of opportunity period.* Before proposing to reduce in grade or remove an employee under this part, the agency shall provide the employee an opportunity to demonstrate acceptable performance. This period may be initiated at any time during the performance appraisal cycle that the employee's performance in one or more critical elements becomes unacceptable. At the time that an agency identifies the critical element(s) for which performance is unacceptable, the employee must be informed of the performance standards that must be reached in order to be retained. If an employee is covered under the Performance Management and Recognition System, 5 U.S.C. 4302a(b)(6) requires an agency to provide written notice of such employee's unacceptable rating to the employee.

(b) *Length of the opportunity period.* An opportunity period shall be a period of time, commensurate with the duties and responsibilities of the employee's position, sufficient to allow the employee to show whether he or she can perform at the requirement level.

(c) *Assistance during the opportunity period.* Section 4302(b)(5) of title 5 of the U.S. Code requires that agency performance appraisal systems shall provide for assisting employees in improving unacceptable performance. Section 4302a(b)(5) of title 5 of the U.S. Code requires that for employees covered under the Performance Management and Recognition System, agency performance appraisal systems shall provide for assisting such employees in improving performance rated at a level below the fully successful level.

(d) *Consideration of medical condition.* (1) If the employee wishes the agency to consider any medical condition that may contribute to his or her unacceptable performance, he or she shall furnish acceptable medical documentation (as defined in Part 339 of this chapter) of the condition.

(2) An agency shall consider such documentation, whether received prior to or during the opportunity period, during the time allowed for an answer to a proposed reduction in grade or removal, or any time before the final agency decision.

(3) An agency may require or offer a medical examination in accordance with the criteria and procedures provided in Part 339 of this chapter.

(4) If the employee has 5 years of service or more, the agency shall provide information concerning disability retirement.

(5) Agencies shall be aware of the affirmative obligations of 29 CFR § 1613.704, which requires reasonable accommodation of a qualified employee who is handicapped.

(e) *Agency decisions based on the results of the opportunity period.*

(1) If, at the completion of the opportunity period, an agency determines that an employee has demonstrated performance of his or her critical element at the minimally acceptable level or higher, the agency may not propose action under this part to reduce in grade or remove the employee.

(2) As required by § 430.405(j)(3), when an employee covered under the Performance Management and Recognition System improves to at least the minimally acceptable level but not to the fully successful level, the employee, if not reassigned, shall be required to undergo an additional oportunity period to demonstrate performance at the fully successful level or higher.

(3) If, at the completion of the opportunity period, the agency determines that the employee's performance is unacceptable, it shall remove, reduce in grade, or reassign the employee.

§ 432.105 Procedures.

(a) *Statutory requirements.* An employee whose reduction in grade or removal is proposed under this part is entitled to the procedures specified in 5 U.S.C. 4303 which are—

(1) A thirty day advance notice of the proposed action that identifies both the specific instances of unacceptable performance by the employee on which the proposed action is based and the critical elements of the employee's

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position involved in each instance of unacceptable performance;

(2) Representation by an attorney or other representative;

(3) A reasonable time to answer orally and in writing; and

(4) A final written decision that specifies the instances of unacceptable performance on which the action is based. Unless proposed by the head of the agency, such written decision shall be concurred in by an employee who is in a higher position than the person who proposed the action.

(b) *Extension of notice period.* (1) Section 4303(b)(A) of title 5 of the U.S. Code provides that an agency shall give an employee 30 days' advance written notice of a proposed reduction in grade or removal. Section 4303(b)(2) of title 5 of the U.S. Code provides that an agency may extend this advance notice period not to exceed 30 days under regulations prescribed by the head of the agency and for a period beyond 30 days in accordance with regulations issued by OPM.

(2) If an agency needs to extend the notice period beyond the additional 30 days provided for in 5 U.S.C. 4303(b)(2), it may do so for the following reasons:

(i) To obtain and/or evaluate medical information when the employee has raised a medical issue in the answer to a proposed reduction in grade or removal;

(ii) To arrange for the employee's travel to make an oral reply to an appropriate agency official;

(iii) To consider the employee's answer if an extension to the period for an answer has been granted (e.g., because of the employee's illness or incapacitation);

(iv) To consider specific positions to which the employee might be reassigned or reduced in grade if agency procedures require this or if it is necessary to consider reasonable accommodation of a handicapping condition; or

(v) To comply with a stay order by the Office of the Special Counsel of the Merit System Protection Board.

(3) If an agency believes that an extension of the notice period is necessary for another reason, it may request prior approval for such extension from the Chief, Appellate Policies Division, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC., 20415.

(c) *Representation.* Section 4303(b)(1)(B) of title 5 of the U.S. Code provides that an employee covered by this part is entitled to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or an employee whose release from his or her official position would give rise to unresonable costs to the Government or whose priority work assignment precludes his or her release from official duties.

(d) *Time limitation on use of instances of unacceptable performance.* Section 4303(c)(2) of title 5 of the U.S. Code provides that a decision to reduce in grade or remove for unacceptable performance may be based only on those instances of unacceptable performance that occurred during the 1-year period ending on the date of notice of proposed action.

(e) *Agency decision.* In arriving at its decision, the agency shall consider any answer of the employee and/or his or her representative furnished in response to the agency's proposal. Section 4303(c)(1) of title 5 of the U.S. Code provides that the decision shall be made within 30 days after expiration of the notice period provided for in 5 U.S.C. 4303(b)(1)(A). The agency shall deliver the written notice of its decision to the employee at or before the time the action will be effective. Such notice shall inform the employee of his or her appeal rights.

(f) *Applications for disability retirement.* Section 831.501(d) of title 5 of the Code of Federal Regulations provided that an employee's application for disability retirement shall not preclude or delay an otherwise appropriate personnel action. Section 831.1203 sets for the basis under which an agency shall file an application for disability retirement on behalf of an employee.

§ 432.106 Appeal and grievance rights.

(a) *Appeal rights.* Section 4303(e) of title 5 of the U.S. Code provides that an employee in the competitive service or a preference eligible in the excepted service who has been removed or reduced in grade under this part is entitled to appeal the action to the Merit System Protection Board. Actions listed at § 432.102(b) are not covered by the provisions of this part, including the right to appeal to the Merit System Protection Board under 5 U.S.C. 4303(e).

(b) *Grievance rights.* Section 7121(e)(1) of title of the U.S. Code provides that if removal or reduction in grade falls within the coverage of an applicable negotiated grievance procedure, an employee may elect to file a grievance under the procedure or file an appeal with the Merit Systems Protection Board but not both.

[FR Doc. 87-3766 Filed 2-20-87; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Parts 870 and 890

Reconsideration Process for the Federal Employees' Group Life Insurance and the Federal Employees Health Benefits Programs

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing revised regulations to clarify for individuals and agencies the reconsideration process under the Federal Employees Health Benefits (FEHB) Program and the Federal Employees' Group Life Insurance (FEGLI) Program. These regulations would distinguish between determinations made by employing offices and those made by OPM.

DATE: Comments must be received on or before April 24, 1987.

ADDRESS: Written comments may be sent to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Ray, (202) 632-4634.

SUPPLEMENTARY INFORMATION: The FEHB and FEGLI regulations currently outline the procedures for individuals to follow in requesting reconsideration of a denial of health benefits or life insurance coverage or a denial of the opportunity to change coverage. Some confusion has been expressed as to what constitutes an "initial decision" by OPM and when that decision is subject to further review within OPM.

Agency employing offices have been delegated the authority by OPM to make the determinations on health benefits and life insurance entitlements for current employees and the health benefits entitlements, generally, for former spouses not currently receiving annuities. These are considered "initial decisions" by the agencies. OPM does not render a formal reconsideration determination *until the agency has made an initial decision in writing* for current employees and former spouses not receiving annuities. OPM makes the determinations ("initial decisions") for annuitants and former spouses who are eligible for immediate annuities. (OPM also acts as the employing office for former spouses' health benefits entitlements if the divorce occurred after retirement and the former spouse has future title to an annuity or portion of an annuity. However, for the purposes of the discussion of these proposed regulation changes, we will refer to the larger category of former spouses actually in receipt of annuity benefits.)

OPM provides an "initial decision" only for an annuitant or a former spouse receiving an annuity. For example, an employee who had not met the statutory requirement of having been enrolled for five years or from his or her first opportunity to enroll may retire and be under the mistaken impression that he or she can retain FEHB coverage during retirement. Once OPM reviews the enrollment forms and discovers that the former employing office has erroneously transferred the enrollment to OPM rather than terminating it, OPM will issue an initial decision to the annuitant, advising him or her of the reason why coverage cannot be continued and of the right to reconsideration. The same would hold true for any other on-the-roll annuitant or former spouse request for a health benefits or life insurance change which could not be honored. The individual would be notified of OPM's "initial decision" and be afforded the right of reconsideration.

The changes we are proposing to the reconsideration regulations should clarify that agencies must make the initial decisions on health benefits and life insurance questions for active employees and former spouses not receiving annuities. OPM will make the initial decisions for annuitants and former spouses who are receiving annuities. Employees, annuitants, and former spouses are entitled to only one reconsideration determination from OPM.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations simply clarify the reconsideration process already in effect.

List of Subjects in 5 CFR Parts 870 and 890

Administrative practice and procedures, Claims, Government employees, Health insurance, Life insurance, Retirement.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM proposes to amend 5 CFR Parts 870 and 890 as follows:

1. The authority citation for Part 870 continues to read as follows:

Authority: 5 U.S.C 8716.

PART 870—BASIC LIFE INSURANCE

2. In § 870.205, paragraphs (a), (b), and (c) are revised to read as follows:

§ 870.205 Reconsideration.

(a) *Who may file.* An employee or annuitant may request OPM to reconsider an agency decision (for employees) or an initial decision of OPM (for annuitants) denying basic insurance coverage.

(b) *Agency decision.* A request for reconsideration of an agency decision must be filed within 30 calendar days from the date of the written decision stating the right to reconsideration by OPM. OPM may extent the time limit as provided in paragraph (e) of this section. An OPM decision in response to a request for reconsideration of an agency decision is a final decision, not an initial decision as described in paragraph (c) of this section.

(c) *Initial OPM decision.* An OPM decision for an annuitant shall be considered an initial decision as used in paragraph (a) of this section when rendered by OPM in writing and stating the right to reconsideration. However, an initial decisoin rendered at the highest level of review available within OPM will not be subject to reconsideration.

* * * * *

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

3. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C 8913; § 890.102 also issued under 5 U.S.C. 1104 and sec. 3(5) of Pub. L 95-454, 92 Stat. 1112; § 890.301 also issued under 5 U.S.C. 8905(b); § 890.302 also issued under 5 U.S.C. 8901(5) and 5 U.S.C. 8901(9) § 890.701 also issued under 5 U.S.C. 8902(m)(2); Subpart H also issued under Title I of Pub. L. 98-615, 98 Stat. 3195, and title II of Pub. L. 99-251.

4. In § 890.104, paragraphs (a), (b), and (c) are revised to read as follows:

§ 890.104 Initial decision and reconsideration.

(a) *Who may file.* An employee, annuitant, or former spouse may request OPM to reconsider a decision of an employing office refusing to permit registration for or change of enrollment or refusing to permit enrollment of an individual as a family member.

(b) *Agency decision.* A request for reconsideration of an agency decision must be filed within 30 calendar days from the date of the written decision stating the right to reconsideration by OPM. The time limit may be extended as provided in paragraph (e) of this section. An OPM decision in response to a request for reconsideration of an agency decision is a final decision, not an initial decision as described in paragraph (c) of this section.

(c) *Initial decision.* An OPM decision for an annuitant shall be considered an initial decision when rendered by OPM in writing and stating the right to reconsideration. However, an initial decision rendered at the highest level of review within OPM will not be subject to reconsideration.

* * * * *

[FR Doc. 87-3765 Filed 2-20-87; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

[Docket No. 44685; Notice No. 87-4]

Nondiscrimination on the Basis of Handicap in Air Travel

AGENCY: Department of Transportation (DOT), Office of the Secretary (OST).

ACTION: Notice of intent to form advisory committee for regulatory negotiation.

SUMMARY: The Department of Transportation is considering the establishment of an advisory committee to develop a recommended rulemaking proposal concerning nondiscrimination on the basis of handicap in air travel. The rulemaking would implement the Air Carrier Access Act of 1986. The committee would adopt its recommendations through a negotiation process. The committee would be composed of persons who represent the interests affected by the rules, such as persons representing disabled individuals and their groups, air carriers, flight crewmembers, airport operators and aviation officials, and the Department.

DATE: Comments should be received by March 25, 1987. Comments received after this date may be considered to the extent practicable.

ADDRESS: Comments should be sent to Docket Clerk, Docket No. 44685, Department of Transportation, 400 7th Street, SW., Room 4107, Washington DC

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20590. Comments are available for inspection at this location from 9:00 a.m. through 5:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington DC 20590. Telephone 202–366–9306 (voice); 202–755–7687 (TDD).

SUPPLEMENTARY INFORMATION:

Background

In 1982, the Civil Aeronautics Board (CAB) promulgated 14 CFR Part 382, a regulation intended to prohibit discrimination on the basis of handicap by certificated air carriers (e.g., the major airlines) and commuter air carriers. The regulation was divided into Subpart A (a general prohibition of discrimination), Subpart B (specific requirements for service to disabled passengers) and Subpart C (recordkeeping, reporting, and enforcement provisions). Only Subpart A applied to all certificated and commuter carriers. Subparts B and C applied only to those carriers who received a direct Federal subsidy under the Essential Air Service program.

The legal authority for the regulation included section 504 of the Rehabilitation Act of 1973, as amended (which prohibits discrimination on the basis of handicap in Federally-assisted programs), section 404(a) of the Federal Aviation Act of 1958, as amended (which requires carriers to provide "safe and adequate" service), and section 404(b) of the latter Act (which prohibited "unjust discrimination" in air transportation). Knowing that section 404(b) was scheduled to be eliminated as part of the CAB "sunset" process, and that section 504 applied only to recipients of Federal financial assistance, the CAB believed it was a sound legal and policy judgment to apply the specific provisions of Subparts B and C only to those subsidized carriers who were subject to section 504. Section 404(a), standing alone, was judged to be too tenuous a legal basis for applying these provisions to nonsubsidized carriers.

The Paralyzed Veterans of America (PVA) sued the CAB, arguing that even nonsubsidized carriers received significant Federal assistance in the form of Federal Aviation Administration (FAA) air traffic control services and airport and airway improvement grants. Consequently, PVA said, all portions of the rule should apply to all carriers. The U.S. Court of Appeals for the District of Columbia agreed. The Department of Justice appealed this decision. The Supreme Court decided, in June 1986, that nonsubsidized carriers did not receive Federal financial assistance and, therefore, were not covered by section 504. The result of this decision was to leave Part 382 in effect, without change.

In response to the Supreme Court decision, Congress enacted the Air Carrier Access Act of 1986, which President Reagan signed into law on October 2, 1986. The Act amended section 404 of the Federal Aviation Act to prohibit discrimination on the basis of handicap by all air carriers. It also directed the Department to promulgate regulations to implement its provisions by January 31, 1987.

In August 1986, in response to correspondence from blind individuals and members of Congress, the Department published an informational notice requesting comment on a series of issues of concern to blind air travelers. The Department received several hundred comments on this notice, which are expected to form part of the basis for subsequent rulemaking actions to implement the Air Carrier Access Act of 1986.

Air carrier policies concerning disabled passengers have long been a troublesome and controversial subject. Many disabled passengers have objected to airline policies that they view as inconvenient, unnecessary, and discriminatory. Disabled passengers have also expressed concern about the seeming inconsistency of airline policies, asserting that it is often difficult for them to know, from one airline to the next or even from one terminal or flight crew to the next on the same airline, what conditions will be imposed on their ability to travel. Air carriers, on the other hand, believe that their policies are necessary for safety reasons.

The Department's experience in other rulemakings concerning the access of handicapped persons to transportation services suggests that it is difficult for the Department to draft a rule agreeable to all affected parties in this area. Consequently, we believe that an effort to negotiate the terms of a rule implementing the Air Carrier Access Act of 1986 could be worthwhile.

Regulatory Negotiation

The increasing complexity of some Government regulations, compounded by what some see as an increased formalization of the written rulemaking process, can make it difficult for an agency to develop a sound regulatory solution to some problems. The standard process often leads to participants developing adversarial relationships with each other. In this more formal structure, they may take extreme positions, withhold information from one another, or attack the legitimacy of opposing positions. The give and take sometimes necessary to develop a workable solution is not always possible through the comment and reply process. Public comments are often focused on finding problems with the proposals of others rather than helping to develop creative solutions.

With these problems in mind, participants often tell the agency that a "better rule could be developed if we could all just sit around a table and work it out." As the Administrative Conference of the United States has pointed out:

> Experience indicates that if the parties in interest were to work together to negotiate the text of a proposed rule, they might be able in some circumstances to identify the major issues, gauge their importance to the respective parties, identify the information and data necessary to resolve the issues, and develop a rule that is acceptable to the respective interests, all within the contours of the substantive statute.

As a result of research on this problem, the Administrative Conference adopted Recommendation 82–4, "Procedures for Negotiating Proposed Regulations," 47 FR 30708, June 16, 1982. The Administrative Conference's recommendation is essentially that agencies consider assembling a group of representatives of all affected interests who would be encouraged to reach consensus on a resolution of the issues and to draft for the agency head's consideration, the text of a proposed regulation. We agree with this recommendation. We have set forth below a set of suggested procedures that we believe will provide a mechanism by which the benefits of negotiation can be achieved. We also believe that the procedures provide the appropriate safeguards suggested by the Administrative Conference, "to ensure that affected interests have the opportunity to participate, that the resulting rule is within the discretion delegated by Congress, and that it is not arbitrary or capricious."

To ensure its legality, regulatory negotiation would be carried out by an advisory committee created under the Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C. app. 1. The purpose of regulatory negotiation is to have representatives of all affected interests fully discuss the issues under conditions that would provide incentives to narrow or eliminate their differences and to negotiate a proposed rule acceptable to each interest. The recommendation by the committee should be a proposal that reflects appropriate rulemaking objectives, including Executive Order 12291. The agency would take part in the discussions. Additionally, to facilitate this process, the agency will utilize the services of an impartial convenor or mediator to conduct the regulatory negotiation. While the agency is hopeful that this process will result in the issuance of an NPRM and, subsequently, a final rule that would be acceptable to most or all parties, the agency is committed to promulgating a rule to carry out the Air Carrier Access Act of 1986.

If this process fails, DOT will issue an NPRM based upon the complete regulatory record including the record of this process.

The Department used regulatory negotiation once before, in connection with the Federal Aviation Administration's Flight and Duty Time rulemaking. While the affected parties did not come to formal consensus on all issues, the negotiation process resulted in agreement on many issues and, in the Department's view, enabled it to successfully develop a materially improved final rule. The Department believes that regulatory negotiation can be useful in many contexts, including this one.

The Department has been heartened by the interest in regulatory negotiation on this rulemaking by many key parties. The PVA, along with several other groups representing disabled persons, took the initiative to request that the Department use regulatory negotiation to conduct the rulemaking on this subject. Air carrier industry groups we have informally contacted have indicated their willingness to participate as well.

Procedures and Guidelines

The following proposed procedures and guidelines would apply to this process, subject to appropriate changes made as a result of comments received on this notice or as are determined to be necessary during the negotiating process. It should be noted that several necessary preliminary steps have already been taken.

1. *Convenor/Mediator:* The Department is seeking the services of a convenor/mediator for the negotiating group. Upon determination by the Department (in consultation with the convenor/mediator) of the appropriate negotiating group, the convenor/mediator, a neutral third-party, would conduct the regulatory negotiation process and help it run smoothly. This individual is not involved with the substantive development or enforcement of this regulation. The convenor/mediator would chair the actual negotiations, participate in them, and be expected to offer alternative suggestions toward the desired consensus. He or she could also ask the parties to present additional material or to reconsider their position. Being "neutral" with respect to the end result, he or she can make some of the objective decisions that are necessary in determining the feasibility of negotiation for particular issues and in determining potential interests and participants.

2. *Feasibility:* The Department has examined the issues and interests involved and we have made a preliminary inquiry among representatives of the identified interests to determine whether it is possible to reach agreement on: (a) Individuals to represent those interests, (b) the preliminary scope of the issues to be addressed, and (c) a schedule for developing a notice of proposed rulemaking. The issues and interests are listed in subsequent sections of this document. On the basis of the regulatory history of the rulemaking and the preliminary inquiry, we believe that regulatory negotiation could be successful in developing a proposal and that the potential participants listed below could adequately represent the affected interests.

3. *Participants:* The number of participants in the negotiating group generally should not exceed 15; a number larger than this could make it difficult to have effective negotiations. One purpose of the present notice is to assist the Department in determining whether other interests, who would not be adequately represented by the proposed participants, may be substantially affected by the prospective rule. However, we do not believe that each potentially affected individual or organization must have its own representative. Rather, each interest should be adequately represented by the selected parties and the committee should be fairly balanced. Individuals and organizations who are not part of the committee (as well as staff or technical assistants to individuals who are sitting at the table) may attend committee sessions and confer with or provide their views to committee members.

4. *Good faith:* Participants must be willing to negotiate in good faith. In this regard, it is important that senior individuals within each organization, including the Department, be designated to represent that organization. No individual is required to "bind" the interests he or she represents, but the individual should be at a high enough level within his or her organization to "carry a lot of weight." The Department plans to issue the negotiated proposal in a notice of proposed rulemaking and, subsequently, a negotiated final rule, unless it is inconsistent with the statutory authority of the agency or other statutory requirements, or it is not appropriately justified. It is expected that, during the negotiating process, the participants will communicate to their respective organizations the progress of the negotiations. For the process to be successful, the interests represented should be willing to accept the final product of the advisory committee.

5. *Notice of intent to establish advisory committee and request for comment:* In accordance with the requirements of the Federal Advisory Committee Act, an agency of the Federal Government cannot establish or utilize a group of people in the interest of obtaining advice or recommendations unless that group is chartered as a Federal advisory committee in accordance with the requirements of the statute. It is the purpose of this notice to indicate our intent to create a Federal advisory committee as well as to—

a. Identify the issues we believe are involved in the rulemaking.

b. Identify the interests we believe are affected by those issues.

c. Identify the participants we have initially determined will adequately represent those interests in the negotiations; and

d. Ask for comment on the use of regulatory negotiation for this rulemaking and on whether the issues, parties, procedures, and guidelines are adequate and appropriate.

6. *Requests for representation:* If, in response to this notice, an additional person or interest requests membership or representation in the negotiating group, the Department would determine (i) whether that interest would be substantially affected by the rule, (ii) if so, whether it would be adequately represented by an individual already in the negotiating group, and (iii) whether, in any event, the requester should be added to the group or whether interests can be consolidated and still provide adequate representation.

7. *Final notice:* After evaluating comments and requests for representation received as a result of this notice, the Department would issue a final notice announcing the establishment of the Federal advisory committee, unless it determines that such action is inappropriate after reviewing the comments. After the Federal advisory committee is

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appropriately chartered, and notice is published in the **Federal Register**, the negotiation process would begin.

6. *Administrative support and meetings:* Staff support would be supplied by the Department. Meetings, at least initially, would be held in the Washington, DC, area.

9. *Consensus:* The goal of the negotiating process is consensus. Generally, consensus means that each interest should concur in the result. In this regard, a mediation service would be provided by the convenor/mediator to facilitate the negotiation process.

10. *Record of meetings:* In accordance with the requirements of the Federal Advisory Committee Act, the Department would keep a record of all meetings of the advisory committee. This record would be placed in the public docket for this rulemaking. Meetings of the committee would generally be open to the public, subject to space availability, and would be announced in the **Federal Register** before being held.

11. *Committee procedures:* Under the general guidance and direction of the convenor and subject to any applicable legal requirements, the committee would establish the detailed procedures for committee meetings that it deemed most appropriate.

12. *Notice of proposed rulemaking:* The objective of the committee is to prepare a report containing a notice of proposed rulemaking (NPRM) and preamble. The Department would make drafting assistance available to the committee. The report should also describe the factual material on which the group relied. If consensus is not obtained on some issues, the report should identify the areas of agreement, the areas in which consensus could not be reached, and the reasons for nonagreement. It is expected that, to the extent possible, the participants would address economic and regulatory flexibility requirements.

13. *Agency action on NPRM:* The Department would issue the proposed rule as prepared by the committee unless the agency finds that it is inconsistent with the statutory authority of the agency or other statutory requirements or it is not appropriately justified. In that event, the agency would explain the reasons for its decision. If the agency wishes to modify the negotiated proposal, it would do so in a way that allows the public to distinguish its modifications from what the group proposed.

14. *Final rule:* After the comments have been received on any notice of proposed rulemaking, the advisory committee would review the comments to determine whether its original recommendations to the agency should be modified. Any necessary changes would be negotiated by the committee in the same manner as the NPRM. The committee would prepare a final report, including a preamble responding to public comment and a proposed final rule. The final rule is the sole responsibility of the Secretary. It must be stressed that the Secretary wants to use the regulatory negotiation process and intends to use any negotiated rule on which there is a committee consensus, if it is practicable and legally proper for her to do so.

Major Issues

The Department has reviewed correspondence, comments responding to the August 1986 informational notice, the legislative history of the Air Carrier Access Act of 1986, and other available information and has tentatively identified major issues that would be considered as part of the regulatory negotiation. Other issues would be considered during the negotiation as they arose. Comments are invited concerning the appropriateness of these issues for consideration and concerning whether other issues should be added to this list.

1. *Coverage.* Should air taxi and charter operations be covered as well as those of major airlines and commuter carriers?

2. *Differences in rules.* How, if at all, should substantive regulatory provisions differ as applied to different types of carriers (e.g., major airlines, commuter carriers, air taxis) and/or different types and sizes of aircraft?

3. *Consistency.* To what extent should all carriers be required to have consistent policies and practices concerning travel by persons with a given disability?

4. *Differences in disability.* To what extent, and how, should carriers' practices be required to be specifically adapted to the needs of persons with various disabilities (e.g., blindness, mobility impairments)?

5. *Roles of carriers and airports.* How should the reponsibilities of air carriers and airport operators for accommodating the needs of disabled passengers be allocated?

6. *Definitions.* What definitions should be used for such terms as "handicapped person," "qualified handicapped person," and "facility"? Should additional terms be defined, and, if so, how?

7. *Carrier practices.* What Federal regulatory requirements, if any, should there be concerning the following matters or issues affecting air travel by disabled persons?

(a) Provision of information to persons with vision or hearing impairments (including reservations, terminal procedures, pre-flight and in-flight briefings, and emergency information).

(b) Conditions and procedures for refusal of service.

(c) Determinations concerning requirements for an attendant.

(d) Advance notice requirements for travel by disabled persons.

(e) Accommodation of dog guides.

(f) Conditions for the carriage and storage of artificial aids (e.g., canes, crutches, wheelchairs, including carriage of batteries for electric wheelchairs).

(g) Provision of ramps, wheelchairs, aisle chairs, medical oxygen, and other equipment to facilitate the travel of disabled persons (including whether there should be Federal standards for these or other devices used to assist disabled passengers).

(h) Charges for assistance or equipment provided to disabled travelers.

(i) Training of carrier personnel (including knowledge of the procedures concerning disabled passengers).

(j) Circumstances under which a carrier may require a disabled passenger to accept special assistance, if any.

(k) Seating restrictions (e.g., limitations by carriers on where disabled persons may sit in the aircraft, requirements that a disabled person must sit on a blanket).

(l) Procedures for enplaning (including preboarding), deplaning, and emergency evacuation as they affect disabled passengers.

(m) Reimbursement or replacement by airlines in cases of lost or damaged artificial aids or medical items.

8. *Relationship to other standards.* What relationship, if any, should these rules have with standards or policies of international organizations (e.g., the International Air Transport Association (IATA) and the International Civil Aviation Organization (ICAO)?

9. *Recordkeeping and reporting.* What recordkeeping and/or reporting requirements, if any, should there be through which the Department would monitor carrier compliance with these regulations?

10. *Enforcement.* What enforcement procedures should the Department use to ensure compliance with these rules (e.g., the present complaint/hearing/order mechanism of Part 382, a regulatory compensation scheme analogous to the denied boarding compensation rule, a right of civil action by the passenger, as in 14 CFR Part 253, etc.).

Interests Involved

The Department has tentatively identified the following interests to be represented in the negotiations to develop a rule to implement the Air Carrier Access Act of 1986. Comments are invited on any additional interests that should be represented.

1. Persons with disabilities:
(a) Mobility impaired persons.
(b) Vision-impaired persons.
(c) Persons with other types of disabilities (e.g., hearing disabilities, mental disabilities).
2. The air travel industry.
(a) Scheduled air carriers.
(b) Commuter airlines.
(c) Air taxis.
(d) Charter operators and carriers.
(e) Airport operators and aviation officials.
(f) Airline public contact personnel (e.g., ticket or reservation agents, flight attendants).
3. Federal government.

Potential Parties

It is important that the advisory committee be composed of persons with substantial expertise and divergent viewpoints on the various issues that would be discussed. The representatives also must be able to adequately represent their interests and be able to "speak for them" to the fullest extent possible.

The following is a list of organizations which the Department has tentatively identified as participants representing the various interests involved in this rulemaking:

1. Paralyzed Veterans of America.
2. National Federation of the Blind.
3. American Council of the Blind.
4. Society for the Advancement of Travel for the Handicapped.
5. National Council of Independent Living.
6. A representative of persons with mental disabilities.
7. A representative of persons with hearing impairments.
8. Air Transport Association (ATA).
9. Regional Airline Association.
10. National Air Taxi Association.
11. A representative of airport operators and aviation officials.
12. A representative of charter operators and/or carriers.
13. A representative of airline public contact personnel.
14. A representative of scheduled air carriers whose interests are not represented by ATA.
15. Office of the Secretary, Department of Transportation.

Comments are invited about the appropriateness of these participants for the negotiation. We also invite suggestions for other potential participants. Commenters should keep in mind that it is not necessary for every concerned organization to be represented, so long as every significant interest is represented. In addition, the number of participants representing clusters of interests (e.g., disabled persons, the air travel industry) should be balanced. Negotiation sessions will be open to members of the public, so individuals and organizations that are not represented at the table may attend all sessions and communicate informally with members of the advisory committee. The Department will make technical services (e.g., drafting and word-processing assistance) available to the participants.

Schedule

The Air Carrier Access Act of 1986 calls for the Department to promulgate a rule on this subject by January 31, 1987. Clearly, the proposed regulatory negotiation will not result in the publication of a final rule by this date. The Department believes that the participation of the concerned parties (including groups that played a key role in the enactment of the Air Carrier Access Act of 1986) in a regulatory negotiation has significant benefits that will substantially mitigate any problems caused by the additional time the process will take. However, the Department does seek comment on the issue of the timing of the process, as it relates to the time frame set forth in the Act.

The Department does believe that it is essential to come as close as possible to the time frame that Congress established. To this end, the Department proposes the following timetable for the regulatory negotiation process. The Department seeks comment on this proposed timetable for the rulemaking.

March 27, 1987—Notice establishing advisory committee; beginning of negotiations.

July 24, 1987—Conclusion of negotiations on notice of proposed rulemaking (NPRM).

August 21, 1987—Publication of NPRM, with 60-day comment period.

October 21, 1987—End of comment period; beginning of negotiations on final rule.

December 15, 1987—Conclusion of negotiations on final rule.

January 15, 1987—Publication of final rule.

The development of a final rule would depend on the comments received and their consideration by the advisory committee. Our experience indicates that the period of time between the publication of a proposed and a final rule can be significantly shortened in a successful regulatory negotiation. This expectation is reflected in the proposed timetable. Also, in order to minimize the possibility of delay because of the review required by Executive Order 12291, DOT has already taken steps to ensure the involvement of the Office of Management and Budget (OMB) during the process.

Failure of Advisory Committee to Agree on Recommendations

In the event that the advisory committee is unable to reach a consensus on a proposed NPRM for submission to the Department, the Department will promptly develop and publish for comment an NPRM implementing the Air Carrier Access Act in a manner it deems appropriate. Because of the importance the Department attaches to the timely promulgation of a rule on this subject, the Department has determined that, in the event the committee is unable to agree on a recommended NPRM by July 24, 1987, the Department may dissolve the committee and issue an NPRM on its own. The Department may dissolve the committee at an earlier time if the convenor/mediator believe that sufficient progress cannot be made or that an impasse has developed that cannot be resolved.

Issued this 13th day of February 1987, at Washington, DC.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 87-3779 Filed 2-20-87; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-277-76]

Miscellaneous Tax Matters; Withdrawal of Notices of Proposed Rulemaking; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to withdrawal notice.

SUMMARY: This document contains a correction to a withdrawal of notices of proposed rulemaking that appeared in the **Federal Register** on January 26, 1987 (52 FR 2724). That notice withdrew several notices of proposed rulemaking

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relating to Federal taxation that were published from 1970 through 1984. The list of withdrawn proposals contained an error.

FOR FURTHER INFORMATION CONTACT: Robert Beatson, 202–566–3459 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

During the development of the Tax Reform Act of 1986, the Internal Revenue Service and the Treasury Department intensively reviewed all regulations projects that were open as of July 1, 1986, to determine whether these projects should remain open or whether available Service and Treasury resources would be more efficiently utilized if some of those projects could be closed. As a result of that review, it was announced in the January 26, 1987, withdrawal notice that various circumstances warranted the closing of numerous regulations projects. Twenty-five notices of proposed rulemaking were withdrawn.

Need for Correction

As published, the withdrawal of notices of proposed rulemaking at 52 FR 2724 inadvertently included project number LR–9–75, proposed rules to clarify the definition of property which is a pollution control facility. It was not intended that proposed regulations LR–9–75 be withdrawn.

Correction of Publication

Accordingly, the publication of the withdrawal of notices of proposed rulemaking, which was the subject of FR Doc. 87–1653, is corrected as follows:

Paragraph 1. In the table on page 2725, the line that reads "LR–9–75...103 (b)(4)...To Clarify the Definition of Property which is a Pollution Control Facility...08–20–75 40 FR 36371" is removed.

Donald E. Osteen,

Director, Legislation and Regulations Division.

[FR Doc. 87–3737 Filed 2–18–87; 3:11 pm]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–3159–6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Notification of availability of data and request for comment.

SUMMARY: Today's notice announces the availability of waste sampling and ground-water monitoring data for U.S. Nameplate Company, Incorporated's on-site lagoon. This data was collected through EPA's spot-check verification sampling program in an effort to more fully characterize the waste included in U.S. Nameplate's delisting petition to exclude specific wastes from hazardous waste control. The data is contained in a report entitled "Hazardous Waste Delisting Support: Sampling Mission #2-U.S. Nameplate" prepared by ERCO/A Division of ENSECO Incorporated. The Agency requests public comment on this data in relation to the proposed denial of U.S. Nameplate's waste (see 51 FR 26428–26438, July 23, 1986).

DATES: EPA will accept public comments on this data until March 25, 1987. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this notice as it relates to the proposed denial of U.S. Nameplate's waste by filing a request with Bruce Weddle, whose address appears below, by March 10, 1987. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH–562), 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variance Section, Assistance Branch, PSPD/OSW (WH–563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this docket number: "F–87–USNN–FFFFF".

Requests for a hearing should be addressed to Bruce Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH–563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The public docket where this information can be viewed is located at the U.S. Environmental Protection Agency, 401 M Street SW. (sub-basement), Washington, DC 20460. The docket is open from 9:30 a.m. to 3:30 p.m. Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information, contact Ms. Lori DeRose, Office of Solid Waste (WH–563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–5096.

SUPPLEMENTARY INFORMATION: On July 23, 1986, the Agency proposed to deny a final exclusion to U.S. Nameplate Company, Incorporated under 40 CFR 260.20 and 260.22 (see 51 FR 26428–26438 and regulatory docket number "F–87–USNN–FFFFF"). During the public comment period for that proposal, the petitioner disagreed with waste and ground-water characterization data previously collected by the Agency. Subsequent to the publication of the proposed denial, the U.S. EPA conducted verification sampling and ground-water monitoring to more fully assess the characteristics of the waste. The samples collected included: 45 samples of the petitioned lagooned sludge; two ground-water samples; and two field bank samples. A discussion of all sampling activities and sampling results are contained in a summary report entitled "Hazardous Waste Delisting Support: Sampling Mission #2-U.S. Nameplate". A copy of this report has been included in the public docket for the Agency's proposed decision (see docket number "F–87–USNN–FFFFF"). The information and data contained in this report will be considered and used by the Agency in making its final decision on U.S. Nameplate's delisting petition.

Dated: February 17, 1987.

Susan Bromm,

Acting Director, Permits and State Programs Division.

[FR Doc. 87–3719 Filed 2–20–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86–499; FCC 86–587]

Radio and Television Broadcasting; Proposed Rules Relating to the Issues-Programs List for Noncommercial Educational Broadcasting Licensees

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to modify § 73.3527(a)(7) of the Commission's Rules relating to the noncommercial educational issues-programs list. The proposal would replace the existing quarterly list of 5 to 10 issues with a requirement that calls for a quarterly list of those programs that have provided the stations most significant treatment of community issues for the preceding three months. The proposed rule change will bring noncommercial rules into line with the Court of Appeals' concern with the previously required illustrative issues-programs list and conform noncommercial rules with those same requirements for commercial stations.

DATES: Comments must be filed on or before March 27, 1987, and reply comments on or before April 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Barbara A. Kreisman, Policy and Rules Division, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making* in MM Docket No. 86–499, FCC 86–587, adopted December 29, 1986 and released on January 26, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. In this proceeding, the Commission proposes to modify § 73.3527(a)(7) of the Commission's Rules relating to the noncommercial educational issues-programs list. The proposal would replace the present illustrative issues-programs list as was done for commercial stations. Under the revised rule, a noncommercial licensee is obliged, each quarter, to list those programs aired during the preceding quarter which, in the licensee's judgment, provided the station's most significant treatment of issues of concern to the broadcaster's community. This program record keeping obligation accommodates the Court of Appeals concern for the proper functioning of the petition to deny process and the FCC's own information needs. This requirement has been narrowly tailored to meet our regulatory needs and, therefore, is minimally burdensome to licensees. The proposed rule change will conform noncommercial rules with those same requirements for commercial stations.

2. This is a nonrestricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

3. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. section 603, adoption of these proposals would be minimally burdensome on small entities since the "significant treatment" issues-programs list has been narrowly tailored to meet the FCC's regulatory needs.

4. The Secretary shall cause a copy of the *Notice* to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. section 601 *et seq.* (1981).

5. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified requirement or burden upon the public. Implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

6. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415 and 1.419, interested parties may file comments on or before March 27, 1987, and reply comments on or before April 13, 1987. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A—Initial Regulatory Flexibility Analysis

I. Reason for Action

In this proceeding the Commission proposes to modify § 73.3527(a)(7) of its rules relating to the noncommercial educational issues-programs list to conform with the same requirements for commercial stations. The modification of those rules was initiated in response to concern expresed by the United States Court of Appeals that an illustrative issues-programs list did not further the Commission's stated regulatory goal of relying on effective public particiaption in the license renewal process.

II. Objective

Specifically, this proceeding proposes to amend § 73.3527(a)(7) by replacing the illustrative issues-programs list with a requirement that calls for a quarterly list of those programs that have provided the station's most significant treatment of community issues for the preceding three months.

III. Legal Basis

The legal basis for the Commission's engaging in rule making is contained in sections 4(i) and (j) and 303(r) of the Communications Act of 1934, as amended.

IV. Description, Potential Impact, and Number of Small Facilities Affected

This item would have a minimal impact on small noncommercial educational stations for the "significant treatment" alternative has been narrowly tailored to meet the FCC's regulatory needs and, therefore, is minimally burdensome to licensees. In the past, these stations have been required to place in their public files on a quarterly basis a list of from 5 to 10 community issues and the programming broadcast during the preceding three months that was responsive to the community issues. In repsonse to directives from the Court of Appeals, the Commission is proposing herein to replace the existing illustrative issues-programs list with one that sets forth the significant programming broadcast in response to community issues listed.

V. Recording, Record Keeping and Other Compliance Requirements

The modified list would be required to set forth the signficant programming in response to community issues broadcast during the quarter.

VI. Federal Rules which Overlap, Duplicate or Conflict with the Proposed Rules

There is no overlap, duplication, or conflict.

VII. Any Significant Alternatives Minimizing Impact On Small Entities And Consistent With Stated Objectives

There are none.

[FR Doc. 87–3728 Filed 2–20–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 80

[PR Docket No. 87-10; FCC 87-31; RM-5576]

Maritime Service; Proposed Amendment Permitting Installation of Radar Equipment on Voluntarily Equipped Ships by Non-Licensed Persons

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The proposed rule would permit installation of radar equipment on any voluntarily equipped ship by the station licensee or by any one who is under the supervision of the station licensee. In either case the person installing the radar equipment would not be required to have an FCC operator license. This action was initiated by a petition for rulemaking filed by SI-TEX Marine Electronics Inc. (SI-TEX). The effect of the proposed rule is to eliminate the need for persons who install radar equipment on voluntarlily equipped ships to have an FCC operator license.

DATES: Comments must be received on or before April 6, 1987, and reply comments must be received on or before April 21, 1987.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William P. Berges, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, adopted January 2, 1987 and released February 12, 1987. The full text of this Commission decision including the proposed rule change is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, NW., Washington, DC. The full text of this decision including the proposed rule change may also be purchased from the Commission's contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. In response to a petition for rulemaking (RM-5576) filed by SI-TEX the FCC proposes amending the rules in the maritime service to permit installation of radar equipment on voluntarily equipped ships by persons who do not have FCC operator licenses provided the installation is made by or under the supervision of the station licensee. However, any internal modifications of adjustments during or coincidental to the installation of radar which may affect its operation would still be required to be made by licensed personnel.

2. This is a non-restricted notice and comment rule making proceeding. See § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

3. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the proposed rule if promulgated will not have a significant economic impact on a substantial number of small entities. This action permits persons without FCC operator licenses to install radar equipment on ships not rquired to carry radar.

4. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

5. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before April 6, 1987, and reply comments on or before April 21, 1987. All re.evant and timely comments will be considered by the Commission before final action is taken in this proceeding.

6. This Notice of Proposed Rule Making is issued under the authority of 47 U.S.C. 154(i) and 303(g).

7. A copy of this Notice of Proposed Rule Making will be served on the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 80

Radio.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Proposed Rules

Part 80 of Chapter I of Title 47 of the Code of Federal Regulations would be amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. In § 80.177 a new paragraph (d) is added to read as follows:

§ 80.177 When operator license is not required.

* * * * *

(d) A radio operator license is not required to install a radar station on a voluntarily equipped ship if the installation is made by, or under the supervision of, the licensee of that ship station and if modifications or adjustments other than to the front panel controls are not made to the equipment.

[FR Doc. 87-3727 Filed 2-20-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87-03; Notice 1]

Federal Motor Vehicle Safety Standards; Headlamp Concealment Devices

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to amend Motor Vehicle Safety Standard No. 112, in response to Chrysler Corporation's alternative request for an interpretation or petition for rulemaking. The amendment would delete the requirement that during the opening of a concealed headlamp the headlamp beam may not project to the left of or above the position of the beam when the concealed headlamp device is fully open. The agency also asks comment upon Chrysler's suggested amendment which would not delete the requirement, but would create an exception to it.

DATES: Comment closing date is April 9, 1987. Effective date for the amendment would be 30 days after publication of the final rule in the **Federal Register.**

ADDRESS: Comments should refer to the docket number and notice number and be submitted to: Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 8 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Richard Van Iderstine, Office of Rulemaking, NHTSA, Washington, DC (202-366-5280).

SUPPLEMENTARY INFORMATION: Paragraph S4.5 of Safety Standard No. 112, *Headlamp Concealment Devices* states that "After December 31, 1969, the headlamp beam of headlamps that illuminate during opening and closing of the headlamp concealment device may not project to the left of or above the position of the beam when the device is fully opened". In the view of Chrysler Corporation, this requirement imposes a design restriction on those types of rotating headlamp systems "which, although they project a beam of light very slightly to the left during opening and closing do so at a point in their travel that does not produce glare in the eyes of oncoming drivers".

Chrysler specifically references its 1987 Dodge Daytona model which is equipped with a retracting headlamp system. In order to adapt the system to the car's front end sheetmetal, it was necessary to design the system so that in opening and closing it moves through "a laterally outboard 7 mm truncated arc". As a result, the right headlamp momentarily projects a beam of light to the left of center, which, however, is not above the position of the beam when the device is fully opened. Chrysler can meet the requirement through "incorporating a complex and costly electronic switching system to illuminate the headlamps only when they are fully opened and to turn out the light during opening and closing." Because it does not believe that the low candela of the lamp during its arc are sufficient to cause glare, Chrysler asked the agency for an interpretation that beams could project to the left "provided the photometric values for the glare test points of a fully opened headlamp are not exceeded. . . ." Alternatively, it petitioned for rulemaking to amend paragraph S4.5 to establish an exception to the prohibition of beam projection to the left. That exception would be "when the photometric values for the points above V=0 (glare test points) are not exceeded during any portion of the headlamp's travel". In a subsequent letter revising its original petition Chrysler requested amendment of paragraph S4.5 to establish an exception that would be "when the maximum allowable photometric values at the points at or above V=0.5 (glare test points) are not exceeded during any portion of the headlamp's travel." The significant difference in this revised petition is that the exception would now allow light intensities permitted by the standard, rather than limit the light intensity to that achieved by the specific lamp under test, at the regulated test points.

Because the prohibition in S4.5 is absolute, NHTSA is unable to provide an "interpretation" that would allow a deviation from its terms. However, the agency has reviewed Chrysler's alternative requests for rulemaking, and has decided to grant the manufacturer's petition. In the agency's opinion, however, either Chrysler's original proposed or revised amendment are problematic. Regardless of the motion of the beam during movement to the final position of the lamp, headlamp beams do not uniformly decrease in intensity from their hot spots (i.e., brightest part of beam) radially outward. Because small higher intensity areas randomly occur in larger areas of lower intensity, any concealed headlamp could produce higher intensities at various test points during its travel than when fully open. Therefore, even concealed headlamps that comply with Standard No. 112 could become noncompliant with a procedure that uses performance relative to the photometry in Standard No. 108 as the criterion, rather than performance relative to the lamp's own photometry when fully opened.

The safety problem that paragraph S4.5 is intended to address is the effect of transitory glare upon drivers of other motor vehicles. The agency believes that such effects are minimal in comparison with the incidence of glare that motorists already experience, such as created by oncoming upper beams, or by lower beams during changes in vehicle position (rounding corners) or attitude (coming over the brow of a hill) causing momentary "glare" with little ill effect. Although undue glare in any form is undesirable, and manufacturers should design their headlighting systems so that glare in any form is reduced, the agency has tentatively concluded that S4.5 represents a design restriction that is not required to serve the interests of motor vehicle safety.

Accordingly, the agency is proposing the deletion of paragraph S4.5. Although it does not believe that the detailed photometric measurement implied in the two amendments of S4.5 recommended by Chrysler, and quoted in a prior paragraph, is necessary for safety, NHTSA is nevertheless interested in soliciting comments from the public on Chrysler's suggested method.

Having proposed the deletion of S4.5, the agency also proposes that S4.6 be renumbered, and that reference to its effective date ("after December 31, 1969") be removed.

NHTSA has considered this proposal and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation" or significant under Department of Transportation regulatory policies or procedures, and that neither a regulatory impact statement nor a regulatory evaluation is required. Since use of concealed headlamp systems is optional and because the proposed amendment would relieve a restriction, the proposal would not impose additional requirements or costs but would permit manufacturers greater flexibility in the design of headlamp systems.

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. The proposal will have no effect upon the human environment since there will be no change in the weight and quantity of materials used in the manufacture of headlamp concealment devices.

The agency has also considered the impacts of this proposal in relation to the Regulatory Flexibility Act. I certify that this proposal would not have a significant economic impact upon a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles, those affected by the proposal, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Finally, small organizations and governmental jurisdictions would not be significantly affected since the price of new vehicles will be minimally impacted.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the

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proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Because of the necessity for the petitioner and other vehicle manufacturers to plan production on an orderly basis, it is tentatively found that an effective date earlier than 180 days after issuance of the final rule would be in the public interest.

The engineer and lawyer primarily responsible for this proposal are Richard Van Iderstine and Taylor Vinson, respectively.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR Part 571 and 571.11, Motor Vehicle Safety Standard No. 112, *Headlamp Concealment Devices*, be amended as follows:

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50, 501.8.

2. Paragraph S4.5 of § 571.112 would be removed.

3. Paragraph S4.6 of § 571.112 would be redesignated S4.5 and the phrase "after December 31, 1969" removed.

Issued on: February 18, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87-3760 Filed 2-18-87; 4:04 pm]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 52, No. 35
Monday, February 23, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

National Commission on Dairy Policy; Advisory Committee Meeting

Pursuant to provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meeting.

Name: National Commission on Dairy Policy.

Time and date: 9:00 a.m., March 2, 1987 and 8:00 a.m., March 3, 1987.

Place: March 2—State Capitol Building, Room 4202, Sacramento, California 95814; March 3—California Farm Bureau Federation, Board of Directors Room, 1601 Exposition Boulevard, Sacramento, California 95815.

Status: Open.

Matters to be considered: On March 2, the Commission will hold a public hearing to receive testimony on the dairy price support program, new dairy technologies, and the impact of the program and technologies on the family farm. The meeting on March 3 is expected to review the public hearing, discuss Commission matters with the new Executive Director, review and revise Commission by-laws, and discuss legislation to extend the Commissions reporting date.

Written statements may be filed before or after the meeting with: Contact person named below.

Contact person for more information: Mr. Floyd Gaibler, Assistant to the Secretary, Office of the Secretary, United States Department of Agriculture, Washington, DC 20250. (202) 447-3631.

Signed at Washington, DC, this 18th day of February 1987.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 87-3772 Filed 2-20-87; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census

Title: Survey of Public Institutions of Higher Education

Form number: Agency—F-15; OMB—NA

Type of request: New collection

Burden: 1,333 respondents; 440 reporting hours

Needs and uses: This survey will secure financial data from public institutions of higher education. The data will supplement data collected by the Department of Education, and will be used in calculating the GNP and in a statistical series on state and local government finances.

Affected public: State or local governments

Frequency: Quarterly, annually

Respondent's obligation: Voluntary

OMB desk officer: Don Arbuckle, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3721, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: February 13, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87-3715 Filed 2-20-87; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[A-301-602 and A-223-602]

Certain Fresh Cut Flowers From Colombia and Costa Rica; Postponement of Final Antidumping Duty Determinations

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: The final antidumping duty determinations involving certain fresh cut flowers from Colombia and Costa Rica are being postponed until not later than February 24, 1987.

EFFECTIVE DATE: February 23, 1987.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW. Washington, DC 20230; telephone (202) 377-3965.

SUPPLEMENTARY INFORMATION: On October 28, 1986, we made affirmative preliminary antidumping duty determinations that certain fresh cut flowers from Colombia and Costa Rica are being, or are likely to be, sold in the United States at less than fair value (Colombia: 51 FR 39887, November 3, 1986, Costa Rica: 51 FR 39890, November 3, 1986). The notices state that we would issue our final determinations by January 12, 1987.

On November 3, 1986, counsel for the respondents in both investigations requested that the Department extend the period for the final determination for 30 days, *i.e.*, until not later than 105 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act). On November 24, 1986, the extensions were granted (Colombia: 51 FR 43649, December 3, 1986, Costa Rica: 51 FR 43650, December 3, 1986).

On January 30, 1987, counsel for the respondents in the Colombian investigation requested that the Department extend the period for the final determination for eight additional days, *i.e.*, until not later than 113 days after the date of publication of the preliminary determination, in accordance with 735(a)(2)(A) of the Act.

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On February 9, 1987, counsel for the respondents in the Costa Rican investigation also requested an extension of eight additional days. The respondents are exporters who account for a significant portion of the exports of the merchandise under investigation. If exporters who account for a significant portion of the exports of the merchandise under investigation properly request an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, the period for the final determinations in these cases is hereby extended. We intend to issue the final determinations not later than February 24, 1987.

Scope of Investigation

The products covered by these investigations are fresh cut miniature (spray) carnations, currently provided for in item 192.17 of the *Tariff Schedules of the United States* (TSUS), and standard carnations, standard and pompon chrysanthemums, alstroemeria, gerbera, and gypsophila, currently provided for in item 192.21 of the TSUS.

The United States International Trade Commission is being advised of these postponements in accordance with section 735(d) of the Act.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

February 17, 1987.

[FR Doc. 87-3784 Filed 2-20-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-014]

Tuners (of the Type Used in Consumer Electronic Products) From Japan; Final Results of Antidumping Duty Administrative Review and Revocation in Part

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review and revocation in part.

SUMMARY: On January 13, 1987, the Department of Commerce published the preliminary results of its administrative review, tentative determination to revoke in part, and intent to revoke in part the antidumping finding on tuners (of the type used in consumer electronic products) from Japan. The review covers three manufacturers and/or exporters of this merchandise to the United States and generally the period December 1, 1981 through November 30, 1985.

We gave interested parties an opportunity to comment on the preliminary results, tentative determination to revoke in part, and intent to revoke in part. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results and we revoke the finding with respect to merchandise produced and exported by Alps Electric Co., Ltd. and Mitsumi Electric Co., Ltd.

EFFECTIVE DATE: February 23, 1987.

FOR FURTHER INFORMATION CONTACT: Edward Haley or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5289/5255.

SUPPLEMENTARY INFORMATION:

Background

On January 13, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 1351) the preliminary results of its administrative review, tentative determination to revoke in part, and intent to revoke in part the antidumping finding on tuners (of the type used in consumer electronic products) from Japan (35 FR 18914, December 12, 1970). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("The Tariff Act").

Scope of the Review

Imports covered by the review are shipments of tuners (of the type used in consumer electronic products) consisting primarily of television receiver tuners and tuners used in radio receivers such as household radios, stereo and high fidelity radio systems, and automobile radios. They are virtually all in modular form, aligned and ready for simple assembly into the consumer electronic product for which they were designed. The term "consumer electronic products" includes television sets, radios, and other electronic products of the type commonly bought at retail by household consumers, whether or not used in or around the household. Excluded are complete stereophonic tuners which are consumer products themselves, but not excluded are modular-type stereophonic tuners. Tuners covered by the finding are currently classifiable under items 685.0200 and 685.3277 of the Tariff Schedules of the United States Annotated.

The review covers three manufacturers and/or exporters of Japanese tuners to the United States and generally the period December 1, 1981 through November 30, 1985.

Final Results of Review and Revocation in Part

We invited interested parties to comment on the preliminary results, tentative determination to revoke in part, and intent to revoke in part. We received no comments. Based on our analysis, the final results of review are the same as those presented in the preliminary results of review, and we determine that no margins exist during the periods indicated:

Manufacturer-exporter	Time period
Alps Electric Co., Ltd.	12/01/82-06/22/84
Mitsumi Electric Co., Ltd.	[1] 12/01/82-06/22/84
Shin-Shirasuna Corp.	[1] 12/01/81-11/30/85

[1] No shipments during the period.

For the reasons set forth in the preliminary results of review, tentative determination to revoke in part, and intent to revoke in part, we are satisfied that there is no likelihood of resumption of sales at less than fair value by Alps or Mitsumi. Accordingly, we revoke the antidumping finding on tuners (of the type used in consumer electronic products) from Japan with respect to Alps Electric Co., Ltd. and Mitsumi Electric Co., Ltd.

This partial revocation applies to all unliquidated entries of this merchandise manufactured and exported by Alps or Mitsumi and entered, or withdrawn from warehouse, for consumption on or after June 22, 1984, the date of our tentative determination to revoke with respect to these firms.

The Department will instruct the Customs service not to assess antidumping duties on all appropriate entries. Further, in accordance with section 751(a)(1) of the Tariff Act, the Department shall not require a cash deposit of estimated antidumping duties for Shin-Shirasuna. For any shipments from the remaining known manufacturers and /or exporters not covered by this review, a cash deposit shall be required at the rates published in the final results of the last administrative review for each of those firms. For any shipments from a new exporter, whose first shipments occurred after November 30, 1985 and who is unrelated to any reviewed firm, or previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Japanese tuners (of the type used in consumer electronic products) entered, or withdrawn from warehouse, for consumption on or after

the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review, revocation in part, and notice are in accordance with section 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1) and (c)) and sections 353.53a. and 353.54 of the Commerce Regulations (19 CFR 353.53a and 353.54).

Dated: February 16, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-3785 Filed 2-20-87; 8:45 am]

BILLING CODE 3510-DS-M

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: February 23, 1987.

FOR FURTHER INFORMATION CONTACT: William L. Matthews or Richard W. Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5253/2786.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with §§ 353.53a(a)(1), (a)(2), (a)(3), and 355.10(a)(1) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements.

Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews no later than February 29, 1988.

Antidumping duty proceedings and firms	Periods to be reviewed
Anhydrous Sodium Metasilicate from France: Rhone-Poulenc	1/1/86-12/31/86
Cell-site Transceivers from Japan: Kokusai	1/1/86-12/31/86
Potassium Permanganate from Spain: Asturquimica	1/1/86-12/31/86

Countervailing duty proceedings	Periods to be reviewed
Nonrubber Footwear from Argentina	1/1/86-12/31/86
Certain Red Raspberries from Canada	1/9/86-12/31/86
Roses and Other Cut Flowers from Colombia	1/1/86-12/31/86
Truck Trailer Axle-and-Brake Assemblies from Hungary	1/1/86-12/31/86
Fabricated Automotive Glass from Mexico	1/1/86-12/31/86
Stainless Steel Wire Rod from Spain	1/1/86-12/31/86
Carbon Steel Wire Rod from Trinidad/Tobago	1/1/86-12/31/86

Interested parties are encouraged to submit applications for administrative protective orders as early as possible in the review process.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and §§ 353.53a(c) and 355.10(c) of the Commerce Regulations (19 CFR 353.53a(c), 355.10(c)).

Dated: February 16, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-3786 Filed 2-20-87; 8:45 am]

BILLING CODE 3510-DS-M

Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee will be held March 10, 1987, at 9:30 a.m. at the Department of Commerce, Room 5230, 14th and Constitution Avenue, NW., Washington, DC 20230. The Committee advises the Office of Technology and Policy Analysis, Export Administration, with respect to technical questions which affect the level of export controls applicable to computer peripherals, components and related test equipment or technology.

General Session

1. Opening remarks by the Chairman.
2. Introduction of public attendees and invited guests.
3. Reports of the Subcommittees.
4. Presentation by MiniScribe Corporation.
5. Discussion of:
   a. Public rulemaking;
   b. ECCN 1565 (graphic display equipment);
   c. Technical data regulations (Section 379 of the EAR);
   d. Strategic use of magnetic tape (including video and computer);
   e. Cipher Data proposal concerning decontrol parameters for one half inch streamer tape drives;
   f. When disc drives qualify for G-COM treatment and when they do not;
   g. How we control disc drive systems embedded in unembargoed systems;
   h. Recommendations concerning relaxation of export controls on commodities currently under control to the People's Republic of China—particularly ECCNs 1565 and 1572.
6. New Business.

Executive Session

7. Discussions of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on January 10, 1986, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377-4217. For further information or copies of the minutes contact Ruth Fitts at (202) 377-2583.

Dated: February 17, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 87-3757 Filed 2-20-87; 8:45 am]

BILLING CODE 3510-DT-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Bilateral Textile Consultations With the Government of the People's Republic of China Concerning Cotton and Man-Made Fiber Textile Products in Categories 369-D and 604-A+W

February 18, 1987.

The Chairman of the Committee for the Implementation of Textile

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Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 20, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566–6828. For information on embargoes and quota re-openings, please call (202) 377–3715. For information on categories on which consultations have been requested call (202) 377–3740.

Background

On November 25, 1986, pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, the Government of the United States requested consultations concerning imports into the United States of cotton dish towels in Category 369–D (only T.S.U.S.A. numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440, and 366.2860) and man-made fiber acrylic spun yarn in Category 604–A+W (only T.S.U.S.A. numbers 310.5049 and 310.6045), produced or manufactured in China and exported to the United States.

Summary market statements concerning these categories follow this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Anyone wishing to comment or provide data or information regarding the treatment of Categories 369–D and 604–A+W under the agreement with the People's Republic of China, or in any other aspect thereof, or to comment on domestic production or availability of textile products included in the categories, is invited to submit such comments or information in ten copies to Mr. Ronald I. Levin, Acting Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs functions of the United States."

Pursuant to the terms of the bilateral agreement, the People's Republic of China is obligated under the consultation provision to limit its exports to the United States of cotton and man-made fiber textile products in the following categories during the ninety-day period which began on November 25, 1986 and extends through February 22, 1987 to the following levels:

Category	Ninety-day restraint level
369–D	2,216,913 pounds
604–A+W	319,994 pounds

The People's Republic of China is also obligated under the bilateral agreement, if no mutually satisfactory solution is reached during consultations, to limit its exports to the United States during the twelve-months following the ninety-day consultation period (February 23, 1987–February 22, 1988) to the following levels:

Category	Twelve-month restraint level
369–D	7,543,914 pounds
604–A+W	260,546 pounds

The United States Government has decided, pending a mutually satisfactory solution, to control imports of textile products in Categories 369–D and 604–A+W exported furing the ninety-day period at the levels described above. The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register**.

In the event the limits established for Categories 369–D and 604–A+W for the ninety-day period are exceeded, such excess amounts, if allowed to enter at the end of the restraint period, shall be charged to the levels defined in the agreement for the subsequent twelve-month period.

SUPPLEMENTARY INFORMATION: On December 30, 1985 a letter to the Commissioner of Customs was published in the **Federal Register** (50 FR 53182) from the Chairman of the Committee for the Implementation of Textile Agreements which established restraint limits for certain categories of cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1986. The notice which preceded that letter referred to the consultation mechanism which applies to categories of textile products under the bilateral agreement, such as Categories 369–D and 604–A+W, which are not subject to specific ceilings and for which levels may be established during the year. In the letter to the Commissioner of Customs which follows this notice, ninety-day levels are established for these categories.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—China

Category 369 Pt.—Cotton Dish Towels

November 1986.

Summary and Conclusions

United States imports of cotton dish towels—Category 369 Pt.—from China were 6,334 thousand pounds (3,720 thousand dozen) during the year ending September 1986, up 23 percent from the 5,144 thousand pounds (3,065 thousand dozen) imported a year earlier. China is the largest supplier of these dish towels, accounting for 38 percent of the total imports.

The sharp and substantial increase of low-valued imports of Category 369 Pt. dish towels from China is disrupting the U.S. market.

Production and Market share

U.S. production of cotton dish towels declined 19 percent from 8,149 thousand dozen in 1984 to 6,612 thousand dozen in 1985. this downward trend continued into 1986. During the first half of 1986, production dropped 12 percent below the level in the comparable period of 1985.

The U.S. producers' share of the market for domestically produced and imported dish towels declined sharply, dropping from 54 percent in 1984 to 45 percent in 1985. The U.S. market share fell to 36 percent in the first half of 1986.

Imports and Import Penetration

U.S. imports of Category 369 Pt. dish towels from all sources increased 73 percent in 1984 and another 34 percent in 1985 reaching a record level 14,016 thousand pounds (8,216 thousand dozen). Imports for the first nine months of 1986 were up 24 percent over the comparable period in 1985.

The ratio of imports to domestic production more than doubled, increasing from 58 percent in 1983 to 124 percent in 1985. The ratio continued to rise dramatically in the first half of 1986, reaching 177 percent.

Import Values

During the period January-September 1986, 72 percent of China's Category 369 Pt. dish towel imports entered under TSUSA 366.2860. The duty-paid landed values of Category 369 Pt. dish towels from China are well below the U.S. producers' prices for comparable dish towels.

Market Statement—China

Category 604 Part—Spun Plied Acrylic Yarns

November 1986.

Sumary and Conclusions

U.S. imports of Category 604 part—spun plied acrylic yarns—from China totaled 914,268 pounds during the period of January-September 1986, a sudden development considering that prior to 1986, there were no imports of these yarns from China. In less than a year, China has become the eighth largest supplier of these products to the United States.

The large and sudden increase in imports of Category 604 part from China is disrupting the U.S. market for spun plied acrylic yarns.

U.S. Shipments and Market Share

U.S. shipment of spun plied acrylic yarn has been on the decline since 1981. U.S. shipments in 1985, although up slightly from 1984, were down 5 percent from the 1982–83 average level and 18 percent below the 1981 level. The U.S. producers' share of the market fell to 60 percent in 1985, down from an average 67 percent in 1982–83 and 77 percent in 1981.

Imports and Import Penetration

During the period 1981–1985 imports of plied acrylic yarns increased by 80 percent, reaching 24.8 million pounds in the latter year, a record level. Imports continue to increase in 1986, up 40 percent in the first nine months over the same period in 1985. The ratio of imports to domestic shipments of plied acrylic yarns increased more than two-fold, from 30.8 percent in 1981 to 67.8 percent in 1985.

Import Values

Category 604 part imports from China are entered under TSUSA No. 310.5049, spun plied acrylic yarn. The duty-paid landed values of these imports from China are below the U.S. producer prics for comparable yarn.

Committee for the Implementation of Textile Agreements

February 18, 1987.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Agreement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended and extended, between the Governments of the United States and People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 20, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 369-D [1] and 604-A+W [2], produced or manufactured in the People's Republic of China, and exported during the ninety-day period which began on November 25, 1986 and extends through February 22, 1987, in excess of the following levels of restraint [3]:

Category	Ninety-day restraint level
369-D	2,216,913 pounds
604-A+W	319,994 pounds

Textile products in Categories 369-D and 604-A+W which have been exported to the United States prior to November 25, 1986 shall not be subject to this directive.

Textile products in Categories 369-D and 604pt. which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

[1] In Category 369, only TSUSA numbers 365.6615, 366.1720, 366.1740, 366.0220, 366.2040, 366.2420, 366.2440 and 366.2860.

[2] In Category 604, only TSUSA numbers 301.5049 and 310.6045.

[3] The limits have not been adjusted to account for any imports exported after November 24, 1986.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–3706 Filed 2–20–87; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Revision

Acquisition Management Systems and Data Requirements Control List, 0704–0188

(AMSDL), DoD 5010.12–L

The AMSDL is a listing of data acquisition documents (information collection requests) utilized in DoD contracts. Information collection requests contained in these contracts number 2,095. These information collection requests from the public (contractors) are necessary for the Government to support the design, test, manufacture, training, operation, maintenance, and logistical support of items of defense materiel being acquired under the provisions of the Armed Services Procurement Act, Title 10, U.S.C.

Business or other for profit; non-profit institutions and small businesses/ organizations

Responses 1,598,485

Burden hours 175,833,350

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ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone number (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Carl L. Berry, DDMO, 5203 Leesburg Pike, Suite 1403, Falls Church, Virginia 22041-3466, telephone (703) 756-2554/5.

Linda Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 18, 1987.

[FR Doc. 87-3710 Filed 2-20-87; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review.

ACTION: Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Revision

DoD FAR Supplement—Part 4, Administrative Matters and Part 52.204 (0704-0225).

DoD FAR Supplement Part 204.202(c), 204.471, 204.72 and 52.204-7006.

Part 204 of the DoD FAR Supplement and the clause at 252.204-7006, Very High Speed Integrated Circuits Technology Security Program, require contractors to be certified that they are in compliance with special security procedures for VHSIC-sensitive information and/or program products. These procedures include notification requirements on subcontractors to be certified and recordkeeping requirements regarding training, personnel access and receipts for incoming and outgoing VHSIC-sensitive information and/or program products.

Businesses or other for profit.

Responses: 101,603.

Burden hours: 13,142.

ADDRESS: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Owen Green, DAR Council, ODASD(P)DARS, c/o OASD (A&L)(MRS), Room 3C841, The Pentagon, Washington, DC 20301-3062, telephone (202) 697-7266.

Linda Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 18, 1987.

[FR Doc. 87-3711 Filed 2-20-87; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Computer Applications to Training and Wargaming; Change in Location of Meeting

ACTION: Change in Location of Advisory Committee Meeting Notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Computer Applications to Training and Wargaming scheduled for February 17-19, 1987 as published in the **Federal Register** (Vol. 51, No. 15, Page 2578-9, Friday, January 23, 1987, FR Doc. 87-1580) will be held in Fort Lewis, Washington, and at the Boeing Aerospace Corporation, Seattle, Washington. In all other respects the original notice remains unchanged.

Linda Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 87-3712 Filed 2-20-87; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on LHX Requirements; Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on LHX Requirements will meet in closed session on April 27, 1987 at the MITRE Corporation, McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defesne and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will evaluate the Army's current requirements for the LHX helicopter.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense

February 18, 1987.

[FR Doc. 87-3714 Filed 2-20-87; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Low Observable Technology; Cancellation of Meeting

ACTION: Cancellation of Meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Low Observable Technology for February 25, 1987 as published in the **Federal Register** (Vol. 51, No. 205, Page 37629, Thursday, October 23, 1986, FR Doc. 86-23948.) has been cancelled. In all other respects the original notice remains unchanged.

Linda Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 18, 1987.

[FR Doc. 87-3713 Filed 2-20-87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Date of meeting: Tuesday, 16 March 1987.

Times of meeting: 0900-1800 hours.

Place: Rockwell International Corporation, Advanced Systems Development, 2230 East Imperial Highway, El Segundo, California 90245.

Agenda: The Army Science Board Ad Hoc Subgroup for Effectiveness Review of ARDEC will meet for the purpose of preparing the report on the Effectiveness Review of ARDEC in Dover, New Jersey. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87-3674 Filed 2-20-87; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of meeting: 12-13 March 1987.

Times of meeting: 0900-1700 hours, 12 March 1987; 0800-1200 hours, 13 March 1987.

Place: Lincoln Labs, MIT, Boston, Massachusetts.

Agenda: The Army Science Board Ad Hoc Subgroup for Ballistic Missile Defense Follow-On will meet for briefings and discussions on Lincoln Lab Overview, Free Electron Laser, Replica Decoys, and KREMS. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87-3673 Filed 2-20-87; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board.

Dates of Meeting: 11-13 March 1987.

Times of Meeting: 1800-2130, 11 March 1987; 0830-1630, 12 March 1987; 0830-1330, 13 March 1987.

Place: Headquarters, US Army Signal Center and School, Fort Gordon, Georgia.

Agenda: The Army Science Board's Ad Hoc Panel on Army Information Management Concepts and Architecture will meet to gather facts for its study. On the first day, the panel will conduct a working dinner with Commander, USASCS, to be held at the Fort Gordon Officers' Club. On the second and third days of the meeting the panel will hear briefings on Information Management, TRADOC IMA roles and functions, and tour facilities belonging to the Director of Information Management. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner Permitted by the committee. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87-3672 Filed 2-20-87; 8:45 am]

BILLING CODE 3710-08-M

Defense Logistics Agency

Cooperative Agreements Revised Procedures

AGENCY: Defense Logistics Agency, DoD.

ACTION: Cooperative Agreements; Proposed Revised Procedures.

SUMMARY: This proposed revised procedure implements Chapter 142, Title 10, United States Code, as amended, which authorizes the Secretary of Defense, acting through the Director Defense Logistics Agency (DLA), to enter into cost sharing Cooperative Agreements to support procurement technical assistance programs established by state and local governments and private non-profit organizations. Subpart III of this issuance establishes the administrative procedures proposed to be implemented by the Defense Logistics Agency (DLA) to enter into such agreements for this purpose.

DATES: Comments will be accepted until March 23, 1987. Proposed Effective Date: March 30, 1987.

FOR FURTHER INFORMATION CONTACT: Sim Mitchell, Program Officer, Office of Small & Disadvantaged Business Utilization (DLA-UM), Defense Logistics Agency, Alexandria, VA 22304-6100, Telephone (202) 274-6471.

I. Background Information

The Department of Defense (DoD) has developed programs designed to expand the industrial base and increase competition for its requirements for goods and services, thereby reducing the cost of maintaining a strong national security. Its efforts to increase competition among the private sector have been supplemented by many state and local governments and other entities where their interest in improving the business climate and economic development in their communities is compatible with these DoD objectives To assist in furthering this mutual interest, a Cooperative Agreement Program has been established by which the DoD can share the cost of supporting existing procurement technical assistance programs being conducted by state and local governments and private non-profit organizations and encourage other state and local governments and private non-profit organizations to consider establishing similar programs in their communities.

The Fiscal Year (FY) 1985 DoD Authorization Act, Pub. L. 98-525, amended Title 10, United States Code, by adding a Chapter 142 which authorized the Secretary of Defense, acting through the Director, Defense Logistics Agency (DLA), to enter into cooperative agreements with state and local governments (hereinafter referred to as eligible entities as defined in Section 3 of this procedure) to establish and conduct a procurement technical assistance program during FY 85. Title 10, United States Code as amended provides for continuation of the program during FY 87.

The Congress has authorized a total of $6 million to support the program during FY 87. Of this total, $3,000,000 is to be divided between existing programs and new starts on a 75% and 25% basis, with the remaining $3 milion being available for either existing programs or new starts. Each of the nine Defense Contract Administration Services Regions (DCASRs) within DLA will be authorized to award approximately $633,333 of the $6 million authorized for FY 87 as its share of program costs to applicants within the geographic area under their cognizance to support existing programs and new starts. In cases where the area being or to be serviced by the eligible entity encompasses more than one DCASR's area of geographic cognizance, eligible entities are to submit their proposals to the one DCASR having cognizance over the preponderant part of the area being or to be serviced. Only one proposal will be accepted from a single eligible entity. The addresses and geographic areas under the cognizance of each of the DCASRs, together with the name of the Associate Director for Small Business who is designated the Cooperative Agreement Program Manager, follows:

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State or Area	DCASR	Associate Director for Small Business
Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico	DCASR Atlanta, 805 Walker Street, Marietta, GA 30060-2789, Room Number 104	Mr. Harold Watson, Telephone (404) 429-6195, Toll Free 1-800-331-8415 (GA Only); 1-800-551-7801
Connecticut (except Fairfield County) Maine, New Hampshire, Massachusetts, New York (All Counties except Bronx, Dutchess, Kings, New York, Nassau, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester), Rhode Island, Vermont	DCASR Boston, 495 Summer Street, Boston, MA 02210-2184, Located on 8th Floor	Mr. Edward J. Fitzgerald, Telephone (617) 451-4318, Toll Free 1-800-321-1661
Illinois, Indiana, Wisconsin	DCASR Chicago, O'Hare Int'l Airport, P.O. Box 66475, Chicago, IL 60666-0475, Room Number 107	Mr. James L. Kleckner, Telephone (312) 694-6020, Toll Free 1-800-637-3848 (IL Only); 1-800-826-1046
Kentucky, Michigan, Ohio, Pennsylvania (Crawford, Erie, and Mercer Counties only)	DCASR Cleveland, Federal Office Bldg., 1240 East 9th Street, Cleveland, OH 44199-2063, Room Number 1849	Ms. Wilma R. Combs, Telephone (216) 522-5122, Toll Free 1-800-551-2785
Arizona, Arkansas, Louisiana, New Mexico, Oklahoma, Texas	DCASR Dallas, 1200 Main Street, Dallas, TX 75202-4399, Room Number 640	Mr. Kenneth E. Streck, Telephone (214) 670-9205
Alaska, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington	DCASR Los Angeles, 222 N. Sepulveda Blvd, El. Segundo, CA, 90045-4320, Room Number 302	Ms. Mana R. Seckler (Actg), Telephone (213) 335-3260, Toll Free: 1-800-624-7372 (Alaska, Hawaii, Idaho, Nevada, Oregon, and Washington) (CA Only), 1-800-251-5285
Connecticut (Fairfield County Only), New Jersey (Northern 12 Counties), New York, (Bronx, Dutchess, Kings, New York, Nassau, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Ulster, and Westchester Counties only)	DCASR New York, 201 Varick St., New York, NY, 10014-4811, Room Number 1061	Mr. John E. Mulreany, Telephone (210) 807-3050, Toll Free 1-800-251-8969
Delaware, District of Columbia, Maryland, New Jersey (Except for Northern 12 Counties), Pennsylvania, (All counties except Crawford, Erie and Mercer), Virginia, West Virginia	DCASR Philadelphia, 2800 South 20th St., P.O. Box 7478, Philadelphia, PA, 19101-7478, Room Number 129	Mr. Roger C. Rhyner, Telephone (215) 952-4006, Toll Free 800-258-9503 (New Jersey, Delaware, Maryland, Virginia, West Virginia, and District of Columbia) (PA Only) 800-843-7694
Colorado, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Utah, Wyoming	DCASR St. Louis, 1136 Washington Ave., St. Louis, MO, 63101-1194, Third Floor	Mr. Thomas G. Moore, Telephone (314) 263-8617, Toll Free 800-325-3419

Additional Limitations placed on these funds follow:

(a) DoD cost sharing shall not exceed 50% of the total cost of a single program, excluding any Federal funds, except that the DoD share may be increased to no more than 75% for that portion of an existing program or new start that qualifies solely as a distressed area. In no event, shall the DoD share of the total program cost exceed $150,000.

(b) Eligible entities are not to subcontract more than 10% of their total costs for private consulting services to support the program.

The DoD presently provides procurement and technical assistance to business firms through its network of Small Business Specialists located in industrial centers around the country. The Associate Directors of Small Business located in these industrial centers at the DCASRs will be available to provide eligible entities such assistance as necessary to explain and interpret the solicitation requirements when issued and to provide general guidance in preparing proposals.

Procurement technical assistance given to clients for marketing their goods and services to other Federal Agencies and/or state and local governments will not be considered when evaluating proposals. However, eligible entities are encouraged to consider supplementing their DoD program to include those marketing opportunities for business firms located in the area being or to be serviced.

The purpose of this proposed revised procedure is to make available to all eligible entities the prerequisite requirements and policies which govern the award of cooperative agreements by the DLA. This procedure is necessary to establish a permanent procedure which governs the award and administration of cooperative agreements.

Although this procedure will affect all eligible entities desiring to enter into a cooperative agreement with DLA, the DLA has determined that this rule does not involve a substantial issue of fact or law, and that it is unlikely to have a substantial or major impact on the Nation's economy or large numbers of individuals or businesses. This determination is based on the fact that this proposed Cooperative Agreement Procedure implements policies already published by the Office of Management and Budget pursuant to Chapter 63, Title 31, United States Code, Using Procurement Contracts and Grant and Cooperative Agreements. In addition, DLA Cooperative Agreements will be entered into pursuant to the authorities and restrictions contained in the annual DoD Authorization and Appropriation Acts.

II. Other Information

The language contained in the current Cooperative Agreement Procedure limited the period of coverage to the FY 86 Program in that it addressed the FY 86 Authorization Act requirements in specific terms, including the exact dollar amounts of funding applicable to the Program. This proposed revision to the procedure will provide general guidance for cooperative agreements entered into by the DLA and will become a permanent document for the duration of the FY 87 programs.

DLA has determined that the proposed procedure does not involve substantial issues of fact or law and the regulation is unlikely to have a substantial or major impact on the Nation's economy or large numbers of individuals or businesses. Therefore, public hearing were not conducted.

Since this is DLA's permanent procedure covering cooperative agreements pursuant to 31 U.S.C. 6301 et seq. using Procurement Contracts and Grant and Cooperative Agreements, additional comments are invited on the procedure and are to be submitted to the Defense Logistics Agency, ATTN: DLA-UM, Cameron Station, Alexandria, VA 22304-1600. All comments received by 23 March 1987 will be evaluated to determine if any revisions should be made to Subpart III.

Issued in Alexandria, VA on February 19, 1987.

For the Defense Logistics Agency.

Ray W. Dellas,

Staff Director, Office of Small and Disadvantaged Business Utilization.

III. Proposed Revision to DLA Procedure—Cooperative Agreements

1. Scope.

(a) This procedure implements Chapter 142 of Title 10, United States Code, as amended, and establishes requirements for the award and administration of Cost Sharing Cooperative Agreements entered into between the Defense Logistics Agency (DLA) and eligible entities. Under these agreements Department of Defense (DoD) financial assistance will be provided to recipients. Such assistance will cover the DoD share of the cost of establishing new and/or maintaining existing Procurement Technical Assistance (PTA) Programs for furnishing PTA to business entities.

(b) A cooperative agreement is a binding legal instrument which reflects a relationsip between the DLA and a

cooperative agreement recipient for the purpose of transferring money, property, services or anything of value to the recipient for the accomplishment of the requirements described therein. The requirement shall be authorized by Federal statute and substantial involvement shall be anticipated between the DLA and the recipient during performance of the agreement.

(c) When proposals for cooperative agreements are obtained through the issuance of a DLA Solicitaiton of Cooperative Agreement Proposals, hereinafter referred to as a SCAP, the contents of this regulation shall be incorporated in part or in whole, into the program solicitation for the purpose of establishing administrative provisions for the execution and administration of DLA Cooperative Agreements. Program solicitations may include additional administrative provisions when such provisions are required by program legislation or program regulations not included herein.

(d) The DoD share of an eligible entity's proposal and award recipient's total program cost (TPC) shall not exceed 50%, except in the case of a distressed area (as defined in paragrpah 3 (c) below) the DoD share may be increased to an amount not to exceed 75%. However, in no event is the DoD share of any single program cost to exceed $150,000.

(e) In order to qualify for the DoD share of 75% total program costs, an eligible entity is required to service clients exclusively in a distressed area. In the event an eligible entity plans to service both a distressed and a nondistressed area, it may segregate its TPC between the distressed area and nondistressed area (as detailed in paragraph 8 of this regulation) in submitting its application for a Cooperative Agreement, and request a maximum of 75% and 50% respectively. Absent such segregation, and if any part of the geographic area being or to be serviced includes a nondistressed area, the applicant will be entitled to a maximum of 50% DoD share.

(f) During each fiscal year (FY) for which funding is authorized for the PTA program at least one cooperative agreement for either an existing program or a new start shall be awarded within the geographic cognizance of each of the 9 Defense Contract Administration Services Regions (DCASRs) within the DLA. In cases where the area being or to be serviced by an eligible entity encompases more than one DCASR's areas of geographic cognizance, the eligible entity should submit its applications to the one DCASR having cognizance over the majority of the area being or to be serviced. Only one application will be accepted from a single eligible entity.

2. Policy.

(a) It is the DLA policy to encourage and maximize open and fair competititon when awarding cooperative agreements for establishing or maintaining existing PTA programs. Cooperative agreements will generally be awarded on a competitive basis as a result of the issuance of Solicitations for Cooperative Agreement Proposals (SCAPs). However, the DoD, through the DLA, reserves the right to make or deny an award to an applicant whose application is competitive based on other factors that would enhance competition for DoD goods and services, reduce or eliminate overlapping or duplicate coverage in selected geographic areas, or otherwise be in the best interests of the government.

(b) SCAPs inviting the submission of proposals shall be given the widest practical dissemination to all known eligible entities and to those that request copies of the SCAP subsequent to its issuance. All eligible entities that have advised the DCASR of their interest in submitting a proposal under the SCAP will be invited to participate in a presolicitation conference to be held at a location to be designated by the DCASR approximately 30 calendar days prior to the SCAP closing date.

(c) Any solicitation issued in accordance with this regulation shall not be considered to be an offer made by the DoD and will not obligate the DLA to make any awards under this program. The DoD is also not responsible for any monies expended or expense incurred by applications prior to the award of any cost sharing cooperative agreement.

(d) The award of a cooperative agreement under this program shall not in any way obligate the DoD to enter into a contract or give preference for the award of a contract to a concern or firm which becomes a client of the award recipient.

(e) The Federal Acquisition Regulation (FAR) contains numerous clauses and provisions which provide operational guidance and spell out rights and obligations of parties in Federal Procurement transactions. Although the regulation is not applicable per se to cooperative agreements, some of the provisions contained in the Regulation may be suitable for inclusion in cooperative agreements. Therefore, the clauses and provisions contained therein may be made a part of all cooperative agreement solicitations and awards with eligible entities other than those covered under Office of Management and Budget (OMB) Circulars A-102 (Uniform Administrative Requirements for Grants-In-Aid to State and Local Governments) and A-110 (Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-profit Organizations). Where appropriate, the language of the clauses will be modified to change "contract" to "cooperative agreement" and "contractor" to "participant" as necessary. Clauses and provisions specified as mandatory are not subject to negotiations. The clauses and provisions will only be used if the applicable dollar threshold is met. For example, if there is a $100,000 threshold for applying the clause, that particular clause will only be used in the cooperative agreement if the total cost of the project (including both the proposer's and DoD share of total costs) exceeds that threshold. However, the addition of any clauses and provisions not identified in the solicitation or the modification of clauses and provisions which are not designated as being mandatory will be subject to negotiations.

(f) Award recipient are not required to obtain or retain private consulting services for any extended period of time. Accordinlgy, any costs being proposed for such services are not to exceed 10% of the total program cost. Costs in excess of 10% included in the eligible entity's proposal will not be allowed.

(g) Reasonable quantities of government publications, such as "Selling to the Military" may be furnished to award recipients at no cost, subject to availability.

(h) For the purpose of executing cooperative agreements, the DCASR Associate Director of Small Business who has been delegated the authority to execute the cooperative agreement shall not require appointment as a contracting officer.

3. Definitions. The following definitions apply for the purpose of this regulation.

(a) *Client.* A recognized business entity, including corporations, partnerships, or sole proprietorships organized for profit, which are small and other than small, that have the potential or are seeking to market their goods or services to the DoD.

(b) *Cooperative Agreement Officer/Application/Proposal.* An eligible entity's response to the SCAP describing their PTA program being operated or being planned. The offer binds the eligible entity to perform the services described therein if selected for an

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award, and upon the proposal being incorporated into the cooperative agreement award document.

(c) *Distressed Area.* The geographic area being or to be serviced by an eligible entity in providing procurement technical assistance to business firms physically located within that area that:

(1) Has a per capita income of 80% or less of that State's average, or

(2) Has an unemployment rate at least 1% above the national average for the most recent 24-month period for which statistics are available from the U.S. Department of Labor in all of the geographic areas being or to be serviced. A distressed area cannot include any areas that do not meet this criteria.

(d) *Eligible Entities* include:

(1) *State Government.* A State of the United States, the District of Columbia, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-state, regional, or interstate entity having governmental duties and powers.

(2) *Local Government.* A unit of government in a State, a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, an interstate entity, or another instrumentality of a local government.

(3) *Private, non-profit organization.* Any corporation, trust, foundation, or institution which is entitled to exemption under Section 501 (c) (3)–(6) of the Internal Revenue Code, or which is not organized for profit and no part of the net earnings of which inure to the benefit of any private shareholder or individual.

(e) *Existing Program.* Includes any PTA type program that has been established and operated by an eligible entity for at least 12 months prior to the closing date for submission of proposals to the DLA, as well as all prior recipients of cooperative agreements with the DLA, regardless of the length of time their PTA program has been in operation.

(f) *In-kind Contributions.* Represent the value of noncash contributions provided by the eligible entity and non-Federal parties. Only when authorized by Federal legislation may property or services purchased with Federal funds be considered as in-kind contributions. In-kind contributions may be in the form of charges for real property and nonexpendable personal property and the value of goods and services directly benefitting and specifically identifiable to the project or program.

(g) *New Starts.* Includes all eligible entities that have not had an established and operating PTA program for a full 12-month period prior to the closing date for submission of proposals under a SCAP. It also includes any eligible entities' program that otherwise meets the definition of an existing program, but whose proposal anticipates expanded geographical coverage or a significant increase in the scope of operations. However, recipients of cooperative agreements with the DLA will not be eligible for consideration as a new start, regardless of how long their program has been in operation.

(h) *Private Consultant Services.* Services offered by private profit seeking individuals, organizations or otherwise qualified business entities to provide marketing and technical assistance to business firms seeking contracts with Federal, State and local government organizations.

(i) *Solicitation for Cooperative Agreement Proposals (SCAP).* A document issued by DLA containing provisions and evaluation criteria applicable to all applicants that apply for a PTA cooperative agreement.

(j) *Direct Cost.* Any cost that can be identified specifically with a particular final cost objective. No final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose in like circumstances have been included in any indirect cost pool to be allocated to that or any other final cost objective.

(k) *Indirect Cost.* Any cost not directly identified with a single, final cost objective, but identified with two or more final cost objectives or an intermediate cost objective. It is not subject to treatment as a direct cost.

4. Program Description.

The objective of the PTA Program is to assist eligible entities in providing marketing and technical assistance to businesses, hereinafter referred to as clients, in selling their goods and services to the DoD, thus assisting the DoD in its acquisition goals and at the same time enhancing the business climate and economies of the communities being served. Specific program requirements to accomplish this objective will vary, depending on locations, the types of industries and business firms within the community, the level of economic activity in the community, and many other factors. However, the SCAP will describe the minimum features that a comprehensive PTA Program should generally include, as follows:

(a) *Personnel.* Professional personnel qualified to counsel and advise clients regarding DoD procurement policies and procedures. The areas of consideration should relate to marketing techniques and strategies, pricing policies and procedures, preaward procedures, postaward contract administration, quality assurance, production and manufacturing, financing, subcontracting requirements, bid preparation, and specialized acquisition requirements for such things as construction, research and development and date processing.

(b) *Marketing.* Should include, as a minimum, the Commerce Business Daily, Federal Acquisition Regulation, DoD FAR Supplement, commodity listings from DoD contracting activities, Federal and military specifications and standards, and other Federal Government publications.

(c) *Networking.* Techniques for providing assistance throughout the area being serviced by locating assistance offices in areas of industrial concentration, arrangements with other entities or organizations, establishing data links, and through other appropriate means.

(d) *Fees and Service Charges.* In the event the applicant presently charges or plans to charge clients a fee or service charge, details as to the basis for and amount of the fee to be charged must be described. Any fees earned under the program are to be included as part of the total program costs.

(e) *Performance Measurement.* Should include a means of periodically measuring program effectiveness in achieving the objectives described above. Factors to consider in establishing this performance measurement system should include the number and types of clients assisted, including size and socioeconomic status; the types of assistance rendered, such as marketing and accounting; the number of clients added to the DoD and other Federal Agency bidders mailing lists, the Profile Business System of the Minority Business Development Agency, the Procurement Automated Source System (PASS) of the Small Business Administration, and the value of prime and subcontract awards received by clients resulting from the program.

5. Procedures for processing SCAPs and Award of Cooperative Agreement.

(a) The SCAP shall be prepared by the HQ DLA Cooperative Agreement Policy Council and will be issued through each DCASR. The Policy Council will be comprised of representatives from the HQ DLA Offices of General Counsel, Contracting, Comptroller, Congressional Affairs and Small Business. The Staff Director, Small and Disadvantaged Business Utilization shall serve as Policy Council Chairman and final appeal authority for disagreements between the DCASR Associate Director of Small Business and the eligible entity and/or Cooperative Agreement recipient. The Council will be responsible for development of the SCAP, for reviewing the results of the DCASR's evaluations and recommendations, for assuring that adequate funds are made available to the DCASR and for considering other factors in the selection process necessary to fully protect the interests of the government.

(b) The evaluation of proposals submitted in response to the SCAP and the selection of award recipients shall be conducted as detailed below: (1) Proposals will be evaluated by a specially constituted evaluation panel established at each DCASR. The panel will be comprised of representatives from the DCASR offices of small business, contract management, comptroller, and other offices deemed appropriate by the DCASR Commander. However, the DCASR Associate Director of Small Business, who has been delegated the authority to execute the cooperative agreement, shall not serve as a panel member. A member of the Office of Counsel will be appointed on the panel, but shall serve in an advisory capacity only.

(2) Prior to making a comprehensive evaluation of a proposal, the evaluation panel shall make an initial evaluation to determine if the proposal contains sufficient technical, cost, and other information; has been signed by a responsible official authorized to bind the eligible entity and whether it generally meets all requirements of the SCAP. If the proposal does not meet those requirements, a comprehensive evaluation shall not be made. In such case, a prompt reply shall be sent to the proposer indicating the reason for its proposal not being acceptable. Revised proposals will not be accepted from applicants whose proposals are rejected after the initial evaluation unless the revised proposal is postmarked or is hand delivered prior to the closing date of the SCAP. Any proposal received which is unsigned will not be given additional review consideration and will be retained with other unsuccessful applications by the DCASR Associate Director of Small Business.

(3) The initial evaluation of acceptable proposals will include a review to verify the accuracy of the classification of the proposal concerning the entity's stated program status as existing or a new start. In the event the evaluation panel considers the proposal status misclassified, it will review the matter with the applicant. In the event of disagreement, the panel's determination of the applicant's classification shall be final and not subject to further review.

(4) Proposals which pass the initial evaluation phase will be subjected to a comprehensive evaluation. The basic purpose of the comprehensive evaluation is to assess the relative merits of the proposals to determine which offer the greatest likelihood of achieving the stated program objectives, considering technical, quality, personnel qualifications, estimated cost, and other relevant factors. Proposal evaluations shall consist of two steps. First, each proposal will be evaluated by the panel in accordance with stated criteria and ranked in order of excellence to determine which will best further specific program goals. Second, the Associate Director of Small Business will determine whether sufficient funds have been allocated to the DCASR to cover the DoD share of costs. All findings and recipient selections will be documented, signed, and retained to provide an adequate record to support the panel's decisions. Upon completion of its review, the evaluation panel will submit the panel results and its recommendations to the Associate Director of Small Business who will forward it to the HQ DLA Policy Council for review.

(c) The HQ DLA Policy Council will review the DCASR evaluation panels recommendations and submit the results of its review and its recommendations to the DCASR Commander for approval. In developing its recommendations the council may consider additional factors, such as the extent of geographic overlap among eligible entities, economic downturns in selected geographic areas resulting from base closures or terminations of major DoD contracts, and other factors necessary to fully protect the interests of the government.

(d) After approval by the DCASR Commander, the cooperative agreement will be executed by the DCASR Associate Director of Small Business.

6. Evaluation Criteria.

(a) The evaluation factors for an existing program and for a new start shall be specified in the SCAP, along with a narrative description of their relative importance.

(b) The following evaluation factors are listed in their order of relative importance and will be considered as the evaluation criteria for new starts: (1) The types and qualifications of personnel assigned or to be assigend to the program.

(2) The quality of the PTA Program.

(3) The number of clients in the geographic area being or to be serviced.

(4) The amount and percentage of total program costs to be shared by DoD.

(5) The level of unemployment in the area being or to be serviced.

(c) The evaluation criteria for an existing program will include factors 1,3,4, and 5 above, as well as the following factors: (1) The eligible entity's development, performance and effectiveness in conducting its PTA Program, including achievements against established goals. This factor will be given more weight than any other single factor during the evaluation of existing programs.

(2) The amount of subcontracting to private consultants. This factor will be given the least weight of any of the 6 factors applicable to an existing program.

(d) As this program applies both to existing PTA Programs and to those being planned, certain of these evaluation factors will be evaluated based upon stated implementation policy for programs being planned. For example, the types and qualifications of personnel assigned will require applicants that do not presently have established but are planning programs to identify the standards to be used in selecting the personnel.

(e) The amount of subcontracting to private consultants is limited to no more than 10% of total program costs for both existing programs and new starts. In evaluating this factor for existing programs the smaller the amount of such subcontracting the greater the weight that will be given. However, in the case of new starts, equal weight will be given to all offers, subject only to the 10% limitation.

7. DoD Funding.

(a) DoD Authorization and Appropriation Acts may authorize different amounts as the DoD share of costs to support the program each FY. Of the total amount authorized in any FY, a specific percentage is required to be allocated to support existing programs, with the balence being allocated to support new starts.

(b) Any funds authorized for the PTA program will be allocated approximately equally among the nine DCASRs to cover the DoD share of the PTA program cost for existing programs and for new starts. The SCAP will identify the total amount of funds authorized for the related FY, as well as the specific amounts of funds authorized for existing programs and new starts, and the amounts allocated to each DCASR.

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(c) The SCAP will, as appropriate, also identify any funding being considered for the program in future years.

8. Cost Sharing Criteria and Limitations.

(a) This section sets for the policy on cost sharing by the Government under DLA Cooperative Agreements. Cost sharing is a generic term denoting any situation wherein the Government does not fully fund the participant's total allowable costs required to accomplish the defined project or effort. The term encompasses concepts such as cost participation, cost matching, cost limitations (direct or indirect), and participation in kind.

(b) The DoD share of program costs shall not exceed 50%, except in the case an eligible entity meets the criteria of a distressed area. When the prerequisite conditions to qualify as a distressed area are met, the DoD share may be increased to an amount not to exceed 75%.

(c) In no event shall the DoD share of program costs exceed $150,000 for any single proposal.

(d) Cost contributions may be to either direct or indirect costs, provided such costs are otherwise allowable in accordance with the cost principles applicable to the award. Allowable costs which are absorbed by the eligible entity as its share of costs may not be charged directly or indirectly or may not have been charged in the past to the Federal Government under other contracts, agreements, or grants.

(e) The SCAP will require applicants to submit an annualized estimated budget, which may include cash contributions, in-kind contributions, any fees and service charges to be earned under the program, and any other Federal Agency funding (including grants, loans, and cooperative agreements). The type and value of any in-kind contribution will be limited to no more than 25% of the total annual budget. However, any fees, service charges or Federal funds provided under another Federal financial assistance award, including loans (but not including loan guarantee agreements since these do not provide for disbursement of Federal funds) are not acceptable for calculating cost contributions of the eligible entity. The fees, service charges and other federal funds must be included in the annualized estimated budget. Inclusion of other federal funds is subject to the terms of the award instrument containing such funds or written advice being obtained from the Agency(s) authorizing such use. Any method used by the eligible entity in providing the required funds which relies upon Federal funds must be disclosed and identified in the eligible entity's proposal.

(f) In submitting its budget, an eligible entity that services, or plans to service clients exclusively in areas that qualify as distressed areas may submit a single budget and request a maximum of 75% DoD share of total program costs (TPC), subject to e. above. An entity that services or plans to service clients exclusively in nondistressed areas or in areas that include both distressed and nondistressed areas may submit a single budget and request a maximum of 50%. In those cases where the geographic area being or to be serviced includes both distressed areas and nondistressed areas, the budget may be divided based on a reasonable and logical distribution of TPC between these two discrete areas, and submitted as a single proposal. In such case, costs must also be divided betwen these two budget items as costs are incurred.

(g) Recipients of cooperative agreements shall be required to maintain records adequate to reflect the nature and extent of their costs and to insure that the required cost participation is achieved.

(h) The SCAP will also provided that indirect costs are not to exceed 100% of indirect costs.

(i) In the event the applicant charges or plans to charge a fee or service charge for PTA given to clients, or to receive any other income as a direct result of operating the PTA Program, the estimated amount of such reimbursement is to be clearly identified in the proposed budget and shall be included as part of the total budgeted costs.

(j) The Federal cost principles as stated in the regulations listed below will be used as guidelines to determine allowable costs in performance of the program: (1) OMB Circular A-21 for Educational Institutions.

(2) OMB Circular A-87 (FMC 74-4) Cost Principles for State and Local Governments.

(3) OMB Circular A-122. Cost Principles for Non-profit Organizations.

9. Administration.

(a) Cooperative agreements will be assigned to the cognizant DCASR for payment and for postaward administration by the Associate Director of Small Business.

(a) The Associate Director of Small Business at the cognizant DCASR will be responsible for periodically reviewing recipient performance, to include a review of budgeted versus actual expenditures, progress being made in meeting goals, compliance with certificates and representations, and other performance factors. The results of the periodic reviews will be furnished to the recipient.

(c) For eligible entities covered by OMB Circular A-102, Uniform Administrative Requirements for Grants-In-Aid to State and Local Governments, or OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations, the administrative requirements specified in those circulars will apply.

[FR Doc. 87-3579 Filed 2-20-87; 8:45 am]

BILLING CODE 3620-01-M

DEPARTMENT OF EDUCATION

Robert C. Byrd Honors Scholarship Program; Implementation of Proposed Procedures; Fiscal Year 1987

AGENCY: Department of Education.

ACTION: Notice of proposed procedures for implementing the Robert C. Byrd Honors Scholarship Program in Fiscal Year 1987.

SUMMARY: The Secretary proposes to implement the Robert C. Byrd Honors Scholarship Program (the Byrd Scholarship Program) in fiscal year 1987 in accordance with the provisions of the program statute (Title IV, Part A, Subpart 6 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1070d-31 *et seq.*), with certain exceptions. The exceptions are necessary in order to implement applicable statutory provisions enacted in the Fiscal Year 1987 Continuing Appropriations Act, Pub. L. 99-500 and Pub. L. 99-591. Because the Department has not issued specific regulations for this program, grant awards to the States for fiscal year 1987 will be governed by the General Education Provisions Act, the Education Department General Administrative Regulations, applicable provisions of the program statute, and the procedures proposed in this notice.

DATES: Comments must be received on or before March 25, 1987.

ADDRESSES: All written comments should be sent to Dr. Neil C. Nelson, Chief, State Student Incentive Grant Program (Room 4018, ROB#3), Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Neil C. Nelson, Telephone (202) 245-9720.

SUPPLEMENTARY INFORMATION: Under the Byrd Scholarship Program, the Secretary makes available, through grants to the States, scholarships to outstanding high school graduates for the first year of study at institutions of higher education. In the Fiscal Year 1987 Continuing Appropriations Act, Congress appropriated $8 million for the Byrd Scholarship Program. Pursuant to the Continuing Appropriations Act, certain provisions of the program statute will not apply to the administration of the program in fiscal year 1987.

The Secretary proposes to establish the following procedures for fiscal year 1987 in order to implement, to the extent possible, the congressional intent conveyed in the Conference Committee Report on H.R. 5233, the Appropriations Act as reported out of conference, House Report 99-960. These procedures are necessary for the administration of those aspects of the program which, due to superseding statutory provisions in the Continuing Appropriations Act, are not governed by provisions of the program statute for fiscal year 1987.

1. The Secretary will allot to the States the funds appropriated for the Byrd Scholarship Program in fiscal year 1987 in accordance with the provisions of section 419D of the program statute, except that the amount allotted for scholarshp payments to each State will be $1,500 multiplied by the number of scholarships the Secretary has assigned to the State. The Secretary will assign to each State participating in the program the number of Byrd Scholarships which bears the same ratio to the total number of scholarships made available to all States as the State's school-aged population (ages five through seventeen) bears to the total school-aged population in all participating States, except that no State shall receive fewer than 10 scholarships. The population figures used to calculate the allotment of funds will be determined by the most recently available data from the United States Census Bureau.

2. States shall administer their fiscal year 1987 allotments under the Byrd Scholarship Program, for scholarships for academic year 1987-88, in accordance with the provisions of the program statute. However, due to the Continuing Appropriations Act, sections 419G(b) and 419I(a) of the program statute will not apply to the fiscal year 1987 appropriation. Thus, the Secretary proposes that States also administer their fiscal year 1987 allotments in accordance with the following procedures—

(a) Byrd Scholars shall be selected soley on the basis of a demonstrated outstanding acedemic achievement, promise of continued academic achievement, and the geographic consideration described in item 2(b) below.

(b) Byrd Scholars shall be selected in such a way that all parts of a State are fairly represented, and no part of the State has a disproportionate share of awards.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the procedures proposed in this notice. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 4018, ROB-3, 7th & D Streets, SW., Washington, DC between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Authority: 20 U.S.C. 1070d-31 *et seq.*

(Catalog of Federal Domestic Assistance No. 84.145, Robert C. Byrd Honors Scholarship Program)

Dated: February 18, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-3759 Filed 2-20-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-C&E-87-07; OFP Case No. 50783-9334-01-12]

Order Granting to Detroit Edison Company Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order granting exemption.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a premanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), to Detroit Edison Company (Detroit Edison). The permanent exemption is based on lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The order shall take effect on April 24, 1987.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal hoilidays.

FOR FURTHER INFORMATION CONTACT:

Myra Couch, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585, Telephone (202) 586-6769.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586-6947

SUPPLEMENTARY INFORMATION: On November 21, 1986, Detriot Edison petitioned ERA under section 212(a)(1)(A)(ii) of the Act and 10 CFR 503.32 for a permanent exemption to permit the use of natural gas as the primary energy source for a water tube package-type boiler designed to produce steam at its River Rouge Power Plant in River Rough, Michigan. The unit for which the exemption is sought will be operated less than 1500 hours annually.

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on December 18, 1986 (51 FR 45384), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on February 2, 1987; no comments were received and no hearing was requested.

Order Granting Permanent Exemption

Based upon the entire record of this proceeding, ERA has determined Detroit Edison has satisfied the eligibility requirements for the requested permanent exemption, as set forth in 10 CFR 503.32. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent exemption to Detroit Edison, to permit the use of natural gas

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as the primary energy source for its proposed auxiliary boiler located at their River Rouge Power Plant in River Rouge, Michigan.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register**.

Issued in Washington, DC on February 12, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-3776 Filed 2-20-87; 8:45 am]

BILLING CODE 6450-01-M

Office of General Counsel

Intent to Grant Exclusive Patent License; Charles L. Chandler

Notice is hereby given of an intent to grant to Mr. Charles L. Chandler of Morgantown, West Virginia, an exclusive license under U.S. Patent No. 4,382,607, entitled "Steering System for a Train of Rail-less Vehicles," and counterparts in Canada, Great Britain, France, and West Germany. The invention is owned by the United States of America, as represented by the Department of Energy (DOE).

The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Patents, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed licenses; or

(ii) An application for a nonexclusive license to the invention, in which applicant states that he has already brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Department will review all written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, DC, on February 13, 1987.

J. Michael Farrell,

General Counsel.

[FR Doc. 87-3777 Filed 2-20-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER87-245-000 et al.]

Carolina Power & Light Company et al.; Electric Rate and Corporate Regulation Filings

February 13, 1987.

Take notice that the following filings have been made with the Commission:

1. Carolina Power & Light Company

[Docket No. ER87-245-000]

Take notice that Carolina Power & Light Company ("Company") on February 6, 1987, tendered for filing a Contract, dated January 23, 1987, between the United States of America, Department of Energy, acting by and through the Southeastern Power Administration (SEPA) and Carolina Power & Light Company, which supersedes and cancels Rate Schedule FERC No. 125, for the transmission of power from a reservoir project in the Roanoke River Basin known as the John H. Kerr Dam and Reservoir (Kerr Project).

Under the provisons of the Contract, Company will receive from the Kerr Project approximately forty-two percent (42%) of the Project's total capacity of which 76,400 kilowatts is for delivery to SEPA's preference customers in Company's control area. Preference customers located within Company's control area but not served directly from Company's transmission and distribution system will receive 6,000 of these kilowatts. SEPA will make a monthly payment to Company for transmitting the power to the preference customers. Preference customers are any municipality or cooperative located within company's control area or any other public body determined by the Government to be a preference entity. A preference customers's point of delivery must be located within 165 miles of the interconnection point with Virginia Power at the Virgina-North Carolina State line. It is proposed that the Contract Submitted herewith to become effective at 12:01 a.m., on February 1, 1987.

Comment date: February 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

[Docket No. ER87-216-000]

2. The Dayton Power & Light Company

Take notice that on February 4, 1987, The Dayton Power and Light Company (DP &L) tendered for filing in this docket amendments to page 2 of the schedule C of the Agreement between DP&L and The City of Piqua, Ohio (Piqua). DP&L states in this filing that it is renewing its request for a waiver of noitce requirements so that the filing may become effective January 1, 1987.

Comment date: February 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company

[Docket No. ER87-244-000]

Take notice that on February 4, 1987, Florida Power & Light Company (FPL) tendered for filing a document entitled Amendment Number one to St. Lucie Delivery Service Agreement between Florida Power & Light Company and Orlando Utilities Commission (OUC).

FPL states that Amendment Number One provides for the delivery of OUC's power and energy entitlements from FPL's St. Lucie Unit No. 1 and Unit No. 2 in those instances in which there are interruptions or reductions in the capability of the transmission systems of the parties.

FPL requests that waiver of § 35.3 of the Commission's regulations be granted and that the proposed Amendment Number One be made effective February 1, 1987 to correspond with OUC's desire to perform extended maintenance of the OUC delivery point.

Comment date: February 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Tucson Electric Power Company

[Docket No. ER87-4-000]

Take notice that Tucson Electric Power Company ("Tucson") on February 6, 1987, tendered for filing a supplement of explanation and/or amendment to the Interchange Agreement between Tucson and State of California, Department of Water Resources ("DWR") originally tendered for filing on October 2, 1986, under Docket Number ER87-4-000. The primary purpose of that Agreement is to provide the terms and conditions relating to the interconnection of the electrical systems of Tucson and DWR and the exchange of capacity, energy and non-firm transmission Service." The "compensation" to be paid to Tucson by DWR for non-firm transmission service under the Agreement shall not exceed one mill per kilowatt hour.

Tucson states that copies of the filing were served upon DWR.

Tucson hereby requests a waiver of the sixty-day notice period for the supplement so that the Agreement, as supplemented, will have an effective date of February 15, 1987.

Comment date: February 27, 1987, in accordance with Standard Paragraph E at end of this notice.

5. Utah Power & Light Company

[Docket No. ER87-247-000]

Take notice that on February 9, 1987, Utah Power & Light Company (UP&L) tendered for filing a Notice of Cancellation of the Loop Flow Agreement between the Western Systems Coordinating Council (WSCC) and its participating members and UP&L FERC Rate Schedule No. 129.

UP&L requests termination of said Agreement as of August 31, 1985, pursuant to its terms and also requests waiver of the notice requirements of 18 CFR § 35.16.

Copies of this filing have been served upon the Utah Public Service Company, the Idaho Public Utilities Commission, the Wyoming Public Service Commission and all of WSCC's participating members.

Comment date: February 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protect with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3753 Filed 2-20-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-4-51-000, 001]

Great Lakes Gas Transmission Co.; Filing

February 17, 1987.

Take notice that Great Lakes Transmission Company ("Great Lakes"), on February 9, 1987, tendered for filing Sixth Revised Sheet Nos. 57(i) and 57(ii) ot its FERC Gas Tariff, First Revised Volume No. 1.

Sixth Revised Sheet Nos. 57(i) and 57(ii) reflect changes in the gas purchase prices applicable to Michigan Consolidated Gas Company ("Mich Con"). The most significant price change is a reduction in the overrun rate, from $1.60 per MMBtu to $1.40 per MMBtu, which results from recent negotiations between TransCanada PipeLines Limited and Mich Con, which Great Lakes has been requested to implement. Other incidental price changes for Mich Con Result from application of indicies from agreements which have previously received regulatory approval. Effective February 1, 1987, for purchases up to 62.5% of daily contract quantity ("DCQ"), the price of the commodity component of the purchase gas cost of the rate changes from $1.96330 per MMBtu to $1,96460 per MMBtu; for purchases in excess of 62.5% DCQ up to 100% DCQ such price changes from $1.82420 per MMBtu to $1,82550 per MMBTU; and for purchases in excess of 100% of contract quantity such price change is from $1.60 per MMBtu to $1.40 per MMBtu.

Great Lakes requests wavier of the 30 day notice requirement of the Commission's Regulations and any other necessary waivers so as to permit the above tariff sheets to become effective as requested.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before February 24, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3756 Filed 2-20-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-523-001 et al.]

Iroquois Gas Transmission System et al.; Natural gas certificate filings

February 13, 1987.

Take notice that the following filings have been made with the Commission:

1. Iroquois Gas Transmission System

[Docket No. CP86-523-001]

Take notice that on January 30, 1987, Iroquois Gas Transmission System (Iroquois), Two Enterprise Drive, Shelton, Connecticut 06484, filed in docket No. CP86-523-001 an amendment to its pending application filed in Docket No. CP86-523-000 pursuant to Section 7 of the Natural Gas Act and Subpart E of Part 157 of the Commission's Regulations for an optional expedited certificate of public convenience and necessity, so as to reflect revisions to its cost-of-service, rate structure, and FERC gas tariff, all as more fully set forth in the notice of amendment which is on file with the Commission and open to public inspection.

Iroquois states that the amendment (referred to as the "First Amendment") is occasioned principally by Iroquois' negotiation structure in order to conform the tariff and rates to the guidelines, including risk requirements, set forth by the Commission in its decision in *Great Lakes Gas Transmission Company, et al.*, Docket No. CP86-423-000, isssued December 22, 1986, (37 FERC ¶ 61,270). Iroquois asserts that the Commission's *Great Lakes* decision would preclude the use of a modified fixed-variable methodology in designing transportation reservation fees for optional expedited certificate (OEC) pipelines. It is stated that Iroquois' maximum reservation rates were originally designed on a modified fixed-variable basis; Iroquois thus now proposes to adjust its original rate design by shifting 100 percent of the equity portion of its depreciation charge into its maximum transportation commodity rate. Iroquois explains that it would therefore assume 100 percent of the risk of recovering the return on and of its investors' equity (as well as associated income taxes) through commodity charges.

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Iroquois further states that, as a result of both changing economic conditions and negotiations with its non-investor shippers, Iroquois has reduced its proposed rate of return on equity for the project to 15.75 percent. It is stated that the revised *pro forma* rates also reflect a reduction in the projected cost of debt to 10.0 percent, due to declining interest rates. Iroquois asserts that, when service commences, the rates would reflect the actual debt costs incurred in financing the pipeline.

It is also stated that, as a result of the completion of Iroquois' October 1986 Final Environmental Report and a general review of its cost estimates, Iroquois' estimated construction and operating costs have been revised. The revised exhibits K and N included in the amendment reflect an increase in the length of the original route (by approximately thirteen miles) as a result of changes that were made for environmental reasons. The application also includes exhibits K, L, N, and P for Alternative 7 (the highest cost alternative route) in order to demonstrate a range of Iroquois' probable costs, rates, and revenues.

Iroquois further states that its *pro forma* rates have been reformulated to take into account the expected impact of the Tax Reform Act of 1986 and that its tariff has also been modified to include a tax bracket tracker of the type approved in *High Island Offshore System*, 32 FERC ¶ 61,164 (1985).

Iroquois proposes to revise the nomination of two of its shippers, the Brooklyn Union Gas Company (Brooklyn Union) and Consolidated Edison Company of New York, Inc. (Consolidated Edison). Iroquois asserts that the two distribution companies have agreed to shift 15,000 Mcf of natural gas per day from Brooklyn Union to Consolidated Edison, thus decreasing Brooklyn Union's nomination from 85,000 Mcf of natural gas per day to 70,000 Mcf of natural gas per day and increasing Consolidated Edison's nomination from 5,000 Mcf of natural gas per day to 20,000 Mcf of natural gas per day.

In addition, Iroquois proposes to add an eleventh gas distribution company, New York State Electric and Gas Corporation (NYSEG), as an Iroquois shipper with a nomination of 17,000 Mcf of natural gas per day of firm reserved service. Iroquois asserts that the transportation agreement with NYSEG, which is not an investor nor does it have any other affiliation with Iroquois, was negotiated at arm's length. Iroquois proposes to deliver these volumes, at NYSEG's request, at the point of interconnection between Iroquois and Algonquin Gas Transmission Co., Inc. (Algonquin) with an additional potential delivery point at an interconnection to be established with the facilities of Consolidated Gas Supply Corporation (Consolidated). Iroquois thus proposes to construct interconnect facilities for delivery points at the following points of interconnection:

Company	Point of interconnection
Consolidated	MP 178, Duanesburg, NY
Algonquin	MP 287, Southbury, CT

Iroquois states that its revised exhibit K includes these interconnect facilities. Iroquois further states that NYSEG has not yet concluded final arrangements for transportation of its volumes; however, it is expected that such arrangements will be completed expeditiously.

It is stated that Iroquois and St. Lawrence Gas Company (St. Lawrence), who is not an investor in Iroquois, have agreed to establish an interconnection between their two systems. Iroquois thus requests authority to establish a delivery point and to construct interconnect facilities with St. Lawrence at MP 7.8 Lisbon, New York. Iroquois avers that the primary purpose of the interconnection would be to provide access to a back-up transportation system in the event St. Lawrence experiences an emergency and that St. Lawrence has not sought to enter into an interruptible transportation contract with Iroquois and has not arranged for a gas supply to be transported by Iroquois.

Iroquois further states that the proposed delivery points have changed slightly due to the realignment of the route for environmental reasons. Iroquois thus requests authority to establish delivery points to the following companies at the respective points of interconnection:

Company	Points of interconnection
TransCanada PipeLines Limited	MP 0.0, Waddington, NY
St. Lawrence Gas Company	MP 7.8, Lisbon, NY
Consolidated Gas Supply Corporation	MP 178.0, Duanesburg, NY
Tennessee Gas Pipeline Company,	MP 181.0, Wright, NY
	MP 304.4, Stratford, CT
Algonquin Gas Transmission Co., Inc.	MP 287.1, Southbury, CT
The Connecticut Light and Power Company	MP 276.5 + 26.9 mi., Farmington, CT
	MP 286.9, Roxbury, CT
	MP 300.2, Huntington, CT
Connecticut Natural Gas Corporation	MP 276.5 + 26.9 mi., Farmington, CT
Southern Connecticut Gas Company	MP 306.0, Chapel St., Stratford, CT
	MP 308.9 Milford, CT
Long Island Lighting Company	MP 343.8, South Commack, NY

At the present time, Iroquois proposes to construct interconnect facilities for all delivery points except Waddington and Wright, New York, and Stratford, Connecticut. It is stated that exhibits G, G–I, and G–II reflect the revisions in volumes and delivery points.

The application describes the additional transportation agreements made by the four New Jersey shippers: New Jersey Natural Gas Company (New Jersey Natural), Public Service Electric and Gas Company (Public Service), Elizabethtown Gas Company (Elizabethtown), and South Jersey Gas Company (South Jersey). Iroquois states that deliveries for these four shippers would occur at the terminus of the Iroquois system at South Commack, New York. It is stated that New Jersey Natural, Public Service, and Elizabethtown are finalizing arrangements with Texas Eastern Transmission Corporation (Texas Eastern) for delivery of the volumes shipped on Iroquois to specified delivery points in New Jersey. Those arrangements would involve each of three shippers transferring title to their Iroquois volumes to Texas Eastern at South Commack with Texas Eastern in turn delivering equivalent volumes to the specified New Jersey delivery points. It is stated that, to effect this arrangement, Texas Eastern would establish South Commack, New York, as an additional delivery point to Brooklyn Union, Consolidated Edison, and Long Island Lighting Company (LILCO) (all of which are served by the New York Facilities System) pursuant to Texas Eastern's blanket certificate authorization issued in Docket Nos. CP86–378–000, *et seq.*, on December 19, 1986. It is further stated that the volumes delivered by the New Jersey shippers to Texas Eastern at South Commack would physically be delivered by Texas Eastern to the New York City customers that volumes otherwise destined for those New York City customers via the Texas Eastern mainline system would instead be delivered to the specified New Jersey delivery points. Iroquois states that this service would be rendered by Texas Eastern pursuant to additional authorization to be sought by Texas Eastern.

Iroquois states that no specific arrangements have yet been proposed for the delivery of South Jersey's Iroquois volumes from South Commack to its New Jersey delivery points. Iroquois explains that South Jersey is not presently served by Texas Eastern and is thus not in a position to participate in the arrangements made for the other New Jersey Iroquois shippers. Iroquois states that various alternatives are under active consideration.

The application further states that Iroquois' projected level of reservations has been increased to 352,000 Mcf of natural gas per day in recognition of NYSEG's reservation of 17,000 Mcf of natural gas per day. Iroquois states that it has retained a projected 80 percent load factor in its rate design because the addition of NYSEG is not expected to improve the overall level of throughput. Iroquois asserts that NYSEG plans to utilize firm transportation service on the Iroquois system to develop a new, physically isolated service territory and that NYSEG is not expected to achieve more than a 40 percent load factor in the initial years of Iroquois' operation.

Iroquois states that, since the filing of Iroquois's tariff, the Commission has considered several Order No. 436 settlements and has clarified a number of the details involved in providing open-access transportation on a first-come, first-served basis. Iroquois states that, while its original tariff generally complies with the requirements of Order No. 436, Iroquois proposes a number of revisions to its tariff in order to conform it to the Commission's most recent decisions. It is stated that those revisions include reducing the minimum reservation fees to zero and clarifying that service is available to all classes of shippers, including, for example, producers. Iroquois also proposes to eliminate its proposed firm unreserved service.

Comment date: March 9, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP85–710–005]

Take notice that on February 6, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85–710–005, a Petition to Amend the Commission's Order of July 24, 1986, to permit a three-year extension of Northern's limited-term abandonment authorization, and the accompanying producer-suppliers certificates of public convenience and necessity to make or abandon sales for resale in interstate commerce.

Northern requests an extension of the term of such authorization until March 31, 1990, from the current termination date of March 31, 1987 as set by the Commission in its Order in Docket No. CP85–710–000, *et al.*, on July 24, 1986, and its January 28, 1987 order on rehearing.

Comment date: March 2, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Panhandle Eastern Pipe Line Company Trunkline Gas Company

[Docket No. CP87–174–000]

Take notice that on January 27, 1987, Panhandle Eastern Pipe Line Company (Panhandle) and Trunkline Gas Company (Trunkline), hereinafter referred to as Applicants, P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP87–174–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon transportation service for Mid-Louisiana Gas Company (Mid-Louisiana), all as more fully set forth in application on file with the Commission and open to public inspection.

Applicants explain that the transportation service to be abandoned includes gas that Panhandle receives on behalf of Mid-Louisiana from Kansas-Nebraska Natural Gas Company, Inc. (K–N), at an existing point of interconnection between K–N and Panhandle in Dewey County, Oklahoma, and delivers to Trunkline in Douglas County, Illinois, for redelivery by Trunkline to Mid-Louisiana in Richland Parish, Louisiana.

Mid-Louisiana requested by letter dated May 1, 1986, that it wishes to terminate the transportation agreement with Applicants, effective May 3, 1987. The request for the termination is in accordance with Mid-Louisiana's tariff, it is asserted.

Applicants indicate that upon such authorization, each would cancel the appropriate Rate Schedules T–20 and T–27, respectively.

Comment date: March 6, 1987, in accordance with Standard Paragraph F at the end of this notice.

4. Texas Eastern Transmission Corporation

[Docket No. CP87–175–000]

Take notice that on January 27, 1987, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP87–175–000 an application pursuant to section 7(b) of the Natural Gas Act for authorization of partial abandonment of natural gas purchases from United Gas Pipe Line Company (United), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authority to reflect the contractual reduction of the Maximum Daily Quantity (MDQ) under the October 28, 1985, service agreement pursuant to United's Rate Schedule PL–N. Specifically, Applicant seeks to reduce its MDQ from 500,000 Mcf of natural gas per day to 400,000 Mcf of natural gas per day effective November 1, 1987, and to reduce its minimum billing demand from 477,000 Mcf of Natural gas per day to 300,000 Mcf of natural gas per day. United was authorized to sell this gas to Applicant by a Commission order issued on September 30, 1985, in Docket No. CP85–368–000 (32 FERC ¶ 61,477). Applicant states that Paragraph 2 of an October 25, 1985, Letter Agreement provides that United or Applicant may exercise its right to reduce the MDQ and either party may make the appropriate filings with the Commission. The current service agreement provides United sales authority at nine points in Louisiana, Texas, and Mississippi, it is stated. Applicant further states that on October 14, 1986, it gave written notice to United that Applicant wanted to reduce its MDQ by 100,000 Mcf of natural gas per day. In this notice Applicant informed United that if United did not make the appropriate filings by December 1, 1986, Applicant would make such filings. Applicant also states that no facilities would be abandoned.

Comment date: March 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filling should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act

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and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3755 Filed 2-20-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER87-252-000 et al.]

Vermont Electric Power Company, Inc., et al.; Electric rate and corporate regulation filings

February 18, 1987.

Take notice that the following filings have been made with the Commission:

1. Vermont Electric Power Company, Inc.

[Docket No. ER87-252-000]

Take notice that on February 11, 1987, Vermont Electric Power Company (VELCO) tendered for filing a change in rate under FERC Rate Schedule No. 10 and FERC Rate Schedule No. 236.

VELCO states that these rate changes are provided for in Paragraph 5 of FERC Rate Schedule No. 10 and Article IV of FERC Rate Schedule No. 236.

VELCO further states that the percentage rate used in computing montly charges from 18.31% to 19.72%.

VELCO requests that the effective date for the proposed change in rate be January 1, 1987.

Comment date: March 4, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Allegheny Power Service Corporation

[Docket Nos. ER87-188-000, ER87-189-000, ER87-192-000, ER87-193-000, ER87-194-000, ER87-195-000 and ER87-196-000]

Take notice that on February 9, 1987, Allegheny Power Service Corporation (APS) tendered for filing additional information concerning various modifications of APS Interconnection Agreement filings.

Copies of this additional information have been served upon appropriate regulatory authorities of Maryland, Ohio, Pennsylvania, Virginia and West Virginia.

Comment date: March 4, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Appalachian Power

[Docket Nos. ER87-105-002 and ER87-106-002]

Take notice that in compliance with the Commission's order issued January 13, 1987 in these consolidated dockets (38 FERC ¶ 61,010), on February 12, 1987, Appalachian Power Company (APCO) tendered for filing two sets of revised rates for its Electric Service Rate Schedule FPC No. 23 applicable to service to Kingsport Power Company and for its FERC Rate Schedules for service to its twenty-three wholesale customers in the States of Virginia and West Virginia. The revised rates and related cost-of-service statements have been filed to recognize the Commission's ratemaking policy of using a split rate of a 46% Federal income tax rate for rates collected June 30, 1987 and a 34% Federal income tax rate for rates collected after that date. As part of its filing APCO has requested that the LEVEL B rates which are based upon a 34% tax rate be made effective January 1, 1988.

Copies of the filing were served upon Kingsport Power Company and APCO's jurisdictional customers and the Virginia State Corporation Commission and the Public Service Commission of West Virginia and the Tennessee Public Service Commission.

Comment date: March 4, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Central Power and Light Company and West Texas Utilities Company

[Docket No. ER87-93-001]

Take notice that on February 2, 1987, Central Power and Light Company (CPL) and West Texas Utilities Company (WTU) tendered for filing a response to the Commission deficiency letter, issued to CPL and WTU on January 9, 1987.

Comment date: March 4, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Central Vermont Public Service Corporation

[Docket No. ER87-212-000]

Take notice that on February 2, 1987, Central Vermont Public Service Corporation tendered for filing a Certificate of Concurrence to be attached to the rate schedule previously filed in the above-captioned Docket.

Comment date: March 4, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Dayton Power and Light Company

[Docket No. ER87-216-000]

Take notice that on February 4, 1987, Dayton Power and Light Company (DP&L) tendered for filing a revision to Service Schedule C-Emergency Service of the Agreement between DP&L and the city of Piqua, Ohio (Pigua). DP&L states that this revision changes the demand charge stated in section 2.2 from 2.16 mills per kilowatt hour to 2.00.

Comment date: March 4, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. Illinois Power Company

[Docket No. ER87-167-000]

Take notice that Illinois Power Company ("the Company") on February 12, 1987 tendered for filing certain changes in the following rate schedule which was previously filed with the Commission on December 15, 1986.

Rate Schedule FERC No. 100, Partial Requirements Wholesale Service Agreement applicable to the City of Highland.

The revised language clarifies the provisions of section 3(c) Rates and Charges of Exhibit A, Wholesale Electric Service Schedule, as it pertains to the purchase of Excess Energy by the City of Highland and section 2(a) of Exhibit D, Supplemental Interruptible Electric Service.

The Company proposes the increased rates become effective on September 1, 1986 as agreed to by the Company and the City of Highland, and the Company requests that the Commission grant a waiver of its notice requirement pursuant to § 35.11 of the Commission's Regulations.

Copies of this filing were served upon the City of Highland and the Illinois Commerce Commision, Springfield, Illinois.

Comment date: March 4, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. Iowa Electric Light and Power Company

[Docket No. ER87-249-000]

Take notice that Iowa Electric Light and Power Company (Iowa Electric) on February 10, 1987, tendered for filing proposed changes in its FERC Electric Service Tariff, Original Volume I. The proposed changes would increase revenues from jurisdictional sales and service by $999,469, based on the 12-month period ending December 31, 1985.

A revision to the definition of Production Billing Demand is proposed. Filing requirements are submitted under § 35.13(a)(2) of the Commission's Rules and Regulations.

Iowa Electric states that, under rates currently in effect, its overall rate of return realized from service to its resale customers is inadequate and below the level of the FERC generic bench mark. The proposed rates are designed to enable Iowa Electric to increase earnings by $994,469 based on calendar year 1985.

Copies of the filing were served upon the public utility's jurisdictional customers and the Iowa State Utilities Board.

Comment date: March 4, 1987, in accordance with Standard Paragraph E at the end of this notice.

9. New York State Electric & Gas Corporation

[Docket No. ER82-410-000]

Take notice that on February 9, 1987, New York State Electric & Gas Corporation tendered for filing a compliance report responding to orders conveyed in Opinion No. 254.

Comment date: March 4, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3754 Filed 2-20-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Proposed Decision and Order; Period of January 12 Through January 23, 1987

During the period of January 12 through January 23, 1987, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Richard T. Tedrow,

Acting Director, Office of Hearings and Appeals.

February 12, 1987.

Kelley Williamson Company, Rockford, Illinois; KEE-0089, Reporting Requirement

Kelley Williamson Company filed and Application for Exception from the reporting requirements of the EIA. If granted, the firm would no longer be required to file Form EIA-782B. In considering the exception request, the DOE determined that the firm had not shown that the filing requirement imposed and inordinate burden. Accordingly, on January 21, 1987, the DOE issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 87-3774 Filed 2-20-87; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order; Week of January 12 Through January 30, 1987

During the week of January 26 through January 30, 1987, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Richard T. Tedrow,

Acting Director, Office of Hearings and Appeals.

February 12, 1987.

Waldo Oil Company, Waldo Wisconsin; KEE-0104, Reporting Requirements

Waldo Oil Company filed for relief from the requirements to submit Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The firm argued that it is too small to be relevant for EIA's statistical analysis concerning oil distribution in Wisconsin, and that none of its competitors are required to file the Form. The Office of Hearings and Appeals of the Department of Energy determined, however, that Waldo had not met the standards for exception relief. The OHA found that neither Waldo's size for the possibility that none of

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its competitors is required to file the Form establishes that Waldo was more burdened by the reporting requirement than similar firms. Consequently, on January 27, 1987 the OHA issued a Proposed Decision and Order to deny Waldo's request for relief.

[FR Doc. 87-3775 Filed 2-20-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-3159-3]

Assessment of Copper as a Potentially Toxic Air Pollutant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of copper assessment results and solicitation of information.

SUMMARY: This notice announces the results of EPA's assessment of copper as a candidate for regulation under the Clean Air Act (CAA). The Agency has concluded that the health data for copper is insufficient to determine its carcinogenic, mutagenic, or teratogenic potential following inhalation exposures. Adverse respiratory effects have been associated with inhalation exposure to copper dusts and mists. Similarly, exposure to total particulate matter, which may or may not contain copper, has been associated with adverse respiratory effects. Primary national ambient air quality standards (NAAQS) have been established to protect the general public from such adverse respiratory effects; and, regulations exist to control particulate emissions in order to attain the NAAQS. Therefore, no regulation under the CAA directed specifically at controlling emissions of copper is appropriate at this time.

Given the limited opportunity for public review of the health and exposure information incorporated in this notice, the Agency is soliciting comment and information pertinent to the determination made today. A further notice will be published only if public comments or additional information suggest a need to revise EPA's present conclusion. This finding has no effect on the regulation of copper as particulate matter to attain the NAAQS for particulate matter. In addition, this notice does not preclude any State or local air pollution control agency from specifically regulating emission sources of copper.

DATES: Written comments pertaining to this notice must be received on or before May 26, 1987.

ADDRESSES: Submit comments (duplicate copies are preferred) to: Central Docket Section (A-130), Environmental Protection Agency, Attn: Docket No. A-86-14, 401 M Street, SW., Washington, DC 20460.

Availability of related information: Information on the availability of the document "Summary Review of the Health Effects Associated with Copper: Health Issue Assessment," EPA 600/8-87/001, can be obtained from ORD Publications, CERI-FR, U.S. Environmental Protection Agency, Cincinnati, OH, 45268 (Telephone: 513-569-7562). The above document and other information on the sources, emissions, and environmental fate of copper are summarized in several reports which are found in Docket No. A-86-14. Docket No. A-86-14 is located in the Central Docket Section of the U.S. Environmental Protection Agency, West Tower Lobby Gallery I, 401 M Street, SW., Washington, DC 20460. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays, and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Robert M. Schell, Pollutant Assessment Branch (MD-12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711 (Telephone: 919-541-5645/commercial; 629-5645/FTS).

SUPPLEMENTARY INFORMATION: The EPA initiated an assessment of copper (Cu) based on the large production volume and the potential for adverse health effects associated with exposure to copper in ambient air. In the course of this assessment, the Agency collected relevant information currently available and today's notice provides a summary of this information on the following topics: production and uses, emissions, health effects, monitored ambient air concentrations, and exposure and risk estimates.

Production and Uses

In 1981, United States copper production was approximately 1.5 million metric tons, an estimated 0.76 million metric tons were imported, and approximately 0.60 million metric tons were refined from old scrap (EPA, 1985a). Copper metal and copper products are used in a variety of applications including electrical equipment and supplies, construction materials, machinery, etc. (EPA, 1985a).

Sources and Emissions

Copper is emitted to the ambient air from a variety of sources. Table 1 presents a summary of source categories which emit copper and their estimated emissions (EPA, 1985a). The emission ranges that are presented indicate the large variability of estimates in the data found in the literature. In addition to the anthropogenic sources listed in Table 1, copper is naturally emitted, with windblown dusts as the primary natural source of copper. Based on the available information, primary copper smelters and ore processing facilities appear to be the largest sources of anthropogenic air emissions of copper.

TABLE 1.—SOURCES AND EMISSIONS OF ATMOSPHERIC COPPER[1]

Source category	[2] Estimated copper emissions to the atmosphere (Mg/year)
Primary copper smelters	45-8,000[3]
Copper and iron ore processing	480-660
Iron and steel production	110-240
Combustion sources	45-360
Municipal incineration	3-270
Secondary copper smelters	160
Miscellaneous [4]	100-510
Total	940-8,200 Mg/year

[1] EPA, 1985a.
[2] A number of emission estimates were available to the Agency and this column reflects the range of estimates.
[3] Most probable emission estimate is 2,100 Mg/year.
[4] Includes copper mining and milling, gray iron foundries, miscellaneous copper metals and alloys, and miscellaneous copper chemicals and products.

Health Effects

The Agency has prepared a document entitled "Summary Review of the Health Effects Associated with Copper: Health Issue Assessment" (EPA, 1986a) which discusses the relevant data available for assessing the health effects associated with exposure to copper and some copper-related compounds in the ambient air. Its contents are summarized below.

Copper is an essential element required for proper nutrition. It is distributed throughout the body and may accumulate in the liver, serum, brain, or kidneys. Following environmental exposure to copper, absorption may occur via the gastrointestinal or respiratory tracts. The highest rates of absorption occur in the gastrointestinal tract following oral exposures (32-70 percent for adults; 42-85 percent for children, 3-6 years of age). It is estimated that only 20 percent of inhaled copper is eventually absorbed by the human lung. Another 20 percent is estimated to be retained in the lung tissue. An unknown percent of this may be cleared via respiratory transport mechanisms, swallowed, and possibly absorbed through the gastrointestinal tract. Dermal absorption of copper is though to be a minor pathway as very little copper is absorbed through the skin.

Experiments designed to evaluate the carcinogenicity and mutagenicity of copper compounds in animals have

produced equivocal results. Some short-term *in vitro* mutagenicity assays have indicated that certain copper salts may have characteristics suggestive of carcinogenicity, however, to date, bioassays that have been conducted show no evidence of animal carcinogenesis. EPA's Carcinogen Assessment Group (CAG) has concluded that the overall weight-of-evidence for copper suggests that data are not sufficient to determine its carcinogenic potential. Therefore, based on EPA's Guidelines for Carcinogen Risk Assessment (EPA, 1986b), CAG has classified copper in Group D (not classifiable as to human carcinogenicity).

Copper can cross the placental barrier and be absorbed by the fetus. Animal studies to evaluate the teratogenic potential of copper indicate limited positive evidence of teratogenicity in two rodent species following exposure to certain copper salts via oral, intravenous, and intraperitoneal routes of administration. A deficiency in copper has also been observed to produce teratogenic responses in many animal species.

Two subchronic inhalation studies in rabbits exposed to 60 μg Cu/kg/day as copper chloride ($CuCl_2$) for 28-42 days indicated a statistically significant increase in alveolar type II cells in one study and no change in lung lysozyme levels in the second study. These studies only involved examination of tissues directly exposed to copper chloride and no further analysis was conducted to assess systemic toxicity which might result from inhalation exposure.

A chronic inhalation toxicity study to evaluate the effects on guinea pigs exposed to air saturated with Bordeaux mixture (1.5% copper sulfate neutralized by hydrated calcium carbonate), a compound used to prevent the development of mildew on grapevines, 3 times/day for 6.5 months (duration of each exposure was not reported), revealed micronodular lesions and small histiocytic granulomas upon examination of the lungs. Only a small number of animals were tested and a daily copper exposure level cannot be derived from the information reported. Also, the contribution of calcium carbonate to the formation of these lesions cannot be assessed with present data.

Adverse health effects associated with occupational exposures to airborne copper fumes, dusts, or mists are primarily manifested by respiratory and dermatologic symptoms. Copper fumes as well as fumes of many other heavy metals have been shown to cause an acute illness called metal fume fever in workers exposed to high concentrations of metallic fumes in confined occupational settings. This condition is typically characterized by influenza-like symptoms (e.g., fever, stuffiness of the head, sensations of chills or warmth, and general aches and pains). A similar condition has been reported in workers exposed to fine dusts containing copper (120 μg Cu/m^3, unspecified exposure time, assumed less than 24 hours) and copper oxide and copper acetate dusts (unspecified concentrations and exposure times).

Chronic occupational exposure to dusts and mists of copper salts may result in irritation of the nasal mucous membranes and the pharynx. Additional effects observed following chronic industrial exposures to copper include contact dermatitis (rare occurences), mild anemia (600-1000 μg Cu/m^3, averaged over several months), and vineyard sprayer's lung. This latter condition has been reported in vineyard sprayers exposed to Bordeaux mixture. Dyspnea, weakness, decreased appetite, weight loss, radiographic lung opacities and copper deposits in the lungs have been reported in patients with vineyard sprayer's lung.

Monitored Ambient Concentrations

Data contained in the EPA's National Aerometric Data Bank indicate the highest annual average concentration of copper monitored is approximately 7.2 $\mu g/m^3$(Faoro, 1986). additional information in the literature show annual atmospheric copper concentrations in remote locations range from 0.01-12 ng/m^3; in rural locations from 5-50 ng/m^3; and from 30-200 ng/m^3 in urban and suburban areas (EPA, 1986a). The highest available ambient air concentration of copper measured for a 24-hour period was approximately 100 $\mu g/m^3$ located within one-half mile of a major point source (Raisch, 1985, Faoro et al., 1986).

Exposure Estimates

Estimates of long-term human exposure to atmospheric copper emitted from representative facilities for each source category identified in EPA's source assessment for copper (EPA, 1985a) were calculated using the Human Exposure Model (HEM). The HEM estimated concentrations to which populations living within 50 kilometers of specific sources may be exposed. As indicated in Table 1, a broad range of emission estimates were available for sources emitting copper to the atmosphere. For all sources, the maximum reported emission estimates were used in the modeling exercise. The results of these modeling analyses indicated a maximum annual copper concentration of 30 $\mu g/m^3$ (Hassett, 1987).

In order to assess the potential for adverse non-cancer health effects from short-term exposure to copper, a conservative screening modeling analysis was performed using time-adjusted most probable annual emission rates for two primary copper smelters. Worst case assumptions for source location, meteorological conditions and terrain effects were applied. The highest predicted concentrations, however, would exceed the 24-hour primary NAAQS for particulate matter by greater than one order of magnitude. While available monitoring data for particulate matter indicate that there are exceedances of this standard in the vicinity of copper smelters, actual total particulate matter measured (containing copper as well as other particulates) do not confirm ambient concentrations as high as those predicted by the screening technique (Hassett, 1987).

Existing Regulations

Particulate matter, which may or may not contain copper, has been associated with an increased incidence of adverse respiratory effects in both occupationally-exposed people and in the general public. An analysis of the health effects associated with exposure to particulate matter and the concentrations required to elicit these effects is contained in the EPA staff paper (EPA, 1982a) and the criteria document on particulate matter (EPA, 1982b). Primary NAAQS have been established under section 109 of the CAA to protect the general public from adverse respiratory effects for both short-term (24-hours) and long-term (annual) exposure periods. These levels are 260 $\mu g/m^3$ and 75 $\mu g/m^3$, respectively. The NAAQS for particulate matter are presently undergoing review and the Agency has proposed changes to the primary (health-based) standards that would focus on particles having diameters of less than or equal to 10 microns (PM_{10}) (EPA, 1984).

The National Institute for Occupational Safety and Health, the Occupational Safety and Health Administration and the American Conference of Governmental Industrial Hygienists (ACGIH) have adopted regulations or have made recommendations for an occupational time weighted average level of 1 $\mu g/m^3$ for copper dusts and mists. This level is designed to protect the average healthy worker that may be repeatedly exposed to copper, day after day, from adverse health effects (ACGIH, 1986).

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The Office of Drinking Water has recommended a one day health advisory based on acute toxicity of 1.3 mg copper/liter of drinking water and proposed a recommended maximum contaminant level (RMCL) at the same level to protect against adverse gastrointestinal effects (EPA, 1985b). A secondary drinking water standard of 1 mg/liter adopted for organoleptic reasons currently exists. Copper and some copper compounds are currently listed as hazardous substances under section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Further, under section 101(14) of CERCLA, Reportable Quantities (RQs) are established for substances specified in the CERCLA, as well as substances listed or designated under certain sections of the Clean Water Act, CAA (section 112), the Resource Conservation and Recovery Act and the Toxics Substances Control Act (EPA, 1985c). Section 103(a) of the CERCLA requires that any release to the environment (including the air) in any 24-hour period that is equal to or greater than 5000 pounds for copper, 10 pounds for cupric chloride, 10 pounds for cupric sulfate, 100 pounds for cupric tartrate, 10 pounds for copper cyanide, 100 pounds for copper acetate, 100 pounds for cupric acetoarsenite, 100 pounds for cupric nitrate, 100 pounds for cupric oxalate, and 100 pounds for cupric sulfate ammoniated (EPA, 1985c; EPA, 1986c) must be reported to the National Response Center (NRC) (telephone 800-414-8802 or 202-426-2675 for the Washington, DC metropolitan area). The 24-hour period refers to the period within which a reportable quantity of a hazardous substance is released in order for the release to be considered reportable; it does not refer to the time available for a person to report a release. Such reporting must occur immediately.

Conclusions

The Agency concludes that the data available at this time are insufficient to indicate health concerns that require further regulation of copper emissions under the Clean Air Act. Target levels identified for protection against adverse respiratory effects associated with exposure to copper were the primary NAAQS for particulate matter. These levels were selected on the basis that the respiratory effects elicited by particulate matter containing or not containing copper are equivalent. As indicated previously, the particulate matter NAAQS are currently undergoing review. Proposed changes to the primary (health-based) standards focus on PM_{10}. Available ambient monitoring data indicate that the mass median diameter (MMD) of copper particles ranges from <0.4–10 μm with an average MMD of 1.3 μm (EPA, 1986a). Therefore, when standards for PM_{10} are promulgated, the levels identified to protect public health will still be appropriate for protecting against adverse effects associated with exposure to copper.

Protective levels were not identified for metal fume fever. Available information indicates that metal fume fever is an acute occupational hazard confined to the immediate work place. It is associated with exposure to fumes or fine dusts of many heavy metals (e.g., copper, zinc, manganese) which are generated during certain work practices (e.g., welding or cutting metals, galvanizing iron). Metal fume fever is a transitory acute effect and appears to be more a function of the physical form(s) of a metal rather than a specific metal. One study associated fine dusts containing copper at a short-term concentration (duration unspecified, assumed less than 24 hours) of 120 μg/m³ with mild metal fume fever-like symptoms in three individuals. Due to the limited number of air samples collected, the limited number of individuals studied, and simultaneous exposure to other compounds, this data does not permit broad generalizations about the toxicological aspects of fine, airborne dusts containing copper (Gleason 1968). In a review of occupational exposures to copper, ACGIH acknowledged this study but concluded that the weight-of-evidence did not support lowering their current occupational level (1 mg/m³, for hours) (ACGIH, 1986). Consequently, the 120 ug/m³ concentration was not considered sufficiently reliable to use as an effect level for purposes of this analysis. As noted above, the most appropriate benchmark for this decision on copper was judged to be the NAAQS for particulate matter.

Given the findings presented here, the long-term (annual) copper concentrations measured or estimated to be present in the ambient air are below the non-cancer health effects levels associated with exposure to copper. In contrast, the concentrations predicted from the short-term modeling exercise indicate a potential cause for concern, since these concentrations exceed the 24-hour primary NAAQS for particulate matter. Criteria air pollution control programs have been established to control particulate matter emissions in order to attain the NAAQS for particulate matter in all areas. Appropriate revisions to these plans will be made once the NAAQS revisions for particulate matter are promulgated. Copper, as particulate matter, is controlled under these efforts. Therefore, Federal regulatory activity specifically directed at regulating copper under the CAA is not warranted at this time. This present conclusion has no effect on the regulation of particulate matter, which may include copper.

The EPA invites comments and submission of information pertinent to the determination made today. A further notice will be published if public comments or other additional information suggest a need to reevaluate today's findings and revise EPA's present conclusions.

Dated: February 10, 1987.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

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ACGIH (1986). Documentation of Threshold Limit Values and Biological Exposure Indices. Fifth edition, 1986.

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EPA (U.S. Environmental Protection Agency) (1982b). Air Quality Criteria for Particulate Matter and Sulfur Dioxides. Environmental Criteria and Assessment Office, Office of Research and Development, U.S. Environmental Protection Agency, Research Triangle Park, NC. EPA 600/8-82-029.

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EPA (U.S. Environmental Protection Agency) (1985c). Notification Requirements; Reportable Quantity Adjustments. April 4, 1985. 50 F.R. 13456.

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EPA (U.S. Environmental Protection Agency) (1986b). Guidelines for Carcinogen Risk Assessment. September 24, 1986. 51 F.R. 33992.

EPA (U.S. Environmental Protection Agency) (1986c). Superfund Programs; Reportable Quantity Adjustments; Final Rule. September 29, 1986. 51 F.R. 34534.

Faoro, R.B. (1986). Personal communication R. B. Faoro, U.S. EPA, Office of Air Quality Planning and Standards, Monitoring and Data Analysis Division, with B. Hassett. Ambient copper monitoring data. September 10, 1986.

Faoro, R. B., Hunt, W. F, Nelson, K. A. (1986). Compilation of Benzo(a)pyrene and Trace Metal Summary Statistics 1983-84. U.S. EPA, Office of Air Quality Planning and Standards, June 1986. EPA-450/4-86-009.

Gleason, R. C. (1968). Exposure to Copper Dust. Journal of the American Industrial Hygienists Association. Vol. 29, p. 461.

Hassett, Beth M. (1987). Memorandum to the Files. Copper Exposure and Risk Analysis. January 6, 1987.

Raisch, Bob (1985). Letter from Bob Raisch, Supervisor, Operations Section, State of Montana to John Vandenberg, Office of Air Quality Planning and Standards. Ambient copper monitoring data. November 25, 1985.

[FR Doc. 87-3720 Filed 2-20-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3158-9]

Meeting of the Advisory Committee Negotiating the Hazardous Waste Injection Restrictions Rulemaking

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of an open two day meeting of the Advisory Committee negotiating Hazardous Waste Injection Restrictions.

The meeting will be held on Monday and Tuesday, March 9 and 10, 1987, at the Conservation Foundation, 1255 23rd Street, NW., First Floor Library, Washington, D.C. On both days the meeting will start at 9:30 a.m. and will run until completion. The purpose of the meeting is to continue working on the substantive issues which the Committee has identified for resolution.

If interested in more information, please contact Kathy Tyson at (202) 382-5479.

Dated: February 12, 1987.

Milton Russell,

Assistant Administrator for Policy, Planning and Evaluation.

[FR Doc. 87-3721 Filed 2-20-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3159-2]

Science Advisory Board, Clean Air Scientific Advisory Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given of a meeting of the Lead Benefits Analysis Subcommittee of the Clean Air Scientific Advisory Committee of the Science Advisory Board. The meeting will be held on March 10, 1987 at the U.S. Environmental Protection Agency, Room 1103 West Tower, 401 M Street, SW., Washington, DC 20460. The meeting will begin at 9:30 a.m. and adjourn at approximately 5:00 p.m.

The purpose of the meeting is for the Subcommittee to review EPA's lead benefit valuation methodology as presented in the document *Methodology for Valuing Health Risk of Ambient Lead Exposure*, December 1986 (Draft), and to provide its advice to the Agency on the following issues, among others: (1) the valuation of changes in health endpoints, (2) presentation of the uncertainty in the benefits estimates, and (3) appropriateness of the benefit category aggregation procedures.

For further information and copies of the draft EPA Document, please contact: Dr. David McLamb, U.S. EPA, Office of Air Quality Planning and Standards (MD-12), Economic Analysis Branch, Research Triangle Park, NC 27711, (919) 541-5611. Written comments may be submitted to Dr. McLamb at the above address until March 20, 1987.

The meeting is open to the public, however, due to the size of the conference room, seating is very limited. Persons wishing to attend must contact Mr. Robert Flaak, Executive Secretary, Clean Air Scientific Advisory Committee, Science Advisory Board (A-101F), U.S. EPA, 401 M Street, SW., Washington, DC 20460 (202) 382-2552, prior to the meeting to be assured of seating. Opportunity will be provided for members of the public to make brief oral statements concerning the document. Persons wishing to make statements at the meeting must contact Mr. Flaak no later than close of business on March 4, 1987 to obtain space on the agenda. Written statements of any length may be submittee to Mr. Flaak up to the day of the meeting. These oral and written statements will be considered by the Subcommittee in preparing its report to the Agency. The Subcommittee will not accept comments after March 10, 1987, however, comments may still be submitted to the Agency until March 20, 1987. The Agency will consider the Subcommittee report and the public comments in its revision of the document.

Dated: February 13, 1987.

Dr. Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 87-3722 Filed 2-20-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

February 13, 1987.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0323

Title: Section 97.36(c), Reimbursement for expenses

Action: Extension

Respondents: Volunteer examiners and volunteer examiner coordinators

Frequency of Response: Annually

Estimated Annual Burden: 3,500 Respondents; 3,500 Recordkeepers; 42,585 Hours

Needs and Uses: The Commission uses volunteer examiners and volunteer examiner coordinators to administer examinations to applicants for amateur radio licenses. Volunteer examiners or volunteer examiner coordinators seeking reimburement for expenses incurred in preparing, processing, or administering examinations must keep records of their expenditures. They must also certify annually to the Commission that all expenses for which they were reimbursed were necessary and prudent. These requirements are necessary to prevent fraud and abuse in the volunteer examination program.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-3730 Filed 2-20-87; 8:45 am]

BILLING CODE 6712-01-M

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FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-REP-5-IL-7]

Illinois Plan for Radiological Accidents (Volumes I and VII)

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of Receipt of plan.

SUMMARY: For operation of nuclear power plants, the Nuclear Regulatory Commission requires approved license and State and local governments' radiological emergency response plans. Since FEMA has the responsibility for reviewing the State and local government plans, the State of Illinois has submitted its plan for radiological accidents to the FEMA Regional Office. Volumes I and VII of this plan provide the required offsite emergency response to an accident at the Braidwood Nuclear Power Station location in Will County, Illinois, which impacts on Will, Grundy and Kankakee Counties within the State of Illinois.

DATES:

Date Plans Recieved: January 26, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Connor, Acting Regional Director, FEMA Region V, 300 South Wacker Drive, 24th Floor, Chicago, Illinois, 60606, (312) 353–1500.

SUPPLEMENTARY INFORMATION: In support of the Federal requirement for emergency response plans, FEMA Rule 44 CFR 350.12 (FEMA Headquarters Review and Approval) describes the procedures for review and approval of State and local governments' radiological emergency response plans. Pursuant to the Rule, the Illinois Plan for Radiological Accidents (Volumes I and VII) were received by FEMA Region V. Included are plans for local governments which are wholly or partially within the plume exposure pathway emergency planning zone. For the Braidwood Nuclear Power Station, plans are included for Will, Grundy and Kankakee Counties.

Copies of the plans are available for review at the FEMA Region V Technological Hazards Branch, Natural and Technological Hazards Division, 300 South Wacker Drive, 24th Floor, Chicago, Illinois, 60606. Copies will be made available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, as set out in FEMA Rule 44 CFR 5. There are 292 pages in Volume I and 718 pages in Volume VII of the document; reproduction fees are $.10 a page payable with the request for copy. Comments on the Illinois Plan for Radiological Accidents (Volumes I and VII) may be submitted in writing to Mr. Robert E. Connor, Acting Regional Director, at the above address within thirty days of this Federal Register Notice.

FEMA Rule 44 CFR 350.10 calls for a public meeting prior to approval of the plan. A public meeting will be held on the Illinois Plan for Radiological Accidents for the Braidwood Nuclear Power Station on May 20, 1987, at 7:00 p.m., at the Reed-Custer High School, 225 Conet Drive, Braidwood, Illinois.

Dated: February 6, 1987.

Robert E. Connor,

Acting Regional Director.

[FR Doc. 87-3700 Filed 1-20-87; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License No.: 2587
Name: M.I.T. Shipping Incorporated
Address: 22706 Aspan Street, #307, Lake Forest, CA 92630
Date revoked: December 17, 1986
Reason: Failed to maintain a valid surety bond

License No.: 1494
Name: Jetero International Services, Inc.
Address: P.O. Box 60612 AMF, Houston, TX 77205
Date revoked: December 18, 1986
Reason: Failed to maintain a valid surety bond

License No.: 1652
Name: Osborne International, Inc.
Address: P.O. Box 52370, Houston, TX 77052
Date revoked: January 5, 1987
Reason: Requested revocation voluntarily

License No.: 29
Name: Berry & McCarthy Shipping Co., Inc.
Address: 1350 Marin Street, San Francisco, CA 94124
Date revoked: January 9, 1987
Reason: Requested revocation voluntarily

License No.: 2721
Name: ABCO Freight Forwarders, Inc.
Address: 7371 N.W. 54th Street, Miami, FL 33166
Date revoked: January 10, 1987
Reason: Failed to maintain a valid surety bond

License No.: 1398
Name: Wilson Shipping, Incorporated
Address: 5702 Saxon Drive, Houston, TX 77092
Date revoked: January 12, 1987
Reason: Requested revocation voluntarily

License No.: 2930
Name: World Shipping Inc.
Address: 316 Main Street, East Rutherford, NJ 07073
Date revoked: January 14, 1987
Reason: Failed to maintain a valid surety bond

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 87-3689 Filed 2-20-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

February 17, 1987.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTRACT: Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–6880).

Approval under OMB delegated authority of the extension without revision of the following reports:

1. *Report title:* Application for Employment with the Board of Governors of the Federal Reserve System:

Agency form number: N.A.
OMB Docket number: 7100–0181
Frequency: On occasion
Reporters: Individuals

Small businesses are not affected.

General description of report:

This information collection is required to obtain a benefit [12 U.S.C. 244 and 248(1)] and is given confidential treatment [5 U.S.C. 552a and 552(b)].

Form is used to seek benefit of employment with the Board of Governors of the Federal Reserve System.

2. *Report title:* Request for Proposal; Request for Price Quotations:

Agency form number: N.A.
OMB Docket number: 7100–0180
Frequency: On Occasion
Reporters: Venders, suppliers

Small businesses are affected.

General description of report:

This information collection is required to obtain a benefit [12 U.S.C. 244] and is not given confidential treatment, unless requested otherwise by the respondent.

Forms are used for obtaining competitive proposals/contracts for procurement of goods and services and sale property. These requirements are prapared is correspondence format:

Board of Governors of the Federal Reserve System, February 17, 1987.

William W. Wiles,

Secretary of the Board

[FR Doc. 87-3675 Filed 2-20-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 77N-0240; DESI 12836]

Dipyridamole; Drugs for Human Use; Drug Efficacy Study Implementation; Amendment

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) amends a notice of opportunity for hearing which proposed to withdraw approval of new drug applications for drug products containing dipyridamole. As amended, the proposal names sixteen more products.

EFFECTIVE DATE: February 23, 1987.

FOR FURTHER INFORMATION CONTACT: Judy O'Neal, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8041.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 15, 1987 (52 FR 1663), FDA revoked the temporary exemption that has allowed drug products containing dipyridamole to remain on the market beyond the time limits scheduled for implementation of the Drug Efficacy Study. FDA reclassified the drug to lacking substantial evidence of effectiveness for long term therapy of chronic angina pectoris, proposed to withdraw approval of the new drug applications insofar as they provide for the indication reclassified to lacking substantial evidence of effectiveness, and offered an opportunity for a hearing on the proposal.

The notice listed products that had been permitted to continue marketing under the terms of exemption. The following conditionally approved abbreviated new drug applications (ANDA's) should have been included in the list:

1. *ANDA 86–906;* Dipyridamole Tablets containing 25 milligrams (mg) of the drug per tablet; Lemmon Co., P.O. Box 630, Sellersville, PA 18960.
2. *ANDA 87–432;* Dipyridamole Tablets containing 75 mg of the drug per tablet; Danbury Pharmacal, 131 West St., Danbury, CT 06810.
3. *ANDA 87–492;* Dipyridamole Tablets containing 25 mg of the drug per tablet; Barr Laboratories, Inc., 265 Livingston St., Northvale, NJ 07647.
4. *ANDA 87–830;* Dipyridamole Tablets containing 75 mg of the drug per tablet; Boehringer-Ingelheim Pharmaceuticals, Inc., 90 East Ridge, Ridgefield, CT 06877.
5. *ANDA 87–831;* Dipyridamole Tablets containing 50 mg of the drug per tablet; Boehringer-Ingelheim.
6. *ANDA 88–018;* Dipyridamole Tablets containing 50 mg of the drug per tablet; Barr Laboratories, Inc.
7. *ANDA 88–019;* Dipyridamole Tablets containing 75 mg of the drug per tablet; Barr Laboratories, Inc.
8. *ANDA 88–416;* Dipyridamole Tablets containing 25 mg of the drug per tablet; Barr Laboratories, Inc.
9. *ANDA 88–417;* Dipyridamole Tablets containing 50 mg of the drug per tablet; Barr Laboratories, Inc.
10. *ANDA 88–418;* Dipyridamole Tablets containing 75 mg of the drug per tablet; Barr Laboratories, Inc.
11. *ANDA 88–800;* Dipyridamole Tablets containing 50 mg of the drug per tablet; Danbury Pharmacal.
12. *ANDA 88–822;* Dipyridamole Tablets containing 50 mg of the drug per tablet; Pharmaceutical Basics, Inc. P.O. Box 9327, Denver CO 80209.
13. *ANDA 88–945;* Dipyridamole Tablets containing 25 mg of the drug per tablet; Danbury Pharmacal.
14. *ANDA 89–346;* Dipyridamole Tablets containing 25 mg of the drug per tablet; Colmed Laboratories, P.O. Box 1148, Fort Collins, CO 80522.
15. *ANDA 89–349;* Dipyridamole Tablets containing 50 mg of the drug per tablet; Colmed Laboratories.
16. *ANDA 89–350;* Dipyridamole Tablets containing 75 mg of the drug per tablet; Colmed Laboratories.

The products identified above are subject to the provision of the notice published January 15, 1987 except that the dates are changed as follows:

The revocation of the temporary exemption is effective February 23, 1987;

Requests for hearing are due on or before March 25, 1987;

Data in support of hearing requests are due April 24, 1987.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053 as amended (21 U.S.C. 352, 355)) and under authority delegated to the Acting Director of the Center for Drugs and Biologics (21 CFR 5.70 and 5.82).

Dated: February 7, 1987.

Gerald F. Meyer,

Acting Deputy Director, Center for Drugs and Biologics.

[FR Doc. 87-3734 Filed 2-20-87; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Veterinary Medicine Advisory Committee

Date, time, and place. April 21 and 22, 8:15 a.m., Conference Rm. E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, April 21, 8:15 a.m. to 10:30 a.m.; open public hearing, 10:30 a.m. to 1 p.m., unless public participation does not last that long; open committee discussion, 1 p.m. to 4:30 p.m.; closed committee deliberations, April 22, 8:15 a.m. to 12 m.; Max L. Crandall, Center for Veterinary Medicine (HFV-4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3450.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal diseases and increased animal production.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on

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issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss (1) phasing NADA review, (2) CVM compliance programs, (3) classification of Rx and OTC products, (4) new tissue residue compliance program, and (5) CVM research program plans.

Closed committee deliberations. The committee will review and discuss trade secret and/or confidential commercial information relevant to pending new animal drug applications (NADA's) and investigational new animal drugs (INAD's). This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: February 17, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87–3735 Filed 2–20–87; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of March 1987:

Name: Council on Graduate Medical Education.

Date and Time: March 17–18, 1987, 8:30 a.m.

Place: Sheraton National Hotel, Columbia Pike and Washington Blvd., Arlington, VA 22204.

The entire meeting is open.

Purpose: Provides advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with respect to (A) the supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to foreign medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteophathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), and (C) above; and (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Agenda: On March 17 the agenda includes the review of previous minutes, discussion of Draft Council Action Plan I, and subcommittee meetings. On March 18, report on HRSA developments; update on legislative developments; discussions of issues for Council consideration; presentation on FMG issues; and reports from the subcommittees on Physician Manpower, FMG, and GME Programs and Financing.

Anyone requiring information regarding the subject Council should contact Mr. Paul Schwab, Executive Secretary, Council on Gradute Medical Education, Health Resources and Services Administration, Room 14–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2033. Agenda items are subject to change as priorities dictate.

Dated: February 17, 1987.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 87–3731 Filed 2–20–87; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–080–07–6332–02: GP7–120]

Oregon; Closures and Restrictions; Yaquina Head Outstanding Natural Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closures and restrictions, Yaquina Head Outstanding Natural Area, Oregon.

SUMMARY: To fulfill the specific administrative mandate set forth in the Act of Congress dated March 5, 1980 (Pub. L. 96–199), and in accordance with 43 CFR 8364.1, notice is hereby given that the closures and restrictions listed below apply to lands within the Congressionally established Yaquina Head Outstanding Natural Area. This 100-acre area is located in Lincoln County, Oregon, along the Pacific Coast in sections 29 and 30, T. 10 S., R. 11 W., Willamette Meridian.

(1) The area is open to public visitation and use during daylight hours and closed at night;

(2) Motorized travel is limited to developed interior access roads and parking areas;

(3) Walking and hiking are limited to developed interior access roads, parking areas and foot-trails;

(4) Hunting, shooting firearms, and igniting fireworks or other explosive devices are prohibited;

(5) Damaging or removing plant and animal specimens or cultural resources are prohibited;

(6) Overnight camping is prohibited;

(7) Flying radio-controlled model airplanes or kites is prohibited;

(8) Domesticated pets are not permitted on lands west of the centralized parking area at the tip of the headland (seeing-eye and hearing-ear dogs excepted). Elsewhere on the headland, domesticated pets must be physically restrained at all times.

(9) Hang gliding set up, launch and flying activities are restricted to historically used sites located east of the prominent ridge which forms the western wall of the upper quarry. North of Ocean Drive, hang gliding activity is not regulated seasonally and use may continue throughout the year. South of Ocean Drive, hang gliding activity is regulated annually during the critical portion of the sea bird nesting period; and

(10) Research projects and scientific studies are regulated by permit.

This closure and restriction order does not apply to:

(1) Any Federal, state or local official or member of an organized rescue, medical or fire fighting unit while in the performance of fire, emergency, law enforcement or other similar duty;

(2) Any Bureau of Land Management, U.S. Coast Guard or U.S. Fish and Wildlife Service employee, agent, contractor or cooperator while in the performance of an official duty; and

(3) Any person or member of a group or institution expressly authorized by permit, license, agreement or other similar authorization while in the performance of activities covered by the authorization.

A copy of this closure and restriction order, and a map showing the exact location of the Yaquina Head Outstanding Natural Area boundaries, are posted at the Bureau of Land Management, Salem District Office, 1717 Fabry Road S.E., Salem, Oregon, and at the centralized parking area near the western tip of the headland.

Any person who violates this closure and restriction order may be subject to a maximum fine of $1,000 and/or imprisonment not to exceed 12 months under authority of 43 CFR 8360.0–7.

This closure and restriction order is in effect immediately and shall remain in effect unless revised, revoked or amended.

SUPPLEMENTARY INFORMATION: The Act of Congress dated March 5, 1980 (Pub. L. 96–199), directed the Secretary of the Interior to administer the Yaquina Head Outstanding Natural Area in such a manner as will best provide for:

(1) The conservation and development of the scenic, natural and historic values of the area;

(2) The continued use of the area for purposes of education, scientific study and public recreation which do not substantially impair the purposes for which the area is established; and

(3) Protection of the wildlife habitat of the area.

The purpose of this closure and restriction order is to provide a means by which the Secretary of the Interior, through the Bureau of Land Management, can control and manage public use of the area to effectively carry out the specific mandate set forth in the Act. Each of the closures and restrictions listed in this order are addressed in the December 27, 1983, Management Plan Decision for the Yaquina Head Outstanding Natural Area, a document approved after completion of an environmental assessment with full public participation.

FOR FURTHER INFORMATION CONTACT: Richard C. Prather, Area Manager, Yamhill Resource Area, Bureau of Land Management, Salem District Office, 1717 Fabry Road S.E., Salem, Oregon 97306. (503) 399–5646.

Dated: February 12, 1987.

Van W. Manning,

District Manager, Salem District.

[FR Doc. 87–3679 Filed 2–20–87; 8:45 am]

BILLING CODE 4310–33–M

[OR–090–07–4212–2: GP7–111]

Oregon; Realty Action—Noncompetitive Lease of Public Lands for Commercial Occupancy Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—noncompetitive occupancy lease of public lands in Lane County, Oregon.

SUMMARY: The following described acquired land has been examined and determined to be suitable for lease under section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732) at not less than the fair market rental:

Willamette Meridian, Oregon

T. 17 S., R. 4 W.,
Sec. 33: Metes and Bounds within SW¼NE¼.
Containing 8.2 acres, more or less.

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The proposed lease would authorize use of the site for construction of a Bureau of Land Management District Office complex under the terms and conditions of a contract to be awarded and administered by the General Services Administration (GSA). The GSA contract will provide for construction of the District Office and lease of the facilities back to the government for a term of 15 years. The proposed lease of the land will be linked directly to the GSA contract. At the end of the GSA contract/BLM lease period, the improvements will become the property of the United States.

The site is located within the City of Eugene, Oregon and was acquired in 1979 specifically for construction of a BLM office complex.

The lease will be issued noncompetitively to the contractor selected by GSA for award of the construction/lease contract. The GSA selection process is competitive. The lease term will be 15 years and it will be nonrenewable.

DATE: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Coast Range Area Manager at the address shown below. Any objections will be reviewed by the Eugene District Manager, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

ADDRESS: Detailed information concerning this lease, including the land report and draft lease, is available for review at the Eugene District Office, P.O. Box 10226 (1255 Pearl Street), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Ronald Wold, Eugene District Office, at (503) 687–6895.

Date of issue: February 11, 1987.

Wayne E. Elliott,

Area Manager.

[FR Doc. 87–3682 Filed 2–20–87; 8:45 am]

BILLING CODE 4310–33–M

[CA–940–07–4520–12; Group 803]

California; Filing of Plat of Survey

February 11, 1987.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

San Bernardino Meridian, Riverside County

T. 7 S., R. 4 W.

2. This plat representing the corrective dependent resurvey of a portion of Lot 38, Rancho Santa Rosa, a portion of the west boundary, and the east and west center line of fractional section 18, Township 7 South, Range 4 West, San Bernardino Meridian, California, under Group No. 803, California, was accepted February 3, 1987.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Forest Service, Cleveland National Forest.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 87–3680 Filed 2–20–87; 8:45 am]

BILLING CODE 4310–40–M

[CO–940–07–4220–11; C–043548]

Colorado; Notice of Proposed Continuation of Withdrawal

February 10, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, proposes that the order which withdrew lands for an indefinite period of time for use as various recreation areas and campgrounds, be modified and the withdrawal be continued for 20 years insofar as it affects 579.60 acres of National Forest System land. The land will remain closed to surface entry and mining, but not to mineral leasing.

DATE: Comments should be received by May 26, 1987.

ADDRESS: Comments should be addressed to State Director, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 236–1768.

The Forest Service, U.S. Department of Agriculture, proposes that the existing withdrawal made by Public Land Order 2625, dated March 9, 1962, as amended, for an indefinite period of time, be modified to expire in 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. This order affects lands in T. 11 S., R. 93 W., Tps. 11 and 12 S., R. 94 W., T. 12 S., R. 95 W., and T. 11 S., R. 96 W., Sixth Principal Meridian, Colorado. This area aggregates approximately 579.60 acres of land in the Grand Mesa National Forest, Delta and Mesa Counties, Colorado.

The purpose of this withdrawal is for the administration and protection of various recreation areas and campgrounds. No change is proposed in the purpose or segregative effect of the withdrawal. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with this proposed action may present their views in writing to this office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. Notice of the final determination will be published in the **Federal Register**. The existing withdrawal will continue until such determination is made.

Richard D. Tate,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87–3678 Filed 2–20–87; 8:45 am]

BILLING CODE 4310–JB–M

[NM–010–07–4410–08]

New Mexico; Albuquerque District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of District Advisory Council meeting.

SUMMARY: The Bureau of Land Management's Albuquerque District Advisory Council will meet on Monday, March 16, 1987, at 10 a.m., in the BLM District Office Building located at 435 Montano NE., in Albuquerque, New Mexico.

The Council will address the following issues:

1. The future of BLM and New Mexico State Land Office Exchanges.
2. Status Report—National Academy of Sciences Committee on Guidelines for Paleontological Collecting. Review of Draft Recommendations.
3. Brief Overview of the Farmington Resource Management Plan.
4. Reports from Council Subcommittees.

—Taos RMP Land Disposal Issue
—De-Na-Zin Wilderness Management Plan
—Rio Puerco ORV Implementation

5. Program Updates

—Lee Acres Hazardous Waste
—Statewide Wilderness Study Process.

Time will be provided for public comments during the appropriate agenda items. The Albuquerque District Advisory Council is managed in accordance with the Federal Land Policy and Management Act of 1979. Minutes of the meeting will be made available for review within 30 days following the meeting. For additional information, contact Alan Hoffmeister, Public Affairs Specialist, 435 Montano NE., Albuquerque, New Mexico 87107, (505) 766–4504.

L. Paul Applegate,

District Manager.

[FR Doc. 87–3681 Filed 2–20–87; 8:45 am]

BILLING CODE 4310–FB–M

[ID–940–07–4211–08]

Availability of the Final Environmental Impact Statement; Elgin-Hamer Road Plan, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the final environmental impact statement (EIS) and proposed decision for the Elgin–Hamer road plan amendment.

DATE: Protests of the proposed plan amendment will be accepted until March 23, 1987.

ADDRESS: Protests of the proposed plan amendment should be sent to: Director, Bureau of Land Management, 18th and "C" Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Lloyd Ferguson, District Manager, Idaho Falls District Office, BLM, 940 Lincoln Road, Idaho Falls, ID 83401. Telephone 208–529–1020.

A limited number of the final EISs are available from this address.

SUPPLEMENTARY INFORMATION: Fremont and Jefferson Counties in eastern Idaho have applied for a right-of-way across public land to construct a year-round gravel road approximately 10 miles long. The right-of-way would cross the Nine Mile Knoll Area of Critical Environmental Concern (ACEC). Management constraints established by designation of the ACEC include prohibition of new roads or major rights-of-way. Granting a right-of-way would require an amendment of the Medicine Lodge Resource Management Plan (RMP). The draft plan amendment/EIS was distributed to the public in June 1986.

The proposed decision is to amend the Medicine Lodge RMP to allow the right-of-way, with the stipulation that the road be closed every year from December 1 through March 31. Failure to effect the closure would cause revocation of the right-of-way. The RMP would also be amended to increase the size of the Nine Mile Knoll ACEC from 31,600 acres to 40,090 acres. The management contraints on the ACEC would remain as in the existing plan. The reason for enlarging the ACEC is to include all of the most important parts of the crucial winter habitat of the Sand Creek elk herd.

Anyone who participated in the planning process and has an interest that may be adversely affected by this amendment may protest. The protest shall be in writing and filed with the Director at the address given above. The protest shall contain the name, mailing address, telephone number, and interest of the person filing the protest; a statement of the issue being protested; a statement of the part of the amendment being protested; a copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record; and a concise statement explaining why the State Director's decision is believed to be wrong.

Dated: February 12, 1987.

Pieter J. Van Zanden,

Associate State Director.

[FR Doc. 87–3676 Filed 2–20–87; 8:45 am]

BILLING CODE 4310–GG–M

[Alaska AA–48615–F]

Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48615–F has been received covering the following lands:

Copper River Meridian, Alaska

T. 13 N., R. 4 W.,
Sec. 20, N½SW¼
(80 acres).

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16 2/3 percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from June 1, 1985, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48615–F as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective June 1, 1985, subject to the terms and conditions cited above.

Dated: February 12, 1987.

Kay F. Kletka,

Acting Chief, Branch of Mineral Adjudication.

[FR Doc. 87–3705 Filed 2–20–87; 8:45 am]

BILLING CODE 4310–JA–M

[A–22594]

Community Pit and Common Use Area; Realty Action; Mohave County, AZ

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action, Mohave County, Arizona.

SUMMARY: The following described public land has been determined to be available to provide mineral materials for public use under the authority of the Act of July 31, 1947 as amended (30 U.S.C. 601 *et. seq.*)

Gila and Salt River Meridian, Mohave County, AZ

40 Acres
T. 40 N., R. 15 W.,
Sec. 9, NW¼SW¼

Under the provisions of 43 CFR 3604.1(b) this Notice of Realty Action shall segregate the lands from appropriation under the mining laws and mineral leasing laws subject to valid existing rights or leases. This segregation shall terminate upon publication in the **Federal Register** of a termination notice or after two years and the community pit is not established, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Arizona Strip District, 196 East Tabernacle, St. George, Utah 84770.

Raymond D. Mapston,

Acting Arizona Strip District Manager.

February 17, 1987.

[FR Doc. 87–3773 Filed 2–20–87; 8:45 am]

BILLING CODE 4310–32–M

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[F-020174, F-35871, F-35872]

Public Land Withdrawals; Fort Greely Maneuver Area et al., Alaska

AGENCY: Bureau of Land Management Interior.

ACTION: Notice.

SUMMARY: This notice provides official publication of the legal descriptions of the Fort Greely Maneuver Area, the Fort Greely Drop Area and the Fort Wainwright Maneuver Area withdrawals as required by section 2(a) of Pub. L. 99–606, enacted November 6, 1986.

EFFECTIVE DATE: November 6, 1986.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, (907) 271–5477.

The legal descriptions of the public land withdrawals for the Fort Greely Maneuver Area, the Fort Greely Drop Area and the Fort Wainwright Maneuver Area effected by Pub. L. 99–606 are as follows:

Fairbanks Meridian

Fort Greely Maneuver Area

A track of land located in the Big Delta Area, and more particularly described as:

Beginning at the U.S.C. and G.S. Monument "Big Delta Airport," Latitude 63°59'35" N., Longitude 145°43'40" W.,

Thence N. 04°55'47.3" E., 11,997.64 feet to Mile Post 270 on the Richardson Highway;

Thence due West to the mean high water line on the east bank of Delta River, which point is the true point of beginning for this description;

Thence southerly along the west boundary of the Fort Greely Military Reservation (withdrawn by Public Land Order (PLO) No. 255) to the southwest corner thereof;

Thence due East along the south boundary of the Fort Greely Military Reservation to the north ¼ corner monument of section 28, T. 11 S., R. 10 E., Fairbanks Meridian (F.M.);

Thence South along the north-south centerlines of sections 28 and 33, T. 11 S., R. 10 E., F.M., and sections 4, 9, and 16, T. 12 S., R. 10 E., F.M., to the corner section monument of section 16, thence east to the west ¼ corner monument of section 15, T. 12 S., R. 10 E. F.M.;

Thence S. 0°05' E., to the west section corner monument common to sections 15 and 22; thence east to the ¼ corner monument common to sections 15 and 22;

Thence South along the north-south centerline of sections 22, 27, and 34, T. 12 S., R. 10 E., F.M., to the south ¼ corner of section 34;

Thence East 74 feet more or less, along the south boundary of section 34 to a point one-half mile west of the centerline of the existing Richardson Highway;

Thence southerly, parallel to and one-half mile west of said centerline to a point one-half mile due west of Donnelly, Alaska;

Thence N. 75°30' W., 190,740 feet, more or less, to the east bank of Buchanan Creek;

Thence northerly along the east bank of Buchanan Creek and the east bank of Little Delta River to a point 11,580 feet, southerly from the point of confluence of Little Delta River and the Tanana River, which point is also located at Latitude 64°15' N., Longitude 146°43' W., approximately;

Thence S. 52°40' E., 160,843 feet, more or less, to a point identical with a point located at Latitude 63°59' N., Longitude 145°55' W., approximately;

Thence N. 60°43' E., 31,705 feet, more or less, to the point of beginning, excepting therefrom a five-acre tract of land embraced in U.S. Survey No. 5633 (Trade and Manufacturing Patent 50–75–0116), located at the confluence of the Little Delta River East and West Forks.

The area described contains approximately 571,995 acres.

Fort Greely Air Drop Area

A parcel of land situated approximately 2.5 miles southeast of Delta Junction, being located between the Richardson and Alaska Highways and more particularly described as: Beginning at a point 1.08 miles, east of U.S.C. and G.S. Station "Pillsbury," Latitude 63°47'00.309" N., Longitude 145°47'24.713" W., said point of beginning being 150 feet east of the centerline of the Richardson Highway;

Thence due East approximately 4.5 miles to the west bank of Granite Creek;

Thence in a generally northeasterly direction approximately 11.83 miles to a point which is situated on the west bank of the Granite Creek and further identified as being situated one mile southerly at right angles to the centerline of the Alaska Highway;

Thence northerwesterly, parallel with and one mile southerly at right angles to the centerline of the Alaska Highway to a point situated approximately 1,394 feet due south of the southeast corner of section 13, T. 11 S., R. 11 E., F.M.;

Thence North approximately 1,394 feet to said southeast corner of section 13, T. 11 S., R. 11 E., F.M.;

Thence West one mile, North one mile, West two miles, North one mile, West one mile, and North one mile following the south and west boundaries of sections 13, 11, 10, and 4, T. 11 S., R. 11 E., F.M.;

Thence West one mile along the south boundary of section 32, T. 10, S., R. 11 E., F.M.;

Thence West 1,172.8 feet approximately along the south boundary of section 31, T. 10 S., R. 11 E., F.M., to a point on the east boundary of the Fort Greely Military Reservation (PLO No. 255), which point is situated approximately 7,062 feet due South of the centerline of the Alaska Highway;

Thence due South approximately 8,628 feet to the point of intersection of the north line bounding a 160-acre parcel of land reserved by PLO No. 1153 for the use of Department of the Army;

Thence East along the north line of said parcel 1,000 feet;

Thence South along the east line of said parcel 7,000 feet;

Thence West along the south line of said parcel 1,000 feet to the point of intersection of said boundary with the east boundary of the parcel of land reserved by PLO No. 255;

Thence South along said east boundary 6,000 feet;

Thence West along the south boundary of said reserve approximately 2.74 miles (14,479 feet) to the northeast corner of section 27, T. 11 S., R. 10 E., F.M.;

Thence South two miles along the east boundary of sections 27 and 34, T. 11 S., R. 10 E., F.M.;

Thence South two miles, East one mile and South two miles along the east boundary of sections 14 and 23, T. 12 S., R. 10 E., F.M.;

Thence West approximately 0.75 mile to a point which is situated 150 feet easterly at right angles from the centerline of the Richardson Highway thence southerly parallel to and 150 feet easterly from the centerline of the Richardson Highway approximately 4.75 miles to the point of beginning, excepting therefrom that portion of the W½ of section 26, T. 12 S., R. 10 E., F.M., lying east of the Richardson Highway.

The area described contains approximately 51,590 acres.

Fort Wainwright Maneuver Area

A parcel of land situated approximately 20 miles southeast of Fairbanks, Fourth Judicial District, State of Alaska:

T. 1 S. R. 3 E. (Unsurveyed)
- Sec. 22, E1½SE¼;
- Sec. 23, S½;
- Sec. 24, S½;
- Secs. 25 and 26;
- Sec. 27, E½E½;
- Sec. 34, E½E½;
- Secs. 35 and 36.

T. 2 S., R. 3 E. (Unsurveyed)
- Secs. 1 and 2;
- Sec. 3, E½E½;
- Sec. 10, E½E½;
- Secs. 11 and 12;
- Sec. 14, N½, W½SW¼;
- Sec. 15, E½E½;
- Sec. 22, E½NE¼, N¼SE¼;
- Sec. 23, W½NW¼, S½SE¼, NE¼SE¼;
- Sec. 24, S½;
- Sec. 25;
- Sec. 26, E½, SW¼, S½NW¼, NE¼NW¼.

T. 1 S., R. 4 E. (Unsurveyed)
- Sec. 19, S½;
- Sec. 21, SE¼;
- Sec. 22, S½;
- Sec. 23, S½;
- Sec. 24, S½;
- Secs. 25 to 36, inclusive.

T. 2 S., R. 4 E. (Unsurveyed)
- Secs. 1 to 16, inclusive;
- Sec. 17, E½;
- Sec. 19, S½;
- Sec. 20, E½, SW¼;
- Secs. 21 to 30, inclusive;
- Secs. 34, 35 and 36.

T. 3 S., R. 4 E. (Unsurveyed)
- Secs. 1, 2 and 3;
- Secs. 10 to 15, inclusive;
- Secs. 22 to 27, inclusive;
- Secs. 34, 35 and 36.

T. 4 S., R. 4 E. (Unsurveyed)
- Sec. 1;
- Sec. 2, E½, NW¼, N½SW¼;
- Sec. 3, NE¼, N½NW¼;
- Sec. 12, NE¼, N½NW¼.

T. 1 S., R. 5 E. (Unsurveyed)
- Sec. 19, S½;
- Sec. 20, S½;
- Sec. 21, S½;
- Sec. 22, S½;
- Sec. 23, S½
- Sec. 24, S½;
- Secs. 25 to 36, inclusive.

T. 2 S., R. 5 E. (Unsurveyed)
- Secs. 1 to 36, inclusive.

T. 3 S., R. 5 E. (Unsurveyed)
- Secs. 1 to 36, inclusive, excepting therefrom that parcel of land withdrawn by Public Land Order (PLO) No. 1345 (F–012866) dated October 16, 1956 as amended by PLO No. 1523 dated October 8, 1957.

T. 4 S., R. 5 E. (Surveyed)
- Secs. 1 to 6, inclusive;
- Sec. 7, lots 1, 2 and 3, E½, W½NW¼, NE¼SW¼;
- Secs. 8 to 15, inclusive;
- Sec. 16, N½, SE¼, N½SW¼;
- Sec. 17, NE¼, N½NW¼, excepting therefrom that parcel of land withdrawn by PLO NO. 1345 (F–012867) dated October 16, 1956 as amended by PLO No. 1523 dated October 8, 1957.

T. 1 S., R. 6 E. (Surveyed)

That portion of Tract A, more particularly described as (protracted):
- Sec. 19, S½;
- Sec. 20, S½;
- Sec. 21, S½;
- Secs. 28 to 33, inclusive.

T. 2 S., R. 6 E. (Unsurveyed)
- Secs. 1 to 36, inclusive.

T. 3 S., R. 6 E. (Unsurveyed)
- Secs. 1 to 36, inclusive.

T. 4 S., R. 6 E. (Surveyed)
- Secs. 1 to 18, inclusive.

T. 2 S., R. 7 E. (Unsurveyed)
- Secs. 1 to 36, inclusive.

T. 3 S., R. 7 E. (Unsurveyed)
- Secs. 1 to 36, inclusive.

T. 4 S., R. 7 E. (Surveyed)
- Secs. 1 to 5, inclusive;
- Sec. 6, lots 1, 2, 3 and 4, E½, E½W½;
- Sec. 7, lots 1, 2, 3 and 4, E½, E½W½;
- Secs. 8, 9, 10 and 11;
- Sec. 12, N½, N½SW¼;
- Sec. 14, N½NW¼, NW¼NE¼, SW¼NW¼;
- Sec. 15, N½, N½SW¼, SW¼; SW¼;
- Secs. 16 and 17;
- Sec. 18, lots 1, 2, 3 and 4, E½, E½W½.

T. 2 S., R. 8 E. (Unsurveyed)
- Sec. 5, W½, W½E½;
- Secs. 6 and 7;
- Sec. 8, W½,W½E½;
- Sec. 17, W½, W½E½;
- Secs. 18, and 19;
- Sec. 20, W½, W½E½;
- Sec. 29, W½, W½E½;
- Secs. 30 and 31;
- Secs. 32, W½, W½E½.

T. 3 S., R. 8 E. (Surveyed)
- Sec. 5, W½, W½E½;
- Sec. 6, lots 1, 2, 3, and 4, E½, E½W½;
- Sec. 7, lots 1, 2, 3, and 4, E½, E½W½;
- Sec. 8, W½, W½E½;
- Sec. 17, W½, W½E½;
- Secs. 18 and 19;
- Sec. 20, W½, W½E½;
- Sec. 29, W½, W½E½;
- Secs. 30 and 31;
- Sec. 32, W½, W½E½.

T. 4 S., R. 8 E. (Surveyed)
- Sec. 5,NE¼, W½NE¼, NW¼SW¼;
- Sec. 6, lots 1, 2, 3, and 4, E½, E½W½;
- Sec. 7, lot 1 and NE¼NW¼.

The area described contains approximately 246,266 acres.

Total areas described aggregate approximately 869,851 acres.

Copies of the legal description and maps of each area are available for public inspection in the following offices:

Office of the Director (322), Bureau of Land Management, Room 3643, Interior Building, 18th and C Streets NW., Washington, DC 20240

State Director, Bureau of Land Management, Alaska State Office, 701 C Street, Anchorage, Alaska 99513

Office of the Secretary, Department of Defense, The Pentagon, Washington, DC 20301–1000

Commander, 6th Infantry Division (Light), U.S. Army Garrison, Alaska, Attn: Directorate of Engineering and Housing, Building 730, Fort Richardson, Alaska 99505–5500

Commander, 6th Infantry Division (Light), U.S. Army Garrison, Alaska/ADEH, Building 3015, Fort Wainwright, Alaska 995703–5500

Commander, 6th Infantry Division (Light), U.S. Army Garrison, Alaska/ADEH, Building 603, Fort Greely, Alaska 98733–5500

Wayne A. Boden,

Deputy State Director for Lands and Renewable Resources.

[FR Doc. 87–3703 Filed 2–20–87; 8:45 am]

BILLING CODE 4310–84–M

Minerals Management Service

Outer Continental Shelf Advisory Board; North, Mid, and South Atlantic Regional Technical Working Groups

AGENCY: Minerals Management Service, Interior.

ACTION: Recruitment of Discretionary Members for North, Mid, and South Atlantic Regional Technical Working Groups.

SUMMARY: The Atlantic Outer Continental Shelf (OCS) Region is accepting nominations to fill discretionary member vacancies on the North, Mid, and South Atlantic Regional Technical Working Group (RTWG) Committees. Technical expertise is needed in the areas of commercial fishing, oil and gas exploration, nonenergy minerals, marine biology/oceanography, and environment/conservation.

Nomination packages should consist of a letter explaining the nominee's qualifications and how the individual would contribute to the effectiveness of the RTWG Committees, and a current resume or biographical profile.

DATES: The deadline for receipt of nominations is April 17, 1987.

ADDRESSES: Nominaiton packages should be submitted to RTWG Coordinator, Atlantic OCS Region, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180.

FOR FURTHER INFORMATION CONTACT: Marsha Polk, RTWG Coordinator, Atlantic OCS Region at the above address; telephone 703/285–2165. (FTS) 285–2165.

SUPPLEMENTARY INFORMATION: The RTWG's are part of the OCS Advisory Board and were established to advise the Minerals Management Service (MMS) Director on technical matters of Regional concern regarding offshore prelease and postlease sale activities. RTWG membership consists of representatives from Federal Agencies, the Coastal States of Maine through Florida, the petroleum industry, and other private interests. Appointments will be made by the Secretary of the Interior with the objective of achieving a balance of viewpoint and a range of technical expertise on Regional OCS activities.

Dated: February 11, 1987.

Bruce G. Weetman,

Regional Director, Atlantic OCS Region.

[FR Doc. 87–3683 Filed 2–20–87; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Intention To Negotiate Concession Contract; McCarter's Riding Stables, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession permit with McCarter's Riding Stables, Inc., authorizing it to continue to provide saddle horse livery and guide services for the public at Great Smoky Mountains National Park, Tennessee for a period of five (5) years from January 1, 1987, through December 31, 1991.

This permit renewal has been determined to be categorically excluded from the Procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

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The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on December 31, 1986, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Southeast Region, Atlanta, Georgia, for information as to the requirements of the proposed permit.

Dated: December 9, 1986.

Frank Captroppa,

Acting Regional Director, Southeast Region.

[FR Doc. 87-3781 Filed 2-20-87; 8:45 am]

BILLING CODE 4310-70-M

Notice of Intent To Negotiate Concession Contract; Smokemont Riding Stables, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession permit with Smokemont Riding Stables, Inc., authorizing it to continue to provide saddle horse livery and guide services for the public at Great Smoky Mountains National Park, Tennessee for a period of five (5) years from January 1, 1987, through December 31, 1991.

This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on December 31, 1986, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Southeast Region, Atlanta, Georgia, for information as to the requirements of the proposed permit.

Dated: December 9, 1986.

Frank Captroppa,

Acting Regional Director, Southeast Region.

[FR Doc. 87-3782 Filed 2-20-87; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 86-60]

Dewey G. Archambault, M.D.; Revocation of Registration

On July 1, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Dewey G. Archambault, M.D. (Respondent) of 45 Princeton Street, N. Chelmsford, Massachusetts 01863, proposing to revoke his DEA Certificate of Registration AA1955220 and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The statutory basis for the proposed action was Respondent's controlled substance-related felony conviction. 21 U.S.C. 824(a)(2).

By letter dated August 4, 1986, Respondent requested a hearing on the issues raised by the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Francis L. Young. The hearing was scheduled to be held in Washington, DC on January 9, 1987. In a letter dated January 6, 1987, Respondent withdrew his request for a hearing and requested an extension of time to file a written statement regarding his position on the matters of fact and law raised by the Order to Show Cause pursuant to 21 CFR 1301.54(c). This request was granted and Respondent submitted such a statement on January 17, 1987. In an order dated January 27, 1987, Judge Young terminated the proceedings before him. The Administrator now enters his final order in this matter based on the investigative file and Respondent's written statement. 21 CFR 1301.57.

The Administrator finds that in April 1983, the Massachusetts State Police—Diversion Investigation Unit initiated an investigation into Respondent's controlled substance handling practices. Between April 7, 1983, and January 20, 1984, three undercover Michigan State Police troopers went to Respondent's office on ten separate occasions to attempt to purchase prescriptions for controlled substances from Respondent. On each occasion, Respondent wrote a prescription for the trooper for either Ionamin, Didrex or Valium, all controlled substances. Before issuing these prescriptions, Respondent performed cursory physical examinations of the troopers.

These prescriptions were not written for a legitimate medical purpose. The troopers told Respondent that they wanted a prescription. Respondent would then say that he could write them a prescription if he put them on his weight program. One trooper specifically told Respondent that, "what ever you have to do to cover yourself, that will be alright. Put me on your weight program—as long as I get the script for the 'Speed'."

On January 20, 1984, Respondent was arrested and charged with ten counts of illegal dispensing and distribution of controlled substances in violation of the laws of the Commonwealth of Massachusetts. On February 19, 1986, following a jury trial in Middlesex Superior Court, Commonwealth of Massachusetts, Respondent was found guilty of all ten counts, and was sentenced on March 19, 1986, to two years in the House of Corrections to run concurrently on all ten counts, which was suspended. In addition, Respondent was placed on two years probation and fined $13,000.00. These are felony offenses relating to controlled substances. Therefore, lawful grounds exist for the revocation of Respondent's registration. 21 U.S.C. 824(a)(2).

In his statement, dated Janaury 17, 1987, Respondent states that he has appealed his criminal conviction. The Administrator has long and consistently maintained that a revocation of registration or denial of application is lawful even if a conviction is on appeal. See, *Ronald Wardell Andrews, M.D.*, 47 FR 56744 (1982); *Lamar T. Zimmerman, M.D.*, 45 FR 3405 (1980); *Joseph J. Godorov, D.O.*, Docket No. 78-8, 43 FR 36702 (1978), and cases cited therein.

Throughout his statement, Respondent questions the veracity of the evidence presented by the prosecution during his criminal trial. The jury at the trial in this matter found the evidence to be persuasive beyond a reasonable doubt. It found Respondent guilty of all ten counts. The Administrator will not question such a finding.

Having considered the record in this matter, the Administrator concludes that Respondent's DEA Certificate of Registration should be revoked and any pending applications for registration should be denied. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 21 CFR 0.100(b), orders that DEA Certificate of Registration AA1955220, previously issued to Dewey G. Archambault, M.D., be, and it hereby is revoked. In addition, the Administrator orders that any pending applications, submitted by Dewey G. Archambault, M.D., for registration under the Controlled Substances Act, be, and they hereby are denied. This order is effective March 25, 1987.

Dated: February 17, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-3736 Filed 2-20-87; 8:45 am]

BILLING CODE 4410-09-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix R to 10 CFR Part 50 to Connecticut Yankee Atomic Power Company (the licensee), for the Haddam Neck Plant located in Middlesex County, Connecticut.

Environmental Assessment

Identification of Proposed Action: The exemption would grant relief from the separation requirements of 10 CFR Part 50, Appendix R, Section III.G. 2 for safe shutdown equipment in the service building men's locker room (Fire Area 5-9). This exemption is responsive to the licensee's appications for exemption dated March 1, 1982 and January 6, 1987.

The need for the proposed action: The proposed exemption is needed because the features described in the licensee's requests regarding the existing fire protection at the plant for these items appear to be the most practical method for meeting the intent of Appendix R; and literal compliance would not significantly enhance the fire protection capability.

Environmental impacts of the proposed action: The proposed exemption will provide a degree of fire protection that does not increase the risk of fires at this facility. Consequently, the probability of fire has not increased, post-fire radiological releases will not be greater than previously determined, nor does the proposed exemption otherwise affect the radiological plant effluent. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

The proposed exemption involves features located entirely within the restriction area, as defined in 10 CFR Part 20, and does not affect non-radiological plant effluents or have any other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative use of Resources: This action involves no use of resources not previously considered in the Draft and Final Environmental Statements for the Haddam Neck Plant.

Agencies and persons consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the applications for the exemption dated March 1, 1982 and January 6, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Russell Library, 124 Broad Street, Middleton, Connecticut 06457.

Dated at Bethesda, Maryland this 13th day of February, 1987.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Director, Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.

[FR Doc. 87-3743 Filed 2-20-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-247]

Consolidated Edison of New York, Inc.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix R to 10 CFR Part 50 to Consolidated Edison Company of New York (the licensee) for the Indian Point Nuclear Generating Unit No. 2 located at Westchester County, New York.

Environmental Assessment

Identification of proposed action: The exemption relieves the technical requirements concerning redundant primary auxiliary building and auxiliary feedwater pump room heating, ventilation and air condition (HVAC) exhaust fans, to the extent that the HVAC circuits are not separated and protected in accordance with the requirements of Section III.G.2 of Appendix R to 10 CFR Part 50. The exemption is responsive to the licensee's application for exemption dated July 13, 1983, as supplemented by letters dated December 7, 1984, January 10, 1986 and December 17, 1986.

The need for the proposed action: The proposed exemption is needed because the features described in the licensee's requests regarding the existing fire protection at the plant for these items are the most practical means for meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability.

Environmental impacts of the proposed action: The proposed exemption will provide a degree of fire protection that is equivalent to that required by Appendix R for the affected areas of the plant such that there is no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative use of resources: This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Indian Point Nuclear Generating Unit No. 2.

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Agencies and persons consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated July 13, 1983 and supplements dated December 7, 1984 and January 10, 1986 and December 17, 1986 which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC., and at the Local Public Document Room, White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Bethesda, Maryland, this 17th day of February 1987.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Project Directorate No. 3, Division of PWR Licensing-A.

[FR Doc. 87-3744 Filed 2-20-87; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-269, 50-270 and 50-287]

Duke Power Co.; Environmental Assessment and Finding of no Significant Impact, Oconee Nuclear Station, Units 1, 2 and 3

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR Part 50, Appendix J, III.A.3, to Duke Power Company (the licensee), for operation of the Oconee Nuclear Station, Units 1, 2 and 3, located in Oconee County, South Carolina.

Environmental Assessment

Identification of proposed action: The licensee is requesting an exemption from 10 CFR Part 50, Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors", paragraph III.A.3. In 1973, Appendix J was issued to establish requirements for primary containment leakage testing and incorporated, by reference, ANSI N45.4–1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors". This Standard requires that containment leakage calculations be performed by using either the point-to-point method or the total time method The total time method was used the most by the nuclear industry until about 1976. As noted in N45.4, the point-to-point method is suited to uninsulated containments where atmospheric stability is affected by outside diurnal changes, while the total time method is appropriate for insulated containments that are relatively unaffected by diurnal changes. In 1976, an article "Containment Leak Rate Testing: Why the Mass-Plot Analysis Method is Preferred," Power Engineering, February 1976, was written which compared the results of test analyses that were performed using point-to-point, total time and mass-plot techniques. Subsequently, the mass-plot method received the Commission's endorsement and a conforming change to Appendix J was proposed. A revision to the Standard (reference: ANSI/ANS 56.8–1981, "Containment System Leakage Testing") specifies the use of mass-plot, to the exclusion of the two older methods. However, at this time, licensees who wish to use mass-plot must submit an application for exemption from the Appendix J requirement that containment integrated leak rate tests will conform to N45.4. The exemption proposed by Duke Power Company would be granted for each of the three units until pending changes to Appendix J become effective. The exemption applies only to the method of calculating leakage by use of the mass-plot and not to any other aspect of the tests.

The mass-plot is a newer and more accurate means of calculating containment leakage. In the mass-plot method, the mass of air in containment is calculated and plotted as a function of time. Leakage is calculated from the slope of the Linear Least Squares.

The Commission's staff believes that the mass-plot method was not specified in ANSI N45.4–1972 because the other more conservative methods (point-to-point and total time) were adequate and suitable for the sensitivity levels of the instrumentation in use at that time. However, with the present developments in technology, the mass-plot method has gained recognition as the proper one to use. The superiority of the mass-plot method becomes apparent when it is compared with the two other methods. In the total time method, a series of leakage rates are calculated on the basis of air mass differences between an initial data point and each individual data point thereafter. If for any reason (such as instrument error, lack of temperature equilibrium, ingassing or outgassing) the initial data point is not accurate, the results of the test will be affected. In the point-to-point method, the leak rates are based on the mass difference between each pair of consecutive points which are then averaged to yield a single leakage rate estimate. Mathematically, this can be shown to be the difference between the air mass at the beginning of the test and the air mass at the end of the test expressed as a percentage of the containment air mass. It follows from the above that the point-to-point method ignores any mass readings during the test and thus the leakage rate is calculated on the basis of the difference in mass between two measurements taken at the beginning and at the end of the test, which are 24 hours apart.

The licensee's request for exemption and the bases therefore are contained in a letter dated August 13, as superseded on August 20, 1986. In the same letter, the licensee proposed an amendment to the Technical Specifications (TSs) to maintain consistency between the TSs and Appendix J. The Commission will respond to the proposed amendment by separate correspondence.

The need for proposed action:. The exemption is needed to allow continued use of the mass-plot analysis method at Oconee.

Environmental impact of the proposed action: The proposed exemption will have no incremental environmental impact relative to current practice because the exemption will allow testing to be conducted in the same manner as it is currently performed.

The erraticism of the total time method creates a higher probability of unnecessarily failing a containment integrated leak rate test (note that the calculational procedure is independent of containment tightness) possibly resulting in increased test frequency, critical path outage time, and exposure to test personnel.

Thus, radiological releases will not be greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternative to the proposed action: It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative use of resources: This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to the Operation of Oconee Nuclear Station," dated March 1972.

Agencies and persons consulted: The Commission's staff reviewed the licensee's request that supports the proposed exemption. The staff did not consult other agencies or persons.

Finding of no Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an enviromental impact statement for the proposed exemption.

For further details with respect to the proposed action, see the licensee's request for exemption dated August 13, as superseded August 20, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, Washington, DC 20555 and at the Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691.

Dated at Bethesda, Maryland, this 17th day of February, 1987.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, PWR Project Directorate #6, Division of PWR Licensing-B.

[FR Doc. 87-3745 Filed 2-20-87; 8:45 am]

BILLING CODE 7590-01-M

Lindsay Audin; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated January 10, 1987, Lindsay Audin requested that the Director, Office of Nuclear Material Safety and Safeguards, review the Safety Analysis report for the GE–700 container in order to reevaluate the puncture test analysis for this cask, and that the cask be used only in its non-extended mode until it can be shown that the extended mode complies with all of the requirements of 10 CFR Part 71. The Petition alleges that the puncture test analysis was based on the testing of a much smaller cask, the GE–100, and that this resulted in a deficient analysis of the GE–700 cask with its extension.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. As provided by § 2.206, appropriate action will be taken on this request within a reasonable time.

Copies of the Petition are available for inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC.

For the Nuclear Regulatory Commission.

John G. Davis,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 87-3746 Filed 2-20-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-280 and 50-281]

Virginia Electric and Power Co.; Surry Power Station, Units 1 and 2; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that, by mailgram dated December 11, 1986, and by supplemental petition dated January 20, 1987, Citizen Action for a Safe Environment (CASE) requested the Nuclear Regulatory Commission to require Virginia Electric and Power Company to take a number of actions before the Surry facility restarts. The bases for the requested action were: (1) The December 9, 1986 pipe-break accident at the facility, (2) an alleged ongoing pattern of violations in areas such as plant operations, surveillance, fire protection, radiological controls, emergency preparedness, security and safeguards, quality assurance and administrative control of quality assurance at the station, (3) alleged deficiences in welder certification and welding quality assurance at the station, and (4) alleged inadequacies in the siren warning system and evacuation plans for the Surry plant.

The petition is being treated pursuant to 10 CFR 2.206 of the Commission's regulations and, accordingly, appropriate action will be taken on the request within a reasonable time. A copy of the petition and the supplement are available for inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Room for the Surry facility located at Swem Library, Documents Department, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Bethesda, Maryland, this 13th day of February, 1987.

For the Nuclear Regulatory Commission.

Richard H. Vollmer,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 87-3747 Filed 2-20-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-155]

Consumers Power Company (Big Rock Point Plant)

Exemption

I.

Consumers Power Company (CPC, the licensee) is the holder of Facility Operating License No. DPR–6 which authorizes the operation of the Big Rock Point Plant (the facility) at steady-state reactor power levels not in excess of 240 megawatts thermal (rated power). The facility consists of one boiling water reactor located at the licensee's site in Charlevoix County, Michigan. This license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II.

Section III.J of Appendix R to 10 CFR Part 50 specifically requires emergency lighting units with at least an 8-hour battery power supply be provided in all areas needed for operation of safe shutdown equipment and in access and egress routes thereto.

By letter dated July 1, 1986, the licensee requested an exemption from the requirements of section III.J of Appendix R to 10 CFR Part 50 to install emergency lights for areas outside of the Service Building, Turbine Building and Containment (i.e., power block) and for operation of the Stand-By-Diesel Generator for which access and egress is required.

Specifically, the licensee has stated that access and egress routes to safe shutdown equipment outside the power block and for operation of the Stand-By Diesel Generator do not meet the requirements of section III.J of Appendix R because 8-hour battery-powered emergency lighting is not installed.

Safe shutdown components are located within several buildings that require exterior access. These buildings are the Intake Structure, Emergency Diesel Generator building and the Alternate Shutdown Building (ASB).

For the following reasons, the licensee has determined that the use of portable battery-powered lanterns is equivalent, and therefore is an acceptable alternative, to the installation of permanent 8-hour emergency lighting in the plant yard and Stand-By Diesel Generator areas.

(a) Emergency lighting of the plant yard area is needed for short periods of time to allow travel to and from shutdown equipment; no longer than 5 minutes of lighting per occurrence is necessary for access to and egress from

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the ASB, Screenhouse, and Emergency Diesel Generator Building. No longer than 15 minutes of lighting per occurence is needed to access, start, and egress the Stand-By Diesel Generator.

(b) A sufficient number of portable lanterns are maintained by administrative controls in or near the Control Room to assure adequate lighting is available to operators during an 8-hour period for the purpose of shutting down the plant during periods of darkness.

(c) The use of portable lanterns to illuminate plant yard areas affords more flexibility than permanently installed emergency lighting since the lanterns can illuminate alternate routes of access/egress if the need arises.

(d) The ability of an operator to start and operate the Stand-By Diesel Generator using portable lantern for light was demonstrated by the licensee in the presence of the NRC Senior Resident Inspector and subsequently documented in IER 155/86014 (DRP).

Portable battery-powered lanterns are stored under administratively controlled conditions for use in emergencies, such as an Appendix R event. The lanterns are under the periodic test program to assure that the proper number is available and that they are all in working condition.

NRC staff evaluation of the existing emergnecy lighting for the areas discussed above has provided for the conclusion that an acceptable level of emergency lighting exists at the facility to assure access and egress to emergency control stations. This includes dedicated, controlled, and maintained portable lanterns. The location and control of the portable lanterns assures emergency lighting will be available for access and egress to areas required to achieve and maintain safe shutdown.

NRC staff has determined that there is reasonable assurances, with the features described above, that adequate lighting for all required areas is provided such that the underlying purpose of the rule is achieved and that the lack of 8-hour battery power supplied emergency lighting units will not prevent the facility from safely shutting down.

Thus, the NRC staff concludes that the existing lighting, combined with the location and controls of dedicated portable lanterns, provides a level of fire protection equivalent to the technical requirements of section III.J of Appendix R, such that an exemption to section III.J of Appendix R to 10 CFR Part 50 should be granted and that the 8-hour battery powered emergency lights in the specific areas discussed above, need not be installed.

III.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption, namely, that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule—to require emergency lighting units with at least an 8-hour battery power supply in all areas needed to operation of safe shutdown equipment and in access and egress routes thereto. Requiring emergency lighting units is not necessary to assure sufficient emergency lighting exists for achieving safe shutdown and that implementing additional modifications to provide emergency lighting units would require an expenditure of engineering and construction resources as well as the associated capital costs which would represent an unwarranted burden on the licensee's resources.

The Commission hereby grants an exemption from the requirements of section III.J of Appendix R to 10 CFR Part 50 that emergency lighting units be installed for all areas outside the power block and for operation of the Stand-By Diesel Generator at the facility in which access and egress is needed for the operation of safe shutdown equipment.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will have no significant impact on the environment (January 15, 1987, 52 FR 1678).

This exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 17th day of February 1987.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Division of BWR Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 87-3748 Filed 2-20-87; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR Part 73, Physical Protection of Plants and Materials; Survey of Licensees Employing Security Guards, to Protect Special Nuclear Material.

3. The form number if applicable: Not applicable.

4. How often the collection is required: One-time survey.

5. Who will be required or asked to report: NRC licensees who, pursuant to 10 CFR Part 73, Appendix B, employ a security force to protect the special nuclear material in their possession from diversion and sabotage.

6. An estimate of the number of responses: 58.

7. An estimate of the total number of hours needed to complete the requirements or request: 24 hours for each response, for an industry total of 1,392 hours.

8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: NRC will survey licensees who are required to employ a security force in order to obtain their views on training requirements for security force personnel. The survey will be sent to 58 licensees including 52 power reactor utilities, two storage-only facilities, and four Category I fuel cycle facilities.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Rick Otis, (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 17th day of February 1987.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 87-3742 Filed 2-20-87; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: New.

2. The title of the information collection: Diagnostic Misadministration Report.

3. The form number if applicable: NRC Form 473.

4. How often the collection is required: Upon the occurrence of a specified diagnostic medical misadministration.

5. Who will be required or asked to report: Holders of NRC medical licenses under which the diagnostic misadministration of a radiopharmaceutical occurs.

6. An estimate of the number of responses: 500.

7. An estimate of the total number of hours needed to complete the requirement or request: One hour per report, for an industry total of 500 hours.

8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: NRC Form 473 will be used by NRC medical licensees to report diagnostic misadministrations of radiopharmaceuticals pursuant to 10 CFR Part 35.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Rick Otis, (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8585.

Dated at Bethesda, Maryland, this 17th day of February 1987.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 87-3741 Filed 2-20-87; 8:45 am]

BILLING CODE 5790-01-M

[Docket No. 50-346; License No. NPF-3; EA 85-107]

Toledo Edison Company (Davis-Besse Nuclear Power Station); Order Imposing Civil Monetary Penalties

I

Toledo Edison Company (the "licensee") is the holder of Operating License No. NPF-3 (the "license") issued by the Nuclear Regulatory Commission (the "Commission"). The license authorizes the licensee to operate the Davis-Besse Nuclear Power Station in accordance with the conditions specified therein. The license was issued on April 22, 1977.

II

Special inspections of the licensee's activities were conducted during the period March 26-September 9, 1985. The results of these inspections indicated that the licensee has not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated December 13, 1985. The Notice states the nature of the violations, the applicable provisions of the Atomic Energy Act, the requirements of the Nuclear Regulatory Commission regulations or license conditions that were violated, and the amount of civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalties with a letter dated January 27, 1986.

III

Upon consideration of Toledo Edison Company's response (January 27, 1986) and the statements of fact, explanation, and argument regarding mitigation contained therein, the Director of the Office of Inspection and Enforcement has determined, as set forth in the Appendix to this Order, that the penalties proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalties as amended in the Appendix to this Order should be mitigated in the amount of 50 percent and imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1984, as amended, 42 U.S.C. 2282, Pub. L. 96-295, and 10 CFR 2.205, It Is Hereby Ordered That:

The licensee pay civil penalties in the amount of Four Hundred Fifty Thousand Dollars ($450,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director of the Office of Inspection and Enforcement, USNRC, Washington, DC 20555.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent to the Assistant General Counsel for Enforcement, Office of the General Council, USNRC, Washington, DC 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. If the licensee fails to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above as amended in the Appendix to this Order, and

(b) Whether on the basis of such violations this Order should be sustained.

Dated at Bethesda, Maryland this 12th day of February 1987.

For The Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

APPENDIX—EVALUATION AND CONCLUSION

The licensee's January 27, 1986 response to the December 13, 1985 Notice of Violation and Proposed Imposition of Civil Penalties for the Davis-Besse Nuclear Power Station admits that all violations, except Violations II.E and IV.A.2, occurred as stated in the Notice. The NRC staff evaluation included the licensee's Course of Action (COA) program submitted on September 10, 1985, Revisions 1 through 6. The licensee requested that the NRC consider mitigation of the civil penalties in whole or in part with the provision that the mitigated amount be applied to further improvements in the operation and maintenance of the Davis-Besse facility. The contested violations are restated below, followed by a summary of the licensee's reponse, the NRC evaluation, and the conclusion.

Restatement of Violation II.E

10 CFR 50.55a(h), "Protection Systems" requires that for construction permits issued after January 1, 1971, protection systems must meet the requirements set forth in editions or revisions of the Institute of Electrical and Electronics Engineers Standard, "Criteria for Protection Systems for Nuclear Power Generating Stations" (IEEE-279). The Licensee's Updated

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Safety Analysis Report (USAR), Chapter 7, section 7.4.2.3.1, "Compliance with IEEE Standard 279–1971," discussed adherence to section 4 of IEEE–279 and in Paragraph (4.2) requires that no single failure prevent the Steam and Feedwater Rupture Control System (SFRCS) from performing its protective function.

Contrary to the above, as of June 9, 1985, single failure of an auxiliary feedwater containment isolation valve to reopen in response to an SFRCS actuation signal following a main steam line break accident which initially depressurizes both steam generators below the SFRCS setpoint as shown in the licensee's USAR Chapter 15, Figure 15.4.3, would prevent either auxiliary feedwater train from feeding the unaffected steam generator.

Summary of Licensee's Response

The licensee denies the violation and provides an analysis it believes demonstrates that the SFRCS and the Auxiliary Feedwater (AFW) systems conform with the single failure criterion of the IEEE–279 Standard. The licensee references its analysis in the Course of Action (COA) program, Appendix (IV.C.3.3 and assets that the SFRCS and AFW systems meet the single failure criterion. The analysis is found in Appendix III.2, "NRC Questions and TED Responses," and in response to NRC Question 18 of an NRC request for information dated October 30, 1985.

The licensee believes its COA analysis shows that the USAR Chapter 15 analysis is overly conservative. The USAR analysis states that the AFW supply lines to both steam generators would be automatically isolated following a main steam line break. With both steam generators isolated, the AFW system does not conform with the single failure criterion of IEEE–279. However, in the licensee's view, the COA analysis shows that, following a main line break, the AFW supply line to the steam generator unaffected by the break would not be automatically isolated.

NRC Evaluation of Licenses's Response

The NRC has carefully reviewed the licensee's COA analysis and it appears, following a main steam line break event, for the two cases analyzed, auxiliary feedwater to the unaffected steam generator would not be isolated. In one case, a turbine stop valve closes within one second which prevents pressure in the unaffected steam generator from going below 730 psia, thus preventing complete AFW system isolation. In the other case analyzed, a turbine stop valve was assumed not to close, the main steam isolation valve was assumed to close within six seconds, and the steam generators were assumed to be depressurized sufficiently to close both AFW system isolation valves. In this case, the licensee concludes that the repressurization of the unaffected steam generator would cause the AFW system isolation valve to reopen. Since a single failure, the failure of the turbine stop valve to close, has already been hypothesized, no other failure can be assumed. Therefore, the licensee asserts that the failure of the AFW isolation valve of the unaffected steam generator to reopen cannot be assumed.

The NRC staff recognizes that only one failure can be hypothesized for a design basis accident. However, the licensee has analyzed only two cases of turbine stop valve operation, closure with one second and a failure to close. The assumption of the one second closure time of the turbine stop valve in the licensee's analysis is inconsistent with the closure time of six seconds allowed by the Technical Specifications and has not been proven to be actually achieved in the plant. The licensee has neither demonstrated by test or analyses that, if the turbine stop valve closes between one and six seconds, steam generator pressures would remain above the AFW system isolation setpoint (600 psia (from the SFRCS)). Should the steam generator pressures fall below the AFW system isolation setpoint, the AFW system isolation valves would receive automatic closure signals. Assuming a single failure of the AFW system isolation valve of the unaffected steam generator, this valve would not reopen and would therefore prevent AFW system flow to the unaffected steam generator. Therefore, because the basis of a turbine stop valve closure time of one second after a main-steam line break has not been provided, the NRC staff considers it possible that AFW system flow could be prevented assuming a single failure of the AFW isolation valve to reopen.

Conclusion

Because the turbine stop valve closure time of one second was not consistent with the closure time specified by the Technical Specification nor actually proven by test, the licensee has not provided an adequate basis for its assertion that Violation II.E did not occur and that the design of the SFRCS and AFW systems meets the single failure criterion of IEEE–279.

Restatement of Violation IV.A.2.

10 CFR Part 50, Appendix B, Criterion XV, "Nonconforming Materials, Parts, or Components," requires measures be established to control materials, parts, or components which do not conform to requirements in order to prevent their inadvertent use or installation.

The Toledo Edison Quality Assurance Manual, sections 15.0 and 15.1.3 which implement Criterion XV of 10 CFR 50, Appendix B, require that nonconformances be documented on Nonconformance Reports to prevent their inadvertent use.

Contrary to the above, in March 1985, Toledo Edison Company Facility Engineering Department personnel used controlled sketches to document damaged Auxiliary Feedwater Pump Turbine Steam Supply hangers rather than Nonconformance Reports as required and, as a result, failed to prevent their inadvertent use or installation.

Summary of Licensee's Response

The licensee admits to the events that are described in NRC Inspection Report No. 50–346/85013 and should be considered a violation of 10 CFR Part 50, Criterion XV. However, the licensee states "the violation, as written, is in error," but does not provide an explanation as to why.

NRC Evaluation of Licensee's Response and Conclusion

The licensee is correct that the violation, as written, contains an error. Specifically, the statement that the failure to use Nonconformance Reports resulted in inadvertent use or installation of hangers is erroneous. Inspection Report 50–346/85013 described the failure of engineering personnel to document conditions adverse to quality on Nonconformance Reports in accordance with Toledo Edison procedure. Sketches were used instead to document identified nonconforming conditions that were forwarded to the architect/engineer for evaluation. The use of these sketches could not ensure that materials, parts, or components which did not conform to requirements were inadvertently used or installed. The inspection report did not identify any instances where the use of these uncontrolled sketches resulted in the inadvertent use or installation of materials, parts, or components and this is apparently the licensee's basis for stating that the violation was in error. Therefore, Violation IV.A.2 is modified to read as follows:

10 CFR Part 50, Appendix B, Criterion XV, "Nonconforming Materials, Parts, or Components," requires measures be established to control materials, parts, or components which do not conform to requirements in order to prevent their inadvertent use or installation.

The Toledo Edison Nuclear Quality assurance Manual, sections 15.0 and 15.1.3 which implement Criterion XV of 10 CFR Part 50, Apendix B, require that nonconformances be documented on Nonconformance Reports to prevent their inadvertent use.

Contrary to the above, in March 1985, Toledo Edison company Facility engineering department personnel used sketches to document damaged Auxiliary Feedwater Pump Turbine Steam Supply hangers rather than Nonconformance Reports as required.

The violation, as rewritten, focuses on the licensee's failure to follow procedures which required the use of Nonconformance Reports to document nonconforming conditions as opposed to the inadvertent use or installation of materials, parts, or components. The NRC staff has concluded that this violation, as rewritten, occurred.

Conclusion

This violation, as rewritten, occurred, and no basis for withdrawing this violation has been provided.

Licensee's Request for Mitigation of Proposed Civil Penalties

The licensee stated in its January 27, 1985 response that after the June 9, 1985 event there was a rapid commencement of corrective actions and that the magnitude and quality of the effort expended since the June 9, 1985 event to set the operation of Davis-Besse on the road to excellence has few parallels if any, in the history of the nuclear industry in the United States. Further, Toledo Edison is committed to the continued and unabated achievement of the goal of excellence. If the civil penalty is mitigated in whole or in part, Toledo Edison will use the mitigated amount to accelerate such programs as the configuration management effort and improvements in the maintenance program to further improve the operation of Davis-Besse.

NRC Evaluation of Licensee's Request

The NRC staff has reviewed the licensee's January 27, 1986 response as well as the ongoing results of the Course of Action program. The staff agrees that Toledo Edison has expended and is continuing to expend considerable financial and personnel resources in their attempt to resolve the problems identified in the December 13, 1985 Notice of Violation and Proposed Imposition of Civil Penalties (Notice) as well as in other recent escalated enforcement actions. It appears that the licensee has made significant progress in its effort to identify and correct these problems and the staff acknowledges Toledo Edison's progress in these efforts.

The NRC staff believes extraordinary enforcement actions were required as a result of the series of problems that formed a long history of ineffective and inadequate attention and direction in the operation and maintenance of the Davis-Besse facility. However, the Enforcement Policy allows mitigation of civil penalties by as much as 50 percent for unusually prompt and extensive corrective action. Therefore, the NRC staff also believes that mitigation of the civil penalties in the amount of 50 percent is appropriate because such extensive actions were taken and because Toledo Edison has been aggressive in establishing an extensive, indepth corrective action program to address the problems that existed at Davis-Besse.

Conclusion

The amount of the civil penalties proposed in the December 13, 1985 Notice of Violation and Proposed Imposition of Civil Penalties is mitigated in the amount of 50 percent. Accordingly, an Order imposing a $450,000 civil penalty will be issued.

[FR Doc. 87–3749 Filed 2–20–87; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Agency Information Collection Activities Under OMB Review

ACTION: Public information collection requirement submitted to OMB for review.

SUMMARY: The Management Improvement Division, OMB has submitted to OMB (OIRA) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and form number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Contractor Social Security (OASDI) and Thrift Plan costs for use in OMB Circular A–76 cost comparisons.

Pub. L. 99–335, Federal Employees Retirement System Act of 1986, section 307 prohibits the inclusion of both the Government's and contractor's employer contributions to the OASDI portion of social security and retirement thrift plan costs in A–76 cost comparisons. Contractors will be asked to provide a separate breakout of these costs to the contracting officer so they can be entered on the cost comparison form and subtracted from the contractors bid price for the cost comparison. Contractors, Responses 500, Burden hours 500.

ADDRESS: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington DC 20503.

FOR FURTHER INFORMATION CONTACT:

A copy of the information collection proposal may be obtained from Mr. David Muzio, Office of Management and Budget, Room 9013, New Executive Office Building, Washington, DC 20503, telephone (202) 395–6810.

Joseph Wright, Jr.,

Deputy Director, Office of Management and Budget.

[FR Doc. 87–3599 Filed 2–20–87; 8:45 am]

BILLING CODE 3110–01–M

OMB Information Technology Advisory Committee

AGENCY: Office of Management and Budget.

ACTION: Notice of establishment of an advisory committee.

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), we are giving notice of the establishment of the Office of Management and Budget Information Technology Advisory Committee. The Advisory Committee will provide views on issues affecting the use of information technology by Federal agencies, including but not limited to, the following:

The opportunities for the productive application of information technology to government operations,

The impediments to effective use of technology, and

The remedies to mutual problems experienced by the Federal Government and the commercial sector.

The OMB Information Technology Advisory Committee will be composed

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of representatives of a cross-section of the information technology community. Membership will be drawn from providers and manufacturers of computer hardware and software products, computer industry trade associations, technology services, and private sector information technology users.

FOR FURTHER INFORMATION CONTACT: Franklin S. Reeder, Office of Management and Budget, Office of Information and Regulatory Affairs, Information Policy Branch (202) 395–3785.

Wendy L. Gramm,

Administrator for Information and Regulatory Affairs.

[FR Doc. 87–3704 Filed 2–20–87; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Extension of SF 50–A Submitted to OMB For Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), this notice announces the proposed extension of SF 50–A, Notice of Short-Term Employment, which was submitted to OMB for clearance. SF 50–A is completed by applicants for temporary Federal employment for 1 year or less. For copies of this proposal, call William Duffy, Agency Clearance Officer, on (292) 632–7714.

DATE: Comments on this proposal should be received within 10 working days from date of this publication.

ADDRESSES: Send or deliver comments to—

William C. Duffy, Agency Clearance Office, U.S. Office of personnel Management, Room 6410 1900 E Street, NW., Washington, DC 20415.

and

Timothy J. Sprehe, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Carol E. Porter, (202) 632–4453.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 87–3763 Filed 2–20–87; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreement Filed During the Week Ending February 13, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date filing.

Docket No. 44674 R–1—R–10

Parties: Members of International Air Transport Association
Date Filed: February 09, 1987
Subject: So. Atlantic Africa Fares
Proposed Effective Date: April 1, 1987

Docket No. 44675 R–1—R–15

Parties: Members of International Air Transport Association
Date Filed: February 09, 1987
Subject: Canada Europe Fares
Proposed Effective Date: April 1, 1987

Docket No. 44679

Parties: Members of International Air Transport Association
Date Filed: February 12, 1987
Subject: Amend Zloty Exchange Rate
Proposed Effective Date: April 1, 1987

Docket No. 44680 R–1 & R–2

Parties: Members of International Air Transport Association
Date Filed: February 12, 1987
Subject: Europe Mid-East Cargo Rates
Proposed Effective Date: April 1, 1987

Phyllis T. Kaylor,

Chief, Documentary Service Division.

[FR Doc. 87–3690 Filed 2–20–87; 8:45 am]

BILLING CODE 4910–62–M

Aviation Proceedings; Agreements Filed During the Week Ending February 13, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412 and 414. Answers may be filed within 21 days of date of filing.

Docket No. 44682

Parties: American Airlines, Inc.
Date Filed: February 13, 1987.
Subject: Application of American Airlines, Inc., pursuant to Section 412 of the Act, for Discussion Authority With Antitrust Immunity with respect to Scheduling Adjustments.

Phyllis T. Kaylor,

Chief, Documentary Service Division.

[FR Doc. 87–3691 Filed 2–20–87; 8:45 am]

BILLING CODE 4910–62–M

Office of the Secretary

Proposed Revocation of Certificates Issued Under Sections 401 and 418 of the Federal Aviation Act; Bay Air, Inc.

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Order to Show Cause (Order 87–2–31), Dockets 42748, 34007, 43129, 43130, 39103 and 39104.

SUMMARY: The Department is directing all interested persons to show cause why it should not issue orders revoking certain certificates issued to Bay Air, Inc., Burlington Northern Air Freight, Inc., UCC Charter Company and Zantop Airlines, Inc.

DATES: Persons wishing to file objections should do so no later than March 11, 1987.

ADDRESSES: Responses should be filed in Docket 42748, 34007, 43129, 43130, 39103 and 39104, as appropriate, and addressed to the Documentary Services Division, Department of Transportation, 400 Seventh Street SW., Room 4107, Washington, DC 20590 and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: James A. Lawyer, Special Authorities Division, Office of Aviation Operations, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590 (202) 366–1064.

Dated: February 17, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87–3692 Filed 2–20–87; 8:45 am]

BILLING CODE 4910–62–M

Minority Business Resource Center Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the Minority Business Resource Center Advisory Committee to be held March 30, 1987, at 5:30 p.m. at the Hyatt Regency Washington on Capitol Hill "Conference Theater", 400 New Jersey Avenue, NW., Washington, DC 20001. The agenda for the meeting is as follows:

—Review of Financial Assistance Programs
—Overview of OSDBU Program Initiatives
—Role of Women-owned Business Enterprises in Transportation-related Activities
—Procurement Opportunities for Disadvantaged Business Enterprises in the Transportation Industry

Attendance is open to the interested public but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend and persons wishing to present oral statements should notify the Minority Business Resource Center not later than the day before the meeting. Information pertaining to the meeting may be obtained from Ms. Josie Graziadio, Office of Small and Disadvantaged Business Utilization, 400 7th Street, SW., Washington, DC 20590, telephone (202) 366–1930. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on February 17, 1987.

Amparo B. Bouchey,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 87–3780 Filed 2–20–87; 8:45 am]

BILLING CODE 4910–62–M

Research and Special Programs Administration

Office of Hazardous Materials Transportation; Applications for Renewal or Modification of Exemptions or Applications To Become Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for renewal or modification of exemptions or application to become a party to an exemption; correction.

SUMMARY: This document corrects a notice published in the **Federal Register** on *Thursday, February 12, 1987 on page 4563.* Exemption Number 8236 applicant name should have been Talley Defense Systems instead of Manager, Advanced Project.

Issued in Washington, DC, on February 17, 1987.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 87–3716 Filed 2–20–87; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: February 12, 1987.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB No. 1545–0810
Form No. IRS Form TD 7533
Type of Review: Reinstatement
Title: Time for Filing Returns and Other Documents

Internal Revenue Service

OMB No. 1545–0807
Form No. IRS Form TD 7533
Type of Review: Reinstatement
Title: Time for Filing Returns and Other Corporations

Internal Revenue Service

OMB No. 1545–0808
Form No. None
Type of Review: Reinstatement
Title: Time and Manner of Making Certain Elections Under the Tax Equity and Fiscal Responsibility Act of 1982
Clearance Officer: Garrick Shear (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Office.

[FR Doc. 87–3709 Filed 2–20–87; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

February 12, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB No. 1545–0902
Form No. IRS Forms 8288 and 8288–A
Type of Review: Resubmission
Title: Withholding Upon Dispositions of U.S. Real Property Interests by Foreign Persons (CC: INTL–51–86 (FINAL), LR–151–84 (NPRM), LR–218–84 (TEMP)
Clearance Officer: Garrick Shear (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Office.

[FR Doc. 87–3708 Filed 2–20–87; 8:45 am]

BILLING CODE 4810–25–M

Customs Service

Application for Recordation of Trade Name; Snyder Laboratories, Inc.

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "SNYDER LABORATORIES, INC." used by Snyder Laboratories, Inc., a corporation organized under the laws of the State of Delaware, located at 200 West Ohio Avenue, Dover, Ohio 44662.

The application states that the trade name is used in connection with the developing and marketing of medical devices and equipment, including wound drainage devices and any parts, developments, extensions and accessories, including tubing, sterile needles and sterile connectors, manufactured in the United States.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

DATE: Comments must be received on April 24, 1987.

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ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–5765).

Dated: February 13, 1987.

Steven I. Pinter,

Chief, Entry, Licensing and Restricted Merchandise Branch.

[FR Doc. 87–3758 Filed 2–20–87; 8:45 am]

BILLING CODE 4820–02–M

VETERANS ADMINISTRATION

Wage Committee; Meetings

The Veterans Administration, in accordance with Pub. L. 92–463, gives notice that meetings of the Veterans Administration Wage Committee will be held on:

Thursday, February 26, 1987, at 2:30 p.m.
Thursday, March 12, 1987, at 2:30 p.m.
Thursday, March 26, 1987, at 2:30 p.m.

The meetings will be held in Room 304, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Veterans Administration and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, and as cited in 5 U.S.C. 552b(c)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairman for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairman, Veterans Administration Wage Committee, Room 1175, 810 Vermont Avenue, NW., Washington, DC 20420.

This notice does not appear 15 days prior to the meeting due to delays in administrative processing.

Dated: February 6, 1987.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 87–3750 Filed 2–20–87; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 35
Monday, February 23, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, February 25, 1987.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: *Field Plan Review.*

The Commission will consider issues related to reorganization for Field Operations.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

January 19, 1987.

[FR Doc. 87–3847 Filed 2–19–87; 2:12pm]

BILLING CODE 6355–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, February 17, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of CapeBank, a Massachusetts Co-operative Bank, an operating noninsured co-operative bank located at 450 South Street, Hyannis, Massachusetts, for Federal deposit insurance.

Requests for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: February 18, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–3862 Filed 2–19–87; 3:34 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Tuesday, February 17, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,878–L (Amendment)
American City Bank Los Angeles, California
Case No. 46,921–L
The First National Bank of Midland Midland, Texas

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable.

Dated: February 18, 1987.

Federal Deposit Insurance Corporation

Hoyle L. Robinson

Executive Secretary.

[FR Doc. 87–3863 Filed 2–19–87; 3:34 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION:

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:26 p.m. on Wednesday, February 11, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) Accept the bid submitted by The First National Bank of Seiling, Seiling, Oklahoma, for the purchase of certain assets of and the assumption of the liability to pay deposits made in Community Bank, Seiling, Oklahoma, which was expected to be closed by the Bank Commissioner for the State of Oklahoma on Wednesday, February 11, 1987; and (2) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction;

(B)(1) Accept the bid submitted by The Atoka State Bank, Atoka, Oklahoma, an insured State nonmember bank, for the purchase of certain assets of and the assumption of the liability to pay deposits made in First City Bank of Atoka, Atoka, Oklahoma, which was expected to be closed by the Bank Commissioner for the State of Oklahoma on Thursday, February 12, 1987; (2) approve the application of The Atoka State Bank, Atoka, Oklahoma, for consent to purchase certain assets of and assume the liability to pay deposits made in First City Bank of Atoka, Atoka, Oklahoma, and for consent to establish the sole office of First City Bank of Atoka as a branch of The Atoka State Bank; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction;

(C)(1) Accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for a purchase and assumption transaction, or (2) in the event no acceptable bid for a purchase and assumption transaction is submitted, accept the highest acceptable bid for an insured deposit transfer transaction which may be submitted, or (3) in the event no acceptable bid for either type transaction is submitted, make funds available for the payment of the insured deposits of the closed bank, with respect to each of the following: (a) Federated National Bank, Live Oak (P.O. San Antonio), Texas, which was expected to be closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, February 12, 1987; (b) First State Bank of King City, Missouri, King City, Missouri, which was expected to be closed by the Commissioner of Finance for the State

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of Missouri on Friday, February 13, 1987; and (c) The County Bank, Manatee County (P.O. Palmetto), Florida, which was expected to be closed by the State Comptroller for the State of Florida on Friday, February 13, 1987; and

(D)(1) Accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for an insured deposit transfer transaction, or (2) in the event no acceptable bid for an insured deposit transfer transaction is submitted, make funds available for the payment of the insured deposits of Security National Bank of Midland, Midland, Texas, which was expected to be closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Friday, February 13, 1987.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: February 17, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-3864 Filed 2-19-87; 3:34 pm]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 52, No. 35
Monday, February 23, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1641]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

Correction

In notice document 87-2402 appearing on page 3702 in the issue of Thursday, February 5, 1987, make the following correction:

On page 3702, in the third column, in the first and second lines, "(insert date 16 days after date of publication)" should have read "February 23, 1987".

BILLING CODE 1505-01-D

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[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1986. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1986. The CFR volume issued as of July 1, 1984, should be retained.

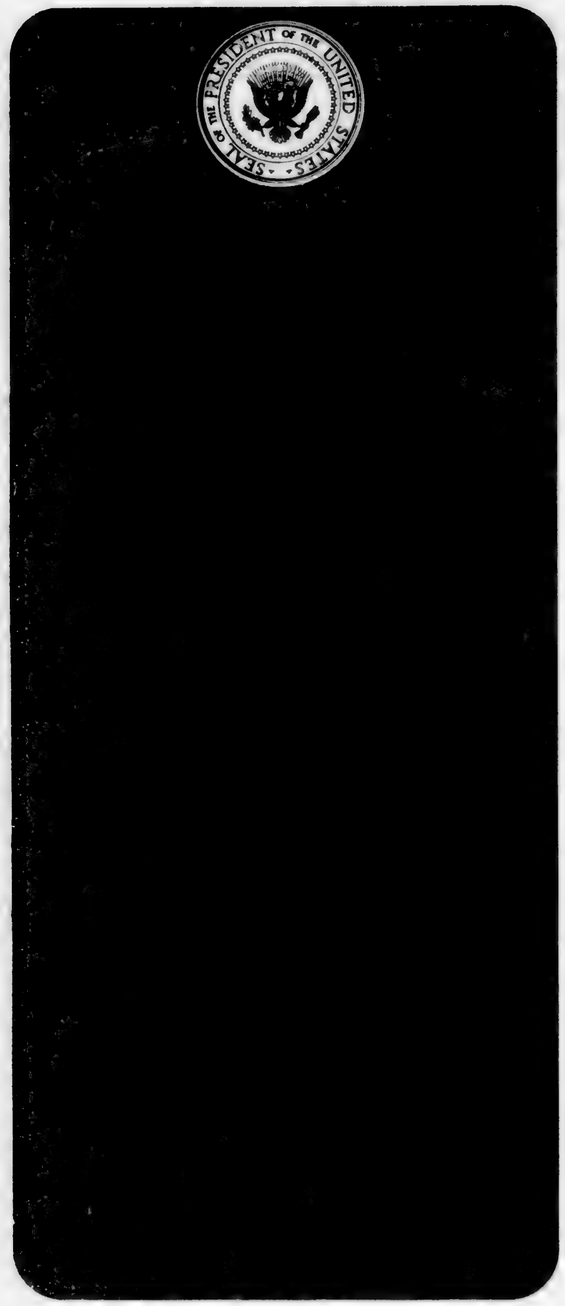
[4] No amendments to this volume were promulgated during the period July 1, 1985 to June 30, 1986. The CFR volume issued as of July 1, 1985 should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[7] No amendments to this volume were promulgated during the period Oct. 1, 1985 to Sept. 30, 1986. The CFR volume issued as of Oct. 1, 1985 should be retained.

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The February 24, 1987, Federal Register issue was not published because Federal Government offices in Washington, DC, were closed due to a severe snowstorm. Documents scheduled to be published on February 24, 1987, are published in today's issue, which is designated number 36-37 of volume 52.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

HOUSTON, TX

WHEN: March 10; at 9 am.
WHERE: Room 4415, Federal Building, 515 Rusk Avenue, Houston, TX.
RESERVATIONS: Call the Houston Federal Information Center on the following local numbers:
Houston 713–229–2552
Austin 512–472–5495
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ATLANTA, GA

WHEN: March 26; at 9 am.
WHERE: L.D. Strom Auditorium, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, GA.
RESERVATIONS: Call the Atlanta Federal Information Center, 404–331–2170.

WASHINGTON, DC

WHEN: March 31; at 9 am.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: Beverly Fayson, 202–523–3517

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Title 3—
The President

Proclamation 5611 of February 19, 1987

National Consumers Week, 1987

By the President of the United States of America

A Proclamation

In the bicentennial year of the Constitution of the United States, it is appropriate that we reflect on the cherished freedoms and rights on which our open marketplace is founded. In recognition of the importance of the Constitution to American consumers in assuring us the many blessings we enjoy today, the theme for National Consumers Week 1987 shall be "Consumers Celebrate the Constitution."

Two hundred years ago, a group of patriots conceived the Constitution and thereby created the political, economic, and social framework for our Nation. As a result, many precious freedoms have been guaranteed to American citizens. Inherent in these is the freedom to produce, to sell, and to buy or not to buy.

Our competitive marketplace has flourished and become the most productive in the world, providing American consumers with unparalleled choices and opportunities. The goal of the Constitution's framers was to provide a free market in goods and services marked by creativity, by invention, and by the productivity of American workers.

We can be thankful today for the wisdom of our Founders. A functioning national market for goods and services with common money, standard weights and measures, reliable legal procedures respecting honest contracts, freedom from oppressive taxation, the encouragement of invention, and a dependable postal system were commonly recognized as needs in the debates of the Constitutional Convention. The resulting document, signed in Philadelphia in 1787, so effectively addressed those concerns that the same principles guide our modern economy.

These principles of freedom and fairness are the basis for consumer rights in the marketplace: the right to choose among products, services, and suppliers; the right to adequate information about what we buy; the right to expect that products offered for sale will conform to reasonable safety standards; the right to be heard; and the right to consumer education.

National Consumers Week 1987 is dedicated to reminding us that the exercise of these rights helps to maintain the vigor of our economic system—creating positive pressure for better products, services, and warranties—and that consumer education is a lifelong process.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week beginning April 19, 1987, as National Consumers Week. I urge consumers, businesses, educators, community organizations, labor unions, the media, and government officials to identify, emphasize, and promote activities during National Consumers Week that draw attention to the consumer's rights under the Constitution.

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IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of Feb., in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-3948
Filed 2-20-87; 11:14 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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Wednesday, February 25, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

[Amdt. 16]

Child Care Food Program; Appeals of Actions Based on Federal Audits

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Child Food Program (CCFP) regulations to permit State agencies to refuse to grant appeals of actions taken as a result of findings made by Federal audits. The rule further stipulates that if State agencies do not offer institutions an appeal at the State level in these instances, appeals will be afforded by the Department of Agriculture. This regulation implements a nondiscretionary provision included in Pub. L. 99–500 and 99–591 and will enhance the integrity of Federal audits while ensuring that institutions have appropriate avenues of administrative redress.

EFFECTIVE DATE: February 25, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302, (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified as not major because it will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices for Program participants, individual industries, Federal agencies, State or local government agencies or geographic regions, and will not have a significant economic impact on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

This regulation has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to the review, the Administrator of the Food and Nutrition Service has certified that this final rule does not have a significant economic impact on a substantial number of small entities because State agencies are not "small entities" as defined under the Act.

This final rule implements a provision included in Pub. L. 99–500 and 99–591 which is nondiscretionary. For this reason, the Administrator of the Food and Nutrition Service has determined, in accordance with 5 U.S.C. 553(b) and 553(d), that prior notice and comment is unnecessary and contrary to the public interest and that good cause exists for making the rule effective upon publication. In addition, since this rule merely implements cited statutory provisions, it constitutes an interpretive rule for which notice and comment rulemaking and a 30-day period before taking effect are not required by 5 U.S.C. 553.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements that are included in this final rule have been approved by the Office of Management and Budget (OMB) under clearance 0584–0055.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule related Notice published at 48 FR 29114, June 24, 1983.).

Background

Under the Child Care Food Program (CCFP), audits of participating public and nonprofit private institutions must be conducted in accordance with the Office of Management and Budget Circulars A–128 and A–110, respectively. Further, State agencies must conduct audits of proprietary Title XX institutions at least once every 2 years. In addition to these audits, program audits of institutions may be carried out by State agencies and the Department's Office of the Inspector General. Under current regulations, there is one group of audits—those conducted directly by the Department's Office of the Inspector General—that has created a unique situation which is addressed in section 361 of Pub. L. 99–500 and 99–591 and this final regulation. Specifically, § 226.14(b) of the CCFP regulations prohibits State agencies from disregarding overpayments or waiving collection actions against institutions arising from the findings of Federal audits. Moreover, § 226.6(j)(12) of the regulations specifies that if a State review official dismisses a claim based on a Federal audit, the State agency may be held liable for the loss. The Department's position in this area reflects the fact that once a Federal claim has been established against a State agency based on Federal audit findings, only the Department has the authority to adjust, settle, compromise or deny the claim.

Nevertheless, until the law was amended States were required to afford institutions the right to appeal any actions which could affect participation or reimbursement, including actions stemming from Federal audit findings. Consequently, there was some potential for a State to be placed in an untenable position when complying with Federal audit recommendations. If, for example, a State appeals officer were to rule against a State agency which was attempting to enforce an audit finding, that State agency could be subject to a recovery action by the Department and, at the same time, be prevented from taking a similar action against the institutions in question.

To remedy this potential for conflict, section 361 of Pub. L. 99–500 and 99–951, amended section 17(e) of the National School Lunch Act to stipulate that States would not be required to offer appeals of actions which arise from Federal audit findings. The amendment further provides that if States do not allow appeals in these situations, the institutions may appeal the actions to the Department. Since the Department has no latitude in implementing these legislative mandates, these provisions are being incorporated into the CCFP

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regulations through a final rule without opportunity for public comment.

As a final note, the Department wishes to emphasize that the legislation in no way changed institutions' appeal rights with respect to any other adverse actions taken by State agencies. State agencies will continue to be required to allow appeals of all other adverse actions, including actions arising from the findings of audits performed in accordance with § 226.8 of the CCFP regulations, except for those conducted by the Department's Office of the Inspector General.

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs—health, Infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Part 226 is amended as follows:

PART 226—CHILD CARE FOOD PROGRAM

1. The Authority citation for Part 226 is revised to read as follows:

Authority: Sec. 361, Pub. L. 99–500 and 99–951 (42 U.S.C. 1766), secs. 803, 810, and 820, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1758, 1766); sec. 2, Pub. L. 95–627, 92 Stat. 3603 (42 U.S.C. 1766); sec. 10, Pub. L. 89–642, 80 Stat. 889 (42 U.S.C. 1779), unless otherwise noted.

§ 226.6 [Amended]

2. Section 226.6 is amended by removing the word "Each" at the beginning of the first sentence of the introductory text of paragraph (j) and adding "Except as provided in § 226.8(g), each".

3. Section 226.8 is amended by adding a new paragraph (g), to read as follows:

§ 226.8 Audits.

* * * * *

(g) State agencies are not required to provide a hearing to an institution for State actions taken on the basis of a Federal audit determination. If a State agency does not provide a hearing in such situations, FNS will provide a hearing, upon request, in accordance with procedures set forth in § 226.6(j) of this part.

Dated: February 17, 1987.

Robert E. Leard,

Administrator.

[FR Doc. 87–3880 Filed 2–24–87; 8:45 am]

BILLING CODE 3410–30–M

Agricultural Marketing Service

7 CFR Part 929

Cranberries Grown in Massachusetts et al.; Increase in Base Quantity Reserve

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases the base quantity reserve for the 1986–87 crop year from the required minimum of 2.0 percent to 7.24 percent of the total base quantities currently issued to cranberry growers, in order to update and expand base quantities for the benefit of growers. This should help to facilitate the appropriate and equitable operation of the cranberry marketing order with the establishment in the future of any marketable quantity and annual allotment. The rule also expands the criteria for determining a bona fide effort (i.e., a condition for the continuing validity of a grower's base quantity) to provide conditions under which a grower's base quantity may be reduced or cancelled. The rule is intended to ensure that base quantities remain with growers who have demonstrated a bona fide effort to produce and sell cranberries. The final rule is virtually identical to the proposal published in the August 21, 1986, **Federal Register**, with the exception of three adjustments. These adjustments include revising slightly the base quantity reserve percentage, delaying the implementation of the new bona fide effort requirement from 1987 to 1988, and expanding the criteria the committee considers on whether a grower has made a bona fide effort to produce and sell cranberries.

EFFECTIVE DATE: February 25, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, Telephone (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1, and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the FRA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders and rules issued thereunder, pursuant to the Agricultural Marketing Agreement Act of 1937, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that 31 handlers and 950 producers of cranberries under the marketing order will be subject to regulation during the course of the current season. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2 (1985)) as those having average annual gross revenues for the last three years of less than $100,000, and agricultural service firms have been defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of cranberries may be characterized as small entities.

As discussed later in this document, the impact of this regulation will be on growers and will not be significant because the changes represent either a relaxation of restrictions (i.e., the increase in the base quantity reserve) or establishment of additional conditions to demonstrate that a producer is making a bona fide effort in the production and sales of cranberries necessary to retain base quantity under the terms of the order. We have examined various alternatives, including maintaining the current requirements, and have concluded that this amendment is the appropriate alternative. We also conclude that any potential costs to growers appear to be significantly offset when compared to the potential benefits of greater and more equitable allocation of allotment bases to growers. Finally, this final fule imposes no new reporting or recordkeeping requirements on the affected parties.

On August 21, 1986, notice was published in the **Federal Register** (51 FR 29936) to amend § 929.153 of Subpart—Rules and Regulations. Interested persons were invited to submit comments on the proposal. Four comments were filed with the Docket Clerk.

This final rule is issued under marketing agreement and Order No. 929, as amended (7 CFR Part 929). The order regulates the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The agreement

and order are effective under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674). This final rule is based on a recommendation by the Cranberry Marketing Committee (committee), comments received from interested persons, and other information.

Each year prior to May 1, the committee considers its marketing policy for the coming season and estimates a marketable quantity of cranberries. Such quantity is the amount of cranberries necessary to meet the season's total market demand and provide for an adequate carryover of cranberries to the next season. If the Secretary finds from a recommendation of the committee, or from other available information, that limiting the quantity of cranberries that may be purchased or handled on behalf of growers would tend to effectuate the declared policy of the Act, the Secretary shall determine and establish the marketable quantity for that crop year. The marketable quantity shall be apportioned among all eligible growers by applying an allotment percentage to each grower's base quantity, pursuant to § 929.48.

Such base quantities are issued to growers: (a) Based on their sales during the period 1968–69 through 1973–74; (b) as a result of transfers of base quantities from other growers; or (c) as part of an annual reserve of at least 2 percent of the total base quantities. The reserve is used for the issuance of base quantities to new growers and adjustments in base quantities for existing growers, with 25 percent being made available for new growers and 75 percent available for adjustments for existing growers. Any unallocated portion of the 25 percent available to new growers may, at the discretion of the committee, be prorated among eligible existing growers on an equitable basis.

On February 27–28, 1986, the Cranberry Marketing Committee held its annual winter meeting to formulate its marketing policy for the 1986–87 crop year. It determined that implementation of § 929.49 (i.e., the establishment of a marketable quantity and annual allotment) was not warranted. However, the committee noted that cranberry production was projected to exceed the total of all allotment bases and recommended that additional base be issued to all qualified new and existing growers to the full amount to which each grower is entitled, contingent on the grower's demonstrated ability to produce and sell cranberries. Such an increase would make additional quantities of base quantity available to new and existing growers. The committee said this change would also aid in the updating of base quantities which would be necessary for any future establishment of a marketable quantity and annual allotment.

In his comment, a Grayland, Washington, grower stated that no such increase is warranted because it is predicated on a projected increase in production. That is, the grower commented that the proposed increase in base quantities would only serve to encourage more production. He also stated that the demand for cranberries is growing at a slower rate than production. Moreover, the grower concluded that, in the event of any volume regulation, the large size of the total of all base quantities would result in a regulation which would be more burdensome on "smaller or average growers" than on larger growers. On review, however, the increase in base quantity is not based on projected production, but is based on a grower's demonstrated sales of cranberries. Moreover, in the event of volume regulation, the allotment percentage would be uniformly applied to all growers. Finally, the proposed increase in allotment bases should be considered in conjunction with the changes in bona fide effort requirements (discussed later in this document). The purpose of the changes in the bona fide effort requirements are to insure that base quantities remain with growers who have demonstrated a bona fide effort to produce and sell cranberries regardless of the size of their farming operations.

In its comment, the committee stated that, following a comprehensive review of computerized grower files, it was determined that discrepancies existed which necessitated a recomputation of the additional base quantity amount. The corrected figures represented 7.24 percent, or 237,249 barrels, of the total aggregate of base quantities held by all producers. (The proposed rule specified 7.74 percent, or 254,629 barrels). The committee noted that as recomputed the change in the allocation amount and corresponding percentage does not adversely affect the intent of the committee to allocate the full amount of additional base quantity to all qualified new and existing growers for which they are entitled, contingent on their demonstrated ability to produce and sell cranberries. Therefore, § 929.153(a) is established to provide for the 1986–87 crop year, the reserve base quantity shall be 7.24 percent.

Section 929.48, and § 929.153(d) which implements that section, provides that a condition for the continuing validity of a grower's base quantity is the production of cranberries in a proprietary capacity. If no bona fide effort is made to produce and sell cranberries thereunder for five consecutive seasons, commencing with the 1978–79 season, the base quantity may be reduced or declared invalid due to lack of use and cancelled at the end of the fifth season of nonproduction. Section 929.48 also provides that the committee shall establish criteria, subject to approval by the Secretary, whereby the committee may determine whether a bona fide effort has been made to produce and sell cranberries produced on the grower's own acreage.

In order to assure that base quantities are held by growers who have demonstrated their ability to produce and sell cranberries on their established acreage, and to prepare for any future recommendation for a marketable quantity and annual allotment, the committee recommended stricter criteria for determining bona fide effort. The committee observed that its proposal was intended as a means to treat all cranberry growers in an equitable manner since base quantities would remain only with growers who demonstrate a bone fide effort and who are not merely holding base quantities in anticipation of any future volume regulation. Such a practice is unfair to growers who are currently producing and selling cranberries to the full extent of their base quantities. The committee's proposal was intended to apply criteria which would recognize certain factors characteristic of cranberry production which are beyond the control of growers using accepted normal cultural practices. Such characteristic factors include: (1) Fluctuations in quantity and quality caused by weather, disease and other natural phenomena beyond a grower's control; and (2) the generally low production yields on new or recently replanted acreage.

Thus, the committee recommended the bona fide effort criteria be expanded to include both: (1) The present operational provision that the base quantity of a grower who has not produced and sold cranberries for five consecutive seasons, commencing with the 1978–79 season, may be declared invalid and cancelled at the end of the fifth such season due to lack of use; and (2) a new requirement operational in 1987, that the base quantity of a grower who has not maintained an average production and sales level for the best four of the most recent six years, commencing with the 1981–82 season, equal to at least 50 percent of the grower's base quantity, may be reduced to an amount equal to the average

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production and sales for the best four of the most recent six years.

The proposed rule contained the above committee recommendations. However, it is now clear that the new requirement with respect to the most recent six years of production should not be made operational until 1988, in order to provide growers an adequate opportunity to make necessary adjustments in their cultural practices or other operational changes. Thus, it is appropriate that the bona fide effort requirement be based on the best four of the most recent six years, commencing with the 1982–83 season and no action would be taken to reduce base quantities until after the 1987–88 crop year. The 1987–88 crop year begins on September 1, 1987.

In order to provide growers with advance notice of the possibility of an impending reduction in their base quantities, the proposed rule also provided that the committee shall notify growers by registered mail when a grower's production and sales records show, for the best three out of the most recent five years, that the grower's production is 40 percent or more below the established base quantity. The proposed rule stated that the first such notification would occur shortly after the production and sales figures for the 1985–86 season, as reported by growers and handlers, are known, and each year thereafter. However, as previously discussed it is necessary to delay implementation of the bona fide effort rule regarding the removal of allotment base one year later than proposed. Thus, the committee will make the first notification utilizing 1986–87 crop production and sales figures as reported by growers and handlers. This notification should provide growers with ample opportunity to adjust their cultural practices, or to transfer base quantities to other growers who have more production and sales than base quantities.

A comment was received from a Middleboro, Massachusetts, grower who favored the proposed changes, but was concerned that growers with less than six years experience would be unfairly affected. However, the bona fide effort rule applies only to growers with at least six years of production and sales experience.

The final rule provides that the committee review production and sales records annually to determine if such a bona fide review effort is being made to produce and sell cranberries from growers' established acreages. The committee would take due consideration of any available information which might indicate that specified factors beyond growers' control may have had an effect on growers' abilities to make bona fide efforts.

A Long Beach, Washington, grower submitted a comment which discussed the grower's own production experience with cranberry acreage which had not been harvested in the eight years previous to his ownership. He concluded that, despite his best efforts in the following five years, his base would be reduced unfairly under the terms of the proposal. Thus, he proposed that the proposed rule be modified so that the committee could consider the low production yields on new or recently replanted and rejuvenated acreage as a migitating factor beyond a grower's control in making a bona fide effort. Consideration of renovated acreage (the term more widely used than "rejuvenated" to describe the production and cultural practices associated with acreage which has not been recently maintained and harvested) is appropriate because some growers employing good commercial practices may experience low yields on such acreage. Such low yields may be considered outside of a grower's control. Therefore, the final rule has been modified herein to provide for committee consideration of such renovated acreage.

The rule also reaffirms and incorporates an existing requirement that growers should be responsible for furnishing the committee with the necessary records and any other pertinent information in order for the committee to perform its determination.

The rules and regulations currently in effect under the order provide review procedures that any grower could follow if that grower was dissatisfied with the committee's determination. In summary, § 929.125 provides that such grower may submit to the committee, within 30 days after notification of any committee action with respect to a grower's base quantity, a request for a review by the committee of that determination, along with any materials which the grower feels are pertinent. The committee would review its determination, taking into account all materials submitted by the grower, and any other appropriate information. Thereupon, the committee must make a redetermination, and notify the grower of its conclusions, accompanied by the reasons for its decision. If the grower is not satisfied with the subsequent decision of the committee, the grower may appeal, through the committee, to the Secretary, within 30 days. The Secretary shall promptly review the decision of the committee and make a decision which shall be final.

After consideration of all relevant matter presented, including the comments received, and other available information, it is found that the amendment of § 929.153, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that it is impracticable and contrary to the public interest to postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because a final rule should be issued before the February 25 committee meeting, in order for growers to have an established base allotment in the event volume regulation is recommended for the 1987–88 marketing season. Also, this rule needs to be effective before that meeting in order for the committee to evaluate the need for additional base in the 1987–88 marketing year.

List of Subjects in 7 CFR Part 929

Marketing agreements and orders, Cranberries, Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, New York.

PART 929—[AMENDED]

1. The authority citation for 7 CFR Part 929 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 929.153 is amended by revising paragraphs (a) and (d) to read as follows:

§ 929.153 Base quantity reserve.

(a) *Establishment.* An annual reserve base quantity equal to 2 percent of total base quantities is hereby established: *Provided,* That, for the 1986–87 crop year, the reserve base quantity shall be 7.24 percent.

* * * * *

(d) *Invalidation of base quantity.* As a condition for the continuing validity of a grower's base quantity, the grower shall make a bona fide effort to produce and sell cranberries on the grower's established acreage. In determining whether a grower has made a bona fide effort, the committee shall apply the following criteria and procedures:

(1) The committee shall review production and sales records of growers annually to determine if a bona fide effort is being made to produce and sell cranberries. Growers are responsible for furnishing the committee with the necessary records and any other pertinent information in order for the committee to perform its duties under this paragraph.

(2) The base quantity of a grower who has not produced and sold cranberries for five consecutive seasons, commencing with the 1978–79 season, may be declared invalid and cancelled at the end of the fifth season due to lack of use. In addition, commencing with the 1982–83 season, the base quantity of a grower who has not maintained an average production and sales level for the best four of the most recent six years equal to at least 50 percent of the grower's established base quantity, may be reduced to an amount equal to the average production and sales for the best four of the most recent six years. Due consideration shall be given to any available information which indicates that production and sales were adversely affected by the following factors which are beyond a grower's control: (i) Fluctuations in quantity and quality as affected by weather, disease, and other natural phenomena; and (ii) the generally low production yields on new, or recently replanted or renovated, acreage.

(3) Any grower who is dissatisfied with a committee determination may appeal such determination pursuant to § 929.125. In its reconsideration, the committee shall consider the grower's production and sales data and shall take due consideration of any information submitted regarding the above specified factors beyond a grower's control, which may have an effect on a grower's ability to produce and sell cranberries.

(4) After the production and sales for the 1986–87 season are known, and each year thereafter, the committee shall notify a grower by registered mail when the grower's production and sales records show for the best three out of the most recent five years that the grower's production is 40 percent or more below such grower's established base quantity.

* * * * *

Dated: February 20, 1987.

William J. Doyle

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 87–3955 Filed 2–24–87; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 945

[Amdt. No. 1]

Irish Potatoes Grown in Certain Designated Counties in Idaho and Malheur County, OR; Amendment to Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule permits handlers to ship up to 200 hundredweight per day of yellow fleshed Finnish-type potatoes exempt from grade, size, maturity, pack, inspection, and assessment requirements, permits the shipment of prepeeled potatoes exempt from quality requirements, and permits potatoes for prepeeling to be handled without a Certificate of Privilege. Yellow fleshed Finnish-type potatoes often fail marketing order requirements although there is a small specialized market for them. There is a limited market for prepeeled potatoes and such potatoes will not enter normal fresh market channels.

EFFECTIVE DATE: March 27, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This action relieves restrictions on handlers regulated under the marketing agreement and order program and will not increase handler costs.

Marketing Order No. 945 regulates the handling of potatoes grown in designated counties in Idaho and Malheur County, Oregon. The program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Idaho-Eastern Oregon Potato Committee, established under the order, is responsible for its local administration.

Notice was given in the May 22, 1986, **Federal Register** (51 FR 18796) affording interested persons until June 23, 1986, to file written comments. None were filed.

At its meeting on January 15, 1986, the committee recommended that yellow fleshed Finnish-type potatoes be exempt from the grade, size, maturity, pack, and inspection requirements of the handling regulation, and from assessment requirements. These potatoes are generally small and often misshapen, and frequently do not meet the quality requirements of the order. However, there is a small but specialized market for this product which is often marketed as "organically grown." The committee believes that by permitting handlers to ship up to 200 hundredweight per day of these potatoes a small part of the consuming public could be served and a few growers and handlers could benefit, all with no adverse impact on the marketing of potatoes. There are few growers and even fewer handlers presently involved with this type of potato. If, however, the shipments of this type of potato reached a significant level, the committee would review the situation and would make any necessary changes at that time.

The committee also recommended that handlers be permitted to ship prepeeled potatoes exempt from quality and pack requirements. According to committee sources, there is only one active prepeeler in the area. The market for prepeeled potatoes is limited, with most going to local restaurants throughout the production area and nearby locations. Hence, the exemption is not expected to adversely affect fresh market shipments.

The committee also recommended removing the requirement that potatoes for prepeeling move under a Certificate of Privilege. Since such potatoes must be inspected and certified as meeting minimum grade and size requirements specified by the handling regulation, the committee believes that the Certificate of Privilege is unnecessary. Eliminating the requirement for a Certificate of Privilege in this instance will simplify the regulation and lessen the paperwork burden on handlers without compromising the quality control efforts of the industry.

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It is hereby found and determined that this action, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 945

Marketing agreements and orders, Potatoes, Idaho, Oregon.

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR Part 945 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 945.341 is hereby amended by revising (e)(1) to include "prepeeled potatoes," (f) to exclude potatoes for prepeeling, and revising (g) to include yellow-fleshed Finnish potatoes as follows:

§ 945.341 Handling regulation.

* * * * *

(e) *Special purpose shipments.* (1) The minimum grade, size, cleanness, maturity, and pack requirements set forth in paragraphs (a), (b), and (c) of this section shall not be applicable to shipments of prepeeled potatoes as defined in paragraph (h) of this section or potatoes for any of the following purposes:

* * * * *

(f) *Safeguards.* (1) Each handler making shipments of potatoes for charity, experimentation, or export pursuant to paragraph (e) of this section shall:

* * * * *

(g) *Minimum quantity exemption.* Each handler may ship up to but not to exceed, five hundredweight of potatoes, except yellow fleshed Finnish-type potatoes, any day without regard to the inspection and assessment requirements of this part, but this exception shall not apply to any shipment that exceeds five hundredweight of potatoes. Handlers of potatoes commonly known as yellow fleshed Finnish potatoes may handle up to 200 hundredweight of such potatoes any day without regard to the inspection and assessment requirements of this part.

* * * * *

Dated: February 12, 1987.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–3707 Filed 2–24–87; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–NM–09–AD; Amdt. 39–5566]

Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped With General Electric CF6–80 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes equipped with General Electric CF6–80 series engines, which requires inspection of the underside of the engine strut systems raceway and filling of certain unsealed openings. This action is prompted by an inspection of production airplanes that revealed two unsealed triangular openings on the underside of the raceway. If leaking flammable fluids should enter the raceway, this condition, if not corrected, could allow the fluids to drain out onto the engine core, rather than overboard through the normal drainage system, and could result in an engine compartment fire.

EFFECTIVE DATE: March 13, 1987.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Steven P. Clark, Aerospace Engineer, Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office; telephone (206) 431–1963. Mailing address: Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: An inspection of the systems raceway on the engine struts of two Boeing Model 767 airplanes in production, equipped with General Electric CF6–80 series engines, revealed two unsealed triangular openings on the underside of the raceway approximately one-quarter-inch wide and two inches long. The systems raceway routes the airplane hydraulic and electrical lines into the engine compartment and isolate leaking flammable fluids in the area from the engine core. The main fuel supply line passes through the systems raceway compartment and exits on the opposite side of the strut. If leaking flammable fluids should enter the raceway, these openings could allow the fluids to drain out onto the engine core instead of overboard through the normal drainage system. The condition could result in an engine compartment fire.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–54A0024, dated December 23, 1986, which describes the inspection of the raceway area and the sealing of any unfilled openings.

Since this condition is likely to exist on other airplanes of the same type design, this AD requires inspection of the raceway and repair, if necessary, in accordance with the service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, and evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Rev. Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, equipped with General Electric CF6–80 series engines, listed in Boeing Alert Service Bulletin 767–54A0024 dated December 23, 1986, certificated in any category. Compliance required as indicated, unless previously accomplished.

To preclude flammable fluid leaking into the engine strut systems raceway from draining onto the engine core, accomplish the following:

A. Within 30 days after the effective date of this AD, inspect the underside of the engine strut system raceway and fill any unsealed openings identified in accordance with Boeing Alert Service Bulletin 767–54A0024 dated December 23, 1986, or later FAA-approved revision.

B. An alternate means of compliance or adjustment of compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 13, 1987.

Issued in Seattle, Washington, on February 17, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–3788 Filed 2–24–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 87–NM–02–AD; Amdt. 39–5567]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD), applicable to certain Boeing Model 747 airplanes, which currently requires inspection of trailing edge flap tracks for cracking. This amendment incorporates a change in the required inspection procedure from visual to ultrasonic for the area adjacent to the first four fastener holes from the forward end on flap track numbers 1, 2, 7, and 8. This action is prompted by a recent flap track failure which occurred shortly after the track was inspected visually in accordance with the existing AD. Cracking could lead to failure of the flap track and separation of the flap, which could result in partial loss of controllability of the airplane.

EFFECTIVE DATE: March 13, 1987.

ADDRESSES: The applicable service information may be obtained from the Boeing Commerical Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM–120S; telephone (206) 431–1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Airworthiness Directive 84–19–02, Amendment 30–4917 (49 FR 36819), as amended by Amendments 39–5314 (51 FR 18308) and 39–5466 (51 FR 40969), requires visual inspections for cracking of the first four fastener holes of the trailing edge flap track at intervals of 300 landings, visual inspections for cracking of the other fastener holes common to the fail-safe bar at intervals of 1,000 landings, and subsequent repair, if necessary. There have been new reports of cracking of the forward end of the flap track. Recently, a Number 1 flap track failed at the first fastener hole at 124 landings since the last visual inspection. This indicates that the visual inspection is not adequate to detect a crack before it becomes critical.

The FAA has reviewed and approved Revision 3 to Boeing Alert Service Bulletin 747–57A2229, dated December 18, 1986, which described a procedure for ultrasonic inspection of the area adjacent to the first four fastener holes from the forward end of flap track numbers 1, 2, 7, and 8, and repair, as necessary.

Since this condition is likely to exist or develop on other airplanes of the same type design, this action amends the existing airworthiness directive to require ultrasonic inspection for cracking of the trailing edge flap tracks and repair, if necessary, in accordance with Boeing Alert Service Bulletin 747–57A2229, Revision 3, dated December 18, 1986.

Further, since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Rev. Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending AD 84–19–02, Amendment 39–4917 (49 FR 36819; September 20, 1984), as amended by Amendments 39–5314 (51 FR 18308; May 19, 1986) and 39–5466 (51 FR 40969; November 12, 1986), by revising paragraph A. to read as follows:

"A. 1. Within 100 landings after the effective date of this amendment, unless accomplished within the last 200 landings, and at intervals thereafter not to exceed 300 landings, ultrasonically inspect the Number 1 and 8 flap tracks lower flanges directly below their vertical web at the front end for cracks

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adjacent to bolts number 1 through 4 in accordance with the procedures described in Boeing Alert Service Bulletin 747–57A2229, Revision 3, dated December 18, 1986, or later FAA-approved revisions.

2. Within 150 landings after the effective date of this amendment, unless accomplished within the last 150 landings, and at intervals thereafter not to exceed 300 landings, ultrasonically inspect the number 2 and 7 flap tracks lower flanges directly below their vertical web at the front end for cracks adjacent to bolts number 1 through 4 in accordance with the procedures described in Boeing Alert Service Bulletin 747–57A2229, Revision 3, dated December 18, 1986, or later FAA-approved revisions.

3. Within 300 landings after the effective date of this amendment, or within 300 landings from the last visual inspection, whichever occurs first, and at intervals thereafter not to exceed 300 landings, visually inspect number 3, 4, 5, and 6 flap tracks lower flanges and vertical webs at the front end for cracks adjacent to bolts number 1 through 4 in accordance with the procedures described in Boeing Service Bulletin 747–57A2229, Revision 2, dated June 6, 1986, or later FAA-approved revisions.

4. Replace cracked flap tracks prior to further flight in accordance with Boeing Service Bulletin 747–57–2146, Revision 3, dated May 9, 1986, or later FAA-approved revisions."

This amends Amendment 39–4917, as amended by Amendments 39–5314 and 39–5466.

This amendment becomes effective March 13, 1987.

Issued in Seattle, Washington, on February 17, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–3789 Filed 2–24–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 376 and 399

[Docket No. 60853–6153]

Technical Adjustments to Human Rights Controls

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which includes all commodities subject to Department of Commerce export controls, including foreign policy controls for reason of human rights/crime control.

This rule is issued with the concurrence of the Department of State and amends the Export Administration Regulations to reflect recent technological advances and to clarify that computerized fingerprint equipment, laser-driven fingerprint equipment and plastic handcuffs are subject to foreign policy controls for human rights/crime control purposes.

EFFECTIVE DATE: This rule is effective February 25, 1987.

FOR FURTHER INFORMATION CONTACT: John Black, Regulations Branch, Export Administration, Telephone: (202) 377–2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291 and, it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*). This collection has been approved by the Office of Management and Budget under control number 0625–0001.

3. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign affairs function of the United States. Further, no other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to John Black, Export Administration, Room 1622, Department of Commerce, Washington, DC 20230, Telephone (202) 377–3856.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

List of Subjects in 15 CFR Parts 376 and 399

Exports; Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 368 through 399) are amended as follows:

1. The authority citation for 15 CFR Part 376 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

§ 376.14 [Amended]

2. Section 376.14(a) is amended by inserting "1522 (laser-driven fingerprint equipment only)," and "1565A (computerized fingerprint equipment only)," between "1518A," and "4597B".

3. The authority citation for 15 CFR Part 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 *et seq;* E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 (October 2, 1986); E.O. 12571, October 27, 1986 (51 FR 39505, October 29, 1986).

§ 399.1 [Amended]

4. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1522A is amended by revising the *Reason for Control* paragraph and adding a *Special Foreign Policy Controls* paragraph immediately following the *Special Licenses Available* paragraph, reading as follows:

1522A Lasers and Laser Systems Including Equipment Containing Them.

* * * * * *

Reason for Control: National security; nuclear non-proliferation; foreign policy controls apply only to laser-driven fingerprint equipment.

Special Licenses Available * * *

Special Foreign Policy Controls: Foreign policy controls apply to exports of laser-driven fingerprint equipment controlled by ECCN 1522A to all foreign destinations except Australia, Japan, New Zealand, and members of NATO.

* * * * * *

5. In Supplement No. 1 to § 339.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1565A is amended by adding a *Special Foreign Policy Controls* paragraph immediately preceding the *Special South Africa and Namibia Controls* paragraph, reading as follows:

1565A Electronic computers * * *

* * * * * *

Special Foreign Policy Controls: Foreign Policy Controls apply to exports of computerized fingerprint equipment controlled by ECCN 1565A to all foreign destinations except Australia, Japan, New Zealand, and members of NATO.

* * * * * *

6. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 5597B is amended by revising the heading to read as follows:

5597B Polygraphs (except biomedical recorders designed for use in medical facilities for monitoring biological and neurophysical responses); fingerprint analyzers, cameras and equipment, n.e.s.; automated fingerprint and identification retrieval systems, n.e.s.; psychological stress analysis equipment; and specially designed parts and accessories, n.e.s.

* * * * * *

7. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 9 (Miscellaneous), ECCN 5999B is amended by revising the heading to read as follows:

5999B Saps; specially designed implements of torture; straight jackets; plastic handcuffs; police helmets and shields; and parts and accessories, n.e.s.

* * * * * *

Dated: February 19, 1987

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87–3895 Filed 2–24–87; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 157, 270, 271 and 284

[Docket Nos. RM86–3–069 through 017]

Ceiling Prices; Old Gas Pricing Structure; Order Granting Rehearing

Issued: February 13, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting rehearing for purposes of further consideration.

SUMMARY: On December 15, 1986, the Federal Energy Regulatory Commission issued Order No. 451–A granting rehearing in part, denying rehearing in part, and clarifying the final rule adopted in Order No. 451. Order 451 modified the price structure of old natural gas pursuant to Commission authority under the Natural Gas Policy Act of 1978, and adopted regulations governing implementation of the revised price structure. On January 14, 1987, three applicants filed for rehearing of Order No. 451–A. In this order, the Commission grants rehearing of its decision solely for the purposes of further consideration.

EFFECTIVE DATE: February 13, 1987

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8308.

Ceiling Prices: Old Gas Pricing Structure; Order Granting Rehearing for Purposes of Further Consideration

Issued February 13, 1987.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon Charles a. Trabandt and C.M. Naeve.

On December 15, 1986, the Federal Energy Regulatory Commission issued Order No. 451–A [1] amending the final rule adopted in Order No. 451.[2] On January 14, 1987, Independent Petroleum Association of America, General Service Customer Group, and Meridian Oil filed timely applications for rehearing of Order No. 451–A.

To have sufficient time to consider the issues raised in these applications, the Commission grants rehearing of Order No. 451–A solely for the purpose of further consideration. This action does not constitute a grant or denial of any application on its merits, either in whole or in part. As provided in § 385.713 of the Commission's Rules of Practice and Procedure (18 CFR Part 713), no answers to these applications will be entertained by the Commission.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3751 Filed 2–24–87; 8:45 am]

BILLING CODE 6717–01–M

[1] 51 FR 46782 (December 24, 1986).
[2] 51 FR 22168 (June 18, 1986).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203, 220, and 226

[Docket No. R–87–1304; FR–1801]

Mutual Mortgage Insurance and Rehabilitation Loans; Mortgage Insurance Qualification Requirements for Veterans

AGENCY: Office of the Assistant Secretary of Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule conforms 24 CFR 203.18 and other HUD rules governing single family qualification requirements for veterans with 1981 and 1982 amendments to 38 U.S.C. 3103A—amendments modifying time-in-service requirements necessary for more recent military veterans to qualify for various service-related benefits.

EFFECTIVE DATE: March 26, 1987.

FOR FURTHER INFORMATION CONTACT: Morris E. Carter, Director, Single Family Development Division, Room 9270, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–6720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The statutory maximum loan-to-value ratio required to be met by a veteran of military service to qualify for a HUD-insured single family mortgage is more favorable than the loan-to-value ratio for non-veterans. This permits veterans to qualify for lower downpayments on HUD-insured homes. At present, §§ 203.18(b)(1), 220.30(b)(1), and 226.5(b)(1) require that, before a veteran may qualify for the more favorable downpayment treatment, a Certificate of Eligibility from the Veterans Administration must be submitted to HUD.

This rule conforms 24 CFR 203.18(b)(1), 220.30(b)(1) and 226.5(b)(1) with 1981 and 1982 amendments to 38 U.S.C. 3103A which altered the time-in-service requirements necessary for persons who have served in the armed services to qualify for HUD mortgage insurance (and other Federal benefits) arising out of their status as veterans.

Although this rule will have the effect of increasing the durational requirements necessary for more recent veterans to claim that status, the change in HUD rules implements an explicit

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statutory requirement, and for that reason, the Department believes that it is unnecessary to solicit public comment before publication of this rule for effect.

HUD's revised mortgage insurance certification requirements for veterans constitutes an internal administrative procedure that 24 CFR 50.20 excludes from the requirements of 24 CFR Part 50—the HUD rules implementing section 102(2)(c) of the National Environmental Policy Act 1969, 42 U.S.C. 4332.

This rule is not a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations, issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities because the central purpose of this rule is to conform 24 CFR 203.18 and other HUD rules governing single family qualification requirements for veterans with the 1982 Veterans Act.

This rule was listed as item number 820 in the Department's Semiannual Agenda of Regulations published on October 29, 1986 (51 FR 44166 and 44180) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 203

Home improvement, Loan programs: Housing and community development, Mortgage insurance, Solar energy.

24 CFR Part 220

Home improvement, Mortgage insurance, Urban renewal, Rental housing, Loan programs: Housing and community development, Projects.

24 CFR Part 226

Government employees, Mortgage insurance, Single family housing.

Accordingly, the Department amends 24 CFR Parts 203, 220 and 226 as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for 24 CFR Part 203 continues to read as follows:

Authority: Secs. 203, 204, and 211, National Housing Act (12 U.S.C. 1709, 1710, 1715b); (sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); in addition, Subpart C also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

2. Section 203.18 is amended by revising (b)(1) and (b)(2) and by adding (b)(3) to read as follows:

§ 203.18 Maximum mortgage amounts.

* * * * *

(b) * * *

(1) A certification issued by the Secretary of Defense establishing that the veteran performed extra hazardous service while serving in the armed forces for a period of less than 90 days; or

(2) A Certificate of Eligibility from the Veterans Administration establishing that the person served 90 days or more on active duty in the armed forces (U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air Force Reserve, the Coast Guard Reserve, the National Guard of the United States, or the Air National Guard of the United States); that he or she enlisted before September 8, 1980; and that he or she was discharged or released under conditions other than dishonorable (a copy of the veteran's discharge papers or Form DD–214 shall be submitted with the certificate); or

(3) A Certificate of Eligibility from the Veterans Administration establishing that the person:

(i)(A) Originally enlisted in a regular component of the armed forces after September 7, 1980; or entered on active duty after October 16, 1981, and he or she had not previously completed a period of active duty of at least 24 months or been discharged or released from active duty under 10 U.S.C. 1171; and

(B) Has completed, since enlistment or entering on active duty, either:

(*1*) Twenty-four months of continuous active duty, or the full period for which he or she was called or ordered to active duty, whichever is shorter; or

(*2*) Any other period of active duty if he or she was discharged or released from duty under 10 U.S.C. 1171 or 1173; was discharged or released from duty for disability incurred or aggravated in the line of duty; or has a disability which the Veterans Administration has determined to be compensable under 38 U.S.C. Ch. 11; and

(ii) Was discharged or released under conditions other than dishonorable (a copy of the veteran's discharge papers or Form DD–214 shall be submitted with the certification).

* * * * *

PART 220—MAXIMUM MORTGAGE AMOUNT—DOLLAR LIMITATION

3. The authority citation for 24 CFR Part 220 continues to read as follows:

Authority: Secs. 207, 211, 220, National Housing Act (12 U.S.C. 1713, 1715b, 1715k); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. Section 220.30 is amended by revising (b)(1) and (b)(2) and by adding (b)(3) to read as follows:

§ 220.30 Maximum mortgage amounts—loan-to-value limitation.

* * * * *

(b) * * *

(1) A certification issued by the Secretary of Defense establishing that the veteran performed extra hazardous service while serving in the armed forces for a period of less than 90 days; or

(2) A Certificate or Eligibility from the Veterans Administration establishing that the person served 90 days or more on active duty in the armed forces (U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air Force Reserve, the Coast Guard Reserve, the National Guard of the United States, or the Air National Guard of the United States); that he or she enlisted before September 8, 1980; and that he or she was discharged or released under conditions other than dishonorable (a copy of the veteran's discharge papers or Form DD–214 shall be submitted with the certificate); or

(3) A Certificate of Eligibility from the Veterans Administration establishing that the person:

(i)(A) Originally enlisted in a regular component of the armed forces after September 7, 1980; or entered on active duty after October 16, 1981, and he or she had previously completed a period of active duty of at least 24 months or been discharged or released from active duty under 10 U.S.C. 1171; and

(B) Has completed, since enlistment or entering on active duty, either:

(*1*) Twenty-four months or continuous active duty, or the full period for which he or she was called or ordered to active duty, whichever is shorter; or

(*2*) Any other period of active duty if he or she was discharged or released from duty under 10 U.S.C. 1171 or 1173; was discharged or released from duty for disability incurred or aggravated in the line of duty; or has a disability which the Veterans Administration has determined to be compensable under 38 U.S.C. Ch. 11; and

(ii) Was discharged or released under conditions other than dishonorable (a copy of the veteran's discharge papers or Form DD–214 shall be submitted with the certification).

* * * * *

PART 226—ARMED SERVICES HOUSING—CIVILIAN EMPLOYEES

5. The authority citation for 24 CFR Part 226 continues to read as follows:

Authority: Secs. 211, 807, 809, National Housing Act (12 U.S.C. 1715b, 1748f, 1748h–1); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

6. Section 226.5 is amended by revising (b)(1) and (b)(2) and by adding (b)(3) to read as follows:

§ 226.5 Maximum mortgage amount; loan-to-value limitation.

* * * * *

(b) * * *

(1) A certification issued by the Secretary of Defense establishing that the veteran performed extra hazardous service while serving in the armed forces for a period of less than 90 days, or

(2) A Certificate of Eligibility from the Veterans Administration establishing that the person served 90 days or more on active duty in the armed forces (U.S. Army, Navy, Marine Corps, Air Force, Coast Guard, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air Force Reserve, the Coast Guard Reserve, the National Guard of the United States, or the Air National Guard of the United States); that he or she enlisted before September 8, 1980; and that he or she was discharged or released under conditions other than dishonorable (a copy of the veteran's discharge papers or Form DD–214 shall be submitted with the certification); or

(3) A Certificate of Eligibility from the Veterans Administration establishing that the person:

(i)(A) Originally enlisted in a regular component of the armed forces after September 7, 1980; or entered on active duty after October 16, 1981, and he or she had not previously completed a period of active duty of at least 24 months or been discharged or released from active duty under 10 U.S.C. 1171; and

(B) Has completed, since enlistment or entering on active duty, either:

(*1*) Twenty-four months of continuous active duty, or the full period for which he or she was called or ordered to active duty, whichever is shorter; or

(*2*) Any other period of active duty if he or she was discharged or released from duty under 10 U.S.C. 1171 or 1173; was discharged or released from duty for disability incurred or aggravated in the line of duty; or has a disability which the Veterans Administration has determined to be compensable under 38 U.S.C. Ch. 11; and

(ii) That the person was discharged or released under conditions other than dishonorable (a copy of the veteran's discharge papers or Form DD–214 shall be submitted with the certification).

Dated: February 13, 1987.

Thomas T. Demery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 87–3855 Filed 2–24–87; 8:45 am]

BILLING CODE 4210–27–N

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

[SECNAV Instruction 5211.5C]

Availability of Department of the Navy Records and Publications of the Navy Documents Affecting the Public

AGENCY: Department of the Navy, DOD.

ACTION: Final rule amendment.

SUMMARY: The Department of the Navy establishes a new specific exemption rule from certain provisions of the Privacy Act of 1974 for a system of records.

EFFECTIVE DATE: September 28, 1986.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn R. Aitken, Head, PA/FOIA Branch, Office of the Chief of Naval Operations, (OP–09B30), Department of the Navy, The Pentagon, Washington, DC 20350–2000, telephone: 202/697–1459, Autovon: 227–1459.

SUPPLEMENTARY INFORMATION: On August 26, 1986, at 51 FR 30377 of the **Federal Register**, the Department of the Navy proposed to amend final rule 32 CFR Part 701 by adding a new exemption rule for a system of records. No comments were received on the proposal and the new exemption rule for the record system under the Privacy Act of 1974 (5 U.S.C. 552a) is adopted as set forth below for Subpart G.

List of Subjects in 32 CFR Part 701

Privacy, Exemption, Investigative information records.

PART 701—[AMENDED]

1. The authority citation for Part 701 continues to read as follows:

Authority: 5 U.S.C. 552a, as amended by Pub. L. 93–502, 32 CFR Part 286 (40 FR 8190).

Subpart G—Privacy Act Exemptions

2. Section 701.117 is amended by adding a new paragraph (o).

§ 701.117 Exemptions for specific Navy records systems.

* * * * *

(o) *Naval Sea Systems Command.*

(1) *ID–N04385–2.*

System name: Hotline Program Case File.

Exemption: Portions of this system of records are exempt from the following subsections of Title 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f).

Authority: 5 U.S.C. 552a (k) (1), (2), (5), (6) and (7).

Reason: Exempted portions of this system consist of information compiled for the purpose of investigations, including reports of informants and investigators. Such investigations may be associated with identifiable individuals. Disclosure of files in this system would interfere with orderly investigations, and possibly result in the concealment, destruction, or fabrication of evidence, and possibly jeopardize the safety and well-being of informants, witnesses and their families. Such disclosures could also reveal the render ineffectual investigatory techniques and methods and sources of information and could further result in the invasion of the personal privacy of individuals only incidentally related to an investigation. Depending on the nature of the complaint, records may contain information that: Is currently and properly classified pursuant to executive order or foreign policy, is confidentially provided information located in investigatory records compiled for the purposes of enforcement of non-criminal law, relates to qualifications, eligibility, or suitability for Federal employment, is test or examination material used to determine qualifications for appointment or promotion in the Federal service, is confidentially provided

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information used to determine potential for promotion in the armed services.

Linda Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 19, 1987.

[FR Doc. 87–3857 Filed 2–24–87; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD3 86–33]

Drawbridge Operation Regulations; Cold Spring Brook, CT

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Summerwood Condominium Association, the Coast Guard is adding regulations governing the footbridge over Cold Spring Brook, at mile 0.1, Old Saybrook, Connecticut, by requiring advance notice when the span is in place during the summer. This change is being made because of the limited number of requests for opening the draw. This action would relieve the bridge owner of the burden of having a person constantly available to open the draw and should still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on April 13, 1987.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District, (212) 668–7994.

SUPPLEMENTARY INFORMATION: On September 26, 1986, the Coast Guard published proposed rules (51 FR 34233) concerning this amendment. The Commander, Third Coast Guard District, also published the proposal as a Public Notice dated September 29, 1986. In each notice, interested persons were given until November 10, 1986, to submit comments.

Drafting Information

The drafters of these regulations are Ciro Compagno, project manager, and Mary Ann Arisman, project attorney

Discussion of Comments

No comments were received on the notice of proposed rules published in the **Federal Register** and only two comments offering no objections were received to Public Notice 3–636.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. There are no commerical water-dependent facilities or entities that will be adversely affected by this action.

Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–01(g).

2. Section 117.202 is added to read as follows:

§ 117.202 Cold Spring Brook.

The draw of the footbridge, mile 0.1 at Saybrook, shall open within 15 minutes of a mariner's request by telephone. To enable mariners to request bridge openings, the owner shall maintain and monitor a telephone at the bridge and provide a means for mariners to secure their boats upstream and downstream of the bridge in order to use this telephone.

Dated: February 3, 1987.

G.D. Passmore,

Rear Admiral, U.S. Coast Guard Commander, Third Coast Guard District.

[FR Doc. 87–3814 Filed 2–24–87; 8:45 am]

BILLING CODE 4910–14–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–26

[FPMR Temp. Reg. E–82, Supp. 1]

Requests for Waivers

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement extends the expiration date of FPMR Temporary Regulation E–82 to January 31, 1988.

DATES: *Effective date:* February 1, 1987. *Expiration date:* January 31, 1988.

FOR FURTHER INFORMATION CONTACT: Robert A. Renner, Regulations and Policy Division (703–557–1256).

SUPPLEMENTARY INFORMATION: GSA has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR 101–26

Government property management.

(Sec. 205(c) 63 Stat. 390; (40 U.S.C. 486(c))

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter E to read as follows:

T.C. Golden,

Administrator of General Services

Federal Property Management Regulations Temporary Regulation E–82—Supplement 1

February 2, 1987.

To: Heads of Federal agencies.

Subject: Requests for waivers.

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation E–82.

2. *Effective date.* This regulation is effective February 1, 1987.

3. *Expiration date.* This supplement expires on January 31, 1988.

4. *Explanation of change.* The expiration date in paragraph 3 of FPMR Temporary Regulation E–82 is revised to January 31, 1988.

[FR Doc. 87–3808 Filed 2–24–87; 8:45 am]

BILLING CODE 6820–24–M

41 CFR Part 101–40

[FPMR Temp. Reg. A–23, Supp. 3]

Use of Carrier Contractors for Express Small Package Transportation

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement amends FPMR Temp. Reg. A–23 by incorporating the provisions of the new express small package contract effective October 1, 1986. Accordingly, this supplement (a) Extends the regulation to include the Department of Defense as a voluntary user of the contractor's services; (b) expands the service areas to include Puerto Rico; (c) reflects organizational changes within the General Services Administration (GSA); (d) incorporates the use of the U.S. Postal Service's nationwide five-digit ZIP codes in identifying geographical areas; (e) excludes from contract coverage local pickup and delivery between locations within the metropolitan area of any city, town, or community; (f) authorizes use of automated electronic billing and payment procedures; (g) introduces the use of contractor "lock boxes" to facilitate pickup service; (h) prescribes requirements for agencies using purchase orders or blanket purchase agreements to acquire services; and (i) revises attachment A to identify the new shipment charges effective October 1, 1986, and the locations of the contractor's offices.

DATES: *Effective date:* October 1, 1986. *Expiration date:* September 30, 1987, unless otherwise canceled or extended.

FOR FURTHER INFORMATION CONTACT: Charles T. Angelo, Director, Travel and Transportation Management Division (FBT), Washington, DC 20406, telephone FTS 557–1261 or commercial 703–557–1261.

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–40

Freight, Government property, Moving of household goods, Office relocations, Transportation.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter A to read as follows:

Federal Property Management Regulations Temporary Regulation A–23—Supplement 3

January 20, 1987.

To: Heads of Federal agencies.

Subject: Use of carrier contractors for express small package transportation.

1. *Purpose.* This supplement amends FPMR Temp. Reg. A–23 by incorporating provisions of the new express small package contract effective October 1, 1986. In addition, this supplement cancels supplements 1 and 2 and consolidates all changes to the original regulation. Paragraphs 10 and 13 remain unchanged and are found in the original regulation.

2. *Effective date.* October 1, 1986.

3. *Expiration date.* September 30, 1987, unless otherwise canceled or extended.

4. *Explanation of changes.* a. Paragraph 4 is revised to reflect organizational changes in the General Services Administration (GSA) and the expansion of contract services to include Puerto Rico, and reads as follows:

4. *Background.* Under section 201(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(a)), as amended, the General Services Administration (GSA) is responsible for prescribing policies and procedures that are advantageous to the Government in terms of economy, efficiency, or service, regarding program activities in the area of transportation and traffic management. Accordingly, GSA has entered into a contract with the carrier listed in attachment A for the transportation of express small packages from and to specified locations in the United States (including Alaska and Hawaii) and Puerto Rico, where the contractor or its agent presently provides or will provide next day service. In consideration of the contract rates listed in Attachment A and to the extent provided in this regulation, the Government has agreed to place all its transportation requirements for express small package service with the contractor.

b. Paragraph 5 is revised by adding reference to the Department of Defense as a voluntary user of the contractor's services, and reads as follows:

5. *Scope.* This regulation is mandatory for all civilian executive agencies pursuant to section 201(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(a)), as amended, and also may be used by (1) cost-reimbursable contractors working for the Government, (2) the legislative and judicial branches of the U.S. Government, and (3) the Department of Defense.

c. Paragraph 6 is revised to define "agency" and to redefine "geographical areas" through the use of the U.S. Postal Service national five-digit ZIP codes, and reads as follows:

6. *Definitions.* a. "Agency" means any ordering activity (including cost-reimbursable contractors) authorized to obtain contractor services at the contract rate.

b. "Commercial form" means a commercial uniform straight bill of lading, a commercial express receipt, or any other commercial instrument constituting a contract of carriage subject to the terms and conditions set forth in Standard Form 1103, U.S. Government Bill of Lading (see 41 CFR 101–41.302–3).

c. "Commercial forms and procedures" means a provision whereby shipments are made using commercial forms and commercial billing procedures instead of Government bills of lading (SF 1103) and their related billing procedures. (See 41 CFR 101–41.304–2.)

d. "Contractor" means the contract awardee listed in attachment A.

e. "Contract rate" means a shipment charge listed in attachment A.

f. "Express small package" means a package weighing 50 pounds or less, measuring a maximum of 108 inches in length and girth combined, and containing general commodities except:

(1) Hazardous materials as defined in 49 CFR 172.101;

(2) Property of extraordinary value;

(3) Live animals or plants;

(4) Precious metals or stones;

(5) Weapons or firearms;

(6) Liquor or tobacco products;

(7) Currency, including money orders;

(8) Narcotics or other controlled substances, unless otherwise accepted by the contractor;

(9) Any other article which the contractor prohibits its commercial customers from shipping; and

(10) Letters, unless adhering to the criteria established by the U.S. Postal Service as specified in par. 7a, below.

g. "Geographical areas" means locations lying wholly or partially within cities, towns, and communities identified by the U.S. Postal Service national five-digit ZIP code in the contractor's service guide or analogous listing.

h. "Holiday" means a Federal holiday.

i. "Special service" means any other agency-required services, such as weekend delivery, escorted courier service, insurance, proof of delivery,

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additional airbill copies, etc., which, if requested, will be subject to fees not higher than those charged to the contractor's regular commercial customers.

j. "Standard service" means pickup and next day delivery (including desk pickup and desk delivery) between the hours of 8 a.m. and 5 p.m., Mondays through Fridays, except holidays.

d. Paragraph 7 is revised to exclude local pickup and delivery service between locations within the metropolitan area of any city, town, or community, and reads as follows:

7. *Applicability.* a. The scope of the express small package contract does not include "letters"; i.e., routine first class mail, as defined in U.S. Postal Service Regulations, 39 CFR 310.1 (Private Express Statutes) unless the letters are so "extremely urgent" that the value or usefulness of the letters would be lost or greatly diminished if not delivered within the time limits noted in par. (2), below. "Letter" is generally defined as "a message directed to a specific person or address and recorded in or on a tangible object." (See 39 CFR 310.1 for specific exclusions from the definition.)

(1) It is conclusively presumed that a letter is "extremely urgent" if the amount paid for carriage under the contract is at least $3 or twice the applicable U.S. postage for first class mail (including priority mail), whichever is greater. If a single shipment consists of a number of letters that are picked up together at a single origin for shipment to a single destination, postage may be computed as though the shipment constitutes a single letter. For other types of charges, a bona fide estimate of the average number of letters or shipments may be divided into the charge.

(2) If the value or usefulness of a letter would be lost or greatly diminished if the letter were not delivered under the following conditions, then the letter is considered "extremely urgent" and may be shipped by the contractor under the express small package contract:

(a) Where the letter is dispatched within 50 miles of the intended destination, delivery must be completed within 6 hours or by the close of the addressee's normal business hours on the date of dispatch, whichever is later, except that letters dispatched after noon and before midnight must be delivered by 10 a.m. of the addressee's next business day;

(b) For all other letters, delivery must be completed within 12 hours or by noon of the addressee's next business day;

(c) Agencies shall ensure that all outside covers or containers of letters are prominently marked with the words "Extremely Urgent—Private Carriage Authorized." In addition, each outside cover shall show the names and addresses of the contractor, the sender, and the addressee;

(d) The determination that a letter or letters meet the extreme urgency provisions of 39 CFR 320.6 shall be made by the responsible sending office. If such letters are sent to an agency mailroom for pickup by a private carrier rather than pickup at the sending office, the sending office shall ensure that such letters are marked clearly with the legend "Extremely Urgent—Private Carriage Authorized"; or

(e) Any letters, the extreme urgency of which meets the requirements of 39 CFR 320.6, sent by a private express carrier shall be placed in plain envelopes.

(3) In addition to the exception for extremely urgent letters, data processing materials may be shipped as an express small package if the data processing materials are conveyed (a) to a data processing center, if carriage is completed within 12 hours or by noon of the addressee's next business day and if data processing work is commenced on such materials within 36 hours of their receipt at the center; or (b) back from the data processing center to the address of the office originating the incoming materials, if carriage is completed within 12 hours or by noon of the addressee's next business day and if data processing work was commenced on the incoming materials within 36 hours of their receipt at the center.

(4) For further guidance with respect to shipments of letters, including data processing materials, see U.S. Postal Service Regulations at 39 CFR Parts 310 and 320, or call the Law Department of the U.S. Postal Service at FTS 245–4616.

b. The provisions of this regulation apply only when agencies subject to this regulation are using commercial forms and procedures. These agencies shall ship their express small packages by the contractor specified in attachment A, except that the Government reserves the right to use the U.S. Postal Service when in the Government's best interest.

c. To the extent cost-reimbursable contractors are authorized by an agency to ship under this regulation and are reimbursed the transportation costs as direct allowable costs, the contract rates and services provided in this regulation apply to cost-reimbursable contractors. Agencies shall instruct their cost-reimbursable contractors. Agencies shall instruct their cost-reimbursable contractors that, before a shipment is made under this regulation, the commercial shipping document must be annotated with either of the following notations, as appropriate:

(1) *When the Government is shown as the consignee*—"Transportation is for the (name of specific agency) and the actual total transportation charges paid to the carrier by the consignor are assignable to, and shall be reimbursed by, the Government"; or

(2) *When the Government is not shown as either the consignor or consignee*—"Transportation is for the (name of specific agency) and the actual total transportation charges paid to the carrier by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement contract number ————————. This may be confirmed by contacting (name and address of the contract administration office listed in the contract)."

d. If the contractor offers and publishes for use by the general public a charge that is lower than the contract rate for the same service, agencies shall pay the lower charge.

e. The contract rate does not apply for local pickup and delivery between locations in the metropolitan area of any city, town, or community.

e. Paragraph 8 is revised to identify the contractor's relationship with agencies acquiring service by purchase order or blanket purchase agreement, and reads as follows:

8. *Contractor responsibilities.* a. In consideration of payment for services provided at the contract rates, the contractor will furnish:

(1) Standard service (see subpar. 6j);

(2) Delivery service for "extremely urgent" letters (see par. 7);

(3) Pickup service on the same day pickup is requested (see subpar. 11a); and

(4) Delivery service on the next day (excluding Saturdays, Sundays, and holidays) following receipt from the shipper. Next day delivery service will not apply when delivery is delayed due to acts of God, the public enemy, the authority of law, or the acts of the consignor (shipper) or consignee (receiver).

b. Packages not delivered on the next day as prescribed in subpar. 8a(4) shall be transported free of charge.

c. When an agency uses purchase orders (POs) or blanket purchase agreements (BPAs), as authorized at 48 CFR Subpart 13.2, and these contain a dollar value limitation, the contractor will monitor the BPAs/POs and promptly notify the issuing agency when the contractor's service charges approach the dollar value ceilings noted on the BPAs/POs. The contractor will monitor the BPAs/POs to determine if such instruments restrict the ordering of contractor service to only certain

authorized personnel of an agency. If there are restrictions, the contractor will communicate with the issuer of the BPAs/POs to clarify the intent and purpose of the restriction or to remove the restriction, as agreed to by the Government agency involved. The contractor's financial system should have the flexibility to separately account for contractual and noncontractual services which may have been authorized by separate BPAs/POs, and also "break out" the charges for such services on subsequent invoices.

f. Paragraph 9a is redesignated as paragraph 9–1 and is revised to cover use of automated electronic billing and payment systems, and reads as follows:

9–1. *Payment responsibilities.* In accordance with the terms of the contract, payments to the contractor will be due on the 30th calendar day after the date of actual receipt of a proper invoice. The contractor is authorized to suspend service to an account to the extent that undisputed amounts are overdue more than 90 calendar days from the invoice date in accordance with par. 9–2. The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made. The Prompt Payment Act (Pub. L. 97–177, 31 U.S.C. 3902, May 21, 1982) provides for the assessment of interest penalties when payments are overdue. A claim for reimbursement of paid transportation charges shall be filed against the contractor when it is determined that the contractor failed to furnish next day delivery service as provided in subpars. 8a(4) and 8b.

a. GSA has determined that the contractor's invoice form meets the requirements of 41 CFR 101–41.304–2(d)(2) regarding payment of charges and is a proper invoice for payment and for the purposes of implementing the Prompt Payment Act. Accordingly, agencies should establish simplified procedures to ensure prompt payment to the contractor. If agencies do not have an effective payment system to achieve this purpose, they should consider requiring the shipper and/or consignee to forward a copy of the contractor's airbill to the appropriate paying office for payment or reconciliation. (Requests for *additional* airbill copies are considered "special services" under subpar. 6(i), however.)

b. Agencies shall instruct their cost-reimbursable contractors shipping under this regulation to ensure that the commercial document bears a proper "bill to" address and appropriate account reference(s) to facilitate the prompt processing and payment of the contractor's invoice by the due date.

c. At the option of the agency, and with the concurrence of the contractor, use of automated electronic billing and payment systems, or other sophisticated methods to simplify the verification and control process, may be separately negotiated and established by agreement between the Government agency and the contractor.

g. Paragraph 9b is redesignated as paragraph 9–2 and is revised to reflect GSA's organizational changes, and read as follows:

9–2. *Suspension of service.* a. Service to any delinquent agency account may be suspended to the extent that undisputed amounts are overdue more than 90 calendar days provided the contractor has simultaneously notified the account holder and the appropriate GSA zone office 60 calendar days after the invoice date that amounts are overdue and need to be paid within 30 calendar days of the date of the delinquency notice. The GSA zone office will also send a letter to the delinquent agency account within 5 calendar days of receipt of the 60 calendar day notice from the contractor.

b. When a question arises concerning the proper amount of charges for services rendered (e.g., improper billing, failure to post payments, erroneous charges, etc.), agencies shall give notice of the apparent error, defect, or impropriety in an invoice to the contractor's billing office, with a copy to the appropriate GSA zone office, within 15 calendar days of receipt of the invoice, pursuant to 31 U.S.C. 3903(5) and OMB Circular A–125, sec. 6b., which implement the Prompt Payment Act.

c. No suspension of service will be initiated where such disputes exist if an activity has paid the balance of undisputed billings. The GSA contracting officer will make the final decisions concerning any disputed charges.

d. Any suspension will be taken only against the activity to which the account number is assigned, not against the entire agency.

e. Service shall be restored within 5 calendar days of payment of the overdue amount(s).

h. Paragraph 11 is revised to include use of contractor's "lock boxes" and to prescribe requirements for agencies establishing account numbers and appropriate acquisition procedures, and reads as follows:

11. *Agency procedures for obtaining service.* a. Pickup service as noted in subpar. 6j may be ordered on an as-needed basis. In these instances, agencies shall allow the contractor a minimum of 2 hours to make the pickup. For repetitive shipments, agencies may arrange with the contractor to install "lock boxes" and/or furnish regular pickup service at specified times on specified days to meet the shipper's requirements. Agencies should arrange such security clearances and passes as may be necessary to enable the contractor to perform pickup services in a timely fashion in accordance with agency procedures.

b. When and where practicable, agencies shall minimize transportation and administrative costs by consolidating into one shipment packages moving at one time from one consignor to one consignee.

c. Agencies shall determine the weight of each shipment and have the weight indicated on the appropriate commercial form. The total weight of a shipment shall be rounded to the nearest whole pound. Shipments weighing less than 1 pound shall be shown as weighing 1 pound.

d. Where the Government requires special services beyond the scope of the contract (such as weekend or holiday pickup and delivery, escorted courier services, insurance, airbill copies, and proof of delivery, international service, service to communities not served next day by the contractor or its agent), an agency will have the option either to purchase these services from the contractor at the same fees charged to its regular commercial customers or use another carrier.

e. Agencies shall provide the contractor with a billing address at the time an agency account is established. To ensure that billings are directed to the proper paying office and subsequent payments are credited, agencies may establish a centralized payment system or clearly identify individual shipping activities/accounts to which billings are to be directed. Some agencies may require more than one account number per ordering activity if they wish to differentiate billing of different type shipments.

f. Agencies using a purchase order (PO), a blanket purchase agreement (BPA) pursuant to 48 CFR Subpart 13.2, or other simplified acquisition procedures, should provide the following information:

(1) Name of contractor;

(2) Account number(s);

(3) GSA contract number GS–00F–88038;

(4) Purchase order number;

(5) "Bill to" address;

(6) Term of the BPA/PO; and

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(7) Total dollar value authorized under the BPA/PO.

g. The contractor's Government coordinator may be contacted to establish accounts or resolve service issues. (See Attachment A.)

i. Paragraph 12 is revised to reflect GSA's organizational changes and reads as follows:

12. *Contractor performance.* The performance of contractor responsibilities as specified in par. 8 is essential to meet the objectives for which the express small package contract and these regulations were developed. Agencies should notify the appropriate GSA zone office, Federal Supply Service Bureau, Attn: Traffic and Travel Services Zone Manager, in writing, when the contractor fails to meet its contractual responsibilities. For purposes of this paragraph, the appropriate GSA zone office is that office listed in attachment B having jurisdiction over specified locations from which a shipment originates. These agency reports shall be complied and forwarded for appropriate action to the GSA Travel and Transportation Management Division (FBT), Washington, DC 20406.

j. Paragraph 14 is revised to read as follows:

14. *Comments.* Comments and recommendations concerning use of this program or implementing regulations may be submitted to the General Services Administration, Travel and Transportation Management Division (FBT), Washington, DC 20406.

k. Attachment A is revised to reflect shipment charges effective October 1, 1986, and updated references to the contractor's Government coordinator and office locations.

l. Attachment B is revised to reflect GSA's organizational changes.

T.C. Golden,

Administrator of General Services.

Attachment A

Contractor, Shipment Charges, and Geographical Areas

CONTRACTOR CODE AND NAME: DHL-DHL AIRWAYS, INCORPORATED

Shipment weight (lbs)	Shipment charge
1	$4.94
2	5.88
3	6.82
4	7.76
5	8.70
6	9.64
7	10.58
8	11.52
9	12.46
10	13.40
11	14.34
12	15.28

CONTRACTOR CODE AND NAME: DHL-DHL AIRWAYS, INCORPORATED—Continued

Shipment weight (lbs)	Shipment charge
13	16.22
14	17.16
15	18.10
16	19.04
17	19.98
18	20.92
19	21.86
20	22.80
21	23.74
22	24.68
23	25.62
24	26.56
25	27.50
26	28.44
27	29.38
28	30.32
29	31.26
30	32.20
31	33.14
32	34.08
33	35.02
34	35.96
35	36.90
36	37.84
37	38.78
38	39.72
39	40.66
40	41.60
41	42.54
42	43.48
43	44.42
44	45.36
45	46.30
46	47.24
47	48.18
48	49.12
49	50.06
50	51.00

Geographical Areas Served

The DHL contract rates listed in this attachment apply to any location within the geographical area of cities, towns, and communities in the United States (including Alaska and Hawaii) and Puerto Rico, where DHL or its agent presently, or in the future, provides or will provide next day service to the extent prescribed in par. 8 of this regulation. The geographical area of cities, towns, and communities is the U.S. Postal Service national five-digit ZIP code area listed in DHL's publication, "DHL Express Guide for U.S. Federal Government Shippers," or as may be subsequently identified by DHL as being served next day. Since it is impracticable to print a current area listing in these regulations, agencies may determine up-to-date areas of service and obtain other information by contacting either DHL's Government coordinator at 703–684–0102, the DHL offices listed herein, or the appropriate GSA office listed in attachment B. DHL will furnish its guide to agencies upon request.

DHL Offices

Alabama

Birmingham, (205) 591–6560
Huntsville, (205) 772–3887
Mobile, (800) 231–3391
Montgomery, (205) 265–5666

Alaska

Anchorage, (907) 243–1503
Fairbanks, (907) 456–1707
Homer, (907) 235–5244
Juneau, (907) 789–2187
Kenai, (907) 283–4650
Ketchikan, (907) 225–5777
Kodiak, (907) 488–5354
Prudhoe Bay, (907) 659–2547
Sitka, (907) 747–3063
Valdez, (907) 835–2625

Arizona

Phoenix, (602) 244–9922
Tucson, (602) 294–1887

Arkansas

Little Rock, (501) 562–1666

California

Bakersfield, (805) 392–0183
Burbank, (818) 785–7555
Concord, (800) 345–6011
Fresno, (209) 454–0535
Los Angeles, (213) 973–7300
Ontario, (714) 241–1520
Oxnard, (805) 967–5551
Sacramento, (916) 929–1112
San Diego, (619) 275–3890
San Francisco, (415) 345–9400
San Jose, (408) 345–9400
Santa Ana, (714) 241–1520
Santa Barbara, (805) 967–5551
Santa Maria, (805) 967–5551
Stockton, (800) 632–4774
Van Nuys, (213) 973–7300

Colorado

Colorado Springs, (303) 528–6777
Denver, (303) 388–9212

Connecticut

Hartford, (203) 683–2014

Delaware

(215) 461–8111

District of Columbia

Washington, (703) 684–8733

Florida

Ft. Lauderdale, (305) 791–7400
Ft. Myers, (800) 231–3391
Jacksonville, (904) 739–2327
Melbourne, (305) 851–1432
Miami, (305) 592–8795
Orlando, (305) 851–1432
Pensacola, (800) 231–3391
St. Petersburg, (813) 886–5889
Sarasota, (813) 886–5889
Tallahassee, (800) 231–3391
Tampa, (813) 886–5889
West Palm Beach, (305) 737–2922

Georgia

Atlanta, (404) 997–1635
Savannah (912) 233–5111

Hawaii

Hilo, (808) 836–0441
Honolulu, (808) 836–0441
Kaanapali, (808) 836–0441
Kahului, (808) 836–0441
Kailua/Kona, (808) 836–0441
Lihue, (808) 636–0441

Idaho

Boise, (208) 322–1466
Idaho Falls, (800) 828–3314
Lewiston, (800) 828–3314
Pocatello, (800) 828–3314
Twin Falls, (800) 828–3314

Illinois

Chicago, (312) 456–3200
Decatur, (800) 942–0503
Moline, (800) 942–0503
Peoria, (800) 942–0503
Rockford, (800) 942–0503
Springfield, (800) 942–0503

Indiana

Fort Wayne, (800) 231–3391
Indianapolis, (317) 241–4464
South Bend, (800) 231–3391

Iowa

Cedar Rapids, (800) 942–0503
Des Moines, (515) 282–5416

Kansas

Kansas City, (816) 587–5040
Topeka, (913) 232–5096
Wichita, (316) 263–8300

Kentucky

Lexington, (606) 254–0105
Louisville, (502) 499–7131

Louisiana

Baton Rouge, (800) 231–3391
Lafayette, (800) 231–3391
Lake Charles, (800) 231–3391
New Orleans, (504) 464–0231
Shreveport, (318) 631–9643

Maine

Portland, (800) 225–5345

Maryland

Baltimore, (301) 768–3730

Massachusetts

Boston, (617) 846–8900

Michigan

Battle Creek, (800) 446–6650
Detroit, (313) 388–6810
Flint, (800) 446–6650
Grand Rapids, (800) 446–6650
Jackson, (800) 446–6650
Lansing, (800) 446–6650
Saginaw, (800) 446–6650

Minnesota

Duluth, (800) 272–1825
Minneapolis/St. Paul, (612) 727–1100
Rochester, (800) 272–1825
St. Cloud, (800) 272–1825

Mississippi

Gulfport, (800) 231–3391
Jackson, (800) 231–3391

Missouri

Kansas City, (816) 587–5040
St. Louis, (314) 423–8663
Springfield, (913) 621–0900

Montana

Billings, (800) 826–1063

Nebraska

Lincoln, (402) 474–1111
Omaha, (402) 330–6806

Nevada

Las Vegas, (702) 798–4090
Reno, (702) 358–0545

New Hampshire

Manchester, (800) 225–5345

New Jersey

Newark, (201) 225–6800
Teterboro, (201) 225–6800
Trenton, (201) 382–6820

New Mexico

Albuquerque, (505) 292–7699

New York

Albany, (800) 632–3301
Buffalo, (716) 685–2500/01/03/04
Elmira, (800) 225–5345
Farmingdale, (516) 333–3370
New York City, (718) 917–8000
Rochester, (716) 436–7031
Syracuse, (315) 432–8953
White Plains, (914) 683–1183

North Carolina

Charlotte, (704) 398–2354
Fayetteville, (704) 398–2354
Greensboro, (919) 668–9533
High Point, (919) 668–9533
Raleigh/Durham, (919) 787–9584
Wilmington, (800) 722–8620
Winston-Salem, (919) 668–9533

North Dakota

Bismarck, (612) 727–1100
Fargo, (701) 232–2838
Moorhead, (800) 272–1825

Ohio

Akron, (216) 798–0155
Cincinnati, (606) 331–7777
Cleveland, (216) 671–4700
Columbus, (614) 252–8470
Dayton, (513) 252–3773
Toledo, (419) 866–1560
Youngstown, (216) 671–4700

Oklahoma

Oklahoma City, (405) 682–8088
Tulsa, (918) 622–8311

Oregon

Eugene, (503) 257–3551
Medford, (503) 257–3551
Portland, (503) 257–3551
Redmond, (503) 257–3551

Pennsylvania

Allentown/Bethlehem/Easton, (215) 264–4550
Erie, (412) 262–2764
Philadelphia, (215) 461–8111
Pittsburgh, (412) 262–2764
Scranton, (800) 225–5345
York, (717) 564–7600

Rhode Island

Providence, (401) 739–5900

Puerto Rico

San Juan, (809) 757–5800

South Carolina

Charleston, (803) 767–0275
Columbia, (803) 796–9640
Florence, (803) 767–0275
Greenville/Spartanburg, (803) 234–8651

South Dakota

Sioux Falls, (605) 335–8053 + dial tone + 950–1088

Tennessee

Chattanooga, (404) 820–0821
Johnson City, (800) 231–3391
Knoxville, (615) 970–2232
Memphis, (901) 795–9911
Nashville, (615) 889–4602

Texas

Addison, (214) 471–1999
Amarillo, (800) 633–0151
Austin, (512) 928–3960
Beaumont/Pt. Arthur, (713) 442–4500
College Station, (713) 442–4500
Corpus Christi, (800) 633–0151
Dallas/Ft. Worth, (214) 471–1999
El Paso, (800) 633–0151
Harlingen/McAllen/Brownsville, (800) 633–0151
Houston, (713) 442–4500
Lake Jackson, (713) 442–4500
Laredo, (800) 633–0151
Longview/Tyler, (214) 757–9287
Lubbock, (800) 633–0151
Midland, (800) 633–0151
San Antonio, (512) 491–0430
Sugarland, (713) 442–4500
Texarkana, (800) 633–0151
Town & Country, (800) 633–0151
Victoria, (713) 442–4500

Utah

Ogden, (801) 539–8900
Provo, (801) 539–8900
Salt Lake City, (801) 539–8900

Vermont

Burlington, (800) 225–5345

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Virginia

Charlottesville, (800) 225–5345
Norfolk, (804) 857–6116
Richmond, (804) 353–2277
Roanoke, (800) 225–5345

Washington

Pasco, (800) 468–6856
Seattle, (206) 763–4222
Spokane, (509) 456–6200
Wenatchee, (800) 468–6856
Yakima, (800) 468–6856

West Virginia

Charleston, (800) 225–5345
Huntington, (800) 225–5345

Wisconsin

Appleton, (800) 242–5243
Green Bay, (414) 762–3372
Madison, (800) 242–5243
Manitowoc, (414) 762–3372
Wausau, (414) 762–3372
Milwaukee, (414) 762–3372

Wyoming

Casper, (800) 826–1063
Cheyenne, (800) 826–1063

Attachment B

Areas of Jurisdiction, Federal Supply Service Bureau, Traffic and Travel Services Zone Offices

Eastern Zone

Jurisdiction: AL, CT, DE, FL, GA, KY, MA, MD (note A), ME, MS, NC, NH, NJ, NY, PA, Puerto Rico, RI, SC, TN, VT, VA (note B), Virgin Islands, WV
Address: GSA, Attn: 4FBT, 75 Spring Street, SW., Atlanta, GA 30303
Telephone: FTS 242–5121, CML (404) 331–5121

Central Zone

Jurisdiction: IA, IL, IN, KS, MI, MN, MO, NE, OH, WI
Address: GSA, Attn: 6FBT, 1500 E. Bannister Road, Kansas City, MO 64131
Telephone: FTS (not available), CML (816) 523–6029

Southwestern Zone

Jurisdiction: AR, CO, LA, MT, ND, NM, OK, SD, TX, UT, WY
Address: GSA, Attn: 7FBT, 819 Taylor Street, Fort Worth, TX 76102
Telephone: FMS 334–2737, CML (817) 334–2737

Western Zone

Jurisdiction: AK, American Samoa, AZ, CA, GU, HI, ID, NV, Northern Mariana Islands, OR, Pacific Trust Territories, WA
Address: GSA, Attn: 9FBT, 525 Market Street, San Francisco, CA 94105
Telephone: FTS 454–9288, CML (415) 974–9288

National Capital Region (NCR)

Jurisdiction: DC, MD (note C), VA (note D)
Address: GSA, Attn: WFBT, 7th & D Streets SW., Washington, DC 20407
Telephone: FTS 472–1626, CML (202) 472–1626

Note A—Except for those counties under NCR jurisdiction as listed in note C.

Note B—Except for those cities and counties under NCR jurisdiction as listed in note D.

Note C—Counties of Prince Georges and Montgomery only.

Note D—Cities of Alexandria, Fairfax, Manassas, and Manassas Park, and counties of Arlington, Fairfax, Loudoun, and Prince William only.

[FR Doc. 87–3804 Filed 2–24–87; 8:45 am]
BILLING CODE 6820–24–M

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41 CFR Part 101–47

[FPMR Amdt. H–160]

Report of Identical Bids

AGENCY: Federal Property Resources Service, GSA.

ACTION: Final rule.

SUMMARY: This final rule implements the provisions of Executive Order (E.O.) 12430 and eliminates the reporting requirements mandated under E.O. 10936. In implementing E.O. 10936, GSA required the disposal agency to report to the Department of Justice when identical bids were received in response to an invitation for bids for the sale of surplus real property. E.O. 12430 indicates that the reporting requirements of E.O. 10936 proved to be ineffective in preventing anti-trust violations.

EFFECTIVE DATE: This regulation is effective February 25, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Kearns, Jr., Office of Real Estate Policy and Sales (202–535–7052).

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–47

Surplus government property, Government property management.

PART 101–47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

1. The authority citation for Part 101–47 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

2. The Table of Contents for Part 101–47 is amended by removing and reserving the following entry:

101–47.304–8 [Reserved]

Subpart 101–47.3—Surplus Real Property Disposal

3. Section 101–47.304–8 is removed and reserved as follows:

§ 101–47.304–8 [Reserved]

Dated: February 2, 1987.

T.C. Golden,

Administrator of General Services.

[FR Doc. 87–3807 Filed 2–24–87; 8:45 am]
BILLING CODE 6820–96–M

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR Part 2005

Disclosure of Information; Implementation of the Freedom of Information Act

AGENCY: Commission on the Bicentennial of the United States Constitution.

ACTION: Interim final rule.

SUMMARY: These regulations establish the basic policies and procedures that the Commission on the Bicentennial of the United States Constitution will use to process requests for information from the public under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and other applicable laws.

DATE: Effective February 25, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph B. McGrath, General Counsel, Commission on the Bicentennial of the United States Constitution, 736 Jackson Place, NW., Washington, DC 20503, (202) USA–1787.

SUPPLEMENTARY INFORMATION:

Background

The Commission on the Bicentennial of the United States Constitution was established by Pub. L. 98–101; 97 Stat. 719. The Commission is comprised of 23 members: the Honorable Warren E. Burger, retired Chief Justice of the United States, serves as Chairman of the Commission. Additional information on Commission functions can be found in Title 45 of the Code of Federal Regulations Part 2000. The organization and functions rule covering Commission operations was published in the **Federal Register** as a final rule on February 28, 1986 (51 FR 7220).

Classification

This is not a major rule under E.O. 12291 since it has no significant impact upon the economy, nor does it affect prices or economic competition. This interim final rule has no significant impact on the environment and preparation of an environmental impact statement is not necessary.

Public Comment

This is an interim final rule which is being put into effect so that the Commission can meet its statutory obligations concerning release of information to the public. Public comments are requested for a period of 60 days beginning on date of publication and ending on April 30, 1987. All comments received during this period will be considered; if changes are warranted, this rule will be amended.

Statutory Authority

This regulation is issued under authority granted by Pub. L. 98–101, as amended; and by 5 U.S.C. 552 as amended by sections 1801–1804 of the omnibus Anti-Drug Abuse Act of 1986 (Pub. L. 99–570; 100 Stat. 3207) which contains the Freedom of Information Reform Act of 1986.

List of Subjects in 45 CFR Part 2005

U.S. Constitution Bicentennial, Freedom of information.

Issued in Washington, DC, on February 17, 1987.

Mark W. Cannon,

Staff Director.

For the reasons set out in the preamble and under the authorities cited above, a new Part 2005 is added to Title 45 Code of Federal Regulations to read as follows:

PART 2005—DISCLOSURE OF INFORMATION

Subpart A—Purpose and Policies

Sec.
2005.1 Organization of Commission.
2005.2 Statement of policies.
2005.3 Where to make information requests.
2005.4 Applicable laws and regulations.

Subpart B—Commission Responsibilities

2005.10 General Counsel action.
2005.11 Index of records.
2005.12 Fee policy.
2005.13 Interim fee schedule.

Subpart C—How To File Information Requests

2005.20 Form and content of requests.
2005.21 Information not subject to release.

Subpart D—Processing Information Requests

2005.30 Prompt response to requests.
2005.31 Denials.
2005.32 Appeals.
2005.33 Judicial review.

Authority: Pub. L. 98–101 as amended; 5 U.S.C. 552 as amended by sections 1801–1804 of the omnibus Anti-Drug Abuse Act of 1986 which contains the Freedom of Information Reform Act of 1986 (Pub. L. 99–570; 100 Stat. 3207).

Subpart A—Purpose and Policies

§ 2005.1 Organization of Commission.

Information about the organization and functions of the Commission on the Bicentennial of the United States Constitution ("the Commission") can be found in Title 45 Code of Federal Regulations Part 2000 and in Pub. L. 98–101, as amended. The organization and functions rule covering Commission operations was published in the **Federal Register** as a final rule on February 28, 1986 (51 FR 7220).

§ 2005.2 Statement of policies.

(a) It is the policy of the Commission to make available as soon as possible for public information, inspection and copying, all Commission approved resolutions, statements of policy and other final decisions affecting public programs and activities of the Commission. These include sponsorship and project recognition approvals, logo licenses, and public program decisions of the Chairman, Staff Director, and committees of the Commission when exercising delegated authority of the Commission. Notices and agenda of scheduled Commission meetings shall be announced publicly and the minutes of Commission meetings including records of voting shall be available to the public immediately following review and approval by Commissioners and the Chairman. Any person may examine and copy records listed in this paragraph at the Commission offices in Washington, DC, at reasonable times during normal working hours. Identifying details of any records referred to in this paragraph may be deleted to prevent unwarranted invasion of personal privacy and in any such case the justification for deletion will be fully explained in writing.

(b) Other official records of the Commission shall be available to the fullest extent possible consistent with the terms and policies of the Freedom of Information Act (FOIA), 5 U.S.C. section 552, as amended. On request they will be furnished promptly to any person for inspection and copying as set forth below provided the request reasonably describes such records and otherwise conforms with these regulations.

(c) Information currently furnished to the public in the regular course of official duties may continue to be furnished to the public without complying with this Part, provided that the furnishing of such information would not violate the Privacy Act of 1974, 5 U.S.C. 552a, and would not be inconsistent with this Part.

§ 2005.3 Where to make information requests.

(a) A member of the public may request information and records from the Commission by writing to the General Counsel of the Commission on the Bicentennial of the United States Constitution, Attn: FOIA officer, 736 Jackson Place NW., Washington, DC 20503. Requests for information and supervised access to Commission records may also be made in person at the office of the General Counsel between 9 a.m. and 5:30 p.m. Monday through Friday except holidays. The Office of General Counsel is located at 736 Jackson Place NW., Washington, DC; telephone (202) USA–1787.

(b) Except as provided below in § 2005.11 of this regulation, any request for Commission records made in person shall be submitted in writing form and signed by the requester.

(c) The General Counsel is designated the Freedom of Information Officer for the Commission and is hereby delegated the exclusive authority to act on all requests under FOIA for Commission documents and records.

§ 2005.4 Applicable laws and regulations.

The following laws and regulations are applicable to information requests made under this Part:

(a) The Freedom of Information Act (5 U.S.C. 552);

(b) Sections 1801–1804 of the Freedom of Information Reform Act of 1086 (Pub. L. 99–570; 100 Stat. 3207);

(c) The regulations in this Part 2005 and 45 CFR Part 2000; and

(d) Pub. L. 98–101, as amended by Pub. L. 99–549.

Subpart B—Commission Responsibilities

§ 2005.10 General Counsel action.

The General Counsel or his designee is responsible for ensuring that all

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Commission programs, activities and personnel comply with the requirements of FOIA and these regulations.

§ 2005.11 Index of records.

(a) The Commission shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated by authority of the Commission and which is required to be made available pursuant to 5 U.S.C. 552(a) (1) and (2). Publication of such indices in the **Federal Register** has been determined by the Commission to be unnecessary and impracticable. The indices shall, nonetheless, be provided to any member of the public at a cost not in excess of the direct cost of duplication of any such index upon request therefore made in accordance with § 2005.12.

(b) A copy of the index shall be available at the offices of the Staff Director and General Counsel respectively.

§ 2005.12 Fee policy.

(a) When records are being requested for commercial use, the fee policy of the Commission is to levy reasonable standard charges for document searching, duplication, and review. "Commercial use" is defined to mean use of requested documents for resale, or use for private financial gain.

(b) When records are being requested by representatives of the media, the fee policy of the Commission is to levy reasonable standard charges only for document duplication.

(c) When records are being requested by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research, the fee policy of the Commission is the levy reasonable standard charges only for document duplication.

(d) For any other request which does not meet the criteria contained in § 2005.12 (a through c), the fee policy of the Commission is to levy reasonable standard changes for document search and duplication.

(e) The Commission may waive all fees or levy a reduced fee when disclosure of the information requested is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government and is not primarily in the commercial interest of the requester.

(f) A fee waiver request shall indicate how the information will be used, to whom it will be provided and whether the requester intends to use the information for resale at a fee above actual cost.

§ 2005.13 Interim fee schedule.

(a) The Freedom of Information Reform Act of 1986 requires that all agencies develop a uniform schedule of fees after the Office of Management and Budget (OMB) develops regulatory guidance designed to help agencies develop uniform fee schedules. Until the OMB fee guidance regulations are developed and the Commission establishes a new uniform fee schedule, the Commission will levy fees according to § 2005.13 (b) and (c).

(b) A fee may be charged for direct costs of document duplication at the rate of $0.15 per page for copying, and for search and review at the rate of $2.50 per quarter hour for clerical time expended in identifying and locating records. When professional staff must be used to conduct search and reviews, their time will be billed at $5.00 per quarter hour.

(c) Fees for duplication of audio, video, automated tapes and other electronic records will be charged at the actual cost to the Commission.

(d) The Commission may limit the number of copies of any document or record provided to any person.

Subpart C—How To File Information Requests

§ 2005.20 Form and content of requests.

(a) A request for access to official records shall reasonably describe the records requested so that Commission personnel will be able to locate them with a reasonable amount of effort. When possible, specific information regarding project names, dates, titles, file designations, and other data which may help identify the records should be supplied by the requester.

(b) Any request submitted in writing should be clearly identified as a request made pursuant to the Freedom of Information Act by labeling the envelope with the letters FOIA and referring to FOIA in the body of the letter.

§ 2005.21 Information not subject to release.

(a) The provisions of 5 U.S.C. 552 which require that agencies make their official records available for public inspection and copying do not apply to Commission records which are:

(1) Related solely to the internal personnel rules and practices of the Commission;

(2) Specifically exempted from disclosure by statute;

(3) Trade secrets, proprietary material, information which is privileged, and information furnished in confidence which relates to the business, personal of financial affairs of any person or organization;

(4) Inter-agency and intera-agency memoranda or letters which would not be available by law to a private party in litigation with the Commission; or

(5) Personnel, medical and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(b) Any reasonably segregable portion of an official record shall be provided upon request after deletion of any portion of the requested record which is exempt from disclosure under this § 2005.21.

Subpart D—Processing Information Requests

§ 2005.30 Prompt response to requests.

(a) Within ten working days (excluding Saturdays, Sundays and legal public holidays) of the receipt of a request, the General Counsel or his designee shall determine whether to comply with or deny such request in whole or in part and shall transmit such determination to the requester, unless an extension is made under paragraph (c) of this section. A legal public holiday is one established by the Congress.

(b) Only the General Counsel or his designee may deny a request. The General Counsel is the "person responsible for the denial" within the meaning of 5 U.S.C. 552(a). If a denial is made at the behest of another agency, the person in that agency responsible for urging the denial may also be a "person responsible for the denial" if he or she is so advised before the General Counsel informs the requester that a request is denied.

(c) In unusual circumstances as specified in this paragraph, the General Counsel may extend the time for the initial determination of a request up to a total of ten working days (excluding Saturdays, Sundays and legal public holidays). Extensions shall be made by written notice to the requester setting forth the reason for the extension and the date upon which a determination is expected to be transmitted. The Commission may exercise the extended response option when there is a need to:

(1) Search for and collect the requested records from field facilities or other establishments that are separate from the Commission;

(2) Search for, collect, and review a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) Consult with another agency having substantial interest in the determination in the request, which consultations shall be conducted with all practical speed.

(d) If no determination has been transmitted at the end of the ten-day working period, or the last extension thereof, the requester may deem a request denied, and exercise a right of appeal in accordance with § 2005.32. When no determination can be transmitted within the applicable time limit, the General Counsel shall nevertheless continue to process the request. On expiration of the time limit, the requester shall be informed of the reason for the delay and of the day on which a determination is expected to be transmitted. The requester shall also be informed of his or her rights (1) to treat the delay as a denial and file for judicial review under 5 U.S.C. (a)(4)(B) and § 2005.33 of this Part, and (2) to appeal to the Staff Director in accordance with § 2005.32. The requester may also be asked to forgo an appeal until a determination is made.

§ 2005.31 Denials.

(a) A reply denying a request for any records, in whole or in part, shall be in writing, signed by the General Counsel, and shall include: (1) a specific reference to the exemption or exemptions under the FOIA authorizing the withholding of the record; (2) a brief explanation of the exemption(s) applicable to the record(s) withheld; and (3) a statement indicating how the denial may be appealed (see § 2005.32 of this part).

(b) Judicial review is thereafter available as set forth in §§ 2005.32(d) and 2005.33 of this part.

§ 2005.32 Appeals.

(a) When the General Counsel has denied a request for a record in whole or in part, the requester may appeal to the Staff Director of the Commission within 30 days after receiving the denial notification. Appeals shall be in writing, addressed to the Staff Director, Commission on the Bicentennial of the United States Constitution, 736 Jackson Place, NW., Washington, DC 20503.

(b) The Staff Director will act upon an appeal within twenty working days (excluding Saturdays, Sundays or legal public holidays) of its receipt, unless an extension is made under paragraph (c) of this section.

(c) In unusual circumstances as specified in this paragraph, the time for action on an appeal may be extended up to ten working days (excluding Saturdays, Sundays and legal public holidays) minus any extension granted at the initial request level pursuant to § 2005.30(c). Such extension shall be made by written notice to the requester setting forth the reason for the extension and the date on which a determination is expected to be transmitted. The Staff Director of the Commission may exercise the extended response option for appeals for any of the reasons set forth in paragraphs (c)(1) through (c)(3) of § 2005.30.

(d) If no determination of the appeal has been transmitted at the end of the twenty-day working period or the last extension thereof, the requester is deemed to have exhausted all administrative remedies and thereupon has a right to judicial review in a United States District Court as specified in 5 U.S.C. 552(a)(4). When no determination can be made by the agency within the applicable time limit, the appeal will nevertheless continue to be processed. On expiration of the time limit, the requester shall be informed of the reason for the delay, of the date on which a determination may be expected to be transmitted, and of the right to seek judicial review in the United States District Court in the district in which he or she resides or has a principal place of business, the District in which the records are situated, or the District of Columbia. The requester may be asked to forego judicial review until the Commission's Staff Director has made a determination of how to respond to the appeal.

(e) The Staff Director's determination on the appeal shall be made in writing and transmitted at once to the FOIA requester. An affirmance, in whole or in part, of a denial of a requester for records shall include:

(1) A reference to a specific exemption or exemptions under FOIA authorizing the withholding of the record;

(2) A brief explanation of how the exemption(s) applies to the record(s) withheld, and

(3) A statement that judicial review of the decision on appeal is available as set forth in § 2005.33 of this part.

§ 2005.33 Judicial review.

Judicial review of a denial of a request under § 2005.31, or a denial of an appeal under § 2005.32, is available in a United States District Court

(a) For the judicial district in which the requester resides or has a principal place of business, or

(b) For the judicial district in which the agency records are situated, or

(c) For the District of Columbia.

Jurisdiction of the Court is granted under 5 U.S.C. 552(a)(4)(B).

[FR Doc. 87–3879 Filed 2–24–87; 8:45 am]
BILLING CODE 6340–01–M

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Proposed Rules

Federal Register
Vol. 52, No. 36–37
Wednesday, February 25, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-03-AD]

Airworthiness Directives; Boeing Model 747 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require installation of a hydraulic fuse in the number 4 hydraulic system. This proposal is prompted by a report of loss of all four hydraulic systems when failure of the rear pressure bulkhead resulted in loss of the vertical stabilizer, which in turn severed the hydraulic lines. Without the hydraulic fuse, loss of the vertical stabilizer could result in loss of all four hydraulic systems and inability to control the airplane.

DATES: Comments must be received no later than April 16, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-03-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-03-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

In August 1985, a Boeing Model 747SR-100 airplane was involved in an accident after failure of the aft pressure bulkhead allowed air from the pressurized cabin to enter the vertical stabilizer (fin); this caused the loss of portions of the fin leading edge and, ultimately, the major part of the fin itself. As all four hydraulic systems are present in the fin, loss of that surface resulted in all four hydraulic systems being lost. Since the Model 747 has fully-powered irreversible flight control surfaces driven by hydraulic actuators with no manual back-up, the pilot had no control over the airplane attitude other than some limited pitch control using differential thrust. Although the pilot could not effectively control the flight path nor the attitude of the airplane, it continued to fly for approximately 30 minutes before it crashed.

If one hydraulic system could be retained to provide limited control over the pitch and roll attitudes of the airplane, the pilot would have some control over the flight path and could land the airplane, assuming other factors did not render the airplane unflyable. A hydraulic fuse, installed in the hydraulic line where it enters the fin, would prevent the loss of that system in the event that excessive leakage occurred in the hydraulic tubing in the vertical stabilizer, thus preserving hydraulic power to some elevator, aileron, and spoiler surfaces.

The FAA has reviewed and approved Boeing Service Bulletin 747-29-2063, dated December 23, 1986, which describes the installation of a hydraulic fuse in the number 4 hydraulic system of Boeing Model 747 airplanes, to prevent the loss of all four hydraulic systems in the event of severe damage to or loss of the vertical stabilizer.

Since this condition may develop on other airplanes of this same type design, an AD is proposed which would require the installation of a hydraulic fuse in the number 4 hydraulic system on all Boeing Model 747 airplanes in accordance with the service bulletin previously mentioned.

It is estimated that 113 airplanes of U.S. registry would be affected by this AD, that it would take approximately 27 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Parts are estimated at $1,271 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $265,663.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, listed in Boeing Service Bulletin 747-29-2063, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of all four hydraulic systems in the event of severe damage to or loss of the vertical stabilizer, accomplish the following:

A. Within the next 24 months after the effective date of this AD, modify the number 4 hydraulic system by installing a hydraulic fuse in accordance with Boeing Service Bulletin 747-29-2063, dated December 23, 1986, or later FAA-approved revision.

B. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on February 17, 1987.

Wayne J. Barlow,
Director, Northwest Mountain Region.

[FR Doc. 87-3790 Filed 2-24-87; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Parts 215, 298 and 389

[OST Docket No. 44684, Notice No. 87-3]

Use and Change of Names of Air Carriers, Foreign Air Carriers and Commuter Air Carriers

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department proposes to eliminate its detailed rules on air carrier name changes and replace it with a simple name registration system. This approach would eliminate the Department's role in determining whether air carrier name similarities may cause public confusion. This would encourage carriers to resolve potential problems among themselves and use existing legal protections without unnecessary government intervention. However, it would not prevent the Department from taking enforcement action, when necessary, against unfair and deceptive practices under section 411 of the Federal Aviation Act. The regulation would be expanded to cover commuter air carriers and makes a conforming change to Part 298. It also would reduce the Department's fees for air carrier name changes in Part 389.

DATE: Comments on the proposal must be received on or before April 27, 1987.

ADDRESS: Comments on the proposal may be mailed in duplicate to Documentary Services Division, C-55, Department of Transportation, Room 4107, 400 Seventh Street, SW., Washington, DC 20590. In order to facilitate the Department's review, we request that four additional copies of the comments be submitted and that commenters include a reference to the docket number of their last application, if any. Comments will be available for review by the public at this address from 9:00 a.m. through 5:00 p.m., Monday through Friday. Persons wishing acknowledgement of their comments' receipt should include a stamped, self-addressed postcard with their comments. The Documentary Services Division will time and date-stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Joseph Brooks or Juliana Winters, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, (202) 366-9349 or Gwyneth Radloff, Office of the Assistant General Counsel for Regulation and Enforcement, (202) 366-9305.

SUPPLEMENTARY INFORMATION: Part 215 of the Department's regulations (14 CFR Part 215) requires direct certificated air carriers and direct foreign air carriers to use the names in which their operating authorizations were issued. It sets out a detailed process by which those carriers may apply to change their names or to use names different from those on their operating authorizations. The Department reviews each application to determine whether there is potential for name confusion and whether a name change is in the public interest.

Name similarity cases arise in connection with both name change applications and initial fitness cases. The number of name similarity cases before the Department has increased due to the growing number of carriers holding and seeking authority and the fact that these carriers often select geographic names descriptive of their area of operations. Because of the number of carriers providing similar or overlapping service, the same or similar names are often proposed by more than one carrier.

The Civil Aeronautics Board adopted Part 215 during a period of strict regulation in order to protect carriers and the public from confusion and unfair and deceptive practices prohibited by section 411 of the Federal Aviation Act. However, the present rules are duplicative of existing legal protections and inconsistent with the deregulation of the airline industry. They do not encourage air carriers to resolve potential problems among themselves as do other unregulated businesses. In addition, they impose an undue burden on the industry; competitors are citing the use of arguably similar names as reasons to object to new applicants, thereby unnecessarily complicating and delaying the certification process. This serves to impede new entry because of the time and cost to an applicant of having to respond to such objections, which do not relate to the applicant's ability to operate.

The Department is proposing to eliminate the existing rule and replace it with a simple name change registration system. This approach would eliminate the Department's role in determining whether the prospective use of a particular name may cause public confusion. The revised rules still would require that an air carrier use the name under which its operating authorization or other authority was issued. However, if the carrier wants to change its name or use a different business name, it would be able to register the new name with the Department and begin using the name immediately after the registration is accepted. Any application for initial, reissued, or transferred authority, including commuter air carrier

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registrations and amendments, would be considered as containing a registration of the intended name. This change would eliminate the need to file a separate name registration document. A carrier requesting use of a trade name, without seeking reissuance of its underlying certificate or foreign air carrier permit or exemption authority, would file a statement with the Office of Aviation Operations registering its intended name.

In either case, the Department would compare the proposed name with a list of names, maintained by the Office of Aviation Operations, used by existing U.S. and foreign air carriers. The Department would notify the applicant about similar names on the air carrier register. The applicant would then have to notify those carriers of its application and send the Department a certificate of service that it has notified any similarly named carriers. The Department would then acknowledge the registration and issue a notice announcing the new name, or reissue the applicant's authority in its new name.

The proposed registration system would be purely ministerial, both in terms of what the applicants are required to do and the Department's role in administering the system. The Department would exercise no substantive review of name confusion issues in the context of the proposed registration process or its licensing functions. Consequently, challenges to the registration of a particular name would not be accepted or considered in that context.

The proposed changes would in no way affect the recourse available to the Department to take enforcement action under section 411 of the Act for unfair or deceptive practices. Enforcement action could be taken on a complaint or on the Department's own initiative. Such action, however, will generally not prevent or delay the registration of a name that complies with the proposed procedures, or otherwise serve to complicate or delay the certification process. The registration of a name by the Department would become essentially ministerial, and would not be a judgment about its acceptability with respect to section 411.

The Department's withdrawal from the strict regulation of what is essentially, in most cases, a private matter between carriers would encourage carriers to resolve problems informally or use alternate avenues for protection available through other government agencies, State laws and the courts. The Patent and Trademark Office of the Department of Commerce administers the Lanham Act (14 U.S.C. 1050–1127), which protects and ensures the proper use of registered trade names and trademarks. It specifically addresses the likelihood of confusion among similar or identical names. Recent litigation under that Act has expanded the type of false or misleading advertising deemed prohibited and the type of plaintiffs protected. It can protect air carriers, and now indirectly consumers, under standards applicable to other industries.

Although the Lanham Act does not exclude air carriers, very few air carriers now participate in registration under that Act. Similarly, available State court and common law remedies also have been underused, perhaps because of the regulation in this area. The Federal Communications Commission took action 2 years ago, which is similar to what is being proposed here, by revising its rules so that it no longer resolves disputes about similarities in call letters. These disputes are now handled under the Lanham Act and by State and local courts.

Although Part 215 does not now apply to commuter carriers, the same name similarity issues arise with these carriers in the context of their applications for fitness. In those cases, name issues generate numerous pleadings, often peripheral to the case. Under the proposed rule, commuters would be treated as other carriers in this respect. Because of the changes in Part 215, no new burden would be imposed on commuters.

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act of 1980

This action has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions.

Furthermore this rule will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, a regulatory impact analysis is not required.

This proposed regulation is not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979. It involves the elimination of unnecessary procedural requirements. A full regulatory evaluation has not been prepared since the overall impact of the proposal is expected to be minimal with the only impact being reduced administrative costs on the Federal Government and possibly some reduced paperwork on the part of applicants and certificate holders.

In this regard, we estimate that under the current rules, the Department spends a minimum of 60 hours of staff time on each controversial case, at an approximate cost to the Department of $1,080 per case. Under the proposed registration system, we estimate that one hour of staff time will be needed to review the proposed name, contact the applicant about carriers with similar names, and issue a notice announcing the new trade name and two hours will be needed to follow the same procedure and reissue a certificate in the new name. The weighted average unit cost per case will be approximately $56. The proposed rule would reduce the Department's fees for air carrier name changes in Part 389 ($165 for domestic and $125 for foreign) to $56 for each change.

I certify that this proposal will not have a significant economic impact on a substantial number of small entities. It will have no impact on the environment. It would not impose any reporting or paperwork requirements under the Paperwork Reduction Act in addition to those already approved by the Office of Management and Budget under control number 3024–0064.

List of Subjects

14 CFR Part 215

Air Carriers, Foreign air carriers, Trade names.

14 CFR Part 298

Air taxis, Alaska, Antitrust, Consumer protection, Insurance, Reporting and recordkeeping requirements.

14 CFR Part 389

Archives and records.

Accordingly, the Department proposes to amend 14 CFR Parts 215, 298 and 389 as follows:

1. Part 215 is revised to read as follows:

PART 215—USE AND CHANGE OF NAMES OF AIR CARRIERS, FOREIGN AIR CARRIERS AND COMMUTER AIR CARRIERS

Sec.
215.1 Applicability.
215.2 Purpose.
215.3 Use of name.
215.4 Change of name or use of trade name.
215.5 Procedure in cases of similarity of names.
215.6 Acknowledgment of registration.

Authority: 49 U.S.C. 1301, 1324, 1371, 1372, 1381, 1388, 1387.

§ 215.1 Applicability.

This part applies to all certificated air carriers, commuter air carriers, and foreign direct air carriers and to initial or amended applications for authority, applications for certificate or permit transfers or reissuances, and registration of business names.

§ 215.2 Purpose.

This part sets rules under which direct air carriers may use the names in their operating authorizations and change those names. It further provides for notification to air carriers that may be affected by the use by other air carriers of the same or similar names. Its purpose is to place the responsibility for resolving private disputes about the use of similar names with the air carriers involved, through recourse to the trade name statutes and the courts. These rules do not preclude Department intervention or enforcement action should there be evidence of a significant potential for, or of actual, public confusion.

§ 215.3 Use of name.

In holding out to the public and in performing air transportation services, a direct air carrier or foreign direct air carrier subject to this part shall use only the name in which its operating authorization is issued or trade name is registered. Except as provided in §§ 221.21(j) and 221.35(d) of this chapter, minor variations in the use of this name, including abbreviations, contractions, initial letters, or other variations of the name that are readily identifiable with the authorized name, are permitted. Slogans and service marks shall not be considered names for the purpose of this part, and their use is not restricted.

§ 215.4 Change of name or use of trade name.

(a) *Registrations.* Any air carrier subject to this part that desires to change the name in which its operating authorization has been issued, or to use a trade name, or to obtain initial operating authority must register the name with the Department. The Department will construe any application for initial, reissued, or transferred authority, as well as any commuter air carrier registration or amendment filed under Part 298, as containing a "registration" of the intended name. A separate name registration document need not be filed.

A carrier registering use of a trade name, without seeking reissuance of its underlying certificate or foreign air carrier permit or exemption authority, must file a statement that complies with §§ 302.3 and 302.4 of this chapter registering its intended name with the Office of Aviation Operations.

(b) *Montreal Agreement.* Each registration under this section shall be accompanied by three copies of a counterpart to the Montreal Agreement (Agreement 18900) (OST Form 4523) signed by the carrier using the proposed name. Upon approval of the application, the Department will place a copy of the signed OST Form 4523 in Docket 17325.

(Reporting and recordkeeping requirements in paragraph (b) were approved by the Office of Management and Budget under control number 3024–0064)

§ 215.5 Procedure in cases of similarity of names.

The Department will compare the proposed name in any registration filed under this part or in an application for new, reissued, or transferred authority with a list of names used by existing certificated, commuter and foreign direct air carriers. The Department will notify the applicant of any other certificated, foreign or commuter carriers that may have an identical or similar name. The registrant must then notify those carriers of its registration. The notification will identify the applicant and state its proposed name or the name requested, area of operation or proposed area of operation, type of business, and other pertinent matters. The registrant must then file a certificate of service of the notification with the Department.

§ 215.6 Acknowledgment of registration.

After completion of the filing and notification requirements of this part, the Department may acknowledge the registration by notice in the action granting the application for initial operating authority, transfer, or reissuance or in approving the commuter registration, or by separate notice in the case of use of a trade name. Non-action under this provision shall not be construed as an adjudication of any rights or liabilities.

PART 298—EXEMPTIONS FOR AIR TAXI OPERATIONS

2. The authority citation for Part 298 continues to read as follows:

Authority: Secs. 101(3), 204, 401, 404, 407, 416, 418, 419, Pub. L. 85–726, as amended, 72 Stat. 737, 743, 754, 760, 766, 771, 91 Stat. 1284, 92 Stat. 1732; 49 U.S.C. 1301, 1324, 1371, 1374, 1377, 1386, 1388, 1389.

3. Section 298.36 would be amended by revising paragraph (a) as follows:

§ 298.36 Limitation on use of business name.

(a) An air taxi operator in holding out to the public and in performing its services in air transportation shall do so only in the name or names in which its air carrier operating certificate is issued pursuant to section 604 of the Act by the Federal Aviation Administration, and in which it is registered with the Department under this part.

* * * * *

PART 389—FEES AND CHARGES FOR SPECIAL SERVICES

4. The authority citation for Part 389 continues to read as follows:

Authority: Secs. 204, 1002, Pub. L. 85–726, as amended, 72 Stat. 743, 797; 49 U.S.C. 1324, 1502. Act of August 31, 1951, ch. 376, 65 Stat. 268; 31 U.S.C. 483a.

5. Section 389.25 would be amended by revising the following fees:

§ 389.25 Schedule of processing fees.

Code	*Document*
Interstate and Overseas Air Transportation	
* * * * *	
8	Change of Name (registration of trade name or reissuance of certificate) 56
* * * * *	
Foreign Air Transportation (U.S. and Foreign Air Carriers)	
* * * * *	
19	Change of Name (registration of trade name or reissuance of certificate) 56
* * * * *	

Issued this 12th day of February 1987, at Washington, DC.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 87–3665 Filed 2–24–87; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Parts 22 and 51

[SD–203]

Schedule of Fees for Consular Services and Refund of Fees

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State proposes to amend its regulations to provide that refunds of fees or other payments for amounts totaling $5.00 or less will not be made unless specifically

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requested by the person who has overpaid. If adopted, the amendment would eliminate the cost to the Department and to the Treasury of processing and mailing checks that is not commensurate with the amounts involved. The amendment to the regulation would save the Government a considerable amount of money and time.

DATES: Comments must be submitted on or before April 27, 1987.

ADDRESSES: Comments may be mailed to Office of Citizenship Appeals and Legal Assistance, Department of State, Suite 300, 1425 K Street, NW., Washington, DC 20524.

FOR FURTHER INFORMATION CONTACT: William B. Wharton, Director, Office of Citizenship Appeals and Legal Assistance, Telephone (202) 326–6172.

SUPPLEMENTARY INFORMATION: Present regulations provide for the refund of any excess fees submitted to the Department or posts abroad with a passport application or a request for other consular services. When individuals remit payments in excess of the amount due, the Department deposits the payments directly into the U.S. Treasury and then requests the Treasury to refund any excess.

It has been established that refunds of $50.00 or less are not cost effective. Approximately 65 percent of refunds are for overpayments of two dollars or less. The cost of processing these refunds far exceeds the amounts to be refunded. The Comptroller General in Decision B–220942 has approved that refunds of overpayments of $5.00 or less should not be made unless specifically claimed.

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 301 et seq.), it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities.

The provisions of the Paperwork Reduction Act do not apply. (44 U.S.C. Ch. 35).

List of Subjects

22 CFR Part 22

Foreign Service, Passports and Visas.

22 CFR Part 51

Passports and Visas.

PART 22—[AMENDED]

1. The authority citation for Part 22 is revised to read as follows:

Authority: Secs. 3, 4, 63 Stat. 111, as amended; 22 U.S.C. 211a; 214, 2651, 2658, 3921, 4219; 31 U.S.C. 9701, E.O. 10718, 22 FR 4632; E.O. 11295, 31 FR 10603; 3 CFR, 1954–1958 Comp. p. 507 unless otherwise noted.

2. Section 22.6 is revised to read as follows:

§ 22.6 Refund of fees.

(a) Fees which have been collected for deposit in the Treasury are refundable: (1) As specifically authorized by law (See 22 U.S.C. 214a concerning passport fees erroneously charged persons excused from payment, 22 U.S.C. 216 concerning passport fees in cases where the appropriate representative in the United States of a foreign government refuses a visa and 46 U.S.C. 8 concerning fees improperly imposed on vessels or seamen); (2) when the principal officer at the consular post where the fee was collected (or the officer in charge of the consular section at a combined diplomatic/consular post) finds upon review of the facts that the collection was erroneous under applicable law; and (3) where determination is made by the Department of State with a view to payment of a refund in the United States in cases where it is impracticable to have the facts reviewed and refund effected by and at the direction of the responsible consular office. See § 13.1 of this chapter concerning refunds of fees improperly exacted by consular officers who have neglected to return the same.

(b) Refunds of $5.00 or less will not be paid to the remitter unless a claim is specifically filed at the time of payment for the excess amount. An automatic refund on overpayments due to misinformation or mistakes on the part of the Department of State will be made.

PART 51—[AMENDED]

3. The authority citation for Part 51 is revised to read as follows:

Authority: 44 Stat. 887; 63 Stat. 111, as amended; 22 U.S.C. 211a–218, 2651, 2658; E.O. 11295, 31 FR 10603; 3 CFR, 1966–1970 Comp. p. 507, unless otherwise noted.

4. In section 51.64 a new paragraph (e) is being added:

§ 51.64 Refunds.

. . . . . .

(e) For procedures on refunds of $5.00 or less, see § 22.6(b) of this title.

Dated: December 18, 1986.

For the Secretary of State.

Joan M. Clark,

Assistant Secretary, Bureau of Consular Affairs.

[FR Doc. 87–3817 Filed 2–24–87; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Public Comment Period and Opportunity for Public Hearing on Proposed Amendments to the Oklahoma Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of proposed amendments submitted by Oklahoma as modifications to its permanent regulatory program (hereinafter referred to as the Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments consist of revised regulations for several parts of its program.

This notice sets forth the times and locations that the Oklahoma program and proposed amendments will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing.

DATES: Written comments from the public not received by 4:00 p.m. on April 13, 1987, will not necessarily be considered in the decision process. A public hearing on the proposed amendments has been scheduled for 9:00 a.m. on March 27, 1987, at the address shown below under **"ADDRESSES"**. Any person interested in making an oral or written presentation at the hearing should contact Mr. James H. Moncrief at the OSMRE Tulsa Field Office by 4:00 p.m. on March 17, 1987. If no one expresses an interest in participating in the hearing by this date, the hearing will not be held. If only one person has so contacted Mr. Moncrief, a public meeting, rather than a hearing, may be held; the results of the meeting will be included in the Oklahoma administrative record.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand-delivered to: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 333 West Fourth Street, Tulsa, Oklahoma 74103.

Copies of the Oklahoma program, the proposed modificatioins to the program, and the administrative record of the Oklahoma program are available for public review and copying at the OSMRE offices and the State regulatory authority office listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting the OSMRE Tulsa Field Office.

Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 333 West Fourth Street, Room 3432, Tulsa, Oklahoma 74103. Telephone: (918) 581–7927

Oklahoma Department of Mines, 4040 North Lincoln Boulevard, Suite 107, Oklahoma City, Oklahoma 73105. Telephone: (405) 521–3859

Office of Surface Mining Reclamation and Enforcement 1100 "L" Street NW., Room 5124, Washington, DC 20240. Telephone: (202) 343–4855

The public hearing, if requested, will be held at the Federal Building, 125 South Main Street, Muskogee, Oklahoma 74401.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 333 West Fourth Street, Tulsa, Oklahoma 74103. Telephone: (918) 581–7927..

SUPPLEMENTARY INFORMATION:

I. Background

The Oklahoma program was conditionally approved by the Secretary of the Interior on January 19, 1981 (46 FR 4910). Information pertinent to the general background, revisions, modifications and amendments to the proposed permanent program submission as well as the Secretary's findings, the disposition of comments, and detailed explanation of the conditions of approval of the Oklahoma program can be found in the January 19, 1981 **Federal Register** (49 FR 4910), in the April 2, 1982 **Federal Register** (47 FR 14152), in the May 4, 1983 **Federal Register** (48 FR 20050) and the August 28, 1984 **Federal Register** (49 FR 34000). Subsequent actions on conditions of approval and program amendments are identified at 30 CFR 936.11 and 936.15.

II. Submission of Amendments

In accordance with the provisions of 30 CFR 732.17(d) through (f), on July 15, 1985, the Director notified Oklahoma of the changes necessary to ensure that the approved regulatory program, as revised since January 19, 1981, when the program was originally approved, was no less stringent than SMCRA and no less effective than the Federal regulations. To comply with this letter and to meet other needs and State objectives, the State elected to undertake a complete rewrite of the regulations governing its permanent regulatory program.

By letter dated January 16, 1987, Oklahoma submitted several sections of these regulations to OSMRE for review as program amendments (Administrative Record No. OK–780). The proposed regulations, consisting of Parts 707, 779, 780, 784, 816, 817, 845 and 850, would replace those Parts of the currently approved regulatory program. The proposed regulations concern the exemption for coal extraction incident to government-financed construction, permit application requirements, performance standards, civil penalties, and blaster training and certification.

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the proposed regulations satisfy the criteria for approval of State program amendments set forth at 30 CFR 732.15 and 732.17. If approved, the proposed amendments will become part of the Oklahoma permanent regulatory program.

III. Procedural Requirements

1. Compliance with the National Environment Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements but rather would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 936

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: February 18, 1987.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 87–3858 Filed 2–24–87; 8:45 am]

BILLING CODE 4310-05-M

POSTAL SERVICE

39 CFR Part 10

Proposed Express Mail International Service to Indonesia

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: Pursuant to an agreement with the postal administration of Indonesia, the Postal Service intends to begin Express Mail International Service with Indonesia at postage rates indicated in the tables below.

DATE: Comments must be received on or before March 26, 1987.

ADDRESS: Written comments should be directed to the General Manager, Rate Development Division, Office of Rates, Rates and Classification Department, U.S. Postal Service, Washington, DC 20260–5350. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 8620, 475 L'Enfant Plaza West, SW., Washington, DC 20260–5350.

FOR FURTHER INFORMATION CONTACT: Leon W. Perlinn, (202) 268–2673.

SUPPLEMENTARY INFORMATION: The International Mail Manual is incorporated by reference in the Code of Federal Regulations, 39 CFR 10.1. Additions to the manual concerning the proposed new service, including the rate tables reproduced below, will be made in due course. Accordingly, although 39 U.S.C. 407 does not require advance notice and the opportunity for submission of comments on international service, and the provisions of the Administrative Procedure Act regarding proposed rulemaking [5 U.S.C. 553] do not apply [39 U.S.C. 410[a]], the Postal Service invites interested persons to submit written data, views or arguments concerning the proposed Express Mail International Service to Indonesia at the rates indicated in the table below.

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Lists of Subjects in 39 CFR Part 10

Postal Service, Foreign relations.

PART 10—[AMENDED]

The authority citation for Part 10 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

INDONESIA EXPRESS MAIL INTERNATIONAL SERVICE

Custom Designed Service [1] [2]		On Demand Service [2]	
Up to and Including		Up to and Including	
Pounds	Rate	Pounds	Rate
1	$31.00	1	$23.00
2	36.90	2	28.90
3	42.80	3	34.80
4	48.70	4	40.70
5	54.60	5	46.60
6	60.50	6	52.50
7	66.40	7	58.40
8	72.30	8	64.30
9	78.20	9	70.20
10	84.10	10	76.10
11	90.00	11	82.00
12	95.90	12	87.90
13	101.80	13	93.80
14	107.70	14	99.70
15	113.60	15	105.60
16	119.50	16	111.50
17	125.40	17	117.40
18	131.30	18	123.30
19	137.20	19	129.20
20	143.10	20	135.10
21	149.00	21	141.00
22	154.90	22	146.90

[1] Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a designated Post Office.

[2] Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge

An appropriate amendment to 39 CFR 10.3 to reflect these changes will be published when the final rule is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division

[FR Doc. 87-3796 Filed 2-23-87; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3160-2]

Approval and Promulgation of Implementation Plans, Massachusetts; Control of Volatile Organic Compound Emissions From the Manufacture of Polystyrene Resins

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts on November 8, 1985, February 21, 1986, and June 23, 1986. This revision will approve a regulation to reduce volatile organic compound (VOC) emissions from the manufacture of polystyrene resins. The intended effect of this action is to approve this regulation in accordance with commitments Massachusetts made in the ozone attainment plan approved by EPA for the Commonwealth to regulate such sources. This action is being taken under section 110 of the Clear Air Act.

DATES: Comments must be received on or before March 27, 1987. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2312, JFK Federal Bldg., Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmenal Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203 and the Department of Environmental Quality Engineering, Division of Air Quality Control, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Lorenzo Thantu, (617) 565–3250; FTS 835–3250.

SUPPLEMENTARY INFORMATION:

Background

In its 1982 ozone attainment plan approved on November 9, 1983 (48 FR 51480), the Commonwealth of Massachusetts committed to adopt reasonably available control technology (RACT) regulations for all sources categories covered by Group III Control Technique Guidelines (CTG).

EPA published the Group III CTG for "Control of Volatile Organic Compound Emissions from the Manufacture of High Density Polyethylene, Polypropylene, and Polystyrene Resins" in November 1983 which specifies RACT for VOC emissions from the manufacture of these products. Therefore, the Commonwealth of Massachusetts must either adopt RACT regulations for each of these source categories or submit a certification that no such sources are located within its boundaries. This certification of no sources is commonly referred to as a negative declaration.

Negative Declaration

On November 8, 1985, the Massachusetts Department of Environmental Quality Engineering (DEQE) submitted a letter certifying that the Commonwealth of Massachusetts has no polypropylene or polyethylene manufacturing sources. EPA intends to codify this certification in 40 CFR Part 52 at the time of final rulemaking on today's action.

Regulation for Manufacture of Polystyrene Resins

On February 21, 1986, DEQE submitted revisions to its ozone attainment plan. These revisions include: (1) Two new definitions, (2) a change to one definition, and (3) a regulation to control the emissions of VOCs from the manufacture of polystyrene resins. The two new definitions being added to 310 CMR 7.00 are for (1) "continuous process polystyrene resins manufacturing plant" and (2) "material recovery section". Each of these definitions is consistent with Federal guidance.

The DEQE amended the SIP definition of "VOC" to include methane and ethane as compounds of carbon not considered to be VOCs. This revision is consistent with EPA's definition of VOCs as stated in "Glossary for Air Pollution Control of Industrial Coating Operations" (EPA–450/3–83–013) and "Recommended Policy on Control of Volatile Organic Compounds", 42 FR 35314 (July 8, 1977). The July 8, 1977 **Federal Register** listed methane and ethane as having negligible photochemcial reactivity that should be exempt from regulation under SIPS. In addition, this change was made to make the definition consistent with the Commonwealth of Massachusetts' current practice.

The regulation to control VOC emissions from the manufacture of polystyrene resins, 310 CMR 7.18(18), requires that no continous process polystyrene resins manufacturing plant or facility shall emit in excess of 0.12 pounds of VOC per 1,000 pounds of product from the material recovery section. It also requires that any owner or operator of a facility subject to this regulation shall, within 150 days of the effective date of 310 CMR 7.18(18), either (1) demonstrate compliance or (2) submit a proposed compliance schedule that justifies to the Department that additional time is necessary. This proposed compliance schedule must achieve emission limitations contained in 310 CMR 7.18(18) as expeditiously as practicable, but not later than December 31, 1986. Any compliance testing shall be performed in accordance with Test Methods 2 and 25 as cited in 40 CFR Part 60, Appendix A. Additionally, the regulation requires that the use of any other methods must be approved by both the DEQE and EPA.

On June 23, 1986, the DEQE submitted a letter stating that the DEQE adopted implementation guidance, developed for the regulation, which sets forth the requirements for "Reporting and Recordkeeping" and "Compliance Testing and Monitoring." Therefore, EPA is proposing to approve amendments to Massachusetts regulation 310 CMR 7.00 and the addition of 310 CMR 7.18(18), including the implementation guidance adopted pursuant to that regulation, as revisions to the SIP.

EPA is proposing to approve this Massachusetts SIP revision and is soliciting public comments on the issues discussed in this notice. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting comments to the **ADDRESSES** section of this notice.

Proposed Action

EPA is proposing to approve the revisions to 310 CMR 7.00 and 310 CMR 7.18(18), including the implementation guidance adopted pursuant to that regulation, submitted by the DEQE on February 21 and June 23, 1986, as well as the State's negative declaration submitted on November 8, 1985.

Under 5 U.S.C. section 605(b), I certify that these SIP revisions will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the plan revisions will be based on whether they meet the requirements of sections 110(a)(2)(A) through (K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur dioxide, Nitrogen oxides, Lead, Particulate matter, Caron monoxide, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7410–7642.

Dated: October 14, 1986.

Michael R. Deland,

Regional Administrator, Region I.

[FR Doc. 87-3835 Filed 2-24-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-5-FRL-3160-5]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: USEPA is proposing to approve a revision to the State of Michigan's total suspended particulate (TSP) State Implementation Plan (SIP) for Michigan Act No. 65 of the Public Acts of 1986. Michigan's submittal of April 29, 1986, for Air Pollution Control Act (APCA) No. 65 revises the State's 1965 APCA No. 348, with respect to: (1) Car ferries having the capacity to carry more than 110 motor vehicles and (2) coal-fueled trains used in connection with tourism. USEPA believes that approval of this SIP revision will not jeopardize the attainment and maintenance of any national ambient air quality standard (NAAQS).

DATE: USEPA must receive comments on or before March 27, 1987.

ADDRESSES: Comments should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section (5AR–26), Air and Radiation Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

Please submit an original and three copies if possible. You may inspect copies of the submittal and USEPA's evaluation during normal business hours at:

U.S. Environmental Protection Agency, Air and Radiation Branch, Region V, 230 South Dearborn, Chicago, Illinois 60604

Michigan Department of Natural Resources, Air Quality Division, Stevens T. Mason Building, 530 West Allegan, Lansing, Michigan 48909

FOR FURTHER INFORMATION CONTACT: Ms. Toni Lesser, Regulatory Analysis Section (5AR–26), Air and Radiation Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6037.

SUPPLEMENTARY INFORMATION: On April 29, 1986, the State of Michigan submitted APCA No. 65, an amendment to Act No. 348 of the 1965 Michigan APCA, as a revision to the Michigan TSP SIP. That submittal also included technical support documentation in the form of emission monitoring data and a screening analysis for the source, which indicated that the car ferry emissions have demonstrated no effect on attainment or maintenance of the NAAQS for TSP resulting from uncontrolled operation of this source. APCA No. 65 was approved by the Governor of the State of Michigan on March 30, 1986. This Act amended APCA No. 348 of 1965 by adding Section 7a; which (first) exempts car ferries having the capacity to carry more than 110 motor vehicles and (second) exempts from the requirements of APCA No. 348, coal-fueled trains used in connection with either tourism, or the transportation of works of art, or items of historical interest.

USEPA has reviewed APCA No. 65 with respect to its impact on the attainment and maintenance of the NAAQS for all applicable criteria pollutants. In order for this revision to be approvable, it must be demonstrated that this SIP revision will not jeopardize attainment and maintenance of the NAAQS.

Car Ferries

Currently, the only car ferry operation to be affected by Michigan's APCA No. 65 is located in the City of Ludington, Mason County and is owned by the Michigan-Wisconsin Transportation Company. This Company operates a single car ferry ("City of Midland") between Ludington, Michigan and Kewaunee, Wisconsin on a daily basis. Ludington, Michigan is currently in attainment of all NAAQS and has one monitoring site in use. The nearest monitor to the ferry docks in Ludington did not record any exceedances of the TSP standards during the years of the monitor's operation (1977–1981); at which time two car ferries were in operation and the City of Ludington was designated as a TSP secondary nonattainment area.

Analysis of the receptor filters from the days when nonattainment level readings were recorded, showed no particulate matter traceable to car ferry emissions. USEPA believes that Michigan has made an adequate demonstration based on screening modeling with the Industrial Source Complex (ISC) model; assuming a maximum idling time of four hours in Ludington, Michigan, the impact of the car ferry service is less than the Prevention of Significant Deterioration (PSD) significant impact level of five micrograms per cubic meter on a 24-hour basis.

Coal-Fueled Trains

USEPA has reviewed APCA No. 65 with respect to the exemption of special coal-fueled trains. Michigan has only a few coal-fueled trains known to exist

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that operate as amusement rides and tourist attractions. There are presently no coal-fueled trains in existence on commercial railroad lines. The only train that operates on a semi-regular basis is known as the "Art Train". The Art Train usually operates from early Spring to late Fall traveling from one city to another on a weekly basis.

USEPA believes the specific exemptions for tourism, transporting works of art, and transporting historical artifacts, contained in Michigan's APCA No. 65, have a negligible impact upon attainment and maintenance of the NAAQS.

USEPA's complete review of this SIP revision is contained in technical support documents [TSDs] dated July 18, 1986, and October 27, 1986. USEPA is today proposing to approve the Michigan Act No. 65 of the Public Acts of 1986 as a revision to the Michigan TSP SIP. USEPA believes that approval of this SIP revision will not jeopardize the attainment and maintenance of any NAAQS as a result of uncontrolled operation of this source.

A 30-day public comment period is being provided for this notice of proposed rulemaking. Public comments received on or before March 27, 1987, will be considered in USEPA's final rulemaking action.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. section 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7642.

Dated: December 23, 1986.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 87–3836 Filed 2–24–87; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–7–FRL–3160–7]

Approval and Promulgation of the Nebraska; State Implementation Plan for Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to fully approve the Nebraska State Implementation Plan (SIP) for lead. All portions of the plan had been previously approved except as it pertained to Omaha. EPA approved portions of the Omaha lead SIP on January 31, 1985, but withheld approval of the control measures. Since that time, the state of Nebraska has developed and submitted, in draft form, a revised demonstration of attainment for lead in Omaha. This action proposes to approve the revised demonstration of attainment including the control measures which support that demonstration and requests public comment on that action.

DATES: Comments must be received on or before March 27, 1987.

ADDRESSES: Comments may be mailed to Dewayne E. Durst, Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the state submittal and EPA's evaluation are available for inspection during normal business hours at the Region VII office at the above address and at the Nebraska Department of Environmental Control, 301 Centennial Mall, Lincoln, Nebraska.

FOR FURTHER INFORMATION CONTACT: Dewayne E. Durst at (913) 236–2893, FTS 757–2893.

SUPPLEMENTARY INFORMATION: On January 31, 1985, EPA approved the Omaha lead SIP except for the control measures (48 FR 4510). These control measures were to be applied at the Asarco lead refinery in Omaha which is the principal source of lead in the area. EPA withheld approval of the control measures in the January 31, 1985, **Federal Register** because the measures were not sufficiently described and were therefore considered unenforceable. The state of Nebraska agreed to provide additional details concerning the control measures so EPA could proceed with final rulemaking on that one remaining portion of the Omaha lead SIP.

Before the state developed the information concerning the control measures, a revised demonstration of attainment dated January 18, 1985, was prepared by Asarco and submitted to the state. Asarco contended that the original control strategy was overly stringent because it was developed using diffusion modeling, which overpredicted the ambient lead levels in the vicinity of the Asarco lead refinery. One year of lead monitoring data from a newly established station near the point of predicted maximum concentration gave considerably lower lead levels than those predicted by the original modeling. Using monitored lead data, Asarco attempted to calibrate the dispersion model by developing a correction factor which was applied to all modeled lead concentrations to reduce their value. Because of the limited amount of ambient lead data which were available, EPA did not accept the revised control strategy based upon the use of calibrated modeling.

A revised control strategy dated August 14, 1985, was developed by Asarco, submitted to the State, and adopted after public hearing by the Nebraska Environmental Control Council on September 27, 1985. The August 14 revision to the control strategy was based upon dispersion modeling adjusted to predict lower lead concentrations which supposedly more nearly correlated with the measured lead levels in the area. The adjustments in the modeling involved changes in source input data which Asarco and the State of Nebraska believed more nearly described the emission plume behavior from the sources than that which was used in the original modeling. This revised control strategy was submitted to EPA in October 1985 as a SIP revision.

EPA did not agree with all of the adjustments in the SIP submittal. Two items were of particular concern to EPA. One involved the use of plume enhancement for stacks located in the vicinity of one another. Asarco contended that the plume from such stacks should be modeled as though all the stack gases were being emitted from one stack even though in some cases, the stacks were nearly 35 feet apart. By theoretically representing all stack gases emanating from one stack, the model calculates a greater plume rise and thus, a lower ground level lead concentration than if modeled using individual stacks. EPA determined that the combined plume representation gave too much plume enhancement for adjacent stacks and that no enhancement credit could be claimed unless on-site verification of plume enhancement was performed.

Another item of disagreement involved the height of the plume origin for fugitive lead emissions from certain buildings at the Asarco refinery. Asarco and the State of Nebraska argued that the height should be the top of the building because the heat-generating sources in the building caused the hot gases to rise to the top of the buildings where they were emitted. EPA contended that some of the emissions would be emitted from the sides of the building, and even those that were emitted from the building top would be diffused in the building wake which would place the plume origin near building mid-height.

There were other items involving model input on which EPA disagreed with the August 14, 1985, revision. The impact of these items on predicted ground level lead concentrations near the lead refinery was found to be negligible and, therefore, they were not pursued further.

In March 1986, EPA, the Nebraska Department of Environmental Control (NDEC), and Asarco representatives met to determine a course of action for resolving the issues concerning the control strategy. It was agreed that an on-site evaluation of the plume release height from the process buildings would be conducted by Asarco and observed by NDEC. It was also agreed that EPA would provide the requirements for an on-site study to determine whether the actual plume rise from adjacent stacks was appreciably greater than the height obtained by modeling each stack individually. These requirements were transmitted to NDEC and Asarco on March 27, 1986.

The building plume tests were conducted and observed by NDEC. The state determined that the tests showed the majority of the process fugitive emissions were emitted from the top of buildings. EPA believes that the State's determination on this matter is justified. Asarco determined they would not conduct on-site studies on plume rise from the stacks, but would model them individually and treat the plume rise as if there were no interaction of stack gases.

Other disagreements in model input between EPA and Asarco were resolved through subsequent correspondence, and all parties agreed on a base case model to be used for strategy development and evaluation. The base case model was used to develop a demonstration of attainment for all receptor points in the vicinity of the lead refinery. A number of control measures were developed or identified and the emission inventory was appropriately reduced. Using the projected inventory, the model predicted that the National Ambient Air Quality Standards for lead will be met at all receptors in Omaha where the model is capable of calculating ambient concentrations. The control strategy for attainment of the lead standard is composed of control measures contained in the Administrative Order issued to Asarco by NDEC on November 12, 1986, and includes the following items:

1. One control measure requires that dust collected in certain baghouse cellars at the plant be removed by a vacuum truck. Formerly, the dust was removed using front-end loaders, which allowed a great deal of material to become airborne during transfer of the dust to the vehicles which transported the material to the residue storage area. The operational practices for use of the vacuum truck are described in detail in work practice manuals which Nebraska intends to incorporate as enforceable requirements of the Omaha lead SIP.

2. Fugitive emissions are or will be reduced in the refinery building through the use of improved hooding with increased airflow, and by process changes which maintain materials in liquid rather than solid state or reduce the temperature and thus reduce the vaporization of molten lead.

3. Improved dampers on the retort furnaces reduce leakage by approximately 40 percent and thus supply additional ventilation air to the hoods over the retort when they are being "pulled" or emptied, which is the period when emissions are highest.

4. The reverberatory furnace in the smelter building will be controlled by installing additional local exhaust hooding over the charging and slag cooling operations supplied with additional draft air. The furnace will also be equipped with an automatic damper to prevent overpressures inside of the furnace which cause excess lead emissions for the furnace.

5. Fugitive emissions from elevators, storage hoppers, product sacking machine, and other sources in the antimony oxide building will be controlled with new baghouses which increase building ventilation by 158 percent.

6. The emission inventory presently includes emissions from stockpiles, unpaved areas, and plant traffic. These emissions will be reduced by paving additional plant area and vacuum sweeping all paved areas of the plant. The plant also has purchased a spray truck to apply chemical dust suppressants to piles of slag, dross and refractory brick, and to other unpaved plant areas. The use of the vacuum truck and the spray truck are governed by a detailed work practice manual.

7. In addition to all other control measures, the plant will be required to curtail production by 10 percent.

There are no lead emission control regulations in the Nebraska lead SIP. The NDEC has issued an Administrative Order which requires the installation of the emission control equipment and the implementation of control practices which are identified in the plan as necessary to show attainment and maintenance of the lead standard in Omaha.

The NDEC previously issued an Administrative Order dated June 12, 1984, to Asarco as part of the original control strategy for the Omaha area. EPA approved the order in the January 31, 1985, **Federal Register**. A revision to the demonstration of attainment was drafted by the state of Nebraska in January 1985. The previous order was withdrawn at that time because it did not contain the same control measures as those in the revised attainment demonstration. On August 22, 1985, another order was issued to Asarco which required them to install certain controls and to implement procedures which the State determined were adequate to meet the air quality standards for lead. These measures were required to be installed and in compliance by February 1, 1988, or three years after EPA's initial partial approval of the Omaha lead SIP. The August 22, 1985, order was amended by an order dated May 9, 1986. Among other things, the amendments suspended portions of the August 22, 1985 order, pending the outcome of negotiations between NDEC, Asarco, and EPA concerning acceptance of the dispersion modeling for the attainment demonstration.

A second amended Administrative Order dated November 12, 1986, was issued to Asarco by NDEC and was approved by the Nebraska Enviromental Control Council as part of the Omaha lead SIP. The order amends the May 9, 1986, order and incorporates all the control measures necessary to reach attainment of the lead standard in Omaha. The order requires implementation of all control measures by the attainment date established in the January 31, 1985 rulemaking, which is February 1, 1988. The order also identifies certain recordkeeping provisions which are considered necessary to insure continued compliance with the requirements of the order. If approved, NDEC intends that the order be submitted to EPA as an enforceable portion of the Nebraska lead SIP. The order provides for continued operation and monitoring of all existing control equipment, and the continuation of all emission control practices which were included as a part of the approved control strategy. If there are major changes in control equipment at the plant or major changes in emission control practices, such changes must be submitted and approved as SIP revisions.

Action

EPA has reviewed the draft SIP submitted by the State of Nebraska concerning the revised demonstration of

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attainment and control measures for the Omaha lead SIP contained in the Administrative Order dated November 12, 1986. Based on this review, EPA proposes to approve the Nebraska lead SIP for Omaha as meeting the requirements of 40 CFR 51.111, Description of Control Measures (formerly 40 CFR 51.87, Control Measures) and 40 CFR 51.112, Demonstration of Adequacy (formerly 40 CFR 51.80, Demonstration of Attainment). This action also proposes to approve the Administrative Complaint and Order No. 753 dated August 22, 1985, as amended by amended Administrative Order No. 753 dated May 9, 1986, and by second amended Administrative Order No. 753 dated November 12, 1986.

All other portions of the Omaha lead SIP have already been approved.

This action is being proposed under the "parallel processing" procedure (47 FR 27073). If the demonstration of attainment and control measures which the State of Nebraska submits in final form differ substantially from the material already submitted, EPA will evaluate those changes and may publish a revised Notice of Proposed Rulemaking.

The Administrator's final decision to approve the Omaha demonstration of attainment and control measures for the Nebraska lead SIP will be based on whether it meets the requirements of section 110 of the Clean Air Act, as amended, EPA regulations in 40 CFR Part 51, and comments received in response to today's proposal.

Under 5 U.S.C. 605(b), I certify that SIP approvals do not have significant economic impact on a substantial number of small entities (46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Incorporation by reference.

Authority: 42 U.S.C. 7401–7642.

Dated: December 4, 1986.

Morris Kay,

Regional Administrator.

[FR Doc. 87–3837 Filed 2–24–87; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[A–6–FRL–3161–3]

Proposed Federal Assistance; Limitations; State of New Mexico; Air Quality Implementation Plans

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On March 4, 1985, the Environmental Protection Agency (EPA) disapporved the vehicle inspection and maintenance (I/M) portion of the 1982 State Implementation Plan (SIP) for controlling carbon monoxide (CO) in Bernalillo County, New Mexico. The EPA also finalized actions to limit certain federal funding assistance and prohibited the construction or modification of major stationary sources of CO in Bernalillo County. On September 4, 1984, EPA proposed the above disapproval and requested comments on the appropriateness of witholding Federal construction grant funds for sewage treatment facilities under section 316(b) of the Clean Air Act (CAA). After consideration of all comments, the EPA believes that it is appropriate to propose section 316(b) sactions at this time, as reasonable efforts have not been made to reestablish the I/M program in Bernalillo County. EPA invites public comment on this action.

If EPA imposes 316(b) funding restrictions EPA proposes that the restrictions be removed when either of the following conditions are met:

(a) The State submits evidence that it has taken concrete steps toward restarting its I/M program in an expeditious manner, including the submittal of adequate legal authority and institution of an adequate funding mechanism, or

(b) The County is formally redesignated by EPA to attainment for CO.

DATE: Written comments must be submitted by March 27, 1987.

ADDRESSES: Written comments should be sent to Jack Divita, Chief, Air Programs Branch, Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270.

Copies of this notice are available for public inspection during normal business hours at the following locations:

Air Branch (6T–AS), Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270

Air Quality Bureau, Environmental Improvement Division, 1190 St. Francis, Harold Runnels Building, Santa Fe, New Mexico 87504–0968

Air Pollution Control Division, 924 Park SW., Albuquerque, New Mexico 87103

FOR FURTHER INFORMATION CONTACT: Carol Peters, Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270, (214) 767–2742.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to section 172(a) of the CAA, the State of New Mexico submitted a Part D SIP in January 1979, which demonstrated that the CO standard could not be attained by December 31, 1982, in Bernalillo County. (A Part D SIP is a SIP submitted by the State in order to meet the requirements of Part D of Title I of the Clean Air Act, as amended in 1977.) Consequently, New Mexico requested and received an extension for attainment of the CO standard in this area. The State was then required to submit a SIP revision in 1982 which would demonstrate attainment of the CO standard by December 31, 1987. The SIP was required to include an I/M program that met EPA's program specifications as outlined in the January 22, 1981 policy for extension area SIPs (47 FR 7181). The State of New Mexico submitted the 1982 SIP for attainment of the CO NAAQS in Bernalillo County on June 28, 1982. Subsequently, on July 1, 1983 (48 FR 30365), EPA approved the 1982 SIP for attainment of the CO NAAQS in Bernalillo County, including the provisions for an I/M program in Bernalillo County. The approved 1982 CO SIP for Bernalillo County contained City and County ordinances requiring all 1968 and newer gasoline powered light duty vehicles to participate in the program and provided for penalties for noncomplying vehicle owners. The SIP also contained the Albuquerque/Bernalillo County Air Quality Board Regulations governing the I/M program and the Albuquerque Traffic Code amendment pertaining to enforcement of the I/M ordinances.

B. I/M Program Disapproval

The I/M program in Bernalillo County began operation on January 3, 1983. However, on January 4, 1983 a citizen suit was filed in a New Mexico District Court challenging the I/M program on both statutory and constitutional grounds. The New Mexico Supreme Court issued a final ruling on the suit in March 1984 which included a finding that the City of Albuquerque/Bernalillo County did not have the authority to collect an inspection fee for the I/M test. The Supreme Court decision therefore

meant that the SIP revision was not legally adopted before submission to EPA and the revision did not meet the financial resource requirement of section 172.

Faced with the lack of authority to collect fees for funding the I/M program, the City officials revoked the ordinance governing the I/M program and closed the inspection facilities on March 28, 1984. The events relating to the Supreme Court ruling and the I/M program closure are discussed in detail in a **Federal Register** notice published on September 4, 1984 (49 FR 34866) which proposed disapproval and in the **Federal Register** notice published on March 4, 1985 (50 FR 8616) which finalized the disapproval of the I/M portion of the 1982 New Mexico CO SIP and imposed CAA limitations. The limitations imposed in the March 4 notice included federal funding restrictions under section 176(a) and a construction ban under section 110(a)(2)(I) of the CAA. The September 4, 1984, notice also requested public comment on the appropriateness of Federal limitations on sewage treatment grants as provided by section 316(b) of the CAA.

The SIP disapproval and limitations were proposed on the basis that the new 1982 CO SIP revision was not legally adopted before submission to EPA because the revision did not meet the financial resource requirement of section 172 of Part D of the Act. Further, as discussed in detail in the March 4, 1985 notice, in EPA's judgment, reasonable efforts were not being made to reestablish the I/M program and develop an approvable SIP as required by the Act. State challenges to EPA's rulemaking action were dismissed by the U.S. Court of Appeals for the Tenth Circuit in *New Mexico E.I.D.* v. *Thomas*, 789 F.2d 825, on April 23, 1986.

During the period of time since the EPA disapproved the I/M program and imposed funding limitations on CAA and highway grants, the City of Albuquerque has proposed several remedies to reinstate an I/M program. However, no I/M program has been reestablished to meet the EPA requirements.

C. Proposed Funding Restrictions

By this notice, EPA is proposing under section 316(b) of the CAA to withhold Federal assistance for the construction of sewage treatment facilities in Bernalillo County, New Mexico. EPA has discretionary authority under section 316(b) of the CAA, to withhold grants for the construction of sewage treatment works available under section 201(g) of the Clean Water Act (33 U.S.C. 1251 *et seq.*) to states, municipalities, and certain other governmental entities. The sewage treatment funding may be withheld if the State does not have in effect or is not carrying out an EPA approved SIP that expressly quantifies and that provides for the increase of each air pollutant that is reasonably anticipated to result either directly or indirectly from proposed new sewage treatment capacity [316(b)(2)]. Such capacity is described in an approved Clean Water Act section 201 facility plan funded under a previous EPA planning grant (C35–1020–01). Sewage treatment funding may also be withheld in areas where construction of the proposed treatment works will create new sewage treatment capacity that may reasonably be anticipated to cause or contribute to, directly or indirectly, an increase in emissions of any pollutant in excess of the increase provided for under the SIP [316(b)(3)(A)]. On November 2, 1983, EPA announced its policy on imposing section 316(b) sanctions, along with policy statements on other sanctions and issues (48 FR 50686). This policy indicated that EPA may propose to add section 316(b) restrictions in areas where further inducement to action is needed.

Bernalillo County is a nonattainment area without an approved SIP, and the existing SIP does not provide for the increased emissions which would "result" from new wastewater treatment capacity. Further, the Agency feels it is inappropriate to fund sewage treatment projects which may reasonably be anticipated to contribute to growth and associated air quality problems. In this situation, EPA, believes section 316(b) sanctions are appropriate.

As indicated, the EPA requested comments on the appropriateness of using CAA section 316(b) sanctions against Bernalillo County in the **Federal Register** on September 4, 1984. EPA received comments on the appropriateness of using this sanction during the comment period for the September 4, 1984, proposal and at the public hearing on December 4, 1984, for the September 4, notice.

The majority of comments received indicated that EPA should impose sanctions and limit additional growth in the area because of the high air pollution levels in Bernalillo County. Some of these commenters also indicated that the section 316(b) limitations are necessary because additional incentives were needed to induce State and local action of the I/M program.

Several of the commenters including the City and State believed that section 316(b) sanctions should not be imposed, arguing primarily that sewage treatment construction projects proposed for the area are not for growth but to improve treatment capability. However, EPA has reviewed the list of projected Clean Water Act construction projects for Bernalillo County and finds that certain projects clearly will provide for increased wastewater treatment capacity.

A detailed description of all prior comments relating to section 316(b) and other proposals in the September 4, 1984, notice received and EPA's response are contained in the Technical Support Document available for public inspection in Docket Number NM–85–1. Based on broad cost estimates currently available to EPA, application of section 316(b) sanctions would result in a loss to the City of Albuquerque of up to $39,000,000 in grant funds.

D. Summary and Request for Comments

EPA will consider any future actions or commitments by the State before making a final determination on this proposal. If the State resumes an approvable I/M program prior to EPA taking final action on this matter, EPA will withdraw this proposal upon approving the revised CO SIP.

EPA is soliciting comments on the proposed imposition of section 316(b), sewage treatment works funding limitations in Bernalillo County. EPA will consider all comments received within 30 days of publication of this notice.

E. Miscellaneous

Under Executive Order 12291 this action is not "Major." It has been submitted to the Office of Management and Budget for review. EPA is soliciting further public comment on the imposition of funding limitations.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the Agency must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. Under 5 U.S.C. 605(b), this requirement may be waived if the Agency certifies that the rule will not have a significant economic effect on a substantial number of small entities with jurisdiction over populations of less than 50,000. EPA does not believe this funding limitation, if porposed, will have a significant affect upon a substantial number of small entities, but it could impact some located in Bernalillo County.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Intergovernmental Relations.

Authority: 42 U.S.C. 7401–7642.

BEST COPY AVAILABLE

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Dated: February 12, 1987.
Frances E. Phillips,
Acting, Regional Administrator (6A).
[FR Doc. 87–3838 Filed 2–24–87; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Part 52

[A–7–FRL–3160–4]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rulemaking (PRM).

SUMMARY: On March 27, 1986, the Kansas Department of Health and Environment submitted revised regulations pertaining to operating and construction permit fees. These regulations are K.A.R. 28–19–7, *Definitions;* K.A.R. 28–19–8, *Reporting required;* K.A.R. 28–19–9, *Time schedule for compliance;* and K.A.R. 28–19–14, *Permits required.* Also submitted was a revision to K.A.R. 28–19–31, *Emission limitations,* and K.A.R. 28–19–45, *Open burning prohibited.*

Today, EPA proposes to approve these revised rules and solicits public comment on this proposal.

DATES: Public comments should be received by April 27, 1987.

ADDRESSES: Comments should be sent to Robert J. Chanslor, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. The State submission is available for public inspection during normal business hours at the above address and at the Kansas Department of Health and Environment, Forbes Field, Topeka, Kansas 66620.

FOR FURTHER INFORMATION CONTACT: Robert J. Chanslor at (913) 236–2893 or FTS 757–2893.

SUPPLEMENTARY INFORMATION: Section 110(a)(2)(K) of the Clean Air Act, as amended, requires the owner or operator of each major source to pay the permitting authority, as a condition of any permit required under the Act, a fee sufficient to cover the reasonable costs of reviewing and acting upon any application for such permit. In order to provide for such permits, the State of Kansas revised certain of their rules pertaining to State-issued permits. A draft of these rules was submitted to EPA on September 28, 1983, for review and comment. These rules were subsequently adopted by the State after a public hearing on November 4, 1983. The notice and public hearing satisfied EPA's requirements for notice and public hearings at 40 CFR 51.4. Normally, newly-adopted Kansas regulations become permanent on May 1 of the year after adoption. In this case, these rules became permanent on May 1, 1984. However, State regulations 28–19–7, 28–19–8, 28–19–9, 28–19–14, 28–19–31, and 28–19–45 were not submitted as part of the revised Kansas State Implementation Plan (SIP). The reason offered by the State is that there was a rapid turnover of air program staff which allowed submittal of these revisions to be overlooked.

These regulations were subsequently revised by the KDHE after notice and a public hearing on November 22, 1985. While the public hearing satisfies part of the EPA's requirements, the notice allowed 15 days' advance notice of the hearing, and the hearing record was held open for five days after the hearing. The notice satisfies the State's requirements, but does not satisfy the 30-day period for public comment at 40 CFR 51.4(b). Because these rules were previously subject to hearings subject to the § 51.4 requirements, and the revisions adopted were minor in nature, EPA believes the public hearing requirements have substantially been met. However, EPA believes that an additional 30 days for public comments on this proposed rulemaking is appropriate.

K.A.R. 28–19–7, *Definitions,* is currently a part of the approved SIP. The rule submitted by the KDHE contains minor wording changes made for the purpose of clarity and to be consistent with terms used in the permit fee regulations in K.A.R. 28–19–14. Definitions in 28–19–7 include the terms alter, control device, department, existing, opacity, and the like.

K.A.R. 28–19–8, *Reporting required,* identifies sources of pollutant emissions which must report such emissions to the KDHE. This rule applies to proposed construction, alteration, or operation of a source type as identified in the regulation. Sources of emissions which must report are as follows: (1) One pound per hour or greater of particulate matter; (2) two pounds per hour or more of sulfur oxides; (3) 50 pounds or more of nitrogen oxides in any 24-hour period; (4) 50 pounds or more of carbon monoxide in any 24-hour period; (5) 50 pounds or more of volatile organic compounds in any 24-hour period; (6) any measurable quantity of lead; (7) incinerator emissions except for residential use; and (8) any other air contaminant emission that the KDHE determines may cause or contribute to air pollution in the State of Kansas. This rule provides wide latitude for the State to obtain emissions data. Construction is prohibited until KDHE determines a permit is not needed or KDHE issues a permit under 28–19–14, *Permits required.*

K.A.R. 28–19–9, *Time schedule for compliance,* is currently a part of the applicable SIP for Kansas. This rule requires that new or altered sources be in compliance with applicable emission limits prior to start-up, but allows the State to extend a final compliance date. The revision submitted by the KDHE removes an exemption that allowed sources under construction prior to January 1, 1971, to operate without an operating permit. The operating permit portion of the regulation is not part of the Kansas SIP. However, the portion of the regulation which requires previously exempt sources to pay a fee to obtain an operating permit is proposed to be approved.

K.A.R. 28–19–14, *Permits required,* subjects all sources of criteria pollutants at or above a minimum emission limit to the requirement that they obtain a permit to construct, alter, or operate. Sources of 10 tons per year or more of particulate matter, sulfur oxides, carbon monoxide, and volatile organic compounds must obtain construction or operating permits. Nitrogen oxide sources with a potential to emit 50 tons or more per year must obtain a permit to construct, alter, or operate. A lead source of any amount of emissions must obtain a permit to construct, alter, and/or operate. Sources of any emissions required to report under provisions of 28–19–8 must also obtain a permit to construct, alter, and/or operate.

K.A.R. 28–19–14a establishes a permit fee cost for new and existing sources. Permit fees must accompany an application if the application is to be processed. This regulation establishes minimum and maximum fees. K.A.R. 28–19–14b identifies the source types subject to the permit fee. Certain sources are exempted from the fee, but all sources must obtain permits.

EPA believes these rules satsify the intent of section 110(a)(2)(K) of the Clean Air Act and are consistent with the EPA Fee Guideline document EPA–450/2–81–003, September 1981.

K.A.R. 28–19–31, *Emission limitations,* concerns emissions limits for indirect-fired heating equipment with respect to total suspended particulate matter (TSP), sulfur, and nitrogen oxides. This rule is currently part of the approved Kansas SIP. The State's submittal contains minor wording changes intended to provide clarity. The revisions do not strengthen or relax the rule in the applicable SIP.

K.A.R. 28–19–45, *Open burning prohibited,* is part of the applicable SIP. The State's submittal contains minor wording revisions which do not affect the rule's stringency. This rule prohibits open burning of waste, salvage by open burning, and open burning of structures.

Proposed Action

EPA proposes to approve K.A.R. 28–19–7, *Definitions;* K.A.R. 28–19–8, *Reporting required;* K.A.R. 28–19–9, *Time schedule for compliance;* K.A.R. 28–19–14, *Permits required;* K.A.R. 28–19–14a, *Construction or alteration permit fees;* K.A.R. 28–19–14b, *Operating permit fees;* and K.A.R. 28–19–31, *Emission limitations;* and K.A.R. 28–19–45, *Open burning prohibited.* EPA solicits public comments on this proposed rule.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Authority: 42 U.S.C. 7401–7642.

Dated: July 25, 1986.
Morris Kay,
Regional Administrator.

Note—This document was received at the Office of the Federal Register on February 19, 1987.
[FR Doc. 87–3833 Filed 2–24–87; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Part 52

[A–7–FRL–3160–6]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: On March 27, 1986, the Kansas Department of Health and Environment (KDHE) submitted revised regulations pertaining to construction permits for sources to be located in nonattainment areas and attainment areas. K.A.R. 28–19–16, *New source permit requirements for designated nonattainment areas; and K.A.R. 28–19–17, New source permit requirements for designated attainment and unclassified areas,* were adopted by the State after a public hearing on November 22, 1985.

Today, EPA proposes to approve these revised rules.

DATES: Public comments should be received by April 27, 1987.

ADDRESSES: Comments should be sent to Robert J. Chanslor, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. The state submission is available for public inspection during normal business hours at the above address and at the Kansas Department of Health and Environment, Forbes Field, Topeka, Kansas 66620.

FOR FURTHER INFORMATION CONTACT: Daniel J. Wheeler at (913) 236–2893 or FTS 757–2893.

SUPPLEMENTARY INFORMATION: The KDHE adopted K.A.R. 28–19–16 through 28–19–16m to satisfy the preconstruction review requirements of section 172(b)(6) of the Clean Air Act, as amended. EPA approved these regulations as part of the applicable State Implementation Plan (SIP) on October 22, 1981 (46 FR 51743). The KDHE adopted revisions to K.A.R. 28–19–16, 28–19–16b, 28–19–16d, 28–19–16g, 28–19–16i, and 28–19–16l after a public hearing on November 22, 1985. These regulations are applicable in nonattainment areas of the State.

K.A.R. 28–19–16 identifies the applicability of these regulations. K.A.R. 28–19–16b has been revised to delete the time limit required for KDHE to act on a permit application. Other changes in 28–19–16b have been made for clarity and style. K.A.R. 28–19–16d contains minor revisions which do not materially affect its stringency. This rule remains consistent with 40 CFR 51.165(a) (§ 51.18(j)(4)).

K.A.R. 28–19–16g prohibits issuance of permits in nonattainment areas if emissions from such sources would prevent attainment or maintenance of a national ambient air quality standard. This rule further requires that the application demonstrate reasonable further progress toward attainment of an applicable air quality standard. The revisions adopted by the state are minor wording changes which do not affect the stringency of the regulation. This rule remains consistent with section 173 of the Clean Air Act, as amended.

K.A.R. 28–19–16i requires a new or modified source to operate within the requirements of its permit. The revisions adopted by the KDHE are minor wording changes which do not affect its stringency.

K.A.R. 28–19–16l states that each permit shall become void if construction is not commenced within 18 months or if construction is discontinued for 18 months or more. The wording changes adopted by the State do not affect the stringency of the regulation. This regulation is consistent with the requirements of 40 CFR 52.21(i)(4).

The Kansas regulations which govern permits to construct or modify emission sources in attainment or unclassified areas are contained in K.A.R. 28–19–17 through 28–19–17l. These rules represent the state's prevention of significant deterioriation (PSD) regulations. These rules were approved, with certain exceptions, as part of the applicable Kansas SIP on December 11, 1984 (49 FR 48185).

The December 11, 1984, rulemaking disapproved K.A.R. 28–19–17l affecting the use of innovative control of technology because it did not provide for consultation with governors of affected adjacent States. The revisions submitted by the KDHE delete K.A.R. 28–19–17l; thus, those seeking to use innovative control technology in Kansas would continue to seek permits from EPA. The effect of the State regulatory change is to recognize the requirements of the SIP as approved by EPA in the December 11, 1984, rulemaking.

In the rulemaking at 49 FR 48186 (December 11, 1984), EPA retained the 40 CFR 52.21(h) good engineering practice (GEP) stack height authority promulgated as part of the Kansas SIP at 40 CFR 52.884 until such time that the State adopts acceptable stack height regulations. The rationale was that the Kansas general stack height regulations at K.A.R. 28–19–18 et seq. contained exemptions inconsistent with the EPA stack height requirement in the PSD regulations at 40 CFR 52.21(h). EPA took no action on the Kansas stack height regulations in the December 11, 1984, rulemaking. That rulemaking delayed action on the Kansas stack height regulations until EPA revised its general stack height regulation as required by Sierra Club and NRDC v. EPA, 719 F 2d 436 (D.C. Cir., 1983).

EPA's revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878) and finalized on July 8, 1985 (50 FR 27892). Pursuant to the requirements of the Act, the State revised its stack height regulations to be consistent with EPA's revised stack height regulations. The State also performed the required stack analysis to determine whether emission limitations had been set using stack heights or any other dispersion techniques. This revision was submitted to EPA as a SIP revision on March 27, 1986. The Kansas stack height rules at K.A.R. 28–19–18 et. seq. will be addressed in a separate proposed rulemaking in the **Federal Register** at a later date.

Because a GEP stack height analysis is an integral part of the PSD permitting

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process, EPA will delay final action on the revised Kansas PSD rules until the State's stack height rules are approved.

The revised Kansas PSD regulations submitted by the KDHE are contained in K.A.R. 28–19–17, 28–19–17a, and 28–19–17b. These revised PSD regulations were submitted to EPA on March 27, 1986. The intent of the revisions was to correct the deficiencies cited in the December 11, 1984, rulemaking (49 FR 48185) insofar as possible. The deficiency which relates to vessel activities will be corrected after EPA revises the definition of "building, structure, facility, or installation" to satisfy the Circuit Court decision cited in that rulemaking.

EPA's review of the Kansas PSD regulations revisions finds a deficiency still remains in K.A.R. 28–19–17(c). This subsection is deficient in that it does not clearly prevent the use of decreases in netting calculations previously relied upon by EPA for PSD permits. The KDHE has since submitted a draft revision which EPA believes should correct this deficiency when adopted and submitted as a final rule. The State intends to submit the correction in early 1987. In the interim, EPA believes that the existing rule can be interpreted in a manner which allows the State to disregard emission decreases relied upon by EPA in the issuance of PSD permits.

K.A.R. 28–19–17a, *Definitions*, is revised to correctly attribute the PSD area classifications (Class I, Class II, and Class III) to the Clean Air Act, as amended. This regulation is approvable.

K.A.R. 28–19–17b, *Permit required*, contains minor wording changes which do not affect the rule's stringency. However, the time required for action on permit applications is deleted. Thus, the State has sufficient time to review applications and de factor permits cannot be obtained merely because the State has failed to act within a specified time.

The State's revised new source rules for nonattainment areas and attainment or unclassified areas were adopted after a public hearing held on November 22, 1985. Included with the submittal is a hearing officer's report and an annoucement that was published in the *Kansas Register*. The public hearing satisfied part of the requirements in 40 CFR 51.102; however, the record shows that only 15 days' advance public notice was provided and that the hearing record was held open for an additional 5 days. Thus, only 20 days were available for public comment.

The new source review rules for nonattainment areas (K.A.R. 28–19–16 et seq.) that EPA approved on October 22, 1981 (46 FR 51743) were adopted after adequate notice and public hearing. The revisions adopted by the State after the November 22, 1985, hearing are primarily minor wording changes made after clarification and style. Additionally, these rules were subjected to review by the State legislative review committee. For these reasons, EPA believes the public notification and hearing requirements have substantially been met. A similar situation exists regarding the Kansas PSD regulation revisions.

In the case of the PSD revisions, the State was attempting to correct deficiencies identified in EPA's rulemaking of December 11, 1984. Thus the State had limited discretion in the changes which could be made during the public participation process. For these reasons, EPA believes the public notice requirements of 40 CFR 51.102 requiring that the State give 30 days' notice were substantially met.

Proposed Action

EPA proposes to approve the revisions to K.A.R. 28–19–16, 28–19–16b, 28–19–16d, 28–19–16g, 28–19–16l, and 28–19–161 as they apply to new source review in nonattainment areas.

EPA proposes to approve the State's revisions to K.A.R. 28–19–17 et seq. except as noted below.

For the reasons stated above, final action on these revisions will be delayed until final action is taken on the revised Kansas stack height regulations.

EPA proposes to disapprove the revision in K.A.R. 28–19–17(c) which defines Administrator to mean either the Administrator of EPA or Secretary of the Kansas Department of Health and Environment.

EPA proposes to approve the revisions in K.A.R. 28–19–17a.

EPA proposes to approve the revisions in K.A.R. 28–19–17b.

EPA is soliciting comments on the State's submission and on the proposed approval of these regulations as a revision to the Kansas SIP. The Administrator's decision to approve or disapprove this submission will be based upon the comments received and on whether the SIP revisions meet the requirements of the Clean Air Act, as amended, and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur Oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Authority: 42 U.S.C. 7401–7642.

Dated: August 28, 1986.

Morris Kay,

Regional Administrator.

Note.—This document was received at the Office of the **Federal Register** on February 19, 1987.

[FR Doc. 87–3834 Filed 2–24–87; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 81

[A–5–FRL–3160–3]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: On December 6, 1985, the State of Ohio requested that Franklin County be redesignated from nonattainment to attainment for the Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS). Additional technical support was submitted by the State on March 4, 1986.

Additionally, on November 20, 1985, the State of Ohio requested that Hamilton County be redesignated from nonattainment to attainment for the CO NAAQS. Supplemental technical information was submitted by the State on March 4, 1986, and March 19, 1986. USEPA has reviewed this technical information and determined that it satisfies USEPA's redesignation policy. Therefore USEPA proposes to approve the redesignation requests for Franklin and Hamilton Counties for CO.

DATE: Comments on this redesignation request and on the proposed USEPA action must be received by March 27, 1987.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 S. Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, (312) 886–6036.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the Clean Air Act (Act), the Administrator of USEPA has promulgated the NAAQS attainment status for each area of every State. See 43 FR 8962 (March 3, 1978) and 40 CFR Part 81. These area designations may be revised whenever the data warrant.

The primary NAAQS for CO is violated if, more than once in a calendar year, maximum CO concentrations exceed either: (1) The maximum allowable 8-hour concentration of 9 parts per million (9 ppm), (35 ppm), or (2) the maximum allowable 1-hour concentration of 35 ppm.

USEPA's criteria for a supportable redesignation request, as they pertain to CO, are discussed in the following USEPA memoranda:

1. June 12, 1979, from Richard G. Rhoads to the Director of Air and Hazardous Materials Divisions, Regions I–X, Subject: "Section 107 Redesignation Criteria."
2. April 21, 1983, from Sheldon Meyers to Directors of Air Management Divisions, Region I–X, Subject: "Section 107 Designation Summary Policy."
3. December 23, 1983, from G.T. Helms to Chiefs of Air Programs Branches, Regions I–X, Subject: "Section 107 Questions and Answers."

The USPA policy relevant to CO redesignations is summarized as follows:

1. The most recent 2 years (8 consecutive quarters) of quality assured, representative air quality data are to be considered for each monitoring site.
2. Evidence must be provided to show that a control strategy fully approved by USEPA has been implemented. The monitored air quality improvement must be related to the emissions impacts of the implemented control strategy.
3. Supplemental data, such as air quality modeling data, emissions data, etc., should be used to determine whether or not the monitoring data characterize the worst-case air quality in the air.
4. An entire urban core area should be designated as nonattainment if standard violations or the potential for such standard violations exist in the core area.

Franklin County (Columbus)

On March 3, 1978 (43 FR 9026), USEPA designated all of Franklin County (Columbus) as nonattainment for CO. On December 6, 1985, the State of Ohio submitted redesignation request to USEPA requesting that Franklin County be redesignated from nonattainment to attainment for CO. Additional technical support was submitted by the State on March 4, 1986.

Air Quality Data

According to the State submittal, CO was monitored at three sites in Franklin County during the period January 1982 through September 1985. The three sites are: 1313 Chesapeake (Columbus); 1585 Morse Road; and 280 E. Broad Street (Columbus). None of these sites has recorded a CO Standard violation since 1982. Two of the three monitoring sites in Franklin County are in areas where relatively high CO concentrations might be expected. One monitor, which is located at 280 East Broad Street, is in the Central Business District (CBD) of Columbus. The high traffic density in the CBD coupled with low vehicle speeds in this area should produce relatively high CO concentrations locally. The intersection nearest the monitor carries an average daily traffic (ADT) level of approximately 30,000 vehicles, with the majority of the traffic being on Broad Street immediately in front of the monitor. Because the annual second-high CO concentrations at the 280 East Broad Street site have been well below the 8-hour standard since 1982 and because Broad Street is one of the heaviest travelled streets in the CBD, it has been determined that one of the intersections in the CBD are likely to experience violations of the CO NAAQS.

The second monitor of possible concern is located at 1585 Morse Road, which is located outside of the CBD. The nearest intersection to this site carriers a high ADT of 59,000 vehicles per day, with vehicle speeds between 35 and 40 miles per hour. This site has not had monitored violations of the CO NAAQS in the last 3 years despite its location near a high traffic area.

SIP Attainment Demonstration

The State of Ohio's 1979 SIP noted that the 1975 Franklin County CO emission total was estimated to be 266,735 tons/year. The SIP committed to reduce this total to 211,788 tons/year by the end of the 1982 as the result of the Federal Motor Vehicle Emissions Control Program (FMVECP) and the implementation of Transportation Control Measures (TCMs). The March 4, 1985, submittal contains estimates of 1984 CO emissions and an updated Reasonable Further Progress (RFP) report. The supplemental submittal shows that the SIP emission reduction committment was actually exceeded. The actual Franklin County CO emissions for 1982 were estimated to be 150,347 tons/year. Additional TCM based CO emission reductions occurred in 1985.

The March 4, 1986, submittal lists the TCMs that were implemented after 1979 and the CO emission reduction achieved from each measure. These TCMs were: Mass transit improvements; ridesharing programs; signalization improvements; and roadway/traffic flow improvements. Between 1980 and 1982, TCM's achieved an estimated CO emission reduction of 7,031 tons/year. An additional estimated CO emission reduction of 3,982 tons/year was achieved between 1982 and the end of 1985. The observed air quality improvements can be explained to be the result of the implemented TCM's and the FMVECP. Since the TCM's and the FMVECP will continue to reduce CO emissions in the future and a substantial growth margin (i.e., emission reductions in excess of that minimally necessary to assure attainment of the NAAQS) in county CO emissions has occurred, it is expected that the attainment of the CO NAAQS will be maintained at the monitoring sites.

Conclusion

USEPA has reviewed both the December 6, 1985, and March 4, 1986, submittals, and has determined that the monitored improvement in CO concentrations to below-standard levels can be explained in terms of permanent, enforceable control measures. In addition, USEPA has concluded that the peak monitored CO concentrations are representative of the worst-case concentrations in Franklin County. Because, there are no violations of the 8-hour and 1-hour standard which have been monitored in the most recent 2 years for each site and the SIP has been implemented, USEPA has determined that a redesignation of Franklin County, Ohio to attainment for CO is acceptable. Therefore, USEPA proposes approval of the redesignation of Franklin County to attainment for CO.

Hamilton County (Cincinnati)

On March 3, 1978 (43 FR 9026), USEPA designated Hamilton County (Cincinnati) as nonattainment for CO. On November 20, 1985, the State of Ohio submitted a redesignation request to USEPA requesting that Hamilton County be redesignated from nonattainment to attainment for CO. Additional technical support was submitted by the State on March 4, 1986, and March 19, 1986.

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Air Quality Data

According to the State submittal, CO was monitored at five sites in Hamilton during the period of January 1982 through August 1985. These sites are: 1675 Gest Street (1982 data only) (sites are in Cincinnati unless otherwise noted); Fifth and Walnut; Vine and St. Clair; 6950 Ripple Road; and 3001 Harris in Norwood. The 1982 CO SIP revision noted that of the five CO monitors operating during the 1979–1981 period (the base period of the SIP revision), only one monitor, located at the intersection of Vine and St. Clair, recorded a violation of the CO NAAQS with two monitored 8–hour exceedances (11.1 ppm and 9.6 ppm). The State determined after analyzing the emissions in the vicinity of the monitor, that the monitored concentrations at this site were reflective of the impacts of mobile source CO emissions from two relatively small traffic zones surrounding the monitor. In particular, the SIP noted that traffic levels are high along both Vine and St. Clair Avenues.

The Cincinnati CO SIP revision and the November 20, 1985, redesignation request do not address the representativeness of the monitoring sites in terms of monitoring the worst-case CO concentrations that may actually have occurred in Hamilton County. USEPA requested supplemental ADT data. These data were submitted by the State on March 19, 1986.

The Vine and St. Clair monitor is located adjacent to St. Clair Avenue, which has an ADT of 23,000 vehicles per day, and 91 meters east (generally downwind of the monitor) Vine Street which has an ADT of 28,000 vehicles per day. Both roadways have low to moderate vehicle speeds of 30 miles per hour or less (low vehicle speeds result in higher per vehicle CO emission rates). The 51,000 vehicles per day passing along Vine Street or St. Clair Avenue are the likely source of the pre-1982 CO standard exceedances monitored at this site. No exceedances of the standard have been recorded at this site since 1982.

The Fifth and Walnut monitor is located near the center of the CBD of Cincinnati. Although each roadway carries a lower ADT (approximately 10,000) in the CBD, the area density ADT is relatively high in the tighter grid of streets to be found in the CBD. This grid extends from 2nd Street on the south to 10th Street on the north and from Central Avenue on the west to Boardway on the east. All streets in this CBD grid carry approximately 10,000 ADT or more. Vehicle speeds in this area are low, 25 miles per hour or less, resulting in high per vehicle emission rates. In addition, in excess of 70,000 ADT pass along I–71 on the CBD's southern and eastern edges and in excess of 70,000 ADT pass along I–75 near the CBD's western edge. All of these factors have the potential of producing relatively high CO concentrations in the CBD. No exceedances of the standard have been monitored at this site since 1982.

With the exception of the Western Hills Viaduct/Beekman Avenue intersection, all other intersections with ADTs equal to or greater than the ADT at Vine/St. Clair are located significantly farther from downtown Cincinnati than the Vine/St. Clair intersection. These intersections may have higher average vehicle speeds than the Vine/St. Clair intersection and, thus, lower CO emission rates and lower CO concentrations. In addition, these intersections should have lower background CO concentrations due to lower area densities of vehicles.

The only other intersection of concern in this analysis is the intersection of Western Hills Viaduct and Beekman Avenue. This intersection has an ADT very similar to that of Vine and St. Clair. It has a relatively similar location to downtown Cincinnati. Lacking other data, USEPA has concluded that it has CO concentrations similar to those at Vine and St. Clair, and is, therefore, currently below the standard.

SIP Attainment Demonstration

Although the redesignation request itself contains no documentation demonstrating that the monitored attainment of the CO standard is due to implementation of permanent, enforceable control measures, USEPA has recently completed final rulemaking (49 FR 6724) approving a 1982 Cincinnati CO SIP revision which does document the impact of such control measure implementation.

The demonstration of attainment contained in the SIP was based entirely on the projected impact of the FMVECP and demonstrated attainment of the CO NAAQS by December 31, 1982. The SIP revision notes that other TCMs, such as the installation of metered parking and enhanced bus services will be implemented in the vicinity of the worst-case monitor. The SIP, however, does not address the emission impact of these additional control measures. These measures would act to further increase the demonstrated margin of attainment.

The approved demonstration of attainment is verified by the air quality data. Because, the demonstration of attainment was based entirely on the projected impacts of the FMVECP and this control program has been implemented and continues to be implemented, it is concluded that the observed air quality improvement can be explained in terms of the SIP's attainment demonstrated control program. The post-1982 implementation of additional TCM's as well as the continued implementation of the FMVECP should act to maintain attainment of the CO NAAQS at the monitoring sites.

Conclusion

USEPA has concluded that the monitored improvements in CO concentrations to below-standard levels in Hamilton County can be explained in terms of permanent, enforceable control measures. USEPA has also concluded that the peak monitored concentrations are reasonably representative of the worst-case concentrations in the Cincinnati area. Since no violations of the standard have been monitored in the most recent 2 years of data for each site, USEPA has determined that a redesignation of Hamilton County, Ohio to attainment for CO is acceptable. Therefore, USEPA proposes approval of the redesignation of Hamilton County to attainment for CO.

All interested persons are invited to submit written comments on the proposed redesignation. Written comments received by the date specified above will be considered in determining whether USEPA will approve the redesignation. After review of all comments submitted, the Administrator of USEPA will publish in the **Federal Register** the Agency's final action on the redesignation.

Under 5 U.S.C. section 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401–7642.

Dated: September 30, 1986.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 87–3839 Filed 2–24–87; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81–11; Notice 21]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes a technical amendment which, in effect, would permit aiming pad configurations specified for sealed beam headlamps with circular lenses to be used on replaceable bulb headlamps. The notice implements the grant of a rulemaking petition filed by BMW of North America, Inc.

DATES: Comment closing date for the proposal is April 13, 1987. Effective date of the amendment would be 30 days after publication of the final rule in the **Federal Register**.

ADDRESS: Comments should refer to the docket number and notice number and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 8 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Rulemaking, NHTSA, Washington, DC 20590 (202–366–5276).

SUPPLEMENTARY INFORMATION: BMW of North America, Inc., has filed a petition for rulemaking to amend Motor Vehicle Safety Standard No. 108, to clarify that replaceable bulb headlamp systems may incorporate aiming pad configurations identical to those required on sealed-beam headlamps with circular lenses. The petitioner wishes to introduce a replaceable bulb headlamp shortly with a circular lens whose diameter is equal to that of a 5¾ inch sealed beam headlamp. However, it is impossible for BMW's new headlamp to meet the aiming pad configurations specified by Figure 4 of Standard No. 108 for replaceable bulb headlamps, though it can meet those specified for sealed beam headlamps with a lens diameter of 5¾ inches. It therefore petitioned NHTSA for an alternative to Figure 4 which would allow replaceable bulb lamp lenses to "be designed so that the lamp may be inspected and aimed by mechanical aimers as specified in SAE J602 October 1980, without the removal of any ornamental trim rings or other parts."

In amending Standard No. 108 to allow use of replaceable bulb headlamps with the attendant styling freedom, NHTSA did not deem it likely that a manufacturer would wish to introduce such a lamp with a size identical to one of the four then permitted. Thus, the petitioner is correct in concluding that the apparent exclusion of replaceable bulb headlamp systems from sealed beam aiming pad location requirements was inadvertent. Therefore, NHTSA has granted BMW's petition. It is proposing an amendment of paragraph S4.1.1.36(a)(2) that would allow replaceable bulb headlamps the option incorporating aiming pads as specified for 7-inch, or 5¾-inch diameter sealed beam headlamps as specified in SAE Standard J571d, and that would require such headlamps to be designed so that they could be inspected and aimed by mechanical aimers as specified in SAE Standard J602. This is necessary because the universal adaptor used on other types of replaceable bulb headlamps are not designed for use on headlamps of the sizes covered by SAE J571d. The agency is considering the advisability of requiring headlamps on which the universal adaptor cannot be used to bear permanent identification of the type adaptor for which it is designed, and whether such an adaptor has been provided with the vehicle. The identification could be in the form of a label, or permanently marked upon the housing, but they would have to be visible as installed on the headlamp. The agency is also considering the advisability of placing this information in the operator's manual. NHTSA requests commenters on the proposed amendment to comment also on the necessity for the provision of information as discussed in this paragraph.

NHTSA has considered this proposal and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation" or significant under Department of Transportation regulatory policies and procedures, and that neither a regulatory impact analysis nor a regulatory evaluation is required. Since an amendment of the nature proposed would relieve a restriction, the proposal would not impose additional requirements or costs but would permit manufacturers greater flexibility in the design and use of headlighting systems. The price of new headlamps would not be affected.

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. The proposal will have no effect upon the human environment since it would result in no change in the weight and quantity of materials used in the manufacture of headlamps. The agency has also considered this proposal in relation to the Regulatory Flexibility Act. I certify that this proposal would not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and headlamps, those affected by the proposal, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Finally, small organizations and governmental jurisdictions would not be significantly affected as there will be no impact on the price of new vehicles or headlamps.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21.) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. (49 CFR Part 512.)

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

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Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Because of the necessity of the petitioner to plan production, importation, and distribution on an orderly basis, it is tentatively found that an effective date earlier than 180 days after issuance of the final rule would be in the public interest. The engineer and lawyer primarily responsible for this proposal are Jere Medlin and Taylor Vinson, respectively.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR Part 571 be amended as follows:

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50 and 501.8

§ 571.108 [Amended]

2. In § 571.108, subparagraph (a)(2) of Paragraph S4.1.1.36 would be revised to read to read as follows:

S4.1.1.36

* * * * *

(a) * * *

(2) The exterior face of the lens of each replaceable bulb headlamp shall have three pads which meet the requirements of either Figure 4, *Dimensional Specifications for Location of Aiming Pads on Replaceable Bulb Headlamp Units*, or SAE Standard J571d *Dimensional Specifications for Sealed Beam Headlamp Units*, June 1976, as specified for a headlamp with a diameter of 5¾ inches or 7 inches. Except as provided in subparagraph (a)(3), a whole number which represents the distance in tenths of an inch (i.e., 0.3 inch=3) from the aiming reference plane to the respective aiming pads which are not in contact with that plane, shall be inscribed adjacent to each respective aiming pad on the lens of a headlamp whose pads meet the requirements of Figure 4. The height of these numbers shall not be less than .157 inch (4mm). If there is interference between the plane and the area of the lens between the aiming pads, the whole number will represent the distance to a secondary plane. The secondary plane shall be located parallel to the aiming reference plane and as close as possible to the lens without causing interference. A headlamp whose aiming pads meet the requirements specified in SAE J571d for a headlamp with a diameter of 5¾ inches or 7 inches shall be designed so that it may be inspected and aimed by a mechanical aimer as specified in SAE Standard J602c *Headlamp Aiming Device for Mechanically Aimable Sealed Beam Headlamp Units*, Dec. 1974, without the removal of any ornamental trim rings or other parts.

* * * * *

Issued on February 18, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87–3846 Filed 2–24–87; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 640

Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan amendment and request for comments.

SUMMARY: NOAA issues this notice that the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils) have submitted Amendment 1 to the Fishery Management Plan for Spiny Lobster in the Gulf of Mexico and South Atlantic (FMP) for review by the Secretary of Commerce. Comments are invited from the public on the amendment and any other documents made available.

DATE: Comments will be accepted until Saturday, April 18, 1987.

ADDRESSES: Comments should be sent to Craig R. O'Connor, Acting Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Copies of Amendment 1, the Environmental Assessment, and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis are available from the South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407–4699; and the Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen (Regional Plan Coordinator), 813–893–3722.

SUPPLEMENTARY INFORMATION: Amendment 1 to the FMP was prepared under the Magnuson Fishery Conservation and Management Act (Act). The Act also requires that the Secretary of Commerce (Secretary), upon receiving an FMP or amendment, must immediately publish a notice that the FMP or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve this Amendment.

This amendment proposes measures to prevent overfishing of the spiny and slipper lobster stocks in the exclusive economic zone in the Gulf of Mexico and South Atlantic, to rebuild and maintain the stock at a maximum sustainable yield level through protection of undersized lobsters, and provide for more consistent State and Federal management measures. On January 23, 1981 (46 FR 7433), the Environmental Protection Agency published a notice of availability of a draft environmental impact statement for the FMP.

Proposed regulations for this amendment will be published within 15 days.

(16 U.S.C. 1801 *et seq.*)

Dated: February 19, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87–3882 Filed 2–19–87; 4:24 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 52, No. 36–37
Wednesday, February 25, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Rulemaking; Meeting

ACTION: Committee on Rulemaking; Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Rulemaking of the Administrative Conference of the United States. The committee has scheduled this meeting to consider (a) the Administrative Conference study of OSHA rulemaking procedures and (b) future projects.

DATE: Friday, March 13, 1987, at 9:45 a.m.

Location: Library of the Administrative Conference, 2120 L Street, NW., Suite 500 Washington, DC.

Public Participation: The committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Michael W. Bowers Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7065.

Dated: February 19, 1986.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 87–3824 Filed 2–24–87; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Office of International Cooperation and Development

Partial Funding Support for Collaborative International Agricultural Research; University of Georgia; Intent To Enter Cooperative Agreement

AGENCY: Office of International Cooperation and Development (OICD).

ACTION: Notice of intent.

ACTIVITY: OICD intends to enter into a Cooperative Agreement with the University of Georgia to provide partial funding support for collaborative international agricultural research.

Authority: Sec. 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD anticipates the availability of funds during fiscal year 1987 (FY1987) to enter into a cooperative agreement with the University of Georgia to collaborate in international research on "Development and Strategies for Marketing Peanut-Based Spreads and Fermented Products." Funds would be available to the University of Georgia to conduct collaborative research with the University of the Philippines. Assitance will be provided only to the University of Georgia, which is contributing resources and experience to conduct the research. Funds provided by OICD will be used for Research Assistants, supplies, travel and computer time. The University of the Philippines will support their portion of the research.

Based on the above, this is not a formal request for application. An estimated $20,000 will be available in FY1987 to support this work. It is anticipated that this cooperative research effort will be funded over a 36-month budget period, with total funding support in the amount of $43,200, subject to availability of federally appropriated funds in future fiscal years.

Information may be obtained from: Nancy J. Croft, Contracting Officer, Management Services Branch, Office of International Cooperation and Development, U.S. Department of Agriculture (58–319R–7–013).

Dated: February 19, 1987.

Allen Wilder,

Contracting Officer.

[FR Doc. 87–3899 Filed 2–24–87; 8:45 am]

BILLING CODE 3410-DF-M

Intent To Enter Cooperative Agreement; Partial Funding Support for Collaborative International Agricultural Research; University of Wyoming

AGENCY: Office of International Cooperation and Development (OICD).

ACTION: Notice of intent.

ACTIVITY: OICD intends to enter into a Cooperative Agreement with the University of Wyoming to provide partial funding support for collaborative international agricultural research.

Authority: Sec. 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD anticipates the availability of funds during fiscal year 1987 (FY1987) to enter into a cooperative agreement with the University of Wyoming to collaborate in international research on "Identification of That Region in the Protoxin Genes of the Lepidopteran Killing *Bacillus thuringiensis* Subspecies Which Dictates Insect Host Range Specificity." Funds would be available to the University of Wyoming to conduct collaborative research with China's Shanghai Institute of Plant Physiology at the Academia Sinica. Assistance will be provided only to the University of Wyoming, which is contributing resources and experience to conduct the research. Funds provided by OICD will be used to supplement costs for a research associate. China's Academia Sinica will support their portion of the research.

Based on the above, this is not a formal request for application. An estimated $20,000 will be available in FY1987 to support this work. It is anticipated that this cooperative research effort will be funded over a 36-month budget period, with total funding support in the amount of $60,000, subject to availability of federally appropriated funds in future fiscal years.

Information may be obtained from: Nancy J. Croft, Contracting Officer, Management Services Branch, Office of

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International Cooperation and Development, U.S. Department of Agriculture, (58–319R–7–014).

Dated: February 19, 1987.

Allen Wilder,

Contracting Officer.

[FR Doc. 87–3898 Filed 2–24–87; 8:45 am]

BILLING CODE 3410–DP–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Coastal Zone Management Programs; Intent To Evaluate

AGENCY: National Ocean Service, Office of Ocean and Coastal Resource Management, NOAA, Commerce.

ACTION: Notice of intent to evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), announces its intent to evaluate the performance of the Massachusetts Coastal Management Program (CMP); California CMP; Pennsylvania CMP; New Hampshire CMP; South Carolina CMP; Rhode Island CMP; Florida CMP; and Georgia's Sapelo Island National Estuarine Research Reserve; through June 30, 1987. The reviews of coastal management programs will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) which requires a continuing review of the performance of coastal states with respect to coastal management, including detailed findings concerning the extent to which the state has implemented and enforced the program approved by the Secretary of Commerce, addressed the coastal management needs identified in section 303(2)(A) through (I) of the CZMA, and adhered to the terms of any grant, loan or cooperative agreement funded under CZMA. The review of the National Estuarine Research Reserve is conducted pursuant to section 315(f) of the CZMA, as amended by Pub. L. 99–272, which requires the Secretary of Commerce to evaluate periodically the operation and management of each Reserve, including education and interpretive activities, and the research being conducted within the reserve. The reviews involve consideration of written submissions, a site visit to the state, and consultations with interested Federal, State and local agencies and members of the public. Public meetings will be held as part of the site visits. The state will issue notice of these meetings. Copies of each state's most recent performance report, as well as the OCRM's notification letter and supplemental information request letter to the state are available upon request from the OCRM. Written comments from all interested parties on each of those programs to the contact listed below are encouraged at this time. OCRM will place subsequent notice in the **Federal Register** announcing the availability of the Final Findings based on each evaluation once these are completed.

FOR FURTHER INFORMATION CONTACT: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235 (telephone: 202/673–5104).

(Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration)

Dated: February 17, 1987.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 87–3827 Filed 2–24–87; 8:45 am]

BILLING CODE 3510–08–M

Red Drum Advisory Panel; Gulf of Mexico Fishery Management Council

AGENCY: National Marine Fisheries Servive, NOAA., Commerce.

The Gulf of Mexico Fishery Management Council will convene a public meeting of its Red Drum Advisory Panel, April 9, 1987, at the Landmark Motor Hotel, 2601 Severn Avenue, Metairie, LA, to review the amendment to the Secretarial Red Drum FMP. For further information contact Wayne E. Swingle, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228–2815.

Dated: February 17, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87–3828 Filed 2–24–87; 8:45 am]

BILLING CODE 3510–22–M

Scientific and Statistical Committees; Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committees will convene public meetings (with closed sessions) at the Holiday Inn Riverwalk, 217 North Saint Mary, San Antonio, TX, as follows:

Council

On March 12, from 8:30 a.m. to 5 p.m., will review Scientific and Statistical Committee (SSC) and Advisory Panel (AP) reappointments; discuss travel policies; review the draft amendment and proposed regulations for the Red Drum Fishery Management Plan (FMP) and take action, as well as discuss the reef fish options papers. (Also on March 12 the Council will convene a closed session (not open to the public) from 1 p.m. to 2:30 p.m. to discuss personnel matters). The public meeting will reconvene on March 13 at 8:30 a.m. and adjourn at noon.

Committees

On March 10, the Council's SSC Selection Committee will convene at 9:30 a.m., followed by a meeting of the Council's AP Selection Committee and its Personnel Committee (which will convene a closed session from 1 p.m. to 2:30 p.m. to discuss personnel matters). Subsequently, the Council's Administrative Policy Committee will convene, and adjourn its public meeting at 5 p.m. The Council's Red Drum Management Committee will convene its public meeting on March 11 at 8 a.m. followed by a public meeting of the Council's Reef Fish Management Committee, which will adjourn its meeting at 5 p.m.

For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881 , Tampa, FL 33609; telephone: (813) 228–2815.

Dated: February 17, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87–3829 Filed 2–23–87; 8.45 am]

BILLING CODE 3510–22–M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council, its Scientific and Statistical Committee (SSC) and its Advisory Panel (AP) will convene sepaate public meetings, March 16–20, 1987, at the Hilton Hotel in Anchorage, AK, as follows:

Council

Will convene March 18 at 9 a.m. and continue to March 20 to review proposals for amendments to the Bering Sea/Aleutian Islands and Gulf of Alaska Groundfish Fishery Management

Plans (FMPs), and determine which should be sent for public review. Final decisions on these amendments will be made in May. The Council also will review salmon troll regulations for 1987 and receive a progress report on the revision of the Council's Salmon FMP. Regulations set by the Alaska Board of Fisheries for the 1987 king and Tanner crab fisheries also will be reviewed. The Council may convene an executive session (not open to the public) some time during the meeting to discuss personnel matters and ongoing litigation or foreign affairs.

SSC and AP

Will convene March 16 at 10 a.m. and continue on March 17. The SSC and AP agendas will generally be the same as that of the Council.

Other Council workgroup and plan team meetings also may be convened on short notice during the week. For further information contact Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephne: (907) 274–4563.

Dated: February 17, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 3830 Filed 2–24–87; 8:45 am]

BILLING CODE 3510–22–M

Evaluation of State/Territorial Coastal Management Programs, Coastal Energy Impact Programs and National Estuarine Research

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the Alaska, North Carolina, New Jersey, and Michigan Coastal Management Programs and Oregon's South Slough National Estuarine Research Reserve. Section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) requires a continuing review of the performance of each coastal state with respect to funds authorized under the CZMA and to the implementation of its federally approved Coastal Management Program. Section 315(f) of the CZMA requires a periodic review of the performance of each Reserve with respect to its operation and management. The states evaluated were found to be adhering both to the programmatic terms of their financial assistance awards and/or to their approved coastal management programs; and to be making progress on award tasks, special award conditions, and significant improvement tasks aimed at program implementation and enforcement, as appropriate. Accomplishments in implementing coastal zone management programs were occurring with respect to the national coastal management objectives identified in section 303(2) (A) through (I) of the Coastal Zone Management Act. A copy of the assessment and detailed findings for these programs may be obtained on request from: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235 (telephone: 202/673–5104).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: February 17, 1987

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 87–3826 Filed 2–24–87; 8:45 a.m.]

BILLING CODE 3510–08–M

National Technical Information Service

Intent To Grant Exclusive Parent License; American Home Products Corp.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to American Home Products Corporation, having a place of business at P.O. Box 8299, Philadelphia, PA 19101, an exclusive right in the United States to practice the invention embodied in U.S. Patent 4,571,385, "Genetic Reassortment of Rotaviruses for Production of Vaccines and Vaccine Precursors." The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR Part 404. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted within the above specified sixty-day period and should be addressed to Robert P. Auber, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Specialist, Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 87–3804 Filed 2–24–87; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Cancelling Staged Entry for Certain Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

February 20, 1987

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 24, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On December 30, 1986, a notice was published in the **Federal Register** (51 FR 47041), which, among other things, established staged entry periods for imports of man-made fiber textile products in Category 648, produced or manufactured in the People's Republic of China and exported during the period which began on January 1, 1986 and extends through December 31, 1986. Inasmuch as it has been determined that these staged entry periods are no longer needed, they are being cancelled.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule

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3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 20, 1987.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, I request that, effective on February 24, 1987, you cancel the staged entry periods established in the directive of December 23, 1986 for man-made fiber textile products in Category 648, produced or manufactured in the People's Republic of China.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements

[FR Doc. 87–3998 Filed 2–24–87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Thursday, 26 March 1987.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Harold Summer, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the areas of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

February 19, 1987.

Linda Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 87–3856 Filed 2–24–87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

February 18, 1987.

The meeting of the USAF Scientific Advisory Board Ad Hoc Committee on Space-Based Radar, scheduled for February 26–27, 1987, has been postponed. The Committee will now meet at the Pentagon, Room 5D982, on March 12–13, 1987, from 8:00 A.M. to 5:00 P.M. each day.

The purpose of this meeting is to receive briefings on and to discuss requirements for a space-based radar system. These meetings are being held to prepare Board members to advise senior Air Force personnel on appropriate means of achieving stated requirements.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87–3794 Filed 2–24–87; 8:45 am]

BILLING CODE 3910-01-M

Defense Logistics Agency

Announcement, Formation of a Committee To Study Item Name Policy in the Federal Catalog System

The Defense Logistics Agency Directorate of Technical and Logistics Services announces the formation of the joint Government-Industry Federal Catalog System Item Name Policy Review Committee (INPRC). The purpose of the INPRC is to review and evaluate all policies, practices and procedures of assigning names to items of supply in the Federal Catalog System. The Federal Catalog System provides logistics data to the Governmental logistics community both civil and military. An accurate and complete logistics data base, especially item classification and identification data, is essential for the logistics community to do its job efficiently.

This study will cover all aspects of item naming in the Federal Catalog System including the development of item names selection, usage of item names, and coding of item names. All phases of item development which relate to naming will be reviewed from design through disposal. This review should result in the most efficient methods of item name determination in the earliest possible stage, to the agreement of Government and Industry. The full and complete item descriptions that should result from the improved item naming practices will enhance the acquisition process and help insure price reasonableness and competitiveness.

Any industrial organizations desiring input to the item name process are invited to participate in the work of the committee. Points of contact are Mr. Jack McDevitt, Defense Spares Initiatives Office (202) 695–8361, or Mr. Gregory Shanley, Defense Logistics Agency (202) 274–6491.

George J. Hehemann,

Colonel, USA, Deputy Executive Director, Technical and Logistics Services.

[FR Doc. 87–3805 Filed 2–24–87; 8:45 am]

BILLING CODE 3820-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER87–85–000 et al.]

Electric Rate and Corporate Regulation Filings; Central Maine Power Co. et al.

February 19, 1987.

Take notice that the following filings have been made with the Commission:

1. Central Maine Power Co.

[Docket No. ER87–85–000]

Take notice that Central Maine Power Company ("CMP") on February 13, 1987, tendered for filing an amendment to its previous filing of November 6, 1986 which proposed a rate schedule for transmission service to be provided to Unitil Power Corporation ("Unitil") by CMP.

Under the proposed rate schedule, CMP will provide transmission service to Unitil for up to 31,000 kilowatts per year; payment will be on the basis of a demand charge. Assuming transmission of 26,000 kilowatts during the initial twelve-month period of service ending October 1987, CMP would receive approximately $411,840 in revenues during the first year of service. Copies of the filing have been served on Unitil, the Maine Public Utilities Commission, and the Office of the [Maine] Public Advocate.

Comment date: March 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Central Maine Power Co.

[Docket No. ER87–92–000]

Take notice that Central Maine Power Company ("CMP") on February 13, 1987, tendered for filing an amendment to its previous filing of November 10, 1986 which proposed a rate schedule for transmission service to be provided to Down East Peat, Ltd. ("DEP") by CMP.

Under the proposed rate schedule, beginning on or after December 31, 1988, CMP will provide transmission service to DEP for an initial 12,000 kilowatt block of energy on the basis of a negotiated cost-based demand charge. CMP will also provide transmission service for a second, 11,000 kilowatt block of energy pursuant to a negotiated useage-based charge. Assuming a 75 percent first year plant capacity factor, CMP would receive approximately $282,007 for the initial twelve-month period of service ending December 30, 1989. Copies of the filing have been served on Down East Peat, Ltd., Peat Products of America, Ltd., Peat Products of America, Inc., Down East Peat, L.P., the Maine Public Utilities Commission, and the Office of the [Maine] Public Advocate.

Comment date: March 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Consolidated Edison Co. of New York, Inc.

[Docket No. ER87–254–000]

Take notice that on February 13, 1987, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing a notice of termination of its currently effective Rate Schedule FERC No. 80, as supplemented. The Rate Schedule, dated April 25, 1986 provides for the sale of capacity and energy to Long Island Lighting Company ("LILCO").

The Rate Schedule has been terminated pursuant to its terms.

Con Edison seeks an effective date of January 1, 1987, and therefore requests waiver of the Commission's notice requirements.

A copy of this filing has been served upon LILCO.

Comment date: March 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Gulf States Utilities Co.

[Docket No. ER87–250–000]

Take notice that on February 10, 1987, Gulf States Utilities Company ("Gulf States") tendered for filing a Power Delivery Agreement between it and the City of Welsh, Louisiana. Gulf States indicates that the Agreement for services at the parties' standard rates and terms for such services.

According to Gulf States, a copy of the filing was served upon the Public Utility Commission of Texas, the Louisiana Public Service Commission, and the City of Welsh, Louisiana.

Comment date: March 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Nevada Power Co.

[Docket No. ER87–152–000]

Take notice that on February 13, 1987, Nevada Power Company ("NPC") tendered for filing a Notice of Cancellation of the Power Coordination Agreement between Arizona Public Service Company (APS) and NPC, *FERC Rate Schedule No. 9*, which provides for power coordination with APS.

NPC requests to cancel said Agreement effective January 31, 1987.

Copies of this filing have been served upon APS, the Arizona Corporation Commission, and the Public Service Commission of Nevada.

Comment date: March 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Tampa Electric Co.

[Docket No. ER87–253–000]

Take notice that on February 13, 1987, Tampa Electric Company (Tampa Electric) tendered for filing a Letter Agreement providing for amendments to the existing contract for the sale by Tampa Electric to Florida Power & Light Company (FPL) of capacity and energy from Tampa Electric's Big Bend No. 4 generating unit, designated as Tampa Electric's Rate Schedule FERC No. 25. Tampa Electric states that the Letter agreement modifies the fuel cost and production operation and maintenance expense components of the energy charge formula under the contract, and it intended to make energy sales under the contract more competitive.

Tampa Electric proposes an effective date of February 14, 1987, for the contract modifications, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on FPL and the Florida Public Service Commission.

Comment date: March 5, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriation action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3865 Filed 2–24–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87–92–001 et al.]

Natural Gas Certificate Filings; Texas Eastern Transmission Corp. et al.

Take notice that the following filings have been made with the Commission:

1. Texas Eastern Transmission Corporation; PennEast Gas Services Company

[Docket No. CP87–92–001]

February 17, 1987.

Take notice that on February 9, 1987, Texas Eastern Transmission Corporation (Texas Eastern) and PennEast Gas Service Company (PennEast), jointly referred to as Applicants, Post Office Box 2521, Houston, Texas 77252, filed in Docket

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No. CP87–92–001 an amendment to the joint application in Docket No. CP87–92–000, pursuant to sections 7(b) and 7(c) of the Natural Gas Act, to reflect a modification to the proposed facilities for which authorization to construct and operate was sought in Docket No. CP87–92–000, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicants state that the pipeline facilities for which authorization was requested in Docket No. CP87–92–000 were comprised of 316 miles of new pipeline and 63,000 horsepower (HP) additional compression. Applicants further state that, as part of the Capacity Restoration Program, Texas Eastern sought authorization in the original joint application to construct and operate in 1988, 15.2 miles of 24-inch pipeline extending from its Line No. 20 in Middlesex County, New Jersey, to its Line No. 20–B near its Hanover Compressor Station in Morris County, New Jersey (the Hanover Loop).

Applicants request that the original application be amended as follows:

(1) Delete Texas Eastern's request to construct and operate 15.20 miles of 24-inch pipeline in various counties in New Jersey (the Hanover Loop);

(2) Texas Eastern requests authorization to install and operate up to 16,000 HP turbine centrifugal compressor unit, to upgrade two existing DC–990 turbine units from 4,000 HP to 5,100 HP each; to abandon four 1,100 HP reciprocating compressor units, and modify station piping, at its Lambertville Compressor Station No. 26, located in Hunterdon County, New Jersey.

(3) PennEast requests authorization to include in its rate base those amounts to be reimbursed to Texas Eastern for the proposed Station 26 compression addition.

Applicants state that the direct cost of the proposed facilities is estimated to be $18,130,000. Applicants state that the total capital cost of the Capacity Restoration program would be $524,292,000. It is indicated that Texas Eastern's plan of financing remains unchanged from the original application.

It is indicated that the alternative facilities to the Hanover Loop would provide the same capacity sought by the original joint application. It is further indicated that the 1987 construction and utilization of capacity would remain unchanged. Applicants state that the revision to the proposed facilities by this amendment would provide an environmentally acceptable alternative to the Hanover Loop.

Comment date: March 3, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. East Tennessee Natural Gas Company

[Docket No. CP87–186–000]

February 19, 1987.

Take notice that on January 30, 1987, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 10245, Knoxville, Tennessee 37939–0245, filed in Docket No. CP87–186–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate three delivery points for service to existing distribution customers in Tennessee under the certificate issued in Docket No. CP82–412–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

East Tennessee proposes to establish new delivery points for Marion Natural Gas System in Marion County, Tennessee, to serve a new industrial customer, Resources Limited; for Chattanooga Gas Company in Hamilton County, Tennessee, to serve a new residential subdivision; and for Loudon Utilities in Loudon County, Tennessee, to serve a new residential community.

It is stated that the volumes to be delivered through the proposed delivery points would be within existing entitlements for the three customers. It is asserted that no customers would be adversely affected by the addition of the three delivery points.

Comment date: April 6, 1987, in accordance with Standard Paragraph G at the end of this notice.

3. Mississippi River Transmission Corporation

[Docket No. CP87–192–000]

February 19, 1987.

Take notice that on February 3, 1987, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP87–192–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of an additional natural gas storage facility at MRT's West Unionville Storage Field, located in Lincoln Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MRT proposes the drilling and operation of an additional injection/withdrawal well in its West Unionville storage field and the construction and operation of minor appurtenant facilities to connect the proposed well to the existing storage field gathering system or to its west line. MRT states that the proposed well would increase the overall deliverability of the field, but would not alter the total storage capacity of the field.

MRT estimates the total cost of the proposed construction of the well and related facilities to be $989,500.

Comment date: March 12, 1987, in accordance with Standard Paragraph F at the end of this notice.

4. Texas Eastern Transmission Corporation

[Docket No. CP66–43–001]

February 19, 1987.

Take notice that on February 30, 1987, Texas Eastern Transmission Corporation (Petitioner), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP66–43–001 a petition to amend the order issued April 29, 1966, in Docket No. CP66–43 pursuant to section 7(c) of the Natural Gas Act in order to authorize certain revisions to Petitioner's Rate Schedule SS, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By orders issued on April 29, 1966, and October 30, 1967, in Docket No. CP66–43, Petitioner was authorized to construct and operate certain facilities (including the Staten Island LNG facility) and to provide firm storage service to several customers of Petitioner pursuant to Rate Schedule SS.

It is indicated that on February 10, 1973, the Staten Island facility was severely damaged by fire. It is further indicated that on September 5, 1985, in Docket No. CP85–859–000, Petitioner filed an application requesting authority to abandon the Staten Island LNG facility. Petitioner states that such abandonment of the LNG facility was granted by Commission order issued April 21, 1986.

Petitioner seeks to amend the certificate of public convenience and necessity in Docket No. CP66–43 in order to conform the applicability and character of service under its SS Rate Schedule to that required as a result of the Commission's order authorizing abandonment of the Staten Island LNG facility used in conjunction with the SS service, issued in Docket No. CP85–859–000. Petitioner states that the pro-forma revised tariff sheets, attached as Exhibit P to the application, would clarify that daily deliveries of natural gas under the service would, in addition to

curtailments as a result of force majeure events, also be subject to curtailment or interruption as a result of capacity limitations caused by the destruction and abandonment of the Staten Island LNG facility. Petitioner further states that the revised tariff sheets would provide for curtailment in this eventuality on a pro-rata basis among all customers receiving SS service. Petitioner indicates that the proposed tariff sheets would limit the duration of the effectiveness of the revisions to the period of time elapsing prior to the date on which the capacity lost due to the destruction and abandonment of the LNG facility is restored to the system.

It is explained that on November 24, 1986, Petitioner filed a certificate application in Docket No. CP87–92–000 requesting authorization of its Capacity Restoration Program involving the construction of pipeline facilities which, *inter alia*, would provide capacity to alleviate the peak-day capacity deficiency created by abandonment of the Staten Island LNG facility. Petitioner states that, in the interim, approval of the proposed tariff sheets would allow Petitioner to reflect the operating facts resulting form the destruction and abandonment of the Staten Island LNG facility which is to be effective only until such time as the capacity lost by virture of the LNG facility's destruction is restored.

Comment date: March 12, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Northwest Central Pipeline Corporation

[Docket No. CP87–183–000]

February 19, 1987.

Take notice that on January 29, 1987, Northwest Central Pipeline Corporation [1] (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP87–183–000, as amended February 6, 1987, a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon by reclaim and in place approximately 4.50 miles of 8-inch lateral pipeline and appurtenant facilities in Allen County, Kansas, under the authorization issued in Docket No. CP82–479–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

[1] Northwest Central states that on January 1, 1987, it changed its name to Williams Natural Gas Company and will soon file a petition to effectuate such name change for all Commission dockets.

Northwest Central states that the existing 8-inch lateral pipeline was installed in 1929 and requires extensive maintenance. It is further stated that the 8-inch pipeline would remain in service until construction of a 12-inch replacement line is completed pursuant to § 157.208 of the Commission's Regulations. The cost to reclaim would be $55,000 and the estimated salvage value would be $16,138, it is stated.

Northwest Central states that this change is not prohibited by an existing tariff and it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Comment date: April 6, 1987, in accordance with Standard Paragraph G at the end of this notice.

6. Transcontinental Gas Pipe Line Corporation

[Docket No. CP87–188–000]

February 19, 1987.

Take notice that on January 30, 1987, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP87–188–000 an application pursuant to section 7(b) of the Natural Gas Act for authorization of partial abandonment of certain transportation services to Sun Refining and Marketing Company (Sun), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authority to partially abandon transportation for Sun under an agreement dated February 3, 1970, which is on file with the Commission as Rate Schedule X–11. Specifically, Applicant states that it currently transports up to 60,000 dt equivalent of natural gas per day for Sun on a firm basis and by mutual agreement with Sun wants to reduce this amount to 40,000 dt equivalent of natural gas per day. Applicant presently receives the gas at seven points in Texas, Louisiana, and Mississippi, and delivers it to Sun's Marcus Hook Refinery and its Sun Oil Chemical Company both located in Delaware County, Pennsylvania, and Sun's McComb Field located in Pike County, Mississippi.

Applicant states that Sun's requirements for natural gas at its Marcus Hook Refinery have been permanently reduced due to the shutdown of lubricating oil manufacturing operations and increased production of by-product refinery fuel gas. Applicant also states that the proposed partial abandonment of services would not result in the abandonment of any facilities.

Comment date: March 12, 1987, in accordance with Standard Paragraph F at the end of this notice.

7. Trunkline Gas Company

[Docket No. CP87–181–000]

February 19, 1987.

Take notice that on January 29, 1987, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP87–181–000 an application pursuant to section 7(b) of the natural Gas Act for permission and approval to abandon certain transportation services on behalf of South Jersey Gas Company (South Jersey) all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline proposes to abandon, effective April 16, 1986, the receipt, transportation and redelivery of natural gas for South Jersey authorized by Commission order issued on December 29, 1977, in Docket No. CP77–639, and amended in Docket No. CP77–639–002 on December 14, 1982. Trunkline states that such order authorized Trunkline to receive gas on South Jersey's behalf at a point of interconnection located in South Tomball field in Harris County, Texas, and to transport the gas to a point of interconnection between the facilities of Trunkline and transcontinental Gas Pipe Line Corporation (Transco) near Ragley in Beauregard Parish, Louisiana for ultimate delivery to South Jersey. Trunkline also requests authority to physically abandon the measuring station and appurtenant facilities associated with the proposed abandonment of service at the Harris County, Texas delivery point, and to cancel Rate Schedule T–37 of its FERC Gas Tariff Original Volume No. 2 under which the transportation service referenced herein has been provided.

Comment date: March 12, 1987, in accordance with Standard Paragraph F at the end of this notice.

8. United Gas Pipe Line Company

[Docket No. CP87–197–000]

February 19, 1987.

Take notice that on February 9, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, (United), pursuant to section 7(c) of the Natural Gas Act, as amended, filed in Docket No. CP87–197–000, an abbreviated application for a certificate of public convenience and necessity authorizing interruptible transportation of natural gas for Tennessee Gas Pipe

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Line Company (Tennessee) under the gas transportation agreement between United and Tennessee, dated September 18, 1986, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states, that the agreement provides for Tennessee to cause delivery of up to 250 Mcf of natural gas per day to United at the interconnection of facilities of United and Tennessee in Plaquemines Parish, Louisiana. United also states that it would redeliver an equivalent volume to Tennessee near West Monroe, Ouachita Parish, Louisiana. United indicates that the agreement extends for a period beginning September 18, 1986, and ends June 30, 1991, and for successive one year terms thereafter.

United proposes to charge Tennessee a rate of 26.89 cents for each Mcf delivered to the point of delivery, plus the currently effective Gas Research Institute surcharge. United states that no facilities need be constructed to implement the transportation service.

Comment date: March 12, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3866 Filed 2–24–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF87–264–000]

County of Kent, Michigan; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

February 19, 1987.

On February 17, 1986, County of Kent, Michigan (Applicant), of 1500 Scribner, NW., Grand Rapids, Michigan 49504 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in the City of Grand Rapids, Michigan. The facility will consist of a solid waste-fired steam generator and an extraction/condensing turbine-generator set. The electric power production capacity will be approximately 19 megawatts. The primary energy source will be biomass in the form of municipal solid waste. Small amounts of natural gas or oil will be used (approximately 0.5% of the total energy input to the facility) for start-up and flame stabilization. Construction of the facility is scheduled to begin prior to October 1, 1987.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3867 Filed 2–24–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA87–1–31–002]

Arkla Energy Resources, a Division of Arkla, Inc.; Filing of Revised Tariff Sheets Reflecting Tariff Adjustment

February 18, 1987.

Take notice that on February 9, 1987 Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following tariff sheets:

1st Substitute 41st Revised Sheet No. 185, Original Volume No. 3, Rate Schedule No. X–26

1st Substitute 42nd Revised Sheet No. 4, First Revised Volume No. 1, Rate Schedule No. G–2

The purpose of the above tariff sheets is to revise AER's regular semi-annual PGA rates by (1) reducing the Average Cost of Purchased Gas for the six-month period commencing October 1, 1986, based on revised demand costs for its purchase of gas from Texas Gas Transmission Corporation and (2) eliminating from total supply, gas delivered to storage, as reflected on revised Page 1 of Exhibit A Summary.

These revisions reduce AER's system cost of gas for the PGA period by ($2,653,371) which equates to a current adjustment change from ($.0661) to ($.1031) or ($.0370).

The reduction in cost will be flowed thru to AER's jurisdictional customers through billing adjustments effective retroactive to October 1, 1986.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before February 26, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3868 Filed 2–24–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI85–692–002]

Cities Service Oil and Gas Corporation and CansdianOxy Offshore Production Co.; Application

February 19, 1987.

Take notice that on February 6, 1987, Cities Service Oil and Gas Corporation, *et al.* (Cities), pursuant to sections 4 and 7 of the Natural Gas Act (NGA) and Parts 154 and 157 of the Federal Energy Regulatory Commission's (Commission) Regulations promulgated thereunder, and in accordance with § 2.77(b) promulgated by Order No. 436, in Docket No. RM85–1–000, filed an application requesting that in Docket No. CI85–892–002, the Commission amend its Order Permitting and Approving Limited-Term Abandonments and Granting Certificates issued October 29, 1985, as extended by Order issued March 31, 1986, by further extending the abandonment and sales authority granted in that order for a term not to exceed five (5) years from the date of authorization, all as more fully described in the application which is on file with the Commission and open to public inspection.

Cities states that the circumstances that called forth Cities' application filed on September 19, 1985 and supported issuance of the Commission's October 29, 1985 order will continue beyond the March 31, 1987 termination date as extended by order issued March 31, 1986. If the limited-term abandonment and sales certificate authority granted by the October 29, 1985 order is extended beyond March 31, 1987, Cities states that it will continue existing sales and will make additional sales.

Any person desiring to be heard or to make any protests with reference to said application should on or before March 4, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3869 Filed 2–24–87; 8:45 a.m.]

BILLING CODE 6717–01–M

[Docket No. CI87–293–000]

Conoco Inc.; Application for a Blanket Limited-Term Certificate of Public Convenience and Necessity With Pre-Granted Abandonment

February 19, 1987.

Take notice that on February 9, 1987, Conoco Inc. (Conoco), P.O. Box 2197, Houston, Texas 77252, filed an application pursuant to sections 4 and 7 of the Natural Gas Act (15 U.S.C. 717c and f) and Part 157 of the Commission's Regulations under the Natural Gas Act (18 CFR Part 157), for the issuance of a Blanket Limited-Term Certificate of Public Convenience and Necessity and other authorizations which would: (1) Authorize the limited-term sale of natural gas in interstate commerce for resale by Conoco; (2) authorize pre-granted abandonment; and (3) authorize abandonment of sales of natural gas made pursuant to the requested certificate upon expiration of the term of such sales. This blanket certificate and other authorizations are necessary to enable Conoco to initiate sales of gas from developed properties which are subject to Natural Gas Act jurisdiction and which are currently uncommitted.

Any person desiring to be heard or to make any protest with reference to said request should on or before March 4, 1987 file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rule of Practice and Procedure (18 CFR 385.211 385.214). All protests filed with the Commission will be considered in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under this procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

EXHIBIT "A"

	Conoco working interest (percent)	Estimated volume Mcfd [3]	NGPA category
South Marsh Island 266 oc Offshore, LA. (OCS-G2316) [1]	50	460	[4] 102
Eugene Island 361 Offshore, LA. (OCS-G2324) [1]	15	5,700	[4] 102
Vermilion 119, H7 well Offshore, LA. (OCS 0487) [2]	25	600	109

[1] Chevron USA Inc. operated.
[2] Conoco Inc. operated.
[3] Conoco is an under produced working interest owner and the estimates below reflect Conoco's actual working interest; actual daily volumes may differ to the extent that Conoco is able to recoup its under produced volumes.
[4] Old OCS.

[FR Doc. 87–3870 Filed 2–24–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP 86–45–016]

El Paso Natural Gas Co.; Compliance Filing

February 18, 1987.

Take notice that on February 11, 1987, El Paso Natural Gas Company (El Paso) tendered for filing revised and original tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 1–A, Third Revised Volume No. 2, and Original Volume No. 2A.

El Paso states that the tendered tariff sheets which set forth the rates, terms and conditions under which it will render open, non-discriminatory transportation service in accordance with the Commission's Order No. 436, *et seq.*, are those originally attached to and made part of its Offer of Settlement filed March 21, 1986 in this proceeding, modified to reflect changes to the fuel reimbursement provisions of Rate Schedules T–1 and T–3, and the operating provisions governing interruptible and firm transportation service mandated by the Commission's "Order Approving Contested Offer of

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Settlement Subject to Conditions" issued June 27, 1986, and to reflect certain order rate and tariff provision changes approved by the Commission in other docketed proceedings after the Offer of Settlement was filed.

El Paso respectfully requests waiver of all applicable Commission rules and regulations as may be necessary to permit the tendered tariff sheets to become effective on March 1, 1987.

El Paso states that copies of the filing have been served upon all parties of record in Docket No. RP86–45–000 and, otherwise, upon all of its interstate pipeline system customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol, Street, NE., Washington, DC, 20426, in accordance with §§ 385.214 and 385.211 of this Chapter. All such motions or protests should be filed on or before February 25, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3871 Filed, 2–24–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP68–179–007]

Florida Gas Transmission Co.; Proposed Original FERC Gas Tariff Sheet

Take notice that Florida Gas Transmission Company ("Florida Gas") on February 17, 1987 tendered for filing as a part of its FERC Gas Tariff, First Revised Volume No. 1, the following sheet: Original Sheet No. 57A

This tariff sheet constitutes a new tariff sheet added to Florida Gas' existing First Revised Volume No. 1 in order to comply with Ordering Paragraph (D) of the Commission's order dated January 16, 1987, in *Florida Gas Transmission Company,* Docket No. CP68–179–006, *et al* (the "January 16 Order"). In the January 16 Order, the Commission authorized the construction and operation of the facilities described in Docket No. CP74–192–009. By virtue of this construction, the capacity of Florida Gas' system will be increased by approximately 100,000 Mcf per day. The FERC provided that the incremental capacity associated with the new facilities would be allocated to Florida Gas' customers in curtailment categories Priority 1 through Priority 9 on an interim basis in the manner described more fully in the January 16 Order. The Commission required that Florida Gas file tariff sheets within thirty days of the issuance of the January 16 Order setting forth an allocation methodology developed in accordance with the guidelines set forth in the Commission's order. Original Sheet No. 57A is being submitted in compliance with that directive.

The proposed effective date of this tariff sheet is February 17, 1987.

A copy of this filing was served on each party required to be served by the Commission's regulations.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice & Procedure. All such motions or protests should be filed on or before February 25, 1987. The protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person who wishes to become a party must file motion to intervene. Copies of this filing are on file with the Commission and made available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3872 Filed 2–24–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI87–295–000]

Gulf Energy Marketing Co.; Application of Gulf Energy Marketing Company for Blanket Certificate of Public Convenience and Necessity and for an Order Permitting and Approving Pregranted Abandonment

February 19, 1987.

Take notice that on February 9, 1987, Gulf Energy Marketing Company ("Gulf Energy"), pursuant to sections 4 and 7 of the Natural Gas Act ("NGA"), and Parts 154 and 157 of the Regulations of the Federal Energy Regulatory Commission ("Commission"), 18 CFR Parts 154 and 157, applied for a blanket certificate of public convenience and necessity: (1) Authorizing sales for resale of natural gas in interstate commerce by Gulf Energy, and certain producers from whom Gulf Energy purchases natural gas (a) who have received abandonment approval from the Commission in a separate proceeding, (b) who have qualified for automatic abandonment authority pursuant to Order No. 451, or (c) who have NGA-regulated gas supplies never sold for resale in interstate commerce; (2) authorizing sales for resale of natural gas in interstate commerce by certain producers through Gulf Energy acting as their agent; and (3) authorizing pre-granted abandonment of such sales.

Gulf Energy states tht such authorities, if granted, will enable Gulf Energy to sell natural gas in the spot market which it purchases from certain producers, as described more fully in its application. Such authority will also enable Gulf Energy to act as agent for certain producers in the sale for resale of their gas in the spot market.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 4, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3873 Filed 2–24–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI87–301–000]

Marathon Oil Co.; Application

February 19, 1987.

Take notice that on February 10, 1987, Marathon Oil Company ("Marathon") filed in this proceeding an application pursuant to sections 4 and 7 of the Natural Gas Act ("NGA") and § 2.77, Parts 154 and 157 of the Commission's regulations. The application requests an order (1) authorizing blanket limited-term abandonment of certain sales for resale of natural gas released by interstate pipeline purchasers, (2) issuing a blanket limited-term certificate of public convenience and necessity authorizing the sale for resale of such natural gas in interstate commerce for three years, and (3) authorizing blanket pre-granted abandonment of any sales for resale of natural gas made under the requested certificate. Marathon also requests waiver of certain Commission regulations and requests that the authorizations sought in this proceeding be considered on an expedited basis.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 4, 1987, file with the Federal Energy Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (187 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3874 Filed 2–24–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI87–292–000]

Mobile Oil Corp., et al.; Application for Blanket Limited-Term Abandonment and Blanket Limited-Term Certificate of Public Convenience and Necessity With Pre-Granted Abandonments

February 19, 1987.

Take notice that on February 6, 1987, Mobil Oil Corporation, Mobil Producing Texas & New Mexico Inc., Mobil Oil Exploration & Producing Southeast Inc. and Mobil Exploration and Producing North America Inc. (jointly referred to as Mobil), 9 Greenway Plaza, Suite 2700, Houston, Texas 77046, filed an Application pursuant to sections 4 and 7 of the Natural Gas Act (NGA), the provisions of 18 CFR Parts 154 and 157, and 18 CFR 2.77(a)(1), seeking (i) a blanket limited-term certificate of public convenience and necessity authorizing the sale for resale in interstate commerce of certain natural gas, with pre-granted abandonment and (ii) a blanket limited-term abandonment, all for a term from April 1, 1987 through March 31, 1989, as more fully described in the Application which is on file with the Commission and open for public inspection.

Mobil states that the authority as requested is consistent with the Commission's rules and regulations and is necessary for Mobil to make short-term, best efforts and spot gas sales. Further, Mobil states that, absent said authorization, the flexibility and efficiency necessary for successful operation in the spot market would be hindered, and gas would be shut-in or significantly excluded from the market-place.

Specifically, Mobil requests that the Commission authorize Mobil:

(i) To make sales for resale in interstate commerce for a period of two years, with pre-granted abandonment of any such sale, without supply or market limitations, of gas subject to the Commission's NGA jurisdiction that is produced from various interests owned by Mobil or produced from various interests attributable to other owners having interests in the same wells as Mobil, to the extent that such co-owners agree;

(ii) To abandon for a two-year term sales for resale of gas subject to the Commission's NGA jurisdiction and previously certificated by the Commission, to the extent that such gas is released from contract by interstate pipelines for resale to third parties; and

(iii) A waiver of Part 154 of the Commission's Regulations concerning the establishment of rate schedules for any sales made under (i).

Any person desiring to be heard or to make any protest with reference to said application should on or before March 4, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3875 Filed 2–24–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RI87–2–000]

Plains Petroleum Co. and Plains Petroleum Operating Co.; Petition for Recovery of Excess Royalty Payments and for Declaratory Order

Issued: February 19, 1987.

Take notice that on January 16, 1987, Plains Petroleum Company and Plains Petroleum Operating Company (Plains) filed in the above-captioned docket a petition seeking (1) authorization to recover from KN Energy Inc. (KN) "excess royalty" payments made with respect to certain sales of natural gas to KN from October 1, 1984, through December 31, 1986, and (2) a declaratory order stating that, with respect to certain sales to KN from and after January 1, 1987, under a contract between Plains and KN that was renegotiated pursuant to Order No. 451, Plains needs no further Commission authority to recover its excess royalty payments from KN so long as the total price paid by KN under such contract does not exceed the new alternative price ceiling prescribed by Order No. 451. Plains alternatively asks, in the event the Commission declines to issue such declaratory order, for authorization to apply a surcharge in the amount of the per-MMBtu excess royalty payment to all gas sold to KN from and after January 1, 1987, attributable to leases subject to the excess royalty obligation. On February 10, 1987, Plains filed an amendment to its petition that adjusts the amounts for which recovery is requested with respect to sales made between October 1, 1984, and December 31, 1986.

Plains states that it has recently settled certain litigation with a plaintiff class consisting of owners of lands in Southwest Kansas from which Plains produces natural gas. In accordance with the settlement agreement, which was approved by the District Court of Kearny County, Kansas, on December 29, 1986, Plains is obligated to pay the landowner class certain amounts in settlement of a dispute concerning the interpretation of the terms "market value," "market rate," and "market price" in the royalty provisions of the oil and gas leases between Plains and the landowners. Specifically, Plains is required to make additional royalty payments for the period October 1, 1984, through August 31, 1986, based upon the difference between the royalties previously paid on the basis of applicable maximum lawful prices prescribed in Section 104 of the Natural Gas Policy Act of 1978 (NGPA), which Plains received from sale of the gas, and

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royalties based upon the maximum lawful price prescribed by the Commission for NGPA section 106(b)(1)(B) gas. From September 1, 1986, forward, Plains must make additional royalty payments based upon the greater of (a) $1.787/MMBtu for the month of September 1986 (as adjusted monthly thereafter for inflation under the NGPA) or a lower "market clearing price," subject to review by Plains and the landowner class and to redetermination through binding arbitration, or (b) the actual proceeds received by Plains from sale of the gas.

Plains further states in its petition (as amended) that, under the settlement terms outlined above, its excess royalty liability for sales made between October 1, 1984, and December 31, 1986, is approximately $1,528,709.67. This amount, Plains notes, has been disbursed to the landowner class. Plains estimates that its excess royalty payment for January 1987 sales subject to the settlement agreement will be $.051 per MMBtu.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the requirements of Rules 211 or 214 of the Commission's rules of practice and procedure. Motions to intervene or protest should be filed not later than 30 days following publication of this notice in the **Federal Register**. All protests filed will be considered by the Commission but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3876 Filed 2–24–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87–1–40–003]

Raton Gas Transmission Co.; Compliance Filing

February 18, 1987.

Take notice that on February 5, 1987, Raton Gas Transmission Co. (Raton) tendered for filing Substitute Seventh Revised Sheet No. 4 to its FERC Gas Tariff, Original Volume No. 1 in compliance with the Commission's letter order dated September 22, 1986 in Raton's PGA tracking rates of its pipeline supplier, Colorado Interstate Gas Company (CIG), and the Commission's order dated December 30, 1986 accepting CIG's Substitute Twenty-Sixth Revised Sheet No. 7. Raton requests an effective date for its Substitute Seventh Revised Sheet No. 4 of October 1, 1986 to coincide with CIG's approved rate. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until February 12, 1987.

Raton states that it will make refunds, together with interest as required, upon receipt of approval of this rate change.

Copies of this filing were sent to Raton Natural Gas Company, Midwest Energy Corp., and the Public Service Commission of New Mexico.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before February 25, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3877 Filed 2–24–87; 8:45 am]

BILLING CODE 6717-01-M

Docket No. CI86–33–002]

Sun Exploration and Production Co.; Application

February 19, 1987.

Take notice that on January 28, 1987, as amended on February 11, 1987 Sun Exploration and Production Company ("Sun"), P.O. Box 2880, Dallas, Texas 75221, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and Part 157 of the Federal Energy Regulatory Commission's ("Commission") regulations under the Natural Gas Act requesting modification of the Commission's December 5, 1985 Order Permitting and Approving Limited-Term Abandonment and Granting Certificates by requesting the term be extended from one (1) year to three (3) years substituting March 31, 1990 for March 1, 1987 therein. In addition Sun has also requested that all NGPA vintages of gas 102(d), 104, 106, 108 and 109 be covered, thus removing the provision that allowed only the resale of gas priced above the 109 rate. The certificate would (1) Continue to authorize the sale of natural gas by Sun and its working interest owners for resale in interstate commerce: (2) permit temporary partial abandonment of certain natural gas sales; (3) and confer pre-granted abandonment authorization for sales of natural gas made pursuant to the requested certificate.

Any person desiring to be heard or to make any protest which reference to said application should on or before March 4, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3878 Filed 2–24–87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6501–001]

Twin Falls Beaver Ranch; Surrender of Exemption

February 13, 1987.

Take notice that the Twin Falls Beaver Ranch, exemptee for the proposed Beaver Ranch Project No. 6501, has requested by letter dated January 6, 1987, that its exemption be terminated. The exemption was issued November 9, 1982. The project would have been located on Springs tributary to the Snake River in Twin Falls County, Idaho. There has been no construction activity.

The exemption for Project No. 6501 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFr Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–3803 Filed 2–24–87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00238; FRL–3161–2]

Federal Insecticide, Fungicide and Rodenticide Act Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency in connection with the special review of cyanazine, a briefing paper on the Tolerance Assessment System, and proposed revision of Guidelines for Immunotoxicity Testing of Biochemical Pest Control Agents (BPCA's), Subdivision M.

DATE: Tuesday, March 24, 1987, from 8:30 a.m. to 5:00 p.m.

ADDRESS: The meeting will be held at: U.S. Environmental Protection Agency, Room 1112, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By Mail: Stephen L. Johnson, Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS–769C), 401 M Street, SW., Washington DC 20460. Office location and phone number: Rm. 1121, Crystal Mall, Building No. 2, Arlington, VA, (703) 557–7695.

SUPPLEMENTARY INFORMATION: The agenda for the meeting is:

1. Review of the scientific issues being considered by the Agency in connection with the Special Review of cyanazine.
2. Review of a briefing paper on the Tolerance Assessment System (TAS). TAS is a computer-based tool which can estimate dietary exposure to a pesticide and then compare that estimate to a previously determined acceptable dietary intake.
3. Review of proposed revised Guidelines for Immunotoxicity Testing of Biochemical Pest Control Agents (BPCA's), for Subdivision M.
4. Completion of any unfinished business from previous Panel meetings.
5. In addition, the Agency may present status reports on other ongoing programs of the Office of Pesticide Programs.

Copies of documents relating to items 1–3 above may be obtained by contacting:

Information Services Branch, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: Rm. 240, Crystal Mall No. 2, Arlington, VA, 703–557–7400.

Any member of the public wishing to submit written comments should contact Stephen L. Johnson at the address or phone listed above to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons are permitted to file such statements before the meeting. To the extent that time permits and upon advance notice to the Executive Secretary, interested persons may be permitted by the chairman of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. Since oral statements will be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. All statements will be made part of the record and will be taken into consideration by the Panel. Persons wishing to make oral/written statements should notify the Executive Secretary and submit 10 copies of written comments and oral written testimony no later than March 10, 1987, in order to ensure appropriate consideration by the Panel.

Dated: February 18, 1987.

Victor J. Kimm,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 87–3841 Filed 2–24–87; 8:45 am]

BILLING CODE 6560-50-M

[FRL–3159–1]

Science Advisory Board; Environmental Effects, Transport and Fate Committee; Municipal Waste Combustion Subcommittee; Open Meeting

Under the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that a two-day meeting of the Municipal Waste Combustion Subcommittee of the Science Advisory Board's Environmental Effects, Transport and Fate Committee will be held on March 9 and 10, 1987. The meeting will begin at 9:00 a.m. on March 9, in the conference facilities of the National Center for Atmospheric Research (NCAR) Mesa Laboratory on Table Mesa Drive, Boulder, Colorado, and will adjourn on March 10, no later than 4:00 p.m.

The main purpose of the meeting is to continue with a review of a series of scientific issues related to municipal waste incineration. The Subcommittee will spend considerable meeting time drafting a report which summarizes these issues and describes the technology used for incinerating municipal waste. A briefing will also be given detailing a research plan for municipal waste combustion, as developed by EPA's Office of Research and Development.

The meeting will be open to the public. Any member of the public who wishes to attend, present information to the subcommittee, or obtain information concerning the meeting, should contact Ms. Janis Kurtz, Executive Secretary, or Mrs. Lutithia Barbee, Staff Secretary (A101–F), Environmental Effects, Transport and Fate Committee, Science Advisory Board, U.S. EPA, 401 M. Street, SW., Washington, DC 20460, Telephone (202) 382–2552 or FTS 8–382–2552. Written comments will be accepted, and can be sent to Ms. Kurtz at the address above. Persons interested in making statements before the Subcommittee must contact Ms. Kurtz no later than March 5, 1987 in order to be assured of space on the agenda.

Dated: February 13, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 87–3843 Filed 2–24–87; 8:45 am]

BILLING CODE 6560-50-M

[FRL–3160–8]

Science Advisory Board, Integrated Environmental Management Subcommittee; Open Meeting

Under Pub. L. 92–463, notice is hereby given of a meeting of the Science Advisory Board's Integrated Environmental Management Subcommittee on March 16–17, 1987 at the U.S. EPA Region 3, 841 Chestnut Street, Philadelphia, Pa. 19107, in Conference Room 8A. The meeting will begin at 9:00 a.m. on March 16th and will adjourn at approximately 3:00 p.m. on March 17, 1987.

The principal purpose of the meeting is to provide the Subcommittee with the opportunity to independently review the scientific quality of the Environmental Protection Agency's "Kanawha Valley Environmental Overview Report." Any

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member of the public wishing to obtain further information about this report should contact Mr. Green Jones, EPA Region III, 841 Chestnut Street, Philadelphia, Pa., or call Mr. Jones at (215) 597–9800.

The meeting is open to the public. Any member of the public wishing to attend, obtain information, or submit written comments should contact Dr. Terry F. Yosie, Director, Science Advisory Board or Mrs. Joanna Foellmer located at 401 M Street, SW., Washington, DC 20460 or call (202) 382–4126 by close of business March 9, 1987.

Dated: February 17, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 87–3842 Filed 2–23–87; 8:45 am]

BILLING CODE 6560–50–M

[SW–FRL–3161–1]

Uncontrolled Hazardous Waste Sites; Availability of Documents and Information

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of availability of information.

SUMMARY: The Environmental Protection Agency today publishes this announcement which is consistent with its April 18, 1985 Interim Information Release Policy. This announcement concerns the availability of documents and data generated from the investigation of uncontrolled hazardous or potentially hazardous waste sites. The documents and information addressed by this notice may include the identity, quantity, physical state, concentration, and containment of toxic substances at a site, and their potential effect on ground water, surface water, drinking water, food chain, soil, and air in the vicinity of a site. This information is generally available in documents called Preliminary Assessments (PA) and Site Inspection (SI) reports. The PA and SI are available to the public as soon as they are completed. The instructions for completing the PA and SI reports are also available upon request.

If the information described above is available, but has not been recorded in either a PA or an SI report, then that information will also be available upon request. In addition, sampling data on a site which have been verified as analytically accurate are available to the public upon request.

ADDRESSES: The information described herein, and the PA/SI reports, as well as directions for completing those reports may be obtained from the appropriate EPA Regional offices.

Susan Svirskey, EPA—Region I, John F. Kennedy Federal Bldg., Boston, MA 02203, 616/565–3661

Ben Conetta, EPA—Region II, 26 Federal Plaza, New York, NY 10278, 212/264–6324

Connie Carr, EPA—Region III, 841 Chestnut Street, Philadelphia, PA 19107, 215/597–4966/3535

Richard Ferrazzuolo, EPA—Region VI, 345 Courtland Street, NE., Atlanta, GA 30365, 404/347–2234

Jeanne Griffin, EPA—Region V, 230 S. Dearborn Street, Chicago, IL 60604, 312/886–3007

Barry Nash, EPA—Region VI, First International Bldg., 1201 Elm Street, Dallas, TX 75270, 214/767–4075

Shelly Brodie, EPA—Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, 913/236–2856

Dave Shaller, EPA—Region VIII, One Denver Pl., 18th St., Denver, CO 80202, 303/293–1537

Holly Hadlock, EPA—Region IX, 215 Fremont Street, San Francisco, CA 94105, 415/974–7931

Debbie Flood, EPA—Region X, 1200 6th Avenue, Seattle, WA 98101, 206/442–2722

FOR FURTHER INFORMATION CONTACT: Trudi J. Fancher, Hazardous Site Control Division, Office of Emergency and Remedial Response (WH–548E), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Phone (800) 424–9346 (or 382–3000 in the Washington, DC, metropolitan area).

SUPPLEMENTARY INFORMATION: EPA collects information about hazardous waste sites in documents called Preliminary Assessment and Site Inspection reports, as well as a series of documents, which EPA considers deliberative, called HRS (Hazard Ranking System) package documents. Preliminary Assessment and Site Inspection Reports, which are not HRS package documents, are available to the public on request in both draft and final form as soon as they are completed. The instructions used in completing both the Preliminary Assessment and the Site Inspection Reports are also publicly available on request.

The Preliminary Assessment and Site Inspection Report may contain information about the identity, quantity, physical state, and concentration of toxic substances at a site, and their potential effect on the ground water, surface water, drinking water, food chain, soil, and air in the vicinity of the site. They also may include information about the containment of toxic substances at the site.

In those instances where EPA has collected the information described in the above paragraph by the time the Preliminary Assessment or Site Inspection Report was prepared (that is to say, before the HRS evaluation process regarding the site has commenced), but has not recorded the information on either the Preliminary Assessment or the Site Inspection Report, EPA shall make this information available to the public on request.

In addition, whether or not the above information is reflected in the Preliminary Assessment or Site Inspection Report, sampling data on a site that have been verified as analytically accurate by EPA are routinely available to the public on request. Such verified sampling data may include information about the identity and concentration of toxic substances at a site.

If the identity of the toxic substances at a site is not included in the Preliminary Assessment or Site Inspection Report, and the identity of the substances is not indicated in the sampling data described above, EPA shall generally make this information available to the public on request. However, if the identity of the toxic substances is contained in supplemental reports, not developed by EPA and not related to EPA's sampling efforts, and the identity of the substances itself is the subject of a deliberative process, then the identities of these substances need not be released by EPA until the completion of that process. In endeavoring to make available to the public, information about the identity of toxic substances at a site, EPA need not release HRS drafts or other documents generated in the Hazard Ranking System evaluation process, which documents EPA considers deliberative, until the completion of that process.

With the exception of the instruction forms to the Preliminary Assessment and Site Inspection Report, EPA reserves the right to withhold the above information in accordance with Exemption 7 of the Freedom of Information Act.

Dated: February 17, 1987.

J.W. McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 87–3840 Filed 2–24–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3161–6]

The Asbestos Hazard Emergency Response Act Negotiated Rulemaking Advisory Committee; Open Meeting

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), EPA is giving notice of an open meeting of the Advisory Committee negotiating proposed regulations under the Asbestos Hazard Emergency Response Act (AHERA) of 1986.

The meeting is scheduled on Tuesday, March 10, 1987.in the Crabtree Auditorium at the National Education Association, 1201 16th Street, NW., Washington, DC. The meeting will begin at 9:00 a.m. and will run until completion.

The purpose of this meeting is to continue working on the substantive issues the Committee has identified for resolution.

If interested in attending, or in receiving more information, please contact Kathy Tyson at (202) 382–5479.

Dated: February 19, 1987.

Milton Russell,

Assistant Administrator.

[FR Doc. 87–3987 Filed 2–24–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1644]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

February 18, 1987.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202–857–3800). Oppositions to these petitions must be filed within 16 days after date of publication) See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments FM Broadcast Stations. (Ketchum, Oklahoma) (MM Docket No. 86–14, RM–5132) Number of petitions received: 1.

Subject: Amendment of Part 65, Interstate Rate of Return Prescription: Procedures and Methodologies to Establish Reporting Requirements. (CC Docket No. 86–127) Number of Petitions received: 2.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–3851 Filed 2–24–87; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following persons have filed applications for licenses as ocean freight forwarders with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and 46 CFR 510.

Persons knowing of any reason why any of the following persons should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Capital Shipping Corp., 55 Edward Hart Drive, Jersey City, NJ 07305. Officer: Chang Do Park, President

John Ha Kim (Tom) dba Overseas Moving Center, 1687 South Elmhurst Road, Elk Grove Village, IL 60007

Delta Shipping and Marketing Corp., 825 Windham Court North, Wyckoff, NJ 07481. Officers: Dr. Nurettin Ayasun, Director, Tarik N. Ayasun, President/Director, Behcet Tuysuzoglu, Vice President

Daniel P. San Diego dba SAS International, 200 62nd Street, Brooklyn, NY 11220

Carlos Adolfo Marzol, 6841 S.W. 3rd Street, Miami, FL 33144

Eagle Shipping & Trading Corp., 1380 Flatbush Avenue, Brooklyn, NY 11210. Officers:, Sydney F. M. Ross, President, Mary Ross, Secretary/Treasurer

David Tzuwei Yang dba SMS Express Company, 8518 Turpin Street, Rosemead, CA 91770

Joe Castano dba On Board Shipping Company, 1513 Broadmoor Avenue, West Covina, CA 91790

R. G. Curbelo, Inc., 8496 N.W. 61st Street, Miami, FL 33166. Officers: Rachel G. Curbelo, President/Director, Raquel Martinez, Vice President, Oscar Rojas, Secretary/Treasurer

Magellan Shipping, Inc., 91 Ivy Lane, Tenafly, NJ 07670, Michael Rubin, Director/President, Mona Rubin, Secretary

Dunnington & Arnold, Inc., 11222 La Cienega Blvd., Suite 415, Inglewood, CA 90304. Officer: Joseph L. Vidal, President

Scully & Company, Incorporated, 149 Sheldon Street, El Segundo, CA 90245. Officers: Stephen C. Scully, President, Stephen Orton, Vice President, Harold E. Scully, Secretary/Treasurer

Dated February 19, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87–3801 Filed 2–24–87; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Bank of Granite Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 12, 1987.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Bank of Granite Corporation,* Granite Falls, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Granite, Granite Falls, North Carolina.

2. *First Virginia Banks, Inc.,* Falls Church, Virginia; to acquire 100 percent of the voting shares of Clinch Valley Bank and Trust Company, Richlands, Virginia. Comments on this application must be received by March 13, 1987.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Citizens Investments, Inc.,* Vineland, New Jersey; to acquire 100 percent of the voting shares of Sun

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National Bank, Medford, New Jersey. Comments on this application must be received by March 17, 1987.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *The Colonial BancGroup, Inc.*, Montgomery, Alabama; to merge with Jackson County Bancshares, Inc., Scottsboro, Alabama, and thereby indirectly acquire The Jackson County Bank, Scottsboro, Alabama. Comments on this application must be received by March 13, 1987.

2. *Commerce Union Corporation*, Nashville, Tennessee; to merge with United Citizens Bancshares, Inc., Ashland City, Tennessee, and thereby indirectly acquire United Citizens Bank of Cheatham County, Ashland City, Tennessee.

3. *Southeastern Bancshares, Inc.*, Nashville, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Quality Financial Services Corporation, Alexandria, Tennessee, and thereby indirectly acquire Dekalb County Bank & Trust Company, Alexandria, Tennessee.

4. *Straz Investment Company, Inc.*, Belleair Shore, Florida; to become a bank holding company by acquiring 51 percent of the voting shares of First Gulf Bank, Gulfport, Florida, a *de novo* bank. Comments on this application must be received by March 13, 1987.

D. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Interstate Corporation of Wisconsin*, Sheboygan, Wisconsin; to acquire 100 percent of the voting shares of State Bank of Green Valley, Green Valley, Wisconsin. Comments on this application must be received by March 11, 1987.

E. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Belle Fourche Bancshares, Inc.*, Belle Fourche, South Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of Pioneer Bank & Trust Company, Belle Fourche, South Dakota. Comments on this application must be received by March 17, 1987.

Board of Governors of the Federal Reserve System, February 18, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–3791 Filed 2–24–87; 8:45 am]

BILLING CODE 6210–01–M

The Chase Manhattan Corp. et al.; Acquisition of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 255.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR § 255.23 (a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 11, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President), 33 Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation*, New York, New York, to acquire Freedom Mortgage Company, Tampa, Florida, and thereby engage in making and servicing mortgage loans pursuant to § 225.25(b)(8) of the Board's Regulation Y.

b. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Draper Holding Company, Inc.*, Draper, South Dakota; to acquire First Insurance—Presho, Presho, South Dakota, and thereby engage in general insurance agency activities in a community with a population not exceeding 5,000 pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. These activities will be conducted in Presho, South Dakota, and surrounding areas within Lyman County.

2. *Draper Holding Company, Inc.*, Draper, South Dakota; to acquire Hayes Insurance Agency, Draper, South Dakota, and thereby engage in general insurance agency activities in a community with a population not exceeding 5,000 pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. These activities will be conducted in Draper, South Dakota.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *RCB Corporation*, Sacramento, California; to engage through its subsidiary, River City Money Management Company, Sacramento, California, in investment and financial advising pursuant to § 225.25(b)(4) of the Board's Regulation Y. Applicant proposes to engage in this activity through a joint venture with Alex Brown Financial Group.

Board of Governors of the Federal Reserve System, February 18, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–3792 Filed 2–24–87; 8:45 am]

BILLING CODE 6210–01–M

Marine Midland Banks, Inc., et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 12, 1987.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Marine Midland Banks, Inc.*, Buffalo, New York, The Hong Kong and Shanghai Banking Corporation, Hong Kong, HSBC Holdings B.V., Amsterdam, Amsterdam, The Netherlands, and Kellett N.V., Curacao, Netherlands Antilles; to engage *de novo* through its subsidiary, Marmid Life Insurance Company, in underwriting, as reinsurer, of home mortgage redemption insurance on a nationwide basis pursunt to § 225.25(b)(8)(i) of the Board's Regulation Y.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Forestwood Financial Corporation*, Dallas, Texas; to engage *de novo* through its subsidiary, Independent Credit Consultants, Inc. Dallas, Texas, a *de novo* company, in providing bank management consulting services in area of operations, systems, and procedures to non-affiliated depository institutions pursuant to § 225.25(b)[11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 18, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–3793 Filed 2–24–87; 8:45 am]

BILLING CODE 6210–01–M

[Docket Nos. R–0587, R–0588, R–0589, R–0590, and R–0591]

Requests for Comments on Proposals Regarding Payment System Risks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Extension of comment periods.

SUMMARY: On December 10, 1986, the Board requested public comment on a series of six proposals to reduce and control payment system risks. (The notices were published in the **Federal Register** on December 16, 1986.) Comments on four of these proposals, risks associated with book-entry securities transfers (Docket No. R–0587, 51 FR 45046), reduction of existing levels for net debit caps (Docket No. R–0588, 51 FR 45050), adoption of a new, "*de minimis*" cap category (Docket No. R–0589 [1] 51 FR 45053), and adopting limits on inter-affiliate Fedwire transfers (Docket No. R–0590, 51 FR 45054), were due by February 9, 1987, and the Secretary to the Board, acting pursuant to delegated authority from the Board, recently extended the comment period for each of these four proposals until February 27, 1987. 52 FR 2296 (Jan. 21, 1987). In response to further requests from the public, the Secretary has extended the comment period on these four proposals and has also extended the time for filing comments on the proposals on automated clearing houses (Docket No. R–0591; 51 FR 45043) to April 3, 1987. The time for filing comments on the remaining proposal (pricing of Fedwire daylight overdrafts, R–0592, 51 FR 45052) remains April 13, 1987.

DATE: Comments must be received by April 3, 1987.

FOR FURTHER INFORMATION CONTACT: Edward C. Ettin, Deputy Director, Division of Research and Statistics (202–4523–368), or Joseph R. Alexander, Senior Attorney, Legal Division (202–452–2489); or, for the hearing impaired *only*: Telecommunications Device for the Deaf (202–452–3544), Earnestine Hill or Dorothea Thompson.

By order of the Secretary of the Board, acting pursuant to delegated authority, 12 CFR 265.2(a)(6), February 17, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–3812 Filed 2–24–87; 8:45 am]

BILLING CODE 6210–01–M

[1] A typographical error in the December 16, 1986, **Federal Register** misidentified Docket No. R–0589 as Docket No. R–05891.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Advisory Committee for Elimination of Tuberculosis; Establishment

ACTION: Notice of Establishment—Advisory Committee for Elimination of Tuberculosis.

Pursuant to Federal Advisory Committee Act, 5 U.S.C. Appendix 2, the Centers for Disease Control announces the establishment by the Secretary of Health and Human Services, on February 4, 1987, of the following Federal advisory committee:

Designation: Advisory Committee for elimination of Tuberculosis.

Purpose: This Committee will advise and make recommendations to the Secretary, the Assistant Secretary for Health, and the Director, Centers for Disease Control, regarding feasible goals for eliminating tuberculosis. The Committee will make recommendations regarding policies, strategies, objectives, and priorities; address the development of new technologies and their subsequent application; and review progress toward elimination.

Authority for this Committee will expire February 4, 1989, unless the Secretary of Health and Human Services, with the concurrence of the Committee Management Secretariat, General Services Administration, formally determines that continuance is in the public interest.

Dated: February 18, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87–3802 Filed 2–24–87; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

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Allergenic Products Advisory Committee

Date, time, and place. March 12 and 13, 1987, 8:30 a.m., Rm. 121, Bldg. 29, Office of Biologics Research and Review, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, March 12, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 12:30 p.m.; closed committee discussion, March 13, 9 a.m. to 4 p.m.; Clay Sisk, Center for Drugs and Biologics (HFN–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695 or 443–5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational allergenic biological products administered to humans for the diagnosis, prevention, or treatment of allergies and allergic disease. The committee also reviews and evaluates the quality and relevance of FDA's research program which provides scientific support for the regulation of these products.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The open meeting will be devoted to the review of the intramural research programs of the Laboratory of Allergenic Products, Division of Bacterial Products, Office of Biologics Research and Review (OBRR), Center for Drugs and Biologics, Food and Drug Administration. The work of the individual scientists in the Laboratory will be presented.

Closed committee discussion. The committee will review part of the intramural research program in the Office of Biologics Research and Review. This session of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with this research program, disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee may also review trade secret and/or confidential commercial information relevant to pending license applications and investigational new drugs (IND's). This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Circulatory System Devices Panel

Date, time, and place. March 27, 8:30 a.m., Rms. 703–727A, Hubert H. Humphrey Bldg., 200 Independence Ave., SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9 a.m.; open committee discussion, 9 a.m. to 2 p.m.; closed committee deliberations, 2 p.m. to 4 p.m.; Keith Lusted, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7594.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of medical devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 13, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications (PMA's) for an external dual chamber pacemaker and prosthetic heart valves.

Closed committee deliberations. The committee may discuss trade secret and/or confidential commercial information regarding the PMA's listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: February 17, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87–3797 Filed 2–24–87; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 86B–0058]

Anesthesia Apparatus Checkout Recommendations; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Anesthesia Apparatus Checkout Recommendations" prepared by FDA's Center for Devices and Radiological Health (CDRH). The recommendations present a general checkout and inspection procedure designed to be performed daily by anesthesia professionals to ensure that the anesthesia gas machine, patient breathing system, monitors, and other apparatus, which together comprise the anesthesia gas delivery system, are correctly interconnected, adjusted, and functioning as intended.

ADDRESS: Written requests for single copies of the recommendations should be addressed to the contact person below. The recommendations are also available from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter B. Carstensen, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2436.

SUPPLEMENTARY INFORMATION: FDA, through CDRH, develops and carries out a national program to ensure the safety and effectiveness of medical devices. One aspect of this program involves regulatory activity under the laws administered by the agency concerning the design, manufacture, and distribution of medical devices. CDRH recognizes, however, that patient safety is dependent on more than properly functioning devices. Proper operation, maintenance, and periodic inspection of these devices by the user, matters that do not ordinarily involve direct regulatory action under the laws administered by the agency, are essential to minimize associated patient risks. Consequently, as an important adjunct to its regulatory program, CDRH conducts a variety of educational efforts to aid medical professionals in the safe use of medical devices. These educational endeavors are done in cooperation with, and usually done with the active participation of, the relevant professional organizations and other groups within the private sector.

For example, to reduce unnecessary retakes in radiology and improve image quality, CDRH developed, in cooperation with the American College of Radiology and other private sector organizations, voluntary recommendations for radiology facilities concerning equipment quality assurance programs (A Basic Quality Assurance Program for Small Diagnostic Radiology Facilities, FDA 83–8218). In cooperation with the American College of Radiology and numerous other medical professional societies, CDRH fostered the development of guides for clinicians on the effective use of selected diagnostic imaging procedures (The Selection of Patients for X-ray Examinations, FDA 80–8104; The Selection of Patients for X–ray Examinations: The Pelvimetry Examination, FDA 81–8174; The Selection of Patients for X-ray Examinations: Chest X-ray Screening Examinations, FDA 83–8204). As an adjunct to the teaching of medical students and radiology residents, CDRH funded the development of a basic teaching system in radiology (the Radiological Health Sciences Learning File), which is now a staple for radiology education used in 118 medical schools in the United States and several foreign schools as well. These examples illustrate CDRH's commitment to promote the principle that users of medical devices need to be sufficiently educated and motivated to use the devices safely and effectively.

There is mounting evidence and increased urging from the anesthesia community that a routine preuse inspection of anesthesia apparatus would improve patient safety. Several articles and at least one text published in recent years (Refs. 1 and 2) indicate that many patient deaths and serious injuries associated with the administration of gaseous anesthesia could be avoided if an adequate inspection and functional check of the equipment were performed by the anesthetist just before use of the equipment on the patient.

Operating manuals currently supplied with anesthesia gas machines include certain recommended procedures for inspection and functional checking of the equipment. In past years the manuals may not have provided adequate instructions for checking the complete anesthesia system. Also, in many hospitals the original operating manuals can no longer be found or are no longer relevant due to equipment modification made by owners over the years.

A generic checkout procedure for anesthesia gas delivery systems has been developed by CDRH staff with the

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cooperative efforts of anesthetists, biomedical engineers expert in anesthesia equipment, and representatives of manufacturers of anesthesia gas machines. This procedure is contained in a document entitled "Anesthesia Apparatus Checkout Recommendations." The document is intended to provide the anesthetists with a general procedure to aid in the daily inspection and functional checking of the equipment before using it on patients.

The Anesthesiology and Respiratory Therapy Devices Panel, an FDA advisory committee, reviewed the draft recommendations during its scheduled meeting on November 22, 1985. The Panel agreed that there is a need for guidance such as that contained in the checklist and suggested several minor revisions to the draft document which were incorporated into it.

In the **Federal Register** of March 28, 1986 (51 FR 10673), FDA published a notice of availability of the draft Anesthesia Apparatus Checkout Recommendations (Ref. 3). Sixteen comments were received and reviewed. Some minor refinements were made to the checkout recommendations in response to the comments. Single copies of the comments and their analyses are available upon written request to the contact person above.

FDA believes that the inspection procedure provided in the checkout recommendations, dated August 1986, will aid medical professionals in the safe use of anesthesia devices. FDA regards the inspection procedure to be "recommendations" as defined in the agency's regulations. Therefore, the checklist is being made available under 21 CFR 10.90(c) of the agency's administrative practices and procedures regulations. That regulation provides for FDA to formulate and disseminate recommendations about matters that are authorized by, but do not involve direct regulatory action under, the laws administered by the agency.

FDA is making available to the public the Anesthesia Apparatus Checkout Recommendations and intends to make them available to anesthesia clinicians through their professional organizations and to the anesthesia equipment manufacturers so they may include them in their own user education programs.

References

Copies of the checkout recommendations, comments received on the draft recommendations, FDA's analyses of the comments received, and the following references are on file in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Cooper, J.B., et al., "An Analysis of Major Errors and Equipment Failures in Anesthesia Management: Consideration for Prevention and Detention," *Anesthesiology*, 60:34–42, 1984.

2. Dorsch, J.A., and S.E. Dorsch, "Understanding Anesthesia Equipment: Construction, Care, and Complications," 2d Ed., Baltimore/London, Williams and Wilkins, 1984, Chapters 10 and 14.

3. "Anesthesia Apparatus Checkout Draft Recommendations; Availability," Federal Register/Vol. 51, No. 60/Friday, March 28, 1986/Notices, pp. 10673–10674.

Interested persons may at any time submit to the Dockets Management Branch (address above) written comments regarding the recommendations identified with the docket number found in brackets in the heading of this document. Such comments will be considered in determining whether amendments to or revisions of the recommendations are warranted. Two copies of comments are to be submitted (except that individuals may submit single copies). Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 17, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–3798 Filed 2–24–87; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 87M–0009]

Arzco Medical Electronics, Inc.; Premarket Approval of the Arzco Transesophageal Cardiac Stimulator Model 7

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Arzco Medical Electronics, Inc., Chicago, IL, for premarket approval, under the Medical Device Amendments of 1976, of the Arzco Transesophageal Cardiac Stimulator Model 7. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by March 27, 1987.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Doris Terry, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Ave., Silver Springr MD 20910, 301–427–7594.

SUPPLEMENTARY INFORMATION: On June 23, 1986, Arzco Medical Electronics, Inc., Chicago, IL 60616, submitted to CDRH an application for premarket approval of the Arzco Transesophageal Cardiac Stimulator Model 7. The Arzco Transesophageal Cardiac Stimulator Model 7 is indicated for (1) The termination of supraventricular tachycardia (atrial flutter and reentrant atrial or atrioventricular paroxysmal tachycardias) in children via an esophageal catheter electrode; and (2) the acceleration of heart rate in adults via a pill-electrode as an alternative to exercise during diagnostic studies such as echocardiography or radionuclide ventriculography.

On October 24, 1986, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On December 30, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Doris Terry (HFZ–450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the person who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 27, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 13, 1987.

John. C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 87–3795 Filed 2–24–87; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 87M–0022]

Avery Laboratories, Inc.; Premarket Approval of Diaphragm Pacer

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Avery Laboratories, Inc., Farmingdale, NY, for premarket approval, under the Medical Device Amendments of 1976, of the Diaphragm Pacer. After reviewing the recommendation of the Neurological Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by March 27, 1987.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert F. Munzner, Center for Devices and Radiological Health (HFZ–430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7226.

SUPPLEMENTARY INFORMATION: On July 3, 1986, Avery Laboratories, Inc., Farmingdale, NY 11735, submitted to CDRH an application for premarket approval of the Diaphragm Pacer. The device is an implanted diaphragmatic/phrenic nerve stimulator which is classified into class III (premarket approval). In the **Federal Register** of April 8, 1986 (51 FR 12100), FDA issued a final rule (21 CFR 882.5830), pursuant to section 515(b) of the act (21 U.S.C. 360e(b)), to require the filing of premarket approval applications for such devices by July 7, 1986. The Diaphragm Pacer is indicated for persons who require chronic ventilatory support because of upper motor neuron respiratory muscle paralysis or because of central alveolar hypoventilation and whose remaining phrenic nerve, lung, and diaphragm function is sufficient to accommodate electrical stimulation.

On September 8, 1986, the Neurological Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On January 5, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Rohert F. Munzner (HFZ–430), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(R) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the person who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 27, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 13, 1987.

John C. Vilforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 87–3799 Filed 2–23–87; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[IOA–007–N]

Meeting; Task Force on Long-Term Health Care Policies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), this notice announces a meeting of the Task Force on Long-Term Health Care Insurance Policies.

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DATE: The meeting will be held on March 26, 1987 from 10:00 a.m. to 4:30 p.m., and on March 27, 1987 from 8:30 a.m. to 3:00 p.m., E.S.T. The meeting will be open to the public.

ADDRESS: The meeting will be held in the Holiday Inn, Baltimore-Washington International Airport, 890 Elkridge Landing Road, Linthicum, Maryland.

FOR FURTHER INFORMATION CONTACT: Dennis DeWitt, 202–245–0063.

SUPPLEMENTARY INFORMATION:

Purpose

The Task Force on Long-Term Health Care Policies, established under section 9601 of the Consolidated Omnibus Budget Reconciliation Act of 1985, will evaluate current issues relating to private long-term care insurance. To ensure the evolution of sound private long-term care policies and to help foster consumer confidence in them, the Task Force will develop guidelines that can be used by State regulators, persons involved in the insurance industry, and consumers who may wish to purchase such policies.

The term "lone-term health care policy" means an insurance policy, or similar health benefits plan, that is designed for or marketed as providing (or making payment for) health care services (such as nursing home care and home health care) or related services (which may include home and community-based services), or both, over an extended period of time.

The Task Force on Long-Term Health Care Policies will advise the Secretary of Health and Human Services and the Administrator of the Health Care Financing Administration concerning the development of insurance policies for long-term care that are privately marketed to individuals or groups. The Task Force will develop recommendations for long-term health care policies, including recommendations designed to: (1) Limit marketing and agent abuse for those policies; (2) assure the dissemination of information to consumers necessary to permit informed choice in purchasing the policies and to reduce the purchase of unnecessary or duplicative coverage; (3) assure that benefits provided under the policies are reasonable in relationship to premiums charged; and (4) promote the development and availability of long-term health care policies that meet these recommendations.

Agenda

Agenda items for the meeting will include Task Force discussion on induced demand; adverse selection; ways to make long-term care insurance more affordable, including vehicles that are tax-based and those that are not; and employer-employee issues.

Agenda items are subject to change as priorities dictate.

(Sec. 10(a)(2) of Pub. L. 92–463, as amended (5 U.S.C. App. I, Sec 1–15) and sec. 9601 of Pub. L. 99–272 (42 U.S.C. 1395b note); 45 CFR Part 11)

Dated: February 12, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 87–3861 Filed 2–24–87; 8:45 am]

BILLING CODE 4120–01–M

Health Resources and Services Administration

Health and Allied Health Professions Eligibility for Scholarship Consideration Under the Health Professions Preparatory and Pregraduate Scholarship Programs for Indians, and the Indian Health Scholarship Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Health and Allied Health Professions Which Will be Eligible for Scholarship Support under Indian Health Service (IHS) Scholarship Programs.

SUMMARY: The IHS is publishing a list of health and allied health professions for which support under the various scholarship programs administered by the IHS may be available for the 1987/1988 academic year and possibly beyond. Actual awards will be dependent upon the availability of funds. Awards will not be available in health and allied health professional areas not listed. This list will remain in effect until superseded.

DATE: This IHS policy is effective on February 25, 1987.

FOR FURTHER INFORMATION CONTACT: Please address inquiries to Mr. Larry Thomas, Indian Health Service, Parklawn Building, Room 6–12, 5600 Fishers Lane, Rockville, Maryland 20857; Telephone 301–443–6197. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Health Professions Preparatory and Pregraduate Scholarship Programs for Indians are authorized by section 103 of the Indian Health Care Improvement Act, Pub. L. 94–437 as amended by Pub. L. 96–537, Indian Health Care Amendments of 1980. The Indian Health Scholarship Program is authorized by section 338G of the Public Health Service Act. Both programs are intended to encourage Indians to enter the health professions and to assure the availability of Indian health professionals to serve Indians. The list below is based upon the needs of the IHS as well as upon the needs of the Indians for additional service by specific health professions.

Regulations at 42 CFR 36.304 provide that the IHS shall, from time to time, publish a list of health professions eligible for consideration for the award of Health Professions Preparatory and Pregraduate Scholarships for Indians and Indian Health Scholarships. Also, section 338G(b)(1) of the Public Health Service Act [42 U.S.C. 254r(b)(1)] authorizes the determination of specific health professions for which Indian Health Scholarships will be awarded.

Pending the availability of funds, consideration will be given to qualified applicants for scholarship support under the above-named scholarship programs in the following health profession categories:

Priority Categories

Health Professions Preparatory Scholarship Program for Indians

A. Pre-Nursing.
B. Pre-Accounting.

Pre-Graduate Program

A. Pre-Medicine: Junior/Senior level only.
B. Pre-Dentistry: Junior/Senior level only.

Indian Health Scholarship Program

A. Medicine; Allopathic and Osteopathic.
B. Nursing: ADN, BSN, and MS Degrees.
C. Pharmacy: Junior/Senior level.
D. Engineering: Civil, Environmental and Mechanical—Junior/Senior level.
E. Dietician/Nutrition: Junior/Senior level.
F. Sanitarian: Environmental Health, Environmental Science, and Occupational Safety and Health—Junior/Senior level.
G. Medical Technologist: BS Degree—Junior/Senior level.
H. Dentistry.
I. Accounting: Junior/Senior level.
J. Health Administration: MS/MA Degree.
K. Statistician: BS/MA Degree—Junior/Senior level.
L. Dental Hygiene: Junior/Senior level.
M. Health Education: Masters level.
N. Chemical Dependency Counseling: Masters level.

Interested individuals are reminded that the list of eligible health and allied health professions is initially effective for the applicants for the 1987–1988 academic year. These priorities will remain in effect until superseded. Applicants for health and allied health professions not on the above priority list will be considered pending the availability of funds and dependent upon the availability of qualified applicants in the priority areas.

The Health Professions Preparatory and Pregraduate Scholarship Program for Indians is listed as No. 13.971 in the OMB Catalog of Federal Domestic Assistance. The Indian Health Scholarship Program is listed as No. 13.972 in the Catalog.

Dated: February 18, 1987.

David N. Sunwall, M.D.,

Administrator.

[FR Doc. 87–3852 Filed 2–24–87; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D–87–832; FR–2299]

Delegation of Authority With Respect to the Transitional Housing Demonstration Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of concurrent delegation of authority.

SUMMARY: The Transitional Housing Demonstration Program was authorized by section 101(g), Pub. L. 99–500 (approved October 18, 1986) and Pub. L. 99–591 (approved October 30, 1986), making appropriations as provided in H.R. 5313, 99th Cong., and 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986). This Notice delegates to the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner the Secretary's power and authority with respect to this program, subject to specified exceptions.

EFFECTIVE DATE: February 13, 1987.

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–5720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This Notice states the scope of authority given to the Assistant Secretary for Housing—Federal Housing Commissioner and General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner for the Transitional Housing Demonstration Program. All of the Secretary's authority with respect to this Program is delegated except the power to sue and be sued. The authority delegated includes the authority to redelegate to employees of the Department, except for the authority to issue rules, regulations and guidelines under the Program.

The Transitional Housing Demonstration Program is a new program authorized by Title V of HUD's appropriation for fiscal year 1987. Proposed guidelines for the operation of the program are published elsewhere in today's issue of the Federal Register. Accordingly, the Secretary delegates as follows:

Section A. Authority Delegated

The Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner are authorized individually to exercise the power and authority of the Secretary of Housing and Urban Development with respect to the Transitional Housing Demonstration Program as authorized by section 101(g), Pub. L. 99–500 (approved October 18, 1986) and Pub. L. 99–591 (approved October 30, 1986), except as indicated in Section B below. This includes the authority to issue or waive rules, regulations, or guidelines under the Program.

Section B. Authority Excepted

There is excepted from the authority delegated under Section A the power to sue or be sued.

Section C. Authority to Redelegate

The Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner are authorized, individually, to redelegate to employees of the Department any of the power and authority delegated under Section A, and not excepted under Section B of this delegation. In addition, the Assistant Secretary and the General Deputy Assistant Secretary are not authorized to redelegate the authority to issue or waive rules, regulations and guidelines under the Program.

(Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

Dated: February 13, 1987.

Samuel R. Pierce, Jr.,

Secretary

[FR Doc. 87–3762 Filed 2–24–87; 8:45 am]

BILLING CODE 4210–32–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–87–1666; FR–2299]

Transitional Housing Demonstration Program; Proposed Guidelines

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of proposed guidelines.

SUMMARY: This notice announces HUD's proposed guidelines for the operation of the Transitional Housing Demonstration Program contained in HUD's appropriation for fiscal year 1987. The Program is designed to develop innovative approaches to providing housing and supportive services to help facilitate the transition to independent living for homeless persons who are capable of making the transition within a reasonable period of time. Under the guidelines, HUD would make assistance available to eligible governmental and private nonprofit entities in the forms of (1) interest-free advances to cover part of the costs of acquiring or rehabilitating (or both) existing structures for use in the provision of housing and supportive services for homeless persons; (2) annual payment of a portion of the operating costs of the housing; and (3) technical assistance to Program recipients in carrying out activities under the Program.

DATE: Comments must be received by March 27, 1987.

ADDRESS: Interested persons are invited to submit comments regarding this notice to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202)

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755–5720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Transitional Housing Demonstration Program

I. Background
II. Procedural Implementation Requirements
III. Transitional Housing Demonstration Program
A. Definitions
B. Types of Assistance
1. Assistance Under the Program
(i) Acquisition/rehabilitation advances.
(ii) Annual payments for operating costs.
(iii) Technical assistance.
2. Commitment of Amounts for Operating Costs
3. Limitations on the Use of Assistance
(i) Funding of existing homeless programs.
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I. Background

Title V of HUD's appropriation for fiscal year 1987 [1] established the Homeless Housing Act of 1986 (the Act). The Act created two new programs to assist homeless persons. Part B of Title V contains the Transitional Housing Demonstration Program. Part C contains the Emergency Shelter Grants Program. This notice addresses the Transitional Housing Demonstration Program. (A proposed rule implementing the Emergency Shelter Grants Program was published in the **Federal Register** on December 17, 1986 (51 FR 45277).)

Under the Transitional Housing Demonstration Program, HUD is directed to carry out a program to develop innovative approaches for providing housing and supportive services to help facilitate the transition to independent living for homeless persons who are capable of making the transition within a reasonable time. The purposes of the Program are to determine:

—The cost of acquiring or rehabilitating (or both), or leasing, existing structures for the provison of housing for homeless persons;
—The cost of operating the housing and providing supportive services to its residents; and
—The social, financial, and other advantages of the housing and supportive services as a means of assisting homeless persons.

II. Procedural Implementation Requirements

Section 514 of the Act contains procedural requirements governing the implementation of the Program. Section 514(a) directs the Secretary to issue, within 180 days of the Act's enactment, guidelines necesssry to carry out the demonstration. Before issuing these guidelines, section 514(b) directs the Secretary to consult with persons and entities having expertise on the problems and needs of homeless persons or experience in providing housing or supportive services for them. Finally, under section 514(c), all guidelines must be published in the **Federal Register** annually and whenever modified, and their development is made subject to the procedural rulemaking requirements of the Administrative Procedure Act. (5 U.S.C. 551–553.)

In conformance with the advance consultation requirements, HUD program officials conducted several meetings with homeless care providers and other groups and individuals with expertise regarding homeless persons. These meetings were held in Seattle, Washington; San Francisco, California; Atlanta, Georgia; Detroit, Michigan; and Boston, Masssachusetts during the period beginning December 10, 1986 and ending December 16, 1986. Summaries of these meetings and a list of participants have been included in the public comment file and are available for inspection and copying during regular business hours in the Office of the Rules Docket Clerk at the above address.

Interested parties that were not contacted during the advance consultation procedure will have an opportunity to participate in the development of the final guidelines. In accordance with section 514, HUD is publishing this notice of proposed guidelines in the **Federal Register**, will permit the public to comment on them for a 30-day period following publication, and will publish final guidelines in the **Federal Register** no later than April 16, 1987. Interested parties with expertise or experience in matters concerning homeless persons, as well as all other members of the public, are encouraged to participate in this process.

III. Transitional Housing Demonstration Program

A. Definitions

The following definitions would apply to the Program:

Applicant means any governmental or private nonprofit entity that submits an application for assistance under the Program. Governmental entities include those that have general governmental powers, such as a city or county, as well as those that have limited or special purpose powers, such as public housing agencies.

Homeless person means an individual or family which does not have access to either traditional or permanent housing, but which is capable of living independently within a reasonable amount of time, not to exceed 18 months.

Housing for homeless persons means a structure that is suitable for the provision of housing and supportive services for homeless persons in an appropriate group setting. Some or all supportive services may be provided by arrangements with other service providers at facilities outside the structure.

HUD means the Department of Housing and Urban Development.

Operating costs means expenses that a recipient operating transitional housing incurs for:

(a) The administration, maintenance, minor or routine repair, and security of the housing;

(b) Utilities, fuels, furnishings, and equipment for the housing;

(c) Conducting resident supportive services needs assessments (see paragraph E.1.(ii) of this section, below); and

(d) The provision of supportive services to the residents of the housing.

Private nonprofit entity means a secular or religious organization described in section 501(c) of the Internal Revenue Code that:

(a) Has a currently effective tax exemption ruling issued by the Internal Revenue Service under section 501(c) of the Internal Revenue Code;

(b) Has a functioning accounting system that is operated in accordance with generally accepted accounting principles;

(c) Has a voluntary board; and

(d) Practices nondiscrimination in the provision of assistance under this Program, in accordance with the authorities described in paragraph E.5.(i) of this section, below.

Recipient means an applicant that HUD approves as to financial responsibility and that executes a grant agreement with HUD for assistance under the Program.

Rehabilitation means labor, materials, tools, and other costs of improving structures to a level that, at a minimum, meets or exceeds applicable State and local government health and safety standards. Rehabilitation includes repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing structures; installation of security devices; and improvement through alterations or additions to, or enhancement of, existing structures, including improvements to increase the efficient use of energy in structures. Rehabilitation does not include minor or routine repairs or cosmetic repairs or improvements.

Supportive services means:

(a) Assistance in obtaining permanent housing;

(b) Medical and psychological counseling and supervision;

(c) Employment counseling;

(d) Nutritional counseling;

(e) Assistance in obtaining other Federal, State, and local assistance available for residents of transitional housing, including mental health benefits; employment counseling; medical assistance; and income support assistance, such as Supplemental Security Income benefits, Aid to Families with Dependent Children, General Assistance, and Food Stamps; and

(f) Other services proposed by the applicant in its application and approved by HUD, that are essential for maintaining independent living and that address the needs of the homeless persons served by the recipient. Such services might include child care, transportation, job placement, and job training.

Transitional housing means a program assisted under the demonstration (a) that provides housing and supportive services for homeless persons and (b) that has as its purpose facilitating the movement of homeless persons to independent living within a reasonable amount of time, not to exceed 18 months for any homeless person. All or part of the supportive services in transitional housing may be provided directly by the recipient or by arrangements with other public or private service providers. (See paragraphs D.2.(iv)(b) and D.3.(iii) of this section, below.)

B. Types of Assistance

1. Assistance Under the Program

HUD is authorized to provide three types of assistance under the Program: acquisition/rehabilitation advances, annual payments for operating costs, and technical assistance. This paragraph discusses the types of assistance available under the Program. Depending upon their proposed activities and the availability of other sources of funding, applicants may request both an acquisition/rehabilitation advance and operating cost payments, or they may seek only one of these types of assistance. HUD would make technical assistance available only in conjunction with the award of funds under the Program.

The three types of Program assistance would be:

(i) *Acquisition/rehabilitation advances.* HUD would advance sums to recipients to help defray the cost of acquiring or rehabilitating (or both) an existing structure selected by the recipient for use as transitional housing. Advances could not exceed the lesser of $200,000 or 50 percent of the aggregate acquisition/rehabilitation costs. Advances would be interest-free and, if certain conditions are met, would not be repayable. (For the rules governing repayment of advances, see paragraph E.2. of this section, below.) As noted above, HUD would limit advances to a maximum 50 percent of the costs involved; the recipient would have to make up the other half with funds from other sources. This matching requirement reflects HUD's belief in the importance of using Program funds to leverage at least an equal amount of funds from other sources. (For a full discussion of the leveraging concept, see paragraph D.2.(iii) of this section, below.)

(ii) *Annual payments for operating costs.* HUD would make annual payments of up to 50 percent of the operating costs (which include supportive services) for transitional housing. The 50 percent maximum reflects HUD's belief in the need to use Program funds to leverage at least equal amounts from other sources. (See the immediately preceding paragraph for the leveraging requirement for acquisition/rehabilitation advances and paragraph D.2.(iii) of this section, below, for a discussion of the leveraging concept.)

(iii) *Technical assistance.* Technical assistance would be offered to recipients through HUD field office staff in such matters as the computation of resident rent (see paragraph E.3. of this section, below), compliance with Federal requirements (see paragraph E.5. of this section, below), the availability of Federal housing assistance to residents upon their departure from transitional housing (see paragaprh B.4. of this section, below), and engineering and other advice on rehabilitation plans and work write-ups. HUD would also facilitate the exchange of information among recipients, and help recipients to learn from the experience of other recipients.

2. Commitment of Amounts for Operating Costs

Upon approval of an application requesting operating cost assistance, HUD would obligate amounts for the period sought, not to exceed five years. Each year, up to five years, HUD would make operating cost payments to the recipient from the amounts obligated.

The Department believes that the five-year period strikes an appropriate balance among a number of competing considerations. The five-year term coincides with the minimum period under the Act for which a recipient must agree to use a structure for transitional housing. The five-year term would ensure that recipients have a steady

[1] Section 101(g), Pub. L. 99–500 (approved October 18, 1986) and Pub. L. 99–591 (approved October 30, 1986), making appropriations as provided for in H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986).

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stream of income to help them meet their responsibilities for the full period for which they are obligated to HUD to operate transitional housing under the Program.

Obligating funds for a period in excess of five years could inappropriately constrict the number of homeless persons that the Program could serve and result in too few recipients to permit a demonstration of adequate size to yield meaningful results. Obligating funds for a shorter period (*e.g.*, one year) could make recipients' ability to meet the statutory five-year operating requirement too dependent on their success in locating alternative funding sources during the initial stages of operation—the time when, without a proven track record, attracting new funding would be generally the most difficult. Failure to obtain alternate funding could jeopardize operation of the transitional housing, thus frustrating the Program's objectives.

As noted in paragraph E.2. of this section (below), HUD would waive repayment of an acquisition/rehabilitation advance if the recipient continues to operate transitional housing in accordance with the Program's requirements for 10 years, or if HUD approves the use of the structure for another charitable purpose for the rest of the 10-year period. Failure to meet these provisions would require repayment of the full amount of the advance.

The Department recognizes that the use of the five-year period for operating cost assistance may make it more difficult for some recipients to meet this 10-year operating requirement. The Department does not believe, however, that this is sufficient to compel fund obligation beyond five years. As noted above, the Department believes that a term longer than five years unduly narrows the number of homeless persons served and the scope of the demonstration. In addition, the five-year period provides certain funding during the recipient's start-up period, the succcessful completion of which should make it far easier to attract alternate sources of funding for the remaining years. Even if an applicant cannot continue to operate transitional housing under the Program, it may nonetheless avoid repayment of any advance by securing HUD's approval for use of the structure for another charitable purpose.

3. Limitations on the Use of Assistance

(i) *Funding of existing homeless programs.* HUD would not generally provide any acquisition/rehabilitation advances or annual operating costs payments for existing facilities or programs that serve homeless persons. Funding could be provided, however, if an applicant operating existing homeless facilities proposes to use Program funds to substantially increase the number of homeless persons for whom transitional housing would be provided, or to substantially increase the level of supportive services to be provided to homeless persons. Funding also could be provided if the applicant proposes a substantial change in the use of the existing facilities: *e.g.*, if existing facilities that are not currently used for transitional housing (such as an emergency shelter for the homeless) would be used to provide transitional housing, or if an applicant currently providing transitional housing proposes to serve an additional or alternative segment of the homeless population.

If such an applicant is selected for funding, HUD would make assistance available only for the increased operating costs and increased cost of acquisition/rehabilitation attributable to the increased number of homeless persons for whom transitional housing would be provided, the increased level of supportive services to be provided, or the change in use. Consistent with the leveraging requirement in paragraph D.2.(ii) of this section, below, the amount of HUD assistance would be limited to 50 percent of the increased operating costs or increased cost of acquisition/rehabilitation.

(ii) *Leases.* Acquisition/rehabilitation advances would not be available to help defray the costs of acquiring a lease on existing property. Advances would, however, be available for the rehabilitation of leased property, if the lease runs for a term of at least 10 years after the date of initial occupancy of the housing. Although the expenses of acquiring a leasehold interest would not be eligible for an acquisition/rehabilitation advance, rental payments under a lease would be an allowable operating expense, and HUD would permit the inclusion of these expenses in the computation of the annual operating cost payment.

(iii) *New construction.* Assistance under the Program is limited to the acquisition or rehabilitation (or both) of existing structures. Assistance, may not be used for the new construction of housing for homeless persons.

(iv) *Constitutional limitations on the use of program funds by primarily religious organizations.* The definition of private nonprofit entities would include religious organizations that qualify under section 501(c) of the Internal Revenue Code and that meet certain specified criteria. (See paragraph A. of this section, above)

The First Amendment of the Constitution provides that "Congress shall make no law respecting an establishment of religion." In accordance with this constitutional principle, the Supreme Court has directed that statutes affording public assistance must have a primary effect that neither advances nor inhibits religion. (See *Lemon* v. *Kurtzman*, 403 U.S. 603 (1971). In *Hunt* v. *McNair*, the Court stated:

> Aid normally may be thought to have a primary effect of advancing religion when it flows to an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission or when it funds a specifically religious activity in an otherwise substantially secular setting." (413 U.S. 734, 742 (1973))

Thus, determining constitutional compliance requires an examination of the extent to which religion pervades an entity's functions. In addressing this issue, Justice Blackmun, speaking for the majority in *Roemer* v. *Maryland Public Works Board*, declared:

> To answer the question whether an institution is so 'pervasively sectarian' that it may receive no direct State aid of any kind, it is necessary to paint a general picture of the institution. (426 U.S. 736, 738 (1976))

In accordance with these principles, HUD does not propose to provide acquisition/rehabilitation advances for existing structures to be owned or leased by pervasively sectarian organizations. While structures to be owned or leased by churches clearly may not receive advances, not all section 501(c) tax-exempt organizations would fall within the pervasively sectarian classification, even though they may be church-related or have certain religious affiliations or purposes. Determinations in this regard would generally turn on the extent to which religion is infused in the organization's functions, as reflected in its charter, by-laws, publications, or other evidence related to its stated purposes, organization, control, membership, and operations, including the nature of, and eligibility for participation in, the activities, services, and benefits it provides.

In addition, pervasively sectarian organizations may establish independent nonprofit entities to provide transitional housing under the Program. This approach, like that used in the Department's administration of the section 202 loan program for the elderly and handicapped, makes possible all forms of assistance under the demonstration for structures owned by such independent nonprofit entities. Finally, it should be understood that this notice would not prohibit HUD from providing *operating cost payments* to private nonprofit entities—including those determined to be pervasively sectarian—if the provision of housing and supportive services would be carried out in a manner free from religious influences and in accordance with conditions prescribed in the grant agreement.

As noted above, a pervasively sectarian organization may establish an independent private nonprofit entity to provide transitional housing under the Program. Because the formation of such an independent entity may be time consuming, costly, and unnecessary if the application is not ultimately selected for funding, HUD would not require the formation of the independent entity before such a proposal is selected. Under these limited circumstances, the pervasively sectarian organization would be permitted to apply on behalf of the independent entity. The application would be reviewed on the basis of the pervasively sectarian organization's financial responsibility and capacity, and its commitment to provide appropriate resources to the independent entity after formation. (See paragraphs D.2.(ii)(b) and (c), and paragraphs D.3.(i) (a) and (b) of this section, below.) Additionally, the pervasively sectarian organization would be required to demonstrate site control under paragraph D.2.(iv)(d) of this section, below, and a commitment to transfer control of the site to the independent entity after formation. Since the independent entity would not be in existence at the time of the application, it would be permitted to demonstrate that it meets the definition of private nonprofit entity and has the appropriate legal authority to participate in the Program, following selection. (See paragraphs D.2.(ii)(a) and (d) of this section, below.) Where such an independent entity is selected for funding HUD would condition the obligation of funds upon the completion of these requirements.

4. Assistance Under Other HUD Programs.

As noted earlier (paragraph B.1.(iii) of this section), as a part of its technical assistance under the Program, HUD would provide recipients with information concerning the availability of Federal housing assistance for residents upon their departure from transitional housing. HUD also intends to provide housing vouchers under section 8(o) of the United States Housing Act of 1937 for income-eligible homeless persons upon their departure from transitional housing, if such assistance can be made available through local public housing agencies participating in the Voucher Program and there is adequate funding authority for this purpose. Use of housing vouchers in connection with the Program is designed to help very low-income graduates of transitional housing achieve and maintain independent living by making their rental payments more affordable.

Additionally, HUD is considering offering applicants an opportunity to obtain HUD-owned single family properties for use as transitional housing through the Department's Single Family Property Disposition Program.

C. Application Process

HUD intends to develop an application package prescribing the specific information that applicants for assistance under the Program must submit. The application package would be available at the same time as the issuance of the final guidelines for the Program—no later than April 16, 1987—and would be provided upon the written request of any party.

The application package would require submission of a narrative description of the applicant's transitional housing proposal. The narrative should address each programmatic aspect of the applicant's proposed activities in establishing and operating transitional housing in conformance with HUD's guidelines. This narrative statement should describe such matters as the applicant's proposed procedures for the selection of residents and the preparation of residential assessments, and should describe how the applicant proposes to provide or coordinate the provision of supportive services to the residents. With regard to the selection of residents, applicants may submit, and HUD may approve, proposals for transitional housing that would serve certain designated populations of homeless persons. Such designated populations may include the chronically mentally ill, the victims of domestic violence, families with children, the unemployed, and runaway children, or appropriate combinations of designated populations of homeless persons.

Applicants would also have to specify each financial aspect of the proposed activities for the proposed term of the applicant's commitment to HUD, including the proposed amounts, sources, and uses of funding for the applicant's program, and the proposed amounts and uses of assistance requested from HUD. Other application material would include (1) an analysis of the supportive services required by the homeless persons to be served; (2) copies of balance sheets and statements of income and expenses for each of the past three years for which the applicant has been in operation or if the applicant has operated for less than three years, this information for its actual period of operation; and (3) such other information as HUD may require to make funding selections. (See paragraph D. of this section, below.)

The application package would announce deadlines for completed applications and timeframes for HUD selections. Currently, HUD intends to require applicants to file completed applications eight weeks after HUD issues final guidelines for the Program. (Final guidelines are due by April 16, 1987.)

Potential applicants should note that it may take some time to fulfill certain application requirements and to assemble a complete application. For example, under paragraph D.2 of this section, below, HUD would impose certain leveraging, zoning, site control, historic preservation, and other requirements that applicants may not be able to meet if they take no action on them until the issuance of final guidelines. Accordingly, potential applicants would be well advised to consider taking some initial steps in the preparation of their applications as soon as possible.

HUD headquarters would process all applications and select the successful applicants. HUD would make its final selections and obligate funds as soon as the applications can be processed. In no event would the selection process and the obligation of funds be completed later than the end of fiscal year 1987.

D. Selection Process

1. Overview

The selection process would have four stages. In the first stage, HUD would determine if an application meets the threshold criteria discussed in paragraph D.2. of this section, below. An application that does not meet all the threshold criteria would not advance to the next stage, and would not be eligible for funding under the Program.

Applications that meet each of the threshold criteria would advance to the ranking stage. HUD would evaluate each application under the ranking criteria described in paragraph D.3. of this section, below, and would rank all applications in priority order on the basis of the overall points awarded them on the ranking factors.

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After the completion of the ranking in the second stage, a number of highest ranked applications would be passed on to the third stage for compliance review in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and HUD's implementing regulations at 24 CFR Part 50. Environmental reviews would not be performed on all applications ranked under the second stage. Rather, HUD would only review the number of highest rated applications that it determines necessary to ensure an adequate pool of applications for the final selection process. Applications that do not move to this third stage of processing would not be selected for funding. In this third stage, any application that would require the preparation of an environmental impact statement (EIS) would be ineligible for funding. Additionally, HUD may make adjustments to the rating scores based on the results of the environmental review.

In the fourth stage, HUD would consider for final selection the applications that advance from the third stage review, with any rating adjustment made on the basis of the environmental review performed at that stage. HUD would find the highest rated applications, but would reserve the right to fund other applications that successfully completed the third stage, if necessary to ensure reasonable diversity in the demonstration, as discussed in more detail in paragraph D.5. of this section, below.

2. Threshold Criteria

Applicants would be required to meet each of the following threshold criteria (as modified for independent private nonprofit entities to be established by pervasively sectarian organizations under paragraph B.3. (iv) of this section, above):

(i) *Form, time, and adequacy of the application.* The application must be filed in the form and within the time periods established by HUD, include all the required elements, and contain evidence or information sufficient to support each of its elements.

(ii) *Applicant*—(a) *Eligibility to receive assistance.* The applicant would be required to demonstrate that it meets the definition of a governmental or private nonprofit entity (as defined in paragraph A. of this section, above).

(b) *Financial responsibility.* The applicant must demonstrate that it is financially responsible. To show financial responsibility, applicants would be required to demonstrate that they will be able to establish and operate the proposed transitional housing for the term of their commitment to HUD with the finances that are, or are reasonably expected to be, available to them. In making this determination, HUD would consider to be, available to them. In making this determination, HUD would consider factors such as the past financial history of the applicant; its current and anticipated financial outlook; the amount of funding that would be committed under the proposal; and the applicant's other financial responsibilities. (This factor is also a ranking criterion (see paragraph D.3.(i)(a) of this section, below).)

(c) *Capacity.* The applicant must demonstrate that it has the ability to carry out activities under the Program within a reasonable time after execution of the grant agreement with HUD and in a successful manner. In making this determination, HUD would consider the extent and quality of the applicant's past experience in establishing and operating housing for homeless persons and in providing or coordinating supportive services for its residents. (If the applicant does not have direct experience with these activities, HUD would consider the extent and quality of the applicant's activities in other areas that the applicant demonstrates are relevant to successful development and operation of transitional housing.) HUD would also consider the ability of the applicant's personnel to perform administrative, managerial, and operational functions necessary to the successful development and operation of transitional housing. (This factor is also a ranking criterion under paragraph D.3.(i)(b), below.)

In the event that HUD receives appropriations for this program in the future, the capacity of an applicant that has received previous funding would also be determined based upon its performance in meeting the goals of the Program and the objectives of its original application.

(d) *Legal authority.* (1) Applicants would be required to demonstrate that they have the appropriate legal authority to participate in the Program and to carry out activities in accordance with Program requirements and the requirements of other applicable Federal law.

(2) In addition, each applicant would have to submit a resolution, motion, or similar action that has been duly adopted or passed as an official act by its governing body, authorizing the submission of an application under the Program and the establishment and operation of the proposed transitional housing if HUD selects it for funding.

(iii) *Leveraging.* To ensure recipients' commitment to the provision of transitional housing and to ensure that the most effective use is made of the limited funds available for this demonstration, HUD proposes to require that each recipient match the amount of the acquisition/rehabilitation advance and operating cost payments to be provided under the Program with at least an equal amount of funds from other sources.

To be accepted for consideration, the applicant must provide appropriate documentation indicating the sources and amounts of the applicant's leveraging contribution. If the source of the applicant's contribution would be an entity other than the applicant (such as funding provided through State or local agencies), HUD must find the documentation sufficient to demonstrate a commitment to provide the funds if the application is selected under the Program.

Recipients would have to meet this matching requirement for *each* category of assistance received. Thus, the most HUD would make available for acquisition/rehabilitation advances or operating cost payments would be 50 percent of their *respective* costs. Since, as noted earlier, technical assistance would be furnished by HUD staff, no match would be required for that category of assistance.

To satisfy the leveraging requirement, recipients would be required to commit *new* funds. If the HUD assistance is requested for funding of existing programs described in paragraph B.3.(i) of this section, above, the resources necessary to maintain and operate the program *at its current level* would be excluded from the leveraging calculation. The following example illustrates this requirement. An applicant submits a request for annual payments of operating costs. It currently operates transitional housing that has a capacity to serve 10 homeless persons and has annual operating costs of $100,000. If the applicant proposes no increase in the level of supportive services provided or the number of homeless persons served, it would not be eligible for operating cost funding under the Program. (See paragraph B.3.(i) of this section, above.) If, however, the applicant proposes to provide *additional* supportive services for the 10 homeless persons and these services will increase annual operating costs to $150,000, $25,000 (the $50,000 increase in operating costs times the 50 percent leveraging requirement) would be eligible for funding. The applicant would be required to demonstrate that it could provide its leveraging ($25,000) from resources in addition to those already committed to its existing program.

Participants in the advance field consultations urged HUD to include the value of "in kind" contributions (e.g., materials, buildings, and volunteer services) in calculating the recipient's leveraging contribution. Because accurate valuation of "in-kind" contributions is difficult, HUD is proposing to exclude all "in-kind" contributions from the leveraging calculation, except "in-kind" contributions of structures to be used for transitional housing.

HUD, however, would permit only limited use of the value of donated structures in the leveraging computation. If an applicant is donated an *ownership* interest in a structure, HUD would permit the applicant to use the fair market value of its interest in the structure as its contribution only for the *acquisition/rehabilitation advance.* If the applicant if given a *leasehold* interest in a structure, the Department would permit the applicant to use the fair rental value of the structure as its leveraging contribution only for the *annual payment of operating costs.* Under no circumstances would the value of a structure in which an applicant is given an ownership interest be used to compute the applicant's leveraging contribution for operating costs, or would the value of a structure in which an applicant is given a leasehold interest be used to compute the value of the applicant's leveraging contribution for an advance. To be accepted for consideration by the Department, the applicant must support the fair market value or fair rental value of a structure with an appraisal prepared by a qualified real estate appraiser.

Under the proposed guidelines, applicants' matching contributions may come from any source. HUD, however, would encourage applicants to meet their matching requirement with funds other than those provided through other federally assisted programs, and is considering imposing such a requirement in the final guidelines.

Rental amounts paid by residents of transitional housing under paragraph E.3. of this section, below, could be included in the leveraging calculation of the annual payment of operating costs, if the rental amounts can be substantiated. An applicant would be permitted to substantiate rental amounts based on the rental income experience of the applicant or others in providing transitional housing or other assistance for homeless persons, modified to reflect the rental income calculation requirements of paragraph E.3. of this Section. Additionally, the applicant's substantiation should take into account the length of time necessary for homeless persons to qualify for Federal, State, or local income support assistance or to obtain employment, and any other factors that may reasonably be expected to affect the amount and timing of resident income.

(This factor is also a ranking criterion (see paragraph D.3.(iv) of this section, below)

(iv) *Proposed housing and supportive services*—(a) *Need.* Applicants would be required to demonstrate that an unmet need for the proposed transitional housing exists in the area to be served and that this need is likely to continue through the term of the applicant's commitment to HUD. Need may be demonstrated by information such as (1) estimates, based on past experience in the community, of unmet demand for the proposed transitional housing by the homeless population to be served; (2) present need for the proposed transitional housing, based on estimates of the homeless population to be served; or (3) projections of future need for the proposed transitional housing.

(b) *Adequacy of the proposed supportive services.* HUD does not propose to prescribe minimum supportive service requirements. Applicants would have to show, however, that the supportive services proposed (including the proposed job requirements of the residential supervisor (paragraph E.1.(iii) of this section, below)) would appropriately address the needs of the homeless population to be served, and would be sufficient to facilitate the movement of the homeless persons to appropriate permanent housing and independent living. In determining the adequacy of proposed services, HUD would assess both the supportive services to be provided to the residents of the transitional housing through the applicant and those to be provided through other private and public organizations. Where services are to be provided through other private and public organizations, the applicant must secure a letter of intent from each organization, indicating its willingness and ability to provide the services to the residents of the housing, and must attach these letters to the application.

(c) *Adequacy of the proposed housing.* Except for the siting and zoning requirements discussed in the next paragraph (paragraph (d)), HUD does not intend to impose any specific structure, design, or siting requirements for proposed transitional housing. Applicants would have to show, however, that the proposed structure and site are appropriate for (1) the provision of housing and supportive services in a suitable group setting and (2) the homeless population to be served by the applicant.

Recipients are encouraged to arrange for the provision of all or part of the proposed supportive services outside the proposed transitional housing, if the services are readily accessible to the homeless population to be served. Services would be considered to be readily accessible if residents can get to the services on their own or if transportation is provided to the site where the services are provided. Accordingly, when determining whether a structure will be suitable for the provision of supportive services, HUD will consider whether the structure is designed to permit the provision of proposed on-site supportive services, and whether any proposed off-site supportive services are readily accessible from the housing. (The provision of supportive services outside transitional housing is also a ranking criterion. See paragraph D.3.(iii) of this section, below.)

(d) *Siting and zoning.* To ensure that transitional housing will be available to serve homeless persons as soon as possible after applicant selection, HUD would require applicants to meet the following four siting and zoning requirements.

(1) The applicant must demonstrate that it has control of the site involved. For example, the applicant may demonstrate that it owns or has an option to purchase, or leases or has an option to lease, the structure involved;

(2) The applicant must demonstrate that the proposed use of the site is, at the time of the application, permissible under applicable zoning ordinances and regulations;

(3) The applicant must provide with the application, or within a reasonable time afterwards, a letter from the State Historic Preservation Officer (SHPO) indicating that no acquisition or rehabilitation funded under the Program would involve a property that is listed on the National Register of Historic Places, is eligible for listing on the Register, is located in a historic district, or is immediately adjacent to a property that is listed on the Register; and

(4) The applicant must submit a statement that the proposed transitional housing is not located in any 100-year floodplain, as designated by maps prepared by the Federal Emergency Management Agency.

HUD would impose the site control requirement (item (1)) to ensure that the

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applicant will be able to proceed with the establishment and operation of the transitional housing at the earliest possible time. Similarly, HUD would impose the remaining three requirements because of our concern, based on experience with other HUD programs, that projects can be delayed for a year or longer waiting for appropriate governmental zoning actions and the resolution of historic preservation and floodplain issues. In a program for homeless persons such as this, HUD believes it is under a mandate to ensure that the assistance reaches its intended beneficiaries as quickly as possible. Indeed, Congress had indicated its clear intention for speedy HUD action by imposing a six-month deadline for the issuance of final program guidelines and by excusing HUD from going through a rulemaking proceeding to implement the Program.

HUD is concerned, however, that a requirement that these siting and zoning requirements must be met at the application stage may be overly restrictive, and may work to exclude some otherwise meritorious applications from further funding consideration. We are, therefore, requesting public comment on the problems associated with requiring these showings at the application stage. Commenters may also address how any alternative system may be formulated, giving due regard to the paramount concern of making the Program's benefits available to homeless persons as quickly as possible.

(e) *Consistency with local government plans.* Applicants would be required to furnish a written statement from the unit of general local government in which the proposed transitional housing is located, indicating that the proposed use of the structure and site for transitional housing is not inconsistent with any plan of the local government that may have an effect on the use of the structure and site for this purpose. This requirement is designed to ensure that Federal funds are not used in ways that conflict with or frustrate the plans and objectives of local government. In order to avoid any unreasonable delay in the application submission, this requirement would be satisfied if the applicant demonstrates that it made a written request to the unit of local government for the statement and received no response within 30 days of the request.

(f) *Displacement.* Each applicant would be required to submit a statement that its proposed activities will not result in the temporary or permanent displacement of any person or entity. HUD believes that a program serving homeless persons should not result in displacement that may increase the homeless population. Thus, HUD would not fund an application that contemplates any permanent or temporary displacement.

(v) *Proposal feasibility.* Applicants would be required to demonstrate that the proposal for transitional housing, when viewed as a whole, is operationally feasible and would provide adequate housing and supportive services to homeless persons to facilitate their transition to independent living within a reasonable time.

3. Ranking Criteria

In the second stage of the selection process, all applications that meet the above threshold requirements would be placed in priority funding order, based upon their scores on the following ranking criteria:

(i) *Applicant.* During the course of HUD's meetings with members of the public (discussed in Section II., above), a number of individuals stressed the paramount importance of an applicant's ability to establish and operate transitional housing. HUD agrees with this view, and intends to give more weight to the ability factor than any other ranking criterion. The elements addressing an applicant's ability are as follows:

(a) *Financial responsibility.* HUD would consider the applicant's relative ability to establish and operate the proposed transitional housing for the term of its commitment to HUD with the finances that are, or are reasonably expected to be, available to it. The factors HUD would consider in making this judgment are discussed in paragraph D.2.(ii)(b) of this section, above.

(b) *Capacity.* HUD would consider the applicant's relative ability to carry out activities under the Program within a reasonable time after execution of the grant agreement with HUD and in a successful manner. The factors HUD would consider in making this judgment are discussed in paragraph D.2.(ii)(c) of this section, above. HUD would assign the greatest number of points under this criterion to applicants that demonstrate, on the basis of prior experience in the provision of transitional housing, the greatest ability to carry out activities under the Program expeditiously and successfully.

(ii) *Innovative quality of proposal.* HUD would consider the innovative quality of the proposal in providing housing and supportive services for homeless persons in a manner that facilitates the transition to independent living. In assessing an application under this factor, HUD would consider the degree to which the applicant demonstrates that:

(1) The proposal would use an approach to transitional housing that is new or unusual in the area to be served by the applicant, and that holds promise of successfully facilitating the transition of homeless persons to independent living; and

(2) The new or unusual approach that the applicant proposes to use would be replicable by others.

(iii) *Coordination of supportive services.* HUD would consider the extent to which the applicant would use other public or private entities to provide appropriate supportive services to the residents of the housing, or has demonstrated that the supportive services that are to be directly provided by the applicant are not available or readily accessible to the residents from another provider. HUD believes that the fullest possible use of the community's resources to provide supportive services is an important aspect of any transitional housing proposal, since it treats homelessness as a community-wide concern and does not establish services that would duplicate those available elsewhere in the community. Thus, HUD would assign the greatest number of points under this element to applications that use outside service providers for all the supportive services proposed. HUD recognizes that there may be situations in which some or all supportive services are not available, or are not readily accessible to the residents of the proposed transitional housing. HUD would not penalize applicants that can show this in their applications.

(iv) *Leveraging.* HUD would consider the extent to which applicants propose to match the amount of assistance to be provided under the Program with more than an equal amount of funds from other sources. Requirements for matching amounts are discussed at paragraph D.2.(iii) of this section, above.

(v) *Cost reasonableness.* HUD would consider the extent to which the applicant's proposed costs in acquiring or rehabilitating housing under the Program, and in operating the housing and providing supportive services, are reasonable in relation to the work done and the goods and services purchased. This factor would be designed to ensure that the costs involved are reasonably related to the items and services purchased.

4. Environmental Review

In the third stage of the selection process, HUD would conduct an environmental review of a number of the highest ranked applications, as ranked under paragraph D.3. above. Environmental reviews would not be performed on all applications ranked under the second stage. Rather, HUD would only review the number of highest rated applications necessary to ensure an adequate pool of applications for the final selection process. Applications that do not move to this third stage of processing would not be selected for funding under the Program.

In conducting the environmental review, HUD would assess the envionmental effects of each application in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and HUD's implementing regulations at 24 CFR Part 50. Any application that requires an Envionmental Impact Statement (EIS) (generally, those applications that HUD determines would have a significant impact on the human environment, in accordance with the environmental assessment procedures at 24 CFR Part 50, Subpart E) would not be eligible for funding. HUD bases this proposed requirement on its concern that applications that need an EIS would be unduly delayed while the procedural requirements for the preparation of a final EIS are fulfilled. (See 24 CFR Part 50, Subpart F). As noted in paragraph D.2.iv.(d) of this section, above, HUD believes that Congress clearly intended this Program to be implemented expeditiously to ensure that homeless persons would be benefitted as quickly as possible. HUD does not anticipate that many applications would be found to be ineligible for funding based on the need to prepare an EIS.

As a related matter, as a result of the environmental review, HUD may find that it cannot approve an application unless adequate measures mitigating environmental impacts are taken. (See *e.g.*, 24 CFR Part 51). Often these mitigating measures take some time to fulfill. Based on the need for quick implementation of the Program, HUD may adjust rating scores of such applications, based on the anticipated time delays in adopting appropriate impact mitigation.

HUD also notes that the environmental review often will reveal information not contained in the application that may have relevance to the selection process. For example, the environmental review may reveal that the proposed site is located near a hazardous condition that could adversely affect the appropriateness of the site for housing for homeless persons. The final guidelines may permit HUD to make further adjustments to the ratings based on the information revealed during the environmental review.

5. Final Selection

In the final stage of the selection process, the highest ranked applications would be considered for final selection in accordance with their rank order, as determined under paragraph D.3. of this section and any adjustments made during environmental review. HUD expects to fund at least five to 10 projects. Among the projects funded, we anticipate a variety of projects differing in size, geographic distribution, and the homeless population to be served. Accordingly, if the top-rated applications under the ranking criteria described above involve projects that would predominantly serve one geographic area, would primarily serve one homeless population, or would be substantially of the same project size (in terms of the number of homeless persons served), HUD may substitute one or more highly rated applications to ensure reasonable variety in the demonstration.

E. Program Requirements

1. Required Agreements

Recipients must make the following agreements with HUD for any structure for which assistance under the Program is provided:

(i) *Operation of transitional housing.* Each recipient would be required to agree to operate transitional housing in accordance with the provisions of these guidelines. In addition, each recipient would have to agree to limit the stay of its residents to a period that is reasonable for the homeless population to be served, but in no event could this period (or the stay of an individual resident) exceed 18 months.

HUD does not believe it appropriate to establish more specific limits on the length of time that various homeless populations may reside in transitional housing. Accordingly, to set the time limit for its residents, the applicant would be required to propose in its application a limitation on the stay of residents and to demonstrate that the proposed time period would provide an appropriate opportunity to permit members of the homeless population to be served to move to independent living.

(ii) *Assessments.* HUD would require recipients to agree to assess the supportive services required for each resident upon his or her admission to the transitional housing. This assessment would be designed to identify all supportive services required by the resident to facilitate the transition to independent living. It would also include an individual action plan identifying the steps that the individual and the recipient plan to take over a specified period of time to enable the individual to reach the goal of independent living.

While HUD does not propose to require additional reassessments of residents during their stay in transitional housing, the Department encourages the use of additional assessments. These assessments and reassessments are included in the definition of operating costs (paragaph A. of this section, above), and their costs are, therefore, eligible for assistance under the Program.

(iii) *Residential supervisor.* Each recipient would have to agree to employ a full-time residential supervisor with sufficient expert knowledge to provide, or supervise the provision of, supportive services to the residents of the transitional housing. HUD would require that the recipient agree to employ a residential supervisor throughout the term of its commitment to HUD to operate transitional housing. (The term of the recipient's commitment to operate transitional housing is discussed at paragraphs E.1.(iv) and E.2. of this section, below.)

The level of expert knowledge required of the supervisor and the amount of supervisory guidance needed will vary with the homeless population that the recipient proposes to serve. Therefore, HUD would not impose minimum requirements regarding the level and quality of supervision. For example, HUD would not require that all residential supervisors live in the transitional housing. The proposed job requirements of the residential supervisor, however, would be considered by HUD in assessing the adequacy of the support services. (See paragraph D.2.(iv)(b) of this section, above.)

(iv) *Use of structure.* Each recipient must agree to use the structure for which assistance is provided as transitional housing for not less than five years following its initial occupancy. (The relationship between this five-year operating requirement and the 10-year non-repayment requirement is discussed in paragraph E.2. of this section, below.)

(v) *State and local requirements.* Recipients must agree to comply with all State and local requirements regarding the condition of the structure to be used in the demonstration (*e.g.*, the structure must meet (or after rehabilitation will meet), and will continue to meet, applicable State and local standards of being in a safe and sanitary condition).

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Recipients must also agree to comply with all State and local requirements regarding the operation of transitional housing, such as the State and local licensing requirements.

(vi) *Reporting and recordkeeping.* Each recipient would be required to keep any records and make any reports that HUD may require.

2. Repayment of advances

Section 512(b) of the Act provides that the recipient need not repay any acquisition/rehabilitation advance (1) if it uses the structure for hwich the advance was made as transitional housing in accordance with the provisions of the Program for not less than the 10-year period following its initial occupancy, or (2) if, within the 10-year period, the Secretary determines that the structure is no longer needed for use as transitional housing and approves its use for another charitable purpose for the remainder of the 10-year period. If the recipient fails to comply with the conditions for waiver of repayment, it must repay to HUD in cash the full amount of the advance received, on such terms as HUD may prescribe. Under section 513(c)(4) and paragraph E.1.(iv) of this section, all recipients are required to agree to use each structure for which assistance is provided as transitional housing for not less than the five-year period following the initial occupancy of the housing.

HUD believes that these statutory provisions impose a five-year obligation on all recipients to operate a project under the demonstration Program. After five years, recipients that have received an advance may either: (1) Continue operating transitional housing under the Program for the next five years and be under no obligation to repay the advance; (2) obtain a waiver from the Secretary, use the structure for the approved alternate charitable purpose for the remainder of the 10-year period, and be under no obligation to repay the advance (note that HUD's approval of alternative charitable uses will be subject to the Establishment Clause limitations described in paragraph B.3.(iv) of this Section, above); or (3) stop using the structure as transitional housing or discontinue an approved alternate charitable use at any time during the second five-year period and repay the full amount of the advance in cash and on the terms prescribed by the Secretary.

The duty to provide transitional housing in accordance with the Program's requirements would be incorporated into the grant agreement executed by HUD and the recipient. HUD would enforce these contractual obligations, including the repayment obligation, through actions on the contract. Additionally, restrictions regarding the use of the structure would be contained in covenants that would be recorded with lands records in the jurisdiction where the structure is located.

Recipients operating structures that are destroyed by fire or taken by eminent domain would be relieved of their five- and 10-year obligations. To ensure repayment of the advance under such circumstances, all recipients would be required to obtain property casualty insurance with HUD named as beneficiary, in an amount at least equal to the amount of the advance. Additionally, a recipient whose structure is taken by eminent domain would be required to repay the advance to the extent that the funds are available from the eminent domain proceeding.

The Department would permit recipients to bring in a successor to continue transitional housing operations or to use the structure for an approved alternate charitable use. The successor would be subject to the approval of the Department. Repayment obligations would either remain with the original recipient or be transferred to the successor, depending upon the terms of HUD's approval.

3. Resident Rent

Each homeless person residing in transitional housing would be required to pay as rent an amount determined in accordance with section 3(a) of the United States Housing Act of 1937. Under this statutory scheme, each resident would pay as rent the highest of (1) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses, and child care expenses); (2) 10 percent of the family's monthly income; or (3) if the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated. As part of its technical assistance authority under the Program, HUD will provide successful applicants with detailed information and assistance concerning the calculation of resident rent.

4. Funding Amendments and Recaptures

When HUD selects an applicant, it will obligate funds to cover the amount of any acquisition/rehabilitation advance and annual payments for operating costs for five years. After the obligation, HUD would make no upward revision to the amount committed for the advance or the annual payments of operating costs.

HUD would retain the right to deobligate and recapture amounts for the acquisition/rehabilitation advance if the actual total cost of the acquisition/rehabilitation is less than the amount obligated. HUD may also reduce the amounts obligated for operating costs in any later year, based on the recipient's actual operating cost experience. Similarly, if a recipient's operations generate a substantial amount of resident rent (as discussed in the preceding paragraph), HUD would retain the right to adjust the operating cost allowed under the grant agreement downward, to the extent of the rent received.

HUD would reserve the right to recapture funds made available under the Program if proposed acquisition/rehabilitation activities are not begun and completed within a reasonable time after selection, or if transitional housing operating are not commended within a reasonable time following selection. Funds already expended for eligible activities under the Program would generally not be subject to recapture. The grant agreement would set forth, in detail the circumstances under which funds could otherwise be recaptured and other sanctions could be imposed.

6. Other Federal Requirements

(i) *Nondiscrimination and equal opportunity.* The nondiscrimination and equal opportunity requirements that apply to the Program are discussed below. Notwithstanding the permissibility of proposals that serve designated populations of homeless persons (see paragraph C. of this Section, above), a recipient serving a designated population of homeless persons would, within the designated population, be required to comply with these requirements for nondiscrimination on the basis of race, color, religion, sex, and national origin.

(a) The requirements of Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601–3619) (Fair Housing Act) and implementing regulations; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR Part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(c) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60; and

(d) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects); and

(e) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the recipient must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded.

(f) If the procedures that the recipient intends to use to make known the availability of the transitional housing would be unlikely to reach persons of any particular race, color, religion, sex, or national origin who may qualify for admission to the housing, the recipient must establish additional procedures that will ensure that they are made aware of the availability of transitional housing opportunities.

(ii) *Environmental.* The National Environmental Policy Act of 1969, the related authorities in 24 CFR Part 50, and the Coastal Barriers Resources Act of 1982 (16 U.S.C. 3601) are applicable to proposals under this Program.

(iii) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A–87 and A–102 apply to the acceptance and use of assistance under the program by governmental entities, and OMB Circular Nos. A–110 and A–122 apply to the acceptance and use of assistance by private nonprofit organizations.

(iv) *Lead-based paint.* The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR Part 35 are applicable to the demonstration Program.

(v) *Conflicts of interest.* In addition to conflict of interest requirements in OMB Circular A–102 and A–110, no person (1) who is an employee, agent, consultant, officer, or elected or appointed official of the recipient, that receives assistance under the demonstration and who exercises or has exercised any functions or responsibilities with respect to assisted activities or (2) who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(vi) *Use of debarred, suspended, or ineligible contractors.* The provisions of 24 CFR Part 24 apply to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(vii) *Audit.* The financial management systems used by governmental entities that are recipients under this program must provide for audits in accordance with 24 CFR Part 44. Private nonprofit entity recipients are subject to the audit requirements of OMB Circular A–110. HUD may perform further and additional audits as it finds necessary or appropriate.

(viii) *Intergovernmental review.* The requirements for intergovernmental review in Executive Order No. 12372 and the implementing regulations at 24 CFR Part 52 would not be applicable to applications under this Program. In accordance with OMB criteria governing the coverage of the Executive Order, HUD will exempt the Program from the intergovernmental review requirements because it involves research and development, national in scope. (*I.e.*, The Program is a demonstration designed to develop innovative approaches to providing transitional housing; its purpose is to determine the costs and the advantage of such housing; and the Department does not anticipate continued long-term funding of the Program.)

F. Waiver

To ensure flexibility in the administration of the Program, the Secretary of HUD would be permitted to waive any guideline that is not required by law, if the Secretary determines that good cause for waiver exists. Each waiver must be in writing and supported by documentation of the pertinent facts and grounds.

IV. Other Information

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(1)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address.

Upon implementation of the Program, the information collection requirements contained in this notice will be submitted to the Office of Management and Budget for review and approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3502). No person may be subject to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number.

(The Catalog of Federal Domestic Assistance Program Number is 14.178.)

Authority: Sec. 101(g), Pub. L. 99–500 (approved October 18, 1986) and Pub. L. 99–591 (approved October 30, 1986), making appropriations as provided for in sec. 514 of H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: February 13, 1987.

Thomas T. Demery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 87–3761 Filed 2–23–87; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–963–4213–15; AA–8099–1]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sections 14(f) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(f) and 1621(j), will be issued to Calista Corporation for approximately 7,355 acres. The lands involved are in the vicinity of Platinum, Alaska.

Seward Meridian, Alaska

Tps. 14 and 15 S., R. 75 W. (Unsurveyed)

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Tundra Drums*. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the

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decision, an agency of the Federal government or regional corporation, shall have until March 27, 1987 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Ann Johnson,

Chief, Branch of Calista Adjudication.

[FR Doc. 87–3914 Filed 2–24–87; 9:15 am]

BILLING CODE 4310–JA–M

Minerals Management Service

Supplemental Call for Information and Nominations; Proposed Sale 96—North Atlantic

Purpose of Supplemental Call

As part of the Minerals Management Service's (MMS) analysis of, and planning for, Outer Continental Shelf (OCS) Sale 96—North Atlantic, all interested parties are invited to provide additional information on blocks (see "Description of Area") in the North Atlantic planning area which were not included in the Sale 96 Call for Information and Nominations (Call) as published in the November 4, 1986, **Federal Register**. Information received in response to the Call revealed an interest in blocks outside of the Call area. The MMS is therefore seeking information on certain blocks outside of the original Call area but beyond the 60-meter isobath and not excluded from leasing by the congressional moratorium. Additional information related to such blocks will assist in the determination of the area to be examined in an environmental impact statement (EIS) for Sale 96. Since these blocks were not included in the Call, respondents who have an interest in nominating or commenting on this area are now requested to do so. Nominations and comments submitted in response to the Call need not be resubmitted, but additional responses to the November Call will be accepted until the close of this comment period.

Use of Information from Supplemental Call

Information received in response to this Supplemental Call will be used to help determine areas for further study during the Sale 96 prelease process. The EIS study area will be based on hydrocarbon potential; industry interest; and environmental, national defense, or other potential joint or multiple use conflicts.

Description of Area

This Supplemental Call is targeted to those blocks or portions of blocks within Official Protraction Diagram (OPD) NK 19–9 which lie in water depths greater than 60 meters, are not excluded from leasing by the congressional moratorium, and were not included in the Sale 96 Call.

The area covered by this Supplemental Call is depicted on the bathymetric map for OPD NK 19–9 and on the Supplemental Call map. Both maps are available free upon request from the Regional Supervisor, Leasing and Environment, MMS, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180, telephone (703) 285–2165. Copies of the Call published in the **Federal Register** on November 4, 1986, at page 40114, will be forwarded to requesters of maps.

Instructions on Supplemental Call

Nominators are asked to designate any of the blocks covered by this Supplemental Call that they wish to have included in Sale 96. Expressions of interest should be as specific as possible and should be shown by outlining the area(s) of interest along block lines. A detailed list of whole and partial blocks nominated by OPD designation should be submitted to ensure correct interpretation of nominations. Although individual indications of interest are considered to be privileged and proprietary information, the names of persons or entities submitting indications of interest and/or comments will be a matter of public record.

Nominators should rank selected blocks according to the priority of their interest (High, Medium, or Low). The telephone number and name of a person to contact in the respondent's organization for additional information should be included. Respondents with information (on the area covered by this Supplemental Call) that would assist in the preparation of the EIS are encouraged to submit comments.

Respondents' nominations and/or comments must be submitted no later than 45 days following publication of this document in the **Federal Register** in envelopes labeled "Supplemental Call for Information and Nominations for proposed Sale 96—North Atlantic." Letters and maps should be submitted to the Regional Supervisor, Leasing and Environment, at the address stated under "Description of Area."

Dated: February 13, 1987.

Wm. D. Bettenberg,

Director, Minerals Management Service.

Approved:

J. Steven Griles,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 87–3811 Filed 2–24–87; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Gates of the Arctic National Park Subsistence Resource Commission; Meeting

AGENCY: National Park Service, Alaska Region, Department of the Interior.

ACTION: Subsistence Resource Commission Meeting.

SUMMARY: The Alaska Regional Office of the National Park Service announces a meeting of the Gates of the Arctic National Park Subsistence Resource Commission. The following agenda items will be discussed:

1. NPS subsistence research program.
2. Update on ATV/Anaktuvuk Pass situation.
3. Review of NPS proposal to the Game Board on brown bears; and additional discussions on Game Board proposals.
4. Review, revision and commission vote on final subsistence hunting program.
5. Discussion of the problem of new residents at Nolan: Should they be allowed to be subsistence users in the park?

Information: The Gates of the Arctic National Park Subsistence Resource Commission is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487.

Date: The meeting will he held at 9:00 a.m. on March 12 and continue through March 13.

Address: FAA Rec. Hall, Bettles, Alaska.

Information: Roger Siglin, Superintendent, Gates of the Arctic National Park and Preserve, P.O. Box 74680, Fairbanks, Alaska 99707, (907) 456–0281.

Boyd Evison,

Regional Director.

[FR Doc. 87–3783 Filed 2–24–87; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 14, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written coments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by March 12, 1987.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS

Hot Spring County

Malvern, *Bank of Malvern* 212 S. Main St.

Mississippi County

Blytheville, *Blytheville Greyhound Bus Station*, 109 N. 5th St.

Union County

Lisbon, *Mt. Moriah Masonic Lodge No. 18*, Off AR 172

CONNECTICUT

New London County

Preston, *Preston City Historic District*, Amos and Old Shetucket Rds., NW Corner Rd., and CT 164

KENTUCKY

McCraken County

Paducah, *St. Mary Academy Complex*, Bounded by Fourth, Fifth, Monroe, and Jefferson Sts.

MAINE

Franklin County

North Jay, *Jay-Niles Memorial Library*, US 4

Hancock County

Sullivan vicinity, *Gavin Watson Site*, Smelt Cove, E. Sullivan

Oxford County

Otisfield vicinity, *Sargent, Levi, House*, Otisfield Gore Rd.
Waterford vinicity, *McWain—Hall House*, McWain Hill Rd.

Penobscot County

Bangor, *Bangor Mental Health Institute*, 656 State St.

Waldo County

Islesboro, *Grindle Point Light Station*, Ferry Rd.

Washington County

Cherryfield, *Archibald—Adams House*, ME 193

York County

East Limington vicinity, *Chase, Capt. Josiah E., Octagon House*, Chase's Mill Rd.

MICHIGAN

Manistee County

Kaleva, *Makinen, John J., Bottle House*, 14551 Wuoksi Ave.

MISSISSIPPI

Lauderdale County

Meridian, *East End Historic District (Meridian MRA)*, Roughly bounded by Eighteenth St., Eleventh Ave., Fourteenth St., Fourteenth Ave., Fifth St., and Seventeenth Ave.
Meridian, *Highlands Historic District (Meridian MRA)*, Roughly bounded by Fifteenth St., Thirty-fourth Ave., Fifth St., Nineteenth St., and Thirty-sixth Ave.
Meridian, *Mid-Town Historic District (Meridian MRA)*, Roughly bounded by Twenty-third Ave., Fifteenth St., Twenty-eighth Ave., and Twenty-second St.
Meridian, *Poplar Springs Road Historic District (Meridian MRA)*, Roughly bounded by Twenty-ninth St., Twenty-third Ave., Twenty-second St., and Twenty-ninth Ave.
Meridian, *West End Historic District (Meridian MRA)*, Roughly bounded by Seventh St., Twenty-eighth Ave., Shearer's Branch, and Fifth St.

MISSOURI

Lafayette County

Higginsville, *Chicago and Alton Railroad Depot at Higginsville*, 2109 Main St.

St. Louis (Independent City)

Wasington Avenue: East of Tucker District, Roughly bounded by Lucas, N. Ninth, St. Charles, Locust, and Tucker Blvd.

St. Louis County

Jennings, *Seed, Miles A., Carriage House*, 2456 Hord Ave.

NEW MEXICO

Santa Fe County

Santa Fe, *Scottish Rite Cathedral*, 463 Paseo de Peralta

NOTH CAROLINA

Alamance County

Bellemont vicinity, *Kernodle—Pickett House*, Jct. of SR 1136 and SR 1131
Burlington vicinity, *Sunny Side*, SR 1136 3 mi. E of jct. with NC 62
Snow Camp vicinity, *Friends Spring Meeting House*, Jct. of SR 1005 and SR 2338

OHIO

Belmont County

Belmont, *Belmont Historic District*, Roughly bounded by Barrister, John, Jefferson, Sycamore, and Bridge Sts.

Cuyahoga County

Cleveland, *Archwood Avenue Historic District (Brooklyn Centre MRA)*, Archwood Ave. roughly bounded by W. Thirty-first Pl. and W. Thirty-seventh St.
Cleveland, *Bomante House (Brooklyn Centre MRA)*, 3000 Mapledale Ave.
Cleveland, *Brooklyn Bank Building (Brooklyn Centre MRA)*, 3764—3770 W. Twenty-fifth St.
Cleveland, *Brooklyn Memorial Methodist Church (Brooklyn Centre MRA)*, 2607 Archwood
Cleveland, *Cleveland Fire Department Engine Company No. 24 (Brooklyn Centre MRA)*, 3725 W. Twenty-fifth St.
Cleveland, *Eighth Reformed Church (Brooklyn Centre MRA)*, 2409 Willowdale
Cleveland, *Jones Home for Children (Brooklyn Centre MRA)*, 3518 W. Twenty-fifth St.
Cleveland, *Kindra, W. H., Apartments (Brooklyn Centre MRA)*, 3802—2812 Mapledale Ave.
Cleveland, *Malio House (Brooklyn Centre MRA)*, 3781 W. Twenty-fifth St.
Cleveland, *Riverside Cemetery Building (Brooklyn Centre MRA)*, 3607 W. Twenty-fifth St.
Cleveland, *Riverside Cemetery Chapel (Brooklyn Centre MRA)*, 3607 Pearl Rd.
Cleveland, *Third Church of Christ Scientist (Brooklyn Centre MRA)*, 3648 W. Twenty-fifth St.
Cleveland, *Townes, Clayton, House (Brooklyn Centre MRA)*, 3800 W. Thirty-third St.

Franklin County

Columbus, *Ohio Farm Bureau Federation Offices*, 620 and 630 E. Broad St.

Greene County

Xenia, *Conner, Alexander, House*, 99 E. Second St.

Jefferson County

Mingo Junction, *Central High School (Mingo Junction MRA)*, 110 Steuben Ave.
Mingo Junction, *Central Public School (Mingo Junction MRA)*, 109 St. Clair Ave.
Mingo Junction, *Commercial Street Historic District (Mingo Junction MRA)*, Roughly Commercial St. between McLister and Highland Aves., May, and RR Tracks.
Mingo Junction, *North Hill Historic District (Mingo Junction MRA)*, Bounded by Logan, George, Western, and Alley W of Logan Ave.
Mingo Junction, *St. Agnes Roman Catholic Church (Mingo Junction MRA)*, 220 St. Clair Ave.

Lucas County

Toledo, *St. Peter and St. Paul Historic District—Oliver's Second Addition*, 600 and 700 blks. of S. St. Clair St.

OKLAHOMA

Garfield County

Enid, *Eason, T.T., Mansion*, 1305 W. Broadway
Enid, *McCristy—Knox Mansion*, 1323 W. Broadway

PENNSYLVANIA

Philadelphia County

Philadelphia, *USS DES MOINES (CA—134) (cruiser)*, Philadelphia Navy Yard

TENNESSEE

Knox County

Knoxville vicinity, *Riverdale Mill*, Wayland Rd. and Thorngrove Pike

Shelby County

Memphis, *South Bluffs Warehouse Historic District*, Roughly S. Front St., Wagner Pl., and Tennessee St. from Beale St. to Calhoun Ave.

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WASHINGTON

Clark County

Yacolt vicinity, *Pomeroy Farm*, 10902 NE Lucia Falls Rd.

WISCONSIN

Dane County

Madison, *Bellevue Apartment Building*, 29 E. Wilson St.

Stoughton, *Ingebretson, Guats, Loft House*, 1212 Pleasant Hill Rd.

La Crosse County

Onalaska, *La Crosse County School of Agriculture and Domestic Economy*, 700 Wilson Ave.

Rock County

Janesville, *Wisconsin School for the Blind-Music Building*, 1700 W. State St.

Walworth County

Lake Geneva, *Davidson Hall*, 550 S. Shore Dr.

Winnebao County

Neenah, *Paepke, Henry, House*, 251 E. Doty Ave.

[FR Doc. 87–3854 Filed 2–24–87; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Section 5a Application No. 63 [1]]

Bulk Carrier Conference, Inc.; Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comment.

SUMMARY: Bulk Carrier Conference, Inc. (BCC) has filed, pursuant to Section 14(e) of the Motor Carrier Act of 1980 (MCA), an application for approval of its ratemaking agreement under 49 U.S.C. 10706(b). Because some modifications are required before the agreement receives final approval, and because new and complex questions are involved in determining whether the agreement is consistent with the MCA, the Commission solicits public comment on its interpretation and application of specific rate bureau provisions. Copies of BCC's proposed amended agreement are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, and from BCC's representatives:

Reginald E. Mutter, Bulk Carrier Conference, Inc., 249 South Van Dorn St., Alexandria, VA 22304

Leonard A. Jaskiewicz, Grove, Jaskiewicz, Gilliam, and Cobert, 1730 M Street NW., Washington, DC 20036.

Additional information is in the Commission decision. Copies may be purchased from T.S InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC, 20423, or call toll-free (800) 424–5403, or (202) 289–4357 in the Washington, DC, metropolitan area.

DATES: Comments from interested persons are due March 26, 1987. Replies are due 15 days thereafter.

ADDRESS: An original and 10 copies, if possible, of comments referring to Section 5a Application No. 63 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Ken Schwartz, (202) 275–7956

or

Louis E. Gitomer, (202) 275–7691.

SUPPLEMENTARY INFORMATION: We have provisionally approved BCC's agreement as consistent with 49 U.S.C. 10706(b) and *Motor Carrier Rate Bureaus-Implementation of Pub. L. 96–296*, 364 I.C.C. 464 (1980) and 364 I.C.C. 921 (1981) (*Rate Bureau*), subject to certain conditions and modifications in the following subject areas: Identification and description of member carriers; right of independent action; open meetings; final disposition of cases; general standards; single-line rates; general increases and decreases; and zone of rate freedom and released rates. We have also offered comments and imposed requirements concerning the agreement generally. BCC has been directed to file a revised agreement conforming to the imposed conditions within 120 days of service of the decision.

In light of the complexity of interpretation involved in determining whether the agreement is consistent with the MCA and the *Rate Bureau* case, *supra*, we request applicant and other interested parties to comment on our interpretation of the controlling statutory and administrative criteria, and their application to BCC's agreement.

A copy of any comments filed with the Commission must also be served on BCC, which will have 15 days from the expiration of the comment period to reply. These comments will be considered in conjunction with our review of the modifications that BCC must submit to the Commission as a condition to final approval of its agreement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: February 4, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Andre dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87–3837 Filed 2–23–87; 8:45 am]

BILLING CODE 7035–01–M

[1] Section 5 was recodified as Section 10706.

DEPARTMENT OF JUSTICE

Lodging of Consent Judgment Pursuant to the Clean Water Act; City of Boonville, IN

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 10, 1987 a proposed Consent Judgment in United States v. City of Boonville, Civil Action No. EV–84–187C was lodged with the United States District Court for the Southern District of Indiana. The proposed Consent Judgment concerns discharge of pollutants from the City of Boonville's wastewater treatment plant. The proposed Consent Judgment requires the defendant to institute interim measures and to meet interim effluent limitations pending the construction of required improvements to the wastewater treatment plant, to meet final effluent limitations, and to pay a $26,000 civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Boonville*, D.J. Ref. 90–5–1–1–2071.

The proposed Consent Judgment may be examined at the office of the United States Attorney, Southern District of Indiana, 274 U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana, and at the Region V Office of Environmental Protection Agency, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the Consent Judgment may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Judgment may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $4.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–3810 Filed 2–24–87; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

Advisory Council on Employee Welfare and Pension Benefit Plans; Public Briefing

A public briefing of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Thursday, March 5, 1987, in Room N–5437–B, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC.

The purpose of the briefing, which will begin at 9:30 a.m., is to allow Administration officials to present details of the Legislative proposal on the funding and termination of Defined Benefit Pension Plans.

Signed at Washington, DC, this 19th day of February, 1987.

Dennis M. Kass,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 87–3815 Filed 2–24–87; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL CAPITAL PLANNING COMMISSION

Senior Executive Service; Performance Review Board; Membership Appointments

AGENCY: National Capital Planning Commission.

ACTION: Notice of members of Senior Executive Service Performance Review Board.

SUMMARY: Section 4314(c) of Title 5, U.S.C. (as amended by the Civil Service Reform Act of 1978) requires that each agency establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards (PRB) to review, evaluate and make a final recommendation on performance appraisals assigned to individual members of the agency's Senior Executive Service. The PRB established for the National Capital Planning Commission also makes recommendations to the agency head regarding SES Performance awards, ranks and bonuses. Section 4314(c)(4) requires that notice of appointment of Performance Review Board members be published in the **Federal Register**.

The following persons have been appointed to serve as members of the Performance Review Board for the National Capital Planning Commission: Reginald W. Griffith, Robert E. Gresham, Donald F. Bozarth, Richard L. Petrocci and Peter J. Basso.

DATE: February 25, 1987.

FOR FURTHER INFORMATION CONTACT: Malcolm L. Trevor, Special Assistant to the Executive Director, National Capital Planning Commission, 1325 G Street, NW., Suite 1002, Washington, DC 20576 (202) 724–0206.

Reginald W. Griffith,

Executive Director.

[FR Doc. 87–3806 Filed 2–24–87; 8:45 am]

BILLING CODE 7520–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that this meeting will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. Date: March 23–24, 1987. Time: 8:30 a.m. to 5:00 p.m. Room: M–14.

Program

This meeting will review applications for Humanities Instruction in Elementary and Secondary Schools, submitted to the Division of Education Programs, for projects beginning after August 31, 1987.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 87–3894 Filed 2–24–87; 8:45 am]

BILLING CODE 7536–01–M

National Endowment for the Humanities; Humanities Panel Advisory Committee; Meeting; Change in Date

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Change.

This is to announce a change in the date of a National Endowment for the Humanities, Humanities Panel Advisory Committee meeting which was announced on page 4207 of the **Federal Register** dated February 10, 1987.

The meeting originally scheduled to be held on March 27, 1987 in Room 315 of the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC to review Research Tools applications submitted for projects beginning after July 1, 1987 has been changed. The meeting will now be held on March 23, 1987.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 87–3893 Filed 2–24–87; 8:45 am]

BILLING CODE 7536–01–M

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NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued another periodic report to Congress on abnormal occurrences (NUREG–0090, Vol. 9, No. 2).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on criteria published in the **Federal Register** (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and byproduct materials are abnormal occurrences.

This report to Congress is for the second calendar quarter of 1986. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedical actions that were undertaken are also described. During the report period, there were two abnormal occurrence at the nuclear plants licensed to operate. One involved an out of sequence control rod withdrawal and the other involved a boiling water reactor emergency core cooling system design deficiency. There were five abnormal occurrences at the other NRC licensees. Two involved willful failure to report diagnostic medical misadministrations to the NRC; one involved a therapeutic medical misadministration; and two involved diagnostic medical misadministrations. There were two abnormal occurrences reported by the Agreement States. One involved an uncontrolled release of krypton-85 to an unrestricted area; the other involved a contaminated radiopharmaceutical used in diagnostic administrations.

The report also contains information updating some previously reported abnormal occurrences.

Interested persons may review the report at the NRC's Public Document Room, 1717 H Street, NW, Washington, DC, or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies or microfiche of NUREG–0090, Vol. 9, No. 2 (or any of the previous reports in this series), may be purchased by calling (202) 275–2060 or (202) 275–2171, or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20012–7982. A years subscription to the NUREG–0090 series publication, which consists of four issues, is also available. Documents may be purchased by check, money order, Visa, Mastercard, or charged to a GPO Deposit Account.

Copies of the report may also be purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Washington, DC this 12th day of February 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87–3901 Filed 2–24–87; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Subcommittee on Regional and I&E Programs; Meeting

The ACRS Subcommittee on Regional and I&E Programs will hold a meeting on March 12, 1987, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Thursday, March 12, 1987—8:30 a.m. until 1:00 p.m.

The Subcommittee will continue its review of the activities of the Office of Inspection and Enforcement.

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m. Persons planning to atend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 18, 1987.

Morton W. Libarkin,

Assistant, Executive Director for Project Review.

[FR Doc. 87–3900 Filed 2–24–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–320]

Draft Supplement 2 to the Programmatic Environmental Impact Statement Related to TMI-2 Cleanup; General Public Utilities; Extension of Comment Period

On December 31, 1986, a Notice of Availability of Draft Supplement 2 to the Programmatic Environmental Impact Statement on the TMI-2 Cleanup was published in the **Federal Register** (51 FR 47323). The Notice stated that comments on the draft Supplement must be received before February 28, 1987. Since several intersted persons, as well as the Commission's Advisory Panel for the Decontamination of Three Mile Island Unit 2, have requested an extension, the NRC is hereby extending the comment period for this draft supplement until April 14, 1987.

Comments should be forwarded to Dr. Michael T. Masnik, TMI Cleanup Project Directorate, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Bethesda, Maryland, this 18th day of February 1987.

For the Nuclear Regulatory Commission.

Michael T. Masnik,

Acting Director, Three Mile Island-2 Cleanup Project Directorate, Office of Nuclear Reactor Regulation.

[FR Doc. 87–3859 Filed 2–24–87; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[Docket No. A87–11; Order No. 745]

Order Accepting Appeal and Establishing Procedural Schedule; Fabius, AL (Leota Giles, Petitioner)

Issued February 17, 1987

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice-Chairman; John W. Crutcher; Henry R. Folsom; Patti Birge Tyson.

Docket No. A87–11.

Name of Affected Post Office: Fabius, Alabama 35965.

Name(s) of Petitioner(s): Leota Giles.

Type of Determination: Closing.

Date of Filing of Appeal Papers: February 9, 1987.

Categories of Issues Apparently Raised: 1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders

(A) The record in this appeal shall be filed on or before February 24, 1987.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

Fabius, Alabama 35965

February 9, 1987—Filing of Petiton
February 17, 1987—Notice and Order of Filing of Appeal
March 6, 1987—Last day of filing of petition to intervene [*see* 39 CFR 3001.111(b)].
March 16, 1987—Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b).
April 6, 1987—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].
April 21, 1987—Petitioner's Reply Brief should petitioner choose to file one [*see* 39 CFR 3001.115(d)].
April 28, 1987—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].
June 9, 1987—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 87–3816 Filed 2–24–87; 8:45 am]

BILLING CODE 7715–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–24106; File No. SR–BSE–86–6]

Self-Regulatory Organizations; Proposed Rule Change by Boston Stock Exchange, Inc. Relating to Amendments to the Use of the General Securities Representative (Series 7) Examination and Its Study Outline to Qualify Persons Seeking Registration as General Securities Representatives

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act") 15 U.S.C. 78s(b)(1), notice is hereby given that on December 29, 1986 the Boston Stock Exchange, Incorporated ("BSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Self-Regulatory Organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Boston Stock Exchange, Incorporated hereby announces as a proposed rule change the use of the Series 7 examination and its study outline to qualify those persons seeking registration as general securities representatives.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, or the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The proposed rule change reflects the BSE's current use and commitment to future use of the Series 7 examination and its study outline in qualifying persons seeking registration as general securities representatives. The use of the Series 7 examination and its study outline for the above stated purpose is consistent with section 6(c)(3) of the Securities Exchange Act of 1934 which authorizes a national securities exchange to "examine and verify the qualifications of an applicant" to become a member or associated with a member in accordance with procedures established by the rules of an exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

(C) Self Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Boston Stock Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commision and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to the file number in the caption above and should be submitted by March 17, 1987.

V. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the

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rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6, in that, it establishes appropriate qualifications for persons seeking general securities representative registration.

The Commission finds good cause for approving the rule change prior to the thirtieth day after the date of publication of notice thereof, in that, the Commission has, to date, approved proposed rule changes submitted by the National Association of Securities Dealers, Inc., the Philadelphia Stock Exchange, Inc. and the New York Stock Exchange, Inc. that permitted these exchanges to revise and update the Series 7 examination and its study outline to reflect recent trends and developments in the securities markets.[1] Accordingly, the Commission believes that the BSE should be permitted to use the revised Series 7 examination and its study outline as a part of its training and qualification program.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referred to above be, and hereby, is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Dated: February 17, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–3864 Filed 2–24–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24105; File No. SR–PSE–85–34]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to Amendments to Its Equity Floor Procedure Advices Concerning Conduct on Its Equity Trading Floors and the Wearing of Badges on Its Equity Trading Floors

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 2, 1987, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been proposed by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of revisions and amendments to the Equity Floor Procedure Advices ("EFPA") 1–B and 1–C.[1] The changes in EFPA 1–B relate to prohibiting eating and drinking on the Los Angeles Equity Trading Flood, and increasing the fine schedule that is currently utilized in this Advice. Proposed amendments to EFPA 1–C would require that badges be worn on the Los Angeles Equity Trading Floor. Currently the badge requirement under EFPA 1–C applies only to the San Francisco Equity Trading Floor.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The provisions of PSE Equity Floor Procedure Advice ("EFPA") 1–B, relate to Conduct on the Equity Trading Floor. It sets forth the basic contention that the conduct of individuals on the Equity Trading Floors of the PSE affects not only the image of the quality, fairness and professionalism of the Exchange marketplace, but also impacts the safety and conduct of both the individuals on the floor and the efficient undisrupted conduct of business on the floor.

The proposed changes to EFPA 1–B involve several items. First, the decision was made to adopt a specific section prohibiting eating or drinking on the Los Angeles Trading Floor. This was based on the need to prevent spillage from such materials slipping through the protective floor covering and causing the fire alarm system from going off and shutting down the trading floor. Because such an unnecessary shut down would cause disruption to the trading facilities and have an impact on the rest of the interrelated marketplace, a statement outlining the potential common-law liability was also inserted into EFPA 1–B.

Secondly, to further define the prohibition of such behavior, and to continue the general structure of EFPA 1–B as it is currently written, a fine schedule was approved detailing amounts for the first, second, third and subsequent offenses. These amounts ($100, $250, $500) have also been approved as changes in the current fine schedules so as to keep the amounts consistent and to update the fine schedule since the current amounts were seen as out of date and perhaps had lost a significant amount of their deterent effect.

The additional portion of the subject of this rule filing relates to EFPA 1–C, which currently mandates the strict use of Badges on the San Francisco Equities Floor. Based on a need to maintain proper security and to prohibit the admission of unauthorized personnel to the Los Angeles Trading Floor as well as the San Francisco Floor, it has been proposed to amend EFPA 1–C to include the Los Angeles Equity Trading Floor as well. Therefore, the language currently contained in EFPA 1–C which relates to only the San Francisco Floor has been deleted to include appropriate language which relates to both equities floors.

These proposed revisions do not affect the currently existing Exchange rules and procedures which delineate the method of citation or the rights of members and Floor clerical employees of members and member organizations to appeal any penalties that might be imposed.

These revisions to PSE Equity Floor Procedure Advices are intended to promote the efficient, undisputed conduct of business on the equity trading floors. This in turn, will facilitate transactions in securities, perfect the mechanism of a free and open market, and protect investors and the public interest, as called for by section 6(b)(5) of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule changes to Equity Floor Procedure Advice's 1–B and 1–C are concerned solely with regulating behavior on the PSE equity trading floors, and as such they will not impose any burden on competition.

(C) Self Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change were neither solicited nor received by the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth St., NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communication relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 551, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to the file number in the caption above and should be submitted by March 18, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 17, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–3865 Filed 2–24–87; 8:45 am]

BILLING CODE 8010–01–M

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[1] *See* Securities Exchange Act Release Nos. 23325 (June 16, 1986), 51 FR 22874, 23885 (October 6, 1986) 51 FR 36621, and 23954 (January 5, 1987) 52 FR 1270.

[2] 17 CFR 200.30–3.

[1] In its filing, the PSE included copies of both the proposed amendments to its Equity Floor Procedure Advices and the revised fine schedule. Copies of the amendment and fine schedule are available from the Commission at the address noted in Section IV below and from the PSE.

[Release No. 34–24103; File No. SR–Phlx–86–14]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Accelerated Approval to Proposed Rule Change

On May 1, 1986, the Philadelphia Stock Exchange, Inc., submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, a proposed rule change to revise certain of its strike price policies to permit the orderly introduction of $.025 strike price intervals for British pound put and call options contracts.

The proposed rule change was noticed in Securities Exchange Act Release No. 23964 (January 7, 1987), 52 FR 1571 (January 14, 1987). No comments were received on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6, and the rules and regulations thereunder. This rule change will provide investors in a non-volatile currency with more choices as to their participation in this market. The flexibility of switching from a $.05 to $.025 intervals will enable the Exchange to be competitive with the Chicago Mercantile Exchange, which currently has $0.25 intervals on British Pound options contracts.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the **Federal Register** in that: (1) The proposed rule change has been published for comment for 21 days, and no comments have yet been received; and (2) the strike price revision is similar to others the Commission has approved in non-volatile currencies.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 13, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–3866 Filed 2–24–87; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by Office of Management And Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549.

New, File No. 270–311, Rule 15Ca1–1
New, File No. 270–310, Rule 15Ca2–1
New, File No. 270–309, Rule 15Ca2–2
New, File No. 270–308, Rule 15Cc1–1
Rev, File No. 270–19, Form BD

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearance the following proposed rules, together with proposed revisions to Form BD under the Securities Exchange Act of 1934 as amended by the Government Securities Act of 1986:

Rule 15Ca1–1—Provides that a registered broker-dealer that is a government securities broker or dealer must notify the Commission of their government securities activities on Form BD.

Rule 15Ca2–1—Provides that an application for registration as a government securities broker or dealer must be filed on Form BD.

Rule 15Ca2–2—Requires a Statement of Financial Condition and other statements to be filed by government securities broker-dealers with their application for registration.

Rule 15Cc1–1—Requires a government securities broker or government securities dealer to file a Form BDW when it withdraws its registration.

Form BD—Application for Registration as a Broker or Dealer

Submit comments to OMB Desk Officer: Mr. Robert Neal, (202) 395–7340, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

February 18, 1987.

[FR Doc. 87–3891 Filed 2–24–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–15580 (812–6186)]

Citibank, N.A.; Foreign Custodian Arrangements

February 13, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

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ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Citibank, N.A.

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from section 17(f).

Summary of Application: Applicant seeks an order to permit maintenance of securities and other assets of any registered management investment company, other than an investment company registered under section 7(d) of the 1940 Act, for which Applicant serves as custodian or subcustodian ("U.S. Investment Companies") with (i) fifteen wholly-owned foreign subsidiaries of Applicant's bank company holding parent, Citicorp (each of which is delineated in the application and hereafter referred to as a "Foreign Subsidiary"), (ii) ANZ Nominees Limited, a New Zealand banking institution, and (iii) Frankfurter Kassenverein AG, one of the central systems for the handling of securities or equivalent book-entries in West Germany.

Filing Date: The application was filed on August 19, 1985, and amended on January 30, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 9, 1987. Request a hearing in writing, giving the nature of your interest, the reason for your request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Citibank, N.A., c/o Jonathan R. Bell, Debevoise & Plimpton, 875 Third Avenue, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Thomas C. Mira, Staff Attorney (202) 272–3033 or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Each Foreign Subsidiary is a wholly-owned, direct or indirect, subsidiary of Citicorp and is a banking institution or trust company incorporated under the laws of a country other than the U.S. and regulated as such by that country's government or an agency thereof. Each Foreign Subsidiary does not satisfy the applicable shareholder's equity requirement contained in Rule 17f–5 under the 1940 Act, and thus, does not qualify as an "eligible foreign custodian" under that Rule.

2. Seven of the fifteen Foreign Subsidiaries have experience in providing custody services to U.S. Investment Companies. Before Applicant will consider maintaining U.S. Investment Company assets with the remaining Foreign Subsidiaries, Applicant will have determined, based on the level of service, adequacy of safeguards, competence of management, timeliness and responsiveness of service, and reasonableness of fees, that such Foreign Subsidiary is capable and well qualified to provide custody services for U.S. Investment Companies and that under the proposed foreign custody arrangements, investor protection would not be diminished. In addition to ensuring adequate investor protection, depositing U.S. Investment Company assets with the Foreign Subsidiaries would give Applicant a measure of flexibility in the use of its global custody network.

3. ANZ Nominees Limited ("ANZ") is a banking institution incorporated and regulated under the laws of New Zealand. Although ANZ does not satisfy the applicable shareholders' equity requirement contained in Rule 17f–5, to qualify as an "eligible foreign custodian", its parent is Australia and New Zealand Banking Group Limited (ANZ Bank"), an Australian banking institution with shareholders' equity exceeding $800 million.

4. Frankfurter Kassenverein AG ("Frankfurter") services the Frankfurter stock exchange and is one of several central systems for the handling of securities or equivalent book-entries in West Germany. Accordingly, it does not meet the requirement that a securities depository or clearing agency must operate *the* central system in its respective country in order to qualify as an "eligible foreign custodian" under Rule 17f–5.

Applicant's Conditions:

If the requested order is granted, Applicant expressly consents to the following conditions:

1. The foreign custody arrangements with the Foreign Subsidiaries and ANZ will satisfy all requirements of Rule 17f–5, except the provision regarding the foreign custodians' shareholders' equity level.

2. The foreign custody arrangements with Frankfurter will satisfy all requirements of Rule 17f–5, except the requirement that securities depositories must be the central system for the handling of securities or equivalent book-entries in the relevant country.

3. Securities of U.S. Investment Companies will be maintained with a Foreign Subsidiary only in accordance with an agreement, required to remain in effect at all times during which the Foreign Subsidiary does not satisfy the shareholders' equity requirement of Rule 17f–5, among the U.S. Investment Companies or custodians for which Applicant serves as custodian or subcustodian, Applicant, the Foreign Subsidiary and Citicorp, pursuant to the terms of which,

(i) Applicant would act as the custodian or subcustodian of the securities of the U.S. Investment Company,

(ii) Applicant would delegate to the Foreign Subsidiary such of Applicant's duties and obligations as would be necessary to permit the Foreign Subsidiary to hold in custody in the country in which it operates, the securities of the U.S. Investment Company or custodian, and

(iii) Citicorp would agree to be liable in accordance with the terms of a guarantee ("Guarantee") for losses relating to the bankruptcy or insolvency of the Foreign Subsidiary. The agreement would further provide that Applicant's delegation of duties to the Foreign Subsidiary would not relieve Applicant of any responsibility to the U.S. Investment Company or custodian for any loss due to such delegation except such loss as may result from (i) political risk (e.g., exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife or armed hostilities), and (ii) other risk of loss for which neither Applicant nor the Foreign Subsidiary would be liable under Rule 17f–5 (i.e., despite the exercise of reasonable care).

4. The dollar value of the Guarantee for each Foreign Subsidiary will be adjusted based on the quarterly fluctuation of the market value of U.S. Investment Company assets in the custody of such Foreign Subsidiary, a follows: The market value of U.S. Investment Company assets in the custody of each Foreign Subsidiary will be calculated by Applicant or such Foreign Subsidiary at the end of each calendar quarter. If it is determined that the market value of U.S. Investment Company assets in custody of a Foreign Subsidiary exceeds the Guarantee, Applicant will, as soon as practicable but in no event later than 30 days after receipt of the quarterly valuation, cause the Guarantee to be increased so as to fully cover the value of U.S. Investment Company assets in custody of the Foreign Subsidiary, calculated as of the most recent quarterly report.

5. Securities of U.S. Investment Companies will be maintained with ANZ only in accordance with an agreement among Applicant, ANZ and ANZ Bank, under which ANZ Bank would agree to be liable, at all times during which ANZ does not meet the shareholders' equity requirement of Rule 17f–5, for any loss, damage, cost, expense, liability or claim arising out of, or in connection with, the performance by ANZ of its custodial responsibilities to the same extent as if ANZ Bank had itself been the party required to provide custody services under the agreement, and for losses relating to the bankruptcy or insolvency of ANZ.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–3887 Filed 2–24–87; 8:45 am]

BILLING CODE 8010–01–M

[File No. 22–16361]

Application and Opportunity for Hearing; Citicorp

February 17, 1987.

Notice is hereby given that Citicorp (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeships of United States Trust Company of New York (the "Trust Company") under four existing indentures and two Pooling and Servicing Agreements each dated as of November 1, 1986 ("the Agreements") under which certificates evidencing interests in a pool of mortgage loans have been issued, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as Trustee under any of such indentures or the Agreements. Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within ninety days after ascertaining that it has such a conflicting interest, either eliminate the conflicting interest or resign as trustee. Subsection (1) of section 310(b) provides, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which securities of an obligor upon the indenture securities are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of the subsection another indenture under which other securities of the same obligor are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under both the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under such other indenture.

The Applicant alleges that: (1) The Trust Company currently is acting as Trustee under four indentures in which the Applicant is the obligor. The indenture dated as of February 15, 1972 involved the issuance of Floating Rate Notes due 1989; the indenture dated as of March 15, 1977 involved the issuance of various series of unsecured and unsubordinated Notes; the indenture dated as of August 25, 1977 involved the issuance of Rising-Rate Notes, Series A; and the indenture dated as of April 21, 1980 involved the issuance of various series of unsecured and unsubordinated Notes. Said indentures were filed as, respectively, Exhibits 4(a), 2(b), 2(b), and 2(a) to Applicant's respective Registration Statements Nos. 2–42915, 2–58355, 2–59396 and 2–64862 filed under the Securities Act of 1933, and have been qualified under the Trust Indenture Act of 1939. The four indentures are hereinafter called the "Indentures" and the securities issued pursuant to the Indentures are hereinafter called the "Notes."

(2) The Applicant is not in default in any respect under the Indentures or under any other existing indenture.

(3) On November 25, 1986, the Trust Company entered into a Pooling and Servicing Agreement dated as of November 1, 1986 (the "1986-Q Agreement") with Citibank, N.A., Originator and Servicer, and Citicorp Homeowners, Inc., under which there were issued on November 25, 1986 Mortgage Pass-Through Certificates, Series 1986-Q 9.00% Pass-Through Rate (the "Series 1986-Q Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1986-Q Mortgage Pool") originated and serviced by Citibank, N.A. and having adjusted principal balances aggregating $112,751,881.26 at the close of business on November 1, 1986, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1986-Q Certificates. On November 25, 1986, Applicant, the parent of Citibank, N.A., entered into a guaranty of even date (the "1986-Q Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1986-Q Certificates, to be liable for 7.5% of the initial aggregate principal balance of the 1986-Q-Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1986-Q Guaranty. The 1986-Q Guaranty states the Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1986-Q Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1986-Q Certificates were registered under the Securities Act of 1933 (Registration Statement on Forms S–11 and S–3, File No. 33–6358) as part of a delayed or continuous offering of $2,000,000,000 aggregate amount of Mortgage Pass-Through Certificates pursuant to Rule 415 under the Act. The Series 1986-Q Certificates were offered by Prospectus Supplements dated November 7, 1986, supplemental to Prospectuses dated November 7, 1986. The 1986-Q Agreement has not been qualified under the Trust Inderture Act of 1939.

(4) On November 25, 1986, the Trust Company entered into a Pooling and Servicing Agreement dated as of November 1, 1986 (the "1986-R Agreement") with Citibank, N.A., Originator and Servicer, and Citicorp Homeowners, Inc., under which there were issued on November 25, 1986, Mortgage Pass-Through Certificates, Series 1986–R 9.50% Pass-Through Rate (the "Series 1986–R Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1986–R Mortgage Pool") originated and serviced by Citibank, N.A. and having adjusted principal balances aggregating $142,985,493.16 at the close of business on November 1, 1986, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1986–R Certificates. On November 25, 1986, Applicant, the parent of Citibank, N.A.,

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entered into a guaranty of even date (the "1986–R Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1986–R Certificates, to be liable for 7.50% of the initial aggregate principal balance of the 1986–R Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1986–R Guaranty. The 1986–R Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1986–R Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1986–R Certificates were registered under the Securities Act of 1933 (Registration Statement on Forms S–11 and S–3, File No. 33–635B) as part of a delayed or continuous offering of $2,000,000,000 aggregate amount of Mortgage Pass-Through Certificates pursuant to Rules 415 under the Act. The Series 1986–R Certificates were offered by a Prospectus Supplemental dated November 11, 1986 supplemental to a Prospectus dated November 7, 1986. The 1986–R Agreement has not been qualified under the Trust Indenture Act of 1939.

The 1986–Q Agreement and the 1986–R Agreements are hereinafter called the 1986 Agreements and the 1986–Q Guaranty and the 1986–R Guaranty are hereinafter called the 1986 Guarantees.

(5) The obligations of Applicant under the Indentures and the 1986 Guarantees are wholly unsecured, are unsubordinated and rank *pari passu*. Any differences that exist between the provisions of the Indentures and the 1986 Guarantees are unlikely to cause any conflict of interest among the trusteeships of the Trust Company under the Indentures and 1986 Agreements.

(6) The Applicant has waived notice of hearing, hearing and any and all rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22–16361, which is a public document on file in the office of the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC.

Notice is further given that an interested person may, not later than March 13, 1987, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by said application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549.

At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–3892 Filed 2–24–87; 8:45 am]

BILLING CODE 8010–10–M

[Rel. No. IC–15579; (812–6585)]

PaineWebber Investment Series and Master Series; Approval of Contingent Deferred Sales Load and Exchange Offer

February 13, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for exemption under the Investment Company Act of ("1940 Act").

Applicants: PaineWebber Investment Series ("Investment Series"); PaineWebber Master Series, Inc. ("Master Series").

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) and Rule 22c–1; approval requested under section 11(a).

Summary of Application: Investment Series seeks an order to permit the imposition and waiver of a contingent deferred sales load on certain redemptions of its shares, and each Applicant requests an order to permit the imposition of a service charge on certain exchanges of their shares effected pursuant to a continuing offer of exchange. Pursuant to an existing order of the Commission (Investment Company Act Release No. 15166, June 23, 1986) Master Series is currently permitted to assess and waive a contingent deferred sales load under terms identical to those proposed by Investment Series.

Filing Dates: The application was filed on December 31, 1986, and amended on January 29, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the requested order will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on March 9, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 1285 Avenue of the Americas, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Thomas C. Mira, Staff Attorney (202) 272–3033, or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Investment Series was organized as a Massachusetts business trust and is registered under the 1940 Act as a non-diversified, open-end, management investment company. On December 22, 1986, Investment Series filed a registration statement for the registration of shares of the PaineWebber Master Global Income Fund series under the Securities Act of 1933, and proposes to commence a public offering of those shares upon the effectiveness of such registration statement. Master Series was organized as a Maryland corporation and is registered under the 1940 Act as a diversified, open-end, management investment company, which currently offers four series of shares. Applicants anticipate creating and issuing additional series of classes of shares and, thus, request that the exemptive order extend to such future series or classes shares.

2. Applicant's principal underwriter, investment adviser and administrator is PaineWebber Incorporated ("Distributor"); the sub-adviser of each Applicant is Mitchell Hutchins Assets Management, Inc. ("Adviser"). The Distributor and the Adviser are both subsidiaries of PaineWebber Group, Inc.

3. Shares of Investment Series will be offered and sold without a sales charge, but a contingent deferred sales load ("CDSL") will be imposed on certain redemptions. The proceeds of the CDSL will be paid to the Distributor and will be used by the Distributor in whole or in part to defray costs incurred in connection with the sales of Investment Series' shares.

4. The CDSL will only be assessed on redemptions that reduce the current net asset value of a shareholder's account in a particular series of the Investment Series to an amount lower than the total dollar amount of payments made by the shareholder for the purchase of shares of that series during the six years preceding the redemption. No CDSL would be assess imposed if the net asset value of the shares redeemed by a shareholder on Investment Series did not exceed (1) increases in the net asset value of the shares above the total dollar amount of purchase payments for shares of that series during the six years preceeding the redemption (either through appreciation in the net asset value of the series or through reinvestment of dividends and capital gains distributions in additional shares of the series) or (2) purchase payments for shares of the series made more than six years prior to the date of redemption.

5. The amount of the CDSL will be calculated based on the number of years since the intitial purchase from which an amount is being redeemed. The CDSL will be 5% for redemptions made within one year of the relevant purchase payment and will decline 1% for each year thereafter until the seventh and following years when no CDSL will be assessed on redemptions. The amount of the CDSL will be calculated by first determining the date(s) on which the shareholder made the purchase payment(s) which is (are) the source of the redemption and then applying the appropriate percentage(s) to any portion of the redemption that is subject to the CDSL. In determining whether a CDSL is payable and, if so, the applicable percentage it will be assumed that the amount invested first is the first to be redeemed. This will result in the imposition of the CDSL at lowest possible rate.

6. Investment Series proposes to waive the CDSL upon the following redemptions of shares of any of its series: (i) Redemptions following the death or disability (as defined in the Internal Revenue Codes of a shareholder; (ii) any partial or complete redemption in connection with a distribution following retirement under a tax-deferred retirement plan or attaining age 70½ in the case of an Individual Retirement Account ("IRA"), Keogh Plan or a custodial account pursuant to Section 403(b) of the Internal Revenue Code, or any redemption resulting from the tax-free return of an excess contribution to an IRA; (iii) all shares purchased by officers, directors or trustees, and employees of Investment Series, the Distributor and its affiliated companies, and by members of the immediate families of such persons; (iv) redemptions made in connection with Investment Series' systematic withdrawal plan; and (v) as to a portion of the applicable CDSL redemptions from accounts with balances in excess of specifed amounts. Investments Series will comply with all the requirements of Rule 22d–1 under the 1940 Act.

7. With respect to the approval sought for the proposed exchange offers, when shares of two or more series of Investment Series are outstanding, shares of each such series may be exchanged for shares of another series at their relative net asset value without the imposition of a CDSL. Similarly, shares of each Applicant may be exchanged for shares of the other Applicant at their relative net asset values without the imposition of a CDSL. However, a $5.00 service charge will be deducted on each such exchange and paid to the Distributor for the costs incurred in effecting such exchanges. For purposes of calculating the CDSL upon redemption of shares acquired by way of exchange, the purchase of shares acquired in one or more exchanges will be deemed to have occurred at the time of the original purchase of the exchanged shares. Applicant will comply with the provisions of proposed Rule 11a–3 under the 1940 Act if and when it is adopted with respect to the contemplated offers of exchange.

8. Investment Series proposes to finance its distribution expenses under a plan of distribution adopted pursuant to Rule 12b–1 under the 1940 Act ("Plan"). Under the Plan each series of Investment Series will pay a monthly distribution fee to the Distributor for expenses incurred in connection with the offering of shares of each series of Investment Series. The distribution fee will be 1% on an annualized basis of the lesser of (a) the net asset value on the date of purchase ("Original Purchase Price") of shares (not including shares representing reinvestment of dividends and capital gains distributions) less the net asset value at the time of redemption of all shares redeemed upon which (i) a CDSL was paid or would have been imposed but for the fact that such shares were purchased six years or more prior to redemption and (ii) upon which no CDSL was imposed under a waiver from such charge as described herein; and (b) the average daily net assets of the series during the month. The Trustees of Investment Series will consider receipts from the CDSL obtained by the distributor in connection with their annual review of the Plan.

9. The requested exemptions and the approval of the exchange offers are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. The proposed CDSL will permit shareholders of Investment Series to have the advantage of having purchase payments immediately and fully invested. Further, the decision to waive the CDSL in connection with certain redemptions of Investment Series' shares is appropriate and fair because such shares either are sold (a) with no significant marketing or selling expenses to the Distributor; (b) under circumstances where the imposition of a CDSL (e.g., for an involuntary redemption) is equivalent to imposing a penalty; (c) to shareholders which are members of a class favored under federal tax or securities laws/or (d) to substantial or long-term shareholders whose investments facilitate economies of scale and reduced expense ratios.

10. The imposition of the $5.00 service fee for effecting the proposed exchanges of Applicants' shares is fair and will not harm shareholders or discriminate among Applicants' shareholders. The exchange offers will provide shareholders the opportunity to change their investment objective from time to time. Further, the $5.00 service fee is designed merely to compensate the Distributor for its costs in facilitating exchanges between the series of Investment Series and between Applicants.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–3888 Filed 2–24–87; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

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SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted on or before March 26, 1987. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83s), supporting statements, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Elizabeth M. Zaic, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653–6623.

OMB Reviewer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395–7340.

Title: SBDC Project Officer's Checklist
Form No.: SBA 59
Frequency: Quarterly
Description of Respondents: SBDC's are required to submit on quarterly basis, a programmatic and financial report
Annual Responses: 196
Annual Burden Hours: 392
Type of Request: Extension

Title: Applications for Funds and Guaranty
Form Nos.: SBA 1022, 1022A
Frequency: On occasion
Description of Respondents: Small Business Investment companies are required to update financial information
Annual Responses: 220
Annual Burden Hours: 880
Type of Request: Extension

Title: Portfolio Financial Report
Form No.: SBA 1031
Frequency: Monthly and Annually
Description of Respondents: Small Business Investment companies are required to update financial and economic data
Annual Responses: 4300
Annual Burden Hours: 1075
Type of Request: Extension and Revision

Title: Client Verification and Evaluation Sheet
Form No.: SBA 1538
Frequency: Upon completion of services rendered
Description of Repondents: Recipients are required to provide this information. This data will provide adequate feedback on the client's progress and difficulties related to business operations
Annual Responses: 5,000
Annual Burden Hours: 1,667
Type of Request: Extension

Title: Bi-Monthly 7(j) Client Services Report
Form No.: SBA 1539
Frequency: Bi-Monthly
Description of Respondents: This form is to be completed by awardees (providers) of management and technical assistance
Annual Responses: 5,000
Annual Burden Hours: 1,667
Type of Request: Extension

Title: 7 (j) Monitoring: Client's Record on Assistance Rendered
Form No.: SBA 1540
Frequency: Upon completion of services rendered
Description of Respondents: The client is required to complete the form upon completion of the task. This information provides SBA with adequate feedback on the client's progress and difficulties related to business operations.
Annual Responses: 1,000
Annual Burden Hours: 500
Type of Request: Extension

Title: Disaster Loan Authorization and Agreement
Form No.: SBA 1366, 1391
Frequency: On occasion
Description of Respondents: Disaster victims who obtain physical injuries are required to provide this information.
Annual Responses: 19,733
Annual Burden Hours: 65,089
Type of Request: Extension and revision

Title: Liquidation Activities
Frequency: On occasion
Description of Respondents: The auctioneer contractor is required to submit information on the items of SBA collateral that was sold.
Annual Responses: 3,400
Annual Burden Hours: 34,000
Type of Request: Extension

Title: Lender Field Visit Report
Form No.: SBA 1183
Frequency: On occasion
Description of Respondents: The information for the completion of this form is collected by the loan officer at the time of the visit to the lender.
Annual Responses: 18,000
Annual Burden Hours: 18,000
Type of Request: Extension

Title: Loan Servicing Field Visit Report
Form No.: SBA 712
Frequency: On occasion
Description of Respondents: This form is completed by the SBA loan specialist visiting the SBA borrower at the site of the business to determine what assistance is necessary
Annual Responses: 63,000
Annual Burden Hours: 63,000
Type of Request: Extension

Dated: February 13, 1987.

Elizabeth M. Zaic,

Deputy Director, Office of Administrative Services, Small Business Administration.

[FR Doc. 87–3822 Filed 2–24–87; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 01/01–0341]

Application for a Small Business Investment Company License; Mezzanine Capital Corporation

An application for a license to operate a small business investment company under the provisions of the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*) has been filed by Mezzanine Capital Corporation (Applicant), 45 Milk Street, Boston, Massachusetts 02109 with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1986).

The officers, directors and sole shareholder of the Applicant are as follows:

Name	Title or relationship	Percentage of shares owned
David D. Croll, 25 Chestnut Street, Boston, MA 02108	President, Director	
Richard H. Churchill, Jr., 14 Wheeler Road, Lincoln, MA 01773	Vice President, Clerk, Director	
Stephen F. Gormley, 23 Woodman Road, Chestnut Hill, MA 02167	Vice President, Assistant Clerk, Director	
William P. Collatos, 25 Fountain Street, West Newton, MA 02165	Vice President, Assistant Clerk, Director	
Marie Dixon, 9 Grace Road, Medford, MA 02155	Treasurer	
Media/Communications Partners, Limited Partnership, 45 Milk Street, Boston, MA 02109	Sole Shareholder	

TA Associates Communications Limited Partnership is the sole general partner of Media/Communications Partners Limited Partnership. The limited partners who have contributed or who are committed to contribute 10 percent of the aggregate capital contributions made to Media/Communications Partners Limited Partnership are, New York Life Insurance Company; The Prudential Insurance Company of America c/o Prudential Venture Capital Management; Treasurer's Management Trust c/o Massachusetts Fidiciary Advisers, Inc; Boston Safe Deposit and Trust Company as Trustee for US West Master Trust.

The Applicant, a Massachusetts Corporation, will begin operations with $10,000,000 paid in capital and paid in surplus. The Applicant will conduct its activities primarily in the New England area but will consider investments in business in other areas in the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in Boston, Massachusetts.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 13, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87–3821 Filed 2–24–87; 8:45 am]

BILLING CODE 8025–01–M

Minority Small Business and Capital Ownership Development; Management and Technical Assistance Application Announcement

SUMMARY: The Small Business Administration, Office of Minority Small Business and Capital Ownership Development (MSB&COD) announces that it is accepting applications/unsolicited proposals under its 7(j) program to provide management and technical assistance services nationally to eligible small business concerns/individuals who are SBA clients. Projects are to start when funds become available in FY 88.

The announcement number is MSB–88–001–01.

Funding Instrument: The funding instruments, as defined by the Federal Grants and Cooperative Agreements Act of 1977 (31 U.S.C. 6304/6305) will be cooperative agreements.

Program Description: The SBA provides management and technical assistance services to eligible small businesspersons with the goal of developing socially and economically disadvantaged small businesses in order that they may become competitively viable. In general, management and technical assistance includes, but is not limited to, those services which are provided to eligible businesses in the areas of planning and research, identification and development of new business opportunities, furnishing centralized services with regard to public services and Federal Government programs, business counseling, management training, legal and related services, establishment and strengthening of business service agencies (including trade associations and cooperatives), loan packaging, financial counseling, and marketing assistance. However, special emphasis is being placed on the areas of money (finance), marketing and management in order to develop new techniques and approaches to reaching our goal.

The announcement for proposals is designed to assist SBA's Office of MSB&COD in its goal of providing management and technical assistance to individuals or enterprises eligible for assistance under section 7(i) and 8(a) of the Small Business Act, as amended. These services will be especially geared to small business concerns located in urban and rural areas of high concentration of unemployed or low-income individuals and to 8(a) transitioning firms who have two years or less remaining on their Fixed Program Participation Term (FPPT). This announcement is national in scope to qualified concerns in order for the Office of MSB&COD to acquire innovative projects in these three areas. Consideration will be given to innovative projects which focus on activities related to the enhancement of management skills, development of financial resources, and international and private sector marketing opportunities. Priority will be given to the following types of projects:

1. Provide needed assistance to 8(a) transitioning firms (two years or less remaining on their Fixed Program Participation Term (FPPT)). This assistance may include, but not be limited to opportunities to develop non-8(a) governmental, commercial, and other markets.

2. Provide needed assistance to 8(a) firms which have not reached the transitional phase of their FPPT.

3. Provide needed assistance to minority firms by ethnic group and/or industry.

4. Impact minority business development organizations and Historically Black Colleges and Universities (HBCUs) who in turn provide needed assistance to minority firms by ethnic group and/or industry.

5. Support the general outreach needs of minority business development in these areas.

6. Provide assistance to minority business firms leveraging other resources from the private sector, other Federal, and/or state and local agencies.

7. Provide innovative seminars or sessions with opportunities for individuals and owners of firms to develop and implement strategies for growth.

8. Provide funding to business development organizations who will in turn provide management and technical assistance to eligible businesses and individuals.

9. Assist specific business sectors such as construction and manufacturing firms.

Closing Date: Applicants must submit their application/proposal on or before April 1, 1987, 5:00 p.m., local time, at the U.S. Small Business Administration, Office of Procurement and Grants Management, 1441 L Street, NW., in the designated official depository, Room 221, Washington, DC 20416.

Eligible Applicants: This announcement is open to for-profit buinesses, business development and trade associations, state and local governments and colleges and universities.

Application Materials: Applications will be forwarded to interested participants upon telephone request, contact Ms. Bernita Kane at (202) 653–5689 or Ms. Lillian Harris at (202) 653–6439 or upon written request to the U.S. Small Business Administration, Office of Minority Small Business and Capital Ownership Development, Office of Private Industry Programs, 1441 L Street, NW., Room 602, Washington, DC 20416. All awards will be announced in the Federal Register and the Commerce Business Daily.

Evaluation and Award Process: All proposals received as a result of this announcement will be evaluated by an SBA review panel. The awarding of

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MSB&COD Cooperative Agreements is discretionary. Generally, projects are supported in order of merit to the extent permitted by available funds.

Disposition of Proposals: Notification of awards will be made by the Grants Management Officer. Organizations whose proposals are unsuccessful will be sent an awards list advising them of the successful awardees. Nothing in this announcement shall be construed as committing MSB&COD to divide available funds among all qualified applicants.

(59.007 Management and Technical Assistance to Disadvantaged Businesspersons.)

Dated: February 17, 1987.

Charles L. Heatherly,

Deputy Administrator.

[FR Doc. 87–3823 Filed 2–24–87; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice CM–8/1051]

Study Group 2 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 2 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on March 12, 1987 in room 5211 of the National Aeronautics and Space Administration, 600 Independence Avenue, SW., Washington, DC. The meeting will begin at 10:00 a.m.

Study Group 2 deals with matters relating to the communications for scientific satellites, space probes, spacecraft, exploration satellites (e.g., meteorological and geodetic) and to interference problems concerning the radio astronomy and radar astronomy services. The purpose of the meeting is to discuss preparations for the Interim Meeting of International Study Group 2 in the fall of 1987.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. Richard E. Shrum, State Department, Washington, DC 20520; telephone 202 647–2592.

Dated: February 17, 1986.

Richard E. Shrum,

Chairman U.S. CCIR National Committee.

[FR Doc. 87–3825 Filed 2–24–87; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket S–801]

American President Lines, Ltd.; Application for Written Permission Pursuant to Section 805(a) of the Merchant Marine Act, 1936, as Amended, and Article II–13 of Operating-Differential Subsidy Agreement, Contract MA/MSB–417 for Service to Hawaii

Notice is hereby given that American President Lines, Ltd. APL), has requested written permission to permit its subsidized vessels operating in Line A and Line B services as set forth in its Operating-Differential Subsidy Agreement, Contract MA/MSB–417 to call at Hawaii to provide service between California-Washington-Oregon and Hawaii. This application does not include service between Hawaii and foreign ports on the Operator's Line A and Line B services.

APL currently provides twice weekly sailings on Line A between California and the Far East with nine full containerships. The Operator also provides weekly sailings on its Line B service between Washington-Oregon and the Far East with five full containerships. The application is limited to no more than 52 sailings per year on Line A and/or Line B services calling at Hawaii.

APL States that its current intention is to provide weekly service to Hawaii from California, on regularly scheduled Line A sailings, calling Honolulu en route to the Far East. Although that is the operator's intention, APL also requests the Hawaii authority for its Line B service originating in Washington-Oregon, subject to an aggregate maximum of 52 sailings annually that would call Hawaii on Line A and/or Line B services.

In addition, APL wishes to provide service to the Neighbor Islands (the other principal islands of Hawaii besides Oahu) by feeder, using existing services or APL's own service.

Any person, firm or corporation having any interest (within the meaning of section 805(a)) in APL's application and desiring to submit comments must by 5:00 PM on March 9, 1987, file written comments in triplicate with the Secretary, Maritime Administration, together with petition for leave to intervene. The petition shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petition for leave to intervene is received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

Dated: February 18, 1987.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 87–3819 Filed 2–24–87; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: February 18, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington DC 20220.

Internal Revenue Service

OMB Number: 1545–0668

Form Number: Letters 1671C, 1671(DO)), and 1671(SC)

Type of Review: Extension

Title: Second Request for Information to Handle Problem Resolution Case

OMB Number: 1545–0817

Form Number: None

Type of Review: Extension

Title: EE–28–78 FINAL: Public Inspection of Information Required of Exempt Organizations and Trusts

Clearance Officer: Garrick Shear, (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Office.

[FR Doc. 87–3813 Filed 2–24–87; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "The Quest for Eternity: Chinese Ceramic Sculpture from the People's Republic of China" (see list [1] imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. I also determine that the temporary exhibition or display of the listed exhibit objects at the Philadelphia Museum of Art, Philadelphia, Pennsylvania, beginning on or about March 22, 1987, to on or about May 24, 1987; at the Museum of Fine Arts, Houston, Texas, beginning on or about June 28, 1987, to on or about September 6, 1987; at the Los Angeles County Museum of Art, Los Angeles, California, beginning on or about October 15, 1987, to on or about January 3, 1988; and at the Cleveland Museum of Art, Cleveland, Ohio, beginning on or about February 10, 1988, to on or about April 10, 1988, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: February 20, 1987.

John A. Lindburg,

Acting General Counsel and Congressional Liaison.

[FR Doc. 87–3932 Filed 2–23–87; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. John Lindburg of the Office of the General Counsel of USIA. The telephone number is 202–485–7976, and the address is Room 700, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547.

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Sunshine Act Meetings

Federal Register
Vol. 52, No. 36–37
Wednesday, February 25, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: February 18, 1987, 52 FR 4987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: February 18, 1987, 10:00 a.m.

CHANGE IN THE MEETING: The Commission meeting will be held in Room 9306 rather than Hearing Room A.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 87–3921 Filed 2–20–87; 10:40 am]
BILLING CODE 6717–02–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

February 19, 1987.

TIME AND DATE: 10:00 a.m., Thursday, February 26, 1987.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Youghiogheny & Ohio Coal Company,* Docket No. LAKE 84–98. (Issues include the propriety of the judge's entry of default; whether the judge erred in not remanding the matter to MSHA for reassessment in accordance with appropriate penalty regulations; and whether the judge's penalty findings are supported by substantial evidence.)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629.

Jean H. Ellen,
Agenda Clerk.
[FR Doc. 87–4013 Filed 2–20–87; 3:50 pm]
BILLING CODE 6735–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

February 19, 1987.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 4989, Wednesday, February 18, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Thursday, February 19, 1987.

CHANGES IN THE MEETING: In addition to previously announced items, the Commission considered the following in open session:

1. *Secretary of Labor for Ronnie Beavers, et al. v. Kitt Energy Corporation,* WEVA 85–73–D. (Issues include consideration of a petition for discretionary review.)
2. *Jim Walter Resources, Inc.,* SE 86–29–R. (Consideration of petition for discretionary review.)
3. *Jim Walter Resources, Inc.,* SE 86–83. (Consideration of petition for discretionary review.)

The Commissioners determined that these items should be included in the meeting and that no earlier announcement of the additions was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629.

Jean H. Ellen,
Agenda Clerk.
[FR Doc. 87–4016 Filed 2–20–87; 3:55 pm]
BILLING CODE 6735–01–M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE COMMISSION

DATE AND TIME: February 26–March 1, 1987.

PLACE: Airlie Foundation, Warrenton, Virginia.

STATUS:

February 26, 8:00 p.m. to 9:00 p.m.—Open
February 27, 9:00 a.m. to 9:00 p.m.—Open
February 28, 8:30 a.m. to 9:00 p.m.—Open
March 1, 1987, 9:00 a.m. to 12 noon—Open

MATTERS TO BE DISCUSSED:

February 26–28, 1987 Planning Sessions
- Speaker—"A Look Into the Future"
- Speaker—"Library and Information Services—the Administration View"
- Speaker—"Library and Information Services—the Congressional View"
- Speaker—"East/West Information Transfer"
- Panel—"Library/Information Issues
- Speaker—"The Impact of Technology"
- Administrative Matters—
  - Executive Director's Report
  - Budget Report
  - Committee Structure
  - Information Age Update
  - Proposed White House Conference Update

CONTACT: Vivian J. Arterbery, Executive Director, (202) 382–0840.

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Vol. 52, No. 36–37
Wednesday, February 25, 1987

Submitted.

Jane D. McDuffie,
Staff Assistant.
February 18, 1987.
[FR Doc. 87–4017 Filed 2–20–87; 3:57 pm]
BILLING CODE 7527–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 23, March 2, 9, and 16, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of February 23

Monday, February 23
2:00 p.m.
Briefing on Consideration of Proposed Emergency Planning Rule Changes (Public Meeting)

Tuesday, February 24
2:30 p.m.
Discussion of Foreign Trip (Closed—Ex. 1)

Wednesday, February 25
10:00 a.m.
Briefing on Surry Incident (Public Meeting)
2:00 p.m.
Briefing on National Academy of Sciences Report, "Revitalizing Nuclear Safety Research" (Public Meeting)

Thursday, February 26
10:00 a.m.
Briefing on Status of and Possible Vote on Restricted Power Levels for Fort St. Vrain (Public Meeting)
3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rule 10 CFR 73.57, Implementing Requirements for Licensee Access to FBI Criminal History Data (Tentative) (*Postponed* from February 18)

Week of March 2—Tentative

Thursday, March 5
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 9—Tentative

Thursday, March 12
10:00 a.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)
2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for Vogtle–1 (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 16—Tentative

Monday, March 16
2:00 p.m.
Briefing on Status of TVA (Public Meeting)

Thursday, March 19
2:30 p.m.
Discussion/Possible Vote on Full Power Operating License for Clinton (Public Meeting)
4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, March 20
10:00 a.m.
Discussion/Possible Vote on Restart of Palisades (Public Meeting)
2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634–1410.

Robert B. McOsker,
Office of the Secretary.
February 19, 1987.
[FR Doc. 87–4014 Filed 2–20–87; 3:50 p.m.]
BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of February 23, 1987:

An open meeting will be held on Wednesday, February 25, 1987, at 10:00 a.m., in Room 1C30, followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Wednesday, February 25, 1987, at 10:00 a.m., will be:

1. Consideration of whether to: (1) Repropose Rule 26a–3 under the Investment Company Act of 1940 which would provide exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the Act to registered life insurance company separate accounts funding variable annuity contracts to permit them to deduct mortality and expense risk charges from account assets; (2) propose corresponding amendments to Rule 6e–3(T) which would provide the same exemptions to registered life insurance company separate accounts funding flexible premium variable life insurance contracts; (3) propose amendments to Forms N–3, N–4 and N–8B–2 to require additional disclosures regarding the use of proceeds from risk charges by insurance companies; and (4) repropose amendments to general Rule 0–1(e) of the Act. For further information, please contact David S. Goldstein at (202) 272–2622.

2. Consideration of whether to issue a release proposing for comment Securities Exchange Act Rules 3a43–1 and 3a44–1 to implement the provisions of the Government Securities Act of 1986, which authorizes the Commission after consultation with the Commodity Futures Trading Commission, to determine for purposes of exceptions in the definitions of "government securities broker" and "government securities dealer" that activities are incidental to the futures-related business of certain persons directly or indirectly regulated by the Commodity Futures Trading Commission. For further information, please contact Lynne G. Masters at (202) 272–2848.

The subject matter of the closed meeting scheduled for Wednesday, February 25, 1987, following the 10:00 a.m. open meeting, will be:

Settlement of administrative proceedings of an enforcement nature.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive action.
Litigation matter.
Administrative proceeding of an enforcement nature.
Formal orders of investigation.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Douglas Michael at (202) 272–2467.

Shirley E. Hollis,
Assistant Secretary.
February 18, 1987.
[FR Doc. 87–3952 Filed 2–20–87; 11:25 am]
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Corrections

Federal Register
Vol. 52, No. 36-37
Wednesday, February 25, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPTS-62048A; FRL-3135-7]

Regulations Required by the Asbestos Hazard Emergency Reponse Act of 1986

Correction

In proposed rule document 86-29354 beginning on page 47265 in the issue of Wednesday, December 31, 1986, make the following corrections:

1. On page 47265, in the first column, the FRL number is corrected as set forth above.

2. On the same page, in the same column, the heading **ADDRESS** should read, **ADDRESSES**.

3. On the same page, in the second column, in the first complete paragraph, in the second line, "Pa" should read "EPA".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51655; FRL-3136-7]

Certain Chemicals Premanufacture Notices

Correction

In notice document 86-29361 beginning on page 47307 in the issue of Wednesday, December 31, 1986, make the following corrections:

1. On page 47309, in the third column, under **P 87-365**, in the seventh line, "1,200" should read "2,000".

2. On the same page, in the same column, under **P 87-366**, in the ninth line, "1,200" should read "2,000".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180711; FRL-3136-5]

Emergency Exemptions; Metalaxyt, etc.

Correction

In notice document 86-29359 appearing on page 47304 in the issue of Wednesday, December 31, 1986, make the following corrections:

1. On page 47304, in the first column, in the **SUMMARY**, in the third line, the first word should read "pests".

2. On the same page, in the second column, from the 3rd, 4th and 5th lines, remove, "The exemptions, issued of Agriculture and Consumer Services.".

3. On the same page, in the same column, in the last paragraph numbered "1.", in the last line, the last word should read "corn".

4. On the same page, in the third column, in the last paragraph numbered "2.", in the second line, remove the last word "a".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 242

Proceedings To Determine Deportability of Aliens in the United States; Apprehension, Custody, Hearing, and Appeal

Correction

In rule document 87-1861 beginning on page 3098 in the issue of Friday, January 30, 1987, make the following corrections:

§ 242.1 [Corrected]

1. On page 3098, in the second column, in § 242.1(a), in the sixth line, "alien be" should read "alien shall be".

§ 242.2 [Corrected]

2. On page 3098, in the third column, in § 242.2(a)(1)(viii), "change" should read "charge".

§ 242.7 [Corrected]

3. On page 3098, in the third column, in § 242.7(a)(3), "deceased" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

St. Lawrence Seaway Development Corporation

33 CFR Part 402

Tariff of Tolls; Proposed Revision

Correction

In proposed rule document 87-2463 beginning on page 3826 in the issue of Friday, February 6, 1987, make the following correction:

§ 402.8 [Corrected]

On page 3827, in the third column, in § 402.8, in the table, in paragraph (a)(2), insert a zero to the left of each decimal point except for the entry in the second column opposite "Bulk cargo" and the entries in the first and second columns opposite "General cargo".

BILLING CODE 1505-01

federal register

Wednesday
February 25, 1987

Part II

Environmental Protection Agency

40 CFR Part 763

Asbestos Abatement Projects; Worker Protection; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPTS-62050; FRL 3104-1]

Asbestos Abatement Projects; Worker Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule, under section 6(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(a), extends additional protections to State and local government employees covered by the EPA asbestos abatement worker protection rule published in the **Federal Register** of April 25, 1986. This additional protection is provided by incorporating in the EPA rule the new asbestos workplace standard issued by the Occupational Safety and Health Administration (OSHA) in June 1986. EPA's worker protection rule of April 1986 had extended the protection of OSHA's previous asbestos workplace standard to employees in States that do not have either worker protection plans approved by OSHA or asbestos abatement regulations which EPA decided were comparable to or more stringent than EPA's worker protection rule.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern time on March 11, 1987. This rule is effective on March 27, 1987.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St. SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Authority

Section 6(a) of TSCA authorizes EPA to impose a number of specific regulatory requirements concerning a chemical substance or mixture if the Agency finds that the manufacturing, processing, distribution in commerce, use, or disposal of the substance or mixture, or any combination of these activities presents or will present an unreasonable risk of injury to health or the environment. Among the requirements that EPA may impose are those in section 6(a) (5) and (6). Section 6(a)(5) of TSCA authorizes EPA to prohibit or otherwise regulate any manner or method of commercial use of a chemical substance or mixture. Section 6(a)(6) of TSCA authorizes EPA to prohibit or otherwise regulate any manner or method of disposal of a chemical substance or mixture, or any article containing that substance or mixture, by any person who uses or disposes of it for commercial purposes.

These subsections provide authority for EPA to issue this rule, which establishes requirements to protect State and local public employees engaged in abating the hazards of asbestos in public buildings. The asbestos present in such buildings has been sold as a commercial product, and therefore abatement activities affecting the use of asbestos in these buildings is commercial activity, subject to section 6(a)(5) of TSCA. The removal of asbestos, a disposal activity, will affect commercial activities occurring in the public buildings, and, therefore, is considered disposal for commercial purposes subject to section 6(a)(6).

II. Background

This rule replaces a final rule published in the **Federal Register** of April 25, 1986 (51 FR 15722). That rule was promulgated after EPA received and considered public comments on an immediately effective proposed rule published in the **Federal Register** of July 12, 1985 (50 FR 28530). In the previous final rule, EPA extended provisions of the then existing Asbestos Standard of the Occupational Safety and Health Administration (OSHA) to State and local government employees who were not covered by asbestos standards issued under State plans approved by OSHA, or other State regulations in Idaho, Kansas, Oklahoma, and Wisconsin that EPA had determined are comparable to or more stringent than the EPA rule. In that rule EPA announced that it would issue a revised rule when the OSHA standard was revised to ensure that all public and private sector employees who participate in asbestos abatement projects enjoy similar levels of protection. OSHA issued such a revised rule with detailed requirements for construction activities, including asbestos abatement projects, in the **Federal Register** of June 20, 1986 (51 FR 22612).

EPA also announced in the previous rule that it would issue the revised rule as a final rule with no additional comment period because EPA and OSHA had already received extensive comments on the topic of protection of workers engaged in abatement work (51 FR 15723). EPA is incorporating changes in this rule which have been suggested in comments to both agencies. In this rule, EPA is lowering the permissible exposure limit (PEL) to asbestos to 0.2 fiber per cubic centimeter of air (f/cc) and is instituting new requirements for engineering and work practice controls, and new requirements to train workers engaged in asbestos abatement.

III. The Relationship of This Rule to the OSHA Asbestos Standard

In general, this rule applies the major provisions of OSHA's new Asbestos Standard for construction work to asbestos abatement projects. This rule, however, differs from OSHA's because it retains certain features of EPA's previous final rule. It applies solely to activities involved in asbestos abatement projects, in contrast to the standard promulgated by OSHA, which applies generally to any construction activity involving exposure to asbestos. This rule also retains the definition of asbestos EPA has used in the previous final rule and, unlike OSHA's standard, does not cover non-asbestiform fibers.

This rule also differs from OSHA in retaining the reporting requirements published in the previous final EPA rule. EPA considers these requirements necessary to monitor compliance with the general provisions of the rule. Under § 763.124, employers, with certain exceptions, must notify EPA that they intend to undertake an abatement project covered by the rule at least 10 days before they begin abatement. The exceptions include all asbestos abatement projects involving less than 3 linear feet or 3 square feet of friable asbestos material, which employers need not report to EPA, and emergency projects which need not be reported in advance, but, instead, "as soon as possible but in no case more than 48 hours after the project begins."

Employers engaged in small-scale abatement projects should note that this rule imposes requirements which differ from those in the previous final rule. These requirements differ because EPA is incorporating OSHA's new provisions for small-scale, short-duration projects. Thus, under the new rule, employers whose workers are engaged in sampling or repair projects of less than 3 linear feet or 3 square feet are no longer excluded from all requirements as they were in EPA's previous final rule. Instead, consistent with OSHA, the new rule defines "small-scale", "short duration" projects in a qualitative way and generally imposes requirements different from, and less burdensome than, projects characterized as large-scale and long-duration (see Units V.C and G). Examples of typical small-scale, short-duration projects are listed in Unit V.C.

EPA also wishes to clarify the reasons why it defines the term "fiber" in the same way as OSHA, i.e., as a "particulate form of asbestos 5 micrometers or longer, with a length to diameter ratio of at least 3 to 1." This definition is consistent with OSHA and avoids technical difficulties in measuring concentrations of smaller fibers. The definition does not result from a finding that small fibers are less harmful than other fibers. EPA refers readers to its previous discussion of fiber length in the preamble to the notice published in the **Federal Register** of January 29, 1986 entitled "Asbestos; Proposed Mining and Import Restrictions and Proposed Manufacturing, Importation and Processing Prohibitions" (51 FR 3742) for an analysis of this issue.

IV. Provisions

EPA has retained in §§ 763.120, 763.124, 763.125, and 763.126 the same language concerning the scope of the rule, reporting requirements, enforcement and inspections as in the rule published in April 1986. Those sections are republished in this rule for the convenience of the reader. Section 763.121 of this rule establishes new regulatory requirements for the protection of State and local asbestos abatement workers. These requirements replace the requirements of the rule published in April 1986. The major new provisions are discussed below. Section 763.122 of this rule establishes the criteria for States to be excluded from this rule and the procedures for the submission and review of the regulations adopted by States which request exclusion. These criteria and procedures are summarized in Unit V. This document also corrects the authority citation for 40 CFR Part 763.

This rule is effective March 27, 1987. EPA is making this rule effective at this relatively early date so that protections for asbestos abatement workers in the public sector will be introduced at the same time as, or soon after, the lower permissible exposure level, work practices and engineering controls required by OSHA's standard for the construction industry.

A. Exposure Limits

In this rule, EPA establishes a new Permissible Exposure Limit (PEL) for workers exposed to airborne asbestos. In § 763.121(c), it sets the PEL as 0.2 fiber per cubic centimeter of air (f/cc), averaged over an 8-hour day. Employers (defined in this rule as the public department, agency or entity which hires an employee) must determine the PEL by means of the methods prescribed in Appendix A, the "EPA/OSHA Reference Method," or by an equivalent method, as described in Appendix B, "Detailed Procedures for Asbestos Sampling Analyses, Non-Mandatory." EPA will treat Transmission Electron Microscopy as an equivalent method for the purposes of this rule.

In § 763.121(b) the rule establishes the action level as 0.1 f/cc averaged over 8 hours. The action level is that level at which employers must begin activities such as air monitoring, employee training, and medical surveillance.

B. Air Monitoring

This rule establishes new requirements for initial and periodic air monitoring of workplaces where asbestos abatement projects take place. Section 763.121(f) requires that employers who have a workplace or work operation covered by this standard must generally perform initial monitoring to determine the airborne concentrations of asbestos to which employees may be exposed. If employers can demonstrate that employee exposures are below the action level by means of objective data, then initial monitoring is not required. If initial monitoring indicates that employee exposures are below the PEL, daily monitoring is not required. In certain areas designated as regulated areas (discussed in Unit V.C) the employer must conduct daily monitoring unless all workers are equipped with supplied-air respirators operated in the positive pressure mode. If daily monitoring within the regulated area indicates by statistically reliable measurements that employee exposures are below the action level, no further monitoring is required for those employees whose exposures are represented by such monitoring. Employees must be given the chance to observe monitoring, and affected employees must be notified as soon as possible following the employers' receipt of the results.

C. Regulated Areas

Where airborne concentrations of asbestos exceed the PEL, the employer must establish special areas, called regulated areas, to demarcate those places. Only authorized personnel may enter regulated areas. All persons entering a regulated area must be supplied with an approved respirator, and employers must ensure that these respirators are worn. No smoking, eating, drinking, or applying cosmetics is permitted in regulated areas. Warning signs stipulated in § 763.121(k) must be displayed at each regulated area and must be posted at all approaches to regulated areas.

Wherever feasible (i.e., wherever permitted by the physical characteristics of the space where asbestos abatement takes place), § 763.121(e)(6) requires that the employer establish negative-pressure enclosures before commencing asbestos removal, demolition, and renovation operations. In these enclosures, a competent person (described in Section H) must be designated to set up the enclosure and ensure its integrity and supervise employee activity within the enclosure. In addition, the employer must conduct daily monitoring that is representative of the exposure of each employee who is assigned to work within a regulated area unless all employees are equipped with supplied-air respirators.

Section 763.121(e)(6)(iv) establishes an exemption from the requirement to maintain negative-pressure enclosures in regulated areas for small-scale, short-duration operations, such as pipe repair, valve replacement, installing drywall and other general building maintenance and repair activities.

D. Methods of Compliance

EPA stipulates in § 763.121(g)(1) the engineering and work practice controls which must be used to reduce employee exposure to within the PEL. The employer must use one or any combination of the following control methods to achieve compliance: (1) Local exhaust ventilation equipped with High Efficiency Particulate Air (HEPA) filter dust collection systems; (2) general ventilation systems; (3) asbestos vacuum cleaners equipped with HEPA filters; (4) enclosure or isolation of asbestos dust-producing processes; (5) wet methods, wetting agents, or removal encapsulants used during asbestos handling, mixing, removal, cutting, application, and clean-up; and (6) prompt disposal of asbestos-containing wastes in leak-tight containers. Respiratory protection must be used where engineering and work practice controls have been instituted but are insufficient to reduce employee exposure to or below the PEL.

Section 763.121(g)(2) states that certain work practices are prohibited. These include: (1) The use of high speed abrasive disc saws that are not equipped with appropriate engineering controls; (2) the use of compressed air to remove asbestos-containing materials, unless the compressed air is used in conjunction with an enclosed ventilation system; and (3) the spray application of asbestos-containing materials.

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E. Respiratory Protection

EPA requires in § 763.121(h) that employers provide respirators and have their employees use them in the following circumstances: (1) While feasible engineering and work practice controls are being installed or implemented; (2) during activities where engineering and work practice controls are not feasible; (3) if feasible engineering and work practice controls are insufficient to reduce employee exposure to or below the exposure limit; and (4) in emergencies. Respirators must be selected according to the provisions of 30 CFR Part 11. The employers must develop a respirator program, and EPA suggests that they develop one that follows the OSHA General Industry Standards (29 CFR 1910.134). Based on available data, EPA believes that this rule would require the wearing of respirators during many asbestos abatement projects.

The rule also requires in § 763.121(h)(3) that employees who use a filter respirator must change filters whenever an increase in breathing resistance is detected. Employees who wear respirators must be allowed to wash their faces and respirator facepieces whenever necessary to prevent skin irritation associated with respirator use. An employee must not be assigned to tasks requiring the use of respirators if a physician determines that the employee is unable to function normally wearing a respirator or that the employee's safety and health or that of others would be affected by the employee's use of a respirator. In this case, the employer must assign the employee to another job which does not require the use of a respirator. The job should be with the same employer in the same geographical area, and with the same seniority, status, and rate of pay, if such a position is available.

Section 763.121(h)(4) requires that the employer must assure that a respirator issued to an employee fits properly and exhibits minimum facepiece leakage. Employers must perform quantitative or qualitative fit tests at the time of initial fitting and at least every 6 months for each employee wearing negative-pressure respirators. Appendix C describes mandatory quantitative and qualitative procedures for testing respirators.

F. Protective Clothing

Section 763.121(i) of this rule establishes the general requirement that employers must provide and require the use of protective clothing such as coveralls or similar full body clothing, head coverings, gloves, and foot coverings for any employee exposed to airborne concentrations of asbestos that exceed the PEL.

The section also stipulates that asbestos-contaminated work clothing must be removed in change rooms and placed and stored in closed, labeled containers which prevent dispersion of the asbestos into the ambient environment. Protective clothing and equipment must be cleaned, laundered, repaired, or replaced to maintain their effectiveness. EPA recommends the use of disposable protective clothing, but if nondisposable clothing is worn, the employer must inform any person who launders or cleans such asbestos-contaminated clothing of the potentially harmful effects of exposure to asbestos. Contaminated clothing and equipment taken out of change rooms or the workplace for cleaning, maintenance, or disposal must be transported in sealed impermeable bags, or other closed impermeable containers and be appropriately labeled.

G. Hygiene Facilities and Practices

In § 763.121(j), EPA requires that the employer provide clean change areas for employees required to work in regulated areas who wear respirators and protective clothing. Change areas are to be equipped with separate storage facilities for protective clothing and street clothing. Section 763.121(j)(2) requires that for asbestos removal, demolition, and renovation operations, the employer must establish a decontamination area for the decontamination of asbestos-contaminated employees. This area must be adjacent and connected to the regulated area. The section describes in detail the requirements for the decontamination area which must consist of an equipment room, shower area, and clean room in series.

Section 763.121(j) also provides an exclusion for employers of workers engaged in small-scale, short-duration projects. In lieu of the clean change area requirement, the employer may permit employees engaged in the operations to clean their protective clothing with a portable HEPA-equipped vacuum before employees leave the area where maintenance was performed.

H. Information and Training

Section 763.121(k)(3) requires that the employer develop a training program for all employees who are exposed to airborne concentrations of asbestos at or above the action level. Training must be provided prior to the time of initial assignment and at least yearly thereafter. The training program must inform employees about the methods of recognizing asbestos and the health hazards of asbestos exposure; the relationship between asbestos and smoking in producing lung cancer; operations which could result in asbestos exposure; the importance of necessary protective controls to minimize exposure including, as applicable, engineering controls, work practices, respirators, housekeeping procedures, hygiene facilities, protective clothing, decontamination procedures, emergency procedures, and waste disposal procedures; the purpose, proper use, and limitations of respirators; and the medical surveillance program. All training materials must be available to the employees without cost and, upon request, to the EPA. The competent person who supervises activities in the regulated area must attend a comprehensive course on asbestos hazards and proper methods of abatement, such as the courses offered by EPA-approved Information Centers and Satellite Centers, or courses of similar length and content.

I. Housekeeping

Section 763.121(l) requires that vacuuming equipment, when used, must have HEPA filters. It also stipulates that asbestos waste, scrap, debris, bags, containers, equipment, and asbestos-contaminated clothing consigned for disposal must be collected and disposed of in sealed, labeled, impermeable bags or other closed, labeled, impermeable containers.

J. Medical Surveillance

Section 763.121(m) requires that the employer establish a medical surveillance program, prior to assignment, for all employees who will be required to wear respirators or who will be exposed to airborne concentrations of asbestos at or above the action level for 30 or more days per year. All examinations must be performed under the supervision of a licensed physician and shall be provided without cost to the employee and at a reasonable time and place. Examinations must include: A medical and work history and physical examination with special emphasis directed to the respiratory, cardiovascular, and gastrointestinal systems; completion of a respiratory disease questionnaire; a chest X-ray administered at the discretion of the physician; and pulmonary function tests. These examinations must be made available annually, and Appendix E, a mandatory "Medical Questionnaire," must be used.

The employer must give the examining physician: A copy of this rule and its Appendix E; a description of the employee's duties relating to the employees's asbestos exposure; the exposure level or anticipated exposure level; a description of any personal protective and respiratory equipment used or to be used; and information from previous medical examinations. The employer must obtain a written signed opinion from the physician as to whether the employee has any detected medical condition that would place the employee at an increased risk from exposure to asbestos, any recommended limitations on the employee or upon the use of personal protective equipment such as clothing or respirators, and a statement that the employee has been informed by the physician of the results of the medical examination. The physician is not to reveal in the written opinion given to the employer specific findings or diagnoses unrelated to occupational exposure to asbestos. The employer must provide a copy of the physician's written opinion to the affected employee within 30 days from its receipt.

K. Recordkeeping

According to § 763.121(n), the employer must keep an accurate record of all measurements taken to monitor employee exposure to asbestos. This record should include: The date of measurement; operation involving exposure; sampling and analytical methods used, and evidence of their accuracy; number, duration and results of samples taken; type of respiratory protective devices worn; and name, social security number, and the results of all employee exposure measurements. This record must be kept for 30 years.

The employer must also maintain an accurate record for each employee subject to medical surveillance. The record must include: The name and social security number of the employee; a copy of the employee's medical complaints related to exposure to asbestos; and information provided to the examining physician as described under medical surveillance. This record must be maintained for the duration of employment plus 30 years. The employer must maintain all employee training records for 1 year beyond the last date of employment by that employee.

All records must be made available on request to the EPA, as well as to affected employees, former employees, and designated representatives. When the employer ceases to operate (e.g., because of consolidation of a school district or abolition of a special purpose district) and there is no successor employer to receive the records for the prescribed period, the employer must notify the Administrator of EPA at least 90 days prior to disposal of records.

V. Future Revisions and Exclusions for States

EPA realizes that it may be necessary to revise this rule in the future. Several parties have brought suit against OSHA challenging provisions of its Asbestos Standard. Should that litigation cause the need to revise the OSHA rule, EPA would revise the present rule to be consistent with any such revisions to the OSHA rule.

In § 763.122 EPA gives the four States which were exempt from the previous final rule 6 months, or such other reasonable time as suggested by the particular State and approved by EPA's Director of the Office of Toxic Substances, to revise their regulations to conform to the new standard. These States must submit any new regulations to the Agency for review. The Agency will review each submission to decide whether to continue excluding the State from coverage under the rule, or to amend the rule to cover the public employees in the State who are engaged in abatement work. Section 763.122(a)(1) of the rule establishes procedures for this review process.

If any other State now has or in the future adopts a regulation which is comparable to or more stringent than this rule and wishes to be excluded from this rule, that State should send a copy of the regulation to EPA's Office of Toxic Substances and request to be excluded from the rule. EPA will review the regulation, and, if it finds the regulation to be comparable to or more stringent than this rule, will propose an amendment excluding that State from coverage. Interested persons may then comment on the proposed exclusion during a period for public comment. After considering any comments, EPA could then promulgate a final amendment to the rule. These procedures are outlined in § 763.122(b) of the rule.

VI. Regulatory Assessment

EPA, in developing this final rule, has considered the requirements imposed by section 6(c)(1) of TSCA in order to determine whether asbestos or mixtures containing asbestos present an unreasonable risk. Specifically, it has considered the effects of the substance, or mixtures containing the substance, on health and the environment, and the magnitude of human and environmental exposure to the substance or mixture. It has also considered the benefits of the substance and the availability of substitutes and the reasonably ascertainable economic consequences of the rule. EPA incorporates the regulatory assessment made for the previous final rule (51 FR 15724), and assesses in this document only the incremental changes introduced by this rule.

A. Health Effects and Magnitude of Exposure to Asbestos

In the rule published in April, EPA reviewed the serious adverse human health effects associated with the use of asbestos. No additional analysis is needed for this rule. EPA's conclusions as to the health effects of asbestos were supported by the "Report to the United States Consumer Product Safety Commission (CPSC) by the Chronic Hazard Advisory Panel on Asbestos," (CHAP) (Ref. 1), "Health Effects and Magnitude of Exposure" in EPA's "Support Document for Final Rule of Friable Asbestos-Containing Materials in School Buildings" (Ref. 2), and the "Report of the (National Research Council) Committee on Nonoccupational Health Risks of Asbestiform Fibers" (Ref. 3), and were summarized more recently in the preambles to EPA's proposal entitled "Asbestos; Proposed Mining and Import Restrictions and Proposed Manufacturing, Importation and Processing Prohibitions" (51 FR 3738) and OSHA's final rule, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite" (51 FR 22612).

The final rule published in April 1986 considered the nature of exposures to asbestos which occur in the course of abatement work, and this rule incorporates that analysis. This rule will lower the exposures due to asbestos abatement experienced by State and local public employees who take part in asbestos abatement work, State and local public employees, and building occupants, such as school children, hospital patients and visitors. It will do so because the rule lowers the PEL from 2.0 f/cc, the level set by the final rule published in August, to 0.2 f/cc, and it requires employers to provide respirators, and to establish engineering and work practice controls to reduce exposures to asbestos to this level.

B. Environmental Effects

Section 6(c) of TSCA requires that EPA state the relevant environmental factors and key considerations which form the basis for regulatory action under section 6(a). The unreasonable risk finding of this rule is based solely on risks to human health since these risks are by far the most serious consequence of unregulated removal,

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enclosure, or encapsulations of friable asbestos material and are sufficient to support this rule.

C. Benefits of Asbestos Products and Availability of Substitutes

As in the previous final rule, EPA finds that the benefits of the asbestos-containing products affected by this rule are minimal. This rule applies only when persons have already decided to remove, enclose, or encapsulate friable asbestos material. These people presumably will have already determined that there are no benefits in using the asbestos-containing material in its present condition. In addition, there are adequate substitutes for the asbestos products that are being removed from buildings.

D. Economic Effects of the Rule

This portion of the preamble presents EPA's determination of the "reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health" as required by section 6(c)(1)(D) of TSCA.

EPA estimates that this rule will increase the cost of asbestos abatement to some extent beyond the costs stated in the preamble to the rule published in April (51 FR 15727). In its analysis of the costs of this rule (Ref. 5), EPA estimates that the rule would increase the cost of asbestos removal projects as follows:

	Cost/project under old rule	Incremental increase in cost/project under new rule	Projects/year	Incremental increase in cost/year	No. of years	Present value (r=10%)
School	15,000	$13,930	48	$668,640	4	$2,331,449
Offices	21,000	17,702	3	53,106	15	444,247
Hospitals	61,000	45,160	2	90,320	15	755,679
Boiler	5,000	5,237	9	47,133	15	394,356
Boiler/Pipes	3,000	1,965	9	17,685	15	134,513
Total						4,060,244

This analysis assumes the removal of all friable asbestos materials by the end of 15 years, with an accelerated schedule for asbestos removal in schools. EPA acknowledges that the estimate of asbestos abatement projects may be low, because it only considers removal, and thus may miss some maintenance and repair operations. However, even if the total number of asbestos abatement projects is higher than estimated by EPA, both the costs and the benefits of the rule will have been underestimated in roughly the same proportion.

This rule will not have a direct impact on small business, since it applies only to those public employees not covered by OSHA's Asbestos Standard. However, it may have indirect effects similar to those discussed in the rule published in April (51 FR 15727), and EPA incorporates that analysis here.

EPA does not believe that this rule will restrict technological innovation. The rule allows sufficient flexibility for the development of new technology concerning asbestos abatement.

E. Evaluation of Other Statutes

Section 6(c) of TSCA requires that if EPA determines that a risk of injury to health or the environment could be eliminated or reduced to a sufficient extent by actions taken under another statute administered by EPA, EPA may not promulgate a rule under section 6(a) of TSCA unless EPA finds it is in the public interest to protect against the risk by action under TSCA. EPA finds that no other law administered by EPA will eliminate or reduce the risks to the workers associated with the removal, encapsulation, or enclosure of asbestos to a sufficient level.

The Agency has analyzed the Clean Air Act and the Resource Conservation and Recovery Act, and has come to the following conclusions. Although EPA does list asbestos as a hazardous air pollutant under the Clean Air Act, it does not have authority under that Act to issue regulations protecting workers exposed to indoor air containing asbestos fibers. The other law administered by EPA which regulates asbestos, the Resource Conservation and Recovery Act, does not give EPA authority to protect abatement workers, since it allows the Agency to regulate the substance only when it is ultimately placed in a disposal site.

Under section 9(a) of TSCA, EPA is required to review other Federal authorities not administered by EPA to determine whether action under those authorities may prevent or reduce a given risk. EPA cannot determine that there is a statute administered by another Federal agency that can prevent or reduce the risk presented to persons not covered by the OSHA Asbestos Standard during the removal, enclosure, or encapsulation of friable asbestos. EPA's analysis of this issue is in the preamble to the previous final rule (51 FR 15728) and is hereby adopted for this rule.

VII. Finding of Unreasonable Risk

EPA has weighed the health risks from asbestos abatement, as presently regulated, against the costs attributable to this regulation. In evaluating risks, it incorporates into its finding the determination made by OSHA in its notice published in the **Federal Register** of June 20, 1986 (51 FR 22612) that workers exposed to asbestos at the PEL of 2.0 f/cc face a significant risk to their health, and that the new final standard will reduce that risk. OSHA developed this finding after a lengthy rulemaking process and extended public hearings, and EPA believes that the safe finding applies to workers engaged in asbestos abatement in the public sector.

EPA estimates that the rule would increase the costs of asbestos abatement by a total of $4.0 million. This figure represents the present value of costs incurred over the next 15 years, assuming that all friable asbestos is abated. Although this rule may double the costs of some projects, the costs nonetheless are low, compared to benefits. If a State or local government has decided it can afford a project under the original final rule, the incremental cost under this amended rule should not be substantial. EPA believes that the possibility of reducing releases of asbestos during abatement under the new requirements justifies the increased costs.

EPA has concluded that the additional protection provided by this new rule outweighs the incremental costs of the control measures required, and that public employees engaged in asbestos abatement work should receive the same standard of protection as that set by OSHA for workers in the private sector. Therefore, EPA finds it is necessary to require that certain measures be taken to reduce the risk faced by asbestos abatement workers and persons using and visiting buildings during and after asbestos abatement activities.

VIII. Enforcement

Section 15 of TSCA makes it unlawful to fail or refuse to comply with any provision of a rule promulgated under section 6 of TSCA. Therefore, failure to comply with this rule would be a violation of section 15 of TSCA. In addition, section 15 of TSCA makes it unlawful for any person to: (1) Fail or refuse to establish and maintain records as required by this rule; (2) fail or refuse to permit access to or copying of records, as required by TSCA; or (3) fail or refuse to permit entry or inspection as required by section 11 of TSCA.

Violators may be subject to both civil and criminal liability. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation. Each day of operation in violation of this rule could constitute a separate violation. Knowing or willful violations of this rule could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In addition, other remedies are available to EPA under sections 7 and 17 of TSCA, such as seeking an injunction to restrain violations of this rule.

IX. Rulemaking Record

EPA has established a record for this rulemaking under document control number OPTS–62050. A public version of the record and an index of documents in the record are available to the public in the Office of Toxic Substances Public Information Office from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The Public Information Office is located in Rm. NE–004, 401 M St., SW., Washington, DC.

The record includes information considered by EPA in developing this rule. The record now includes the following categories of information: (1) **Federal Register** notices, (2) support documents, (3) reports, and (4) memoranda and letters.

The record also includes by reference the rulemaking record compiled by OSHA as part of the revision of the OSHA Asbestos Standard and the rulemaking record for EPA's final rule published in April 1986.

X. References

(1) USCPSC, Reports to the U.S. Consumer Product Safety Commission by the Chronic Hazard Advisory on Asbestos, July 1983.

(2) USEPA, OPTS, OTS, Support Document for Final Rule on Friable Asbestos-Containing Materials in School Buildings—Health Effects and Magnitude of Exposure, January 1982.

(3) National Research Council, "Nonoccupational Health Risks of Asbestiform Fibers", National Academy Press, Washington, DC, 1984.

(4) USDOL, OSHA, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite." [June 20, 1986: 51 FR 22612].

(5) USEPA, OPTS, OTS, Revision to Asbestos Abatement Worker Protection Rule: Summary of Cost-Effectiveness Analysis, December 1986.

XI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA prepared a Regulatory Impact Analysis. The Analysis estimated that this rule, would cost about $4.2 over 15 years. EPA believes that these costs are reasonable. Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "Major Rule" because it will not have an effect on the economy of $100 million or more and it will not have a significant effect on competition, costs, or prices.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

EPA has analyzed the economic impact of this rule on small businesses. Reference to EPA's analysis appears in Unit VI.D.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C 3501 *et seq.* and have been assigned OMB control number 2070–0072.

List of Subjects in 40 CFR Part 763

Asbestos, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 6, 1987.

Lee M. Thomas,

Administrator.

PART 763—[AMENDED]

Therefore, 40 CFR Part 763 is amended as follows:

1. The authority citation for Part 763 is revised to read as follows, and all of the section or subpart authorities are removed:

Authority: 15 U.S.C. 2605 and 2607(a).

2. Subpart G consisting of §§ 763.120 through 763.126 is revised to read as follows:

Subpart G—Asbestos Abatement Projects

Sec.

763.120 Scope.
763.121 Regulatory requirements.
763.122 Exclusions for States.
763.124 Reporting.
763.125 Enforcement.
763.126 Inspections.

Subpart G—Asbestos Abatement Projects

§ 763.120 Scope.

(a) This part establishes requirements which must be followed during asbestos abatement projects by employers of State and local government employees not covered by the Asbestos Standard of the Occupational Safety and Health Administration (OSHA), 29 CFR 1926.58, an Asbestos Standard adopted by a State as part of a State plan approved by OSHA under section 18 of the Occupational Safety and Health Act, or a State asbestos regulation which EPA has determined to be comparable to or more stringent than this part. The rule covers those employees who take part in asbestos abatement work.

(b) [Reserved]

§ 763.121 Regulatory requirements.

(a) [Reserved]

(b) *Definitions.* "Action level" means an airborne concentration of asbestos of 0.1 fiber per cubic centimeter (f/cc) of air calculated as an 8-hour time-weighted average.

"Administrator" means the Administrator, U.S. Environmental Protection Agency, or designee.

"Asbestos" means the asbestiform varieties of chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonit—grunerite); tremolite; anthophyllite, and actinolite.

"Asbestos abatement project" means any activity involving the removal, enclosure, or encapsulation of friable asbestos material.

"Authorized person" means any person authorized by the employer and required by work duties to be present in regulated areas.

"Clean room" means an uncontaminated room having facilities for the storage of employees' street clothing and uncontaminated materials and equipment.

"Competent person" means one who is capable of identifying existing asbestos hazards in the workplace and who has the authority to take prompt corrective measures to eliminate them. The duties of the competent person include at least the following: Establishing the negative-pressure enclosure, ensuring its integrity, and controlling entry to and exit from the enclosure; supervising any employee exposure monitoring required by this subpart, ensuring that all employees working within such an enclosure wear the appropriate personal protective equipment, are trained in the use of appropriate methods of exposure control, and use the hygiene facilities

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and decontamination procedures specified in this subpart; and ensuring that engineering controls in use are in proper operating condition and are functioning properly.

"Decontamination area" means an enclosed area adjacent and connected to the regulated area and consisting of an equipment room, shower area, and clean room, which is used for the decontamination of workers, materials, and equipment contaminated with asbestos.

"Demolition" means the wrecking or taking out of any load-supporting structural member and any related razing, removing, or stripping of asbestos products.

"Emergency project" means a project involving the removal, enclosure, or encapsulation of friable asbestos-containing material that was not planned but results from a sudden unexpected event.

"Employee exposure" means that exposure to airborne asbestos would occur if the employee were not using respiratory protective equipment.

"Employer" means the public department, agency, or entity which hires an employee. The term includes, but is not limited to, any State, County, City, or other local governmental entity which operates or administers schools, a department of health or human services, a library, a police department, a fire department, or similar public service agencies or offices.

"Equipment room (change room)" means a contaminated room located within the decontamination area that is supplied with impermeable bags or containers for the disposal of contaminated protective clothing and equipment.

"Fiber" means a particulate form of asbestos, 5 micrometers or longer, with a length-to-diameter ratio of at least 3 to 1.

"Friable asbestos material" means any material containing more than 1 percent asbestos by weight which, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure.

"High-efficiency particulate air (HEPA) filter" means a filter capable of trapping and retaining at least 99.97 percent of all monodispersed particles of 0.3 micrometer in diameter or larger.

"Regulated area" means an area established by the employer to demarcate areas where airborne concentrations of asbestos exceed or can reasonably be expected to exceed the permissible exposure limit. The regulated area may take the form of: (1) A temporary enclosure, as required by paragraph (e)(6) of this section, or (2) an area demarcated in any manner that minimizes the number of employees exposed to asbestos.

"Removal" means the taking out or stripping of asbestos or materials containing asbestos.

"Renovation" means the modifying of any existing structure, or portion thereof, where exposure to airborne asbestos may result.

"Repair" means overhauling, rebuilding, reconstructing, or reconditioning of structures or substrates where asbestos is present.

(c) *Permissible exposure limit (PEL).* The employer shall ensure that no employee is exposed to an airborne concentration of asbestos in excess of 0.2 fiber per cubic centimeter of air as an 8-hour time-weighted average (TWA), as determined by the method prescribed in Appendix A of this section, or by an equivalent method.

(d) *Communication among employers.* On multi-employer worksites, an employer performing asbestos work requiring the establishment of a regulated area shall inform other employers (as defined by this subpart and by 29 U.S.C. section 652(5)) on the site of the nature of the employer's work with asbestos and of the existence of and requirements pertaining to regulated areas.

(e) *Regulated areas*—(1) *General.* The employer shall establish a regulated area in work areas where airborne concentrations of asbestos exceed or can reasonably be expected to exceed the permissible exposure limit prescribed in paragraph (c) of this section.

(2) *Demarcation.* The regulated area shall be demarcated in any manner that minimizes the number of persons within the area and protects persons outside the area from exposure to airborne concentrations of asbestos in excess of the permissible exposure limit.

(3) *Access.* Access to regulated areas shall be limited to authorized persons.

(4) *Respirators.* All persons entering a regulated area shall be supplied with a respirator, selected in accordance with paragraph (h)(2) of this section.

(5) *Prohibited activities.* The employer shall ensure that employees do not eat, drink, smoke, chew tobacco or gum, or apply cosmetics in the regulated area.

(6) *Requirements for asbestos removal, demolition, and renovation operations.* (i) Wherever feasible, the employer shall establish negative-pressure enclosures before commencing removal, demolition, and renovation operations.

(ii) The employer shall designate a competent person to perform or supervise the following duties:

(A) Set up the enclosure.

(B) Ensure the integrity of the enclosure.

(C) Control entry to and exit from the enclosure.

(D) Supervise all employee exposure monitoring required by this section.

(E) Ensure that employees working within the enclosure wear respirators and protective clothing as required by paragraphs (h) and (i) of this section.

(F) Ensure that employees are trained in the use of engineering controls, work practices, and personal protective equipment.

(G) Ensure that employees use the hygiene facilities and observe the decontamination procedures specified in paragraph (j) of this section.

(H) Ensure that engineering controls are functioning properly.

(iii)(A) In addition to the qualifications specified in paragraph (b) of this section, the competent person shall be trained in all aspects of asbestos abatement, the contents of this subpart, the identification of asbestos and its removal procedures, and other practices for reducing the hazard. Such training shall be obtained in a comprehensive course, such as a course conducted by an EPA Asbestos Training Center, or an equivalent course.

(B) For small-scale, short-duration operations, such as pipe repair, valve replacement, installing electrical conduits, installing or removing drywall, roofing, and other general building maintenance or renovation, the employer is not required to comply with the requirements of paragraph (e)(8) of this section.

(f) *Exposure monitoring*—(1) *General.* (i) Each employer who has a workplace or work operation covered by this subpart shall perform monitoring to determine accurately the airborne concentrations of asbestos to which employees may be exposed.

(ii) Determinations of employee exposure shall be made from breathing zone air samples that are representative of the 8-hour TWA of each employee.

(iii) Representative 8-hour TWA employee exposure shall be determined on the basis of one or more samples representing fullshift exposure for employees in each work area.

(2) *Initial monitoring.* (i) Each employer who has a workplace or work operation covered by this subpart, except as provided for in paragraphs (f)(2)(ii) and (iii) of this section, shall perform initial monitoring at the initiation of each asbestos job to determine accurately the airborne concentrations of asbestos to which employees may be exposed.

(ii) The employer may demonstrate that employee exposures are below the action level by means of objective data demonstrating that the product or material containing asbestos cannot release airborne fibers in concentrations exceeding the action level under those work conditions having the greatest potential for releasing asbestos.

(iii) Where the employer has monitored each asbestos job, and the data were obtained during work operations conducted under workplace conditions closely resembling the processes, type of material, control methods, work practices, and environmental conditions used and prevailing in the employer's current operations, the employer may rely on such earlier monitoring results to satisfy the requirements of paragraph (f)(2)(i) of this section.

(3) *Periodic monitoring within regulated areas.* (i) The employer shall conduct daily monitoring that is representative of the exposure of each employee who is assigned to work within a regulated area.

(ii) When all employees within a regulated area are equipped with supplied-air respirators operated in the positive-pressure mode, the employer may dispense with the daily monitoring required by this paragraph.

(4) *Termination of monitoring.* If the periodic monitoring required by paragraph (f)(3)(i) of this section reveals that employee exposures, as indicated by statistically reliable measurements, are below the action level, the employer may discontinue monitoring for those employees whose exposures are represented by such monitoring.

(5) *Method of monitoring.* (i) All samples taken to satisfy the monitoring requirements of paragraph (f) of this section shall be personal samples collected following the procedures specified in Appendix A of this section.

(ii) All samples taken to satisfy the monitoring requirements of paragraph (f) of this section shall be evaluated using the EPA/OSHA Reference Method (ORM) specified in Appendix A, or an equivalent counting method.

(iii) If an equivalent method to the ORM is used, the employer shall ensure that the method meets the following criteria:

(A) Replicate exposure data used to establish equivalency are collected in side-by-side field and laboratory comparisons.

(B) The comparison indicates that 90 percent of the samples collected in the range 0.5 to 2.0 times the permissible limit have an accuracy range of plus or minus 25 percent of the ORM results with a 95 percent confidence level as demonstrated by a statistically valid protocol.

(C) The equivalent method is documented and the results of the comparison testing are maintained.

(iv) To satisfy the monitoring requirements of paragraph (f) of this section, employers shall rely on the results of monitoring analysis performed by laboratories that have instituted quality assurance programs that include the elements prescribed in Appendix A of this section.

(6) *Employee notification of monitoring results.* (i) The employer shall notify affected employees of the monitoring results that represent the employees' exposure as soon as possible following receipt of monitoring results.

(ii) The employer shall notify affected employees of the results of monitoring representing the employees' exposure in writing either individually or by posting at a centrally located place that is accessible to affected employees.

(7) *Observation of monitoring.* (i) The employer shall provide affected employees or their designated representatives an opportunity to observe any monitoring of employee exposure to asbestos conducted in accordance with this section

(ii) When observation of the monitoring of employee exposure to asbestos requires entry into an area where the use of protective clothing or equipment is required, the observer shall be provided with and be required to use such clothing and equipment and shall comply with all other applicable safety and health procedures.

(g) *Methods of compliance*—(1) *Engineering controls and work practices.* (i) The employer shall use one or any combination of the following control methods to achieve compliance with the permissible exposure limit prescribed by paragraph (c) of this section:

(A) Local exhaust ventilation equipped with HEPA filter dust collection systems.

(B) General ventilation systems.

(C) Vacuum cleaners equipped with HEPA filters.

(D) Enclosure or isolation of processes producing asbestos dust.

(E) Use of wet methods, wetting agents, or removal encapsulants to control employee exposures during asbestos handling, mixing, removal, cutting, application, and cleanup.

(F) Prompt disposal of wastes contaminated with asbestos in leak-tight containers.

(G) Use of work practices or other engineering controls that the Administrator can show to be feasible.

(ii) Wherever the feasible engineering and work practice controls described in this paragraph are not sufficient to reduce employee exposure to or below the limit prescribed in paragraph (c) of this section, the employer shall use them to reduce employee exposure to the lowest levels attainable by these controls and shall supplement them by the use of respiratory protection that complies with the requirements of paragraph (h) of this section.

(2) *Prohibitions.* (i) High-speed abrasive disc saws that are not equipped with appropriate engineering controls shall not be used for work related to asbestos.

(ii) Compressed air shall not be used to remove asbestos materials containing asbestos unless the compressed air is used in conjunction with an enclosed ventilation system designed to capture the dust cloud created by the compressed air.

(iii) Materials containing asbestos shall not be applied by spray methods.

(3) *Employee rotation.* The employer shall not use employee rotation as a means of compliance with the exposure limit prescribed in paragraph (c) of this section.

(h) *Respiratory protection*—(1) *General.* The employer shall provide respirators, and ensure that they are used, where required by this section. Respirators shall be used in the following circumstances:

(i) During the interval necessary to install or implement feasible engineering and work practice controls.

(ii) In work operations such as maintenance and repair activities, or other activities for which engineering and work practice controls are not feasible.

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the exposure limit.

(iv) In emergencies.

(2) *Respirator selection.* (i) Where respirators are used, the employer shall select and provide, at no cost to the employee, the appropriate respirator as specified in Table 1 in paragraph (iv), and shall ensure that the employee uses the respirator provided.

(ii) The employer shall select respirators from among those jointly approved as being acceptable for protection by the Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 30 CFR Part 11.

(iii) The employer shall provide a powered, air-purifying respirator in lieu

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of any negative-pressure respirator specified in Table 1 whenever:

(A) An employee chooses to use this type of respirator; and

(B) This respirator will provide adequate protection to the employee.

(iv) Table 1—Respiratory Protection for Asbestos Fibers.

TABLE 1.—RESPIRATORY PROTECTION FOR ASBESTOS FIBERS

Airborne concentration of asbestos	Required respirator
Not in excess of 2 f/cc (10 × PEL).	1. Half-mask air-purifying respirator equipped with high-efficiency filters.
Not in excess of 10 f/cc (50 × PEL).	1. Full facepiece air-purifying respirator equipped with high-efficiency filters.
Not in excess of 20 f/cc (100 × PEL).	1. Any powered air-purifying respirator equipped with high-efficiency filters. 2. Any supplied-air respirator operated in continuous flow mode.
Not in excess of 200 f/cc (1,000 × PEL).	1. Full facepiece supplied-air respirator operated in pressure demand mode.
Greater than 200 f/cc (>1,000 × PEL) or unknown concentration.	1. Full facepiece supplied air respirator operated in pressure demand mode equipped with an auxiliary positive pressure self-contained breathing apparatus.

Note.—a. Respirators assigned for higher environmental concentrations may be used at lower concentrations.

b. A high-efficiency filter means a filter that is at least 99.97 percent efficient against mono-dispersed particles of 0.3 micrometers in diameter or larger.

(3) *Respirator program.* (i) Where respiratory protection is used, the employee shall institute a respirator program. This should include all information and guidance necessary for their proper selection, use, and care. Possible emergency uses of respirators should be anticipated and planned for.

(ii) The employer shall permit each employee who uses a filter respirator to change the filter elements whenever an increase in breathing resistance is detected and shall maintain an adequate supply of filter elements for this purpose.

(iii) Employees who wear respirators shall be permitted to leave work areas to wash their faces and respirator facepieces whenever necessary to prevent skin irritation associated with respirator use.

(iv) No employee shall be assigned to tasks requiring the use of respirators if, based on his or her most recent examination, an examining physician determines that the employee will be unable to function normally wearing a respirator, or that the safety or health of the employee or of other employees will be impaired by the use of a respirator. Such employee shall be assigned to another job or given the opportunity to transfer to a different position, the duties of which he or she is able to perform, with the same employer, in the same geographical area, and with the same seniority, status, and rate of pay he or she had just prior to such transfer, if such a different position is available.

(4) *Respirator fit testing.* (i) The employer shall ensure that the respirator issued to the employee exhibits the least possible facepiece leakage and that the respirator is fitted properly.

(ii) Employers shall perform either quantitative or qualitative face fit tests at the time of initial fitting and at least every 6 months thereafter for each employee wearing a negative-pressure respirator. The qualitative fit tests may be used only for testing the fit of half-mask respirators where they are permitted to be worn, and shall be conducted in accordance with Appendix C of this section. The tests shall be used to select facepieces that provide the required protection as prescribed in Table 1.

(i) *Protective clothing*—(1) *General.* The employer shall provide and require the use of protective clothing, such as coveralls or similar whole-body clothing, head coverings, gloves, and foot coverings for any employee exposed to airborne concentrations of asbestos that exceed the permissible exposure limit prescribed in paragraph (c) of this section.

(2) *Laundering.* (i) The employer shall ensure that laundering of contaminated clothing is done so as to prevent the release of airborne asbestos in excess of the exposure limit prescribed in paragraph (c) of this section.

(ii) Any employer who gives contaminated clothing to another person for laundering shall inform such person of the requirement in paragraph (i)(2)(i) of this section effectively to prevent the release of airborne asbestos in excess of the exposure limit prescribed in paragraph (c) of this section.

(3) *Contaminated clothing.* Contaminated clothing shall be transported in sealed impermeable bags, or other closed, impermeable containers, and be labeled in accordance with paragraph (k) of this section.

(4) *Protective clothing for removal, demolition, and renovation operations.* (i) The competent person shall periodically examine worksuits worn by employees for rips or tears that may occur during performance of work.

(ii) When rips or tears are detected while an employee is working within a negative-pressure enclosure, rips and tears shall be immediately mended, or the worksuit shall be immediately replaced.

(j) *Hygiene facilities and practices*—(1) *General.* (i)(A) The employer shall provide clean change areas for employees required to work in regulated areas or required by paragraph (i)(1) of this section to wear protective clothing.

(B) In lieu of the change area requirement specified in paragraph (j)(1)(i), the employer may permit employees engaged in small-scale, short-duration operations, as described in paragraph (e)(6) of this section, to clean their protective clothing with a portable HEPA-equipped vacuum before such employees leave the area where maintenance was performed.

(ii) The employer shall ensure that change areas are equipped with separate storage facilities for protective clothing and street clothing.

(iii) Whenever food or beverages are consumed at the worksite and employees are exposed to airborne concentrations of asbestos in excess of the permissible exposure limit, the employer shall provide lunch areas in which the airborne concentrations of asbestos are below the action level.

(2) *Requirements for removal, demolition, and renovation operations*—(i) *Decontamination area.* Except for small-scale, short-duration operations, as described in paragraph (e)(6) of this section, the employer shall establish a decontamination area that is adjacent and connected to the regulated area for the decontamination of employees contaminated with asbestos. The decontamination area shall consist of an equipment room, shower area, and clean room in series. The employer shall ensure that employees enter and exit the regulated area through the decontamination area.

(ii) *Clean room.* The clean room shall be equipped with a locker or appropriate storage container for each employee's use.

(iii) *Shower area.* Where feasible, shower facilities shall be provided. The showers shall be contiguous both to the equipment room and the clean change room, unless the employer can demonstrate that this location is not feasible. Where the employer can demonstrate that it is not feasible to locate the shower between the equipment room and the clean change room, the employer shall ensure that employees:

(A) Remove asbestos contamination from their worksuits using a HEPA vacuum before proceeding to a shower that is not contiguous to the work area; or

(B) Remove their contaminated worksuits, don clean worksuits, and proceed to a shower that is not contiguous to the work area.

(iv) *Equipment room.* The equipment room shall be supplied with impermeable, labeled bags and containers for the containment and disposal of contaminated protective clothing and equipment.

(v) *Decontamination area entry procedures.* (A) The employer shall ensure that employees:

(1) Enter the decontamination area through the clean room.

(2) Remove and deposit street clothing within a locker provided for their use.

(3) Put on protective clothing and respiratory protection before leaving the clean room.

(B) The employer shall ensure that employees pass through the equipment room before entering the enclosure.

(vi) *Decontamination area exit procedures.* (A) The employer shall ensure that employees remove all gross contamination and debris from their protective clothing before leaving the regulated area.

(B) The employer shall ensure that employees remove their protective clothing in the equipment room and deposit the clothing in labeled impermeable bags or containers.

(C) The employer shall ensure that employees do not remove their respirators in the equipment room.

(D) The employer shall ensure that employees shower prior to entering the clean room.

(E) The employer shall ensure that, after showering, employees enter the clean room before changing into street clothes.

(k) *Communication of hazards to employees*—(1) *Signs.* (i) Warning signs that demarcate the regulated area shall be provided and displayed at each location where airborne concentrations of asbestos may be in excess of the exposure limit prescribed in paragraph (c) of this section. Signs shall be posted at such a distance from such a location that an employee may read the signs and take necessary protective steps before entering the area marked by the signs.

(ii) The warning signs required by paragraph (k)(1)(i) of this section shall bear the following information:

DANGER
ASBESTOS
CANCER AND LUNG DISEASE HAZARD
AUTHORIZED PERSONNEL ONLY
RESPIRATORS AND PROTECTIVE CLOTHING ARE REQUIRED IN THIS AREA

(2) *Labels.* (i) Labels shall be affixed to all products containing asbestos and to all containers containing such products, including waste containers. Where feasible, installed asbestos products shall contain a visible label.

(ii) Labels shall be printed in large, bold letters on a contrasting background.

(iii) Labels shall be used and shall contain the following information:

DANGER
CONTAINS ASBESTOS FIBERS
AVOID CREATING DUST
CANCER AND LUNG DISEASE HAZARD

(iv) [Reserved]

(v) Labels shall contain a warning statement against breathing airborne asbestos fibers.

(vi) The provisions for labels required by paragraph (k)(2)(i) of this section do not apply where:

(A) Asbestos fibers have been modified by a bonding agent, coating, binder, or other material, provided that the manufacturer can demonstrate that, during any reasonably foreseeable use, handling, storage, disposal, processing, or transportation, no airborne concentrations of asbestos fibers in excess of the action level will be released or

(B) Asbestos is present in a product in concentrations less than 0.1 percent by weight.

(3) *Employee information and training.* (i) The employer shall institute a training program for all employees exposed to airborne concentrations of asbestos in excess of the action level and shall ensure their participation in the program.

(ii) Training shall be provided prior to or at the time of initial assignment, unless the employee has received equivalent training within the previous 12 months, and at least annually thereafter.

(iii) The training program shall be conducted in a manner that the employee is able to understand. The employer shall ensure that each employee is informed of the following:

(A) Methods of recognizing asbestos.

(B) The health effects associated with asbestos exposure.

(C) The relationship between smoking and asbestos in producing lung cancer.

(D) The nature of operations that could result in exposure to asbestos, the importance of necessary protective controls to minimize exposure including, as applicable, engineering controls, work practices, respirators, housekeeping procedures, hygiene facilities, protective clothing, decontamination procedures, emergency procedures, and waste disposal procedures, and any necessary instruction in the use of these controls and procedures.

(E) The purpose, proper use, fitting instructions, and limitations of respirators.

(F) The appropriate work practices for performing the asbestos job; and

(G) Medical surveillance program requirements.

(H) A review of this subpart, including appendices.

(4) *Access to training materials.* (i) The employer shall make readily available to all affected employees without cost all written materials relating to the employee training program, including a copy of this regulation.

(ii) The employer shall provide to the Administrator upon request, all information and training materials relating to the employee information and training program.

(l) *Housekeeping*—(1) *Vacuuming.* Where vacuuming methods are selected, HEPA filtered vacuuming equipment must be used. The equipment shall be used and emptied in a manner that minimizes the reentry of asbestos into the workplace.

(2) *Waste disposal.* Asbestos waste, scrap, debris, bags, containers, equipment, and contaminated clothing consigned for disposal shall be collected and disposed of in sealed, labeled, impermeable bags or other closed, labeled, impermeable containers.

(m) *Medical surveillance*—(1) *General*—(i)—*Employees covered.* The employer shall institute a medical surveillance program for all employees engaged in work involving levels of asbestos at or above the action level for 30 or more days per year, or who are required by this section to wear negative-pressure respirators.

(ii) *Examination by a physician.* (A) The employer shall ensure that all medical examinations and procedures are performed by or under the supervision of a licensed physician, and are provided at no cost to the employee and at a reasonable time and place.

(B) Persons other than such licensed physicians who administer the pulmonary function testing required by this section shall complete a training course in spirometry sponsored by an appropriate academic or professional institution.

(2) *Medical examinations and consultation*—(i) *Frequency.* The employer shall make available medical examinations and consultations to each employee covered under paragraph (m)(1)(i) of this section on the following schedules:

(A) Prior to assignment of the employee to an area where negative-pressure respirators are worn.

(B)(1) When the employee is assigned to an area where exposure to asbestos may be at or above the action level for

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30 or more days per year, a medical examination must be given within 10 working days following the thirtieth day of exposure.

(2) No medical examination is required of any employee if adequate records show that the employee has been examined in accordance with this paragraph within the past 1-year period.

(C) At least annually thereafter.

(D) If the examining physician determines that any of the examinations should be provided more frequently than specified, the employer shall provide such examinations to affected employees at the frequencies specified by the physician.

(ii) *Content.* Medical examinations made available pursuant to paragraphs (m)(2)(i) (A), (B), and (C) of this section shall include:

(A) A medical and work history with special emphasis directed to the pulmonary, cardiovascular, and gastrointestinal systems.

(B) On initial examination, the standardized questionnaire contained in Appendix D, Part 1 of this section and, on annual examination, the abbreviated standardized questionnaire contained in Appendix D, Part 2 of this section.

(C) A physical examination directed to the pulmonary and gastrointestinal systems, including a chest roentgenogram to be administered at the discretion of the physician, and pulmonary function tests of forced vital capacity (FVC) and forced expiratory volume at one second (FEV_1). Interpretation and classification of chest roentgenograms shall be conducted in accordance with Appendix E of this section.

(D) Any other examinations or tests deemed necessary by the examining physician.

(3) *Information provided to the physician.* The employer shall provide the following information to the examining physician:

(i) A copy of this rule and Appendices D, E, and I of this section.

(ii) A description of the affected employee's duties as they relate to the employee's exposure.

(iii) The employee's representative exposure level or anticipated exposure level.

(iv) A description of any personal protective and respiratory equipment used or to be used.

(v) Information from previous medical examinations of the affected employee that is not otherwise available to the examining physician.

(4) *Physician's written opinion.* (i) The employer shall obtain a written opinion from the examining physician. This written opinion shall contain the results of the medical examination and shall include:

(A) The physician's opinion as to whether the employee has any detected medical conditions that would place the employee at an increased risk of material health impairment from exposure to asbestos.

(B) Any recommended limitations on the employee or on the use of personal protective equipment such as respirators.

(C) A statement that the employee has been informed by the physician of the results of the medical examinations and of any medical conditions that may result from asbestos exposure.

(ii) The employer shall instruct the physician not to reveal in the written opinion given to the employer specific findings or diagnoses unrelated to occupational exposure to asbestos.

(iii) The employer shall provide a copy of the physician's written opinion to the affected employee within 30 days from its receipt.

(n) *Recordkeeping*—(1) *Objective data for exempted operations.* (i) Where the employer has relied on objective data that demonstrate that products made from or containing asbestos are not capable of releasing fibers of asbestos in concentrations at or above the action level under the expected conditions of processing, use, or handling to exempt such operations from the initial monitoring requirements under paragraph (f)(2) of this section, the employer shall establish and maintain an accurate record of objective data reasonably relied upon in support of the exemption.

(ii) The record shall include at least the following information:

(A) The product qualifying for exemption.

(B) The source of the objective data.

(C) The testing protocol, results of testing, and/or analysis of the material for the release of asbestos.

(D) A description of the operation exempted and how the data support the exemption.

(E) Other data relevant to the operations, materials, processing, or employee exposures covered by the exemption.

(iii) The employer shall maintain this record for the duration of the employer's reliance upon such objective data.

(2) *Exposure measurements.* (i)(A) The employer shall keep an accurate record of all measurements taken to monitor employee exposure to asbestos as prescribed in paragraph (f) of this section.

(B) The employer may utilize the services of competent organizations such as employee associations to maintain the records required by this section.

(ii) This record shall include at least the following information:

(A) The date of measurement.

(B) The operation involving exposure to asbestos that is being monitored.

(C) Sampling and analytical methods used and evidence of their accuracy.

(D) Number, duration, and results of samples taken.

(E) Type of protective devices worn, if any.

(F) Name, social security number, and exposure of the employees whose exposures are represented.

(iii) The employer shall maintain this record for at least 30 years.

(3) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance by paragraph (m) of this section.

(ii) The record shall include at least the following information:

(A) The name and social security number of the employee.

(B) A copy of the employee's medical examination results, including the medical history, questionnaire responses, results of any tests, and physician's recommendations.

(C) Physician's written opinions.

(D) Any employee medical complaints related to exposure to asbestos.

(E) A copy of the information provided to the physician as required by paragraph (m) of this section.

(iii) The employer shall ensure that this record is maintained for the duration of employment plus 30 years.

(4) *Training records.* The employer shall maintain all employee training records for 1 year beyond the last date of employment by that employer.

(5) *Availability.* (i) The employer, upon request, shall make all records required to be maintained by this section available to the Administrator for examination and copying.

(ii) The employer, upon request, shall make any exposure records required by paragraphs (f) and (n) of this section available for examination and copying to affected employees, former employees, designated representatives, and the Administrator.

(iii) The employer, upon request, shall make employee medical records required by paragraphs (m) and (n) of this section available for examination and copying to the subject employee, anyone having the specific written consent of the subject employee, and the Administrator.

(6) *Transfer of records.* Whenever the employer ceases to operate and there is no successor employer to receive and retain the records for the prescribed period, the employer shall notify the Administrator at least 90 days prior to disposal and, upon request, transmit them to the Administrator.

(o) *Effective date.* This section shall become effective March 27, 1987.

(p) *Appendices.* (1) Appendices A, C, D, and E to this section are incorporated as part of this section and the contents of these appendices are mandatory.

(2) Appendix B to this section is informational and is not intended to create any additional obligations not otherwise imposed or to detract from any existing obligations.

Appendix A To § 763.121—EPA/OSHA Reference Method—Mandatory

This mandatory appendix specifies the procedure for analyzing air samples for asbestos and specifies quality control procedures that must be implemented by laboratories performing the analysis. The sampling and analytical methods described below represent the elements of the available monitoring methods essential to achieve adequate employee exposure monitoring while allowing employers to use methods that are already established within their organizations. All employers who are required to conduct air monitoring under § 763.121(f) are required to utilize analytical laboratories that use this procedure, or an equivalent method for collecting and analyzing samples.

Sampling and Analytical Procedure

1. The sampling medium for air samples shall be mixed cellulose ester filter membranes. These shall be designated by the manufacturer as suitable for asbestos counting. See below for rejection of blanks.

2. The preferred collection device shall be the 25-mm diameter cassette with an open-faced 50-mm extension cowl. The 37-mm cassette may be used if necessary, but only if written justification for the need to use the 37-mm filter cassette accompanies the sample results in the employee's exposure monitoring record.

3. An air flow rate between 0.5 liter/min and 2.5 liters/min shall be selected for the 25-mm cassette. If the 37-mm cassette is used, an air flow rate between 1 liter/min and 2.5 liters/min shall be selected.

4. Where possible, a sufficient air volume for each air sample shall be collected to yield between 100 and 1,300 fibers per square millimeter on the membrane filter. If a filter darkens in appearance or if loose dust is seen on the filter, a second sample shall be started.

5. Ship the samples in a rigid container with sufficient packing material to prevent dislodging the collected fibers. Packing material that has a high electrostatic charge on its surface (e.g., expanded polystyrene) cannot be used because such material can cause loss of fibers to the sides of the cassette.

6. Calibrate each personal sampling pump before and after use with a representative filter cassette installed between the pump and the calibration devices.

7. Personal samples shall be taken in the "breathing zone" of the employee (i.e., attached to or near the collar or lapel near the worker's face).

8. Fiber counts shall be made by positive phase contrast using a microscope with an 8 to 10 X eyepiece and a 40 to 45 X objective for a total magnification of approximately 400 X and a numerical aperture of 0.65 to 0.75. The microscope shall also be fitted with a green or blue filter.

9. The microscope shall be fitted with a Walton-Beckett eyepiece graticule calibrated for a field diameter of 100 micrometers (± 2 micrometers).

10. The phase-shift detection limit of the microscope shall be about 3 degrees measured using the HSE phase shift test slide as outlined below.

a. Place the test slide on the microscope stage and center it under the phase objective.

b. Bring the blocks of grooved lines into focus.

Note.—The slide consists of seven sets of grooved lines (ca. 20 grooves to each block) in descending order of visibility from sets 1 to 7, seven being the least visible. The requirements for asbestos counting are that the microscope optics must resolve the grooved lines in set 3 completely, although they may appear somewhat faint, and that the grooved lines in sets 6 and 7 must be invisible. Sets 4 and 5 must be at least partially visible but may vary slightly in visibility between microscopes. A microscope that fails to meet these requirements has either too low or too high a resolution to be used for asbestos counting.

c. If the image deteriorates, clean and adjust the microscope optics. If the problem persists, consult the microscope manufacturer.

11. Each set of samples taken will include 10 percent blanks or a minimum of 2 blanks. The blank results shall be averaged and subtracted from the analytical results before reporting. Any samples represented by a blank having a fiber count in excess of 7 fibers/100 fields shall be rejected.

12. The samples shall be mounted by the acetone/triacetin method or a method with an equivalent index of refraction and similar clarity.

13. Observe the following counting rules.

a. Count only fiber equal to or longer than 5 micrometers. Measure the length of curved fibers along the curve.

b. Count all particles as asbestos that have a length-to-width ratio (aspect ratio) of 3:1 or greater.

c. Fibers lying entirely within the boundary of the Walton-Beckett graticule field shall receive a count of 1. Fibers crossing the boundary once, having one end within the circle, shall receive the count of one-half (½). Do not count any fiber that crosses the graticule boundary more than once. Reject and do not count any other fibers even though they may be visible outside the graticule area.

d. Count bundles of fibers as one fiber unless individual fibers can be identified by observing both ends of an individual fiber.

e. Count enough graticule fields to yield 100 fibers. Count a minimum of 20 fields; stop counting at 100 fields regardless of fiber count.

14. Blind recounts shall be conducted at the rate of 10 percent.

Quality Control Procedures

1. *Intralaboratory program.* Each laboratory and/or each company with more than one microscopist counting slides shall establish a statistically designed quality assurance program involving blind recounts and comparisons between microscopists to monitor the variability of counting by each microscopist and between microscopists. In a company with more than one laboratory, the program shall include all laboratories and shall also evaluate the laboratory-to-laboratory variability.

2. *Interlaboratory program.* Each laboratory analyzing asbestos samples for compliance determination shall implement an interlaboratory quality assurance program that as a minimum includes participation of at least two other independent laboratories. Each laboratory shall participate in round robin testing at least once every 6 months with at least all the other laboratories in its interlaboratory quality assurance group. Each laboratory shall submit slides typical of its own work load for use in this program. The round robin shall be designed and results analyzed using appropriate statistical methodology.

3. All individuals performing asbestos analysis must have taken the NIOSH course for sampling and evaluating airborne asbestos dust or an equivalent course.

4. When the use of different microscopes contributes to differences between counters and laboratories, the effect of the different microscope shall be evaluated and the microscope shall be replaced, as necessary.

5. Current results of these quality assurance programs shall be posted in each laboratory to keep the microscopists informed.

Appendix B to § 763.121—Detailed Procedure for Asbestos Sampling and Analysis—Non-Mandatory

This appendix contains a detailed procedure for sampling and analysis and includes those critical elements specified in Appendix A of this section. Employers are not required to use this procedure, but they are required to use Appendix A of this section. The purpose of Appendix B of this section is to provide a detailed step-by-step sampling and analysis procedure that conforms to the elements specified in Appendix A of this section. Since this procedure may also standardize the analysis and reduce variability, EPA encourages employers to use this appendix.

Technique: Microscopy, Phase Contrast.

Analyte: Fibers (manual count).

Sample Preparation: Acetone/triacetin method.

Calibration: Phase-shift detection limit about 3 degrees.

Range: 100 to 1,300 fibers/mm ^{2} filter area.

Estimated Limit of Detection: 7 fibers/mm ^{2} filter area.

Sampler: Filter (0.8–1.2 μm mixed cellulose ester membrane, 25-mm diameter).

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Flow Rate: 0.5 l/min to 2.5 l/min (25-mm cassette); 1.0 l/min to 2.5 l/min (37-mm cassette).

Sample Volume: Adjust to obtain 100 to 1,300 fibers/mm ^{2}.

Shipment: Routine.

Sample Stability: Indefinite.

Blanks: 10% of samples (minimum 2).

Standard Analytical Error: 0.25.

Applicability: The working range is 0.02 f/cc (1920–L air sample) to 1.25 f/cc (400–L sample). The method gives an index of airborne asbestos fibers but may be used for other materials such as fibrous glass by inserting suitable parameters into the counting rules. The method does not differentiate between asbestos and other fibers. Asbestos fibers less than ca. 0.25 μm diameter will not be detected by this method.

Interferences: Any other airborne fiber may interfere since all particles meeting the counting criteria are counted. Chain-like particles may appear fibrous. High levels of nonfibrous dust particles may obscure fibers in the field of view and raise the detection limit.

Reagents:

1. Acetone.
2. Triacetin (glycerol triacetate), reagent grade.

Special Precautions: Acetone is an extremely flammable liquid and precautions must be taken not to ignite it. Heating of acetone must be done in a ventilated laboratory fume hood using a flameless, spark-free heat source.

Equipment:

1. *Collection device:* 25-mm cassette with 50-mm extension cowl with cellulose ester filter, 0.8 to 1.2 mm pore size and backup pad.

Note.—Analyze representative filters for fiber background before use and discard the filter lot if more than 5 fibers/100 fields are found.

2. Personal sampling pump, greater than or equal to 0.5 l/min, with flexible connecting tubing.
3. Microscope, phase contrast, with green or blue filter, 8 to 10X eyepiece, and 40 to 45X phase objective (total magnification ca. 400X); numerical aperture = 0.65 to 0.75.
4. Slides, glass, single-frosted, pre-cleaned, 25 x 75 mm.
5. Cover slips, 25 x 25 mm, No. 1½ unless otherwise specified by microscope manufacturer.
6. Knife, #1 surgical steel, curved blade.
7. Tweezers.
8. Flask, Guth-type, insulated neck, 250 to 500 mL (with single-holed rubber stopper and elbow-jointed glass tubing, 16 to 22 cm long).
9. Hotplate, spark-free, stirring type; heating mantle; or infrared lamp and magnetic stirrer.
10. Syringe, hypodermic, with 22-gauge needle.
11. Graticule, Walton-Beckett type with 100 μm diameter circular field at the specimen plane (area = 0.00785 mm ^{2}). (Type G–22).

Note.—The graticule is custom-made for each microscope.

12. HSE/NPL phase contrast test slide, Mark II.
13. Telescope, ocular phase-ring centering.
14. Stage micrometer (0.01 mm divisions).

Sampling

1. Calibrate each personal sampling pump with a representative sampler in line.
2. Fasten the sampler to the worker's lapel as close as possible to the worker's mouth. Remove the top cover from the end of the cowl extension (open face) and orient face down. Wrap the joint between the extender and the monitor's body with shrink tape to prevent air leaks.
3. Submit at least two blanks (or 10 percent of the total samples, whichever is greater) for each set of samples. Remove the caps from the field blank cassettes and store the caps and cassettes in a clean area (bag or box) during the sampling period. Replace the caps in the cassettes when sampling is completed.
4. Sample at 0.5 L/min or greater. Do not exceed 1 mg total dust loading on the filter. Adjust sampling flow rate, Q (L/min), and time to produce a fiber density, E (fibers/mm^2), of 100 to 1,300 fibers/mm^2 [3.85 x 10^4 to 5 x 10^5 fibers per 25-mm filter with effective collection area (A_c = 385 mm^2)] for optimum counting precision (see step 21 below). Calculate the minimum sampling time, t_{min} (min) at the action level (one-half of the current standard), L (f/cc) of the fibrous aerosol being sampled:

$$t_{min} = \frac{(A_c)(E)}{(Q)(L)10^3}$$

5. Remove the field monitor at the end of sampling, replace the plastic top cover and small end caps, and store the monitor.
6. Ship the samples in a rigid container with sufficient packing material to prevent jostling or damage.

Note.—Do not use polystyrene foam in the shipping container because of electrostatic forces which may cause fiber loss from the sampler filter.

Sample Preparation

Note.—The object is to produce samples with a smooth (nongrainy) background in a medium with a refractive index equal to or less than 1.46. The method below collapses the filter for easier focusing and produces permanent mounts which are useful for quality control and interlaboratory comparison. Other mounting techniques meeting the above criteria may also be used, e.g., the nonpermanent field mounting technique used in P & CAM 239.

7. Ensure that the glass slides and cover slips are free of dust and fibers.
8. Place 40 to 60 ml of acetone into a Guth-type flask. Stopper the flask with a single-hole rubber stopper through which a glass tube extends 5 to 8 cm into the flask. The portion of the glass tube that exits the top of the stopper (8 to 10 cm) is bent downward in an elbow that makes an angle of 20 to 30 degrees with the horizontal.
9. Place the flask in a stirring hotplate or wrap in a heating mantle. Heat the acetone gradually to its boiling temperature (ca. 58 °C).

Caution. The acetone vapor must be generated in a ventilated fume hood away from all open flames and spark sources. Alternate heating methods can be used, providing no open flame or sparks are present.

10. Mount either the whole sample filter or a wedge cut from the sample filter on a clean glass slide.
    a. Cut wedges of ca. 25 percent of the filter area with a curved-blade steel surgical knife using a rocking motion to prevent tearing.
    b. Place the filter or wedge, dust side up, on the slide. Static electricity will usually keep the filter on the slide until it is cleared.
    c. Hold the glass slide supporting the filter approximately 1 to 2 cm from the glass tube port where the acetone vapor is escaping from the heated flask. The acetone vapor stream should cause a condensation spot on the glass slide ca. 2 to 3 cm in diameter. Move the glass slide gently in the vapor stream. The filter should clear in 2 to 5 sec. If the filter curls, distorts, or is otherwise rendered unusable, the vapor stream is probably not strong enough. Periodically wipe the outlet port with tissue to prevent liquid acetone dripping onto the filter.
    d. Using the hypodermic syringe with a 22-gauge needle, place 1 to 2 drops of triacetin on the filter. Gently lower a clean 25-mm square cover slip down onto the filter at a slight angle to reduce the possibility of forming bubbles. If too many bubbles form or the amount of triacetin is insufficient, the cover slip may become detached within a few hours.
    e. Glue the edges of the cover slip to the glass slide using a lacquer or nail polish.

Note.—If clearing is slow, the slide preparation may be heated on a hotplate (surface temperature 50°C) for 15 min. to hasten clearing. Counting may proceed immediately after clearing and mounting are completed.

Calibration and Quality Control

11. *Calibration of the Walton-Beckett graticule.* The diameter, d_c (mm), of the circular counting area and the disc diameter must be specified when ordering the graticule.
    a. Insert any available graticule into the eyepiece and focus so that the graticule lines are sharp and clear.
    b. Set the appropriate interpupillary distance and, if applicable, reset the binocular head adjustment so that the magnification remains constant.
    c. Install the 40 to 45 X phase objective.
    d. Place a stage micrometer on the microscope object stage and focus the microscope on the graduated lines.
    e. Measure the magnified grid length, L_u (um), using the stage micrometer.
    f. Remove the graticule from the microscope and measure its actual grid length, L_a (mm). This can best be accomplished by using a stage fitted with verniers.
    g. Calculate the circle diameter, d_c (mm), for the Walton-Beckett graticule:

$$d_c = \frac{L_a \times D}{L_u}$$

Example: If L_u = 108 um, L_a = 2.93 mm and D = 100 um, then d_c = 2.71 mm.

h. Check the field diameter, D (acceptable range 100 mm ± 2 mm) with a stage micrometer upon receipt of the graticule from the manufacturer. Determine field area (mm^2).

12. *Microscope adjustments.* Follow the manufacturer's instructions and also the following:

a. Adjust the light source for even illumination across the field of view at the condenser iris.

Note.—Kohler illumination is preferred, where available.

b. Focus on the particulate material to be examined.

c. Make sure that the field iris is in focus, centered on the sample, and open only enough to fully illuminate the field of view.

d. Use the telescope ocular supplied by the manufacturer to ensure that the phase rings (annular diaphragm and phase-shifting elements) are concentric.

13. Check the phase-shift detection limit of the microscope periodically.

a. Remove the HSE/NPL phase-contrast test slide from its shipping container and center it under the phase objective.

b. Bring the blocks of grooved lines into focus.

Note.—The slide consists of seven sets of grooves (ca. 20 grooves to each block) in descending order of visibility from sets 1 to 7. The requirements for counting are that the microscope optics must resolve the grooved lines in set 3 completely, although they may appear somewhat faint, and that the grooved lines in sets 6 to 7 must be invisible. Sets 4 and 5 must be at least partially visible but may vary slightly in visibility between microscopes. A microscope which fails to meet these requirements has either too low or too high a resolution to be used for asbestos counting.

c. If the image quality deteriorates, clean the microscope optics and, if the problem persists, consult the microscope manufacturer.

14. *Quality control of fiber counts.*

a. Prepare and count field blanks along with the field samples. Report the counts on each blank. Calculate the mean of the field blank counts and subtract this value from each sample count before reporting the results.

Note.—The identity of the blank filters should be unknown to the counter until all counts have been completed.

Note.—If a field blank yields fiber counts greater than 7 fibers/100 fields, report possible contamination of the samples.

b. Perform blind recounts by the same counter on 10 percent of filters counted (slides relabeled by a person other than the counter).

15. Use the following test to determine whether a pair of counts on the same filter should be rejected because of possible bias. This statistic estimates the counting repeatability at the 95 percent confidence level. Discard the sample if the difference between the two counts exceeds 2.77 (F)s_r, where F = average of the two fiber counts and s_r = relative standard deviation, which should be derived by each laboratory based on historical in-house data.

Note.—If a pair of counts is rejected as a result of this test, recount the remaining samples in the set and test the new counts against the first counts. Discard all rejected paired counts.

16. Enroll each new counter in a training course that compares performance of counters on a variety of samples using this procedure.

Note.—To ensure good reproducibility, all laboratories engaged in asbestos counting are required to participate in the Proficiency Analytical Testing (PAT) Program and should routinely participate with other asbestos fiber counting laboratories in the exchange of field samples to compare performance of counters.

Measurement

17. Place the slide on the mechanical stage of the calibrated microscope with the center of the filter under the objective lens. Focus the microscope on the plane of the filter.

18. Regularly check phase-ring alignment and Kohler illumination.

19. The following are the counting rules:

a. Count only fibers longer than 5 um. Measure the length of curved fibers along the curve.

b. Count only fibers with a length-to-width ratio equal to or greater than 3:1.

c. For fibers that cross the boundary of the graticule field, do the following:

(1) Count any fiber longer than 5 um that lies entirely within the graticule area.

(2) Count as ½ fiber any fiber with only one end lying within the graticule area.

(3) Do not count any fiber that crosses the graticule boundary more than once.

(4) Reject and do not count all other fibers.

d. Count bundles of fibers as one fiber unless individual fibers can be identified by observing both ends of a fiber.

e. Count enough graticule fields to yield 100 fibers. Count a minimum of 20 fields. Stop at 100 fields regardless of fiber count.

20. Start counting from one end of the filter and progress along a radial line to the other end, shift either up or down on the filter, and continue in the reverse direction. Select fields randomly by looking away from the eyepiece briefly while advancing the mechanical stage. When an agglomerate covers ca. ⅛ or more of the field of view, reject the field and select another. Do not report rejected fields in the number of total fields counted.

Note.—When counting a field, continuously scan a range of focal planes by moving the fine focus knob to detect very fine fibers which have become embedded in the filter. The small-diameter fibers will be very faint but are an important contribution to the total count.

Calculations

21. Calculate and report fiber density on the filter, E (fibers/mm^2); by dividing the total fiber count, F; minus the mean field blank count, B, by the number of fields, n; and the field area, A_f (0.00785 mm^2 for a properly calibrated Walton-Beckett graticule):

$$E = \frac{F - B}{(n)(A_f)} \text{ fibers/mm}^2$$

22. Calculate the concentration, C (f/cc), of fibers in the air volume sampled, V (L), using the effective collection area of the filter, A_c (385 mm^2 for a 25-mm filter):

$$C = \frac{(E)(A_c)}{V(10^3)}$$

Note.—Periodically check and adjust the value of A_c if necessary.

Appendix C to § 763.121—Qualitative and Quantitative Fit Testing Procedures—Mandatory

Qualitative Fit Test Protocols

I. Isoamyl Acetate Protocol

A. Odor Threshold Screening. 1. Three 1-liter glass jars with metal lids (e.g. Mason or Bell jars) are required.

2. Odor-free water (e.g. distilled or spring water) at approximately 25 °C shall be used for the solutions.

3. The isoamyl acetate (IAA) (also known as isopentyl acetate) stock solution is prepared by adding 1 cc of pure IAA to 800 cc of odor-free water in a 1-liter jar and shaking for 30 seconds. This solution shall be prepared new at least weekly.

4. The screening test shall be conducted in a room separate from the room used for actual fit testing. The two rooms shall be well ventilated but shall not be connected to the same recirculating ventilation system.

5. The odor test solution is prepared in a second jar by placing 0.4 cc of the stock solution into 500 cc of odor-free water using a clean dropper or pipette. Shake for 30 seconds and allow to stand for two to three minutes so that the IAA concentration above the liquid may reach equilibrium. This solution may be used for only one day.

6. A test blank is prepared in a third jar by adding 500 cc of odor-free water.

7. The odor test and test blank jars shall be labeled 1 and 2 for jar identification. If the labels are put on the lids they can be periodically peeled, dried off and switched to maintain the integrity of the test.

8. The following instructions shall be typed on a card and placed on the table in front of the two test jars (i.e. and 2): "The purpose of this test is to determine if you can smell banana oil at a low concentration. The two bottles in front of you contain water. One of these bottles also contains a small amount of banana oil. Be sure the covers are on tight, then shake each bottle for two seconds. Unscrew the lid of each bottle, one at a time, and sniff at the mouth of the bottle. Indicate to the test conductor which bottle contains banana oil."

9. The mixtures used in the IAA odor detection test shall be prepared in an area separate from where the test is performed, in order to prevent olfactory fatigue in the subject.

10. If the test subject is unable to identify correctly the jar containing the odor test

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solution, the IAA qualitative fit test may not be used.

11. If the test subject correctly identifies the jar containing the odor test solution, the test subject may proceed to respirator selection and fit testing.

B. Respirator selection. 1. The test subject shall be allowed to pick the most comfortable respirator from a selection including respirators of various sizes from different manufacturers. The selection shall include at least five sizes of elastomeric half facepieces, from at least two manufacturers.

2. The selection process shall be conducted in a room separate from the fit-test chamber to prevent odor fatigue. Prior to the selection process, the test subject shall be shown how to put on a respirator, how it should be positioned on the face, how to set strap tension and how to determine a "comfortable" respirator. A mirror shall be available to assist the subject in evaluating the fit and positioning of the respirator. This instruction may not constitute the subject's formal training on respirator use, as it is only a review.

3. The test subject should understand that the employee is being asked to select the respirator which provides the most comfortable fit. Each respirator represents a different size and shape and, if fitted properly and used properly, will provide adequate protection.

4. The test subject holds each facepiece up to the face and eliminates those which obviously do not give a comfortable fit. Normally, selection will begin with a half-mask and if a good fit cannot be found, the subject will be asked to test the full facepiece respirators. (A small percentage of users will not be able to wear any half-mask.)

5. The more comfortable facepieces are noted; the most comfortable mask is donned and *worn at least five minutes* to assess comfort. All donning and adjustments of the facepieces shall be performed by the test subject without assistance from the test conductor or other person. Assistance in assessing comfort can be given by discussing the points of #6 below. If the test subject is not familiar with using a particular respirator, the test subject shall be directed to don the mask several times and to adjust the straps each time to become adept at setting proper tension on the straps.

6. Assessment of comfort shall include reviewing the following points with the test subject and allowing the test subject adequate time to determine the comfort of the respirator:

- Positioning of mask on nose.
- Room for eye protection.
- Room to talk.
- Positioning mask on face and cheeks.

7. The following criteria shall be used to help determine the adequacy of the respirator fit:

- Chin properly placed.
- Strap tension.
- Fit across nose bridge.
- Distance from nose to chin.
- Tendency to slip.
- Self-observation in mirror.

8. The test subject shall conduct the conventional negative and positive-pressure fit checks (e.g. see ANSI Z88.2–1980). Before conducting the negative- or positive-pressure test, the subject shall be told to "seat" the mask by rapidly moving the head from side-to-side and up and down, while taking a few deep breaths.

9. The test subject is now ready for fit testing.

10. After passing the fit test, the test subject shall be questioned again regarding the comfort of the respirator. If it has become uncomfortable, another model of respirator shall be tried.

11. The employee shall be given the opportunity to select a different facepiece and be retested if the chosen facepiece becomes increasingly uncomfortable at any time.

C. Fit test. 1. The fit test chamber shall be similar to a clear 55 gallon drum liner suspended inverted over a 2 foot diameter frame, so that the top of the chamber is about 6 inches above the test subject's head. The inside top center of the chamber shall have a small hook attached.

2. Each respirator used for the fitting and fit testing shall be equipped with organic vapor cartridges or offer protection against organic vapors. The cartridges or masks shall be changed at least weekly.

3. After selection, donning, and properly adjusting a respirator, the test subject shall wear it to the fit testing room. This room shall be separate from the room used for odor threshold screening and respirator selection, and shall be well ventilated, as by an exhaust fan or lab hood, to prevent general room contamination.

4. A copy of the following test exercises and rainbow passage shall be taped to the inside of the test chamber:

Test Exercises

i. Breathe normally.

ii. Breathe deeply. Be certain breaths are *deep* and *regular*.

iii. Turn head all the way from one side to the other. Inhale on each side. Be certain movement is complete. Do not bump the respirator against the shoulders.

iv. Nod head up-and-down. Inhale when head is in the full up position (looking toward ceiling). Be certain motions are complete and made about every second. Do not bump the respirator on the chest.

v. *Talking.* Talk aloud and slowly for several minutes. The following paragraph is called the Rainbow Passage. Reading it will result in a wide range of facial movements, and thus be useful to satisfy this requirement. Alternative passages which serve the same purpose may also be used.

vi. Jogging in place.

vii. Breathe normally.

Rainbow Passage. When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond reach, his friends say he is looking for the pot of gold at the end of the rainbow.

5. Each test subject shall wear the respirator for at least 10 minutes before starting the fit test.

6. Upon entering the test chamber, the test subject shall be given a 6 inch by 5 inch piece of paper towel or other porous absorbent single ply material, folded in half and wetted with three-quarters of one cc of pure IAA. The test subject shall hang the wet towel on the hook at the top of the chamber.

7. Allow two minutes for the IAA test concentration to be reached before starting the fit-test exercises. This would be an appropriate time to talk with the test subject, to explain the fit test, the importance of cooperation, the purpose for the head exercises, or to demonstrate some of the exercises.

8. Each exercise described in #4 above shall be performed for at least one minute.

9. If at any time during the test, the subject detects the banana-like odor of IAA, the test has failed. The subject shall quickly exit from the test chamber and leave the test area to avoid olfactory fatigue.

10. If the test is failed, the subject shall return to the selection room and remove the respirator, repeat the odor sensitivity test, select and put on another respirator, return to the test chamber, and again begin the procedure described in the c(4) through c(8) above. The process continues until a respirator that fits well has been found. Should the odor sensitivity test be failed, the subject shall wait about 5 minutes before retesting. Odor sensitivity will usually have returned by this time.

11. If a person cannot pass the fit test described above wearing a half-mask respirator from the available selection, full facepiece models must be used.

12. When a respirator is found that passes the test, the subject breaks the faceseal and takes a breath before exiting the chamber. This is to assure that the reason the test subject is not smelling the IAA is the good fit of the respirator facepiece seal and not olfactory fatigue.

13. When the test subject leaves the chamber, the subject shall remove the saturated towel and return it to the person conducting the test. To keep the area from becoming contaminated, the used towels shall be kept in a self-sealing bag so there is no significant IAA concentration buildup in the test chamber during subsequent tests.

14. At least two facepieces shall be selected for the IAA test protocol. The test subject shall be given the opportunity to wear them for one week to choose the one which is more comfortable to wear.

15. Persons who have successfully passed this fit test with a half-mask respirator may be assigned the use of the test respirator in atmospheres with up to 10 times the PEL of airborne asbestos. In atmospheres greater than 10 times, and less than 100 times the PEL (up to 100 ppm), the subject must pass the IAA test using a full face negative pressure respirator. (The concentration of the IAA inside the test chamber must be increased by ten times for QLFT of the full facepiece.)

16. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

17. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

18. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respirator diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

19. Qualitative fit testing shall be repeated at least every six months.

20. In addition, because the sealing of the respirator may be affected, qualitative fit testing shall be repeated immediately when the test subject has a:

(1) Weight change of 20 pounds or more,

(2) Significant facial scarring in the area of the facepiece seal.

(3) Significant dental changes; i.e., multiple extractions without prothesis, or acquiring dentures.

(4) Reconstructive or cosmetic surgery, or

(5) Any other condition that may interfere with facepiece sealing.

D. Recordkeeping. A summary of all test results shall be maintained in each office for 3 years. The summary shall include:

(1) Name of test subject.

(2) Date of testing.

(3) Name of the test conductor.

(4) Respirators selected (indicate manufacturer, model, size and approval number).

(5) Testing agent.

II. Saccharin Solution Aerosol Protocol

A. Respirator selection. Respirators shall be selected as described in section IB (respirator selection) above, except that each respirator shall be equipped with a particulate filter.

B. Taste threshold screening. 1. An enclosure about head and shoulders shall be used for threshold screening (to determine if the individual can taste saccharin) and for fit testing. The enclosure shall be approximately 12 inches in diameter by 14 inches tall with at least the front clear to allow free movement of the head when a respirator is worn.

2. The test enclosure shall have a three-quarter inch hole in front of the test subject's nose and mouth area to accommodate the nebulizer nozzle.

3. The entire screening and testing procedure shall be explained to the test subject prior to conducting the screening test.

4. During the threshold screening test, the test subject shall don the test enclosure and breathe with mouth open with tongue extended.

5. Using a DeVilbiss Model 40 Inhalation Medication Nebulizer or equivalent, the test conductor shall spray the threshold check solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the fit test solution nebulizer.

6. The threshold check solution consists of 0.83 gram of sodium saccharin, USP in water. It can be prepared by putting 1 cc of the test solution (see C.7 below) in 100 cc of water.

7. To produce the aerosol, the nebulizer bulb is firmly squeezed so that it collapses completely, then is released and allowed to expand fully.

8. Ten squeezes of the nebulizer bulb are repeated rapidly and then the test subject is asked whether the saccharin can be tasted.

9. If the first response is negative, ten more squeezes of the nebulizer bulb are repeated rapidly and the test subject is again asked whether the saccharin can be tasted.

10. If the second response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin can be tasted.

11. The test conductor will take note of the number of squeezes required to elicit a taste response.

12. If the saccharin is not tasted after 30 squeezes (Step 10), the saccharin fit test cannot be performed on the test subject.

13. If a taste response is elicited, the test subject shall be asked to take note of the taste for reference in the fit test.

14. Correct use of the nebulizer means that approximately 1 cc of liquid is used at a time in the nebulizer body.

15. The nebulizer shall be thoroughly rinsed in water, shaken dry, and refilled at least every four hours.

C. Fit Test. 1. The test subject shall don and adjust the respirator without assistance from any person.

2. The fit test uses the same enclosure described in IIB above.

3. Each test subject shall wear the respirator for at least 10 minutes before starting the fit test.

4. The test subject shall don the enclosure while wearing the respirator selected in section IB above. This respirator shall be properly adjusted and equipped with a particulate filter.

5. The test subject may not eat, drink (except plain water), or chew gum for 15 minutes before the test.

6. A second DeVilbiss Model 40 Inhalation Medication Nebulizer is used to spray the fit test solution into the enclosure. This nebulizer shall be clearly marked to distinquish it from the screening test solution nebulizer.

7. The fit test solution is prepared by adding 83 grams of sodium saccharin to 100 cc of warm water.

8. As before, the test subject shall breathe with mouth open and tongue extended.

9. The nebulizer is inserted into the hole in the front of the enclosure and the fit test solution is sprayed into the enclosure using the same technique as for the taste threshold screening and the same number of squeezes required to elicit a taste response in the screening. (See B.8 through B.10 above).

10. After generation of the aerosol, read the following instructions to the test subject. The test subject shall perform the exercises for one minute each.

i. Breathe normally.

ii. Breathe deeply. Be certain breaths are *deep* and *regular*.

iii. Turn head all the way from one side to the other. Be certain movement is complete. Inhale on each side. Do not bump the respirator against the shoulders.

iv. Nod head up-and-down. Be certain motions are complete. Inhale when head is in the full up position (when looking toward the ceiling). Do not bump the respirator on the chest.

v. *Talking.* Talk aloud and slowly for several minutes. The following paragraph is called the Rainbow Passage. Reading it will result in a wide range of facial movements, and thus be useful to satisfy this requirement. Alternative passages which serve the same purpose may also be used.

vi. Jogging in place.

vii. Breathe normally.

Rainbow Passage. When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond his reach, his friends say he is looking for the pot of gold at the end of the rainbow.

11. At the beginning of each exercise, the aerosol concentration shall be replenished using one-half the number of squeezes as initially described in C.9.

12. The test subject shall indicate to the test conductor, if at any time during the fit test, the taste of saccharin is detected.

13. If the saccharin is detected, the fit is deemed unsatisfactory and a different respirator shall be tried.

14. At least two facepieces shall be selected by the IAA test protocol. The test subject shall be given the opportunity to wear them for one week to choose the one which is more comfortable to wear.

15. Successful completion of the test protocol shall allow the use of the half mask tested respirator in contaminated atmospheres up to 10 times the PEL of asbestos. In other words this protocol may be used to assign protection factors no higher than ten.

16. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

17. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

18. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respirator diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

19. Qualitative fit testing shall be repeated at least every six months.

20. In addition, because the sealing of the respirator may be affected, qualitative fit testing shall be repeated immediately when the test subject has a:

(1) Weight change of 20 pounds or more,

(2) Significant facial scarring in the area of the facepiece seal,

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(3) Significant dental changes; i.e., multiple extractions without prothesis, or acquiring dentures,

(4) Reconstructive or cosmetic surgery, or

(5) Any other condition that may interfere with facepiece sealing.

D. Recordkeeping. A summary of all test results shall be maintained in each office for 3 years. The summary shall include:

(1) Name of test subject.

(2) Date of testing.

(3) Name of test conductor.

(4) Respirators selected (indicate manufacturer, model, size and approval number).

(5) Testing agent.

III. Irritant Fume Protocol

A. Respirator selection. Respirators shall be selected as described in section IB above, except that each respirator shall be equipped with a combination of high-efficiency and acid-gas cartridges.

B. Fit test. 1. The test subject shall be allowed to smell a weak concentration of the irritant smoke to familiarize the subject with the characteristic odor.

2. The test subject shall properly don the respirator selected as above, and wear it for at least 10 minutes before starting the fit test.

3. The test conductor shall review this protocol with the test subject before testing.

4. The test subject shall perform the conventional positive pressure and negative pressure fit checks (see ANSI Z88.2 1980). Failure of either check shall be cause to select an alternate respirator.

5. Break both ends of a ventilation smoke tube containing stannic oxychloride, such as the MSA part #5645, or equivalent. Attach a short length of tubing to one end of the smoke tube. Attach the other end of the smoke tube to a low pressure air pump set to deliver 200 milliliters per minute.

6. Advise the test subject that the smoke can be irritating to the eyes and instruct the subject to keep the eyes closed while the test is performed.

7. The test conductor shall direct the stream of irritant smoke from the tube towards the faceseal area of the test subject. The person conducting the test shall begin with the tube at least 12 inches from the facepiece and gradually move to within one inch, moving around the whole perimeter of the mask.

8. The test subject shall be instructed to do the following exercises while the respirator is being challenged by the smoke. Each exercise shall be performed for one minute.

i. Breathe normally.

ii. Breathe deeply. Be certain breaths are *deep* and *regular*.

iii. Turn head all the way from one side to the other. Be certain movement is complete. Inhale on each side. Do not bump the respirator against the shoulders.

iv. Nod head up-and-down. Be certain motions are complete and made every second. Inhale when head is in the full up position (looking toward ceiling). Do not bump the respirator against the chest.

v. *Talking.* Talk aloud and slowly for several minutes. The following paragraph is called the Rainbow Passage. Reading it will result in a wide range of facial movements, and thus be useful to satisfy this requirement. Alternative passages which serve the same purpose may also be used.

Rainbow Passage. When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond his reach, his friends say he is looking for the pot of gold at the end of the rainbow.

vi. Jogging in place.

vii. Breathe normally.

9. The test subject shall indicate to the test conductor if the irritant smoke is detected. If smoke is detected, the test conductor shall stop the test. In this case, the tested respirator is rejected and another respirator shall be selected.

10. Each test subject passing the smoke test (i.e. without detecting the smoke) shall be given a sensitivity check of smoke from the same tube to determine if the test subject reacts to the smoke. Failure to evoke a response shall void the fit test.

11. Steps B4, B9, B10 of this fit test protocol shall be performed in a location with exhaust ventilation sufficient to prevent general contamination of the testing area by the test agents.

12. At least two facepieces shall be selected by the IAA test protocol. The test subject shall be given the opportunity to wear them for one week to choose the one which is more comfortable to wear.

13. Respirators successfully tested by the protocol may be used in contaminated atmospheres up to ten times the PEL of asbestos.

14. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

15. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

16. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respirator diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

17. Qualitative fit testing shall be repeated at least every six months.

18. In addition, because the sealing of the respirator may be affected, qualitative fit testing shall be repeated immediately when the test subject has a:

(1) Weight change of 20 pounds or more,

(2) Significant facial scarring in the area of the facepiece seal,

(3) Significant dental changes; i.e., multiple extractions without prosthesis, or acquiring dentures,

(4) Reconstructive or cosmetic surgery, or

(5) Any other condition that may interfere with facepiece sealing.

C. Recordkeeping. A summary of all test results shall be maintained in each office for 3 years. The summary shall include:

(1) Name of test subject.

(2) Date of testing.

(3) Name of test conductor.

(4) Respirators selected (indicate manufacturer, model, size and approval number).

(5) Testing agent.

Quantitative Fit Test Procedures

1. General

a. The method applies to the negative-pressure nonpowered air-purifying respirators only.

b. The employer shall assign one individual who shall assume the full responsibility for implementing the respirator quantitative fit test program.

2. Definitions

a. "Quantitative Fit Test" means the measurement of the effectiveness of a respirator seal in excluding the ambient atmosphere. The test is performed by dividing the measured concentration of challenge agent in a test chamber by the measured concentration of the challenge agent inside the respirator facepiece when the normal air purifying element has been replaced by an essentially perfect purifying element.

b. "Challenge Agent" means the air contaminant introduced into a test chamber so that its concentration inside and outside the respirator may be compared.

c. "Test Subject" means the person wearing the respirator for quantitative fit testing.

d. "Normal Standing Position" means standing erect and straight with arms down along the sides and looking straight ahead.

e. "Fit Factor" means the ratio of challenge agent concentration outside with respect to the inside of a respirator inlet covering (facepiece or enclosure).

3. Apparatus

a. *Instrumentation.* Corn oil, sodium chloride or other appropriate aerosol generation, dilution, and measurement systems shall be used for quantitative fit test.

b. *Test chamber.* The test chamber shall be large enough to permit all test subjects to perform freely all required exercises without distributing the challenge agent concentration or the measurement apparatus. The test chamber shall be equipped and constructed so that the challenge agent is effectively isolated from the ambient air yet uniform in concentration throughout the chamber.

c. When testing air-purifying respirators, the normal filter or cartridge element shall be replaced with a high-efficiency particular filter supplied by the same manufacturer.

d. The sampling instrument shall be selected so that a strip chart record may be made of the test showing the rise and fall of challenge agent concentration with each inspiration and expiration at fit factors of at least 2,000.

e. The combination of substitute air-purifying elements (if any), challenge agent, and challenge agent concentration in the test chamber shall be such that the test subject is not exposed in excess of PEL to the challenge agent at any time during the testing process.

f. The sampling port on the test specimen respirator shall be placed and constructed so that there is no detectable leak around the port, a free air flow is allowed into the sampling line at all times and so there is no interference with the fit or performance of the respirator.

g. The test chamber and test set-up shall permit the person administering the test to observe one test subject inside the chamber during the test.

h. The equipment generating the challenge atmosphere shall maintain the concentration of challenge agent constant within a 10 percent variation for the duration of the test.

i. The time lag (interval between an event and its being recorded on the strip chart) of the instrumentation may not exceed 2 seconds.

j. The tubing for the test chamber atmosphere and for the respirator sampling port shall be the same diameter, length and material. It shall be kept as short as possible. The smallest diameter tubing recommended by the manufacturer shall be used.

k. The exhaust flow from the test chamber shall pass through a high-efficiency filter before release to the room.

l. When sodium chloride aerosol is used, the relative humidity inside the test chamber shall not exceed 50 percent.

4. Procedural Requirements

a. The fitting of half-mask respirators should be started with those having multiple sizes and a variety of interchangeable cartridges and canisters such as the MSA Comfo II-M, Norton M, Survivair M, A–O M, or Scott–M. Use either of the tests outlined below to assure that the facepiece is properly adjusted.

(1) *Positive pressure test.* With the exhaust port(s) blocked, the negative pressure of slight inhalation should remain constant for several seconds.

(2) *Negative pressure test.* With the intake port(s) blocked, the negative pressure slight inhalation should remain constant for several seconds.

b. After a facepiece is adjusted, the test subject shall wear the facepiece for at least 5 minutes before conducting a qualitative test by using either of the methods described below and using the exercise regime described in 5.a., b., c., d. and e.

(1) *Isoamyl acetate test.* When using organic vapor cartridges, the test subject who can smell the odor should be unable to detect the odor of isoamyl acetate squirted into the air near the most vulnerable portions of the facepiece seal. In a location which is separated from the test area, the test subject shall be instructed to close her/his eyes during the test period. A combination cartridge or canister with organic vapor and high-efficiency filters shall be used when available for the particular mask being tested. The test subject shall be given an opportunity to smell the odor of isoamyl acetate before the test is conducted.

(2) *Irritant fume test.* When using high-efficiency filters, the test subject should be unable to detect the odor of irritant fume (stannic chloride or titanium tetrachloride ventilation smoke tubes) squirted into the air near the most vulnerable portions of the facepiece seal. The test subject shall be instructed to close her/his eyes during the test period.

c. The test subject may enter the quantitative testing chamber only if she or he has obtained a satisfactory fit as stated in 4.b. of this Appendix.

d. Before the subject enters the test chamber, a reasonably stable challenge agent concentration shall be measured in the test chamber.

e. Immediately after the subject enters the test chamber, the challenge agent concentration inside the respirator shall be measured to ensure that the peak penetration does not exceed 5 percent for a half-mask and 1 percent for a full facepiece.

f. A stable challenge agent concentration shall be obtained prior to the actual start of testing.

g. Respirator restraining straps may not be overtightened for testing. The straps shall be adjusted by the wearer to give a reasonably comfortable fit typical of normal use.

5. *Exercise Regime.*

Prior to entering the test chamber, the test subject shall be given complete instructions as to her/his part in the test procedures. The test subject shall perform the following exercises, in the order given, for each independent test.

a. *Normal Breathing (NB).* In the normal standing position, without talking, the subject shall breathe normally for at least one minute.

b. *Deep Breathing (DB).* In the normal standing position the subject shall do deep breathing for at least one minute pausing so as not to hyperventilate.

c. *Turning head side to side (SS).* Standing in place the subject shall slowly turn his/her head from side between the extreme positions to each side. The head shall be held at each extreme position for at least 5 seconds. Perform for at least three complete cycles.

d. *Moving head up and down (UD).* Standing in place, the subject shall slowly move his/her head up and down between the extreme position straight up and the extreme position straight down. The head shall be held at each extreme position for at least 5 seconds. Perform for at least three complete cycles.

e. *Reading (R).* The subject shall read out slowly and loudly so as to be heard clearly by the test conductor or monitor. The test subject shall read the "rainbow passage" at the end of this section.

f. *Grimace (G).* The test subject shall grimace, smile, frown, and generally contort the face using the facial muscles. Continue for at least 15 seconds.

g. *Bend over and touch toes (B).* The test subject shall bend at the waist and touch toes and return to upright position. Repeat for at least 30 seconds.

h. *Jogging in place (J).* The test subject shall perform jog in place for at least 30 seconds.

i. *Normal Breathing (NB).* Same as exercise a.

Rainbow Passage. When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond reach, his friends say he is looking for the pot of gold at the end of the rainbow.

6. Termination of Test

The test shall be terminated whenever any single peak penetration exceeds 5 percent for halfmasks and 1 percent for full facepieces. The test subject may be refitted and retested. If two of the three required tests are terminated, the fit shall be deemed inadequate. (See paragraph 4.h.).

7. Calculation of Fit Factors

a. The fit factor determined by the quantitative fit test equals the average concentration inside the respirator.

b. The average test chamber concentration is the arithmetic average of the test chamber concentration at the beginning and the end of the test.

c. The average peak concentration of the challenge agent inside the respirator shall be the arithmetic average peak concentrations for each of the nine exercises of the test which are computed as the arithmetic average of the peak concentrations found for each breath during the exercise.

d. The average peak concentration for an exercise may be determined graphically if there is not a great variation in the peak concentrations during a single exercise.

8. Interpretation of Test Results

The fit factor measured by the quantitative fit testing shall be the lowest of the three protection factors resulting from three independent tests.

9. Other Requirements

a. The test subject shall not be permitted to wear a halfmask or full facepiece mask if the minimum fit factor of 100 or 1,000, respectively, cannot be obtained. If hair growth or apparel interfere with a satisfactory fit, then they shall be altered or removed so as to eliminate interference and allow a satisfactory fit. If a satisfactory fit is still not attained, the test subject must use a positive-pressure respirator such as powered air-purifying respirators, supplied air respirator, or self-contained breathing apparatus.

b. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface.

c. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respirator diseases or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

d. The test subject shall be given the opportunity to wear the assigned respirator for one week. If the respirator does not provide a satisfactory fit during actual use, the test subject may request another QNFT which shall be performed immediately.

e. A respirator fit factor card shall be issued to the test subject with the following information:

(1) Name.

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(2) Date of fit test.
(3) Protection factors obtained through each manufacturer, model and approval number of respirator tested.
(4) Name and signature of the person that conducted the test.

f. Filters used for qualitative or quantitative fit testing shall be replaced weekly, whenever increased breathing resistance is encountered, or when the test agent has altered the integrity of the filter media. Organic vapor cartridges/canisters shall be replaced daily or sooner if there is any indication of breakthrough by the test agent.

10. Retesting

In addition, because the sealing of the respirator may be affected, quantitative fit testing shall be repeated immediately when the test subject has a:

a. Weight change of 20 pounds or more,
b. Significant facial scarring in the area of the facepiece seal,
c. Significant dental changes; i.e., multiple extractions without prosthesis, or acquiring dentures,
d. Reconstructive or cosmetic surgery, or
e. Any other condition that may interfere with facepiece sealing.

11. Recordkeeping

A summary of all test results shall be maintained for 3 years. The summary shall include:

a. Name of test subject.
b. Date of testing.
c. Name of the test conductor.
d. Fit factors obtained from every respirator tested (indicate manufacturer, model, size and approval number).

Appendix D to § 763.121—Medical Questionnaires—Mandatory

This mandatory appendix contains the medical questionnaires that must be administered to all employees who are exposed to asbestos above the action level, and who will therefore be included in their employer's medical surveillance program. Part 1 of the appendix contains the Initial Medical Questionnaire, which must be obtained for all new hires who will be covered by the medical surveillance requirements. Part 2 includes the abbreviated Periodical Medical Questionnaire, which must be administered to all employees who are provided periodic medical examinations under the medical surveillance provisions of the standard.

BILLING CODE 6560-50-M

Part 1
INITIAL MEDICAL QUESTIONNAIRE

1. NAME _____

2. SOCIAL SECURITY # ___ ___ ___ ___ ___ ___ ___ ___ ___
(1 2 3 4 5 6 7 8 9)

3. CLOCK NUMBER ___ ___ ___ ___ ___ ___
(10 11 12 13 14 15)

4. PRESENT OCCUPATION _____

5. PLANT _____

6. ADDRESS _____

7. _____
(Zip Code)

8. TELEPHONE NUMBER _____

9. INTERVIEWER _____

10. DATE _____ (16 17 18 19 20 21)

11. Date of Birth _____ (22 23 24 25 26 27)
Month Day Year

12. Place of Birth _____

13. Sex
1. Male ___
2. Female ___

14. What is your marital status?
1. Single ___
2. Married ___
3. Widowed ___
4. Separated/ Divorced ___

15. Race
1. White ___
2. Black ___
3. Asian ___
4. Hispanic ___
5. Indian ___
6. Other ___

16. What is the highest grade completed in school? _____
(For example 12 years is completion of high school)

OCCUPATIONAL HISTORY

17A. Have you ever worked full time (30 hours per week or more) for 6 months or more? 1. Yes ___ 2. No ___

IF YES TO 17A:

B. Have you ever worked for a year or more in any dusty job? 1. Yes ___ 2. No ___ 3. Does Not Apply ___

BEST COPY AVAILABLE

BEST COPY AVAILABLE

Specify job/industry _____ Total Years Worked ___

Was dust exposure: 1. Mild ___ 2. Moderate ___ 3. Severe ___

C. Have you even been exposed to gas or chemical fumes in your work? 1. Yes __ 2. No __
Specify job/industry _____ Total Years Worked ___

Was exposure: 1. Mild ___ 2. Moderate ___ 3. Severe ___

D. What has been your usual occupation or job--the one you have worked at the longest?

1. Job occupation _____
2. Number of years employed in this occupation _____
3. Position/job title _____
4. Business, field or industry _____

(Record on lines the years in which you have worked in any of these industries, e.g., 1960-1969).
Have you ever worked:

	YES	NO
E. In a mine?.....	☐	☐
F. In a quarry?.....	☐	☐
G. In a foundry?.....	☐	☐
H. In a pottery?.....	☐	☐
I. In a cotton, flax or hemp mill?.....	☐	☐
J. With asbestos, tremolite, anthophyllite, or actinolite?.....	☐	☐

18. PAST MEDICAL HISTORY

	YES	NO
A. Do you consider yourself to be in good health?	☐	☐

If "NO" state reason _____

B. Have you any defect of vision?..... ☐ ☐

If "YES" state nature of defect _____

C. Have you any hearing defect?..... ☐ ☐

If "YES" state nature of defect _____

D. Are you suffering from or have you ever suffered from:

a. Epilepsy (or fits, seizures, convulsions)?	☐	☐
b. Rheumatic fever?	☐	☐
c. Kidney disease?	☐	☐
d. Bladder disease?	☐	☐
e. Diabetes?	☐	☐
f. Jaundice?	☐	☐

19. CHEST COLDS AND CHEST ILLNESSES

19A. If you get a cold, does it usually go to your chest? (Usually means more then 1/2 the time) 1. Yes __ 2. No __ 3. Don't get colds __

20A. During the past 3 years, have you had any chest illnesses that have kept you off work, indoors at home, or in bed? 1. Yes __ 2. No __

IF YES TO 20A:

B. Did you produce phlegm with any of these chest illness? 1. Yes __ 2. No __ 3. Does not apply __

C. In the last 3 years, how many illnesses with (increased) phlegm did you have which lasted a week or more? Number of illnesses __ No such illnesses __

21. Did you have any lung trouble before the age of 16? 1. Yes __ 2. No __

22. Have you ever had any of the following?

1A. Attacks of bronchitis? 1. Yes __ 2. No __

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IF YES TO 1A:
B. Was it confirmed by a doctor? 1. Yes __ 2. No __ 3. Does not apply __

C. At what age was your first attack? Age in Years __ Does not apply __

2A. Pneumonia (including bronchopneumonia)? 1. Yes __ 2. No __

IF YES TO 2A:
B. Was it confirmed by a doctor? 1. Yes __ 2. No __ 3. Does Not Apply __

C. At what age did you first have it? Age in Years __ Does Not Apply __

3A. Hay Fever? 1. Yes __ 2. No __

IF YES TO 3A:
B. Was it confirmed by a doctor? 1. Yes __ 2. No __ 3. Does Not Apply __

C. At what age did it start? Age in Years __ Does Not Apply __

23A. Have you ever had chronic bronchitis? 1. Yes __ 2. No __

IF YES TO 23A:
B. Do you still have it? 1. Yes __ 2. No __ 3. Does Not Apply __

C. Was it confirmed by a doctor? 1. Yes __ 2. No __ 3. Does Not Apply __

D. At what age did it start? Age in Years __ Does Not Apply __

24A. Have you ever had emphysema? 1. Yes __ 2. No __

IF YES TO 24A:
B. Do you still have it? 1. Yes __ 2. No __ 3. Does Not Apply __

C. Was it confirmed by a doctor? 1. Yes __ 2. No __ 3. Does Not Apply __

D. At what age did it start? Age in Years __ Does Not Apply __

25A. Have you ever had asthma? 1. Yes __ 2. No __

IF YES TO 25A:
B. Do you still have it? 1. Yes __ 2. No __ 3. Does Not Apply __

C. Was it confirmed by a doctor? 1. Yes __ 2. No __ 3. Does Not Apply __

D. At what age did it start? Age in Years __ Does Not Apply __

E. If you no longer have it, at what age did it stop? Age Stopped __ Does Not Apply __

26. Have you ever had:

A. Any other chest illness? 1. Yes __ 2. No __
If yes, please specify _____

B. Any chest operations? 1. Yes __ 2. No __
If yes, please specify _____

C. Any chest injuries? 1. Yes __ 2. No __
If yes, please specify _____

27A. Has a doctor ever told you that you had heart trouble? 1. Yes __ 2. No __

IF YES TO 27A:
B. Have you ever had treatment for heart trouble in the past 10 years? 1. Yes __ 2. No __ 3. Does Not Apply __

28A. Has a doctor ever told you that you had high blood pressure? 1. Yes __ 2. No __

IF YES TO 28A:
B. Have you had any treatment for high blood pressure (hypertension) in the past 10 years? 1. Yes __ 2. No __ 3. Does Not Apply __

29. When did you last have your chest X-rayed? (Year) 25 26 27 28

30. Where did you last have your chest X-rayed (if known) _____

What was the outcome? _____

FAMILY HISTORY

31. Were either of your natural parents ever told by a doctor that they had a chronic lung conditions such as:

	Father			Mother		
	1. Yes	2. No	3. Don't Know	1. Yes	2. No	3. Don't Know
A. Chronic Bronchitis?	___	___	___	___	___	___
B. Emphysema?	___	___	___	___	___	___
C. Asthma?	___	___	___	___	___	___

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		Father			Mother		
		1. Yes	2. No	3. Don't Know	1. Yes	2. No	3. Don't Know
D.	Lung cancer?	___	___	___	___	___	___
E.	Other chest conditions	___	___	___	___	___	___
F.	Is parent currently alive?	___	___	___	___	___	___
G.	Please Specify	___ Age if Living ___ Age at Death ___ Don't Know			___ Age if Living ___ Age at Death ___ Don't Know		
H.	Please specify cause of death	_____			_____		

COUGH

32A. Do you usually have a cough? (Count a cough with first smoke or on first going out of doors. Exclude clearing of throat.) [If no, skip to question 32C.] 1. Yes ___ 2. No ___

B. Do you usually cough as much as 4 to 6 times a day 4 or more days out of the week? 1. Yes ___ 2. No ___

C. Do you usually cough at all on getting up or first thing in the morning? 1. Yes ___ 2. No ___

D. Do you usually cough at all during the rest of the day or at night? 1. Yes ___ 2. No ___

IF YES TO ANY OF ABOVE (32A, B, C, OR D), ANSWER THE FOLLOWING. IF NO TO ALL, CHECK DOES NOT APPLY AND SKIP TO NEXT PAGE

E. Do you usually cough like this on most days for 3 consecucive months or more during the year? 1. Yes ___ 2. No ___ 3. Does not apply ___

F. For how many years have you had the cough? Number of Years ___ Does not apply ___

33A. Do you usually bring up phlegm from your chest? (Count phlegm with the first smoke or on first going out of doors. Exclude phlegm from the nose. Count swallowed phlegm.) (If no, skip to 33C) 1. Yes ___ 2. No ___

B. Do you usually bring up phlegm like this as much as twice a day 4 or more days out of the week? 1. Yes ___ 2. No ___

C. Do you usually bring up phlegm at all on getting up or first thing in the morning? 1. Yes ___ 2. No ___

D. Do you usually bring up phlegm at all during the rest of the day or at night? 1. Yes ___ 2. No ___

IF YES TO ANY OF THE ABOVE (33A, B, C, OR D), ANSWER THE FOLLOWING: IF NO TO ALL, CHECK DOES NOT APPLY AND SKIP TO 34A.

E. Do you bring up phlegm like this on most days for 3 consecutive months or more during the year? 1. Yes ___ 2. No ___ 3. Does not apply ___

F. For how many years have you had trouble with phlegm? Number of years ___ Does not apply ___

EPISODES OF COUGH AND PHLEGM

34A. Have you had periods of episodes of (increased*) cough and phlegm lasting for 3 weeks or more each year? *(For persons who usually have cough and/or phlegm) 1. Yes ___ 2. No ___

If YES to 34A

B. For how long have you had at least 1 such episode per year? Number of years ___ Does not apply ___

WHEEZING

35A. Does your chest ever sound wheezy or whistling

1. When you have a cold? 1. Yes ___ 2. No ___
2. Occasionally apart from colds? 1. Yes ___ 2. No ___
3. Most days or nights? 1. Yes ___ 2. No ___

IF YES TO 1, 2, OR 3 IN 35A

B. For how many years has this been present? Number of years ___ Does not apply ___

36A. Have you ever had an attack of wheezing that has made you feel short of breath? 1. Yes ___ 2. No ___

IF YES TO 36A

B. How old were you when you had your first such attack? Age in years ___ Does not apply ___

C. Have you had 2 or more such episodes? 1. Yes ___ 2. No ___ 3. Does not apply ___

D. Have you ever required medicine or treatment for the(se) attack(s)? 1. Yes ___ 2. No ___ 3. Does not apply ___

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BREATHLESSNESS

37. If disabled from walking by any condition other than heart or lung disease, please describe and proceed to question 39A.
Nature of condition(s) _____

38A. Are you troubled by shortness of breath when hurrying on the level or walking up a slight hill? 1. Yes __ 2. No __

IF YES TO 38 A

B. Do you have to walk slower than people of your age on the level because of breathlessness? 1. Yes __ 2. No __ 3. Does not apply __

C. Do you ever have to step for breath when walking at your own pace on the level? 1. Yes __ 2. No __ 3. Does not apply __

D. Do you ever have to stop for breath after walking about 100 yards (or after a few minutes) on the level? 1. Yes __ 2. No __ 3. Does not apply __

E. Are you too breathless to leave the house or breathless on dressing or climbing one flight of stairs? 1. Yes __ 2. No __ 3. Does not apply __

TOBACCO SMOKING

39A. Have you ever smoked cigarettes? (No means less than 20 packs of cigarettes or 12 oz. of tobacco in a lifetime or less than 1 cigarette a day for 1 year). 1. Yes __ 2. No __

IF YES TO 39A

B. Do you now smoke cigarettes (as of one months ago) 1. Yes __ 2. No __ 3. Does not apply __

C. How old were you when you first started regular cigarette smoking? Age in years __ Does not apply __

D. If you have stopped smoking cigarettes completely, how old were you when you stopped? Age stopped __ Check if still smoking __ Does not apply __

E. How many cigarettes do you smoke per day now? Cigarettes per day __ Does not apply __

F. On the average of the entire time you smoked, how many cigarettes did you smoke per day? Cigarettes per day __ Does not apply __

G. Do or did you inhale the cigarette smoke? 1. Does not apply __ 2. Not at all __ 3. Slightly __ 4. Moderately __ 5. Deeply __

40A. Have you ever smoked a pipe regularly? (Yes means more than 12 oz. of tobacco in a lifetime.) 1. Yes __ 2. No __

IF YES TO 40A:
FOR PERSONS WHO HAVE EVER SMOKED A PIPE

B. 1. How old were you when you started to smoke a pipe regularly? Age __

2. If you have stopped smoking a pipe completely, how old were you when you stopped? Age stopped __ __ Check if still smoking a pipe __ Does not apply __ __

C. On the average over the entire time you smoked a pipe, how much pipe tobacco did you smoke per week? __ oz. per week (a standard pouch of tobacco contains 1 1/2 oz.) __ Does not apply

D. How much pipe tobacco are you smoking now? oz. per week __ Not currently smoking a pipe

E. Do you or did you inhale the pipe smoke? 1. Never smoked __ 2. Not at all __ 3. Slightly __ 4. Moderately __ 5. Deeply __

41A. Have you ever smoked cigars regularly? (Yes means more than 1 cigar a week for a year) 1. Yes __ 2. No __

IF YES TO 41A
FOR PERSONS WHO HAVE EVER SMOKED CIGARS

B. 1. How old were you when you started smoking cigars regularly? Age __

2. If you have stopped smoking cigars completely, how old were you when you stopped? Age stopped __ Check if still smoking cigars __ Does not apply __

C. On the average over the entire time you smoked cigars, how many cigars did you smoke per week? Cigars per week __ Does not apply __

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D. How many cigars are you smoking per week now?

Cigars per week ___
Check if not smoking cigars currently ___

E. Do or did you inhale the cigar smoke?

1. Never smoked ___
2. Not at all ___
3. Slightly ___
4. Moderately ___
5. Deeply ___

Signature _____ Date _____

Part 2
PERIODIC MEDICAL QUESTIONNAIRE

1. NAME _____

2. SOCIAL SECURITY # ___ ___ ___ ___ ___ ___ ___ ___ ___ ___
(1 2 3 4 5 6 7 8 9)

3. CLOCK NUMBER ___ ___ ___ ___ ___ ___ ___
(10 11 12 13 14 15)

4. PRESENT OCCUPATION _____

5. PLANT _____

6. ADDRESS _____

7. _____
(Zip Code)

8. TELEPHONE NUMBER _____

9. INTERVIEWER _____

10. DATE _____ ___ ___ ___ ___ ___ ___ ___
(16 17 18 19 20 21)

11. What is your marital status?
1. Single ___
2. Married ___
3. Widowed ___
4. Separated/Divorced ___

12. OCCUPATIONAL HISTORY

12A. In the past year, did you work full time (30 hours per week or more) for 6 months or more? 1. Yes ___ 2. No ___

12B. IF YES TO 12A:

In the past year, did you work in a dusty job? 1. Yes ___ 2. No ___ 3. Does not apply ___

12C. Was dust exposure: 1. Mild ___ 2. Moderate ___ 3. Severe ___

12D. In the past year, were you exposed to gas or chemical fumes in your work? 1. Yes ___ 2. No ___

12E. Was exposure: 1. Mild ___ 2. Moderate ___ 3. Severe ___

12F. In the past year, what was your:
1. Job/occupation? _____
2. Position/job title? _____

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13. RECENT MEDICAL HISTORY

13A. Do you consider yourself to be in good health? Yes ____ No _____

If NO, state reason _____

13B. In the past year, have you developed:

	Yes	No
Epilepsy?	___	___
Rheumatic fever?	___	___
Kidney disease?	___	___
Bladder disease?	___	___
Diabetes?	___	___
Jaundice?	___	___
Cancer?	___	___

14. CHEST COLDS AND CHEST ILLNESSES

14A. If you get a cold, does it usually go to your chest? (Usually means more than 1/2 the time)

1. Yes ___ No ___
3. Don't get colds ___

15A. During the past year, have you had any chest illnesses that have kept you off work, indoors at home, or in bed? 1. Yes ___ 2. No ___ 3. Does not apply ___

IF YES TO 15A:

15B. Did you produce phlegm with any of these chest illnesses 1. Yes ___ 2. No ___ 3. Does not apply ___

15C. In the past year, how many such illnesses with (increased) phlegm did you have which lasted a week or more? Number of illnesses ___ No such illnesses ___

16. RESPIRATORY SYSTEM

In the past year have you had:

	Yes or No	Further Comment on Positive Answers
Asthma	_____	
Bronchitis	_____	
Hay Fever	_____	
Other Allergies	_____	

	Yes or No	Further Comment on Positive Answers
Pneumonia	_____	
Tuberculosis	_____	
Chest Surgery	_____	
Other Lung Problems	_____	
Heart Disease	_____	
Do you have:		
Frequent colds	_____	
Chronic cough	_____	
Shortness of breath when walking or climbing one flight of stairs	_____	
Do you:		
Wheeze	_____	
Cough up phlegm	_____	
Smoke cigarettes	_____	Packs per day ___ How many years ___

Date _____ Signature _____

BILLING CODE 4160-50-C

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Appendix E to § 763.121—Interpretation and Classification of Chest Roentgenograms—Mandatory

(a) Chest roentgenograms shall be interpreted and classified in accordance with a professionally accepted classification system and recorded on a Roentgenographic Interpretation Form. Form CSD/NIOSH (M) 2.8.

(b) Roentgenograms shall be interpreted and classified only by a B-reader, a board eligible/certified radiologist, or an experienced physician with known expertise in pneumoconioses.

(c) All interpreters, whenever interpreting chest roentgenograms made under this section, shall have immediately available for reference a complete set of the ILO–U/C International Classification of Radiographs for Pneumoconioses, 1980.

§ 763.122 Exclusions for States.

(a) The States of Idaho, Kansas, Oklahoma, and Wisconsin have 6 months or such other reasonable time as suggested by the particular State and approved by the Director of the Office of Toxic Substances to make their regulations comparable to or more stringent than this part, and to submit their regulations to EPA's Office of Toxic Substances for review. If in such reasonable time after March 27, 1987, any of these States have not so revised their regulations and submitted them to EPA, State and local government employees in such States shall be covered by the requirements of this part.

(b) Any other State that wishes to be excluded from this rule shall send a copy of a regulation which it considers to be comparable to or more stringent than this part to EPA's Office of Toxic Substances for review. EPA will review the regulation and tentatively determine whether the regulation is comparable to or more stringent than this part. If EPA makes a positive tentative determination, EPA will propose an amendment to this rule excluding that State from coverage. Interested persons may comment on the proposed exclusion during the period for public comment. After considering any comments, EPA may promulgate the final amendment to the rule.

§ 763.124 Reporting.

(a) Employers subject to this rule must report to the Regional Asbestos Coordinator for the EPA Region in which the asbestos abatement project is located at least 10 days before they begin any asbestos abatement project, except one that involves less than either 3 linear feet or 3 square feet of friable asbestos material, and an emergency project. Employers must report any emergency project covered by this rule as soon as possible but in no case more than 48 hours after the project begins. A list of the EPA Regional Offices is given under § 1.7(b) of this chapter.

(b) The report must include:

(1) The employer's name and address.

(2) The location, including street address, of the asbestos abatement project.

(3) The scheduled starting and completion dates for the asbestos abatement project.

(c) If a report is mailed to EPA, the report must be postmarked at least 10 days before the asbestos abatement project begins unless the report is for an emergency project. In such a case, the report must be postmarked as soon as possible but in no case more than 48 hours after the project begins.

(d) Employers do not have to report under this section if they submit a notice to EPA under the National Emission Standard for Asbestos, § 61.146 of this chapter, at least 10 days before they begin the asbestos abatement project and that notice clearly indicates that employees covered by this rule will perform some or all of the asbestos abatement work.

(Approved by the Office of Management and Budget under control number 2070–0072)

§ 763.125 Enforcement.

(a) Failure to comply with any provision of this part is a violation of section 15 of the Act (15 U.S.C. 2614).

(b) Failure or refusal to establish and maintain records or to permit access to or copying of records, as required by the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(c) Failure or refusal to permit entry or inspection as required by section 11 of the Act (15 U.S.C. 2610) is a violation of section 15 of the Act (15 U.S.C. 2614).

(d) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation.

(e) EPA may seek to enjoin an asbestos abatement project in violation of this part, or take other actions under the authority of section 7 or 17 of the Act (15 U.S.C. 2606 or 2616).

§ 763.126 Inspections.

EPA will conduct inspections under section 11 of the Act (15 U.S.C. 2610) to ensure compliance with this part.

[FR Doc. 87–3645 Filed 2–24–87; 8:45 am]

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federal register

Wednesday
February 25, 1987

Part III

Department of Agriculture

Cooperative State Research Service

Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program for FY 1987; Solicitation of Graduate Fellowships Grants Proposals From Colleges and Universities; Notice

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DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program for FY 1987; Solicitation of Graduate Fellowships Grants Proposals From Colleges and Universities

Purpose: Notice is hereby given that under the authority contained in section 1417(a)(3)(B) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152(a)(3)(B)), the Cooperative State Research Service (CSRS) through its Higher Education Programs (HEP) will award competitive grants to colleges and universities for doctoral fellowships to meet national needs for the development of professional and scientific expertise in the food and agricultural sciences.

Available funds: The total amount available for this purpose in Fiscal Year 1987 is approximately $2,800,000.

Targeted areas: Food and agricultural sciences areas appropriate for fellowship applications are those in which developing shortages of expertise have been determined and targeted by CSRS–HEP for national needs fellowship support. The targeted national needs areas for FY 1987 are: Biotechnology and Food Science and/or Human Nutrition. Doctoral fellowships will be supported only in these two national needs areas. Approximately two-thirds of the fellowships will be awarded in the area of Biotechnology and one-third of the fellowships will be awarded in the area of Food Science and/or Human Nutrition.

Proposal limitations: For the Fiscal Year 1987 program, a proposal may request funding in only one (1) national need area. A proposal may request a minimum of two (2) fellowships and a maximum of four (4) fellowships in the national need area for which funding is requested. While no limitation is placed on the number of proposals an institution may submit, not more than two (2) proposals may be submitted by the same college or equivalent administrative unit within an institution. Additionally, total funds awarded to an institution under the program in Fiscal Year 1987 shall not exceed $288,000.

Financial and other limitations: Each institution funded will receive $48,000 for each doctoral fellowship awarded. These monies must be used to: (1) Support the same doctoral fellow for three (3) years at $15,000 per year; and (2) provide for an institution annual cost-of-education allowance of $1,000, not to exceed a total of $3,000 over the three year duration of the fellowship.

Application information: An Application Kit has been developed which provides the forms, instructions, and other relevant information needed by institutions to apply for the Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program described herein. To obtain a copy of the Application Kit, write or call the Grants Administrative Management office (address and telephone number below): USDA-CSRS, Office of Grants and Programs Systems, Grants Administrative Management, Room 005 Justin Smith Morrill Building, 15th and Independence Ave., SW., Washington, DC 20251–2200, Telephone: (202) 475–5049.

Six (6) copies of a proposal and one (1) copy of the institution's latest graduate catalong should be submitted to the Grants Administrative Management office at the preceding address no later than the close of business April 27, 1987. The grants will be awarded and administered in accordance with the regulations set forth in Title 7, Chapter XXXIV, Part 3402 published in the **Federal Register** February 13, 1987, 52 FR 4712. Additional regulations regarding this assistance program may be found in the Department of Agriculture Uniform Federal Assistance Regulations (7 CFR Part 3015).

Supplementary Information: This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.210. For the reasons set forth in the Final Rule related notice to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, when the authority to administer this program resided in the Agricultural Research Service, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0024.

Done at Washington, DC, this 19th day of February 1987.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 87–3890 Filed 2–24–87; 8:45 am]
BILLING CODE 3410–22–M

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federal register

Wednesday
February 25, 1987

Part IV

Environmental Protection Agency

Amendment to Notice of Intent To Cancel Registrations and Denial of Applications for Registration of Products Containing Diazinon; Notice

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ENVIRONMENTAL PROTECTON AGENCY

[OPP-30000/47C FRL]

Amendment to Notice of Intent To Cancel Registrations and Denial of Applications for Registration of Products Containing Diazinon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amendment to Notice of Final Determination and Intent to Cancel.

SUMMARY: This Notice amends the Notice of Final Determination and Intent to Cancel Pesticide Products Containing Diazinon (51 FR 35034; October 1, 1986) to more clearly define the scope of that Notice by describing with more particularity the registrations which are subject to its terms. This Notice also allows affected registrants, applicants, and other adversely affected parties subject to the Notice another 30 days to respond before the affected products will be deemed canceled.

DATES: A request for a hearing by a registrant or applicant must be received by March 27, 1987 or 30 days from receipt by mail of this Notice, whichever is later. A request for a hearing from any other adversely affected persons must be received by March 27, 1987.

ADDRESS: Requests for a hearing must be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Ingrid Sunzenauer, Special Review Branch, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1010, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. (703) 557–7416.

SUPPLEMENTARY INFORMATION: This Notice is organized into three parts. Unit I is the introduction. It provides the background information concerning this Amendment to the Notice of Intent to Cancel. Unit II sets forth the language being added to the definitions section of the original Notice. Unit III describes the procedure for responding to this Notice.

I. Background

On January 6, 1986, EPA initiated a Special Review of all pesticide products that contain the active ingredient diazinon and that are registered for use on golf courses and sod farms. On the same date EPA also issued the Preliminary Determination proposing to cancel registrations and deny applications for use of diazinon products on these two sites. The initiation of the Special Review and the proposed cancellation action were based on the Agency's determination that the use of diazinon on golf courses and sod farms would result in unreasonable adverse effects on non-target birds. A **Federal Register** notice was published concerning these actions on January 15, 1986 (51 FR 1842).

After conducting the Special Review, EPA announced its final decision to cancel registrations and deny applications of all pesticide products containing diazinon that are registered for use on golf courses and sod farms. The Notice of Intent to Cancel announcing this decision was sent to all registrants and was published on October 1, 1986 (51 FR 35034). EPA subsequently amended the provision of that Notice concerning the disposition of existing stocks of pesticides subject to the Notice in a **Federal Register** Notice published December 16, 1986 (51 FR 45039).

Under the terms of the Notice of Intent to Cancel, the registration of a pesticide product "containing diazinon which is registered for use on golf courses and sod farms" would be canceled within 30 days unless: (1) The registration was amended to prohibit such use, or (2) the registrant or other adversely affected person requested a hearing to contest the cancellation of a particular registration. *Id.* at 35045. Subsequently, the Notice of Intent to Cancel was amended to extend the existing stocks provision provided by the original Notice (51 FR 45039; December 16, 1986).

The Notice of Intent to Cancel was based upon the Agency's findings that the risk to non-target birds of continued use of diazinon on golf course and sod farm turf outweighed the benefits of use of diazinon on these sites, and therefore, that continued registration on these sites posed an unreasonable adverse effect on the environment. In evaluating the hazard, the Agency considered diazinon's acute toxicity, estimated residue levels on grass and seed, estimated dose levels consumed by birds, diazinon application practices, exposure, diazinon residue data, bird kills, problems associated with the reporting of bird kills, and the effect on endangered species. In evaluating the benefits, the Agency considered the biology of the insect pests, their control, the user cost impact of cancellation, the efficacy of diazinon and its major alternatives, and the hazards posed by the major alternatives to diazinon.

These findings applied to the use of any pesticide product containing diazinon on grass on either golf courses or sod farms. The Notice of Intent to Cancel, therefore, defined its scope as those products "registered for use on golf courses and sod farms." The term "registered" is broader than the term "labeled." If a label contains language which permits the use of diazinon on turf, the product is registered for use on these two sites and is subject to the Notice, even if the product's label does not specifically mention golf courses and sod farms. For example, the word "lawn" can be used to describe any closely mowed grassy land and includes both golf courses and sod farms. Thus, all diazinon products bearing directions for use outdoors on ornamental grass, lawns, turf, sod, recreational areas, or similar site designations are subject to the Diazinon Notice. Thus the term "registered for use on golf courses and sod farms" includes all products which legally can be used to treat grass on either golf courses or sod farms.

The Agency has reason to believe, however, that the language "registered for use on golf courses and sod farms" has been misinterpreted by some potentially affected registrants. Because of misinterpretation of the scope of the Notice of Intent to Cancel, certain registrants may have failed to amend their registrations, or to seek a hearing to contest the requirement to amend their registrations within 30 days of the receipt of the Notice of Intent to Cancel. Ordinarily, the registration of a product subject to a Notice of Intent to Cancel for which a hearing is not requested and for which the required amendments are not sought would be considered canceled once this time period expired. The potential misunderstanding by registrants and applicants, however, raises some doubt as to whether the Diazinon Notice of Intent to Cancel provided adequate notice to all registrants of the products subject to its terms.

In light of these doubts, as well as the serious consequences of failure to comply with the requirements of the Diazinon Notice, the Agency has concluded that it would be inequitable to presume that the Diazinon Notice provided adequate notice to all affected registrants. Therefore, the Agency in this Notice of Amendment is revising the Diazinon Notice to clarify its scope and is providing registrants, applicants, and other adversely affected parties, with 30 days in which to amend their registrations to comply or to seek a hearing to contest the requirements of the Diazinon Notice.

II. Amendment to the Notice

The definitions section of the Diazinon Notice of Intent to Cancel (Unit V.B., 51 FR 35044; October 1, 1986) is amended to add the following additional definition:

4. "Registered for use on golf courses and sod farms" for purposes of this Notice means any pesticide product which contains diazinon in any formulation, except products sold in pressurized aerosol containers; and which is labeled for use outdoors on ornamental grass, lawns, turf, sod, recreational areas, or similar site designations which might result in use on grass. This definition does not include products whose labeling specifically prohibits the use of the product on both golf courses and sod farms. The Agency does not consider products labeled for the spot treatment of the nests or mounds of ants, fire ants, digger wasps, or other similar pests and the immediate area surrounding these nests or mounds, or products labeled for treatment of the exterior perimeter of a building within 10 feet or less of the building to be registered for use on golf courses and sod farms unless the product otherwise would fall within the definition of the term. By "spot treatment" the Agency means application to the individual nest or mound and/or the immediate area surrounding the nest or mound. By "immediate area" the Agency means within a four foot radius of the center or the mound and/or the nest. "Spot treatment" does not include application to broad expanses of grass.

III. Procedural Matters

This Notice reannounces EPA's intent to cancel the registrations of pesticide products containing diazinon in any formulation (except products sold in pressurized aerosol containers) which are labeled for use outdoors on ornamental grass, lawns, turf, sod, recreational areas or similar site designations which might result in use on grass. It also amends the Diazinon Notice of Intent to Cancel. (51 FR 35034; October 1, 1986). In issuing this amendment to the Notice of Intent to Cancel the Agency incorporates and relies upon the Notice of Intent to Cancel and all materials which support the Notice of Intent to Cancel.

This Unit explains how current registrants may apply to amend their registrations to comply with the terms and conditions discussed in Unit V of the Diazinon Notice of Intent to Cancel. Under sections 6(b) and 3(c)(6) of the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA) applicants, registrants, and certain other adversely affected persons are also entitled to respond to this Notice by requesting a hearing on the actions that EPA is initiating. Unless a hearing is properly requested with regard to a particular registration or application, this action will become final by operation of law with regard to that application or registration.

Some registrants have already properly requested a hearing to contest the requirements of the Diazinon Notice of Intent to Cancel for specifically identified products and other registrants have already satisfied the Notice's requirements by seeking to amend their registration(s) and/or applications or have indicated in writing that certain of their diazinon products are not subject to the Notice because they are not registered for use on golf courses or sod farms. These registrants need take no further action to comply with the Diazinon Notice for those products which they have specifically identified in either a request for a hearing, label amendment submission, or written indication that their product is not subject to the Notice. This Unit explains how other registrants may take action to respond to the terms of the Diazinon Notice or how registrants may respond for specific products omitted from their early responses to the Agency and the consequences of failure to do so.

This Unit also explains how registrants, applicants, or other adversely affected persons may request a hearing on EPA's final cancellation and denial Notice (and the consequences of requesting a hearing and failing to request a hearing in accordance with those procedures).

A. Procedure for Amending the Terms and Conditions of Registration to Avoid Cancellation or Denial of Application

Registrants affected by the cancellation action set forth in the Diazinon Notice and this Notice may avoid cancellation by filing an application for an amended registration which contains the label modifications detailed in Unit V.B. of the Diazinon Notice of Intent to Cancel. Amendment applications already submitted to the Agency will be considered to be responses to this Notice as well, and will be considered to be filed in time. Unless the application has already been filed, it must be filed within 30 days of receipt of this Notice or within 30 days from the publication of this Notice in the **Federal Register**, whichever occurs later. Similarly, applicants for a registration subject to this Notice must file an amended application for registration within the applicable 30-day period, unless they have already done so, to avoid denial of their pending applications.

Applications must be submitted to: George LaRocca, Product Manager 15, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 (703–557–2400).

B. Procedures for Requesting a Hearing

To contest the cancellation action set forth in this Notice, Federal registrants or applicants may request a hearing within 30 days of receipt of this Notice, or within 30 days from publication of this Notice in the **Federal Register**, whichever occurs later. Some registrants and applicants have already requested a hearing concerning the Diazinon Notice of Intent to Cancel; all of those requests are also considered to be responses to this Notice and are considered to be in time. Any other person adversely affected by cancellation of a registration proposed by this Notice or an interested person with the concurrence of an applicant with an application for registration subject to this Notice may request a hearing within 30 days of publication of this Notice in the **Federal Register.**

A registrant, or applicant, or other adversely affected party who requests a hearing must file the request in accordance with the procedures established by FIFRA and EPA's Rules of Practice Governing Hearings under 40 CFR Part 164. These procedures require, among other things, that all requests must identify the specific pesticide product(s) for which a hearing is requested and that all requests must be received by the Hearing Clerk within the applicable 30-day period. Failure to comply with these requirements will result in denial of the request for a hearing. Requests for a hearing should also be accompanied by objections that are specific for each use of each pesticide product for which a hearing is requested.

Requests for a hearing must be submitted to: Hearing Clerk (A–101), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

1. Consequences of Filing a Timely and Effective Hearing Request.

If a hearing on the action initiated by this Notice is requested in a timely and effective manner, the hearing will be governed by EPA's Rules of Practice for hearings under FIFRA section 6 (40 CFR Part 164), as modified by the Diazinon Notice of Intent to Cancel. The hearing will be limited to the specific uses and specific product registrations or applications for which the hearing is requested. In the event of a hearing, specific registrations which are the

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subject of the hearing will not be canceled and the specific applications will not be denied except pursuant to an order of the Administrator at the conclusion of the hearing.

2. Consequences of Failure to File in a Timely and Effective Manner.

If a hearing concerning the registration of a specific pesticide product subject to this Notice is not requested by the end of the applicable 30-day period, registration of that product will be canceled, unless the registrant files a request for an amended registration within the statutory period provided herein. Similarly, if a hearing concerning a specific application for registration is not requested, then that application will be denied unless the application is revised to comply with the requirements of the Diazinon Notice within the permitted time.

C. Registrants Who Have Already Taken Action in Response to the Diazinon Notice of Intent to Cancel

Some registrants, and applicants, have already made a request for a hearing or made an amendment to their registration(s) or application(s) in response to the Diazinon Notice of Intent to Cancel or have submitted written indication that certain or their diazinon end-use product included on the Agency's list of diazinon products are not registered for golf courses or sod farms and are thus not subject to the notice. A proper response to the Notice of Intent to Cancel remains effective, and no further action is necessary from such persons to respond to this Notice. However, those registrants or applicants who failed to make a proper and complete response to the initial Notice must now make such a response or their registration(s) subject to this Notice will be considered canceled or their applicaton(s) denied in 30 days.

Dated: February 19, 1987.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 87-3937 Filed 2-24-87; 8:45 am]

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federal register

Wednesday
February 25, 1987

Part V

Department of the Treasury
Securities and Exchange Commission
Federal Reserve System

17 CFR Ch. IV
Government Securities Act of 1986; Implementing Regulations; Proposed Rule

17 CFR Parts 240 and 249
Government Securities Act of 1986; Proposed Rule and Proposed Revision of Form BD
Financial Institutions Acting as Government Securities Brokers or Government Securities Dealers; Notice

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DEPARTMENT OF THE TREASURY

Office of the Assistant Secretary (Domestic Finance)

17 CFR Ch. IV

Government Securities Act of 1986; Implementing Regulations

AGENCY: Office of the Assistant Secretary (Domestic Finance), Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury is issuing proposed regulations as required by the Government Securities Act of 1986 (the "Government Securities Act" or "GSA"). The GSA requires the Secretary of the Treasury (the "Secretary") to adopt rules and regulations concerning the financial responsibility, protection of investor securities and funds, recordkeeping, reporting and audit of brokers and dealers in government securities. The GSA also requires the Secretary to adopt regulations relating to the custody of government securities held by financial institutions that are not government securities brokers or dealers. The proposed regulations are designed to enhance the protection of investors in government securities while maintaining a fair, honest and liquid market in such securities. Subchapter A of the proposed regulations covers government securities brokers and dealers. Subchapter B of the proposed regulations deals with custody of government securities by financial institutions.

DATES: Comments must be submitted on or before March 27, 1987. No extensions of time for comment will be provided.

ADDRESSES: Send comments to: The Government Securities Regulations Project, Department of the Treasury, Room 4417, Main Treasury Building, Washington, DC 20220.

Copies of all written comments will be available for public inspection and copying from 9:00 A.M. to 5:30 P.M. at the Treasury Department Library, Room 5030, Main Treasury Building, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Ellen Seidman (Special Assistant to the Under Secretary), Room 4414, Main Treasury Building, Washington, DC 20220, (202) 566–2278.

For information concerning financial responsibility (capital) and Form G 405, contact: Norman Carleton (Assistant Director, Office of Government Finance & Market Analysis), Room 3044, Main Treasury Building, Washington, D.C. 20220, (202) 566–2330.

For information concerning possession or control of securities, contact: Virginia Rutledge (Senior Attorney for Finance), Room 2025, Main Treasury Building, Washington, DC 20220, (202) 535–4890.

SUPPLEMENTARY INFORMATION:

I. Background

The GSA establishes, for the first time, a federal system for regulation of brokers and dealers who transact business exclusively in government securities, or a government securities business combined with business in exempted securities and/or futures and other commodity interests regulated by the Commodity Futures Trading Commission ("CFTC"). The Secretary of the Treasury is to adopt rules and regulations concerning the financial responsibility, protection of investor securities and balances, recordkeeping, reporting and audit of government securities brokers and dealers.[1] Previously unregulated government securities brokers and dealers must also register with the Securities and Exchange Commission (the "SEC" or "Commission") and join a self-regulatory organization.[2] Enforcement of the Secretary's regulations will be carried out by the SEC and the appropriate self-regulatory organizations.[3] The GSA also provides for regulation of all other brokers and dealers in government securities, all of whom must notify their principal regulatory agency of their status as government securities brokers or dealers.[4] Enforcement of the regulations for such entities will be carried out by the appropriate regulatory agencies.[5]

The purpose of such registration and regulation is to enhance the protection of investors in government securities by establishing and enforcing appropriate financial responsibility and custodial standards for government securities brokers and dealers. At the same time, the standards must respect and protect the integrity, liquidity and efficiency of the world's largest securities market, which is vital to the effective implementation of fiscal and monetary policy in the United States.[6]

In adopting regulations concerning those entities that are already regulated, such as brokers and dealers registered under sections 15 or 15B of the Securities Exchange Act of 1934 (the "Act") and financial institutions, the Secretary of the Treasury is to take into consideration already existing regulation with a view toward preventing overly burdensome or duplicative regulation.[7]

The proposed regulations constitute the Secretary's response to these mandates. The GSA requires that the regulations become effective as temporary regulations on May 26, 1987, and as final regulations on July 25, 1987. All government securities brokers and dealers must register or give notice by July 25, 1987, and must be in compliance with the regulations that will become final on that date.[8] Because of the short timetable both for developing the regulations and meeting their requirements, no extensions of time for comment will be granted and it is extremely important that all those potentially affected by the regulations

[1] Section 15C(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5(b)). All citations to the Securities Exchange Act (hereinafter the "Act") will refer to the section of the Act followed by the parallel citation to the United States Code in brackets. Title I of the GSA, which provides for regulation of government securities brokers and dealers, amends the Act, in part by adding Section 15C.

[2] Section 15C(a)(1)(A), (e) (15 U.S.C. 78o–5(a)(1)(A), (e)). Currently unregulated entities that believe they are government securities brokers or dealers are urged to contact the appropriate self-regulatory organization, in most cases the National Association of Securities Dealers ("NASD"), for membership information, as soon as possible. The NASD has informed the Department that it will only be able to guarantee completion of membership processing before the July 25, 1987 deadline for entities that submit complete applications prior to April 15, 1987.

[3] Sections 15C(c)(1), 19(g)(1) (15 U.S.C. 78o–5(c)(1), 78s). The Act also contains criminal penalties enforced by the Department of Justice. Section 32 (15 U.S.C. 78ff).

[4] Section 15C(a)(1)(B), (b) (15 U.S.C. 78o–5(a)(1)(B), (b)).

[5] Generally, the appropriate regulatory agency, for a financial institution is that institution's federal supervisory agency and is the SEC for all others, including brokers and dealers registered with the SEC under sections 15 or 15B of the Act. Section 3(a)(34)(G) (15 U.S.C. 78c(a)(34)(G)).

[6] Government Securities Act of 1986, Pub. L. 99–571, Section 1, 100 Stat. 3208 (1986) (hereinafter cited as *GSA*).

[7] Section 15C(b)(3)(C) (15 U.S.C. 78o–5(b)(3)(C)); 132 Cong. Rec. H9251 (Oct. 6, 1986).

[8] GSA, supra note 6, section 402. In general, the regulations are proposed to be effective July 25, 1987. However, because of the difficulties of achieving compliance with several of the regulations in the maximum of 15 days that will be available between the date for publication of the temporary regulations and June 10, 1987, the date on which entities must file registration applications with the SEC in order to assure registration before July 25, several of the regulations, in particular Part 402 relating to financial responsibility, will not become fully effective until October 25, 1987.

Previously unregulated government securities brokers and dealers are reminded that, in addition to the regulations to be promulgated under the GSA, they are subject to the provisions of sections 10(b), 15(c)(1), 17(f)(1) and 17(f)(2) of the Act and the regulations promulgated by the SEC thereunder.

take the opportunity provided by this publication to analyze and comment upon the proposals, and also to prepare for implementation.[9]

In developing the proposed regulations, the Treasury has consulted extensively with the SEC and the federal supervisory agencies for financial institutions, and with the Federal Reserve Bank of New York ("FRBNY"), which has developed and published a voluntary capital adequacy guideline for brokers and dealers in government securities. The Department has met with twenty-three brokers or dealers in government securities, regulated and unregulated, large and small, financial institutions and others, and talked with a number of additional brokers and dealers by telephone. We have met with the relevant self-regulatory organizations, the National Association of Securities Dealers and the New York Stock Exchange. We have also met with trade associations, professional organizations (such as the American Institute of Certified Public Accountants), and with individual professionals serving government securities brokers and dealers. We have also been in touch with representatives of investors, including governmental entities and savings and loan associations. We have received written comments and suggestions from some of those with whom we met and from others.

As a result of this consultation and the Department's analysis, the Department has reached several conclusions concerning the Commission's existing regulations under sections 15 and 17 of the Act. First, the Department believes that in large part the existing SEC regulations that correspond to the statutory mandate of the Secretary work effectively to protect customers and insure financial integrity of brokers and dealers. In addition, almost all of the entities other than financial institutions that will be affected by the proposed regulations are familiar with many of the appropriate regulations under sections 15 and 17, either by virtue of their affiliation with a registered broker or dealer or a registered municipal securities dealer or because the principals in the firm or professionals who service them are familiar with these regulations. Furthermore, many of these entities currently are in compliance with the SEC's regulations. Finally, with a few exceptions, the Department has concluded that regulations currently applicable to financial institutions that are government securities brokers and dealers also effectively meet the purposes of the GSA.

As a result of these conclusions, the proposed regulations, in all areas except financial responsibility, largely adopt existing regulations under sections 15 and 17 of the Act by reference, with limited modifications. Compliance by registered brokers or dealers with rules under sections 15 and 17 will, in general, be deemed compliance with these rules. With limited modifications, compliance by government securities brokers and dealers that are financial institutions with existing regulations will also be deemed compliance with these regulations. In this way, the Department intends to enable newly registered entities to rely on SEC interpretations of the rules, which are in general well-known to the industry and essential to effective enforcement of the rules. The Department is working with the other regulatory agencies to encourage them to adopt the modifications proposed in these regulations so that in time there will be only one applicable set of regulations for each entity.

In the area of financial responsibility, however, the Department determined that the capital adequacy model designed by the FRBNY,[10] which effectively recognizes certain types of risks as well as risk-mitigating hedging techniques is, with modifications, better suited for brokers and dealers solely in government securities, other exempted securities, and CFTC-regulated commodity interests than SEC Rule 15c3–1.[11] The Department is working with the SEC toward development of a uniform rule that would allow the Treasury to accept compliance with Rule 15c3–1 by presently unregulated government securities brokers and dealers as compliance with the Treasury rule.

Regulations relating to CFTC-regulated entities. The Act requires that the SEC, in consultation with the CFTC, determine what government securities activities of a CFTC-registered entity are "incidental" to the futures business. A CFTC-registered entity conducting only "incidental" government securities activities will not be considered a government securities broker or dealer.[12] Entities whose activities go beyond the "incidental" are required to register with the SEC and to become a member of a self-regulatory organization as defined in the Act. The SEC is scheduled to publish soon a proposed regulation defining the term "incidental" with respect to CFTC-registered entities. Based on the information available to it, the Department believes that the SEC regulation effectively removes from regulation as government securities brokers or dealers a very large number of futures commission merchants ("FCM's") and other CFTC-registered entities who limit their activities in the cash government securities market to those that are incidental to their futures-related business.

During the development period for these proposed regulations, the Department received a number of informal requests to exercise its exemptive authority to exempt FCM's and other CFTC-registered entities who transact business in government securities from, in particular, the registration and financial responsibility requirements of the Act and related regulations. The Department recognizes the potential for duplicative regulation of entities already subject to substantial federal regulation. However, the Department has not included such exemptions in the proposed rules at this time because (i) we believe that the SEC proposed regulation will eliminate the problem for all but true government securities brokers and dealers; (ii) the statutory decision to treat the CFTC differently than the SEC and the financial institution regulatory agencies suggests that, at least with respect to registration, the Department has limited authority to allow CFTC registration to substitute for SEC registration; and (iii) we have not yet been able to gather sufficient information concerning the activities, capital positions, unregulated government securities accounts for customers etc., of entities whose government securities business goes beyond the "incidental" to determine whether exemptions would be consistent with the protection of investors and the public interest.

The Department specifically invites comments concerning modified requirements for FCM's and other

[9] Currently unregulated persons (including subsidiaries and affiliates of financial institutions) and registered brokers or dealers uncertain of their status as government securities brokers or dealers are urged to contact the Office of the Chief Counsel, Division of Market Regulation, Mail Stop 5–1, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549, as soon as possible. Financial institutions uncertain of their status should contact their appropriate regulatory agency.

[10] Federal Reserve Bank of New York, Capital Adequacy Guideline for U.S. Government Securities Dealers, May 20, 1985.

[11] Section 240.15c3–1. Unless otherwise stated, all references to existing rules of the Commission are to sections of Title 17 of the Code of Federal Regulations.

[12] Sections 3(a)(43)(B) (government securities brokers), 3(a)(44)(D) (government securities dealers) (15 U.S.C. 78c(a)(43)(B), (a)(44)(D)).

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CFTC-registered entities that are government securities brokers or dealers. In particular, we request consideration, by those entities who would not be removed from regulation through the SEC definitional rule, of (i) a financial responsibility requirement under which such an entity would be required to meet the higher of the CFTC's capital rule or the rule proposed in § 402.2; [13] (ii) a financial responsibility requirement under which such an entity would be required to meet the higher of the CFTC's capital rule or the SEC's capital rule; and (iii) a possession or control rule that would exempt from the rules proposed in part 403 securities that were in customer segregation accounts pursuant to 17 CFR 1.20–1.30. In commenting on these and other suggestions, commenters should consider whether the suggested rules would accurately and appropriately reflect risk and adequately protect investors.

II. Section-by-Section Analysis of Proposed Regulations

A. Part 400. Rules of General Application

1. *Section 400.1.* This section notes the requirements of the Act, as amended by the GSA, for regulation, registration and notice of status. It sets forth the principle that, unless otherwise specifically provided, all regulations apply to all government securities brokers and dealers, both those who must register and those who must give notice of their status as government securities brokers or dealers to the appropriate regulatory agency. Exemptions are provided in individual parts or sections of the regulations for registered brokers or dealers and financial institutions where applicable.

The section also states the registration and notice requirements of the Act and cross-references the appropriate regulations providing for registration and notice.

2. *Section 400.2.* This section specifies the Office of the Deputy Assistant Secretary (Federal Finance) as the office within Treasury responsible for the regulations, and directs correspondence, including correspondence concerning exemptions, to that office. The section notes that the appropriate regulatory agencies (the SEC and the financial institution supervisory agencies) and the self-regulatory organizations are responsible for enforcement of the regulations.

3. *Section 400.3.* This section sets out definitions that are applicable, except where otherwise explicitly provided, throughout the proposed regulations. Definitions contained in SEC rules referenced in the proposed regulations are applicable unless otherwise explicitly provided. These definitions are also used in this preamble.

(a) "Act" means the Securities Exchange Act of 1934, including amendments enacted as part of the GSA.

(b) "Appropriate regulatory agency" has the meaning set out in Section 3(a)(34)(G) of the Act, and in general means the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board for commercial banks and thrift institutions that are federally chartered or insured and certain foreign and District of Columbia financial institutions, and the SEC for all others. In particular, the appropriate regulatory agency for state chartered non-federally insured commercial banks and thrift institutions and for credit unions is the SEC.

(c) "Commission" or "SEC" means the Securities and Exchange Commission.

(d) "Designated examining authority" and "Examining Authority" mean, for a registered government securities broker or dealer that belongs to only one self-regulatory organization, that organization, and for a registered government securities broker or dealer that belongs to more than one self-regulatory organization, the one designated by the Commission under section 17(d) of the Act.

(e) "Financial institution" has the meaning set out in section 3(a)(46) of the Act. It includes both commercial banks and thrift institutions, both federal and state chartered. It does not include credit unions or subsidiaries or affiliates of banks and thrifts.

(f) "Government securities broker" has the meaning set out in section 3(a)(43) of the Act. As used in the proposed regulations, the term (together with the term "government securities dealer") represents the broadest classification of persons subject to the regulations. With the exceptions noted in section 3(a)(43) of the Act, the term includes registered broker-dealers and financial institutions that effect transactions in government securities for the account of others as well as registered government securities brokers.

(g) "Government securities dealer" has the meaning set out in section 3(a)(44) of the Act. As used in the proposed regulations, the term (together with the term "government securities broker") represents the broadest classification of persons subject to the regulations. With the exceptions noted in section 3(a)(44) of the Act, the term includes registered broker-dealers and financial institutions that are engaged in the business of buying and selling government securities for their own account, through a broker or otherwise, as well as registered government securities dealers.

(h) "Government securities" has the meaning set out in section 3(a)(42) of the Act. It includes securities issued or guaranteed by the Treasury or by federal agencies (including the Government National Mortgage Association), and also securities (including equity securities) issued or guaranteed by certain government-related corporations such as the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Student Loan Marketing Association and the Farm Credit System. (Readers are cautioned this list is not exclusive and that new organizations may be formed whose securities would also be covered by this definition.) The term also includes certain off-exchange options, puts, calls, straddles and similar privileges on other types of government securities. In general, securities that were "exempted securities" under section 3(a)(12) of the Act (prior to enactment of the GSA) because of their connection with the United States, are "government securities."

(i) "Registered broker or dealer" means a firm that is registered with the SEC under sections 15 or 15B of the Act and that is also a government securities broker or dealer.

(j) "Registered government securities broker or dealer" means a firm that effects transactions solely in government securities, other exempted securities (not including municipal securities) and/or futures and other commodity interests regulated by the CFTC, and is registered pursuant to section 15C(a)(1)(A) of the Act. This term does not include registered brokers or dealers or financial institutions.

(k) "Secretary" means the Secretary of the Treasury.

(l) "Treasury" or "Department" means the Department of the Treasury.

4. *Section 400.4.* This section requires every officer, director or manager of a government securities broker or dealer that is a financial institution not exempt from these regulations under Part 401 of the proposed regulations, who is directly engaged [14] in the management, supervision or performance of any activities of the financial institution as a government securities broker or dealer, as well as salespersons and traders (together "associated persons"), to file with the financial institution and keep current a disclosure form. The form will enable the financial institution and the appropriate regulatory agencies to determine whether such person is subject to a statutory disqualification as provided in section 15C(c) of the Act. Persons who already have on file with their financial institution a current Form U–4 (which is required for persons associated with a registered broker or dealer) or a Form MSD–4 (which is required for associated persons of a bank municipal securities dealer) need not file a new form.

The rule requires the financial institution to verify the information on the form and to file the form with the appropriate regulatory agency. Initially this procedure will be part of the notification required by section 15C(a)(1)(B)(i) of the Act. The requirements of this section do not apply to persons associated with financial institutions that are exempt from registration as provided in Part 401 of the proposed regulations. This section also requires the financial institution to file with its appropriate regulatory agency a notification of the termination of association with the government securities business of the financial institution of an associated person.

The requirements in section 400.4 mirror existing requirements concerning bank municipal securities dealers and are designed to increase the integrity of the entire industry by reducing the ability of persons subject to statutory disqualification to become affiliated with other government securities brokers or dealers, including financial institutions. The Department anticipates that the self-regulatory organizations will impose similar requirements on persons associated with registered government securities brokers and dealers and on registered government securities brokers and dealers.[15] By virtue of the exemption for those who already have filed the U–4, U–5, MSD–4 or MSD–5 forms, and the simplicity of the forms (no information is required relating to professional qualifications), the Department anticipates that the burden imposed by this section will be minimal.

5. *Section 400.5.* This section requires registered government securities brokers and dealers and registered brokers or dealers who are also government securities brokers or dealers to update and keep current with the SEC information on their registration application and notice forms, respectively. Section 400.5 also requires similar updating of notices filed by financial institutions that are government securities brokers and dealers.

6. *Section 400.6.* This section requires government securities brokers and dealers that are financial institutions (and that are not exempt from notice requirements pursuant to Part 401 of the proposed regulations) to file with their appropriate regulatory agency a notice of termination of such status. The notice is required by section 15C(a)(1)(B)(i) of the Act and is similar to the withdrawal requirements imposed on registered brokers and dealers and on bank municipal securities dealers. The withdrawal would become effective 60 days after filing, unless disciplinary action concerning the entity filing the notice had started prior to the date on which the notice was filed. Enforcement actions may, of course, be instituted after that time arising out of occurrences prior to the expiration of the 60 day period.

B. Part 401. Exemptions

Under section 15C(a)(4) of the Act, the Secretary may exempt any government securities broker, government securities dealer or class of such brokers and dealers from any provision of section 15C (a), (b) and (d) of the Act or the regulations issued under those subsections. Any exemption must be consistent with public interest, the protection of investors and the purposes of the GSA. Commenters are asked to consider whether exemptions other than those proposed are necessary or desirable and to provide information responding to the statutory standards for exemption. In particular, comments are particularly requested on whether an exemption for entities whose government securities business is limited to brokering repurchase transactions (a group the Department believes is coincident with brokers of federal funds) should be exempt from regulation as government securities brokers so long as they operate on a fully disclosed basis to both principals in all such transactions.

1. *Section 401.1.* There are thousands of organizations that handle transactions in United States Savings Bonds ("savings bonds"), whether in their capacities as qualified issuing or paying agents or in providing services to customers or employees by forwarding requested transactions to qualified issuing or paying agents or the Treasury. For many of these organizations, savings bond transactions are the only type of government securities transactions they handle. However, it is possible that under a broad interpretation of the definition of government securities broker in section 3(a)(43) of the Act, some or all of these organizations might be considered government securities brokers. The Treasury is therefore proposing, pursuant to its exemptive authority, that if an organization's activities are limited to savings bond transactions and any other activity exempt as provided in Part 401, and it would otherwise be considered a government securities broker, such organization shall be exempt from the requirements of sections 15C (a), (b) and (d) of the Act and the regulations thereunder.

Savings bonds offer terms and conditions that protect investors from risk. Savings bonds are not transferable and therefore are not eligible for trading or for pledging as collateral. Additionally, most savings bond transactions are handled by organizations that have qualified to act as savings bond issuing and paying agents pursuant to 31 CFR Part 317 and 31 CFR Part 321. These agents are governed by those regulations and by the terms and conditions of the application-agreements executed by them at the time of qualification. The remaining organizations that handle savings bond transactions are not qualified savings bond agents but may, as a service to customers or to employees participating in a payroll savings plan, forward applications or other savings bond transactions to an authorized issuing or paying agent or the Treasury. In the case of organizations that only forward savings bond transactions, the Treasury has determined that sufficient customer protection exists because of the limited involvement of these organizations and the terms and conditions of the bonds themselves.

[13] An FCM that is also a broker-dealer is currently required to meet the higher of the CFTC or SEC capital adequacy rule. 17 CFR 1.17. If such an entity were also a government securities broker or dealer, this proposal would not require consideration by the entity of the § 402.2 rule.

[14] Directors and senior officers of the financial institution who may from time to time set broad policy guidelines affecting the financial institution as a whole that are not directly related to the conduct of the financial institution's government securities business are not considered to be "directly engaged" in the government securities business of the financial institution.

[15] With respect to registered government securities brokers and dealers who are currently registered with the CFTC, the Department is hopeful that it will be possible for the self-regulatory organizations under the Act and the self-regulatory organizations for the futures industry to work together to minimize the paperwork burden attendant on registration.

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It should be noted that the recordkeeping requirements of Part 404 do not apply to the savings bond transactions of any government securities broker or dealer. The Treasury does not consider that any other parts of these regulations are applicable to savings bond transactions.

2. *Section 401.2.* This section provides an exemption for depository institutions that submit tenders or subscriptions for purchase on original issue of U.S. Treasury securities for the account of customers. A depository institution engaging only in such transactions and other activities exempted by Part 401 of the proposed regulations, would be exempt from the provisions of section 15C (a), (b), and (d) of the Act, and the regulations thereunder.

Under the terms of Treasury securities auctions, commercial banks and certain other depository institutions may submit a tender for the account of a customer, provided the customer is identified as the purchaser on the tender form. Generally, payment for the securities also will be handled through the institution submitting the tender. Furthermore, the securities purchased may continue to be held by the customer through that same institution. The Department has concluded that where a depository institution submits tenders for customers, facilitates payment, and perhaps maintains the purchased securities in a purely custodial capacity, the customer will be adequately protected so long as the depository institution complies with the regulations for custodial depository institutions set forth in Part 450 of the proposed regulations.

Therefore, the Department proposes to exempt depository institutions whose only involvement in government securities transactions is the submission of tenders for customers and any other activity exempt from the regulations as provided in Part 401. The exemption is conditioned on the depository institution's agreement to comply with Part 450 of the proposed regulations concerning possession or control of government securities held for customers, thereby obviating a technical legal argument that a financial institution that is a government securities broker or dealer but is exempt under this part is not required to comply with the regulations under Title II of the GSA. The exemption of this section is intended to apply only as long as the depository institution submits tenders and facilitates payment solely as agent for the identified customer. It would not apply to a depository institution that purchases securities itself on original issue and resells them to customers.

3. *Sections 401.3 and 401.4.* These sections exempt from Sections 15C (a) (b) and (d) of the Act and the regulations thereunder, financial institutions that engage in certain limited types of transactions in government securities which, under traditional interpretations of the definitions of "broker" or "dealer," might qualify them as government securities brokers or dealers. For the reasons set forth below, the Department has determined that, for these types of transactions, regulation of a financial institution as a government securities broker or dealer is not necessary for the Protection of investors or to achieve the other purposes of the GSA as long as the institution complies with Part 450 of these regulations relating to custody of government securities held for customers.

Throughout the consideration of the GSA Congress cited estimates of the total number of secondary government securities dealers in the range of 200 to 500 firms, including registered brokers and dealers.[15] The Department has been informed by the federal financial institution regulatory agencies that a very large percentage of the financial institutions in the country engage in the types of transactions involving government securities that are described below, primarily on a customer accommodation basis. Without an exemption for these activities, the total number of government securities brokers and dealers subject to registration or notice requirements would reach well into the thousands. The Department believes this would not be consistent with the intent of Congress.

(a) Section 401.3, relating to brokerage activities

Although the government securities market is primarily a dealer market, many financial institutions effect brokerage transactions as an accommodation for customers. Sections 401.1 and 401.2 of these regulations would exempt financial institutions whose brokerage activities are confined to transactions in United States savings bonds or submission of tenders for the account of customers in auctions for U.S. Treasury securities. The Department believes that financial institutions, including federal credit unions,[17] effecting a modest number of other brokerage transactions or effecting such transactions on a fully disclosed basis are, through existing supervision and the requirements of Part 450 of these regulations, adequately regulated to protect investors and do not need to be regulated as government securities brokers. Financial institutions engaged in more than 500 brokerage transactions in government securities per year (other than those involving savings bonds or purchases of U.S. Treasury securities on original issue for the account of customers, but including networking transactions), unless all such transactions not exempt under §§ 401.1 or 401.2 are carried on through a "networking" arrangement involving a government securities broker or dealer not exempt under this Part, are not exempt from regulation as a government securities broker.

(b) Section 401.4, relating to dealer activities limited to repurchase transactions and a limited number of reverse repurchase transactions.

A significant number of financial institutions engage in repurchase transactions in which securities held by the Institution are sold, subject to repurchase, to entities other than registered brokers or dealers or government securities brokers or dealers. Financial institutions engage in such transactions to increase yields on their investment portfolios and in so doing to provide customers with a secured, more flexible alternative to certificates of deposit. The transactions are subject to the uniform supervisory policy on repurchase agreements adopted by all the federal financial supervisory agencies.[16] Although that policy is written mainly to protect financial institutions engaging in repurchase transactions as buyers rather than sellers of securities, the policy states, among other things, that banks should obtain written agreements, conforming confirmations identifying specific securities and appropriate margin, and should mark to market term agreements. In addition, of course, the financial institutions engaging in these transactions are subject to governmental

[15] See, e.g., S. Rep. No. 99–426, 99th Cong., 2d Sess. 4 & n.5 (1986); H.R. Rep. No. 99–258, 99th Cong., 1st Sess. 13–14 & n.12 (1985).

[17] Federal credit unions have extremely limited brokerage powers, which are further restricted by their supervisory agency, the National Credit Union Administration ("NCUA"), to acting only on a network basis. See NCUA Interpretive Ruling and Policy Statement 85–1 (Nov. 14, 1985). The Department invites comments on whether similar supervisory safeguards are in place for state-chartered credit unions.

[16] See Office of the Comptroller of the Currency, BC 210, Oct. 31, 1983; Federal Deposit Insurance Corporation, BL–43–85, Nov. 1, 1985; 50 FR 46764 (Dec. 4, 1985, Board of Governors of the Federal Reserve System); 50 FR 44640 (Dec. 6, 1985, Federal Home Loan Bank Board proposed rule).

supervision. Many financial institutions also do a small number of reverse repurchase transactions as an accommodation to customers.

Under traditional interpretations of the term "dealer," such transactions, if regarded as sales and purchases, could make the financial institution a dealer. For the reasons stated above, the Department believes such treatment is inappropriate and unnecessary in the public interest, and therefore is proposing the exemption in this section for financial institutions whose only government securities dealer activities are repurchase transactions and a limited number of reverse repurchase transactions. However, since the financial institution could be regarded as a government securities dealer, although an exempt one, the exemption is available only on the condition that the financial institution agree to comply with the custody requirements proposed as Part 450 of these regulations, which are applicable to financial institutions that are not government securities brokers or dealers. This section also exempts, as fully supervised, financial institutions whose only government securities dealer activities are in a fiduciary capacity, an exemption provided to banks in Section 3(a)(44) of the Act.

A financial institution engaging in more traditional dealer activities, such as purchasing or selling other government securities, as principal, from or to customers, participating in a selling group or underwriting government securities, carrying a dealer inventory and quoting a market in government securities, advertising itself as a government securities dealer, or otherwise holding itself out as a government securities dealer, would not be covered by this exemption.

4. *Section 401.5.* This section exempts corporate credit unions that are generally subject to examination by the National Credit Union Administration ("NCUA") from sections 15C (a), (b), and (d) of the Act and the regulations thereunder if their only government securities dealer activities are the purchase or sale, subject to resale or repurchase, of government securities to other such credit unions and other activities exempted by Part 401.

Corporate credit unions, whose members are credit unions composed of natural persons, provide a valuable service to such members and other natural person credit unions by providing secured liquidity through repurchase agreements involving government securities. The corporate credit union's sales and purchases of securities subject to repurchase and resale might constitute government securities dealer activities under traditional interpretations of the term "dealer." [19] However, both sides to the transaction are subject to federal supervision,[20] and the Department has concluded that the additional burden that would be placed on corporate credit unions whose transactions are so limited is unnecessary for the protection of the natural person credit union investors.

The exemption is available only on the condition that the credit union agrees to comply with the terms of Part 450 of the regulations, relating to custody of government securities by depository institutions, including credit unions.

C. Part 402. Financial Responsibility

The capital adequacy rule of these proposed regulations effectively would apply only to currently unregulated government securities brokers and dealers. The general rule, based on the capital adequacy guideline recommended by the FRBNY,[21] is that a government securities broker's or dealer's liquid capital shall equal or exceed 120 percent of total haircuts, the measure of risk of a government securities broker's or dealer's securities holdings and related financings.

1. *Section 402.1.* The section of the proposed rule would in effect exempt government securities brokers and dealers that are directly subject to the capital requirements of another appropriate regulatory agency from the requirements of this rule. Consequently, government securities brokers and dealers which are financial institutions or registered brokers or dealers are not subject to the capital requirements of this rule if they are subject to the capital requirements contained in the other appropriate federal regulatory framework. This exemption avoids the imposition on adequately regulated entities of potentially conflicting and unduly burdensome regulations in the financial responsibility area. It is noted, however, that the exemption is not available to subsidiaries or affiliates of financial institutions or of registered brokers or dealers, which are not necessarily subject to independent, overlapping capital requirements and where recourse to the parent would not necessarily be available.

Although the Department believes that SEC Rule 15c3–1 [22] does not provide as accurate an assessment of risk for firms that transact business in government securities (alone or in combination with exempted securities and/or CFTC-related commodity interests) as the FRBNY guideline methodology, experience has shown it to be appropriate for entities with a general securities business. In making this assessment, the Department assumes that the SEC will adopt many of its recently proposed modifications to Rule 15c3–1 concerning repurchase and reverse repurchase agreement deficits.[23]

Banks and bank holding companies that are subject to the supervision of the Federal Reserve Board, Comptroller of the Currency, and Federal Deposit Insurance Corporation are, in general, required to maintain a ratio of primary capital to total assets of 5.5 percent and a minimum ratio of total capital to total assets of 6.0 percent.[24] Thrift institutions insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation are also subject to minimum net-worth requirements.[25]

It is the understanding of the Department that the bank capital requirements, which are designed for other purposes, when applied to a normal mix of government securities dealer activities, would be significantly higher than those proposed to be required of registered government securities brokers and dealers. Recently, the three bank regulatory agencies and the Bank of England published for comment a risk-based capital framework.[26] No specific risk-based capital ratio has been proposed at the present time, however, and there may also be some modifications to the risk-based capital structure. Accordingly, it is too early to make a judgment as to the effect of the new proposed risk-based capital requirements on a government securities dealer operation. The Department will monitor this situation

[19] The natural person credit union counterparty in this situation is an investor and is not a government securities dealer.

[20] Although some corporate credit unions are neither federally chartered nor federally insured, all existing corporate credit unions are members of the National Credit Union Administration Central Liquidity Facility and are subject to the NCUA's authority to prescribe certain rules and regulations. 12 U.S.C. 1795f(b)(3). In practice, the NCUA examines all corporate credit unions yearly.

[21] The Federal Reserve Bank of New York, Capital Adequacy Guideline for U.S. Government Securities Dealers (May 20, 1985).

[22] Section 240.15c3–1.

[23] Exchange Act Release No. 34–23602, 51 FR 32658 (Sept. 15, 1986).

[24] See 12 CFR Part 225 Appendix A (Board of Governors of Federal Reserve System); 12 CFR 3.6 (Comptroller of the Currency); 12 CFR 325.3 (Federal Deposit Insurance Corporation).

[25] See 12 CFR 563.13.

[26] See news release of the Comptroller of the Currency, Federal Deposit Insurance Corporation and Federal Reserve Board dated January 8, 1988.

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and will continue to evaluate the financial institution exemption in the light of any changed financial institution capital requirements.

Although it is unclear whether the thrift institution capital requirements would also exceed those required under this part for a thrift institution (and not a subsidiary or affiliate) that was a government securities broker or dealer, the Department believes that few, if any, thrift institutions will not be exempt under Part 401. Since all financial institutions are closely supervised and their capital levels receive the close attention of their supervisory agencies, an exemption from the capital requirements being proposed in these regulations is believed warranted. The Department specifically requests comments with respect to the thrift institution exemption, and particularly requests factual information concerning thrift institutions that believe that, under the proposed regulations, they are government securities brokers or dealers not exempt under Part 401.

Government securities brokers that come within the definition of government securities interdealer brokers are allowed to elect to follow the requirements of a provision similar to the municipal securities broker's broker rule of SEC Rule 15c3–1 [27] rather than the capital rule of § 402.2 of the proposed regulations. The Department is considering whether this or another special rule should apply to interdealer brokers who also serve customers other than dealers, and welcomes comments and suggestions on this point.

The capital rule will be effective July 25, 1987, except that, for a three month period, newly registered government securities brokers and dealers will be required only to have and maintain liquid capital (before deduction of any haircuts) of $50,000, except that the minimum for introducing brokers will be $5,000. This delay is necessary to give new registrants an opportunity to put in place the systems needed for the haircut calculations required by the rule while at the same time requiring such firms to have some cushion of capital to protect investors.

2. *Section 402.2.* While many of the basic concepts underlying the proposed rule are the same as those contained in the SEC's Rule 15c3–1, the proposed rule is tailored for participants in the government securities market. The basic standard set out in the proposed rule is that liquid capital, defined to be equal to the SEC concept of tentative net capital with one modification for futures contracts, must exceed measured risk (total haircuts) by at least 20 percent.

In comparison to Rule 15c3–1, the proposed rule eliminates the need to determine aggregate indebtedness. However, the Department recognizes that some government securities dealers and brokers may find the haircut calculations of the proposed rule complex. Consideration was given to allowing registered government securities brokers and dealers the option of meeting the requirements of Rule 15c3–1 rather than the requirements contained in the proposed rule.[28] For the reasons stated below, the Department believes that option is inappropriate for entities transacting business solely in government and other exempted securities.

For firms without a broad range of diversified activities but rather concentrated in the government securities market, the haircut calculation of the proposed rule is a more accurate measure of risk than the haircut calculations of the SEC rule.

The ratio requirement of the proposed rule, liquid capital to risk, is a simpler concept and more appropriate to these firms.

The haircut factors of the proposed rule are based on recent market conditions and will be revised as market conditions change. This not only holds for the factors applying to net positions, but also for the factors that permit a reduction in measured risk for offsetting positions in the same maturity sector or across different sectors. Consequently, the haircut factors are proposed to be a more current risk measurement than the SEC factors, which are not designed to be updated with any frequency.

The proposed haircut methodology also provides a more accurate system for recognizing the reduced risk of hedged positions than the SEC methodology, which in some cases is more generous and in other cases less generous than the proposed rule. Also, the inclusion of financings, mainly repurchase and reverse repurchase agreements, into the total haircut calculation in the proposed rule is a recognition of the importance of a major financing technique in the market and a recognition that term repurchase and reverse repurchase agreements can serve to offset the risk in the position being financed.

Linking capital requirements to aggregate indebtedness or aggregate debit items as computed in accordance with the Formula for Determination of Reserve Requirements for Brokers and Dealers (Exhibit A to Rule 15c3–3) [29] may not be appropriate in all cases for specialized firms. The activities of government securities brokers and dealers may generate very little aggregate indebtedness or aggregate debit items. Consequently, the Department believes that the direct link between liquid capital and measured risk of the proposed rule serves better to focus a government securities broker's or dealer's attention on the amount of liquid capital needed in order to undertake prudentially a given level of risk.

Comparison to the FRBNY Guideline. The proposed rule differs in two principal ways, which are related, from the FRBNY's capital adequacy guideline. The definition of liquid capital has been modified, and one category of haircut has been eliminated.

The FRBNY defined liquid capital to be net capital before haircuts on securities positions (line 3640 of SEC Form X–17A–5 or FOCUS Report) with two adjustments—omission of proprietary charges on commodities (line 3600) and the deduction for reverse repurchase agreement deficits (included in line 3612, "Other Charges and/or Deductions"). These adjustments were required because the FRBNY included haircuts on futures and forward positions and haircuts for credit exposure to counterparties. The proposed rule retains the omission of proprietary charges on commodities, since, as in the FRBNY methodology, haircuts on futures and forward positions are included in the calculation of total haircuts.

The proposed rule, however, does not omit the deduction for reverse repurchase agreement deficits because, unlike the FRBNY guideline, it does not include a "customer exposure haircut." Rather, the Department decided to retain the SEC capital charge for unsecured receivables.[30] In some cases, the FRBNY included both the SEC capital charge and a haircut for unsecured receivables. In order to keep the concept of liquid capital close to the SEC concept of tentative net capital, the

[27] Section 240.15c3–1(a)(8).

[28] Firms that wish to follow Rule 15c3–1 in effect have that option by registering with the SEC as a broker-dealer under Section 15.

[29] Section 240.15c3–3a. Under SEC rules, aggregate indebtedness may not be greater than 15 times the amount of "net capital," the determination of which includes all securities haircuts and other deductions. For broker-dealers electing the alternative net capital requirement of Rule 15c3–1, net capital must be the greater of $1, 0,000 or 2 percent of aggregate debit items in the Reserve Formula. Electing the alternative has the effect of increasing the amount of funds a broker-dealer is required to maintain in a "Special Reserve Account for the Exclusive Benefit of Customers."

[30] Section 240.15c3–1(c)(iv)(B).

choice was made to retain all SEC capital charges and deductions used to determine tentative net capital, except for the charge related to "commodities." To avoid inclusion in the proposed rule of both haircuts and capital charges on unsecured receivables, the customer exposure haircut of the guideline was eliminated. Commenters are invited to address the decision to retain the SEC deductions for unsecured receivables and reverse repurchase agreement deficits and consequently not to include the customer exposure haircut of the FRBNY guideline. The proposed rule also clarifies that the deduction for aged fail to deliver contracts is based on the haircut factors of this proposed rule.

SEC Repurchase Agreement Proposal. The recent SEC proposals with respect to repurchase agreements and reverse repurchase agreements [31] have implications for this proposed capital adequacy rule that commenters are invited to address. Specifically, are the proposed increase in the capital charge for reverse repurchase agreement deficits and the new capital charge for repurchase agreement deficits appropriate and should they be applied to government securities brokers and dealers subject to the proposed rule? Also, is it appropriate to include in this capital rule (in a fashion similar to the SEC proposal) an increase in required capital when a government securities dealer receives margin in connection with a reverse repurchase agreement in excess of 105 percent of the contract value of the agreement, or should provisions relating to such "excess" margin he included in § 403.4 of the proposed rule, relating to possession or control of customer securities?

Calculation of Risk Level. The proposed rule quantifies the risk to the portfolios of government securities brokers and dealers according to a series of haircut factors. The two major types of risk that are measured are credit risk and market risk. The sum of the credit risk haircut and the market risk haircut equals total haircuts or measured risk. Total haircuts are then compared to liquid capital to determine capital adequacy. Appendix A to this preamble is a detailed example of the calculation of capital adequacy under the proposed rule.

(a) *Credit Risk.* The credit risk haircut [32] is the sum of two haircuts used to quantify credit risk—a concentration of credit haircut and a credit volatility haircut. The concentration of credit haircut is equal to the product of a concentration of credit haircut factor of 25 percent and the amount by which the net credit exposure to a single counterparty is in excess of 15 percent of the government security broker's or dealer's liquid capital. Net credit exposure is the dollar amount of funds or securities at risk to the government securities broker or dealer in the event the counterparty defaults less the dollar amount at risk to the counterparty in the event the government securities broker or dealer were to default. There is no concentration of credit haircut for exposure to the government securities broker or dealer's principal clearing bank(s) or principal clearing broker(s).

The credit volatility haircut is assessed on high quality money market instruments which are not U.S. government or agency issues and mature in more than 45 days and futures, forwards and options thereon. A credit haircut volatility factor, set at 0.15 percent (0.0015), is applied to the larger of the gross long position or gross short position in these instruments to calculate this credit volatility haircut.

(b) *Market Risk.* [33] Portfolios of government securities are subject to changes in value due to market fluctuations. This is termed market risk.

For instruments that meet the definition of "Treasury market risk instrument" in § 402.2(e), a Treasury market risk haircut is calculated. These dollar-denominated instruments are most government securities, zero-coupon receipts or certificates based on marketable Treasury notes or bonds, short-term certificates of deposit, bankers acceptances, and high quality short-term commercial paper. Futures, forwards and options on the above instruments and on time deposits whose changes in yield are closely correlated with that of certificates of deposit are included in the definition.[34] Options on futures on the debt instruments listed are also Treasury market risk instruments. Excluded from the definition are mortgage-backed government securities that do not pass through to each security holder on a pro rata basis a distribution based on the monthly payments and prepayments of principal and interest on the underlying pool of mortgage collateral less fees and expenses. Consequently, government securities that are collateralized mortgage obligations, real estate mortgage investment conduits, and stripped mortgage in obligations are not included in the Treasury market risk haircut calculation.[35]

For positions in instruments and inventory not described above, such as most Eurobonds and foreign currency, the SEC haircut factors and methodology are used. The calculation is called the "other securities haircut." The sum of the Treasury market risk haircut and the other securities haircut is the market risk haircut.

(i) *Treasury Market Risk Haircut.* [36]

(A) *Introduction.* The Treasury market risk haircut methodology of the proposed rule quantifies risk by placing all positions into one of twelve categories and applying three different types of haircut factors—(1) net position haircut factors, (2) offset haircut factors, and (3) hedging disallowance haircut factors—to positions grouped in the categories. Net position haircut factors reflect the price volatility of debt instruments; offset haircut factors, the imperfection inherent in any hedge within a category and the range of price volatility in that category; and hedging disallowance haircut factors, the risk inherent in hedges across categories. In addition, the imperfection of hedging with futures and options is captured with a single futures and options offset factor of 20 percent.

Section 402.2(f)(1) of the proposed rule defines the twelve categories in which Treasury market risk instruments are placed in order to calculate the Treasury market risk haircut. The first ten categories are defined in terms of periods of time, either to maturity of the instrument or to the next scheduled interest rate adjustment in the case of those instruments whose rates change periodically. The last two of these ten categories are for zero-coupon instruments with terms to maturity of ten years or more. Shorter-term zero-coupon instruments are included in the first eight categories according to different time period criteria than for conventional coupon securities. The reason for this is the greater price volatility of zero-coupon instruments than conventional coupon instruments of the same maturity. The final two categories are for fixed-rate and adjustable-rate mortgage-backed securities that are Treasury market risk instruments. These categories are the same as those in the FRBNY guideline.

Section 402.2(f)(2) shows the schedule of net position and offset haircut factors for the twelve categories. Section

[31] Exchange Act Release No. 34–23602, 51 FR 32656 (Sept. 15, 1986).

[32] See § 402.2(g)(1) of the proposed rule.

[33] The market risk haircut calculation is found in Appendix A to the proposed rule, § 402.2a.

[34] In particular, Eurodollar futures are included in the definition of Treasury market risk instrument.

[35] These securities are included in the total haircuts calculation using SEC haircut factors. § 402.2a(b) of the proposed rule.

[36] See § 402.2a(a) of the proposed rule.

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402.2(f)(3) shows the category pair hedging disallowance haircut factors and indicates those category pairs for which a reduction in total haircuts is allowed through recognition of the reduction in risk due to cross category hedging.[37]

Schedules A through E, similar to those in the guideline, are presented in Appendix A to the rule and can be used to calculate haircuts and the liquid capital to total haircut ratio.[38]

The haircut factors have been updated to reflect recent market conditions, while retaining the same twelve haircut categories as in the FRBNY guideline for security positions. The Department tentatively plans to review these haircut factors at six month intervals and plans to change them with appropriate notice if warranted by changed market conditions. Also, the mapping of zero-coupon instruments into the maturity categories may change. Commenters are invited to address this aspect of the proposal.

Commenters are also asked to address whether the calculation of risk with respect to options and futures is adequate. The proposed rule follows the FRBNY guideline in this area, but the Department recognizes that a more sophisticated treatment is possible. However, a better measure of risk in this area would substantially complicate the calculation for government securities brokers and dealers. This increased complexity does not appear to be commensurate with the resulting increase in the accuracy of the risk measurement.

(B) *Calculation of the Treasury Market Risk Haircut.*[39] The three haircut factors are used to calculate four different haircuts: the governments offset portion haircut, the futures and options offset haircut, the hedging disallowance haircut, and the residual net position haircut. The sum of these four haircuts is the dollar measure of market risk captured by the Treasury market risk haircut. In the process of calculating the haircuts, some interim haircuts must be calculated. These interim haircuts, unlike the final four haircuts used to determine the Treasury market risk haircut, may be positive or negative numbers. The final four haircuts are always positive or zero.

(*i*) *Net Immediate Position Interim Haircuts and Governments Offset Portion Haircut.*[40] The net immediate position interim haircuts, which are used in the determination of the residual net position haircut, and the governments offset portion haircut are calculated for each category by applying net position and offset haircut factors to immediate positions in Treasury market risk instruments and financings.

The gross long (gross short) immediate position for each category is the sum of the market values of each long (short) immediate position in Treasury market risk instruments that are placed in the category and the value of financings that provide securities (cash) to the government securities broker or dealer. Long and short immediate positions in Treasury market risk instruments are the net long or short position in such an instrument as of the trade date (as long as the time between trade date and settlement date is not longer than five business days or 30 calendar days in the case of mortgage-backed securities). Also, certain net long and short when-issued positions are included as long and short immediate positions in Treasury market risk instruments. With respect to these when-issued positions in Treasury notes and bonds, commenters are requested to address whether the rule should specifically set out a valuation methodology for such positions between announcement and auction date, i.e., before a coupon rate has been set on the Treasury note or bond, and to suggest an appropriate methodology if one is considered necessary.

Most financings, excluding subordinated debt, are included in the gross long and gross short immediate positions. The dominant forms of financing in the government market are repurchase agreements, which provide funds to government securities brokers and dealers, and reverse repurchase agreements, which provide securities. Securities lending and borrowing are included if such borrowing or lending is in effect secured by cash collateral. Financings are included in each category at contract value and according to the term to maturity or time to the next scheduled interest rate adjustment. The underlying securities are not relevant to the placement of the financing in a category. Reverse repurchase agreements and other arrangements to borrow securities against cash collateral are considered

[37] The net position haircut factors are based on the market risk implicit in price volatility as it relates to changes in yields. The sensitivity of prices to yield changes varies with the maturity of a security and the level of yields. Thus the grouping of securities, except for mortgage-backed securities, is related to maturity.

Yield volatility was measured by the observed week-to-week changes in yields, using a benchmark security in each category. Treasury's constant maturity yield series and a comparable series for zero-coupon instruments based on Treasury securities were employed for the first ten categories. Based on data for 1986, a yield change was derived for each category that would encompass approximately 99 percent of expected weekly yield changes. For mortgage-backed securities, volatility was measured directly from data on prices and compared with the price volatility of Treasury securities.

To measure price volatility in the non-mortgage-backed securities categories, benchmark securities were derived that generally correspond to the Treasury original-issue maturities. In the shortest category, there is no Treasury original-issue maturity, thus a 1-month constant maturity series was used. In the 1.5 to 3.5 year category, where there are two original-issue maturities, the data employed were the average of the 2-year and the 3-year data. In the 3.5 to 7.5 year category, where there are three original-issue maturities, the 5-year data were used. The data for the 30-year maturity were used for the 15–30 year category. Zero-coupon maturities were mapped into coupon categories of similar duration. A price for each hypothetical benchmark security was determined using average coupon data and average yield data for coupon instruments and average yield data for zero-coupon instruments for 1986. The price was then recomputed using the average yield plus the yield change that has been described above for each category. For each category, the difference in these two prices as a percent of the original (benchmark) price, when rounded is the net position haircut factor. When multiplied by the dollar net position, the result is the dollar value of potential risk exposure.

The offset haircut factors for each category are based on the difference in the price elasticity with respect to yield of the benchmark security and a hypothetical security with a maturity set at the beginning point of the maturity range of the category. This difference in elasticity is divided by the elasticity of the benchmark security, to which a constant of five percent (0.05) is added to account for changes in the shape of the yield curve and for securities that trade off the curve. The net position haircut factor multiplied by the number calculated above is the offset haircut factor for the category.

Hedging across maturity classes can reduce total risk. As the distance between maturity classes increases, however, the risk associated with the variability of the yield curve increases. Thus in the calculation of risk, the haircut on a net long position in one maturity category does not offset one for one the haircut for a net short position in another category. The hedging disallowance haircut factor determines what percent of the offset that is not permitted. The factors, which are found at § 402.2(f)(3) of the proposed rule, were derived by examining the correlations (R^2) between yield changes in different maturity categories using 1986 data. Hedging is permitted only if yield changes in the two categories are sufficiently well correlated. To compute the factor, the amount by which the movements in yields in one category do not correspond to movements in another category was determined. Another 10 percent was added to reflect the imperfections inherent in any hedge. The results were rounded and grouped into three classes determined by the percent of the hedge being disallowed.

[38] Schedules A through E are included in Appendix A to the proposed capital rule, § 402.2a, not necessarily as a required form that would be used in computing haircuts, but rather as a convenient reference in the computation of haircuts. The SEC or designated examining authority may, at its discretion, require adherence by the government securities broker or dealer to these schedules or to substantially similar forms. The Department requests comments on the utility of these forms and in particular invites suggestions for improving Schedule E.

[39] See Appendix A to this preamble for a detailed example of this calculation.

[40] See §§ 402.2a(a) (1), (2) of the proposed rule.

long positions, while repurchase agreements and other arrangements to borrow funds are considered short positions.

Gross long and gross short immediate positions, including financings, that are placed in Category A (under 45 days) will not contribute to the calculation of total haircuts, since there is no haircut on these positions.

The appropriate net position haircut factor is applied to the net position (gross long position minus gross short position) in each of the twelve categories. This determines the net immediate position interim haircut for each category. (In order to perform the hedging calculation between categories described below, the sign convention is that net immediate position interim haircuts on net long positions are positive, and on net short positions, negative.)

The offset haircut factor is applied to the smaller of the gross long or gross short immediate position in each category to create the governments offset portion haircut. Since offset haircuts cannot be netted, they are all positive. The sum of the offset haircuts for each category is the total governments offset portion haircut.

(*ii*) *Futures and Options Offset Haircut and Aggregate Interim Haircuts.*[41] The calculation of offset haircuts on futures and forward contracts is different from that on immediate positions. The haircuts on these contracts are calculated separately from the haircuts on immediate positions and then these futures and forward haircuts along with haircuts on options (also calculated separately as described below) are consolidated with the net immediate position interim haircuts on immediate positions by category. Schedule D can be used for this consolidation.

To calculate the futures and options offset haircut, interim haircuts on gross long and gross short futures and forward positions are determined by using the net position haircut factors that correspond to the term to maturity of the deliverable security at the time of the maturity of the futures or forward contract, which is henceforth referred to as the maturity of the underlying security. (In the case of a cash settlement contract, the term to maturity of the security or investment on which the cash settlement price is based would be used.) For example, the applicable haircut factor for futures contracts on three-month Treasury bills would be the net position haircut for Category B (45–135 days). However, for purposes of combining these haircuts with the net immediate position interim haircuts on immediate positions, the haircut is placed in the maturity category corresponding to the sum of the remaining time to maturity of the futures contract and the maturity of the underlying security. For example, the interim haircut on a three-month Treasury bill futures contract with four months remaining to delivery would be placed in Category C (4.5–9 months), though the haircut was determined by the net position haircut factor for Category B.

As a practical matter, this shifting of maturity categories will usually be relevant only to futures and forward contracts on short-term instruments. It will, of course, not be relevant to contracts on mortgage-backed securities.

The gross futures or forward interim haircut [42] is the product of the applicable haircut factor and the value of the futures or forward position which corresponds to the current market price of such contract. For example, a futures price of 95 on the 20-year bond futures contract on $100,000 par value would produce a value of $95,000. The interim haircuts on long futures and forwards are positive, and on short futures and forwards, negative.

Gross options interim haircuts [43] are the lesser of (1) the market value of the option or (2) the net immediate position interim haircut on the underlying cash instrument or gross futures interim haircut on the underlying futures contract. Gross options interim haircuts on purchased calls and sold puts are positive, while the interim haircuts on sold calls and purchased puts are negative. The gross options interim haircut is entered in the category in which the underlying instrument would be entered.

Net immediate position interim haircuts are combined with gross option and futures and forward interim haircuts in the same category (the categories in which these haircuts are placed is described above) to form positive and negative aggregate interim haircuts. In each category, the sum of positive interim haircuts equals the positive aggregate interim haircut, and the sum of negative interim haircuts equals the negative aggregate interim haircut. An offset haircut factor of 20 percent is applied to the smaller of the absolute values of the positive and negative aggregate interim haircuts in each category. The sum of these resulting offset haircuts for all the categories is the total futures and options offset haircut.

(*iii*) *Hedging Disallowance Haircuts.*[44] To calculate these haircuts, residual position interim haircuts must be determined for each category. If there are no futures and options positions, the residual position interim haircut for each category is equal to the net immediate position interim haircut described in the section on the government offset portion haircut. If there are futures or options positions, then the positive and negative aggregate interim haircuts for each category are summed to calculate the residual position interim haircut. This interim haircut may be a positive or negative number.

The risk reduction inherent in hedges between categories where the price volatility is reasonably well correlated is reflected by netting the residual net position interim haircuts in these category pairs. Each time two residual position interim haircuts are netted, a hedging disallowance is determined. The sum of these hedging disallowances is the total hedging disallowance haircut.

Section 402.2(f)(2) of the rule shows the category pairs where such netting is allowed and the applicable hedging disallowance haircut factor for these category pairs. Schedule E can be used to calculate the hedging disallowance haircut.

Hedging disallowance haircuts are first calculated for residual position interim haircuts in those category pairs where the hedging disallowance haircut factor is smallest. For each such pair, the hedging disallowance haircut factor is applied to the smaller of the absolute values of the two residual position interim haircuts. The resulting hedging disallowance haircuts are positive. The sum of the two residual position interim haircuts is called a net residual position interim haircut and may be positive or negative.

Net residual position interim haircuts may be paired with other residual position interim haircuts or net residual position interim haircuts. For this purpose, net residual position interim haircuts as described above are considered to be in the category of the larger in absolute value of the two interim haircuts that were netted to produce it and a net residual position interim haircut of zero is placed in the other category. Of course, as before, such netting is only permitted for certain

[41] See § 402.2a(a)(3) of the proposed rule.

[42] See §§ 402.2a(a)(3)(i)(A), 402.2a(a)(3)(ii)(A) of the proposed rule.

[43] See §§ 402.2a(a)(3)(i)(B), 402.2a(a)(3)(ii)(B) of the proposed rule.

[44] See § 402.2a(a)(4) of the proposed rule.

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category pairs. Note that each time two interim haircuts are netted, the total hedging disallowance haircut increases, while the total residual net position haircut, described below, decreases.

After all possible netting has been recognized for category pairs with the smallest hedging disallowance haircut factors, the same procedure is applied for haircuts in category pairs with higher hedging disallowance haircut factors. Once all possible (net) residual position interim haircuts have been netted, then all the hedging disallowance haircuts from each netting described above are summed to produce the total hedging disallowance haircut.

(iv) *Residual Net Position Haircut.*[46] The absolute values of the (net) residual position interim haircuts remaining for each category after the netting described above are summed to produce the total residual net position haircut.

(ii) *Other Securities Haircut.*[46] For inventory and securities that are not Treasury market risk instruments for the purpose of the Treasury market risk haircut calculation, SEC haircut factors are used. If a position in a Treasury market risk instrument is part of a hedge with an instrument that is not a Treasury market risk instrument, it is permissible to exclude this position from the Treasury market risk haircut calculation and include it in the other securities haircut calculation if such inclusion serves to reduce the other securities haircut. The value of the position taken out of the Treasury market risk haircut calculation and placed in the other securities calculation may not be larger than the position that is being offset in the SEC framework.

Debt-Equity Requirements and Prohibition on Withdrawal of Capital.[47] The proposed rule provides for minimum debt-equity requirements and prohibitions against withdrawal of capital for government securities brokers and dealers. These proposed requirements largely reflect the requirements of paragraphs (d) and (e) of SEC Rule 15c3–1.[48]

D. Part 403. Protection of Customer Securities and Balances

The Act requires the Secretary to promulgate rules to provide safeguards with respect to "the acceptance of custody and use of customers, securities, the carrying and use of customers, deposits or credit balances, and the transfer and control of government securities subject to repurchase agreements and in similar transactions."[49]

The SEC has promulgated a number of rules designed to protect customer funds and securities held by registered brokers and dealers. The primary customer protection rules are Rules 15c3–2 and 15c3–3.[50] Rule 15c3–3 requires that brokers and dealers immediately obtain possession or control of all fully paid customer securities as well as margin securities in excess of a certain specified amount. An important function of the possession or control requirement is to assure that such customer securities are maintained free of all liens and encumbrances. The rule also requires that customers' free credit balances and certain other amounts owing to customers are set aside by a broker or dealer in a special reserve account. In addition, Rule 15c3–2 provides that a broker or dealer may not use customer free credit balances unless the customer receives regular statements indicating the amount owed to the customer and notifying the customer that the funds are not segregated from funds of the broker or dealer and may be used in its business.

These rules have two primary purposes: to protect customer assets in the event a firm requires liquidation and to prevent unwarranted expansion of a firm's business through the use of customer funds and securities. The rules have been viewed by the SEC as an effective means of customer protection. In addition, many registered brokers and dealers that effect transactions in government securities have indicated that from their perspective the rules are generally both workable and effective.

The Department has examined these rules in detail and has concluded that the SEC rules, with mostly minor modifications, will be equally effective to provide protection of customer assets in the government securities market. As a result, the Department proposes, as a general matter, to require compliance with Rule 15c3–3 and certain related rules. Certain proposed modifications to these rules are described in the section-by-section analysis of Part 403. With the exception of certain proposed requirements for control of securities subject to hold-in-custody repurchase agreements, the modifications provide language necessary to apply the SEC rules in the context of the government securities market.

The Department notes that Rule 15c3–3 establishes certain time frames in which a broker or dealer must reduce securities to possession or control, such as the requirement in paragraph (d)(2) to take action on securities shown as "failed to receive" more than 30 calendar days.[51] Although responses to inquiries by the Department did not suggest any significant abuse, some of these time frames for buying in securities to cover shortfalls may be longer than necessary, particularly in the case of transactions in book-entry securities. Comments are requested on whether the time frames should be shortened with respect to some or all classes of securities. Commenters are also requested to suggest any other modifications to Rule 15c3–3 not included in the proposed rule that would be appropriate in the context of the government securities market.

The Department has also considered whether it would be appropriate for the rule governing buy-ins to cover securities shortfalls to provide that a broker or dealer may buy in a substitute security, such as Treasury bills of the appropriate market value. The Department has not adopted this approach because it appears that it could undermine the basic rationale of the rule and because it raises at least two problems. The most important one is that the bills or other substitute securities would need to he viewed as belonging to a specific customer whose securities position had not been covered in order to accomplish customer protection in the event of liquidation of the broker or dealer. The Department is not certain this could be accomplished in these regulations. Second, it would appear that a substitution should not be permitted unless it is explicitly permitted under the terms of the agreement between the dealer or broker and its customer. If a right of substitution is agreed to, then it would not appear necessary to include additional language in the rule.

The Department also invites comments on whether "reverse repurchase surplus"—the amount by which the market value of securities purchased by a broker or dealer in a repurchase transaction exceeds the funds transferred—should be considered a credit item in the reserve calculation under Exhibit A of Rule 15c3–3.[52] In its recent proposal concerning repurchase transactions,[53] the SEC noted that

[45] See § 402.2a(a)(5) of the proposed rule.
[46] See § 402.2a(b) of the proposed rule.
[47] See §§ 402.2 (h), (i) of the proposed rule.
[48] Section 240.15c3–1 (d), (e).
[49] Section 15C(b)(1)(a) [15 U.S.C. 78o–5(b)(1)(A)].
[50] Sections 240.15c3–2, .15c3–3.
[51] Section 240.15c3–3(d)(2).
[52] Section 240.15c3–3a.
[53] Exchange Act Release No. 34–23602, 51 FR 32658 (Sept. 15, 1986).

"some broker-dealers create leverage by obtaining the use of funds through matched repurchase agreements," and proposed an increase in required capital to take this into account. The Department notes that reverse repurchase surplus does not create additional risk to the broker or dealer, but that it creates a liability to a counterparty which might more appropriately be accounted for in the Rule 15c3–3 reserve. Comments are requested on which treatment, if any, is appropriate.

Finally, the Department notes that Part 403 deals with aspects of transactions in the government securities market that may also be affected by other proposed rules that have been published for comment by various agencies. The SEC's recently proposed amendments to rule 15c3–3 impose certain requirements with respect to securities that are the subject of repurchase transactions.[54] On November 28, 1986, the Treasury published for public comment a revised proposed rule governing the transfer of interest in Treasury book-entry securities.[55] Finally, on December 16, 1986, the Board of Governors of the Federal Reserve System published for comment a proposal to reduce payment system risk that arises in connection with, among other things, transactions in book-entry securities.[56] Commenters are asked to give particular consideration to the interaction of all these proposals with the proposed rules set forth below in both Part 403 and Part 450, which contain the rules applicable to custody of government securities held for customers by financial institutions.

1. *Section 403.1.* This section provides that registered brokers and dealers effecting transactions in government securities must comply with Rules 8c–1, 15c2–1, and 15c3–2 and with Rule 15c3–3 [57] as modified by § 403.4 below. The modifications (discussed in detail in connection with § 403.4) relate primarily to repurchase and reverse repurchase transactions, and are based on the SEC's recent proposal in this area, noted above. If amendments to the SEC rules substantially similar to those in the § 403.4 modifications are adopted prior to the adoption of the final Treasury rules, the Department intends to revise § 403.1 to provide that compliance with the SEC rule constitutes compliance with this part.

2. *Sections 403.2 and 403.3.* These sections provide that every registered government securities broker or dealer must comply with the SEC rules governing hypothecation of customer securities and the use of free credit balances.

3. *Section 403.4.* This section sets forth the basic rule that, except as otherwise provided in Section 403.1, every government securities broker or dealer must comply with Rule 15c3–3, as modified by paragraphs (a) through (i) of this section; paragraphs (j) and (k) are technical modifications applicable only to registered government securities brokers and dealers.

(a) This paragraph states that the term "broker or dealer" in Rule 15c3–3 includes government securities brokers and dealers.

(b)–(d) Rule l5c3–3 defines "fully paid securities," "margin securities," and "excess margin securities" in terms of the requirements of the accounts in which they must be carried, as set out in Regulation T of the Board of Governors of the Federal Reserve System.[58] More general definitions are included here because the provisions of Regulation T are not always applicable to government securities. The definitions set forth here are intended to describe the commonly understood meanings of the terms "fully paid securities," "margin securities," and "excess margin securities," without reference to the specific accounts in which the securities may be carried. Comments are requested on whether, in the government securities market, 140 percent of a customer's total debit balances is the appropriate cut-off between margin and excess margin securities. Under the SEC rules, a registered broker or dealer is permitted to treat securities with a market value of up to 140 percent of a customer's debit balances as margin securities because ordinarily a bank financing the purchase of such securities will lend only 75 percent of their market value. With respect to government securities, lending at a higher loan to market value ratio is common.

(e) This paragraph provides a specific rule for control of securities subject to a repurchase agreement. Repurchase agreements represent a substantial portion of the daily activity of the government securities market and provide a significant financial and cash management tool for both investors and government securities dealers.[59] Repurchase agreements may be for a specified term or for overnight investment only. Repurchase transactions may also provide investment for an indefinite period by permitting the participant to elect each day whether to continue the repurchase transaction or terminate it.

Typically, a repurchase agreement will be structured in one of three ways. The agreement may require that the securities be delivered to the purchaser or the purchaser's designated custodial bank. An alternative arrangement is for the seller, the buyer, and a third party (usually a custodial bank) to enter into a tripartite agreement under which the third party agrees to hold the securities that are the subject of the repurchase agreement for the benefit of both parties. The third alternative is that the seller of the securities may retain control of the securities and earmark them on its own books as securities subject to a specific repurchase transaction. Under this arrangement, the seller usually will also instruct its clearing bank to segregate the securities subject to repurchase from the securities in the dealer's clearing account. However, the clearing bank will not necessarily be advised of the identity of the buyer of specific repo securities, and the securities will be subject only to the control of the seller and its clearing bank.

Experience over the last several years has indicated that this last type of repurchase transaction, commonly referred to as a "hold in custody" or "letter" repurchase agreement, represents the greatest potential for loss on the part of the investors since the securities purchased remain in the control of the seller. Many of the investors that experienced significant losses in the failures of two government securities dealers, Bevill, Bresler & Schulman, Inc. ("BBS") and E.S.M. Government Securities, Inc. ("ESM"), had entered into hold in custody repurchase transactions with these entities, and it is the investor losses in these cases that provided the impetus for passage of the GSA.

At the same time, as is recognized in the legislative history of the GSA, requiring actual deli.very of all

[54] Ibid.
[55] 51 FR 43027 (Nov. 28, 1986).
[56] 51 FR 45046 (Dec. 16, 1986).
[57] Sections 240.8c–1, .15c2–1, .15c3–2, .15c3–3.
[58] 12 CFR Part 220.
[59] A repurchase agreement is a transaction in which the owner of securities agrees to sell them to another and to repurchase them on a specified date at a specified price. Although the transactions generally are documented as the sale and repurchase of securities, economically the transaction has characteristics of a secured loan. The parties to a repurchase transaction may characterize and account for the transaction in either of these ways. In the discussion that follows, the parties to a transaction will be referred to as the seller and buyer for ease of reference. The use of these terms does not reflect a determination on the part of the Department that for all purposes and in all contexts repurchase transactions must be characterized as sales and repurchases and not as secured loans.

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securities subject to repurchase could have a significant detrimental impact on the liquidity of the market. For example, the Senate Committee Report [60] indicates that the Committee concluded that a physical delivery requirement for overnight repurchase agreements in securities guaranteed by the Government National Mortgage Association ("GNMA") might have adverse consequences on the efficiency and liquidity of the government securities market, and that such a requirement would also be impractical for other certificated government securities. With respect to other repurchase agreements, the Committee expressed the expectation that the Secretary would adopt rules requiring physical delivery of the securities to a customer only after a determination that less expensive alternatives, such as segregation of customers' securities and procedures for credit analysis and review of counterparties, would not effectuate the purposes of the Act, and that such a requirement is feasible and justifiable given the need to protect the liquidity of the government securities market.[61] The House Committee Report [62] states that requiring the physical transfer of securities involved in repurchase transactions would impair market efficiency, but that requirements for segregating and designating securities for particular investors would help prevent fraud as well as inadvertent errors that may occur.[63]

Many of the entities that enter into hold in custody repurchase agreements are large institutional investors that are sufficiently sophisticated and informed to make a reasonable assessment of the risks and benefits of a given transaction and a careful evaluation of the creditworthiness and stability of their counterparty. For these investors and for the dealers with whom they enter into these transactions, the hold in custody repurchase agreement provides a convenient and flexible method of financial and cash management. The Department believes that these investors should continue to have the opportunity to make the judgment that the convenience and flexibility provided outweigh any potential risk of loss. Nevertheless, the Department has also concluded that to provide adequate protection to the smaller, possibly less sophisticated investors, it is necessary to establish certain requirements for the control of securities subject to hold in custody repurchase agreements.[64]

Just prior to the enactment of the GSA, the SEC proposed amendments to several of its financial responsibility and customer protection rules that would deal explicitly with securities subject to repurchase agreements.[65] In particular, the proposed SEC rule generally would require possession or control of securities that are the subject of a hold in custody repurchase agreement. However, for repurchase agreements with a contract price of $1,000,000 or greater, possession or control is not required during the trading day. The effect of this exception is to permit securities that are the subject of a hold in custody repurchase agreement to be commingled with the dealer's own securities during the day and to be used to facilitate deliveries of securities to third parties if necessary. Under the proposed SEC rules, the securities would be resegregated from the dealer's own securities at the end of the trading day. Since most repurchase agreements give the dealer the right to substitute collateral, the securities that are segregated each night for a given repurchase transaction may differ from day to day.

The intraday use of securities subject to term hold in custody repurchase agreements appears to be a common practice in the government securities market, and those commenting on the SEC proposal have urged that to eliminate completely the capability of using such securities for deliveries and resubstituting collateral could seriously diminish the efficiency of the market. The amount of securities that may be committed to term repurchase agreements during any one day may be substantial. To require that these securities be monitored during the day, transaction-by-transaction, and that individual instructions to move securities to the dealer's account to facilitate a delivery and to substitute other securities that are acceptable collateral for that transaction, may require real-time operational capabilities that, at the present time, might slow a dealer's daily trading activities and increase costs to unacceptable levels. The proposed SEC rule is designed to allow sufficient flexibility in this area, but at the same time provide adequate protection for the smaller investors who may not fully understand the operational practices of their dealer/counterparties and who therefore cannot make a reasonable assessment of the risks and benefits of a given transaction.

The Department generally agrees with the SEC approach and believes that, if certain requirements are met, the sophisticated investor should still be able to enter into hold in custody repurchase transactions in which the subject securities may not be segregated at all times. The Department further agrees with the SEC that, for the smaller investor, full protection must be afforded by requiring possession or control of the securities subject to repurchase at all times. However, the Department has chosen to vary its proposed rule from the SEC proposal in two significant respects. As noted above, in the event the SEC finally adopts a rule substantially similar to the Treasury rule as proposed, the Department contemplates exempting registered brokers or dealers from the Treasury rule and working with the SEC to resolve any variations in the two rules.

First, the Department has raised the cut-off for round-the-clock segregation from the $1 million proposed by the SEC to $5 million. Based on inquiries and on the size of some of the transactions involved in the BBS and ESM failures, the Department concluded that $1 million was too low a number to reasonably assure protection of all the less-informed investors.

The Department intends the dollar amount cut-off to refer to the aggregate contract price of all outstanding repurchase agreements between a particular buyer and a particular broker or dealer. Comments are specifically invited on both the dollar limit itself and on any operational or definitional problems, such as the difficulty of ascertaining the aggregate contract amount for a given buyer and of defining what constitutes a single buyer, that may arise from permitting application of the limit to the aggregate amount of repurchase agreements between a seller and buyer.

The second way in which the Treasury's proposed rule varies from the SEC rule relates to the repurchase agreement itself. Instead of adopting the more general requirement proposed by the SEC of disclosure of the rights and liabilities of the parties to the agreement, the Department proposes that repurchase agreements must be written and must contain specific consent language if the securities may

[60] S. Rep. No. 99-426, 99th Cong., 2d Sess. (1986).

[61] Ibid. at 18 n.34.

[62] H.R. Rep. No. 99-256, 99th Cong., 1st Sess. (1985).

[63] Ibid. at 16–17.

[64] Similar requirements for securities that are the subject of triparty repurchase transactions or repurchase transactions involving actual delivery to the buyer are unnecessary because those transactions are structured to assure recognition of the buyer's interest in the securities and to eliminate control by the seller.

[65] Exchange Act Release No. 34-23602, 51 FR 32688 (Sept. 15, 1986).

not be segregated at all times. The Department has chosen to require written repurchase agreements and to specify the required consent language for several reasons.

First, the rights and liabilities of parties to a repurchase agreement is an unsettled area of law. Therefore, the disclosure requirement would require brokers and dealers to reach specific legal conclusions in an area in which the law itself is unclear. Second, the Department believes that any language included in a repurchase agreement should be explicit enough to put the less sophisticated investor on notice of the potential risks involved in the hold in custody repurchase transaction. Finally, in the Department's view, the practice of customarily making use of repurchase agreement securities held in custody to accomplish other deliveries committed to by a dealer as part of its ordinary trading activities is inconsistent with the fact that rights in the securities, whether as a sale or as a secured loan, have been conveyed to the repurchase agreement counterparty, unless that counterparty has consented to such use. The Department does not believe that retaining the right to substitute securities, as is done in most repurchase agreements, should be regarded as explicit enough to constitute consent by a counterparty to daily commingling and use of the securities for which it has paid.

For all of the foregoing reasons, the Department proposes to require that a repurchase agreement be written and that the dealer maintain possession or control of securities subject to repurchase at all times unless, for aggregate repurchase transactions of $5 million or more, the buyer has consented to intraday commingling with the dealer's securities and certain other provisions. Compliance with the requirement for a written repurchase agreement may be met by use of a written master repurchase agreement under which the parties to the agreement may initiate a series of distinct repurchase transactions. It should be noted that the rule requires inclusion of the specific wording set forth in § 403.4(e)(4)(iii)(A)(*i*) and (*ii*). In these provisions, the term "seller" is used to refer to the broker or dealer that agrees to sell and subsequently repurchase securities under a repurchase agreement. This word was chosen because of its use in the standard master repurchase agreement of the Public Securities Association ("PSA") which the Department believes has gained wide acceptance in the government securities market. If a different term is used to indicate the initial seller of securities under a specific repurchase agreement, then that term may be substituted for the word "seller." Otherwise, the repurchase agreement should include the precise wording set out in the rule.

The Department also proposes to require that the securities that are the subject of a repurchase agreement be confirmed in writing at initiation of the transaction and with each substitution.

By requiring full-time possession or control of securities subject to a repurchase agreement where the aggregate transactions with a counterparty are under $5 million, the Department does not intend to prohibit substitutions of collateral that the counterparty may agree to pursuant to the terms of the repurchase agreement. However, the Department recognizes that because of operational constraints, substitutions that are intended to be simultaneous may not be completed until the end of the day. Therefore, for transactions with less sophisticated investors, the proposed rule also requires that whenever the aggregate repurchase transactions with a single counterparty are under $5 million, substitutions of securities may be made only with the prior agreement of the counterparty. It is noted that the PSA standard master repurchase agreement provides that substitutions of collateral are subject to the agreement of and acceptance by the counterparty. The proposed provision is included to ensure that a similar provision is included in all repurchase agreements involving transactions aggregating less than $5 million and to make clear that agreement to a specific substitution must be obtained prior to taking any steps toward substitution of securities.

The Department also proposes that the repurchase agreement contain a disclosure concerning coverage under the Securities Investor Protection Act of 1970.[66] Under SIPA, customers of all brokers or dealers registered with the SEC under Section 15 of the Act are eligible for coverage by the Securities Investor Protection Corporation ("SIPC") of losses up to $500,000 in the event of the bankruptcy of such broker or dealer. However, government securities brokers and dealers registered under Section 15C of the Act may not become members of SIPC and their customers would not be eligible for SIPC coverage. Furthermore, SIPC has taken the position that the provisions of SIPA do not protect the counterparty of any broker or dealer under a repurchase agreement. For these reasons, the Department proposes that, for all hold in custody repurchase transactions, the repurchase agreement must disclose that there may not be protection under SIPA, and that to the extent SIPA is at all applicable, the protection is limited to $500,000.

It should be noted that, for purposes of control of securities that are the subject of a repurchase agreement, acceptable control locations are limited to those described in paragraphs (c)(1), (c)(5), and (c)(6) of Rule 15c3–3 and to the additional clearing bank control location described in paragraph (f) of this rule. Comments are specifically requested on whether additional control locations are appropriate or necessary.

(f) This section adds a new paragraph to that portion of Rule 15c3–3 that describes acceptable control locations.[67] This new paragraph describes an account maintained at a clearing bank as a permissible control location for a dealer so long as (1) the account does not include proprietary securities of the dealer, and (2) the clearing bank expressly agrees in its clearing agreement with the dealer that securities in the designated account are not subject to any lien or claim of the clearing bank.

A significant proportion of all outstanding government securities are held in uncertificated form and transfers of such securities are accomplished by means of book-entries on the books of Federal Reserve Banks or financial intermediaries. A substantial number of such securities are held by or through dealers that maintain the securities through banks that provide clearing services to the dealers including extensions of credit to finance dealer positions.

Because Rule 15c3–3 was drafted for a somewhat different environment, where securities are issued in certificated form, the language of Rule 15c3–3 does not clearly apply to securities that are issued in book-entry form only. Furthermore, none of the control locations described in the rule clearly relate to the segregation accounts maintained by dealers at clearing banks. The Department understands that the SEC has interpreted the Rule to be applicable in this situation but concluded that it would be useful to include a specific provision covering this arrangement to avoid unnecessary confusion. The Department also requests comments as to whether additional control locations not

[66] Securities Investor Protection Act of 1970, Pub. L. 91–598, 84 Stat. 1636, as amended (codified at 15 U.S.C. 78aaa-eee).

[67] § 240.15c3–3(c).

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specified in the SEC rule would be appropriate or suitable in the context of the government securities market.

(g) If a bank is unable or unwilling to comply with an instruction of the broker or dealer to move securities into the segregated account, the broker or dealer must give an "early warning notice" as described in § 405.5. Such a notice was considered appropriate because a refusal of a bank to segregate securities is likely to be an indication of a situation similar to a "material inadequacy" as described in § 240.17a–5(g)(3).

(h) Rule 15c3–3 provides that nothing contained in the Rule shall be construed as affecting the absolute right of a customer to receive the physical delivery of certificates for fully-paid securities or certain margin securities.[68] This provision has been modified to include the comparable right of a customer to direct the disposition of a security held in book-entry (certificateless) form. All new U.S. Treasury bonds and notes issued after July 1986 are available only in book-entry form. U.S. Treasury bills have been available in exclusively book-entry form since 1977. This provision does not preclude the customer from agreeing in writing to restrictions on its right to dispose of securities.

(i) This paragraph provides that the provision of Rule 15c3–3[69] requiring buy-in of securities after 10 days to complete a sell order of a customer (other than a short sale) applies to government securities. The application of this rule to government securities applies to registered brokers and dealers as well as registered government securities brokers and dealers.

(j) This paragraph conforms Rule 15c3–3 to § 402.2 of these regulations to allow government securities brokers and dealers that have liquid capital that exceeds by a specified amount the liquid capital required under Part 402 and that hold small amounts of customer funds to make the required reserve computations monthly rather than weekly.

(k) This paragraph conforms a portion of the reserve calculation to the net capital rules in § 402.2 of these regulations.

4. *Section 403.5.* This section sets forth the rules for custody of customer securities that are applicable to government securities brokers or dealers that are financial institutions. As a general rule, these financial institutions are directed to comply with Part 450 with respect to custody of securities held for customers or counterparties. For securities that are held for others by the financial institution in its capacity as a government securities broker or dealer, certain additional requirements are imposed that generally parallel the requirements of SEC Rule 15c3–3.

For example, a financial institution that is a government securities broker or dealer and that engages in repurchase transactions is required to comply with provisions that parallel the requirements of § 403.3(e) described above. In addition, the financial institution is required to make daily determinations of the amount of shortfall, if any, of securities required to be in its possession or control and to take steps to obtain securities to cover a shortfall. Section 403.5 does not, however, contain any provisions similar to the requirements of SEC Rule 15c3–2 concerning use of customer funds or SEC Rule 15c3–3 concerning a special reserve bank account for holding customer balances. Rule 15c3–2, by its terms, does not apply to supervised banking institutions and the Department concluded that the exemption should be extended to all supervised financial institutions that are government securities brokers or dealers. Furthermore, because financial institutions generally maintain customer funds as a fundamental part of their business, and because they are supervised in large part to protect their deposits, the Department concluded that it would serve no useful investor protection purpose to impose the added requirement of Rule 15c3–3(e) to require a financial institution to establish a special account for customer funds at another financial institution.

A separate rule was drafted for financial institutions that are government securities brokers or dealers primarily because neither financial institutions nor their regulatory agencies are familiar with Rule 15c3–3. However, the proposed rule is intended to parallel the relevant requirements of Rule 15c3–3. Although the requirements of the proposed rule are stated in less detail than is found in Rule 15c3–3, it is anticipated that its enforcement by the financial institutions supervisory agencies will follow, in practical effect, the Commission's rule.

E. Part 404. Recordkeeping

Section 15C(b)(1)(C) of the Act requires the Secretary to propose and adopt rules that require government securities brokers and dealers to make, keep current and preserve records relating to the operation of their businesses. Part 404 of these regulations responds to that requirement. The proposed rules generally adopt analogous rules of the SEC, Rules 17a–3, 17a–4, 17a–7 and 17a–13.[70]

1. *Section 404.1.* This section provides that, for government securities brokers and dealers that are registered brokers or dealers, compliance with applicable SEC rules, with certain modifications pertaining to books and records concerning repurchase and reverse repurchase agreements, will constitute compliance with Part 404. Specifically, registered brokers and dealers (as well as registered government securities brokers and dealers, see § 404.2 below) would be required to: (i) maintain a separate ledger reflecting assets and liabilities resulting from repurchase and reverse repurchase transactions, (ii) record separately on their securities records those securities subject to repurchase and reverse repurchase agreements, and (iii) maintain copies of confirmations they send out with regard to repurchase and reverse repurchase agreements.

These additional recordkeeping requirements will ensure that all repurchase and reverse repurchase agreements are properly reflected, thereby ensuring accountability for the cash and securities involved in such transactions. The additional records required are the records specified in recent proposed amendments to the SEC rules.[71] Comments provided to the SEC on these provisions of the SEC proposal were almost unanimously favorable, with many commenters indicating that they already comply as a matter of good business practice. If the amendments to the SEC rules are adopted prior to the adoption of the final Treasury rule, § 404.1 will be modified to reflect the adoption of the amendments.

2. *Sections 404.2 and 404.3.* Under these sections, registered government securities brokers and dealers are required to make, keep current and preserve the types of records required by SEC rules 17a–3, 17a–4 and 17a–7,[72] with limited modifications relating to the different financial responsibility rules applicable to registered government securities brokers and dealers. In addition, registered government securities brokers and dealers would be required to maintain the books and records pertaining to repurchase and reverse repurchase agreements that are described above.

The Department proposes adoption of the SEC rules with modifications because those rules are well understood

[68] § 240.15c3–3(l).
[69] § 240.15c3–3(m).
[70] §§ 240.17a–3, .17a–4, .17a–7, .17a–13.
[71] Exchange Act Release No. 34–23602, 51 FR 32658 (Sept. 15, 1986).
[72] §§ 240.17a–3, .17a–4, .17a–7.

by many government securities brokers and dealers, the audit community and the self-regulatory organizations. During the consultation process prior to issuance of these proposed rules, the Department found that many currently unregulated government securities brokers and dealers are affiliated with registered brokers or dealers that must comply with the SEC rules, or with registered municipal securities dealers that must comply with similar rules. These communities generally favored adoption of recordkeeping and record preservation rules that follow the SEC rules.

3. *Section 404.4.* This section provides that financial institutions that are government securities brokers and dealers subject to specified recordkeeping rules of their appropriate regulatory agency,[73] are exempt from the recordkeeping and preservation requirements of Part 404, except for two types of books and records. Specifically, such financial institutions would be required to maintain records pertaining to securities positions and to associated persons of such financial institution.[74] Both types of records are already required of bank municipal securities dealers.[75] Position records are essential if a dealer is accurately to keep track of its holdings and their locations, and are the key to any assessment by an appropriate regulatory agency of the risk of a dealer operation within a financial institution. Maintenance of associated person records is needed to protect the integrity of the market in government securities by enabling financial institutions and their regulators to locate persons whose past activities make their participation in the market as brokers or dealers questionable and to take appropriate action with respect to such persons.

This partial exemption from the recordkeeping and record retention requirements recognizes that these financial institutions are already subject to federal supervision, which explicitly includes recordkeeping requirements relating to securities activities. Requiring these institutions to follow another set of recordkeeping requirements would be unduly burdensome and would not promote the purposes of the Act. Compliance with the recordkeeping requirements of the bank supervisory agencies and maintenance and preservation of records on securities positions and associated persons will protect investors and is consistent with the public interest.

4. *Section 404.5.* This section requires registered government securities brokers and dealers to comply with SEC Rule 17a–13,[76] requiring a quarterly count of all securities, verification of securities records and comparison of the count and records. Although the count portion of the rule is written in terms of physical securities, the portion relating to accounting for securities not in a dealer's possession requires the equivalent of a count of book-entry securities. The rule is an important check on the accuracy of a firm's operations and recordkeeping and as such is an important aspect of investor protection.

5. *Section 404.6.* This section requires financial institutions that are government securities brokers or dealers to conduct annual counts of book-entry and definitive government securities held for customers and to verify and reconcile records. Financial institutions hold securities for a variety of customer purposes, frequently transferring customer securities held by virtue of the dealer function to the safekeeping and trust departments. Trust department securities are, by state and federal law and examination policy, required periodically to be reconciled to customer accounts.[77]

Proposed Part 450 of these regulations would impose periodic count and related requirements for custodial holdings of government securities by financial institutions that are not government securities brokers or dealers. This rule requires financial institutions that are government securities brokers or dealers not exempt from regulation pursuant to Part 401, to count, reconcile and verify annually all government securities held for customers outside of trust departments. The count of book-entry securities and of definitive securities not in the financial institution's possession should be accomplished by verifying the financial institution's records with those of the depositories, depository institutions or Federal Reserve Bank that hold securities accounts for the financial institution.

F. Part 405. Reporting and Audit Requirements.

The reporting and audit regulation generally follows the provisions of SEC Rules 17a–5, 17a–8 and 17a–11.[78] Registered government securities brokers and dealers that clear transactions or carry customer accounts will be required to file monthly reports similar to Part I of the current SEC FOCUS report (Form X–17a–5, § 249.617 of this title) demonstrating compliance with capital adequacy requirements. All registered government securities brokers and dealers will be required to file quarterly reports containing unaudited financial statements, and an annual report certified by an independent public accountant. The accountant's report is to include, among other things, schedules concerning liquid capital and customer reserve requirements and a report on internal accounting controls, including any material inadequacies in those controls. Financial institutions that are government securities brokers or dealers will, with one exception, be exempt from reporting requirements being imposed on nonfinancial government securities brokers and dealers.

1. *Section 405.1.* Compliance with Rules 17a–5, 17a–8 and 17a–11 by registered brokers and dealers who are also government securities brokers and dealers will constitute compliance with the reporting and audit regulations. Since registered brokers or dealers will continue to be required to determine net capital according to SEC Rule 15c3–1,[79] additional reporting and audit requirements are not necessary.

The Department has determined that the additional burden that would be created by requiring financial institution government securities brokers and dealers to comply with additional reporting requirements is unnecessary. Financial institutions are subject to regular capital reporting requirements,[80] and are also subject to regular examination by supervisory agencies. Moreover, the Department proposes to exempt financial institution government securities brokers and dealers from the capital adequacy requirements of Part 402 of these regulations.[81] Government

[73] See 12 CFR Part 12 (Office of the Comptroller of the Currency); 12 CFR Part 208 (Board of Governors of the Federal Reserve System); 12 CFR Part 344 (Federal Deposit Insurance Corporation). Section 404.4 provides that such regulations are to be complied with without regard to the exemptions therein for transactions in U.S. government or federal agency obligations, 12 CFR 12.7(a), 12 CFR 208.8(k)(6)(i), 12 CFR 344.7(a).
[74] See discussion of records concerning associated persons at § 400.4 above.
[75] See Municipal Securities Rulemaking Board Rule G–8; Office of the Comptroller of the Currency, Comptroller's Handbook for National Bank Examiners, § 204.1, at 6 (August 1985).
[76] Section 240.17a–13.
[77] See, e.g., Comptroller's Handbook for National Trust Examiners, § 401.4.
[78] Sections 240.17a–5, .17a–8, .17a–11.
[79] Section 240.15c3–1, § 402.1 of the proposed regulation.
[80] See, e.g., 12 U.S.C. 161, relating to call reports, and regulations thereunder.
[81] See § 402.1(c) of the proposed regulations.

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securities brokers and dealers that are financial institutions will be subject to the proposed regulation concerning reporting of foreign currency transactions, as are registered brokers and dealers under SEC Rule 17a–8.[82]

The section provides that all requirements of the part, except the reporting requirements, will become effective on July 25, 1987. Therefore, for example, registered government securities brokers and dealers will be required to have engaged an independent public accountant by that date. The monthly reporting requirement is delayed until the first month within which a firm becomes subject to the capital adequacy requirements, which under this proposal will be October, 1987. Registered government securities brokers and dealers will be required to file unaudited quarterly reports for the quarter ending September 30, 1987, and will be required to file quarterly reports on the appropriate form starting with the quarter within which they first become subject to the capital adequacy rules, which under this proposal will be the quarter ending December 31, 1987.

2. *Section 405.2.* This section establishes the requirements for financial reporting by and audit of registered government securities brokers and dealers. It provides that, with limited modifications, registered government securities brokers and dealers must comply with SEC Rule 17a–5.[83] The Department's discussions with the SEC, the self-regulatory organizations, government securities brokers and dealers, and representatives of the accounting profession, all indicated that these requirements are appropriate to meet the purposes of the Act and feasible to implement without excessive burden. The requirement for annual certified financial statements is statutory.[84]

The major provisions of Rule 17a–5, as modified, are:

(a) Registered government securities brokers and dealers that clear transactions or carry customer accounts must file monthly Part I of Form G–405[85] (§ 449.5 of this chapter), showing liquid capital and total haircuts calculations;

(b) All registered government securities brokers and dealers must file quarterly Part II or Part IIA of Form G–405, consisting largely of unaudited financial statements;

(c) All registered government securities brokers and dealers must file audited annual financial statements certified by an independent public accountant;

(d) Registered government securities brokers and dealers other than introducing brokers must send investors an annual audited statement of financial condition (including a footnote concerning capital adequacy and a statement that audited financial statements and any audit report commenting on material inadequacies are available for inspection), and an unaudited statement as of the date six months from the date of the audited statement;

(e) Registered government securities brokers and dealers must engage an independent public accountant to conduct an annual audit of the registered government securities broker or dealer, and must file a statement concerning such engagement, and, if applicable, the termination of the engagement and replacement of auditors;

(f) Annual financial statements must be audited by an independent public accountant according to generally accepted auditing principles;

(g) The audit must be sufficient to enable the auditor to comment on material inadequacies, if any, in the accounting system, internal accounting controls, procedures for safeguarding securities, and in obtaining and maintaining possession or control of customer securities; and

(h) Material inadequacies must be reported within 24 hours of the time the auditor notifies the chief financial officer of the condition.

The proposed regulation provides that the SEC may declare effective a plan by a self-regulatory organization under which filings may be made with the designated examining authority rather than the Commission. The Department anticipates that the Commission will approve such plans.

3. *Section 405.3.* This rule provides that registered government securities brokers and dealers must comply with SEC Rule 17a–11,[86] concerning early warning to the Commission and designated examining authorities of capital difficulties. The rule, as modified, provides that if a registered government securities broker's or dealer's liquid capital falls below the required level established in § 402.2 of the regulations, the firm shall give notice to the Commission and the appropriate self-regulatory organization of that fact on the day it occurs. Within 24 hours, the registered government securities broker or dealer must also file a Part II or IIA of Form G–405.

In addition, if liquid capital falls below 150 percent of total haircuts, determined in accordance with § 402.2 of the regulation, the registered government securities broker or dealer is required to file Part II or Part IIA monthly until liquid capital stays above the 150 percent level for three consecutive months. The purpose of this regulation, in coordination with other early warning regulations that the self-regulatory organizations are expected to adopt, is to allow the registered government securities broker or dealer and the enforcement authorities an opportunity to alter the firm's business practices to bring it back into compliance, and to protect customers, without requiring a shut-down or complete liquidation of the firm's business.

Section 405.3 also requires notice to the Commission and the appropriate self-regulatory organization of failure to keep the books and records required by § 404.2 of the regulations or upon discovery or notification by an independent public accountant of a material inadequacy, as defined in Rule 17a–5(g).[87]

4. *Section 405.4.* This section requires registered government securities brokers and dealers and government securities brokers and dealers that are financial institutions to comply with the requirements of 31 CFR Part 103, concerning currency and foreign transactions. The effect of this requirement, which parallels Rule 17a–8[88] for registered brokers or dealers, is that the regulations are enforceable under the Act as well as under the Currency and Foreign Transactions Reporting Act (the Bank Secrecy Act).[89]

G. Part 450. Custodial Holdings of Government Securities by Depository Institutions

Part 450 sets out regulations applicable to depository institutions that hold government securities for customer accounts, whether directly or through correspondent banks, trust companies, Federal Reserve Banks, or other custodial arrangements, but do not fall within the definition of a government securities broker or dealer. These regulations provide custody, recordkeeping, and other requirements

[82] Section 240.17a–8.
[83] Section 240.17a–5.
[84] Section 15C(b)(1)(B) [15 U.S.C. 78o–5(b)(1)(B)].
[85] The version of the SEC FOCUS Report applicable to registered government securities brokers and dealers.
[86] Section 240.17a–11.
[87] Section 240.17a–5(g).
[88] Section 240.17a–8.
[89] Pub. L. No. 91–508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311–23).

applicable to government securities held for customers, including those purchased or sold subject to resale or repurchase. Depository institutions that are exempt from the requirements of Section 15C of the Act under Part 401 of these regulations, as well as certain depository institutions that are government securities brokers or dealers (see § 403.5) would also be subject to the Part 450 regulations.

Depository institutions often provide custody or safekeeping services involving the purchase of government securities for a customer. Depending on the size and geographic location of the depository institution, these securities may be held in a custody account maintained at a correspondent bank for the depository institution. If the securities are issued only in book-entry form, then the depository institution or its correspondent will generally maintain such securities in a securities account on the books of a Federal Reserve Bank.

There currently is no explicit regulatory or supervisory framework governing the practices of depository institutions providing custodial or safekeeping services for customers except where securities are held in a fiduciary capacity. Without such standards, there is the potential for inadvertent or other actions that can harm customers. The development and increasing use of certain types of transactions involving these securities, such as due bills, suggests the potential for problems may be increasing. The GSA therefore mandates promulgation of more explicit standards of conduct which will help the supervisory agencies assure that all institutions conform to good business practices in this area. The Department believes that the proposed regulations largely codify existing practices of responsible financial institutions.

1. *Section 450.1.* This section states that the Part 450 regulations apply to all depository institutions that hold government securities for customers, including in particular those who are exempt from regulation as government securities brokers or dealers under Part 401 of the proposed regulations. Unlike the regulations under subchapter A, the regulations under part 450 apply to credit unions.

2. *Section 450.2.* This section defines the terms "appropriate regulatory agency," "customer," "depository institution," "fiduciary capacity" and "government securities" for the purposes of this subchapter. The definition of appropriate regulatory agency makes explicit the statutory determination that, except in the case of federally-chartered or federally-insured credit unions for which the NCUA is the appropriate regulatory agency, where another agency is not explicitly designated in section 3(a)(34)(G) of the Act, the SEC is the appropriate regulatory agency. This would be the case with respect to state-chartered non-federally insured banks, thrift institutions, and credit unions. References to the NCUA in Title II of the GSA as an agency whose standards might substitute for the Secretary's make it clear that, for the purposes of Title II, NCUA was meant to be considered an appropriate regulatory agency. The definition also reflects the fact that the Federal Home Loan Bank Board will act on behalf of the Federal Savings and Loan Insurance Corporation.

The customer definition is meant to ensure that repurchase agreement counterparties that are investors, rather than brokers or dealers, are protected by the provisions of this part. The definition of fiduciary capacity, which in essence requires that the depository institution have the power to exercise discretion, is substantially the same as the definition of "fiduciary" in 12 CFR 9.1, concerning fiduciary powers of national banks. The definition of "government securities" notes that, for purposes of Part 450, off-exchange puts, calls, straddles, options or privileges on government securities are not themselves government securities.

3. *Section 450.3.* This section provides an exemption from the regulations of Part 450 for government securities held in a fiduciary capacity by certain depository institutions or in a trust department in such an institution. The GSA provides that, prior to adopting regulations under Title II, the Secretary shall determine whether the rules and standards of the appropriate regulatory agencies and the National Credit Union Administration Board adequately protect government securities held for customers by depository institutions subject to their jurisdiction. The Department was not able to make such a determination with regard to custodial holdings generally. As described below, however, it appears that holdings of government securities in a fiduciary capacity by depository institutions are adequately regulated by depository institutions subject to the supervision of certain of the appropriate regulatory agencies. This determination does not extend to the rules and standards of the National Credit Union Administration Board, since credit unions generally do not exercise trust powers, and the Board does not generally regulate fiduciary activities.

Based on the information provided by the appropriate regulatory agencies and on the Department's own analysis, the Department has determined that holdings of government securities in a fiduciary capacity by depository institutions under the regulatory jurisdiction of the appropriate regulatory agencies are adequately regulated.[90] Such depository institutions are generally subject either to state or federal laws and regulations governing the safekeeping of fiduciary assets. They are also subject to examination procedures that generally require (i) review of the institution's systems and procedures to ensure that assets are adequately protected; (ii) review of applicable laws, regulations, and fiduciary principles governing the safeguarding of assets; (iii) review of the institution's accounting system to insure that records are accurate and reliable; and (iv) review of the adequacy of the institution's audit program. Accordingly, such depository institutions are exempt from § 450.4 with regard to their fiduciary holdings of government securities, provided they adhere to the applicable requirements imposed by their appropriate regulatory agencies. This exemption also extends to holdings of government securities for customers in a custodial capacity by such depository institutions, as long as such holdings are within the trust department and the depository institution agrees, with respect to such custodial holdings, to adhere to the rules applicable to securities held in a fiduciary capacity.

The Department does not anticipate that subsequent modifications of the applicable rules and standards will make this exemption inappropriate. However, the Department expects the regulatory agencies to inform the Department of any material revisions of such rules and standards.

4. *Section 450.4.* Section 450.4 sets out basic requirements for custodial holdings of government securities by depository institutions. The most fundamental of these safeguards, set out

[90] Letter from A. David Meadows, Associate Director, Division of Bank Supervision, Federal Deposit Insurance Corporation to William J. Bremner, Deputy Assistant Secretary (Federal Finance), Treasury Department (Jan. 28, 1987); Letter from Owen Carney, Director, Investment Securities Division, Office of the Comptroller of the Currency to William J. Bremner (Jan. 17, 1987); Letter from Robert S. Plotkin, Assistant Director, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System to William J. Bremner (Jan. 16, 1987); Letter from Robert S. Plotkin to Mary Ann Gadziala, Assistant General Counsel (Banking & Finance), Treasury Department (Dec. 22, 1986); Memorandum from Owen Carney to Mary Ann Gadziala (Nov. 26, 1986).

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at §§ 450.4(a) and (b), are the requirements that customers' securities be kept separate from those of the depository institution, that the depository institution maintain possession or control of customers' securities and that customers' securities be kept free of all liens unless expressly agreed to in writing by the customer. This requirement applies both to securities maintained in definitive (physical) form and securities maintained in book-entry form. In the case of physical securities, this might be accomplished by safekeeping in a separate part of the depository institution's vault or by delivery to another institution. In the case of book-entry securities, a depository institution would need to maintain on its own records separate securities accounts for each customer, on the one hand, and separate accounts for securities owned by the depository institution on the other. Similar account separation would also be necessary for each level in any chain of correspondent relationships through which government securities are being maintained. Where government securities are being maintained for customers at a Federal Reserve Bank, a correspondent bank or other custodian, the depository institution would need to instruct such entity to maintain possession or control of such securities free of any charge, lien, or claim of any kind in favor of the correspondent or other custodian or any persons claiming through them. To the extent it has received such an instruction, the correspondent bank or other custodian would be required to comply with Part 450 with respect to its custody of those securities held for customers of the depository institution, as well as securities held directly for customers of the correspondent.

Section 450.4(c) imposes a number of recordkeeping requirements on depository institutions holding securities for customers. Correspondent banks and other custodians of both proprietary government securities of a depository institution as well as government securities belonging to customers of that depository institution could comply with these requirements by maintaining separate sets of records, one reflecting securities held for the depository institution's own account and another reflecting securities held for the account of the depository institution's customers. The depository institution would be responsible for maintaining records identifying the interests of each customer in the securities so held.

Section 450.4(d) requires periodic counts of government securities held for customers in both physical and book entry form. For definitive securities not in the possession of the depository institution and for all book-entry securities, the count would be accomplished by verifying the depository institution's records with those of the custodial entities on whose books the depository institution has a securities account. Such entities include depositories, correspondent banks, and Federal Reserve Banks.

The frequency of the required counts should be determined by the scope of the depository institution's custodial operations, the volume of its holdings, and the frequency of delivery and receipt of cash or securities. For example, a small bank holding government securities for a few relatively inactive customers might conduct annual counts. On the other hand, a bank that safekeeps government securities for active traders might need to conduct counts weekly or more frequently.

The requirements set forth in § 450.4 are similar to, but less burdensome than, the requirements imposed on trust departments through the regulatory and examination process. Compliance with these requirements should not add significantly to the cost of providing custodial services.

III. Executive Order 12291; Regulatory Flexibility Act; Burden on Competition

Section 402 of the GSA requires that these proposed regulations be published within 120 days of the date of enactment of that act.[91] Therefore, the Department's opportunity to determine the effect of these proposed regulations on the economy, on small entities and on competition, has been very limited. However, based on discussions with government securities brokers and dealers, including those currently subject to federal regulation and those that are not, it is the Department's view that the proposed regulations will not impose any significant cost on those affected or affect the economy in a manner other than that explicitly required by the GSA. In addition, the Department believes that the proposed regulations will not have an unnecessary or inappropriate differential impact on classes of government securities brokers or dealers such as to create a burden on competition.

In particular, the Department believes the following decisions minimize the regulatory burden to that required by the statute:

(a) To limit any additional burden on registered brokers or dealers by deeming compliance with existing rules under Section 15 of the Act to be compliance with the proposed rules, with modifications related solely to anticipation of the SEC's proposed rulemaking concerning repurchase agreements;[92]

(b) To minimize additional burdens on financial institutions by (1) providing exemptions for activities deemed not to be within the contemplation of the statute and (2) largely accepting compliance with existing financial institution regulation as compliance with the proposed rules;

(c) To adopt in large part the possession or control, reporting and audit regulations of the SEC, with which many currently unregulated government securities brokers and dealers are familiar;

(d) To adopt in large part the recordkeeping regulation of the SEC, with which many currently unregulated government securities brokers and dealers are familiar and, in many cases, already in compliance; and

(e) To treat dealers in all types of government securities similarly and, in particular, not to distinguish between U.S. Treasury and agency securities (except for certain mortgage backed securities in which principal and interest do not flow through to all holders on a pro rata basis) for purposes of market risk haircuts in the capital adequacy requirement.

In addition, the Department believes that the impact of these regulations will be minimized because a large number of potential registrants do not hold customer securities and/or funds. Finally, Florida's recently enacted requirement that government securities brokers and dealers in that state register with the Commission under section 15 of the Act,[93] as well as information obtained from entities thought to be unregistered government securities brokers and dealers, suggest that many of these entities are registering under section 15 or are merging government securities operations into already registered brokers or dealers. Once an entity has registered under section 15, the proposed regulations will have minimal additional impact.

Accordingly, the Department has concluded that the proposed regulations do not constitute a major regulation for purposes of Executive Order 12291 and that a regulatory impact analysis is not required. Similarly, it is hereby certified that the proposed regulations, if adopted, will not have a significant economic impact on a substantial number of small entities. However, the Department invites comments on these determinations, particularly with respect to the following:

(a) What entities will be affected by the proposed regulations, and what compliance costs will be incurred? Commenters should consider the statutory requirements and distinguish among the sections of the proposed regulations, particularly distinguishing between the cost of being required to have additional capital (if that would be the result of compliance with the capital adequacy requirement) and the cost of developing and implementing systems to comply with the regulations.

(b) What will be the effect on the integrity, efficiency and liquidity of the government securities market of requiring government securities brokers and dealers to maintain effective possession or control of customer securities? In particular, comments are invited on the requirements in proposed § 403.4 that repurchase agreements be entered into only pursuant to written agreement and that brokers or dealers maintain intraday control of securities that are the subject of term repurchase transactions of under $5,000,000 per customer.

(c) Will a substantial number of small entities be affected by the regulations, and if so to what extent? Commenters should consider not only the potential regulatory burden on small entities that are government securities brokers or dealers but also the potential benefits to small investors that may arise from the proposed regulations.

(d) Will the proposed regulations have differential impacts on classes of government securities brokers or dealers such that they would have an unnecessary or inappropriate burden on competition?

(e) Does the format of the regulations, using cross-references to SEC regulations for most rules applicable to registered government securities brokers and dealers and thereby adopting all SEC interpretations, enhance the ability of firms, particularly those already familiar with SEC rules, to comply?

If, on the basis of comments received and further investigation by the Department, the Department determines that the regulations constitute a major rule or are likely to have a significant economic impact on a substantial number of small entities, the Department will prepare and make available the required Regulatory Impact or Regulatory Flexibility Analysis.

The collection of information requirements contained in this proposed rule have been submitted to the Office of Management and Budget pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on these requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention Desk Officer for the Department of the Treasury, Washington, D.C. 20503, and to the Department of the Treasury at the address previously specified.

Appendix A—Example of Capital Computation

Example (1). On October 31, 1986 firm A's proprietary position contains a long position of Treasury notes due November 15, 1991 with a market value of $20 million and a short position of Treasury notes due October 15, 1990 with a market value of $30 million. The firm would enter these holdings on schedule B,[1] "Calculation of Net Immediate Positions in Securities and Financings", in row F (3.5–7.5 year maturity category for conventional securities) as follows:

SCHEDULE B.—CALCULATION OF NET IMMEDIATE POSITIONS IN SECURITIES AND FINANCINGS

[In millions of dollars]

Maturity category	Financings		Securities positions		Total securities and financing positions		Offset portions (+)	Net immediate positions (+/−)
	Long (+)	Short (−)	Long (+)	Short (−)	(+)	(−)		
F 3.5–7.5 yr. (3–5.5 yr.)			+20	−30	+20 (1+3)	−30 (2+4)	+20	−10 (5+6)
Column No.	1	2	3	4	5	6	7	8

where the net immediate position is the sum of the positive and negative entries under "Securities and Financing Positions" and the offset portion is the lesser of the absolute values of the positive and negative entries under "Securities and Financing Positions."

Example (2). On October 31, 1986 firm A's proprietary position contains, in addition to the positions given in Example 1, a long position of Treasury bills due September 3, 1987 with a market value of $50 million. This bill position has been financed by a $50 million repurchase agreement terminating on August 14, 1987. The firm would enter these holdings on schedule B, "Calculation of Net Immediate Positions in Securities and Financings", in row D (9–18 month maturity category for conventional securities) as follows:

SCHEDULE B.—CALCULATION OF NET IMMEDIATE POSITIONS IN SECURITIES AND FINANCINGS

[In millions of dollars]

Maturity category	Financings		Securities positions		Total securities and financing positions		Offset portions (+)	Net immediate positions (+/−)
	Long (+)	Short (−)	Long (+)	Short (−)	(+)	(−)		
D 9–18 mn.		−50	+50		+50 (1+3)	−50 (2+4)	+50	0 (5+6)
Column No.	1	2	3	4	5	6	7	8

where the net immediate position is the sum of the positive and negative entries under "Securities and Financing Positions" and the offset portion is the lesser of the absolute values of the positive and negative entries under "Securities and Financing Positions."

Example (3). On October 31, 1986 firm A's proprietary position contains, in addition to the positions given in Examples 1 and 2, a long position in commercial paper which has received a rating in one of their three highest categories from two nationally recognized statistical rating organizations and has a market value of $70 million, and a long position in a Eurodollar certificate of deposit with a market value of $80 million. The commercial paper matures on January 30, 1987, and the Eurodollar CD matures on

[1] Because Schedule A can only be filled out after the haircut calculations are completed, it is located in the last of these examples.

[91] GSA, supra note 8, § 402.

[92] Exchange Act Release No. 23802, 51 FR 32658 (Sept. 15, 1986).

[93] Fla. Stat. § 517.12(16) (Supp. 1986).

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February 13, 1987. The firm's proprietary position also contains short positions in a Treasury bill maturing on November 28, 1986 with a market value of $100 million, a domestic negotiable certificate of deposit maturing on March 31, 1987 with a market value of $80 million, and commercial paper which has not received a rating in one of their three highest categories from at least two nationally recognized statistical rating organizations. This commercial paper has a market value of $40 million and matures on May 15, 1987. The firm would enter the holdings of the Treasury bill, the highly-rated commercial paper, and the domestic and Eurodollar CDs on Schedule B, "Calculation of Net Immediate Positions in Securities and Financings", in rows A, B, and C (0–44 day, 45–134 day, and 135 day–9 month maturity categories for conventional securities), as follows:

SCHEDULE B.—CALCULATION OF NET IMMEDIATE POSITIONS IN SECURITIES AND FINANCINGS

[In millions of dollars]

Maturity category	Financings		Securities positions		Total securities and financing positions		Offset portions (+)	Net immediate positions (+/−)
	Long (+)	Short (−)	Long (+)	Short (−)	(+)	(−)		
A 0–44 days				−100	0	−100	0	−100
B 45–134 days			+150		+150	0	0	+150
C 135 days–9 mn				−90	0	−90	0	−90
					(1+3)	(2+4)		(5+6)
Column No	1	2	3	4	5	6	7	8

where the net immediate position is the sum of the positive and negative entries under "Securities and Financing Positions" and the offset portion is the lesser of the absolute values of the positive and negative entries under "Securities and Financing Positions."

Example (4). On October 31, 1986 firm A's proprietary position contains, in addition to the positions given in Examples 1 and 3, long positions in a coupon stripped from a U.S. Treasury bond through the STRIPS program and due November 15, 1995 with a market value of $50 million, and a coupon physically stripped from a Treasury security in bearer form due November 15, 1988 with a market value of $15 million. It also contains a short position in a receipt based on a single coupon or principal payment from a Treasury security. The payment is due on November 15, 2001 and has a market value of $45 million. The firm would enter these holdings of zero-coupon securities on schedule B, "Calculation of Net Immediate Positions in Securities and Financings", in rows H, E, and I (9–12 year, 1.5–3 year, and 12–21 year maturity categories for zero-coupon instruments), respectively, as follows:

SCHEDULE B.—CALCULATION OF NET IMMEDIATE POSITIONS IN SECURITIES AND FINANCINGS

[In millions of dollars]

Maturity category	Financings		Securities positions		Total securities and financing positions		Offset portions (+)	Net immediate positions (+/−)
	Long (+)	Short (−)	Long (+)	Short (−)	(+)	(−)		
E 1.5–3.5 yr. (1.5–3 yr.)			+15		+15	0	0	+15
H 15–30 yr. (9–12 yr.)			+50		+50	0	0	+50
I (12–21 yr.)				−45	0	−45	0	−45
					(1+3)	(2+4)		(5+6)
Column No	1	2	3	4	5	6	7	8

where the net immediate position is the sum of the positive and negative entries under "Securities and Financing Positions" and the offset portion is the lesser of the absolute values of the positive and negative entries under "Securities and Financing Positions."

Example (5). On October 31, 1986 firm A's proprietary position contains, in addition to the positions given in Examples 1 through 4, a long position in FNMA mortgage-backed securities with a market value of $30 million, and a short position in GNMA I adjustable rate mortgage-backed securities with a market value of $20 million. The firm would enter these holdings of mortgage-backed securities on schedule B, "Calculation of Net Immediate Positions in Securities and Financings", in the rows marked MB and AR (the categories for mortgage-backed and adjustable rate mortgage-backed securities), respectively, as follows:

SCHEDULE B.—CALCULATION OF NET IMMEDIATE POSITIONS IN SECURITIES AND FINANCINGS

[In millions of dollars]

Maturity category	Financings		Securities positions		Total securities and financing positions		Offset portions (+)	Net immediate positions (+/−)
	Long (+)	Short (−)	Long (+)	Short (−)	(+)	(−)		
MB mortgage-backed			+30		+30	0	0	+30
AR adjustable rate mortgage backed				−20	0	−20	0	−20
					(1+3)	(2+4)		(5+6)

SCHEDULE B.—CALCULATION OF NET IMMEDIATE POSITIONS IN SECURITIES AND FINANCINGS—Continued

[In millions of dollars]

Maturity category	Financings		Securities positions		Total securities and financing positions		Offset portions (+)	Net immediate positions (+/−)
	Long (+)	Short (−)	Long (+)	Short (−)	(+)	(−)		
Column No	1	2	3	4	5	6	7	8

where the net immediate position is the sum of the positive and negative entries under "Securities and Financing Positions" and the offset portion is the lesser of the absolute values of the positive and negative entries under "Securities and Financing Positions."

Example (6). On October 31, 1986 firm A's proprietary position contains, in addition to the positions given in Examples 1 through 5, a short position in the Treasury bond due November 15, 1998 with a market value of $30 million. The firm has partially financed the short position by borrowing $25 million of the bonds (market value). The borrowing arrangement will terminate on April 30, 1987. The firm would enter this short position and its financing on schedule B, "Calculation of Net Immediate Positions in Securities and Financings", in rows G and C (7.5–15 year and 4.5–9 month maturity categories for conventional securities), respectively, as follows:

SCHEDULE B.—CALCULATION OF NET IMMEDIATE POSITIONS IN SECURITIES AND FINANCINGS

[In millions of dollars]

Maturity category	Financings		Securities positions		Total securities and financing positions		Offset portions (+)	Net immediate positions (+/−)
	Long (+)	Short (−)	Long (+)	Short (−)	(+)	(−)		
C 135 days–9 mn	+25			−90	+25	−90	+25	−65
G 7.5–15 yr. (5.5–9 yr.)				−30	0	−30	0	−30
					(1+3)	(2+4)		(5+6)
Column No	1	2	3	4	5	6	7	8

where the net immediate position is the sum of the positive and negative entries under "Securities and Financing Positions" and the offset portion is the lesser of the absolute values of the positive and negative entries under "Securities and Financing Positions." The financing in category C is combined with the short position entered in category C in Example 3 to calculate the net immediate position of −$65 million.

Schedule C

Example (7). To calculate the net immediate position interim haircuts and the government's offset portion haircuts on the positions given in Examples 1 through 6, the offset portions and the net immediate positions are carried to Schedule C and entered in columns 7 and 8 in their respective maturity categories. The government's offset portion haircuts are determined by taking the percentage of the government's offset portions given by the corresponding government's offset portion factor. The government's offset portion haircut for maturity category C is $25 million x 0.08% = $0.02 million, or $20 thousand. The net immediate position interim haircuts are determined by taking the percentage of the net immediate positions indicated by the corresponding net immediate position factor. The net immediate position interim haricut for maturity category C is −$65 million × 0.20% = −$0.13 million, or −$130 thousand. The completed Schedule C, "Governments Portion and Net Immediate Position Interim Haircuts Calculation," read as follows:

SCHEDULE C.—GOVERNMENT'S OFFSET PORTION AND NET IMMEDIATE POSITION INTERIM HAIRCUTS CALCULATION

[Dollar amounts in millions]

Maturity category	Government's offset portions			Net immediate positions		
	Amounts (+)	Factors (percent)	Haircuts (+)	Amounts (+/−)	Factors (percent)	Interim haircuts (+/−)
A 0–44 days	0	None	0.0000	−100	None	0.0000
B 45–134 days	0	0.05	0.0000	+150	0.12	+$0.1800
C 135 days–9 mn	$25	0.08	$0.0200	−65	0.20	−0.1300
D 9–18 mn	50	0.20	0.1000	0	0.45	0.0000
E 1.5–3.5 yr. (1.5–3 yr.)	0	0.50	0.0000	+15	1.10	+0.1650
F 3.5–7.5 yr. (3–5.5 yr.)	20	0.45	0.0900	−10	2.20	−0.2200
G 7.5–15 yr. (5.5–9 yr.)	0	0.90	0.0000	−30	3.30	−0.9900
H 15–30 yr. (9–12 yr.)	0	1.55	0.0000	+50	5.00	+2.5000
I (12–21 yr.)	0	1.50	0.0000	−45	7.75	−3.4875
J (over 21 yr.)	0	2.10	0.0000	0	11.25	0.0000

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SCHEDULE C.—GOVERNMENT'S OFFSET PORTION AND NET IMMEDIATE POSITION INTERIM HAIRCUTS CALCULATION—Continued

[Dollar amounts in millions]

Maturity category	Government's offset portions			Net immediate positions		
	Amounts (+)	Factors (percent)	Haircuts (+)	Amounts (+/−)	Factors (percent)	Interim haircuts (+/−)
MB mortgage-backed security	0	0.90	0.0000	+30	3.30	+0.9900
AR adjustable rate mortgage-backed security	0	0.50	0.0000	−20	1.10	−0.2200
Total Government's offset portion haircut			0.2100			
Column No.	7	9	10	8	11	12

Schedule D

Example (8). On October 31, 1986 firm A's proprietary position contains, in addition to the immediate positions given in Examples 1 through 6, a short position in forward contracts in GNMA I mortgage-backed securities with a market value of $5 million. The forward contracts mature January 15, 1987. The gross futures and forward interim haircut would be calculated by taking the negative of 3.30% (the net position haircut factor for mortgage-backed securities) of the market value of the position, $5 million × 3.30% = $0.1650 million, or −$165 thousand. This haircut is then entered on Schedule D, "Consolidation of Net Immediate Position Interim Haircuts with Gross Futures and Options Interim Haircuts," in the row marked MB (the category for mortgage-backed securities), as follows:

SCHEDULE D.—CONSOLIDATION OF NET IMMEDIATE POSITION INTERIM HAIRCUTS WITH GROSS FUTURES AND OPTIONS INTERIM HAIRCUTS

[Dollar amounts in millions]

Maturity category	Net immediate position interim haircuts (+/−)	Gross interim haircuts				Aggregate interim haircuts		Futures and options offset portions (+)	Residual position interim haircuts (+/−)
		Futures and forward		Options					
		(+)	(−)	(+)	(−)	(+)	(−)		
MB mortgage backed securities	+$990.0		−$165.0			$990.0	−$165.0	$165.0	+$825.0
Column No.	12	13	14	15	16	17	18	19	20

where the positive aggregate interim haircut is the sum of all positive net immediate position, gross futures and forward, and gross options interim haircuts in category MB, and the negative aggregate interim haircut is the sum of all negative net immediate position, gross futures and forward, and gross options interim haircuts in category MB. The futures and options offset portion (column 19) is the smaller of the absolute values and the positive and negative aggregate interim haircuts, and the residual position interim haircut (column 20) is the sum of the positive and negative aggregate interim haircuts. The net immediate position interim haircut is carried over from column 12 of Schedule C.

Example (9). On October 31, 1986 firm A's proprietary position contains, in addition to the positions given in Examples 1 through 8, a long position of 25 futures contracts on Treasury bills with a closing price of 94.68. The futures contracts mature in March 1987. The market value of the 25 contracts is $24.68 million. The gross futures and forward interim haircut is calculated by taking 0.12% (the net position haircut factor for maturity category B, 45–135 days) of the market value of the position, $24.68 million × 0.12%= $0.0296 million, or $29.6 thousand. Since the sum of the remaining time to maturity of the futures contract and the maturity of the underlying security is about 7.5 months, this haircut is entered in row C (4.5–9 month maturity category for conventional securities) of Schedule D, "Consolidation of Net Immediate Position Interim Haircuts with Gross Futures and Options Interim Haircuts," as follows:

SCHEDULE D.—CONSOLIDATION OF NET IMMEDIATE POSITION INTERIM HAIRCUTS WITH GROSS FUTURES AND OPTIONS INTERIM HAIRCUTS

[Dollar amounts in millions]

Maturity category	Net immediate position interim haircuts (+/−)	Gross interim haircuts				Aggregate interim haircuts		Futures and options offset portions (+)	Residual position interim haircuts (+/−)
		Futures and forward		Options					
		(+)	(−)	(+)	(−)	(+)	(−)		
C 135 days-9 mn.	−$130.0	+$29.6				+$29.6	−$139.0	$29.6	−$100.4
Column N.	12	13	14	15	16	17	18	19	20

where the positive aggregate interim haircut is the sum of all positive net immediate position, gross futures and forward, and gross options interim haircuts in category C, and the negative aggregate interim haircut is the sum of all negative net immediate position, gross futures and forward, and gross options interim haircuts in category C. The futures and options offset portion (column 19) is the smaller of the absolute values and the positive and negative aggregate interim haircuts, and the residual position interim haircut (column 20) is the sum of the positive and negative aggregate interim haircuts. The net immediate position interim haircut is carried over from column 12 of Schedule C.

Example (10). On October 31, 1986 firm A's proprietary position contains, in addition to the positions given in Examples 1 through 9, 25 purchased put option contracts on Treasury bill futures. The options expire in March 1987 and have an exercise price of 94.75. The closing premium on these options for October 31 is $0.19. The interim haircut on a purchased put is the lesser of the market value of the option contracts or the gross futures and forward interim haircut on the underlying bill futures contracts. The market value of the option contracts is found by multiplying the premium per $100 par value times the total par value of the underlying futures contracts, ($0.19/$100) × $25 million = $0.475 million, or $47.5 thousand. The gross futures and forward interim haircut on the underlying futures contract was calculated in Example 9 to be $29.6 thousand. The interim haircut on these purchased puts is equal to the negative of the lesser of these two values, −$29.6 thousand. This haircut is entered as follows on Schedule D, "Consolidation of Net Immediate Position Interim Haircuts with Gross Futures and Options Interim Haircuts," in row C (4.5–9 month maturity category for conventional securities) as were the underlying bill futures contracts:

SCHEDULE D.—CONSOLIDATION OF NET IMMEDIATE POSITION INTERIM HAIRCUTS WITH GROSS FUTURES AND OPTIONS INTERIM HAIRCUTS

[In thousands of dollars]

Maturity category	Net immediate position interim haircuts	Gross interim haircuts				Aggregate interim haircuts		Futures options offset portions	Residual position interim haircuts
		Futures & forward		Options					
	(+/−)	(+)	(−)	(+)	(−)	(+)	(−)	(+)	(+/−)
C 135 days-9 mn.	−130.0	+29.6			−29.6	+29.6	−159.6	29.6	−130.0
Column No.	12	13	14	15	16	17	18	19	20

where the positive aggregate interim haircut is the sum of all positive net immediate position, gross futures and forward, and gross options interim haircuts in category C, and the negative aggregate interim haircut is the sum of all negative net immediate position, gross futures and forward, and gross options interim haircut in category C. The futures and options offset portion (column 19) is the smaller of the absolute values of the positive and negative aggregate interim haircuts, and the residual position interim haircut (column 20) is the sum of the positive and negative aggregate interim haircuts. The net immediate position interim haircut is carried over from column 12 of Schedule C.

Example (11). On October 31, 1986 firm A's proprietary position contains, in addition to the positions given in Examples 1 through 10, 40 purchased call option contracts on Treasury bonds due May 2016. The call options expire in December 1987 and have an exercise price of $94. The cash price of the bond is $95.78125. The closing premium on these options for October 31 is $2.18 (in 64ths). The interim haircut on a purchased call is the lesser of the market value of the option contracts or the net immediate position interim haircut on the underlying bonds. The market value of the option contracts is found by multiplying the premium per $100 par value of the bond times the total par value of the underlying bonds ($2.28125/$100) × $4 million = $0.09125 million, or $91,250 thousand. The net immediate position interim haircut on the underlying bonds is found by taking 5.00% (the net position haircut factor for maturity category H, 15–30 years for conventional securities) of the market value of the position, 5.00% × 40 × $95.78125/$100 = $191.6 thousand. The interim haircut on these purchased calls is equal to the lesser of these two values, $91.3 thousand. This haircut is entered on Schedule D, "Consolidation of Net Immediate Position Interim Haircuts with Gross Futures and Options Interim Haircuts," in row H (15–30 year maturity category for conventional securities), as follows:

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SCHEDULE D.—CONSOLIDATION OF NET IMMEDIATE POSITION INTERIM HAIRCUTS WITH GROSS FUTURES AND OPTIONS INTERIM HAIRCUTS

[In thousands of dollars]

Maturity category	Net immediate position interim haircuts (+/−)	Gross interim haircuts				Aggregate interim haircuts		Futures & options offset portions (+)	Residual position interim haircuts (+/−)
		Futures & forward		Options					
		(+)	(−)	(+)	(−)	(+)	(−)		
H 15–30 yr. (9–12 yr.)	+2,500.0	13	14	+91.3	16	+2,591.3	0.0	0.0	+2,591.3
Column No.	12			15		17	18	19	20

where the positive aggregate interim haircut is the sum of all positive net immediate position, gross futures and forward, and gross options interim haircuts in category H, and the negative aggregate interim haircut is the sum of all negative net immediate position, gross futures and forward, and gross options interim haircuts in category H. The futures and options offset portion (column 19) is the smaller of the absolute values of the positive and negative aggregate interim haircuts, and the resideual position interim haircut (column 20) is the sum of the positive and negative aggregate interim haircuts. The net immediate position interim haircut is carried over from column 12 of Schedule C.

Example (12). To calculate the total futures and options offset haircut, the futures and options offset haircut factor of 20 per cent is multiplied by the sum of all the futures and options interim haircuts in category H, and the hedging disallowance haircut of $33.0 thousand in category E (20% × $165.0 thousand = $33.0 thousand). The second offset is between categories G and H, with residual position interim haircuts of −$990.0 thousand and +$2,591.3 thousand, leaving a net residual position interim haircut of +$1,601.3 thousand in category H and a hedging disallowance haircut of $198 thousand in category G. The result of these calculations would be recorded in rows E, F, G, and H of the 20 per cent disallowance category of Schedule E, "Calculation of Hedging Disallowance Haircuts When Netting Haircuts Across Categories," as follows:

SCHEDULE D.—CONSOLIDATION OF NET IMMEDIATE POSITION INTERIM HAIRCUTS WITH GROSS FUTURES AND OPTIONS INTERIM HAIRCUTS—Continued

[In thousands of dollars]

Maturity category	Futures & options offset portions (+)	Residual position interim haircuts (+/−)
AR adjustable rate mortgage-backed	0.0	−220.0
Total futures and options offset portion	194.6	
Factor (percent)	×20	
Total futures and options offset haircut	38.92	
Column No.	19	20

Schedule E

Example (13). [i] Schedule E is used to calculate the hedging disallowance haircuts, the net residual position interim haircuts, the total hedging disallowance haircut, and the residual net position haircut. The residual position interim haircut for each category is carried forward from Schedule D, column 20 to Schedule E, column 20. For firm A's positions given in Examples 1 through 11, categories E and F, with residual position interim haircuts of +$165.0 thousand and −$220.0 thousand, are first offset, leaving a net residual position interim haircut of −$55.0 thousand (+$165.0 thousand + −$220.0 thousand) in category F and a hedging disallowance haircut of $33.0 thousand in category E (20% × $165.0 thousand = $33.0 thousand). The second offset is between categories G and H, with residual position interim haircuts of −$990.0 thousand and +$2,591.3 thousand, leaving a net residual position interim haircut of +$1,601.3 thousand in category H and a hedging disallowance haircut of $198 thousand in category G. The result of these calculations would be recorded in rows E, F, G, and H of the 20 per cent disallowance category of Schedule E, "Calculation of Hedging Disallowance Haircuts When Netting Haircuts Across Categories," as follows:

SCHEDULE E.—CALCULATION OF HEDGING DISALLOWANCE HAIRCUTS WHEN NETTING HAIRCUTS ACROSS CATEGORIES

[In thousands of dollars]

Maturity category	Residual position interim haircuts (+/−)	20% disallowance	
		Hedging disallowance haircuts (+)	Net residual position interim haircuts (+/−)
E 1.5–3.5 yr. (1.5–3 yr.)	+165.0	33.0	0.0
F 3.5–7.5 yr. (3–5.5 yr. (3–5.5 yr.)	−220.0	0.0	−55.0
G 7.5–15 yr. (5.9–9 yr.)	−990.0	198.0	0.0
H 15–30 yr. (9–12 yr.)	+2,591.3	0.0	+1,601.3
Column No.	20	21	22

[ii] With completion of offsetting of category pairs between which 20% hedging disallowance is permitted, categories between which 30% hedging disallowance is permitted are offset. Of the permissible category pairings at the 30% disallowance level, only categories B and C contain residual position interim haircuts or net residual position interim haricuts which can be offset. Category B's residual interim position haircut of +$180 thousand is offset against category C's residual position interim haircut of −$130 thousand, leaving a net residual position interim haircut of +$50 thousand in category B and a hedging disallowance haircut of $39 thousand in category C. The results of this calculation would be shown in rows B and C of Schedule E, "Calculation of Hedging Disallowance Haircuts when Netting Haircuts across Categories," as follows:

SCHEDULE E.—CALCULATION OF HEDGING DISALLOWANCE HAIRCUTS WHEN NETTING HAIRCUTS ACROSS CATEGORIES

[In thousands of dollars]

Maturity category	Residual position interim haircuts (+/−)	20% disallowance	
		Hedging disallowance haircuts (+)	Net residual position interim haircuts (+/−)
B 45–134 days	+180.0	0.0	+50.0
C 135 days-9 mn	−130.0	39.0	0.0

SCHEDULE E.—CALCULATION OF HEDGING DISALLOWANCE HAIRCUTS WHEN NETTING HAIRCUTS ACROSS CATEGORIES—Continued

[In thousands of dollars]

Maturity category	Residual position interim haircuts (+/−)	20% disallowance	
		Hedging disallowance haircuts (+)	Net residual position interim haircuts (+/−)
Column No.	20	23	24

[iii] Of the permissible category pairings at the 40% disallowance level, categories F and MB contain residual position interim haircuts or net residual position interim haircuts which can be offset. Category F's net residual interim position haircut of −$55 thousand is offset against category MB's residual position interim haircut of +$825 thousand, leaving a net residual position interim haircut of +$770 thousand in category MB and a hedging disallowance haircut of $22 thousand in category F. The second offset at the 40% level is between categories H and I, where the net residual position interim haircut of +$1,601.3 thousand in category H is offset against the residual position interim haircut of −$3,487.5 thousand in category I, leaving a net residual position interim haircut of −$1,886.2 thousand in category I and a hedging disallowance haircut of $640.5 thousand in category H. The results of these calculations would be shown in rows F, H, I, and MB of Schedule E, "Calculation of Hedging Disallowance Haircuts When Netting Haircuts Across Categories," as follows:

SCHEDULE E.—CALCULATION OF HEDGING DISALLOWANCE HAIRCUTS WHEN NETTING HAIRCUTS ACROSS CATEGORIES

[In thousands of dollars]

Maturity category	Residual position interim haircuts (+/−)	20% disallowance—Net Position Interim Haircuts (+/−)	40% disallowance	
			Hedging disallowance haircuts (+)	Net residual position interim haircuts (+/−)
F 3.5–7.5 yr. (3–5.5 yrs.)	−220.0	−55.0	22.0	0.0
H 15–30 yr. (9–12 yr.)	+2,591.3	+1,601.3	640.5	0.0
I (12–21 yr.)	−3,487.5	0.0	0.0	−1,886.2
MB mortgage backed security	+825.0	0.0	0.0	+770.0
Column No.	20	22	25	26

[iv] Calculation of the total hedging disallowance haircut and the residual net position haircut is shown in Schedule E in the last two columns, "Hedging Disallowance Haircuts" and "Qualified Netting Interim Haircuts," where the hedging disallowance haircut and the qualified netting interim haircut for each category are entered as follows:

SCHEDULE E.—CALCULATION OF HEDGING DISALLOWANCE HAIRCUTS WHEN NETTING HAIRCUTS ACROSS CATEGORIES

[In thousands of dollars]

Maturity category	Hedging disallowance haircuts	Qualified netting interim haircuts
	(+)	(+)
A 0–44 days	0.0	0.0
B 45–134 days	0.0	50.0
C 135 days-9 mn	39.0	0.0
D 9–18 mn	0.0	0.0
E 1.5–3.5 yr. (1.5–3 yr.)	33.0	0.0
F 3.5–7.5 yr. (3–5.5 yr.)	22.0	0.0
G 7.5–15 yr. (5.5–9 yr.)	198.0	0.0
H 15–30 yr. (9–12 yr.)	640.5	0.0
I (12–21 yr.)	0.0	1,886.2
J (over 21 yr.)	0.0	0.0
MB mortgage-backed security	0.0	770.0

SCHEDULE E.—CALCULATION OF HEDGING DISALLOWANCE HAIRCUTS WHEN NETTING HAIRCUTS ACROSS CATEGORIES—Continued

[In thousands of dollars]

Maturity category	Hedging disallowance haircuts	Qualified netting interim haircuts
	(+)	(+)
AR adjustable rate mortgage-backed	0.0	220.0
Total hedging disallowance haircut	932.5	
Residual net position haircut		2,926.2
Column No.	27	28

Schedule A

Example (14). On Schedule A, haircuts from Schedules C through E and liquid capital are entered, and the capital-to-risk ratio is calculated. On October 31, 1986, Firm A has total ownership equity of $10,185.8 thousand and subordinated liabilities of $2,000.0 thousand, of which $800.3 thousand are non-allowable, or illiquid, assets. These amounts with various deductions and credits give firm A liquid capital of $11,335.7 thousand. With one of its customers, who is not firm A's principal clearing bank or clearing broker, firm A has a net credit exposure of $1,780.4 thousand. This is in excess of 15 percent of firm A's liquid capital of $11,335.7 thousand, so a concentration of credit haircut of $20 thousand is found by multiplying the excess, $80 thousand, by 25 percent. A credit volatility haircut of $225 thousand is found by multiplying the larger of the qualifying long or short money market positions, $150 million, by 0.15 percent. Since the $40 million commercial paper position is rated in one of the four highest rating categories by two nationally recognized statistical rating organizations, it has a haircut of 2% x $40 million = $800 thousand according to SEC Rule 15c3–1. The haircuts and the elements making up liquid capital are entered on Schedule A, "Liquid Capital Requirement Summary Computation," as follows:

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SCHEDULE A.—LIQUID CAPITAL REQUIREMENT SUMMARY COMPUTATION

[In thousands of dollars]

1. Liquid capital [1]	11,335.7
2. Haircuts on security and financing positions including contractual commitments:	
a. Total governments offset portion haircut (Schedule C)	210.0
b. Total futures and options offset haircut (Schedule D)	38.9
c. Total hedging disallowance haircut (Schedule E)	932.5
d. Residual net position haircut (Schedule E)	2,926.2
e. Other securities haircut (use SEC factors)	800.0
3. Haircuts on credit exposure:	
a. Concentration of credit haircut	20.0
b. Credit volatility haircut	225.0
4. Total haircuts (lines 2+3)	5,152.6
5. Capital-to-risk ratio (line 1/line 4)	2.2:1

[1] Identical to the amount reported on line 3640 of the Report on Finances and Operations of Government Securities Brokers and Dealers, Form G–405.

A completed set of the remaining schedules, using firm A's positions from the examples above, follows.

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Schedule B

Calculation of Net Immediate Positions in Securities and Financings
($ millions)

	Maturity Category 1/	Financings Long 2/ (+)	Financings Short 2/ (-)	Securities Positions Long (+)	Securities Positions Short (-)	Total Securities and Financing Positions (+)	Total Securities and Financing Positions (-)	Offset Portions (+)	Net Immediate Positions (+/-)	
A	0-44 days				-100	0	-100	0	-100	A
B	45-134 days			+150		+150	0	0	+150	B
C	135 days-9 months	+25			-90	+25	-90	+25	-65	C
D	9-18 months		-50	+50		+50	-50	+50	0	D
E	1.5-3.5 years (1.5-3 years)			+15		+15	0	0	+15	E
F	3.5-7.5 years (3-5.5 years)			+20	-30	+20	-30	+20	-10	F
G	7.5-15 years (5.5-9 years)				-30	0	-30	0	-30	G
H	15-30 years (9-12 years)			+50		+50	0	0	+50	H
I	(12-21 years)				-45	0	-45	0	-45	I
J	(21 years and over)									J
MB	mortgage-backed			+30		+30	0	0	+30	MB
AR	adjustable rate mortgage-backed				-20	0	-20	0	-20	AR
	Column Number	1	2	3	4	5 (1+3)	6 (2+4)	7# (Note 1)	8# (5+6)	

Carry forward to Schedule C.

Note 1: The offset portion (Column 7) is the smaller of Columns 5 and 6.

1/ The categories are designated in Sec. 402.2(f)(1). A category contains all securities with maturities greater than or equal to the lower of the designated maturities, but less than the higher. Maturity designations in parentheses refer to maturities of zero-coupon instruments to be placed in that category. In categories A, B, C, and D, zero-coupon instruments are to be treated in the same manner as all other instruments. A half year (.5) is always considered to be 6 months.

2/ Long financings are financings which provide securities to a broker or dealer; short financings are those which provide funds.

Federal Register / Vol. 52, No. 36-37 / Wednesday, February 25, 1987 / Proposed Rules

Schedule C

Governments Offset Portion and Net Immediate Position Interim Haircuts Calculation
($ millions)

	Maturity Category 1/	Governments Offset Portion $ Amounts (+)	Governments Offset Portion Factors	Governments Offset Portion Haircuts (+)	Net Immediate Positions $ Amounts (+/-)	Net Immediate Positions Factors	Net Immediate Positions Interim Haircuts (+/-)
A	0-44 days	0	None	0.0000	-100	None	0.0000
B	45-134 days	0	0.0005	0.0000	+150	0.0012	+0.1800
C	135 days-9 months	25	0.0008	0.0200	-65	0.0020	-0.1300
D	9-18 months	50	0.0020	0.1000	0	0.0045	0.0000
E	1.5-3.5 years (1.5-3 years)	0	0.0050	0.0000	+15	0.0110	+0.1650
F	3.5-7.5 years (3-5.5 years)	20	0.0045	0.0900	-10	0.0220	-0.2200
G	7.5-15 years (5.5-9 years)	0	0.0090	0.0000	-30	0.0330	-0.9900
H	15-30 years (9-12 years)	0	0.0155	0.0000	+50	0.0500	+2.5000
I	(12-21 years)	0	0.0150	0.0000	-45	0.0775	-3.4875
J	(21 years and over)	0	0.0210	0.0000	0	0.1125	0.0000
MB	mortgage-backed	0	0.0090	0.0000	+30	0.0330	+0.9900
AR	adjustable rate mortgage-backed	0	0.0050	0.0000	-20	0.0110	-0.2200

Total Governments Offset Portion Haircut $ 0.2100

Column Number	7 (Note 1)	9	10# (7x9)	8 (Note 1)	11	12## (8x11)

\# Carry to Schedule A, line 2a
\## Carry forward to Schedule D (or Schedule E, if no forwards, futures, or options).

Note 1: From Schedule B.

1/ The categories are designated in Sec. 402.2(f)(1). A category contains all securities with maturities greater than or equal to the lower of the designated maturities, but less than the higher. Maturity designations in parentheses refer to maturities of zero-coupon instruments to be placed in the category. In categories A, B, C, and D, zero-coupon instruments are to be treated in the same manner as all other instruments. A half year (.5) is always considered to be 6 months.

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Schedule D

Consolidation of Net Immediate Position Interim Haircuts
with Gross Futures and Options Interim Haircuts
($ thousands)

	Maturity Category 1/	Net Immediate Position Interim Haircuts (+/-)	Gross Interim Haircuts: Futures & Forward (+)	Futures & Forward (-)	Options (+)	Options (-)	Aggregate Interim Haircuts (+)	Aggregate Interim Haircuts (-)	Futures & Options Offset Portions 2/ (+)	Residual Position Interim Haircuts (+/-)	
B	45-134 days	+180.0								+180.0	B
C	135 days-9 months	-130.0	+29.6			-29.6	+29.6	-159.6	29.6	-130.0	C
D	9-18 months	0.0								0.0	D
E	1.5-3.5 years (1.5-3 years)	+165.0								+165.0	E
F	3.5-7.5 years (3-5.5 years)	-220.0								-220.0	F
G	7.5-15 years (5.5-9 years)	-990.0								-990.0	G
H	15-30 years (9-12 years)	+2500.0			+91.3		+2591.3	0.0	0.0	+2,591.3	H
I	(12-21 years)	-3487.5								-3,487.5	I
J	(21 years and over)	0.0								0.0	J
MB	mortgage-backed	+990.0		-165.0			990.0	-165.0	165.0	+825.0	MB
AR	adjustable rate mortgage-backed	-220.0								-220.0	AR

Total Futures and Options Offset Portion: $ 194.6
Factor: x20%
Total Futures and Options Offset Haircut: $ 38.92 #

Column Number	12 (Note 1)	13	14	15	16	17	18	19 (Note 2)	20##

Carry to Schedule A, line 2b.
Carry forward to Schedule E.
Note 1: From Schedule C.
Note 2: Column 19 is the smaller of columns 17 and 18.
1/ The categories are designated in Sec. 402.2(f)(1). A category contains all securities with maturities greater than or equal to the lower of the designated maturities, but less than the higher. Maturity designations in parentheses refer to maturities of zero-coupon instruments to be placed in the category. In categories A, B, C, and D, zero-coupon instruments are to be treated in the same manner as all other instruments. A half year is always considered to be 6 months.
2/ The total futures and options haircut is calculated from the total of column 19.

Schedule E

Calculation of Hedging Disallowance Haircuts when Netting Haircuts Across Categories 1/
($ thousands)

	Maturity Category 2/	Residual Position Interim Haircuts (+/-)	20% Disallowance: Hedging Disallowance Haircuts (+)	20% Disallowance: Net Residual Position Interim Haircuts (+/-)	30% Disallowance: Hedging Disallowance Haircuts (+)	30% Disallowance: Net Residual Position Interim Haircuts (+/-)	40% Disallowance: Hedging Disallowance Haircuts (+)	40% Disallowance: Net Residual Position Interim Haircuts (+/-)	Hedging Disallowance Haircuts (+)	Qualified Netting Interim Haircuts (+)	
B	45-134 days	+180.0			0.0	+50.0			0.0	50.0	B
C	135 days-9 months	-130.0			39.0	0.0			39.0	0.0	C
D	9-18 months	0.0							0.0	0.0	D
E	1.5-3.5 years (1.5-3 years)	+165.0	33.0	0.0					33.0	0.0	E
F	3.5-7.5 years (3-5.5 years)	-220.0	0.0	-55.0			22.0	0.0	22.0	0.0	F
G	7.5-15 years (5.5-9 years)	-990.0	198.0	0.0					198.0	0.0	G
H	15-30 years (9-12 years)	+2,591.3	0.0	+1,601.3			640.5	0.0	640.5	0.0	H
I	(12-21 years)	-3,487.5					0.0	-1,886.2	0.0	1,886.2	I
J	(21 years and over)	0.0							0.0	0.0	J
MB	mortgage-backed	+825.0					0.0	+770.0	0.0	770.0	MB
AR	adjustable rate mortgage-backed	-220.0							0.0	220.0	AR

Total Hedging Disallowance Haircut: $ 932.5

Residual Net Position Haircut: $ 2,926.2

Column Number	20 (Note 1)	21	22 (Note 2)	23	24 (Note 2)	25	26 (Note 2)	27# (Note 3)	28##

\# Column 27 carries forward to Schedule A, line 2c.

\## Column 28 total carries forward to Schedule A, line 2d.

Note 1: From Schedule D (or Schedule C, if no forwards, futures, or options).

Note 2: Net of two offsetting haircuts of paired maturity categories.

Note 3: For every entry in column 20 there should be an entry in either column 27 or 28 (but never both).

1/ See Sec 402.2(f)(3) for category pair hedging disallowance haircut factors.

2/ The categories are designated in Sec. 402.2(f)(1). A category contains all securities with maturities greater than or equal to the lower of the designated maturities, but less than the higher. Maturity designations in parentheses refer to maturities of zero-coupon instruments to be placed in the category. In categories A, B, C, and D, zero-coupon instruments are to be treated in the same manner as all other instruments. A half year (.5) is always considered to be 6 months.

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List of subjects in 17 CFR Chapter IV

Accounting, Accountants, Banks, banking, Brokers, Credit unions, Dealers, Federal home loan banks, Government securities, Government securities brokers and dealers, Investments, National banks, Savings and loan associations, Securities.

For the reasons set out in the preamble, Chapter IV of Title 17, *Code of Federal Regulations*, is proposed to be added as set forth below.

CHAPTER IV—REGULATIONS UNDER THE GOVERNMENT SECURITIES ACT OF 1986

SUBCHAPTER A—REGULATIONS UNDER SECTION 15C OF THE SECURITIES EXCHANGE ACT OF 1934

Part
400—Rules of General Application
401—Exemptions
402—Financial Responsibility
403—Protection of Customer Securities and Balances
404—Recordkeeping and Preservation of Records
405—Reports and Audit
449—Forms, Section 15c of the Securities Exchange Act of 1934

SUBCHAPTER B—REGULATIONS UNDER TITLE II OF THE GOVERNMENT SECURITIES ACT OF 1986

Part
450—Custodial Holdings of Government Securities by Depository Institutions

SUBCHAPTER A—REGULATIONS UNDER SECTION 15C OF THE SECURITIES EXCHANGE ACT OF 1934

PART 400—RULES OF GENERAL APPLICATION

Sec.
400.1 Scope of regulations.
400.2 Office responsible for regulations; filing of requests for exemptions, for interpretations, and of other materials.
400.3 Definitions.
400.4 Information concerning associated persons of financial institutions that are government securities brokers or dealers.
400.5 Amendments to application for registration and to notice of status as a government securities broker or dealer.
400.6 Notice of withdrawal from business as a government securities broker or dealer by a financial institution.

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3209 (15 U.S.C. 78o–5).

§ 400.1 Scope of regulations.

(a) Title I of the Government Securities Act of 1986 (Pub. L. 99–571, 100 Stat. 3208) amends the Securities Exchange Act of 1934 (48 Stat. 881–905; 15 U.S.C. chapter 2B) ("Act") by adding section 15C, authorizing the Secretary of the Treasury to promulgate regulations concerning the finanical responsibility, protection of customer securities and balances, recordkeeping and reporting of brokers and dealers in government securities. Those regulations constitute subchapter A of this chapter. Unless otherwise explicitly provided, all regulations in this subchapter apply to all government securities brokers or dealers, including registered brokers or dealers and financial institutions.

(b) Section 15C(a)(1)(A) of the Act (15 U.S.C. 78o–5(a)(1)(A)) requires all government securities brokers and government securities dealers, except those who are brokers or dealers registered pursuant to section 15 or section 15B of the Act or financial institutions, to register with the Securities and Exchange Commission ("Commission"). Regulations concerning registration are at § 240.15Ca2–1 et seq. of this title. The Commission is responsible for the interpretation of the definitions of government securities broker and government securities dealer and of the regulations at § 240.15Ca2–1 et seq.

(c) Section 15C(a)(1)(B)(i) of the Act (15 U.S.C. 78o–5(a)(1)(B)(i)) requires all government securities brokers or dealers that are also registered brokers or dealers to notify the Commission of their status as government securities brokers or dealers. Regulations concerning notice are at § 240.15Ca1–1 of this title.

(d) Section 15C(a)(1)(B)(i) of the Act also requires all government securities brokers or dealers that are financial institutions to notify the appropriate regulatory agency, as defined in section 3(a)(34)(G) of the Act (15 U.S.C. 78c(a)(34)(G)), of their status as government securities brokers or dealers. The form of notice, Form G–FIN, is at § 449.1 of this chapter. Forms are available from the appropriate regulatory agency.

§ 400.2 Office responsible for regulations; filing of requests for exemptions, for interpretations and of other materials.

(a) The regulations in this chapter are promulgated by the Assistant Secretary (Domestic Finance) pursuant to a delegation of authority from the Secretary of the Treasury. The office responsible for the regulations is the Office of the Deputy Assistant Secretary (Federal Finance).

(b)(1) Section 15C(a)(4) of the Act (15 U.S.C. 78o–5(a)(4)) authorizes the Secretary to exempt any government securities broker or dealer or class thereof from the requirements of registration or regulations promulgated under section 15C. In addition, section 15C(b)(3) of the Act (15 U.S.C. 78o5(b)(3)) provides for classification, by the Secretary, of government securities brokers or dealers and authorizes the whole or partial exemption of classes from rules under section 15C or the application of different standards to different classes.

(2) Although the appropriate regulatory agencies, as defined in § 400.3, and the self-regulatory organizations, as defined in section 3(a)(26) of the Act (15 U.S.C. 78c(a)(26)), have enforcement responsibility under section 15C of the Act, Treasury is responsible for interpretation and amendment of the regulations under this chapter (with the exception of Forms G–FIN and G–FINW, §§ 449.1 and 449.2 of this chapter, which are the responsibility of the Board of Governors of the Federal Reserve System).

(c) Correspondence with the Treasury concerning the regulations, including any request for exemption, should be directed to the Deputy Assistant Secretary (Federal Finance), Department of the Treasury, Main Treasury Building, Washington, D.C. 20220. Both the envelope and the document should prominently state "Government Securities Act Request". Three copies should be provided of lengthy documents and exhibits.

§ 400.3 Definitions.

Unless otherwise explicitly provided, in this subchapter:

(a) "Act" means the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. chapter 2B, as amended);

(b) "Appropriate regulatory agency" has the meaning set out in section 3(a)(34)(G) of the Act (15 U.S.C. 78c(a)(34)(G)), except that the appropriate regulatory agency for an entity insured by the Federal Savings and Loan Insurance Corporation is in all cases the Federal Home Loan Bank Board, and, with respect to a financial institution for which an appropriate regulatory agency is not explicitly designated, the appropriate regulatory agency is the SEC;

(c) "Commission" or "SEC" means the Securities and Exchange Commission;

(d) "Designated examining authority" and "Examining Authority" means: (1) In the case of a registered government securities broker or dealer that belongs to only one self-regulatory organization, such self-regulatory organization, and (2) in the case of a registered government securities broker or dealer that belongs to more than one self-regulatory organization, the self-regulatory organization designated by the Commission pursuant to section 17(d) of the Act (15 U.S.C. 78q(d)) as the entity with responsibility for examining such registered government securities broker or dealer;

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(e) "Financial institution" has the meaning set out in section 3(a)(46) of the Act (15 U.S.C. 78c(a)(46)), and such term explicitly does not include a subsidiary or affiliate of an institution described in such section;

(f) "Government securities broker" has the meaning set out in section 3(a)(43) of the Act (15 U.S.C. 78c(a)(43)), and explicitly includes not only registered government securities brokers, but also registered brokers and financial institutions;

(g) "Government securities dealer" has the meaning set out in section 3(a)(44) of the Act (15 U.S.C. 78c(a)(44)), and explicitly includes not only registered government securities dealers, but also registered dealers and financial institutions;

(h) "Government securities" has the meaning set out in section 3(a)(42) of the Act (15 U.S.C. 78c(a)(42));

(i) "Registered broker or dealer" means a broker or dealer registered pursuant to section 15 or section 15B of the Act (15 U.S.C. 78o, 78o–4));

(j) "Registered government securities broker or dealer" means a government securities broker or dealer registered pursuant to section 15C(a)(1)(A) of the Act (15 U.S.C. 78o–5(a)(1)(A));

(k) "Secretary" means the Secretary of the Treasury; and

(l) "Treasury" or "Department" means the Department of the Treasury.

§ 400.4 Information concerning associated persons of financial institutions that are government securities brokers or dealers.

(a) Every associated person of a financial institution that is a government securities broker or dealer that is not exempt pursuant to Part 401 of this chapter shall file with such financial institution a completed Form G–FIN–4 (§ 449.4 of this chapter) unless such person has on file with such financial institution a completed and current Form U–4 (promulgated by a self-regulatory organization) or Form MSD–4 (as required for associated persons of bank municipal securities dealers).

(b) To the extent any information furnished by an associated person pursuant to paragraph (a) of this section (including information on a Form U–4 or Form MSD–4) is or becomes materially inaccurate or incomplete, such associated person shall promptly furnish in writing to such financial institution, in a form acceptable to the appropriate regulatory agency for such financial institution, a statement correcting such information.

(c) For the purpose of verifying the information furnished by an associated person pursuant to paragraph (a) of this rule, every government securities broker or dealer that is a financial institution shall make inquiry of all other employers of such associated person during the immediately preceding three years concerning the accuracy and completeness of such information.

(d) Every government securities broker or dealer that is a financial institution not exempt from this section pursuant to Part 401 of this chapter shall:

(1) Obtain and, within 10 days thereafter, file with the appropriate regulatory agency, in a form acceptable to such appropriate regulatory agency, the information required by paragraphs (a) and (b) of this section; and

(2) File with the appropriate regulatory agency within 30 days after the termination of the status of an individual as an associated person a Form G–FIN–5 (§ 449.4 of this chapter), unless the financial institution is required to and has filed a Form U–5 or Form MSD–5 with respect to such person.

(e)(1) For the purposes of this part, "associated person" means a person:

(i) Directly engaged in any of the following activities in either a supervisory or non-supervisory capacity:

(A) Underwriting, trading or sales of government securities;

(B) Financial advisory or consultant services for issuers in connection with the issuance of government securities;

(C) Research or investment advice, other than general economic information or advice, with respect to government securities in connection with the activities described in paragraphs (e)(1)i(A) and (e)(1)i(B) of this section;

(D) Activities other than those specifically mentioned which involve communication, directly or indirectly, with public investors in government securities in connection with the activities described in paragraphs (e)(1)(A) and (e)(1)(B) of this section; or

(ii) Directly engaged in the following activities in a supervisory capacity:

(A) Processing and clearance activities with respect to government securities;

(B) Maintenance of records involving any of the activities described in this paragraph (e)(1).

(2) Directors and senior officers of the financial institution who may from time to time set broad policy guidelines affecting the financial institution as a whole that are not directly related to the conduct of the financial institution's government securities business are not considered to be "directly engaged" in the activities described in this paragraph (e).

(f) Every notice and form filed pursuant to this section shall constitute a "report" within the meaning of sections 15, 15C and 32(a) of the Act (15 U.S.C. 78o, 78o–5, 78ff(a)).

§ 400.5 Amendments to application for registration and to notice of status as a government securities broker or dealer.

(a) (1) If the information contained in any application for registration as a government securities broker or dealer (other than the statements required by § 250.15Ca2–2 of this title) or in any amendment thereto, becomes inaccurate for any reason, the registered government securities broker or dealer shall file within 30 days thereafter an amendment on Form BD (§ 249.501 of this title) correcting such information, in accordance with the instructions provided therein.

(2) If the information contained in any notice of status as a government securities broker or dealer filed by a registered broker or dealer, or in any amendment thereto, becomes inaccurate for any reason, the registered broker or dealer shall file within 30 days an amendment on Form BD (§ 249.501 of this title) correcting such information, in accordance with the instructions provided therein.

(b) If the information contained in any notice of status as a government securities broker or dealer filed by a financial institution, or any amendment thereto, becomes inaccurate for any reason, the financial institution shall file within 30 days an amendment on Form G–FIN (§ 449.1 of this chapter) correcting such information, in accordance with the instructions provided therein.

(c) Every amendment filed pursuant to this section shall constitute a "report" within the meaning of sections 15, 15C and 32(a) of the Act (15 U.S.C. 78o, 78o–5, 78ff(a)).

§ 400.6 Notice of withdrawal from business as a government securities broker or dealer by a financial institution.

(a) Whenever a financial institution that is a government securities broker or dealer that is not exempt from the notice requirements of § 400.5 pursuant to Part 401 of this chapter, ceases to act as a government securities broker or dealer, it shall file with the appropriate regulatory agency notice of such cessation on Form G–FINW (§ 449.2 of this chapter) in accordance with the instructions contained therein.

(b) Except as provided in paragraph (c) of this section, a notice that a financial institution has ceased to act as a government securities broker or dealer shall become effective for all purposes

on the 60th day after the filing thereof with the appropriate regulatory agency or within such shorter period of time as the appropriate regulatory agency determines.

(c) If the notice described in paragraph (a) of this section is filed with the appropriate regulatory agency any time after the date of the issuance of a notice or order by the appropriate regulatory agency instituting proceedings pursuant to section 15C(c)(2)(A) of the Act (15 U.S.C. § 78o–5(c)(2)(A)) to censure, suspend, limit, or bar from acting as a government securities broker or government securities dealer the entity filing such notice, or if the appropriate regulatory agency has instituted any action against the entity filing such notice pursuant to section 15C(2)(B) of the Act (15 U.S.C. § 78o–5(c)(2)(B)), the notice shall become effective pursuant to paragraph (b) of this section at such time and upon such terms and conditions as the appropriate regulatory agency deems necessary to appropriate in the public interest for the protection of investors.

(d) Every notice filed pursuant to this section shall constitute a "report" within the meaning of sections 15, 15C and 32(a) of the Act (15 U.S.C. 78o, 78o–5, 78ff(a)).

PART 401—EXEMPTIONS

Sec.

401.1 Exemption for organizations handling transactions in United States Savings Bonds.
401.2 Exemption for depository institutions that submit tenders for the account of customers for purchase on original issue of United States Treasury securities.
401.3 Exemption for financial institutions that are engaged in limited government securities brokerage activities.
401.4 Exemption for financial institutions whose government securities dealer activities consist only of repurchase and limited reverse repurchase transactions.
401.5 Exemption for corporate credit unions transacting limited government securities business with other credit unions.

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3209 (15 U.S.C. 78o–5(a)(4)).

§ 401.1 Exemption for organizations handling transactions in United States Savings Bonds.

An organization that handles United States Savings Bond transactions, including a qualified issuing or paying agent or an organization that accommodates customers or employees by forwarding requested transactions to qualified issuing or paying agents or the Treasury and whose transactions in government securities are limited to these transactions and such other activities that are exempted by the regulations under this subchapter, shall be exempt from the provisions of section 15C(a), (b) and (d) of the Act (15 U.S.C. 78o–5(a), (b), (d)) and the regulations of this subchapter. For the purposes of this section, the term "United States Savings Bond" means any savings-type security offered by the Treasury, including all series of the United States Savings Bonds, United States Savings Notes and United States Savings Stamps.

§ 401.2 Exemption for depository institutions that submit tenders for the account of customers for purchase on original issue of United States Treasury securities.

(a) Subject to the requirements of paragraph (b) of this section, a depository institution that submits tenders or subscriptions for purchase on original issue of United States Treasury securities for the account of customers on a fully disclosed basis, whose transactions in government securities are limited to such transactions and such other activities as have been exempted by regulation under this subchapter shall be exempt from the provisions of section 15C(a), (b) and (d) of the Act (15 U.S.C. 78o–5(a), (b), (d)) and the regulations of this subchapter.

(b) The exemption described in paragraph (a) of this section is available only to a depository institution that agrees to comply with the regulations of Part 450 of this chapter concerning custodial holdings of goverment securities.

(c) For the purposes of this section, "depository institution" has the meaning stated in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)–(vi)) and also includes a foreign bank, an agency or branch of a foreign bank and a commercial lending company owned or controlled by a foreign bank (as such terms are defined in the International Banking Act of 1978, Pub. L. 95–369, 92 Stat. 607).

§ 401.3 Exemption for financial institutions that are engaged in limited government securities brokerage activities.

(a)(1) Subject to the requirements of paragraph (b) of this section, a financial institution shall be exempt from the provisions of Sections 15C(a), (b) and (d) of the Act (15 U.S.C. 78o–5(a), (b), (d)) and the regulations of this subchapter, unless it acts as a government securities broker by:

(i) Holding itself out as a government securities broker or interdealer broker; or

(ii) Actively soliciting purchases or sales of government securities on an agency basis;

(2) A financial institution shall not be regarded as acting as a government securities broker within the meaning of this section if it:

(i) Effects fewer than 500 government securities brokerage transactions (other than transactions described in §§ 401.1 or 401.2) per year; or

(ii) Effects all such transactions (other than transactions described in §§ 401.1 or 401.2) pursuant to a contractual or other arrangement with a government securities broker or dealer that is registered pursuant to section 15C(a)(1)(A) of the Act (15 U.S.C. 78o–5(a)(1)(A)) or that has filed notice of its status as a government securities broker or dealer pursuant to section 15C(a)(1)(B) of the Act (15 U.S.C. 78o–5(a)(1)(B)) (the "transacting government securities broker or dealer") under which the transacting government securities broker or dealer will offer securities services on or off the premises of the financial institution, provided that:

(A) The transacting government securities broker or dealer is clearly identified as the person performing the securities services;

(B) Financial institution employees perform only clerical and ministerial functions in connection with government securities transactions unless such employees are associated persons (as defined in § 400.4(e) of this chapter) or registered representatives of the transacting government securities broker or dealer;

(C) Financial institution employees do not receive compensation for government securities activities other than clerical or ministerial functions unless such employees are associated persons (as defined in § 400.4(e) of this chapter) or registered representatives of the transacting government securities broker or dealer; and

(D) Such services are provided on a basis in which all customers are fully disclosed to the transacting government securities broker or dealer.

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(b) The exemption described in paragraph (a) of this section is available only to a financial institution that agrees to comply with the regulations of Part 450 of this chapter concerning custodial holdings of government securities for customers.

(c) For the purposes of this section, "financial institution" includes a federal credit union, as defined in 12 U.S.C. 1752(1).

§ 401.4 Exemption for financial institutions whose government securities dealer activities consist only of repurchase and limited reverse repurchase transactions.

(a) Subject to the requirements of paragraph (b) of this section, a financial institution shall be exempt from the provisions of sections 15C (a), (b), and (d) of the Act (15 U.S.C. 78o–5 (a), (b), (d)) and the regulations of this subchapter if its government securities dealer activities are limited to:

(1) Sales or purchases in a fiduciary capacity;

(2) The sale and subsequent repurchase of government securities pursuant to a repurchase agreement;

(3) Not more than 500 transactions per year involving the purchase and subsequent resale of government securities pursuant to a reverse repurchase agreement;

(4) Such other activities as have been exempted by regulation under this subchapter.

(b) The exemption described in paragraph (a) of this section is available only to a financial institution that agrees to comply with the regulations of Part 450 of this chapter concerning custodial holdings of government securities for customers.

§ 401.5 Exemption for corporate credit unions transacting limited government securities business with other credit unions.

(a) (1) Subject to the requirements of paragraph (b) of this section, a corporate credit union shall be exempt from the provisions of section 15C (a), (b) and (d) of the Act (15 U.S.C. 78o–5 (a), (b), (d)) and the regulations thereunder if its government securities dealer activities are limited to the sale and subsequent repurchase and the purchase and subsequent resale, each pursuant to a repurchase or reverse repurchase agreement, of government securities to other credit unions and such other activities as have been exempted by regulation under this Part.

(2) For the purposes of this section, "corporate credit union" means a credit union whose membership consists primarily of other credit unions and that is (i) a federal credit union as defined in 12 U.S.C. 1752(1), (ii) an insured credit union as defined in 12 U.S.C. 1752(7), or (iii) a member of the National Credit Union Administration Central Liquidity Facility.

(b) The exemption described in paragraph (a) of this section is available only to a credit union that agrees to comply with the regulations of Part 450 of this chapter concerning custodial holdings of government securities.

PART 402—FINANCIAL RESPONSIBILITY

Sec.

402.1 Application of part to registered brokers and dealers and financial institutions; effective date.
402.2 Capital requirements for registered government securities brokers and dealers.
402.2a Appendix A—Calculation of market risk haircut for purposes of § 402.2(g)(2).
402.2b [Reserved]
402.2c Appendix C—Modification of § 240.15c3–1c of this title, relating to consolidated calculations of capital, for purposes of § 402.2.
402.2d Appendix D—Modification of § 240.15c3–1d of this title, relating to satisfactory subordination agreements, for purposes of § 402.2.

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3209 (15 U.S.C. 78o–5(b)(1)(A), (b)(2)).

§ 402.1 Application of part to registered brokers and dealers and financial institutions; effective date.

(a) *Application of part.* This part applies to all government securities brokers and dealers, except as otherwise provided herein.

(b) *Registered brokers or dealers.* This part does not apply to a registered broker or dealer that is subject to § 240.15c3–1 of this title (SEC Rule 15c3–1).

(c) *Financial institutions.* This part does not apply to a government securities broker or dealer that is a financial institution and that is subject to the rules and regulations of its appropriate regulatory agency concerning capital requirements.

(d) *Government securities interdealer brokers.* (1) A government securities interdealer broker, as defined in paragraph (d)(2) of this section, may elect not to be subject to the limitations of this Part 402 but rather to be subject to the requirements of § 240.15c3–1 of this title (SEC Rule 15c3–1) except paragraph (c)(2)(ix) thereof, and paragraphs (d)(3), (4), and (5) of this section by filing such election in writing with its designated examining authority. A government securities interdealer broker may not revoke such election without the written consent of its designated examining authority.

(2) "Government securities interdealer broker" means a government securities broker which acts exclusively as an undisclosed agent in the purchase or sale of government securities for a registered broker or dealer or government securities broker or dealer not exempt pursuant to Part 401 of this chapter, which has no "customers" as defined in § 240.15c3–1 of this title and which does not have or maintain any government securities in its proprietary or other accounts.

(3) In order to qualify to operate under this paragraph (d), a government securities interdealer broker shall at all times have and maintain net capital, as defined in § 240.15c3–1(c)(2) of this title, of not less than $1,000,000.

(4) For purposes of this paragraph (d), a government securities interdealer broker shall deduct from net worth ¼ of 1% of the contract value of each government securities failed-to-deliver contract which is outstanding 5 business days on longer. Such deduction shall be increased by any excess of the contract price of the failed-to-deliver over the market value of the underlying security.

(5) For purposes of this paragraph (d), a government securities interdealer broker may exclude from its aggregate indebtedness computation indebtedness adequately collateralized by government securities outstanding for not more than one business day and offset by government securities failed to deliver of the same issue and quantity. In no event may a government securities interdealer broker exclude any overnight bank loan attributable to the same government securities failed-to-deliver contract for more than one business day. A government securities interdealer broker need not deduct from net worth the amount by which the market value of securities failed to receive outstanding longer than thirty (30) calendar days exceeds the contract value of those failed to receive as required by § 240.15c3–1(c)(2)(iv)(E) of this title.

(6) On the application of the government securities interdealer broker, the designated examining authority may extend the periods of time in this paragraph (d) if it determines that the extension is warranted because of exceptional circumstances and that the government securities interdealer broker is acting in good faith.

(e) The Department may, upon written application, exempt from the provisions of this part, either unconditionally or on specified terms and conditions, any registered government securities broker or dealer who satisfies the Department that, because of the special nature of its

business, its financial position, and the safeguards it has established for the protection of customers' funds and securities, it is not necessary in the public interest or for the protection of investors to subject such government securities broker or dealer to the provisions of this part.

(f) *Effective Date.* This part shall be effective July 25, 1987, *provided however,* that until October 25, 1987, registered government securities brokers and dealers need not comply with § 402.2(a)–(c) as long as:

(1) A registered government securities broker or dealer that acts solely as an introducing broker within the meaning of § 240.15c3–1(a)(2) of this title has and maintains liquid capital, as defined in § 402.2(d), in an amount of not less than $5,000; and

(2) Any other registered government securities broker or dealer has and maintains liquid capital, as defined in § 402.2(d), in an amount of not less than $50,000.

§ 402.2 Capital requirements for registered government securities brokers and dealers.

(a) *General rule.* No government securities broker or dealer shall permit its liquid capital to be below an amount equal to 120 percent of total haircuts as defined in paragraph (g) of this section.

(b) *Minimum liquid capital.* Notwithstanding the provisions of paragraph (a) of this section, a government securities broker or dealer shall have and maintain liquid capital in an amount not less than $25,000, after deducting total haircuts as defined in paragraph (g) of this section.

(c) *Minimum liquid capital for introducing brokers.* Notwithstanding the provisions of paragraphs (a) and (b) of this section, a government securities broker or dealer that acts solely as an introducing broker within the meaning of § 240.15c3–1(a)(2) of this title, shall maintain liquid capital in an amount not less than $5,000, after deducting total haircuts as defined in paragraph (g) of this section.

(d) *Liquid capital.* "Liquid capital" means net capital as defined in § 240.15c3–1)c)(2) of this title with the following modifications:

(1) The percentages used to calculate the deductions for failed to deliver contracts when the underlying instrument is a Treasury market risk instrument as defined in paragraph (e) of this section are the appropriate haircut factors specified in paragraph (f)(2) of this section; and

(2) The deductions from net worth required by §§ 240.15c3–1(c)(2)(vi) and (c)(2)(viii) of this title and the adjustments to net worth set forth in § 240.15c3–1a and § 240.15c3–1b of this title (Appendices A and B to SEC Rule 15c3–1) are omitted.

(e) *Treasury market risk instruments.* (1) For purposes of this part, the term "Treasury market risk instrument" means the following dollar-denominated securities, debt instruments, and derivative instruments:

(i) Government securities, except equity securities and those mortgage-backed securities described in paragraph (e)(2) of this section;

(ii) Zero-coupon receipts or certificates based on marketable Treasury notes or bonds;

(iii) Certificates of deposit of less than one year to maturity;

(iv) Bankers acceptances;

(v) Commercial paper of less than one year to maturity rated in one of the three highest categories by at least two nationally recognized statistical rating organizations;

(vi) Futures, forwards, and options on Treasury market risk instruments described in paragraphs (e)(1)(i)–(v) of this section or on time deposits whose changes in yield are closely correlated with the Treasury market risk instruments described in paragraph (e)(1)(iii) of this section, settled on a cash or delivery basis;

(vii) Options on those futures contracts described in paragraph (e)(1)(vi) of this section, settled on a cash or delivery basis; and

(2) "Treasury market risk instrument" does not include mortgage-backed securities that do not pass through to each security holder on a pro rata basis a distribution based on the monthly payments and prepayments of principal and interest on the underlying pool of mortgage collateral less fees and expenses.

(f)(1) *Haircut categories.* For purposes of this part, the applicable categories within which non-zero-coupon and zero-coupon Treasury market risk instruments are classified are:

Category	Term or type for non-zero-coupon instruments	Term for zero-coupon instruments
A	Less than 45 days	Less than 45 days.
B	At least 45 days but less than 135 days	At least 45 days but less than 135 days.
C	At least 135 days but less than 9 months	At least 135 days but less than 9 months
D	At least 9 months but less than 1 year, 6 months.	At least 9 months but less than 1 year, 6 months.
E	At least 1 year, 6 months but less than 3 years, 6 months.	At least 1 year, 6 months but less than 3 years.
F	At least 3 years, 6 months but less than 7 years, 6 months.	At least 3 years but less than 5 years, 6 months
G	At least 7 years, 6 months but less than 15 years.	At least 5 years, 6 months but less than 9 years.
H	15 years and over	At least 9 years, but less than 12 years.
I		At least 12 years but less than 21 years.
J		21 years and over.
MB	All fixed rate mortgage-backed securities that are Treasury market risk instruments.	
AR	All adjustable rate mortgage-backed securities that are Treasury market risk instruments.	

(2) *Haircut factors.* For purposes of this part, the applicable net position and offset haircut factors to be used in the calculation of the Treasury market risk haircut are as follows:

Category	Haircut factors	
	Net position haircuts (percent)	Offsets (percent)
A	None	None
B	0.12	0.05
C	0.20	0.08
D	0.45	0.20
E	1.10	0.50
F	2.20	0.45
G	3.30	0.90
H	5.00	1.55
I	7.75	1.50
J	11.25	2.10
MB	3.30	0.90
AR	1.10	0.50

(3) *Category pair hedging disallowance haircut factors.* For purposes of this part, the applicable category pair hedging disallowance haircut factors to be used in the calculation of the Treasury market risk haircut are as follows:

Category	Percent disallowed							
	C	D	E	F	G	H	I	J	MB
B	30	40							
C		30	40	40					
D			20	30	30				
E				20	30	40			
F					20	40			40
G						20	40		30
H							40	40	40
I								30	

(g) *Total haircuts.* "Total haircuts" equals the sum of the credit risk haircut and the market risk haircut.

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(1) *Credit risk haircut.* The "credit risk haircut" equals the sum of the total concentration of credit haircut and the credit volatility haircut.

(i) *Total concentration of credit haircut.* The "total concentration of credit haircut" equals the sum of the concentration of credit haircuts taken for all counterparties, except for counterparties that are principal clearing banks or principal clearing brokers, of the government securities broker or dealer.

(A) *Concentration of credit haircut.* The "concentration of credit haircut" equals the product of a concentration of credit haircut factor of 25 percent the amount by which the net credit exposure to a single counterparty, except a counterparty that is a principal clearing bank or principal clearing broker of the government securities broker or dealer, is in excess of 15 percent of the government securities broker's or dealer's liquid capital.

(B) *Net credit exposure.* For purposes of this part, the "net credit exposure" equals the dollar amount of funds or debt instruments, other securities, and other inventory at risk to the government securities broker or dealer in the event of the counterparty's default, less the amount of funds or debt instruments, other securities, and other inventory risk to the counterparty in the event of the government securities broker's or dealer's default.

(ii) *Credit volatility haircut.* The "credit volatility haircut" equals the product of a credit volatility haircut factor of 0.15 percent and the dollar amount of the larger of the gross long position or gross short position in those Treasury market risk instruments described in paragraphs (e)(1) (iii), (iv) and (v) of this section that have a term to maturity greater than 45 days, and futures, forwards and options thereon, settled on a cash or delivery basis.

(2) *Market risk haircut.* The "market risk haircut" equals the sum of the Treasury market risk haircut and the other securities haircut, calculated in accordance with the provisions of Appendix A of this section, § 402.2a.

(h) *Debt-equity requirements.* No government securities broker or dealer shall permit the total of outstanding principal amounts of its satisfactory subordination agreements as defined in § 240.15c3–1d of this title (Appendix D to SEC Rule 15c3–1) modified as provided in Appendix D to this section, § 402.2d, to exceed the allowable levels set forth in § 240.15c3–1(d) of this title.

(i) *Limitation on withdrawal of equity capital.* No equity capital of the government securities broker or dealer or a subsidiary or affiliate consolidated pursuant to § 240.15c3–1c of this title (Appendix C to SEC Rule 15c3–1) modified as provided in Appendix C to this section, § 402.2c, may be withdrawn by action of a stockholder or partner, or by redemption or purchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, nor may any unsecured advance or loan be made to a stockholder, partner, sole proprietor or employee if, after giving effect thereto and to any other such withdrawals, advances or loans and any Payments of Payment Obligations (as defined in § 240.15c3–1d of this title, Appendix D to SEC Rule 15c3–1, modified as provided in Appendix D to this section, § 402.2d) under satisfactory subordination agreements which are scheduled to occur within six months following such withdrawal, advance or loan, either:

(1) The ratio of liquid capital to total haircuts, determined as provided in § 402.2, would be less than 150 percent; or

(2) Liquid capital minus total haircuts would be less than 120 percent of the minimum capital required by § 402.2(b) or § 402.2(c) as applicable; or

(3) In the case of any government securities broker or dealer included in such consolidation, the total outstanding principal amounts of satisfactory subordination agreements of the government securities broker or dealer (other than such agreements which qualify as equity under § 240.15c3–1(d) of this title) would exceed 70% of the debt-equity total as defind in such § 240.15c3–1(d).

The term equity capital includes capital contributions by partners, par or stated value of capital stock, paid-in capital in excess of par, retained earnings or other capital accounts. The term equity capital does not include securities accounts of partners and balances in limited partners' capital accounts in excess of their stated capital contributions. This provision shall not preclude a government securities broker or dealer from making required tax payments or preclude the payment to partners of reasonable compensation.

(j) *Modification of appendices to § 240.15c3–1 of this Title.* For purposes of this part, Appendix C to Rule 15c3–1 (§ 240.15c3–1c of this title), relating to Consolidated Computations of Net Capital, is modified as provided in Appendix C to this section (§ 402.2c), and Appendix D to Rule 15c3–1 (§ 240.15c3–1d of this title), relating to Satisfactory Subordination Agreements, is modified as provided in Appendix D to this section (§ 402.2d).

§ 402.2a Appendix A—Calculation of market risk haircut for purposes of § 402.2(g)(2).

The market risk haircut is the sum of the Treasury market risk haircut and the other securities haircut, calculated as follows.

(a) *Treasury market risk haircut.* The "Treasury market risk haircut" equals the sum of the total governments offset portion haircut, the total futures and options offset haircut, the total hedging disallowance haircut, and the residual net position haircut, calculated with respect to financings and positions in Treasury market risk instruments, except to the extent that a permissible election is made pursuant to paragraph (b)(1) of this section to include qualified positions in the calculation of the other securities haircut.

(1) *Total governments offset portion haircut.* The "total governments offset portion haircut" equals the sum of the governments offset portion haircuts calculated for each category in § 402.2(f)(1). The "governments offset portion haircuts" equal, for each category in § 402.2(f)(1), the product of the offset haircut factor for that category set out in § 402.2(f)(2) and the smaller of the gross long immediate position or gross short immediate position for that category. Schedules B and C of this Appendix can be used to make this calculation.

(i)(A) The "gross long immediate position" for purposes of this part equals, for each category except categories MB and AR in § 402.2(f)(1), the sum of the market values of each long immediate position in Treasury market risk instruments with a term to maturity (or, in the case of a floating rate note, the time to the next scheduled interest rate adjustment or the term to maturity, whichever is less) corresponding to such category, the contract values of each reverse repurchase agreement with a term to maturity or time to the next scheduled interest rate adjustment, whichever is less, corresponding to that category, and the values of the cash collateral of each security borrowing with a term to maturity or time to next scheduled interest rate adjustment, whichever is less, corresponding to such category.

(B) In the case of category MB, the "gross long immediate position" equals the sum of the market values of all long immediate positions in fixed rate mortgage-backed securities which are Treasury market risk instruments.

(C) In the case of category AR, the "gross long immediate position" equals the sum of the market values of all long immediate positions in adjustable rate

mortgage-backed securities which are Treasury market risk instruments.

(ii)(A) The "gross short immediate position" for purposes of this section equals, for each category except categories MB and AR in § 402.2(f)(1), the sum of the market values of each short immediate position in Treasury market risk instruments with a term to maturity (or, in the case of a floating rate note, the time to the next scheduled interest rate adjustment or the term to maturity, whichever is less) corresponding to such category, and the values of funds received from each financing transaction (including repurchase agreements, securities lending secured by cash collateral, and bank loans, but excluding subordinated debt which meets the requirements of § 240.15c3–1d of this title modified as provided in § 402.2d) with a term to maturity or time to the next scheduled interest rate adjustment, whichever is less, corresponding to that category.

(B) In the case of category MB, the "gross short immediate position" equals the sum of the market values of all short immediate positions in fixed rate mortgage-backed securities which are Treasury market risk instruments.

(C) In the case of category AR, the "gross short immediate position" equals the sum of the market values of all short immediate positions in adjustable rate mortgage-backed securities which are Treasury market risk instruments.

(iii) The term "long immediate position" in a Treasury market risk instrument means, for purposes of this part:

(A) The net long position in a Treasury market risk instrument as of the trade date, except when the settlement date, in the case of a Treasury market risk instrument except a mortgage-backed security, is scheduled more than five business days in the future, and, in the case of a mortgage-backed security, more than thirty calendar days in the future;

(B) The net long when-issued position in a marketable U.S. Treasury security between announcement and issue date; and

(C) The net long when-issued position in a government agency or a government sponsored agency debt security between release date and issue date.

(iv) The term "short immediate position" on a Treasury market risk instrument means, for purposes of this part:

(A) The net short position in a Treasury market risk instrument as of the trade date, except when the settlement date, in the case of a Treasury market risk instrument except a mortgage-backed security, is scheduled more than five business days in the future, and, in the case of a mortgage-backed security, more than thirty calendar days in the future;

(B) The net short when-issued position in a marketable U.S. Treasury security between announcement and issue date; and

(C) The net short when-issued position in a government agency or a government sponsored agency debt security between release date and issue date.

(2) *Net immediate position interim haircut.* The "net immediate position interim haircut" equals, for each category in § 402.2(f)(1), the product of the net position haircut factor for that category and the sum of the gross long immediate position and the gross short immediate position for that category. For purposes of this part, a gross long immediate position shall be a positive number and a gross short immediate position shall be a negative number. Schedules B and C to this Appendix can be used to make this calculation.

(3) *Total futures and options offset haircut.* The "total futures and options offset haircut" equals the sum of the futures and options offset haircuts calculated for each category in § 402.2(f)(1). The "futures and options offset haircut" equals, for each category in § 402.2(f)(1), the product of a futures and options offset factor of 20 percent and the smaller of the absolute values of the positive and negative aggregate interim haircuts for that category. Schedule D to this Appendix can be used to make this calculation.

(i) *Positive aggregate interim haircut.* The "positive aggregate interim haircut" equals, for each category in § 402.2(f)(1), the sum of a positive net immediate position interim haircut (see paragraph (a)(2) of this Appendix), the gross long futures and forward interim haircut, and the positive gross options interim haircut for that category. Schedule D to this Appendix can be used to make this calculation.

(A) *Gross long futures and forward interim haircut.* The "gross long futures and forward interim haircut" equals, for each category in § 402.2(f)(1), the sum of the interim haircuts on each long futures position and long forward position placed, in the case of a futures or forward contract on Treasury market risk instruments except mortgage-backed securities, in the category corresponding to the sum of the term to maturity of the contract and the term to maturity of the underlying instrument at the time of the maturity of the contract or, in the case of a futures or forward contract on Treasury market risk mortgage-backed securities, the category corresponding to the type of Treasury market risk mortgage-backed security.

(*1*) For purposes of this part, the "interim haircut on each long futures position and each long forward position" is the product of the net position haircut factor for the category corresponding to, in the case of a futures or forward contract on Treasury market risk instruments except mortgage-backed securities, the maturity of the underlying instrument at the time of the maturity of the contract or, in the case of a futures or forward contract on Treasury market risk mortgage-backed securities, the type of Treasury market risk mortgage-backed security and the value of the long futures position or long forward position evaluated at the current market price for such contract.

(*2*) For purposes of this part, the gross long futures and forward interim haircut shall be a positive number.

(B) *Positive gross options interim haircut.* The "positive gross options interim haircut" equals, for each category in § 402.2(f)(1), the sum of the interim haircuts on each purchased call and sold put placed in the category corresponding to the term to maturity or type of underlying instrument.

(*1*) For purposes of this part, the "interim haircut on each purchased call and sold put" equals the lesser of the market value of the option or, (*i*) in the case of an option on a cash instrument, the product of the net position haircut factor for the category to which the underlying cash instrument corresponds and the market value of the underlying cash instrument or, (*ii*) in the case of an option on a futures contract, the interim haircut on the underlying futures contract.

(*2*) For purposes of this part, the positive gross options interim haircut is a positive number.

(ii) *Negative aggregate interim haircut.* The "negative aggregate interim haircut" equals, for each category in § 402.2(f)(1), the sum of the negative net immediate position interim haircut (see paragraph (a)(2) of this Appendix), the gross short futures and forward interim haircut, and the negative gross options interim haircut for that category. Schedule D to this Appendix can be used to make this calculation.

(A) *Gross short futures and forward interim haircut.* The "gross short futures and forward interim haircuts" equals, for each category in § 402.2(f)(1), the sum of the interim haircuts on each short futures position and short forward position placed, in the case of a futures or forward contract on Treasury market risk instruments except mortgage-backed securities, in the category

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corresponding to the sum of the term to maturity of the contract and the term to maturity of the underlying instrument at the time of the maturity of the contract or, in the case of a futures or forward contract on Treasury market risk mortgage-backed securities, in the category corresponding to the type of Treasury market risk mortgage-backed security.

(*1*) For purposes of this part, the "interim haircut on each short futures position and each short forward position" is the product of the net position haircut factor for the category corresponding to, in the case of a futures or forward contract on Treasury market risk instruments except mortgage-backed securities, the maturity of the underlying instrument at the time of the maturity of the contract or, in the case of a futures or forward contract on Treasury market risk mortgage-backed securities, the type of Treasury market risk mortgage-backed security and the value of the short futures position or short forward position evaluated at the current market price for such contract.

(*2*) For purposes of this part, the gross short futures and forward interim haircut is a negative number.

(B) *Negative gross options interim haircut.* The "negative gross options interim haircut" equals, for each category in § 402.2(f)(1), the sum of the interim haircuts on each sold call and purchased put placed in the category corresponding to the term to maturity or type of underlying instrument.

(*1*) For purposes of this part, the "interim haircut on each sold call and purchased put" equals the lesser of the market value of the option or, (*i*) in the case of an option on a cash instrument, the product of the net position haircut factor for the category to which the underlying cash instrument corresponds and the market value of the underlying cash instrument or, (*ii*) in the case of an option on a futures contract, the interim haircut on the underlying futures contract.

(*2*) For purposes of this part, the negative gross options interim haircut is a negative number.

(4) *Total hedging disallowance haircut.* The "total hedging disallowance haircut" equals the sum of the hedging disallowance haircuts calculated pursuant to each netting of qualified netting interim haircuts. The "hedging disallowance haircut" equals the absolute value of the product of the applicable category pair hedging disallowance haircut factor specified in § 402.2(f)(3) and the smaller in absolute value of any two qualified netting interim haircuts, netted in accordance with the provisions of this paragraph. Schedule E of this Appendix can be used to make this calculation.

(i) *Qualified netting interim haircut.* The term "qualified netting interim haircut" means a residual position interim haircut or a net residual position interim haircut.

(A) *Residual position interim haircut.* The "residual position interim haircut" equals, for each category in § 402.2(f)(1), the sum of the positive aggregate interim haircut and the negative aggregate interim haircut corresponding to the category, calculated in accordance with the provisions of paragraph (a)(3) of this Appendix.

(B)(*1*) *Net residual position interim haircut.* The "net residual position interim haircut" equals, for any two categories between which netting is permitted, the sum of (*i*) the residual position interim haircuts calculated for those categories, in the case of the category of the larger in absolute value of the two residual position interim haircuts being netted, and (*ii*) zero, in the case of the category of the smaller in absolute value of the two residual position interim haircuts being netted.

(*2*) For the purposes of this paragraph (a)(4), netting is permitted only between categories for which a category pair hedging disallowance haircut factor has been specified in paragraph § 402.2(f)(3).

(ii) Net residual position interim haircuts shall be substituted for the residual position interim haircuts in the respective categories in which they have been placed and shall be considered as if they were residual position interim haircuts. New net residual position interim haircuts may continue to be calculated until for each category pair for which netting is permitted at least one of the two qualified netting interim haircuts is zero or both qualified netting interim haircuts are of the same sign.

(5) *Residual net position haircut.* The "residual net position haircut" equals the sum of the absolute values of all qualified netting interim haircuts remaining in each category after the completion of the calculation of permissible nettings described in paragraph (a)(4) of this section.

(b) *Other securities haircut.* The "other securities haircut" equals the sum of all deductions specified in § 240.15c3–1(c)(2)(vi) and (c)(2)(viii) of this title and §§ 240.15c3–1a and 240.15c3–1b of this title for long and short positions in securities, futures contracts, forward contracts, options, and other inventory which are not Treasury market risk instruments as defined in § 402.2(e).

(1) A registered government securities broker or dealer may elect to exclude from its calculation of the Treasury market risk haircut and include in its calculation of the other securities haircut long and short positions in Treasury market risk instruments if such positions form part of a hedge against long and short positions in securities, futures contracts, forward contracts, or options which are not Treasury market risk instruments. The value of each position in Treasury market risk instruments excluded from the calculation of the Treasury market risk haircut and included in the calculation of the other securities haircut may not exceed the value of the position which it offsets as part of a hedge.

(2) For purposes of this paragraph (b), a gross long or short position in Treasury market risk instruments shall be considered part of a hedge if the inclusion of such position in the calculation of the other securities haircut would serve to reduce said haircut.

(c) *Schedules.* This paragraph sets forth schedules which may be used by government securities brokers or dealers in the calculation of total haircuts as required by this Part 402. The appropriate regulatory agency or designated examining authority may specify other substantially similar forms required to be used by government securities brokers or dealers in the calculation of such haircuts.

SCHEDULE A.—LIQUID CAPITAL REQUIREMENT SUMMARY COMPUTATION

[Dollars in thousand]

1. Liquid capital [1]	
2. Haircuts on security and financing positions including contractual commitments:	
a. Total governments offset portion haircut (Schedule C)	
b. Total futures and options offset haircut (Schedule D)	
c. Total hedging disallowance haircut (Schedule E)	
d. Residual net position haircut (Schedule E)	
e. Other securities haircut (use SEC factors	
3. Haircuts on credit exposure:	
a. Concentration of credit haircut	
b. Credit volatility haircut	
4. Total haircuts (lines 2+3)	
5. Capital-to-risk ratio (line 1 divided by line 4)	

[1] Identical to the amount reported on line 3640 of the Report on Finances and Operations of Government Securities Brokers and Dealers, Form G-405.

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Schedule B

Calculation of Net Immediate Positions in Securities and Financings
($ millions)

	Maturity Category 1/	Financings Long 2/ (+)	Financings Short 2/ (-)	Securities Positions Long (+)	Securities Positions Short (-)	Total Securities and Financing Positions (+)	Total Securities and Financing Positions (-)	Offset Portions (+)	Net Immediate Positions (+/-)	
A	0-44 days									A
B	45-134 days									B
C	135 days-9 months									C
D	9-18 months									D
E	1.5-3.5 years (1.5-3 years)									E
F	3.5-7.5 years (3-5.5 years)									F
G	7.5-15 years (5.5-9 years)									G
H	15-30 years (9-12 years)									H
I	(12-21 years)									I
J	(21 years and over)									J
MB	mortgage-backed									MB
AR	adjustable rate mortgage-backed									AR
	Column Number	1	2	3	4	5 (1+3)	6 (2+4)	7# (Note 1)	8# (5+6)	

Carry forward to Schedule C.

Note 1: The offset portion (Column 7) is the smaller of Columns 5 and 6.

1/ The categories are designated in Sec. 402.2(f)(1). A category contains all securities with maturities greater than or equal to the lower of the designated maturities, but less than the higher. Maturity designations in parentheses refer to maturities of zero-coupon instruments to be placed in that category. In categories A, B, C, and D, zero-coupon instruments are to be treated in the same manner as all other instruments. A half year (.5) is always considered to be 6 months.

2/ Long financings are financings which provide securities to a broker or dealer; short financings are those which provide funds.

Schedule C

Governments Offset Portion and Net Immediate Position Interim Haircuts Calculation
($ millions)

	Maturity Category 1/	Governments Offset Portion $ Amounts (+)	Factors	Haircuts (+)	Net Immediate Positions $ Amounts (+/-)	Factors	Interim Haircuts (+/-)
A	0-44 days	None			None		
B	45-134 days		0.0005			0.0012	
C	135 days-9 months		0.0008			0.0020	
D	9-18 months		0.0020			0.0045	
E	1.5-3.5 years (1.5-3 years)		0.0050			0.0110	
F	3.5-7.5 years (3-5.5 years)		).0045			0.0220	
G	7.5-15 years (5.5-9 years)		0.0090			0.0330	
H	15-30 years (9-12 years)		0.0155			0.0500	
I	(12-21 years)		0.0150			0.0775	
J	(21 years and over)		0.0210			0.1125	
MB	mortgage-backed		0.0090			0.0330	
AR	adjustable rate mortgage-backed		0.0050			0.0110	

Total Governments Offset Portion Haircut $_____

Column Number	7 (Note 1)	9	10# (7x9)	8 (Note 1)	11	12## (8x11)

Carry to Schedule A, line 2a
Carry forward to Schedule D (or Schedule E, if no forwards, futures, or options).

Note 1: From Schedule B.

1/ The categories are designated in Sec. 402.2(f)(1). A category contains all securities with maturities greater than or equal to the lower of the designated maturities, but less than the higher. Maturity designations in parentheses refer to maturities of zero-coupon instruments to be placed in the category. In categories A, B, C, and D, zero-coupon instruments are to be treated in the same manner as all other instruments. A half year (.5) is always considered to be 6 months.

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Schedule D

Consolidation of Net Immediate Position Interim Haircuts
with Gross Futures and Options Interim Haircuts
($ thousands)

	Maturity Category 1/	Net Immediate Position Interim Haircuts (+/-)	Gross Interim Haircuts: Futures & Forward (+)	Futures & Forward (-)	Options (+)	Options (-)	Aggregate Interim Haircuts (+)	Aggregate Interim Haircuts (-)	Futures & Options Offset Portions 2/ (+)	Residual Position Interim Haircuts (+/-)	
B	45-134 days										B
C	135 days-9 months										C
D	9-18 months										D
E	1.5-3.5 years (1.5-3 years)										E
F	3.5-7.5 years (3-5.5 years)										F
G	7.5-15 years (5.5-9 years)										G
H	15-30 years (9-12 years)										H
I	(12-21 years)										I
J	(21 years and over)										J
MB	mortgage-backed										MB
AR	adjustable rate mortgage-backed										AR

Total Futures and Options Offset Portion: $ _____
Factor: _____
Total Futures and Options Offset Haircut: $ _____ #

Column Number	12 (Note 1)	13	14	15	16	17	18	19 (Note 2)	20##

Carry to Schedule A, line 2b.
Carry forward to Schedule E.
Note 1: From Schedule C.
Note 2: Column 19 is the smaller of columns 17 and 18.
1/ The categories are designated in Sec. 402.2(f)(1). A category contains all securities with maturities greater than or equal to the lower of the designated maturities, but less than the higher. Maturity designations in parentheses refer to maturities of zero-coupon instruments to be placed in the category. In categories A, B, C, and D, zero-coupon instruments are to be treated in the same manner as all other instruments. A half year is always considered to be 6 months.
2/ The total futures and options haircut is calculated from the total of column 19.

Schedule E

Calculation of Hedging Disallowance Haircuts when Netting Haircuts Across Categories 1/
($ thousands)

Maturity Category 2/	Residual Position Interim Haircuts (+/-)	20% Disallowance: Hedging Disallowance Haircuts (+)	20% Disallowance: Net Residual Position Interim Haircuts (+/-)	30% Disallowance: Hedging Disallowance Haircuts (+)	30% Disallowance: Net Residual Position Interim Haircuts (+/-)	40% Disallowance: Hedging Disallowance Haircuts (+)	40% Disallowance: Net Residual Position Interim Haircuts (+/-)	Hedging Disallowance Haircuts (+)	Qualified Netting Interim Haircuts (+)	
B 45-134 days										B
C 135 days-9 months										C
D 9-18 months										D
E 1.5-3.5 years (1.5-3 years)										E
F 3.5-7.5 years (3-5.5 years)										F
G 7.5-15 years (5.5-9 years)										G
H 15-30 years (9-12 years)										H
I (12-21 years)										I
J (21 years and over)										J
MB mortgage-backed										MB
AR adjustable rate mortgage-backed										AR

Total Hedging Disallowance Haircut:$_____

Residual Net Position Haircut:$_____

Column Number	20 (Note 1)	21	22 (Note 2)	23	24 (Note 2)	25	26 (Note 2)	27# (Note 3)	28##

\# Column 27 carries forward to Schedule A, line 2c.

Column 28 total carries forward to Schedule A, line 2d.

Note 1: From Schedule D (or Schedule C, if no forwards, futures, or options).

Note 2: Net of two offsetting haircuts of paired maturity categories.

Note 3: For every entry in column 20 there should be an entry in either column 27 or 28 (but never both).

1/ See Sec 402.2(f)(3) for category pair hedging disallowance haircut factors.

2/ The categories are designated in Sec. 402.2(f)(1). A category contains all securities with maturities greater than or equal to the lower of the designated maturities, but less than the higher. Maturity designations in parentheses refer to maturities of zero-coupon instruments to be placed in the category. In categories A, B, C, and D, zero-coupon instruments are to be treated in the same manner as all other instruments. A half year (.5) is always considered to be 6 months.

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§ 402.2b [Reserved]

§ 402.2c Appendix C—Modification of § 240.15c3–1c of this title, relating to consolidated calculations of capital, for purposes of § 402.2.

Section 240.15c3–1c of this title shall apply to government securities brokers and dealers subject to the requirements of § 402.2 with the following modifications:

(a) References to "broker or dealer" include government securities brokers and dealers.

(b) References to "net capital" mean "liquid capital" as defined in § 402.2(d).

(c) References to "aggregate indebtedness" shall be disregarded.

(d) References to "17 CFR 240.15c3–1" mean § 402.2.

(e) Section 240.15c3–1c(b)(1) is modified to read as follows:

"(1) If the consolidation, provided for in paragraph (a) of this section, of any such subsidiary or affiliate, results in the increase of the government securities broker's or dealer's liquid capital, as defined in § 204.2(d) of this title, or the decrease of the government securities broker's or dealer's total haircuts, as defined in § 402.2(g) of this title, and an opinion called for in paragraph (b)(2) has not been obtained, such benefits shall not be recognized in the government securities broker's or dealer's computation required by § 402.2 of this title."

(f) The reference in § 240.15c3–1c(c)(3) to "17 CFR 240.15c3–1d" means such section as modified by § 402.2d.

§ 402.2d Appendix D—Modification of § 240.15c3–1d of this title, relating to satisfactory subordination agreements, for purposes of § 402.2.

Section 240.15c3–1d of this title shall apply to government securities brokers and dealers subject to the requirements of § 402.2 with the following modifications.

(a) References to "broker or dealer" include government securities brokers and dealers.

(b) References to "17 CFR 240.15c3–1" mean § 402.2.

(c) Section 240.15c3–1d(a)(2)(iii) is modified to read as follows:

"(iii) The term "Collateral Value" of any securities pledged to secure a secured demand note shall mean the market value of such securities after giving effect to the haircuts specified in § 402.2a of this title."

(d) References to "17 CFR 240.15c3–1d" mean that section as modified by this section.

(e) Section 240.15c3–1d(b)(6)(iii) is modified to read as follows:

"(iii) The secured demand note agreement may also provide that, in lieu of the procedures specified in the provisions required by paragraph (b)(6)(ii) of this section, the lender, with prior written consent of the government securities broker or dealer and the Examining Authority for such broker or dealer, may reduce the unpaid principal amount of the secured demand note. After giving effect to such reduction, the liquid capital, as defined in § 402.2(d) of this title, of the government securities broker or dealer may not be less than 150% of the government securities broker's or dealer's total haircuts, as defined in § 402.2(g) of this title. No single secured demand note shall be permitted to be reduced by more than 15% of its original principal amount and after such reduction no excess collateral may be withdrawn. No Examining Authority shall consent to a reduction of the principal amount of a secured demand note if, after giving effect to such reduction, liquid capital after deducting total haircuts would be less than 120% of the minimum dollar amount required by § 402.2(b) or § 402.2(c) of this title as applicable."

(f) Section 240.15c3–1d(b)(7) is modified to read as follows:

"(7) A government securities broker or dealer at its option but not at the option of the lender may, if the subordination agreement so provides, make a Payment of all or any portion of the Payment Obligation thereunder prior to the scheduled maturity date of such Payment Obligation (hereinafter referred to as a "Prepayment"), but in no event may any Prepayment be made before the expiration of one year from the date such subordination agreement became effective. This restriction shall not apply to temporary subordination agreements which comply with the provisions of paragraph (c)(5) of this Appendix D. No Prepayment shall be made if, after giving effect thereto (and to all Payments of Payment Obligations under any other subordinated agreements then outstanding the maturities or accelerated maturities of which are scheduled to fall due within six months after the date such Prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect to such Prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the government securities broker or dealer, the liquid capital, as defined in § 402.2(d) of this title, of the government securities broker or dealer would be less than 150% of the government securities broker's or dealer's total haircuts, as defined in § 402.2(g) of this title. Notwithstanding the above, no Prepayment shall occur without the prior written approval of the Examining Authority for such government securities broker or dealer."

(g) Section 240.15c3–1d(b)(8) is modified to read as follows:

"(i) The Payment Obligation of the government securities broker or dealer in respect of any subordination agreement shall be suspended and shall not mature if, after giving effect to Payment of such Payment Obligation (and to all Payments of Payment Obligations of such broker or dealer under any other subordination agreement(s) then outstanding which are scheduled to mature on or before such Payment Obligation), either the liquid capital, as defined in § 402.2(d) of this title, of the government securities broker or dealer would be less than 150% of the government securities broker's or dealer's total haircuts, as defined in § 402.2(g) of this title, or the government securities broker's or dealer's liquid capital after deducting total haircuts would be less than 120% of the minimum dollar amount required by § 402.2(b) or § 402.2(c) of this title, as applicable. The subordination agreement may provide that if the Payment Obligation of the government securities broker or dealer thereunder does not mature and is suspended as a result of the requirement of this paragraph (b)(8) for a period of not less than six months, the government securities broker or dealer shall thereupon commence the rapid and orderly liquidation of its business but the right of the lender to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of 17 CFR 240.15c3–1 and 240.15c3–1d."

(h) Section 240.15c3–1d(b)(10)(ii)(B) is modified to read as follows:

"(B) The liquid capital, as defined in § 402.2(d) of this title, of the government securities broker or dealer is less than 120% of total haircuts, as defined in § 402.2(g) of this title, throughout a period of 15 consecutive business days, commencing on the day the broker or dealer first determines and notifies the Examining Authority for the government securities broker or dealer, or the Examining Authority or the Commission first determines and notifies the government securities broker or dealer of such fact;".

(i) Section 240.15c3–1d(c)(2) is modified to read as follows:

"(2) *Notice of Maturity or Accelerated Maturity.* Every government securities broker or dealer shall immediately notify the Examining Authority for such broker or dealer if, after giving effect to

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all Payments of Payment Obligations under subordination agreements then outstanding which are then due or mature within the following six months without reference to any projected profit or loss of the broker or dealer, the liquid capital, as defined in § 402.2(d) of this title, of such government securities broker or dealer, would be less than 150% of total haircuts, as defined in § 402.2(g) of this title."

(j) Section 240.15c3–1d(c)(5)(i) is modified to read as follows:

"(i) For the purpose of enabling a government securities broker or dealer to participate as an underwriter of securities or other extraordinary activities in compliance with the capital requirements of § 402.2 of this title, a government securities broker or dealer shall be permitted, on no more than three occasions in any 12 month period, to enter into a subordination agreement on a temporary basis which has a stated term of no more than 45 days from the date such subordination agreement became effective. This temporary relief shall not apply to a government securities broker or dealer if, at such time, it is subject to any of the reporting provisions of § 405.3 of this title, irrespective of its compliance with such provisions or if immediately prior to entering into such subordination agreement, the liquid capital, as defined in § 402.2(d) of this title, of such broker or dealer would be less than 150% of total haircuts, as defined in § 402.2(g) of this title, or the amount of its then outstanding subordination agreements exceeds the limits specified in § 240.15c3–1(d). Such temporary subordination agreement shall be subject to all other provisions of this Appendix D."

(k) Section 240.15c3–1(c)(5)(ii)(A) is modified to read as follows:

"(A) After giving effect thereto (and to all Payments of Payment Obligations under any other subordinated agreements then outstanding the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect of such prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the government securities broker or dealer, the liquid capital, as defined in § 402.2(d) of this title, of such broker or dealer, would be less than 180% of total haircuts, as defined in § 402.2(g) of this title."

PART 403—PROTECTION OF CUSTOMER SECURITIES AND BALANCES

Sec.

403.1 Application of part to registered brokers and dealers.
403.2 Hypothecation of customer securities.
403.3 Use of customers' free credit balances.
403.4 Customer protection—reserves and custody of securities.
403.5 Custody of securities held by financial institutions that are government securities brokers or dealers.

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3209 (15 U.S.C. 78o–5(b)(1)(A), (b)(2)).

§ 403.1 Application of part to registered brokers and dealers.

Compliance by registered brokers or dealers with §§ 240.8c–1, .15c2–1, and .15c3–2 of this title (Commission Rules 8c–1, 15c2–1 and 15c3–2), and with § 240.15c3–3 of this title (Commission Rule 15c3–3) as modified by § 403.4(a)–(i) constitutes compliance with this part.

§ 403.2 Hypothecation of customer securities.

Every registered government securities broker or dealer shall comply with the requirements of § 240.15c2–1 of this title concerning hypothecation of customer securities with the following modifications:

(a) In § 240.15c2–1(a), the words "as used in section 15(c)(1) of the Act" shall be substituted for the words "as used in section 15(c)(2) of the Act."

(b) Section 240.15c2–1(d) is modified to read as follows:

"(d) *Exemption for clearing liens.* The provisions of paragraphs (a)(2), (a)(3) and (f) of this section shall not apply to any lien or claim of a clearing bank, or the clearing corporation (or similar department or association) of a national securities exchange or a registered national securities association, for a loan made on the date of purchase or sale of the securities subject to said lien and to be repaid on the same calendar day, which loan is incidental to the clearing of transactions in securities or loans through such bank, corporation, department or association: *provided, however,* that for the purpose of paragraph (a)(3) of this section, 'aggregate indebtedness of all customers in respect of securities carried for their accounts' shall not include indebtedness in respect of any securities subject to any lien or claim exempted by this paragraph."

§ 403.3 Use of customers' free credit balances.

Every registered government securities broker or dealer shall comply with the requirement of § 240.15c3–2 of this title concerning the use of customer free credit balances.

§ 403.4 Customer protection—reserves and custody of securities.

Every registered government securities broker or dealer shall comply with the requirements of §§ 240.15c3–3 and 240.15c3–3a of this title (Commission Rule 15c3–3 and Exhibit A thereto), with the following modifications:

(a) References to "broker or dealer" include government securities brokers and dealers.

(b) "Fully paid securities", as defined in § 240.15c3–3(a)(3) of this title, includes all securities held by a government securities broker or a government securities dealer for the account of a customer who has made full payment for such securities.

(c) "Margin securities", as defined in § 240.15c3–3(a)(4) of this title, includes any securities for which a customer has not made full payment and for which the customer has received an extension of credit by a government securities broker or government securities dealer for a portion of the purchase price.

(d) "Excess margin securities", as defined in § 240.15c3–3(a)(5) of this title, includes margin securities carried for the account of a customer having a market value in excess of 140 percent of the total of the debit balances in the customer's account or accounts with the broker or dealer.

(e) For purposes of this section, § 240.15c3–3(b) of this title shall include a new paragraph (4) as follows:

"(4)(i) A broker or dealer that retains custody of securities that are the subject of a repurchase agreement between the broker or dealer and a person other than another broker or dealer that is registered pursuant to section 15, 15B or 15C(a)(1)(A) of the Act (15 U.S.C. 78o, 78o–4, 78o–5(a)(1)(A)) or that has filed notice of its status as a government securities broker or dealer pursuant to section 15C(a)(1)(B) of the Act (15 U.S.C. 78o–5(a)(1)(B)) shall:

"(A) Obtain the repurchase agreement in writing;

"(B) Provide in such agreement that when the contract price in the aggregate of all currently outstanding repurchase transactions with a single counterparty is less than $5,000,000, any substitution of other securities for the securities that are the subject of any repurchase transaction, pursuant to the terms of the repurchase agreement, may be made only with the prior agreement of the counterparty to each specific substitution;

"(C) Confirm in writing the specific securities that are the subject of a repurchase transaction pursuant to such agreement at the initiation of the transaction and at the end of any day during which other securities are substituted;

"(D) Advise the counterparty in the repurchase agreement that the Securities Investor Protection Act of 1970 may not provide any protection to the counterparty with respect to the repurchase agreement, and to the extent that it is deemed applicable, the amount of protection provided may not exceed $500,000; and

"(E) Maintain possession or control of securities that are the subject of the agreement.

"(ii) For purposes of this paragraph (4), securities are in the broker's or dealer's control only if they are in the control of the broker or dealer within the meaning of §§ 240.15c3–3(c)(1), (c)(5), (c)(6), or § 403.4(f) of this title.

"(iii) A broker or dealer shall not be required to maintain possession or control during the trading day if:

"(A) the repurchase agreement provides for the consent of the counterparty to limited possession or control by including the following provisions:

"*(1)* 'The securities allocated to the repurchase transaction under the agreement may be segregated from the seller's own securities only at the end of each trading day.'; and

"*(2)* 'While the securities are commingled with the seller's own securities during the course of a trading day, they may be subject to a clearing lien or use by the seller for deliveries on other securities transactions.'; and

"(B) The contract price of all currently outstanding repurchase agreements with that counterparty in the aggregate equals or exceeds $5,000,000."

(f)(1) Securities under the control of a broker or dealer, as described in § 240.15c3–3(c) of this title, shall include securities maintained by a broker or dealer in an account at a depository institution, as defined in section 19(b)(A)(i)–(vi) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)–(vi)), which depository institution has a book-entry securities account at a Federal Reserve Bank through which it provides clearing services ("clearing bank"), provided the securities are maintained in a Segregated Account of the government securities broker or dealer.

(2) For purposes of this paragraph and paragraph (g) of this section, a Segregated Account is an account (other than a clearing account) of the government securities broker or dealer maintained on the books of a clearing bank pursuant to a written clearing agreement with such clearing bank which provides that:

(i) Such account is established for the purpose of segregating securities of counterparties or customers of such broker or dealer from proprietary securities of the broker or dealer;

(ii) The broker or dealer is entitled to direct the disposition of the securities; and

(iii) The clearing bank does not have, and will not assert, any claim or lien against such securities nor will the clearing bank grant any third party, including any Federal Reserve Bank, any interest in such securities so long as they are maintained in the segregated account.

(g) In addition to the notification required by § 240.15c3–3(i) of this title, whenever any government securities broker or dealer is notified by a clearing bank that the bank refuses to place securities in a Segregated Account (as defined in paragraph (f) of this section), the broker or dealer shall, in accordance with § 240.17a–11(f) of this title, give telegraphic notice of the notification by the clearing bank within 24 hours and within 48 hours of the telegraphic notice, file a report stating what steps are being taken to correct the situation.

(h) For purposes of this section, § 240.15c3–3(l) of this title is modified to read as follows:

"(1) *Delivery or disposition of securities.* Nothing stated in this section shall be construed as affecting the absolute right of a customer of a government securities broker or dealer, unless otherwise agreed in writing, in the normal course of business operations following demand made on the broker or dealer, to receive the physical delivery of certificates if the securities are issued in certificated form, or to direct a transfer of or otherwise to exercise control over any securities if they are:

"(1) Fully-paid securities to which the customer is entitled;

"(2) Margin securities upon full payment by such customer to the broker or dealer of the customer's indebtedness to the broker or dealer; or

"(3) Excess margin securities not reasonably required to collateralize such customer's indebtedness to the broker or dealer."

(i) For purposes of this section § 240.15c–3(m) shall apply to government securities, notwithstanding the May 9, 1973, order of the Commission (38 FR 12103) suspending such applicability.

(j) For purposes of this section, § 240.15c3–3(e)(3) is modified to read as follows:

"(3) Computations necessary to determine the amount required to be deposited as specified in paragraph (e)(1) of this section shall be made weekly, as of the close of the last business day of the week, and the deposit so computed shall be made no later than 1 hour after the opening of banking business on the second following business day; provided, however, a government securities broker or dealer registered pursuant to section 15C(a)(1)(A) of the Act (15 U.S.C. 78o–5(a)(1)(A)) which has a ratio of liquid capital to total haircuts (calculated in accordance with Part 402 of this chapter) of 1.8 or greater and which carries aggregate customer funds (as defined in paragraph (a)(10) of this section), as computed at the last required computation pursuant to this section, not exceeding $1 million, may in the alternative make the computation monthly, as of the close of the last business day of the month, and, in such event, shall deposit not less than 105 percent f the amount so computed no later than 1 hour after the opening of banking business on the second following business day. If a registered government securities broker or dealer, computing on a monthly basis, has, at the time of any required computation, a ratio of liquid capital to total haircuts of less then 1.8, such broker or dealer shall thereafter compute weekly as aforesaid until four successive weekly computations are made, none of which were made at a time when its ratio of liquid capital to total haircuts was less than 1.8. Computations in addition to the computation required in this paragraph (3), may be made as of the close of any other business day, and the deposits so computed shall be made no later than 1 hour after the opening of banking business on the second following business day. The registered government securities broker or dealer shall make and maintain a record of each such computation made pursuant to this paragraph (3) or otherwise and preserve such record in accordance with § 240.17a–4."

(k) For purposes of this section, Note E(5) of § 240.15c3–3a of this title is modified to read as follows:

"(5) Debit balances in margin accounts (other than omnibus accounts) shall be reduced by the amount by which any single customer's debit balance exceeds 25% (to the extent such amount is greater than $50,000) of the government securities broker's or dealer's liquid capital unless such broker or dealer can demonstrate that the debit balance is directly related to credit items in the Reserve Formula.

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Related accounts (*e.g.*, the separate accounts of an individual, accounts under common control or subject to cross guarantees) shall be deemed to be a single customer's accounts for purposes of this provision."

§ 403.5 Custody of securities held by financial institutions that are government securities brokers or dealers.

(a) A government securities broker or dealer that is a financial institution shall:

(1) Comply with Part 450 with respect to all securities held for the account of customers of the financial institution in its capacity as a fiduciary or custodian (unless otherwise exempt pursuant to § 450.3); and

(2) Comply with Part 450 and with paragraphs (c) and (d) of this section with respect to all securities held for customers or counterparties of the financial institution in its capacity as government securities broker or dealer.

(b) A financial institution shall not be in violation of the possession or control requirements of paragraphs (c) and (d) of this section if, solely as the result of normal business operations, temporary lags occur between the time when a security is first required to be in the financial institution's possession or control and the time when it is actually placed in possession or control, provided that the financial institution takes timely steps in good faith to establish prompt possession or control.

(c)(1) On each business day a financial institution shall determine the quantity and issue of such securities, if any, that are required to be but are not in the financial institution's possession or control. As appropriate to bring such securities into possession or control, the financial institution shall promptly:

(i) Obtain the release of any lien, charge, or other encumbrance against such securities;

(ii) Obtain the return of any securities loaned;

(iii) Obtain possession or control of securities failed to receive for more than 30 days;

(iv) Buy in securities as necessary to the extent any shortage of securities in possession or control cannot be resolved by any of the above procedures.

(2) The financial institution shall prepare and maintain a current and detailed description of the procedures and internal controls that it utilizes to comply with the possession or control requirements of this paragraph (c), which shall be made available upon request to its appropriate regulatory agency.

(3) Nothing stated in this section shall be construed as affecting the absolute right of a customer of a government securities broker or dealer, unless otherwise agreed in writing, in the normal course of business operations following demand made on the broker or dealer, to receive the physical delivery of certificates if the securities are issued in certificated form, or to direct a transfer of or otherwise to exercise control over any securities if they are:

(i) Fully-paid securities to which the customer is entitled;

(ii) Margin securities upon full payment by such customer to the broker or dealer of the customer's indebtedness to the broker or dealer; or

(iii) Excess margin securities not reasonably required to collateralize such customer's indebtedness to the broker or dealer.

(d)(1) A financial institution that retains custody of securities that are the subject of a repurchase agreement between the financial institution and a person other than another broker or dealer that is registered pursuant to section 15, 15B or 15C(a)(1)(A) of the Act (15 U.S.C. 78o, 78o–4, 78o–5(a)(1)(A)) or that has filed notice of its status as a government securities broker or dealer pursuant to section 15C(a)(1)(B) of the Act (15 U.S.C. 78o–5(a)(1)(B)) shall:

(i) Obtain the repurchase agreement in writing;

(ii) Provide in such agreement that when the contract price in the aggregate of all currently outstanding repurchase transactions with a single counterparty is less than $5,000,000, any substitution of other securities for the securities that are the subject of any repurchase transaction, pursuant to the terms of the repurchase agreement, may be made only with the prior agreement of the counterparty to such substitution;

(iii) Confirm in writing the specific securities that are the subject of a repurchase transaction pursuant to such agreement at the initiation of the transaction and at the end of any day during which other securities are substituted;

(iv) Advise the counterparty in the repurchase agreement that the funds held by the financial institution pursuant to a repurchase transaction are not a deposit and therefore are not insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, as applicable; and

(v) Maintain possession or control of securities that are the subject of the agreement in accordance with § 450.4 (a) and (b).

(2) The financial institution shall not be required to maintain possession or control during the trading day if:

(i) The repurchase agreement provides for the consent of the counterparty to limited possession or control by including the following provisions:

(A) "The securities allocated to the repurchase transaction under the agreement may be segregated from the seller's own securities only at the end of each trading day."; and

(B) "While the securities are commingled with the seller's own securities during the course of a trading day, they may be subject to a clearing lien or use by the seller for deliveries on other securities transactions."; and

(ii) The contract price in the aggregate of all currently outstanding repurchase transactions with that counterparty equals or exceeds $5,000,000.

PART 404—RECORDKEEPING AND PRESERVATION OF RECORDS

Sec.

404.1 Application of part to registered brokers and dealers.
404.2 Records to be made and kept current by registered government securities brokers and dealers; records of non-resident registered government securities brokers and dealers.
404.3 Records to be preserved by registered government securities brokers and dealers.
404.4 Records to be made and preserved by government securities brokers and dealers that are financial institutions.
404.5 Securities counts by registered government securities brokers and dealers.
404.6 Securities counts by government securities brokers and dealers that are financial institutions.

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3209 (15 U.S.C. 78o–5(b)(1)(B), (b)(1)(C), (b)(2)).

§ 404.1 Application of part to registered brokers and dealers.

Compliance by a registered broker or dealer with:

(a) Section 240.17a–3 of this title, pertaining to records to be made, modified as provoded in §§ 404.2(a) (3), (4) and (5);

(b) Section 240.17a–4 of this title, pertaining to preservation of records;

(c) Section 204.17a–13 of this title, pertaining to quarterly securities counts, modified as provided in § 404.5(a)(2); and

(d) Section 240.17a–7 of this title, pertaining to records of non-resident brokers or dealers, shall constitute compliance with this part.

§ 404.2 Records to be made and kept current by registered government securities brokers and dealers; records of non-resident registered government securities brokers and dealers.

(a) Every registered government securities broker or dealer shall comply with the requirements of § 240.17a–3 of this title (Commission Rule 17a–3), with the following modifications:

(1) References to "broker or dealer" and "broker or dealer registered pursuant to Section 15 of the Act" include registered government securities brokers or dealers.

(2) References to §§ 240.17a–3, .17a–4, .17a–5, and .17a–13 mean such sections as modified by this Part and Part 405 of this chapter.

(3) Section 240.17a–3(a)(4) is revised by adding paragraph (a)(4)(vii) to read as follows:

"(vii) Repurchase and reverse repurchase agreements."

(4) Section 240.17a–3(a)(5) is modified to read as follows:

"(5) A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping and securities that are the subjects of repurchase or reverse repurchase agreements) carried by such member, broker, or dealer for his account or for the account of his customers or partners or others and showing the location of all securities long and the offsetting position to all securities short, including long security count differences and short security count differences classified by the date of the physical count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried."

(5) Section 240.17a–3(a)(8) is modified to read as follows:

"(8) Copies of confirmations of all purchases and sales of securities, including all repurchase and reverse repurchase agreements, and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners of such member, broker or dealer."

(6) Paragraph 240.17a–3(a)(11) is modified to read as follows:

"(11) A record of the proof of money balances of all ledger accounts in the form of trial balances, and a record of the computation of liquid capital and total haircuts, as of the trial date, determined as provided in § 402.2 of this title; *provided however*, that such computation need not be made by any registered government securities broker or dealer unconditionally exempt from Part 402 of this title by § 402.1(e) of this title. Such trial balances and computations shall be prepared currently at least once a month."

(7) Paragraph 240.17a–3(b)(1) is modified to read as follows:

"(1) This section shall not be deemed to require a government securities broker or dealer registered pursuant to section 15C(a)(1)(A) of the Act (15 U.S.C. 78o–5(a)(1)(A)) to make or keep such records of transactions cleared for such government securities broker or dealer as are customarily made and kept by a clearing broker or dealer pursuant to the requirements of §§ 240.17a–3 and 240.17a–4: *Provided*, that the clearing broker or dealer has and maintains net capital of not less than $25,000 (or, in the case of a clearing broker or dealer that is a registered government securities broker or dealer, liquid capital less total haircuts, determined as provided in § 402.2 of this title, of not less than $25,000) and is otherwise in compliance with § 240.15c3–1, § 402.2 of this title, or the capital rules of the exchange of which such clearing broker or dealer is a member if the members of such exchange are exempt from § 240.15c3–1 by paragraph (b)(2) thereof."

(8) The undertaking in § 240.17a–3(b)(2) is modified to read as follows:

"The undersigned hereby undertakes to maintain and preserve on behalf of [registered government securities broker or dealer] the books and records required to be maintained by [registered government securities broker or dealer] pursuant to 17 CFR §§ 404.2 and 404.3 and Rules 17a–3 and 17a–4 under the Securities Exchange Act of 1934 and to permit examination of such books and records at any time or from time to time during business hours by examiners or other representatives of the Securities and Exchange Commission, and to furnish to said Commission at its principal office in Washington, DC, or at any regional office of said Commission specified in a demand made by or on behalf of said Commission for copies of books and records, true, correct, complete, and current copies of any or all, or any part, of such books and records. This undertaking shall be binding upon the undersigned, and the successors and assigns of the undersigned."

(9) Section 240.17a–3(c) is modified to read as follows:

"(c) This section shall not be deemed to require a government securities broker or dealer to make or keep such records as the required by paragraph (a) reflecting the sale and redemption of United States Savings Bonds, United States Savings Note and United States Savings Stamps."

(b)(1) Every non-resident government securities broker or dealer registered or applying for registration pursuant to section 15C of the Act shall comply with § 240.17a–7 of this title, *provided that* in such section references to "broker or dealer" shall include government securities brokers or dealers.

(2) The term "non-resident government securities broker or dealer" means (i) in the case of an individual, one who resides in or has his principal place of business in any place not subject to the jurisdiction of the United States; (ii) in the case of a corporation, one incorporated in or having its principal place of business in any place not subject to the jurisdiction of the United States; and (iii) in the case of a partnership or other unincorporated organization or association, one having its principal place of business in any place not subject to the jurisdiction of the United States.

§ 404.3 Records to be preserved by registered government securities brokers and dealers.

Every registered government securities broker or dealer shall comply with the requirements of § 240.17a–4 of this title (Commission Rule 17a–4), with the following modifications:

(a) References to "broker or dealer" and "broker and dealer" include registered government securities brokers or dealers.

(b) References to §§ 240.17a–3, .17a–4, and .17a–5 mean such sections as modified by this part and Part 405 of this chapter.

(c) References to § 240.15c3–1, relating to net capital, and "Computation for Net Capital" thereunder mean § 402.2 of this chapter and the computation of the ratio of liquid capital to total haircuts required thereunder.

(d) References to § 240.15c3–3, relating to possession or control of customer securities and balances, mean § 403.4 of this chapter.

(e) References to Form X–17A–5 mean Form G–405 (§ 449.5 of this chapter).

(f) The computation described in § 240.17a–4(b)(8)(x) is not required.

§ 404.4 Records to be made and preserved by government securities brokers and dealers that are financial institutions.

(a) Every financial institution that is a government securities broker or dealer and that is not exempt from this part pursuant to Part 401 of this chapter shall comply with the requirements of §§ 404.2 and 404.3 unless such financial institution:

(1) Is subject to 12 CFR Part 12 (relating to national banks), 12 CFR Part

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208 (relating to state member banks of the Federal Reserve System) or 12 CFR 344 (relating to state banks that are not members of the Federal Reserve System), *provided however*, that the records required to be made and kept by those regulations shall be made or kept without regard to the exemptions for transactions in U.S. government or federal agency obligations provided in 12 CFR 12.7(a), 12 CFR 208.8(k)(6)(i), and 12 CFR 344.7(a); and

(2) Makes and keeps current:

(i) A securities record or ledger reflecting separately for each government security as of the clearance dates all "long" or "short" positions (including government securities in safekeeping and government securities that are the subjects of repurchase or reverse repurchase agreements) carried by such financial institution for its account or for the account of its customers or others and showing the location of all government securities long and the offsetting position to all government securities short, including long security count differences and short security count differences classified by the date of the physical count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried;

(ii) A complete and current Form G–FIN–4 (§ 449.3 of this chapter) or Form U–4 (promulgated by a self-regulatory organization) or Form MSD–4 (as required for associated persons of bank municipal securities dealers) for each associated person as defined in § 400.4(e) of this chapter; and

(iii) A Form G–FIN–5 (§ 449.4 of this chapter) or Form U–5 (promulgated by a self-regulatory organization) or Form MSD–5 (as required for associated persons of bank municipal securities dealers) for each associated person whose association has been terminated as provided in § 400.4(d)(2) of this chapter.

(b)(1) The records required by paragraph (a)(2)(i) of this section shall be preserved for not less than six years, the first two years in an easily accessible place.

(2) The records required by paragrapha (a)(2) (ii) and (iii) of this section shall be preserved for at least three years after the person who is the subject of the record has terminated his employment and any other association with the government securities broker or dealer function of the financial institution

§ 404.5 Securities counts by registered government securities brokers and dealers.

Every registered government securities broker or dealer shall comply with the requirements of § 240.17a–13 of this title (Commission Rule 17a–13), with the following modifications:

(a) References to "broker or dealer" and "broker and dealer" include registered government securities brokers or dealers.

(b) Sections 240.17a–13(b)(1), (2), and (3) are modified to read as follows:

"(1) Physically examine and count all securities held, including securities that are the subject of repurchase or reverse repurchase agreements;

"(2) Account for all securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, failed to deliver, subject to repurchase or reverse repurchase agreements or otherwise subject to his control or direction but not in his physical possession by examination and comparison of the supporting detail records with the appropriate ledger control accounts;

"(3) Verify all securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, failed to deliver, subject to repurchase or reverse repurchase agreements or otherwise subject to his control or direction but not in his physical possession, where such securities have been in said status for longer than thirty days;".

§ 404.6 Securities counts by government securities brokers and dealers that are financial institutions.

(a) Every government securities broker or dealer that is a financial institution shall, at least once in each calendar year, with respect to all government securities held by the financial institution for customers except those securities held in a fiduciary capacity or in a custodial capacity within the financial institution's trust department,

(1) Physically examine and count securities held in definitive form, including securities that are the subject of repurchase or reverse repurchase agreements;

(2) Account for securities, including securities held in book-entry form and securities subject to repurchase or reverse repurchase agreements or otherwise subject to the financial institution's control or direction but not in its physical possession, by examination and comparison of the supporting detail records and with the appropriate ledger control accounts and by verification of the records of the financial institution with those of any depository, depository institution or Federal Reserve Bank on whose books the financial institution has securities accounts;

(3) Verify securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, failed to deliver, subject to repurchase or reverse repurchase agreements or otherwise subject to the financial institution's control or direction but not in its physical possession, where such securities have been in said status for longer than thirty days;

(4) Compare the results of the counts required by paragraphs (a)(1) and (2) of this section and verification with the institution's records; and

(5) Record on the books and records of the financial institution all unresolved differences, setting forth the security involved and the date of comparison in a security count difference account no later than seven business days after the date of each required annual securities examination, count, and verification as provided in this paragraph.

(b) For the purposes of this section, "fiduciary capacity" includes trustee, executor, administrator, registrar, transfer agent, guardian, assignee, receiver, managing agent, and any other similar capacity involving the sole and shared exercise of discretion by a financial institution having fiduciary powers that is supervised by a federal or state financial institution regulator agency.

PART 405—REPORTS AND AUDIT

Sec.

405.1 Application of part to registered brokers and dealers and to financial institutions; transition rule.
405.2 Reports to be made by registered government securities brokers and dealers.
405.3 Supplemental current financial and operational reports to be made by certain registered government securities brokers and dealers.
405.4 Financial recordkeeping and reporting of currency and foreign transactions.

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3209 (15 U.S.C. 78o–5(b)(1)(B), (b)(1)(C), (b)(2)).

§ 405.1 Application of part to registered brokers and dealers and to financial institutions; transition rule.

(a) Compliance by registered brokers or dealers with §§ 240.17a–5, .17a–8, and .17a–11 of this title (Commission Rules 17a–5, 17a–8 and 17a–11) constitutes compliance with this part.

(b) A government securities broker or dealer that is a financial institution and is subject to financial reporting rules of its appropriate regulatory agency is

exempt from the provisions of §§ 405.2 and 405.3.

(c) This part shall be effective July 25, 1987, *provided however*,

(1) That registered government securities brokers or dealers shall first be required to file the reports required by § 240.17a–5(a), by virtue of § 405.2, for the month and the quarter during which they were first required to comply with § 402.2 of this chapter; but that

(2) For any quarter ending prior to the quarter during which they were first required to comply with § 402.2 of this chapter, registered government securities brokers or dealers shall file with the designated examining authority for such registered broker or dealer, within 17 business days after the close of the quarter, an unaudited balance sheet (with appropriate notes) for such quarter, prepared in accordance with generally accepted accounting principles.

§ 405.2 Reports to be made by registered government securities brokers and dealers.

Every registered government securities broker or dealer shall comply with the requirements of § 240.17a–5 of this title (Commission Rule 17a–5), with the following modifications:

(a) References to "broker or dealer" include registered government securities brokers and dealers.

(b) References to "rules of the Commission" or words of similar import include, where appropriate, the regulations contained in this chapter.

(c) References to Form X–17A–5 mean Form G–405 (§ 449.5 of this chapter).

(d) For the purpose of § 240.17a–5(a)(4) of this title, the Commission may, on the terms and conditions stated in that subparagraph, declare effective a plan with respect to Form G–405, in which case, that plan shall be treated the same as a plan approved with respect to Form X–17A–5.

(e) References to "net capital" mean "liquid capital" as defined in § 402.2(d) of this chapter.

(f) References to § 240.15c3–1, relating to net capital, mean § 402.2 of this chapter.

(g) Paragraph 240.17a–5(c)(2)(ii) is modified to read as follows:

"(ii) A footnote containing a statement of the registered government securities broker's or dealer's liquid capital, total haircuts, and ratio of liquid capital to total haircuts, determined in accordance with § 402.2 of this title. Such statement shall include summary financial statements of subsidiaries consolidated pursuant to Appendix C of § 240.15c3–1 modified as provided in § 402.2c of this title, where material, and the effect thereof on the liquid capital, total haircuts and ratio of liquid capital to total haircuts of the registered government securities broker or dealer."

(h) References to § 240.15c3–3 and the exhibits thereto, relating to possession or control of customer securities and reserve requirements, mean § 403.4 of this chapter.

(i) The reference to § 240.15b1–2 of this title, relating to financial statements to be filed upon registration, means § 240.15Ca2–2.

(j) The supplemental report described in § 240.17a–5(f) of this title, concerning the Securities Investor Protection Act, is not required.

(k) The statement described in § 240.17a–5(f)(2) of this title shall be headed "Notice Pursuant to Section 405.2," and shall be filed within 30 days following the effective date of registration as a government securities broker or dealer.

(l) References in § 240.17a–5(h)(2) of this title to § 240.17a–11 mean § 405.3 of this chapter.

§ 405.3 Supplemental current financial and operational reports to be made by certain registered government securities brokers and dealers.

Every registered government securities broker or dealer shall comply with the requirements of § 240.17a–11 of this title (Commission Rule 17a–11), with the following modifications:

(a) References to "broker or dealer" include registered government securities brokers and dealers.

(b) References to § 240.15c3–1, relating to net capital, mean § 402.2 of this chapter.

(c) References to "net capital" mean "liquid capital" as defined in § 402.2 of this chapter.

(d) References to § 240.15c3–1d, relating to subordination agreements, mean that section as modified by § 402.2d of this chapter.

(e) References to Form X–17A–5 mean Form G–405 (§ 449.5 of this chapter).

(f) References to § 240.17a–5, relating to reports and audit, mean § 405.2 of this chapter.

(g) Section 240.17a–11(b)(1), for the purposes of this section, is modified to read as follows:

"(1) If a computation made by a registered government securities broker or dealer pursuant to the requirements of § 402.2 of this title shows, at any point during the month, that his liquid capital is less than 150 percent of total haircuts, determined in accordance with § 402.2 of this title, such person shall file a report on Part II or Part IIA of Form G–405 (§ 449.5 of this title) as determined in accordance with the standards set forth in § 240.17a–5(a)(2) (ii) and (iii), within 15 calendar days after the end of each month thereafter until 3 successive months shall have elapsed during which liquid capital does not fall below 150 percent of total haircuts."

(h) References to § 240.17a–3, relating to records, mean § 404.2 of this chapter.

§ 405.4 Financial recordkeeping and reporting of currency and foreign transactions.

Every government securities broker or dealer who is subject to the requirements of the Currency and Foreign Transactions Reporting Act of 1970 shall comply with the reporting, recordkeeping and record retention requirements of 31 CFR Part 103. Where 31 CFR Part 103 and § 404.3 of this chapter require the same records to be preserved for different periods of time, such records or reports shall be preserved for the longer period of time.

PART 449—FORMS, SECTION 15C OF THE SECURITIES EXCHANGE ACT OF 1934

Sec.

449.1 Form G–FIN, notification by financial institutions of status as government securities broker or dealer pursuant to section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934.
449.2 Form G–FINW, notification by financial institutions of cessation of status as government securities broker or dealer pursuant to section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934 and § 400.6 of this chapter.
449.3 Form G–FIN–4, notification by persons associated with financial institutions that are government securities brokers and dealers pursuant to section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934 and § 400.4 of this chapter.
449.4 Form G–FIN–5, notification of termination of association with a financial institution that is a government securities broker or dealer pursuant to section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934 and § 400.4 of this chapter.
449.5 Form G–405, information required of registered government securities brokers and dealers pursuant to section 15C of the Securities Exchange Act of 1934 and §§ 405.2 and 405.4 of this chapter.
449.6 Display of OMB control numbers.

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3208 (15 U.S.C. 78o–5(a), (b)(1)(B), (b)(2)).

§ 449.1 Form G–FIN, notification by financial institutions of status as government securities broker or dealer pursuant to section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934.

This form is to be used by financial institutions that are government securities brokers and dealers not exempt under Part 401 of this chapter to notify their appropriate regulatory

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agency of their status. The form is promulgated by the Board of Governors of the Federal Reserve System and is available from the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board and the SEC.

§ 449.2 Form G–FINW, notification by financial institutions of cessation of status as government securities broker or dealer purusant to section 15C(a)(1)(B)(I) of the Securities Exchange Act of 1934 and § 400.6 of this chapter.

This form is to be used by financial institutions that are government securities brokers or dealers to notify their appropriate regulatory agency that they have ceased to function as a government securities broker or dealer. The form is promulgated by the Board of Governors of the Federal Reserve System and is available from the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board and the SEC.

§ 449.3 Form G–FIN–4, notification by persons associated with financial institutions that are government securities brokers and dealers pursuant to section 15C(a)(1)(B)(I) of the Securities Exchange Act of 1934 and § 400.4 of this chapter.

This form is to be used by associated persons of financial institutions that are government securities brokers or dealers to provide certain information to the financial institution and the appropriate regulatory agency concerning employment, education, residence, and statutory disqualification. The form is promulgated by the Department of the Treasury and is available from the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board and the SEC.

§ 449.4 Form G–FIN–5, notification of termination of association with a financial institution that is a government securities broker or dealer pursuant to section 15C(a)(1)(B)(I) of the Securities Exchange Act of 1934 and § 400.4 of this chapter.

This form is to be used by financial institutions that are government securities brokers or dealers to notify the appropriate regulatory agency of the fact that an associated person is no longer associated with the government securities broker or dealer function of the financial institution. The form is promulgated by the Department of the Treasury and is available from the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board and the SEC.

§ 449.5 Form G–405, information required of registered government securities brokers and dealers pursuant to section 15C of the Securities Exchange Act of 1934 and §§ 405.2 and 405.4 of this chapter.

This form is to be used by registered government securities brokers and dealers to make the monthly, quarterly and annual financial reports required by Part 405 of this chapter. The form is promulgated by the Department of the Treasury and is available from the SEC and the designated examining authorities.

§ 449.6 Display of OMB control numbers.

The following rules promulgated by the Department of the Treasury pursuant to the Government Securities Act of 1986 containing information collection requirements are listed with the control numbers assigned by the Office of Management and Budget.

Part or section of Title 17, CFR	Currently assigned OMB control No.
§ 400.4	
§ 400.5	
§ 400.6	
§ 404.2	
§ 404.3	
§ 404.4	
§ 404.5	
§ 404.6	
§ 405.2	
§ 405.3	

SUBCHAPTER B—RULES AND REGULATIONS UNDER TITLE II OF THE GOVERNMENT SECURITIES ACT OF 1986

PART 450—CUSTODIAL HOLDINGS OF GOVERNMENT SECURITIES BY DEPOSITORY INSTITUTIONS

Sec.

450.1 Scope of regulations; office responsible.
450.2 Definitions.
450.3 Exemption for trust holdings and holdings in trust departments.
450.4 Custodial holdings of government securities.
450.5 Display of OMB control numbers.

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3208 (15 U.S.C. 78o–5(b)(1)(A), (b)(2), (b)(3)(B)); Sec. 201, Pub. L. 99–571, 100 Stat. (31 U.S.C. 3121, 9110).

§ 450.1 Scope of regulations; office responsible.

(a) This part applies to depository institutions that hold government securities as fiduciary, custodian, or otherwise for the account of a customer, and that are not government securities brokers or dealers, as defined in sections 3(a)(43) and 3(a)(44) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(43)–(44)). Depository institutions exempted under Part 401 of this chapter from the requirements applicable to government securities brokers or dealers must comply with this part. Certain depository institutions that are government securities brokers or dealers must also comply with this part, as well as with additional requirements set forth in § 403.5.

(b) The regulations in this subchapter are promulgated by the Assistant Secretary (Domestic Finance) pursuant to a delegation of authority from the Secretary of the Treasury. The office responsible for the regulations is the Office of the Deputy Assistant Secretary (Federal Finance).

§ 450.2 Definitions.

For purposes of this subchapter:

(a) "appropriate regulatory agency" has the meaning set out in section 3(a)(34)(G) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)(G)), except that the appropriate regulatory agency for—

(1) An institution insured by the Federal Savings and Loan Insurance Corporation is the Federal Home Loan Bank Board;

(2) A Federal credit union as defined in 12 U.S.C. 1752(1) and an insured credit union as defined in 12 U.S.C. 1752(7) is the National Credit Union Administration; and

(3) Any depository institution for whom an appropriate regulatory agency is not explicitly specified by either section 3(a)(34)(G) or this paragraph, is the SEC;

(b) "customer" includes the counterparty to a transaction pursuant to a repurchase agreement for whom the depository institution retains possession of the security sold subject to repurchase, but does not include a broker or dealer that is registered pursuant to section 15, 15B or 15C(a)(1)(A) of the Act (15 U.S.C. 78o, 78o–4, 78o–5(a)(1)(A)) or that has filed notice of its status as a government securities broker or dealer pursuant to section 15C(a)(1)(B) of the Act (15 U.S.C. 78o–5(a)(1)(B)) except to the extent that a depository institution holds securities for customers of such broker or dealer;

(c) "depository institution" has the meaning stated in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)–(vi)) and also includes a foreign bank, an agency or branch of a foreign bank and a commercial lending company owned or controlled by a foreign bank (as such terms are defined in the International Banking Act of 1978, Pub. L. 95–369, 92 Stat. 607);

(d) "fiduciary capacity" includes trustee, executor, administrator, registrar, transfer agent, guardian, assignee, receiver, managing agent, and any other similar capacity involving the sole or shared exercise of discretion by a depository institution having fiduciary powers that is supervised by a federal or state financial institution regulatory agency; and

(e) "government securities" means those obligations described in subparagraphs (A), (B), or (C) of section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)(A)–(C)).

§ 450.3 Exemption for trust holdings and holdings in trust departments.

(a) The Secretary has determined that the rules and standards of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation governing the holding of government securities in a fiduciary capacity by depository institutions subject thereto are adequate. Accordingly, such depository institutions are exempt from this part with respect to their holdings of government securities in a fiduciary capacity and their holdings of government securities in a custodial capacity within their trust departments, provided such institutions agree, with respect to such custodial holdings, to adhere to all requirements applicable to holdings of government securities in a fiduciary capacity imposed by their appropriate regulatory agency.

(b) The Secretary expects that each appropriate regulatory agency will notify the Department if it materially revises its rules and standards governing the holding of government securities in a fiduciary capacity.

§ 450.4 Custodial holdings of government securities.

Depository institutions that are subject to this Part shall observe the following requirements with respect to their holdings of government securities for customer accounts:

(a) All government securities held for the account of customers shall be segregated from the assets of the depository institution and shall be kept free of any charge, lien or claim of any kind, unless expressly agreed to in writing by the customer for whose account such securities are held. A safekeeping receipt or a confirmation shall be issued for every government security held for a customer.

(b) All depository institutions holding government securities for customers shall maintain possession or control of such securities. Securities shall be deemed to be under the control of a depository institution to the extent that it has instructed a Federal Reserve Bank, correspondent bank, trust company, or other custodian, as appropriate, to maintain possession or control of such securites free of any charge, lien, or claim of any kind in favor of such correspondent bank, trust company, or other custodian or any persons claiming through them, except to the extent expressly agreed to in writing by the customer for whose account such securities are held.

(c) Records of government securities held for customers shall be kept separate and distinct from other records of the depository institution. Such records shall:

(1) Provide a system for identifying each customer and each government security held for the customer, unless the depository institution is holding securities for customers of another depository institution or of a government securities broker or dealer registered pursuant to section 15C(a)(1)(A) of the Act (15 U.S.C. 78o–5(a)(1)(A)) or a government securities broker or dealer that has filed notice of its status pursuant to section 15C(a)(1)(B) of the Act (15 U.S.C. 78o–5(a)(1)(B));

(2) Describe the customer's interest in the government security;

(3) Indicate all receipts and deliveries of government securities and all receipts and disbursements of cash in connection with such securities;

(4) Include a copy of the safekeeping receipt or a confirmation issued for each government security held; and

(5) Provide an adequate basis for audit of such information.

(d) Counts of government securities held for customers in both definitive and book-entry form shall be conducted at least annually and such counts shall be reconciled with customer account records. Counts of book-entry securities and of definitive securities held outside the possession of the depository institution shall be made by verification of the records of the depository institution with those of any depository, depository institution, or Federal Reserve Bank on whose books the depository institution has securities accounts. The dates and results of such counts and reconcilements shall be documented with differences noted.

§ 450.5 Display of OMB control numbers.

The following rules promulgated by the Department of the Treasury pursuant to the Government Securities Act of 1986 containing information collection requirements are listed with the control numbers assigned by the Office of Management and Budget.

Part or section of Title 17, CFR	Currently Assigned OMB Control No
§ 450.4	

Dated: February 19, 1987.

Charles O. Sethness,

Assistant Secretary for Domestic Finance.

[FR Doc. 87–3800 Filed 2–24–87; 8:45 am]

BILLING CODE 4810–25–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Rel. No. 34–24109; File No. S7–4–87]

Request for Comments on Proposed Rules and Proposed Revisions of Form BD

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking and form revision.

SUMMARY: The Commission is publishing for comment proposed rules to implement provisions of the Government Securities Act of 1986, which requires currently unregulated government securities brokers or government securities dealers to register with the Commission. Registered broker-dealers who act as government securities brokers or government securities dealers must file written notice with the Commission. The proposed rules prescribe the form and information required to be filed by government securities broker-dealers in their applications for registration with the Commission. The Commission also is publishing for comment proposed revisions to Form BD, the form used to register as a broker-dealer. The proposed revisions adapt the form for use by government securities broker-dealers and enable government securities broker-dealers currently registered or registering with the Commission to use Form BD in order to notify the Commission of their activities as government securities broker-dealers.

DATES: Comments should be submitted by March 18, 1987.

ADDRESSES: All comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Washington, DC 20549, and should refer to File No. S7–4–87. All submissions will be available for public inspection at the Commission's

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Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Lynne G. Masters, Esq. at (202) 272–2848, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

Introduction

On October 28, 1986, the Securities Exchange Act of 1934 (the "Exchange Act") was amended by Pub. L. No. 99–571,[1] the Government Securities Act of 1986 (the "Act"). As amended, the Exchange Act contains a new section 15C(a) that requires government securities brokers [2] and government securities dealers,[3] other than those already registered with the Commission or financial institutions,[4] to register with the Commission, by July 25, 1987.[5] Under the Act, broker-dealers currently registered with the Commission [6] that act as government securities brokers or government securities dealers are not required to re-register with the Commission. They are, however, required to file by July 25, 1987 [7] written notice with the Commission that they are government securities brokers or government securities dealers. [8] Similarly, financial institutions that are government securities brokers or dealers are required to file with their appropriate regulatory agency [9] by July 25, 1987 written notice in the form prescribed by the Board of Governors of the Federal Reserve System.

Government securities brokers and government securities dealers are subject to the rulemaking authority of the Secretary of the Treasury ("Treasury") in the areas of financial responsibility, reporting, recordkeeping, and exemptions from rulemaking. The Treasury has proposed rules in these areas, at 17 CFR 400.1–405.3.

For government securities broker-dealers required to register under section 15C(a)(1)(A) of the Exchange Act, the Act directs the Commission to prescribe the forms to be used for registration and for withdrawal from registration, as well as the information that must be filed with the required forms. In addition, the Act authorizes the Commission to establish the form to be used by registered broker-dealers that must file notice with the Commission of their status as government securities broker-dealers. In order to implement the registration, withdrawal from registration, and notice requirements of the Act, the Commission is proposing the rules described more fully below and the corresponding revisions to Form BD. Unless otherwise noted, these rules impose upon government securities broker-dealers required to register under the Act [10] disclosure and filing requirements for registration and withdrawal from registration similar to those that are imposed upon other broker-dealers. The proposed revisions to Form BD are intended to adapt the form for use by government securities broker-dealers applying for registration and by registered broker-dealers notifying the Commission of their government securities activities or intention to cease such activities.

I. Discussion of Rules

1. *Proposed Rule 15Cal–1.* The Commission is proposing Rule 15Cal–1 to implement the requirement that

[1] 100 Stat. 3208.

[2] New section 3(a)(43) of the Exchange Act defines a government securities broker as:

Any person regularly engaged in the business of effecting transactions in government securities for the account of others, but does not include—

(A) Any corporation the securities of which are government securities under subparagraph (B) or (C) of paragraph (42) of this subsection; or

(B) Any person registered with the Commodity Futures Trading Commission, any contract market designated by the Commodity Futures Trading Commission, such contract market's affiliated clearing organization, or any floor trader on such contract market, solely because such person effects transactions in government securities that the Commission, after consultation with the Commodity Futures Trading Commission, has determined by rule or order to be incidental to such person's futures-related business.

[3] New section 3(a)(44) of the Exchange Act defines a government securities dealer as:

Any person engaged in the business of buying and selling government securities for his own account, through a broker or otherwise, but does not include—

(A) Any person insofar as he buys or sells such securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business;

(B) Any corporation the securities of which are government securities under subparagraph (B) or (C) of paragraph (42) of this subsection;

(C) Any bank, unless the bank is engaged in the business of buying and selling government securities for its own account other than in a fiduciary capacity, through a broker or otherwise; or

(D) Any person registered with the Commodity Futures Trading Commission, any contract market designated by the Commission, any contract market designated by the Commodity Futures Trading Commission, such contract market's affiliated clearing organization, or any floor trader on such contract market, solely because such person effects transactions in government securities that the Commission, after consultation with the Commodity Futures Trading Commission, has determined by rule or order to be incidental to such person's futures-related business.

[4] New section 3(a)(46) of the Exchange Act defines "financial institution" as "[A] a bank as defined in section 3(a)[6) of the Act, (B) a foreign bank, and (C) an insured institution as such term is defined in section 401 of the National Housing Act."

[5] Government securities brokers and dealers registering pursuant to section 15C(a) are also required to become members of a registered securities association or a national securities exchange. *See* section 15C(e)(1).

[6] These broker-dealers (hereinafter referred to as "registered broker-dealers") are broker-dealers registered under Section 15(b) of the Exchange Act and non-bank intrastate municipal securities dealers registered under Section 15B of the Exchange Act. *See* section 3(a)(48).

[7] Because July 25, 1987, falls on a Saturday, registered broker-dealers required to file notice must file their notices no later than July 27, 1987. *See* Rule 0–3(a).

[8] After the effective date of the amendments, all registered broker-dealers that are government securities broker-dealers are required by section 15C(a)(1)(B)(ii) to file a notice with the Commission when they cease to act as a government securities broker or dealer. Section 15C(a)(1)(B) provides that a government securities broker or dealer must file a written notice with the appropriate regulatory authority when it ceases to act as a government securities broker or dealer. Although the literal language of this provision could be interpreted to apply to any government securities broker or dealer, the Commission believes that Congress intended this provision to apply only to broker-dealers registered pursuant to sections 15 and 15B and financial institutions, and not to government securities broker-dealers registered solely pursuant to section 15C(a)(1)(A).

[9] As amended, section 3(a)(34) of the Exchange Act defines "appropriate regulatory agency" to include the following new paragraph:

(G) When used with respect to a government securities dealer, or person associated with a government securities broker or government securities dealer:

(i) The Comptroller of the Currency, in the case of a national bank, a bank in the District of Columbia examined by the Comptroller of the Currency, or a Federal branch or Federal agency of foreign bank (as such terms are used in the International Banking Act of 1978);

(ii) The Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a foreign bank, a State branch or a State agency of a foreign bank, or a commercial lending company owned or controlled by a foreign bank (as such terms are used in the International Banking Act of 1978);

(iii) The Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System or a Federal Savings Bank);

(iv) The Federal Home Loan Bank Board, in the case of a Federal Savings and Loan Association, Federal Savings Bank, or District of Columbia savings and loan association;

(v) The Federal Savings and Loan Insurance Corporation, in the case of an institution insured by the Federal Savings and Loan Insurance Corporation (other than a Federal Savings and Loan Association, Federal Savings Bank, or District of Columbia savings and loan association);

(vi) The Commission, in the case of all other government securities brokers and government securities dealers.

The term "District of Columbia savings and loan associations", means "any association subject to examination and supervision by the Federal Home Loan Bank Board under Section 8 of the Home Owners Loan Act of 1933."

[10] The Commission will exercise its interpretive and no-action authority in determining whether registration under the Act is required. *See* S. Rep. No. 426, 99th Cong., 2d. Sess. n.37 (1986). Requests for interpretative or no-action advice should be addressed to the Chief Counsel, Division of Market Regulation.

government securities broker-dealers already registered with the Commission pursuant to sections 15(b) or 15B(a) of the Exchange Act file written notice with the Commission that they are government securities brokers or dealers.[11] The Rule requires such government securities broker-dealers to file notice on Form BD that they are government securities broker-dealers by July 25, 1987. Proposed Rule 15Cal–1 also requires a registered broker-dealer that begins government securities activities after July 25, 1987 to file written notice on Form BD with the Commisison on or prior to the day it begins acting as a government securities broker-dealer. Paragraph (b) of the Rule requires a registered broker-dealer that has previously filed notice of government securities activities to file written notice on Form BD within 30 days of ceasing to act as a government securities broker-dealer.

2. *Proposed Rule 15Ca2–1:* Under paragraph (a) of proposed Rule 15Ca2–1, government securities broker-dealers required to register pursuant to new section 15C(a)(1)(A) would be required to apply for registration on Form BD. Form BD is the uniform application form for broker-dealer registration [12] used by the Commission, state securities regulators, and the National Association of Securities Dealers, Inc. ("NASD").[13]

Form BD requires that an applicant provide the Commission with information concerning the nature of its business, the background of its principals, its controlling persons, and its employees and is designed to permit the Commission to determine whether the applicant meets the statutory requirements to engage in the securities business.[14] Because the Act requires applicants registering under section 15C(a)(1)(A) to meet substantially the same statutory requirements as other applicants for broker-dealer registration, the Commission has determined to use Form BD as the application for registration for government securities broker-dealers. Government securities broker-dealers required to register pursuant to section 15C(a)(1)(A) will be required to complete all Items on the Form.

At present, Rule 15b3–1(b) requires registered broker-dealers to amend their Form BDs promptly whenever information contained in the forms becomes inaccurate.[15] The proposed rules do not contain a similar provision because such amendments are deemed reports under the Act, and the Act vests the Treasury with the authority to adopt reporting requirements. However, the Treasury has proposed a rule requiring that Form BD be amended when the Form as filed becomes inaccurate.[16]

3. *Proposed Rule 15Ca2–2: Statement of Financial Condition to be Filed with Application for Registration as a Government Securities Broker or Government Securities Dealer.* Proposed Rule 15Ca2–2 requires a government securities broker-dealer applying for registration to submit as part of its application on Form BD a statement of financial condition and other information concerning the applicant's financial resources. For example, the Rule requires: (1) Disclosure of the applicant's assets, liabilities and net worth, (2) a schedule listing the applicant's securities and, if readily marketable, their market value, (3) a computation made in accordance with the capital requirements to be established by the Secretary of the Treasury,[17] (4) a statement describing the nature and source of capital and representing that such amount of capital has been contributed to and will continue to be devoted to the business, (5) a statement concerning establishment and maintenance of the facilities and financing required for the operation of the business, and (6) a statement for the ensuing year of operations (a) describing the arrangements made for obtaining the funds necessary to operate the business, (b) setting forth the anticipated expenses for that year, and (c) providing information as to any arrangements which have been made to obtain additional financing if it becomes necessary. The purpose of the proposed rule is to allow the Commission to determine whether the applicant has the required amount of capital and the capacity to operate as a going concern.

Many of the government securities brokers and dealers required to register under the Act have been in operation for substantial periods of time. Because these firms often have substantial inventories of securities and adequate, well-established businesses, paragraph (e) of the proposed rule provides that firms in operation for one or more years prior to July 25, 1987, the effective date of the Act, are not required to submit a schedule of securities, a detailed description of the firm's personnel and physical facility, or a detailed description of arrangements for and uses of its funds. Such firms, however, must represent that they have been acting as a government securities broker or dealer as of a date prior to July 25, 1986. In reviewing the appropriateness of this exemption, the Commission requests comment generally on the utility of the information required by this rule to the self-regulatory organizations in reviewing registration applications and admitting applicants to membership.

4. *Proposed Rule 14Ca2–3: Registration of Successors.* The Commission is proposing a successor rule for government securities broker-dealers similar to that already applicable to broker-dealers registered under section 15(b) of the Act.[18] The rule is intended to provide for a smooth transition when one government securities broker-dealer succeeds to the business of another government

[11] Section 15C(a) (1) (B).

[12] Form BD is the form filed by an applicant to become registered pursuant to section 15(b) of the Exchange Act. *See* Rule 15b1–1. In addition, intrastate nonbank municipal securities dealers required to register under Section 15B(a) file an application for registration with the Commission on Form BD. *See* Rule 15Ba2–2. Municipal securities dealers that are banks or separately identifiable departments or divisions of banks are not brokers or dealers because of the exception for banks contained in the section 3(a)(4) definition of broker and the section 3(a)(5) definition of dealer. These municipal securities dealers are required to register with the Commission under section 15B and file an application for registration on Form MSD. *See* Rule 15Ba2–1.

[13] In 1975 the Commission adopted Form BD as a uniform form in order to enable broker-dealer applicants to file a single form for registration as a broker-dealer with the Commission, the states, and the self-regulatory organizations. *See* Securities Exchange Act Rel. No. 11424 (May 28, 1975), 40 FR 30634. Although the amendments facilitated the use of a single form, duplicative filing requirements remained. *See* Securities Exchange Act Rel. No. 20020 (July 28, 1983), 48 FR 36115. In 1983 the Commission amended Form BD to reduce those duplicative registration requirements. In addition, the revisions made Form BD and Form BDW, the form used for broker-dealer withdrawal from registration, compatible with the NASD's Central Registration Depository ("CRD"). The CRD provides a computer database that maintains current registration information for every broker-dealer that is a member of the NASD or registered with a state that participates in the CRD system. *See* Securities Exchange Act Rel. Nos. 20406 (Nov. 22, 1983), 48 FR 54436; 22468 (Sept. 26, 1985), 50 FR 41687 ("1985 Release"); 23646 (Sept. 26, 1986), 51 FR 35655.

[14] For example, section 15C of the Exchange Act incorporates by reference the provisions of section 15(b) of the Exchange Act to permit the Commission to deny an applicant's registration if it finds that the applicant has been convicted of committing certain crimes, such as bribery, perjury or burglary within the preceding 10 years.

[15] *See also* Rules 15Ba2–2(c) and 15Ba2–1(b).

[16] 17 CFR 400.5.

[17] Under the Act, the Secretary of the Treasury is to establish capital adequacy requirements for government securities broker-dealers. The proposed rule, therefore, differs from Rule 15b1–2 because it requires information concerning compliance with capital standards as established by the Secretary of the Treasury rather than the Commission.

[18] *See* Rule 15b1–3 and Rule 15Ba2–4. Similar successor rules also apply to investment advisers. 17 CFR 275.203–1 (c) and (d). For a more complete discussion of the successor rules *see* 1985 Release, at 16.

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securities broker-dealer that is registered pursuant to section 15C(a) of the Act. In general, a broker-dealer succeeds to and continues the business of a predecessor broker-dealer when the successor broker-dealer assumes substantially all the assets and liabilities of the predecessor [19] and therefore closely resembles the predecessor registered government securities broker-dealer.

Paragraph (a) of the rule applies to most instances where a new legal entity succeeds to the business of a registered government securities broker-dealer. The successor is allowed to operate under the registration of the predecessor for 75 days if it files its own complete application for registration on Form BD within 30 days of the date of the succession.[20] Paragraph (b) provides special procedures for certain changes in legal status that involve the legal creation of a new entity but no practical change in the broker-dealer—changes in date or state of incorporation, form of organization,[21] or change in the composition of a partnership. In these instances, paragraph (b) allows the new entity simply to amend the predecessor's Form BD within 30 days of the date of the succession. The amendment would include page 1 of Form BD (the execution page), page 2 (indicating that the applicant is a successor), and any other pages necessary to reflect changes in the successor government securities broker-dealer. In addition, the government securities broker-dealer would be required to comply with Rule 15Ca2–1 and file a statement of financial condition described in Rule 15Ca2–1(a).

5. *Proposed Rule 15Ca2–4: Registration as Fiduciaries.* The Commission is proposing to adopt for government securities broker-dealers substantially the same rule governing the registration of fiduciaries that applies to registered broker-dealers.[22] The proposed rule permits a duly appointed fiduciary to assume immediate responsibility for the operation of a government securities broker-dealer's business. Under the rule, the registration of a government securities broker-dealer is deemed to be the registration of any executor, guardian, conservator, assignee for the benefit of creditors, receiver, trustee in insolvency or bankruptcy, or other fiduciary appointed or qualified by order, judgment or decree of a court of competent jurisdiction. This enables the fiduciary to continue the business of a registered government securities broker or dealer, provided that the fiduciary files with the Commission, within 10 days after entering upon the performance of his duties, a statement setting forth substantially the same information required by Form BD.

6. *Proposed Rule 15Ca2–5: Consent to Service of Process To Be Furnished by Non-Resident Government Securities Brokers or Government Securities Dealers and by Non-Resident General Partners or Managing Agents of Government Securities Brokers or Government Securities Dealers.* The Commission is proposing a rule governing service of process for non-resident government securities broker-dealers that is similar to that applied to non-resident registered broker-dealers.[23] Generally, this rule provides that every non-resident government securities broker-dealer applying for registration pursuant to section 15C(a)(1)(A) must provide the Commission with a written irrevocable consent and power of attorney. This consent and power of attorney designates the Commission as an agent upon whom may be served any papers in connection with actions arising from the government securities broker or dealer's government securities business, that are subject to the jurisdiction of the United States and that accrue while the government securities broker or dealer is registered with the Commission.[24] The Rule requires that the applicant stipulate to be bound by the service of process upon the Commission as if personal service had been made. Paragraph (b)(1) of the Rule provides that registered government securities broker-dealers that become non-residents must file their consent within 30 days.

Pursuant to Rule 15b1–5, the Commission prescribed a series of forms to be used by non-resident broker-dealers.[25] The Commission is not prescribing specific forms under Rule 15Ca2–5; nevertheless, an appropriate form to satisfy the requirements of the Rule would be one of those used for Rule 15b1–5 that is modified to apply to a government securities broker-dealer registered pursuant to section 15C(a)(1)(A).

Unlike Rule 15b1–5, proposed Rule 15Ca2–5 does not grant registered government securities brokers or dealers or those whose registrations are pending when the Rule becomes effective additional time in which to file the consents and powers of attorney.[26] Non-resident government securities brokers or dealers that may have already registered would have done so pursuant to section 15(b) of the Exchange Act and the rules thereunder. The consent and power of attorney would have been filed in connection with their original application for registration. Therefore, the Commission believes that these provisions are unnecessary in the proposed rule.

7. *Proposed Rule 15Cc1–1: Withdrawal From Registration.* Proposed Rule 15Cc1–1 provides that, in order for a government securities broker-dealer to withdraw its registration under section 15C of the Exchange Act, it must file notice of withdrawal from registration with the Commission on Form BDW.[27] Registered broker-dealers withdrawing from registration under other provisions of the Exchange Act are required to file the same notice.[28] On October 7, 1986 the Commission proposed largely technical revisions to Form BDW that are intended to simplify the form and reduce the regulatory burden on broker-dealers filing Form BDW.[29] The proposed rule does not affect those proposed Form BDW revisions.

[19] The successor rule cannot be used by a government securities broker-dealer to eliminate a substantial liability. *See* 1985 Release, at 17.

[20] The predecessor must file a Form BDW indicating it is withdrawing from business.

[21] Rule 15b1–3(b) as revised in 1986 contained a typographical error causing the phrase "form of organization" to read as "form or organization." The Commission intended Rule 15b1–3(b) to refer to "form *of* organization" and interprets the Rule in this manner.

[22] *See* Rule 15b1–4 and 15Ba2–5 concerning broker-dealers registered pursuant to section 15(b) and section 15B, respectively.

[23] *See* Rule 15b1–5.

[24] Under the proposed rule, the government securities broker-dealer's consent and power of attorney relate to causes of action that accrue between the time the government securities broker or dealer becomes registered and when its registration is cancelled or revoked or when a notice to withdraw from registration (Form "BDW") becomes effective. *See* Rule 15Ca2–5(a). The cut-off date in proposed Rule 15Ca2–5 differs slightly from that in Rule 15b1–5 which relates to causes of action accruing up until the Commission receives a broker-dealer's Form BDW. Because a broker-dealer's withdrawal does not become effective for 60 days from the date the Form BDW is filed, or a longer time if proceedings are instituted pursuant to section 15C, the Commission believes that Rule 15Ca2–5 should provide for causes of action that may accrue between the time a government securities broker-dealer files its Form BDW and the date that notice becomes effective.

[25] *See* Forms 7–M, 8–M, 9–M, and 10–M.

[26] *See* Rule 15b1–5(b) (1) and (2).

[27] Form BDW must be filed only if an entity is completely ceasing its securities business; if an entity is a registered broker-dealer and is ceasing its government securities activities but continuing other securities activities, it must file a notice on Form BD to reflect this change. *See* proposed Rule 15Ca1–1.

[28] *See* Rule 15b6–1 and rule 15Bc–3.

[29] *See* Securities Exchange Act Rel. No. 23946 (September 29, 1986), 51 FR 35855.

II. Proposed Revisions to Form BD.[30]

The Commission proposes to modify Form BD for use as a registration form by government securities broker-dealers by adding a new Item 12. New Item 12 requires an applicant to indicate whether it is applying for registration solely as a government securities broker or dealer. The new Item 12 will enable the Commission, regulatory authorities, and the public to identify government securities brokers or dealers registering pursuant to section 15C(a)(1)(A). In addition, this identification will facilitate the Commission's determination of the broker-dealer's compliance with other applicable requirements.[31]

The Commission also proposes to revise Form BD so that broker-dealers registered or applying for registration pursuant to sections 15 and 15B may use it to notify the Commission of their government securities activities. These broker-dealers would file notice on Form BD by answering "yes" to new Item 13A, indicating they are acting as a government securities broker or dealer. After the effective date of the Act, broker-dealers registered pursuant to sections 15(b) and 15B that have conducted a government securities business also must notify the Commission when they cease their government securities activities.[32] Under the proposed amendments, notice would be filed by answering "yes" to Item 13B, indicating they are ceasing their government securities activities.

Broker-dealers registered with the Commission will have until July 25, 1987, to file this notice with the Commission. Registered broker-dealers that become government securities brokers or dealers after that date will be required pursuant to Rule 15Ca1–1 to notify the Commission on the date they begin acting as a government securities dealer and within thirty days after ceasing these activities.

Depending on their volume of government securities business, broker-dealers filing notice of government securities activities may also have to amend their Form BD to reflect a change in Item 10. Item 10 requires the applicant to check boxes indicating the types of business it is or will be engaged in if a type of business accounts for 10 percent or more of the applicant's annual revenue from the securities or advisory business. Current Item 10 provides a box only for government securities dealer activities. The Commission is proposing to add an additional box for government securities brokers.

III. Proposed Revisions to Rule 15b2–2: Inspection of Newly Registered Brokers and Dealers

Section 15(b)(2)(C) requires the Commission or the responsible self-regulatory organization to conduct an inspection of a broker-dealer [33] within six months [34] of granting its registration in order to determine whether the broker-dealer is operating in conformity with the federal securities laws. Pursuant to this requirement the Commission adopted Rule 15b2–2. The Commission is proposing revisions to Rule 15b2–2 to provide for the inspection of newly registered government securities broker-dealers. The Rule requires the responsible self-regulatory organization to conduct inspections of newly registered broker-dealers within six months to a year [35] to determine compliance with "applicable financial responsibility rules." The revisions clarify the applicability of the Rule to government securities broker-dealers registered pursuant to section 15C(a)(1)(A) and define "applicable financial responsibility rules" to include any rule adopted by the Secretary of the Treasury pursuant to section 15C(b)(1).

Cost of Benefits. While there are no direct fees required to file Form BD with the Commission, government securities broker-dealers may incur costs associated with the proposed rules to the extent that the preparation of the required statements becomes time-consuming or requires the assistance of legal or accounting advice. These costs are difficult to estimate; therefore, the Commission solicits comments on the specific costs firms would face in complying with the proposed rules. The Commission is particularly interested in comments that identify the sources and expected amount of expenditure needed to meet the requirements of the individual rule proposals as well as suggestions for alternative, less costly methods to comply effectively with the intent of the Act.

The benefits of the proposed rules may be viewed in terms of how effectively they implement the intent of Congress to increase confidence in the government securities market and to reduce risks by having U.S. government securities brokers and dealers register or file notice with the appropriate regulatory authority.

The Commission believes that investor protection will be enhanced by the proposed registration requirements, because they should provide an adequate basis for determining whether a firm meets minimum industry standards for operating as a government securities broker or dealer. In the case of succession or withdrawal, the rules would allow for a smooth, continuous transition in management and, as with withdrawal applications, enable the Commission to determine if any further action is necessary. Another major benefit of the proposed registration procedure is that it implements the requirements of the Act while using a pre-existing method and a standard form familiar to the broker-dealer industry and that is also used by the states and the NASD.

The Commission solicits comments on the costs and benefits of the proposed rules and form changes. The Commission is particularly interested in comments addressing the identification of other sources of costs and benefits and the quantification of costs and benefits to the proposed amendments.

IV. Regulatory Flexibility Act Considerations

The Regulatory Flexibility Act establishes procedural requirements applicable to agency rulemaking that has a "significant economic impact on a

[30] In addition to the new Items described below, the Commission is proposing amendments to the instructions page to describe the procedure for registering with the Commission as a government securities broker-dealer and for registered broker-dealers to provide notice of their government securities activities.

[31] Under the Act, government securities brokers and dealers may be subject to different regulations than broker-dealers registered under Section 15(b). For example, a firm that conducts a business solely in government securities, and therefore registers with the Commission pursuant to section 15C(a)(1)(A), would not be a member of the Securities Investor Protection Corporation ("SIPC"). *See* S. Rep. No. 426, 99th Cong., 2d. Sess. 25 (1986). In addition, under section 15C(b) the Secretary of the Treasury may adopt for government securities broker-dealers rules governing their books and records and capital requirements that may differ from the rules applicable to broker-dealers generally. Finally, under section 15A(f) of the Act the NASD's rulemaking authority over transactions by government securities broker-dealers in government securities is generally limited to examining for and enforcing compliance with applicable provisions of the Act. The NASD, however, is specifically empowered to adopt rules to prohibit fraudulent, misleading, deceptive, and false advertising.

[32] Section 15C(a)(1)(B).

[33] Government securities broker-dealers that are required to register pursuant to section 15C(a) are broker-dealers, and are therefore subject to the Rule.

[34] The Commission may delay inspection of any class of brokers or dealers for up to six months. *See* section 15(b)(2)(C).

[35] Rule 15b2–2(c) and (d).

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substantial number of small entities." [36] The Chairman of the Commission has certified pursuant to that Act that the proposed amendments to Rule 15b2–2, if adopted, will not have a significant economic impact on a substantial number of small entities. Rule 15b2–2 provides for inspections of newly registered broker-dealers by the NASD and the exchanges. Most government securities broker-dealers will belong to the NASD, therefore, the NASD will incur most of the costs associated with the proposed amendments to Rule 15b2–2. The NASD, however, is not a small organization under § 601(4) of the Regulatory Flexibility Act because the NASD is considered "dominant in its field."

Under Rule 0–11(e) of the Exchange Act, the Commission defines a small organization, when used with reference to an exchange as any exchange that has been exempted from the reporting requirements of Rule 11Aa3–1. There is only one exchange, the Spokane Exchange, that falls within the definition of small organization. It is not expected that government securities broker-dealers will join the Spokane Exchange. Therefore, it is unlikely that there will be any economic impact on an exchange that is a small entity.

The proposed amendments to Rule 15b2–2 may result in indirect costs to government securities broker-dealers that are small entities. The costs, however, of being inspected by the NASD or the exchanges are minimal and will not have a significant economic impact on such government securities broker-dealers.

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding proposed rules 15Ca1–1, 15Ca2–1, 15Ca2–2, 15Ca2–3, 15Ca2–4, 15Ca2–5, 15Cc1–1, 15b2–2, and proposed revisions to Form BD. The Analysis notes that the objective of the rules is to implement the provisions of the Act. The Analysis utilized the Commission's Rule 0–10 under the Exchange Act, which defines small entities when used in reference to a broker-dealer. The Commission believes that the proposed rules will have a significant economic impact on a substantial number of small entities. The impact, however, has been minimized by requiring government securities broker-dealers to register using the same form as the form used for registration of other broker-dealers.

The intent of and the possible costs and benefits of each rule proposal is also discussed in the Analysis. Comments are solicited with respect to this initial regulatory analysis and the appropriateness of the current definition of a small broker-dealer for purposes of the Analysis.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Lynne G. Masters, Esq., Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549, (202) 272–2848.

V. Statutory Authority

Pursuant to the Securities Exchange Act of 1934 and particularly sections 3, 15(b), 15C(a), and 23 thereof, 15 U.S.C. 78c, 78*o*(b), 78*o*–5(a), and 78w, the Commission proposes to adopt §§ 240.15Ca1–1, 240.15Ca2–1, 240.15Ca2–2, 240.15Ca2–3, 240.15Ca2–4, 240.15Ca2–5, 240.15Cc1–1, and to amend § 240.15b2–2 and Form BD, § 249.501 of Title 17 of the Code of Federal Regulations, in the manner set forth below.

VI. Text of Proposed Amendments

In accordance with the foregoing, it is proposed to amend 17 CFR Part 240 as follows:

PART 240—GENERAL RULES AND REGULATIONS SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citations:

Authority: Sec. 23, 48 Stat. 901 as amended 15 U.S.C. 78w * * * Section 240.15b2–2, also issued under Secs. 3, 15 U.S.C. 78c, and 15, 15 U.S.C. 78*o*, Secs. 240.15Ca1–1, 240.15Ca2–1, 240.15Ca2–2, 240.15Ca2–3, 240.15Ca2–4, 240.15Ca2–5, 240.15Cc1–1, also issued under Secs. 3, 15 U.S.C. 78c, 15C, 15 U.S.C. 78*o*–5, * * *

2. § 240.15b2–2 is amended by revising paragraphs (a) and (b) as follows:

§ 240.14b2–2. Inspection of newly registered brokers and dealers.

(a) *Definition*. For the purpose of this section the term "applicable financial responsibility rules" shall include: (1) Any rule adopted by the Commission pursuant to sections 8, 15(c)(3), 17(a), or 17(e)(1)(A) of the Act; (2) any rule adopted by the Commission relating to hypothecation or lending of customer securities; (3) any other rule adopted by the Commission relating to the protection of funds or securities; and (4) any rule adopted by the Secretary of the Treasury pursuant to section 15C(b)(1) of the Act.

(b) Each self-regulatory organization that has responsibility for examining a broker or dealer member (including members that are government securities brokers or government securities dealers registered pursuant to section 15C(a)(1)(A) of the Act) for compliance with applicable financial responsibility rules is authorized and directed to conduct an inspection of the member, within six months of the member's registration with the Commission, to determine whether the member is operating in conformity with applicability financial responsible rules.

* * * * *

Registration of Government Securities Brokers and Government Securities Dealers

3. By adding §§ 240.15Ca1–1, 240.15Ca2–1, 240.15Ca2–2, 240.15Ca2–3, 240.15Ca2–4, 240.15Ca2–5, 240.15Cc1–1 after the undesignated heading above as follows:

§ 240.15Ca1–1. Notice of government securities broker-dealer activities.

(a) Every government securities broker or government securities dealer that is a broker or dealer registered pursuant to sections 15 or 15B of the Act (other than a financial institution as defined in section 3(a)(46) of the Act) shall file with the Commission written notice on Form BD (§ 249.501 of this chapter) in accordance with the instructions contained therein that it is a government securities broker or government securities dealer. After July 25, 1987, every broker or dealer subject to this paragraph shall file notice that it is a government securities broker or government securities dealer prior to or on the date it begins acting as a government securities broker or government securities dealer.

(b) Every government securities broker or government securities dealer required to file notice under paragraph (a) of this section shall file with the Commission written notice on Form BD in accordance with the instructions contained therein when it ceases to be a government securities broker or government securities dealer. Notice shall be filed within 30 days after the date the broker or dealer has ceased acting as a government securities broker or a government securities dealer.

§ 240.15Ca2–1. Application for registration as a government securities broker or a government securities dealer.

(a) An application for registration pursuant to section 15C(a)(1)(A) of the Act of a government securities broker or government securities dealer shall be filed with the Commission on Form BD (§ 249.501 of this chapter) in accordance with the instructions contained therein.

(b) Every amendment to Form BD filed by a government securities broker or government securities dealer registered pursuant to section 15C(a)(1)(A) of the Act shall constitute a "report" within the meaning of sections 15, 15C, and 32(a) of the Act.

§ 240.15Ca2–2. Statement of financial condition to be filed with application for registration as a government securities broker or government securities dealer.

(a) Every government securities broker or government securities dealer who files an application for registration on Form BD pursuant to Rule 15Ca2–1 shall file with such application a statement of financial condition as of a date no more than 30 days after the date on which such statement is filed and as of a later date reflecting any material change, if there has been a material change. Such statement of financial condition shall: (1) Be in such detail as will disclose the nature and amount of assets and liabilities and the net worth of such government securities broker or government securities dealer; (2) contain a schedule listing the securities of such government securities broker or government securities dealer or in which such government securities broker or government securities dealer has an interest and, if a ready market for the security exists, valuing the security at the market price with an indication of the market on which such valuation is made, and (3) contain a computation made in accordance with the capital requirements applicable to the business of such government securities broker or government securities dealer under the capital rules established by the Secretary of the Treasury. For purposes of this paragraph (a), if the government securities broker or government securities dealer is a soler proprietorship, the personal assets and liabilities of such government securities broker or government securities dealer shall be included in the computations of its net worth and the Treasury capital requirements pursuant to clauses (1) and (3) hereof in testing compliance with the applicable capital rules.

(b) The schedule of securities furnished as a part of such statement of financial condition shall be deemed confidential if bound separately from the balance of such statement, except that it shall be available for official use by any official or employee of the United States or any state, by any national securities exchange or national securities association of which the person filing such statement is a member, or with whom the person is seeking to be associated, and by any other person to whom the Commission authorizes disclosure of such information as being in the public interest.

(c) Every government securities broker or government securities dealer who files an application for registration on Form BD pursuant to Rule 15Ca2–1 shall file with such application a statement that shall include the following:

(1) A representation that the capital of such government securities broker or government securities dealer has been contributed, and that such amount of capital will continue to be devoted to its business as government securities broker or government securities dealer, and a description of the nature and source of such capital, and

(2) A representation that adequate arrangements have been made by such government securities broker or government securities dealer for the establishment and maintenance of adequate facilities and financing required for the carrying on of its business as a government securities broker or government securities dealer, and an undertaking that such government securities broker or government securities dealer will continue to maintain facilities and financing adequate for its business, and a detailed statement thereof, including a discussin of the nature of such arrangements with respect to (i) personnel, (ii) physical facilities, (iii) the maintenance and preservation of books and records as required by applicable provisions of law and any applicable rules of any national securities exchange or national securities association of which such government securities broker or government securities dealer is a member, including information concerning any arrangements made for the adequate performance of these functions and duties with a bookkeeping service company or data processing service company, or otherwise, and (iv) the methods and procedures to be employed by such government securities broker or government securities dealer for the purpose of supervising the activities of persons associated with it, and

(3) A statement describing the arrangements made for the obtaining of the funds required for the operation of its business for the first year of operations after registration, and the uses to which such funds will be put, stating in appropriate detail the expenses expected to be incurred for such first year of operations after registration; and setting forth the arrangements made, if any, for the obtaining of additional funds if such funds should become necessary.

(d) Attached to each of the statements required by this rule shall be an oath or affirmation that the information contained therein is true and correct to the best knowledge and belief of the person making such oath or affirmation. The oath or affirmation shall be made before a person duly authorized to administer such oath or affirmation. If the government securities broker or government securities dealer is a sole proprietorship, the oath or affirmation shall be made by the proprietor; if a partnership, by a general partner; if a corporation, by a duly authorized officer.

(e)(1) The provisions of this rule shall not apply to a government securities broker or government securities dealer succeeding to and continuing the business of a registered government securities broker or government securities dealer, provided that such successor government securities broker or government securities dealer files with the application on Form BD a statement of financial condition as specified in paragraph (a) of this section.

(2) The information required pursuant to paragraphs (a)(2), (c)(2)(i), (c)(2)(ii), and (c)(3) of this rule shall not apply to a government securities broker or government securities dealer that has been acting continuously as a government securities broker or government securities dealer for one or more years prior to July 25, 1987, and who files with its application for registration a representation that it has been acting as a government securities broker or dealer as of a date prior to July 25, 1986.

(3) The Commission may, upon written request or upon its own motion, exempt from the provisions of this rule any government securities broker or government securities dealer, either unconditionally or on specified terms or conditions, as it deems necessary or

[36] Although section 601(b) of the Regulatory Flexibility Act defines the term "small entity," the statute permits agencies to formulate their own definitions. The Commission has adopted definitions of the term small entity for purposes of Commission rulemaking in accordance with the Regulatory Flexibility Act. Those definitions, as relevant to this certification, are set forth in Rule 0–10, 17 CFR 240.0–10. *See* Securities Exchange Act Rel. No. 18452 (January 28, 1982), 47 FR 5215. An exchange generally is a "small business" or "small organization" if it has been exempted from the reporting requirements of 17 CFR 240.11Aa3–1. *See* Rule 0–10(e). A broker or dealer generally is a "small business" or "small organization" if it had total capital of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to 17 CFR 240.17a–5(d) or if not required to file such statements a broker or dealer that had total capital, net worth plus subordinated liabilities, of less than $500,000 on the last business day of the preceding fiscal year. *See* Rule 0–10(c), 17 CFR 240.0–10(c).

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appropriate in the public interest or for the protection of investors.

(4) The statement of financial condition required by this rule shall be deemed a part of the application for registration within the meaning of the provisions of sections 15, 15C and 32(a) of the Act authorizing the Commission to prescribe the form of application for registration of a government securities broker or government securities dealer and prohibiting the filing of a false application.

§ 240.15Ca2–3. Registration of successor to registered government securities broker or government securities dealer.

(a) If a government securities broker or government securities dealer succeeds to and continues the business of a government securities broker or government securities dealer registered pursuant to section 15C(a)(1)(A) of the Act, the registration of the predecessor shall be deemed to remain effective as the registration of the successor for a period of 75 days after such succession, provided that an application for registration on Form BD (§ 249.501 of this chapter) is filed by such successor within 30 days after such succession.

(b) Notwithstanding the proviso to paragraph (a) of this rule, if a government securities broker or government securities dealer succeeds to and continues the business of a predecessor government securities broker or government securities dealer that is registered pursuant to section 15C(a)(1)(A) of the Act, and the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or change in composition of a partnership, the registration of the successor may be effected by amending within 30 days of the succession the Form BD of the predecessor to reflect these changes. This amendment shall be deemed an application for registration filed by the predecessor and adopted by the successor. This successor government securities broker or government securities dealer also must file with its Form BD amendment the statements of financial condition specified in Rule 15Ca2–2.

§ 240.15Ca2–4 Registration of fiduciaries.

The registration of a government securities broker or government securities dealer pursuant to section 15C of the Act shall be deemed to be the registration of any executor, administrator, guardian, conservator, assignee for the benefit of creditors, receiver, trustee in insolvency or bankruptcy, or other fiduciary, appointed or qualified by order, judgment, or decree of a court of competent jurisdiction to continue the business of such registered government securities broker or government securities dealer, provided that such fiduciary files with the Commission, no more than 30 days after entering upon the performance of its duties, a statement setting forth as to such fiduciary substantially the information required by Form BD.

§ 240.15Ca2–5. Consent to service of process to be furnished by non-resident government securities brokers or government securities dealers and by non-resident general partners or managing agents of government securities brokers or government securities dealers.

(a) Each non-resident government securities broker or government securities dealer applying for registration pursuant to section 15C(a)(1)(A) of the Act, each non-resident general partner of a government securities broker or government securities dealer partnership that is applying for such registration, and each non-resident managing agent of any other unincorporated government securities broker or government securities dealer that is applying for registration, shall furnish to the Commission, in a form acceptable to the Commission, a written irrevocable consent and power of attorney that: (1) designates the Securities and Exchange Commission as an agent of such government securities broker or government securities dealer upon whom may be served any process, pleadings, or other papers in any civil suit or action brought in any appropriate court in any place subject to the jurisdiction of the United States, with respect to any cause of action (i) that accrues during the period beginning when such government securities broker or government securities dealer becomes registered pursuant to section 15C(a)(1)(A) of the Act and ending either when such registration is cancelled or revoked, or when a notice filed by such government securities broker or government securities dealer to withdraw from such registration becomes effective, whichever is earlier, (ii) that arises out of any activity, in any place subject to the jurisdiction of the United States, occurring in connection with the conduct of the business of such government securities broker or government securities dealer, and (iii) that is founded, directly or indirectly, upon the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, or any rule or regulation under any of those Acts, and (2) stipulates and agrees that any such civil suit or action may be commenced against such government securities broker or government securities dealer by the service of process upon the Commission and the forwarding of a copy thereof as provided in paragraph (c) of this section and that the service as aforesaid of any such process, pleadings or other papers upon the Commission shall be taken and held in all courts to be as valid and binding as if due personal service thereof had been made.

(b) Each government securities broker or government securities dealer registered pursuant to section 15C(a)(1)(A) of the Act that becomes a non-resident government securities broker or government securities dealer, and each general partner or managing agent of an unincorporated government securities broker or government securities dealer registered or applying for registration pursuant to section 15C(a)(1)(A) of the Act who becomes a non-resident after such registration or filing of an application for such registration, shall furnish such consent and power of attorney no more than 30 days thereafter.

(c) Service of any process, pleadings or other papers on the Commission under this rule shall be made by delivering the requisite number of copies thereof to the Secretary of the Commission or to such other person as the Commission may authorize to act in its behalf. Whenever any process, pleadings, or other papers as aforesaid are served upon the Commission, it shall promptly forward a copy thereof by registered or certified mail to the appropriate defendants at their last address of record filed with the Commission; but any failure by the Commission to forward such a copy shall have no effect on the validity of the service made upon the Commission. The Commission shall be furnished a sufficient number of copies for such purpose, and one copy for its file.

(d) For purposes of this rule the following definitions shall apply:

(1) The term "managing agent" shall mean any person, including a trustee, who directs or manages or who participates in the directing or managing of the affairs of any unincorporated organization or association that is not a partnership.

(2) The term "non-resident government securities broker or government securities dealer" shall mean: (i) In the case of an individual, one who is domiciled in or has his principal place of business in any place not subject to the jurisdiction of the United States, (ii) in the case of a corporation, one incorporated in or having its principal place of business in any place not subject to the jurisdiction of the United States; (iii) in the case of a partnership or other unincorporated organization or association, one having its principal place of business in any place not subject to the jurisdiction of the United States.

(3) A general partner or managing agent of a government securities broker or government securities dealer shall be deemed to be a non-resident if he is domiciled in any place not subject to the jurisdiction of the United States.

§ 240.15Cc1–1. Withdrawal from registration.

(a) Notice of withdrawal from registration as a government securities broker or government securities dealer pursuant to section 15C(a)(1)(A) of the Act shall be filed on Form BDW in accordance with the instructions contained therein.

(b) Except as hereinafter provided, a notice to withdraw from registration filed by a government securities broker or government securities dealer shall become effective for all matters on the sixtieth day after the filing thereof with the Commission or within such shorter period of time as the Commission shall determine. If a notice to withdraw from registration is filed with the Commission at any time subsequent to the date of the issuance of a Commission order instituting proceedings pursuant to section 15C(c) to censure, place limitations on the activities, functions or operations of, suspend or revoke the registration of, such government securities broker or government securities dealer or if, before the effective date of the notice of withdrawal pursuant to this paragraph (b), the Commission institutes such a proceeding or a proceeding to impose terms or conditions upon such withdrawal, the notice of withdrawal shall not become effective pursuant to this paragraph (b) except at such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(c) Every notice of withdrawal filed pursuant to this section shall constitute a "report" within the meaning of sections 15, 15C, and 32(a) of the Act.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

4. The authority citation for Part 249 continues to read, in part as follows:

Authority: The Securities Exchange Act of 1934, 15 U.S.C. 78a. *et seq.*

5. FORM BD prescribed by § 249.501 is revised as follows: Revisions to the Instructions page, New Items 12 and 13 added, Item 10 amended. (FORM BD does not appear in the Code of Federal Regulations). The revised Form BD with the exception of Schedules A–E which are unchanged appears in the Appendix below.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

February 18, 1987.

Appendix—Form BD

Note.—This appendix will not appear in the Code of Federal Regulations.

OMB APPROVAL

OMB No. 3235–0012
Expires May 31,1988

U.S. Securities and Exchange Commission, Washington, D.C. 20549

Special Instructions for Completing or Amending Form BD, Uniform Application for Registration as a Broker-Dealer, with the U.S. Securities and Exchange Commission.

How and Where to File

File Form BD and its schedules in triplicate with the Securities and Exchange Commission, Washington, D.C. 20549. Manually sign and notorize all three copies on the execution page. Keep a copy. Duplicated copies may be filed if manually signed. Copies must be made on standard size white paper, in the same size as the original.

Form BD Initial Filings—Required Statements

Rule 15b1–2 and Rule 15Ca2–2 require filing with each initial Form BD application two copies of special statements of financial condition, capital contribution, facilities, and first-year funding. (See Securities Exchange Act Release No. 9594 (May 12, 1972); Securities Exchange Act Release No. 24109 (Feb. 18, 1987).)

Successor Registration

A broker-dealer that assumes substantially all the assets and liabilities of and continues the business of a predecessor broker-dealer is a successor broker-dealer. Rule 15b1–3 and Rule 15Ca2–3 require a successor broker-dealer to file a new Form BD (or, in special instances, to amend the predecessor broker-dealer's Form BD) within 30 days. The filing must indicate on page 2 of the form that the applicant is a successor and must contain the statement of financial condition required by Rule 15b1–2 or Rule 15Ca2–1 Form BD successor filings. (See Securities Exchange Act Release No. 22468, (September 26, 1985); Securities Exchange Act Release No. 24109 (Feb. 18, 1987).)

Prohibited Broker-Dealer Names

United States Code Title 18 Section 709 makes a criminal offense of using the words "National," "Federal," "United States," "reserve," or "Deposit Insurance" in the name of a person or organization in the brokerage business, unless otherwise allowed by Federal law. If these words are used in the applicant's name, include an opinion of counsel with the Form BD explaining why the words are permitted.

BILLING CODE 8010–01–M

OMB APPROVAL
OMB Number: 3235-0012
Expires: Pending Action

Instructions for Form BD

1. Updating - By law, the applicant must update the Form BD information by submitting amendments whenever the information on file changes. Complete all amended pages in full and circle the number of the item being changed.

2. Contact Employee - The individual listed on page 1 as the contact employee must be authorized to receive all compliance information, communications and mailings and be responsible for disseminating it within the applicant's organization.

3. Format

   * Attach an execution page (page 1) with original manual signatures to the initial Form BD filing and each amendment to the form or Schedules A through D.

   * Type all information.

   * Give the broker-dealer and date on each page.

   * Use only the Form BD and its Schedules or a reproduction of them.

4. Definitions

   * Applicant - The broker-dealer applying on or amending this form.

   * Control - The power to direct or cause the direction of the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any individual or firm that is a director, partner or officer exercising executive responsibility (or having similar status or functions) or that directly or indirectly has the right to vote 25 percent or more of the voting securities or is entitled to 25 percent or more of the profits is presumed to control that company.

   * Jurisdiction - Any non-Federal government or regulatory body in the United States, Puerto Rico or Canada.

   * Person - An individual, partnership, corporation or other organization.

   * Self-regulatory organization - Any national securities or commodities exchange or registered securities association, or registered clearing agency.

5. Schedule A, B and C - Individuals not required to have a Form U-4 (individual registration) in the Central Registration Depository (CRD) who are listed on Schedules A, B or C must attach page 2 of Form U-4. The applicant broker-dealer must appear in Form U-4 Item 19 or 20. Signatures are not required.

6. Schedule D - Schedule D provides additional space for explaining "Yes" answers to Form BD items, but not for continuing Schedules A, B or C. To continue Schedules A, B or C, use copies of the Schedule being continued.

7. Schedule E - Schedule E Amendments to report changes in Branch Offices may be submitted without an execution page.

8. Federal Information Law and Requirements - The Securities Exchange Act of 1934, Sections 15, 15C, 17(a) and 23(a), authorize the SEC to collect the information on this form from applicants for registration as a broker or dealer (and persons associated with applicants). The information is used for regulatory purposes, including deciding whether to grant registration. The SEC maintains files of the information on this form and makes it publicly available. Only the Social Security Number information, which aids in identifying the applicant, is voluntary.

9. Government Securities Activities

   A. Section 15C of the Exchange Act requires government securities broker-dealers to register with the SEC. To do so, use Form BD and answer "yes" to Item 12 if conducting only a government securities business.

   B. Broker-dealers registered or applicants applying for registration under Section 15(b) or 15B of the Exchange Act that conduct (or intend to conduct) a government securities business in addition to other broker-dealer activities (if any) must file a notice on Form BD by answering "yes" to Item 13A.

   C. Broker-dealers registered under Section 15(b) or 15B of the Exchange Act that cease to conduct a government securities business must file notice when ceasing their activities in government securities. To do so, file an amendment to Form BD and answer "yes" to Item 13B.

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FORM BD PAGE 1 (Execution Page) (revised 1/86) | **UNIFORM APPLICATION FOR BROKER-DEALER REGISTRATION** | OFFICIAL USE

WARNING Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise to comply with the provisions of law applying to the conduct of business as a broker-dealer would violate the Federal securities laws and the laws of the jurisdictions and may result in disciplinary, administrative, injunctive or criminal action.

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS

☐ APPLICATION ☐ AMENDMENT FIRM CRD NO _____

1 Exact name, principal business address, mailing address, if different, and telephone number of applicant

A Full name of applicant (If sole proprietor, state last, first, and middle name) B IRS Empl Ident No

C Name under which business is conducted, if different

D If name of business is hereby amended, state previous name

E Firm main address

(Number and Street) (City) (State) (Zip Code)

Mailing Address, if different

F Telephone Number

(Area Code) (Telephone Number) G (CONTACT EMPLOYEE)

EXECUTION For the purpose of complying with the laws of the State(s) I have designated in Item 2 relating to either the offer or sale of securities or commodities, I hereby certify that the applicant is in compliance with applicable state surety bonding requirements and irrevocably appoint the administrator of each of those State(s), or such other person designated by law, and the successors in such office, my attorney in said State(s) upon whom may be served any notice, process or pleading in any action or proceeding against me arising out of or in connection with the offer or sale of securities or commodities or out of the violation or alleged violation of the laws of those State(s) and I do hereby consent that any such action or proceeding against me may be commenced in any court of competent jurisdiction and proper venue within said State(s) by service of process upon said appointee with the same effect as if I were a resident in said State(s) and had lawfully been served with process in said State(s).

The undersigned, being first duly sworn, deposes and says that he has executed this form on behalf of, and with the authority of, said applicant. The undersigned and applicant represent that the information and statements contained herein, including exhibits attached hereto and other information filed herewith, all of which are made a part hereof, are current, true and complete. The undersigned and applicant further represent that to the extent any information previously submitted is not amended, such information is currently accurate and complete.

_____ _____
Date Name of Applicant

By _____
Signature and Title

Subscribed and sworn before me this _____ day of _____, 19____ by _____

My commission expires _____ County of _____ State of _____

This page must always be completed in full with original, manual signature and notarization.

To amend, circle item(s) being amended

DO NOT WRITE BELOW THIS LINE FOR OFFICIAL USE ONLY

To amend, circle question numbers amended and file with a completed Execution page (Page 1).

FORM BD Page 2 Applicant Name _____ | OFFICIAL USE

Date _____ Firm CRD No _____

2 To be registered with the following (designate) "1" Initial Registration, "2" Pending, "3" Already Registered. If any license, registration or membership listed herein is of a restricted nature, explain fully on Schedule D

☐ SECURITIES & EXCHANGE COMMISSION

SRO: ☐ ASE ☐ BSE ☐ CBOE ☐ CSE ☐ MSE ☐ NASD ☐ NYSE ☐ PHLX ☐ PSE ☐ OTHER (Specify) ☐

JURISDICTION:

☐ AL	☐ AK	☐ AZ	☐ AR	☐ CA	☐ CO	☐ CT	☐ DE	☐ DC	☐ FL	☐ GA	☐ HI	☐ ID
☐ IL	☐ IN	☐ IA	☐ KS	☐ KY	☐ LA	☐ ME	☐ MD	☐ MA	☐ MI	☐ MN	☐ MS	☐ MO
☐ MT	☐ NE	☐ NV	☐ NH	☐ NJ	☐ NM	☐ NY	☐ NC	☐ ND	☐ OH	☐ OK	☐ OR	☐ PA
☐ RI	☐ SC	☐ SD	☐ TN	☐ TX	☐ UT	☐ VT	☐ VA	☐ WA	☐ WV	☐ WI	☐ WY	☐ PR

3 Date of formation _____ Place of filing _____ for

☐ Corporation Complete Schedule A ☐ Partnership Complete Schedule B ☐ Sole Proprietorship Complete Schedule C

☐ Other (specify) _____ Complete Schedule C

4 If applicant is a sole proprietor, state full residence address and social security number

Social Security No _____

(Number and Street) (City) (State) (Zip Code)

	YES	NO
5 Is applicant a successor to a registered broker-dealer? If yes, explain on Schedule D	☐	☐

If yes, state

A Date of Succession _____

B Full name, IRS Empl Ident No, SEC File No, and Firm CRD No of predecessor broker-dealer

Name _____

IRS Empl Ident No _____ FIRM CRD No _____

SEC File Number _____

	YES	NO
6 A Does any person not named in Item 1 or Schedules A, B or C, directly or indirectly through agreement or otherwise exercise or have the power to exercise control over the management or policies of applicant? (If yes, state on Schedule D the exact name of each person (if individual, state last, first, and middle names) and describe the agreement or other basis through which such person exercises or has the power to exercise control.)	☐	☐ 1
B Is the business of applicant wholly or partially financed, directly or indirectly, by any person not named in Item 1 or Schedules A, B or C, in any manner other than by (1) a public offering of securities made pursuant to the Securities Act of 1933, (2) credit extended in the ordinary course of business by suppliers, banks and others, or a satisfactory subordination agreement, as defined in Rule 15c3-1 under the Securities Exchange Act of 1934 (17 CFR §240.15c3-1)? (If yes, state on Schedule D the exact name (last, first, middle) of each person and describe the agreement or arrangement through which such financing is made available, including the amount thereof.)	☐	☐ 2

To amend, circle question numbers amended and file with a completed Execution page (Page 1).

FORM BD Page 3 Applicant Name _____ Date _____ Firm CRD No _____ OFFICIAL USE

7 ***Definitions***

- **Control affiliate** – An individual or firm that directly or indirectly controls, is under common control with, or is controlled by the applicant. Included are any employees identified in Schedules A, B or C of this form as exercising control. Excluded are any employees who perform clerical, administrative, support or similar functions, or who, regardless of title, perform no executive duties or have no senior policy making authority.
- **Investment or investment-related** – Pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association).
- **Involved** – Doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

A. In the past ten years has the applicant or control affiliate been convicted of or pleaded guilty or nolo contendere ("no contest") to

(1) a felony or misdemeanor involving investment or an investment related business, fraud, false statements or omissions, wrongful taking of property, or bribery, forgery, counterfeiting or extortion? YES ☐ NO ☐ 3

(2) any other felony? YES ☐ NO ☐ 4

B. Has any court

(1) in the past ten years enjoined the applicant or a control affiliate in connection with any investment related activity? YES ☐ NO ☐ 5

(2) ever found that the applicant or a control affiliate was involved in a violation of investment related statutes or regulations? YES ☐ NO ☐ 6

C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever

(1) found the applicant or a control affiliate to have made a false statement or omission? YES ☐ NO ☐ 7

(2) found the applicant or a control affiliate to have been involved in a violation of its regulations or statutes? YES ☐ NO ☐ 8

(3) found the applicant or a control affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted? YES ☐ NO ☐ 9

(4) entered an order denying, suspending or revoking the applicant's or a control affiliate's registration or otherwise disciplined it by restricting its activities? YES ☐ NO ☐ 10

D. Has any other Federal regulatory agency or any state regulatory agency

(1) ever found the applicant or a control affiliate to have made a false statement or omission or been dishonest, unfair, or unethical? YES ☐ NO ☐ 11

(2) ever found the applicant or a control affiliate to have been involved in a violation of investment regulations or statutes? YES ☐ NO ☐ 12

(3) ever found the applicant or a control affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted? YES ☐ NO ☐ 13

(4) in the past ten years entered an order against the applicant or a control affiliate in connection with investment related activity? YES ☐ NO ☐ 14

(5) ever denied, suspended, or revoked the applicant's or a control affiliate's registration or license, prevented it from associating with an investment related business, or otherwise disciplined it by restricting its activities? YES ☐ NO ☐ 15

(6) ever revoked or suspended the applicant's or a control affiliate's license as an attorney or accountant? YES ☐ NO ☐ 16

To amend, circle question numbers amended and file with a completed Execution page (Page 1).

FORM BD Page 4 Applicant Name _____ Date _____ Firm CRD No _____ OFFICIAL USE

E. Has any self regulatory organization or commodities exchange ever

(1) found the applicant or a control affiliate to have made a false statement or omission? YES ☐ NO ☐ 17

(2) found the applicant or a control affiliate to have been involved in a violation of its rules? YES ☐ NO ☐ 18

(3) found the applicant or a control affiliate to have been the cause of an investment-related business having its authorization to do business denied, suspended, revoked or restricted? YES ☐ NO ☐ 19

(4) disciplined the applicant or a control affiliate by expelling or suspending it from membership, by barring or suspending its association with other members, or by otherwise restricting its activities? YES ☐ NO ☐ 20

F. Has any foreign government, court, regulatory agency, or exchange ever entered an order against the applicant or a control affiliate related to investments or fraud? YES ☐ NO ☐ 21

G. Is the applicant or a control affiliate now the subject of any proceeding that could result in a "yes" answer to parts A-F of this item? YES ☐ NO ☐ 22

H. Has a bonding company denied, paid out on, or revoked a bond for the applicant? YES ☐ NO ☐ 23

I. Does the applicant have any unsatisfied judgments or liens against it? YES ☐ NO ☐ 24

J. Has the applicant or a control affiliate of the applicant ever been a securities firm or a control affiliate of a securities firm that has been declared bankrupt, had a trustee appointed under the Securities Investor Protection Act, or had a direct payment procedure begun? YES ☐ NO ☐ 25

Item 7 Instructions

If a "yes" answer on Item 7 involves

- the applicant broker-dealer, or an individual without a Form U-4 (individual registration) in the CRD, give the details on Schedule D
- an individual with a Form U-4 (individual registration) in the CRD, attach any necessary Form U-4 amendments to the Form BD. The CRD will update the Forms U-4 and BD

For each "yes" to Item 7, give the following details of any court or regulatory action:

- the broker-dealer and individuals named
- the title and date of the action
- the court or body taking the action, and
- a description of the action

8 Does applicant

A. Have any arrangement with any other person, firm or organization under which

(1) Any of the accounts or records of applicant are kept or maintained by such person, firm, or organization? YES ☐ NO ☐ 26

(2) Such other person, firm or organization (other than a bank or satisfactory control location as defined in paragraph (c) of Rule 15c3-3 under the Securities Exchange Act of 1934, 17 CFR §240.15c3-3) holds or maintains funds or securities of applicant or of any of its customers? YES ☐ NO ☐ 27

B. Have any arrangements with any other broker or dealer under which applicant refers or introduces customers to such other broker or dealer? YES ☐ NO ☐ 28

(If the answer to any question of Item 8 is "yes," furnish as to each such arrangement the full name and principal business address of the other person, firm, or organization, and the summary of each such arrangement on Schedule D.)

9 Does applicant control, is applicant controlled by, or is applicant under common control with, directly or indirectly, any partnership, corporation, or other organization engaged in the securities or investment advisory business? YES ☐ NO ☐ 29

(If "yes," state full name and principal business address of such partnership, corporation, or other organization and describe the nature of control on Schedule D. See instructions for definition of control.)

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To amend, circle question numbers amended and file with a completed Execution page (Page 1).

FORM BD Page 5 Applicant Name _____ OFFICIAL USE

Date _____ Firm CRD No. _____

10. Check types of business engaged in (or to be engaged in, if not yet active) by applicant. Do not check any category which accounts for or is expected to account for less than 10% of annual revenue from the securities or investment advisory business.

A. Exchange member engaged in exchange commission business	☐	XMC
B. Exchange member engaged in floor activities	☐	XMF
C. Broker or dealer making inter-dealer markets in corporate securities over-the-counter	☐	IBM
D. Broker or dealer retailing corporate securities over-the-counter	☐	RBM
E. Underwriter or selling group participant (corporate securities other than mutual funds)	☐	USG
F. Mutual fund underwriter or sponsor	☐	MFU
G. Mutual fund retailer	☐	MFR
H. 1. U.S. government securities dealer	☐	GSD
2. U.S. government securities broker	☐	GSB
I. Municipal securities dealer	☐	MSD
J. Municipal securities broker	☐	MSB
K. Broker or dealer selling variable life insurance or annuities	☐	VLA
L. Solicitor of savings and loan accounts	☐	SAL
M. Real estate syndicator	☐	RES
N. Broker or dealer selling oil and gas interests	☐	OGI
O. Put and call broker or dealer or option writer	☐	PCB
P. Broker or dealer selling securities of only one issuer or associated issuers (other than mutual funds)	☐	SIA
Q. Broker or dealer selling securities of non-profit organizations (e.g., churches, hospitals)	☐	NPO
R. Investment advisory services	☐	IAS
S. Broker or dealer selling tax shelters or limited partnerships	☐	TAP
T. Other (give details on Schedule D)	☐	OTH

	YES	NO	
11.A. Does applicant effect transactions in commodity futures, commodities, commodity options as a broker for others or dealer for its own account?	☐	☐	11
B. Does applicant engage in any other non-securities business? (If "yes," describe each other business briefly on Schedule D)	☐	☐	11
12. Is applicant applying for registration solely as a government securities broker or dealer?	☐	☐	12
13. Notice of Government Securities Activities			
A. Is applicant active or intending to act as a government securities broker or dealer? (Do not answer "yes" if applicant answered "yes" to Question 12.)	☐	☐	13
B. Is applicant ceasing its activities as a government securities broker or dealer? (Do not answer "yes" unless previously answered "yes" to Question 13A.)	☐	☐	14

[FR Doc. 87-3883 Filed 2-24-87; 8:45 am]

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FEDERAL RESERVE SYSTEM

[Docket No. R–0596]

Financial Institutions Acting as Government Securities Brokers or Government Securities Dealers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: Under section 15C(a)(1)(B) of the Securities Exchange Act of 1934, 15 U.S.C. 78o–5(a)(1)(B), as amended by the Government Securities Act of 1986 (Pub. L. 99–571), all financial institutions that act as government securities brokers or government securities dealers must notify their designated federal supervisory agencies of their broker/dealer activities, unless exempted from the notice requirement by Treasury Department regulation. The Board of Governors has the responsibility for establishing the form for this notice, as well as the form of the notice to be filed by financial institutions that are no longer acting as government securities brokers or government securities dealers. In discharging these responsibilities, the Board is proposing to adopt Form G–FIN (notification by financial institution of status as government securities broker or dealer) and Form G–FINW (notification by financial institution of termination of status as government securities broker or dealer).

These forms are also being submitted for review and approval under the Paperwork Reduction Act (chapter 35 of 44 U.S.C.) and OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). Copies of the proposed forms and supporting documents are available from the Board clearance officer listed below.

DATES: Comments must be received by March 27, 1987.

ADDRESSES: Comments, which should refer to Docket No. R–0596, should be sent to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments may also be sent to Mr. Robert Neal, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert S. Plotkin, Assistant Director (202–452–2782), or Susan S. Meyers, Senior Securities Regulation Analyst (202–452–2781), Division of Banking Supervision and Regulation; or, for the hearing impaired *only:* Telecommunications Device for the Deaf (202–452–3544), Earnestine Hill or Dorothea Thompson, Board of Governors of the Federl Reserve System. Federal Reserve Paperwork Clearance Officer: Nancy Steele, Division of Research and Statistics (202–452–3822). Interested parties may also contact the OMB Desk Officer, Robert Neal (202–395–6880).

SUPPLEMENTARY INFORMATION: The Board is proposing to prescribe forms G–FIN and G–FINW as the vehicles for financial institutions to submit the notices of status as government securities brokers and government securities dealers required by the Government Securities Act of 1986, 15 U.S.C. 78o–5(a)(1)(B). All financial institutions (generally federal and state chartered commercial banks, foreign banks, savings banks, and savings and loan associations, but not credit unions) that act or cease to act as government securities brokers or government securities dealers are required by section 78o–5(a)(1)(B) to file these notices with their appropriate regulatory agencies unless exempted from the notice requirement by Treasury Department rule. Financial institutions that are currently acting as government securities brokers or government securities dealers and not otherwise exempt must file a notice on Form G–FIN by July 25, 1987. Financial institutions that intend to engage in these activities after that date must file a notice prior to commencement of these operations.

In general, the appropriate regulatory agency for national banks is the Comptroller of the Currency; for state member banks, the Board of Governors of the Federal Reserve System; for insured non-member state banks, the Federal Deposit Insurance Corporation; for savings and loan associations, the Federal Home Loan Bank Board; and for non-federally insured financial institutions, the Securities and Exchange Commission. A foreign bank should refer to section 3(a)(34) of the Securities Exchange Act (15 U.S.C. 78c(a)(34)) as amended by section 102 of the Government Securities Act to determine its appropriate regulatory agency.

In a related action the Treasury Department is proposing rules under the Government Securities Act that, among other things, establishes exemptions from the notice requirement for certain classes of financial institutions. (See proposed 17 CFR Part 401.) In addition, the Treasury Department is proposing to require the filing of an amendment to the notice if any information contained therein becomes inaccurate. (See proposed 17 CFR 400.5(b).)

Reference to the Forms G–FIN and G–FINW will be at 17 CFR 449.1 and 449.2.

Board of Governor of the Federal Reserve System February 23, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–4043 Filed 2–24–87; 8:45 am]

BILLING CODE 6210–01–M

federal register

Wednesday, February 25, 1987

Part VI

Department of Agriculture

Commodity Credit Corporation

7 CFR Part 1496

Procurement of Processed Agricultural Commodities for Donation Under Title II, Pub. L. 480; Final Rule

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1496

Procurement of Processed Agricultural Commodities for Donation Under Title II, Pub. L. 480

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations applicable to the procurement by the Commodity Credit Corporation (CCC) of processed agricultural commodities for donation under Title II of the Agricultural Trade Development and Assistance Act of 1954 (Pub. L. 480), as amended. The amendment provides that CCC will determine lowest landed cost on a U.S. flag basis for the quantity of Title II, Pub. L. 480 commodities required to be shipped on U.S. flag vessels. The purpose of this amendment is to provide a reasonable and practicable procedure for complying with cargo preference requirements at the least cost to the government. The final rule also sets forth CCC's responsibilities in complying with the requirement contained in the Merchant Marine Act, 1936, as amended, regarding the minimum annual level of Title II, Pub. L. 480 cargo required to be moved through Great Lakes ports.

EFFECTIVE DATE: February 24, 1987. See **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Merle Brown, Commodity Operations Division, ASCS–USDA. Telephone: (202) 447–4254 or 447–3995.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Department of Agriculture (USDA) procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified "not major." It has been determined that this will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in costs to consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not have an adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

A Regulatory Impact Analysis of this regulation has been prepared. Copies of the analysis are available to the public from the Director, Commodity Operations Division, ASCS–USDA, P.O. Box 2415, Washington, DC 20013.

This action will not have a significant impact specifically upon area and community development. Therefore, review as established by Executive Order 12372 was not used to assure that units of local government are informed of this action. It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Background

Pursuant to the authority contained in Title II of the Agricultural Trade Development and Assistance Act of 1954 (Pub. L. 480), 7 U.S.C. 1721, *et seq.*, CCC makes agricultural commodities available for donation overseas to meet famine or other urgent or extraordinary relief requirements; to combat malnutrition, especially in children; to promote economic and community development in friendly developing countries; and for needy persons and nonprofit school lunch and preschool feeding programs outside the United States. In addition to donating the commodities, CCC is authorized to pay certain related costs including transportation charges to loading ports and ocean freight charges to foreign destinations. See 7 U.S.C. 1723.

CCC may make commodities available for donation overseas from its inventory or by procurement. Part 1496 of Title 7 of the Code of Federal Regulations sets forth the criteria that is considered by CCC in awarding contracts for the purchase of processed agricultural commodities for donation under Title II, Pub. L. 480. In awarding contracts, 7 CFR 1496.5(a) provides that the general principle of lowest landed cost (LLC) will prevail, but additional factors described therein will be considered. LLC reflects the lowest combined total cost of commodity and transportation charges to the foreign port of discharge. Thus, the LLC principle has the effect of determining the commodity supplier awarded the contract as well as the U.S. port of export of the commodity.

Shipments of Title II, Pub. L. 480 commodities are subject to the cargo preference requirements of the Merchant Marine Act, 1936. Amendments to the Merchant Marine Act, 1936, made by section 1142 of the Food Security Act of 1985 (Pub. L. 99–198, December 23, 1985), increased the minimum U.S. flag preference tonnage requirements from 50 percent to 60 percent for the 12-month period beginning April 1, 1986. This percentage requirement will increase further to 70 percent beginning April 1, 1987, and to 75 percent beginning April 1, 1988. The 1985 amendments also include a provision concerning the level of Title II, Pub. L. 480 commodities to be shipped by waterborne export through Great Lakes ports during 1986–89.

In accordance with the procurement regulations in 7 CFR Part 1496, commodity procurements by CCC for Title II, Pub. L. 480 have generally been made on an LLC basis. In most cases, this resulted in commodities being procured and allocated to ports (or port ranges) on the basis of foreign flag vessel rates since these rates are often lower than U.S. flag rates. Foreign flag and U.S. flag vessels are then contracted to carry portions or all of the cargoes allocated to these ports (or port ranges). Generally, cargo preference requirements have been met by contracting with U.S. flag vessels calling at these ports. On occasion this practice results in higher expenditures for U.S. flag carriage than is necessary to comply with cargo preference because commodities allocated on an LLC basis may not have been allocated to ports serviced by U.S. flag vessels with the least costly U.S. flag rates. The requirement for increased cargo preference carriage will exacerbate the problem. Additional Title II, Pub. L. 480 expenditure for ocean transportation reduces funds available for procuring commodities needed to meet the humanitarian purposes of the program. This practice also has generated complaints from U.S. flag vessel operators who may have available service at lower rates at ports other than the port representing LLC, foreign flag basis.

On July 21, 1986, CCC published in the **Federal Register** (51 FR 26164) a proposal to amend the Title II, Pub. L. 480 procurement regulations (7 CFR Part 1496) to provide for the procurement of processed commodities on a lowest landed cost basis using U.S. flag rates for the quantity of commodities required to be shipped on U.S. flag vessels because of cargo preference requirements. In addition, it was proposed to include a new provision in the regulation for compliance by CCC with the Great Lakes tonnage requirement contained in section 901b(c)(2)(B) of the Merchant Marine Act, 1936, as added by section 1142 of the Food Security Act of 1985, Pub. L. 99–198, 99 Stat. 1490, December 23, 1985.

Summary of Comments

A total of 45 comments on the proposed rule was received. Eight were from steamship lines, fifteen were from stevedore companies/warehousemen, six were from port authorities, two were from commodity processors, three were from other federal agencies, one was from a congressional office, six were from general shipping and maritime interests, and four were from city and county governments.

Thirty-eight of the commentors fully endorsed the proposal, generally citing their belief that the proposal resulted in a truer lowest landed cost procurement which would thereby increase the funds available for the purchase of Title II commodities. The remaining commentors either gave qualified support and stated their reservations, or simply expressed their concerns and, in some instances, provided suggested language to replace that contained in the proposed rule.

Determinations Based on Comments

After full consideration of all comments, it has been determined that the provision in the proposed rule regarding the use of U.S. flag vessel rates in the determination of lowest landed cost will be adopted with only minor editorial changes. Under the amended rule, CCC will determine LLC on a U.S. flag basis for the quantity of commodities required to be shipped on U.S. flag vessels with the balance of commodities procured on an LLC basis without regard to whether carriage is on a U.S. or foreign flag vessel. This final rule reflects a reasonable and practicable method of complying with cargo preference requirements in an efficient and less costly manner than under previous procedures.

It has also been determined that the final rule should adopt the Great Lakes' reserved tonnage provision of the proposed rule with an editorial change and the change described below. CCC will continually monitor the quantity of commodities moving through Great Lakes ports. The annual quantity required to be shipped through Great Lakes ports will be a factor in port allocation decisions in addition to the LLC evaluation procedure. However, CCC shall take such steps as are necessary and practicable to comply with the Great Lakes provision consistent with the cargo preference requirements contained in sections 901b and 901(b) of the Merchant Marine Act, 1936, as amended.

Discussion of Comments

1. One commodity processor commented that, under the proposal, factors determining awards will vary with each invitation thus creating an element of uncertainty in the commodity award process. Thus, the rule change would create distortions in competition. The commentor stated that processors, under present procedures, are immune from distortions in competition resulting from cargo preference compliance, and expressed concern about effects on risk management decisions, investment strategies, allocation of running time, and procurement of raw materials involving both cost and hedging strategies.

CCC believes that commodity processors are exposed to essentially the same factors and risks whether or not LLC is on a U.S. flag basis. However, we recognize that an additional uncertainty arises from the fact that the specific percentage of commodities purchased on a U.S. flag basis will vary month by month.

Under current procedures, the LLC evaluation necessarily includes consideration of ocean freight rates and availability of ocean transportation in making awards. Thus, the lowest commodity offer is not always accepted by CCC. This, in itself, distorts the competitive position of a commodity offeror. Presumably, this comment reflects the fact that the commodity processor is often in the position to offer the lowest commodity prices at a port or coastal range reflecting the lowest freight rates. While current procedures are usually foreign flag rates. While the commodity processor may then be awarded a contract by CCC, the total cost to CCC may be higher than necessary due to the requirements of cargo preference. In other words, once a seller and port of export are determined, CCC may be required to utilize U.S. flag rates at that port which could result in total landed cost higher than available through other ports with lower U.S. flag rates. In a particular procurement, CCC recognizes that the proposed revision of the LLC procedure may result in a change in coasts of export and commodity processors from what would have been the case under current procedures for U.S. flag carriage. The relative competitive position between commodity processors could possibly change on the basis of CCC's LLC cost analyses, but the new procedure is necessary for CCC to lower its total costs for the purchase and transportation of Title II processed commodities. This desire to lower costs should not depend upon whether one particular commodity processor or another is awarded a contract.

2. One commodity processor and two trade associations commented that the rule should be reviewed within 6 months to a year to assess the effects of the change.

CCC will continue to monitor the LLC bid evaluation process and make appropriate changes if necessary. Accordingly, mandatory review time is not deemed necessary.

3. One maritime trade association disagreed with the determination of the rule as "not major" because of its impact on the U.S. economy in general and on certain ports in particular.

CCC acknowledges that the effects of the rule will be more significant on certain entities in the country than on others. However, CCC has determined that the overall impact of the final does not fit the classification "major" as specified in Executive Order 12291, and Departmental Regulation 1512–1. Nevertheless, CCC has designated this rule as a "Reserved Nonmajor" regulation within the meaning of Departmental Regulation 1512–1, thereby assuring review at appropriate policy levels within USDA.

4. One part authority and one maritime trade association commented that the proposed rule may limit competition, thereby resulting in no cost savings. It was suggested that there is inadequate competition on all trade routes, and U.S. flag carriers will have no incentive to call at certain ports.

CCC believes that the final rule results in more competition among U.S. flag carriers than under the previous procedure since U.S. flag service on all coastal ranges will now be considered in the LLC bid evaluation process. Under current procedures, there often may be no competition between U.S. flag service since, once a port of export is determined, CCC has no choice but to utilize available U.S. flag service at that port. Under the new procedure, U.S. flag carriers will have to compete among themselves.

CCC believes that this competition will not only be in the form of freight rates, but also as to ports of call. As long as commodity prices at port and port costs are competitive, U.S. carriers will have an incentive to include various ports in their offered service.

5. Two trade associations commented on various aspects of the Cargo Preference Act and its application on the rule. The associations commented that the terms "availability," "adequacy of service," "and reasonableness of rates" should be defined, and that the rule should not be implemented until

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issues such as reimbursement from the Department of Transportation for the additional cost of cargo preference is resolved.

For the purpose of this procurement regulation, the terms "availability of ocean service" and "adequacy of service" are defined in § 1496.5. CCC believes that a definition of "reasonableness of rates" relates only to availability of U.S. flag vessels for the purpose of cargo preference compliance and is beyond the scope of this regulation. Further, the implementation of a reimbursement procedure for additional cargo preference costs has no bearing on the subject matter of the proposed rule.

6. The Department of Transportation (DOT) commented that the Secretary of Transportation, not CCC, was empowered by Congress with the exclusive authority to make the relevant determinations and take the appropriate steps for assuring compliance with the annual minimum Great Lakes tonnage provision. Consequently, DOT suggested that the new § 1496.5(f) of the proposed regulation be modified to add, at the beginning thereof, "After consultation with and receipt of prior approval from the Secretary of Transportation, CCC shall . . . ."

CCC agrees that the law vests certain authorities with the Secretary of Transportation to administer the Great Lakes provision. Accordingly, the language pertaining to the Great Lakes provision provides that CCC will take the appropriate steps to comply with the Great Lakes provision in consultation with the Secretary of Transportation. CCC has not accepted DOT's suggestion regarding "prior approval" since such language implies DOT participation in, and possible veto of, each specific monthly CCC procurement decision. Such involvement is not necessary to assure proper implementation of the Great Lakes minimum tonnage provision and could add significant delays to the procurement process. CCC's consultations with DOT will include keeping DOT informed of the volume of commodities moving through the Great Lakes during the course of the year and of the possibility of having to take specific action, such as a set-aside for the Great Lakes.

7. The Saint Lawrence Seaway Development Corporation, DOT, and one maritime trade association commented that in order to satisfy the Great Lakes provision, a percentage of cargo should be set-aside for the Great Lakes on a monthly basis.

CCC will continually monitor the quantity of commodities moving through the Great Lakes ports and, if necessary, make appropriate adjustments in its LLC evaluation procedure. For example, in certain years, the Great Lakes may obtain the minimum amount of cargo through the usual allocations on an LLC basis. In other years, a cargo set-aside to the Great Lakes may be necessary for a particular month's procurement. However, in view of the uncertainties associated with determining, in advance, the monthly requirements for the procurement of Title II commodities, CCC will also need as much flexibility as possible on each monthly procurement. Also, a specific monthly set-aside does not leave room for the consideration of the statutory limitations on the Great Lakes minimum tonnage, that is, that the steps taken to comply with the Great Lakes provision will be conistent with the cargo preference requirements of the Merchant Marine Act, 1936, as amended, and without detriment to other port ranges.

8. The Agency for International Development (AID) urged CCC to provide in its preamble to the final rule a "clarification" of its procedures in complying with cargo preference requirements by including a statement that U.S. flag vessels may be declared unavailable for a particular month and that the resultant shortfall in U.S. flag tonnage need not be made up in subsequent months.

AID's suggestion deals with an aspect of compliance with cargo preference requirements that is beyond the scope of the proposed rule, which deals with lowest landed cost bid evaluations. CCC intends to further review the issue of a monthly nonavailability determination in consultation with DOT and AID, and if more flexibility is appropriate in this regard, CCC will make the necessary notification to the public.

Good cause is shown to make this rule effective less than 30 days after publication in the **Federal Register** in order for CCC to procure commodities in a manner that would efficiently and effectively comply with the provisions of the Merchant Marine Act, 1936, as amended. The provisions of that Act increased the minimum U.S. flag tonnage requirement from 60 percent to 70 percent on April 1, 1987. Further delay to implement the rule change will increase the government's cost and make it difficult for the government to comply with the requirements of that Act. Consequently, this rule will be effective February 24 which corresponds with the date that commodity invitations will be issued by CCC for April/May deliveries at U.S. ports. Offers in response to that invitation will be due March 9, 1987.

List of Subjects in 7 CFR Part 1496

Agricultural exports, Maritime carriers, Exports.

PART 1496—[AMENDED]

Accordingly, Part 1496 of Title 7 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 1496 continues to read as follows:

Authority: Secs. 201, 202 and 203, Pub. L. 480, 83rd Cong. as amended, 68 Stat. 455 (7 U.S.C. 1721, 1722, and 1723); sec. 901b, Pub. L. 864, 83 Cong. as amended, 99 Stat. 1491 (46 U.S.C. 1241f).

§ 1496.1 [Amended]

2. Section 1496.1 is amended by removing the paragraph designation "(a)", and paragraphs (b) and (c).

3. The second and third sentences of paragraph (a), and all of paragraph (b) of § 1496.2 are revised to read as follows:

§ 1496.2 Administration.

(a) * * * The program will be administered through the Office of the Deputy Administrator, Commodity Operations, ASCS, Washington, DC and the Kansas City Commodity Office (KCCO), ASCS, Kansas City, Missouri. Procurement will be in accordance with USDA–1, "General Terms and Conditions for the Procurement of Agricultural Commodities or Services", as amended or revised, applicable provisions of the Federal Acquisition Regulations (48 CFR), and applicable purchase announcements and bid invitations.

(b) Purchases are made to fulfill commodity requests received in KCCO from AID.

4. Section 1496.3 is amended by removing paragraphs (f) and (h), redesignating paragraph (g) as paragraph (f), and revising paragraph (e) and redesignated paragraph (f) to read as follows:

§ 1496.3 Definitions.

* * * * *

(e) "Commodity Office" means the Kansas City Commodity Office, within ASCS, which is responsible for assigned inventory management, acquisition, disposition and related program activities of CCC.

(f) "Lowest landed cost" means the lowest combined total cost of the commodity plus transportation charges to the port of discharge.

5. Section 1496.5 is amended by revising paragraph (a) and adding a new paragraph (f) to read as follows:

§ 1496.5 Consideration of bids.

(a) *Lowest landed cost.* The general principle of awarding contracts that will result in the lowest landed cost will prevail. Lowest landed cost will be calculated on the basis of U.S. flag rates and service for that portion of the commodities being purchased that CCC determines is necessary and practicable to meet cargo preference requirements and on an overall (foreign and U.S. flag) basis for the remaining portion of the commodities being purchased. However, the additional factors set forth in this section will be considered in awarding contracts.

* * * * *

(f) *Great Lakes ports.* In consultation with the Secretary of Transportation, CCC shall take such steps during calendar years 1986–89 as are necessary and practicable to preserve annually the percentage share or metric tonnage, whichever is lower, of Title II, Pub. L. 480 bagged, processed, or fortified commodities exported from Great Lakes ports during 1984, as determined by the Secretary of Agriculture, consistent with the cargo preference requirements of the Merchant Marine Act, 1936, as amended, and without detriment to other port ranges.

Signed at Washington, DC, on February 20, 1987.

Vern Neppl,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87–4064 Filed 2–24–87; 10:34 am]
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Part VII

Nuclear Regulatory Commission

Gulf States Utilities Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing; Notice

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NUCLEAR REGULATORY COMMISSION

Gulf States Utilities Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

[Docket No. 50–458]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–47, issued to Gulf States Utilities Company, for operation of the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana.

The proposed amendment to the River Bend Station operating license would change the requirements to perform channel calibrations of the recirculation flow transmitters for two functions of the Average Power Range Monitor (APRM) and one function of the Reactor Coolant System Recirculation Flow from once per six months to once per 18 months.

These changes would be implemented through amending Technical Specification 3.3.1, Reactor Protection System Instrumentation, Table 4.3.1.1–1, Reactor Protection System Instrumentation Surveillance Requirements, Item 2.b, Average Power Range Monitor (APRM) Flow Biased Simulated Thermal Power—High, and Technical Specification 3.3.6, Control Rod Block Instrumentation, Table 4.3.6–1, Control Rod Block Instrumentation Surveillance Requirements, Item 2.a, APRM Flow Biased Neutron Flux-Upscale and Item 6.a, Reactor Coolant System Recirculation Flow-Upscale. The Technical Specifications presently have requirements to perform a channel calibration of these functions at least once per SA (semiannually, 6 months, 184 days). This change request permits the recirculation flow transmitters for these three (3) functions to be calibrated on an 18 month basis in accordance with the licensee's application for amendment dated August 29, 1986 as supplemented on February 19, 1987.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operations of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the possibility or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee in their February 19, 1987 letter provided a justification for the license amendment. Based on that justification as discussed below the staff concurs with the licensee that:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the change in the frequency of calibration is considered within the design specification for the recirculation system and the safety analysis. The proposed change does not revise the Trip Setpoint or Allowable Value as stated in Technical Specification 3.3.1 and 3.3.6, but rather only extends the surveillance interval of the recirculation flow transmitters. The drift allowance is the only term in the setpoint determination affected by the surveillance interval. The existing Flow Biased Scram total instrument drift allowance is 3.0% NBR (Nuclear Boiler Rated) as presented in the Neutron Monitoring System Design Specification.

Based upon the methods outlined in the licensees' February 19, 1987 letter, the instrument drift is 2.2% for 18 months. The 2.2% calculated drift is lower than the allowed 3% instrument drift utilized for determination of the current Technical Specification setpoints. Therefore, the calculated drift for these instruments with an eighteen (18) month surveillance frequency is within the allowed drift used to develop the current setpoints. There is no impact on the safety analysis since credit for the flow biased trips is not taken in the Final Safety Analysis Report (FSAR). This proposed change does not involve a design change or physical change to the plant. Thus, there is no increase in the probability or consequence of any accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the change in the frequency of calibration of flow transmitters is considered within the design specification for the recirculation system and the safety analysis, and does not involve a design change or physical change, and therefore does not alter the single failure design of the instrumentation. Thus, no new accident scenario is introduced by this revised frequency of calibration of the flow transmitters.

The proposed change to the flow transmitter surveillance period does not involve a significant reduction in a margin of safety because the change in the frequency of calibration of the flow transmitters is considered within the design specification of the recirculation system and the safety analysis. As discussed above, the design specifications for the Technical Specifications are based upon an allowed 3% instrument drift. The licensee in its February 19, 1987 letter, calculated the total loop drift over an 18 month period to be 2.2% which is within the 3% instrument drift of the design basis. There is no impact on the safety analysis since credit for the flow biased trips is not taken in the FSAR. Additionally, as delineated in the justification, the proposed change does not impact the Limiting Conditions of Operation of the TS. Thus, the margin of safety is not reduced.

The staff concurs with the above analysis. Accordingly, the staff has made a proposed determination that the application involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 27, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler, Director, BWR Project Directorate No. 4, Division of BWR Licensing: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue NW., Washington, DC 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1) (i) through (v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 29, 1986, as amended and supplemented February 19, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Bethesda, Maryland, this 20th day of February 1987.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Acting Director, BWR Project Directorate No. 4, Division of BWR Licensing.

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RESERVATIONS: Beverly Fayson, 202–523–3517

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 210

National School Lunch Program; AIMS Reporting

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends 7 CFR Part 210, the regulations governing the National School Lunch Program, to require each State agency to annually report the results of the Assessment, Improvement and Monitoring System (AIMS) to the Food and Nutrition Service (FNS). The Department is publishing this final rule to improve accountability in the National School Lunch Program by collecting consistent national information on program status.

EFFECTIVE DATE: March 30, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302; (703) 756–3620.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and has been classified not major. This rule will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for program participants, individual industries, Federal, State or local government agencies or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

The program is listed in the Catalog of Federal Domestic Assistance under No. 10.553 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983)

This final rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the additional reporting requirements contained in § 210.18(f)(8), § 210.18(l) and § 210.20(a)(6) of this final rule have been submitted to the Office of Management and Budget (OMB) for approval. The OMB control number assigned to the current AIMS recordkeeping requirements is 0584–0006.

Background

Proposed Rule

On September 30, 1985, the Department published a proposed rule in the **Federal Register** (50 FR 39707) to:

(1) Establish a reporting requirement for State agencies to annually report a summary of their AIMS reviews/audits to FNS.

(2) Add the verification of eligibility requirement to the AIMS performance standards and require State agencies to evaluate verification efforts during AIMS reviews/audits.

(3) Expand the current verification recordkeeping requirements by also requiring that verification schedules and verification results be maintained by school food authorities.

(4) Establish a reporting requirement for a sample of approximately one-third of all school food authorities to report a summary of their verification results through State agencies to FNS.

Overview of Comments Received

The proposed rule provided a 60-day comment period during which the Department received 48 comments from State agency and school food authority personnel and professional organizations. The Department would like to thank commenters for the careful consideration given to the proposed rule.

This final rule implements only item (1) above, the requirement that State agencies annually report a summary of their AIMS reviews/audits to FNS. Those elements of the proposed rule regarding verification monitoring, recordkeeping and reporting are not addressed in this final rule. Those portions of the proposed rule were the subject of substantial public comment and concern. Consequently, the Department is continuing to assess the merits of commenters' recommendations and has postponed publication of the final rule regarding verification. The Department's publication of such a final rule will be dependent on further analysis of the verification of eligibility process and consideration of all comments received on the proposed rule. In addition, the Department currently has underway a nationwide study of income verification. The results of this study, as they become available, may be utilized in the development of any additional final rulemaking based on the September 30, 1985 proposed rule.

The remainder of this preamble, therefore, will address only the portion of the proposed rule which concerned AIMS reporting. A description of commenters concerns about verification issues will be reserved until the final rule on that subject is published.

AIMS Reporting

Section 210.14(g)(2) of the proposed rule specified that State agencies would annually, by March 1, report to FNS the results of AIMS reviews/audits on a form designated by FNS. The first report was proposed to be due on March 1, 1987.

Approximately eight commenters objected to any requirement that State agencies report the results of AIMS reviews/audits to FNS annually. Those commenters believed that the data to be collected is unneeded, inconsistent and would interfere with the relationships between State agencies and school food authorities. The Department disagrees with these commenters. The AIMS results to be collected represent a fundamental measurement of program performance, since AIMS examines only areas considered to be critical. The Department believes that these results will provide a valuable profile of program status. However, the Department also recognizes that varying program conditions and AIMS priorities

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within each State may make direct State to State comparisons difficult. Consequently, the Department will exercise caution in the analysis of AIMS results. Finally, the Department wishes to point out that the AIMS results to be gathered are aggregate results by State agency and will not detail findings for individual school food authorities. Therefore, the Department does not believe that the AIMS reporting requirement contained in this final rule will interfere with traditional relationships between State agencies and school food authorities.

Approximately 12 commenters, while not objecting to the collection of AIMS results, suggested that AIMS results need not be annually reported but could be obtained during management evaluations of State agencies performed by FNSROs. The Department wishes to note that the management evaluation process is not intended to be a data collection effort but rather an examination of State agency program management. Further, in recent years, management evaluations have not been conducted annually in all State agencies. Therefore, the Department believes that an annual reporting requirement represents the most efficient and consistent method of data collection.

Approximately 11 commenters objected to AIMS reporting as unduly burdensome in light of the Department's proposed rule, published on September 17, 1985 (50 FR 37667), which suggested using a portion of the State Administrative Expense (SAE) funds for State commodity processing activities. In response to objections received concerning that proposed rule, the Department determined that no such redistribution of SAE funds was appropriate at this time. The proposal was rescinded in a final rule published in the **Federal Register** on September 24, 1986 (51 FR 33861). Therefore, the Department believes that the annual reporting burden required by this final rule is not disproportionate to the funding available and should not result in significant increases in State agency workloads.

One commenter suggested that the reporting date be changed from March 1 to June 30 of each year. The AIMS reporting date was selected based on the requirement that second AIMS reviews be completed by December 31 of the school year following that in which the first AIMS review was conducted. Therefore, the Department believes the March 1 deadline affords State agencies sufficient time to include in the annual report results obtained during second reviews.

Two commenters requested clarification of the period of time to be covered by each annual AIMS report. AIMS requires that all school food authorities be reviewed once every four years. In addition, State agencies must perform a second review of all large school food authorities and 25 percent of the small school food authorities which were found to exceed the error tolerance for one or more performance standards. Second reviews must be completed by December 31 of the school year following the school year of the first AIMS review. Therefore, the complete AIMS review process may extend from the beginning of one school year until December of the following school year, a total of 18 months. The AIMS reviews/audits to be included in each March 1 report are all first AIMS reviews/audits conducted in the preceding school year and any consequent second reviews conducted either in the preceding school year or by December 31 of the current school year. The regulatory language of this final rule has been modified to reflect this clarification.

Implementation

Several commenters suggested that the first required report of AIMS results be delayed to give State agencies more time to develop recordkeeping systems. The Department concurs with commenters' concerns and has modified this rule to require that the first AIMS report from State agencies must be submitted by March 1, 1989. Further, the Department will work with State agencies to resolve any implementation problems experienced due to the new FNS form to be used to gather AIMS results.

Regulatory Provisions

On September 30, 1986 the Department published a revision of 7 CFR Part 210 in the **Federal Register** (51 FR 34864) which substantially reorganized the regulations governing the National School Lunch Program. The regulatory provisions of this final rule have therefore been made consistent with the revised organization of 7 CFR Part 210.

List of Subjects in 7 CFR Part 210

Food assistance programs, National School Lunch Program, Grant programs—Social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Part 210 is amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for Part 210 continues to read as follows:

Authority: Sec. 2–12, 60 Stat. 230, as amended; Sec. 10, 80 Stat. 889, as amended; 84 Stat. 270, (42 U.S.C. 1751—1760, 1779), unless otherwise noted.

2. Section 210.18 is amended by:

a. Removing the word "and" from the end of paragraph (f)(6) and adding it to the end of (f)(7); and adding a new paragraph (f)(8).

b. Paragraph (l) is revised and a new paragraph (m) is added.

The amendments and additions read as follows:

§ 210.18 Monitoring responsibilities.

* * * * *

(f) * * *

(8) Beginning March 1, 1989, submit annual reports of the results of such State developed monitoring system reviews to FNSRO on a form designated by FNS.

* * * * *

(l) *AIMS reporting.* Each State agency shall report to FNSRO:

(1) The name of any school food authority which exceeds an error tolerance level on a second AIMS review and the type and extent of the regulatory violations; and

(2) Beginning March 1, 1989, the results of AIMS reviews/audits by March 1, of each school year, on a form designated by FNS. In such annual reports, the State agency shall include the results of all AIMS reviews/audits conducted in the preceding school year and any consequent second AIMS reviews performed in the preceding school year or by December 31 of the current school year.

(m) *AIMS recordkeeping.* Each State agency shall keep records which document the details of all AIMS reviews or audits and demonstrate the degree of compliance with AIMS performance standards. AIMS records shall be kept on file by the State agency for a minimum of 3 years after the date of the exit conference or after the year in which problems have been resolved, whichever is later. When necessary, the records must include a corrective action plan as described in this section. Additionally, the State agency must have on file:

(1) Criteria for selecting schools on first and second reviews, if the selection is not random;

(2) Its system for selecting small school food authorities for second reviews; and;

(3) Documentation demonstrating compliance with the statistical sampling requirements specified in § 210.18(i)

3. Section 210.20 is amended by:

(a) Removing the "and" at the end of paragraph (a)(5);

(b) Redesignating paragraph (a)(6) as paragraph (a)(7) and adding a new paragraph (a)(6); and

(c) Removing the references to § 210.18(l) from § 210.20(b)(7) and (8) and inserting, in their place, the reference § 210.20(m).

New § 210.20(a)(6) reads as follows:

§ 210.20 Reporting and recordkeeping.

(a) * * *

(6) Results of AIMS reviews/audits as required under § 210.18(l); and

* * * * *

Dated: February 17, 1987.

Robert E. Leard,

Administrator.

[FR Doc. 87–3861 Filed 2–25–87; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Parts 917, 932, 959, 971, and 979

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Order 932 for the 1987 fiscal year, and for Marketing Orders 959, 971 and 979 for the respective 1986–87 fiscal year for each order. Marketing Order 917 expenses are increased for the 1986–87 fiscal year. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: August 1, 1986-July 31, 1987 (§§ 959.227 and 971.226); October 1, 1986-September 30, 1987 (§ 979.209); January 1, 1987-December 31, 1987 (§ 932.221). March 1, 1986-February 28, 1987 (§ 917.244).

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601–674), and rules promulgated thereunder, are unique in that they are brought about through group action of essentially small entities on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated 608 handlers of California pears, plums, and peaches, 7 handlers of California olives, 40 handlers of Texas onions, 4 handlers of Texas lettuce, and 35 handlers of Texas melons who will be subject to regulation under these marketing orders during the course of the respective season for each specified commodity. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and agricultural services firms are defined as those whose gross annual receipts are less then $3,500,000. The majority of handlers are believed to be classified as small entities.

Pursuant to the requirements set forth in the RFA, the Administrator of the Agricultural Marketing Service has considered the economic impact on small entities. Each marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. This is appropriate because they are familiar with the committees' needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budgets are formulated and discussed in public meetings, thus all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is a derived figure. It is merely applying a rate per unit of the commodity (e.g. per pound, ton box, carton, etc.), to the estimated production in order to produce income sufficient to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts and expenses are incurred on a continuous basis, therefore budget and assessment rate approval must be expedited in order that the committee will have funds to pay their expenses.

While this action may impose some additional costs on handlers, including small entities, the costs are in the form of uniform assessments on all handlers which do not impose significant economic impact on the small entities involved.

Based on the foregoing, the Secretary finds that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and to engage in public rulemaking procedure with respect to this action and that good cause exists for not postponing the effect date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). It is found that the specified expenses and assessment rates will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Parts 917, 932, 959, 971 and 979

Marketing agreements and orders

1. The authority citation for 7 CFR Part 917, 932, 959, 971 and 979 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New §§ 932.221, 959.227, 971.226, 979.209 are added and § 917.244 is amended to read as follows (the following sections prescribe the annual expenses and assessment rates and will not be publishd in the Code of Federal Regulations):

PART 932—OLIVES GROWN IN CALIFORNIA

§ 932.221 Expenses and assessment rate.

Expenses of $1,862,400 by the California Olive Committee are authorized for the fiscal year January 1, 1987 through December 31, 1987. The rate of assessment for that period shall be established as $20.03 per ton. Unexpended funds may be carried over as a reserve.

PART 959—ONIONS GROWN IN SOUTH TEXAS

§ 959.227 Expenses and assesament rate.

Expenses of $283,227 by the South Texas Onion Committee are authorized, and an assessment rate of $0.04 per 50-pound container or equivalent quantity is established for the fiscal period ending July 31, 1987. Unexpended funds may be carried over as a reserve.

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PART 971—LETTUCE GROWN IN SOUTH TEXAS

§ 971.226 Expenses and assessment rate.

Expenses of $44,415 by the South Texas Lettuce Committee are authorized for the fiscal period ending July 31, 1987. During this fiscal period, an assessment rate of $0.04 per carton of lettuce is established. Unexpended funds may be carried over as a reserve.

PART 979—MELONS GROWN IN SOUTH TEXAS

§ 979.209 Expenses and assessment rate.

Expenses of $197,696 by the South Texas Melon Committee are authorized, and an assessment rate of $0.02 per carton of melons is established for the fiscal period ending September 30, 1987.

In accordance with the provisions of § 979.42, late payment charges of one and one-half percent per month shall be charged on the unpaid balance for each past due account. An account is past due 30 days after the billing date. Unexpended funds may be carried over as a reserve.

PART 917—FRESH PEARS, PLUMS AND PEACHES GROWN IN CALIFORNIA

§ 917.244 [Amended]

Section 917.244 is amended by changing $1,704,964 to $1,799,926.

Dated: February 17, 1987.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 87-3954 Filed 2-25-87; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations of the Immigration and Naturalization Service relating to alien workers seeking temporary classification under sections 101(a)(15)(H)(i) and section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101. The amendments are intended to clarify and conform Service policy to the intent of Congress as it relates to these classes of nonimmigrants and to facilitate the entry into the United States of certain nonimmigrants needed by international businesses and other organizations.

EFFECTIVE DATE: March 30, 1987.

FOR FURTHER INFORMATION CONTACT: Flora T. Richardson, Sr., Immigration Examiner, Immigration and Naturalization Service, 425 Eye Street, NW, Washington, DC 20536, Telephone: (202) 633-3946.

SUPPLEMENTARY INFORMATION: On May 21, 1986, at 51 FR 18591 the Immigration and Naturalization Service published a Notice of Proposed Rulemaking, proposing to amend the Service's regulations at 8 CFR 214.2(h) and 214.2(l) to clarify Service policy. Interested parties were invited to submit written comments on the proposed amendments by July 21, 1986. The comment period was extended to July 31, 1986, to give commenters additional time.

Comments on Proposed Regulations

The Service received 49 comments from attorneys, businesses, health organizations, employer/employee groups, entertainment organizations, and several state officials. All of the comments were reviewed and considered in developing this final rulemaking. Many commenters commended the Service on its efforts to resolve important issues in the H-1 and L classifications, to offer detail and guidance, and to simplify procedures, especially as they relate to the blanket petition program. Some of the commenters were critical of various amendments which they believe would not facilitate admission of foreign workers needed by businesses and other organizations. A number of the commenters offered suggestions or improvements, many of which have been adopted in this final rulemaking. Several commenters asked specific questions or made recommendations which will be more appropriately addressed in our Operations Instructions. The discussion that follows groups the comments into major problem areas raised, provides the Service's position on the issues, and indicates the revisions adopted as a final rule, based on the public's concerns.

Definition of Manager and Executive—§ 214.2(l)(1)(ii) (B) and (C)

The Service had proposed to modify the definitions of manager and executive to require that virtually all of the employee's time must be spent in performing managerial or executive duties. This would have required a demonstration that a beneficiary will be, for virtually all of his or her time, directing the management of an organization or a customarily recognized division of an organization. Any other duties performed would have had to be incidental to those as a manager or as an executive. In addition, in order to qualify for L classification, managers would have had to be supervising and controlling the work of supervisory, managerial, or professional employees, and executives would have had to be supervising and controlling the work of others acting in executive or managerial capacities.

Twenty-seven commenters strongly objected to the revised definitions of manager and executive. They viewed the definitions as so restrictive that very few, if any, managers and executives would qualify for L classification because of the requirement that they spend virtually all of their time directing and supervising. They stated that the definitions are unrealistic, discriminatory, and contrary to Congressional intent because, in their view:

- Many managers and executives do not spend virtually all or even a majority of their time directing and supervising, even in a large organization;
- The definitions would discriminate against medium to small businesses which are not structured with supervisory tiers and may lack the required number of employees; and
- The definitions would deter large and small business investment in the United States since managers and executives coming to the United States to open new offices could not qualify under the revised definitions.

Twenty-two of the commenters believed that it is sufficient to require that the alien's substantial or primary responsibilities be managerial or executive in nature. They explained that managers and executives perform countless other corporate duties, such as customer and public relations, lobbying, and negotiating contracts on more than an incidental basis. In addition, managers and executives usually devote considerable time to areas of their individual expertise, such as engineering, marketing, or research. While their managerial functions are significant, they cannot be untangled from the exercise of their professional skills. Some commenters also observed that the definitions exclude from consideration those key managers and executives who manage a function within an organization without necessarily having any personnel duties or extensive staff reporting to them.

To corroborate their views, some commenters cited a 1980 report by a division of the American Management Association (AMA) which, they said, established that on the average, only 47% of a manager's working time is spent on managerial activities; vice presidents spend 49% of their time managing; and presidents allocated 60% of their time to management activities. Some also contended that the Service's proposed definitions of manager and executive are contrary to Department of Labor (DOL) definitions. They believed that if Service regulations are to be workable, they must be consistent with the cooperating agency's definitions. DOL's *Technical Assistance Guide* requires that, to qualify as a manager for the purpose of labor certification under Schedule A, Group IV, the alien must direct the work of other employees, while to qualify as an executive, the alien must customarily and regularly perform executive functions.

The public comments revealed that the proposed revisions to the definition of manager and executive created more concern than any of the other proposed revisions to the L regulations. It was the Service's intention to include in the duties of a manager or executive activities that are normally done by persons in these positions, such as customer and public relations and lobbying and contracting.

However, the Service agrees that a strict and literal reading of these definitions could make a number of legitimate managers and executives not qualify for L classification. An executive or managerial capacity requires a certain level of authority and an appropriate mix of job duties. Managers and executives plan, organize, direct, and control an organization's major functions and work through other employees to achieve the organization's goals. Supervisors who plan, schedule, and supervise the day-to-day work of nonprofessional employees are not employed in an executive or managerial capacity, even though they may be referred to as managers in their particular organization. In addition, individuals who primarily perform the tasks necessary to produce the product(s) or provide the service(s) of an organization are not employed in an executive or managerial capacity.

Eligibility requires that the duties of a position be primarily of an *executive or managerial nature*. The test is basic, to ensure that a person not only has requisite authority, but that a majority of his or her duties relate to operational or policy management, not to the supervision of lower level employees, performance of the duties of another type of position, or other involvement in the operational activities of the company, such as doing sales work or operating machines, or supervising those that do. This does not mean that the executive or manager cannot regularly apply his or her technical expertise to a particular problem.

The Service does not believe that its concept of managerial and executive capacity conflicts with DOL's *Technical Assistance Guide*. Since DOL requires an alien to be eligible for L classification under the Service's regulations before he or she can qualify for Schedule A, Group IV, the Service's definitions must of necessity provide more detailed guidance than those of DOL.

The Service will also recognize that an executive may manage a function within an organization. It must be clearly demonstrated, however, that the function is not directly performed by the executive. If the function itself is performed by the intended executive, the Service views the position as a staff officer or specialist, not as an executive. In general, classification in a specialized knowledge capacity is more appropriate for individuals who control and perform a function within an organization, but do not have subordinate staff except perhaps a personal staff.

The standards included in the proposed regulations were intended to clarify the Service's interpretation of the statute and current regulations, not to make a change in policy. To correct the misimpressions conveyed by the wording of the proposed definitions, the Service has modified those definitions to require that the employee "primarily," instead of "for virtually all of his or her time," perform managerial or executive duties. The Service has also modified the supervisory requirements and deleted the requirement that other duties performed must be incidental to those of a manager or executive. It has been clarified that the definitions do not include an employee who spends a substantial amount of time performing the tasks necessary to produce the product(s) or to provide the service(s) of the organization.

Ten commenters, nine of which were from the State of Florida, were concerned about the effect of regulation changes on small businesses. They believed that the definitions of manager and executive clearly discriminate against small businesses which are being formed in the thousands in the U.S. by nonresident aliens. They argued that altering the regulations so that small and medium sized companies, as well as start-up operations, are precluded from using L visas was not the intent of Congress. The definitions would, in their view, adversely effect United States policy to actively promote foreign investment and trade in order to strengthen our economy, balance trade, and offset deficits.

The revisions adopted in the final rule should resolve concerns that the definitions will discriminate against small or medium-sized businesses. It is clear that a large organization is not required for the manager or executive to qualify for L classification. The Service supports international business and legitimate foreign investment in the United States. It is Service policy to encourage creation of jobs for United States workers and, with these revisions to regulations for L classification, the Service is attempting to facilitate the movement of international personnel and to clarify and simplify requirements for classification and admission.

If a small or medium-sized business supports a position wherein the duties are primarily executive or managerial, it can qualify under the L category. However, neither the title of a position nor the ownership of a business are, by themselves, indicators of managerial or executive capacity. One commenter stated that every business has at least one manager. This may be true in the general sense; however, section 101(a)(15)(L) does not include every type of manager, such as self-employed persons who perform the management activities involved in practicing their profession or trade. For example, a physician may incorporate his or her practice for business purposes. The physician is not a manager as contemplated under section 101(a)(15)(L), but a person who primarily practices his or her professional skills as a physician.

In administering the Act, the Service must concern itself with abuse or the potential for abuse of any visa category by persons seeking to enter the United States for purposes not intended by Congress. The L classification was not created for self-employed persons to enter the United States to continue self-employment, unless they are otherwise qualified for L classification. The legislative history (House Report 91-851, U.S. Code Cong. and Ad. News 2751-2755 (1970)) of section 101(a)(15)(L) indicates that Congress established that provision to help eliminate problems faced by international companies having offices abroad in transferring key personnel freely within the organization. The legislative history states:

Evidence submitted to the committee established that the number of

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temporary admissions under the proposed "L" category will not be large. The class of persons eligible for such nonimmigrant visas is narrowly drawn and will be carefully regulated and monitored by the Immigration and Naturalization Service. Provision has been made in section 3 of the bill for the filing of a petition with the Attorney General by the employer.

Consideration of the petition will involve verification of the prior employment of the individual for a continuous period of atleast one year abroad by a company affiliated with the parent, subsidiary, or branch located in the United States and verification that the subject of the petition is in a managerial, executive, or specialized knowledge capacity and is the subject of a transfer to the United States. The applicant would not be issued a nonimmigrant visa or admitted to the United States unless he established that he intended to remain in this country temporarily. The committee is convinced that no international company would jeopardize or endanger its future need for a corporate executive rotation by attempting to misuse or abuse such procedure as a vehicle for immigration.

It is clear from the above quotation from the legislative history that self-employed persons who are immigratinq to the United States are not eligible for L classification. Congress has provided several other nonimmigrant classifications which permit such persons (who often characterize themselves as "investors") to come to the United States to oversee their investments, including the B–1 (temporary visitor for business), E (treaty trader or investor), and the H (temporary worker) classifications.

A self-employed person who wishes to immigrate to the U.S. but does not qualify under the categories Congress has set forth will frequently attempt to qualify under the L category by setting up a corporation in the United States, giving himself an executive title (e.g., "president") and continuing his self-employment in the U.S., often with a minimal "investment," with no foreign operations abroad and no intent to return abroad. Such a person, if granted "L" status as an executive or manager can, after one year, qualify for blanket labor certification under DOL's Schedule A, Group IV, and hence for a third or sixth preference classification, even though he could not qualify or would have difficulty qualifying directly for a preference classification. We do not believe that Congress intended the L classification to be used in this manner, and the regulations are intended to control this abuse.

Eight commenters believed that the regulations will deter large and small business investment in the U.S. because foreign companies will be unable to transfer key personnel to start-up operations if the transferees cannot qualify under the managerial or executive definition. They explained that business entities just starting up seldom have a large staff, but a manager is clearly needed to set up the business and hire local employees. In addition, small investors frequently find it necessary to become involved in operational activities. They believed that the rule would require that the new office from the time of its inception begin operations with numerous employees and a multilevel organization. One commenter observed that many new companies require a period longer than one year to reach the "doing business" standard, and believed there should be an opportunity for the director to exercise discretion in allowing a continuation of the petition to give a new company more time to develop its business.

After reviewing the public comments, the Service recognized that the proposed definitions of manager and executive created an anomaly with respect to the opening of new offices in the United States. The Service will correct this in the final regulations by modifying the filing requirement for new offices to provide for L classification of persons who are coming to the United States to open a new office as managers or executives under certain conditions. The beneficiary may be classified as a manager or executive during the one year required to reach the "doing business" standard if it can be expected, after review of relevant factors relating to the new office and the parent organization, that the new office will, within one year, support a managerial or executive position. The factors to be considered include amount of investment, intended personnel structure, product or service to be provided, physical premises, and viability of the foreign operation. It is expected that a manager or executive who is required to open a new business or office may be more actively involved in day-to-day operations during the initial phases of the business, but must also have authority and plans to hire staff and have wide latitude in making decisions about the goals and management of the organization.

The Service believes that one year is sufficient for any legitimate business to reach the "doing business" standard. Because of the wide variety of circumstances, the Service will not at this time further define "doing business"; the director will determine, in his discretion, whether the new office is "doing business" when an extension of the petition is adjudicated. The regulations will be modified to require the filing, after one year, of an extension of the petition with supporting documentation evidencing compliance with the "doing business" standard where the petition involved the opening of a new office.

Definition of Specialized Knowledge—§ 214.2(l)(1)(ii)(D)

The Service had proposed to revise the definition of specialized knowledge to require that the knowledge be unique, narrowly held in the organization, and involve a key process or function which enhances the organization's operation and competitiveness in the market. The Service, in a number of precedent decisions, has discussed the various requirements for specialized knowledge, e.g., (*Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (R.C. 1978); *Matter of Penner*, I.D. 2865 (Com. 1982); *Matter of Colley*, I.D. 2881 (Com. 1981)). The proposed definition incorporated standards for determining specialized knowledge that are set forth in these decisions.

Fifteen commenters objected to the proposed definition of specialized knowledge and preferred to see the current definition retained. They stated that requirements that knowledge be unique and narrowly held in the organization are too rigid and very few personnel would qualify, which is contrary to Congressional intent. Most believed that the present regulatory language is more than adequate to properly restrict use of this category. Several commenters argued that as long as the company can show that the knowledge is proprietary and not readily available in the U.S. workplace, it is not relevant whether the knowledge is widely held by the petitioner's company abroad. Also, even if the knowledge is not unique, it may not be readily available in the U.S. market. One commenter explained the uniqueness of an employee's knowledge does not necessarily provide the company with knowledge that is essential to its ongoing operations.

It was the Service's intention to provide clearer standards for determining specialized knowledge. Although commenters would prefer to retain the definition in current regulations, the Service believes that a revision is appropriate to better

articulate case law. The definition set forth in the summary to the proposed rule will be modified in part. It will not require that the knowledge be unique or narrowly held. As suggested by commenters, the Service has reinstated the standard that knowledge which is not readily available in the United States labor market should be considered in determining specialized knowledge.

Definition of a Qualifying Organization § 214.2(l)(1)(ii)(D)

The Service proposed that a qualifying organization under section 101(a)(15)(L) would be required to do business in the United States and one other country for the duration of the intracompany transferee's stay in the United States.

Several commenters stated that nothing in the statute requires the organization to continue to do business in at least one other country. In addition, they contended that the rule departs significantly from current case law since the requirement contradicts *Matter of Chartier*, 16 I&N Dec. 284 (BIA 1977), and *Matter of Thompson*, ID 2889 (Com., August 1981), and attempts to accomplish what five years ago the Service said only Congress has the power to do. However, one commenter agreed that the petitioner should demonstrate its ongoing international nature and, if the corporation ceases to be eligible, that the employee(s) should be required to return to their country and further, be prohibited from seeking reclassification under other provisions of the Act. Several commenters also questioned whether sole proprietorships and partnerships are considered qualifying organizations.

The Service continues to believe that Congress did not intend the L category to accommodate the complete relocation of foreign businesses to the United States. Throughout the legislative history of section 101(a)(15)(L), Congress refers to "international companies" and provided the means for such companies to temporarily rotate their foreign personnel to the United States.

The Service's position is that the requirement to continue to do business in the U.S. and at least one other country for the duration of the L's stay does not conflict with *Chartier*. That case involved a United States company with an employee stationed abroad. The employee was not employed by a subsidiary or other legal entity of the U.S. employer, but reported directly to the parent company in the United States. The U.S. company was an international corporation with a subsidiary in Belgium. The facts of this case are consistent with L classification, and the Service has not attempted to alter the situation where a U.S. company can have employees abroad unattached to a foreign entity and qualify to transfer such employees to the United States under the L classification. However, the reverse of this situation is not appropriate. A foreign employer must have or be in the process of establishing a legal entity in the United States which will be doing business as an employer in order to transfer an employee under section 101(a)(15)(L). *Matter of Thompson* was an inappropriate application of the holdings of *Chartier*. *Thompson* involved the total transfer of the foreign business to the United States with no foreign operations remaining to which the employee could be transferred at the end of his temporary stay. The Service recognizes this error and corrects it in these regulations. The final regulations will require a qualifying organization to demonstrate its ongoing international nature and the existence of foreign operations to which the employee can reasonably be expected to be transferred at the end of his/her authorized stay in the United States.

The definition of a qualifying organization reflects the Service's interpretation of the type of organization which we believe Congress intended to be included under section 101(a)(15)(L). It does not preclude a proprietorship or partnership as long as the required ownership and control exist. In requiring that the organization continue to do business in the U.S. and abroad, the definition adopted in the final rule will overturn *Matter of Thompson*, which the Service now believes was an inappropriate precedent decision.

These regulations provide for revocation of an L petition if the organization ceases to be eligible under section 101(a)(15)(L). Beneficiaries of such petitions will be required to leave the United States unless the beneficiary obtains other authorization from the Service to work in the United States. The Service cannot deny the beneficiary the opportunity to seek other authorization to work when the petitioner ceases to be eligible.

Definition of Doing Business—§ 214.2(l)(1)(ii)(H)

The proposed definition of "doing business" required the regular, systematic, and continuous provision of goods and/or services by a qualifying organization. One commenter was concerned that the definition of doing business would mean that representatives and liaison offices established in the U.S. to promote the business of foreign corporations through research and providing consultation to U.S. customers and trading companies would no longer qualify for L visas if adhered to literally. The commenter requested that liaison or representative offices be either exempted from the definition or stated to be doing business.

The Service recognizes that company representatives and liaison offices provide services in the United States, even if the services are to a company outside the United States. Such services are included in the doing business definition and aliens who perform such services may qualify for L classification, if they are otherwise qualified under section 101(a)(15)(L).

Definitions of Parent, Subsidiary, and Affiliate—§ 214.2(l)(1)(ii) (I), (K), and (L)

The Service proposed definitions of parent, subsidiary, and affiliate to reflect the Service's interpretation and application of these terms under section 101(a)(15)(L).

Seven commenters made specific points or gave recommendations for modifying the Service's interpretation of these terms. They were:

—The Service's concept of the correct corporate relationship for L purposes is narrower than the statutory language requires. An appropriate standard is the existence of a legitimate business interest and economic ties between the two entities.

—In *Johnson-Laird, Inc. v. INS*, 537 F. Supp. (D. Ore. 1981), a U.S. district court held that Congress intended that the legal form of a petitioning company may not be dispositive of whether it qualifies as a legal entity for L purposes. Factors such as the type of organization favored in a foreign country should have no bearing on immigration proceedings. The court held that the term "legal entity" included all bona fide forms of business organization.

—The definition of a parent would exclude a parent corporation owned by another parent corporation. Any corporation which owns several subsidiaries is usually considered a parent, but may itself have an ultimate parent.

—The definition of subsidiary should be revised to indicate that a parent may directly or indirectly own and control an entity that qualifies as a subsidiary. In addition, the word "equity" should be deleted from the description of a 50–50 joint venture since it has no legal significance.

—The definition of affiliate should be amended to include companies that are integrally related through a combination of factors, such as share ownership,

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business and economic ties, or common management in lieu of total control.

—The definition of affiliate would disqualify entities when control of the two entities is divided between two or more individuals or other entities.

—The use of contractual joint ventures is increasing in international business transactions. If companies which create joint venture partnerships are denied the use of the L category, an increasingly smaller number of international businesses will benefit from it.

Congress did not define the terms "employer, affiliate, or subsidiary" used in section 101(a)(15)(L). However, since the L category was created, Service policy has been based on the common or general meaning and usage of those terms, which imply "control" by virtue of ownership. The Service's definitions of qualifying business relationships reflect the ownership and control required. The commenters' recommendation that the L category encompass relationships between entities where control is lacking, but there are legitimate business interests and economic ties between the entities, is far too broad and goes beyond congressional intent in enacting the L provision. This could cover virtually any kind of business association between companies. Such relationships could be based on factors, such as ownership of a small amount of stock in another company without control, exchange of products or services, and membership of the directors of one company on another company's board of directors. Adoption of this recommendation would be contrary to Congress' view that transfers would be made within the same international organization.

The Service appreciates the technical improvements to the definitions that were offered by some commenters. The final rule adopts a number of these suggestions:

—The definition of parent has been revised to mean a firm, corporation, or other legal entity which has subsidiaries. This will include recognized subsidiaries that are themselves parents, but are owned and controlled by an ultimate parent.

—The definition of subsidiary has been revised to provide for direct or indirect ownership and control of the entity consistent with the revised definition of parent. The word "equity" has been deleted from the description of a 50–50 joint venture. For a 50–50 joint venture, it is only necessary for the two business entities which form the joint venture to provide evidence of equal ownership of its assets and equal control of the entity. However, the Service cannot construe the definition of subsidiary to include contractual joint ventures because the requisite ownership and control of a legal entity would not be present in such arrangements.

—The definition of affiliate has been revised to mean one of two subsidiaries owned and controlled by the same parent or individual or one of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

Time Spent in the United States Cannot Count Towards Eligibility for L Classification—§ 214.2(l)(1)(ii)(A)

The Service clarified in the proposed rule that periods spent in the United States in lawful status for a branch of the same employer or a parent, subsidiary, or affiliate thereof are not interruptive of the one year of continuous employment abroad, but such periods do not count towards fulfillment of that requirement.

Four commenters believed that refusal to count any of the time spent in the U.S. towards the one year of employment abroad requirement for L eligibility is unduly harsh. They contended that the Service has to date, recognized a different interpretation which it now seeks to change without justification and cited Operations Instructions at 248.4 and *Matter of Continental Grain*, 14 I&N Dec. 140 (D.D. 1972), as allowing time in the U.S. to count towards the one year abroad. By failing to permit any of the lawful employment in the U.S. to accrue eligibility for the one-year requirement, they believed that start-up operations may be needlessly injured. Also, they believed the proposed change will prove detrimental for recently hired employees who visit the U.S. for training or business visits.

One commenter indicated that the statute makes no reference to the requirement that the one year of continuous employment take place abroad. The commenter suggested that a better rule would be to establish a maximum amount of time during the preceding year that an employee could spend in the U.S. without having the time deducted from his qualifying year, such as six months.

Contrary to the interpretation of commenters, *Matter of Continental Grain* only stands for the proposition that authorized periods of stay in the U.S. on behalf of the foreign employer do not interrupt the one year of continuous employment abroad. That case involved a beneficiary whose actual total period of employment abroad was for a little over one year prior to entering the U.S. as an H–3 trainee. After receiving training in the U.S. for 28 months, the beneficiary returned to the same overseas employer for another seven months prior to filing for L classification.

The Service agrees that this requirement conflicts with OI 248.4, which states that periods spent in the U.S. count toward fulfillment of the one-year requirement. That O.I. provision is an incorrect interpretation and will be revised to conform to these regulations. The Service's position that time spent in the United States does not count towards the one year of employment abroad that is required for L classification has received judicial approval (*Karmali* v. *INS*, 707 F. 2d 408 (9 Cir. 1983)).

The final rule retains the requirement that periods spent in the United States in lawful status for the same employer or a parent, branch, subsidiary, or affiliate thereof, are not interruptive of the one year of continuous employment abroad, but such periods do not count toward fulfillment of that requirement.

Blanket L Petition Procedures—§ 214.2(l)(4) and (5)

The Service proposed to modify the blanket L petition program to make it more useful to businesses. The revisions expanded the criteria which petitioners must meet to file a blanket petition; reduced documentation requirements; provided for indefinite validity of blanket petitions after the initial three-year approval period; expanded the classes of eligible beneficiaries to include specialized knowledge professionals; and delegated to consular officers of the Department of State authority to determine eligibility of individual beneficiaries who are outside the United States seeking L classification under blanket petitions and who require a visa to enter the United States.

Nine corporations and a number of attorneys praised the Service for its efforts to make the blanket petition procedure more available and convenient for businesses. They especially appreciated the inclusion of specialized knowledge professionals under the blanket program and the provision for indefinite validity. Although the commenters welcomed the changes to the blanket program and believed that they would facilitate entry of international personnel, most of the commenters had concerns about specific provisions. The major areas of concern related to the criteria which petitioners must meet to file a blanket petition, filing of individual petitions, adjudication of eligibility by consular officers, standards for specialized knowledge professionals, and reporting requirements. Individual commenters raised other points which the Service will address separately from these issues.

The Service proposed requirements which a petitioner must meet to file a blanket petition that have the effect of limiting participants in the program to medium to large businesses which provide goods or services for profit. At the same time, the qualifying criteria would increase the number of businesses which can meet the requirements to file a blanket petition.

One nonprofit organization stated that exclusion of large, nonprofit, international organizations from eligibility is arbitrary and unnecessary. The commenter felt that a criterion for eligibility could be to limit blanket L visas to those organizations which meet certain budgetary standards or have certain structural characteristics. Another commenter felt that the first three qualifying criteria for filing a blanket petition are unnecessary in light of the last criterion, and they only serve to disqualify many companies who are beginning to do business in the United States. In addition, that commenter felt that to require the entities to engage in commercial trade or services is too restrictive and would bar organizations engaged in manufacturing, mining, farming, fishing, etc. The commenter believed that the rule should permit any kind of legitimate organization to seek blanket L approval. One commenter also stated that there is no justification for raising the qualifying beneficiary threshold from five to ten.

The Service was intentionally selective in establishing criteria for qualifying to file a blanket petition. This procedure is meant to serve only relatively large, established companies having multi-layered structures and numerous subsidiaries. Such companies would usually have an established program for rotating personnel and, in general, are the types of companies for which the L provision in the statute was created.

Nonprofit organizations were excluded from the blanket petition procedure because the Service has found from operating experience that the relationship between the organizations frequently constitutes a type of relationship which is not qualifying under section 101(a)(15)(L). The Service wishes to retain the ability to look at the relationship in each individual case.

The Service believes that all of the criteria required to file a blanket petition are essential safeguards which the Service needs to limit the blanket procedure to certain types of petitioners, particularly where the Service will, after three years, extend the validity of the petition indefinitely. The Service would be especially reluctant to extend blanket petition privileges to companies which are just beginning to do business in the United States and have no track record of using the L classification. The criteria for filing a blanket petition do not bar any particular industry, as long as the qualifying organizations are providing goods and services for profit.

The reason for raising the qualifying beneficiary threshold from five to ten is that specialized knowledge professionals are now included under blanket petitions as qualifying beneficiaries. International businesses have made representations to the Service that 75% of the foreign nationals transferred to the United States possess specialized knowledge. Under the modified blanket program, petitioners may count specialized knowledge professionals, managers, and executives to meet the qualifying beneficiary threshold.

The Service had proposed to require the petitioner with an approved blanket petition to use the blanket procedure for qualifying beneficiaries. Only if the consular officer denied the beneficiary L classification would the petitioner be able to file an individual petition with the Service for another determination of the beneficiary's eligibility. This would have enabled the Service to more closely monitor the petitioner's use of the L category. It would also have avoided the possibility of conflicting determinations if the petitioner chose to simultaneously use the individual and blanket procedure for the same alien.

Nine commenters recommended that regulations should be changed to state that an individual petition may be filed by the petitioner or any of its related entities if the petitioner is uncertain whether the beneficiary is eligible for L classification under the blanket petition. Some commenters felt that large employers may not be willing to forfeit the right to have the Service make initial determinations in difficult cases because of the time required to obtain a consular determination, in addition to a service determination on an individual petition. One commenter requested that where an individual petition is made necessary by a denial of an L visa by a consular officer, the employee should start with a clean slate, and the regulations should specifically prohibit officers from considering the prior denial.

The Service has considered the commenters' objections to this requirement and decided that the control desired by the Service can be achieved in a less time-consuming manner. The regulations have been modified at § 214.2(l)(4)(iii) to allow the petitioner and other qualifying organizations to file an individual petition in lieu of using the blanket procedure. However, the qualifying organizations may not seek L classification for the same allien under both procedures at the same time. In addition, whenever a petitioner which has blanket L approval files an individual petition to seek L classification for a manager, executive, or specialized knowledge professional, the petitioner will be required to advise the Service that it has blanket L approval and certify that the beneficiary has not and will not apply to a consular officer for L classification under the approved blanket petition.

The commenter's suggestion that Service officers should be prohibited from considering the prior denial by a consular officer when an individual petition is made necessary by that denial cannot be accepted by the Service. Although the Service will make its own objective determination on the individual petition, the reasons for the consular officer's denial are relevant in reviewing the facts of the case. Commenters' concerns that denials by a consular officer will make it very difficult for a subsequently filed individual petition to be approved are unwarranted. The Service uses specific criteria for adjudicating L petitions. If the petitioner and beneficiary meet those criteria, the petition will be approved.

A number of commenters felt that consular offices are generally unschooled in L–1 substantive law and lack the expertise developed over the years by the Service in making fine-line distinctions. Several commenters also opposed having Canadian beneficiaries of blanket petitions seek L classification and obtain visas from consular officers. Some commenters felt that ceding of authority to consular officers to determine L–1 eligibility under blanket petitions has the potential for inconclusive and conflicting determinations. They recommended administrative appeal of consular denials to the Administrative Appeals Unit.

One commenter believed that the requirement for consular determinations is entirely needless in view of the

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safeguards that have been imposed on approval of blanket petitions. Considering that only certain kinds of petitioners may qualify for blanket petition approval, the commenter felt that there is every reason to have confidence in the certification of the petitioner without consular determinations. The commenter believes that employer certifications should be accepted similar to certifications issued by approved schools for F–1 students and program sponsors for J–1 participants.

Another commenter stated that the Department of State (DOS) has openly acknowledged its disagreement with the Service over the definition of specialized knowledge which, according to the commenter, DOS construes more liberally. The commenter felt that this leaves employers with a lack of certainty regarding their ability to maintain transferees in the U.S. once they are admitted or to even have them admitted once a visa is issued. Development of a consistent definition which reflects business realities was recommended by the commenter.

The arrangement to have consular officers make determinations of eligibility for beneficiaries seeking L classification under approved blanket petitions was negotiated between the Service and the Department of State. That agency and the Service believe that consular officers have sufficient knowledge to make correct determinations of L eligibility. In addition, the Service has developed detailed Operations Instructions for L visa classification to be used by Service officers and consular officers in making these determinations. As with any new procedure, there may be start-up problems, but the Service intends to maintain a close working relationship with DOS to insure that the blanket program operates efficiently and effectively; that consular officers develop the necessary expertise; and that interpretations of policy, including definitions of the employment capacities under the L category, are consistent for the Service and Department of State.

The Service believes that beneficiaries of blanket petitions who do not require a visa, including Canadian nationals, must have an advance determination of blanket L eligibility by a Service or consular officer in order to avoid inspection problems at a port of entry. From the Service's perspective, the determinations to be made under the revised blanket program are too time-consuming and complex to be made at a port of entry. In view of the objections of commenters and the Service's desire to minimize the administrative changes which the Department of State would have to make to accommodate visa issuance for blanket L beneficiaries who previously did not require a visa, the regulations have been modified to have determinations of eligibility made by Service officers. When the alien is a visa-exempt nonimmigrant seeking L classification under a blanket petition, the Certificate of Eligibility shall be filed with the Service office at which the blanket petition was filed for adjudication.

In accordance with section 104(a) of the Act, decisions of consular officers abroad relating to the granting or refusal of visas are final. They are not appealable to an administrative body in the United States. Even though the Service delegated its authority to determine eligibility of aliens abroad for L classification under blanket petitions to consular officers, the Service cannot assume administrative jurisdiction over decisions made by consular officers. After a denial by a consular officer, the regulations allow the filing of an individual petition. An adverse decision by the Service on the individual petition may be appealed to the Administrative Appeals Unit.

The commenter's statement that consular determinations of eligibility are needless and his recommendation that the petitioner's certification of eligibility should be accepted cannot be considered under the statute. Section 214(c) of the Immigration and Nationality Act states that the question of importing any alien as a nonimmigrant under section 101(a)(15)(H) or (L) in any specific case or cases shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer. In view of this statutory requirement, the Attorney General's authority under the L nonimmigrant category can be delegated only to another government agency. The Service could not allow the petitioning employer to determine eligibility of the alien for L classification.

The commenter's statement that there is disagreement between the Service and Department of State over the definition of specialized knowledge is incorrect. Specialized knowledge is a concept under the L classification which is administered by the Service. The commenter appears to be equating "specialized knowledge" with "essential skills or special knowledge," which are concepts under the E visa classification. The E classification is administered primarily by the Department of State, and requirements for E classification are not necessarily parallel to those for L classification. The Department of State is in agreement with and intends to use the Service's definition of specialized knowledge for L classification.

Several commenters believed that the concept of specialized knowledge professional carries the double burden of the restrictive definition of specialized knowledge and the lack of definition for profession. One commenter felt that blanket petitions should not be limited to specialized knowledge professionals; while most are professionals, there is an occasional need for others, such as technicians. Another commenter requested that the regulations include the definition of "professional" and include the fact that professional status may be acquired through training and experience as well as through acquisition of a formal degree.

This rule includes modifications to the definition of specialized knowledge to resolve the concerns of commenters. The definition of profession and criteria for who qualifies as a professional will be clarified in our revisions to H regulations. The definition and criteria will later be incorporated by reference into these regulations. At this time, the Service will limit eligibility under the blanket procedure to managers, executives, and specialized knowledge professionals. Specialized knowledge is a difficult concept that requires fine-line distinctions to be made between what is specialized and what is general knowledge and expertise in a field. Professionals under the blanket program may also qualify for H–1 classification to work for the petitioning employer. The incorrect classification of an H–1 professional as an L–1 specialized knowledge professional causes the Service less concern than the incorrect classification of a nonprofessional under the L category, when that individual should be subject to H–2 labor certification requirements. For this reason, the Service is unwilling to include nonprofessionals who have specialized knowledge under the blanket petition procedures.

Several businesses and attorneys were concerned about reporting requirements under the blanket program. The Service had proposed to require that the petitioner, at the end of each three-year period following the petition's approval date, provide the Service with a report on the aliens admitted during the preceding three years. The commenters opposed this requirement and explained that

transferees are generally sought by a local office. Often there is not a centralized office with sufficient information to monitor the visa process. They believed that it is unrealistic to expect that many employers will have the ability to comply with the record-keeping requirements. The commenters suggested that the Service use a specially endorsed I–94 to track Blanket L transferees and the petitioner's use of the blanket petition. One commenter believed that employers may opt to seek extensions of the blanket petition at three-year intervals in lieu of extensive record keeping.

The Service has resolved the concerns of commenters by eliminating the requirement for a report on admissions every three years. The Service will require a report on admissions during the three-year initial approval period of a blanket petition as part of the documentation required to accompany a request for indefinite validity. Thereafter, the Service will track the petitioner's use of the blanket petition through centralization of blanket petitions at Regional Service Centers and the retention at Regional Service Centers of copies of certificates of eligibility that have been collected at ports of entry.

The option to seek extensions of blanket petitions every three years in lieu of extensive recordkeeping will not be possible under the blanket procedure. If a petitioner decides not to seek indefinite validity of a blanket petition, eligibility to use the blanket procedure will be revoked until another three years have expired. The regulations will be amended to reflect this requirement. The Service does not intend to grant new approvals of blanket petitions every three years or fail to look at the petitioner's record of transfers made under the blanket procedure.

Commenters were concerned about several other general requirements under the blanket program. One commenter thought the regulations should be amended to allow an alien to be reassigned to any organization listed in the approved petition in the same or a higher position without referral to the Service. If the alien will be demoted, the petitioner would complete a new Certificate of Eligibility and send it to the Service for approval. Another commenter recommended elimination of the provision allowing transfers between entities.

The Service will continue to allow transfers between qualifying organizations if the beneficiary's job duties are basically the same. If the beneficiary will be performing different job duties, it must be determined whether the beneficiary will be employed in a managerial or executive capacity or whether the beneficiary is a specialized knowledge professional. This determination can only be made by the Service or a consular officer.

Another commenter stated that the requirement that blanket petitions include or be amended to include all entities which plan to transfer aliens under the blanket procedure is burdensome to the Service and the petitioner because of the never ending termination and creation of affiliations. The commenter recommended that petitioners with high credibility should be exempted from this requirement.

Although it may be burdensome for employers with approved blanket petitions to amend the petition to include new entities to which they wish to transfer aliens, it is necessary for the Service to determine if the entities are qualifying organizations. This determination is not a responsibility which the Service can delegate to petitioners, regardless of their credibility.

The recommendation of another commenter that the regulations should allow filing of blanket petitions where the petitioner has any recognized office in the United States has been adopted. However, in order to properly administer the blanket L procedure, the Service must deal with a single representative of petitioner. The petitioner's designated office in the United States will serve as the Service's contact point for all information needed to adjudicate and monitor the blanket petition; will file amendments to the blanket petition as necessary; and will account for certificates of eligibility issued by qualifying organizations.

Temporariness—a Five/Six-year Limit on a Temporary Stay and Restriction on Admission—§ 214.2(h)(9)(ii) and § 214.2(l)(12)

The Service had proposed to adopt a generous but specific limit on what is regarded as temporary for the H–1 and L categories. The beneficiary of an H–1 or L petition would be admitted to the United States initially for a period of up to three years. An extension of stay could be authorized for a period not to exceed two years. After five years, an extension of stay not to exceed one year could be granted under extraordinary circumstances after certification to the Administrative Appeals Unit. A new petition for the same alien would not be approved unless the alien departed voluntarily and resided outside the United States for one year.

Commenters did not oppose the five/six-year limit on a temporary stay in general; however, some believed that certain H–1 and L beneficiaries should be exempted from the five/six-year limit and the requirement to reside abroad for one year after a five/six-year stay in the United States. Exemptions were requested for nurses and physical therapists, commuter aliens and businessmen intermittently in the United States, orchestra conductors and other entertainers, university teachers and researchers' and medical residents.

The Service recognizes that there are H–1 and L visa holders who work in the United States intermittently, part-time, or for short or seasonal periods. They do not remain more or less continually in the United States. To accommodate such circumstances, the regulations have been amended to provide exceptions to the five/six-year limit and the requirement that the alien reside abroad for one year after a five/six-year authorized stay in the U.S.

These limitations will not apply to aliens who do not reside continually in the United States and whose employment in the United States is seasonal, intermittent, or an aggregate of six months or less per year. In addition, the limitations will not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. Each period of stay must be based on a new petition or clear and convincing proof that the alien meets one of the requirements for the exception. Clear and convincing proof shall consist of evidence, such as arrival and departure records, copies of tax returns, and records of employment in the United States and abroad. Although these exceptions will not accommodate all of the exemptions requested by commenters, the Service believes that this is a fair and equitable way to administer exceptions to the limitations. The discussion below of the exemptions requested explains the Service's position on each.

Five commenters stated that the five/six-year limit makes sense, but should be enacted with an exemption for registered nurses and physical therapists where the individual hospital certifies a continuing shortage of such workers, and an extension denial would be detrimental to the particular institution. The commenters contended that adoption of this rule will:

—Contribute to the growing shortage of these professionals and result in hospital industry stagnation;
—Cause a major exodus of trained nurses from some hospitals, leaving hospitals unable to obtain timely replacements and endangering their

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ability to provide adequate health care to their local community; and
—Cause patient costs to increase because hospitals will be forced to hire nurses and physical therapists from outside pools at hourly rates double the hourly rates of temporary foreign nurses and physical therapists.

One commenter was concerned about hospitals staffed with Filipino nurses, whose country has been on the oversubscribed immigrant visa list. Another suggested a six-month restriction on admission of nurses and physical therapists.

The Service has observed that the shortage of nurses and physical therapists has been a persistent problem over the years due, in part, to low wages and undesirable working conditions. It is increasingly evident that the medical facilities have an indefinite need for nursing services provided by H–1 nurses. Although the H–1 alien may come to the United States to work in a permanent job, the alien must be coming for a temporary period with the intention to return abroad. If the employer intends to use the alien's services indefinitely, it is appropriate to seek a visa classification which allows the alien to immigrate to the United States under the numerical preference system. In most cases, an alien seeking to obtain permanent residence in the United States can do so during the five or six-year period allowed for a temporary stay.

The medical facilities appear to be concerned about the five/six-year limit because nurses from the Philippines may not be able to adjust status within the five/six-year period. We do not believe that Congress intended the nonimmigrant classifications to be used for the purpose of immigrating prematurely or to be used for continuous employment in the United States for indefinite periods of time. In view of this, the Service does not intend to exempt nurses and physical therapists from the five/six-year limit or the requirement to reside abroad for one year, unless they qualify under the exception provided for in these regulations.

The medical facilities and the H–1 nurses and physical therapists are aware that an alien's stay in the United States as a nonimmigrant is for a temporary period. It is necessary for the medical facilities to plan their recruitment and position assignments of foreign nurses and physical therapists with this condition in mind.

Six commenters believed that the five/six-year limit on a temporary stay and the requirement to reside abroad for one year run counter to the common situation of part-time H's and L's who divide their time in varying proportions between the United States and abroad. They explained that the L–1 classification has been used extensively by Canadians who operate on both sides of the border and such should be allowed to continue. The commenters felt that there ought not to be a maximum time limit on the number of extensions granted to H's and L's who spend a minority of their time in the U.S., but need H or L visas to carry out their employment activities.

The Service believes that the exception provided in these regulations will accommodate situations where Ls and H–1s work in the United States for a few months each year, or occasionally come to the United States for short periods to oversee business operations or divide their time between the United States and abroad in varying proportions. Occasional visits to the United States for business purposes may also be appropriate for B–1 classification, except that the alien cannot receive a salary or other remuneration from the U.S. entity.

Regarding aliens who "commute" across U.S. borders and work full-time in the United States on a permanent basis, it is more appropriate for such aliens to seek permanent resident and commuter status. The Service views such an arrangement as permanent employment in the United States, even though the alien resides abroad. The five/six-year limit and requirement to reside abroad would apply if the alien seeks H–1 or L status.

Four commenters stated that the limit on renewal of H–1 visas for symphony conductors and the requirement that the alien remain out of the country for one year would serve no useful purpose and would have an adverse impact on the future and growth of American orchestras. The commenters explained that conductors and performing artists do not engage in work requiring them to be in the United States on a permanent basis. Even though they come to the United States on a repetitive basis, orchestras engage them on a seasonal basis. They requested that the final rule clearly exempt performing artists.

The Service has noted that aliens in the entertainment industry traditionally come to the United States for short or seasonal periods. Such aliens, including orchestra conductors, will qualify for the exception and will not be affected by the limits unless they reside and work in the United States continuously for a five/six-year period.

Four representatives of universities were concerned about the effect of the limitations on foreign faculty and researchers who come to the United States for certain periods of each year—sometimes for a month or one semester, to teach a course or to work on an ongoing research project. The commenters explained that universities have generally submitted H–1 petitions for these individuals on a one-year basis to provide maximum flexibility for the institution and the alien. They believe that shared visiting faculty should be exempted from the five/six-year limit as long as their time is divided between the United States and abroad on a fairly equal basis and their intent remains temporary.

The exception provided by the Service will apply to foreign faculty and researchers who come to the United States for short periods of time each year. If educational institutions choose to file petitions for continuous one-year periods or for the maximum allowable period, they must provide proof that the aliens qualify for an exception.

Three university representatives explained that foreign graduates of American medical schools engage in residency programs, inclusive of specialty and subspecialty training, that span six or seven years. They recommended that medical residents should be able to maintain H–1 status through completion of their residency programs. The Service sees no compelling reason to exempt medical residents from the five/six-year limit for the H–1 classification. Medical residents who are participating in residency programs may also seek a J–1 visa classification. Regarding such J–1 classification, the regulations of the United States Information Agency at 22 CFR 514.23(a)(1)(iv) provide that an alien who is a graduate of a medical school pursuing graduate medical education or training in the United States is limited to the time typically required to complete such program and is limited to a maximum of seven years unless exceptional circumstances are present.

In view of this, medical residents who are in residency programs which exceed the five/six-year limit imposed on H–1 classification may instead seek J–1 classification.

Several commenters had general concerns about the five/six-year limit and requirement to reside abroad. One commenter stated that the requirement that the alien reside outside the U.S. for one year after spending five years in the U.S. creates a new ground of exclusion which can only be prescribed by Congress.

The Service does not agree that a new ground of exclusion has been created by requiring the alien to reside outside the United States for one year after spending five/six years in the United States before a new petition will be approved. Section 214(a) of the Act provides that the admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe. The Service, acting for the Attorney General, is prescribing a condition under which temporary worker petitions for H–1s and Ls will be approved. The rationale behind the requirement is that an alien who seeks to remain in the United States continuously or to reenter in a work-authorized capacity a short time after spending a five/six-year period of time in the United States is viewed by the Service as having a permanent intent to remain in the United States, and thus, should be classified as an immigrant, rather than a nonimmigrant. Because of the unavailability of preference visa numbers, many aliens seek to use the H–1 and L categories principally to enter and remain permanently in the United States while they wait for a preference visa number to become available. The H–1 and L nonimmigrant categories may not be used for this purpose. By residing outside the United States for one year after spending five/six years in the United States, the alien will have demonstrated to the Service that he or she has the temporary intent required for H–1 or L classification.

A commenter stated that it is unclear whether an H or L alien who has spent five/six years in the United States and then leaves can reenter in a different visa category without having to reside outside the United States for one year.

The Service intends that after a five/six-year period of stay, the alien cannot reenter the United States in the H or L visa classifications unless he or she has resided and been physically present outside the United States for one year. Brief trips to the United States for business or pleasure will not be interruptive of, but do not count towards the one-year requirement. The regulations have been modified to make this clear.

Two commenters suggested that Service officers should have discretionary authority to approve extensions for individuals who already have the maximum number of years or are close to it. Another commenter believed that the warning of the five/six-year limit is very short and recommended that a limited grandfather clause be included in the regulations.

The Service's interim policy regarding the five/six-year limit had been in effect since September 23, 1985. The Service believes that petitioners and aliens have had sufficient warning of the five/six-year limit on a temporary stay in the H–1 and L classifications. Therefore, these final regulations do not give directors discretionary authority to approve extensions beyond the five/six-year limit, nor do they include a grandfather clause for aliens who have already been in the United States for five years or longer.

Two commenters noted that the wording of the limitations provision should be changed to authorize five/six years irrespective of the number of petitions filed because some aliens could receive fewer than five years under the proposed wording. The Service agrees with the commenters' recommendation and has modified the regulations to permit a five/six-year period of stay irrespective of the number of petitions filed or changes of employers.

Extension of Stay Procedures for L–1 Beneficiaries—§ 214.2(l)(15)

The Service proposed to eliminate the requirement to file a petition extension to extend the stay of an L beneficiary. The regulations require only the filing of an application for extension of stay by the beneficiary, along with supporting documents. Approval of the alien's extension of stay will cause the Service to automatically extend the petition for the same period.

Although commenters were pleased with this change in procedures, they felt that provision should be made for administrative appeal of a denial of extension of stay.

The Service does not provide appellate review of an alien's application for extension of stay. A decision to grant or deny the application is discretionary. Due process does not require the Service to provide appellate review of the discretionary denial of an application for a benefit conferred on a nonimmigrant. Due process requires only a fair and impartial review of the nonimmigrant's application. The Service provides such a review by the officer who reviews the application. When novel or unusually complex issues are presented, the application receives supervisory-level review.

An alien who believes that his or her application has been arbitrarily or erroneously denied may file a motion to reopen or reconsider the case, request certification, or seek judicial relief. Although the alien's employer cannot file an appeal when the Service takes no action on the petition, the employer is not precluded from filing a new petition in the alien's behalf.

The Service cannot utilize scarce resources for the purposes of handling unnecessary appeals, and believes that the review mechanisms discussed above are adequate to deal with any problems that may arise.

Temporary/Permanent Intent Policy—§ 214.2(h)(12) and § 214.2(l)(16)

The Service proposed to define temporariness in the H–1 and L classification and specify that a petitioner may legitimately have the intent to use the services of an alien lawfully for a temporary period and, in the future, to permanently employ the alien when and if the petitioner could lawfully do so; the alien may also legitimately have the intent to come to the United States temporarily and depart voluntarily at the end of his or her authorized stay unless, within that period, the alien has become a permanent resident of the United States. The temporary admission may not be sought, however, for the principal purpose of immigrating prematurely. The regulations clarified that the burden is on the petitioner/alien to establish the requisite intent.

The proposed regulations further clarified that the approval of a permanent labor certification or the filing of a preference petition for an alien would not by itself be ground to deny an H–1 or L petition or a request to extend an H–1 or L petition during the five/six-year period if the director, in his judgment, determines that certain conditions have been met. In the summary to the proposed rule, the Service explained those conditions and provided examples of factors which the director would consider in determining whether those conditions are met.

Most of the commenters appreciated the interpretation and clarification of temporary/permanent intent. Several commenters requested that the standards listed in the preamble be incorporated into the regulations. However, some were concerned that the regulations require an employer to establish that it is not seeking a temporary classification for the principal purpose of enabling the employee to enter the U.S. permanently in advance of the availability of a visa number. Other commenters contended that temporariness is established by a commitment that the alien will depart at the end of the authorized stay, unless he or she has been granted permanent residence in the meantime, and that it

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ought not to matter whether the principal or subordinate purpose in coming to the United States is to eventually acquire permanent residence.

Eight of the commenters were concerned about the criteria for determining temporary intent under dual intent. They believed that the criteria are inaccurate indicators and plainly unnecessary. Most felt that the petitioner's and beneficiary's affirmation to abide by immigration laws should be sufficient. Specific comments regarding the factors to be considered in determining intent were:

- Some of the criteria set forth under dual intent will be difficult, if not impossible to meet. Criteria will require significant amounts of information to satisfy, and much of it will have to come from abroad. The paperwork required will be onerous and the costs to the public and private sectors will be significant.
- The existence of a position abroad to which the employee can be transferred should not be a relevant consideration when an employer with high credibility affirms that it will abide by the terms of the authorized stay. Very few, if any, employers are prepared to designate a position abroad to which they can or will transfer an alien at the end of the temporary stay, although they have every intention of complying with immigration laws. With research or technical positions in high-tech fields, it may well be true that a company has no position abroad to which the employee could be transferred.
- Requirement for availability of a position abroad to which the employee *will* be transferred should be changed to require only the availability of a job overseas to which the employee *could* be transferred subject to the normal considerations used by business in making job assignments.
- Past history of employing aliens on a permanent or temporary basis is of limited value in determining intent in subsequent cases. Intent is specific in each case.
- The fact that an employer may have employed aliens without authorization in the past does not bear on temporary or permanent intent in a subsequent case. A denial of a petition on this factor would become a punishment for improper past activities. Congress has not provided for such punishment.
- If a job offer is an accommodation, then an H or L petition should not be approved regardless of dual intent.

The Service agrees with several commenters that the examples of factors to be considered by the director in determining intent should be incorporated into the regulations for the benefit of the public and Service officers. The final regulations include these factors.

Some commenters would have the Service take the position that the petitioner's and alien's intent do not matter as long as the petitioner and the alien intend that the alien will leave the United States at the end of the alien's authorized stay. In addition, an assertion by the petitioner and alien to that effect should be sufficient without providing documentation to establish intent.

The statute clearly differentiates between immigrants and nonimmigrants. Section 214(b) of the Act states that every alien shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officer, at the time of application for admission, that he is entitled to nonimmigrant status under 101(a)(15). Nonimmigrants must be coming to the United States for a temporary period with the intention to return abroad at the end of their authorized stay. The alien whose primary purpose is to immigrate to the United States must seek a preference classification and wait for a visa number to become available. The nonimmigrant classes are not intended to serve as a vehicle for an alien to enter the United States permanently in advance of the availability of a visa number.

The Service cannot, under the Act, condone the use of the nonimmigrant categories to wait for a visa number to become available. The criteria established by the Service for determining intent are reasonable and appropriate for the H–1 and L visa classification. They do not preclude the petitioner and the alien from providing evidence of other factors which they believe can more appropriately demonstrate their intent. The specific comments regarding the factors are discussed below.

Contrary to the belief of one commenter, none of the factors specified requires extensive documentation. Most require a written explanation from the petitioner and the alien. Others can be determined by the Service from the facts of the petition. Basically, the Service will require explanation of certain factors, rather than extensive documentation by the petitioner and the alien regarding their intent.

For L classification, the Service believes that the existence of operations and an appropriate position abroad to which the alien could be transferred at the end of the authorized stay is the most significant factor the Service can look at to determine intent. Intracompany transferee status envisions a temporary rotation to the United States with the expectation of returning to a position with the petitioner's operation(s) abroad. Where a permanent labor certification had been obtained or a preference petition had been filed for the petitioner and the record indicated that foreign operations had been terminated, the Service could reasonably conclude that the purpose of the nonimmigrant classification is for the alien to enter the United States permanently in advance of the availability of a visa number. The Service would also view the recommended language change "availability of a position abroad to which the employee could be transferred subject to normal considerations used by business in making job assignments" as no real commitment on the petitioner's part to transfer the alien to an assignment abroad.

The Service agrees that intent is specific in each case: however, a petitioner's past history of employing aliens would be somewhat indicative of future actions. For example, if the petitioner transferred 20 Ls to the United States during the past three years, and all became permanent residents based on their employment with the petitioner, there would be reason to believe that the petitioner is using the L category to permanently staff the U.S. operation in advance of the availability of visa numbers.

The extent to which an employer employs aliens without proper authorization bears on the credibility of the employer's assertions as to intent. To approve a petition involving permanent/temporary intent, the Service has to believe that the petitioner will not employ the alien beyond the authorized period of stay, unless the alien has become a permanent resident of the United States. If that employer employs other aliens without authorization, there is reason not to believe the employer's claim that he would not employ the beneficiary of the petition without authorization at the end of the authorized stay.

The Service agrees with one commenter's view that an H or L petition should be denied when the job offer is an accommodation, regardless of permanent/temporary intent. Service officers already deny H and L petitions when the job offer is cearly an accommodation.

Revocation of Petitions § 214.2(l)(9)

Four commenters felt that further explanation should be given regarding the circumstances in which revocation will occur because approval of the petition was improvidently granted. They believed that the term "improvidently granted" is so broad that a director could conceivably give notice of intention to revoke a petition for virtually any reason.

The Service agrees that the term "improvidently granted" could be given a broader interpretation than intended. This provision was intended to correct situations where there was gross error in approval of the petition. For example, after a petition has been approved, it may later be determined that a qualifying relationship did not exist between the United States and the foreign entity which employed the beneficiary abroad. To clearly specify what is intended, the Service has changed that provision to state that the director shall send to the petitioner a notice of intent to revoke the petition if it is found that approval of the petition involved gross error.

Technical Amendments

Other minor technical amendments have been made to provisions in the final rule to make the language technically correct or to further clarify the meaning. For example, the title "district director" has been changed to "director," since Regional Service Center directors have the same authority as district directors with respect to these regulations; petitioners will be allowed 30 days instead of 15 days to submit evidence in rebuttal to an intent to deny or revoke a petition: and further detail required in the petitioner's supporting statement which acompanies a beneficiary's application for extension of stay have been included in these regulations.

Description of Final Rule

This final rule sets forth the procedures whereby benefits under section 101(a)(15)(L) may be granted, denied, extended, revoked, or appealed. The regulations revise certain H–1 requirements, along with the L requirements, to change admission and/or extension time periods for an alien's stay in the United States, to define temporariness, and to clarify Service policy regarding the effect which approval of a labor certification or the filing of a preference petition has on an alien's H–1 or L nonimmigrant status. The H–1 revisions in this final rule will be incorporated at a later date into pending revisions to 8 CFR 214.2(h).

These regulations, for the most part, make clear Service policy regarding classification, admission, and requirements for petitioners and beneficiaries who seek approval of classification under section 101(a)(15)(L). They modify policies and procedures which, in the past, have restricted businesses and other organizations in transferring and maintaining key personnel needed in the United States. They also change some previous policies which had the effect of permitting a number of organizations and alien beneficiaries to qualify under section 101(a)(15)(L) that were not contemplated by Congress when that section was enacted.

This rule defines a number of terms relating to L classification and clarifies the Service's interpretations of these terms. Certain key requirements for L classification are also included in the definitions. For intracompany transferees, periods spent in the United States in lawful status for a branch of the same employer or a parent or an affiliate or subsidiary thereof are not interruptive of the required one year of continuous employment abroad, but do not count towards fulfillment of that requirement. Managers and executives must primarily perform managerial or executive duties; they will not be considered managers or executives if they primarily perform the tasks necessary to produce the product(s) or provide the service(s) of the organization. Special provisions have been established for managers and executives who are coming to the United States to open a new office. A qualifying organization under section 101(a)(15)(L) must, for the duration of the alien's stay in the United States, be doing business in the United States and at least one other country. Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization. Qualifying organizations may be a parent, branch, subsidiary, or an affiliate. Ownership and control of the entity abroad and the entity in the United States are factors for determining if the requisite relationship exists between the organizations.

The blanket petition program allows a petitioner to seek continuing approval of itself, its parent, and its branches, subsidiaries, and affiliates as qualifying organizations and, later, classification under section 101(a)(15)(L) of multiple numbers of aliens employed by itself, its parent, or some of its branches, subsidiaries, and affiliates. The blanket petition will be approved initially for three years and indefinitely thereafter. The approved organizations listed in the blanket petition may transfer managers, executives, and specialized knowledge professionals to the United States.

A petitioner is eligible to file a blanket petition on behalf of itself, its parent, and any number of its branches, subsidiaries, and affiliates as qualifying organizations if:

1. The petitioner, its parent, and those branches, subsidiaries, and affiliates are engaged in commercial trade or services;
2. The petitioner has an office in the United States that has been doing business for one year or more;
3. The petitioner has three or more domestic and foreign branches, subsidiaries, or affiliates; and
4. The petitioner and the other qualifying organizations have obtained approval of petitions for at least ten "L" managers, executives, or specialized knowledge professionals during the previous 12 months; or have U.S. subsidiaries or affiliates with combined annual sales of at least 25 million dollars; or have a United States workforce of at least 1,000 employees.

Under the blanket petition program, the Service is responsible for determining whether the petitioner and related entities are qualifying organizations. The Department of State or, in certain cases, the Service is responsible for determining the classification of aliens. Consular officers will determine whether the position in which the alien will be employed in the United States is with an organization named in the approval notice and whether the specific job is managerial, executive, or requires a specialized knowledge professional. The consular officer will determine further whether the alien had one immediate prior year of continuous employment abroad with an organization named in the approval notice and whether that employment was in a capacity that was managerial, executive, or required a specialized knowledge professional. All nonimmigrants who require a visa and are seeking admission as beneficiaries of blanket petitions will be required to possess a nonimmigrant visa issued by an American consular officer classifying the alien under section 101(a)(15)(L).

The rule adopts a specific limit on a temporary stay in the H–1 and L classifications. The beneficiary of an H–1 or L petition may be admitted to the United States initially for a period up to three years. An extension of stay may be authorized in increments not to exceed two years. After five years, an extension of stay not to exceed one year may be granted under extraordinary circumstances after certification to the

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Administrative Appeals Unit. After a five or six-year period of stay, a new petition for the same alien will not be approved unless the alien departed voluntarily and resided outside the United States for one year. The rule provides exceptions to these limitations in certain circumstances.

The rule clarifies that a petitioner may legitimately have the intent to use the services of an alien lawfully for a temporary period and, in the future, to permanently employ the alien when and if the petitioner may lawfully do so; the alien may also legitimately have the intent to come to the United States temporarily and depart voluntarily at the end of his or her authorized stay unless, within that period, the alien has become a permanent resident of the United States. The temporary admission may not be sought, however, for the principal purpose of immigrating prematurely. The regulations clarify that the burden is on the petitioner/alien to establish the requisite intent.

Since the petitioner and alien may legitimately have a temporary/permanent intent, the approval of a permanent labor certification or the filing of a preference petition for an alien will not by itself be ground to deny an H-1 or L petition or a request to extend an H-1 or L petition during the five/ six-year period, if certain conditions are met. The regulations specify those conditions.

Finally, the rule includes procedural changes which improve the Service's administration of section 101(a)(15)(L), such as the elimination of petition extensions and the inclusion of specific grounds for revocation of L petitions.

The Service believes that these regulations reflect Congressional intent as it relates to the H-1 and L nonimmigrant categories and that the public will benefit from the changes to the extent that they make these categories more useful to businesses and other organizations. They also make clear Service policy regarding classification, admission, the alien's temporary stay in the United States, and requirements for petitioners and beneficiaries who seek approval or classification under these nonimmigrant categories.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

Information collection requirements contained in this rule have been reviewed by OMB under the Paperwork Reduction Act and have been approved under control numbers 1115-0127 and 1115-0128.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Authority delegation, Employment, Organization and functions, Passports and visas.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for Part 214 continues to read as follows:

Authority: Secs. 101 and 214 of the Immigration and Nationality Act, as amended, (8 U.S.C. 1101 and 1184).

2. Section 214.2 would be amended by revising paragraph (h)(6)(i); redesignating paragraph (h)(6)(ii) as (h)(6)(v); adding new paragraphs (h)(6)(ii), (h)(6)(iii), and (h)(6)(iv); revising paragraph (h)(9); redesignating paragraph (h)(11) as (h)(13); redesignating paragraph (h)(10) as (h)(11) and revising; redesignating paragraph (h)(12) as (h)(10) and revising; adding a new paragraph (h)(12); redesignating paragraphs (h)(13) and (h)(14) as paragraphs (h)(14) and (h)(15), respectively; and revising (1).

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(6) *Approval of Petition*—(i) *General.* The director shall consider all the evidence submitted and such other evidence as he or she may require to assist in the adjudication. The director shall notify the petitioner on Form I-171C of the approval of a petition filed on Form I-129B. Form I-171C shall include the name(s) of the beneficiary(ies), their classification, and the petition's period of validity. A petition for more than one beneficiary may be approved in whole or in part. Form I-171C shall cover only those beneficiaries approved for classification under section 101(a)(15)(H).

(ii) *H-1 petition.* An approved petition for an alien classified under section 101(a)(15)(H)(i) of the Act is valid for the period of established need for the beneficiary's temporary services, but not to exceed three years.

(iii) *H-2 petition.* If a certification by the Secretary of Labor or designated representative is attached to a petition to accord an alien a classification under section 101(a)(15)(H)(ii) of the Act, the approval of the petition will not be valid beyond the date to which the certification is valid. When the certification does not state a validity period, approval of the petition will not exceed one year from the date on which the certification was issued.

(iv) *H-3 petition.* An approved petition for an alien classified under section 101(a)(15)(H)(iii) of the Act is valid for the documented length of the approved training program.

* * * * *

(9) *Admission*—(i) *General.* A beneficiary may apply for admission to the United States only during the validity period of the petition. The authorized period of the beneficiary's admission shall not exceed the date of validity of the petition.

(ii) *H-1 limitation on admission.* An alien who, as provided in paragraph (h)(10)(ii) of this section, has spent five or six years in the United States under section 101(a)(15)(H)(i) of the Act may not be readmitted to the United States under the H or L visa classification, unless the alien has resided and been physically present outside the United States, except for brief trips for pleasure or business, for the immediate prior year. In view of this restriction, a new petition shall not be approved for an alien who has spent five or six years in the United States under section 101(a)(15)(H)(i) of the Act, unless the alien has resided and been physically present outside the United States. Brief trips for pleasure or business, for the immediate prior year are not interruptive of the one-year requirement, but do not count towards fulfillment of that requirement. The petitioner shall provide information about the alien's employment, place of residence, and the dates and purpose of any trips to the United States for the previous year. The limitations in this subparagraph shall not apply to aliens who do not reside continually in the United States and whose employment in the United States is seasonal, intermittent, or an aggregate of six months or less per year. In addition, the limitations shall not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. To qualify for this exception, each period of stay must be based on a new petition, or the petitioner and the alien must provide clear and convincing proof that the alien qualifies for this exception. Clear and convincing proof shall consist of evidence such as arrival and departure records, copies of tax returns, and records of employment abroad.

(10) *Extension of visa petition validity*—(i) *General.* A visa petition under section 101(a)(15)(H) of the Act may be extended by filing a new Form I-129B with the number of the previously approved petition. If there is no change in the previously approved visa petition, supporting documents are not required unless requested by the Service.

(ii) *H-1 petition.* An H-1 petition may be extended in increments of up to two years; however, the total period of approvals, including the initial approval, may not exceed five years, except in extraordinary circumstances. The number of petitions filed is not relevant. An additional extension not to exceed one year may be granted beyond five years under extraordinary circumstances. Extraordinary circumstances shall exist when it is found that termination of the alien's services will impose extreme hardship on the petitioner's business operation or that the alien's services will be in the national welfare, safety, or security interests of the United States. No further extensions may be granted. If the director decides that approval of the petition extension beyond five years, but not to exceed six years is warranted, the decision shall be certified to the Administrative Appeals Unit.

(iii) *H-2 and H-3 petitions.* A visa petition extension for H-2 and H-3 classification may be authorized in increments of not more than 12 months each under the same terms and conditions that applied to the original approval.

(11) *Extension of stay*—(i) *General.* If maintaining status, the beneficiary may apply for an extension of stay to the validity period of the approved visa petition by submitting Form I-539. An application for an extension of stay on behalf of a group of beneficiaries covered by the same original petition must be filed on Form I-539 by each individual alien, but only one form I-129B for extension of visa petition validity is required. In the case of an extension of stay for an alien ensemble performing as a group, only one Form I-539 is required with an attached list of beneficiaries. A change in the previously authorized employment or training requires the filing of a new petition by the prospective employer or trainer and the filing of an I-539 by the beneficiary. The Forms I-539 and I-129s shall be filed concurrently. There is no appeal from the denial of an alien's request for an extension of stay filed on Form I-539.

(ii) *H-1 extension of stay.* An extension of stay may be authorized in increments of up to two years for a beneficiary of an H-1 petition. The alien's total period of stay may not exceed five years, except in extraordinary circumstances. The number of extensions requested during the five years and changes in employers are not relevant. An extension of stay not to exceed one year may be granted beyond five years under the extraordinary circumstances required in the paragraph (h)(10)(ii) of this section for extension of an H-1 visa petition. No further extensions may be granted. If the director decides that approval of the one-year extension is warranted because of extraordinary circumstances, the decision shall be certified to the Administrative Appeals Unit. No extension shall be granted to exceed the validity of the approved petition.

(iii) *H-2 extension of stay.* For an alien defined in section 101(a)(15)(H)(ii) of the Act, the application for extension of stay must be accompanied by a labor certification or a notice that the certification cannot be made, and the alien shall not be granted an extension which would result in an unbroken stay in the United States for more than three years. An application for an alien athlete or entertainer admitted under section 101(a)(15)(H)(ii) of the Act to perform services in the United States Virgin Islands cannot be approved for extension of stay beyond a total of 45 days.

(iv) *H-3 extension of stay.* An extension may be authorized in increments of not more than 12 months each under the same terms and conditions that apply to admission.

(12) *Effect of approval of a permanent labor certification or filing of a preference petition on H-1 classification*—(i) *Petitioner*—(A) *Conditions.* The approval of a permanent labor certification or the filing of a preference petition for an alien is not by itself ground to deny an H-1 petition or a request to extend an H-1 petition if the director, in his or her judgment, determines that certain conditions are met:

(*1*) The dates of employment must be within the time limit for which an H-1 petition may be authorized or extended; and

(*2*) The petitioner must establish that temporary classification is not being requested for the principal purpose of enabling the employee to enter the United States permanently in advance of the availability of a visa number.

(B) *Evidence.* In deciding whether or not the foregoing conditions have been met, the director will consider evidence provided by petitioner of factors such as, but not limited to the following, as appropriate:

(*1*) Petitioner's prior history of use of aliens in temporary and permanent capacities and extent to which petitioner has employed aliens without lawful authorization, and

(*2*) Whether the employment appears to be an accommodation rather than a bona fide employer/employee relationship.

(ii) *Beneficiary*—(A) *Conditions.* The approval of a labor certification or the filing of a preference petition is not by itself a ground to deny an alien's application for admission, change of status, or extension of stay if the director, in his or her judgment, determines that certain conditions are met:

(*1*) The alien must demonstrate that he/she has not abandoned residence abroad; and

(*2*) The alien must establish that he or she intends to enter and remain in the United States only in accordance with any authorized stay and to return abroad voluntarily at or before termination of that authorization, unless he or she has become a permanent resident of the United States in the meantime.

(B) *Evidence.* In determining whether the alien meets these conditions, the director shall consider evidence, which the alien shall provide, of appropriate factors such as, but not limited to, the following:

(*1*) Evidence of a residence abroad, such as home, bank accounts, or prospects of a job abroad at the end of the authorized stay;

(*2*) Close family ties abroad;

(*3*) History of previous stays in the United States and visa classifications; evidence that the alien has not entered or remained in the United States in violation of status or U.S. immigration laws; and

(*4*) Alien's employment history within and outside the United States.

* * * * *

(l) *Intracompany transferees*—(1) *Admission of intracompany transferees*—(i) *General.* Under section 101(a)(15)(L) of the Act, an alien employee of a qualifying organization may be admitted temporarily to the United States to continue employment with a branch of his/her same employer or a parent, affiliate, or subsidiary of that employer in a managerial, executive, or specialized knowledge capacity. An alien transferred to the United States under this nonimmigrant classification is referred to as an intracompany transferee, and the organization which seeks the classification of an alien as an intracompany transferee is referred to as the petitioner. The Service has responsibility for determining whether the alien is eligible for admission and whether the petitioner is a qualifying organization. These regulations set forth

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the procedures whereby these benefits may be applied for and granted, denied, extended, or revoked. They also set forth procedures for appeal of adverse decisions and admission of intracompany transferees. Certain petitioners seeking the classification of aliens as intracompany transferees may file blanket petitions with the Service. Under the blanket petition process, the Service is responsible for determining whether the petitioner and its parent, branches, subsidiaries, and affiliates specified are qualifying organizations. The Department of State or, in certain cases, the Service is responsible for determining the classification of the alien.

(ii) *Definitions.*

(A) "Intracompany transferee" means an alien who, immediately preceding the time of his/her application for admission into the United States, has been employed abroad continuously for the immediate prior year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to continue to render his/her services to a branch of the same employer or a parent, subsidiary, or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge. Periods spent in the United States in lawful status for a branch of the same employer or a parent, subsidiary, or affiliate thereof shall not be interruptive of the one year of continuous employment abroad, but such periods shall not be counted toward fulfillment of that requirement.

(B) "Managerial capacity" means an assignment within an organization in which the employee primarily directs the organization or a department or subdivision of the organization, supervises and controls the work of other supervisory, professional, or managerial employees, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), and exercises discretionary authority over day-to-day operations. The term manager does not include a first-line supervisor, unless the employees supervised are professional, nor does it include an employee who primarily performs the tasks necessary to produce the product and/or to provide the service(s) of the organization. See paragraph (1)(3)(v) of this section for application of this definition to aliens who are coming to the United States to open a new office.

(C) "Executive capacity" means an assignment within an organization in which the employee primarily directs the management of an organization or a major component or function of that organization, establishes the goals and policies of the organization, component or function, exercises wide latitude in discretionary decision-making, and receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the business. This definition does not include an employee who primarily performs the tasks necessary to produce the product and/or to provide the service(s) of the organization. See paragraph (1)(3)(v) of this section for application of this definition to aliens who are coming to the United States to open a new office.

(D) "Specialized knowledge" means knowledge possessed by an individual whose advanced level of expertise and proprietary knowledge of the organization's product, service, research, equipment, techniques, management, or other interests of the employer are not readily available in the United States labor market. This definition does not apply to persons who have general knowledge or expertise which enables them merely to produce a product or provide a service.

(E) "Specialized knowledge professional" means an individual who has specialized knowledge as defined in paragraph (l)(1)(ii)(D) of this section and is a member of the professions as defined in section 101(a)(32) of the Immigration and Nationality Act.

(F) "New office" means an office that has been doing business for less than one year.

(G) "Qualifying organization" means a United States or foreign firm, corporation, or other legal entity which, for the duration of the alien's stay in the United States as an intracompany transferee, directly or through a parent, branch, affiliate, or subsidiary is or will be doing business as an employer in the United States and in at least one other country and which otherwise meets the requirements of section 101(a)(15)(L). A qualifying organization is not required to engage in international trade.

(H) "Doing business" means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization which has employees and does not include the mere presence of an agent or office of the qualifying organization in the United States or abroad.

(I) "Parent" means a firm, corporation, or other legal entity which has subsidiaries.

(J) "Branch" means an operating division or office of the same organization housed in a different location.

(K) "Subsidiary" means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, 50% of a 50–50 joint venture and has equal control and veto power; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) "Affiliate" means one of two subsidiaries both of which are owned and controlled by the same parent or individual or one of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

(M) "Director" means a district director or Regional Service Center director with delegated authority at 8 CFR 103.1.

(2) *Filing of petitions*—(i) Except as provided in paragraph (l)(2)(ii) of this section, a petitioner seeking to classify an alien as an intracompany transferee shall file a petition in duplicate on Form I–129L with the director having jurisdiction over the area where the alien will be employed. The petitioner shall advise the Service whether it has filed a petition for the same beneficiary with another office and certify that it will not file a petition for the same beneficiary with another office, unless the circumstances and conditions in this petition have changed. Failure to make a full disclosure of previous petitions filed will result in denial of this petition.

(ii) A United States petitioner which meets the requirements of paragraph (l)(4) of this section and seeks continuing approval of itself and its parent, branches, specified subsidiaries and affiliates as qualifying organizations and, later, classification under section 101(a)(15)(L) of multiple numbers of aliens employed by itself, its parent, or those branches, subsidiaries, or affiliates may file a blanket petition on Form I–129L with the director having jurisdiction over the area where the petitioner is located. The blanket petition shall be adjudicated and maintained at the appropriate Regional Service Center. Approved blanket petition files shall be maintained indefinitely by that Regional Service Center. The petitioner shall be the single representative for the qualifying organizations with which the Service will deal regarding the blanket petition.

(3) *Evidence for individual petitions.* An individual petition filed on Form I–129L shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(4)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization immediately preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

(v) If the petition indicates that the beneficiary is coming to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary's prior year abroad was in an executive or managerial capacity and the proposed employment involves executive or managerial authority over the new operation;

(C) The intended United States operation, within one year of approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(ii) (A) or (B) of this section, supported by information regarding:

(1) The proposed number of employees and the types of positions they will hold;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The size and staffing levels of the foreign entity.

(vi) If the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and evidence that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States.

(vii) Such other evidence as the director, in his or her discretion, may deem necessary.

(4) *Blanket petitions*—(i) A petitioner which meets the following requirements may file a blanket petition seeking continuing approval of itself and some or all of its parent, branches, subsidiaries, and affiliates as qualifying organizations if:

(A) The petitioner and each of those entities are engaged in commercial trade or services;

(B) The petitioner has an office in the United States that has been doing business for one year or more;

(C) The petitioner has three or more domestic and foreign branches, subsidiaries, or affiliates; and

(D) The petitioner and the other qualifying organizations have obtained approval of petitions for at least ten "L" managers, executives, or specialized knowledge professionals during the previous 12 months; or have U.S. subsidiaries or affiliates with combined annual sales of at least $25 million; or have a United States work force of at least 1,000 employees.

(ii) Managers, executives, and specialized knowledge professionals employed by firms, corporations, or other entities which have been found to be qualifying organizations pursuant to an approved blanket petition may be classified as intracompany transferees and admitted to the United States as provided in paragraphs (l) (5) and (11) of this section.

(iii) When applying for a blanket petition, the petitioner shall include in the blanket petition all of its branches, subsidiaries, and affiliates which plan to seek to transfer aliens to the United States under the blanket petition. An individual petition may be filed by the petitioner or organizations in lieu of using the blanket petition procedure. However, the petitioner and other qualifying organizations may not seek L classification for the same alien under both procedures, unless a consular officer first denies eligibility. Whenever a petitioner which has blanket L approval files an individual petition to seek L classification for a manager, executive, or specialized knowledge professional, the petitioner shall advise the Service that it has blanket L approval and certify that the beneficiary has not and will not apply to a consular officer for L classification under the approved blanket petition.

(iv) *Evidence.* A blanket petition filed on Form I–129L shall be accompanied by:

(A) Evidence that the petitioner meets the requirements of paragraph (l)(4)(i) of this section.

(B) Evidence that all entities for which approval is sought are qualifying organizations as defined in subparagraph (l)(1)(ii)(G) of this section.

(C) Such other evidence as the director, in his or her discretion, deems necessary in a particular case.

(5) *Certification and admission procedures for beneficiaries under blanket petition.*

(i) *Jurisdiction.* United States consular officers shall have authority to determine eligibility of individual beneficiaries outside the United States seeking L classification under blanket petitions, except for visa-exempt nonimmigrants. An application for a visa-exempt nonimmigrant seeking L classification under a blanket petition or by an alien in the United States applying for change of status to L classification under a blanket petition shall be filed with the Service office at which the blanket petition was filed.

(ii) *Procedures*—(A) When one qualifying organization listed in an approved blanket petition wishes to transfer an alien outside the United States to a qualifying organization in the United States and the alien requires a visa to enter the United States, that organization shall complete Form I–129S, Certificate of Eligibility for Intracompany Transferee under a Blanket Petition, in an original and three copies. The qualifying organization shall retain one copy for its records and send the original and two copies to the alien. A copy of the approved Form I–171C must be attached to the original and each copy of Form I–129S.

(B) After receipt of Form I–171C and Form I–129S, a qualified employee who is being transferred to the United States may use these documents to apply for visa issuance with the consular officer within six months of the date on Form I–129S.

(C) When the alien is a visa-exempt nonimmigrant seeking L classification under a blanket petition or when the alien is in the United States and is seeking a change of status from another nonimmigrant classification to L classification under a blanket petition, the petitioner shall submit Form I–129S, a copy of the approved Form I–171C, and, as appropriate, Form I–506 (Application for Change of Nonimmigrant Status) completed by the alien beneficiary to the Service office with which the blanket petition was filed.

(D) The consular or Service officer shall determine whether the position in which the alien will be employed in the United States is with an organization named in the approved petition and whether the specific job is for a manager, executive, or specialized knowledge professional. The consular or Service officer shall determine further whether the alien's immediate prior year of continuous employment abroad was with an organization named in the

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petition and was in a position as manager, executive, or specialized knowledge professional.

(E) Consular officers may grant "L" classification only in clearly approvable applications. If the consular officer determines that the alien is eligible for L classification, the consular officer may issue a nonimmigrant visa, noting the visa classification "Blanket L-1" for the principal alien and "Blanket L-2" for any accompanying or following to join spouse and children. The consular officer shall also endorse all copies of the alien's Form I-129S with the blanket L-1 visa classification and return the original and one copy to the alien. When the alien is inspected for entry into the United States, both copies of the Form I-129S shall be stamped to show a validity period not to exceed three years and the second copy collected and sent to the appropriate Regional Service Center for control purposes. Service officers who determine eligibility of aliens for L-1 classification under blanket petitions shall endorse both copies of Form I-129S with the blanket L-1 classification and the validity period not to exceed three years and retain the second copy for Service records.

(F) If the consular officer determines that the alien is ineligible for L classification under a blanket petition, the consular officer's decision shall be final. The consular officer shall record the reasons for the denial on Form I-129S, retain one copy, return the original of I-129S to the Service office which approved the blanket petition, and provide a copy to the alien. In such a case, an individual petition may be filed for the alien with the director having jurisdiction over the area of intended employment; the petition shall state the reason the alien was denied L classification and specify the consular office which made the determination and the date of the determination.

(G) An alien admitted under an approved blanket petition may be reassigned to any organization listed in the approved petition without referral to the Service during his/her authorized stay if the alien will be performing virtually the same job duties. If the alien will be performing different job duties, the petitioner shall complete a new Certificate of Eligibility and send it for approval to the director who approved the blanket petition.

(6) *Certification of documents.* A copy of a document submitted in support of a visa petition filed pursuant to section 214(c) of the Act and § 214.2(1) of this part may be accepted, without the original, if the copy bears a certification by an attorney or a voluntary agency in accordance with § 204.2(j) of this chapter. However, the original document shall be submitted if requested by the Service.

(7) *Approval of petition*—(i) *General.* The director shall notify the petitioner on Form I-171C of the approval of an individual or a blanket petition filed on Form I-129L. Only the Director of a Regional Service Center may approve blanket petitions. The original Form I-171C received from the Service with respect to an approved individual or blanket petition may be duplicated by the petitioner for the beneficiary's use as described in paragraph (l)(13) of this section.

(A) *Individual petition*—(*1*) Form I-171C shall include the beneficiary's name and classification and the petition's period of validity.

(*2*) An individual petition approved under this paragraph shall be valid for the period of established need for the beneficiary's services, not to exceed three years, except where the beneficiary is coming to the United States to open or to be employed in a new office.

(*3*) If the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year, after which the petitioner shall demonstrate as required by paragraph (l)(14)(ii) of this section that it is doing business as defined in paragraph (l)(1)(ii)(H) of this section to extend the validity of the petition.

(B) *Blanket petition*—(*1*) Form I-171C shall identify the approved organizations included in the petition and the petition's period of validity.

(*2*) A blanket petition approved under this paragraph shall be valid initially for a period of three years and may be extended indefinitely thereafter if the qualifying organizations have complied with these regulations.

(*3*) A blanket petition may be approved in whole or in part and shall cover only qualifying organizations.

(C) *Amendments.* The petitioner shall file an amended petition with the Service office where the original petition was filed to reflect changes in approved relationships, additional qualifying organizations, and any information which would affect the beneficiary's employment under section 101(a)(15)(L) of the Act.

(ii) *Spouse and dependents.* The spouse and unmarried minor children of the beneficiary are entitled to the same nonimmigrant classification and length of stay as the beneficiary, if the beneficiary will be employed and residing primarily in the United States and if the spouse and unmarried minor children are accompanying or following to join the beneficiary in the United States. Neither the spouse nor any child may accept employment unless he or she is otherwise authorized to be employed pursuant to the Act.

(8) *Denial of petition*—(i) *Notice of intent to deny.* When an adverse decision is proposed on the basis of evidence not submitted by the petitioner, the director shall notify the petitioner of his or her intent to deny the petition and the basis for the denial. The petitioner may inspect and rebut the evidence and will be granted a period of 30 days from the date of the notice in which to do so. All relevant rebuttal material will be considered in making a final decision.

(ii) *Individual petition.* If an individual petition is denied, the petitioner shall be notified on Form I-292 of the denial, the reasons for the denial, and the right to appeal the denial.

(iii) *Blanket petition.* If a blanket petition is denied in whole or in part, the petitioner shall be notified on Form I-292 of the decision, the reasons for the denial, and the right to appeal the denial. When the petition is denied in part, the Service office issuing the denial shall forward to the petitioner, along with the denial, a Form I-171C listing those organizations which were found to qualify. If the decision is reversed on appeal, a new Form I-171C shall be sent to the petitioner to reflect the changes made as a result of the appeal.

(9) *Revocation of approval of individual and blanket petitions*—(i) *General.* The petitioner shall notify the Service of any changes in the relationship between approved entities and any changes in the employment of a beneficiary which would affect eligibility under section 101(a)(15)(L) and these regulations within ten days of the change.

(ii) *Automatic revocation.* The approval of any individual or blanket petition is automatically revoked if the petitioner withdraws the petition or the petitioner fails to request indefinite validity of a blanket petition.

(iii) *Revocation on notice*—(A) The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he/she finds that:

(*1*) One or more entities are no longer qualifying organizations;

(*2*) The alien is no longer eligible under section 101(a)(15)(L) of the Act;

(*3*) A qualifying organization(s) violated requirements of section 101(a)(15)(L) and these regulations;

(*4*) The statement of facts contained in the petition was not true and correct; or

(*5*) Approval of the petition involved gross error; or

(*6*) None of the qualifying organizations in a blanket petition have used the blanket petition procedure for three consecutive years.

(B) The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. Upon receipt of this notice, the petitioner may submit evidence in rebuttal within 30 days of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If a blanket petition is revoked in part, the remainder of the petition shall remain approved, and a revised Form I-171C shall be sent to the petitioner with the revocation notice.

(iv) *Status of beneficiaries.* If an individual petition is revoked, the beneficiary shall be required to leave the United States, unless the beneficiary has obtained other work authorization from the Service. If a blanket petition is revoked and the petitioner and beneficiaries already in the United States are otherwise eligible for L classification, the director shall extend the blanket petition for a period necessary to support the stay of those blanket L beneficiaries. The approval notice, Form I-171C, shall include only the names of qualifying organizations and covered beneficiaries. No new beneficiaries may be classified or admitted under this limited extension.

(10) *Appeal of denial or revocation of individual or blanket petition*—(i) A petition denied in whole or in part may be appealed under Part 103 of this chapter.

(ii) A petition that has been revoked on notice in whole or in part may be appealed under Part 103 of this chapter. Automatic revocations may not be appealed.

(11) *Admission.* A beneficiary may apply for admission to the United States only while the individual or blanket petition is valid. The beneficiary of an individual petition shall not be admitted for a date past the validity period of the petition. The beneficiary of a blanket petition may be admitted for three years even though the initial validity period of the blanket petition may expire before the end of the three-year period. If the blanket petition will expire while the alien is in the United States, the burden is on the petitioner to file for indefinite validity of the blanket petition or to file an individual petition in the alien's behalf to support the alien's status in the United States. The admission period for any alien under section 101(a)(15)(L) shall not exceed three years unless an extension of stay is granted pursuant to paragraph (l)(15) of this section.

(12) *L-1 limitation on admission*—(i) *Limits.* An alien who has spent five or, in some cases, six years in the United States under section 101(a)(15)(L) may not be readmitted to the United States under the H or L visa classification unless the alien has resided and been physically present outside the United States, except for brief visits for business or pleasure, for the immediate prior year. Such visits do not interrupt the one year abroad, but do not count towards fulfillment of that requirement. In view of this restriction, a new individual petition may not be approved for an alien who has spent five or six years in the United States under section 101(a)(15)(L) unless the alien has resided and been physically present outside the United States, except for brief visits for business or pleasure, for the immediate prior year. The petitioner shall provide information about the alien's employment, place of residence, and the dates and purpose of any trips to the United States for the previous year. A consular or Service officer may not grant L classification under a blanket petition to an alien who has spent five or six years in the United States unless the alien has met the limitations of this subparagraph.

(ii) *Exception.* The limitations of paragraph (l)(12)(i) of this section shall not apply to aliens who do not reside continually in the United States and whose employment in the United States is seasonal, intermittent, or an aggregate of six months or less per year. In addition, the limitations will not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. To qualify for this exception, each period of stay must be based on a new petition, or the petitioner and the alien must provide clear and convincing proof that the alien qualifies for this exception. Clear and convincing proof shall consist of evidence such as arrival and departure records, copies of tax returns, and records of employment abroad.

(13) *Beneficiary's use of Form I-171C and Form I-129S*—(i) *Beneficiary of an individual petition.* The beneficiary of an individual petition who does not require a nonimmigrant visa may present a copy of Form I-171C at a port of entry to facilitate entry into the United States. The copy of Form I-171C shall be retained by the beneficiary and presented during the validity of the petition (provided that the beneficiary is entering or reentering the United States) for entry and reentry to resume the same employment with the same petitioner (within the validity period of the petition) and to apply for an extension of stay. A beneficiary who is required to present a visa for admission and whose visa will have expired before the date of his or her intended return may use an original Form I-171C to apply for a new or revalidated visa during the validity period of the petition and to apply for an extension of stay.

(ii) *Beneficiary of a blanket petition.* Each alien seeking L classification and admission under a blanket petition shall present a copy of Form I-171C and a Form I-129S from the petitioner which identifies the position and organization from which the employee is transferring, the new organization and position to which the employee is destined, a description of the employee's actual duties for both the new and former positions, and the positions, dates, and locations of previous L stays in the United States. A current copy of Form I-171C and Form I-129S should be retained by the beneficiary and used for leaving and reentering the United States to resume employment with a qualifying organization during his/her authorized period of stay, for applying for a new or revalidated visa, and for applying for readmission at a port of entry. The alien may be readmitted even though reassigned to a different organization named on the Form I-171C than the one shown on Form I-129S if the job duties are virtually the same.

(14) *Extension of visa petition validity*—(i) *Individual petition.* An individual petition under section 101(a)(15)(L), except those involving new offices, shall be automatically extended without the filing of Form I-129L, if the director extends the stay of the alien beneficiary in accordance with paragraph (l)(15) of this section. A new Form I-171C shall be issued to the petitioner at the same time that the beneficiary is notified that his or her extension of stay application has been approved. The dates of extension shall be the same for the petition and the beneficiary's extension of stay. If the alien's extension of stay application is denied, lack of action on the petition may not be appealed. The filing of a new petition is not precluded.

(ii) *New offices.* A visa petition under section 101(a)(15)(L) which involved the opening of a new office may be extended by filing a new Form I-129L, accompanied by the following:

(A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;

(B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;

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(C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;

(D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees; and

(E) Evidence of the financial status of the United States operation.

(iii) *Blanket petitions*—(A) *Extension procedure.* A blanket petition may only be extended indefinitely by filing a new Form I–129L with a copy of the previous approval notice and a report of admissions during the preceding three years. The report of admissions shall include a list of the aliens admitted under the blanket petition during the preceding three years, including positions held during that period, the employing entity, and the dates of initial admission and final departure of each alien. The petitioner shall state whether it still meets the criteria for filing a blanket petition and shall document any changes in approved relationships and additional qualifying organizations.

(B) *Other conditions.* If the petitioner in an approved blanket petition fails to request indefinite validity or if indefinite validity is denied, the petitioner and its other qualifying organizations shall seek L classification by filing individual petitions until another three years have expired; after which the petitioner may seek approval of a new blanket petition.

(15) *Extension of stay*—(i) *General.* An extension of stay may be authorized in increments of up to two years for beneficiaries of individual and blanket petitions. The total period of stay may not exceed five years except that extension of stay not to exceed one year may be granted beyond five years in extraordinary circumstances. The number of petitions filed and changes in employers are not relevant. Extraordinary circumstances shall exist when it is found that termination of the alien's services will impose extreme hardship on the petitioner's business operation or that the alien's services will be in the national welfare, safety, and security interests of the United States. No further extensions may be granted. If the director decides that approval of an extension beyond five years is warranted because of extraordinary circumstances, the decision shall be certified to the Administrative Appeals Unit. The spouse and minor children of an L–1 beneficiary may be included in the extension application and given extensions of stay to the same date as the beneficiary.

(ii) *Beneficiary of individual petition.* A beneficiary of an individual petition may apply for an extension of stay by submitting Form I–539, a copy of the original I–171C, and a letter from the petitioner which describes the beneficiary's current duties, hours of work and salary, specifies the new dates of employment requested, indicates whether and how the terms and conditions of the original petition have changed, specifies the current relationship between the petitioner and the qualifying organization abroad, and gives the reasons for the extension.

(iii) *Beneficiary of blanket petition.* A beneficiary of a blanket petition may apply for an extension of stay by submitting Form I–539, his or her copy of Form I–171C and I–129S, and a letter from the petitioner which describes the beneficiary's current duties, hours of work and salary, indicates whether and how the terms and conditions of the original Certificate of Eligibility have changed, and specifies the new dates of employment requested.

(iv) A new Form I–171C and a revalidated Form I–129S, as appropriate, shall be sent to the applicant if the extension is approved. Form I–541 shall be sent if the extension is denied. There is no appeal from the denial of an extension of stay.

(16) *Effect of approval of a permanent labor certification or filing of a preference petition on L–1 classification*—(i) *Petitioner*—(A) *Conditions.* The approval of a permanent labor certification or the filing of a preference petition for an alien is not by itself ground to deny an L petition or a request to extend an L petition if the director, in his or her judgment, determines that certain conditions are met:

(*1*) The dates of temporary employment must be within the time limit for which a petition may be authorized or extended;

(*2*) The petitioner must establish that temporary classification is not being requested for the principal purpose of enabling the employee to enter the United States permanently in advance of the availability of a visa number; and

(*3*) The petitioner must establish that it will transfer the beneficiary to an assignment abroad upon completion of the approved temporary employment unless the alien has been accorded permanent resident status or other authorization to work.

(B) *Evidence.* In order to establish the above conditions, the petitioner shall provide evidence of factors, such as:

(*1*) Petitioner's prior history of use of aliens in temporary and permanent capacities and extent to which petitioner has employed aliens without lawful authorization;

(*2*) Whether the employment appears to be an accommodation rather than a bona fide employer/employee relationship;

(*3*) Whether the organization has an established program for rotation of international personnel;

(*4*) Whether the employer or a subsidiary, parent, or affiliate has operations and an appropriate position abroad to which the alien could be transferred at the end of his/her authorized stay; and

(*5*) When the employee is a major stockholder or the sole proprietor of the petitioner, whether the petitioner has a record of international entrepreneurship.

(ii) *Beneficiary*—(A) *Conditions.* The approval of a labor certification or the filing of a preference petition is not by itself ground to deny an alien's application for admission, change of status, or extension of stay if the director, in his or her judgment, determines that certain conditions are met:

(*1*) The alien has demonstrated that he or she intends to enter and remain in the United States only in accordance with any authorized stay; and

(*2*) The alien has demonstrated that he or she intends to return abroad voluntarily at or before termination of that authorization, unless he or she has been awarded permanent resident status or other authorization to work in the meantime.

(B) *Evidence.* In order to establish that the above conditions are met, the alien shall provide evidence of factors, such as:

(*1*) History of previous stays in the United States and visa classifications and evidence that the alien has not entered or remained in the United States in violation of status or U.S. immigration laws;

(*2*) Alien's employment history within and outside the United States;

(*3*) Whether the employment appears to be an accommodation; and

(*4*) Whether the alien could reasonably be expected to continue his or her career outside the United States upon completion of his or her temporary employment.

* * * * *

Dated: February 10, 1987.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 87–3769 Filed 2–25–87; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 302

[Docket No. 70115–7015]

Foreign Excess Property Regulations; Removal

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce is removing 15 CFR Part 302 from the Code of Federal Regulations. The Department is taking this action because Congress has further amended the Federal Property and Administrative Services Act of 1949, as amended, (63 Stat. 398, 399; 40 U.S.C. 512, 514(b) and 472; "the Act") by striking out in section 402(a)(1) "; but in no event shall any property be sold without a condition forbidding its importation into the United States, unless the Secretary of Agriculture (in the case of any agricultural commodity, food, or cotton or woolen goods) or the Secretary of Commerce (in the case of any other property) determines that the importation of such property would relieve domestic shortages or otherwise be beneficial to the economy of this country." Accordingly, the Department of Commerce no longer has the responsibility for making determinations on the importation of foreign excess property.

EFFECTIVE DATE: February 26, 1987.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, Statutory Import Programs Staff, Room 1523, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230, telephone no. (202) 377–1660.

SUPPLEMENTARY INFORMATION: Section 402 of the Act required the Department of Commerce to authorize the importation of foreign excess property (FEP) on the basis of an affirmative finding either that there was a shortage of the property or that the importation would be beneficial to the economy of the United States. FEP is any property under control of any Federal agency which is not required for its needs and the discharge of its responsibilities, found to be excess, and then disposed of outside the States of the Union, the District of Columbia, Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands. The idea behind section 402 was that the domestic peacetime economy should not be disrupted by surplus military equipment brought back to the U.S. section 3 of Pub. L. 99–627 (November 7, 1986) made the elimination of the Department's responsibilities in this area effective immediately. Therefore, removal of this rule is effective immediately. Notice and opportunity to comment are deemed impractical, unnecessary, and contrary to the public interest.

This action will not have a significant economic impact on a substantial number of small entities.

This action eliminates an information collection subject to the Paperwork Reduction Act (OMB control no. 0625–0026).

List of Subjects in 15 CFR Part 302

Customs duties and inspection, Surplus government property, Administrative practice and procedure, Penalties.

PART 302—[REMOVED AND RESERVED]

For reasons set forth above, Part 302 is removed and reserved.

Dated: February 18, 1987.

Joseph A. Spetrini,

Deputy to the Deputy, Assistant Secretary for Import Administration.

[FR Doc. 87–3906 Filed 2–25–87; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket Nos. RM86–12–001 through RM86–12–003; Order No. 461–A]

Generic Determination of Rate of Return on Common Equity for Public Utilities

Issued: February 19, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is denying requests for rehearing of its final rule determining the basis for the benchmark rates of return for electric utilities for rate schedule filings made on or after February 1, 1987, in accordance with the new Part 37 of its regulations. As indicated in § 37.8 of the Commission's regulation, these benchmark rates of return remain advisory only.

EFFECTIVE DATE: The Order Denying Requests for Rehearing is effective February 19, 1987.

FOR FURTHER INFORMATION CONTACT:

Technical:
Marvin Rosenberg,
Ronald Rattey,
Office of Regulatory Analysis,
Federal Energy Regulatory Commission,
825 North Capitol Street, NE.,
Washington, DC 20426,
(202) 357–8283.

Legal:
L. Jorn Dakin,
Lori J. Tsang,
Office of the General Counsel,
Federal Energy Regulatory Commission,
825 North Capital Street, NE.,
Washington, DC 20426,
(202) 357–8472.

SUPPLEMENTARY INFORMATION:

Order Denying Requests for Rehearing

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is denying three requests for rehearing of Order No. 461.[1] That order determined: (1) The average cost of common equity for the jurisdictional operations of public utilities for the year ending June 30, 1986 ("base year") and (2) a quarterly indexing procedure to update the cost estimate and establish benchmark rates of return on common equity for use in individual rate cases.[2] Order No. 461 was the third annual proceeding for evaluating the rate of return issue on a generic basis. The benchmark rates of return remain advisory for the year ending January 31, 1988.

II. Background

In Order No. 389,[3] the Commission added a new Part 37 to its regulations to implement a generic approach to rate of return on common equity determinations. The Commission's intent has been to produce more accurate and consistent rate of return decisions, to involve the Commission on an ongoing basis in the consideration of the financial and operating circumstances of the industry, and to reduce the resources directed to this issue by applicants, intervenors, and the Commission.[3]

[1] Order No. 461, 52 FR 11 (1987).

[2] Generic Determination of Rate of Return on Common Equity for Electric Utilities, 49 FR 29946 (1984).

[3] *See* Order No. 420, 50 FR 21802, 21803 (1985).

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In the first two annual proceedings implementing Part 37 of the Commission's regulations, the Commission estimated the rate of return on common equity by relying on a discounted cash flow ("DCF") model.[4] In Order No. 461, the Commission again adopted a DCF model, finding "compelling economic justification for relying on the market cost of capital as the standard for rate of return decisions." [5]

The growth rate used in the DCF model is based, in part, on a fundamental analysis.[6] A fundamental analysis separately evaluates the underlying components of dividend growth: retained earnings and new stock sales. Growth from retained earnings is a function of the expected rate of return on common equity and the expected retention rate. Retained earnings account for most of the dividend growth rate. Growth from new stock sales is the second element of dividend growth.

In determining current dividend yields for use in the DCF model, the Commission continued its policy of using the median dividend yields of a 100 company sample.

The DCF model is relied upon as a basis for two components of the generic rate of return proceeding. First, it is used as the basis for estimating the average cost of common equity for the jurisdictional operations of public utilities.[7] Second, it is the basis for the indexing procedure [8] which yields the benchmark rates of return.

In Order No. 461, the Commission again determined that a quarterly indexing procedure should be adopted and that the index should be the average of the median dividend yields for the two most recent calendar quarters for the company sample. For the first two years in which the Commission implemented Part 37 of its regulations, the quarter-to-quarter change in the benchmark rate, with the exception of the initial benchmark rate established in each annual proceeding, was capped at 50 basis points (one basis point equals 1/100 percent). In Order No. 461, the Commission eliminated the cap and set the benchmark rate equal to the cost of common equity.

In Order No. 461, the Commission also determined that it would not adopt the "ratemaking rate of return" adjustment. In Order No. 442, the Commission described the ratemaking rate of return as the rate of return which, when applied to the particular rate base determined by the regulatory agency, allows the electric utility to provide investors with their effective required return.[9] In Order No. 461, the Commission stated that the comments supported the conclusion that there remain formidable issues not presently resolved regarding implementation of this adjustment. Therefore, the Commission declined to apply the ratemaking rate of return concept to adjust the benchmark rates.[10]

Three of the commenters have requested rehearing of Order No. 461: The Southern Company (Southern), Alfred Winchell Whittaker (AWW), and the Wholesale Customer Group (WCG). Southern objects to the elimination of the 50 basis point cap from the indexing procedure. AWW objects to the use of a DCF model, proposing, instead, a comparable earnings standard. WCG objects to the average "sv" component of the growth rate adopted in applying the DCF model and the decision not to apply the "ratemaking rate of return" concept to the DCF model.

III. Discussion

A. Indexing Procedure

Southern requests rehearing of the elimination of the 50 basis point cap from the indexing procedure. Southern states that the cap would make the benchmark rates of return more stable in that large fluctuations would be avoided and that it would reduce the incentive to time rate filings based on the quarterly changes. Although the cap may cause the benchmark rates to lag behind the cost of capital when there are significant and long-lasting changes in market conditions, Southern says the effect would be relatively small and would not be expected to persist for very long periods. Further, Southern believes that any significant divergence of the benchmark rates from the cost of equity would be an exception rather than the rule. In sum, Southern contends that any detrimental effects would be outweighed by the benefits of retaining the cap.

The comments made by Southern were considered by the Commission in its decision to eliminate the cap in Order No. 461. The Commission continues to believe that elimination of the cap is appropriate for the reasons stated in Order No. 461. Specifically, the use of a six month dividend yield should provide a reasonable degree of stability. Moreover, based on the 1986 period, the Commission believes that significant and potentially lasting divergences between the benchmark rates and the cost of capital may occur if the cap is retained.

B. DCF Method

AWW requests that the Commission not use a DCF model. AWW argues that the efficient market premise of the DCF model is incorrect and that, because of this, the prices used in the DCF model are not adequately reflective of the cash flows expected by investors. AWW states that if the Commission remains with a DCF model, the benchmark rates will produce "mischievous results", adversely affecting both investors and ratepayers. AWW also argues that if the Commission retains a DCF model it should be modified to allow electric utility stocks to trade at 80 percent above book value, a level AWW states would be comparable to unregulated companies with corresponding risk. Finally, AWW urges the Commission to abandon the benchmark rate concept if the DCF model adopted in Order No. 461 is retained.

AWW also argues that *Hope* and *Bluefield* require a comparable earnings standard, rather than the cost of capital standard used by the Commission.[11] AWW recommends that the Commission adopt a formula based on the returns to book equity of nonregulated companies of comparable risk (a comparable earnings standard), based on their *Standard and Poor's* common stock ratings and their *Value Line* beta, safety, and timeliness ratings.

The issues raised by AWW were addressed in Order No. 461.[12] The Commission has reconsidered the arguments in AWW's rehearing request and remains convinced that the DCF model provides a reliable measure of the cost of common equity capital. In addition, AWW cites studies by Shiller [13] and Summers [14] in support of

[4] Order No. 420, 50 FR at 21804; Order No. 442–A, 51 FR 22505, 22508 (1986).

[5] 52 FR at 29.

[6] 52 FR at 18.

[7] 18 CFR 37.3(b) (1986).

[8] 18 CFR 37.3(c) (1986).

[9] *See* 51 FR 343, 349 (1986). One component of the ratemaking rate of return concept, raised on rehearing and discussed more fully below, is the proposition that a utility has an opportunity to reinvest intra-year retained earnings which reduces the rate of return ratepayers must pay to allow the utility an opportunity to pay out the amount required. 52 FR at 28.

[10] 52 FR at 29.

[11] Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1944); Bluefield Water Works & Improv. Co. v. Public Service Commission of W. Va., 262 U.S. 679 (1923).

[12] 52 FR at 29–30.

[13] Robert J. Shiller, *Do Stock Prices Move Too Much to be Justified by Subsequent Changes in Dividends?*, 71 Am. Econ.

[14] Lawrence H. Summers, *Does the Stock Market Rationally Reflect Fundamental Values?*, 41 J. Fin. 591 (1986).

the position that stock markets are inefficient.[15] Both of these studies have recently been subject to criticism. In particular, there are assertions in the finance literature that Shiller's study does not demonstrate market inefficiency and that Summers' study is inconclusive.[16] The findings of both the Shiller and Summers papers do not appear to be generally accepted as proven propositions. Thus, the Commission reiterates its belief that it is premature to conclude that the efficient market theory [17] has been discredited.[18]

With respect to AWW's request that the DCF model be revised to permit electric utility stocks to trade at 80 percent above book value, the Commission believes that this proposal is equivalent in result to AWW's suggestion that a comparable earnings standard be adopted. The Commission continues to believe that the DCF model properly reflects the cost of common equity of utilities, and, as discussed more fully below, a comparable earnings standard does not reflect the market cost of common equity.

AWW has not established that the only appropriate standard for assessing rate of return on common equity is comparable earnings. In fact, the Commission is not required to accept any particular methodology. *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968); *Federal Power Commission* v. *Hope Natural Gas*, 320 U.S. 591 (1944). Rate of return decisions are policy determinations. In the final analysis, the Commission must apply its informed judgment to the range of estimates which it has found to be helpful indicators of the cost of common equity. The Commission has authority to adopt those portions of the record it finds credible. *Nader* v. *FCC*, 520 F.2d 182, 192–94 (D.C. Cir. 1975). The Commission is also permitted to make pragmatic adjustments called for by particular circumstances. *Permian Basin Area Rate Cases*, 390 U.S. at 800.

Although comparable earnings data have been offered before as corroborative evidence of the cost of capital, the Commission has found fault with its use in this regard for essentially two reasons. First, unlike the relationship between risk and market required rates of return, the relationship between risk and accounting rates of return is not clear. In other words, companies with high risk don't necessarily earn high book returns, and vice versa for companies with low risk. In contrast, investors will expect/require a high market rate of return from companies with high risk and a lower market rate of return from lower risk companies. Second, and more fundamentally, accounting rates of return are not reliable measures of the current cost of capital, since they do not reflect the current market prices that are determined in competitive capital markets.

In Order No. 461, the Commission explained that the consistent use of a cost of capital standard over time is fair and equitable to both stockholders and to the utility's customers. The Commission found "compelling economic justification for relying on the market cost of capital as the standard for rate of return decisions." It also found insufficient evidence in the record to support the claim that market price, a primary input in a DCF formula, does not adequately reflect the cash flows expected by investors. For these reasons the Comission adopted a DCF model rather than any of the other approaches presented and considered in this proceeding. Furthermore, the Commission believes that its cost of capital approach is not precluded, but is in fact supported, by *Hope* and *Bluefield*.

C. Growth Rate

WCG states that Order No. 461 did not address WCG's comments regarding the Commission's method for estimating the equity accretion component ("sv") of the fundamental growth rate.[19] WCG argues that the Commission's approach to estimating the "sv" component inherently causes an upward bias in the estimated growth rate. WCG asserts that using industry averages for the components "s" and "v" provides an unbiased estimate of "sv" only when the parameters are independently and randomly distributed. WCG states that the companies that have the highest market-to-book ratios (and thus the lowest "v" values) have the lowest external financing requirements ("s" values) and vice versa. If there is such a negative correlation between the market-to-book ratio and external financing, WCG alleges, a growth rate estimate, determined by multiplying an average "s" by an average "v", will be biased upward. WCG argues that "sv" should be estimated on a company-by-company basis and then averaged to avoid this bias.

On review of this issue, the Commission is not persuaded that any adjustment to its growth rate determination of 4.6 percent is justified. WCG has not shown that a correlation exists or that the Commission's estimate of the fundamental growth rate is distorted due to this correlation. The Commission's estimate of the "sv" component was a relatively small factor in the fundamental growth rate evaluation, 30 basis points of the total 470 basis points. Moreover, the growth rate adopted by the Commission was also found to be reasonable based on a two-stage growth rate analysis.[20]

WCG's criticism of the Commission's method for estimating the "sv" component of fundamental growth is an incomplete analysis. The WCG analysis focuses on only one of the growth rate components. Any statistical problem

[15] Rehearing request of AWW, at 5.

[16] In a recent article, Marsh and Merton discuss Shiller's finding that variations in stock market prices appear to be too large to be explained by variations in subsequent dividend payments. After analyzing both Shiller's model and his statistical analysis, they conclude that Shiller's "test results might be better interpreted as an impressive rejection of his model of dividend process than as a rejection of stock market rationality." T.A. Marsh and R.C. Merton, *Dividend Variability and Variance Bounds Tests for the Rationality of Stock Market Prices*, 76 Am. Econ. Rev. 483 (1986). In another recent article, Robert F. Stambaugh discusses Summers' thesis that statistical tests of the efficient markets hypothesis lack the power to find market inefficiencies. Stambaugh tested a model proposed by Summers, using real data, rather than the theoretical calculations which Summers used. His results were inconsistent with the predictions of the Summers' model. Robert F. Stambaugh, *Does the Stock Market Rationally Reflect Fundamental Values?: Discussion*, 41 J. Fin. 601 (1986).

[17] The efficient market theory is founded upon the proposition that "all relevant information is widely and cheaply available to investors and that all relevant and ascertainable information is already reflected in security prices." *See* R. Brealey, and S. Myers, Principles of Corporate Finance, at 266 (1984). The Commission again notes that this is a general proposition subject to some known exceptions, such as insider trading activities.

[18] For a discussion of the general acceptance of market efficiency and the extensive testing of the efficient markets hypothesis, *see* Frank K. Reilly, Investment Analysis and Portfolio Management, Chapter 7 at 183–304 (2nd Ed. 1985).

[19] Fundamental growth is defined as the sum of growth from retained earnings and growth from equity accretion. The first component is equal to the expected rate of return on common equity (r) times the expected retention ratio (b). The second component is equal to the rate of growth in new common stock sales (s) times the equity accretion factor (v). The equity accretion factor is specified as one minus the reciprocal of the expected market-to-book ratio and measures the extent of accretion (or dilution) that occurs when new stocks are issued at prices above or below book value. The equity accretion factor is negative and reflects dilution when the market-to-book ratio is below unity. *See also* 52 FR at 18.

[20] *See* 52 FR at 23. Further, as the Commission noted in Order No. 461 three of the ten commenters that made growth rate recommendations, AUS, Second Cooperatives and FA Staff, proposed a growth rate of 4.6 percent. In addition, one other customer group, Cooperatives, recommended a growth rate of 4.76 percent based on a fundamental analysis comparable to that of the Commission. WCG proposed a growth rate of less than 3.7 percent, which the Commission found unreasonable.

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resulting from a correlation between "s" and "v" may also be true of the larger retention growth component ("rb") of fundamental growth. That is, a similar correlation, possibly offsetting the "sv" correlation, may exist between the expected return on common equity ("r") and the expected retention ratio ("b"), since the growth rate that the Commission determined from its fundamental analysis was reasonably corroborated through other information.

WCG also has neither demonstrated empirically that a correlation exists between "s" and "v" for utilities generally nor provided evidence to evaluate any bias created by such correlation. The "sv" component of the fundamental growth rate analysis is a long run expected value. The statistics presented by WCG are historical data for recent years, not estimates of the values investors expect for the future. Also, WCG presents no estimates of "s" and "v" calculated separately for comparison with its combined individual company "sv" estimates.

The Commission does not believe that the record supports a finding that the alleged correlation exists for the industry as a whole or that, if it does, it would be any more than a short term phenomenon. Nor does the Commission have a basis for finding that, to the extent such correlation does exist, it has affected the Commission's fundamental growth rate estimate.

D. "Ratemaking Rate of Return"

WCG also requests rehearing of the decision not to apply the "ratemaking rate of return" concept, stating that the Commission failed to engage in reasoned decision-making when it rejected WCG's arguments favoring the adoption of a daily compounding DCF model as a means of implementing the "rate-making rate of return" concept. This concept refers to the proposition that a utility has an opportunity to reinvest intra-year retained earnings which reduces the rate of return ratepayers must pay to allow the utility an opportunity to pay out the amount required. WCG argues that application of that concept is necessary to recognize intra-year earnings beyond those contemplated in the nominal rate of return and proposes a formula whereby such a concept may be implemented.

In Order No. 461 the Commission found that questions regarding the "ratemaking rate of return" remain unresolved.[21] WCG has not provided adequate evidence for adopting its approach. Indeed, many other commenters raised formidable issues which the Commission believes are not susceptible to resolution based on the records in these generic proceedings at this time. Because of unresolved questions and the absence of a sufficient record upon which to postulate reasoned answers, the Commission has determined not to adopt the "ratemaking rate of return" for the third year in which the benchmark rates remain advisory only.

[21] 52 FR at 28-29.

IV. Conclusion

The Commission is unpersuaded that any basis has been presented to warrant modification of Order No. 461. Therefore, the Commission denies rehearing.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-3922 Filed 2-25-87; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 232 and 235

[Docket No. R-87-1324; FR 2340]

Mortgage Insurance; Changes In Interest Rates

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the maximum allowable interest rate on Section 232 (Mortgage Insurance for Nursing Homes) and on Section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for these programs into line with competitive market rates.

EFFECTIVE DATE: January 19, 1987.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Chief Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-7270. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR Chapter II have been made to decrease the maximum interest rate which may be charged on loans insured by this Department under section 232 (fire safety equipment) and section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 232 (fire safety equipment) and section 235 insurance programs has been lowered from 9.00 percent to 8.50 percent.

The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately.

HUD regulations published at 47 FR 56266 (1982), amending 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs made by this rule fall within the categorical exclusions set forth in paragraph (*1*) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small decrease in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities.

This rule was not listed in the Department's Semiannual Agenda of

Regulations published on October 27, 1986 (51 FR 38424) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Calalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

List of Subjects

24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: housing and community development.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs: Health, Loan programs: Housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

Accordingly, the Department amends 24 CFR Parts 232 and 235 as follows:

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

1. The authority citation for 24 CFR Part 232 continues to read as follows:

Authority: Secs. 211, 232, National Housing Act, (12 U.S.C. 1715b, 1715w); section 7(d), Department of Housing and Urban Development, (42 U.S.C. 3535(d)).

2. In § 232.560, paragraph (a) is revised to read as follows:

§ 232.560 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 8.50 percent per annum, except that where an application for commitment was received by the Secretary before January 19, 1987, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

3. The authority citation for 24 CFR Part 235 continues to read as follows:

Authority: Secs. 211, 235, National Housing Act, (12 U.S.C. 1715b, 1715z); section 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

4. In § 235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 8.50 percent per annum, except that where an application for commitment was received by the Secretary before January 19, 1987, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

5. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) On or after January 19, 1987, the loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 8.50 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

Dated: January 23, 1987.

Susan K. Zagame,

Acting Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 87-3953 Filed 2-25-87; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is making a number of interpretive clarifications, revisions and additions to its paroling policy guidelines contained in 28 CFR 2.20 and 2.36. These changes and additions are intended to make the guidelines more comprehensive and to more appropriately sanction certain sexual offenses against minors, offenses related to the freebased form of cocaine popularly known as "CRACK," and criminal conduct in institutions.

EFFECTIVE DATE: April 5, 1987.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-5980.

SUPPLEMENTARY INFORMATION:

A. The Proposed Rules and Their Purposes

On November 25, 1986, the U.S. Parole Commission published in the **Federal Register** (51 FR 42593) a set of proposed revisions to 28 CFR 2.20 and 2.36 that fell into three categories: (a) A revision of an offense example in the Offense Severity Index of § 2.20 that covers unlawful sexual conduct with minors to clarify, and more appropriately sanction the offenses described therein; (b) a revision to the offense examples in the Offense Severity Index of § 2.20 adding a new example to sanction offenses related to the freebased form of cocaine popularly known as "CRACK"; and (c) a revision of the rescission guidelines found in § 2.36 to more appropriately sanction criminal behavior in prisons.

(a) First, Offense Example 232 in Chapter 2, Subchapter D of the Offense Behavior Severity Index of 28 CFR 2.20 grades the severity for unlawful sexual conduct with minors (e.g., carnal knowledge) as Category Four. Carnal knowledge is defined as sexual intercourse with a female who is less than sixteen years of age and who is not the wife of the offender. Offense Example 232 contains an exception that provides that: If the relationship is clearly consensual, and the victim is at least fourteen years old, and the age difference between the victim and the offender is less than four years, then the offense is to be graded as Category One. Finally, as a note to this offense example, the guidelines state that, if the victim is less than twelve years of age at the time of the offense, the aggravating factor of an extremely vulnerable victim is presumed to exist thus providing a rationale to go above the appropriate guideline range.

After reviewing this offense example, the Commission proposed to clarify the offenses/behavior covered therein by revising the title of 232 to "Carnal Knowledge or Sodomy Involving Minors" and, to more appropriately sanction this conduct, where the victim is less than fourteen years of age, to increase the severity to Category Seven. The Commission proposed further to add a new offense example, 233, to provide guidance for rating other unlawful sexual conduct with minors. Additionally, the Commission proposed to change the title of Offense Example 231 (Forcible Rape or Forcible Sodomy) to "Rape or Forcible Sodomy," thus removing a redundancy.

(b) Next, over the past several months, the Parole Commission, like the public in general, had been introduced

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to information about a new, more potent form of cocaine known as "CRACK". Details as to the addictive nature of this drug, as to its manufacture and the typical distribution methods associated with it, and as to its availability to a wider audience of users because of its relatively inexpensive street sales price, convinced the Commission that the existing sanctions provided for cocaine in the Offense Behavior Severity Index of § 2.20 may not appropriately sanction offenses related to this freebased form of that drug.

The Parole Commission had proposed, therefore, to amend its paroling policy guidelines contained in 28 CFR 2.20 and to develop separate guidelines for "CRACK". In that regard, the Commission sought public comment as to the nature and content of these guidelines by publishing an Advance Notice of Proposed Rulemaking in the July 31, 1986 edition of the **Federal Register** (51 FR 27424). In an effort to broaden the reviewing audience, thus increasing the potential for the receipt of useful comment, the Commission arranged for the Department of Justice to issue a press release on the proposal. Additionally, over 75 letters describing this endeavor were forwarded to members of Congress and other organizations and individuals interested in and knowledgeable about the drug. Further, an article was published in *The Third Branch* (the monthly newsletter of the Federal Judiciary) further detailing the effort.

In response to that Notice, the Parole Commission received ten (10) comments. Four (4) United States Senators (D'Amato, Dodd, Heflin and Roth) wrote to note their approval of the Commission's effort to address the problem created by the drug, but only one (1) (D'Amato) had a specific recommendation: He stated that increasing the existing cocaine guidelines by a factor of ten would be warranted because of "CRACK's" "extreme potency and its addictive qualities, and of the small quantities in which it is produced and sold." The District Attorney in Philadelphia suggested that the Commission treat "CRACK" like it treats Dilaudid, while the treasurer of Americans for Substance Abuse Prevention counseled that the penalties for possession of one gram of "CRACK" be equivalent to the penalties for 1,000 grams of regular cocaine. The Chief Probation Officer from the Eastern District of Missouri "supported" the proposal to do something, but expressed a concern that these new guidelines for "CRACK" might "inadvertently decrease criminal acts regarding the distribution of 'regular' cocaine"; and the Chief Probation Officer for the Northern District of Indiana labeled the proposal as "a responsible and reasonable approach" to the issue, but one that may need future revision. An inmate at the Federal Correctional Institution at Petersburg, Virginia, wrote to inform the Commission that making "CRACK" has the side effect of removing impurities from cocaine, thus reducing the total amount of the drug in question. Finally, the Assistant Attorney General for the Criminal Division of the U.S. Department of Justice wrote to "commend" the Commission's efforts in recognizing the dangers of the drug and stated that, until enhanced penalties are enacted for "CRACK" by the Congress, the Commission's proposal was "the most significant action that can be taken" in this regard.

The Commission proposed to adopt separate guidelines for "CRACK," guidelines that treat the drug as ten times more potent than cocaine and are based on the weight of the drug alone, with no specific purity measure. In this regard, the Parole Commission sought specific comment on two issues. The first related to the relative potency of "CRACK" cocaine as compared with other forms of the drug. The Commission's proposal rated various quantities of "CRACK" in severity categories corresponding to the categories for 1/10 those quantities for regular cocaine. Information on this determination was thus sought. Secondly, the Commission sought guidance on how best to define "CRACK." The proposed guidelines refer to "freebased cocaine." A more appropriate or accurate definition may be needed.

(c) Finally, 28 CFR 2.36 contains the Commission's guidelines for sanctioning criminal conduct committed in a prison facility. Because of the relative severity and significance of all offenses committed in such institutions, the Commission proposed to increase the sanctions imposed for such behavior other than those now in effect for escape, attempted escape, and for certain administrative rule infractions. The sanction for use or simple possession of illicit drugs in institutions and for refusal to provide a urine sample for drug testing would be increased also. As proposed, the sanctions in § 2.36(a)(2)(ii) would be changed as follows: Category One: < =8 months; Category Two: < =10 months; Category Three: 12–16 months; Category Four: 20–26 months; Category Five: 36–48 months; Category Six: 52–64 months; Category Seven: 64–92 months; Category Eight: 120+ months. The proposed sanction for use or simple possession of illicit drugs would be 0–8 months as would refusal to provide a urine sample.

B. Public Comment

No public comment was received in response to the proposed rule changes.

C. Changes From the Proposed Rules

To conform with the provisions of 18 U.S.C. § 2241 as contained in the Sexual Abuse Act of 1986 (Pub. L. 99–654), the Commission is changing the age level in Offense Examples 232(c) and 233(b) in Chapter Two, Subchapter D of the Offense Behavior Severity Index of 28 CFR 2.20 from *fourteen* years old to *twelve* years old.

Also, rather than create new Offense Example 923 *Distribution or Possession With Intent to Distribute Freebased Cocaine ("CRACK")* in Chapter Nine, Subchapter C of the Offense Behavior Severity Index of 28 CFR 2.20, the Commission is incorporating, as proposed, the guideline levels for free-based cocaine within the existing Offense Example for cocaine (Offense Example 921, Chapter Nine, Subchapter C of the Offense Behavior Severity Index of 28 CFR 2.20). In considering the proposed rule in this regard, the Commission reviewed the Anti-Drug Abuse Act of 1986 (Pub. L. 99–570). Further, as a conforming change, proposed Offense Example 924 is eliminated.

These rule changes will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Lists of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

PART 2—[AMENDED]

28 CFR Part 2 is amended as follows:

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

§ 2.20 [Amended]

2. The title of Offense Example 231 in Chapter Two, Subchapter D of the Offense Behavior Severity Index of 28 CFR 2.20 is revised to read as follows:

231 Rape or Forcible Sodomy

3. Offense Example 232 in Chapter Two, Subchapter D of the Offense Behavior Severity Index of 28 CFR 2.20 is revised to read as follows:

232 Carnal Knowledge or Sodomy Involving Minors*

(a) Grade as Category Four, except as provided below.

(b) If the relationship is clearly consensual and the victim is at least fourteen years old, and the age difference between the victim and offender is less than four years, grade as Category One.

(c) If the victim is less than twelve years old, grade as Category Seven.

4. Chapter Two, Subchapter D of the Offense Behavior Severity Index of 28 CFR 2.20 is amended by adding new Offense Example 233 to read as follows:

233 Other Unlawful Sexual Conduct With Minors

(a) Category Four

(b) Exception: If the victim is less than twelve years old grade as Category Six.

5. Offense Example 921 Chapter Nine, Subchapter C of the Offense Behavior Severity Index of 28 CFR 2.20 is revised to read as follows:

Subchapter C—Cocaine Offenses

921 Distribution or Possession With Intent to Distribute Freebased Cocaine ("CRACK")

(a) If extremely large scale (e.g., involving 15 kilograms or more of 100% purity, or equivalent amount; or 1.5 kilograms or more of freebased cocaine), grade as Category Eight [except as noted in (c) below];

(b) If very large scale (e.g., involving 5 kilograms, but less than 15 kilograms of 100% purity, or equivalent amount; or 500 grams but less than 1.5 kilograms of freebased cocaine), grade as Category Seven [except as noted in (c) below];

(c) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (a) or (b) as Category Six;

(d) If large scale (e.g., involving more than 1 kilogram, but less than 5 kilograms of 100% purity, or equivalent amount; or more than 100 grams, but less than 500 grams of freebased cocaine) grade as Category Six [except as noted in (e) below];

(e) Where the Commission finds that the offender had only a peripheral role, grade conduct under (d) as Category Five;

(f) If medium scale (e.g., involving 100 grams-1 kilogram of 100% purity, or equivalent amount; or 10 grams-100 grams of freebased cocaine), grade as Category Five;

(g) If small scale (e.g., involving 5–99 grams of 100% purity, or equivalent amount; or 1 gram-9.9 grams of freebased cocaine), grade as Category Four;

(h) If very small scale (e.g., involving less than 1.0–4.9 grams of 100% purity, or equivalent amount; or less than 1 gram of freebased cocaine), grade as Category Three;

(i) If extremely small scale (e.g., involving less than 1 gram of 100% purity, or equivalent amount), grade as Category Two.

6. Paragraph (a)(1) of the Rescission Guidelines in 28 CFR 2.36 is revised to read as follows:

*Terms marked by an asterisk are defined in Chapter Thirteen.

§ 2.36 Rescission guidelines.

(a) • • •

(1) Administrative Rule Infraction(s) (including alcohol abuse) normally can be adequately sanctioned by postponing a presumptive or effective date by 0–60 days per instance of misconduct, or by 0–8 months in the case of use or simple possession of illicit drugs or refusal to provide a urine sample. Escape or other new criminal conduct shall be considered in accordance with the guidelines set forth below.

• • • • •

7. Paragraph (a)(2)(ii) of the Rescission Guidelines in 28 CFR 2.36 is amended to read as follows:

§ 2.36 Rescission guidelines.

(a) • • •

(2) • • •

(ii) Other New Criminal Behavior in a Prison Facility

Severity rating in the new criminal behavior (from § 2.20)	Guideline range
Category One	< = 8 months.
Category Two	< = 10 months.
Category Three	12–16 months.
Category Four	20–26 months.
Category Five	36–48 months.
Category Six	52–64 months.
Category Seven	64–92 months.
Category Eight	120+ months.

• • • • •

Dated: February 6, 1987.

Cameron M. Batjer,

Chairman, U.S. Parole Commission.

[FR Doc. 87–3956 Filed 2–25–87; 8:45 am]

BILLING CODE 4410–01–M

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is adopting a new regulation, 28 CFR 2.64, to explain the Commission's interpretation of section 235(b)(3) of the Sentencing Reform Act of 1984, which provides for the transition from the present system of sentences with parole eligibility to a determinate sentencing system. Section 235(b)(3), which calls for the Parole Commission to set release dates within the applicable parole guideline ranges for the prisoners remaining in its jurisdiction before ceasing operations, has given rise to a number of questions. This regulation is intended to resolve those questions by giving formal notice of the Commission's interpretation of that provision. Specifically, the Commission interprets the release provision of section 235(b)(3) (in its present form) as (a) applying only to persons who will be incarcerated on October 31, 1992 (the day before the fifth anniversary of the effective date of the Sentencing Reform Act); (b) not requiring the release dates to be set any earlier than the last three months before October 31, 1992; and (c) not allowing the Commission to set a release date which would conflict with the parole eligibility or ineligibility provisions of a prisoner's sentence.

EFFECTIVE DATE: February 26, 1987.

FOR FURTHER INFORMATION CONTACT: Patrick J. Glynn, General Counsel, U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland, telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: Section 235(b)(3) of the Sentencing Reform Act, states as follows:

The United States Parole Commission shall set a release date, for an individual who will be in its jurisdiction the day before the expiration of five years after the effective date of this act, that is within the range that applies to the prisoner under the applicable parole guideline. A release date set pursuant to this paragraph shall be set early enough to permit consideration of an appeal of the release date, in accordance with Parole Commission procedures, before the expiration of five years following the effective date of this Act.

Legislation was introduced in the 99th Congress to delete the requirement for the section 235(b)(3) release decisions to within the parole guideline range. S. 1236, Sec. 37. That section, however, was not acted upon, and, although it is anticipated that similar legislation will be introduced in the 100th Congress, the requirement for decisions within the applicable parole guideline ranges remains a part of the Sentencing Reform Act as enacted.

A number of prisoners have urged that section 235(b)(3) be applied to their benefit in ways which the Commission had not envisioned. The claims of those prisoners have generally been one or more of the following:

1. That the Commission must give them decisions within the parole guideline ranges now because they will be in the Commission's jurisdiction (either in prison or on supervision) at the end of the five-year phaseout period;

2. That their parole eligibility dates are overridden by the requirement for a release date within the guideline ranges;

3. That parole ineligibility provisions [e.g., 21 U.S.C. 848(c)] are overridden by the requirement for a release date within the guideline ranges; and

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4. That the five year period referred to began on October 12, 1984.

The Commission does not believe any of the above points are correct interpretations of the Sentencing Reform Act.

First, the five-year period referred to in section 235(b)(3) does not begin until November 1, 1987. The reference is to "five years after the effective date of this Act." Section 235 appears in Chapter II of the Comprehensive Crime Control Act of 1984, which is referred to as the "Sentencing Reform Act of 1984," 98 Stat. 1987, and which has a general effective date of November 1, 1987. Section 235(a)(1), 98 Stat. 2031, as amended, Pub. L. 99–217, Sect. 4, 99 Stat. 1728. Furthermore, the legislative history of section 235(b) states that that section retains the Parole Commission and current law provisions related to parole in effect for the five-year period after the effective date of the Sentencing Reform Act to deal with sentences imposed under current sentencing practices, and that the setting of release dates within the guideline ranges is required for the prisoners who have not been released before the end of that five year period. Senate Report No. 98–225 (98th Cong., 1st Sess.) 189, reprinted at 1984 U.S. Code Cong. & Admin. News 3182, 3372.

Second, although section 235(b)(3) refers to persons within the Commission's jurisdiction at the end of the five-year period, the section was clearly not designed to require release dates within the guideline ranges for persons who will be within the Commission's jurisdiction as parolees at the end of the five-year phase out period, (i.e., prisoners who will be released at some time prior to November 1, 1992, above the applicable parole guideline ranges). The legislative history of the Section explains its operation as follows:

> Most of those individuals incarcerated under the old system will be released during the five-year period. As to those individuals who have not been released at that time, the Parole Commission must set a release date for them prior to the expiration of the five years that is consistent with the applicable parole guidelines.

Senate Report No. 98–225, *supra*, at 189. Thus, the term "jurisdiction," as used in section 235(b)(3), refers to the Commission's parole-releasing jurisdiction and not to the Commission's post-release supervisory jurisdiction.

Third, the Commission does not read section 235(b)(3) as requiring the release dates within the guideline ranges to be set any earlier in the five year period than the three to six months necessary to permit an administrative appeal of the date before the end of the five year period. See 18 U.S.C. 4215(a). This is consistent with the above-quoted portion of the legislative history and with the provision in section 235(a)(1)(B) that the current parole laws, which include the possibility for decisions outside of the guideline ranges, remain in effect during the five-year period. The parole guidelines may be revised at any time until their final application, pursuant to the Commission's current statutory mandate. Hence, the applicable guideline ranges will not necessarily be known until the Commission sets final release dates in 1992.

Fourth, section 235(b)(3) does not advance a prisoner's parole eligibility date or confer parole eligibility on a prisoner whose sentence does not provide for any parole eligibility at all. The guidelines are not "applicable" in the first instance to any but an "eligible" prisoner. 18 U.S.C. 4206(a). Moreover a prisoner serving a non-parolable sentence is not a person who would be within the Commission's jurisdiction the day before the expiration of the five year period. And in the case of either a minimum term of parole ineligibility or a totally nonparolable sentence, the general savings statute 1 U.S.C. 109 would prevent such penalties, once imposed, from being retroactively extinguished since there has not been express statutory release from such penalties. See *Warden* v. *Marrero*, 417 U.S. 653 (1974).

This new interpretative regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedures, Probation and parole, Prisoners.

PART 2—[AMENDED]

28 CFR Part 2 amended as follows:

1. The authority citation for 28 CFR Part 2 continues to read:

> **Authority:** 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR 2.64 is added to read as follows:

§ 2.64 Sentencing Reform Act.

(a) It is the Commission's interpretation of section 235(b)(3) of the Sentencing Reform Act of 1984 (Chapter II of the Comprehensive Crime Control Act of 1984), as originally enacted, that persons who will be incarcerated at the expiration of five years after the effective date of the Sentencing Reform Act, and whose sentences provide for parole eligibility shall, before the expiration of that five year period, be given release dates by the Commission within the guideline ranges found by the Commission to be appropriate for their cases.

(b) The release dates required by section 235(b)(3) need not be set any earlier than the time required to allow an administrative appeal within the five-year period; i.e., three to six months before the end of that period. Thus, the Commission may continue to make decisions outside of its guideline ranges, with such decisions being subject to a *de novo* review and modification by the Commission to conform to the guideline ranges before the end of the five year period.

(c) Section 235(b)(3) does not apply to persons who will be on parole or mandatory release supervision at the expiration of the five-year period.

(d) Section 235(b)(3) does not change the parole eligibility date established by a prisoner's sentence and does not confer parole eligibility on prisoners whose sentences do not provide any eligibility for parole.

Dated: February 9, 1987.

Cameron M. Batjer,

Chairman, U.S. Parole Commission.

[FR Doc. 87–3957 Filed 2–25–87; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS FOX (CG–33) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS without interfering with its special function as a naval cruiser. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: February 6, 1987.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS FOX (CG–33) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully within 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, the placement of the masthead light, and the horizontal distance between the forward and after masthead lights, without interfering with its special function as a Navy ship. The Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

> **Authority:** 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table Five of § 706.2 is amended by adding the following Navy ship to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when lowing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS FOX	CG–33						X	X	31

Dated: February 6, 1987.

Approved.

John Lehman,

Secretary of the Navy.

[FR Doc. 87–3944 Filed 2–25–87; 8:45 am]

BILLING CODE 3810–AE–M

POSTAL SERVICE

39 CFR Part 233

Forfeiture; Delegation of Functions to Chief Postal Inspector, United States Postal Inspection Service; Correction

AGENCY: Postal Service.

ACTION: Final rule; correction.

SUMMARY: The Postal Service is correcting two errors in the procedures to be followed by the Postal Inspection Service when it conducts civil forfeitures of property subject to forfeiture under the Protection of Children Against Sexual Exploitation Act of 1977, as amended, which appeared in the **Federal Register** on February 12, 1987 (52 FR 4496).

EFFECTIVE DATE: March 14, 1987.

FOR FURTHER INFORMATION CONTACT: George C. Davis, (202) 268–3076.

SUPPLEMENTARY INFORMATION: In FR Doc. 87–2999, in the issue of Thursday, February 12, 1987, the Postal Service published a final rule on civil forfeitures it conducts. In two places the published rule uses incorrect words that change the intended meaning of the rule. For example, at one point, the rule requires the Postal Inspection Service to keep a written inventory of the property seized and to provide a written receipt to the party from whom the property was seized as soon after the seizure as practicable, but in no event "less" than ten days after the seizure. The rule should have said but in no event "more" than ten days after the seizure.

At another point, the rule provides a procedure to follow for a person desiring a judicial determination of forfeiture. Any such person must file a claim, accompanied by a bond, unless the person is financially unable to post the bond because of indigency. The published rule provides that an indigent person may "require" a waiver of the bond by filling out a particular Postal Service form. The rule should have said that an indigent person may "request" waiver of the bond. This final rule corrects the erroneous language.

For the reasons explained above, the Postal Service hereby makes the following corrections to FR Doc. 87–2999 beginning on page 4496 in the issue of Thursday, February 12, 1987:

List of Subjects in 39 CFR Part 233

Crime, Postal Service.

PART 233—[AMENDED]

§ 233.7 [Corrected]

1. On page 4497, middle column, in § 233.7, in the next to last line of paragraph (c), strike out "less" and insert "more" in lieu thereof.

2. On page 4497, right hand column, in § 233.7, in the third sentence of paragraph (h)(2), strike out "require" and insert "request" in lieu thereof.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87–3930 Filed 2–25–87; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4F3081/R869; FRL–3161–4]

Pesticide Tolerance on Agricultural Commodities; Amitraz

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of the insecticide amitraz in or on the fat, kidney, liver, and meat byproducts of hogs. This rule

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to establish the maximum permissible level for residues of amitraz in or on the above commodities was requested by Nor-Am Chemical Company.

EFFECTIVE DATE: Effective on February 26, 1987.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis Edwards, Acting Product Manager (12), Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Rm. 202, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of June 20, 1984 (49 FR 25293), that Nor-Am Chemical Company, 3509 Silverside Road, P.O. Box 7495, Wilmington, DE 19803, had filed a petition proposing to amend 40 CFR 180.287 by establishing tolerances for the combined residues of the insecticide amitraz [*N*-(2,4-dimethylphenyl)-*N*-[[(2,4-dimethylphenyl) imino]methyl]-*N*-methylmethanimidamide and its metabolites *N*-(2,4-dimethylphenyl)-*N*-methyl formamide and *N*-(2,4-dimethylphenyl)-*N*-methylmethanimidamide (both calculated as the parent compound) in or on the following commodities: Hogs, fat, meat, and meat byproducts (mbyp) at 0.05 part per million (ppm) and hogs, kidney and liver at 0.1 ppm. No comments were received in response to the notice at filing.

EPA is also amending the introductory text of 40 CFR 180.287 by changing the expression for the metabolites for amitraz to be consistent with *Codex Alimentarius*.

The petition was later amended by: increasing the tolerance for hog fat from 0.05 ppm to 0.1 ppm, for hog meat byproducts from 0.05 ppm to 0.3 ppm, and for hog kidney and liver from 0.1 ppm to 0.2 ppm.

In April 1977, the Agency initiated a Special Review for amitraz because an 80-week mouse oncogenicity study showed a significant increase in the incidence of lymphoreticular tumors in mice. Proposed uses for amitraz pending with the Agency were apples and pears. To determine the risks, the Agency conducted a dietary and occupational risk assessment. In reviewing the benefits and risks, the Agency determined that there would be significant benefits from the use on pears and little or no benefits from the use on apples since there were suitable alternatives. After weighing the benefits and risks, the Agency determined that the registration of amitraz for use on pears would not cause unreasonable adverse effects because it would result in substantial benefits and very small risks. Therefore, the Agency issued a conditional registration for 4 years for use of amitraz on pears. Recently, this decision was reevaluated and reaffirmed via the Registration Standard process.

One of the conditions under which amitraz was conditionally registered was the requirement that an additional mouse oncogenicity study be submitted. This study was submitted and referred to the Agency's Carcinogen Assessment Group (CAG) for evaluation. The results of this study show an increase in the incidence of hepatocellular tumors (both benign and malignant) in female mice. Based on this study and the first mouse study, CAG has determined that amitraz has carcinogenic activity in the mouse. The second study did not appreciably change the Agency's quantitative assessment of the potency of amitraz from the first mouse study. CAG concluded that based on the weight of available evidence amitraz should be considered a possible human carcinogen (a Group "C"). This classification is based on the Agency's published Guidelines for Carcinogen Risk Assessment published in the **Federal Register** of September 24, 1986 (51 FR 33992).

In reaching this conclusion, CAG considered the following information:

1. The positive carcinogenic effects were found in only one species, the mouse;
2. Tumors were discovered mostly in animals at the scheduled terminal sacrifice;
3. The rat was negative for oncogenic effects at doses as high as 200 ppm; and,
4. There is no positive epidemiological carcinogenicity data for amitraz.

In addition, the mutagenic potential of amitraz has been determined to be negative in the gene mutation, host-mediated, and dominant lethal test systems. Studies including the Ames bacterial test, a mouse lymphoma assay, and an unscheduled DNA synthesis in human embryonic cells have been conducted with amitraz with negative results.

On February 12, 1986, the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) completed a review of the data base supporting the Agency's decision to classify amitraz as a Group "C" carcinogen. The SAP concluded that the weight of evidence is inadequate to clearly categorize the carcinogenicity of amitraz. As described above, amitraz was also found to be negative in a battery of mutagenicity studies. For these reasons, the SAP disagreed with the Agency recommendation and recommended that amitraz be classified as a Group "D" carcinogen [not classifiable as to human carcinogenicity). They also recommended that the Agency consider any data that may be available or could be obtained which would better characterize the carcinogenicity of amitraz. The Agency is currently considering what additional data, if any, would allow it to better characterize the carcinogenic potential of amitraz.

The tolerance is based on the following assumptions which reflect very conservative estimates of the percentage of animals treated and the residue levels present on edible hog tissue. These assumptions are likely to overestimate actual dietary exposure.

1. The metabolic pathway of amitraz in humans is presumed to be the same as that found in test animals;
2. The highest value of risk obtainable from the animal data is applicable to humans;
3. All hogs raised in the United States will be treated with amitraz; and,
4. All edible hog tissue will contain amitraz at the full tolerance levels.

As previously stated in this document, the Agency conducted a dietary and applicator risk assessment to determine the risks from the pear use and based that assessment on very conservative assumptions. The Agency also assessed the dietary and applicator risks associated with the use on pears using more realistic assumptions. These assumptions were: Only 40 to 50 percent of the pear acreage is treated annually with amitraz, and the residues present average only 1.0 ppm instead of the full tolerance of 3.0 ppm.

In addition, the Agency established a tolerance for use of amitraz on cattle (51 FR 16846; May 7, 1986). The dietary risk estimated to occur from the use of amitraz on cattle is the same level as the risk estimated from the use on pears using the most conservative approach of calculating risk.

The Agency expects little if any incremental increase in risk to occur as the result of the use of amitraz on hogs.

The chronic toxicology data base is complete for amitraz.

The toxicological data considered in support of this petition include numerous acute toxicity studies: A 90-day feeding study in rats with a no-observed-effect level (NOEL) of 3.0 ppm (0.15 milligram per kilogram of body weight (mg/kg/bwt)); a 90-day feeding study in mice with a NOEL of 3.0 ppm (0.45 mg/kg/bwt); a 2-year rat feeding/oncogenicity study which was negative for oncogenic effects under the conditions of the study and with a NOEL of 200 ppm (10.0 mg/kg/bwt) for nononcogenic effects; a three-generation rat reproduction study with a NOEL of 15 ppm (0.75 mg/kg/bwt); rat and rabbit teratology studies which were negative at doses up to 12 mg/kg/bwt and 25 mg/kg/bwt, respectively, and a 2-year mouse oncogenicity study which demonstrated an increase in the incidence of hepatocellular tumors in female mice; and a 2-year dog feeding study with a NOEL of 0.25 mg/kg/bwt. Based on the 2-year dog feeding study with a NOEL of 0.25 mg/kg/bwt and using a safety factor of 100, the acceptable daily intake (ADI) for humans is calculated to be 0.0025 mg/kg/bwt/day, or 0.15 mg/day for a 60kg individual. The theoretical maximum residue contribution (TMRC) resulting in the human diet from this and previously established tolerances is 0.0723 mg/day and utilizes 48.20 percent of the ADI.

On the basis of the available data on amitraz, the Agency has concluded that the human risk posed by the use of amitraz on hogs does not raise prudent concerns of unreasonable adverse effects.

The nature of the residue is adequately understood, and an adequate analytical method, gas chromatography, is available for enforcement purposes. The analytical method is published in the Food and Drug Administration's (FDA) *Pesticide Analytical Manual* Vol. II (PAM–II).

There are no regulatory actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, it is concluded that the pesticide is considered useful for the purpose for which the tolerances are sought, and it is concluded that the establishment of the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Exective Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164 (5 U.S.C. 601–612)), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: February 10, 1987.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for 40 CFR Part 180 continues to read as follows:

Authority: 21 U.S.C. 3462a.

2. 40 CFR 180.287 is amended by revising the introductory text and the entries for "Hogs, fat," "Hogs, mbyp," and "Hogs, meat" and by adding and alphabetically inserting the entries "Hogs, kidney," and "Hogs, liver" to read as follows:

§ 180.287 Amitraz; tolerances for residues.

Tolerances are established for residues of the insecticide amitraz (*N*-[2,4-dimethylphenyl]-*N*-[[(2,4-dimethylphenyl)imino] methyl]]-*N*-methylmethanimidamide) and its metabolites *N*-(2,4-dimethylphenyl)-*N*-methyl formamide and *N*-(2,4-dimethylphenyl)-*N*-methylmethanimidamide (both calculated as the parent) in or on the following raw agricultural commodities (RAC) at the following levels:

Commodities	Parts per million
. . . . .	
Hogs, fat	0.1
Hogs, kidney	0.2
Hogs, liver	0.2
. . . . .	
Hogs, mbyp	0.5
Hogs, meat	0.05
. . . . .	

[FR Doc. 87–3938 Filed 2–25–87; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 4F3069/R872; FRL–3158–7]

Pesticide Tolerance for Fluazifop-Butyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of resolved isomer of fluazifop, (R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoic acid, both free and conjugated, and of fluazifop-P-butyl, butyl(R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoate, all expressed as fluazifop, in or on the raw agricultural commodity carrots. This regulation to establish maximum permissible levels for residues of the resolved isomer of fluazifop and fluazifop-P-butyl, all expressed as fluazifop, in or on carrots was requested in a petition by ICI Americas, Inc.

EFFECTIVE DATE: Effective on February 26, 1987.

ADDRESS: Written objections, identified by the document control number [PP 4F3069/R872], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Richard F. Mountfort, Product Manager (PM) 23, Registration Division, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of May 23, 1984 (49 FR 21795), which announced that ICI Americas, Inc. Agricultural Chemicals Division, Wilmington, DE 19897, had filed pesticide petition 4F3069 with the EPA. This petition proposed that a tolerance be established for residues of (±)-2-[4-[[5-(trifluoro-methyl)-2-pyridinyl]oxy]phenoxy]propanoic acid (fluazifop), both free and conjugated, and of (±)-butyl 2-[4-[[5-(trifluoro-methyl)-2-pyridinyl]oxy]

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phenoxy]propanoate (fluazifop-butyl), all expressed as fluazifop, in or on the raw agricultural commodity carrots at 0.2 part per million (ppm). ICI Americas, Inc. subsequently amended the proposal by increasing the tolerance level in or on carrots to 2.0 ppm, which was published in the **Federal Register** of November 6, 1985 (50 FR 46178). The tolerance expression is being editorially corrected to specify the resolved isomer of fluazifop, (R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl] oxy]phenoxy]propanoic acid, and fluazifop-P-butyl, butyl(R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoate.

There were no comments received in response to the notices of filing.

The data submitted in the petition and other relevant material have been evaluated. The data considered in support of the tolerance include:

1. Plant and animal metabolism studies.

2. A rat oral lethal dose (LD_{50}) with an LD_{50} of 3,300 milligrams (mg) per kilogram (kg) of body weight (bwt).

3. A rabbit subchronic dermal study with a no-observed-effect level (NOEL) of 100 gm/kg.

4. A 90-day rat feeding study with a NOEL of 0.5 mg/kg/day.

5. A 90-day dog feeding study with a NOEL of 25 mg/kg/day.

6. A rat teratology study with a teratogenic and maternal toxicity NOEL of 10 mg/kg/day (the teratogenic and maternal toxic effect level is 200 mg/kg/day [highest dose] with diaphragmatic hernia) and the fetotoxic NOEL of 1 mg/kg/day (Margin of Safety values are based on the developmental toxicity NOEL of 1 mg/kg/day).

7. A rabbit teratology study with no terata at 90 mg/kg/day (highest dose) and a fetotoxic NOEL of 10 mg/kg/day.

8. A 2-generation rat reproduction study with a NOEL of 80 ppm (4 mg/kg/day).

9. A 2-year chronic feeding/oncogenicity study in rats with no-observed-oncogenic potential under conditions of the study up to and including 3.0 mg/kg/day (highest dose) and a systemic toxicity NOEL of 1 mg/kg/day.

10. An 18-month mouse chronic feeding/oncogenicity study with no-observed-oncogenic potential up to and including 3.0 mg/kg/day (highest dose) and a systemic toxicity NOEL of 1.0 mg/kg/day.

11. An Ames test (negative).

12. A rat cytogenetic study (negative).

13. An *in-vitro* transformation assay (negative).

14. An acute delayed neurotoxicity study in hens (negative).

15. A 1-year dog feeding study with a NOEL of 5 mg/kg/day.

The acceptable daily intake (ADI), based on the 2-year rat feeding study (NOEL of 1.0 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.01 mg/kg bwt/day. The maximum permitted intake for a 60-kg human is calculated to be 0.6 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.0457 mg/day: the current action will increase the TMRC by 0.0144 mg/day (31.5 percent). Published tolerances utilize 7.6 percent of the ADI. The current action will utilize an additional 2.4 percent to utilize a total of 10.0 percent of the ADI.

The nature of the residue of the pesticide is adequately delineated, and an adequate analytical method, high-pressure liquid chromatography using an ultraviolet detector, is available in Pesticide Analytical Manual, Volume II, for enforcement purposes. Existing tolerances for fluzifop-butyl are adequate to cover secondary residues in meat, milk, poultry, or eggs resulting from this use of the pesticide. There are currently no regulatory actions pending against the pesticide.

Based on the information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 11, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.411 is amended by adding paragraph (c) to read as follows:

§ 180.411 Fluazifop-butyl; tolerances for residues.

* * * * *

(c) Tolerances are established for residues of the resolved isomer of fluazifop, (R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoic acid, both free and conjugated and of fluazifop-P-butyl, butyl(R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoate, all expressed as fluazifop, in or on the raw agricultrual commodity:

Commodities	Parts per million
Carrots	2.0

[FR Doc. 87-3643 Filed 2-25-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 6E3428, 6E3391/R866; FRL-3158-8]

Pesticide Tolerances for Certain Pesticide Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These rules establish tolerances for residues of certain pesticide chemicals in or on certain raw agricultural commodities. These regulations, to establish maximum permissible levels of residues for the pesticides in or on the commodities, were requested in petitions by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on February 26, 1987.

ADDRESS: Written objections, identified by the document control number [PP 6E3428, 6E3391/R866], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Donald R. Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA issued proposed rules, published in the **Federal Register** of December 17, 1986, which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, submitted pesticide petitions (PP) as follows on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the named Agricultural Experiment Stations (AES).

1. *PP 6E3428.* 52 FR 45134. AES of Louisiana. Proposed establishing a tolerance for residues of the fumigant phosphine resulting from the postharvest use of magnesium phosphide in or on the raw agricultural commodity sweet potatoes at 0.01 part per million (ppm).

2. *PP 6E3391.* 51 FR 45133. AES of California, Indiana, North Carolina, Oklahoma, and Washington. Proposed establishing tolerances for residues of the insecticide cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(methylethyl)benzeneacetate in or on the raw agricultural commodities turnip tops at 20 ppm and turnip roots at 0.5 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rules.

The data submitted and other relevant information have been evaluated and discussed in the proposed rules. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore the tolerances are established as set forth below.

Any person adversely affected by these regulations may, within 30 days after publication in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted these rules from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 11, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.375(a) is amended by adding, and alphabetically inserting, the following commodity to read as follows:

§ 180.375 Magnesium phosphide; tolerances for residues.

(a) * * *

Commodities	Parts per million
. . . . .	
Sweet potatoes	0.01
. . . . .	

3. Section 180.379(a) is amended by adding, and alphabetically inserting, the following commodities to read as follows:

§ 180.379 Cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(methylethyl) benzeneacetate; tolerances for residues.

(a) * * *

Commodities	Parts per million
. . . . .	
Turnip roots	0.5
Turnip tops	20.0
. . . . .	

[FR Doc. 87-3644 Filed 2-25-87; 8:45 am]

BILLING CODE 6560-50-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1180

Institute of Museum Services; Museum Assessment Program

AGENCY: Institute of Museum Services, NFAH.

ACTION: Final regulations.

SUMMARY: The Institute of Museum Services issues a final amendment to its regulations for the Museum Assessment Program revising the limitation on the amount of a grant.

EFFECTIVE DATE: The amendment is effective February 26, 1987.

FOR FURTHER INFORMATION CONTACT: Ruth Weant, Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Room 609, Washington, DC 20506 Telephone: (202) 786-0539.

SUPPLEMENTARY INFORMATION:

General Background

The Museum Services Act ("the Act"), Title II of the Arts, Humanities and Cultural Affairs Act of 1976, as amended, establishes an Institute of Museum Services (IMS). IMS is an independent agency placed in the National Foundation on the Arts and the Humanities. The purpose of the Act is stated in section 202, in pertinent part, as follows:

> It is the purpose of the Museum Services Act . . . to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic, and scientific heritage . . .

The Act lists a number of illustrative activities for which grants may be made, including assisting museums to meet their administrative costs for preserving and maintaining their collections, exhibiting them to the public, and providing educational programs to the public.

The Institute's regulations contain provisions relating to the Institute's Museum Assessment Program (MAP), which has been conducted since fiscal year 1981. 45 CFR 1180.70-1180.76. MAP is designed to assist museums in carrying out institutional assessments. Grants enable museums to obtain technical assistance in order to evaluate their programs and operations according to generally accepted professional standards. A museum which receives a grant under the program requests assessment from an appropriate professional organization, a term which is defined in the Institute's regulations. See 45 CFR 1180.74(b).

IMS published a notice of proposed rulemaking proposing an amendment to the MAP regulations on January 6, 1987. 52 FR 691. The notice described the proposed amendment and the reason why changes were needed. 52 FR 691. This document does not repeat that discussion. In response to an invitation for public comment contained in the notice of proposed rulemaking, one

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individual submitted a comment indicating no opposition to the proposed change in the MAP award ceiling.

Executive Order 12291

This amendment has been reviewed in accordance with Executive Order 12291. It is classified as non-major because it does not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Director certifies that the amendment will not have a significant economic impact on a substantial number of small museums. To the extent that it affects States and State agencies it will not have an impact on small entities because States and State agencies are not considered to be small entities under the Regulatory Flexibility Act. The amendment will affect certain museums receiving federal financial assistance under the Museum Services Act. However, it will not have significant economic impact on the small entities affected because it does not impose excessive regulatory burdens or require unnecessary federal supervision.

Paperwork Reduction Act of 1980

The regulations do not contain any information collection requirements under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

List of Subjects in 45 CFR Part 1180

Museums, National Boards.

Authority: Museum Services Act Secs. 201–210, 20 U.S.C. 961–68.

Dated: February 20, 1987.

Lois Burke Shepard,

Director, Institute of Museum Services.

(Catalog of Federal Domestic Assistance No. 45.301, Museum Services Program)

PART 1180—[AMENDED]

The Institute of Museum Services amends Part 1180 of Title 45 of the Code of Federal Regulations as set forth below:

1. The authority citation for part 1180 continues to read as follows:

Authority: 20 U.S.C. 961 et seq.

2. Revise § 1180.73(b) to read as follows:

§ 1180.73 Form of assistance; limitation on amount.

* * * * *

(b) The amount of a grant to a museum under this subpart may not exceed $1,400.

[FR Doc. 87–4011 Filed 2–25–87; 8:45 am]

BILLING CODE 7036–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 85–349; FCC 86–575]

Cable Television; Amendment of Cable Carriage Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; Order staying effective date.

SUMMARY: The Commission stays the January 15, 1987, effective date of the final rule regarding Amendment of Part 76 of the Commission's Rules on Carriage of Television Broadcast Signals by Cable Television Systems, 51 FR 44606 (Dec. 11, 1986). The stay will remain in effect until 30 days after the release date of a Memorandum Opinion and Order is published in the **Federal Register** by the Commission addressing the petitions for reconsideration filed in this proceeding. The *Order* dismisses as moot motions for stay of the effective date of the proceeding filed by Seventeen Cable Operators, Turner Broadcasting Systems, Inc. and the National Cable Television Association, Inc., the Community Antenna Television Association and the National Association of Broadcasters.

DATES: The effective date of the *Report and Order*, 51 FR 44606, is stayed until 30 days after the release of the Memorandum Opinion and Order in MM Docket No. 85–349 is published in the **Federal Register**, addressing petitions for reconsideration filed in the proceeding.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan R. Stillwell, Policy and Rules Division, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order* in MM Docket No. 85–349, adopted December 24, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 76

Cable television.

William J. Tricarico,

Secretary.

[FR Doc. 87–3849 Filed 2–25–87; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 231, 242 and 252

Department of Defense Federal Acquisition Regulation Supplement on Penalties for Unallowable Costs

AGENCY: Department of Defense (DoD).

ACTION: Interim rule and request for public comment.

SUMMARY: The Defense Acquisition Regulatory Council has approved a new DFARS Subpart 231.70 and changes to Subpart 242.7 and new clauses at 252.231–7001 and 252.231–7002 to implement the interest penalty provisions of section 2324 of Pub. L. 99–145, the DoD Authorization Act of 1986.

DATES: Effective date: February 26, 1987.

Comments due on or before April 27, 1987. Please cite DAR Case 85–216 in all correspondence on this subject.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD(P)DARS, c/o OASD(A&L) (MRS), Room 3C841, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Defense Authorization Act, 1986 (Pub. L. 99–145) amends Title 10 of the United States Code by adding new section 2324, Allowable costs under defense contracts. Section 2324 contains provisions regarding contractor submittal of proposals for settlement of final indirect costs. Included in these provisions is authority for DoD to assess certain penalties when contractors submit unallowable costs in final indirect rate proposals. It is not necessary that the costs actually have been paid to the contractor.

To implement the penalty provisions of the law, DFARS is revised to add new Subpart 231.70, Penalties for Unallowable Costs, new section 242.771, same title, new contract clause 252.231–7001, same title, and new contract

clause 252.231–7002, Penalties for Unallowable Costs—Fixed Price Incentive.

B. Regulatory Flexibility Act

The Department of Defense certifies that the revisions to DFARS 231.7001, 242.771, 252.231–7001 and 252.231–7002 will not have a significant impact on a substantial number of small entities because no contractor should be putting clearly unallowable costs in their billing rates. Furthermore, the penalties are prescribed by law.

C. Paperwork Reduction Act

The rule does not contain any additional information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

D. Determination to issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim regulation. This action is necessary to implement section 2324 of Pub. L. 99–145, the DoD Authorization Act of 1986, and to protect the Government in those instances when contractors might put clearly unallowable costs in their billing rates.

List of Subjects in 48 CFR Parts 231, 242 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, 48 CFR Parts 231, 242 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 231, 242 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

2. A new Subpart 231.70, consisting of section 231.7001, is added to read as follows:

Subpart 231.70—Penalties for Unallowable Costs

§ 231.7001 Penalties for Unallowable Costs.

(a) *General.* (1) Public Law 99–145 (10 U.S.C. 2324 (a) through (d)) prescribes the assessment of penalties when contractors submit unallowable costs in proposals for settlement of indirect costs under certain Department of Defense contracts. Covered contracts are contracts covered by the penalty provision of Pub. L. 99–145 and include all Department of Defense contracts in an amount of more than $100,000 other than fixed-price contracts without cost incentives. As prescribed at 231.7001(d) such contracts will contain either one of the clauses at 252.231–7001 or 252.231–7002. It is not necessary that such unallowable costs have been paid to the contractor.

(2) An unallowable cost is defined at FAR 31.001.

(3) Penalties provided under the law are as follows:

(i) If the cost is unallowable based on clear and convincing evidence, the penalty is equal to the (A) amount of the disallowed cost plus (B) interest on the paid portion, if any, of the disallowance.

(ii) If the cost was determined to be unallowable before proposal submission, the penalty is equal to (A) the amount in (a)(3)(i) above plus (B) two times the amount of the disallowed cost.

(iii) If any penalty is assessed under (a)(3)(i) or (a)(3)(ii) above, an additional penalty of not more than $10,000 per proposal may be assessed.

(4) The above stated penalties are in addition to other civil and criminal penalties provided by law.

(b) *Responsibilities*—(1) *Contracting Officer.* (i) The cognizant administrative contracting officer (ACO) is responsible for determining whether the penalties under (a)(3)(i) and (a)(3)(ii) above should be assessed.

(ii) The cognizant ACO is responsible for initiating recommendations that the penalty under (a)(3)(iii) above be assessed.

(2) *(Department/Agency.* (i) Departments/Agencies are responsible for designating officials authorized to assess the penalty under (a)(3)(iii) above.

(ii) Department/Agencies are responsible for setting forth requirements for documentation and review of ACO determinations to assess the penalties under (a)(3)(i) and (a)(3)(ii) above, and ACO recommendations to assess the penalty under (a)(3)(iii) above.

(3) *Contract Auditor.* The contract auditor, in review and/or determination of final rates, shall make a recommendation to the ACO as to the appropriateness of penalties on questioned unallowable costs. Any such recommendation shall include documentation sufficient for a decision

(c) *Guidelines.*—(1) *Assessing the Penalty.* (i) The ACO shall assess the penalty under (a)(3)(i) above when the submitted cost is unallowable based on clear and convincing evidence.

(ii) The ACO shall also assess the penalty under (a)(3)(ii) above when the submitted cost was determined to be unallowable prior to submission of the proposal. Prior determinations of unallowability may be evidenced by the following documentation (This list is not all inclusive):

(A) A DCAA Form 1 (see FAR 42.705–2) which was not appealed by the contractor or withdrawn by DCAA.

(B) A contracting officer final decision which was not appealed under the Disputes clause.

(C) Prior ASBCA or Court decision which upheld a cost disallowance involving the contractor.

(D) Any determination of unallowability under the procedures provided in FAR 31.201–6, Accounting for unallowable costs.

(iii) The ACO shall issue a demand letter (see FAR 33.211) to the contractor for payment of any penalty assessed under (a)(3)(i) or (a)(3)(ii) above. The letter shall state that the determination is a final decision under the Disputes clause of the contract. (Demanding payment of the applicable penalty is separate from demanding repayment of the paid portion of the disallowed cost.)

(iv) The designated official, after receiving the ACO's recommendation and where circumstances warrant the additional penalty, may assess the penalty under (a)(3)(iii) above. Appropriate circumstances may include repeated submission of unallowable costs in a specific proposal.

(2) *Computing the Penalty.* (i) The amount of the disallowed cost subject to penalty is the amount submitted in the contractor's proposal which is allocated to the covered contracts (see (a)(1) above) and which is determined to be unallowable, based on clear and convincing evidence by the contracting officer.

(ii) Interest is to be computed on the paid portion of the disallowed cost.

(A) The overpayment may be considered to have occurred, and interest to start running, from the midpoint of the contractor's fiscal year. An alternate equitable method should be used if the cost was not incurred and paid evenly over the fiscal year.

(B) The rate specified by the Secretary of the Treasury pursuant to Pub. L. 92–41 (85 Stat. 97) is the interest rate to be used.

(C) Interest shall be computed from the date of overpayment to the date of the demand letter for payment of the penalty.

(D) The paid portion of the disallowed cost will be determined in consultation with the contract auditor.

(d) *Contract clauses.* (1) The contracting officer shall insert the clause

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at 252.231–7001, Penalties for Unallowable Costs, in all solicitations and contracts exceeding $100,000 which contain the clause at FAR 52.216–7 or FAR 52.216–13.

(2) The contracting officer shall insert the clause at 252.231–7002, Penalties for Unallowable Costs—Fixed-Price Incentive, in all solicitations and contracts exceeding $100,000 which contain the clause at FAR 52.216–16 or 52.216–17.

PART 242—CONTRACT ADMINISTRATION

3. Section 242.771 is added to read as follows:

242.771 Penalties for Unallowable Costs.

(a) 10 U.S.C. 2324 (a) through (d) prescribes the assessment of penalties when contractors submit unallowable costs in proposals for settlement of indirect costs under Department of Defense contracts. Subpart 231.70 provides guidance on penalty assessment.

(b) The ACO shall review all costs submitted in the contractor's proposal which are subsequently disallowed by the Government to determine whether a penalty is assessable under the criteria in 231.7001(c)(1).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Sections 252.231–7001 and 252.231–7002 are added to read as follows:

252.231–7001 Penalties for Unallowable Costs.

As prescribed at 231.7001(d)(1), insert the following clause.

Penalties for Unallowable Costs (Feb. 1987)

(a) The Contractor is required, under the Allowable Cost and Payment clause in this contract, to submit final indirect cost rates within ninety (90) days after the expiration of each of its fiscal years. The Contractor shall not include in any such submission any cost which is unallowable under the definition in section 31.001 of the Federal Acquisition Regulation (FAR).

(b) If the Contracting Officer determines by clear and convincing evidence that a cost submitted by the Contractor in its proposal for settlement for indirect costs incurred is unallowable in accordance with (a) above, the Contractor shall be assessed a penalty equal to (1) the amount of the disallowed cost allocated to this contract plus (2) simple interest, to be computed on the funds the Contractor was paid in excess of the amount to which the Contractor was entitled (see paragraph 231.7001(c) of the Department of Defense Supplement to the FAR). The simple interest will be computed using the applicable rate effective for each six month interval prescribed by the Secretary of the Treasury pursuant to Public Law 92–41 (85 Stat. 97).

(c) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal for settlement of indirect costs incurred includes a cost determined to be unallowable in the case of such Contractor before the submission of such proposal, the Contracting Officer shall assess, in addition to the penalty assessed in paragraph (b) above, a penalty in the amount equal to two times the amount of the unallowable cost.

(d) The determination of the Contracting Officer under (b) and (c) above is a final decision for the purpose of section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) and appealable in the manner provided in Section 7 of such Act (41 U.S.C. 606).

(e) The Government is entitled to assess an additional penalty of not more than $10,000 per proposal, if any penalty is assessed under (c) or (d) above.

(f) Contractor submission of unallowable costs is also subject to the provisions of 18 U.S.C. 287 and 31 U.S.C. 3729.

(g) Payment by the Contractor of any penalty assessed under (b) or (c) above does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

(End of clause)

252.231–7002 Penalties for Unallowable Costs—Fixed-Price.

As prescribed at 231.7001(d)(2), insert the following clause.

Penalties for Unallowable Costs—Fixed-Price Incentive (Feb. 1987)

(a) 10 U.S.C. 2304 provides for certain penalties if a Contractor submits to the Department of Defense a proposal for settlement of indirect costs incurred by the Contractor for any period after such costs have been accrued if that proposal includes the submission of a cost which is unallowable under the definition in section 31.001 of the Federal Acquisition Regulation. The Contractor shall not include such unallowable costs in any such proposal.

(b) The term "proposal for settlement of indirect costs incurred" shall include—

(1) A final indirect cost rate proposal submitted by the Contractor after the expiration of his fiscal year which relates to any payment (such as a progress or billing payment or interim cost reimbursement) made on the basis of billing rates or which will be used in negotiating the final contract price, or

(2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause which is used to establish the final contract price.

(c) If the Contracting Officer determines by clear and convincing evidence that cost submitted by the Contractor in a proposal for settlement of indirect costs incurred is unallowable in accordance with (a) above, the Contractor shall be assessed a penalty equal to (1) the amount to the disallowed cost allocated to this contract, plus (2) simple interest, to be computed on the funds the Contractor was paid, whether as a progress payment or billing payment, in excess of the amount to which the Contractor was entitled (see paragraph 231.7001(c) of the Department of Defense Supplement to the FAR). The simple interest will be computed using the applicable rate effective for each six month interval prescribed by the Secretary of the Treasury pursuant to Public Law 92–41 (85 Stat. 97).

(d) If the Contracting Officer determines that a cost submitted by the Contractor in a proposal for settlement of indirect costs incurred includes a cost determined to be unallowable in the case of such Contractor before the submission of such proposal, the Contracting Officer shall assess, in addition to the penalty assessed in paragraph (c) above, a penalty in an amount equal to two times the amount of the unallowable cost.

(e) The determination of the Contracting Officer under (c) and (d) above is a final decision for the purpose of Section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) and appealable in the manner provided in Section 7 of such Act (41 U.S.C. 606).

(f) The Government is entitled to assess an additional penalty of not more than $10,000 per proposal, if any penalty is assessed under (c) or (d) above.

(g) Contractor submission of unallowable costs is also subject to the provisions of 18 U.S.C. 287 and 31 U.S.C. 3729.

(h) Payment by the Contractor of any penalty assessed under (c) or (d) above does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

(End of clause)

[FR Doc. 87–4030 Filed 2–25–87; 8:45 am]

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Proposed Rules

Federal Register

Vol. 52, No. 38

Thursday, February 26, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Doc. No. 3784S]

General Administrative Regulations—Standard Reinsurance Agreement; Standards for Approval

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of Additional Proposed Rulemaking and Extension of Comment Period.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby extends for an additional thirty days the comment period on its proposal to issue a new Subpart L in Chapter IV of Title 7 of the Code of Federal Regulations (CFR) to contain the Standards for Approval; Reinsurance Agreement Regulations combining the standards for financial approval (7 CFR Part 400, Subpart G), with the provisions for operational standards (7 CFR Part 400, Subpart I). The intended effect of this additional proposed rule is to: (1) Make mandatory FCIC's assumption of all obligations for unpaid losses to any multiple peril crop insurance policyholder whose policy is reinsured by FCIC when an insurance company reinsured by FCIC is unable to fulfill such obligations by reason of a directive or order issued by any State Department of Insurance, or a court of competent jurisdiction; and (2) extend FCIC's exemption from punitive and other damages which are not available in suits against the Corporation, to Reinsured Companies and their agents in certain instances. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

DATE: Written comments on this proposed rule must be received by not later than March 30, 1987, to be sure of consideration.

ADDRESS: Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512.1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is July 1, 1991.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Tuesday, July 1, 1986, FCIC published a Notice of Proposed Rulemaking in the **Federal Register** at 51 FR 23782, proposing to combine into one document the financial standards and financial reporting requirements provisions of 7 CFR Part 400, Subpart G—Standards for Approval; Reinsurance Agreement with 7 CFR Part 400, Subpart I—Reinsurance Agreement, containing operational standards.

In order for the reader to refer to provisions contained in 7 CFR Part 400, Subparts G and I, FCIC herewith provides a redesignation table to indicate the proposed relocation of such previous provisions in the proposed 7 CFR Part 400, Subpart L:

Old	New
7 CFR Part 400, Subpart G	
400.50 Applicability of Standards for Approval	400.143
400.51 Definitions	400.141 and 142
400.52 Certification of submissions	400.150
400.53 Notification of deviation from Financial Standards	400.154
400.54 Revocation and non-acceptance	400.155
400.55 Qualifications for acceptability	400.150
400.56 Qualifications for less than acceptable; waiver	400.152 and 153
7 CFR Part 400, Subpart I	
400.75 Availability of reinsurance agreements	400.144
400.76 Eligibility for reinsurance agreements	400.145
400.77 Obligations of the Corporation	400.146
400.78 Limitations on Corporation's obligations	400.147
400.79 Obligations of participating insurance companies	400.148
400.80 Disputes	400.149
400.81 OMB control numbers	400.157

FCIC herein proposes to add a further element of reinsurance with respect to: (1) The assumption by FCIC of all obligations for unpaid losses on policies reinsured under the Standard Reinsurance Agreement in the event that a company reinsured under such Agreement is unable to fulfill its obligations to any holder of a Multiple Peril Crop Insurance Policy reinsured by FCIC by reason of a directive or order issued by a State Department of Insurance or by a court of competent jurisdiction; and (2) providing that no policy of insurance reinsured by FCIC, nor any claim, settlement, or adjustment action under such policy will provide a basis for a claim for damages, that the Corporation would not be liable for, against reinsured companies or their agents or employees, unless the claimant establishes that the basis of its

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claim for such damages was the result of the reinsured company's or its agents' or employees' actions which were beyond the scope of their authority or was the result of their failure to substantially comply with FCIC's procedures in the handling of the claim or in servicing the insured's policy.

Background

Most State laws regulating insurance provide for a guaranty fund assessment whereby the State obtains funds from regulated insurance companies licensed to operate within that State. The funds are used by the state to discharge any unfunded obligations of any such regulated insurance company.

The Standard Reinsurance Agreement between FCIC and a reinsured Company provides that, whenever a Company reinsured by FCIC is unable to fulfill its obligations to any policyholder reinsured under the Agreement, by virtue of an order or directive issued by a State Department of Insurance, or a court of competent jurisdiction, all such policies affected by such order or directive are immediately transferred to FCIC along with the obligations for all unpaid losses whether they occurred before or after such transfer. In addition, FCIC collects all funds with respect to all policies transferred and assumes from the Company the right to all uncollected premiums.

Since FCIC guarantees fulfillment of the Reinsured Company's obligations to insureds, the guarantee fund will not be required to pay on such policies. Any requirement by a State Department of Insurance for guaranty fund assessment against insurance companies licensed to operate in a state who participate in the Standard Reinsurance Agreement with FCIC on policies reinsured by FCIC is unnecessary because, in reality, such obligations to insureds are and have been guaranteed by FCIC as a part of its reinsurance agreement.

Under the provisions of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) (the Act), State and local laws or rules are not applicable to contracts or agreements of FCIC, or the parties thereto, to the extent that such contracts or agreements provide that such State or local laws or rules shall not apply, or that such laws or rules are inconsistent with such contracts or agreements (7 U.S.C. 1506(k)).

The Act further precludes recovery of assessments for the purpose of discharging unfunded obligations through additions to premium rates as provided by some of the state laws with respect to licensed insurance companies.

Rates charged by FCIC and the Reinsured Companies for insurance under the Act must, under the requirements of the Act, cover only anticipated indemnities and establish a reasonable reserve against unforeseen losses (7U.S.C. 1508(b)(1)).

FCIC has determined that State laws or rules providing for guaranty fund assessment for the purpose of discharging unfunded obligations of insurance companies should be preempted because the Standard Reinsurance Agreement provides adequate assurance that, with respect to Multiple Peril Crop Insurance reinsured by FCIC, any such State requirements will be properly met.

It is therefore determined that no such State laws of insurance practice, will arise under any FCIC reinsured multiple peril crop insurance business conducted in any State and that such business should not be subject to any guaranty fund assessment.

For this purpose, FCIC exercises the preemptive authority contained in 7 U.S.C. 1506(k) by adding a provision to the proposed 7 CFR 400.146, contained herein, providing: (1) Mandatory assumption by FCIC of all obligations for unpaid losses on policies reinsured under the Standard Reinsurance Agreement; and (2) determination that no assessment for any State guaranty fund may be computed or levied against companies for, on account of, any premiums payable on policies of Multiple Peril Crop Insurance reinsure by FCICI.

In addition, FCIC proposes to more clearly define the obligations of the Corporation with respect to damages by providing that no policy of insurance reinsured by FCIC will be the basis of a claim for damages which the FCIC would not be liable for unless the claimant establishes that the claim is based on the failure of the reinsured Company or its agents to properly follow FCIC procedures and instructions in the handling of the claim or servicing the insured's policy, or unless the Reinsured Company or its agents were acting outside the scope of their authority

The losses paid by a reinsured Company, including the sum paid by the Company under any crop insurance contract reinsured by FCIC in settlement of any claim and in satisfaction of any judgement rendered on account of such claim, are computed in the ultimate net loss of the Company. Such ultimate net loss computation may also include interest and insured's court costs contained in a final judgement against the Company in a court of competent jurisdiction.

In order to assure that the portion of the liability for ultimate net losses which the Company cedes to FCIC as reinsurance is correct and justified, FCIC proposes that no policy of insurance reinsured by FCIC will be the basis for a claim for damages unless the claimant establishes in court, or in the case of a settlement, satisfies FCIC, that the reinsured Company failed to comply with FCIC procedures with respect to the claim, or in servicing the insured, or that the Company or its agents were acting beyond the scope of their authority.

For the purpose of notice to the insureds, all Multi Peril crop insurance policies reinsured by the Corporation must be clearly identified as such.

FCIC herein proposes to add to the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on July 1, 1986, at 51 FR 23782, the additional proposed provisions described above.

For this purpose, FCIC republishes the notice of proposed rulemaking as amended herein and provides an additional comment period of thirty days in which written comments, data, and opinions may be submitted on the original proposed rule and the additional proposal contained herein to include provisions as described above.

Written comments, data, and opinions on this additional proposed rulemaking should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

Written comments received pursuant to this notice will be available for public inspection in the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 400

Crop Insurance—Standard Reinsurance Agreement—Standards for Approval.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation (FCIC) hereby proposes to remove and reserve 7 CFR Part 400, Subparts G and I and add a new Subpart L in Chapter IV of Title 7, Code of Federal regulations, to be known as 7 CFR Part 400, Subpart L, General Administrative Regulations—Standard Reinsurance Agreement—Standards for Approval, commencing July 1, 1987, for the 1988 and subsequent contract years, to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart L—Standard Reinsurance Agreement—Standards for Approval—Regulations for the 1988 and Subsequent Contract Years

Sec.

400.141 Definitions.
400.142 Definitions, IRIS Ratios.
400.143 Applicability.
400.144 Availability of the Standard Reinsurance Agreement.
400.145 Eligibility for Standard Reinsurance Agreements.
400.146 Obligations of the Corporation.
400.147 Limitations on the Corporation's obligations.
400.148 Obligations of participating insurance company.
400.149 Disputes.
400.150 General qualifications.
400.151 Qualifying when a State does not require that a financial statement be filed.
400.152 Qualifying with less than eight IRIS Ratios in the usual range.
400.153 Qualifying by waiver.
400.154 Notification of deviation from financial standards.
400.155 Revocation and non-acceptance.
400.156 State action preemptions.
400.157 OMB control numbers.
400.158—400.299 [Reserved]

Subpart L—Standard Reinsurance Agreement—Standards for Approval—Regulations for the 1988 and Subsequent Contract Years

Authority: Secs 501–520, Pub. L. 75.430, 52 Stat. 72–77 (7 U.S.C. 1501–1520), as amended.

§ 400.141 Definitions.

In addition to the terms defined in the Standard Reinsurance Agreement, the following terms as used in this rule are defined to mean:

(a) "Company" means the company reinsured by FCIC or applying to FCIC for a Standard Reinsurance Agreement.

(b) "Corporation" means the Federal Crop Insurance Corporation.

(c) "Current Assets" mean assets, including cash, that are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business, or within one year, if the operating cycle is less than one year.

(d) "Current liabilities" mean liabilities expected to be satisfied by either the use of assets classified as current in the same balance sheet, or the creation of other current liabilities, or those expected to be satisfied within a relatively short period of time.

(e) "FCIC" means the Federal Crop Insurance Corporation.

(f) "Financial statement" means the financial statement of an insurer seeking FCIC reinsurance prepared annually by an independent public accountant in accordance with generally accepted accounting principles; together with related exhibits, schedules, and explanations. This is the financial statement of an insurer submitted to the State Insurance Department if required by any state in which the insurer does business.

(g) "Guaranty fund assessments" mean the state administered program utilized by some state insurance regulatory agencies to obtain funds with which to discharge unfunded obligations of insurance companies licensed to do business in that state.

(h) "Insurer" means an insurance company that is licensed or admitted as such in any State, Territory, or Possession of the United States.

(i) "MPUL" means the maximum possible underwriting loss that an insurer can sustain on policies it intends to reinsure with FCIC, after adjusting for the effect of any reinsurance agreement with FCIC, and any other reinsurance agreement, as evaluated by FCIC.

(j) "Nonaffiliated company" means an insurer (1) that is not owned or controlled by the reinsured, (2) which does not own or control the reinsured, or (3) which is not jointly owned or controlled with the reinsured by any person or entity.

(k) "Obligations" mean crop or indemnity for crop loss on policies reinsured under the Standard Reinsurance Agreement.

(l) "Plan of Operation" means a statement submitted to FCIC each year in which a reinsured or a prospective reinsured specifies the reinsurance options it wishes to use, its marketing plan, and similar information as required by the Corporation.

(m) "Reinsurance agreement" means an agreement between two parties by which an insurer cedes to a reinsurer certain liabilities arising from the insurer's sale of insurance policies.

(n) "Reinsured" means the insurer which is a party to the Standard Reinsurance Agreement with FCIC.

(o) "Standard Reinsurance Agreement" (also "Agreement") means the reinsurance agreement between the reinsured and FCIC.

§ 400.142 Definitions, IRIS Ratios.

As used in this rule, with respect to the IRIS Ratios, the following terms are defined to mean:

(a) "Agents' Balances to Surplus Ratio" means premiums and agents' balances in the course of collection, divided by surplus.

(b) "Change in Surplus Ratio" means the increase or decrease in surplus, divided by the prior year-end surplus, with surplus adjusted for deferred acquisition expenses.

(c) "Change in Writings Ratio" means the increase or decrease in net premiums written, divided by the prior year's net premiums written.

(d) "Estimated Current Reserve Deficiency to Surplus Ratio" means the estimated current deficiency or redundancy in the liabilities for losses and loss adjustment expenses, divided by surplus. The estimated deficiency or redundancy is the net earned premium, times the average of the developed loss ratios from the one-year and the two-year reserve development to surplus ratios, minus the liabilities for losses and loss adjustment expenses reflected in the Company's annual or financial statement.

(e) "Investment Yield Ratio" means the net investment income divided by the average invested assets. Invested assets are: investments, cash, and investment income due and accrued, less borrowed money.

(f) "IRIS Ratios" mean the eleven financial ratios contained in the National Association of Insurance Commissioner's Insurance Regulatory Information System (IRIS). They are calculated using data from an insurer's annual statement for the accounting period ending the previous December 31st, and are expressed as percentages.

(g) "Liabilities to Liquid Assets Ratio' means liabilities divided by liquid assets. Liquid assets are cash, investments, investment income due and accrued, and agents' balances or uncollected premiums deferred and not yet due, less investments in affiliates and real estate in excess of 5% of liabilities.

(h) "One-Year Reserve Development to Surplus Ratio" means the one-year development of losses and loss adjustment expenses, divided by the prior year-end surplus. The one-year reserve development is the net payments during the current year for losses incurred more than one year prior, plus current liabilities for such losses, minus the liabilities on such losses at the prior year end.

(i) "Premium to Surplus Ratio" means net premiums written, divided by surplus.

(j) "Surplus Aid to Surplus Ratio" means surplus aid from reinsurance, divided by surplus. Surplus aid is estimated by multiplying the ratio of ceded commissions to ceded premiums by the unearned premiums on reinsurance ceded to nonaffiliated companies.

(k) "Two-Year Overall Operating Ratio" means the sum of the following

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two ratios: losses and loss expenses incurred, dividends to policyholders, and net investment income, all divided by net premiums earned; and other underwriting expenses, less income, divided by net premiums written.

(l) "Two-Year Reserve Development to Surplus Ratio" means a ratio calculated the same as the one-year reserve development to surplus ratio, except that a two-year base period is used.

(m) "Usual Range" means the range of IRIS Ratio results that has been established by the National Association of Insurance Commissioners as usually indicative of financially sound insurers.

§ 400.143 Applicability.

The standards contained herein shall be applicable to insurers who apply for or enter into a Standard Reinsurance Agreement effective for the 1988 and subsequent contract years.

§ 400.144 Availability of the Standard Reinsurance Agreement.

The Federal Crop Insurance Corporation will offer Standard Reinsurance Agreements to eligible Companies under which the Corporation will reinsure policies which the Companies issue to producers of agricultural commodities. The Standard Reinsurance Agreement will be consistent with the requirements of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and provisions of the regulations of the Corporation found at Chapter IV of Title 7 of the Code of Federal Regulations.

§ 400.145 Eligibility for Standard Reinsurance Agreements.

A Company will be eligible to participate in a Standard Reinsurance Agreement if the Corporation determines the Company meets the standards and reporting requirements of this subpart.

§ 400.146 Obligations of the Corporation.

The Standard Reinsurance Agreement will include the following among the obligations of the Corporation.

(a) The Corporation will reinsure policies written on terms, including premium rates, approved by the Corporation, on crops and in areas approved by the Corporation, and in accordance with the provisions of the Federal Crop Insurance Act, as amended, and the provisions of these regulations.

(b) The Corporation will pay a portion of each producer's premium on the policies reinsured under the Agreement, as authorized by the Federal Crop Insurance Act, as amended.

(c) The Corporation will assume all obligations for unpaid losses on policies reinsured under the Agreement in the event any company reinsured under the Agreement is unable to fulfill its obligations to any holder of a Multiple Peril Crop Insurance Policy reinsured by the Corporation by reason of a directive or order issued by any State Department of Insurance, State Commissioner of Insurance, any court of law having competent jurisdiction or any other similar authority of any jurisdiction to which the Company is subject.

(d) Each policy reinsured by the Corporation must be clearly identified in bold face or large type on the face thereof as follows:

This insurance policy is reinsured by the Federal Crop Insurance Corporation under the provisions of the Federal Crop Insurance Act, as amended (the Act) (7 U.S.C. 1501 et seq.), and all terms of the policy and rights and responsibilities of the parties are specifically subject to the Act and the regulations under the Act published in Chapter IV of 7 CFR.

§ 400.147 Limitations on the Corporation's obligations.

The Agreement will include the following among the limitations on the obligations of the Corporation.

(a) The Corporation may, at any time, suspend its obligation to accept additional liability from the Company by providing written notice to that effect.

(b) The obligations of the Corporation under the Agreement are contingent upon the availability of appropriations.

(c) The Corporation will not reinsure any policy sold by the Company to a producer after the date the Company receives notice that the Corporation has determined that the producer is ineligible to receive Federal Crop Insurance.

§ 400.148 Obligations of participating insurance company.

The Agreement will include the following among the obligations of the Company.

(a) The Company shall follow all applicable Corporation procedures in its administration of the crop insurance policies reinsured

(b) The Company shall make available to all eligible producers crop insurance for the crops and in the areas which are stated in its plan of operation as approved by the Corporation.

(c) The Company shall provide the Corporation, on forms approved by the Corporation, all information that the Corporation may deem relevant in the administration of the Agreement, including a list of all applicants refused coverage and all insured producers cancelled from insurance, along with the reason for such action, the crop program and the amount of coverage for each.

(d) The Company shall utilize only loss adjustment procedures and methods that are approved by the Corporation.

(e) The Company shall sell the policies covered under the Agreement through licensed agents or brokers who have successfully completed a training course approved by the Corporation.

(f) The Company shall not discriminate against any employee, applicant for employment, insured or applicant for insurance because of race, color, religion, sex, age, handicap, or national origin.

§ 400.149 Disputes.

All disputes arising under this Subpart and the Standard Reinsurance Agreement entered into by the Company and the Corporation must be submitted for decision to the Manager of the Corporation. The decision of the Manager shall be final unless the Company requests reconsideration in writing within 45 days of the receipt of the decision. Any hearing provided by the Corporation will be of an informal nature and the rules of evidence will not apply. Pending final decision of the dispute, the Company will proceed diligently with the performance of the Agreement, as required by the Corporation.

§ 400.150 General qualifications.

To qualify initially or thereafter for a Standard Reinsurance Agreement with FCIC, an insurer must:

(a) Be a licensed or admitted insurer in any State, Territory, or Possession of the United States;

(b) Be licensed or admitted, or use as a policy-issuing Company an insurer that is licensed or admitted, in each state from which the insurer will cede policies to FCIC for reinsurance;

(c) Have surplus, as reported in its most recent financial statement, that is at least equal to the values specified in the Minimum Surplus Table,[1] times an underwriting loss at a 400 loss ratio for the policies anticipated to be reinsured by FCIC (As used in the Minimum Surplus Table, an insurer is considered to issue policies in a state if at least 5 percent of all policies it reinsures with FCIC are issued in that state);

(d) Have at least eight of its eleven IRIS ratios, based on its most recent financial statement, fall within the usual ranges stipulated in the Usual Ranges of IRIS Ratios Table:[1]

(e) Submit to FCIC with its Plan of Operation each year a copy of the latest financial statement, signed by the President and another officer of the insurer, and filed with the Insurance Department of any state in which the Company does business; and

(f) Submit to FCIC any insurance department examination report, loss reserve certification, independent auditor's letter relating to the adequacy of the Company's internal control, and any other appropriate financial information, as requested by FCIC.

§ 400.151 Qualifying when a State does not require that a financial statement be filed.

An insurer which is exempted by the Insurance Department of the state from submitting a financial statement to the state must, in addition to the requirements of § 400.150 (a), (b), (d), and (f):

(a) Submit to FCIC with its Plan of Operation each year a copy of the latest annual financial statement prepared by an independent public accountant with generally accepted accounting principles, signed by the President and another officer of the insurer, which, if not exempted, would have been filed with the Insurance Department of any state in which it does business;

(b) Have a ratio of current assets to current liabilities of at least 1.2 to 1; and

(c) Have surplus at least equal to the values specified in the Minimum Surplus Requirements Table, times its MPUL from the policies to be reinsured by FCIC.

[1] The Minimum Surplus Table and the Usual Ranges of IRIS Ratios Table are shown below.

TABLE.—MINIMUM SURPLUS

Number of States in which a company issues FCIC-reinsured policies—	Minimum surplus values (multiply by underwriting loss at a 400 loss ratio—
1	8
2 through 10	5
11 or more	4

TABLE.—USUAL RANGES OF IRIS RATIOS

IRIS ratio	Usual range (percent)	
	From	To
Premium to surplus		+300
Change in writings	-33	+33
Surplus aid to surplus		+25
2-year overall operating ratio		+100
Investment yield	+6 and up	
In surplus	-10	+50
Liabilities to liquid assets		+105
Agent's balances to surplus		+40
1-year reserve development to surplus		+25
2-year reserve development to surplus		+25
Estimated current reserve deficiency to surplus		+25

§ 400.152 Qualifying with less than eight IRIS ratios in the usual range.

An insurer with less than eight of the IRIS ratios in the usual range (required by § 400.150(d)) may qualify if, in addition to the requirements of § 400.150 (a), (b), (c), (e), and (f), the insurer:

(a) Submits a plan, acceptable to FCIC, to eliminate the financial deficiency indicated by the IRIS ratios;

(b) Has a B+ rating or higher in the latest edition of "Best's Insurance Reports," is listed in the latest edition of "Surety Companies Acceptable on Federal Bonds," or is currently approved under the provisions of Treasury Department Circular No. 570; or

(c) (1) Has a ratio of current assets to current liabilities of at least 1.2 to 1, and a surplus at least equal to the values specified in the Minimum Surplus Table times its MPUL from the policies to be reinsured by FCIC;

(2) Has an irrevocable source of surplus such that conditions in (1) are met; or

(3) Has a binding agreement with another insurer that qualifies such insurer under this Part 400 to assume financial responsibility in the event of the reinsured's failure to meet its obligations on FCIC reinsured policies.

§ 400.153 Qualifying by waiver.

If an insurer does not qualify under any of the above methods because of unique circumstances and FCIC determines that the insurer is otherwise financially sound, FCIC may enter into a reinsurance agreement with the insurer.

§ 400.154 Notification of deviation from financial standards.

An insurer must immediately advise FCIC if it deviates from compliance with any of the requirements of this Chapter. FCIC may require the insurer to update its financial statement during the year. FCIC may terminate the reinsurance agreement if the Company is out of compliance with the requirements of this Chapter.

§ 400.155 Revocation and non-acceptance.

(a) FCIC will deny reinsurance to any insurer or will terminate any existing reinsurance agreement if any false or misleading statement is made in the financial statement or any other document submitted by the insurer in connection with its qualification for FCIC reinsurance.

(b) No policy issued by an insurer subsequent to revocation of a reinsurance agreement will be reinsured by FCIC. Policies in effect at the time of revocation will continue to be reinsured by FCIC for the balance of the crop year then in effect for the applicable crop. However, if materially false information is made to the Corporation and that information directly affects the ability of the Company to perform under the Standard Reinsurance Agreement, or if the Company commits any fraudulent or criminal act in relation to the Standard Reinsurance Agreement or any policy reinsured under the Standard Reinsurance Agreement, FCIC may require that the Company transfer the servicing and contractual right to all business in effect and reinsured by the Corporation to the Corporation.

§ 400.156 State action preemptions.

(a) No policyholder shall have recourse to any state guaranty fund or similar state administered program for crop or premium losses reinsured under such Standard Reinsurance Agreement. No assessments for such State funds or programs shall be computed or levied on companies for or on account of any premiums payable on policies of Multiple Peril Crop Insurance reinsured by the Corporation.

(b) No policy of insurance reinsured by the Corporation and no claim, settlement, or adjustment action with respect to any such policy shall provide a basis for a claim of damages against the Company issuing such policy, other than damages to which the Corporation would be liable under federal law if the Corporation had issued the policy of insurance under its direct writing program, unless the claimant establishes in a court of competent jurisdiction, or to the satisfaction of the Corporation in the event of a settlement, that such damages were caused by the culpable failure of the Company to substantially comply with the Corporation's procedures or instructions in the handling of the claim or in servicing the insured's policy, or unless the Company or its agents were acting outside the scope of their authority (apparent or implied) in performing or omitting the actions claimed as a basis for the damage action.

§ 400.157 OMB control numbers.

OMB control numbers are contained in Subpart H to Part 400 in Title 7 CFR.

§ 400.158—400.299 [Reserved]

Done in Washington, DC, on February 4, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-3897 Filed 2-25-87; 8:45 am]

BILLING CODE 3410-08-M

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Agricultural Marketing Service

7 CFR Part 946

Irish Potatoes Grown in Washington; Proposed Suspension of Provision on Mandatory Committee Membership for Certified Seed Producers in District No. 5, and Conforming Change

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would suspend a provision in § 946.25(c) of the marketing order that requires one producer member and that member's alternate on the State of Washington Potato Committee from District No. 5 to be a certified seed producer. Suspension of the provision would allow any producer in District No. 5 to serve on the committee. Over the years, the number of tablestock market producers relative to seed producers has increased. The rule also would make conforming changes in § 946.104 of the rules and regulations issued under the order to reflect the suspension of the order provision. The proposal was recommended by the committee.

DATE: Comments must be received by March 9, 1987.

ADDRESS: Comments should be sent to: Docket Clerk, F&V, AMS, Room 2085–S, U.S. Department of Agriculture, Washington, DC 20250. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch F&V, AMS USDA, Washington DC 20250, telephone (202) 447–5697.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Executive Order 12291 and Department Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (The Act, 7 U.S.C. 601–674), and rules promulgated thereunder, are unique in that they are brought about through the group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This proposed rule would suspend an order provision in § 946.25(c) requiring one producer member of the State of Washington Potato Committee from District No. 5, and that member's alternate, to be a certified seed producer. It would also remove the requirement in § 946.104(a)(5) of the rules and regulations that makes only potato seed producers eligible for committee membership from District No. 5. These actions are designed to make the producer membership from District No. 5 more representative of the producer makeup in that district. District No. 5 includes 17 counties west of the Cascade mountain range slope in Washington. It is bounded on the south by the Oregon border, on the north by the Canadian border, and on the west by the Pacific Ocean.

There are approximately 60 handlers of Washington potatoes subject to regulation under the marketing order for potatoes grown in Washington. In addition, there are approximately 350 producers of Washington potatoes. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average annual gross revenues for the last three years of less than $100,000, and agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities. This action is primarily of an administrative nature and, as such, does not impose any additional costs on handlers or producers.

The proposed rule is issued under the Marketing agreement and Order No. 946, both as amended (7 CFR Part 946), regulating the handling of Irish potatoes grown in the State of Washington. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposed actions are based on the recommendation of the State of Washington Potato Committee established under the order, and upon other available information.

The proposed rule would suspend the proviso in § 946.25(c) of the marketing order regarding District No. 5 producer representation. The proviso to be suspended reads as follows: *"Provided,* That one producer member of the committee from District No. 5, with his respective alternate, shall be a certified seed producer". Section 946.104(a)(5) of Subpart—Rules and Regulations (7 CFR 946.100 through 946.142) allocates one producer member and alternate member to District No. 5 and requires each to be a certified seed producer. The proposal would make a conforming change in § 946.104(a)(5) necessary because of the suspension.

The suspension of the proviso in § 946.25(c) and the conforming change in § 946.104(a)(5) removing the certified seed producer requirements are necessary to reflect changes in the producer makeup in that district in recent years. District No. 5 had originally been composed mostly of certified seed producers. However, the number of tablestock growers has increased over the years, and currently they substantially exceed seed growers. Allowing both certified seed and tablestock growers to serve on the committee on District No. 5, would foster more equitable producer representation on the committee reflective of the current producer makeup and recognize that it is inequitable to allot the one position for District No. 5 only to certified seed producers.

It is hereby found and determined that a comment period of less than 30 days is appropriate, because nominations for the member and alternate member for District No. 5 are scheduled to begin February 19, 1987. A longer comment period would not allow completion of this action in time for the scheduled nominations. Moreover, this action is not controversial and is fully supported by the producers in District No. 5.

List of Subjects in 7 CFR Part 946

Marketing agreements and orders, Potatoes, Washington.

PART 946—IRISH POTATOES GROWN IN WASHINGTON

The proposal is to suspend indefinitely certain provisions in § 946.25(c) (7 CFR Part 946), and to amend Subpart-Rules and Regulations (7 CFR Part 946.101 through 946.142) as follows:

1. The authority citation for 7 CFR Part 946 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 946.25 [Amended]

2. Section 946.25(c) is amended by changing the colon to a period and by indefinitely suspending the proviso in paragraph (c) which reads as follows: *"Provided,* That one producer member of the committee from District No. 5, with his respective alternate, shall be a certified seed producer."

3. Section 946.104 (43 FR 52199, November 9, 1978) is amended by removing the last sentence in paragraph (a)(5). As revised § 946.104(a)(5) reads as follows:

§ 946.104 Reapportionment of committee membership.

. . . . . .

(5) District No. 5—One producer member and one handler member.

Dated: February 19, 1987.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 87–4018 Filed 2–25–87; 8:45 am]

BILLING CODE 3410–02–M

Rural Telephone Bank

7 CFR Part 1610

Rural Telephone Bank Loan Policies

AGENCY: Rural Telephone Bank, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Telephone Bank (RTB) hereby amends Part 1610 Loan Policies, Chapter XVI in Title 7 of the Code of Federal Regulations by redesignating the text of § 1610.5 as 1610.5(a) and adding a new paragraph (b). Section 1610.5(b) provides that each advance of funds on RTB loans approved after the effective date of the final rule shall bear interest at the cost of money rate determined by the Governor of the RTB, prevailing at the time of such advance but not less than 5 percent.

The primary purpose of this amendment is to insure that the RTB lends funds at its "cost of money rate" as mandated in section 408(b)(3) of the Rural Electrification Act of 1936 (7 U.S.C. 901–950b) as amended. The amendment will also eliminate risk to the RTB caused by fluctuating interest rates. The amendment will affect all future RTB borrowers.

DATE: Comments concerning this proposed rule must be received on or before March 30, 1987.

ADDRESS: Comments may be mailed to F. Lamont Heppe, Jr., Chief, Loans and Management Branch, Telecommunications Staff Division, Rural Electrification Administration, Room 2823—South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382–9550. The Draft Regulatory Impact Analysis describing the options considered in developing this rule amendment is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This rule is issued in conformity with Executive Order 12291, Federal Regulation. The action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies; or (3) result in significant adverse effects on competition, employment, investment or productivity, and therefore has been determined to be "not major."

This program is listed in the Catalog of Federal Domestic Assistance as 10.851—Rural Telephone Loans and Loan Guarantees, and 10.852—Rural Telephone Bank Loans. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015 Subpart V in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq. 1976) and, therefore, does not require an environmental impact statement or an environmental assessment.

This rule amendment contains no information or recordkeeping requirements which would require approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 et. seq.).

Background

The Board of Directors of the Rural Telephone Bank at its meeting held on September 18, 1986, adopted a resolution calling for the above rule change. The Rural Telephone Bank is mandated by law to lend money at its cost of money rate. Current RTB policies and procedures establish a fixed rate for a loan, and all subsequent advances under the loan, at the time the loan is approved. The fixed rate is based on a projection of the anticipated cost of money rate to the RTB at least one year after the loan is approved. Draw down of loan funds by borrowers can extend over a period of five years.

The Bank's borrowing rate materially affects the rate at which it can lend money. Thus, during periods of extreme interest rate volatility, as witnessed during recent years, the interest rate on a particular loan commitment may bear no resemblance to the Bank's average cost of money at the time the loan is advanced because of this time differential. For example, a loan commitment made to a borrower at 8 percent in January of 1980 could have been drawn down two years later in January of 1982 when the average cost of money to the Bank was 11 percent. Conversely, a loan commitment made to a borrower in January of 1982 could have been drawn down on May 1, 1986, when the average cost of money to the Bank was 8 percent.

This raises a serious question as to whether the current system of applying the Bank's interest rates accurately reflects its statutory obligation to lend at the "cost-of-money rate." And, it places both the Bank and the borrower at considerable risk, with the Bank bearing the greater proportion, since the borrower may avoid drawing down the loan funds if disadvantageous, whereas the Bank has committed itself to lend the funds for a period of years at a specified rate of interest without fixing its cost of money. Since the Bank does not match the interest rate on loan commitments with the interest rate on advances, the investment of all three classes of stockholders is being subjected to enormous risk. This, of course, includes the Government's investment of almost $450 million in the Bank's Class A stock plus almost $800 million invested by Treasury in the Bank's debentures.

To avoid this type of risk, the Federal Financing Bank refrains from establishing an interest rate at the time of commitment. It sets the interest rate on each advance as it is made.

Given the Rural Telephone Bank's statutory obligation to lend funds at its "average cost of moneys," it is imperative that the most current interest rate established by the Governor be applied to each advance. Such a procedure would not intrude upon the Governor's authority under the Act to determine the Bank interest rates. Nor would it affect current determinations of borrower eligibility.

List of Subjects in 7 CFR Part 1610

Loan programs—communications, Telecommunications telephone.

PART 1610—[AMENDED]

In view of the above 7 CFR Part 1610 is hereby amended to read as follows:

1. The authority citation for 7 CFR Part 1610 continues to read:

Authority: 85 Stat. 29 et seq.; 7 U.S.C. 931 et seq.; as amended at Pub. L. 93–32, 87 Stat. 65 et seq.

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2. The text of § 1610.5 is redesignated as paragraph (a) and new paragraph (b) is added to read as follows:

§ 1610.5 Concurrent REA and Bank loans.

(a) * * *

(b) Notes for loans approved by the Governor after (the effective date of this rule) shall provide that each advance thereunder shall bear interest at the cost of money rate determined by the Governor, prevailing at the time of such advance.

Dated: February 13, 1987.

Jack Van Mark,

Acting Governor, Rural Telephone Bank.

[FR Doc. 87-3869 Filed 2-25-87; 8:45 am]

BILLING CODE 3410-15-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-21]

Northern States Power Co. & Wisconsin Electric Power Co.; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission is denying a petition for rulemaking submitted by Northern States Power Company and Wisconsin Electric Power Company. The petitioners requested that the Commission amend its regulations to include plant security information within the definition of Restricted Data, or alternatively within the definition of National Security Information, and to ensure that the discovery of plant security information during the Commission's adjudicatory proceedings is subject to the protection of 10 CFR Part 2, Subpart I for Restricted Data or National Security Information. According to petitioners, the revisions are necessary in order to protect plant security information from unauthorized disclosure, and thus ensure that security plans are not compromised. In the time since the petitioners submitted their petition, amendments to the Atomic Energy Act concerning plant security information and corresponding revisions to the Commission's regulations have been made. Therefore, the Commission is denying the petition because existing regulatory framework adequately balances the need for protection of plant security information with the need to disclose such information to parties in adjudicatory hearings.

ADDRESS: Copies of the petition for rulemaking, the public comments received, and the NRC's letter of denial are available for public inspection or copying for a fee at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kristina Jamgochian, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 427-4754.

SUPPLEMENTARY INFORMATION:

The Petition

On June 6, 1977, the Nuclear Regulatory Commission received a petition from the Northern States Power Company and the Wisconsin Electric Power Company. The petitioners requested that the Commission amend its regulations to include plant security information within the definition of Restricted Data, or alternatively within the definition of National Security Information, and to ensure that the discovery of plant security information during the Commission's adjudicatory proceedings is subject to the protection of 10 CFR Part 2, Subpart I for Restricted Data or National Security Information.

Basis for the Request

The Commission's regulations, 10 CFR 50.34, requires each applicant for a license to operate a nuclear power reactor to include in the license application a physical security plan demonstrating how the applicant plans to comply with the Commission's requirements in 10 CFR Part 73. These regulations require licensees to provide physical protection against radiological sabotage and against theft of special nuclear material (10 CFR 73.40). These security plan issues have been raised and litigated in the Commission's adjudicatory proceedings for construction permits and operating licenses.

At the time of petitioners request, security plan information was afforded the same protection in Commission adjudicatory proceedings as that given to privileged or confidential commercial or financial information. As recognized by petitioners, disclosure of this information to intervenors in a licensing proceeding is authorized under a protective order issued by the licensing board. These protective orders bar further disclosure of the information. However, the petitioners asserted that this treatment does not adequately protect security plan information against public disclosure. According to the petitioners, the reclassification of security plan information as either Restricted Data or National Security Information would provide a more effective level of protection. Petitioners also noted that the Commission's regulations do not protect against disclosure in proceedings conducted by agencies other than the NRC.

The petitioners offered the following justification for the proposed revision of the regulations:

- The penalties for disclosure of plant security information would only be triggered after there had been an unauthorized disclosure and any resulting damage had occurred;
- Organizations seeking to disclosure or wrongful use plant security information could intervene in a licensing proceeding solely in order to gain access to the information; and
- State agencies often insist on considering plant security questions in the course of State proceedings and may not afford *in camera* protection to this information.

For the above reasons, petitioners would limit access to plant security information to persons having security clearances. According to petitioners, this could be accomplished by establishing it as Restricted Data under section (y) of the Atomic Energy Act, as amended, 42 U.S.C. 2014(y), or as National Security Information pursuant to Executive Order 11652, as amended. By requiring an intervenor in a licensing proceeding to obtain a security clearance in advance of access to plant security information, the Commission would gain substantial assurance that the individual securing such information would not misuse it. In addition, agencies other than NRC would be bound to observe the Federal requirements on the disclosure of Restricted Data or National Security Information. The plant security information could be disclosed only to persons having the requisite security clearances.

Public Comments on the Petition

On July 21, 1977, the Commission published a notice in the **Federal Register** and requested comments on the petition (42 FR 37458). The NRC received 12 public comments on the petition for rulemaking. Two commenters were major suppliers of equipment to nuclear power plants and the other 10 commenters were nuclear power plant licensees, one of which was the petitioners. Nine commenters, including the petitioners, supported the petition for rulemaking. In addition, the petitioners requested that a letter from the Advisory Committee on Reactor Safeguards (ACRS) to the Chairman of the NRC dated August 18, 1977, be included in the record of this proceeding. In this letter the ACRS recommended ". . . that access to sensitive material of this type be restricted to persons with appropriate clearances and a definite need to know."

Three commenters did not agree with the petition. These commenters felt that the proposal recommended by petitioners would inhibit the utility companies' internal use of such information because of the large number of employees requiring its use. They also felt that establishng and administering a clearance program would create an overwhelming burden to the utility in terms of time and expense.

Reasons for Denial

In the time since the petitioners submitted their petition, amendments to the Atomic Energy Act concerning plant security information and corresponding revisions to the Commission's regulations have been made. Section 207(a)(1) of Public Law No. 96-295 added a new section 147 of the Atomic Energy Act, 42 U.S.C. 2167. This provision directed the Commission to promulgate regulations to prohibit the unauthorized disclosure of certain types of Safeguards Information. In response, the Commission promulgated regulations that establish a framework for the protection of this information. As published in 46 FR 51718 of October 22, 1981, 10 CFR 73.2(jj) defines "Safeguards Information" as:

> . . . information not otherwise classified as National Security Information or Restricted Data which specifically identifies a licensee's or applicant's detailed (1) security measures for the physicial protection of special nuclear material, or (2) security measures for the physical protection and location of certain plant equipment vital to the safety of production or utilization facilities.

A provision contained in 10 CFR 73.21(c)(1) of the Commission's regulations prohibits any person from having access to Safeguards Information unless the person has an established "need to know" for the informaton and also falls into one of several specified categories of individuals. One of these categories, 10 CFR 73.21(c)(1)(vi), is for individuals to whom disclosure is ordered pursuant to 10 CFR 2.744(e), which governs requests for the production of NRC records and documents by parties to an NRC adjudicatory hearing. Under 10 CFR 2.744, a party to a hearing may request documents containing Safeguards Information. However, 10 CFF 2.744(d) requires that the requested document must not only be relevant to the issues in the hearing, but the presiding officer must also find that the disclosure of the information is necessary to a proper decision in the proceeding. If these requirements are met, any order to produce the document may contain protective terms and conditions, including the signing of an affidavit of nondisclosure. These protective terms and conditions are designed to limit the disclosure of Safeguards Information to the parties in the proceeding, to any interested governmental entities participating pursuant to 10 CFR 2.725(c), and their qualified witnesses and counsel. The presiding officer is authorized to impose sanctions for the violation of an order pertaining to the disclosure of Safeguards Information under 10 CFR 2.744(e). For example, if a protective order were violated by an intervenor, § 2.744(e) would allow the licensing board to dismiss the intervenor from the proceeding. If a protective order is violated by counsel for an intervenor, the licensing board may bar the particular counsel from further participation in the proceeding. Under 10 CFR 2.713(c)(3), the licensing boards are also required to notify the State bar to which the attorney is admitted of such suspension. It is conceivable that there may be some circumstances in which these sanctions might not prove satisfactory because they would not reach witnesses who make unauthorized disclosures of protected information and who are not under the direct control of the parties to the adjudicatory proceeding. In actual practice, however, these sanctions have been more than adequate. In addition to these sanctions, section 147, 42 U.S.C. 2282, and section 223, 42 U.S.C. 2273, of the Atomic Energy Act, as amended, impose civil and criminal penalties for unauthorized disclosure of unclassified Safeguards Information.

In promulgating its regulations on the disclosure of Safeguards Information, the Commission was required by section 181 of the Atomic Energy Act, 42 U.S.C. 2231, to provide for the protection of Safeguards Information with the *minimum* impairment of procedural rights. The provisions of 10 CFR 73.21 and 2.744, discussed above, were seen by the Commission as the minimum restrictions necessary to protect public health and safety or the common defense and security in the context of adjudicatory hearings. This principle is also the basis for the creation of the separate category of "Safeguards Information" rather than including this type of information in the more restrictive categories of Restricted Data or National Security Information, which are governed by special procedures in 10 CFR Part 2, Subpart I. These regulations also reflect the Commission's judgment that the adequacy of a security plan bears significantly on public health and safety and is a proper issue for consideration in an adjudicatory proceeding.

The existing regulatory framework adequately balances the need for protection of plant security information with the need to disclose such information to parties in adjudicatory hearings. Accordingly, the petition is denied.

Dated at Bethesda, Maryland, this 13th day of February, 1987.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Excutive Director for Operations.

[FR Doc. 87-4006 Filed 2-25-87; 8:45 am]

BILLING CODE 7590-01-M

10 CFR Part 73

[Docket Nos. 73-2, 73-7, and 73-8]

Wisconsin Electric Power Co., et al.; Withdrawal of Petitions for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petitions for rulemaking; withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing, at the petitioners' request, three related petitions for rulemaking (PRM-73-2, 73-7, and 73-8) that were filed by Shaw, Pittman, Potts & Trowbridge on behalf of Wisconsin Electric Power Co. (73-2, 73-7, 73-8), Wisconsin Public Service Corp. (73-2), Public Service Gas & Electric Co. (73-7, 73-8), Baltimore Gas & Electric Co. (73-2), Commonwealth Edison Co. (73-7, 73-8), Yankee Atomic Power Co. (73-7, 73-8), Northern States Power Co. (73-7, 73-8), and Sacramento Municipal Utility District (73-7, 73-8), collectively referred to as petitions for rulemaking filed by Wisconsin Electric Power Co., et al. The three petitions for rulemaking requested the elimination of certain requirements at nuclear power plants: "pat-down" physical searches of individuals, log-out for certain individuals, and searches of hand-carried personal effects of certain screened employees.

ADDRESSES: A copy of the petitioners' letter requesting the withdrawal of the petitions is available for public inspection or copying for a fee in the NRC's Public Document Room, 1717 H

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Street, NW., Washington, DC 20555. Single copies of the petitioners' letter requesting the withdrawal of the petitions may be obtained free of charge by writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Acting Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7086 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION: In a **Federal Register** notice published on September 15, 1977 (42 FR 46431), the NRC announced the receipt of and requested comments on a petition for rulemaking (PRM–73–2) filed by Wisconsin Electric Power Co., et al. The comment period expired on October 17, 1977. (About 100 letters of comment were received on the petition.) The petition, which was dated August 19, 1977, requested that the NRC amend § 73.55(d)(1) to eliminate the requirement for "pat-down" physical searches of individuals entering a protected area of a nuclear power plant. Petitioners' contended that the requirement was unnecessary because comparable highly sensitive facilities, such as those used to store nuclear weapons, do not have such a requirement.

In **Federal Register** notices published on February 16, 1982 (47 FR 6657 and 6658), the NRC announced the receipt of and requested comments on two petitions for rulemaking (PRM–73–7 and 73–8) filed by Wisconsin Electric Power Co., et al. The comment period for both petitions expired on April 19, 1982. (Thirteen letters of comment were received on each petition). Both petitions were dated December 2, 1981. PRM–73–7 requested that the NRC amend § 73.70(d) to eliminate the log-out requirement at nuclear power reactors for individuals given access to normally unoccupied vital areas. The petitioners contended that the requirement was not only unnecessary from a safety standpoint, but that it might be detrimental to safe plant shutdown and effective plant response to other emergencies. PRM–73–8 requested that the NRC amend § 73.55(d)(2) to eliminate the requirement for searches of hand-carried personal effects of screened employees entering a protected area of a nuclear power plant.

By letter dated January 12, 1987, the petitioners confirmed their agreement to withdraw the petitions for rulemaking. Important to the petitioners' decision to withdraw these petitions is the fact that the NRC recently published two final rules on August 4, 1986 (51 FR 27817–27825). One of the rules, "Searches of Individuals at Power Reactor Facilities," revised § 73.55(d) regarding the search requirements for individuals entering the protected area of nuclear power plants; and the other rule, "Miscellaneous Amendments Concerning Physical Protection of Nuclear Power Plants," amended several paragraphs of §§ 73.55 and 73.70 regarding access control to vital areas, the protection of certain physical security equipment, requirements for key and lock controls, and the suspension of safeguards measures during emergencies. Because of the foregoing rulemaking activities, the petitioners have agreed to withdraw the petitions.

Dated at Bethesda, Maryland, this 19th day of February 1987.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 87–4007 Filed 2–25–87; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 571

[No. 87–175]

Federal Savings and Loan Insurance Corp.; Transfers of Assets of Insured Institutions

Dated: February 17, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is proposing to adopt a clarifying amendment to its statement of policy regarding mergers and transfers of assets. The purpose of the amendment is to make clear that the Board's regulations governing transfers of assets, savings accounts, and other liabilities by institutions insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") are applicable to all transfers in bulk not made in the ordinary course of business, including transfers by operation of law effected pursuant to charter conversions, mergers, consolidations, and other business combinations and reorganizations in which an FSLIC-insured institution is not the surviving entity, and that, accordingly, application to and approval by the Board are required for such transactions. The proposed amendment is a slightly modified version of an interpretive rule recently adopted by the Board. The Board is making this proposal to resolve any uncertainty that may exist concerning the types of transfers that are subject to the Board's regulations.

DATES: Comments must be received on or before March 30, 1987.

ADDRESS: Send comments to Director, Information Service Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: John A. Buchman, Attorney, (202) 377–6963; or Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 377–6459; Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 1986, the Board, acting as operating head of the FSLIC, amended its statement of policy regarding mergers and transfers of assets set forth in § 571.5(a) of its Rules and Regulations for FSLIC-Insured Institutions ("Insurance Regulations"). The Board's objective in adopting the amendment was to make clear that application to and approval by the Board under 12 CFR 563.22(b) are required for transfers of assets and savings account liabilities of insured institutions that are effected by operation of law pursuant to charter conversions, mergers, consolidations, and other business combinations and reorganizations in which an FSLIC-insured institution is not the surviving entity. *See* Board Resolution No. 86–1096, 51 FR 36528 (Oct. 10, 1986) (to be codified at 12 CFR 571.5(a)). In support of this clarification, the Board noted, *inter alia*, that there is no basis for limiting the applicability of § 563.22(b) to transfers resulting from conventional purchase and assumption transactions or bulk sales of assets and that the clarification is consistent with one of the Board's primary purposes when it amended § 563.22(b) in 1983—"to protect accountholders whose rights and interests could be adversely affected by a transfer of their accounts in connection with a transfer of substantially all of an institution's assets." *Id. See* Board Resolution No. 83–243, 48 FR 21302 (May 12, 1983). The Board also found that compliance with the notice, comment, and delayed

effectiveness requirements of section 553 of the Administrative Procedure Act ("APA") (5 U.S.C. 553) and the Board's regulations thereunder (12 CFR 508.11, 508.14) was not necessary, given the clarifying and interpretive nature of the rule. Accordingly, the rule was adopted by the Board in final form and became effective on October 10, 1986, the date on which the revision to 12 CFR 571.5(a) was published in the **Federal Register.**

The validity of the Board's interpretation was subsequently challenged by United States Federal Savings and Loan Association, Sarasota, Florida, and Barnett Banks of Florida, Inc. In an order dated December 19, 1986, the United States District Court for the Middle District of Florida, Jacksonville Division, issued a preliminary injunction against the Bank Board's "[implementation or enforcement] of its rule requiring approval of [the proposed] merger [of United First into a commercial bank subsidiary of Barnett] before the merger could take place." [1] In support of its order, the district court found that plaintiffs were likely to succeed on their claim that the clarification was, in fact, a legislative rule and that the rule was promulgated in violation of the procedural requirements of section 553 of the APA.[2]

The Board has filed an appeal from the court's order with the United States Court of Appeals for the Eleventh Circuit.[3] The Board believes that its appeal raises substantial issues on which it should ultimately prevail and remains of the view that the clarifying amendment was promulgated in compliance with all applicable precedural requirements. Accordingly, pending appeal, the Board will continue to require all insured institutions that propose to make transfers of all or a substantial portion of their assets and/or savings account liabilities to comply with the provisions of 12 CFR 563.22(b), regardless of how the transfer is to be structured or effected or how the transfer is characterized under state law.[4]

The Board, acknowledges, however, the possibility that the federal appeals court could affirm the district court's holding. The Board also recognizes that, although the district court's preliminary injunction in *United First* was, by its terms, only applicable to Barnett's acquisition of United First, a number of the insured institutions presently contemplating transfers of assets by operation of law may question the need for continued compliance with the application and approval requirements of § 563.22(b) in light of the court's decision. To avoid any uncertainty that exists regarding the procedural validity of the recent clarification of 12 CFR 571.5(a) and to provide interested parties an opportunity to express their views on this mattter, the Board hereby proposes a revised modification to the definition of "transfers" in § 571.5(a) substantially similar to the clarification previously adopted by the Board. The Board's primary purpose in making this proposal is to ensure that application to and approval by the Board is required for (1) all conventional transfers of assets, deposit accounts and/or other liabilities not in the ordinary course of business that are effected pursuant to purchases of assets, assumptions of liabilities, and/or bulk sales of assets transactions, and (2) all transfers by operation of law in which an institution insured by the FSLIC is not the surviving entity. The proposal differs from the earlier clarification in one respect to make clear that transfers by operation of law in which FSLIC insurance of accounts will continue are not subject to the requirements of 12 CFR 563.22(b). The reason for this change is discussed below.

Current Proposal

The Board is proposing to revise the definition of "transfers" in 12 CFR 571.5(a) to include transfers by operation of law that are effected pursuant to charter conversions, mergers, consolidations, and other business combinations and reorganizations in which an institution insured by the FSLIC is not the surviving entity. As noted by the Board in the preamble to its October 7, 1986 clarifying amendment, there is no basis for limiting the application of §563.22(b) only to transfers that result from conventional purchase and assumption or bulk sale transactions. A transfer by operation of law has the same practical effect as a conventional purchase and assumption transaction—namely, transfer of an institution's assets, deposits, and other liabilities to a distinct and separately existing legal entity. Moreover, many of the same legal and supervisory concerns that originally prompted the board to adopt § 563.22(b) arise in both contexts. *See* Board Resolution No. 83–243, 48 FR 21302 (May 12, 1983). Accordingly, the Board believes that conventional transfers and transfers by operation of law equally warrant Board oversight.

Application of § 563.22(b) to transfers of all types is also supported by the basic approach that has been followed in the Savings and Loan Holding Company Amendments to the National Housing Act ("Holding Company Act"), as well as other regulations of the board, in interpreting similar concepts. The provisions governing "acquisitions" under the Holding Company Act, for example, explicitly encompass transfers of control of an institution effected through various types of transactions, including mergers, consolidations, or purchases of assets. *See* 12 U.S.C. 1730a(e)(1)(A)(ii). The Board's mutual-to-stock conversion regulations (12 CFR Part 563b) also define an acquisition of control to include "every type of acquisition, whether effected by purchase, exchange, operation of law or otherwise." *See* 12 CFR 563b.3(i)(8)(iii). In short, the approach taken in determining whether a transaction is an "acquisition" for purposes of the Holding Company Act and the Board's regulations has been to focus on the substance of a transaction, rather than its characterization or structure. A similar approach in the present instance would dictate that transfers by operation of law are "transfers" within the meaning of § 571.5(a) and therefore are subject to the application and approval requirements of § 563.22(b).

In addition, the clarification to § 571.5(a) that the Board is proposing today is also consistent with one of the Board's primary purposes when it amended § 563.22(b) in 1983—to ensure that the rights and interests of accountholders are protected in connection with a transfer of substantially all of an institution's assets. *See* Board Resolution No. 83–243, 48 FR at 21303. Conversion by operation

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[1] Transcript at 55, *United First Federal Savings und Loan Ass'n, et al.* v. *Federal Home Loan Bank Board*, No. 86–861–Civ–J–16 (M.D. Fla., Dec. 19, 1986) ("*United First*").

[2] *Id.* at 54. The district court's order did not address the separate issue of whether the Board had the statutory authority to adopt this clarification of its statement of policy in 12 CFR 571.5.

[3] The Board's motion for expedited appeal from the order has been granted by the Eleventh Circuit, and oral argument is currently scheduled for the week of March 9, 1987.

[4] Prior to the Board's adoption of its October 7, 1986, clarifying rule, the Office of General Counsel of the Board ("OGC") had issued a number of opinion letters advising insured institutions that their proposed transfers by operation of law constituted "transfers" which would be subject to the provisions of § 563.22(b). As previously stated, the Board has determined that OGC's interpretation of the prior version of 12 CFR 571.5(a) is correct and does not believe that an amendment to its statement of policy was or is necessary in order for § 563.22(b) to be applicable to all such transfers. *See* Board Resolution No. 86–1096, 51 FR at 36529. It is therefore the Board's view that, for the reasons set forth in OGC's recent opinions, transfers by operation of law would continue to be within the scope of the transfer of assets regulation even if the district court's preliminary injunction were upheld on appeal.

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of law of a mutual institution into a commercial bank or savings bank insured by the Federal Deposit Insurance Corporation ("FDIC") presents the concern that the inchoate ownership interests of the institution's accountholders would no longer be preserved and protected by the Board's mutual-to-stock conversion regulations. Similarly, transformation into an FDIC-insured bank of an insured institution that has recently converted to the stock form of ownership, and the accompanying transfer of the institution's liquidation account, would limit the ability of the Board to protect the interests of former mutual accountholders in the liquidation account of the converted institution in the event of its subsequent liquidation. Thus, this proposed amendment to 12 CFR 571.5(a) would further a primary objective of the Board when paragraph (b) was added to § 563.22. *See id;* Board Resolution No. 83–88, 48 FR 8480 (Mar. 1, 1983).

The Board believes that the application of § 563.22(b) to transfers by operation of law would also serve an additional purpose by providing the Board with an opportunity to review such transactions and ensure that they are effected in compliance with all applicable federal laws. In this regard, the Board notes that in at least one recent instance a federally-chartered thrift converted into a national bank without prior application to or approval by the Board. It has consistently been the Board's view that federally-chartered institutions are governed exclusively by federal law and the Board's rules and regulations for federal associations,[5] and that in the absence of any enabling provision in the Home Owners' Loan Act of 1933, as amended ("HOLA"), or the regulations thereunder, such a transfer is invalid. In the situation cited above, if the federal thrift had sought Board approval of its proposed transfer by operation of law, the Board could have advised the thrift that a federally-chartered association lacks the authority to convert directly into a national bank under the HOLA and could have acted to prevent a violation of law by an institution over which it has "cradle-to-grave" regulatory authority. *See Fidelity Federal Savings and Loan Ass'n* v. *de la Cuesta,* 458 U.S. 141, 145 (1983) *quoting California* v. *Coast Federal Savings and Loan Ass'n,* 98 F. Supp. 311, 316 (S.D. Cal. 1951). The proposed clarification would therefore strengthen the ability of the Board to enforce those laws that are applicable to insured institutions.[6]

As a final matter, the Board notes that in the *United First* litigation, questions were also raised as to whether the Board possessed the legal authority to adopt its recent clarifying amendment. Specifically, plaintiffs in the case claimed that the October 7, 1986, interpretive rule exceeded the Board's statutory authority and was therefore invalid, because (1) the rule would interfere with the ability of a federally-chartered thrift to convert to a state charter under section 5(i)(3) of the HOLA, and (2) it would conflict with the right of a thrift to terminate its status as an insured institution under section 407(a) of the NHA.[7] Given that the issue of the Board's legal authority to regulate transfers by operation of law may again be raised in this rulemaking proceeding, the Board believes that each of these arguments should be addressed at this time.

With respect to the plaintiffs' first contention, it is not the intent of the Board to make the requirements of § 563.22(b) applicable to transfers effected pursuant to conversions of federally-chartered thrifts into state-chartered savings and loan associations. Although the October 7, 1986, clarifying amendment defined "transfers" to include transfers by operation of law of all kinds, the preamble to the amendment indicated that the purpose of the interpretation was to make clear that application to and approval by the Board would be required for "transfers by operation of law . . . in which an insured institution is not the surviving entity. . . ." Board Resolution No. 86–1096, 51 FR 36528. Because the resulting state-chartered association in a one-step federal-to-state conversion transaction must retain FSLIC insurance of accounts,[8] the Board determined that application of 12 CFR 563.22(b) to transfers by operation of law that only involve a termination of FSLIC insurance would not interfere with a federal association's right under section 5(i)(3) to become a state-chartered institution.

To resolve any uncertainty that has existed as to the types of transfers by operation of law for which Board approval under 12 CFR 563.22(b) is required, the Board makes clear in the amendment hereby proposed that the Board's regulations governing transfers of assets would apply, in addition to all conventional transfers in bulk, only to those transfers by operation of law in which the surviving entity is not FSLIC-insured. The Board notes in this regard that transfers by operation of law in which FSLIC insurance of accounts continues do not generally present the concerns regarding accountholder protection and conformity under law which are raised in other transfer contexts. Moreover, many of these types of transfers by operation of law, such as mergers, acquisitions, and consolidations, are already subject to the requirement of Board approval. *See* 12 CFR 546.2, 552.13, 563.22(a), 563b.3(i) and 574.3. For these reasons, the Board believes that its interpretation as revised would be fully consistent with section 5(i)(3) and would enable the Board to review those transfers that typically present the greatest number of legal and supervisory issues.

As to the second argument made by plaintiffs in *United First,* it is true that under the proposed amendment application to and approval by the Board would be required for a transaction in which the assets and liabilities of a state-chartered institution are transferred and the FSLIC-insured status of the institution is terminated. However, the event that would trigger the applicability of § 563.22 would be the transfer of assets itself and not the termination of insured status. In other words, any state-chartered institution may terminate its insured status pursuant to section 407 of the NHA by notifying the FSLIC, and nothing in the Board's transfer of assets regulation interferes with the ability of a thrift to effect such a termination. Accordingly, the Board perceives no conflict between the NHA and the clarification that would cause the latter to be invalid.

[5] *See, e.g., Fidelity Federal Savings and Loan Ass'n* v. *de la Cuesta,* 458 U.S. 141, 166–67 (1983); *California* v. *Coast Federal Savings & Loan Ass'n,* 98 F. Supp. 311 (S.D. Cal. 1951).

[6] The Board believes that on this basis the clarification would constitute a legitimate exercise of its enforcement authority under section 407(e) of the National Housing Act, as amended ("NHA"), 12 U.S.C. 1730(e). *See Otero Savings and Loan Ass'n* v. *Federal Home Loan Bank Board,* 665 F.2d 279, 285–86 (10th Cir. 1981).

[7] The district court, in issuing its preliminary injunction, neither addressed nor resolved the issue of the Board's statutory authority to promulgate the interpretive rule.

[8] In its recent opinion letters to insured institutions contemplating transfers by operation of law, OGC has expressed the view generally that transfers by operation of law in which the surviving entity is nt FSLIC-insured involve voluntary terminations of insured status under section 407(a) of the NHA, 12 U.S.C. 1730(a), given the volitional nature of the transfer. In the Board's view, OGC's characterization of such transactions is correct. Thus, a federally-chartered thrift could not directly convert into a state-chartered, FDIC-insured institution because section 407(a) prohibits federal savings and loan associations and federal savings banks from voluntarily terminating their status as insured institutions. *See* 12 U.S.C. 1730(a); 12 U.S.C 1462(d).

Public Comment Period

The Board has determined that a 30-day public comment period is appropriate because prompt action is in the public interest in order to resolve the uncertainty which currently exists as to the types of transfers subject to § 563.22(b) and to make the foregoing clarification effective as soon as possible. 12 CFR 508.13; Board Resolution No. 80–584, 45 FR 63135 (Sept. 23, 1980).

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the proposed rules.* The elements have been discussed elsewhere in the supplementary information regarding the proposal.

2. *Small entities to which the proposed rules would apply.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). Therefore, small entities to which the proposed rule would apply are the 1,651 insured institutions that has assets totaling $100 million or less as of December 31, 1986.

3. *Impact of the proposed rules on small institutions.* The proposed rule would not have a disproportionate effect on small institutions, nor is it expected that the rule will have a significant economic impact on a substantial number of small institutions.

4. *Overlapping or conflicting federal rules.* There are no federal rules that duplicate, overlap, or conflict with the proposed rule.

5. *Alternatives to the proposed rule.* No alternative to the proposal would better attain the objectives of the proposal.

List of Subjects in 12 CFR Part 571

Accounting, Bank deposit insurance, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Part 571, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 571—STATEMENTS OF POLICY

1. The authority citation for Part 571 is revised to read as follows, and the authority citations at the ends of the sections are removed.

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended; sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437). sec 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 406, 407, 48 Stat. 1256, 1257, 1259, 1260, as amended (12 U.S.C. 1725, 1726, 1729, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–48 Comp., p. 1071.

2. Paragraph (a) of § 571.5 is received to read as follows:

§ 571.5 Mergers and transfers of assets and liabilities.

(a) *General policy.* This is a statement of the Federal Home Loan Bank Board's general policy on merger and transfer proposals. It does not ordinarily apply to mergers and transfers instituted for supervisory reasons. The term "merger" includes consolidations as well as statutory mergers, and the term "transfers" means tranfers in bulk not made in the ordinary course of business including, but not limited to, transfers of assets and savings account liabilities, purchases of assets, assumptions of savings accounts and other liabilities, and transfers of assets in bulk that are effected by operation of law pursuant to statutory conversions, mergers, consolidations, and other reorganizations and combinations: *Provided however,* that the term "transfers" shall not include transfers in bulk that are effected by operation of law pursuant to statutory conversions, mergers, consolidations, and other reorganizations and combinations where the surviving entity is an insured institution. Transactions in accordance with § 545.82 of this chapter between a Federal association or a state-chartered insured institution and a finance subsidiary as defined in § 563.13–2(a)(4) of this subchapter are not "transfers" for purposes of this paragraph. Potential merger and transfer applicants are encouraged to review proposed transactions with the Supervisory Agent prior to proceeding with the formal application process. Generally, the Board regards mergers or transfers primarily as business decisions to be made by the institutions involved.

* * * * *

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87–3973 Filed 2–25–87; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 70116–7016]

U.S. Trade in Services: Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons—1986

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice sets forth proposed rules for a new BE–20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons, covering 1986. The data from the survey will be used to develop U.S. trade policy and support U.S. negotiations on services trade with foreign countries. They will enable the Government to better assess U.S. competitiveness in, and institute export promotion programs for, services industries. They will also result in improvement in U.S. balance of payments statistics and in the ability of U.S. services businesses to identify and evaluate market opportunities.

The survey is to be conducted by the Bureau of Economic Analysis, U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. The proposed rules will implement a portion of the President's responsibilities for collecting data on U.S. services trade under the Act. These responsibilities have been delegated to the Secretary of Commerce, who has redelegated them to BEA. The proposed rules will amend 15 CFR Part 801, as published in the **Federal Register** on March 6, 1986.

DATE: Comments on the proposed rules will receive consideration if submitted in writing on or before April 27, 1987.

ADDRESS: Comments may be mailed to the Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 2030, or hand delivered to Room 608, Tower Building, 1401 K Street NW., Washington, DC 20005. Comments received will be available for public inspection in Room 608, Tower Building, between 8:00 a.m. and 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: George R. Kruer, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of

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Commerce, Washington, DC 20230; phone (202) 523–0657.

SUPPLEMENTARY INFORMATION:

Purpose

In response to urgent concerns expressed by representatives of U.S. services industries to the U.S. Congress and to the Administration about the need to reduce international barriers to services trade, Congress included an amendment in the Trade and Tariff Act of 1984 authorizing mandatory surveys of trade in services. Under the General Agreement on Tariffs and Trade and in other international fora, the United States has taken the initiative to make reduction in barriers to services trade a topic for negotiations. Such negotiations can only be conducted effectively if the U.S. Government has sufficient data to assess the size of U.S. services trade, both in the aggregate and by individual country and type of service; to evaluate the extent to which U.S. services trade has been disadvantaged by trade barriers; and to determine the benefits that would result from a reduction in those barriers.

BEA's existing direct investment surveys collect information on trade in services between U.S. and affiliated foreign persons (that is, between U.S. parent companies and their foreign affiliates and between U.S. affiliates and their foreign parent companies). In addition, BEA's existing services surveys collect data on certain types of services transactions with unaffiliated foreign persons—specifically, on royalties and license fees; foreign ocean carriers' expenses in the United States; foreign airline operators' revenues and expenses in the United States; freight revenues and foreign expenses of U.S. ocean carriers; U.S. airline operators' foreign revenues and expenses; foreign contract operations of U.S. construction, engineering, architectural, and related consulting and technical services firms; and reinsurance transactions with insurance companies resident abroad. The proposed BE–20 survey will collect information on selected services transactions between U.S. and unaffiliated foreign persons that are not covered by the existing surveys. It will fill many of the remaining gaps in data on services needed by the Government to conduct trade policy and negotiations, better assess U.S. competitiveness in services industries, and institute export promotion programs for services. In addition, the survey data will result in improvement in U.S. balance of payments statistics and in the ability of U.S. services businesses to identify and evaluate market opportunities. It is anticipated that the information from the benchmark survey will be updated in subsequent years by an annual follow-on survey that is more limited in scope and that will cover only a sample of the companies reporting in the BE–20 survey.

Statutory Authority

The Trade and Tariff Act of 1984 amended the International Investment Survey Act of 1976 to extend the latter's coverage to international services trade and to rename it the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108, as amended by section 306 of Pub. L. 98–573), hereafter "the Act." Section 4(a) of the Act authorizes the conduct of mandatory surveys of trade in services between U.S. and foreign persons, including benchmark surveys of trade between U.S. and unaffiliated foreign persons. Specifically, it provides that "The President shall, to the extent he deems necessary and feasible— . . . (4) conduct (not more frequently than once every five years and in addition to any other surveys conducted pursuant to paragraphs (1) and (2)) benchmark surveys with respect to trade in services between unaffiliated United States persons and foreign persons; . . ." In section 3 of Executive Order 11961, as amended by Executive Order 12518 of June 3, 1985, the President delegated the authority under the Act as concerns trade in services to the Secretary of Commerce. The Secretary of Commerce has, in turn, redelegated this authority to BEA.

Background

A "Notice of Proposed Rulemaking" to implement a previous version of the BE–20 benchmark survey, to make several existing surveys of U.S. services trade between U.S. and foreign persons mandatory, and to bring all existing services surveys under the authority of the International Investment and Trade in Services Survey Act was published in the September 18, 1985 **Federal Register**, Volume 50, No. 181 (50 FR 37867).

After publication of these proposed rules and submission of the previous version of the BE–20 survey to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act (44 U.S.C. Chapter 35), OMB disapproved the BE–20 survey. A letter dated October 21, 1985, from Wendy L. Gramm, Administrator for Information and Regulatory Affairs of OMB, to Allan H. Young, Director of BEA, stated that, while OMB recognized the importance of securing information on international trade in services, as reflected in the International Investment and Trade in Services Survey Act, it believed the BE–20 survey in the form then submitted for approval was "unreasonably burdensome on reporting firms and would not yield the quality of data required to achieve the survey's purposes." OMB requested that BEA hold consultations with potential industry respondents to achieve improvements and burden reductions in the BE–20 forms before resubmitting the forms for approval.

Following disapproval of the BE–20 survey, the sections of the proposed rules dealing with that survey were removed, and final rules to make BEA's existing voluntary surveys of U.S. services transactions with foreign persons mandatory and to bring all existing services surveys under the International Investment and Trade in Services Survey Act were published in the March 6, 1986 **Federal Register**, Volume 51, No. 44 (51 FR 7771).

In response to OMB's request, BEA began to meet regularly with a task force of business representatives, assembled by the Business Advisory Council on Federal Reports (BACFR), to develop a revised BE–20 survey that would collect the needed information with the minimum burden on respondents. The proposed rules contained herein are for the revised version of the survey, which is considerably simpler and less burdensome than the version submitted to OMB in 1985.

Steps taken to reduce the reporting burden include the development of an "Optional Checklist," which is to be included as a supplement to the survey, for U.S. Reporters to use in determining whether they have covered transactions; this determination may be judgmental, that is, based on the judgment of knowledgeable persons in a company who can say, with a reasonable degree of certainty without conducting a manual records search, whether or not the Reporter had any covered transactions during the reporting period. In addition, it was decided that only individual transactions that exceeded $250,000 in the reporting period are to be reported, by country, on a mandatory basis. Transactions of $250,000 or less are requested to be reported on a voluntary basis if, for a given type of service, they exceeded $500,000 in aggregate. Such transactions may be reported on a judgmental basis and do not have to be disaggregated by country. Information provided on these latter transactions will make the survey results more complete and will better ensure that all types of services are adequately represented in any negotiations or other policy initiatives supported by the survey data. Finally,

several existing survey forms that, in the original proposal, had been modified and incorporated into the BE–20 survey, have not been included in the revised proposal and remain separate.

Executive Order 12291

BEA had determined that this proposed rule is not "major" as defined in E.O. 12291 because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

This proposed rule contains a collection of information requirement subject to the Paperwork Reduction Act. The collection of information is necessary to secure data on U.S. services transactions with unaffiliated foreign persons that will be used to develop U.S. trade policy; support U.S. negotiations on services trade with foreign countries; enables the Government to better assess U.S. competitiveness in, and develop export promotion programs for, services industries; improve U.S. balance of payments statistics; and increase the ability of U.S. services businesses to identify and evaluate market opportunities. A request to collect this information has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. A copy of the proposed survey may be obtained from: Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523–0657. Comments from the public on this collection of information requirement should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20530, Attention: Desk Officer for the Department of Commerce.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to preparation of an initial regulatory flexibility analysis are not applicable to this proposed rulemaking because it will not have a significant economic impact on a substantial number of small entities. Most small businesses will be excluded from reporting data on a mandatory basis, as a result of the $250,000 cutoff level applicable to individual transactions under the survey's mandatory reporting requirement. Also, under the survey's voluntary reporting provision, the $500,000 cutoff level applicable to total transactions of a given type will include many other small businesses from reporting any data at all. Those that do have reportable transactions are requested to provide judgmental estimates only of the total amount of transactions of a given type, not disaggregated by country. This voluntary reporting provision ensures that smaller businesses with significant inernational transactions can be covered, but with the minimum burden possible. Even if a small business is required to file on a mandatory basis, or chooses to report information on a voluntary basis, it is unlikely to be very diversified and will probably report data only on the one schedule relevant to its particular activity. Thus, the burden for small businesses should be low.

Accordingly, the General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the proposed rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 801

Economic statistics, Foreign trade, Reporting and recordkeeping requirements, Services.

Dated: February 2, 1987.

Allan H. Young,

Director, Bureau of Economic Analysis.

PART 801—[AMENDED]

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR Part 801 as follows:

1. The authority citation for 15 CFR Part 801 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101–3108, and E.O. 11961, as amended.

2. Section 801.9(a) is revised to read as follows:

§ 801.9 Reports required.

(a) *Benchmark surveys.* BE–20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons: Section 4(a)(4) of the Act (22 U.S.C. 3103) provides that benchmark surveys of trade in services between U.S. and unaffiliated foreign persons be conducted, but not more frequently than every 5 years. The survey is referred to as the "BE–20." Specific reporting requirements, exemption levels, and the year of coverage of a given BE–20 survey may be found in § 801.10.

* * * * *

3. Section 801.10 is added to read as follows:

§ 801.10 Rules and regulations for the BE–20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons—1986.

A BE–20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons, will be conducted covering companies' 1986 fiscal year. All legal authorities, provisions, definitions, and requirements contained in § 801.1 through § 801.9(a) are applicable to this survey. Additional rules and regulations for the BE–20 survey are given below. More detailed instructions are given on the report form itself.

(a) The BE–20 survey consists of two Parts and six Schedules, A–F. Part I (Name, Address, and Determination of Reporting Status) requests information needed to determine whether a report is required and which schedules apply. Part II (Identification and Selected Financial and Operating Data of U.S. Reporter) requests information about the reporting entity. Each of the six schedules covers a different type or group of services and is to be completed only if the U.S. Reporter has transactions of the type(s) covered by the particular schedule.

(b) *Who is to report and transactions to be reported.* (1) Mandatory reporting—A BE–20 report is *required* from each U.S. person who had one or more individual sale *or* purchase transactions in excess of $250,000 with an unaffiliated foreign person in any of the services listed in paragraph (d) of this section during the U.S. person's 1986 fiscal year.

(i) The determination of whether a U.S. person is subject to this mandatory reporting requirement may be judgmental, that is, based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty without conducting a detailed manual records search.

(ii) Reporters who must file pursuant to this mandatory reporting requirement must complete Parts I and II of Form BE–20 and all applicable schedules. The total amounts of individual transactions exceeding $250,000 that are applicable to a particular schedule are to be entered in the appropriate column(s) on

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line 1, Section A of the schedule. In addition, these amounts must be distributed below line 1 of the country(ies) involved in the transaction(s).

(2) *Voluntary reporting.* U.S. persons receiving a copy of the survey are *requested* to provide, for each of the services listed in paragraph (d) of this section, supplemental estimates of individual sale or purchase transactions with unaffiliated foreign persons that are $250,000 or less but for which the total value exceeds $500,000 during the U.S. person's 1986 fiscal year. These estimates are requested whether or not the U.S. Reporter also had activity to report under the mandatory reporting requirement in paragraph (b)(1) of this section.

(i) Provision of this information is voluntary. The estimates may be judgmental, that is, based on recall, without conducting a detailed manual records search.

(ii) The total amounts of transactions applicable to a particular schedule are to be entered in the appropriate column(s) on line 39, Section B of the schedule; they are *not* to be disaggregated by country. Reporters filing voluntary information only and who have *no* individual transactions exceeding $250,000 should also complete Part 1, Sections A, B, and C of Form BE–20, answering "no" for each type of service listed in Part 1, Section B. They should not complete Part II of Form BE–20.

(3) Any U.S. person receiving the BE–20 survey form from BEA, even if the person is not subject to the mandatory reporting requirement in paragraph (b)(1) of this section and is not filing information on a voluntary basis pursuant to paragraph (b)(2) of this section, must nevertheless complete and return to BEA Part I of the form, answering "no" for each type of service listed in Part I, Section B, and indicating in Part I, Section C that no voluntary data are being reported. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary followup contact.

(c) *BE–20 definition of transaction.* (1) For purposes of the BE–20 survey, a "transaction" is defined as the total amount of services sold to (received from) or purchased from (paid to) an unaffiliated foreign person, as entered on the respondent's books during its 1986 fiscal year.

(2) Notwithstanding paragraph (c)(1) of this section, in the following cases, a "transaction" is to be measured by an item other than sales or purchases in determining whether the thresholds for mandatory or voluntary reporting are exceeded:

(i) Advertising. Advertising agencies should use gross billings to unaffiliated foreign persons, including funds passed through to media companies and not included in the agency's income statement.

(ii) Telecommunications. For jointly provided (basic) services, receipts from foreign persons for messages or leased lines originating abroad, and payouts to foreign persons for messages or leased lines originating in the United States, should be used.

(iii) Performing arts, sports, and other performances, presentations, and events. Fees are defined net of allowances for expenses.

(iv) Employment agencies and temporary help supply services. Receipts and payments should include any funds for compensation of workers carried on the payroll of the agency or supply service, as well as for agency fees.

(d) *Covered types of services.* Only the services listed below are covered by the BE–20 survey. Other services, such as transportation, reinsurance, lending and borrowing and related fees and charges, brokerage fees, royalties and license fees, etc., are NOT covered. Covered services are:

(1) *Advertising services.* Preparation of advertising and placement of such advertising in media, including charges for media space and time.

(2) *Computer and data processing services.* Data entry, processing (both batch and remote), and tabulation; computer systems analysis, design, and engineering; software, both custom programming and prepackaged, including rights to use, reproduce, or distribute such software; equipment leasing (except financial leasing); integrated hardware/software systems; and other computer services (e.g., timesharing, maintenance, and repair).

(3) *Data base and other information services.* Business and economic data base services, including business news, stock quotation, and financial information services; medical, legal, technical, demographic, bibliographic, and similar data base services; general news services, such as those purchased from a news syndicate; and other information services, including reservation systems and credit reporting and authorization systems.

(4) *Telecommunications services.* (i) Message telephone, telex, telegram, and other jointly provided (basic) services—Receipts from foreign persons (communications companies and postal, telephone, and telegraph agencies (PTT's)) for own share of revenues for transmitting message originating abroad to U.S. destinations, and payouts to foreign persons (communications companies and PTT's) for their share of revenues for transmitting messages originating in the United States to foreign destinations. For messages originating in foreign countries and routed through the United States (for example, from Caribbean countries via the United States to Western Europe), includes receipts from the foreign person originating the message and payouts to the country of destination. Also includes receipts for transmitting messages between foreign points when not routed through the United States. Includes packet switched services when not offered in connection with enhanced services, and other regulated services of the type reportable to the FCC on Report 4361.

(ii) Private leased channel services. Receipts from foreign persons for circuits and channels terminating in the United States and for circuits and channeled between foreign points, and payouts to foreign persons for leased channels and circuits terminating in foreign countries.

(iii) Value added (enhanced) services. Telecommunications services that add value or function above and beyond the telecommunications transport services that deliver the value-added services to end users. They can include electronic mail, voice mail, code and protocol processing, and management of data networks; facsimile services and videoconferencing; and other value-added (enhanced) services.

(iv) Support services. Services related to the maintenance and repair of telecommunications equipment; ground station services; capacity leasing for transiting; and launching of communications satellites.

(5) *Agricultural services.* Soil preparation services, crop services, veterinary and other animal services, farm labor and management services, and landscape and horticultural services.

(6) *research and development, and commercial testing, laboratory services.* Laboratory and other physical research and development and product testing. Excludes medical and dental laboratory services.

(7) *Management, consulting, and public relations services.* Management services, except management of health care facilities (see paragraph (d)(8) of this section); consulting services, except consulting engineering services related to actual or proposed construction or mining services projects (see paragraph (d)(18) of this section) and computer consulting (see paragraph (d)(2) of this section); and public relations services, except those are an integral part of an advertising campaign (see paragraph (d)(1) of this section). Excludes management and operation of a foreign business by a U.S. person, or of a U.S. business by a foreign person, where operating staff as well as management is provided. (Generally, such operations would be deemed to constitute a foreign affiliate of the U.S. person, or a U.S. affiliate of the foreign person, to be reported in BEA's direct investment surveys, rather than in this survey.)

(8) *Management of health care facilities.* Management of hospitals, nursing homes, and other health care facilities. If operating staff is provided, generally should be reported in BEA's direct investment surveys, rather than in this survey.

(9) *Accounting, auditing, and bookkeeping services, etc.* Excludes data processing and tabulating services (see paragraph (d)(2) of this section).

(10) *Legal services.* Legal advice or other legal services.

(11) *Educational and training services.* Educational or training services provided on a contract or fee basis. Excludes tuition and fees charged to individual foreign students by U.S. educational institutions or to individual U.S. students by foreign educational institutions. Also excludes training done by a U.S. or foreign manufacturer in connection with the sale of a good (see paragraph (d)(15) of this section).

(12) *Mailing, reproduction, and commercial art.* Direct mail advertising services; blueprinting, photocopying, and other reproduction services, including those in connection with direct mail advertising; commercial photography, art, and graphic services; and stenographic services.

(13) *Employment agencies and temporary help supply services.* Employment services and provision of temporary help and personnel to perform services for others on a contract or fee basis. Where workers are carried on the payroll of the agency, includes receipts from or payments to unaffiliated foreign persons covering the compensation of workers, as well as agency fees.

(14) *Industrial engineering services.* Engineering services related to the design of movable products, including product, design services. Excludes engineering and architectural services that relate to immovable products, such as those that relate to actual or proposed construction or mining services projects (see paragraph (d)(18) of this section). Excludes computer systems engineering (see paragraph (d)(2) of this section). (Includes, however, services performed with the assistance of computers, such as computer-assisted design work.)

(15) *Industrial-type maintenance and repair, installation, and training services.* (i) Maintenance and repair services primarily to machinery and equipment. May also include small maintenance and repair work on buildings, structures, dams, highways, etc., but only to the extent that the work is not covered under paragraph (d)(18) of this section). Would include such services as the periodic overhaul of turbines or locomotives, the extinguishing of natural gas well fires, and refinery maintenance. Excludes computer maintenance and repair services (see paragraph (d)(2) of this section).

(ii) Installation, startup, and training services provided by a manufacturer in connection with the sale of goods. Do not include such services where the cost is included in the price of the goods and not separately billed or is declared as a part of the price of the goods on the shippers export or import declaration filed with the U.S. Customs Service; however, services provided at a price over and above that entered on the shippers export or import declaration should be included. These services would be reported elsewhere if not provided in connection with the sale of goods. For example, installation of machinery and equipment is normally considered a construction activity, and training personnel in the use of new machinery would ordinarily be reported as an educational or training service. However, this separate category has been provided for reporting such services when provided in connection with goods.

(16) *Performing arts, sports, and other live performances, presentations, and events.* Fees (net of allowances for expenses) for performances abroad by U.S. or foreign performers, and for performances in the United States by foreign performers. To be reported by U.S. management companies, booking agents, promoters, and presenters who book performances and events abroad by U.S. or foreign performers; U.S. performers who received funds directly from a foreign person rather than through a U.S. management company (or similarly entity); and management companies, booking agents, promoters, and presenters who book performances in the United States by foreign performers. (As used here, "performers" means entertainers, sports teams, orchestras, dance companies, lecturers, and similar persons or performing groups.)

(17) *Direct insurance.* Applies only to insurance *purchased* from unaffiliated foreign insurance carriers and includes premiums (net of cancellations) paid to these carriers. A U.S. Reporters should not report direct transactions with a foreign insurance company that is its foreign affiliate; such transactions are to be reported on direct investment survey Form BE–577. A U.S. Reporter should, however, report direct transactions with a foreign insurance company that is an affiliate of another U.S. company, as the U.S. Reporter and the foreign insurance company are unaffiliated. Note that the criterion for reporting is whether the transaction is between a U.S. and an unaffiliated foreign person. It is immaterial whether the assets insured are located in the United States or abroad. Excludes reinsurance transactions with insurance companies resident abroad. When insurance is purchased through a broker, the guidelines for reporting transactions carried out through an intermediary, which are contained in the *General Instructions* to the survey, should be followed.

(18) *Construction, engineering, architectural, and mining services.* Covers only *purchases* of the following types of services: services of general contractors in the fields of building and heavy construction; construction work by special trade contractors, such as the erection of structural steel for bridges and buildings and on-site electrical work; architectural, engineering, and land-surveying services; and mining services, including oil and gas field services. Includes only those engineering services purchased in conjunction with construction and mining services projects; industrial engineering services, such as product design services, should be included under paragraph (d)(14) of this section). Includes services purchased in connection with proposed projects (e.g., feasibility studies) as well as projects that are actually being carried out. Note that the U.S. Reporter's *sales* of construction, engineering, architectural, and mining services are not reportable in this survey, but on separate Form BE–47.

[FR Doc. 87–3905 Filed 2–25–87; 8:45 am]

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19, 25, 240, 250, 270, 275 and 285

[Notice No. 622; Re: Notice No. 617]

Timely Remittance of Tax by EFT

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Extension of comment period.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms proposes to amend ATF regulations implementing 26 U.S.C. 5061(e) and 5703(b), relating to the payment of tax on distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes by electronic fund transfer (EFT). The proposed amendments establish that a remittance of tax by electronic fund transfer is made when the payment is credited to the Treasury Account at the Federal Reserve Bank in New York City. These amendments to the regulations would insure timely payment of taxes by electronic fund transfer. ATF has received a number of requests for additional time to review and comment on these amendments, and is, therefore extending the comment period to allow more time for public review and comment.

DATE: Written comments must be received by April 15, 1987.

ADDRESS: Send written comments to: Chief, Procedures Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385 (Attn: Notice No. 617).

FOR FURTHER INFORMATION CONTACT: Pauline C. Ashe, Procedures Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226; (202) 566–7602.

SUPPLEMENTARY INFORMATION:

Background

On January 26, 1987, AFT published Notice No. 617, proposing to amend AFT regulations implementing 26 U.S.C. 5061(e) and 5703(b) to establish that a remittance of tax by electronic fund transfer is made when the payment is credited to the Treasury Account at the Federal Reserve Bank in New York City.

AFT has received written comments from the Association of American Vintners, the Distilled Spirits Council of the United States, Inc., the National Liquor Stores Association, Inc., the Kobrand Corporation and the National Association of Beverage Importers, Inc. Each of the aforementioned organizations has requested additional time to gather data and to formulate comments. AFT has also received verbal inquiries concerning additional time for comments from interested parties directly affected by the issue raised in Notice No. 617.

Disclosure of Comments

ATF will not recognize any material in the comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of any person submitting comments is not exempt from disclosure. Copies of written comments received in response to this notice will be available for public inspection during normal business hours at: FTF Reading Room, Disclosure Branch, Room 4406, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC.

Drafting Information

The principal author of this document is Pauline C. Ashe, Procedures Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority

This notice is issued under the authority contained in 26 U.S.C. 7805 (68 Stat. 917, as amended).

Signed: February 24, 1987.

W.T. Drake,

Acting Director.

[FR Doc. 87–4144 Filed 2–24–87; 3:22 pm]

BILLING CODE 4810–31–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket Nos. S–205, S–206, and S–207]

Safety Standards: Scaffolds Used in the Construction Industry, Fall Protection in the Construction Industry, and Stairways and Ladders Used in the Construction Industry; Extension of Comment Period

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of written comment period.

SUMMARY: This notice extends the time in which written comments and requests for a hearing may be submitted concerning the notices of proposed rulemaking which OSHA issued on November 25, 1986 on Scaffolds (51 FR 42680), Fall Protection (51 FR 42718), and Stairways and Ladders (51 FR 42750) used in the construction industry.

DATE: Written comments and requests for a hearing on the proposal must be postmarked by June 1, 1987.

ADDRESS: Comments and requests for a hearing must be submitted, in quadruplicate, to the Docket Office, Dockets S–205, S–206, and S–207, Room N–3670, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523–7894. The data, views and arguments, as well as the hearing requests and objections, that are submitted will be available for public inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, U.S. Department of Labor, OSHA, Room S–4220, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523–8151.

SUPPLEMENTARY INFORMATION: OSHA issued Notices of Proposed Rulemaking on November 25, 1986 (51 FR 42680, 51 FR 42718 and 51 FR 42750) which proposed to revise the interrelated safety standards for scaffolds, fall protection, stairways, and ladders used in construction. Interested persons were given until February 23, 1987 to submit comments pertaining to the proposals. The notices of proposed rulemaking also informed the public of the opportunity to request an informal public rulemaking hearing in the proposals.

OSHA has received several requests for an extension of the comment period, based on the complexity of the subject matters, the extent of the proposed revisions, and the fact that all three proposed regulations, effectively, request comments from the same interested parties. To ensure the fullest participation of interested persons, OSHA is extending the period in which written comments may be submitted on the proposed rules until June 1, 1987. The comments should be sent in quadruplicate to the Docket Office at the above address. Commenters are requested to provide substantive data and documentary evidence in support of their views and arguments on the proposals.

In addition, OSHA is extending the period during which interested persons may file objections to the proposed rules or request an informal hearing until June 1, 1987. The objections and hearing requests should be submitted in quadruplicate to the Docket Office at the above address and must comply with the following conditions:

1. The objections must include the name and address of the objector;
2. The objections must be postmarked by June 1, 1987;
3. The objections must specify with particularity the provisions of the proposed rule to which objection is taken and must state the grounds therefor;
4. Each objection must be separately stated and numbered; and
5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. (Sec. 6(b), 29 U.S.C. 655; 29 CFR Part 1911, Secretary of Labor's Order No. 9–83 (48 FR 35736))

Signed at Washington, DC, this 20th day of February, 1987.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 87–3980 Filed 2–25–87; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF DEFENSE

48 CFR Parts 215 and 252

Department of Defense Federal Acquisition Regulation Supplement on Availability of Contractor Records

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for public comment.

SUMMARY: The Defense Acquisition Regulatory Council is proposing to add section 215.873 and the related clause at 252.215–7001 to the DFARS. The clause requires the contractor to provide access to certain cost and work measurement data.

DATE: Comments should be submitted by April 27, 1987. Please cite DAR Case 85–219 in all correspondence on this subject.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD (P) DARS, c/o OASD (A&L) (MRS), Room 3C841, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7267.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule implements 10 U.S.C. 2406 as found in the FY 1987 DoD Authorization Act at section 943. This rule grants the Department access to records on certain contracts.

B. Regulatory Flexibility Act

This rule applies to the award of contracts requiring the submission of cost or pricing data and most awards to small entities are made on a price competitive basis not requiring such data. It does not require contractors to collect or maintain additional data not already collected or maintained. The only potential additional administrative effort imposed is that contractors must retain any data collected or maintained until three years after final payment. This minimal burden does not appear to have a significant impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis has not been prepared. Comments from interested small businesses are invited.

C. Paperwork Reduction Act

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 215 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed to amend 48 CFR Parts 215 and 252 as follows:

1. The authority citation for 48 CFR Parts 215 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 215—CONTRACTING BY NEGOTIATION

2. Section 215.873 is added to read as follows:

§ 215.873 Availability of Contractor Records.

In accordance with 10 U.S.C. 2406, the contracting officer shall include the clause at 252.215–7001, "Availability of Contractor Records", in solicitation and contracts which—

(a) Require the submission and certification of cost or pricing data; and

(b) Are for the manufacture of end items for a major defense acquisition program, as defined in 10 U.S.C. 2432a.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.215–7001 is added to read as follows:

252.215–7001 Availability of Contractor Records.

As prescribed in 215.873, insert the following clause:

Availability of Contractor Records (Feb. 1987)

(a) Upon request by the Contracting Officer, the Contractor shall make available, in a timely manner, to the Contracting Officer or to an authorized representative of the Contracting Officer (who is an employee of the United States or a member of the Armed Forces), records of the contract and of end items under the contract for:

(1) The proposed, negotiated and incurred costs and related profit or fee;

(2) Bills of material; and

(3) Work measurement system data (and any revision to such data), including standard hours of work content. These work measurement system data are those generated from time standard setting, time monitoring and variance analysis, produced for such purposes as planning, cost estimating and productivity improvement. This availability includes access to proposed and negotiated work measurement system data (and any revision to such data).

(b) Nothing in this clause shall require the Contractor to collect or maintain additional data not otherwise collected or maintained nor to maintain data in a form or manner different from that in which the Contractor maintains such data.

(c) Any data covered by this clause shall be available for review until three (3) years after final payment under this contract.

(End of clause)

[FR Doc. 87–4032 Filed 2–25–87; 8:45 am]

BILLING CODE 3810–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1201

[Ex Parte No. 468]

Review of Railroad Depreciation Studies by Independent Public Accountants

AGENCY: Interstate Commerce Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is considering a proposal that would alter the manner in which the review of a railroad's depreciation study is conducted. This proposal would require Class I railroads to have an independent public accountant review each

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depreciation study and report on the conformity of the study with the Commission's regulations and instructions. The Commission is statutorily required to prescribe depreciation rates for depreciable road and equipment property of major railroads. Presently, railroads perform depreciation studies, which develop proposed rates, and the Commission reviews and approves the rates. Review by independent public accountants would help expedite this process. A more rapid completion of the depreciation study process would provide both railroads and the Commission with better and more current information.

DATES: Comments must be received by April 27, 1987.

ADDRESS: An original and 10 copies of any comments should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER IHFORMATION CONTACT: William F. Moss III, (202) 275–7510 or Estel C. Hostettler, (202) 275–7357.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, contact the Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423, or call 202–275–7428.

This Advance Notice of Proposed Rulemaking (ANPR) will not have a significant economic impact on a substantial number of small entities. This ANPR would have a direct effect only on Class I railroads which have annual revenues of $50 million or more.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

This Advance Notice of Proposed Rulemaking has been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). Respondents may direct comments to OMB by addressing them to the Office of Management and Budget, Office of Informaiton and Regulatory Affairs, Attention: Desk Officer for the Interstate Commerce Commission, Washington, DC 20503.

List of Subjects in 49 CFR Part 1201

Railroads, Uniform system of accounts.

This ANPR is issued under the authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: February 6, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Simmons, joined by Vice Chairman Lamboley, dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87–3958 Filed 2–25–87; 8:45 am]

BILLING CODE 7035–01–M

Notices

Federal Register
Vol. 52, No. 38
Thursday, February 26, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

February 20, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250 (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Animal and Plant Health Inspection Service.

Gypsy Moth—Outdoor Household Articles

On occasion

Individuals or households; Businesses or other for-profit; 16,300 responses; 27,221 hours; not applicable under 3504(h)

Cheryl Jenkins (301) 436–5030

• Rural Electrification Administration.

Request for Mail List Data—REA Borrowers

REA 87

Annually

Small businesses or organizations; 1,948 responses; 487 hours; not applicable under 3504(h)

Curtis L. Bryant (202) 382–8940

New

• Agricultural Cooperative Service.

Imports by Agricultural Cooperatives

Every 5 years

Businesses or other for-profit; Small businesses or organizations; 110 responses; 28 hours; not applicable under 3504(h)

Arvin R. Bunker (202) 653–6756

• Agricultural Marketing Service.

Proposed Procedure for the Conduct of Referenda in Connection with Marketing Orders for Eggs and Spent Fowl

Recordkeeping; On occasion

Farms; Businesses or other for-profit; 1,200 responses; 634 hours; not applicable under 3405(h)

Janice L. Lockard (202) 382–8132.

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 87–4019 Filed 2–25–87; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Mt. Ashland Ski Development Plan, Rogue River National Forest, Jackson County, OR; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement for a proposal to permit the improvement and further development of the Mt. Ashland Ski Area on the Ashland Ranger District.

A range of alternatives for this area will be considered. One of these will be no further development of the area. Other alternatives will consider projects which will increase capacities ranging from 1200 to 3500 persons at one time. Improvements and/or developments to the lodge, ski runs, parking lots and other facilities will be considered.

Federal, State, and local agencies; and other individuals and organizations who may be interested in or affected by the decision were contacted during the Environmental Assessment scoping process to identify issues. Other than analysis of responses to this Notice, no further scoping activities are planned.

Steven Deitemeyer, Forest Supervisor, Rogue River National Forest, Medford, Oregon, is the responsible official.

The draft environmental impact statement should be available for public review by March 1987. The final environmental impact statement is scheduled to be completed by June 1987.

Written comments, suggestions and questions concerning the nature of the proposed action and the nature of the draft environmental impact statement should be directed to Ronald Waitt, District Ranger, Ashland Ranger District, Ashland, Oregon 97520, phone (503) 482–3333, by March 1, 1987.

Dated: February 9, 1987.

Ronald L. Ketchum,

Deputy Forest Supervisor.

[FR Doc. 87–3677 Filed 2–25–87; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Hayden-Dry Creek Critical Area Treatment RC&D Measure, Colorado

AGENCY: Soil Conservation Service.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an Environmental Impact Statement is not being prepared for the Hayden-Dry Creek Critical Area Treatment RC&D Measure, Routt County, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Sheldon G. Boone, State

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Conservationist, Soil Conservation Service, 2490 West 26th Avenue, Denver, Colorado 80211, telephone (303) 964–0292.

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this federally assisted action indicates that the measure will not cause significant local, regional or national impacts on the environment. As a result of these findings, Mr. Sheldon G. Boone, State Conservationist, has determined that the preparation and review of an Environmental Impact Statement are not needed for this measure.

This critical area treatment measure concerns a plan to prevent water erosion along the drainageway through the Town of Hayden. This gully erosion is damaging buildings, streets and public utilities. The planned works of improvement include constructing approximately 400 feet of rock riprap on the channel bank.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state and local agencies and interested parties. A limited number of copies of the FONSI are available at the above address to fill single-copy requests. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting Mr. Sheldon G. Boone. No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901, Resource Conservation and Development, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Dated: February 17, 1987.

Sheldon G. Boone,

State Conservationist.

[FR Doc. 87–4028 Filed 2–25–87; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–601]

Certain Fresh Cut Flowers From Mexico; Postponement of Final Antidumping Duty Determination

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The final antidumping duty determination on certain fresh cut flowers from Mexico is being postponed until no later than February 24, 1987.

EFFECTIVE DATE: February 26, 1987.

FOR FURTHER INFORMATION CONTACT: William D. Kane or John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–1766, (202) 377–3965.

SUPPLEMENTARY INFORMATION: On October 28, 1986, we made an affirmative preliminary antidumping duty determination that certain fresh cut flowers from Mexico are being, or are likely to be, sold in the United States at less than fair value (51 FR 39896, November 3, 1986). The notice stated that we would issue our final determination by January 12, 1987.

Pursuant to requests of January 12, 20 and 23, by counsel for respondents representing a significant proportion of the merchandise under investigation, we granted extensions for the final determination until not later than February 17, 1987.

On February 17, 1987, cousel for respondent requested a further postponement of the final determination until not later than February 24, 1987, in accordance with section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act). If exporters who account for a significant proportion of the exports of the merchandise under investigation properly request an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, the period for the final determination in this case is hereby extended. We intend to issue the final determination not later than February 24, 1987.

Scope of Investigation

The products covered by this investigation are fresh cut standard carnations, standard chrysanthemums and pompon chrysanthemums, currently provided for in item 192.21 of the Tariff Schedules of the United States.

This notice is published pursuant to section 735(d) of the Act.

The United States International Trade Commission is being advised of this postponement in accordance with section 735(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

February 17, 1987.

[FR Doc. 87–3907 Filed 2–25–87; 8:45 am]

BILLING CODE 3510–DS–M

[C–401–502]

Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Hollow Products From Sweden

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Sweden of certain stainless steel hollow products (SSHP) as described in the "Scope of Investigation" section of this notice. The estimated net subsidy for Avesta Sandvik Tube AB (AST) and all other manufacturers, producers, or exporters in Sweden of SSHP is 2.18 percent *ad valorem*. We are not including AB Sandvik Steel (Sandvik Steel) in this determination because the estimated net subsidy on the subject merchandise produced by Sandvik is 0.06, which is *de minimis*. Where a company receives *de minimis* benefits, we consider that to be a "significant differential" warranting company-specific treatment under section 706 of the Tariff Act of 1930, as amended by section 607 of the Trade and Tariff Act of 1984 (Pub.L. 98–573).

We have notified the U.S. International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of SSHP from Sweden, except that produced and exported by Sandvik Steel, that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond on entries of these products in the amount equal to the estimated net subsidy as described in the "Suspension of Liquidation" section of this notice. With respect to Sandvik Steel, the suspension of liquidation ordered in our preliminary affirmative countervailing duty determination shall be terminated. All cash deposits shall be refunded and all appropriate bonds shall be released with respect to imports of the subject merchandise from Sandvik Steel.

Our notice of initiation in this proceeding indicated that we were investigating more than one class or kind of merchandise. Thus, the notice referred to "investigations" of certain stainless steel hollow products. Based on analysis by the Department's industry experts, we preliminarily determined that SSHP constituted one class or kind of merchandise. After careful review of the relevant facts and further consultation with the Department's industry experts, we determine that, in fact, the merchandise covered by this proceeding comprises a single class or kind of merchandise.

EFFECTIVE DATE: February 26, 1987.

FOR FURTHER INFORMATION CONTACT: Jack Davies, Carole Showers, or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–1785, 377–3217, or 377–0161.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Sweden of SSHP. For purposes of this investigation, the following programs are found to confer subsidies:

- 1977–1979 Structural Reorganization Fund
- 1983–1984 Specialty Steel Restructuring Program
- Regional Development Incentives

We determine the estimated net subsidy for SSHP to be 2.18 percent *ad valorem* for all manufacturers, producers, or exporters in Sweden except for Sandvik Steel. The estimated net subsidy on the subject merchandise produced by Sandvik Steel is 0.06 percent, which is *de minimis*.

Case History

On September 5, 1986, we received a petition in proper form from the Specialty Tubing Group (STG) and its six member companies filed on behalf of the U.S. industry producing SSHP. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Sweden of SSHP directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate two countervailing duty investigations. We initiated two investigations on SSHP because we believed, at the time, that SSHP constituted two different classes or kinds of merchandise. On September 25, 1986, we initiated these investigations (51 FR 35018, October 1, 1986). We stated that we expected to issue preliminary determinations on or before December 1, 1986.

Since Sweden is a "country under the Agreement" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Sweden materially injure, or threaten material injury to, a U.S. industry. On October 20, 1986, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise (51 FR 44841, December 12, 1986).

We presented a questionnaire concerning the allegations to the Government of Sweden in Washington, DC on October 6, 1986. On November 5, 1986, we received responses to our questionnaires from the Government of Sweden, Sandvik Steel, Sandvik AB (Sandvik), AST, and Avesta AB (Avesta). There are two manufacturers, producers, and exporters of SSHP in Sweden: Sandvik Steel and AST. Sandvik Steel, wholly-owned by Sandvik, produces and exports seamless pipe and tube, hollow bars, and blanks. AST, owned 75 percent by Avesta and 25 percent by Sandvik, produces and exports welded pipe and tube. Both Sandvik Steel and AST exported SSHP to the United States during the review period.

On November 17, 1986, petitioners requested a full extension of the period within which a preliminary countervailing duty determination must be made pursuant to section 703(c)(1) of the Act, and 19 CFR 355.28(c) of our regulations. Because this request was not filed in a timely manner, we were unable to extend the deadline for the preliminary determination.

On November 20 and 21, 1986, respondents submitted letters challenging the standing of the Specialty Tubing Group and requesting dismissal of the petition. In response to respondents' contentions, we stated in our preliminary determination:

> [N]either the Act nor the Commerce Regulations requires a petitioner to establish affirmatively that it has the support of a majority of a particular industry. The Department relies on petitioner's representation that it has, in fact, filed on behalf of the domestic industry, until it is affirmatively shown that this is not the case. Where domestic industry members opposing an investigation provide a clear indication that there are grounds to doubt a petitioner's standing, the Department will review whether the opposing parties do, in fact, represent a major proportion of the domestic industry. *In this case, we have not received any opposition from the domestic industry.* (51 FR 43950, December 5, 1986 (emphasis added)). See also *Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada* (51 FR 10041, March 24, 1986).

On the basis of information contained in the responses to our questionnaires, we made a preliminary affirmative countervailing duty determination on December 1, 1986 (51 FR 43949, December 5, 1986).

From December 8–10 and 19–20, 1986, we verified the response of the Government of Sweden. From December 10–19, 1986, we verified the responses of Sandvik Steel, Sandvik, AST, and Avesta. We received supplemental information from respondents on January 13 and 14, 1987.

On January 16, 1987, counsel for Sandvik sent the Department two letters from members of the domestic seamless SSHP industry which were originally sent to the ITC. Sandvik characterized these letters as demonstrating opposition to STG's petition. In fact, only one letter arguably expressed opposition to this investigation. For our determination with respect to this issue, see the Department's Position on Respondents' Comment 3.

At the request of petitioners and respondents, a public hearing was held on January 23, 1987, to afford interested parties an opportunity to present views orally in accordance with our regulations (19 CFR 355.35). Petitioners and respondents filed pre-hearing briefs on January 16, 1987, post-hearing briefs on February 4 and 5, 1987, and comments on the verification reports on February 10, 11 and 12, 1987.

On January 29, 1987, we received a letter from petitioners requesting that the petition be amended to add the United Steelworkers of America (USWA) as co-petitioners. On February 9, 1987, we received a letter directly from the USWA confirming its membership in the Specialty Tubing Group and its wish to join petitioners as co-petitioners in this investigation. On February 13, 1987, we denied this request based on the untimeliness of the proposed amendment to the petition.

Scope of Investigation

The products covered by this investigation are certain stainless steel hollow products including pipes, tubes, hollow bars, and blanks therefor, of circular cross-section, containing over 11.5 percent chromium by weight, provided for in items 610.3701, 610.3727, 610.3731, 610.3741, 610.3742, 610.5130, 610.5202, 610.5229, 610.5230, and 610.5231 of the *Tariff Schedules of the United States Annotated.*

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Analysis of Programs

Throughout this notice we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

For purposes of this final determination, the period for which we are measuring subsidies (the review period) is calendar year 1985. The denominator used for benefits conferred to Avesta (Avesta's 1985 stainless steel sales) was calculated as follows: from Avesta's total sales for the review period we subtracted, (1) the total sales of carbon steel forgings of Bjorneborgs Jernverks (an Avesta subsidiary), (2) the net sales of Avesta, Inc., a U.S. subsidiary of Avesta which produces steel in the United States, and (3) total sales of AST for 1985. We then added 75 percent of AST's sales (the portion attributable to Avesta), adjusted for sales of SSHP produced in the Netherlands plant of AST. Lastly, we added 50 percent of Fagersta Stainless' sales for 1985 (the portion attributable to Avesta). The denominator used for benefits conferred to Sandvik Steel is total steel sales of Sandvik, which includes all sales of Sandvik Steel.

In their pre-hearing brief of January 16, 1987, petitioners made a new allegation regarding the creditworthiness of the Swedish SSHP producers. Due to the untimeliness of this new allegation and due to the complexity of the creditworthiness issue itself, we have not analyzed this allegation. See the Department's Position on Petitioners' Comment 2.

Based upon our analysis of the petition and the responses to our questionnaire, verification, and written comments filed by petitioners and respondents, we determine the following:

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers, or exporters in Sweden of the subject merchandise under the following programs:

A. 1977–1979 Structural Reorganization Fund

Petitioners allege that in 1977 the Government of Sweden established the Structural Reorganization Fund (SRF) to provide loans and loan guarantees to the SSHP industry. Petitioners claim that the loans were made on terms inconsistent with commercial considerations, and that the loan guarantees resulted in borrowing on open capital markets at below commercial market rates. Petitioners further allege that the companies (or their successors) that received these loans and loan guarantees restructured the industry by forming mergers and joint ventures to manufacture the subject merchandise.

The SRF was established by and operated under Government Bill 1977/78:47 and the Swedish Code of Statutes (SFS) 1977:1123. The purpose of the SRF program was to facilitate needed structural change within the specialty steel industry. Assistance was given in the form of loans (investment, conditional, and liquidity) and loan guarantees. At verification, we found that the following loans and loan guarantees were given under this program: long-term investment loans to Avesta, Sandvik, Fagersta, and Nyby Uddeholm (the latter two companies produced SSHP before the restructuring in 1984); long-term conditional loans to Nyby Uddeholm; and government guarantees for commercial loans to Avesta and Nyby Uddeholm. At verification we saw no evidence that liquidity loans had been given under this program to the companies under investigation.

As a part of the 1984 Specialty Steel Restructuring Program (discussed at length in section I.B of this notice), two government actions concerning loans and loan guarantees given under the SRF program occurred. First, certain investment loans provided to Avesta, Fagersta, and Nyby Uddeholm were forgiven. Second, the conditional loans provided to Nyby Uddeholm under the SRF program were transferred to its parent company, Uddeholm, and refinanced. The forgiveness and transfer of these loans is discussed in section I.B. of this notice. The remainder of loans and loan guarantees that were granted under the SRF program can be divided into two groups: (1) those held by companies that continued to exist as stainless steel producers after the 1984 restructuring (*i.e.*, Avesta and Sandvik), and (2) those held by Nyby Uddeholm, which was purchased by Avesta in the 1984 restructuring. Sandvik had one investment loan and Avesta and Nyby Uddeholm had several loan guarantees.

Because the loans and loan guarantees under this program were provided solely to the specialty steel industry, we determine that the SRF program was limited to a specific enterprise or industry, or group of enterprises or industries.

1. Loans: To determine whether the investment loan to Sandvik was given on terms inconsistent with commercial considerations, we compared the amount of interest actually paid in 1985 to the amount of interest the company otherwise would have paid. The investment loan was a long-term, variable-rate loan. Since Sandvik did not have similar loans to use as a benchmark, we used the 1985 national average short-term interest rate to measure what the company otherwise would have paid. This benchmark was compiled from data in the "Riksbank Statistical Yearbook for 1985" (RSY 1985). Based on this comparison, we determine the investment loan to be on terms inconsistent with commercial considerations.

To calculate the benefit conferred by this investment loan to Sandvik, we divided the interest differential (*i.e.*, the difference between interest that would have been paid under our benchmark and the amount of interest Sandvik actually paid) by Sandvik Steel's total sales of all products in 1985. On this basis, we calculate an estimated net subsidy of 0.012 percent *ad valorem* for Sandvik.

2. Loan Guarantees: With respect to the loan guarantees received by Avesta, we were unable to obtain documentation on loan guarantee fees charged by commercial banks from 1978 through 1979, the period in which loan guarantees were received under the SRF program. Therefore, lacking information on a benchmark for loan guarantees, we compared the interest rates charged on the guaranteed loans to an appropriate benchmark.

The loans for which Avesta received government guarantees included both fixed-rate and variable-rate long-term loans. According to our methodology, we prefer to use a company-specific benchmark. Since we do not have specific information on Avesta's long-term loans, either fixed- or variable-rate, given in the same year as the guarantees, we used as a benchmark the effective base rate for 15-year industrial bonds, as published in the RSY 1985. For the variable-rate loans, we used the 1985 national average short-term benchmark, as described above. Based on these comparisons, we find that only the guarantees for the variable-rate loans are on terms inconsistent with commercial considerations.

To calculate the benefit conferred on Avesta by the loan guarantees, we divided the interest differential by Avesta's 1985 stainless steel sales. On this basis, we calculate an estimated net subsidy of 0.009 percent *ad valorem* for SSHP.

As noted above, Nyby Uddeholm received guarantees under the SRF program for commercial loans taken out in 1978 and 1979. These guaranteed loans were assumed by Avesta when it purchased Nyby Uddeholm in 1984. During verification, we discovered no evidence that the government grant of these loan guarantees to Nyby Uddeholm resulted in Avesta purchasing Nyby Uddeholm six years later for a lower price than Avesta otherwise would have paid. Absent evidence that these guarantees resulted in a lower than arm's-length price, we presume that any potential subsidy to the firm being acquired is reflected in a higher price paid and, hence, does not confer a benefit on the purchaser. Therefore, we find the loan guarantees to Nyby Uddeholm not to confer a benefit on SSHP produced by AST.

B. 1983–1984 Specialty Steel Restructuring Program

A second attempt by the Swedish government and industry to restructure the Swedish stainless steel industry occurred during 1983 and 1984 as a result of the continued poor financial performance of the industry. In 1983, the government, the producers, and the owners in the Swedish stainless steel industry conducted a series of negotiations which culminated in a comprehensive industry restructuring agreement in January 1984.

The Government of Sweden, as a major creditor of the stainless steel producers, played a critical role throughout these negotiations. The government's principal goal was to rationalize and consolidate the Swedish stainless steel and SSHP industry into an entity with a majority shareholder that would assume responsibility for the industry. To accomplish these objectives, the government was willing to forgive some of its loans to the industry, but only if the owners of the industry were willing to rationalize the industry and to consolidate and accept long-term majority ownership of the industry. But for the government's offer of significant financial inducements, the January 1984 industry restructuring agreement would not have occurred.

Under the January 1984 agreement, the Government of Sweden agreed to take two actions which had the effect of relieving the Swedish stainless steel industry of substantial debt obligations. These two actions were authorized by Parliament in May 1984 under Government Bill 1983/84:157. First, the government agreed to forgive Avesta of all repayment obligation for 450 million Swedish kronor (mSEK) of outstanding principal and accrued, but unpaid, interest on long-term investment and localization loans which had been given originally by the government to Nyby Uddeholm, Fagersta, and Avesta, and which subsequently were assumed by Avesta.

Second, the government agreed to transfer repayment responsibility on 668.1 mSEK of conditional loans from Nyby Uddeholm to its parent, Uddeholm, and to adjust Uddeholm's repayment obligations on these loans. The refinancing terms stipulate that Uddeholm's loan payments to the government are to be tied to Avesta's convertible loan payment due Uddeholm for the sale to Avesta of Nyby Uddeholm. According to information in Uddeholm's financial statements, the terms of the refinancing require Uddeholm to repay the government a maximum of 135 mSEK on the 668.1 mSEK of transferred debt. As a consequence, the government forgave repayment of the balance of 533.1 mSEK.

In addition to these government financial inducements, the January 1984 agreement brought about the consolidation of the stainless steel assets of Fagersta and Nyby Uddeholm into Avesta. Avesta purchased the stainless steel assets of Fagersta which consisted of Fagersta's 75 percent ownership of its joint venture with Sandvik, Fagersta Sandvik Tube (FST), and Fagersta's stainless steel plants in Fagersta, Sweden, and Langshyttan, Sweden. Avesta also purchased the stainless steel facilities and assets of Uddeholm, which consisted of Uddeholm's 100 percent ownership of its subsidiary, Nyby Uddeholm. Furthermore, Avesta's owners agreed in the January 1984 agreement to maintain their majority ownership in Avesta for at least 10 years. In June 1984, after purchasing of Fagersta's shares in FST, Avesta changed the name of that company to Avesta Sandvik Tube AB (AST).

Given these facts, the principal issue is whether the government's forgiveness of (1) Avesta's obligations to repay the 450 mSEK in loans Avesta had incurred or assumed from Fagersta and Nyby Uddeholm, and (2) Uddeholm's obligation to repay 533.1 mSEK in loans it had assumed from Nyby Uddeholm, constitute countervailable benefits in the context of this investigation. To be countervailable under the Act, a government's grant of a benefit must be to a "specific enterprise or industry, or group of enterprises or industries." Since both government actions identified above were undertaken to benefit the Swedish stainless steel industry, we find that the "specificity" requirement of the Act has been satisfied.

The Act further requires that a domestic subsidy must fit within one of the four subsections of section 771(5)(B) before benefits provided under the subsidy may be countervailed. We find that the government's forgiveness of loan repayment obligations in the two contexts described above falls within section 771(5)(B)(iv), "the assumption [by the government] of any costs or expenses of manufacturing, production, or distribution."

As we stated in *Final Affirmative Countervailing Duty Determination: Certain Steel Products From Belgium* (47 FR 39304, 39314, September 7, 1982): "Debt forgiveness by the government is an assumption of a company's cost of doing business and, as such, is countervailable." The record clearly shows that, but for the government's willingness to relieve the industry of substantial indebtedness, the restructuring would not have occurred. Specifically, the government's actions made possible the purchase by Avesta of the Fagersta and Nyby Uddeholm assets, which, together with some of Avesta's own assets, were later sold to, and now comprise, AST. Barring the transfer, refinancing, and forgiveness of these loans, the primary long-term goal of the government's restructuring program—rationalizing and consolidating the Swedish stainless steel and SSHP industry into one company with a majority shareholder—could not have been achieved.

Respondents argue that the government's forgiveness of repayment obligations here should be analyzed under section 771(5)(B)(i), which describes domestic subsidies that amount to "the provision of capital, loans, or loan guarantees on terms inconsistent with commercial considerations." Respondents argue that the government's forgiveness of loans was consistent with commercial considerations, and thus are not countervailable. We determine, however, that even were these actions properly analyzed under section 771(5)(B)(i), they were not consistent with commercial considerations since the record makes clear that a commercial lender would not have extended such forgiveness to the industry under similar circumstances.

We also must determine that benefits provided by the government's forgiveness of loans have benefitted the products under investigation. The government's forgiveness of Avesta's obligations to repay the 450 mSEK in loans clearly benefitted Avesta.

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However, Avesta has retained in its immediate corporate organization none of the welded SSHP facilities it purchased in the 1983–1984 restructuring. As noted above, Avesta sold all of its welded SSHP facilities to its joint venture with Sandvik, AST. The Swedish respondents maintain that government benefits bestowed on Avesta cannot be attributed to AST because Avesta and AST are separate entities and Avesta does not exclusively control AST. The respondents point to the fact that Avesta and Sandvik must agree before many important actions can be taken that affect AST.

After careful review of the record, we find that Avesta exerts considerable control and influence over AST. Under the terms of the Shareholders' Agreement between AST and its owners, AST s shares are owned 75 percent by Avesta and 25 percent by Sandvik. Consequently, a majority of AST's board members, including the board chairman, are appointed by Avesta. AST also is required under its Shareholders' Agreement to purchase a large percentage of its raw materials from Avesta, the sole supplier of these raw materials in Sweden after the restructuring. In November 1984, AST purchased the welded SSHP facilities of Avesta, thereby becoming the sole producer of welded SSHP in Sweden. Although the Shareholders' Agreement does stipulate that certain actions undertaken by the company require a unanimous vote by the board, Avesta can exert significant authority over AST as majority shareholder. More important than Avesta's control over AST, is the fact that through the forgiveness of loans held by Avesta and the transfer-refinancing of Nyby Uddeholm's debt (discussed below), the government enabled Avesta to purchase Fagersta's shares in FST as part of the restructuring. Therefore, we conclude that any benefit accruing to Avesta through the restructuring benefits all of Avesta's stainless steel production, including SSHP produced by AST.

To determine the benefit conveyed by the government to the SSHP industry through its forgiveness of Avesta's obligation to repay the 450 mSEK in loans, we treated this forgiveness, consistent with our practice (see *Certain Steel Products From Belgium, supra*), as a grant. We allocated the 450 mSEK grant amount over 15 years (the average useful life of renewable physical assets for the steel industry). Normally, we prefer to use a company-specific weighted-average cost of capital as the discount rate for allocating such benefits. However, adequate information which would enable us to do so is not on the record. Therefore, we used the effective base rate for 15-year industrial bonds, as published in the RSY 1985.

As noted above, the government's forgiveness of Uddeholm's obligation to repay 533.1 mSEK of the loans of its subsidiary, Nyby Uddeholm, was given in connection with Avesta's purchase of Nyby Uddeholm from Uddeholm. Thus, our principal task with respect to this action is to determine (1) whether the seller (Uddeholm), the buyer (Avesta), or both benefitted from the government's forgiveness of Uddeholm's debt, and (2) the amount of benefit received by each.

The government's intervention clearly benefitted Uddeholm. It enabled Uddeholm to sell an operation which had been losing money since its early years and which was burdened with debts, including the 666.1 mSEK. The government's intervention also substantially reduced Uddeholm's debt obligation. Thus, at least some portion of the benefit conveyed by the government's debt forgiveness must be attributed to Uddeholm.

The crucial question, however, is whether Avesta also benefitted from the government's intervention. If the government's intervention reduced the price Avesta would have otherwise paid for Nyby Uddeholm (*i.e.*, the arm's-length price), Avesta can be said to have directly received a benefit equal to the difference between the actual purchase price and the arm's-length price. Despite the extensive record we have gathered in this investigation, we do not know the exact arm's-length price Avesta would have paid for Nyby Uddeholm had the government not intervened as it did. We are reasonably certain, however, that the arm's-length price would have been more than the actual price paid by Avesta. This is because Uddeholm and the Swedish government eagerly sought the transaction's consummation with Avesta, for failure of that transaction would have meant the failure of the restructuring plan. Avesta was thus in a position to force the government to step in and forgive the loan and, thereby, force the sale at a discount below what would have been the arm's-length price. We accordingly conclude that Avesta, like Uddeholm, directly benefitted from the government's intervention.

In addition, Avesta indirectly benefitted from the government's intervention, since that action enabled Avesta to become, (1) the majority owner of AST, the only producer in Sweden of welded SSHP, and (2) one of the two remaining producers of stainless steel products in Sweden.

In light of this analysis, we have concluded that we cannot reasonably attribute all the benefit of the debt forgiveness and refinancing to Uddeholm because Avesta itself gained from the purchase of Nyby Uddeholm Similarly, we cannot attribute all the benefit to Avesta because Uddeholm also gained as a result of government actions. Because we cannot precisely dissect the complex package of transactions to quantify the benefits that accrued individually to Avesta and to Uddeholm, we have attributed half of the 533.1 mSEK loan forgiveness to Avesta and half to Uddeholm. We have treated the 266.55 mSEK loan forgiveness to Avesta in accordance with our grant methodology described above.

To calculate the *ad valorem* benefit conferred on AST by the 450 mSEK loan forgiveness and the 266.55 mSEK loan refinancing, we divided the 1985 benefit by Avesta's total 1985 stainless steel sales of all products. On this basis, we determine the estimated net subsidy to be 2.165 percent *ad valorem*.

C. Regional Development Incentives

The regional development assistance programs provide assistance to promote new employment in regions with high unemployment or retarded development. Assistance is provided in the form of grants and loans. These are received for location of industry, freight relief, regional investment projects, health care facilities, building and construction, and various employment schemes. The size of the localization grant or loan is determined by several factors, including the number of new jobs created by the investment, the size of the investment, and the area in which it is made.

Based upon our findings at verification, only the following assistance was provided under this program to producers of SSHP: Sandvik received a localization loan for its stainless steel facilities in Sandviken and a localization grant for its saw and tool facilities in Sveg, which do not produce SSHP; Avesta received freight relief and two localization loans, all of which was for its stainless steel facilities in Avesta; Fagersta received several localization loans for its stainless steel facilities located in various designated areas in Sweden; and Nyby Uddeholm received several localization loans for its stainless steel facilities located in various designated areas throughout Sweden.

The localization loans held by Fagersta and Nyby Uddeholm were transferred to Avesta under the 1984 Specialty Steel Restructuring Program, described in section I.B. above. Some of these were forgiven, along with localization loans taken out by Avesta, as part of the Restructuring Program. We have included the benefits to Avesta from this forgiveness in the subsidy calculations for that program.

Other localization loans held by Fagersta and Nyby Uddeholm that were transferred to Avesta were not forgiven. We have not included these loans in calculating the benefit to Avesta for the reasons stated in section I.A. pertaining to guaranteed loans to Nyby Uddeholm that were transferred to Avesta.

The remaining localization loans are to Avesta and Sandvik. A portion of Avesta's localization loans was forgiven in 1985. Sandvik's loan is still outstanding.

We determine that Sandvik's loan was provided to a specific enterprise or industry, or group of enterprises or industries because receipt of this loan was conditional upon regional location. We further determine that forgiveness of Avesta's loan in 1985 is countervailable because we find that the government's forgiveness of loan repayment obligations falls within section 771(5)(B)(iv), "the assumption [by the government] of any costs or expenses of manufacturing, production, or distribution."

We compared the terms of Sandvik's regional loan with our benchmark interest rate. The localization loan was a long-term, variable-rate loan. Since Sandvik did not have similar loans to use as a benchmark, we used the 1985 national average short-term interest rate to measure what the company otherwise would have paid. This benchmark was compiled from data in the RSY 1985. On the basis of this comparison, we found that this loan was on terms inconsistent with commercial considerations.

To calculate the benefit conferred by the localization loan to Sandvik, we divided the interest differential (*i.e.*, the difference between our benchmark interest rate and the amount of interest Sandvik actually paid) by Sandvik Steel's total sales of all products in 1985. On this basis, we calculate an estimated net subsidy of 0.05 percent *ad valorem* for Sandvik.

Based upon our findings at verification, freight relief is provided in the form of a grant and is contingent upon the location of facilities in designated areas. Because this program is limited to specific regions within Sweden, we determine that it is countervailable. Since freight relief benefits are received yearly by Avesta and are based on the level of its shipments, we consider these benefits to be a recurring grant and expensed the 1985 benefits during the review period.

We divided the sum of the benefits from the forgiveness of the conditional localization loan and freight relief to Avesta by Avesta's total sales in 1985 of all products to arrive at an estimated net subsidy of 0.009 percent *ad valorem*.

II. Programs Determined Not To Confer Subsidies

We determine that subsidies are not being provided to manufacturers, producers, or exporters in Sweden of the subject merchandise under the following programs:

A. 1977–1979 Employment Promotion Grants

The Government of Sweden initially provided employment support benefits under the provisions of Government Bill 1976/77:95. These benefits were later extended through a series of overlapping bills which eventually covered the period 1977 through 1979. This was a temporary employment stabilization program designed to give work and education grants to companies with a dominant employment position in a community. A basic condition for the employment and training grants was that the employees facing dismissal continued to be employed by the company in non-productive activities and that the notice of lay-off was to be withdrawn. The employment grants amounted to either (1) 75 percent of the wages of workers who had been designated for lay-off, but who were kept on the job working on projects unconnected with direct production, or (2) a portion of the costs incurred for training and education classes for affected employees. This program was terminated as of December 1979.

At verification, we found that Avesta and Fagersta were the only producers of SSHP that received grants under this program. We found that the companies were required to contribute either 25 percent of the affected employees' salaries, or a portion of the costs related to the training/education courses. But for this government program, neither of these companies would have been liable for expenses related to these employees who otherwise would have been dismissed. Because we saw no evidence that: (1) The classes were for jobs related to stainless steel production; or (2) that either of these companies was relieved of any expenses it otherwise would have incurred absent this program, we determine that no countervailable benefit was bestowed under this program.

B. Bank Guarantee on 1984 Stock Issuance by Avesta

Petitioners allege that in 1984, as part of the structural reorganization of the specialty steel industry, described in section I.B. of this notice, the government provided guarantees on stock issued by Avesta in 1984. Petitioners assert that the capital raised by this stock issuance was used by Avesta to support its stainless steel operations.

During verification, we found that Avesta's stock issue in 1984 was underwritten and guaranteed by Skandinaviska Enskilda Banken, a commercial bank that is not owned or controlled by the government. We also found that under Swedish law, a commercial bank is allowed to underwrite a stock issuance for a company. Because we found that a commercial bank guaranteed Avesta's 1984 stock issuance based on its own commercial interests, we determine that no countervailable benefit was bestowed under this program.

C. 1972 and 1976–1978 Inventory Grants

Petitioners allege that the Government of Sweden has provided funding for increases in stainless steel inventories in order to keep surplus personnel employed.

Inventory grants were provided pursuant to the Swedish Code of Statutes (SFS) 1971:1249, ss 1 and 2. The purpose of the program was to maintain existing levels of employment. To receive a grant under this program, the company was required to have at least 20 employees and inventories of finished or semifinished goods increasing from the previous year. If a grant was received, the company had to maintain its current level of employment.

During verification, we found that this program was available to, and used by, a wide variety of Swedish manufacturers. Because this program was not limited to producers of stainless steel products, or otherwise limited to a specific enterprise or industry, or group of enterprises or industries, or to specific regions within Sweden, we determine that no countervailable benefit was bestowed under this program.

D. Government Funding to Companies and Research Organizations for Research and Development

The Swedish Government provides research and development grants to Swedish industries either directly or indirectly through various research and development (R&D) agencies. The Swedish Board of Technical

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Development (STU) is Sweden's central agency for funding of R&D grants.

During verification, we found that conditional grants are given for R&D. Upon completion of a project, the results must be reported to STU and thereafter are made publicly available by STU. However, under certain circumstances, a grant recipient may find the results from a research project to be exploitable and decide to have them patented, at which time STU is requested not to release any results arising from the project. In this situation, STU requires that the conditional grant be converted to a loan and be repaid with interest to STU.

We also found during verification that Sandvik received four grants for projects related to SSHP, the results of which have been made publicly available. Avesta received two grants for projects pertaining to SSHP. One of the projects has not yet been completed.

Upon completion of the other project, Avesta decided to patent the project results. Therefore, the grant was converted to a loan which was repaid with interest by 1981. According to the government's response, Nyby Uddeholm received three grants for projects related to SSHP. Because Nyby Uddeholm no longer exists as a company and because we saw no evidence at verification of any R&D grants transferred to Avesta's books after it purchased Nyby Uddeholm in 1984, we assume that these grants were either converted to loans and repaid with interest prior to the review period or the results of the research were made publicly available.

Because the results of the government-funded corporate R&D projects are publicly available, we determine the R&D funds provided under this program are not countervailable.

III. Programs Determined Not to Exist

A. Government Loan to Sandvik for Working Capital

Petitioners allege that an increase in "Interest-Free Trading Debts" shown in Sandvik's 1983 Annual Report was the result of a government transfer of interest-free loans to the company. At verification, we found that this increase was the result of a sale by Sandvik of one of its assets, with no participation on the part of the government. Because this was a commercial transaction, unrelated to any government program or action, we determine that there is no program by which the Swedish government provided interest-free loans to Sandvik.

B. Government Convertible Loan to Avesta for Purchase of Nyby Uddeholm

Petitioners allege that the Government of Sweden provided convertible loans on terms inconsistent with commercial considerations to Avesta for the purpose of financing the acquisition of Nyby Uddeholm's and Fagersta's stainless steel operations.

During verification, we found that the government did not issue convertible loans to Avesta, or any of its subsidiaries, for the purchase of Nyby Uddeholm and Fagersta. Rather, Avesta issued convertible loans in 1984 to Fagersta and Uddeholm as payment for the facilities and assets purchased. Because the Government of Sweden had no involvement in this part of the structural reorganization of the specialty steel industry, we determine that there was no program by which the government provided convertible loans to Avesta.

Petitioners' Comments

Comment 1. Petitioners contend that the Department should countervail the additional benefits that have flowed to the SSHP industry from the forgiven localization loans to Avesta and Fagersta resulting from interest holidays and below-market interest rates. They argue that the amount of interest that should have been paid during the interest holidays should be added as an additional grant to the loan amount forgiven in 1984, and the total amount of additional benefits attributable to the below-market interest rates should be added to the 1984 grant amount.

DOC Position. We disagree. We have treated the amounts forgiven in 1984 as grants and have allocated the benefits over 15 years. Under our standard methodology, any savings that might have occurred in the form of interest holidays or low interest rates prior to 1984 would be attributable to years prior to the forgiveness.

Comment 2. Petitioners contend that a major portion of the SSHP industry was uncreditworthy between the years 1976 and 1983. Therefore, in evaluating and measuring benefits bestowed, the Department should adopt benchmarks and discount rates that reflect the uncreditworthiness of much of the Swedish SSHP industry.

DOC Position. Petitioners' allegation of uncreditworthiness was received by the Department on January 16, 1987, approximately one month before the final determination. Petitioners had access to respondents' annual reports and financial statements as of November 6, 1986, almost two months before any allegation was received by the Department. Given the complexity of the analysis necessary to investigate this allegation, we consider it to be too late to be considered in this investigation. This decision is consistent with past Department practice regarding allegations of uncreditworthiness. *See e.g., Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Lime Oil from Mexico* (49 FR 35627, 35677, September 11, 1984).

Comment 3. Regarding the calculation of the benefit from employment grants made after July 1978 to Avesta, petitioners contend that the Department should use as the cost of capital to Avesta the rate derived by adding a 4.7 spread to the industrial bond rate in 1978, for an estimated cost of capital of 15.03 percent. Petitioners maintain that this rate reflects the relative cost experienced by Avesta in view of its uncreditworthiness in 1978.

DOC Position. We determine that employment grants are not countervailable. See section II.A. of this notice. We have not considered the allegation of uncreditworthiness because of the untimeliness of its filing. See DOC Position on Petitioners' Comment 2.

Comment 4. Petitioners contend that, if the Department finds the inventory grants were limited in Sweden, then it should also find that countervailable benefits have flowed to Avesta and Sandvik under this program.

DOC Position. We determine that inventory grants are not limited to a specific enterprise or industry, or group of enterprises or industries and, thus, are not countervailable. See section II.C. of this notice.

Comment 5. Petitioners contend that the localization loans that had previously provided countervailable benefits to Fagersta and Nyby Uddeholm continue to provide countervailable benefits to Avesta after its acquisition of the loans. Petitioners further contend that benefits from below-market interest rates and interest holidays on these loans have flowed to Avesta and should be countervailed.

DOC Position. We disagree. See section I.C. of the notice and DOC Position on Petitioners' Comment 19.

Comment 6. Petitioners contend that subsidies for the production of the flat-rolled products used to manufacture SSHP have continued to benefit the production of SSHP regardless of the corporate maneuverings in 1984. As an integral part of the Avesta Group, AST has derived a significant benefit from enhanced production of stainless steel plate, sheet, and strip made possible by government preferential loans designed

to improve Avesta's continuous casting facilities.

DOC Position. We agree. See section 1.B. of this notice.

Comment 7. Petitioners contend that, contrary to Sandvik's assertions, the Department properly applied a country-wide rate for purposes of the preliminary determination and should continue to do so in the final determination. In support of this position, petitioners assert that the 1977–78 Structural Reorganization Fund and the government-directed and subsidized 1984 industry reorganization were intended not to benefit a particular company or companies, but, rather, the entire stainless steel industry.

DOC Position. It is our general practice to publish a country-wide countervailing duty rate applicable to all imports of the subject merchandise. However, where a company receives *de minimis* benefits, we consider that to be a "significant differential" warranting company-specific treatment under section 706 of the Act, as amended by section 607 of the Trade and Tariff Act of 1984. Because Sandvik Steel received *de minimis* benefits, we are not including it in this determination.

Comment 8. Petitioners disagree with Sandvik's assertion that it should be given a separate rate because it had *de minimis* margins. Petitioners contend that the benefits from Sandvik's loans under the SRF are substantial. Petitioners further contend that Sandvik and its subsidiary companies benefitted from the government-directed and subsidized reorganization through insured viability and increased competitiveness.

DOC Position. We disagree. See DOC Position on Petitioners' Comment 7 and section 1.B. of this notice.

Comment 9. Petitioners contend that the request for exclusion from any countervailing duty order that may be issued in this investigation, which appeared in the prehearing brief of Sandvik and Sandvik Steel is inappropriate because these companies have not fulfilled the procedural or substantive prerequisites for exclusion from a countervailing duty order. Petitioners contend that given respondents' failure to request exclusion within 30 days"of the notice of initiation, as required by § 355.38 of the Department's regulations, and the evidence of subsidies provided to Sandvik, the Department should not grant respondents' exclusion request.

DOC Position. We agree. However, as we state in response to Petitioners' Comment 7, our investigation of Sandvik revealed that it receives de minimis benefits and, therefore, Sandvik is not included within this determination.

Comment 10. Petitioners allege that Avesta benefitted from below-market interest rates on guaranteed loans from the Swedish government. They argue that such benefits are distinct from the benefits conferred by preferential guarantee fees. In view of Avesta's uncreditworthiness, the benefits to Avesta from its variable-rate loan should be calculated using the highest short-term interest rate in Sweden as a benchmark.

DOC Position. Where the government provides guarantees for loans, a countervailable benefit can arise if the fee paid for the government guarantee is less than what the borrower would otherwise pay for a guarantee. If we have a benchmark guarantee fee, we would not generally examine the interest rate on the guaranteed loan because any benefit to the borrower would be reflected in the difference in the guarantee fees.

Because we lacked a benchmark guarantee fee in this case, we compared the interest rate on the government guaranteed loan to the interest rate the firm would otherwise have paid. This is the best measure of any benefit conferred in the absence of a benchmark guarantee fee.

With respect to Avesta's creditworthiness, see DOC Position on Petitioners' Comment 2.

Comment 11. Petitioners argue that the Department should use Avesta's cost of long-term debt as the basis for the discount rate in calculating benefits from Avesta's guaranteed loans. Petitioners contend that Avesta's weighted-average cost of capital cannot be reliably determined due to the absence of capital infusions into the company from 1979–84.

DOC Position. As discussed above, we examined the interest rates on Avesta's government guaranteed loans because we lacked a benchmark guarantee fee. The guaranteed loans had fixed and variable interest rates. We found that the interest rates on the fixed rate guaranteed loans were not lower than Avesta would otherwise have paid. Therefore, we determined that the guarantees for these loans were not provided on terms inconsistent with commercial considerations.

With regard to the guaranteed variable rate loans, we found that the interest rate paid by Avesta was less than the benchmark rate. Therefore, we found the government guarantees for variable rate loans were provided on terms inconsistent with commercial considerations. To measure the benefit arising from these guarantees, we compared the interest paid in 1985 to the interest that would have been paid under the short-term benchmark. Because of this, there was no need for a discount rate because no benefits were allocated over time.

Comment 12. Petitioners allege that the Government of Sweden provided preferential loans to Bjorneborgs Jernverks (BJ), a subsidiary of Avesta Jernverks, which have directly benefitted the SSHP industry. Petitioners contend that an investment loan and a localization loan, both transferred to Avesta in 1985, conferred two benefits on Avesta: (1) A preferential interest rate, and (2) a three-year interest holiday.

DOC Position. We disagree. BJ produces forged steel products primarily from carbon steel. We did not attribute any benefits accruing to BJ to the SSHP industry and we did not include BJ's sales in Avesta's total steel sales for purposes of calculating a denominator.

Comment 13. Petitioners argue that, in addition to the benefits conferred by the Swedish government's forgiveness of a 52.5 mSEK investment loan to Avesta in connection with the 1984 restructuring, Avesta benefitted by not paying the interest that would have accrued prior to the forgiveness if the loan had been at market rates. Petitioners further argue that Avesta's interest savings should be treated as a grant in the amount of the annual interest saved by Avesta between the year the loan was bestowed and the year it was forgiven. The 1985 benefits from this loan should be calculated by adding the interest that would have accrued over the life of the loan to the amount of the loan principal forgiven, and then treating the sum as a grant.

DOC Position. We disagree. Any benefit from interest savings prior to forgiveness would be attributable to the period before the forgiveness. See also DOC Position on Petitioners' Comment 1.

Comment 14. Petitioners allege that a 35 mSEK government loan to Sandvik was inconsistent with commercial considerations. Petitioners argue that (1) the loan had an interest holiday, (2) Sandvik apparently paid no loan fees, and (3) because the loan has a variable interest rate, the correct benchmark is the 1985 short-term interest rate. If a long-term loan interest rate is used as a benchmark, petitioners argue that the 15-year industrial bond rate is not an appropriate benchmark because it does not reflect long-term loans to the SSHP industry.

DOC Position. We agree that the loan was made on terms inconsistent with

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commercial considerations. However, because the loan had variable interest rates, we were not able to apply our methodology for fixed rate, long-term loans, which would have resulted in allocating any benefits from an interest holiday or lack of loan fees over the life of the loan. Instead, because the loan has a variable interest rate, we calculate the benefit that arises in each year and allocate that entire amount to that year. As petitioners suggest, we have used the 1985 short-term interest rate to measure the benefit accruing to Avesta in 1985.

Comment 15. Petitioners allege that the transfer of Nyby Uddeholm's conditional loans to Uddeholm in 1984 provided countervailable benefits to the SSHP industry. By relieving Nyby Uddeholm and Avesta, its successor corporation, of a substantial liability, the Government of Sweden effectively bestowed a grant on Avesta. Petitioners further argue that the loans' below-market interest rate also conferred benefits on Nyby Uddeholm and Avesta.

DOC Position. We disagree that the loan transfer, in itself, conferred benefits on the SSHP industry. However, the government refinancing and partial forgiveness of the loans did provide certain benefits to Avesta. We did not analyze whether the original terms of these loans were inconsistent with commercial considerations because the loans were forgiven or refinanced. Therefore, the original terms of the loans are not relevant to our determination. See section I.B. of this notice.

Comment 16. Petitioners allege that the Swedish government forgiveness of loans to Nyby Uddeholm and Fagersta provided a direct benefit to the SSHP industry. They argue that the loan forgiveness enabled the SSHP industry to restructure and become more competitive, and that this restructuring would have been impossible absent government intervention. The loan forgiveness, recorded in Avesta's 1984 annual report, allowed Avesta to write down the value of its fixed assets. Petitioners further argue that, because neither Avesta nor Sandvik provided any payment or other consideration for the loan forgiveness, the forgiveness cannot be characterized as an arm's-length transaction between the SSHP industry and the Government of Sweden. In addition, petitioners contend that the loans' below-market interest rates and interest holidays directly benefitted the SSHP industry.

DOC Position. We agree that the loan forgiveness cannot be characterized as an arm's-length transaction between any company in the SSHP industry and the government. Debt forgiveness by a government is an assumption of a company's cost of doing business and, as such, constitutes a benefit to the production of the subject merchandise. We do not agree that any interest savings which might have occurred prior to the forgiveness yield a benefit during the review period. See DOC Position to Petitioners' Comment 1.

Comment 17. Petitioners allege that certain Swedish government loans to Nyby Uddeholm and Fagersta carried preferential guarantee fees, below-market interest rates, conditional repayment terms; and interest holidays. Petitioners argue that these benefits flowed to Avesta when Avesta acquired the loans in the 1984 restructuring.

DOC Position. We disagree. See sections I.A. through and I.C. of this notice.

Comment 18. Petitioners allege that the Swedish government's loan forgiveness, as the impetus for the 1984 restructuring, benefitted the entire stainless steel industry, including SSHP. They argue that AST came into existence only because of the government-directed reorganization of the industry. Petitioners cite *Final Affirmative Countervailing Duty Determination: Certain Steel Products from France* (47 FR 39332, September 7, 1982) in which the Department found government restructuring efforts in the French steel industry to be countervailable, as directly analogous to Swedish government actions in this investigation.

DOC Position. We disagree. The government's loan forgiveness provided certain countervailable benefits to Avesta, but not to the SSHP industry as a whole. For example, we did not attribute any benefits to Sandvik from the 1984 loan forgiveness. See section I.B. of the notice.

Comment 19. Petitioners argue that none of the inter- and intra-corporate transfers of assets and debts which occurred during the 1984 steel restructuring were arm's-length transactions. Further, petitioners argue that the creation of FST and AST cannot be considered "commercial" due to the existence of government direction in the form of preferential loan terms, loan forgiveness, and below-market asset purchase agreements.

DOC Position. We disagree. Some of the above-mentioned debt and asset transfers were arm's-length transactions. Only certain portions of the 1984 restructuring were non-commercial: namely, the government's loan forgiveness and loan refinancing. These government actions ultimately allowed the restructuring to occur, but they did not undermine the commercial nature of certain key aspects of the restructuring. The complex set of agreements which comprise the restructuring contain both commercial and non-commercial elements. In section I.B. of the notice, we have identified those elements which conferred countervailable benefits. We have not found a "pass through" of benefits from preferential loan terms when those loans were transferred because the transfers can be considered "commercial" once the government's role in the agreement is accounted for.

We consider that, absent government loan forgiveness and refinancing, any preferential loans sold at arm's-length would cease to be preferential to the new purchaser. In effect, the purchase price of the loan package would reflect the preferential terms of the loan. As such, the loan transfers are not inconsistent with commercial considerations. We have countervailed only those government actions, loan forgiveness and refinancing, which were contemporaneous with the restructuring and which clearly enabled a transaction to take place that otherwise would not have occurred on the same terms.

Comment 20. Petitioners argue that the Swedish government's loan forgiveness and the transfer of debt from Nyby Uddeholm to Uddeholm should be treated as a grant and allocated over total sales of stainless steel. Petitioners cite *Certain Steel Products from France, supra,* Comment 18, in support of their argument.

DOC Position. We disagree. See section I.B. of this notice.

Comment 21. Petitioners dispute Avesta's contention that any benefits from the Swedish government's loan forgiveness and debt transfers accrued to Fagersta and Uddeholm and did not pass on to Avesta or AST. Petitioners' claim that Avesta was relieved of significant liabilities as a result of government-directed restructuring.

DOC Position. We agree that certain benefits from the government's loan forgiveness and refinancing accrued directly to Avesta and indirectly to AST. See section I.B. of this notice.

Comment 22. Petitioners argue that Sandvik benefitted from the 1984 restructuring and from preferential localization and investment loans, both as a producer of seamless SSHP and as a joint owner of AST and Fagersta Stainless.

DOC Position. We found Sandvik's localization loan and investment loan to be countervailable, but the benefits received are *de minimis* (see sections I.A. and I.C. of this notice). We disagree that Sandvik received countervailable benefits from the 1984 restructuring.

Those benefits accrued solely to Avesta, AST and their production of stainless steel products.

Comment 23. Petitioners argue that Avesta and AST are not separate entities in any meaningful respect, in view of the highly integrated supply relationships between AST and Avesta and the common ownership responsibility for Avesta, AST and the entire Avesta Group. Petitioners conclude that government benefits to Avesta have also benefitted AST.

DOC Position. We agree. See section I.B. of this notice.

Comment 24. Petitioners argue that the revised figures for Avesta's total steel sales in the Department's verification report are overstated because (1) they include steel products not produced in Sweden, (2) they include sales by marketing entities of products that are not made by Avesta, and (3) they include sales of a variety of fabricated products that are not normally considered part of the steel industry.

DOC Position. We disagree. For an explanation of those Avesta sales included in our denominator, see the "Analysis of Programs" section of this notice.

Comment 25. Petitioners contend that information relating to the government's loan forgiveness remains unverified. Specifically, petitioners note that the Swedish government failed to provide the Department with financial calculations regarding the amount of the loan forgiveness and how that amount was reached. Further, petitioners recommend that the Department conclude, as best information available, that the full amount of the loan forgiveness and debt transfer was intended to benefit the stainless steel and SSHP industry.

DOC Position. We disagree. We are satisfied that all information relied upon in making our final determination has been sufficiently verified. Our calculation methodology for the loan forgiveness and debt transfer is set out in section I.B. of this notice.

Comment 26. Petitioners argue that Avesta's purchase of Fagersta's and Nyby Uddeholm's stainless steel and SSHP operations was not made on commercial terms. Petitioners claim that, when payment for these operations is ultimately made, it will be through convertible debentures with a present value at the time of purchase well below the nominal asset valuation.

DOC Position. We disagree. See section I.B. of this notice.

Respondents' Comments

Comment 1. Sandvik contends that it should be excluded from any final subsidy determination because there is a significant differential, within the meaning of section 706 of the Act between Sandvik Steel and the other companies subject to this investigation and because any benefits received by Sandvik Steel are *de minimis.* Sandvik further contends that, during the initial 30-day period for an exclusion request under § 355.38 of the Department's regulations [19 CFR 355.38], it was not able to make such a request for exclusion because they had participated in certain programs alleged by petitioners to be countervailable. Sandvik, therefore, requests that it be excluded from any countervailing duty order issued in this investigation if the Department finds that this company received no subsidies with respect to SSHP, or if the Department finds that the only subsidy provided to Sandvik Steel arose from the investment loan and that the benefit from such subsidy was *de minimis.*

DOC Position. Because Sandvik Steel failed to request an exclusion within 30 days of the notice of initiation, we did not grant it an exclusion under section 355.38 of our regulations. However, because we found that Sandvik Steel received *de minimis* benefits we are not including it in this final determination. See DOC Position on Petitioners' Comments 7 and 8.

Comment 2. Sandvik contends that petitioners do not represent a majority of the stainless steel pipe and tube industry, that the countervailing duty law expressly requires that a petitioner must represent the affected industry, and that the Department's position that a petitioner need not establish its standing to bring a petition is without basis.

DOC Position. See the "Case History" section of this notice. Furthermore, the only opposition we received from the entire domestic SSHP industry was one letter from one producer. This letter did not express outright opposition to the Department's investigation, but rather, opposition to any interference with its continued reliance upon foreign sources of SSHP. Therefore, we have determined that this one expression of questionable opposition to an investigation does not present us with a clear indication that we should doubt petitioners' standing.

Comment 3. Sandvik argues that petitioners' request to include the United Steelworkers of America (USWA) as co-petitioner should be rejected by the Department. Sandvik contends that petitioners' attempt at this late stage in the investigation to cure a defect with respect to petitioners' standing to cause this investigation to be initiated is untimely, improper, and has no support in statute or regulation.

DOC Position. We have determined that there is no defect in petitioners' standing. As for petitioners' attempt to amend the petition in order to add the USWA as a co-petitioner, we have sent a letter to petitioners informing them that their request has been denied. In order for a petition to be amended, adequate time must exist for any opposing parties to submit comments and for the Department to consider the relevant arguments.

Given that the Department received no information with regard to the USWA until February 4, 1987, and more fully on February 9, 1987, we have determined that we are unable, at such a late stage in the investigation, to recognize the USWA as a co-petitioner. This determination is consistent with section § 355.26 of the Department's regulations, which permits the Department to reject a proposed amendment if it is submitted in an untimely manner.

Comment 4. Sandvik argues that, in developing a benchmark to compare to long-term government loans to Sandvik, the Department should not derive a benchmark from short-term commercial loans. Sandvik adds that, even if the Department chooses to use short-term rates as benchmarks, the rates reported by the RSY 1985 are inappropriate because they reflect borrowing to all classes of borrowers and exceed those available to a blue chip company like Sandvik. Sandvik also believes that a long-term, floating interest rate loan with interest tied to the Swedish discount rate (discount plus 4.25 percent) is the appropriate benchmark.

DOC Position. When the loan in question is a long-term variable-rate loan, we will derive a company-specific benchmark if the company has similar variable-rate loans taken out at approximately the same time. Sandvik did not have such loans. Therefore, we used that short-term interest rate reported in the RSY 1985.

Comment 5. Avesta argues that the 450 mSEK loan write-off by the Swedish government did not bestow any countervailable benefits on the production or exportation of any stainless steel product because it was consistent with commercial considerations. Avesta supports this argument by asserting that the loan forgiveness was matched by comparable private interest financial commitments, and that it was the best option available

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to the Swedish government for ensuring maximum repayment on outstanding loans and avoiding greater losses.

DOC Position. We disagree. See section I.B. of this notice.

Comment 6. Avesta contends that the amount of loans forgiven 450 mSEK is "commercially negligible" when compared to the value of sales made by the major Swedish stainless steel producers (in 1983).

DOC Position. We disagree. According to our methodology, we treat loan forgiveness as a grant and allocate the benefit to the "grant" recipients. Under this methodology, the benefit of loan forgiveness conferred on the subject merchandise was not negligible. See section I.B. of this notice.

Comment 7. Avesta submits that none of the 450 mSEK loan write-off was tied to the production or exportation of the subject merchandise; rather, it was for the entire stainless steel industry.

DOC Position. We disagree. The 1984 restructuring was directed specifically at improving the Swedish stainless steel industry. SSHP was a beneficiary of the restructuring. Therefore, at a minimum, the restructuring indirectly benefitted the production and exportation of the subject merchandise. See section I.B. of this notice.

Comment 8. Avesta contends that it incurred substantial costs to revitalize the assets it acquired, and that these costs are separate from the write-down in the value of certain worthless assets against the 450 mSEK loan forgiveness.

DOC Position. Any "additional" costs incurred by Avesta do not diminish the benefits conferred by the government through its loan forgiveness.

Comment 9. Avesta argues that the reduction of Nyby Uddeholm's 668.1 mSEK in liabilities conferred a commercial benefit on the seller, Uddeholm AB, not on Avesta. Avesta claims that its purchase of Nyby Uddeholm shares came only after Uddeholm agreed to assume Nyby Uddeholm's liability to the Swedish government. Avesta asserts that the 200 mSEK it paid for Nyby Uddeholm stock was the fair market value and it never would have paid that amount had Nyby Uddeholm retained the liability to the Swedish government.

DOC Position. We disagree. We determine that the benefit arising from the transfer and refinancing of the 668.1 mSEK liability accrued to both Uddeholm and Avesta. See section I.B. of this notice.

Comment 10. Avesta asserts that it has always been creditworthy and that petitioners' allegation of uncreditworthiness is wrong.

DOC Position. We determined that petitioners' allegation of uncreditworthiness was untimely and, therefore, we have not made a determination regarding the creditworthiness of Avesta.

Comment 11. AST argues that the formation of its precursor, FST, and the acquisition of the mills at Fagersta and in West Germany in 1983 did not result in the bestowal of countervailable benefits to AST because the transactions were made at commercially reasonable prices and entirely without the assistance of the Swedish government.

DOC Position. We agree. We saw no evidence that the Government of Sweden participated in any way in the formation of FST nor in the purchases of the Fagersta and West German mills. We believe that these were arm's-length transactions at commercially reasonable prices.

Comment 12. AST argues that Avesta's purchase of Fagersta's interest in FST did not confer countervailable benefits because the price which Avesta paid was a realistic commercial price and because Avesta was financially able to purchase the shares without government assistance. AST adds that, even if the Department concludes that Avesta's purchase of Fagersta's stock was made possible through government assistance or that the price was not commercially reasonable, there was no benefit that flowed to AST. AST argues that the Department has expressly recognized the difference between the purchase of pre-existing stock, which benefits the seller, and the purchase of newly issued stock, which benefits the issuing company.

DOC Position. We disagree. See section I.B. of this notice.

Comment 13. AST argues that, as a corporation wholly responsible for its own taxes and other debts and liabilities, it is a legal entity separate and distinct from its corporate stockholders. AST argues that its business transactions with Avesta, specifically, the purchases of raw materials and the Storfors and Torshalla plants from Avesta, did not confer countervailable benefits to AST because the Department does not countervail transactions between related companies where there is no government direction or assistance. AST also contends that petitioners' reliance on *British Steel Corporation* v. *United States*, 9 CIT ___, 605 F. Supp. 286 (1985) and on *Certain Steel Products from France* (47 FR 39332, September 7, 1982) is misplaced because petitioners have confused the ITA's method for allocating subsidies with the ITA's method for determining whether subsidies exist.

DOC Position. We found that the forgiveness of loans to Avesta, and the transfer and refinancing of Nyby Uddeholm's debt to Uddeholm benefitted Avesta's production of stainless steel, including SSHP produced by AST, which is 75 percent owned by Avesta. We disagree that we need to trace a flow of benefits to AST through its purchase of raw materials or through its purchase of Nyby Uddeholm's welded SSHP plants. As described at length in section I.B., we found these government actions to be a necessary element of the restructuring, and the reconstitution of AST in 1984 was a direct result of that restructuring. Therefore, AST's production, like Avesta's other stainless steel production, benefitted.

Comment 14. AST argues that, even if Avesta received a countervailable benefit, it was not passed through to AST because all transactions conducted between AST and Avesta were on a commercial basis. AST argues that the Department recognizes that funds transferred on a commercial basis between a parent and a subsidiary, even if the parent received its funds in the form of government subsidies, do not confer a countervailable benefit on the subsidiary.

DOC Position. We disagree. See section I.B. of this notice and DOC Position on Respondents' Comment 13.

Comment 15. AST contends that, contrary to statements made in the verification reports, AST made a profit in 1984 and that it had an overall negative result only because it took an extraordinary write-down for the permanent closing of certain productive facilities.

DOC Position. In our verification report we stated that "AST recorded a loss in 1984 for its operations in Sweden (AST Parent) and for its overall operations (AST Group)." We derived this information from the "result before tax" data in the profit and loss statements of the 1984 AST Annual Report. Since the AST 1984 Annual Report is publicly available, we did not attempt to provide an analysis of the 1984 financial data in the verification report.

Comment 16. AST argues that the liabilities of Nyby Uddeholm were not forgiven, but were assumed by Uddeholm in order for it to be able to sell Nyby Uddeholm. AST contends that this was a commercially reasonable act because in the absence of such a transfer, the subsidiary could not have been sold.

DOC Position. We agree that the liabilities were transferred from Nyby Uddeholm to Uddeholm so that Nyby Uddeholm could be sold, but disagree that liabilities were not forgiven and that the government's action was a commercially reasonable one. See section I.B. of this notice.

Comment 17. AST contends that the investment by Avesta and Sandvik in newly-issued equity of AST in late 1984 was consistent in every way with normal commercial considerations and cites as support the *Final Administrative Review: Certain Refrigeration Compressors from Singapore* (51 FR 37055, October 17, 1986), which characterizes increases in equity as normal commercial transactions between a parent company and a subsidiary.

DOC. Position. We agree. Investments in equity by private shareholders typically do not confer benefits on the issuing company unless the government intervenes to provide government funds for such purposes. We determine that Avesta's and Sandvik's investment in AST was independent of the series of transactions facilitated by the government in January 1984, and was not directed or facilitated by government action and provision of benefits.

Comment 18. Sandvik and AST argue that seamless and welded SSHP constitute two separate "classes or kinds" of merchandise within the scope of the countervailing duty law. They contend that the difference in the physical characteristics of the product (*i.e.*, the presence or absence of a weld) reflects a completely different method of manufacture. Furthermore, they contend that this difference in physical characteristics results in separate ultimate uses, channels of trade, cost and expectations of the ultimate user.

DOC Position. We disagree. For purposes of this final determination, we have found that seamless and welded SSHP constitute one "class or kind" of merchandise. Although the Department recognizes that there *may be* physical differences between seamless and welded SSHP (*i.e.*, the presence or absence of a weld), the physical properties with regard to steel grade and ASTI specifications between seamless and welded SSHP can be identical. Therefore, we have determined that seamless and welded tubing manufactured to identical specifications are interchangeable.

Because both seamless and welded SSHP can meet identical technical characteristics, the choice of one over the other is based more on individual customer preference and past experience, rather than the inability of one type of product to fulfill certain specifications. Furthermore, with regard to the remaining criteria, we found that ultimate use and expectations of the ultimate user are directly related to the arguments concerning physical characteristics, and that ultimate use and expectations are based on individual preference, rather than technical criteria. With regard to channels of trade, we found that, contrary to respondents' arguments, both seamless and welded SSHP flow through pipe and tube distributors and that both seamless and welded SSHP are stocked in standard sizes, as well as custom order availability. Lastly, although cost is not a factor that the Department considers in making its class or kind determination, this is not a basis on which to distinguish the two products. Although historically welded tube has been found to have a price differential of perhaps 10 to 20 percent, recent developments in SSHP production (*e.g.*, x-ray inspection), which enable the product to meet the stringent standards previously held for certain types of seamless SSHP, have decreased the price differential so as to render the difference insignificant.

Comment 19. AST contends that the failure of the Department to find two separate "classes or kinds" of merchandise in this investigation would make it virtually impossible for the ITC to fulfill the statutory requirement of linking injury from imports of a "class or kind" of merchandise to subsidization of such merchandise.

DOC Position. We disagree. In its preliminary determination (51 FR–44841, December 12, 1986), the ITC found two "like" products and two domestic industries: seamless and welded SSHP. Should the ITC maintain this distinction in its final determination we see no circumstance which would prevent us from linking injury from imports of the class or kind of merchandise under investigation to subsidization of the merchandise.

It is our practice when the ITC finds more than one industry to exist within a single class or kind of merchandise, to publish a final countervailing duty or antidumping duty order conforming to and coterminous with the ITC's injury and industry determinations. For example, in the *Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled and Frozen Pork Products from Canada* (50 FR 25097, June 17, 1985), the Department found that the products under investigation constituted one "class or kind" of merchandise. However, the ITC, in its final determination (50 FR 31931, August 7, 1985), found injury on live swine, and found no injury with regard to fresh, chilled and frozen pork products. The Department issued one order which covered only live swine.

The correctness of this approach has been specifically endorsed by the United States Court of International Trade. In *Badger-Powhaton v. United States*, 6 ITRD 2324 (April 29, 1985), a case involving the antidumping statute, the Court held that final orders may only cover merchandise which satisfies both the less than fair value sales criteria and the material injury criteria under section 731 of the Act. A broader coverage, the Court noted, would render the ITC's role in determining the like product, the industry effected, and injury, meaningless:

> If taken to its logical conclusion, plaintiffs' interpretation of [19 USC] 1673 would require an affirmative material injury determination in only one industry for the issuance of an antidumping order covering the entire class or kind of merchandise being sold at less than fair value. Such an incongruous result would violate the basic tenets of antidumping duty law. (footnote omitted).

6 ITRD at 2327. This holding, and the reasoning upon which it is based, are as applicable to a countervailing duty case as it is to an antidumping duty case.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. During verification, we followed standard verification procedures, including meeting with government and company officials, inspection of documents and ledgers, and tracing information in the responses to source documents, accounting ledgers, and financial statements.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of SSHP from Sweden, except SSHP produced and exported by Sandvik Steel, which are entered, or withdrawn from warehouse, for consumption on or after December 7, 1986. As of the date of publication of this notice in the **Federal Register**, the Customs-Service will require a cash deposit or bond of 2.18 percent *ad valorem* for each entry of the subject merchandise from Sweden by all manufacturers, producers, or exporters except Sandvik Steel. The estimated net subsidy for Sandvik Steel is 0.062 percent *ad valorem*, which is *de minimis*.

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Accordingly, the subject merchandise produced by Sandvik Steel is not included in this determination. The suspension of liquidation ordered in our preliminary affirmative countervailing duty determination shall be terminated with respect to Sandvik Steel. All estimated countervailing duties shall be refunded and all appropriate bonds shall be released for entries of the subject merchandise produced by Sandvik Steel.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted, as a result of the suspension of liquidation, will be refunded or cancelled. If, however, the ITC determines that such injury does not exist, we will issue a countervailing duty order, directing Customs officers to assess countervailing duties on all entries of the subject merchandise from Sweden, except that produced and exported by Sandvik Steel, entered, or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

Administrative Procedures

We afforded interested parties an opportunity to submit written views in accordance with section 355.34 of our regulations (19 CFR 355.34). We also afforded the parties to the proceeding an opportunity to present views orally before the Department at a public hearing held on January 23, 1987, in accordance with § 355.35 of our regulations (19 CFR 355.35).

This determination is published pursuant to section 705(d) of the Act [19 U.S.C. 1671d(d)].

Dated: February 17, 1987.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 87-3908 Filed 2-25-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-007]

Pectin From Mexico; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on pectin from Mexico. The review covers the period April 1, 1983 through December 31, 1984 and 12 programs.

As a result of the review, the Department has preliminarily determined that the only known exporter of Mexican pectin to the United States, Grindsted de Mexico, S.A. de C.V., has complied with the terms of the suspension agreement. Grindsted took over Pectina de Mexico, S.A., the signatory to the suspension agreement, in January 1984. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: February 26, 1987.

FOR FURTHER INFORMATION CONTACT: Stephen Nyschot or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 18882) the final results of its last administrative review of the agreement suspending the countervailing duty investigation on pectin from Mexico (47 FR 54987, December 7, 1982). On September 18, 1985, the petitioner, Hercules, Inc., requested in accordance with § 355.10 of the Commerce Regulations an administrative review of the agreement. We published the initiation of the administrative review on February 12, 1986 (51 FR 5219). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Mexican pectin, used as an ingredient in food and drugs. Such merchandise is currently classifiable under item 455.0400 of the Tariff Schedules of the United States Annotated.

The review covers the period April 1, 1983 through December 31, 1984 and 12 programs: (1) CEPROFI; (2) FONEI; (3) NDP preferential discounts; (4) CEDI; (5) FOMEX; (6) FOGAIN; (7) state tax incentives; (8) import duty reductions and exemptions; (9) Article 94 of the Banking Law; (10) BANCOMEXT loans; (11) delay of payments on loans, and (12) delay of payment of fuel charges to PEMEX.

The review covers the only known exporter of pectin to the United States, Grindsted de Mexico, S.A. de C.V. Grindsted took over Pectina de Mexico, S.A., the signatory to the suspension agreement, in January 1984.

Analysis of Programs

(1) CEPROFI

Certificates of Fiscal Promotion ("CEPROFI") are tax certificates which are used to promote the goals of the National Development Plan and are granted in conjunction with investments in designated industrial activities and geographic regions. CEPROFI certificates can be used to pay a wide range of federal tax liabilities.

Due to an administrative oversight, Grindsted received three countervailable CEPROFI's during the period of review and used them to pay taxes in early 1985. Grindsted repaid the full face value of these CEPROFI's to the Mexican government on December 12, 1985 and an interest penalty on January 13, 1987. By using rates applicable for late payment of taxes to the Mexican government, Grindsted calculated the interest due from the date it used the CEPROFI's to December 12, 1985, when it repaid the face value of the CEPROFI's, as well as an additional amount representing interest on that interest from December 12, 1985 to January 13, 1987. On this basis, we preliminarily determine that Grindsted did not receive any countervailable benefits from this program during the period of review.

(2) FONEI

The Fund for Industrial Development ("FONEI") is a specialized financial development fund, through which the Banco de Mexico grants long-term peso loans at below-market rates. In 1981, Grindsted received a FONEI loan, which was scheduled to be repaid in May 1985. The FONEI program was not included in the original suspension agreement, since we had not yet determined that it was countervailable. On April 27, 1983, we officially notified the firm, pursuant to

section B(1)(e) of the suspension agreement, of our determination that the FONEI program is countervailable. The firm repaid the FONEI loan on May 19, 1983. Therefore, we preliminarily determine that Grindsted did not receive any countervailable benefits from this program during the period of review.

(3) NDP Preferential Discounts

Under the National Development Plan ("NDP"), preferential discounts on energy (natural gas, fuel oil and electricity) and petrochemical products are granted to companies located in specific regions or engaged in certain priority activities.

Grindsted used electricity and fuel oil during the period of review. The company received no discounts for electricity during the period. For fuel oil, with the exception of the months of March and April 1984, the prices Grindsted paid were the PEMEX national prices. The prices paid in March and April 1984 were 10 to 15 percent below the PEMEX national prices. The lower prices, which Grindsted could not explain, do not appear to be the result of a preferential discount program; Grindsted did not apply for any benefits under this program and, as in all months of the review period, simply paid its fuel oil bill in the amount stated on the invoice. We therefore preliminarily determine that Grindsted did not receive countervailable benefits under this program during the review period.

(4) Other Programs

We also examined the following programs and preliminarily determine that Grindsted did not use them during the review period:

(A) Tax Rebate Certificates ("CEDI");
(B) Fund for the Promotion of Exports of Mexican-Manufactured Products ("FOMEX");
(C) Guarantee and Development Fund for Medium and Small Industries ("FOGAIN");
(D) State tax incentives;
(E) Import duty reductions and exemptions;
(F) Article 94 of the General Law of Credit Institutions and Auxiliary Organizations;
(G) BANCOMEXT loans;
(H) Delay of payments on loans; and
(I) Delay of payment of fuel charges to PEMEX.

Preliminary Results of Review

As a result of our review, we preliminarily determine that Grindsted has complied with the terms of the suspension agreement for the period April 1, 1983 through December 31, 1984. The agreement can remain in force only so long as shipments covered by it account for at least 85 percent of exports of such merchandise to the United States. Our information indicates that Grindsted was the only exporter to the United States of Mexican pectin during the review period.

Interested parties may submit written comments on these preliminary results within two weeks of the date of publication of this notice and may request disclosure and/or a hearing within 7 days of the date of publication. Any hearing, if requested, will be held on the 14th day after the date of publication of this notice, or the first workday afterwards. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Dated: February 18, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-3999 Filed 2-25-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-002]

Wool From Argentina; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on wool from Argentina. The review covers the period January 1, 1985 through December 31, 1985.

As a result of the review, the Department has preliminarily determined the total bounty or grant for the period of review to be 9.67 percent *ad valorem*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: February 26, 1987.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Lorenza Olivas, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On September 17, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 37716) the final results of its last administrative review of the countervailing duty order on wool from Argentina (40 FR 14423, April 1, 1983). On April 5, 1986, an importer, C. Dana Draper Company, requested in accordance with § 355.10 of the Commerce Regulations an administrative review of the order. We published the initiation on May 20, 1986 (51 FR 18475). The Department has now conducted the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Argentine wool. Such merchandise is currently classifiable under items 306.3152, 306.3172, 306.3253, 306.3273, 306.3354, and 306.3374 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1985 through December 31, 1985 and six programs: (1) Incentives for exports from southern ports; (2) the reembolso, a cash rebate of taxes; (3) preferential pre-export financing; (4) multiple exchange rates; (5) government assistance to wool growers in Patagonia; and (6) financial reorganization aids.

Analysis of Programs

(1) Incentives for Exports from Southern Ports

This program provides a payment for goods shipped from the southern ports of Argentina. The payment is an incentive to promote economic development in the regions south of the Rio Colorado and to develop the southern ports as the primary means of transportation from the southern regions of the country.

Law 23.018/83, effective December 21, 1983, provided for payments ranging from 8 to 13 percent of the f.o.b. price depending on the port used. The law also provided for a reduction of one percentage point for each port as of January 1, 1984, and for the rates to remain within the resulting level for a period of eleven years.

The Argentine government did not respond to our questionnaire. Therefore, to calculate the benefit, we used the best information available, which we

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consider to be the average of rates for all southern ports during the period of review. On this basis, we preliminarily find the total benefit provided by this program during the review period to be 9.67 percent *ad valorem*.

(2) Reembolso

The reembolso is a cash rebate of taxes paid upon exportation and is calculated as a percentage of the f.o.b. invoice price. On May 5, 1982, Resolution 437 abolished the 5 percent reembolso for washed wool. There is no reembolso for wool in the grease, the only other merchandise included in the order. Therefore, we preliminarily determine that there is no benefit from this program.

(3) Preferential Pre-export Financing

Because exporters of wool are ineligible for this program, we preliminarily determine that there is no benefit from this program.

(4) Other Programs

In the original investigation, we found that the following programs had been terminated or suspended:

A. Multiple exchange rates;

B. Government assistance to wool growers in Patagonia; and

C. Financial reorganization aids.

We therefore preliminarily determine that there is no benefit from these programs.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 9.67 percent *ad valorem* for the period of review. The Department intends to instruct the Customs Service to assess countervailing duties of 9.67 percent of the f.o.b. invoice price on any shipments exported on or after January 1, 1985 and on or before December 31, 1985.

The Department intends to instruct the Customs Service to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 9.67 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held within 55 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Dated: February 18, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-3909 Filed 2-25-87; 8:45 am]

BILLING CODE 3510-DS-M

[Case No. OEE-1-86]

La Physique Appliquee Industrie et al.; Order Renewing Temporary Denial of Export Privileges

In the matter of La Physique Appliquee Industrie, 5 Rue de Pacalaire, 38170 Seyssinet-Pariset, France, and Les Accessories Scientifiques, Varigney, 70800 Conflans-Sur-Lanterne, France, Respondents.

On January 28, 1987, the Office of Export Enforcement, International Trade Administration, United States Department of Commerce (Department), pursuant to the provisions of § 388.19 of the Export Administration Regulations, 15 CFR Parts 368–399 (1986) (the Regulations), issued pursuant to the Export Administration Act of 1979, 50 U.S.C. app. 2401–2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985) (the Act), asked the Deputy Assistant Secretary for Export Enforcement to renew an order temporarily denying all United States export privileges to La Physique Appliquee Industrie (LPAI) of Seyssinet-Pariset, France, and Les Accessoires Scientifiques (LAS) of Conflans-Sur-Lanterne, France (hereinafter collectively referred to as respondents). The initial order was issued on April 23, 1986 (51 FR 15955, April 29, 1986) and renewed on June 20, 1986 (51 FR 23256, June 26, 1986), August 21, 1986 (51 FR 30688, August 28, 1986), October 20, 1986 (51 FR 37778, October 24, 1986) and December 19, 1986 (51 FR 46889, December 29, 1986).

Section 388.19(d)(2) of the Regulations provides that LPAI or LAS may oppose renewal of the temporary denial order by filing written submissions with the Deputy Assistant Secretary not later than seven days before the expiration of the Order. Such opposition was received by the Deputy Assistant Secretary on February 10, 1987.

As a result of my review of the record before me, I find that the Department has established that a violation is imminent. In this regard, it is important to note that the matter is still under investigation by the Department. Moreover, the Department advises that French authorities, also, are continuing their investigation into the transactions in question.

The material facts out of which this proceeding arose are not, in my view, seriously disputed by the parties. What is disputed between the parties is the conclusions to be drawn from those facts. Based on the record before me, I find that the Department's continuing investigation is focusing on serious violations which may have been committed by the respondents. The Department's investigation to date has given it sufficient reason to believe that respondents herein may have participated in a scheme to divert highly sensitive U.S.-origin goods and technology to the Union of the Soviet Socialist Republic (U.S.S.R.) and other Eastern bloc countries. Further, there is sufficient reason to believe that respondents may continue to seek to obtain U.S.-origin goods and technology which they may divert to the U.S.S.R. or other Eastern bloc countries.

The evidence presented to me established a very strong basis for the Department's belief that: (1) On at least two occasions, LPAI, acting in response to an order from LAS, purchased U.S.-origin goods; (2) The ultimate destination of those U.S.-origin goods was intended to be the U.S.S.R.; (3) If an export license or reexport authorization request had been requested by either respondent identifying the U.S.S.R. as the country of ultimate destination, which it was not, the Department would not have authorized that export or reexport; (4) Further, LAS currently has a contract with the U.S.S.R. which calls for LAS to supply equipment of a similar type and nature to equipment in the two transactions which are the principal focus of the Department's investigation; (5) Again, export or reexport of this equipment to the U.S.S.R. would not be authorized by the Department; (6) That the respondents have had substantial business experience in import and export transactions involving scientific and technical products; (7) Respondent LAS was a consignee of licensable U.S. technology and commodities under a distribution license in 1978 and, as such, the respondent would have had considerable experience handling U.S.-controlled commodities and reason to know the requirements of the Regulations; (8) In 1977, respondent LAS, in a statement made by its President in connection with a distribution license application, expressly stated that LAS would "comply with the U.S. Export Administration's Regulations", including the provision pertaining to the general distribution license procedure; (9) The respondents knew or had reason to know the requirements of the Regulations at the time of the occurrence of the alleged illegal reexportation here in question; (10) An investigation by the Department into these alleged violations is ongoing; (11) French authorities are also investigating into the matters which gave rise to the Department's request for this order; and, (12) A violation may be likely to occur in the future unless action is taken to prevent respondents from gaining access to U.S.-origin goods and technical data.

In its renewal request, the Department takes issue with the argument contained in earlier submission by the respondents which says assertions involving the respondents have not been "proven". The Department contends "that such 'proof' is not necessarily in a temporary denial proceeding where OEE has been able to establish . . . that there is a *reasonable basis for its belief* that the violations under investigation are deliberate and covert and are likely to occur again." [emphasis supplied]

A temporary denial order is a preventive enforcement measure and not a punative instrument. Indeed, it is not necessary for the Department to prove that a respondent is in fact guilty of diversion or illegal exportation or reexportation of U.S.-origin controlled goods or technology before a temporary denial order could be issued against him. While evidence of past unlawful export activities is relevant to the question of a respondent's susceptibility or vulnerability to further illegal re-export or diversion conduct, and thus pertinent to the ultimate issue of "imminent violation", whether the Department's evidence is sufficient to show past violation on the part of a respondent, or is likely to make such a showing ultimately, is not dispositive as to whether a temporary denial order is necessary to prevent an imminent violation.

In their opposition to renewal, respondents state they cannot and need not agree to submit documents to the Department in order to "resolve" the TDO issue. Certainly the respondents are under no compulsion to do so, however I find no request nor invitation in the Department's submission for respondents to submit documents. Rather, the Department makes a commitment to review any and all documents if they were submitted by respondents. This promise by the Department indicates to me its attempt to explore all avenues to resolve the questions still pending in the investigation.

Also in their opposition, respondents question the value of certain internal documents submitted by the Department as exhibits to the renewal request. While neither represents new "evidence" regarding possible past violations in the case, both lend support to the Department's statement that the investigation is ongoing and evince the continuing good faith effort on the part of the Department to move forward on its investigation—including requesting the assistance of the U.S. Customs Service. This is an important point to be made, because if the investigation is not shown to be active, I might be led to conclude that the Department no longer perceives the likelihood of an imminent violation, obviating the need for a temporary denial order.

Therefore, based on the record before me, I find that the Department has established a reasonable basis for the belief that renewal of the order temporarily denying export privileges to respondents is necessary in order to prevent an imminent violation and to give notice to companies in the United States and abroad to cease dealing with respondents in goods and technical data subject to the Act and the Regulations in order to reduce the substantial likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations.

Accordingly, it is hereby Ordered:

I. All outstanding validated export licenses in which any respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation.

II. The respondents, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which any respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related party, or whereby any respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

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V. In accordance with the provisions of § 388.19(e) of the Regulations, any respondent may, at any time, appeal this temporary denial order by filing with the Office of Administrative Law Judges, U.S. Department of Commerce, Room H-6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order shall become effective on February 17, 1987 and shall remain in effect for 60 days.

VII. In accordance with the provisions of § 388.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Any respondent may oppose any request to renew this temporary denial order by filing a written submission with the Deputy Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order renewing the temporary denial of export privileges shall be served upon the respondents and published in the **Federal Register**.

Dated: February 17, 1987.

Theodore W. Wu,

Deputy Assistant Secretary for Export Enforcement.

[FR Doc. 87-3910 Filed 2-25-87; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments; University of California; Correction

In FR Document 87-1685 appearing at page 2752 in the **Federal Register** of January 26, 1987, Docket Number: 86-207 is hereby corrected to read:

Docket Number: 86-207. Applicant: University of California, Santa Barbara, CA 93106. Instrument: Surface Forces Apparatus (Mk II). Manufacturer: Anutech Pty., Ltd., Australia. Intended use: See notice at 51 FR 39701. Reasons for this decision: The foreign instrument can measure force-distance relationships between solid surfaces with a force sensitivity of 10.0 nanonewtons and a distance resolution of about 0.1 nanometer.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-3911 Filed 2-25-87; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; University of Rochester et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 87-089. Applicant: University of Rochester, Institute of Optics, Wilmot Building, Rochester, NY 14627. Instrument: Pulfrich Refractometer, Model PR2. Manufacturer: Jenoptik Jena GmbH, East Germany. Intended use: The instrument is intended to be used for studies of fluoride crystals, plastic polymers and monomers and various research glasses to determine the index of refraction of the various materials at multiple wavelengths in order to calculate their relative dispersions. Application received by Commissioner of Customs: January 27, 1987.

Docket Number: 87-090. Applicant: California State University, Long Beach, 1250 Bellflower Boulevard, Long Beach CA 90840. Instrument: Inductively Coupled Plasma/Mass Spectrometer, Model PlasmaQuad. Manufacturer: VG Isotopes Ltd., United Kingdom. Intended Use: Investigate the influence of complex multi-metal exposure regimes that simulate environmental conditions on metal metabolism in marine polychaete worms and bivalves. Similar analyses will be conducted on field collected organisms sampled from areas of exposure to known metal contaminants. Research projects that investigate metal exposure, metabolism, and toxicity will primarily utilize environmental exposures resulting from oil drilling activities, sewage outfall and industrial outfall. Application Received by Commissioner of Customs: January 27, 1987.

Docket Number: 87-091. Applicant: North Carolina Memorial Hospital, Manning Drive, Chapel Hill NC 27514. Instrument: Extracorporeal Shockwave Lithotripter, Manufacturer: Dornier Medizintechnik GmbH, West Germany. Intended use: The instrument is intended to be used to study the effects of size, location and chemical composition on the ease of disintegration of urinary tract stones to determine the most efficient method to treat patients with urinary tract stones. The instrument will also be used extensively for training urology residents. Application received by Commissioner of Customs: January 28, 1987.

Docket Number: 87-092. Applicant: Cleveland Research Institute, 2351 East 22nd Street, Cleveland, OH 44115. Instrument: Electron Microscopes, Model CM 12/STEM with Attachments Manufacturer: N.V. Philips, The Netherlands. Intended use: The instrument is intended to be used for investigation of early detection and prevention of atherosclerosis. Studies are concerned with the cellular composition of blood vessels from humans and experimental animals which contain atherosclerotic lesions. Application received by Commissioner of Customs: January 29, 1987.

Docket Number: 87-094. Applicant: Hunter College of the City University of New York, 645 Park Avenue, New York, NY 10021. Instrument: Stopped-Flow Apparatus. Manufacturer: Hi-Tech Scientific Ltd., United Kingdom. Intended use: The instrument is intended to be used for studies of protein-protein and protein-nucleic acid interactions; these are specific proteins involved in the regulation of cell growth and development. Experiments will be conducted to determine the rate constants and biological mechanism of protein synthesis and MRNA translation. These data will make it possible to elucidate the rate limiting steps and control points for the reaction. Application received by Commissioner of Customs: January 30, 1987.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-3912 Filed 2-25-87; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments; University of Utah et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86-150R. Applicant: University of Utah, Salt Lake City, UT 84112. Instrument: Mass Spectrometer System, Model Delta E. Manufacturer: Finnigan MAT, West Germany. Intended use: See notice at 51 FR 42125. Reasons for this decision: The foreign instrument

provides a guaranteed internal precision of at least 0.01 °/oo for 10 microliters (STP) of carbon dioxide of 0.02 °/oo for 20 microliters of nitrogen, and 0.2°/oo for 1 milliliter of hydrogen. Advice submitted by: National Institutes of Health, December 18, 1986.

Docket Number: 86-282. Applicant: Centers for Disease Control, Atlanta, GA 30333. Instrument: Mass Spectrometer, Model MM7070S with Accessories. Manufacturer: VG Instruments Inc., United Kingdom. Intended use: See notice at 51 FR 29149. Reason for this decision: The foreign instrument can quantitate tissue levels of dioxin (2,3,7,8-TCDD) from samples (5 to 50 picograms) with a measurement sensitivity in the 20 to 50 femtogram range at a resolution of 10,000 using selected ion recording model with lock mass correction Advice submitted by: National Institutes of Health, December 18, 1986.

Docket Number: 86-283. Applicant: The Research Foundation of State University of New York, Albany, NY 12201-0009. Instrument: Micromanipulator. Manufacturer: Carl Zeiss/Aus Jena, East Germany. Intended use: See notice at 51 FR 29150. Reason for this decision: The foreign instrument provides a sliding plate movement allowing precise control of electrodes by two microelectrodes on a single baseplate. Advice submitted by: National Institutes of Health, December 18, 1986.

Docket Number: 86-285 Applicant: State University of New York at Stony Brook, Stony Brook, NY 11794-6100. Instrument: Renal Micropuncture System. Manufacturer: Klaus Effenberger, West Germany. Intended use: See notice at 51 FR 29150. Reason for this decision: The foreign instrument can perform renal micropuncture procedures while maintaining constant temperature in small experimental animals. Advice submitted by: National Institutes of Health, December 18, 1986.

Docket Number: 86-290. Applicant: Boston University, Boston, MA 02215. Instrument: Motion Analysis System. Manufacturer: Northern Digital, Canada. Intended use: See notice at 51 FR 29953. Reason for this decision: The foreign instrument provides 3-dimensional digital recordings for motion analysis with a sampling rate up to 8000 markers per second per camera. Advice submitted by: National Institutes of Health, December 18, 1986.

Docket Number: 86-296. Applicant: The Johns Hopkins University School of Medicine, Baltimore, MD 21205. Instrument: Micromanipulator, Model MO-103. Manufacturer: Narishige, Japan. Intended use: See notice at 51 FR 29954. Reason for this decision: The foreign instrument provides precise and smooth movements in increments of 2.0 micrometers on any of three axes with a singly controlled variable-ratio hydraulic mechanism. Advice submitted by: National Institutes of Health, December 18, 1986.

Docket Number: 86-299. Applicant: University of Cincinnati, Cincinnati, OH 45221-0172. Instrument: Plasma Mass Spectrometer for trace element analysis. Manufacturer: Sciex, Canada. Intended use: See notice at 51 FR 30525. Reason for this decision: The foreign instrument provides high sensitivity for trace elements in extremely small samples (1.0 part per billion for 20 milliliters) and can serve as a detector for HPLC. Advice submitted by: National Institutes of Health, December 18, 1986.

Comment: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health advises in the respectively cited memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-3913 Filed 2-25-87; 8:45 am]

BILLING CODE 3510 DS-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory entities will convene public meetings, March 9-13, 1987, at the Red Lion Motor Inn-Comumbia River, 1401 North Hayden Island Drive, Portland, OR, as follows:

Council—will convene March 9 at 8 a.m. with an executive session (not open to the public) to interview candidates for the position of executive director and to discuss litigation. The general session (open to the public) will convene March 10 at 1 p.m. for consideration of administrative matters, including a report on the recent Council chairmen's meeting; discussions with Mexican fisheries authorities; implications of the most recent Magnuson Fishery Conservation and Management Act amendments, and discussions of the future of foreign fishing and joint ventures. Groundfish matters to be heard or considered include a review of the impact of the undersized sablefish trip limit; a fishery management plan (FMP) progress report; foreign fishing applications, and tribal halibut allocations. There will be a public comment period at 4 p.m.

On March 11, the Council will hear salmon management matters, including a review of the 1986 fisheries and stock projections for 1987; reports from the Pacific Salmon Commission, the Columbia River Fish and Wildlife Authority, and the Klamath River Salmon Management Group, as well as management option recommendations for 1987 by the Salmon Advisory Subpanel (SAS), tribal entities, states, and the public. The Council also will tentatively adopt management options for analysis by the Salmon Plan Development Team (SPDT).

On March 12 the Council will hear a salmon FMP amendment issue update; the SPDT management option analysis, as well as SAS, state, tribal, and public comments on the tentatively adopted management options before adopting final management options for public hearings.

On March 13 the Council will complete any unfinished business and adjourn until April 7, 1987.

SAS—will convene March 9 at 9 a.m. to develop recommendations for 1987 management options and will reconvene March 10-12 as necessary to assist the Council in developing final management options for public hearings.

SPDT—will convene March 9 at 9 a.m. to assist the SAS in the development of management option recommendations and will reconvene March 10-12 as necessary to analyze the Council's action on management options.

Scientific and Statistical Committee—will convene March 9 at 1 p.m. to consider matters on the Council's agenda and will reconvene March 10 to complete their agenda.

Foreign Fishing Committee—will convene March 10 at 9 a.m. to consider foreign fishing applications.

Detailed agendas for all of the above meetings will be available to the public on February 20. For further information contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Center, 2000 SW. First

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Avenue, Suite 420, Portland OR 97201; telephone: (503) 221–6352.

Dated: February 19, 1987.

Richard B. Roe,

Director, Office of Fisheries Management National Marine Fisheries Service.

[FR Doc. 87–3968 Filed 2–25–87; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Services, NOAA, Commerce.

The Western Pacific Fishery Management Council and the Council's Scientific and Statistical Committee (SSC) will convene separate public meetings, March 9–11, 1987, at Ala Moana Americana Hotel, 410 Atkinson Drive, Honolulu, HI; telephone: 808–955–4811, as follows:

Council—On March 10 at its 56th public meeting, the Council will cover routine fisheries reports from Island and Federal Government Council representatives, as well as from private sector Council representatives. The Council also will hear reports on: (a) World lobster markets; (b) methods of fish distribution in Guam outside of normal market channels; (c) indigenous fishing rights; (d) methods for obtaining detailed relief maps of certain portions of the ocean bottom, as well as (e) discuss a sampling procedure for determining how much catch is actually taken in Hawaii by recreational fishermen. The Council also will discuss issues regarding the bottomfish fishery in the Northwestern Hawaiian Islands (NWHI), including a report from the Plan Monitoring Team on ways to better monitor the fishery; a synopsis of public respnse to the Council's limited entry proposal for the bottomfish fishery in the NWHI, as well as address other issues resulting from public response for progressing with the limited entry proposal.

At the March 11 session, the Council will hear a report on the results of escape research and recommendations for implementing escape gaps in the NWHI trap fishery for lobsters. A recommendation on a minimum legal size for slipper lobsters will be made also. A report also will be made on the status of a proposed rule change to prohibit commercial fishing for lobsters in certain designated refuge areas. Means to better coordinate the timing and content of State/Federal regulations pertaining to lobster fishing also will be discussed. A decision regarding the approvability of the Council's Fishery Management Plan (FMP) for pelagic fisheries will be announced, together with a synopsis of comments received from the Japanese and from local fishermen regarding changes to the FMP. The Council also will hear a report regarding monitoring of various pelagic fisheries in the region.

The Council will convene a closed session (not open to the public) to discuss personnel matters.

SSC—On March 9 at its 39th public meeting, the Council's SSC is scheduled to hear reports on agenda items (a), (b), (c) and (e) as indicated above in the Council's March 10 agenda. The SSC will also hear reports on how the bottomfish fishery in the NWHI can be better monitored; a synopsis of public response to the Council's limited entry proposal for the bottomfish fishery in the NWHI, as well as discuss issues in order to progress with the limited entry proposal.

On March 11 the SSC will discuss the results of escape gap research and recommendations for implementing escape gaps on the NWHI trap fishery for lobsters. The SSC will also review the methods employed in establishing a recommendation for a minimum legal size requirement for slipper lobsters. After discussing lobsters, the SSC will be apprised of the decision on the pelagic species FMP made by the National Marine Fisheries Service's Washington Office, and a method will be presented for monitoring the various pelagic fisheries in the Region.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Dated: February 19, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87–3969 Filed 2–25–87; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Correlation; Textile and Apparel Categories with Tariff Schedules of the United States Annotated

February 19, 1987.

The Committee for the Implementation of Textile Agreements (CITA) announces the availability of the *Correlation*, as revised through January 1, 1987.

The *Correlation*, Textile and Apparel Categories with the Tariff Schedules of the United States Annotated, provides for placement of numbers from the Tariff Schedules of the United States (TSUSA) in the textile category system. This publication sets forth the system used by the United States to implement bilateral textile agreements and Article 3 restraints under the Agreement Regarding International Trade in Textiles and unilateral restraints under Section 204 of the Agricultural Act of 1956.

This edition incorporates all changes that were made to the *Correlation* during 1986 and published separately in the **Federal Register**, which include breakouts for shirts with two or more colors, woolen and worsted fabrics, infants' breakouts and the placement of silk blends and other vegetable fiber textiles and textile products in the Textile Category System. Additional changes for 1987 include breakouts for cotton yarn, man-made fiber yarn blended with wool, pillowcases and bolster cases, towels and wash clothes, other man-made fiber underwear, garments for rainwear, and gloves.

To obtain a copy of the *Correlation*, send a $30.00 check or money order, payable to the U.S. Department of Commerce, to: U.S. Department of Commerce, Office of Textiles and Apparel, Room H 3100, 14th and Constitution Avenue, NW., Washington, DC 20230. Attn: Correlation

For Further Information Contact: Shirley Hargrove, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–3904 Filed 2–25–87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

February 19, 1987.

The USAF Scientific Advisory Board Committee on Software Expertise and Ada will meet at Space Division, Los Angeles Air Force Station, CA on March 25, 1987 from 8:00 a.m. to 5:00 p.m. and at the USC Information Sciences Institute, Marina Del Rey, CA on March 26, 1987 from 8:00 a.m. to 5:00 p.m.

The purpose of these meetings is to review, discuss and evaluate the effectiveness of software expertise being developed by the Air Force and the success of implementing the Ada computer language on space systems.

These meetings concern matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87–4029 Filed 2–25–87; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Pacific Basin Task Force will meet March 12, 1987, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to examine the broad policy issues related to maritime aspects in the Pacific. The entire agenda for the meeting will consist of discussions of key issues related to United States national security interests and naval strategies in the Pacific and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: February 20, 1987.

Harold L. Stoller,

Commander, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 87–3939 Filed 2–25–87; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Space Task Force will meet March 16–17, 1987, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to assess the Navy's potential role in space. The entire agenda for the meeting will consist of discussions of key issues regarding space exploration in support of U.S. national security, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: February 20, 1987.

Harold L. Stoller,

Commander, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 87–3940 Filed 2–25–87; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Strategic Capabilities Task Force will meet March 25–26, 1987, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review the Navy's future needs and balance of strategic offensive/defensive forces, potential initiatives to enhance strategic capabilities, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: February 20, 1987.

Harold L. Stoller,

Commander, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 87–3941 Filed 2–25–87; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Industrial Base and National Security Task Force will meet March 31, 1987, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review the Navy's policies in several broad areas, including mobilization readiness, production surge capacities, weapon system acquisition strategies, potential resource vulnerabilities, and related intelligence. These matters constitute classified information that is specifically authorized by Executve order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601,

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Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Harold L. Stoller,

Commander, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 87-3942 Filed 2-25-87; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Constrained Resources Task Force will meet April 2-3, 1987, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review the Navy's approaches to maritime operations and readiness in the management of resources, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: February 20, 1987.

Harold L. Stoller,

Commander, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 87-3943 Filed 2-25-87; 8:45 am]

BILLING CODE 3810-AE-M

Academic Advisory Board to the Superintendent, United States Naval Academy; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Academic Advisory Board to the Superintendent, United States Naval Academy, will meet on March 25, 1987, in Rickover Hall, Room 301, United States Naval Academy, Annapolis, Maryland. The meeting will commence at 8:15 a.m. and terminate at 2:00 p.m.

The purpose of the meeting is to advise and assist the Superintendent of the Naval Academy concerning the education of midshipmen. To accomplish this objective, the Board will review academic policies and practices of the Naval Academy and will submit their proposals to the Superintendent to aid him im improving education standards and in solving Academy problems. The meeting will be open to the public for observation to the extent that space is available.

For further information concerning this meeting, contact: Major S. E. Leitch, USMC, Military Secretary to the Academic Advisory Board, Office of the Academic Dean, United States Naval Academy, Annapolis, MD 21402-5000, Telephone No. (301) 267-2500.

Dated: February 20, 1987.

H. L. Stoller,

CDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 87-3945 Filed 2-25-87; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee will meet on March 22-26, 1987. The meeting will be held at the Office of Naval Research, Arlington, Virginia and the Naval Air Station, Keflavik, Iceland. The meeting will commence at 4:00 p.m. and terminate at 7:00 p.m. on March 22; commence at 7:00 a.m. and terminate at 7:00 p.m. on March 23; commence at 8:00 a.m. and terminate at 4:45 p.m. on March 24; commence at 8:30 a.m. and terminate at 4:00 p.m. on March 25; and commence at 9:30 a.m., and terminate at 12:00 p.m. on March 26, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings and tours for the Committee members on ground and air system capabilities for detection, identification and tracking of surface, air and submarine contacts. The agenda will include technical briefings, tours and discussions addressing anti-submarine warfare operations. These briefings, tours and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T. C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: February 20, 1987.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 87-3946 Filed 2-25-87; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Laser Weapons will meet on March 10-11, 1987. The meeting will be held at the Singer Corporation, 1725 Jefferson Davis Highway, Arlington, Virginia. The meeting will commence at 9:30 a.m. and terminate at 4:00 p.m. on March 10; commence at 9:00 a.m. and terminate at 3:30 p.m. on March 11, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide for the Navy an assessment of the potential military value of laser technology for weapon applications. The agenda will include technical briefings and discussions addressing military laser weapon programs. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: February 20, 1987.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 87-3947 Filed 2-25-87; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Education Appeal Board; Applications for Review

AGENCY: Department of Education.

ACTION: Notice of applications for review accepted for hearing by Education Appeal Board.

SUMMARY: This notice lists the applications for review accepted for hearing by the Education Appeal Board (Board) on December 30, 1986. A summary of each appeal has been included to help potential intervenors. In addition, the notice explains how interested third parties may intervene in proceedings before the Board.

FOR FURTHER INFORMATION CONTACT: Ernest C. Canellos, Chairman, Education Appeal Board, 400 Maryland Avenue, SW. (Room 1065, FOB-6), Washington, DC 20202. Telephone: (202) 732-1756.

SUPPLEMENTARY INFORMATION: Under section 451 through 454 of the General Education Provisions Act (20 U.S.C. 1234 *et seq.*), the Education Appeal Board has authority to conduct (1) audit appeal hearings, (2) withholding, termination, and cease and desist hearings initiated by the Secretary of Education, and (3) other proceedings designated by the Secretary as being within the jurisdiction of the Board.

The Secretary has designated the Board as having jurisdiction over appeal proceedings related to final audit determinations, the withholding or termination of funds, and cease and desist actions for most grant programs administered by the Department of Education (ED). The Secretary also has designated the Board as having jurisdiction to conduct hearings concerning most ED-administered programs that involve (a) a determination that a grant is void, (b) the disapproval of a request for permission to incur an expenditure during the term of a grant, or (c) determinations regarding cost allocation plans or special rates negotiated with specified grantees.

Regulations governing Board jurisdiction and procedures were published in the **Federal Register** on May 18, 1981, at 46 FR 27304 (34 CFR Part 78).

Application Accepted

Appeal of North Rose-Wolcott Central School, Docket No.: 35(235)86

North Rose-Wolcott Central School (North Rose) appealed a fiscal year 1986 funding decision of the Director of the Office of Bilingual Education and Minority Languages Affairs (OBEMLA) to deny a third year continuation grant under the Bilingual Education Act. The Secretary has designed the Education Appeal Board as the forum for this appeal under 20 U.S.C. 1234(a)(4).

The Director of OBEMLA concluded that North Rose had failed to satisfactorily complete the previous two budget periods by failing to serve the numbers of Limited English Proficient (LEP) students approved in the first and second year applications. North Rose was also advised that its annual performance report did not satisfy the parent advisory committee requirements of the Bilingual Education Act. (20 U.S.C. 3231(e)).

Appeal of Mendocino County Office of Education, Docket No.: 36(236)86

Mendocino County Office of Education (Mendocino) appealed a fiscal year 1986 funding decision of the Director of OBEMLA to deny a third year continuation grant under the Bilingual Education Act. The Secretary has designated the Education Appeal Board as the forum for this appeal.

The Director of OBEMLA concluded that the principal basis for the funding decision was the failure of Mendocino's third year continuation application to meet the applicable statutory and regulatory requirements of a transitional bilingual education program designed to serve LEP students (20 U.S.C. 3223(a)(1) and (4), and 34 CFR 500.4).

Intervention

Regulations establishing intervention procedures for the Education Appeal Board in 34 CFR 78.43 provide that an interested person, group, or agency may, upon application to the Board Chairman, intervene in appeals before the Education Appeal Board.

An application to intervene must indicate to the satisfaction of the Board Chairman or, as appropriate, the Panel Chairperson, that the potential intervenor has an interest in, and information relevant to, the specific issues raised in the appeal. If an application to intervene is approved, the intervenor becomes a party to the proceedings.

Applications to intervene, or questions, should be addressed to Ernest C. Canellos, Chairman, Education Appeal Board, 400 Maryland Avenue, SW. (Room 1065, FOB-6) Washington, DC 20202. Telephone (202) 732-1756.

(20 U.S.C. 1234)

(Catalog of Federal Domestic Assistance No. not applicable)

Dated: February 24, 1987.

Peter R. Greer,

Deputy Under Secretary, Intergovernment and Interagency, Affairs.

[FR Doc. 87-4075 Filed 2-24-87; 10:55 am]

BILLING CODE 4000-01-M

[CFDA No. 84-116G]

Inviting Applications for New Awards Under the Lectures Program of the Fund for the Improvement of Postsecondary Education (FIPSE) for Fiscal Year 1987

Purpose: Provides grants to or enters into cooperative agreements with institutions of postsecondary education and other public and private institutions and agencies to improve postsecondary education and educational opportunities through the development and presentation of lectures on key issues in postsecondary education at conferences and educational institutions.

Deadline for Transmittal of Applications: April 16, 1987.

Applications Available: March 2, 1987.

Available Funds: $30,000.

Estimated Size of Awards: $5,000.

Estimated Number of Awards: 6.

Project Period: 12 months.

Program Priorities: Under 34 CFR 75.105(c)(1), "Annual priorities," the Secretary invites applicants to submit proposals that address the issues listed below. However, proposals that address other significant issues in postsecondary education are also eligible for support. Proposals are solicited that address the following issues:

(1) What has been the social and economic impact of the dramatic increase since 1960 in the proportion of American young people attending college, and what has been the impact on the nature and quality of college education itself?

(2) How can postsecondary education best respond to changes in the country's racial and ethnic composition? What can we learn from earlier educational responses to previous demographic shifts?

(3) What are the most important changes in colleges' curricular offerings and students' curricular choices during the past decade? Are there significant similarities in the way the particular disciplines have evolved during this period?

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Applicable Regulations: (a) The priority for the FIPSE Lectures Program published as a final priority in the **Federal Register** on December 23, 1986, 51 FR 45938, (b) the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78 with the exceptions noted in 34 CFR 630.4(b), and (c) the Fund for the Improvement of Postsecondary Education program regulations, 34 CFR Part 630.

For Applications or Information Contact: Russell Y. Garth, U.S. Department of Education, 400 Maryland avenue, SW., (Room 3100, ROB–3), Washington, DC 20202. Telephone (202) 245–8091.

Program Authority: 20 U.S.C. 1135a–3.

Dated: February 20, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87–4038 Filed 2–25–87; 8:45 am]

BILLING CODE 4000–01–M

Office of Postsecondary Education

Publication of Approved Systems of Need Analysis for the Perkins Loan (Formerly the National Direct Student Loan), College Work-Study, Supplemental Educational Opportunity Grant and Guaranteed Student Loan Programs

AGENCY: Department of Education

ACTION: Notice of Approved Systems of Need Analysis for Academic Year 1987–88; Correction.

On January 30, 1987, the Secretary of Education published in the **Federal Register**, a notice of approved systems that institutions of higher education must use in calculating a student's financial need or expected family contribution during academic year 1987–88 under the Perkins Loan, College Work-Study (CWS), Supplemental Educational Opportunity Grant (SEOG) and Guaranteed Student Loan (GSL) Programs (52 FR 3091).

This notice corrects item number 26 in the third column of page 3091 to read "Financial Aid System Technologies, Inc., Fresno, California."

Dated: February 20, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87–4037 Filed 2–25–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Solicitation of Cooperative Agreement Proposals; Load Temperature Analyzer System for Industrial Furnaces

AGENCY: Department of Energy.

ACTION: Solicitation for Cooperative Agreement Proposals (SCAP) No. DE–SC07–87ID12674 for the development of a load temperature analyzer system for industrial furnaces.

SUMMARY: The Idaho Operations Office of the U.S. Department of Energy is seeking to support the design, fabrication, and testing of an advanced, cost effective, and reliable analyzer system to make remote, nonintrusive, on-line, and continuous internal temperature determination of furnace load. The analyzer should be applicable to applications such as: metals, ceramic and clay processes, and others. The analyzer development is sponsored by the DOE Office of Industrial Program's Combustion Improvement Program, which seeks to improve combustion efficiency in industrial processes. Two phases are anticipated: Phase I is sensor development through the laboratory verification stage and includes analysis of the projected design and economics of full-scale systems. Phase II would include full-scale industrial testing and verification. DOE reserves the right to proceed with the second phase or stop with completion of the first phase based upon the results of Phase I and complimentary work conducted by DOE. Cost sharing will be encouraged and will be part of the evaluation criteria. DOE will have approximately $220,000 available funding for this solicitation. It is expected that this award will result in one cost-share cooperative agreement with an anticipated project period of 18 months for Phase I.

DATES: SCAP No. DE–SC07–87ID12674 is expected to be issued during late February 1987 with a closing date approximately 45 days from the issue date.

Contacts: Potential proposers desiring to receive a copy of the SCAP should request it in writing within ten calendar days from the date of this notice from: Elaine M. Richardson, Contracts Management Division, U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83402. Telephone No. (208) 526–1699.

Issued at Idaho Falls, Idaho, on February 11, 1987.

H. Brent Clark,

Director, Contracts Management Division.

[FR Doc. 87–3935 Filed 2–25–87; 8:45 am]

BILLING CODE 6450–01–M

Solicitation of Cooperative Agreement Proposals Water-Jet-Assist Mechanized Oil Shale Mining Technology Development

AGENCY: Department of Energy.

ACTION: Solicitation for Cooperative Agreement Proposals (SCAP) No. DE–SC07–87GJ12676 for evaluating the potential of water-jet-assist mechanical cutting of oil shale.

SUMMARY: The U.S. Department of Energy, Grand Junction Projects Office, desires to receive and consider for support, proposals to enter into a Cooperative Agreement to evaluate the technical and economical feasibility of water-jet-assist mechanical cutting of oil shale under actual mining conditions and to establish the technological basis necessary for subsequent private sector development and commercialization of water-jet-assist mechanized mining equipment. The total amount of anticipated DOE funding for this three-phase program is $750,000. The offeror is expected to cost-share at least 25% of the total proposed project cost. In-kind contributions, such as capital equipment use, can be applied to the 25% offeror's share of the proposed cost. The research effort will be divided into three phases: (1) The design of a water-jet-assist cutting system to be retrofitted to an existing mechanical cutting machine for use in oil shale; (2) the modification of an existing water-jet-assist cutting machine; and (3) the collection of data from actual cutting tests at an oil shale mine approved by the DOE. DOE expects a major oil shale resource holder to contribute to the project by providing access to an oil shale mine in Western Colorado and electrical power and limited support services for the in-mine test phase. The proposal is to cover all three phases of the project. The period of performance for the entire three-phase project is estimated at 24 months. Proposals shall demonstrate: (1) Experience in water-jet-assist mechanized cutting and mechanical excavation; (2) the existing capability of using data and experience gained through this agreement to design and manufacture commercial-sized mining equipment; (3) the ability to provide in-house maintenance and support from U.S. based facilities; and (4) include a cost-share plan. The requirements can be satisfied by the offeror or by the combined capability of team members.

DATES: It is anticipated that the SCAP will be issued during April 1987. A pre-proposal conference will be held with the time and place to be determined. Proposals will likely be due in late May 1987.

Contacts: Potential offerors desiring to receive a copy of the SCAP should request it in writing from: U.S. Department of Energy, Grand Junction Projects Office, Post Office Box 2567, Grand Junction, CO 81502, ATTN: Robert E. Ivey, Contracting Officer. Telephone No. (303) 242–8621.

Issued at Grand Junction, CO, on February 12, 1987.

H. Brent Clark,

Director, Contracts Management Division.

[FR Doc. 87–3934 Filed 2–25–87; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award (Grant); Electric Power Research Institute

AGENCY: Department of Energy, San Francisco Operations Office.

ACTION: Notice of restricted eligibility for grant award.

SUMMARY: The Department of Energy, San Francisco Operations Office, in accordance with 10 CFR Part 600.7(b), hereby announces its intention to restrict grant award eligibility for the Advanced Light Water Reactor Program (ALWR), to the Electric Power Research Institute (EPRI) of Palo Alto, California. The Department considers such a restriction necessary and justified in light of the existing agreement between it and EPRI for close cooperation and coordination in meeting common development goals for utility requirements documents and conceptual small plant design for Advanced Boiling Water Reactors (BWR's) and Pressurized Water Reactors (PWR's). The research and development efforts of EPRI, under this agreement have afforded it certain expertise and technical resources which are unique to the Advanced Light Water Reactor Program. Accordingly, and so as to avoid duplication and to foster a DOE-industry consensus on the approach to the ALWR program, the Department intends to award a financial assistance grant (DE–FG03–87SF16711) to EPRI to facilitate the development of a five year program to define the best nuclear power plant technology for small advanced BRW's and PWR's. The aggregate amount of the grant award is intended to be $4,900,000.

FOR FURTHER INFORMATION CONTACT: Aundra Richards, U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.

Issued in Oakland, CA January 14, 1987.

Donald W. Pearman,

Acting Manager.

[FR Doc. 87–3936 Filed 2–25–87; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket Nos. 86–44–NG; 86–45–NG; 86–46–NG; 86–48–NG; 87–02–NG]

Brooklyn Union Gas Co. et al.; Application To Import Natural Gas, Amendments to Pending Applications, and Consolidation of Dockets

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of an application to import natural gas from Canada, Amendments to pending applications, and consolidation of dockets.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on January 14, 1987, of a joint application to import natural gas, and of amendments to four import applications currently pending before the ERA. The application, filed in ERA Docket No. 87–02–NG, is the fifth of five applications relating to imports of Canadian natural gas to be transported through the proposed Iroquois Gas Transmission System (IGTS). The five applications involve gas purchase contracts with different Canadian gas suppliers but are otherwise substantially identical. The first four applications were filed simultaneously on August 1, 1986, in ERA Docket Nos. 86–44–NG, 86–45–NG, 86–46–NG, and 86–48–NG; the amendments are to those four applications. The ERA issued one notice of the four applications on September 10, 1986 (51 FR 33108, September 18, 1986). The applicants have requested that ERA consolidate those four applications and this fifth application.

The ERA hereby consolidates the four previously filed applications and the current application. Protests, interventions, comments, responses, or any other filings, filed in any of the previous dockets, will be deemed to have been filed in all of those dockets and in the current docket, 87–02–NG. A party/intervenor in any of the earlier dockets is considered an intervenor in this docket and is not required to file an additional notice of intervention or a motion to intervene. Any protestor, intervenor, commentor, or other respondent, who wishes to participate in a specific docket or dockets only, may do so by expressly requesting such limited participation in its filing.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments should be filed no later than 4:30 p.m., on March 30, 1987.

FOR FURTHER INFORMATION CONTACT:

Lot Cooke, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6116

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: The applicants (herein called the "Repurchasers") are The Brooklyn Union Gas Company, Connecticut Light and Power Company, Connecticut Natural Gas Corporation, Southern Connecticut Gas Company, Long Island Lighting Company, Consolidated Edison Company of New York, Inc., New Jersey Natural Gas Company, South Jersey Gas Company, and New York State Electric and Gas Corporation (NYSEG). These nine natural gas distribution companies seek authority to import 17,500 Mcf per day of natural from Canada for a period of fifteen years. The natural gas would be exported from Canada and sold to the Repurchasers by Alberta Northeast Gas, Ltd. (ANE), a Canadian corporation established by the Repurchasers. The gas would be sold to ANE by Alberta Energy Corporation (AEC), and transported to the Repurchasers through the proposed IGTS, which will extend from a yet to be established export point on the international border near Iroquois, Ontario through the States of New York and Connecticut.

The border price of the imports will be indexed to the price of competing fuels, including natural gas, in the market served by the Repurchasers. Each Repurchaser will be entitled to receive a predetermined percentage of the imported gas but would be authorized to purchase additional gas, not to exceed the total amount authorized at 17,500 Mcf per day for this contract, if any of the Repurchasers takes less than their

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alloted share. As in the previously filed Brooklyn Union applications the border price includes both demand and commodity charges. The minimum bill is the monthly demand charge and there are no take-or-pay requirements.

In order to provide assurance to ANE that it will meet its gas supply obligations, AEC has entered into a backstop agreement with ATCOR Limited (ATCOR). The backstop agreement provides that, if AEC is unable to supply gas as required under its purchase contract with ANE, ATCOR will make up the deficiency. Additionally, if in two consecutive years AEC fails to deliver more than 10% of the gas required under the purchase contract, then either ATCOR or AEC may elect to transfer, from AEC to ATCOR, AEC's rights and obligations under the purchase contract up to the amount of the deficiency.

In support of the application the Repurchasers maintain that the import transactions are fully consistent with the Secretary of Energy's import policy because the purchase contracts (1) were negotiated at arms-length to meet the discrete requirements of the Repurchasers' markets and (2) are flexible with respect to both volume and price, and thus assure that the gas supply can be marketed competitively over the life of the contracts. The Repurchasers state further that the marketability and flexibility of the arrangement are enhanced by allowing gas not taken by one Repurchaser to be sold to other Repurchasers. This allows for a reduction of individual Repurchasers' minimum bills and for seasonal load balancing by the Repurchasers.

After the four ERA applications were filed on August 1, 1986, NYSEG decided to become a repurchaser from ANE, electing to take 17,000 Mcf per day of natural gas. As a consequence, ANE and ATCOR agreed to increase the daily contract quantity under the ANE/ATCOR purchase contract from 18,000 Mcf per day to 35,000 Mcf per day. The authorization to import gas pursuant to the ANE/ATCOR purchase contract is requested in the application filed in ERA Docket No. 86-46-NG. The amendments add NYSEG, as a Repurchaser, to the applications filed in ERA Docket Nos. 86-44-NG, 86-45-NG, and 86-46-NG, and increase the authorization sought in ERA Docket No. 86-46-NG from 18,000 Mcf per day to 35,000 Mcf per day.

Pursuant to the backstop agreement between AEC and ATCOR, the application filed in ERA Docket No. 86-46-NG is further amended to allow the authorization to increase if, and to the extent that, AEC does not meet its natural gas supply obligations to ANE and ATCOR undertakes to supply the gas to ANE according to the terms of the backstop agreement. At no point would the natural gas imported pursuant to the applications filed in ERA Docket No. 86-46-NG and in the current application, ERA Docket No. 87-02-NG, exceed the 52,500 Mcf per day total authorization sought in the two applications.

The decision on these applications to import natural gas will be made consistent with the DOE's import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose the applications should address their responses on the issue of competitiveness as set forth in the policy guidelines. The applicants assert that the arrangements are competitive. Parties opposing these arrangements bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. However, since this application has been consolidated with ERA Docket Nos. 86-44-NG, 86-45-NG, 86-46-NG, and 86-48-NG, any person who is an intervenor in one or more of those dockets is deemed an intervenor in the instant application and does not need to submit a new filing in this docket. All persons submitting filings in the current docket, even if they did not file in the earlier applications, will, nevertheless, be deemed to have submitted filings in each of those dockets unless they expressly request that their participation be limited to a specific docket or dockets. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076-A RG-23 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m. March 30, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision on the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of the application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on February 19, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-4040 Filed 2-25-87; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: The Department of Energy (DOE) has submitted the energy information collections listed at the end of this notice to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information: (1) The sponsor of the collection (DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (12) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. Last notice published Wednesday, January 28, 1987.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments may also be addressed to, and copies of the submissions obtained from, Mr. Gross at the address below.)

FOR FURTHER INFORMATION CONTACT: John Gross, Director, Data Collection Services Division (EI-73), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586-2308.

SUPPLEMENTARY INFORMATION: If you anticipate commenting on a collection, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB DOE desk officer of your intent as early as possible.

The energy information collections submitted to OMB for review were:

1. Energy Information Administration/Coal, Nuclear, Electric and Alternate Fuels and the Federal Energy Regulatory Commission.
2. EIA-714.
3. 1905-0161 and 1902-0140.
4. Annual Electric Power System Report.
5. Revision.
6. Annually.
7. Mandatory.
8. Business or other for profit, State of local governments, Federal agencies, and other non-profit institutions.
9. 350 respondents.
10. 350 responses.
11. 39,900 hours (900 hours for OMB number 1905-0161; 39,000 hours for OMB number 1902-0140).
12. Major electric utilities will provide this data which will be used to facilitate electric power systems reliability and adequacy analyses, to prepare status reports, to monitor utility forecasts of loads and systems expansion and to obtain a comprehensive picture of energy generation, transfers, and load distribution.

Statutory Authority

(Sec. 5(a), 5(b), 13(b), and 52), Pub. L. 93-275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790(a)).

Issued in Washington, DC, February 18, 1987.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 87-3928 Filed 2-25-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. EL87-9]

Electric Consumers Protection Act, Section 8(d) Study; Scoping Meetings and Request for Comments

February 20, 1987.

On January 16, 1987, the Federal Energy Regulatory Commission issued a notice of intent to prepare an environmental study and conduct a scoping session, Docket No. EL87-9, required by section 8(d) of the Electric Consumers Protection Act (ECPA). The study was outlined in the Commission's notice, which has appeared in the **Federal Register** on January 22, 1987.

To afford the public an opportunity to identify issues and alternatives to be examined in the section 8(d) study the following scoping sessions have been scheduled. The first scoping session will be held at 9:00 a.m. on March 18, 1987, in the Federal Energy Regulatory Commission's Hearing Room A at 825 North Capitol Street NE., in Washington, DC. The second scoping session will be held at 9:00 a.m. on March 20, 1987, in the Portland Public Library at 5 Monument Square in Portland, Maine. The third scoping session will be held at 9:00 a.m. on March 24, 1987, in the Portland Building's second floor Hearing Room at 1120 Southwest Fifth Avenue, in Portland, Oregon. The fourth scoping session will be held at 9:00 a.m. on March 26, 1987, in the Department of Water Resource's main floor Conference Room at 1416 Ninth Street, Sacramento, California.

All interested federal, state and local agencies, tribal representatives, public utilities, private developers, and other interested parties are invited to participate in the scoping process. At the scoping sessions the Commission's staff will describe and take comments on the ECPA section 8(d) study and will explain the schedule for completion of the study. Participants are requested to address and identify the significant issues that should be included in the ECPA section 8(d) study; identify and eliminate from detailed study the issues that are not significant; and to identify completed studies, assessment methods, or other information that are related to the study. A transcript of each scoping session will be taken and all comments either oral or written will be included in the public record.

Participants wishing to reserve time in which to speak at the meetings or obtain information about the scoping process should contact either Mr. S. Ronald McKitrick at (202) 376-9065 or Ms. Patricia E. Aspland at (202) 376-9623.

All written comments regarding the scope of the section 8(d) study will be accepted during the scoping session, or may be filed on or before April 30, 1987. Comments filed with the Commission must be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The following caption should be affixed to all comments: Electric Consumers Protection Act, section 8(d) study, Docket No. EL87-9.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3923 Filed 2-25-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. QF87-249-000]

L'Energia Inc.; Notice of Application for Commission Certification of Qualifying Status of a Cogeneration Facility

February 20, 1987.

On February 3, 1987, L'Energia Inc. (Applicant), of Rural Route No. 2, Box 85, Route 127, West Hopkinton, New Hampshire 03229, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located on Andrew Street in Lowell, Massachusetts. The facility will consist of a combustion turbine generator, a heat recovery steam generator, and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be used at an adjacent food manufacturing plant. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 36,540 kW. Installation of the facility is scheduled to begin in the summer of 1987.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-4020 Filed 2-25-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-251-000]

PPG Industries, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

February 20, 1987.

On February 5, 1987, PPG Industries, Inc. (Applicant), of One PPG Place, Pittsburgh, Pennsylvania 15272, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located at Applicant's Natrium chemical plant in New Martinsville, West Virginia 26155. The facility consists of three steam generators, one extraction/ condensing steam turbine generator, one extraction/ back pressure steam turbine generator, and two back pressure steam turbine generators. Thermal energy recovered from the facility is used for various processes at Applicant's chemical plant. The primary energy source is coal. The electric power production capacity of facility is 123 MW. Most of the facility was installed between 1943 and 1966.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-4021 Filed 2-25-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-308-000]

ARCO Oil and Gas Co.; Application

Issued: February 20, 1987.

Take notice that on February 12, 1987, ARCO Oil and Gas Company, a Division of Atlantic Richfield Company (ARCO) filed an application requesting the Federal Regulatory Commission (Commission) to modify (on an expeditious basis) its Order Permitting and Approving Limited-Term Abandonments and Granting Certificates, issued October 29, 1985, as follows: (1) Provide for an extension of authorization to at least March 31, 1990; (2) expand the authorization to include gas categorized under section 104, 106(a), and 109 of the Natural Gas Policy Act of 1978 (NGPA); and (3) expand the authorization to include released gas that is attributable to other owners having an interest in the same wells as ARCO, to the extent that such co-owners agree to same.

ARCO states that the circumstances that led to ARCO's application filed on October 15, 1985, and supported issuance of the Commission's October 29, 1985 Order will continue past the March 31, 1987 termination date prescribed in Paragraph (A) of the October 29, 1985 Order as extended March 31, 1986. If the limited-term abandonment and certificate authorization granted by the October 29, 1985 Order is extended past March 31, 1987, ARCO states that it could continue any existing spot market sales and make additional sales. ARCO also states that expanding the authorization: (1) To include gas categorized under sections 104, 106(a) snd 109 of the NGPA; and (2) to include released gas produced from various interests and attributed to other owners having an interest in the same wells as ARCO would increase the flexibility of producers and purchasers to move supplies to meet customer demands.

Any person desiring to be heard or to make any protests with reference to said application should on or before March 9, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-4024 Filed 2-25-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-245-000]

Bay County, FL; Application for Commission Certification of Qualifying Status of a Small Power Production

February 12 1987.

On January 29, 1987, Bay County, Florida (Applicant), of P.O. Box 1818, Panama City, Florida 32402, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on U.S. Route 231 in the Panama City Port Authority Industrial Park, near Panama City, Florida. The facility will consist of two rotary combustors with two heat recovery steam generators and a steam turbine generator. The primary energy sources will be biomass in the form of municipal solid waste. The power production capacity of the facility will be 12 MW.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3924 Filed 2-25-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL83-10-000]

East Columbia Basin Irrigation District et al., Petition for Declaratory Order

February 20, 1987.

Take notice that on March 9, 1983, the East Columbia Basin Irrigation District, Quincy-Columbia Basin Irrigation District, and South Columbia Irrigation District (Districts) filed a petition pursuant to 18 CFR 385.207(a)(2) requesting that the Commission issue an order declaring that the Grand Coulee Project Hydroelectric Authority (Authority) is a municipality as defined in section 3(7) of the Federal Power Act (Act), 16 U.S.C. 796(7). Section 3(7) of the Act defines municipality as "a city, county, irrigation district, or other political subdivision or agency of a state competent under the laws thereof to carry on the business of developing, transmitting, utilizing, or distributing power".

The Districts state in their petition that the Authority is a legal entity authorized by the Washington State legislature and established for the purpose of developing hydroelectric facilities on behalf of the Districts. The Districts intend to transfer to the Authority all of their rights, title and interest in the Districts' hydroelectric facilities located within the U.S. Department of the Interior, Bureau of Reclamation's Columbia Basin Irrigation Project. The proposed transfer would also entail applications to the Commission for the transfer to the Authority of the Districts' licenses for various facilities. The Districts are currently the licensees of Project Nos. 2840, 2926, 2937, 3295, 3842, and 3843.

Comments, Protests, and Motions to Intervene

Anyone may submit comments, protests, or a motion to intervene in this proceeding in accordance with the requirements of Rules 210 (comments), 211 (protests) or 214 (intervention) of the Commission's Rules of Practice and Procedures, 18 CFR 385.210, 385.211, and 385.214.

In determining what appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before March 20, 1987, and must be mailed to Mr. Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. The petition is on file with the Commission and is available for inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-4022 Filed 2-25-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-265-000]

Mesa Operating Limited Partnership; Application for Limited-term Blanket Abandonment and Limited-term Blanket Certificate With Pre-granted Abandonment

Issued: February 20, 1987.

Take notice that on February 3, 1987, Mesa Operating Limited Partnership (Mesa) filed an Application pursuant to sections 4 and 7 of the Natural Gas Act (NGA) and Parts 154 and 157 and § 2.77 of the Regulations, requesting: (1) Limited-term blanket authorization to abandon sales by Mesa (or its co-owners in the same production) of certificated gas released by the original pipeline-purchaser; and (2) limited-term blanket certificate authorization with pre-granted abandonment for sales for resale in interstate commerce of gas released by the original pipeline-purchaser and covered by such blanket limited-term abandonment. The authorizations requested would be for a two year term without supply or market restrictions and without limitation on vintage of gas, as more fully described in the Application which is on file with the Commission and open for public inspection.

Similar authorizations were granted to Mesa in Docket No. C186-12-001 and are due to expire March 31, 1987. Mesa states that the authorizations sought herein, if granted, will enable Mesa (and its co-owners) to sell on a short-term and spot basis natural gas that remains subject to the Commission's NGA jurisdiction, but has been released by the original pipeline-purchasers. The authorizations requested in this proceeding, it is alleged, would enable Mesa to continue and to expand its ability to sell gas on an expeditious basis to meet market needs. Sales volumes, prices, purchasers and delivery points will vary from sale to sale.

Further, Mesa has requested a waiver of Commission rules and regulations to the extent necessary to implement the authorizations requested, including without limitation filings required under §§ 154.94(h) and 154.94(k) and Part 271 of the regulations.

Mesa asserts that the authorizations requested herein are consistent with the Commission's recent orders in *NICOR Exploration Company*, Docket No. C187-708-000 (issued December 22, 1986); *Sonat Exploration Company*, Docket No. C186-403-000 (issued December 29, 1986); and *ANR Pipeline Company, et al.*, Docket Nos. CI86-637-000, *et al.* (issued January 21, 1987).

Any person desiring to be heard or to make any protest with reference to said application should, on or before March 9, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 386.211, 385.214). All protests filed with

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the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-4026 Filed 2-25-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-307-000]

MidCon Marketing Corp.; Application of Midcon Marketing Corp. for Blanket Certificate of Public Convenience and Necessity and for Abandonment and Pre-Granted Abandonment Authorization

February 20, 1987.

Take notice that on February 12, 1987, MidCon Marketing Corp. ("MidCon Marketing"), pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717-717(z) ("NGA"), and § 2.77 and Part 157 of the regulations of the Federal Energy Regulatory Commission ("Commission") filed an application for a blanket certificate of public convenience and necessity (i) authorizing, for a three-year period, sales for resale of all Natural Gas Policy Act categories of gas by MidCon Marketing and the producers from which MidCon Marketing purchases gas, and (ii) granting partial abandonment and pregranted abandonment of certain sales for resale as described more fully in MidCon Marketing's application.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 9, 1987, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure. All protests filed with the Commission will be considered by it in determining the appropriate actions to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-4027 Filed 2-25-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-2-55-000 and -001]

Mountain Fuel Resources, Inc.; Tariff Filing

February 19, 1987.

Take notice that Mountain Fuel Resources, Inc. (MFR) on February 17 1987, tendered for filing and acceptance revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 as follows:

Seventh Revised Sheet No. 12
Eighth Revised Sheet No. 12

Seventh Revised Sheet No. 12 reflects a change in MFR's Unrecovered Purchased Gas Cost Adjustment of $(0.11923)/Dth from ($0.02157)/Dth, currently in effect, to $(0.14080)/Dth. MFR proposes that this adjustment be effective for the period February 1, 1987, through May 31, 1987. MFR states that the purpose of this adjustment is to provide a more orderly reduction in its gas-cost rates through 1986.

Eighth Revised Sheet No. 12 reflects the removal of the $0.02/Dth Moxa Arch surcharge, approved by the Commission's May 20, 1986, letter order in Docket Nos. RP85-208-000 and CP80-274-011. The surcharge was to be effective from May 1, 1986, through the earlier of April 30, 1987, or until MFR has accumulated $1,400,000 by virtue of applying the surcharge. MFR has requested an effective date of May 1, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 26, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3925 Filed 2-25-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-1-001]

Natural Gas Pipeline Co. of America; Changes in FERC Gas Tariff

February 19, 1987.

Take notice that on February 13, 1987, Natural Gas Pipeline Company of America tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective March 18, 1987:

Third Revised Sheet No. 137
Seventh Revised Sheet No. 402
Eighth Revised Sheet No. 403
Ninth Revised Sheet No. 502
Tenth Revised Sheet No. 503

Natural states that the above listed tariff sheets are submitted pursuant to §284.10 of the Commission's Regulations. Natural also states that the sheets reflect the changes necessary to effectuate a 15% reduction in the firm Sales Entitlement Quantities of Iowa Southern Utilities Company (Iowa Southern) and Iowa Electric Light and Power Company (Iowa Electric). Natural requested that the above listed tariff sheets be accepted for filing to be effective March 18, 1987. The requested effective date is 150 days from the close of the 45 day period provided for in § 284.10(c)(2)(i)(A) of the Commission Regulations.

In addition, Natural submitted Substitute Twenty-fourth Revised Sheet No. 301 and Substitute Twenty-third Revised Sheet No. 303 to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective April 1, 1987. The Daily and Monthly Quantity Entitlements on these sheets were changed, where required to reflect the changes in Entitlements by Natural concerning service for Iowa Southern and Iowa Electric for the service year beginning April 1, 1987. With the exception of the necessary changes made to Iowa Southern and Iowa Electric, Natural states that these tariff sheets are identical to the corresponding sheets currently pending Commisison approval at Docket No. RP87-1-000. Natural requested that the Commission's Regulations be waived to the extent necessary to permit these tariff sheets to become effective on April 1, 1987.

A copy of this filing has been mailed to Natural's jurisdictional customers and to interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before February 26, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3926 Filed 2-25-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-4-37-000, 001]

Northwest Pipeline Corp.; Change in Sales Rates Pursuant to Purchased Gas Cost Adjustment

February 19, 1987.

Take notice that on February 17, 1987, Northwest Pipeline Coporation ("Northwest") submitted for filing a proposed change in rates applicable to service rendered under rate schedules affected by and subject to Article 16, Purchased Gas Cost Adjustment Provision ("PGA"), of its FERC Gas Tariff, First Revised Volume No. 1. Such change in rates is for the purpose of (1) reflecting changes in Northwest's estimated cost of purchased gas; (2) reflecting the change in unrecovered purchased gas costs since Northwest's PGA filing dated February 14, 1986; and (3) projecting incremental surcharges to be assessed Northwest's affected direct and sales for resale customers pursuant to Order No. 49.

The current PGA adjustment, for which notice is given herein, aggregates to a decrease of .231¢ per therm (including the elimination of the special surcharge credit of 0.319¢ [not applicable to Rate Schedule PL-1]) in the commodity rate for all rate schedules, unless noted above, affected by and subject to the PGA. There is no change in the demand rate. The annual jurisdictional change in the Northwest's rates is a decrease of approximately $4,881,061. Northwest proposes to refund through its twelve-month surcharge, the adjusted balance of $15,983,452 which is the balance in FERC Account No. 191 as of December 31, 1986. The proposed rate changes have been reflected on Thirty-Third Revised Sheet No. 10.

Northwest also tendered for filing and acceptance Fourteenth Revised Sheet No. 10-B reflecting revised projected incremental surcharges. Northwest requests an effective date of April 1, 1987 for all tendered tariff sheets.

A copy of this filing has been mailed to all parties of record in Docket No. RP72-154-000 to all jurisdictional customers, and to affected state regulatory commissions.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 27, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-3927 Filed 2-25-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL87-16-000]

Sierra Pacific Power Co.; Filing of Petition for Declaratory Order

February 20, 1987.

Take notice that on February 12, 1987, Sierra Pacific Power Company (Sierra), acting pursuant to section 5(e) of the Administrative Procedure Act and Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, filed a petition asking the Commission to issue a declaratory order to remove uncertainty and resolve controversy regarding the Commission's jurisdiction over the regulation of transmission facilities and agreements in and affecting interstate commerce. The petitioning company asserts that the Public Service Commission of Nevada (PSCN) has ordered Sierra not to terminate a wheeling agreement between Sierra and the Bonneville Power Administration (BPA) without prior approval by PSCN. Sierra asserts that PSCN has no jurisdiction over the transmission of electricity in interstate commerce, so that to this extent the order of the PSCN is void. Sierra requests that the Commission issue a declaratory order holding that the portion of the PSCN order cited by Sierra is null and void. Sierra also requests that the Commission declare that ownership by a third party of a transmission line described by Sierra in its petition would subject that third party to the jurisdiction of the Commission.

Any person desiring to be heard or to protest this application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with section 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-4023 Filed 2-25-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-695-003]

TXP Operating Co.; Application

February 20, 1987.

Take notice that on February 12, 1987, TXP Operating Company ("TXPO" or "Applicant"), P.O. Box 1396 Houston, Texas 77251 filed an Application requesting that the Commission modify its Order Permitting and Approving Limited-Term Abandonments and Granting Certificates, issued on October 29, 1985 in Docket No. C185-695 and extended for one (1) year by Order Granting Extension of Limited Term Abandonments and Blanket Sales Certificate issued on March 31, 1986 in such docket (LTA Order), to extend the term thereof through March 31, 1990 and to expand the authorizations granted therein to cover all categories of gas under the Natural Gas Policy Act of 1978 subject to Natural Gas Act jurisdiction. TXPO further requests that the Commission handle this Application on an expedited basis to avoid disruption in the spot market.

Any person desiring to be heard or to make any protest with reference to said Application should on or before March 9, 1987, file with the Federal Energy Regulatory Commission, Washington, DC, 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be

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taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-4025 Filed 2-25-87; 8:45 am]

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Office of Hearings and Appeals

Cases Filed; Week of January 2 Through January 9, 1987

During the Week of January 2 through January 9, 1987, the appeal and the applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

February 18, 1987.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 2 through January 9, 1987]

Date	Name and Location of Applicant	Case No.	Type of Submission
Jan. 5, 1987	Atlantic Oil & Heating Company, Macungie, PA	KEE-0107	Exception to the reporting requirements. If granted: Atlantic Oil & Heating Company would not be required to file Form EIA-782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Jan. 5, 1987	B&R Oil Company, Inc., South Bend, IN	KEE-0108	Exception to the reporting requirements. If granted: B&R Oil Company, Inc. would not be required to file Form EIA-782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Jan. 5, 1987	Good Hope Refineries, Inc./Kerr-McGee Corporation, Oklahoma City, OK	RR189-1	Request for modification/rescission. If granted: The December 10, 1986 Decision and Order (Case No. RF189-1) issued to Kerr-McGee Corporation would be modified regarding the firm's Application for Refund submitted in the Good Hope Refineries, Inc. refund proceeding.
Jan. 5, 1987	Painting & Drywall Work Preservation Fund, Inc., Oakland, CA.	KFA-0070	Appeal of an information request denial. If granted: The December 18, 1986 Freedom of Information Request Denial issued by the Office of Classification and Technical Information Division would be rescinded, and the Painting & Drywall Work Preservation Fund, Inc. would receive access to copies of certified payroll records submitted by all contractors and subcontractors performing work in the painting and drywall crafts on Contract #DE-AC04-76DP-03533.
Jan. 5, 1987	Rob-Lu Oil Company, Inc., Clarksburg, WV	KEE-0109	Exception to the reporting requirements. If granted: Rob-Lu Oil Company, Inc. would not be required to file Form EIA-821, "Annual Fuel Oil & Kerosene Sales Report."
Jan. 8, 1987	Ackerman Oil Company, Jasper, IN	KEE-0110	Exception to the reporting requirements. If granted: Ackerman Oil Company would not be required to file Form EIA-782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."

Refund Applications Received

[Week of Jan. 2 through Jan. 9, 1987]

Date received	Name of refund proceeding/name of refund applicant	Case No.
08/08/86	Amoco/Wisconsin	RQ21-354, RQ251-355
11/26/86	Tillie Gertz	RF276-10
11/26/86	Junius Gertz	RF276-11
11/26/86	Raymond A. Gertz	RF276-12
11/26/86	Benson Pool & Patio Center.	RF276-13
01/02/87	Wallack Freight Lines, Inc.	RF270-2457
01/02/87	Onka's Charter Bus Service.	RF270-2458
01/02/87	Amcan Transport, Inc./Becker.	RF270-2459
01/05/87	Grover Trucking Company.	RF270-2460
01/05/87	Sather Trucking Corp.	RF270-2461
01/05/87	Charter Express, Inc.	RF270-2462
01/05/87	Doyle's Yellow Checker Cab.	RF270-2463

Refund Applications Received—Continued

[Week of Jan. 2 through Jan. 9, 1987]

Date received	Name of refund proceeding/name of refund applicant	Case No.
01/07/87	Lawson's Marathon	RF250-2683
01/07/87	R.H. Smith District Co.	RF259-21
01/07/87	Enterprise Products Co.	RF283-27
01/07/87	General Electric Co	RF269-10
01/07/87	Parker Fuel Corp	RF284-3
01/08/87	United Oil Marketers	RF7-168
01/08/87	Huffy Gas, Inc	RF40-3627
01/08/87	H & W Oil Co	RF40-3628
01/08/87	Sands Propane, Inc.	RF40-3629
01/08/87	Huffy Gas, Inc	RF250-2684
01/08/87	Commonwealth of Massachusetts.	RF284-4

Refund Applications Received—Continued

[Week of Jan. 2 through Jan. 9, 1987]

Date received	Name of refund proceeding/name of refund applicant	Case No.
01/08/87	Amoco, Vickers & Coline/North Dakota.	RQ251-350, RQ1-351, RQ2-352
01/09/87	Ellas Oil Company, Inc.	RF40-3630
01/09/87	Gaeta Bros. Oil, Inc.	RF40-3631
01/09/87	Arlington Marathon	RF250-2685
01/09/87	Simonik Moving & Storage, Inc.	RF270-2465
01/09/87	Town of Westborough	RF284-5
01/02/87 through 01/09/87	Getty Oil Refund Applications.	RF265-56 through RF265-98

Refund Applications Received—Continued

[Week of Jan. 2 through Jan. 9, 1987]

Date received	Name of refund proceeding/name of refund applicant	Case No.
01/02/87 through 01/09/87	Mobil Refund Applications.	RF225-10492 through RF225-10531

[FR Doc. 87-4041 Filed 2-25-87; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of January 5 through January 9, 1987

During the week of January 5 through January 9, 1987, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Burt A. Braverman, 1/9/87; KFA-0067

Burt A. Braverman filed an Appeal from a denial by the Office of Procurement Operations of a Request for Information which he had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the proposal involved a contract that had not yet been awarded, and that the entire proposal was thus exempt from mandatory release pursuant to Exemption 4 of the FOIA. Accordingly, the Appeal was denied.

Remedial Order

National Distillers and Chemical Corporation, 1/7/87; BRO-1384

National Distillers and Chemical Corporation (National Distillers) objected to a Proposed Remedial Order alleging that it violated the price rule for natural gas processors at 10 CFR Part 212, Subpart K, by treating its sales of propane and butanes as "net-back sales," when they should have been treated as "first sales". The DOE rejected National Distillers' contention that its sales were "net back sales", finding that the language and stated regulatory purpose of the price rule clearly precluded net-back treatment of sales of fractionated products by gas plant operators to marketers, where the gas plant operator had paid a fixed price for the natural gas liquids that it processed. In addition, the DOE rejected the firm's contentions that the PRO's interpretation of the Subpart K price rule represented an improperly promulgated substantive rule and that the PRO was required to show that National Distillers' pricing practices resulted in harm to a third party or to the general public. The DOE modified the PRO to require a lump sum payment of overcharges totalling $65,565,237 plus interest, and further provided that this sum would be disbursed pursuant to Subpart V Special Refund Procedures.

Request for Exception

Telzrow Oil Company, 1/7/87; KEE-0064

Telzrow Oil Company filed an Application for Exception from the requirement to file Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In evaluating the request, the DOE found that the firm had not experienced a significantly greater burden in filing Form EIA-782B than other reporting firms. Accordingly, the Telzrow exception application was denied.

Request for Modification and/or Rescission

Economic Regulatory Administration (RFB Petroleum Inc.), 1/6/87; KRR-0014

The Economic Regulatory Administration moved for reconsideration of a Remedial Order that was issued to RFB Petroleum, Inc. The Remedial Order held that RFB had violated the layering rule applicable to crude oil resellers, but found that because the ERA had not convincingly matched the firm's purchases and sales, the overcharge amount should be $1,965,473.67, the firm's gross profits from its layering activities. In its Motion, the ERA asked that this determination be reconsidered, and that the overcharge amount specified in the Proposed Remedial Order, $3,450,436.25, which was based upon individual transactions as specified by the ERA's matching of the firm's purchases and sales, be restored. The DOE first rejected REB's contention that the agency lacked jurisdiction to reconsider Remedial Order determinations, noting that administrative agencies have inherent authority to reconsider their decisions and that the firm's filing of an appeal of the Remedial Order to the Federal Energy Regulatory Commission did not divest the agency of jurisdiction to reconsider the decision. In considering the merits of the ERA's Motion, the DOE found that the ERA had provided no explanation of how it matched RFB's purchase and sale transactions and that there were numerous instances where the ERA's matching appeared to be incorrect. Under these circumstances, the DOE found that the Remedial Order was correct in finding that RFB's refund liability should be the amount of its gross profits from its layering activities, plus interest. Accordingly, the ERA Motion for Reconsideration was denied.

Refund Applications

Apco Oil Corp./Madden Oil Co., et al., 1/8/87; RF83-26, et al.

The DOE issued a Decision and Order concerning applications for Refund filed by Madden Oil Company and four other purchasers of refined petroleum products from Apco Oil Corporation, each seeking a portion of the settlement fund obtained by the DOE through a consent order with Apco. Since no refund claim exceeded $5,000, each applicant was eligible to receive a refund based on the small claims refund procedures set forth in the Order implementing the *Apco* special refund proceeding. After examining the applications, the DOE concluded that each of the five firms should receive a refund based on a volumetric methodology. The total amount of refunds granted was $19,007, including $13,498 in principal and $5,509 in interest.

Gulf Oil Corporation/Coleman Oil Co., Inc., City Coal Co. of New London, Inc., 1/5/87; RF40-2762, RF40-3072

The DOE issued a Decision and Order concerning the Applications for Refund filed by Coleman Oil Co., Inc. and City Coal Co. of New London, Inc., resellers of Gulf middle distillates. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 84,048 (1984), each applicant demonstrated that it would not have been required to reduce selling prices to its customer by an amount equal to the refund claimed. The DOE therefore concluded that the claimants should receive a total refund of $17,759 in principal and $4,076 in interest.

Gulf Oil Corporation/Puerto Rico Office of Energy, 1/7/87; RF 40-2608

The DOE issued a Decision and Order concerning an Application for Refund filed by the Puerto Rico Office of Energy (PROE) in the Guld Oil Corporation special refund proceeding. The DOE rejected PROE's refund claim based on purchases of Gulf products by agencies of the government of Puerto Rico, because PROE was unable to provide actual or estimated volume information for these purchases, as required by *Gulf Oil Corp.* 12 DOE ¶ 85,048 (1984). The DOE also found that in a first stage refund proceeding PROE was not eligible for refund on behalf of motorists in Puerto Rico. Accordingly, PROE's Application was denied.

Gull Industries, Inc./Fred Wambaugh, et al., 1/9/87; RF258-2, et al.

The DOE issued a Decision and Order concerning six Applications for Refund from the Gull Industries, Inc. escrow account under the provisions outlined in *Gull Industries, Inc.*, 14 DOE ¶ 85,381 (1986). Each applicant was a reseller who was listed in the Appendix to that Decision as being eligible for a specified refund amount from the Gull consent order fund. Since each applicant's claim was for $5,000 or less, no further proof of injury was required. The refunds approved in the Decision totaled $9,106.54, including $5,557.77 in principal and $3,548.77 in interest.

La Gloria Oil & Gas Company/Columbia Lng Corp., et al., 1/5/87; RF263-1, et al.

The DOE issued a Decision and Order concerning twelve Applications for Refund in the La Gloria Oil & Gas Company special refund proceeding. Ten of the applicants were resellers, one was a public utility, and one was an end-user of refined petroleum products. All of the applicants presented evidence that they purchased refined petroleum products from La Gloria during the consent order period. The reseller claims fell below the $5,000 small claims threshold. The public utility applicant certified that it would pass along any refund to its customers. The end-user was presumed to have absorbed the alleged LaGloria overcharges. Consequently,

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none of the applicants was required to provide a detailed showing of injury. Accordingly, all twelve applications were approved. The refunds approved in this Decision totaled $55,718, including $31,244 in principal and $24,474 in interest.

Mobil Oil Corp./A.S.P.C.A., et al, 1/8/87; RF225–8579, et al.

The DOE issued a Decision and Order granting 41 Applications for Refund from the consent order fund made available by Mobil Oil Corporation. Each applicant was an end-user who presented evidence that it purchased refined petroleum products directly from Mobil during the consent order period. According to the methodology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), each applicant was found to be eligible for a refund from the Mobil consent order fund based on the volume of its purchases times 100 percent of the volumetric refund amount. The refunds approved in the Decision totaled $7,124 ($5,907 in principal and $1,235 in interest).

Mobil Oil Corporation/Alvin L. Vyhnalek, et al, 1/9/87; RF225–7389, et al.

The DOE issued a Decision granting 49 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers, resellers, and end-users of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,330 (1985). The refunds granted in this proceeding totaled $33,947 ($28,083 in principal, plus $5,864 in interest).

Mobil Oil Corporation/Archer's Mobil, et al, 1/9/87; RF225–6376, et al.

The DOE issued a Decision granting 50 Applications for Refund from the Mobil Oil Corporation escrow account. Each applicant was a reseller or retailer of Mobil refined petroleum product that elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The refunds granted in this proceeding totaled $21,643 ($17,944 principal plus $3,699 in interest).

Mobil Oil Corporation/Cowley County, et al, 1/7/87; RF225–2080, et al.

The DOE granted ten Applications for Refund from a consent order fund made available by Mobil Oil Corporation. All of the applicants were end-users who purchased refined petroleum products directly from Mobil. The claimants were therefore eligible for refunds equivalent to their full allocable shares, based on the volumetric methodology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $12,518, representing $10,354 in principal and $2,184 in interest.

Post Petroleum Company/Joe Valine, Gill Livestock Company, 1/5/87, RF229–2, RF229–3

The DOE issued a Decision and Order concerning two Applications for Refund from a consent order fund made available by Post Petroleum Company. Since both of the applicants were end users of Post motor gasoline, they were found to have been injured by Post's alleged overcharges after examining the applications and supporting documentation submitted by the applicants, the DOE concluded that they should receive refunds totaling $156, representing $111 in principal and $54 in accrued interest.

St. James Resources Corporation/Marvo Oil Company, L&A Fuel Company, Walters' Oil, Inc., 1/5/87, RF180–18, RF180–32, RF180–33

The DOE issued a Decision and Order concerning three Applications for Refund from a consent order fund made available by St. James Resources Corporation. The applicants were purchasers of St. James No. 2 heating oil. Since all of the applicants claimed refunds of less than $5,000, they were presumed to have been injured by St. James' alleged overcharges. After examining the applications and supporting documentation submitted by the applicants, the DOE concluded that they should receive refunds totaling $13,695, representing $6,886 in principal and $6,809 in accrued interest.

Sid Richardson Carbon and Gasoline Company and Richardson Products Company/William Schaus & Son, Inc., Lewis LP Gas, Inc., 1/9/87, RF26–54, RF26–55

The DOE issued a Decision and Order granting refunds from the Sid Richardson Carbon and Gasoline Company and Richardson Products Company deposit fund escrow account to William Schaus & Son and to Lewis LP Gas, Inc., two reseller-retailers of Sid Richardson propane. Because the applicants claimed purchases below the small claims threshold level of 720,000 gallons of annual purchases, the DOE did not require the firms to submit detailed showings of injury. The refunds granted to the applicants totalled $7,287 ($3,780 principal plus $3,507 interest).

Standard Oil Co. (Indiana)/Colorado, Coline Gasoline Corp./Colorado, OKC Corp./Colorado, Standard Oil Co. (Indiana)/West Virginia, 1/7/87, RQ251–336, RQ2–337, RQ13–338, RQ251–339

The DOE issued a Decision and Order concerning the second-stage refund plans submitted by the States of Colorado and West Virginia for use of funds made available pursuant to consent orders entered into with Coline Gasoline Corporation, OKC Corporation and Standard Oil Company (Indiana). West Virginia's plan to use $129,321 for three traffic light synchronization projects was approved on the grounds that the programs would benefit injured consumers. Colorado's plan to use $388,466 for traffic light synchronization and transportation services was approved on similar grounds. However, the DOE did not approve Colorado's proposal to install ice sensors on certain roadways, because the project failed to provide adequate energy-related benefits.

Standard Oil Co. (Indiana)/(Indiana, 1/8/87, RQ251–330, RM21–56

The DOE issued a Decision concerning the second-stage refund application and Motion for Modification filed by the State of Indiana in the Standard Oil Co. (Indiana) refund proceeding. Indiana's plans to use $1,669,623 for small business energy audits, the Indiana Energy Information Center, workshops on energy-efficent housing, oil furnace efficiency programs, farm energy analyses, energy saving kits, and loan subsidies for residential conservation measures were approved on the grounds that the programs would benefit injured consumers. The DOE did not approve energy audits for government buildings, a boiler efficiency program that also promoted the use of Indiana coal, a research project to develop a computer "expert" program for electrical management, and clinics to train car mechanics. The DOE granted Indiana's Motion for Modification, allowing the state to use previously approved OHA funds to weatherize buildings constructed after January 1, 1980.

Tenneco Oil Company/Riverside Oil Co., Et Al., 1/7/87, RF7–140, Et Al.

The Department of Energy issued a Decision and Order granting refunds from the Tenneco deposit fund escrow account to 14 resellers and retailers of Tenneco refined petroleum products. Each applicant purchased less than 600,000 gallons of product per year from Tenneco and was therefore presumed to have been injured by those purchases. The refunds granted totaled $13,042 ($10,569 in principal plus $2,473 in interest).

Dismissals

The following submissions were dismissed:

Name and Case No.
American Linen Supply Co.; RF225–7656
Anocad Plating Co.; RF225–7617, RF225–7618
Blackburn Propane; RF52–6
Blackburn Propane Service; RF58–3
Boston Sand & Gravel Co.; RF225–7657
Charles F. Wilson, Inc.; RF225–7968
City of Brookings; RF6–1
City of Crookston; RF225–7693,RF225–7694
CPI Oil & Refining, Inc.; RF6–17
Eastern Seaboard Petroleum; RF6–49, RF6–50
Elkay Manufacturing Co.; RF225–6978
Farmers Petroleum Coop.; RF6–77
Foxon Packaging Corp.; RF225–7662
Fuller Butane Co.; RF267–1
Gas City, Ltd.; RF274–1
General Mechatronics Corp.; RF225–7917
George A. Milton Can Co.; RF225–6181
Glenville Gaga Co., Inc.; RF225–7574
Hudson and Odom Tire Co.; RF225–7581
Ivan Walker, Inc.; RF225–8692
L. J. Quebedeaux Trucking; RF225–6830, RF225–8931,RF225–8932
Lance, Inc.; RF225–6882
M & G Convoy, Inc.; RF225–7687
Midland Coop., Inc.; RF6–60
Nutrilite Products, Inc.; RF225–7594
Pabst Brewing Co.; RF225–1661
Pennzoil Company; KRO–0310
Philadelphia Elec. Co.; RF6–63
Portland Stone Ware Co.; RF225–7964
Reed & Barton; RF225–7998
Regal Ware, Inc.; RF225–8895
Rodgers Oil Company; RF225–8421
Satellite Eng. & Mfg. Inc RF225–7970
Southwest Products Co.; RF225–7634, RF225–7635
Star Moving & Storage, Inc.; RF225–7925
Sterling Oil & Gas Co.; RF113–7
The Specialty Packaging Group, Inc.; RF225–7966
The West End Brewing Co., Inc.; RF225–4166
Toyota of Pasadena; RF225–7703,RE225–7704,RF225–7705
United Refining Co.; RF6–40
Village of Mamaroneck; RF225–6874
Vulcan Asphalt Refining Co.; RF6–39
Western Screw Products, Inc.; RF225–7710, RF225–771
Westvaco Corp.; RF225–7999

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

February 18, 1987.

[FR Doc. 87–4042 File 2–25–87; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Proposed Decisions and Orders; Week of February 2 through February 6, 1987

During the week of February 2 through February 6, 1987, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objection within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: February 13, 1987.

Richard T. Tedrow,

Acting Director, Office of Hearings and Appeals.

Spreeman Oil Co., Downer's Grove, Illinois; KEE–0080, Reporting Requirements

Spreeman Oil Company filed an Application for Exception from the reporting requirements of the EIA. If granted, the firm would no longer be required to file Form EIA–782B. In considering the exception request, the DOE determined that the firm had not shown that the filing requirement imposed an inordinate burden. Accordingly, on February 3, 1987, the DOE issued a Proposed Decision and Order which tentatively determined that the exception request should be denied.

Taylor Oil Co. Inc., Blair, Nebraska; KEE–0100, Reporting Requirements

The OHA issued a Proposed Decision and Order to the Taylor Oil Co., Inc., which tentatively determined that the firm's Application for Exception from the requirement to file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report," should be denied.

Torch Oil Co., Rockford, Illinois; KEE–0079, Reporting Requirements

Torch Oil Company filed an Application for Exception from the reporting requirements of the EIA which if granted, would relieve the firm of the requirements to file Form EIA–782B. In considering the exception request, the DOE determined that the firm had not shown that the filing requirement imposed an inordinate burden. Accordingly, on February 2, 1987, the DOE issued a Proposed Decision and Order which tentatively determined that the exception request should be denied.

Webb Oil Co., Mt. Pleasant, Michigan; KEE–0085, Reporting Requirements

Webb Oil Company filed an Application for Exception from the reporting requirements of the EIA which, if granted, would relieve the firm of the requirements to file Form EIA–782B. In considering the exception request, the DOE determined that the firm had not shown that the filing requirement imposed an inordinate burden. Accordingly, on February 3, 1987, the DOE issued a Proposed Decision and Order which tentatively determined that the exception request should be denied.

[FR Doc. 87–3931 Filed 2–25–87; 8:45 am]

BILLING CODE 6450–01–M

Office of Minority Economic Impact

[DE-PI05–87MI10111]

Minority Educational Institution Assistance Program

AGENCY: Office of Minority Economic Impact, DOE.

ACTION: Notice of program interest.

GENERAL INFORMATION: The Department of Energy (DOE), Office of Minority Economic Impact, through Oak Ridge Operations, desires to encourage the submission of unsolicited proposals in support of the Department's Minority Educational Institution Assistance Program at minority educational institutions. Such support is authorized by 42 U.S.C. 7141(d) and 7256(a); Pub. L. 95–619, Part 3, section 2.11(d), which states that the Director of the Office of Minority Economic Impact may provide technical assistance to minority educational institutions. It is intended in particular to obtain proposals from qualified educational institutions, or from teams of organizations including minority educational institutions. For purposes of this notice, a qualified minority educational institution is a school of higher learning (such as a college or university) that is a non-profit entity with more than 50 percent total minority enrollment. This notice describes the principal scope of the activity and provides some guidance on submitting proposals.

Nature of proposals sought: With this notice, it is DOE's intent to encourage the submission of proposals for minority educational institution assistance that would address the following program objectives:

1. Initiate collaborative research and development clustering at minority institutions.
2. Develop energy-related science and technology research centers at minority educational institutions.
3. Identify and institute arrangements between minority institutions that expand the private sector support provided to these institutions.
4. Develop linkages between minority community, technical, and junior colleges and minority four-year institutions to increase the pool of minorities engaged in science and technology.
5. Support the development of joint activities between minority educational institutions and the private sector.

Eligibility

Institution. To be eligible to participate in this program, an institution must have more than 50

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percent minority enrollment, and award a masters degree or doctoral degree in the physical sciences or engineering. This program is open only to institutions within the United States and its territories. Institutions having more than one eligible component may choose whether to apply on behalf of the institution as a whole or to submit freestanding applications on behalf of one or more components. Individual components of a university, university system, or other institution are separately eligible.

Principal Investigator. The Principal Investigator should be the President/Chancellor of the applicant institution or another high-ranking official designated as the surrogate for the purpose of this award. The Principal Investigator is the representative and spokesperson for the institution in matters concerning the award. The Principal Investigator should be available for consultation with the DOE Program Manager and assist in resolving issues or problems encountered by the DOE Program Manager during the tenure of the project.

Award size and duration: The FY 1987 budget for this program is $1,200,000. It is estimated that these funds will support awards in each of the following categories:

1. Infrastructure Support—Awards in this area are to improve the competitiveness of minority educational institutions in energy related research by strengthening the administrative support provided to principal researchers at these institutions.

2. Private Sector Interrelationships—Awards in this area will support activities to strengthen linkage between minority educational institutions and the private sector and facilitate support and cooperation between these entities.

It is estimated that up to two new awards over a 24-month period will be made under the Infrastructure Support category and up to five awards over an 18-month period will be made in the Private Sector category. Also, supplemental funds may be provided to previous grant recipients under this program if proposal justifies such action. However, these are estimates and do not bind the U.S. Department of Energy to a specific number of awards. Renewal of the awards may be negotiated not to exceed 24 months subject to availability of funds.

Evaluation process and selection criteria: Proposals may be subjected to external review following preliminary screening based on the criteria listed below. Projects will be selected for funding based on their quality as determined by DOE staff evaluation on the merit of the proposal using the following general criteria as required by the Department of Energy Financial Assistance Regulations, 10 CFR Part 600, and the specific evaluation criteria outlined in the "Guide for the Preparation of Proposals for Infrastructure Support and Private Sector Interrelationships."

- The potential contribution which the proposed effort is expected to make to the program's objectives, if pursued at this time.
- Evidence of overall merit.
- Unique capabilities, related experience, facilities, techniques of the university staff, or combinations of these, as integral factors for achieving the scientific, technical, or socioeconomic objectives of the proposal.
- Use of unique, innovative, or meritorious methods, approaches, or ideas.
- Qualifications, capabilities, and experience of the proposed principal university investigator and key personnel who are considered to be critical in achieving proposal objectives.

More specific evaluation criteria and their relative importance will be available in the "Guide for the Preparation of Proposals for the Infracture Support and Private Sector Interrelationships."

Proposal preparation guidelines: Unsolicited proposals submitted in response to this notice shall contain the information required in the "Guide for the Preparation of Proposals for the Infrastructure Support and Private Sector Interrelationships," Notice of Program Interest Number DE–PI05–87MI10111. Copies of the guide are expected to be ready for mailing by March 2, 1987. Qualified applicants may obtain a copy of the guide by writing to the U.S. Department of Energy, Oak Ridge Operations, Procurement and Contracts Division, ATTN: Marlena Clark, 200 Administration Road, P.O. Box E, Oak Ridge, TN 37831; Telephone Number (615) 576–7599. DOE assumes no responsibility for any costs associated with proposal preparation under this announcement.

Closing date for submission of proposals: To be eligible, proposals must be received by the Department of Energy at the Oak Ridge, Tennessee, address in the preceding section by 4:30 p.m., April 24, 1987.

For further information: All questions concerning this Notice of Program Interest should be directed to Ms. Marlena Clark, Contract Specialist, Oak Ridge Operations Office, U.S. Department of Energy, Procurement and Contracts Division, P.O. Box E, Oak Ridge, TN 37831; Telephone (615) 576–7599.

Dated: February 9, 1987.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations.

[FR Doc. 87–4039 Filed 2–25–87; 8:45 am]

BILLING CODE 6450–01–M

Southwestern Power Administration

1987 Final Allocation of Additional Power (7.5 MW)

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of 1987 Final Allocation of Additional Power (7.5 MW).

SUMMARY: The Southwestern Power Administration (SWPA), Department of Energy, markets Federal hydroelectric power and energy from projects constructed and operated by the Corps of Engineers and located in the States of Arkansas, Missouri, Oklahoma and Texas, under the provisions of Section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), as amended. In 1980, SWPA adopted final power allocations which allocated then-existing and then-anticipated Federal hydroelectric power (capacity) to preference customers in SWPA's marketing area which includes the above-mentioned states, plus Kansas and Louisiana. The 1980 Final Power Allocations (1980–1988) (FPA) were published March 24, 1980 (45 FR 19032).

A Notice of Intent to Allocate Additional Power was published in the Federal Register January 28, 1986 (51 FR 3505). The Notice announced SWPA's intent to allocate an additional 7.5 MW of power (capacity) which has become available subsequent to the 1980 FPA. The allocation was to be made in accordance with the FPA; consequently, preference entities (customers) in Kansas and Louisiana would have received proportionate quantities of the additional power since no apparent changes in operating conditions had occurred in Texas subsequent to the FPA, that would allow additional allocations into the Electric Reliability Council of Texas (ERCOT) area. Customers and interested parties were invited to comment on the Notice of Intent before February 27, 1986.

Comments were received from three parties in response to the first Notice; two customers and one group of prospective customers. One customer (Cajun Electric Power Cooperative, Inc., of Baton Rouge, Louisiana) expressed

support for the allocation procedure and encouraged its implementation. The group of prospective customers, all U.S. Air Force Bases located in Kansas and Louisiana, requested the allocation of power to such bases. The other customer, Brazos Electric Power Cooperative, Inc., of Waco, Texas (Brazos), proposed a method by which Brazos and the non-interconnected part of Texas, could receive the benefits of the additional power allocation in spite of the continuing operating conditions in Texas which effectively limit the direct transfer of power to or from the ERCOT area. Brazos noted that approximately 5 percent of its load is located in the interconnected part of Texas (outside ERCOT) and arrangements can be developed such that the allocation can be delivered to the Brazos load outside ERCOT with 95% of the resulting benefits flowing to the non-interconnected area (ERCOT) by virtue of a "rolled-in" (postage stamp) rate which is the same for Brazos customers both inside and outside ERCOT.

As a result of this new information, SWPA published a request for Data and Comments Regarding the Allocation of Additional Power in the **Federal Register** May 9, 1986 (51 FR 17229). SWPA also sent copies of both **Federal Register** Notices to all customers and known interested parties. These additional data and comments were requested to enable SWPA to evaluate the feasibility of Brazos' suggestion and its applicability to any other entities operating under similar circumstances.

Data and comments were received from seven parties in response to the second Notice; six customers and one customer agency. Two cooperative customers in Kansas (Kaw Valley Electric Cooperative Company, Inc., and Nemaha-Marshall Electric Cooperative Association, Inc.) requested allocations, preferring the initially proposed procedure which would have allocated the additional power in Kansas and Louisiana, and suggested consideration in the allocation be given under special circumstances such as a commitment to peak demand conservation, rather than following the 1980 Final Power Allocation procedure which sets allocations on a prorata share basis. A cooperative customer (Kansas Electric Power Cooperative, Inc., (KEPCo)) and the municipal customer agency (Kansas Municipal Energy Agency (KMEA)) in Kansas support SWPA's ultimate decision whether it is to allocate in Kansas and Louisiana, or to allocate in Texas as deemed appropriate by SWPA. The Department of the Army suggested that any additional allocation in the State of Texas should serve to replace power generation lost as a result of water supply diversion. The remaining parties commenting were three cooperative customers in Texas (Tex-La Electric Cooperative of Texas, Inc. (Tex-La of Texas), Rayburn Country Electric Cooperative, Inc. (Rayburn Country), and Brazos Electric Power Cooperative, Inc. (Brazos)), each of which requested an allocation and provided data to support their request and show their ability to receive power in the non-ERCOT area for the benefit of consumers in the ERCOT area.

After considerable analysis and in response to the information and comments received as a result of the Federal Register Notice published May 9, 1986, SWPA published a "Proposed Allocation of Additional Power" in the **Federal Register** November 14, 1986 (51 FR 41413), and provided an additional opportunity for public comment through December 15, 1986. In this notice, SWPA concurred with the method by which a customer with loads located both inside and outside ERCOT, which can receive and utilize a power allocation to meet the non-ERCOT load and can pass the majority of the benefits of the power allocation through to ERCOT area consumers by means of a "rolled in" (postage stamp) rate to all customers. The Notice published November 14, 1986, included a proposed 7.5 MW power allocation of 5.2 MW to Brazos, 1.6 MW to Rayburn Country and 0.7 MW to Tex-La of Texas to reduce the allocation deficiency in the ERCOT area. SWPA received written comments from the three proposed allottees and Kansas Power Cooperative, Inc. (KEPCo), in response to the Federal Register Notice.

The parties commenting indicated their general agreement with the proposed power allocation with some exceptions. One comment was that customers which can pass on a significant majority (75% or more) of the benefits to ERCOT customers should be considered for an allocation and that SWPA should verify that prior to SWPA customers receiving an allocation, they should have in place a "rolled in" (postage stamp) rate which is the same for both ERCOT and non-ERCOT customers. It is SWPA's objective to provide the benefits of Federal hydropower to customers in ERCOT through postage stamp rates. The three cooperatives which will benefit from the 7.5 MW power allocation serve a majority of their customers' loads in ERCOT. If any of those three cooperatives were excluded from the 7.5 MW allocation, there would be customers served by those cooperatives in ERCOT who would be deprived of receiving the benefits of the Federal hydropower allocation. The postage stamp rate concept provides an equitable method of distributing the benefits of Federal hydropower to customers in ERCOT achieving wide spread use of a limited resource.

We also received a comment that SWPA should refuse any part of the 7.5 MW allocation to customers who intend to make load shifts that will cause significant economic benefits from the allocation to be transferred out of ERCOT, and furthermore, should in the future revoke any such allocation made when an SWPA customers ceases to pass on a significant majority of the benefits to ERCOT customers. SWPA intends for the benefits of the 7.5 MW allocation to be provided to ERCOT to mitigate that area's deficiency in Federal hydropower. We recognize that some non-ERCOT loads must exist for all the recipients to receive the allocated power by January 15, 1988, which is the date that arrangements for receipt of power must be finalized. Consequently, certain load shifts are necessary to facilitate the concept designed to provide the benefits of Federal hydropower into the ERCOT area. We also recognize that loads and financial circumstances are dynamic requiring decisions that lead to the most cost effective operations and consequently the lowest cost of power for the ERCOT customers. Since Federal hydropower is marketed on a non-profit basis, its economic benefits are apparent, and are generally highly valued to those entitled to them. As a result, it is our opinion that beneficiaries of Federal hydropower will protect their allocations by using them as they were intended, i.e. to achieve wide spread use through efficient and cost effective operations.

One customer indicated that new peak load data (1986) should be used in the allocation process or old peak load data (1985) should be adjusted to allow for new customers that were not customers in 1985, but who have contributed to 1986 peak loads. SWPA began an extensive public participation process to allocate the additional 7.5 MW of power by notice published in the **Federal Register** January 28, 1986 (51 FR 3505). SWPA published a second notice in the **Federal Register** May 9, 1986 (51 FR 17229), and received additional data and comments including 1985 peak load data from Brazos, Rayburn Country and Tex-la of Texas. We subsequently contacted those three cooperatives in September to ensure that the 1985 peak

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load data were consistent. Brazos had provided such 1985 peak load data by delivery point, and like data were obtained form Rayburn Country and Tex-la of Texas. The prposed allocation published in the **Federal Register** November 14, 1986 (51 FR 41413), was based on consistent 1985 non-interconnected (ERCOT) peak load data which required a significant amount of time to gather and analyze for consistency. We recognize that loads fluctuate as a result of many factors including elapsed time, the economy, whether, population trends, and service area expansions. These fluctuations are continuous, so a cut off point must be established in order to finalize the 7.5 MW power allocation. Further time allocated to the process of accumulating additional data would not facilitate finalization of this power allocation, be warranted by any minor potential changes that could occur in the power allocation, or enhance the objectives of reducing the deficiency of allocations in ERCOT. Consequently, we have determined the cut off point to be the 1985 peak load data originally requested and verified, which we consider to be as fair for one customer as for another.

Lastly, we received a comment that the one-year period allowed by SWPA to finalize contractual arrangements is extremely long and that no extension should be granted. We concur that the one-year period should be adequate to accomplish the contractual arrangements, and we have included additional wording in the conditions of the final 7.5 MW power allocation to enforce this time requirement.

Final Additional Power Allocation

Based on the opportunities for public participation published in the **Federal Register** January 28, 1986 (51 FR 3505), May 9, 1986 (51 FR 17229), and November 14, 1986 (51 FR 41413), and the comments received as a result of those opportunities, SWPA has determined that the proposed 7.5 MW power allocation as published November 14, 1986, will accomplish the objective of encouraging the most widespread use of power and energy marketed by SWPA, will implement the intent of the 1980 FPA to allocate power to areas receiving less than their fair share of SWPA power, and will provide a means of overcoming the restrictive operating conditions which have limited the delivery of power into the ERCOT area of Texas and, hence, limited the allocations and benefits of Federal power.

Therefore, SWPA hereby adopts the proposed allocation as final and allocates the entire 7.5 MW of additional power to the three Texas cooperatives (Brazos, Rayburn Country and Tex-La of Texas) which requested the allocation and provided information which indicates their abilities to receive and utilize such allocations in the non-ERCOT area and their use of "rolled-in" (postage stamp) rates, thus passing the majority of the financial benefits into the ERCOT area through such rates. The allocations will be made in acordance with the 1980 FPA. The distribution among those three cooperatives (Brazos, Rayburn Country and Tex-La of Texas) requesting an allocation will be made on the basis of the ratio that each customer's "fair share", after adjusting for Federal Power under contract, bears to the state's (or area's) total fair share.

This procedure is also called the deficiency allocation. Calculation of each customer's fair share is based on non-interconnected (ERCOT) 1985 peak load data. The following table entitled "Allocation of Additional Power (1987)—Texas (non-interconnected)" shows the detail of the deficiency allocation to the non-interconnected Texas system:

ALLOCATION OF ADDITIONAL POWER (1987); TEXAS (NON-INTERCONNECTED)

Amount to be Allocated: 7.5MW	
State's (Area's) Fair Share of SWPA Capacity	[3] 485 MW
Amount Capacity Under Contract	—100 MW
Deficiency	385 MW

	1985 peak load [1] (kW)	Percent of total	Fair share (MW)	Amount under contract [2] (MW)	Deficiency (MW)	Deficiency (percent)	Allocation (MW)
Cooperatives:							
Brazos	811,663	61.4	297.8	30.0	267.8	69.6	5.2
Rayburn Country	332,029	25.1	121.7	38.5	83.2	21.6	1.6
Tex-la of Texas	179,143	13.5	65.5	31.5	34.0	8.8	0.7
Total	1,322,835	100.0	[3] 485.0	100.0	385.0	100.0	7.5

[1] From 1985 non-interconnected (ERCOT) Peak Load Data provided by Customers.
[2] Breakdown of 70 MW combined sale to Rayburn Country and Tex-La of Texas from contract allocation percentages (55.5/44.5).
[3] Total State (Area) Fair share from 1980 FPA, Tables 1 and 2, (45 FR 19037) March 24, 1980.

This Final 7.5 MW Allocation of Additional Power is subject to the following conditions:

1. The power allottee will accept and agree to purchase the amount allocated, under contract terms and conditions applicable to the sale of Hydro Peaking Power by SWPA, not later than January 15, 1988, with the power sale commencing at the beginning of the month following the contract execution, but in any event not later than 12:01 a.m., February 1, 1988.

2. The power allottee will provide transmission facilities and/or contractual arrangements with others as may be necessary to receive and transmit this allocated power to its load centers, coincidental with condition 1 above.

3. If any power allottee does not agree to purchase or cannot arrange to receive its allocation so as to satisfy conditions 1 and/or 2 above, or refuses its allocation, such allocation will be redistributed in accordance with the deficiency allocation procedure used in this allocation to those allottees remaining.

4. The power allottee will not distinguish between its customers located inside or outside of the non-interconnected Texas system (ERCOT) with regard to rates or charges for the sale of wholesale power and energy and will provide written certification to this effect to SWPA on request. Failure to abide by this condition may be cause for revocation of the allocation.

FOR FURTHER INFORMATION CONTACT: Francis R. Gajan, Director, Power Marketing, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581–7529.

Issued in Tulsa, Oklahoma, this 29th day of January, 1987.

Ronald H. Wilkerson,

Administrator Southwestern Power Administration.

[FR Doc. 87–3966 Filed 2–25–87; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00236; FRL–3160–1]

State-FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1-day meeting of the State FIFRA Issues Research and Evaluation Group (SFIREG). The meeting will be open to the public.

DATE: Thursday, March 19, 1987, beginning at 10:15 a.m. and ending at 3:30 p.m.

ADDRESS: The meeting will be held at: Hyatt-Regency—Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, (703–486–1234).

FOR FURTHER INFORMATION CONTACT: By mail: Philip H. Gray, Jr., Office of Pesticide Programs (TS–766C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1115C, CM# 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–7096).

SUPPLEMENTARY INFORMATION: The tentative agenda for the meeting thus far includes the following topics:

1. Action items from the December 1986 meeting of the full Group.
2. Regional reports.
3. Working Committee reports.
4. Other topics which may have arisen during the March 16–18, 1987, meeting of the Association of American Pesticide Control Officials.

Dated: February 9, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 87–3844 Filed 2–25–87; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180720; FRL–3159–9]

Virginia Department of Agriculture and Consumers Services; Receipt of Applications for Emergency Exemptions to use Pursuit™; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

Subject: EPA has received requests for two emergency exemptions from the Virginia Department of Agriculture and Consumer Services (hereafter referred to as the "Applicant") to use the active ingredient (±)-2-[4, 5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid (Pursuit™) to control broadleaf weeds on 500 acres of lima beans and 8,000 acres of snap beans in Virginia. Pursuit™ contains an unregistered active ingredient and, therefore, in accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant these exemptions.

DATE: Comments must be received on or before March 13, 1987.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP–180720" should be submitted by mail to: Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, Crystal Mall # 2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

FOR FURTHER INFORMATION: By mail: Libby Pemberton, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue two specific exemptions to permit the use of an unregistered herbicide, (±)-2-[4, 5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl)-5-ethyl-3-pyridinecarboxylic acid (CAS 81335–77–5), manufactured as Pursuit™, by American Cyanamid Company, on lima beans and snap beans in Virginia. Information in accordance with 40 CFR Part 166 was submitted as part of these requests.

Late in 1986 all labeled uses of the herbicide dinoseb were suspended. According to the Applicant, dinoseb was used to control annual broadleaf weeds on almost all the acreages of lima beans and snap beans grown in Virginia. The Applicant states that other products that are labeled either do not control a broad spectrum of broadleaf weeds consistently or cannot be used in Virginia without causing crop injury.

The Applicant indicates that weeds in bean fields reduce yields by competing with the crop and cause additional problems. Weeds reduce harvest efficiency and result in field abandonment when weed problems are severe. Weeds interfere with insecticide applications and may result in increased insect problems or additional insecticide applications.

The Applicant indicates that without adequate control a 45% value loss of snap beans due to weeds will occur. This would amount to approximately $2.25 million. Losses in the past four years, with use of dinoseb have not exceeded 7%. Projected losses were unavailable for lima beans, but are expected to be similar.

Pursuit™ will be applied preemergence to the crop at a maximum rate of 0.047 pounds active ingredient per acre. A single application will be made sometime between March 1 and July 31, 1987 to approximately 8,000 acres of snap beans and 500 acres of lima beans.

This notice does not consitute a decision by EPA on the applications themselves. The regulations governing section 18 require publication of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for the opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before March 13, 1987, and should bear the identifying notation "OPP–180720 ." All written comments filed pursuant to this notice will be available

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for public inspection in Rm. 236, Crystal Mall No. 2, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the Virginia Department of Agriculture and Consumer Services.

Dated: February 11, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87-3845 Filed 2-25-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Third Meeting of the National Public Safety Planning Advisory Committee

The third meeting of the National Public Safety Planning Advisory Committee has been rescheduled from March 26, 1987, to March 24, 1987, and will continue on March 25, 1987, if necessary. The meeting will be held in Room 856 (the Commission Meeting Room), 1919 M Street, NW., Washington, DC, and will start at 9:30 a.m. (Original notice of the meeting was never published in the **Federal Register**).

All interested parties are invited to attend the meeting. Since this is a technical advisory committee, attendees should be prepared for technical discussions. The agenda for the third meeting will consist of:

1. Approval of the minutes of the last meeting;
2. Status reports from the Chairman and from the Task Group Facilitators;
3. Discussion of additional work for Task Groups or deletion of work from Task Groups; and
4. Discussion of appropriate date and tentative agenda for future meetings.

Any questions regarding the meeting should be directed to Mr. William R. Torak at (202) 632-7025.

Federal Communications Commission.

William Tricarico,

Secretary.

[FR Doc. 87-3850 Filed 2-25-87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

Life Savings of America, F.S.B., Rockford, IL; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Life Savings of America, F.S.B., Rockford, Illinois on February 13, 1987.

Dated: February 19, 1987.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87-3974 Filed 2-25-87; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-006200-029.

Title: U.S. Atlantic & Gulf/Australia-New Zealand Conference.

Parties:

Columbus Line Pacific American Container Express

Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations.

Agreement No.: 202-010776-014.

Title: Asia North America Eastbound Rate Agreement.

Parties:

American President Lines, Ltd.
Barber Blue Sea
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Lines
Mitsui O.S.K Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha Line
Orient Overseas Container Line, Ltd.
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment would prohibit a party who has given notice of its withdrawal from the agreement, from participating in certain agreement activities or receiving certain information.

Agreement No.: (1) 224-011068, (2) 224-011069.

Titles: (1), (2) Portland Terminal Agreement.

Parties:

(1) The Port of Portland (Port), Evergreen Marine Corp. (Taiwan) Ltd.
(2) The Port of Portland (Port), Japan Line (U.S.A.), Ltd. (Party)

Synopsis: The proposed amendments would permit the Port to provide 6 acres at its Terminal 6 to the Parties until March 30, 1990. The Port will perform all vessel stevedoring and terminal services at the premises and will share dockage and wharfage revenues with the Parties.

Dated: February 20, 1987.

By Order of the Federal Maritime Commission

Joseph C. Polking,

Secretary.

[FR Doc. 87-3990 Filed 2-25-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Meeting

The Consumer Advisory Council will meet on Thursday, March 19, and Friday, March 20. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The March 19 session is expected to begin at 1:00 p.m. and to continue until 5:00 p.m. The March 20 session is expected to begin at 9:00 a.m. and to continue until 3:00 p.m., with a lunch break from 12:00 to 1:00 p.m. The Martin Building is on C Street, Northwest, between 20th and 21st Streets in Washington, DC.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

1. *Truth in Savings.* Discussion of federal truth-in-savings legislative initiatives designed to facilitate consumer shopping for savings instruments.
2. *Credit Card Disclosures.* Discussion of federal legislative proposals that mandate additional disclosures of terms and conditions for credit card plans.
3. *Home Equity Lines of Credit:* Discussion of issues related to the increased availability and use of home equity lines as a source of credit for consumers.
4. *APR Demonstration Project.* Briefing by Board staff on the results of a demonstration project that involved publication of shoppers guides to credit in three metropolitan areas; and a report by the Council's Consumer Education Committee on its collection and analysis of shoppers guides and other consumers education material available to the public.
5. *Reduced-Rate Financing Update.* Update by a Council subcommittee which has been exploring issues related to reduced-rate financing programs that have been offered by automobile companies.
6. *Basic Banking Efforts.* Status report by several Council members concerning activities of the financial trade groups in encouraging their members to offer basic banking services to individuals at low or no cost.
7. *Committee Reports.* Reports from various Council committees on their plans for the upcoming year.
8. *Regulatory Update.* Report by Board staff on the status of recent Board actions in the areas of consumer financial services.

Others matters previously considered by the Council or initiated by Council members may also be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ms. Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments must be received no later than close of business Friday, March 13, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Ms. Bedelia Calhoun, Staff Specialist, at (202) 452-3305; Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users, may contact Earnestine Hill or Dorothea Thompson (202) 452-3544.

Board of Governors of the Federal Reserve System, February 19, 1987.

James McAfee,

Associate Secretary to the Board.

[FR Doc. 87-3916 Filed 2-25-87; 8:45 am]

BILLING CODE 6210-01-M

James F. Boyd et al.; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 11, 1987.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *James F. Boyd,* Sterling, Virginia, O.K. Makela and Ronald R. Vail, both of Leesburg, Virginia, Leslie L. Peters and Michael M. Vlahos, both of Falls Church, Virginia, and Harold O. Miller, Reston, Virginia; to acquire up to 41.1 percent of the voting shares of Community Bank and Trust Company of Virginia, Sterling, Virginia.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Michael L. Ryan,* Heartwell, Nebraska; to acquire 14.29 percent of the voting shares of First Central Nebraska Co., Broken Bow, Nebraska, and thereby indirectly acquire Nebraska State Bank, Broken Bow, Nebraska.
2. *Timothy M. Brennan,* Michael J. Morrison, Robert E. Myers, Stephen G. Sheppard, P.J. Morgan, Timothy J. McReynolds, and John J. Rickette, all of Omaha, Nebraska; Brad Merchant and James C. Hupp, both of Norfolk, Nebraska, James I. Black, Pierce, Nebraska, and Kenneth T. Nordlund, York, Nebraska; to acquire 100 percent of the voting shares of The Pierce Corporation, Pierce, Nebraska, and thereby indirectly acquire Cones State Bank, Pierce, Nebraska.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Stites Corporation,* Corsicana, Texas; to acquire 20.26 percent of the voting shares of Corsicana Bancshares, Inc. Corsicana, Texas, and thereby indirecty acquire Corsicana National Bank.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *James E. Burney,* Los Altos, California; to acquire up to 24.99 percent of the voting shares of Area Financial Corporation, Redwood City, California.
2. *Gary S. Goss,* Portola Valley, California; to acquire up to 24.99 percent of the voting shares of Area Financial Corporation, Redwood City, California.
3. *Michael R. Goland,* Beverly Hills, California; to acquire 67.2 percent of the voting shares of San Clemente Bancorp, San Clemente, California.

Board of Governors of the Federal Reserve System, February 19, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-3917 Filed 2-25-87; 8:45 am]

BILLING CODE 6210-01-M

Citizens State Bank Employee Stock Ownership Trust et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 17, 1987.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. **Citizens State Bank Employee Stock Ownership Trust,** Trenton, Tennessee; to become a bank holding company by acquiring 27.97 percent of the voting shares of Citizens State Bank, Trenton, Tennessee.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Waconia Bancorporation, Inc.,* Waconia, Minnesota; to become a bank holding company be acquiring 88.96 percent of the voting shares of Waconia State Bank, Waconia, Minnesota.

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Board of Governors of the Federal Reserve System, February 19, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-3918 Filed 2-25-87; 8:45 am]

BILLING CODE 6210-01-M

David Hill et al.; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to Federal Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than March 12, 1987.

A. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *David Hill,* Ellsworth, Iowa; to acquire 56 percent of the voting shares of Agri-Bank Corporation, Webster City, Iowa, and thereby indirectly acquire Farmers National Bank of Webster City, Webster City, Iowa.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Young Ook Kim,* Garden Grove, California; to acquire at least 76.49 percent but not more than 88.36 percent of the voting shares of New City Bancorp, Orange, California, and thereby indirectly acquire New City Bank, Orange, California.

Board of Governors of the Federal Reserve System, February 19, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-3919 Filed 2-25-87; 8:45 am]

BILLING CODE 6210-01-M

Republicbank Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 19, 1987.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *RepublicBank Corporation,* Dallas, Texas; to acquire the successor by merger of InterFirst Corporation, Dallas Texas, and thereby indirectly acquire InterFirst Bank Delaware, New Castle, Delaware; InterFirst Bank Abilene, N.A., Abilene, Texas; InterFirst Bank South Abilene, Abilene, Texas; InterFirst Bank Addison, Addison, Texas; InterFirst Bank Alamo Heights, N.A. Alamo Heights, Texas; InterFirst Bank SW Arlington, N.A. Arlington, Texas; InterFirst Bank, Arlington, N.A., Arlington, Texas; Interfirst Bank Northwest, N.A., Austin, Texas; InterFirst Bank Westlake, N.A., Austin, Texas; InterFirst Bank Austin, N.A., Austin, Texas; InterFirst Bank North Austin, N.A., Austin, Texas; InterFirst Bank Baytown, Baytown, Texas; InterFirst Bank, Beaumont, Beaumont, Texas; Interfirst Bank SW-Houston, N.A., Bellaire, Texas; InterFirst Bank Brownwood, Brownwood, Texas; InterFirst Bank Carrollton, Carrollton, Texas; InterFirst Bank Cleburne, N.A., Cleburne, Texas; InterFirst Bank Clifton, Clifton, Texas; InterFirst Bank Conroe, N.A., Conroe, Texas; InterFirst Bank Corsicana, N.A., Corsicana, Texas; InterFirst Bank Oak Cliff, Dallas, Texas; InterFirst Bank Dallas, N.A., Dallas, Texas; InterFirst Bank Pleasant Grove, Dallas, Texas; InterFirst Bank Galleria, N.A., Dallas, Texas; InterFirst Bank Park Cities, Dallas, Texas; InterFirst Bank Denison, N.A., Denison, Texas; InterFirst Bank El Paso, N.A., El Paso, Texas; InterFirst Bank Chelmont, N.A., El Paso, Texas; InterFirst Bank Ennis, N.A., Ennis, Texas; InterFirst Bank Forney, Forney, Texas; InterFirst Bank Fort Worth, N.A. Fort Worth, Texas; InterFirst Bank Gateway, N.A., Fort Worth, Texas; InterFirst Bank River Oaks, Fort Worth, Texas; InterFirst Bank South Fort Worth, Fort Worth, Texas; InterFirst Bank University, Fort Worth, Fort Worth, Texas; InterFirst Bank Galveston, N.A., Galveston, Texas; InterFirst Bank Greenville, N.A., Greenville, Texas; Interfirst Bank Harlingen, N.A., Harlingen, Texas; InterFirst Bank Hillsboro, Hillsboro, Texas; InterFirst Bank Fannin, Houston, Texas; InterFirst Bank Post Oak, Houston, Texas; InterFirst Bank East Houston, Houston, Texas; InterFirst Bank Greenspoint, Houston, Texas; InterFirst Bank Houston, N.A., Houston, Texas; InterFirst Bank San Felipe, N.A., Houston, Texas; Interfirst Bank Hutchins, Hutchins, Texas; InterFirst Bank D/FW Freeport, N.A., D/FW Freeport, Texas; InterFirst Bank Las Colinas, Irving, Texas; InterFirst Bank Irving, Irving, Texas; InterFirst Bank Malakoff, Malakoff, Texas; InterFirst Bank Mount Pleasant, N.A., Mount Pleasant, Texas; InterFirst Bank Nassau Bay, N.A., Houston, Texas; InterFirst Bank Nederland, Nederland, Texas; InterFirst Bank Richland, N.A., Richland Hills, Texas; InterFirst Bank Oak Hill, N.A., Oak Hill, Texas; InterFirst Bank Odessa, N.A., Odessa, Texas; InterFirst Bank Paris, Paris, Texas; InterFirst Bank Pasadena, Pasadena, Texas; InterFirst Bank San Antonio, N.A., San Antonio, Texas; InterFirst Bank Stephenville, N.A., Stephenville, Texas; InterFirst Bank SW Temple, N.A., Temple, Texas; InterFirst Bank Temple, N.A., Temple, Texas; InterFirst Bank Tomball, Tomball, Texas; InterFirst Bank Tyler, N.A., Tyler, Texas; InterFirst Bank Victoria, Victoria, Texas; InterFirst Bank Waco, N.A., Waco, Texas; and InterFirst Bank Wichita Falls, N.A., Wichita Falls, Texas.

In connection with this application, RB-IF Merger Company, Dallas, Texas, has applied to become a bank holding company by merging with InterFirst Corporation, Dallas, Texas.

RepublicBank has also applied to acquire InterFirst Funding Corporation, InterFirst Mortgage Company, InterFirst Financial Corporation, and InterFirst Leading Corporation, all of Dallas, Texas, and thereby engage in commercial, consumer, and mortgage lending activities pursuant to § 225.25(b)(1) of the Board's Regulation Y; InterFirst Investment Management, Inc., Dallas, Texas, and thereby engage in investment advisory services pursuant to § 225.25(b)(4) of the Board's Regulation Y; InterFirst Services Corporation, and InterFirst Services Corporation in Houston, both of Dallas, Texas, and thereby engage in data processing pursuant to § 225.25(b)(7) of the Board's Regulation Y; InterFirst Insurance Company, InterFirst Life Insurance Company, InterFirst Finance Company, all of Dallas, Texas, and thereby engage in insurance agency and underwriting activities related to extensions of credit made by the banks and the bank holding company pursuant to § 225.25(b)(8) of the Board's Regulation Y; and InterFirst Securities Company, Dallas, Texas, and thereby engage in discount brokerage activities pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 19, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-3920 Filed 2-25-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental Research; Dental Research Programs Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Dental Research Programs Advisory Committee, National Institute of Dental Research, April 16-17, 1987, in Building 31, Conference Room 7, National Institutes of Health, Bethesda, Maryland, from 9 a.m. to recess on April 16 and from 9 a.m. to adjournment on April 17, 1987.

The entire meeting will be open to the public to discuss research progress and ongoing plans and programs. Attendance by the public will be limited to space available.

Dr. Marie Nylen, Director for Extramural Programs, NIDR, NIH, Westwood Building, Room 503, Bethesda, MD 20892 (telephone 301/496-7723) will provide a summary of the meeting, roster of committee members and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.121-Diseases of the Teeth and Supporting Tissues: Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122-Disorders of Structure, Function, and Behavior, Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13-845-Dental Research Institutes, National Institutes of Health)

Dated: February 13, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-3949 Filed 2-25-87; 8:45 am]

BILLING CODE 4140-01-M

Biomedical Research Support Subcommittee of the General Research Support Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Biomedical Research Support Subcommittee of the General Research Support Review Committee, Division of Research Resources, National Institutes of Health, March 30, 1987, Building 31C, Conference Room 8, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on March 30, from 9 a.m. to adjournment to discuss program policies, the Minority High School Student Research Apprentice Program, planning for the Biomedical Research Support Grant Program, and the Biomedical Research Support Shared Instrumentation Grant Program. Attendance by the public will be limited to space available.

Mr. James Augustine, Information Officer, Division of Research Resources, Room 5B10, Building 31, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of the meeting and a roster of the Subcommittee members upon request.

Dr. John A. Beisler, Executive Secretary, Biomedical Research Support Subcommittee of the General Research Support Review Committee, (301) 496-6743), will furnish substantive program information upon request, and will receive any comments pretaining to this announcement.

(Catalogue of Federal Domestic Assistance Program No. 13.337, Biomedical Research Support, National Institutes of Health)

Dated: February 13, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-3950 Filed 2-25-87; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Wyoming; Casper District Office; Casper District Grazing Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Casper District Grazing Board meeting.

SUMMARY: The Casper District Grazing Board will meet on Thursday April 2, 1987 in the conference room of the Casper District Office, 951 North Poplar, Casper, Wyoming. The meeting will begin at 10:00 am MST.

The meeting agenda will include rangeland monitoring, discussions on range projects, weed control, management plans and comments from the public. Other topics may be considered as suggested by board members or the public.

Meetings are open to the public. Persons who desire to address the board are asked to contact Runore Wycoff at (307) 261-5101 in advance of the meeting.

Dated: February 17, 1987.

James W. Monroe,

District Manager.

[FR Doc. 87-3965 Filed 2-25-87; 8:45 am]

BILLING CODE 4310-22-M

[CA-940-07-4212-13; CA 17640]

California; Exchange of Public and Private Lands in San Diego and San Bernardino Counties and Order Providing for Opening of Public Lands; Correction

The notice of issuance of land exchange conveyance document and order providing for opening of public lands published in the **Federal Register** for Wednesday, January 21, 1987, Vo. 52, No. 13, pages 2299 and 2300, is hereby corrected as follows:

On page 2299, second column, fifth paragraph, the following described lands are hereby added to the list of public lands described in the conveyance document to the Southern Pacific Land Company:

San Bernardino Meridian, California

T. 12 S., R. 1 W.,
Sec. 4, S1/2SW1/4;

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T. 13 S., R. 1 E.,
Sec. 1, NE1/4SE1/4 and S1/2SE1/4;
Sec. 12, NE1/4;
T. 13 S., R. 2 E.,
Sec. 7, Lots 1 and 2;
and in the sixth paragraph, change the acreage to 560.69.

On page 2300, first column, second paragraph, third line, remove the words "and Two."

On page 2300, first column, third paragraph, third line, after "Parcel One," insert the words "except those lands described under Parcel Two,".

Dated: February 17, 1987.

Sharon N. Janis,

Chief, Branch of Adjudication and Records.

[FR Doc. 87-3964 Filed 2-25-87; 8:45 am]

BILLING CODE 4340-40-M

[OR-930-07-4212-12; GP7-114; OR 39641]

Realty Action; Exchange of Public Lands in Deschutes, Harney, Lake, and Malheur County, OR; Correction

Summary: This notice corrects a legal description previously published in the **Federal Register,** January 28, 1987. On page 2771 under Lakeview District, Lake County, T. 28 S., R. 23 E., the entry for Sec. 2: Lots 1, 2, 3, 4, S½N½, N½S½, SE¼NW¼, S½SE¼ should read Sec. 2: Lots 1, 2, 3, 4, S½N½, N½S½, SE¼SW¼, S½SE¼.

Dated: February 13, 1987.

Jerry E. Asher,

Lakeview District Manager.

[FR Doc. 87-3963 Filed 2-25-87; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-712134

Applicant: Ginger Rickards, Mickleton, NJ

The applicant requests a permit to purchase one pair of nene geese (*Nesochen* (=*Branta*) *sandvicensis*) from Charles Nugent, Kimbolton, OH in interstate commerce for the purpose of propagation.

PRT-715347

Applicant: Great Ape Protection Project, Fillmore, CA

The applicant requests a permit to harass one captive born male orangutan (*Pongo pygmaeus*) in captivity for the purposes of language and behavioral studies. The organgutan is to be purchased from the Cheyenne Zoo, Colorado Springs, Colorado.

PRT-715094

Applicant: Tallahassee Junior Museum, Tallahassee, FL

The applicant requests a permit to obtain two red wolves (*Canis rufus*) from the Red Wolf Recovery Team in Tacoma, Washington for the purpose of education and exhibit. The applicant agrees to cooperate with the Red Wolf Recovery Program and the disposition of any offspring will be handled in accordance with the Red Wolf Recovery Program.

PRT-715479

Applicant: Donald R. Steurer, Evansville, IN

The applicant requests a permit to purchase in interstate commerce one male and one female Hawaiian (=nene) goose (*Nesochen* (=*Branta*) *sandvicensis*) from Marc K. McKay, 550 East Jackson Street, Ridgeland, Mississippi for the purpose of captive breeding.

PRT-711457

Applicant: Wood Family Shows, Sarasota, FL

The applicant requests a permit to export and reimport one male and two female captive born Bengal tigers (*Panthera tigris*) for the purpose of conservation education and maintain such tigers in captivity at applicant's facilities.

Applicant: Patuxtent Wildlife Research Center PRT-678870 Laurel, MD

The applicant requests an amendment to their existing permit to conduct the following activities:

(1) Sacrifice of four captive born Andean condors (*Vultur gryphus*) for a study of the susceptibility and physiological effects of lead ingestion on cathartids;

(2) Attach radio transmitters to Hawaii creepers (*Oreomystis* (=*Loxops*) *mana*), palila (*Loxioides* (=*Psittirostra*) *bailleui*), and Hawaii akepas (*Loxops coccineus coccineus*) to determine movements of the birds in prime and low density areas and recapture of such birds:

(3) Hold Hawaii creepers and palilas in captivity for periods exceeding 24 hours for testing of radio transmitter attachments prior to use in field; and

(4) Use of emetics on Hawaii creepers, palilas, Hawaii akepas, and akiapolaaus (*Hemignathus wilsoni*) for analysis of food habits.

PRT-715472

Applicant: Dr. John C. Avise, University of Georgia, Athens, GA

The applicant requests a permit to import eggs, hatchlings and incidental mortalities of the following sea turtle species to obtain mitochondrial DNA for genetic studies: green sea turtle (*Chelonia mydas*), Pacific green sea turtle (*C. m. agassiszi*), hawksbill turtle (*Eretmochelys imbricata*), Kemp's ridley (*Lepidochelys kempi*), olive ridley (*L. olivacea*) and leatherback turtle (*Dermochelys coriacea*). Researchers will collect specimens from nesting beaches throughout the turtles' ranges.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: February 20, 1987.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87-3933 Filed 2-25-87; 8:45am]

BILLING CODE 4310-55-M

National Park Service

Golden Gate National Recreation Area; Public Hearing

Section 460bb-2(i) of the legislation establishing the Golden Gate National Recreation Area ("GGNRA"), 16 U.S.C. 460bb-2(i), prescribes limitations on new construction or development at the Presidio of San Francisco, which is located entirely within the boundaries of the GGNRA. The legislation also requires that a public hearing conducted by the Secretary of the Interior or his designated representative be held in connection with any proposed new construction or development.

Accordingly, notice is hereby given that a public hearing will be conducted by the Superintendent of the GGNRA on Thursday, March 26, 1987, in order to present to the public and solicit its views on: A new branch exchange facility; enlisted barracks without dining, operations and supply; and enlisted barracks with dining, operations, supply, and parking, all at the Presidio of San Francisco. The hearing will commence at 7:30 p.m. (PST) at Building 201, Fort Mason, San Francisco, California.

The new branch exchange will be a small (4,916 square foot) convenience store operated by the Army and Air Force Exchange Service (AAFES). This store is planned to be opened longer hours than the post exchange at the Presidio and will provide active and retired military and family members a store to purchase certain necessities locally. The overall height of the structure is expected to be approximately 18 feet. The site for this project will be east of the intersection of Gorgas Avenue and Marshall Street, adjacent to the Richardson Avenue bridge. This project will replace a portion of the old Four Seasons store which is presently used for this activity and which will be demolished to clear the site for a new commissary. Three temporary buildings will be demolished to clear the construction site.

The enlisted barracks without dining facilities will be safe, modern barracks for 167 single, enlisted officers assigned to Letterman Army Hospital Medical Center and Letterman Army Institute of Research. Total square footage of this project is 62,540. The two buildings of this project are each three stories and 47 feet tall. Parking will be located between the buildings and the Doyle Drive elevation. The site selected for this project is currently vacant. It is located midway between Lincoln Blvd. and Gorgas Avenue, 100 yards east of Halleck Street. This project replaces old barracks which do not meet current seismic codes or standards for safety, security, and privacy. The present historic barracks will not be demolished but will be converted to administrative uses for the Presidio command activities.

The enlisted barracks with dining will be a project for single, enlisted soldiers assigned to the Presidio (Garrison Units). This project also includes space for operations and supply activities associated with these units. Plans call for ten three-story barrack modules of 8,584 square feet each, one 8,617 square foot separate one-story dining facility, and one 9,604 square foot one-story operations and supply area. The total square footage of the complex is 104,065. The barracks will house 313 soldiers; the dining facility will serve 400. This project will be built north of Lincoln Blvd. in the vicinity of the Thompson Hall Guest House, which will be demolished. Girard Road will be abandoned and used as part of the construction site. All proposed structures and a small parking lot will be located on the north side of Lincoln Blvd. The majority of the parking for the project will be located south of Lincoln Blvd. This project is a replacement for old barracks which do not meet current seismic codes or standards for safety, security and privacy. The present barracks will not be demolished since they are historic. They will be converted to administrative and Army Reserve facilities after they are seismically upgraded and safety standards are met for their converted use. Former enlisted barracks and other related structures which had occupied the area east of the old Crissy Field runway have been demolished. These demolished buildings comprise a total of 104,747 square feet.

A fact sheet and environmental documents on the branch exchange facility, enlisted barracks without dining facility, and the enlisted barracks with dining facilities are available by request from the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, CA 94123, telephone (415) 556-4484.

Interested individuals, representatives of organizations, and public officials are invited to express their views in person at the aforementioned public hearing. Those not wishing to appear in person may submit written statements to the General Superintendent of the Golden Gate National Area on this construction project. Statements will be accepted until April 9, 1987.

This meeting will be recorded for documentation and transcribed for dissemination.

Dated: February 18, 1987.

W. Lowell White,

Acting Regional Director, Western Region.

[FR Doc. 87-3971 Filed 2-25-87; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-242]

Certain Dynamic Random Access Memories, Components Thereof and Products Containing Same; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Mitsubishi Electric Corporation and Mitsubishi Electronics America, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on February 17, 1987.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Written comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

Issued: February 17, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-3981 Filed 2-25-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-242]

Certain Dynamic Random Access Memories Components Thereof, and Products Containing Same; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

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ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: OKI Electric Industry Company, Ltd.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on February 17, 1987.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

Issued: February 17, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–3982 Filed 2–25–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–253]

Certain Electrically Resistive Monocomponent Toner; Commission Decision To Review and Reverse in Part and Affirm in Part an Initial Determination Granting the Federal Trade Commission Leave To Intervene as a Party

AGENCY: International Trade Commission.

ACTION: Review and partial affirmance and partial reversal of an initial determination (ID) granting the Federal Trade Commission (FTC) leave to intervene as a party.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and to affirm in part and to reverse in part the ID (Order No. 9) in the above-captioned investigation granting the FTC leave to intervene as a party in the investigation.

FOR FURTHER INFORMATION CONTACT: Edwin J. Madaj, Jr. Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0148.

SUPPLEMENTARY INFORMATION: On December 22, 1986, the FTC filed a request (designated Motion No. 253–6) to intervene and become a party in this investigation. The motion stated that the FTC wished to intervene because the complaint was based primarily on antitrust allegations and the FTC, as an agency enforcing the antitrust laws, had a strong interest in seeing that these laws are interpreted consistently. The FTC stated that it had no interest in the specific factual details of the investigation and thus had no wish to conduct discovery in the case.

The Commission investigative attorney (IA) filed a response to the FTC request to intervene on December 30, 1986, stating that he had no objection to the FTC's intervention in the investigation, provided that the FTC was not permitted access to confidential information under protective order and provided that the FTC was not permitted to take discovery.

Complainant Aunyx Corporation (Aunyx) opposed the request to intervene, stating that the Commission was competent to determine whether the activity complained of violated section 337, and that the FTC's intervention was unnecessary. Aunyx also contended that if the presiding administrative law judge (ALJ) allowed the intervention by the FTC, the FTC should not be allowed access to confidential business information under protective order because such access would have a chilling effect on the litigants, potential third parties, and future litigants.

Respondents Canon, Inc. and Canon U.S.A., Inc. filed a reply to the FTC request to intervene on January 5, 1987, stating that they did not object to the FTC's intervention, and proposing that the ALJ permit limited access to confidential data under an appropriate protective order.

The FTC, pursuant to leave granted by the ALJ, responded to the responses of Aunyx and the IA on January 9, 1987. The FTC asserted that the case involved a number of antitrust issues. Moreover, the FTC stated that it did not at that time seek access to confidential information under protective order, but essentially urged the ALJ to leave the question open.

On January 12, 1987, the ALJ issued an ID granting the FTC's request to intervene and become a party provided that the FTC (a) agreed to abide by the terms of a protective order (attached to the ID) in the event it seeks access to confidential materials and (b) did not conduct discovery in the investigation.

Both complainant Aunyx and the IA filed petitions for review on January 21, 1987. Aunyx's petition for review argued that the ID constituted an abuse of discretion and affected Commission policy. Aunyx argued that the Commission is capable of adjudicating the investigation, with the assistance of the FTC's comments pursuant to section 337(b)(2) of the Tariff Act of 1930 (19 U.S.C. 1337(b)(2)), without the necessity of permitting the FTC's intervention as a party, with all the additional burden on the existing parties such intervention would entail. Moreover, Aunyx argued that granting the FTC access to confidential information under the protective order would have a chilling effect on third-party discovery in the investigation. The IA argued in his petition for review that the portion of the ID granting the FTC leave to obtain access to confidential information under the protective order should be reversed as contrary to Commission policy and as having a chilling effect on voluntary compliance with discovery requests by third parties. On January 27, 1987, the Canon respondents filed a response to the petitions for review stating that the ID set suitable terms for intervention by the FTC and that respondents opposed the petitions for review. On January 28, 1987, the FTC filed a response to Aunyx's petition for review, arguing that

intervention was appropriate under the Commission's rules given the antitrust-based nature of the investigation, and denying that granting the FTC access to confidential information under protective order would have a chilling effect on discovery.

The Commission determined to review the ID as a determination affecting Commission policy. The Commission also determined to reverse that portion of the ID that grants the FTC access to confidential information under protective order and to affirm that portion of the TD that allows the FTC to intervene on the condition that the FTC not engage in any discovery. The FTC's intervention is limited to the issue of the consistent application of the antitrust laws and the FTC's participation in this investigation is analogous to that of an amicus curiae.

The basis for the Commission's reversal of the part of the ID that grants the FTC access to confidential information under protective order is that, as a matter of Commission policy, granting the FTC access to confidential information, even under protective order, would hinder the Commission's investigations under section 337 of the Tariff Act of 1930 by having a chilling effect on voluntary compliance with discovery requests.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rules §§ 210.53 through 210.56. (19 CFR 210.53 through 210.56).

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: February 18, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–3983 Filed 2–25–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 701–TA–270 (Final) and 731–TA–313, 314, 316, and 317 (Final)]

Certain Brass Sheet and Strip From France, Italy, Sweden, and West Germany

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)), that an industry in the United States is materially injured by reason of imports from France (investigation No. 701–TA–270 (Final)) of certain brass sheet and strip,[3] provided for in item 612.39 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be subsidized by the Government of France.

Further, the Commission determines,[4] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673(b)), that an industry in the United States is materially injured by reason of imports from France (investigation No. 731–TA–313 (Final)), Italy (investigation No. 731–TA–314 (Final)), Sweden (investigation No. 731–TA–316 (Final)), and West Germany (investigation No. 731–TA–317 (Final)) of certain brass sheet and strip,[5] provided for in item 612.39 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673).

Background

The Commission instituted investigation No. 701–TA–270 (Final) effective June 9, 1986, following a preliminary determination by the Department of Commerce that imports of certain brass sheet and strip from France were being subsidized within the meaning of section 701 of the Act (19 U.S.C. 1671). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 2, 1986 (51 FR 24237).

The Commission instituted investigations Nos. 731–TA–313, 314, 316, and 317 (Final) effective August 22, 1986, following preliminary determinations by the Department of Commerce that imports of certain brass sheet and strip from France, Italy, Sweden, and West Germany were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commision, Washington, DC, and by publishing the notice in the **Federal Register** of September 10, 1986 (51 FR 32255).

The hearing on the investigations was held in Washington, DC, on December 1, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on February 19, 1987. The views of the Commission are contained in USITC Publication 1951 (February 1987), entitled "Certain Brass Sheet and Strip from France, Italy, Sweden, and West Germany: Determinations of the Commission in Investigation No. 701–TA–270 (Final) and Investigations Nos. 731–TA–313,

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairman Liebeler and Vice Chairman Brunsdale determine that an industry in the United States is not materially injured or threatened with material injury, and that the establishment of an industry in the United States is not materially retarded, by reason of imports from France that are being subsidized.

[3] For purposes of these investigations, the term "certain brass sheet and strip" refers to brass sheet and strip, other than leaded brass and tin brass sheet and strip, of solid rectangular cross section, over 0.006 inch but not over 0.188 inch in thickness, in coils or cut to length, whether or not corrugated or crimped, but not cut, pressed, or stamped to nonrectangular shape, provided for in items 612.3960, 612.3982, and 612.3986 of the *Tariff Schedules of the United States Annotated* (TSUSA). The chemical compositions of the products under investigation are currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical compositions are defined by other C.D.A. or U.N.S. series are not covered by these investigations.

[4] Chairman Liebeler and Vice Chairman Brunsdale determine that an industry in the United States is not materially injured or threatened with material injury, and that the establishment of an industry in the United States is not materially retarded, by reason of imports from France, Italy, Sweden, or West Germany that are being sold at less than fair value.

[5] For purposes of these investigations, the term "certain brass sheet and strip" refers to brass sheet and strip, other than leaded brass and tin brass sheet and strip, of solid rectangular cross section, over 0.006 inch but not over 0.188 inch in thickness, in coils or cut to length, whether or not corrugated or crimped, but not cut, pressed, or stamped to nonrectangular shape, provided for in items 612.3960, 612.3982, and 612.3986 of the *Tariff Schedules of the United States Annotated* (TSUSA). The chemical compositions of the products under investigation are currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical compositions are defined by other C.D.A. or U.N.S. series are not covered by these investigations.

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314, 316, and 317 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: February 19, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-4004 Filed 2-24-87; 10:55 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-255]

Certain Garment Hangers; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: Hangers Unlimited, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on February 17, 1987.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

Issued: February 17, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-3984 Filed 2-25-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-243]

Certain Luggage Products; Commission Decision to Review Portions of Initial Determination

AGENCY: International Trade Commission.

ACTION: The U.S. International Trade Commission has determined to review portions of an initial determination (ID) finding no violation of section 337 in the above-captioned investigation. The portions of the ID that will be reviewed are the presiding administrative law judge's (ALJ's) determinations regarding secondary meaning, the definition of the domestic industry, and the effect or tendency to substantially injure the domestic industry. The parties to the investigation and interested Government agencies are requested to file written submissions addressing the issue of secondary meaning and the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Randi S. Field, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0261.

SUMMARY: On December 29, 1986, the ALJ issued an ID finding that there is no violation of section 337 in the importation and sale of certain luggage products. Complainant Lenox, Incorporated, on behalf of its division Hartmann Luggage Company, filed a petition for review of the ID insofar as the ALJ determined that comnplainant had not established common law trademarks in the overall appearances of its products at issue because the marks were not inherently distinctive and had not acquired secondary meaning. Respondent Star Leather Products, Ltd., and the Commission investigative attorney filed repsonses to the petition. No agency comments were received.

Having examined the record in this investigation including the ID, the petition for review, and the responses thereto, the Commission has determined to review portions of the ID. Specifically, the Commission has decided to review the issue of secondary meaning and is especially interested in the weight and effect that should be given to Finding of Fact (FF) 311 of the ID and the testimony underlying FF 311. Because the Commission's review of the issue of secondary meaning may affect the ultimate disposition of the issues of industry and injury, the Commission is reviewing those issues as well, but only to the extent that such review may be required by its review of the issue of secondary meaning.

No other issues will be reviewed.

SUPPLEMENTARY INFORMATION: If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders which could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions which address the form of relief, if any, which should be ordered.

If the Commission concludes that a violation of section 337 has occurred and contemplates that some form of relief is appropriate, it must consider the effect of that relief upon the public health and welfare, competitive conditions in the U.S. economy, the U.S. production of articles which are like or directly competitive with those that are subject to investigation, and U.S. consumers. The Commission is therefore interested in receiving written submissions concerning the effect, if any, that granting relief would have on the enumerated public interest factors.

If the Commission finds that a violation of section 337 has occurred and orders relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond which should be imposed.

Written Submissions

The parties to the investigation and interested Government agencies are requested to file written submissions on the issue of secondary meaning and on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Written submissions on the issue under review and on the issues of remedy, the public interest, and bonding must be filed no later than the close of business on February 23, 1987. Reply submissions on all issues must be filed not later than the close of business on March 2, 1987. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding. Such submissions must be filed not later than the close of business on February 23, 1987. No further submissions will be permitted

Commission Hearing

The Commission does not plan to hold a public hearing in connection with final disposition of this investigation.

Additional Information

Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by the ALJ. All such requests should be directed to the Secretary of the Commission and must include a statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential submissions will be available for public inspection at the Secretary's office.

Authority. This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.54-210.56 of the Commission's Rules of Practice and Procedure (19 CFR 210.54-210.56).

Notice of this investigation was published in the **Federal Register** on March 27, 1986 (51 FR 10580).

Copies of the nonconfidential version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary; U.S. International Trade Commission, 701 E Street NW., Washington; DC 20436, telephone 202-523-0161. Hearing-imprinted individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: February 13, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-3985 Filed 2-25-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-341, 342, 344, 345, and 346 (Final)]

Tapered Roller Bearings and Parts Thereof, and Certain Housings, Incorporating Tapered Rollers from Hungary, Italy, The People's Republic of China, Romania, and Yugoslavia

AGENCY: International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-341, 342, 344, 345, and 346 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Hungary (inv. No. 731-TA-341), Italy (inv. No. 731-TA-342), The People's Republic of China (inv. No. 731-TA-344), Romania (inv. No. 731-TA-345), and Yugoslavia (inv. No. 731-TA-346) of tapered roller bearings and parts therefor provided for in Tariff Schedules of the United States (TSUS) items 680.30 and 680.39; flange, take-up, cartridge, and hanger units incorporating tapered roller bearings, provided for in TSUS item 681.10; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use, provided for in item 692.32 or elsewhere in the TSUS, which have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV). Unless there investigations are extended, Commerce will make its final LTFV determinations on or before April 18, 1987, and the Commission will make its final injury determinations by June 5, 1987 (see sections 735(a) and 735(b) of the Act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: February 6, 1987.

FOR FURTHER INFORMATION CONTACT: Maria Papadakis (202-523-0439), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commissions's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of tapered roller bearings and parts thereof, and certain housings incorporating tapered rollers from Hungary, Italy, the People's Republic of China, Romania, and Yugoslavia are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigations were requested in a petition filed on August 25, 1986, by the Timken Company, Canton, OH. In response to that petition the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (51 FR 36874).[1]

Participation in the investigations.

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in

[1] The petition and the Commission's preliminary affirmative determinations also covered imports of the subject products from Japan. However, the Department of Commerce has determined that the investigation involving Japan is "extraordinarily complicated" and, accordingly, extended the date for its preliminary less-than fair value determination to March 23, 1987. In the event that Commerce's preliminary determination concerning imports from Japan is affirmative, the Commission will institute an investigation at that time.

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§ 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations maut be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report.

A public version of the prehearing staff report in these investigations will be placed in the public record on April 28, 1987, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on May 12, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requeats to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on April 16, 1987. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on April 21, 1987 in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is May 8, 1987.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on May 19, 1987. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subjct of the investigation on or before May 19, 1987.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary of the Commission.

Any business information for which confidential treatment is desired msst be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These invetigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: February 17, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-3986 Filed 2-25-87; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-279 (Sub-No. 1X)[1]]

Canadian National Railway Co.; Abandonment Exemption; Cumberland County, ME

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by Canadian National Railway Company of 3,740 feet of track in the City of Portland, Cumberland County, ME, subject to standard labor protection.

DATES: This exemption is effective on March 28, 1987. Petitions to stay must be filed by March 6, 1987 and petitions for reconsideration must be filed by March 20, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB-279 (Sub-No. 1X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Joan Rector McGlockton, Hamel & Park, 888 16th Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION:

This proceeding embraces Docket No. AB-268 (Sub-No. 1X), *Portland Terminal Company—Abandonment Exemption—Cumberland County, ME*, notice of exemption published at 51 *Fed. Reg.* 31178 (September 2, 1986). At the request of the Portland Terminal Company, that exemption is vacated except for that portion of track lying in Commercial Street from the Intersection of Union Street to the eastern sideline of State Street extended. In all other respects, the exemption is affirmed.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area), or toll-free (800) 424-5403.

Decided: February 4, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley dissented in part with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87-3961 Filed 2-25-87; 8:45 am]

BILLING CODE 7035-01-M

[1] Docket No. AB-268 (Sub-No. 1X), *Portland Terminal Company—Abandonment Exemption—Cumberland County, ME*, has been consolidated with this proceeding.

[Finance Docket No. 30953]

Consolidated Rail Corp.; Trackage Rights; Illinois Central Gulf Railroad Co.; Exemption

The Illinois Central Gulf Railroad Company (ICG) has agreed to grant overhead trackage rights to Consolidated Rail Corporation (Conrail) between Granite City, IL and East St. Louis, IL (the eastern track) and to establish new terms and conditions with Conrail for continuance of existing trackage rights over a contiguous ICG track (the western track). The combined distance of the eastern track and western track is 5.31 miles. The trackage rights agreement became effective on February 10, 1987.

As a condition to use of this exemption any employee affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: February 13, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-3962 Filed 2-25-87; 8:45 am]

BILLING CODE 7035-01-M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in the Third Floor Conference Room, 227 Public Ledger Building, 6th and Chestnut Streets, Philadelphia, Pennsylvania on March 31, 1987, beginning at 8:30 a.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 29 U.S.C. 1242(a)(1)(B).

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) has been made that the subject of the meeting falls within the exceptions to the open meeting requirements set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: February 20, 1987.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 87-3967 Filed 2-25-87; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 86-85]

Everett S. Coleman, M.D.; Revocation of Registration

On November 4, 1986, the Deputy Assistant Administrator Office of Diversion Control, Drug Enforcement Administration, (DEA) issued an Order to Show Cause to Everett S. Coleman, M.D. (Respondent) of Main Street, Sacramento, Kentucky 42372. The Order to Show Cause sought to revoke his DEA Certificate of Registration AC3002312 and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The proposed action was based on two statutory grounds. First, Respondent was convicted of a controlled substance-related felony offense. 21 U.S.C. 824(a)(2). Second, Respondent is not currently authorized to handle controlled substances in the state in which he practices. 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(3).

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was placed on the docket of Administrative Law Judge Francis L. Young. Judge Young issued an Order for Prehearing Statements. On November 24, 1986, the Government filed a motion for summary disposition. The Administrative Law Judge then provided Respondent an opportunity to respond to the motion for summary disposition. Respondent did not file such a response. In an Order dated February 4, 1987, the Administrative Law Judge terminated the proceedings before him. The Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that on June 23, 1986, Respondent was convicted in the McLean Circuit Court, Commonwealth of Kentucky, of trafficking in a Schedule II controlled substance in violation of Kentucky Revised Statutes 218A.140(1) and 218A.990(1). Respondent was sentenced to five years incarceration and a $5,000.00 fine.

In an Order dated April 29, 1986, the Kentucky State Board of Medical Licensure temporarily suspended Respondent's license to practice medicine in the Commonwealth of Kentucky. Subsequently, in an Order dated June 2, 1986, the Board reinstated Respondent's license to practice medicine. The Board also ordered that Respondent could not prescribe, dispense or administer controlled substances. Therefore, Respondent is without authority to handle controlled substances in Kentucky, the state in which he is registered.

The Administrator finds that DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. See, 21 U.S.C. 823(f). The Administrator and his predecessors have consistently so held. See, *Ramon Pla, M.D.*, Docket No. 86-54, 51 FR 41168 (1986); *George S. Heath, M.D.*, Docket No. 86-24, 51 FR 26610 (1986); *Dale D. Shahan, D.D.S.*, Docket No. 85-57, 51 FR 23481 (1986); *Agostino Carlucci, M.D.*, Docket No. 82-20 49 FR 33184 (1984).

The Administrator also finds that the motion for summary disposition must be granted. When no fact question is involved, or when the facts are agreed, there is no requirement that an agency convene a plenary, adversarial administrative proceeding, even though the pertinent statute prescribes a hearing. Congress does not intend administrative agencies to perform meaningless tasks. See, *United States v. Consolidated Mines and Smelting Co., Ltd.*, 445 F.2d 432, 453 (9th Cir. 1971); *NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO*, 549 F.2d 634 (9th Cir. 1977).

Having considered the facts and circumstances in this matter, the Administrator concludes that Respondent's DEA Certificate of Registration should be revoked due to his lack of authorization to handle controlled substances in the Commonwealth of Kentucky. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 21 CFR 0.100(b), orders that DEA Certificate of Registration AC3002312, previously issued to Everett S. Coleman, M.D., is hereby revoked. In addition, the Administrator orders that any pending applications of Everett S. Coleman, M.D., for registration under the Controlled Substances Act, are hereby denied. This order is effective February 26, 1987.

Dated: February 20, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-3976 Filed 2-25-87; 8:45 am]

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[Docket No. 85-61]

Geoffrey A.W. DiBella, M.D.; Revocation of Registration

On December 5, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Geoffrey A.W. DiBella, M.D. (Respondent) at 20 East 9th Street, New York, New York 10003 and 227 East 19th Street, New York, New York 10013, proposing to revoke his DEA Certificates of Registration AD6591843 and AD1452767 and deny the outstanding applications for renewal of those registrations. The statutory basis for the Order to Show Cause was that Respondent's registration with DEA was inconsistent with the public interest in that Dr. DiBella had, from November, 1981 through June, 1982, issued prescriptions for methaqualone, then a Schedule II controlled substance, outside the scope of professional practice and for other than a legitimate medical purpose, and that he had been found guilty, after a jury trial, in the U.S. District Court for the Southern District of New York of illegal distribution of controlled substances.

The Order to Show Cause was sent to Dr. DiBella by registered mail. In a letter dated December 7, 1985, Respondent requested a hearing on the issues raised in the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Francis L. Young. A hearing was held in New York City on June 16, 17, and 19, 1986. On November 21, 1986, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. Respondent filed exceptions to the opinion of the Administrative Law Judge which were dated December 11, 1986. Government counsel filed a response to those exceptions dated December 29, 1986. On January 5, 1987, the Administrative Law Judge transmitted the record of these proceedings to the Administrator. The Administrator has considered this record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that in March, 1981, an organization named Jorum Associates formed a New York corporation with its stated purpose being the operation of a clinic for treatment of insomnia. The clinic's treatment of choice was the drug Quaalude. Quaalude was at that time a Schedule II depressant controlled substance. Since August, 1984, it has been a Schedule I controlled substance, not available for prescribing by physicians.

During the period March, 1981 through August, 1981, Jorum Associates employed three physicians. In October, 1981, the triplicate prescription privileges of one of the physicians, Dr. Martin Feit, were revoked by the New York State Department of Health. The result was that Dr. Feit could no longer prescribe Schedule II controlled substances. Toward the end of October, 1981, Jorum Associates placed an advertisement in the *New York Times* for part-time or full-time physicians. As a result of this ad, Doctors Margaret and Albert Chioffi, both psychiatrists, responded to the advertisement. Both doctors worked for Jorum Associates for a few days and then left, stating that they were uncomfortable with a situation where large numbers of individuals were receiving prescriptions for Quaalude. The Chioffis later stated that they doubted the legitimacy of the operation. A Dr. Binkhorst also responded to the advertisement. She worked one day, was paid $2,000, and did not return because of the large number of Quaalude prescriptions being written.

Respondent also responded to the *New York Times* advertisement and first worked at Jorum Associates for a half-day beginning November 10, 1981. He returned about December 3, 1981, and woked one day a week at the clinic until mid-February, 1982.

An investigation of the clinic and the physicians' prescribing practices was conducted by DEA Diversion Investigators and Special Agents. This investigation included an analysis of Respondent's patient charts at the Jorum clinic, and in his subsequent private practice. It also included a review of triplicate prescription records and visits by DEA undercover agents. The analysis of the patient charts and prescription records showed that from November, 1981 through February, 1982, the Respondent wrote 649 prescriptions for Quaalude. From March, 1982 through June, 1982, in his private practice he wrote 122 such prescriptions. The total number of Quaalude tablets prescribed was 39,542. The Respondent was working only one day a week during this period. For the thirty actual days that Respondent worked, he refused to prescribe Quaalude to only eight of 779 patients. On one day alone, December 30, 1981, he wrote 96 prescriptions for Quaalude. Respondent was paid $3,000 per day when working at Jorum Associates.

Three visits by undercover DEA agents were made to the Respondent. One DEA Special Agent went to the Jorum clinic and saw the Respondent on December 3, 1981. He went again, utilizing a different undercover name on December 17, 1981. Each time he received a prescription for 45 tablets of Quaalude and paid $200. He was given a physical examination by a physician's assistant. Neither the Respondent or the physician's assistant recognized the agent on December 17, 1981 as being the same individual who came to the clinic on December 3, 1981.

On May 15, 1982, another DEA Special Agent made an undercover visit to Respondent's practice at 60 East 42nd Street in New York City. The agent completed the necessary forms, informed the Respondent that he had trouble sleeping, and received a physicial examination followed by a prescription for 45 Quaalude tablets. The agent paid the Respondent $180.

Three physicians reviewed selected medical charts of individuals who Respondent saw at the Jorum clinic and in private practice. All three physicians concluded that there was no legitimate practice of medicine by Respondent at the Jorum clinic or in his private practice. They concluded that the operation was a sham to cover the illegal distribution of prescriptions.

Respondent was indicted along with three other physicians and four lay persons by a Federal Grand Jury in the United States District Court for the Southern District of New York of conspiracy to illegally distribute the controlled substance Quaalude, and of two counts of illegal distribution of Quaalude. On August 7, 1985, he was found guilty by a jury of the two counts of illegal distribution of controlled substances, but not guilty of conspiracy to illegally distribute Quaalude. On July 2, 1986, two weeks after the hearing was conducted in this matter, Respondent was sentenced, in the United States District Court for the Southern District of New York, to two years imprisonment, two years special parole, and fined $5,000.

During the hearing, and on his renewal application dated May 8, 1986, Respondent continued to maintain that he dispensed controlled substances in good faith. He stated that he was unaware that Jorum was a front for dealing drugs.

The Administrative Law Judge found that Respondent's conviction of two controlled substance-related felonies provides a lawful basis for revocation of his DEA Certificates of Registration and denial of the pending applications. He also found that the evidence in the record as to Respondent's experience in dispensing controlled substances clearly demonstrates that his continued registration would be inconsistent with the public interest.

The Administrative Law Judge recommended that Respondent's DEA Certificates of Registration be revoked, and that the applications for renewal of those registrations be denied. The Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge in its entirety. The Administrator finds Respondent's arguments in the Exceptions to the Opinion of the Administrative Law Judge to be unpersuasive. If Respondent was so naive and unsophisticated that he was unaware that the large-scale dispensing of Quaalude at the Jorum clinic was for other than legitimate medical purposes, then he should not be entrusted with a DEA registration. Respondent has been convicted of a felony relating to the illegal distribution of Quaalude. He participated in an operation whose purpose was to distribute Quaalude under the guise of medical practice. Respondent's DEA registrations must be revoked and any pending applications denied.

Having concluded that there is a lawful basis for the revocation of Respondent's registrations and denial of pending applications, and having further concluded under the facts and circumstances presented in this case that the registrations should be revoked and any applications denied, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificates of Registration AD6591843 and AD1452767, previously issued to Geoffrey A.W. DiBella, M.D., be, and hereby are, revoked. The Administrator orders that any pending applications for renewal of those registrations are hereby denied. This order is effective March 30, 1987.

Dated: February 19, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-3977 Filed 2-25-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-66]

Frank Riforgiato, M.D.; Denial of Application

On August 13, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration [DEA] directed an Order to Show Cause to Frank T. Riforgiato, M.D., 35 Nottingham Terrace, Buffalo, New York 14216 (Respondent), seeking to deny an application for registration executed by Respondent on March 20, 1986. The statutory predicate for the Order under 21 U.S.C. 824(a)(2) was the conviction of Respondent on February 11, 1982, in the United States District Court for the Western District of New York, of furnishing false and fraudulent material information in a record required to be made and kept as required by 21 U.S.C. 827(a)(5) and 827(c)(1)(B), in violation of 21 U.S.C. 843(a)(4)(A). This is a felony relating to controlled substances.

Respondent, through counsel, requested a hearing on the issues raised by the Order To Show cause. The matter was docketed before Administrative Law Judge Francis L. Young. On September 5, 1986, Judge Young entered an order for prehearing statements to be filed by both parties by October 7, 1986. By letter dated November 12, 1986, counsel for Respondent requested an extension for the filing of Respondent's prehearing statement until November 24, 1986. No prehearing statement has been received from Respondent or his counsel. On December 2, 1986, Judge Young *sua sponte* terminated the proceedings before him. He found that Respondent had no evidence to present which would call for an evidentiary hearing, and had waived his opportunity for a hearing. The Administrative Law Judge found there was no reason why the matter should not be presented to the Administrator for a final order as in a case in which no hearing was requested under 21 CFR 1301.54(d) and (e).

The Administrator also finds that Respondent has waived his opportunity for a hearing by failing to file a prehearing statement as ordered. Accordingly, the Administrator enters this order on the record as it appears. 21 CFR 1301.54(e).

The Administrator finds that Respondent pled guilty on February 11, 1982, to furnishing false and fraudulent material information in a record required to be made and kept, in violation of 21 U.S.C. 843(a)(4)(A). This plea was the culmination of an investigation of Respondent's controlled substance dispensing habits that began in 1979. Respondent maintained a weight control practice and ordered tens of thousands of dosage units of stimulants such as phentermine and phendimetrazine, far more than any other physician in the Buffalo area. He was unable to account for thousands of dosage units of these drugs.

The Administrator further finds that two DEA Special Agents, an Erie County Sheriff's Department Deputy and a Buffalo Police Department Officer made 16 undercover purchases of stimulants from Respondent between January, 1980 and July, 1980. The undercover purchase by a DEA Special Agent on January 16, 1980, is typical. The Agent told Respondent that he was a bartender, and he needed something to stay awake. Respondent placed a stethoscope partially on a cigarette lighter in the Agent's left breast pocket, and partially on the Agent's chest. Respondent prescribed Ionamin (phentermine, a Schedule IV controlled substance) and gave the Agent a quantity of phendimetrazine until he could have the Ionamin prescription filled. The physical examination conducted by Respondent during these visits never consisted of more than his taking the officer's blood pressure (often without rolling up the officer's sleeve), weighing the officer, and listening to the officer's heartbeat through clothing, or other obstructions. Respondent never took a medical history. Several times Respondent discussed "speed" (amphetamine) and declined to prescribe amphetamine, saying the "Government" was "watching" this drug. The officers were not obese.

The Administrator finds that controlled substances ordered by Respondent found there way into illicit channels. In 1979, a New York Bureau of Controlled Substances investigator arrested Respondent's son who was in possession of a quantity of stimulants. The son told New York State investigators that he had stolen drugs from his father's office.

The Administrator finds further that the Commissioner of Education of the State of New York, the official ultimately responsible for licensing of physicians in New York, entered an order on October 30, 1984, revoking Respondent's medical license, staying the revocation, and placing Respondent on probation for three years. Respondent admitted a specification of professional misconduct based on his conviction in the United States District Court for the Western District of New York.

The Administrator finds further that on October 4, 1982, Respondent and the Drug Enforcement Administration entered into a memorandum of agreement based on an Order to Show Cause issued April 19, 1982, to revoke a Certificate of Registration previously held by Respondent. The agreement revoked the earlier registration, and permitted Respondent to use the

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registration of the Buffalo Columbus Hospital to prescribe or administer controlled substances to hospital patients. Apparently Respondent is abiding by the terms of the agreement.

Finally, the Administrator finds that Respondent applied again for DEA registration on October 21, 1986. Respondent indicated on that application that he pled "guilty to keeping improper records of controlled substances. Specifically I dispensed $20 of phendimetrazine a Class 4 drug and my record showed that I recoreded (sic) only $10." On his application dated March 20, 1986, Respondent indicated that he surrendered a previous DEA registration "as part of his penalty for conviction." The Administrator finds that the surrender was the result of an agreement between Respondent and DEA, and, while based on DEA's statutory authority, not a penalty for Respondent's conviction.

Based on the investigative record in this case, the Administrator hereby denies the applications for registration executed by Dr. Riforgiato. It is clear that Respodent is unable to handle the responsibilities imposed by DEA registration. It is also clear that Respondent willfully violated the law and dispensed considerable quantities of stimulants without legitimate medical need. Respondent's records were such that he was unable to detect diversion from his supply. The comments on the applications cannot give the Administrator hope to believe that Respondent will not violate the law again were he to be registered.

Accordingly, under the authority given the Attorney General in 21 U.S.C. 824(a)(2) and delegated to the Administator in 21 U.S.C. 871 and 28 CFR 0.100 *et seq.*, the Administrator hereby denies the applications for registration executed by Frank T. Riforgiato, M.D., on March 20, 1986, and October 21, 1986, and any other applications for registration executed by Dr. Riforgiato. The denials are effective March 30, 1987.

Dated: February 18, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-3978- Filed 2-25-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-30]

Rudolfo Torres, M.D.; Denial of Application

On April 7, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Rudolfo Torres, M.D. (Respondent) at 25 Garfield Street, Madison, Maine 04950, proposing to deny his application for a DEA Certificate of Registration which was executed on July 16, 1985. The statutory basis for the Order to Show Cause was that Respondent's registration with DEA would be inconsistent with the public interest as evidenced by three factors. The first factor was Dr. Torres' voluntary relinquishment of his license to practice medicine in the State of Florida because of a pending action by the Florida Department of Professional Regulation based upon inappropriate prescribing and self-administering of controlled substances. The second factor was Dr. Torres' prescribing of controlled substances for individuals outside the course of professional practice and for no justifiable purpose. The third factor was that Dr. Torres continued to prescribe controlled substances after he relinquished his medical license in Florida.

The Order to Show Cause was mailed to Dr. Torres by registered mail. In a letter dated April 23, 1986, Dr. Torres' counsel requested a hearing on the issues raised in the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Francis L. Young. A hearing was held in Boston, Massachusetts, on August 14, 1986. On December 2, 1986, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. Respondent, through counsel, filed exceptions dated December 17, 1986. On December 29, 1986, the Administrative Law Judge transmitted the record of these proceedings to the Administrator. The Administrator has considered this record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that in October, 1982, the Respondent's prescribing activities came to the attention of the Florida Department of Professional Regulation. The initial investigation resulted in the recovery of numerous prescriptions for controlled substances written by Respondent from area pharmacies. At this time Respondent was advised that he was under investigation, and was given an opportunity to explain his liberal prescribing of controlled substances for specific patients. Respondent sent a written response to the Department. Subsequent investigation resulted in the recovery of approximately 75 additional prescriptions for controlled substances written by Respondent. The Department of Professional Regulation then filed a formal administrative complaint against the Respondent. The administrative complaint alleged that Respondent had inappropriately and excessively prescribed controlled substances to six individuals from February, 1982 through July, 1983.

In October, 1984, while the administrative matter was still pending, an investigator with the Department of Professional Regulation was notified by the Panama City, Florida, Police Department that Respondent had been involuntarily incarcerated for detoxification after determination that he was unsafe to the public and himself. The Police Department told the investigator that Respondent's girlfriend was willing to discuss Respondent's drug related activities. Respondent's girlfriend was listed in the administrative complaint as one of the individuals to whom Respondent had inappropriately prescribed controlled substances, including 36 prescriptions for controlled substances between April, 1982 and July 8, 1983. Respondent's girlfriend told the investigator that she lived with Respondent and had been his patient since September, 1982. She indicated that Respondent had introduced her to drugs, and that she became addicted to Dilaudid and cocaine. She indicated that Respondent used these substances, as well as alcohol.

On December 9, 1984, Respondent was taken ito custody by the Panama City Police Department after he discharged a firearm and had been holding his girlfriend in his bedroom for two to three hours. A search of the residence revealed cocaine residue, hypodermic needles, and marijuana. The Respondent was placed in a mental health facility. He voluntarily relinquished his license to practice medicine on December 15, 1984. The Respondent entered the impaired physician's program in Florida under court order.

By his own admission, Respondent began abusing alcohol in 1981 or 1982 while in the throes of a custody proceeding for his children. He began abusing drugs in 1984. Respondent has used cocaine and tried other drugs such as marijuana, Demerol and Dilaudid.

Respondent completed five months of rehabilitation in Florida from December, 1984 through May, 1985. He states that he has had no problems with alcohol or drugs since that time. Respondent is currently residing in the State of Maine with his girlfriend from Florida. He is in continuing treatment with Alcoholics Anonymous, Narcotics Anonymous, and a private physician specializing in substance abuse. Respondent's medical license in Maine is on probation for five years under the terms of a Consent Decree. Respondent is only permitted to prescribe, administer or dispense Schedule II controlled substances in a hospital setting. He is required to submit to random urinalysis testing.

The Administrative Law Judge concluded that Respondent had a serious drug abuse problem as recently as December, 1984. He indicated that too little time had passed since Respondent's serious problems in Florida, and there was not sufficient evidence to indicate that Respondent has had a marked and lasting turnaround. In addition, the evidence indicates that Respondent did issue numerous prescriptions for controlled substances outside the course of professional practice in Florida, and that it is likely some sanction would have been imposed on his license in Florida prior to his voluntary surrender of that license.

The Administrative Law Judge recommended that Respondent's application for a DEA Certificate of Registration be denied. The Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge in its entirety. The Administrator agrees that granting the Respondent a DEA Certificate of Registration would be inconsistent with the public interest.

Having concluded that there is a lawful basis for the denial of Respondent's application for registration, and having further concluded that the application should be denied, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for registration submitted by Rudolfo Torres, M.D., be, and hereby is, denied. This order is effective immediately.

Dated: February 19, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-3979 Filed 2-25-87; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (87-16)]

Government-Owned Inventions; Availability for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government and are available for domestic and, possibly, foreign licensing.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.00 each ($10.00 outside North American Continent.) Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent application copies sold to avoid premature disclosure.

DATE: February 26, 1987.

FOR FURTHER INFORMATION CONTACT: National Aeronautics and Space Administration, Dennis Marchant, Director of Patent Licensing, Code GP, Washington, DC 20546, telephone (202) 453-2430.

Patent Application 761,310: Tower Evaporator; filed July 30, 1985.
Patent Application 862,959: Low Phase Noise Oscillator; filed May 14, 1986.
Patent Application 867,987: Cellular Thermo Setting Fluoropolymers and Process for Making Them; filed May 29, 1986.
Patent Application 867,986: Compensation for Primary Reflector Wavefront Error; filed May 29, 1986.
Patent Application 886,149: Fiber Reinforced Ceramic Material; filed July 16, 1986.
Patent Application 875,798: Thermal Stress Minimized, Two Component Turbine Shroud Seal; filed June 18, 1986.
Patent Application 859,688: Carbine/Fluoride/Silver Self-Lubricating Composite; filed May 5, 1986.
Patent Application 890,445: Preloaded Space Structural Coupling Joints; filed July 30, 1986.
Patent Application 823,713: Ion Beam Nitriding of Steels; filed January 29, 1986.
Patent Application 890,575: Airfoil Flutter Model Suspension System; filed July 30, 1986.
Patent Application 886,133: Photodetector Array with Image Plane Processing; filed August 16, 1986.
Patent Application 886,123: Improved Flux Gate Magnetometer; filed July 16, 1986.
Patent Application 871,207: Polyarylene Ethers with Improved Properties; filed June 5, 1986.
Patent Application 879,758: ARC Lamp Power Supply; filed June 26, 1986.
Patent Application 874,320: Pretreatment and Reactivation of an Oxide-Containing Catalyst; filed June 11, 1986.
Patent Application 874,304: Isotope Exchange in Oxide-Containing Catalyst; filed June 11, 1986.
Patent Application 875,799: Monogroove Cold Plate; filed June 18, 1986.
Patent Application 886,121: Fatigue Testing a Plurality of Test Specimens and Method; filed July 16, 1986.
Patent Application 875,891: Remotely Controllable Mixing System; filed June 18, 1986.
Patent Application 890,577: Boron-Containing Organosilane Polymers and Ceramic Materials Thereof; filed July 30, 1986.
Patent Application 890,584: Castable Hot Corrosion Resistant Alloy; filed July 30, 1986.
Patent Application 879,757: Cross-Contact Chain; filed June 26, 1986.
Patent Application 898,986: A Method of Estimating the Molecular Weight of Polymeric Materials; filed August 22, 1986.
Patent Application 897,239: Coaxial Tube Tether/Transmissionline for Manned Nuclear Space Power; filed August 18, 1986.
Patent Application 913,447: Self-Clamping Arc Light Reflector for Welding Torch; filed September 30, 1986.
Patent Application 904,134: Mobil Remote Manipulator System for a Tetrahedral Truss; filed September 5, 1986.
Patent Application 913,433: Large TV Display System; filed September 30, 1986.
Patent Application 890,586: Ground Plan Interference Elimination by Passive Element; filed July 30, 1986.
Patent Application 901,114: Tailorable Infrared Sensing Device with Strain Layer Superlattice Structure; filed August 28, 1986.
Patent Application 913,446: Infusion Extractor; filed September 30, 1986.
Patent Application 874,319: Acoustic Emission Frequency Discrimination; filed June 12, 1986.
Patent Application 889,883: Synchronously Deployable Double Fold Beam and Planar Truss Structure; filed October 22, 1986.
Patent Application 901,113: Device for Quick Changeover Between Wind Tunnel Force and Pressure Testing; filed October 28, 1986.
Patent Application 913,432: Space Spider Crane; filed September 30, 1986.
Patent Application 904,132: High Lift, Low Pitching Moment Airfoils; filed September 5, 1986.
Patent Application 878,916: Real-time Garbage Collection for List Processing; filed June 26, 1986.
Patent Application 901,496: Preparation of B-Trichloroborazine; filed August 28, 1986.
Patent Application 904,513: Coexial Cable Connector; filed September 8, 1986.
Patent Application 924,470: New Condensation Polyimides Containing 1,1,1-Triaryl-2,2,2-Triffuoro-ethane Structures; filed October 29, 1986.
Patent Application 924,399: Liquid Encapsulated Float Zone Process and Apparatus; filed October 29, 1986.
Patent Application 917,125: Gas Particle Radiator; filed October 9, 1986.
Patent Application 924,474: Substituted 1,1,1-Triaryl-2,2,2-Triflouroethanes and Processes for Their Synthesis; filed October 29, 1986.
Patent Application 921,574: High Density Tape Casting System; filed October 29, 1986.
Patent Application 921,573: Action Hold-Down for Heat Treating; filed October 21, 1986.

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Patent Application 921,577: Passively Activated Prehensile Digit for a Robotic End Effector; filed October 21, 1986.
Patent Application 924,398: Weightlessness Simulation System and Process; filed October 10, 1986.

Dated: February 17, 1987.

John E. O'Brien,
General Counsel.

[FR Doc. 87-3959 Filed 2-25-87; 8:45 am]
BILLING CODE 7510-01-M

[Notice 87-15]

NASA Advisory Council, Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on General Aviation.

DATE AND TIME: March 31, 1987, 8:30 a.m. to 4:30 p.m.; April 1, 1987, 8:30 a.m. to 4:30 p.m.

ADDRESS: Briefing Room, Garage Level, National Air and Space Museum, 7th and Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Louis J. Williams, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2798.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance and direction to the aeronautics research and technology activities in the Office of Aeronautics and Space Technology (OAST). Special ad hoc teams were formed to address specific topics. The ad hoc team on General Aviation, chaired by Mr. John Olcott, is comprised of nine members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including the team members and other participants).

Type of Meeting: Open.
Agenda:
March 31, 1987
8:30 a.m.—Opening Remarks by Chairperson and Executive Secretary.
10 a.m.—Foreign Technology and Competition.
1:30 p.m.—Propulsion Technology.
4:30 p.m.—Adjourn.
April 1, 1987
8:30 a.m.—Future Air Traffic Control System.
10 a.m.—Technology Implementation.
1 p.m.—Review Team Caucus.
4:30 p.m.—Adjourn.

Dated: February 19, 1987.

Richard L. Daniels,
Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 87-3960 Filed 2-25-87; 8:45 am]
BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b, of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on March 5-7, 1987, in Room 1046, 1717 H Street, NW, Washington, DC. Notice of this meeting was published in the **Federal Register** on February 18, 1987, Vol. 52, FR-4980.

Thursday, March 5, 1987

8:30 A.M.-8:45 A.M.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:45 A.M.-10:45 A.M.: Quantitative Safety Goals (Open)—Review proposed NRC Staff plan for implementation of the NRC Quantitative Safety Goals.

11:00 A.M.-12:30 P.M.: Radioactive Waste Management and Disposal (Open)—Discuss proposed ACRS role in the regulation of radioactive waste management and disposal, as well as the risks to public health and safety of radioactive waste compared to other nuclear hazards.

1:30 P.M.-2:30 P.M.: Nuclear Power Plant License Renewal (Open)—Briefing regarding proposed NRC policy for renewal of nuclear power plant licenses.

2:30 P.M.-4:00 P.M.: Human Factors (Open)—Discuss proposed ACRS recommendations regarding the responsibility for safety at nuclear facilities. Representatives of the NRC Staff and the nuclear industry will participate as appropriate.

4:00 P.M.-6:00 P.M.: Safety Features in Foreign Nuclear Power Plants (Open/Closed)—Discuss added safety features in foreign nuclear power plants compared to those in U.S. reactor plants.

Portions of this session will be closed as necessary to discuss information provided in confidence by a foreign source.

Friday, March 6, 1987

8:30 A.M.-12:00 Noon: GE Advanced Boiling Water Reactor (Open/Closed)—Review the proposed Licensing Basis Agreement for this standardized nuclear plant as well as improvements proposed in the ABWR and related EPRI requirements for improved standardized light-water reactors. Representatives of the NRC Staff, the General Electric Company, and EPRI will participate in this discussion to the degree considered appropriate.

Portions of this session will be closed as required to discuss Proprietary Information applicable to this facility.

1:00 P.M.-3:00 P.M.: Quantitative Safety Goals (Open)—Continue discussion of proposed NRC Staff plan for implementation of the NRC Quantitative Safety Goals.

3:15 P.M.-4:15 P.M.: Human Factors (Open)—Briefing by representatives of the NRC Staff regarding application of the NRC Rule on Fitness for Duty at nuclear facilities. The status of similar rules regarding NRC employees will also be discussed.

4:15 P.M.-4:30 P.M.: Future Activities (Open)—The members will discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

4:30 P.M.-5:15 P.M.: Generic Item 61, SRV Discharge Line Break in the Airspace of Mark I and Mark II Containment Suppression Pool (Open)—Discuss proposed NRC Staff resolution of GI 61 and other mechanisms for bypass of the containment suppression pool.

5:15 P.M.-6:00 P.M.: ACRS Subcommittee Activities (Open)—Discuss the status of designated subcommittee activities related to safety and regulatory matters including the preparation of an ACRS annual report to the NRC regarding the proposed NRC Safety Research Program and Budget and activities associated with the regulation of high-level and low-level radioactive waste matters.

Saturday, March 7, 1987

8:30 A.M.-12:00 Noon and 1:00 P.M.-3:00 P.M.: Preparation of ACRS Reports (Open/Closed)—The members will discuss proposed ACRS reports to the NRC regarding topics discussed during this meeting.

Portions of this session will be closed as required to discuss Proprietary Information and information provided in

confidence by a foreign source which is applicable to the matter being considered.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 20, 1986 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R.F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10 (d) Pub. L. 92-463 that it is necessary to close portions of this meeting as noted above to discuss information that involves Proprietary Information (5 U.S.C. 552b(c)(4)) and information provided in confidence by a foreign source (5 U.S.C. 552b(c)(1)) applicable to the facility being discussed.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634-3265), between 8:15 A.M. and 5:00 P.M.

Dated: February 19, 1987.

John C. Hoyle,
Advisory Committee Management Officer.

[FR Doc. 87-4015 Filed 2-25-87; 8:45 am]
BILLING CODE 7590-01-M

Bi-Weekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations APPLICATIONS AND

I. Background

Pursuant to Public Law (Pub. L.) 97-415, the Nuclear Regulatory Commission (the Commission is publishing this regular bi-weekly notice. Pub. L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on February 11, 1987 (52 FR 4400).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 30, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been

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admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram 6 Identification Number 3737 and the following message addressed to *(Project Director)*: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, Dockets Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: November 1–3, 1986, as supplemented January 28, 1987.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) for Brunswick Steam Electric Plant, Units 1 and 2. The proposed change deletes the requirement to perform response time testing on various temperature switches and thermocouples listed in TS Table 3.3.2–3.

Currently, Surveillance Requirement 4.3.2.3 requires that the isolation system response time of the applicable functions shown in Table 3.3.2–3 shall be demonstrated to be within its limit at least once per 18 months. As part of this requirement, Table 3.3.2–3 includes the testing of: (1) Primary containment isolation within 13 seconds of indication of high main steam line tunnel temperature (Item 1.d); (2) reactor water cleanup system (RWCS) isolation within 13 seconds of indication of high area temperature (Item 3.b); (3) RWCS isolation within 13 seconds of indication of high area ventilation temperature gradient (Item 3.c); and (4) high pressure coolant injection isolation within 13 seconds of indication of high HPCI steam line tunnel temperature (Item 4.a.4). Temperature sensors are provided primarily for detection of small line breaks. The Final Safety Analysis Report (FSAR) does not take credit for temperature sensor initiation of main steam line isolation in the event of a main steam line break. Therefore, these sensors are not subject to the design base accident response time.

The present surveillance program utilizes two distinct testing methods to determine the response time of the temperature sensors for the systems described above. However, the test results are not repeatable and, thus, do not give a reliable indication of the real response time. The Brunswick FSAR safety analysis does not address individual temperature sensor response times or the response times of the logic systems to which the temperature sensors are connected. The isolation times of primary containment, RWCS, and HPCI can be determined by other parameters such as reactor low level, high steam flow, or system low pressure.

In addition, the testing of the RWCS thermocouples requires removal of the devices. This may result in increased instrument wear causing decreased accuracy and reliability.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the FSAR safety analysis does not address individual temperature sensor response times or the response times of the logic systems to which the temperature sensors are connected. [The licensee has verified that credit is not taken for these temperature sensor response times in any accident analysis.] The purpose of these sensors is to initiate isolation of a given system in the event of a breach in the pressure boundary. The operability status of their safety-related function is adequately monitored by the remaining surveillance requirements of TS 3/4.3.2 (i.e., channel check, channel calibration, channel functional test, and logic system functional test).

2. For the same reasons as given in Item 1, the proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety. The affected isolation actuation instrumentation response times are only measured and recorded to enhance overall system reliability and to monitor instrument channel response time trends. Since the temperature sensors discussed in this request do not provide repeatable results when tested, the data collected does not serve any useful purpose. The primary containment, RWCS, and HPCI system isolation time is more accurately tested by using other parameters (pressure, flow or level) currently tested by surveillance requirements.

Based on the above reasoning, the licensee has determined that the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff therefore proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: Thomas A Baxter, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: Daniel R. Muller.

Carolina Power and Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: December 18, 1986.

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) for the H. B. Robinson Steam Electric Plant, Unit No. 2. The proposed revision involves revising Technical Specification Heatup and Cooldown curves, Figures 3.1–1 and 3.1–2. The existing curves expire soon after the licensee's planned refueling outage in March of 1987 as 10 Effective Full Power Years (EFPY) are reached. The new curves retain the same numbers which currently apply to the existing curves but with an addition of designators (a) or (b) to differentiate between the new 12.5 and 15 EFPY curves. Appropriate changes to Section 3.1.2 of the TS will also be made to direct the use of the appropriate set of the curves.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Carolina Power and Light Company has reviewed their proposed change in accordance with 10 CFR 50.92(c) and has determined that the proposed change does not:

(1) Involve a significant increase in the probability or consequences of any accident previously evaluated because the change only updates existing operating limits with new limits which compensate for continuing neutron fluence. The basis for the analysis remain unchanged;

(2) Create the possibility of a new or different kind of accident than previously evaluated because the change does not alter facility operation in such a manner or to an extent as to generate a new or different kind of accident. Slightly more restrictive operating limits are not expected to significantly change the operation of the facility;

(3) Involve a significant reduction in a margin of safety because the same techniques and margins have been applied that were previously used. Only the fluence-dependent parameters have been changed to update the analysis to compensate for the increased integrated power value. The NRC staff has reviewed the licensee's determination and agrees with their evaluation in this regard and, therefore, proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Attorney for licensee: Shaw, Pittman, Potts, and Trowbridge, 2300 N Street NW., Washington, DC. 20037.

NRC Project Director: Lester S. Rubenstein.

Carolina Power and Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: January 12, 1987.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Table 4.1–1 for the H.B. Robinson Steam Electric Plant, Unit No. 2. The proposed change would revise the Technical Specifications to add requirements for independent testing of the undervoltage and shunt trip attachments of the reactor trip breakers on a monthly basis, testing of the bypass breakers prior to use, and independent testing of the control room manual switch contacts and wiring during each refueling outage.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Carolina Power & Light Company has reviewed their proposed change in accordance with 10 CFR 50.92(c) and has determined that the proposed change does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because

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the proposed change adds new testing requirements to help insure the functioning of the reactor trip system when needed. The change is intended to reduce the frequency of postulated Anticipated Transients Without Scram (ATWS) events.

(2) Create the possibility of a new or different kind of accident than previously evaluated because the proposed change adds new testing requirements intended to reduce the frequency of postulated ATWS events.

(3) Involve a significant reduction in a margin of safety because the proposed change adds additional testing requirements which effects an increase in the margin of safety. The NRC staff has reviewed the licensee's determination and agrees with their evaluation in this regard and, therefore, proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Attorney for licensee: Shaw, Pittman, Potts, and Trowbridge, 2300 N Street NW., Washington, DC. 20037.

NRC Project Director: Lester S. Rubenstein.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: July 31, 1985, as supplemented October 10, 1986.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) Surveillance Requirement 4.8.2.1.1a.3) concerning electrolyte leakage. The proposed revision would change the requirement to demonstrate the operability of the 125 volt battery bank and charger by verifying, at least once per 7 days, that "there is no visible indication of electrolyte leakage" to the requirement that "there is no visible indication of damaging electrolyte leakage." This change would allow battery operation when there is minor electrolyte leakage.

By letter dated August 15, 1986, the NRC staff requested additional information regarding the proposed amendments. By letter dated October 10, 1986, the licensee modified the July 31, 1985, request to alleviate the staff's concerns regarding battery electrolyte leakage and significant discharge of a battery cell.

The proposed change is justified because Surveillance Requirement 4.8.2.1.1a.1) requires that the parameters in Table 4.8–3, Category A, be met every 7 days. Electrolyte leakage is one of these parameters. The limits on these parameters ensure that the electrolyte level is sufficient for battery operability. Thus, some minor electrolyte leakage, that would be unlikely to cause any significant discharge of a battery cell, can be allowed as long as the minimum electrolyte level is maintained.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendments and determined that should this request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because the operability of the battery bank and charger continues to be ensured via the implementation of existing Surveillance Requirement 4.8.2.1.1a.1). Also, it would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change would not affect the applicable accident analyses and would not introduce new modes of operation. Finally, it would not (3) involve a significant reduction in a margin of safety because the proposed change has no adverse impact on safety and does not reduce the safety margin. Accordingly, the Commission has determined that the above changes involve no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: B.J. Youngblood.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: July 31, 1985, as supplemented November 8, 1985, March 7 and October 10, 1986.

Description of amendment request: The proposed amendments would revise Technical Specifications (TS) 6.5, 6.6, 6.8 and 6.10, concerning "Administrative Controls." The proposed amendments would (1) seek to add the Superintendent of Integrated Scheduling to TS 6.5.1.3, 6.5.1.5, 6.6.1b, 6.8.2, and 6.8.3c., (2) seek to add the Superintendent of Station Services to TS 6.5.1.8 and 6.8.1c., and (3) change the record retention period in TS 6.10.2 for records of quality assurance activities required by the QA Manual.

The effect of the first part would be to add the position of Superintendent of Integrated Scheduling to the list containing three other superintendents authorized to review and/or approve modifications of safety-related structures, systems or components (TS 6.5.1.3), proposed tests and experiments which affect nuclear safety and are not addressed in the FSAR or the Station Technical Specifications (TS 6.5.1.5), Reportable Events (6.6.1b.), and procedures specified under Specification 6.8.1 and changes thereto (TS 6.8.2 and 6.8.3), as designated by the Station Manager.

By letter dated August 15, 1986, the NRC staff requested additional information regarding the proposed amendments. By letter dated October 10, 1986, the licensee stated that each of the superintendents has received Qualified Reviewer Training which includes review and approval of procedures and procedure changes, and the requirements of 10 CFR 50.59. In addition, each of the superintendents meets the minimum qualifications specified by ANSI N18.1–1971.

The effect of the second part would be to allow the Superintendent of Station Services to review and approve modifications to the station security program and related implementation procedures. Currently, only the Station Manager has this authority. In the October 10, 1986, letter, the licensee stated that the qualifications of the Superintendent of Station Services meet the minimum qualifications requirements of ANSI N18.1–1971 for comparable station positions.

Regarding the third part of the proposed amendments, TS 6.10.2 presently requires that the records of the quality assurance activities be retained for the duration of the Operating License. The proposed change would substitute a new TS 6.10.3 requiring that these records be retained for the period specified by ANSI N45.2.9–1974, "Requirements for Collection, Storage, and Maintenance of Quality Assurance Records of Nuclear Power Plants."

A **Federal Register** Notice regarding parts (1) and (3) of the proposed amendments was published on January 29, 1986 (51 FR 3714).

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards

considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendments and determined that should this request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because the qualifications of the Superintendents of Integrated Scheduling and Station Services meet acceptable standards for comparable station positions. The proposed change to TS 6.10 would involve only the substitution of a more specific and more appropriate requirement for QA record retention pursuant to a standard accepted by the NRC staff. Also, it would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes would not affect the applicable accident analyses. Finally, it would not (3) involve a significant reduction in a margin of safety because the proposed addition of two superintendents would not represent a loss of review capability, and would not affect the applicable accident analyses. The change to TS 6.10 would not shorten the retention period for those types of QA records which the Commission has determined should be retained for the plant lifetime, and does appropriately recognize that some of the QA record types have limited significance and may be retained for lesser periods. Thus, the proposed change has no adverse impact on safety and does not reduce the safety margin. Accordingly, the Commission has determined that the above changes involve no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: B.J. Youngblood.

Duke Power Company, Dockets Nos. 50–269, 50–270 and 50–287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: February 12, 1986, as revised on October 10, 1986, and supplemented on October 20, 1986

Description of amendment request: The proposed amendments would revise the Station's common Technical Specifications (TSs) to govern the operation and maintenance of the recently installed and operational containment hydrogen recombiner system (CHRS). TSs 3.16 and 4.4.3, on the hydrogen purge system, would be changed to include the CHRS as the primary method to maintain the post-accident amount of hydrogen in the containment atmosphere below the control limit. The current Oconee TSs 3.16 and 4.4.3 define the conditions necessary to assure the availability for the reactor building hydrogen purge system (RBHPS) as the means for the containment hydrogen control. The hydrogen purge system will be available as a backup system.

Recombination of hydrogen and oxygen in the reactor building atmosphere is an alternate and preferred means of post-accident hydrogen control. The CHRS has a greater capacity than the RBHPS. Also, use of the recombiner will not increase offsite releases of radioactivity. The CHRS consists of two portable hydrogen recombiners, control panel for the recombiners and a portion of the penetration room ventilation system (PRVS). When needed, a recombiner will be moved to the affected unit, anchored to its foundation, and connected by flexible metal piping to PRVS piping which runs to and from containment penetrations. The control panel will be locally mounted near the recombiner.

The system functions by drawing air from the reactor building into a heater in the recombiner. As the air temperature increases, the hydrogen in the air combines with oxygen to form water vapor. The mixture is then returned to the reactor building. The design flowrate is 90 standard cfm, and the design recombination efficiency is 95 percent for hydrogen concentrations greater than 0.5 volume percent.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7750). Example (ii) of the types of amendments not likely to involve significant hazards considerations is an amendment that constitutes an additional limitation, restriction, or control not presently included in the TSs: for example, a more stringent surveillance requirement.

The proposed TSs concern the use of hydrogen recombination as the method for controlling the post-accident reactor building hydrogen concentration. Specifically, the current TSs 3.16 and 4.4.3 provide requirements for operation and surveillance of the RBHPS as the method for post-accident hydrogen purging. The proposed TSs will permit the use of CHRS as the primary method to control the post-accident reactor buildinq hydrogen concentrations. The CHRS has a greater capacity than the RPHPS.

Section 15.16 of the Oconee Nuclear Station Final Safety Analysis Report (FSAR) describes the post-accident hydrogen control. The FSAR provides detailed evaluation of hydrogen recombination acceptability as a method for controlling the reactor building hydrogen concentrations. The analyses conclude that recombination is the preferred technique for containment hydrogen control compared to purging since it does not result in offsite releases of radioactivity.

The proposed license amendments will improve the margin of safety in that the application of hydrogen recombination instead of purging as an alternate method for containment hydrogen control provides additional protection since it does not result in offsite releases of radioactivity.

Thus, the proposed license amendments appear to be encompassed by example (ii) of amendments not likely to involve a significant hazards consideration. On this basis, the Commission proposes to determine that these amendments do not involve significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691.

Attorney for licensee: J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036.

NRC Project Director: John F. Stolz.

Duke Power Company, Dockets Nos. 50–269, 50–270 and 50–287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: August 13, 1986.

Description of amendment request: The proposed license amendments would revise Figure 2.3–1, "Protective System Maximum Allowable Setpoints," and Table 2.3–1, "Reactor Protective System Trip Setting Limits," of the Station's common Technical Specifications (TSs) to increase the reactor coolant system (RCS) high pressure reactor trip setpoint from 2300 psig to 2355 psig.

Basis for proposed no significant hazards consideration determination: Technical justification for increasing the RCS high pressure reactor trip setpoint is contained in Babcock & Wilcox (B&W) Owners Group Topical Report BAW–1890, "Justification for Raising Setpoint for Reactor Trip on High

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Pressure," dated September 1985. In its April 22, 1986, Safety Evaluation of this topical report, the Commission concluded that it is acceptable to increase the high pressure reactor trip setpoint for B&W plants from 2300 psig to 2355 psig while the power operated relief valve (PORV) setpoint remains at 2450 psig; that the setpoint change meets the requirements of NUREG–0737, Items II.K.3.2 and II.K.3.7, regarding PORV openings and PORV caused small-break loss of coolant accidents (SBLOCA) and the requirements on this matter embodied in IE Bulletin 79–05B; and the topical report may be referenced in licensing submittals by B&W Owners Group members.

The Commission has made a proposed determination that the proposed amendments involve no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the Station in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The total PORV openings per reactor year is negligibly changed by raising the setpoint for reactor trip on high pressure from 2300 psig to 2355 psig. However, as discussed in the Commission's Safety Evaluation of Topical Report BAW–1890, the probability of a SBLOCA caused by a stuck-open PORV is within the WASH–1400 range of 10^{-3} to 10^{-4} per reactor year. In addition, increasing the reactor trip setpoint in accordance with the proposed amendments will not alter the consequences of a stuck-open PORV. On these bases, the Commission finds that the proposed amendments would not increase the probability or the consequences of an accident.

Since the design high pressure reactor trip setpoint is 2355 psig, the original Final Safety Analysis Report analyses remain applicable for the increased setpoint. Raising the RCS high pressure trip setpoint would not, therefore, create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed setpoint change meets the requirements of NUREG–0737, Items II.K.3.2 and II.K.3.7 regarding PORV openings and PORV caused SBLOCA, as well as the requirements on this matter embodied in IE Bulletin 79–05B. In addition, the licensee states that the proposed change will result in improved operational safety through a reduction in challenges to safety systems. On these bases, the Commission finds that the proposed change would not involve a significant reduction in a margin of safety.

Based on the above, the Commission proposes to find that the proposed license amendment request does not involve a significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691.

Attorney for licensee: J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street NW., Washington, DC 20036.

NRC Project Director: John F. Stolz.

Duquesne Light Company, Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: January 15, 1987.

Description of amendment request: The proposed amendment would add a temporary note to Technical Specification 3.7.7.1 to allow the Control Room Emergency Ventilation System (CREVS) to be temporarily removed from service for up to 60 days. This request is being made to allow CREVS modifications, which will increase the capability of the system, and to remove an air-tight partition of steel plates which currently separates the Beaver Valley Unit 1 and Unit 2 portions of the control room.

Basis for proposed no significant hazards consideration determination: The proposed amendment is a temporary revision which would provide an alternate means of emergency control room pressurization during that time period when the Beaver Valley Unit 1 CREVS is out of service for equipment modifications and to allow removal of the partition that currently physically separates the Unit 1 and Unit 2 portions of the control room. The Beaver Valley Unit 2 CREVS is sized to provide the required ventilation system capacity for both control room areas. During the temporary period when the Beaver Valley 1 CREVS is out of service, control room habitability will be maintained by the Unit 2 CREVS, and the required support systems will also be available (including the applicable portions of the emergency power systems). The probability of occurrence or consequences of accidents (FSAR Chapter 15 accidents and offsite accidents involving chemical releases) previously evaluated will not be significantly increased. The implementation of the requested amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because existing systems are only being modified to increase their capability, and during the modification, Unit 2 systems will provide the needed service. Furthermore, the amendment will not involve a significant reduction in the margin of safety because equivalent means of control room habitability and pressurization will be provided. Therefore, the staff proposes to determine that the amendment involves a no significant hazards consideration.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: Lester S. Rubenstein.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: December 19, 1986.

Description of amendment request: The proposed change adds a license condition to require implementation of Florida Power & Light Company's (FPL) Plan for the Integrated Scheduling of Plant Modifications for Turkey Point Units 3 and 4 (the Plan). The Plan describes the responsibilities of FPL and the Nuclear Regulatory Commission (NRC); provides a summary description of the FPL Integrated Schedule Program; describes the Integrated Schedules; describes the mechanisms for changing the Integrated Schedules; describes the periodic reporting requirements; and describes the mechanism for changing the Plan.

The Integrated Schedule program will enable FPL to effectively manage implementation of modifications which have been required or proposed by the NRC, as well as other measures which have been identified by FPL, and which will ensure the continued safe, prudent, reliable, and economic operation of the Turkey Point Plant.

This program was developed to coordinate and schedule all necessary work at the Turkey Point Plant, whether mandated by NRC or identified by FPL and others. The program objectives are to: (1) Conform to regulatory requirements; (2) provide sufficient lead times for modifications; (3) minimize changes for operators; (4) assure training requirements are fulfilled; (5) effectively manage financial and human resources; and (6) specify the framework for changes to developed schedules.

The program reflects that fiscal and manpower resources are finite and that a limit on the onsite manpower is necessary. The program integrates all presently planned work at Turkey Point over a nominal five year period to ensure that individual tasks are effectively scheduled and coordinated. It provides a means for new requirements to be accommodated taking into account schedule and resource constraints.

The proposed changes to the Turkey Point Technical Specifications are: for Facility Operating License DPR–31, the license will be amended by adding a new license condition, Condition K, to read as follows:

K. Integrated Schedule

1. The plan for the Integrated Scheduling of Plant Modifications for Turkey Point Units 3 and 4 (the Plan), submitted on December 19, 1986 is approved.

a. The Plan shall be followed by the licensee from and after the effective date of this amendment.

b. Changes to dates for completion of items identified in Schedule B do not require a license amendment. Dates specified in Schedule A shall be changed only in accordance with applicable NRC procedures.

2. This license amendment shall be effective December 31, 1989, subject to renewal upon application by the licensee.

For Facility Operating License DPR–41, the license will be amended by adding a new license condition, Condition J, to read as follows:

J. Integrated Schedule

1. The plan for the Integrated Scheduling of Plant Modifications for Turkey Point Units 3 and 4 (the Plan), submitted on December 19, 1986 is approved.

a. The Plan shall be followed by the licensee from and after the effective date of this amendment.

b. Changes to dates for completion of items identified in Schedule B do not require a license amendment. Dates specified in Schedule A shall be changed only in accordance with applicable NRC procedures.

2. This license amendment shall be effective December 31, 1989, subject to renewal upon application by the licensee."

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences or an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendments implement an administrative program to provide for scheduling changes and notification of scheduling changes, and does not affect in any way the design or operation of the plant. The program would enhance plant safety by more effectively controlling the number and scheduling of plant modifications, thereby ensuring that issues required for safe operation of the plant receive priority and are completed in a timely manner.

In addition, the amendment is consistent with the NRC guidance in Generic Letter 83–20 dated May 9, 1983 and Generic Letter 85–07 dated May 2, 1985.

Since the proposed amendments will not affect the existing design nor result in any changes to the operational limitation of this plant, the staff proposes to determine that the amendments do not involve a significant increase in the probability or consequences of an accident from any accident previously evaluated; do not create the possibility of a new or different kind of accident previously evaluated; and do not involve a significant reduction in a margin of safety. The staff, therefore, proposes to determine that the amendments do not involve a significant hazards consideration.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street NW., Washington, DC 20036.

NRC Project Director: Lester S. Rubenstein.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia

Date of amendment request: September 9, 1986.

Description of amendment request: This amendment would modify the Technical Specifications (TS) to clarify the surveillance requirements for refueling interlocks by (a) stating that the reactor mode switch refueling interlocks shall be functionally tested "prior to core alterations" rather than the current "prior to any fuel handling with the head off the reactor vessel" and (b) adding surveillance requirement discussions that specifically address the fuel grapple hoist load setting interlock and the auxiliary hoist load setting interlock.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of criteria in 10 CFR 50.92. Providing example of amendments that are considered not likely to involve a significant hazards consideration (51 FR 7751). One such example is (i) a purely administrative change to technical specifications.

The proposed modification consists of changes in wording and format that clarify the original wording but do not change the original intent of the surveillance requirements. Therefore since there have been no changes in the requirements the proposed change is an editorial change and is similar to example (i).

On this basis the Commission has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: Daniel R. Muller.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia

Date of amendment request: August 25, 1986, supplemented January 23, 1987.

Description of amendment request: The amendment would modify the Technical Specification (TS) to change the high room temperature setpoint that automatically closes the Reactor Water Cleanup Unit (RWCU) isolation valves in the event of a leak or pipe break inside the RWCU rooms. It would increase this setpoint from 120° F to 150° F in order to eliminate some of the unnecessary valve isolations that occur due to high RWCU room temperature that are not related to pipe breaks or leaks in the RWCU piping.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a

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significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed change involves an increase in the RWCU room temperature setpoint at which the RWCU isolation valves would automatically close if a pipe break or leak occurred in the RWCU room. The RWCU pipe break accident was evaluated in Section 15A.5.5 of the Hatch Unit 2 FSAR. The proposed change does not affect the cause of a pipe break and therefore, does not affect the probability of the pipe break accident. The increase in the temperature setpoint will have essentially no affect on the consequences of a full pipe break in the RWCU room because the increase in the temperature would be so rapid that by the time it reach 150°F or the time it takes to reach 120°F is insignificant compared to the time it takes to close the isolation valves after the setpoint is reached.

The smallest leak rate requiring automatic actuation of the isolation valves is 25 gallons per minute. The difference in consequences of an accident involving this 25 gallon per minute leak with a 150°F as compared to a 120°F setpoint amounts to an increase in total leakage into the RWCU prior to isolation of the RWCU of a few hundred gallons of water. This is insignificant with respect to the 7500 gallons (approximately) water release estimated in the full pipe break accident analysis.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the physical features of the plant are not altered and no new modes of operation are created. The postulated effects of this change are bounded by the existing Accident Analysis of the RWCU pipe break as discussed in the Hatch Unit 2 FSAR.

The proposed change does not involve a significant reduction in the margin of safety because (1) the system continues to isolate the postulated leaks and breaks with little water released prior to isolation compared to the design break analysis as discussed in Section 15.A.5.5 of the Hatch Unit 2 FSAR, (2) the environmental qualification of the affected components remains valid, and (3) allowing the RWCU to operate with a higher RWCU room temperature will prevent some unnecessary forced outages of the RWCU that are currently caused by the existing lower temperature setpoint and the resultant automatic isolation of the RWCU.

On the basis of the above, the Commission has determined that the requested amendments meet the three standards and therefore has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: Daniel R. Muller.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania.

Date of amendment request: January 28, 1987.

Description of amendment request: The TMI–1 Fire Detection System in the Auxiliary, Fuel Handling, Intermediate and Control Buildings, and the Fire Suppression System in the Auxiliary Building are being expanded to satisfy the commitments made concerning 10 CFR Part 50, Appendix R, and approved in NRC Safety Evaluations dated June 4, 1984, and December 30, 1986. The amendment would revise the TMI–1 Technical Specifications (TSs) to include expansions of existing fire detection systems to cover new areas. Additionally, it would allow converting a manually actuated deluge water spray system to an automatically actuated sprinkler system in the Auxiliary Building containment penetration area and would allow installing a water curtain system in one location. The amendment would also correct a typographical error in the existing TSs.

Basis for proposed no significant hazards consideration determination: A proposed amendment to an operating license for a facility involves no significant hazards considerations if the three standards of 10 CFR 50.92(c) are met. Pursuant to the provisions of 10 CFR 50.91, the licensee has provided an analysis of no significant hazards considerations using the Commission's standards. The Commission's staff agrees with the licensee's analysis. Each standard of 10 CFR 50.92(c) is discussed in turn.

Standard 1. Operation of the facility in accordance with the proposed amendment should not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. The design basis event related to this change is a fire in the affected fire zones. The proposed amendment has no effect on the probability of occurrence of this design basis event. The potential consequences of a fire in the affected fire zones are reduced because the proposed change provides additional assurance that the fire detection instrumentation and suppression provided in each fire zone are operable and therefore capable of promptly detecting, confining and extinguishing the fire.

Standard 2. Operation of the facility in accordance with the proposed amendment should not create the possibility of a new or different kind of accident from any accident previously evaluated. The design basis event related to this change is a fire in the affected fire zones. The proposed amendment has no effect on the possibility of creating a new or different kind of accident from any accident previously evaluated. The proposed amendment provides additional assurance that the fire detection instrumentation and suppression systems installed to satisfy 10 CFR Part 50, Appendix R, requirements are operable and are unrelated to the possibility of creating a new or different kind of accident.

Standard 3. Operation of the facility in accordance with the proposed amendment should not involve a significant reduction in a margin of safety. The proposed amendment provides for the control of the additional fire detection instrumentation and suppression installed to satisfy 10 CFR Part 50, Appendix R, requirements. The proposed amendment also increases the minimum number of detectors required to be operable in the Control Room Cabinets and the Control Room Area in Control Building Elevation 355'. Therefore, the overall margin of safety for the plant is increased.

The typographical error being corrected concerns the incorrect spelling of a single word and is purely administrative in nature. This change is considered to fall within the scope of example (i) of amendments that are not considered likely to involve significant hazards considerations contained in the Commission's guidelines published within 51 FR 7751.

Accordingly, based on the above discussion, the Commission proposes to determine that the application for amendment does not involve significant hazards considerations.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for licensee: Ernest L. Blake, Jr., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Indiana and Michigan Electric Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: January 16, 1987.

Description of amendment request: The proposed amendment would revise the Technical Specifications for the emergency diesel generators to improve and maintain reliability (Per Generic Letter 84–15 issued July 2, 1984), change a number of related Technical Specifications to improve clarity and correct errors, and revise the emergency battery loads testing, to allow simulated connected loads during tests.

Basis for proposed no significant hazards consideration determination: The Commission's standard for determining whether a significant hazards consideration exists is as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Generic Letter 84–15 on the subject "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability," established new requirements that would reduce the risk of core damage from station blackout events by, among other things, changes to the technical specifications which support a desired diesel generator reliability goal. The licensee proposes to adopt many of the technical specification changes which were determined by the NRR as risk reduction actions. The proposed changes, therefore, should reduce the probabilities and consequences of accidents previously analyzed and should increase the margin of safety. The proposed changes will not place the plant in a new or unanalyzed condition, therefore, the changes will not create a new or different kind of accident from any previously analyzed.

The licensee also proposes to change a number of related Technical Specifications to improve clarity and correct errors. Several changes were made to reflect plant design and to make the two Units' Technical Specifications alike. There are also a number of editorial changes and error corrections. All of these changes are administrative in nature and do not change the probabilities or consequences of any previously analyzed accidents. The changes reflect plant design similarities and correct errors, therefore, there is no change to plant operation which would result in a new or different kind of accident. The corrections and clarifications will not result in a reduction in any margin of safety.

In amendments 86 and 72 for Unit Nos. 1 and 2 respectively, the licensee was granted approval to test the battery capacities with simulated loads using a load bank in place of the actual loads using the static inverters. The surveillance requirement being changed is to determine the condition of the battery; a separate surveillance test is required for determining the performance discharge through actual battery loads. The use of a load bank which simulates actual loads should not affect the test nor would it significantly increase the probabilities or consequences of any previously analyzed accident. While the battery is connected to the load bank during testing, the battery cannot affect other systems or components which are required to be operable. Therefore, the change would not create a new or different kind of accident from any previously analyzed. The batteries will continue to be capacity tested on the same frequency; only the method of loading the batteries is changed. Since the change will not impact the batteries in the modes when the batteries are required to be operable, the change will not affect the ability of the batteries to perform their safety function. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

On the basis of the above consideration, the staff proposes to find that the changes do not involve a significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20036.

NRC Project Director: B.J. Youngblood.

Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: October 14, 1986.

Description of amendment request: The Iowa Electric Light and Power Company (the licensee) proposes to change the Technical Specifications for the Duane Arnold Energy Center to (1) eliminate the requirement for Operations Committee review of routine procedure changes that do not affect safety related equipment design bases or the safety objectives of administrative controls by substituting a screening process, and (2) invoke minor administrative revisions to reflect changes in nomenclature.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of each of the above criteria for the amendment request as follows:

In reviewing this proposed request for Technical Specification change we have concluded that this amendment:

(1) does not involve a significant increase in the probability or consequences of an accident previously evaluated because there will be no change in the review procedures for these changes which affect safety-related equipment design bases or safety objectives of administrative controls. The word changes noted above are to achieve consistency in nomenclature and, therefore, do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) does not create the possibility of a new or different kind of accident because the use of a senior licensed operator and member of the plant supervisory staff or a plant supervisory staff member who possesses a senior operator's license to review routine procedure changes will provide a comprehensive review of plant procedures and their effect on system interrelationships. For those procedure changes which affect safety-related equipment design bases or the safety objectives of administrative controls, review and approval by the Operations Committee will still be required. The word changes which are needed to achieve consistency in nomenclature are administrative in nature and, therefore, do not create the possibility of a new or different kind of accident.

(3) does not involve a significant reduction in a margin of safety because changes to

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existing procedures which are identified to potentially affect the safety design bases of equipment or safety objectives will not only have an additional level of review (a senior licensed operator and a supervisory plant staff member who possesses a senior operator's license), but also review by the Operations Committee. This will result in an equivalent or more stringent review process as compared to the existing process.

Based on an evaluation of the above licensee analysis, the staff has made a proposed determination that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: November 26, 1986.

Description of amendment request: The proposed license amendment would revise Duane Arnold Energy Center (DAEC) Technical Specification Section 3.7/4.7, which requires Standby Gas Treatment System (SGTS) surveillance testing at a flowrate of 4,000 cfm. The proposed changes would allow those SGTS tests that are required to be performed at the design flowrate to be performed in the flowrate range of design flow minus 10% (3,600 cfm) to design flow (4,000 cfm).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of each of the above criteria for the amendment request as follows:

In reviewing this proposed request for Technical Specification change we have concluded that this amendment:

(1) does not involve a significant increase in the probability or consequences of an accident previously evaluated because the Standby Gas Treatment System will still perform its design functions and will be demonstrated to do so using this flowrate range. These tests will be performed using the same acceptance criteria for inplace cold (dioctylphthlate) DOP and halogenated hydrocarbon removal and maintaining a minimum 1/4 inch w.g. negative pressure in secondary containment currently in the DAEC Technical Specifications.

(2) does not create the possibility of a new or different kind of accident because it involves no modifications to the plant and affects only the testing of the Standby Gas Treatment System. The changes to the testing will not affect the performance or the design basis of the Standby Gas Treatment System as described in the updated FSAR.

(3) does not involve a significant reduction in a margin of safety because performing the revised Technical Specification Surveillance Requirements at an SGTS train flow near but below 4,000 cfm (e.g., between 3,600 and 4,000 cfm) is consistent with the design basis of the system. The SGTS flow control system will be tested to meet the same iodine retention requirement and maintain flow below 4,000 cfm and meet the 1/4 inch w.g. negative pressure requirement of Technical Specification Surveillance 4.7.C.1.c.

Therefore, this proposed license amendment is judged to involve no significant hazards consideration.

Based on an evaluation of the above licensee analysis, the staff has made a proposed determination that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, N W, Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana.

Date of amendment request: January 13, 1987.

Description of amendment request: Louisiana Power and Light Company (LP&L) has proposed the addition of new technical specification (No. 3.3.3.7.3) for the Broad Range Toxic Gas Detection System (BRTGDS) to satisfy Condition 2.C.4, "Broad Range Toxic Gas Detectors," of Facility Operating License No. NPF–38 and Supplement No. 6 to the Safety Evaluation Report (NUREG–0787).

Waterford 3 was allowed to operate during the first cycle without a BRTGDs system due to near-term compensatory measures i.e., periodic surveys of toxic gas inventories, a hot line communication with the St. Charles Parish Emergency Operations Center, a control room operator and plant personnel training program, and procedures with respect to response to toxic gases. Although these measures were considered adequate for short-term operation, an additional level of protection will be provided by the BRTGDS for operation over the expected plant lifetime.

The proposed BRTGDS would include two redundant photoionization detectors. These detectors would monitor the atmosphere in the reactor auxiliary building outside air intake duct. Whenever the concentration of the detectable gases exceeds a preset limit, these detectors will each induce an electric current in the associated circuit through photoionization, thus generating a signal. This signal automatically switches the control room air conditioning system to the isolation mode of operation.

The Waterford Steam Electric Station, Unit 3 control room operators are presently protected from accidental releases of chlorine and ammonia by separate chlorine and ammonia detectors which monitor the atmosphere in the outside air intake duct. The detectors sound an alarm and isolate the control room if the concentration of either of these gases exceeds its respective preset limit.

In addition, LP&L is a participant in the St. Charles Parish emergency hot line, which can be expected to alert the control room within five minutes of being notified of any serious release of hazardous chemicals in the area, thus allowing the operators to take immediate protective action. The BRTGDS will thus supplement the present defense-in-depth toxic chemical protective measures and provide additional toxic chemical protection.

This new technical specification will require two independent broad range gas detection systems to be operable with their alarm/trip setpoints adjusted to actuate at the lowest achievable IDLH (Immediately Dangerous to Life and Health) gas concentration level of detectable toxic gases. They are also required to provide reliable operation. This proposed technical specification is to be applicable in all modes of operation. Should the above requirements not be met, one of the following actions will be required. When only one broad range gas detection system is operable, the inoperable system must be restored to operable status within seven days, or within the next six hours the plant must initiate and maintain operation of the control room ventilation system in the recirculation mode of operation. When both systems are inoperable, the control room ventilation system must be initiated and maintained in the recirculation mode of operation within one hour. The provisions of Specification 3.0.4 (Entry into an Operational Mode) are not applicable to this proposed technical specification.

The proposed surveillance requirements for this technical specification demand that each broad range gas detection system be demonstrated operable by a performance of a channel check at least once every twelve hours, a channel functional test at least once every 31 days, and a channel calibration at least once every seven days.

LP&L has proposed that the Bases (3/4.3.3.7) for this section be amended to include the BRTGDS with the other chemical detection systems. It would state that the operability of the BRTGDS shall ensure that sufficient capability is available to promptly detect and initiate protective action in the event of an accidental chemical release. The amended Bases would also provide further definition of the system and indicate that the setpoint is based on testing and operating experience as a result of the Waterford 3 area chemical atmosphere profile. Due to possible environmental conditions, this setpoint is subject to change and therefore would be established and controlled by procedure.

Basis for Proposed No Significant Hazards Considerations Determination: The NRC staff proposes to determine that the proposed change does not involve a significant hazards consideration, because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) The proposed addition has no effect on the assumptions contained in the safety analyses. The technical specifications which preserve the safety analysis assumptions are likewise unaffected by the proposed change. The Waterford 3 program for the protection of control room operators is comprised of various in-depth defensive measures. The control room operators are protected from accidental releases of chlorine and ammonia by dedicated chlorine and ammonia detectors, which monitor the atmosphere in the outside air intake duct and will sound an alarm and isolate the control room if the concentration of either of these gases exceeds its respective preset limit. In addition, LP&L is a participant in the St. Charles Parish emergency hot line, which can be expected to alert the control room within five minutes of being notified of any serious release of hazardous chemicals in the area, thus allowing the operators to take immediate protective action. The proposed BRTGDS will supplement the present defense-in-depth toxic chemical protective measures and will therefore not increase the probability or consequences of any accident previously analyzed.

(2) The proposed change will not physically affect existing chlorine and ammonia systems. Therefore, the proposed change will not create the possibility of a new or different kind of accident.

(3) The Waterford 3 safety limits and margins are defined and maintained by the Technical Specifications. This proposed technical specification is an additional limitation on plant operation and does not affect the safety limits or margins contained in the other Waterford 3 technical specifications. The proposed change will therefore not involve any reduction in a safety margin.

The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (51 CFR Part 7751) of amendments that are considered not likely to involve significant hazards considerations. Example (ii) relates to a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications.

In this case, the proposed change in similar to Example (ii) in that the BRTGDS has not previously had a technical specification associated with it.

As the changes requested by the licensee's January 13, 1987 submittal fit Example (ii) as well as satisfy the criteria of 50.92, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St. NW., Washington, DC 20037.

NRC Project Director: George W. Knighton.

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: May 22, 1986 as revised December 9, 1986 and January 29, 1987.

Description of amendment request: The proposed amendment would change the Technical Specifications (TSs) for alternating current electrical power systems (TS 3/4.8.1) to reduce excessive testing of the three onsite emergency diesel generators (diesel generators 11, 12 and 13) consistent with the recommendations provided in the Commission's Generic Letter 84–15 "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability," July 2, 1984. The specific changes to the Technical Specifications would include the following changes to Limiting Conditions for Operation in TS 3.8.1.1:

(1) Action Statement a. (actions to be taken upon declaring either one of the two required offsite circuits or diesel generator 11 or 12 inoperable) would be divided into two action statements: Action Statement a, for one offsite circuit inoperable and Action Statement b, for either diesel generator 11 or 12 inoperable. Proposed Action Statements a and b would require the performance of Surveillance Requirement 4.8.1.1.2.a.4 (verifying operability of the remaining diesel generators) within 24 hours of declaring the offsite circuit or diesel generator inoperable. The present requirement is to perform the surveillance within 2 hours and at least once per 8 hours thereafter. Also, the time allowed for restoration to operable status (72 hours) is clarified by specifying that inoperable equipment will be restored to operable status within 72 hours "from time of initial loss."

(2) Action Statement b. (actions to be taken upon declaring one offsite circuit and either diesel generator 11 or 12 inoperable) would be designated Action Statement c and would be changed to require the performance of Surveillance Requirement 4.8.1.1.2.a.4 within 8 hours. The present requirement is to perform this surveillance testing within 2 hours and at least once per 8 hours thereafter. Also, the statement regarding time allowed for restoration of all required offsite circuits and diesel generators to operable status (72 hours) would be deleted because it would be redundant

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to similar statements in proposed Action Statements a and b.

(3) Action Statement c would be designated Action Statement d and only the references to other action statements would be changed to be consistent with the proposed TS.

(4) Action Statement d (actions to be taken upon declaring two offsite power circuits inoperable) would be designated Action Statement e and would be changed to require performance of Surveillance Requirement 4.8.1.1.2.a.4 within 8 hours. The present requirement is to perform this surveillance testing within 2 hours and at least once per 8 hours thereafter. The time allowed for restoration of both offsite power circuits to operable status would be deleted because it would be redundant to a similar statement in proposed Action Statement a.

(5) Action Statement e (actions to be taken upon declaring diesel generators 11 and 12 inoperable) would be designated Action Statement f and would be changed by deleting the present requirement to perform Surveillance Requirement 4.8.1.1.2.a.4 for diesel generator 13 within two hours from the time of initial loss and at least once per 8 hours thereafter. Performance of Surveillance Requirement 4.8.1.1.2.a.4 for diesel generator 13 within 2 hours of the restoration to operability of either diesel generator 11 or 12 would be a condition for continued operation.

(6) Action Statement f (actions to be taken upon declaring diesel generator 13 inoperable) would be designated action statement g and would be changed to require the performance of Surveillance Requirement 4.8.1.1.2.a.4 for diesel generators 11 and 12 within 2 hours. The present requirement is to perform this surveillance testing within 2 hours and at least once per 8 hours thereafter.

Additional changes would be made to the Surveillance Requirements in TS 4.8.1.1 as follows:

(7) Surveillance Requirement 4.8.1.1.2.a.4 (testing required to demonstrate diesel generator starting capability) would be revised by changing the term for initial testing conditions from "ambient" to "standby" and by adding a footnote to specify allowable initial conditions for testing.

The proposed footnote would allow all diesel generator starts to be preceded by an engine prelube period. The footnote would also allow surveillance testing to be preceded by warmup procedures except that a fast cold start from standby conditions would be required once per 184 days. The present requirement is to perform all testing from ambient (standby) conditions.

(8) Surveillance Requirement 4.8.1.1.2.a.5 (testing required to demonstrate diesel generator loading capability) would be revised by adding a footnote to specify allowable loading conditions for testing. The footnote would allow gradual loading during surveillance testing except that fast loading (within 60 seconds) would be required once per 184 days. The present requirement is to perform all testing with fast loading.

(9) Table 4.8.1.1.2–1 (diesel generator test frequency as a function of valid test failures) would be revised to: (a) make the maximum test frequency once per 7 days instead of the present maximum frequency of once per 3 days; (b) base the determination of number of test failures on a per diesel generator basis instead of the present requirement to base the number of failures on a per nuclear unit basis; (c) clarify the starting date for counting valid tests by adding the OL issuance date; and, (d) clarify the use of the table by deleting the statement "Entry in this test schedule shall be made at the 31 day test frequency."

The TS Bases 3/4.8.1 (alternating current sources) would be changed to reflect the proposed changes to TS 3/4.8.1 regarding a reduced maximum test frequency and determination of number of test failures on a per diesel generator basis rather than a per nuclear unit basis.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided an analysis of significant hazards considerations in its request for a license amendment. The licensee has concluded with appropriate bases, that the proposed amendment satisfies the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations. The NRC staff has made a preliminary review of the licensee's submittal. A summary of staff's review follows.

The objective of diesel generator (DG) periodic surveillance testing is to meet the reliability goals of Regulatory Guide 1.108 "Periodic Testing of Diesel Generator Units Used as Onsite Electric Power Systems at Nuclear Power Plants." Such surveillance testing provides assurance of the availability of the diesel generators in mitigating various transients and postulated accidents following a loss of offsite power. The required reliability is demonstrated with more frequent testing as the number of test failures increases. Standard Technical Specifications require that the DGs be tested in accordance with Regulatory Guide 1.108 where the test interval depends on the demonstrated DG performance and the test interval is established on a per nuclear unit basis.

As described in Generic Letter 84–15, the staff has for sometime been evaluating the frequency of DG testing and the associated potential for severe degradation of engine parts. The staff concluded that this test frequency can be reduced to minimize this potential. Generic Letter 84–15 identified the following means by which periodic surveillance testing of diesel generators can be changed to increase availability of onsite electric power without significantly affecting diesel generator reliability:

(a) testing of remaining operable diesel generators following failure of an offsite power circuit or diesel generator can be reduced from a starting test of each diesel generator every 8 hours to one test of each diesel generator;

(b) testing of all diesel generators based on the number of failures of all diesel generators for one nuclear unit can be changed to testing of the restored diesel generator based on the number of failures of that diesel generator;

(c) the test frequency for an individual diesel generator based on the number of its failures can be reduced from the present maximum of once every three days to a maximum of once every seven days; and,

(d) the number of cold fast starts during surveillance testing can be reduced by using engine prelubrication and warmup procedures recommended by the diesel engine manufacturer to reduce engine stress and wear for most tests.

Changes (1), (2), (4), (5), and (6) to the Technical Specifications would reduce the number of tests of remaining operable diesel generators following loss of an alternating current power source, thus reducing wear of the diesel generators and consequently increasing their reliability, and availability because of less frequent outages for repairs. Change (3) is an editorial change to reference redesignated action

statements in the proposed amendment. Changes (7) and (8) would minimize the number of cold fast starting and loading tests and allow prelubrication and warmup procedures for most surveillance testing, further reducing wear of the diesel generators and further increasing their reliability and availability. Change (9) would decrease the number of tests of good diesel generators and decrease the maximum frequency of testing failed diesel generators after their restoration to operable status. However, the reliability goal has not been changed by the changes to proposed TS Table 4.8.1.1.2–1. Other changes in the limiting conditions for operation, surveillance requirements and bases are administrative or editorial and do not affect the TS requirements.

Based on its preliminary review, the staff concludes that the proposed changes would not involve a significant increase in the probability or consequences of an accident previously evaluated because the changes will increase diesel generator reliability and availability by eliminating excessive testing which can lead to increased wear and more frequent diesel generator failures. The proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not involve modifications to plant equipment or procedures. The proposed changes do not involve a significant reduction in a margin of safety because the reliability goal of the testing schedule for failed diesel generators after they are repaired would remain the same.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications regarding diesel generator testing do not involve significant hazards considerations.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street NW., Washinoton, DC 20036.

NRC Project Director: Walter R. Butler.

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: May 28, 1986 as amended November 11, 1986 and February 13, 1987.

Description of amendment request: The proposed amendment would change the facility Technical Specifications (TSs) as follows: (1) Change the wording in TS 3/4.6.2 and Bases 3/4.6.2.3 to indicate only one drywell air lock instead of "each" drywell air lock; (2) combine parts 1, 2 and 3 of Action Statement a. of TS 3.6.2.3 into one statement; (3) change the drywell overall air lock leakage test frequency in Surveillance Requirement 4.6.2.3.b.1 from the present frequency of once per 6 months, to each cold shutdown if not performed within the previous 6 months; (4) change Surveillance Requirement 4.6.2.3.c regarding the verification that only one door in the air lock can be opened at a time from once per 6 months to once per 18 months; and, (5) change Surveillance Requirement 4.6.2.3.d.1 so that the drywell air lock inflatable seal pressure instrumentation channel functional tests will be run once per 18 months rather than once per 31 days.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided an analysis of significant hazards considerations in its request for a license amendment. The licensee has concluded with appropriate bases, that the proposed amendment satisfies the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations. The NRC staff has made a preliminary review of the licensee's submittal. A summary of staff's review follows.

Change (1) corrects an error in the TSs; reference to "each" drywell air lock is incorrect because there is only one personnel air lock in the drywell. Change (2) clarifies Action Statement a. because as presently written parts 1, 2 and 3 could be interpreted as separate actions whereas they are intended to be part of the same action. Because changes (1) and (2) correct and clarify the TSs and do not change the TS requirements, these two changes would not involve a significant increase in the probability or consequences of an accident previously evaluated nor would they involve a significant reduction in a margin of safety. Because changes (1) and (2) do not involve a change in equipment or procedures they would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Changes (3), (4) and (5) involve changes to the surveillance tests for determining operability of the drywell air lock. The present tests require entering the drywell air lock during high power operation because the test intervals are less than intervals for refueling when the plant is in cold shutdown (presently 12 months and in the future, 18 months). During high power operation, the drywell and the drywell air lock are high radiation areas: therefore, plant procedures restrict entry into the drywell or the drywell air lock when power level is greater than 5% of rated power. With the present surveillance requirements, the tests required by TS 4.6.2.3.c (verifying that only one door can be opened at a time) and by TS 4.6.2.3.d.1 (demonstrating operability of the inflatable seal pressure instrumentation channels for each door) are performed only for the outer door when the reactor is operating greater than 5% power. Because testing the inner door would require entering the high radiation field in the drywell air lock, the inner door is declared inoperable and the outer door is locked closed and verified to be locked closed at least once per 31 days as permitted by Action Statement a. of TS 3.6.2.3. The present overall drywell airlock leakage test required by TS 4.6.2.3.b is performed during power operation by declaring the air lock inoperable and entering the air lock briefly to complete the test within the 24 hours as permitted by Action Statement b. of TS 3.6.2.3. Before the air lock is entered to complete the airlock leakage test, the operability of the inner door seal is assured by verifying the inner door seal pressure is greater than 60 psig as required by Action Statement c. of TS 3.6.2.3. Change (3) would require the airlock leakage test to be performed during each cold shutdown (including forced outages) unless it has been performed during the previous 6 months. This new requirement would eliminate the necessity for licensee personnel to enter a high radiation field to perform the tests and would eliminate the opening of the outer door during high power operation. Assuming no forced outages during an 18-month fuel cycle, the potential maximum test interval would be increased thus increasing the potential for failure of a leakage barrier in the air lock between tests. However, the major leakage potential exists for

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the inflatable door seals which would remain inflated for the proposed interval instead of being deflated and reinflated for the present 6-month test interval. The greater potential for failure of the door seals during the longer test interval is offset by the lesser potential for failure due to less openings of the outer door for test purposes. Furthermore, the periodic verification (once per 7 days) of the airlock door inflatable seal system pressure (TS 4.6.2.3.d.2) will be retained in the Technical Specifications, thus assuring that the airlock doors are sealed and closed during the interval between tests. Changes (4) and (5) would eliminate the present requirements to test each airlock door during high power operation to verify proper operation of the interlock which prevents opening of both doors at the same time (TS 4.6.2.3.c) and to demonstrate operability of the seal pressure instrumentation channels (TS 4.6.2.3.d.1). In the implementation of the present requirements, however, because of high radiation in the air lock, these tests are not run during power operation (as permitted by Action Statement a.). Changes (4) and (5), which would permit tests of the door interlocks and seal pressure instrumentation channels to be made during cold shutdown (once per 18 months) would not therefore result in significant changes to the implementation procedures.

Because changes (3), (4) and (5) would result in less airlock door openings during power operation when the potential accidental release of fission products is greatest and another means is retained in the TS for verifying the door seals are operable between surveillance tests (TS 4.6.2.3.d.2), changes (3), (4) and (5) would not involve a significant increase in the consequences of an accident previously evaluated. Because changes (3), (4) and (5) involve only changes to surveillance tests of accident mitigation features they would not involve a significant increase in the probability of an accident previously evaluated nor would these changes create the possibility of a new or different kind of accident from any accident previously evaluated. Because changes (3), (4) and (5) do not involve a change in TS limiting conditions for operation or safety analyses, they would not involve a significant reduction in a margin of safety.

Accordingly, for the reasons cited above, the Commission proposes to determine that these five changes do not involve significant hazards considerations.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street NW., Washington, DC 20036.

NRC Project Director: Walter R. Butler.

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: October 17, 1986.

Description of amendment request: The October 17, 1986 application for license amendment requested four changes to the Technical Specifications (TSs). One of the changes, the addition of TSs for smoke detectors in the control rod drive repair room, is not addressed in this notice. The other three changes to TSs which are addressed herein are: (1) Change of action Statement b. of TS 3.4.2.1 by deleting the requirement to close a stuck-open safety relief valve within two minutes and by changing the limit of the suppression pool water temperature from 105 °F to 110 °F; (2) addition of a requirement in TS Table 3.8.4.2–1 for a bypass of the thermal overload protection device for the motor operated valve in the reactor core isolation cooling (RCIC) turbine bypass line; and, (31 change of the nomenclature of a valve in TS Table 3.6.6.2–1 for the residual heat removal (RHR) discharge line to the liquid radwaste system.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided an analysis of significant hazards considerations in its request for a license amendment. The licensee has concluded with appropriate bases, that the proposed amendment satisfies the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations. The NRC staff has made a preliminary review of the licensee's submittal. A summary of staff's review follows:

Change (1) would delete the two-minute time limit for closing one or more stuck-open safety relief valves and increase the suppression pool temperature limit from 105 °F to 110 °F. The purpose of the time limit for closing stuck-open safety relief valves is to assure the valve is closed as soon as possible and thus preserve the maximum capability of the suppression pool to absorb fission product decay heat and reactor coolant and structure sensible heat during a reactor blowdown without exceeding containment structural limits. Necessary and sufficient conditions for preserving adequate capability of the suppression pool is obtained by specifying minimum pool water level and maximum pool water temperature in TS 3.6.3.1. The specification of a time limit to close a stuck-open safety relief valve is therefore not necessary to preserve an acceptable heat absorption capability in the suppression pool. The two-minute time limit was based on the estimated minimum time for an operator to identify the condition and close the valve with a hand switch in the control room. An April 7, 1986 stuck-open safety relief valve event showed that two-minutes was not adequate to determine the condition, operate the valve hand switch and verify that the valve had closed; therefore, the reactor was manually tripped. Analysis after the trip showed the valve had closed four to five seconds before the trip. Simulated stuck-open relief valves on a simulator have shown that from four to six minutes were required to close the valve when the operators were aware of the condition to be simulated. Calculations indicate the suppression pool temperature would be less than the limiting temperature for these longer times. The safety analysis of a stuck-open relief valve takes no credit for reactor shutdown within two minutes. The radiological release to the suppression pool following a stuck-open safety relief valve is less than the release from a main steam isolation valve closure. Because the time limit for closing a stuck-open safety relief valve is not necessary in addition to the temperature limit, because the time limit can cause unnecessary reactor trips, and because the safety analyses do not depend on the time limit, deleting the time limit does not involve a significant increase in the consequences of an accident previously evaluated. The change in Action Statement b. of TS 3.4.2.1 to require plant shutdown if pool water temperature exceeds 110 °F instead of the presently specified 105 °F would make this action statement consistent with Action Statement b.2 of TS 3.6.3.1 which specifies pool water temperature limits. Because the limiting pool temperature would not be exceeded, the change from 105 °F to 110 °F in the action statement does not involve a significant increase in the consequences of an accident previously evaluated. Because change (1) affects accident mitigation only, it does not involve a siqnificant increase in the probability of an accident previously evaluated. Change (1) does not create the possibility of a new or different kind of accident from any accident previously evaluated because the time limit has not been considered in safety analyses and the proposed temperature limit is consistent with that used in other safety analyses. Change (1) does not involve a significant reduction in a margin of safety because the proposed temperature limit is the same as that used in the specification of suppression pool heat absorption capability.

The Commission has also provided guidance concerning the application of the three standards in 10 CFR 50.92 by providing examples of amendments considered likely, and not likely, to involve a significant hazards consideration. These were published in the **Federal Register** on March 6, 1986 (51 FR 7751) . The NRC staff has made a preliminary review of changes (2) and (3) in the licensee's submittal. A discussion of these examples as they relate to changes (2) and (3) follows.

One of the examples of actions involving no significant hazards consideration, (ii), is a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. Change (2) is similar to this example because it would add a requirement to continuously bypass the thermal overload device for a motor-operated valve in the RCIC system. The bypass will meet the requirements of Regulatory Guide 1.106, "Thermal Overload Protection for Electric Motor-Operated Valves." Addition of the bypass will increase the availability of the valve, which is used in the startup of the RCIC turbine prior to opening the main steam supply valve.

Another example of an action involving no significant hazards consideration, (i), is a purely administrative change to Technical Specifications: for example, a change in nomenclature. Change (3) is similar to this example because the nomenclature of a valve would be changed. The change would more clearly identify the valve as one in the line connecting the RHR discharge header to the liquid radwaste system. Several RHR Loop A and Loop B flushing lines tie into the discharge header. The nomenclature change would also identify the two ESF power divisions (A and B) that power two solenoid valves that control air supply to the air operated valve.

Accordingly, for the reasons cited above, the Commission proposes to determine that these three changes do not involve significant hazards considerations.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street NW., Washington, DC 20036.

NRC Project Director: Walter R. Butler.

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: November 11, 1986 as revised January 20, 1987.

Description of amendment request: The licensee's application dated November 11, 1986 requested two changes to the Technical Specifications (TSs); (1) Changes to the reactor pressure vessel (RPV) pressure-temperature limit curves, and (2) changes to the drywell air lock Technical Specifications. This notice addresses only the first item. The proposed amendment would change the Technical Specifications and associated Bases for the RPV pressure and temperature limits (TS 3/4.4.6) to be consistent with the limits provided by the nuclear steam system supplier, the General Electric Company.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided an analysis of significant hazards considerations in its November 11, 1986 request for a license amendment. The licensee has concluded, with appropriate bases, that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations.

The Commission has also provided guidance concerning the application of these standards by providing examples of amendments considered likely, and not likely, to involve a significant hazards consideration. These were published in the **Federal Register** on March 6, 1986 (51 FR 7751). The NRC staff has made a preliminary review of the licensee's submittal. A discussion of these examples as they relate to the proposed amendment follows.

One of the examples of actions involving no significant hazards consideration, (ii), involves a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. The proposed change of the RPV pressure-temperature limit curves is similar to this example because the proposed curves are more restrictive than the present curves. Curve "A" for hydrostatic or leak testing would not be changed. More restrictive (higher) temperature limits would be imposed for pressures below 312 psig for Curve "B" which is used for non-nuclear heatup, cooldown following shutdown and low power physics tests and for Curve "C" which is used for operation with a critical core other than low power physics tests. The licensee's review of plant operating records showed that the plant has not operated in the proposed additional restricted area of the pressure-temperature limit curves.

Accordingly, for the reasons cited above, the Commission proposes to determine that the proposed change does not involve significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street NW., Washington, DC 20036.

NRC Project Director: Walter R. Butler

Northeast Nuclear Energy Company (NNECo), Docket No. 50–245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: January 21, 1987.

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Description of amendment request: The proposed amendment would delete reference to the switchyard batteries from technical specifications 3.9.A.5, 4.9.B.2 and Basis 4.9.B.

Basis for proposed no significant hazards consideration determination: Deletion of the technical specifications for switchyard batteries will permit NNECO to shift maintenance responsibility for these batteries from the Millstone Nuclear Power Station, Unit No. 1 (Millstone 1), Maintenance Department to the New London Substation Maintenance Department. The batteries are part of the components requiring surveillance, calibration and preventive maintenance that make up the switchyard. However, the switchyard breakers, disconnect switches, cables, protective relays, and other components are not contained in the technical specifications. The proposed changes will provide consistent treatment of the Millstone 1 preferred offsite power supply.

NNECO has reviewed the proposed changes pursuant to 10 CFR 50.59 and has determined that they do not constitute an unreviewed safety question. The probability of occurrence or the consequences of a previously analyzed accident has not been increased and the possibility for a new type of accident has not been created. Since switchyard batteries do not serve a safety-related function and are not included in the Standard Technical Specifications for General Electric Boiling Water Reactors, NUREG–0123, (STS) the changes proposed herein will establish consistency between the Millstone 1 technical specifications and the STS.

Removal of this non-safety related provision from the technical specifications would not result in a decrease in safety, because the capability for emergency power is unchanged, and would facilitate focusing attention of maintenance personnel on matters more directly related to nuclear safety.

NNECO has reviewed the proposed changes, in accordance with 10 CFR 50.92, and has concluded that they do not involve a significant hazards consideration in that these changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because switchyard batteries do not serve a safety-related function.

2. Create the possibility for a new or different kind of accident from any previously analyzed. The proposed change has no effect on potential failure modes because there are no equipment changes; the only change is the transfer of responsibility for maintenance of the batteries.

3. Involve a significant reduction in a margin of safety, in that the reliability of station power will not be degraded. By having the switchyard batteries maintained by the New London Substation Maintenance Department, the reliability of the offsite power supplies will be consistent with the entire NNECO system.

Based on the information provided by the licensee, the staff proposes to determine that the licensee amendment request involves no significant hazards consideration.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry, & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499.

NRC Project Director: Christopher I. Grimes.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: December 22, 1986.

Description of amendment request: The proposed amendment would change the expiration date for the Millstone Unit 2 Operating License, DPR–65, from December 11, 2010 to July 31, 2015.

Basis for proposed no significant hazards consideration determination: The currently licensed term for Millstone Unit 2 is 40 years commencing with issuance of the construction permit (December 11, 1970). Accounting for the time that was required for plant construction, this represents an effective operating license term of approximately 35 years. The licensee's application requests a 40-year operating license term for Millstone Unit 2.

The licensee's request for extension of the operating license is based primarily on the fact that a 40-year service life was considered during the design and construction of the plant. Although this does not mean that some components will not wear out during the plant lifetime, design features were incorporated which maximize the inspectability of structures, systems and equipment. Surveillance and maintenance practices which are implemented in accordance with the ASME code and the facility Technical Specifications provide assurance that any unexpected degradation in plant equipment will be identified and corrected.

The design of the reactor vessel and its internals considered the effects of 40 years of operation at full power with a plant capacity factor of 80% (32 effective full power years). Analyses have demonstrated that expected cumulative neutron fluences will not be a limiting consideration. In addition to these calculations, surveillance capsules placed inside the reactor vessel provide a means of monitoring the cumulative effects of power operation.

Aging analyses have been performed for all safety-related electrical equipment in accordance with 10 CFR 50.49, "Environmental qualification of electrical equipment important to safety for nuclear power plants," identifying qualified lifetimes for this equipment. These lifetimes will be incorporated into plant equipment maintenance and replacement practices to ensure that all safety-related electrical equipment remains qualified and available to perform its safety function regardless of the overall age of the plant.

Based upon the above, it is concluded that extension of the operating license for Millstone Unit 2 to allow a 40-year service life is consistent with the safety analysis in that all issues associated with plant aging have already been addressed. Since the proposed amendment involves no change in the Technical Specifications or safety analyses, we conclude that the proposed amendment would not: (i) Involve any significant increase in the probability or consequences of an accident previously evaluated; or (ii) create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) involve any reduction in the margin of safety.

Based upon the above, the Commission proposes to determine that the proposed amendment, which would provide for a 40-year operating life for Millstone Unit 2, involves no significant hazards considerations.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esq., Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Project Director: Ashok C. Thadani.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: January 8, 1986 [sic] (1987).

Description of amendment request: The proposed amendment would delete

the hydrogen fluoride detectors from Table 2–11, Toxic Gas Monitors Operating Limits, and from Table 3–3, Minimum Frequencies for Checks, Calibrations and Testing of Miscellaneous Instrumentation and Controls. The licensee has concurrently requested that the NRC terminate license SMC–1420 which authorizes possession of natural uranium hexafluoride (UF_6) at the Fort Calhoun station. The licensee's submittal states that the UF_6 was shipped offsite in April 1986. With no UF_6 on site, the licensee states that there is no possibility of a toxic gas accident involving hydrogen fluoride. The amendment would also correct a typographical error in Table 3–3.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The proposed deletion of the hydrogen fluoride monitors from Tables 2–11 and 3–3 will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. As stated by the licensee, the UF_6 was shipped offsite and therefore there is no possibility of a toxic gas accident involving hydrogen fluoride. Accordingly, the deletion of the hydrogen fluoride monitors will not increase the possibility or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. Because the proposed change will delete instruments from the Technical Specifications that are designed to monitor hydrogen fluoride and there is no possibility of a toxic gas accident involving hydrogen fluoride, as discussed above, the possibility of a new or different kind of accident from any previously evaluated will not be created.

(3) Involve a significant reduction in the margin of safety. The proposed change will delete instruments from the Technical Specifications that will no longer be needed to monitor a hydrogen fluoride toxic gas release because such a release is not possible, as discussed above; hence, there will not be a reduction in the margin of safety.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7744). One of these examples, (i), involving no significant hazards consideration is a purely administrative change to technical specifications. The proposed change to correct the typographical error is related to this example.

Based on the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue NW., Washington, DC 20036.

NRC Project Director: Ashok C. Thadani.

Portland General Electric Company, et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: October 31, 1986.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 3/4.4.9, Figures 3.4–2 and 3.4–3, to reflect heatup and cooldown rate pressure/temperature limits for a service period of up to 10 Effective Full Power Years (EFPY) consistent with the May 27, 1983 amended requirements of 10 CFR Part 50, Appendix G. Table 4.4–5 would be revised to reflect compliance with ASTM E 185–82 with respect to capsule withdrawals, consistent with the amended requirements of 10 CFR Part 50, Appendix H. The capsule withdrawal schedule would be based on neutron fluence or EFPY, consistent with ASTM E 185–82. The associated bases would also be revised to maintain consistency within the Technical Specifications.

Figures 3.4–2 and 3.4–3 of the current TS are based on a service period of up to 15 EFPYs, and do not reflect the amended requirements of 10 CFR Part 50, Appendix G. The capsule withdrawal schedule in Table 4.4–5 is currently based on calendar years rather than EFPYs as required by the revised 10 CFR Part 50, Appendix H. Changes to 10 CFR Part 50 Appendix H require compliance with ASTM E 185–82 for reactor vessel material irradiation surveillance capsule withdrawal, for capsules withdrawn after July 26, 1983. The change from calendar years to EFPY is only a minor change in facility operation.

Changes to Section IV.A.2 of 10 CFR Part 50 Appendix G require that, when the reactor is not critical and pressure exceeds 20 percent of the preservice system hydrostatic test pressure, the temperature of the closure flange regions must exceed the reference temperature of the material in these regions by at least 120 °F. To implement this revised regulation, the licensee proposes minor changes to the required pressure-temperature curves for the reactor coolant system. For Trojan, the amended regulation would require that the reactor coolant system be at a temperature higher than 140 °F before exceeding a pressure of 620 psig. To account for possible instrument error, the indicated temperature must be at least 150 °F before exceeding a pressure of 560 psig. This represents only a minor change from present requirements.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety. The Commission has also provided guidance concerning the application of these standards by providing certain examples (March 6, 1986, 51 FR 7751). An example of an amendment that is considered not likely to involve a significant hazards considerations is Example (vii) A change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

The staff has reviewed the licensee's no significant hazards analysis and concludes that the proposed changes are within the scope of the Commission's cited example, since the changes are required in order to assure compliance with the regulations, as amended.

Thus, the staff proposes to determine that the requested changes do not involve a significant hazard consideration.

Local Public Document Room location: Multnomah County Library, 801 S. W. 10th Avenue, Portland, Oregon 97205.

Attorney for licensee: J. W. Durham, Senior Vice President, Portland General Electric Company, 121 S. W. Salmon Street, Portland, Oregon 97204.

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NRC Project Director: Steven A. Varga.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Unit No. 3, Westchester County, New York

Date of amendment request: January 14, 1987.

Description of amendment request: The licensee provided the following description:

This proposed revision to the Indian Point 3 Technical Specifications seeks to reduce the elapsed time interval from shutdown requirement for the discharge of more than one region of fuel (72 assemblies). Presently, the Technical Specifications require 400 hours to have elapsed after shutdown before more than one region of fuel can be discharged from the reactor.

This change will reduce the elapsed time interval prior to discharge to 162 hours.

The 400 hour limitation was originally established based on pool decay heat load calculations from a full core discharge, not based on any accident analysis. An analysis is provided of the decay heat load after a 162 hour period which concludes that the maximum bulk pool water temperature would be less than or equal to 198 °F and that the spent fuel pool heat removal system is adequate to transfer the decay heat generated in this case. This is consistent with the NRC Standard Review Plan Section 9.1.3 which states that the temperature of the spent fuel pool water should be kept below the boiling point upon full core discharge.

The analysis assumes a component cooling water (CCW) temperature of 100 °F. This CCW temperature was determined to correspond to a river water temperature of 87.8 °F. A sensitivity study was performed on the analysis to determine the effect of increasing the assumed river water temperature. The sensitivity study results indicate that increasing the assumed river water temperature to 92 °F would increase the maximum spent fuel pool bulk temperature to 201.9 °F, which is below the boiling point.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided the following analysis of this change:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not increase the probability of a previously evaluated accident. The consequences of a fuel handling accident are described in FSAR Chapter 14.2.1. The assumed fuel decay time after shutdown is 100 hours. The consequences of a fuel handling accident assuming a 100 hour decay time will bound the consequence of such an accident with a greater assumed decay time. As the proposed delay time of 162 hours for the discharge of more than one region of fuel is greater than 100 hours, the consequences of the previously evaluated fuel handling accident are not increased.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change involves a reduction in the delay time prior to discharge of more than one region of fuel. Reducing the length of the delay time will not create a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Upon a complete loss of the spent fuel cooling system, the adiabatic pool heatup rate of the pool has been conservatively calculated to be 15.37 ° F/hr. For the case assuming a river water temperature of 87.8 ° F, the instantaneous discharge of a full core after a decay time of 162 hours will result in a steady state bulk pool temperature of 197.7 ° F. For this case 0.93 hours are available to start the redundant spent fuel pooling cooling pump to restore heat removal and preclude bulk pool boiling. For the case assuming a river water temperature of 92 ° F, the instantaneous discharge of a full core after a decay time of 162 hours will result in a steady state bulk pool temperature of 201.9 ° F. For this case 0.66 hours are available to start the redundant spent fuel pool cooling pump and preclude bulk pool boiling. These time periods are considered adequate to start the redundant pump.

Based on the above, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Steven A. Varga.

Public Service Company of Colorado, Docket No. 50–267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: January 15, 1987.

Description of amendment request: The licensee has proposed changes to LCO 4.3.1 of the Fort St. Vrain (FSV) Technical Specifications to require both evaporator-economizer-superheater (EES) sections and both reheater sections be available during operation at power as the minimum number of operable heat exchangers. The FSV Technical Specifications currently require both the reheater section and the EES section of one steam generator and either the reheater section or the EES section of the other steam generator be operable for the removal of decay heat. For power levels above 39 percent of full power, the plant will only use the two EES sections to remove decay heat for the Class 1E and Appendix R design basis shutdowns. The licensee is retaining the operability requirement for the reheater sections because they can be used for other accident sequences.

A second proposed change to LCO 4.3.1 is that the EES sections shall be capable of receiving water from both the Emergency Condensate Header and the Emergency Feedwater Header instead of the former minimum allowable of only one of these emergency headers.

Basis for proposed no significant hazards consideration determination: Recent analyses of Safe Shutdown Cooling with a single EES have shown that maximum fuel temperatures remain well below a level where significant fuel damage could occur, the primary coolant pressure boundary remains intact and the PCRV safety valves remain seated. The fuel temperatures are lower than those than would have occurred had decay heat been removed with the reheater section. Thus, the consequences of the Safe Shutdown Cooling accident previously evaluated will not be increased by the LCO 4.3.1 Basis change that omits reliance on the reheaters for Safe Shutdown Cooling. In addition, LCO 4.3.1 would require that the EES sections can be supplied by water from either the Emergency Condensate Header or the Emergency Feedwater Header. For these reasons, it is considered that this proposed change does not involve an increase in the probability or consequences of an accident previously evaluated.

The revision to LCO 4.3.1 will not create a new or different kind of accident. The accident descriptions for Safe Shutdown Cooling with a fire pump and other Safe Shutdown List equipment in the FSAR (Sections 10.3.9, 14.4.2.1 and 14.4.2.2) will remain essentially as written. FSV will continue to meet the NRC's single failure requirements. FSV continues to meet the General Design Criteria commitments in Appendix C of the FSAR without relying on the reheaters for Safe Shutdown Cooling.

Reliance on the EES sections of the steam generators is considered desirable because of their larger heat transfer capability and the fact that their capabilities have been demonstrated in normal plant operation. Thus, the proposed fully redundant EES sections potentially offer a greater margin of safety. The revision of LCO 4.3.1, requiring both EES sections to be capable of receiving water from both the Emergency Feedwater Header and the Emergency Condensate Header, does not decrease the margin of safety over the former minimum requirement of the capability of receiving water from only one of these headers.

Based on the above evaluation, it is the staff's initial determination that operation of Fort St. Vrain in accordance with the proposed LCO changes will not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in any margin of safety. Hence, the staff proposes to determine that this proposed change would involve no significant hazards consideration.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado.

Attorney for licensee: Bryant O'Donnell, Public Service Company of Colorado, P.O. Box 840, Denver, Colorado 80201–0840.

NRC Project Director: Herbert N. Berkow.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: June 18, 1986, supplemented by letter dated January 7, 1987.

Description of amendment request: The proposed amendment would delete the surveillance requirements for the Reactor Building Upper Dome Air Circulators (RB–UDAC) from Technical Specification 4.5.2.1.B.

Basis for proposed no significant hazards consideration determination: The surveillance requirement for the Reactor Building Upper Dome Air Circulators (RB–UDAC) has been in effect since the issuance of the initial operating license for Rancho Seco. Since then, reviews and data have shown that the safety function of these circulators, which is to prevent formation of flammable pockets of hydrogen within the Reactor Building (RB) dome during accident conditions, can be adequately accomplished by other existing systems and mechanisms. These existing systems include the RB Emergency Coolers and Containment Spray Systems, as well as natural mechanisms such as convective mixing and molecular diffusion. The RB Emergency Coolers and Containment Spray Systems are safety-related systems with appropriate surveillance requirements in the Technical Specifications to ensure their operability in the event of an accident.

The licensee has reviewed the issue of safety-related RB–UDAC against the Commission's Standard Review Plan and the omission of RB–UDACs, or equivalent, at similar reactor plants, all designed by the same architect-engineer. The licensee's comparison of Rancho Seco's design with these other plants, which do not have a separate containment recirculation system (i.e., RB–UDAC), reveals very close similarities in Reactor Building design features. This indicates that plants similar to Rancho Seco but of later design satisfy Standard Review Plan 6.2.5, Section II.3, "Combustible Gas Control in Containment, Acceptance Criteria".

The Commission has provided standards for determining whether a significant hazards consideration exists [10 CFR 50.92(c)]. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

As noted previously, the proposed change does not affect ability of the plant to operate safely or perform necessary safety functions in the event of an accident. The Commission's staff agrees with the licensee's conclusion that plant operation with the surveillance requirement of the RB–UDAC deleted from the Technical Specifications would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The initial design intent of the RB–UDAC was to ensure that an accumulation of hydrogen would not occur in the RB dome under accident conditions. With respect to this safety-related function of the RB–UDAC, the Rancho Seco Updated Safety Analysis Report (USAR paragraph 6.4.2) states:

> The hydrogen will rapidly diffuse by rising into the Reactor Building atmosphere to give an even distribution throughout the Reactor Building. In addition, convective mixing due to the heating of air above the hot water in the sump and the forced circulation created by the Reactor Building emergency coolers will enhance the dispersion of hydrogen. Accordingly, operation of the emergency upper dome circulators is not considered essential to the elimination of regions of high hydrogen concentration.

This conclusion is supported by a research project conducted by the Los Alamos National Laboratory in 1978. Their report, NUREG/OR–0304, "Mixing of Radiolytic Hydrogen Generated Within a Containment Compartment following a LOCA", provides detailed mathematical and experimental evidence that the molecular diffusion process and the turbulent mixing caused by small temperature differences between the floor and the ceiling of the containment will be sufficient to ensure proper mixing of hydrogen in containment.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The worst accident foreseen, the possibility that the RB–UDAC is unavailable in a future post-accident situation, has already been evaluated as indicated in Item (1). Therefore, the absence of the RB–UDAC or its associated surveillance requirement would not create a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety. As discussed above, there are various means of achieving the mixing of postaccident generated hydrogen in the RB to prevent an explosive or flammable concentration. Therefore, the possible minor reduction of a margin of safety resulting from the proposed change is considered not significant.

Thus, based on the above criteria, the Commission's staff proposes to determine that the change involves no significant hazards considerations.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

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NRC Project Director: John F. Stolz.

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: December 9, 1986.

Description of amendment request: South Carolina Electric & Gas Company (SCE&G) hereby requests a revision to the Virgil C. Summer Nuclear Station Technical Specifications, Section 5.3.1, "Fuel Assemblies." This change would allow SCE&G the flexibility to reconstitute fuel assemblies in order to reduce coolant activity and utilize the remaining energy in fuel assemblies which contain small numbers of defective fuel rods.

Basis for proposed no significant hazards consideration determination: Section 5.3.1 of the Technical Specifications describes certain design features of the fuel assemblies in the reactor core. The description currently states that each fuel assembly in the core is comprised of 264 fuel rods clad with Zircaloy-4. The proposed change would allow substitution of some of the fuel rods with filler rods consisting of Zircaloy-4 or stainless steel. The change would also allow fuel rods to be removed from the assembly structure and those positions left vacated. In each reload core the reconstituted assemblies would be specifically evaluated using standard methods currently utilized in accepted reload methodology topicals. Existing safety criteria and design limits will apply in these evaluations. Consideration of the effects on peaking factors and core average linear heat rate will be included in the core physics evaluations.

The Commission has provided certain examples (51 FR 7751) of actions likely to involve no significant hazards considerations. This change is similar to Example iii which states: "For a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC—89 for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable."

Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218.

NRC Project Director: Lester S. Rubenstein.

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: December 11, 1986.

Description of amendment request: South Carolina Electric & Gas Company requests a revision to Technical Specification Section 3.1.2.5, "Borated Water Source—Shutdown," Section 3.1.2.6, "Borated Water Sources—Operating," and other related Sections 3.5.1, 3.5.5, B3/4.1.2, B3/4.5.4, and B3/4.6.2.2. The changes revise the Refueling Water Storage Tank (RWST) boron concentration levels from a minimum of 2000 ppm to a minimum of 2300 ppm in Sections 3.1.2.5, 3.1.2.6 and B3/4.1.2, and from between 2000 ppm and 2100 ppm to between 2300 ppm and 2500 ppm in Section 3.5.5; revise the accumulator boron concentration levels from between 1900 ppm and 2100 ppm to between 2200 ppm and 2500 ppm in Section 3.5.1; and revise the pH value from between 8.5 and 11.0 to 7.8 and 11.0 for the solution recirculated within containment after a loss of coolant accident [LOCA] in Sections B3/4.5.4 and B3/4.6.2.2. The purpose of these changes is to increase the current margin to a post-LOCA shutdown requirement in order to have increased assurance of conformance for Cycle 4 and future cycles at Virgil C. Summer Nuclear Station.

Basis for proposed no significant hazards consideration determination: The purpose of these changes is to increase the current margin to a post-LOCA shutdown requirement (i.e., the reactor will remain subcritical in the cold condition following a large break LOCA assuming complete mixing of the RWST, reactor coolant system (RCS) and emergency core coolant system (ECCS) water and other sources of water that may eventually reside in the sump post-LOCA with all control rods assumed to be out) in order to have increased assurance of conformance for Cycle 4 and future cycles at Virgil C. Summer Nuclear Station.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from accidents previously evaluated; or (3) involve a significant reduction in margin of safety. The licensee has determined that the requested amendment does not involve significant hazards considerations for the following reasons:

(1) The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report is not increased.

a. The only non-LOCA safety analyses affected are those in which the Safety Injection System (SIS) is actuated. For these accidents no adverse impact will occur, and the conclusions as stated in the FSAR will remain valid. For most accidents, the higher boron concentrations are beneficial since a more rapid negative reactivity insertion will occur.

b. In the small break LOCA analysis, there is no assumption regarding the concentration of boron in the ECCS water and no credit is taken for the negative reactivity produced by soluble boron. Thus, the FSAR conclusions remain valid with the higher allowable boron concentrations.

c. Like small breaks, the large break analysis takes no credit for boron in the ECCS water up to the time of peak clad temperature. The FSAR conclusions remain valid.

d. For maintenance of post-LOCA long term cooling, the higher boron concentrations decrease the maximum allowable time for operator action (i.e., from 24 hours to 11 hours to start hot recirculation and from 24 hours to 11 hours to start hot recirculation and from 24 hours to 18 hours to subsequently alternate hot leg and cold leg recirculation) to prevent boron precipitation. The resulting operator action times are still adequate to assure the required actions can be accomplished to maintain post-LOCA long term cooling.

e. The increased boron concentrations and resulting lower post-LOCA containment spray and recirculating core cooling solution pH are acceptable. The design basis for pH sensitive issues are maintained.

(2) The possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report is not created. The proposed changes increase existing boron concentration limits within current operational restraints and without compromising the performance or qualification of safety related equipment. Thus, these changes are considered to be adjustments within the Virgil C. Summer design bases and thus do not create the possibility of a new or different kind of accident.

(3) The margin of safety as defined in the basis for any Technical Specification is not reduced. The proposed Technical Specification changes maintain the Final Safety Analysis Report design bases and adequate margins of safety. The higher boron concentrations increase the negative reactivity insertion capability of the ECCS providing an increase in the plant's margin of safety. As discussed in item 1.d above, the higher boron concentrations do impact safety by decreasing the allowable operator action times to prevent boron precipitation in the long term following a LOCA. However, the required operator action scan still be easily accomplished within the minimum acceptable time restraints to prevent boron precipitation. Therefore, the proposed increases in the Technical Specification boron concentrations do not result in a significant reduction in margins of safety.

The staff has reviewed the licensee's determination and finds it acceptable. Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218.

NRC Project Director: Lester S. Rubenstein.

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: January 20, 1987.

Description of amendment request: South Carolina Electric & Gas Company requests a revision to Technical Specification (TS) 4.6.2.3 "Reactor Building Cooling System" and the associated bases to reflect a flow requirement of 2,000 gpm per operating reactor building cooling unit (RBCU) instead of 4,000 gpm per train as currently listed in Technical Specifications. The proposed change would allow continued operation at lower indicated service water booster pump flow rates due to automatic closure of the outlet valves on the non-operating RBCU's while ensuring that the required flow rate to the single operating RBCU in each train is met.

Basis for proposed no significant hazards consideration determination: The existing RBCU service water outlet valves are non-active and therefore cannot be assumed to be capable of post accident operation. Since service water (SW) flow presently passes through the operating and non-operating RBCU's, the TS flow is 200% of the flow required for cooling. The modification converts the RBCU service water outlet valves to active motor operated valves with automatic controls to open the valves on the RBCU selected post accident, and close the valves on the non-selected RBCU.

TS 4.6.2.3 requires that the service water booster pump flow be at least 4,000 gpm to assure that the selected RBCU in each train receives its required 2,000 gpm. Since only 2,000 gpm is required per selected RBCU and the system is designed to have only one RBCU and its associated fan in each train in service for the design basis accident, the required flow through the service water booster pump can be reduced to 2,000 gpm.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from accidents previously evaluated; or (3) involve a significant reduction in margin of safety. The licensee has determined that the requested amendment does not involve significant hazards considerations for the following reasons:

1. (a) An increase in the probability of the previously evaluated will not occur. The valves are being made active to facilitate the removal of heat from the containment following a Condition IV event by assuring that the entire SW flow provided for containment cooling is delivered to the active (fans running) reactor building coolers.

(b) There will be no increase in the consequences of an accident previously evaluated in the FSAR/FPER. Since this modification will increase the SW flow margin it will enhance the capability to remove reactor building heat following a Condition IV event and assures that any potential release of radioactivity will be less than the FSAR licensing basis.

(c) The upgrade of these valves to active status will not adversely affect the functions of equipment important to safety as previously evaluated in the FSAR/FPER. Separation of redundant electrical systems is maintained per FSAR section 8.3.1.4.1, and Electrical Construction Guidelines Dwg. S-200-926, sheet 6, revision 3, paragraph 2.3.6; and sheet 4, revision 5, paragraph 2.1.8. This separation is maintained by physical distance, and by the installation of a single Kaowool wrap, acting as a suitable barrier. Installed conduit is designed to withstand a seismic event, and to avoid main steam line break 'jet-cones'. The modified valve operators are seismically designed, and valve position status lights on the engineered safety features equipment board are designed as described in the FSAR.

(d) The use of active valves in these positions does not increase the consequences of a malfunction of equipment important to safety as valves as the single active failure results in the same consequences from the accident. All accidents evaluated in the FSAR/FPER bound any accidents which these valves may create or contribute to.

2. The proposed change will not create the possibility of a new or different kind of accident from accidents previously evaluated because the original design was reviewed to 10 CFR Part 50, Appendix A, criterion 38, 39 and 40, and the proposed change is in accordance with that criteria. No malfunctions of equipment important to safety are anticipated which will be different from those malfunctions already evaluated in the FSAR/FPER. The modification will not induce water hammer transient loadings in the piping system. Flow limiting orifices in the discharge pipe are revised to maintain the SW system pressure in the reactor building and to prevent excessive flow through the reactor building cooling coils. The reduced flow thru the SW booster pump after the modification is greater than the minimum flow at which the pump was tested. The valve operator stroke time maintains the margin of safety as defined in TS Table 3.3-5 for service water response times.

3. The margin of safety as defined in the bases to TS 3/4.6.2.3 is not reduced by this modification. This modification will permit a reduction in the

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surveillance requirements for SW flow. The TS surveillance flow of 4,000 gpm is the total of: (1) 2,000 gpm to the active functioning fan cooler, and (2) 2,000 gpm to the non-functioning fan cooler. This modification will allow the isolation of flow to the non-functioning reactor building fan cooler. This will permit a reduction in the surveillance flow requirements to 2,000 gpm. This modification will increase the margin of flow to the reactor building fan cooler operating post accident above the 2,000 gpm required and will provide cooling capacity greater than that assumed for accident analysis.

The staff has reviewed the licensee's determination and finds it acceptable. Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180 Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218.

NRC Project Director: Lester S. Rubenstein.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: December 23, 1986.

Description of amendment request: The proposed amendments would increase the maximum allowable response time for the alignment of the safety injection system valves between the charging pumps, the volume control tank, and the refueling water storage tank (RWST).

Basis for proposed no significant hazards consideration determination: The Commission provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. Therefore, the staff has reviewed the proposed change and the no significant hazards analysis performed by the licensee.

In its determination the licensee reached the following conclusions.

(1) The proposed amendment did not involve a significant increase in the probability and consequences of an accident previously evaluated since a Westinghouse analysis of the proposed valve stroke time increase would not adversely impact the current analyses results contained in the final safety analysis report.

(2) There is no possibility of a new or different kind of accident since the change only involves valve regearing.

(3) There is not a significant reduction in margin. This is because the change does not adversely impact any of the safety margins in the present analysis.

Based on its review of the licensee's determination, the staff finds that the amendment request meets the standards for concluding that no significant hazard exists. Accordingly, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

Attorney for licensee: Mr. Lewis E. Wallace, Acting General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E11B33, Knoxville, Tennessee 37902.

NRC Project Director: B.J. Youngblood.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: January 29, 1987.

Description of amendment request: The proposed amendment requests that the Action Statement associated with the Ultimate Heat Sink be divided into 2 separate Action Statements to provide clarification and to recognize that there are 2 separate trains of cooling available (100 percent redundancy) for the Essential Service Water System. Currently as stated, the Action Statement requires declaring the Ultimate Heat Sink inoperable if one train of cooling tower has an inoperable cell. If the Ultimate Heat Sink is inoperable, then both trains of the Essential Service Water are inoperable and require entry into the more restrictive action required by Technical Specification 3.0.3.

Basis for proposed no significant hazards consideration determination: In accordance with the requirements of 10 CFR 50.92, the licensee has submitted the following no significant hazards determination:

This amendment request consists of a change to Technical Specification 3/4.7.5. The following discussion addresses this change and its corresponding significant hazards evaluation.

This change involves the wording of the Action Statement for Technical Specification 3/4.7.5. It will be revised to establish two Action Statements in lieu of the existing one to clearly delineate that there are two independent trains of cooling available to justify the operability requirements of the Ultimate Heat Sink (UHS). As currently stated, the UHS is considered inoperable with one cell of one cooling tower train out-of-service. If the UHS is inoperable, then the entire Essential Service Water System is inoperable, and the requirements of Technical Specification 3.0.3 must be met. This change provides consistency between the Technical Specifications and the FSAR as to the purpose for providing two independent trains of cooling for the UHS.

This change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change provides clarification to establish operability of the UHS thus averting the entry into an Action Statement erroneously.

This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This is based on the fact that the method and manner of plant operation is unchanged.

This change does not involve a significant reduction in a margin of safety. This is based on the fact that no design change is involved, but the intent of the Technical Specification is clarified to meet the as-built condition as specified in the FSAR.

Based on the previous discussions, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; nor create the possibility of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The staff has reviewed the licensee's no significant hazards considerations determination and agrees with the licensee's analysis. The staff has therefore made a proposed determination that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and the Olin Library of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20036.

NRC Project Director: B.J. Youngblood.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: November 25, 1986.

Description of Amendment Request: The proposed changes would modify the NA–1&2 Technical Specifications (TS) 3/4.12 (Radiological Environmental Monitoring) to reflect established practices, to agree with NRC approved

documents, and to conform to regulatory guidance.

The proposed changes to the NA–1&2 TS will correct an administrative error in Table 4.12–1, paragraph 2.c. This table lists a sample point for offsite monitoring to be 15 to 30 kilometers from the site. This specification came in existence when the radiological portion of the Environmental TS were incorporated into the NA–1&2 TS (Amendment 48 for Unit 1 and Amendment 31 for Unit 2).

The original Environmental TS listed eight locations for continuous airborne sampling. There was 1 at the site, 3 on the site perimeter, 3 in nearby communities and 1 at the Orange District Office. These locations are also specified in the Offsite Dose Calculation Manual (ODCM) in accordance with TS requirements. The ODCM lists site 24, the "Control" monitor at the Orange District Office, as being "22 miles" (35.4 km) from the site. This monitoring site was placed in service in December 1976 as a control location for NA–1&2 and has provided the station with a well established 10 year base of sampling data. The location is secure from vandalism and assures a stable power source.

In order to correct this discrepancy, TS Table 4.12–1 paragraph 2.c will be changed to read "1 sample from a control location 15–40 kilometers distant and in the least prevalent wind direction." This change will bring the NA–1&2 TS into agreement with the NRC approved Offsite Dose Calculation Manual.

Table 4.12–2 of the NA–1&2 TS lists a reporting level of 30,000 pCi/liter for H_3. This is to be changed to 20,000 pCi/liter in accordance with NUREG–0472, Radiological Effluent Technical Specifications for PWRs, Revision 3. In addition there is a footnote being added which specifies the sample to be tested.

Table 4.12–3 of the NA–1&2 TS 3/4.12.1 lists a Lower Limit of Detectability (LLD) for High Resolution Ge(Li) Gamma Spectroscopy Environmental sample of 10 pCi/liter for I_{131} and LLD of 3000 pCi/liter for H_3. These are to be changed to 1 pCi/liter for I_{131} and 2000 for H_3 in accordance with NUREG–0472, Radiological Effluent Technical Specifications for PWRs, Revision 3. Finally, a footnote is being deleted from Table 4.12–3 which specifies that, "The LLD for Gamma isotopic analysis shall be used." A footnote being added to Table 4.12–2 and 4.12–3 will state that, "The LLD value is for drinking water samples."

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining whether a proposed action involves a significant hazards consideration by providing certain examples (See 51 FR 7751). Example (i) states: "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The proposed change is enveloped by example (i) above, since the proposed change would correct an error presently existing in Table 4.12–1, paragraph 2.C and achieve consistency with the NRC approved ODCM and NUREG–0472 for Tables 4.12.2 and 4.12.3. Accordingly, the Commission proposes to determine this change involves no significant hazards consideration.

Local Public Document Room location: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Lester S. Rubenstein.

Washington Public Power Supply System, Docket No. 50–397, WNP–2, Richland, Washington

Dates of amendment requests: January 31, April 11, July 22, 1986 and January 9, and February 11, 1987.

Description of amendment request: This proposed amendment, if approved, will modify the WNP–2 Technical Specifications surveillance requirement to allow Appendix J Type B and C testing on an extended schedule of 27 months maximum between tests instead of the 24 month maximum now required by the Technical Specifications. Concurrently, the Supply System is seeking exemptions to the requirements of 10 CFR Part 50, Appendix J regulations which require Type C testing during reactor shutdown for refueling and Type B and C testing at intervals no greater than 2 years.

WNP–2 provides power to the Bonneville Power Administration (BPA) grid which is heavily dependent on hydroelectric power generation, in turn impacted by seasonal variation in snow pack and spring runoff in the Pacific Northwest. The spring runoff and subsequent increase in hydroelectric capacity is the most opportune time for WNP–2 refueling. Hence, the BPA directs the Supply System to refuel on a yearly basis, ideally coinciding with the peak period of hydroelectric capacity. This peak period can vary from year to year by as much as three months.

As most of the Type B and C testing is carried out during refueling outages, strict compliance with the Technical Specifications as currently applied requires testing each valve every year during refueling. The Supply System proposes that the B and C tests would be performed on approximately half the valves during each (annual) refueling outage, such that each valve is tested approximately every two years (the actual interval being no greater than 27 months).

The Supply System has proposed criteria for the acceptable leakage of individual valves and will retest, at the next refueling outage, those valves that fail the leakage criteria. Specifically, the Supply System's criteria require placing each valve in one of three categories depending upon its service and previous leakage history:

1. Some valves, such as Main Steam Isolation Valves, will be tested during each refueling outage regardless of previous leakage history.

2. Valves with leakage rates that exceed the target leakage rate by a factor of five or more and those valves that were reworked due to excessive leakage during the preceding outage will be tested during each refueling outage.

3. Valves with leakage rates that do not exceed the target leakage rate and did not exceed this leakage during the previous outage in which they were tested will be tested every other outage. Target leakage rate is determined from past performance and is based on ensuring that the overall leakage rate is less than the Technical Specification limit.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether no significant hazards considerations exist (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the staff agrees, that the requested amendment does not: (1) Involve a significant increase in the probability or consequences of an accident previously

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evaluated because the proposed change continues a containment isolation valve testing program and operation governed by the overall bounds required by Appendix J of 10 CFR Part 50 and incorporated into the Technical Specifications; or (2) create the possibility of a new or different kind of accident than previously evaluated because changing to a 27 month testing frequency rather than the 24 month frequency in the regulations does not affect the accident scenarios previously evaluated or (3) involve a significant reduction in a margin of safety because, as indicated in (1) above, operation is maintained consistent with the original intent of Appendix J, thus the original safety margin is maintained because those valves that contribute most to the total leakage will be detected, repaired and retested on a shorter (annual) cycle.

Based on our review of the proposed modification, the staff proposes to determine that the requested change to the WNP-2 Technical Specifications involves no significant hazards considerations.

Local Public Document Room: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for the Licensee: Nicholas Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW., Washington, DC 20036.

NRC Project Director: Elinor G. Adensam.

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Date of amendment request: December 12, 1986.

Description of amendment request: In its December 12, 1986 letter, the licensee requested changes to WNP-2 Technical Specification 3/4.7.4, "Snubbers". The Technical Specification currently requires that, if a snubber is removed from its associated system while that system is required to be operable, the system is to be declared inoperable, requiring entry into the applicable Action Statement. The licensee notes that during Operation Conditions 4 and 5, snubbers are removed periodically for (1) functional testing, and (2) eliminating interferences in the performance of maintenance activities on adjacent equipment. The requested change would permit the removal of snubber(s) for maintenance or testing (while in Operational Condition 4 or 5) without having to declare the associated system inoperable, provided its (their) removal is substantiated by engineering analysis.

Additionally, the current Technical Specification requires that visual inspection periods of a snubber type occur every 18 months, ± 25 percent, if no inoperable snubbers of each type on any system are discovered per inspection period. This requires that a visual inspection of a snubber type be performed between 13.5 months and 22.5 months following the previous inspection. At WNP-2, this visual inspection is done during refueling outages, which occur on 12-month cycles. The current visual inspection requirement does not recognize 12-month refueling cycles. Accordingly, the licensee has requested that the visual inspection criteria be revised to 18 months, −50 percent, + 25 percent. This would require a visual inspection of a snubber type between 9 months and 22.5 months following the previous inspection. Without such a change, the licensee could be required to shutdown between refueling outages for the purpose of snubber surveillance, even when the last inspection revealed no failures. The proposed change reduces the minimum interval between inspections; however, the maximum interval between inspections remains 22.5 months. The Basis of the Technical Specification would be revised to be consistent with the proposed Technical Specification change.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed Technical Specification change involves snubber removal in Operational Conditions 4 and 5, "Cold Shutdown" and "Refueling", respectively. The proposed modification does not increase the probability of an accident previously evaluated because those accidents were not initiated by snubber failure in Operational Conditions 4 and 5. Similarly, the proposed modification does not increase the consequences of an accident previously evaluated because engineering analyses performed by the licensee demonstrate the structural integrity of safety-related systems in which snubbers may be removed during Operational Conditions 4 and 5. It should be noted that during these operational conditions, the reactor is shut down; therefore, stresses and loads on piping systems are much lower than those stresses and loads occurring during power operation. The licensee's analyses also demonstrate that while in Operational Conditions 4 and 5, structural integrity of safety-related systems is maintained during and following a seismic event. The proposed modification to the interval of visual inspections, should no inoperable snubbers be discovered in the previous inspection, is purely an administrative change to accommodate a 12-month operating cycle, and does not increase the probability or consequences of an accident previously evaluated, because the maximum time between visual inspections remains 22.5 months.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. Engineering evaluations will be conducted to demonstrate the capability of the snubbers remaining in place to handle the normal and accident piping loads anticipated in Operational Modes 4 and 5. Accordingly, no new failure mode is created. The change in visual inspection period in no way creates different accidents from those previously evaluated because this change is an administrative change to accommodate a 12-month operating cycle.

The proposed changes do not involve a significant reduction in a margin of safety. Engineering analysis and generic snubber replacement criteria assure that sufficient margin exists to accommodate normal and accident loads anticipated while in Operational Conditions 4 and 5. Regarding the change to visual inspection period, the margin of safety is actually increased because the proposed change permits the visual inspection to take place as early as 9 months after the previous inspection, instead of the 13.5 months currently required in the Technical Specification. The maximum visual inspection period remains as 22.5 months following the previous inspection.

Based on its review of the proposed modification, the Commission proposes to determine that the proposed change to the WNP-2 Technical Specifications involves no significant hazards consideration.

Local Public Document Room: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for the Licensee: Nicholas Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW., Washington, DC 20036

NRC Project Director: Elinor G. Adensam.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio,

Date of amendment request: January 23, 1987.

Brief description of amendment request: The proposed amendment would allow sale and leaseback transactions by Ohio Edison Company (OE) relating to its 30.0% ownership interest in Perry Unit 1 and common facilities.

Date of publication of individual notice in Federal Register: February 11, 1987 (52 FR 4432).

Expiration date of individual notice: March 13, 1987.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: January 23, 1987.

Brief description of amendment: The Emergency Feedwater (EFW) System is being upgraded to safety-related criteria during the present Cycle 6 Refueling Outage in order to comply with TMI-1 restart commitments and NUREG-0737, Action Item II.E.1. In accordance with the licensee's application dated January 23, 1987 (Technical Specification (TS) Change Request No. 166), this amendment would provide appropriate operability and surveillance requirements for the modified EFW System and associated Heat Sink Protection System (HSPS). Administrative and editorial changes to affected TS pages were also requested, including revisions to the EFW and HSPS bases.

Date of publication of individual notice in Federal Register: February 4, 1987 (52 FR 3515).

Expiration date of individual notice: March 6, 1987.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: January 21, 1987.

Brief description of amendment: The amendment would revise Technical Specification (TS) Sections 3.6.2.3, 4.8.2.3.1, 4.8.2.3.2, and 4.8.2.4.1 and the associated Basis Section 3/4.8. These TS Sections relate to the D.C. electrical power distribution system during plant operation and when shutdown. The proposed revisions would (1) change certain nomenclature used in the TSs to the specific equipment designations used at Davis-Besse, and (2) revise the Surveillance Requirements for D.C. Distribution using the guidance of the model technical specifications for station batteries issued by the NRC on July 16, 1981. The NRC guidance was based upon Regulatory Guide 1.129, February 1978, and IEEE Standard 450-1980. The current Davis-Besse TS Surveillance Requirements were based on earlier revisions of these documents.

Date of publication of individual notice in Federal Register: February 2, 1987 (52 FR 3182); corrected February 11, 1987 (52 FR 4436).

Expiration date of individual notice: March 4, 1987.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the Federal Register as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

Arizona Public Service Company, et al. Docket Nos. STN 50-528 and STN 50-529, Palo Verde Nuclear Generating Station, Units 1 and 2, Maricopa County, Arizona

Date of application for amendments: November 6, 1986.

The Commission's related evaluation of the amendments is

Niagara Mohawk Power Corporation,

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Brief description of amendments: The amendments revised the Technical Specifications to change the organizational structure and to change the version of ANSI Standard N509 to be used for initial testinq of the charcoal filter units in the Essential Filtration Systems.

Date of issuance: February 9, 1987.
Effective date: February 9, 1987.
Amendment Nos.: 13 and 7.
Facility Operating License Nos.: NPF-41 and NPF-51: Amendments revised the Technical Specifications.
Date of initial notice in the **Federal Register:** December 17, 1986 (51 FR 45192). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 9, 1987.

No significant hazards consideration comments were received: No.
Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Commonwealth Edison Company, Docket No. 50-374, La Salle County Station, Unit 2, La Salle County, Illinois

Date of amendment request: October 16, 1986.
Brief description of amendment: This amendment revises the La Salle, Unit 2 Technical Specifications to permit replacing an existing peripheral locking piston control rod drive module with a fine motion control rod drive module during one fuel cycle.
Date of issuance: February 9, 1987.
Effective date: Upon startup following the first refueling outage.
Amendment No.: 30.
Facility Operating License No. NPF-18: Amendment revises the Technical Specifications.
Date of initial notice in **Federal Register:** November 5, 1986 (51 FR 40277) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 9, 1987.

No significant hazards consideration comments received: No.
Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: February 17, 1983, as supplemented and superseded August 23, 1984 and January 20, 1986, respectively.
Brief description of amendments: Changes were made in the Administrative Control section of the Technical Specifications, primarily to reflect changes in staff organization, and changes in 10 CFR Part 50 regarding minimum staffing and immediate notification requirements, and the Licensee Event Reporting system.
Date of issuance: February 2, 1987.
Effective date: February 2, 1987.
Amendment Nos.: 100 and 97.
Facility Operating License Nos. DPR-29 and DPR-30. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** November 19, 1986 (51 FR 41848) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 2, 1987.

No significant hazards consideration comments received: No.
Local Public Document Room location: Moline Public Library, 504—17th Street, Moline, Illinois 61265.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: October 20, 1981.
Brief description of amendment: This amendment revises Technical Specification 4.3 by deleting the requirement that surveillance tests of the diesel generators include automatic loading of the charging pumps. No credit for automatic loading of the charging pumps is assumed in any accident safety analysis.
Date of issuance: February 9, 1987.
Effective date: February 9, 1987.
Amendment No. 89.
Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** October 28, 1983 (48 FR 49580).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 9, 1987. No significant hazards consideration comments received: No.
Local Public Document Room location: Russell Library, 124 Broad Street, Middletown, Connecticut 06457.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: July 9, 1984.
Brief description of amendment: The amendment incorporated Technical Specifications pertaining to the implementation of a post-accident sampling system. The change is consistent with the requirements of NUREG-0737 TMI Action Plan II.B.3 and the guidance given in Generic Letter 83-37.
Date of issuance: February 3, 1987.
Effective date: February 3, 1987.
Amendment No. 100.
Provisional Operating License No. DPR-20. The amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 22, 1984 (49 FR 33363).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 3, 1987. No significant hazards consideration comments received: No.
Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: December 19, 1985.
Brief description of amendment: The amendment deletes out of date footnotes and incorrect references to a motor control center within the Technical Specifications.
Date of issuance: February 10, 1987.
Effective date: February 10, 1987.
Amendment No. 101.
Provisional operating License No. DPR-20. The amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** December 30, 1986 (51 FR 47072 at 47077). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 1987. No significant hazards consideration comments received: No.
Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: June 25, 1982.
Brief description of amendment: This amendment revised Section 4.7.1(d) of the Technical Specifications and included an addition to the Bases of Section 4.7 to reflect the manufacturer's true nameplate rating of the emergency diesel generators.
Date of issuance: February 11, 1987.
Effective date: February 11, 1987.
Amendment No. 102.
Provisional Operating License No. DPR-20. The amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 23, 1983 (48 FR 38398).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 1987. No significant hazards consideration comments received: No.
Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: October 27, 1986.
Brief description of amendment: The amendment changes the Technical Specifications for Beaver Valley Unit No. 1 to add requirements for independent testing of the reactor trip breaker, undervoltage and shunt trip attachments, and bypass breakers. Review of the design of these components has been documented in the staff's letters of November 8, 1984, October 9, 1985, and April 3, 1986.
Date of issuance: February 4, 1987.
Effective date: February 4, 1987.
Amendment No. 107
Facility Operating License No. DPR-66. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** December 17, 1986 (51 FR 45199) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 4, 1987.

No significant hazards consideration comments received: No.
Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: August 25, 1986, as supplemented November 14, 1986.
Brief description of amendments: The amendments modify the technical specifications Limiting Conditions of Operation (LCO) for a one-time additional 45 day LCO in conjunction with the current 3½ day LCO to permit implementation of modifications required to satisfy NUREG-0737, Item III.D.3.4, Control Room Habitability.
Date of issuance: February 2, 1987.
Effective date: February 2, 1987.
Amendment Nos. 121 and 115.
Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** December 30, 1986 (51 FR 47078). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 2, 1987.

No significant hazards consideration comments received: No
Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: November 25, as supplemented December 8, 1986.
Brief description of amendment: This amendment revises the Technical Srecifications to increase the fuel enrichment limit to 3.5 weight percent Uranium-255 for Cycle 10 and beyond.
Date of issuance: February 9, 1987.
Effective Date: February 9, 1987.
Amendment No.: 92.
Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** December 30, 1986 (51 FR 47072 at 47081.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 9, 1987.

No significant hazards consideration comments received: No. Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: November 6, 1986.
Brief description of amendment: The amendment changes the Technical Specifications to state that the Main Steam Drain Header Isolation Valves are normally open.
Date of issuance: February 3, 1987.
Effective date: February 3, 1987.
Amendment No.: 107.
Facility Operating License No. DPR-62. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** December 17, 1986 (51 FR 452111).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 3, 1987.
No significant hazards consideration comments received: No.
Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: August 22, 1986.
Brief description of amendment: The amendment adds surveillance requirements to Technical Specification Section 4.4.5 to verify the ability of the control room air treatment system to maintain a positive pressure in the control room to maintain control room habitability during accident conditions.
Date of issuance: February 10, 1987.
Effective date: February 10, 1987.
Amendment No.: 91.
Facility Operating License No. DPR-63. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** October 8, 1986 (51 FR 36099).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 1987.

No significant hazards consideration comments received: No.
Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station Unit No. 2, Town of Waterford, Connecticut

Date of application for amendment: October 29, 1986.
Brief description of amendment: The amendment changes the Technical Specifications (TS) for Millstone Unit 2 related to primary system iodine spiking: (1) The requirement in TS 3.4.8, "Specific Activity", that operation, outside predetermined primary coolant activity limits, not exceed 10 percent of the unit's total yearly operating time is deleted; and (2) the current "special report" requirement in TS 6.9.2i associated with primary coolant activity is replaced by an annual report requirement in TS 6.9.1.4.
Date of issuance: February 3, 1987.
Effective date: February 3, 1987.
Amendment No.: 115.
Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** December 30, 1986 (51 FR 47072 at 47083).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 3, 1987.

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No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Waterford, Connecticut.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: July 18, 1986 (LAR 86–08).

Brief description of amendments: Technical Specification change will implement axial offset control (RAOC) for Diablo Canyon Unit 2 after burnup of relaxed 8000 MWD/MTU in first cycle.

Date of issuance: January 30, 1987.

Effective date: January 30, 1987.

Amendment Nos.: 12 and 10.

Facility Operating Licenses Nos. DPR–80 and DPR–82: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 22, 1986 (51 FR 37518).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 30, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University Library, Documents and Maps Department, San Luis Obispo, California 93407.

Pacific Gas and Electric Company, Docket No. 50–133, Humboldt Bay Power Plant, Unit No. 3, Eureka, California

Date of application for amendment: May 14, 1986 as revised November 17, 1986.

Brief description of amendment: The amendment establishes physical security requirements for the shutdown Humboldt Bay, Unit 3. The security plan reflects the possess-but-not-operate status of Facility Operating License No. DPR–7.

Date of issuance: February 11, 1987.

Effective Date: When the revised physical security plan is fully implemented but in no case more than 90 days from the date of issuance.

Amendment No.: 22.

Facility Operating License No. DPR–7. Amendment revised the license.

Date of initial notice in **Federal Register:** June 4, 1986 (51 FR 20371).

The November 17, 1986 letter provided clarifying information and did not change the initial determination published in the **Federal Register**. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Eureka-Humboldt County Library, 471 I Street (County Court House), Eureka, California 95501.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: October 8, 1986.

Brief description of amendment: The amendment changes the Technical Specifications to eliminate operability and testing requirements for the recirculation pump discharge bypass valves. The bypass valves and lines are to be removed during the 1987 refueling outage.

Date of issuance: February 9, 1987.

Effective date: February 9, 1987.

Amendment No.: 104.

Facility Operating License No. DPR–59. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 19, 1986 (51 FR 41867).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 9, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: July 11, 1986.

Brief description of amendment: The amendment changes the Administrative Controls section of the Technical Specifications to reflect the management reorganization of the Power Authority of the State of New York's headquarters staff.

Date of issuance: February 10, 1987.

Effective date: February 10, 1987.

Amendment No.: 105.

Facility Operating License No. DPR–59. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 8, 1986 (51 FR 36102).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: September 12, 1986 as supplemented on September 22, and November 10, 1986.

Brief description of amendment: This amendment revises the Technical Specifications to be consistent with the Standard Radiological Effluent Technical Specifications for BWRs by permitting continued plant operation should certain gaseous and liquid radioactive effluent monitors be inoperable, provided regular grab samples are collected and analyzed to be below specified limits.

Date of issuance: February 6, 1987.

Effective date: February 6, 1987.

Amendment No.: 2.

Facility Operating License No. NPF–57: Amendment revises the Technical Specifications.

Date of initial notice in **the Federal Register:** November 19, 1986, (51 FR 41867). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 6, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 South Broadway, Pennsville, New Jersey 08070.

Rochester Gas and Electric Corporation, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: October 24, 1986.

Brief description of amendment: The licensee plans to replace the analog rod position indication (ARPI) system with a Westinghouse microprocessor rod position indication (MRPI) system. The ARPI system is being replaced because the system requires a significant effort to maintain alignments, the aging system is prone to component failures, and spare parts are difficult to obtain. In addition, the replacement of the ARPI system will resolve human engineering discrepancies identified during the detailed control room design review; a licensing action of NUREG–0737 (Item I.D.1.1).

As a result of the replacement of the ARPI system with the MRPI system, the licensee has proposed changes to the technical specification (TS) that (1) replaces the references to the ARPI system with references to the MRPI system, (2) clarifies the requirements related to the indicated positions versus demand positions, (3) allows the use of the process plant computer system as a backup to the MRPI cathode ray tube (CRT) if the CRT should become inoperable, (4) remove the calibration requirement which is no longer necessary when the new system is operational, and (5) modify the rod movement test.

Date of issuance: February 10, 1987.

Effective date: February 10, 1987.

Amendment No.: 22.

Facility Operating License No. DPR–18: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 19, 1986 (51 FR 41868). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 1987. No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: January 24, 1986, as supplemented September 19, 1986.

Brief description of amendment: This amendment increased the setpoint for reactor trip on high pressure from 2300 psig to 2355 psig and increased the arming threshold for anticipatory reactor trip on turbine trip from 20% to 45% of full power.

Date of issuance: February 3, 1987.

Effective date: February 3, 1987.

Amendment No.: 83.

Facility Operating License No. DPR–54. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 5, 1986 (51 FR 40281).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 3, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

Tennessee Valley Authority, Dockets Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Dates of applications for amendments: September 30, 1986.

Brief description of amendments: The amendments change the Technical Specifications to add requirements for Radiological Effluent Technical Specifications (RETS) which comply with Section V of Appendix I to 10 CFR Part 50.

Date of issuance: February 5, 1987.

Effective date: February 5, 1987.

Amendments Nos.: 132, 128 and 103.

Facility Operating Licenses Nos. DPR–33, DPR–52 and DPR–68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 3, 1986 (51 FR 43685).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 5, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: February 1, 1985, as supplemented August 8, 1986.

Brief description of amendments: The amendments change the Technical Specifications to delete a surveillance requirement, add a footnote to allow a reduction in fast start/fast load surveillance testing and change the reporting requirements of Emergency Diesel Generators, and correct an editorial mistake.

Date of issuance: February 3, 1987.

Effective date: February 3, 1987.

Amendment Nos.: 52 and 44.

Facility Operating License Nos. DPR–77 and DPR–79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 4, 1985 (50 FR 23554) and December 3, 1986 (51 FR 43685).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 3, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: March 4, 1983, as supplemented September 30, 1986.

Brief description of amendments: The amendments change the license conditions related to implementation of Regulatory Guide 1.97, Revision 2.

Date of issuance: February 12, 1987.

Effective date: February 12, 1987.

Amendment Nos.: 53 and 45.

Facility Operating License Nos. DPR–77 and DPR–79. Amendments revised Operating License conditions.

Date of initial notice in **Federal Register:** October 22, 1986 (51 FR 37521).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 12, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: May 28, 1985.

Brief description of amendment: This amendment reduces the frequency of cold fast starts required for surveillance testing of emergency diesel generators. A portion of the amendment request has been denied by the Commission. A Notice of Denial is being published separately in the **Federal Register**.

Date of issuance: February 10, 1987.

Effective date: February 10, 1987.

Amendment No. 97.

Facility Operating License No. NPF–3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 4, 1985 (50 FR 49793).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

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Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of application for amendments: June 16, 1986.

Brief description of amendments: These amendments revise the audit frequency of the Surry Power Station Security Plan from at least once per 24 months to at least once per 12 months.

Date of issuance: February 3, 1987.

Effective date: February 3, 1987.

Amendment Nos. 112 and 112.

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 16, 1986 (51 FR 25772).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 3, 1987.

No significant hazards consideration comments received: No

Local Public Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: September 30, 1986.

Brief description of amendment: The amendment removed requirements from the Technical Specifications (TS) that were duplicated in the Operational Quality Assurance Program. In addition, a recent change in a management title was made on three pages of the TS.

Date of issuance: February 3, 1987.

Effective date: February 3, 1987.

Amendment No.: 72.

Facility Operating License No. DPR-43. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 17, 1986 (51 FR 45216).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 3, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: August 29, 1986.

Brief description of amendments: The amendments revise the Limiting Conditions for Operation (LCO) of the component cooling water system to reflect the addition of a fourth heat exchanger to the system.

Date of issuance: February 2, 1987.

Effective date: 20 days from the date of issuance.

Amendment Nos.: 105 and 108.

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 8, 1986 (51 FR 36108).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 2, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act, and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(bl and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By March 30, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearinq conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearinq conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Project Director):* petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Florida Power and Light Company, Docket No. 50-250, Turkey Point Plant Unit 3, Dade County, Florida

Date of application for amendment: February 4, 1987.

Brief description of amendment: The amendment extends the surveillance testing requirements of Technical Specifications 4.7.1.1 and 4.7.1.2.a relating to the Emergency Containment Filter System to allow the tests to be performed during the Unit 3 refueling outage for Cycle 11.

Date of issuance: February 12, 1987.

Effective date: February 12, 1987.

Amendment No.: 122.

Facility Operating License No. DPR-31: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment and final determination of no significant hazards consideration are contained in a Safety Evaluation dated February 12, 1987.

Attorney for Licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street NW., Washington, DC 20036.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

NRC Project Director: Lester S. Rubenstein.

Dated at Bethesda, Maryland this 19th day of February, 1987.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Acting Director, Division of PWR Licensing-A.

[FR Doc. 87-3860 Filed 2-25-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. STN 50-530]

Arizona Public Service Co. et al. Palo Verde Nuclear Generating Station, Unit 3; Order Extending Construction Completion Date

Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, Southern California Edison Company, El Paso Electric Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power and Southern California Public Power Authority are the holders of Construction Permit CPPR-143 issued by the Nuclear

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Regulatory Commission on May 25, 1976, for construction of the Palo Verde Nuclear Generating Station, Unit 3. Construction of the facility is substantially complete at the applicants' site in Maricopa County, Arizona, approximately 34 miles west of Phoenix, Arizona.

On September 8, 1986, Arizona Public Service Company (APS) filed a request for an extension of the completion date. The extension has been requested because construction has been delayed by the following factors:

1. Palo Verde, Units 1, 2 and 3 have been constructed on a sequential schedule. Delays in construction, testing and operations of Units 1 and 2 to assure Safety have resulted in modifications and delays impacting the sequential schedule for completion of Unit 3.

2. Although, at the current time, basic construction of Palo Verde, Unit 3 is substantially complete, and preoperational testing is at an advanced stage, additional time will be required for completion in a safe manner. Unit 3 is expected to be ready for fuel load toward the end of the first quarter of 1987.

Additionally, APS states that extension of the latest date for completion of Palo Verde, Unit 3 to December 31, 1987, will preclude the need for requesting further amendments of CPPF–143 if there should be any slippage in the expected Unit 3 fuel load date due to unforseen circumstances.

This action involves no significant hazards consideration; good cause has been shown for the delays; and the extension is for a reasonable period, the bases for which are set forth in the staff's evaluation dated February 19, 1987.

Pursuant to 10 CFR 51.32, the Commission has determined that extending the construction completion dates will have no significant impact on the environment (52 FR 4694).

The NRC staff safety evaluation of the request for extension of the construction permit is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and the Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

It is hereby ordered that the latest competion date for Construction Permit No CPPR–143 is extended from November 1, 1986 to December 31, 1987.

Date of Issuance: February 19, 1987.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.

[FR Doc. 87–4008 Filed 2–25–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 30–14597; License No. 25–18172–01 EA 86–140]

Professional Consultants, Inc.; Order Imposing Civil Monetary Penalties

I

Professional Consultants, Inc. (licensee), 3115 Russell Street, Missoula, Montana, is the holder of License No. 25–18172–01 issued by the Nuclear Regulatory Commission (NRC). License No. 25–18172–01 authorizes use of byproduct materials and is due to expire December 31, 1988.

II

An inspection of the licensee's activities under its license was conducted on May 8–9, 1986. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. These results were discussed with the licensee's representative during an enforcement conference on July 15, 1986.

A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated September 30, 1986. This Notice stated the nature of the violations, NRC requirements that were violated, and amount of civil penalties proposed. An answer dated October 27, 1986, to the Notice of Violation and Proposed Imposition of Civil Penalties was received from the licensee.

III

After consideration of the answer received, and the statements of fact, explanations, and arguments for mitigation of the proposed civil penalties contained therein, the Director, Office of Inspection and Enforcement, has determined, as set forth in the Appendix to this Order that the penalties proposed for the violations in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2282, Pub. L. 96–295, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay civil penalties in the total amount of One Thousand Dollars ($1,000) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

V

The licensee may, within 30 days of the date of this Order, request a hearing. A request for hearing shall be addressed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of the hearing request shall be sent to the Assistant General Counsel for Enforcement, Office of the General Counsel, at the same address. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee violated NRC requirements set forth in the Notice of Violation and Proposed Imposition of Civil Penalties, and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland, this 18th day of February 1987.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

Appendix—Evaulation and Conclusions

On September 30, 1986 a Notice of Violation and Proposed Imposition of Civil Penalties (NOV) was issued for violations identified during a rountine NRC inspection. Professional Consultants, Inc. responded on October 27, 1986. The licensee admitted all of the violations, including Violation F, although characterizing the violation as "partially true." In addition, the licensee requested mitigation of the civil penalties because it argued that such penalties place an unreasonable burden on the firm. The NRC's evaluation and conclusions regarding the licensee's response are as follows:

Restatement of Violation F

License Condition 13 requires, in part, that each sealed source be tested for leakage and/or contamination at intervals not to exceed six months.

Contrary to the above, a Troxler moisture/density gauge Model 3411–B, S/N 5487, containing an 8 millicurie cesium-137 sealed source and a 40 millicurie americium-241 sealed source, was not leak tested for the periods of September 2, 1980 to November 24, 1982, and November 24, 1982 to the date of the inspection.

This is a repeat violation from the previous inspection of August 1980.

Summary of Licensee's Response

The licensee admitted all of the violations, including Violation F; however, it also characterized Violation F as "partially true" in that a copy of a leak test dated February 4, 1985 was in the licensee's file but was apparently overlooked by the NRC during its inspection.

NRC's Evaluation of Licensee's Response

The violation is based on the licensee's failure to perform leak tests for multiple six-month intervals. Consequently, the existence of the February 4, 1985 leak test results does not invalidate the violation. Therefore, the licensee has not provided an adequate basis for the withdrawal of this violation.

Summary of Licensee's Request for Mitigation

The licensee's October 27, 1986 response stated that the licensee could not "deny . . . any of the violations. . . ." However, the licensee asserted that the proposed civil penalties place an unreasonable financial burden on it, in that, the return of profit for using the guage is less the $1,000 civil penalties. In support of this argument, the licensee provided information which seeks to demonstrate that the financial costs to the licensee, before any payment of the civil penalties, has already exceeded the total of the proposed civil penalties. Further, the licensee argues that because its use of the licensed material constitutes only a service provided to its construction clients, imposing the civil penalties at this time will only further exacerbate the unprofitability of the use of the subject licensed material.

NRC's Evaluation of Licensee's Request for Mitigation

The Commission's stated position in the Enforcement Policy is that the NRC intends to apply its full enforcement authority where such action is warranted, such as for repeated poor performance in the area of concern. In view of this policy and because in this case five of the seven cited violations were repeated from the licensee's previous inspection, it is clear that imposition of the proposed civil penalties is warranted. Further, the licensee's arguments concerning costs associated with the May 8–9, 1986 inspection and the ensuring proposed enforcement action, and the unprofitability of its use of the licensed material, provide no basis to mitigate the civil penalties.

NRC Conclusion

The licensee's assertion with regard to the facts associated with Violation F, even if true, does not invalidate the violation. Further, the licensee provides no basis for mitigation of the proposed civil penalties. The NRC concludes that the violations occurred as stated in the Notice of Violation and Proposed Imposition of Civil Penalties. Accordingly, the NRC concludes that civil penalties in the amount of $1,000 should be imposed.

[FR Doc. 87–4010 Filed 2–25–87; 8:45 am]

BILLING CODE 7590–01–M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meeting

Notice is hereby given of the meeting of the Prospective Payment Assessment Commission on March 2 and 3, 1987, at the Hyatt Regency Crystal City at Washington National Airport, 2799 Jefferson Davis Highway, Arlington, Virginia.

The meeting will convene at 9:00 a.m. on March 2, 1987 and at 10:00 a.m. on March 3, 1987 and will be held in Washington Room A&B.

The meeting is open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 87–4049 Filed 2–25–87; 8:45 am]

BILLING CODE 6820–BW–M

SMALL BUSINESS ADMINISTRATION

Region II—Advisory Council; Public Meeting

The Small Business Administration, Region II Newark District Advisory Council, located in the geographical area of Newark, New Jersey, will hold a public meeting at 9:00 AM on Tuesday, March 31, 1987, at the Ramada Inn, 36 Valley Road, Clark, New Jersey 07066, to discuss such business as may be presented by members and the staff of the Small Business Administration or others attending. For further information, write or call Stanley H. Salt, District Director, U.S. Small Business Administration, 60 Park Place, Newark, New Jersey, 07102, (201) 645–3580.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 19, 1987.

[FR Doc. 87–3994 Filed 2–25–87; 8:45 am]

BILLING CODE 8025–01–M

Region VIII Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region VIII Advisory Council, located in the geographical area of Sioux Falls, South Dakota, will hold a public meeting on Friday, March 20, 1987, from 9:00 a.m. to 3:00 p.m., at the Community Room, First National Bank in Sioux Falls, 100 South Phillips, Sioux Falls, South Dakota 57102, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Chester B. Leedom, District Director, U.S. Small Business Administration, Suite 101, Security Building, 101 South Main, Sioux Falls, South Dakota 57102, 605/336–2980, Ext. 231.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 11, 1987.

[FR Doc. 87–3995 Filed 2–25–87; 8:45 am]

BILLING CODE 8025–01–M

Region IV Joint Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region IV Advisory Council, located in the geographical area of Nashville, Tennessee, and Jackson, Mississippi, will hold a joint public meeting at 8:30 a.m. to 3:30 p.m. on Wednesday, March 25, 1987, in the office of the First American Bank, 44 North Second Street, Memphis, Tennessee 38101–0183, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Robert D. Hartman, District Director, U.S. Small Business Administration, Suite 1012 Parkway Towers, 404 James Robertson Parkway, Nashville, Tennessee 37219, telephone (615) 736–5850.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 11, 1987.

[FR Doc. 87–3993 Filed 2–25–87; 8:45 am]

BILLING CODE 8025–01–M

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Region IV Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Louisville, Kentucky, will hold a public meeting at 2:00 p.m., Tuesday, March 3, 1987, at the Louisville District Office, 600 Federal Place, Room 188, Louisville, Kentucky, to discuss such matters as may be presented by members and staff of the U.S. Small Business Administration, P.O. Box 3527, Louisville, KY 40201—(502) 582–5971.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 19, 1987.

[FR Doc. 87–3991 Filed 2–25–87; 8:45 am]

BILLING CODE 8025–01–M

Region V District Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region V Advisory Council, located in the geographical area of Minneapolis/St. Paul, will hold a public meeting on March 13, 1987, at 9:30 A.M. at the U.S. Small Business Administration District Office, 610–C Butler Square, 100 North Sixth Street, Minneapolis, Minnesota, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call George W. Griebenow, District Director, U.S. Small Business Administration, 610–C Butler Square, 100 North Sixth Street, Minneapolis, MN 55403, 612/349–3530

Jean M. Nowak,

Director, Office of Advisory Councils.

February 19, 1987.

[FR Doc. 87–3992 Filed 2–25–87; 8:45 am]

BILLING CODE 8025–01–M

Region VI Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region VI Advisory Council, located in the geographical area of Houston, Texas, will hold a public meeting from noon until 4:00 p.m., Friday, February 27, 1987, at the Marriott Hotel, at the Astrodome, in Salon I and II, located at 2100 South Braeswood at Greenbrier, Houston, Texas 77030, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Donald D. Grose, District Director, U.S. Small Business Administration, 2525 Murworth, Suite 112, Houston, Texas 77054, (713) 660–4409.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 11, 1987.

[FR Doc. 87–3996 Filed 2–25–87; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/02–0489]

United Jersey Venture Capital Inc.; Issuance of a Small Business Investment Company License

On August 27, 1985, a notice was published in the **Federal Register** (50 FR 34 788) stating that an application has been filed by United Jersey Venture Capital, Inc., with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1986)) for a license as a small business investment company.

Interested parties were given until close of business September 27, 1985, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA Issued License No. 02/02–0489 on January 20, 1987, to United Jersey Venture Capital, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 11, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87–3997 Filed 2–25–87; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Cities of Norfolk and Portsmouth, VA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the Cities of Norfolk and Portsmouth, Virginia.

FOR FURTHER INFORMATION CONTACT: George E. Kirk, Jr., District Engineer, Federal Highway Administration, Post Office Box 10045, Richmond, Virginia 23240–0045, telephone (804) 771–2380.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Transportation (VDOT), will prepare an Environmental Impact Statement (EIS) on a proposal to construct a four-lane limited access facility and parallel tunnel to the Midtown Tunnel under the Elizabeth River from the east end of the West Norfolk Bridge in the City of Portsmouth to the Brambleton Avenue Interchange in the City of Norfolk. The length of the proposed improvement is approximately 2.2 miles. The proposal will relieve congestion on existing facilities and improve intercity travel.

Alternatives under consideration include (1) taking no action (no build), (2) mass transit, (3) Transportation System Management (improving existing roadway network), and (4) build alternatives.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens who have previously expressed interest in this proposal. No formal scoping meeting is planned at this time. The Draft EIS will be available for public and agency review and comment. Following publication of the Draft EIS, a public hearing will be held. Public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the DEIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this program.

Issued on: February 18, 1987.

George E. Kirk, Jr.,

District Engineer, Richmond, Virginia.

[FR Doc. 87–3915 Filed 2–25–87; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Dept Clr.—Public Debt Series—No. 6–87]

Treasury Notes of May 15, 1992, Series J–1992

Washington, February 19, 1987.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,250,000,000 of United States securities, designated Treasury Notes of May 15, 1992, Series J–1992 (CUSIP No. 912827 UQ 3), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated March 3, 1987, and will accrue interest from that date, payable on a semiannual basis on November 15, 1987, and each subsequent 6 months on May 15 and November 15 through the date that the principal becomes payable. They will mature May 15, 1992, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, February 25, 1987. Non-competitive tenders as defined below will be considered timely if postmarked no later than Tuesday, February 24, 1987, and received no later than Tuesday, March 3, 1987.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a 1/8 of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves that right to accept or

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reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Tuesday, March 3, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Friday, February 27, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, March 3, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forefeited to the United States.

5.3 Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.2. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-4045 Filed 2-24-87, 10:07 am]

BILLING CODE 4810-40-M

Dept. Circ.—Public Debt Series—No. 5-87]

Treasury Notes of February 28, 1989, Series V-1989

Washington, February 19, 1987.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $10,000,000,000 of United States securities, designated Treasury Notes of February 28, 1989, Series V-1989 (CUSIP No. 912827 UP 5), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated March 2, 1987, and will accrue interest from that date, payable on a semiannual basis on August 31, 1987, February 29, 1988, August 31, 1988 and February 28, 1989. They will mature February 28, 1989, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2 The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Tuesday, February 24, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, February 23, 1987, and received no later than Monday, March 2, 1987.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5 Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery.

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, March 2, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing one or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, February 26, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, March 2, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-4046 Filed 2-24-87; 10:07 am]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Special Medical Advisory Group; Availability of Annual Report

Under section 10(d) of Pub. L. 92-463 (Federal Advisory Committee Act)

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notice is hereby given that the Annual report of the Veterans Administration's Special Medical Advisory Group for calendar year 1986 has been issued.

The report summarizes activities of the Group on matters relative to the care and treatment of disabled veterans, and other matters pertinent to the Veterans Administration's Department of Medicine and Surgery. It is available for public inspection at two locations:

Exchange and Gift Division, LM 632, Library of Congress, Washington, DC 20540

and

Veterans Administration, Office of the Chief Medical Director, Room 800, 810 Vermont Avenue NW., Washington, DC 20420.

Dated: February 12, 1987.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 87-3970 Filed 2-25-87; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 38
Thursday, February 26, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 3376.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 11:30 a.m., February 24, 1987.

CHANGE IN THE MEETING: This meeting has been rescheduled for 11:30 a.m., February 27, 1987.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-4076 Filed 2-24-87; 11:08 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., March 6, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-4077 Filed 2-24-87; 11:21 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., March 13, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-4078 Filed 2-24-87; 11:21 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., March 20, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-4079 Filed 2-21-87; 11:21 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., March 27, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-4080 Filed 2-24-87; 11:21 am]

BILLING CODE 6351-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 4987, February 18, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 1:30 p.m. (eastern time) Monday, February 23, 1987.

CHANGE IN THE MEETING: Due to inclement weather, the above subject Meeting of the Equal Employment Opportunity Commission was canceled.

Open

Items on the Open Portion of the Commission Meeting will be handled by Notation Vote. The results of the Notation Voting will be announced at the Commission Meeting of March 2, 1987, at 2:00 p.m., eastern time.

Closed

Items on the Closed Portion of the Meeting will be considered at the Closed Portion of the Commission Meeting of March 2, 1987, at 2:00 p.m., eastern time.

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, (202) 634-6748.

Dated: February 24, 1987.

Johnnie L. Johnson, Jr.,

Attorney Advisor, Executive Secretariat.

[FR Doc. 87-4127 Filed 2-24-87; 2:30 pm]

BILLING CODE 6750-06-M

FEDERAL ELECTION COMMISSION

PURSUANT TO 11 CFR 2.7(D)(1) THE COMMISSION HAS CALLED A MEETING FOR THE FOLLOWING DATE: Wednesday, February 25, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be open to the public.

MATTER TO BE CONSIDERED: Proposed revision of Title 26 Regulations.

* * * * *

FEDERAL REGISTER NO. 87-3647

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, February 26, 1987, 10:00 a.m.

THE FOLLOWING ITEM HAS BEEN ADDED TO THE AGENDA: Draft Advisory Opinion 1986-43—Laurence A. Tuttle.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 87-4074 Filed 2-24-87; 11:08 am]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM

TIME AND DATE: 4:00 p.m., Wednesday, February 25, 1987.

The business of the Committee requires that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. The Committee's agenda will consist of matters relating to (a) the general administrative policies and procedures of the

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Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenance of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations of each of such Plans; (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans. Specific item to be considered: Proposal regarding the Retirement Plan.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452–3204.

Dated: February 24, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–4145 Filed 2–24–87; 3:13 pm]

BILLING CODE 6210–01–M

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 9:00 a.m., Thursday, February 26, 1987.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.

STATUS:

The first part of this meeting will be open to the public.

The remaining part of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion open to the public

Proposed revisions to Board Rules in respect to the posting of election notices and to summary judgment procedures.

Portion closed to the public

Board case agenda.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, DC 20570, Telephone: (202) 254–9430.

Dated, Washington, DC, 20 February 1987.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 87–4068 Filed 2–24–87; 10:54 am]

BILLING CODE 7545–01–M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, March 4, 1987.

PLACE: Board Hearing Room 8th Floor, 1425 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of February, 1987.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523–5920.

Date of notice: February 24, 1987.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 87–4072 Filed 2–24–87; 10:54 am]

BILLING CODE 7550–01–M

Corrections

Federal Register

Vol. 52, No. 38

Thursday, February 26, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 26

Public Access, Use and Recreation; Back Bay National Wildlife Refuge, VA

Correction

In proposed rule document 87–3412 beginning on page 5159 in the issue of Thursday, February 19, 1987, make the following corrections:

1. On page 5159, in the third column, in the sixth line, the FR citation should read "28314".

§ 26.34 [Corrected]

2. On page 5162, in § 26.34(h)(2), in the first column, in the first line "Commercial service" should read "Commercial service vehicles".

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–51661; FRL–3154–3]

Toxic and Hazardous Substances Control; Certain Chemicals Premanufacture Notices

Correction

In notice document 87–2869 beginning on page 4381 in the issue of Wednesday, February 11, 1987, make the following corrections:

1. On page 4383, in the first column, in premanufacture notice P 87–502, in the sixth line, remove ">"; and

2. On the same page, in the second column, in premanufacture notice P 87–506, in the first line, "*Manufacturer*" should read "*Importer*", and in the 12th line, "Sking" should read "Skin".

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–040–07–4212–11; A 20916]

Realty Action; Recreation and Public Purposes Classification and Conveyance of Public Land in Graham County, AZ

Correction

In notice document 87–2476 beginning on page 3873 in the issue of Friday, February 6, 1987, make the following corrections:

On page 3873, in the third column, in the legal description table, in the third line, insert "¼" after the second "SE", and in the fourth line, "26" should read "25".

BILLING CODE 1505–01–D

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federal register

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Part II

Department of Transportation

Federal Highway Administration

49 CFR Parts 393 and 396
Motor Carrier Safety Regulations; Proposed Rules

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[OMCS Docket No. MC-127; Notice No. 87-01]

Motor Carrier Safety Regulations; Parts and Accessories Necessary for Safe Operation; General

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA is requesting comments on proposed revisions to the Federal Motor Carrier Safety Regulations (FMCSR's) relative to requirements affecting axles and attaching parts, brake systems, frame and frame assemblies, lights, steering systems, suspension systems, wheels and rims, fuel tanks, fuel systems including natural gas fuel systems, and other vehicle parts and accessories, or possible ways to improve, streamline and simplify existing regulations in Part 393. This rulemaking is being issued under the provisions of section 206 of the Motor Carrier Safety Act of 1984. This action is being taken to enhance the safe operation of commercial motor vehicles in interstate commerce.

Elsewhere in today's **Federal Register**, in the same part, is published another NPRM entitled Inspection, Repair, and Maintenance (OMCS Docket No. MC-113; Notice No. 87-102). We request that the public consider these proposed rules together and make recommendations or suggestions on how both rulemaking actions can work together in a more efficient manner.

DATE: Comments must be received on or before April 27, 1987.

ADDRESS: All comments should refer to the docket number that appears at the top of this document and must be submitted (preferably in triplicate) to Room 3404, Office of Motor Carrier Standards, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Office of Motor Carrier Standards, (202) 366-2999, or Mrs. Kathleen S. Markman, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: On October 11, 1984, Congress passed the Motor Carrier Safety Act of 1984 (Pub. L. 98-554, 98 Stat. 2832) (the Act). The Act was signed into law by the President on October 30, 1984.

On January 10, 1985, the FHWA published an advance notice of proposed rulemaking (ANPRM) (50 FR 1245) seeking public comment concerning possible modifications to Parts 393 and 396 of the FMCSR (OMCS Docket No. MC-113; Notice No. 84-9, Parts and Accessories Necessary for Safe Operation and Inspection, Repair, and Maintenance). Numerous comments were received concerning these potential changes. Due to the complexity of these two areas of rulemaking, the FHWA is separating the rulemaking action for Part 393 from Docket No. MC-113. The Part 396 review will be addressed further in Docket No. MC-113, found elsewhere in today's **Federal Register**.

The purpose of these proposed changes is to ensure that all parts and equipment are maintained in a safe operating condition. The FHWA is charged with the important role of promulgating regulations for commercial motor vehicles operating on our Nation's highways. These regulations have a vital role in ensuring, to the maximum extent practical, the safe operation of such vehicles. At the same time the FHWA is properly concerned that its regulations do not impose unnecessary burdens on the motor carrier industry and yet protect the safety of the general public. In order to fulfill adequately both of these aims, the FHWA must periodically review these regulations as new technologies become available. In addition, it is desirable to open channels of communication with those directly affected by the regulations. Comments are specifically requested on possible ways that the requirements of this part can be streamlined or simplified.

These proposed revisions, in addition to those sections not revised, will be applicable to commercial motor vehicles operated in interstate commerce that have a gross vehicle weight rating of 10,001 pounds or more; are designed to transport more than 15 passengers, including the driver; and such vehicles as are used in the transportation of materials found by the Secretary to be hazardous for the purposes of the Hazardous Materials Transportation Act and are transported in a quantity requiring placarding under regulations issued by the Secretary.

Background

This rulemaking action addresses section 210 of the Act, which directs the Secretary of Transportation to afford interested parties an opportunity to comment on Part 393 of the FMCSR, concerning parts and accessories necessary for safe operation. Part 393 is the basis for the vehicle inspection currently performed on vehicles operated by motor carriers subject to the jurisdiction of the FHWA.

It is important to note that section 210 of the Act requires that each commercial motor vehicle pass an inspection, upon request, of all safety equipment required under Part 393 of the FMCSR. We invited public comment in the ANPRM regarding the need for further revision of Part 393.

Proposed Changes

Public comment was requested specifically on the issue of expanding the present scope of Part 393 to include the vehicles: (1) Frame and frame assemblies, (2) suspension systems, (3) axles and attaching parts, (4) wheels and rims, and (5) sterring systems now referred to in Part 396. It should be noted that manufacturing requirements, where used, are considered as those requirements needed for evaluation of the minimal physical attributes of component materials, labelling, and instructional materials considered necessary for adequate safety of the motoring public, for proper identification of responsible parties, and the safety of operation of the commercial vehicle.

The majority of those commenting on this issue supported expanding the scope of Part 393 to include the above five items so as to assure standardization. Two of those commenting on the issue were of the opinion that it was not necessary to include the five items in Part 393. However, the Act requires that each commercial motor vehicle shall be required to pass an inspection, upon request, of all safety equipment required under Part 393. These items are commonly found to service items at agency roadside vehicle inspections. In addition, a study of approximately 3,000 truck accidents by the California Highway Patrol, preceding its development of the Critical Item Inspection process, clearly indicated each of these items to be common causes of truck accidents. Therefore, we are proposing to include the five items in Part 393.

Also, it is being proposed herein to require parking brakes on all trailers. Further, we propose to require that the name of the manufacturer be marked on the motor vehicle's fuel tank along with the certification requirement. A new § 393.68 is being proposed covering

natural gas fuel systems. Revisions of certain lighting requirements of Part 393, to be compatible with the Federal Motor Vehicle Safety Standards (FMVSS), are being proposed.

A new § 393.5, Definitions, would be added, defining the words and terms used in this Part only.

A grandfather clause would be provided in the final rule for vehicles in use. Consideration is being given to permit a 2 year period for design changes on new vehicles unless comments to the docket indicate otherwise.

It is proposed to redesignate § 393.2, Additional equipment and accessories, as § 393.3 and to amend it to include Parts 398 and 399 of this subchapter.

Lighting Requirements

It is being proposed that the FMCSR lighting requirements be amended to be in conformity with the FMVSS. A proposed table in § 393.11 has been devised to make it easier to identify the requirements. It is also being proposed to make it clear that the current regulations now require, and will continue to require, that the rear of large trailers have either identification lamps or clearance lamps located at the top of the trailer. This is compatible with National Highway Traffic Safety Administration (NHTSA) and the various State's standards. Some trailers are now being manufactured with neither lamps at the extreme height.

The FHWA agrees with the position of the NHTSA that there is a need for lights marking the width of the vehicle. This is especially true for the new vehicles constructed to the 102-inch width range. Other proposed changes include requirements for a light to illuminate the rear license plate on all vehicles as now required by the FMVSS 108; two stop lamps and two tail lamps on all truck tractors and on dollies when the towing unit's rear lamps are obscured by the dolly; and updating Society of Automotive Engineers (SAE) references.

In addition, it is proposed to update the wiring specifications contained in § 393.27 to require compliance with the current SAE standard for high tension (voltage) ignition cable, battery cable and low tension (voltage) primary cable. Also, it is desirable to divide the trailer lights between two circuits so that should one circuit fail, the other will continue to illuminate the vehicle.

Wiring to be protected, as provided in § 393.28, would be revised to require specifically that wiring be protected from moisture, abrasion, road splash, grease, oil, fuel and chafing. The wiring on trailers would have to be accessible when the trailer is fully loaded and locked.

It is being proposed that parking brakes be required on all trailers (full trailers and semitrailers) which shall be in conformity with the requirements of the FMVSS (49 CFR 571.121, S5.6). Parking brakes are necessary to prevent the trailer from moving from the dock when being loaded and to prevent the trailer from rolling backwards when the tractor is being hooked up. In addition, the parking brake on trailers increases the overall holding capability of the combination unit. Parking brakes are not being required on dollies.

The requirement in § 393.44 that each bus be equipped at a location adjacent to but neither forward nor to the left of the driver's seat, with a means to apply the brakes on the rear wheels in the event any connection to the brake system forward of the driver's seat or any brake line to any of the front wheels is broken, is being considered for revision to accommodate new technology that may be developed. As proposed herein the means to apply the brakes on the rear wheels may be located either on the vehicle's dash or, under certain conditions, at the brake treadle, so long as the means can be reached by the driver from the driver's seat with the seatbelt in use.

A proposed revision to § 393.41, parking brake system, would change the grade holding requirement to be in conformity with the requirement in 49 CFR 571.121, S5.6.2, that requires the vehicle to remain stationary facing uphill and downhill on a 20 percent grade, both loaded and empty. The current rule requires the vehicle to remain stationary on any grade on which the vehicle is operated. This rule is considered unenforceable. The proposed change gives industry and enforcement personnel a specific criterion of measurement. Comments on this proposed revision are requested.

Updated brake tubing and brake hose requirements in § 393.45 are being proposed. SAE recommended practices represent the correlation of the best information available from research investigation and production experience on the minimum construction and performance characteristics essential for new brake tubing and hose assemblies used as original or replacement equipment. They also represent the minimum quality recognized by manufacturers and hose suppliers as essential for satisfactory and safe operation by the hose itself and other parts of the braking system. Therefore, special requirements for metallic brake tubing, nonmetallic brake tubing, coiled nonmetallic brake tubing and brake hose are being revised to reflect current SAE recommended practices.

Nonmetallic brake tubing will be required to meet the requirements of the SAE Recommended Practice, J844 nonmetallic air brake system Type B (Oct. 80). This requires an outer layer of material of a different color. The reason for this is that a simple visual inspection could then identify serious wear. The idea here being that wear through the first layer will be indicated by a color change and replacement made before an accident causing situation develops. This is similar to the present requirement for coiled nonmetallic tubing.

We propose to amend § 393.50, Reservoirs required, and § 393.51, Warning devices and gauges, to make the applicability of those sections consistent with the Act.

Fuel Tanks

The rules pertaining to fuel systems were revised by rulemaking published in the **Federal Register** on August 14, 1971 (36 FR 15444) at which time the fuel tank manufacturer's identity marking requirement was inadvertently omitted from the revised certification requirement. It is now being proposed to again require the manufacturer's name be marked on all fuel tanks. Without the identification of themanufacturer, it is impossible to enforce the certification requirement on fuel tanks not so certified. It is our understanding that most fuel tank manufacturers now include their name in addition to the certification. Therefore it is being proposed to amend § 393.67(f), Certification, to include the manufacturer's name.

Fuel Gauges

It is proposed that a fuel gauge be required to assist the driver in knowing at all times the fuel supply of the motor vehicle being operated. With the introduction of anti-theft plates being installed by many carriers, it is impossible for the driver to determine the available fuel supply by looking in the fuel tank. Therefore, we propose to amend § 393.65 to require a fuel gauge.

Fuel System—Natural Gas

The use of natural gas as a fuel for motor vehicles began in Italy about 40 years ago. During the past 10 years, increases in the price of liquid fuels and political considerations reflecting dependence upon imported energy have made the use of natural gas more attractive. The approximately 15,000 natural gas vehicles in the U.S.A. are predominantly in the so-called "fleet"

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operations. These systems have been designed, fabricated and operated on the basis of criteria agreed upon by equipment manufacturers, vehicle owners, and fueling station owners and operators. Since natural gas is lighter than air and will dissipate readily into the atmosphere when released, it is felt that fueling operations must be conducted outdoors.

Compressed Natural Gas (CNG) is a naturally occurring mixture of hydrocarbon gases and vapors, consisting principally of methane (CH_4 in gaseous form which has been compressed to 2,400—3,600 PSIG for use as a vehicular fuel.

There is considerable concern, from a safety standpoint, that once the use of natural gas fuel systems increases, the probability of fuel tank failures will rise sharply. Uncontrolled blending of pure (clean) natural gas with natural gas from sources with corrosive impurities present in the gas will cause destructive deterioration (stress-corrosion cracking) to the fuel system. When pressurized natural gas fuel systems fail there is a great potential for very serious accidents involving fire. Therefore, a Federal standard is necessary prior to any mass introduction of such systems to the interstate commercial vehicle fleets to assure that potential hazards associated with the gaseous fuel system are minimized.

One of the greatest incentives for using gaseous fuels in urban areas is the control of air pollution. The environmental and ecological problems attributed to air pollution have caused considerable concern from the standpoint of identifying and eliminating pollution at its source. One of the biggest pollution sources is that associated with the internal combustion engine. The exhaust fumes from these engines produce, in addition to particulate contamination, significant quantities of hydrocarbons, carbon monoxide, and oxides of nitrogen. These substances have been responsible for a large share of the health and environmental problems associated with atmospheric smog and air pollution in general. One means of controlling the exhaust contaminants is to replace the gasoline fuel, which is a mixture of literally hundreds of compounds with a simpler fuel, such as natural gas, which is principally methane. Government vehicles, equipped to run on either natural gas or gasoline, have been shown to produce exhaust emissions which are characterized by an 82% reduction in hydrocarbons, 87% reduction in carbon monoxide and 53% reduction in oxides of nitrogen, when using natural gas as compared with gasoline.[1] Natural gas is usually supplied as compressed natural gas (CNG), but systems are available using liquefied natural gas (LNG) stored at approximately minus 260° F in a cryogenic tank.

At this time, there does not appear to be sufficient interest in LNG to initiate a Federal standard for commercial motor vehicle use. However, we invite comments on the use of LNG as a fuel for commercial motor vehicles. It is our intention to limit this rulemaking to CNG.

CNG and LNG are both lighter than air in the gaseous state and have different hazard characteristics from the familiar liquefied petroleum gas (LPG), which is principally propane.

This new proposed standard on gaseous fuel systems is intended to fulfill a need that is materializing as vehicle fleets are modified to use gaseous fuel.

Fuels, such as natural gas, possess additional desirable characteristics in addition to the lowered exhaust emissions. Lubricating engine oil does not require changing as often, due to reduced contamination and sludge formation. Engine life is prolonged and maintenance is reduced.

In general, the tanks, lines, regulators and other components must be placed and secured in such a manner that normal vibration and vehicle utilization cannot damage the fuel system. The tanks and associated valves must be placed in a structurally protective area. These components must also be readily accessible for inspection or disassembly. The system tubing must be protected in a similar manner, utilizing, where possible, the vehicle frame or other substantial components along with protective grommets in areas where the tubing passes through structural members. The system tubing also must be equipped with "stand-off" braces where rubbing or chafing may be encountered. Serious consideration should be given to crash conditions when installation is made. Catastrophic failure of the system during a crash should be guarded against. High pressure tubing for example, can be installed with sufficient slack provided in the form of a stress relieving loop or other means that is capable of absorbing substantial deformation or stretching of the line without rupture.

Little actual experience in using American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code containers in this service is available to the FHWA, especially with regard to testing and recertification. It is felt that hydrostatic testing is an acceptable method of requalification for containers at these pressures. However, the FHWA is inclined to require either internal inspection by the wet fluorescent magnetic particle method in accordance with Section V of the ASME code or by the ultrasonic method as prescribed in American Society for Testing and Materials (ASTM) Standard A–388–67 for those containers subject to stress corrosion cracking.

At the present time, and for purposes of this rulemaking, the difference between the terms "cylinder" and "pressure vessel" is one of size and structure. Comments are invited on the use of these terms.

To ensure a high level of safety practices in fleet operations, minimum safety requirements are being proposed by the addition of a new § 393.68 covering natural gas fuel systems.

One of the recognized risks associated with the use of compressed natural gas is stress corrosion cracking introduced or enhanced through contaminants in the gas. One way of eliminating this problem is by setting limits on the contaminants in the gas. Another means may be by controlling the dew point of the gas. The effect of contaminants may be lessened by controlling the dew point of the gas. Public comment is sought on this matter in order to determine the best means of controlling gas purity and thereby preventing or decreasing stress corrosion cracking of the container.

Due to this risk of contamination in the gas, it is felt that a very strict inspection standard should be established for natural gas containers. Two container inspection standards which are relevant and useful to the operation of commercial motor vehicles are: (1) Compressed Gas Association (CGA) C–6 for steel containers, and (2) CGA C–6.1 for aluminum containers. Public comment is also sought on these procedures.

The purpose of this proposed rule is to specify requirements for the integrity and security of compressed gaseous fuel system equipment and its installation, and to minimize the fire hazard resulting from gaseous fuel leakage.

In view of a lack of a national standard for the composition of natural gas, it is important that such cylinders and pressure vessels be retested and reinspected at a frequency suited to the severity of the service conditions, in order to assure continued integrity. A major safety concern with the use of high pressure cylinders and vessels in CNG service is stress corrosion cracking and/or hydrogen embrittlement also called "hydrogen-assisted cracking" and

"sulfide stress cracking". This phenomenon, caused primarily by contaminants in the CNG, including hydrogen sulfide (H_2S) and water vapor (H_2O), can cause cylinder failure. Since the composition of CNG varies, and since there is no industry standard restricting contaminants in CNG Used as fuel, there is an increased possibility that harmful amounts of H_2S and H_2O will be present in these high pressure containers. Also, the high filling pressure used (up to 4500 psig) significantly increases the potential for stress corrosion caused by contaminants.

In at least four respects, cylinders used in fuel systems are likely to be subject to more severe conditions than those used in commercial shipments:

(1) The CNG is likely to have more contaminants, and is contained at higher pressures.

(2) The cylinders are often mounted horizontally and any condensation or other contaminants settle on the sidewall which is the most highly stressed part of the cylinder.

(3) The cylinders are subject to far more pressure cycles due to frequent filling and may not receive a visual inspection as a part of the filling procedure.

(4) Damage potential from abrasion and corrosion at the mounting brackets may be present in fuel system containers but is not normally a factor with commercial cylinders. In addition, certain mounting locations may expose containers to severe external corrosion from such elements as moisture and road salt.

In view of the above, appropriate retest and reinspection intervals should be established by manufacturers and equipment installers, but in no case should this retest and reinspection interval exceed 3 years. Such retests and reinspections should be performed on a container after it has been removed from the fuel system in conformance with all retest and reinspection requirements prescribed in 49 CFR 173.34(e) for DOT–3AA cylinders.

An additional concern is the adequacy of the pressure relieving systems. Traditional pressure relief device requirements for DOT specification and exemption cylinders are contained in 49 CFR 173.34(d). These requirements provide a relief device system capable of preventing rupture of the normally charged cylinder under fire conditions. However, a relief device system based on these requirements may not be adequate to prevent rupture of a partially charged cylinder under fire conditions because of the longer period of time required for pressure to increase to the level needed to activate the relief device. This longer exposure to fire could weaken the container and cause failure. Any container used in a partially filled condition should be equipped with a pressure relief device(s) tested and proven to function so as to prevent rupture of the container under fully enveloping fire conditions at all pressure levels. A cylinder (container) must be removed from the fuel system to be retested and reinspected in conformity with the requirements prescribed in 49 CFR 173.34(e) for DOT–3AA cylinders. In addition, any cylinder made from material that may be subject to stress corrosion cracking should be examined for this type of defect and removed from service if any evidence of cracking is present. This testing will be conducted by the wet flourescent magnetic particle method in accordance with Section V of The American Society of Mechanical Engineers Boiler and Pressure Vessel Code, 1985 edition, or by the ultrasonic method as prescribed in the American Society for Testing and Material Standard A–388–67, 1982 edition.[2]

The FHWA would like to receive information from utility companies, cylinder manufacturers, equipment manufacturers, compressor manufacturers and equipment installers on the following:

1. Range of gas quality supplied through the gas utilities distribution system.

2. The quality of gas that a cylinder or system manufacturer would recommend in their storage vessels.

3. Information gathered through cylinder testing regarding corrosion, stress fractures or other related information about the structural integrity of CNG vessels such as research ongoing at Southwest Research Institute.

4. Type of CNG vessel testing that should be allowed or required. An information to support time interval of conducting test on these vessels.

Hydro-static testing is presently the most common means of retesting a cylinder. The FHWA is also seeking public comment on more effective/efficient means of testing, such as ultrasonic on acustic testing and also comments on length of time between test periods.

This information could lead to a less restrictive requirement than the one proposed in this rulemaking.

Frame and Frame Assemblies

High strength heat treated steel frame rails, having high resistance to bending moments, are used in truck/tractor frames. The load carrying ability of this type frame is dependent primarily on the ability of the material used to withstand very high stresses. High strength steel frames, because they are so highly stressed, are particularly susceptible to failures due to stress concentration. This is most critical in areas where a stress concentration will be combined with fatigue loading. Most problems encountered in truck/tractor frame failures today are the result of improperly installed frame mounted accessories. Therefore, we propose to amend the regulations to include frame and frame assembly requirements which would: (1) Prohibit cracked, loose, sagging or broken frames or frame members; (2) require that all accessories be bolted securely; and (3) prohibit welds and the drilling of holes in certain areas of the frame by persons other than the manufacture.

Wheels

Specific requirements for the maintenance of wheels are being proposed. Wheel and tire failures are historically one of the major mechnical defect related causes of reportable accidents filed with the FHWA. The proposed rule would prohibit cracks in wheels and rims, prohibit stud or bolt holes from being elongated (out of round), and prohibit missing or loose nuts or bolts.

Suspension Systems

The suspension system is employed to allow axle movement independent of the frame in order to provide a smooth ride for the driver and the cargo. As a multifunctional system it also attaches the axle to the vehicle. The suspension must keep the axle or axles in proper alignment for safe operation and absorb the tremendous twisting imposed by driving torque, as well as the equally punishing opposite force of braking. Accident statistics generated by motor carriers of property filing accident reports with the FHWA, show that suspension systems is the fourth leading cause of accidents; therefore, regulations concerning the condition of springs, axles, adjustable axle assemblies, torsion bars, and related devices, are being proposed herein.

Steering Wheel Systems

In 1983, 5.9 percent of the reported mechanical defect related accidents involved steering systems. According to accident reports filed with the FHWA, steering wheel system problems and failures account for the third most serious mechanical defect resulting in accidents of motor carriers. Regulations concerning free play in steering wheels, defects in the steering column system,

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universal joints, and power steering systems are therefore being proposed for the first time.

Exhaust Systems

It is being proposed to amend the exhaust system location requirement to require an exhaust system, and to prohibit the use of patches or leaking at any point below or forward of the driver/sleeper compartment, or in the case of a bus, forward of any window or door designed to be opened. These proposed changes will increase safety by ensuring that exhaust fumes will not affect the alertness of the driver while driving or affect the driver's health or the health of passengers when being transported.

Sleeper Berths

A petition has been received requesting an amendment to § 393.76 to permit the use of water mattresses in sleeper berths of trucks. The petition appears to have merit. Therefore, it is being proposed that mattresses containing a liquid may be used in sleeper berths provided the mattress is so manufactured that the occupant will not get wet in the event of a leak; that it is of such thickness that it will not "bottom-out" when occupied while the vehicle is in motion; that electricity is not used to heat the mattress; that the liquid will not freeze, and eliminate the requirement for cleaning.

Future rulemaking will consider other changes in the regulations upon which research is presently being conducted. It would be unwise to make these changes until the research is complete and found to be acceptable. Besides research being conducted by the Federal Government, several industry associations and private companies are conducting research that will hopefully resolve several controversial issues.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291. It is considered to be a significant regulation under the regulatory policies and procedures of the Department of Transportation because of the sizeable number of individuals and companies that may be impacted economically by certain rule changes promulgated herein. However, despite the number of individuals and companies that may be affected, it is anticipated that the economic impact of this rule to all individuals will be minimal. It is also anticipated that the benefits and opportunities for benefits to be derived from the rule will offset any costs. A draft regulatory evaluation/ initial regulatory flexibility analysis has been prepared and is available for review in the public docket.

Based on the information available to the FHWA at this time, this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 393

Highways and roads, Highway safety, Motor carriers, Motor vehicle safety, Parts and accessories.

References

1. EPA Motor Vehicle Emission Laboratory, Ann Arbor, Michigan, April 1981.

2. Published by The American Society of Mechnical Engineers, United Engineering Center, 345 East 47th Street, New York, NY 10017, and by the American Society For Testing and Materials, 1916 Race Street, Philadelphia, Pa. 19103, respectively.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: February 13, 1987.

Ray Barnhart,

Administrator.

In consideration of the foregoing, the FHWA proposes to amend Title 49, Code of Federal Regulations, Subtitle B, Chapter III, by amending Part 393 as set forth below.

Part 393—[Amended]

1. The authority citation for Part 393 is revised to read as follows:

Authority: Section 210 of Pub. L. No. 98-554, 98 Stat. 2839 (1984) (49 U.S.C. App. 2505); 49 U.S.C. 3102; 49 CFR 1.48 and 301.60.

2. Subpart A consisting of §§ 393.1 through 393.5 is revised to read as follows:

Subpart A—General

Sec.

393.1 Scope of the rules in this part.
393.3 Additional equipment and accessories.
393.5 Definitions.

Subpart A—General

§ 393.1 Scope of the rules in this part.

Every employer and employee shall comply and be conversant with the requirements and specifications of this part. No employer shall operate a commercial motor vehicle, or cause or permit it to be operated, unless it is equipped in accordance with the requirements and specifications of this part.

§ 393.3 Additional equipment and accessories.

Nothing contained in subchapters A and B of this chapter shall be construed to prohibit the use of additional equipment and accessories, not inconsistent with or prohibited by subchapters A and B of this chapter, provided such equipment and accessories do not decrease the safety of operation of the motor vehicles on which they are used.

§ 393.5 Definitions.

As used in this part, the following words and terms are construed to mean:

Brake. An energy conversion mechanism used to stop, or hold a vehicle stationary.

Brake tubing/hose. (a) Metallic brake tubing, nonmetallic brake tubing and brake hose are conduits or lines used in a brake system to transmit or contain the medium (fluid or vacuum) used to apply the motor vehicle's brakes.

(b) Metallic and nonmetallic brake tubing intended for use in areas of the brake system where relative movement in the line is not anticipated.

(c) Brake hose and coiled nonmetallic brake tubing is intended for use in the brake system where substantial relative movement in the line is anticipated or the hose/coiled nonmetallic brake tubing is exposed to potential tension or impact such as between the frame and axle in a conventional type suspension system (axle attached to frame by suspension system).

Chassis. The load-supporting frame in a truck or trailer, exclusive of any appurtenances which might be added to accommodate cargo.

Clearance Lamp. A lamp used on the front and the rear of a motor vehicle to indicate its overall width and height.

Composite container. A container fabricated of two or more materials that interact together to facilitate the container design criteria.

Container. A pressure vessel or cylinder used to store CNG.

Container Appurtenances. Devices connected to container openings for safety, control or operating purposes.

Container Valve. A handwheel-operated valve connected directly to a container outlet.

Converter dolly. A motor vehicle with a fifth wheel lower half or equivalent mechanism, the attachment of which converts a semitrailer to a full trailer.

Curb weight. The weight of a motor vehicle with standard equipment; maximum capacity of fuel, oil, and coolant; and if so equipped, air conditioning and additional weight of optional engine. Curb weight does not include the driver.

Cylinder. A container constructed, inspected, and maintained according to DOT regulations (Research & Special Programs Administration (DOT–E8009) for the purpose of storing compressed natural gas and having not over 1000 pounds of water capacity (nominal).

Dew Point. The temperature at which vapor begins to condense.

Emergency Brake System. a mechanism designed to stop a vehicle after a failure of the service brake system.

Fittings. Any removable device affixed to an opening in the fuel tank with the exception of the filler cap.

Flammable Range. Designates the difference between the minimum and maximum volume percentages of the material in air that forms a flammable compressed gas.

Fuel Supply Container. A container mounted upon a motor vehicle to store Compressed Natural Gas (CNG) as the fule supply to the internal combustion engine of the vehicle.

Grommets. A device that serves as a support and protection to that which passes through it.

Hazard Warning Signal. Lamps that flash simultaneously to the front and rear, on both the right and left sides of a commercial motor vehicle, to indicate to an approaching driver the presence of a vehicular hazard.

Head Lamps. Lamps used to provide general illumination ahead of a motor vehicle.

Identification Lamps. Lamps used to identify certain types of commercial motor vehicles.

Lamp. A device used to produce artificial light.

Lash. The condition in which the steering wheel may be turned through some part of a revolution without associated movement of the front wheels.

License Plate Lamp. A lamp used to illuminate the license plate on the rear of a motor vehicle.

Lower Half Fifth Wheel. A device mounted on a truck tractor or a converter dolly upon which the upper half fifth wheel mounted on a semitrailer rests.

Manual Shutoff Valve. A quick-closing valve located downstream of all CNG fuel supply containers on the vehicle.

Parking Brake System. A brake system used to hold a vehicle stationary.

Play. Any free movement of the front wheels and suspension components.

Pressure Relief Device. A device designed to prevent rupture of a normally charged fuel supply container placed in a total fire involvement Test as prescribed in CGA pamphlet C–14.[1]

[1] Procedures for Fire Testing of D.O.T. Cylinder Pressure Relief Device Systems, published by the Compressed Gas Association, Inc., Crystal Gateway 1, Suite 501, 1235 Jefferson Davis highway, Arlington, Virginia 22202.

Pressure Relief Device Channels. The passage or passages beyond the operating parts of the pressure relief device through which fluid must pass to reach the atmosphere.

Rear Extremity. The rearmost point on a vehicle when the vehicle's cargo doors, tailgate or other permanent structure are positioned as they normally are when the vehicle is being driven. Non-structural protrusions such as taillights, hinges and latches are deleted from the determination of the rear most point.

Reflector. A device used on a vehicle to reflect the light from all sources, but primarily from the head lamps of an approaching motor vehicle.

Service Brake System. A primary brake system used for slowing and stopping a vehicle.

Side Extremities. The outermost point on the sides of the vehicle. Nonstructural protrusions such as taillights, hinges, and latches are excluded from the determination of the outermost point.

Side Marker Lamps. Lamps used on each side of a trailer to indicate its overall length.

Side Marker Lamp (Intermediate). A lamp shown to the side of a trailer to indicate the approximate middle of a trailer 30 feet or more in length.

Stop lamps. Lamps shown to the rear of a motor vehicle to indicate the intention of the operator to stop or reduce speed by braking.

Tail Lamps. Lamps used to designate the rear of a motor vehicle.

Turn Signals. Lamps used to indicate a change in direction by emitting a flashing light on the side of a motor vehicle towards which a turn will be made.

Upper Half Fifth Wheel. A device consisting of upper coupler plate reinforcement framing and a fifth wheel kingpin mounted on a semitrailer.

Upper Coupler Plate. A plate structure through which the kingpin neck and collar extend. The bottom surface of the plate contacts the fifth wheel lower half when the trailer is coupled to the truck-tractor.

3. Subpart B is amended by revising § 393.11 to read as follows and removing § 393.12, 393.13, 393.14 and 393.15.

Subpart B—Lighting Devices, Reflectors, and Electrical Equipment

. . . . . .

§ 393.11 Lighting devices and reflectors.

The following table sets forth the required color, position and required lighting devices by type of commercial motor vehicle. Diagrams illustrating the location of lighting devices and reflectors, by type and size of commercial motor vehicles, are shown immediately following the table.

Footnote—1

Identification lamps may be mounted on the vertical centerline of the cab where different from the centerline of the vehicle, except where the cab is not more than 42 inches wide at the front roofline, then a single lamp at the center of the cab shall be deemed to comply with the requirements for identification lamps. No part of the identification lamp or their mountings may extend below the top of the vehicle windshield.

Footnote—2

Unless the turn signals on the front are so constructed (double-faced) and located as to be visible to passing drivers, two turn signals are required on the rear of the cab, one at each side.

Footnote—3

The identification lamps need not be lighted if obscured by a vehicle in the same combination.

Footnote—4

Vehicles manufactured on and after March 1, 1979 shall be equipped with side-marker lamps at a height of not less than 15 inches (381 mm) nor more than 60 inches (1524 mm) above the road surface, as measured from the center of the lamp on the vehicle at curb height. The rear side-marker lamps shall be visible in the vehicle's rearview mirror when the trailer is tracking straight.

Footnote—5

For purposes of these regulations, each converter dolly shall be equipped with two stop lamps, two tail lamps, and two reflectors on the rear at each side when towed singly by another vehicle. Each converter dolly shall be equipped with turn signals at the rear if the converter dolly obscures the turn signals at the rear of the towing vehicle when towed singly by another vehicle.

Footnote—6

Pole trailers will have two reflectors, one on each side, placed to indicate extreme width of the trailer.

Footnote—7

Pole trailers may have 3 identification lamps mounted on the vertical centerline of the rear of the cab of the truck tractor drawing the pole trailer, and higher than the load being transported, in lieu of the three identification lamps mounted on the rear vertical centerline of the trailer.

Footnote—8

Pole trailers shall have on the rear-most support for the load, one combination marker lamp showing amber to the front and red to the rear and side, mounted on each side to indicate maximum width of the pole trailer; also one red reflector on each side of the rear-most support for the load.

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Footnote—9

Any motor vehicle having a load which extends beyond the sides, or more than 4 feet beyond the rear of the motor vehicle, shall have the extremities of the load marked with a red flag, not less than 12 inches square at each point where a map is required.

Footnote—10

Any motor vehicle transporting a load which extends beyond the width of the motor vehicle, or having projections beyond the rear of such vehicle, shall be equipped with the following lamps in addition to other required lamps.

(a) Loads projecting beyond sides of motor vehicles

(1) The foremost edge of the projecting load at its outermost extremity shall be marked with an amber lamp visible from the front and both sides.

(2) The rear-most edge of the projecting load at its outermost extremity shall be marked with red lamp visible from the rear and side.

(3) If any portion of the projecting load extends beyond both the foremost and rear-most edge, it shall be marked with an amber lamp visible from the front, both sides, and rear.

(4) If the projecting load does not measure over 3 feet from front to rear, it shall be marked with an amber lamp visible from the front, both sides, and rear, except that if the projection is located at or near the rear, it shall be marked by a red lamp visible from the front, side, and rear.

(b) Projections beyond rear of motor vehicles. Motor vehicles transporting loads which extend over 4 feet beyond the rear of the motor vehicle, or which have tailboards or tailgates extend over 4 feet beyond the body, shall have these projections marked as follows.

(1) On each side of the projecting load, one red lamp, visible from the side, located so as to indicate maximum overhang.

(2) On the rear of the projecting load, two red lamps, visible from the rear, one at each side; and two red reflectors visible from the rear, one at each side, located so as to indicate maximum width.

Footnote—11

To be illuminated when tractor headlamps are illuminated.

Footnote—12

Every motor vehicle shall be equipped with a signaling system that, in addition to signaling turning movements as required by Section 392.15, shall have a switch or combination of switches that will cause the two front turn signals and the two rear signals to flash simultaneously as a vehicular traffic signal warning, required by Section 392.22(a). The system shall be capable of flashing simultaneously with the ignition of the vehicle turned on or off.

Footnote—13

To be actuated upon application of service brakes.

Footnote—14

Backup lamp not required but allowable to operate when unit is in reverse.

Legend

1. Headlamps (2)-white (4 optional)
2. Side-marker lamps, Front (2)-amber
3. Side reflectors, Front (2)-amber
4. Turn-signal lamps, Front (2)-amber
4a. Turn-signal lamps, Front (2)-amber (optional location)
5. Identification lamps, Front (3)-amber
5a. Identification lamps, Front (3)-amber (optional location)
6. Clearance lamps, Front (2)-amber
7. Side-marker lamps, Rear (2)-red
8. Side reflectors, Rear (2)-red
9. Identification lamps, Rear (3)-red
10. Clearance lamps, Rear (2)-red
11. Reflectors, Rear (2)-red
12. Stop lamps, Rear (2)-red
13. License plate lamp, Rear (1)-white
14. Rear backup lamp (1)-white (location optional provided optional requirements are met)
15. Side-marker lamps, Intermediate (2)-amber (if vehicle is 30' or more overall length)
16. Side reflectors, Intermediate (2)-amber (if vehicle is 30' or more overall length)
17. Turn signal lamps, amber or red
18. Tail lamps, Rear (2)-red

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Table
Required Commercial Vehicle Lighting Equipment

A Item	B Quantity	C Color	D Location	E Position	F Height Above Road Surface in Inches	G Required Lighting Devices/ Vehicles*
Headlamps	2 At least	White	Front	On the front at the same height, an equal number at each side of the vertical centerline as far apart as practicable.	Not less than 24 nor more than 54.	1, 2, 3
Turn Signal (Front). See Footnote # 12	2	Amber	Front	One at each side, at the same height and as far apart as practical.	Not less than 15 nor more than 83.	1, 2, 3
Identification Lamp (Front)	3	Amber	Front	Mounted on the vertical centerline of the vehicle or the vertical centerline of the cab where different from the centerline of the vehicle.	All three on same level as close as practicable to the top of the vehicle.	2, 3
Tail Lamp See Footnote # 11	2	Red	Rear	One lamp each side of the vertical centerline at the same height and as far apart as practicable.	Both on the same level, between 15 and 72.	1, 2, 3, 4, 5, 6, 7
Stop Lamp See Footnote # 13	2	Red	Rear	One lamp each side of the vertical centerline at the same height and as far apart as practicable.	Both on the same level, between 15 and 72.	1, 2, 3, 4, 5, 6, 7

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Table
Required Commercial Vehicle Lighting Equipment (Continued)

A Item	B Quantity	C Color	D Location	E Position	F Height Above Road Surface in Inches	G Required Lighting Devices/ Vehicles*
Clearance Lamps See Footnote # 9	2	Amber	One on each side of front	On each side to indicate overall width	Both on same level as high as practicable	2, 3, 4, 7
	2	Red	One on each side of rear	On each side to indicate overall width	Both on same level as high as practicable	2, 4, 7
Side Marker Lamp, Intermediate, See Footnote # 4	2	Amber	One on each side	Near midpoint between front and rear side marker lamps, if over 30' in length.	Not less than 15.	1, 2, 3, 4, 7
Reflector Intermediate (Side)	2	Amber	One on each side	Near midpoint between front and rear side reflectors, if over 30' in length	Between 15 and 60.	1, 2, 3, 4, 7
Reflector (Rear) See Footnote # 4	2	Red	Rear	As far apart as practicable	Both on same level, between 15 and 60	1, 2, 3, 4, 5, 6, 7
Reflector (Rear Side)	2	Red	One on each side (rear)	As far to the rear as practicable	Between 15 and 60	2, 4, 7
Reflector (Front Side)	2	Amber	One on each side (front)	As far to the front as practicable.	Between 15 and 60.	2, 4, 7

Table
Required Commercial Vehicle Lighting Equipment (Continued)

A Item	B Quantity	C Color	D Location	E Position	F Height Above Road Surface in Inches	G Required Lighting Devices/ Vehicles*
License Plate Lamp (Rear) Footnote # 11	1	White	At rear license plate	To illuminate the license plate from the top or sides.	No requirement	1, 2, 3, 4, 6, 7
Side Marker Lamp (Front) Footnote # 4	2	Amber	One on each side	As far to the front as practicable.	Not less than 15.	2, 4
Side Marker Lamp (Rear) Footnote # 4	2	Red	One on each side	As far to the rear as practicable	Not less than 15.	2, 4, 7
Turn Signal (Rear) See Footnote # 12	2	Amber or Red	Rear	One lamp each side of the vertical centerline at the same height and as far apart as practicable	Both on the same level, between 15 and 83	1, 2, 3, 4, 6, 7
Identification Lamp (Rear)	3	Red	Rear	One as close as practicable to vertical centerline. One on each side with lamp centers spaced not less than 6" or more than 12" apart	All three on same level as close as practicable to the top of the vehicle	2, 4, 7

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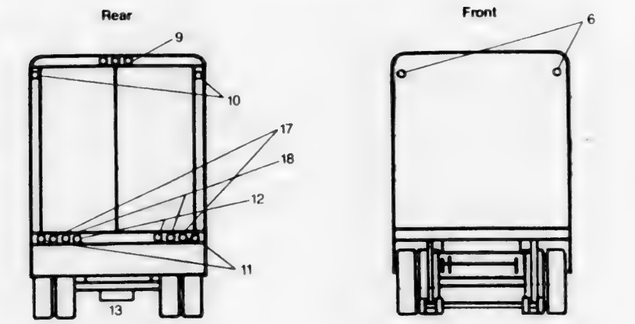
Table
Required Commercial Vehicle Lighting Equipment (Continued)

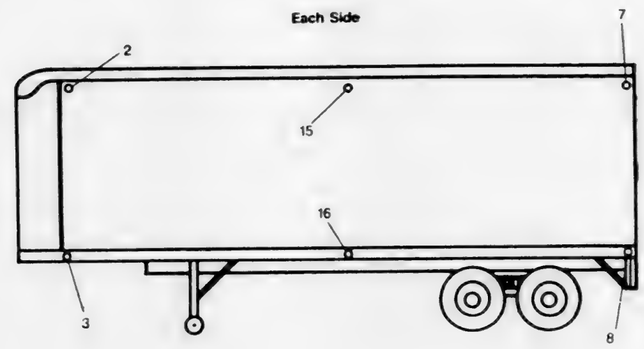
A Item	B Quantity	C Color	D Location	E Position	F Height Above Road Surface in Inches	G Required Lighting Devices/ Vehicles*
Vehicular Hazard Warning Flashers See Footnote # 12	2	Amber	Front	One lamp each side of vertical centerline at the same height and as far apart as practicable.	Both on same level, between 15 and 83.	1, 2, 3, 4, 5, 6, 7
	2	Amber or Red	Rear			
Backup Lamp. See Footnote # 14	1	White	Rear	Rear power unit	Optional	2, 3

*Lighting Required per Type of Commercial Vehicle as Shown in Column H of Table

1. Small buses and trucks less than 80 inches in overall width.
2. Buses and trucks 80 inches or more in overall width. See Footnote # 1.
3. Truck tractors. See Footnote # 1, # 2.
4. Large semitrailers and full trailers 80 inches or more in overall width except converter dollies. See Footnote # 3, # 4.
5. Converter dolly. See Footnote # 5.
6. Small semitrailers and full trailers less than 80 inches in overall width.
7. Pole trailers. See Footnote # 6, # 7, # 8.
8. Projecting loads. See Footnote # 9, # 10.
9. All lighting devices must comply with FMVSS 571.108.

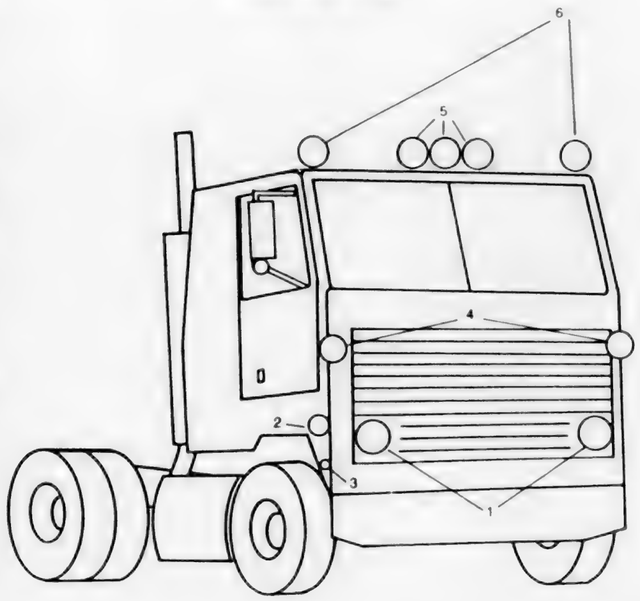
Large Trailers



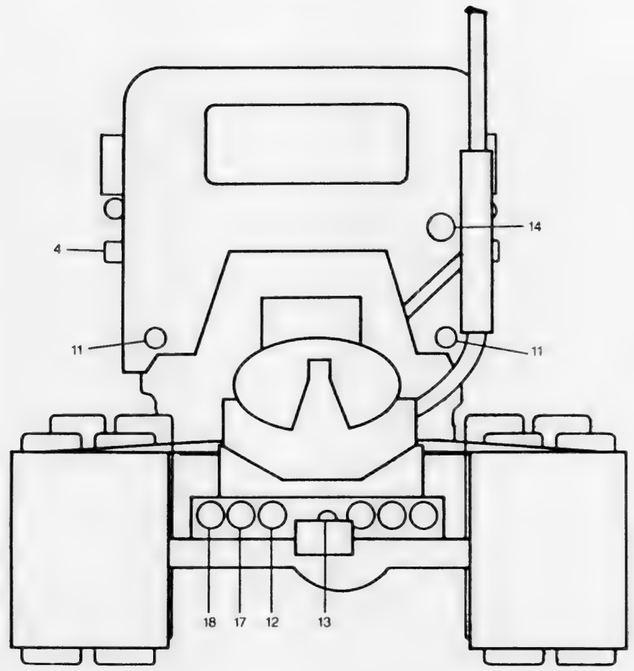


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Truck Tractor
Front & Side View

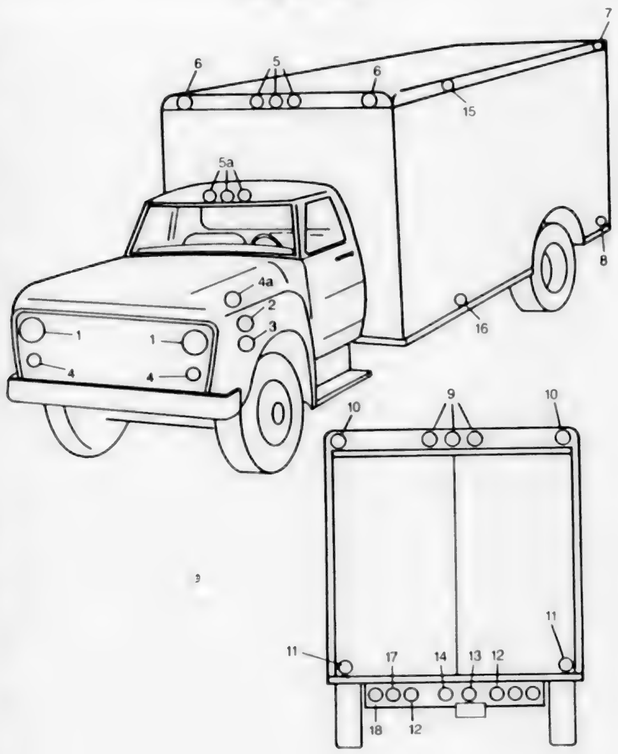


Truck Tractor
Rear View

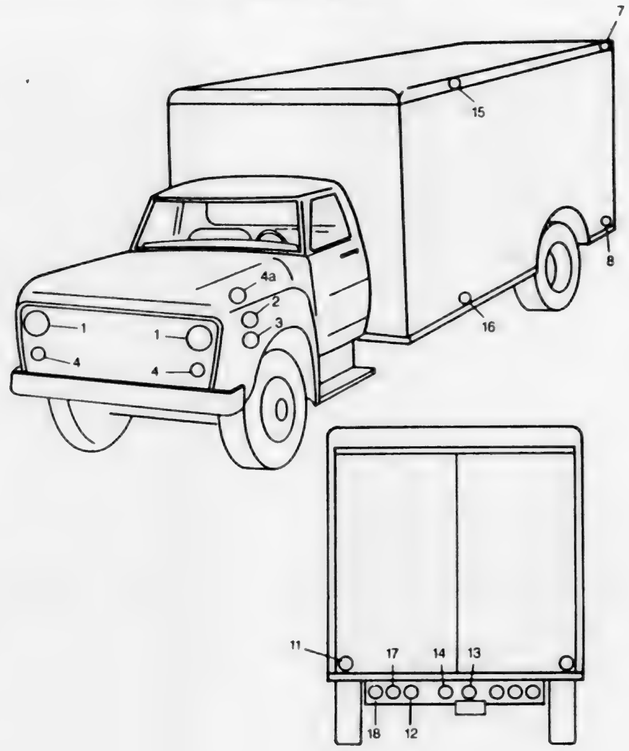


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Over 80 Inches

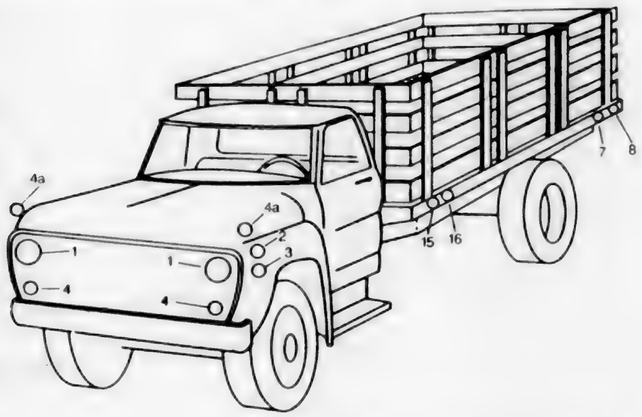


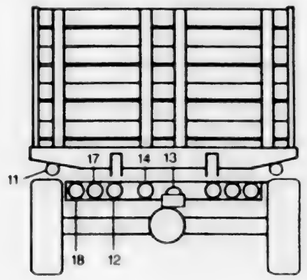
Under 80 Inches



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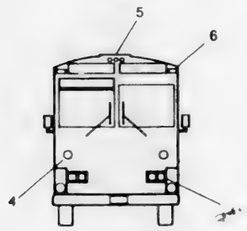
Under 80 Inches



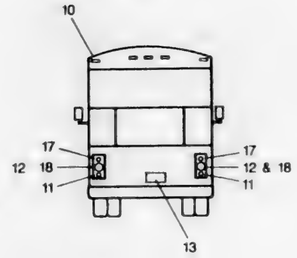


Large Bus

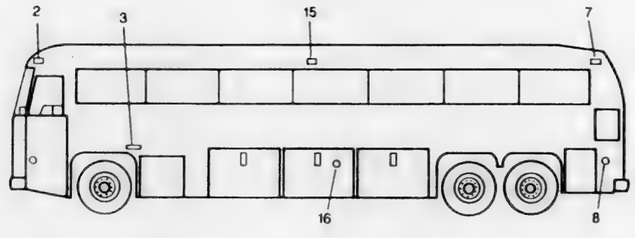
Front



Rear



Each Side



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4. Section 393.20 is amended by revising the first portion of the introductory text to read as follows:

§ 393.20 Clearance lamps to indicate extreme width and height.

Clearance lamps shall be mounted so as to indicate the extreme width of the motor vehicle (not including mirrors) and the extreme height: *Provided,* * * *.

* * * * *

§ 393.22 [Amended]

5. Section 393.22 is amended by removing paragraph (b)(2) and redesignating paragraph (b)(3) as paragraph (b)(2).

6. The footnote to § 393.24(c) is amended by adding paragraph (d), as follows:

§ 393.24 Requirements for head lamps and auxiliary road lighting lamps.

* * * * *

(d) When reference is made in these regulations to SAE Standards or SAE Recommended Practices, they shall be as found in the 1985 Edition of the SAE Handbook:

(i) With respect to parts and accessories other than lighting devices and reflectors:

(ii) With respect to lighting devices and reflectors on motor vehicles manufactured on and after (*one year after effective date of this rulemaking*).

§ 393.25 [Amended]

7. Section 393.25 is amended by removing paragraph (e) and redesignating paragraphs (f) and (g) as (e) and (f), respectively, and revise the reference in the last sentence of redesignated paragraph (f), Stop lamp operation, to read "paragraph (e) of this section."

§ 393.26 [Amended]

8. Section 393.26 is amended by removing paragraph (d) and redesignating paragraph (e) as (d).

9. Section 393.27 is revised to read as follows:

§ 393.27 Wiring specifications.

(a) Wiring for both low voltage (tension) and high voltage (tension) circuits shall be constructed and installed so as to function properly. Wiring shall meet or exceed, both mechanically and electrically, the following SAE Standards as found in the 1985 edition of the SAE Handbook:

(1) Commercial vehicle engine ignition systems—SAE J557—High Tension Ignition Cable.

(2) Commercial vehicle battery cable—SAE J1127—Jan 80—Battery Cable.

(3) Other commercial vehicle wiring—SAE J1128—Low Tension Primary Cable.

(b) Required lamps shall be connected to the source of power with fittings or stranded wire. The source of power and the electrical wiring shall be of such size and characteristics that required lamps shall, when lighted, be capable of being seen by a person with 20/20 vision (Snellen) at a distance of at least 500 feet under clear atmospheric conditions during the time lamps are required to be lighted.

(c) Lamps shall be properly grounded to the vehicle.

Note.—This shall not prohibit the use of the frame or other metal parts of a motor vehicle as a return ground system provided truck-tractor semitrailer/full trailer combinations are electrically connected.

(d) The wire for the upper trailer circuit, where needed, shall control the upper clearance, marker, and identification lights. The wire shall be color coded black. The lower lighting circuit shall be color coded brown and shall control tail, marker, and lower clearance lights.

10. Section 393.28 is revised to read as follows:

§ 393.28 Wiring to be protected.

(a) The wiring shall—

(1) Be so installed that connections are protected from moisture, abrasion, road splash, grease, oil, fuel and chafing;

(2) Be accessible so that it can be repaired or replaced from the outside of a fully loaded and locked trailer;

(3) Be grouped together, when possible, and protected by nonmetallic tape, braid, or other covering capable of withstanding severe abrasion or shall be protected by being enclosed in a metallic sheath or tube;

(4) Be properly supported in a manner to prevent chafing;

(5) Not be so located as to be likely to be charred, overheated, or enmeshed in moving parts;

(6) Not be adjacent to any part of the fuel system; and

(7) Be protected when passing through holes in metal by a grommet of rubber, or other suitable material, or the wiring shall be metal-covered.

(b) The complete wiring system including lamps, junction boxes, receptacle boxes, conduit and fittings must be protected from the weather.

(c) Harness connections shall be accomplished by a positive mechanical means.

11. In Subpart C, § 393.41(a) is revised to read as follows:

§ 393.41 Parking brake system.

(a) Every commercial motor vehicle, except a converter dolly, shall at all times be equipped with a parking brake system adequate to hold the vehicle or combination under any condition of loading in a stationary position facing uphill and facing downhill on a smooth dry portland cement concrete roadway with a 20 percent grade.

* * * * *

13. Section 393.44 is revised to read as follows:

§ 393.44 Front brake lines, protection.

On every bus, if equipped with air brakes, except buses being transported in driveaway-towaway operations, the braking system shall be so constructed that in the event any connection to the brake system forward of the driver's seat or any brake line to any of the front wheels is broken, the driver can apply the brakes on the rear wheels despite such breakage. The means used to apply the brakes may be located forward of the driver's seat as long as it can be operated manually by the driver when the driver is properly restrained by any seat belt assembly provided for use.

14. Section 393.45 is amended by revising paragraphs (b) and (c) to read as follows, and by removing paragraph (d).

§ 393.45 Brake tubing and hose, adequacy.

* * * * *

(b) *Special requirements for metallic brake tubing, nonmetallic brake tubing, coiled nonmetallic brake tubing and brake hose.*

(1) Metallic brake tubing, nonmetallic brake tubing, coiled nonmetallic brake tubing, and brake hose installed on a commercial motor vehicle on and after (effective date of rule), must meet or exceed one of the following specifications set forth in the SAE Handbook, 1986 edition:

(i) Metallic Air Brake Tubing—SAE Recommended Practice J1149—Metallic Air Brake System Tubing and Pipe *REVISED* July 1978.

(ii) Nonmetallic Air Brake Tubing—SAE Recommended Practice J844 Nonmetallic Air Brake System Type B—OCT 80—and SAE J1131—JAN 76 Performance Requirements for SAE J844 Nonmetallic Tubing and Fitting Assemblies used in Automotive Air Brake Systems, JAN 1976.

(iii) Air Brake Hose—SAE Recommended Practice J1402 Automotive Air Brake Hose and Hose Assemblies JUN 85.

(iv) Hydraulic brake hose—SAE Recommended Practice J1401 Road Vehicle—Hydraulic Brake Hose Assemblies for Use for Non-Petroleum Base Hydraulic Fluid JUN 85.

(v) Vacuum Brake Hose—SAE Recommended Practice J1403 Vacuum Brake Hose JUN 85.

(2) Except as provided in paragraph (c) of this section, brake hose and brake tubing installed on a motor vehicle before the effective date of this rule must conform to 49 CFR 393.45 effective October 31, 1983.

(c) *Nonmetallic brake tubing.* Coiled nonmetallic brake tubing may be used for connections between towed and towing vehicles or between the frame of a towed vehicle and the unsprung subframe of an adjustable axle of that vehicle if—

(1) The coiled tubing has a straight segment (pigtail) at each end that is at least 2 inches in length and is encased in a spring guard or similar device which prevents the tubing from kinking at the fitting at which it is attached to the vehicle; and

(2) The spring guard or similar device has at least 2 inches of closed coils or similar surface at its interface with the fitting and extends at least 1½ inches into the coiled segment of the tubing from its straight segment.

15. Section 393.46 is amended by adding a new paragraph (f) as follows:

§ 393.46 Brake tubing and hose connections.

* * * * *

(f) Splices in tubing must use fittings that meet the requirements of SAE Standard J512—OCT 80 Automotive Tube Fittings as found in the SAE Handbook 1986 edition.

16. Section 393.50(a) is revised and paragraph (c) is removed as follows:

§ 393.50 Reservoirs required.

(a) *General.* Every commercial motor vehicle using air or vacuum for braking, shall be equipped with reserve capacity or a reservoir sufficient to ensure a full service brake application with the engine stopped without depleting the air pressure or vacuum below 70 percent of that pressure or degree of vacuum indicated by the gauge immediately before the brake application is made. For purposes of this section, a full service brake application is considered to be made when the service brake pedal is pushed to the limit of its travel.

* * * * *

§ 393.51 [Amended].

17. Section 393.51 is amended by removing paragraph (g).

18. In Subpart E, § 393.65 is amended by adding a new paragraph (h) as follows:

§ 393.65 All fuel systems.

* * * * *

(h) *Fuel gauge.* All fuel systems must be equipped with an operable gauge to indicate the amount of fuel available at any given time.

19. Section 393.67(f) is revised to read as follows:

§ 393.67 Liquid fuel tanks.

* * * * *

(f) *Certification and markings.* Each liquid fuel tank shall be legibly and permanently marked by the manufacturer with the following minimum information:

(1) The month and year of manufacture,

(2) The manufacturer's name on tanks manufactured on and after July 1, 1986, and

(3) A certificate that it conforms to the rules in this section applicable to the tank. The certificate must be in the form set forth in either of the following:

(i) If a tank conforms to all rules in this section pertaining to side-mounted fuel tanks: "Meets all FHWA side-mounted tank requirements."

(ii) If a tank conforms to all rules in this section pertaining to tanks which are not side-mounted fuel tanks: "Meets all FHWA requirements for non-sidemounted fuel tanks."

(iii) The form of certificate specified in paragraph (f)(3)(i) or (ii) of this section may be used on a liquid fuel tank manufactured before July 11, 1973, but it is not mandatory for liquid fuel tanks manufactured before that date.

20. A new § 393.68 is added to Subpart E and reads as follows:

§ 393.68 Natural gas fuel systems.

(a) A fuel system that uses non-liquefied compressed gas as a fuel for the operation of a commercial motor vehicle or for the operation of auxiliary equipment installed on, or used in connection with, a commercial motor vehicle shall be approved by a national recognized fire testing and research laboratory engaged either continuously or from time to time to some degree in fire testing or fire research or both and shall meet the following minimum requirements:

(1) Natural gas introduced into any system covered by this standard shall have a distinctive odor potent enough for its presence to be detected down to a concentration in air of not over ⅕ of the lower limits of flammable range.

(2) Fuel containers used in compressed natural gas must be manufactured, inspected, marked, and tested in accordance with Department of Transportation specification DOT-3AA cylinders, as well as fiberglass reinforced plastic (FRP) cylinders authorized under exemption. The exemption cylinders are loop (circumferentially) wrapped FRP cylinder with seamless steel or seamless aluminum cylinder liners; or manufactured in accordance with and meet the rules for construction of *Unfired Pressure Vessels, Section VIII, American Society of Mechanical Engineers, Boiler and Pressure Vessel Code* (ASME) 1984.

(3) Be labeled with the words "FOR CNG ONLY" in letters at least 1-inch high in contrasting colors and in a location which will be visible after installation.

(4) Fuel containers shall be equipped with one or more pressure relief devices sized and selected as to type, location, and quantity and tested in accordance with CGA Pamphlet S-1.1. The pressure relief device system must be capable of preventing rupture of the container when subjected to a fire test. The fire test must be conducted in accordance with CGA Pamphlet C-14 for both cylinder and pressure vessels except the fuel container must be charged with fuel to a pressure of not more than 50% of the maximum filling pressure and tested in the orientation used on the commercial motor vehicle. The pressure relief device shall vent the fuel to the atmosphere.

(b) Each component of a nonliquefied compressed gas fuel system must be visually inspected for damage corrosion of any condition that may affect safety at least once each year, according to CGA C-6 (standards for visual inspection of compressed gas cylinders).

(c) Each fuel container must be removed from the vehicle and retested not later than two years after the most recent retest date marked on the container.

(1) The retest of a fuel container must be in accordance with 49 CFR 173.34(e). Any fuel container made from material that may be subject to stress corrosion cracking should be examined for this type of defect and removed from service if any evidence of cracking is present by any one of the following methods:

(i) Commercially available ultrasonic devices which can be used to detect sub-surface faults and to measure wall thickness.

(ii) Magnetic Particle Inspection to locate surface faults not readily visible to the naked eye.

(iii) Dye penetrant materials which show surface faults not readily visible to the naked eye.

(2) The safety relief device shall be permanently marked with the manufacturer's name, the temperature rating and maximum pressure rating and—

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(i) The pressure in pounds per square inch (psi) at which the device is set to start to discharge; and

(ii) The discharge capacity in cubic feet per minute (CFM).

(3) Pressure relief devices shall meet the requirements found in 49 CFR 173.34(d).

(4) Pipe, tubing, fitting, gaskets, and packing material shall be compatible with the fuel under maximum allowable working pressure.

(5) Piping between a container and the first shutoff device shall be capable of withstanding a hydrostatic test of at least four times the maximum allowable working pressure of the container.

(6) Piping shall be fabricated and tested in accordance with American National Standard Code (ANSI BB1.3).

(7) Shutoff devices shall have a rated working pressure not less than the maximum allowable working pressure of the container used in the system.

(8) A motor vehicle fueling connection shall provide for a reliable and secure connection of the fuel system container to a source of high pressure natural gas and have a different fueling connection for each level of pressure fuel system.

(9) Each fuel container shall be mounted in a location that will minimize damage from collision as follows:

(i) No part of the fuel system shall protrude beyond the sides or top of the motor vehicle to which it is attached;

(ii) No portion of the fuel system shall be located ahead of the front axle or behind the rear bumper; and

(iii) The fuel system shall be securely mounted to the vehicle frame at least 12 inches above the roadway when the motor vehicle is laden.

(10) A manually operated shutoff device shall be installed on each fuel container. In addition, a master manual shutoff device shall be installed in an accessible location which will permit isolation of the container from the remainder of the fuel system.

(11) The shutoff device shall be securely mounted in a protected location to minimize damage from vibration and collision. The device shall be marked with the words "Manual Shutoff Device."

(12) A shutoff device shall be provided in the system to prevent the flow of gaseous fuel to the engine when the engine is not running even if the vehicles ignition is on.

(13) A motor vehicle equipped with a CNG fuel system shall bear a permanent plate, readily visible and located at the refueling connection showing—

(i) Manufacturer's name and address;

(ii) Serial number;

(iii) Model number;

(iv) CNG Fueled vehicle;

(v) Maximum allowable working pressure;

(vi) Container retest date;

(vii) Total container water volume in cubic inches;

(viii) Certification of system meeting this regulation;

(ix) Installer's name and address if different from manufacturer.

(d) The mounting rack shall be—

(1) Secured to the vehicle in such a manner as to withstand a static force applied in any direction of eight times the weight of a fully pressurized container.

(2) Electrically insulated from the container to prevent electrolytic action; and

(3) Designed to prevent container rotational displacements and be capable of disassembly to the degree necessary to replace a container or for inspection purposes.

(e) A provision shall be made to minimize vibration of piping, tubing, and fittings in vehicle installations.

(f) Grommets or similar devices shall be used where necessary to prevent abrasion of supply lines which pass through metal panels and shall provide a snug fit.

(g) Manual valves shall—

(1) Be made of material suitable for use with natural gas and shall be capable of withstanding a temperature of 800°F;

(2) Function satisfactorily at temperatures from −40°F to 250°F;

(3) Have handles and shall be securely attached to the rotor member of the valve.

(h) Emergency shutoff valves shall have no more than 90° rotation from "on" to "off" positions and shall be provided with rigidly secured stops to limit rotation. In the "off" position, valve handles shall be crosswise to the direction of flow at the valve inlet.

(i) Solenoid valves shall be suitable for the working pressure and fluids to which they will be subjected and shall comply with applicable provisions of UL 429—1982 Valves for Flammable fluids.

(j) Gas-air mixing devices shall—

(1) Be of corrosion resistent material or have a corrosion resistant finish;

(2) Have moving parts that operate freely and maintain operating integrity over the temperature range of -40 °F and 250 °F before and after continual operation.

(k) Fueling devices shall be grounded.

(l) The vehicle fueling connection shall provide for the reliable and secure connection of the fuel system container to a source of high pressure natural gas.

(m) A check valve shall be provided between the fill connection and the vehicle fuel distribution system.

(n) A different fueling connection for each level of pressure shall be provided for the vehicle fuel system.

(o) A quick disconnect type device shall comply with applicable construction provisions of the American National Standard for Quick Disconnect Devices for Use With Gas Fuel, ANSI Z21.41.

(p) Electrical equipment and wiring listed or certified by a nationally recognized testing agency, qualified to certify or list electrical equipment or writing, shall be deemed to be of an approved type.

(q) Circuit breakers or fuses shall be of a listed or approved type SAE J554b as found in the SAE handbook 1985.

(r) Measures will be taken to prevent CNG leakage into enclosed occupant compartment of vehicles using CNG fuel.

21. In Subpart G, § 393.76 is amended by revising paragraphs (e)(2)(iv) and (e)(2)(v), as follows:

§ 393.76 Sleeper berths.

* * * * *

(e) * * *

(2) Either:

* * * * *

(iv) A mattress filled with air and of sufficient thickness when inflated to prevent "bottoming-out" when occupied while the vehicle is in motion; or

(v) A mattress filled with a liquid and of such thickness as to prevent "bottoming-out" while occupied when the vehicle is in motion. The mattress must meet the following requirements:

(A) The fluid must not freeze at −20 °F.

(B) Must be treated with a flame inhibitor.

(C) Must not be heated by electrical means.

(D) Shall be so constructed that should the mattress leak the liquid will be absorbed without the occupant getting wet.

* * * * *

22. Section 393.83 is revised to read as follows:

§ 393.83 Exhaust systems.

(a) Every commercial motor vehicle shall be equipped with an exhaust system. No part shall be located where its location would likely result in burning, charring, or damaging the electrical wiring, the fuel supply, or any combustible part of the motor vehicle.

(b) No exhaust system shall discharge to the atmosphere at a location immediately below the fuel tank or the fuel tank filler pipe.

(c) The exhaust system of a bus powered by a gasoline engine shall discharge to the atmosphere at or within 6 inches forward of the rearmost part of the bus.

(d) The exhaust system of a bus using fuels other than gasoline shall discharge to the atmosphere either:

(1) At or within 15 inches forward of the rearmost part of the vehicle; or

(2) To the rear of all doors or windows designed to be open, except windows designed to be opened solely as emergency exists.

(e) The exhaust system of every truck and truck tractor shall discharge to the atmosphere at a location to the rear of the cab or, if the exhaust projects above the cab, at a location near the rear of the cab.

(f) No part of the exhaust system shall be temporarily repaired with wrap or patches.

(g) No part of the exhaust system shall leak or discharge at a point forward of directly below the driver/sleeper compartment.

(h) The exhaust system must be securely fastened to the vehicle.

23. A new Subpart J consisting of §§ 393.201 through 393.209 is added to Part 393 to read as follows:

Subpart J—Frames, Wheels, Steering and Suspension Systems

Sec.

393.201 Frames.
393.203 Cab and body components.
393.205 Wheels.
393.207 Suspension systems.
393.209 Steering wheel systems.

Subpart J—Frames, Wheels, Steering and Suspension Systems

§ 393.201 Frames.

(a) The frame of every commercial motor vehicle shall not be cracked, loose, sagging or broken.

(b) Bolts or brackets securing the cab or the body of the vehicle to the frame must not be loose, broken or missing.

(c) There shall be no welds on a truck frame rail between the axles, except as specified by the manufacturer.

(d) The frame rail flanges between the axles shall not be bent, cut or notched, except as specified by the manufacturer.

(e) All accessories mounted to truck tractor frame must be bolted.

(f) No holes shall be drilled into the top or bottom rail flanges, except as specified by the manufacturer.

§ 393.203 Cab and body components.

(a) The passenger compartment shall not have doors or door parts missing or broken. Doors shall not sag so that they cannot be properly opened or closed. No door shall be wired shut or otherwise secured in the closed position so that it cannot be readily opened. *Exception:* When the vehicle is loaded with pipe or bar stock that blocks the door and the cab has a roof exit.

(b) Bolts or brackets securing the cab or the body of the vehicle to the frame shall not be loose, broken, or missing.

(c) The hood must be securely fastened.

(d) All seats must be securely mounted.

(e) The front bumper must not be missing, loosely attached or protruding beyond the confines of the vehicle so as to create a hazard.

§ 393.205 Wheels.

(a) Wheels or rims shall not be cracked or broken.

(b) Stud or bolt holes on the wheels shall not be elongated (out of round).

(c) Nuts or bolts shall not be missing or loose.

§ 393.207 Suspension systems.

(a) *Axles.* No axle positioning part shall be cracked, broken, loose or missing. All axles must be in proper alignment.

(b) *Adjustable axles.* Adjustable axle assemblies shall not have locking pins missing or disengaged.

(c) *Leaf springs.* No leaf spring shall be cracked, broken or missing nor shifted out of position.

(d) *Coil springs.* No coil spring shall be cracked or broken.

(e) *Torsion bar.* No torsion bar or torsion bar suspension shall be cracked or broken.

(f) *Air Suspensions.* The air pressure regulator valve shall not allow air into the suspension system until at least 55 psi is in the braking system. The vehicle shall be level (not tilting to the left or right). Air leakage shall not be greater than 3 psi in a 5 minute time period when the vehicle's air pressure gauge shows normal operating pressure.

§ 393.209 Steering wheel systems.

(a) The steering wheel shall be secured and must not have any spokes cracked through or missing.

(b) The steering wheel free play shall not exceed the following parameters:

Steering wheel diameter	Manual steering system	Power steering system
16" or less	2" +	4½" +
18"	2¼" +	4¾" +
20"	2½" +	5¼" +
22"	2¾" +	5¾"

The steering wheel shall be secured and must not have any spokes cracked through or missing.

(c) *Steering column.* The steering column must be securely fastened.

(d) *Steering system.* Universal joints shall not be worn, faulty or repaired by welding. The steering gear box shall not have loose or missing mounting bolts or cracks in the gear box or mounting brackets. The pitman arm on the steering gear output shaft shall not be loose. Steering wheels shall turn freely through the limit of travel in both directions.

(e) *Power steering systems.* All components of the power system must be in operating condition. No parts shall be loose or broken. Belts shall not be frayed, cracked or slipping. The system shall not leak. The power steering system shall not have insufficient fluid in the reservoir.

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49 CFR Part 396

[OMCS Docket No. MC-113; Notice No. 87-02]

Motor Carrier Safety Regulations; Inspection, Repair, and Maintenance

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA is requesting comments on proposed changes to the Federal motor carrier inspection standards contained in Part 396 of the Federal Motor Carrier Safety Regulations (FMCSR). The revisions have been proposed in response to section 210 of the Motor Carrier Safety Act of 1984 and to comments received to an advanced notice of proposed rulemaking (ANPRM) published on January 10, 1985. The proposed revisions will require motor carriers to comply with Federal inspection standards, a State inspection program or an authorized self inspection program. By this notice, the FHWA is announcing that modifications to Part 393 (Parts and Accessories Necessary for Safe Operation) will be addresed in a separate notice of proposed rulemaking.

Elsewhere in today's **Federal Register**, in the same part, is published another NPRM entitled Parts and Accessories Necessary for Safe Operation (OMCS Docket No. MC-127; Notice No. 87-01). We request that the public consider these proposed rules together and make recommendations or suggestions on how both rulemaking actions can work together in a more efficient manner.

DATE: Comments must be received on or before April 27, 1987.

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ADDRESS: All comments should refer to the docket number that appears at the top of this document and must be submitted (preferably in triplicate) to Room 3404, Office of Motor Carrier Standards, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Neill Thomas, Office of Motor Carrier Standards, (202) 366–2999; or Mrs. Kathleen S. Markman, Office of the Chief Counsel, (202) 366–0843, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: On October 11, 1984, Congress passed the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, 98 Stat. 2829) (the Act). The Act was signed into law by the President on October 30, 1984.

On January 10, 1985, the FHWA published an ANPRM at 50 FR 1245 seeking public comment concerning possible modifications to Parts 393 and 396 of the FMCSR. Approximately 50 comments were received concerning these potential changes. Due to the complexity of these two areas of rulemaking docket (i.e., MC–113). The Part 393 review will be addressed further in Docket Number MC–127, found elsewhere in today's **Federal Register**.

Background

This rulemaking action addresses section 210 of the Act, which requires the Secretary of Transportation to establish standards for the annual (i.e., periodic) or more frequent inspection of all commercial motor vehicles engaged in interstate or foreign commerce. A commercial motor vehicle is any self-propelled or towed vehicle which: (1) Has a gross vehicle or combination weight rating of 10,001 pounds or more; (2) is designed to transport more than 15 passengers, including the driver; or (3) is used to transport hazardous materials in a quantity which requires the vehicle to be placarded.

As directed by Congress in the Motor Carrier Act of 1984, this revision to Part 396 concerning inspections poses an increase to the paper work burden on the motor carrier industry. The FHWA is seeking comments from interested parties on how to reduce this burden. Comments are particularly sought on unique or innovative approaches to this problem which could be used to benefit the industry in general by reducing this burden. Although the proposed rule envisions an increase in the burden, the FHWA has proposed to reduce the paperwork burden on the industry in a number of recent rulemaking initiatives, including a notice of proposed rulemaking published in the **Federal Register** on May 9, 1986, concerning Part 395, Hours of Service of Drivers, that proposed to reduce the paperwork burden on the industry by 4 million hours annually.

The successful completion of this rulemaking effort depends upon the receipt of diverse viewpoints and supporting data to this public docket. The FHWA seeks detailed answers to the following requests for information. Failure to provide complete data may not permit the FHWA to adequately consider the merits of an interested party's position. Information which provides a rationale for a particular position on a question is very important, as is data which estimates the cost impacts and benefits of the action under consideration.

ANPRM Comments

The ANPRM addressed numerous issues related to section 210 of the Act. Several directly impact this phase of the rulemaking proceeding. They are: (1) Whether other inspection systems exist which would be as effective as a periodic or more frequent inspection system, (2) what place self-inspection programs should have in the new Federal inspection standards, (3) what evidence of periodic inspection should be required by the new standards, (4) should the Commercial Vehicle Safety Alliance (CVSA)/Essential Element Examination (EEE)[1] roadside type of inspection be considered as effective as an annual [periodic] or more frequent inspection system, and (5) should the new inspection standards be applied only to the motor carrier industry. We will discuss the comments received in response to each of these issues.

Whether Other Inspection Systems Exist Which Would be as Effective as an Annual [Periodic] or More Frequent Inspection System

Many of the comments specifically addressed this issue. The Teamsters stated ". . . a meaningful inspection program must be conducted frequently enough to detect problems with equipment within a reasonable period of time from when they develop. . . . The inspection itself must be thorough enough to cover all equipment for which failure will affect the safety of the driver and the public." The California Highway Patrol stated "Whatever is decided on periodic inspection of commercial vehicles, it should never be construed to be adequate to replace existing carrier systematic inspection requirements or the random on-highway inspection of the MCSAP (Motor Carrier Safety Assistance Program) and CVSA states." The American Bus Association offered ". . . periodic inspection programs are the sole means of meeting the spirit of the Motor Carrier Safety Act. Typically, state periodic inspection programs offer comprehensive evaluation, objective standards, and a time and place of mutual convenience. CVSA type inspections can offer quality control of formal inspections. Roadside/random inspections will not be able to meet the criteria of thoroughness."

We generally concur with these comments. The FHWA finds that the comments do not identify other inspection systems which would be as effective as an annual or more frequent inspection and which ensure that each vehicle was inspected at least annually. In order to fulfill the requirements of the Act, we believe that a formalized and thorough periodic inspection requirement must be developed and implemented by the FHWA. The periodic inspection developed through this rulemaking process will not preempt further official examination of the vehicle's components in CVSA/EEE type inspections. In fact, the FHWA's MCSAP will require participating States to continue performing uniform roadside vehicle inspections in the future.

A review of the comments indicates that there is confusion regarding the FHWA's current inspection and maintenance requirements. Presently, the FMCSR require the driver to perform a pretrip and post-trip inspection of the vehicle driven that day. Both inspections involve an evaluation of the vehicle's componentry by the driver. Defects noted by the driver during the pretrip and post-trip inspection are to be repaired prior to the vehicle's further use.

The post-trip inspection procedure also includes the preparation of a vehicle inspection report detailing defects noted by the driver during the tour of duty. The vehicle inspection report is submitted to the motor carrier by the driver. Following the repair of the vehicle defects, the motor carrier must certify on the report that necessary repairs have been made.

[1] The CVSA inspection program is officially known as the North American Uniform Driver Vehicle Inspection Procedure and Out of Service Criteria. The EEE program is now officially known as the National Uniform Driver Vehicle Inspection Procedure and Out of Service Criteria.

In addition to the pretrip (section 392.7) and post-trip (section 396.11) inspections performed by the driver, the motor carrier is required to develop and implement a systematic inspection program (section 396.3), including prescribed maintenance records, for the vehicles it operates. These vehicles are required to be systematically inspected, repaired, and maintained. These requirements are usually implemented through routine maintenance at regular time or mileage intervals. Further, parts and accessories shall be in safe and proper operating condition at all times. These include those specified in Part 393 of this subchapter and any additional parts and accessories which may affect safety of operation. A thorough inspection of specific components of the vehicle at a set time interval will add to the current maintenance requirement of routine systematic maintenance of a commercial motor vehicle. We believe that the periodic inspection procedures and standards developed in this rulemaking action will complement the programs described above.

The FHWA is proposing to requre that this periodic inspection be performed at least once every 365 days. Comment is requested, however, on whether more frequent periodic inspection—quarterly, for instance—would be more appropriate in view of the large mileage accumulated by trucks in interstate commerce, with the potential for excessive wear, in relatively short periods, on crucial safety systems such as brakes. Comment is also sought on whether more frequent inspections would offer enough additional safety benefits to justify the burden they might impose.

A major difference between the periodic inspection program being developed in this rulemaking and the current roadside driver-vehicle inspection is that serious defects discovered during the roadside inspection will cause the driver or the vehicle to be placed out of service at the inspection site. Under the periodic inspection program, identified vehicle defects can be repaired by the motor carrier in a more convenient setting.

What Place Self-Inspection Programs Should Have in the New Federal Inspection Standards

The range of comments in response to this issue was quite diverse. However, due to a lack of authority provided by the Act, we must reject as not feasible, further consideration of requiring a State to establish commercial vehicle inspection locations and perform the periodic vehicle inspections with State personnel. Likewise, we must reject as not feasible consideration of establishing Federally owned and operated inspection sites for periodic commercial motor vehicle inspections. The costs and manpower resource requirements associated with the creation of a State or Federally operated inspection sites would be prohibitive.

The majority of commenters generally accept the premise of self-inspection. Two major positions were expressed, however, regarding the implementation of the self-inspection process.

Position 1—*Before self inspection is permitted, approval must be received from the State or from the FHWA.* In support of this position, the Michigan State Police stated "To just enact a self-inspection program with no monitoring procedures would spell disaster for any self-type program". The Carriers Insurance Company stated that ". . . there must be a system developed where a source other then [sic] the motor carrier conducts the vehicle inspection. It is far too easy for a motor carrier doing his own inspection to allow annual inspections to slide." The American Bus Association offered: "Many carriers conduct thorough and objective inspections far more often than these Federal standards require. It is the remaining small segment of the industry . . . those who either through lack of knowledge or lack of skill are unable to thoroughly conduct vehicle inspection to assure safe vehicle condition which could create difficulties for a self inspection program." The Atlantic Richfield Company stated "We believe that any self-inspection program should meet the federal and state requirements as a minimum; and that denial of the privilege of conducting a self-inspection program would occur after repeated violations." The vast majority of motor carriers have a preventive maintenance system set up around maintenance operations that occur on a regular or reasonably predictable basis. In general most systems are arranged so that certain items are checked at predetermined inspection intervals. What is included at each interval and the time or mileage between each inspection is related to the particular motor carrier's needs and equipment.

Position 2—*No governmental approval should be required before self-inspection can be conducted.* In support of this position, the California Highway Patrol stated that "We do not believe it is necessary to set standards or grant or deny carriers the privilege of conducting self-inspections because current law requires each carrier to maintain all equipment in a safe and proper operating condition." The Commercial Vehicle Safety Alliance stated that "If periodic inspection is only an addition to existing programs . . . there is no reason why self-inspection should not be permitted."

The FHWA agrees with many of the concerns expressed by the commenters supporting each of the positions. However, the FHWA believes that Position 2 is more feasible and most cost-beneficial to all concerned due to the inherent costs associated with the establishment of a procedure requiring specific program approval by the Government. Given the previously discussed regulatory requirements addressing motor vehicle maintenance and safe operation, and the additional monitoring of motor carrier operations as a result of the active participation by States in the MCSAP program, the FHWA does not believe that a self-inspection authorization system is necessary.

With this in mind, we propose generally permitting self inspection by motor carriers, with one major proviso. Where a State has in effect or in the future places into effect an inspection program which: (1) Is similar to the periodic inspection program developed through this rulemaking effort, (2) annually inspects all commercial motor vehicles registered in that State, and (3) requires the inspections to be performed by State personnel, at State authorized inspection facilities, or through a viable State administered self-inspection program for motor carriers, the motor carrier industry must comply with the State program.

For those motor carriers domiciled in states not having one of the state conducted or monitored inspection programs mentioned above, the motor carrier would be required to ensure that the required periodic inspection, developed through this rulemaking effort, is performed. The FHWA proposes to permit the periodic inspection to be performed by the carrier, provided it operates at least five (5) motor vehicles in commerce subject to these regulatory requirements, has a qualified inspector, and has adequate inspection facilities. This fleet size baseline is not unique, the insurance industry categorizes fleets as those with 5 or more vehicles.

The FHWA believes that permitting very small motor carriers to perform the periodic inspections on a self-inspection basis would make it extremely difficult for the FHWA to adequately monitor compliance with the Federal standards. Typically, larger motor carriers have permanent employees who are

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responsible for maintenance and other safety programs, have permanent repair facilities equipped to perform vehicle inspections, and are more readily available for safety management audits by FHWA field personnel. For this reason, the FHWA is proposing that a motor carrier must operate 5 or more commercial motor vehicles in commerce subject to these requirements before it can perform the periodic inspections on a self-inspection basis. Due to the lack of information addressing this issue, we request the submission of any economic or safety data which indicates that the proposed fleet size baseline should be raised or lowered. Better maintenance practices are usually associated with larger motor carriers. However, that is not to imply that some smaller firms don't have as thorough a system of preventative maintenance. Comments are specifically requested on the number of vehicles a motor carrier must operate before self-inspection is allowed or if self-inspection should be allowed by all motor carriers regardless of the number of vehicles operated.

Comments are also welcomed concerning the procedures for counting the number of vehicles operated by a motor carrier. Specifically, should we take the average number of vehicles operated over some period, such as 1 year or 6 months? Or, in lieu of using the number of vehicles operated as the critical criterion for determining when self-inspection will be permitted, should the determination be based on the gross income of the motor carrier? If so, comment concerning the appropriate minimum gross income is necessary.

The FHWA is not proposing specific minimum standards for inspection facilities at this time. Comments concerning this issue are, however, requested. Consideration will be given to the establishment of minimum standards for both equipment and buildings, should the data supplied in response to this request warrant it.

As an alternative to self-inspection and for those motor carriers not operating at least 5 motor vehicles, the FHWA proposes to permit the periodic inspection to be conducted at a commercial garage, fleet leasing company, truck stop and other commercial facilities of a similar nature which have both qualified inspector(s) and adequate inspection facilities. The inspection standards appear to be comprehensive and thorough enough to ensure full coverage is given to each vehicle at least once a year. Comments concerning the merits of this proposal are requested.

The FHWA's field staff plus State staff will ultimately be responsible for monitoring the motor carrier's compliance with the periodic inspection requirement. This will be done during roadside vehicle inspections of commercial motor vehicles and during safety management audits at the motor carriers' place of business. Further, States participating in the MCSAP program will assist in monitoring compliance during roadside vehicles inspections conducted by state personnel. The FHWA is committed to aggresive enforcement of violations of the periodic inspection requirement. Under this proposal penalty provisions are outlined in § 396.17(g).

For those motor carriers performing self inspections (i.e., not administered by a State governmental agency) or having a commercial facility perform the required inspections, the issue of the qualification of the individual performing the inspection must be resolved. Once again, the range of comments with respect to this issue was quite wide. For example, the Teamsters stated that "Individuals performing such inspections should be a journeyman mechanic, knowledgeable in Parts 393 and 396. . . ." The majority of commenters on the other hand, felt that the critical issue was the ability to identify defects, not the capability of repairing them. The California Highway Patrol stated "Persons performing inspection whether private or governmental should be sufficiently trained to understand the safety systems they are evaluating. There is no reason for an inspector to be a mechanic. Many, if not the majority of those who conduct state and FHWA inspections are not mechanics. The inspector must be able to understand the inspection criteria and identify the defects it calls for. An employer can screen persons to determine if they are qualified to inspect a truck."

We agree with the majority of the commenters. An inspector need not be a mechanic to successfully identify mechanical defects. We are therefore seeking comments concerning the specific qualification of motor vehicle inspectors. The FHWA is proposing to require the motor carrier to ensure that the individual performing the periodic inspection, at a minimum, (1) understands the inspection criteria and can identify defective components, (2) can read and write the English language to the extent necessary to understand the inspection criteria and prepare the required documentation, (3) has mastered the methods and procedures used when performing an inspection, and (4) is capable of performing an inspection by reason of experience, training, or both. Comments concerning these or other minimum requirements are requested. FMHA is further proposing that the training and/or experience consist of one or more of the following: (1) Participation in a truck manufacturer sponsored training program or similar commercial training program designed to train students in truck operation and maintenance; (2) experience as a mechanic or inspector in a motor carrier maintenance program; (3) experience as a mechanic or inspector in truck maintenance at a commercial garage, fleet leasing company, or similar facility; (4) experience as a commercial vehicle inspector for a State or Federal government. FHWA is proposing that the combined training and experience total at least 2 years. Comments concerning these or other minimum requirements are requested.

What Evidence of Periodic Inspection Should be Required by the New Standards

The majority of commenters believe that some type of evidence of periodic inspection must be carried or placed on the motor vehicle. Evidence suggested by the commenters ranged from a carrier issued sticker which is placed on a vehicle's door jamb, to a sticker prescribed by FHWA or the State and issued to the motor carrier under a self-inspection program, to a permanent sticker indicating that a motor carrier participates in a self-inspection program, to a copy of the inspector's inspection form.

The California Highway Patrol, on the other hand, does not believe any evidence of the periodically required inspection should be required on the motor vehicle. States which are part of the CVSA program select vehicles for inspection based on the presence or absence of CVSA stickers. Consequently, the presence of evidence that the vehicle has received the required periodic inspection would be of little benefit to the CVSA inspection program.

The FHWA believes that some evidence of the periodic inspection must be carried upon the motor vehicle. To fail to require evidence on-board the vehicle would greatly limit the ability of State and Federal enforcement personnel to monitor compliance with the periodic inspection requirement during roadside inspections. Without the ability to monitor compliance during these roadside inspections, we foresee much non-compliance with this legislatively mandated vehicle inspection requirement. This is due to the fact that the FHWA's only other

opportunity to verify compliance with the requirement is during the formal safety management audit of a motor carrier's place of business. While the FHWA performed approximately 4600 Safety Management Audits on a population of two hundred and eleven thousand (211,000) motor carriers of record (i.e., those motor carriers whom the FHWA is aware of and who are subject to FHWA jurisdiction) during Fiscal Year 1984, our capability to verify compliance at each carrier's place of business is severely limited. By requiring evidence of the periodic inspection to be carried on-board the vehicle, the likelihood of compliance with the periodic inspection requirement is dramatically increased, since identified non-compliance in this area can be used by our field staff to target carriers for a Safety Management Audit at the motor carrier's place of business. During a Safety Management Audit, compliance with all vehicle inspection standards and requirements of this subchapter will be reviewed by the field staff.

Therefore, we believe that evidence of the periodic inspection should be carried on-board the vehicle. Comments are requested on whether it would be sufficient to mark the side of the truck with the date of the periodic inspection, institute a system utilizing a sticker which would provide proof of inspection, or if a copy of the inspection form should be carried on-board the vehicle. One alternative would be to require a motor carrier to paint, stencil, or otherwise durably and legibly mark each motor vehicle with the letters "PI" which stands for "Periodic Inspection", followed by the date of the periodic inspection, in letters and numbers at least 1 inch high. The marking could be located at the right rear of the driver's compartment for trucks and truck tractor, on the right front of semi and full trailers, and on the right side of converter dollies and buses. Failure to have this information marked on the motor vehicle(s) would indicate that the required periodic inspection had not been performed. FHWA could determine the veracity of the markings by comparing the periodic inspection report maintained by the motor carrier in its files to the markings on the trucks.

The FHWA proposes to require that vehicles registered in States: (1) Requiring annual or more frequent State inspections or (2) having a self-inspection program monitored by the State, deemed adequate by the FHWA, use the evidence of inspection required by the State of registration. Should a State fail to require that evidence of the inspection be visible on the outside of the vehicle, the motor carrier must display the evidence required by the Federal inspection standards. Comments are sought concerning any other method of verification which would assist enforcement personnel in ascertaining whether or not the annual inspection was performed.

The periodic inspection report prepared at the time of inspection by the inspector(s), must: (1) Clearly identify the registered owner of the vehicle, (2) identify the motor carrier operating the vehicle, if other than the registered owner, (3) identify the inspector and the date and location of the inspection, (4) identify the license plate number and vehicle identification number of the vehicle being inspected, (5) identify the vehicle components inspected and the results of the inspection, including the identification of those components not meeting the minimum standards, and (6) identify the repairs made prior to that vehicle's further use in commerce subject to the jurisdiction of these requirements. Comments concerning this proposal are requested.

Should the CVSA/EEE (Roadside) Type of Inspection Be Considered "As Effective as an Annual [Periodic] or More Frequent Inspection System"

A CVSA type of inspection is designed to enhance uniformity in the regulation of commercial motor vehicle traffic. Any State having responsibility for commercial vehicle safety can join CVSA. The goals of CVSA are to improve highway safety, avoid duplication of inspection efforts, minimize delays for the operating industry, increase the number of on-highway inspections by concentrating on equipment items found to be those most often involved in a defect related accident, and improve the safety of equipment being operated on the highways. These goals and this type of inspection are in harmony with the Motor Carrier Safety Assistance Program. The Secretary of Transportation has the authority to make grants to the States for the development or implementation of national programs for the enforcement of Federal or State rules and regulations concerning motor carrier safety. The MCSAP is an ongoing cooperative endeavor between the Federal Government and States to enforce uniform Federal and State safety and hazardous materials regulations applicable to commercial motor vehicles and their drivers. The objective is to reduce truck and bus involvement in collisions by minimizing the hazards associated with large commercial motor vehicles on the Nation's highways.

The majority of the commenters pointed out the differences between the intent of the CVSA/EEE (roadside) inspections and the periodic inspection described in the Act. The Teamsters stated that "Although the EEE and CVSA roadside inspections address the more critical components on the unit, we believe the intent of Congress was for a more complete systematic inspection of all components that may affect highway safety." The Minnesota State Patrol stated ". . . EEE or CVSA procedure[s] are probably adequate for most roadside inspection if a full BMCS inspection is performed at least annually." The Truck Safety Equipment Institute stated in its comments, "Lamps, reflectors, emergency equipment and mirrors now go uninspected during the roadside check and this equipment is essential to safe vehicle operation. If these devices are either inoperable or missing, there exists a high accident potential ranked alongside of the current elements inspected in EEE." The State of Utah offered that "CVSA inspections are normally 'spot checks' or made randomly and are very effective in their own right. 'Annual or more frequent checks' are done on a routine basis, requiring renewal after a specific time. Each system has merit and considering the variations of different states, the interstate carriers should be required to comply with both."

The FHWA agrees with these commenters. The roadside inspection is very effective in monitoring the safe condition of certain critical vehicle components, the driver's qualifications, the driver's hours of service, the motor carrier's compliance with the Hazardous Materials Regulations, etc. However, there is no assurance that each vehicle will be inspected at least once per year under this program. Further, these inspections, by emphasizing a limited number of critical components, fail to evaluate the condition of the entire vehicle. We believe that this is necessary in order for there to be an improvement in highway safety. The adoption of a formalized and thorough periodic inspection, in addition to the normal preventative maintenance a motor carrier takes to maintain its vehicles in safe working order (as is now required by § 396.3) and the present roadside inspection program, will greatly improve the mechanical quality of the commercial motor vehicles operating on this Nation's highways. However, we welcome comments which would outline any methods meeting the overall intent of an annual inspection.

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For example, comments focusing on the feasibility of a safety inspection covering only critical elements would ensure that both schools of thought would be considered in this rulemaking action.

Following the implementation of the Federal periodic inspection standards, the FHWA intends to monitor its effect upon the mechanical condition of the commercial motor vehicles operating on the Nation's highways.

Should the New Inspection Standards Be Applied Only to the Motor Carrier Industry

The Act does not provide the FHWA with the means by which it can require a State to adopt and use the Federal inspection standards developed in this rulemaking action. Consequently, the FHWA will make the inspection standards applicable solely to the motor carrier industry.

With this in mind, the FHWA intends to make those motor carriers subject to its jurisdiction responsible for compliance with the Federal inspection standards developed in this rulemaking. However, provision will be made in the new requirements for a State's development or continued use of a State inspection program or authorized self-inspection program provided that the State inspection program is approved by FHWA. Comments are sought as to whether or not State plans can vary from one another and, if so, how much of a variation should be allowed. Motor vehicles registered in these States would be required to comply with the State requirements.

If no formal State program exists, the motor carrier must ensure that its vehicles are evaluated in terms of the Federal standards at least once each year. We intend to propose a 12-month phase-in period during which compliance with the periodic inspection requirement will be recommended but not required. Twelve months following the date of publication of the final rule in the **Federal Register**, all commercial motor vehicles subject to the FMCSR must be inspected in accordance with the periodic inspection procedures.

The periodic inspection may be performed by the carrier, provided it operates at least five (5) motor vehicles in commerce subject to These regulatory requirements, has a qualified inspector, and has adequate inspection facilities. As an alternative, a motor carrier may have a commercial garage, fleet leasing company, truck stop, or other commercial facilities of a similar nature, which employ qualified inspectors and have adequate facilities perform the inspection as the motor carrier's agent.

Periodic Inspection Standards

The FHWA, in developing the proposed periodic inspection program, evaluated the inspection standards currently used by States performing commercial motor vehicle inspections, the CVSA/EEE roadside inspection standards, and the requirements contained in Parts 393 and 396 of the FMCSR. Detailed comments concerning these inspection standards, including data which estimates the cost impacts and benefits of the periodic inspection standards are requested. In the event a commenter recommends a revision to one of the proposed inspection standards, it is important that detailed justification for the revision be submitted along with recommended language for the revision. The proposed minimum inspection standards are similar to the inspection criteria currently utilized by Federal/State inspectors. Further, the standards are for the most part those universally accepted and used by the industry in inspecting their own vehicles. For example, the FHWA has recognized the importance of requiring a bulk container to be inspected on at least an annual basis. The transportation of bulk commodities such as milk, cement, corn syrup, and other commodities not requiring intermediate packaging is a concern necessitating an inspection of the containment system to ensure its integrity while being used on the public highway and to afford to the motoring public a sense of security.

We realize that these proposed standards are minimums and that the standards recommended by various manufacturers are more thorough and exacting. These minimums are not expected to inhibit and technological innovations made by vehicle component manufacturers but will provide those persons regulated with a set of minimum standards. These minimum standards are such that if the vehicle or vehicle component meets the performance standards required by the National Highway Traffic Safety Administration it would also meet these proposed minimum inspection standards. The FHWA is specifically seeking comments on these proposed minimum inspection standards and their inclusion in the regulations.

An alternative to this would be to prescribe in the regulations specific performance standards for the operating characteristics of the individual components covered in the annual inspection. A performance standard specifies the required minimum safe performance of a component but not the manner in which the performance is achieved. The industry could then develop and select devices that could meet or surpass the performance standard. The regulations would be concerned with the measurable performance of a component but not its design details. If this alternative were chosen, the FHWA could publish a separate inspection manual that compiled the current mechanical specifications on the components that are generally used by the industry that would meet the performance standards set in the regulations. Comments are also requested on prescribing performance standards in the regulations for the annual inspection and the publication of a separate inspection manual that compiles the current standards of the industry for the performance of specific components to meet the specified performance standards. Comments in favor of an inspection manual should be comprehensive in nature when outlining the methods, the procedures, and the standards whereby vehicles would be inspected.

Finally, the FHWA proposes to expand the driveaway-towaway exemption to include an exemption from the periodic inspection requirements. We believe this is necessary, since the periodic inspection procedures are not appropriate for vehicles being delivered to dealers for sale.

Because the impact of this proposal will not result in an annual effect on the economy of $100 million, a major increase in costs or prices, or significant adverse effects on the American economy, the FHWA has determined that this document does not contain a major rule under Executive Order 12291 but is a significant regulation under the regulatory policies and procedures of the Department of Transportation. This evaluation indicates that accident reduction resulting from the rule would amount to approximately $93 million per year. The incremental cost of compliance would be about $16 million annually. Thus, the net benefit to society would be on the order of $77 million per year, and would be expected to continue for the life of the rule. A draft regulatory evaluation has been prepared and is available for review in the public docket. Comments on this analysis are requested.

Based on the information available to the FHWA at this time, the action will not have a significant economic impact on a substantial number of small business entities.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 99-511), the recordkeeping provisions that are

included in this regulation are being submitted for approval to the Office of Management and Budget.

List of Subjects in 49 CFR Part 396

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: February 13, 1987

Ray Barnhart,

Administrator.

In consideration of the foregoing, the Federal Highway Administration proposes to amend Title 49, Code of Federal Regulations, Subtitle B, Chapter III, by amending Part 396 as set forth below.

PART 396—INSPECTION, REPAIR, AND MAINTENANCE [AMENDED]

1. The authority citation for Part 396 is revised to read as follows:

Authority: Sec. 210 of Pub. L. 98-554, October 30, 1984, 98 Stat. 2839 (49 U.S.C. App. 2509); 49 U.S.C. 3102; 23 U.S.C. 315; 49 CFR 1.48 and 301.60.

2. Part 396 is amended by revising § 396.15(a) and adding §§ 396.17, 396.19, 396.21, 396.23 and 396.25 to read as follows:

§ 396.15 Driveaway-towaway operations, inspections.

(a) General. Effective [*12 months after date of publication of final rule in the* **Federal Register**] every motor carrier, with respect to motor vehicles engaged in driveaway-towaway operations, shall comply with the requirements of this part. Exception: Maintenance records required by § 396.3, the vehicle inspection report required by § 396.11, and the periodic inspection required by § 396.17 of this part shall not be required for any vehicle which is part of the shipment being delivered.

* * * * *

§ 396.17 Periodic inspection.

(a) Every commercial motor vehicle shall be inspected as required by this section. The inspection shall include, at a minimum, the parts and accessories set forth in § 396.25.

Note.—The term motor vehicle includes each vehicle in a combination vehicle. For example, for a tractor semi-trailer, full-trailer combination, the tractor, semi-trailer, and the full trailer (including the converter dolly if so equipped) shall each be inspected.

(b) Except as provided in § 396.23, a motor carrier shall inspect or cause to be inspected all motor vehicles subject to its control.

(c) A motor carrier shall not use a commercial motor vehicle unless the commercial motor vehicle has been inspected according to the terms of this section at least once during the preceding 365 days and is marked with the required evidence of inspection.

(d) Except as provided in § 396.23(b), a motor carrier operating five or more commercial motor vehicles may perform the required annual inspection, if the motor carrier has facilities appropriate for commercial motor vehicle inspections and qualified inspectors, as required by § 396.19.

(e) In lieu of the self inspection provided for in paragraph (d) of this section, a motor carrier may choose to have a commercial garage, fleet leasing company, truck stop, or other similar commercial business perform the inspection as its agent, provided that business operates and maintains facilities appropriate for commercial vehicle inspections and it employs qualified inspectors, as required by § 396.19.

(f) It shall be the responsibility of the motor carrier to ensure that all components not meeting the minimum standards set forth in § 396.25 are repaired prior to that vehicle's further use in commerce subject to these regulatory requirements.

(g) Failure to perform the annual or more frequent inspection set forth in this section, shall cause the motor carrier to be subject to the penalty provisions provided by 49 U.S.C. 521(b). Likewise, an employee or agent of the motor carrier who, with or without the knowledge of the motor carrier, fails to properly inspect a motor vehicle according to the terms of this section, shall be subject to the penalties provided in 49 U.S.C. 521(b).

§ 396.19 Inspector qualifications.

(a) It shall be the motor carrier's responsibility to ensure that the individual(s) performing the required annual inspection is qualified. A qualified inspector must be sufficiently trained and qualified to understand the safety systems that are to be evaluated. Evidence of that individual's capability with respect to paragraphs (a) through (d) of this section, shall be retained by the motor carrier for the period during which that individual is performing annual motor vehicle inspections for the motor carrier, and for one year thereafter. The motor carrier, at a minimum, must ensure that the individual performing the inspection:

(1) Understands the inspection criteria set forth in § 396.21 and can identify defective components,

(2) Can read and write the English language to the extent necessary to understand the inspection criteria and prepare the required documentation,

(3) Has mastered the methods and procedures used when performing an inspection, and

(4) Is capable of performing an inspection by reason of experience, training, or both.

(b) The inspector shall have a combination of training and/or experience totaling at least two (2) years. Such training and/or experience may consist of:

(1) Participation in a truck manufacturer sponsored training program or similar commercial training program designed to train students in truck operation and maintenance;

(2) Experience as a mechanic or inspector in a motor carrier maintenance program;

(3) Experience as a mechanic or inspector in truck maintenance at a commercial garage, fleet leasing company, or similar facility;

(4) Experience as a commercial vehicle inspector for a State or Federal government.

§ 396.21 Periodic inspection recordkeeping and marking requirements.

(a) The qualified inspector performing the inspection shall prepare a report which—

(1) Identifies the individual performing the inspection, including the individual's printed or typed name and signature,

(2) Identifies the registered owner of the vehicle,

(3) Identifies the motor carrier operating the vehicle, if other than the registered owner,

(4) Identifies the date and location of the inspection,

(5) Identifies the license plate number and vehicle identification number of the vehicle being inspected,

(6) Identifies the vehicle components inspected and describes the results of the inspection, including the identification of those components not meeting the minimum standards set forth in § 396.25, and

(7) Certifies the accuracy and completeness of the inspection as complying with all the requirements of this section. As inspector failing to comply with this section will be subject to the penalties provided in 49 U.S.C. 521(b).

(b)(1) The original or a copy of the inspection report shall be retained by the motor carrier under whose control the vehicle operates for 30 consecutive days or more, for a period of one year. The inspection report shall be retained

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where the vehicle is either housed or maintained.

(2) The month and year of the last inspection, preceded by the letters "PI" must be durably and legibly marked on each vehicle inspected in letters not less than 1 inch high. The marking must be located at the right rear of the driver's compartment for trucks and truck tractor, on the right front of semi and full trailers, and on the right side for buses and all other vehicles. For example, a tractor semi-trailer, full-trailer combination must have the letters "PI" followed by the month and year of the last periodic inspection marked on the tractor, semi-trailer, and the full trailer (including the converter dolly if so equipped).

(c) A motor carrier which leases or otherwise has control of a motor vehicle for less than 30 days must ensure that the motor vehicle is marked in accordance with paragraph (b)(2) of this section. If the vehicle is not marked in accordance with paragraph (b)(2) of this section, it must be inspected in accordance with this Part.

§ 396.23 Equivalent to periodic inspection.

(a) In place of, and as equivalent to, the periodic inspection required by §396.17, the motor carrier may accept a copy of an annual inspection report relating to an inspection performed in accordance with the minimum periodic inspection standards set forth in § 396.25. The annual inspection must have been performed during the preceding 365 days. When accepting such inspection report, the motor carrier must ensure that the motor vehicle is marked in accordance with § 396.21(b)(2).

(b)(1) When a State has an annual or more frequent State inspection program which meets the objectives of this section, whereby all commercial motor vehicles registered in that State: Are inspected by State personel; are inspected at State authorized commercial facilities; or are inspected by the motor carrier under the auspices of a State authorized self inspection program, the motor carrier shall comply with the State inspection program. Such compliance shall be deemed as fulfilling the inspection requirement of this section. Should a State fail to require that evidence of the inspection be visible on the outside of the vehicle, the motor carrier must display the evidence required by § 396.21(b)(2) and maintain a copy of the State inspection form in its files for one year.

(2) Should the FHWA determine that a State inspection program is not meeting the objectives of this section, the motor carrier must also perform the periodic inspection required by § 396.17 on all commercial motor vehicles registered in that State.

§ 396.25 Minimum periodic inspection standards.

All motor vehicles required to be periodically inspected by § 396.17 shall be evaluated in terms of the following minimum standards:

(a) *Lighting devices, reflectors, and electrical equipment.*

(1) All lights and reflectors required by part 393 must be present and capable of being operated at all times as follows:

(i) Any exterior bulb or sealed beam, required by Part 393 must light properly.

(ii) Turn signal and hazard warning lamps must flash between 60 to 120 flashes per minute.

(iii) Turn signal lamps must properly indicate right or left, when so switched.

(iv) Back-up lamps must turn off automatically when vehicle goes forward.

(v) Lamps and reflectors must not show a color other than that permitted by Part 393.

(vi) Lamps and reflectors must not have missing or broken lens covers.

(vii) Auxiliary equipment must not be placed on, in, or in front of any lamp.

(viii) Each lamp must be turned or inclined so that its light is properly directed.

(ix) All lamps and reflectors must be securely fastened to the vehicle.

(x) Headlamps must not be out of adjustment in either the upper or lower beam setting.

(xi) The "beam" indicator in the drivers compartment must operate when the headlamps are on high beam setting.

(xii) Headlamps must emit enough light to make a person or object visible at 350 feet under normal light conditions.

(2) Wiring shall be grouped together and protected by nonmetallic tape, braid, or other covering, or be enclosed in a metallic sheath or tube, capable of withstanding severe abrasion.

(3) Wiring shall not be located so as to be likely charred, overheated, or enmeshed in moving parts.

(4) Wiring shall not be adjacent to any part of the fuel system.

(5) The edges of all holes in metal through which wiring passes, unless the wiring is metal covered, shall be rolled or bushed with a grommet of rubber or other suitable material.

(6) Every storage battery shall be covered by a fixed part of the motor vehicle or protected by a removable cover or enclosure.

(7) All electrical wiring shall be mechanically and electrically adequate and free of shorts or open circuits. The presence of bare, loose, dangling, chafing, or poorly connected wires is prohibited.

(b) *Brakes.*

(1) Each commercial motor vehicle must have operative brakes on each axle required to have brakes.

(2) Brake drum(s) and rotor(s):

(i) Must not be cracked on friction surface extending to an open edge.

(Note.—Do not confuse short hairline heat check cracks with flexural cracks.)

(ii) Must not be scored deeper than .060 inches.

(iii) Drums must not have an inside diameter greater than the maximum diameter stamped on the drum, or greater than .090 inch over original drum diameter for unmarked drums.

(iv) Must not have external cracks (i.e. cracks on other than the friction surface) or any portion missing.

(3) Brake linings:

(i) Must not be cracked or have a missing piece(s), or be saturated with oil, grease, or brake fluid.

(ii) Must be firmly attached to the brake shoe.

(iii) Must have a thickness not less than ¼ inch at the thinnest point for cam brakes or less than ⅛ inch at the thinnest point for disc brakes.

(4) The brake system shall not have missing, broken, loose, or inoperative components including: shoes, springs, anchor pins, spiders, cam rollers, push-rods, and cam shaft brackets.

(5) The service brake system must fully release when the brake pedal is in the released position.

(6) Brake adjustment (i.e, chamber stroke) must be balanced across the axle.

(7) Parking brakes:

(i) Each commercial motor vehicle must be equipped with a parking brake system. The parking brake system shall be applied through the use of a single valve in the cab of the vehicle.

(ii) The parking brake system must be operative and capable of holding the vehicle on any grade on which it is operated.

(iii) The parking brake system must fully release when the control in the cab of the vehicle is placed in the release position.

(iv) The parking brake system shall not have missing, broken, loose, or inoperative components.

(8) Emergency brakes system. Each semi-trailer, converter dolly, and full trailer equipped with an air mechanical brake system must be equipped with an emergency brake system. The emergency brake system:

(i) Must apply automatically if the towed vehicle's air pressure in the supply line drops to between 20 to 45 psi and maintain full emergency brake application for at least 15 minutes.

(ii) Must be capable of being manually applied and released by a control device in the cab of the power unit. The control device must be readily accessible to the driver while in the normal drivers' position.

(iii) Must fully release when the manual control in the cab of the power unit is placed in the release position.

(9) Brake hose:

(i) Must not have any damage extending through the outer ply.

(ii) Must not have bulging or swelling when air or hydraulic pressure is applied.

(iii) Must not collapse when vacuum is applied.

(iv) Must not have audible or visible leaks.

(v) Must not have splices (i.e., sliding the hose ends over a piece of tubing and clamping the hose to the tube), or

(vi) Must not be cracked, broken, or crimped.

(10) Brake tubing:

(i) Must not have audible or visible leaks, or

(ii) Must not be cracked, broken, damaged by heat, or crimped.

(11) Brake pedal:

(i) There must not be excessive friction in the pedal linkage or components,

(ii) The pedal levers must not be misaligned or improperly positioned, and

(iii) The brake pedal pad must not be missing.

(12) For air brake systems:

(i) Minimum Criteria For Brake Adjustment. Brake adjustment (i.e., chamber stroke) for a commercial motor vehicle equipped with air mechanical brakes shall be less than the brake chamber stroke lengths specified below. Brake adjustment measurements shall be taken when the brake chamber air pressure is at 85 psi.

(A) Cam Brakes.

Brake chamber type (effective area in sq. in.)	Outside diameter [1] (inches)	Stroke with brakes adjusted	Brake chamber stroke (inches)
Bolt Type Brake Chamber Data			
6	5¼	[2]	1
9	6 3/16	[2]	1 ⅛
12	6 15/16	[2]	1 ⅛
16	8 1/16	[2]	1 ½
24	9 3/16	[2]	1 ½
30	9⅞	[2]	1¾
36	11	[2]	2
Rotochamber Data			
9	4 9/32	[2]	1¼
12	4 13/16	[2]	1¼
16	5 13/32	[2]	1⅜
20	5 13/16	[2]	1⅝
24	6 13/32	[2]	1⅝
30	7 1/16	[2]	2
36	7⅝	[2]	2⅜
50	8⅞	[2]	2¾
Clamp Type Brake Chamber Data			
6	4⅛	[2]	1
9	5¼	[2]	1⅛
12	5 1 1/16	[2]	1⅛
16	6⅜	[2]	1½
20	6 29/32	[2]	1½
24	7 1/32	[2]	1½
30	8 3/32	[2]	1¾
36	9	[2]	2
Wedge Brake Data			

Movement of the scribe mark on the lining shall not exceed 1/32 inch; and failure of the brake shoes to move requires that brake to be repaired.

[1] Dimensions listed do not include capscrew head projections for rotochambers and bolt clamp projections for clamp-type brake chambers.

[2] Should be as short as possible without brakes dragging.

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(B) Disc Brakes.

Brake chamber type (effective area in sq. in.):	Brake chamber stroke (in inches)
12	1 3/8
16	1 3/8
20	1 3/4
24	1 7/8
30	2

(ii) The air compressor belt(s) must not be worn, loose, or frayed so as to prevent proper operation of the compressor.

(iii) The air compressor must be capable of building air pressure from 50 to 90 psi at fast idle in less than five minutes.

(iv) The air intake cleaner must not be clogged.

(v) The vehicle must be equipped with a low pressure warning device which operates at 60 psi and below.

(vi) The air compressor's governor cut-out pressure must not exceed 135 psi, except on manufacturer's recommendation.

(vii) The air compressor's governor cut-in pressure must not be less than 80 psi, except on manufacturer's recommendation.

(viii) It must have sufficient reserve to permit one full brake application after the engine is shut off, without actuating the low pressure warning indicator.

(ix) A power unit which will be used to pull a semi or full trailer must be equipped with an operative air tractor protection valve.

(x) The vehicle must be equipped with an operative check valve between the air reservoir and the compressor.

(xi) Brake systems involving the use of compressed air shall not have air leaks.

(xii) The steering axle must not have a mismatch of either air chamber type (i.e., size), slack adjuster length, retracted pushrod lengths differing by more than ⅛ inch, or brake chamber stroke differing by ¼ inch.

(13) For hydraulic brake systems, including power assist vacuum-over hydraulic and engine driven hydraulic booster:

(i) The master cylinder must be filled to manufacturer's recommended level.

(ii) It must have pedal reserve with the engine running.

(iii) The brake hose(s) must not seep or swell under application pressure.

(iv) The power unit must have an operative check valve.

(v) The system, including the master cylinder and wheel cylinders, must not leak hydraulic fluid.

(vi) The hydraulic hoses must not be abraded (chafed) through outer cover-to-fabric layer.

(vii) The fluid lines or connections must not leak, have constrictions, be crimped, be cracked or broken.

(viii) It must have an operative brake failure/low fluid warning light.

(ix) The brake pedal travel must not exceed 75 percent of total available travel.

(x) It must have sufficient reserve to permit one full brake application after the engine is shut off, without actuating the brake failure/low fluid warning indicator.

(14) For vacuum brake systems:

(i) It must have sufficient vacuum reserve to permit one full brake application after the engine is shut off, without actuating the "low vacuum" indicator.

(ii) The vacuum hose(s) or line(s) must not be constricted, abrade (chafed) through outer cover to cord ply, be crimped, cracked, or broken.

(iii) The vacuum hose(s) or line(s) must not collapse when vacuum is applied.

(iv) The low vacuum indicator must activate at not less than 8 inches Hg. (mercury).

(v) The indicator must not show "low vacuum" with brakes applied and engine at idle after 1 minute.

(vi) The air intake cleaner must not be clogged.

(vii) The brake pedal travel must not exceed 75 percent of total available travel.

(viii) The brake pedal must not fade under pressure.

(15) For electric brake systems:

(i) There must not be loose or dirty connections.

(ii) There must not be broken frayed, or unsupported wires.

(iii) There must not be broken wire supports.

(iv) The maximum amperage per brake must not be:

(A) More than 20 percent above the brake manufacturer's maximum current rating.

(B) More than 30 percent below the brake manufacturer's maximum current rating.

(c) *Fuel systems.*

(1) The vehicle's fuel system must not leak at any point.

(2) Each fuel tank must be properly closed with a cap designed for that tank.

(3) The mounting bolts or brackets securing the fuel tank to the motor vehicle must not be loose, broken, or missing.

(Note: Some fuel tanks use springs or rubber bushings to permit movement).

(4) The fuel tank must not extend beyond the widest part of the vehicle.

(Note: Each vehicle is to be considered individually. Consequently, a fuel tank mounted on a truck tractor must not extend beyond the widest part of the truck tractor).

(5) Gravity or syphon feed of fuel directly to the carburetor or injector is prohibited.

(6) Fuel crossover, return, and withdrawal lines which extend below the tank must be protected against damage.

(7) No part of the fuel tank may be forward of the front axle of a power unit.

(8) Fill pipe openings must not be located in the passenger or cargo compartment.

(9) Each fuel tank must meet the fuel tank certification requirements provided by § 393.67(f).

(10) Each compressed natural gas fuel system shall be inspected for corroded or abraded areas, dents, distortions, defects in welds and other conditions including leakage, that might render the cylinder or fuel system including lines, connections, and regulators unsafe for transportation.

(11) All compressed natural gas fuel system mounting brackets shall be inspected for corrosion or abraded areas, distortions, or defects in welds, and other conditions which would lead to failure of the fuel system mounting brackets. All fuel system mounting brackets shall secure the cylinder and other components so as to prevent any relative motion.

(12) All compressed natural gas fuel system lines, connections, regulators, and other components shall be inspected for proper operation and be free of leaks.

(d) *Coupling devices and towing methods.*

(1) Adjustable tow-bar or fifth wheel asemblies must not have locking pins missing or out of position.

(2) Each adjustable fifth wheel locking mechanism must be capable of remaining in the locked position.

(3) Adjustable fifth wheel locking mechanisms dependent on fluid energy or air pressure must not have any system leakage.

(4) The coupling device must not have any crack, break or damaged part.

(5) Mounting plates and brackets, including bolts, nuts, welds, rivets and pins (but not including adjustable features) must not be loose, worn or broken so as to permit ⅛ inch or more observable relative motion between the

mounting components and the frame or the vehicle.

(6) The fifth wheel and tow-bar must not have play lengthwise of the vehicle exceeding ½ inch between the upper and lower fifth wheel halves. Where provision is made for adjustment of a fifth wheel lower half or tow-bar, relative to the vehicle frame, there must not be more than ½ inch of play lengthwise of the vehicle in any such adjustment when locked or latched in position.

(7) Safety devices. A safety chain, cable, or other device must be properly attached, and may not be missing, worn, abraded or otherwise damaged to the extent that it is no longer reliable to hold the towed unit.

(e) *Tires.*

(1) Tires on a vehicle's steering axle must:

(i) Not have less than 4/32 inch tread when measured in any two adjacent major tread grooves at three equally spaced intervals around the circumference of the tire, if the tire is without tread wear indicators.

(ii) Not have tread wear indicators contacting the road in any two adjacent grooves at three equally spaced intervals around the circumference of the tire.

(iii) Not have any part of the breaker strip or casing ply showing in the tread.

(iv) Not be cut, worn, or damaged in the sidewall to the extent the ply cord is exposed.

(v) Not be labeled 'Not for highway use' or display other marking which would exclude use on the steering axle.

(vi) Not lack radial tube stem markings on a tube-type radial tire.

Note.—These markings include a red band around the tube stem, the word 'radial' embossed in metal stems, or the word 'radial' molded in rubber stems.

(viii) Not mix bias ply and radial construction tires.

(ix) Not have the tire flap protruding through the valve stem slot in the rim.

(x) Not be regrooved, except as provided in § 393.75.

(xi) Not have a visually observable bump, bulge, or knot apparently related to tread or sidewall separation.

(xii) Not have a boot, blowout patch or other ply repair.

(xiii) Not carry weight exceeding the tire load limit. This includes an overloaded tire resulting from low air pressure.

(xiv) Not be flat or have a noticeable (e.g., can be heard or felt) leak.

(xv) Not be mounted or inflated in such a manner that it comes in contact with any part of the vehicle.

(2) In addition to complying with the standards set forth in paragraph (e)(1) of this section, a bus also must not be equipped with recapped or retreaded tire(s) on the steering axle.

(3) All tires, other than those found on the steering axle of a powered motor vehicle must:

(i) Not carry weight exceeding the tire load limit. This includes an overloaded tire resulting from low air pressure.

(ii) Not be flat or have a noticeable (e.g., can be heard or felt) leak.

(iii) Not have any part of the breaker strip or casing ply showing in the tread.

(iv) Not be cut, worn, or damaged in the sidewall to the extent the ply cord is exposed.

(v) Not be labeled 'Not for highway use' or display other marking which would exclude its use on the highway.

(vi) Not be mounted or inflated in such a manner that it comes in contact with any part of the vehicle.

(vii) Not have a visually observable bump, bulge, or knot apparently related to tread or sidewall separation.

(viii) Not have less than 2/32 inch tread when measured in any two adjacent major tread grooves at any three equally spaced intervals around the circumference of the tire, if the tire is without tread wear indicators.

(ix) Not have tread wear indicators contacting the road in any two adjacent grooves at three equally spaced intervals around the circumference of the tire.

(x) Not be regrooved or recut unless the word REGROOVABLE is molded on or into both sides of the tire.

(xi) Be of the same or equivalent size designation recommended by the vehicle or tire manufacturer, across a single axle.

(xii) Not mix bias ply and radial construction tires on the same axle.

(xiii) Not have a valve stem which:

(A) Leaks,

(B) Is damaged or positioned so as to hamper the checking of tire pressure or inflation, or

(C) Shows evidence of wear because of misalignment.

(4) Spare tires must be properly secured.

(f) *Wheels and rims.*

(1) The lock or side ring must not be bent, broken, cracked, improperly seated, sprung, or mismatched with other wheel components.

(2) The rim must not be cracked. (Not to be confused with rims purposely split or cut at manufacture).

(3) Disk or cast wheels must not be cracked.

(4) Stud or bolt holes on the wheel must not be elongated (i.e., worn out of round).

(5) Spoked wheels must not be cracked.

(6) Wheel nuts or bolts must not be missing, loose, have improper thread engagement, or fail to function as designed by the manufacturer.

(7) Wheels mounted on the power unit steering axle must not have been repaired by welding. This does not apply to the attachment, by welding, of the disc to the rim on steel disc wheel(s).

(8) Welds in wheels must not be cracked.

(9) All exterior spare tire(s) and wheel(s) must be securely fastened to the vehicle.

(g) *Emergency equipment.*

(1) Each commercial motor vehicle must be equipped with three bidirectional emergency reflective triangles, except as provided by Section 393.95(f).

(2) Fire extinguisher:

(i) A commercial motor vehicle used to transport hazardous materials must be equipped with a fire extinguisher having an Underwriters' Laboratories rating of 10 B:C or more.

(ii) A commercial motor vehicle used to transport nonhazardous materials must be equipped with a fire extinguisher having an Underwriters' Laboratories rating of 5 B:C or more, or two fire extinguishers with a rating of 4 B:C or more.

(3) Each commercial motor vehicle must be equipped with at least one spare fuse of each size or kind used on the vehicle.

(h) *Cab and body components.*

(1) The vehicle must not have metal, glass, or other loose or dislocated parts protruding from the surface of the vehicle so as to cause a safety hazard to pedestrians or cyclists.

(2) The vehicle's front bumper must not be missing, loosely attached, or protruding so as to create a hazard to pedestrians, cyclist, or other vehicles.

(3) The vehicle must not be missing fenders which were present as original equipment.

(4) The passenger compartment must not have doors or door parts missing, broken, or sagging so that the door can not be properly operated. Further, doors must not be wired shut or secured by means other than a latch.

(5) The engine compartment hood:

(i) It must open.

(ii) The hood latch must securely hold the hood in its proper fully-closed position.

(iii) The hood hinges must not be broken or missing, and must be securely attached to the body.

(6) The floor and fire wall of the passenger compartment must not contain holes which would permit exhaust gases to enter the compartment.

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(7) Seats:
(i) Must be securely anchored to the floor.
(ii) Adjustment mechanism must not slip out of position during braking and steering of the vehicle.
(8) Buses:
(i) Must have the driveshaft protection required by § 393.89.
(ii) Must have the standee line or bar required by § 393.90.
(iii) Must not have aisle seats, except as provided by § 393.91.
(iv) Must have all emergency doors marked in letters at least one inch in height with the words "Emergency Door" or "Emergency Exit."
(v) Must have all emergency doors marked with a red electric lamp which operates when the head lamps are operative.
(vi) Must have emergency exits, including push-out windows or doors which operate properly.
(i) Glazing and window construction.
(1) A motor vehicle must not be missing any glazing, except at a location permanently blocked by the vehicle's body or equipment.
(2) All glazing used in the motor vehicle must be approved safety glass. The windshield must be "AS 1" and all other glass must be "AS 2".
(3) In the area swept or wiped by the full proper length of the blade(s) of a properly functioning windshield wiper, the windshield:
(i) Must not have scratches or abrasions which are more than ½ inch wide and more than 6 inches in length.
(ii) Must not have holes or intersecting cracks.
(iii) Must not have nicks or chips larger than 1½ inches.
(iv) Must not have a crack whose edge can be felt on the wiper side of the windshield.
(v) Must not have discoloration extending more than 3 inches up from the bottom, more than 1 inch in from the right or left side, or more than 1 inch down from the top.
(4) The left front door window must roll down completely, in order to facilitate a driver's hand and arm traffic control signals.
(5) The windshield must not have a sign(s), poster(s), sticker(s), or other non-transparent material extending more than 4½ inches from the bottom of the windshield.
(6) Buses must have operable push-out windows, as required by § 393.61(c).
(j) *Frame and frame assembles.*
(1) Frame or cross members must not be cracked, loose, sagging or broken.
(2) Tire and Wheel Clearance: Under no circumstances shall the body or frame be capable of coming in contact with a tire or any part of the wheel assemblies.
(3) Bolts or brackets securing the cab or the body of the vehicle to the frame must not be loose, broken, or missing.
(4) Body spacer blocks used to keep the cab or body level with the chassis must not be missing.
(k) *Suspension systems.*
(1) U-bolt(s), spring hanger(s), or other axle positioning part(s) must not be cracked, broken, loose or missing. Note: After a turn, lateral axle displacement is normal with some suspensions. Forward or rearward operation in a straight line will cause the axle to return to proper alignment.
(2) Spring Assembly:
(i) The leaves in any leaf spring assembly must not be cracked, broken or missing.
(ii) A coil spring must not be cracked or broken.
(iii) A rubber spring must not be missing.
(iv) The leaves in any leaf spring assembly must not shift or be displaced in a manner that could result in contact with a tire, rim, brake drum or frame.
(v) A torsion bar spring to torsion bar suspension must not be cracked or broken.
(3) Torque, Radius or Tracking Components: Any part of a torque, radius or tracking component assembly or any part used for attaching the same to the vehicle frame or axle must not be cracked, loose, broken or missing. (This does not apply to loose bushings in torque or track rods.)
(4) Air Suspensions:
(i) The air pressure regulator valve must not allow air into the suspension system until at least 55 psi is in the braking system.
(ii) With the vehicle's air pressure showing normal operating pressure, the vehicle must be level (i.e., not tilting to the left or right).
(iii) With the vehicle's air pressure showing normal operating pressure, the suspension system (including the hoses, connections, and bellows) must not have air leakage greater than 3 psi in a 5 minute time period.
(l) *Axles and attaching parts.*
(1) Steering wheel free play must not exceed the following:

Steering wheel diameter	Manual steering system	Power steering system
16" or less	2" +	4½" +
18"	2¼" +	4¾" +
20"	2½ +	5¼" +
22"	2¾" +	5⅝" +

Note: For power systems, the engine must be running and the fluid level, belt tension and condition must be adequate before testing.

(2) Steering column:
(i) There must not be any absence or looseness of U-bolt(s) or positioning part(s).

Note: Some steering column systems are designed to permit some movement.

(ii) There must not be any worn or faulty universal joint(s) or universal joints obviously repaired by welding.
(iii) The steering wheel must be properly secured.
(3) The steering wheel:
(i) Must not have any spokes cracked through or missing.
(ii) Replaced steering wheels must not be noticeably smaller than the original factory equipment.
(4) Wheel bearing loseness must not exceed ¼ inch when measuring relative movement between the brake drum or disc and the backing plate or splash shield.
(5) The front axle beam and all steering components other than the steering column must not have a crack(s) or any obvious welded repair.
(6) The steering gear box must not have loose or missing mounting bolts or a crack(s) in the gear box or mounting bracket(s).
(7) There must not be looseness of the pitman arm on the steering gear output shaft.
(8) Power Steering:
(i) The auxiliary power assist cylinder, pump mounting, or connector must not be loose or broken.
(ii) The power steering belts must not be frayed or cracked, and must have proper tension.
(iii) Hoses, tubes or connectors must not show evidence of being rubbed by moving parts.
(iv) System must not show evidence of fluid leakage.
(v) Fluid must not be below recommended levels.
(9) For ball and socket joints, there must not be any movement under steering load of a stud nut(s). Further, any motion, other than rotational, between any linkage member and its attachment point is prohibited.
(10) Tie rods and drag links must not have loose clamps or clamp bolts, or have any looseness in any threaded joint.
(11) There must not be a loose or missing nut(s) on the tie rods, pitman arm, drag link, steering arm or tie rod arm.
(12) There must not be any modification to the steering or any other steering condition that interferes with free movement of any steering component.
(13) Adjustable axle assemblies must not have locking pins missing or not engaged.

(14) All axles on the motor vehicle must be in proper alignment with the longitudinal axis of the vehicle.
(m) *Bulk container, dry or liquid.*
(1) The bulk container shell must be inspected for corroded or abraded areas, dents, distortions, defects in welds, and other conditions, including leakage, that might render the bulk container unsafe for transportation services.
(2) The piping, valves, vents, closures, and gaskets must be inspected for corroded areas, defects in welds, and other conditions, including leakage, that might render the bulk container unsafe for transportation service.
(3) Devices for tightening manhole covers must be operative and there must be no evidence of leakage at manhole covers or gaskets.
(4) Missing bolts and nuts must be replaced. Loose bolts and nuts must be tightened.
(n) *For purposes of this section a Bulk Container means—an article of transport equipment which is—*
(1) of a permanent character and strong enough for repeated use;
(2) specifically designed to facilitate the carriage of goods without intermediate packaging; and
(3) of the following design characteristics:
(i) a cargo tank, dry or liquid;
(ii) a cargo tank type vehicle;
(iii) a cargo container;
(iv) a intermodal container; or
(v) a hopper-type dry bulk transport.
(o) *Other equipment.*
(1) Exhaust System:
(i) Truck or truck tractor:
(A) Must have an exhaust system.
(B) Must not be leaking at the manifold gaskets, manifold and exhaust pipe gasket, muffler and muffler connections, and any other point in the exhaust system, or discharging at a point forward of or directly below the driver/sleeper compartment.
(C) Must not have excessive vibration in the exhaust line.
(D) Must be securely fastened to motor vehicle. Securement must be by appropriate hardware such as bolts, brackets, clamps, and hangers. It must not be by the use of wire.
(E) Must not pass through the passenger compartment.
(F) Must not have patches on the muffler, resonators, exhaust pipe, or tail pipe.
(G) Must not have the exhaust openings to atmosphere pinched, closed, or otherwise restricted.
(ii) Buses:
(A) Gasoline powered—must not exhaust in excess of 6 inches forward of the rearmost part of the bus.
(B) Other than gasoline powered—must not exhaust in excess of 15 inches forward of the rearmost part of the bus, or forward of a door or window (other than emergency exists) designed to be opened.
(C) Must not have patches on the muffler, resonators, exhaust pipe, or tail pipe.
(D) Must be securely fastened to motor vehicle. Securement must be by appropriate hardware such as bolts, brackets, clamps, and hangers. It must not be by the use of wire.
(2) Windshield Wipers:
(i) The power unit must have operable windshield wipers and washers.

Note.—If a motor vehicles was originally equipped (manufactured) with only 1 wiper, only one wiper is required; if originally equipped (manufactured) with 2 or more wipers, all wipers are required.

(ii) The windshield wipers must not have defective wiper blades (i.e., wiper blades are torn, or smear or streak windshield after five cycles).
(iii) The windshield wipers must operate for a full stroke and must return to the proper "park" position out of the driver's view area when shut off.
(iv) The windshield wiper blade(s) or arm(s) parts must not be missing, or severely damaged.
(v) The windshield wiper arm must force the wiper blade to contact the windshield firmly.
(vi) The windshield wiper controls must operate properly and must be located within the driver's reach while at the controls of the vehicle.
(3) Mirrors required by § 393.80 must:
(i) Be present.
(ii) Not obstruct forward vision of driver.
(iii) Not be cracked, pitted, discolored, or clouded to the extent that rear vision is obscured.
(iv) Hold adjustment so as to provide a clear view of the areas the mirror(s) were designed to reflect.
(v) Not have object(s) or material hung from or blocking mirrors.
(vi) Be securely mounted on a stable support.
(vii) Reflect to the driver a view of the highway for a distance of at least 200 feet to the rear of such motor vehicle.
(4) Heater/Defroster. If originally equipped with a heater/defroster, the power unit must have a properly functioning device for removing condensation from the inside of the windshield.
(5) Horn:
(i) Each power unit must be equipped with an operative horn and horn switch.
(ii) The horn or horn switch must be securely attached to the vehicle.
(iii) The horn switch must be readily accessible to the vehicle operator.
(iv) The horn must be audible, under normal conditions, at a distance not less than 200 feet.
(v) A siren, bell, or whistle shall not constitute a horn.
(vi) The horn wiring shall be properly maintained. The horn shall not be actuated by grounding two naked wires or by a similar method.
(6) Speedometer. Each power unit shall be equipped with an operative speedometer accurate to within plus or minus 5 m.p.h. at a speed of 50 m.p.h.
(7) Rearend protection. Each motor vehicle must be equipped with a rearend protection device meeting the requirements of § 393.86.
(8) Seat belts:
(i) Required seat belts must be present.
(ii) Seat belt webbing must not be frayed, split, or torn.
(iii) Seat belt anchorages or attachment fittings:
(A) Must not be loose.
(B) Must not be badly corroded.
(C) Must not be missing.
(D) Must be fastened to the belt.
(iv) Seat belt buckles must not be loose or inoperative.
(v) All seat belt anchor bolts must be present and securely fastened to the floor.
(9) Vehicle interior noise levels: Following the test procedure found in § 393.94(c), the interior sound level at the driver's seating position must not exceed 90 dB(A). The measurements must be taken with a sound level meter which meets the requirements of the American National Standards Institute Standard ANSI S1.4–1971 Specification for Sound Level Meters, for Type 2 Meters.

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Part III

Department of Education

Bilingual Vocational Instructor Training Program; Proposed Priority and Applications Notices

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DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

Bilingual Vocational Instructor Training Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Priority for Fiscal Year 1987.

SUMMARY: The U.S. Secretary of Education (Secretary) proposes that an absolute priority to reserve funds for inservice training projects be made for the Fiscal Year 1987 grant competition under the Bilingual Vocational Instructor Training Program.

DATE: Comments on this proposed priority must be received on or before March 30, 1987.

ADDRESS: Comments should be addressed to Ron Castaldi, National Projects Branch, Division of Innovation and Development, Office of Vocational and Adult Education (Room 519 Reporters Building), 400 Maryland Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Ron Castaldi. Telephone (202) 732–2359.

SUPPLEMENTARY INFORMATION:

Program Information

The Bilingual Vocational Instructor Training (BVIT) program was established in 1976, as one of three Bilingual Vocational Training programs. The two other programs are the Bilingual Vocational Training (BVT) and Bilingual Vocational Materials, Methods and Techniques (BVMMT) programs. The BVIT program provides financial assistance to conduct training programs for instructors of bilingual vocational education and training programs for individuals with limited English proficiency.

To date, the majority of applications submitted and funded under the BVIT program have been for preservice programs. Most of these have been four-year, baccalaureate-level programs. Discussions with local BVT program directors, however, indicate that there is a shortage of well-trained personnel in BVT programs, and that quality inservice training for BVT program personnel is needed on an ongoing basis. As it currently operates, the BVIT program does not meet this need for inservice training.

The purpose of reserving funds for inservice training projects under the BVIT program is to address the need for trained personnel in BVT programs, thereby increasing the effectiveness of BVT programs.

Priority

In accordance with 34 CFR 75.105(c)(3), the Secretary proposes to establish an absolute priority to reserve funds under the Bilingual Vocational Instructor Training Program in Fiscal Year 1987, for projects that provide inservice training for instructors, aides, counselors, or other ancillary personnel participating in bilingual vocational and training programs.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed reservation of funds for inservice training projects.

All comments submitted in response to this proposed notice will be available for public inspection during and after the comment period in Room 519, Reporters Building, 300 7th Street SW., Washington, DC, between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday of each week except Federal holidays.

Authority: 20 U.S.C. 2441(b).

Dated: February 9, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87–4035 Filed 2–25–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.099A]

Inviting Applications for New Awards Under the Program for Bilingual Vocational Instructor Training for Fiscal Year 1987

Purpose: Provides financial assistance for conducting training for instructors of bilingual vocational education and training programs for individuals with limited English proficiency.

Deadline for Transmittal of Applications: April 29, 1987.

Deadline for Intergovernmental Review Comments: June 29, 1987.

Applications Available: February 27, 1987.

Available Funds Anticipated: For fiscal year 1987, $552,900 has been appropriated for bilingual vocational instructor training programs. Applicants should be aware that the President has proposed budget rescissions to the Congress that may eliminate these funds. However, the deadline established in this notice will not be extended, and applicants should prepare and submit applications pending further notice.

Estimated Range of Awards: $25,000 to $180,000.

Estimated Average Size of Awards: $92,150.

Estimated Number of Awards: 6.

Project Period: 18 months.

Applicable Regulations:

(a) When adopted in final, the proposed priority published in this issue of the **Federal Register**, Applicants should prepare their applications based on this proposed priority. If substantive changes are made in the final priority, applicants will be given an opportunity to revise or resubmit their applications; (b) The regulations in 34 CFR Part 408; and (c) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 78, and 79.

Criteria for Evaluating Applications: The Secretary assigns the fifteen points, reserved in 34 CFR 408.30(b), as follows: five points to the Selection Criterion (a)—Need—in 34 CFR 408.31(a) for a total of 25 points for that criterion; and ten points to the Selection Criterion (b)—Plan of Operation—in 34 CFR 408.31(b) for a total of 30 points for that criterion.

For Applications or Information Contact: Ron Castaldi, National Projects Branch, Division of Innovation and Development, Office of Vocational and Adult Education, U. S. Department of Education, 400 Maryland Avenue, SW. (Room 519, Reporters Building), Washington, DC 20202, Telephone (202) 732–2359.

Program Authority: 20 U.S.C. 2441(b).

Dated: February 19, 1987.

John Pucciano,

Acting Assistant Secretary for Vocational and Adult Education.

[FR Doc. 87–4034 Filed 2–25–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84 0771]

Inviting Applications for New Awards Under the Program for Bilingual Vocational Training for Fiscal Year 1987

Purpose: Provides financial assistance for bilingual vocational education and training for individuals with limited English proficiency to prepare these individuals for jobs in recognized occupations and new and emerging occupations consistent with the Carl D. Perkins Vocational Education Act (20 U.S.C. 2441(a)).

Deadline For Transmittal of Applications: April 29, 1987.

Deadline for Intergovernmental Review Comments: June 29, 1987.

Applications Available: February 27, 1987.

Available Funds Anticipated: In fiscal year 1987, $2,764,500 has been appropriated for the bilingual vocational training program. Applicants should be aware that the President has proposed budget rescissions to the Congress that may eliminate these funds. However, the deadline established in this notice will not be extended, and applicants should prepare and submit applications pending further notice.

Estimated Range of Awards: $150,000 to $325,000.

Estimated Average Size of Awards: $276,450.

Estimated Number of Awards: 10.

Project Period: 18 months.

Applicable Regulations: (a) The Bilingual Vocational Training Program Regulations, 34 CFR Part 407; and (b) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

Criteria for Evaluating Applications: The Secretary assigns the fifteen points, reserved in 34 CFR 407.30(b), to the Selection Criterion (c)—Program Factors—in 34 CFR 407.31(c) for a total of 25 points for that criterion.

For Applications or Information Contact: Ron Castaldi, National Projects Branch, Division of Innovation and Development, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 519, Reporters Building), Washington, DC 20202. Telephone (202) 732–2359.

Program Authority: 20 U.S.C. 2441(a).

Dated: February 19, 1987.

John Pucciano,

Acting Assistant Secretary for Vocational and Adult Education.

[FR Doc. 87–4036 Filed 2–25–87; 8:45 am]

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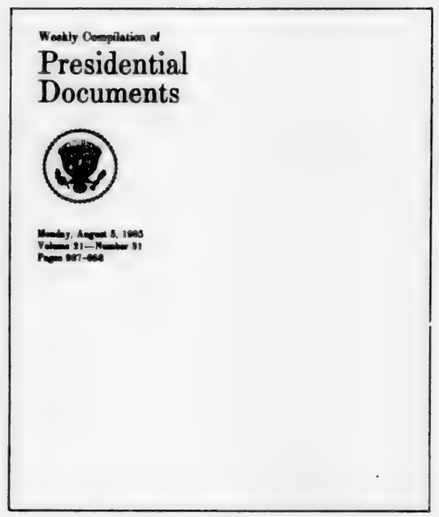
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A Supplement to the Guide, revised as of January 1, 1987, is published as Part II of this issue.

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Rules and Regulations

Federal Register
Vol. 52, No. 39
Friday, February 27, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 845

Federal Employees Retirement System—Debt Collection

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim rules and requesting comment on the rules to provide for recovery of debts due the United States from benefits payable under the Federal Employees Retirement System (FERS) Act of 1986. These rules provide the procedures that OPM must follow in collecting debts from FERS benefits and the standards for waiver of overpayments made under FERS.

DATES: Interim rules effective March 30, 1987. Comments must be received on or before April 28, 1987.

ADDRESSES: Send comments to Frank D. Titus; Director, FERS Implementation Task Force; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 884; Washington, DC 20044; or deliver to OPM, Room 3311, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 632-5560.

SUPPLEMENTARY INFORMATION: OPM has developed procedures for collection of debts due the United States from FERS basic benefits and standards for waiver of overpayments made in connection with these benefits. These procedures comply with the Debt Collection Act of 1982, Pub. L. 97-365, the revised Federal Claims Collection Standards, 4 CFR 101.1 *et seq.*, 49 FR 8889, March 9, 1984, and related Federal court decisions. These rules state the procedures for collection and the standards for waiver as they apply to basic benefits payable under the FERS Act of 1986, Pub. L. 99-335, which created a new retirement system for some Federal employees.

Under section 553(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. Because parallel rules were developed with full opportunity for public participation as applied to the Civil Service Retirement System administered by OPM, further opportunity for public participation before these rules are effective would be unnecessary. Moreover, the need to establish temporary procedures as soon as possible after the statutory effective date of FERS (January 1, 1987) to provide for proper functioning of the new retirement system makes the general notice of proposed rulemaking impracticable.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal agencies and retirement payments to retired Government employees.

List of Subjects in 5 CFR Part 845

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM is amending Title 5, Code of Federal Regulations, to add Part 845 to read as follows:

PART 845—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEBT COLLECTION

Subpart A—General Provisions

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845.102 Definitions.
845.103 Prohibition against collection of debts.
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Subpart B—Collection of Overpayment Debts

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Subpart C—Standards for Waiver of Overpayments

845.301 Conditions for waiver.
845.302 Fault.
845.303 Equity and good conscience.
845.304 Financial hardship.
845.305 Ordinary and necessary living expenses.
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845.307 Burdens of proof.

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845.401 Purpose.
845.402 Scope.
845.403 Definitions.
845.404 Conditions for requesting an offset.
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845.407 Installment withholdings.
845.408 Special processing for fraud claims.

Subpart A—General Provisions

Authority: 5 U.S.C. 8461.

§ 845.101 Purpose.

(a) This part regulates—

(1) The recovery of overpayments of FERS basic benefits;

(2) The standards for waiver of recovery of overpayments of FERS basic benefits; and

(3) The use of FERS basic benefits to recover debts due the United States.

(b) This subpart states the rules of general applicability to this part.

§ 845.102 Definitions.

In this subpart—

"FERS" means the Federal Employees Retirement System as described in chapter 84 of title 5, United States Code.

"FERS basic benefits" means any benefits payable under Subchapter II, IV, or V of Chapter 84 of Title 5, United States Code.

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"Fund" means the Civil Service Retirement Fund.

§ 845.103 Prohibition against collection of debts.

(a) Debts may be collected from FERS basic benefits only to the extent expressly authorized by Federal statute.

(b) When collection of a debt from FERS basic benefits is authorized under paragraph (a) of this section, the collection will be made in accordance with this part.

§ 845.104 Status of debts.

A payment by OPM to a debtor because of an OPM error or the failure of the creditor agency to properly and/or timely submit a debt claim under Subpart D of this part, does not erase the debt or affect the validity of the claim by the creditor agency.

§ 845.105 Termination and suspension of collection actions.

The termination or suspension of a collection action, other than waiver of an overpayment under Subparts B and C of this part, are controlled exclusively by the Federal Claims Collection Standards, Chapter II of Title 4, Code of Federal Regulations.

Subpart B—Collection of Overpayment Debts

Authority: 5 U.S.C. 8461.

§ 845.201 Purpose.

This subpart prescribes procedures to be followed by the Office of Personnel Management (OPM), which are consistent with the Federal Claims Collection Standards (FCCS) (Chapter II of Title 4, Code of Federal Regulations), in the collection of debts owed to the Fund.

§ 845.202 Scope.

This subpart covers the collection of debts due the Fund, with the exception of the collection of court-imposed judgments, amounts referred to the Department of Justice because of fraud, and amounts collected from back pay awards in accordance with § 550.805(e)(2) of this chapter.

§ 845.203 Definitions.

In this subpart—

"Additional charges" means interest, penalties, and/or administrative costs owed on a debt.

"Annuitant" means a retired employee or Member of Congress, former spouse, spouse, widow(er), or child receiving recurring benefits under the provisions of chapter 84 of title 5, United States Code.

"Compromise" is an adjustment of the total amount of the debt to be collected based upon the considerations established by the FCCS (4 CFR Part 103).

"Consumer reporting agency" has the same meaning provided in 31 U.S.C. 3701(a)(3).

"Debt" means a payment of benefits to an individual in the absence of entitlement or in excess of the amount to which an individual is properly entitled.

"Delinquent" has the same meaning provided in 4 CFR 101.2(b).

"FCCS" means the Federal Claims Collection Standards (Chapter II of Title 4, Code of Federal Regulations).

"Offset" means to withhold the amount of a debt, or a portion of that amount, from one or more payments due the debtor. Offset also means the amount withheld in this manner.

"Reconsideration" means the process of reexamining an individual's liability for a debt based on—

(a) Proper application of law and regulation; and

(b) Correctness of the mathematical computation.

"Repayment schedule" means the amount of each payment and the number of payments to be made to liquidate the debt as determined by OPM.

"Retirement fund" means the Civil Service Retirement Fund.

"Voluntary repayment agreement" means an alternative to offset that is agreed to by OPM and includes a repayment schedule.

"Waiver" is a decision not to recover a debt under authority of 5 U.S.C. 8470(b).

§ 845.204 Processing.

(a) *Notice.* Except as provided in § 845.205, OPM will, before starting collection, tell the debtor in writing—

(1) The reason for and the amount of the debt;

(2) The date on which the full payment is due;

(3) OPM's policy on interest, penalties, and administrative charges;

(4) That offset is available, the types of payment(s) to be offset, the repayment schedule, the right to request an adjustment in the repayment schedule and the right to request a voluntary repayment agreement in lieu of offset;

(5) The individual's right to inspect and/or receive a copy of the Government's records relating to the debt;

(6) The method and time period (30 calendar days) for requesting reconsideration, waiver, and/or compromise and, in the case of offset, an adjustment to the repayment schedule;

(7) The standards used by OPM for determining entitlement to waiver and compromise;

(8) The right to a hearing by the Merit Systems Protection Board on a waiver request (if OPM's waiver decision finds the individual liable) in accordance with paragraph (c)(2) of this section; and

(9) The fact that a timely filing of a request for reconsideration, waiver and/or compromise, or a later timely appeal of a reconsideration or waiver denial to the Merit Systems Protection Board, will stop collection proceedings, unless (i) failure to take the offset would substantially prejudice the Government's ability to collect the debt; and (ii) the time before the payment is to be made does not reasonably permit the completion of these procedures.

(b) *Requests for reconsideration, waiver, and/or compromise.* (1) If a request for reconsideration, waiver, and/or compromise is returned to OPM by mail, it must be postmarked within 30 calendar days of the date of the notice detailed in paragraph (a) of this section. If a request for reconsideration, waiver, and/or compromise is hand delivered, it must be received within 30 calendar days of the date of the notice detailed in paragraph (a) of this section. OPM may extend the 30-day time limit for filing when individuals can prove that they—

(i) Were not notified of the time limit and were not otherwise aware of it; or

(ii) Were prevented by circumstances beyond their control from making the request within the time limit.

(2) When a request for reconsideration, waiver, and/or compromise covered by this paragraph is properly filed before the death of the debtor, it will be processed to completion unless the relief sought is nullified by the debtor's death.

(3) Individuals requesting reconsideration, waiver, and/or compromise will be given a full opportunity to present any pertinent information and documentation supporting their position.

(4) An individual's request for waiver will be evaluated on the basis of the standards set forth in Subpart C of this part. An individual's request for compromise will be evaluated on the basis of standards set forth in the FCCS (4 CFR Part 103).

(c) *Reconsideration, waiver, and/or compromise decisions.* (1) OPM's decision will be based upon the individual's written submissions, evidence of record, and other pertinent available information.

(2) After consideration of all pertinent information, OPM will issue a written decision. The decision will state the

extent of the individual's liability, and, for waiver and compromise requests, whether the debt will be waived or compromised. If the individual is determined to be liable for all or a portion of the debt, the decision will reaffirm or modify the conditions for the collection previously proposed under paragraph (a) of this section. The decision will state the individual's right to appeal to the Merit Systems Protection Board as provided by § 1201.3 of this title, and, in the case of a denial of waiver or reconsideration request that a timely appeal will stop collection of the debt.

§ 845.205 Collection of debts.

(a) *Means of collection.* Collection of a debt may be made by means of offset under § 845.206, or under any statutory provision providing for offset of money due the debtor from the Federal Government, or by referral to the Justice Department for litigation, as provided in § 845.206. Referral may also be made to a collection agency under the provisions of the FCCS.

(b) *Additional charges.* Interest, penalties, and administrative costs will be assessed on the debt in accordance with standards established in the FCCS at 4 CFR 102.13. Additional charges will be waived when required by the FCCS. In addition, such charges may be waived when OPM determines—

(1) Collection would be against equity and good conscience under the standards prescribed in §§ 845.303 through 845.305; or

(2) Waiver would be in the best interest of the United States.

(c) *Collection in installments.* (1) Whenever feasible, debts will be collected in one lump sum.

(2) However, installments payments may be effected when—

(i) The debtor establishes that he or she is financially unable to pay in one lump sum; or

(ii)(A) The benefit payable is insufficient to make collection in one lump sum;

(B) The debtor fails to respond to a demand for full payment; and

(C) Offset is available.

(3) The amount of the installment payments will be set in accordance with the criteria in 4 CFR 102.11.

(d) *Commencement of collection.* (1) Except as provided in paragraph (d)(2) of this section, collection will begin after the time limits for requesting further rights stated in § 845.204(a)(6) expire or OPM has issued decisions on all timely requests for those rights and the Merit Systems Protection Board has acted on any timely appeal of a waiver denial, unless failure to make an offset would substantially prejudice the Government's ability to collect the debt; and the time before the payment is to be made does not reasonably permit the completion of the proceedings in § 845.204 or litigation. When offset begins without completion of the administrative review process, these procedures will be completed promptly, and amounts recovered by offset but later found not owed will be refunded promptly.

(2) The procedures identified in § 845.204 will not be applied when the debt is caused by a retroactive adjustment in the periodic rate of annuity or any deduction taken from annuity when the adjustment is a result of the annuitant's election of different entitlements under law, if the adjustment is made within 120 days of the effective date of the election; or interim estimated payments made before the formal determination of entitlement to annuity, if the amount is recouped from the total annuity payable on the first day of the month following the last advance payment or the date the formal determination is made, whichever is later.

§ 845.206 Collection by administrative offset.

(a) *Offset from retirement payments.* A debt may be collected in whole or in part from any lump-sum retirement payment or recurring annuity payments.

(b) *Offset from other payments—(1) Administrative offset.* (i) A debt may be offset from other payments due the debtor from other agencies in accordance with 4 CFR 102.3 except that offset from back pay awarded under the provisions of 5 U.S.C. 5596 (and 5 CFR 550.801 et seq.) will be made in accordance with § 550.805(e)(2) of this chapter.

(ii) In determining whether to collect claims by means of administrative offset after the expiration of the 6-year limitation provided in 5 U.S.C. 2415, the Director or his or her designee will determine the cost effectiveness of leaving a claim unresolved for more than 6 years. This decision will be based on such factors as the amount of the debt, the cost of collection, and the likelihood of recovering the debt.

(2) *Salary offset.* When the debtor is an employee, or a member of the Armed Forces, OPM may effect collection action by offset of the debtor's pay in accordance with 5 U.S.C. 5514 and 5 CFR 550.1101 *et seq.* Due process described in § 845.204 will apply. The questions of fact and liability, and entitlements to waiver or compromise determined through that process are deemed correct and will not be amended under salary offset procedures. When the debtor did not receive a hearing on the amount of the offset under § 845.204 and requests such a hearing, one will be conducted in accordance with Subpart K of Part 550 of this chapter.

§ 845.207 Use of consumer reporting agencies.

(a) *Notice.* If a debtor's response to the notice described in § 845.204(a) does not result in payment in full, payment by offset, or payment in accordance with a voluntary repayment agreement or other repayment schedule acceptable to OPM, and the debtor's rights under § 845.204 have been exhausted, OPM may report the debtor to a consumer reporting agency. In addition, a debtor's failure to make subsequent payments in accordance with a repayment schedule may result in a report to a consumer reporting agency. Before making a report to a consumer reporting agency, OPM will notify the debtor in writing that—

(1) The payment is overdue;

(2) OPM intends, after 60 days, to make a report as described in paragraph (b) of this section to a consumer reporting agency;

(3) The debtor's right to dispute the liability has been exhausted under § 845.204; and

(4) The debtor may suspend OPM action on referral by paying the debt in one lump sum or making payments current under a repayment schedule.

(b) *Report.* When a debtor's response to the notice described in paragraph (a) of this section fails to comply with paragraph (a)(4) of this section or the debtor does not respond, and 60 days have elapsed since the notice was mailed, OPM may report to a consumer reporting agency that an individual is responsible for an unpaid debt and provide the following information:

(1) The individual's name, address, taxpayer identification number, and any other information necessary to establish the identity of the individual;

(2) The amount, status, and history of the debt; and

(3) The fact that the debt arose in connection with the administration of FERS or CSRS.

(c) *Subsequent reports.* OPM will update its report to the consumer reporting agency whenever it has knowledge of events that substantially change the status or the amount of the liability.

§ 845.208 Referral to a collection agency.

(a) OPM retains the responsibility for resolving disputes, compromising claims, referring the debt for litigation,

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or suspending or terminating collection action.

(b) OPM may refer certain debts to commercial collection agencies under the following conditions:

(1) All processing required by § 845.204 has been completed before the debt is released; and

(2) A contract for collection services has been negotiated.

§ 845.209 Referral for litigation.

From time to time and in a manner consistent with the General Accounting Office's and the Justice Department's instructions, OPM will refer certain overpayments to the Justice Department for litigation. Referral for litigation will suspend processing under this subpart.

Subpart C—Standards for Waiver of Overpayments

Authority: 5 U.S.C. 8461.

§ 845.301 Conditions for waiver.

Recovery of an overpayment from the Fund may be waived pursuant to section 8470(b), of title 5, United States Code, when (a) the annuitant is without fault and (b) recovery would be against equity and good conscience. When it has been determined that the recipient of an overpayment is ineligible for waiver, the individual is nevertheless entitled to an adjustment in the recovery schedule if he or she shows that it would cause him or her financial hardship to make payment at the rate scheduled.

§ 845.302 Fault.

A recipient of an overpayment is without fault if he or she performed no act of commission or omission that resulted in the overpayment. The fact that the Office of Personnel Management (OPM) or another agency may have been at fault in initiating an overpayment will not necessarily relieve the individual from liability.

(a) *Considerations.* Pertinent considerations in finding fault are—

(1) Whether payment resulted from the individual's incorrect but not necessarily fraudulent statement, which he or she should have known to be incorrect;

(2) Whether payment resulted from the individual's failure to disclose material facts in his or her possession, which he or she should have known to be material; or

(3) Whether he or she accepted a payment that he or she knew or should have known to be erroneous.

(b) *Mitigation factors.* The individual's age, physical and mental condition or the nature of the information supplied to him or her by OPM or a Federal agency may mitigate against finding fault if one or more of these factors contributed to his or her submission of an incorrect statement, a statement that did not disclose material facts in his or her possession, or his or her acceptance of an erroneous overpayment.

§ 845.303 Equity and good conscience.

Recovery is against equity and good conscience when—

(a) It would cause financial hardship to the person from whom it is sought;

(b) The recipient of the overpayment can show (regardless of his or her financial circumstances) that due to the notice that such payment would be made or because of the incorrect payment he or she either has relinquished a valuable right or has changed positions for the worse; or

(c) Recovery would be unconscionable under the circumstances.

§ 845.304 Financial hardship.

Financial hardship may be deemed to exist in, but not limited to, those situations when the annuitant from whom collection is sought needs substantially all of his or her current income and liquid assets to meet current ordinary and necessary living expenses and liabilities.

(a) *Considerations.* Some pertinent considerations in determining whether recovery would cause financial hardship are as follows:

(1) The individual's financial ability to pay at the time collection is scheduled to be made.

(2) Income to other family member(s), if such member's ordinary and necessary living expenses are included in expenses reported by the annuitant.

(b) *Exemptions.* Assets exempt from execution under State law should not be considered in determining an individual's ability to repay the indebtedness. Rather primary emphasis will be placed upon the annuitant's liquid assets and current income in making such determinations.

§ 845.305 Ordinary and necessary living expenses.

An individual's ordinary and necessary living expenses include rent, mortgage payments, utilities, maintenance, transportation, food, clothing, insurance (life, health, and accident), taxes, installment payments, medical expenses, support expenses for which the annuitant is legally responsible, and other miscellaneous expenses that the individual can establish as being ordinary and necessary.

§ 845.306 Waiver precluded.

Waiver of an overpayment cannot be granted when—

(a) The overpayment was obtained by fraud; or

(b) The overpayment was made to an estate.

§ 845.307 Burdens of proof.

(a) *Burden of OPM.* The Associate Director must establish by the preponderance of the evidence that an overpayment occurred.

(b) *Burden of annuitant.* The recipient of an overpayment must establish by substantial evidence that he or she is eligible for waiver or an adjustment.

Subpart D—Agency Requests to OPM for Recovery of a Debt From the Civil Service Retirement Fund

Authority: 5 U.S.C. 8461.

§ 845.401 Purpose.

This subpart prescribes the procedures to be followed by a Federal agency when it requests the Office of Personnel Management (OPM) to recover a debt owed to the United States by administrative offset against money due and payable to the debtor from the Fund. This subpart also prescribes the procedures that OPM must follow to make these administrative offsets.

§ 845.402 Scope.

This subpart applies to agencies and debtors, as defined by § 845.403.

§ 845.403 Definitions.

In this subpart—

"Act" means the Federal Claims Collection Act of 1966 as amended by the Debt Collection Act of 1982 and implemented by 4 CFR 101.1 *et seq.*, the Federal Claims Collection Standards (FCCS)

"Administrative offset" means withholding money payable from the Fund to satisfy a debt to the United States under 31 U.S.C. 3716.

"Agency" means—

(a) An Executive agency as defined in § 105 of title 5, United States Code, including the U.S. Postal Service and the U.S. Postal Rate Commission;

(b) A military department, as defined in § 102 of title 5, United States Code;

(c) An agency or court in the judicial branch, including a court as defined in § 610 of title 28, United States Code, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation;

(d) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(e) Other independent establishments that are entities of the Federal Government.

"Annuitant" means an annuitant as defined in § 8401(2) of title 5, United States Code, or a survivor as defined in § 8401(28) of title 5, United States Code.

"Annuity" means the monthly benefit of indefinite duration payable to an annuitant or survivor annuitant.

"Compromise" has the same meaning as in 4 CFR Part 103.

"Consent" means the debtor has agreed in writing to administrative offset after receiving notice of all rights under 31 U.S.C. 3716 and this subpart.

"Creditor agency" means the agency to which the debt is owed.

"Debt" means an amount owed to the United States on account of loans insured or guaranteed by the United States, and other amounts due the United States from fees, duties, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, taxes, forfeitures, etc.

"Debt claim" means an agency request for recovery of a debt in a form approved by OPM.

"Debtor" means a person who owes a debt, including an employee, former employee, Member, former Member, or the survivor of one of these individuals.

"Employee" has the same meaning as in section 8401(11) of title 5, United States Code, and includes reemployed annuitants and employees of the U.S. Postal Service.

"Fraud claim" means any debt designated by the Attorney General (or designee) as involving an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim.

"Individual Retirement Record" means the record of retirement contributions that must be maintained under § 841.504 of this chapter.

"Lump-sum credit" has the same meaning as in section 8401(19) of title 5, United States Code.

"Member" has the same meaning as in section 8401(20) of title 5, United States Code.

"Net annuity" means annuity after excluding amounts required by law to be deducted.

"Paying agency" means the agency that employs the debtor and authorizes the disbursement of his or her current pay account.

"Refund" means the payment of a lump-sum credit to an individual who meets all requirements for payment and files application for it.

§ 845.404 Conditions for requesting an offset.

An agency may request that money payable from the Fund be offset to recover any valid debt due the United States when all of the following conditions are met:

(a) The debtor failed to pay all of the debt on demand, or the creditor agency has collected as much as possible from payments due the debtor from the paying agency; and

(b) The creditor agency sends a debt claim to OPM (under § 845.405(b) (1), (2), (3) or (4), as appropriate) after doing one of the following:

(1) Obtaining a court judgment for the amount of the debt;

(2) Following the procedures required by 31 U.S.C. 3716 and 4 CFR 102.4;

(3) Following the procedures required by 5 U.S.C. 5514 and Subpart K of Part 550 of this chapter; or

(4) Following the procedures agreed upon by the creditor agency and OPM, if it is excepted by § 845.405(b)(4) from the completion of procedures prescribed by § 845.405(b)(3).

§ 845.405 Creditor agency processing for non-fraud claims.

(a) *Where to submit the debt claim, judgment or notice of debt*—(1) *Creditor agencies that are not the debtor's paying agency.* (i) If the creditor agency knows that the debtor is employed by the Federal Government, it should send the debt claim to the debtor's paying agency for collection.

(ii) If some of the debt is unpaid after the debtor separates from the paying agency, the creditor agency should send the debt claim to OPM as described in paragraph (b) of this section.

(2) *Creditor agencies that are the debtor's paying agency.* Ordinarily, debts owed the paying agency should be offset under 31 U.S.C. 3716 from any final payments (salary, accrued annual leave, etc.) due the debtor. If a balance is due after offsetting the final payments or the debt is discovered after the debtor has been paid, the paying agency may send the debt claim to OPM as described in paragraph (b) of this section.

(b) *Procedures for submitting debt claim, judgment or notice of debt to OPM*—(1) *Debt claims for which the agency has a court judgment.* If the creditor agency has a court judgment against the debtor specifying the amount of the debt to be recovered, the agency should send the debt claim and two certified copies of the judgment to OPM.

(2) *Debt claims previously processed under 5 U.S.C. 5514.* If the creditor agency previously processed the debt claim under 5 U.S.C. 5514, it should—

(i) Notify the debtor that the claim is being sent to OPM to complete collection from the Fund; and

(ii) Send the debt claim to OPM with two copies of the paying agency's certification of the amount collected and one copy of the notice to the debtor that the claim was sent to OPM.

(3) *Debt claims not processed under 5 U.S.C. 5514, reduced to court judgment, or excepted by paragraph (b)(4) of this section.* (i) If the debt claim was not processed under 5 U.S.C. 5514, reduced to court judgment or excepted by paragraph (b)(4) of this section, the creditor agency must—

(A) Comply with the procedures required by 4 CFR 102.4 by issuing written notice to the debtor of the nature and amount of the debt, the agency's intention to collect by offset, the opportunity to obtain review within the agency of the determination of indebtedness, and the opportunity to enter into a written agreement with the agency to repay the debt; and

(B) Complete the appropriate debt claim.

(ii) If the debtor does not respond to the creditor agency's notice within the allotted time and there is no reason to believe that he or she did not receive the notice, the creditor agency may submit the debt claim to OPM after certifying that notice was issued and the debtor failed to reply.

(iii) If the debtor responds to the notice by requesting a review (or hearing if one is available), the review (or hearing) must be completed before the creditor agency submits the debt claim.

(iv) If the debtor receives the notice and responds by consenting to the collection, the creditor agency must send (to OPM) a copy of the debtor's consent along with the debt claim.

(4) *Debt claims excepted from procedures described in paragraph (b)(3) of this section.* Creditor agencies must follow specific procedures approved by OPM, rather than those described in paragraph (b)(3) of this section, for the collection of—

(i) Debts due because of the individual's failure to pay health benefits premiums while he or she was in nonpay status or while his or her salary was not sufficient to cover the cost of premiums;

(ii) Unpaid Federal taxes to be collected by Internal Revenue Service levy;

(iii) Premiums due because of the annuitant's election of Part B, Medicare coverage (retroactive collection limited to 6 months of premiums); or

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(iv) Overpaid military retired pay an annuitant elects in writing to have withheld from his or her annuity.

(5) *General certification requirements for debt claims.* Creditor agencies submitting debt claims must certify—

(i) That the debt is owed to the United States;

(ii) The amount and reason for the debt and whether additional interest accrues;

(iii) The date the Government's right to collect the debt first accrued;

(iv) That the agency has complied with the applicable statutes, regulations, and OPM procedures;

(v) That if a competent administrative or judicial authority issues an order directing OPM to pay a debtor an amount previously paid to the agency (regardless of the reasons behind the order), the agency will reimburse OPM or pay the debtor directly within 15 days of the date of the order.

Note.—OPM may, at its discretion, decline to collect other debt claims sent by an agency that does not abide by this certification.

(vi) If the collection will be in installments, the amount or percentage of net annuity in each installment; and

(vii) If the debtor does not (in writing) consent to the offset, or does not (in writing) acknowledge receipt of the required notices and procedures, or the creditor agency does not document a judgment offset or a previous salary offset, identify the action(s) taken to comply with 4 CFR 102.3, including any required hearing or review, and give the date(s) the action(s) was taken.

(6) *Notice of debt.* When a creditor agency cannot send a complete debt claim, it should notify OPM of the existence of the debt so that the lump-sum will not be paid before the debt claim arrives.

(i) The notice to OPM must include a statement that the debt is owed to the United States, the date the debt first accrued, and the basis for and amount of the debt, if known. If the amount of the debt is not known, the agency must establish the amount and notify OPM in writing as soon as possible after submitting the notice.

(ii) The creditor agency may either notify OPM by making a notation in column 8 [Remarks] under "Fiscal Record" on the Individual Retirement Record, if the Individual Retirement Record is in its possession, or if not, by submitting a separate document identifying the debtor by name, giving his or her date of birth, social security number, and date of separation, if known.

(c) *Time limits for sending records and debt claims to OPM*—(1) *Time limits for submitting debt claims.* Unless there is an application for refund pending, there is no specific time for submitting a debt claim or notice of debt to OPM. Generally, however, agencies must file a debt claim before the statute of limitations expires (4 CFR 102.4(c)) or before a refund is paid. Time limits are imposed (see § 845.406(a)) when the debtor is eligible for a refund and OPM receives his or her application requesting payment. In this situation, creditor agencies must file a complete debt claim within 120 days (or 180 days if the agency requests an extension of time before the refund is paid) of the date OPM requests a complete debt claim.

(2) *Time limit for submitting retirement records to OPM.* A paying agency must send the Individual Retirement Record to OPM no later than 60 days after the separation, termination, or entrance on duty in a position in which the employee is not covered by FERS.

§ 845.406 OPM processing for non-fraud claims.

(a) *Refunds—incomplete debt claims.* (1) If a creditor agency sends OPM a notice of debt claim against a refund OPM is processing for payment, OPM will withhold the amount of the debt but will not make any payment to the creditor agency. OPM will notify the creditor agency that the procedures in this subpart and 4 CFR 102.4 must be completed; and a debt claim must be completed and returned to OPM within 120 days of the date of OPM's notice to the creditor agency. Upon request, OPM will grant the creditor agency one extension of up to 60 days if the request for extension is received before the lump-sum payment has been made. The extension will commence on the day after the 120-day period expires so that the total time OPM holds payment of the refund will not exceed 180 days.

(2) During the period allotted the creditor agency for sending OPM a complete debt claim, OPM will handle the debtor's application for refund under section 8424 of title 5, United States Code, in one of two ways:

(i) If the amount of the debt is known, OPM will notify the debtor of the debt claim against his or her lump-sum credit, withhold the amount of the debt, and pay the balance to the debtor, if any.

(ii) If the amount of the debt is not known, OPM will not pay any amount to the debtor until the creditor agency certifies the amount of the debt, submits a complete debt claim, or the time limit for submission of the debt claim expires, whichever comes first.

(b) *Refunds—complete debt claims*—(1) *OPM receives an application from the debtor prior to or at the same time as the agency's debt claim.* (i) If a refund has been paid, OPM will notify the creditor agency there are no funds available for offset. Except in the case of debts due because of the employee's failure to pay health benefits premiums while he or she is in nonpay status or while his or her salary was not sufficient to cover the cost of premiums, creditor agencies should refer to the instructions in the FCCS for other measures to recover the outstanding debt; however, OPM will retain the debt claim on file in the event the debtor is once again employed in a position subject to retirement deductions.

(ii) If a refund is payable and the creditor agency submits a complete debt claim in accordance with § 845.405(b)(1), (2), (3), or (4), the debt will be collected from the refund and any balance paid to the debtor. OPM will send the debtor a copy of the debt claim, judgment, consent, or other document, and notify him or her that the creditor agency was paid.

(2) *If OPM has not received an application from the debtor when the agency's debt claim is received.* If a debtor has not filed application for a refund, OPM will retain the debt claim for future recovery. OPM will make the collection whenever an application is received, provided the creditor agency initiated the administrative offset before the statute of limitations expired. (See 4 CFR 102.3(b)(3) and 102.4(c).) OPM will notify the creditor agency that it does not have an application from the debtor so that the agency may take other action to recover the debt.

Note.—If the recovery action is successful, the creditor agency must notify OPM so it can void the debt claim.

(3) *Future recovery.* (i) If OPM receives an application for refund within 1 year of the date the agency's debt claim was received and the creditor agency does not indicate that interest is accruing on the debt, the debt will be processed as stated in paragraph (b)(1)(ii) of this section.

(ii) If OPM receives an application for refund within 1 year of the date the agency's debt claim was received and the creditor agency indicates that interest accrues on the debt, when necessary, OPM will contact the creditor agency to confirm that the debt is outstanding and request submission in writing, of the total additional accrued interest. OPM will not make interest computations for creditor agencies.

(iii) When OPM receives an application for refund more than 1 year after the creditor agency's debt claim was received, whether interest accrues or not, OPM will contact the creditor agency to see if the debt is still outstanding and, when necessary, request an update of the interest charges. If the debt is still due, the creditor agency must give the debtor an opportunity to establish that his or her changed financial circumstances, if any, would make the offset unjust. (See 4 CFR 102.4(c).) If the creditor agency determines that offset as requested in the debt claim would be unjust because of the debtor's changed financial circumstances, the agency should permit the debtor to offer a satisfactory repayment plan in lieu of offset. If the agency decides to pursue the offset, it must submit to OPM the requested information and any new instructions within 60 days of the date of OPM's request or the claim may be voided and the balance paid to the individual.

(c) *Annuities—incomplete debt claims.* (1) If a creditor agency sends OPM notice of a debt or an incomplete debt claim against a debtor who is receiving an annuity, OPM will not offset the annuity. OPM will notify the creditor agency that—

(i) The procedures in this subpart and 4 CFR 102.4 must be completed; and

(ii) A debt claim must be completed and sent to OPM.

(2) No time limit will be given for the submission of a debt claim against an annuity; however, a debt claim must be received within 10 years of the date the Government's right to collect first accrued (4 CFR 102.3(b)(3)).

(d) *Annuities—complete debt claims*—(1) *General*—(i) *Notice.* When OPM receives a complete debt claim and an application for annuity, OPM will offset the annuity, pay the creditor agency, and mail the debtor a copy of the debt claim along with notice of the payment to the creditor agency.

(ii) *Beginning deductions.* If OPM already established the debtor's annuity payment, deductions will begin with the next available annuity payment. If OPM is in the process of establishing the annuity payments, deductions will not be taken from advance annuity payments, but will begin with the annuity payable on the first day of the month following the last advance payment.

(iii) *Updating accrued interest.* Once OPM has completed a collection, if there are additional accrued interest charges, the creditor agency must contact OPM regarding any additional amount due within 90 days of the date of the final payment.

(2) *Claims held for future recovery.* (i) If OPM receives an application for annuity within 1 year of the date the agency's debt claim was received, the debt will be processed as stated in paragraph (c)(1) of this section.

(ii) If OPM receives an application for annuity more than 1 year after the agency's debt claim was submitted, OPM will contact the creditor agency to see if the debt is still outstanding. If the debt is still due, the creditor agency should permit the debtor to offer a satisfactory repayment plan in lieu of offset if the debtor establishes that his or her changed financial circumstances would make the offset unjust. (See 4 CFR § 102.4(c).) If the agency decides to pursue the offset, it must submit the requested information and any new instructions about the collection to OPM.

(e) *Limitations on OPM review.* In no case will OPM review—

(1) The merits of a creditor agency's decision regarding reconsideration, compromise, or waiver; or

(2) The creditor agency's decision that a hearing was not required in any particular proceeding.

§ 845.407 Installment withholdings.

(a) When possible, OPM will collect a creditor agency's full claim in one payment from the debtor's refund or annuity.

(b) If collection must be made from an annuity and the debt is large, the creditor must generally accept payment in installments. The responsibility for establishing and notifying the debtor of the amount of the installments belongs to the creditor agency (see § 845.405(b)(5)). However, OPM will not make an installment deduction for more than 50 percent of net annuity, unless a higher percentage is needed to satisfy a judgment against a debtor within 3 years or the annuitant has consented to the higher amount in writing. All correspondence concerning installment deductions received by OPM will be referred to the creditor agency for consideration.

§ 845.408 Special processing for fraud claims.

When an agency sends a claim indicating fraud, presentation of a false claim, misrepresentation by the debtor or any other party interested in the claim, or any claim based in whole or part on conduct violating the antitrust laws, to the Department of Justice (Justice) for possible treatment as a fraud claim (4 CFR 101.3), the following special procedures apply.

(a) *Agency processing.* If the debtor is separated or separates while Justice is reviewing the claim, the paying agency must send the Individual Retirement Record to OPM, as required by § 845.405(c)(2). The agency where the claim arose must send OPM notice that a claim is pending with Justice. (See § 845.405(b)(6) for instructions on giving OPM a notice of debt.)

(b) *Department of Justice processing.* (1) The Attorney General or a designee will decide whether a debt claim sent in by an agency will be reserved for collection by Justice as a fraud claim. Upon receiving a possible fraud claim to be collected by offset from the Fund, the Attorney General or a designee must notify OPM. The notice to OPM must contain the following:

(i) The name, date of birth, and social security number of the debtor;

(ii) The amount of the possible fraud claim, if known;

(iii) The basis of the possible fraud claim; and

(iv) A statement that the claim is being considered as a possible fraud claim, the collection of which is reserved to Justice.

(2) When there is a pending refund application, the Attorney General or designee must file a complaint seeking a judgment on the claim and send a copy of the complaint to OPM; or as provided in 4 CFR 101.3, refer the claim to the agency where the claim arose and submit a copy of the referral to OPM within 180 days of the date of either notice from the agency that a claim is pending with Justice (paragraph (a) of this section) or notice from Justice that it has received a possible fraud claim (paragraph (b)(1) of this section) whichever is earlier. When the claim is referred to the agency where it arose, the agency must begin administrative collection action under 4 CFR 102.4 and send a complete debt claim to OPM as required in § 845.405.

(c) *OPM processing against refunds.* (1) Upon receipt of a notice under paragraph (a) or (b)(1) of this section, whichever is earlier, OPM will withhold the amount of the debt claim, if known; notify the debtor that the amount of the debt will be withheld from the refund for at least 180 days from the date of the notice that initiated OPM processing; and pay the balance to the debtor. If the amount of the debt claim is not known, OPM will notify the debtor that a debt claim may be offset against his or her refund and that OPM will not pay any amount until either the amount of the debt claim is established, or the time limit for filing a complaint in court or submitting the debt claim expires, whichever comes first.

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(2) If the Attorney General files a complaint and notifies OPM within the applicable 180-day period, OPM will continue to withhold payment of the lump-sum credit until there is a final judgment.

(3) If the Attorney General refers the claim to the agency where the claim arose (creditor agency) and notifies OPM within the applicable 180-day period, OPM will notify the creditor agency that (i) the procedures in this subpart and 4 CFR 102.4 must be completed; and (ii) a debt claim must be sent to OPM within 120 days of the date of OPM's notice to the creditor agency. At the request of the creditor agency, one extension of time of not more than 60 days will be granted, as provided by § 845.406(a).

(4) If OPM is not notified that a complaint has been filed or that the claim has been referred to the creditor agency within the applicable 180-day period, OPM will pay the balance of the refund to the debtor.

(d) *OPM processing against annuities.* If the debtor has filed an annuity claim, OPM will not take action against the annuity. OPM will continue to pay the annuity unless and until there is a final judgment for the United States or submission of a complete debt claim.

(e) *OPM collection and payment of the debt.* (1) If the United States obtains a judgment against the debtor for the amount of the debt or the creditor agency submits a complete debt claim, OPM will collect and pay the debt to the creditor agency as provided in §§ 845.406 and 845.407.

(2) If the suit or the administrative proceeding results in a judgment for the debtor without establishing a debt to the United States, OPM will pay the balance of the refund to the debtor upon receipt of a certified copy of the judgment or administrative decision.

[FR Doc. 87-4044 Filed 2-26-87; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 649]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 649 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period February 27, 1987, through March 5, 1987. Such action is needed to balance the supply of fresh navel oranges with the demand for such period, due to the marketing situation confronting the orange industry.

DATE: Regulation 649 (§ 907.949) is effective for the period February 27, 1987, through March 5, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202-447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1986-87 adopted by the Navel Orange Administrative Committee. The committee met publicly on February 24, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended unanimously a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for navel oranges is steady.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (Navel).

PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 907.949 Navel Orange Regulation 649 is added to read as follows:

§ 907.949 Navel Orange Regulation 649.

The quantities of navel oranges grown in California and Arizona which may be handled during the period February 27, 1987, through March 5, 1987, are established as follows:

(a) District 1: 1,605,635 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons;

Dated: February 25, 1987.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87-4318 Filed 2-26-87; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Reg. 550]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 550 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 305,000 cartons during the period March 1-7, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 550 (§ 910.850) is effective for the period March 1-7, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1986-87. The committee met publicly on February 24, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is improving.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, and Lemons.

PART 910—[AMENDED]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.850 added to read as follows:

§ 910.850 Lemon Regulation 550.

The quantity of lemons grown in California and Arizona which may be handled during the period March 1 through March 7, 1987, is established at 305,000 cartons.

Dated: February 25, 1987.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87-4319 Filed 2-26-87; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 86-119]

Brucellosis in Cattle; State and Area Classification

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of Interim rule.

SUMMARY: We are affirming without change an interim rule that amended the regulations governing the interstate movement of cattle because of brucellosis by changing the classification of Puerto Rico from Class A to Class Free. This rule is necessary because it has been determined that Puerto Rico meets the standards for Class Free status. The effect of this action is to relieve certain restrictions on the interstate movement of cattle from Puerto Rico.

EFFECTIVE DATE: February 27, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Jan D. Huber, Domestic Program Support Staff, VS, USDA, Room 812, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (202) 436-5965.

SUPPLEMENTARY INFORMATION:

Background

The interim rule published October 2, 1986 (51 FR 35205-35206), was effective on the date of publication in the **Federal Register**, and comments were solicited for 60 days ending December 1, 1986. No comments were received. The facts presented in the interim rule still provide a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant effect on competition, employment, investment, productively, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Puerto Rico reduces certain requirements on the interstate movements of these cattle. Cattle from Certified Brucellosis-Free Herds moving interstate are not affected by the change in status. It has been determined that the changes in brucellosis status made by this document will not affect marketing patterns and will not have a significant economic impact on those persons affected by this document.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities. Executive Order 12372.

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental

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consultation with State and local officials. (See CFR Part 3015, Subpart V).

List of Subject in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule the interim rule that amended 9 CFR Part 78 that was published at 51 FR 35205–35206 on October 2, 1986.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, D.C., this 24th of February, 1987.

B.G. Johnson,

Deputy Administrator, Veterinary Services Animal and Plant Health Inspection Service.

[FR Doc. 87–4092 Filed 2–26–87; 8:45 am]

BILLING CODE 3410–34–M

9 CFR Part 92

[Docket No. 87–001]

Requirement for Branding of Cattle From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations on importation of cattle to require branding of steers imported into the United States from Mexico. This action is necessary to improve surveillance for bovine tuberculosis in cattle by providing a permanent means of identifying steers of Mexican origin.

EFFECTIVE DATE: March 30, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. M. A. Essey, Program Planning Staff, VS, APHIS, USDA, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–5961.

SUPPLEMENTARY INFORMATION: Title 9 Part 92 of the Code of Federal Regulations (9 CFR Part 92; and referred to below as the regulations) regulates the importation into the United States of specified animals and animal products to prevent the introduction into the United States of various diseases.

A document published in the **Federal Register** on November 13, 1986 (51 FR 41109–41110) proposed to amend § 92.35(c) of the regulations, which contains provisions restricting the importation of certain Mexican cattle to prevent the introduction of bovine tuberculosis into the United States. We proposed to add a new paragraph (c)(2) to § 92.35 to require steers imported into the United States from Mexico be branded with the letter "M" on each steer's right jaw, which would provide a permanent, highly visible means of identifying steers of Mexican origin. The jaw area is recognized and used by animal health officials around the world as a location for branding for international livestock disease eradication purposes. It is necessary to be able to determine the origin of a steer in order to trace the movements of an infected animal, for disease eradication purposes.

We solicited comments on the proposal for 60 days, ending on January 12, 1987, and received 40 comments. Commenters included State departments of agriculture, cattle producers, a veterinary medical association and private citizens. All but one commenter were in favor of the proposal. We have carefully considered the comments submitted in response to the proposal, and discuss below the issue raised by the comment opposed to the proposal. Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal without change, in a final rule.

The one comment opposed to the proposal argued that branding cattle with an "M" on the right jaw would be of little value in identifying the origin of cattle at slaughter, because at the time of postmortem examination for tuberculosis, the hide will have been separated from the affected carcass. The comment indicated that such branding would be useful for purposes of identification only while the animal was still alive.

We disagree with the comment and believe that an "M" brand is an essential step in determining the Mexican origin of an animal, and that such identification can be maintained during the slaughtering process. Despite the usual separation of the hide from the carcass, at the time tuberculosis is detected, hide and carcass matching and identity can be performed throughout slaughter by utilizing variations of identification procedures already in existence in most slaughtering establishments.

Miscellaneous

This document also makes certain nonsubstantive changes in the regulations for purposes of clarity.

Executive Order 12291 and Regulatory Flexibility Act

This rule has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final rule requiring that certain Mexican steers be branded prior to their arrival at United States ports of entry should not increase or decrease the number of Mexican steers imported into the United States. Branding will involve a small additional cost for Mexican ranchers and exporters, but this expenditure will not be significant—even for small entities—when measured against overall production and transportation costs. The Department also believes that the branding requirement will not affect cattle or meal prices at either the wholesale or retail levels.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR Part 92 is amended as follows:

1. The authority citation for Part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.1 [Amended]

2. The definitions in § 92.1 are placed in alphabetical order, and the paragraph designations are removed.

3. Section 92.1 is amended by adding, in alphabetical order, the following new definition:

§ 92.1 Definitions.

* * * * *

United States. All of the States of the United States, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other Territories and Possessions of the United States.

* * * * *

§ 92.35 [Amended]

4. In § 92.35, current paragraphs (c)(2) and (c)(3) are redesignated as (c)(3) and (c)(4), respectively.

5. In § 92.35 a new paragraph (c)(2) is added to read as follows:

§ 92.35 Cattle from Mexico.

* * * * *

(c) * * *

(2) Each steer imported into the United States from Mexico shall be branded with the letter "M," prior to arrival at a port of entry, unless the steer is imported for slaughter in accordance with § 92.40 of this part. The "M" brand shall be not less than 2 inches, nor more than 3 inches high, and shall be applied to each steer's right jaw with a hot iron.

* * * * *

Done in Washington, D.C., this 24th day of February 1987.

B.G. Johnson,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87–4091 Filed 2–26–87; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 5

[Docket No. 87–3]

Rules, Policies and Procedures for Corporate Activities; Corporate Activities Processing and Delegations

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency ("Office") is amending 12 CFR 5.3 to update official titles; add to the chain of command by designating another official to act in the absence of the Senior Deputy Comptroller for Corporate and Economic Programs; make provisions for subdelegations to various Office organizational segments; and eliminate the list of specific matters delegated to the District Administrators, Deputy Comptrollers (Districts) and the Deputy Comptroller for Multinational Banking. These administrative changes are intended to enable the Office to adopt new processing procedures or to amend existing delegations in a more timely manner, and to simplify published delegations by eliminating nonessential information. Internal delegation orders are available to the public upon written request from the Communications, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219. Minor technical changes are made to 12 CFR 5.1.

EFFECTIVE DATE: February 27, 1987.

ADDRESS: Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

FOR FURTHER INFORMATION CONTACT: Sheila G. Ogilvie, National Bank Examiner/Licensing Policy and Systems Analyst at (202) 447–1184, Bank Organization and Structure.

SUPPLEMENTARY INFORMATION:

Background

This final rule is part of the Office's Corporate Activities Review and Evaluation (CARE) Program. That program is described in the **Federal Register** (45 FR 68586), dated October 15, 1980, and involves a comprehensive review of the Office rules, policies, procedures, and forms governing filings for corporate expansion and structure changes for national banks. The goals of the CARE program are to minimize the costs and burdens on applicants, the agency and the public; to provide a better understanding of policies; to modify or eliminate rules, policies, procedures, and forms which are unnecessary or lead to inefficiencies; and to remove barriers to competition.

Purpose

The Office is amending 12 CFR 5.3 to update official titles; add to the chain of command by designating another official to act in the absence of the Senior Deputy Comptroller for Corporate and Economic Programs; make provisions for subdelegations to various Office organizational segments; and to eliminate the list of specific matters delegated to the Deputy Comptrollers (Districts), District Administrators, and the Deputy Comptroller for Multinational Banking.

At the same time, the Office is modifying its internal delegation orders, which are available to the public upon written request, to expand the authority of the Deputy Comptrollers (Districts), the Deputy Comptroller for Bank Organization and Structure and the Deputy Comptroller for Multinational Banking. The new delegation order will also permit the Deputy Comptrollers (Districts) and the District Administrators to subdelegate certain functions to the field offices under their supervision. In § 5.1 a few minor technical changes are made for clarity.

These changes will allow the Office to realign corporate activities processing and delegations to enable the district offices to decide most corporate activity filings from banks under district supervisory authority.

This final rule benefits national banks and the Office as costs and burdens are reduced by streamlining the decision process to eliminate unnecessary reviews.

Administrative Procedure Act

The Office has determined that notice and comment are not required under 5 U.S.C. 553(b)(A) because this rulemaking pertains to rules of agency organization, procedure and practice. Moreover, because this rulemaking is nonsubstantive and will benefit the public, it is found unnecessary, pursuant to 5 U.S.C. 553(d)(3), to provide for a delayed effective date.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required by the Administrative Procedure Act or any other statute, the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612) are not applicable.

Executive Order 12291

Because this rule concerns agency organization and management, it is not subject to Executive Order 12291.

List of Terms

National Banks, District Offices, Administrative Practices and Procedures, Delegations, Corporate Activities.

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PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

Authority and Issuance

For the reasons set forth in the preamble, 12 CFR Part 5 is amended as follows:

1. The authority citation for 12 CFR Part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*

2. Section 5.1(a) is revised to read as follows:

§ 5.1 Scope of part.

(a) This part establishes rules, policies and procedures of the Office of the Comptroller of the Currency ("Office") for national bank corporate activities ("corporate activities"). The Office renders decisions on requests for approval of corporate activities and on filings for proposed changes in bank control. Information on where and how to file, requirements and policies applicable to each type of filing, procedures which will be followed, and other rules of general and specific applicability are included.

* * * * *

3. Section 5.3 is revised to read as follows:

§ 5.3 Corporate activities processing and delegations of authority.

(a) *General.* The Comptroller of the Currency delegates certain functions of the Office as described in this section. In any case in which a delegate deems it appropriate, the delegate may submit the matter to an authorized official or to the Comptroller. The Comptroller or an authorized official may reserve the right to render a decision on any specific filing in a category previously delegated.

(b) *Headquarters ("Washington Office").* (1) The Senior Deputy Comptroller for Corporate and Economic Programs, or in his or her absence, the Senior Deputy Comptroller for Administration, is authorized to act on any corporate application or filing described in this part. In the absence of both the Senior Deputy Comptroller for Corporate and Economic Programs and the Senior Deputy Comptroller for Administration, the Senior Deputy Comptroller for Bank Supervision—Policy is authorized to act. In the absence of the Senior Deputy Comptroller for Bank Supervision—Policy, the Senior Deputy Comptroller for Bank Supervision—Operations is authorized to act.

(2) The Senior Deputy Comptroller for Corporate and Economic Programs may delegate authority described in this part to the Deputy Comptrollers (Districts), District Administrators, the Deputy Comptroller for Bank Organization and Structure, or the Deputy Comptroller for Multinational Banking. Exercise of delegated authority is subject to any limitations the Comptroller or the Senior Deputy Comptroller for Corporate and Economic Programs defines.

(3) The Senior Deputy Comptroller for Corporate and Economic Programs may authorize the Deputy Comptrollers (Districts), District Administrators, the Deputy Comptroller for Bank Organization and Structure, or the Deputy Comptroller for Multinational Banking to further delegate the authority delegated to them subject to any limitations the Comptroller or Senior Deputy Comptroller for Corporate and Economic Programs defines.

(c) *Availability of Internal Delegation Orders.* Copies of internal Office delegation orders are available by written request to Communications, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

Dated: December 18, 1986.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 87-4090 Filed 2-26-87; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 500

Public-Use Forms

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is amending 12 CFR 500.31 to update the list of public-use forms of the Board and the Federal Savings and Loan Insurance Corporation.

EFFECTIVE DATE: February 27, 1987.

FOR FURTHER INFORMATION CONTACT: Colleen Devine, Chief, Management Analysis Staff, Administration Office (202-377-6025), Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board has determined that observance of the notice and comment procedures of 5 U.S.C. 552(b) and 12 CFR 508.11 and the delay of effective date pursuant to 5 U.S.C. 552(d) and 12 CFR 508.11 is unnecessary, because the amendment is of a minor, technical nature in that it merely updates the list of forms.

List of Subjects in 12 CFR Part 500

Federal Home Loan Bank Board, organization and channelling of functions.

Accordingly, The Board hereby amends Part 500, Subchapter A, Chapter V, Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER A—GENERAL

PART 500—ORGANIZATION AND CHANNELLING OF FUNCTIONS

1. The authority citation for Part 500 continues to read as follows:

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 402, 48 Stat. 1256, as amended (12 U.S.C. 1725); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071; Reorg. Plan No. 6 of 1961, reprinted in 12 U.S.C.A. 1437 App. (West Supp. 1986).

2. Revise § 500.31 to read as follows:

§ 500.31 Forms.

(a) The following forms, which are available at the offices of agents of the Board and the Federal Savings and Loan Insurance Corporation at the Federal Home Loan Banks, shall be used for the purpose indicated.

(1) Forms with permanent numbers, excepting Savings and Loan Holding Company forms in the H series:

Form:

107—Monthly Report of Selected Financial Data (Insured institutions) [1]

107a—Supplement to Monthly Report (Sample of Insured Associations) [1]

138—Outline of Information to be Submitted in Support of an Application for Permission to Organize a Federal Savings and Loan Association

138a—Application for Permission to Organize a Federal Mutual Savings and Loan Association

138b—Application for Permission to Organize a Federal Mutual Savings Bank

138c—Application for Permission to Organize a Federal Stock Savings and Loan Association

138d—Application for Permission to Organize a Federal Stock Savings Bank

139—Biographical and Financial Report (Certain applications)

140—Outline of Information to be Submitted in Support of an Application for Insurance of Accounts or a Request for a Commitment to Insure Accounts

140a—Application for Insurance of Accounts

[1] Applicable through December 31, 1986.

140b—Request for a Commitment to Insure Accounts (State-Chartered institutions)

159a—Application for Conversion from a State-Chartered Mutual Institution into a Mutual Savings and Loan Association

159b—Application for Conversion from a State-Chartered Mutual Institution into a Federal Mutual Savings Bank

159c—Application for Conversion from a State-Chartered Stock Institution into a Federal Stock Savings and Loan Association

159d—Application for Conversion from a State-Chartered Stock Institution into a Federal Stock Savings Bank

248—Annual Report: Deposits and Savings at Branch Offices (Insured Associations)

303—Statement of Condition (Federal Savings and Loan Associations)

366—Criminal Referral

443—Report of Liquidity Deficiency (Bank member)

450—Application for Membership and Subscription to Stock in Federal Home Loan Bank

603—Pledge and Escrow Agreement (Insurance of Accounts)

647—Lender's Schedule of Housing Opportunity Allowance Programs (Bank member)

660—Confidential Biographical and Financial Report (Holding Company)

700—Application for Permission to Establish a Branch Office (Federal Savings and Loan Associations)

710—Application for Merger or Increase in Accounts of an Insurable Type

850—Application for Permission to Change Location of an Office (Federal Savings and Loan Associations)

877a—Rates and Terms on Conventional 1-Family Nonfarm Mortgage Loans: Loans Closed (monthly sample of insured associations and mortgage companies)

877b—Rates and Terms on Conventional 1-Family Nonfarm Mortgage Loans: Policy on Interest Rates and Fees (monthly sample of insured associations and mortgage companies)

893—Determination of Compliance with Insurance Regulation § 563.13

1013—Federal Home Loan Bank Board Membership Change of Status Report

1015—Financial Report for Wholly-Owned Service Corporations

1154o—Loan Application Register—Mortgage Loans

1154p—Loan Application Register—Home Improvement and/or Equipping Loans

1154q—Loan Application Register—Mobile Home Loans

1173—Notice in Change of Control of an Insured Institution or Savings and Loan Holding Company

1183—A Confidential Biographical and Financial Report

1192o—Data Submission Report—Mortgage Loans

1192p—Data Submission Report—Home Improvement Loans

1192q—Data Submission Report—Mobile Home Loans

1194—List of Decision Centers for Loan Application Register System

1240—Application for Trust Department

1286—Net Worth Certificate Act—Application for Capital Assistance and Computation Worksheet

1312a—Monthly Financial Survey: Selected Deposits and Accounts [2]

1312b—Monthly Financial Survey: Balance Sheet and Activity [2]

1312c—Monthly Financial Survey: Quarterly Supplement of Cash, Deposits and Investment Securities (Monthly sample of insured associations)

1313—Thrift Financial Report (Sections A through I, and K)

1314—Application for Purchase of Branch Office(s) and/or Transfer of Savings Accounts

1337—Monthly Financial Report [2]

1344—Application for the Issuance of Subordinated Debt Securities

Form:

AC—Application for Preliminary Approval for Conversion from Mutual to Stock Form (insured institutions)

PS—Proxy Statement in Connection with Conversion from Mutual to Stock Form (insured institutions)

OC—Offering Circular in Connection with Conversion from Mutual to Stock Form and Securities Offerings by Insured Institutions

Form:

H-(b)3—Registration Statement (Corporation as Trustee)

H-(b)4—Registration Statement (Creditor as savings and loan holding company)

H-(b)5—Registration Statement (Voting Trust)

H-(b)10—Registration Statement

H-(b)11—Annual Report

(2) Savings and Loan Holding Company forms (Corporations as Trustee) in § 584.10 of this chapter):

H-(b)12—Current Report

H-(c)1—Notice Filing (Pursuant to § 584.2-1)

H-(d)2—Application under § 584.4

H-(e)1—Application under § 584.4

H-(e)2—Application under § 584.4

H-(e)3—Application under § 584.4

H-(e)4—Application under § 584.4

H-(f)—Divided Notification

H-(g)—Application under § 584.4

[2] Applicable through December 31, 1986.

(b) The following forms, which are available at the Office of the Federal Savings and Loan Insurance Corporation, Federal Home Loan Bank Board Building, 1700 G Street, NW., Washington, DC 20552, are prescribed for use by members of the public:

Form:

681—Affidavit as to Ownership Interest in Non-qualifying Joint Accounts

683—Agreement to Indemnify (Payment of Claim for Insurance)

844—Affidavit for Lost Passbook or Certification Claim for Insurance and Assignment of Insured Account

927—Certificate of Claim in Liquidation

927a—Assignment of Certificate

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87-3972 Filed 2-26-87; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-161-AD; Amdt. 39-5570]

Airworthiness Directives; Lockheed-California Company Model L-1011 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that requires inspections and replacement of the pylon attach fitting-to-skate-angle bolts on Lockheed L-1011 airplanes. This action is necessary to detect broken H-11 bolts that have failed due to stress-corrosion. Failure of two or more bolts, in combination with maximum limit load conditions, could lead to engine separation from the wing.

DATE: Effective April 2, 1987.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Lockheed-California Company, P. O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Dept. 65-33, U-33, B-1. This information may be examined at

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the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Kyle L. Olsen, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6319.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive to require inspection for broken bolts and replacement of the pylon attach fitting-to-skate-angle H-11 bolts on Lockheed Model L-1011 series airplanes, was published in the **Federal Register** on September 2, 1986 (51 FR 31137). The comment period for the proposal closed on October 20, 1986.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received.

Comments received from the manufacturer, the Air Transport Association (ATA) of America on behalf of its members, and several other commenters, suggested that the FAA had underestimated the cost impact of the AD on U.S. operators. Upon reconsideration, the FAA concurs that the cost impact was underestimated; however, the cost of the replacement bolt reflected in the economic impact analysis was based upon information provided to the FAA at the time the NPRM was being prepared. The cost estimate in this document has been revised to reflect the revised cost estimates of the MP-35N bolt and revised manhour estimates.

Several commenters requested that the date to replace the H-11 bolts with MP-35N bolts, January 15, 1989, be extended, or that the H-11 bolts be allowed to remain in service as long as they are inspected. As a part of their justification, the commenters cited the cost burden and delivery lead times for the MP-35N bolts. Also, they stated that actual conditions have shown that failed bolts do not necessarily back out or fail at the shear joint. The FAA has reconsidered the proposed required replacement date and concurs that it may be unduly restrictive. The FAA has determined that the required replacement date may be extended to January 15, 1991, without significantly affecting safety, provided the repetitive inspections are performed. However, the FAA does not concur that the H-11 bolts can remain in service indefinitely, in this application, because of unsatisfactory service history.

Several commenters, including the manufacturer, requested that the repetitive inspection interval be revised from "3,000 hours time-in-service" to "3,000 hours time-in-service or 15 months, whichever is later." Since stress corrosion is time-dependent, the FAA agrees, and the final rule has been revised accordingly.

After the NPRM was issued, the referenced Lockheed service bulletin was revised to clarify the engine support requirements and to correct or add material callouts and part numbers. The final rule has been revised to refer to this latest revision of the applicable service bulletin. This is an editorial change and does not represent any change in the scope of this AD. The FAA has determined that this change will not increase the financial burden on any operator.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule with the changes previously noted.

It is estimated that 120 airplanes of U.S. registry will be affected by this AD, that it will take approximately 70 manhours per airplane to accomplish the required actions, plus approximately $8,000 for new parts per airplane; and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,928,000.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model L-1011-385 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Lockheed-California Company: Applies to Lockheed Model L-1011-385 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent engine separation due to broken pylon attach fittings-to-skate-angle bolts, which are cracking because of stress-corrosion, accomplish the following:

A. Before accumulating a total of 15,000 hours time-in-service or within the next 3,000 hours time-in-service after the effective date of the AD, whichever occurs later, and thereafter at intervals not to exceed 3,000 hours time-in-service or 15 months, whichever occurs later, accomplish the following:

1. Inspect the pylon attach fittings-to-skate-angle bolts in accordance with the Accomplishment Instructions in Lockheed Service Bulletin 093-54-049, Revision 1, dated September 25, 1986, or later FAA approved revision.

2. If broken bolts are found, before further flight, replace each broken bolt with a new bolt in accordance with the Accomplishment Instructions in Lockheed Service Bulletin 093-54-049, Revision 1, dated September 25, 1986, or later FAA-approved revision.

B. Before accumulating a total of 15,000 hours time-in-service or before January 15, 1991, whichever is later, replace all of the pylon attach fittings-to-skate-angle H-11 steel bolts with stress-corrosion resistant MP-35N bolts in accordance with the Accomplishment Instructions in Lockheed Service Bulletin 093-54-049, Revision 1, dated September 25, 1986, or later FAA-approved revision. The inspections required by paragraph A. may be discontinued after paragraph B. has been accomplished.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Dept. 65-33, U-33, B-1. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective April 2, 1987.

Issued in Seattle, Washington, on February 18, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-4052 Filed 2-26-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-205-AD; Amdt. 39-5569]

Airworthiness Directives; Aerospatiale Model ATR-42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR-42 series airplanes, that requires modification to the pilot's seat back locking mechanism on certain flightcrew seats. This action is prompted by a report of a seat back collapsing in flight. Failure of the seat reduces the pilot's ability to control the airplane.

EFFECTIVE DATE: April 2, 1987.

ADDRESSES: The applicable service information specified in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires modification of the crew seat back structure and locking mechanism to prevent inadvertent collapse of the seat back, was published in the **Federal Register** on November 5, 1986 (51 FR 40209).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the Notice of Proposed Rulemaking (NPRM).

Since issuance of the NPRM, the manufacturer has issued Revision 1 to Aerospatiale Service Bulletin 42-25-0006, dated September 3, 1986. This revision does not change the modification procedures, parts, or applicability as reflected in the original issue of the service bulletin; it only revises the estimated manhours required for accomplishment of the modification, from 3 to 9 manhours. Accordingly, the final rule has been revised to permit modification in accordance with Revision 1, and the economic impact analysis has been revised to reflect the change in manhours necessary for accomplishment of the required actions. The FAA has determined that this change will not increase the financial burden on any operator, nor does it expand the scope of the AD.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the change noted above.

It is estimated that 4 airplanes of U.S. registry will be affected by this AD, that it will take approximately 9 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $1,440.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($360). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

AEROSPATIALE: Applies to Model ATR-42 series airplanes listed in Aerospatiale Service Bulletin ATR 42-25-0006, dated July 21, 1986, fitted with IPECO flight crew seats, certificated in any category. Compliance is required within 30 days after the effective date of this AD, unless already accomplished.

To prevent collapse of the pilot or co-pilot seat backs, accomplish the following:

A. Modify seats, P/N 3A063-0035, 3A063-0036, 3A063-0079, and 3A063-0080, in accordance with Aerospatiale Service Bulletin ATR 42-25-0006, dated July 21, 1986, or Revision 1, dated September 3, 1986 (Reference IPECO Service Bulletin A001-25-22, dated June 5, 1986.).

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 2, 1987.

Issued in Seattle, Washington, on February 18, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-4050 Filed 2-26-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-179-AD; Amdt. 39-5571]

Airworthiness Directives; Garrett Turbine Engine Company Model GTCP331 Series Auxiliary Power Units

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to Garrett Model GTCP331-

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200A and -200AC Auxiliary Power Units (APU) installed on Boeing Model 757 and Boeing Model 767 series airplanes, which currently requires modification of the APU cooling fan containment housing. This amendment is necessary to extend the applicability of the AD to all U.S.-registered airplanes equipped with the Garrett GTCP331 series APU's. This action is prompted by the recent U.S. registration of other make/model airplanes equipped with the Garrett GTCP series APU.

EFFECTIVE DATE: April 2, 1987.

ADDRESSES: The applicable service information may be obtained from Garrett Turbine Engine Company, P.O. Box 5217, Phoenix, Arizona 85010. This information may be examined at the Federal Aviation Administration (FAA), Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Moring, Aerospace Engineer, Propulsion Section, ANM-174W, FAA, Northwest Mountain Region, Western Aircraft Certification Office, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007; telephone (213) 297-1362.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to revise AD 85-14-02, Amendment 39-5091 (50 FR 27933; July 9, 1985), to require broadening the applicability statement of the AD to include all U.S. registered airplanes with GTCP331 APU installed, was published in the **Federal Register** on October 1, 1986 (51 FR 34998).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given the one comment which was received.

The only commenter, the ATA, concurred with the proposal.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 12 airplanes of U.S. registry will be affected by this AD, that it will take approximately 0.5 manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Modification parts will be furnished by the manufacturer at no charge. Based on these figures, the total cost impact of the AD on U.S. operators for 12 additional airplanes affected by this AD is estimated to be $240.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($20.). A final evaluation has been prepared for this regulation and has been placed in the Regulatory Docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By revising AD 85-14-02, Amendment 39-5091 (50 FR 27933; July 9, 1985), by revising the applicability statement and paragraph A. to read as follows:

"**Garrett Turbine Engine Company (GTEC) (formerly the AiResearch Manufacturing Company of Arizona):** Applies to all GTEC Models GTCP331 series Auxiliary Power Units (APU) with fan assembly, Garrett Part Number 3862160-3 or -4, installed. Compliance is required as indicated, unless already accomplished.

To prevent an uncontained APU cooling fan failure, accomplish the following:

A. Upon removal of the cooling fan assembly, Garrett Part No. 3862160-3 or -4, from an affected GTCP331 series Auxiliary Power Unit (APU) for any reason; or within 1,000 airplane hours time-in-service after August 15, 1985, or prior to September 15, 1985, whichever comes first, for the Boeing Model 757 and 767 series airplane; and within 1,000 airplane hours time-in-service after the effective date of this AD, for all other airplanes with GTCP331 series APU installed; incorporate the new fan assembly with the improved fan containment housing as specified in Section 2.A., "Accomplishment Instructions," of GTEC Service Bulletin GTC331-49-5546, dated August 9, 1984, or equivalent approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region."

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Garrett Turbine Engine Company, Post Office Box 5217, Phoenix, Arizona 85010. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

This amends Amendment 39-5091.

This amendment becomes effective April 2, 1987.

Issued in Seattle, Washington on February 18, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-4051 Filed 2-26-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-30-AD; Amdt. 39-5572]

Airworthiness Directives; McDonnell Douglas Model DC-10-10, -10F, -15, -30, -30F, -40, and K-10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires modification of flight compartment crew seat life vest pouches on certain McDonnell Douglas DC-10 and KC-10A (Military) series airplanes. This AD is prompted by reports of holes in the life vest caused by the life vest chafing against a metal plate sewn on the inside forward flap of the storage pouch. This AD is needed to minimize the potential for damage to crew seat life vests that would render the vest useless in an emergency.

EFFECTIVE DATE: Effective April 2, 1987.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESS: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Jerald R. Berube, Aviation Safety Inspector, Manufacturing Inspection Branch, ANM-180L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6343.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) which requires modification of certain flight compartment crew seats on McDonnell Douglas DC-10 and KC-10A (Military) series airplanes, was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on May 1, 1986 (51 FR 16176). The comment period for the proposal closed on June 23, 1986.

Interested person have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received. A total of 7 comments were received from 4 commenters.

Three commenters requested that an alternate means of compliance be included within the AD. The FAA has provided operators the option of obtaining an alternate means of compliance under paragraph C. of the AD. It is not practical to include all possible alternate means of compliance within the body of the AD.

Two commenters requested that the proposed rule be withdrawn because the intent of the proposed rule had previously been accomplished on their aircraft. FAA does not agree because there is no assurance that all operators have modified the seats. Additionally, the AD is necessary to preclude operators from returning the seats to the original configuration.

Two commenters noted that the proposed rule was in error in stating that, upon modification, the seat is reidentified in accordance with the Aircraft Mechanics, Inc., [AMI] service bulletin. There are no instructions in the service bulletin to reidentify the seats. The FAA agrees and the requirement for reidentification of the seats has been deleted from the final rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule with the change previously noted.

It is estimated that 194 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD is estimated to be $23,280.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model DC-10 or KC-10A airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-10-10, -10F, -15, -30, -30F, -40, and KC-10A (Military) series airplanes, certificated in any category, equipped with Aircraft Mechanics, Inc., crew seats model numbers 1058, 1057, and 1058, having serial numbers 001 through 907 and 911. Compliance required as indicated, unless previously accomplished.

To preclude the potential of damage to crew seat life vests, accomplish the following:

A. Within 12 months after the effective date of this AD, inspect the life vest. If any signs of chafing are found, replace before further flight with a serviceable unit.

B. Within 12 months after the effective date of this AD, modify the crew seat in accordance with the accomplishment instructions of Aircraft Mechanics, Inc., Service Bulletin 25-DC-10/678-24, dated May 20, 1984, or later revision approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective April 2, 1987.

Issued in Seattle, Washington, on February 18, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-4053 Filed 2-26-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AWP-2]

Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of Federal Airways V-25, V-27, V-299 and V-485 located in the states of California, Oregon and Washington by removing all references which exclude operations within Restricted Area R-2520 because the restricted area is being revoked.

EFFECTIVE DATE: 0901 UTC, April 9, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9254.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations amends the descriptions of V-25, V-27, V-299 and V-485 located in the states of California, Oregon and Washington to delete any reference to Restricted Area R-2520, which is being revoked by the FAA. This action removes from the descriptions of V-25, V-27, V-299 and V-485 the exclusion of airspace for R-2520. That exclusion has had no effect on the current configuration of V-25, V-27, V-299 and V-485 since R-2520 is being revoked, and any continuing reference to R-2520 is inappropriate and

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misleading. Since this amendment is editorial only and does not alter existing airspace designations, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as amended (51 FR 7, 8, 6102 and 6103) is further amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.123 is amended as follows:

V-25 [Amended]

By removing ", R-2520,"

V-27 [Amended]

By removing ", R-2520,"

V-299 [Amended]

By removing ", and the airspace within R-2520 is excluded"

V-485 [Amended]

By removing ", R-2520,"

Issued in Washington, DC, on February 18, 1987.

Harold H. Downey,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-4055 Filed 2-26-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 25193; Amdt. No. 1341]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: Effective: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from: 1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require

making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC, on February 20, 1987.

John S. Kern,

Director of Flight Standards.

Adoption of the Amendment

PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 48 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective April 9, 1987

Brewton, AL-Brewton Muni, VOR/DME RWY 30, Amdt. 5
Mobile, AL-Bates Field, RNAV RWY 9, Orig
Mobile, AL-Brookley, RNAV RWY 36, Orig
Monroeville, AL-Monroe County, VOR RWY 3, Amdt. 7
Monroeville, AL-Monroe County, VOR RWY 21, Amdt. 7
Monroeville, AL-Monroe County, VOR/DME RWY 3, Orig CANCELLED
Monroeville, AL-Monroe County, VOR/DME RWY 21, Orig CANCELLED
Middleton Island, AK-Middleton Island, NDB-A, Orig
Middleton Island, AK-Middleton Island, NDB-A, Amdt. 6 CANCELLED
Bridgeport, CT-Igor I. Sikorsky Memorial, VOR RWY 29, Orig.
Lake City, FL-Lake City Muni NDB RWY 28, Orig
Punta Gorda, FL-Charlotte County, VOR RWY 21, Amdt. 2
Punta Gorda, FL-Charlotte County, VOR RWY 33, Amdt. 2
Punta Gorda, FL-Charlotte County, RNAV RWY 27, Amdt. 3
Alma, GA-Bacon County, VOR RWY 33, Amdt. 6
Brunswick, GA-Glynco Jetport, VOR/DME-B Amdt. 5
Brunswick, GA-Glynco Jetport, RNAV RWY 7, Amdt. 5
Brunswick, GA-Glynco Jetport, RNAV RWY 25, Amdt. 5
Brunswick, GA-Malcolm McKinnon, VOR RWY 4, Amdt. 13
Brunswick, GA-Malcolm McKinnon, NDB RWY 4, Amdt. 3
Brunswick, GA-Malcolm McKinnon, NDB RWY 22, Amdt. 3
Brunswick, GA-Malcolm McKinnon, RNAV RWY 22, Amdt. 4
Columbus, GA-Columbus Metropolitan, RADAR-1, Amdt. 8
Flora IL-Flora Muni, NDB RWY 21, Amdt. 3
Peoria, IL-Greater Peoria, VOR or TACAN RWY 13, Amdt. 21
Peoria, IL-Greater Peoria, VOR/DME or TACAN RWY 31, Amdt. 7
Peoria, IL-Greater Peoria, NDB RWY 31, Amdt. 13
Peoria, IL-Greater Peoria, ILS RWY 13, Amdt. 4
Peoria, IL-Greater Peoria, ILS RWY 31, Amdt. 4
Wichita, KS-Wichita Mid-Continent, LOC BC RWY 19L, Amdt. 14
Lincoln, ME-Lincoln Regional, VOR/DME-A, Amdt. 1
Old Town, Me-DeWitt Fld, Old Town Muni, VOR-A, Amdt. 10
Hyannis, MA-Barnstable Muni-Boardman/Polando Field, VOR RWY 6, Orig
Hyannis, MA-Barnstable Muni-Boardman/Polando Field, VOR RWY 6, Amdt. 3 CANCELLED
Nantucket, MA-Nantucket Memorial, ILS RWY 24, Amdt. 12
Stow, MA-Minute Man Airfield, NDB-A, Amdt. 7
Montevideo, MN-Montevideo-Chippewa County, VOR RWY 14, Amdt. 3
Okonlona, MS-Okolona MUNI-Richard Stovall Field, VOR/DME RWY 18, Amdt. 2
Millville, NJ-Millville Muni, ILS RWY 10, Amdt. 1
Sussex, NJ-Sussex, VOR-A, Amdt. 5
Albany, NY-Albany County, VOR RWY 1, Amdt. 17
Albany, NY-Albany County, VOR/DME RWY 1, Amdt. 9
Saratoga Springs, NY-Saratoga County, VOR-A, Amdt. 4
Charlotte, NC-Charlotte/Douglas Intl, VOR RWY 36R, Amdt. 5
Rutherfordton, NC-Rutherford County, VOR RWY 36, Amdt. 2
Rutherfordton, NC-Rutherford County, NDB RWY 36, Amdt. 3
Port Clinton, OH-Carl R. Keller Field, VOR/DME-A, Amdt. 4
Port Clinton, OH-Carl R. Keller Field, NDB RWY 26, Amdt. 7
Tulsa, OK-Tulsa Intl, RNAV RWY 17L, Amdt. 3 CANCELLED
Tulsa, OK-Tulsa Intl, RNAV RWY 35R, Amdt. 2 CANCELLED
Hazleton, PA-Hazleton Muni, LOC RWY 28, Amdt. 4
Pittsburgh, PA-Greater Pittsburgh Intl, ILS RWY 32, Amdt. 7
St. Marys, PA-St. Marys Muni, VOR RWY 28, Amdt. 6
St. Marys, PA-St. Marys Muni, LOC/DME RWY 28, Amdt. 2
St. Marys, PA-St. Marys Muni, RNAV RWY 10, Amdt. 5
St. Marys, PA-St. Marys Muni, RNAV RWY 28, Amdt. 5
Pawtucket, RI-North Central State, VOR-B, Amdt. 3
Barnwell, SC-Barnwell County, NDB-A, Amdt. CANCELLED
Memphis, TN-Memphis Intl, ILS RWY 9, Amdt. 24
Castroville, TX-Castroville Muni, NDB RWY 33, Amdt. 1
Georgetown, TX-Georgetown Muni, NDB RWY 18, Amdt. 3
Wichita Falls, TX-Kickapoo Downtown Airpark, NDB-A Amdt. 5
Chesapeake, VA-Chesapeake Muni, NDB RWY 5, Amdt. 1
Norfolk, VA-Norfolk Intl, ILS RWY 5, Amdt. 22
Suffolk, VA-Suffolk Muni, NDB RWY 7, Amdt. 1
Ephrata, WA-Ephrata Muni, VOR RWY 20, Amdt. 18
Cumberland, WI-Cumberland Muni, NDB RWY 9, Orig

. . . Effective March 12, 1987

Denver, CO-Stapleton Intl, ILS/DME RWY 36, Orig.
Lake Charles, LA-Lake Charles Muni, LOC BC RWY 33, Amdt. 17

. . . Effective February 12, 1987

Bluefield, WV-Mercer County, ILS RWY 23, Amdt. 11

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Parkersburg, WV–Wood County Airport Gill Robb Wilson Fld, ILS RWY 3, Amdt. 9
Green Bay, WI–Austin–Straubel Field, RADAR–1, Amdt. 6

Transmittal Letter 87–5.

February 20, 1987.

[FR Doc. 87–4054 Filed 2–26–87; 8:45 am]

BILLING CODE 4910–3–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM79–14]

Incremental Pricing Regulations Implementing the Incremental Pricing Provision of the Natural Gas Policy Act of 1978

In the matter of Order of the Director, OPPR of Publication of Incremental Pricing Acquisition Cost Thresholds Under Title II of the NGPA.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order Prescribing Incremental Pricing Thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: MARCH 1, 1987.

FOR FURTHER INFORMATION CONTACT: Richard P. O'Neill, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, D.C. 20426, (202) 357–8500.

SUPPLEMENTARY INFORMATION:

Issued: February 24, 1987.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of March, 1987 are issued by the publication of a price table for the month. The incremental pricing acquisition cost threshold prices for months prior to those reflected on the table are found in § 282.304.

The incremental pricing thresholds for March, 1987 reflect a two-month lag adjustment described in the notice of the March 1, 1986 thresholds.

List of Subjects in 18 CFR Part 282.

Natural gas.

Richard P. O'Neill,

Director, Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

	January	February	March	April	May	June	July	August	September	October	November	December
Calendar Year 1986												
Incremental pricing threshold	$2.460	$2.467	$2.474	$2.481	$2.487	$2.493	$2.499	$2.504	$2.509	$2.514	$2.522	$2.530
NGPA section 102 threshold	4.166	4.191	4.216	4.241	4.264	4.287	4.310	4.332	4.354	4.376	4.403	4.431
NGPA section 109 threshold	2.539	2.546	2.553	2.560	2.566	2.572	2.578	2.583	2.588	2.593	2.601	2.609
130 percent of No. 2 fuel oil in New York City threshold	7.370	7.930	5.040	5.290	4.680	3.980	3.800	3.190	3.310	4.020	3.320	3.240
Calendar Year 1987												
Incremental pricing threshold	$2.538	$2.541	$2.544									
NGPA Section 102 threshold	4.459	4.478	4.497									
NGPA Section 109 threshold	2.617	2.620	2.623									
130% of No. 2 fuel oil in New York City threshold	4.09	4.660	4.620									

[FR Doc. 87–4176 Filed 2–26–87; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Food Safety and Applied Nutrition

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations for delegations of authority to delegate to the Director and Deputy Director, Center for Food Safety and Applied Nutrition (CFSAN), the authority to approve notices of confirmation of effective dates for color additives. This delegation of authority will expedite the administrative handling of certain routine actions. Also this notice updates the list of delegates to reflect an organizational change within CFSAN.

EFFECTIVE DATE: February 27, 1987.

FOR FURTHER INFORMATION CONTACT: Marjorie J. Shandruk, Office of Management and Operations (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: FDA is revising § 5.61 *Food standards, food additives, generally recognized as safe (GRAS) substances, and color additives* (21 CFR 5.61) by amending paragraph (b)(1) to delegate to the Director and Deputy Director of the Center for Food Safety and Applied Nutrition (CFSAN) the authority to approve notices of confirmation of effective date for regulations listing color additives when those regulations do not involve novel or controversial issues. Also, paragraph (d)(3) is being amended to reflect the title change of the Division of Color Technology, Office of Physical Sciences, CFSAN, to the Division of Color and Cosmetics, Office of Physical Sciences, CFSAN. This change in title was made as part of a recent reorganization of the Office of Physical Sciences.

Further redelgation of authority is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commission of Food and Drugs, Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR Part 5 is revised to read as follows:

Authority: 5 U.S.C. 504, 552; 7 U.S.C. 2217; 15 U.S.C. 638, 1451 *et seq.*; 21 U.S.C. 41 *et seq.*, 61–63 141 *et seq.*; 301–392, 467f(b), 801 et seq., 823(f), 1031 *et seq.*; 35 U.S.C. 156; 42 U.S.C. 219, 241, 242(a), 242a, 242l, 242o, 243, 262, 263, 263b through 263m, 264, 265, 300u *et seq.*, 1395y and 1395y note, 3246b(b)(3), 4831(a), 10007, and 10008; Federal Caustic Poison Act (44 Stat. 1406); Federal Advisory Committee Act (Pub. L. 92–463); E.O. 11490, 11921.

2. In § 5.61 by redesignating paragraph (b)(2) as paragraph (b)(3), by revising paragraphs (b)(1) and (d)(3), and by adding a new paragraph (b)(2) to read as follows:

§ 5.61 Food standards, food additives, generally recognized as safe (GRAS) substances, and color additives.

* * * * *

(b)(1) The Director and Deputy Dirctor, CFSAN, are authorized to perform all of the functions of the Commissioner of Food and Drugs under sections 409 and 706 of the act regarding the approval of the use of food additives under section 409(e) of the act and the listing of color additives other than those on the provisional list, under section 706(d) of the act (including notices of confirmation of effective date), where the listing does not involve novel or controversial issues and does not involve any question about the applicability of the Delaney Anti-Cancer Clause.

(2) The Director and Deputy Director, CFSAN, are authorized to perform all of the functions of the Commissioner of Food and Drugs under section 401 of the act regarding the issuance of notices of temporary permits for foods varying from standards of identity under § 130.17 of this chapter.

* * * * *

(d) * * *

(3) The Director and Deputy Director, Division of Color and Cosmetics, Office of Physical Sciences, CFSAN.

* * * * *

Dated: February 20, 1987.

George R. White,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–4065 Filed 2–26–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Changes in Administration Controlled Substances Code Numbers

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: The Dangerous Drug Diversion Control Act of 1984, which was part of the Comprehensive Crime Control Act of 1984, amended portions of the Controlled Substances Import and Export Act. Included in these amendments was the establishment of a new limitation which prohibits importers and exporters from importing or exporting any controlled substance not specified in their registration. The mechanism by which a controlled substance is specified in a registration is through the use of its Administration Controlled Substance Code Number. However, although a number of controlled substances appear in more than one schedule, not all of these substances have different code numbers for each schedule. As a result, importers and exporters are unable to specify which schedule of these substances they actually wish to include in their registration. The purpose of this rule is to remedy this situation by assigning additional code numbers so that each substance appearing in more than one schedule will have a different code number for each schedule.

EFFECTIVE DATE: March 30, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Alfred A. Russell, Chief, Regulatory Support Section, Office of Diversion Control, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Telephone (202) 633–1570.

SUPPLEMENTARY INFORMATION: The Dangerous Drug Diversion Control Act of 1984, which was Part B of Chapter V of the Comprehensive Crime Control Act of 1984 (Pub. L. 98–473), amended portions of the Controlled Substances Import and Export Act (21 U.S.C. 951–970). Included in these amendments was an expansion of the scope of 21 U.S.C. 958(b) to prohibit importers and exporters from importing or exporting, respectively, any controlled substance not specified in their registration. Previously, this restriction had applied only to substances in Schedules I and II. The mechanism by which a controlled substance is specified in a registration is through the use of its Administration Controlled Substance Code Number which is listed in 21 CFR 1308.11–51.

The purpose of this rule is to modify the list of code numbers which appears in Part 1308 so that all those substances which appear in more than one schedule have a different code number for each schedule. At present, certain substances such as codeine and morphine do have different code numbers for each schedule whereas certain others such as amobarbital and dextropropoxyphene do not. This not only represents an inconsistency in the manner in which code numbers are assigned, it has created a barrier to the full implementation of the new requirements of 21 U.S.C. 958(b). For example, if an exporter registered in Schedules III–V wishes to specify Schedule III codeine preparations in its registration, it can readily do so through use of the appropriate code number. However, an exporter cannot specify Schedule III amobarbital preparations in its registration because the same code number is used for amobarbital products in Schedules II and III. This rule will resolve this difficulty. However, it should be noted that this rule will follow the general policy of not assigning code numbers to substances in Schedule V.

The Administrator hereby certifies that this rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq. This rule imposes no new regulatory requirements, it merely makes it possible for registrants to comply with an already existing requirement in a more specific manner.

This rule is not a major rule for the purposes of Executive Order (E.O.) 12291 of February 17, 1981. Pursuant to sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this final rule has been submitted for review to the Office of Management and Budget.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug trafficking control, Narcotics, Prescription drugs.

PART 1308—[AMENDED]

For the reasons set out in the preamble, 21 CFR Part 1308 is amended as follows:

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1. The authority citation for Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. 21 CFR 1308.13 is amended by revising paragraphs (c)(1) (i) through (iii) and (c)(2) (i) through (iii) to read as follows:

§ 1308.13 Schedule III.

* * * * *

(c) * * *

(1) * * *

(i) Amobarbital	2126
(ii) Secobarbital	2316
(iii) Pentobarbital	2271

* * * * *

(2) * * *

(i) Amobarbital	2126
(ii) Secobarbital	2316
(iii) Pentobarbital	2271

* * * * *

3. 21 CFR 1308.14 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 1308.14 Schedule IV.

* * * * *

(b) * * *

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit, 9167

(2) Dextropopoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane), 9278

* * * * *

4. 21 CFR 1308.15 is amended by revising paragraph (c)(6) to read as follows:

§ 1308.15 Schedule V.

* * * * *

(c) * * *

(6) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

Dated: February 18, 1987.

John C. Lawn,

Administrator

[FR Doc. 87-3975 Filed 2-26-87; 8:45 am]

BILLING CODE 4410-09-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

[Rulemaking No. 2—Exchange Visitor Boards]

Functions of Exchange Visitor Policy Boards

AGENCY: United States Information Agency.

ACTION: Interim Final Rule.

SUMMARY: United States Information Agency amends Title 22, Code of Federal Regulations, Part 514 to provide for two Exchange Visitor Boards, an "Exchange Visitor Waiver Board" and an "Exchange Visitor Program Designation Suspension and Revocation Board" to perform certain functions and exercise certain responsibilities in connection with: (1) The Agency's statutory function of recommending to the Attorney General (Immigration and Naturalization Service) whether an exchange visitor shall be granted a waiver of the two year home country residence requirement of Title 8 United States Code, section 1182(e); and (2) other functions in the management of the exchange visitor program authorized by the Mutual Educational and Cultural Exchange Act of 1961 ("Fulbright-Hays Act") as amended, Pub. L. No. 87-256, 75 Stat. 527, 22 U.S.C. 2451 *et seq.*, and Subpart "C" of Part 514. By this notice an interim rule is adopted and comments are requested.

The purpose of the Exchange Visitor Waiver Board is to provide a mechanism for thorough and equitable review of waiver applications where there is disagreement between concerned United States government agencies as to whether the waiver should be granted, or which for some other reason are unusually significant, sensitive or controversial. The purpose of the Exchange Visitor Program Designation Suspension and Revocation Board is to provide a forum to consider and decide issues concerning revocation or suspension of designations of exchange visitor programs as provided in §514.17.

DATES: This interim rule will become effective March 27, 1987. Comments on this interm rule will be accepted until May 28, 1987. All written communications received on or before the closing date will be considered by the Agency before taking action on a final rule.

ADDRESS: Interested persons should sumit relevant views or arguments to Richard L. Fruchterman, Assistant General Counsel, United States Information Agency, 301 4th St., SW. Washington, DC 20547 (202) 485-7976.

SUPPLEMENTARY INFORMATION: The Agency has determined that this interim rule is "non-major" under criteria set forth in Executive Order 12291. The rule will not have an anual effect on the economy of $100 million or more; nor will it result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Furthermore, competition, employment, investment, productivity, innovation, and the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets will not be adversely affected.

Section 514.17 is revised so that the sponsor's program may be suspended for sixty days by the General Counsel or his or her designee for violations of this Subpart, acts of commission or omission which would endanger the health, safety, or welfare of participants in the sponsor's program, failure to submit complete, current and accurate reports as required by this Subpart or requested by the Agency, or conduct on the part of the sponsor which may have the effect of bringing the Exchange Visitor Programs administered by the Agency into notoriety or disrepute. The revised regulation provides that following suspension the Exchange Visitor Program Designation Suspension and Revocation Board may revoke the sponsor's designation. The procedures providing for due process set forth.

List of Subjects in 22 CFR Part 514

Cultural exchange programs. The United States Information Agency amends the Regulations in Chapter V, Part 514 of Title 22, Code of Federal Regulations as set forth below.

1. The authority citation for 22 CFR Part 514 is revised as follows and the authority citations for the sections are hereby removed.

Authority: U.S. Information and Education Exchange Act of 1948, as amended, Pub. L. 80-402, as amended (22 U.S.C. 1431-1442); Mutual Education and Cultural Exchange Act of 1961, as amended, Pub. L. 87-256, as amended, 75 Stat. 527, 534, 535 (8 U.S.C. 1101, 1104, 1182, 1258 and 22 U.S.C. 2451-2480); Pub. L. 97-241, 96 Stat. 291; 66 Stat. 166, 182, 184, 204 (8 U.S.C. 1101(a)(15)(j), 1182(e), 1182(j), 1258); Pub. L. 91-225, 84 Stat. 116, 117 (8 U.S.C. 1101, 1182); Pub. L. 97-116, 95 Stat. 1611, 1612, 1613 (8 U.S.C. 1101, 1182); Reorg. Plan. No. 2 of 1977; E.O. 12048 of March 27, 1978; USIA Delegation Order No. 85-5 (50 F.R. 27393).

2. Section 514.1 is amended by adding in alphabetical order the following:

§ 514.1 Definitions.

* * * * *

"Exchange Visitor Program Designation Suspension and Revocation Board" refers to a Suspension and Revocation Board consisting of the—

(1) Deputy Director of Academic Programs in the Bureau of Educational and Cultural Affairs;

(2) A person designated by the Chief of the Policy and Guidance Staff of the Bureau of Programs; and

(3) A legal member designated on a case-by-case basis by the General Counsel of the Agency from among the attorneys in the Office of General Counsel.

"Exchange Visitor Waiver Board" refers to a Board consisting of—

(1) The Chief of the Academic Programs Branch covering the geographical area of the applicant in the Bureau of Educational and Cultural Affairs;

(2) The country desk officer from the geographic Area Office covering the geographical area of the applicant;

(3) A legal member designated on a case-by-case basis by the General Counsel of the Agency from among the attorneys in the Office of General Counsel (other than the Supervisory Attorney, Waiver Review Branch).

"Facilitative Services Branch" means the staff within the Office of the General Counsel of the Agency designated by the General Counsel to carry out the functions and responsibilities of the Agency set forth in Subparts "B" and "C" of this part.

* * * * *

"Waiver Review Branch" means a Supervisory Attorney and supporting staff within the Office of the General Counsel of the Agency designated by the General Counsel to carry out the functions and responsibilities set forth in Subpart "D" of this part.

3. Section 514.17 is revised to read as follows:

§ 514.17 Revocation or suspension of designation.

(a) *Reasons.* The Agency may suspend or revoke the designation of a sponsor's program if it has been found that: there has been willful violation by the sponsor of one or more provisions of this part; there has been a negligent disregard of the applicable regulations; there has been a continued failure to comply with the provisions of this part; there has been a failure to submit complete, current and accurate reports as required by this Part or as requested by the Agency; the sponsor has committed an act of commission or omission which has or could have the effect of endangering the health, safety or welfare of participants in the sponsor's program; or there has been conduct on the part of the sponsor which may have the effect of bringing the Exchange-Visitor Programs administered by the Agency into notoriety or disrepute.

(b) *Suspension.* The General Counsel or his or her designee may in his or her discretion, upon not less than ten (10) calendar days written notice to the sponsor specifying the grounds therefor and the effective date thereof, summarily suspend the designation of the sponsor's program for a period not to exceed sixty (60) days. *Provided,* That, before the suspension of the sponsor is effected the General Counsel or his or her designee shall consider and take into account any response, including any documentary evidence or affidavits submitted by the sponsor in response to such notice and shall decide whether or not to effect the suspension. The sponsor may appeal the suspension decision to the Exchange Visitor Program Designation Suspension and Revocation Board which must make a decision within ten (10) working days of receipt of the appeal. The Exchange Visitor Program Designation Suspension and Revocation Board will issue a written decision signed by all three voting members, stating the basis for its action. A decision will be reached by a majority vote, a Board member who disagrees may write a dissenting opinion. Written notice of any suspension shall be given on or before the effective date thereof to the sponsor, to the Immigration and Naturalization Service, to the Bureau of Consular Affairs of the Department of State, and such other agencies, public or private, as the Board shall deem necessary. During the period of such suspension no Forms IAP-66 issued by the sponsor shall be recognized or accepted for the issuance of non-immigrant visas for entry into the United States.

(c) *Revocation.* Revocation must be preceded by Suspension following the procedures outlined in paragraph (b) of this section. Before the institution of formal proceedings for the revocation of designation, the sponsor shall be given notice in writing of the facts or conduct warranting such revocation and shall be given a reasonable opportunity to demonstrate or to achieve compliance with all lawful requirements. In the event that the sponsor does not, after the written notice last above mentioned, demonstrate to the satisfaction of the General Counsel that revocation of its designation is not warranted, then the sponsor shall be given not less than thirty (30) days formal notice in writing of intention to revoke its designation, including a full statement of the facts and reasons to be relied on therefor, and advising the sponsor of its right to formal hearing before the Exchange Visitor Program Designation Suspension and Revocation Board pursuant to Title 5, United States Code, sections 556 and 557, and its right to be represented by counsel, to cross-examine witnesses and to present oral or documentary evidence. If such a hearing is demanded in writing by the sponsor within ten days after receipt of formal notice, the hearing shall be scheduled promptly, after proper notice, and shall be conducted in accordance with section 556. If a hearing is not demanded the Exchange Visitor Program Designation Suspension and Revocation Board shall act on the proposed revocation by majority vote on the basis of available evidence, including any evidence submitted by the sponsor. The Exchange Visitor Program Designation Suspension and Revocation Board will issue a written decision signed by all three voting members, stating the basis for its action. Whenever one of the three Board members disagrees with the majority, the member may write a dissenting opinion.

(d) If the Exchange Visitor Program Designation Suspension and Revocation Board decides that the designation of the sponsor should be revoked, a copy of its decision shall be given to the sponsor, the Immigration and Naturalization Service, the Bureau of Consular Affairs of the Department of State, and to such other agencies, public or private, as the Board shall deem necessary, and thereafter no Forms IAP-66 issued by the sponsor shall be recognized or accepted for the issuance of non-immigrant visas for entry into the United States, *Provided,* That no such revocation shall invalidate any such visas previously issued for Exchange-Visitors enrolled in the sponsor's programs, nor in any way diminish or restrict the sponsor's legal or financial responsibilities toward such visitors.

4. Section 514.18 is revised to read as follows:

§ 514.18 Authority of the Director or of the General Counsel.

Except as to acts herein provided to be done by the Waiver Board or the Suspension and Revocation Board established pursuant to this Part, all acts herein provided to be done by the Agency shall be performed on its behalf by the General Counsel, his or her Deputy, or his or her designee. Nothing in these regulations precludes the exercise of any functions by the Director.

5. Section 514.32 is revised to read as follows:

§ 514.32 Action by the Director on requests for waivers.

(a) Upon receipt of a request for a recommendation of waiver of the two-year home country physical residence requirement of section 212(e) of the Immigration and Nationality Act, as amended, the request shall be forwarded to the Supervisory Attorney of the Waiver Review Branch in the Office of the General Counsel of the Agency, who will review the program,

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policy and foreign relations aspects of the case, and shall make a recommendation in the case.

(b) The recommendation of the Supervisory Attorney shall constitute the final recommendation of the Agency and shall be transmitted to the Attorney General or his or her designee for decision except in: cases involving requests of interested United States Government agencies, in which the recommendation of the Supervisory Attorney is unfavorable; cases in which another federal agency has provided the Agency with a written opposition to a waiver in which the recommendation of the Supervisory Attorney is favorable; cases in which a "no objection" letter from the Government of the exchange visitor's country or nationality or last legal residence appears in the file and whose participation in any program is financed by the United States Government in an amount exceeding $2000, and as to which the recommendation of the Supervisory Attorney is unfavorable, except for an exchange visitor who received graduate medical education; cases involving claims of probable persecution on the ground of race, religion, political opinion, nationality, or membership in a particular social group, in which the Department of State has provided the Agency with a written opinion that there is no genuine basis for a claim of probable persecution on the ground alleged, and in which the recommendation of the Supervisory Attorney is favorable; and cases in which for any reason the Supervisory Attorney requests Exchange Visitor Waiver Board review of his or her recommendation. The Agency's complete file in any such case shall be referred to the Exchange Visitor Waiver Board. The Exchange Visitor Waiver Board shall review the program, policy and foreign relations aspects of the case, and shall prepare and transmit to the Attorney General or his or her designee a recommendation which, whether favorable or unfavorable, shall constitute the final recommendation of the Agency. The Exchange Visitor Waiver Board's recommendation shall be signed by its Chairperson. The exchange visitor will be advised of the decision in the case by the Immigration and Naturalization Service.

Dated: February 2, 1987.

C. Normand Poirier,

Acting General Counsel.

[FR Doc. 87-4235 Filed 2-26-87; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 1, 4, 5, 7, 9, 18, 19, 20, 21, 22, 47, 55, 70, 71, 72, 170, 178, 194, 250, 251, 252, and 285

[T.D. ATF-249]

Technical Amendments

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This Treasury decision makes technical amendments and conforming changes to Chapter I of Title 27 Code of Federal Regulations (CFR). It makes nomenclature changes in Parts 1, 70, and 71; changes the address for the ATF Distribution Center, and; makes conforming changes to Part 9. Some of these changes were requested by the CFR Unit of the Office of the Federal Register. All changes are to provide clarity and uniformity throughout Title 27 Code of Federal Regulations.

EFFECTIVE DATE: February 27, 1987.

FOR FURTHER INFORMATION CONTACT: Lori Weins, FAA, Wine and Beer Branch, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202) 566-7626.

SUPPLEMENTARY INFORMATION: The Bureau of Alcohol, Tobacco and Firearms administers regulations published in Chapter I of Title 27 Code of Federal Regulations. These regulations are updated April 1 of each year to incorporate new or revised regulations that were published by ATF in the **Federal Register** during the preceding year. Upon reviewing Title 27 for the annual revision ATF and the CFR Unit of the Office of the Federal Register identified several amendments and conforming changes that are needed to provide uniformity in Chapter I of Title 27, Code of Federal Regulations. These amendments and changes do not make any substantive regulations changes and are only intended to improve the clarity of Title 27. Throughout Title 27 the address for the ATF Distribution Center has been changed to reflect the new address wherever it appears. Nomenclature changes have been made in Parts 1, 70, and 71. Part 9 has been amended by only making conforming changes in the map and boundary descriptions to provide uniformity throughout the Part. In Part 71 fees for services provided under the Freedom of Information Act are being increased in accordance with 31 CFR Part 1, and the addresses for the ATF Regional Offices have been updated.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions, or

(c) Significant adverse affect on competiton, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets. Administrative Procedures Act

Because this final rule merely makes technical amendments and conforming changes to improve the clarity of the regulations, it is unnecessary and impractical to issue this final rule with notice and public procedure under 5 U.S.C. 553(b). Similarly it is unnecessary and impractical to subject this final rule to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal author of this document is Lori D. Weins, of the FAA, Wine, and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 1

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Imports, Warehouses.

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

27 CFR Part 7

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, Labeling.

27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural area, Wine.

27 CFR Part 18

Administrative practice and procedure, Authority delegations, Excise taxes, Exports, Labeling, Reporting and recordkeeping requirements, Security measures, Spices and flavorings, Stills, Surety bonds.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 20

Administrative practice and procedure, Advertising, Alcohol and alcohol beverages, Authority delegations, Chemicals, Claims, Cosmetics, Excise taxes.

27 CFR Part 21

Alcohol and alcohol beverages, Authority delegations, Chemicals, Gasohol.

27 CFR Part 22

Administrative practice and procedure, Advertising, Alcohol and alcohol beverages, Authority delegations, Claims, Excise taxes, Reporting and recordkeeping requirements, Surety bonds.

27 CFR Part 47

Administrative practice and procedure, Arms control, Arms and Munitions, Authority delegations, Chemicals, Customs Duties and Inspection, Imports, Penalties, Reporting and recordkeeping Requirements, Scientific Equipment, Seizures and forfeitures.

27 CFR Part 55

Administrative practice and procedure, Authority delegations, Customs duties and inspection, Explosives, Exports, Hazardous materials transportation, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Warehouses.

27 CFR Part 70

Administrative practice and procedure, Authority delegations, Claims, Government employees, Law enforcement, Law enforcement officers.

27 CFR Part 71

Administrative practice and procedure, Authority delegations, Freedom of information, Privacy.

27 CFR Part 72

Administrative practice and procedure, Authority delegations, Seizures and forfeitures, Surety bonds.

27 CFR Part 170

Alcohol and alcoholic beverages, Authority delegations, Claims, Customs duties and inspection, Disaster assistance, Excise taxes, Labeling, Liquors, Penalties, Reporting and recordkeeping requirements, Surety bonds, Wine.

27 CFR Part 178

Administrative practice and procedure, arms and munitions, exports, imports, intergovernmental relations, penalties, reporting and recordkeeping requirements, research seizures and forfeitures.

27 CFR Part 194

Alcohol and alcoholic beverages, Authority delegations, Beer, Claims, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Wine.

27 CFR Part 250

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Customs duties and inspection, Electronic funds transfers, Excise taxes, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Transportation, U.S. possessions, Wine.

27 CFR Part 251

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Customs duties and inspection, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Perfume, Reporting and recordkeeping requirements, Transportation, Wine.

27 CFR Part 252

Aircraft, Alcohol and alcoholic beverages, Armed forces, Authority delegations, Beer, Claims, Excise taxes, Exports, Fishing vessels, Foreign trade zones, Liquors, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine.

27 CFR Part 285

Administrative practice and procedure, Authority delegations, Cigarettes papers and tubes, Claims, Excise taxes, Packaging and containers, Penalties, Seizures and forfeitures, Surety bonds, Reporting and recordkeeping requirements.

Authority and Issuance

Title 27, Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 is revised to read as follows:

Authority: 27 U.S.C. 203, 204.

§ 1.25 [Amended]

2. In § 1.25 replace "Director, Alcohol, and Tobacco Tax Division" wherever it appears with "Director, Bureau of Alcohol, Tobacco and Firearms."

§ 1.59 [Amended]

3. In § 1.59(c) replace "Director, Alcohol and Tabacco Tax Division" in the second sentence with "Director, Bureau of Alcohol, Tobacco and Firearms."

PART 4—[AMENDED]

4. The authority citation for Part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

§ 4.3 [Amended]

5. Section 4.3(c) is revised to read as follows:

* * * * *

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

* * * * *

§ 4.38 [Amended]

6. Section 4.38(f) is amended by removing the phrase "other then the mandatory label information" in the first sentence.

PART 5—[AMENDED]

7. The authority citation for Part 5 continues to read as follows:

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Authority: 26 U.S.C. 5301, 7805; 27 U.S.C. 205.

8. Section 5.3(c) is revised to read as follows:

§ 5.3 Forms prescribed.

* * * * *

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

§ 5.38 [Amended]

9. Section 5.38(d) is amended by replacing the word "new" with the word "net".

PART 7—[AMENDED]

10. The authority citation for Part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

§ 7.3 [Amended]

11. Section 7.3(c) is revised to read as follows:

* * * * *

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

§ 7.24 [Amended]

12. Section 7.24(f)(2) is amended by replacing the word "Klumbacher" with "Kulmbacher" in the second sentence.

PART 9—[AMENDED]

13. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

§ 9.27 [Amended]

14. Section 9.27(b) is revised to read as follows:

* * * * *

(b) *Approved Map.* The appropriate map for determining the boundaries of the Lime Kiln Valley Viticultural area is: "Paicines Quadrangle, California," 1968, 7.5 minute series.

* * * * *

§ 9.29 [Amended]

15. Section 9.29(b) is revised to read as follows:

* * * * *

(b) *Approved maps.* The maps showing the boundaries of the Sonoma valley viticultural area are entitled:

(1) "Cuttings Wharf, Calif.", 1949 (photorevised 1968 and photoinspected 1973), 7.5 minute quadrangle;

(2) "Petaluma Point, Calif.", 1959 (photorevised 1968 and photoinspected 1973), 7.5 minute quadrangle;

(3) "Sears Point, Calif.", 1951 (photorevised 1968), 7.5 minute quadrangle;

(4) "Petaluma River, Calif.", 1954 (photorevised 1968 and 1973), 7.5 minute quadrangle;

(5) "Glen Ellen, Calif.", 1954 (photorevised 1968 and photoinspected 1973), 7.5 minute quadrangle;

(6) "Cotati, Calif.", 1954 (photorevised 1968 and 1973), 7.5 minute quadrangle;

(7) "Santa Rosa, Calif.", 1954 (photorevised 1968 and 1973), 7.5 minute quadrangle;

(8) "Kenwood, Calif.", 1954 (photorevised 1968 and photoinspected 1973), 7.5 minute quadrangle; and

(9) Appropriate Sonoma County tax assessor's maps showing the Sonoma County-Napa County line.

* * * * *

§ 9.32 [Amended]

16. Section 9.32(c)(5) and (6) are revised to read as follows:

* * * * *

(c) * * *

(5) Then following that contour line generally northwestward to Carneros Creek (on the Sonoma Quadrangle map).

(6) Then following the same contour line generally southeastward to the range line R. 5 W/R. 4 W (on the Napa Quadrangle map).

* * * * *

§ 9.34 [Amended]

17. Section 9.34(b) and (c) are revised to read as follows:

* * * * *

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Finger Lakes viticultural area are two U.S.G.S. maps scaled 1:250,000. They are entitled:

(1) "Rochester," Location diagram NK 18–1, 1961; and

(2) "Elmira," Location diagram NK 18–4, 1968.

(c) Boundaries. The boundaries of the Finger Lakes viticultural area, based on landmarks and points of reference found on the approved maps, are as follows:

(1) Starting at the most northwest point, the intersection of the Erie Canal and the north/south Conrail line south of the City of Rochester.

(2) Then east along the course of the Erie Canal approximately 56 miles (45 miles due east) to the intersection of New York State Highway 89 (NY–89).

(3) Then south on NY–89 four miles to the intersection of highway US–20.

(4) Then east on US–20 for 36 miles to the intersection of interstate 81 (I–81).

(5) Then south along I–81 for ten miles to NY–281.

(6) Then south along NY–281 for 20 miles around the western city limits of Cortland where NY–281 becomes NY–13.

(7) Then continuing southwest on NY–13 (through the cities of Dryden and Ithaca) approximately 36 miles to the intersection of NY–224.

(8) Then due west one mile to the southern boundary of Schuyler County.

(9) Then continuing west along this county line 20 miles to the community of Meads Creek.

(10) Then north along the Schuyler-Steuben county line four miles to the major east-west power line.

(11) Then west along the power line for eight miles to the intersection of NY–17 (four miles southeast of the community of Bath).

(12) Then northwest on NY–17 approximately nine miles to the intersection of I–390.

(13) Then northwest on I–390 for 21 miles to the intersection of NY–36.

(14) Then north for two miles through the community of Dansville to NY–63.

(15) Then northwest on NY–63 approximately 18 miles to the intersection of NY–39, just south of Genesco.

(16) Then north on NY–39 nine miles to the intersection where the west and north/south Conrail lines meet at the community of Avon.

(17) Then north along the north/south Conrail line for 15 miles to the beginning point at the intersection of the Erie Canal.

§ 9.35 [Amended]

18. Section 9.35(b)(3) is revised to read as follows:

* * * * *

(3) "Pismo Beach Quadrangle, California-San Luis Obispo Co.," 7.5 minute series; and

* * * * *

§ 9.36 [Amended]

19. Section 9.36(c) is revised to read as follows:

* * * * *

(c) *Boundaries.* (1) Beginning at the northwest corner of Section 22 T13N R11W.

(2) Then southerly along the section line between Sections 22 and 21 approximately 1700 feet to the intersection of the section line and the ridge line (highest elevation line) between the McDowell Creek Valley and the Dooley Creek Valley.

(3) Then southeasterly along the ridge line (highest elevation line) to the intersection of the ridge line and the 1000-foot contour line in Section 27.

(4) Then southeasterly and on the McDowell Creek Valley side of the ridge along the 1000-foot contour line to the intersection of the 1000-foot contour line and the south section line of Section 27.

(5) Then easterly along the section line between Sections 27 and 34 and between Sections 26 and 35 to the intersection of the section line and the centerline of Younce Road.

(6) Then southeasterly and then northeasterly along Younce Road to the intersection of Younce Road and the section line between Sections 26 and 35.

(7) Then due north from the section line, across Coleman Creek approximately 1250 feet, to the 1000-foot contour line.

(8) Then westerly and then meandering generally to the north and east along the 1000-foot contour line to the intersection of the 1000-foot contour line and section line between Sections 26 and 25.

(9) Then continuing along the 1000-foot countour line easterly and then northwesterly in Section 25 to the intersection of the 1000-foot contour line and the section line between Sections 26 and 25.

(10) Then northerly along the 1000-foot contour line to the intersection of the 1000-foot contour line and the section line between Sections 23 and 24.

(11) Then northerly along the section line across State Highway 175 approximately 1000 feet to the intersection of the section line and the 1000-foot contour line.

(12) Then generally to the northwest along the 1000-foot contour line through Sections 23 and 14 and into Section 15 to the intersection of the 1000-foot contour line and the flowline of an unnamed creek near the northeast corner of Section 15.

(13) Then southwesterly and down stream along the flowline of said unnamed creek and across Section 15, to the stream's intersection with the section line between Sections 15 and 16.

(14) Then southerly along the section approximately 100 feet to the northwest corner of Section 22 and to the point of beginning.

§ 9.37 [Amended]

20. Section 9.37(c) is revised to read as follows:

* * * * *

(c) *Boundaries.* The Shenandoah Valley viticultural Area is located in portions of Amador and El Dorado Counties of California. The boundaries are as follows:

(1) Beginning at the point where the Consumnes River meets Big Indian Creek.

(2) Then south, following Big Indian Creek, until Big Indian Creek meets the boundary between Sections 1 and 2 of Township 7 North Range 10 East.

(3) Then following this boundary south until it meets the Oleta (Fiddletown) Road.

(4) Then following the Oleta Road east until it meets the boundary between Sections 6 and 5 of Township 7 North Range 11 East.

(5) Then following that boundary north into Township 8 North Range 11 East, and continues north on the boundary between Sections 31 and 32 until this boundary meets Big Indian Creek.

(6) Then following Big Indian Creek in a northeasterly direction until Big Indian Creek meets the boundary between Sections 28 and 27 of Township 8 North Range 11 East.

(7) Then following this boundary north until it reaches the southeast corner of Section 21 of Township 8 North Range 11 East.

(8) The boundary then proceeds east, then north, then west along the boundary of the western half of Section 22 of Township 8 North Range 11 East to the intersection of Sections 16, 15, 21, and 22.

(9) Then proceeding north along the boundary line between Sections 16 and 15 of Township 8 North Range 11 East and continues north along the boundary of Sections 9 and 10 of Township 8 North Range 11 East to the intersection of Sections 9, 10, 3, and 4 of Township 8 North Range 11 East.

(10) Then proceeding west along the boundary of Sections 9 and 4.

(11) Then continuing west along the boundary of Sections 5 and 8 of Township 8 North Range 11 East to the Consumnes River.

(12) Then the boundary proceeds west along the Consumnes River to the point of the beginning.

§ 9.43 [Amended]

21. Section 9.43(c) is revised to read as follows:

* * * * *

(c) *Boundaries.* The Rocky Knob viticultural area is located in Floyd and Patrick Counties in southern Virginia. The boundaries are as follows:

(1) The beginning point is the intersection of Virginia State Route Nos. 776 and 779 at Connors Grove.

(2) Then follow State Route No. 779 south and east to the Blue Ridge Parkway.

(3) Then south on the parkway to its first intersection with State Route No. 758.

(4) Then follow State Route No. 758 east to the intersection of State Route No. 726 at the southern boundary of the Rocky Knob Recreation Area.

(5) Then follow the boundary of the Rocky Knob Recreation Area south then in a northeastern direction to where the boundary first intersects State Route No. 8.

(6) Then from that point at State Route No. 8, proceed northeast in a straight line to State Route No. 719 and Widgeon Creek at a point about 0.7 of a mile west of the intersection of State Route Nos. 719 and 710.

(7) Then proceed northwest in a straight line to the intersection with State Route No. 710 and the Blue Ridge Parkway.

(8) Then follow the Parkway southwest to the intersection with State Route No. 726.

(9) Then turn right on State Route No. 726 and proceed 0.6 of a mile to a roadway at the 3308 elevation point on the map.

(10) Then from that point, proceed west in a straight line back to the starting point at Connors Grove.

§ 9.48 [Amended]

22. Section 9.48 (b) and (c) are revised to read as follows:

* * * * *

(b) *Approved maps.* Approved maps for the Monticello viticultural area are three 1971 U.S.G.S. maps titled:

(1) Charlottesville Quadrangle, Virginia: 1:250,000 minute series;

(2) Roanoke Quadrangle, Virginia: 1:250,000 minute series; and

(3) Washington, DC: 1:250,000 minute series.

(c) *Boundaries.* (1) Beginning at Norwood, Virginia, follow the Tye River west and northwest until it intersects with the eastern boundary of the George Washington National Forest.

(2) Then follow this boundary northeast to Virginia Rt. 664.

(3) Then west following Rt. 664 to its intersection with the Nelson County Line.

(4) Then northeast along the Nelson County line to its intersection with the Albemarle County line at Jarman Gap.

(5) Then from this point continuing northeast along the eastern boundary of the Shenandoah National Park to its intersection with the northern Albemarle County line.

(6) Then following the county line southeast to its intersection with the Orange County line.

(7) Then continuing north on the county line to its intersection with the Rapidan River, which continues as the Orange County line.

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(8) Then following the Rapidan River east and northeast to its confluence with the Mountain Run River.

(9) Then following the Mountain Run River southwest to its intersection with Virginia Route 20.

(10) Then continuing southwest along Rt. 20 to the corporate limits of the town of Orange.

(11) Then following the corporate limit line southwest to its intersection with U.S. Route 15.

(12) Then continuing southwest on Rt. 15 to its intersection with Virginia Rt. 231 in the town of Gordonsville.

(13) Then southwest along Rt. 231 to its interesection with Albemarle County line.

(14) Then continuing southwest along the county line to its intersection with the James River.

(15) Then following the James River to its confluence with the Tye River at Norwood, Virginia, the beginning point.

§ 9.49 [Amended]

23. Section 9.49(c)(2)(xv) is revised to read as follows:

* * * * *

(xv) From there in a straight line westward to the 952 ft. summit of Musconetcong Mountain (on the Frenchtown Quadrangle map).

* * * * *

§ 9.50 [Amended]

24. Section 9.50(c)(15) is revised to read as follows:

* * * * *

(c) * * *

(15) The boundary follows the Pauba Land Grant boundary northwesterly, then west, then south, then west, to Warren Road (which coincides with the range line dividing Range 1 West from Range 2 West).

* * * * *

§ 9.60 [Amended]

25. Section 9.60(c) is revised to read as follows:

* * * * *

(c) *Boundaries.* The Shenandoah Valley Viticultural area is located in Frederick, Clarke, Warren, Shenandoah, Page, Rockingham, Augusta, Rockbridge, Botetourt, and Amherst Counties in Virginia, and Berkeley and Jefferson Counties in West Virginia. The boundaries are as follows:

(1) The boundary line starts at the point of the intersection of the Potomac River and the Virginia-West Virginia State line approximately eight miles east of Charlestown, West Virginia.

(2) Then the boundary proceeds southwesterly approximately 14.8 miles along the State line, which essentially follows the crest of the Blue Ridge Mountains, to its intersection with the western border line of Clarke County, Virginia.

(3) Then the boundary continues approximately 13.8 miles southwesterly along the county line and the crest of the Blue Ridge to its intersection with the western boundary line of Warren County, Virginia.

(4) Then the boundary continues approximately 15 miles along the Warren County line to its intersection with the Skyline Drive.

(5) Then the boundary continues approximately 71 miles in a southwesterly direction along the Skyline Drive and the Blue Ridge to its intersection with the Blue Ridge Parkway.

(6) Then the boundary continues approximately 53 miles in a southeasterly direction along the Blue Ridge Parkway to its intersection with the James River.

(7) Then the boundary proceeds approximately 44 miles along the James River in a west-northwesterly direction to its intersection with the northwest boundary line of the Jefferson National Forest near Eagle Rock.

(8) Then the boundary proceeds approximately 10.5 miles in a northeasterly direction along the Jefferson National Forest line and along the crest of North Mountain to its intersection with the western boundary line of Rockbridge County.

(9) Then the boundary continues approximately 23 miles along the county line in the same northeasterly direction to its intersection with the Chesapeake and Ohio Railroad.

(10) Then the boundary continues approximately 23 miles along the railroad between the Great North Mountain and the Little North Mountain to its intersection with the southeastern boundary line of the George Washington National Forest at Buffalo Gap.

(11) Then the boundary continues approximately 81 miles northeasterly along the George Washington National Forest Line to the Vertical Control Station, (elevation 1883), on the crest of Little North Mountain approximately 3 miles west of Van Buren Furnace.

(12) Then the boundary line continues approximately 53 miles northeasterly along the crest of Little North Mountain to its intersection with the Potomac River in Fort Frederick State Park.

(13) Then the boundary continues approximately 47.4 miles southeasterly along the Potomac River to the beginning point at that Rivers intersection with the boundary line between West Virginia and Virginia.

§ 9.65 [Amended]

26. Section 9.65(b) and (c) are revised to read as follows:

* * * * *

(b) *Approved maps.* The appropriate maps for determining the boundaries of the North Fork of Roanoke viticultural area are six U.S.G.S. Virginia, 7.5 minute series maps. They are:

(1) McDonalds Mill Quadrangle, 1965;

(2) Glenvar Quadrangle, 1965;

(3) Elliston Quadrangle, 1965;

(4) Ironto Quadrangle, 1965;

(5) Blacksburg Quadrangle, 1965; and

(6) Newport Quadrangle, 1965.

(c) Boundaries. The North Fork of Roanoke viticultural area is located in parts of Roanoke and Montgomery Counties in southern Virginia.

(1) The point of the beginning is in the north at the intersection of State Routes 785 and 697 in Roanoke County.

(2) Then the boundary follows State Route 697 northeast over Crawford Ridge to the intersection at State Route 624.

(3) Then the boundary turns southwest on State Route 624 along the boundary of the Jefferson National Forest and then continues across the Montgomery County line to U.S. 460 (business).

(4) Then the boundary follows U.S. Route 460 (business) south through the town of Blacksburg.

(5) Then the boundary continues on U.S. Route 460 (bypass) to the intersection of U.S. Route 460 East, where it turns east for approximately one mile to the intersection of U.S. Interstate Highway 81 at Interchange 37.

(6) Then the boundary continues northeast on Interstate Highway 81 to its intersection with State Route 603 at interchange 38.

(7) Then the boundary continues northwest on State Route 603 to its intersection with State Route 629.

(8) Then the boundary follows State Route 629 (which later becomes State Route 622 north of Brandshaw Creek) 2 miles across the Roanoke County line to where it intersects the Chesapeake and Potomac Telephone Company right-of-way.

(9) Then the boundary turns northwest along the C & P right-of-way over Pearis Mountain to the point where the right-of-way intersects State Route 785, one quarter mile northeast of the intersections of State Routes 785 and 697.

(10) Then the boundary follows State Route 784 back to the beginning point.

§ 9.66 [Amended]

27. Section 9.66(c) (1), (7), (8), (9), and (13) are revised to read as follows:

* * * * *

(c) * * *

(1) Starting point Healdsburg map-Healdsburg Avenue Bridge over the Russian River at Healdsburg. Proceed south along Russian River to the point where Russian River and Dry Creek converge, from this point proceed west in a straight line to Forman Lane.

* * * * *

(7) Proceed in a westerly direction along California Hwy 116 to Monte Rio where it intersects the Bohemian Hwy.

(8) Proceed southeast along the Bohemian Hwy onto the Camp Meeker Map and then the Valley Ford map to the town of Freestone where it intersects the Bodega Road.

(9) Proceed northeast along the Bodega Road onto the Sebastopol map to the city of Sebastopol where it becomes California Hwy 12 then northeast along California Hwy 12 to its intersection with Wright Road.

* * * * *

(13) Proceed in a northerly direction along Franz Vally Road to the northerly most crossing of Franz Creek.

* * * * *

§ 9.67 [Amended]

28. Section 9.67 is amended by adding a new paragraph (b)(13) to read as follows:

* * * * *

(b) * * *

(13) "Middletown Quadrangle, Maryland," 7.5 minute series, 1953 (photorevised 1979);

* * * * *

§ 9.68 [Amended]

29. Section 9.68(c) is revised to read as follows:

* * * * *

(c) *Boundaries.* The Merritt Island viticultural area is located in Yolo County, California, six miles south of the City of Sacramento. The boundaries of the Merritt Island viticultural area, using landmarks and points of reference found on the appropriate U.S.G.S. maps, are as follows:

(1) Starting at the most southernly point, the intersection of Sutter Slough with the Sacramento River.

(2) Then west along the course of Sutter Slough for 0.54 miles until it intersects Elk Slough.

(3) Then northeast along the course of Elk Slough for 9.58 miles to the community of Clarksburg and the intersection of Sacramento River.

(4) Then southeasterly along the course of the Sacramento River for 7.8 miles to the beginning point.

§ 9.71 [Amended]

30. Section 9.71(c) is revised to read as follows:

* * * * *

(c) *Boundaries.* The Hermann viticultural area is located in central Missouri along and south of the Missouri River, in the northern portions of Gasconade and Franklin Counties. The boundaries of the Hermann viticultural area, using landmarks and points of reference found on the appropriate U.S.G.S. maps, are as follows:

(1) Starting at the intersection of the Gasconade River with the Missouri River.

(2) Then continuing east and northeast approximately 16.5 miles along the Missouri River Pacific Railroad, as it parallels the Missouri River, to the Gasconade/Franklin County line.

(3) Then continuing along the Missouri Pacific Railroad southeast approximately 8.5 miles to the intersection Big Berger Creek.

(4) Then southwest along the winding course of Big Berger Creek for approximately 20 miles (eight miles due southwest) to Township line T.44/45N.

(5) Then west along the T.44/45N. line approximately 15.5 miles to the intersection of First Creek.

(6) Then north and northwest along the course of First Creek approximately 13.7 miles (6.5 miles straight northwest) to the intersection of the Gasconade River.

(7) Then northeast along the course of the Gasconade River approximately 3.8 miles to the beginning point.

§ 9.75 [Amended]

31. Section 9.75(c)(43) is revised to read as follows:

* * * * *

(c) * * *

(43) Then southwest following Washington Highway 126 and U.S. Highway 12 through Marengo, Dayton, and Waitsburg to Dry Creek in Dixie;

§ 9.78 [Amended]

32. Section 9.78(c)(2) is revised to read as follows:

* * * * *

(c) * * *

(2) The boundary follows the Illinois-Indiana State line northerly (across the Belleville map) to Interstate Route 64 (Vincennes map).

* * * * *

§ 9.79 [Amended]

33. Section 9.79(c) is revised to read as follows:

* * * * *

(c) *Boundaries.* The Lake Michigan Shore viticultural area is located in the southwestern corner of the State of Michigan. The boundaries of the Lake Michigan Shore viticultural area, using landmarks and points of reference found on the appropriate U.S.G.S maps, are as follows:

(1) Starting at the most northern point, the intersection the Kalamazoo River with Lake Michigan.

(2) Then southeast along the winding course of the Kalamazoo River for approximately 35 miles until it intersects the Penn Central railroad line just south of the City of Otsego.

(3) Then south along the Penn Central railroad line, through the City of Kalamazoo, approximately 25 miles until it intersects the Grand Trunk Western railroad line at the community of Schoolcraft.

(4) Then southwest along the Grand Trunk Western railroad line approximately 35 miles to the Michigan/Indiana State line.

(5) Then west along the Michigan-Indiana State line approximately 38 miles until it meets Lake Michigan.

(6) Then north along the eastern shore of Lake Michigan approximately 72 miles to the beginning point.

§ 9.80 [Amended]

34. Section 9.80(b) is revised to read as follows:

* * * * *

(b) *Approved map.* The approved map for the York Mountain viticultural area is the U.S.G.S. map entitled "York Mountain Quadrangle," 7.5 minute series (topographic), 1949 (photorevised 1979).

* * * * *

35. Section 9.80(c)(4) is revised to read as follows:

* * * * *

(c) * * *

(4) Then proceed north along Dover Canyon Creek to its intersection with Dover Canyon Road, then following Dover Canyon Road (which becomes Dover Canyon Jeep Trail) back to the point of beginning.

§ 9.81 [Amended]

36. Section 9.81(b) is revised to read as follows:

* * * * *

(b) *Approved maps.* The approved maps for the Fiddletown viticultural area are four U.S.G.S. maps entitled:

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(1) Fiddletown, CA, 1949, 7.5 minute series;
(2) Amador City, CA, 1962, 7.5 minute series;
(3) Pine Grove, CA, 1948 (photoinspected 1973), 7.5 minute series;
(4) Aukum, CA, 1952 (photorevised 1973), 7.5 minute series.
* * * * *

§ 9.91 [Amended]

37. Section 9.91(c) is revised to read as follows:
* * * * *

(c) *Boundaries.* The Walla Walla Valley viticultural area, located in the southeast portion of Washington State and the northeast portion of Oregon. The boundaries of the Walla Walla Valley viticultural area, using landmarks and points of reference found on the appropriate U.S.G.S. maps, are as follows:

(1) Beginning at a point just northeast of Dixie, Washington, in T8N/37E, at the intersection of Highway 3 and Mud Creek.

(2) Then southwest along State Highway 3 approximately 4 miles to its intersection with the Northern Pacific Railroad in T7N/R37E.

(3) Then follow the Northern Pacific in a generally westerly direction through Walla Walla, continuing west then northwest along the railroad line, past Pedigo Station approximately 7 miles until it intersects the secondary road in T8N/R34E.

(4) Then southwest in a straight line approximately 12½ miles until it meets the Union Pacific Railroad at the intersection of T7N and R32E/R33E.

(5) Then south along R32E/R33E for 2 miles until it intersects the 1,000 foot contour line.

(6) Then follow the 1,000 foot contour line in a southeast direction until it intersects the Union Pacific Railroad at T5N/R35E.

(7) Then south along said track until it intersects Dry Creek in T4N/R35E.

(8) Then southeast along Dry Creek until it intersects the 2,000 foot contour line.

(9) Then continue in a northeast direction along the 2,000 foot contour line until it intersects Dry Creek in T7N/R38E.

(10) Then north along Dry Creek, approximately 3½ miles, until it intersects the Northern Pacific Railroad at T8N/R37E.

(11) Then continuing in a northeast direction along said track until it intersects Mud Creek.

(12) Then follow Mud Creek in a northwest direction to the beginning point where it intersects State Highway 3.

§ 9.92 [Amended]

38. Section 9.92(c)(2) is revised to read as follows:
* * * * *

(c) * * *

(2) Then north approximately 7 miles following Sunnyside Road and continuing along the section line to the point of intersection of section 16, 17, 20, and 21, T.11S., R.21E.;
* * * * *

§ 9.94 [Amended]

39. Section 9.94(c) is revised to read as follows:
* * * * *

(c) *Boundaries.* The Howell Mountain viticultural area is located in Napa County, California, and is part of the Napa Valley viticultural area. The exact boundaries of the viticultural area, based on landmarks and points of reference found in the approved maps, as follows:

(1) Beginning at the 1,400 foot contour line at the intersection of Sections 15 and 16 in R6W/T9N of the Detert Reservoir Quadrangle U.S.G.S. map.

(2) Then continuing in an east and southeast direction along the 1,400 foot contour line to the southeast corner of Section 23 in R5W/T8N.

(3) Then in a generally northwest direction along the 1,400 foot contour line until it intersects the line between Sections 21 and 22 in R6W/T9N.

(4) Then north along the Section 21/22 boundary line to the starting point at the 1,400 foot contour line.

§ 9.98 [Amended]

40. Section 9.98 is amended by removing paragraph (b)(17); redesignating existing paragraphs (b)(18) through (36) as (b) (17) through (35), and; adding new paragraphs (b) (36) through (38) to read as follows:
* * * * *

(b) * * *

(36) Greenfield, CA, 1956

(37) Salinas, CA, 1947 (photorevised 1975)

(38) Seaside, CA, 1947 (photorevised 1968, photoinspected 1974)
* * * * *

§ 9.98 [Amended]

41. Section 9.98(c) (37) and (72) are revised to read as follows:
* * * * *

(c) * * *

(37) Then north along the line separating Range 8 E. and Range 9 E. along the western boundaries of sections 36, 25, 24, 13, 12, and 1, T. 19S., R. 8 E. to the northeast corner of section 1, T. 19 S., R. 9 E.
* * * * *

(72) Then east to the northwest corner of section 2, T. 17 S., R. 4 E.
* * * * *

§ 9.102 [Amended]

42. Section 9.102(c)(1) is revised to read as follows:
* * * * *

(c) * * *

(1) The beginning point is the northern most point at which the 1600-foot contour line crosses the section line dividing section 22 from section 23, in Township 6 North, Range 7 West.
* * * * *

§ 9.105 [Amended]

43. Section 9.105 is amended by removing paragraph (b)(14); redesignating existing paragraphs (b)(15) through (32) as (b)(14) through (31), and; adding new paragraphs (b)(32) through (b)(40) to read as follows:
* * * * *

(b) * * *

(32) "Mason Dixon Quadrangle", edition of 1943–53 (photorevised 1971).

(33) "Hagerstown Quadrangle", edition of 1943–53 (photorevised 1971, photoinspected 1977).

(34) "Funkstown Quadrangle", edition of 1943–53 (photorevised 1971, photoinspected 1977).

(35) "Plainfield Quadrangle", edition of 1975.

(36) "Shippensburg Quadrangle", edition of 1973.

(37) "Chambersburg Quadrangle", edition of 1973.

(38) "Williamson Quadrangle", edition of 1973.

(39) "Greencastle Quadrangle", edition of 1973.

(40) "Dillsburg Quadrangle", edition of 1973.
* * * * *

PART 18—[AMENDED]

44. The authority citation for Part 18 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5172, 5178, 5179, 5203, 5511, 5552, 6065, 7805; 44 U.S.C. 3504(h).

§ 18.16 [Amended]

45. Section 18.16(c) is revised to read as follows:
* * * * *

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

PART 19—[AMENDED]

46. The authority citation for Part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–6, 5008, 5041, 5061, 5062, 5066, 5101, 5111–5113, 5221–5223, 5231, 5232, 5235, 5236, 5241–5242, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 19.1005 [Amended]

47. Section 19.1005(b) is amended by revising the third sentence to read as follows:
* * * * *

(b) * * * The list may be obtained at no cost upon request from the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.
* * * * *

PART 20—[AMENDED]

48. The authority citation for Part 20 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5206, 5214, 5271–5275, 5311, 5552, 5555, 5607, 6055, 7805.

§ 20.21 [Amended]

49. Section 20.21(c) is revised to read as follows:
* * * * *

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

§ 20.191 [Amended]

50. Section 20.191 is amended by replacing "3800 South Four Mile Run Drive, Arlington, Virginia 22206." with "7943 Angus Court, Springfield, Virginia 21153."

PART 21—[AMENDED]

51. The authority citation for Part 21 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5242, 7805.

§ 21.2 [Amended]

52. Section 21.2(c) is revised to read as follows:
* * * * *

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

PART 22—[AMENDED]

53. The authority citation for Part 22 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5121, 5206, 5214, 5271–5275, 5311, 5552, 5555, 6056, 7805; 31 U.S.C. 9304, 9306.

§ 22.21 [Amended]

54. Section 22.21(c) is revised to read as follows:
* * * * *

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

PART 47—[AMENDED]

55. The authority citation for Part 47 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 926; 22 U.S.C. 2778; 44 U.S.C. 3504(h).

§ 47.35 [Amended]

56. Section 47.35(c) is revised to read as follows:
* * * * *

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

PART 55—[AMENDED]

57. The authority citation for Part 55 is revised to read as follows:

Authority: 18 U.S.C. Chapter 40, 847, 926; 44 U.S.C. 3504(h).

§ 55.21 [Amended]

58. Section 55.21(c) is revised to read as follows:
* * * * *

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

PART 70—[AMENDED]

59. The authority citation for Part 70 is revised to read as follows:

Authority: 5 U.S.C. 301; 26 U.S.C. 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5741, 6301, 7601–7606, 7608, 7622, 7623, 7653, 7805.

§ 70.23 [Amended]

60. In § 70.23(b)(2) replace the words "Criminal Enforcement" with "Law Enforcement" and the words "Office of Inspection" with "Office of Internal Affairs" in the first sentence.

§ 70.41 [Amended]

61. In § 70.41 replace "26 CFR" with "27 CFR" wherever it appears.

§ 70.42 [Amended]

62. In § 70.42 replace "26 CFR" with "27 CFR" wherever it appears.

PART 71—[AMENDED]

63. The authority citation for Part 71 is revised to read as follows:

Authority: 5 U.S.C. 301, 552.

§ 71.23 [Amended]

64. In § 71.23 paragraph (e) is amended by revising the second sentence to read as follows:
* * * * *

(e) * * * Facilities shall be provided whereby a person may inspect the material and obtain copies.
* * * * *

§ 71.24 [Amended]

65. In § 71.24(c)(3) replace "Assistant to the Director (Disclosure)" with "Chief, Disclosure Branch."

66. In § 71.24(g)(1) replace "Assistant to the Director (Disclosure)" with "Chief, Disclosure Branch."

67. In § 71.24(i)(1)(iii) replace "Assistant to the Director (Disclosure)" with "Chief, Disclosure Branch."

§ 71.25 [Amended]

68. § 71.25(g) is amended by revising paragraph (1)(i); by removing paragraphs (1)(iv), (2), and (4); and by revising paragraph (3) and redesignating revised paragraph (c) as new paragraph (2) to read as follows:
* * * * *

(g) * * *

(1) *Duplication.* (i) Photocopies, per page up to 8½" x 14", are provided at $0.15 each.
* * * * *

(2) *Search services.* (i) The fee charged for services of personnel involved in locating records is $10 for each hour or fraction thereof, and for transportation of personnel and records necessary to the search of actual cost.

(ii) Where, because of the nature of the records sought and the manner in which the records are stored, a computer search is required, the fee is $10 for each hour (or fraction thereof) of personnel time associated with the search plus an amount which reflects the actual costs of extracting produced, based on computer time and supplies necessary to comply with the request.

(iii) Searches for computerized records—Actual direct cost of the search. The fee for computer printouts will be actual costs.

(iv) Other costs. When other duplication not specifically identified above are requested and provided, their direct cost to the Bureau shall be charged. Other services and materials which are not covered by this part are chargeable at the actual cost to the Bureau.
* * * * *

§ 71.26 [Amended]

69. In § 71.26(a) replace "Assistant to the Director for Public Affairs" with "Assistant Director (Congressional and Media Affairs)."

70. In § 71.26(d) replace "Chief, Trade and Consumer Affairs Division" with "Chief, Industry Compliance Division."

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71. In § 71.26(g) replace "Office of the Assistant to the Director for Public Affairs" with "Disclosure Branch" in the second sentence, and by replacing "Assistant to the Director (Disclosure)" with "Chief, Disclosure Branch" wherever it appears.

Appendix A of Subpart C [Amended]

72. Part 71, Subpart C, Appendix A, paragraph 2, is amended by revising the locations and mailing addresses for Bureau Headquarters, Southeast Region, Southwest Region and Western Region, by amending the North Atlantic Region and Midwest Region to add an additional location and mailing address, and by removing the locations and mailing addresses for the Mid Atlantic Region and Central Region to read as follows:

Bureau Headquarters

Location: Public Reading Room, Room 4406, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20226.
Mailing Address: Chief, Disclosure Branch, Room 4406, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226.

North Atlantic Region

Location: * * *
Mailing Address: * * *
Location: Chief, Technical Services, Bureau of Alcohol, Tobacco and Firearms, 841 Chestnut Street, 3rd Floor, Philadelphia, PA 19102.
Mailing Address: Same as location.

Southeast Region

Location: Regional Director (Compliance), Bureau of Alcohol, Tobacco and Firearms, 3835 Northeast Expressway, Atlanta, GA 30340.
Mailing Address: Same as location.

Midwest Region

Location: * * *
Mailing Address: * * *
Location: Chief, Technical Services, Bureau of Alcohol, Tobacco and Firearms, Federal Office Building, 550 Main Street, Cincinnati, OH 45202.
Mailing Address: Same as location.

Southwest Region

Location: Regional Director (Compliance), Bureau of Alcohol, Tobacco and Firearms, 1114 Commerce Street, Room 701, Dallas, TX 75242.
Mailing Address: Same as location.

Western Region

Location: Regional Director (Compliance), Bureau of Alcohol, Tobacco and Firearms, 212 Main Street, 11th Floor, San Francisco, CA 94105.
Mailing Address: Same as location.

73. Part 71, Subpart C, Appendix A, paragraph 3, is amended by replacing "Assistant to the Director (Disclosure)" with "Chief, Disclosure Branch" wherever it appears and by replacing "Federal Building" with "Ariel Rios Federal Building" in the address.

74. Part 71, Subpart C, Appendix A, paragraph 4, is amended by revising the address to read as follows:

* * * * *

4. * * * Director, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20226.

* * * * *

75. Part 71, Subpart C, Appendix A, paragraph 5, is amended by replacing "Federal Building" with "Ariel Rios Federal Building" in the introductory text and by revising the address to read: "Director, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 ATTN: Chief Counsel.

§ 71.41 [Amended]

76. Section 71.41(a)(1) is amended by replacing "Office of Regulations and Procedures Division" with "Office of Compliance Operations" in the fifth sentence.

77. Section 71.41(c) is amended by revising the last sentence to read as follows:

* * * * *

(c) * * * Petitions shall be addressed to the Director, Washington, DC 20226, Attention: Compliance Operations.

* * * * *

§ 71.42 [Amended]

78. Section 71.42(c)(2) is revised to read as follows:

* * * * *

(c) * * *

(2) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

* * * * *

PART 72—[AMENDED]

79. The authority citation for Part 72 is revised to read as follows:

Authority: 18 U.S.C. 921, 1261; 19 U.S.C. 1607, 1610, 1612, 1613, 1618; 26 U.S.C. 7101, 7322–7325, 7328, 7805; 31 U.S.C. 9301, 9303, 9304, 9306; 40 U.S.C. 304(k); 49 U.S.C. 784, 788.

§ 72.2 [Amended]

80. Section 72.2(c) is revised to read as follows:

* * * * *

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

PART 170—[AMENDED]

81. The authority citation for Part 170 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5064, 5111, 5121, 5171, 5205, 5291, 5301, 5362, 7805; 31 U.S.C. 9304, 9306.

§ 170.22 [Amended]

82. Section 170.22(c) is revised to read as follows:

* * * * *

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

§ 170.302 [Amended]

83. Section 170.302(c) is revised to read as follows:

* * * * *

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

PART 178—[AMENDED]

84. The authority citation for Part 178 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921–928; 44 U.S.C. 3504(h).

§ 178.21 [Amended]

85. Section 178.21(c) is revised to read as follows:

* * * * *

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

PART 194—[AMENDED]

86. The authority citation for Part 194 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5025, 5111–5117, 5121–5124, 5142, 5143, 5145, 5146, 5205–5207, 5301, 5352, 5555, 5613, 5681, 5691, 6001, 6011, 6051, 6061, 6065, 6071, 6091, 6109, 6311, 6314, 6402, 6601, 6657, 6657, 6676, 6511, 7011, 7805.

§ 194.41 [Amended]

87. Section 194.41(c) is revised to read as follows:

* * * * *

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

PART 250—[AMENDED]

88. The authority citation for Part 250 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5146, 5205, 5207, 5232, 5301, 5314, 5555, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 250.2 [Amended]

89. Section 250.2(c) is revised to read as follows:

* * * * *

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943, Angus Court, Springfield, Virginia 22153.

PART 251—[AMENDED]

90. The Authority citation for Part 251 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5041, 5054, 5051, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805; 27 U.S.C. 203, 205; 44 U.S.C. 3504(h).

§ 251.2 [Amended]

91. Section 251.2(c) is revised to read as follows:

* * * * *

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

PART 252—[AMENDED]

92. The authority citation for Part 252 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1309, 1311; 26 U.S.C. 5008, 5051, 5053, 5055, 5056, 5062, 5066, 5114, 5173, 5175–5177, 5204–5207, 5214, 5223, 5301, 5326, 5354, 5362, 5367, 5370, 5371, 5401, 5415, 5551, 5552, 5555, 6065, 7302, 7805; 31 U.S.C. 9301, 9303, 9304, 9306; 44 U.S.C. 3504(h).

§ 252.2 [Amended]

93. Section 252.2(c) is revised to read as follows:

* * * * *

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

PART 285—[AMENDED]

94. The authority citation for Part 285 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5701, 5703–5705, 5711, 5721–5723, 5741, 5751, 5753, 5761–5763, 6109, 6302, 6402, 6404, 6676, 7212, 7325, 7342, 7606; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 285.2 [Amended]

95. Section 285.2(c) is revised to read as follows:

* * * * *

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

Signed: February 5, 1987.
Stephen E. Higgins,
Director.

Approved: February 12, 1987.
Francis A. Keating, II,
Assistant Secretary (Enforcement)

[FR Doc. 87–4000 Filed 2–26–87; 8:45 am]
BILLING CODE 4810–31–M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Education Loans in Default

AGENCY: Veterans Administration.
ACTION: Final regulations

SUMMARY: To be eligible to defer repayment of a Veterans Administration (VA) education loan, a veteran must continue training as at least a half-time student. If a veteran has been granted an education loan which becomes payable by virtue of his or her ceasing to train at the half-time or greater rate for nine months, the VA is required to arrange repayment. If a payment is not forthcoming as scheduled under the agreed repayment plan, the loan is placed in default. For many years the VA has followed a policy that once such a veteran's loan has been placed in default, that default is not set aside even though the veteran subsequently reenrolls in training at the half-time or greater rate. This policy has appeared in internal agency documents, but not in the Code of Federal Regulations. The VA's experience has been that this policy would be easier to administer if it appeared in the Code of Federal Regulations. This regulation does this, and better informs the public as to the VA's policy when a default has occurred on an education loan.

EFFECTIVE DATE: December 11, 1986.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Education Policy and Program Administration, vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW, Washington, DC 20420 (202) 233–2092.

SUPPLEMENTARY INFORMATION: On June 23, 1986, a notice was published in the **Federal Register** to amend Part 21 to better state the VA's policy when education loans have been placed in default. Interested people were given 30 days to submit comments, suggestions and objections. The VA received one letter on this subject. The writer urged that the proposal be adopted. Accordingly, the VA is making the proposal final.

The VA has determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that this amended regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation simply makes clear and continues present VA policy, and it concerns only VA loans to individual veterans. No regulatory burdens are imposed on small entities.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this regulation are 64.111 and 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, vocational rehabilitation.

Approved: December 11, 1986.
Thomas K. Turnage,
Administrator.

PART 21—[AMENDED]

38 CFR Part 21, vocational Rehabilitation and Education, is amended by revising § 21.4504(d) to read as follows:

§ 21.4504 Promissory note.

* * * * *

(d) *Default.* Whenever the VA determines that a default, in whole or in part, has occurred on any such loan the eligible veteran or other eligible person shall be notified that the amount of the default shall be recovered from the eligible veteran or other eligible person concerned in the same manner as other debt due the United States. Once a

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default has occurred, the veteran's or eligible person's subsequent reentrance into training at the half-time or greater rate shall not be the basis for rescinding the default. A default may only be rescinded when the VA has been led to create the default as a result of a mistake of fact of law. (38 U.S.C. 1798(e)(1))

* * * * *

[FR Doc. 87-4149 Filed 2-26-87; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-6-FRL-3149-9]

Approval and Promulgation of Implementation Plan State of New Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is conditionally approving a revision to the New Mexico State Implementation Plan (SIP) that provides for State issuance and enforcement of permits to prevent the significant deterioration of air quality (PSD) in certain areas of the State. The regulatory requirement of the SIP is New Mexico Air Quality Control Regulation 707. The proposed approval was published in the **Federal Register** of September 22, 1983, (48 FR 43194), and one comment was received.

New Mexico Regulation 707 does not apply to sources in Bernalillo County, New Mexico, or to sources on Indian governed land. In a letter of May 14, 1985, the Governor agreed that the State would not issued PSD permits to sources which trigger review under the stack height regulations, which he indicated would be adopted by the State after EPA's regulations were promulgated. EPA's regulations were promulgated on July 8, 1985 (50 FR 27892). This approval is conditioned upon adoption by the State of the applicable provisions of those regulations and submittal to EPA as a SIP revision as quickly as possible. It is EPA's understanding that the State has completed action on appropriate stack height regulation, and such a regulation will be submitted by the State in the near future.

EPA proposed to approve the State's PSD regulations provided that the State amends certain requirements which were specified in EPA's comment letters of July 6, 1983, and July 19, 1983. Subsequently, the State made the appropriate amendments to Regulation 707, and the Governor of New Mexico submitted the final regulation to EPA on February 21, 1984.

Today's action notice is published to advise the public that EPA is approving the State's final submittal as amended subject to the conditions and terms specified in this notice. The rationale for this action is contained in this notice, the Evaluation Report, and its supplement.

EFFECTIVE DATE: This action is effective on March 30, 1987.

ADDRESSES: Copies of the State's submittal and EPA's Evaluation Report and its supplement along with other information are available for inspection during normal business hours at the following locations.

Environmental Protection Agency, Region 6, Air, Pesticides, and Toxics Division, Air Programs Branch, 1201 Elm Street, Dallas, Texas 75270

Environmental Protection Agency, Public Information Reference Unit, EPA Library, 401 M Street, SW, Washington, DC 20460

New Mexico Environmental Improvement, Division, Health and Environmental Department, Air Quality Bureau, P.O. Box 968, Crown Building, Santa Fe, New Mexico 87503-0968.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P.E., Air Programs Branch, Environmental Protection Agency, Region 6, 1201 Elm Street, Dallas, Texas 75270, telephone (214) 767-6672.

SUPPLEMENTARY INFORMATION: On December 20, 1980, the State of New Mexico requested delegation of the technical and administrative review portion of the Federal PSD program, including authority for source inspection for compliance and review of compliance test reports. The PSD partial authority was granted on February 16, 1982, subject to certain conditions, and a notice published in the **Federal Register** on March 16, 1982 (47 FR 11318).

On June 27, 1983, the New Mexico Environmental Improvement Division (NMEID) submitted a draft PSD SIP revision to EPA for review. EPA had previously reviewed a draft revision based on the requirements of 40 CFR 51.24 and developed an Evaluation Report. On February 21, 1984, the Governor of New Mexico submitted the final copy of the adopted New Mexico Air Quality Control Regulation 707 (PSD) which incorporated the EPA's comments along with the State's commitment for carrying out enforcement of the PSD program. On May 14, 1985, the Governor submitted another letter containing a statement agreeing to limit the New Mexico PSD SIP in that no PSD permit approval which "triggers the so-called sixty-five meter stack height question" would be issued under Regulation 707 "until final regulations addressing these issues are promulgated and subsequently adopted by the State." EPA understands that the Governor by this letter meant to indicate how the PSD program would be implemented. This letter commits the State not to issue PSD permits to sources which would require review under EPA's stack height regulations because they would have stack heights over sixty five (65) meters or would use any other dispersion technique, as defined at 40 CFR 51.1(hh), until the State has submitted as a part of SIP (and EPA has approved), the provisions now found in the amendments to 40 CFR 51.1(hh)-(kk) and published in the **Federal Register** on July 8, 1985. EPA evaluated this final submission and developed a supplement to the Evaluation Report. This Evaluation Report and its supplement are available for inspection during normal business hours at the EPA Region 6 office and the other addresses listed above.

The draft PSD SIP revision did not meet all the requirements of 40 CFR 51.24. EPA's review noted several requirements which needed to be incorporated in the regulation before it could be approved. A complete review of the requirements and EPA's comments were presented in the proposed approval which was published in the **Federal Register** on September 22, 1983, (48 FR 43194). The State has incorporated all of the required elements of the Federal regulations which were necessary for an approvable SIP.

In the notice of proposed rulemaking (48 FR 43194), EPA specifically solicited comments from the public and one comment was received. The commentor proposed that two modifications be made to the State Regulation 707, before the final approval, requiring the State (1) to adopt a fugitive emissions exemption as proposed in the **Federal Register**, August 25, 1983 (48 FR 38742), and (2) eliminate its visibility monitoring requirements from the State PSD regulations.

In regard to the first comment, the **Federal Register** of August 25, 1983, EPA proposed to delete the requirement for the inclusion of fugitive emissions in the threshold applicability determinations and to exempt from all substantive requirements applicable to major projects any project that would be major only if its fugitive emissions were

included. However, after reviewing the comments on the proposal, EPA has determined that the original interpretation and treatment of the fugitive emissions, as reflected in 40 CFR 51.24 and 40 CFR 52.21, are correct. Therefore, EPA's final ruling in the **Federal Register** of October 26, 1984 (49 FR 43202) reaffirmed EPA's original position. The commentor had based his assertion on the proposed ruling of August 25, 1983, which did not represent EPA's final determination. Since the EPA has retained the original regulation in the October 26, 1984, **Federal Register** action and the State has complied with these Federal regulations, EPA has no reason to disapprove the New Mexico regulation on the basis of fugitive emissions exemption.

In regard to the second comment, the monitoring requirements of Regulation 707, section I(5), apply only to the areas which are designated as Class I areas. The commentor failed to acknowledge this fact. The Federal PSD regulations, 40 CFR 51.24(p) and 40 CFR 52.21(p), clearly include consideration and analysis of the new source impacts on the visibility of the Class I areas. This requirement is based on the Federal Clean Air Act sections 165(d)(2)(B) and 165(d)(2)(C). In addition, certain requirements of the visibility regulations (40 CFR 51.307) which are directly related to new source review processes and affecting the Class I areas may be included in the PSD regulations. In satisfying the visibility requirements, the State had options to determine the appropriate means by which the visibility protection of the Class I areas would be administered and enforced. The procedures and options that New Mexico has chosen are consistent with 40 CFR 51.24, 40 CFR 52.21, 40 CFR 51.307, and the promulgated visibility requirements specified in the **Federal Register** of July 12, 1985 (50 FR 28544). The inclusion of the Class I areas visibility monitoring requirement in the PSD regulation is legitimate and it does not add extra burden on the sources impacting the Class I areas. Thus, EPA has no justification to disapprove the New Mexico PSD SIP on the basis of the commentor's discussion. The commentor also contended that adequate public notice and hearing had not been carried out. EPA does not agree with the commentor and the State submission indicated that the public participation process has been conducted adequately by the NMEID.

On October 12, 1983, EPA asked the NMEID for a description of its jurisdiction over lands controlled by Indian governing bodies, especially with respect to PSD, permits, and enforcement. In a letter dated February 21, 1984, the NMEID provided its response. EPA has reviewed the NMEID's analysis on the basis of recent Federal court decisions, the Clean Air Act, and general administration policies in treating Indian tribes' sovereignty. As a result, EPA believes that the State's analysis did not provide an adequate legal basis for EPA to find that the NMEID has jurisdiction over the Indian governed lands. At this time, the provisions of 40 CFR 52.21 remain the effective PSD requirements on Indian governed lands in New Mexico. Therefore, EPA retains authority to review PSD applications, and issue and enforce the PSD permits in Indian governed lands in conjunction with the appropriate Indian governing authority.

Under the New Mexico Air Quality Act, the NMEID also lacks jurisdiction in certain "A Class" counties and municipalities in A Class counties which establish their own air pollution control programs which meet the requirements of the Air Quality Act. Bernalillo County and Albuquerque have pre-empted the NMEID under that provision, although they have not yet prepared a PSD SIP. EPA retains authority for and will continue to implement the PSD program under 40 CFR 52.21 for the Bernalillo County area until such time as the Albuquerque-Bernalillo County Air Quality Control Board adopts and submits an adequate PSD SIP.

The State's PSD SIP contains a very short section, section J, which addresses Stack Height Credit. While that provision is not inconsistent with EPA's July 8 regulations, it does not necessarily require the same results as the July 8 regulations. In anticipation of this problem, the Governor added to his letter of May 14, 1985, a sentence which indicated that permits would not be issued to sources with stack height issues. EPA understands the Governor to have made a commitment that the State, therefore, will not issue PSD permits to sources which propose to have a stack height greater than 65 meters (213 feet) nor to sources which propose to use a dispersion technique as defined at 40 CFR 51.1(hh). The provisions of 40 CFR 52.21, administered by EPA, continue to apply to such sources.

In summary, today EPA is conditionally approving a SIP revision which—

1. Allows the NMEID, in areas outside Indian governed lands and Bernalillo County, to continue to administer, review, and evaluate the PSD applications.

2. Gives the NMEID the authority, in areas outside Indian governed lands and Bernalillo County, to issue PSD permits for sources submitting applications after the effective date of this approval (except for sources which propose to have a stack height greater than 65 meters or which propose to use a dispersion technique as defined at 40 CFR 51.1(hh)), and

3. Gives the NMEID the authority, in areas outside Indian governed lands and Bernalillo County, to enforce both State-issued and EPA-issued PSD permits.

Effective today, sources seeking PSD permits, in areas outside Indian governed lands or Bernalillo County, should apply to the NMEID. Sources located or seeking PSD permits on Indian governed lands of Bernalillo County, should apply to the EPA Region 6 Office at the address given in this notice.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 28, 1987. This action may not be challenged later in proceedings to enforce its requirements [See 307(b)(2)].

Incorporation by reference of the SIP for the State of New Mexico was approved by the Director of the **Federal Register** on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur Oxides, Nitrogen Dioxide, Lead, Particulate Matter, Carbon Monoxide, and Hydrocarbons, Incorporation by reference.

Dated: January 27, 1987.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

Subpart GG—New Mexico

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1620 is amended by adding paragraph (c)(37) as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(37) On February 21, 1984, the Governor of New Mexico submitted Air Quality Control Regulation 707—

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Permits, Prevention of Significant Deterioration (PSD), as adopted by the New Mexico Environmental Improvement Board on January 13, 1984. Regulation 707 provides authority for the State to implement the PSD program in certain areas of the State. On May 14, 1985, the Governor of New Mexico submitted a letter in which he committed the State not to issue PSD permits under Regulation 707 to sources which would require review under EPA's stack height regulations because thay would have stack heights over sixty five (65) meters or would use any other dispersion techniques, as defined at 40 CFR 51.1(hh).

(i) Incorporation by reference.

(A) Letter from the Governor of New Mexico dated February 21, 1984 to EPA, and New Mexico Air Quality Control Regulation No. 707—Permits, Prevention of Significant Deterioration of Air Quality, except for sources that locate (or are located) on lands under control of Indian Governing Bodies, or sources that locate (or are located) in Bernalillo County, or sources that require review under EPA's stack height regulations because they have stack heights over sixty five (65) meters or use any other dispersion techniques, as defined at 40 CFR 51.1(hh), adopted on January 13, 1984.

(B) A letter from the Governor of New Mexico dated May 14, 1985, in which he committed the State not to issue PSD permits under Regulation 707 to source which would require review under EPA's stack height regulations because they would have stack heights over sixty five (65) meters or would use any other dispersion techniques, as defined at 40 CFR 51.1(hh).

(ii) Additional material.

(A) A narrative explantion entitled "Revision to the New Mexico State Implementation Plan—Prevention of Significant Deterioration of Air Quality."

3. Section 52.1634 is revised to read as follows:

§ 52.1634 Significant deterioration of air quality.

(a) *Regulation for preventing significant deterioration of air quality.* The plan submitted by the State of New Mexico for preventing significant deterioration of air quality does not apply in certain areas in the State. Therefore, the provisions of § 52.21(b) through (w) are made a part of the applicable implemenation plan and are applicable to sources located on land under the control of Indian governing bodies and to sources located within the boundaries of Bernalillo County (including Albuquerque) and to sources which would require review under EPA's stack height regulations because they would have stack heights over sixty five (65) meters or would use any other dispersion techniques, as defined at 40 CFR 51.1(hh).

(b) *Conditional approval.* Regulation 707 is conditionally approved on the basis that

(1) The State will not issue permits to sources which would require review under EPA's stack height regulations because they would have stack heights over sixty five (65) meters or would use any other dispersion techniques, as defined at 40 CFR 51.1(hh).

(2) The State will adopt and submit as a plan revision a regulation which is equivalent to the regulations in 40 CFR Part 51 promulgated to implement Section 123 of the Clean Air Act.

[FR Doc. 87-2077 Filed 2-26-87; 8:45 am]

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[OW-FRL-3159-5]

40 CFR Part 228

Ocean Dumping; Cancellation of Site Designations

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today cancels the designation of ten ocean dumping sites which are currently designated on an interim basis. This action is being taken because there is no projected future need for these sites. These sites will be removed from the list of "Approved Interim and Final Ocean Dumping Sites."

DATE: These cancellations shall become effective on March 30, 1987.

ADDRESSES: Ms. Sally Turner, Environmental Protection Agency, Region IV, Water Management Division, Marine Protection Section, 345 Courtland Street, NE, Atlanta, Georgia 30365.

The file supporting these cancellations and the letters of comment are available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street Southwest, Washington, DC 20460

EPA Region IV, 345 Courtland Street, NE., Atlanta, GA 30365

FOR FURTHER INFORMATION CONTACT: Ms. Sally Turner at 404/347-2126.

SUPPLEMENTARY INFORMATION: EPA published revised Ocean Dumping Regulations on January 11, 1977, (42 FR 2462 *et seq.*). Section 228.12 contains a list of "Approved Interim and Final Ocean Dumping Sites." This list was amended on December 9, 1980, (45 FR 81042 *et seq.*) to extend the interim designation of some ocean dumping sites and cancel the designation of six industrial sites and one dredged material site. At that time EPA stated its intention to identify additional ocean dumping sites for which there is no projected future need.

Ten such sites have now been identified, and EPA is cancelling the interim designation of these sites based upon recommendations from the Corps of Engineers.

Response to Comments

On Friday August 22, 1986, EPA proposed cancellation of these sites in the **Federal Register** [51 FR 30081 *et seq.*]. The proposed rulemaking contained information regarding the sites and the circumstances surrounding the recommendation for cancellation. The comment period on this proposed rulemaking closed on October 6, 1986. EPA received one response for this request for comments. This comment came from the State of Florida and indicated their approval of the cancellation of these sites. These sites with their identifying coordinates are listed below:

St. Augustine Harbor, FL—29°55'04"N., 81°17'04"W.; 29°55'13"N., 81°16'11"N.; 29°54'30"N., 81°15'58"W.; 29°54'19"N., 81°16'51"W.

St. Lucie Inlet, FL—27°09'58"N., 80°09'30"W.; 27°09'58"N., 80°08'42"W.; 27°09'52"N., 80°08'42"W.; 27°09'52"N., 80°09'30"W.

Ponce de Leon Inlet, FL—29°04'46"N., 80°53'40"W.; 29°04'36"N., 80°53'40"W.; 29°04'36"N., 80°54'26"W.; 29°04'46"N., 80°54'26"W.

Largo Sound, FL—25°06'06"N., 80°24'42"W.; 25°05'58"N., 80°24'05"W.; 25°05'50"N., 80°24'10"W.; 25°05'58"N., 80°24'47"W.

Anclote, FL—

The coordinates printed in the Proposed Rule for the Anclote, FL site were in error. Those coordinates appeared incorrectly as:

28°09'00"N., 82°53'48"W.; 28°09'00"N., 82°52'48"W.; 28°08'30"N., 82°52'48"W.; 28°08'30"N., 82°53'40"W.

The correct coordinates for the Anclote, FL site are as follows:

28°09'00"N., 83°51'48"W.; 28°09'00"N., 83°50'54"W.; 28°08'30"N., 83°50'54"W.; 28°08'30"N., 83°51'48"W.

Pithlachascotee, FL—

The coordinates printed in the Proposed Rule for the Pithlachascotee, FL site were in error. Those coordinates appeared incorrectly as:

28°17'02"N., 82°46'21"W.; 28°17'02"N., 82°45'12"W.; 28°16'25"N., 82°45'00"W.; 28°16'42"N., 82°45'00"W.

The correct coordinates for the Pithlachascotee, FL site are as follows:

28°17'02"N., 82°46'21"W.; 28°17'02"N., 82°45'12"W.; 28°16'25"N., 82°45'00"W.; 28°16'42"N., 82°45'00"W.; 28°16'42"N., 82°46'21"W.

Withlacoochee, FL—28°59'08"N., 82°48'48"W.; 28°59'32"N., 82°47'40"W.; 28°59'18"N., 82°47'32"W.; 28°58'54"N., 82°48'40"W.

Cedar Keys, FL—29°08'43"N., 83°07'53"W.; 29°08'43"N., 83°07'03"W.; 29°08'33"N., 83°07'03"W.; 29°08'33"N., 83°07'03"W.

Cedar Keys, FL—

The coordinates printed in the Proposed Rule for the second Cedar Keys, FL site were in error. Those coordinates appeared incorrectly as:

29°04'08"N., 83°04'06"W.; 29°04'01"N., 83°03'54"W.; 29°03'28"N., 83°04'12"W.; 29°03'28"N., 83°04'24"W.

The correct coordinates for the second Cedar Keys, FL site are as follows:

29°04'08"N., 83°04'06"W.; 29°04'01"N., 83°03'54"W.; 29°03'28"N., 83°04'12"W.; 29°03'35"N., 83°04'24"W.

Horseshoe Cove, FL—29°25'58"N., 83°17'32"W.; 29°25'53"N., 83°17'22"W.; 29°25'44"N., 83°17'28"W.; 29°25'49"N., 83°17'38"W.

Apart from the errors noted above in the Proposed Rule's listing of site coordinates, an error also appears in the current Code of Federal Regulations (CFR) in the listing for the site designated off Anclote, FL. The southeast corner of this site is shown in the CFR as 28°08'48"N., 83°50'54"W., whereas the correct coordinates for this point, as stated above, are 28°08'30"N., 83°50'54"W. To avoid any confusion which this discrepancy might cause, the rule amendment being finalized today cancels the Anclote, FL designation as both correctly and incorrectly described.

Action: The cancellation of these ten sites as EPA interim approved ocean dumping sites is being published as final rulemaking.

Regulatory Assessments: Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis.

EPA has determined that this rule will not have a significant impact on small entities. No small entities are using or, as far as EPA is aware, are planning to use these sites in the near future. Furthermore, the cancellation of these site designations will have no effect on the economy or cause any of the other effects which could result in its being qualified as a "major" action. Consequently, this rule does not necessitate the preparation of a Regulatory Flexibility Analysis or Regulatory Impact Analysis.

This rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. et seq.

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: February 13, 1987.

Approved by:

Jack E. Ravan,

Regional Administrator for Region IV.

PART 228—[AMENDED]

In consideration of the foreign, Subchapter H of Chapter I of Title 40 is amended as set forth below.

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. sections 1412 and 1418.

§ 228.12 [Amended]

Amend § 228.12(a)(3) is amended by removing from the list of dredged material sites the following ten ocean dumping sites:

St. Augustine Harbor, FL—29°55'04"N., 81°17'04"W.; 29°55'13"N., 81°16'11"N.; 29°54'30"N., 81°15'58"W.; 29°54'19"N., 81°16'51"W.

St. Lucie Inlet, FL—27°09'58"N., 80°09'30"W.; 27°09'58"N., 80°08'42"W.; 27°09'52"N., 80°08'42"W.; 27°09'52"N., 80°09'30"W.

Ponce de Leon Inlet, FL—29°04'46"N., 80°53'40"W.; 29°04'36"N., 80°53'40"W.; 29°04'36"N., 80°54'26"W.; 29°04'40"N., 80°54'26"W.

Largo Sound, FL—25°06'06"N., 80°24'42"W.; 25°05'58"N., 80°24'05"W.; 25°05'50"N., 80°24'10"W.; 25°05'58"N., 80°24'47"W.

Anclote, FL—28°09'00"N., 83°51'48"W.; 28°09'00"N., 83°50'54"W.; 28°08'48"N., 83°50'54"W.; 28°08'30"N., 83°51'48"W.

Pithlachascotee, FL—28°17'02"N., 82°46'21"W.; 28°17'02"N., 82°45'12"W.; 28°16'25"N., 82°45'00"W.; 28°16'42"N., 82°45'00"W.; 28°16'42"M., 82°46'21"W.

Withlacoochee, FL—28°59'08"N., 82°48'48"W.; 28°59'32"N., 82°47'40"W.; 28°59'18"N., 82°47'32"W.; 28°58'54"N., 82°48'40"W.

Cedar Keys, FL—29°08'43"N., 83°07'53"W.; 29°08'43"N., 83°07'03"W.; 29°08'33"N., 83°07'03"W.; 29°08'33"N., 83°07'53"W.

Cedar Keys, FL—29°04'08"N., 83°04'06"W.; 29°04'01"N., 83°03'54"W.; 29°03'28"N., 83°04'12"W.; 29°03'35"N., 83°04'24"W.

Horseshoe Cove, FL—29°25'58"N., 83°17'32"W.; 29°25'53"N., 83°17'22"W.; 29°25'44"N., 83°17'28"W.; 29°25'49"N., 83°17'38"W.

[FR Doc. 87-3718 Filed 2-26-87; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431, 433, and 435

[BPO-052-F]

Medicaid Program; Identification of Third Party Liability Resources for Medical Assistance

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule revises regulations governing a Medicaid State agency's responsibility to take reasonable measures to determine the legal liability of third parties to pay for services under the plan. The final regulations require that the agency at a minimum: (1) Obtain certain health insurance information for Medicaid applicants or recipients during the initial application and redetermination processes; (2) conduct, or in some cases attempt to secure agreements to conduct, certain types of data exchanges with specific State and Federal agencies, or in some cases alternate sources, to identify legally liable third parties; (3) conduct diagnosis and trauma code edits to identify third party resources; and (4) follow other specified procedures regarding frequency of conducting the above activities, follow up, safeguarding information obtained and exchanged, and reporting and reimbursement requirements.

The objectives of these requirements are to impove State agency performance in the identification of third party resources and to assure the timely incorporation of this resource information into the third party claims payment processing system.

This regulation also makes minor technical revisions to the Income and

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Eligibility Verification System final rule published in the **Federal Register** on February 28, 1986.

EFFECTIVE DATE: These regulations are effective May 28, 1987.

FOR FURTHER INFORMATION CONTACT: Al Czerski (301) 597–0463.

SUPPLEMENTARY INFORMATION:

I. Background

A. General

A "third party" is any individual, entity or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished under a State plan. Examples of liable third parties include commercial insurance companies, through employment-related or privately purchased health insurance or through casualty coverage resulting from an accidental injury; an individual who has either voluntarily accepted or been assigned legal responsibility for the health care of one or more Medicaid recipients; fraternal groups; unions; or State Workers' Compensation commissions. Other examples of a third party would include an absent parent or other entities providing medical support or services.

B. Statute-General

Section 1902(a)(25) of the Social Security Act (the Act), requires that State or local Medicaid agencies take all reasonable measures to ascertain the legal liability of third parties to pay for care and services furnished to Medicaid recipients. This section requires the agency to seek reimbursement from a third party to the extent that the party is legally liable for Medicaid covered services.

Section 1903(o) of the Act prohibits Federal matching of State Medicaid payments if a private insurer would have been liable to pay for the medical care, except that the insurance contract limits or excludes liability when the individual is eligible for Medicaid. Section 1903(d)(2) of the Act provides for consideration of the Federalshare of any amounts already recovered by a State from a third party for medical assistance as an overpayment to the State, and for appropriate adjustment of the quarterly Medicaid payments made by the Federal government to the State.

C. Deficit Reduction Act (DEFRA) of 1984

The Deficit Reduction Act of 1984 (Pub. L. 98–369, July 18, 1984) made several changes to the statute that affect requirements related to third party liability.

Section 2367 of DEFRA added a new section 1902(a)(45) to the Act to provide, as a Medicaid State plan requirement, for mandatory assignment of rights to payments for medical support and other medical care owed to recipients in accordance with section 1912 of the Act. Section 2367 also amended section 1912 of the Act to require (rather than allow as an option) that the State Medicaid plan provide that (1) as a condition of eligibility for medical assistance, individuals assign to the State their rights to any medical support or other payments for medical care and that they cooperate with the State in establishing paternity and in obtaining third party payments; and (2) States enter into certain cooperative agreements for the enforcement of rights to and collection of third party benefits. These agreements may be with State child support enforcement (title IV–D) agencies, any other appropriate agency of a State, and appropriate courts and law enforcement officials. In addition, section 2651 of DEFRA added a new section 1137 to the Act. This section, in part, requires State agencies that administer the Unemployment Compensation program, the Food Stamp program, the Aid to Families with Dependent Children (AFDC) program (title IV–A), the adult assistance programs (Titles I, X, XIV, and XVI (AABD) of the Act) and the Medicaid program to have in effect an Income and Eligibility Verification System (IEVS) under which certain income and other relevant information would be exchanged and utilized among the above agencies for the purpose of verifying eligibility and benefit amounts under the programs administered by those agencies (section 1137(a)(2) of the Act). Section 2651 also provides that such information be targeted to uses most likely to identify and prevent erroneous eligibility determinations and incorrect payments. (Section 1137(a)(4)(C) of the Act).

We interpret the language of section 1137 of the Act to mean that State Medicaid agencies must use relevant information available under that section to the extent it is useful, as determined by the Secretary in the identification and pursuit of legally liable third party payers of medical expenses, since this affects the correct amount of payment made under Medicaid.

D. Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985

Section 9503 of COBRA, in part, amended section 1902(a)(25) of the Act by adding a new provision under section 1902(a)(25)(A)(i) to specify that the Medicaid State plan must provide for the collection of sufficient information to enable the State to pursue claims against third parties, with such information being collected at the time of any application or redetermination process with regard to eligibility for medical assistance.

E. Current Third Party Regulations

Regulations containing third party liability requirements are located at 42 CFR Part 433, Subpart D. For purposes of the provisions set forth in this document, the relevant regulations sections to be considered are §§ 433.138 through 433.140. Section 433.138 requires the State agency to take reasonable measures to determine the legal liability of third parties to pay for services covered under the State's Medicaid State plan. Section 433.139 (as amended under final regulations published on November 12, 1985 (50 FR 46652) sets forth provisions for payment of claims involving probable third party liability. Under § 433.140, one of therequirements for Federal financial participation in Medicaid payments is that the State agency has fulfilled the requirements of §§ 433.138 and 433.139.

In an effort to improve the administration of the Medicaid program and implement certain sections of DEFRA and COBRA with respect to third party liability, on May 28, 1986, we published in the **Federal Register** a proposed rule (51 FR 19227). The major provisions of that rule, the comments received, our responses, and the changes we made in response to those comments are discussed below.

II. Provisions of the Proposed Rule

The May 28 proposed rule provided that the State Medicaid agency take reasonable measures to determine the legal liability of third parties to pay for services under the plan, at a minimum, providing for the following:

A. Obtaining Health Insurance Information: Initial Application and Redetermination Processes

1. Collection by the Social Security Administration (SSA)

Under section 1634 of the Act, SSA is authorized to enter into agreements with interested State Medicaid agencies to determine Medicaid eligibility for individuals who receive Supplemental Security Income (SSI) benefits under title XVI. The proposed rule would require States to enter into an agreement with HCFA (or prior to February 1, 1985, have executed a modified section 1634 agreement with SSA that is still in effect) to—

a. Provide for collection, from the SSI applicant or recipient during the initial and each redetermination process of health insurance information in the form and manner specified by the Secretary; and

b. Transmit the information to the Medicaid agency.

2. Collection by State Agencies Other Than the Medicaid Agency

Under § 431.10(d) of current regulations, the State plan must provide for written agreements between the Medicaid agency and other State agencies that determine Medicaid eligibility; for example, the State agency administering the AFDC program. We proposed that the Medicaid agency must modify its agreement to provide for the collection, during the initial application and each redetermination process for eligibility, of health insurance information useful in identifying legally liable third party resources. This information would be forwarded to the Medicaid agency.

3. Collection by State Medicaid Agency

If the State Medicaid agency determines Medicaid eligibility, our proposal would require the agency itself to collect the health information described above during the initial application and each redetermination process.

4. Followup Procedures

With respect to the health insurance information obtained by agencies, we would require that within 30 days the Medicaid agency must followup on such information (if appropriate) in order to identify legally liable third party resources and incorporate such information into the eligibility case file and into its third party data base and third party recovery unit so the agency can process claims under the third party liability payment procedures. We would require the State to describe in their State plan the methods the agency would use to meet these requirements.

B. Data Exchanges With State Wage Information Collection Agencies (SWICAs), the SSA Wage and Earnings Files and State Title IV–A Agencies.

1. General

We also proposed changes to § 433.138 of the regulations that would require use of information obtained from certain data exchanges which each State is now required to have under the final IEVS regulations published in the **Federal Register** February 28, 1986 (51 FR 7178). That final rule implements section 1137 of the Act, described earlier in this document, by requiring Federally-funded State administered programs such as Medicaid, AFDC, food stamps, etc., to have in effect an Income and Eligibility Verification System (IEVS) under which certain wage and other relevant information must be exchanged and utilized among those program agencies for purposes of verifying eligibility and benefit amounts under those programs.

2. Social Security Numbers (SSNs) of Absent or Custodial Parents

The agency would be required to incorporate into the Medicaid eligibility case file the names and SSNs (to the extent available) of absent or custodial parents of recipients for the purpose of conducting data matches with SWICAs, the SSA wage and earnings files and the Workers' Compensation or Industrial Accident Commissions. As set forth in the IEVS final rule, a SWICA is the State agency administering the State unemployment compensation law, a separate agency administering a quarterly wage reporting system, or a State agency administering an acceptable alternative system. A SWICA that does not use reported wages for unemployment insurance benefit calculations or that is an alternative system approved by the Secretary of Labor is required (and other SWICAs are strongly encouraged) to maintain and exchange wage information that identifies the SSN, full name, wages earned, and an identifier of the employer (for example, name and address). The SSA wage and earnings files are nationwide files of wages, including those paid by Federal government, earnings from self-employment and pension benefits.

3. Data Exchanges With SWICAs and SSA Wage and Earnings Files

Under our proposal the agency would be required (for purposes of identifying third parties) as part of the SWICA and SSA wage and earnings files data exchange requirements, to use the information that identifies those Medicaid recipients that are employed and their employer(s), and the agency must also (assuming that it has obtained the names and SSNs of absent or custodial parents of Medicaid recipients) obtain information that identifies those absent or custodial parents of recipients that are employed and their employer(s), unless the agency can demonstrate to HCFA that it has an alternate source of information that can be obtained as timely and is as complete and useful for identifying third parties as SWICA and SSA information.

4. Data Exchanges with State Title IV–A (Aid to Families With Dependent Children) Agencies

The proposed rule provides that the Medicaid agency must, as required under the final IEVS regulations, request from the State title IV–A agency income information obtained from the title IV–A agency SWICAs and SSA wage and earnings files data exchanges to identify those Medicaid recipients that are employed and their employer(s).

5. Followup Procedures

With respect to the information obtained from the data exchanges with the SWICAs, the SSA wage and earnings files and title IV–A agencies, followup requirements would be the same as for obtaining health insurance information.

6. Frequency of Exchanges

The frequency of the Medicaid agency's data exchanges with regard to SWICAs and SSA wage and earnings files have already been set under the final IEVS regulations. The frequency of title IV–A agency data exchanges with SWICAs and SSA wage and earnings files under the IEVS regulations are located at 45 CFR 205.55(a)(1) and (a)(3). With regard to the Medicaid agency obtaining information from the State title IV–A agency, our proposal provides that the information be obtained from the title IV–A agency on a timely basis that is consistent with the intervals specified in § 205.55(a)(1) and (a)(3).

C. Other Data Exchanges

We proposed to require that State Medicaid agencies attempt to secure agreements with the following two agencies (to the extent permitted by State law) to conduct data exchanges as discussed below.

1. State Worker's Compensation or Industrial Accident Commission Files

Assuming that an agreement can be reached, and such exchanges comply with applicable State and Federal law, data exchanges would entail matching identifying information (for example, name, SSN) for Medicaid recipients and (assuming names and SSNs have been obtained) absent or custodial parents of Medicaid recipients with Workers' Compensation or Industrial Accident files to identify those individuals with employment-related injuries or illnesses.

2. State Motor Vehicle Accident Report Files

Required data exchanges would involve matching identifying information for Medicaid recipients with State Motor

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Vehicle Accident Report Files to identify those recipients injured in motor vehicle accidents, whether injured as pedestrians, drivers or passengers in motor vehicles, or as bicyclists.

3. Securing Agreements

The proposed rule would require the Medicaid agency to attempt to secure agreements with the above two agencies. If unable to secure agreements, the agency would have to submit documentation to the regional office that demonstrates that the agency made a reasonable attempt to secure them. If HCFA determines that a reasonable attempt was made, the requirements concerning data exchanges with these two agencies would be deemed to be met.

4. Frequency of Exchange

If agreements have been secured, States would be required to conduct data exchanges with the above two agencies on a routine and timely basis. The State Medicaid agency would have the flexibility to develop a plan (as part of its State plan) defining the frequency of the exchanges.

5. Followup Procedures

a. *State Workers' Compensation or Industrial Accident Commission Files.* Followup requirements would be the same as for obtaining and acting on health insurance information. States would have flexibility in developing a plan for followup.

b. *State Motor Vehicle Accident Report Files.* With respect to the information obtained from the State Motor Vehicle Accident Report Files, our proposal provides that the agency develop and submit a plan (as part of its State plan) that describes its methods for following up on this information in order to identify legally liable third party resources so the agency can process claims under the third party liability payment procedures. Also, after followup, the agency would be required to incorporate that information into the eligibility case file and into its third party data base and third party recovery unit within timeframes specified in the State plan.

D. Diagnosis and Trauma Code Edits

1. General

We proposed to amend regulations to include a requirement regarding diagnosis and trauma code edits. State claims data that are generated periodically include a listing of claims paid, the amount of the claim and the diagnosis code under which the claim was submitted. These diagnosis codes can be found in the International Classification of Disease, 9th Revision, Clinical Modification, Volume 1 (ICD–9–CM). We proposed to require that State agencies take action to identify those paid claims that contain diagnosis or trauma codes 800–999, inclusive, and follow up on that information for purposes of identifying liable third parties.

2. Frequency of Trauma Edits and Followup

We would require agencies to conduct these edits on a routine and timely basis and develop and specify in the plan the frequency of the edits performed and the methods used to follow up. As part of the followup procedures, we also proposed that States periodically take action to identify those trauma codes which have yielded the highest third party collections. Based on these findings, future followup procedures would give higher priority to those codes likely to be the most productive. After followup, the agency must incorporate all information identifying legally liable third parties so the agency can process claims under the third party liability payment procedures into the eligibility case file and its third party data base and recovery unit within timeframes specified in the plan.

E. Safeguarding of Information

1. General Safeguards

Our proposal provided that the agency have criteria that govern the safeguarding of third party liability data received under the proposed rule and also provided that the agency must safeguard information obtained under this proposed rule in accordance with regulations at Part 431, Subpart F.

2. Data Exchanges

The proposal provided that the State Medicaid agency have a written agreement before requesting information from, or releasing information to, other agencies to identify legally liable third party resources under the data exchange requirements of the proposed regulations. The written agreement requirements would parallel the requirements contained in the final IEVS regulations.

F. Reimbursement and Reports

We proposed to provide for reimbursement to agencies for furnishing information and for reports with respect to certain activities.

1. Reimbursement

We would require State Medicaid agencies to reimburse other agencies, upon request, for reasonable costs incurred in furnishing information to the Medicaid agency. Also, in connection with reimbursement, we would require each State Medicaid agency to specify, when entering into an agreement with another agency to obtain data, how it would reimburse reasonable costs for those activities.

2. Reports

Finally, we would require State Medicaid agencies to provide such reports as the Secretary prescribes for purposes of determining compliance with requirements in § 433.138, and evaluating the effectiveness of the third party liability identification system.

II. Public Comments

We received suggestions on the proposed rule from eight Medicaid State agencies and State technical advisory groups. The main comments and our responses to those comments are as follows:

A. Followup

Comment: Several commenters objected to the 30 day timeframe for following up on information in order to identify liable third party resources, and for incorporating such information into the eligibility case file and third party data base. They contend this is not adequate time to verify and process the information. One commenter pointed out that the 30 day requirement is in conflict with System Performance Review (SPR) requirements. The SPR allows for 30 days after verification of third party data for the information to be placed into the third party data base. Two commenters requested clarification of the 30 day requirement. One of the commenters questioned whether the timeframe begins at intake and ends when the request for verification is made or whether it begins upon receipt of verified information and ends when the data is entered into the third party data base. Another commenter asked if the data from IV–A and the data matches must be followed up on within 30 days of receipt of third party data or entered into the eligibility file and the third party data base within 30 days or both.

Response: We are revising the followup timeframes from 30 to 60 days for followup on health insurance information obtained from applicants and recipients and workers' compensation data exchanges. The 60 day period encompasses the following required followup activities:

(1) Verification that third party resources exist, and (2) incorporation of identifying information into the eligibility case file and into the State's third party data base and third party recovery unit. We believe the additional 30 days will provide State agencies with sufficient time to complete all activities necessary to verifying third party resources including those situations in which, for example, followup with several agencies would be necessary to verify information.

The followup procedures for identifying legally liable third party resources for the SWICA, SSA wage and earnings files, and title IV–A data exchanges were set forth in final IEVS regulations published February 28, 1986 (§ 435.952(d)). The followup timeframe for verifying information under these exchanges and entering information into the case file is 30 days. An exception applies when the agency does not receive requested verification within the timeframe. However, action on no more than twenty percent of the information items may be delayed beyond 30 days. Therefore, to be consistent with the requirements under the IEVS regulations, we are amending § 433.138(g)(i) of the proposed rule to allow the same exception criteria to the 30 day timeframe for followup that is contained in § 435.952(d).

We are making no changes in followup timeframes with respect to the State Motor Vehicle Accident Report File data exchanges and diagnosis and trauma code edits since the proposed rule does not include a 30 day followup requirement. States have flexibility in describing in their State plans the methods the agency will use for following up on potential third party resource information.

B. Obtaining Health Insurance Information-SSA

Comment: One commenter expressed concern about the proposed requirement that all section 1634 States must contract with the Social Security Administration (SSA) to collect and transmit health insurance information obtained from SSI clients at application and redetermination. Inasmuch as SSA will not verify the TPL information obtained at intake, the commenter objects to being required to pay for information that is not verified.

Response: The current agreement between SSA and HCFA does not require SSA to verify TPL information obtained during initial application and redetermination processes. This remains the responsibility of the State Medicaid Agency. However, the cost to States under the agreement between HCFA and SSA for the TPL data is based on the collection and transmission of TPL information to the State Medicaid agency only. It would be much more costly to the States if SSA was required to verify the data.

C. Data Matches

1. SSNs

Comment: One commenter pointed out that experience has indicated that data matches on recipients with unverified SSNs has resulted in mismatches and discrepancy problems. The commenter is concerned that performing matches using absent parents' SSNs will result in an even greater number of mismatches and discrepancies since these SSNs are not verified by the State Medicaid agency. The State would have to expend a great deal of time and money to research and disregard the data from such mismatches.

Response: We are aware that there could be mismatches based on the use of unverified SSNs of custodial parents or SSNs of absent parents furnished by recipients. However, as a result of changes made under section 2367 of DEFRA, applicants (usually custodial parents) are required to provide their SSNs as a condition of Medicaid eligibility. (Previously, SSNs were required as a condition of AFDC eligibility.) In addition, under the medical support regulations published by the Office of Child Support Enforcement (OCSE) on October 16, 1985, the IV–D agency is now required to provide the SSN of the absent parent to the Medicaid Agency (45 CFR 306.50(a)). With the advent of these new requirements we believe the number of mismatches will decrease. Also, based on the experience of States reporting in *A Guide to Successful State Agency Practices-TPL in the Medicaid Program,* the data matches using absent and custodial parents SSN's have proven to be cost effective.

2. Accident Report Files

Comment: One commenter objected to the requirement that States conduct data exchanges with the State Motor Vehicle Accident Report Files. The commenter stated that since States do not require SSNs to be included on the accident reports, it would not be cost-effective to require States with a large Medicaid population to conduct a match manually by name. The commenter also pointed out that the same information could be obtained from the diagnosis and trauma code edits.

Response: We recognize that a manual match of Medicaid recipients by name with the State Motor Vehicle Accident Report Files is labor intensive. However, experience indicates that due to the severity of motor vehicle accident related injuries, extended medical care is usually required which results in substantial Medicaid program expenditures. In addition, with respect to the last comment, Motor Vehicle Accident Report Files may provide more comprehensive information regarding the identity of the insurer of parties involved in the accident, witnesses, and responsible parties (information that the recipient cannot always provide).

In considering the suggestion of the commenter regarding cost effectiveness, if HCFA receives substantial complaints from State Medicaid agencies regarding the cost effectiveness of the State Workers' Compensation, Motor Vehicle Accident Report File data matches and diagnosis and trauma code edits we will reevaluate these requirements.

D. Diagnosis and Trauma Code Edits

Comment: Several commenters objected to following up on all claims that contain diagnosis or trauma codes 800–999. Certain codes (e.g., 994.6, motion sickness) are nonproductive for identifying third party resources.

They asked if States have flexibility to eliminate some diagnosis codes from the initial identification of claims process based on their experience. One commenter asked whether a State that can successfully followup on all trauma related claims is required to prioritize claims for followup.

Response: The specific diagnosis codes in the 800 to 999 series inclusive, contained in the International Classification of Diseases, 9th Revision, Clinical Modification (1CD–9–CM) are codes that could denote a possible trauma related injury. The use of diagnosis code edits to identify third party resources has produced significant third party recoveries. We agree with the commenter, however, that the likelihood of code 994.6, Motion Sickness, being productive is remote. Therefore, we are amending regulations at § 433.138(e) to remove from the 800–999 series for edits the code 994.6. Also, as we discussed in our response to the previous comment, if we receive substantial complaints regarding diagnosis and trauma code edits, we will reevaluate the code requirements regarding this activity.

With respect to followup requirements, in our proposed rule we proposed to require that States periodically take action to identify those trauma codes which have yielded the highest third party collections and give higher priority to following up on those codes which are likely to be the most

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productive. We believe the identification of the most productive codes, with revisions based on periodic analysis will ensure a more cost-effective program and, therefore, do not believe that a State should be permitted to avoid this prioritization process because it has the resources to fully follow up on all trauma related claims.

E. Eligibility File and Data Base

Comment: Two commenters objected to including information on resources belonging to someone other than the recipient in the eligibility case file and third party data base. They claim that in the case of an automobile accident, updating the files with the other party's policy information would result in claims being incorrectly edited.

Response: We believe that all identifying third party information should be included in the Medicaid eligibility case file since that file is intended to contain all pertinent information involving the recipient. With respect to entry of information into the third party data base, we would expect that once Medicaid has been reimbursed, the information should remain in the third party data base for a reasonable period in case there is a recurring need for additional medical care by the recipient. The information including the automobile accident data and the diagnosis and trauma code edits is not required to be place in the third party data base on a permanent basis.

F. Definitions

1. Custodial parent

Comment: One commenter contends that the reference to "custodial parent" used in § 433.138(c) of the proposed regulations is inappropriate unless the regulation means to identify parents having the legal status of custodial parent. They suggested use of the phrase "parent living with child and providing parental care and guidance."

Response: We believe the use of the term "custodial parent" is appropriate since "custodial parent" is used extensively in Medicaid regulations and other program regulations (for example, OCSE regulations). Any revision to this phrase (for example, making a distinction between a parent that has a legal status of a custodial parent and one that does not) may result in confusion and a conclusion that we are setting up a new category of parent.

2. Eligibility Case File

Comment: Two commenters requested that we define "eligibility case file." They questioned whether it was an automated file or a hard copy file and also whether it was the master eligibility file maintained by the Medicaid agency or the eligibility file of the certifying agency when it is separate from the Medicaid agency.

Response: The Medicaid eligibility file is the hard copy or automated eligibility case record containing the required current and past data necessary to establish eligibility and evaluate the efficiency and effectiveness of State eligibility, claims processing and third party liability operations. In some States it may be a county office hard copy file while in others it may be an automated record.

The Medicaid eligibility file is the file maintained by the certifying agency (if separate from the Medicaid agency). For example, the IV–A agency file would be the eligibility file in States where IV–A is responsible for the eligibility determination.

G. General

1. Clarification

Comment: One commenter requested that the language contained in § 433.138(d)(1)(ii) be clarified. They contend that it is not clear whether we mean employed absent or custodial parents of recipients or whether we mean absent or custodial parents of employed recipients.

Response: We concur with the commenter and are revising § 433.138(d)(1)(ii) to read " . . . identifies employed absent or custodial parents of recipients and their employer(s)."

Comment: One commenter pointed out that in sections II.B.5 and II.C.5 of the preamble to the proposed rule, reference is made to section II.A.5 which is not included in the proposed regulations.

Response: The commenter is correct. The reference should have been II.A.4.

2. Reasonable Measures

Comment: A commenter recommended States be given an opportunity to determine reasonable measures based on appropriate cost-effective needs.

Response: States have been provided with sufficient opportunity to determine and take all reasonable measures to ascertain the legal liability of third parties to pay for care and services available under the State plan. While some States have taken appropriate measures to do so, others have not. In its report to the Congress dated February 12, 1985, the General Accounting Office (GAO) indicates that States are not taking adequate measures to identify and collect from available third party resources. A Maximus study completed in 1981 concluded that between 1.0 and 2.5 percent of annual Medicaid expenditures could be eliminated through better use of third party information collection and utilization. The regulation is intended to assist States in improving the effectiveness of third party liability programs.

H. Confidentiality

Comment: One commenter was concerned that contacting the employer of an absent parent would violate the parent's rights to confidentiality (since the absent parent is not a member of the applying household). The commenter questioned whether the State has the right to contact an absent parent's employer.

Response: Under § 306.50 of the final OCSE regulations published on October 16, 1985, the State IV–D agency is now required to: gather medical support enforcement information, submit the information to the Medicaid agency for use in its third party liability activities, and to petition the court to include employment related group health insurance coverage for dependent children in new or modified court orders. The IV–D agency's authority for obtaining this information is vested under title IV–D of the Act and applies to all IV–D cases, including those which are not AFDC recipients. Included in the information obtained by the IV–D agency is the name and address of the absent parent's place of employment, whether the absent parent has a health insurance policy and, if so, the policy number. The IV–D agency is also required to take steps to enforce court or administrative orders and provide the information to the Medicaid agency when a support order requires that the absent parent obtain health insurance coverage for a dependent child. As a result of the OCSE regulation, the need for the Medicaid agency to contact an absent parent's employer should not be necessary in situations where the Medicaid case involves a family receiving IV–D services. However, since a recipient must assign all rights to available third party benefits Medicaid is authorized to make such contacts as necessary to establish the existence of available third party benefits.

Comment: One commenter requested that we clarify the phrase contained in the preamble to the proposed rule (section II.B.4.) regarding written agreements to make Medicaid eligibility determinations.

Response: When we made reference in the preamble under section II.B.4. to written agreements, we stated that these written agreements had been mentioned earlier in the preamble. We refer the commenter to section II.A.2. of the preamble to the proposed rule, which discusses such agreements.

I. Reporting Requirements

Comment: One commenter objected to the requirement in proposed § 433.138(j) that State Medicaid agencies provide such reports as the Secretary prescribes for purposes of determining compliance with requirements in § 433.138. The commenter asserted that specific reporting requirements must be prescribed and that States be given opportunity to comment on such requirements.

Response. We have not included the specific reporting in the regulation since the requirements have not been determined at this time. The reporting requirements will involve the States furnishing necessary information required to evaluate the implementation and effectiveness of these regulations. When the reporting requirements have been determined we will solicit State comments throught the State Medicaid Directors Third Party Liability Technical Advisory Group prior to the issuance of the Medicaid Manual instructions.

J. Implementation-Timeframes

Comment: Three commenters expressed concern that sufficient time be given for States to implement the proposed changes to the regulations. They believe it will take over a year for some States to negotiate necessary contracts, to redesign systems, and to establish and implement procedures. One of these commenters recommended being given one full year to implement certain provisions of COBRA and recommended that System Performance Review (SPR) penalties not be imposed for the first full year following implementation of the provisions.

Response: We believe that States were given sufficient notice of the implementation requirements for the data exchanges with SWICAs, the SSA Wage and Earnings file, and State Title IV–A agencies since those requirements were published in the IEVS Notice of Proposed Rulemaking on March 14, 1985 and the final rule on February 28, 1986. We considered the implementation time required by States in establishing the effective date for this regulation. With regard to implementation of COBRA, the requirements contained in the proposed rule include only one provision contained under section 9503 of COBRA. That provision amends section 1902(a)(25) of the Act by requiring that the State Plan must provide for the collection of sufficient information to enable States to pursue claims against third parties with the information being collected at application or eligibility redetermination process.

With regard to the SPR penalty mentioned by the commenter, our proposed rule does not include that provision of the COBRA legislation. That provision will be contained in another HCFA proposed rule to be published shortly. We suggest the comment regarding the SPR penalties be submitted in connection with the proposed rule to be published in the **Federal Register.**

K. Paperwork Burden

Comment: Two commenters objected to additional paperwork requirements under these regulations, such as maintaining documentation for audit trails to verify timeliness and accuracy of data updates. These commenters believe that these requirements are unnecessary.

Response: The TPL information must be entered into the Medicaid file and the third party data base on a timely basis in order to provide the information necessary to determine if the requirements of § 433.138 and 433.139 are being met. State and Federal reviewers must have access to current and past third party liability data to evaluate the effectiveness of the eligibility, claims processing and third party liability operations.

III. Technical Revisions

On February 28, 1986, we published in the **Federal Register** a final rule, establishing the Income and Eligibility Verification System (the IEVS), that implements the legislative requirement that Medicaid State agencies exchange information with various agencies to verify income and eligibility of applicants and recipients (51 FR 7178). One section of that rule, 42 CFR 435.960, has proven to be ambiguous in content.

The purpose of § 435.960 is to implement the legislative requirement that State agencies use a standardized format, as prescribed by the Secretary, when releasing or requesting information. Exceptions to this general rule are the formats the Social Security Administration (SSA) and the Internal Revenue Service (IRS) use; State agencies must request data from SSA and IRS as those agencies require. Paragraph (a) of the section as written does not clearly state this policy, but instead appears to emphasize requests for information rather than formats. In addition, the paragraph cross-references only § 435.945(b) for the programs involved. Although § 435.945(b) discusses those agencies to which a Medicaid agency must *furnish* information, § 435.960 dictates the agencies from which the Medicaid agency must *request* information; § 435.948(a) is the section that lists the agencies from which Medicaid State agencies must request information. Since the agencies must use the same format (except as noted) for requesting and furnishing information, we are revising paragraph (a) to emphasize the use of a standardized format for requesting *and* releasing data and to cross-refer to § 435.948(a) as well as § 435.945(b) to assure that all agencies are using the same format.

The current paragraph (b) is deleted. In view of the revision to paragraph (a) (which will be broken down into two paragraphs), paragraph (b) is redundant, except for its requirement that release and receipt of data be "timely". Since this requirement does not fit well in a section on standardized formats, and one cannot require an agency to *receive* information timely, we are moving the requirement to § 435.945(b) to require that "The agency must timely furnish to other agencies . . . information . . .".

IV. Changes to the Regulations

Based on the comments received, we are making the following changes to the proposed rule.

- We are clarifying the language contained in §433.138(d)(1)(ii) to make clear that we are referring to employed absent or custodial parents, not employed recipients.
- We are amending § 433.138(d)(3) to make clear that the Medicaid agency is to request from the State title IV–A agency information that has not been previously reported. This should alleviate the collection of duplicate information which may result in unnecessary workload burden on both agencies.
- We are amending § 433.138(e) to delete from the required 800–999 series for edits, the code 994.6.
- To be consistent with the requirements in the IEVS regulations, § 433.138(g)(i) is amended to allow the same flexibility in the 30 day timeframe for followup that is contained in § 435.952(d).
- We are amending from 30 days to 60 days the timeframe for State Medicaid agencies to followup on health insurance information and on information obtained under the workers' compensation data exchanges.
- We have made minor technical changes to various sections of the regulations to correct typographical errors and to make minor clarifications.

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V. Impact Analyses

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any major rule. A major rule is one that would result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or any geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation is likely to result in a significant reduction of Federal Medicaid program expenditures. Additionally, while there may be moderate increases in State administrative costs, such costs would be offset by larger savings to States due to more effective identification of liable third parties.

Implementation of this rule would result in program savings to the extent that liable third parties are identified and payments are made for services that would otherwise be paid for by the Medicaid program under existing TPL identification programs. It is difficult to estimate precisely the overall impact of this rule due to the flexible nature of many of the requirements, a lack of sufficient data on existing State TPL programs, and the overlapping nature of this regulation with other regulations that affect TPL collections.

We have, however, made a rough estimate of the impact based on a study prepared under contract with HCFA by Maximus, Inc. (Contract No. 500–79–0500) titled *Evaluation of the Cost-Effectiveness of the Collection of Third-Party Liability by State Medicaid Agencies*, completed in 1981. Based on the findings of that study, we concluded that between 1.0 and 2.5 percent of annual Federal Medicaid expenditures could be eliminated through better use of TPL information collection and related State agency procedures. We attempted to take into account the impact of related regulations discussed elsewhere in this preamble, and developed low and high approximations, reflecting 1.0 percent and 2.5 percent reductions respectively, of savings that could be achieved if all the TPL-related regulations were implemented. We then apportioned that estimate to each of the regulations under development. Below, we provide our best high and low approximations illustrating the range of potential savings that would result from implementing the provisions of this rule.

FEDERAL SAVINGS PER FISCAL YEAR

(Rounded to nearest $25 million)

	1987	1988	1989	1990	1991
Low	25	75	125	125	150
High	75	200	300	325	350

In total, we estimate that implementation of this rule would result in Federal Medicaid savings of between 500 million and 1.275 billion during the next five-year period. Because potential annual savings would exceed the $100 million threshold under E.O. 12291, this is considered a major rule and a regulatory impact analysis is necessary. While each requirement is discussed previously in this preamble, fulfilling some of the requirements of an impact analysis, we are highlighting below the areas that may produce the greatest impact.

The costs of implementation and operation of a revised TPL identification program will vary from State to State. We recognize that in some States the costs will be high. However, it is these States that we believe will benefit the most from the requirements. The States that already have effective TPL identification and collection procedures will not benefit as much. On the other hand, implementation costs for them will be relatively small.

The main factors that will affect the magnitude of savings achieved by implementation of these regulations are:

- The effectiveness of agencies in obtaining liability information at the time of application or redetermination.
- The intensity of followup actions taken by the State Medicaid agency to bring about actual payments from liable third parties.
- The degree of success in obtaining agreements with other agencies for exchanging relevant data.
- The relative usefulness and frequency of utilizing diagnosis codes related to trauma in identifying liable third parties.

This final rule should have no effect on Medicaid eligibility determinations. It is intended to provide assistance and incentives to States for the identification of alternative sources of payment for health services provided to Medicaid participants. It is further possible that by making Medicaid enrollees more aware of other health insurance coverage available to them, access to care may be enhanced.

B. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulation would not have a significant economic impact on a substantial number of small entities.

The primary impact of this rule would fall on State Medicaid agencies and on other, primarily private, insurers. For purposes of the RFA, States are not considered small entities. Further, we do not believe that increased payments on the part of other insurers or payers would represent a significant portion of their total payments. The Department generally uses 3 percent as a threshold in determining whether the impact is significant under the RFA. We estimate that private insurance companies, in calendar year 1984, paid out about $111.8 billion in the form of benefits to enrollees. Thus, even the high estimate of $325 million eventual additional annual payments by other payers is significantly less than the 3 percent criteria. Additionally, the increased payments by third parties would not be a result of revised payment policies. These would be payments for which the third parties are presently liable but ineffectively identified and billed. For these reasons, we have determined, and the Secretary certifies, that this regulation would not have a significant economic impact on a substantial number of small entities. Therefore, a final regulatory flexibility analysis is not required.

VI. Information Collection Requirements

Sections 431.306, 433.138(b)–(h) and (j), 435.945(b), and 435.960(a) of this final rule contain information collection requirements. However, the information collection requirements contained in §§ 435.945(b) and 435.960(a) have been approved under OMB control number 0938–0467. As required by the Paperwork Reduction Act of 1980, we have submitted a copy of the final to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: Allison Herron.

VII. List of Subjects

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 433

Administrative practice and procedure, Claims, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to families with dependent children, Grant programs-health, Medicaid, Supplemental Security Income (SSI).

42 CFR Chapter IV, Subchapter C is amended as set forth below:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

• • • • • •

SUBCHAPTER C—MEDICAL ASSISTANCE PROGRAMS

• • • • • •

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

The authority citation for Part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act. (42 U.S.C. 1302), unless otherwise noted.

A. Part 431, Subpart F is amended as set forth below:

1. In § 431.305, the introductory text to paragraph (b) is republished and a new paragraph (b)(7) is added to read as follows:

§ 431.305 Types of information to be safeguarded.

• • • • • •

(b) This information must include at least—

• • • • • •

(7) Any information received in connection with the identification of legally liable third party resources under § 433.138 of this chapter.

2. In § 431.306, a new paragraph (h) is added to read as follows:

§ 431.306 Release of information

• • • • • •

(h) Before requesting information from, or releasing information to, other agencies to identify legally liable third party resources under § 433.138(d) of this chapter, the agency must execute data exchanges agreements, as specified in § 433.138(h)(2) of this chapter.

PART 433—STATE FISCAL ADMINISTRATION

B. Part 433 is amended as set forth below:

1. The authority citation for Part 433 is revised to read as follows:

Authority: Secs. 1102, 1137, 1902(a)(4), 1902(a)(25), 1902(a)(45), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(o), 1903(p), 1903(r), and 1912 of the Social Security Act; 42 U.S.C. 1302, 1320b–7, 1396a(a)(4), 1396a(a)(25), 1396a(a)(45), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(o), 1396b(p), 1396b(r) and 1396k, unless otherwise noted.

2. In Part 433, Subpart D, § 433.138 is revised to read as follows:

§ 433.138 Determining liability of third parties.

(a) *Basic provisions.* The agency must take reasonable measures to determine the legal liability of third parties to pay for services furnished under the plan. At a minimum, such measures must include the requirements specified in paragraphs (b) through (j) of this section.

(b) *Obtaining health insurance information: Initial application and redetermination processes for Medicaid eligibility.* (1) If the Medicaid agency determines eligibility for Medicaid, it must, during the initial application and each redetermination process, obtain from the applicant or recipient such health insurance information as would be useful in identifying legally liable third party resources so that the agency may process claims under the third party liability payment procedures specified in § 433.139 (b) through (f). Health insurance information may include, but is not limited to, the name of the policy holder, his or her relationship to the applicant or recipient, the social security number (SSN) of the policy holder, and the name and address of insurance company and policy number.

(2) If Medicaid eligibility is determined by the Federal agency administering the supplemental security income program under title XVI in accordance with a written agreement under section 1634 of the Act, the Medicaid agency must take the following action. It must enter into an agreement with HCFA or must have, prior to February 1, 1985, executed a modified section 1634 agreement that is still in effect to provide for—

(i) Collection, from the applicant or recipient during the initial application and each redetermination process, of health insurance information in the form and manner specified by the Secretary; and

(ii) Transmittal of the information to the Medicaid agency.

(3) If Medicaid eligibility is determined by any other agency in accordance with a written agreement, the Medicaid agency must modify the agreement to provide for—

(i) Collection, from the applicant or recipient during the initial application and each redetermination process, of such health insurance information as would be useful in identifying legally liable third party resources so that the Medicaid agency may process claims under the third party liability payment procedures specified in § 433.139(b) through (f). Health insurance information may include, but is not limited to, those elements described in paragraph (b)(1) of this section; and

(ii) Transmittal of the information to the Medicaid agency.

(c) *Obtaining other information.* The agency must, for purposes of implementing the requirements in paragraph (d)(1)(ii) and (d)(4)(i) of this section, incorporate into the eligibility case file the names and SSNs of absent or custodial parents of Medicaid recipients to the extent such information is available.

(d) *Exchange of data.* To obtain and use information for the purpose of determining the legal liability of third parties so that the agency may process claims under the third party liability payment procedures specified in § 433.139 (b) through (f), the agency must take the following actions:

(1) Except as specified in paragraph (d)(2) of this section, as part of the data exchange requirements under § 435.945 of this chapter, from the State wage information collection agency (SWICA) defined in § 435.4 of this chapter and from the SSA wage and earnings files data as specified in § 435.948(a)(2) of this chapter, the agency must—

(i) Use the information that identifies Medicaid recipients that are employed and their employer(s); and

(ii) Obtain and use, if their names and SSNs are available to the agency under paragraph (c) of this section, information that identifies employed absent or custodial parents of recipients and their employer(s).

(2) If the agency can demonstrate to HCFA that it has an alternate source of information that furnishes information as timely, complete and useful as the SWICA and SSA wage and earnings files in determining the legal liability of third parties, the requirements of paragraph (d)(1) of this section are deemed to be met.

(3) The agency must request, as required under § 435.948(a)(6)(i), from the State title IV–A agency, information not previously reported that identifies

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those Medicaid recipients that are employed and their employer(s).

(4) Except as specified in paragraph (d)(5) of this section, the agency must attempt to secure agreements (to the extent permitted by State law) to provide for obtaining—

(i) From State Workers' Compensation or Industrial Accident Commission files, information that identifies Medicaid recipients and, (if their names and SSNs were available to the agency under paragraph (c) of this section) absent or custodial parents of Medicaid recipients with employment-related injuries or illnesses; and

(ii) From State Motor Vehicle accident report files, information that identifies those Medicaid recipients injured in motor vehicle accidents, whether injured as pedestrians, drivers, passengers, or bicyclists.

(5) If unable to secure agreements as specified in paragraph (d)(4) of this section, the agency must submit documentation to the regional office that demonstrates the agency made a reasonable attempt to secure these agreements. If HCFA determines that a reasonable attempt was made, the requirements of paragraph (d)(4) of this section are deemed to be met.

(e) *Diagnosis and trauma code edits.* With the exception of code 994.6, the agency must take action to identify those paid claims for Medicaid recipients that contain diagnosis codes 800 through 999 (ICDCM) International Classification of Disease, 9th Revision, Clinical Modification, Volume 1) inclusive, for the purpose of determining the legal liability of third parties so that the agency may process claims under the third party liability payment procedures specified in § 433.139 (b) through (f).

(f) *Data exchanges and trauma code edits: Frequency.* The agency must coduct the data exchange required in paragraph (d)(1) of this section in accordance with the intervals specified in § 435.948 of this chapter, the data exchanges required in paragraph (d)(3) of this section on a timely basis that is consistent with the intervals specified in 45 CFR 205.55 (a)(1) and (a)(3); and must conduct the data exchanges and diagnosis and trauma edits required in paragraphs (d)(4) and (e) of this section on a routine and timely basis. The State plan must specify the frequency of these activities.

(g) *Followup procedures for identifying legally liable third party resources.*—(1) *SWICA, SSA wage and earnings files, and title IV–A data exchanges.* With respect to information obtained under paragraphs (d)(1) through (d)(3) of this section—

(i) Except as specified in § 435.952(d) of this chapter, within 30 days, the agency must followup (if appropriate) on such information in order to identify legally liable third party resources and incorporate such information into the eligibility case file and into its third party data base and third party recovery unit so the agency may process claims under the third party liability payment procedures specified in § 433.139 (b) through (f); and

(ii) The State plan must describe the methods the agency uses for meeting the requirements of paragraph (g)(1)(i) of this section.

(2) *Health insurance information and workers' compensation data exchanges.* With respect to information obtained under paragraphs (b) and (d)(4)(i) of this section—

(i) Within 60 days, the agency must followup on such information (if appropriate) in order to identify legally liable third party resources and incorporate such information into the eligibility case file and into its third party data base and third party recovery unit so the agency may process claims under the third party liability payment procedures specified in § 433.139 (b) through (f); and

(ii) The State plan must describe the methods the agency uses for meeting the requirements of paragraph (g)(2)(i) of this section.

(3) *State motor vehicle accident report file data exchanges.* With respect to information obtained under paragraph (d)(4)(ii) of this section—

(i) The State plan must describe the methods the agency uses for following up on such information in order to identify legally liable third party resources so the agency may process claims under the third party liability payment procedures specified in § 433.139 (b) through (f);

(ii) After followup, the agency must incorporate all information that identifies legally liable third party resources into the eligibility case file and into its third party data base and third party recovery unit; and

(iii) The State plan must specify timeframes for incorporation of the information.

(4) *Diagnosis and trauma code edits.* With respect to the paid claims identified under paragraph (e) of this section—

(i) The State plan must describe the methods the agency uses to follow up on such claims in order to identify legally liable third party resources so the agency may process claims under the third party liability payment procedures specified in § 433.139 (b) through (f) (Methods must include a procedure for periodically identifying those trauma codes that yield the highest third party collections and giving priority to following up on those codes.);

(ii) After followup, the agency must incorporate all information that identifies legally liable third party resources into the eligibility case file and into its third party data base and third party recovery unit; and

(iii) The State plan must specify the timeframes for incorporation of the information.

(h) *Obtaining other information and data exchanges: Safeguarding information.* (1) The agency must safeguard information obtained from and exchanged under this section with other agencies in accordance with the requirements set forth in Part 431, Subpart F of this chapter.

(2) Before requesting information from, or releasing information to other agencies to identify legally liable third party resources under paragraph (d) of this section the agency must execute data exchange agreements with those agencies. The agreements, at a minimum, must specify—

(i) The information to be exchanged;

(ii) The titles of all agency officials with the authority to request third party information;

(iii) The methods, including the formats to be used, and the timing for requesting and providing the information;

(iv) The safeguards limiting the use and disclosure of the information as required by Federal or State law or regulations; and

(v) The method the agency will use to reimburse reasonable costs of furnishing the information if payment is requested.

(i) *Reimbursement.* The agency must, upon request, reimburse an agency for the reasonable costs incurred in furnishing information under this section to the Medicaid agency.

(j) *Reports.* The agency must provide such reports with respect to the data exchanges and trauma code edits set forth in paragraphs (d)(1) through (d)(4) and paragraph (e) of this section, respectively, as the Secretary prescribes for the purpose of determining compliance under § 433.138 of the regulations and evaluating the effectiveness of the third party liability identification system.

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

C. Part 435 is amended as set forth below:

1. The authority citation for Part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302)

2. In § 435.945, paragraph (b) is revised to read as follows:

§ 435.945 General requirements.

* * * * *

(b) The agency must furnish timely to other agencies in the State and in other States and to Federal programs income, eligibility and medical assistance payment information for verifying eligibility or benefit amounts for the programs listed in § 435.948(a)(6) of this subpart. In addition, the agency must furnish income and eligibility information to—

(1) The child support enforcement program under part D of title IV of the Act; and

(2) SSA for old age, survivors and disability benefits under title II and for SSI benefits under title XVI of the Act.

* * * * *

3. Section 435.960 is revised to read as follows:

§ 435.960 Standardized formats for furnishing and obtaining information to verify income and eligibility.

(a) The agency must maintain for all applicants and recipients within an agency file the SSN, surname and other data elements in a format that at a minimum allows the agency to furnish and to obtain eligibility and income information from the agencies or programs referenced in § 435.945(b) and § 435.948(a).

(b) The format to be used will be prescribed by—

(1) HCFA when the agency furnishes information to, or requests information from, any Federal or State agency, except SSA and the Internal Revenue Service as specified in paragraphs (b) (2) and (3), respectively;

(2) The Commissioner of Social Security when the agency requests information from SSA; and

(3) The Commissioner of Internal Revenue when the agency requests information from the Internal Revenue Service.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: October 6, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: January 29, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87–4005 Filed 2–26–87; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

National Flood Insurance Program; Insurance Rates

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION. Final rule.

SUMMARY: This final rule increases the National Flood Insurance Program (NFIP) chargeable (subsidized) rates, which apply to all structures located in communities participating in the Emergency Program of the NFIP and to certain structures in communities in the Regular Program of the NFIP.

EFFECTIVE DATE: June 1, 1987.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Federal Emergency Management Agency, Federal Insurance Administration, Room 429, 500 "C" Street, SW., Washington, DC 20472; telephone number (202) 646–3422.

SUPPLEMENTARY INFORMATION: On April 10, 1986, FEMA published for comment in the **Federal Register** (Vol. 51, Page 12348) a proposed rule to increase the National Flood Insurance Program (NFIP) chargeable (subsidized) rates. The proposed increase was intended to help the NFIP satisfy the premium requirements for the historical average loss year and to reduce the general taxpayer's burden with a more equitable sharing of the costs of flood losses between the general taxpayers and the insureds. In addition to rate increases, other measures, such as coverage changes, optional deductibles, rating system changes, and measures to reduce flood losses are part of the ongoing effort to achieve these goals.

The chargeable (subsidized) rates, for which an increase was proposed, are the rates applicable to structures located in communities participating in the Emergency Program of the NFIP and to certain structures in communities in the Regular Program. They are countrywide rates for two broad building type classifications which, when applied to the amount of insurance purchased and added to the expense constant, continue to produce a premium income somewhat less than necessary to cover the expense and loss payments incurred on the flood insurance policies issued on that basis. The funds needed to supplement the inadequate premium income are provided by the National Flood Insurance Fund. The subsidized rates are promulgated by the Federal Insurance Administrator for use under the Emergency Program (added to the NFIP by the Congress in section 408 of the Housing and Urban Development Act of 1969) and for the use in the Regular Program on construction or substantial improvement started before December 31, 1974 (this additional grandfathering was added to the NFIP by Congress in Section 103 of the Flood Disaster Protection Act of 1973) or the effective date of the initial Flood Insurance Rate Map (FIRM), whichever is later.

FEMA proposed to increase the chargeable or subsidized rates as follows:

Type of Structure	Rates per year per $100 coverage on	
	Structure	Contents
(1) Residential	$0.55	$0.65
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration)	.65	1.30

For comparison, the current subsidized rates are as follows:

Type of Structure	Rates per year per $100 coverage on	
	Structure	Contents
(1) Residential	$0.45	$0.55
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration)	.55	1.10

Subsequent to the publication of the proposed rule on April 10, 1986, the House Appropriations Committee in its Report (dated July 31, 1986) accompanying H.R. 5313 directed that NFIP premium rates not be increased "during the period beginning on the date of enactment of this bill and ending on September 30, 1987, by more than a prorated annual rate of 10 percent." Also, the Senate Appropriations Committee in its Report (dated September 25, 1986) accompanying H.R. 5313 stated that it was "in agreement with the House Appropriations Committee and both authorizing committees that premium rate changes for flood insurance during fiscal year 1987 may not be increased by more than 10 percent."

To comply with this Congressional limit, the increase in the chargeable or subsidized rates made by this final rule are not as great as proposed. This final rule increases the chargeable or subsidized rates to the following amounts:

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Type of structure	Rates per year per $100 coverage on	
	Structure	Contents
(1) Residential	$0.50	$0.60
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration)	.80	1.20

Of the 23 comments received on the proposed rule, one supported the proposed increase in chargeable premium rates, three urged a larger rate increase, and the remainder were critical of the rate increase. A number of the comments expressed the view that the NFIP rate revision program was inconsistent with the intent of Congress in establishing the NFIP, which they believed was to provide very long term subsidies until the building stock was replaced, with premiums being required to be affordable in the meantime. A number of the comments also were concerned about possible large reductions in the number of NFIP policies as a result of rate increases. Some of these comments also were concerned about the impact on disaster relief programs if there were large reductions in the number of NFIP policies. Two comments referred to the NFIP making a profit in Fiscal Year 1985. Comments also raised the possibility of higher rates resulting in communities dropping out of the NFIP, as well as the possibility of requests being made for the repeal of the mandatory purchase requirement. Several comments suggested that the administrative costs of the NFIP were high compared to private insurance companies and should be reduced. A number of comments suggested various measures to reduce flood damage as an alternative to rate increases. Among the measures suggested were technical assistance to local communities in developing sound flood plain management practices, a community rating system, encouraging retrofitting of existing buildings, correcting misrated policies by better monitoring and enforcement, expanding the policy base, and increasing the waiting period for coverage to become effective. Two environmental groups urged an even greater rate increase as a disincentive to development in flood prone areas. One of the environmental groups also urged FEMA to consider the cost of loss of wild-life habitat and recreational opportunities as a result of building in flood prone areas and contended that doing that would justify a larger rate increase.

FEMA has responded in the past to a number of these concerns and welcomes this opportunity to explain its rate revision program. First, in explaining the self-supporting goal, it would be appropriate to provide the full statement of the goal as expressed in the Federal Insurance Administration's (FIA) planning documents:

Implement a self-supporting nationwide flood insurance program by 1988 which minimizes the general taxpayer burden through an equitable sharing of the costs of flood losses; fulfills the financial need in risk transfer for the average loss year and has mechanisms in place to develop reserves or otherwise meet the needs of catastrophic loss years; results in rates which are not excessive, inadequate, unfairly discriminatory or otherwise unreasonable; responds to competitive market conditions; improves the availability and reliability of flood insurance; and does not violate public policy. Study the feasibility of proposing legislative initiatives to permit a systematic phase out of program subsidies. In addition to rating and coverage changes, this goal will be achieved through appropriate support of and commitment to Write-Your-Own and loss reduction activities.

A key term in the statement of the goal is "average loss year," which in this case refers to the historical average loss year. Over the NFIP's history, the Program has not been subjected to the truly catastrophic flood event, with more than a billion dollars in flood insurance claims. Thus, the historical average is substantially less than could be expected over the long term when the influence of the extremely infrequent, truly catastrophic flood would result in a significant increase in the average year's losses.

Because the estimated amount of flood losses in any future one-year period is so uncertain, it can only be provided for by having available large loss reserves. Those reserves should be replenished by accumulating funds in low loss years to offset the drain on the reserves during heavy loss years. However, on an earned premium and incurred loss and expense basis, the NFIP has operated at a deficit since its inception. Thus, the general taxpayer has subsidized the beneficiaries of the Program through appropriations to repay borrowing authorized by statute from the U.S. Treasury to cover the losses and expenses exceeding premium income.

This has occurred even during a period where the average year's losses have been less than can be expected over the long term. Additionally, the deficit operation has prevented any accumulation of reserves.

The National Flood Insurance Act of 1968 (Section 1302(d)(2)) has the requirement of "distributing burdens equitably among those who will be protected by flood insurance and the general public." FEMA has concluded that an equitable sharing of the burdens can be achieved through rating and coverage changes that will provide adequate premium income to meet losses and expenses of a "normal" year (the average year experienced to date as opposed to the average resulting from a time period including a truly catastrophe reserves during lower loss years). The realization of the 1968 goal will not eliminate the subsidy of the NFIP, but it will allow the NFIP to operate during lower loss years with an underwriting profit which can be used to pre-fund some of the reserves needed for high loss years.

The key elements of FEMA's plan for achieving the goal of a self-supporting Program for the historical average loss year by 1988 include:

1. Regularly scheduled review of experience and revision of rates and coverage. The NFIP is a relatively young insurance program dealing with a risk about which very little was known at the time of the Program's inception. Because initially the rate structure was necessarily based to a large degree on professional judgement, it is important, now that there is credible experience available, to translate that experience into action. Some coverage has proven to be very expensive to provide. Such was the case with finished basements where coverage is now provided for structural elements and items necessary to the habitability of the building such as washers, dryers, water heaters, furnaces, air conditioners, but not for items such as carpeting and wet bars. Experience has shown that it is very expensive to provide first dollar, all inclusive coverage and that flood insurance must be oriented more toward coverage that maintains a building's habitability and prevents the truly large loss that could be someone's personal financial disaster. Therefore, FEMA has introduced a program of optional increased deductibles.

2. Increased market penetration and broader spread of risk. One of the goals of the Write-Your-Own (WYO) Program, which has re-involved the insurance industry in the NFIP by providing for the issuance of the Standard Flood Insurance Policy by private sector insurers who enter into an arrangement with the Federal Insurance Administrator to do so, is to make use of the industry's existing marketing apparatus to increase the policy base and broaden the geographic spread of business. So far about 28% of WYO policies are new to the NFIP.

3. Loss reduction efforts and incentives for good flood plain management at the local level. In addition to both the technical assistance offered by FEMA and to the NFIP regulations covering the construction of new buildings so as to reduce the risk of flood damage, a guidance manual on retrofitting techniques to reduce damage to existing buildings was published in 1986. The rating of a local community's efforts in flood plain management is being explored for a possible system of community-wide rate adjustments

recognizing meaningful efforts to reduce losses.

In response to the view that the rating and coverage changes proposed by FEMA are moving the NFIP away from its purposes as stated in the National Flood Insurance Act of 1968, FEMA believes that, on the contrary, its actions legitimately further the purposes of the 1968 Act. The equitable distribution of burdens has already been discussed. An additional purpose is the encouragement of sound flood plain management measures to minimize exposure of property to flood losses. Inexpensive, highly subsidized flood insurance with broad indemnification provisions encourages owners of existing flood prone properties to increase their capital investment in those risky properties. Through the use of increased insurance rates and leaner coverage so that the property owner still bears some risk, this threat of expansion of flood risk can be managed and still protect these individuals from severe financial losses. To ignore economic leverage as a flood plain management tool, particularly with respect to existing construction, where Federal regulations have little effect, would be a mistake.

With respect to legislative intent and legislative authority for FEMA to raise chargeable rates and thereby reduce or eliminate the subsidy, the General Accounting Office (GAO) in its 1983 report, "National Flood Insurance Program-Major Changes Needed If It Is To Operate Without a Federal Subsidy," reviewed in depth the FEMA ratemaking procedures and the Federal Insurance Administrator's (the Administrator) goal to make the Program self-sustaining. The GAO concluded that "The act currently allows FEMA considerable freedom in establishing chargeable rates."

There was no finding that indicated that the FEMA goal to obtain a self-sustaining program violated either legislative intent or authority. The GAO report states: "In establishing the flood insurance program the Congress gave FEMA very general guidance on the level and duration of the subsidy in the program's chargeable rates. These rates have been set based on what FIA's Administrators believed people could afford. In setting these rates the Administrators sought to encourage wide participation. While not ignoring the desirability of wide participation, the current Administrator has emphasized making the program self-sustaining and actuarially sound by fiscal year 1988. To achieve this goal some as yet undetermined rate increases and/or coverage reductions will be necessary." In commenting on FEMA ratemaking activities, the GAO encouraged FEMA to continue to give more credence to its recent loss experience, estimate and establish a catastrophe reserve, correct data and methodological weaknesses and avoid unnecessary complexity in the rating of risks. The GAO was informed of the Administrator's policy to reduce or suspend future rate increases and reevaluate the time frame for achieving a self-sustaining, actuarially sound program if rate increases were having a negative impact on the National Flood Insurance Program.

In response to the view that the administrative costs of the NFIP are too high in comparison with those of the private insurance industry and should be reduced, recognition must be given to the statutory requirements that the NFIP make extensive flood risk studies, flood loss reduction studies and implement flood plain management programs that go beyond the comparable risk studies and risk management programs currently needed by the private insurance for normal property insurance lines of business. The NFIP expenses for these activities are subsidized by the federal government and therefore, not included in the ratemaking procedures. The normal administrative expenses of the NFIP compare favorably with those of the private insurance industry. The latest two year average expense ratio of .34 is the same as the latest two year average expense ratio of the private insurance industry for property insurance. FEMA continues to explore means available to reduce all administrative costs.

Increasing the waiting period required for a policy to be in force before a disaster strikes as a way of reducing claims has been suggested in the past but the need to attain a proper balance between the waiting period, the NFIP objective to write more insurance policies, and previous public comment on this matter have led to the current five day waiting period. However, FEMA intends to review the experience to determine whether or not the five day waiting period is resulting in a costly adverse selection and will reevaluate the waiting period rule if warranted.

In response to the view that the rate revision be postponed until several NFIP enhancements recently implemented or proposed are studied to determine their effect on rates, FEMA believes that, in abiding by the limitation of 10%, it has taken into consideration the NFIP objectives and the expectation that the program enhancements may reduce losses.

Regarding the suggestion that the NFIP include the cost of the loss of wildlife habitat and recreational opportunities as a result of building in the flood plain in the evaluation of insurance rates, FEMA does not believe that these elements are on appropriate part of a consideration of the risk in the NFIP ratemaking process. Further, considering such elements would be inconsistent with standard industry principles of insurance ratemaking.

It has been mentioned already that the NFIP's legislation considers the equitable distribution of cost for flood insurance among policyholders and the general public. The 1968 Act additionally mentions "making flood insurance coverage available on reasonable terms and conditions" (Section 1302(a)). Also, the FEMA goal states that rates should be established "which are not excessive, inadequate, unfairly discriminatory or otherwise unreasonable." (In the case of chargeable (subsidized) rates, inadequacy is accepted.) The question remains as to what rates, terms and conditions are "reasonable". Some have equated "reasonable" with "affordable". Although reasonableness may include consideration of affordability, it is not equivalent to affordability and it must take into account other concerns. As stated before, FEMA has concluded that it is reasonable for flood insurance to be provided on terms and conditions such that losses and expenses in the historical average loss year, which is significantly less than the long-term average, can be adequately funded from premium income without the necessity of borrowing from the U.S. Treasury. Additionally, it is reasonable, even for a subsidized Program, to experience years where premium income exceeds losses and expenses so that reserves are accumulated for use in higher loss years.

The projected average annual premium for subsidized policies using the revised chargeable rates is $267. This represents 80% of the premium needed to fund the normal loss year currently projected at 1987 cost levels.

The revised chargeable rates are considered by FEMA to be reasonable. During the study of the feasibility of a flood insurance program conducted at the direction of Congress, by the Department of Housing and Urban Development in 1966, projections were made of the realistic limit of flood insurance rates at which it would still be economically justified to continue using residentially developed land while paying those rates for flood insurance. It was estimated this limit would be around $1.00 per $100 of insurance

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purchased to cover building and contents. The revised rates are well within this limit. Additionally, the 1966 feasibility study anticipated that only buildings within the 50-year flood plain would be subsidized. The revised chargeable rates represent a rate level that provides a subsidy to many buildings outside the 50-year flood plain and therefore actually represent a more generous subsidy.

Concerns have been raised regarding the effects of rating and coverage changes on the policyholder base and how losses to that base of the better risks will possibly worsen the chances for the Program to eventually be actuarially sound and will possibly increase disaster relief expenditures. FEMA established a monitoring system to evaluate whether or not rate increases were having a negative affect on the NFIP. FEMA and GAO jointly did an initial evaluation of the pre-1983 rate revision on the NFIP. This evaluation established that several factors other than rate increases were negatively affecting insurance policy sales, and that no community had left the Program because of the rate increase. Further, FEMA has seen no indication that the rate increases would cause policyholders to request a repeal of the mandatory purchase requirement. FEMA has continued to monitor the number of flood insurance policies in force on a monthly basis. This includes monthly statistical reports, monthly State and regional analyses by NFIP regional offices and monthly policy meetings with the Administrator. The monthly technical analyses show that current renewal rates for FY 1983, 1984, 1985 and 1986 generally exceed those of 1981 and 1982.

The following table of renewal percentage illustrates this point:

FY RENEWAL PERCENTAGE

1981	1982	1983	1984	1985	1986
78	80	84	80	82	81

The sale of new flood insurance policies appears to be influenced by several factors in addition to cost, namely mortgage activity, the local economy, insurance purchased as a result of post-flood disaster public awareness campaigns, and insurance purchased as a condition to obtain Federal disaster relief. The study that FEMA performed in conjunction with the GAO report referred to above showed that most of the fluctuations in the numbers of new policies could be attributed to housing market activity and flood disaster occurrences.

In spite of a relatively low frequency of major flood disasters since 1982, the insurance in force has shown some growth. The policies in force at the end of FY 1982, 1983, 1984 and 1985 were 1,866,801, 1,911,316, 1,865,076 and 1,904,052, respectively. The number of policies in force as of the end of FY 1986 is estimated to be 2,075,496. It is quite evident from the information that FEMA reviews that the past rate increases have had no negative impact on the NFIP. FEMA believes that the rate increases are consistent with the use of a premium subsidy to help existing property owners maintain their properties and temporarily save capital, as well as to help these individuals salvage some of their investment in the property, as suggested in the premium payment and risk compensation discussion in the 1966 feasibility study. Further, the rate increases are consistent with the legislative purpose in section 1302(d)(2) of the 1968 Act to "provide flexibility in the program so that such flood insurance may be based on workable methods of pooling risks, minimizing costs, and distributing burdens equitably among those who will be protected by flood insurance and the general public."

FEMA has determined, based upon an Environmental Assessment, that this proposed rule does not have a significant impact upon the quality of the human environment. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

These regulations do not have a significant economic impact on a substantial number of small entities and have not undergone regulatory flexibility analysis.

The rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, and, hence, no regulatory analysis has been prepared.

FEMA has determined that the proposed rule does not contain a collection of information requirement as defined in section 3502 of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 61

Flood insurance.

Accordingly, Subchapter B of Chapter 1 of Title 44 is proposed to be amended as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

2. Section 61.9 is revised to read as follows:

§ 61.9 Establishment of chargeable rates.

(a) Pursuant to section 1308 of the Act, chargeable rates per year per $100 of flood insurance are established as follows for all areas designated by the Administrator under Part 64 of this subchapter for the offering of flood insurance.

RATES FOR NEW AND RENEWAL POLICIES

Type of structure	Rates per year per $100 coverage on—	
	Structure	Contents
(1) Residential	$0.50	$0.60
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration)	.60	1.20

(b) The contents rate shall be based upon the use of the individual premises for which contents coverage is purchased.

Harold T. Duryee,

Federal Insurance Administrator.

[FR Doc. 87-4086 Filed 2-26-87; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6709]

Final Flood Elevation Determination; Buchanan County, VA; Rescission

AGENCY: Federal Emergency Management Agency.

ACTION: Rescission of final rule.

SUMMARY: The Federal Emergency Management Agency published the final flood elevation determination for Buchanan County, Virginia. This notice will serve to rescind that publication. Following an engineering analysis and review, a new notice of final flood elevation determination will be made.

EFFECTIVE DATE: February 27, 1987.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: As a result of recent data developed by the Army Corps of Engineers, Huntington District, the Federal Emergency Management Agency gives notice of rescission of the final flood elevation determination for Buchanan County, Virginia, published at 51 FR 37287 on October 21, 1986, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67.

Issued: February 18, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-4085 Filed 2-26-87; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-92; RM-5226, 5315, and 5453]

Radio Broadcasting Services; Bar Harbor and Milbridge, ME

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channels 256B1 and 299B to Bar Harbor, Maine, and Channel 229B to Milbridge, Maine. Bar Harbor will receive its first and second service and Milbridge, its first service. This action is taken in response to petitions filed by Pierless Broadcasting Company (Ch. 256B1), Sound Innovations, Inc. (Ch. 299B) and a counterproposal filed by Gordon Kelley (229B at Milbridge). Canadian concurrence has been obtained for the allotment of the above channels. With this action this proceeding is terminated.

DATES: Effective April 6, 1987; the window period for filing applications will open on April 7, 1987, and close on May 6, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-92, adopted January 30, 1987 and released February 19, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. § 73.202(b), the Table of FM Allotments is amended, under Maine, by adding Channel 256B1 and Channel 299B to Bar Harbor, and by adding Channel 229B to Milbridge, Maine.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-4134 Filed 2-26-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-375; RM-5511]

Radio Broadcasting Services; Hyannis, MA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates FM Channel 275A to Hyannis, Massachusetts, and modifies the permit of Station WPXC(FM), Channel 276A, to specify Channel 275A. This action is taken in response to a petition filed by Radio Hyannis, Inc. permittee of Channel 276A. The substitution of channels will provide a greater area in which the transmitter site can be located. Comments were filed by the petitioner. No other comments were received. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 6, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-375, adopted December 24, 1986 and released February 19, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended by revising the entry of Hyannis, Massachusetts, to delete Channel 276A and add Channel 275A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-4135 Filed 2-26-87; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 503

[APD 2800.12 CHGE 39]

General Services Administration Acquisition Regulation; Procedures for Voiding and Rescinding Contracts

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5, is amended to add Subpart 503.7 which implements Subpart 3.7 of the Federal Acquisition Regulation (FAR) by providing agency procedures for voiding and rescinding contracts. The intended effect is to improve the regulatory coverage and provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: February 9, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Office of GSA Acquisition Policy and Regulations, (VP) (202) 535-7791.

SUPPLEMENTARY INFORMATION:

Background

This rule was published in the **Federal Register** for public comment on October 28, 1986 (51 FR 39404). No public comments were received. Comments from various GSA offices have been

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considered and incorporated in the final rule when considered appropriate.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this rule. The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rule implements higher level regulations which provide for voiding and rescinding of contracts based upon a conviction where there is fraud in the inducement. The rule does not contain information collection requirements which require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Part 503

Government procurement.

1. The authority citation for 48 CFR Part 503 continues to read as follows:

Authority: 40 U.S.C. 486(c)

PART 503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. The table of contents for Part 503 is amended by revising the title of Subpart 503.3 and by adding Subpart 503.7 and related sections, to read as follows:

Subpart 503.3 Report of Suspected Antitrust Violations

Subpart 503.7 Voiding and Rescinding Contracts

Sec.
503.700 Scope of subpart.
503.702 Definitions.
503.703 Authority.
503.705 Procedures.

3. Subpart 503.3 is amended by revising the title to read "Subpart 503.3—Report of Suspected Antitrust Violations".

4. Subpart 503.7 is added to read as follows:

Subpart 503.7 Voiding and Rescinding Contracts

503.700 Scope of subpart.

This subpart implements and supplements FAR Subpart 3.7 with respect to the voiding and rescinding of a contract where there has been a final conviction of the contractor for bribery, conflict of interest, or similar misconduct directly related to the award of the contract. The remedy available herein is in addition to the common law right of avoidance, rescission, or cancellation.

503.702 Definitions.

"Voiding and rescinding official" means the Associate Administrator for Acquisition Policy or a designee.

"Notice" means a written communication sent by certified mail, return receipt requested, to the last known address of a party, its identified counsel, or agent for service of process. In the case of a business, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venturer. If no return receipt is received within 10 calendar days of mailing, receipt will then be presumed.

"Fact-finding official" means the Chairman of the General Services Administration Board of Contract Appeals or a designee.

503.703 Authority.

Where a contract has been awarded as a result of fraud, bribery, conflict of interest, or similar misconduct, the contracting officer should consult with counsel to determine if the Government has a common law remedy such as avoidance, rescission, or cancellation. As an alternative, the matter may be referred to the voiding and rescinding official, after consultation with counsel, for processing under the procedures set forth in FAR Subpart 3.7 and Subpart 503.7 where there has been a final conviction of a contractor for any violation of 18 U.S.C. 201–224.

503.705 Procedures.

(a) *Reporting.* (1) As an alternative to exercising the Government's common law right of avoidance, rescission, or cancellation of contracts awarded as a result of bribery, conflict of interest, or similar misconduct, the contracting officer may elect to postpone a decision to void, rescind, or cancel a contract pending a final conviction of the contractor for the particular offense. Upon conviction, the contracting officer may exercise the Government's common law rights, if appropriate, or refer the matter to the voiding and rescinding official through appropriate channels with a recommendation that the contract be declared void and rescinded.

(2) The referral should include the same information provided for in 509.406–3(a)(2) (i) through (vi). Additionally, the referral should include the information required to prepare the notice of proposed action in accordance with FAR 3.705(d).

(3) Since a final conviction for any violation of 18 U.S.C. 201 is a cause for debarment under FAR 9.406–2(a)(1) and/or (3), the Office of Inspector General (OIG) may be preparing a debarment referral. Therefore, in order to minimize duplication of effort, the contracting officer is encouraged to coordinate its referral with the OIG and ascertain if a debarment referral is contemplated.

(b) *Notice of proposal to declare void and rescind contracts pursuant to FAR Subpart 3.7 and GSAR 503.7.* (1) The voiding and rescinding official shall review the adequacy of the referral and coordinate the matter with assigned legal counsel and the respective contracting activity.

(2) Where a determination is made to declare void and rescind a contract and to recover the amounts expended and the property transferred, written notice by the voiding and rescinding official must be given to the contractor in accordance with FAR 3.705(c). The notice must include the information in FAR 3.705(d).

(3) A copy of the notice will be given to the contracting activity affected.

(c) *Decision-making process.* Where notice of the proposed action to declare void and rescind a contract is issued under FAR Subpart 3.7 and Subpart 503.7, the process to be followed by the voiding and rescinding official and the rights afforded to the contractor are virtually the same as those provided for in 509.406–3(c) except for the following changes:

(1) Where the term "debarring" is used, substitute "action to declare void and rescind a contract."

(2) Where the phrase "debarment notice" is used, substitute "notice of the proposed action to declare void and rescind a contract."

(3) Where the phrase "debarring official" is used, substitute "voiding and rescinding official."

(4) The first sentence in 509.406–3(c)(3) is not applicable and the following sentence is substituted: "Where the contractor disputes facts relating to the proposed action, other than the validity of the conviction, it may request, a formal fact-finding hearing before the agency fact-finding official."

(5) In 509.406–3(c)(4), only (i) and (ii) are applicable.

(6) In 509.406–3(c)(5), substitute the phrase, "FAR Subpart 3.7 and Subpart 503.7" for the phrase, "FAR Subpart 9.4 and GSAR 509.4."

(d) *Voiding and rescinding official's final decision.* (1) The voiding and rescinding official's final decision must be made, in writing, and notice of the decision given in accordance with the requirements of FAR 3.705(e). The final decision shall be coordinated with the respective contracting activity.

(2) A copy of the final decision will be given to the contracting activity affected.

Dated: February 9, 1987.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 87–4109 Filed 2–26–87; 8:45 am]

BILLING CODE 6820–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 685

[Docket No. 60964–7028]

Foreign Fishing: Pelagic Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP). The FMP will (1) Establish a triggering mechanism to institute new area closures for foreign longline vessels in the exclusive economic zone (EEZ) if they are found by the Regional Director, Southwest Region, to be warranted; (2) eliminate existing quotas on foreign longline catch in the EEZ; (3) require catch data and reporting of fishery interaction with protected species in the EEZ; (4) prohibit the use of drift gill nets in the EEZ; (5) establish a process to obtain data on the incidental catch of pelagic fishes in the EEZ by tuna pole-and-line and purse seine vessels, and with respect to the domestic fishery for pelagic fishes, the FMP will prohibit the use of drift gill nets in the EEZ except where authorized by an experimental fishing permit. The intended effect of the final rule is to maintain the abundance of pelagic resources within the EEZ to support commercial and recreational fisheries.

EFFECTIVE DATE: March 23, 1987.

ADDRESSES: Copies of the FMP are available by writing to Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1608, Honolulu, Hawaii 96813.

FOR FURTHER INFORMATION CONTACT: Doyle E. Gates (Administrator, Western Pacific Program Office, Southwest Region, NMFS, Honolulu, Hawaii), 808/955–8831; or Svein Fougner (Chief, Fisheries Management and Analysis Branch, Southwest Region, NMFS, Terminal Island, California), 213/514–6660.

SUPPLEMENTARY INFORMATION:

Background

The FMP was prepared by the Western Pacific Fishery Management Council (Council) under the authorization of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq. (Magnuson Act). Proposed regulations were published in the **Federal Register** on September 16, 1986 (51 FR 32808) and comments were invited until October 24, 1986. The FMP was scheduled to be approved on November 13, 1986; however, in view of the comments received on the size of the proposed area closures, the Council on November 9, 1986, voted unanimously to amend the FMP to limit the size of the areas closed to foreign longline vessels until certain criteria are satisfied. The FMP was resubmitted and an amended proposed rule was published in the **Federal Register** on December 17, 1986 (51 FR 45141). The public comment period ended on January 23, 1987.

Comments and Responses

When the FMP was resubmitted and a new proposed rule published in the **Federal Register** on December 17, 1986, responses to the comments that had been received by that date were discussed in the publication. The subjects covered were drift gill netting, need for the FMP, area closures, reporting requirements, observer requirements and recordkeeping. These comments and responses are not repeated here.

The only comments received since the December 1986 publication were from the Japan Tuna Association (JTA). The JTA repeated its argument against the area closures, reporting requirements and the need for the FMP, all of which have been discussed.

The JTA also commented on the proposed triggering mechanism that will change non-retention zones to some type of area closure, based upon the adverse effects of foreign fishing. The basic criticism is of the factors considered when estimating the effect of foreign longlining in the EEZ. The factors are viewed by the JTA as very general, requiring no quantification to convert non-retention zones to closed areas.

The factors that are to be considered by the Regional Director are general because they are designed to cover all situations that may arise; however, they do not eliminate any requirements of the Magnuson Act or circumvent the national standards. Quantification of the effects of foreign fishing is required before action can be taken. A decision to implement a specific closed area cannot be arbitrary and unsubstantiated. In addition, determinations are required to be published in the **Federal Register** as a proposed action, and the information upon which the action is based will be available for public inspection.

Changes From Proposed Regulations of December 17, 1986

In § 611.81(j), Table 1 and Table 2 were confusing and have been revised. The new tables show clearly the closed areas, the non-retention zones, and the retention zones that will be in effect.

Classification

The Administrator of NOAA determined that this FMP is necessary for the conservation and management of the pelagic resources of the western Pacific region and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for this FMP and concluded that there will be no significant impact on the environment as a result of this rule. A copy of the EA may be obtained at the above address.

The Administrator of NOAA determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. A summary of his determination appears in the proposed rule.

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small businesses. A summary of this determination appears in the proposed rule.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA). The collection of the information has been approved by the Office of Management and Budget, OMB Control Number 0648–0097. Other reporting requirements contained in the rulemaking are approved under OMB Control Numbers 0648–0075 and –0089.

The Council has determined, and the appropriate State and territorial government offices have found, that the measures established in the FMP are consistent to the maximum extent practicable with the approved coastal zone management programs of Hawaii and the territories of American Samoa and Guam. Since the FMP was resubmitted for public review, the state of Hawaii and the territories of American Samoa and Guam will be asked to confirm their consistency determination.

The Council requested a consultation

subject to this section are prohibited

(b) *Collection and reporting of data*

American Samoa, and the U.S.

(2) *Zones.* The FMP Management Area

zones (each of which is measured from

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The Council requested a consultation and biological opinion on the FMP under section 7 of the Endangered Species Act (ESA). The National Marine Fisheries Service (NMFS) issued a biological opinion on September 17, 1985, which concluded that the FMP is not likely to jeopardize any threatened or endangered species within the FMPs geographical scope. The biological opinion recommended that the FMP provide authority for NMFS to require the submission of reports on fishery interactions with protected species. Reporting requirements to this effect are contained in the final rule.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 685

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 20, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, Chapter VI of 50 CFR is amended as follows:

PART 611—[AMENDED]

1. The authority citation for 50 CFR Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

2. Section 611.81 is revised to read as follows:

§ 611.81 Pacific billfish, oceanic sharks, wahoo, and mahimahi fishery.

(a) *Purpose.* (1) This section regulates all foreign fishing conducted under a Governing International Fishery Agreement which involves the catching of any species of billfish, oceanic shark, wahoo, or mahimahi (dolphin) in the exclusive economic zone (EEZ) of the United States in the Pacific Ocean, excluding the portion of the EEZ seaward of Alaska.

(b) *Definitions.* For the purposes of this section, these terms have the following meanings:

Billfish means broadbill swordfish (*Xiphias gladius*), blue marlin (*Makaira nigricans*), black marlin (*Makaira indica*), striped marlin (*Tetrapturus audax*), sailfish (*Istiophorus platypterus*), and shortbill spearfish (*Tetrapturus angustirostris*).

Closed area means that area of the EEZ in which foreign longline vessels subject to this section are prohibited from fishing.

Drift gill net means a floating rectangular net with one or more layers of mesh which is set vertifically in the water.

Exclusive economic zone means the zone established by Presidental Proclamation 5030, dated March 10, 1983 and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Mahimahi means "dolphin fish" (*Coryphaena hippurus* and *Coryphaena equisetis*).

Non-retention zone means that area of the EEZ in which all billfish, oceanic sharks, wahoo, mahimahi, and other fish caught by foreign longline vessels in the course of fishing under this section must be returned to the sea in accordance with the requirements of paragraph (k)(5) of this section.

Oceanic sharks means sharks of the families Carcharhinidae, Alopiidae, Sphyrnidae, and Lamnidae.

Regional Director means the Director of the Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731, telephone number: 213–514–6196; or a designee.

Retention zone means that area of the EEZ in which foreign longline vessels subject to this section may retain billfish, oceanic sharks, wahoo, and mahimahi to the extent that retention is authorized by this section.

Wahoo means fish of the species *Acanthocybium solanderi*.

(c) *Permits.* All foreign longline vessels which intend to fish must have a permit issued under § 611.3.

(d) *Vessel and gear identification.* All permitted vessels subject to this section must comply with the vessel and gear identification requirements of § 611.5.

(e) *Observers.* Permitted vessels subject to this section must comply with the observer requirements of § 611.8.

(f) *Prohibited species.* The owner or operator of each foreign vessel must minimize its catch or recipt of prohibited species and must report the vessel's activities as prescribed in § 611.11 of the Foreign Fishing Regulations.

(g) *Vessel reporting.* The operator of each foreign fishing vessel must report the vessel's activities as prescribed in § 611.4 and in the formats specified in Appendix B to Subpart A of the Foreign Fishing Regulations.

(h) *Collection and reporting of data.* Permitted vessels subject to this section must comply with the recordkeeping requirements of § 611.9, in addition to the following.

(1) The daily fishing log contents found at § 611.9(e) must contain the following additional information:

(i) The number of each species caught and retained;

(ii) The number of each species caught and released;

(iii) The number of each species released alive; and

(iv) The number of hooks set by type of bait.

(2) Daily fishing logs must be mailed to the Regional Director not later than 30 days following the completion of fishing or must be hand delivered to the NMFS observer aboard the vessel upon his request.

(3) *Report of marine mammal and sea turtle incidental catch.* Each foreign nation whose permitted vessels fish under this section must submit, through the designated representative, a report of marine mammal and sea turtle incidental catch in the manner prescribed by § 611.4(f)(4) within 60 days of leaving the EEZ in lieu of weekly reports. (Permits issued under this section do not authorize the take and retention of marine mammals and sea turtles in the EEZ).

(4) *Reporting of incidental catch by non-permitted tuna harvesting vessels.* [Reserved].

(i) *Management area groups.* For the purposes of this section, the EEZ of the Pacific Ocean (excluding the EEZ seaward of Alaska) is divided into two management area groups as follows:

(1) *FMP management area group.* The areas of the EEZ off the coasts of the Hawaiian and Midway Islands, Guam, American Samoa, and U.S. possessions are governed by the provisions of the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP) and are designated the FMP Management Area Group.

(2) *PMP management area group.* The areas of the EEZ off the U.S. west coast and the coasts of the Commonwealth of the Northern Mariana Islands are governed by the provisions of the Preliminary Fishery Management Plan for Billfish, Oceanic Sharks, Wahoo, and Mahimahi (PMP) in the Pacific Ocean and are designated the PMP Management Area Group.

(j) *Authorized fishery—FMP Management Area Group—*(1) *General.* Foreign vessels subject to this section are authorized to fish in the EEZ of the Hawaiian and Midway Islands, Guam, American Samoa, and the U.S. possessions subject to the requirements of this section.

(2) *Zones.* The FMP Management Area Group comprises the following closed-areas, non-retention zones and retention zones (each of which is measured from the baseline used to measure the U.S. territorial sea) described in Table 1:

TABLE 1

Management area	Closed area	Non-retention zone	Retention zone
Hawaiian Islands	Within 12 nautical miles of all islands in the Hawaiian Islands chain.	(1) Between 12 and 100 miles from the islands of Hawaii, Kahoolawe, Kauai, Lanai, Maui, Molokai, Niihau, and Oahu of the State of Hawaii. (2) Between 12 and 50 nautical miles from the remaining islands of the State of Hawaii.	(1) Beyond 100 nautical miles from the islands of Hawaii, Kahoolawe, Kauai, Lanai, Maui, Molokai, Niihau, and Oahu of the State of Hawaii. (2) Beyond 50 nautical miles from the remaining islands of the State of Hawaii.
Guam	Within 12 nautical miles of Guam.	Between 12 and 50 nautical miles from Guam.	Beyond 50 nautical miles from Guam.
American Samoa	(1) Within a rectangle around the Tutuila and Manua islands of American Samoa bounded by 14° and 15° S. latitude and 168° to 171° W. longitude; and 2) Within a one degree (1°) square surrounding Swain's Island bounded by 10°33' to 11°33' S. latitude and 170°34' to 171°34' W. longitude.	None.	(1) Areas of the EEZ outsides the rectangle bounded by 14° to 15° S. latitude to 170° W. longitude; and 168° to 171° W. longitude; and (2) Areas of the EEZ outside the one-degree (1°) square surrounding Swain's Island.
U.S. possessions	Within 12 nautical miles of shore.	None.	Beyond 12 nautical miles from shore.

(3) *Effort plans.* Foreign longline vessels which desire to fish in the FMP Management Area Group are required to file effort plans two (2) months prior to entering the retention zones of the EEZ for fishing purposes. Effort plans must indicate the dates when fishing is expected to begin and cease and must specify the areas of the EEZ where the vessels intend to operate. Effort plans must be submitted to the Administrator, Western Pacific Program Office, MNFS, 2570 Dole Street, Honolulu, HI 96822, telephone number: 808–955–8831.

(4) *Catch and effort.* There will be no limit on the amount of fishing effort or the catch of billfish, oceanic sharks, mahimahi, and wahoo made by foreign longline vessels in the retention zones described in Table 1 of paragraph (j) of this section.

TABLE 2

Management area	Maximum closed areas
Hawaiian Islands	(1) Within 150 nautical miles of the Main Hawaiian Islands (islands east of 161° W. longitude); and (2) Within 100 nautical miles of the Northwestern Hawaiian Islands including Midway (islands west of 161° W. longitude).
Guam [1]	Within 150 nautical miles of Guam.
American Samoa	(1) Within a rectangle around the Tutuila and Manua islands of American Samoa bounded by 14° to 15° S. latitude and 168° to 171° W. longitude, and (2) Within a one-degree (1°) square surrounding Swain's Island bounded by 10°33' to 11°33' S. latitude and 170°34' to 171°35' W. longitude.
U.S. possessions	Within 12 nautical miles of shore.

[1] The northern boundary of the EEZ off the coast of Guam extends to those points which are equidistant between Guam and the island of Rota in the Commonwealth of the Northern Mariana Islands.

(5) *Determinations.* The Regional Director will determine by the following criteria within 30 days after a request by the Council, whether the non-retention zones presented in Table 1 of this section should be converted to closed areas or expanded up to the maximum closed areas presented in Table 2 of this section. All or portions of the area closures will be implemented as appropriate when the Regional Director has determined that foreign fishing has resulted in or is likely to result in—

(i) Adverse impacts on the catch, effort, gear, or economic performance of domestic vessels fishing in the area(s) for management unit species;

(ii) Excessive waste of management unit species in the affected area(s) of the EEZ;

(iii) Excessive costs to monitor foreign fishing and enforce the provisions of the EMP if the area(s) remains open; or

(iv) Adverse effects on one or more management unit species.

(6) *Factors considered.* Factors that will be considered by the Regional Director in making any determination described in paragraph 5 of this section will include the following:

(i) The current and projected level of domestic fishing and associated catch and landed value of catch in the affected area(s) in the absence of foreign fishing;

(ii) The importance of the area(s) to domestic vessels in terms of catch, effort, catch rates, and landed value of the catch of management unit species;

(iii) The level of foreign fishing likely to occur if the area(s) were to remain open to foreign fishing;

(iv) The likelihood of gear conflicts or waste of management unit species if foreign fishing were to be permitted; and

(v) Such other factors as the Regional Director determines to be important in making the determination as to area closures.

(7) *Notice of determination.* (i) The Secretary will publish a notice of any proposed determination described in paragraph (j)(5) of this section in the **Federal Register** for public comment, unless the Secretary finds good cause that such notice and public review are impracticable or contrary to the public interest. During the public comment period, the aggregate data upon which the proposed determination is based will be available for public inspection at the Regional Office during business hours.

(ii) If the Secretary determines, for good cause, that a determination described in paragraph (j)(5) of this section must be issued without affording a prior opportunity for public comment, public comments on the notice will be received by the Secretary for a period of 15 days after the effective date of the notice. During any such 15-day period, the aggregate data upon which the notice was based will be available for public inspection in the office of the Regional Director during business hours.

(iii) Any notice issued under this section will not be effective until 30 days after the publication in the **Federal Register**, unless the Secretary finds and publishes with the notice good cause for an earlier effective date.

(iv) Notices issued under this section will remain in effect until the expiration data stated in the published notice or until rescinded, modified, or superseded.

(v) Nothing contained in this section limits the authority of the Secretary to issue emergency regulations under section 305(e) of the Magnuson Act.

(8) *Drift gill nets.* The use of drift gill nets in the FMP Management Area Group is prohibited.

(k) *Authorized fishery—PMP Management Area Group.*—(1) *General.* Foreign longline vessels subject to this section are authorized to fish in the EEZ of the Northern Mariana Islands and the U.S. west coast beyond 12 miles from the baseline used to measure the U.S.

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territorial sea, subject to the requirements of this section. Only foreign longline vessels are eligible for permits to fish in the PMP Management Area Group.

(2) *Zones.* The PMP Management Area Group comprises the following closed areas, non-retention and retention zones (each of which is measured from the baseline used to measure the U.S. territorial sea) described in Table 3:

TABLE 3

Management area	Non-retention zone	Retention zone
West Coast	Between 12 and 100 nautical miles offshore.	Beyond 100 nautical miles.
Northern Mariana Islands,[1] Rota, Tinian, Aguijan, and Saipan.	Between 12 and 50 nautical miles from Tinian, Aguijan, Rota, and Saipan.	Beyond 50 nautical miles of Rota, Tinian, Aguijan, and Saipan. Beyond 12 nautical miles of the remaining islands of the Northern Mariana Islands.

Closed areas. Foreign longline vessels subject to paragraph (j) of this section are prohibited from fishing within 12 nautical miles of the U.S. west coast and the Northern Mariana Islands.

[1] The southern boundary of the EEZ off the coast of the Northern Mariana Islands extends to those points which are equidistant between Guam and the island of Rota.

(3) *Total allowable level of foreign fishing (TALFF), joint venture processing (JVP), national allocations, and reserves.*

(i) *TALFF, reserve, and JVP amounts.* The TALFFs, amounts of fish held in reserve, and amounts of JVP are published in the **Federal Register**. Current TALFFs, reserves, and JVPs are also available from the Regional Director.

(ii) *TALFF and national allocations.* (A) The total amount of each species of billfish, oceanic sharks, wahoo, and mahimahi which may be caught and retained in each area of the PMP Management Area Group by foreign vessels subject to paragraph (k) of this section is limited to the TALFF for each applicable area and to the amount of the applicable national allocation.

(B) No foreign vessels subject to paragraph (k) of this section may catch and retain billfish, oceanic sharks, wahoo, and mahimahi within the non-retention zones set out in the table at paragraph (k)(2) of this section.

(iii) *Determination.* (A) As soon as practicable after September 1 of each year, and upon receipt of a written request from a foreign nation, the Regional Director, Southwest Region, will determine, for each species for which a reserve has been established, the amount of fish which has been harvested to date by U.S. vessels in each applicable area.

(B) If the Regional Director determines that the amount of fish of a species harvested by vessels of the United States in an area is less than 80 percent of the expected domestic harvest for that species in that area, the Regional Director will apportion to TALFF the entire amount of the reserve for the applicable species in the applicable area. No reserve amounts will be apportioned to TALFF if domestic vessels have harvested 80 percent or more of the expected domestic harvest for that species in the applicable area by the date of this determination.

(iv) *Notice.* The Assistant Administrator for Fisheries, NOAA, will publish in the **Federal Register** a notice of each determination made under paragraph (k)(3)(iii) of this section.

(4) Cancellation of authority to retain.

(i) The authority of a foreign longline vessel to retain an applicable species is canceled:

(A) When the national allocation for the applicable species is reached; or

(B) At the date and time specified in the notification issued by the Assistant Administrator under paragraph (k)(4)(ii) of this section.

(ii) The Assistant Administrator will determine, on the basis of the information specified in § 611.13, when the TALFF or optimum yield (OY) of a billfish species, oceanic sharks, wahoo, or mahimahi in an area of the PMP Management Area Group will be reached. At least forty-eight hours before the applicable TALFF or OY will be reached, the Assistant Administrator will notify both the affected foreign nation(s) and the designated representative for any affected fishing vessel that authority to retain the applicable species is canceled.

(iii) Any cancellation under paragraph (k)(4) of this section will remain in effect until a new or increased allocation becomes available.

(iv) The closure provisions of § 611.13 do not apply to foreign longline vessels fishing subject to paragraph (k) of this section.

(5) Prohibited species.

(i) *General.* The following are prohibited species under paragraph (k) of this section.

(A) All species of fish over which the United States exercises exclusive fishery management authority and for which there is no national allocation;

(B) All billfish, oceanic sharks, wahoo, and mahimahi caught in excess of an applicable OY, TALFF, or national allocation; and

(C) All billfish, oceanic sharks, wahoo, and mahimahi caught in a non-retention zone. (See Table 3 at paragraph (k)(2) of this section.)

(ii) *Treatment.* All prohibited species will be treated in accordance with § 611.11.

(iii) *Additional requirements for billfish and oceanic sharks.* Unless otherwise specifically instructed by a U.S. observer or authorized officer, all prohibited billfish and oceanic sharks must be released by cutting the line (or by other appropriate means) without removing the fish from the water.

(iv) *Rebuttal of presumption.* Foreign vessels fishing subject to paragraph (k) of this section may rebut the presumption of § 611.11(d) by

(A) Storing all prohibited species caught outside the EEZ in a separate part of the vessel's hold which can be sealed, and arranging inspection and sealing of the vessel's hold by U.S. authorities before commencing fishing in the EEZ or in non-retention zones; or

(B) Other reasonable means which may be authorized by the Regional Director if, in consultation with the U.S. Coast Guard, the Regional Director determines that special circumstances warrant alternative arrangements.

(v) *Procedures for hold sealing.*

(A) Inspection and sealing of a foreign vessel's hold may be arranged by contacting the Southwest Region Office, National Marine Fisheries Service, 2570 Dole Street, Honolulu, HI 96822, telephone number: 808–955–8831, at least 48 hours in advance of the date for which inspection is requested.

(B) Ports at which such inspections may be made are Honolulu and Kahului, Hawaii, Agana, Guam; and San Diego, California.

(C) Additional ports for hold inspections may be arranged with the Regional Director.

(vi) *Other requirements.* The designation of ports for hold inspection and sealing does not modify any port entry arrangements or requirements (if any) of Governing International Fishery Agreements or the notification requirements of any other laws or regulations of the United States.

1. A new Part 685 is added to Chapter VI to read as follows:

PART 685—PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

Subpart A—General Provisions

Sec.

685.1 Purpose and scope.
685.2 Definitions.
685.3 Relation to State laws.
685.4 Reporting requirements.
685.5 Prohibitions.
685.6 Facilitation of enforcement.
685.7 Penalties.
685.8 Experimental fishing permits (EFPs).

Subpart B—Management Measures

685.21 Prohibition on drift gill netting.
685.22 Annual report.
685.23 Five-year review.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 685.1 Purpose and scope.

(a) The regulations in this part govern fishing for billfish and associated species by fishing vessels of the United States in the exclusive economic zone (EEZ) off the coasts of Hawaii, American Samoa, Guam, and the U.S. possessions.

(b) Regulations governing fishing for billfish and associated species by fishing vessels other than vessels of the United States are published at 50 CFR Part 611.

(c) These regulations implement the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP) developed by the Western Pacific Regional Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act).

§ 685.2 Definitions.

In addition to the definitions in the Magnuson Act, the terms used in this part have the following meanings (some definitions in the Magnuson Act have been repeated here to aid understanding of the regulations):

Administrator means the Administrator of the National Oceanic and Atmospheric Administration (NOAA), or a designee.

Associated species refers to the following species managed by the FMP:

(a) *Mahimahi* means "dolphin fish" (*Coryphaena hippurus* and *Coryphaena equisetis*);

(b) *Oceanic sharks* means sharks of the families Carcharhinidae, Alopiidae, Sphyrnidae, and Lamnidae; and

(c) *Wahoo* means fish of the species *Acanthocybium solanderi*.

Authorized officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard.

(b) Any special agent of the National Marine Fisheries Service.

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Billfish means broadbill swordfish (*Xiphias gladius*), blue marlin (*Makaira nigricans*), black marlin (*Makaira indica*), striped marlin (*Tetrapturus audax*), sailfish (*Istiophorus platypterus*), and shortbill spearfish (*Tetrapturus angustirostris*).

Drift gill net means a floating rectangular net with one or more layers of mesh which is set vertically in the water.

Exclusive economic zone (EEZ) means the zone established by Presidential Proclamation 5030, dated March 19, 1983 and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal states to a line each point of which is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishery management area means the fishery conservation zone off the coasts of Hawaii, American Samoa, Guam, and U.S. possessions in the western Pacific. The outer boundary of the fishery management area north of Guam extends to those points which are equidistant between Guam and the island of Rota in the Commonwealth of the Northern Mariana Islands. This definition does not include the EEZ off the coasts of the Commonwealth of the Northern Mariana Islands.

Fishing means

(a) The catching, taking, or harvesting of fish;

(b) The attempted catching, taking or harvesting of fish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(d) Any operations at sea in support of, or in preparation for, any activity described above.

(e) This term does not include any scientific research activity which is conducted by a scientific research vessel.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for

(a) Fishing; or

(b) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Land or *landing* means to begin offloading any fish, to arrive in port with the intention of offloading any fish, or to cause any fish to be offloaded.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, as amended.

Maximum sustainable yield (MSY) means an average over a reasonable length of time of the largest catch which can be taken continuously from a stock.

Official number means the documentation number issued by the U.S. Coast Guard or the certificate number issued by a State or by the U.S. Coast Guard for undocumented vessels.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means

(a) Any person who owns that vessel in whole or in part;

(b) Any chartered of the vessel, whether bareboat, time, or voyage;

(c) Any person who acts in the capacity of a charterer including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by a person decribed in paragraph (a), (b), or (c) of this definition.

Person means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local or foreign government or any entity of any such government.

Regional Director means the Southwest Regional Director, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731, or a designee.

Secretary means the Secretary of Commerce or a designee.

State means the State of Hawaii, the Territory of American Samoa, and the Territory of Guam.

Vessel of the United States means

(a) Any vessel documented under chapter 121 of title 46, United States Code;

(b) Any vessel numbered under chapter 123 of title 46, United States Code, and measuring less than 5 net tons;

(c) Any vessel numbered under chapter 123 of title 46, United States

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Code, and used exclusively for pleasure; and

(d) Any vessel not equipped with propulsion machinery of any kind and not used exclusively for pleasure.

§ 685.3 Relation to State laws.

This part recognizes that any State law which pertains to vessels registered under the laws of that State while in the fishery management area, and which is consistent with the FMP including any State landing law, will continue in effect with respect to fishing activities regulated under this part.

§ 685.4 Reporting requirements.

This part recognizes that catch and effort date necessary for implementing the FMP are collected by the State of Hawaii, American Samoa, and Guam under existing State data collection programs. No additional Federal reports are required of fishermen or processors as long as the data collection and reporting systems operated by the State agencies continue to provide the Secretary with statistical information adequate for management.

§ 685.5 Prohibitions.

(a) It is unlawful for any person to do any of the following:

(1) Possess, have custody or control of, ship or transport, offer for sale, sell, purchase, import or export any billfish or associated species taken, retained, or landed in violation of the Magnuson Act, this part, or any other regulation promulgated under the Magnuson Act;

(2) Refuse to allow an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation promulgated under the Magnuson Act;

(3) Forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any inspection or search described in paragraph (a)(2) of this section;

(4) Resist a lawful arrest for any act prohibited by this part;

(5) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, with the knowledge that such other person has committed any act prohibited by this part;

(6) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search conducted in the process of enforcing the Magnuson Act;

(7) Transfer, or attempt to transfer, directly or indirectly, any U.S.-harvested billfish or associated species to any foreign fishing vessel within the EEZ, unless the foreign vessel has been issued a permit which authorizes the receipt of U.S.-harvested fish of the species being transferred;

(8) Fail to comply immediately with enforcement and boarding procedures specified in § 685.6;

(9) Fish for billfish or associated species in violation of any terms or conditions attached to an experimental fishing permit (EFP) issued under § 685.8; or

(10) Fish for billfish or associated species using gear prohibited under § 685.21 or not permitted by an EFP issued under § 685.8.

(b) It is unlawful to violate any other provision of this part, the Magnuson Act, or any other regulation or permit promulgated under the Magnuson Act.

§ 685.6 Facilitation of enforcement.

(a) *General.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing the Magnuson Act and this part.

(b) *Communications.* (1) Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft with an authorized officer aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) If the size of the vessel and the wind, sea, and visibility conditions allow, loudhailer is the preferred method for communicating between vessels. If use of a loudhailer is not practicable, and for communications with an aircraft, VHF–FM or high frequency radiotelephone will be employed. Hand signals, placards, or voice may be employed by an authorized officer and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by a flashing light directed at the vessel signaled. Coast Guard units will normally use the flashing light signal "L" as the signal to stop.

(4) Failure of a vessel's operator to stop his vessel when directed to do so by an authorized officer using loudhailer, radiotelephone, flashing light signal, or other means constitutes *prima facie* evidence of the offense of refusal to permit an authorized officer to board.

(5) The operator of a vessel who does not understand a signal from an enforcement until and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel instantly.

(c) *Boarding.* The operator of a vessel directed to stop must

(1) Guard Channel 16, VHF–FM if so equipped;

(2) Stop immediately and lay to or maneuver in such a way as to allow the authorized officer and his party to come aboard;

(3) Except for those vessels with a freeboard of four feet or less, provide a safe ladder, if needed, for the authorized officer and his party to come aboard;

(4) When necessary to facilitate the boarding or when requested by an authorized officer, provide a manrope or safety line, and illumination for the ladder; and

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (. — . —) [1] is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY–CY" (. — . — . — — . — . — . — —) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear which may be in the water.

(3) "SQ3" (. . . — . — . . . —) means "You should stop or heave to; I am going to board you."

(4) "L" (. — . .) means "You should stop your vessel instantly."

§ 685.7 Penalties.

Any person or fishing vessel committing or used in the commission of a violation of this part is subject to the civil and criminal penalty provisions and civil forfeiture provisions prescribed

[1] Period (.) means a short flash of light and dash (—) means a long flash of light.

in the Magnuson Act, and to 15 CFR Part 904 (Civil Procedures), and any other applicable law.

§ 685.8 Experimental fishing permits (EFPS).

(a) *General.* The Secretary may authorize, for limited experimental purposes, the direct or incidental harvest of billfish or associated species managed by the FMP which would otherwise be prohibited by this part. No experimental fishing may be conducted unless authorized by an EFP issued by the Secretary in accordance with the criteria and procedures specified in this section. EFPs will be issued without charge.

(b) *Application.* An applicant for an EFP must submit to the Regional Director at least 60 days before the desired effective date of the EFP a written application including, but not limited to, the following information:

(1) The date of the application;

(2) The applicant's name, mailing address, and telephone number;

(3) A statement of the purposes and goals of the experiment for which an EFP is needed, including a general description of the arrangements for disposition of all species harvested under the EFP;

(4) A statement of whether the proposed experimental fishing has broader significance than the applicant's individual goals;

(5) For each vessel to be covered by the EFP:

(i) Vessel name;

(ii) Name, address, and telephone number of owner and master;

(iii) U.S. Coast Guard documentation, State license, or registration number;

(iv) Home port;

(v) Length of vessel;

(vi) Net tonnage; and

(vii) Gross tonnage.

(6) A description of the species (directed and incidental) to be harvested under the EFP and the amounts of such harvest necessary to conduct the experiment;

(7) For each vessel covered by the EFP, the approximate times and places fishing will take place, and the type, size, and amount of gear to be used; and

(8) The signature of the applicant.

(c) The Secretary may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected in writing.

(d) *Issuance.* (1) If an application contains all of the required information, the Secretary will publish a notice of receipt of the application in the **Federal Register** with a brief descripton of the proposal, and will give interested persons an opportunity to comment. The Secretary will also forward copies of the application to the Western Pacific Fishery Management Council, the U.S. Coast Guard, and the fishery management agency of the affected State, accompanied by the following information:

(i) The current utilization of domestic annual harvesting and processing capacity (including existing experimental harvesting, if any) of the directed and incidental species for which an EFP is being requested.

(ii) A citation of the regulation or regulations which, without the EFP, would prohibit the proposed activity; and

(iii) Biological information relevant to the proposal.

(2) At a Western Pacific Fishery Management Council meeting following receipt of a complete application, the Secretary will consult with the Council and the Director of the affected State fishery management agency concerning the permit application. The applicant will be notified in advance of the meeting at which the application will be considered, and invited to appear in support of the application if the applicant desires.

(3) Within 5 working days after the consultation in paragraph (d)(2) of this section, or as soon as practicable thereafter, the Secretary will notify the applicant in writing of the decision to grant or deny the EFP, and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(i) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application;

(ii) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect any species of fish in a significant way;

(iii) Issuance of the EFP would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose;

(iv) Activities to be conducted under th EFP would be inconsistent with the intent of this section or the management objectives of the FMP;

(v) The applicant has failed to demonstrate a valid justification for the permit; or

(vi) The activity proposed under the EFP would create a significant enforcement problem.

(4) The decision of the Secretary to grant or deny an EFP is final and unappealable. If the permit is granted, the Secretary will publish a notice in the **Federal Register** describing the experimental fishing to be conducted under the EFP. The Secretary may attach terms and conditions to the EFP consistent with the purpose of the experiment including, but not limited to

(i) The maximum amount of each species which can be harvested and landed during the term of the EFP, including trip limits, where appropriate;

(ii) The number, sizes, names, and identification numbers of the vessels authorized to conduct fishing activities under the EFP;

(iii) The times and places where experimental fishing may be conducted;

(iv) The type, size, and amount of gear which may be used by each vessel operated under the EFP;

(v) The condition that observers be carried aboard vessels operating under an EFP;

(vi) Data reporting requirements; and

(vii) Such other conditions as may be necessary to assure compliance with the purposes of the EFP consistent with the objectives of the FMP.

(e) *Duration.* Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is effective for no longer than one year unless revoked, suspended, or modified. EFPs may be renewed following the application procedures in this section.

(f) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(g) *Transfer.* EFPs issued under this part are not transferable or assignable. An EFP is valid only for the vessel(s) for which it is issued.

(h) *Inspection.* Any EFP issued under this part must be carried aboard the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.

(i) *Sanctions.* Failure of the holder of an EFP to comply with the terms and conditions of an EFP, the provisions of Subpart B of this part, any other applicable provision of this part, the Magnuson Act, or any other regulation promulgated thereunder, is grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP will be governed by 15 CFR Part 904 Subpart D. Other sanctions available under the statute will be applicable.

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(j) *Protected Species.* Vessels fishing under an EFP are required to report any incidental take or fisheries interaction with protected species on a form provided for that purpose. Reports must be submitted to the Regional Director within 3 days of arriving in port.

Subpart B—Management Measures

§ 685.21 Prohibition on drift gill netting.

Fishing with drift gill nets in the fishery management area is prohibited, except where authorized by an experimental fishing permit issued under § 685.8 of this part.

§ 685.22 Annual report.

By June 30 of each year, a plan monitoring team appointed by the Council will prepare an annual report on the domestic and foreign fisheries for billfish and associated species in the management area.

§ 685.23 Five-year review.

Within five years of the effective date of this FMP, the Council, in cooperation with the NMFS and State and Territorial agencies, will conduct a full review of the FMP. The review will assess the effectiveness of the FMP in meeting with the Council's objectives and the need for changes in any management measures, including adjustments in area closure to foreign longline fishing and adding data collection or reporting requirements for the domestic fisheries which take billfish and associated species.

[FR Doc. 87-4119 Filed 2-24-87; 2:57 pm]
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Proposed Rules

Federal Register
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 319

[Docket No. 85-022P]

Cured Pork Products; Added Substances and Labeling

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would revise provisions of the Federal meat inspection regulations that were adopted in the final rule titled "Control of Added Substances and Labeling Requirements for Cured Pork Products; Updating of Provisions". This proposal provides an additional option for the size of qualifying statements for the names of cured pork products containing added substances, deletes the requirement for marking the full length of the product label with a qualifying statement, and deletes the limitation on the use of sweeteners, such as corn syrup, in "Chopped Ham". The Proposed changes would provide the processor of cured pork products with greater flexibility while continuing to assure properly labeled products, and would delete a compositional requirement that is believed to be unnecessary.

DATE: Comments must be received on or before April 28, 1987.

ADDRESS: Written comments to: Policy Office, ATTN: Linda Carey, FSIS Hearing Clerk, Room 3168, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Mr. C. R. Brewington, Chief, Labeling Policy and Approval Branch, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-5388.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this proposed rule is not a "major rule" under Executive Order 12291. This proposed rule would not result in an annual effect on the economy of $100 million or more; or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or have significant adverse effects on competition, employment, investment, productivty, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule would essentially make minor revisions to regulations promulgated as part of a final rule that was reviewed under Executive Order 12291 and determined not to be a "major rule". This proposal would offer flexibility to the affected industry by modifying certain labeling requirements and would delete a regulatory restriction on product composition.

Effects on Entities

Under the circumstances mentioned above, the Administrator, Food Safety and Inspection Service, has detemined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601), because the proposed rule would only make minor revisions to the regulations which recognized nontraditional products and provided increased flexibility to produce a variety of cured pork products.

Comments

Interested parties are invited to submit comments concerning this proposal. Written comments should be sent in duplicate to the Policy Office. The comments should reference the docket number which appears in the heading of this document. All comments submitted pursuant to the notice will be available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

On April 13, 1984, FSIS published a final rule (49 FR 14856-14887), effective April 15, 1985, that modernized the regulatory program to assure that cured pork products are accurately labeled at all stages of commerce. Standards limiting the amount of added water and other substances were replaced with standards specifying a minimum meat protein content on a fat free basis (PFF) in the various finished cured pork products. In addition, the rule eliminated certain unnecessary restrictions on optional ingredients in the standard for "Chopped Ham".

The standards define cured pork products in terms of minimum meat PFF percentages (9 CFR 319.104 and 319.105). This controls the use of added substances by associating the meat protein in the nonfat portion of a cured product with product identification. As the level of added substances increases, the PFF content decreases. At specified PFF percentages, the type of product changes, as reflected in qualifying statements on the label. For example, the common and usual name "Cooked ham" is specified for a product containing a minimum meat PFF percentage of 20.5. If a product contains a minimum meat PFF percentage of 18.5, it is labeled "(Common and usual) with natural juices." At a minimum meat PFF content of 17, a product is labeled "(Common and usual) water added". Lastly, if a product contains a meat PFF of less than 17, it is labeled "(Common and usual) and water product—X% of weight is added ingredients".

During implementation of the revised cured pork product regulations, it became apparent that certain requirements should be reconsidered. Three changes are proposed to eliminate or modify requirements that appear to be unnecessary or impractical as initially adopted. These changes are intended to provide the processor with flexibility while continuing to assure properly labeled cured pork products and to provide consistency with labeling requirements of other products.

One change would amend the standard for "Chopped Ham" in § 319.105(d) of the Federal meat inspection regulations (9 CFR 319.105(d)) by deleting the provision which limits the amount of sweetneres that may be added to 2 percent on a dry basis.

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Maintaining this requirement was an oversight since the revised standard indirectly controls the use of all added substances. Thus, specific restrictions on the use of these added substances is unnecessary, and the Agency proposes to rescind § 319.105(d) of the regulations.

A second change would amend § 319.104(b) of the regulations (9 CFR 319.104(b)). Under the present regulations, cured pork products for which a qualifying statement is required (e.g., "water added" or "with natural juices") must bear that statement in lettering at least ⅜ inch in height. The Administrator, however, may approve smaller lettering for labels of packages of 1 pound or less, provided the lettering is at least one-third the size and of the same color and style as the product name.

The meat processing industry has advised FSIS that processors are experiencing problems in printing labels to comply with the ⅜-inch type size requirement for qualifying statements. This requirement appears impractical, in some cases, because of the length of some of the qualifying statements required under § 319.104(a) of the regulations (9 CFR 319.104(a)). Additionally, some product packages cannot easily accommodate labeling statements of the size now required. Thus, it appears appropriate to provide an alternative to the ⅜-inch lettering required for qualifying statements. It is proposed that qualifying statements may be in lettering not less than one-third the size of the largest letter in the product name if they are in the same color and style of print and on the same color background as the product name. This option would assure that the qualifying statements are sufficiently prominent and conspicuous to clearly indicate the nature of products. The approach being proposed is consistent with the size of many qualifying statements found presently on labels and reflects general Agency policy as set forth in Policy Memo 087A for words within a product name.[1]

Another problem encountered by industry is the requirement that cured pork products be labeled the full length of the product. Cured pork products not placed in consumer-size packages must be marked repeatedly with any qualifying statement on the full length of the product. This requirement was imposed to assure continued identification of product at the retail level when the product is subdivided. However, the usefulness of this requirement is questionable. Often, these products do not remain in their original, fully labeled packages when offered for sale. Some products are sliced and repackaged while others are placed in delicatessen cases with no packaging. Additionally, other similar delicatessen products (e.g., cured beef products with additional moisture) are not subject to the requirement of repeating the qualifying statement the full length of the product. By deleting the full length requirement, cured pork products would remain accurately labeled and their marking would be comparable to that of other products. The third proposed change would delete the requirement that qualifying statements be marked the full length of the product in § 319.104(b) of the regulations (9 CFR 319.104(b)).

[1] This policy memo is available for public inspection in the office of the FSIS Hearing Clerk. Copies of the memo may be obtained free upon request from the Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

Proposed Rule

List of Subjects in 9 CFR Part 319

Meat and meat food products, Standards of identity, Food labeling.

1. The authority citation for Part 319 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*); 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise noted.

2. Section 319.104 (9 CFR 319.104) would be amended by revising paragraph (b) to read as follows:

§ 319.104 Cured pork products.

* * * * *

(b) Cured pork products for which there is a qualifying statement required in paragraph (a) of this section shall bear that statement as part of the product name in lettering not less than ⅜ inch in height, or in lettering not less than one-third the size of the largest letter in the product name if it is in the same color and style of print and on the same color background as the product name. However, the Administrator may approve smaller lettering for labeling of packages of 1 pounnd or less, provided such lettering is at least one-third the size and of the same color and style as the product name.

* * * * *

§ 319.105 [Amended]

3. Section 319.105 (9 CFR 319.105) would be amended by removing paragraph (d) and redesignating paragraph (e) as (d).

Done at Washington DC., on: February 24, 1987.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 87-4185 Filed 2-26-87; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 60

Definition of "High-Level Radioactive Waste"

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission has previously adopted regulations for disposal of high-level radioactive wastes (HLW) in geologic repositories (10 CFR Part 60). The Commission intends to modify the definition of HLW in those regulations so as to follow more closely the statutory definition in the Nuclear Waste Policy Act of 1982 (NWPA). In this advance notice of proposed rulemaking (notice), the Commission identifies legal and technical considerations that are pertinent to the definition of HLW and solicits public comment on alternative approaches for developing a revised definition.

DATES: Comment period expires April 29, 1987. Comments received after this date will be considered if it is practical to do so, but assurance of consideration can be given only for comments received on or before this date.

ADDRESSES: Send comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received and of documents referenced in this notice may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Copies of NUREG documents may be purchased through the U.S. Government Printing Office by calling (202) 275–2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies of NUREG and DOE documents may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: W. Clark Prichard, Division of Engineering Safety, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 443–7668.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

Radioactive wastes contain a wide variety of radionuclides, each with its own half-life and other radiological characteristics. These radionuclides are present in concentrations varying from extremely high to barely detectable. One type of waste, generated by reprocessing spent nuclear fuel, contains both long-lived radionuclides which pose a long-term hazard to human health and other, shorter-lived nuclides which produce intense levels of radiation. This combination of highly-concentrated, short-lived nuclides together with other very long-lived nuclides has historically been described by the term "high-level radioactive wastes" (HLW). There has long been a recognition that such waste materials require long-term isolation from man's biological environment and that, in view of public health and safety considerations, disposal of such wastes should be accomplished by the Federal government on Federally owned land. This policy was codified by the Atomic Energy Commission (AEC) in 1970 in Appendix F to 10 CFR Part 50.

A. *Previous use of the term "HLW."* In Appendix F, HLW was defined in terms of the source of the material rather than its hazardous characteristics. Specifically, HLW was defined as "those aqueous wastes resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated wastes from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuels." As used in Appendix F, "high-level waste" thus refers to the highly concentrated (and hazardous) waste containing virtually all the fission product and transuranic elements (except plutonium) present in irradiated reactor fuel. The term does not include incidental wastes resulting from reprocessing plant operations such as ion exchange beds, sludges, and contaminated laboratory items, clothing, tools, and equipment. Neither are radioactive hulls and other irradiated and contaminated fuel structural hardware within the Appendix F definition.[1]

The first statutory use of the term "high-level radioactive waste" occurs in the Marine Protection, Research, and Sanctuaries Act of 1972 (Marine Sanctuaries Act). Congress adopted the Appendix F definition, but broadened it to include unreprocessed spent fuel as well.[2] Two years later, the AEC was abolished and its functions were divided between the Energy Research and Development Administration (ERDA, now the Department of Energy, DOE) and the Nuclear Regulatory Commission (NRC or Commission) by the Energy Reorganization Act of 1974, Pub. L. 93–438, 42 U.S.C. 5811. Under this legislation, certain activities of ERDA were to be subject to the Commission's licensing and regulatory authority. Specifically, NRC was to exercise licensing authority as to certain nuclear reactors and the following waste facilities:

(1) Facilities used primarily for the receipt and storage of high-level radioactive wastes resulting from activities licensed under the [Atomic Energy] Act.

(2) Retrievable Surface Storage Facilities and other facilities authorized for the express purpose of subsequent long-term storage of high-level radioactive waste generated by the Administration [now DOE], which are not used for, or are part of, research and development activities.[3]

Although neither the statute nor the legislative history defines the term "high-level radioactive waste," earlier usage of the term in Appendix F and the Marine Sanctuaries Act is indicative of the meaning. The Commission so construed the statute when it declared spent nuclear fuel to be a form of HLW and, by the same token, when it found transuranic-contaminated wastes not to be HLW.[4]

A different statutory formula appears in the West Valley Demonstration Project Act (West Valley Act), enacted in 1980. This legislation authorizes the Department of Energy (DOE) to carry out a high-level radioactive waste management demonstration project for the purpose of demonstrating solidification techniques which can be used for preparing HLW for disposal. It includes the following definition:

> The term "high level radioactive waste" means the high level radioactive waste which was produced by the reprocessing at the Center of spent nuclear fuel. Such term includes both liquid wastes which are produced directly in reprocessing, dry solid material derived from such liquid waste and such other material as the Commission designates as high level radioactive waste for purposes of protecting the public health and safety.[5]

The Commission has not yet designated any "other material" as HLW under the West Valley Act. Rather, it has construed the term in a manner equivalent to the 10 CFR 50, Appendix F definition. That is, it is the liquid wastes in storage at West Valley and the dry solid material derived from solidification activities that are regarded as HLW, and it is DOE's plans with respect to such wastes that are subject to the Commission's review.

B. *Current NRC regulations.* The Commission has adopted regulations that govern the licensing of DOE activities at geologic repositories for the disposal of HLW. The regulations define HLW in the jurisdictional sense. That is, if the facility is for the "storage" of "HLW" as contemplated by the Energy Reorganization Act, the prescribed procedures and criteria would apply.[6] The appropriate definition for this purpose draws upon the understanding in 1974, as reflected in Appendix F and the Marine Sanctuaries Act, rather than the words of the West Valley Act of more limited purpose and scope.

It should be emphasized that NRC's existing regulations in Part 60 do not require that any radioactive materials, whether HLW or not, be stored or disposed of in a geologic repository.[7]

[1] See 34 FR 8712, June 3, 1969 (notice of proposed rulemaking), 35 FR 17530 at 17532, November 14, 1970 (final rule). Incidental wastes generated in further treatment of HLW (e.g., decontaminated salt with residual activities on the order of 1,500 nCi/g Cs–137, 30 nCi/g Sr–90, 2 nCi/g Pu, as described in the Department of Energy's FEIS on long-term management of defense HLW at the Savannah River Plant, DOE/EIS–0023, 1979) would also, under the same reasoning, be outside the Appendix F definition.

[2] Sec. 3, Pub. L. 92–532, as amended by Pub. L. 93–254 (1974), 33 U.S.C. 1402.

[3] Sec. 202, Pub. L. 93–438, 42 U.S.C. 5842. Nuclear waste management responsibilities were subsequently transferred to the Department of Energy. Secs. 203(a)(6), 301(a), Pub. L. 95–91, 42 U.S.C. 7133(a)(6), 7151(a).

[4] Proposed General Statement of Policy, "Licensing Procedures for Geologic Repositories for High-Level Radioactive Wastes," 43 FR 53869, 53870, November 17, 1978; Report to Congress, "Regulation of Federal Radioactive Waste Activities," NUREG–0527 (1979), 2–1, 2–2, Appendix G.

[5] Sec. 8(4), Pub. L. 96–368, 42 U.S.C. 2021a note.

[6] NRC regulations are codified in 10 CFR Part 60 (Part 60). DOE is required to have a license to receive source, special nuclear or byproduct material at a geologic repository operations area § 60.3. A geologic repository operations area is defined to refer to a "HLW facility" which in turn is defined as a facility subject to NRC licensing authority under the Energy Reorganization Act of 1974, note 3, *supra*. § 60.2 The Part 60 definition of HLW, *ibid.*, is as follows:

> "High-level radioactive waste" or "HLW" means (1) Irradiated reactor fuel, (2) liquid wastes resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated wastes from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuel, and (3) solids into which such liquid wastes have been converted.

[7] In the event that commercial reprocessing of irradiated reactor fuel is pursued, Appendix F of 10 CFR Part 50 would require that the resulting reprocessing wastes be transferred to a Federal repository.

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Nor do they provide that radioactive materials must be HLW in order to be eligible for disposal in a geologic repository. Part 60 expressly provides for NRC review and licensing with respect to any radioactive materials that may be emplaced in a geologic repository authorized for disposal of HLW. The term "high-level radioactive waste" in Part 60 identifies the class of facilities subject to NRC jurisdiction.

The Commission has also adopted regulations related to land disposal of low-level radioactive wastes (10 CFR Part 61). Based on analyses of potential human health hazards, these regulations identify three classes of low-level radioactive wastes which are routinely acceptable for near-surface disposal, with "Class C" denoting the highest radionuclide concentrations of the three. Class C does not, however, denote a maximum concentration limit for low-level wastes. The low-level waste category includes all wastes not otherwise classified, while HLW is currently defined by source (rather than concentration or hazard) and is limited to reprocessing wastes and spent fuel. Thus, there is no regulatory limit on the concentrations of LLW, and some LLW (exceeding Class C concentrations) may have concentrations approaching those of HLW. These are the wastes which the Commission wishes to evaluate for possible classification as HLW. The Appendix to this notice presents information on the volumes and characteristics of wastes with radionuclide concentrations exceeding the Class C concentration limits. (This Appendix was prepared in 1985. DOE is currently carrying out a study of "above Class C" wastes which will update the information presented here.)

C. *Nuclear Waste Policy Act of 1982.* The Nuclear Waste Policy Act of 1982 (NWPA), Pub. L. 97–425, provides for the development of repositories for the disposal of high-level radioactive waste and establishes a program of research, development, and demonstration regarding the disposal of high-level radioactive waste.[8] The NWPA follows, with some modification, the text of the West Valley Act. For purposes of the NWPA, the term "high-level radioactive waste" means:

(A) The highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and

(B) Other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation.[9]

It should be noted that the NWPA does not require that materials regarded as HLW pursuant to this definition be disposed of in a geologic repository. Indeed, the NWPA directs the Secretary (of DOE) to continue and accelerate a program of research, development and investigation of alternative means and technologies for the permanent disposal of HLW.[10] Part 60 and the changes discussed in this notice would allow for consideration of such alternatives by the Commission. Nevertheless, the NWPA does not specifically authorize DOE to construct or operate facilities for disposal by alternative means, and new legislative authorization might be needed in order to dispose of HLW by means other than emplacement in a deep geologic repository.

II. Considerations for Defining "High-Level Radioactive Waste"

Wastes which have historically been referred to as HLW (i.e., reprocessing wastes) are initially both intensely radioactive and long-lived. These wastes contain a wide variety of radionuclides. Some (principally Sr–90 and Cs–137) are relatively short-lived and represent a large fraction of the radioactivity for the first few centuries after the wastes are produced. These nuclides produce significant amounts of heat and radiation, both of which are of concern when disposing of such wastes. Other nuclides, including C–14, Tc–99, I–129 and transuranic nuclides, have very long half-lives and thus constitute the longer-term hazard of the wastes. Some of these nuclides pose a hazard for sufficiently long periods of time that the term "permanent isolation" is used to describe the type of disposal required to isolate them from man's environment. The Commission considers that these two characteristics, intense radioactivity for a few centuries followed by a long-term hazard requiring permanent isolation, are key features which can be used to distinguish high-level wastes from other waste categories.

The NWPA identifies two sources of HLW, each of which is discussed separately in the following sections.

A. Clause (A)

Clause (A) of the NWPA definition of HLW refers to wastes produced by reprocessing spent nuclear fuel and thus is essentially identical to the Commission's current HLW definition in 10 CFR Part 60. Clause (A) is, however, different in one respect. The NWPA wording would clasify solidified reprocessing waste as HLW only if such waste "contains fission products in sufficient concentrations"—a phrase that may reflect the possibility that liquid reprocessing wastes may be partitioned or otherwise treated so that some of the solidified products will contain substantially reduced concentrations of radionuclides.

The question, then, is whether Commission should (1) numerically specify the concentrations of fission products which it would consider "sufficient" to distinguish HLW from non-HLW under Clause (A); or (2) define HLW so as to equate the Clause (A) wastes with those which have traditionally been regarded as HLW.

1. Numerically Specifying Concentrations of Fission Products

The first option considered is to numerically define "sufficient concentrations" of fission products. Liquid reprocessing wastes may contain significant amounts of non-radioactive salts, and removal of these salts prior to waste solidification may be desirable for both economic and public health and safety reasons. Removal of salts in this way would result in a smaller volume of highly radioactive wastes, which might reduce the cost and radiological impacts associated with transportation and occupational handling of those wastes. Nevertheless, any salts removed from liquid HLW would retain residual amounts of radioactive contaminants. By establishing numerical limits on the concentrations of fission products, the Commission would be identifying those wastes from reprocessing that require disposal in a deep geologic repository or its equivalent. The proper classification of the salts discussed above would then be made on the basis of the numerical limits on radionuclide concentrations and the salts would be disposed of accordingly. In other cases, certain radionuclides may be removed from the bulk liquid reprocessing waste (as has been done in removing cesium and strontium from wastes at Hanford), raising similar questions about the classification of the remaining waste and acceptable methods of disposal. For these reasons, there would be merit in numerically specifying the concentrations of radionuclides in solidified reprocessing wastes which would distinguish HLW from non-HLW.

(Clause (A) refers to solidified waste "that contains fission products in sufficient concentrations." No mention is made of the long-lived transuranic radionuclides which are also present in liquid reprocessing wastes but, since the transuranics constitute the predominant long-term hazard of reprocessing wastes, such nuclides must be considered as well in defining reprocessing wastes that should be regarded as HLW. With this view, a numerical classification of solidified wastes under Clause (A) could be derived in the same manner, and contain the same concentration limits, as the numerical definitions developed under Clause (B). Derivation of concentration limits under Clause (B) is discussed in the following section of this notice.)

2. Traditional Definition

The alternate approach is to define HLW so as to equate the category of Clause (A) wastes with those wastes which have traditionally been regarded as HLW under Appendix F to 10 CFR Part 50 and the Energy Reorganization Act. The advantage of this option is that the term HLW retains its utility in defining the facilities that are subject to NRC licensing. That is, all materials that have traditionally been considered HLW for purposes of the Energy Reorganization Act would also be regarded as HLW under the Nuclear Waste Policy Act. The disadvantage is that some materials might continue to fall within the HLW classification even though they do not require the degree of isolation afforded by a repository. They would be called "HLW" even though the technical community might not so regard them.

3. Other Considerations Regarding Clause (A) Options

The Commission would add two observations regarding the options discussed above.

a. Development of a definition under Clause (A), as suggested by the first option, would not alter the Commission's existing authority to license DOE waste facilities, including defense wastes facilities, under the Energy Reorganization Act of 1974 (ERA). Any classification of wastes as non-HLW on the basis that they do not contain "sufficient concentrations" of fission products would be irrelevant in determining whether such wastes must be disposed of in licensed disposal facilities. For example, if DOE were to pursue its proposal for in-place stabilization of the Hanford "tank" wastes (see DOE/EIS–0113, March, 1986), most or all of the disposal "facilities" for those wastes would need to be licensed by the NRC.

b. Retaining the traditional definition for purposes of Clause (A) does not limit the Commission's ability to establish at some later date criteria to define wastes that require the isolation afforded by a deep geologic repository or its equivalent. That is, wastes requiring such isolation could be identified by terms other than "high-level".

B. Clause (B)

Clause (B) of the NWPA authorizes the Commission to classify "other highly radioactive material" (other than reprocessing wastes) as HLW if that material "requires permanent isolation." The Commission considers that both characteristics (highly radioactive and requiring permanent isolation) must be present simultaneously in order to classify a material as HLW.[11] Each of these characteristics is discussed in turn in the following sections.

1. Highly Radioactive

The Commission proposes [12] to consider a material "highly radioactive" if it contains concentrations of short-lived radionuclides in excess of the Class C limits of Table 2 of 10 CFR Part 61. Such concentrations are sufficient to produce significant radiation levels and to generate substantial amounts of heat. Moreover, the Class C concentration limits for short-lived nuclides approximate the actual concentrations of those nuclides present in some existing reprocessing wastes (see NUREG–0946, Table 4).

2. Permanent Isolation

The phrase "permanent isolation" in NWPA is much less subjective than is "highly radioactive." Within the context of NWPA, "permanent isolation" clearly implies the degree of isolation afforded by a deep geologic repository.[13] Thus, a waste "requires permanent isolation" if it cannot be safely disposed of in a facility less secure than a repository. The Commission will determine which wastes require permanent isolation by evaluating the disposal capabilities of alternative, less secure, disposal facilities.[14] Any wastes which cannot be safely disposed of in such facilities will be deemed to require permanent isolation and, if also highly radioactive, would be classified as high-level wastes.

The approach which the Commission proposes to pursue to determine which wastes requires permanent isolation will be an extension of the 10 CFR Part 61 waste classification analyses and will consist of the following steps.

a. *Establish acceptance criteria.* 10 CFR Part 61 currently contains performance objectives for disposal of radioactive wastes in a land disposal facility. These performance objectives will serve as acceptance criteria for waste classification analyses, but might need to be supplemented for specific types of facilities or wastes. The Part 61 performance objectives may also need to be supplemented to accommodate any environmental standards for non-HLW which may be promulgated by the U.S. Environmental Protection Agency pursuant to its authority under the Atomic Energy Act of 1954, as amended.

b. *Define disposal facility.* The hazard which a radioactive waste poses to public health depends, in part, on the nature of the facility used for its disposal. Thus, a reference disposal facility, less secure than a repository, needs to be defined in terms of the characteristics which contribute to isolation of wastes from the environment. For land disposal facilities, such characteristics might include depth of disposal, use of engineered barriers, and the geologic, hydrologic and geochemical features of a disposal site.

c. *Characterize wastes.* Wastes will be characterized in terms of the factors which determine their hazard and behavior after disposal, including

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[8] For purposes of the NWPA, "spent nuclear fuel" is distinguished from "high-level radioactive waste," but the provisions of the statute dealing with such spent nuclear fuel are not of present concern.

[9] Sec. 2(12), Pub. L. 97–425, 42 U.S.C. 10101(12) Sec. 2(16) also authorizes the Commission to classify certain radioactive material as low-level radioactive waste.

[10] Sec. 222, Pub. L. 97–425, 42 U.S.C. 10202.

[11] The Commission would not find tenable the argument that a material requires permanent isolation *because* it is highly radioactive. The need for permanent isolation correlates with the length of time a material will remain hazardous. Long half-lives, in turn, correlate with low rather than high levels of radioactivity.

[12] All references to "proposals" by the Commission refer only to its tentative views. No formal proposals will be developed until comments are received in response to this notice.

[13] The NWPA includes the following definitions:

The term "disposal" means the emplacement in a repository of high-level radioactive waste, spent nuclear fuel, or other highly radioactive material with no foreseeable intent of recovery, whether or not such emplacement permits the recovery of such waste.

The term "repository" means any system licensed by the Commission that is intended to be used for, or may be used for, the permanent deep geologic disposal of high-level radioactive waste and spent nuclear fuel, whether or not such system is designed to permit the recovery, for a limited period during initial operation, of any materials placed in such system. Such term includes both surface and subsurface areas at which high-level radioactive waste and spent nuclear fuel handling activities are conducted.

[14] These facilities might make use of intermediate depth burial or various engineering measures, such as intruder barriers, to accommodate wastes with radionuclide concentrations unsuitable for disposal by shallow land burial.

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physical and chemical forms of the waste, the radionuclide concentrations and associated radiological characteristics, the waste volumes, and the heat generation rates. The wide range of types and characteristics of wastes arising from industrial, biomedical and nuclear fuel cycle sources makes this a particularly critical step in the waste classification process—especially for wastes to be generated in the future (e.g., decommissioning wastes).

d. *Develop assessment methodology.* Analytical methods (including mathematical models and computer codes) for projecting disposal system performance will be acquired or developed. For land disposal facilities, such methods include models of groundwater flow and contaminant transport. An assessment methodology also includes descriptions of the natural and human-initiated disruptive events or processes which could significantly affect disposal system performance as well as the analytical means for evaluating the impacts of such events or processes.

e. *Evaluate disposal system performance.* The performance of the alternative disposal facility will be evaluated to estimate the public health hazards from disposal of various types and concentrations of wastes. Hazards below the acceptance criteria of item (a) above indicate an acceptable match of waste type and disposal option. Wastes which cannot be safely disposed of in the alternative facility will be classified as requiring permanent isolation.

A practical difficulty with classifying wastes as described here is that alternative disposal facilities are currently unavailable. Thus, classification of wastes in this manner requires many assumptions about the performance of nonexistent disposal facilities. Such analyses will inevitably involve substantial uncertainties.

It is also possible that no alternative disposal facility will ever be needed for commercially-generated "above Class C" wastes. (Disposal of such wastes is a Federal, rather than State, responsibility.) Because of the overhead costs of developing and licensing new facilities, the relatively small volumes of such wastes, and the low heat generation rates of some of these wastes, it might prove most economical to dispose of all such wastes in a repository. Nevertheless, the Commission recognizes a "chicken-and-egg" problem here. Until wastes are classified as HLW or non-HLW, it may be difficult for the DOE to make decisions regarding appropriate types of disposal facilities. Therefore, despite the uncertainties involved, the Commission proposes to select a hypothetical alternative disposal facility which will serve as the basis for carrying out waste classification analyses.

Previous analyses by the NRC (NUREG–0782, draft EIS for 10 CFR Part 61) suggest that disposal facilities with characteristics intermediate between shallow land burial and geologic repository disposal may be most effective in protecting against short-term radiological impacts associated with inadvertent intrusion into a disposal facility. These "intermediate" facilities may be much less effective in providing enhanced long-term isolation of very long-lived radionuclides. If this preliminary view is supported by subsequent analyses, wastes with concentrations above the Commission's current Class C limits for long-lived nuclides (Table 1 of 10 CFR Part 61) would require permanent isolation. In the following sections, the Commission will assume, for the sake of illustration, that Table 1 is an appropriate interpretation of the term "requires permanent isolation."

3. Conceptual Definition of "High-Level Waste"

The Commission proposes to classify wastes as HLW under Clause (B) of the NWPA definition only if they are both highly radioactive and in need of permanent isolation. As discussed above, the Commission considers that wastes should be considered to be highly radioactive if they contain concentrations of short-lived radionuclides which exceed the Class C limits of Table 2 of 10 CFR Part 61. The Commission also assumes, for illustrative purposes, that the radionuclide concentrations of Table 1 of Part 61 are appropriate for identifying the concentrations of long-lived radionuclides requiring permanent isolation. Solidified reprocessing wastes would similarly be classified as HLW only if they contain both short- and long-lived radionuclides in concentrations exceeding Tables 2 and 1, respectively.

It is assumed that a revised definition of HLW would appear in the definitions section of Part 60, and that the materials encompassed by the definition would be subject to the containment requirements of that regulation. It would also serve incidentally to define the materials covered by DOE's waste disposal contracts. This definition would apply only to wastes disposed of in a facility licensed under Part 60. As discussed elsewhere in this notice, there would be no alteration of the Commission's authority to license disposal of HLW under provisions of the Energy Reorganization Act. Some technical amendments would be needed to preserve the jurisdictional provisions of existing Part 60—i.e., to indicate that Part 60 applies to the DOE facilities described in sections 202(3) and (4) of the Energy Reorganization Act, and for that purpose the proposed definition of HLW would not be controlling.

A conceptual, revised definition of HLW could be stated as follows:

"High-level radioactive waste" or "HLW" means: (1) Irradiated reactor fuel, (2) liquid wastes resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated wastes from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuel, (3) solids into which such liquid wastes have been converted, and solid radioactive wastes from other sources, provided such solid materials contain both long-lived radionuclides in concentrations exceeding the values of Table 1 and short-lived radionuclides with concentrations exceeding the values of Table 2.

TABLE 1

Radionuclide	Concentration[1] (Ci/m³)
C–14	8
C–14 in act. metal	80
Ni–59 in act. metal	220
Nb–94 in act. metal	0.2
Tc–99	3
I–129	0.08
Alpha emitting TRU, $t_{1/2} > 5$ yr	[2]100
Pu–241	[2]3,500
Cm–242	[2]20,000

[1] If a mixture of radionuclides is present, a sum of the fractions rule is to be applied for each table. The concentration of each nuclide is to be divided by its limit, and the resulting fractions are to be summed. If the sum exceeds one for both tables, the waste is classified as HLW.

[2] Units are nanocuries per gram

TABLE 2

Radionuclide	Concentration[1] (Ci/m³)
Ni–63	700
Ni–63 in act. metal	7,000
Sr–90	7,000
Cs–137	4,600

[1] If a mixture of radionuclides is present, a sum of the fractions rule is to be applied for each table. The concentration of each nuclide is to be divided by its limit, and the resulting fractions are to be summed. If the sum exceeds one for both tables, the waste is classified as HLW

4. Status of wastes not classified as HLW

The NWPA, the Low-Level Radioactive Waste Policy Act, and the Commission's regulations in 10 CFR Part 61 currently classify wastes as "low-level" if they are not otherwise classified as high-level wastes or certain other types of materials (e.g., uranium mill tailings). Classification of certain wastes as HLW, under Clause (B) of the NWPA definition, would reduce the amount of waste classified (by default) as LLW and, more importantly, would establish a distinct, concentration-based boundary between the two classes of waste.

If this conceptual definition of Clause (B) were adopted, certain wastes with radionuclide concentrations above the Class C limits of 10 CFR Part 61 would not be classified as HLW because they do not contain the requisite combination of short- and long-lived nuclides. These wastes would continue to be classified as special types of low-level wastes analogous to DOE's "transuranic" waste category. Any such wastes generated by defense programs would continue to fall under DOE's responsibility for disposal, and no NRC licensing of facilities intended solely for their disposal, such as the Waste Isolation Pilot Plant (WIPP), would be authorized.

As provided by the amendments to the Low-Level Radioactive Waste Policy Act,[15] the Federal government is responsible for disposal of all commercially-generated "above Class C" wastes; it is contemplated, under the amendments, that the NRC would be responsible for licensing the facilities for their disposal. The Commission would continue to permit disposal of wastes containing naturally-occurring or accelerator-produced materials in licensed facilities provided there was no unreasonable risk to public health and safety.

III. Legal Considerations Related to the Nuclear Waste Policy Act

The exercise of NWPA Clause (B) authority may give rise to a number of legal questions which are discussed below.

A. *Disposal of waste generated by materials licensees.* The NWPA established a Nuclear Waste Fund composed of payments made by the generators and owners of "high-level radioactive waste" (including spent fuel) that will ensure that the costs of disposal will be borne by the persons responsible for generating such waste. The Nuclear Waste Fund is to be funded with moneys obtained pursuant to contracts entered into between the Secretary of Energy and persons who generate or hold title to high-level radioactive waste.

The statute addresses the particulars of contracts with respect to spent nuclear fuel and solidified high-level radioactive waste derived from spent nuclear fuel used to generate electricity in a civilian nuclear power reactor. It further limits the authority of the Commission to issue or renew licenses for utilization and production facilities—i.e., for present purposes, nuclear reactors and reprocessing plants—unless the persons using such facilities have entered into contracts with the Secretary of Energy.

The absence of any reference to materials licensees (e.g., fuel fabricators, some research laboratories) suggests that the Nuclear Waste Fund was not intended to apply to their activities. As a result, there could be a question if the Commission were to define materials licensees' waste as high-level waste, because the waste might thereby become ineligible for disposal in a repository. The reason is that the law prohibits disposal of HLW in a repository unless such waste was covered by a contract entered into by June 30, 1983 (or the date the generator or owner commences generation of or takes title to the waste, if later). Few contracts have been entered into with materials licensees except those who are also facility licensees. Thus, it can be argued that the Commission should refrain from designating as HLW, under Clause (B),[16] materials generated by materials licensees.

The Commission is not persuaded by such an argument. The statutory language dealing with the Commission's classification of materials as HLW refers solely to considerations relating to the nature of the wastes, and the character of the licensee generating or owning the waste is simply not relevant. If there are good reasons to treat that waste from materials licensees as HLW, the Commission regards it as likely that any statutory impediment to the acceptance of such waste at a geologic repository could be modified.

B. *Confidence regarding disposal capacity for power reactors.* The availability of waste disposal facilities for wastes generated at commercial power reactors has been the subject of controversy and litigation. The NWPA addresses these concerns by establishing a Federal responsibility to provide for the construction and operation of a geologic repository, leaving undefined (i.e., to the discretion of the Commission) the classes of materials that require permanent isolation in such a facility. Whatever materials they may be, however, they must be transferred to DOE for disposal; and the presons responsible for generating the waste must enter into contracts with DOE which provide for payment of fees sufficient to offset DOE's costs of disposal. Existing facility licensees were required to enter into such contracts by June 30, 1983.

The Commission believes that the purpose of the NWPA can best be accomplished if all the highly radioactive wastes generated by facility licensees (reactors and reprocessing plants) which require permanent isolation are covered by waste disposal contracts with DOE. This would assure that DOE can and will accept possession of such wastes when necessary. Further, in the absence of such assurance, the basis for Commission confidence that these wastes will be safely stored and disposed of would be subject to question even if concerns about the disposal of the licensees' spent nuclear fuel had been laid to rest. Accordingly, if there are any highly radioactive materials (other than those previously regarded as HLW) that are generated by facility licensees and that require permanent isolation, the Commission believes that, for purposes of the NWPA, they should be regarded as "high-level waste." The Commission has reviewed the terms of DOE's standard waste disposal contract and believes that classifying such additional materials as HLW would require no changes to the contract terms.

C. *Implications with respect to disposal methods.* Under the Atomic Energy Act of 1954, the Commission is authorized to establish such standards to govern the possession of licensed nuclear materials as it may deem necessary or desirable to protect health.[17] Under this authority, the Commission may classify materials according to their hazards and may prescribe requirements for the long-term management or disposal thereof. It is not necessary to label materials as HLW under the NWPA in order to require their disposal in a geologic repository or other suitably permanent facility.

The Commission exercised this authority with respect to concentrated

[15] Low-Level Radioactive Waste Policy Amendments Act of 1985, Pub. L. 99–240, Sec. 3, 42 U.S.C. 2021c.

[16] The Nuclear Waste Fund is governed by Sec. 302, Pub. L. 97–425, 42 U.S.C. 10222. The prohibition of disposal of HLW not covered by timely contracts is set out in sec. 302(b)(2).

[17] Sec. 161b., Pub. L. 83–703, 42 U.S.C. 2201(b).

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reprocessing wastes by specifying, in Appendix F to 10 CFR Part 50, that any such wastes generated at licensed facilities are to be transferred to a Federal repository for disposal. More recently, the Commission classified certain low-level wastes as being generally acceptable for near-surface disposal (10 CFR Part 61). On the basis of further consideration, the Commission could specify appropriate disposal means for wastes exhibiting radionuclide concentrations greater that those defined in Part 61. Thus, the Commission need not exercise NWPA Clause (B) authority in order to assure that radioactive wastes from licensed activities are disposed of properly. Moreover, the identification of material as HLW under Clause (B) would not by itself mandate that such material must be disposed of in a geologic repository. Since the NWPA authorizes only a single method of permanently isolating HLW—geologic repositories—classification of materials as HLW may effectively preclude disposal of such wastes by other means. Nevertheless, the Commission's regulations will continue to leave open the prospect of disposal by other means if Congress should so authorize.

D. *Relationship to State role.* Section 3 of the Low-level Radioactive Waste Policy Act (LLRWPA), Pub. L. 96–573, 42 U.S.C. 2021b., enacted in 1980, defines a State responsibility to provide, pursuant to regional compacts, for the disposal of "low-level radioactive waste" (LLW).[18] Such waste is defined to mean "radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in section 11.e.(2) of the Atomic Energy Act of 1954."

The Low-Level Radioactive Waste Policy Amendments Act of 1985, Pub. L. 99–240, 42 U.S.C. 2021c., limited the range of LLW for which the States must provide disposal capacity. Specifically, the States are not responsible for wastes with radionuclide concentrations in excess of the Class C limits of 10 CFR Part 61. Instead, the Federal government now assumes responsibility for providing disposal capacity for such wastes. Thus, classification of "above Class C" wastes as HLW or non-HLW will have no impact on State government responsibilities.

E. *Impact on existing technical criteria.* NRC's regulations in Part 60 include technical criteria to be applied in licensing DOE's receipt and possession of source, special nuclear, and byproduct material at a geological repository. The regulations would accommodate the disposal of any radioactive materials, including spent fuel, reprocessing wastes, or any other materials which could be disposed of in accordance with the specified performance objectives.

Materials categorized as high-level waste are subject to a containment requirement (§ 60.113(a)(1)(i)(A)) and to specified waste package design criteria and waste form criteria (§ 60.135 (a–c)). These criteria apply to wastes characterized by the presence of fission products generating substantial amounts of heat at the time of emplacement, but with much reduced heat generation after decades or a few centuries.[19] The rule also explicitly provides that design criteria for waste types other than HLW will be addressed on an individual basis if and when they are proposed for disposal in a geologic repository (§ 60.135(d)).

If additional materials were to be designated as high-level waste, the Commission would need to consider whether the existing repository design criteria are appropriate with respect to such materials.

F. *Applicability of HLW definition to naturally-occurring and accelerator-produced radioactive materials.* Clause (B) of the NWPA provides that the Commission may extend the definition of the term "high-level radioactive waste" to include material requiring permanent isolation only where this is "consistent with existing law." The applicable existing law is the Atomic Energy Act of 1954, under which the Commission has authority to regulate the possession and use of "source material," "special nuclear material," and "byproduct material." There are other radioactive materials, however: naturally-occurring radionuclides, such as radium, and accelerator-produced radionuclides. These are not covered by the Atomic Energy Act and hence there would be no statutory basis, consistent with existing law, for the Commission to require that they be disposed of at facilities licensed by the Commission or otherwise to regulate their possession or use. Accordingly, no legal basis exists for the Commission to classify such materials as HLW or non-HLW.

Nevertheless, as already noted, 10 CFR Part 60 contemplates that "other radioactive materials other than HLW" may be received for emplacement in a geologic repository. This provision of Part 60 would not be altered by expanding the definition of HLW. Part 60 provides that waste package requirements for such wastes will be determined on a case-by-case basis when these wastes are proposed for disposal. Thus, it might be determined, on the basis of technical considerations, that certain naturally-occurring or accelerator-produced radioactive waste materials present hazards similar to licensed materials that are defined as high-level waste and that such material should be disposed of in a geologic repository developed under NWPA. If so, plans for such disposal can be reviewed under Part 60 and the Commission could impose such packaging or other requirements as appropriate to protect public health and safety.

IV. Issues on Which Public Comments are Particularly Sought.

The Commission invites comments on all the issues identified in this notice and any other issues that might be identified. However, comments (with supportive rationale) in response to the following would be particularly helpful.

1. Two options are presented for defining reprocessing wastes under Clause (A) of NWPA. The first option proposes to define the "sufficiency" of fission product concentrations in solidified reprocessing wastes in a manner analogous to its treatment of "highly radioactive" and "requires permanent isolation" under Clause (B) (i.e., by examining the hazards posed by wastes if disposed of in facilities other than a repository). The second option interprets Clause (A) as encompassing all those wastes which have heretofore been considered high-level waste under Appendix F to 10 CFR Part 50 and the Energy Reorganization Act. Which of these two approaches is preferable?

2. The Commission proposes that the current Class C concentration limits of 10 CFR Part 61 serve to identify radionuclide concentrations which are "highly radioactive" for purposes of Clause (B) of the NWPA definition. Would an alternative set of concentration limits be preferable? If so, how should such limits be derived?

3. The Commission proposes to equate the "requires permanent isolation" wording of the NWPA definition with a level of long-term radiological hazard requiring disposal in a geologic repository. Are the Commission's proposed analyses appropriate for identification of concentrations requiring permanent isolation?

4. Although, under section 121 of NWPA, no environmental review is required with respect to the definition of HLW, the Commission would welcome identification of any environmental consequences associated with the matters discussed in this notice.

5. Some waste materials, such as certain laboratory wastes or some sealed sources, may be highly concentrated, yet contain only relatively small total quantities of radioactive materials. Is there a need for a special provision (e.g., a minimum total quantity of activity) before a waste should be classified as HLW?

6. What difficulties (legal, administrative, financial, or other) would an expanded definition of HLW cause in implementing the provisions of the NWPA?

7. The Commission's regulations do not generally require that any particular type of waste be disposed of in any specified type of facility. Would such a requirement be appropriate?

8. As discussed in this notice, the Commission has no legal authority to classify naturally-occurring or accelerator-produced radioactive materials (NARM) as HLW or non-HLW. Nevertheless, such materials may be presented for disposal at facilities licensed by the Commission. When the Commission carries out its proposed analyses to identify "other highly radioactive material that . . . requires permanent isolation," should NARM be included in the analyses?

9. Are there issues other than those identified in this notice which the Commission should consider in developing approaches to implement its authority?

Separate Views of Commissioner Asselstine

Commissioner Asselstine is concerned about the potential for creating a confusing situation if the Commission were to adopt the first option under Clause (A). The first option is to numerically specify concentrations of fission products in defining high-level wastes. Under this approach, it is conceivable that material considered high-level waste for the purposes of licensing under the Energy Reorganization Act of 1974 will also be considered low-level waste for the purposes of the Nuclear Waste Policy Act (NWPA) of 1982. Wastes presently being stored at the Hanford waste tanks, which have traditionally been classified as high-level wastes, would likely be reclassified as above Class C low-level waste under the first option. Commissioner Asselstine requests public comment on how this reclassification would affect the NRC's licensing authority over the long-term storage or *in situ* disposal of the Hanford waste tanks. Commissioner Asselstine also requests comments on whether there are alternative approaches to achieving the stated purpose of this advanced notice of proposed rulemaking of identifying wastes subject to the provisions of the NWPA without altering the traditional definition of high-level waste and thus creating this potential for confusion.

List of Subjects in 10 CFR Part 60

High-level waste, Nuclear power plants and reactors, Nuclear materials, Penalty, Reporting requirements, Waste treatment and disposal.

Authority: The authority citation for this document is Sec. 161, Pub. L. 83–703, 68 Stat. 948, as amended (42 U.S.C. 2201).

Dated at Washington, DC, this 20th day of February 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

Appendix—Volumes and Characteristics of Wastes Exceeding Class C Concentration Limits

For a number of years NRC has had an ongoing program to develop regulations and criteria for disposal of low-level radioactive waste. At the time this program was initiated, there was a well-documented need for comprehensive national standards and technical criteria for the disposal of low-level waste. The absence of sufficient technical standards and criteria was seen to be a major deterrent to the siting of new disposal facilities by states and compacts.

A significant milestone in this program was the promulgation of the regulation 10 CFR Part 61 ("Licensing Requirements for Land Disposal of Radioactive Waste") on December 27, 1982 (47 FR 57446). This regulation establishes procedural requirements, institutional and financial requirements, and overall performance objectives for land disposal of radioactive waste, where land disposal may include a number of possible disposal methods such as mined cavities, engineered bunkers, or shallow land burial. This regulation also contains technical criteria (on site suitability, design, operation, closure, and waste form) which are applicable to near-surface disposal, which is a subset of the broader range of land disposal methods. Near-surface disposal is defined as disposal in or within the upper 30 meters of the earth's surface, and may include a range of possible techniques such as concrete bunkers or shallow land burial. The Part 61 regulation is intended to be performance-oriented rather than prescriptive, with the result that the Part 61 technical criteria are written in relatively general terms, allowing applicants to demonstrate how their proposals meet these criteria for various specific near-surface disposal methods.

A waste classification system was also instituted in the regulation which establishes three classes of waste suitable for near-surface disposal: Class A, Class B, and Class C. Limiting concentrations for particular radionuclides were established for each waste class, with the highest limits being for Class C. The concentration limits were established based on NRC's understanding (at the time of the rulemaking) of the characteristics and volumes of low-level waste that would be reasonably expected to the year 2000, as well as potential disposal methods.

The Class C concentration limits are applicable to all potential near-surface disposal systems; however, the calculations performed to establish the limits are based on postulated use of one near-surface disposal method: shallow land burial. The Class C limits are therefore conservative since there may be other near-surface disposal methods that have greater confinement capability (and higher costs) than shallow land burial.

The regulation states that waste exceeding Class C concentration limits is considered to be "not generally acceptable for near-surface disposal," where this is defined in § 61.55(a) as "waste for which waste form and disposal methods must be different, and in general more stringent, than those specified for Class C waste." Thus, waste exceeding Part 61 concentrations generally has been excluded from near-surface disposal and is being held in storage by licensees. (This amounts to less than 1% of the approximately 3,000,000 ft³ of commercial low-level waste annually being generated.) Given the current absence of prescriptive requirements for disposal of waste exceeding Class C concentration limits, the regulation allows for evaluation of specific proposals for disposal of such waste on a case-by-case basis. The general criteria to be used in evaluating specific proposals are the Part 61 performance objectives contained in Subpart C of the regulation.

Current NRC activities include analyses of low-level waste that exceeds Class C concentration limits to determine the extent to which alternative near-surface disposal systems (e.g. concrete bunkers, augered holes, deeper disposal) may be suitable for safe disposal of such waste. These analyses include a more detailed characterization of physical, chemical, and radiological characteristics of wastes that may be close to or exceed Class C concentration limits as well as development of improved methods for modeling the radiological and economic impact of disposal of these wastes. A related activity is development of more specific guidance for design and operation of alternative near-surface and other land disposal systems. These activities represent a continuation of the Part 61 rulemaking process as discussed in the December 27, 1982 notice of the final Part 61 regulation (47 FR 57446).

Wastes exceeding Class C concentrations are projected to be generated by nuclear power reactors and other supporting nuclear fuel cycle facilities, and also generated by

[18] States are not responsible for disposal of LLW from atomic energy defense activities or Federal research and development activities.

[19] The Commission's expectation that HLW would generate significant amounts of heat is reflected in the discussion of transuranic waste in the notice of proposed rulemaking on the Part 60 technical criteria. 46 FR 35284, July 8, 1981. Reduction of the heat load, for example by removal of cesium-137 and strontium-90, could result in different containment requirements. 48 FR 28196, June 21, 1983 (final rule).

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radioisotope product manufacturers and other facilities and licensees outside of the nuclear fuel cycle. Such wastes can be grouped as follows:

—Plutonium-contaminated nuclear fuel cycle wastes
—Activated metals
—Sealed sources
—Radioisotope product manufacturing wastes
—Other waste

Plutonium-contaminated nuclear fuel cycle wastes. These wastes are being generated from two principal sources. One source of waste arises from operations supporting the nuclear fuel cycle—i.e., post-irradiation radiochemical and other performance analyses of spent fuel rods from nuclear reactors (e.g., "burnup" studies). These operations generate about 200 ft^3 of plutonium-contaminated waste per year, much of which is believed to exceed Class C concentration limits. This waste consists of solidified liquids and other solid material such as scrap, trash, and contaminated equipment. Eventual decommissioning of the three facilities currently performing these analyses is expected to generate additional waste volumes, a portion of which is expected to exceed Class C concentration limits.

The second source of waste arises from fuel cycle licensees who have previously been authorized to use plutonium in research and development of advanced reactor fuels. None of these licensees is using plutonium now, and there is no prospect in the foreseeable future for such activities. In fact, each of the licensees in this category has either decommissioned, or is in the process of decommissioning, its facility. Some of the licensees have made contractual arrangements to transfer their decommissioning waste to DOE for retrievable storage. Approximately 5,000 to 10,000 ft^3 of waste, however, is projected to be generated on a one-time basis that will not be covered by contract.

Activated metals. Activated metals are typically generated as a result of long-term neutron bombardment of metals forming the structure or internal components of a nuclear reactor used for power production, radioisotope production, or other purpose (e.g., education, testing, research). Activated metal wastes are unlike most other wastes being generated in that the radionuclides form part of the actual metal matrix rather than being mixed with large volumes of other, nonradioactive material such as paper, cloth or resins. Radionuclide release is principally governed by the material corrosion rate, and for most reactor metals of concern (e.g., stainless steel), the corrosion rate is quite low.

To date, only a small fraction (about 200 ft^3/yr) of the activated metal waste currently being generated by nuclear power reactors has been identified as exceeding Class C concentration limits. Such waste appears to primarily consist of in-core instrumentation which is no longer serviceable. An example of this waste is a reactor flux wire which is physically small but may be high in activity. (A flux wire is a wire that is inserted into a tube running the length of the reactor core and used to make neutron flux measurements.)

Large quantities of activated metal wastes are projected to be generated in the future as a part of reactor decommissioning. Studies by NRC (NUREG/CR-0130, addendum 3 and NUREG/CR-0672, addendum 2) indicate that over 99% of the waste volume that is projected to result from nuclear power reactor decommissioning will not exceed class C concentration limits and the 1% that is projected to exceed these limits will be almost all activated metals from core structure. Conservative estimates presented in these studies indicate that packaged quantities of decommissioning wastes exceeding Class C concentration limits will total about 4700 ft^3 for a large (1175 MWe) pressurized water reactor (PWR) and about 1660 ft^3 for a large (1155 MWe) boiling water reactor (BWR). Much smaller quantities of wastes exceeding Class C concentration limits may also be generated from future decommissioning of test, research, and education reactors.

Another source of activated metal waste is expected to arise as part of consolidation of spent fuel assemblies for storage and/or disposal. Spent fuel assemblies now being periodically discharged from nuclear power reactors are stored in on-site fuel storage pools. Each assembly is composed of a large number of fuel rods arranged in a rectangular array, and held in place by spacer grids, tie rods, metal end fittings, and other miscellaneous hardware. One option under consideration, for long-term waste storage and eventual disposal is to remove this hardware form the fuel rods. This allows the fuel rods, which contain the fission products which are of primary interest in terms of geologic repository disposal, to be consolidated into a smaller volume. This enables more economical storage and easier handling for transport and disposal. The hardware, which is composed of various types of corrosion-resistant metal such as Inconel or zircalloy, becomes a second waste stream which could potentially be safely disposed by a less expensive method than a geologic repository.

Based on information from DOE (DOE/RW-0006, September, 1984) about 12 kg of waste hardware would be generated per BWR fuel assembly, and about 26 kg per PWR fuel assembly. Assuming 200 fuel assemblies are replaced per year per large 1000 NWe) BWR, roughly 2400 kg of activated metal hardware would be generated per year per large BWR, and about 1700 kg per PWR. An approximate compacted volume is on the order of 50 ft^3/yr per large reactor, or about 4,000 ft^3/yr over the entire industry. Depending upon parameters such as the fuel irradiation history and the hardware elemental composition, particular pieces of separated hardware may or may not exceed Class C concentration limits.

Other than perhaps a few isolated cases, all of the spent fuel assemblies are being stored by licensees with the hardware still attached. Under the provisions of the NWPA, operators of nuclear power plants have entered into contracts with DOE for acceptance by DOE of the spent fuel for storage and eventual disposal. (See 48 FR 16590, April 18, 1983 for the terms of the contract.) Acceptance of the spent fuel by DOE implies acceptance of the activated hardware along with the fuel rods, with the result that disposal of the hardware would intrinsically be a Federal rather than a State responsibility. Disposal responsibility becomes less clear if licensees, seeking more efficient onsite storage, consolidated fuel themselves.

Sealed sources. A number of discrete sealed sources have been fabricated for a variety of medical and industrial applications, including irradiation devices, moisture and density gauges, and well-logging gauges. Each source contains only one or a limted number of radioisotopes. Sealed sources can range in activity from a few millionths of a curie for sources used in home smoke detectors to several thousand curies for sources used in radiotherapy irradiators. Sealed sources are produced in several physical forms, including metal foils, metal spheres, and metal cylinders clamped onto cables. The larger activity sealed sources typically consist of granules of radioactive materials encapsulated in a metal such as stainless steel.

Sealed sources are generally quite small physically. Even sources containing several curies of activity have physical dimensions which are normally less than an inch or two in diameter and 6 inches in length. These dimensions are such that, like activated metals, sealed sources may be considered to be a unique form of low-level waste. Characterizing sealed sources in terms of radionuclide concentration certainly appears to be of less utility than characterizing sealed sources in terms of source activity.

Depending upon the application, sealed sources may be manufactured using a variety of different radioisotopes. A review of the NRC sealed source registry was conducted to identify those source designs which may contain radioisotopes in quantities that might exceed Class C concentration limits. The principal possibilities appear to be those containing cesium–137, plutonium–238, plutonium–239, and americium–241. Large cesium-137 sources are generally used in irradiators, and while some large sources can range up to a few thousand curies, most which are sold appear to contain in the neighborhood of 500 curies. Cesium-137 is a beta/gamma emitter having a half-life of 30 years, which suggests that special packaging and disposal techniques can be readily developed for safe near-surface disposal of sources containing this isotope.

The remaining three isotopes are alpha emitters and are longer lived. Sources manufactured using these isotopes can range up to a few tens of curies, although most that have been sold appear to be much less than one curie in strength. Plutonium-239 sources are not commonly manufactured. Plutonium-238 sources have been manufactured for use as nuclear batteries for applications such as heart pacemakers. Plutonium-238 has also been used in neutron sources, although neutron sources currently being manufactured generally contain americium-241. Americium-241 is also used in a wide variety of other industrial applications such as fill level gauges.

Neutron sources produce neutrons for applications such as reactor startup, well logging, mineral exploration, and clinical calcium measurements. These sources contain alpha-emitting radionuclides such as americium-241 plus a target material (generally beryllium) which generates neutrons when bombarded by alpha particles. Neutron sources can contain up to approximately 20 curies of activity.

It is difficult to project potential waste sealed source quantities and activities, since sealed sources as wastes are not routinely generated as part of licensed operations. In addition, sealed sources only become waste when a decision is made by a licensee to treat them as such. In many instances sources held by licensees may be recycled back to the manufacturer when they are no longer usable, and the radioactive material recovered and fabricated into new sources. Finally, source manufacturers are licensed by the NRC and NRC Agreement States to manufacture a particular source design up to a specified radioisotope curie limit. Most actual sources, however, contain activities considerably less than the design limit.

NRC staff estimates that licensees currently possess approximately 10,000 encapsulated sources having activities above a few thousandths of a curie and containing americium-241 or plutonium-238. Given the hypothetical case that all these sources were candidates for disposal, the total consolidated source volume would be only about 35 ft^3. After packaging for shipment, however, the total disposed waste volume would be significantly increased. The total activity contained in the sources is estimated to be approximately 70,000 curies.

Radioisotope product manufacturing wastes. Wastes exceeding Class C concentration limits are occasionally generated as part of manufacture of sealed sources, radiopharmaceutical products, and other materials used for industrial, educational, and medical applications. Volumes and characteristics of such wastes are difficult to project. However, it is believed that the largest volume of this waste consists of sealed sources which cannot be recycled, plutonium-238 and americium-241 source manufacturing scrap, and waste contaminated with carbon-14.

Sealed sources as a waste form are discussed above. Manufacture of large plutonium-238 and americium-241 sources is concentrated in only a few facilities, from which the generation of waste exceeding Class C concentration limits is believed to total only a few hundred ft^3 per year. Approximately 10 ft^3 per year of carbon-14 waste is generated as a result of radiopharmaceutical manufacturing.

Other wastes. Although the above discussed wastes are believed to be the principal wastes that are expected to exceed Class C concentration limits, other wastes may occasionally also be generated. For example, relatively small quantities of such wastes are currently being generated as part of decontamination of the Three Mile Island, Unit 2, nuclear power plant. However, these wastes are being generated as a result of an accident, are therefore considered abnormal, and are being transferred to DOE under a memorandum of understanding with NRC. Wastes exceeding Class C concentration limits and generated as part of the West Valley Demonstration Project are also being transferred to DOE for storage pending disposal.

Sealed sources and other waste containing discrete quantities of radium-226 may also exceed Class C concentration limits. Products containing radium-226 have been manufactured in the past for a variety of industrial and medical applications. Such wastes are not regulated by NRC but occasionally have been disposed at licensed low-level waste disposal facilities. NRC is currently investigating the impacts of disposal of such waste in order to provide guidance to States and other interested parties on safe disposal methods and any concentration limitations.

[FR Doc. 87–4129 Filed 2–26–87; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–CE–10–AD]

Airworthiness Directives; Cessna Model T303 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to amend Airworthiness Directive (AD) 86–01–01R1, Amendment 39–5316, published in the **Federal Register** on May 21, 1986 (51 FR 18573), applicable to Cessna Model T303 airplanes. The AD removed approval for flight into known icing conditions for those Model T303 airplanes with flight is known icing approval. The manufacturer has developed a modification for the airplane which eliminates the unsafe condition when operating in icing conditions. This proposed amendment restores approval for flight in known icing conditions for those airplanes which install the modification.

DATE: Comments must be received on or before April 15, 1987.

ADDRESS: Cessna Service Bulletins MEB86–17, dated October 1, 1986, and MEB86–18, dated October 1, 1986, applicable to this AD may be obtained from Cessna Aircraft Company, Customer Services, P.O. Box 1521, Wichita, Kansas 67201; or may be examined in the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86–CE–10–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Bennett L. Sorensen, Aerospace Engineer, Wichita Aircraft Certification Office, ACE–160W, FAA Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; Telephone (316) 946–4433.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86–CE–10–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106

Discussion

AD 86–01–01R1, Amendment 39–5316, was published in the **Federal Register** (51 FR 18573) on May 21, 1986. The AD removed approval for flight into known icing conditions for Cessna Model T303 airplanes. The AD was written because there were several reported occurrences of rudder/rudder pedal oscillations, pitch oscillations and uncommanded nose down pitch changes when conducting flight in icing conditions. AD 86–01–01 and AD 86–01–01R1 were sent

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to all known registered owners by priority mail on January 2, 1986, and January 17, 1986, respectively.

Cessna Aircraft Company has developed a modification and POH/AFM revisions (referenced in Service Bulletins MEB86-17 and MEB86-18, both dated October 1, 1986) for these airplanes which eliminates the oscillations and uncommanded nose down pitch changes when operating in icing conditions. This proposed amendment would restore approval for flight in known icing conditions for those Model T303 airplanes which (1) install the modification and make the associated POH/AFM revisions, and (2) are otherwise approved for flight in known icing conditions.

The FAA has determined there are approximately 169 airplanes affected by the proposed amendment to the AD. The cost of modifying these airplanes is estimated to be $990 per airplane. The total cost is estimated to be $167,310. However, since Cessna Aircraft Company is furnishing and installing the kits at their expense, this action will not impose an adverse economic impact on the owners.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follow:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 135(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising and reissuing AD 86-01-01R1, Amendment 39-5315, as follows:

(1) Redesignate paragraph (e) as paragraph (f).

(2) Add a new paragraph (e) to read as follows:

"(e) The requirements of paragraph (a) of this AD do not apply to airplanes which have installed Cessna Part Number (P/N) SK303-39A (called out as SK303-39 in Cessna Service Bulletin MEB86-18, dated October 1, 1986), and associated POH/AFM revisions—either Cessna P/N D1596R7-13PH for S/Ns T300001 through T30300175, Cessna P/N D1602R3-13PH for S/Ns T30300176 through T30300247, or Cessna P/N D1607R2-13PH for S/Ns T30300258 through T30300315 (called out in Cessna Service Bulletin MEB86-17, dated October 1, 1986).

Issued in Kansas City, Missouri, on February 13, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-4056 Filed 2-26-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-AGL-3]

Proposed Establishment of Transition Area—Peru, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Peru, Illinois, transition area to accommodate a new NDB Runway 18 Standard Instrument Approach Procedure (SIAP) to Illinois Valley Regional—Walter A. Duncan Field. This action also cancels Airspace Docket Number 86-AGL-13, Peru, Illinois.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATES: Comments must be received on or before March 31, 1987.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 87-GL-3, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: Airspace Docket Number 86-AGL-13 was published in the **Federal Register** on May 27, 1986, and proposed to establish a transition area to accommodate a new NDB Runway 36 Standard Instrument Approach Procedure (SIAP) to Illinois Valley Regional—Walter A. Duncan Field. Prior to finalization of docket action it was disclosed that lower approach minimums could be achieved by developing an NDB Runway 18 SIAP in lieu of the initial NDB Runway 36 SIAP, which in turn would cause the transition arrival extension to be located to the northwest of Illinois Valley Airport rather than from the southwest as described in Docket 86-AGL-13. Consequently Docket 86-AGL-13 is cancelled and superseded by this action.

The development of a new NDB Runway 18 SIAP requires that the FAA designate airspace to ensure that the procedure will be contained within controlled airspace.

The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AGL-3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area airspace near Peru, Illinois.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Peru, Illinois [New]

That airspace extending upward from 700 feet above the surface within a 5 mile radius of Illinois Valley Regional—Walter A. Duncan Field (lat. 41°20'58"N., long. 89°09'14"W.); and within 3 miles either side of the Valley NDB (VYS) 332° bearing extending from the 5 mile radius area to 8.5 miles northwest of the Valley NDB.

Issued in Des Plaines, Illinois on February 13, 1987.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 87-4057 Filed 2-26-87; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-1851]

Holiday Universal, Inc.; Prohibited Trade Practices, and Required Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Notice of 30 day period for public comments on petition by Holiday Universal, Inc., to reopen and modify the order in Docket No. C-1851.

SUMMARY: Holiday Universal, Inc., in the order in Docket No. C-1851, filed a petition on February 6, 1987, requesting that the Commission reopen and modify the order.

DATE: The deadline for filing comments in this matter is March 30, 1987.

ADDRESS: Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. Requests for copies of the petition should be sent to Public Reference Branch, Room 130.

FOR FURTHER INFORMATION CONTACT: Joseph J. Koman, Enforcement Division, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326-3014.

SUPPLEMENTARY INFORMATION: The petitioner, Holiday Universal, Inc., operates a chain of "Holiday Spas" in the Washington-Baltimore area. The order modification requested by petitioner would relax prohibitions regarding the benefits derived from its health plan program and delete certain prohibitions concerning deceptive sales practices. The petition was placed on the public record on February 27, 1987.

List of Subjects in 16 CFR Part 13

Health spas, Advertising, Trade practices.

Emily H. Rock,

Secretary.

[FR Doc. 87-3820 Filed 2-26-87; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket No. 9193]

AMERCO, et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, Phoenix, Ariz.-based respondent U-Haul International, Inc., the nation's largest renter of trucks and trailers, and its Las Vegas, Nev.-based parent company, AMERCO, from initiating or participating in any judicial or administrative proceeding in which their main purpose would be to harass or injure any competitor or potential competitor. Additionally, respondents would be required for ten years: (1) To give the FTC prior notice before participating in any bankruptcy proceeding of a competitor; (2) to obtain FTC approval before filing a plan of reorganization to acquire a competitor in bankruptcy; (3) to provide the FTC with a copy of any lawsuit filed against a competitor; and (4) to obtain FTC approval before acquiring any competitor worth $5 million or more.

DATE: Comments must be received on or before April 28, 1987.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

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FOR FURTHER INFORMATION CONTACT: FTC/A-3302, Ronald B. Rowe, Washington, DC 20580 (202) 326-2610.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Truck and trailer rental, Trade practices.

In the Matter of AMERCO, a corporation, and U-HAUL INTERNATIONAL, INC., a corporation; Docket No. 9193.

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

The agreement herein, by and between AMERCO, a corporation, and U-Haul International, Inc., a corporation, hereinafter referred to as "Respondents," by their duly authorized officers and their attorneys, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rules governing consent order procedures. In accordance therewith the parties hereby agree:

1. Respondent AMERCO is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its principal place of business at 3111 Bel Air, Las Vegas, Nevada 89109.

Respondent U-Haul International, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oregon, with its principal place of business located at 2727 North Central Avenue, P.O. Box 21502, Phoenix, Arizona 85036.

2. Respondents have been served with the Complaint issued by the Federal Trade Commission charging them with violation of section 5 of the Federal Trade Commission Act, and have filed answers to said Complaint denying said charges.

3. Respondents admit all the jurisdictional facts set forth in the Commission's Complaint in this proceeding, and agree not to contest the jurisdiction of the Commission to enforce the Order entered pursuant to this Agreement.

4. Respondents waive:

a. any further procedural steps,

b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law,

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement,

d. any claim under the Equal Access To Justice Act.

5. This Agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision in disposition of the proceeding.

6. This Agreement is for settlement purposes only and does not constitute evidence or an admission by Respondents that the law has been violated as alleged in said Complaint issued by the Commission.

7. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to Respondents, (a) issue its decision containing the following Order to Cease and Desist in disposition of the proceeding, and (b) make information public in respect thereto. When so entered, the Order to Cease and Desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to Order to Respondents' addresses as stated in this Agreement shall constitute service. Respondents waive any right they might have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation or interpretation not contained in the Order or in the Agreement may be used to vary or to contradict the terms of the Order.

8. Respondents have read the Complaint and the Order contemplated hereby. Respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

A. For the purpose of this Order, the following definitions shall apply:

1. "Person" is any natural person, corporate entity (including subsidiaries thereof), partnership, joint venture, trust or legal entity;

2. "Competitor" is any person or association of persons that offers one-way rentals of moving equipment, directly through a network of store locations and/or indirectly through a network of dealer locations, but does not refer to a dealer or a franchisee or licensee of such a person or association of persons;

3. "Potential competitor" is any person or association of persons that either Respondents knows or has reason to believe is planning or preparing to offer one-way rentals of moving equipment, directly through a network of store locations and/or indirectly through a network of dealer locations, but does not refer to a dealer or a franchisee or licensee of such a person or association of persons.

B. It is ordered that each Respondent, including each of its successors and assigns, directly or indirectly or through any subsidiary, affiliate, division, director, officer, employee, agent, representative, corporation or other device, in connection with the conduct of business in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, forthwith cease and desist from initiating or participating in any judicial or administrative proceeding where such Respondent's primary purpose is to harass or injure any competitor or potential competitor.

C. It is further ordered that each Respondent, including each of its successors and assigns, directly or indirectly or through any subsidiary, affiliate, division, director, officer, employee, agent, representative, corporation or other device, in connection with the conduct of business in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, during the period of ten (10) years from

date of service of this Order, forthwith cease and desist from:

1. Participating in any proceeding initiated by a competitor under the Bankruptcy Code, without (a) first giving twenty (20) days written notice to the Fedral Trade Commission (or, if fewer than twenty (20) days, written notice shall be given to the Federal Trade Commission as soon as is reasonably practicable under the circumstances), and (b) serving a copy of each pleading filed by either Respondent in the proceeding on the Federal Trade Commission by first-class mail at the same time that the pleading is filed:

2. Filing or seeking to file in any proceeding initiated by a competitor under the Bankruptcy Code, without the prior approval of the Federal Trade Commission, a plan of reorganization by which either or both Respondents would acquire the whole or any part of the stock, share capital, assets or equity interest of such competitor;

3. Initiating or participating in any judicial or administrative proceeding against any competitor without providing the Federal Trade Commission (a) within ten (10) days of filing the complaint, petition, or pleading in question, a copy of that complaint, petition, or pleading that each Respondent filed to initiate to to initiate participation in such a proceeding, and (b) within twenty (20) days of receiving a request from the Federal Trade Commission for such a statement, a statement of the factual and legal bases underlying each Respondent's reasons for the initiation of or initial participation in such a proceeding; provided, however, that this subparagraph C.3 shall not apply to any insurance subrogation claim for personal injury or for damage to property.

D. It is further ordered that each Respondent, including each of its successors and assigns, directly or indirectly, during the period of ten (10) years from the date of service of this Order:

1. Shall not acquire from any person any claim or right under any claim such person has against a competitor, other than by means of insurance subrogation to any claim for personal injury or for damage to property;

2. Shall not acquire, without the prior approval of the Federal Trade Commission, the whole or any part of the stock, share capital, assets, or equity interest in any competitor; provided, however, that nothing in this subparagraph D.2 shall prohibit Respondents from:

a. Acquiring any assets the total value of which in any single acquisition is less than five million dollars ($5,000,000), or

b. Entering into any transaction with any subsidiary or affiliate of either Respondent, with any company wholly developed by either Respondent, or with any noncompetitor, where such transaction involves the conduct of business, including mergers, consolidations, joint ventures, or other reorganizations, solely with or among these entities.

E. It is further ordered that for a period of ten (10) years form the date of servide of this Order, Respondents, including their successors and assigns, shall distribute a copy of the Federal Trade Commission's Complaint and Order to: (1) Respondents' directors and officers and their successors, (2) Respondents' in-house counsel and their successors, (3) Respondents' auditor and its successors, (4) AMERCO District Vice Presidents and their successors, and (5) Respondents' outside counsel in any judicial or administrative proceeding involving a competitor, other than a proceeding based on an insurance subrogation claim for personal injury of for damage to property. Respondents shall make their initial distribution under this paragraph E within thirty (30) days of date of service of this Order.

F. It is further ordered that Respondents, including their successors and assigns, shall:

1. file with the Federal Trade Commission within ninety (90) days of date of service of this Order a report in writing setting forth in detail the manner and form in which Respondents have compiled and are complying with this Order;

2. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in either Respondents, such as dissolution, assignment or sale resulting in the emergence of a successor corporation or any other proposed change in the corporation which may affect compliance obligations arising out of this Order.

In the Matter of AMERCO and U-Haul International, Inc.; Docket No. 9193

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from AMERCO and U-Haul International, Inc. The proposed consent order has been placed on the public record for sixty days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Description of the Complaint

The Commission issued a complaint against AMERCO and U-Haul International, Inc. ("UHI") on June 24, 1985, charging both corporations with unlawfully using sham litigation in an attempt to monopolize the national one-way moving equipment rental market by preventing a competitor, Jartran, Inc., from competing in that market in violation of section 5 of the Federal Trade Commission Act.

AMERCO owns 100 percent of a large number of corporations, including UHI, that collectively engage in the rental of moving equipment (trucks, trailers, and accessories) under the name of "U-Haul." UHI provides accounting, technical, and advisory services to U-Haul. U-Haul has been dominant in the national one-way moving equipment rental market for at least 10 years; it had a 59.2 percent market share in 1984. According to the complaint, Jartran entered the market in 1979, and by 1980 had a 10 percent market share, obtained largely by taking business away from U-Haul.

U-Haul sued Jartran in federal district court in June 1980, for false and misleading advertising and sought approximately $375 million in damages. On December 31, 1981, Frank B. Hall & Company acquired Jartran, and Jartran filed in bankruptcy court to reorganize its operations under Chapter 11 of the Bankruptcy Code. The next month U-Haul filed a creditor's claim in the Chapter 11 proceeding, based on damages it was seeking in the false advertising suit.

The complaint charged that U-Haul's actions during Jartran's Chapter 11 proceeding were "a deliberate course of action to abuse the judicial process in order to injure a competitor." These actions, the complaint charged, were a sham because they were "inconsistent with U-Haul's legitimate interests as a creditor" and were "intended primarily to delay or prevent Jartran's reorganization as a competitor."

The complaint listed several alleged U-Haul actions that disrupted Jartran's efforts to reorganize. For exemple, U-Haul attempted to propose reorganization plans under which it would acquire Jartran's assets, even though it knew or had reason to believe that such an acquisition would be

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illegal." In addition, the complaint stated that U-Haul opposed a settlement between Jartran and certain other creditors, even though the settlement would have increased the amount of money distributed to U-Haul. Such actions "could only delay Jartran's reorganization."

According to the complaint, U-Haul's actions violated the antitrust laws because they were an attempt by a dominant firm to monopolize the one-way moving equipment rental market by eliminating a competitor.

The Proposed Consent Order

The consent order is designed to remedy the violations charged in the Commission's complaint, and to prevent AMERCO and UHI from engaging in similar acts and practices in the future. Paragraph B of the proposed order requires AMERCO and UHI to cease and desist from initiating or participating in any judicial or administrative proceeding in which either corporation's primary purpose is to harass or injure any competitor or potential competitor. A primary purpose to harass or injure violates this paragraph of the proposed order, regardless of whether a secondary purpose exists for initiating or participating in such proceeding.

A "competitor" is defined in the proposed order as "any person or association of persons that offers one-way rentals of moving equipment." A "potential competitor" is defined as "any person or association of persons that either [AMERCO or UHI] knows or has reason to believe is planning or preparing to offer one-way rentals of moving equipment." The definitions of competitor and potential competitor exclude dealers.

There are three parts to paragraph C. C.1 prohibits AMERCO and UHI from participating in any bankruptcy proceeding initiated by a competitor without first giving written notice to the Commission and providing the Commission with a copy of every pleading either corporation files in the proceeding. C.2 requires that in any bankruptcy proceeding initiated by a competitor, AMERCO and UHI receive prior approval of the Commission before filing a plan of reorganization to acquire that competitor.

C.3 requires AMERCO and UHI to provide the Commission with a copy of any pleading initiating litigation against a competitor, and if requested by the Commission, a statement of the factual and legal bases underlying the reasons for initiating such proceeding. Lawsuits based on insurance subrogation claims for personal injury or damage to property are exempt from this reporting requirement because they arise in the ordinary course of business from accidents involving U-Haul's vehicles. Paragraphs C.1, C.2 and C.3 are designed to deter future wrongful conduct by prohibiting certain actions by AMERCO and UHI and by keeping the Commission fully apprised of their actions in litigation against a competitor.

There are two parts to paragraph D. D.1 prohibits AMERCO and UHI from acquiring from any person any claims such person may have against a competitor of UHI or AMERCO. Claim for personal injury or for damage to property obtained through insurance subrogation are not covered by this provision. D.1 is designed to prevent AMERCO and UHI from shopping for claims against competitors. D.2 prohibits AMERCO and UHI from acquiring, without the prior approval of the Commission, any competitor worth $5 million or more. D.2 allows the Commission to prevent any undue increase in U-Haul's market power through the acquisition of a competitor.

Paragraph E requires AMERCO and UHI to distribute a copy of the Commission's complaint and order to both corporations' directors, officers, in-house counsel, auditors, and the successors of all the above-mentioned persons. In addition, AMERCO and UHI are required to distribute a copy of the Commission's complaint an dorder to outside counsel in any judicial or administrative proceeding involving a competitor.

Paragraph F requires AMERCO and UHI to file written compliance reports and to provide the Commission with notice of any major proposed changes in corporate organization.

AMERCO and UHI are required to comply with paragraphs C through E for a period of ten years from the date of service of the order. There are no time limits on AMERCO's and UHI's compliance with paragraphs B and F.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order to modify in any way its terms.

Emily H. Rock,

Secretary.

[FR Doc. 87-4096 Filed 2-26-87; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 72, 178, and 179

[Notice No. 624; Re: Notice No. 609 and 618]

Commerce in Firearms and Ammunition

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Extension of comment period for notice of proposed rulemaking.

SUMMARY: Public Laws 99-308 and 99-360 made major revisions in the Gun Control Act of 1968 and the National Firearms Act. Temporary rule, T.D. ATF-241, was published in the **Federal Register** on October 29, 1986, to implement the new law revisions. In the same **Federal Register** ATF published Notice No. 609 (51 FR 39635) to allow a 90 day review and comment period on the Temporary rule. ATF received a number of requests for additional time to review and comment on the regulations. The comment period was extended an additional 30 days to allow more time for public review and comment. ATF has once again received requests for additional time to review and comment on the regulations, and is, therefore, extending the comment period an additional 30 days.

DATE: Written comments must be received by March 30, 1987.

ADDRESSES: Send written comments to: Chief, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 189, Washington, DC 20044-0189.

Any written comments received will be available for public inspection during normal business hours at: ATF Reading Room, Room 4406, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Daniel E. Crowley, ATF Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, (202) 566-7591.

Approved: February 25, 1987.

Stephen E. Higgins,

Director.

[FR Doc. 87-4272 Filed 2-25-87; 3:11 pm]

BILLING CODE 4810-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-3162-4]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA proposes to approve a site-specific revision to the Wisconsin State Implementation Plan (SIP) for Volatile Organic Compounds (VOC). The revision, if approved, would provide for a compliance date extension from December 31, 1985, until December 31, 1987, for Union Camp Corporation's (Union Camp) Tomah facility, which is located in Monroe County, Wisconsin. This SIP revision would allow Union Camp additional time to reformulate to low solvent inks for use on flexible packaging materials. Under this SIP revision, the Tomah facility must comply with the emission limits contained in section NR 154.13(4)(1) by December 31, 1987. This action is taken in response to an April 7, 1986, request from the Wisconsin Department of Natural Resources (WDNR).

USEPA is proposing to approve this revision because (1) the Tomah facility is located in an attainment area for ozone; and (2) approval of the extension will not affect the maintenance of the ozone standards.

DATE: Comments on this revision and on the proposed USEPA action must be received by March 30, 1987.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886-6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, (312) 886-6031.

SUPPLEMENTARY INFORMATION: On April 7, 1986, the WDNR submitted a proposed site-specific SIP revision to its ozone SIP for VOC emissions from Union Camp's four flexograph.c printing presses at the Tomah facility, located in Monroe County, Wisconsin. This revision consists of a compliance date extension from December 31, 1985, to December 31, 1987, for meeting the VOC emission limits contained in Wisconsin SIP regulation, NR 154.13(4)(1). USEPA has reviewed Wisconsin's request with respect to whether the compliance date extension, if approved, would affect the attainment and maintenance of the ozone National Ambient Air Quality Standards [1] (NAAQS) in Monroe County, Wisconsin.

Union Camp is a diversified extruder and converter of flexible packaging materials. Numerous grades of polyethylene are extruded, printed, and converted for packaging such items as ice, produce, baby formula, and a wide variety of industrial applications. In addition, a variety of purchased laminated and co-extruded films are printed and converted. These include various combinations of foil, paper, cellophane, polyester, polypropylene and polyethylene.

Under the existing federally-approved SIP, each flexographic printing press is subject to the control requirements contained in section NR 154.13(4)(1) of the Wisconsin Administrative Code. Section NR 154.13(4)(1) limits the VOC content of any ink, as applied, to 25 percent or less by volume of the volatile content or to 40 percent or less by volume of the total content. USEPA approved this statewide rule as meeting the reasonably available control technology (RACT) requirements under Part D of the Clean Air Act (Act) for nonattainment areas on June 21, 1982 (47 FR 26622).

Union Camp is located in Monroe County, an area designated attainment for ozone (40 CFR 81.350) under Section 107 of the Act. Since approval of this proposed SIP revision should not lead to any change in actual emissions, maintenance of the NAAQS will not be affected by the compliance date extension. USEPA is, therefore, proposing to approve this SIP revision extending the compliance schedule.[2]

The present VOC emissions from Union Camp's flexographic printing operations do not indicate a RACT-level of control, nor has Union Camp demonstrated to USEPA's satisfaction that development of complying coatings has progressed as expeditiously as practicable. This rulemaking relaxes a stationary source RACT emission limitation in an area that has always been designated as attainment/unclassifiable for ozone. Originally, this RACT limitation was imposed, by the State, not to satisfy an ozone nonattainment SIP planning requirement, but rather to allow the State to have an accommodative SIP. The original principal of this accommodative ozone SIP for areas classified as attainment/unclassifiable was to require RACT-level controls on existing sources in lieu of requiring new major sources of VOC to do preconstruction monitoring. This monitoring would normally be required of new major sources in attainment/unclassifiable areas under USEPA's prevention of significant deterioration regulations. The rationale behind this tradeoff is that the "extra" emission reductions obtained from these additional RACT controls would be able to accommodate new source growth in these attainment/unclassifiable areas. Therefore, this action, when promulgated, will cancel the accommodative SIP for Monore County. This means that all new major VOC sources and major modifications in this county must comply with all the PSD monitoring requirements. Because this portion of the State's accommodative SIP never had any effect relative to any designated ozone nonattainment area SIP, the RACT relaxation in this notice will also have no effect on nonattainment areas—all sources wishing to locate in nonattainment areas must comply with the State's federally approved Part D new source review program.

USEPA is providing a 30-day comment period on this notice of proposed rulemaking. Public comments received on or before March 30, 1987, will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office listed at the front of this notice.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the

[1] The NAAQS were established to protect public health and welfare under Section 109 of the Clean Air Act.

[2] Since Monroe County is designated attainment for ozone, today's proposal is being evaluated primarily with respect to the Clean Air Act's requirement under Section 110 that a revision must assure the attainment and maintenance of the NAAQS.

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requirements of section 3 of Executive Order 12291.

Authority: U.S.C. 7401–7642.

Dated: September 30, 1986.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 87–4147 Filed 2–26–87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 67

[Docket No. FEMA–6906]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90– 448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
CALIFORNIA	
Loomis (town), Placer County	
Secret Ravine:	
Most downstream location within town limits	*321
Immediately upstream of Brace Road	*341
Immediately upstream of Horseshoe Ravine	*354
Confluence with Secret Ravine Tributary	*355
Most upstream location within corporate limits	*383

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Secret Ravine Tributary	
Confluence with Secret Ravine	*355
Immediately upstream of U.S. Route 80	*368
640 feet upstream of U.S. Route 80	*376
Upstream limit of detailed study (approximately 390 feet upstream of Kings Road)	*397
Antelope Creek:	
Most downstream location within corporate limits	*285
Immediately upstream of Delmar Avenue	*296
200 feet upstream of Sierra College Boulevard	*313
Confluence with Antelope Creek Tributary	*340
Most upstream location within corporate limits	*353
Antelope Creek Tributary:	
Confluence with Antelope Creek	*340
Immediately upstream of confluence with Antelope Creek	*342
860 feet above confluence with Antelope Creek	*347
640 feet downstream of corporate limit	*353
Most upstream location within corporate limits	*359
Maps are available for inspection at Loomis Town Hall, 6140 Horseshoe Bar Road, Loomis, California.	
Send comments to Mayor D. Paul Buckley, P.O. Box 1327, Loomis, California 95650.	
COLORADO	
Larkspur (town), Douglas County	
East Plum Creek: At center of Perry Park Avenue	*6,662
Maps are available for review at the Town Clerk's Office, Town Hall, Larkspur, Colorado	
Send comments to The Honorable Ann Trueblood, Mayor, Town of Larkspur, Box 53, Larkspur, Colorado 80118	
Parker (town), Douglas County	
Cherry Creek: 50 feet downstream of centerline of West Parker Road	*5,811
Sulphur Gulch: 150 feet upstream of centerline of Pikes Peak Drive	*5,857
Tallman Gulch: 50 feet upstream of centerline of Seibert Circle	*5,925
Maps are available for review at the Town Hall, Town of Parker, 19319 East Main Street, Parker, Colorado.	
Send comments to The Honorable Dean Salisbury, Mayor, Town of Parker, P.O. Box 667, Parker, Colorado 80134	
Teller County (unincorporated areas)	
Fountain Creek: The intersection of the stream and the center of Woodland Avenue	*8,125
East Fork Fountain Creek: Center of Midland Avenue, 700 feet southeast along the street from its intersection with Sheridan Avenue	*8,330
Loy Gulch: The intersection of the stream and the center of State Highway 67	*8,286
Lovell Gulch: Center of Lovell Gulch Road, 200 feet west along the road from its intersection with Ridge Drive	*8,460
Paint Pony: Intersection of the stream and the center of Navajo Trail	*8,345
East Fork Paint Pony: Intersection of the stream and the center of Navajo Trail	*8,453
Trout Creek: 40 feet downstream from the center of County Road 75	*8,182
Maps are available for review at the Teller County Planners Office, Woodland Park, Colorado.	
Send comments to The Honorable June Fuhrodt, Chairperson, Teller County Commissioners, P.O. Box 959, Cripple Creek, Colorado, 80813	
Woodland Park (town), Teller County	
Fountain Creek: Center of the intersection of Fairview Street and Chester Avenue	*8,393
East Fork Fountain Creek: Center of the intersection of Baldwin Street and Pikes Peak Avenue	*8,420

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Loy Gulch: Center of the intersection of Chippewa Trail and Valley View Drive	*8,321
Paint Pony: East side of Chippewa Trail 220 feet south along the street from it intersection with Valley View Drive	*8,325
East Fork Paint Pony: Center of Valley View Court at the end of the street 370 feet south of its intersection with Valley View Drive	*8,334
Maps are available for review at the Office of Kathy Lofink, Town Planner, Woodland Park, Colorado.	
Send comments to The Honorable John D. Carr, Mayor, P.O. Box G, Woodland Park, Colorado	
IOWA	
Sabula (city), Jackson County	
Mississippi River: Within community	*595
Maps available for inspection at City Hall, P.O. Box 331, Sabula, Iowa.	
Send comments to The Honorable Donald Meyers, Mayor, City of Sabula, City Hall, P.O. Box 331, Sabula, Iowa 52070.	
KENTUCKY	
Perryville (city), Boyle County	
Chaplin River:	
About 0.5 mile downstream of Second Street	*845
About 0.5 mile upstream of Third Street	*857
Maps available for inspection at the City Hall, Perryville, Kentucky.	
Send comments to The Honorable Rick Lee, Mayor, City of Perryville, City Hall, Perryville, Kentucky 40468.	
LOUISIANA	
Clarence (village), Natchitoches Parish	
Bourbeaux Bayou: Intersection of Lee Street and Greenville Street	*118
Maps available for inspection at the Town Hall, Clarence, Louisiana.	
Send comments to The Honorable Charles Brayton, Mayor of the Village of Clarence, Natchitoches Parish, P.O. Box 309, Clarence, Louisiana 71417.	
Natchez (village), Natchitoches Parish	
Bayou Natchez:	
At downstream corporate limits	*107
At upstream corporate limits	*107
Maps available for inspection at the Village Hall, Natchez, Louisiana.	
Send comments to The Honorable Roosevelt Toussaint, Mayor of the Village of Natchez, Natchitoches Parish, P.O. Box 164, Natchez, Louisiana 71456	
Natchitoches (city), Natchitoches Parish	
Bayou Ile Aux Vaches:	
Approximately 300 feet downstream of Flora Street Bridge	*103
Upstream corporate limits	*113
Bayou Jullen Tributary:	
At confluence with Bayou Jullen 109	*108
Approximately 2,100 feet downstream of Field Road	*109
Approximately 1,400 feet downstream of Field Road	*111
Downstream side of Field Road	*112
Approximately 1,850 feet upstream of Field Road	*113
Old River:	
Downstream corporate limits	*110
Approximately 100 feet downstream of State Route 1	*110
Maps available for inspection at the City Hall, Natchitoches, Louisiana.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable Joe Sampite, Mayor of the City of Natchitoches, Natchitoches Parish, P.O. Box 37, Natchitoches Louisiana 71451	
Natchitoches Parish	
Cane River-Old River-Bayou Natchez	
Approximately 1.8 miles downstream of State Route 1	*105
At upstream side of State Route 119	*106
At upstream side of State Route 102	*107
Approximately 7.1 miles above most upstream corporate limits of the Village of Natchez	*110
Bayou Derbonne	
At confluence with Cane River	*106
At upstream side of Interstate Route 49	*107
Approximately 4.2 miles upstream of State Route 493	*107
Bayou Kisatchie:	
At confluence with Old River	*107
Approximately 1.7 miles upstream of Interstate Route 49	*107
Bourbeaux Bayou:	
Approximately .7 mile downstream of Clark Road	*117
Approximately 0.77 mile upstream of Clark Road	*118
Bayou Fausse:	
Approximately 100 feet above Red River Levee	*112
Approximately 125 feet upstream of Parish Route 1225	*112
Maps available for inspection at the Natchitoches Parish Police Jury Secretary's Office, Natchitoches, Louisiana.	
Send comments to The Honorable Betty Hilton, President of the Natchitoches Parish Police Jury, P.O. Box 799, Natchitoches Parish Courthouse, Natchitoches, Louisiana 71457.	
MAINE	
Lincoln (town), Penobscot County	
Penobscot River:	
Approximately 1.0 mile downstream of the confluence of Mattamsconts Stream	*175
Downstream side of Interstate Route 95 access bridge	*179
At confluence of Medunkeunk Stream	*181
Southern end of Hersey Island	*184
Approximately 0.95 mile upstream of Lincoln-Chester Bridge	*188
Mattanawcook Pond: Entire shoreline	*217
Upper Cold Stream Pond: Entire shoreline within community	*353
Center Pond: Entire shoreline within community	*269
Mill Pond: Entire shoreline within community	*200
Maps available for inspection at the Planning Board Vault, Lincoln, Maine	
Send comments to The Honorable William Gudson, Manager of the Town of Lincoln, Penobscot County, Town Offices, 75 Main Street, Lincoln, Maine 04457.	
Medway (town), Penobscot County	
Penobscot River:	
Downstream corporate limits	*240
Downstream side of I-95	*244
Approximately .4 mile upstream of Interstate Route 95	*247
East Branch Penobscot River:	
Confluence with Penobscot River	*248
Upstream side of State Routes 157/11	*249
Downstream side of Hathaway Road (extended)	*252
Upstream corporate limits	*261
West Branch Penobscot River:	
Confluence with Penobscot River	*248
500 feet upstream of State Route 116	*250
Upstream corporate limits	*262
Maps available for inspection at the Town Office Vault, Medway, Maine	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable Steven Stanley, Chairman of the Town of Medway Board of Selectmen, Penobscot County, P.O. Box 320, Town Offices, Medway, Maine 04460	
Oakland (town), Kennebec County	
Messalonskee Lake: Entire shoreline within community	*238
Salmon Lake: Entire shoreline within community	*279
Maps available for inspection at the Town Offices, Oakland, Maine.	
Send comments to The Honorable Robert Nutting, Chairman of the Town of Oakland Council, Kennebec County, P.O. Box 187, Oakland, Maine 04963	
Topsham (town), Sagadahoc County	
Androscoggin River:	
At the Brunswick-Bath corporate limits extended	*10
Downstream side of Main Central Railroad (second crossing)	*51
At upstream corporate limits	*84
Cathance River:	
Approximately 1.0 mile downstream of Interstate 95	*96
Approximately 50 feet downstream of Interstate 95	*100
Maps available for inspection at the Planning Board, 22 Elm Street, Topsham, Maine	
Send comments to The Honorable Lionel Bourque, Chairman of the Board of Selectmen for the Town of Topsham, Sagadahoc County, 22 Elm Street, Topsham, Maine 04086	
Winslow (town), Kennebec County	
Kennebec River:	
At downstream corporate limits	*54
Downstream side of Bridge Street	*60
Upstream side of Two-Penny Bridge	*66
Approximately 875 feet downstream of Scott Paper Company Dam	*75
Upstream side of Scott Paper Company Dam	*88
At upstream corporate limits	*92
Sebasticook River: Entire length within community	*59
Maps available for inspection at the Department of Public Works, 16 Burton Avenue, Winslow, Maine	
Send comments to The Honorable Edward Gagnon, Manager of the Town of Winslow, Kennebec County, 16 Burton Avenue, Winslow, Maine 04901	
MISSISSIPPI	
Southaven (city), DeSoto County	
Southaven Creek:	
About 2,300 feet downstream of Illinois Central Gulf Railroad	*254
About 1,000 feet upstream of Whitworth Road	*296
Rocky Creek:	
At mouth	*269
About 500 feet upstream of Swinnea Road	*315
Horn Lake Creek:	
About 2.0 miles downstream of Horn Lake Road	*234
At confluence of Rocky Creek	*269
Lateral A:	
At mouth	*244
About 1,000 feet upstream of Horn Lake Road	*247
Lateral E:	
About 800 feet downstream of Swinnea Road	*300
Just upstream of Swinnea Road	*301
Maps available for inspection at the City Hall, P.O. Box 425, Southaven, Mississippi.	
Send comments to The Honorable J.A. Cates, Mayor, Town of Southaven, City Hall, P.O. Box 425, Southaven, Mississippi 38671.	

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PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
MISSOURI	
Cape Girardeau County	
Mississippi River:	
Downstream County boundary	*352
Upstream side of State Route 146	*356
Upstream County boundary	*370
Apple Creek:	
Approximately 2.7 miles downstream of U.S. Route 61	*388
Downstream corporate limits of Town of Appleton	*399
Upstream corporate limits of Town of Appleton	*403
Approximately 1.7 miles upstream of U.S. Route 61	*410
Byrd Creek:	
Approximately 1.5 miles downstream of State Route 72	*399
Upstream side of State Route 72	*406
Approximately 1,000 feet upstream of County Route 466	*418
Cape La Croix Creek:	
Approximately 0.5 mile downstream of State Route W	*391
Most upstream corporate limits of City of Jackson	*417
Approximately 0.4 mile upstream of most upstream corporate limits of City of Jackson	*426
Hubble Creek:	
Approximately 0.2 mile upstream of State Route Z	*379
Upstream side of County Route 324	*395
Confluence of Goose Creek	*401
Upstream side of Missouri Pacific Railroad bridge	*404
Approximately 0.4 mile upstream of confluence of Rocky Branch	*411
Goose Creek:	
Confluence with Hubble Creek	*401
Approximately 1.0 mile upstream of confluence with Hubble Creek	*416
Rocky Branch:	
Confluence with Hubble Creek	*405
Upstream side of State Route PP	*410
Downstream corporate limits of City of Jackson	*412
Williams Creek:	
Approximately 800 feet downstream of State Route K	*363
Upstream side of County Route 316	*398
Approximately 300 feet upstream of U.S. Route 61	*422
Approximately 300 feet upstream of Interstate Route 55	*443
Approximately 200 feet upstream of County Route 616	*490

Maps available for inspection at the County Planning and Zoning Office, Cape Girardeau County Courthouse, Jackson, Missouri

Send comments to The Honorable Gene Huckstep, Presiding Commissioner of the Cape Girardeau County Commission, Cape Girardeau County Courthouse, Jackson, Missouri 63755.

NEW HAMPSHIRE

Canaan (town), Grafton County

Mascoma River:	
At downstream corporate limits	*806
Intersection of South Road and U.S. Route 4	*810
Downstream side of Boston and Maine Railroad (2nd upstream crossing)	*811
At Boston and Maine Railroad (3rd upstream crossing)	*826
At Boston and Maine Railroad (4th upstream crossing)	*843
At U.S. Route 4 (3rd upstream crossing)	*871
Approximately 0.8 mile upstream from U.S. Route 4 (3rd upstream crossing)	*873
Appleblossom Road extended to river bank	*876
Approximately 0.5 mile south on Switch Road from intersection of Switch Road and Canaan Center Hill Road	*881
Downstream side of Grafton Turnpike Road	*923
Downstream side of River Road	*961
Approximately 0.4 mile upstream of Lashua Road	*977
Indian River:	
At confluence with Mascoma River	*870
Upstream side of Gristmill Hill Road	*935
Upstream side of U.S. Route 4 (3rd upstream crossing)	*947
Upstream side of Orange Road	*954
Approximately 1 mile upstream of Orange Road	*956
At upstream side of Lary Road	*984
Approximately 1,450 feet downstream of State Route 118 (3rd upstream crossing)	*1,090
Upstream side of State Route 118 (3rd upstream crossing)	*1,110
At upstream corporate limits	*1,124
Goose Pond Brook:	
At confluence with Mascoma River	*808
Approximately 170 feet upstream of 2nd upstream crossing of Goose Pond Road	*811
Orange Brook:	
At confluence with Indian River	*948
Approximately 0.8 mile upstream of confluence with Indian River	*980

Maps available for inspection at the Selectmens' Office, Canaan, New Hampshire

Send comments to The Honorable Mary Hathorn, Chairlady of the Town of Canaan Board of Selectpeople, Grafton County, P.O. Box 38, Canaan, New Hampshire 03741

NEW YORK

Lansing (village), Tompkins County

Cayuga Lake: Entire shoreline within community	*386

Maps available for inspection at the Village Offices, 2405 North Triphammer Road, Ithaca, New York.

Send comments to The Honorable Anne Furry, Mayor of the Village of Lansing, Tompkins County, Village Offices, 2405 North Triphammer Road, Ithaca, New York 14850

Sidney (town), Delaware County

Susquehanna River:	
Approximately 140 feet downstream of the downstream corporate limits	*991
Approximately 200 feet upstream of Bridge Street	*1,014
Upstream side of Wells Bridge	*1,048
At upstream corporate limits	*1,053
Outcut Creek:	
At confluence with Susquehanna River	*1,0[illegible]
Upstream side of East Sidney Cemetery Bridge	*1,076
Approximately 120 feet downstream of East Sidney Lake Dam	*1,103
At upstream corporate limits	*1,199

Maps available for inspection at the Town of Sidney Civic Center, Sidney, New York

Send comments to The Honorable Walter Johnson, Supervisor of the Town of Sidney, Delaware County, Civic Center, P.O. Box 296, Sidney, New York 13838

Sidney (village), Delaware County

Susquehanna River:	
Downstream corporate limits	*986
Upstream corporate limits	*991

Maps available for inspection at the Civic Center, Sidney, New York

Send comments to The Honorable Elwood F. Davis, Mayor of the Village of Sidney, Delaware County, Civic Center, P.O. Box 60, Sidney, New York 13838

Unadilla (town), Otsego County

Susquehanna River:	
Downstream corporate limits	*966
Upstream side of Main Street	*989
Downstream side of Railroad Bridge	*993
Approximately 50 feet upstream of Village of Unadilla downstream corporate limits	*1,009
Village of Unadilla upstream corporate limits	*1,020
At confluence of Sand Hill Creek	*1,040
Upstream corporate limits	*1,049
Unadilla River:	
At confluence with Susquehanna River	*986
At confluence of Rogers Hollow	*992
Downstream side of Batterson Road	*1,016
Approximately 125 feet upstream of upstream corporate limits	*1,020

Maps available for inspection at the Town Hall, 44 Main Street, Unadilla, New York.

Send comments to The Honorable James S. Westcott, Supervisor of the Town of Unadilla, Otsego County, Town Hall, 44 Main Street, Unadilla, New York 13849

Unadilla (village), Otsego County

Susquehanna River:	
Downstream corporate limits	*1,009
Upstream side of Bridge Street	*1,014
Upstream corporate limits	*1,020

Maps available for inspection at the Unadilla Village Hall, Clerk's Office, 70 Main Street, Unadilla, New York.

Send comments to The Honorable Robert Conley, Supervisor of the Village of Unadilla, Otsego County, Village Hall, 70 Main Street, Unadilla, New York 13849

NORTH CAROLINA

Onslow County (Unincorporated Areas)

Bachelor's Delight Swamp/Tributary	
About 0.52 mile downstream of State Road 1308	*11
Just downstream of State Road 1308	*31
Blue Creek	
About 1.3 miles downstream of State Road 24	*7
About 1.14 miles upstream of State Road 1213	*19
Brinson Creek	
About 1,150 feet downstream of Norfolk Southern Railway	*5
About 2,000 feet upstream of U.S. Route 17	*11
Cowford Branch	
About 85 feet downstream of State Road 24	*45
Just downstream of State Road 24	*46
About 460 feet upstream of State Road 24	*51
Half Moon Creek	
Just downstream of State Road 1308	*12
About 2,600 feet upstream of State Road 1308	*14
Half Moon Creek Tributary	
About 1,250 feet downstream of State Road 1324	*13
Just upstream of State Road 1324	*15
Jenkins Swamp	
About 3,800 feet downstream of State Road 1308	*26
Just downstream of State Road 1003	*55
Mill Swamp	
About 3,000 feet downstream of State Road 1308	*26
About 900 feet upstream of State Road 1301	*61
Mott Creek	
At mouth	*3
About 1.7 miles upstream of mouth	18
New River:	
About 1.4 miles downstream of confluence with Jenkins Swamp	*26
About 0.5 mile upstream of State Road 1235	*72
New River Tributary:	
At mouth	*51
Just downstream of State Road 1235	*75
North Branch at Lauradale Subdivision	
About 3,500 feet upstream of mouth	*10
Just upstream of Ramsey Drive	*31
Northeast Creek/Wolf Swamp	
About 1.5 miles downstream of confluence of Wolf Swamp	*14

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Just upstream of Seaboard Coast Line Railroad	*23
Rocky Run	
About 1,600 feet downstream of State Road 1413	*14
Just upstream of State Road 1413	*16
Scales Creek	
Just upstream of Florence Road	*4
About 1.3 miles upstream of Florence Road	*8
South Branch at Lauradale Subdivision	
About 780 feet above mouth	*12
About 1,440 feet above mouth	*14
Atlantic Ocean	
South of intersection of State Road 210 and Intracoastal Waterway	*7
Along shoreline at Bogue Inlet	*17
Atlantic Ocean/Stump Sound	
Along western shore of Permuda Island	*7
At shoreline south of Thomas Log Road	*9
Atlantic Ocean/New River	
At confluence of Goose Creek and New River	*3
At mouth of New River	*16
Atlantic Ocean/Bogue Sound	
At south end of State Road 1511	*10
Bogue Inlet mouth at Atlantic Ocean	*17
Atlantic Ocean/White Oak River:	
North end of State Road 1448 at White Oak River	*8
At east end of Town of Swansboro	*10

Maps available for inspection at the County Planning Office, 25 Pallman Street, Jacksonville, North Carolina.

Send comments to The Honorable R.G. Leary, County Manager, Onslow County, 109 Old Bridge Street, Jacksonville, North Carolina 28540

NORTH DAKOTA

Relles Acres (city), Cass County

Sheyenne River	
North of County Route 20	*894
Within corporate limits	*895

Maps are available for inspection at City Auditor's Office, Fargo, North Dakota

Send comments to **Mayor** Harold Mertz, Rural Route 2, Box 236, Fargo, North Dakota 58108

Watford City (city), McKenzie County

Cherry Creek	
At the upstream side of bridge at S 7/18 R98W, T150N	*2,046
Upstream side of Highway 23 Bridge	*2,054
Upstream side of Highway 23 Bypass	*2,058
At the upstream extraterritorial limit	*2,062

Maps are available for inspection at Watford City Hall, 213 N.E. Second Street, Watford City, North Dakota

Send comments to Mayor Don Hoffman, P.O. Box 494, Watford City, North Dakota

OHIO

Tuscarawas County (unincorporated areas)

Broad Run	
At mouth	*901
Just downstream of State Route 516	*928

Maps available for inspection at the Regional Planning Commission, County Office Building, New Philadelphia, Ohio.

Send comments to The Honorable William Winters, President, County Commissioners, Tuscarawas County, County Office Building, 172 North Broadway, New Philadelphia, Ohio 44663

OKLAHOMA

Chandler (city), Lincoln County

Bell Cow Creek	
Approximately 1,600 feet downstream of U.S. Route 66	*834
At Park Road	*841
Approximately 0.8 mile upstream of Park Road	*846
Chigger Creek	
At confluence with Bell Cow Creek	*840
At 1st Street	*852
Approximately 160 feet upstream of Chigger Road	*868
Indian Creek	
At Iowa Avenue	*849
Approximately 860 feet upstream of 8th Street	*898
Chuckaho Creek	
Approximately 120 feet downstream of Section Road	*902
Approximately 0.9 mile upstream of Farm Pond Dam	*935

Maps available for inspection at 1001 Steel Avenue, Chandler, Oklahoma.

Send comments to The Honorable Eulah May Cross, Mayor of the City of Chandler, Lincoln County, 1001 Steel Avenue, Chandler, Oklahoma 74834.

McLoud (town), Pottawatomie County

North Canadian River:	
Approximately .9 mile downstream of downstream corporate limits	*1,044
Downstream corporate limits	*1,045
Approximately 200 feet downstream of State Route 102	*1,051
Upstream side of State Route 102	*1,055
At upstream corporate limits	*1,058
Wynnewood Creek	
At confluence with North Canadian Road	*1,046
Approximately 140 feet downstream of State Route 102	*1,051
Downstream side of Chicago Rock Island and Pacific Railroad	*1,055
Downstream side of Hinkley Avenue	*1,067
Upstream side of U.S. Route 270	*1,077

Maps available for inspection at the Town Hall, McLoud, Oklahoma

Send comments to The Honorable Charlie Williams, Mayor of the Town of McLoud, Pottawatomie County, P.O. Box 280, McLoud, Oklahoma 74851

Wyandotte (town), Ottawa County

Wyandotte Ditch	
At Pine Street	#1
At 3rd Street	#1

Maps available for inspection at the Town Hall, Wyandotte, Oklahoma

Send comments to The Honorable Thomas Derwin, Mayor of the Town of Wyandotte, Ottawa County, P.O. Box 251, Wyandotte, Oklahoma 74370

OREGON

Canyon City (city), Grant County

Canyon Creek	
Approximately 920 feet downstream of the Inland Street Bridge	*3,139
Immediately upstream of the Inland Street Bridge	*3,145
Immediately upstream of the Nugget Street Bridge	*3,157
Immediately upstream of Main Street Bridge	*3,188
Approximately 240 feet upstream of the South Humboldt Bridge	*3,222

Maps are available for inspection at City Hall, 123 South Washington Street, Canyon City, Oregon

Send comments to Mayor Reed Patterson, P.O. Box 81, Canyon City, Oregon.

Fairview (city), Multnomah County

Fairview Creek 40 feet upstream from center of Matney Street Bridge	*140
Multnomah Drainage District No. 1 (Ponding) At Fairview Lake	*14
Maps are available for review at the Fairview City Hall, 300 Harrison Street, Fairview, Oregon 97024	

Send comments to the Honorable Marvin V. Woodyla, Mayor, City of Fairview, P.O. Box 337, Fairview, Oregon 97024

Mount Vernon (city), Grant County

John Day River:	
Approximately 790 feet downstream of the confluence with Beech Creek	*2,834
Immediately upstream of the Ingle Creek Road Bridge	*2,840
Approximately 1,400 feet upstream of the Ingle Creek Road Bridge	*2,845
Beech Creek	
Approximately 150 feet upstream of the confluence with John Day River	*2,837
Approximately 100 feet upstream of the John Day Highway Bridge	*2,860
Approximately 100 feet downstream of the upstream corporate limits	*2,894

Maps are available for inspection at Mt. Vernon Firehouse, Mt. Vernon, Oregon

Send comments to Mayor Keith Bradley, P.O. Box 97, Mt. Vernon, Oregon 97865

PENNSYLVANIA

Avondale (borough), Chester County

East Branch White Clay Creek	
Downstream corporate limits	*268
Upstream side CONRAIL tracks	*275
Upstream corporate limits	*280
Trout Run	
Confluence with East Branch White Clay Creek	*269
Upstream side of Filcot Avenue	*276
Upstream corporate limits	*282
Indian Run	
Confluence with East Branch of White Clay Creek	*270
Upstream side of West State Street	*273
Approximately .3 mile upstream of West State Street	*275

Maps available for inspection at the Avondale Borough Building, Pomeroy Avenue, Avondale, Pennsylvania

Send comments to The Honorable Betty Hallman, Secretary of the Borough of Avondale, Chester County, P.O. Box 247, Avondale, Pennsylvania 19311

Canaan (township), Wayne County

Van Auken Creek	
At downstream corporate limits	*1,159
Downstream side of Township Route 460	*1,202
Downstream side of Township Route 456	*1,218
Downstream side of Township Route 450	*1,248
Approximately 650 feet upstream of Township Route 450	*1,252

Maps available for inspection at the Township Secretary's house, R.D. 2, Box 48, Waymart, Pennsylvania

Send comments to The Honorable Lewis C. Henshaw, Chairman of the Township of Canaan Board of Supervisors, Wayne County, Waymart, Pennsylvania 18472

Ceres (township), McKean County

Oswayo Creek	
At downstream corporate limits	*1,437
Upstream side of State Route 44	*1,445
At upstream corporate limits	*1,471
Bell Run	
At confluence with Oswayo Creek	*1,458
Approximately 250 feet upstream of State Route 44	*1,469
At upstream corporate limits	*1,523
Kings Run	
At confluence with Oswayo Creek	*1,442

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PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Downstream side of Legislative Route 42029 (Barden Brook Road)	*1,468
Approximately 250 feet upstream of T-433 (Champion Hollow Road)	*1,519
Maps available for inspection at the Cores Township Building, Shinglehouse, Pennsylvania.	
Send comments to The Honorable Kenneth Herzog, Jr., Chairman of the Township of Ceres Board of Supervisors, McKean County, R.D. 2, Box 5340, Shinglehouse, Pennsylvania 16748.	
Cooper (township), Montour County	
Susquehanna River:	
At the downstream corporate limits	*464
At the upstream corporate limits	*470
Maps available for inspection at the Township Secretary's house, R.D. 4, Box 270, Danville, Pennsylvania.	
Send comments to The Honorable Harold M. Shultz, Chairman of the Township of Cooper Board of Supervisors, Montour County, Box 64, R.D. 5, Danville, Pennsylvania 17821.	
Dyberry (township), Wayne County	
Dyberry Creek:	
At downstream corporate limits	*969
At downstream side of General Edgar Jadwin Dam	*981
Maps available for inspection at the Township Secretary's house, R.D. 1, Box 1264, Honesdale Pennsylvania.	
Send comments to The Honorable Rowland Bates, Chairman of the Township of Dyberry Board of Supervisors, Wayne County, R.D. 3, Box 1290, Honesdale, Pennsylvania 18431.	
Foxburg (borough), Clarion County	
Allegheny River:	
At downstream corporate limits	*873
Upstream side of State Route 58	*874
Upstream corporate limits	*876
Maps available for inspection with Sherri Gardner, Palmer Avenue, Foxburg, Pennsylvania.	
Send comments to The Honorable James Page, Mayor of the Borough of Foxburg, Clarion County, Box 97, Foxburg, Pennsylvania 16036.	
Hamilton (township), Monroe County	
McMichael Creek:	
At downstream corporate limits	*458
At upstream side of first downstream crossing of Manor Drive	*473
At upstream side U.S. Route 209	*509
At upstream side Bush Lane	*515
At upstream side of first downstream crossing of Township Route 221	*567
At downstream side Legislative Route 45085	*620
Appenzell Creek:	
At confluence with McMichael Creek	*484
At Business Route 209	*538
Lake Creek:	
At confluence with McMichael Creek	*550
At Meadow Lake Road	*558
Kettle Creek:	
At confluence with Appenzell Creek	*493
Approximately 0.5 mile upstream of Legislative Route 164	*533
Maps available for inspection at the Hamilton Township Building, Sciota, Pennsylvania.	
Send comments to The Honorable Warren Kreske, Chairman of the Township of Hamilton Board of Supervisors, Monroe County, P.O. Box 285, Sciota, Pennsylvania 18354.	
Lewis (township), Union County	
Penns Creek:	
At downstream corporate limits	*543

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 9 mile upstream of downstream corporate limit	*551
Approximately 100 feet downstream of Mill Dam	*582
At upstream corporate limits	*571
Maps available for inspection at the home of Kalen L. Walters, Secretary of the Township of Lewis, R.D. 1, Box 3804, Mifflinburg, Pennsylvania.	
Send comments to The Honorable Kenneth T. Shuck, Chairman of the Board of Supervisors for the Township of Lewis, Union County, R.D. 1, Mifflinburg, Pennsylvania 17844.	
Lynn (township), Lehigh County	
Ontelaunee Creek:	
Approximately 210 feet downstream of downstream corporate limits	*424
Upstream side of State Route 863	*465
Upstream side of Unich Road	*495
Approximately 0.2 mile upstream of Mosserville Road	*542
School Creek:	
At confluence with Ontelaunee Creek	*525
Approximately 280 feet upstream of second crossing of State Route 143	*585
Maps available for inspection at the Zoning Office, 32 Madison Street, New Tripoli, Pennsylvania.	
Send comments to The Honorable Harold Rex, Chairman of the Township of Lynn Board of Supervisors, Lehigh County, R.D. 1, Box 93A, New Tripoli, Pennsylvania 18066.	
Madison (township), Clarion County	
Allegheny River:	
At confluence of Redbank Creek	*836
At confluence of Catfish Run	*848
At upstream corporate limits	*854
Maps available for inspection at Township Supervisor's home, R.D. 2, Rimersburg, Pennsylvania.	
Send comments to The Honorable Richard McNaughton, Supervisor of the Township of Madison, Clarion County, R.D. 2, Rimersburg, Pennsylvania 16248.	
Mayberry (township), Montour County	
Susquehanna River:	
At downstream corporate limits	*464
At upstream corporate limits	*467
Roaring Creek:	
At confluence with Susquehanna River	*467
Upstream side of Old Concrete Dam	*481
Approximately .57 mile upstream of Old Concrete Dam	*496
Approximately .83 mile downstream of upstream corporate limits	*511
At upstream corporate limits	*525
Approximately 200 feet upstream of corporate limits	*526
Maps available for inspection at the the home of Norma A. Bird, Secretary for the Township of Mayberry, Montour County, R.D. 5, Box 281, Danville, Pennsylvania.	
Send comments to The Honorable David E. Bird, Chairman of the Board of Supervisors for the Township of Mayberry, Montour County, R.D. 2, Box 305, Catawissa, Pennsylvania 17820.	
Modena (borough), Chester County	
West Branch Brandywine Creek:	
Approximately 90 feet downstream of downstream corporate limits	*270
Upstream side of Union Street	*277
Approximately 150 feet upstream of upstream corporate limits	*284

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Borough Secretary's Office, Baker Street, Modena, Pennsylvania.	
Send comments to The Honorable Clayton Ayres, President of the Borough of Modena Council, Chester County, Baker Street, P.O. Box 145, Modena, Pennsylvania 19358.	
Monroe (township), Junista County	
Stony Run:	
Downstream corporate limits	*585
Approximately 615 feet upstream of Legislative Route 34011	*628
West Branch Mahantango Creek:	
Approximately 1.0 mile downstream of Legislative Route 34017	*540
Approximately 90 feet upstream of Legislative Route 34017	*559
Approximately 240 feet downstream of Legislative Route 34010	*618
Approximately 1,150 feet upstream of Church Road	*646
Approximately 280 feet upstream of Township Route 306	*665
Maps available for inspection at the Township Secretary's Office, Star Route, Richfield, Pennsylvania.	
Send comments to The Honorable David Lester, Chairman of the Township of Monroe Board of Supervisors, Junista County, HC7-83, Richfield, Pennsylvania 17086.	
Parker City (city), Armstrong County	
Allegheny River:	
At downstream corporate limits	*866
Approximately 2,250 feet upstream of downstream corporate limits	*867
Approximately 2,600 feet downstream of State Route 368	*868
At upstream corporate limits	*869
Maps available for inspection at the Parker City Secretary's home, Division Avenue, R.D. 2, Parker, Pennsylvania.	
Send comments to The Honorable Dean K. Shakley, Mayor of the City of Parker City, Armstrong County, P.O. Box 185, Parker, Pennsylvania 16049.	
Pillow (borough), Dauphin County	
Mahantango Creek:	
Downstream corporate limits	*471
Upstream corporate limits	*486
Maps available for inspection at Ted Keck's Residence, Borough Secretary, Mill Street, Pillow, Pennsylvania.	
Send comments to The Honorable Joe Reed, Council President of the Borough of Pillow, Dauphin County, Pillow, Pennsylvania 17080.	
Polk (township), Monroe County	
Pohopoco Creek:	
At downstream corporate limits	*651
Approximately 100 feet upstream of Whitey Road	*654
At downstream side of U.S. Route 209	*672
At upstream side of Silver Spring Boulevard	*680
At downstream side of Green Hill Road	*685
Approximately .9 mile downstream of Mill Pond Road	*690
At upstream corporate limits	*704
Dotters Creek:	
At confluence with Pohopoco Creek	*676
At confluence with Middle Creek	*708
Approximately .4 mile upstream of State Route 534	*743
Approximately 200 feet upstream of Mertz Road	*846
At downstream side of Smith Road	*890
At upstream side of Hell Hollow Road	*937

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately .3 mile upstream of Hell Hollow Road	*957
Middle Creek:	
At confluence with Dotters Creek	*708
At upstream side of Whispering Pine Road	*759
At upstream side of Evergreen Road	*789
Approximately .5 mile upstream of Middle Creek Road	*820
Approximately 500 feet upstream of Donshimer Road	*868
Weir Creek:	
At confluence with Pohopoco Creek	*693
At downstream side of Weir Mountain Road	*695
At upstream corporate limits	*696
Maps available for inspection at the Polk Township Building, Kreskeville, Pennsylvania.	
Send comments to The Honorable Clifford A. Woodringer, Chairman of the Township of Polk Board of Supervisors, Monroe County, R.D. Robin Hood Lakes, Kunkletown, Pennsylvania 18058.	
Rainelle (town), Greenbrier County	
Sewell Creek/Little Sewell Creek:	
At downstream of downstream corporate limits	*2,393
Upstream side of U.S. Route 60/State Route 20	*2,395
At upstream of upstream corporate limits	*2,396
Maps available for inspection at the Town Hall, Rainelle, West Virginia.	
Send comments to The Honorable John A. Hill, Mayor of the Town of Rainelle, Greenbrier County, P.O. Box 648, Rainelle, West Virginia 25962.	
Standing Stone (township), Bradford County	
Susquehanna River:	
Approximately 3,300 feet upstream of confluence of King Creek	*701
Approximately 400 feet upstream of corporate limits	*708
Maps available for inspection at the Township Secretary's Home, R.D. # 3, Waytusing, Pennsylvania.	
Send comments to The Honorable Rexford Schoonover, Chairman of the Township of Standing Stone Board of Supervisors, Bradford County, R.D. 2, Wysox, Pennsylvania 18854.	
St. Clair (township), Westmoreland County	
Tubmill Creek:	
At the downstream corporate limits	*1,121
Approximately 1,150 feet upstream of State Route 711	*1,140
Approximately 1.6 mile upstream of State Route 711	*1,205
Approximately 0.43 mile downstream of Tubmill Dam	*1,255
Downstream side of Tubmill Dam	*1,295
Conemaugh River:	
At the downstream corporate limits	*1,061
At the confluence of Shannon Run	*1,064
At the confluence of Baldwin Creek	*1,076
At Penelec Dam	*1,096
Approximately 2.2 miles upstream of State Routes 711 and 56	*1,120
At the upstream corporate limits	*1,137
Shannon Run:	
At confluence with Conemaugh River	*1,064
Approximately 1,190 feet upstream of State Route 711	*1,115
Approximately 0.9 mile upstream of State Route 711	*1,176
Baldwin Creek:	
At the confluence with Conemaugh River	*1,076
Approximately 0.50 mile upstream of State Route 711	*1,117
At the upstream side of Town Route 899	*1,199
Approximately 0.36 mile upstream of Town Route 899	*1,198

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 0.21 mile upstream of Town Route 962	*1,256
Maps available for inspection at the Township Building, Seward, Pennsylvania.	
The Honorable David R. Heming, Chairman of the Township of St. Clair Board of Supervisors, Westmoreland County, R.D. 1, New Florence, Pennsylvania 15944.	
Texas (township), Wayne County	
Lackawaxen River:	
At downstream corporate limits	*927
Approximately 1.5 miles upstream of downstream corporate limits	*937
At confluence of Indian Orchard Brook	*939
Approximately .7 mile upstream of confluence with Holbert Creek	*947
At downstream Honesdale corporate limits	*952
At upstream Honesdale corporate limits	*983
Approximately .5 mile downstream of dam	*995
Approximately 100 feet upstream of dam	*1,034
At upstream side of Bear Swamp Road	*1,048
At upstream corporate limits	*1,076
Indian Orchard Brook:	
At confluence with Lackawaxen River	*939
At downstream side of U.S. Route 6	*956
At downstream side of State Route 652	*969
At upstream corporate limits	*981
Maps available for inspection at the Township Building, Willow Avenue, Honesdale, Pennsylvania.	
Send comments to The Honorable John McDonald, Chairman of the Township of Texas Board of Supervisors, Wayne County, Seilyville Star Route, Honesdale, Pennsylvania 18431.	
Ulster (township), Bradford County	
Susquehanna River:	
Downstream corporate limits	*729
Downstream side of L.R. 08073	*737
Upstream corporate limits	*750
Maps available for inspection at the Township Building, Ulster, Pennsylvania.	
Send comments to The Honorable Edward Lenox, Chairman of the Township of Ulster Board of Supervisors, Bradford County, R.D. 2, Ulster, Pennsylvania 18850.	
Washington (township), Dauphin County	
Wiconisco Creek:	
At downstream corporate limits	*469
Approximately 375 feet upstream of U.S. Route 209	*474
Approximately 673 feet downstream of State Route 225	*514
Approximately 1,640 feet upstream of State Route 225	*520
Approximately 160 feet downstream of Motter Road	*554
Approximately 240 feet upstream of Legislative Route 22035	*577
Maps available for inspection at the Township Building, Manors Road, Washington, Pennsylvania.	
Send comments to The Honorable Ken Rose, Chairman of the Township of Washington Board of Supervisors, Dauphin County, P.O. Box 131, Elizabethville, Pennsylvania 17023.	
West Buffalo (township), Union County	
Buffalo Creek:	
At downstream corporate limits	*526
Upstream side of LR 59017	*538
At upstream corporate limits	*541
North Branch Buffalo Creek:	
At confluence with Buffalo Creek	*538
Downstream side of T-357	*570
Approximately 225 feet upstream of T-358	*599

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the home of Robert E. Valentine, Township Secretary, R.D. 3, Mifflinburg, Pennsylvania.	
Send comments to The Honorable Gregory J. Youtz, Chairman of the Board of Supervisors for the Township of West Buffalo, Union County, R.D. #1, Mifflinburg, Pennsylvania 17844.	
West Vincent (township), Chester County	
Birch Run:	
Approximately 700 feet downstream of Birchrunville Road	*291
Downstream side of Birch Run Road	*312
Upstream side of upstream dam	*335
500 feet upstream of upstream dam	*341
French Creek:	
Downstream corporate limits	*149
150 feet downstream of French Creek Road	*176
Downstream side of Hollow Road	*209
Approximately 100 feet downstream of Saw Mill Road	*229
At upstream corporate limits	*249
Maps available for inspection at the Township Building, School House Lane, Chester Springs, Pennsylvania.	
Send comments to The Honorable Lenore Richards, Supervisor for the Township of West Vincent, R.D. 2, Chester County, Chester Springs, Pennsylvania 19425.	
TENNESSEE	
Lauderdale County (unincorporated areas), (FEMA Docket No. 6719)	
Hyde Creek:	
At mouth	*317
Just downstream of Dam # 19	*341
Just upstream of Dam # 19	*354
Just downstream of Wilbe Parris Road	*365
Cane Creek:	
About 1.1 miles downstream of State Route 371	*254
Just downstream of U.S. Route 51	*323
Just upstream of U.S. Route 51	*331
Just downstream of Dam # 15	*350
Just upstream of Dam # 15	*360
Just downstream of State Route 19	*367
North Creek:	
Just downstream of Gum Flat Road	*272
Just downstream of Illinois Central Gulf Railroad	*294
Sumrow Creek:	
Just upstream of County Route 8216	*288
Just downstream of Smith Road	*324
Tisdale Creek:	
Just upstream of County Route 8216	*288
Just downstream of Heathcock Road	*325
Henning Creek:	
About 0.4 mile downstream of Lovelace Crossing Road	*257
Just downstream of State Route 209	*296
Mississippi River:	
About 0.5 mile downstream of confluence of Hatchie River	*249
About 1.0 mile upstream of confluence of Obion River	*269
Maps available for inspection at the County Courthouse, Ripley, Tennessee. Send comments to The Honorable William Tucker, County Executive, Lauderdale County, County Courthouse, Ripley, Tennessee 38063.	
TEXAS	
Cross Roads (town), Denton County	
Lewisville Lake: Upstream and downstream corporate limits	*537
Maps available for inspection at Jim Cundall's Violin Shop, Mosley Road, Aubrey, Texas.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Cross Roads Town Hall, Cross Roads, Texas.	
Send comments to The Honorable Jerry Hall, Mayor of the Town of Cross Roads, P.O. Box 1, Cross Roads, Texas 76227.	
Denton County (unincorporated areas)	
Lewisville Lake: Upstream and downstream corporate limits	*537
Maps available for inspection at the Denton County Courthouse, Denton, Texas.	
Send comments to The Honorable Jack Hatch, Denton County Judge, Denton County Courthouse, Denton, Texas 76201.	
Krum (city), Denton County	
Lewisville Lake: Upstream and downstream corporate limits	*537
Maps available for inspection at the City Hall, Krum, Texas.	
Send comments to The Honorable Jerry Hall, Mayor of the City of Krum, P.O. Box 1, Krum, Texas 76227.	
Lake Dallas (city), Denton County	
Lewisville Lake: Upstream and downstream corporate limits	*537
Maps available for inspection at the City Hall, Lake Dallas, Texas.	
Send comments to The Honorable Jerry Hall, Mayor of the City of Lake Dallas, P.O. Box 1, Lake Dallas, Texas 76227.	
Shady Shores (town), Denton County	
Lewisville Lake: Upstream and downstream corporate limits	*537
Maps available for inspection at the Town Hall, Shady Shores, Texas.	
Send comments to The Honorable Jerry Hall, Mayor of the Town of Shady Shores, P.O. Box 1, Shady Shores, Texas 76227.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Town Hall, Corinth, Texas.	
Send comments to The Honorable Jerry Hall, Mayor of the Town of Corinth, P.O. Box 1, Corinth, Texas 76227.	
Hickory Creek (town), Denton County	
Lewisville Lake: Upstream and downstream corporate limits	*537
Maps available for inspection at the Town Hall, Hickory Creek, Texas.	
Send comments to The Honorable Jerry Hall, Mayor of the Town of Hickory Creek, P.O. Box 1, Hickory Creek, Texas 76227.	
Lake Cities (city), Denton County	
Lewisville Lake: Upstream and downstream corporate limits	*537
Maps available for inspection at the City Hall, Lake Cities, Texas.	
Send comments to The Honorable Jerry Hall, Mayor of the City of Lake Cities, P.O. Box 1, Lake Cities, Texas 76227.	
Little Elm (town), Denton County	
Lewisville Lake: Upstream and downstream corporate limits	*537
Maps available for inspection at the Town Hall, Little Elm, Texas.	
Send comments to The Honorable Jerry Hall, Mayor of the Town of Little Elm, P.O. Box 1, Little Elm, Texas 76227.	
Lewisville (city), Denton County	
Lewisville Lake: Upstream and downstream corporate limits	*537
Maps available for inspection at the City Hall, Lewisville, Texas.	
Send comments to The Honorable Jerry Hall, Mayor of the City of Lewisville, P.O. Box 1, Lewisville, Texas 76227.	
Oak Point (city), Denton County	
Lewisville Lake: Upstream and downstream corporate limits	*537
Maps available for inspection at the City Hall, Oak Point, Texas.	
Send comments to The Honorable Jerry Hall, Mayor of the City of Oak Point, P.O. Box 1, Oak Point, Texas 76227.	
Double Oak (town), Denton County	
Lewisville Lake: Upstream and downstream corporate limits	*537
Maps available for inspection at the Town Hall, Double Oak, Texas.	
Send comments to The Honorable Jerry Hall, Mayor of the Town of Double Oak, P.O. Box 1, Double Oak, Texas 76227.	
Flower Mound (town), Denton County	
Lewisville Lake: Upstream and downstream corporate limits	*537
Maps available for inspection at the Town Hall, Flower Mound, Texas.	
Send comments to The Honorable Jerry Hall, Mayor of the Town of Flower Mound, P.O. Box 1, Flower Mound, Texas 76227.	

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PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground ^Elevation in feet (NGVD)
Send comments to The Honorable Mark Coats, Mayor of the Town of Cross Roads, Denton County, Route 3, Box 453, Aubrey, Texas 76227	
Dayton (city), Liberty County	
Trinity River:	
Southeast corner of community	*28
Northeast corner of community	*29
Maps available for inspection at the City Hall, 111 North Church Street, Dayton, Texas	
Send comments to The Honorable William Moreau, Mayor of the City of Dayton, 111 North Church Street, Dayton, Texas 77535.	
First Colony Levee Improvement District, Fort Bend County	
Brazos River:	
On West side of levee along Steep Bank Creek	*69
Oyster Creek:	
At downstream corporate limits	*67
Approximately 950 feet upstream of Blair Road	*69
Maps available for inspection at VanSickle, Mickelson, and Klein, Inc., 7500 San Felipe, Suite 700, Houston, Texas	
Send comments to Mr. Melvin Pomikal, Administrative Officer for First Colony Levee Improvement District, Fort Bend County, VanSickle, Mickelson, and Klein, Inc., 7500 San Felipe Suite 700, Houston, Texas 77063	
Fort Worth (city), Tarrant County	
Benbrook Lake: Entire shoreline within community	*715
Eagle Mountain Lake: Entire shoreline within community	*857
Lake Worth: Entire shoreline within community	*600
Marine Creek Lake: Entire shoreline within community	*698
Cement Creek Reservoir:	
Downstream of Interstate 820 (Jim Wright Freeway)	*685
Upstream of Interstate 820 (Jim Wright Freeway)	*691
Lake Arlington: Entire shoreline within community	*564
Big Fossil Creek:	
At confluence with West Fork Tributary River	*500
Approximately 400 feet upstream of Midway Road	*505
At confluence of Stream BFC-1	*578
Approximately 150 feet upstream of Watauga Saginaw Road	*606
Approximately 0.77 mile downstream of confluence of Stream BFC-3	*621
Approximately 1.15 miles upstream of confluence of Stream BFC-3	*660
Approximately 200 feet upstream of Walnut Lake Dam	*697
Approximately 0.4 mile upstream of Channel Dam	*711
Approximately 1.14 miles upstream of Channel Dam	*730
Stream BFC-1:	
At confluence with Big Fossil Creek	*578
Upstream side of Wautauga Road	*599
Approximately 500 feet upstream of second corporate limits crossing	*600
At upstream side of Basswood Boulevard	*617
Approximately 0.42 mile upstream of Basswood Boulevard	*626
Stream BFC-2:	
At confluence with Big Fossil Creek	*585
Approximately 200 feet upstream of Watauga Saginaw Road	*597
Approximately 800 feet downstream of Old Denton Road	*610
Approximately 100 feet downstream of Old Denton Road	*614
Approximately 0.53 mile upstream of Interstate Route 35	*660
Approximately 700 feet upstream of U.S. Route 287	*677

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground ^Elevation in feet (NGVD)
Stream BFC-2A:	
At confluence with Stream BFC-2	*633
Approximately 300 feet upstream of upstream corporate limits	*658
Stream BFC-3:	
At confluence with Big Fossil Creek	*636
Approximately 1.0 mile upstream of confluence with Big Fossil Creek	*660
Approximately 620 feet upstream of Harmon Road	*692
Stream BFC-4:	
At confluence with Big Fossil Creek	*667
Approximately 260 feet upstream of Hicks Road	*733
Approximately 400 feet upstream of Interstate Route 287	*736
Stream BFC-4A:	
At confluence with Stream BFC-4	*685
Upstream side of most upstream crossing of FM 156	*703
Approximately 400 feet downstream of Interstate 287	*717
Approximately 350 feet upstream of Interstate 287	*726
Little Fossil Creek:	
At confluence with Big Fossil Creek	*503
At upstream side of Beach Street	*560
Upstream side of Sylvania Avenue	*592
Upstream side of North Frontage Road Interstate 820	*629
Approximately 1,850 feet upstream of Cantrell Sansom Road	*652
Stream LFC-2:	
At confluence with Little Fossil Creek	*589
Approximately 0.5 mile upstream of Leamside Drive	*611
Approximately 75 feet downstream of Jim Wright Freeway	*620
Whites Branch:	
At most downstream corporate limits	*583
Approximately 50 feet upstream of most upstream corporate limits	*667
Stream WB-1:	
At confluence with Whites Branch	*649
Approximately 50 feet upstream of upstream corporate limits	*666
Clear Fork Trinity River:	
At confluence with West Fork Trinity River	*537
At downstream side of Old Vickery Street	*550
Approximately 200 feet upstream of Bryant-Irvin Road	*590
At confluence of Stream CF-6	*617
Approximately 1.3 miles upstream of the confluence of Stream CF-6	*621
Stream CF-2:	
At confluence with Clear Fork Trinity River	*570
At upstream side of second crossing of Southern Pacific Railroad	*580
Approximately 0.8 mile upstream of Vickery Boulevard	*613
Stream CF-3:	
Approximately 100 feet downstream of South Boulevard	*577
At upstream side of Overton Park Drive East	*622
Approximately 300 feet upstream of Trail Lake Drive	*667
Stream CF-3A:	
At confluence with Stream CF-3	*607
Approximately 0.2 mile upstream of Overton Road	*619
Approximately 0.5 mile upstream of Overton Road	*640
Stream CF-3B:	
At confluence with Stream CF-3	*617
Approximately 80 feet upstream of Bilgrade Road	*666
Stream CF-5:	
At confluence with Clear Fork Trinity River	*594
At upstream side of Bryant-Irvin Road	*607
At upstream side of second crossing of Interstate Route 20	*643
Approximately 1.8 miles upstream of second crossing of Interstate Route 20	*705
Stream CF-6:	
At confluence with Clear Fork Trinity River	*618

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground ^Elevation in feet (NGVD)
Approximately 1.8 miles above confluence with Clear Fork Trinity River	*683
Howards Branch:	
At confluence with Clear Fork Trinity River	*562
At upstream side of Mockingbird Lane	*567
Approximately 0.4 mile above Lynncrest Court	*569
Stream HB-1:	
At confluence with Howards Branch	*564
At upstream side of Colonial Parkway	*577
Approximately 100 feet upstream of North Bellaire Drive	*606
Marine Creek:	
At confluence with West Fork Trinity River	*529
At confluence of Cement Creek	*579
At downstream face of Marine Creek Lake Dam	*642
At upstream corporate limits	*698
Marine Creek Split Flow:	
At confluence with Marine Creek	*533
At origin of Split Flow into Commerce Street	*545
Stream MC-1:	
At confluence with Marine Creek	*530
Upstream side of Northeast 29th Street	*585
Approximately 1,800 feet upstream of Northeast 33rd Street	*625
Stream MC-2:	
At confluence with Marine Creek Lake	*698
Approximately 1.1 miles upstream of confluence with Marine Creek Lake	*705
Cement Creek:	
At confluence with Marine Creek	*579
Downstream side of Cement Creek Reservoir Dam	*645
At upstream corporate limits	*691
Marys Creek:	
At confluence with Clear Fork Trinity River	*607
Upstream side of Old Benbrook Road	*634
At confluence of Stream MSC-2	*679
At confluence of South Marys Creek	*710
Approximately 300 feet upstream of upstream corporate limits	*739
Stream MSC-1:	
Upstream side of Interstate Highway 820	*682
Approximately 100 feet upstream of Almeda Street	*721
Stream MSC-2:	
At confluence with Marys Creek	*679
Approximately 1,100 feet upstream of Chapin School Road	*723
Stream MSC-3:	
At confluence with Marys Creek	*725
At upstream corporate limits	*738
South Marys Creek:	
Approximately 100 feet downstream of downstream corporate limits	*739
At upstream corporate limits	*773
Walnut Creek:	
At confluence with Marys Creek	*634
Upstream side of Aledo Road	*685
Approximately 2.6 miles upstream of Aledo Road	*759
Sycamore Creek:	
At confluence with West Fork Trinity River	*514
At confluence of Stream SC-3	*561
Upstream side of Texas and Pacific Railroad	*620
At confluence of Edgecliff Branch	*652
Upstream side of Missouri Pacific Railroad	*716
At most upstream corporate limits	*773
Stream SC-1:	
At confluence with Sycamore Creek	*527
Upstream side of Conner Road	*547
Approximately 950 feet upstream of Collard Street	*603
Stream SC-2:	
At confluence with Sycamore Creek	*528
Approximately 1,000 feet downstream of Vickery Boulevard	*544
Approximately 100 feet upstream of Texas and Pacific Railroad	*579
Stream SC-3:	
At confluence with Sycamore Creek	*561
Approximately 300 feet upstream of Glen Gardens Drive	*602
Stream SC-5:	
At confluence with Sycamore Creek	*584

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground ^Elevation in feet (NGVD)
Upstream side of Missouri Pacific Railroad	*616
Approximately 1,350 feet upstream of Drew Street	*631
Stream SC-6:	
At confluence with Sycamore Creek	*649
Upstream side of Edgecliff Road	*668
Approximately 130 feet upstream of Gravel Road	*692
Stream SC-7:	
At confluence with Sycamore Creek	*699
Approximately 1,000 feet upstream of Cunningham Avenue (South Worth Road)	*762
Approximately 0.9 mile upstream of the most upstream corporate limits	*787
Edgecliff Branch:	
At confluence with Sycamore Creek	*652
Upstream side of Alta Mesa Boulevard Westbound	*734
Approximately 0.4 mile upstream of Woodway Drive	*779
West Fork Trinity River:	
At most downstream corporate limits	*454
Approximately 1,350 feet upstream of State Route 360	*462
Approximately 7.5 miles upstream of State Route 360	*476
At Precinct Line Road	*483
Approximately 500 feet upstream of Handley Ederville Road	*500
Upstream side of East 1st Street	*511
Approximately 800 feet downstream of St. Louis Southwestern Railroad	*539
Approximately 300 feet upstream of Meandering Road	*561
Approximately .8 mile upstream of State Route 199	*600
At downstream face of Eagle Mountain Dam	*657
Stream WF-1:	
At confluence with West Fork Trinity River	*488
At upstream side of most downstream crossing of Randol Mill Road	*508
At confluence of Stream WF-1A	*538
Stream WF-1A:	
At confluence with Stream WF-1	*538
Approximately 1,400 feet upstream of confluence with WF-1	*543
Stream WF-1B:	
At confluence with Stream WF-1	*538
Approximately 0.76 mile upstream of confluence	*570
Stream WF-2:	
At confluence with West Fork Trinity River	*504
At downstream side of Interstate Route 30	*521
Approximately 1.3 miles upstream of Interstate 30	*581
Stream WF-3:	
At confluence with West Fork Trinity River	*506
Approximately 120 feet downstream of Randol Mill Road	*518
At upstream side of White Lake Dam	*557
At upstream side of Interstate Route 30	*578
Approximately 1,000 feet upstream of Fossil Lake Dam	*601
Stream WF-4:	
At confluence with West Fork Trinity River	*527
At upstream side of Dewey Street	*565
At upstream side of Long Avenue	*610
At upstream side of Dendder Road	*657
Stream WF-5:	
At confluence with West Fork Trinity River	*543
At upstream side of Ohio Garden Road	*546
Approximately 700 feet upstream of Long Avenue	*594
Stream WF-7:	
At confluence with West Fork Trinity River	*602
At upstream side of Shoreline Road	*603
Approximately 1,900 feet upstream of Shoreline Road	*612
Approximately 1,340 feet downstream of Nine Mile Azle Road	*624
Approximately 500 feet upstream of Nine Mile Azle Road	*634
Stream WF-7A:	
At confluence with Stream WF-7	*603
At upstream corporate limits	*629

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground ^Elevation in feet (NGVD)
Stream WF-9:	
At confluence with West Fork Trinity River	*492
At upstream side of Interstate Route 820	*505
Approximately 1,600 feet upstream of Interstate 820	*514
Stream WF-10:	
At confluence with West Fork Trinity River	*551
Approximately 470 feet upstream of Burton Hill Road	*558
At upstream side of Roaring Springs Road	*599
Boyd Branch:	
At downstream corporate limits	*486
At upstream side of Pipeline Road	*515
Calloway Branch:	
At confluence with Walker Branch	*507
Approximately 130 feet upstream of abandoned railroad	*512
Dry Branch:	
At confluence with West Fork Trinity River	*509
At upstream side of State Route 121	*549
At upstream side of Aster Avenue	*575
Approximately 0.31 mile upstream of Hollis Street	*593
Farmers Branch:	
At downstream corporate limits	*719
At upstream side of Academy Boulevard	*751
Approximately 0.31 mile upstream of Little Fox Lane	*789
Hurricane Creek:	
At downstream corporate limits	*479
Approximately 100 feet upstream of South Pipeline Road	*501
Kings Branch:	
At downstream corporate limits	*595
At upstream side of Green Oaks Road	*622
Approximately 0.45 mile upstream of Ridgmar Meadow Road	*651
Live Oak Creek:	
At confluence with Lake Worth	*600
At downstream side of Silver Creek Road	*607
Approximately 200 feet upstream of corporate limits	*655
Lorean Branch:	
At confluence with Walker Branch	*485
Approximately 0.41 mile upstream of Trinity Boulevard	*503
Silver Creek:	
At confluence with Lake Worth	*600
Approximately 90 feet upstream of Silver Creek Road	*613
Sulphur Branch:	
At confluence with Walker Branch	*478
At upstream corporate limits	*482
Valley View Branch:	
At confluence with Walker Branch	*483
At upstream side of Trinity Boulevard	*490
At upstream corporate limits	*502
Walker Branch:	
At downstream corporate limits	*478
At upstream side of downstream crossing of Trinity Boulevard	*479
At upstream side of Norwood Drive	*487
At upstream side of Precinct Line Road	*505
At upstream corporate limits	*512
Village Creek:	
At confluence with West Fork Trinity River	*479
Approximately 500 feet upstream of Interstate Route 30	*484
Approximately 1,400 feet upstream of confluence of Rush Creek	*492
At confluence of South Creek	*578
Approximately 1.1 miles downstream of most upstream corporate limits	*659
At most upstream corporate limits	*670
Stream VC-1:	
At confluence with Lake Arlington	*564
Approximately 2,000 feet downstream of Carey Road	*582
Approximately 70 feet upstream of Freshfield Road	*606
Stream VC-2:	
At confluence with Lake Arlington	*564
Approximately 120 feet upstream of Mansfield Highway	*643

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground ^Elevation in feet (NGVD)
Stream VC-5:	
At downstream corporate limits	*655
Approximately 1,100 feet upstream of Oak Grove Road	*689
Stream VC-6:	
Approximately 860 feet downstream of Oak Grove East Road	*647
Approximately 100 feet upstream of Stone Road	*689
Stream VC-7:	
At downstream corporate limits	*649
Approximately 150 feet upstream of most upstream dam	*680
Chambers Creek:	
At confluence with Village Creek	*580
Upstream side of Anglin Drive	*594
Approximately 920 feet upstream of third upstream corporate limits crossing	*611
Downstream side of Rendon Drive	*626
Cottonwood Creek:	
At confluence with Village Creek	*479
Upstream side of Bentley Village Parkway	*494
Upstream side of Brentwood Stair Road	*518
Upstream side of Sandy Lane	*569
Approximately 870 feet upstream of Miam Street	*600
Deer Creek:	
Approximately 1,740 feet downstream of Forest Hill-Everman Road	*637
Approximately 0.5 mile upstream of Missouri, Kansas and Texas Railroad	*690
Elm Branch:	
Approximately 100 feet downstream of Rendon-New Hope Road	*668
Approximately 1,500 feet upstream of Rendon-New Hope Road	*671
North Fork Chambers Creek:	
At downstream corporate limits	*655
Approximately 70 feet upstream of Oak Grove Road	*683
South Creek:	
At confluence with Village Creek	*578
Approximately 0.7 mile upstream of confluence with Village Creek	*587
South Fork Chambers Creek:	
Approximately 650 feet downstream of Christopher Street	*661
Approximately 1,170 feet upstream of Oak Grove Road	*685
Wildcat Branch:	
At confluence with Lake Arlington	*564
Upstream side of Dillard Street	*598
Approximately 0.5 mile upstream of Village Creek Road	*620
Stream WC-1:	
At confluence with Wildcat Branch	*564
Approximately 650 feet upstream of Ramey Avenue	*603
Bear Creek:	
Approximately 710 feet downstream of Alta Vista Road	*722
Approximately 300 feet upstream of Golden Triangle Spur	*772
Maps available for inspection at the City Hall, Development Activities Division, 1000 Throckmorton, Fort Worth, Texas	
Send comments to Mr. Gary Santerre, Director of Transportation and Public Works for the City of Fort Worth, 1000 Throckmorton, Fort Worth, Texas 76102	
Haskell (city), Haskell County	
Rice Springs Branch:	
Downstream corporate limits	*1,559
Downstream side of Avenue H	*1,580
Upstream corporate limits	*1,593
Stream RS-1:	
Confluence with Rice Springs Branch	*1,562
Upstream side of North 2nd Street	*1,580
Maps available for inspection at City Hall, 907 North 1st Street, Haskell, Texas	

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PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground ◊Elevation in feet (NGVD)
Send comments to The Honorable Robert Baker, Haskell City Manager, Haskell County, 307 North 1st Street, Haskell, Texas 79521	
Liberty (city), Liberty County	
Trinity River	
At downstream corporate limits	*25
Downstream side of U.S. Route 90	*28
Approximately 4.0 miles upstream of upstream corporate limits	*33
Maps available for inspection at the City Hall, 1829 Sam Houston Street, Liberty, Texas 77575	
Send comments to The Honorable Scott Parker, Mayor of the City of Liberty, Liberty County, City Hall, 1829 Sam Houston Street, Liberty, Texas 77575	
Liberty County	
Marsh Branch	
At confluence with Tarkington Bayou	*114
At State Routes 105 and 321	*127
At downstream crossing of Pelican Road	*131
At upstream side of FM 787	*149
Approximately 1.4 miles upstream of Atchison, Topeka & Santa Fe Railway	*159
Marsh Branch Tributary No. 1	
At confluence with Marsh Branch	*146
At downstream side of Atchison, Topeka & Santa Fe Railway	*153
Approximately 1.1 miles upstream of Atchison, Topeka & Santa Fe Railway	*158
Menard Creek	
At confluence with Trinity River	*78
At access road approximately 2.3 miles downstream of State Route 146	*86
At State Route 146	*96
At access road approximately 1.9 miles upstream of State Route 146	*102
At upstream County boundary	*119
Reese Bayou	
At confluence with Tarkington Bayou	*142
At upstream side of FM 787	*150
At downstream side of Lilley Avenue	*156
At downstream side of southbound U.S. Route 59	*159
At upstream County boundary	*168
Tarkington Bayou	
At confluence with Luce Bayou	*92
At access road approximately 4.4 miles upstream of confluence with Luce Bayou	*98
At confluence of Marsh Branch	*114
At downstream side of Gulf Road	*120
At upstream side of State Routes 321 and 105	*134
At confluence of Reese Bayou	*142
At upstream side of Atchison, Topeka & Santa Fe Railway	*149
At upstream County boundary	*180
Trinity River	
At downstream County boundary	*15
At upstream side of Missouri Pacific Railroad	*35
At upstream side of State Route 105	*54
Approximately 500 feet upstream of confluence of Menard Creek	*78
Turtle Bayou	
Approximately 0.6 mile downstream of Old Railroad Embankment	*30
At access road approximately 3.7 miles upstream of Old Railroad Embankment	*41
Approximately 4.6 miles upstream of Old Railroad Embankment	*44
Twin Ditches	
Approximately 0.7 mile downstream of Atascocita Road	*61
Approximately 1.2 miles upstream of Atascocita Road	*66
Upper East Twin Ditch	
At confluence with Twin Ditches	*66
Approximately 85 feet upstream of access road	*73
East-West Dayton Ditch	
Approximately 100 feet upstream of FM 1960	*78
Approximately 1.4 miles upstream of FM 1960	*82
West-West Dayton Ditch	
Approximately 100 feet upstream of FM 1960	*77
Approximately 1.4 miles upstream of FM 1960	*82
Whiskey Branch	
At confluence with East Fork San Jacinto River	*126
At upstream side of State Route 105	*133
At upstream side of access road approximately 0.3 mile downstream of County boundary	*149
At upstream County boundary	*151
Willow Creek	
Approximately 2.4 miles downstream of Hogpen Road	*44
At Hogpen Road	*48
Approximately 2.3 miles upstream of confluence of Bull Tongue Creek	*54
Batiste Creek	
At confluence with Willow Creek	*49
Approximately 1.8 miles upstream of confluence with Willow Creek	*54
Bull Tongue Creek	
At confluence with Willow Creek	*50
Approximately 0.9 mile upstream of confluence with Willow Creek	*50
Cedar Bayou	
At southernmost County boundary	*37
Downstream side of Southern Pacific Railroad	*56
At County boundary approximately 0.4 mile upstream of Crosby-Eastgate Road	*64
Approximately 900 feet upstream of Huffman Road	*71
Approximately 0.8 mile upstream of access road approximately 5.5 miles of Huffman Road	*82
Cow Branch	
At confluence with East Fork San Jacinto River	*100
Approximately 300 feet downstream of upstream County boundary	*111
East Fork San Jacinto River	
Approximately 0.8 mile downstream of first downstream County boundary	*84
At County boundary approximately 1.4 miles downstream of FM 2090	*93
At confluence of Cow Branch	*100
Downstream side of Southern Pacific Railroad	*121
Downstream side of State Route 105	*132
At upstream County boundary	*142
Hickory Island Gully	
Approximately 100 feet upstream of County boundary	*36
Approximately 4.2 miles upstream of Hatcherville Road	*53
Luce Bayou	
At County boundary	*67
Approximately 4.6 miles upstream of County boundary	*80
At confluence with Tarkington Bayou	*92
Approximately 3.2 miles upstream of State Route 321	*103
Downstream side of FM 1008	*114
Maps available for inspection at 2103 Cos, Liberty Texas	
Send comments to The Honorable Dempsie Henley, Liberty County Judge, 1923 Sam Houston Street, Liberty, Texas 77575	
Little Elm (town), Denton County	
Lewisville Lake Entire shoreline affecting community	*537
Maps available for inspection at City Hall, Little Elm, Texas	
Send comments to The Honorable Charles Boatright, Mayor of the Town of Little Elm, Donton County, P.O. Box 129, Little Elm, Texas 75068	
Victoria County	
Guadalupe River	
Approximately 890 feet downstream of the confluence of Coleto Creek	*42
Approximately 600 feet upstream of State Route 175	*48
Upstream side of U.S. Route 59	*60
Approximately 1,100 feet upstream of the confluence of Wright Creek	*78
Approximately 400 feet upstream of FM 447	*103
Coleto Creek	
At the confluence with the Guadalupe River	*42
Upstream side of FM 446	*66
Approximately 1.0 mile upstream of U.S. Route 59	*90
Crescent Valley Creek	
At the confluence with Spring Bayou	*42
Approximately 950 feet upstream of the Missouri-Pacific Railroad	*43
Dry Creek	
At the confluence with the Guadalupe River	*43
Approximately 400 feet upstream of U.S. Route 77	*57
Approximately 600 feet upstream of Old Goliad Road	*74
At Goletoville Road	*121
Jim Branch Outfall	
At the confluence with Cypress Bayou	*51
At the downstream county boundary	*51
Spring Creek	
Approximately 0.8 mile downstream of the downstream county boundary	*89
Approximately 300 feet upstream of U.S. Route 87	*122
Approximately 1,900 feet upstream of the Southern-Pacific Railroad	*131
Whispering Creek	
Approximately 0.4 mile downstream of the county boundary	*113
Approximately 500 feet downstream of Salem Road (extended)	*119
Lone Tree Creek	
Approximately 100 feet downstream of FM 1686	*62
Upstream side of Wood Hi Road	*76
At the county boundary	*87
Garcitas Creek	
Approximately 1,400 feet downstream of FM 444	*27
At the confluence of Casa Blanca Creek	*44
Downstream side of U.S. Route 59	*60
Approximately 300 feet upstream of Benson Road	*76
Maps available for inspection at the Victoria County Courthouse, Victoria, Texas.	
Send comments to The Honorable Norman Jones, Judge of Victoria County, Victoria County Courthouse, Victoria, Texas 77901	
Waller County	
Besses Creek	
At County boundary	*115
Upstream side of Missouri-Kansas-Texas Railroad	*122
Upstream side of FM 1458	*131
Maps available for inspection at the Floodplain Administration Office, 2036 Nineth Street, Hempstead, Texas	
Send comments to The Honorable A. M. McCaig, Waller County Judge, 836 Austin Street, Hempstead, Texas 77445	
VIRGINIA	
Colonial Beach (town), Westmoreland County	
Potomac River	
At Bluff Point	*10
State Route 205 at western corporate limits	*7
At White Point	*11
Shoreline of Monroe Bay at Winkedoodle Point	*7
Maps available for inspection at the Town Hall, Corner of Hawthorn and Irving Avenues, Colonial Beach, Virginia	
Send comments to The Honorable Wayne Kohlwes, Town Manager of Colonial Beach, P.O. Box 38, Colonial Beach, Virginia 22443	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground ◊Elevation in feet (NGVD)
Westmoreland County	
Potomac River	
Shoreline of Goldman Creek approximately 1,000 feet south of State Route 205	*7
Confluence of Rozier Creek and Goldman Creek	*10
Shoreline of Monroe Bay at Stratter Point	*8
Shoreline of Pokomac River approximately 1,500 feet south of Stratter Point	*11
Shoreline of northwest Yeocomico River at Crow Bar	*6
Shoreline of Yeocomico River at Parker Island	*9
Rappahannock River	
Shoreline of Rappahannock River at Blind Point	*7
Shoreline of Rappahannock River at Smith Mount Landing	*7
Maps available for inspection at the County Administration Building, Route 622, Montross, Virginia	
Send comments to The Honorable Eston E. Burge, Westmoreland County Administrator, P.O. Box 467, Montross, Virginia 22520	
WEST VIRGINIA	
Cabell County	
Ohio River	
At confluence of Paddy Creek	*555
At confluence of Ninemile Creek	*557
At confluence of Guyan Creek	*561
Mud River	
At County Road 19	*555
Upstream side of Richard Road	*579
At confluence of Charlie Creek	*602
At upstream County boundary	*614
Guyandotte River	
At Russell Creek Road	*555
Upstream side of County Routes 31 and 6	*559
At upstream County boundary	*578
Fourpole Creek	
Downstream County boundary	*567
Approximately 1,920 feet upstream of downstream County boundary	*569
Hisey Fork	
Approximately .53 mile downstream of Interstate Route 64 (west access ram)	*556
Upstream of U.S. Route 52	*591
Approximately 90 feet upstream of Miller Road	*661
Maps available for inspection at the County Clerk's Office, Cabell County Courthouse, Huntington, West Virginia	
Send comments to The Honorable Claude Legg, Cabell County Administrator, Cabell County Courthouse, Huntington, West Virginia 25071	
Greenbrier County	
Howard Creek	
Approximately 400 feet upstream of confluence with Greenbrier River	*1,688
Approximately 0.16 mile upstream of Interstate Route 64	*1,755
Downstream side of dam	*1,823
Approximately 0.4 mile upstream of upstream County boundary	*1,888
Meadow River	
At Chessie System	*2,392
Approximately 1.5 miles upstream of CONRAIL crossing	*2,409
Wades Creek	
At downstream County boundary	*1,899
Upstream side of County Route 60-25	*1,933
Downstream side of Eastbound Interstate 64	*1,998
Sewell-Little Sewell Creek	
Confluence with the Meadow River	*2,393
Approximately 0.5 mile upstream of County Route 60-32	*2,402
Dry Creek	
At the downstream County boundary	*1,888
Approximately 0.7 mile upstream of County boundary	*1,920
Approximatley 1.2 miles upstream of County boundary	*1,942
Maps available for inspection at the County Courthouse, 200 North Court Street, Lewisburg, West Virginia	
Send comments to The Honorable W. W. McClung, President of the Greenbrier County Commisson, Lewisburg, West Virginia 24901	
Lincoln County	
Mud River	
At downstream county boundary	*614
Approximately 740 feet upstream side of confluence of Buffalo Creek	*622
At downstream side of State Route 3 bridge	*636
Approximately 1,000 feet downstream of County Highway 48	*684
At County Highway 46	*703
Porter Fork	
At confluence with Straight Fork	*690
Approximately 2.6 miles upstream of State Route 3 bridge	*691
Guyandotte River	
At downstream county boundary	*576
At upstream county boundary with Town of west Hamlin	*580
At County Route 36-1 bridge at Branchland	*588
Approximately 740 feet downstream of County Highway 48 bridge at Midkiff	*592
Approximately 200 feet downstream of County Highway 10-2 bridge at Ranger	*599
Approximately 0.3 mile upstream of State Route 10 bridge at Harts	*620
At most upstream county boundary	*628
Middle Fork Mud River	
At confluence with Mud River	*636
At County Route 22	*650
At confluence of Straight Fork and Sugartree Fork	*667
Straight Fork	
At confluence with Sugartree Fork	*667
At confluence of Valley Fork	*670
Approximately 0.9 mile upstream of confluence of Porter Fork	*691
Maps available for inspection at the Tax Assessor's Office, Lincoln County Courthouse, Hamlin, West Virginia	
Send comments to The Honorable A. J. Stowers, President of Lincoln County Commission, P.O. Box 373, Hamlin, West Virginia 25523	
Milton (town), Cabell County	
Mud River	
At downstream corporate limits	*586
At upstream corporate limits	*588
Maps available for inspection at the Town Hall, 1139 Smith Street, Milton, West Virginia	
Send comments to The Honorable Jarrell Sargent, Mayor of the Town of Milton, Cabell County, 1139 Smith Street, Milton, West Virginia 25541	
Wayne (town), Wayne County	
Twelvepole Creek	
0.6 mile downstream of downstream corporate limits	596
At upstream corporate limits	*605
Maps available for inspection at the Town Hall, 440 Cleveland Street, Wayne, West Virginia	
Send comments to The Honorable James Ramey Jr., III, Mayor of the Town of Wayne, Wayne County, P.O. Box 186, Wayne, West Virginia 25570	
Wayne County	
Big Sandy River	
At downstream county boundary	*549
At confluence of Gragston Creek	*558
At confluence of Hurricane Creek	*566
At Lock and Dam No. 3	*575
Tug Fork	
Upstream side of State Route 37	*576
At confluence of Campbell Run	*584
At confluence of Drag Creek	*602
At confluence of Bull Creek	*612
At upstream county boundary	*626
Twelvepole Creek	
At confluence of Walker Brook	*551
Upstream side of first crossing of State Route 152	*571
At fourth crossing of State Route 152	*590
At confluence of West Fork and East Fork Twelvepole Creek	*605
West Fork Twelvepole Creek	
At confluence with Twelvepole Creek	*605
Upstream side of State Route 152	*626
Downstream side of Flat Branch Road	*643
Upstream side of second crossing of County Route 52-56	*660
Downstream side of Dullon Hill Road	*695
At second crossing of State Route 152	*708
Upstream side of Wiley Branch Road	*716
Mill Creek	
At confluence with Tug Fork	*576
At second crossing of U.S. Route 52	*577
At third crossing of U.S. Route 52	*592
Marrowbone Creek	
At confluence with Tug Fork	*626
At upstream county boundary	*626
Jennie Creek	
At confluence with Tug Fork	*620
At most upstream crossing of Access Road	*638
Approximately 0.6 mile downstream of county boundary	*660
At upstream county boundary	*677
Buffalo Creek	
Upstream side of Norfolk and Western Railway bridge	*552
Approximately 0.7 mile upstream of Indian Branch Road	*565
Downstream side of Buffalo Creek Road	*577
Approximately 0.4 mile upstream of Buffalo Creek Road	*586
Maps available for inspection at the Wayne County Courthouse, Room 105, Wayne, West Virginia	
Send comments to The Honorable Jack Leonard, Wayne County Administrator, P.O. Box 248, Wayne, West Virginia 25570	

The proposed modified base (100-year) flood elevations for selected locations are:

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PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
Alaska	Municipality of Anchorage	Fish Creek	100 feet upstream of the Alaska Railroad	*30	*27
			At downstream face of McRae Rd	*43	*43
			70 feet downstream of Minnesota Dr	*78	*78
			130 feet upstream of New Seward Highway	*115	*115
			At upstream face of Tudor Rd	*132	*132
		South Fork Chester Creek	280 feet downstream of Providence Ave	*137	*137
			20 feet upstream of Northern Lights Blvd	*112	*111
			200 feet upstream of Providence Ave	*140	*136
			At confluence with South Branch of South Fork Chester Creek	*180	*180
		South Branch of South Fork Chester Creek	At confluence with South Fork Chester Creek	*180	180
			325 feet downstream of intersection of Muldoon Rd & Debarr Ave	*245	*246
			3,000 feet upstream of Muldoon Rd	None	*281
		Middle Branch of South Fork Chester Creek	At upstream face of Muldoon Rd	*251	*250
			950 feet upstream of Muldoon Rd	*251	*252
			800 feet upstream of Valley St	*263	*263
		Little Campbell Creek	At confluence with Campbell Creek	*78	*78
			At upstream face of Nathan Dr	*81	*82
		North Fork Little Campbell Creek	At confluence with North Fork Little Campbell Creek	*89	*89
			At confluence with Little Campbell Creek	*89	*89
			At upstream face of New Seward Highway	113	*116
			At confluence with North Branch of North Fork Little Campbell Creek	133	*136
		North Branch of North Fork Little Campbell Creek	At confluence with North Fork Little Campbell Creek	133	*136
			At upstream face of Lake Otis Parkway	*142	*147
			At upstream face of Spruce Street	None	*167
		South Branch of North Fork Little Campbell Creek	At Confluence with North Fork Little Campbell Creek	*133	*136
			At downstream face of Spruce Rd	*186	*186
			At downstream face of Abbott Loop Rd	*210	*208
		South Fork Little Campbell Creek	At confluence with Little Campbell Creek	*89	*89
			At upstream face of New Seward Highway	*116	*121
			50 feet downstream of Abbott Rd	None	*232
		South Fork Little Campbell Creek Split Flow 2	At confluence with South Fork Little Campbell Creek	None	*121
			At confluence with North Fork Little Campbell Creek Split Flow 2	None	*134
			170 feet upstream of Diamond Drive Extended	None	*173
		South Fork Little Campbell Creek Split Flow 2	At confluence with South Fork Little Campbell Creek Split Flow 1	None	*134
			580 feet upstream of confluence with South Fork Little Campbell Creek Split Flow 1	None	*138

Maps are available for review at the Community Planning Department, Anchorage, Alaska

Send comments to The Honorable Mayor Tony Knowles, P.O. Box 1966650, Anchorage, Alaska 99519-6650

Arizona	Town of Cottonwood Yavapai County	Railroad Wash	Approximately 300 feet downstream of Main Street	None	*3,304
			Just upstream of Cochise Street	None	*3,333
			Approximately 225 feet downstream of 6th Street	None	*3,390
			Approximately 50 feet downstream of Beech Street	None	*3,435
			Approximately 375 feet upstream of U.S. 89A—State 279	None	*3,475
		Silver Springs Gulch	At the eastern corporate limits (just upstream of Verde River)	*3,291	*3,291
			Approximately 760 feet upstream of S. Main Street	*3,352	*3,360
			Approximately 360 feet downstream of State Hwy 279	*3,407	*3,420
			Approximately 900 feet upstream of South 6th Street	*3,494	*3,500
			Just downstream of the western corporate limits	*3,600	*3,605

Maps are available for inspection at the Town Hall, Planning Department, 827 North Main Street, Cottonwood, Arizona.

Send comments to Mayor Charles D. Garrison, Town Hall, 827 North Main Street, Cottonwood, Arizona 86326.

Arizona	Mohave County (Unincorporated Areas)	Colorado River	Main Channel, downstream limit of detailed study (River Mile 242.4)	None	*474
			Main Channel, 2650 feet downstream of Needles Bridge (River Mile 245.65)	None	*479
			Main Channel, 16300 feet upstream of Needles Bridge (River Mile 249.2)	None	*483
			Main Channel, upstream limit of detailed study (River Mile 252.4)	None	*486
			East Overbank Area, center of Section 7, T17N, R21W	None	*467
			East Overbank Area, northwest corner of Section 1, T17N, R22W	None	*471
			East Overbank Area, southeast corner of Section 23, T18N, R22W	None	*475
			East Overbank Area, northeast corner of Section 14, T18N, R22W	None	*479
		Topock Marsh	Entire area	None	*460

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
Maps are available for inspection at the Mohave County Courthouse, 401 Spring Street, Kingman, Arizona.					
Send comments to Mr. Jerry Holt, Chairman, Mohave County Board of Supervisors, Mohave County Courthouse, P.O. Box 380, kingman, Arizona 86401					
California	Colton (city), San Bernardino County.	Warm Creek	City of Colton Corporate Limits	None	#960
			Upstream of San Bernardino Freeway	None	#960
			Downstream of San Bernardino Freeway	None	#957
			Southern Pacific Railroad	None	#957
		Reche Canyon Channel	City of Colton Corporate Limits (most upstream limit of study)	*1,304	*1,304
			Mobile Home Road	*1,244	*1,244
			Barton Road	*1,041	*1,041
			Confluence with San Timoteo Wash A Baseline	*930	*930
			Confluence with Santa Ana River	*925	*925
		San Timoteo Wash A	Hunts Lane	None	*934
			Confluence with San Timoteo Wash B Baseline	None	*966
			Interstate 15	None	*962
			Mt. Vernon Avenue	None	*939
			Confluence with Reche Canyon Channel	None	*939
		San Timoteo Wash B	Confluence with San Timoteo Wash A	None	*966
			Interstate 15	None	*962
			Limit of Study	None	*952
Maps are available for inspection at City Hall, 650 N. La Cadena Drive, Colton, California.					
Send Comments to Mayor Robert Huntoon, 650 N. La Cadena Drive, Colton, California 92324.					
California	Imperial Beach (city), San Diego County.	Pacific Ocean	Center of Boulevard Avenue, 700 feet west along the street from its intersection with 10th street.	None	*6
Maps are available for review at the Planning and Community Development Office, 825 Imperial Beach Boulevard, Imperial Beach, California.					
Send comments to The Honorable William S. Russell, Mayor, City of Imperial Beach, 825 Imperial Beach Boulevard, Imperial Beach, California 92032.					
Colorado	Castle Rock (town), Douglas County.	Cherry Creek	Approximately 3,200 feet downstream of County Road	None	*6,022
			Approximately 1,200 feet upstream of County Road, at corporate limits	None	*6,030
			At center of County Road	None	*6,039
		East Plum Creek (Downstream of Confluence With Hangmans Gulch).	100 feet downstream from confluence with Haskins Gulch	None	*5,952
			At confluence with Tributary D	None	*6,014
			Approximately 2,150 feet upstream of unnamed road in Section 34, Township 7 South	None	*6,076
		East Plum Creek (Upstream of U.S. Highway 85).	30 feet upstream of U.S. Highway 85	None	*6,214
			Approximately 1,650 feet west from a point on Plum Creek Boulevard 150 feet north of intersection with Mount Royal Drive	None	*6,250
			Approximately 1,700 feet upstream from point approximately 1,650 feet west of intersection of Mount Royal Drive and Plum Creek Boulevard	None	*6,266
			Approximately 1,500 feet downstream of Douglas Lane	None	*6,281
			Approximately 700 feet downstream of Douglas Lane	None	*6,289
			Approximately 350 feet downstream of Douglas Lane	None	*6,292
Maps are available for review at the Planning Department, 318 4th Street, Castle Rock, Colorado.					
Send comments to the Honorable George Kennedy, Mayor, 318 4th Street, Castle Rock, Colorado 80104.					
Colorado	Douglas County (unincorporated areas).	East Plum Creek (Downstream of Confluence With Hangmans Gulch).	Approximately 3,700 feet upstream of State Highway 67	*5,805	*5,805
			At Confluence with 6400 Tributary	None	*5,893
			Approximately 1,300 feet upstream of confluence with Tributary A	None	*5,984
			Approximately 550 feet upstream of unnamed road in Section 34, Township 7 South	None	*6,063
			Approximately 850 feet downstream of confluence with Hangmans Gulch	None	*6,093
			At confluence with Hangmans Gulch	*6,100	*6,100
		East Plum Creek (Upstream of U.S. Highway 85)	Approximately 1,80 feet west from a point on Plum Creek Boulevard approximately 620 feet north of intersection with Mount Royal Drive	None	*6,246
			Approximately 1,300 feet downstream of Douglas Lane	None	6,276
			Approximately 1,675 feet downstream of Douglas Lane	None	*6,280
			Approximately 350 feet downstream of Douglas Lane	None	*6,292
			Approximately 100 feet downstream of confluence with Section 34 Tributary	None	*6,350
			Approximately 4,800 feet downstream of Interestate Highway	*6,567	*6,567
		Sellers Gulch (South of Castle Rock).	At dirt road in Range 67 West, section 13	*6,317	*6,317
			Approximately 400 feet downstream of unnamed road in Range 66 West, Section 19	None	*6,411
			Approximately 50 feet upstream of unnamed road in Range 66 West, Section 19	None	*6,417

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PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
Maps are available for review at the Planning Office, 301 Wilcox, Castle Rock, Colorado					
Send comments to the Honorable Donald A. Klemme, Chairman, Douglas County Commissioners, 301 Wilcox, Castle Rock, Colorado 80104					
Delaware	Elsmere, Town, New Castle County	Little Mill Creek	Approximately 780 feet downstream of Old Dupont Road	*36	*44
			Upstream side of Old Dupont Road	*60	*63
			At confluence of Chestnut Run	*78	*77
		Silverbrook Run	At confluence with Little Mill Creek	*36	*44
			Downstream side of New Road	*85	*88
			At upstream corporate limits	*94	*98
		Chestnut Run	At confluence with Little Mill Creek	*78	*77
			Upstream side of Jefferson Avenue	*88	*90
			At upstream corporate limits	*90	*92
		Derrickson Run	At confluence with Little Mill Creek	*63	*65
			Upstream side of State Route 2 (Wilmington Avenue)	*75	*80
			Approximately 1,225 feet upstream of Junction Street	*95	*102
Maps available for inspection at the Town Office, 11 Poplar Avenue, Elsmere, Pennsylvania.					
Send comments to the Honorable Edward Doyle, Jr., Mayor of the Town of Elsmere, New Castle County, 11 Popular Avenue, Elsmere, Delaware 19805					
Florida	Unincorporated Areas of Dade County	Atlantic Ocean	About 1200 feet east of intersection of Harbour Way and Park Drive	*11	*7
			About 3000 feet northeast of intersection of East Drive and Caribbean Road	*11	*7
			About 4000 feet northwest of Sands Cut	*14	*9
			About 400 feet east of intersection of State Road 826 and State Road A1A	*11	*10
			About 1100 feet east of intersection of Collins Avenue and 34th Street	*14	*11
			About 2000 feet north of Sands Cut	*20	*12
		Intracoastal Waterway	About 1.5 miles northwest of U.S. Route 1 bridge over Glades Canal	*11	*2
			At intersection of Arthur Vining Davis Parkway and Southwest 122nd Avenue	*12	*3
			At intersection of Oleta Drive and Northeast 182nd Drive	*6	*6
			About 1450 feet south of intersection of Tigar Tail Avenue and Ematilla Street	*16	*16
			About 2250 feet south of intersection of Southwest 147th Street and Southwest 63rd Street	*19	*18
			About 0.95 mile east of intersection of Southwest 97th Avenue and Southwest 264th Street	*20	*18
Maps available for inspection at the Department of Environmental Resources, Miami, Florida					
Send comments to the Honorable Sergio Pereira, County Manager, Dade County, 111 N.W. 1st Street, Miami, Florida 33128					
Iowa	City of Des Moines, Polk County	Des Moines River	About 3.6 miles downstream of Chicago, Rock Island and Pacific Railroad	None	*785
			About 3,500 feet upstream of Euclid Avenue	*806	*804
		Raccoon River	At mouth	None	*795
			Just downstream of Southwest 63rd Street	*813	*813
		Frink Creek	At mouth	*807	*806
			About 850 feet upstream of Chicago and North Western Railroad	None	*822
		Walnut Creek	At mouth	*807	*807
			Just upstream of Chicago, Rock Island and Pacific Railroad	*812	*807
			Just downstream of North Valley Drive	*812	*812
			About 2,600 feet upstream Southwest 63rd Street	*824	*824
Maps available for inspection at the City Engineer's Office, City Hall, East 1st & Locus Street, Des Moines, Iowa. Send comments to The Honorable Pete Cnvaro, Mayor, City of Des Moines, City Hall, East 1st & Locus Street, Des Moines, Iowa 50307					
Massachusetts	Bedford, Town, Middlesex County	Shawsheen River	Downstream side of Middlesex Turnpike	*98	*99
			Upstream side of U.S. Route 3 (southbound)	*100	*101
			Upstream side of Burlington Road (State Route 62)	*107	*108
		Vine Brook	At confluence with Shawsheen River	None	*101
			Approximately 50 feet downstream of Burlington Road (State Route 62)	None	*103
			Upstream side of Old Burlington Road	None	*122
			At upstream corporate limits	None	*124
Maps available for inspection at the Town Planner's Office, Bedford, Massachusetts.					
The Honorable Betsy Anderson, Chairman of the Town of Bedford, Middlesex County, Town Office, 15 South Road, Bedford, Massachusetts 11730.					
Massachusetts	Concord, Town, Middlesex County	Mill Brook	Upstream side of Main Street	*129	*128
			Upstream side of Cambridge	None	*132
		Tributary No. 1	Approximately 190 feet downstream of Main Street	*124	*125
Maps Available for inspection at the Town Planner's Office, Concord, Massachusetts.					
Send comments to The Honorable Nancy Beecher, Chairman of the Town of Concord, Middlesex County, P.O. Box 535, Concord, Massachusetts 01742					
Massachusetts	Walpole, Town Norfolk County	Neponset River	Upstream side of Plimpton Street	*121	*123
			Upstream side of Main Stream (downstream crossing)	*126	*127
			Upstream side of West Street and dam	*145	*144
			Upstream side of Lewis Avenue	*150	*148
			Upstream side of powerline Access Road	*184	*185
			Downstream side of dam of Washington Street	*231	*227

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
			Upstream corporate limits	*234	*235
		Stop River	Upstream side of Winter Street	*150	*151
		Cobb's Brook	Confluence with Neponset River	*123	*124
			Upstream side of Gould Street	*149	*147
			Downstream side of North Street	*156	*151
			Approximately 75 feet upstream of North Street	None	*153
		Diamond Brook	Confluence with Neponset River	*134	*135
			Upstream side of Memorial Pond Dam	*142	*141
			Upstream side of New Diamond Road	*155	*154
			Upstream side of CONRAIL bridge	*155	*159
			Upstream side of Stone Street	*178	*177
			Downstream side of Washington Street	*178	*161
			Approximately 40 feet upstream of Washington Street	None	*162
		Mine Brook	Confluence with Neponset	*136	*135
		Traphole Brook	Upstream side of U.S. Route 1	*141	*139
		Pickeral Brook	Confluence with Traphole Brook	*102	*101
			Approximately 150 feet downstream of Union Street	*105	*106
			Approximately 150 feet downstream of Wolcott Avenue	*120	*119
			Upstream side of most upstream footbridge	None	*127
			Approximately 500 feet upstream of most upstream footbridge	*122	*131
		School Meadow Brook	Upstream side of Washington Street	*187	*188
Maps available for inspection at the Town Engineer's Office, Town Hall, Walpole, Massachusetts.					
Send comments to The Honorable Gene Cavallero, Jr., Chairman of the Town of Walpole Board of Selectmen, Norfolk County, Town, Hall, School Street, Walpole, Massachusetts 02081.					
New York	Pamelia, Town Jefferson County	Kelsey Creek	Approximately 150' downstream of CONRAIL bridge	None	*395
			Downstream side of State Route 37	None	*402
			Downstream side of U.S. Route 11	None	*415
Maps available for inspection at the Pamelia Town Hall, Jenkins Road, Pamelia, New York.					
Send comments to The Honorable Donald Jewett, Supervisor of the Town of Pamelia, Jefferson County, R.D. 4 Watertown, Watertown, New York 13601.					
New York	Watertown, Town Jefferson County.	Cold Creek	Confluence with Black River	None	*496
			Downstream side of most upstream Gifford Street crossing.	None	*531
Maps available for inspection at the Town Municipal Building, 6673 Brookside Drive, Watertown, New York.					
Send comments to The Honorable Ralph R. Dickenson, Supervisor of the Town of Watertown, 898 South Massey Street Road, Watertown, New York 13601.					
Pennsylvania	Schuylkill Haven, Borough Schuylkill County.	Schuylkill River	Downstream corporate limits	*508	*506
			Upstream side of first downstream CONRAIL crossing	*516	*515
			Upstream corporate limits	*527	*525
		Long Run Creek	Upstream side of South Berne Street	*510	*509
			Upstream corporate limits	*515	*514
		Berger Creek	Approximately 40 feet upstream of Dock Street	*521	*520
			Approximately 940 feet upstream of Haven Avenue	*546	*544
		Willow Creek	Downstream side of Coal Street Culvert	*521	*520
			Approximately 100 feet upstream of Willow Street	*530	*529
			Approximately 700 feet upstream of Koch Street	*568	*566
			At upstream corporate limits	None	*585
Maps available for inspection at the Borough Building, 39 Dock Street, Schuylkill Haven, Pennsylvania.					
Send comments to The Honorable Nancy Montz, President of the Borough Council of Schuylkill Haven, Schuylkill County, 39 Dock Street, Schylkill Haven, Pennsylvania 17072.					
Vermont	Jamaica (town), Windham County.	West River	At downstream corporate limits	*539	*536
			At the confluence of Turkey Mountain Brook	*561	*560
			Approximately 60 feet upstream of French Bridge	584	*586
			Approximately 1.14 miles upstream of French Bridge	*635	*630
			Approximately 275 feet upstream of the confluence of Ball Mountain Brook.	*658	*659
		West River Auxiliary Channel	At the confluence with West River	None	*596
			At the divergence from West River	None	*654
		Windhall River	At the most downstream corporate limits	*1,052	*1,051
			At the confluence of Mill Brook	*1,115	*1,116
			Approximately 100 feet upstream of the downstream crossing of Vermont Route 30.	*1,173	*1,174
			At the most upstream corporate limits	*1,251	*1,250
		Wardsboro Brook	At the confluence with West River	*548	*547
			Approximately 0.6 mile upstream of the confluence with West River.	*600	*607
			Upstream side of the downstream crossing of Vermont Route 100.	*679	*681
			Approximately 0.86 mile downstream of the upstream crossing of Vermont Route 100.	*804	*817
			At the upstream corporate limits	*921	*923
		Ball Mountain Brook	At the confluence with West River	*657	*658
			Approximately 120 feet upstream of the crossing of Vermont Routes 30 and 100.	*730	*731
			At the upstream side of the most downstream crossing of State Aid Highway 1 (Pikes Falls Road).	*834	*835
			At the upstream side of the most upstream crossing of State Aid Highway 1 (Pikes Falls Road).	*969	*1,044
			0.93 mile upstream of most upstream crossing of State Aid Highway 1 (Pikes Falls Road).	None	*1,131

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PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 0.51 mile downstream of Sage Hill Road.	None	*1,210
			Approximately 0.77 mile upstream of Sage Hill Road	None	*1,381
			Upstream side of the most downstream crossing of Town Highway 30.	None	*1,502
			Approximately 520 feet upstream of the most upstream crossing of Town Highway 30.	None	*1,548

Maps available for inspection at the Town Clerk's Office, Town Office, Jamaica, Vermont.

Send comments to The Honorable Robert Brown, Chairman of the Town of Jamaica Board of Selectmen, Windham County, Town Office, P.O. Box 173, Jamaica, Vermont 05343.

Wyoming	Rock Springs (city), Sweetwater County	Bitter Creek	At downstream corporate limit	None	*6,215
			At intersection of M St. and Pilot Butte Ave.	*6,256	*6,254
			At upstream corporate limit	*6,269	*6,270
			1,000 feet north of a point 6,500 feet west along the Union Pacific Railroad from its crossing with Sweetwater Creek.	None	*6,223
		Sweetwater Creek	At downstream face of the Railroad Access Road	*6,235	*6,233
			At upstream face of Blairtown Flamingo Gorge Rd. (West 2nd Street)	*6,245	*6,246
			At upstream corporate limit	*6,247	*6,253
		Deadhorse Canyon Creek	660 feet downstream of the Union Pacific Railroad crossing.	*6,256	*6,256
			At upstream corporate limit	None	*6,388
			700 feet west of the intersection of Blair Ave. and Hickory St.	None	*6,242
			At upstream corporate limit	None	#1
			At intersection of Elk St. and 2nd St.	None	#2
		Tributary No. 1	At upstream face of Dewar Dr. at its intersection with Foothills Blvd.	None	*6,235
			At downstream face of Dewar Dr. at its intersection with Foothills Blvd.	*6,233	*6,235
			At downstream face of Sunset Dr	*6,223	*6,223
			At upstream face of Interstate 80 (U.S. Highway 30)	*6,227	*6,229
			300 feet south of a point 1,500 feet southwest along Foothills Blvd. from its intersection with Ankeny Way.	None	*6,230
			At intersection of Sierra Rd. and Sandy Rd	None	#2
			At southwesternmost intersection of Cassencal Way and Foothills Blvd.	None	#1
		Tributary No. 2	At confluence with Dead Horse Canyon Creek, 228 feet upstream along Dead Horse Canyon Creek from the State Hwy 430 bridge	None	*6,362
			400 feet upstream from the bridge crossing at the intersection of Donalyn Dr and Country Club Dr.	None	*6,407
			50 feet downstream from the bridge crossing at the intersection of Donalyn and Country Club Dr.	None	*6,397
		Killpecker Creek	800 feet south along Rugby Ave. from its intersection with Elk St.	*6,248	*6,248
			At upstream face of the Interstate Highway 80 bridge where it crosses Springs Dr.	*6,279	*6,276
			At upstream corporate limit	None	*6,303

Maps are available for review at the Department of Public Works, 212 D Street, Rock Springs, Wyoming 82901.

Send comments to The Honorable C. Keith West, City of Rock Springs, 212 D Street, Rock Springs, Wyoming 82901.

Issued: February 18, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-4084 Filed 2-26-87; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 22, and 94

[PR Docket No. 87-5]

Multiple Address System Operations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: On February 10, 1987, the Commission published a Notice of Proposed Rule Making in this proceeding concerning Multiple Address System Operations (52 FR 4161). Inadvertently, the text of the proposed rules changes was omitted. It is included here.

DATES: For the purpose of convenience to the reader, the comment/reply comment dates for the proposed rule are March 24, 1987 and April 8, 1987, respectively.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Herb Zeiler or Molly Nichols, Private Radio Bureau, (202) 634-2443.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Parts 2, 22, and 94 of the Commission's rules are proposed to be amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 2.106 is amended by revising footnote NG120 to read as follows:

§ 2.106 Table of frequency allocations.

* * * * *

Non-Government (NG) Footnotes

* * * * *

NG120 Frequencies in the 928–929 and 952–960 MHz bands may be assigned for multiple address systems as specified in Part 94. Frequencies in the 956 MHz band available under Section 94.65(a) may be used for mobile operations.

* * * * *

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for Part 22 continues to read as follows:

Authority: Secs. 4, 303, 48 STAT., as amended, 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 22.501 is amended by revising paragraph (g)(2).

§ 22.501 Frequencies.

* * * * *

(g)(1) * * *

(2) After January 1, 1987, upon an affirmative showing that the frequencies shown in § 22.501(g)(1) are not available, frequencies listed in Tables 1 and 2 of § 94.65(a)(1) (Private Operational-Fixed Microwave Service) may be authorized for assignment to paging operations functioning in conjunction with the Public Mobile Service on a shared basis with fixed and mobile stations in the Private Operational-Fixed Microwave Service. Applications for these frequencies shall be subject to the requirements of § 94.63(a).

* * * * *

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

1. The authority citation for Part 94 continues to read as follows:

Authority: Secs. 4, 303, 48 STAT., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 94.63 is amended by revising paragraphs (d)(4)(i) and (d)(5) to read as follows:

§ 94.63 Interference protection criteria for operational fixed stations.

* * * * *

(d) * * *

(4) * * *

(i) In the 952–690 MHz band, a statement that all existing co-channel licensees are at least 176 km (110 Miles) from any proposed master station site. For mobile operation, the mileage is measured from the center of the geographical area to be served.

* * * * *

(5) Frequencies in the 956 MHz band may be assigned for mobile operation on a primary basis. Frequencies in the 952 MHz band may be assigned for use by mobile master stations on a case-by-case basis, upon a showing that the mobile requirement cannot be met on existing mobile allocations and upon a showing of no interference to fixed systems. Mobile operation in the 952 MHz band shall be on secondary basis to fixed operations.

3. Section 94.65 is amended by revising paragraph (a)(1); inserting a new introductory heading (a)(2); and renumbering current paragraphs (a)(2), (a)(3), and (a)(4) to read (a)(2)(i), (a)(2)(ii), and (a)(2)(iii), respectively, and changing the heading in each.

§94.65 Frequencies.

* * * * *

(a) 928–929 and 952–960 MHz.

(1) Multiple Address System frequencies: Multiple address system (MAS) frequencies are available for the point-to-multipoint transmission of a licensee's products or services, excluding video entertainment material, to a licensee's customers. The paired frequencies listed in this section shall be used for two-way interrogate/response communications between a master station and remote stations. Each master station operating on one of the paired channels is required to serve a minimum of four separate active remote stations. One-way communications on paired frequencies are permitted on a secondary basis to two-way exchanges. Communications between interrelated co-channel master stations are permitted on a secondary basis. Except for frequencies listed in Table 3 of this section, the normal bandwidth assigned will be 12.5 kHz. Upon adequate justification, however, additional contiguous channels may be authorized to provide up to a 50 kHz bandwidth. Table 2 lists frequencies with 25 kHz bandwidth and are available upon proper justification. When licensed for a larger bandwidth, the system still is required to use equipment which meets the ±.00015 percent tolerance requirement. (see § 94.67(a)). Existing systems operating on 25 kHz channels will be grandfathered indefinitely.

(i) Frequencies listed in this paragraph are available to all persons eligible under Part 94 for use in multiple address radio systems. The frequencies are also available for shared use by Part 22 Public Land Mobile Service users after January 1, 1987, if the frequencies listed in § 22.501(g)(1) are exhausted in a particular area.

Table 1 (12.5 kHz bandwidth)

[Paired Frequencies (MHz)]

Remote transmit	Master transmit
928.00625	952.00625
.01875	.01875
.03125	.03125
.04375	.04375
.05625	.05625
.06875	.06875
.08125	.08125
.09375	.09375
.10625	.10625
.11875	.11875
.13125	.13125
.14375	.14375
.15625	.15625
.16875	.16875
.18125	.18125
.19375	.19375
.20625	.20625
.21875	.21875
.23125	.23125
.24375	.24375
.25625	.25625
.26875	.26875
.28125	.28125
.29375	.29375
.30625	.30625
.31875	.31875
.33125	.33125
.34375	.34375
.35625	.35625
.36875	.36875
.38125	.38125
.39375	.39375
.40625	.40625
.41875	.41875
.43125	.43125
.44375	.44375
.45625	.45625
.46875	.46875
.48125	.48125
.49375	.49375
.50625	.50625
.51875	.51875
.53125	.53125
.54375	.54375
.55625	.55625
.56875	.56875
.58125	.58125
.59375	.59375
.60625	.60625
.61875	.61875
.63125	.63125
.64375	.64375
.65625	.65625
.66875	.66875
.68125	.68125
.69375	.69375
.70625	.70625
.71875	.71875
.73125	.73125
.74375	.74375
.75625	.75625
.76875	.76875
.78125	.78125
.79375	.79375
.80625	.80625
.81875	.81875
.83125	.83125
928.84375	952.84375

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Unpaired Frequencies (MHz) (12.5 kHz bandwidth)

956.25625	956.33125	956.40625
956.26875	956.34375	956.41875
956.28125	956.35625	956.43125
956.29375	956.36875	956.44375
956.30625	956.38125	
956.31875	956.39375	

Table 2 (25 KHZ Bandwidth)

[Paired frequencies (MHz)]

Remote transmit	Master transmit
928.0125	952.0125
.0375	.0375
.0625	.0625
.0875	.0875
.1125	.1125
.1375	.1375
.1625	.1625
.1875	.1875
.2125	.2125
.2375	.2375
.2625	.2625
.2875	.2875
.3125	.3125
.3375	.3375
.3625	.3625
.3875	.3875
.4125	.4125
.4375	.4375
.4625	.4625
.4875	.4875
.5125	.5125
.5375	.5375
.5625	.5625
.5875	.5875
.6125	.6125
.6375	.6375
.6625	.6625
.6875	.6875
.7125	.7125
.7375	.7375
.7625	.7625
.7875	.7875
.8125	.8125
923.8375	952.8375

Unpaired Frequencies (MHz)

956.2625	956.3375	956.4125
956.2875	956.3625	956.4375
956.3125	956.3875	

(11) Frequencies listed in this paragraph are available for Part 22 Public Land Mobile Service users. They are available for shared use by Part 94 users for multiple address operations after January 1, 1987, only if frequencies listed in paragraph (1) of this section are exhausted in a particular geographic area. The frequencies in this pool may be assigned for paired or unpaired operation. If paired, the lower frequency shall be for the remote unit use. Applications for these frequencies shall be subject to the conditiona outlined in § 22.27 of this chapter.

Table 3—Public Mobile Service Category Frequencies (MHz)

[12.5 kHz bandwidth]

928.85625	959.85625
.86875	.86875
.88125	.88125
.89375	89375
.90625	.90625
.91875	.91875
.93125	.93125
.94375	.94375
.95625	.95625
.96875	.96875
.98125	.98125
928.99375	959.99375

25 kHz bandwidth

928.8625	959.8625
928.8875	959.8875
928.9125	959.9125
928.9375	959.9375
928.9625	959.9625
928.9875	959.9875

(iii) Equivalent power and antenna heights for multiple address master stations.

Antenna height (AAT) in feet	Maximum effective radiated power	
	Watts	dBW
Above 1,000	35	15
901–1,000	35	15
801–900	45	16
701–800	55	17
601–700	80	19
501–600	125	21
401–500	200	23
301–400	250	24
Up to 300	400	26

* * * * *

(2) Fixed point-to-point frequencies.

(i) Table 4 50 kHz bandwidth.

* * * * *

(ii) Table 5 100 kHz bandwidth.

* * * * *

(iii) Table 6 200 kHz bandwidth.

* * * * *

4. Section 94.71 is amended by revising the table and footnotes 6 and 7 in paragraph (b) to read as follows:

§ 94.71 Emission and bandwidth limitations.

(a) * * *

(b) * * *

Frequency band (MHz)	Maximum authorized bandwidth
928–929	12.5 kHz [1, 7]
952–960	12.5, 50, 100, or 200 kHz [1, 6, 7]

* * * * *

[6] 12.5 kHz applies only to the frequencies listed in §§ 94.65(a)(1) (i) and (ii).

[7] For frequencies listed in §§ 94.65(a)(1)(i), consideration will be given on a case-by-case basis to authorizing bandwidths of up to 50 kHz.

5. Section 94.73 is amended by revising footnotes 1 and 3 in paragraph (a)(2).

§ 94.73 Power limitations.

(a) * * *

(1) * * *

(2) * * *

[1] For multiple address operations see Section 94.65(a)(1)(iii).

(2) * * *

[3] For multiple address operations in the 952–960 MHz band see § 94.65(a)(1)(iii). When an omnidirectional transmitting antenna is authorized in the 2150–2160 MHz band the maximum power shall be 60 dBm.

* * * * *

[FR Doc. 87–4136 Filed 2–26–87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 2, 90, and 97

[General Docket 87–14; FCC 87–45]

Proposed Allocations for the 216–225 MHz Band

AGENCY: Federal Communications Commission.

SUMMARY: This action proposes allocations for the 216–225 MHz band. It proposes a new primary allocation of 2 MHz for the land mobile service, an allocation of 3 MHz on an exclusive basis for the amateur service and no new allocation for the fixed service. This action is necessary to resolve an outstanding issue of the proceeding that implemented the results of the 1979 World Administrative Radio Conference.

DATES: Comments are due April 6, 1987; reply comments are due April 21, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Fred Thomas, telephone (202) 653–8112.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in General Docket 87–14, FCC 87–45, adopted February 2, 1987, and Released February 12, 1987.

The full text of this Commission decision is available for inspection and copying during the normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of the Notice of Proposed Rule Making

1. In this rule making, the Commission proposes allocations for the 216–225 MHz band, which has been used to meet government radiolocation requirements. It addresses an outstanding allocation issue of General Docket 80–739, Implementation of the 1979, World Administrative Radio Conference, as well as three petitions requesting allocation changes in this band. The petitions were submitted by Land Mobile Communications Council, Sideband Technology, Inc. and LAOAD Radio and Microwave Communications Consultants.

2. We are proposing to allocate the 216–225 MHz band as follows: (1) maintain the primary maritime mobile allocation in the 216–220 MHz band; (2) maintain the secondary aeronautical mobile, fixed and land mobile allocations in the 216–220 MHz band for telemetry operations only; (3) reallocate the 220–222 MHz band on a primary basis to the land mobile service for both government and non-government operations and delete the existing primary allocations to the amateur, fixed and mobile serivces; and (4) maintain the primary amateur allocation in the 222–225 MHz band and delete the existing primary allocation to the fixed and mobile services. The primary allocation to the radiolocation service for government operations in the 216–225 MHz band would be maintained until 1990, when radiolocation would become secondary except for one Navy radar system. Specific operating rules for the land mobile service at 220–222 MHz would be developed in a further proceeding.

3. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

4. This proceeding suggests a proposal which may significantly impact on small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, public comment is requested on the initial regulatory flexibility analysis set out in the Commission's complete decision.

5. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to propose no new or modified information collection requirements on the public.

6. Pursuant to applicable procedures set forth in § 1.415 and 1.419 of the Commission's Rules, 47 CFR § 1.415 and 1.419, interested parties may file comments on or before April 6, 1987 and reply comments on or before April 21, 1987. All relevant and timely comments will be considered by the Commission before final action is taken in the proceeding.

Ordering Clause

7. This action is taken pursuant to 47 U.S.C. 154(i), 303(c), 303(f), 303(g), 303(r) and 332.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–4143 Filed 2–26–87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86–517, RM–5391]

Radio Broadcasting Services; Midland, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by JOSI Broadcasting Corporation proposing the substitution of Channel 227C2 for 226A at Midland, Michigan, and modification of the Class A license for Station WKQZ(FM). The allocation could provide Midland with its second wide area coverage channel. Concurrence of the Canadian government is required for the allocation of Channel 227C2 at Midland.

DATES: Comments must be filed on or before April 13, 1987, and reply comments on or before April 28, 1987.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Robert W. Healy, Gordon & Healy, 1821 Jefferson Place NW., Washington, DC 20036, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–517, adopted December 24, 1986 and released February 19, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission Consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division.

[FR Doc. 87–4137 Filed 2–26–87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86–516, RM–5515]

Radio Broadcasting Services; Marshall, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by KMHL Broadcasting Company, proposing the substitution of FM Class C1 Channel 259 for Channel 261A at Marshall, Minnesota, and modification of the license for Station KKCK(FM) at Marshall to specify operation on the higher class of channel. There is a site restriction 15.4 kilometers (9.6 miles) west of the community. This proposal could provide a first wide coverage area station to Marshall.

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DATES: Comments must be filed on or before April 13, 1987, and reply comments on or before April 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: M. Scott Johnson, Lynn M. Clancy, Gardner, Carton and Douglas, 1875 Eye Street, NW., Suite 1050, Washington, DC 20006–5472.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–516 adopted December 24, 1986 and released February 19, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch Mass Media Bureau.

[FR Doc. 87–4138 Filed 2–26–87; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–20, RM–5544]

Radio Broadcasting Services; Caldwell, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by BCB Communications proposing the allotment of Channel 297A to Caldwell, Texas, as that community's first local FM service.

DATES: Comments must be filed on or before April 13, 1987, and reply comments on or before April 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Harry C. Martin, Esquire, Reddy, Begley & Martin, 2033 M Street, NW., Suite 500, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–20 adopted Jan. 30, 1987, and released February 19, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission Consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–4139 Filed 2–26–87; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of reports; notice of public meetings; tentative hearing dates.

SUMMARY: The Pacific Fishery Management Council (Council) has begun its annual management process for the 1987 ocean salmon fishery as specified under the final salmon management framework amendment. The Council's Salmon Plan Development Team (SPDT) and staff economist are currently drafting two reports which will be available to the public about the first week in March. The first report, "Review of 1986 Ocean Salmon Fisheries," provides a summary of last year's ocean salmon fisheries and assesses how well the Council's management objectives were met in 1986. The second report is entitled "Stock Abundance Analysis for 1987 Ocean Salmon Fisheries" and provides information on expected allowable harvests for 1987. Both reports will be reviewed by the Council at its March meeting in Portland, Oregon, and will help guide the development of management options for 1987.

DATES: Written comments will be accepted until April 10, 1987. Council reports which summarize the 1986 salmon season and project the expected salmon stock abundance for 1987 will be available from the Council office March 4, 1987. See **"SUPPLEMENTARY INFORMATION"** for the dates and times for the scheduled meetings. Public hearings for review of the options are tentatively scheduled as follows: March 31, 1987, in Sacramento, California, and Coos Bay, Oregon; April 1, 1987, in Astoria, Oregon, and Eureka California; and April 6, 1987, in Seattle, Washington.

ADDRESSES: Send written comments to Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 200 SW. First Avenue, Portland, Oregon 97201. See **"SUPPLEMENTARY INFORMATION"** for the addresses of the meetings.

FOR FURTHER INFORMATION CONTACT: Joseph C. Greenley, 503–221–6352.

SUPPLEMENTARY INFORMATION: An impact analysis of the Council's final proposed management options will be developed by the SPDT and be available to the public shortly after the March meeting. After the Council meets in April to consider the input from the public hearings and hear additional comments from its advisors and the public it will then develop its final recommendations for the 1987 ocean salmon fishing season regulations for submission to the Secretary of Commerce. The SPDT will prepare a final impact analysis report of the Council's recommendations. Further details of each meeting will be available in the Council's news releases and the **Federal Register** or by contacting the Council office directly. Except for designated executive sessions, all Council and Council-sponsored meetings are open to the public.

The Council's schedule for development of ocean salmon fishery management recommendations for 1987 follows:

March 9, 1987—The Council's Salmon Advisory Subpanel (SAS) meets at the Red Lion Inn-Columbia River, 1401 North Hayden Island Drive, Portland, Oregon, to develop preliminary 1987 management options for the Council's review at 9:00 a.m.

March 11–13—The Council meets at the Red Lion Inn-Columbia River, Portland Oregon, to adopt proposed management options for public review at 9:00 a.m.

(On March 11, the Council will review the recommendations of its advisors and the public before adopting preliminary management options for the SPDT to analyze. On March 12–13, after reviewing the analysis, advisors' comments, and public recommendations, the Council will adopt management options for public review)

March 24, 1987—The SPDT's analysis of the Council's management options which are proposed for public review are available to the public from the Council office.

March 31–April 6—Public hearings are held to review the proposed management options adopted by the Council at the March meeting.

April 6, 1987—The Council's SAS meets at the Hilton Airport Hotel, Seattle, Washington, to develop final regulatory recommendations for the Council's review at 7:00 p.m.

April 7–10—The Council meets at the Hilton Airport Hotel, Seattle, Washington, to adopt final 1987 regulatory recommendations, tentatively set to begin at 9:00 a.m.

Dated: February 20, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87–4012 Filed 2–26–87; 8:45 am]

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Notices

Federal Register
Vol. 52, No. 39
Friday, February 27, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

VISTA Literacy Corps Guidelines

AGENCY: Action.

ACTION: Final notice of VISTA literacy corps guidelines.

SUMMARY: This notice sets forth the guidelines under which the new VISTA Literacy Corps will operate. Certain modifications have been made to the proposed guidelines in response to comments and recommendations from program sponsors, a member of Congress, Agency staff and the general public. These final guidelines, drafted specifically for the VISTA Literacy Corps, will supplement the current guidelines for the VISTA program as published in the July 31, 1985 **Federal Register**. Applications for sponsorship of Literacy Corps projects will be reviewed in accordance with these criteria.

DATE: The VISTA Literacy Corps guidelines shall take effect on April 13, 1987.

FOR FURTHER INFORMATION CONTACT: Schelly Reid, Special Assistant to the Director of VISTA for Literacy, ACTION, 806 Connecticut Avenue, NW., Washington, DC, 202–634–9445.

SUPPLEMENTARY INFORMATION: These guidelines are issued pursuant to the authority contained in the Domestic Volunteer Service Act Amendments of 1986 (Pub. L. 99–551). This legislation established a new literacy component within VISTA by amending Title I Part A of Pub. L. 93–113 (42 U.S.C. 4951, *et seq.*) and adding a new section 109A.

Section 420 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5060) defines the term "regulation" and details the procedures to be followed in prescribing regulations. Through its broad definition of a regulation, the section requires that "any rule, regulation, guideline, interpretation, order or requirement of general applicability" issued by the Director of ACTION must be published with a 30 day comment period. These guidelines, although not regulations under the Administrative Procedure Act (5 U.S.C. 551, *et seq.*), may, in whole or in part, be required by our Act to be published in proposed form for comments.

The VISTA Literacy Corps Guidelines were published in proposed form in the **Federal Register** for comment on January 14, 1987 (55 FR, 1501–1502).

ACTION has determined that the Literacy Corps Guidelines are not major rules as defined in E.O. 12291. This determination is based on the proposed grants' or projects' size and purpose, none of which will result in the economic impact of a major rule.

Discussion of Comments and Response

A total of eight written comments were received in response to the proposed guidelines for the VISTA Literacy Corps. Each recommendation has been reviewed and duly considered. The following text represents the Agency response to the substantive comments as well as any subsequent modifications and individual word changes.

Generally the comments revealed a need for further clarification of both the nature and scope of the guidelines. Particular concern were raised relative to the anti-poverty aspects of the guidelines; one-on-one literacy instruction; the role of statewide affiliates of national literacy organizations; private sector involvement in the mobilization of resources; and the purpose statement for the VISTA Literacy Corps. These issues were addressed in specific revisions to the guidelines as originally proposed.

I. Purpose

In response to a comment regarding the need to re-emphasize that VISTA Literacy Corps Volunteers will be utilzied in the generation of "local, State, Federal and private sector" resources, the purpose paragraph has been amended to restate verbatim the statutory language.

II. Programmatic Goals and Direction

The programmatic goals were included to generate some interest among potential program sponsors in literacy activities that remain relatively unexplored and merit further examination. However, service delivery to those low-income individuals most in need of assistance is the number one priority of the VISTA Literacy Corps.

The Agency recognizes the proven and unique success of VISTA Volunteers in their traditional catalytic roles as fundraisers, program developers, tutor trainers, and recruiters. The Agency plans to accelerate the achievement of the priorities and criteria set forth in the statute.

The Agency is encouraging innovative approaches in the recruitment, training and retention of individuals most in need of tutoring; in the recruitment and training of community tutors; and in the development of multifaceted strategies for ameliorating illiteracy. VISTA Literacy Corps Volunteers will play an integral role in facilitating these efforts.

The programmatic goals serve as guidance to potential program sponsors and should not be construed as requirements for VISTA Literacy Corps Volunteers to provide direct services.

One respondent asserted that two of the goals were redundant. Dual remedial instruction of parents with their children is recognized as an effective preventive measure in stemming the intergenerational transfer of illiteracy. However, it is the opinion of the Agency that reliance on this methodology alone cannot mitigate this pattern. Program flexibility is an essential element in accommodating the diverse learning needs of children who may be educationally at risk, as well as adult learners. Consequently, the Agency will retain these two provisions as separate goals.

In addition, some comments expressed concern regarding the goal that would "increase significantly the reliance on private sector resources". Literacy networks have benefitted greatly through the contributions and participation of sponsoring organizations, such as, libraries and Adult Basic Education programs which are financed primarily through public sector sources. Therefore, the Agency has rewritten this provision as follows: "to increase significantly the development of financial and volunteer resources through public/private sector cooperation to ensure the permanence and eventual self-sufficiency of effective literacy efforts".

III. Priority Considerations

The Agency received several comments that the guidelines understated the anti-poverty criteria and focus of the VISTA Literacy Corps. Specific references in the Literacy Corps guidelines to serving disadvantaged persons are explicit in the VISTA authorizing statute (Pub. L. 93–113) and accordingly, the VISTA Literacy Corps guidelines have been amended to reflect the anti-poverty focus.

IV. One-On-One Tutoring

The Domestic Volunteer Service Act Amendments of 1986 (Pub. L. 99–551) authorized one-on-one literacy instruction of low-income individuals by Literacy Corps Volunteers (section 109(d)). However, no funds were appropriated by the Congress for this component of the Literacy Corps during FY 87. Based on a comment received, the guidelines have been changed to reflect the statutory language.

V. Statewide Affiliates

The proposed guidelines precluded the use of VISTA Literacy Corps Volunteers in the creation of a statewide affiliate of a national organization. Several respondents commented on the effectiveness of VISTA Volunteers in establishing a permanent foundation and network of state and local literacy providers from which to expand and augment existing literacy services. This original prohibition has been removed from the final guidelines.

Accordingly, the guidelines are published in final form to read as follows:

Purpose:

VISTA is charged with the responsibility of strengthening and supplementing efforts to alleviate and eliminate poverty and poverty-related problems in the United States by using community, public, private sector and volunteer resources to achieve this commitment. In keeping with this mission, the VISTA Literacy Corps will encourage partnerships; promote voluntarism; enhance state and local literacy activities; mobilize resources; increase the capacity of the low-income community to address their literacy needs; and develop a comprehensive approach for combatting illiteracy. As in the case with other VISTA projects, potential program sponsors should include in their plan provisions for the eventual absorption and assumption of VISTA literacy volunteers' activities and contributions upon discontinuation of this federal support.

The purpose of the VISTA Literacy Corps is to use VISTA Volunteers in developing, strengthening, supplementing and expanding the literacy efforts of both public and private nonprofit organizations at the local, State, and Federal levels to mobilize local, State, Federal, and private sector financial and volunteer resources to address the problem of illiteracy throughout the United States.

Criteria and Priority Considerations For The Selection of VISTA Literacy Corps Projects

VISTA Literacy Corps Volunteers will be assigned in a manner consistent with the VISTA equitable distribution requirement of section 414 of Pub. L. 93–113 and based upon current national poverty levels and literacy statistics. In accordance with section 109(f), all VISTA Volunteers serving in literacy projects as of October 1, 1986, became part of the Literacy Corps. New VISTA Literacy Corps Volunteers will be recruited to supplement and not supplant ongoing VISTA literacy activities.

VISTA Literacy Corps Volunteers will be assigned to programs and projects that meet the requisite anti-poverty criteria under Part A and that provide assistance to illiterate and functionally illiterate individuals who are either unserved or underserved by literacy education programs. The legislation places a "special emphasis on targeting disadvantaged individuals with the highest risk of illiteracy, and individuals having the lowest reading abilities and educational level of competence."

Organizations to which Literacy Corps Volunteers may be assigned include public or private nonprofit agencies and organizations; local, State and national literacy councils and organizations; community-based nonprofit organizations; local and State education agencies; local and State agencies administering adult basic education programs; educational institutions; libraries; anti-poverty organizations; local, municipal, and State governmental entities; and administrative entities designated to administer job training plans under the Job Training Partnership Act.

Priority consideration in the assignment of volunteers will be given to the following literacy programs and projects:

(a) Those that assist illiterate individuals in greatest need of literacy training who reside in unserved or underserved areas with the highest concentration of illiteracy and of low-income individual and families;

(b) Those that serve individuals reading at the zero to fourth grade levels;

(c) Those that focus on providing services to high risk populations, e.g., school dropouts and minority youth;

(d) Those that operate in areas with the highest concentration of individuals and families living at or below the poverty level;

(e) Those providing literacy services to parents of disadvantaged children between the ages of two and eight who may be educationally at risk; and

(f) Statewide programs and projects that support the creation of new literacy efforts, encourage the coordination of intrastate literacy efforts and provide technical assistance to local literacy efforts.

One-On-One Tutoring

Section 109(d) authorizes the assignment of volunteers to projects and programs that primarily use volunteers for one-on-one tutoring of low-income individuals. However, no funds have been appropriated for this component of the Literacy Corps.

Programmatic Goals and Direction

In addition to the aforementioned criteria, the Agency will encourage potential VISTA Literacy Corps sponsors in developing programs that will include efforts to:

- Assistant in the eradication of illiteracy and to curb the trend toward its intergenerational transfer;
- Bolster ongoing literacy efforts through public and private sector partnerships, interagency agreements and other cooperative arrangements;
- Increase significantly the development of financial and volunteer resources through public/private sector cooperation to ensure the permanence and eventual self-sufficiency of effective literacy efforts;
- Heighten public awareness of how individuals, organizations, and communities can contribute toward literacy efforts and further generate local support;
- Lower barriers to employment by improving the basic reading skills of those who are unemployed or marginally employed;
- Ensure that volunteers working in the literacy field are provided with appropriate training, adequate supervision, and periodic interim instruction;
- Screen potential tutors and pre-test students to discern more accurately their capabilities as well as their special needs;

whether arising by general statute or

Reinsurance Agreement with FCIC with from records of previous insuring

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• Increase the effectiveness and ensure accountability of literacy programs through the measurement of student performance, attrition and retention data;

• Institute the use of learner advocates or other pesonal support systems in guiding literacy students through the learning process as they graduate on to the next level of achievement; and

• Provide dual remedial instruction of adults with their children.

Signed at Washington, DC this 24th day of February, 1987.

Donna M. Alvarado,

Director.

[FR Doc. 87-4236 Filed 2-26-87; 8:45 am]

BILLING CODE 6050-26-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Doc. No. 3824S]

Privacy Act; System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of revision of Privacy Act system of records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) is amending one of its Systems of Records maintained by the Federal Crop Insurance Corporation (FCIC), titled "USDA/FCIC–8—List of Ineligible Producers USDA/FCIC." This action is necessary to add the category of individuals, those who are ineligible due to non-payment of premium, and to add three new routine uses. The first is to report individuals who have been determined to be ineligible for Federal Crop Insurance on a specific crop(s) due to excessive losses, questionable farming practices, or non-payment of premium, or who have contracts voided due to suspected or apparent fraud. The second and third uses allow information which is relevant and necessary to litigation to be disclosed, in certain limited circumstances, to the Department of Justice and in proceedings before a court or adjudicative body.

The first intended effect of this notice is to add a routine use of the system to enable FCIC to exchange information with private insurance companies under an Agency Sales and Service Contract or a Reinsurance Agreement regarding persons determined by FCIC to be ineligible for crop insurance or whose contract is determined to be ineligible for reinsurance. The second intended effect is to provide for limited release of information in connection with litigation.

DATE: This notice will be adopted without further publication in the **Federal Register** on March 30, 1987, unless modified by a subsequent notice to incorporate comments received from the public. Comments must be received by the contact person listed below on or before March 30, 1987, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Ralph F. Satterfield, Federal Crop Insurance Corporation, Room 4606, South Building, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 382–9714.

SUPPLEMENTARY INFORMATION: USDA hereby amends its system of records, USDA/FCIC–8, published in the **Federal Register** at 51 FR 10036, March 24, 1986, by amending the "Categories of Individuals Covered by the System" and the "Routine use of records maintained in its system, including categories of users and the purposes of such uses." These amendments will permit referral of information regarding policyholder ineligibility to private insurance companies under an Agency Sales and Service Contract with respect to those individuals who have been determined by FCIC to be ineligible for crop insurance, and to private insurance companies under a Reinsurance Agreement with FCIC with respect to individuals whose crop insurance policies are reinsured by FCIC.

By this action FCIC will (1) maintain a list of those policyholders determined by FCIC to be ineligible for Federal Crop Insurance or whose contract is determined to be ineligible for reinsurance on a specific crop(s) due to excessive losses, questionable farming practices, or non-payment of premium, or who have contracts voided due to suspected or apparent fraud; and (2) exchange information on the ineligibility of producers between private insurance companies holding either an Agency Sales and Service Contract or a Reinsurance Agreement with FCIC.

In addition, new routine uses concerning the release of records to the Department of Justice and in proceedings before a court or adjudicative body have been added to USDA/FCIC–8. These new uses are being promulgated to address concerns expressed by the district court in *Krohn* v. *Department of Justice*, Civil No. 78–1536 (D.D.C. March 19, 1984). In *Krohn*, an FBI routine use providing for disclosure "during appropriate legal proceedings" was held to be "vague and capable of being construed so broadly as to encompass all legal proceedings • • • (and) would make disclosure the rule rather than the exception and thus subvert the purposes of the (Privacy) Act." The new routine uses are designed to restrict the amount of information released during litigation.

Accordingly, notice is hereby given that USDA amends its System of Records maintained by the Federal Crop Insurance Corporation (FCIC) titled "USDA/FCIC–8—List of Ineligible Producers USDA/FCIC", to read as set forth below.

Signed at Washington, DC, on February 20, 1987.

Richard E. Lyng,

Secretary of Agriculture.

USDA/FCIC–8

SYSTEM NAME:

List of Ineligible Producers, USDA/FCIC.

SYSTEM LOCATION:

Kansas City Operations Office, Federal Crop Insurance Corporation, 9435 Holmes, Kansas City, Missouri 64131; Field Actuarial Offices, offices of Field Operations Office Directors; and, each service office of the Federal Crop Insurance Corporation. Addresses of each such field office may be obtained from the Director, Field Operations Division, FCIC, Washington, DC 20250.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been determined as not eligible for Federal Crop Insurance on a specific crop(s) due to excessive losses, questionable farming practices, or non-payment of premium, or who have contracts voided due to suspected or apparent fraud.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record contains only lists of names of producers and prior policy numbers, if any, for a specific state and county.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 1501–1520; 7 CFR 2.73.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to the Department of Justice when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(3) Disclosure in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the court is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(5) Referral of information regarding policyholder ineligibility to private insurance companies under an Agency Sales and Service Contract with respect to those policyholders determined by FCIC to be ineligible for Federal Crop Insurance on a specific crop(s) due to excessive losses, questionable farming practices, or non-payment of premium, or who have contracts voided due to suspected or apparent fraud.

(6) Referral of information regarding policyholder ineligibility to private insurance companies under a Reinsurance Agreement with FCIC with respect to individuals whose crop insurance policies are reinsured by FCIC, and whose policies are determined by FCIC to be ineligible for reinsurance on a specific crop(s) due to excessive losses, questionable farming practices, or non-payment of premium, or who have contracts voided due to suspected or apparent fraud.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders by county, and on magnetic tape.

RETRIEVABILITY:

Records are indexed by State, county, and name of individual.

SAFEGUARDS:

Records are accessible only to authorized personnel and are maintained in offices which are locked during non-working hours.

RETENTION AND DISPOSAL:

Records are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Federal Crop Insurance Corporation, USDA, Washington, DC 20250.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records or information as to whether the system contains records pertaining to such individual from the Director, Field Operations Division, FCIC, Washington, DC 20250. Addresses of locations where records are maintained may also be obtained from the above office.

A request for information pertaining to an individual should contain (1) Individual's name and address, (2) State(s) and county(ies) where such individual farms, and (3) the individual policy number(s), if known.

RECORD ACCESS PROCEDURES:

An individual may obtain information as to the procedures for gaining access to a record in the system which pertains to such individual by submitting a written request to the appropriate official referred to in the preceding paragraph.

CONTESTING RECORD PROCEDURES:

Same as access procedure.

RECORD SOURCE CATEGORIES:

Information in this system comes from reports of inspections made by FCIC personnel of producer's operations and from records of previous insuring experience.

[FR Doc. 87-4094 Filed 2-26-87; 8:45 am]

BILLING CODE 3410-01-M

[Docket No. 86-408]

Privacy Act of 1974, System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of revision of Privacy Act System of Records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) is revising five of its Privacy Act Systems of Records; is deleting one of its systems of records; and is adding two systems of records to the systems of records maintained by the Animal and Plant Health Inspection Service (APHIS).

DATE: This action is effective as of April 28, 1987. Comments must be received by the contact person listed below on or before April 28, 1987.

ADDRESSES: Interested persons may submit written comments to Stasia Hutchison, Public Affairs Specialist, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 732–Federal Building, Hyattsville, Maryland 20782; telephone (301) 436–7776, (FTS) 436–7776.

FOR FURTHER INFORMATION CONTACT: Stasia Hutchison, Public Affairs Specialist, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 732-Federal Building, Hyattsville, Maryland 20782; telephone (301) 436–7776, (FTS) 436–7776.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act, 5 U.S.C. 552a, USDA hereby takes the following action: I. Five systems of records maintained by APHIS are revised for the following reasons:

(1) USDA/APHIS–1, "Plant Protection and Quarantine—Regulatory Actions." The purpose of this revision to the system of records is to identify changes in record system location; indicate the addition of "complaints, consent decisions, and decisions and orders in relation to civil penalties assessed by [USDA]" to the categories of records; and indicate that records will be retrieved by case number.

(2) USDA/APHIS–2, "Veterinary Services—Records of Accredited Veterinarians." The purpose of this revision to the system of records is to identify changes in record system location; indicate the addition of "social

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security number, mailing address, phone number, type of practice" to the categories of records; indicate that records will be maintained electronically and will be electronically retrieved by case number; to indicate changes in procedures for safeguarding records; and changes in retention and disposal of records.

(3) USDA/APHIS–3, "Veterinary Services—Animal Quarantine Regulatory Actions." The purpose of this revision to the system of records is to identify changes in record system location and changes in retention and disposal of records.

(4) USDA/APHIS–4, "Veterinary Services—Animal Welfare and Horse Protection Regulatory Actions." The purpose of this revision to the system of records is to identify changes in record system location and changes in retention and disposal of records.

(5) USDA/APHIS–6, "Veterinary Services—Brucellosis Information System." The purpose of this revision to the system of records is to identify changes in retention and disposal of records.

II. USDA/APHIS–5, "Veterinary Services—Candidates for Animal Disease Control Positions in Foreign Countries" is hereby deleted because these records are no longer maintained by USDA.

III. Two new systems of records are added as follows:

(1) A new system of records, USDA/APHIS–7, "Animal Damage Control Non-Federal Personnel Records" is being added. The addition is prompted by Congress's transfer of the Animal Damage Control program (ADC) to USDA in the Agriculture, Rural Development, and Related Agencies Appropriations Act of 1986, as enacted on December 19, 1985, Pub. L. No. 99–190. The ADC was established by the Act of March 2, 1931. The statute authorizes programs for research and operational control of depredating animals injurious to agriculture, horticulture, forestry, animal husbandry, wild game animals, fur bearing animals and birds, and for the protection of stock and other domestic animals through the suppression of animal diseases in predatory and other wild animals. From 1931 until 1939, the ADC was administered by USDA through the then Bureau of Biological Survey. From 1939 to December 19, 1985, the program was administered by the Fish and Wildlife Service of the United States Department of the Interior (USDI), on the basis that the authority to administer the Act of March 2, 1931, along with the Bureau of Biological Survey, had been transferred to USDI by Reorganization Plan No. II of 1939. The Secretary of Agriculture has delegated to the Assistant Secretary for Marketing and Inspection Services and the Administrator, APHIS, the responsibility and the authority for administering the Animal Damage Control Act of 1931 (7 U.S.C. 426, 426b). Maintenance of this system of records is a necessary part of administering the ADC program.

(2) A new system of records, USDA/APHIS–8, "Veterinary Services—Animal Welfare" is being added. The purpose of this system of records is to ensure the maintenance of records essential for the implementation and enforcement of the Animal Welfare Act (AWA). Maintaining this system will help increase efficiency in complying with the regulations and standards of the AWA.

In addition, new routine uses concerning the release of records to the Department of Justice and in proceedings before a court or adjudicative body have been added to USDA/APHIS–1,2,3,4, and 6, and included in USDA/APHIS–7 and USDA/APHIS–8. These new uses are being promulgated to address concerns expressed by the district court in *Krohn v. Department of Justice*, Civil No. 78–1536 (D.D.C. March 19, 1984). In *Krohn*, an FBI routine use providing for disclosure "during appropriate legal proceedings" was held to be "vague and capable of being construed so broadly as to encompass all legal proceedings * * * (and) would make disclosure as a 'routine use' the rule rather than the exception and thus subvert the purposes of the (Privacy) Act." The new routine uses are designed to restrict the amount of information released during litigation.

A "Report on New System" for each system of records, required by 5 U.S.C. 552a(o), as implemented by the OMB Circular A–130, was sent to the President of the Senate, the Speaker of the House of Representatives, and the Office of Management and Budget on February 20, 1987.

Signed at Washington, DC on February 20, 1987.

Richard E. Lyng,

Secretary.

USDA/APHIS—1

SYSTEM NAME:

Plant Protection and Quarantine—Regulatory Actions, USDA/APHIS.

SYSTEM LOCATION:

Plant Protection and Quarantine Program, USDA/APHIS, Room 643 Federal Building, Hyattsville, MD 20782.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Violators and alleged violators of plant protection and quarantine laws and regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of case files on violators and alleged violators and contains copies of violation report forms, compliance agreements, employee or other witness statements, warning notices, Office of the General Counsel (OGC) recommendations to the Department of Justice and court disposition documents. Complaints, consent decisions, and decisions and orders in relation to civil penalties assessed by the U.S. Department of Agriculture.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 150gg, 163.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. (2) Disclosure to the Department of Justice for use in litigation when the agency, or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation; provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected. (3) Disclosure in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when the agency, or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee, or the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records is relevant and necessary to the litigation; provided, however, that in each case, the agency determines that use of such records is relevant and necessary to the litigation; provided, however that in each case, the agency determines that disclosure of the records to the court is a use of the information contained in the records that is compatible with the purpose for which the records were collected. (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders in metal file cabinets.

RETRIEVABILITY:

Records are manually retrieved by case numbers assigned to individual violators and alleged violators.

SAFEGUARDS:

Records are maintained in locked files with APHIS employees in attendance during working hours.

RETENTION AND DISPOSAL:

Records are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Administrator, Plant Protection and Quarantine, USDA/APHIS, 14th & Independence Avenue, S.W., Washington, D.C. 20250.

NOTIFICATION PROCEDURE:

All inquiries should be addressed to: APHIS Privacy Act Coordinator, Office of the Administrator, USDA/APHIS, Room 732 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

RECORD ACCESS PROCEDURES:

All inquiries should be addressed to the APHIS Privacy Act Coordinator.

CONTESTING RECORD PROCEDURES:

All inquiries should be addressed to the APHIS Privacy Act Coordinator.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system has been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f). See 7 CFR 1.23. Individual access to these records would impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action to escape prosecution. Any individual who feels, however, that he has been denied any right, privilege or benefit for which he would otherwise be eligible as a result of the maintenance of such material may request access to the material. Such requests should be addressed to:

APHIS Privacy Act Coordinator, Office of the Administrator, USDA/APHIS, Room 732 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

USDA/APHIS—2

SYSTEM NAME:

Veterinary Services—Records of Accredited Veterinarians, USDA/APHIS.

SYSTEM LOCATION:

Veterinary Services Program, USDA/APHIS, Room 828AA Federal Building, Hyattsville, MD 20782.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Private veterinary practitioners who are accredited by the Federal and State governments to issue health certificates for the interstate and international movement of livestock and participate in cooperative State/Federal animal health programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Record includes name of accredited veterinarian, social security number, mailing address, phone number, type of practice, State in which accredited State license number, college and date of graduation, and score on accreditation examination. (2) Record also includes material pertaining to alleged violations of accreditation standards. If allegations are proven true the record includes the disposition of the case which may be revocation of accreditation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

21 U.S.C. 105, 111–114a–1, 116, 125, 134b, 134f.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referral to State Animal Health officials to certify that a particular individual is indeed accredited. (2) Referral to State veterinary examining boards to certify that a particular individual is indeed accredited. (3) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. (4) Disclosure to the Department of Justice for use in litigation when the agency, or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation; provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected. (5) Disclosure in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when the agency, or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee, or the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation; provided, however, that in each case, the agency determines that disclosure of the records to the court is a use of the information contained in the records that is compatible with the purpose for which the records were collected. (6) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

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POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are electronically stored at the Washington Computer Center.

RETRIEVABILITY:

Records are electronically retrieved by alphabetized names and social security numbers.

SAFEGUARDS:

The computer files and tapes are kept in a safeguarded environment with access only by authorized personnel.

RETENTION AND DISPOSAL:

Records are maintained for the individual's lifetime or until no longer licensed.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Administrator, Veterinary Services, USDA/APHIS, 14th & Independence Avenue, SW., Washington, DC 20250.

NOTIFICATION PROCEDURE:

All inquiries should be addressed to: APHIS Privacy Act Coordinator, Office of the Administrator, USDA/APHIS, Room 732 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

RECORD ACCESS PROCEDURES:

All inquiries should be addressed to the APHIS Privacy Act Coordinator.

CONTESTING RECORD PROCEDURES:

All inquiries should be addressed to the APHIS Privacy Act Coordinator.

RECORD SOURCE CATEGORIES:

Material is transcribed from documents submitted by the individual. Material is verified by State and Area Animal Health Officials which sometimes results in additional source material submitted by such officials.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The portions of this system which consist of investigatory material compiled for law enforcement purposes have been exempted pursuant to 5 U.S.C. 552a(k)(2) from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). See 7 CFR 1.23. Individual access to these records would impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action to escape prosecution. Any individual who feels, however, that he has been denied any right, privilege or benefit for which he would otherwise be eligible as a result of the maintenance of such material may request access to the material. Such requests should be addressed to: APHIS Privacy Act Coordinator, Office of the Administrator, USDA/APHIS, Room 732 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

USDA/APHIS—3

SYSTEM NAME:

Veterinary Services—Animal Quarantine Regulatory Actions, USDA/APHIS.

SYSTEM LOCATION:

Veterinary Services Program, USDA/APHIS, Room 821 Federal Building, Hyattsville, MD 20782.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Veterinarians; Livestock Market Operators; Livestock Haulers; Livestock Dealers, Buyers, and Brokers; Livestock Owners and Producers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigatory and case files of alleged violations of quarantine laws contain the alleged violator's name and address, type of infraction, and documentation of the alleged infraction. The file includes closed cases as well as the current status of those cases remaining unresolved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

21 U.S.C. 101–105, 111–134.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. (2) Disclosure to the Department of Justice for use in litigation when the agency, or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation; provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected. (3) Disclosure in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when the agency, or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee, or the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation; provided, however, that in each case, the agency determines that disclosure of the records to the court is a use of the information contained in the records that is compatible with the purpose for which the records were collected. (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders in metal file cabinets.

RETRIEVABILITY:

Numbered cases are cross-indexed by alphabetized names. Files are manually retrieved.

SAFEGUARDS:

Records are maintained in locked files with APHIS employees in attendance during working hours.

RETENTION AND DISPOSAL:

Precedent setting cases are destroyed 7 years after the case is closed. Routine cases are destroyed 5 years after the case is closed. Investigations not resulting in violations are destroyed 1 year after they are closed.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Administrator, Veterinary Services, USDA/APHIS, 14th & Independence Avenue, SW., Washington, D.C. 20250.

NOTIFICATION PROCEDURE:

All inquiries should be addressed to: APHIS Privacy Act Coordinator, Office of the Administrator, USDA/APHIS, Room 732 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

RECORD ACCESS PROCEDURES:

All inquiries should be addressed to the APHIS Privacy Act Coordinator.

CONTESTING RECORD PROCEDURES:

All inquiries should be addressed to the APHIS Privacy Act Coordinator.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system has been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f). See 7 CFR 1.23. Individual access to these records would impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action to escape prosecution. Any individual who feels, however, that he has been denied any right, privilege or benefit for which he would otherwise be eligible as a result of the maintenance of such material may request access to the material. Such requests should be addressed to: APHIS Privacy Act Coordinator, Office of the Administrator, USDA/APHIS, Room 732 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

USDA/APHIS—4

SYSTEM NAME:

Veterinary Services—Animal Welfare and Horse Protection Regulatory Actions, USDA/APHIS.

SYSTEM LOCATION:

Veterinary Services Program, USDA/APHIS, Room 821 Federal Building, Hyattsville, MD 20782.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Dealers, exhibitors, and other individuals required to be licensed or registered under the Federal Laboratory Animal Welfare Act of 1966, as amended. Operators of research facilities and other individuals required to be registered under the Federal Laboratory Animal Welfare Act of 1966, as amended. Horse trainers, owners, exhibitors, and other individuals subject to the Horse Protection Act of 1970.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigatory and case files contain the alleged violator's name and address, type of infraction, and documentation of the alleged infraction. The files include closed cases as well as the current status of those cases remaining unresolved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 2131 et seq.; 15 U.S.C. 1821 et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. (2) Disclosure to the Department of Justice for use in litigation when the agency, or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation; provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected. (3) Disclosure in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when the agency, or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee, or the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation; provided, however, that in each case, the agency determines that disclosure of the records to the court is a use of the information contained in the records that is compatible with the purpose for which the records were collected. (4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on index cards and in file folders in metal file cabinets.

RETRIEVABILITY:

Numbered cases are cross-indexed by alphabetized names. Files are manually retrieved.

SAFEGUARDS:

Records are maintained in locked files with APHIS employees in attendance during working hours.

RETENTION AND DISPOSAL:

Precedent setting cases are destroyed 7 years after the case is closed. Routine cases are destroyed 5 years after the case is closed. Investigations not resulting in violations are destroyed 1 year after they are closed.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Administrator, Veterinary Services, USDA/APHIS, 14th & Independence Avenue, SW., Washington, D.C. 20250.

NOTIFICATION PROCEDURE:

All inquiries should be addressed to: APHIS Privacy Act Coordinator, Office of the Administrator, USDA/APHIS, Room 732 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

RECORD ACCESS PROCEDURES:

All inquiries should be addressed to the APHIS Privacy Act Coordinator.

CONTESTING RECORD PROCEDURES:

All inquiries should be addressed to the APHIS Privacy Act Coordinator.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system has been exempted pursuant to 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f). See 7 CFR 1.23. Individual access to these records would impair investigations and alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action to escape prosecution. Any individual who feels, however, that he has been denied any right, privilege or benefit for which

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he would otherwise be eligible as a result of the maintenance of such material may request access to the material. Such requests should be addressed to: APHIS Privacy Act Coordinator, Office of the Administrator, USDA/APHIS, Room 732 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

USDA/APHIS—6

SYSTEM NAME:

Veterinary Services—Brucellosis Information System, USDA/APHIS.

SYSTEM LOCATION:

U.S. Department of Agriculture, Fort Collins Computer Center, Colorado, and each of the various States.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Herd owners whose animals or herds are tested, studied, or restricted because of brucellosis; livestock markets, slaughter establishments; and livestock dealers (including agents and brokers) handling livestock covered by the program; milk processing plants receiving milk or cream from dairy farms; laboratories conducting brucellosis program tests or procedures; State, Federal, and contractual personnel engaged in program activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information on herds and individual animals tested, studied, or restricted under the brucellosis program; epidemiologic studies; animals, specimens, or premises sampled, identified, inspected, tested, handled, or restricted under the brucellosis program by State, Federal or contractual personnel; animal identification, health and movement data of animals covered under program activities for traceback of disease from livestock markets, slaughter plants, and livestock dealers or livestock brokers or commission firms; milk and cream samples and related identification data for brucellosis testing from milk processing plants receiving fresh farm milk; and brucellosis test data from laboratories approved to do brucellosis program testing.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

21 U.S.C. 111, 112, 114, 114a–1, 115, 120, 121, 125, 134a–134f and Title 9, Code of Federal Regulations, Part 51 and Part 78.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records maintained in the computer system will be routinely used by the Federal and State government personnel for: (1) Detecting the foci of infection to reduce the rate of spread of infection to new herds; (2) evaluating brucellosis program activities of State, Federal, and contractual personnel; (3) preparing mailing labels and preaddressed forms to enhance field activities; (4) evaluating program effectiveness; (5) detecting factors of epidemiologic importance in containing or eliminating foci of infected herds; (6) assuring that brucellosis indemnities are promptly and properly paid; (7) notification of livestock owners with the animals at high risk of exposure to brucellosis because of livestock movements or an outbreak of disease or presence of quarantined premises in a community; (8) referral to the appropriate agency, whether Federal, State, local, or foreign, charged with responsibility of investigating or prosecuting a violation of law concerning animal disease control and eradication, or of enforcing or implementing a statute, rule, regulation, or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law concerning animal disease control and eradication, whether civil, criminal, or regulatory in nature, and either arising by general statute or particular program statute, or by rule, regulation, or court order issued pursuant thereto; (9) Disclosure to the Department of Justice for use in litigation when the agency, or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation; provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected. (10) Disclosure in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when the agency, or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee, or the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation; provided, however, that in each case, the agency determines that disclosure of the records to the court is a use of the information contained in the records that is compatible with the purpose for which the records were collected. (11) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records will be maintained on two mediums depending on how current they are. These are: (1) On-line disk storage and (2) Magnetic Tape.

RETRIEVABILITY:

Under this system, it will be possible to retrieve and organize data by any of the categories which have been recorded. This will greatly improve the ability to retrieve existing records and to serve the livestock industry in the eradication of brucellosis.

SAFEGUARDS:

The only individuals with access to this system are Federal and State government employees with a need to know. The data base is secured on a State-by-State basis. The brucellosis national planning staff has access to all information in the computerized system without restrictions. The computer files and tapes are kept in a safeguarded environment with access only by authorized personnel.

RETENTION AND DISPOSAL:

(1) Herd records are maintained in the data base as follows: (a) Infected herds not depopulated or sold out are always on-line. (b) Depopulated or sold out herds are archived. (c) Tested herds but not infected are kept on-line for 6 months after testing, and then archived on a fiscal year basis. Archived data is kept for 15 years. (2) Records pertaining to animals, specimens or premises sampled, identified, inspected, tested, handled, or restricted by State, Federal, or contractual personnel are kept on-line as long as the individual is working in brucellosis programs. Once employment or accreditation is terminated, the information is archived by fiscal year for 15 years. (3) Livestock market, slaughter establishments, livestock dealer, milk processing plant and laboratory records pertaining to animal or herd information are retained as described under (1) above.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Administrator, Veterinary Services, USDA/APHIS, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

NOTIFICATION PROCEDURE:

All inquiries should be addressed to: APHIS Privacy Act Coordinator, Office of the Administrator, USDA/APHIS, Room 732 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

RECORD ACCESS PROCEDURES:

All inquiries should be addressed to the APHIS Privacy Act Coordinator.

CONTESTING RECORD PROCEDURES:

All inquiries should be addressed to the APHIS Privacy Act Coordinator.

RECORD SOURCE CATEGORIES:

(1) Epidemiologic information for herds and animals is obtained from documents and reports completed by Federal and State employees or contractual personnel as a part of testing a herd or animal(s) or as a part of investigating the source and spread of brucellosis within the livestock population. (2) Information for work related activities is made available by the appropriate State or Federal office for personnel and contractual employees paid from their funds. (3) Livestock market, slaughter establishment, livestock dealer, milk processing plant, and laboratory information is acquired in the course of obtaining other program activity information such as where samples were collected, where animal identification was applied, where samples were tested, and how the samples or animals were handled or processed prior to or following collection of testing.

USDA/APHIS—7

SYSTEM NAME:

Animal Damage Control Non-Federal Personnel Records—USDA/APHIS.

SYSTEM LOCATION:

Animal Damage Control State Area Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Animal Damage Control Program Cooperative Employees; i.e., State and other.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Non-Federal Employees-recruitment forms, medical forms, security records, life and health insurance forms, military service records, motor vehicle exam records, education and skills records, training records, disciplinary and suspension records, letters of commendation; (2) Payroll Records—Time and attendance records, State retirement records, social security records, workman's compensation insurance records, leave records, salary and expense cost records; (3) Travel Expense and Mileage Report; (4) Animal Damage Control Records—hunter and trapper (district field assistant) records on animals taken weekly, itinerary and report of activity of trappers and hunters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 426–426(b); 7 U.S.C. 136–136w; 16 U.S.C. 703–711; and Section 101, Pub. L. No. 99–190.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The primary uses of the records are to (a) serve as a tool for the State supervisors in the financial and manpower management of Animal Damage Control programs (b) form the legal basis for the disbursement of funds and (c) form the basis for preparation of statistical reports. Disclosures outside the Department of Agriculture may be made: (1) for administrative uses by cooperating Federal, State, county, and local government units, and cooperating private organizations and associations; (2) to the Department of Justice for use in litigation when the agency, or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation; provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected; (3) in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when the agency, or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee, or the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records is relevant and necessary to the litigation; provided, however, that in each case, the agency determines that disclosure of the records to the court is a use of the information contained in the records that is compatible with the purpose for which the records were collected; (4) of information indicating a violation or potential violation of a statute, regulation rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (5) from the record of an individual in response to an inquiry from a Congressional office made at the request of that individual; (6) to other Federal agencies to effect salary and administrative offsets; and (7) to provide addresses obtained from the Internal Revenue Service to debt collection agencies for purposes of locating a debtor to collect or compromise a Federal claim against the debtor, or to consumer reporting agencies to prepare a commercial credit report for use by the Department.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are manually retrieved by employee name.

SAFEGUARDS:

Records and forms are maintained in a standard office filing cabinet and office is locked when authorized personnel are not present.

RETENTION AND DISPOSAL:

Non-record administrative material

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disposed 30 days after employment terminates or in compliance with State regulations on disposal of payroll records subject to audit.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Administrator, Animal Damage Control, USDA/APHIS, 14th & Independence Avenue, SW., Washington, DC 20250.

NOTIFICATION PROCEDURE:

All inquiries should be addressed to: APHIS Privacy Act Coordinator, Office of the Administrator, USDA/APHIS, Room 732 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

RECORD ACCESS PROCEDURES:

All inquiries should be addressed to the APHIS Privacy Act Coordinator.

CONTESTING RECORD PROCEDURES:

All inquiries should be addressed to the APHIS Privacy Act Coordinator.

RECORD SOURCE CATEGORIES:

Material is obtained from documents submitted by the individuals and from records completed by Federal employees or contractual personnel.

USDA/APHIS—8

SYSTEM NAME:

Veterinary Services—Animal Welfare, USDA/APHIS.

SYSTEM LOCATION:

Veterinary Services Program, USDA/APHIS, Room 754 Federal Building, Hyattsville, MD 20782, and the Area Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Dealers, exhibitors, and other individuals required to be licensed under the Federal Laboratory Act of 1966, as amended. Operators of research facilities, intermediate handlers, carriers, and other individuals required to be registered under the Federal Laboratory Animal Welfare Act of 1966, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

The general files contain the name and address of the licensee or registrant and the registration or licensing number. The records maintained in the files include the application for license or annual report, application for registration, annual report of research facility, program of veterinary care, inspection of carriers/intermediate handler, inspection of animal facilities, and request for approval of holding facility.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 2131 et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Records maintained under the proviso of this authority form an integral support network essential for the implementation and enforcement of the Animal Welfare Act, including licensing and registration of individuals, businesses, and research facilities, compliance with regulations and standards applicable under the Act, and annual reporting requirements of summary data as required by law. (2) Referral to the appropriate agency whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto. (3) Disclosure to the Department of Justice for use in litigation when the agency, or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation; provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected. (4) Disclosure in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when the agency, or any component thereof, of any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee, or the United States, where the agency determines that litigation is likely to affect agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation; provided, however, that in each case, the agency determines that disclosure of the records to the court is a use of the information contained in the records that is compatible with the purpose for which the records were collected. (5) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders in locked metal file cabinets.

RETRIEVABILITY:

Records are retrieved by the name of the licensee or registrant or by the license or registration number.

SAFEGUARDS:

Records are maintained in locked files with APHIS employees in attendance during working hours.

RETENTION AND DISPOSAL:

Licensees applications are destroyed 3 years after cancellation. Registrants applications are maintained permanently. Routine records are destroyed after 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Administrator, Veterinary Services, USDA/APHIS, 14th & Independence Avenue, SW., Washington, DC 20250.

NOTIFICATION PROCEDURE:

All inquiries should be addressed to: APHIS Privacy Act Coordinator, Office of the Administrator, USDA/APHIS, Room 732 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

RECORD ACCESS PROCEDURES:

All inquiries should be addressed to the APHIS Privacy Act Coordinator.

CONTESTING RECORD PROCEDURES:

All inquiries should be addressed to the APHIS Privacy Act Coordinator.

RECORD SOURCE CATEGORIES:

Material is obtained from documents submitted by the registrant or licensee and from records completed by Federal employees.

[FR Doc. 87-4186 Filed 2-26-87; 8:45 am]

BILLING CODE 3410-34-M

Animal and Plant Health Inspection Service

[Docket No. 86-127]

Horse Protection; Certified Designated Qualified Person (DQP) Programs and Licensed DQP's

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of currently certified DQP (Designated Qualified Person) programs and licensed DQP's.

SUMMARY: This notice advises the general public and the horse industry of the Designated Qualified Person (DQP) programs currently certified by the Department and the currently licensed Designated Qualified Persons (DQP's) under each certified program.

FOR FURTHER INFORMATION CONTACT: Morley H. Cook, Senior Staff Veterinarian, Animal Care Staff, VS, APHIS, USDA, 6505 Belcrest Road, Federal Building Room 756, Hyattsville, MD 20782, telephone (301) 436-7833.

SUPPLEMENTARY INFORMATION: Section 11.7(b) of the "Horse Protection Regulations" (9 CFR 11.7(b)) states in relevant part ". . . A current list of certified DQP programs and licensed DQP's will be published in the **Federal Register** at least once each year, and as may be further required for the purpose of deleting programs and names of DQP's that are no longer certified or licensed, and of adding the names of programs and DQP's that have been certified or licensed subsequent to the publication of the previous list."

This document lists the Designated Qualified Person (DQP) programs which are currently certified and lists the currently licensed DQP's under those programs. This list supersedes all prior lists published in the **Federal Register** pursuant to § 11.7(b) of the regulations.

This document lists the DQP programs which are currently certified and the individuals listed are currently licensed, according to the regulations in 9 CFR Part 11.

The certified DQP programs and the DQP's licensed by each certified program are as follows:

(a) American Fox Trotting Horse Breed Association, Inc., Marshfield, MO 65706.
(1) Licensed DQP:
(i) CALIFORNIA
Judith Clotheir, Sylmar, CA
Steve Herrera, Rowland Heights, CA
Sebastian C. Kolbusz, Acton, CA
Frank Murphy, Sunland, CA
Ray Pridgen, Sun Valley, CA
Ellen Slaton, Santa Rosa, CA
Paul Slaton, Santa Rosa, CA
(ii) MISSOURI
Deryl L. Caswell, Lebanon, MO
Lee Chick, Lebanon, MO
Paul Garton, Marshfield, MO
Billy Kimmons, Springfield, MO
A. B. Quick, Protem, MO
(b) Heart of America Walking Horse Association, Inc., Eolia, MO 63344.
(1) Licensed DQP:
(i) ILLINOIS
Floyd Hampsmire, Barry, IL
(ii) KANSAS
Dick Brown, Olathe, KS
(iii) MISSOURI
Alam Barnes, Columbia, MO
Robert Finley, Eolia, MO
Harold Magers, Moberly, MO
Paul Patterson, Osborn, MO
Elvin Sapp, Columbia, MO
Sonny Scrivner, Strafford, MO
Bobby Dean Wood, Hartville, MO
(c) Missouri Fox Trotting Horse Breed Association, Ava, MO 65608.
(1) Licensed DQP:
(i) MISSOURI
Deryl Caswell, Lebanon, MO
Elwood Lee Frederick, Urbana, MO
Mile Hill, Dora, MO
J. R. Jones, Cole Camp, MO
Ted Nichols, Ozark, MO
Lee Yates, Lebanon, MO
Marshall Yates, Lebanon, MO
(d) National Horse Show Regulatory Committee, Inc., Shelbyville, TN 37160.
(1) Licensed DQP:
(i) ALABAMA
Lex Helms, Glenwood, AL
Jackie Hodge, Elba, AL
E. N. Hooper, Hartselle, AL
Claud E. Johnson, Goshen, AL
Grady Parsons, Bessemer, AL
Barney Porter, Cullman, AL
Dale Smith, Stevenson, AL
(ii) ARKANSAS
Robert C. Allen, Ward, AR
Percy Moss, Jr., El Dorado, AR
(iii) CALIFORNIA
Darrell Brown, Ontario, CA
William A. Hartman, Norco, CA
Sharon E. McCaleb, Fair Oaks, CA
(iv) COLORADO
Kenneth L. Wilis, Denver, CO
(v) GEORGIA
Douglas Brown, Gainesville, GA
Terry Etheridge, Forsyth, GA
W.R. New, Kingston GA.
Glenn Powell, Kennesaw, GA
(vi) IDAHO
John D. Petersen, Priest River, ID
(vii) ILLINOIS
Wendell Simmons, Creal Springs, IL
J. H. Syrcle, Barry, IL
Phillip J. Williams, Barry, IL
(viii) INDIANA
Teresa A. Upchurch, New Castle, IN
(ix) KENTUCKY
Tom Cundiff, Somerset, KY
John Allen Dadisman, Lawrenceberg, KY
B. G. Edwards, Monticello, KY
W. Glenn Edwards, Monticello, KY
Bob Flynn, Winchester, KY
Thomas E. Garland, Mayfield, KY
(x) MARYLAND
Joanie Erwin, Frederick, MD
(xi) MISSISSIPPI
Ed Abernathy, Shannon, MS
Earl Melton, Laurel, MS
Cary C. Myers, Corinth, MS
Gerald Poole, Ellisville, MS
Don Steen, Corinth, MS
Jimmy K. Sullivan, Raymond, MS
Ronnie S. Wheless, Tylertown, MS
(xii) MISSOURI
Don Bills, Ozark, MO
Ronald F. Elkins, Jr., Ozark, MO
Bill Maack, Jr., Goodson, MO
Johnny Pursley, Bolivar, MO
Steve Skopec, Bolivar, MO
(xiii) NEW MEXICO
Larry Townsend, Albuquerque, NM
(xiv) NORATH CAROLINA
David Finger, Waynesville, NC
Tommy H. West, Asheville, NC
(xv) OKLAHOMA
Carol Branstetter, Council Hill, OK
Ann Kuykendall, Muskogee, OK
(xiv) OREGON
Les Hyatt, Grants Pass, OR
(xvii) SOUTH CAROLINA
James A. McKnight, Sumter, SC
Eddie Potts, Fort Mill, SC
Arnold "Sarge" Walker, Easly, SC
(xviii) TENNESSEE
Craig A. Bacon, Rockwood, TN
G. W. (Copper) Bacon, Rockwood, TN
Gail Barron, Sevierville, TN
James E. (Jimmy) Cole, Jackson, TN
Joe L. Cunningham, Sr., Rockwood, TN
Jeff Givens, Murfreesboro, TN
Dana Kyte, Fall Branch, TN
Larry Landreth, Powell, TN
William (Bill) Lones, Niota, TN
Jerry McKechnie, Pikeville, TN
Lonnie Messick, Murfreesboro, TN
Edmond (Ed) O'Neill, Pinson, TN
Jerry Plemons, Tellico Plains, TN
James K. (Kirk) Seaton, Milton, TN
Ronnie Slack, Englewood, TN
Bill Swafford, Spring City, TN
Mike Swafford, Spring City, TN
Charles Thomas, Lynchburg, TN
(xix) TEXAS
Dean Cox, Conroe, TX
Keith R. Pickard, Crosby, TX
(xx) VIRGINIA
James M. (Jim) Bayne, Fairfax Station, VA
Carl Cartwright, Jr., Tazewell, VA
(xxi) WASHINGTON
Skip Bickford, Elma, WA
Rose Bostion, Puyallup, WA
F. M. (Lane) Curry, Maple Valley, WA
Jeff L. Curry, Maple Valley, WA
(xxii) WEST VIRGINIA
Greg Thomason, Princeton, WV
(e) Walking Horse Owners' Association of America, Inc.
(1) Licensed DQP:
(i) GEORGIA
Jim House, Ringgold, GA
A.M. Turner, Social Circle, GA
(ii) KENTUCKY
Lee Arnold, Fairdale, KY
Nolan Benton, Richmond, KY
Harry K. Chaffin, Catlettsburg, KY
James A. Farris, Lexington, KY
Bobby Helton, Florence, KY
Darrell Owens, Brodhead, KY
Harlan Pennington, Lexington, KY
Romie Sanders, Brownsville, KY
Vernon Shearer, Winchester, KY
Charlie Sims, Lexington, KY
Kent A. Waggoner, Richmond, KY
Gary Ware, Waynesboro, KY

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Johnnie Zeller, Eubank, KY
(iii) NORTH CAROLINA
C.K. Mease, Marion, NC
(iv) OHIO
Johnny Black, Mt. Orab, OH
Dennis Sissel, Mt. Orab, OH
(v) TENNESSEE
Ray "Tut" Brown, Hohenwald, TN
Jesse Dotson, Thompson Station, TN
Tim Guthrie, Franklin, TN
Mike Hooper, Knoxville, TN
Phil Jones, Franklin, TN
Gary Kimmons, Dickson, TN
Sam Pierce, Seymour, TN
Bud Varnadore, Knoxville, TN
Harold D. White, Franklin, TN
(vi) VIRGINIA
J. A. Fields, Lebanon, VA
(vii) WEST VIRGINIA
E.J. Parsons, Ripley, WV
Jim Singleton, Point Pleasure, WV
(viii) WISCONSIN
Charles Sears, Milwaukee, WI
John Wilson, Helenville, WI
(f) Western International Walking Horse Association, Gig Harbor, WA 98335.
(1) Licensed DQP:
(i) OREGON
Bruce Rumpf, Wilsonville, OR
(ii) WASHINGTON
Janet Brener, McCleary, WA
Dennis Izzi, Puyallup, WA
Irvin Steward, Enumclaw, WA
Dave Viet, Issaquah, WA
Bunny Winders, Enumclaw, WA

Done at Washington, DC, this 24th day of February, 1987.

B.G. Johnson,
Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-4093 Filed 2-26-87; 8:45 am]
BILLING CODE 3410-34-M

Packers and Stockyards Administration

Amendment to Certification of Central Filing System; Arkansas

The certification of the Statewide central filing system of Arkansas is hereby amended at the request of W.J. "Bill" McCuen, Secretary of State, to cover all farm products produced in the State of Arkansas except:

Cattle & Calves
Goats
Horses
Hogs
Mules
Sheep & Lambs

The central filing system was previously certified, pursuant to section 1324 of the Food Security Act of 1985, for all farm products produced in that State (51 FR 46887, December 29, 1986).

This amendment is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99-198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: February 23, 1987.

B.H. (Bill) Jones,
Administrator, Packers and Stockyards Administration.

[FR Doc. 87-4192 Filed 2-26-87; 8:45 am]
BILLING CODE 3410-KD-M

Arctic Research Commission

Meetings

Notice is hereby given that the Arctic Research Commission will meet in Los Angeles, California on 5-6 March 1987. The meetings will be held in the Board Room, Bovard Administration Building, University of Southern California, University Park, Los Angeles, California. On 5 March the Commission meeting will start at 8:30 a.m. Matters to be considered include: (1) Opening Remarks by Chairman (2) Approval of Report of Last Meeting (3) Comments from Interagency Arctic Research Policy Committee (4) State of Alaska Research Policy (5) Consideration of Revised Five Year Arctic Research Plan (6) Federal Budget for Arctic Research for FY-87 and Requested for FY-88 (7) Logistic Requirements to Support Arctic Research (9) Federal/State Cooperation in Arctic Research.

On 6 March the Commission meeting will start at 8:30 a.m. Matters to be considered include: (1) Possible Future Activities of Commission (2) Next Meeting (3) Other Business.

At noon on 6 March the Commission will meet in Executive Session to discuss: (1) Commission Budget for FY-1987 and FY-1988 (2) Future Activities of the Commission (3) Rotation of Membership.

Contact Person for More Information:
W. Timothy Hushen, Executive Director, Arctic Research Commission (213) 743-0970.

W. Timothy Hushen,
Executive Director, Arctic Research Commission.

[FR Doc. 87-4113 Filed 2-26-87; 8:45 am]
BILLING CODE 7555-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Petitions by Producing Firms for Determinations of Eligibility to Apply for Trade Adjustment Assistance; Paul's Auto Ignition, Inc., et al.

Petitions have been accepted for filing on the dates indicated from the following firms: (1) Paul's Auto Ignition, Inc., 500 Saw Mill River, Yonkers, New York 10701, producer of stators for automotive alternators (November 7, 1986); (2) V&R Finishing Inc., 2032 Greene Avenue, Ridgewood, New York 11237, producer of women's sweaters skirts and slacks (November 12, 1986); (3) Tri-Molded Plastics, Inc., 59 Spence Street, Bayshore, New York 11706, producer of watch box cases, board games and cosmetic boxes (November 13, 1986); (4) Torr Metal Products, Inc., 3082 West 106th Street, Cleveland, Ohio 44111, producer of electric coffemaker parts and automobile engine parts (November 14, 1986); (5) Schlesinger Brothers, Inc., 117 Jackson Road, Berlin, New Jersey 08009, producer of briefcases, brief bags, attaché cases and portfolios (November 24, 1986); (6) Twin Tower Trading, Inc., 42 Skillman Street, Brooklyn, New York, 11205, producer of women's slacks and tops (December 3, 1986); (7) Jersey Specialty Company, Inc., P.O. Box 248, Wayne, New Jersey 07470, producer of insulated electrical wire and cable (December 4, 1986); (8) Mobern Leather Novelty Company, Inc., 103 North 3rd Street, Brooklyn, New York 11211, producer of children's handbags (December 5, 1986); (9) Fibre Materials Corporation, 40 Dupont Street, Plainview, New York 11803, producer of rubber and plastic washers, gaskets, terminal boards, motor insulators, etc., (December 8, 1986); (10) FX Systems Corporation, 77 Cornell Street, Kingston, New York 12401, producer of electronic instrumentation devices (December 8, 1986); (11) IMS Manufacturing Company, Inc., P.O. Box 8, Lietchfield, Kentucky 42754, producer of men's coats and jackets (December 10, 1986); (12) Clover Wire Forming Company, Inc., 1021 Saw Mill River Road, Yonkers, New York 10710, producer of rings, snaps, loops, pins and hooks of steel wire (December 11, 1986); (13) H.H. Keim Company Limited, P.O. Box 338, Nampa, Idaho 83651-0338, processor of beef (December 15, 1986); (14) Globe Rubber Works, Inc., 254 Beech Street, Rockland, Massachusetts 02370, producer of rubber sheets, film, bars, rods, tubes, gaskets, hoses and tubing, and other rubber products (December 15, 1986); (15) Pratt & Austin Company, 642, South Summer Street, Holyoke, Massachusetts 01040, producer of calendars, planners/organizers and other stationary products (December 19, 1986); (16) Mohawk Furniture, Inc., 314 Main Street, Gardner, Massachusetts 01440, producer of household furniture (December 22, 1986); (17) Jamestown Plywood Corporation, 34 Steele Street, Jamestown, New York 14701, producer of hardwood face veneers & plywood panels (December 23, 1986); (18) F. Bruno Faceting Corporation, 725 Lehigh Avenue, Union, New Jersey 07083, producer of costume

jewelry (December 29, 1986); (19) Bay Area, Inc., 6231 Old Seward Highway, Anchorage, Alaska 99502, producer of dimension lumber, heavy timbers, housing logs and wood chips (December 29, 1986); (20) Hilco Plastic Products Company, Inc., 4172 Danvers Court, S.E., Grand Rapids, Michigan 49508, producer of wing nuts for autos; aerospace equipment and other miscellaneous plastic parts (January 2, 1987) (21) Decorative Firsts, Inc., P.O. Box 270, Huntingburg, Indiana 47542, producer of wood office furniture (January 6, 1987); (22) Nettle Creek Corporation, P.O. Box 9, Richmond, Indiana 47375, producer of bedcoverings and decorative pillows (January 7, 1987); (23) All Packaging Machinery & Supplies Corporation, 90 13th Avenue, Ronkonkoma, New York 11779, producer of baggers, drop sealers and table sealers (January 9, 1987); (24) Antone Dress Manufacturing Company, Inc., 1 Pleasant Avenue, Walden, New York 12586, producer of women's dresses (January 7, 1987); (25) Lakewood Pipe Service, Inc., P.O. Box 700, Bellflower, California 90706, producer of pipes, tubes, couplings and water well component parts (January 7, 1987); (26) Omaha Fixture Manufacturing, Inc., 10320 J. Street, Omaha, Nebraska 68127, producer of displays, brackets, and hardware (January 13, 1987); (27) CB Sports, Inc., 210 South Street, Bennington, Vermont 05201, producer of men's women's and children's jackets, slacks and sweaters (January 15, 1987); (28) Joneil Design, Inc., 7231 Southern Boulevard, West Palm Beach, Florida 33416, producer of fox and mink fur coats, jackets and flings (January 16, 1987); (29) Ocean & Atmospheric Science, Inc., 145 Palisade Street, Dobbs Ferry, New York 10522, producer of computerized, environmental, process control systems (January 21, 1987); (30) Springer-Penquin, Inc., Brookdale Place, Mount Vernon, New York 10550, producer of file cabinets of wood (February 3, 1987); (31) Kingsley Furniture Company, Inc., 102 Park Street, LaPorte, Indiana 46350, producer of upholstered furniture (February 4, 1987); (32) Bilt-Rite Sportswear, Inc., 4077 Park Avenue, Bronx, New York 10457, producer of women's skirts and pants (February 4, 1987); (33) McCurdy Fish Company, P.O. Box 79, Lubec, Maine 04652, producer of smoked and boned herring (February 10, 1987); (34) Sunstate Sportswear, Inc., 900 North Howard Avenue, Tampa, Florida 33606, producer of men's and women's pants and shorts (February 11, 1987); (35) Edsamm Manufacturing Company, 46 North Forklanding Road, Maple Shade, New Jersey 08052, producer of screws, bolts, washers, spacers, standoffs, pins and rivets (February 17, 1987); (36) E.J. Fennell, Inc., 324 East Antietam Street, Hagerstown, Maryland 21740, producer of women's dresses, blazers and warm-up suits (February 17, 1987); and (37) W&F Manufacturing Company, Inc., P.O. Box 126, Buffalo, New York 14240, producer of candles, air freshness, canning wax and wax confections (February 20, 1987).

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93-618), as amended. Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Certification Division, Office of Trade Adjustment Assistance, Room 4015A, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Insofar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A-95 regarding review by clearinghouses do not apply.

S. Cassin Muir,
Acting Chief, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 87-4126 Filed 2-26-87; 8:45 am]
BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

[Docket No. 70225-7025]

Endangered and Threatened Species; Winter Run Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of determination.

SUMMARY: On November 7, 1985, the American Fisheries Society petitioned the NMFS to add the winter run of chinook salmon (*Oncorhynchus tshawytscha*) in the Sacramento River California to the U.S. list of threatened species. The Assistant Administrator for Fisheries, NOAA, determined that substantial information was presented to indicate that the petitioned action might be warranted, and conducted a status review to determine whether a listing was in fact warranted. Based principally on the actions State and Federal agencies have adopted and are implementing, NMFS has determined that a proposed listing of the winter run of chinook salmon in the Sacramento River is not warranted at this time.

FOR FURTHER INFORMATION CONTACT:
James H. Lecky (NMFS, Southwest Region, 300 S. Ferry Street, Terminal Island, CA 90731, 213-514-6199) or Patricia Carter (Office of Protected Species and Habitat Conservation, NMFS, Washington DC 20235, 202-673-5351.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 1985, the American Fisheries Society petitioned NMFS to add the winter run of chinook salmon (*Oncorhynchus tshawytscha*) in the Sacramento River California to the U.S. list of threatened species. In accordance with section 4 of the Endangered Species Act of 1973 (ESA) and 50 CFR Part 424, the Assistant Administrator for Fisheries, NOAA, determined that substantial information was presented to indicate that the petitioned action might be warranted. On February 13, 1986, NMFS announced its intention to conduct a status review to determine whether a listing was in fact warranted and solicited information and comments on the petition (51 FR 5391-5392). The results of the status review are presented below. Based principally on the actions State and Federal agencies have adopted and are implementing, NMFS has determined that a proposed listing of the winter run of chinook salmon in the Sacramento River is not warranted at this time.

Status Review

The status review is based on a consideration of available information on the run relative to the five criteria specified in section 4(a) of the ESA and a consideration of the efforts of the State of California and Federal resource management agencies to restore the run. Information was provided by the petitioner, the State, Federal agencies that affect the run or its habitat, and the public. Most of the information provided by the petitioner is contained in a report

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by the California Department of Fish and Game (CDFG) on the status of the run (Hallock and Fisher 1985).

Four runs of chinook salmon are extant in the Sacramento River. They are separated by differences in spawning and migration seasons. The distribution and abundance of each run is limited by the availability of suitable habitat during their respective spawning seasons. Essential elements for suitable spawning habitat are the availability of clean gravel which provides a substrate for spawning, adequate flow of oxygenated water through the gravel to aerate the eggs, and water temperatures between 42.5 and 57.5 °F which are optimal for egg development (Combs and Burrows 1957). The amount and location of spawning habitat available in the river varies with seasonal changes in flow patterns. The various runs have evolved life history patterns that are adapted to the environmental conditions that exist when they are in the river. For example, suitable spawning conditions exist throughout much of the Sacramento drainage when the fall run is spawning. Consequently, fall-run chinook are the most numerous and widely distributed run in the drainage. On the other hand, when spring and winter-run salmon are migrating or spawning, river flows are not sufficient to maintain a broad distribution of suitable spawning habitat. Historically, these have been small runs limited by the availability of spawning habitat. The spring run migrates to the head waters of tributary streams and holds over the summer in cool pools where temperatures remain below debilitating levels. They spawn in the fall when water temperatures in the gravel beds fall to below levels lethal to eggs. Juvenile spring-run salmon out migrate after the fall rains begin and there is sufficient water to complete the migration to the sea. Historically, the winter run employed a different strategy for spawning at what might be considered a less than optimal time. It entered the river in December and migrated to the spring-fed head waters of the McCloud River where they spawned from April through June. The spring water provided a consistent source of water at a temperature suitable for egg development and enough water to ensure passage of juvenile fish to the mainstem of the Sacramento in the late summer when the out migration began.

These differences in the timing of the runs and spawning behavior serve to isolate the various runs reproductively. Therefore, assuming that the various runs are separate breeding populations that have evolved distinctive genomes is reasonable. An analysis of genetic variants in polymorphic protein systems has been used to describe the population structure of chinook salmon on the Pacific Coast of North America. Utter (in litt.) has identified eight genetically distinct geographic regions in the spawning range of chinook salmon. The Sacramento drainage is one of these regions. Populations within each region are genetically more similar to one another (though still statistically different) than to those in other regions (Utter in litt.). This supports the hypothesis that the species was established in each river system by an ancestral run which subsequently differentiated distinct genetic stocks in response to varying environmental conditions in the river system. The CDFG has contracted a study to quantify the genetic distinctness of the chinook runs in the Sacramento River (Odemar pers. comm.). NMFS anticipates that the results will demonstrate, as in other river systems, that the various runs in the Sacramento River are genetically distinct and that there is likely sufficient reproductive isolation to maintain the runs as distinct races of chinook salmon. NMFS agrees with the petitioners that considering winter-run chinook as a "species" in the context of the ESA is appropriate.

Winter-run chinook in the Sacramento River have a varied and interesting history. The run was excluded from its historical spawning habitat by the construction of Shasta and Keswick Dams in the early 1940s. Prior to the construction of the dams water temperatures in the vicinity of and down river from the dam sites was above lethal limits for salmon eggs at the time of year that winter-run salmon spawn. Cold hypolimnetic water is released from these dams year round to generate electricity. This release of cold water changed the temperature gradient in the river and created suitable spawning habitat for winter-run chinook in the mainstem of the Sacramento that exceeded what had previously been available in the head waters of the McCloud River (Slater 1963).

Trends in the in-river sport catch and observations of spawning activity at various locations in the upper Sacramento River Drainage indicated that the winter run increased in abundance between the 1940s and mid 1960s (Slater 1963). What had been a small run of probably several hundred fish had increased to over 80,000 fish by the mid 1960s. This increase in population size was attributable to the increase in habitat that resulted from human-induced changes in the flow of the Sacramento River.

In 1966, installation of Red Bluff Diversion Dam (RBDD) was completed approximately 50 miles down river from Keswick Dam. RBDD was designed to be a passable dam. Fish ladders were installed to allow salmon to migrate up river past the dam. The ladders provide a mechanism for counting salmon and estimating the size of salmon runs to the upper Sacramento River (above Red Bluff). Since the late 1960s and early 1970s, the winter run has declined. The estimated number of winter-run chinook salmon migrating past RBDD for the three year period, 1967–69, averaged 83,916 fish annually. During the three year period, 1982–84, the run averaged only 2,056 fish annually.

The reasons for the decline in the winter-run chinook population and a discussion of the factors affecting the population are analyzed below in the context of the five criteria specified in section 4 of the ESA for determining whether or not a species should be listed.

Listing Procedures

Section 4 of the ESA requires the Secretary of the Interior or Commerce, depending upon the species involved, to determine if any species is an endangered or threatened species for any of the following reasons: Present or threatened destruction, modification or curtailment of its habitat or range; overutilization for commercial, recreational, scientific or educational purposes; disease or predation; inadequacy of existing regulatory mechanisms; or other natural or manmade factors affecting its continued existence. The ESA requires such listing determinations to be made solely on the basis of the best scientific and commercial data available after conducting a review of the status of the species and taking into account any efforts being made to protect the species under consideration.

NMFS considered the criteria given above in determining whether or not winter-run chinook salmon in the Sacramento River should be listed as a threatened species. These factors and their relation to the winter-run chinook population are discussed below.

1. The past, present, and threatened destruction, modification, or curtailment of winter-run chinook salmon habitat or range.

The most serious problem affecting the habitat of winter-run chinook is the barrier that the RBDD presents to salmon that are migrating upstream to their spawning grounds. Hallock et al. (1982) investigated the effect of the RBDD on migrating salmon and found that the RBDD blocked the upstream migration of 37.5% of the salmon they had tagged. The fish that passed the dam were delayed an average of 18 days in their migration by the dam. These problems are likely a ramification of the hydrodynamics of the dam.

The spawning migration of winter-run chinook salmon coincides with periods of peak flows in the river. During high lows the gates in the dam are partially raised. The acceleration of the flow as it passes through the constraints of the partially raised gates creates a great deal of turbulence downstream from the dam. This turbulence obscures the hydrodynamics of the fish ladders to the point that salmon have difficulty finding the entrances.

The blockage and delays experienced by the winter run have an adverse effect on the population. The extra time added to the migration to overcome the barrier created by the dam prolongs the physiological stress of migration and presumably reduces fecundity by some unquantified amount. Blockage has a more severe effect.

Winter-run salmon that are blocked at the RBDD spawn downstream from the dam. During the spawning season for winter-run chinook salmon (April–June) water temperatures below the dam are usually at levels that are lethal to salmon eggs. Hallock and Fisher (1985) reviewed seasonal temperature variations in the river for a period or 18 years (1967–1984) and found that in 14 of those years water temperatures in the river below the dam reached seasonal highs that were lethal for salmon eggs.

Even in years of relatively light flows, the RBDD interferes with the migration of winter-run chinook. In 1985, 27% of the salmon redds (spawning areas) counted in an aerial survey were located downstream from the dam (Fisher, pers. comm.). If this is assumed to be representative of the population, then over a quarter of the run spawned in a section of the river where egg survival would be expected to be near zero.

The RBDD is operated by the U.S. Bureau of Reclamation (USBR). The purpose of the dam is to create a headwater for diversion into the Tehama-Colusa canal which delivers irrigation water to agricultural lands on the west side of the Sacramento Valley. Peak diversion occurs in the summer and early fall, times of the year that are least likely to affect the winter run. The dam is operated in the winter to provide water to west side National Wildlife Refuges and to meet two small contracts for water deliveries during February and March.

NMFS and the CDFG requested the USBR to raise the gates in the dam during the winter to facilitate the passage of adult winter run to suitable spawning habitat. Until recently, the USBR has been reluctant to comply with these requests because of their commitments for water deliveries in the winter. To assist the USBR in complying with the request to open the gates in the RBDD, the U.S. Fish and Wildlife Service identified alternative water sources for their west side refuges. On October 23, 1986, the USBR informed NMFS that alternative sources of water had been identified for meeting their winter obligations for water and that beginning on December 1, 1986, the gates in the dam would be raised for a period ending on March 31, 1987. The USBR further agreed that the gates could be raised during the same period in subsequent years, if monitoring programs during the first year demonstrated that raising the gates is beneficial.

This will remove the barrier to upstream migration of winter-run chinook salmon. With unrestricted access to suitable spawning habitat, the run should begin rebuilding. NMFS has funded a monitoring program to document that the salmon are passing the RBDD and that the stocks are rebuilding. The four year program will encompass one complete life cycle for the run so the benefit of raising the gates can be quantified in terms of increased returns from the 1987 year class. Documentation of increased returns will allow the USBR to implement a long term change in operations so that the gates are raised during subsequent winter-run migrations.

Other passage problems are created by the operation of the Anderson-Cottonwood Irrigation District's (ACID) diversion dam upstream from Red Bluff. The ACID dam is an antiquated structure that was built in 1917. The gates consist of a series of flash boards that are put in place and manipulated manually. Generally, the dam is operational from mid-March to mid-November. Thus, it is only the tail end of the run that is affected by the dam. There is a fish ladder at the dam but it is inadequate to facilitate passage of all the salmon that encounter the dam when it is operational. This excludes some fish from spawning habitat that exists above the dam (USBR 1983a). Blockage at the ACID dam is not as severe a problem as the blockage at the RBDD because suitable spawning habitat exists below the ACID dam. Consequently, the problem has not been fully investigated and the effect of the blockage on the population remains unquantified.

The seasonal operation of the ACID dam creates an additional problem. When salmon migrate past the dam before it is put into operation and spawn immediately upstream of the dam, the small reservoir created by the dam when it is put into operation covers the salmon redds. This reduces the flow of aerated water over the eggs and can reduce the survival of the eggs (T. Richardson, USFWS, pers. comm.). The effect of this problem on the winter-run chinook population also remains unquantified.

A third problem is created by the operational and structural limitations of the ACID dam. The flash boards can be manipulated only in river flows of 6,000 cubic feet per second (cfs) or less, and they can only withstand flows of up to 12,000 cfs. Because of these limitations the ACID dam must be operated in conjunction with Keswick Dam. The ACID and the USBR have an informal agreement to coordinate their operations. Any time the flash boards have to be manipulated at the ACID dam the releases from Keswick are reduced to 6,000 cfs. When releases from Keswick must exceed 12,000 cfs the flash boards at the ACID dam must be raised. This requires that the releases from Keswick be reduced to below 6,000 cfs before they are raised to above 12,000 cfs. Fluctuating flows in the river to coordinate the operation of the dams has an adverse affect on developing salmon eggs. Reduced flows can result in dewatering of redds or inadequate flows through the interstitial spaces of the gravel to keep developing eggs adequately aerated. Since the winter run's spawning season is encompassed by the irrigation season, this problem likely has some effect on the run. The USBR, the ACID, and the CDFG are negotiating a formal agreement to improve coordination of operations and to factor consideration of the winter run needs into making operational decisions. This agreement will mitigate the problem to some extent, recognizing that situations may arise where adverse effects on the winter run are unavoidable.

While the ACID dam may have an effect on the rate of restoration of the winter run, NMFS doubts that the ACID was a significant contributing factor to the decline of the run. The ACID dam was in operation during the time the winter run was being relocated from the McCloud River and expanding in the Sacramento River (1940–1969). Therefore, NMFS thinks that given

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remedies to other factors affecting the population, such as the passage problems at the RBDD, the run will recover in spite of the problems at the ACID dam.

Spawning habitat has been degraded by decreases in the rate of replenishment of gravel suitable for spawning. Construction of Shasta and Keswick Dams precluded the recruitment of new gravel from the river and its tributaries above those dams, and gravel mining in the tributary streams below those dams has slowed the recruitment of new gravel into the Sacramento (CDWR 1980). Consequently, the amount of suitable spawning habitat has been shrinking. In 1985, the CDFG began a spawning gravel replenishment program. The CDFG is purchasing gravel and placing it in the river to restore degraded spawning riffles in areas of the river used by the winter run. In addition to replenishing degraded riffles, the CDFG is working with the California Department of Water Resources to modify gravel mining permits to ensure adequate stores of gravel are left in the tributary streams to replenish naturally the spawning areas in the main stem of the river with new gravel.

In September, 1986, the State of California approved the Sacramento River Fisheries Habitat Restoration Act (SB 1086) which sets aside funds for identifying and rectifying factors degrading habitat of salmonid species in the Sacramento River. This bill will provide a source of funding upon which the CDFG can commit to continued efforts to restore the habitat of winter-run chinook in the Sacramento River.

Much of the Sacramento River has been riprapped, leveed, or otherwise channeled to prevent erosion of agricultural lands. Studies of bank protection projects in the upper Sacramento River have demonstrated that juvenile salmon show a marked preference for non-riprapped areas over riprapped areas (Schaffter, et al. 1983; Michny and Hampton 1984). Therefore, bank stabilization may affect the quality of rearing habitat. The effect of this on the productivity of the winter run is unclear, however the run does not appear to be limited by the availability of rearing habitat. NMFS, the USFWS, and the CDFG coordinate with the U.S. Army Corps of Engineers on a project-by-project basis to ensure that bank stabilization projects are adequately mitigated to ensure conservation of suitable rearing habitat.

Pollution also has degraded the spawning habitat of the winter run. Runoff from inactive mining operations, at Iron Mountain Mines in the vicinity of Spring Creek, leaches heavy metals which can reach levels that are lethal to juvenile fish, alevins, and eggs. A debris dam was constructed on Spring Creek in the 1940s to collect debris washed down from the mine sites and to control the release of toxic water into the mainstem of the Sacramento River. Under normal conditions releases from Spring Creek Dam are diluted by releases from Keswick Dam so that concentrations of heavy metals in the Sacramento remain below toxic levels. During years of heavy precipitation spills from Spring Creek Reservoir result in uncontrolled releases of toxic water. Generally, this occurs in the winter when fall-run chinook alevins are hatching and fry are emerging from the gravel. These are the life stages most sensitive to pollution and large kills of these life stages have been attributed to spills of toxic water. Winter-run adults are subjected to these spills. While kills of adult fish have not been reported, sublethal effects such as reduced fecundity are probable. The Environmental Protection Agency has identified Iron Mountain Mines as a location for the expenditure of Superfund monies. The EPA has allocated 70 million dollars to cleaning up the site. They will cap old mines, fill open pits and reroute streams around tailing to reduce rates of leaching.

In addition to cleaning up the major source of pollution affecting the upper Sacramento, the California Water Quality Control Board (CWQCB) has established discharge standards for the release of toxic water from Spring Creek Reservoir. This will reduce further the problems emanating from the Spring Creek Reservoir.

Future threats to winter-run chinook habitat include increasing demands for water from the Sacramento River for agricultural and industrial uses and water development projects. Increased deliveries of water from the Sacramento River are likely to affect the flow regime of the river which, without careful planning, may result in increased water temperatures (USFWS 1984a). NMFS is currently in the process of quantifying the value of water left in the river for maintaining anadromous fishery resources. This information will allow the resource management agencies to compete for water on an equal basis with other users so that adequate flows in the river are maintained.

There are several water development projects proposed for the upper Sacramento River. If they are implemented they will likely result in further destruction, modification, or curtailment of winter-run chinook habitat or range. These proposed projects include the USBR's Enlarged Shasta Dam Project, the U.S. Army Corps of Engineers' Cottonwood Creek Project, and the City of Redding's Lake Redding and Lake Red Bluff hydroelectric projects. The Enlarged Shasta Dam Project would result in an enlarged Keswick Dam downstream from the existing structure which would reduce the winter run's range. The Cottonwood Creek Project would probably result in some warming of the Sacramento River which would adversely impact the winter run spawning downstream of the Sacramento River-Cottonwood Creek confluence. The Lake Redding Project would adversely impact spawning habitat upstream and downstream of the proposed dam. The Lake Red Bluff Project would adversely affect both upstream and downstream winter-run salmon passage at RBDD (USFWS 1984a). NMFS and the USFWS are able to work through laws such as the Fish and Wildlife Coordination Act to protect the habitat from degradation by Federal activities. The State of California has similar mechanisms in place to ensure that habitat is not degraded by State activities.

2. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

The winter-run chinook from the Sacramento River are probably subjected to a harvest rate that is less than that for the other three races of Sacramento River chinook. This generalization is based on two observations. First, winter-run chinook return to the upper Sacramento River at a younger age and smaller size than the other three runs. This indicates that winter-run chinook are available to ocean sport and commercial fisheries for a shorter period of time than the other runs and receive greater protection from the size limits imposed by the Pacific Fishery Management Council (PFMC). Second, the separation in timing of the adult spawning migration from the ocean, between the winter-run and the fall run (the target run for the ocean fishery), is almost complete. Data concerning the relative timing and distribution of winter-run chinook in the ocean is scarce and the data that is available is flawed. Nevertheless, the inference from these data is that a significant separation exists and the ocean fishery has a relatively small impact on the winter run.

According to Hallock and Fisher (1985), winter-run chinook mature almost exclusively as two and three year old fish (25% age-two, 67% age-three, and 8% age-four), whereas fall-run chinook tend to mature somewhat later. Winter-run chinook are generally smaller at a given age than fall chinook salmon. Juveniles from a given fall chinook brood generally migrate from the upper Sacramento River in February and March, while winter-run juveniles, from the same brood, migrate to the ocean in July and August. Consequently, in the ocean, the fall chinook are half a growing season ahead of the winter run. Ocean fishing regulations call for a minimum size limit of 20 inches for the sport fishery and a 26 inch size limit for the commercial fishery. These facts help explain why the sport catch of winter-run chinook is almost exclusively two-year-old fish, whereas the commercial catch is mostly three-year-old fish. This also explains why the ocean sport fishery is responsible for 71 percent of the ocean harvest of winter-run chinook, while only representing 29 percent of the total ocean harvest. Winter-run chinook are not available to the ocean fisheries for as long as the "target" species (fall chinook) and thus experience a lower harvest rate.

Hallock and Fisher (1985) report hook-scarring percentages for chinook that were released in the ocean fishery. Hook scars occur when fish under legal size limits are released alive. Of the fish examined at the trapping facility at the RBDD, the spring, fall, and late-fall runs experienced 38 percent greater hook-scarring than the winter run. In addition, the scarring rate of the winter run has declined over the past four years. Hook-scarring cannot easily be used to infer harvest rates or even "shaker mortality" (associated with the release of undersized fish), but it does show a reduced interaction between the winter-run chinook and the ocean harvest.

Nearly all data about the time, growth, distribution, and mortality of stocks in the ocean are based upon tagging experiments at hatcheries, using coded wire tags (cwt). Winter-run chinook are exclusively a naturally spawning race and there have been no cwt studies. However, Hallock and Fisher (1985) report a marking study, conducted in 1969–71, in which juveniles from three broods were seined from the Sacramento River, fin-clipped, and released. Recoveries of the adults from these releases were tabulated, and estimates made of age at harvest and harvest rate. Their results confirmed that winter-run chinook mature almost exclusively as two and three year olds and produce an estimated catch to escapement ratio of 0.53:1.0 and an ocean harvest rate of 34.6 percent.

These are likely conservative estimates because during the study a duplicate mark was used unintentionally in other California and Oregon chinook studies. Consequently, the mark returns in the ocean fishery that were attributed to the Sacramento River winter run were too high by some unknown amount. Also, the harvest rate has likely declined since the study was completed. The ocean fishing regulations are currently more restrictive than they were during the early 1970s. The total harvest rate in the ocean fishery and the landings from the ocean sport fishery have declined since 1970 (PFMC 1986). The effect of each of these factors is an over estimation of the ocean harvest of winter-run chinook.

Data on inland sport harvest of adult winter-run chinook are scarce; estimates are available from 1968–73 and 1975. Hallock and Fisher (1985) report data for this period that show Sacramento River sport harvest rates for winter-run chinook averaging 8.5 percent of the in-river run. No data have been collected in the last ten years.

Hallock and Fisher (1985) reported that 85 percent of the total catch of winter-run chinook from the 1969–1971 broods were caught in the ocean and 15 percent in the Sacramento River. The total catch to escapement ratio was 0.58:1.0 and a total harvest rate was 38.0 percent based on this data.

The harvest rate of winter-run chinook is substantially below that managed for any other chinook stock on the Pacific coast. The PFMC reports an index of ocean fishery harvest rates south of Point Arena for California Central Valley chinook. The 16-year average for this index is 64 percent. The CDFG (L. B. Boydstun, personal communication) estimates that the total harvest rate for these stocks (including areas north of Point Arena) is about 30 percent greater than the reported "index," or 82 percent. This represents a catch to escapement ratio greater than 4:1. In Washington State, where, in addition to "conservation" management, the ocean fishery is restricted to achieve court-ordered allocations of chinook to inside Indian fisheries, the ocean catch to escapement ratios are managed between 1:1 and 2:1 (J. Coon/PFMC staff, personal communication).

NMFS believes that any stock (even a marginally healthy one) should be able to maintain stable population levels at the moderate harvest levels to which winter-run chinook are subjected and that harvests have not been instrumental in the decline of winter-run chinook in the Sacramento River. Nevertheless, NMFS is supporting the CDFG's plans to implement additional restrictions on the in-river sport fishery to curtail the harvest of winter-run chinook as they approach their spawning habitat. The CDFG intends to implement these restrictions beginning January 1, 1987.

3. Disease or Predation

There are no data to indicate that winter-run chinook salmon experience unusual levels of disease. The impact of this factor on winter-run salmon is probably negligible.

There is insufficient data available on the life history of winter-run chinook to predict what effect predation has on the population. The reproductive strategy employed by salmon is to produce large numbers of offspring that can sustain high rates of mortality in the young age classes, with only a small percentage of the brood stock surviving to reproduce. Hallock and Fisher (1985) reported that the average fecundity of winter-run females is 3,353 eggs per female. Presumably, the population can grow if 0.1% of these survive to reproduce. This type of reproductive strategy makes it difficult to determine if predation is excessive or is operating to the disadvantage of a population. There are several predator-prey relationships involving winter-run chinook and piscivorous fish that may be unbalanced as a result of human activities in the river. These particular predation problems may be inhibiting the population's ability to grow, especially when combined with the factors affecting spawning success.

The most important in-river predator on winter-run chinook is probably the Sacramento River squawfish (*Ptychocheilus grandis*). Large numbers of squawfish have been observed below the RBDD where they forage on young salmon that are passing under the dam. As the juvenile salmon pass under the dam, they become disoriented by the turbulence and are unable to escape predation for some period of time. Vogel (unpublished data) has observed squawfish foraging below the dam on juvenile fall-run chinook and he has observed large schools of squawfish below the dam in the fall when winter-run chinook are migrating down stream. It is reasonable to expect that squawfish are exploiting the winter run as well.

Striped bass (*Morone saxitalis*) are another predator on juvenile salmon (USBR 1983b) that has been observed in large schools below the dam (Vogel 1982). Presumably they are taking advantage of the situation also.

Another modification to the flow in the river that exposes juvenile salmon to excess predation exists in front of the CDFG fish screens at the Glenn-Colusa

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Irrigation District's (GCID) pumping plant. Changes in the river channel in the vicinity of the GCID plant have altered the hydrodynamics of this section of the river. During periods of low flows, juvenile salmon are diverted from the main stem of the river to a position in front of the fish screens where they remain because flows are inadequate to flush them back out into the main stem. Periods of low flows usually occur in the fall when winter-run fry are migrating. Ward (CDFG, Pers. comm.) has observed winter-run fry in front of the fish screens in September. This delay in the downstream migration exposes juvenile salmon to predation by squawfish and striped bass for an undefined but extended period of time. Specific data on the magnitude of this problem are lacking, but it is likely that predation rates near the GCID pumping plant are artificially high.

Other piscine predators on juvenile salmon include rainbow trout (*Salmo giardneri;* J. Hanson, USFWS, pers. comm.), American shad (*Alosa sapidissima;* Vogel, USFWS, in lit.), and large juvenile salmon released from hatcheries (Hallock and Fisher 1985). Few data are available to quantify the magnitude of predation by these species. Therefore, whether they represent a resource problem remains uncertain.

Salmon fry and smolts are also preyed upon by birds (gulls, cormorants, and herons) and older age classes and adults are preyed upon by marine mammals, and larger predatory fish in the ocean. The effects of this mortality are also unquantified.

The squawfish population appears to have the greatest potential for interfering with the growth of the winter-run population. It is the only one of the predator species in the river for which there is little interest among fishermen. Consequently, the population of squawfish is relatively large. The NMFS is developing a management strategy to reduce the size of the squawfish population and therefore the effect of the predation on winter-run chinook.

4. The Inadequacy of Existing Regulatory Mechanisms

Laws relevant to the protection and restoration of the winter run are the Magnuson Fishery Conservation and Management Act (MFCMA), the Fish and Wildlife Coordination Act (FWCA), the Clean Water Act, the National Environmental Policy Act, Anadromous Fisheries Conservation Act, and various State laws administered by the CDFG and the California Department of Water Resources. These laws provide for the conservation of living resources through wise use and management or the consideration and mitigation of adverse impacts from water and land use projects on living resources such as winter-run chinook salmon.

An example of the effectiveness of these mechanisms is the "Fish Passage Action Program for Red Bluff Diversion Dam". This is a multi-agency cooperative effort that was implemented, in part, because of the requirements of the FWCA. This program was designed to identify and develop solutions to fish passage problems. Several actions have already been implemented through the USBR's "Interim Action Measure Program." While these actions have been beneficial primarily for fall-run chinook, they indicate that a viable mechanism exists for dealing more specifically with winter-run problems.

The Federal Energy Regulatory Commission's (FERC) regulations for authorizing water related energy projects contain provisions which allow the resource agencies to intervene in the permitting process. This provides the resource agencies with a clear voice in the decision to issue or deny a specific permit or to apply special conditions to the permit to protect fish resources. NMFS has used this process to intervene in the FERC process for the City of Redding's proposed Lake Redding and Lake Red Bluff hydro-electric projects.

NMFS thinks that the available laws and regulations provide adequate mechanisms for restoring the winter run in the Sacramento River. However, the precipitous decline in the size of the run since the late 1960s indicates that these regulatory mechanisms have not been applied effectively with respect to winter-run chinook. For example, the PFMC has established escapement goals for the major salmon runs and has implemented management measures to achieve those goals. They have not established a goal for the winter run, nor have NMFS or the CDFG used their authority under the MFCMA or State law to investigate the effects of commercial and sport harvests on winter-run chinook.

Most of the management measures implemented by Federal and State agencies under existing authorities have been directed at maintaining a harvestable fall run of chinook salmon. Benefits to other runs have been largely incidental to those management measures. The resource agencies are now applying existing authorities to the specific restoration of winter-run chinook salmon. NMFS, the USFWS, and the CDFG are planning field studies to quantify the benefits of these recent actions.

5. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

Winter-run chinook salmon are particularly sensitive to the effects of drought. As was discussed above, water temperature is a critical factor in the development of salmon eggs. During drought years, the water levels in Lake Shasta are drawn down to the point that releases from Shasta Dam become too warm to support a successful spawn. This happened during the 1976–77 drought. Winter-run chinook from those year classes returned during the 1979 and 1980 runs at a rate of 0.07 fish per parent. Water management practices could be modified to maintain cool temperatures in the river during droughts and mitigate the adverse effects of droughts on winter-run chinook. The USBR has identified several options for maintaining adequate river temperatures during droughts. Among the options are a modification of the intake structure at Shasta Dam so that cold water is pulled from the bottom of the reservoir or plan for increased releases from cool reservoirs on tributary streams. The options identified are expensive in terms of funds expended, lost revenues, or unmet obligations for water. Therefore, whether or not the USBR will implement one of the options remains uncertain.

Very little year class overlap occurs for winter-run salmon (25% 2-year-olds, 67% 3-year-olds, and 8% 4-year-olds). The year class overlap is much less for females because the 2-year-olds are predominantly males. The significance of this is that the near loss of two consecutive year classes (1976 and 77) combined with the winter run's low fecundity (relative to the other runs) will make it difficult for the run to rebound to previous population levels.

The 1978 brood stock was the last remaining strong year class. It returned in 1981 in large numbers indicating a potential for rebuilding the run. The progeny of the 1981 year class were adversely affected in the ocean by the 1982–83 El Nino event. They returned to the river in poor numbers in 1984. Consequently, no strong year class remains in the population.

An additional problem at Keswick Dam affects winter-run chinook. During high winter and spring releases, salmon swim into the stilling basin below the dam. As flows subside in the late spring winter-run chinook become trapped and cannot escape to suitable spawning habitat. Although the USFWS and the CDFG attempt to capture and release these fish, an undocumented amount of

winter-run mortality is associated with the problem.

A final factor contributing to the current status of the winter run is the technical difficulty in developing a hatchery stock of winter-run chinook. Most stocks that suffer a loss in productivity due to loss of habitat affected by water projects are supplemented by hatchery stock to compensate for the lost production. The winter-run chinook are fragile fish, and attempts to propagate them failed due to pre-spawning mortality of the brood stock. This mortality is attributable to inadequate adult winter-run chinook holding facilities which create stressful conditions during the several months the fish must be held until spawning maturation (USFWS 1985). The USFWS received 2.2 million dollars from Congress in 1987 to build holding ponds for winter-run chinook. These ponds should be completed by the 1988 run. The USBR has agreed to provide power to the hatchery for the operation of chillers that will be required to keep water temperatures in the holding ponds below lethal limits. Building a spawning program will take several years, but ultimately it will contribute to the restoration of the run.

Discussion

The winter run of chinook salmon in the Sacramento River has declined substantially from the 1960's level. The decline has been persistent over the last 17 years. The major cause of decline appears to be habitat degradation resulting from the operation of the RBDD and several independent factors that contribute to reduced availability of spawning and rearing habitat. These factors include the operation of other diversion facilities, gravel mining, bank stabilization, and pollution. These problems have been aggravated by severe droughts in 1976 and 1977 and a severe El Nino event in 1982 and 1983.

Allendorf and Ryman (unpublished report) suggest that the minimum population size needed to maintain the genetic integrity of wild stocks raised in hatcheries is 200 salmon, with a sex ratio of 1:1. This is a useful guide for establishing a minimum viable population size for wild runs in the river, but it should be increased by a factor of two to five to compensate for uncertainties in the estimated population size, fluctuating environmental parameters, and the fact that in the wild the effective population size (number successfully spawning) is less than the actual number of adult fish. An irretrievable genetic loss would likely result from a succession of four or five year classes falling below an effective population size of 200 fish (Utter in litt.). The winter run is approaching this level, but remains above it. The actions taken by State and Federal agencies in 1986 will increase the effective population size by allowing more of the population to migrate to suitable spawning habitat.

Raising the gates in the RBDD will provide immediate access to suitable spawning habitat for a larger portion of the population. The CDFG habitat restoration project will provide additional spawning habitat and the CWQCB standards for releases of polluted water to the Sacramento River also will improve the quality of the spawning habitat, and the CDFG's in-river fishing regulations will ensure that salmon that arrive at the spawning grounds are not removed from the population before they spawn. Given the resiliency this population demonstrated subsequent to the construction of the Shasta and Keswick Dams, these actions should allow increased production of winter-run chinook.

Other actions that will benefit the population in subsequent years include the FWS' plans to initiate a winter-run hatchery program at the Coleman National Fish Hatchery, EPA's decision to apply Superfund resources to clean up the pollution problem emanating from the Iron Mountain Mines, and the State's enactment of SB 1086 to restore habitat in the Sacramento River. These are long term commitments that are likely to produce benefits into the 1990s and beyond. For example, SB 1086 provides the basis for the formation of a task force similar to the Klamath River and Trinity River Task Forces. These Task Forces have developed habitat restoration plans that are funded by the Federal government. House Bill 4217 authorizes $42 million to implement the Klamath River Plan and Public Law 98–541 authorizes nearly $60 million for accomplishing the tasks identified in the Trinity River Plan. Completion of a Sacramento River Restoration Plan should lead to comparable funding for implementation, but the actual benefit is not likely to be realized for several years.

Conclusions

The winter run of chinook salmon in the Sacramento River comprises a distinct breeding population and qualifies for consideration as a "species" under the ESA. Although it has declined persistently over the past 17 years, NMFS thinks that State and Federal resource management agencies are addressing the habitat problems that contributed to the decline of the run and that the management actions implemented by those agencies ensure the restoration of the run to levels that will be able to withstand future droughts and other environmental perturbations. These actions, combined with other actions that will not produce measurable benefits for several years, should restore the run to a level approaching that which existed prior to the construction of RBDD.

The most important management action implemented is the USBR's revised operational schedule for the RBDD. Raising the gates in the dam during the winter run's spawning migration eliminates a major factor limiting the run's ability to grow. This action will ensure that salmon get to suitable spawning habitat. NMFS expects this action will be translated into greater spawning success, thereby increasing the potential for population growth. Resolving the fish passage problem at the RBDD will increase the benefits that will be derived from the CDFG habitat restoration project and new prohibitions on sport fishing because more fish will be able to migrate up stream to use the restored habitat. NMFS and the CDFG are initiating monitoring programs to verify these expectations.

Several long term programs have been implemented that ultimately will benefit the run. These include an expanded hatchery program at the Coleman National Fish Hatchery to produce additional winter-run chinook salmon, SB 1086 which will restore spawning habitat in the Sacramento River, and the EPA's plans to direct the Superfund resources toward resolving the pollution problems emanating from the Iron Mountain Mines. These long term programs will provide additional enhancement when they are implemented.

Based on the restoration actions that have been implemented or will be implemented prior to the 1987 run, NMFS concludes that the winter run of chinook salmon is not in danger of becoming extinct throughout all or a significant portion of its range, nor is it likely to become endangered in the foreseeable future throughout all or a significant portion of its range.

Dated: February 20, 1987.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

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[P2S]

Marine Mammals; Application for Permit; Sea World, Inc.

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: a. Name Sea World, Inc., b. Address 1720 South Shores Road, Mission Bay, San Diego, California 92109.

2. Type of Permit: Public Display.

3. Name and Number of Marine Mammals: White whales (*Delphinapterus leucas*) 8.

4. Type of Take: Capture/Maintain.

5. Location of Activity: Western Hudson Bay, Canada.

6. Period of Activity: 4 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; Director, Southwest Region, National Marine Fisheries Service, 301 South Ferry Street, Terminal Island, California 93107–7415; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: February 20, 1987.

Nancy Foster,

Director, Protected Species & Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 87–4121 Filed 2–26–87; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of General Permits

General permits have been issued to the Applicants listed below to take marine mammals incidental to commercial fishing operations pursuant to 50 CFR 216.24.

Catetory 1: Towed or Dragged Gear.

1. Japan Deep Sea Trawlers Association, Tokyo, Japan to take up to 60 pinnipeds in the Bering Sea and Gulf of Alaska and up to 15 cetaceans in the North Atlantic Ocean.

2. Hokuten Trawlers Association, Tokyo, Japan to take up to 40 pinnipeds in the Bering Sea.

3. Embassy of the Polish People's Republic, New York, New York to take up to 10 pinnipeds in the North Pacific Ocean and up to 5 cetaceans in the Bering Sea and Gulf of Alaska.

4. Embassy of the Republic of Korea, Washington, DC to take up to 50 pinnipeds in the North Pacific Ocean and up to 10 cetaceans in the Bering Sea and Gulf of Alaska.

Category 5: Other Gear.

North Pacific Longline-Gillnet Association, Tokyo, Japan to take an unspecified number of cetaceans and pinnipeds by harassment in the Bering Sea and Gulf of Alaska.

These general permits are available for public review in the Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Washington, DC.

Dated: February 24, 1987.

Nancy Foster,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 87–4210 Filed 2–26–87; 8:45 am]

BILLING CODE 3510-22-M

Coastal Zone Management: Exxon Santa Ynez Appeal

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Public comments solicited.

SUMMARY: Public comments may be submitted on certain issues raised by the January 20, 1987, submission of Exxon Company U.S.A. in its administrative appeal before the Secretary of Commerce.

DATES: Comments must be received by March 30, 1987.

ADDRESSES: Comments must be sent to Office of the General Counsel, NOAA, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: L. Pittman, Office of the General Counsel, NOAA, at 202/673–5200.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce requests the views of the public on certain items of information submitted by Exxon Company U.S.A. its appeal filed under the Coastal Zone Management Act of 1972, 16 U.S.C. 1451 et seq. and implementing regulations at 15 CFR 930 Subpart H. The appeal is taken from an objection by the California Coastal Commission to Exxon's proposed offshore development plan (Option A) for the Santa Ynez Unit, 19 contiguous oil and gas lease tracts located on the outer continental shelf in the Western Santa Barbara Channel. *See* 51 FR 39778, October 31, 1986.

On January 20, 1987, Exxon filed its final rebuttal brief in this appeal, thus closing the administrative appeal record. After examining the information in the rebuttal brief, finding that certain of that information was not contained in Exxon's earlier submissions, and considering the importance of that information to a final resolution of this appeal, the Secretary has granted a thirty-day public comment period.

Comments must be limited to certain of Exxon's technical appendices to its final brief: Exhibit 13, the AER*X offset search; Exhibit 15, electrification cost support; and Exhibits 17 and 18, costs of project delay. Copies of Exxon's final brief may be obtained from the California Coastal Commission, 631 Howard Street, San Francisco, CA; Exxon's offices at 225 W. Hillcrest Dr., Thousand Oaks, CA; NOAA Office of General Counsel, 1865 Connecticut Ave., NW., Suite 603, Washington, DC.

Interested persons may also comment whether Option B as modified by the County's final development plan and authority to construct permits would require either a new supplemental environmental impact under the California Environmental Quality Act, a new consistency review by the California Coastal Commission, or any other permit or other approval that would be likely to result in significant further delay of Option B.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration.)

Timoty R.E. Keeney,

Acting General Counsel.

[FR Doc. 87–3365 Filed 2–26–87; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Establishment of Guaranteed Access Levels and a Visa and Certification Requirement for Cotton, Wool, and Man-Made Fiber Textile Products From Jamaica

February 19, 1987.

The Committee for the Implementation of Textiles Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, and the President's February 20, 1986 announcement of a Special Access Program for textile products assembled in participating Caribbean Basin beneficiary countries from fabric formed and cut in the United States, and pursuant to the requirements set forth in 51 FR 21208 (June 11, 1986), has issued the directive published below to the Commissioner of Customs, effective March 1, 1987. For further information, contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

As announced in the **Federal Register** on November 21, 1986 (51 FR 42128), the Governments of the Untied States and Jamaica have exchanged diplomatic notes on a new bilateral agreement concerning trade in cotton, wool, and man-made fiber textile products, produced or manufactured in Jamaica and exported during the period which began on September 1, 1986 and extends through December 31, 1989.

The Governments of the United States and Jamaica also have exchanged letters establishing a visa and certification system, as an administrative arrangement under the terms of the bilateral agreement. Pursuant to the terms of that arrangement, the visa and certification requirement applies to textile and apparel products exported on or after March 1, 1987. Textile products that have been exported from Jamaica before March 1, 1987 shall not be denied entry for lack of a visa or certification. Exports from Jamaica of products qualifying for the Special Access Program for entry under TSUSA 807.0010, exported on or after September 1, 1986 must be accompanied by a properly completed CBI Export Declaration (Form ITA–370P).

In addition to the designated consultation levels previously announced, the bilateral agreement established guaranteed access levels for properly certified textile products assembled in Jamaica from fabric formed and cut in the United States within categories 331/631 (cotton and man-made fiber gloves), 338/339 (cotton knit shirts), 347/348 (cotton trousers), and 349/649 (cotton and man-made fiber brassieres), exported from Jamaica during the first agreement period which began on September 1, 1986 and extends through December 31, 1987.

Pursuant to 51 FR 21208 (June 11, 1986), which established the requirements for participation in the Special Access Program and guaranteed access levels, products qualifying for the Special Access Program and covered by guaranteed access levels may be entered under TSUSA number 807.0010. To be entered under TSUSA 807.0010, shipments must be accompanied by a certification issued by the appropriate Jamaican authorities and a completed CBI Export Declaration (Department of Commerce form ITA–370P, stock number 003–009–00490–0, available from the Government Printing Office, Washington, DC 20402). Each shipment of textile products of Jamaica not accompanied by a property issued certification and a CBI Export Declaration must be accompanied by a properly issued visa.

The certification is a square stamp in blue ink placed on the front of the original Jamaican National Export Corporation document, called a certificate of exemption. This document replaces the commercial invoice. The certification must contain the 9-digit certification number, the date of issuance, the correct whole, merged, or part categories and correct quantities in each shipment in the applicable category units, and the signature of the issuing official. However, if the quantity indicated on the certification is more than that of the shipment, entry shall be permitted.

Orders for the Special Access Program CBI Export Declaration (Form ITA–370P) may be placed with the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (202/783–3238). Request stock number 003–009–00490–0. The form is being sold for $31 per package of 100.

Any shipment for entry under TSUSA 807.0010 which is not accompanied by a valid and correct certification and CBI

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Export Declaration in accordance with the foregoing provisions shall be denied entry unless the Government of Jamaica authorizes the entry and any charges to the appropriate designated consultation levels. Any shipment which is declared as TSUSA 807.0010 but found not to qualify for the Special Access Program shall be denied entry into the United States.

Each shipment of textile products of Jamaica not subject to the Special Access Program must be accompanied by a properly issued visa. The visa is a circular stamp in blue ink placed on the front of the original Jamaican National Export Corporation document, called a certificate of origin. This document replaces the commercial invoice.

The visa must contain the 9-digit visa number, the date of issuance, the correct categories and correct whole, merged, or part categories and the correct quantities in each shipment in the applicable category units, and the signature of the issuing official. However, if the quantity indicated on the visa is more than that of the shipment, entry shall be permitted.

Textile products of Jamaica for the personal use of the importer and not for resale do not require a visa or certificate for entry into the United States.

Interested persons are advised to take all necessary steps to ensure that textile products, produced or manufactured in Jamaica, which are to be entered into the United States for consumption, or withdrawn from warehouse for consumption, that are exported on or after March 1, 1987 will meet the stated certification and visa requirements.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 19, 1987

Commissioner of Customs
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 27, 1986, between the Governments of the United States and Jamaica and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, and the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), you are directed, effective on March 1, 1987, and until further notice, to prohibit entry into the United States for consumption or withdrawal from warehouse for consumption of cotton and man-made fiber textile products, produced or manufactured in Jamaica and exported on or after March 1, 1987 which are not visaed or certified in accordance with the procedures outlined below. Textile products that were assembled in Jamaica from fabric formed and cut in the United States and exported from Jamaica before March 1, 1987 shall not be denied entry for lack of a visa or certification.

Products qualifying for the Special Access Program and covered by guaranteed access levels may be entered under TSUSA number 807.0010. To be entered under TSUSA 807.0010, shipments must be accompanied by a certification issued by the appropriate Jamaican authorities and a completed CBI Export Declaration. Each shipment of textile products of Jamaica not accompanied by a properly issued certification and a CBI Export Declaration shall be accompanied by a properly issued visa.

The certification is a square stamp in blue ink placed on the front of the original Jamaican National Export Corporation document, called a certificate of exemption. This document replaces the commercial invoice. The certification must contain the 9-digit certification number, the date of issuance, the correct whole, merged, or part categories and correct quantities in each shipment in the applicable category units, and the signature of the issuing official. However, if the quantity indicated on the certification is more than that of the shipment, entry shall be permitted.

Any shipment for entry under TSUSA 807.0010 which is not accompanied by a valid and correct certification and CBI Export Declaration in accordance with the foregoing provisions shall be denied entry unless the Government of Jamaica authorizes the entry and any charges to the appropriate designated consultation levels. Any shipment which is declared as TSUSA 807.0010, but found not to qualify for the Special Access Program shall be denied entry into the United States.

The following guaranteed access levels have been established for properly certified textile products assembled in Jamaica from fabric formed and cut in the United States and exported during the period September 1, 1986 through December 31, 1987.

Category	Guaranteed access level
331/631	1,500,000 doz. pair
338/339	190,000 doz.
347/348	840,000 doz.
349/649	2,575,000 doz.

Each shipment of textile products of Jamaica not subject to the Specal Access Program must be accompanied by a properly issued visa. The visa is a circular stamp in blue ink placed on the front of the original Jamaican National Export Corporation document, called a certificate of origin. This document replaces the commercial invoice. The visa must contain the 9-digit visa number, the date of issuance, the correct whole, merged, or part categories and correct quantities in each shipment in the applicable category units, and the signature of the issuing official. However, if the quantity indicated on the visa is more than that of the shipment, entry shall be permitted.

Textile products of Jamaica for the personal use of the importer and not for resale do not require a visa or certification for entry into the United States, regardless of value.

You are directed to permit entry into the United States for consumption and withdrawal from warehouse for consumption of designated shipments of textile and apparel products, produced and manufactured in Jamaica and exported to the United States, when the designated merchandise does not fulfill the aforementioned visa and certification requirements, whenever requested to do so in writing by the Chairman of the Committee for the Implementation of Textile Agreements.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

Facsimiles of the visa and certification stamps are enclosed.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

BILLING CODE 3510-DR-M

JAMAICA
NATIONAL
EXPORT
CORPORATION









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JAMAICA NATIONAL EXPORT CORPORATION



GOVERNMENT OF JAMAICA
JAMAICA NATIONAL EXPORT CORPORATION

Visa No: 7JM2

Category No: _____

Quantity: _____

Date: _____

U.S. Shipper's Declaration: _____

Signature: _____

7

TEXTILE/APPAREL EXPORT VISA



GOVERNMENT OF JAMAICA
JAMAICA NATIONAL EXPORT CORPORATION

Visa No: 7JM2

Category No: _____

Quantity: _____

Date: _____

U.S. Shipper's Declaration: _____

Signature: _____

7

TEXTILE/APPAREL EXPORT VISA

[FR Doc. 87-3903 Filed 2-26-87; 8:45 am]

BILLING CODE 3510-DR-C

Announcing Establishment of Guaranteed Access Levels and a New Visa and Certification Requirement for Cotton, Wool, and Man-Made Fiber Textile Products From Haiti

February 19, 1987.

The Committee for the Implementation of Textiles Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, and the President's February 20, 1986 announcement of a Specal Access Program for textile products assembled in participating Caribbean Basin beneficiary countries from fabric formed and cut in the United States, and pursuant to the requirements set forth in 51 FR 21208 (June 11, 1986), has issued the directive published below to the Commissioner of Customs to be effective on March 1, 1987. For further information, contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

As announced in the **Federal Register** on January 13, 1987 (52 FR 1371), the Governments of the United States and Haiti have exchanged diplomatic notes on a new bilateral agreement concerning trade in cotton, wool, and man-made fiber textile products, produced or manufactured in Haiti and exported during the period which began on January 1, 1987 and extends through December 31, 1989. The Governments of the United States and Haiti also have exchanged letters establishing a new visa and certification system, as an administrative arrangement under the terms of the bilateral agreement. Pursuant to the terms of that arrangement, the visa and certification requirement applies to textile and apparel products exported on or after March 1, 1987. This arrangement will replace the visa arrangement established between the Governments of the United States and Haiti, as announced in the **Federal Register** on March 6, 1980 (45 FR 14617). Exports from Haiti of products qualifying for the Special Access Program for entry under TSUSA 807.0010 in a product category with a guaranteed access level, exported during the January 1, 1987–February 28, 1987 period, shall not be denied entry for lack of a certification. However, entries under TSUSA 807.0010 in a product category with a guaranteed access level, must be accompanied by a properly completed CBI Export Declaration (Form ITA-370P).

In addition to the designated consultation levels previously announced, the bilateral agreement establishes guaranteed access levels for properly certified textile products assembled in Haiti from fabric formed and cut in the United States within categories 331 (cotton gloves), 337/637 (cotton and man-made fiber playsuits), 340/640 (cotton and man-made fiber non-knit shirts), 341/641 (cotton and man-made fiber non-knit blouses), 347/348 (cotton trousers), 349/649 (cotton and man-made fiber brassieres), and 350 (cotton nightgowns), exported from Haiti during the first agreement year which begins on January 1, 1987 and extends through December 31, 1987.

Pursuant to 51 FR 21208 (June 11, 1986), which established the requirements for participation in the Special Access Program and guaranteed access levels, products qualifying for the Special Access Program and covered by guaranteed access levels may be entered under TSUSA number 807.0010. To be entered under TSUSA 807.0010, shipments must be accompanied by a certification issued by the appropriate Haitian authorities and a completed CBI Export Declaration (Department of Commerce form ITA-370P, stock number 003-009-00490-0, available from the Government Printing Office, Washington, DC 20402). Each shipment of textile products of Haiti not accompanied by a properly issued certification and a CBI Export Declaration must be accompanied by a properly issued visa.

The certification is a square stamp in blue ink placed on the front of the original commercial invoice. The certification must contain the 9-digit certification number, the date of issuance, the correct whole, merged, or part categories and correct quantities in each shipment in the applicable category units, and the signature of the issuing official. However, if the quantity indicated on the certification is more than of the shipment, entry shall be permitted.

Orders for the Special Access Program CBI Export Declaration (Form ITA-370P) may be placed with the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (202/783-3238). Request stock number 003-009-00490-0. The form is being sold for $31 per package of 100.

Any shipment for entry under TSUSA 807.0010 which is not accompanied by a valid and correct certification and CBI Export Declaration in accordance with the foregoing provisions shall be denied entry unless the Government of Haiti authorizes the entry and any charges to the appropriate designated consultation level. Any shipment which is declared as TSUSA 807.0010 but found not to qualify for the Speical Access Program shall be denied entry into the United States.

Each shipment of textile products of Haiti not subject to the Special Access Program must be accompanied by a properly issued visa. The visa is a circular stamp in blue ink placed on the front of the original commercial invoice. The visa must contain the 9-digit visa number, the date of issuance, the correct whole, merged or part categories and correct quantities in each shipment in the applicable category units, and the signature of the issuing official. However, if the quantity indicated on the visa is more than that of the shipment, entry shall be permitted.

Textile products of Haiti for the personal use of the importer and not for resale do not require a visa or certification for entry into the United States.

Interested persons are advised to take all necessary steps to ensure that textile products, produced or manufactured in Haiti, which are to be entered into the United States for consumption, or withdrawn from warehouse for consumption, that are exported on or after March 1, 1987 will meet the stated certification and visa requirements.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

February 19, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 26 and 30, 1986, between the Governments of the United States and Haiti and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, and the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), you are directed, effective on March 1, 1987, and until further notice, to prohibit entry into the United States for consumption or withdrawal from warehouse for consumption of cotton and man-made fiber textile products produced or manufactured in Haiti and exported on or after March 1, 1987 which are not visaed or certified in accordance with the procedures outlined below. Textile products

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that were assembled in Haiti from fabric formed and cut in the United States and exported from Haiti during the January 1, 1987–February 28, 1987 period shall not be denied entry for lack of a certification. This directive replaces the directive of March 6, 1980 which established visa requirements for cotton, wool, and man-made fiber textile products from Haiti.

Products qualifying for the Special Access Program and covered by guaranteed access levels may be entered under TSUSA number 807.0010. To be entered under TSUSA 807.0010, shipments must be accompanied by a certification issued by the appropriate Haitian authorities and a completed CBI Export Declaration. Each shipment of textile products of Haiti not accompanied by a properly issued certification and a CBI Export Declaration shall be accompanied by a properly issued visa.

The certification is a square stamp in blue ink placed on the front of the original commercial invoice. The certification must contain the 9-digit certification number, the date of issuance, the correct whole, merged, or part categories and correct quantities in each shipment in the applicable category units, and the signature of the issuing official. However, if the quantity indicated on the certification is more than that of the shipment, entry shall be permitted.

Any shipment for entry under TSUSA 807.0010 which is not accompanied by a valid and correct certification and CBI Export Declaration in accordance with the foregoing provisions shall be denied entry unless the Government of Haiti authorizes the entry and any charges to the appropriate designated consultation levels. Any shipment which is declared as TSUSA 807.0010 but found not to quality for the Special Access Program shall be denied entry into the United States.

The following guaranteed access levels have been established for poperly certified textile products assembled in Haiti from fabric formed and cut in the United States and exported during January 1, 1987 through December 31, 1987:

Category	Guaranteed access level
331	500,000 doz. pair.
337/637	300,000 doz.
340/640	440,000 doz.
341/641	400,000 doz.
347/348	800,000 doz.
349/649	2,500,000 doz.
350	120,000 doz.

Each shipment of textile products of Haiti not subject to the Special Access Program must be accompanied by a properly issued visa. The visa is a circular stamp in blue ink placed on the front of the original commercial invoice. The visa must contain the 9-digit visa number, the date of issuance, the correct whole, merged, or part categories and correct quantities in each shipment in the applicable category units, and the signature of the issuing official. However, if the quantity indicated on the visa is more than that of the shipment, entry shall be permitted.

Textile products of Haiti for the personal use of the importer and not for resale do not require a visa or certification for entry into the United States, regardless of value.

You are directed to permit entry into the United States for consumption and withdrawal from warehouse for consumption of designated shipment of textile and apparel products, produced and manufactured in Haiti and exported to the United States, notwithstanding the designated merchandise does not fulfill the aforementioned visa and certification requirements, whenever requested to do so in writing by the Chairman of the Committee for the Implementation of Textile Agreements.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

Facsimiles of the visa and certification stamps and a list of issuing authorities and authorized signatures are enclosed.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

BILLING CODE 3510-DR-M

VISA AND CERTIFICATION STAMPS





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AUTHORIZED ISSUING OFFICIALS

GOVERNMENT OF HAITI

NAME	SIGNATURES
Mme. Sanite L. DESIR Direction de l'Administration et de la Réglementation Industrielle. Directeur.	.....
Mr. Jean-Claude DECIME Service de la Sous-Traitance Chef de Service.	.....
Mr. Démesmin DORSAINVILLE Service de la Sous-Traitance Technicien.	.....

[FR Doc. 87-3902 Filed 2-26-87; 8:45 am]

BILLING CODE 3510-DR-C

Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

February 24, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 2, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

On December 30, 1986, a notice was published in the **Federal Register** (51 FR 47041), announcing import restraint limits for cotton, wool and man-made fiber textile products, produced or manufactured in China and exported to the United States during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

During consultations, the Governments of the United States and the People's Republic of China agreed to establish new specific limits for cotton yarn-dyed fabrics in Category 310/318, cotton infants' sets in Category 359-I, cotton pillowcases in Category 360, man-made fiber headwear in category 659-H and man-made fiber infants' sets in Category 659-I; and a designated consultation level for wool suit-type coats in Category 433, produced or manufactured in China and exported during the period which began on January 1, 1987 and extends through December 31, 1987.

The United States Government has decided to control imports of these categories at the agreed limits. Accordingly, in the letter which, follows this notice, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry, or withdrawal from warehouse, for consumption in the Unted States of cotton, wool and man-made fiber textile products in Categories 310/318, 359-I, 433, 659-H and 659-I, in excess of the designated limits.

A description of the textile categories in terms of T. S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 24, 1987.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive cancels and supersedes the directives of March 20, 1986 and June 12, 1986, issued to you by the Chairman of the Committee for the Implementation of Textile Agreements, which directed you to prohibit entry for consumption or withdrawal from warehouse for consumption of certain man-made fiber and cotton textile products in Categories 659-I and 310/318.

Effective March 2, 1987, the directive of December 23, 1986 is hereby amended, but not cancelled, to include the following restraint limits for cotton, wool and man-made fiber products, produced or manufactured in the People's Republic of China and exported during the period which began on January 1, 1987 and extends through December 31, 1987:

Category	Twelve-month restraint limit [1]
310/318	6,800,000 square yards.
[2] 359-I	1,900,000 pounds.
360	5,665,000 numbers of which not more than 3,862,500 numbers shall be in 360-P (only TSUSA numbers 363.0108, .0112, .3020, .3025, .3060 and .3065.
433	19,000 dozen.
[3] 659-H	4,472,000 pounds.
[4] 659-I	1,700,000 pounds.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

[2] In Category 359, only TSUSA numbers 384.0439, .0441, .0442, .0444, .0805, .0810, .0815, .0820, .0825, .3451, .3452, .3453, .3454, .5162, .5163, .5167, .5169 and .5172.

[3] In Category 659, only TSUSA numbers 703.0510, .0520, .0530, .0540, .0550, .0560, .1000, .1620, .1630, .1640 and .1650.

[4] In Category 659, only TSUSA numbers 384.2105, .2115, .2120, .2125, .2646, .2647, .2648, .2649, .2652, .8651, .8652, .8653, .8654, .9356, .9357, .9358, .9359 and .9365.

Textile products in Categories 310/318, 359-I, 360, 380-P, 433, 659-H and 659-I which have been exported to the United States prior to January 1, 1987 shall not be subject to this directive. Charges for Categories 310/318 and 659-I will be provided in a subsequent directive.

Textile products in the above categories which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-4059 Filed 2-26-87; 8:45 am]

BILLING CODE 3510-DR-M

Announcing Bilateral Textile Consultations with the Government of the Republic of Indonesia to Review Trade in Categories 350 and 342/642

February 19, 1987.

On November 25, 1986, the Government of the United States requested consultations with the Government of Indonesia with respect to Categories 350 (cotton dressing gowns and robes) and 342/642 (cotton and man-made fiber skirts and culottes). This request was made under the agreement between the Governments of the United States and Indonesia of September 25 and October 3, 1985, as amended, relating to trade in cotton, wool and man-made fiber textile products which permits the United States to request consultations when imports from Indonesia threaten or cause market disruption.

During recent consultations between the two governments, agreement was reached on these categories. The agreed levels will be announced in the **Federal Register** after the exchange of diplomatic notes has taken place.

Summary market statements concerning these categories follow this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386)

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and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

FOR FURTHER INFORMATION CONTACT: Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on categories on which consultations have been requested call (202) 377–3740.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Market Statement

Category 342/642—Cotton and Man-Made Fiber Skirts—Indonesia, November 1986.

Summary and Conclusions

U.S imports of Category 342/642 from Indonesia were 119,066 dozen during the year-ending September 1986, nearly two and one-half times the 49,073 dozen imported a year earlier. During the first nine months of 1986, imports from Indonesia were 106,116 dozen, two and one half times the 41,773 dozen imported during the same period of 1985 and 94 percent above the amount imported during calendar year 1985.

The market for Category 342/642 has been disrupted by imports. The sharp and substantial increase of imports from Indonesia has contributed to this disruption.

U.S. Production and Market Share

U.S production of cotton and man-made fiber skirts declined five percent from 8,233 thousand dozen in 1983 to 7,805 thousand dozen in 1985. The U.S. producer's share of this market fell from 75 percent in 1983 to 67 percent in 1985.

U.S. Imports and Import Penetration

U.S. imports of Category 342/642 grew from 2,798 thousand dozen in 1983 to 3,794 thousand dozen in 1985, a 36 percent increase. Imports continue to grow during 1986. Category 342/642 imports during the first nine months of 1986 reached 4,760 thousand dozen, 69 percent above the 2,834 thousand dozen imported during the same period of 1985 and 26 percent more than the amount imported during calendar year 1985.

Duty Paid Values and U.S. Producers' Price

Approximately 66 percent of Category 342/642 imports from Indonesia during the first nine months of 1986 entered under TSUSA numbers 384.5251—women's cotton woven skirts, excluding culottes and skirts of corduroy, denim and velveteen, not ornamented; 384.5120——women's cotton woven denim skirts, not ornamented; 384.2550—women's girls and infants' man-made fiber woven skirts, ornamented; and 384.8660—women's man-made fiber knit skirts and culottes, not ornamented. These garments entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable garments.

Market Statement

Category 350—Cotton Dressing—Gowns and Robes.

Summary and Conclusions

U.S. imports of Category 350 from Indonesia were 51,030 dozen during the year ending September 1986, four times the 11,790 dozen imported a year earlier. During the first nine months of 1986, imports from Indonesia were 39,682 dozen, three times the 11,752 dozen imported during the same period of 1985 and 72 percent more than the amount imported during calendar year 1985.

The U.S. market for Category 350 has been disrupted by imports. The sharp and substantial increase of imports from Indonesia has contributed to this disruption.

U.S. Production and Market Share

U.S. production of cotton dressing gowns and robes declined 11 percent from 680 thousand dozen in 1983 to 605 thousand dozen in 1985. The U.S. producers' share of the market fell from 60 percent in 1983 to 47 percent in 1985.

U.S. Imports and Import Penetration

U.S. imports of Category 350 grew from 461 thousand dozen in 1983 to 676 thousand dozen in 1985, a 47 percent increase. Imports continue to grow in 1986. Category 350 imports are up 22 percent in the first nine months of 1986. The ratio of imports to domestic production increased from 68 percent in 1983 to 112 percent in 1985.

Duty-Paid Value and U.S. Producer's Price

Approximately 82 percent of Category 350 imports from Indonesia during the first nine months of 1986 entered under TSUSA number 384.4000—women's, girls' and infants' cotton woven dressing gowns and robes, except corduroy, not ornamented. These garments entered the U.S. at duty-paid landed values below the U.S. producer's prices for comparable garments.

[FR Doc. 87–4060 Filed 2–26–87; 8:45 am]

BILLING CODE 3510-DR-M

Announcing New Bilateral Textile Agreement With the Government of Japan on Certain Cotton, Wool and Man-Made Fiber Textile Products

February 20, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 31, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 24, 1987. For further information contact Ross Arnold, International Trade Specialist, Office of Textile and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377–4212.

Background

On July 1, 1986 a notice was published in the **Federal Register** (51 FR 23808), establishing import restraint limits for cotton and man-made fiber textile products in Categories 314, 341/641 and 613, produced or manufactured in Japan and exported during the period which began on April 30, 1986 and extends through April 29, 1987. A further notice was published on September 16, 1986 (51 FR 32819), establishing import restraint limits for cotton textile products in Categories 310/318, 315/320pt., 317pt. and 347/348, produced or manufactured in Japan and exported during the period which began on June 30, 1986 and extends through June 29, 1987.

On February 6, 1987, the Governments of the United States and Japan reached agreement on a new bilateral agreement concerning cotton, wool and man-made fiber textile products exported to the United States. This new agreement establishes annual group limits, and individual limits within the groups, for apparel, non-apparel, and man-made fiber yarn, produced or manufactured in Japan and exported during the period on January 1, 1986 and extending through December 31, 1989.

The limits agreed upon for the second agreement year which began on January 1, 1987 and extends through December 31, 1987 are listed below:

Category	12-Mo. level (Jan. 1, 1987–Dec. 31, 1987)
Group I:	
330–354, 359, 431–448, 459, 630–654, and 659.	132,926,540 square yards equivalent.
331/831	2,224,714 dozen pairs.
333	15,450 dozen.
334	26,007 dozen.
335	175,100 dozen.
337	88,425 dozen.
338	662,431 dozen.
339	1,326,000 dozen.
340	102,989 dozen.
341/641	510,000 dozen.
342/642	335,000 dozen.

Category	12-Mo. level (Jan. 1, 1987–Dec. 31, 1987)
350	20,806 dozen.
347/348	1,545,000 dozen.
435	26,823 dozen.
442	19,755 dozen.
444	17,690 dozen.
448	37,100 dozen.
634	96,828 dozen.
644	23,406 dozen.
645/646	183,164 dozen.
648	494,142 dozen.
659pt.[1]	97,850 pounds.
659pt.[2]	635,510 pounds.
Group II:	
300–320, 360–369, 400–429, 464–469, 600pt.,[3] 603–605, 610–627, and 665–670.	499,000,130 square yards equivalent.
300/301	2,700,000 pounds.
310–320	115,360,000 square yards of which not more than 26,265,000 square shall be in fabrics[4] of yarns of different colors.
313/320pt.[5]	9,366,748 square yards.
314/320pt.[6]	25,935,890 square yards.
315/320pt.[7]	17,351,840 square yards.
317/320pt.[8]	16,356,871 square yards.
317pt.[9]	9,785,000 square yards.
410	10,605,000 square yards.
600pt./604pt.[10 11]	3,603,250 pounds.
611	18,082,742 square yards.
612pt.[12]	55,550,000 square yards.
612pt.[13]	126,000,000 square yards.
613	18,540,000 square yards.
614–P[14]	18,540,000 square yards.
614–W[15]	8,585,000 square yards.
Group III:	
600–802[16]	146,681,500 square yards equivalent.

[1] In Category 659, coveralls, etc. in TSUSA numbers 381.3325, 381.9605, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310.

[2] In Category 659, infant sets in TSUSA numbers 384.2105, 384.2115, 384.2120, 384.2125, 384.2646, 384.2647, 384.2648, 384.2649, 384.2652, 384.8651, 384.8652, 384.8653, 384.8654, 384.9356, 384.9357, 384.9358, 384.9359 and 384.9365.

[3] In Category 600, only TSUSA 310.5015.

[4] Fabrics of yarns of different colors in Category 310/318, and TSUS items 320.—, through 331.—, with statistical suffixes: numbered 16 and 69 in category 314; numbered 51, 85, 87 and 89 in category 317; numbered 4 in category 316; and numbered 12, 43 and 82 in category 319.

[5] Category 313, and, in Category 320, sheeting in TSUS items 320.—, through 331.—, with statistical suffixes 38, 80 and 82.

[6] Category 314, and, in Category 320, poplin & broadcloth in TSUS items 320.—, through 331.—, with statistical suffixes 21, 22, 24, 26, 72, 74 and 76.

[7] Category 315, and in Category 320, printcloth in TSUS items 320.—, through 331.—, with statistical suffix 31.

[8] Category 317, and in Category 320, twills and sateens in TSUS items 320.—, through 331.—, with statistical suffixes 54, 92, 94 and 96.

[9] In Category 317, sateens in TSUS items 320.—, through 331.—, with statistical suffixes 50, 67 and 93.

[10] In Category 600, TSUSA number 310.5015.

[11] In Category 604, TSUSA numbers 310.5049 and 310.6045.

[12] In Category 612, all fabrics other than those in footnote 13.

[13] In Category 612, Lightweight polyester filament fabrics in TSUSA numbers 338.5010, 338.5011, 338.5012, 338.5013, 338.5014, 338.5015, 338.5016, 338.5017, 338.5018, 338.5019, 338.5020 and 338.5021.

[14] In Category 614, spun filament combination fabric in TSUSA numbers 338.5040, 338.5045, 338.5051, 338.5056, 338.5061, 338.5065, 338.5069, 338.5072, 338.5075, 338.5079, 338.5084, 338.5087, 338.5092, 338.5095, and 338.5098.

[15] In Category 614, wool blend fabrics in TSUSA numbers 338.1505, 338.1508, 338.1511, 338.1525, 338.1528, 338.1531, 338.1552, 338.1554, 338.1556, 338.1558, 338.1562, 338.1564, 338.1568 and 338.1572.

[16] In Category 600, excluding TSUSA number 310.5015.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of February 6, 1987 between the Governments of the United States and Japan.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to cancel the directives of June 26 and September 11, 1986, which established restraint limits for cotton and man-made fiber textile products in Categories 310/318, 314, 315/320pt., 317pt., 341/641, 347/348 and 613.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

February 20, 1987.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive cancels the directives of June 26, 1986 and September 11, 1986, issued to you by the Chairman of the Committee for the Implementation of Textile Agreements, which directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, of certain cotton and man-made fiber textile products, produced or manufactured in Japan and exported during the twelve-month periods which began, for Categories 314, 341/641 and 613, on April 30, 1986 and extends through April 29, 1987 and for Categories 310/318, 315/320pt.[1], 317pt.[2] and 347/348, on June 30, 1986 and extends through June 29, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–4061 Filed 2–26–87; 8:45 am]

BILLING CODE 3510-DR-M

[1] Category 315, and in Category 320, printcloth in TSUS items 320.—, through 331.— , with statistical suffix 31.

[2] In Category 317, sateens in TSUS items 320.— , through 331.— , with statistical suffixes 50, 67 and 93.

Announcing an Import Level for Certain Wool Textile Products Produced or Manufactured in the Republic of Maldives

February 24, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 2, 1987. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

On July 16 and October 20, 1986, the Governments of the United States and the Republic of Maldives exchanged diplomatic notes further extending the Bilateral Wool Textile Agreement from September 29, 1985 through September 28, 1988. The bilateral agreement establishes a specific limit for wool textile products in Category 445/446 (sweaters), produced or manufactured in the Republic of Maldives and exported during the twelve-month period which began on September 29, 1986 and extends through September 28, 1987.

In the letter which follows this notice, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to control imports in Category 445/446 during this twelve-month period at the designated limit.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to

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assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

February 24, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Agreement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 7 and 19, 1964, as amended and extended, between the Governments of the United States and the Republic of Maldives; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 2, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 445/446, produced or manufactured in the Maldives, and exported during the twelve-month period which began on September 29, 1986 and extends through September 28, 1987 in excess of the following limit [1]:

Category	12-mo. restraint limit
445/446	53,530 dozen

Textile products in Category 445/446 which have been exported to the United States prior to September 29, 1986 shall not be subject to this directive.

Textile products in Category 445/446 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

Administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of this agreement. Appropriate adjustments will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-4123 Filed 2-26-87; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after September 28, 1986. Imports amounted to -0- for the period September 29, 1986 through December 31, 1986.

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Apparel Products Produced or Manufactured in the Philippines

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 31, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 2, 1987. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535-6735. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

A CITA directive dated December 20, 1985 (50 FR 52830), as amended, establishes limits for certain specified categories of cotton, wool and man-made fiber textile products, including Categories 335-T, 335-NT, 336-T, 337-T, 337-NT, 636-T and 636-NT, produced or manufactured in the Philippines and exported during the agreement year which began on January 1, 1986 and extended through December 31, 1986. Pursuant to a request from the Government of the Republic of the Philippines and the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of November 24, 1982, as amended, between the Governments of the United States and the Republic of the Philippines, Categories 335-NT, 336-NT and 636-NT are being increased by application of special swing. Category 337-NT is being increased by regular swing.

The 1986 agreement year limits for Categories 335-T, 336-T, 337-T and 636-T are being reduced to account for the increases in the other categories.

Since Categories 335-NT, 336-NT, 337-NT and 636-NT are being increased, charges which have been made to the limits established for 1987 will be deducted and charged back to 1986 limits. The following amounts will be charged to 1986 and deducted from 1987 limits: Category 335-NT, 2,079 dozen; Category 336-NT, 3,169 dozen; Category 337-NT, 3,043 dozen; and Category 636-NT, 7,629 dozen. The application of the above flexibilities will open up embargoes for Categories 336-NT, 337-NT and 636-NT for the limits established for the period January 1—March 31, 1987.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the restraint limits previously established for the aforementioned categories. The Commissioner of Customs is also directed to deduct charges from the restraint limits established for 1987, charging these same amounts to the limits for 1986.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

February 24, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel the directive issued to you on December 20, 1985 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports of cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1986 and extended through December 31, 1986.

Effective on March 2, 1987, the directive of December 20, 1985 is hereby further amended to include the following adjusted restraint limits: [1]

Category	Adjusted 12-mo limit
335-NT	48,311 dozen.
335-T	40,686 dozen.
336-NT	39,946 dozen.
336-T	393,817 dozen.
337-NT	53,754 dozen.
337-T	407,369 dozen.
636-NT	68,141 dozen.
636-T	1,080,334 dozen

Also effective on March 2, 1987, I request that you deduct the following amounts from charges made to the restraint limits established for the categories indicated for goods produced or manufactured in the Philippines and exported to the United States during the three-month period which began on January 1, 1987 and extends through March 31, 1987. These same amounts should be charged instead to the limits established for these categories during the 1986 agreement year.

Category	Deduct from 1987 and charge to 1986 limits
335-NT	2,079 dozen.
336-NT	3,169 dozen.
337-NT	3,043 dozen.
636-NT	7,629 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-4124 Filed 2-26-87; 8:45 am]

BILLING CODE 3510-DR-M

[1] The agreement provides, in part, that: (1) Specific limits may be exceeded during the agreement year by designated percentages; (2) specific limits may be adjusted for swing, carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Requesting Public Comment on Bilateral Consultations With the Government of Burma on Category 340/640

February 24, 1987.

On January 30, 1987, the Government of the United States, under Section 204 of the Agricultural Act of 1956, requested the Government of Burma to enter into consultations concerning exports to the United States of certain cotton and man-made fiber textile products in Category 340/640, produced or manufactured in Burma.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations with Burma, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of men's and boys' woven cotton and man-made fiber shirts in Category 340/640, produced or manufactured in Burma and exported to the United States during the twelve-month period which began on January 30, 1987 and extends through January 29, 1988, at a level of 93,876 dozen.

A summary market statement for this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Anyone wishing to comment or provide data or information regarding the treatment of Category 340/640, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Ronald I. Levin, Acting Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

FOR FURTHER INFORMATION CONTACT: Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on categories on which consultations have been requested call (202) 377-3740.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Burma—Market Statement

Category 340/640—Men's and Boys' Cotton and Man-Made Fiber Woven Shirts

January 1987.

Summary and Conclusions

U.S. imports of Category 340/640 from Burma were 94,936 dozen during the year ending November 1986, three times the 31,119 dozen imported a year earlier. During the first eleven months of 1986, imports from Burma were 89,782 dozen, nearly three times the amount imported during the same period of 1985 and two and one-half times the amount imported during calendar year 1985.

The U.S. market for Category 340/640 has been disrupted by imports. The sharp and substantial increase of imports from Burma has contributed to this disruption.

U.S. Production and Market Share

U.S. production of men's and boys' cotton and man-made fiber woven shirts has been on the decline since 1972. U.S. production declined from 29.9 million dozen in 1972 to 23.8 million dozen in 1977 to 16 million dozen in 1982. Production dropped to 15.8 million dozen in 1985. Comparison of government cuttings [1] data for the first eleven months of 1986 and 1985 indicated that 1986 production will be down slightly, flat at best. The domestic producers' share of this market declined from 73 percent in 1972 to 45 percent in 1982 to 38 percent in 1985. The U.S. market share is expected to remain flat, around 38 percent, in 1986.

U.S. Imports and Import Penetration

Category 340/640 imports have been on the increase since 1972. U.S. imports increased from 11 million dozen in 1972 to 11.8 million dozen in 1977 to 19.5 million dozen in 1982. Imports reached a record level 26.1 million dozen in 1985. Imports through the first 11 months of 1986 are 23.5 million dozen indicating a 1986 level below the 1985 level but the second highest level on record. The import-to-production ratio increased from 37 percent in 1972 to 122 percent in 1982 to 166 percent in 1985. The ratio is expected to remain above 160 in 1986.

Duty Paid Value and U.S. Producers' Price

Approximately 78 percent of Category 340/640 imports from Burma during the first eleven months of 1986 entered under two TSUSA numbers: 381.5650—men's cotton woven sport shirts, except yarn dyed and corduroy, not ornamented; and 381.5665—boys' cotton woven sport shirts, except yarn dyed and corduroy, not ornamented. These shirts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable garments.

[FR Doc. 87-4125 Filed 2-26-87; 8:45 am]

BILLING CODE 3510-DR-M

[1] Cuttings data are for cotton, wool, and man-made fiber men's woven shirts.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning Request for Approval of Equipment.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. C. W. Mathews, Office of Federal Acquisition and Regulatory Policy (202) 523–3856 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION: a. *Purpose:* Under Federal contracts requiring that equipment (e.g. pumps, fans, generators, chillers, etc.) be installed in a project the Government must determine that the equipment meets the contract requirements. Therefore, the contractor must submit sufficient data on the particular equipment to allow the Government to analyze the item.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *3,160;* responses per respondent, *1.5;* total annual responses, *4,740;* hours per response, *.25;* and total burden hours, *1,185.*

Obtaining Copies of Proposals

Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0062, Request for Approval of Equipment.

Dated: February 19, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87–4100 Filed 2–26–87; 8:45 am]

BILLING CODE 6820–61–M

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning Schedules for Construction Contracts.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. C.W. Mathews, Office of Federal Acquisition and Regulatory Policy (202) 523–3856 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* Federal construction contractors may be required to submit schedules, in the form of a progress chart, showing the order in which the contractor proposes to perform the work. Actual progress shall be entered on the chart as directed by the contracting officer.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *2600;* responses per respondent, *2;* total annual responses, *5200;* hours per response, *1;* and total burden hours, *4200.*

Obtaining copies of proposals: Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0058, Schedules for Construction Contracts.

Dated: February 19, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87–4099 Filed 2–26–87; 8:45 am]

BILLING CODE 6820–61–M

Office of the Secretary

Defense Science Board Task Force on Pacific Command Air Defense: Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Pacific Command Air Defense will meet in closed session on April 9, 1987 in the Boeing Corporation, 1700 N. Moore Streeet, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine defense capabilities for shore installations in the Pacific Command and assess relevant technology, equipment, and modernization plans.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 23, 1987.

FR Doc. 87–9213 Filed 2–26–87; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Special Systems Subgroup, Pacific Command Air Defense

ACTION: Notices of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Pacific Command Air Defense, Special Systems Subgroup will meet in closed session on March 4, 1987 at the Center for Naval Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine systems related to defense capabilities for shore installations in the Pacific Command and assess relevant technology, equipment, and modernization plans.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 23, 1987.

[FR Doc. 87–4212 Filed 2–26–87; 8:45 am]

BILLING CODE 3810–01–M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, March 3, 1987; Tuesday, March 10 1987; Tuesday, March 17, 1987; Tuesday, March 24, 1987; and Tuesday, March 31, 1987; at 10:00 a.m. in Room 1E801, The Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 23, 1987.

[FR Doc. 87–4214 Filed 2–26–87; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 18–20 March 1987.

Times of Meeting:

0830–1630, 18 March 1987
0830–1500, 19 March 1987
0830–1630, 20 March 1987

Place: Headquarters, LABCOM, Adelphi, Maryland.

Agenda: The Army Science Board 1987 Summer Study on Lightening the Force will meet at Headquarters, US Army Laboratory Command for the purpose of conducting its third meeting on the study. Presentations will be made to the Panel by the Army Materiel Command (AMC) Research, Development and Engineering Centers and Laboratories on US Army technology programs related to the study. This is a continuation of the fact-finding phase of the study. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87–4047 Filed 2–26–87; 8:45 am]

BILLING CODE 3710–08–M

Department of Army

Notice of Availability of Environmental Impact Statement, Presidio, San Francisco, CA

ACTION: Notice of availability of the Draft Environmental Impact statement, proposal to construct a barracks complex at Presidio, San Francisco, California.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 and the President's Council on Environmental Quality, the Army has prepared a Draft Environmental Impact Statement for construction of three barracks for enlisted persons at the Presidio, San Francisco, California.

Copies of the DEIS have been forwarded to the US Environmental Protection Agency, other federal agencies, state and local agencies, Golden Gate National Recreation Advisory Board, and predetermined interested organizations and individuals.

Copies of the DEIS can be obtained by writing or calling the US Army Corps of Engineers, Sacramento District, 650 Capital Mall, Sacramento, California 95814–4794, Phone (916) 551–2903.

Dated: February 24, 1987.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health OSA (I&L).

[FR Doc. 87–4089 Filed 2–26–87; 8:45 am]

BILLING CODE 3710–08–M

Defense Logistics Agency

Privacy Act of 1974; New Ongoing Computer Matching Program Between the Department of Defense and the Veterans Administration

AGENCY: Defense Manpower Data Center (DMDC), Defense Logistics Agency, DoD.

ACTION: This action constitutes notice for any public comment on a report to the Office of Management and Budget (OMB) and Congress on a proposed new ongoing computer matching program between the Department of Defense (DoD) and the Veterans Administration (VA).

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SUMMARY: The purpose of this new ongoing matching program is to verify eligibility of active duty military and drilling reservists to VA education benefits so as to determine if the payee of education benefits is receiving the correct amount of such benefits and to detect instances of underpayment or overpayment of education benefits to prevent fraud and abuse.

DATE: The proposed action will be effective, without further notice, March 30, 1987, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Robert J. Brandewie, Deputy Director, Defense Manpower Data Center (DMDC), 550 Camino El Estro, Suite 200, Monterey, CA 93940–3231. Commercial phone number: (408) 375–4131, Autovon: 878–2951

FOR FURTHER INFORMATION CONTACT: Robert J. Brandewie at the above address.

SUPPLEMENTARY INFORMATION: The computer matching will be performed by DoD quarterly upon receipt of an extract of the VA Chapter 34 education file. The match will be accomplished using social security number. Matching records will be returned to the VA who will be responsible for reviewing the information to determine proper benefit level. Set forth below is a matching report containing the information required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Matching Programs, dated May 11, 1982, issued by the Office of Management and Budget and published in the **Federal Register** at 47 FR 21656, May 19, 1982. A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget on February 19, 1987, pursuant to Appendix I of OMB Circular No. A–130—"Federal Agency Responsibilities for Maintaining Records About Individuals" dated December 12, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 23, 1987.

Report of a New Ongoing Computer Matching Program Between the Department of Defense and the Veterans Administration on Chapter 34 Education Beneficiaries

a. *Authority:* The legal authority under which the computer match is being conducted is 10 U.S.C. 136, 38 U.S.C. 210(c)(1) and 3006 and OMB Revised Supplemental Guidance for Conducting Matching Program (47 FR 21656, May 19, 1982).

b. *Program Description:* The Defense Manpower Data Center (DMDC) of the Department of Defense (DoD) and the Department of Veterans Benefits of the VA under authority of Title 38, United States Code, section 210(c)(1) and 3006 plan to conduct a series of computer data exchanges to verify eligibility to VA education benefits granted under Title 38, United States Code and to prevent fraud and abuse. The data exchange will compare certain information in the data base of the DMDC of individuals on active duty and drilling reservists with VA education benefit records to determine if the payee of education benefits is receiving the correct amount of such benefits. The goal of the data exchange is to detect instances of underpayment or overpayment of education benefits under Title 38, U.S.C.

If the data exchange discloses that there is a discrepancy in the active duty service dates of an individual on active duty or a drilling reservist in DMDC records and the service dates of the individual in the individual's VA education benefit record, the VA will verify this information of the individual so identified and will make any necessary adjustment to his or her education benefits. For these individuals so identified, the VA will contact the individual and his or her branch of service to resolve the discrepancy. The match will permit this exchange of data and will disclose the identifying information to branches of military service when required to verify and correct, if necessary, the amount of VA education benefits being paid.

The matching program will identify Chapter 34 education benefit recipients who are either not entitled to those benefits or who require a benefit adjustment.

Quarterly, the VA, as the source agency, will submit to DoD, the matching agency, an extract of the VA Chapter 34 education benefit file containing social security number, VA file number, name, date of birth and various data regarding the benefit payment. DoD will match the VA file with records of active duty military members and drilling reservists. The match will key on social security number and will produce a listing of match records where the VA and DoD files show discrepant data. The listing will contain the VA data plus the same data element as shown in the DoD record system. In addition, the members duty address is provided.

The VA is responsible for reviewing the matching records and for notifying the benefit recipient of any action that is needed as a result of the review. If no action is needed, the matching information will not be used for any other purposes.

c. *Records to be Matched:* The systems of records to be matched between the agencies are as follows: (1) The Veterans Administration record system is identified as 58 VA 21/22/28, entitled "Compensation, Pension, Education and Rehabilitation Records—VA," appearing on page 738 of the **Federal Register** publication—Privacy Act Issuances, 1984 Compilation, Vol. V, amended at 50 FR 28875 (June 28, 1985); 50 FR 31453 (August 2, 1985); 51 FR 24781 (July 8, 1986); 51 FR 25142 (July 20, 1986) and 51 FR 28289 (August 6, 1986) of which routine use number 17. authorizes this match. (2) The Department of Defense record system is identified as S332.10 DLA–LZ, entitled "Defense Manpower Data Center Data Base" appearing at 51 FR 30104 (August 22, 1986).

d. *Period of the Match:* The initial match will begin as soon as possible after this public notice becomes effective as set forth under "DATE" in the preamble of this notice. The matching will continue quarterly until Chapter 34 Benefit Program phases out in approximately 1991.

e. *Security Safeguards:* The matching shall be performed according to the written Memorandum of Understanding (MOU) between the agencies. Each agency agrees that the data exchange described is in compliance with the requirements as set forth in the OMB Revised Supplemental Guidelines for Conducting Matching Programs. The extract file will be used and accessed only to match the file(s) previously agreed to; it will not be used to extract information concerning "non-hit" individuals for any purposes; and it will not be duplicated or disseminated within or outside the matching agency unless authorized in writing by the source agency. The agencies involved will use the data supplied in a manner prescribed by law and will maintain proper safeguards to prevent unauthorized release or use of all data supplied. The VA security safeguards include: (1) Access to working spaces and claims folder file storage areas in VA regional offices and centers is restricted to VA employees on a need-to-know basis. Generally, file areas are locked after normal duty hours and the offices and centers are protected from outside access by the Federal Protection Service or other security personnel. Claims file records of employees and public figures are stored in separate locked files. Strict control measures are enforced to ensure that access to and disclosure from these claims file records are limited to a need-to-know basis. (2) Access to Target data telecommunication terminals is by authorization which is controlled by the site security officer. The security officer is assigned responsibility for privacy-security measures, especially for review of violation logs, information logs, and control of password and badge distribution. (3) Access to data processing centers is generally restricted to center employees, custodial personnel, Federal Protective Service, and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic looking devices. All other persons gaining access to computer rooms are escorted. DMDC safeguards include: (1) Tapes are stored at W.R. Church Computer Center in a controlled access area. (2) Tapes can be physically accessed only by computer center personnel and can be mounted for processing only if the appropriate security coded is provided. Automated records are accessible by password and access to the computer center is by key or picture identification. Hard copy records are maintained in Federal Office Buildings in lockable file cabinets and are accessed only by authorized Federal employees.

f. *Retention and Disposition of Records:* Tapes received by the DoD will be returned to the VA upon successful completion of the match. Hard copy match records will be used by the VA to determine continued benefit entitlement level and to contact the benefit recipient if necessary. "Non-hit" records will not be used for any purpose. Records relating to "hits" will be kept so long as the administrative investigation is active and shall be maintained in a Privacy Act system of records and disposed of in accordance with the requirements of the Privacy Act and the Federal Records Schedule. Specific data obtained from "hits" will be entered into the claims file subject to disclosure only under the Privacy Act provisions.

[FR Doc. 87–4215 Filed 2–26–87; 8:45 am]

BILLING CODE 3510–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP87–92–000 and CP87–92–001]

Texas Eastern Transmission Corp. and PennEast Gas Service Co.; Intent To Prepare an Environmental Assessment for the Capacity Restoration and Expansion Program and Request for Comments on Environmental Issues

February 24, 1987.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC) will prepare an environmental assessment on the facilities proposed in the above-referenced docket. The staff is requesting comments on:

(1) The scope of the environmental assessment;

(2) Significant environmental issues;

(3) Alternatives to the proposal;

(4) Measures to mitigate environmental impacts;

(5) Whether the proposal constitutes a major Federal action significantly affecting the quality of the human environment, thereby requiring the preparation of an environmental impact statement.

Written comments, submitted in accordance with the instructions in this notice, should be filed no later than March 30, 1987.

On November 24, 1986, Texas Eastern Transmission Corporation (Texas Eastern) and PennEast Gas Services Company (PennEast) filed a joint application with the FERC in Docket No. CP87–92–000, to construct 315.7 miles of 8-inch through 42-inch diameter pipeline, and 69,000 horsepower of compression in Ohio, West Virginia, Pennsylvania, New Jersey, and New York. Facilities constructed in Phase I, with a proposed in service date of November 1987, would restore 157,745 dekatherms per day (Dtd) of lost certificated daily design capacity. Phase I facilities would also provide an additional 345,245 Dtd capacity to be used by the following projects: (1) Staten Island LNG facility service replacement, Docket No. CP85–859–000, (2) transportation service for Consolidated Gas Transmission, Docket No. CP85–806–000, (3) PennEast Phase I, Docket No. CP87–4–000, and (4) SS–II Phase V service for Consolidated Edison of New York, Inc., Docket No. CP87–28–000. Phase II facilities, with a proposed in service date of November 1988, would provide an additional 245,000 Dtd capacity for PennEast, Docket No. CP87–4–000, and 100,000 Dtd for a new storage service to be filed in the future. The estimated cost is $523,210,000.

On February 9, 1987, Texas Eastern and PennEast filed, in Docket No. CP87–92–001, an amendment to the original application to delete 15.2 miles of pipeline facilities in New Jersey known as the proposed Hanover Loop. Texas Eastern now proposes to provide the equivalent capacity by installing a net increase of 13,800 horsepower at its existing Lambertville, New Jersey Compressor Station. The revised cost estimate is $524,292,000.

The proposed pipeline construction is described in table 1 and its general location is identified in figure 1.[1] Texas Eastern proposes to replace 227.1 miles of pipeline segments in its Big Inch and Little Big Inch pipelines, which were acquired from the War Assets Administration in 1947. Deterioration of these lines and the encroachment of population have required Texas Eastern to operate at reduced pressures, with the resulting loss of 157,745 Dtd certificated design capacity. Texas Eastern proposes to abandon and remove 179.1 miles of its 20-inch-diameter Little Big Inch pipeline, and 48.0 miles of its 24-inch-diameter Big Inch pipeline, and would install a new 36-inch-diameter pipeline in the same trench. No new permanent right-of-way would be created; however, about a 75-foot width of right-of-way would be disturbed during construction. Some of the 75-foot width would extend beyond the edge of the existing permanent right-of-way.

Texas Eastern would also construct eight pipeline loop segments totalling 69.5 miles adjacent to its existing transmission system. The loop segments are described in table 1, and the general location identified in figure 1. The loop segments would require an additional 25-foot-width of permanent right-of-way, with a 75-foot width of right-of-way disturbed during construction. Further, a proposed 4.0-mile crossover line would parallel an existing pipeline for approximately 2.0 miles using the same land requirements as loop segments. The remaining 2.0 miles would use a 50-foot-wide permanent right-of-way and require an additional 25-foot width for construction. Texas Eastern would construct two new compressor stations, and add compressors at six existing sites, as shown in table 2.

The pipeline facilities are proposed for construction between June and November in 1987 and 1988. Construction would begin with the

[1] The map is not being printed in the **Federal Register**, but copies are available from the Commission's Division of Public Reference.

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clearing and grading of a right-of-way approximately 75-feet-wide to prepare a relatively level strip to accommodate construction equipment. Rotary wheel ditching machines, backhoes, or rippers, would then excavate a trench sufficiently deep to provide the minimum depth of cover, normally 36 inches, required by the U.S. Department of Transportation. Blasting would be required when areas of consolidated rock are encountered. Topsoil would be removed and conserved in all cropland areas in Ohio, West Virginia, Pennsylvania, and all areas in New Jersey.

After trenching, pipe segments would be strung along the right-of-way, bent to conform to the contours of the trench, welded together, coated, and lowered into the trench. Backfilling of the trench would use previously excavated materials. Topsoil that was conserved would be replaced at its original horizon. The right-of-way would be restored to its original contours as much as practicable, and reseeded, limed, fertilized, and mulched in accordance with Texas Eastern's erosion and sedimentation control plans filed with appropriate state agencies and reviewed by the staff.

Based on a preliminary analysis of the application, and the environmental information provided by the applicant, the staff has identified several issues which will be addressed specifically in the environmental assessment. Comments are solicited on the following issues:

(1) Alternatives, route deviations, and/or special construction techniques in areas where residential development has encroached on the right-of-way of the existing pipeline segments proposed for replacement;

(2) Mitigation, route deviations, and/or compensation in areas where the proposed replacement segments cross orchards; and

(3) Restoration of agricultural lands crossed by the proposed project.

Comments are also solicited on any additional topics of environmental concern to residents and others in the project area.

A copy of this notice and request for comments on environmental issues has been sent to Federal, state, and local environmental agencies, parties in this proceeding, and the public. All counties in the project area, and all local jurisdictions which have experienced residential development adjacent to the pipeline proposed for replacement, have been provided copies of detailed maps which identify the location of the proposed project in their respective areas. Comments on the scope of the environmental assessment should be filed as soon as possible but no later than March 30, 1987. All written comments must reference Docket No. CP87-92-000 and be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Comments recommending that the FERC staff address specific environmental issues should be supported with a detailed explanation of the need to consider such issues.

The environmental assessment will be based on the staff's independent analysis of the proposal and, together with the comments received, will comprise part of the record to be considered by the Commission in this proceeding. The environmental assessment will be sent to all parties in this proceeding, to those providing comments in response to this notice, to Federal and state agencies, and to interested members of the public. The environmental assessment may be offered as evidentiary material if an evidentiary hearing is held in this proceeding. In the event that an evidentiary hearing is held, anyone not previously a party to this proceeding and wishing to present evidence on environmental or other matters must first file with the Commission a motion to intervene, pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

Additional information about the proposal, including detailed route maps for specific locations, is available from Mr. Chris Zerby, Project Manager, Environmental Evaluation Branch, Office of Pipeline and Producer Regulation, telephone (202) 357-9037.

Kenneth F. Plumb,

Secretary.

TABLE 1.—PROPOSED PIPELINES

Segment	Pipe diameter (inches)	Length (miles)	Right-of-way width (feet)		State	County
			Construction	Permanent		
1987 Construction:						
Station 21A—Replacement	36	58.7	75	0	PA	Fayette, Somerset, Bedford.
Station 22A—Replacement	36	49.4	75	0	PA	Bedford, Fulton, Franklin.
Station 23—Replacement	36	61.4	75	0	PA	Franklin, Adams, York, Lancaster.
Station 24—Replacement	36	48.0	75	0	PA	Lancaster, Chester.
Station 18—Loop	36	5.0	75	25	OH	Perry.
Holbrook—Loop	36	12.5	75	25	PA	Fayette.
Bechtelsville—Loop	36	7.2	75	25	PA	Beckes, Montgomery.
Station 26—Loop	42	5.5	75	25	NJ	Somerset.
Reconnect M&R Nos. 372, 005, 013, 105, 054, 007, 012, 020, 008, 1275, 010, 056	8	[1] 6.0			PA	
	6	[1] 2.0	([2])	([2])	WV	([2])
	4	[1] 4.0				
1988 Construction:						
Station 25—Replacement	36	9.5	75	0	PA	Chester.
Station 18—Loop	36	22.5	75	25	OH	Perry, Muskingum.
Station 19—Loop	20	5.6	75	25	OH	Monroe.
Berne—Loop	36	9.7	75	25	WV	Marshall.
					PA	Green.
Station 20—Loop	8	1.4	75	25	PA	Green.
Station 19 to Berne Crossover	36	4.0	75	25/50	OH	Noble, Monroe.

[1] Mileage for reconnection segments not included in total mileage listed in text.
[2] Locations of connecting lines are not identified in the application.
Right-of-way information to be provided in response to the FERC staff's data request.

TABLE 2.—ABOVEGROUND FACILITIES

Location	Horsepower	Site (acres)	State	County
1987 Construction: Centre Hall—new	4,000	33	PA	Centre.
1988 Construction:				
Sarahville—addition	11,000	10	OH	Noble.
Berne—addition	6,000	0	OH	Monroe.
Holbrook—addition	11,000	0	PA	Green.
Waynesburg—new	4,000	10	PA	Green.
Connellsville—addition	22,000	0	PA	Fayette.
Chambersburg—addition	11,000	0	PA	Franklin.
Lambertville—addition	13,800 net	0	NJ	Hunterdon.
Bridgewater M&R—new [1]	Meter	1	NJ	Somerset.

[1] Replacement or additional meter runs would be installed at existing meter and regulating stations in Richmond County, NY, Morris County, NJ, and Middlesex County, NJ.

[FR Doc. 87-4175 Filed 2-26-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-195-000, et al.]

Consolidated Gas Transmission Corporation, et al.; Natural Gas Certificate Filings

February 20, 1987.

Take notice that the followings filings have been made with the Commission:

1. Consolidated Gas Transmission Corporation

[Docket No. CP87-195-000]

Take notice that on February 6, 1987, Consolidated Gas Transmission Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP87-195-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for authorization to abandon certain existing sales service, render additional and new sales services, and construct and operate related measuring facilities for two of its existing customers, Corning Natural Gas Corporation (Corning) and New York State Electric & Gas (NYSEG) Corporation, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Consolidated proposes as of November 1, 1987, 1) To increase its Rate Schedule RQ sales service to NYSEG to include the Elmira, New York, market area; 2) to abandon its Rate Schedule SCQ sales service to Corning; 3) to render new Rate Schedule RQ sales service to Corning to meet its requirements in the town of Southport in Chemung County, New York, and the city of Corning, town of Addison, and surrounding vicinity in Steuben County, New York.

Additionally, Consolidated proposes to construct and operate two new measuring and regulating stations to serve as new delivery points to Corning, to be known as the Whiskey Creek and Addision Connections, located in the towns of Corning and Tuscarora, respectively, both in Steuben County, New York. Consolidated also proposes to expand its existing Gardner Connection measuring and regulating station, located in the town of Horseheads, in Chemung County, New York, to serve as s delivery point to NYSEG. The proposed construction would cost approximately $1,500,000 and would be financed from funds on hand or to be obtained from Consolidated's parent corporation, Consolidated Natural Gas Company.

Comment date: March 13, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Mississippi River Transmission Corporation

[Docket No. CP87-204-000]

Take notice that on February 11, 1987, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP87-204-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a delivery point and abandon a delivery point under the blanket certificate issued in Docket No. CP82-489-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

MRT proposes to abandon a direct sale delivery point at Illinois Power Company's (IPC) Wood River power station which it is currently serving under certificate authority issued at Docket No. C-863 and to add that delivery point under its certificate authority issued at Docket No. CP70-158 by which it is authorized to sell IPC up to 100,000 Mcf per day under MRT's CD-1 rate schedule.

MRT states that its FERC Gas Tariff does not prohibit the addition of new delivery points and that it has sufficient capacity to accomplish the deliveries proposed herein without detriment or disadvantage to its other customers. Because MRT would serve IPC at the proposed delivery point without an increase in the volumes it currently delivers under its contract with IPC, MRT states that there would be no impact on peak day and annual deliveries. MRT asserts that no construction is necessary to make this change.

Comment date: April 6, 1987, in accordance with Standard Paragraph G at the end of this notice.

3. National Helium Corporation Panhandle Eastern Pipe Line Company

[Docket No. CP87-176-000]

Take notice that on January 27, 1987, Panhandle Eastern Pipe Line Company (Panhandle) and National Helium Corporation (National), filed in Docket No. CP87-176-000 an application pursuant to section 7(c) of the Natural Gas Act and the Regulations thereunder for a certificate to Panhandle, a limited certificate to National authorizing the exchange of natural gas and waiver of certain reporting requirements as to National and amendment to Panhandle's certificate of public convenience and necessity, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Panhandle requests a certificate of public convenience and necessity authorizing it to exchange gas with National in interstate commerce and amend its certificate of public convenience and necessity granted by Commission order dated December 8, 1966 in Docket No. CP63-159, to include an option allowing National to reimburse Panhandle for shrinkage gas with thermally equivalent volumes of natural gas. National seeks a limited jurisdictional certificate authorizing it to exchange gas with Panhandle in interstate commerce. The limited jurisdictional certificate sought by National attempts to confine the authorization to the proposed exchange with Panhandle and seeks exemption of National's other operations from Commission jurisdiction. National also seeks a waiver of the Commission's regulations and reporting requirements, including those concerning the other operations from Commission jurisdiction. National also seeks a waiver of the Commission's regulations and reporting requirements, including those concerning the Commission's Uniform System of Accounts. Panhandle and National have entered into an Amendment to their existing 1961 agreement which grants National the option of either replacing all or a portion of the shrinkage gas in kind on a Btu basis or to continue to pay Panhandle the contract price for such shrinkage used in its Seward County, Kansas facilities.

Since National performs a vital function of extracting liquefiable hydrocarbons for Panhandle, a decision by National to cease operations would be detrimental to the safe and reliable operation of Panhandle's system. National advised Panhandle that due to increased operating costs and the lower prices of extracted products that its continued operations were in doubt. Panhandle agreed to amend its 1961 agreement with National authorizing an exchange in an effort to assist National in improving the economics of its operation and to avoid having to procure an alternate extraction process which would require additional expenditures.

Panhandle and National have also entered into an exchange agreement authorizing National to deliver to Panhandle at an existing point of connection at National's facilities replacement Btu's up to the amount of shrinkage taken from Panhandle's gas

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stream at National's facilities. All replacement Btu's will be from sources not subject to Commission jurisdiction under the Natural Gas Act and no Panhandle facilities will be used to transport the replacement Btu's. No charge will be made by either party to effect this exchange.

Comment date: March 13, 1987, in accordance with Standard Paragraph F at the end of this notice.

4. Texas Eastern Transmission Corporation

[Docket No. CP87-185-000]

Take notice that on January 29, 1987, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP87-185-000 an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon sales service for North Alabama Gas District (North Alabama) under Rate Schedule DCQ, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern proposes to abandon effective December 31, 1986, sales service to North Alabama in Colbert, County, Alabama, under Texas Eastern's FERC Gas Rate Schedule DCQ. The DCQ service agreement (agreement) dated January 5, 1973, between Texas Eastern and North Alabama, provides for a maximum daily quantity (MDQ) of 14,800 Mcf of natural gas and an annual contract quantity (ACQ) of 5,402,000 Mcf of natural gas.

Texas Eastern states that authorization to abandon this sale is being sought because North Alabama's customer, LaRoche Industries, Inc. (LaRoche) has terminated its contract with North Alabama under which North Alabama supplied it with natural gas for use in its Cherokee Plant located in Colbert County, Alabama. Texas Eastern explains that inasmuch as the natural gas which Texas Eastern sold to North Alabama under Rate Schedule DCQ was used exclusively by North Alabama for resale to LaRoche, a market no longer exists for this gas.

Texas Eastern further states that the sale of natural gas for which it seeks abandonment authorization was authorized by Commission order issued December 17, 1962, in Docket No. CP61-203 (28 FPC 1035). Texas Eastern explains that the December 17, 1962, order authorized Texas Eastern to sell natural gas to Petersville Gas Company (a predecessor to North Alabama) for subsequent resale to Armour and Company (a predecessor to LaRoche) for use in the manufacture of ammonia and ammonia derivatives in its Cherokee Plant.

Texas Eastern further explains that by letter dated December 17, 1985, USS Agri-Chemicals (another predecessor to LaRoche) gave 12-months notice to North Alabama that it was cancelling its contract. Texas Eastern states that North Alabama notified it by letter dated December 23, 1985, of cancellation of its contract with Texas Eastern. According to Texas Eastern the cancellation of the contract between LaRoche and North Alabama was reaffirmed establishing December 31, 1986 as the effective date of cancellation by a letter dated December 29, 1986, from LaRoche to North Alabama. It is explained that North Alabama reaffirmed its desire to terminate its contract with Texas Eastern by letter dated December 29, 1986. Texas Eastern further states that by letter agreement dated December 30, 1986, it and North Alabama formally terminated, as of December 31, 1986, the DCQ service agreement dated January 5, 1973.

According to Texas Eastern, the only facilities involved in the sale are minor measuring and regulating facilities. Texas Eastern further states that it does not propose to abandon the minor facilities related to this sale, but would retain them in place in the event they may later be used for sales, transportation, or exchange arrangements with North Alabama or other parties.

Texas Eastern states that it entered into a precedent agreement with North Alabama dated February 21, 1986, which provides for the execution, upon satisfaction of conditions precedent, of new service agreements under new rate schedules for which Texas Eastern is seeking authorization in Docket No. CP86-378-000. Upon execution, Texas Eastern states that these new service agreements would supersede the January 5, 1973 service agreement which governs Texas Eastern's sale of natural gas to North Alabama for which Texas Eastern is seeking abandonment authorization herein. Texas Eastern concludes that since North Alabama has lost its customer, LaRoche, it would no longer require the gas services which are the subject of the February 21, 1986 precedent agreement. Accordingly, the February 21, 1986 precedent agreement would be terminated, Texas Eastern states, and it would make appropriate filings with the Commission to eliminate North Alabama as a participating customer in Texas Eastern's proposal in Docket No. CP86-378-000.

Comment date: March 13, 1987, in accordance with Standard Paragraph F at the end of this notice.

5. Texas Gas Transmission Corporation

[Docket No. CP87-178-000]

Take notice that on January 28, 1987, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP87-178-000, an application pursuant to section 7(c) of the Natural Gas Act for authorization to transport up to 500 Billion Btu equivalent of natural gas per day on an interruptible basis for Texaco Inc. and its subsidiaries and affiliates (Texaco), and approval for the specific rate related to such transportation, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas requests authorization for the interruptible transportation of up to 500 Billion Btu equivalent of natural gas per day for the account of Texaco, a producer and supplier Texas Gas, for deliveries to certain markets located off the system of Texas Gas. According to Texas Gas, the natural gas for which transportation authority is sought includes supply which is currently dedicated to contract to Texas Gas and has been, or would be, contractually released by Texas Gas. Texas Gas states that limited-term abandonment authority exists for a portion of this gas pursuant to Docket Nos. CP86-370-000 and CP86-373-000, and additional abandonment authority, if necessary, would be sought by Texaco, by means of a separate abandonment filing to be submitted to the Commission simultaneously with this application or shortly thereafter.

Texas Gas states that the gas to be transported by Texas Gas includes supply attributable to gas produced by Texaco from Vermilion Block 31, Offshore Louisiana, certain supplies delivered by Texaco at the tailgate of its Henry Plant, located near Erath, Louisiana, the tailgate of the Champlin Processing Plant in Carthage Field, Panola County, Texas (Carthage), two existing interconnections between Texas Gas and Arkansas Louisiana Gas Company in Phillips County, Arkansas (Helena No. 2), and Ouachita Parish, Louisiana (Munce), and various other specified points of receipt located in the geographic areas designated as Zone 1 and Zone SL (South Louisiana) in Texas Gas' Tariff and described in detail and in pro forma transportation agreement (transportation agreement) attached as an exhibit to the subject application. Texas Gas also requests flexible authority to add additional points of receipt from time to time, limited to points within Zone SL, subject to any reporting requirements the Commission may deem necessary and subject to available capacity.

Texas Gas states that the gas would be delivered for Texaco's account primarily at the various interconnections between Texas Gas and other interstate pipelines for further transportation and delivery to markets located off the system of Texas Gas. Texas Gas states that it has included certain additional points of delivery as part of the transportation service which are necessary to effect transportation from certain offshore blocks where Texaco has gas available for transportation. The specific point(s) of delivery are also described in the transportation agreement, according to Texas Gas.

Texas Gas also requests approval to charge Texaco the following specific rates as stated under Article IX of the transportation agreement. For deliveries from Zone SL to the stated point(s) of delivery identified in the transportation agreement as Lebanon and Slaughters, Texas Gas specifies that the rate is equal to the appropriate zone-to-zone maximum rate under Texas Gas' T Rate Schedule less 7.38 cents.[1] For deliveries from the points of receipt identified as Carthage, Helena No. 2 and Munce to Lebanon and Slaughters, Texas Gas specifies that rate is equal to the appropriate zone-to-zone maximum rate under Texas Gas' T Rate Schedule less 7.38 cents. For deliveries within Zone SL, Texas Gas specifies that the rate is equal to one quarter of the maximum rate stated on the T Rate Schedule for 100 miles of haul.

Texas Gas states that the term of the proposed transportation service is to be 20 years. Upon certification of the proposed service, Texas Gas states, the subject transportation agreement would become an effective rate schedule in its FERC Gas Tariff, Volume No. 2. Texas Gas proposes to limit the proposed service and the specific transportation rates solely to Texaco. Texas Gas further states that no new facilities are necessary to effectuate the delivery of volumes from the receipt points stated in the transportation agreement, and at this time, no new facilities are contemplated to be necessary from any additional points of receipt which may be added.

Texas Gas states that the proposed application is part of a settlement agreement reached between Texaco and Texas Cas to (1) resolve an outstanding pricing dispute that was formerly pending appeal before the United States Court of Appeals for the District of Columbia covering reserves from certain fields located in offshore Louisiana (*Texas Gas Transmission Corporation v. FERC*, Nos. 85-1780 and 85-1815); (2) waive all potential past and future take-or-pay liability through at least December 1, 1987; and (3) incorporate market-responsive provisions pursuant to Commission Order No. 451 in certain gas purchase agreements between Texas Gas and Texaco.

Texas Gas states that the proposed transportation service is an integral part of the settlement and seeks to permit the availability of reserves, in excess of the present market requirements of Texas Gas, to markets located off the Texas Gas system, thereby serving the public interest in the form of significant take-or-pay relief to Texas Gas and its customers, transportation of market-responsive sources of supply to the consuming public, encouragement of the continued development of market-responsive supplies of natural gas, and facilitating overall competition in the natural gas market.

Texas Gas states that Texaco has been and continues to be a major producer and supplier of natural gas to Texas Gas and its customers in terms of both deliverability and long-term services. Because of this unique supply relationship Texaco assumes vis-a-vis Texas Gas, and the benefits bestowed upon Texaco, Texas Gas, and its customers, and the overall public interest, Texas Gas submits that the proposal is in the present and future public convenience and necessity.

Comment date: March 13, 1986, in accordance with Standard Paragraph F at the end of this notice.

6. Trunkline Gas Company

[Docket No. CP87-194-000]

Take notice that on February 4, 1987, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP87-194-000 an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon transportation service for Transcontinental Gas Pipe Line Corporation (Transco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline states that by Commission order issued December 13, 1984, in Docket No. CP84-686-000 it was authorized to receive, transport and redeliver a volume of up to 10,000 Mcf of natural gas per day on an interruptible basis on behalf of Transco in accordance with a transportation agreement between Trunkline and Transco dated March 23, 1984. Trunkline states that it receives gas for Transco's account from Shell Oil Company at a point of receipt in Ship Shoal Area Block 241, offshore Louisiana, and redelivers such gas to Transco at a point of interconnection between Transco and Trunkline near Ragley in Beauregard Parish, Louisiana, all pursuant to Rate Schedule LT-4 of its FERC Gas Tariff, Original Volume No. 2. Trunkline further states that the term of the transportation agreement expired on January 1, 1986. It is explained that Transco has constructed its own offshore facilities as authorized in Docket No. CP84-220-000 and placed into service October 15, 1985; and therefore, no longer requires the service provided by Trunkline to serve its customers.

Accordingly, by this application, Trunkline specifically requests Commission authorization to abandon service provided under Rate Schedule LT-4 and to cancel such Rate Schedule upon receipt of the authorization requested.

Comment date: March 13, 1987, in accordance with Standard Paragraph F at the end of this notice.

7. Trunkline Gas Company

[Docket No. CP87-199-000]

Take notice that on February 9, 1987, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP87-199-000 an application pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving abandonment of transportation of natural gas on behalf of Columbia Gas Transmission Corporation (Columbia), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

By Commission Order issued January 24, 1985, in Docket No. CP84-687-000, Trunkline was authorized to receive, transport and redeliver up to 30,000 Mcf of natural gas per day on an interruptible basis on behalf of Columbia pursuant to, and in accordance with, a transportation agreement between Trunkline and Columbia dated January 30, 1984, it is stated. Trunkline explains that it receives gas for Columbia's account at seven existing receipt points on High Island Offshore System (HIOS). Trunkline utilizes its existing excess capacity in HIOS, U-T Offshore System (UTOS) and Natural Gas Pipeline Company of America to transport the gas to its system. Trunkline states that it then redelivers the gas for Columbia's account at an existing interconnection between the facilities of Trunkline and Columbia Gulf Transmission Company

[1] The current T Rate Schedule appears on Sheet No. 11 of Texas Gas' FERC Gas Tariff, Original Volume No. 1.

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(Columbia Gulf) in St. Mary Parish, Louisiana. Trunkline indicates that Columbia Gulf makes ultimate redelivery to Columbia's system in Kentucky and West Virginia. It is stated that Trunkline provides service to Columbia pursuant to Rate Schedule T-87 of its FERC Gas Tariff, Original Volume No. 2. The term of the transportation agreement expired on January 30, 1986, it is stated. Trunkline further states that Columbia has experienced a decline in HIOS/UTOS throughput and is now able to rely wholly on its own contracted capacity in HIOS/UTOS for transportation of the volumes of gas it requires. Trunkline indicates that Trunkline and Columbia entered into a letter agreement dated October 24, 1986, which provides for the termination of the transportation agreement dated January 30, 1984.

Trunkline specifically requests authorization to abandon the service provided by Trunkline for Columbia as authorized in Docket No. CP84-687-000. Upon such authorization Trunkline would cancel Rate Schedule T-87, it is stated.

Comment date: March 13, 1987, in accordance with Standard Paragraph F at the end of this notice.

8. United Gas Pipe Line Company

[Docket No. CP87-201-000]

Take notice that on February 10, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-201-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for permission to abandon certain sales service under the blanket authorization issued in Docket No. CP82-430-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United requests permission to abandon certain industrial sales service as follows:

Customer	Contract expiration date	Original docket No.
Champion International Corp (Formerly St. Regis Corp.)	09/04/86	G-232
CITGO Petroleum Co. (Formerly Cities Service Co.)	09/04/86	CP71-89
Cities Service Co.	01/01/87	N/A
Exxon Company U.S.A. (Baxterville Field)	01/01/87	N/A
Exxon Co. U.S.A. (Bryan Field)	01/01/87	CP62-12
Georgia-Pacific Corp.	01/01/87	CP70-169
Lone Star Industries (Formerly Marquette Co.)	01/01/87	G-8230
Masonite Corp.	01/01/87	G-232
Willamette Industries, Inc. (Plywood Plant)	01/01/87	CP65-391 & CP70-223
Willamette Industries, Inc. (Sawmill Plant)	01/01/87	CP68-68

United states that the sales contracts have expired and that the proposed abandonments have been agreed to by the affected industrial customers. United further states that its facilities would remain in place in anticipation of future service.

Comment date: April 6, 1987, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-4062 Filed 2-26-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-306-000; Docket No. CI87-317-000]

Elder & Vaughn, et al.; Broussard Number One, Inc.; Applications for Abandonment of Service

February 20, 1987.

Take notice that the Applicants herein have filed applications pursuant to section 7 of the Natural Gas Act for authorization to abandon service as described herein, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Elder & Vaughn, *et al.*, (Elder & Vaughn) P.O. Box 18938, Oklahoma City, Oklahoma 73154-0938, Applicants in Docket No. CI87-306-000, request expeditious treatment of their application to permanently abandon a sale of casinghead gas to Northern Natural Gas Company, Division of Enron Corp., from the Conner Phelps No. 1 and No. 2 wells, located in the SW/4 Sec. 30-T4N-R23ECM, Beaver County, Oklahoma. The working interest are Elder 1976 Okla. Oil Programs II & III, Black Hawk Holding Co., Jack H. Vaughn, small producer certificate holder in Docket No. CS72-234, and John B. Elder, small producer certificate holder in Docket No. CS73-631.

In support of the application, Elder & Vaughn state the wells produce a minimum volume of gas which is not economical due to the high cost of compressor rental. By letter dated February 6, 1987, Northern indicated it would agree to release the wells from March 17, 1977, contract. Elder & Vaughn intend to sell the remaining gas reserves to Phillips Petroleum Company which has a nearby low pressure interstate line which does not require compression.

Broussard Number One, Inc., (Broussard), P.O. Box 6242, Fort Myers, Florida 33911, Applicant in Docket No. CI87-317-000, requests expeditious issuance of authorization to abandon the sale of NGPA section 104 Post 1974 gas to Texas Gas Transmission Corporation from the L.G. Broussard No. 1 well, Jefferson Island Field, Iberia Parish, Louisiana, in order to sell instead to Texas Gas Marketing Company.

In support of its application, Broussard states the well has water problems which will require maintenance of a higher level of production than Texas Gas is currently able to purchase. In November 1986, at an expense of $110,000 Broussard was able to flow gas at the rate of 650 Mcf/d. The well also produced approximately 225 Bbls. of water per day. Texas Gas Transmission Corporation advised by letter dated January 29, 1987, that it is willing to release the gas.

It appears reasonable and consistent with the public interest in these cases to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said applications should on or before February 27, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-4063 Filed 2-26-87; 8:45 am]

BILLING CODE 6717-01-M

[OPTS-59239; FRL-3161-7]

Certain Chemicals Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule pulished in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of three applications for exemption, provides a summary, and requests comments on the appropriateness of granting each exemption.

DATE: Written comments by: March 16, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-59239]" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential versions of the TME applications received by EPA. The complete non-confidential applications are available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 87-8

Close of Review Period. March 25, 1987.

Importer. Confidential.

Chemical. (G) Alyoxylate of a reaction product of a polyamine and an organic acid.

Use/Import. (S) Gasoline additive. Import range: Confidential.

T 87-9

Close of Review Period. March 25, 1987.

Importer. Confidential.

Chemical. (G) Condensation product of an organic acid and an alkylamine.

Use/Import. (S) Gasoline additive. Import range: Confidential.

T 87-10

Close of Review Period. March 25, 1987.

Importer. Confidential.

Chemical. (G) Reaction product of an anhydride and an alkyl amine.

Use/Import. (S) Gasoline additive. Import range: Confidential.

Dated: February 17, 1987.

Denise Devoe,

Acting Division Director, Information Mangement Division.

[FR Doc. 87-3988 Filed 2-26-87; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59806; FRL-3161-6]

Certain Chemicals Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984 (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of four such PMN's and provides a summary of each.

DATES: Close of review period:

Y 87-105—February 26, 1987.

Y 87-106 and 87-107—March 1, 1987.

Y 87-108—March 4, 1987.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

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Y 87-105

Importer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Import. (G) Open non-dispersive use. Import range: Confidential.

Y 87-106

Manufacturer. Rexnord Technologies.
Chemical. (G) Acrylic copolymer.
Use/Production. (S) Coating resin. Prod. range: Confidential.

Y 87-107

Importer. Confidential.
Chemical. (G) Polyamide resin.
Use/Import. (S) Printing ink component used to disperse pigment and to provide gloss, adhesion and resistance properties when printed on paper, plastic and metal substrates. Import range: Confidential.
Toxicity data. Acute oral: 23.1 g/kg., Acute dermal: 6.8 g/kg; Irritation: Skin—Slight, Eye—Moderate.

Y 87-108

Manufacturer. The Dow Chemical Company.
Chemical. (G) Aliphatic thermoplastic urethane.
Use/Production. (G) Industrial manufacture of plastic article for use in industrial medical and transportation. Prod. range: Confidential.

Dated: February 17, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87-3989 Filed 2-26-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3162-1]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075, EPA. Availability of Environmental Impact Statements Filed February 16, 1987 Through February 20, 1987 Pursuant to 40 CFR 1506.9.

EIS No. 870067, Report, COE, NC, Atlantic Intercoastal Waterway, Section IV-Tangent 1, Dredged Material Disposal, Masonboro Island, Vicinity of Carolina Beach Inlet Crossing, New Hanover County, Contact: Chris Correale (919) 343-4745

EIS No. 870062, Draft, FHW, MD, MD-28 Improvements, Jones Lane to I-270, Montgomery County, Due: April 13, 1987, Contact: Edward Terry (301) 962-4010

EIS No. 870063, Revised Final Supplement, EPA, MA, CT, French River Cleanup Program, Water Quality Improvement, Due: March 30, 1987, Contact: Ronald Manfredonia (617) 565-3531

EIS No. 870064, Final Supplement, FHW, VA, Springfield Bypass and Extension Construction, I-66 to the Braddock Road/VA-620 Intersection, Updated Alternative Information, Fairfax County, Due: March 30, 1987, Contact: James M. Tumlin (804) 771-2371

EIS No. 870065, Draft Supplement, NOA, REG, NXG, ATL, Green, Loggerhead and Pacific Ridley Sea Turtles, Protection, Endangered Species Act of 1973, Use of Turtle Excluder Devices by Shrimp Fisherman, Due: April 15, 1987, Contact: Charles Oravetz (813) 893-3366

EIS No. 870066, Draft, AFS, CA, Angeles Pipeline Project, C/O/M, Emidio Pump Station/Tank Farm to Los Angeles Basin Refineries, Permits, Angeles National Forest, Los Angeles and Kern Counties, Due: May 29, 1987, Contact: Richard Simon (213) 620-4083.

Dated: February 24, 1987.

William D. Dickerson,

Acting Director, Office of Federal Activities.

[FR Doc. 87-4181 Filed 2-26-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3162-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 9, 1987 through February 13, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. D-BLM-G08011-00, Rating LO, Arizona Interconnection Project, El Paso 345 kV Transmission Line, Construction, Right-of-Way Grants and Permits, Approval, Plan Amendment, AZ and NM. SUMMARY: EPA has no objections to the proposed action as described.

ERP No. DS-CDB-K89031-CA, Rating EC2, Santa Maria Town Center Expansion and Development, CDBG, CA. SUMMARY: EPA expressed environmental concerns and recommended further information in the final EIS on: (1) Mitigation measures to reduce air quality impacts; (2) water use, water supply, and sewage treatment requirements; and (3) mitigation measures to compensate for water and groundwater impacts.

EPA No. D-COE-C36061—PR, Rating EO2, Rio La Plata River Basin Multipurpose Flood Control Plan, Puerto Rico. SUMMARY: EPA has environmental objections to the selected alternative, based on impacts to water quality, groundwater, wetlands, and secondary impacts. Accordingly, EPA requested that additional information regarding these issues be included in the final EIS.

ERP No. D-FHW-E40695-GA, Rating EO2, GA-400 Extension, I-85 to I-285, Construction, 404 Permit, GA. SUMMARY: EPA's environmental concerns included the alternative analysis and potential air quality, noise, wetlands, and water quality impacts. EPA, therefore, requested that the heavy rail transit alternative be further considered, additional intersection air quality modeling be conducted (preliminary post-draft EIS modeling has already been conducted), noise abatement further considered and finalized, wetland losses mitigated, channelization avoided, and retention/detention drainage basins considered.

ERP No. D-FHW-E40700-FL, Rating EO2, FL-5/US 1 Upgrading, FL-922/NE-123rd Street to NE 203rd Street, 404 and 10 Permits, FL. SUMMARY: EPA is concerned about project air quality and noise impacts. A carbon monoxide intersection and hydrocarbon pollutant burden analyses was requested as well as additional reconsideration of noise abatement measures.

ERP No. D-UAF-B52000-MA; Rating: Civilian 24-hr. Operation Alter. = EU2, Proposed Military Action (16 C-5As) Alter. = EO2, and Alternate Military Action (8 C-5As) Alter. = EC2; Westover Air Force Base, Air Force Reserve Mission Change C-130 to C-5A Aircraft and Civil Aviation Operation Expansion Through 1995, MA. SUMMARY: EPA concludes that the effects of the projected civil aircraft operations, particularly nighttime operations, would be unacceptable from the standpoint of human health and welfare and environmental quality. EPA recommends that the USAF deny Westover Metropolitan Development Corporation (WMDC)s request for 24 hour a day operation at this time. The draft EIS fails to consider alternatives and noise mitigation for the civil aviation operations, and contains significant deficiences in the noise analysis which underestimates the magnitude of noise impacts. EPA rates the proposed civilian operation environmentally unsatisfactory and considers such action a candidate for referral to the Council on Environmental Quality. For the proposed military reorganization, EPA believes that the adoption of the mitigation measures discussed in the draft EIS in conjunction with those recommended in EPA's comments will reduce the military noise impacts to acceptable levels.

Final EISs

ERP No. F-AFS-A61313-00, 1985-2030 Resources Planning Act Program, Amendment to the Forest and Rangeland Renewable Resource Planning Act. SUMMARY: EPA has reviewed the final EIS and found that concerns raised on the draft EIS with respect to water and air quality remain. EPA offers to work with the Forest Service toward the resolution of these issues as future programs are prepared.

ERP No. F-FHW-G40113-AR, Hot Springs East and West Arterial Construction, US 270 East to US 270 West, AR. SUMMARY: EPA has no objections to the proposed action as described.

ERP No. F-USA-G10001-NM, White Sands Missile Range Ground Based Free Electron Laser Technology Integration Experiment Facility, Construction/Operation, Possible Sec. 10 and 404 Permits, NM. SUMMARY: EPA has no objections to the proposed action as described.

Amended Notices

The following reviews were completed during the week of Februrary 2, 1987 through February 6, 1987 and should have appeared in the FR Notice published on February 20, 1987.

ERP No. LD-SFW-L02015-AK; Rating: Alter. A (full leasing) = EO2, Alter. B (limited leasing) = EC2, Alter. C (further exploration) = LO; Arctic Nat'l Wildlife Refuge, Coastal Plain Resource Mgmt., Oil and Gas Exploration, Development, and Production, Leasing and Wilderness Designation, AK SUMMARY: EPA's review found no discussion of air quality deterioration, the effects of noise upon wildlife in the Refuge, or of the consequences of marine transportation facilities on fish populations. EPA believes more discussion is needed regarding impacts on the Refuge's core caribou calving area and finds that some foreseeable impacts are not discussed at all. Further, EPA believes the Department of Interior needs to revise the legislative EIS to enable a better understanding of the environmental impacts and clarify how the proposal relates to the U.S. Fish and Wildlife Mitigation Policy.

ERP No. F-FHA-F24000-00, St. Croix/Taylor Falls WWT Facilities, Plant Abandonment and New Stabilization Pond Treatment Facility Construction, Outfall Line Route Revision, Loan, WI and TN (Adoption of EPA EIS, filed 8-27-81). SUMMARY: EPA made no formal comments. EPA has no objections to the proposed activity.

Dated: February 24, 1987.

William D. Dickerson,

Acting Director, Office of Federal Activities.

[FR Doc. 87-4182 Filed 2-26-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Closed Circuit Test of the Emergency Broadcast System During the Week of March 9, 1987

February 20, 1987.

A test of the Emergency Broadcast System (EBS) has been scheduled during the week of March 9, 1987. Only ABC, AP Radio, CBS, CNN, MBS, NBC, NPR, United Stations and UPI Audio Radio Network affiliates will receive the Test Program for the Closed Circuit Test. The ABC, CBS, NBC, and PBS television networks and the national cable program supplier networks are not participating in the test.

Network and press wire service affiliates will be notified of the test procedures via their network approximately 25 minutes prior to the test.

Final evaluation of the test is scheduled to be made about one month after the Test.

This is a Closed Circuit Test and Will Not Be Broadcast Over the Air.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-4141 Filed 2-26-87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities Under OMB Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of Information Collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Recordkeeping and Confirmation Requirements for Securities Transactions (OMB No. 3064-0028).

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for the review and approval for continuing the information collective system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, DC 20429.

Comments: Comments on this collection of information should be submitted on or before March 16, 1987

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898-3810.

SUMMARY: The FDIC is requesting OMB approval to extend the expiration date of the recordkeeping and confirmation requirements for securities transactions contained in Part 344 of FDIC's rules and regulations (12 CFR Part 344). These requirements ensure that purchasers of securities in transactions effected by an insured state nonmember bank are provided adequate information concerning the transactions. These requirements are also designed to ensure that insured state nonmember banks maintain adequate records and controls with respect to securities transactions they effect. The aggregate annual paperwork burden imposed on insured state nonmember banks for this information collection is estimated to be 83,626 hours.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-4197 Filed 2-26-87; 8:45 am]

BILLING CODE 6714-01-M

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FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Reinstatement of a previously approved collection for which approval has expired.

Title: National Shelter Survey Program

Abstract: Forms are used for the National Facility Survey to evaluate structures; change building information; report data to the FEMA Computer Center for the National Facility Survey and Natural Hazard Vulnerability Survey data base.

Type of Respondents: State or local governments, Federal agencies or employees

Number of Respondents: 1,907

Buden Hours: 105,834

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Dated: February 17, 1987.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 87–4087 Filed 2–26–87; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL RESERVE SYSTEM

National Bancorp, Inc.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 19, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *National Bancorp, Inc.*, Melrose Park, Illinois; to engage *de novo* in investment or financial advice pursuant to § 225.25(b)(4) and in management consulting services pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 20, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–4089 Filed 2–26–87; 8:45 am]

BILLING CODE 6210–01–M

William H. Sipple, et al.; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 13, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *William H. Sipple*, Rochester, Minnesota, Robert E. Sipple, Phoenix, Arizona, and Gene L. Pierce, Minneapolis, Minnesota; to acquire 75 percent of the voting shares of Blanchardville Financial Services, Blanchardville, Wisconsin.

2. *Saul D. Binder*, Lincolnshire, Illinois, Marshall J. Persky, Lincolnwood, Illinois, and Sherwin Willens, Phoenix, Arizona; to acquire 80 percent of the voting shares of Columbia Bancorp, Avondale, Arizona.

Board of Governors of the Federal Reserve System, February 20, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–4070 Filed 2–26–87; 8:45 am]

BILLING CODE 6210–01–M

First Wachovia Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Compact Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 18, 1987.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Wachovia Corporation*, Winston-Salem, North Carolina; to merge with F.A. Bankshares, Inc. Monroe, Georgia, and thereby indirectly acquire First American Bank of Walton, Monroe, Georgia.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Allied Bancshares, Inc.*, Houston, Texas; to acquire 100 percent of the voting shares of First National Bank of Waxahachie, Waxahachie, Texas.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *U.S. Bancorp*, Portland, Oregon; to acquire 100 percent of the voting shares of U.S. Bank of Utah, Salt Lake City, Utah. U.S. Bank of Utah currently operates as U.S. Thrift and Loan, a subsidiary of U.S. Bancorp. U.S. Thrift and Loan will convert from a thrift and loan to a state chartered commercial bank.

Board of Governors of the Federal Reserve System, February 20, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–4071 Filed 2–26–87; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on February 13, 1987.

Public Health Service (PHS)

(Call Reports Clearance Officer on 202–245–2100 for copies of Package)

Center for Disease Control

Subject: Importation and Shipment of Etiologic Agents—NEW

Respondents: State or local governments; Businesses or other for-profit

Office of the Assistant Secretary for Health

Subject: 1987 Automated National Health Interview Survey Feasibility Study—NEW

Respondents: Individuals or households

Food and Drug Administration

Subject: Irradiation in the Production, Processing, and Handling of Food—Extension—(0910–0186)

Respondents: Businesses or other for-profit; Small businesses or organizations

OMB Desk Officer: Shannah Koss

Social Security Administration (SSA)

(Call Reports Clearance Officer on 301–594–5706 for copies of package)

Subject: Application for Benefits Under the Canada U.S. International Social Security Agreement—Revision—(0960–0371)

Respondents: Individuals or households

OMB Desk Officer: Judy Egan

Health Care Financing Administration (HCFA)

(Call Reports Clearance Officer on 301–594–8650 for copies of package)

Subject: Evaluation of the Medicare Competition Demonstrations—NEW—HCFA–554

Respondents: Businesses or other for-profit; Non-profit institutions

OMB Desk Officer: Allison Herron

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

SSA: 301–594–5706

HCFA: 301–594–8650

PHS: 202–245–2100

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

ATTN: (name of OMB Desk Officer).

Dated: February 20, 1987.

James V. Oberthaler,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 87–4195 Filed 2–26–87; 8:45 am]

BILLING CODE 4150–04–M

Alcohol, Drug Abuse, and Mental Health Administration

Extramural Research Support Programs

AGENCY: National Institute of Mental Health.

ACTION: Issuance of Rural Mental Health Demonstration Grant Program Announcement.

SUMMARY: The National Institute of Mental Health announces the availability of an extramural research program for Rural Mental Health Demonstrations, MH–87–10. The program will award $1.2 million to establish four 18 month rural demonstration projects to improve planning, coordination, and community-based service delivery for rural residents experiencing behavioral and emotional dysfunction or mental disorder. In accordance with the applicable statute, competition is limited, and the awards will be made to State Governors or to the State agency designated by the Governors.

FOR FURTHER INFORMATION OR A COPY OF THE ANNOUNCEMENT, CONTACT: James W. Thompson, M.D., M.P.H., Acting Chief, Biometric and Clinical Applications Branch, Division of Biometry and Applied Sciences, National Institute of Mental Health, Parklawn Building, Room 18c–14, 5600 Fishers Lane, Rockville, MD 20857.

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 87–4048 Filed 2–26–87; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 85N–0475]

Epidemiologic Study of Certain Dietary Characteristics and Cancer; Availability of Interim Report

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the report of the Life Sciences Research Office (LSRO) of the Federation of American Societies for

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Experimental Biology (FASEB) titled "Interim Scientific Report on An Epidemiologic Study of Certain Dietary Characteristics and Cancer Mortality" is available to the public. The interim report was publicly available on December 22, 1986.

ADDRESSES: Requests for a copy of the interim report should be sent to FASEB's Special Publication Office, FASEB, 9650 Rockville Pike, Bethesda, MD 20814, along with $10 to cover the cost. In the near future, the report will be available from the National Technical Information Service, 5275 Port Royal Rd., Springfield VA 22161. Copies are on display at FASEB (address above) and at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Land, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: K.D. Fisher, Life Sciences Research Office, Federation of American Societies For Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301–530–7030.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 13, 1985 (50 FR 46832), FDA announced that FASEB, under its contract with FDA (No. 223–83–2020), was undertaking a study on dietary characteristics and cancer mortality. In response to FDA's request that FASEB perform such a study, the Scientific Steering Group that FASEB established under this contract recommended that LSRO perform this task by reviewing information and data being generated by a major study that is assessing the effects of certain dietary constituents on cancer mortality in the People's Republic of China. This study is being conducted by Cornell University and the Chinese Center for Preventive Medicine.

In the **Federal Register** of February 28, 1986 (51 FR 7127), FDA announced that FASEB was holding an open meeting to which the public was invited to present written and oral views, information, and data on dietary characteristics and cancer. That meeting was held at FASEB on March 26, 1986.

The original Task Order called for completion of FASEB's work by June 30, 1986. On April 3, 1986, FASEB requested a 3-month extension of the Task Order at no additional cost to the government. Delays in getting all project data into the electronic files at Cornell University and complex multivariate statistical analysis by the project collaborators were cited as the reasons for the request. On May 7, 1986, FDA granted FASEB's request for the 3-month extension.

On September 9, 1986, FASEB informed FDA by letter that because of additional delays in the multivariate analysis, the analyzed data would not be available to FASEB until sometime in 1987. FASEB also stated that the principal investigators had reached an agreement with the National Cancer Institute, the Chinese Center for Preventive Medicine, and the Chinese Academy of Medicine Cancer Institute for primary publication of all study data and analysis in one comprehensive monograph. The monograph will be published in the *Journal of the National Cancer Institute* in late 1987.

FASEB proposed to FDA in the September 9, 1986, letter that FASEB would prepare an interim scientific report covering the study design, analyses conducted, and status of data, analyses, and plans for monograph publication. FASEB also stated that when the monograph is published, it will provide FDA with data analyses and answers to the six questions posed by FDA at no additional cost to the government. Because it determined that the delay was outside FASEB's control, and that FASEB's request was reasonable, FDA accepted FASEB's September 9, 1986, proposal.

On December 22, 1986, FASEB submitted to FDA a report entitled "Interim Scientific Report on An Epidemiologic Study of Certain Dietary Characteristics of Cancer Mortality."

Dated: February 18, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–4066 Filed 2–26–87; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Advisory Committee Meeting; Maternal and Child Health Research Grants Review

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1987.

Name: Maternal and Child Health Research Grants Review Committee

Date and Time: June 17–19, 1987, 9:00 a.m.–5:00 p.m.

Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

Open on Wednesday, June 17, 1987 at 9:00 a.m. to 10:00 a.m.

Closed for remainder of meeting

Purpose: The Committee is charged with the review of all research grant applications in the program areas of maternal and child health administered by the Bureau of Health Care Delivery and Assistance.

Agenda: The open portion of the meeting will cover opening remarks by the Director, Division of Maternal and Child Health, who will report on program issues, Congressional activities and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on June 17, 1987, from 10:00 a.m. for the remainder of the meeting for the review of research grant applications. The closing is in accordance with the provision set forth in section 552b(c)(6), Title 5 U.S. Code, and the determination by the Acting Administrator, Health Resources and Servicee Administration, pursuant to Pub. L. 92–463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write to or contact Gontran Lamberty, Dr. P.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 6–17, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443–2190.

Agenda items are subject to change as priorities dictate.

Dated: February 17, 1987.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 87–4067 Filed 2–26–87; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

National Toxicology Program; Chemicals (7) Nominated for Toxicological Studies; Request for Comments

SUMMARY: On January 13, 1987, the Chemical Evaluation Committee (CEC) of the National Toxicology Program (NTP) met to review seven chemicals nominated for toxicology studies and to recommend the types of studies to be performed. With this notice, the NTP solicits public comments on the seven chemicals listed herein.

FOR FURTHER INFORMATION CONTACT: Dr. Victor A. Fung, Chemical Selection Coordinator, National Toxicology Program, Room 2B55, Building 31, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–3511.

SUPPLEMENTARY INFORMATION: As part of the chemical selection process of the National Toxicology Program, nominated chemicals which have been reviewed by the NTP Chemical Evaluation Committee (CEC) are published with request for comment in the **Federal Register**. This is done to encourage active participation by the public in the NTP chemical evaluation process, thereby helping the NTP to make more informed decisions as to whether to select, defer or reject chemicals for toxicology study. Comments and data submitted in response to this request are reviewed and summarized by NTP technical staff, are forwarded to the NTP Board of Scientific Counselors for use in their evaluation of the nominated chemicals, and then to the NTP Executive Committee for its decisionmaking. The NTP chemical selection process is summarized in the **Federal Register**, April 14, 1981 (46 FR 21828), and also in the NTP FY 1986 *Annual Plan*, pages 201–203.

On January 13, 1987, the CEC met to evaluate seven chemicals nominated to the NTP for toxicological studies. The following table lists the chemicals, their Chemical Abstract Service (CAS) registry numbers, and the types of toxicological studies recommended by the CEC at the meeting.

Chemical	CAS No.	Committee Recommendation(s)
1. Black Pepper (*Piper Nigrum Linn*)	—	—Toxicity evaluation
2. Cholestyramine	11041–12–6	—Carcinogenicity No testing
3. Divinylbenzene	1321–74–0	—Chemical disposition —Carcinogenicity
4. 1,3-Diphenylguanidine	102–06–7	Carcinogenicity
5. Pitch-based Fibrous Graphite	—	Deferred
6. Sodium Nitrite	7632–00–0	Carcinogenicity testing in rats No testing
7. 1,3,5-Trichloro-1,3,5-triazine-2,4,6-(1H,3H,5H)-trione	87–90–1	

Of the seven chemicals, two have been previously selected for toxicology study by the NTP. Divinylbenzene was nonmutagenic in the *Salmonella* microsomal assay in studies performed by two independent laboratories. 1,3-Diphenylguanidine was weakly positive in the *Salmonella* microsomal assay; a chemical disposition study was also conducted on 1,3-diphenylguanidine.

Interested parties are requested to submit pertinent information. The following types of data are of particular relevance:

(1) Modes of production, present production levels, and occupational exposure potential.

(2) Uses and resulting exposure levels, where known.

(3) Completed, ongoing and/or planned toxicologic testing in the private sector including detailed experimental protocols and results, in the case of completed studies.

(4) Results of toxicological studies of structurally related compounds.

Please submit all information in writing within thirty days after date of publication to the contact person listed above. Any submissions received after the above date will be accepted and utilized where possible.

Dated: February 24, 1987.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 87–4095 Filed 2–26–87; 8:45 am]

BILLING CODE 4140–01–M

Office of the Assistant Secretary for Health Advisory Committees; Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the months of March/April 1987:

Name: Health Services Developmental Grants Review Subcommittee.

Date and Time: March 19–20, 1987, 8:30 am.

Place: Linden Hill Hotel, Sea Pines Room, 5400 Pooks Hill Road, Bethesda, Maryland 20814; open March 19, 8:30 am to 9:30 am; closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Center for Health Services Research and Health Care Technology Assessment (NCHSR).

Agenda: The open session of the meeting of March 19 from 8:30 AM to 9:30 AM will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Acting Director, NCHSR. During the closed sessions, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Acting Director, National Center for Health Services Research and Health Care Technology Assessment has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Mr. Hoke S. Glover, National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

Name: Health Services Research Review Subcommittee.

Date and Time: April 6–7, 1987, 8:00 am.

Place: Hilton Hotel, Parlour A Room, 7600 East Broadway, Tucson, Arizona 85710; open April 6, 8:00 am to 8:30 am.; Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Center for Health Services Research and Health Care Technology Assessment (NCHSR).

Agenda: The open session of the meeting on April 6 from 8:00 AM to 8:30 AM will be devoted to a business meeting covering administration and reports. There will also be a presentation by the Acting Director, NCHSR. During the closed session, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5 U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Acting Director, National Center for Health Services Research and Health Care Technology Assessment has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Dr. Anthony Pollitt, National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

Agenda items are subject to change as priorities dictate.

Date: February 17, 1987.

Samuel Lin, M.D., Ph.D.,

Acting Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 87–4184 Filed 2–26–87; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–919–07–4213–02]

Northern Alaska Advisory Council; Meeting

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Northern Alaska Advisory Council meeting.

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SUMMARY: A general meeting, open to the public, will be held to discuss the following topics:

1. Preferred Alternative for Utility Corridor Resource Management Plan.
2. R.S. 2477 policy in Alaska.
3. Recreation permits on public lands

Public comments on agenda items will be received by the Council from 3 to 4 p.m. Oral comments may be limited by time and it is recommended that public comments be submitted in writing at the meeting.

Time and Date: 8:30 a.m. to 5 p.m., Wednesday, April 1, 1987.

Place: BLM Building, Fairbanks Support Center, 1541 Gaffney Road, Fairbanks, Alaska (on Fort Wainwright), training rooms

FOR FURTHER INFORMATION CONTACT: William J. Robertson, Public Affairs Office, Bureau of Land Management, 1541 Gaffney Road, Fairbanks, Alaska 99703, telephone (907) 356–2345.

M. Thomas Dean,

Designated District Manager, Northern Alaska/Arctic District.

February 18, 1987.

[FR Doc. 87–3951 Filed 2–26–87; 8:45 am]

BILLING CODE 4310-84-M

[AZ–050–07–4212–14; CA–17021, CA–17020, CA–17019]

Arizona; Realty Action, Noncompetitive Sale of Public Lands in San Bernardino County

AGENCY: Bureau of Land Management, Interior.

ACTION: Correct previous **Federal Register** Notices of Realty Action.

SUMMARY: The descriptions of each parcel of public land to be sold in three Notices of Realty Action published in the **Federal Register**, Vol. 50, No. 55, on March 21, 1985, are hereby corrected as follows:

1. CA–17019, Thomas H. & Gail M. Cohenno.

San Bernardino Meridian, California

T. 9 N., R. 22 E.
Sec. 2, Lot 5, comprising 4.03 acres.

2. CA–17020, Raymnd C. Veseth.

San Bernardino Meridian, California

T. 10 N., R. 22 E.
Sec. 35, Lot 10, comprising 1.35 acres.

3. CA–17021, George F. Walters

San Bernardino Meridian, California

T. 10 N., R. 22 E.
Sec. 35, Lot 8, comprising 2.8+ acres.

FOR FURTHER INFORMATION CONTACT: Ferne M. Blair, Yuma District Realty Specialist, P.O. Box 5680, Yuma, Arizona, 85364 at (602) 726–6300.

[MT–070–07–4212–13; M70647]

Montana; Realty Action; Exchange

AGENCY: Bureau of Land Management, Butte District Office.

ACTION: Notice of realty action, exchange of public lands in Powell, Broadwater, Granite, Lewis and Clark, and Silver Bow Counties for private property in Granite County.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976; 43 U.S.C. 1716:

Principal Meridian, Montana:

Tract No.		Acreage
Powell County		
P–1	T. 9 N., R. 10 W., Section 26: W 1/2 W 1/2	160
P–2	T. 9 N., R. 11 W., Section 14: NW 1/4 NW 1/4	40
P–3	T. 9 N., R. 8 W., Section 8: NE 1/4 NE 1/4	40
P–7	T. 10 N., R. 8 W., Section 6: Lot 1	5.4
P–9	T. 10 N., R. 8 W., Section 2: SW 1/4 SE 1/4	40
P–10	T. 10 N., Range 9 W., Section 25: S 1/2 NW 1/4, W 1/2 SW 1/4	160
P–18	T. 9 N., R. 11 West Section 24: SW 1/4 SW 1/4	40
Broadwater County		
B–5	T. 9 N., R. 2 W., Section 34: SE 1/4 SW 1/4	40

SUPPLEMENTARY INFORMATION: The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action.

The mineral rights have been offered to the applicants. Specific patent reservations include a reservation for ditches and canals and a reservation of all minerals to the United States (unless the applicants agree to buy the mineral rights).

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Yuma District Office, P.O. Box 5680, Yuma, Arizona 85364. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify the realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: February 19, 1987.

J. Darwin Snell,

District Manager.

[FR Doc. 87–4106 Filed 2–26–87; 8:45 am]

BILLING CODE 4310-32-M

Tract No.		Acreage
Granite County		
G–7	T. 10 N., R. 14 W., Section 26: SW 1/4 SW 1/4	40
G–9	T. 11 N., R. 16 W., Section 12: Lot 2	48.84
Lewis and Clark County		
L–11	T. 11 N., R. 5 W., Section 28: Lot 5, Section 29: Lot 10	40.34, 32.69
L–12	T. 12 N., R. 5 W., Section 27: SW 1/4 SW 1/4, S 1/2 SE 1/4 SW 1/4	60
L–13	T. 12 N., R. 5 W., Section 33: Lots 8 and 14	9.94
Silver Bow County		
S–1	T. 1 S., R. 5 W., Section 6: Lot 7, SE 1/4 SW 1/4, SW 1/4 SE 1/4	120.14
Containing 877.35 acres of public land.		

In exchange for an equal value of these public lands, the United States will acquire the following described lands in Granite County:

Principal Meridian, Montana

T. 12 N., R. 14 W., Sections 2 and 3		
MS6970	Homestake Lode	20.14
MS6971	Sierra Lode	18.18
MS6972	Forest Lode	20.21
MS6973	Cleveland Lode	0.71
MS6974	Austin Lode	18.73
MS6975	Gold King Lode	2.84
Containing 80.81 acres of land		

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the exchange, including the environmental assessment and land report, is available for review at the Butte District Office, P.O. Box 3388, Butte, Montana 59702.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire 80 acres of high recreational valued land. This tract will provide land with moderate and level topography for a much needed parking area and transportation route to and from the Garnet Range Road to Garnet Ghost Town. The Trust for Public Land is acting as the proponent in this exchange.

The publication of this notice segregates the public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976.

The Exchange will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.
2. The reservation to the United States of any identified mineral values on the Federal lands being transferred.
3. All valid existing rights (e.g., rights-of-way and leases of record).
4. Value equalization by cash payments or acreage adjustments.
5. The exchange must meet the requirements of 43 CFR 4110.4–2(b).

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with state and local officials. The public interest will be served by completion of this exchange.

February 20, 1987.

James A. Moorhouse,

District Manager.

[FR Doc. 87–4097 Filed 2–26–87; 8:45 am]

BILLING CODE 4310-DN-M

[NV–020–4322–02]

Nevada; Winnemucca District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Winnemucca District Grazing Advisory Board Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–163 that a meeting of the Winnemucca District Grazing Advisory Board will be held on April 2, 1987. The meeting will begin at 10:00 a.m. in the conference room of the Bureau of Land Management Office at 705 East Fourth Street, Winnemucca, Nevada 89445.

The agenda for the meeting will include:

1. Orientation/update of district rangeland management program by the District Manager.
2. Public Statements.
3. Update on Grazing Fee formula.
4. Range Betterment (range improvement) funds: 1987 FY projects, 1988 FY projects.

The meeting is open to the public. Interested persons may make oral statements for the Board's consideration. Anyone wishing to make an oral statement should notify the District Manager, 705 East Fourth Street, Winnemucca, Nevada 89445 by March 19, 1987. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meeting will be maintained in the District Office and available for public inspection (during regular business hours) within 30 days following the meeting:

Dated: February 18, 1987.

Frank C. Shields,

District Manager.

[FR Doc. 87–4107 Filed 2–26–87; 8:45 am]

BILLING CODE 4310-HC-M

[WY–030–07–4212–02]

Rawlins Wyoming; District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Rawlings District Office, Rawlings, Wyoming, Interior.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 that a meeting of the Rawlins District Advisory Council will be held. The meeting will consist of briefings on the Medicine Bow and Divide Resource Management Plan, Operation Respect/Hunter Access, District Organizational Changes and Recreational and Cultural Activities.

DATE: March 25, 1987.

ADDRESS: South Room, Bel Air Inn, 23rd & Spruce, Rawlins Wyoming.

FOR FURTHER INFORMATION CONTACT: Gordon Warren, Public Affairs Officer, or Mike Karbs, Associate District Manager, Rawlins District, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming 82301 (307) 324–7171.

SUPPLEMENTARY INFORMATION: The meeting will begin at 10 a.m. The agenda will include the following:

—Briefing on district organizational changes.
—Briefing on recreational and cultural activities.
—Lunch.
—Evaluation of Hunter Access/Operation Respect.
—Public comments.
—Briefing on Preferred Alternative for Medicine Bow and Divide Resource Management Plan.
—Wrap-up and Resolutions.

The meeting is open to the public. Anyone interested in attending the meeting must notify the District Manager by March 18, 1987. Written statements may also be filed before the meeting for the Council's consideration.

Summary minutes will be available for review within 30 days after the meeting at the Rawlins District Office. Copies of the minutes may be obtained for the cost of duplication.

Michael J. Karbs,

Acting District Manager.

[FR Doc. 87–4105 Filed 2–26–87; 8:45 am]

BILLING CODE 4310-22-M

[ID–010–07–4220–10; I–7322]

Proposed Withdrawal of Public Lands in Owyhee County, Idaho; Public Meeting

AGENCY: Bureau of Land Management, Idaho.

ACTION: Notice, Proposed Withdrawal of Public Lands in Owyhee County, Idaho, Public Meeting.

SUMMARY: The Bureau of Land Management proposes to withdraw approximately 52,313.04 acres of public land and the reserved mineral interests in approximately 1,280.00 acres of private land along a 121-mile segment of the Bruneau River system in southwestern Idaho, the withdrawal would close the lands to surface entry and mining, but not to mineral leasing. This action is necessary to protect the scenic, cultural, and recreation values of this proposed wild and scenic river system.

Notice is hereby given that a public meeting will be held in connection with the proposed withdrawal.

DATES: Comments should be received by May 29, 1987. The public meeting will be held at 7:30 p.m. on April 30, 1987.

ADDRESSES: The public meeting will be held at the Bureau of Land Management, Boise District Office, 3948 Development Avenue, Boise, Idaho 83705. Comments should be sent to the Boise District Manager at the same address.

FOR FURTHER INFORMATION CONTACT: Effie Schultsmeier, Boise District Office (208) 334–1582.

SUPPLEMENTARY INFORMATION: On September 28, 1973, the Secretary of the Interior approved a petition allowing the Bureau of Land Management to file an application to withdraw all public land and reserved minerals interests in private lands within approximately ¼-mile of either bank of the Bruneau and Jarbidge Rivers from the Idaho-Nevada border to the confluence of the Bruneau and Snake Rivers. The application was to withdraw the lands from location and entry under the mining laws and from settlement, sale, location, and entry under the general public land laws, subject to valid existing rights.

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At the time of the application, October 1, 1973, the withdrawal was proposed to protect the scenic, recreation, and cultural values of the lands adjacent to the Bruneau River, since it had been designated a study river in the Wild and Scenic Rivers Act of 1968 (Pub. L. 90-542). In October 1976, the final environmental statement titled "Proposed Bruneau Wild and Scenic River, Idaho" was completed which identified the area that was proposed to Congress for inclusion in the National Wild and Scenic Rivers system. The subject statement identified 121 miles of the Bruneau Rivers system for potential inclusion in the National Wild and Scenic Rivers System under Bureau of Land Management administration. It included: (1) 71 miles of the Bruneau River from Blackrock Crossing downstream to Hot Creek; (2) 29 miles of the Jarbidge River from the junction of its East and West Forks downstream to its confluence with the Bruneau River and; (3) the lower 21 miles of Sheep Creek from its Mary's Fork tributary downstream to its confluence with the Bruneau River.

The area proposed for withdrawal by this action is the 121-mile segment of the lands adjoining the Bruneau River System described above, which are located within the following described townships:

Boise Meridian, Idaho

T. 7 S., R. 8 E.
T. 8 S., R. 6 E.
T. 8 S., R. 7 E.
T. 9 S., R. 6 E.
T. 9 S., R. 7 E.
T. 10 S., R. 7 E.
T. 11 S., R. 6 E.
T. 11 S., R. 7 E.
T. 12 S., R. 6 E.
T. 12 S., R. 7 E.
T. 13 S., R. 6 E.
T. 13 S., R. 7 E.
T. 13 S., R. 8 E.
T. 14 S., R. 6 E.
T. 14 S., R. 7 E.
T. 14 S., R. 8 E.
T. 15 S., R. 7 E.
T. 15 S., R. 8 E.
T. 15 S., R. 9 E.
T. 16 S., R. 7 E.
T. 16 S., R. 9 E.

The total area involved contains approximately 52,313.04 acres of public land and approximately 1,280.00 acres of reserved mineral interests in private lands in Owyhee, County, Idaho.

The majority of the lands are and have been segregated from surface entry and mining since October 2, 1968, under the provisions of the Wild and Scenic Rivers Act and subsequently under withdrawal application I-8322. Under the provisions of section 204(g) of the Federal Land Policy and Management Act of October 21, 1976, the segregative effect of the application filing will terminate on October 21, 1991, unless the lands are withdrawn or the application is otherwise terminated before that date. The only uses which have been and will continue to be allowed during the segregative period are those discretionary authorizations which conform with land use management plans. These authorizations include recreation and grazing. It is proposed that the lands be withdrawn for a period of 20 years, the maximum allowed by statute. The application will be processed in accordance with the regulations set forth in 43 CFR, Part 2300.

For a period of 90 days from date of publication of this notice in the **Federal Register** all persons who wish to submit comments, suggestions, or objections to the withdrawal proposal may present their views in writing to the Boise District Manager of the Bureau of Land Management.

The public meeting will be open to attendance to all persons who may state their views. Those who desire to be heard in person at the hearing, should file notice thereof not later than April 23, 1987, with the Boise District Manager, Bureau of Land Management.

Dated: February 17, 1987.

Gene L. Schloemer,

Acting District Manager.

[FR Doc. 87-4102 Filed 2-26-87; 8:45 am]

BILLING CODE 4310-GG-M

Office of Surface Mining Reclamation and Enforcement

Ohio Permanent Regulatory Program; Public Forum and Procedures for Public Comment Period

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of public forum and procedures for public comment period on the Ohio permanent regulatory program.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is announcing procedures for a public forum and a public comment period on the substantive adequacy of the Ohio regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

This notice sets forth the date and the location at which OSMRE will hold a public forum on the Ohio program, the comment period during which interested persons may submit written comments and data on the Ohio program, and other information relevant to public participation during the comment period and public forum.

DATES:

Public Forum: OSMRE will hold a public forum to discuss the adequacy of the Ohio program at 9:00 a.m. on Monday, March 23, 1987

Written Comments: OSMRE will accept written comments, data, or other relevant information to supplement or to substitute for an oral presentation at the forum. Written comments must be postmarked no later than April 13, 1987, in order to be considered

ADDRESSES:

Public Forum: The Public Forum will be held at the Holiday Inn North, 4520 Everhard Road, Canton, Ohio 44718

Written Comments: Written comments should be sent to the Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Columbus, Ohio 43232; Telephone: (614) 866-0578.

Copies of the full text of OSMRE annual evaluation reports on the Ohio program and copies of all written comments are available for review and copying (at a cost per page) at the OSMRE Columbus Field Office, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

FOR FURTHER INFORMATION CONTACT: Nina Rose Hatfield, Director, OSMRE Columbus Field Office (See **ADDRESSES**) for information regarding the general background on the Ohio regulatory program, including past findings, the disposition of past comments, and a detailed explanation of the conditions of approval of the Ohio program. This information will be made available in response to questions on specific issues relating to this public forum.

SUPPLEMENTARY INFORMATION:

I. Background

II. Public Comment Procedures

I. Background

The Surface Mining Control and Reclamation Act of 1977 (SMCRA) created the Office of Surface Mining Reclamation and Enforcement (OSMRE) in the Department of the Interior. OSMRE was created to administer SMCRA and its associated rules and regulations for surface coal mining and reclamation and to establish programs for the reclamation of lands adversely affected by past mining practices.

SMCRA provides that a State may obtain approval to operate permanent programs to regulate surface coal mining and reclamation operations and to reclaim abandoned mine lands. The State of Ohio obtained this approval in August 1982 with the Ohio Department of Natural Resources, Division of Reclamation, being the designated State agency responsible for the implementation of Ohio's permanent program. Once a State has obtained permanent program approval, OSMRE has the responsibility to conduct oversight investigations and inspections necessary to verify that the State programs approved under SMCRA are being implemented in accordance with the approved program provisions.

Periodic evaluations by the OSMRE have highlighted a number of recurring concerns about Ohio's implementation of its approved program. In light of these concerns, the OSMRE has been directed by the U.S. Congress to hold a public forum in Ohio to determine the extent of Ohio's failure to adequately implement its program and to determine the willingness of the State to enter into an explicit plan of action for correcting its deficiencies.

OSMRE will review all testimony and written comments received in connection with this public forum and will discuss this information with the Ohio Department of Natural Resources (ODNR). Following these discussions, a summary of the testimony that was obtained and comments that were received along with any plans for addressing the issues identified by commenters will be provided to the U.S. House and Senate Appropriations Committees. Copies of this correspondence will be available for review or copying (at a cost per page) at the OSMRE Columbus Field Office.

II. Public Comment Procedures

At the public forum to be held on March 23, 1987, parties wishing to comment on the adequacy of the Ohio program will be asked to register for placement on the speaker's agenda. The hearing will begin at 9:00 a.m. and will continue until all persons wishing to testify have been heard. Persons in the audience who have not been scheduled to speak and who wish to do so will be heard at the end of the scheduled speakers. Prsons not scheduled to speak but wishing to do so assume the risk of having the public hearing adjourned prior to their speaking unless they are present in the audience at the time all scheduled speakers have been heard. In addition, the following format and rules of procedure will be followed at the public forum:

1. The hearing shall be informal and follow legislative procedurs.

2. Based on the number of speakers in attendance, each participant may be limited to 10 minutes.

3. Participants will be called in the order in which they register.

4. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Written comments, data, or other relevant information may be submitted to supplement or to substitute for an oral presentation at the hearing. Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements to the OSMRE Columbus Field Office in advance of the hearing will allow OSMRE officials to prepare appropriate questions or statements. Written comments should be specific, pertain only to the issues discussed in this notification, and include explanation in support of the commenter's recommendations. Comments not postmarked by April 13, 1987, or received at locations other than the OSMRE Columbus, Ohio Field Office, will not necessarily be considered.

Public participation in the review of state programs is a vital component in fulfilling the purposes of SMCRA. Interested members of the public are encouraged to read the report entitled, "Fiscal Year 1986 Annual Evaluation Report for the Regulatory and Abandoned Mine Land Reclamation Programs under the Surface Mining Control and Reclamation Act of 1977 in the State of Ohio". This report will be available after March 11, 1987, at the OSMRE Columbus Field Office (See ADDRESSES).

Dated: February 20, 1987.

Jed D. Christensen,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 87-4130 Filed 2-26-87; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30988]

Georgia Eastern Railroad Co., Acquisition and Operation Exemption; CSX Transportation, Inc.

Georgia Eastern Railroad Company has filed a notice of exemption to acquire and operate two CSX lines: (1) Between Social Circle and Monroe, GA (milepost 0.16 to milepost 10.17), a distance of 10.01 miles; and (2) between Barnett and Washington, GA (milepost 0.56 to milepost 17.33), a distance of 16.68 miles. Any comments must be filed with the Commission and served on Francis G. McKenna, 1000 Connecticut Avenue, NW., Suite 707, Washington, DC 20036.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: February 17, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

FR Doc. 87-4189 Filed 2-26-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30986]

OHI-Rail Corp., d/b/a Ohio Southern Railroad Co., Lease and Operation Exemption; Ohio Department of Transportation

Ohi-Rail Corporation (Ohi-Rail), d/b/a Ohio Southern Railroad Company (OSRR), a Class III rail carrier, has filed a notice of exemption to lease and operate a line of railroad extending from milepost 45.8 near Glass Rock and milepost 19.4 near South Zanesville, thence to milepost 36.0 near New Lexington, in Perry and Muskingum Counties, OH.[1] This line of railroad was purchased by the Ohio Department of Transportation (Ohio) from the Consolidated Rail Corporation (Conrail) pursuant to section 308(e) of the Regional Rail Reorganization Act of 1973 (3R Act), after Conrail had filed a application under section 308 to abandon the line.[2]

Any comments must be filed with the Commission and served on: Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

This notice is filed under 49 CFR 1150.31.[3] If the notice contains false or

[1] This notice of exemption was filed under 49 CFR 1180.2(d)(2) as an exemption from the requirements of 49 U.S.C. 11343. However, since the transaction involves the lease and operation by a carrier of rail property owned by a non-carrier, the transaction falls under 49 U.S.C. 10901. Accordingly, this notice is treated as a notice of exemption, under 49 CFR 1150.31, from the requirements of section 10901.

[2] The purchase by Ohio of the Conrail line under section 308(e) of the 3R Act did not require Commission authorization under 49 U.S.C. 10901 or 11343. Finance Docket No. 29867, *Delaware Otsego Corporation—Exemption From 49 U.S.C. 10763(e)(3) 10901, 11301, and 11343* (not printed), served April 15, 1982. However, the subsequent lease and operation of the line by OSRR is subject to the requirements of 49 U.S.C. 10901.

[3] The Railway Labor Executives' Association (RLEA) filed an unsupported request for labor

Continued

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misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: February 17, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-4190 Filed 2-26-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-12 (Sub-No. 112X)]

Southern Pacific Transportation Co.; Exemption; Discontinuance of Operations In Orange County, CA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the discontinuance of service by Southern Pacific Transportation Company over .36 miles of rail line in Orange County, CA, subject to standard labor protective conditions.

DATES: This exemption will be effective on March 30, 1987. Petitions to stay must be filed by March 9, 1987, and petitions for reconsideration must be filed by March 18, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB-12 (Sub-No. 112X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Gary A. Laakso, One Market Plaza, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Joseph Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area), or toll-free (800) 424-5403.

Decided: February 18, 1987.

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protection claiming that this transaction is subject to the mandatory labor protection provisions of 49 U.S.C. 11347. Since this transaction involves an exemption from 49 U.S.C. 10901, RLEA's request is rejected. *See Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901*, 1 I.C.C.2d 810 (1985).

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-4191 Filed 2-26-87; 8:45 am]

BILLING CODE 7035-01-M

[Section 5a Application No. 36]

Wearing Apparel Carriers; Agreement [1]

AGENCY: Interstate Commerce Commission.

ACTION: Notice of institution of show-cause proceeding.

SUMMARY: The Commission has made preliminary findings relating to the continued approval of Wearing Apparel Carriers' (WAC) collective ratemaking agreement and directed WAC to show cause: (1) why it and its member carriers should not be directed to cease and desist from engaging in certain collective ratemaking activity; and (2) why any claimed antitrust immunity should not be revoked. This action is taken to update the record in this proceeding in light of the statutory changes made by the Motor Carrier Act of 1980 and to ensure compliance with all requirements for rate bureaus continuing to receive antitrust immunity for collective activity.

DATES: WAC's response to the show cause order is due by March 30, 1987. Comments from other parties are due by April 27, 1987. WAC's rebuttal is due by May 18, 1987.

FOR FURTHER INFORMATION CONTACT:

Judy A. Barnes, (202) 275-7965

or

Louis E. Gitomer, (202) 275-7691.

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's full decision. A copy may be purchased from T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call toll-free (800) 424-5403, or (202) 289-4357 in the Washington, DC metropolitan area.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

(49 U.S.C. 11701, 10706, and 10321).

Decided: February 18, 1987.

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[1] This rate bureau may also be known as Garment Truckmen Association of New Jersey.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc 87-4193 Filed 2-26-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act; Rochester, IN

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on *February 4*, 1987, a proposed consent decree in *United States* v. *City of Rochester, Indiana*, Civil Action No. S85-0469, was lodged with the United States District Court for the Northern District of Indiana. The proposed consent decree resolves a judicial enforcement action brought by the United States against the City of Rochester under the Clean Water Act for violations of the effluent limitations contained in the City's NPDES permit.

The proposed consent decree establishes a wastewater treatment plant improvement schedule which will ensure the City's compliance with the final effluent limitations in its permit by July 1, 1988. The Decree also establishes a schedule for the improvement of the City's sewer system. In addition, the Decree requires Rochester to pay a civil penalty of $25,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, U.S. Department of Justice, Washington, DC, and should refer to *United States* v. *City of Rochester, Indiana*, D.J. Ref. 90-5-1-1-2138.

The proposed Consent Decree may be examined at the office of the United States Attorney, 312 Federal Bldg., 507 State Street, Hammond, Indiana 46320 and at the Region V office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.30 (10 cent a page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-4103 Filed 2-26-87; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; Tarkett, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 6, 1987, a proposed Consent Decree in *United States* v. *Tarkett, Inc.*, CA. 86-0016, was lodged with the United States District Court for the Eastern District of Pennsylvania. The complaint filed by the United States alleged violations of the Clean Air Act by Tarkett due to its failure to comply with the volatile organic compound ("VOC") emission standards set forth in the Pennsylvania State Implementation Plan, 25 Penn. Code, section 129.67, at its Whitehall, Pennsylvania facility.

The complaint sought injunctive relief and civil penalties. The Consent Decree requires Tarkett to install an emission capture and control system and achieve compliance of the VOC emission standards by July 31, 1987, and to pay a civil penalty of $117,500.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments shall be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Tarkett, Inc.*, DOJ ref. 90-5-2-1-858.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Edward S.G. Dennis, Jr., 3310 U.S. Courthouse, 621 Market St., Philadelphia, Pennsylvania 19106 and at the Region III office of the Environmental Protection Agency, 841 Chestnut St., Philadelphia, Pennsylvania 19107. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Divison of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.70 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-4104 Filed 2-26-87; 8:45 am]

BILLING CODE 4410-01-M

Immigration and Naturalization Service

Meeting on INS Issuance of Cooperative Agreement

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the purpose and proposed agenda of the upcoming Immigration and Naturalization Service meeting regarding the issuance of Cooperative Agreements to Designated Entities pursuant to the "Immigration Reform and Control Act of 1986.

DATE: *March 6, 1987 at 1:00 p.m.*

ADDRESS: Immigration and Naturalization Service, 425 I Street, NW., Conference Room 7111, Washington, DC 20536.

For copies of the Cooperative Agreement and the Cooperative Agreement Applications, please write or call: Director, Outreach Program, Immigration and Naturalization Service, 425 I Street, NW., Room 6230, Washington, DC 20536, (202) 633-4123.

FOR FURTHER INFORMATION CONTACT: E.B. Duarte, Jr., Outreach Program Director, Immigration and Naturalization Service, 425 I Street, Room 6230, Washington, DC 20536. Telephone: (202) 633-4123.

SUPPLEMENTARY INFORMATION: The Immigration and Naturalization Service (INS) envisions the issuance of Cooperative Agreements pursuant to "The Immigration Reform and Control Act of 1986."

The Immigration and Naturalization Service will make use of cooperative agreements to provide information and assistance to persons applying for the benefits of temporary residence in the United States. The "Immigration Reform and Control Act of 1986," Title III, section 201, provides that:

> . . . for purposes of assisting in the general program of legalization provided under this section, the Attorney General—
>
> (1) shall designate qualified voluntary organizations and other qualified state, local and community, farm labor organizations and associations of agricultural employers, and
>
> (2) may designate such other persons as the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in the preparation and submittal of applications for adjustment of status under section 209 or 245, Public Law 89-732, or Public Law 95-145.

The INS will hold a pre-application conference to discuss the cooperative agreement terms and conditions that determine the relationship between the responsibilities of the government and those designated entities awarded cooperative agreements. Under a cooperative agreement, QDEs are expected to provide information and assistance to legalization and special agricultural worker applicants applying for temporary residence according to the Immigration Reform and Control Act of 1986.

The agenda for the meeting is as follows:

1:00 p.m.: General Introduction
1:15 p.m.: Implementation of the Immigration Reform and Control Act of 1986
1:30 p.m.: Formal Involvement of Designated Entities in Legalization and Special Agricultural Worker Programs for Temporary Residence
2:00 p.m.: Review of Cooperative Agreement
2:30 p.m.: Application Processing Review and Approval Procedures, Funding, Training and Monitoring
3:00 p.m.: Questions/Answers
4:00 p.m.: Adjournment

Dated: February 25, 1987.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 87-4250 Filed 2-26-87; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar

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character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and firing benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume III
South Dakota:
SD87-3 ..... pp. 304a-304b.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I
Maryland:
MD87-2 (Jan. 2, 1987) ..... p. 418.
MD87-15 (Jan. 2, 1987) ..... p. 450.
New York:
NY87-7 (Jan. 2, 1987) ..... pp. 738-739.
NY87-9 (Jan. 2, 1987) ..... p. 768.
NY87-12 (Jan. 2, 1987) ..... p. 790.
Volume II
Iowa:
IA87-2 (Jan. 2, 1987) ..... p. 28.
IA87-7 (Jan. 2, 1987) ..... p. 56.
Illinois:
IL87-1 (Jan. 2, 1987) ..... p. 68-69, 75.
Louisiana:
LA87-5 (Jan. 2, 1987) ..... pp. 385, 388.
Michigan:
MI87-1 (Jan. 2, 1987) ..... p. 409.
MI87-3 (Jan. 2, 1987) ..... p. 439, 441.
MI87-5 (Jan. 2, 1987) ..... pp. 459-462, 466-471.
MI87-12 (Jan. 2, 1987) ..... pp. 504-505.
MI87-17 (Jan. 2, 1987) ..... p. 520.
Ohio:
OH87-1 (Jan. 2, 1987) ..... p. 719, 721-723
OH87-3 (Jan. 2, 1987) ..... p. 756-757.
OH87-28 (Jan. 2, 1987) ..... pp. 812-813.
Oklahoma:
OK87-17 (Jan. 2, 1987) ..... p. 912f.
Texas:
TX87-7 (Jan. 2, 1987) ..... pp. 936-938.
TX87-9 (Jan. 2, 1987) ..... p. 944.
Wisconsin:
WI87-10 (Jan. 2, 1987) ..... p. 1129.
Volume III
Hawaii:
HI87-1 (Jan. 2, 1987) ..... p. 130.
Washington:
WA87-3 (Jan. 2, 1987) ..... p. 367.
Listing by Location (index).. pp. XXIX-XXX.
Listing by Decision (index).. p. XXXIV.

General Wage Determination Publication

General wage determination issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 20th day of February 1987.

Nancy M. Flynn,

Acting Assistant Administrator.

[FR Doc. 87-4218 Filed 2-26-87; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 87-17]

NASA Advisory Council (NAC), Life Sciences Advisory Committee (LSAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Life Sciences Advisory Committee.

Date and time: March 13, 1987, 9 a.m.-5 p.m., March 14, 1987, 9 a.m.-3 p.m.

ADDRESS: Capitol Holiday Inn, 550 C Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald J. White, Code EBF, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1656).

SUPPLEMENTARY INFORMATION: The Life Sciences Advisory Committee provides advice on the coordination of NASA's life sciences research program. It assists in the long-range planning of space life sciences research and coordinated ground-based research. At this meeting, possible new initiatives for FY-1989 in the life sciences will be reviewed and discussed. The committee is composed of 28 members. The meeting will be closed Saturday, March 14, at 1:30 p.m. to allow for a discussion on membership. Such a discussion would invade the privacy of the individuals involved. Since this session will be concerned with matters listed in 5 USC 552b(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including committee members and other participants).

Meeting: Open, except for a closed session as noted in the agenda below.

AGENDA:

March 13, 1987
9 a.m. Welcoming Remarks.
9:15 a.m. Announcements/Review of Agenda.
9:30 a.m. Office of Space Science and Applications and Agency Status.
10 a.m. Life Sciences Status.
10:30 a.m. New Initiatives Discussion.
1:30 p.m. New Initiatives Discussion.
5 p.m. Adjourn.
March 14, 1987
9 a.m. Comet Rendezvous Asteroid Flyby Mission and Life Sciences.
10 a.m. Health Maintenance Facility Status.
11 a.m. Committee Discussion.
1:30 p.m. Closed Session on Membership.
3 p.m. Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 87-4073 Filed 2-26-87; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Art in Public Places Section) to the National Council on the Arts will be held on March 17-19, 1987, from 9:00 a.m.-6:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

February 24, 1987.

[FR Doc. 87-4083 Filed 2-26-87; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Alan T. Waterman Award Committee; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Alan T. Waterman Award Committee.
Date: Wednesday, March 18, 1987.
Time: 9 a.m. to 5 p.m.
Place: Rm. 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.
Type of Meeting: Closed.
Contact Person: Mrs. Lois J. Hamaty, Executive Secretary, Alan T. Waterman Award Committee, National Science Foundation, Washington, DC 20550 Telephone: 202/357-7512.

Purpose of Committee: To provide advice and recommendations in the selection of the Alan T. Waterman Award recipient.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are within exemption 6 of 5 U.S.C. 552(c), Government in the Sunshine Act.

Authority To Close Meeting: The determination made on February 20, 1987 by the Director of the National Science Foundation pursuant to the provisions of section 10(d) of Pub. L. 92-463.

M. Rebecca Winkler,

Committee Management Officer.

February 23, 1987.

[FR Doc. 87-4122 Filed 2-26-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-155]

Environmental Assessment and Finding of No Significant Impact; Consumers Power Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an exemption from the schedular requirement of 10 CFR 50.71(e)(ii) to the Consumers Power Company (the licensee) for the Big Rock Point Plant located in Charlevoix County, Michigan.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant an exemption from the requirements of 10 CFR 50.71(e)(3)(ii) to submit an updated Final Hazards Summary Report (FHSR) for the Big Rock Point Plant within 24 months of receipt of a letter notifying the licensee that the Systematic Evaluation Program (SEP) has been completed. Big Rock Point Plant, as one of the plants chosen to be evaluated in the SEP was, therefore, subject to the provisions of 10 CFR 50.71(e)(3)(ii).

The licensee was notified by letter dated August 27, 1984 that the SEP had been completed for the Big Rock Point Plant. The licensee, by application dated August 27, 1986, as supplemented December 3, 1986, has requested an exemption from the schedular requirements of 10 CFR 50.71(e)(3)(ii) in order to allow time for the licensee to complete a newly agreed upon updated FHSR. The deferral of the submittal of the updated FHSR is the proposed action being considered by the staff.

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The Need for the Proposed Action

The licensee, by letter dated March 13, 1983, requested that the updating of the Big Rock Point FHSR be included in an expanded assessment of outstanding regulatory requirements as part of the SEP. The primary purpose of this request was to allow better management of licensee resources which were to be applied to regulatory and nonregulatory tasks.

The licensee proposed that a method of indexing pertinent documents, which could provide a chronology and identification of design changes to the Big Rock Point Plant, might serve as a workable substitute to an updated FHSR. In NUREG-0828, dated May 1984, transmitted to the licensee by NRC letter dated August 27, 1984, the NRC staff concluded that this proposal was acceptable, provided the index of documents identified specific SEP Topic safety evaluation references.

Although the above referenced evaluations were incorporated into the indexing system, subsequent review by the NRC staff has resulted in the identification of additional concerns such that the proposed substitute does not constitute a completely adequate alternative to an updated FHSR. After telephone discussions with the licensee, an agreement was reached for the licensee to provide an updated FHSR to the NRC by December 31, 1988. Therefore, a schedular exemption is required in order to allow time for the licensee to complete an updated FHSR.

Environmental Impact of the Proposed Action

The proposed exemption involves only the required date for submittal of a document describing the as-built condition of the Big Rock Point Plant and does not increase the risk of facility accidents. Thus, the proposed exemption does not involve any increase in the likeklihood of the release of radioactive or nonradioactive effluents from those already determined, nor does the proposed action have other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative to the exemption would be to require an earlier date for the submittal of the updated FHSR. Such an action would not enhance the protection of the environment and would result in unnecessary diversion of licensee engineering resources from other work of higher safety significance.

Alternative Use of Resources

This action does not involve the use of resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Contacted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human evironment.

For further details with respect to this proposed action, see the licensee's letters dated August 27, 1986 as supplemented December 3, 1986. These letters are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, and at North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Dated at Bethesda, Maryland, this 20th day of February 1987.

For the Nuclear Regulatory Commission.

Rajender Auluck,

Acting Director, BWR Project Directorate #1, Division of BWR Licensing.

[FR Doc. 87-4142 Filed 2-26-87; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning April 1, 1987, shall be at the rate of 24 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning April 1, 1987, 28.7 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 71.3 percent of the taxes collected under such sections 3211(b) and 3221(c) plus one hundred percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: February 18, 1987.

By Authority of the Board.

Beatrice Ezerski,

Secretary of the Board.

[FR Doc. 87-4110 Filed 2-26-87; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-24104; File No. SR-Amex-87-2]

Self Regulatory Organization; Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 13, 1987, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The Amex proposes to adopt an interpretation of its Rule 111(a)(1), (b) and (e) which would make those provisions inapplicable to Amex Registered Equity Market Makers ("REMMs") trading in Americus Trust components.[1] The provisions of Amex Rule 111 which the Exchange seeks to interpret currently serve to: (1) Prohibit REMMs from congregating in a particular stock; (2) prohibit REMMs from effecting "long" stock purchases above the previous day's closing price on "plus" or "zero plus" ticks; and (3) require that 75% of the REMMs acquisition and liquidating transactions be stabilizing. The Exchange states that these restrictions were intended to address concerns regarding the potential time and place advantages of floor traders—which were subsequently reflected in the restrictions on trading established in section 11(a)(1) of the Act—and the potential for destabilizing proprietary transactions by such traders.

The Exchange states that the restrictions in Rule 111(a)(1), (b) and (e) are not appropriate for trading in Americus Trust components because Congressional and Commission concerns relating to the "time and place" advantages of floor traders are not raised by the trading of such derivative products where an exchange, in this case the Amex, is not the primary market for the stocks underlying the Trust and Trust components are priced primarily from the underlying common stock quotation.[2]

The Amex believes that its market in Americus Trust components can benefit from additional market making activity by REMMs, and that its interpretation of Rule 111 should encourage such additional participation. In addition, Amex believes that increased REMM participation should result in added depth and liquidity for the markets in Americus Trust components. Amex also noted that REMMs would continue to be subject to other affirmative and regulative market making obligations imposed under its rules and to the other specific requirements of Rule 114 applicable to REMMs.

The Amex states that this proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act.[3] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. Copies of the submission, all subsequent amendments, all written communication relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR-Amex-87-2 and should be submitted by March 20, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 17, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-4114 Filed 2-26-87; 8:45 am]

BILLING CODE 8010-01-M

[1] An Americus Trust ("Trust") consists of Trust units which have been issued in exchange for shares of common stock tendered into the trust by shareholders in the particular company on which the trust is based. Each unit consists of two separate components. The PRIME component retains all rights of share ownership including voting and dividend rights. The SCORE component although retaining no voting or dividend rights, is entitled at the termination of the Trust to capital appreciation above the termination of the Trust to capital appreciation above the termination claim price fixed when the trust was established. We note Amex currently trades two Americus trusts—the Exxon Trust and the American Home Products Trust.

[2] In this regard, Amex states that this interpretation is consistent with the provisions of Rule 950 which designate the requirements of Rule 111(a)(1), (b) and (e) inapplicable to options transactions by Registered Options Traders ("ROT").

[3] In its filing, Amex states that their proposal is a stated policy, practice, or interpretation with respect to the meaning, administration or enforcement of Amex Rule 111.

[Rel. No. 34-24111; File No. SR-CBOE-85-52]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc; Order Approving Proposed Rule Change

On December 11, 1985, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change that would allow CBOE member organizations, including clearing firms, to establish their own exercise cut-off times for foreign currency options.

The proposed rule change was noticed in Securities Exchange Act Release No. 22833 (January 24, 1986), 51 FR 4057. No comments were received on the proposal.

The proposed rule change would extend the exercise cut-off time for foreign currency options traded on the CBOE. Currently, pursuant to CBOE Rule 11.1, CBOE member organizations must submit exercise instructions for expiring option positions no later than 4:30 p.m. Chicago time on the business day immediately prior to the expiration date. The proposed rule change would extend this deadline by providing that Rule 11.1 shall not apply to currency option contracts.

The proposed rule change states that member organizations, including clearing firms, shall establish their own exercise cut-off times. These firms however, must continue to establish times that allow clearing firms to comply with the rules of the Options Clearing Corporation ("OCC").[3] The CBOE has stated that the proposed rule change is intended to permit persons wishing to exercise currency option contracts to have as much time as possible to do so consistent with the rules of the OCC. CBOE noted in its rule filing that the foreign currencies underlying its options contracts continue to trade after the general exercise cut-off time established by CBOE Rule 11.1.

The Commission believes that the proposed rule change will facilitate transactions in foreign currency options by enabling member firms to set more optimal exercise cut-off times. For this reason, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6,[4] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 18, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-4115 Filed 2-26-87; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1)(1982).

[2] 17 C.F.R. 240.19b-4 (1985).

[3] *See* letter from Anne Taylor, Secretary and Associate General Counsel, CBOE, to Sharon Lawson, Esq., Division of Market Regulation, SEC, dated June 23, 1986.

[4] 15 U.S.C. 78f (1982).

[5] 15 U.S.C. 78s(b)(2) (1982)

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[Rel. No. 34-24120; File No. SR-MBS-87-2]

Self-Regulatory Organizations; Proposed Rule Change by MBS Clearing Corporation Relating MBSCC's Policy Regarding the Physical Withdrawal of Securities Eligible for Deposit in MBSCC's Depository Division, Notice of Filing of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 9, 1987 the MBS filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is the MBS Clearing Corporation's ("MBSCC") procedures regarding the physical withdrawal of securities eligible ("Eligible Securities") for deposit in MBSCC's Depository Division. The proposal would become effective by the expiration of the 90-day temporary rule change noticed in a previous rule filing (File No. SR-MBS-87-1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change clarifies and sets forth MBSCC's policy regarding the physical withdrawal of Eligible Securities. The policy covers Eligible Securities subject to the Public Securities Association's ("PSA") Good Delivery Guideline for securities issued by the Government National Mortgage Association ("GNMA"), as adopted on December 29, 1986, as well as those not subject to PSA's guideline. The PSA guideline was announced together with a schedule by GNMA and PSA for the conversion of GNMA securities into book-entry form.

The policy substantially limits, but does not altogether prohibit, the withdrawal of securities subject to PSA's Good Delivery Guideline. Securities not subject to the guideline may be withdrawn by MBSCC Participants and registered in the name of the Participant or the name of a customer of the Participant. Securities subject to the guideline may be withdrawn and registered in a Participant's name only if the Participant is legally required to maintain physical possession of the securities. Participants may otherwise request physical withdrawal of securities on behalf of a customer only if the customer is legally required to maintain physical possession of the securities or the customer, to the best of the Participant's knowledge, does not intend to trade or deliver the withdrawn securities.

Consistent with PSA's Good Delivery Guideline, the policy essentially ensures that securities subject thereo will be cleared and settled in book-entry form through a registered clearing agency. The policy is designed to reduce physical withdrawal requests for book-entry eligible securities subject to the guideline and encourage the centralized processing of mortgage-backed securities transactions. By placing reasonable restrictions on the physical withdrawal of mortgage-backed securities subject to the PSA guideline, the proposed rule change will both foster PSA's mandate for book-entry settlement of certain transactions and significantly reduce delays, unmatched transaction orders and other human errors often associated with the physical delivery and transfer of certificates.

The proposed rule change is consistent with section 17A of the Securities Exchange Act of 1934 in that it encourages the processing and facilitation of securities clearance and settlement of mortgage-backed securities, thereby reducing current inefficient procedures and costs to issuers and investors of mortgaged-backed securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that any burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Oraganization's Statement of Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have not been generally solicited or received. However, representatives of PSA and GNMA have had the opportunity to review the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) By order approve the proposed rule change, or (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 20, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 19, 1987.

Jonathan G. Katz,

Secretary

Exhibit A—MBSCC Procedure for Physical Withdrawal of Depository Eligible Securities

The following is MBSCC's Procedure for physical withdrawal of securities from the MBSCC Depository. The Procedure covers

securities that are *not* yet subject to PSA's Good Delivery Guideline, as adopted by PSA on December 29, 1986, *as well as those* subject to the guideline. This Procedure limits almost in its entirety the withdrawal of securities that are subject to PSA's Good Delivery Guidelines. This is consistent with PSA's and GNMA's intent to move vigorously to a book-entry settlement environment for GNMA securities.

Securities Not Yet Subject to Good Delivery Guideline

In the case of securities not yet subject to the Good Delivery Guideline, a Participant will be permitted to withdraw Securities held by the Depository upon the Participant's submission of a request on the form prescribed by MBSCC. The Participant must specify whether the securities should be registered in the name of the Participant or the name of a customer of the Participant. Assuming that the request is made within the appropriate cut-off times prescribed by MBSCC, securities will be processed within four-to-twelve hours of such request.

Securities Subject to Good Delivery Guideline

MBSCC will honor requests to withdraw securities subject to the PSA Good Delivery Guideline in a Participant's name only in the unlikely event that the Participant is legally required to maintain physical possession of securities. Other Participants may submit requests for withdrawal of securities only if they request that the securities be registered in the name of a customer who is legally required to maintain physical possession of the securities or who, to the best of the Participant's knowledge, does not intend to trade, or deliver for financing purposes, the securities withdrawn.

Assuming a request for withdrawal satisfies the foregoing guidelines and is made within the appropriate cut-off times and on forms prescribed by MBSCC, MBSCC will make the securities available seven calendar days from the date of withdrawal request. Participants should advise their customers that payment will be required on settlement date, even though the physical security may be received sometime thereafter.

By making a request for the withdrawal of securities, an MBSCC Depository Participant represents to the Depository that the withdrawal will satisfy the foregoing guidelines. Abuse of this policy will subject the offending Participant's continued participation in the Depository to review by the MBS Clearing Corporation Board of Directors.

[FR Doc. 87-4116 Filed 2-26-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-24118; File No. SR-MBS-87-1]

Self-Regulatory Organizations; Proposed Rule Change by MBS relating to MBSCC's Policy Regarding the Physical withdrawal of Eligible Securities; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 9, 1987 the MBS filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is the MBS Clearing Corporation's (MBSCC) procedures regarding the physical withdrawal of securities eligible ("Eligible Securities") for deposit in MBSCC's Depository Division. The procedures will be in effect for a period of 90 days from the date of filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change clarifies and sets forth MBSCC's policy regarding the physical withdrawal of Eligible Securities. The policy covers Eligible Securities subject to the Public Securities Association's ("PSA") Good Delivery Guideline for securities issued by the Government National Mortgage Association ("GNMA"), as adopted on December 29, 1986, as well as those not subject to PSA's guideline. The PSA guideline was announced together with a schedule by GNMA and PSA for the conversion of GNMA securities into book-entry form.

The policy substantially limits, but does not altogether prohibit, the withdrawal of securities subject to PSA's Good Delivery Guidelines. Securities not subject to the guideline may be withdrawn by MBSCC Participants and registered in the name of the Participant or the name of a customer of the Participant. Securities subject to the guideline may be withdrawn and registered in a Participant's name only if the Participant is legally required to maintain physical possession of the securities. Participants may otherwise request physical withdrawal of securities on behalf of a customer only if the customer is legally required to maintain physical possession of the securities or the customer, to the best of the Participant's knowledge, does not intend to trade or deliver the withdrawn securities.

Consistent with PSA's Good Delivery Guideline, the policy essentially ensures that securities subject thereto will be cleared and settled in book-entry form through a registered clearing agency. The policy is designed to reduce physical withdrawal requests for book-entry eligible securities subject to the guideline and encourage the centralized processing of mortgage-backed securities transactions. By placing reasonable restrictions on the physical withdrawal of mortgage-backed securities subject to the PSA guideline, the proposed rule change will both foster PSA's mandate for book-entry settlement of certain transactions and significantly reduce delays, unmatched transaction orders and other human errors often associated with the physical delivery and transfer of certificates.

The proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934 in that it encourages the processing and facilitation of securities clearance and settlement of mortgage-backed securities, thereby reducing current inefficient procedures and costs to issuers and investors of mortgage-backed securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that any burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have not been generally solicited nor received. However, representatives of PSA and GNMA have had the opportunity to review the proposed rule change. The rule change is effective for a period of 90 days from the date of filing. Another filing (File No. SR-MBS-87-2), which will propose permanent adoption of the rule change, also will solicit public comment.

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III. Date of Effectivness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copes of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 20, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 19, 1987.

Jonathan G. Katz,

Secretary.

Exhibit A—Mbscc Procedure for Physical Withdrawal of Depository Eligible Securities

The following is MBSCC's Procedure for physical withdrawal of securities from the MBSCC Depository. The Procedure covers securities that are *not* yet subject to PSA's Good Delivery Guideline, as adopted by PSA on December 29, 1986, *as well as those* subject to the guideline. This Procedure limits almost in its entirety the withdrawal of securities that are subject to PSA's Good Delivery Guidelines. This is consistent with PSA's and GNMA's intent to move vigorously to a book-entry settlement environment for GNMA securities.

Securities Not Yet Subject to Good Delivery Guideline

In the case of securities not yet subject to the Good Delivery Guideline, a Participant will be permitted to withdraw Securities held by the Depository upon the Participant's submission of a request on the form prescribed by MBSCC. The Participant must specify whether the securities should be registered in the name of the Participant or the name of a customer of the Participant. Assuming that the request is made within the appropriate cut-off times prescribed by MBSCC, securities will be processed within four-to-twelve hours of such request.

Securities Subject to Good Delivery Guideline

MBSCC will honor request to withdraw securities subject to the PSA Good Delivery Guideline in a Participant's name only in the unlikely event that the Participant is legally required to maintain physical possession of securities. Other Participants may submit requests for withdrawal of securities only if they request that the securities be registered in the name of a customer who is legally required to maintain physicial possession of the securities or who, to the best of the Participant's knowledge, does not intend to trade, or deliver for financing purposes, the securities withdrawn.

Assuming a request for withdrawal satisfies the foregoing guidelines and is made within the appropriate cut-off times and on forms prescribed by MBSCC, MBSCC will make the securities available seven calendar days from the date of withdrawal request. Participants should advise their customers that payment will be required on settlement date, even though the physical security may be received sometime thereafter.

By making a request for the withdrawal of securities, an MBSCC Depository Participant represents to the Depository that the withdrawal will satisfy the foregoing guidelines. Abuse of this policy will subject the offending Participant's continued participation in the Depository to review by the MBS Clearing Corporation Board of Directors.

[FR Doc. 87–4117 Filed 2–26–87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 3424110 File No. SR-NASD-87-7]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Settlement of Syndicate Accounts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 3, 1987, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Item I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule amends paragraph (b) of section 66 of NASD Uniform Practice Code to reduce the time period for settling syndicate accounts from 120 days to 90 days.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Changes

Section 66 of the NASD Uniform Practice Code which was the subject of a prior rule filing (SR–NASD–85–14) became effective on October 1, 1985. The rule was adopted after the NASD determined it was common for lengthy delays to occur in settling syndicate accounts.

Syndicate accounts are ordinarily established by underwriting groups to process the income and expenses of the syndicate. Delays in settling these accounts can result in unnecessary outlays of time and money by syndicate participants. Some members reported that syndicate accounts could take as long as one year to settle after the syndicate settlement date. It is in response to these lengthy and costly delays that NASD is proposing a rule which would establish a time by which these accounts must be closed.

In its original filing the NASD proposed that syndicate managers be required to settle syndicate accounts within 120 days of the date securities are delivered by the issuer to, or for the account of, the syndicate members. In addition, however, it was stated in that filing that after one year, the Board of Governors would review the experience under the rule with a view to reducing the time period to 90 days.

The NASD Corporate Financing Committee reviewed the experience of

members with the rule and recommended that the contemplated time reduction be adopted. The NASD Board of Governors concluded that such a reduction was appropriate and adopted the proposed rule change.

The NASD has adopted the proposed rule changes pursuant to section 15A(b)(6) of the Securities Exchange Act of 1934, which requires that the Association's rules be designed to "promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and, in general, protect investors and the public interest." The Association believes that the proposed rule change, like its predecessor, is consistent with this purpose because it further removes an impediment to a free and open market by requiring even more timely settlement of syndicate accounts.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The NASD neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change,

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provision of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 20, 1987.

For the Commission by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: February 18, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–4118 Filed 2–26–87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM–8/1052]

Oceans and International Environmental and Scientific Affairs Advisory Committee; Partially Closed Meeting

The Antarctic Section of the Oceans and International Environmental and Scientific Affairs Advisory Committee will meet at 10:00 AM, Tuesday, March 31, 1987, in Room 1205, Department of State, 22nd and C Streets, NW., Washington, DC.

At this meeting, officers responsible for Antarctic affairs in the Department of State will discuss key issues and problems involving the Antarctic in the context of current domestic and international developments. This session will be open to the public. The public will be admitted to the session to the limits of seating capacity and will be given the opportunity to participate in discussion according to the instructions of the chairman. As access to the Department of State is controlled, persons wishing to attend the March 31 meeting should enter the Department through the Diplomatic ("C" Street) Entrance. Department officials will be at the Diplomatic Entrance to escort attendees to Room 1205.

The Antarctic Section of the Oceans and International Environmental and Scientific Affairs Advisory Committee will also meet on Monday, March 30, 1987, in Room 1205, Department of State, 22nd and C Streets, NW., in sessions that will not be open to the public. As these sessions will include discussion of classified material, they have been closed pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1) and 5 U.S.C. 552b(c)(9)(B). The disclosure of classified material and revelation of considerations which go into policy development would substantially undermine and frustrate the U.S. position in future negotiations. The purpose of these discussions will be to elicit views concerning the further development of United States policy regarding Antarctic resources, particularly Antarctic mineral resources. This portion of the meeting will include classified briefings and examination and discussion of classified documents pursuant to Executive Order 12356.

Requests for further information on the meetings should be directed to R. Tucker Scully of OES/OPA, Room 5801, Department of State. He may be reached by telephone on (202) 647–3262.

John D. Negroponte,

Chairman.

[FR Doc. 87–4206 Filed 2–26–87; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

San Jose International Airport; Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces formal receipt of the proposed San Jose International Airport noise compatibility program under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150. The proposed noise compatibility program was submitted to the Western-Pacific Regional Director on November 26, 1986, for review and approval under Part 150 in conjunction with noise exposure maps which were found acceptable by the FAA on December 30, 1986. The noise compatibility program will be approved or disapproved by the Administrator on or before August 9, 1987.

EFFECTIVE DATE: The effective date of the start of the formal 180-day review period for the San Jose International Airport noise compatibility program is February 11, 1987.

FOR FURTHER INFORMATION CONTACT: Thomas J. Conley, Environmental Protection Specialist, AWP–611.3, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007,

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World Way Postal Center, Los Angeles, California 90009, (213) 297–1621.

SUPPLEMENTAL INFORMATION: An airport operator who has submitted noise exposure maps that are accepted by FAA as meeting the criteria published in Part 150 may also submit a noise compatibility program for FAA approval. The program must set forth the measures the airport operator has taken or proposes to take for the reduction of existing noncompatible land uses and for the prevention of the introduction of additional noncompatible uses.

San Jose International Airport (SJC) submitted to the FAA on November 26, 1986, a proposed noise compatibility program conducted at SJC. It was requested that the FAA approve the submittal to be implemented jointly by the airport, the airport users and the surrounding communities, as a noise compatibility program under section 104(b) of the Aviation Safety and Noise Abatement Act of 1979.

Upon the December 30, 1986 acceptance of the SJC noise exposure maps and completion of the preliminary review of the submitted material for a noise compatibility program, the FAA has formally received the noise compatibility program for SJC. Preliminary review indicates that the submittal conforms to the requirements of Part 150 for noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program by the Administrator. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 9, 1987.

The proposed program includes recommended measures relating to flight procedures for noise control purposes which are exempt from the 180 day review procedures. The FAA's detailed evaluation of these measures will be conducted under the provisions of Part 150.33. The primary considerations in the evaluation are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, and are reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Because the FAA may approve a proposed noise compatibility program in less than 180 days, no formal comment period has been established. Comments received subsequent to FAA approval or disapproval, even if received beyond the 180 day limit, will be acknowledged and considered in evaluating project applications to implement elements of the program. Copies of the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC, 20591

Western-Pacific Region, Federal Aviation Administration, Airports Division, AWP–600, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009

Mr. Raul L. Regalado, C.A.E., Director of Aviation, San Jose International Airport, 1661 Airport Blvd., San Jose, California 95110–1285.

Questions may be directed to the individual named above under the heading **"FOR FURTHER INFORMATION CONTACT."**

Issued in Hawthorne, California, on February 11, 1987.

Herman C. Bliss,

Manager, Airports Division, FAA, Western-Pacific Region.

[FR Doc. 87–4058 Filed 2–26–87; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Putnam & St. Johns Counties, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Putnam and St. Johns Counties, Florida.

FOR FURTHER INFORMATION CONTACT: David Van Leuven, District Engineer, Federal Highway Administration, 227 N. Bronough Street, Room 2015, Tallahasseee, Florida 32301, Telephone: (904) 681–7231.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation, will prepare an EIS for a proposal to improve S.R. 207 in Putnam and St. Johns Counties, Florida. The proposed improvement would involve the reconstruction of S.R. 207 from S.R. 100/East Palatka to S.R. 5 (U.S. 1) in St. Augustine, a distance of 24.5 miles. Improvements to the corridor are considered necessary to provide for the existing and projected traffic demands.

Alternatives under consideration include: (1) Taking no action; (2) widening to a multi-lane divided roadway with additional right of way; and (3) widen existing facility and add four-foot paved shoulders within the existing right of way.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private citizens who have expressed interest in this proposal. A series of public meetings will be held in Putnam and St. Johns Counties. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be made available for public and agency review and comment. The scoping process will be informal using correspondence and personal contacts; no formal scoping meeting will be held.

To assure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: February 18, 1987.

James E. St. John,

Assistant Division Administrator, Tallahassee, Florida.

[FR Doc. 87–4207 Filed 2–26–87; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Lancaster, Berks and Chester Counties, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Lancaster County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Philibert A. Ouellet, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108. Telephone: (717) 782–4422,

or

Philip D. Miller, Project Manager, Pennsylvania Department of Transportation, 21st and Herr Street, Harrisburg, Pennsylvania 17103–1699, Telephone: (717) 783–5149.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PennDOT) will conduct a Traffic Relief Study and prepare an Environmental Impact Statement (EIS) to identify and evaluate alternatives which provide a viable means of relieving traffic congestion on Traffic Routes (T. R.) 23 and 30 in eastern Lancaster County, Pennsylvania. A two-phased study approach will be used to identify and evaluate alternatives.

The initial phase of this process is for scoping and alternative selection. The study will involve the development of potential alternatives through the study area which will assist in relieving traffic congestion on existing routes. Each of the alternatives will be developed such that a means of comparison of each can be made along with the Do Nothing Alternative.

Concurrent with the development of the alternatives, various types of data will be gathered which will describe the study area as it relates to the alternatives. Typical data will include: census figures; land use; traffic counts and origin/destination studies; hazardous waste site locations; historical and archaeological sites; water resources and quality; utilities; hydraulic information; vegetation; and geologic information; and background air pollutant levels. The above information will be utilized to refine the alternatives or eliminate a particular alternative from further considerations because of the potential for negative socioeconomic, environmental, or engineering impacts.

The second phase will utilize the alternatives identified in the initial phase and perform a detailed analysis on each. From this analysis a preferred alternative will be identified which meets the needs of traffic demand, and satisfies the environmental, socioeconomic, engineering evaluations and public feedback.

Within the chosen alternative, alignments will be developed in greater detail than those during the initial phase. The procedure and evaluation will be based on those in the initial phase.

These alignments will be the basis for the detailed environmental studies and Environmental Impact Statement.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who express interest in the proposal. Scoping meetings are planned with the concerned agencies for March, 1987, and public meetings will be held in the area in early 1987, and throughout the study process. Public notices of the time and place of these meetings and any required public hearings will be given. Public involvement and interagency coordination will be maintained through the development of the Traffic Relief Study and the EIS.

To insure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments or questions concerning this action and the EIS should be directed to FHWA or PennDOT at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, regarding State and local review of Federal and Federally assisted programs and projects apply to this program.

Issued on February 19, 1987.

Manuel A. Marks,

Division Administrator, Harrisburg, PA.

[FR Doc. 87–4098 Filed 2–26–87; 8:45 am]

BILLING CODE 4910–22–M

Urban Mass Transportation Administration

UMTA Sections 3 and 9 Grant Obligations; North Central Pennsylvania Area Transportation Authority, et al.

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: Pub. L. 99–500 signed into law by President Reagan on October 18, 1986, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** each time a grant is obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource Management Division, (202) 366–2053, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to Pub. L. 99–500, UMTA reports the following grant information:

Transit property	Grant No.	Grant amount	Date obligated
Section 3 Grants:			
Area Transportation Authority of North Central Pennsylvania (Johnsonburg, PA).	PA–03–0192	$249,000	1–12–87
Section 9 Grants:			
Kansas City Area Transportation Authority (Kansas City, MO).	MO–90–X033	1,319,232	1–23–87
Putnam County (Putnam County, NY).	NY–90–X096	503,698	1–28–87
Transit Authority of Lexington-Fayette Urban County Government (Lexington, KY).	KY–90–X027	96,752	1–23–87
Transit Authority of River City (Louisville, KY).	KY–90–X030	9,519,597	1–23–87

Issued on: February 20, 1987.

Ralph L. Stanley,

Administrator.

[FR Doc. 87–4111 Filed 2–26–87; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Comprehensive Anti-Apartheid Act of 1986

AGENCY: Department of the Treasury.

ACTION: Notice and Request for Comments.

SUMMARY: The Treasury Department is required under section 507 of the Comprehensive Anti-Apartheid Act of 1986, Pub. L. 99–440, 100 Stat. 1086 (the "Act"), to conduct a study and provide a report to Congress on "the feasibility of

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prohibiting each depository institution from accepting, receiving, or holding a deposit account from any South African national." The Treasury invites comments from the public, particularly depository institutions, for consideration in the study and the preparation of the report to Congress.

DATES: Comments must be received by March 10, 1987 to be considered in the drafting of Treasury's report to Congress. That report is due March 31, 1987.

ADDRESSES: Comments should be sent to David Joy, Attorney-Adviser (International Affairs), or Sharon Lachman, Attorney-Adviser (Banking & Finance), in the Office of the General Counsel, Treasury Department, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: David Joy, Attorney-Adviser (International Affairs), tel.: 202/566-5569, or Sharon Lachman, Attorney-Adviser (Banking & Finance), tel.: 202/566-6630, in the Office of the General Counsel, Treasury Department, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: This notice invites public participation in a study on the feasibility of prohibiting each depository institution (as defined in section 19(b)(1) of the Federal Reserve Act, 12 U.S.C. 461(b)(1)) from accepting, receiving, or holding a deposit account from any South African national. This study is being conducted pursuant to section 507 of the Act, and will form the basis for a report to be submitted to Congress by March 31, 1987.

Section 308 of the Act already prohibits U.S. depository institutions from accepting, receiving, or holding deposit accounts from the South African Government, its agencies, or entities owned or controlled by it. The section 507 study is intended to consider the feasibility of expanding the scope of that prohibition to cover deposit accounts from any "South African national." The Act defines "South African national" to mean a citizen of South Africa, and any partnership, corporation, or other business association organized under the laws of South Africa.

The language of section 507 requires that the feasibility study cover "each depository institution," rather than "United States depository institutions" which are covered by the section 308 prohibition against South African Government deposit accounts. The regulations implementing section 308 cover depository institutions located in the United States, but not foreign branches of depository institutions organized in the United States. While it is uncertain whether Congress intended a distinction, the Treasury Department will examine the feasibility of additionally prohibiting foreign branches of depository institutions organized in the United States from accepting, receiving, or holding deposit accounts from any South African national for purposes of preparing the section 507 report.

Areas on which comments are specifically requested, particularly from banks and other depository institutions, are the following:

(**Note.**—Comments on the questions in sections A and B below should address each of the two possible interpretations of the prohibition on deposit accounts of South African nationals to be studied under section 507: (a) a prohibition applicable only to depository institutions located in the United States, and (b) a prohibition applicable also to the foreign branches of depository institutions organized under the laws of a United States jurisdiction. Under either interpretation, where a foreign depository institution maintains a U.S. branch, the prohibition affecting that branch would not extend to the operations of the foreign parent or those of the parent's foreign branches and affiliates.)

A. Identification of Accounts of South African Nationals

Responses to the following questions will assist the Treasury Department in ascertaining the ease or difficulty for depository institutions to determine whether a deposit account is held by a South African national; whether depository institutions would have sufficient information in their records to administer a prohibition on deposit accounts of South African nationals; the ease with which such a prohibition might be circumvented; any administrative difficulties likely to be encountered; and the administrative or other costs that might be involved in implementing the prohibition.

1. Do depository institutions currently determine which deposit accounts are held by South African nationals? Do depository institutions request information from depositors on residence and citizenship, or, if the depositor is a corporation, partnership, or other business association, whether it is organized under the laws of South Africa?

2. Do depository institutions have the capability of determining whether the "ultimate" owners of deposit accounts are South African nationals?

3. What type of identification is generally necessary for South African nationals, including those resident in the United States, to open a deposit account? Do such requirements for South African individuals differ from those for South African business organizations?

4. Would it be necessary for depository institutions to establish new procedures to identity new and existing account holders as South Africa nationals? If so, how difficult and costly would it be to establish such procedures?

5. Could an identification system be established in a way that could not be easily evaded by South African nationals?

B. Effects of Such a Sanction

Responses to the following questions will assist the Treasury Department in anticipating the effects of a prohibition on deposit accounts of South African nationals on the competitive position of depository institutions located in the United States vis-a-vis that of foreign banks abroad which would not be subject to such a prohibition. (See Note preceding section A.)

1. What would be the effect on the competitive position of depository institutions subject to the prohibition vis-a-vis foreign depository institutions abroad not covered by such a prohibition?

2. To what extent would it have an impact on the profitability of depository institutions subject to the prohibition?

3. How might this prohibition affect the rescheduling of South African debt or the receipt of debt payments?

4. The Act and implementing regulations prohibit certain banking and securities transactions of U.S. nationals with South Africa. Excluding these prohibitions, how might an additional prohibition affecting South African nationals' deposit accounts affect other banking and financial relationships generally involving South Africa? For example, what impact might result on the financing of U.S. exports to South Africa; securities transactions effected for South African nationals; fiduciary activities; maintenance of reinsurance collateral deposits; and commodity, foreign exchange, futures, options, and other operations conducted for South African nationals?

5. What would be the practical effects of compliance?

6. If there were a prohibition extending to deposit accounts of South African nationals in foreign branches of depository institutions organized in the United States, how and to what extent would there be conflicts between U.S. law and the laws of the countries in which the foreign branches of the U.S. depository institutions were located?

7. Would a prohibition on South African nationals' deposit accounts in depository institutions located or organized in the United States affect the relationship between such depository institutions and depositors from other countries?

Please note that comments received in connection with the section 507 study will be furnished upon request to Congress and interested public parties. Confidential business information should not be included.

Dated: February 9, 1987.

R. Richard Newcomb,

Director, Office of Foreign Assets Control

Approved: February 18, 1987.

Francis A. Keating, II,

Assistant Secretary (Enforcement).

[FR Doc. 87-4033 Filed 2-26-87; 8:45 am]

BILLING CODE 4810-25-M

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Sunshine Act Meetings

Federal Register
Vol. 52, No. 39
Friday, February 27, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:23 p.m. on Wednesday, February 18, 1987, the Board of Directors of the Federal Insurance Corporation met in closed session, by telephone conference call, to:

(A) Discuss and consider requests for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act;

(B)(1) Accept the bid submitted by The First National Bank of Atmore, Atmore, Alabama, for the purchase of certain assets of the assumption of the liability to pay deposits made in First State Bank of Atmore, Atmore, Alabama, which was expected to be be closed by the Superintendent of Banks for the State of Alabama on Thursday, February 19, 1987; and (2) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(C)(1) Accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for a purchase and assumption transaction, or (2) in the event no acceptable bid for a purchase and assumption transaction is submitted, accept the highest acceptable bid for an insured deposit transfer transaction which may be submitted, or (3) in the event no acceptable bid for either type of transaction is submitted, make funds available for the payment of the insured deposits of the closed bank, with respect to each of the following: (a) The First National Bank of Weslaco, Weslaco, Texas, which was expected to be closed by the Deputy Controller of the Currency, Office of the Comptroller of the Currency, on Friday, February 20, 1987; and (b) Hub City Bank and Trust Company, Lafayette, Louisiana, which was expected to be closed by the Commissioner of Financial Institutions for the State of Louisiana on Friday, February 20, 1987.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: February 24, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-4269 Filed 2-25-87; 12:59 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, March 3, 1987, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to merge and establish two branches:

The Arizona Bank, Phoenix, Arizona, an insured State nonmember bank, for consent to merge, under its charter and title, with The Bank of Prescott, Prescott, Arizona, and for consent to establish the two offices of The Bank of Prescott as branches of the resultant bank.

Applications for consent to purchase assets and assume liabilities and to establish one branch:

Bank of Stanly, Albemarle, North Carolina, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in the Norwood Branch, located at 13 South Main Street, Norwood, North Carolina, of North Carolina Federal Savings and Loan Association, Charlotte, North Carolina, a non-FDIC-insured institution, and for consent to establish the Norwood Branch as a branch of Bank of Stanly.

The Citizens Bank, Olanta, South Carolina, an insured State nonmember bank, for consent to purchase the assets of and assume the liability to pay deposits made in the Lake City Branch, located at 2865 North Main Street, Lake City, South Carolina, of Palmetto State Savings Bank of South Carolina, Camden, South Carolina, a non-FDIC-insured institution, and for consent to establish the Lake City Branch as a branch of The Citizens Bank.

Application for consent to purchase assets and assume liabilities:

Staten Island Savings Bank, New York City (Staten Island), New York, a State mutual savings bank, for consent to purchase certain assets of and assume the liability to pay deposits made in the St. George Branch, located at 1 Hyatt Street, New York City (Staten Island), New York, of First Nationwide Bank, A Federal Savings Bank, San Francisco, California, a non-FDIC-insured institution.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,822-L (Amendment)
The First National Bank of Midland, Midland, Texas
Case No. 46,916-L
The First National Bank of Midland, Midland, Texas
Case No. 46,928-L
Bank of Commerce and Trust Company, Tulsa, Oklahoma
Case No. 46,936-L
American Bank & Trust Company, Lafayette, Louisiana

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Reports of the Director, Division of Liquidation:

Memorandum re:
Reports Under Delegated Authority Status of Approved Committee Cases
Memorandum re:
Quarterly Report for Actions Approved Under Delegated Authority as of September 30, 1986

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Summary Audit Report re:
New York Consolidated Office Cost Center—502 (Memo dated January 21, 1987)

Summary Audit Report re:
Chicago Regional Office Cost Center—200 (Memo dated February 4, 1987)
Memorandum re:
Status of Auditee Corrective Actions

Discussion Agenda:

Memorandum and Resolution re: Extension to December 31, 1987, of the period of time which the Corporation may use under its internal policy statement for the consideration, adoption, and publication of a final amendment to Part 332 of the Corporation's rules and regulations, entitled "Powers Inconsistent with Purposes of Federal Deposit Insurance Law", which amendment would, among other things, prohibit insured banks, subject to certain exceptions, from directly engaging in real estate development and insurance underwriting activities and establish certain restrictions on the indirect conduct of such activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: February 24, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-4270 Filed 2-25-87; 12:59 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, March 3, 1987, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for Federal deposit insurance and for consent to exercise limited trust powers:

PW Trust Company, a proposed new bank located at 700 Plaza Drive, Secaucus, New Jersey.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: February 24, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-4271 Filed 2-25-87; 12:59 pm]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, March 4, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Treatment of interest rate and exchange rate contracts in the risk asset ratio under the Board's capital adequacy guidelines.
2. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: February 25, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-4248 Filed 2-25-87; 12:00 pm]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:00 a.m., Wednesday, March 4, 1987, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any item carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 25, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-4249 Filed 2-25-87; 12:00 pm]

BILLING CODE 6210-01-M

LEGAL SERVICES CORPORATION

Provisions for the Delivery of Legal Services Committee Meeting

TIME AND DATE: The meeting will commence at 9:00 a.m., Saturday, March 7, 1987, and continue until all official business is completed.

PLACE: The Westin Canal Place, Terrace Room, 100 Rue Iberville, New Orleans, Louisiana 70130.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Consideration of National/State Support and Clearinghouse Funding Issues
3. Public Comment

CONTACT PERSON FOR MORE INFORMATION: Timothy H. Baker, Executive Office (202 863-1839).

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Date issued: February 25, 1987.

Timothy H. Baker,

Secretary.

[FR Doc. 87-4315 Filed 2-26-87; 3:59 pm]

BILLING CODE 6820-35-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Notice of Closed Meeting

DATE: March 5–6, 1987.

PLACE: The Quay, Vancouver, Washington.

SUMMARY: The Northwest Power Planning Council will hold a closed meeting on March 5–6, 1987, to discuss internal personnel matters.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Atkins, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 87-4243 Filed 2-25-87; 11:34 am]

BILLING CODE 0000-00-M

UNITED STATES INSTITUTE OF PEACE

TIMES AND DATES: 9:00 a.m.–5:00 p.m., Thursday, March 5, 1987, and 9:00 a.m.–5:00 p.m. Friday, March 6, 1987.

PLACE: National Trust for Historic Preservation, 1785 Massachusetts Avenue, NW., Washington, DC 20036.

STATUS: Open (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. 98–525).

AGENDA (TENTATIVE):

Meeting of the Board of Directors convened: President's Report, Committee Reports, Consideration of Grant Applications.

On Thursday afternoon from 3:00–5:00 p.m., the Information Services Committee will continue its series of forums on developing an intellectual map of the field of international peace and conflict management. Guests will include Professors Samuel Huntington and Gregory Treverton, of the Kennedy School of Government, Harvard University.

CONTACT: Mrs. Olympia Diniak. Telephone: (202) 789–5700.

Dated: February 24, 1987.

Robert F. Turner,

President, United States Institute of Peace.

[FR Doc. 87-4286 Filed 2-25-87; 1:43 pm]

BILLING CODE 3155-01-M

Corrections

Federal Register
Vol. 52, No. 39
Friday, February 27, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber, Silk Blends and other Vegetable Fiber Textile Products From Taiwan Effective on January 1, 1987

Correction

In notice document 87–149 beginning on page 447 in the issue of Tuesday, January 6, 1987, make the following corrections in the table appearing on page 448:

1. In the first column, under "12–month restraint limit", for "Category 670–H[8]", in the first line "38,989,790" should read "39,989,790".

2. In the first column, under "12–month restraint limit", for "Category 636", "325,724" should read "325,624".

3. In the second column, under "12–month restraint limit", for "Category 659–B[12]", "1,559,559" should read "1,559,599".

BILLING CODE 1505-01-D

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Polish People's Republic Effective on January 1, 1987

Correction

In notice document 87–466 beginning on page 854 in the issue of Friday, January 9, 1987, make the following correction:

On page 854, in the second column, in the table, under "Category", the seventh line should read "645–659".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

Reasonable Cost Regulations

CFR Correction

In Title 42 of the Code of Federal Regulations, Parts 400–429, revised as of October 1, 1986, in § 413.40(c)(1) appearing on page 413 certain portions of the regulatory text are incorrect. (See 51 FR 37398, Oct. 22, 1986, item no. 4.)

§ 413.40 [Corrected]

1. In § 413.40(c)(1)(ii), the first two lines should read:

"(ii) For cost reporting periods beginning on or after October 1, 1982 and before October 1, 1983, these".

2. In § 413.40(c)(1)(iii), the first three lines should read:

"(iii) For cost reporting periods beginning on or after October 1, 1983, these operat-".

BILLING CODE 1505-01-D

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Part II

Supplement to the Guide to Record Retention Requirements in the CFR

Revised as of January 1, 1987

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SUPPLEMENT TO THE GUIDE TO RECORD RETENTION REQUIREMENTS IN THE CFR

This Supplement, published by the Office of the Federal Register, revises as of January 1, 1987, the edition of the Guide published in 1986.

The Guide to Record Retention Requirements in the CFR is a guide in digest form to the provisions of Federal regulations relating to the keeping of records by the public. It provides information on (1) what records must be kept (2) who must keep them, (3) how long they must be kept, and (4) where the full provisions can be found in the Code of Federal Regulations.

The Guide published in 1986 was revised as of January 1, 1986. This Supplement updates the Guide as of January 1, 1987. The publications should be used together.

The Supplement is derived from the regulations published by the various agencies in the **Federal Register** from January 1 through December 31, 1986. It was prepared under the direction of Martha L. Girard. Gladys Queen Ramey was chief editor. Inquiries, telephone 202–523–4534. Suggestions concerning this publication may be sent to John E. Byrne, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

Coverage

In preparing both the Guide and the Supplement it was necessary to establish boundaries in order to stay within the intended purpose. The records covered are those that address categories of activities conducted by individuals, businesses, and organizations for which retention requirements are expressly stated in Federal regulations.

In many regulations there is an implied responsibility to keep copies of reports and other papers furnished to Federal agencies. Such implied requirements have not been included in the Guide and the Supplement.

The following types of requirements also have been excluded:

(1) Requirements involving the furnishing of reports to Government agencies, the filing of tax returns, or the submission of supporting evidence with applications or claims.

(2) Requirements involving the display of posters, notices, or other signs in places of business.

(3) Requirements contained in individual Government contracts, unless the contract provisions are incorporated in the Code of Federal Regulations.

Arrangement

The arrangement and numbering system in the Supplement follows the numbering system established for the Guide. The numbering in the Guide corresponds to the numbering in the CFR.

For example, a record retention requirement relating to agriculture will be found in the Guide under Title 7, Agriculture, and, further, under the agency which administers and enforces the regulation in which the record retention requirement appears. The number to the left of the item is the part and section number in Title 7 of the CFR in which the text of the regulation is printed. Because not all sections of the CFR contain record retention requirements, the numbering in the Guide has gaps in the numerical sequence.

Citation: Citations to the Guide and to the CFR are the same. An example is 7 CFR 17.17. The record retention requirement involved can be checked in digest form in the Guide and in full text in the CFR.

Notice

The Guide to Record Retention Requirements and this Supplement do not have the effect of law, regulation, or ruling. They comprise a guide to legal requirements that appear to be in effect as of January 1, 1987.

LIST OF AGENCIES AND CFR TITLES APPEARING IN THIS SUPPLEMENT [1]

Agency	CFR Title
Agriculture Department	7, 9, 36
Commerce Department	15, 50
Commodity Futures Trading Commission	17
Defense Department	48
Education Department	34
Energy Department	18
Environmental Protection Agency	40
Farm Credit Administration	12
Federal Communications Commission	47
Federal Home Loan Bank Board	12
General Services Administration	48
Health and Human Services Department	21, 42, 45
Housing and Urban Development Department	24
Interior Department	30
Labor Department	20, 29
National Aeronautics and Space Administration	14, 48
National Archives and Records Administration	36
Nuclear Regulatory Commission	10
Postal Service	39
Small Business Administration	13
Transportation Department	49
Treasury Department	19, 26, 27, 31

[1] Agencies appear in this Supplement in CFR title numerical order.

AGRICULTURE DEPARTMENT

Office of the Secretary

7 CFR

17.6 Importers and suppliers involved in sales of agricultural commodities. [Revised]

To maintain a record of all offers received from suppliers as a result of public tenders or negotiation.

Retention period: Until expiration of 3 years after final payment under the purchase authorization.

17.17 Importers and suppliers involved in sales of agricultural commodities. [Redesignated as 17.22]

See 17.6.

Food and Nutrition Service

7 CFR

210.8 Cooperating State agencies, school food authorities, and food service management companies participating in the National School Lunch Program. [Redesignated as 210.9 and revised]

To maintain (a) records and accounts pertaining to its school food service; (b) files of currently approved and denied, free and reduced price applications; and (c) individual applications for free and reduced price lunches submitted by families.

Retention period: (a) 3 years after date of final Claim for Reimbursement for the fiscal year to which they pertain, or beyond 3 years until resolution of any audit questions; (b) not specified; and (c) 3 years after end of the fiscal year to which they pertain or beyond 3 years until resolution of any audit questions.

210.10 School food authorities participating in the National School Lunch Program. [Added]

To maintain production and participation records to demonstrate positive action toward providing one reimbursable lunch per child per day.

Retention period: 3 years after submission of final Claim for Reimbursement for the fiscal year, or beyond 3 years period until resolution of any audit issues.

210.14 School food authorities participating in the National School Lunch Program. [Revised]

To maintain records of revenues and expenditures to demonstrate that the food service is being operated on a nonprofit basis including net cash resources, or the information necessary for the State to compute net cash resources through a review or audit.

Retention period: 3 years after submission of the final Claim for Reimbursement for the fiscal year or beyond 3 years until resolution of any audit issues.

210.15 School food authorities participating in the National School Lunch Program. [Added]

See 210.10 and 210.14.

210.16 Food service management companies participating in the National School Lunch Program. [Revised]

To maintain such records as the school food authorities will need to support Claims for Reimbursements.

Retention period: 3 years after date of submission of the final Financial Status for fiscal year or until resolution of any audit issues.

210.18 State agencies participating in the National School Lunch Program. [Added]

To maintain records which document the details of all Assessment, Improvement and Monitoring System (AIMS) review or audits and which demonstrate the degree of compliance with AIMS performance standards.

Retention period: 3 years after the date of the exit conference or after the year in which problems have been resolved, whichever is later.

210.19 State agencies participating in the National School Lunch Program. [Added]

To maintain all records pertaining to fiscal actions against school food authorities for Claims for Reimbursement that are not properly payable under 7 CFR Part 210.

Retention period: 3 years.

210.20 State agencies participating in the National School Lunch Program. [Added]

To maintain records to demonstrate compliance with Program requirements.

Retention period: 3 years after date of submission of final Financial Status Report for fiscal year or beyond 3 years until resolution of any audit issues.

210.23 State agencies and food authorities participating in the National School Lunch Program. [Added]

To keep necessary records as specified in 7 CFR 210.18 through 210.20.

Retention period: State agencies records–3 years after date of submission of final Financial Status Report for the fiscal year. School food authorities records–3 years after submission of the final Claim for Reimbursement for the fiscal year. In either case, records shall be retained until resolution of any audit issues.

210.27 State educational agencies participating in the National School Lunch Program. [Added]

To maintain records concerning the survey of school food authorities including, at a minimum, a description of survey methods and a copy of the format used to obtain food preferences; the name and address of each school food authority included in the survey; and a record of the data obtained from each school food authority.

Retention period: 3 years.

225.10 State agencies participating in the Summer Food Service Program. [Amended]

(a) To maintain complete and accurate current accounting records of its Program operations which will adequately identify funds authorizations, obligations, unobligated balances, assets, liabilities, income, claims against sponsors and efforts to recover overpayments, and expenditures for administrative and operating costs.

(b) To maintain record for each review or audit conducted.

(c) To maintain complete record of each review or appeal.

Retention period: (a) 3 years after date of the submission of the final Program Operations and Financial Status Report or until resolution of any audit or appeal questions; (b) 3 years.

250.6 Distributing, subdistributing, and recipient agencies to which food commodities are donated for use in school lunch programs, for training students in home economics, in summer camps for children, by needy Indians on reservations, in charitable institutions, and management companies pertaining to the feeding operations of the institutions, in State correctional institutions for minors, in nutrition programs for the elderly, and in assistance of other needy persons. [Amended]

(a) To maintain records relating to receipt, disposal, and inventory of donated foods including records with respect to the receipt, and disbursement of funds arising from, or federally disbursed for, operation of the distributing program; (b) also, to maintain records with respect to (1) the receipt and disbursement of cash received in lieu of donated foods for nutrition programs for elderly, and (2) refusal of commodities by school food authorities.

Retention period: 3 years from the close of the Federal fiscal year to which the records pertain.

251.9 State agencies and emergency feeding organizations. [Revised]

(a) See 250.6.

(b) Each distribution site shall keep accurate and complete records showing the date and method used to determine the number of eligible households served at the site.

Retention period: 3 years from the close of the Federal fiscal year to which they pertain.

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252.4 Food processors participating in the National Commodity Processing Program. [Added]

To maintain complete and accurate records of the receipt, disposal and inventory of donated food including end products processed from donated food. To also keep production records, formulae, recipes, daily or batch production records, loadout sheets, bills of lading, and other processing and shipping records to substantiate the use of the donated food and the subsequent redelivery to an eligible recipient agency.

Retention period: 3 years from the close of the Federal fiscal year to which they pertain.

252.5 Recipient agencies participating in the National Commodity Processing Program. [Added]

To maintain accurate and complete records with respect to the receipt, disposal, and inventory of donated food, including products processed from donated food, and with respect to any foods which arise from the operation of the distribution program.

Retention period: Not specified.

Federal Crop Insurance Corporation

7 CFR

417.7 Insured under FCIC (Sugarcane). [Revised]

To keep records of the harvesting, storage, shipment, sale or other disposition of all sugarcane produced on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

430.7 Insured under FCIC (Sugar beet). [Revised]

To keep records of the harvesting, storage, shipment, sale or other disposition of all sugar beets produced on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

436.7 Insured under FCIC (Tobacco-guaranteed production plan). [Revised]

To keep records of the harvesting, storage, shipment, sale or other disposition of all tobacco produced on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

440.7 Insured under FCIC (Texas citrus tree). [Revised]

To keep records of the trees destroyed and damaged on each unit including separate records showing the same information for any uninsured acreage.

Retention period: 2 years after the time of loss.

441.7 Insured under FCIC (Table grape). [Revised]

To keep records of the harvesting, storage, shipment, sale or other disposition of all grapes produced on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

443.7 Insured under FCIC (Hybrid seed). [Revised]

To keep records of the harvesting, storage, shipment, sale or other disposition of all the crop production on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

444.7 Insured under FCIC (Fresh tomato). [Revised]

To keep records of the harvesting, storage, shipment, sale or other disposition of all tomatoes produced on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

445.7 Insured under FCIC (Pepper). [Revised]

To keep records of the harvesting, storage, shipment, sale or other disposition of all peppers produced on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

447.7 Insured under FCIC (Popcorn). [Revised]

To keep records of the harvesting, storage, shipment, sale or other disposition of all popcorn produced on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

449.7 Insured under FCIC (Fresh market sweet corn). [Revised]

To keep records of the harvesting, storage, shipment, sale or other disposition of all sweet corn produced on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

451.7 Insured under FCIC (Canning and processing peach). [Revised]

To keep records of the harvesting, storage, shipment, sale or other disposition of all peaches produced on each unit including separate records showing the same information for production from any uninsured acreage.

Retention period: 2 years from the time of loss.

Agricultural Stabilization and Conservation Service

7 CFR

729.426 Persons engaged in more than one business of shelling or crushing peanuts. [Added]

See 729.198.

729.429 Persons engaged in more than one business of shelling or crushing peanuts. [Added]

See 729.198.

Federal Grain Inspection Service

7 CFR

800.25 Grain elevator owners and merchandisers. [Revised]

To keep such accounts, records, and memoranda that fully and correctly disclosed all transactions concerning the lots of grain for which the elevator or merchandiser received official services.

Retention period: 3 years from date of the official services; 3 year-period may be extended if notified by the Administrator that specific records should be retained for a longer period.

Agricultural Marketing Service

7 CFR

907.173 Orange handlers. [Added]

See 907.73.

908.73 Orange handlers. [Added]

See 907.73.

908.173 Orange handlers. [Added]

See 907.73.

930.63 Cherry handlers. [Removed]

991.61 Hops handlers. [Revised]

To maintain such records of all hops handled as will substantiate the required reports.

Retention period: At least 2 years after end of marketing year.

1230.58 Contracting parties under the pork promotion, research and consumer information order. [Added]

To keep accurate records of all relevant transactions.

Retention period: At least 2 years beyond the fiscal period of their applicability.

1230.81 Persons subject to the pork promotion, research, and consumer information order. [Added]

To maintain such books and records as are necessary to carry out the provisions of the regulations including such records as are necessary to verify any required reports.

Retention period: At least 2 years beyond the fiscal period of their applicability.

1260.161 Wheat and wheat food manufacturers. [Removed]

1280.330 Wheat and wheat food manufacturers. [Removed]

Commodity Credit Corporation

7 CFR

1425.17 Cooperative marketing associations participating in the price support program. [Revised; new amendment contained no record retention requirements]

1425.18 Cooperative marketing associations participating in the price support program. [Revised; new amendment contained no record retention requirements]

1425.20 Approved cooperative marketing associations participating in the price support program. [Added]

To maintain records showing quantity of commodity received from members and nonmembers, the date received, the eligibility status for price support of each quantity, the quality factors specified in the applicable regulations for the commodity (including class, grade, and quality, where applicable), and the quantity to which each applicable factor applies.

Retention period: 5 years.

1425.21 Approved cooperative marketing associations participating in the price support program. [Added]

See 1425.20.

1430.344 Responsible persons or producers of milk produced in the US that is marketed for commercial use beginning Apr. 1, 1986 and ending Sept. 30, 1987. [Added]

To maintain such records pertaining to operations that are necessary to determine compliance with regulations.

Retention period: 3 years or for such longer periods as Dairy Division or CCC may require.

1430.468 Participating producers or knowing purchasers of dairy cattles sold pursuant to a DIP contract. [Added]

To maintain all records which CCC may require to enforce provisions of the contract, as well as any records necessary to establish compliance with the terms and conditions of the contract.

Retention period: 3 years from date of the nonproduction period under the contract.

1435.12 Sugar processors. [Removed]

1435.24 Sugar processors. [Removed]

1435.33 Sugar producers. [Removed]

1435.43 Sugar processors. [Removed]

1435.85 Sugar processors. [Revised]

To maintain books, records, accounts, and other written data as are deemed necessary by the examining agency to verify compliance with price support purchase program requirements.

Retention period: Not less than 3 years.

1435.106 Sugar processors. [Revised]

See 1435.85.

1435.121 Sugar processors. [Revised]

See 1435.85.

1435.205 Sugar producers. [Added]

To maintain the books and records pertaining to the benefit payments and the applicable contracts with the processors.

Retention period: 3 years following the producer's demand for payment.

1446.83 Peanut handlers. [Added]

To maintain marketing, sales, and disposal records.

Retention period: 3 years following end of the marketing year in which peanuts were produced.

1446.84 Peanut handlers. [Added]

To keep records on inspected and noninspected peanuts; peanuts shelled or milled for a producer; peanuts from which LSKs or pods were removed for a producer; and green peanuts purchased from producer.

Retention period: 3 years following end of marketing year in which peanuts were produced.

1446.86 Peanut handlers. [Added]

See 1446.83 and 1446.84.

1446.93 Peanut handlers. [Added]

To keep records for each lot of quota and/or additional peanuts commingled in storage.

Retention period: 3 years following the end of the marketing year in which the peanuts were produced. Records relating to contract additional peanuts for which penalties or liquidated damages have been assessed shall be retained for 5 years following the date the assessment was made or until the conclusion of the assessment action, whichever is later. Records shall be kept for such longer periods of time as may be requested in writing by the Executive Vice President of CCC.

1446.114 Peanut handlers. [Added]

To keep such records on the disposition for all contract additional peanuts.

Retention period: 3 years following the end of the marketing year in which the peanuts were produced. Records relating to contract additional peanuts for which penalties or liquidated damages have been assessed shall be retained for 5 years following the date the assessment was made or until the conclusion of the assessment action, whichever is later. Records shall be kept for such longer periods of time as may be requested in writing by the Executive Vice President of CCC.

1446.146 Peanut area marketing associates. [Added]

To maintain a debt record for all handlers indicating the amounts due from each handler.

Retention period: 3 years following end of the marketing year in which peanuts were produced.

Farmers Home Administration

7 CFR

Part 1944, Exhibit A Grantees conducting housing preservation programs benefiting very low-and low-income rural residents. [Added]

To maintain financial records, supporting documents, statistical records, and all other records pertinent to the grant.

Retention period: 3 years after submission of the final Project Performance report or until all litigations, claims, audit or investigation findings involving records have been resolved.

1948.98 Rural development grantees-growth management and housing planning for approved designated energy impacted areas. [Revised]

To retain financial records, supporting documents, statistical records, and all other records pertinent to the grant.

Retention period: 3 years after grant closing or until audit findings have been resolved.

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1980.646 Grantees under the Nonprofit Corporations Loan and Grant Program. [Added]

To maintain records to substantiate certification stating that all technical services have been completed.

Retention period: 3 years after grant closing or beyond 3 years until resolution of any audit questions.

1980.647 Grantees under the Nonprofit Corporations Loan and Grant Program. [Added]

To maintain financial records in accordance with standards prescribed in OMB Circular 102, Attachments P, G, and C, or OMB Circular A–110, Attachments F and C, as appropriate, in accordance with terms and conditions of the grant.

Retention period: 3 years after grant closing or beyond 3 years period until resolution of any audit questions.

Office of Transportation

7 CFR

3300.19 Agreement on the International Carriage Perishable Foodstuffs and on the Special Equipment to be Used for Such Carriage (ATP) testing stations. [Added]

To maintain records of basic data developed in each testing of equipment.

Retention period: 3 years.

3300.43 Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for Such Carriage (ATP) testing laboratories. [Added]

To maintain records of basic data in each testing of mechanical refrigerating appliances.

Retention period: 3 years.

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

9 CFR

318.302 Producers of canned meat and poultry products. [Added]

To maintain complete records concerning all aspects of the development or determination of a process schedule, including any associated incubation tests and letters or other written communications from a processing authority recommending all thermal process schedules.

Retention period: Not specified.

318.305 Producers of canned meat and poultry products. [Added]

To maintain records on equipment and procedures for heat processing systems.

Retention period: Not specified.

318.307 Producers of canned meat and poultry products. [Added]

To maintain processing, production, container closure and distribution of product records.

Retention period: Not less than 1 year at the establishment and for an additional 2 years at the establishment or other location from which records can be made available to Program employees within 3 working days.

318.308 Producers of canned meat and poultry products. [Added]

To maintain full records regarding the handling of each deviation in processing.

Retention period: See 318.307.

320.1 Meatbrokers, renderers, and other persons dealing in animal carcasses for use as human or animal food. [Amended]

To keep records as specified in section cited or by the Administrator.

Retention period: 2 years after end of year in which the transaction occurred, or longer if directed by the Administrator.

320.3 Meatbrokers, renderers, and other persons dealing in animal carcasses for use as human or animal food. [Amended]

See 320.1.

381.175 Persons processing, transporting, shipping, or receiving poultry slaughtered for human consumption or poultry products in commerce, or holding such products. [Amended]

To maintain detailed records of such transactions as specified in the regulations.

Retention period: 2 years.

381.177 Persons processing, transporting, shipping, or receiving poultry slaughtered for human consumption or poultry products in commerce or holding such products. [Amended]

See 381.175.

381.305 Producers of canned meat and poultry products. [Added]

See 318.305.

381.306 Producers of canned meat and poultry products. [Added]

To maintain processing and production records which contain the date of production; product name and style; container code; container size and type; and the process schedule, including the minimum initial temperature.

Retention period: For no less than 1 year at the establishment, and for an additional 2 years at the establishment or other location from which the records can be made available to Program employees within 3 working days.

381.307 Producers of canned meat and poultry products. [Added]

To maintain process, container closure, and distribution of products records.

Retention period: For no less than 1 year at the establishment, and for an additional 2 years at the establishment or other location from which the records can be made available to Program employees within 3 working days.

381.308 Producers of canned meat and poultry products. [Added]

To maintain full records regarding the handling of each process deviation. Such records shall include, at a minimum, the appropriate processing and production records, a full description of the corrective actions taken, the evaluation procedures and results, and the disposition of the affected product.

Retention period: See 381.307.

381.309 Producers of canned meat and poultry products. [Added]

To maintain records on incubation checks.

Retention period: See 381.307.

NUCLEAR REGULATORY COMMISSION

10 CFR

25.23 Licensees or requesting organizations employing individual approved for personnel security access authorization. [Revised]

To maintain records of grant of access authorization notification.

Retention period: One year after the access authorization has been terminated by the NRC Division of Security.

34.11 Licensees utilizing sealed sources of byproduct material for radiography. [Amended]

To maintain (a) records of performance of internal inspections at intervals not to exceed three months; (b) records of the results of dates of calibration for each radiation survey instrument possessed by the licensee; (c) records of the results of leak tests of sealed sources; (d) records of quarterly physical inventories of all sealed sources received and possessed under the license; (e) current utilization logs showing for each sealed source a description of the radiographer exposure device or storage container, the identity of the radiographer to whom assigned, and the plant or site where used and dates of use; (f) records of inspection and maintenance of radiographic exposure devices, storage containers and source changers at intervals not to exceed three months prior to first use thereafter; (g) records of alarm system tested at intervals not to exceed three months prior to first use thereafter; (h) records radiographers and radiographers assistants of training, including copies of written tests, dates of oral tests and field examinations; (i) records of daily pocket dosimeter exposure readings and reports of periodic check (not to exceed one year) of film badge of thermoluminescence dosimeter; (j) records of physical radiation storage surveys.

Retention period: (a) For two years; (b) for two years after the date of each calibration; (c) for six months after performance of the required leak test or until transfer or disposal of the sealed source; (d) for two years after the date of each inventory; (e) for two years after the date of each recorded event; (f) for two years; (g) for two years; (h) for three years; (i) until disposal is authorized by the Commission; (j) 3 years when that survey is the last one performed in the work day.

34.43 Licensees utilizing sealed sources of byproduct material for radiography. [Amended]

See 34.11.

35.14 Licensees for certain groups of medical uses of byproduct material. [Revised; new amendment contained no record retention requirements]

35.21 Licensees for certain groups of medical uses of byproduct material. [Revised; new amendment contained no record retention requirements]

35.22 Licensees for certain groups of medical uses of byproduct material. [Revised; new amendment contained no record retention requirements]

35.23 Licensees for certain groups of medical uses of byproduct material. [Revised; new amendment contained no record retention requirements]

35.24 Licensees for certain groups of medical uses of byproduct material. [Removed]

35.25 Licensees for certain groups of medical uses of byproduct material. [Revised]

To maintain records of the individual's use of byproduct material.

Retention period: Not specified.

35.26 Licensees for certain groups of medical uses of byproduct material. [Removed]

35.27 Licensees for certain groups of medical uses of byproduct material. [Revised]

To maintain records on visiting authorized user documentation.

Retention period: 2 years.

35.29 Licensees for mobile nuclear medicine services using byproduct material. [Added]

To retain letters signed by the management of each client for which services were rendered that authorized use of byproduct material at the client's address of use.

Retention period: 2 years after the last provision of service.

35.31 Licensees for certain groups of medical uses of byproduct material. [Added]

To maintain records of radiation safety program changes.

Retention period: Until the license has been renewed or terminated.

35.33 Licensees for certain groups of medical uses of byproduct material. [Added]

To maintain records of misadministrations involving any therapy procedures.

Retention period: 10 years.

35.44 Licensees reporting misadministration of byproduct material under general license. [Removed]

35.50 Licensees for certain groups of medical uses of byproduct material. [Added]

To retain a record of each check of and test of dose calibrators.

Retention period: 2 years unless directed otherwise.

35.51 Licensees for certain groups of medical uses of byproduct material. [Added]

To retain a record of each survey instrument calibration.

Retention period: 2 years.

35.59 Licensees in possession of any sealed source or brachytherapy source. [Added]

(a) To maintain records on leakage test and quarterly physical inventory of all sources in its possession.

Retention period: 5 years.

(b) To maintain records of the survey measuring the ambient dose rates quarterly in all areas where sources are stored.

Retention period: 2 years.

35.70 Licensees for certain groups of medical uses of byproduct material. [Added]

To keep records on the surveys for contamination and ambient radiation exposure rate.

Retention period: 2 years.

35.80 Licensees providing mobile nuclear medicine services. [Added]

To retain records of each survey of all radiopharmaceutical areas of use with a radiation detection survey meter to ensure that all radiopharmaceuticals and all associated waste have been removed.

Retention period: 2 years.

35.92 Licensees for certain groups of medical uses of byproduct material. [Added]

To maintain records of each disposal of byproduct material as ordinary trash.

Retention period: 2 years.

35.204 Licensees for certain groups of medical uses of byproduct material. [Added]

To maintain records of each measurement of molybdenum concentration.

Retention period: 2 years.

35.205 Licensees for certain groups of medical uses of byproduct material. [Added]

To maintain records on the controls of aerosols and gases, including the assumptions, measurements and calculations made of the amount of time needed after a radioactive gas spill to reduce the concentration in the room to the occupational limit listed in Appendix B to Part 20 of this chapter.

Retention period: Duration of use of the area.

35.310 Licensees for certain groups of medical uses of byproduct material. [Added]

To maintain a list of individuals receiving radiation safety instructions.

Retention period: 2 years.

35.315 Licensees for certain groups of medical uses of byproduct material. [Added]

To maintain record of each thyroid burden measurement, its date, the name of the individual whose thyroid burden was measured and the initials of the individual who made the measurements.

Retention period: Until the Commission authorizes disposition.

35.404 Licensees for certain groups of medical uses of byproduct material. [Added]

To maintain a record of the radiation survey of patients.

Retention period: 2 years.

35.408 Licensees for certain groups of medical uses of byproduct material. [Added]

To maintain records of brachytherapy source use and radiation survey of the patients and the areas use to confirm that no sources have been misplaced.

Retention period: 2 years.

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35.410 Licensees for certain groups of medical uses of byproduct material. [Added]

To maintain records of personnel caring for the patient undergoing implant therapy receiving radiation safety instruction.

Retention period: 2 years.

35.610 Licensees for certain groups of medical uses of byproduct material. [Added]

To maintain records of individuals who operate teletherapy units receiving safety instruction.

Retention period: 2 years.

35.615 Licensees for certain groups of medical uses of byproduct material. [Added]

To maintain records of the radiation monitor check for proper operation each day before the teletherapy unit is used for treatment of patients.

Retention period: 2 years.

35.620 Licensees for certain groups of medical uses of byproduct material. [Added]

To maintain a record of each calibration, intercomparison, and comparison of dosimetry equipment.

Retention period: Duration of the license.

35.632 Licensees for certain groups of medical uses of byproduct material. [Added]

To maintain records of each full calibration measurements on each teletherapy unit.

Retention period: Duration of use of the teletherapy unit source.

35.634 Licensees for certain groups of medical uses of byproduct material. [Added]

To maintain records of each spot-check on each teletherapy unit and a copy of each notification of the results of each spot-check.

Retention period: 2 years.

35.636 Licensees for certain groups of medical uses of byproduct material. [Added]

To maintain records of the safety checks for teletherapy facilities.

Retention period: 2 years.

35.641 Licensees for certain groups of medical uses of byproduct material. [Added]

To maintain records of the radiation measurements made following installation of a teletherapy source.

Retention period: Duration of the license.

35.647 Licensees for certain groups of medical uses of byproduct material. [Added]

To keep records of the inspection and servicing of each teletherapy unit during replacement.

Retention period: Duration of the license.

50.54 Licensees authorized to operate nuclear production and utilization facilities. [Amended]

To maintain (a) records of changes to physical security plan made without prior Commission approval; (b) records of changes to safeguard contingency plan made without prior Commission approval; (c) records of periodic review and audit of safeguards contingency plan; (d) records of changes in the production or utilization facility as described in the safety analysis report made without prior Commission approval; (e) records of changes in facility procedures as described in the safety analysis report made without prior Commission approval; (f) records of tests or experiments not described in the safety analysis report and made without prior Commission approval; (g) records showing the results of a review of development, implementation, and revision of an emergency preparedness program. The records described in paragraphs (d), (e), and (f) of this section shall include written safety evaluations which provide the bases for the determination that the change, test or experiment does not involve an unreviewed safety question.

Retention period: (a) and (b) for 2 years after date of change; (c) for two years after each review and audit; (d) until date of termination of license; (e) for five years after each change in facility procedures; (f) for five years after each test or experiment; (g) for 5 years.

50.59 Licensees authorized to operate nuclear production and utilization facilities. [Amended]

See 50.54.

50.71 Licensees and holders of construction permits. [Amended]

To maintain (a) such records as may be required by conditions of the license or permit or by rules, regulations, and orders of the Commission including records of fracture toughness test results, qualifications of test personnel, and calibration of test equipment; (b) records of design, fabrication, erection, and testing of structures, systems, and components important to safety of a production or utilization facility; (c) quality assurance records sufficient to furnish evidence of activities affecting quality, including operating logs, records showing results of reviews, inspections, tests, audits, work performance monitoring and materials analyses, and records containing closely related data such as qualifications of personnel, procedures and equipment; (d) individual records of training of each brigade member, including drill critiques, which ensure that each member receives training in all parts of the training program.

Retention period: (a) If not otherwise specified by regulation, license condition or technical specification, until disposal is authorized by the Commission; (b) throughout life of facility; (c) not specified—to be established by applicant consistent with applicable regulatory requirements; (d) 3 years.

73.70 Licensees required to provide physical protection or safeguards for special nuclear material in transit and at fixed sites. [Amended]

To maintain (a) records of names and addresses of all authorized personnel, records of visitors, vendors and other individuals not employed by the licensee pursuant to 10 CFR 73.46(d)(10), 73.55(d)(6), or 73.60, records of results of tests maintenance and inspections of protected areas and security-related material, record of each alarm intrusion or other security incident, record of shipments of special nuclear material including information to comply with requirements of this part, procedures for controlling access to protected areas; (b) records of results of review and audit of licensee safeguards contingency plan for special nuclear material at fixed sites; (c) records of results of qualification and requalification of armed escorts and physical security personnel; (d) records documenting liaison with law enforcement authorities; (e) records of escort log and communications center personnel, for each spent fuel shipment, describing shipment and significant events that occur during the shipment.

Retention period: (a) Not specified; (b) two years from date of review and audit; (c) not specified; (d) not specified, 73.46(h)(2), (e) 1 year.

95.33 Licensees and others who may require access to National Security Information and Restricted Data related to a license or application for a license. [Revised]

To maintain records reflecting an individual's initial and refresher security orientations and security terminations.

Retention period: Not specified.

FEDERAL HOME LOAN BANK BOARD

12 CFR

564.2 Institutions insured by the Federal Savings and Loan Insurance Corporation. [Amended]

The account records shall be conclusive as to the existence of any relationship pursuant to which the funds in the account are invested and on which a claim for insurance coverage is founded.

Retention period: Not specified.

FARM CREDIT ADMINISTRATION

12 CFR

614.4442 Farm credit associations and banks. [Revised; record retention requirements now in 614.4444]

614.4444 Farm credit associations and banks. [Added]

To maintain complete file on all written requests for reviews, including the disposition of the review by the credit review committee, and other written inquiries concerning adverse credit actions.

Retention period: Not specified.

621.3 Farm credit associations and banks. [Added]

To maintain accurate and complete records of all business transactions as necessary to prepare financial statements in accordance with generally accepted accounting principles.

Retention period: Not specified.

SMALL BUSINESS ADMINISTRATION

13 CFR

13 CFR Part 107, Appendix II Small Business Investment Companies (SBICs) licensed by SBA including 301(d) licensees. [Added]

To maintain books and records including books of account, other records, and memoranda which support the entries in its books of accounts.

Retention period: At least 20 years.

108.5 Small business development companies. [Added]

To maintain financial records including books of accounts in accordance with generally accepted accounting principles.

Retention period: For the periods required by the Internal Revenue Service and generally accepted accounting practices.

108.5 State and local development companies. [Added]

To maintain, at the principal office, financial records including books of accounts, minutes of meetings of members, stockholders, directors, executive committees or other officials, and all documents and supporting material relating to a development company's transactions.

Retention period: For the periods required by the IRS and generally accepted accounting practices.

108.503-3 503 companies. [Added]

To maintain records of all documents and materials relating to the loan applications submitted to SBA.

Retention period: Not specified.

108.505 Fiscal agents, transfer agents and selling groups issuing or selling debenture pool certificates (505 certificates). [Added]

To maintain all books, records and related materials associated with 504 Debentures or 505 Certificates.

Retention period: Not specified.

120.5 Subsection (b) lenders. [Removed]

120.5 Business loan policy. [Removed]

120.302-1 Small business lending companies. [Added]

(a) To maintain accurate and current financial records, including books of account. All financial records, minutes of meetings of stockholders, directors, executive committees, or other officials, and all documents and supporting materials relating to the said Lender's transactions shall be maintained at the principal business office, provided, however, that securities held by a custodian pursuant to a written agreement shall be exempt from this requirement.

(b) To preserve, for the periods hereinafter specified and in a manner that permits the immediate location thereof, such documents which are the basis for financial statements required by section 120.303 (and of the accompanying independent public accountant's opinion), and shall:

(1) Preserve permanently–

(i) All general and subsidiary ledgers (or other records) reflecting asset, liability, capital stock and surplus, income, and expense accounts;

(ii) All general and special journals (or other records forming the basis for entries in such ledgers); and

(iii) The corporate charter, bylaws, application for determination of eligibility to participate with SBA, and all minutes, books, capital stock certificates or stubs, stock ledgers, and stock transfer registers.

(2) Preserve for a least six years following final disposition of the related loan–

(i) All applications for financing;

(ii) Lending, participation, and escrow agreements;

(iii) Financing instruments;

(iv) All other documents and supporting material relating to such loans, including correspondence.

Records and other documents referred to in paragraph (1)(i) may be preserved by reproduction; provided, however, that said Lender shall cause a duplicate to be made on a current basis and stored separately from the original fot the time required, and shall maintain at all times facilities for the projection and reproduction of the records.

124.1-3 The Small Business and Capital Ownership Development Program. [Removed; record retention requirements now in 124.401]

124.401 Minority Small Business and Capital Ownership Development Program. [Added]

8(a) Concerns–advance payments. The section 8(a) business concern has established or agrees to establish and maintain financial records and controls which will provide for complete accountability and required reporting of program funds.

124.403 Minority Small Business and Capital Ownership Development Program. [Added]

Section 8(a) Concerns–letter of credit. See 124.401.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR

1260.304 Grantees; cost—sharing. [Added]

To maintain records of all grant costs claimed as constituting part of its share.

Retention period: 3 years.

1260.406 NASA grants awarded to educational institutions or nonprofit agencies. [Revised]

To maintain books and accounting records in accordance with the principles set forth in the documents listed in paragraph 405 of the NASA Grant and Cooperative Agreement Handbook.

Retention period: Financial records, supporting documents statistical records—3 years, or until all litigation, claims, or audit findings involving the records have been resolved. Nonexpendable property records—3 years.

1260.413 Grantees. [Added]

To maintain records of any accident involving death, disability injury, or substantial loss of property.

Retention period: Not specified.

1260.414 Grantees. [Added]

To maintain records of all grant costs claimed as constituting part of its share.

Retention period: 3 years.

1260.415 Grantees. [Added]

To maintain records of all grant costs claimed as constituting part of its share.

Retention period: 3 years.

1260.416 Grantees. [Added]

To maintain records of all grant costs claimed as constituting part of its share.

Retention period: 3 years.

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1260.509 Grantees-property management. [Added]

To maintain property records accurately.

Retention period: Not specified.

COMMERCE DEPARTMENT

International Trade Administration

15 CFR

373.5 Exporters of donations for humanitarian projects under the Humanitarian license. [Added]

To maintain records of all shipments, the values of said shipments, the countries and beneficiaries to which the donations are sent, the validated Dept. of Commerce letter and narrative statement, and any other party charged with distributing the donations to the beneficiaries.

Retention period: 2 years.

Economic Analysis Bureau

15 CFR

801.2 Persons subject to the jurisdiction of the U.S. engaged in international trade in services. [Added]

To maintain any information (including journals or other books of original entry, minute books, stock transfer records, lists of shareholders, or financial statements) which is essential for carrying out the surveys and studies provided for by the International Investment and Trade in Services Act.

Retention period: Not specified.

National Oceanic and Atmospheric Administration

15 CFR

931.95 Recipients of financial assistance under section 308 of the Coastal Zone Management Act of 1972, relating to the Coastal Energy Impact Program. [Added]

To keep detailed project control records reflecting acquisitions, work progress, expenditures, and commitments, indicating in each instance their relationship to estimated costs and schedules. To also keep full written financial records.

Retention period: 3 years after completion of the project, program, or other undertaking and submission of the final Financial Status Report, whichever is sooner and until an audit is completed and all questions arising from it are resolved.

COMMODITY FUTURES TRADING COMMISSION

17 CFR

1.35 Contract markets. [Revised]

To maintain a single record showing for each future or option trade the transaction date, time quantity, and as applicable, underlying commodity, contract for future delivery or physical, price or premium, delivery month or expiration date, whether the transaction involved a put or a call, strike price, floorbroker or floor trader buying, clearing member buying, floor broker or floor trader selling, clearing member selling, and symbols indicating the buying and selling customer or option customer types.

Retention period: 5 years.[1]

1.35 Futures commission merchants, introducing brokers and clearing members. [Revised]

To maintain trading card or other record showing purchases and sales of any commodity for future delivery or commodity option on or subject to the rules of such contract market.

Retention period: 5 years.[1]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

18 CFR

225.3 Natural gas companies. [Amended]

To maintain records as indicated in 18 CFR Part 225—Preservation of Records of Natural Gas Companies.

Retention period: Various.

277.210 Sellers and purchasers of natural gas. [Added]

To maintain all other documents created in the ordinary course of business which relate to the bona fide offers; right of first refusal provision.

Retention period: 3 years.

[1] After 3 years the person required to keep such books and records may at his option substitute photographic reproductions thereof on film, together with facilities for the projection of such film in a manner which will permit it to be readily inspected or examined. Under certain conditions, microfilm reproductions may immediately be substituted for hard copy.

TREASURY DEPARTMENT

Customs Service

19 CFR

10.173 Importers of products from Caribbean and Central American designated as beneficiary countries. [Added]

To maintain in the files of the party which prepared and signed the Certificate of Origin, the information necessary for preparation of the declaration.

Retention period: 5 years.

111.21 Licensed customs brokers. [Amended]

To keep current records of account reflecting all their financial transactions as customhouse brokers, including a copy of each entry made with all supporting papers, except those documents they are required to file with Customs, powers of attorney, copies of all correspondence and other papers relating to customs business and, except for certain specified limitations, a record of transactions of licensed customhouse broker (Customs Form 3079) in addition to the regular records of account.

Retention period: At least 5 years after the date of entry. When merchandise is withdrawn from a bonded warehouse, copies of papers relating to the withdrawal shall be retained for 5 years from the date of withdrawal. Powers of attorney shall be retained until revoked, and revoked powers of attorney and letters of revocation shall be retained for 5 years after the date of revocation. Records may be retained on microfilm pursuant to section cited.

111.22 Licensed customs brokers. [Amended]

See 111.21.

111.23 Licensed customs brokers. [Amended]

See 111.21.

LABOR DEPARTMENT

Employment and Training Administration

20 CFR

617.57 State agencies administering trade adjustment assistance for workers under the Trade Act of 1974. [Added]

To maintain records pertaining to the administration of the Act as the Secretary requires.

Retention period: Not specified.

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

21 CFR

110.80 Manufacturers, processors, packers, and repackers of human foods. [Removed]

179.24 Persons treating food with low dose electron beam radiation. [Removed]

225.202 Manufacturers of medicated feed. [Added]

To maintain records identifying the formulation, date of mixing, and if not for own use, date of shipment.

Retention period: 1 year following date of last distribution.

310.305 Manufacturers, packers, and distributors of marketed prescription drugs for human use without approved new drug applications. [Added]

To establish and maintain records of all serious, unexpected adverse drug experiences and any significant increase in the frequency of a serious expected adverse drug experience.

Retention period: 10 years.

610.12 Manufacturers performing sterility tests on biological products. [Added]

To maintain records as required by 21 CFR 211.167, 211.194 and 600.12.

Retention period: Not specified.

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR

200.182 Assisted housing owners or mortgagees under the National Housing Act. [Added]

To maintain evidence of citizenship or eligible alien status.

Retention period: Not specified.

207.27 Project mortgagors under the National Housing Act. [Amended]

To maintain records of all cost of any construction or other costs items not representing work under general contract.

Retention period: Not specified.

812.5 Section 8 assisted housing responsible entities. [Added]

To maintain evidence of citizenship or eligible alien status.

Retention period: Not specified.

905.204 Indian Housing Authorities(IHAS). [Added]

To maintain documentation in its files for HUD review a copy of the determination where the provision of preference in Indian contracting, employment, and training is infeasible.

Retention period: 3 years.

912.5 Public housing agents (PHAs). [Added]

To maintain evidence of citizenship or eligible alien status.

Retention period: Not specified.

TREASURY DEPARTMENT

Internal Revenue Service

26 CFR

1.144–5 Transferor of a U.S. property who is not a foreign person. [Added]

To retain a certificate of non–foreign status informing the transferee that withholding is not required.

Retention period: Until the end of the fifth taxable year following the taxable year in which the transfer takes place.

48.4041–7 Allocation of diesel and special fuel from common tank for use in special equipment. [Revised]

To maintain records that will support the allocation of liquid drawn from the same tank as the one supplying fuel for propulsion of a vehicle, and sold for use or used in a separate motor to operate special equipment.

48.4041–11 Persons registered to sell or purchase tax–free fuel for use in non–commercial aviation. [Added]

To maintain exemption certificates and proper supporting records such as invoices, order, etc. relative to tax–free sales.

48.4041–16 Liquid retailers. [Added]

To maintain adequate records and documentary evidence showing that article was so sold to establish exemption from tax in the case of a taxable article for export.

48.6421(a)–1 Allocation of gasoline for use in special equipment. [Removed]

TREASURY DEPARTMENT

Bureau of Alcohol, Tobacco and Firearms

27 CFR

19.750 Proprietors of distilled spirits plants. [Revised]

To maintain records on the results of all alcohol contents and fill tests conducted.

Retention period: 3 years.

19.778 Proprietors of distilled spirits plants. [Revised]

(a) To maintain separate accountings, in proof gallons, of Puerto Rican rum, other Puerto Rican spirits, and Virgin Island spirits received in the processing account for nonindustrial use.

(b) To maintain monthly reports on ATF Form 5110.28, showing separately the adjusted proof gallons of Puerto Rican rum, other Puerto Rican spirits, and Virgin Islands spirits received in processing.

Retention period: 3 years.

25.42 Brewers. [Added]

To keep records of testing of beer measuring devices.

Retention period: 3 years. The regional director (compliance) may require retention for an additional 3 years where such retention is deemed necessary or advisable.

25.252 Brewers. [Added]

To keep records of the production of malt syrup, wort, and the removals of brewer's yeast, malt and other articles from the brewery.

Retention period: 3 years. The regional director (compliance) may require retention for an additional 3 years where such retention is deemed necessary or advisable.

25.276 Operators of pilot brewing plants. [Added]

To maintain records which include information sufficient to account for the receipt, production, and disposition of all beer received or produced on the premises, and the receipt (and disposition, if removed) of all brewing materials.

Retention period: 3 years. The regional director (compliance) may require retention for an additional 3 years where such retention is deemed necessary or advisable.

25.284 Brewers. [Added]

To keep records to support adjustments on the excise tax return in lieu of filing a claim.

Retention period: 3 years. The regional director (compliance) may require retention for an additional 3 years where such retention is deemed necessary or advisable.

25.291 Brewers. [Added]

To maintain individual transaction forms, records, summaries, supplemental, auxiliary, and source data used in the compilation of required forms, records, and summaries, and for preparation of reports, returns, and claims, and copies of notices, reports, returns, and approved applications and other documents relating to operations and transactions.

Retention period: 3 years. The regional director (compliance) may require retention for an additional 3

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years where such retention is deemed necessary or advisable.

25.292 Brewers. [Added]

To maintain daily records of operations.

Retention period: 3 years. The regional director (compliance) may require retention for an additional 3 years where such retention is deemed necessary or advisable.

25.293 Brewers. [Added]

To maintain records of ballings and alcohol content.

Retention period: 3 years. The regional director (compliance) may require retention for an additional 3 years where such retention is deemed necessary or advisable.

25.294 Brewers. [Added]

To maintain records of inventories of beer or cereal beverage.

Retention period: 3 years. The regional director (compliance) may require retention for an additional 3 years where such retention is deemed necessary or advisable.

25.295 Brewers. [Added]

To maintain records of unsalable beer.

Retention period: 3 years. The regional director (compliance) may require retention for an additional 3 years where such retention is deemed necessary or advisable.

25.296 Brewers producing concentrate or reconstitute beer. [Added]

To maintain daily records of beer concentrate.

Retention period: 3 years. The regional director (compliance) may require retention for an additional 3 years where such retention is deemed necessary or advisable.

25.300 Brewers. [Added]

See 27 CFR 25.252, 25.276, 25.284, 25.291, 25.292, 25.294 and 25.296.

25.301 Brewers. [Added]

See 27 CFR 25.252, 25.276, 25.284, 25.291, 25.292, 25.294 and 25.296.

178.100 Licensed firearms manufacturers, importers, dealers, and collectors conducting business at gun shows. [Added]

To maintain firearms and armor—piercing ammunition records in the form and manner prescribed by 27 CFR Part 178, Subpart H.

Retention period: See 27 CFR 178.129.

178.122 Licensed importers of firearms. [Added]

To maintain records on importation or other acquisition; records on firearms and armor–piercing ammunition transferred to another licensee; and records on the sales or other disposition made of firearms and armor–piercing ammunition to nonlicensees.

Retention period: See 27 CFR 178.129.

178.123 Manufacturers of firearms. [Revised]

See 178.122.

178.124 Licensed firearms importers, manufacturers, or dealers. [Revised]

To maintain firearms transaction records.

Retention period: See 27 CFR 178.129.

178.125 Licensed firearms dealers and collectors. [Revised]

To maintain (a) records on armor–piercing ammunition sales to nonlicensees and licensees; (b) commercial records of armor–piercing ammunition transactions; (c) records on firearms receipt and disposition by dealers and licensed collectors; (d) commercial records of firearms received; and (e) other such records as specified in section cited.

Retention period: See 27 CFR 178.129.

178.127 Licensed firearms manufacturers, importers, dealers, and collectors. [Revised]

See 178.129.

178.171 Licensed manufacturers, licensed importers, and licensed dealers exporting firearms and armor–piercing ammunition. [Revised]

(a) To maintain records showing the manufacture or acquisition of the firearms; the name and address of the foreign consignee of the firearms and armor–piercing ammunition; and the date the firearms and armor–piercing ammunition were exported.

Retention period: See 27 CFR 178.129.

245.110C Brewers. [Removed]

245.135 Brewers. [Removed]

245.136 Brewers. [Removed]

245.145 Brewers. [Removed]

245.146 Brewers. [Removed]

245.147 Brewers. [Removed]

245.148 Brewers. [Removed]

245.152 Brewers. [Removed]

245.153 Brewers. [Removed]

245.155 Brewers. [Removed]

245.156 Brewers. [Removed]

245.157 Brewers. [Removed]

245.158 Brewers. [Removed]

245.161 Brewers. [Removed]

245.205 Brewers. [Removed]

245.206 Brewers. [Removed]

245.207 Brewers. [Removed]

245.208 Brewers. [Removed]

245.215 Brewers. [Removed]

245.217 Brewers. [Removed]

245.225 Brewers. [Removed]

245.226 Brewers. [Removed]

245.227 Brewers. [Removed]

245.232 Brewers. [Removed]

245.245 Brewers. [Removed]

245.256 Proprietors of pilot brewing plants. [Removed]

252.145 Brewers. [Revised; record retention requirements now in 252.146]

252.146 Brewers. [Added]

To keep copies of Form 1689 covering beer and beer concentrate withdrawn without payment of tax for exportation, use as supplies on vessels and aircraft,or transfer to a foreign–trade zone.

Retention period: 2 years.

252.150f Brewers. [Removed]

252.150g Brewers. [Removed]

252.150h Brewers. [Removed]

LABOR DEPARTMENT

Office of the Secretary

29 CFR

5.5 Contractors or subcontractors subject to labor standards provisions applicable to contracts covering federally financed and assisted construction (see 29 CFR 5.1 and 5.5). [Amended]

(a) To keep payroll and basic records including name, address, and social security number of each laborer or mechanic, correct classification, rate of pay (including rates of contributions or costs anticipated for medical or hospital

care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship programs, or for other bona fide fringe benefits), daily and weekly number of hours worked, deductions made, and actual wages paid to all laborers and mechanics.

(b) In the case of unfunded plans or programs for fringe benefits listed in the Davis-Bacon Act, which are approved by the Department of Labor, to maintain records showing: (1) That the contractor's commitment is enforceable, (2) that it has been communicated in writing to laborers or mechanics employed by him, (3) that it is financially responsible, and (4) the costs anticipated or the actual cost incurred in providing such benefits.

(c) To furnish evidence of registration of an apprenticeship program and certification of trainee programs, the registration of apprentices and trainees, together with evidence of the appropriate ratios and wage rates prescribed in the applicable program.

Retention period: 3 years after termination of contract.

5.5 Contractors or subcontractors subject to labor standards provisions applicable to contracts subject only to the Contract Work Hours and Safety Standards Act. [Amended]

To keep payrolls and records including name, address, social security number, correct classification, hourly rate of pay, daily and weekly number of hours worked, and deductions made and actual wages paid.

Retention period: 3 years from completion of contract.

Occupational Safety and Health Administration

29 CFR

1910.68 Employers subject to manlifts standards. [Amended]

To maintain certification records of findings of manlift inspections.

Retention period: Not specified.

1910.120 Employers engaged in the hazardous waste operations and emergency response operations under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 USC 9601 et. seq.). [Added]

To maintain records of the medical surveillance of (a) all employees who are or may be exposed to hazardous substances or health hazards at or above the established permissible exposure limits for these substances, without regard to the use of respirators, for 30 days or more a year; (b) all employees who wear a respirator; and (c) HAZMAT employees engaged in hazardous waste operations.

Retention period: As specified in 29 CFR 1910.20.

1910.157 Employers subject to fire protection standards. [Amended]

To maintain evidence of the required hydrostatic testing or portable fire extinguishers.

Retention period: The lesser of until hydrostatically retesting at stated intervals or until taken out of service.

1910.179 Employers subject to materials handling and storage standards. [Amended]

To maintain monthly maintenance and test inspection reports concerning rated load test results and ropes idle for a month or more.

Retention period: Not specified.

1910.180 Employers subject to crawler locomotive and truck cranes. [Amended]

To maintain monthly certification inspection reports and records on critical items such as brakes, crane hooks, and ropes.

Ropes shall be kept readily available.

Retention period: Not specified.

1910.181 Employers subject to derrick standards. [Amended]

To maintain monthly written report readily available on inspections of all running and idle ropes.

Retention period: Not specified.

1910.218 Employers subject to forging machine standards. [Added]

To maintain certification records of the periodic and regular maintenance safety checks.

Retention period: Not specified.

1910.252 Employers subject to welding, cutting and brazing standards. [Amended]

To maintain periodic certification records of maintenance inspections.

Retention period: Not specified.

1910.1001 Employers subject to asbestos, tremolite, anthophyllite, or actinolite standards. [Revised]

(a) To keep accurate records of all employees exposure measurements.

Retention period: 30 years.

(b) To maintain accurate record of objective data reasonably relied upon in support of exempted operations.

Retention period: Duration of employer's reliance upon objective data.

(c) To maintain accurate record for each employee subject to medical surveillance.

Retention period: Duration of employment plus thirty years.

(d) To maintain all employee training records.

Retention period:1 year beyond last date of employment of the employee.

1910.1100 Employers subject to the asbestos standards. [Added]

To maintain medical records and records of any personal or environmental monitoring required by cited section.

Retention period: 20 years.

1915.113 Employers subject to shackles and hooks standards. [Amended]

To maintain certification records of tests on all hooks for which no applicable manufacturer's recommendations are available before use.

Retention period: Not specified.

1915.172 Employers of maritime employees. [Amended]

To maintain certification records of the hydrostatic pressure tests on portable unfired pressure vessels.

Retention period: Not specified.

1926.58 Employers subject to asbestos, tremolite, anthophyllite and actinolite standards. [Added]

See 1910.1001.

INTERIOR DEPARTMENT

Minerals Management Service

30 CFR

212.200 Lessees, operators, revenue payors, or other persons holding offshore and onshore Federal and Indian oil and gas leases. [Added]

See 212.51.

TREASURY DEPARTMENT

Monetary Offices

31 CFR

103.32 Financial institutions granting exemptions from the Bank Secrecy Act reporting requirements. [Revised]

To retain statements signed by customer that describe the customary conduct of the lawful domestic business of that customer and a detailed statement of reasons why such person is qualified for an exemption.

Retention period: As long as the customer is on the exempt list and for a period of 5 years following removal of the customer from the bank's exempt list.

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Office of Foreign Assets Control

31 CFR

545.601 Persons engaged in transactions subject to the South Africa Transactions Regulations. [Revised]

To keep a full record of each transaction subject to the provisions of 31 CFR Part 545, whether effected pursuant to license or not.

Retention period: 2 years after date of transaction.

550.601 Persons engaged in transactions subject to Libyan Sanctions Regulations. [Added]

To keep a full and accurate record of each transaction including any transaction effected pursuant to license or otherwise.

Retention period: 2 years after date of such transaction.

EDUCATION DEPARTMENT

34 CFR

222.40 Assistance to local educational agencies in federally impacted areas receiving Federal assistance. [Amended]

To maintain adequate written records to prove its entitlement to whatever amount of payment the LEA received for any fiscal year.

Retention period: Five years after end of each fiscal year for which funds were received or until resolution of all Federal audit or review and necessary adjustments to payments have been made.

222.41 Assistance to local educational agencies in federally impacted areas receiving Federal payment. [Amended]

See 222.40.

682.211 Lenders participating in the Guaranteed Student Loan and Plus Programs. [Added]

To maintain evidence in the borrower's loan file that the forbearance has been agreed to by both the lender and the borrower.

Retention period: 5 years after the loan is paid in full or has been determined to be uncollectable in accordance with the agency's write–off procedures.

682.405 Guarantee agencies having a reinsurance agreement for PLUS loans and GSLP loans under section 682.404 entering into a supplemental reinsurance agreement for one of the programs. [Added]

To maintain separate records for each program sufficient to enable the Secretary to determine the reinsurance percentage payable by the Secretary on reinsurance claims and the Secretary's equitable share of borrower payments.

Retention period: 5 years after the loan is paid in full or has been determined to be uncollectable in accordance with the agency's write–off procedures.

682.406 Guarantee agencies. [Revised; new amendment contained no record retention requirements]

682.408 Guarantee agencies and participating lenders of low interest loans to students in post secondary schools. [Revised; new amendment contained no record retention requirements]

682.414 Guarantee agencies and participating lenders in the Guaranteed Student Loan and Plus Programs. [Added]

(a)*Guarantee Agencies.*To keep records required by cited section and such other records as are necessary to document fully the accuracy of reports and the right of the agency to receive or retain payment made by the Secretary.

Retention period: 5 years after the loan is paid in full or has been determined to be uncollectable in accordance with the agency's write–off procedures.

(b)*Participating agencies.*To keep complete and accurate records of each loan that it holds permitting readily identification of the current status of each loan.

Retention period: Not less than 5 years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. In particular cases, the Secretary or the guarantee agency may require the retention of records beyond this minimum period.

682.515 Lenders under the FISLP and Federal Plus Programs. [Added]

To keep complete and accurate records of each loan that it holds,including but not limited to the records described in section 682.414(a)(3)(ii).

Retention period: Not less than 5 years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. In particular cases, the Secretary may require the retention of records beyond this minimum period.

682.519 Lenders under the Federal insured Student Loan Program. [Revised; record retention requirements now in 682.515].

682.610 Schools participating in the Guaranteed Student Loan and Plus Program. [Added]

To maintain all necessary records as set forth in 34 CFR Parts 668 and 682.

Retention period: 5 years following the last day of the period for which the loan was intended.

682.612 Institutions of higher education participating in the Guaranteed Student Loan Program. [Revised; record retention requirements now in 682.610]

683.35 Guarantee agencies participating in the PLUS program. [Removed]

683.37 Guarantee agencies. [Removed]

683.68 Lenders participating in the Federal PLUS Program. [Removed]

683.91 Participating schools in the Federal PLUS Program. [Removed]

AGRICULTURE DEPARTMENT

Forest Service

36 CFR

223.48 Timber purchasers. [Added]

To maintain records of such transactions involving unprocessed timber.

Retention period: 3 years after the sale is terminated.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR

1206.92 Recipients of Federal grants for collecting and publishing historical documents. [Added]

To maintain accounting records relating to all expenditures for each projects in accordance with generally accepted accounting practices.

Retention period: During grant period and for 3 years thereafter in accordance with OMB Circular A–110 and Federal Management Circular 74–7.

POSTAL SERVICE

39 CFR

Part 111 Second–class mailers. [Added]

To maintain records of requests for a publication which are obtained in conjunction with subscriptions or requests for another publication or other publications in such a manner that individual requests for the publications, by titles, can be substantiated and verified.

Retention period: Not specified, (incorporation by reference DMM 422.6).

Part 111 Second–class mailers. [Added]

To maintain records for subscriptions to publications which are obtained in conjunction with subscriptions to another publication or other publications in such a manner that individual subscriptions to each publication, by title, can be substantiated and verified.

Retention period: Not specified, (incorporation by reference DMM 422.221).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR

4.9 State agencies participating in relocation assistance program. [Added]

To maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this Part 4.

Retention period: 3 years after each owner of a property and each person displaced from the property receives final payment.

4.105 State agencies participating in relocation assistance programs. [Revised; record retention requirements now in 4.9].

51.102 States conducting public hearings on air pollution control implementation plans. [Added]

To maintain a record of each hearing. The record must contain, at a minimum, a list of witnesses together with the text of each presentation.

Retention period: Not specified.

60.49b Owners or operators of industrial–commercial–institutional steam generating facilities. [Added]

(a) To maintain records of predicted nitrogen oxide emission rates and the monitored operating conditions, including steam generating unit load, identified in the plan which identifies the operating conditions to be monitored under section 60.48b(g)(2) if the plan is approved.

(b)To maintain records of the amounts of all fuels fired during each day.

(c) To maintain records of the nitrogen content of the oil fired in the affected facility.

Retention period: 2 years.

61.67 Owners or operators of plants which produce vinyl chloride. [Amended]

To maintain records of emission test results and other data needed to determine emissions.

Retention period: 3 years.

61.70 Owners or operators of plants which produce vinyl chloride. [Added]

To maintain records of all data needed to determine average emissions.

Retention period: 3 years.

61.71 Owners or operators of plants which produce vinyl chloride. [Amended]

To maintain records of: (a) The leaks detected by the vinyl chloride monitoring system; (b) leaks detected during routine monitoring with the portable hydrocarbon detector and the action taken to repair the leaks; and (c) emission monitoring. To also keep a daily operating record for each polyvinyl chloride reactor, including pressures and temperatures.

Retention period: 3 years.

61.165 Owners or operators of glass melting furnances that use commercial arsenic as raw materials. [Added]

To maintain records to meet the emission limit requirements.

Retention period: 2 years.

61.176 Owners or operators of copper converters. [Added]

To maintain records of the visual inspections, maintenance, and repairs performed on each secondary hood systems.

Retention period: 2 years.

61.185 Owners or operators of arsenic trioxide and metal arsenic production facilities. [Added]

To maintain records of all measurements, maintenance and repairs made to the continuous monitoring system or monitoring device, ambient concentrations at all sampling sites, other data needed to determine such concentrations and other information as specified in section cited.

Retention period: 2 years.

157.36 Registrants of pesticide products required to be in child–resistant packagings. [Added]

To maintain records on description of the packages, copies of certification statements required by section 157.34, and other information as specified in the section.

Retention period: As long as the child–resistant packaging is in effect.

262.57 Primary exporters of hazardous waste. [Added]

To maintain copies of each notification of intent to export; each EPA Acknowledgement of Consent; each confirmation of delivery of the hazardous waste from consignee; and each annual report.

Retention period: 3 years.

264.71 Owners and operators of on-site and off-site hazardous waste treatment, storage, and disposal facilities (hazardous waste from a rail or water bulk shipment) transporter. [Amended]

To keep a copy of each shipping paper and manifest signed by the owner or operator for shipments delivered by rail or water (bulk shipment).

Retention period: 3 years from date of delivery.

264.73 Owners and operators of on-site and off-site hazardous waste treatment, storage, and disposal facilities. [Amended]

To keep a written operating record of the facility.

Retention period: Until at least closure of the facility; monitoring data at disposal facilities: Throughout the post-closure period; records for inspections: 3 years.

265.73 Owners and operators of on-site and off-site hazardous waste treatment, storage, and disposal facilities. [Amended]

See 264.73.

704.33 Persons who manufacture, import or process P–tert–butylbenzoic acid (P–TBBA), p–tert–butyltoluene (P–TBT) and p–tert–butylbenzaldehyde (P–TBB). [Added]

To maintain documentation of information contained in report on data under section 8(a), including information on chemical identity and structure, production, use, exposure, disposal, and health and environmental effects.

Retention period: 5 years from the date of submission of the report.

710.37 Manufacturers and importers of certain substances included in the Toxic Substances Control Act (TSCA) Inventory. [Added]

To maintain records that document any information reported to EPA. For substances that are manufactured or imported at less than 10,000 pounds annually, volume records must be maintained as evidence to support a decision not to submit a report.

Retention period: 4 years beginning with effective date of that reporting period.

720.78 Manufacturers and importers of new chemical substances subject to the provisions of the Toxic Substances Control Act. [Revised]

(a) To maintain documentation of information reviewed and evaluated to determine the need to make any notification of risk.

Retention period: 5 years.

(b) To maintain documentation of the nature and method of notification concerning the health and environmental effect of a substance including copies of any labels or written notices used.

Retention period: 5 years.

(c) To maintain documentation of prudent laboratory practices used instead of notification and evaluation.

Retention period: 5 years.

(d) To maintain the names and addresses of any persons other than the manufacturer or importer to whom the substance is distributed, the identity of the substance to the extent known, the amount distributed and copies of notification required under section 720.36(c)(2).

Retention period: 5 years.

(e) Persons manufacturing or importing substance in quantities

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greater than 100 kilograms per year must maintain records of the identity of the substance to the extent known, the production volume of the substance, and the disposition of the substance.
Retention period: 5 years.

761.80 Processors and distributors of PCBs and PCB items. [Added]

To maintain records of activities.
Retention period: 5 years.

761.80 Processors and distributors of PCB in small quantities for research and development having class exemption. [Added]

To maintain records of PCB activities.
Retention period: 5 years.

763.121 Employers of public asbestos abatement workers. [Revised]

To maintain records of employee medical examinations and personal and environmental monitoring.
Retention period: 20 years.

HEALTH AND HUMAN SERVICES DEPARTMENT

Public Health Service

42 CFR

405.406 All providers of ser ices (hospitals, skilled nursing facilities, home health agencies, and clinics, rehabilitation agencies, and public health agencies as providers of outpatient physical therapy and/or speech pathology services) which have filed agreements to participate in the health insurance for the aged and disabled program. [Removed]

405.2133–405.2160 Suppliers of End-Stage Renal Disease (ESRD) Services. [Amended]

To maintain the following: Personnel records on all employees including health status reports, resumé of training and experience, and job descriptions; records reflecting the content of, and attendance at, employee training sessions; written long-term programs and patient care plans for each patient; medical records on all patients (i.e., those receiving care within the facility and those self-care or home dialysis patients for whom the facility has assumed responsibility); records of equipment test results and maintenance; an emergency preparedness plan; and, in the case of renal dialysis facilities, documentation from a renal dialysis center to the effect that patients from the facility will be accepted and treated in emergencies.
Retention period: Medical records, for a period of time not less than that determined by the State statute governing records retention or statute of limitations; or in the absence of a State statute, 5 years from the date of discharge, or, in the case of a minor, 3 years after the patient becomes of age under State law, whichever is longer.

413.20 All providers of services (hospitals, skilled nursing facilities, home health agencies and clinics, rehabilitation agencies, and public health agencies as providers of outpatient physical therapy and/or speech pathology services) which have filed agreements to participate in the health insurance for the aged and disabled program. [Added]

To maintain sufficient financial records and statistical data for proper determination of costs payable under the program. Such records shall include but not be limited to matters of provider ownership, organization, and operation; fiscal, medical, and other recordkeeping systems; Federal income tax status; asset acquisition, lease, sale or other actions; franchise or management arrangements; patient service charge schedules; matters pertaining to costs of operation; amounts of income received by source and purpose; and flow of funds and working capital.
Retention period: Not specified.

413.174 End-Stage Renal Disease (ESRD) facilities. [Added]

To keep adequate cost data and cost finding for outpatient maintenance dialysis.
Retention period: Not specified.

482.24 Hospitals participating in Medicare. [Added]

To maintain a medical record for each inpatient and outpatient.
Retention period: 5 years.

482.26 Hospitals participating in Medicare. [Added]

To maintain records of radiologic services.
Retention period: 5 years.

482.53 Hospitals participating in Medicare. [Added]

To maintain records on nuclear medicine services including copies of nuclear medicine reports and records of the receipt and disposition of radiopharmaceuticals.
Retention period: 5 years.

482.61 Psychiatric hospitals participating in Medicare. [Added]

To maintain special medical records which include development of assessment/diagnostic data, treatment plan, recording progress and discharge planning and discharge summary.
Retention period: 5 years.

HEALTH AND HUMAN SERVICES DEPARTMENT

Office of Family Assistance

45 CFR

205.60 State agencies administering medical assistance programs. [Revised]

(a) To maintain records on applicants and recipients, program operation, fiscal and statistical information, and other records necessary for reporting and accountability.
Retention period: As prescribed by the Secretary.
(b) To maintain records on applicants and Office of Family Assistance recipients, program operation, fiscal and statistical information, and other records necessary for reporting and accountability.
Retention period: As prescribed by the Secretary.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR

42.4 Communication common carriers. [Added]

To maintain at its operating company headquarters a master index of records. The master index shall identify the records retained, the related retention period, and the locations where the records are maintained.
Retention period: Various.

42.6 Communication common carriers. [Added]

To maintain telephone toll records.
Retention period: 18 months.

42.7 Communication common carriers. [Added]

To prepare, maintain and preserve records cited in 42.4 and 42.6 in such a manner that they are easily accessible, identified, located, and reproduced in readable form without loss of clarity.
Retention period: Various.

42.8 Communication common carriers. [Removed]

42.9 Communication common carriers. [Removed]

73.1225 Licensees of TV broadcast stations. [Revised]

(a)All broadcast stations: Equipment performance measurements required by sections 73.1590 and 73.1690; written designations for chief operators and when applicable, the contracts for chief operators engaged on a contract basis; applications for modification of the transmission systems; informal statements or drawings depicting any transmitter modifications; and station logs and special technical records.
(b) Commercial and noncommercial AM stations: Copy of the most recent antenna or commonpoint impedance measurements; copy of the most recent field strength measurement made to establish performance of directional antennas; and copy of the partial directional antennas.
Retention period: Not specified.

73.3526 Permittees or licensees of AM, FM, or TV stations in the commercial broadcast services. [Amended]

(a) To maintain copies of every application tendered for filing all exhibits, letters, and all amendments, all correspondence between FCC and applicants, every ownership report or supplemental ownership report and every annual employment record.
Retention period: Various.
(b) To maintain records concerning broadcasts by candidates for public office as required by section 73.1940.
Retention period: 2 years.
(c) To maintain a copy of the Public and Broadcasting—A Procedure Manual (see FCC 74–942, 39 FR 32288, September 5, 1974).
Retention period: Indefinitely.
(d) To maintain letters received from members of the public as required by section 73.1202.
Retention period: 3 years.
(e) To maintain a list of at least 5 to 10 community issues addressed by the station's programming during the preceding 3 month period.
Retention period: Term of the license—5 and 7 years for TV and radio, respectively.
(f) To place in the station's local public inspection file a statement certifying compliance when applying for renewal of license.
Retention period: As long as the application to which it refers.

76.311 Operators of cable television systems. [Removed]

80.405 Licensees of radio stations in the maritime services. [Added]

To retain the most recent expired ship station license in the station records .
Retention period: Until the first Commission inspection after the expiration date.

80.409 Licensees of radio stations in the maritime services. [Added]

To maintain station logs.
Retention period: (1) 1 year from date of entry and when applicable for such additional periods as required by the following: (a) Logs relating to distress situation or disaster—3 years from date of entry; (b) logs involving an investigation by the Commission—until the licensee is specifically authorized in writing to destroy them; (c) logs relating to any claim or complaint—until the claim or complaint has been satisfied or barred by statute limiting the time for filing suits upon such claim; and (d) ship radiotelephone logs and applicable radiotelephone log entries— in their original form for at least 30 days from date of entry.

80.413 Licensees of on-board stations in the maritime services. [Added]

To maintain equipment records which show the ship name and identification of the on-board station; the number and type of repeater and mobile units used on-board the vessel; and the date and type of equipment which is added or removed from the on-board station.
Retention period: Not specified.

81.115 Licensees of radio stations on land in the maritime services and Alaska fixed service. [Removed]

81.194 Licensees of radio stations on land in the maritime services and Alaska public fixed stations. [Removed]

81.224 Licensees of radio stations on land in the maritime services and Alaska public fixed stations. [Removed]

81.314 Licensees of radio stations on land in the maritime services and Alaska public fixed stations. [Removed]

81.352 Licensees of limited coast stations or marine-utility stations used on shore. [Removed]

81.352 Licensees of limited coast stations and marine-utility stations. [Removed]

81.603 Licensees of fixed stations associated with the maritime mobile service marine fixed stations. [Removed]

81.704 Licensees of Alaska public fixed stations. [Removed]

83.111 Licensees of radio stations on shipboard in the maritime services. [Removed]

83.115 Licensees of radio stations on shipboard on the maritime services. [Removed]

83.184 Licensees of radio stations on shipboard on the maritime services. [Removed]

83.368 Licensees of radio stations on shipboard on the maritime services. [Removed]

83.405 Licensees of radio stations on shipboard on the maritime services. [Removed]

83.457 Licensees of radio stations on shipboard on the maritime services. [Removed]

83.459 Licensees of ship radiotelegraph stations provided for compliance with part II, title III of the Communications Act or the radio provisions of the Safety Convention. [Removed]

83.462 Licensees of ship radiotelegraph stations provided for compliance with part II, title III of the Communications Act or the radio provisions of the Safety Convention. [Removed]

83.463 Licensees of radio stations on shipboard on the maritime services. [Removed]

83.473 Licensees of radio stations on shipboard on the maritime services. [Removed]

83.548 Licensed operators; radiotelephone installations provided for compliance with the Great Lakes Radio Agreement. [Removed]

83.819 Licensees of radio stations on shipboard on the maritime services authorized for use-of-on-board communications. [Removed]

GENERAL SERVICES ADMINISTRATION

48 CFR

52.222–4 Contractors subject to the Contract Work Hours and Safety Standards Act—Overtime Compensation—General contracts clause. [Revised]

To maintain payroll and basic payroll records during the course of contract work.
Retention period: 3 years from contract completion.

DEFENSE DEPARTMENT

48 CFR

252.208–7000 Contractors with contracts containing the required sources for miniature and instrument ball bearings clause. [Revised]

To maintain compliance records.
Retention period: 3 years from date of final payment.

252.208–7001 Contractors with contracts containing required sources for precision components for mechanical time devices clause. [Revised]

To maintain compliance records.
Retention period: 3 years from the date of final payment.

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252.208–7003 Contractors with contracts containing required sources for high carbon ferrochrome. [Added]

See 252.208–7000.

252.208–7005 Contractors with contracts containing required sources for forging and welded shipboard anchor chain items. [Added]

See 252.208–7000.

252.217–7103 Contractors with contracts containing the job orders and compensation clause. [Revised]

To keep records showing the cost of performing work on a vessel.

Retention period: Not specified.

252.217–7104 Contractors with contracts containing inspection and manner of doing work clause. [Revised]

To keep records of all inspection work.

Retention period: 90 days after completion of all work required by the job order.

252.222.7000 Contractors with fixed price contracts containing potential application of the Service Contract Act, as amended clause. [Revised]

To maintain pertinent books, documents, papers, and records.

Retention period: 3 years after final payment.

252.236–7005 Contractors subject to the salvage materials and equipment contracts clause. [Revised]

To maintain adequate property control records for all materials or equipment specified to be salvaged.

Retention period: Not specified.

252.237–7415 Contractors subject to provisions of cost or pricing data—common carrier contracts clause. [Revised]

To maintain such books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly the direct and indirect cost which were the basis for the pricing of the CSA.

Retention period: 3 years from the date of the submission of the data which forms the basis for a recurring or nonrecurring charge or until the expiration of the period of contingent liability.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR

1852.222–4 Contractors having contracts with Contract Work Hour and Safety Standards Act–overtime compensation clause. [Added]

To maintain payroll and basic payroll records during the course of the contract work for all laborers and mechanics, including guards and watchmen, working on the contract work.

Retention period: 3 years from completion of the contract.

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

49 CFR

192.225 Welders of steel materials to be used in pipelines. [Revised]

To keep records of welding procedures that have been qualified under either section IX of the ASME Boiler and Pressure Vessel Code or section 2 of API Standard 1104.

Retention period: As long as procedure is used.

195.214 Welders. [Added]

To maintain records in detail of the welding procedures, including the results of the qualifying tests.

Retention period: As long as procedures are used.

Coast Guard

49 CFR

421.30 Nonprofit firms or associations designated to certify containers for international transport under Customs seal. [Removed]

National Highway Traffic Safety Administration

49 CFR

585.6 Passenger car manufacturers. [Added]

To maintain records of the Vehicle Identification Number and type of automatic restraint for each passenger car which is reported under section 585.5.

Retention period: Until December 31, 1991.

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

50 CFR

611.70 Operators of foreign fishing vessels. [Amended]

To maintain such records as daily catch, daily receipt, transfer, and daily cumulative receipts logs and/or any other reports required in this section.

Retention period: Not specified.

611.92 Operators of foreign fishing vessels. [Amended]

See 611.60.

630.5 Owners or operators of vessels of the United States who have been issued a permit to fish for or land swordfish. [Added]

To maintain daily fishing records on forms provided by the Center Director according to instructions.

Retention period: Monthly.

653.5 Owners or operators of vessels fishing in the non–directed commercial red drum fisheries. [Added]

To maintain logbook containing the name and address of owner or operator; name and official number of vessel and vessel's home port; port and time of depature and arrival; pounds of red drum landed; and other information as specified in cited section.

Retention period: Not specified.

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federal register

Friday
February 27, 1987

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 3, 9, and 52
Federal Acquisition Regulation; Anti-Kickback Act of 1986; Interim Rule With Request for Comment

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3, 9, and 52

[Federal Acquisition Circular 84-24]

Federal Acquisition Regulation; Anti-Kickback Act of 1986

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: Federal Acquisition Circular (FAC) 84-24 amends the Federal Acquisition Regulation. (FAR) with respect to the revision of sections 3.502, 9.406, and the addition of the clause at 52.203-7 concerning implementation of the Anti-Kickback Act of 1986.

EFFECTIVE DATE: February 6, 1987.

COMMENT DATE: Comments must be received on or before April 28, 1987. Please cite FAC 84-24 in all correspondence on this subject.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041 Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Acquisition Regulation 3.502, 9.406-1, and 52.203-7 are being revised to implement the Anti-Kickback Act of 1986 (41 U.S.C. 51-58). The Act was passed to deter subcontractors from making payments and contractors from accepting payments for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or a subcontract relating to a prime contract. The Act requires each contracting agency to include in all contracts a requirement that the contractor shall (a) have in place and follow reasonable procedures designed to prevent and detect violations of the Act; and (b) cooperate with any Federal agency investigating a violation of the Act. This requirement is effective in all solicitations issued on or after February 6, 1987.

B. Regulatory Flexibility Act

The revision of Subpart 3.5 concerning implementation of the Anti-Kickback Act of 1986 may have a significant economic impact on a substantial number of small entities. An initial regulatory flexibility analysis has been prepared and provided to the Chief Counsel for Advocacy, Small Business Administration.

Initial Regulatory Flexibility Analysis

This initial regulatory flexibility analysis has been prepared in accordance with section 603, Title 5, United States Code.

Reasons for Proposed Agency Action

This rule implements the Anti-Kickback Act of 1986, which requires that each contract include requirements that the prime contractor have in place and follow reasonable procedures designed to prevent and detect violations of the Act and to cooperate fully with any Federal agency investigating a violation of the Act. The rule also provides other essential information on the Act to contracting parties.

Objectives and Legal Basis

The objective is to implement the Anti-Kickback Act of 1986. The legal basis is the aforementioned Act.

Description of and Estimate of Number of Samll Entities to Which Interim Rule Applies

This interim rule may have a significant economic impact on a substantial number of small entities. However, the actual impact is not known. Publication as an interim rule will afford the public the opportunity to comment on its economic impact on small entities, and such comments will be considered in the formulation of the final regulatory flexibility analysis and the final rule.

Projected Reporting, Recordkeeping, and Other Compliance Requirements

This interim rule will require the establishment of procedures by all Government prime contractors and subcontractors to detect and report possible violations of the Act, and to cooperate fully with any Federal agency investigating a violation of the Act. The impact in this area on small entities is not known. As stated above, the public has the opportunity to comment on the reporting and recordkeeping requirements.

Relevant Federal Rules Which May Duplicate, Overlap, or Conflict with the Interim Rule

There do not appear to be any existing relevant Federal rules which duplicate, overlap, or conflict with the interim rule.

Significant Alternatives

There are no significant alternatives since the interim rule merely passes through the requirements of the Anti-Kickback Act of 1986.

C. Determination to Issue an Interim Regulation

A determination has been made pursuant to 41 U.S.C. 418b(d), under the authority of the Secretary of Defense, the Administrator of General Servics, and the Administrator of the National Aeronautics and Space Administration to issue the regulation in FAC 84-24 as an interim regulation. This action is necessary in order to implement the Anti-Kickback Act of 1986 (41 U.S.C. 51-58) by the statutory effectivity date.

D. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 3, 9, and 52

Government procurement.

Dated: February 24, 1987.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Federal Acquisition Circular

Unless otherwise specified, all Federal Acquisition Regulations (FAR) and other directive material contained in FAC 84-24 is effective February 6, 1987.

Eleanor R. Spector,

Deputy Assistant Secretary of Defense for Procurement.

Unless otherwise specified, all Federal Acquisition Regulations (FAR) and other directive material contained in FAC 84-24 is effective February 6, 1987.

Terence C. Golden,

Administrator.

February 24, 1987.

Unless otherwise specified, all Federal Acquisition Regulations (FAR) and other directive material contained

in FAC 84-24 is effective February 6, 1987.

S.J. Evans,

Assistant Administrator for Procurement.

Item I—Anti-Kickback Enforcement Act of 1986

Federal Acquisition Regulation 3.502, 9.406-1, and 52.203-7 are being revised to implement the Anti-Kickback Act of 1986 (41 U.S.C. 51-58). The Act was passed to deter subcontractors from making payments and contractors from accepting payments for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or a subcontract relating to a prime contract. The Act requires each contracting agency to include in all contracts a requirement that the contractor shall (a) have in place and follow reasonable procedures designed to prevent and detect violations of the Act; and (b) cooperate with any Federal agency investigating a violation of the Act. This requirement is effective in all solicitations issued on or after February 6, 1987.

Therefore, 48 CFR Parts 3, 9, and 52 are amended as set forth below.

1. The authority citation for 48 CFR Parts 3, 9, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).9

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Section 3.503 is revised and sections 3.501-1 through 3.502-3 are added to read as follows:

3.502 Subcontractor kickbacks.

3.502-1 Definitions.

"Kickback," as used in this section, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime contractor, prime contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this section, means a corporation, partnerhsip, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this section, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor employee," as used in this section, means any officer, partner, employee, or agent of a prime contractor.

"Subcontract," as used in this section, means a contract or contractural action entered into by a prime contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or service of any kind under a prime contract.

"Subcontractor," as used in this section, (a) means any person, other than the prime contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (b) includes any person who offers to furnish or furnishes general supplies to the prime contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this section, means any officer, partner, employee, or agent of a subcontractor.

3.502-2 General.

The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) was passed to deter subcontractors from making payments and contractors from accepting payments for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or a subcontract relating to a prime contract. The Act—

(a) Prohibit any persons from—

(1) Providing, attempting to provide, or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickbacks; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a subcontractor to a prime contractor or a higher tier subcontractor or in the contract price charged by a prime contractor to the United States.

(b) Imposes criminal penalties on any person who knowingly and willfully engages in the prohibited conduct addressed in paragraph (a) of this subsection.

(c) Provides for the recovery of civil penalties by the United States from any person who knowingly engages in such prohibited conduct and from any person whose employee, subcontractor, or subcontractor employee provides, accepts, or charges a kickback.

(d) Provides that—

(1) The contracting office may offset the amount of a kickback against monies owed by the United States to the prime contractor under the prime contract to which such kickback relates;

(2) The contracting officer may direct a prime contractor to withhold from any sums owed to a subcontractor under a subcontractor of the prime contract the amount of any kickback which was or may be offset against the prime contractor under paragraph (d)(1) of this section; and

(3) An offset under paragraph (d)(1) or a direction under paragraph (d)(2) of this section is a claim by the Government for the purposes of the Contract Disputes Act of 1978.

(e) Authorizes contracting officers to order that sums withheld under paragraph (d)(2) of this section be paid to the contracting agency, or if the sum has already been offset against the prime contractor, that is be retained by the prime contractor.

(f) Requires the prime contractor to notify the contracting officer when the withholding under paragraph (d)(2) of this section has been accomplished unless the amount withheld has been paid to the Government.

(g) Requires a prime contractor or subcontractor to report in writing to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice any possible violation of the Act when the prime contractor or subcontractor has reasonable grounds to believe such violation may have occurred.

(h) Provides that, for the purpose of ascertaining whether there has been a violation of the Act with respect to any prime contract, the General Accounting Office and the inspector general of the contracting agency, or a representative of such contracting agency designated by the head of such agency if the agency does not have an inspector general, shall have access to and may inspect the facilities and the audit books and records, including any electronic data or records, of any prime contractor or subcontractor under a prime contract awarded by such agency.

(i) Requires each contracting agency to include in each prime contract a requirement that the prime contractor shall—

(1) Have in place and follow reasonable procedures designed to prevent and detect violations of the Act in its own operations and direct business relationships; and

(2) Cooperate fully with any Federal agency investigating a possible violation of the Act.

3.502-3 Contract clause.

The contracting officer shall insert the clause at 52.203-7, Anti-Kickback Procedures, in all solicitations and contracts.

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PART 9—CONTRACTOR QUALIFICATIONS

3. Section 9.406–1 is amended in paragraph (a) by adding a third sentence to read as follows:

9.406–1 General.

(a) * * * In this connection, the supplying of information by the contractor to the Government pursuant to the Anti-Kickback Act of 1986 (see 3.502) shall be favorable evidence of the contractor's responsibility.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.203–7 is added to read as follows:

52.203–7 Anti-Kickback Procedures.

As prescribed in 3.502–3, insert the following clause:

Anti-Kickback Procedures (Feb. 1987)

(a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51–58) (the Act), prohibits any person from—

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) Regardless of the contract tier at which a kickback was provided, accepted, or charged under the contract in violation of paragraph (b) of this clause, the Contracting Officer may—

(i) Offset the amount of the kickback against any monies owed by the United States under this contract and/or (ii) direct that the Contractor withhold from sums owed the subcontractor, the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In the latter case, the Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5), in all subcontracts under this contract.

[FR Doc. 87–4219 Filed 2–26–87; 8:45 am]

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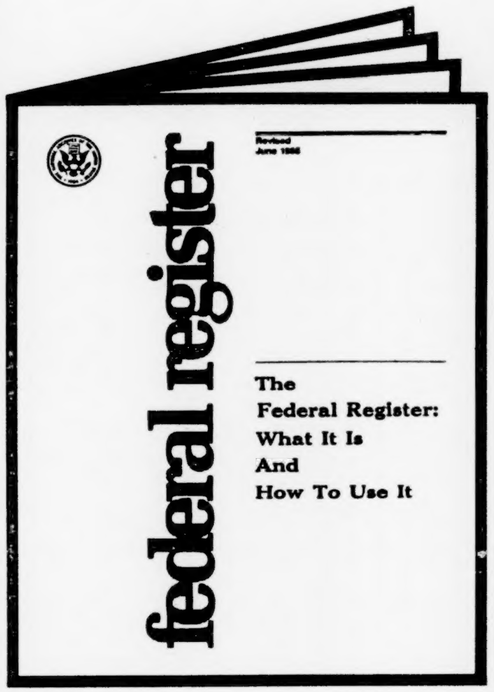
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